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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210001-EI

FUEL AND PURCHASED POWER COST
RECOVERY CLAUSE WITH
GENERATING PERFORMANCE
INCENTIVE FACTOR.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 4B

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER ANDREW GILES FAY
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, December 7, 2021

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
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1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. Next item is Item
3 4B, fuel and purchase power cost recovery clause.
4 Mr. Wooten, you're recognized.

5 MR. WOOTEN: Good morning, Commissioners.
6 Orlando Wooten with Commission staff. Item 4B is
7 DEF's request for recovery of replacement fuel
8 costs for the January 2021 to April 2021, Crystal
9 River Unit 4 forced outage. The records shows that
10 the forced outage was caused by a combination of
11 contributing factors involving both mechanical
12 failure and operator failure. However, failure of
13 the plant operator to follow written procedures
14 without supervisory approval directly led to the
15 outage. Based on the evidence in the record, staff
16 recommends that DEF should credit its customers
17 14.4 million associated with retail replacement
18 power costs for the Crystal River Unit 4 outage
19 through its 2021 final true-up filing. Staff is
20 available for any questions.

21 CHAIRMAN CLARK: All right. Thank you very
22 much. Remind our Commissioners this is a
23 post-hearing decision. Discussion is limited to
24 Commission and staff. So, Commissioners, do you
25 have any questions, comments or discussion on the

1 item? Commissioner Fay. You're still lit up. I'm
2 sorry. Discussion? Commissioner La Rosa. Looking
3 at the buttons here.

4 COMMISSIONER LA ROSA: No. All good. I'm
5 still learning how to find my button. Thank you.

6 Thank you, Chairman. You know, I've certainly
7 spent a lot of time on this issue and kind of gone
8 back and forth and I think I read the root cause
9 analysis more times than I was certainly planning
10 to, but I can't say that I agree with staff's
11 recommendation a hundred percent. Don't
12 necessarily feel that they're pointing to the exact
13 cause by looking -- or by reading through the root
14 cause analysis, I do think that the equipment
15 failure is a massive problem and was significant.
16 And after, you know, going through testimony and
17 hearing testimony, I do believe the witness was
18 very credible. Didn't see a whole lot of
19 contention against the witness. And just thought
20 that I'd, you know, kind of start the conversation
21 that way and --

22 CHAIRMAN CLARK: I will echo before anybody
23 else makes any comments. I'll echo Commissioner La
24 Rosa, I think the same thing. Reflecting back on
25 the testimony and reading back through some of the

1 testimony, again, there -- to me, it's not a
2 hundred percent conclusive in either direction. I
3 think you can absolutely -- and, staff, I think you
4 did a great job in your description and in your
5 analysis, but I think from a purely subjective
6 perspective, you can look at this and go, I can
7 assign some blame and some responsibility and I can
8 understand that there's equipment failure that
9 happens and occurs. And I was -- I wrote it in my
10 notes. I said, you know, this is one of those
11 Solomon decisions, can you split the baby. And I
12 don't know that that's not an option, that this
13 Commission should not just consider is saying,
14 okay, we don't have to assign a hundred percent
15 responsibility in either direction. We can say
16 there's some blame that does need to be assessed
17 and there's some reparation that needs to be made
18 on the other hand. So I would throw out for
19 consideration that maybe there is an equitable
20 split here that we should consider.

21 Comments. Commissioner Graham. You beat him
22 to the buzzer. I'm watching lights.

23 COMMISSIONER GRAHAM: If Mr. Fay wants,
24 because he's going to be the incoming chairman, I
25 will relinquish to --

1 CHAIRMAN CLARK: We're keeping him oppressed
2 as long as we can.

3 COMMISSIONER FAY: Very kind of you,
4 Commissioner Graham. Thank you.

5 I guess I just -- I have a question probably
6 for staff based on your comment, Mr. Chairman. So
7 I'm looking at page four of the bottom of the
8 recommendation, and it says the standard for
9 review, which the parties agree on is, what does a
10 reasonable utility manager would have done in light
11 of conditions and circumstances that were known or
12 should have known in that -- and that should have
13 known part is, I think, in large part, what is in
14 question here. And so, from what I can tell, based
15 on this legal standard, that there -- I can't -- I
16 guess, would there be any prohibition for us, I
17 guess, doing what the Chair said, an allocation?
18 There's no limitation that essentially it either
19 needs to be a hundred percent one way or the other.

20 MS. CRAWFORD: That's correct, Commissioner.
21 You do have some discretion to look at the record
22 and determine, based on the circumstances, that
23 Duke wasn't wholly imprudent in the circumstances
24 leading up to the outage. I think you can allocate
25 what percentage you believe, based on the record,

1 and it's helpful, of course, for us to know exactly
2 what elements you believe are persuasive.

3 COMMISSIONER FAY: Sure. Mr. Chairman, I just
4 probably have a follow-up comment to that. I mean,
5 with that said I sort of -- I felt the same way
6 that Commissioner La Rosa and Clark said, that this
7 is very fact intensive. And I think there's
8 components of it that support, you know, was the
9 policy actually followed. There's also the
10 question if the relay would have -- could have been
11 known based on its age. There's just a number of
12 components in the case itself, I think, that
13 question if there is a full allocation one way or
14 another. And so I feel comfortable and actually
15 appreciate the idea being thrown out that, you
16 know, maybe potentially this is a 50 percent. I
17 don't like to split the baby. I don't know why
18 people say that. Yeah. But I guess -- yeah. So
19 we wouldn't split the number, I guess, here and
20 potentially have that allocation 50/50, because I
21 have concerns that maybe legally we wouldn't be
22 able to do that, but it doesn't seem to be
23 inconsistent with our authority and that -- legal
24 has confirmed that. So I would be supportive of
25 that, Mr. Chairman, but also let my colleagues

1 comment.

2 CHAIRMAN CLARK: Commissioner Graham.

3 COMMISSIONER GRAHAM: Thank you, Mr. Chairman
4 and Mr. Chairman. I agree with -- everything I've
5 heard so far. I think facts are pretty intensive in
6 this case. I think you can look at the same set of
7 facts and, as staff did, come up with reasons to
8 deny the recovery. I think there's good arguments
9 to allow the recovery. I think the operator did
10 exactly what he was supposed to do for the three
11 times that he tried the autosync. But I don't
12 believe -- the one witness that was there said that
13 he -- that he did that exactly. There is no
14 written procedure for the troubleshoot. And so he
15 did what he normally would do for the
16 troubleshooting. You got to remember this is an
17 operator that's been there for 15 years. And so
18 he's very experienced. He's done this a bunch of
19 times. The only thing that failed this time was
20 that Beckwith relay. And there was no way for him
21 to know that that relay was -- it's something that
22 he's normally done, something that normally worked.
23 He just wasn't there to save the day this time.
24 And so it's kind of problematic for me to point my
25 finger at that operator and say he did something

1 wrong, because I don't think he did. I just think
2 that the equipment failed.

3 And if we're talking about coming up with a
4 balance between -- or a number between zero and a
5 100, I'm not quite sure where you would draw that
6 line. I mean, what are the facts in this case
7 where you draw that line saying it's going to be
8 50/50, or it's going to be 60/40, or it's going to
9 be 75/25? I mean, I agree, I don't think you can
10 penalize that operator in this case, but I don't
11 know where you draw the line.

12 CHAIRMAN CLARK: Commissioner Passidomo.

13 COMMISSIONER PASSIDOMO: Thank you, Chairman
14 Clark. Yeah, I agree. I know it's factually
15 intensive and it really hinges on that. So I do
16 kind of want to flesh that out a little bit and
17 just, you know, play devil's advocate in the sense
18 of I understand the check relay, it did fail, but
19 if it hadn't -- had not have failed, operators
20 still proceeded, as they did, you know,
21 accordingly. For the evidence in the record, would
22 that have changed the outcome in any way? Is that
23 even possible?

24 MR. WOOTEN: I believe you're asking if all
25 things the same, except the Beckwith -- the relay

1 not failing, would the outage happen? Okay.
2 According to witness testimony, if everything
3 happened the way it was and the relay had not
4 failed, we would not be here. There would be no
5 outage. There -- the Beckwith relay would have
6 stopped the breaker from closing and we wouldn't
7 have a outage force by his troubleshooting process.

8 CHAIRMAN CLARK: Commissioner Passidomo,
9 that's a good question. Do you think that -- and
10 this is a little bit subjective. I don't know that
11 we asked this question during testimony, but do you
12 think that there are new procedures in place that
13 the company has instituted that would probably
14 prevent this from happening again?

15 MS. CRAWFORD: I would note that speculation
16 on that is outside the record.

17 CHAIRMAN CLARK: Noted.

18 MR. WOOTEN: As said, the speculation's
19 outside of the record, but I can state that they
20 have introduced --

21 CHAIRMAN CLARK: I'm asking if you know -- if
22 you're aware they've introduced any new policies
23 that would -- I restrained the record here -- we've
24 answered our own question. It's actually in the
25 record, and it says that since the CR4 outage

1 event, start-up procedures have been revised to
2 include guidance to contact either of the operation
3 superintendents. So I think that kind of
4 answers -- does kind of answer my question. There
5 have been steps taken, which lead -- would lead us
6 to believe that there were things that could have
7 been done additionally. It's a subjective -- I
8 think there's some subjectivity on the part of the
9 Commission that we have here in terms of making
10 that assessment. I don't think, Commissioner
11 Graham you pointed out, where do you land on
12 numbers? There's not a scientific formula that we
13 can plug this into. These engineers have a hard
14 time understanding that, there's not a formula we
15 can use here, we're going to have to lean on what
16 our gut tells us in some of these regards.

17 When you look at the procedural aspect of it,
18 look at the equipment malfunctioning aspect of it,
19 there's two things. And both issues, both actions
20 had an effect on what happened. And that's how I
21 value and weigh this thing. And I had even -- my
22 notes have a series of numbers in them that started
23 with, you know, do you assess this at 50/50, do you
24 go 49/51, 51/49? And I did a 60/40, as well. And
25 I -- I don't know. I'm not willing to say I know

1 the answer, and here it is. But I would throw out
2 to you that I do firmly believe that this is a
3 situation where we can assess that we can assign
4 some responsibility on both sides.

5 With that, discussion, questions?
6 Commissioner Fay.

7 COMMISSIONER FAY: Thank you, Mr. Chairman. I
8 appreciate this debate and discussion. I think it
9 sort of reaffirms the complexities of the facts in
10 this case and what exactly happened and where that
11 responsibility lies. I feel -- I think the
12 allocation discussion is a fair one by Commissioner
13 Graham, and sometimes I think it's difficult to
14 find that starting point and adjust either left or
15 right to get that number.

16 I do think the record sufficiently
17 substantiates having some responsibility on both
18 sides. And so I think probably a fair way to do
19 that is an equal allocation. Although, I do -- I
20 acknowledge that I also looked at the 60/40 or
21 potential concept just originally when I looked at
22 this. And then, to your point, Mr. Chairman,
23 wasn't sure how you get to a specific number, and
24 even if we could do that. And so I think now that
25 we know legally that's appropriate, a 50/50

1 allocation is something I think the record
2 substantiates.

3 And I just -- I do want to add, related to
4 your last comment, Mr. Chairman. I mean, I think
5 we, as a Commission, clearly would set policies
6 that would incentivize the utility to fix an error
7 like this going forward. So, of course, I -- I
8 look at the RCA as to what occurred and what went
9 wrong to make that decision, and I think the
10 Exhibit 54 that we mentioned in the record that
11 shows some corrections being made -- I'm not sure
12 that that weighs significantly in my decision, but
13 I recognize that it's in there, and so I just
14 acknowledge that I think we'll -- we realize that
15 utilities will want to try to fix something if it
16 occurs in a similar fashion.

17 So, with that, Mr. Chairman, what I would move
18 is the allocation, the recommendation, presented by
19 staff, split that responsibility essentially 50
20 percent and 50 percent -- and I guess just to
21 confirm with staff, Mr. Wooten, we would be able to
22 give you that direction in our order and then you
23 would break out the numbers as to how it would be
24 directed towards each party? Is that -- is that
25 appropriate?

1 MR. WOOTEN: That's correct.

2 COMMISSIONER FAY: Okay. Well, Mr. Chairman,
3 I would feel comfortable moving that 50 percent of
4 the allocation would be essentially recoverable and
5 50 percent would not for Item 4B.

6 CHAIRMAN CLARK: All right. Have a motion.

7 Do I have a second?

8 COMMISSIONER LA ROSA: Second.

9 CHAIRMAN CLARK: Have a motion and a second.
10 Discussion on the motion? Commissioner Graham.

11 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.
12 I am -- I'm not sure I would have gone with 50/50,
13 but I will admit that I don't have enough facts to
14 argue off that point. So I think that that being
15 said, I think we're ready.

16 CHAIRMAN CLARK: Good observation. Other
17 questions, comments?

18 (No comments made.)

19 CHAIRMAN CLARK: On the motion, all in favor,
20 say, aye.

21 (Chorus of ayes.)

22 CHAIRMAN CLARK: Opposed?

23 (No comments made.)

24 CHAIRMAN CLARK: Motion carries. Thank you
25 very much, staff.

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(Agenda item concluded.)

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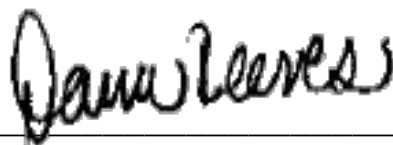
STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 21st day of December, 2021.



DANA W. REEVES
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