

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

DOCKET NO. 110001-EI

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

VOLUME 3

Pages 388 through 495

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COMMISSIONER JULIE I. BROWN

DATE:

Tuesday, November 1, 2011

PLACE:

Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
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(As heretofore noted.)

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

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## P R O C E E D I N G S

(Transcript follows in sequence from Volume 3.)

**CHAIRMAN GRAHAM:** Okay. I think we are ready to bring this hearing back to order. We have Docket Number 110007 on the table, and we are currently active with Docket 110001. We finished the Florida Power Utility's portion of this, and we are at opening statements. And Progress has got seven minutes, and he is going to hold off until the end for that seven minutes. And -- go ahead.

**MR. BURNETT:** Mr. Chairman, to avoid any further debate or controversy, since Mr. Moyle raised an issue, I am happy to go ahead and go first and reserve whatever time, just to move the process along.

**CHAIRMAN GRAHAM:** Okay. Sounds good.

**MR. BURNETT:** Thank you, sir.

Commissioners, we find ourselves with one remaining issue, the legal and policy issue that was briefed extensively last year and that you wrote a 35-page order on and resolved last year. My crystal ball tells me as we move down the table here, you are probably going to hear several attempts to argue the 0437 docket. You will probably hear questions about the extent of (inaudible) prudence issues, and all of that, which is completely inappropriate and not relevant to this docket. So I would

1 caution as we go forward. Don't get upset with me if you  
2 hear a lot of objections if that starts to happen.

3           Now, as to what is on the table this year, the  
4 concept of whether you can allow recovery of replacement  
5 power and fuel costs prior to a prudence determination. I  
6 didn't think I would ever do this, but I would like to  
7 quote Mr. Moyle on the topic when he was talking to  
8 Commissioner Balbis, and said, "But, you know, last year  
9 the fuel decision was decided in the fuel clause. FIPUG  
10 argued that you ought to not allow them to cover until  
11 prudence was determined, and that argument was not  
12 accepted." Mr. Moyle on what was decided last year.

13           Now, FIPUG this year has gone so far as to  
14 suggest that for you to allow the recovery of replacement  
15 power costs would be an unconstitutional taking.  
16 Remaining as professional as I can, to say the least this  
17 argument is frivolous. If you were to agree with Mr.  
18 Moyle, then you just (inaudible) took FPL, Gulf, and  
19 TECO's customers because you said in your order last year  
20 and in the coal refund order that you never determine  
21 prudence in the fuel clause. You don't make a  
22 determination of prudence unless and until there is a  
23 spin-off docket.

24           So if we take Mr. Moyle's argument to it's  
25 logical conclusion, or FIPUG's argument, I'm sorry, if he

1 is right, then every year you have done an  
2 unconstitutional taking every time you have not determined  
3 prudence and allowed the collection of fuel costs. That  
4 can't be right on its face, number one.

5           Number two, it's not a taking at all. What you  
6 do here is you determine a price for our product. You  
7 determine what we are allowed to charge our customers for  
8 a product. You are not taking their property. You are  
9 not taking anything from them.

10           And even if it is a taking, which it's not, they  
11 are represented and they are going to have their day. So  
12 they are going to have a prudence determination eventually  
13 on this. It's a timing issue. So that argument is  
14 completely unsupportable.

15           Now, you will also probably hear the sound bites  
16 that I am becoming used to hearing as let's be equitable.  
17 Let's split the baby. There are hard economic times.  
18 Let's do some risk sharing here. I doubt what you will  
19 hear, though, is what the law says, what your precedent  
20 says, what the factors that you have considered that your  
21 staff and you did a great job of enumerating in your  
22 recommendations and orders last year. I doubt you will  
23 hear any discussion about that, so I would like to discuss  
24 that now.

25           Let's start with what the law says. The law

1 says you may not act arbitrarily, nor may you act  
2 capriciously. I don't think anyone suggests that you are  
3 acting capriciously, so I guess the caution would be are  
4 these intervenors going to suggest that you do anything  
5 that could be construed as arbitrary.

6           Last year, your staff and you worked -- the  
7 staff made a recommendation, you accepted it, most of it,  
8 and wrote a comprehensive order that said when we decide  
9 whether we should make a deferral we deploy a holistic  
10 analysis that looks at several factors. We don't make  
11 these on sound bites. We don't make these decisions on  
12 one piece of evidence. We look at the whole group of  
13 factors, and what we look at is fuel factor stability,  
14 ratepayer impact, utility impact, what is sound policy,  
15 and price signal accuracy.

16           Now, let's look at the first one of these  
17 factors. What is the factor impact. Last year  
18 replacement power costs for Crystal River 3 was a \$3.82  
19 per megawatt hour impact. This year \$3.88. So there is  
20 an incremental .06 cents per megawatt hour difference.  
21 Certainly not substantial on a relative basis.

22           Take that and what does that mean for a  
23 ratepayer? Again, a .06 cents per megawatt hour  
24 incremental difference from last year. Last year,  
25 remember, you said, Progress, you may recover these costs

1 in advance of a prudence determination, and that was the  
2 amount. So you're looking at a very small amount between  
3 last year and this year.

4 Now, the next factor you should look at is how  
5 is PEF effected. I don't think this Commission has ever  
6 said this is a one-sided analysis. You look at all the  
7 stakeholders and how PEF would be impacted. You have to  
8 look, what is our cash flow position? What is it in  
9 totality? Are we getting cash flow in the base rate  
10 decisions? Have we done any other deferrals? Are  
11 deferrals starting to stack up, deferrals on top of  
12 deferrals? What is the total cash flow position to the  
13 company and is that negative or is that going to be  
14 impacted if you guys make a deferral.

15 Then you have to look at your sound regulatory  
16 policy. The regulatory compact as we briefed last year  
17 means that the reason that you get to regulate us is  
18 because there is a trade-off and we get timely recovery of  
19 costs as they are incurred. So what do deferrals do to  
20 the regulatory compact and your overriding principle that  
21 we get costs as they are incurred.

22 And then finally when you look at price signals,  
23 price signals will be less accurate if you defer now into  
24 the future. Just like they are somewhat inaccurate last  
25 year because of what we did with our fuel forecast. It

1 made the price signal be a little bit inaccurate last  
2 year. Prices are a little bit higher this year because of  
3 that. That has a compounding effect every time you defer.

4           So, in closing, here is what the Supreme Court  
5 says about what you should do when you are deciding  
6 whether your activity is arbitrary or not and what this  
7 Commission has said that means. The Supreme Court in  
8 Florida Bridge Company v. Bevis said Commission action has  
9 to be supported in logic, precedent, and sound policy.  
10 You guys said, or this Commission said in 090719, "In all  
11 matters before us we must base our decisions and take  
12 actions based on facts, not suppositions or conclusory  
13 impressions."

14           So, I guess, what does that mean? When you are  
15 deciding whether you are going to defer any of these fuels  
16 costs, do you deploy an objective analysis, logical,  
17 fact-based, holistic, capable of explaining it to others  
18 and with reproducible results, or do you accept an  
19 argument that says put it in the black box. Do what you  
20 want. You have ultimate discretion. You don't have to do  
21 it. Pick a number out of thin air. Do as much as you  
22 want. It can't be understood. It can't be reproduced.  
23 It can be perceived as ambiguous. Absolutely not. The  
24 law says you can't do it. Your own precedent says you  
25 can't do it. So I would ask that you keep that in mind

1 when you hear these arguments and sound bites. Thank you  
2 very much.

3 **CHAIRMAN GRAHAM:** Thank you, sir.

4 Gentlemen, I don't know who is first or second.  
5 Mr. Rehwinkel.

6 **MR. REHWINKEL:** I will take the first shot. Let  
7 me start my clock here.

8 Good afternoon, Mr. Chairman and Commissioners.  
9 My name is Charles Rehwinkel on behalf of the Public  
10 Counsel's Office. I guess having listened to Mr.  
11 Burnett's opening, I would say to you do not be seduced by  
12 arguments about miniscule factors, percentages, these  
13 small numbers you hear about. No doubt about it, this is  
14 a huge dollar amount. You have already seen \$110 million  
15 passed through and they are asking you for \$176 million  
16 more. You can't make that go away or hide it by putting  
17 in a factor or a fraction.

18 On November 30th, 2010, when you voted the order  
19 that Mr. Burnett mentioned, when you voted this order out  
20 and you allowed them to put \$110 million in excess  
21 replacement power costs on the backs of their customers,  
22 you thought the return to service date was going to be  
23 December 2010. You thought this was going to be a  
24 one-year event. Later that day, a press release came out  
25 that the rest of the world found out about the next day

1 that that return to service date was going to be in 2011,  
2 the first quarter. Sometime after that, that return to  
3 service date slipped to April of 2011, and we all know  
4 what happened in March of 2011. The world changed.

5           This one-year event became a five-year event.  
6 An unprecedented event in the history of Public Service  
7 Commission regulation of their utilities and the nuclear  
8 extended outage world. So whatever precedent goes into  
9 this order, we submit to you it does not apply to this  
10 case. You are dealing in pioneer territory now.

11           And I would ask the Commission, remember how you  
12 struggled with passing on this \$110 million. You  
13 considered a lot of factors. You considered 50/50. You  
14 considered deferring it all. And that was when you  
15 thought it was \$110 million in one year.

16           Now, depending on how the evidence turns out and  
17 what is admitted into the record in this case, there is  
18 evidence that is in one of the disputed exhibits that  
19 would tell you that Progress is projecting not  
20 \$110 million of excess replacement power costs, and by  
21 that I mean above the NEIL insurance recovery, but 500 to  
22 \$600 million. So what you do today is going to effect how  
23 customers perceive this agency's view of this case and the  
24 impact on customers.

25           What Progress wants you to do is in the sterile

1 world of fuel true-ups, they want you to ignore what  
2 happened in that docket. And, yes, we understand the  
3 record and we understand what is and is not at issue  
4 today. But the Public Counsel's Office this year has  
5 taken ten depositions. We are taking more. We are now  
6 convinced that Progress made errors in judgment that they  
7 need to be held accountable for. So we are taking a  
8 position different today than we took last year when we  
9 thought it was a one-year event, when we thought that your  
10 Commission precedent about allowing advanced recovery in a  
11 prudence environment should control. We did not take a  
12 strong position. Shame on us. FIPUG was right. You  
13 should not have allowed this recovery.

14 Our basic point here today is that five years is  
15 a long time. There is an uncertain recovery path for this  
16 building. If you allow slice after slice, year after year  
17 of this 5 to \$600 million to be recovered from customers,  
18 those costs could be viewed as sunk costs. The customers  
19 have already paid them. There are these miniscule factors  
20 here, but these are real dollars on real customers. So we  
21 are asking you to take a look at this, and let's look at  
22 this differently. Make Progress share some of the pain  
23 that they have caused through their own management  
24 actions. Put the burden on them.

25 Customers are already taking \$110 million.

1 Let's let Progress share in the next few hundred million.  
2 Because we all know this, customers weren't out there  
3 making the decisions about that building. Customers were  
4 not at fault. Progress was at fault. You're just going  
5 to decide whether they are to be held accountable for it.  
6 We also don't know -- 2014 is the stated return to service  
7 date, but we don't know for sure if that is the repair  
8 path that is going to be ultimately taken or the  
9 licensability path that is going to be taken. If each  
10 year we come in here and you say to the customers you pay  
11 this year's price because we are going to take care of you  
12 in the end when prudence determinations are made, that  
13 puts no discipline on the company as far as the alacrity  
14 with which they need to repair this building.

15           You are going to hear about insurance.  
16 Customers paid the premiums for the insurance. It's not  
17 Progress that has done that, so customers are the insurers  
18 of this entire cost. So we are asking you, please, look  
19 at this one carefully. It is different than you have ever  
20 had before. Thank you, Commissioners.

21           **CHAIRMAN GRAHAM:** Thank you, sir. Mr. Brew.

22           **MR. BREW:** Thank you, Mr. Chairman,  
23 Commissioners. In order to try to avoid being repetitive,  
24 I think it is important to emphasize that we are in  
25 uncharted territory. Last year when you made the decision

1 in this docket, Progress' testimony was that CR-3 would be  
2 back in service in January. They projected  
3 6.7 million megawatt hours of nuclear production from that  
4 unit. And so you were looking at a very defined time for  
5 what we expected would be in dispute in the case.  
6 Obviously everything has changed.

7           Among the things that have changed is you now  
8 have set the hearing schedule for at least Phase I of the  
9 prudence case. As Mr. Rehwinkel mentioned, the unit won't  
10 be available for a long time now. The important thing, I  
11 think, to capture this is -- what Mr. Burnett said was  
12 that Progress wants to increase the fuel rates by \$3.88 a  
13 month for the average residential. Taking CR-3 out takes  
14 \$4.70 out. So the difference really is are you going to  
15 increase the rates for customers while these issues are  
16 pending, or at least hold consumers even this year during  
17 a time when the economy is struggling.

18           There was some discussion of the impacts of the  
19 deferral. Well, everybody understands making a decision  
20 on the deferral has no implications as to the prudence  
21 case at all. You are going to decide that in the 100437  
22 docket. And so the question from a consumer standpoint  
23 you are looking at the cost to the consumers of putting  
24 that money towards 19 percent interest credit card  
25 payments or more to the utility bill that they may or may

1 not get back later. From an overall fairness perspective,  
2 also to the extent that Progress -- you defer the recovery  
3 of costs this year, it would even out what might be  
4 ultimately at stake in the prudence case in terms of what  
5 has been recovered or hasn't been recovered.

6           So what I would urge you to do is look at the  
7 overall picture. This is one of those cases where while  
8 these dockets are -- we do everything on a regular basis  
9 with a lot of due diligence and as a result of that many  
10 of the issues that we have talked about earlier today are  
11 stipulated out, this is something that is not business as  
12 usual. The Commission needs to look beyond the very small  
13 fonts in the spreadsheets to the overall picture. And  
14 that is what the question really is. While the prudence  
15 case is pending, do you want to increase rates for  
16 consumers on the fuel charge or do you at least hold it  
17 even.

18           Our view is that under the circumstances here  
19 now where you know you are going to have no production  
20 from CR-3, unlike what you were told last year, the  
21 appropriate thing to do is to hold the factor constant or  
22 remove CR-3 altogether, the replacement fuel costs, and  
23 then sort everything out once you have made factual  
24 findings in the prudence case. Thank you.

25           **CHAIRMAN GRAHAM:** Mr. Moyle.

1           **MR. MOYLE:** Thank you. Thank you, Mr. Chairman.  
2 Let me just start by thanking the prehearing officer for  
3 giving each of us five minutes. We had a little  
4 discussion about this, and we said that it was a lot of  
5 money, a lot of issues, and we will try not to be  
6 redundant. And given that, I'm going to try not to be  
7 redundant and focus on a couple of other points.

8           First, let me start by quoting from the language  
9 that came out of your order last year that I think is  
10 pertinent and squarely refutes the comments made by  
11 Progress Energy. This is found on Page 14 of your order.  
12 "We disagree with PEF's argument that we cannot defer a  
13 portion of the requested replacement power costs. In  
14 agreement with the intervenors and PCS, we have the  
15 discretion to defer all or a portion of the requested  
16 recovery amount prior to determination of prudence."

17           That was your decision last year. Last year we  
18 were here and we urged you to defer all or at least some  
19 portion thereof, and there was a lot of legal debate about  
20 could you or could you not. We looked at old orders, but  
21 you guys looked at it, the staff looked at it and did a  
22 thorough analysis, and said we have the discretion to make  
23 a judgment as to are we going to allow some, all, or none.  
24 And that issue is back before you today.

25           Mr. Burnett said, look, this is simply a legal

1 and policy issue. You know, we decided it last year. So  
2 I think he is assuming that, well, the way you decided it  
3 last year will be the same way you decide it this year.  
4 Which I would disagree with completely because if it is a  
5 discretionary call, I would argue your decision has to be  
6 made based on the facts as they sit here today. And as my  
7 counsel has said, the facts are materially different.

8           You know, last year you thought the thing was  
9 coming back on-line the next month. They said in your  
10 order the fourth quarter of '10, and now we know it is  
11 '14. So a four year difference is a material fact that we  
12 would suggest compels you to make a decision other than  
13 the one you made last year, which was to allow them  
14 dollar-for-dollar recovery.

15           I think the other important fact is that we have  
16 a prudence hearing coming up, and in terms of the legal  
17 arguments about taking and due process, you know, all of  
18 the recoveries that you allow, the way you have  
19 interpreted your fuel clause is to say we will let that  
20 stuff go through, but then to the extent there is a  
21 question of prudence, we will sort through it.

22           Well, what makes this case different from what  
23 you did earlier today is the question of prudence is teed  
24 up. It's not like, well, maybe it will happen, maybe it  
25 won't. It is scheduled to go to hearing in June. So we

1 think that it is improper when prudence has been  
2 identified, they filed the petition for a spinoff docket  
3 and said we think there are some issues here. Public  
4 Counsel is doing a lot of discovery. Prudence is in play,  
5 and we think it is improper and probably runs afoul of  
6 some constitutional provisions when prudence has been  
7 identified and is teed up to say, okay, we are going to  
8 take your money today, and, you know, we will let you  
9 argue about it further down the road.

10 We don't think that is a good approach. And I  
11 don't want to get into the legal stuff, we can do that in  
12 our briefs, but we do believe that due process and taking  
13 are further strong arguments as to why you ought not to  
14 let them get the money today.

15 You will also hear evidence from their witnesses  
16 that if you say, okay, we got this thing teed up, we are  
17 going to hearing in June, make a decision at that point.  
18 If you defer the recovery today, it's five or six months  
19 away, you know, you can treat it kind of like a midcourse  
20 correction. If they win and they prevail, you can allow  
21 them to recover at that point. If they don't, then they  
22 don't get anything. But we would argue that the  
23 ratepayers, you know, ought to be able to keep their  
24 dollars.

25 And, you know, the notion about hard economic

1 times, I hope that was not made in a way that kind of  
2 doesn't emphasize the significance of hard economic times  
3 because there are hard economic times out there and  
4 residents and consumers are facing them. And to the  
5 extent that they are before you today saying let us keep  
6 the dollars now, which I think everyone is saying, we  
7 would urge you to take that call to heart and let us keep  
8 the dollars now.

9           You know, if someone is going to say, oh, well,  
10 Wall Street may say this, or that, or, you know, all this  
11 kind of stuff about what is best for us, you know, we are  
12 not big fans of paternalism. Let us keep our dollars.  
13 That's what we are asking you.

14           Let me just spend a minute and tell you about  
15 another issue that you are going to hear something about,  
16 and I think if I spend 30 seconds describing it, it will  
17 help in some of the cross-examination. There is an issue  
18 as to the insurance payments, and the insurance payments  
19 are coming in, and they are defraying some of the costs.  
20 Progress, for the purposes of doing a calculation, has  
21 assumed that there is only one incident and we are going  
22 to take issue with that assumption. We think that is a  
23 bad assumption and that it is not based on good facts  
24 when, you know, Progress is filing stuff with you talking  
25 about a second delamination event. We think there is two

1 events. And why does that matter? It matters as to the  
2 amount of insurance monies that are available.

3           If you say, you know what, we think the  
4 assumption of one event was not valid, that there is not  
5 really good facts on that, and the stronger facts are that  
6 there are two events, that is a \$70 million issue in that  
7 that is additional insurance monies that would be brought  
8 to bear that would make it so that ratepayers don't have  
9 to put out another \$70 million.

10           So I may have not have explained that that  
11 clearly, but we think the better assumption is that there  
12 are two events and that triggers additional insurance  
13 monies. Therefore, there is a reduced need for Progress  
14 to collect money from the consumers. And you are going to  
15 hear about that. I just wanted to frame that up.

16           We think at the end of the day, given the  
17 material change in facts about when this plant is coming  
18 back on-line, the fact that there is a prudence hearing  
19 coming up in June, it is already scheduled, that the best  
20 decision to be made, again, using your discretion, is to  
21 not allow them to recover these dollars until after the  
22 hearing. We think that keeps you clear of a whole bunch  
23 of issues.

24           And at the very least, if you are going to award  
25 some dollars, don't give them dollar-for-dollar. I mean,

1 I would urge you to -- you know, particularly in the  
2 economic circumstances to be equitable as to how you deal  
3 with this issue. So thank you for the opportunity to  
4 present opening comments.

5 **CHAIRMAN GRAHAM:** Thank you. Mr. Burnett, you  
6 have three minutes and two seconds.

7 **MR. BURNETT:** I think the federal agencies have  
8 something.

9 **CHAIRMAN GRAHAM:** Oh, sorry.

10 **MS. WHITE:** Good afternoon. I will echo what  
11 some of my colleagues have said and not take a whole lot  
12 of your time.

13 Just as a reminder, the reason that the federal  
14 executive agencies continue to appear here is because we  
15 use those tax dollars that we have in stewardship of those  
16 tax dollars to pay utility bills, and also to fly military  
17 missions, and to do the other federal functions that we  
18 are required to do.

19 And so in these times not only are there  
20 consumers that are very concerned, there are federal  
21 agencies that are looking at mission accomplishment using  
22 the same dollars. And so we echo the call for you to use  
23 your discretion in a way that will save those dollars, if  
24 possible. And especially given the fact there is an  
25 ongoing docket where you will decide the prudence of those

1 costs, we would ask you to use that discretion to save  
2 those dollars this year in this docket. Thank you.

3 **CHAIRMAN GRAHAM:** Thank you. Mr. Wright.

4 **MR. WRIGHT:** Thank you, Mr. Chairman and  
5 Commissioners. Good afternoon. I'm Schef Wright, and I  
6 have the privilege of representing the Florida Retail  
7 Federation in this proceeding.

8 I have some prepared remarks, but before I go  
9 into those, I want to respond briefly to some of the  
10 points argued by Mr. Burnett. First, he correctly stated  
11 that the Commission's actions cannot be arbitrary or  
12 capricious. That is the right standard. I'm not going to  
13 sit here and argue that your decision last year was either  
14 arbitrary or capricious, but what I will submit to you  
15 with a very high degree of confidence, verging on  
16 certainty is that it would not be either arbitrary or  
17 capricious for you, the Florida Public Service Commission,  
18 to disallow further cost recovery of additional  
19 replacement fuel costs until after you decide the prudence  
20 issue next summer in Docket 100437.

21 Second, Mr. Burnett said they do what they  
22 always do. They are entitled to timely recovery of costs  
23 as they are incurred. Not so fast, my friend, as Mr.  
24 Corso would say. They are entitled to timely recovery of  
25 reasonable and prudent costs as they are incurred. There

1 has been no determination that the costs they are  
2 incurring for replacement fuel costs for Crystal River 3  
3 are reasonable or prudent because there has been no  
4 determination that their actions that caused them to incur  
5 these costs are reasonable and prudent.

6           Finally, Mr. Burnett says that your decisions  
7 must rest on logic, precedent, and sound policy. We  
8 agree. Logic would tell you that the way the law usually  
9 works is you are entitled to recovery after you prove you  
10 are entitled to it. Your precedent, I think, is  
11 readily -- you know, his argument about your precedent  
12 means you have to allow it this time because you did last  
13 year is readily disposed of by the language quoted to you  
14 by Mr. Moyle from last year's order in which you said you  
15 have the discretion to order to defer all or -- recovery  
16 of all or part of the costs. That is your precedent, and  
17 I would assert to you that the precedent in probably  
18 99.6 percent of all your cases is that utilities get  
19 recovery of their costs after they prove that they are  
20 reasonable and prudent, at least on a projected basis.  
21 They haven't made that showing here. Finally, sound  
22 policy equally dictates recovery after proof.

23           Here is my prepared commentary, Commissioners.  
24 The issue here is Issue 1(c), should PEF, Progress Energy  
25 Florida, be permitted to recover the costs of replacement

1 power due to the extended outage at Crystal River 3 in  
2 this docket? The Florida Retail Federation and the other  
3 consumer parties believe that your decision on this issue  
4 should be an unequivocal no. Allowing recovery is  
5 contrary to established principles of regulation.

6 First, the utility bears the burden of proving  
7 that its actions were and are prudent in order to justify  
8 cost recovery. Progress has not made that proof yet.  
9 Recovery of costs, even projected costs, is normally  
10 allowed only after a showing of prudence and after  
11 affected parties have an opportunity to test and challenge  
12 the utility's claim. No prudency decision has been made  
13 on this issue. We do expect that you will make a decision  
14 on this probably in August or maybe in September of next  
15 year after the hearings in June, depending on how the  
16 scheduling goes. We believe you should wait until then to  
17 allow recovery.

18 To the extent that Progress may attempt to  
19 assert that the Commission should allow continued recovery  
20 without a prudence determination because of asserted  
21 concerns or considerations of future rate shock, this  
22 argument is inappropriate and the Commission should reject  
23 it. The amount involved here is significantly less than  
24 amounts that Progress has sought to impose and that  
25 Progress has, in fact, imposed on its customers in the

1 past, in the recent past with utter disregard for  
2 considerations of rate shock. And Progress should not now  
3 be allowed, not even be heard to argue for additional  
4 recovery now in 2012 by claiming to be concerned about  
5 future rate shock to its customers.

6           From consumers' perspective, the interest rate  
7 that would accrue on any deferred amount that we might  
8 hypothetically have to pay if you were to ultimately  
9 determine that Progress was prudent and is entitled to  
10 recovery, is about one percent, maybe two percent at the  
11 commercial paper rate. I think it is closer to one  
12 percent right now. This is so low that considering the  
13 best interest of consumers and the continuing tenuous  
14 state of Florida's economy, if the Commission were ever to  
15 allow any recovery, customers would greatly prefer to risk  
16 paying a little bit of interest, one percent, later in  
17 order to be able to pay their other bills now.

18           Last year we expected Crystal River 3 to return  
19 to service in December of 2010. That later moved to a  
20 little bit later, and then it moved to March of 2011, and  
21 then the world changed in March. The point is we expected  
22 the total amount involved to be less. You expected the  
23 total amount to be less. Now it is 2014 or 2015, and  
24 there is lots more money involved. Through December of  
25 this year, through next month, the company will have

1 recovered something in the range of \$110 million without  
2 having proven that its actions that caused those costs  
3 were prudent.

4           The Florida Retail Federation asks you that  
5 following normal regulatory principles, please do not  
6 allow any further recovery until Progress proves that its  
7 actions that caused these costs were prudent. Following  
8 principles of fundamental fairness, we believe that the  
9 Commission has to recognize the fact that Progress has  
10 already received, or will at the end of next month have  
11 recovered \$110 million or so without a prudence  
12 determination.

13           This year, as a matter of fairness and good  
14 policy, please give the Florida Retail Federation's  
15 members and all of Progress' customers the corresponding  
16 fair treatment of requiring Progress to bear the  
17 continuing cost consequences of Progress' actions until  
18 such time as Progress proves that its actions were  
19 reasonable and prudent.

20           Please deny all further recovery until after  
21 your prudence decision next summer. Thank you.

22           **CHAIRMAN GRAHAM:** You have four minutes and  
23 eighteen seconds.

24           **MR. BURNETT:** I don't think I will take them.  
25 Thank you, sir. Just a few points. From what we have

1 heard down the table, Mr. Rehwinkel says we are imprudent.  
2 Just one thing to remember. Just because Mr. Rehwinkel  
3 says so don't mean it's so. Those are easy allegations to  
4 make, but it's important to realize that that is one of  
5 the important things. You just throw it out and say,  
6 oops, guess what, I think there is imprudence here. You  
7 shouldn't get into costs. Think about the logical  
8 implications of that. Anyone comes in at any time and  
9 goes, hey, there may be something wrong here. Let's not  
10 give this business any money or compensation for the  
11 service it provides because we think there might be  
12 something wrong. It's illogical on it's face. You can't  
13 just say something, that there is imprudence and you get  
14 no money.

15           The second thing is Mr. Wright is even  
16 suggesting that we should be assumed imprudent until we  
17 prove ourself innocent. Again, that is the regulatory  
18 compact. Think of the type of business that we are. We  
19 are regulated because of certain tradeoffs. That we are  
20 not presumed imprudent. That we are presumed quite the  
21 opposite, prudent until someone proves it. That has been  
22 your policy through all of these questions, all the way  
23 back to 1997 when you dealt with a similar issue.

24           Another thing is the return to service date has  
25 been brought up several times. What does that mean? That

1 means you're going to have to make this decision more than  
2 once. That's what it means. Because if you apply  
3 objective criteria then you are going to have to make the  
4 same discussion again next year. Might you come to a  
5 different result next year? You may. May you come to a  
6 different result the year after that? You absolutely may.  
7 The question you ask is based on our objective criteria  
8 that we have stated we apply in these situations, what is  
9 the result this year? It may very well change next year.

10           Is a deferral appropriate in some situations?  
11 Absolutely. That's why we have asked for it several  
12 times. We have asked for it before in the fuel clause.  
13 We have come and asked for it in the nuclear clause  
14 before. So yes, based on factors, certain times and  
15 certain circumstances they are appropriate. Is it  
16 appropriate this year based on the objective criteria that  
17 you state on Page 12 and 13 of your order last year? Not  
18 at all. It's not. You can't go through each one of these  
19 factors with a straight face and objectively and logically  
20 say anything has changed to make your decision different  
21 this year. Might that change next year? Perhaps. But,  
22 think about what you are hearing up here. What you are  
23 hearing is fairness. You should do something different  
24 from last year not because of the factors that you said  
25 you analyzed, but because it feels right.



1 Q. Okay. Who do you work for and what is your  
2 position?

3 A. I am employed by the Progress Energy Service  
4 Company as the Controller for Progress Energy Florida.

5 Q. Mr. Garrett, have you filed prefiled direct  
6 testimony and exhibits in this proceeding?

7 A. Yes, I have.

8 Q. And do you have any changes to make to your  
9 prefiled testimony or your exhibits?

10 A. No, I do not.

11 Q. If I asked you the same questions in your  
12 prefiled testimony today, would you give the same answers  
13 that are in your prefiled testimony?

14 A. Yes.

15 **MR. BURNETT:** Mr. Chair, we request that the  
16 prefiled testimony be entered into the record as though it  
17 were read here today.

18 **CHAIRMAN GRAHAM:** We will enter Mr. Garrett's  
19 prefiled testimony into the record as if it was read  
20 today.

21

22

23

24

25

**PROGRESS ENERGY FLORIDA**

**DOCKET No. 110001-EI**

**Fuel and Capacity Cost Recovery  
Actual True-Up for the Period  
January through December, 2010**

**DIRECT TESTIMONY OF  
Will Garrett**

**March 1, 2011**

1 **Q. Please state your name and business address.**

2 A. My name is Will A. Garrett. My business address is 299 First Avenue  
3 North, St. Petersburg, Florida 33701.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Progress Energy Service Company, LLC as Controller of  
7 Progress Energy Florida.

8

9 **Q. Have your duties and responsibilities remained the same since your**  
10 **testimony was last filed in this docket?**

11 A. Yes.

12

13 **Q. What is the purpose of your testimony?**

14 A. The purpose of my testimony is to describe PEF's Fuel Adjustment Clause  
15 final true-up amount for the period of January through December 2010, and  
16 PEF's Capacity Cost Recovery Clause final true-up amount for the same  
17 period.

1 **Q. Have you prepared exhibits to your testimony?**

2 A. Yes, I have prepared and attached to my true-up testimony as Exhibit No.  
3 \_\_ (WG-1T), a Fuel Adjustment Clause true-up calculation and related  
4 schedules; Exhibit No. \_\_ (WG-2T), a Capacity Cost Recovery Clause true-  
5 up calculation and related schedules; Exhibit No. \_\_ (WG-3T), Schedules  
6 A1 through A3, A6, and A12 for December 2010, year-to-date; and Exhibit  
7 No. \_\_ (WG-4T), a schedule outlining the 2010 capital structure and cost  
8 rates applied to capital projects. Schedules A1 through A9, and A12 for the  
9 year ended December 31, 2010, were previously filed with the Commission  
10 on January 19, 2011.

11

12 **Q. What is the source of the data that you will present by way of**  
13 **testimony or exhibits in this proceeding?**

14 A. Unless otherwise indicated, the actual data is taken from the books and  
15 records of the Company. The books and records are kept in the regular  
16 course of business in accordance with generally accepted accounting  
17 principles and practices, and provisions of the Uniform System of Accounts  
18 as prescribed by this Commission.

19

20 **Q. Would you please summarize your testimony?**

21 A. Per Order No. PSC-10-0734-FOF-EI, the projected 2010 fuel adjustment  
22 true-up amount was an under-recovery of \$60,501,165. The actual under-  
23 recovery for 2010 was \$219,326,886 resulting in a final fuel adjustment

1 true-up under-recovery amount of \$158,825,721 (Exhibit No. \_\_ (WG-1T)).

2  
3 The projected 2010 capacity cost recovery true-up amount was an over-  
4 recovery of \$52,311,070. The actual amount for 2010 was an over-  
5 recovery of \$66,995,089 resulting in a final capacity true-up over-recovery  
6 amount of \$14,684,019 (Exhibit No. \_\_ (WG-2T)).  
7

### 8 FUEL COST RECOVERY

9 **Q. What is PEF's jurisdictional ending balance as of December 31, 2010**  
10 **for fuel cost recovery?**

11 A. The actual ending balance as of December 31, 2010 for true-up purposes  
12 is an under-recovery of \$219,326,886.  
13

14 **Q. How does this amount compare to PEF's estimated 2010 ending**  
15 **balance included in the Company's estimated/actual true-up filing?**

16 A. The actual true-up amount attributable to the January - December 2010  
17 period is an under-recovery of \$219,326,886 which is \$158,825,721 higher  
18 than the re-projected year end under-recovery balance of \$60,501,165.  
19

20 **Q. How was the final true-up ending balance determined?**

21 A. The amount was determined in the manner set forth on Schedule A2 of the  
22 Commission's standard forms previously submitted by the Company on a  
23 monthly basis.

1 **Q. What factors contributed to the period-ending jurisdictional under-**  
2 **recovery of \$219,326,886 shown on your Exhibit No. \_\_ (WG-1T)?**

3 A. The factors contributing to the under-recovery are summarized on Exhibit  
4 No. \_\_ (WG-1T), sheet 1 of 6. Net jurisdictional fuel revenues were  
5 favorable to the forecast by \$110.9 million, while jurisdictional fuel and  
6 purchased power expense increased \$337.9 million, resulting in a  
7 difference in jurisdictional fuel revenue and expense of \$227.0 million. The  
8 \$337.9 million increase in jurisdictional fuel and purchase power expense is  
9 primarily attributable to an unfavorable system variance from projected fuel  
10 and net purchased power of \$327.4 million as more fully described below.  
11 The \$219.3 million under-recovery also includes the deferral of \$8.1 million  
12 of 2009 over-recovery approved in Order No. PSC-10-0734-FOF-EI. The  
13 net result of the difference in jurisdictional fuel revenues and expenses of  
14 \$227.0 million, plus the 2009 deferral of \$8.1 million and the 2010 interest  
15 provision calculated on the deferred balance throughout the year is an  
16 under-recovery of \$219.3 million as of December 31, 2010.

17

18 **Q. Please explain the components contributing to the \$158,825,721**  
19 **variance between the actual under-recovery of \$219,326,886 and the**  
20 **approved, estimated/actual under-recovery of \$60,501,165.**

21 A. There are three factors contributing to the \$158,825,721 variance. The first  
22 is the weather impact during the month of December 2010, leading to  
23 jurisdictional fuel expenses exceeding those of the projected period by

1 \$88.3 million. This was offset by an increase in retail fuel revenues of \$8.0  
2 million.

3  
4 Another contributing factor is the outstanding NEIL replacement power  
5 reimbursement receivable as of December 31, 2010 of \$54.0 million.  
6 These funds are related to the 2010 period, and will be applied to reduce  
7 fuel costs as received in 2011. The delay of the receipt of these funds will  
8 have no impact on the ratepayer as their application in 2011 will be  
9 reflected in actual fuel cost and be part of our estimated/actual results for  
10 2011 that will be the basis for the 2012 fuel factor. As of March 1, 2011,  
11 \$27.0 million of these funds were received by PEF, of which \$19.9 million  
12 were applied to the fuel clause in 2011 and \$12.2 million were recorded as  
13 a regulatory liability and is accruing interest. Once insurance proceeds for  
14 a full month have been received, these insurance recoveries will be applied  
15 to the fuel clause.

16  
17 The final factor is the \$29.5 million delta when comparing the approved,  
18 estimated/actual \$60.5 million under-recovery with the November 10, 2010  
19 filed mid-course under-recovery of \$90.0 million. This variance was  
20 attributed to an update of actual results in the mid-course petition for the  
21 period of July through October 2010, and updated fuel cost projections. In  
22 November 2010, PEF filed a petition and requested that the Commission  
23 ignore the mid-course filing and approve the factors previously and

1 preliminarily approved by the Commission on November 2, 2010 (Exhibit  
2 71) because it would result in lower comparative fuel costs for PEF's  
3 customers. While denying PEF's petition for mid-course correction in Order  
4 No. PSC-10-0738-FOF-EI, the Commission agreed that "approval of the  
5 mid-course factors would increase fuel charges for PEF ratepayers above  
6 those approved at the November fuel hearing. Although the mid-course  
7 fuel factors are more current and comprehensive than the currently  
8 approved fuel factors, we determine that the difference between the two  
9 sets is not significant enough to warrant an adjustment at this time."

10  
11 **Q. Please explain the components shown on Exhibit No. \_\_ (WG-1T),**  
12 **sheet 6 of 6 which helps to explain the \$327.4 million unfavorable**  
13 **system variance from the projected cost of fuel and net purchased**  
14 **power transactions.**

15 **A.** Sheet 6 of 6 is an analysis of the system dollar variance for each energy  
16 source in terms of three interrelated components; (1) changes in the  
17 amount (MWH's) of energy required; (2) changes in the heat rate of  
18 generated energy (BTU's per KWH); and (3) changes in the unit price of  
19 either fuel consumed for generation (\$ per million BTU) or energy  
20 purchases and sales (cents per KWH).

21  
22 **Q. What effect did these components have on the system fuel and net**  
23 **power variance for the true-up period?**

1 A. As shown on sheet 6 of 6, the dollar variance due to MWHs generated and  
2 purchased (column B) produced a cost increase of \$631.4 million. The  
3 primary reasons for this unfavorable variance were high system  
4 requirements due to weather experienced throughout 2010, the extended  
5 outage of CR-3, and a decrease in supplemental sales. The favorable heat  
6 rate variance (column C) of \$15.1 million is due to changes in the  
7 generation mix to meet the energy requirements. During peak usage  
8 periods in 2010, the increased use of light oil for the generation of  
9 electricity rather than mainly a start-up fuel, improved the commodity's  
10 actual heat rate from its forecasted rate. The favorable price variance of  
11 \$288.8 million (column D) was caused mainly by lower than projected  
12 natural gas prices. Natural gas averaged \$7.00 per MMBtu, \$0.97 per  
13 MMBtu (12.2%) lower than projected (Exhibit WG-3T, Schedule A3, Page 2  
14 of 3, Line 50). Firm Purchases contained a favorable price variance from  
15 the projection as the actual fuel cost per MWH for the Southern and Shady  
16 Hills contracts were 16.0% and 10.4% below projection, respectively.

17  
18 The variance related to Other Fuel is driven by the coal car investment (see  
19 Order No. 95-1089-FOF-EI.) This favorable variance is coupled with a  
20 favorable price variance in Other Jurisdictional Adjustments. The leading  
21 components of this \$123.9 million favorable price variance are listed below.  
22

1 **Q. Does this period ending true-up balance include any noteworthy**  
2 **adjustments to fuel expense?**

3 A. Yes. Noteworthy adjustments are shown on Exhibit No. \_\_ (WG-3T) in the  
4 footnote to line 6b on page 1 of 2, Schedule A2. Included in the footnote to  
5 line 6b on page 1 of 2, Schedule A2, is the allocation of \$108.1 million of  
6 Nuclear Electric Insurance Limited (NEIL) replacement power  
7 reimbursement funds to the fuel clause, a reduction of \$20.5 million for the  
8 incremental cost of replacement power provided the joint owners of CR-3  
9 per PEF's Joint Ownership Agreements, and the refund of \$8.3 million in  
10 accordance with Order No. PSC-09-0645-FOF-EI found in Docket No.  
11 070703-EI. These adjustments also include adjustments to coal and oil  
12 inventories due to an aerial survey (\$2.5 million) and tank bottom  
13 adjustments (\$1.8 million).

14  
15 **Q. Please explain the adjustment of \$108.1 million related to the Nuclear**  
16 **Electric Insurance Limited (NEIL) replacement power reimbursement.**

17 A. Pursuant to an insurance policy held by PEF with NEIL, in the event an  
18 unplanned outage of our nuclear unit (CR-3) extends beyond a deductible  
19 period of 12 weeks, PEF is entitled to receive reimbursement payments in  
20 the amount of \$4,500,000 per week to cover a portion of the replacement  
21 power costs associated with the outage. When insurance proceeds for a  
22 full month are received, they are then applied to the fuel and capacity  
23 clause at a system level. The \$108.1 million credit represents the

1 application of NEIL funds to the fuel clause after a share of the funds  
2 received had been allocated to the capacity cost recovery clause (\$3.7  
3 million – please see page 12).

4  
5 **Q. Please explain the adjustment of \$20.5 million for the incremental cost**  
6 **of replacement power provided the joint owners of the Crystal River**  
7 **nuclear unit (CR-3).**

8 A. Per an agreement with all of the joint owners of CR-3, if PEF does not meet  
9 a specific capacity factor for this unit per a designated two-year interval,  
10 PEF must replace enough power to meet the capacity factor or reimburse  
11 the joint owners for their cost of replacing the power. PEF decided to  
12 replace CR-3 joint owner power throughout 2010. For each hour  
13 replacement power was provided the joint owners of CR-3, PEF calculated  
14 the fuel costs on the incremental generating units that ran during those  
15 hours and the replacement MW. The incremental cost of the replacement  
16 power was then adjusted from generated fuel expense in order to remove  
17 these costs from fuel expense recovered from our retail ratepayers.

18  
19 **Q. Please explain the Aerial Survey Adjustment of \$2.5 million.**

20 A. This adjustment is attributable to the semi-annual aerial survey conducted  
21 on April 20, 2010 in accordance with Order No. PSC-97-0359-FOF-EI,  
22 found in Docket No. 970001-EI. This was the first survey conducted  
23 subsequent to the completion of a project which included the addition of a

1 new liner being placed underneath the North Coal Yard at Crystal River for  
2 environmental purposes. This adjustment represents 0.5% of the total coal  
3 consumed at the Crystal River facility in 2010. Also, the subsequent semi-  
4 annual survey completed October 26, 2010 required no further adjustment  
5 to inventory.

6  
7 **Q. Did PEF exceed the economy sales threshold in 2010?**

8 A. No. PEF did not exceed the gain on economy sales threshold of \$1.6  
9 million in 2010. As reported on Schedule A1, Line 15a, the gain for the  
10 year-to-date period through December 2010 was \$1.1 million; which fell  
11 below the threshold. This entire amount was returned to customers  
12 through a reduction of total fuel and net power expense recovered through  
13 the fuel clause.

14  
15 **Q. Has the three-year rolling average gain on economy sales included in**  
16 **the Company's filing for the November, 2010 hearings been updated**  
17 **to incorporate actual data for all of year 2010?**

18 A. Yes. PEF has calculated its three-year rolling average gain on economy  
19 sales, based entirely on actual data for calendar years 2008 through 2010,  
20 as follows:

	<u>Year</u>	<u>Actual Gain</u>
1		
2	2008	1,080,438
3	2009	1,219,086
4	2010	<u>1,116,387</u>
5	Three-Year Average	<u>\$1,138,637</u>
6		

### CAPACITY COST RECOVERY

8 **Q. What is the Company's jurisdictional ending balance as of December**  
9 **31, 2010 for capacity cost recovery?**

10 A. The actual ending balance as of December 31, 2010 for true-up purposes  
11 is an over-recovery of \$66,995,089.

13 **Q. How does this amount compare to the estimated 2010 ending balance**  
14 **included in the Company's estimated/actual true-up filing?**

15 A. When the estimated 2010 over-recovery of \$52,311,070 is compared to the  
16 \$66,995,089 actual over-recovery, the final capacity true-up for the twelve  
17 month period ended December 2010 is an over-recovery of \$14,684,019.

19 **Q. Is this true-up calculation consistent with the true-up methodology**  
20 **used for the other cost recovery clauses?**

21 A. Yes. The calculation of the final net true-up amount follows the procedures  
22 established by the Commission in Order No. PSC-96-1172-FOF-EI. The  
23 true-up amount was determined in the manner set forth on the

1 Commission's standard forms previously submitted by the Company on a  
2 monthly basis.

3

4 **Q. What factors contributed to the actual period-end capacity over-**  
5 **recovery of \$67.0 million?**

6 A. Exhibit No. \_\_ (WG-2T, sheet 1 of 3) compares actual results to the original  
7 projection for the period. The \$67.0 million over-recovery is due primarily to  
8 higher actual jurisdictional revenues of \$48.6 million compared to projected  
9 revenues. The revenue variance is attributable to higher than anticipated  
10 system requirements. Lower jurisdictional expenses contributed to the  
11 over-recovery by \$4.2 million when compared to the original projection.  
12 The \$67.0 million over-recovery also includes the 2009 over-recovery of  
13 \$14.2 million approved in Order No. PSC-10-0734-FOF-EI.

14

15 **Q. Were there any items of note included in the current true-up period?**

16 A. Yes. Exhibit No. \_\_ (WG-2T, sheet 2 of 3, line 33) includes NEIL  
17 replacement power reimbursement funds of \$3,712,458 before  
18 jurisdictional allocation to retail customers to cover the direct costs of  
19 purchase power commitments that were the result of the extended CR-3  
20 outage.

21

22

23

**OTHER MATTERS**

1  
2 **Q. Were the coal procurement and transportation functions transferred**  
3 **from Progress Fuels Corporation to PEF in 2006 accounted for**  
4 **correctly in 2010?**

5 A. Yes. As part of a consolidation of PEF's coal procurement and  
6 transportation functions, ownership of railcars used to transport coal to  
7 Crystal River and coal inventory in transit were transferred from Progress  
8 Fuels Corporation to PEF on January 1, 2006. As of the last billing cycle of  
9 December 2009, and upon the expiration of the Stipulation and Settlement  
10 in Docket No. 050078-EI, approved with Order No. PSC-05-0945-S-EI, PEF  
11 is no longer recovering its carrying costs of coal inventory in transit and its  
12 coal procurement O&M costs through the fuel recovery clause. Consistent  
13 with established Commission policy, PEF recovered depreciation expense,  
14 repair and maintenance expenses, property taxes and a return on average  
15 investment associated with railcars used to transport coal to Crystal River.

16  
17 **Q: Please explain the adjustment found on line C. 12 (Other) of Schedule**  
18 **A2 in Exhibit No. \_\_ (WG-3T)?**

19 A: Line C. 12 of Schedule A2 represents an adjustment to the allocation of  
20 fuel expense between the retail and wholesale jurisdictions for 2010.

21  
22 **Q: Have you provided Schedule A12 showing the actual monthly capacity**  
23 **payments by contract consistent with the Staff Workshop in 2005?**

1 A: Yes. A confidential version of Schedule A12 is included in Exhibit No.  
2 \_\_ (WG-3T).

3

4 **Q. Does this conclude your direct true-up testimony?**

5 A. Yes



1 included as part of the cost of service, yes.

2 MR. REHWINKEL: Thank you.

3 CHAIRMAN GRAHAM: Mr. Brew.

4 MR. BREW: I have no questions for this witness.

5 CHAIRMAN GRAHAM: Mr. Moyle.

6 MR. MOYLE: I have a couple, if I could.

7 CROSS EXAMINATION

8 BY MR. MOYLE:

9 Q. Let me refer you on your testimony to Page 7,  
10 Line 12. You say natural gas averages \$7 per million Btu.  
11 Do you see that?

12 A. Yes, I do.

13 Q. Natural gas currently is not that high, is it?

14 A. I'm not aware of what current natural gas prices  
15 are.

16 Q. How did you come up with this number?

17 A. This is a comparison to what was projected in a  
18 previous fuel filing, so these were our actual --  
19 comparison of our actual costs in 2010.

20 Q. Who do you own Crystal River 3 with?

21 A. We have a variety of joint owners of mostly  
22 municipal utilities. I don't have a list of the exact  
23 owners with me.

24 Q. But there is more than one?

25 A. Yes.

1           Q.    You're aware that the intervenors in this case  
2 who represent consumers, and federal agencies, and others  
3 are objecting to y'all recovering monies related to the  
4 Crystal River 3 outage, correct?

5           A.    Yes, I know that you have taken issue to our  
6 ongoing recovery of those costs.

7           Q.    And part of that is a 20.5 million incremental  
8 cost for replacement power to the joint owners, is that  
9 right?

10          A.    No, that is not correct. Any costs that we have  
11 incurred associated with providing replacement power to  
12 joint owners has been removed from the costs that are  
13 being subject to recovery.

14          Q.    Okay. So let me just make sure I'm clear on  
15 this. On Page 9, Question 5, that is your testimony with  
16 respect to the 20.5 incremental cost, correct?

17          A.    That's correct.

18          Q.    And you say in here that Progress decided to  
19 replace Crystal River 3 joint owner power throughout 2010,  
20 right?

21          A.    Yes, that is part of the agreement.

22          Q.    So are you not seeking to recover any dollars  
23 associated with your decision to replace Crystal River 3  
24 joint owner power throughout 2010? As we sit here today,  
25 you are not seeking to ask the ratepayers to front any of

1 those costs, is that correct?

2 A. Yes, that is correct. If you would -- down on  
3 my testimony, if you would look at Lines 15 through 17, it  
4 describes that those costs have been removed from the  
5 costs and fuel expenses recovered from retail customers.

6 Q. How many delamination events have occurred at  
7 Crystal River 3?

8 A. Well, there was the initial delamination that  
9 started the extended outage. There was a recent event in  
10 March as part of the retensioning of the unit that there  
11 was then, again, further damage identified.

12 Q. When was the initial event?

13 A. That would have been back in 2009. December of  
14 2009, I believe.

15 Q. And you mentioned a recent March event. What  
16 year did that take place?

17 A. In the current year.

18 Q. So December 2009 to March 2011, how many months  
19 is that?

20 A. December to -- let's see, that would be 12  
21 months -- 16 months, if I've got that right.

22 Q. It was hard for me to figure out, which is why I  
23 asked you, so --

24 A. Yes.

25 Q. All right. And are you aware that the

1 delamination events with respect to the building, that  
2 they occurred in different places at the building, as  
3 well?

4 A. Yes, that is correct.

5 Q. Okay. And you have filed stuff with this  
6 Commission to say that there has been a second  
7 delamination event, correct?

8 A. I have not filed anything saying that.

9 Q. I have an exhibit and let me -- I will just use  
10 it now.

11 MR. MOYLE: Mr. Chairman, for the record, I'm  
12 going to have an exhibit. It's a FIPUG exhibit. The  
13 title I gave it was Progress Energy Status Report  
14 Regarding Docket Number 100437 filed June 27th, 2011.

15 CHAIRMAN GRAHAM: Unless I am mistaken, I think  
16 we are at Exhibit Number 89. I will temporarily put that  
17 number down.

18 (Exhibit Number 89 marked for identification.)

19 CHAIRMAN GRAHAM: We have it.

20 MR. MOYLE: Okay. Thank you.

21 BY MR. MOYLE:

22 Q. Sir, in the documents before you, there is a  
23 section that is bold on the first page there. Would you  
24 just read the bold section into the record?

25 A. The header that says past analysis of the second

1 delamination and repair option?

2 Q. Yes. And so when you are around the company and  
3 in conversations, it's fair to assume that you talk in  
4 terms of a second delamination event, correct, in general?

5 A. It has been referred to as that.

6 Q. Now, you have some testimony about insurance and  
7 the insurance payments?

8 A. Yes.

9 Q. All right. Did you assume for the purposes of  
10 the insurance that there were two separate events in  
11 calculating how much ratepayers were being asked to pay in  
12 your calculations?

13 A. No, I did not as it relates to the true-up for  
14 2010.

15 Q. You assumed that there was only one event,  
16 correct?

17 A. Well, in 2010, we would not have had anything,  
18 the second delamination that you referred to at that  
19 point. So in the 2010 true-up, it was a continuation of a  
20 single event.

21 Q. For 2011, did you assume that there were two  
22 events, then?

23 A. I didn't sponsor anything related to 2011.

24 Q. Do you know what was assumed with respect to  
25 2011?

1           A.    Assumed where?

2           Q.    With respect to how many delamination events  
3 took place?

4           A.    My understanding is that we have assumed a  
5 single event.

6           Q.    And do you have any understanding as to what  
7 that assumption means in terms of dollars to ratepayers as  
8 to whether it is a single event or two events vis-a-vis  
9 insurance proceeds?

10          A.    Yes.  There is certainly difference in insurance  
11 coverage.  To the extent that there was a second event it  
12 would trigger another deductible period where there would  
13 be no coverage, and then a subsequent change in weekly  
14 recovery rates after that deductible period.

15          Q.    And isn't it true that if you assume a single  
16 event that the insurance proceeds run dry in August of  
17 2012?

18          A.    I believe that is true, yes.

19          Q.    And if you assume two events, the insurance  
20 policy, in effect, reloads, and you continue to receive  
21 insurance proceeds past August 2012, isn't that also  
22 correct?

23          A.    Well, I think you are making an assumption that  
24 it is a covered event.  What we do know today is that we  
25 have a determination of coverage from NEIL that this is a

1 single event, at least the initial event. There has been  
2 no determination of coverage associated with the  
3 March 2010 event.

4 Q. Have you made a claim for a second event, do you  
5 know?

6 A. We have notified NEIL, as I understand, that  
7 there is -- there has been an additional event that we  
8 have requested a determination of coverage.

9 Q. So you have started the ball rolling with  
10 respect to notifying them that there has been something  
11 else that happened. This is the thing we just talked  
12 about that is 18 months or 16 months after the first  
13 event, correct?

14 A. No, I wouldn't describe it as get the ball  
15 rolling. I think we have been continuing to work with  
16 NEIL throughout this event to secure coverage and ongoing  
17 coverage.

18 Q. Do you know if you notified them of this  
19 additional possible event, was that done pursuant to  
20 requirements in your insurance policy with them?

21 A. That I'm not aware of. I'm not aware of whether  
22 it was submitted because of that. I do have knowledge  
23 that we have notified NEIL about the event, but under what  
24 provisions, if you will, of the policy, et cetera, I'm not  
25 aware of.

1 Q. When did you make that notification?

2 A. I don't have that information.

3 Q. Do you have expertise in insurance matters in  
4 this issue?

5 A. No, I do not.

6 Q. So for the purposes of asking this Commission to  
7 approve monies that ratepayers would pay for fuel, which  
8 of the witnesses that are going to be testifying here  
9 today made the decision to assume one event versus two  
10 events?

11 A. Well, I'm not sure that a witness, per se,  
12 independently made that decision.

13 Q. So nobody today is able to talk to that?

14 A. No. I think what I can speak to is that it has  
15 been the company's position that it is an ongoing single  
16 event, and it is based in, founded on what we know today  
17 about a determination of coverage from NEIL, and that is  
18 our ongoing assertion. And we continue to work with them  
19 to secure that coverage.

20 Q. So are you telling us today that you have made a  
21 determination that it is only a single event,  
22 notwithstanding the 18 months in separation, and the fact  
23 that it was on another side of the building? You're  
24 saying, no, we have looked at it and we think it is only a  
25 single event?

1           A.    No, I'm saying that at this point is what we  
2 have assumed and we are seeking a determination of  
3 coverage from NEIL. I just want to make sure that is  
4 clear, that there hasn't been a determination of coverage,  
5 and so there is ongoing risk of whether we will secure  
6 one.

7           Q.    Have you had any --

8           A.    And so for that reason there was an assumption  
9 made that I think is to the benefit of customers in that  
10 we have assumed continuation of insurance coverage as a  
11 single event.

12          Q.    Notwithstanding the fact that there was 18  
13 months separation between the two events?

14          A.    Yes. Again, it was a part of the ongoing  
15 activities at CR-3 to bring it back to service.

16          Q.    Do you know has there been correspondence,  
17 discussions, inquiries where y'all have said we think this  
18 is a second event?

19          A.    Not that I am aware of.

20          Q.    Do you know the difference with respect to the  
21 impact on ratepayers based on monies you are asking for  
22 today if you assume there is two events as compared to one  
23 event?

24          A.    No, I have not done that analysis.

25          Q.    Do you know that two events provides you with

1 additional insurance monies that would cover replacement  
2 fuel and result in less monies that ratepayers would be  
3 asked to pay? Do you know that one way or the other?

4 A. No, I don't know that.

5 MR. MOYLE: Okay. That's all I have. Thank  
6 you.

7 CHAIRMAN GRAHAM: Thank you, sir. Staff. I'm  
8 sorry, Mr. Wright.

9 MR. WRIGHT: I don't have any questions. But,  
10 thank you, Mr. Chairman.

11 CHAIRMAN GRAHAM: Thank you. Staff.

12 CROSS EXAMINATION

13 BY MS. BENNETT:

14 Q. Good afternoon, Mr. Garrett. My name is Lisa  
15 Bennett. I'm an attorney for the Commission staff. I do  
16 have several questions for you.

17 My first one is I understand that you are  
18 Controller for Progress Energy Florida, is that correct?

19 A. That is correct.

20 Q. Can you describe a little bit what your function  
21 as controller for Progress Energy Florida is?

22 A. Sure. I am responsible for our general  
23 accounting, financial reporting, and our regulatory  
24 accounting for the legal entity Progress Energy Florida.  
25 And in that capacity that would include internal/external

1 financial reporting, both to senior management as well as  
2 to the SEC in public documents, as well as regulatory  
3 accounting that is done in filings such as this where we  
4 file true-ups associated with our clauses.

5 Q. Okay. Is it safe to say, then, that part of  
6 your function is the cash flow of the utility, and that is  
7 under your purview?

8 A. Yes. Not the management of cash flow, but we  
9 certainly do reporting around cash flow, because it is  
10 very important to us, and something that we monitor very  
11 closely.

12 Q. Are you an officer of Progress Energy Florida?

13 A. Yes, I am.

14 Q. Okay. And in your role as an officer of this  
15 corporation, do you interact with the treasurer of  
16 Progress Energy Florida?

17 A. I interact with the treasurer of Progress Energy  
18 that would be at the service company. We don't have an  
19 officer treasurer at Progress Energy Florida.

20 Q. Okay. I'm going to ask that you refer to the  
21 handout that Ms. Watts brought to you just now. It is  
22 Staff's Exhibit 77, Progress Energy's responses to Staff's  
23 Seventh Set of Interrogatories, and Progress' Responses to  
24 Staff's Second Request for Production of Documents.

25 MS. BENNETT: And I believe that, Commissioners,

1 you had handed out previously a copy, as well as it is  
2 included on our disk.

3 BY MS. BENNETT:

4 Q. I would like you to refer to Staff's Second  
5 Production of Documents, or actually it is Progress'  
6 Responses to Staff's PODs Number 19 and 20. Number 19  
7 bears the hearing exhibit stamp 566. Let me know when  
8 you're there.

9 MR. MOYLE: I think we are getting into the  
10 issue that I had raised earlier, if I'm not mistaken. Is  
11 that right?

12 MS. BENNETT: We are asking questions -- we are  
13 inquiring --

14 MR. MOYLE: And in terms of the PODs, this is  
15 POD 19 and 20 that I had issued an objection to. I didn't  
16 know staff was going down this line, and if they are going  
17 to try to get into this, then, you know, we had talked  
18 about previously that -- I think I should be entitled to a  
19 ruling on whether it is fair game or not. And if it is  
20 fair game at least have the opportunity to ask some  
21 questions about it. I guess it's not a legal objection,  
22 but I am surprised.

23 CHAIRMAN GRAHAM: My understanding of the way I  
24 left it was that we were going to freely interview the  
25 witnesses and see if we can't get -- well, number one,

1 that staff can get what they want on the record on the  
2 record with or without your objection, and that you are  
3 going to be able to get the questions you wanted so you  
4 didn't have to have the objection. And then at the end of  
5 that we would make the determination -- if you weren't  
6 satisfied at that point, we would make the determination  
7 if the objection was going to be overruled or not.

8           **MR. MOYLE:** I may not have followed it that way.  
9 I thought we were going to have a discussion. I thought  
10 it was going to be principally with Marcia Olivier, but --

11           **CHAIRMAN GRAHAM:** I don't think we limited it to  
12 any one of the witnesses, that we were just going to leave  
13 it open. So it may be one of those things at the end of  
14 the day that you still have the objection and nobody else  
15 was going to object with your objection.

16           **MR. MOYLE:** Well, I guess, just for a clean  
17 record, I would renew the objection that I made previously  
18 in the proceeding with respect to these production of  
19 documents coming in. The documents coming in or any  
20 testimony as to what is in the documents coming in based  
21 on the hearsay and authenticity grounds that we spoke  
22 about at length previously.

23           **CHAIRMAN GRAHAM:** Okay. Mr. Brew.

24           **MR. BREW:** Mr. Chairman, I would like to know  
25 what portion of Mr. Garrett's testimony this is going to?

1           **CHAIRMAN GRAHAM:** I'm sorry?

2           **MR. BREW:** What part of Mr. Garrett's testimony  
3 in this docket are these questions going to?

4           **CHAIRMAN GRAHAM:** That's a fair question.

5           **MS. BENNETT:** He is testifying as controller for  
6 Progress Energy Florida, and so we are inquiring about his  
7 testimony as controller.

8           **MR. BREW:** As I understand it he is testifying  
9 as to the true-up of costs for 2010, is that right?

10          **CHAIRMAN GRAHAM:** He stated earlier that the  
11 only part that he was part of was 2010.

12          **MR. BREW:** So my question is still how does this  
13 have a bearing on his testimony in this docket?

14          **MS. BENNETT:** Well, certainly it bears on the  
15 recovery of costs for 2010.

16          **CHAIRMAN GRAHAM:** What was the question, again?

17          **MS. BENNETT:** I'm asking him to look at the  
18 production of documents -- Staff's Production of Documents  
19 Numbers 19 and 20, and I was going to ask if he had an  
20 opportunity to have reviewed these documents. He may or  
21 may not have.

22          **MR. BREW:** Mr. Chairman, my concern is still the  
23 same. The fact that they have been requested as a POD  
24 doesn't mean that it is relevant to anything he is  
25 actually offering testimony on.

1           **MS. BENNETT:** If you will give me some leeway to  
2 ask the questions and then we can determine whether or not  
3 these PODs are admissible.

4           **CHAIRMAN GRAHAM:** Let me see if I understand.  
5 Commissioner Brown, did you have anything to this point?

6           **COMMISSIONER BROWN:** No, Mr. Chair.

7           **CHAIRMAN GRAHAM:** Okay. Mr. Garrett, you had  
8 stated earlier, unless I heard something incorrectly, that  
9 the only part of this docket before us that you had any  
10 part of is the truing up of 2010, is that correct?

11           **THE WITNESS:** Yes. That is the scope of my  
12 testimony, yes.

13           **CHAIRMAN GRAHAM:** And, Ms. Bennett, the  
14 questions that you're talking about, the questions you're  
15 trying to get to speak specifically to the truing up of  
16 2010?

17           **MS. BENNETT:** That is part of it, and I would  
18 like to point out a couple of things. First of all, the  
19 cross-examination for Mr. Moyle went into NEIL payments  
20 that were 2011 and 2012 and some replacement power costs  
21 that I don't believe that were in part of his projection  
22 testimony or his true-up testimony. And, secondly, this  
23 is not his witness. I am laying a foundation to ask him  
24 some questions about the production of documents responses  
25 to see if he has knowledge about them. It would have

1 implications on the 2010 true-ups, perhaps the ultimate  
2 decisions of the Commission on 2010, and as well as 2011  
3 and 2012. We are not going to just rely on this witness  
4 to ask these questions of. We are also asking questions  
5 of Marcia Olivier.

6           **CHAIRMAN GRAHAM:** Okay. I will allow the  
7 questioning to continue. Let's see where this goes.

8 **BY MS. BENNETT:**

9           Q. These documents that are in response to Staff's  
10 Second POD Request Numbers 19 and 20, have you seen these  
11 before?

12           A. Yes, I have.

13           Q. As an officer of the company, are you cognizant  
14 of how the company's cost-recovery may affect its standing  
15 on Wall Street and with rating agencies?

16           **MR. MOYLE:** Objection, same grounds. It's  
17 asking for hearsay. What does Wall Street think. You  
18 know, somebody had to have told him what Wall Street would  
19 think, so it is inappropriate hearsay, and it is a further  
20 attempt to kind of get these documents in through the back  
21 door rather than the front door.

22           **MR. BREW:** And it is not remotely related to the  
23 scope of his prefiled testimony here.

24           **MR. REHWINKEL:** The Public Counsel would join  
25 that objection, Mr. Chairman. And with respect to 2010,

1 any determination about those dollars will be made in  
2 100437.

3 **MS. BENNETT:** Again, we are laying the  
4 foundation. And, you know, I think FIPUG is a little  
5 bit -- as staff, we don't normally sponsor witnesses. We  
6 attempt to provide all of the information to the  
7 Commission that you need in the record. Staff believes  
8 that this is something that is important for your  
9 consideration as part of the record.

10 When we asked for FIPUG and the parties to agree  
11 to staff's exhibits being admitted into the record at the  
12 beginning, that was just a stipulation, you know, can we  
13 put these into the record without any objection. When  
14 they object, then it is my responsibility to attempt to  
15 get them into the record through different witnesses.

16 I am laying the foundation to see what this  
17 witness can provide to the Commission as far as these  
18 records as it relates to 2010. I would like to be able to  
19 ask him the questions and then, again, before we admit  
20 these into the record, talk with Marcia Olivier about the  
21 same type of questions so that we have an understanding  
22 and that you have an understanding of the effect of the  
23 rating agencies' reports on Progress Energy's cash flow  
24 for 2010, 2011, and 2012.

25 **CHAIRMAN GRAHAM:** I will overrule the objection.

1 Let's continue.

2 BY MS. BENNETT:

3 Q. My question is, as an officer of the company,  
4 how does the effect of Wall Street and the rating agencies  
5 affect you, as Progress Energy Florida?

6 A. Well, it has a rather significant impact. I  
7 mean, it is one of many impacts that would affect our  
8 financial stability. Certainly when rating agencies  
9 speak, we listen. We have an affirmative obligation also  
10 to disclose what we know when we are reporting to our  
11 investors. In SEC documents we have to disclose to what  
12 extent actions are being taken by the rating agencies that  
13 might affect our future liquidity and financial position,  
14 and that way investors have full disclosure and the  
15 ability to understand our financial position. So in my  
16 role as controller, I have quite a bit of experience in  
17 that financial reporting and that external reporting to  
18 our investor community.

19 Q. Okay. To the best of your knowledge are the  
20 reports included in Staff's Production of Documents Number  
21 19 and 20, the actual reports of the rating agencies for  
22 Standard & Poor, Fitch, and Moody's?

23 MR. MOYLE: Mr. Chairman, just so the record is  
24 clear, I mean, our objection is continuous and maintained.  
25 You know, I feel I need to object, but I guess if we have

1 it noted that this whole line of questions is objected to  
2 by FIPUG on the grounds I won't have to interrupt each  
3 question.

4           **CHAIRMAN GRAHAM:** The original objection was  
5 that we have nobody from the rating agencies here to  
6 authenticate these documents, and Ms. Bennett's question  
7 to the witness is can he authenticate these documents.

8           **MS. BENNETT:** We are not asking for  
9 authentication of these documents through this witness.  
10 We are asking for use in the course of the business of  
11 Progress Energy Florida, and are these market reports that  
12 Progress Energy relies upon, which would be an exception  
13 to the hearsay rule.

14           **CHAIRMAN GRAHAM:** I will allow the question  
15 because the question was do you use these documents when  
16 you make some of your determinations. Is that correct,  
17 Ms. Bennett?

18           **MS. BENNETT:** Actually, yes. It wasn't exactly  
19 my question, but, yes, I was coming back to that one. And  
20 I was going to ask him if this is something that the  
21 company relies on, the Standard & Poor, the Moody's, and  
22 the Fitch's reports.

23           **MR. REHWINKEL:** Mr. Chairman, with all due  
24 respect, if I may be heard briefly, the business records  
25 exception has to do with the preparer of the records and

1 testimony that they prepare and keep those in the course  
2 of their business. The market records exception is for  
3 like what Wall Street -- the transactions for stock, if  
4 you look in the Wall Street Journal or whatever and you  
5 see what a certain stock traded that day. That is that  
6 exception, not these analyses which are subjective  
7 statements by individuals with certain business interests.  
8 These documents -- we would object. If you want to allow  
9 the questions, we understand, but we would object that  
10 that is an improper exception to the hearsay rule, both of  
11 those.

12           **CHAIRMAN GRAHAM:** Well, I believe the question  
13 was are these documents something that you use in your  
14 line of business to make determinations.

15           **MR. REHWINKEL:** But that is not -- there is no  
16 exception to the hearsay rule about whether he uses them  
17 or not. If he was to keep records of transactions for  
18 receipts or anything else he does as controller and he was  
19 to testify, yes, these are the records and we keep them  
20 every day this way, and we have this methodology and so  
21 you can rely on them because we do this this way every  
22 day, that that is that exception. Not whether he reads  
23 them every day when he drinks a cup of coffee. That's not  
24 the issue, and I think that is what he is essentially  
25 testifying to.

1           We were willing to stipulate these dry documents  
2 going in here, but this is bolstering, and this is  
3 additional testimony about what he thinks about documents  
4 that are also hearsay on themselves. It is really double  
5 hearsay.

6           **MS. BENNETT:** Mr. Chairman --

7           **CHAIRMAN GRAHAM:** Hold on just a second. Mary  
8 Anne.

9           **MS. HELTON:** Thank you, Mr. Chairman. First, if  
10 we could step back a minute and remember that we are in an  
11 administrative proceeding, and you are guiding us in this  
12 proceeding under Chapter 120 of the Florida Administrative  
13 Procedures Act. We are not in a civil court, so that  
14 means that the standard that you apply when taking in  
15 evidence is much more liberal than if you were in a civil  
16 court.

17           In 120.569, Subsection (2)(g), evidence relied  
18 upon by reasonably prudent persons in their conduct of  
19 affairs shall be admissible whether or not admissible in a  
20 trial in the courts of Florida, or during a trial in the  
21 courts of Florida. So I think that any decision that you  
22 make here today, or in the course of this proceeding, or  
23 any proceeding when you are the chair, that is the  
24 backdrop.

25           At issue here are two Standard & Poor's reports.

1 I think it is Standard & Poor's, isn't it? Excuse me, and  
2 Moody's and Fitch. And I have heard the question of  
3 authenticity raised with respect to both of those reports.

4           It is my belief that under Section 90.902,  
5 Subsection 6, that these reports are self -- I can't say  
6 that right now, but you know what I'm trying to say.  
7 Sometimes my North Florida catches up with me. And  
8 Subsection 6 says that that self-authenticating category  
9 falls on printed materials purporting to be newspapers or  
10 periodicals.

11           I have been here long enough where I have not  
12 studied closely, but I have looked at some Moody's and  
13 Fitch's reports, some Standard & Poor's reports, and it is  
14 my understanding that those reports are treated as  
15 periodicals by the industries that use them. So I believe  
16 that you are on solid ground with respect to that  
17 objection.

18           As I think has been mentioned here today, if you  
19 believe that these reports are hearsay, that under Chapter  
20 120, under that liberal standard that you have, hearsay  
21 evidence is admissible in an administrative proceeding.  
22 The caveat in 120, I think it is 57, you cannot rely  
23 solely on that hearsay evidence if it is not corroborated  
24 by some other evidence in the record. So we remain to see  
25 through the course of the proceeding whether it will be

1 corroborated or not.

2           When I have been asked in the past, my  
3 recommendation always has been, because I think it is the  
4 cleanest way to go about it, if there is a hearsay  
5 question and it doesn't fall under any exception, admit  
6 the hearsay evidence and then you may rely on it if it is  
7 corroborated by other evidence through the course of the  
8 proceeding.

9           There has been a question of whether these  
10 reports fall under an exception to the hearsay rule, and  
11 if they do fall under an exception, I think the authors of  
12 the evidence code intended that it then doesn't -- it then  
13 may be relied upon. It's not like relying upon hearsay  
14 evidence.

15           What I understand and know about Subsection  
16 90.803, Subsection 17, the market reports and commercial  
17 publications exception, I think that it does fall under  
18 that. If it doesn't, you know, the most conservative  
19 approach would be to let it in and then see if it is  
20 corroborated somewhere else. I think that it does fall  
21 under that, so my suggestion to you with respect to both  
22 of these reports is that they would be admissible. And I  
23 think, as Commissioner Balbis has said earlier in this  
24 proceeding, then you would give them the weight that they  
25 are due.

1           **CHAIRMAN GRAHAM:** A question I have for you. As  
2 staff is questioning the witness, the amount of leeway  
3 that staff has to question the witness, are you just  
4 questioning on what he has already testified to, and  
5 basically you are just trying to get to the bottom of his  
6 testimony, or can you enter new facts into the record  
7 through the asking of those questions?

8           **MS. HELTON:** You are directing that towards me?  
9 Staff is in a really unique role at the Commission and  
10 especially in this type of a proceeding when you are in a  
11 ratemaking mode and not in some kind of a more  
12 quasi-judicial type role. Like if you were in a  
13 prosecutorial mode where you were trying to take away  
14 someone's license or trying to fine them. So the answer  
15 that I am going to give you today is in the ratemaking  
16 mode.

17           Staff, we don't have a dog -- they don't have a  
18 dog in the fight. They are trying to ensure that you have  
19 to the best of their ability and the best of their  
20 resources all of the information that you need in the  
21 record to make a fully informed decision.

22           Listening to Ms. Bennett today, it seems -- it  
23 strikes me that she at least very much believes that this  
24 information needs to be in the record. That this is  
25 information that you need to have available to you to make

1 a decision. Now, obviously the intervenors disagree.

2           The Commission has historically in my time here  
3 been pretty liberal with the cross-examination that it  
4 allows parties. I think, as Ms. Bennett pointed out, it  
5 sounds like you were pretty liberal with respect to the  
6 cross-examination that you allowed Mr. Moyle to conduct  
7 concerning this witness.

8           If you agree that you think this is information  
9 that you need to have in the record when you make your  
10 decision, then my recommendation to you would be to allow  
11 Ms. Bennett to go down this line of questioning. I  
12 believe that you, sitting as the Chairman presiding over  
13 this proceeding, you have a lot of discretion with respect  
14 to how far along you allow the cross-examination to go.  
15 So my long answer to the short answer is, yes, sir, I  
16 believe that this is an appropriate line of  
17 cross-examination.

18           **CHAIRMAN GRAHAM:** Ms. Helton, I appreciate it.  
19 Of course, I never expect a short answer from an attorney.

20           Mr. Moyle, for the sake of where we are right  
21 now, I am going to go ahead and overrule your original  
22 objection. And, Ms. Bennett, please continue.

23           **MR. MOYLE:** And I guess the only other point is  
24 to the extent that there is no dog in the fight, you know,  
25 Progress has already kind of said we don't need these

1 documents. Well, staff apparently thinks they do need the  
2 documents. I have a concern of why they need the  
3 documents, and it's not helping my client's interests, so  
4 it is kind of strange without having a dog in the fight,  
5 you know, this effort to put these documents in that  
6 aren't particularly helpful to my client, which is why I'm  
7 trying to keep them out.

8           So I'm kind of -- and I don't like to be adverse  
9 to staff on this thing, but I'm trying to protect the  
10 record and protect my client's interests, and I don't know  
11 that -- you know, the way we do things here is prefiled  
12 testimony and exhibits and no surprises. And then if  
13 through staff asking a whole bunch of questions we expand  
14 and build a record, as Mr. Brew pointed out, I am a little  
15 concerned about that and would object to it.

16           **CHAIRMAN GRAHAM:** So noted. Mr. Brew.

17           **MR. BREW:** Just one last thing. These documents  
18 as exhibits we were informed of late yesterday, so there  
19 is an element of surprise.

20           Second, with respect to the scope of staff's  
21 questions, to the extent that staff is asking this witness  
22 to authenticate the accuracy of the opinions and  
23 statements in here, an exhibit he is not sponsoring, I  
24 would renew our objection.

25           To the extent that he is establishing that such

1 a report exists, that's fine. But in terms of actually  
2 verifying on the record opinions that are in here without  
3 having the ability to explore the underpinnings of that  
4 opinion, I would continue to have a concern that it is not  
5 developing a proper record for the Commission.

6 **CHAIRMAN GRAHAM:** Well, it's my understanding,  
7 unless I'm hearing this incorrectly, that the staff is  
8 asking questions if these are documents that you use in  
9 your role at Progress.

10 **MR. BREW:** I thought I heard staff say that they  
11 were hoping this witness would authenticate the document,  
12 and if that goes to the accuracy of the statements, that  
13 is one thing. If it is something that they look at it in  
14 the normal course of business, that is another. And if we  
15 can get a clarification on that that would go a long way  
16 towards addressing some of my concerns.

17 **CHAIRMAN GRAHAM:** From where I am so far and  
18 what I have heard so far, basically staff is asking him if  
19 these are documents that you use, and in no way are they  
20 asking if they can prove the authenticity -- there is that  
21 word -- of these documents. Ms. Bennett.

22 **MS. BENNETT:** I am ready to continue with the  
23 questions. Again, as Ms. Helton stated, my job is to make  
24 sure that the record is complete. This issue was raised  
25 for the first time by FIPUG in the prehearing statements.

1 Testimony had already been filed in the docket, so there  
2 is no live testimony other than what we have already asked  
3 through interrogatories and other discovery responses.

4           And, Mr. Brew did state that he first saw these  
5 documents yesterday. I did mail them out on October -- or  
6 e-mailed them out on October the 24th. I sent it again  
7 yesterday asking for confirmation, and that is when I  
8 learned that FIPUG was going to be objecting to some of  
9 these questions, and that is why we are walking them in  
10 through different witnesses.

11           **CHAIRMAN GRAHAM:** That's fine. Just as long as  
12 the question is going down the line of are these documents  
13 that you use in the course of your job, because you have  
14 already stated what his job entails.

15           **MS. BENNETT:** Right. And that would be my next  
16 question. I'm not sure that he had answered it, so shall  
17 I continue with my questioning?

18           **CHAIRMAN GRAHAM:** Hold on just a second. It  
19 looks like Mr. Moyle is dying to say something.

20           **MR. MOYLE:** I guess I'm a little confounded and  
21 confused by the statement that FIPUG raised this issue in  
22 terms of -- I'm not sure what this issue means, because to  
23 the extent that I have created this mess, I surely would  
24 withdraw it and move back the issue. But I don't think it  
25 is my issue. I'm not sure what was meant when they said

1 FIPUG raised this issue.

2 MS. BENNETT: Issue 1(c).

3 MR. BURNETT: We accept Mr. Moyle's surrender,  
4 sir.

5 (Laughter.)

6 CHAIRMAN GRAHAM: Okay. Let's get back to the  
7 question at hand. Ms. Bennett.

8 BY MS. BENNETT:

9 Q. Mr. Garrett, are the Standard & Poor, Moody, and  
10 Fitch's reports types of reports that the company relies  
11 upon?

12 A. Yes, they are.

13 Q. Can you explain how you would rely upon them?

14 A. Yes. Again, I think it is they are opinions,  
15 they are assessments of our credit outlook, our ability to  
16 execute financial plans, our ability to maintain  
17 liquidity, and to that extent those independent opinions  
18 are very important to us. They influence investors and  
19 they influence investors to the extent that they are  
20 trying to assess risk.

21 I think we all have experienced how we look to  
22 these types of documents or these types of opinion to help  
23 us sort out very complex risks, and to that extent we use  
24 this quite extensively. Also, as I mentioned earlier, we  
25 have an affirmative obligation to disclose what our credit

1 rating agencies are saying about the company because it is  
2 important as we disclose or discuss our results, but more  
3 importantly our future outlook. And so in our SEC  
4 documents, in our management discussion and analysis there  
5 is a liquidity section. And, of course, we would look to  
6 these types of documents to tell investors what we know  
7 about what experts are saying about our financial outlook.

8 Q. Okay.

9 CHAIRMAN GRAHAM: Mr. Garrett, I have a question  
10 for you so I can understand. When you have to fill out  
11 your SEC documents, are you using these specific reports  
12 from the agencies, or are there other reports you are  
13 getting from the agencies that you are using? Because you  
14 are saying that these are just opinions, not facts. Are  
15 you using these opinions to report to the SEC, or are you  
16 using some other facts that come?

17 THE WITNESS: No, we are using these reports.  
18 What I meant by opinions, within there there are opinions  
19 that they are expressing as experts. But we are using  
20 their reports and that information that is, again, I think  
21 readily available to the public. And we are using that to  
22 make sure we understand what risks they perceive in our  
23 business and then also to disclose those risks and those  
24 assessments to our investors.

25 CHAIRMAN GRAHAM: Are you getting individual

1 reports back from rating agencies that you are using or  
2 are these public documentation?

3           **THE WITNESS:** Well, we get these types of  
4 documents. I believe we do get others. There are others  
5 in terms of there are presentations that are made to  
6 rating agencies by people within our company to explain  
7 our financial outlook and our financial position. And in  
8 that context there could be exchange of documents, as  
9 well, but these are the most readily available public  
10 documents.

11           **CHAIRMAN GRAHAM:** Okay. Ms. Bennett, I  
12 apologize.

13           **MS. BENNETT:** That's fine.

14 **BY MS. BENNETT:**

15           **Q.** One of the uses that Progress Energy made was to  
16 respond to Staff's Interrogatory Number 108, is that  
17 correct? It would be Bates stamp -- it's in Document 77.

18           **A.** Uh-huh.

19           **Q.** And it begins on Hearing Exhibit Page 00557.  
20 Are you familiar with that response? I will give you a  
21 couple of minutes.

22           **A.** Uh-huh. Yes, I have it here.

23           **Q.** And that was an opinion that was provided by  
24 Tommy Moses of Progress Energy?

25           **A.** Yes, that is correct.

1 Q. And who is Tommy Moses?

2 A. Tommy Moses is an employee at Progress Energy  
3 Service Company in our treasury group, and would have  
4 intimate knowledge of these types of reports and would  
5 monitor them very closely.

6 Q. And in response to Interrogatory 108, Progress  
7 expressed concern that the Commission -- if the Commission  
8 deferred part or all of CR-3 related replacement power  
9 costs, the rating agencies would have an adverse  
10 correction, is that correct?

11 MR. MOYLE: Same objection on this.

12 CHAIRMAN GRAHAM: So noted.

13 MR. BREW: Are you reading from the response  
14 somewhere?

15 MS. BENNETT: I'm sorry?

16 MR. BREW: Excuse me. I had a question for  
17 counsel as to whether she was reading from the response  
18 from 108.

19 MS. BENNETT: I had not read any specific -- I  
20 was just summarizing.

21 MR. BREW: Summarizing the answer?

22 MS. BENNETT: Yes.

23 MR. BREW: As it appears where?

24 MS. BENNETT: If you will look at, I believe,  
25 the first paragraph of the answer.

1           **MR. BREW:** Thank you.

2           **CHAIRMAN GRAHAM:** Ms. Bennett, if you would  
3 restate the question. Could you restate the question?

4           **MS. BENNETT:** Okay.

5 **BY MS. BENNETT:**

6           **Q.** In the interrogatory, Progress has expressed  
7 concern that if the Commission deferred part or all of the  
8 CR-3 related replacement power costs, the rating agencies  
9 would have an adverse reaction. Is that correct?

10          **A.** Yes, that is correct. It first states that, you  
11 know, there is a question as Mr. Burnett started off with  
12 in his opening comments about legality and also sound  
13 regulatory policy, but it further goes into that we would  
14 anticipate that credit rating agencies would have an  
15 adverse reaction to the Commission taking such an action.  
16 And it specifically is addressing the partial recovery of  
17 CR-3 replacement power costs.

18          **Q.** Do the company's concerns relate to the  
19 quantitative credit quality metrics, the perception of  
20 regulatory risk, or both?

21          **A.** Again, I think, you know, I know we are making  
22 this a rather complex issue, but I think there is some  
23 just intuition that I think your question gets to which is  
24 there is both. It is quantitative -- there are some  
25 quantitative impacts that this would have. Certainly to

1 the extent that there is a negative impact on current cash  
2 flow, that negative cash flow would have to be financed  
3 somewhere. That increases leverage and all of us deal  
4 with what the consequences of leverage has on our  
5 creditworthiness. So at some point there is a negative  
6 impact.

7           So there are quantitative impacts such as that  
8 that could be measured. But, also, I think there are less  
9 quantitative impacts, and they have to do with some of the  
10 comments that Mr. Burnett made. And that is, you know,  
11 what is the perception of the regulatory climate in  
12 Florida.

13           It seems to me that from an external investor  
14 perspective, the existence of this very clause gives some  
15 financial security to those investors. You are recovering  
16 costs on a projected basis subject to a true-up to  
17 actuals, and that ongoing process provides certainty about  
18 recovery of currently incurred costs.

19           To the extent that we start to stray from that,  
20 I think it becomes quantitative, but it also becomes an  
21 assessment of risk. Is there inherently greater risk in  
22 that enterprise. And that could be very -- you know, that  
23 could exactly be what is being referred to here as, you  
24 know, negative or adverse reactions. They may be  
25 expressed in quantitative impacts, but they may also be

1 expressed in qualitative impacts in terms of what their  
2 perception of the inherent risk of PEF as a financial  
3 enterprise.

4           **MR. REHWINKEL:** Mr. Chairman, I want to move to  
5 strike all of Mr. Garrett's responses. We are now -- we  
6 have a witness who was here for a very specific time  
7 limited purpose and he has now been allowed to freeform  
8 testify about reasons, self-serving reasons why the  
9 company doesn't want to part with their money. And that  
10 is not a valid issue. It is not valid testimony based on  
11 what the parties were aware of in this matter. We haven't  
12 had an opportunity to hear this evidence that he is giving  
13 now for the first time and cross-examine on it. And it is  
14 patently unfair and prejudicial, so I want to state that  
15 objection for the record.

16           **MR. BREW:** Mr. Chairman, just to reiterate that,  
17 and not to beat a dead horse, but if you have listened the  
18 past five minutes he has been speculating upon speculation  
19 as to what somebody might have thought somebody else  
20 meant, and we are so far beyond the scope of his  
21 testimony. It is extremely prejudicial to hear something  
22 new based on guesses with no underlying -- even the  
23 pretense that this is actually based on his judgment, his  
24 analyses, or anything that he is supporting. And, so I  
25 would join in the motion to strike.

1           **MR. WRIGHT:** Mr. Chairman, very briefly. The  
2 Retail Federation also joins in the motion to strike and  
3 in the continuing objection to this testimony. Thank you.

4           **MR. MOYLE:** And FIPUG would join in the motion.  
5 And as I think I stated earlier, I am not objecting  
6 continuously because I think I have a standing objection  
7 as we talked about, correct?

8           **CHAIRMAN GRAHAM:** Yep.

9           **MR. MOYLE:** Anyway, so we would join in the  
10 objection. Thank you.

11           **MS. BENNETT:** I just have three more wrap-up  
12 questions. Again, staff's job is to make sure we have the  
13 record complete. This was an issue that was raised late  
14 in the proceeding. We do have and have had discovery  
15 outstanding about it, have not been able to get it  
16 stipulated into, and most of these questions would have  
17 been responded to with the discovery of what we attempted  
18 to put into the record through stipulation. So that is  
19 what we are doing now is to attempt to get this  
20 information in to you so that you have it before you when  
21 you make your decision on whether or not to defer the  
22 payments to Progress for the CR-3 outage.

23           **CHAIRMAN GRAHAM:** Okay.

24 BY MS. BENNETT:

25           **Q.** My next question, Mr. Garrett. Is it your

1 understanding that any cost-recovery in this docket  
2 related to the CR-3 outage will be recovered subject to  
3 refund if Progress Energy is permitted to recover this,  
4 the cost of the outage?

5 **A.** Yes, that is my understanding.

6 **Q.** And rating agencies -- going back to the rating  
7 reports, rating agencies realize, don't they, that at  
8 times a Commission for good cause will defer or deny  
9 recovery of costs in the cost-recovery clause, is that  
10 correct?

11 **A.** Yes.

12 **MS. BENNETT:** That's all the questions I have.

13 **CHAIRMAN GRAHAM:** Commissioner Brown.

14 **COMMISSIONER BROWN:** Thank you. Thank you for  
15 your testimony today. As a follow-up question, or rather  
16 a clarification of Mr. Moyle's earlier question regarding  
17 insurance coverage, has the company determined -- if you  
18 could please clarify this, because I didn't really glean  
19 your answer correctly. Has the company determined that  
20 the March 2011 event is not a covered event, yet? Has the  
21 company, not the insurance provider.

22 **THE WITNESS:** Well, it's the company's position  
23 that it is covered under the policy, and we have, again,  
24 asserted that at least within these underlying assumptions  
25 that we have made in these filings that we think it is a

1 continuation of a single event.

2 We put forth before NEIL to make such a  
3 determination to really respond to us, that is, is it a  
4 single event or not, or is it a second event. But for  
5 purposes of this filing, we have assumed a continuation of  
6 a single event because that is what we know today. We had  
7 a determination of coverage. We don't have a  
8 determination of coverage yet for the second delamination  
9 that occurred in March.

10 **COMMISSIONER BROWN:** When does the company  
11 expect NEIL to make a determination on whether this is a  
12 covered event under the policy?

13 **THE WITNESS:** I do not know when that will be  
14 made by NEIL. It really is in their court to make that  
15 determination. We continue to work with them to secure  
16 that determination of coverage, but this is a very complex  
17 outage, and there is a lot of sharing of information with  
18 them, and they have a lot of questions, I'm sure. And so  
19 we work with them very diligently to answer those, but I  
20 can't tell you today that I could tell you with certainty  
21 when we would get that determination of coverage.

22 **COMMISSIONER BROWN:** Do you know how long it  
23 took NEIL to respond to the December 2009 claim?

24 **THE WITNESS:** I don't have the exact dates on  
25 me, but it was -- it did take some time into 2010 before

1 we got that. Subject to check, I believe it was sometime  
2 in the May/June time frame, something like that. So it  
3 was, you know, a considerable amount of time after the  
4 December 2009 event. That is my best recollection of when  
5 we got it. But we could provide that to you if that would  
6 be helpful.

7 **COMMISSIONER BROWN:** Thank you.

8 **CHAIRMAN GRAHAM:** Mr. Garrett, back to the  
9 insurance and the deductible. Do you know how much the  
10 deductible is on your insurance per event, or what it was  
11 for the first event?

12 **THE WITNESS:** Yes. It's a 12-week period at  
13 \$4-1/2 million, which would be if I did this right, 48 and  
14 six, so then 54 million. Did I do that right? 54  
15 million. So it is a function of time, 12 weeks, and the  
16 coverage starts then at 4-1/2 million thereafter.

17 **CHAIRMAN GRAHAM:** And is that just Progress'  
18 share of that or is that the total amount?

19 **THE WITNESS:** That is our share. That is our --  
20 that is -- well, it's both. It is the total amount of  
21 NEIL coverage that we have as the policyholder.

22 **CHAIRMAN GRAHAM:** Well, I guess the question,  
23 because you stated earlier that CR-3 is not wholly-owned  
24 by Progress, that some of the munies own pieces of it.  
25 Are they sharing in that insurance deductible?

1           **THE WITNESS:** No. They would have to secure  
2 their own insurance is my understanding.

3           **CHAIRMAN GRAHAM:** Okay. So who covers -- let me  
4 back up a little bit. How much of CR-3 is owned by  
5 Progress?

6           **THE WITNESS:** It is approximately 92 percent. I  
7 don't have the exact percentage in front of me, but my  
8 recollection is that joint ownership is about 8 percent.

9           **CHAIRMAN GRAHAM:** So NEIL is not covering that 7  
10 or 8 percent that is owned by the munies, is that correct?

11           **THE WITNESS:** That is correct. This insurance  
12 is to us as the owner/operator for our exposure for  
13 operating the unit.

14           **CHAIRMAN GRAHAM:** Okay. That answers my  
15 question. Commissioner Brown.

16           **COMMISSIONER BROWN:** Thank you. And just  
17 another follow-up question briefly that I don't want to  
18 pass up. You stated earlier that if it was treated as two  
19 events, the March and the December events were treated as  
20 two separate events, that there would be another  
21 deductible period where there would be no coverage. Is  
22 that correct?

23           **THE WITNESS:** That is correct.

24           **COMMISSIONER BROWN:** And what would that  
25 period -- how long is that period?

1           **THE WITNESS:** That would be 12 weeks. If it  
2 triggered a second event, that would be 12 weeks of no  
3 coverage.

4           **COMMISSIONER BROWN:** And could the company find  
5 coverage separate from the NEIL provider during that  
6 period?

7           **THE WITNESS:** No. At this time I wouldn't  
8 imagine that we could find someone to insure that risk.

9           **COMMISSIONER BROWN:** Since it is after the fact?  
10 Thank you.

11           **CHAIRMAN GRAHAM:** Commissioner Balbis.

12           **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
13 I just have one clarification and a question. In your  
14 direct testimony on Page 9 starting on Line 8, and there  
15 has been a lot of discussion on insurance and ownership  
16 and the deductible, but if I'm reading your testimony  
17 correctly, and starting with your answer -- could you  
18 please just clarify your answer to that question on the  
19 incremental cost. Because it states here that there is an  
20 agreement with all the joint owners that if Progress  
21 doesn't meet a specific capacity factor per two year  
22 interval that Progress must replace the power or reimburse  
23 the joint owners for their costs. So doesn't that, in  
24 effect, protect the joint owners and put the liability on  
25 Progress for any outage?

1           **THE WITNESS:** Yes, it does. It is an  
2 indemnification that Progress Energy Florida provided the  
3 joint owners to meet the capacity factor. So to the  
4 extent they incur replacement power costs associated with  
5 meeting that indemnification, we make up that power, and  
6 the cost associated with that has been excluded from the  
7 fuel expenses that are recovered from ratepayers in this  
8 proceeding.

9           **COMMISSIONER BALBIS:** So then, in other words,  
10 the other owners of the facility are not paying an  
11 increase due to the replacement power costs, that Progress  
12 through this agreement is paying for that, is that  
13 correct?

14           **THE WITNESS:** That is correct. To the extent of  
15 the capacity factor, which assumes some level of what I  
16 will call standard outage time, because it is not  
17 100 percent capacity factor for the full two-year cycle.  
18 It is a partial, I think, 87-plus percent capacity factor,  
19 so that assumes some standard refueling outage time. But  
20 beyond that, yes, you're correct.

21           **COMMISSIONER BALBIS:** And Progress removed that  
22 additional cost from the requested recovery amount?

23           **THE WITNESS:** Absolutely. Yes, we have.

24           **COMMISSIONER BALBIS:** Okay. And then the other  
25 question is concerning the NEIL coverage, and I'm not sure



1 acutely aware of the existence of Docket 100437?

2 A. Yes, I think they would be aware of these  
3 proceedings.

4 Q. And would they be aware that uncertainty  
5 regarding recovery of costs, ultimate recovery of costs,  
6 the rating agencies would be focusing on the ultimate  
7 disposition of coverage under the NEIL insurance and the  
8 Commission's action in that other docket?

9 A. Yes, I think they would be aware of that among  
10 other actions the Commission takes.

11 Q. As well as other actions going on affecting  
12 Progress Energy?

13 A. Yes.

14 Q. And you had said that looking at those issues  
15 and others influence investors and how they assess risk,  
16 is that right?

17 A. Yes, I did.

18 Q. And that would affect, among other things,  
19 whether or not they buy Progress Energy stock, right?

20 A. I didn't say that. I think it would  
21 influence -- what I did say was I think it would influence  
22 their perception of the financial risk that Progress  
23 Energy Florida had. That may ultimately lead to  
24 influencing peoples' buying decisions about our  
25 securities, not only common stock, but also publicly

1 traded bonds.

2 Q. And so would you say that both the rating  
3 agencies and investors as a whole are aware of the  
4 delamination at CR-3 that occurred in March?

5 A. Yes, they are acutely aware of it.

6 Q. And so to the extent that Progress Energy's  
7 stock is up 14 percent since March 14th, that would be a  
8 reflection of all of the factors that would go into their  
9 purchasing of that common stock security?

10 A. It would be -- it would be some impact  
11 associated with that. I think, again, my take on that  
12 would be more the interest rate climate that we are in.  
13 Public utility stocks are notorious to trade up when there  
14 are very low interest rates, and if anybody has a Wall  
15 Street Journal and has looked at it recently, ten-year  
16 treasuries are as low as they have been in a long, long  
17 time. And as those interest rates go down, dividend  
18 sensitive stocks tend to trade up. So your comment about  
19 the share price being up may be directed by other  
20 influences, as well.

21 Q. And so the rating agencies and others would be  
22 looking at those other circumstances?

23 A. Yes, they would.

24 Q. Okay. And the fact that, say, Progress stock  
25 closed at \$52.10 yesterday, which is a \$6 gain over where

1 it was at March 14th, would reflect investors taking into  
2 account all of those factors, right?

3 A. Yes, it would.

4 MR. BREW: That's all I have.

5 CHAIRMAN GRAHAM: Mr. Rehwinkel.

6 CROSS EXAMINATION

7 BY MR. REHWINKEL:

8 Q. Hello again, Mr. Garrett. Just a few questions.  
9 The rating agencies -- the words in the rating agency  
10 reports that you were asked questions about by staff, they  
11 do not offer any evidence or opinion about what the  
12 outcome of the proceeding in this docket should be, do  
13 they?

14 A. No, they do not.

15 Q. And they do not also offer any evidence or  
16 opinion about what the outcome will be, correct?

17 A. That is correct.

18 Q. Okay. And it is true that Progress Energy stock  
19 is trading at or near an all time high, correct?

20 A. I don't know that for a fact, whether it is an  
21 all time high.

22 Q. It is very near such, isn't it?

23 A. What?

24 Q. It is very near an all time high?

25 A. I wouldn't be able to say. I really don't know

1 what the historical trading values are.

2 MR. REHWINKEL: Okay. Those are all the  
3 questions I have. Thank you.

4 CHAIRMAN GRAHAM: Mr. Moyle.

5 MR. MOYLE: Thank you. And I guess I am  
6 assuming for the purposes of my questions that the  
7 documents and the interrogatories and everything that  
8 staff was trying to get in has been admitted, is that  
9 right?

10 CHAIRMAN GRAHAM: That is correct.

11 MR. MOYLE: Okay.

12 CROSS EXAMINATION

13 BY MR. MOYLE:

14 Q. Let me refer you to Interrogatory 108, if I  
15 could.

16 A. Uh-huh.

17 Q. On the hearing exhibits it starts at 557.

18 A. I'm there.

19 Q. All right. Who within the company answered this  
20 question, do you know?

21 A. I think it was submitted by Marcia Olivier.

22 Q. Flip over a couple of pages. Do you see an  
23 affidavit of Tommy Moses?

24 A. Yes, I do see that now. Uh-huh.

25 Q. And you would agree that at least the affidavit

1 appears that Tommy Moses --

2 A. I stand corrected. Yes, it says Tommy Moses.

3 Q. And Tommy is an assistant treasurer?

4 A. That is correct.

5 Q. Did he prefile testimony in this case?

6 A. Not that I am aware of, no.

7 Q. And was he not available today, do you know?

8 A. I'm not aware of Tommy's schedule.

9 Q. But he is a Progress employee, correct?

10 A. Yes, he is.

11 Q. You're not really comfortable giving testimony  
12 based on an interrogatory answer that Tommy prepared, are  
13 you?

14 A. Well, I guess, yes, I am comfortable at least  
15 providing based on the questions that have been answered.

16 Q. Let me ask you a question, then. Tommy said  
17 that the credit agencies would have an adverse reaction to  
18 the Commission taking such action. What action was he  
19 referring to, do you know?

20 A. He was referring to whether the Commission were  
21 to include half of the replacement power costs in the 2012  
22 fuel factors and defer the remaining half for inclusion in  
23 2013.

24 Q. So is it your testimony -- I mean, are you, in  
25 effect, adopting this as your testimony?

1           A.    I'm not sure I am adopting it.  That might be a  
2 legality.  I am comfortable that that could very well be a  
3 reaction by the credit agencies.

4           Q.    Do you know that?

5           A.    No, because they haven't taken that action, but  
6 they certainly have signaled their concern about ongoing  
7 timely cost-recovery.

8           Q.    Have you had any conversations with anybody at  
9 the rating agencies specifically about a split the baby  
10 approach?

11          A.    No, I have not.

12          Q.    What kind of -- I mean, you don't have any idea  
13 as to what adverse reaction may or may not take place, do  
14 you?

15          A.    Yes, I do have some idea.  As I mentioned --

16          Q.    Again, you know, you are under oath and we are  
17 talking about facts here.  As we sit here today, can you  
18 testify that the credit agencies will take adverse action  
19 if the Commission does a split the baby approach?

20          A.    I don't know that for a fact.

21          Q.    Okay.  Did you read all of these reports that  
22 are referenced in this answer?

23          A.    Yes.  Not recently, but I have read them.

24          Q.    Let me flip you over to page -- down at the  
25 bottom it is 569, and tell me when you're there.  It's

1 also PEF 11FL00476.

2 A. Yes, I'm there.

3 Q. My reading of this section on liquidity suggests  
4 that Progress Energy is pretty flush with capital. Would  
5 you agree with that?

6 A. No, I wouldn't say that what it says. I don't  
7 see where it says flush with capital.

8 Q. It has consolidated lines of credit totaling  
9 nearly \$2 billion.

10 A. Yes, that is correct.

11 Q. Okay. And is it also correct that Progress  
12 Energy has 750 million available to it?

13 A. Yes. And I think it's important to put a number  
14 that looks that large in context of the operating  
15 exposures that we manage. I mean, this very proceeding is  
16 dealing with millions of dollars of fuel costs.

17 Q. How much cash do you have on hand?

18 A. I don't know.

19 Q. This document -- and I understand you didn't  
20 write this document, did you?

21 A. No, I did not.

22 Q. This document says you have 172 million of cash  
23 on hand and in short-term investments. Do you have any  
24 reason to disagree with that?

25 A. This also says as of March 31st. A lot could

1 have changed between March 31st and where we are sitting  
2 today. Cash positions in a large company like ours  
3 changes dramatically over a period of time like that.

4 Q. So as we sit here today, you are not able to  
5 give me an estimate of the cash on hand within a range of  
6 10, or 15, or \$20 million?

7 A. No, I don't know what our cash position is  
8 today.

9 Q. And, staff asked you a lot of questions, and we  
10 got into these documents, but you are not suggesting, are  
11 you -- I mean, the purpose of your testimony, you're not  
12 suggesting that this Commission needs to award Progress  
13 its full recovery for fuel costs because the rating  
14 agencies might be concerned, are you?

15 A. It's not the only factor that they should  
16 consider. I think the Commission, as we talked earlier in  
17 the order from last year, the prior order evaluated a  
18 number of factors, and I would hope one of those would be  
19 the impact that it would have on our credit outlook.

20 You know, you mentioned that line in there with  
21 cash, and you didn't cite the fact that it also point outs  
22 that we have over a billion dollars in debt maturities  
23 coming out in the near term, as well. So we are a capital  
24 intensive business. That ability to access capital is  
25 extremely important to us. So yes, I would hope the

1 Commission would consider that in their deliberations.

2 Q. Okay. In your position with the company you  
3 deal with finances, correct?

4 A. Yes.

5 Q. All right. So to the extent the Commission  
6 says, you know what, we have got this prudence hearing  
7 coming up in June. It's November, you know, that is only  
8 a six-month period of time. That given your capital  
9 structure, is not -- if they reach that decision, that is  
10 not a decision that is going to put you at risk or  
11 jeopardy financially, is it, if they were to make that  
12 decision?

13 A. On a quantitative basis, no. I think  
14 qualitatively, though, it does send a signal, if you will,  
15 of risk.

16 Q. And that's where we are getting into these  
17 reports. In terms of quantitative you're saying, no, we  
18 can manage that, but you're saying, oh, if they don't  
19 allow it, then maybe Moody's will be upset?

20 A. That's correct. They could be -- there could be  
21 adverse reactions to that that would have then  
22 quantitative consequences.

23 Q. Do you think that given what things -- well,  
24 wouldn't you agree if they made that decision to say we  
25 are going to defer recovery until after the prudence

1 hearing in June, that if that decision were made based on  
2 decisions that this Commission has made in the past few  
3 years, that that would not be terribly significant to the  
4 rating agencies?

5 A. No, I would not agree with that.

6 Q. Let me ask you this. Do you see the credit  
7 watch section?

8 A. Yes.

9 Q. Is it true that you are on positive credit watch  
10 based on the anticipated merger with Duke?

11 A. That's correct.

12 Q. Okay. So to the extent that some of your  
13 testimony elicited by staff is raising issues about  
14 financial matters, that should be offset, or at least  
15 another factor to be considered is that the pending merger  
16 with Duke will have a positive impact on your financials,  
17 correct?

18 A. Yes, I think we expect there is going to be a  
19 positive impact of the merger with Duke in terms of the  
20 larger company having access to capital, but that is a  
21 proposed merger that is out in the future. Today as we  
22 sit, I think that is a different story. We are still  
23 looking at Progress Energy Florida and it's ability to  
24 raise capital on an ongoing basis, not Duke Energy.

25 Q All right. So based on the discussions we have

1 had, wouldn't you agree that more weight in this  
2 proceeding should be put on argument and evidence of  
3 parties who are here, such as the federal executive  
4 agencies, and FIPUG, and the Retail Federation in this  
5 proceeding today as compared to what Moody's, or Fitch's,  
6 or Standard & Poor's may or may not do at some point in  
7 the future?

8 **MR. BURNETT:** Objection, calls for a legal  
9 conclusion.

10 **CHAIRMAN GRAHAM:** Would you restate the  
11 question, please?

12 BY MR. MOYLE:

13 Q. Wouldn't you agree that this Commission in  
14 making its judgment as to whether to defer some or all of  
15 the fuel purchases, that more weight should be given on  
16 the arguments and testimony that is provided here today,  
17 and the positions of the consumers arguing to keep the  
18 money in the pocket as compared to reports or positions of  
19 Moody's, Fitch's, and Standard & Poor's that they may or  
20 may not take at some point in the future?

21 A. No, I don't agree with that. I think --

22 **MR. MOYLE:** I don't need an explanation.

23 **CHAIRMAN GRAHAM:** You have got to allow him to  
24 finish answering the question. Mr. Garrett, please.

25 **THE WITNESS:** No, I don't agree. I think, as

1 the Commissioner mentioned earlier, it is important to  
2 get -- I thought at least what I took away was to get all  
3 evidence and then give it its appropriate weighting. So  
4 it's not my place to make a determination of how to weight  
5 that, but I think it is important that this Commission  
6 know of the risk associated with these types of decisions.

7 **CHAIRMAN GRAHAM:** Thank you, sir. Mr. Wright.

8 **MR. WRIGHT:** Thank you, Mr. Chairman.

9 **CROSS EXAMINATION**

10 **BY MR. WRIGHT:**

11 Q Good afternoon, Mr. Garrett. My name is Schef  
12 Wright and I represent the Florida Retail Federation. I  
13 just have a few questions following along the questions  
14 asked by my colleagues here.

15 **MR. WRIGHT:** Mr. Chairman, just for the record,  
16 I want to say that by pursuing these questions, I don't  
17 waive either the objection or my joining in the Public  
18 Counsel's motion to strike.

19 **CHAIRMAN GRAHAM:** The only reason why I went  
20 back to you guys is because you didn't know that these  
21 questions were going to come up with this witness, so I  
22 was going to give you the opportunity to put your  
23 statements or answers to your questions on the record.

24 **MR. WRIGHT:** Thank you. I genuinely appreciate  
25 that.

1           **MR. MOYLE:** And FIPUG thanks you, as well, for  
2 giving us that chance. And, also as Mr. Wright said, by  
3 asking questions we are not waiving any objections.

4           **CHAIRMAN GRAHAM:** Duly noted.

5           **MR. WRIGHT:** Thank you.

6 **BY MR. WRIGHT:**

7           **Q.** How long have you been in your present job, Mr.  
8 Garrett?

9           **A.** About six years.

10          **Q.** Thank you. Have you tracked other proceedings  
11 before this Commission in your tenure as controller for  
12 the last six years?

13          **A.** Tracked? I have been involved in a number of  
14 proceedings here.

15          **Q.** Let me ask you this, have you paid attention to  
16 how much the company has asked for on certain occasions  
17 and how much the Commission has awarded y'all in terms of  
18 rate increases?

19          **A.** Yes, I have been.

20          **Q.** Do you happen to recall that in the summer of  
21 2008, the company sought a midcourse correction in the  
22 fuel docket?

23          **A.** Yes, I am aware of that.

24          **Q.** And do you recall that the amount that the  
25 company sought was on the order of \$213 million to be

1 recovered over the latter half of that year?

2 A. Yes.

3 Q. And do you recall that the Commission gave y'all  
4 about 106 million?

5 A. Yes. And the unrecovered piece was recovered in  
6 the following year, and actually resulted in a substantial  
7 price increase in that year. And then there was a  
8 followup to that. Because of pushing those costs forward,  
9 there was a subsequent need to file a midcourse correction  
10 to bring prices back down. So it seems like there is a  
11 lesson to be learned from adopting that type of approach  
12 to setting prices.

13 Q. My question for you goes to your testimony over  
14 the last few minutes, and it is this: Were there adverse  
15 credit rating agency reactions to the Commission's  
16 decision on your midcourse correction in July of 2008?

17 A. No, not in July of 2008, but we are sitting here  
18 in 2011 and a lot has changed since 2008. We have had a  
19 base rate proceeding that we were not afforded cash  
20 recovery. We now have this type of dialogue about pushing  
21 out future costs, so I think this is a different time and  
22 a different circumstance.

23 Q. Just to clarify one point. In fact, the company  
24 got \$126 million a year of cash rate increases in your  
25 last rate case, did you not?

1           A.    We had interim rate relief associated with  
2 Bartow, but as far as the base rate increase subsequent to  
3 that was zero.

4           Q.    Was or was not the increase for Bartow  
5 incorporated into your base rates?

6           A.    Yes, it was.

7           Q.    I'm glad you mentioned the followup to the  
8 summer of 2008 event because I was going there next. In  
9 April of 2009, the company wound up deferring a lot of  
10 capacity cost-recovery that you would have otherwise  
11 recovered through that as related to the Levy project,  
12 correct?

13          A.    Yes, there was.

14          Q.    And that number was about \$198 million, was it  
15 not?

16          A.    Yes, \$198 million. That is correct.

17          Q.    Thank you. Was there any adverse credit agency  
18 reaction to the company's deferral of that \$198 million?

19          A.    No, there was not direct negative reaction, but  
20 there was coverage of it by those agencies.

21          Q.    The amount involved here, the amount involved  
22 for 2012, as I understand it from Ms. Olivier's deposition  
23 testimony, is \$176,603,289. Does that sound about right  
24 to you?

25          A.    Subject to check, yes, that sounds right.

1           Q.    Okay. My question, my next question is this, if  
2 the Commission were to require deferral of that amount  
3 until a decision were made in what we call the CR-3  
4 spin-off docket, how would the company finance whatever  
5 amount that would be over the next, you know, eight months  
6 or nine months of 2012?

7           A.    I'm not sure exactly how it would finance it.  
8 Presumably with short-term borrowing.

9           Q.    Short-term borrowing generally being using  
10 commercial paper?

11          A.    Commercial paper.

12          Q.    Thank you. Do you have an opinion as to what  
13 the capital market's perceptions would be of the  
14 differential risk between deferral of recovery until  
15 summer of 2012 as compared to the risk of disallowance and  
16 refund following the hearing that we anticipate next  
17 summer?

18          A.    Well, I think the -- yes, I do have an opinion  
19 about that. I think it goes back to risk. I think if  
20 there is an appetite to defer costs, that it will indicate  
21 increased risk of recovery versus recovering those amounts  
22 subject to refund.

23          Q.    Did you ever discuss this differential risk with  
24 anybody from Standard & Poor?

25          A.    No, I have not.

1 Q. Moody's?

2 A. No.

3 Q. Fitch?

4 A. No.

5 Q. Any other rating agency?

6 A. I have not.

7 MR. WRIGHT: That's all I had. Thank you very  
8 much, Mr. Chairman. Thank you, Mr. Garrett.

9 CHAIRMAN GRAHAM: Mr. Burnett, if it is okay, we  
10 need to take a break for the court reporter. Can we hold  
11 off your redirect, or if you can do it in five minutes we  
12 can probably get her to hold on for that long.

13 MR. BURNETT: Sir, I have none. I would just  
14 move the exhibits if it would be appropriate at this time.  
15 But, I have no redirect.

16 CHAIRMAN GRAHAM: Okay. Tell me the exhibits  
17 you want to move.

18 MR. BURNETT: Yes, sir. They are 17 through 20,  
19 please. We would move those into evidence.

20 CHAIRMAN GRAHAM: Seventeen through 20?

21 MR. BURNETT: Yes, sir.

22 CHAIRMAN GRAHAM: Seeing no objection, we will  
23 move Exhibits 17 through 20 into the record.

24 (Exhibit Numbers 17 through 20 admitted into the  
25 record.)

1           **CHAIRMAN GRAHAM:** Staff, did you want to move  
2 your exhibits for this witness?

3           **MS. BENNETT:** We would go ahead and move  
4 Exhibits 56 and 77 into the record at this time.

5           **MR. MOYLE:** We would renew our objection that we  
6 stated previously on authenticity and hearsay grounds.

7           **CHAIRMAN GRAHAM:** Let the record show that all  
8 of the intervenors are renewing their objection.

9           **COMMISSIONER BRISÉ:** Excuse me, is it timely to  
10 move 56 yet when we haven't seen Ms. Olivier?

11           **CHAIRMAN GRAHAM:** I think she said 55 (sic) and  
12 77?

13           **MS. BENNETT:** I'm sorry, I jumped the gun. We  
14 will wait until Ms. Olivier comes onto the stand to move  
15 56 in. I would move 77 in.

16           **CHAIRMAN GRAHAM:** Okay. So we are moving 77 at  
17 this time.

18           (Exhibit Number 77 admitted into the record.)

19           **CHAIRMAN GRAHAM:** And there was another one that  
20 was added by Mr. Moyle, Number 89. Did you want to move  
21 that, sir?

22           **MR. MOYLE:** Yes, please.

23           **CHAIRMAN GRAHAM:** And we are moving Number 89  
24 into the record.

25           (Exhibit Number 89 admitted into the record.)

1           **CHAIRMAN GRAHAM:** Is that all, everything? All  
2 right. We will take a ten-minute break. We will come  
3 back at 20 till 4:00.

4           Mr. Garrett, you are excused.

5           (Transcript continues in sequence with  
6 Volume 4.)

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STATE OF FLORIDA )

: CERTIFICATE OF REPORTER

COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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 2nd day of November, 2011.

  
\_\_\_\_\_  
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