

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100437-EI

EXAMINATION OF THE OUTAGE AND  
REPLACEMENT FUEL/POWER COSTS  
ASSOCIATED WITH THE CR3 STEAM  
GENERATOR REPLACEMENT PROJECT,  
BY PROGRESS ENERGY FLORIDA, INC.

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12 NOV -2 AM 11:47  
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PROCEEDINGS: STATUS CONFERENCE

COMMISSIONERS

PARTICIPATING: COMMISSIONER EDUARDO E. BALBIS  
PREHEARING OFFICER

DATE: Tuesday, October 30, 2012

TIME: Commenced at 9:30 a.m.  
Concluded at 10:17 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

## 1 APPEARANCES:

2 JOHN T. BURNETT, ESQUIRE, Progress Energy  
3 Florida, Inc., Post Office Box 14042, St. Petersburg,  
4 Florida 33733-4042, appearing on behalf of Progress  
5 Energy Florida, Inc.

6 JON C. MOYLE, JR., ESQUIRE, c/o Moyle Law  
7 Firm, 118 North Gadsden Street, Tallahassee, Florida  
8 32301, appearing on behalf of the Florida Industrial  
9 Power Users Group (FIPUG).

10 CHARLES REHWINKEL, ESQUIRE, Office of Public  
11 Counsel, c/o The Florida Legislature, 111 West Madison  
12 Street, Room 812, Tallahassee, Florida 32399-1400,  
13 appearing (via telephone) on behalf of the Citizens of  
14 the State of Florida.

15 ROBERT SCHEFFEL WRIGHT, ESQUIRE, c/o Gardner  
16 Law Firm, 1300 Thomaswood Drive, Tallahassee, Florida  
17 32308, appearing (via telephone) on behalf of the  
18 Florida Retail Federation.

19 GEORGE CAVROS, ESQUIRE, Southern Alliance for  
20 Clean Energy, 120 East Oakland Park Boulevard, Suite  
21 105, Fort Lauderdale, Florida 33334, appearing (via  
22 telephone) on behalf of Southern Alliance for Clean  
23 Energy.

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## 1 APPEARANCES (Continued):

2 JAMES W. BREW, ESQUIRE, Brickfield Law Firm,  
3 Eighth Floor, West Tower, 1025 Thomas Jefferson Street,  
4 NW, Washington, DC 20007, appearing (via telephone) on  
5 behalf of White Springs Agricultural Chemicals, Inc.  
6 d/b/a PCS Phosphate.

7 LISA BENNETT, MICHAEL LAWSON, LEE ENG TAN, and  
8 KEINO YOUNG, ESQUIRES, FPSC General Counsel's Office,  
9 2540 Shumard Oak Boulevard, Tallahassee, Florida  
10 32399-0850, appearing on behalf of the Florida Public  
11 Service Commission Staff.

12 CURT KISER, General Counsel, and MARY ANNE  
13 HELTON, Deputy General Counsel, Florida Public Service  
14 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
15 Florida 32399-0850, Advisors to the Florida Public  
16 Service Commission.

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

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2           **COMMISSIONER BALBIS:** Good morning. I'd like  
3 to call the Status Conference for Docket Number 100437  
4 to order. And just to give you a quick recap, obviously  
5 those of you here are aware of how we got here, but just  
6 to give a recap, this Commission opened up this docket  
7 after the Crystal River Unit 3 went out of service in  
8 November 2009. So I separated this docket into three  
9 distinct phases: Phase I being everything leading up to  
10 the first delamination, Phase II is the decision to  
11 repair or retire the unit, and then Phase III would be  
12 everything from the first delamination until the unit  
13 comes back into service.

14           This Commission approved a comprehensive  
15 settlement agreement with Office of Public Counsel and  
16 most of the parties. That handled Phase I of the  
17 docket.

18           So what we're here today is to get a, an  
19 update from Progress Energy/Duke Energy as to the  
20 independent engineering study that was prepared and  
21 where Progress is with their decision to repair or  
22 retire so that then we can address when Phase II of the  
23 docket should move forward with the hearing track. So  
24 with that, I'd like staff to read the notice.

25           **MS. BENNETT:** By notice duly given in the

1 *Florida Administrative Weekly* and sent to all parties in  
2 this docket, the Status Conference agenda -- or Status  
3 Conference for Docket Number 100437 was noticed for this  
4 date, time, and place.

5 **COMMISSIONER BALBIS:** Thank you. And now I'd  
6 like to take appearances. We do have several parties  
7 that are participating by phone, so I'd like to start  
8 with appearances of those that are in attendance, and  
9 then we'll move on to those that are on the phone. So  
10 we'll start with Progress Energy Florida.

11 **MR. BURNETT:** Good morning, sir. John Burnett  
12 for Progress Energy Florida. With me I have Garry  
13 Miller, our Senior Vice President of Nuclear  
14 Engineering.

15 **MR. MOYLE:** Jon Moyle with the Moyle Law Firm  
16 for the Florida Industrial Power Users Group.

17 **COMMISSIONER BALBIS:** I'll go to Commission  
18 staff.

19 **MS. BENNETT:** On behalf of Commission staff,  
20 Lisa Bennett, Lee Eng Tan, Michael Lawson, and Keino  
21 Young.

22 **MS. HELTON:** Mary Anne Helton, advisor to the  
23 Commission. And also here is the General Counsel, Curt  
24 Kiser.

25 **COMMISSIONER BALBIS:** Okay. Thank you. And

1 it's my understanding we have Office of Public Counsel  
2 participating by phone?

3 **MR. REHWINKEL:** Yes. Good morning,  
4 Commissioner. Charles Rehwinkel, Office of Public  
5 Counsel, from New York City.

6 **COMMISSIONER BALBIS:** And from the Retail  
7 Federation.

8 **MR. WRIGHT:** Good morning, Commissioner.  
9 Schef Wright appearing on behalf of the Florida Retail  
10 Federation. I'm down near your hometown in Lake Worth,  
11 Florida, doing some work down here for the city. Thank  
12 you for accommodating this.

13 **COMMISSIONER BALBIS:** Thank you.

14 And the Southern Alliance for Clean Energy.

15 **MR. CAVROS:** Good morning, Commissioner.  
16 George Cavros on behalf of the Southern Alliance for  
17 Clean Energy, and thanks for the opportunity to be able  
18 to join by phone.

19 **COMMISSIONER BALBIS:** Okay. Thank you.

20 And White Springs Agricultural.

21 **MR. BREW:** Yes, Commissioner. This is James  
22 Brew for PCS Phosphate from Washington, D.C., and I also  
23 appreciate the opportunity to call in.

24 **COMMISSIONER BALBIS:** Okay. Thank you. And  
25 just one more housekeeping matter, since we do have

1 several parties participating by phone, as we progress  
2 through this Status Conference, after a section is  
3 completed, whether it be the, the update as to the  
4 Zapata report, at which point I'll allow those  
5 participating by phone to indicate any questions they  
6 may have so we can move this a little smoother since  
7 there are quite a few by phone.

8 So with that, we can proceed to the status  
9 update by Progress Energy Florida.

10 **MR. MILLER:** Thank you. My name is Garry.  
11 Miller. I'm the Senior Vice President of Nuclear  
12 Engineering for Duke Energy, which obviously includes  
13 Progress Energy. I'm here today just to give a brief  
14 update associated with the review of the Zapata report.  
15 The report itself is actually titled the *Crystal River*  
16 *3 Containment Restoration Assessment*, prepared for Duke  
17 Energy, dated August 2012, prepared by Zapata with  
18 several subcontractors that worked under Zapata as part  
19 of that. And I am leading a team inside Duke Energy  
20 that is reviewing the report to determine the insights  
21 that we gather from reading the report and how we might  
22 make any changes to the forward direction of the  
23 technical analysis of this repair itself.

24 The scope of my work really is limited to the  
25 technical review of this only and the risk associated

1 with that technical review. I would characterize in the  
2 report itself there are five broad areas that everything  
3 sort of falls into. One area has to do with the  
4 containment cylinder and potential for additional scope  
5 from additional delamination during the construction  
6 phase, including both de-tensioning and re-tensioning.  
7 That's one broad area.

8 The second broad area is associated with the  
9 dome, and that would also involve any concerns  
10 associated with the current condition assessment, the  
11 de-tensioning of vertical tendons which affect the dome,  
12 and also the re-tensioning of the vertical tendons which  
13 again affect the dome.

14 The third area I would characterize as  
15 licensing, which has broad areas of the license  
16 amendment requests associated with making the change  
17 itself, and any other regulatory issues and interactions  
18 that come out associated with what we see as we progress  
19 with the repair.

20 And we have an area associated with modeling  
21 where there's some specific insights given by the Zapata  
22 report that represent some opportunities for  
23 improvement, some questions that they've raised that we  
24 are addressing.

25 And then finally the last area I would

1 characterize as construction costs and schedule. And  
2 I'd characterize that broadly as the maturity of the, of  
3 the analysis at the point Zapata came in, and  
4 opportunities to improve the precision of that analysis  
5 that would then better inform the cost estimates based  
6 on having particularly congestion analyzed in the, in  
7 the repair itself.

8           So my team has been looking at these five  
9 broad areas, and we're looking at that for the purposes  
10 of understanding what Zapata is identifying as risk and  
11 any new technical concerns that were not previously  
12 considered. And then we're going through systematically  
13 and looking at those and deciding how we would brief our  
14 senior leadership team in our company of what our review  
15 concludes based on the Zapata independent report, and  
16 then that would then go into decision-making by the  
17 senior leadership of our company for, as part of the  
18 path forward, if you will. So that's broadly what we're  
19 doing.

20           My team is working on a schedule that would  
21 likely conclude our technical review by mid-November,  
22 and then we would then feed that up through leadership.  
23 And that would then be a back and forth as they ask  
24 questions and any additional follow-up that would again  
25 continue to feed the decision-making of the company at

1 the highest level. So that's broadly what we're doing.

2 **MR. BURNETT:** And, Commissioner, if it makes  
3 sense, I can go ahead and address 4B, which kind of  
4 feeds in and dovetails with what Mr. Miller was  
5 discussing. And if, and if that's appropriate, I can  
6 give an update on that. And then perhaps if there's  
7 questions on either 4A or 4B after that, we could take  
8 up those, if that works.

9 **COMMISSIONER BALBIS:** Well, let's stick with  
10 4A at this point.

11 **MR. BURNETT:** Okay.

12 **COMMISSIONER BALBIS:** Because, you know,  
13 obviously that's a very brief overview of the Zapata  
14 report.

15 **MR. BURNETT:** Right.

16 **COMMISSIONER BALBIS:** And I did read it and I  
17 agree that those five broad categories are appropriate.

18 Can you touch on, a little bit on the cost  
19 estimates? Because I understand there were several  
20 scopes of repairs that Zapata analyzed, and compare  
21 those with the EPC contractor's estimate, if it's not  
22 confidential.

23 **MR. MILLER:** Okay. All right. I'll be glad  
24 to do that, Commissioner. And I'm going to do it -- I'm  
25 probably going to have to have some technical discussion

1 first to preface the cost discussions.

2 So there are two broad areas -- of the five  
3 areas I discussed, there are two areas which had a lot  
4 of dialogue in the Zapata report associated with the  
5 potential for scope change. One was the containment  
6 cylinder, and here is the scenario. That -- to  
7 facilitate the repair, the building has to be  
8 de-tensioned. And the scope, which is currently being  
9 considered by Duke Energy, involves the upper portion of  
10 the containment cylinder, and then there is a band of  
11 temporary anchors at various heights along each bay  
12 itself, and then there is an area below that that would  
13 be targeted for pinning, if you will, that would then  
14 not have the concrete removed.

15 And there are questions raised in the Zapata  
16 report associated with the risks that come with -- as we  
17 de-tension, is there potential for additional  
18 delaminations in the upper portions of the containment  
19 which are targeted for concrete removal? So that would  
20 be just something we'd have to be concerned about from  
21 an industrial safety perspective. But is there a  
22 potential for some of that delamination to go through  
23 the temporary band of anchors or to originate below the  
24 band of anchors into the area that is not scheduled for  
25 concrete removal? So those risks are finite and real,

1 and we've been evaluating those as part of our dialogue  
2 in my team.

3 And what they do is they affect then the scope  
4 of what you actually remove as concrete to address the  
5 risk. So currently if you look at the, at the plan, and  
6 it's actually shown in a graphic in Appendix A of the  
7 report, if you look at all the five bays other than Bay  
8 3-4, which was previously repaired back in the 2010 time  
9 frame, you will see there are varying heights of  
10 concrete removal. And, and when the concrete is taken  
11 out, then we go back in with heavy reinforcement and we  
12 replace the tendon sheaths and the tendons, et cetera.

13 And so this risk associated with this, as I  
14 described it, was we de-tensioned, and as part of that  
15 de-tension evolution, again, a delamination is occurring  
16 somewhere where you don't expect it. And what it does  
17 then is it involves taking additional concrete off the  
18 wall that is not in the original scope, particularly in  
19 the lower areas. And so what you see in here from a  
20 cost estimate perspective is, is you see some numbers  
21 that are associated with the, the based -- I'm going to  
22 call it the base scope, which is what's under  
23 consideration right now, which is on the order of  
24 1.55 billion, which represents the EPC and the owner's  
25 costs, if you will, and that is for the scope that's

1 actually reviewed by Zapata.

2 And then there are some additional estimates  
3 in here where they say if you were to then include  
4 additional scope of replacement of the walls and the  
5 dome, the number goes up. So before I give that number,  
6 let me go to the dome.

7 **COMMISSIONER BALBIS:** Let me back you up a  
8 little bit.

9 **MR. MILLER:** Okay.

10 **COMMISSIONER BALBIS:** And maybe I wasn't that  
11 clear with, with my question.

12 So focusing on the original scope where there  
13 are some level of construction plans prepared and an EPC  
14 contractor bid upon, with the 1.55 billion, Zapata  
15 reviewed the scope of work and then provided their own  
16 cost estimate for that same scope. And how did that  
17 compare to the original or what Duke/Progress is  
18 considering?

19 **MR. MILLER:** Actually that compared very  
20 favorably. The number I just gave for including the URS  
21 portion of the EPC contract and the owner's cost, the  
22 number was 1.55 billion. When Zapata considered their  
23 own analysis of that same scope of work, they came up  
24 with a number of 1.49 billion. So they're relatively  
25 close together. Some differences slightly in the

1 contingency management reserves, but they actually are  
2 quite close together.

3 **COMMISSIONER BALBIS:** Okay. And then those  
4 other additional scopes of work, I mean, that's  
5 something that, again, worst case, worst case type  
6 scenarios and different cost estimates associated with  
7 that which the EPC contractor did not bid on; is that  
8 correct?

9 **MR. MILLER:** That's correct. The EPC contract  
10 as it stands right now was a given scope of work that  
11 was based on an alternative analysis we did last year.  
12 And so it only goes down a certain elevation on each of  
13 the bays that is to be repaired. That's correct.

14 **COMMISSIONER BALBIS:** Okay. And then maybe,  
15 you know, now we can lead into the 4B before we go  
16 there. So the question then is the decision that the  
17 board is going to make as to repair, retire, what scope  
18 of work will be based upon or is this the analysis that  
19 you're doing with the Zapata report and costs, et  
20 cetera?

21 **MR. MILLER:** Well --

22 **MR. BURNETT:** I can take that one.

23 **MR. MILLER:** Okay.

24 **MR. BURNETT:** Commissioner, the, the board's  
25 decision, I think they're going to see sensitivities, so

1 they're going to see a primary number, as you noted, for  
2 the EPC and the as bid, that number. And they'll also,  
3 as you're familiar with seeing with our Levy project,  
4 there are sensitivities on the, the cost of scheduling  
5 the like. So I think they'll see a spectrum of, of  
6 different scenarios and, you know, low, middle, high  
7 case.

8 **COMMISSIONER BALBIS:** Okay. And I guess I'll  
9 give an opportunity for some of the other parties on 4A  
10 as far as the summary of the Zapata report. So,  
11 Mr. Moyle, do you have any questions or comments on it?

12 **MR. MOYLE:** Just, just a couple of, couple of  
13 questions following up on the, on the cost issue.

14 The -- you were, you were, I think, describing  
15 the, the different scopes. And if, if, if you wouldn't  
16 mind just finishing the, the point, like if the dome has  
17 to be replaced, what, what does that number entail? And  
18 then I think there may have been another scope and then  
19 the worst case. If you don't mind just detailing that.

20 **MR. MILLER:** The Zapata report does a  
21 calculation that looks at based on the risk -- if you  
22 were to choose -- if you chose to increase the scope of  
23 concrete removal on the cylinder walls of the  
24 containment and also the dome and you did that from the  
25 start, they estimate the cost of complete replacement of

1 the walls and dome is 2.44 billion, which includes a  
2 management reserve of 631 million. And that would be  
3 under the scenario that that scope of work was started  
4 as part of the original repair effort.

5 They do a different analysis that says you  
6 keep the current scope of work, you proceed through the  
7 repair, and in the re-tensioning phase you have some  
8 late event takes place with additional delamination of  
9 either the cylinder or the dome. And they have a  
10 worst-case scenario that results in a total project cost  
11 of 3.43 billion, which is what's in the report. So that  
12 would be if you chose to stay with the continued scope  
13 of work and then there was some late event that actually  
14 increased the scope.

15 **MR. MOYLE:** And then just one, one other  
16 question, if I may. In terms of the timing that you  
17 discussed, it sounds like you all are putting together  
18 information that should be finalized in November. And  
19 then is it anticipated that you'll have a repair/replace  
20 decision by the end of this year or is that likely to  
21 fall into next year?

22 **COMMISSIONER BALBIS:** Well, Mr. Moyle, if we  
23 can -- I think that kind of leads into 4B.

24 **MR. MOYLE:** Okay.

25 **COMMISSIONER BALBIS:** Which we can obviously

1 discuss next. But I just want to give --

2 **MR. MOYLE:** Sure. I'll defer that then.

3 **COMMISSIONER BALBIS:** Yeah. And I, I just  
4 want to give the other parties opportunity to ask any  
5 questions on the Zapata summary. So I'd like to offer  
6 that opportunity to those participating by phone.

7 (Experiencing technical difficulties with  
8 phone connection.)

9 **MR. CAVROS:** (Inaudible.) This is George  
10 Cavros. The summary of the report states that the base  
11 repair appears to be (inaudible); however, a significant  
12 risk remains that needs to be addressed.

13 Does the additional scope change that requires  
14 the replacement of the dome and the replacement of the  
15 lower parts of the concrete priced at approximately 2.5  
16 billion and estimated duration of five years, does that  
17 address a lot of the risk?

18 **COMMISSIONER BALBIS:** Mr. Cavros, we're having  
19 a hard time hearing you. If you could repeat your  
20 question, please.

21 **MR. CAVROS:** Sure. Mr. Miller, in the, in the  
22 letter provided to the parties there's a cover letter by  
23 Mr. Glenn. It stated that the independent review team  
24 believes that if the base repair, the base case or the  
25 base scope of the repair appears to be technically

1 feasible; however, significant risks remain that need to  
2 be addressed. And I was wondering and my question was  
3 you had mentioned, or the independent review team had  
4 considered an additional scope change that would replace  
5 the dome and also the lower portions of the concrete,  
6 which would cost approximately 2.5 billion and run 50  
7 months. And I was wondering if that scope change option  
8 addresses the risks in --

9 **MR. MILLER:** I believe I understand the  
10 question. Go back to the summary of this part, of this  
11 part of the Zapata report where it actually summarizes  
12 the statement that he referred to, it says, the scope of  
13 work proposed by URS is feasible, but there are risks  
14 associated with the technical approach, construction  
15 methodology, scheduling, and licensing.

16 So to answer your question specifically, if  
17 you increase the scope of the cylinder and the dome,  
18 that takes care of part of those risks. There remains  
19 some risk associated with licensing because it does  
20 require a license amendment request, and those licensing  
21 amendment processes are subject to intervention and  
22 they're certainly subject to the final disposition  
23 approval by the Nuclear Regulatory Commission. So those  
24 are, those are risks that are out there, but we expect  
25 those to be low.

1           And in terms of the construction methodology,  
2 even if you increase the scope of concrete removal, you  
3 do replace some of the engineering risk with what I  
4 would characterize as construction risks where you're  
5 working in more congested spaces, there are more  
6 interferences, the work is a little bit more difficult.  
7 So while the risks go down from an engineering  
8 perspective that you would have some late event during  
9 the construction phase, there are still finite risks  
10 associated with licensing and actual construction  
11 implementation that you would have some unrelated damage  
12 from some part or some piece of equipment just from the  
13 construction evolution itself. But, but the large risk  
14 associated with scope growth would be addressed if you  
15 did increase the amount of scope associated with the  
16 containment walls and the dome.

17           **COMMISSIONER BALBIS:** Okay. Any other  
18 questions from those participating by phone?

19           Okay. Hearing none, you can proceed with 4B.

20           **MR. BURNETT:** Thank you, Commissioner.

21           So as Mr. Miller mentioned, the technical  
22 review team is one of, of basically four teams that are  
23 working now to get an information package to our, our  
24 executive utility committee and to, ultimately to our  
25 board. You've heard about the technical review and the

1 five areas that they're working on now.

2 There's also a retirement decommissioning team  
3 that's going through largely the same process but with a  
4 retirement scenario. So what does a retirement entail  
5 with respect to decommissioning the unit and, and  
6 everything that would flow out of a retirement,  
7 personnel, communications, and other things like that?

8 We also have our project team working now with  
9 URS and finalizing the terms and conditions of the  
10 contract, and as well as looking at any additional scope  
11 that may be needed, and specifically right now focusing  
12 on what, if anything, needs to be done to the dome with  
13 respect to tensioning the dome or not de-tensioning the  
14 dome and any work that would need to be done there. So  
15 that's ongoing.

16 And then finally we have a team that's taking  
17 the information from those three teams and putting it  
18 into the qualitative and quantitative analysis format  
19 that will ultimately be used to advise our executive  
20 management and the board. So that team is largely an  
21 information collector from the three main teams and is  
22 running that analysis.

23 To get to Mr. Moyle's question, the earliest  
24 we believe that a, that all that information could be  
25 collected, put in a format that's appropriate to get to

1 senior management and then the board would be December  
2 of this year. The outer bound of estimate would be no  
3 later than summer of next year. And kind of in between  
4 is, is a middle case for when we would expect that  
5 decision to be ripe to be made.

6 **COMMISSIONER BALBIS:** Okay. I hate to tap  
7 back into the Zapata report, but in the Zapata report,  
8 especially their detailed schedules, they anticipated a  
9 lot of preliminary work, the de-tensioning, for example,  
10 to have begun in August. So Progress/Duke has not  
11 proceeded with any of those activities; is that correct?

12 **MR. BURNETT:** That's correct, sir.

13 **COMMISSIONER BALBIS:** Okay. Are there any  
14 questions from Mr. Moyle since you're the only one  
15 participating here in person?

16 **MR. MOYLE:** I have, I have a question that I  
17 don't know if it's appropriate in this part of the  
18 agenda, but I'd like to ask it at one point because I  
19 think we've been -- you know, there are a lot of moving  
20 parts with respect to this plant. And, you know, given  
21 the variety of the numbers that are projected in terms  
22 of, you know, the 1.5 in a base case to a 2.5 if you  
23 remove the walls, I was curious as to the number that  
24 has been put forward to the insurance company for repair  
25 costs. I understand you may be in discussions with the

1 insurance company and I was curious as to the number  
2 that's been put to the insurance company.

3 **COMMISSIONER BALBIS:** You know, that's a very  
4 good point. And although -- so we'll address that maybe  
5 after this section because I want to make sure we have  
6 as detailed a discussion on the NEIL discussions as, as  
7 possible. So we can handle that at that point.

8 And then just for everyone to know where we're  
9 going with the, with the agenda, I mean, we'll have the  
10 discussion on NEIL and then we'll have a joint report by  
11 the parties regarding the discussions that were  
12 anticipated with the settlement agreement. And we're  
13 going to focus on the settlement agreement, how this  
14 decision, knowing -- now hearing that December decision  
15 up until summer 2013, how that affects the settlement  
16 agreement provisions that are included. And then we'll,  
17 we'll get into our final discussion on, on anticipated  
18 dates when we can start Phase II of the docket, which  
19 again is, is this Commission's review of the decision to  
20 repair or retire and whether or not that was a prudent  
21 decision to make.

22 So are there any questions from staff or, from  
23 staff on Section 4B on the decision to repair or retire?

24 **MS. BENNETT:** No questions at this time.

25 **COMMISSIONER BALBIS:** For those participating

1 by phone?

2 Okay. Hearing none, we'll move on to the  
3 joint report by the parties. And just to summarize, as  
4 part of the settlement agreement it was agreed that all  
5 the parties would work together and have, you know,  
6 access to all the information and they would issue at  
7 these status conferences oral reports as to the, the,  
8 the summary of those discussions. So I don't know if --  
9 last time I believe the Office of Public Counsel led  
10 that discussion. I don't know if the parties have  
11 agreed as to who's going to lead it this time, but I'll  
12 kind of leave it open at this point.

13 **MR. REHWINKEL:** Commissioner, this is Charles  
14 Rehwinkel with Public Counsel's Office. The, the status  
15 report of the parties is that -- and can you hear me  
16 okay? I'm hearing a bit of echo. I'm afraid I might  
17 have the same issue Mr. Cavros had.

18 **COMMISSIONER BALBIS:** No. We can hear you  
19 better than we did Mr. Cavros.

20 **MR. REHWINKEL:** Okay. The parties met with  
21 Progress recently in Charlotte. We brought Dr., Mr.  
22 Buyukozturk from MIT and Bill Jacobs and Jim McKay from  
23 GBS in Atlanta, and met with technical personnel from  
24 Progress/Duke, as well as the principals of the Zapata  
25 team in an all-day-long meeting to gain more insight

1 into the process and the nature of the engineering  
2 report.

3 We had a very successful meeting and have  
4 scheduled follow-up to take place sometime in the time  
5 frame where Mr. Miller's team is concluding its work,  
6 and I think that's kind of where we stand right now.

7 We're still trying to assess the report and  
8 assess the direction of our comments that will be  
9 provided to the Duke management team and/or board at the  
10 appropriate time when the repair/retire decision is  
11 ripe. And I would leave it to the rest of the, the  
12 group to provide any additional comment.

13 **COMMISSIONER BALBIS:** Okay. Any additional  
14 comments from the Intervenor parties?

15 Okay. Hearing none, I do have a question for  
16 Mr. Rehwinkel, and this is something that was discussed  
17 at the last status conference. With the settlement  
18 agreement, you know, there was again discussion on all  
19 the parties working together. And the question for you  
20 is are these meetings, and especially the Charlotte  
21 meeting, has it been a successful one and are you  
22 getting the information that you need and are the  
23 meetings what was anticipated when you agreed to the  
24 settlement agreement?

25 **MR. REHWINKEL:** So far they are, Commissioner.

1 And we had a good meeting in Charlotte. There's  
2 still -- part of the thing that is, I guess, hampering,  
3 if you will, is that the decision-making that the  
4 Duke/Progress team is going through takes time, it has a  
5 lot of moving parts. And as Mr. Moyle mentioned, it, it  
6 has the, the insurance issue kind of involved as well,  
7 and that is kind of complicating the time frame, if you  
8 will.

9 So we are -- I think from my standpoint the  
10 meetings are what we expected. Certainly when we  
11 reached agreement in January of 2011, there were events  
12 such as the merger and the delay that caused the Zapata  
13 report, et cetera, that were not known to any of us.  
14 But we learned that the Zapata report was commissioned,  
15 I think, in March, which was after the settlement was  
16 reached.

17 So there have been a lot of events that have  
18 occurred that have put twists and turns in the road.  
19 Certainly the pace of things is not what we would have  
20 wanted or expected, but I'm not certain that it's within  
21 the control of any one individual. These are just kind  
22 of circumstances that, that we find ourselves in. But,  
23 yes, we are getting good information and access to  
24 information that, that we need.

25 **COMMISSIONER BALBIS:** Okay. Thank you. Are

1 there any other comments concerning the joint report?  
2 Staff, do you have any questions?

3 **MS. BENNETT:** No.

4 **COMMISSIONER BALBIS:** Okay. Let's, let's go  
5 on to a discussion on NEIL. And if Progress -- this is  
6 a real question. Should I continue to call you Progress  
7 or just go straight to Duke at this point?

8 **MR. BURNETT:** Yes, sir. We are still Progress  
9 Energy Florida at this time, so that's still our name.  
10 I don't anticipate that changing before next year  
11 officially, so we're still Progress Energy Florida for  
12 now.

13 **COMMISSIONER BALBIS:** Okay. Thank you. If  
14 you can provide an update on the discussions with NEIL  
15 that you're having.

16 **MR. BURNETT:** Yes, sir. So right now we're  
17 scheduled in the last quarter of this year to go to  
18 nonbinding mediation with NEIL, and then we'll see how  
19 we proceed after that. NEIL has taken some, some  
20 depositions under oath, and I believe those have been  
21 concluded now. So the next move with NEIL is the  
22 nonbinding mediation sometime in the remainder of this  
23 year. And that's, that's the update as it is now.

24 There continues to be information exchanges  
25 with NEIL when, when they request information. And to

1 Mr. Moyle's earlier question, right now I'm not sure  
2 there is a per se number with NEIL as, as we are  
3 continuing to refine the, the final number for what  
4 would be with an EPC contract and looking at whether the  
5 scope of the project, the repair would increase or  
6 decrease. That's, that's still under calculation now,  
7 so I'm not necessarily sure there's a number that NEIL  
8 is working off of. But, again, any, any, any  
9 replacement power costs that we've had or any repair  
10 costs incurred to date have all been submitted to NEIL  
11 per the terms of the policy. So that's kind of how that  
12 information flow is going.

13 **COMMISSIONER BALBIS:** And I know at one point  
14 there was a, I don't know if delay is the right word,  
15 but a pausing of discussions or more specifically  
16 payments. Has Progress Energy Florida received any  
17 payments from NEIL since the last status conference?

18 **MR. BURNETT:** No, sir, we have not.

19 **COMMISSIONER BALBIS:** Okay. Mr. Moyle, does  
20 that answer the question that you had concerning NEIL?

21 **MR. MOYLE:** It answers, it answers one. I, I  
22 have a few others, if it's okay.

23 **COMMISSIONER BALBIS:** Okay. Go ahead.

24 **MR. MOYLE:** And maybe -- you know, I just want  
25 to start by saying that I, I do think that the

1 conversations and the meetings have, have been  
2 productive. They have been free with information. It's  
3 been appreciated. It's been useful. But at least from  
4 FIPUG's perspective, and probably from the company's  
5 perspective too, the NEIL issue has, has been a source  
6 of some frustration because this plant has been offline  
7 for a long time, and it seems that a critical component,  
8 which is how much money might be available to help  
9 repair this, continues to be quite elusive. And so, you  
10 know, FIPUG is, is concerned about that and is digging  
11 into the insurance issue.

12           You know, I think in state insurance law, if  
13 you have a property claim in a residential context, I  
14 think the insurance company has so many days to make a  
15 decision. If they, if they don't make a decision in  
16 that time, you start getting interest on your, your  
17 monies.

18           But am I, am I correct in that the NEIL  
19 insurance company is, is headquartered overseas or  
20 something; it's not really a Florida company? Do you  
21 know?

22           **MR. BURNETT:** I can't say for sure, Mr. Moyle.  
23 I believe that, if memory serves me, I believe that they  
24 may be incorporated offshore. But I couldn't tell you  
25 for sure. I'm sorry.

1           **MR. MOYLE:** And, and, and with respect to the,  
2 you know, to the claims that have been submitted, you've  
3 submitted a claim for the property damage for Crystal  
4 River 3; right?

5           **MR. BURNETT:** Correct.

6           **MR. MOYLE:** Okay. But the number has not, the  
7 number is going to be filled in after further analysis,  
8 is that right, in terms of the amount of -- I mean, you  
9 have a 1.5 number, a 1.55, a 1.49, and then, you know, a  
10 2.5 number. So would it be safe to assume that the  
11 number that you're going to be looking to NEIL for is  
12 somewhere between 1.5 and 2.5?

13           **MR. BURNETT:** Based, certainly based on the  
14 information we know now as we're maturing any estimates  
15 for repair those are the numbers we have. I mean, the  
16 most concrete number, of course, we have at this point  
17 is what is bid in the EPC. And, again, we're looking to  
18 finalize that scope. But, again, that is somewhat of a  
19 moving target. But, yes, those are the indicative  
20 numbers we have now.

21           **MR. MOYLE:** Okay. And one --

22           **COMMISSIONER BALBIS:** Mr. Moyle, I just want  
23 to maybe throw out this caveat and, and give this  
24 opportunity to Progress. I mean, I understand that  
25 negotiations with NEIL are very critical and important,

1 and I appreciate these questions and you can continue  
2 with the line of questioning, but if there's something  
3 that you feel may interfere with your negotiations with  
4 NEIL, please let us know so that we don't negatively  
5 impact the discussions with NEIL.

6 **MR. BURNETT:** Yes, sir. Thank you,  
7 Commissioner. We're fine so far.

8 **MR. MOYLE:** Okay. And, and obviously, I mean,  
9 the questions are of interest because the ratepayers  
10 stand to benefit or, or not depending on how the  
11 insurance issues flow out.

12 The -- can you just describe, if you would, if  
13 the mediation is not successful, what then is  
14 anticipated? Are you comfortable describing that? Or,  
15 you know, with, with NEIL, you're going to mediation  
16 with them in the fourth quarter I guess. And if that  
17 works, then you're back in front of this Commission  
18 saying here, here's a number for consideration. Or, you  
19 know, if it's not successful -- do you mind just  
20 spending a minute describing how that is anticipated to  
21 flow?

22 **MR. BURNETT:** Yes. Commissioner, the way I  
23 understand that the policy works is the next move, if  
24 mediation was not successful and informal resolution  
25 from the parties was no longer an option, the next move

1 would be to move to binding arbitration. So that would  
2 be the next step.

3 **MR. MOYLE:** Okay. And I think that a policy  
4 contains an appraisal process that, that has the ability  
5 to appoint different independent people within Florida  
6 who could look at that. Have you all looked at  
7 considering following that appraisal process rather than  
8 going through the binding arbitration?

9 **MR. BURNETT:** Mr. Moyle, I apologize. You do  
10 have me at a loss on that one. I'm, I'm not familiar  
11 with that particular provision. So, sorry.

12 **MR. MOYLE:** Okay. And then just one final  
13 question, if I could. With respect to the NEIL  
14 insurance claims for the replacement power, could you  
15 just let us know how many claims have been submitted?  
16 Has it been for one event or two events, and then the  
17 amount of money that's been paid to date.

18 **MS. BENNETT:** Before -- we're treading into  
19 areas that will be subject to the fuel hearing next  
20 week. It's an issue that Mr. Moyle raised. I'm a  
21 little concerned with raising this now before the full  
22 Commission has a chance to hear the answer to those  
23 questions.

24 **COMMISSIONER BALBIS:** I agree, Mr. Moyle. I  
25 think we are treading --

1           **MR. MOYLE:** Okay. I'll save, save --

2           **COMMISSIONER BALBIS:** Okay.

3           **MR. MOYLE:** -- that question for next week.

4           And that is an issue that, you know, that we have  
5           raised, the one event versus two events and whether  
6           insurance coverage should be in place for one versus  
7           two. So I'll just wait until next week on that. Thank  
8           you.

9           **COMMISSIONER BALBIS:** Okay. And --

10          **MR. MOYLE:** And thank you, Mr. Burnett, for  
11          answering those questions.

12          **COMMISSIONER BALBIS:** And I have, I have one  
13          last question concerning NEIL, provided there aren't any  
14          other questions from those participating by phone. And  
15          something that was asked when Mr. Rogers was here, and I  
16          just want continued assurance that Progress Energy  
17          Florida is negotiating as rigorously as possible in  
18          order to recover potential ratepayer dollars with NEIL.

19          **MR. BURNETT:** Yes, sir, absolutely, at our  
20          highest levels of management.

21          **COMMISSIONER BALBIS:** Okay. Thank you. And  
22          any parties by phone have any questions concerning the  
23          NEIL process?

24          **MR. BREW:** Mr. Commissioner, this is J. Brew.

25          **COMMISSIONER BALBIS:** Yes. Go ahead.

1           **MR. BREW:** Can you hear me all right?

2           **COMMISSIONER BALBIS:** Yes. You're coming in  
3 pretty clear.

4           **MR. BREW:** Good. Thanks.

5           Mr. Burnett, there are two pieces to the NEIL  
6 coverage, replacement fuel and the actual repair. And  
7 the -- NEIL was making the replacement fuel payments and  
8 then suspended them. Is that something that we're  
9 likely to see addressed as a separate matter, the  
10 outstanding balance on replacement fuel recovery?

11           **MR. BURNETT:** Mr. Brew, I'm sorry. I'm not  
12 sure if I know what you mean by "separate matter." You  
13 are correct that there, there are two distinct aspects  
14 to the NEIL policy. There is the replacement power  
15 policy and then there is the loss policy for the actual  
16 damage to the unit. So those are two independent  
17 policies and two independent issues. But I imagine that  
18 those would both be addressed in, in either the  
19 nonbinding mediation, if possible, or certainly in the  
20 binding arbitration, if that were the route to be taken.

21           **MS. BENNETT:** Mr. -- Commissioner, again I  
22 think I hear some discussion about topics that are going  
23 to be part of a full evidentiary hearing next week. I'm  
24 not sure Mr. Brew has yet asked that question, but I  
25 just want to caution the parties that we don't want to

1 discuss things that are part of the evidentiary hearing  
2 next week.

3 **COMMISSIONER BALBIS:** I agree.

4 **MR. BREW:** Understood.

5 **COMMISSIONER BALBIS:** Mr. Brew, do you have  
6 any other questions?

7 **MR. BREW:** No, thank you. Thank you,  
8 Mr. Commissioner.

9 **COMMISSIONER BALBIS:** Okay. Any other parties  
10 participating by phone?

11 Okay. Then let's move on past NEIL and the  
12 joint report and let's talk about -- you indicated the  
13 decision-making process being in likely December or as  
14 late as summer 2013, and obviously the settlement  
15 agreement has a deadline of December 31st of this year  
16 when construction repair activities must commence. What  
17 is the impact on the decision on the settlement  
18 agreement?

19 **MR. BURNETT:** Yes, sir. As you note, the  
20 settlement agreement, if the -- if a repair decision is  
21 not made per the terms of the settlement agreement,  
22 interactions with the settlement parties and then  
23 commencement before the end of this year, there are  
24 certain things that happen under the settlement.  
25 Notably there are -- that subjects the company to, to

1 money that would be refunded to the customers in 2015,  
2 if the unit weren't back in service then, in 2016 on a  
3 pro rated basis. And also I think that if the repair is  
4 not started, the, that allows the settlement parties to  
5 then come in and, and question the prudence of the  
6 repair decision if it's not made by that time.

7 **COMMISSIONER BALBIS:** Okay. I just want to  
8 make sure that -- I know there's been a merger and now  
9 Duke is involved, but it appears that you have the same  
10 understanding that at least I do as to the settlement  
11 agreement associated with the, with the commencement of  
12 repair activities.

13 Mr. Moyle.

14 **MR. MOYLE:** If you're not comfortable, don't,  
15 don't answer, but it kind of sounds to me like, based on  
16 your previous answer, that at the earliest a decision  
17 could be expected in December that it's very unlikely  
18 that construction would begin in December because we  
19 were talking merely about presumably a board decision.  
20 So, you know, December is kind of a slow time anyway. I  
21 mean, there's not really much contemplation that to the  
22 extent the board says, yes, let's go forward and repair,  
23 that construction would actually begin in December. Is  
24 that fair?

25 **MR. BURNETT:** It is, it is, it is technically

1 possible that construction could, could commence, but it  
2 is unlikely. I agree with that assessment.

3 **MR. MOYLE:** Okay. Thank you.

4 **COMMISSIONER BALBIS:** Any questions from  
5 staff?

6 **MS. BENNETT:** No questions.

7 **COMMISSIONER BALBIS:** Okay. For those  
8 participating by phone?

9 Okay. We'll move on to the next section.

10 There was another provision of the settlement agreement  
11 that allowed the parties to bring to the Commission any  
12 issues that cannot be resolved with the signatories of  
13 the settlement agreement. Are there any of those issues  
14 that need to be brought before the Commission? Okay.

15 **MR. REHWINKEL:** Commissioner, this is Charles  
16 Rehwinkel, and I think I can speak on behalf of the  
17 Intervenors. At this point in time we don't think that  
18 that provision is ripe as of yet.

19 **COMMISSIONER BALBIS:** Okay.

20 **MR. MOYLE:** And I guess I would only make the  
21 comment, you know, as a bit of a heads up, but not to  
22 say there's an issue that we feel compelled to bring  
23 forward. But, you know, the NEIL issues raise a lot of  
24 questions. So as we continue next week, you know, to  
25 ask questions and learn more about this, there may be a

1 possibility at some point that, that we could, could be  
2 having further conversations about, about NEIL before  
3 the, before the Commission. But, but it's not ripe at  
4 this point.

5 **COMMISSIONER BALBIS:** And have you tried to  
6 resolve those with, with the parties as a group?

7 **MR. MOYLE:** We've -- we're having discussions.

8 **COMMISSIONER BALBIS:** Okay. Okay. I want to  
9 turn it over to staff at this point. There's been some  
10 information provided by Progress Energy Florida on  
11 either a board decision made in December or in the  
12 summer. And one of my goals when I separated this into  
13 three phases is to, you know, when a, when a decision is  
14 ripe for hearing, to, to start that process as soon as  
15 possible to reduce regulatory lag. With those two time  
16 frames of December and possibly summer, are there some  
17 potential dates, or what does staff recommend concerning  
18 starting Phase II of the docket?

19 **MS. BENNETT:** We have tentatively reserved  
20 some time in April were there to be a decision earlier,  
21 excuse me, later this year if there were issues ripe for  
22 hearing. I think we're going to have to continue to  
23 watch and listen for the decision from Progress to  
24 schedule that time definitively, and we, of course, will  
25 need some time to conduct discovery and file testimony.

1 So as it gets into 2013, we may need to look at  
2 different dates, but right now we've got some time in  
3 April scheduled or reserved.

4 **COMMISSIONER BALBIS:** And what do you  
5 anticipate as far as the number of days for hearing for  
6 Phase II?

7 **MS. BENNETT:** Three.

8 **COMMISSIONER BALBIS:** Okay. Any questions or  
9 comments concerning the April dates, if I assume a  
10 decision is made in December? And then we would look  
11 for other dates past that time if a decision is made in  
12 the summer.

13 Okay. And I have, you know, one last question  
14 for, for Progress. From a procedural standpoint you  
15 indicated you have several teams put together: One, the  
16 technical team addressing the Zapata report. My  
17 question is will this technical team be preparing a  
18 formal response? Because obviously there were, there  
19 were issues that were raised that, technical issues that  
20 would require a technical response. Is there going to  
21 be a formal response prepared or, or what will be  
22 prepared?

23 **MR. BURNETT:** Yes, sir. Mr. Miller can, can  
24 keep me honest here. But that is my understanding is  
25 that the key issues arising out of the Zapata report

1 will be disposition, and conclusions will be made off of  
2 those and that will be part of the information that will  
3 either lead to more work being done or that will be  
4 briefed out to the executive management.

5 **MR. MILLER:** That is correct. What we would  
6 envision is a technical write-up that takes each of  
7 those five areas of the containment, the dome, the  
8 modeling, the licensing, and the construction estimates,  
9 in each of those areas we would, we would annotate the  
10 insights we have from the report; those things that we  
11 recommend specific actions, for example, inclusion of  
12 the foundation springs in the modeling is an example;  
13 and then any recommendations we would have to address  
14 the risk, that would all be memorialized in a report.

15 **COMMISSIONER BALBIS:** Okay. Well, in  
16 conclusion, I'm glad to hear that the collaboration  
17 between the signatories of the settlement agreement is,  
18 is continuing and it's what all the parties expect. I  
19 think this is a good example of everyone working  
20 together, and we have a fallback position for any issues  
21 again that the parties cannot agree to that could come  
22 to us. So I'm glad to hear that the process is working.  
23 This is obviously an extremely important issue facing a  
24 great many Floridians, and it's something that the  
25 Commission is looking at very closely and following very

1 closely. And once a decision is made, we will schedule  
2 a process again to review and make sure that that was  
3 the right decision for all customers.

4 So I want to thank everyone for your  
5 participation, especially those that came here and also  
6 those by phone, and this is your last chance to bring up  
7 any issues that were not discussed.

8 **MR. REHWINKEL:** I just want to thank you,  
9 Commissioner, for allowing me to participate by phone.  
10 It's been very helpful.

11 **COMMISSIONER BALBIS:** Okay. You're welcome.  
12 And from staff, I understand you may have a comment.

13 **MS. BENNETT:** It's not a comment. It's a  
14 request. Mr. Miller had mentioned that the decisions or  
15 the recommendation would be memorialized in a report,  
16 and I think that the Commission staff would like to see  
17 that once it's prepared.

18 **MR. BURNETT:** Certainly, Commissioner. We'll  
19 be happy to submit that.

20 **COMMISSIONER BALBIS:** Okay. I want to thank  
21 everyone again for your participation, and with that, we  
22 are adjourned.

23 (Proceeding adjourned at 10:17 a.m.)  
24  
25

1 STATE OF FLORIDA )  
2 COUNTY OF LEON ) : CERTIFICATE OF REPORTER

3  
4 I, LINDA BOLES, RPR, CRR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

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

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

18 DATED THIS 2nd day of November, 2012.

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