

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.
_____ /

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PROCEEDINGS: SPECIAL AGENDA

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Monday, November 26, 2012

TIME: Commenced at 1:31 p.m.
Concluded at 2:24 p.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
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P R O C E E D I N G S

1
2 **CHAIRMAN BRISÉ:** Good afternoon. We are glad
3 to be back. It seemed like we were here almost
4 yesterday, but we're glad to be back. We certainly hope
5 that everyone had a good Thanksgiving weekend, and we're
6 glad to see everybody back in one piece, those who
7 traveled and so forth, and those of us who could still
8 get up after all that food and stuff.

9 But we're going to go ahead and call this
10 Special Agenda to order. Staff, are there any
11 modifications?

12 **MR. BREMAN:** Yes. Yes, Commissioner, there
13 are. We have three. I believe an e-mail was sent out
14 and you all were circulated with what these changes are.

15 The first one is on page 83. It's in the
16 third paragraph, end of the first sentence. You should
17 strike the year "2012" and replace it with "2013."

18 The second one is on page 167 in Attachment A.
19 The first line of the title, if you would strike the
20 word "proposed."

21 And a similar change is on Attachment A. The
22 title should be changed to strike the word "proposed,"
23 as well as the first sentence, it contains the word
24 "proposed" and it should be struck. Those are the only
25 changes.

1 **CHAIRMAN BRISÉ:** All right. Thank you.

2 There's about 32 issues that we have to take up, so
3 we'll -- what's that?

4 **COMMISSIONER BALBIS:** Mr. Chairman, I'd like
5 to make a comment. I just want to apologize to
6 Commissioner Edgar in advance. If my gleaming
7 University of Florida pin is distracting, I just want to
8 apologize to her for that. So with that, we can get
9 started.

10 (Laughter.)

11 **CHAIRMAN BRISÉ:** Ouch.

12 Yeah. So we have 32 items, 32 issues that we
13 have to take up, and staff has made it a little bit
14 easier on us by grouping them. And as we move through
15 them, we can either vote on them as, as groups, or we
16 can, you know, break it up, if necessary. But there is
17 some rationale as to why the ones that are grouped
18 together are grouped together. They tend to be linked
19 together and so forth.

20 So if there are no other issues by
21 Commissioners at this point, we can go ahead and move
22 through the issues. And I'll ask Mr. Breman to go ahead
23 and begin with Issue 1.

24 **MR. BREMAN:** Thank you. Being a layperson,
25 I'll let Michael Lawson handle the legal issues. Issues

1 1 and 1A are legal issues.

2 **MR. LAWSON:** If you'd like -- would you like
3 me to discuss 1 and 1A or just start with 1?

4 **CHAIRMAN BRISÉ:** We can go ahead and do 1 and
5 1A.

6 **MR. LAWSON:** Okay. Certainly. Certainly.
7 Issue 1, does Section 366.93, *Florida*
8 *Statutes*, authorize the Commission to disallow recovery
9 of all or a portion of the carrying costs prescribed by
10 Section 366.93(2)(b) of the *Florida Statutes*?

11 When we look at the text, the two relevant
12 passages are, first, the Commission shall establish by
13 rule alternative cost recovery mechanism for the
14 recovery of costs incurred. The key word here is
15 "shall." And then later in that same paragraph it
16 states, Such mechanisms shall be designed to promote
17 utility investment in nuclear or integrated gasification
18 combined cycle power plants and allow for the recovery
19 in rates of all prudently incurred costs and shall
20 include but not be limited to, and then it proceeds to
21 describe them.

22 The key phrase in that second sentence, of
23 course, is "all." And when we look on the basic rules
24 of statutory construction, we find that the use of the
25 words "shall" and "all" create a situation in which what

1 the Legislature has intended is that you as the
2 Commission have broad authority to decide whether a cost
3 is imprudent or prudent.

4 If you find a cost is imprudent, however, the
5 use of the words "shall" and "all" means that they can
6 recover all prudently incurred costs. And the corollary
7 of course is true, is that if it is imprudent, then no
8 costs can be controlled. So it's -- while you have the
9 broad authority to decide yes or no, there is no real
10 statutory authority, in staff's opinion, that would
11 suggest there's any way to sort of tinker with it.

12 Now the obvious caveat is that in very large
13 projects there are going to be ways to discretely
14 identify different costs. And just speaking in purely
15 hypothetical terms, you could say you have a replace the
16 steam generator, replace the -- repair, retire the dome,
17 actual management, siting and engineering, those may be
18 broken up on a common sense basis obviously. But within
19 those discrete and very obvious identifiable chunks it
20 still is very much an all or nothing proposition.

21 **CHAIRMAN BRISÉ:** All right. Thank you.

22 Commissioner Brown.

23 **COMMISSIONER BROWN:** Thank you. And thank
24 you, Mr. Lawson, for that further clarification.

25 I had some concern just with, on language on

1 page 10.

2 **MR. LAWSON:** Yes, ma'am.

3 **COMMISSIONER BROWN:** In the, the full
4 paragraph that is presented, which is the second
5 paragraph, the last sentence, we talked about this a
6 little bit in my briefing with you, and I just wanted to
7 share it with the Commissioners as well. It says, if
8 costs are only prudent or imprudent, and if the
9 legislative intent provides for the recovery of all
10 prudent costs, then the statute does not appear to
11 provide for the partial disallowance of only a portion
12 of any prudent cost. And I just wanted clarification
13 here. We're just talking about carrying costs for this
14 particular issue and we're not talking about a blanket
15 general statement there.

16 **MR. LAWSON:** Yes, ma'am, that is entirely
17 correct. The question is very clear, and I'll just
18 state it, is to disallow recovery of all or a portion of
19 the carrying costs. So while any analysis may spread to
20 other areas, what we're dealing with today is the
21 carrying costs.

22 **COMMISSIONER BROWN:** Okay. It would make me
23 feel a little bit more comfortable, if we ultimately
24 find in favor of staff's recommendation on these issues,
25 if we could limit that discussion to carrying costs and

1 not make it as broadly worded as that sentence portrays.
2 I think there's, there's some discrepancy in a little
3 bit of the analysis that you spoke about and that we
4 talked about as well in my, our briefing. Since the
5 issue is focused on carrying costs, if we can emphasize
6 carrying costs, I'd be comfortable with supporting the
7 recommendation.

8 **MR. LAWSON:** Certainly. I would be happy to
9 do so.

10 **COMMISSIONER BROWN:** And with that, I would
11 move staff recommendation on Issues 1 and 1A if there
12 are no other questions or discussion.

13 **COMMISSIONER GRAHAM:** Second.

14 **CHAIRMAN BRISÉ:** All right. It's been moved
15 and seconded. Any further discussion on Issues 1 and
16 1A?

17 Okay. Seeing no further discussion, all in
18 favor, say aye.

19 (Vote taken.)

20 All right. Thank you very much.

21 Now we're moving on to the Levy project, Issue
22 Number 4.

23 **MR. LAUX:** Commissioner, Issue Number
24 4 addresses whether PEF's activity relating to Levy
25 Units 1 and 2 since 2011 qualify for cost recovery under

1 Section 366.93.

2 SACE was the only party that really took
3 active opposition to this issue. They stated in their
4 briefs that PEF only intends to secure an NRC license
5 for this staff and is not committed to actually
6 completing the nuclear unit as, as included in their
7 plans. Therefore, they argued in their brief that the
8 project does not qualify for cost recovery under the
9 statute.

10 As you may remember, the Commission, in Order
11 Number PSC-11-0005-FOF-EI, established a standard on how
12 the Commission will review the issue of intent to build.
13 That standard was applied in this case, and staff
14 recommends that the record supports that PEF's actions
15 satisfied the standard and the project remains qualified
16 for cost recovery under the statute.

17 **CHAIRMAN BRISÉ:** All right. Commissioner
18 Balbis.

19 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

20 I don't have a question for staff. I'd just
21 like to state that, you know, this is an issue that has
22 recurred at least in the second proceeding that I've
23 had, and I'm sure in the past, and I'm glad to see that
24 staff is consistent in their determination as to their
25 recommendation. So with that, I move approval of

1 staff's recommendation on this issue.

2 **CHAIRMAN BRISÉ:** All right. Just before you
3 do that, if you could go over that determination that,
4 that, how the Commission arrives at the conclusion that
5 the, the company is doing what they're supposed to be
6 doing towards seeking a license.

7 **MR. LAUX:** Yes, Commissioner. I'd be glad to.

8 **CHAIRMAN BRISÉ:** I know I've asked this
9 before, but I just want to make sure that, that everyone
10 is clear on it.

11 **MR. LAUX:** The, the standard that was
12 developed was that the company must demonstrate actions
13 moving the project forward, and they don't, they do not
14 need to perform all the different activities
15 simultaneously; i.e., planning, construction, and all
16 the categories that are listed under the statute.

17 Just to give a little bit of highlights of
18 what the company did show, put into the record as
19 evidence into this case, for the Levy projects there
20 are -- I'll break them down into two fairly broad
21 categories.

22 The one is state activities. Those are the
23 activities to support the site certification, of which
24 they've already received, and also the local and
25 environmental licensing permits that they've already

1 received. And in that, in the site certification they
2 are continuing to do activities to help -- that are
3 requirements or conditions of the site certification and
4 the environmental permit. Many of those are
5 environmental monitoring activities. There was some
6 requirement that a report has to be done 90 days before
7 they actually start moving ground and they have to
8 monitor the activities that are in that report, things
9 along those lines.

10 The other activities that are more on a
11 national level or the NRC licensing board, and just some
12 of the highlights on that is that they were a member of
13 a group that helped support getting certification of the
14 AP1000 design at the NRC. There was a number of
15 activities in that, in that regard.

16 They have been responding to a number of RAIs,
17 which are requests for additional information, on an
18 expanded environmental review that you have all heard
19 about about the waste, Waste Confidence Rule portion of
20 it, which basically means that they have to look at
21 different activities in the environmental area as it
22 deals with the holding of waste fuel on-site for a
23 longer period of time than what was originally
24 envisioned in the application.

25 Let's see. They have basically completed all

1 requirements by the advanced safety evaluation that
2 happened in around September of 2011. They have
3 responded to all the requests by the Advisory Committee
4 on Reactor Safety, and they have gotten a positive
5 result, or a letter came from that committee to the NRC
6 saying that they, their COLA should be approved.

7 They continue to respond to different RAIs to
8 the Atomic Safety Licensing Board, and it's that review
9 of their -- the Atomic Safety Licensing review was
10 supposed to be completed in early 2012, and I believe
11 that has been completed. I'm not 100% sure whether they
12 have actually sent the letter, but the review has been
13 completed. I don't know if the next step has been
14 completed.

15 They continue to perform actually in
16 developing new studies due to the Fukushima task force
17 and the requirements from that. So they're performing
18 new seismic studies at the site to help respond to those
19 requirements. And they're actually, I guess, in the
20 process right now -- as a matter of fact, that's been
21 completed. There was a hearing that was held in place
22 down in Citrus County on the environmental safety report
23 that came out. That was in October of this year.

24 **CHAIRMAN BRISÉ:** Thank you. All right. I
25 just wanted for that to be part of the record so it

1 could be clear that, you know, there are steps that are
2 being taken and -- towards the licensing. And so,
3 therefore, there is some clear rationale as to the
4 decisions that we take here.

5 I believe there was a motion that was being
6 proffered. Commissioner Balbis moved it. I think now
7 it's seconded by Commissioner Graham. Is there any
8 further discussion?

9 All right. Seeing none, all in favor, say
10 aye.

11 (Vote taken.)

12 All right. Moving on to Issues 5, 6, and 7.

13 **MR. GARL:** Good afternoon, Commissioners. I'm
14 Steve Garl with Commission staff.

15 Issue 5 addresses Progress Energy's
16 2012 feasibility analysis of the company's Levy project,
17 Progress Energy's analysis, which is similar to the
18 prior analyses approved by the Commission in past NCRC
19 proceedings.

20 The only contesting party to this issue was
21 SACE basing their contention that Progress Energy had
22 not performed a realistic feasibility analysis, properly
23 taking into account the historic low cost of natural gas
24 and a lack of cost of CO2 emissions.

25 Nonetheless, staff believes Progress Energy

1 demonstrated that completion of the Levy project remains
2 feasible and in the best interest of the customers.
3 Staff recommends that the Commission approve Progress
4 Energy's 2012 Levy project feasibility analysis.

5 **CHAIRMAN BRISÉ:** All right. Commissioner
6 Brown.

7 **COMMISSIONER BROWN:** Thank you. And thank
8 you, Mr. Garl.

9 I'm sorry you weren't in the briefing that we
10 had. I would have appreciated some of your, your input
11 here. But I want to talk -- just a few questions about
12 this. Even though the cost-effectiveness analysis has
13 decreased from last year's analysis, the Levy project
14 still is deemed to be cost-effective at this time based
15 on the evidence in the record today.

16 Is there a point in time, say, whether the
17 in-service dates get pushed out a few more years from
18 when they're predicted today, where Levy would therefore
19 be no longer deemed to be cost-effective? So, in
20 essence, is there a breakeven point that would
21 ultimately determine when that project, projects would
22 be deemed not cost-effective?

23 **MR. GARL:** Discussions among staff and as well
24 as the discussions during the hearing all seem to pretty
25 much agree that cost-effectiveness is one element of

1 whether the entire project is feasible or not.

2 **COMMISSIONER BROWN:** Uh-huh. Of course.

3 **MR. GARL:** Or an important part of it which
4 should be taken in consideration.

5 In the scenarios that they ran to determine
6 cost-effectiveness, for example, if they came out even,
7 five, five were not cost-effective and five were
8 cost-effective, now it's that point in time where we
9 start to question the overall feasibility of the
10 project. But I wouldn't, I wouldn't say it's
11 necessarily a killer to the project, but certainly
12 warrants further scrutiny by the Commission.

13 **COMMISSIONER BROWN:** And I appreciate that. I
14 know there's a lot of moving parts associated with the
15 feasibility analysis. I just wanted to know from your
16 perspective, when you're analyzing the feasibility, and
17 from a cost-effectiveness perspective, not just
18 regulatory and all the other risk factors there, whether
19 there's a typical breakeven point on this particular
20 project that you have out there.

21 **MR. GARL:** It's not a hard, fast line, as, as
22 staff sees it. As I say, it would have to encompass all
23 those things. And if I were to put a, a star next to
24 the most important one, it probably would be
25 cost-effectiveness.

1 **COMMISSIONER BROWN:** Right. I would think
2 that would be the, the primary driver as well.

3 I'm sympathetic to the arguments that are made
4 on behalf of the customers and the different customer
5 groups that those who are paying today may not even be
6 around to receive the cost benefits ultimately of these
7 Levy plants. So at this point I'm trying to figure out
8 what -- is there anything we can do today to minimize
9 the cost impacts of those prudently incurred costs of
10 the Levy projects that the Progress customers are
11 currently paying? Do we have any authority to minimize
12 those impacts? And, yes, Mr. Breman.

13 **MR. BREMAN:** If I may, I think the Commission
14 has already taken those steps in creating something we
15 call the rate management plan. And the rate management
16 plan is a concept where some costs that the company has
17 been authorized to recover are deferred to be recovered
18 at a future date.

19 So we have taken steps within 366.93 to do the
20 review, to assess the reasonableness and prudence of the
21 dollars incurred, and then defer recovery.
22 Unfortunately, any deferral has a carrying cost
23 component associated with that, so you are increasing
24 total costs. So the more we practice rate management,
25 the more it looks like traditional ratemaking.

1 **COMMISSIONER BROWN:** Which I, I definitely am
2 sensitive to with those additional carrying costs, which
3 we'll get to on later issues as well.

4 At this point going forward can staff kind of
5 indicate for the record, and for all of us, which we're
6 probably all aware, but really more for the record what
7 you plan to do to monitor and oversee with regard to the
8 Levy costs until next year's NCRC hearing? Again, as
9 we've seen from last year an escalation in costs, what
10 steps are you doing to continue to monitor them?

11 **MR. BREMAN:** Staff has two management
12 functions that go on. After this proceeding, after you
13 vote, we will take your vote and incorporate that in
14 what we call audit service requests. We will issue
15 audit service requests to two teams, a financial auditor
16 and a management audit. And I believe from some of the
17 emails that I've been receiving --

18 **COMMISSIONER BROWN:** That are part of the
19 record.

20 **MR. BREMAN:** Not part of the record.

21 **COMMISSIONER BROWN:** Okay.

22 **MR. BREMAN:** But you did have management audit
23 staff testify in this proceeding. You will have a team,
24 I can't guarantee the same persons, but you will have
25 similar testimony next year addressing what their review

1 encompasses.

2 **COMMISSIONER BROWN:** Uh-huh.

3 **MR. BREMAN:** So both in our rules and in the
4 statute it says the Commission shall receive whatever
5 reports it needs to conduct its work. Yes.

6 **COMMISSIONER BROWN:** Okay. Thank you.

7 **CHAIRMAN BRISÉ:** All right. Commissioner
8 Balbis.

9 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
10 And I appreciate Commissioner Brown's comments on the,
11 on the delay of the project by Progress Energy, and I
12 indicated my concern with that during the hearing
13 process, as it does increase the carrying costs. And,
14 you know, at some point theoretically the increasing
15 costs will make the project theoretically not
16 cost-effective, and I know there's other factors. So
17 I'm glad we're continuing to watch this closely. It
18 does give me some comfort that the low fuel reference in
19 all cases has some financial concerns, but I believe the
20 low fuel reference assumes that for 30 years gas prices
21 will be below \$5 per million Btu. And if history is any
22 indicator, I would find that to be unlikely. So that
23 does give me some comfort.

24 A question for staff, the activities that
25 Progress will be undertaking from now until the next

1 year's proceeding, they will be solely for the obtaining
2 of the combined operating license; is that correct?

3 **MR. GARL:** Yes, Commissioner, that is correct.
4 They set that out in their, their plan, their integrated
5 project plan, those steps that they need to continue
6 taking or putting on hold in anticipation of the license
7 from the NRC.

8 **COMMISSIONER BALBIS:** Okay. And I would
9 assume -- go ahead, Mr. Breman.

10 **MR. LAUX:** Commissioner, in addition to the
11 NRC activities and trying to receive the COLA, there are
12 also other activities that the company will be engaging
13 this year like they did last year. Again, on the state
14 level there are the requirements of the site
15 certification and the local permitting requirements that
16 they continue to do studies and perform studies and meet
17 certain conditions of those site certifications. Those
18 will continue at the site.

19 Directly, beyond directly getting the COLA,
20 they also are working with the, the user's group from
21 the AP1000 to enhance the activities for the design, the
22 actual design of the AP1000, and the construction and
23 how that plant will actually be constructed.

24 And then probably one of the more sensitive
25 activities that they will continue to do is the

1 strategic purchasing of transmission -- land that
2 supports their transmission plan for the Levy.

3 **COMMISSIONER BALBIS:** But the bulk of the
4 costs that ratepayers would pay associated with this
5 project would be when the true EPC activities commence;
6 is that correct?

7 **MR. LAUX:** The actual dollar amounts start
8 growing fairly astronomically when you start getting
9 into the actual construction because you're now buying
10 big pieces of stuff.

11 **COMMISSIONER BALBIS:** Okay. And I just want
12 to again point out that, you know, we are monitoring
13 this closely, we do have this annual proceeding to
14 update the feasibility and long-term feasibility of this
15 project, and pushing it out has gotten us closer to
16 perhaps some sort of point. But I'm glad to see that,
17 you know, we're continuing to watch this, and I think
18 that everyone out there should be aware that we're
19 watching this closely and on an annual basis so that
20 this project can proceed if it is cost-effective and
21 prudent.

22 **CHAIRMAN BRISÉ:** All right. Any further
23 comments or questions on 5, 6, and 7? If not, we're
24 ready to entertain a motion.

25 **COMMISSIONER GRAHAM:** Move staff on 5, 6, and

1 7.

2 **CHAIRMAN BRISÉ:** Okay.

3 **COMMISSIONER BALBIS:** Second.

4 **CHAIRMAN BRISÉ:** It's been moved and seconded.

5 All in favor, say aye.

6 (Vote taken.)

7 All right. Thank you very much.

8 Now moving on to Issues 8, 9, 10, and 11.

9 **MR. LAUX:** 8, 9, 10, and 12, isn't it?

10 **MR. BREMAN:** 8, 9, 10, and 11.

11 **MR. LAUX:** 11, okay.

12 Commissioner, Issue 8 is, this issue concerns
13 the management, contracting, accounting, and cost
14 oversight controls of PEF, that were employed by PEF on
15 the Levy project during 2011.

16 The only opposition in this one was from SACE.
17 They suggested in their briefs that given that the
18 estimated cost of the project increased this year and
19 the in-service dates moved back, that if PEF had
20 employed a reasonable and prudent project management
21 system, those changes would have been prevented.

22 Staff recommends that the record supports that
23 PEF did employ in 2011 an overall project management
24 system that was reasonable and prudent.

25 **CHAIRMAN BRISÉ:** All right. Commissioner

1 Brown.

2 **COMMISSIONER BROWN:** I move staff on item --
3 Issues 8, 9, 10, and 11.

4 **COMMISSIONER GRAHAM:** Second.

5 **CHAIRMAN BRISÉ:** Okay. It's been moved and
6 seconded. Any further discussion or questions? No?
7 Okay. Commissioner Balbis.

8 **COMMISSIONER BALBIS:** Thank you. I just have
9 one question for staff.

10 **CHAIRMAN BRISÉ:** Sure.

11 **COMMISSIONER BALBIS:** The settlement agreement
12 this Commission approved that handled the recovery for
13 the Levy projects, would this recommendation be
14 consistent with the settlement agreement?

15 **MR. BREMAN:** Yes.

16 **COMMISSIONER BALBIS:** Okay. That's all I had.

17 **CHAIRMAN BRISÉ:** All right. It's been moved
18 and seconded. All in favor, say aye.

19 (Vote taken.)

20 All right. So we have approved Issues 8, 9,
21 10, and 11.

22 Moving on to Issues 13, 14, and 15.

23 **MR. LAUX:** Issue 13 addresses -- we are now in
24 the CR3 uprate issues. Issue 13 addresses PEF's 2011
25 CR3 uprate overall project management, accounting,

1 control oversight activities.

2 Staff notes that in, in the staff's financial
3 audit of 2011 costs one adjustment was identified, and
4 PEF has agreed to make that adjustment in its next
5 true-up proceeding.

6 The Intervenors argued that any spending on
7 the uprate project in 2011 was imprudent, given the
8 uncertain, uncertainties associated with the decision to
9 repair or retire the actual CR3 facility -- not the
10 uprate project but the facility, the containment
11 building, which you all know -- and, therefore, the
12 Commission should either defer this decision or deny any
13 cost recovery in this, in this, this period.

14 Staff notes that regardless of whatever
15 decision is made to repair or retire the facility, that
16 nothing will change the facts as they were known in
17 2011. And that is the actual standard that the
18 Commission applies for a prudence determination, which
19 you're being asked to make, is what would, what should
20 have been known or is known by a utility manager in the
21 year that they make the decision.

22 Issue 14 is very similar to Issue 13. Issue
23 13 focuses primarily on decisions that were made in
24 2011. Issue 14 is similar to Issue 13 in that it
25 addresses whether the incurrence of any actual project

1 costs was prudent, given the absence of a decision to
2 repair or retire the CR3 facility.

3 There was also an additional argument that was
4 offered by one of the Intervenors in that, and it was
5 based on the idea that PEF cannot show that its actions
6 were reasonable or prudent because the Commission has
7 not reviewed a feasibility analysis in 2011 -- that
8 covered 2011 for completing the uprate project.

9 And Issue 15 is actually the dollar amount
10 fallout for the actual dollars that Progress is asking
11 for recovery in, for 2011. This is sort of a wrap up of
12 all the, the two prior issues.

13 The Intervenors made the same arguments in
14 this issue as they did in the other two prior issues,
15 that you either should deny or not allow cost recovery
16 or defer cost recovery.

17 Staff recommends that there's no real record
18 evidence to demonstrate that PEF was imprudently, either
19 imprudently managed the project in 2011 or made improper
20 decisions concerning the cost in 2011, and, therefore,
21 the Commission should approve the petition as, as filed.

22 **CHAIRMAN BRISÉ:** All right. Thank you.

23 Commissioner Brown and then Commissioner
24 Edgar.

25 **COMMISSIONER BROWN:** Thank you.

1 And I will just note, you know, the Office of
2 Public Counsel is supportive of Progress's efforts to
3 evaluate, scale back the EPU costs in 2011, and that's,
4 that's noteworthy.

5 I have a couple of questions, and primarily
6 just for the record.

7 First, the total costs associated with
8 deferring the prudence and reasonableness for the
9 CR3 uprate until next year's NCRC, what are the actual
10 costs? And then I'm going to just ask you the carrying
11 costs as well, which you probably don't know, but.

12 **MR. LAUX:** The actual cost, if you deferred
13 making a decision on 2011 costs, that actually affects a
14 number of different years in the recommendation or so,
15 but I believe we estimated that number to be somewhat
16 around 20 million.

17 **COMMISSIONER BROWN:** 20 million?

18 **MR. LAUX:** Yeah.

19 **COMMISSIONER BROWN:** And that's inclusive of
20 carrying costs as well?

21 **MR. LAUX:** Adding additional carrying costs
22 onto that until you make the decision next year, or when
23 it comes up for you to make the decision next year. You
24 deferred it one year.

25 **COMMISSIONER BROWN:** And that's the costs that

1 customers would have to pay. What, what would customers
2 benefit from, if any, from a deferral based on the staff
3 recommendation?

4 **MR. LAUX:** The benefits that customers receive
5 from this project beyond the fuel benefits --

6 **COMMISSIONER BROWN:** Deferral.

7 **MR. LAUX:** -- when the project is completed
8 and everything else, it's -- I'll make it synonymous to
9 when you get a credit card bill. If you pay the full
10 bill on time, you don't, you don't have to pay the
11 interest on that. If you don't pay your full bill on
12 time, then the next year you, you've got interest -- or
13 the next time the bill shows up there's, the bill is
14 higher because there's interest on there.

15 I can't predict what your decision would be
16 next year as compared to this year, so I wouldn't be
17 able to say what other benefits would be there.

18 **COMMISSIONER BROWN:** But, Mark --

19 **MR. LAUX:** But if you made the decision next
20 year not -- that they were imprudent, then they would
21 save a year's worth of interest.

22 **COMMISSIONER BROWN:** But, Mark, are there any
23 additional facts that could be gleaned from a deferral
24 at this point?

25 **MR. LAUX:** Staff does not believe there is any

1 additional facts that is not presented, that was not
2 presented in the record for the Commission to make a
3 decision this year.

4 **COMMISSIONER BROWN:** Nor did I. I agree with
5 that as well. Okay. That's all.

6 **CHAIRMAN BRISE:** Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

8 I just wanted to point out, as our staff did
9 when they presented the item or these items, 13, 14, and
10 15, a moment ago, and as I believe is very clearly
11 explained and backed up in the written analysis, that
12 these three issues do specifically deal with 2011 costs,
13 and that the standard is what would have reasonably been
14 known and not known at that time.

15 And so recognizing that 15 is a fallout
16 calculation, I will go ahead and move the staff
17 recommendation on 13, 14, and 15.

18 **CHAIRMAN BRISE:** All right. It's been moved.
19 Do you have a question or were you going to second?

20 Okay. All right. So before we get into
21 voting, go ahead, Commissioner Balbis.

22 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman,
23 and thank you, Commissioner Edgar. I agree with your
24 statements and I support the motion. I'd just like to,
25 to add a little bit to what justification I have for

1 supporting staff's recommendation on it, and it really
2 is based upon what was known in 2011. We can defer this
3 20 years and it's not going to change the fact that, of
4 the facts that pertained in that time frame.

5 This Commission in September of this year
6 approved a motion for Progress to defer the 2012 and
7 2013 costs, which I think is, is obviously a good
8 decision, because that is when the, you know, facts are
9 in question. So we can defer that. But 2011, the facts
10 were, were evident at that time, these issues are ripe
11 for consideration, and I fully support the motion.

12 **CHAIRMAN BRISÉ:** All right. So we have a
13 motion by Commissioner Edgar. Is there a second?

14 **COMMISSIONER BROWN:** Second.

15 **CHAIRMAN BRISÉ:** Okay. It's been moved and
16 seconded. Any further comments?

17 All right. All in favor, say aye.

18 (Vote taken.)

19 All right. Moving on to Issue Number 3.

20 **MR. LAWSON:** Issue 3 is whether or not the
21 Commission has the authority to defer the determination
22 of prudence for the Crystal River Unit 3 uprate project
23 in 2012 and 2013 due to lack of a final decision to
24 repair or retire Crystal River Unit 3.

25 As we're all aware, parties and the utilities

1 agreed to defer 2012/2013 issues, and that was approved
2 during the, earlier by this Commission, which left only
3 the 2011 issues, which were just voted on in Issues 13,
4 14, and 15.

5 Since this Commission has just made a decision
6 on the remaining CR3 uprate project costs, we believe
7 that the Issue 3 is moot since there would be no need to
8 defer this, to respond to this issue since you've
9 already made a decision.

10 **CHAIRMAN BRISÉ:** All right. Thank you.

11 Moving on to Issues 17 and 18.

12 **MR. LAUX:** Issues 17 and 18 actually have to
13 do with the CR3 costs in 2012 and 2013. We just
14 discussed the actual motion to defer. The motion to
15 defer is the Commission's review of any new costs that
16 were, that the company may have incurred on this project
17 in, in 2012 and 2013.

18 The numbers that are in Issues 17 and 18 have
19 to do with carrying costs associated with capital costs
20 that the Commission had approved for -- in earlier years
21 and now approved for 2011.

22 **CHAIRMAN BRISÉ:** All right. Commissioner
23 Balbis.

24 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

25 And, you know, just to be clear, that the

1 capitals costs, the jurisdictional costs, and the O&M
2 costs are zero for both 2012 and 2013.

3 **MR. LAUX:** All new capital costs that would
4 have been incurred in '12 and 2013 would be zero.

5 **COMMISSIONER BALBIS:** Which is consistent with
6 our September motion that we approved.

7 **MR. LAUX:** Correct.

8 **COMMISSIONER BALBIS:** Okay. With that, I move
9 staff's recommendation on Issues 17 and 18.

10 **COMMISSIONER BROWN:** Second.

11 **CHAIRMAN BRISÉ:** All right. It's been moved
12 and seconded. Any further comments or questions?

13 Okay. Commissioner Edgar.

14 **COMMISSIONER EDGAR:** Thank you. I was just
15 going to say that I think we all recognize that there
16 are some pretty important decisions ahead, but I
17 absolutely support the approach that this Commission has
18 taken in giving, having the opportunity for full
19 analysis and full information as it is available and as
20 options are able to be fleshed out.

21 And so with that, I agree that the approach
22 taken in 17 and 18 is consistent with the approach that
23 we have taken and is the best option for Florida and for
24 the ratepayers at this time, and I support the motion.

25 **CHAIRMAN BRISÉ:** All right. It's moved and

1 seconded. Any further discussion?

2 All right. Seeing none, all in favor, say
3 aye.

4 (Vote taken.)

5 All right. Moving on to Issue Number 19,
6 which is PEF's net recovery amount.

7 **MR. LAUX:** Commissioner, Issue 19 is
8 substantially an administrative fallout issue based on
9 all the decisions that you have made today. There is
10 one little bit of difference in that issue compared to
11 what you have seen in past years.

12 If you remember back in Order PSC-12-
13 0104-FOF-EI, that is the settlement agreement issue for
14 Progress. One of the provisions in there that the
15 Commission approved was that for Levy costs for the next
16 five -- well, at least through 2012 would be covered by
17 a fixed factor set on each kilowatt hour sold. During
18 the normal process of the NCRC, that would be the last
19 step in what we would do is the factor, and that
20 actually is done in another docket, in the fuel docket.
21 So now that a factor has been set, we've had to kind of
22 work backwards through the process to get there, and
23 that's what most of the write-up is in trying to square
24 up how much revenues will be collected by that factor to
25 the issues of which you just voted on today and then how

1 we would deal with any differences.

2 **CHAIRMAN BRISÉ:** All right. Any questions?
3 Okay.

4 **COMMISSIONER BROWN:** Move staff recommendation
5 on Issue 19.

6 **CHAIRMAN BRISÉ:** All right. It's been moved.
7 Is there a second?

8 **COMMISSIONER EDGAR:** Second.

9 **CHAIRMAN BRISÉ:** Okay. It's been moved and
10 seconded. All in favor, say aye.

11 (Vote taken.)

12 All right. Thank you. Moving on to Turkey
13 Point Units 6 and 7, Issues 20 through 23.

14 **MR. BREMAN:** Thank you. Issue 20 is the
15 feasibility or the intent to complete or construct
16 Turkey Point 6 and 7. This is essentially the FPL
17 version of Issue 4 that you voted on. The information
18 is substantially the same; however, FPL's status on the
19 project is a little bit different.

20 FPL is going through their siting
21 certification process and they're going through those
22 responses -- and my cheat sheet isn't here. Thank you,
23 boss. Very reliable.

24 The site certification is still developing and
25 there's a lot of review going on, especially with the

1 water use and land use and what's below the surface, the
2 geotechnical stuff. There will be a consolidated land
3 use hearing in the future; at least that's what the plan
4 is. Currently that land use hearing is scheduled for
5 July 13, 2013.

6 FPL has provided studies to Intervenors in
7 that review, the state certification review, and FPL has
8 responded to numerous data requests in that regard with
9 respect to alternative corridors and transmission.

10 At the NRC level, FPL's activities are very
11 similar to what you heard Mark Laux present with respect
12 to Levy. The NRC has asked a lot of questions and will
13 continue to ask questions until it resolves the matters
14 with respect to Fukushima and the spent fuel issues that
15 have come up with the environmental review and the
16 reconsideration of those matters.

17 FPL is also engaged in heavy forging contract
18 negotiations. There are also ongoing dialogue with
19 potential joint owners, and FPL continues to plan what
20 the next phase is. They're doing a preliminary review
21 of site preparation and civil engineering work that may
22 be considered once they get the appropriate permits in
23 place to begin those construction activities.

24 **CHAIRMAN BRISÉ:** All right. I suppose we can
25 deal with 20 by itself, and then go ahead and use 21,

1 22, and 23 sort of as fallouts of that decision on, on
2 20. Okay? So any questions on Issue Number 20?

3 **COMMISSIONER EDGAR:** I'd move staff rec.

4 **CHAIRMAN BRISÉ:** All right. There's a motion
5 and it's seconded. Any further comments or questions?

6 Okay. Seeing none, all in favor, say aye.

7 (Vote taken.)

8 All right. Thank you. Moving on to Issues
9 21, 22, and 23.

10 **MR. GARL:** Issue 21 addresses Florida Power &
11 Light's 2012 feasibility analysis of the company's
12 Turkey Point 6 and 7 project. Issues 22 and 23 deal
13 with the cost and in-service date of the Turkey Point
14 6 and 7 project.

15 As far as the feasibility analysis is
16 concerned, SACE is the only Intervenor that contested
17 the feasibility analysis, arguing that FP&L did not
18 present a realistic feasibility analysis due to its not
19 considering the historic low cost of natural gas and the
20 absence of a cost of CO2 emissions.

21 Staff believes FPL demonstrated that
22 completion of the Turkey Point 6 and 7 project remains
23 feasible and in the best interest of the customer, and
24 recommends that the Commission approve the feasibility
25 analysis and the project cost estimate and in-service

1 dates.

2 **CHAIRMAN BRISÉ:** All right. Commissioner
3 Balbis.

4 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

5 I looked at the long-term feasibility analysis
6 for Florida Power & Light for Turkey Point 6 and 7, as
7 we all did, very closely, and I, and I did appreciate as
8 much quantitative data that they did provide because I
9 think it made it a little, little easier for me to
10 address this.

11 But, you know, I did focus on, in all the
12 scenarios, with or without Turkey Point 6 and 7,
13 regardless of the fuel forecasts, it was, it was
14 cost-effective, so it made the determination on this
15 project a lot easier. So I do appreciate FPL providing
16 the quantitative data for this. And, and whenever we're
17 in position for a motion, but I fully support staff's
18 recommendation, and it's clearly in the public interest
19 and cost-effective.

20 **CHAIRMAN BRISÉ:** All right. Commissioner
21 Graham.

22 **COMMISSIONER GRAHAM:** I was just going to move
23 approval of 21 through 27 --

24 **COMMISSIONER BROWN:** Second.

25 **COMMISSIONER GRAHAM:** -- of staff

1 recommendation.

2 **CHAIRMAN BRISÉ:** All right. Unless there are
3 objections or questions. No?

4 All right. So Commissioner Graham moves
5 approval of Issues 21 through 27. Is there a second?

6 **COMMISSIONER BROWN:** Second.

7 **CHAIRMAN BRISÉ:** Okay. It's been moved and
8 seconded. Any further discussion?

9 All right. Seeing none, all in favor, say
10 aye.

11 (Vote taken.)

12 All right. So we have just approved Issues
13 21 through 27.

14 Moving on to the FPL uprate, Issue Number 28.

15 **MR. GRAVES:** Issue 28 addresses FPL's 2012
16 feasibility analysis of the company's extended power
17 uprate project. FPL's analysis, which is similar to
18 prior analyses approved by the Commission, demonstrates
19 that completion of the extended power uprate project
20 remains feasible.

21 OPC and the other Intervenors argued that the
22 Commission should analyze the activities at FPL's
23 St. Lucie site and Turkey Point sites separately. This
24 argument is similar to the argument that was made in
25 last year's NCRC proceedings.

1 Staff's recommendation this year echos the
2 Commission's decision in last year's proceeding, noting
3 that the Intervenors have not adequately addressed the
4 benefits gained by performing the activities
5 simultaneously. As such, staff is recommending that the
6 Commission approve FPL's 2012 extended power uprate
7 project's feasibility analysis.

8 **CHAIRMAN BRISÉ:** All right. Commissioner
9 Brown.

10 **COMMISSIONER BROWN:** Thank you.

11 Just a quick follow-up to your staff summary.
12 I agree with what you're saying, but has anything
13 changed to warrant deviating from our past decision last
14 year?

15 **MR. GRAVES:** No, ma'am. There have been no
16 changes that have been pointed out by the Intervenors.

17 **COMMISSIONER BROWN:** With that, I would move
18 Issue 28.

19 **COMMISSIONER EDGAR:** Second.

20 **CHAIRMAN BRISÉ:** Okay. It's been moved and
21 second. Any further questions?

22 All right. Seeing none, all in favor, say
23 aye.

24 (Vote taken.)

25 All right. Moving on to 29A.

1 **MR. BREMAN:** 29A is the Turkey Point 3 and
2 4 uprate portion of the total uprate project. This is
3 an issue that was argued because OPC believed -- OPC
4 witnesses believed FPL's cost increase demonstrated that
5 they inappropriately managed the project, and also that
6 FPL failed to consider an estimate to complete the
7 project in their 2011 feasibility of completing the
8 project analysis. And they postulate that had FPL used
9 that feasibility -- that estimate back then, FPL would
10 have done something different today. However, OPC
11 witnesses don't demonstrate any adjustments. They agree
12 with FPL's cost estimate to, current cost estimate to
13 complete the project, and OPC recommends completing the
14 project.

15 **CHAIRMAN BRISÉ:** All right. Any questions?
16 Commissioner Balbis.

17 **COMMISSIONER BALBIS:** Thank you. I have a
18 couple of questions for Mr. Brennan -- Breman. Sorry.
19 During the hearing there was a lot of discussion about
20 the management of FPL's EPC contractor and there were
21 audit reports and there were other reports that noted
22 some concerns. How is staff dealing with that in this
23 proceeding or the next proceeding?

24 **MR. BREMAN:** Next. We will continue to
25 monitor. Right now we don't -- there's no record

1 evidence that something inappropriate happened in their
2 oversight over Bechtel, but that is definitely an area
3 that we have focused on.

4 I believe it was FPL Witness Reed that
5 characterized staff's testimony as a heads-up, and so
6 we're going to follow through on that.

7 **COMMISSIONER BALBIS:** Okay. And I appreciate
8 that. And, and as you recall, I had discussion during
9 the hearing with Witness Jones on any additional costs
10 that customers may have incurred due to the EPC
11 contractor, and I believe there was a \$155,000 number
12 that was stated in the record. However, FPL had
13 negotiated a \$46 million concession, if you will, from
14 FPL, so that alleviated my concerns with that. And I'm,
15 I'm glad to see that staff has -- is going to continue
16 to monitor this, and that FPL is going to monitor it as
17 well.

18 **CHAIRMAN BRISÉ:** All right. Any further
19 questions?

20 **COMMISSIONER BALBIS:** I move staff's approval
21 on this issue.

22 **CHAIRMAN BRISÉ:** All right. It's been moved.
23 Is there a second?

24 **COMMISSIONER GRAHAM:** Second.

25 **CHAIRMAN BRISÉ:** Okay. It's been moved and

1 seconded. Any further comments or questions?

2 Okay. Seeing none, all in favor, say aye.

3 (Vote taken.)

4 All right. Now we're moving on to Issues 29
5 and 30.

6 **MR. BREMAN:** 29 and 30 is the 2011 uprate
7 costs. This is an issue that is, where we present the
8 prudence review, and you're making a finding of prudence
9 with respect to the company's actions and the final
10 amounts that will be run through the clause.

11 There were issues. We resolved them. There's
12 a partial stipulation: Attachment B to the staff's
13 recommendation, the last page. And other than that one
14 adjustment, we didn't find anything imprudent. The
15 financial auditors scrubbed FPL's numbers. There were
16 numerous changes, and FPL fixed those changes through
17 errata and discussed that in supplemental testimony. We
18 recommend approval of the final revised errata numbers
19 that FPL filed.

20 **CHAIRMAN BRISÉ:** Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

22 I just want to confirm with staff that both
23 the Turkey Point and St. Lucie uprate projects will be
24 completed next year; is that correct? Or, I'm sorry,
25 the Turkey Point project is, will be completed in March

1 of 2013. Is that still the scheduled date?

2 **MR. BREMAN:** Yes. The record has the last
3 outage where uprate activities will be physically
4 completed is scheduled to be done or finished in March
5 of 2013, if all things go well.

6 **COMMISSIONER BALBIS:** Okay. And that will
7 complete the 490 megawatts of capacity increase that
8 this project was planned to provide?

9 **MR. BREMAN:** Yes. It will probably exceed
10 that. Current testimony reflects 520 to 530 megawatts
11 might be available.

12 **COMMISSIONER BALBIS:** Okay. And I just wanted
13 to point that out because there -- I made this comment
14 before, and there's been a lot of discussion in the
15 public that, you know, these nuclear projects never come
16 to fruition and it's money just, it's kind of thrown
17 away. And here's an example of, of, you know, over
18 490 megawatts of, of nuclear power that customers are
19 going to start receiving by March of this year, the
20 completed project, and start realizing those benefits.
21 And hopefully the, the good news of that will continue
22 to get out. I know, you know, I see Mr. Robins in the
23 audience. I'm sure he'll do a good job getting that
24 message out. But, you know, I think this is something
25 that we need to applaud as, as being a good thing for

1 customers. So with that, I move approval of staff's
2 recommendation.

3 **COMMISSIONER BROWN:** Second.

4 **CHAIRMAN BRISÉ:** Okay. Moved and seconded.
5 Any further discussion? All right. All in favor of
6 approving Issues 29 and 30, say aye.

7 (Vote taken.)

8 All right. Moving on to Issues 31 and 32.

9 **MS. LEWIS:** Good afternoon, Commissioners.

10 Issues 31 and 32 address FPL's 2012 and 2013
11 activities and costs with regard to the uprate project.
12 There is no dispute regarding FPL's identified costs,
13 and staff recommends approval.

14 **CHAIRMAN BRISÉ:** All right. Commissioner
15 Graham.

16 **COMMISSIONER GRAHAM:** Move staff approval on
17 31 through 33.

18 **CHAIRMAN BRISÉ:** Okay.

19 **COMMISSIONER EDGAR:** Second.

20 **CHAIRMAN BRISÉ:** All right. It's been moved
21 and seconded. Any further discussion?

22 Okay. Seeing none, all in favor, say aye.

23 (Vote taken.)

24 All right. So we have approved -- we have
25 dealt with all the matters that came before us this

1 afternoon.

2 Staff, are there any other things that we need
3 to address?

4 **MR. BREMAN:** I apologize, Mr. Chairman. This
5 is Jim Breman. Did you vote on 33?

6 **CHAIRMAN BRISÉ:** Yes, we did.

7 **MR. BREMAN:** Okay. Just cleaning my wax out.

8 (Laughter.)

9 **CHAIRMAN BRISÉ:** All right. Are there any
10 other things that we need to address with, with this
11 docket today?

12 All right. Seeing none, thank you very much
13 for your participation, your hard work, and we stand
14 adjourned.

15 (Proceeding adjourned at 2:24 p.m.)
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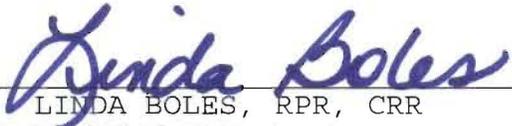
1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

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 29th day of November, 2012.

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LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734