

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

EXAMINATION OF THE OUTAGE DOCKET NO. 100437-EI
AND REPLACEMENT FUEL/POWER
COSTS ASSOCIATED WITH THE
CR3 STEAM GENERATOR REPLACEMENT
PROJECT, BY PROGRESS ENERGY
FLORIDA, INC.

FUEL AND PURCHASED POWER COST DOCKET NO. 130001-EI
RECOVERY CLAUSE WITH GENERATING
PERFORMANCE INCENTIVE FACTOR.

ENVIRONMENTAL COST RECOVERY DOCKET NO. 130007-EI
CLAUSE.

NUCLEAR COST RECOVERY CLAUSE. DOCKET NO. 130009-EI

PETITION OF PROGRESS ENERGY DOCKET NO. 130091-EI
FLORIDA, INC. TO APPROVE
ESTABLISHMENT OF A REGULATORY
ASSET AND ASSOCIATED THREE-YEAR
AMORTIZATION SCHEDULE FOR COSTS
ASSOCIATED WITH PEF'S PREVIOUSLY
APPROVED THERMAL DISCHARGE
COMPLIANCE PROJECT.

PETITION FOR LIMITED PROCEEDING DOCKET NO. 130208-EI
TO APPROVE REVISED AND RESTATED
STIPULATION AND SETTLEMENT
AGREEMENT BY DUKE ENERGY FLORIDA,
INC. D/B/A DUKE ENERGY.

VOLUME 2

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PROCEEDINGS: HEARING

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

DATE: Thursday, October 17, 2013

TIME: Commenced at 1:20 p.m.
Concluded at 1:49 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporters
(850) 413-6732

APPEARANCES: (As heretofore noted.)

P R O C E E D I N G S

1
2 **CHAIRMAN BRISÉ:** Good afternoon. We are going
3 to reconvene Docket Number 130208-EI once again this
4 afternoon. It is 1:20, and so we are going to go back
5 into questions of signatories, if there are any further
6 questions for signatories at this time. But I know we
7 have to take an appearance from FIPUG, so --

8 **MS. PUTNAL:** Thank you, Mr. Chairman. My name
9 is Karen Putnal, and I'm with the Moyle law firm, and
10 here today on behalf of FIPUG, Florida Industrial Power
11 Users Group. Thank you.

12 **CHAIRMAN BRISÉ:** Thank you very much.
13 Commissioners, I don't know if you have any
14 further questions. Well, actually let's move back a
15 little bit and say where we are in the process. We were
16 in the phase of hearing where we were posing questions
17 to the signatories to make sure we have a full
18 understanding of what is in the settlement, and we were
19 questioning witnesses and so forth. And so we spent
20 quite a bit of time yesterday doing so, and we are
21 continuing that today and trying to query if there are
22 any questions, any additional questions that still
23 exist.

24 Okay. I'm not seeing any lights. I think I
25 may have one question for Mr. Rehwinkel. I didn't ask

1 you any questions on yesterday, so I will exercise that
2 today.

3 **MR. REHWINKEL:** I felt lonely.

4 (Audience laughter.)

5 **CHAIRMAN BRISÉ:** It's okay. We talked a lot
6 about unknowns yesterday, you mentioned some, and so I
7 want to know what are some of the known unknowns that
8 this settlement addresses and contains for the
9 consumers.

10 **MR. REHWINKEL:** I apologize, Mr. Chairman.
11 I'm not completely sure I understand your question.

12 **CHAIRMAN BRISÉ:** Sure.

13 **MR. REHWINKEL:** If you could give me a little
14 more context, I'd appreciate it.

15 **CHAIRMAN BRISÉ:** Sure. Obviously, if the
16 Office of Public Counsel had not entered into the
17 settlement agreement, there are many factors that would
18 go into consideration as you prepare your case and so
19 forth. And some of those things are known quantities
20 that have very limited aspects, and there are some that
21 are sort of open. And so I suppose as part of the
22 calculation to enter into a settlement and agree to the
23 terms that you mitigated some of the potential unknowns
24 that are out there within the context that we're talking
25 about.

1 **MR. REHWINKEL:** Thank you and I appreciate it.

2 I understand the question.

3 Let me take one of the ones that I did not
4 mention in response to Commissioner Brown's question
5 yesterday, which is the asset cap. In the 2012
6 settlement we had kind of left that issue about if
7 retired, what ratemaking treatment would be there. And
8 so that was kind of left off into the future, and then
9 upon the retirement decision it became palpable and
10 something that it looked like it was going to go for
11 determination in Phases II and III of what I called the
12 dormant docket that got brought back to life.

13 So the asset cap of 1.466 billion places some
14 bounding on the risk that the customers would face in
15 the determination of that asset that was going to be
16 recovered over 20 years. And that recovery over
17 20 years was provided for in the 2012 settlement. So
18 that gave us more of a known quantity, and it gave us
19 what we consider a safety net. That ultimately would be
20 trued up to actual. And we have expectation that that
21 true-up will come in lower, but we don't know that. But
22 we do have the cap. So I think that is one of the
23 things that we get out of the agreement, that absent the
24 agreement we would not have.

25 Certainly, the write-down also is one of those

1 things that we have, and we have -- the customers will
2 not have to pay that \$295 million, nor will they have to
3 pay a return on that \$295 million. So as Mr. Ballinger
4 said in his assessment, it's about a \$600 million value
5 to the customers. So we did take care of some of that
6 there.

7 Kind of one of the ripples in the pond of the
8 loss of this plant is you have to replace the
9 generation. And we negotiated two GBRA provisions, the
10 little GBRA, and we got some certainty, in my opinion,
11 with respect to the standard that would be applied to
12 that. So there is an unknown aspect to the little GBRA
13 component, but there is also the known quantity that the
14 customers get to come to you, and we have an opportunity
15 to challenge the prudence of their decision-making. And
16 more importantly, the Commission retains full
17 jurisdiction over the prudency determination surrounding
18 that.

19 And, likewise, with the big GBRA we have the
20 need determination process and the certainty of that,
21 and the application of the rule that also caps it at the
22 need determination amount, and the lower -- the
23 customers get the benefit of the actual. So putting
24 those parameters around those two replacement generation
25 choices is of value to us.

1 Also, I would say the salvage aspects. We
2 don't know whether salvage will be achievable or not.
3 We hope that it can in some of the issues. Perhaps
4 there's some portion of unprocessed nuclear fuel that
5 they can sell or there are some other assets. It's not
6 entirely clear that under the NCRC statute when the
7 cancellation is triggered and then you have the
8 amortization of the costs that salvage is an affirmative
9 obligation of the utility, but we negotiated that in
10 here, and I think that's something that the customers
11 feel is a benefit in that -- putting some bounds on the
12 unknown. So those are some of the highlights of that,
13 if that answers your question.

14 **CHAIRMAN BRISÉ:** It does. And part of the
15 reason I asked that question is obviously when you
16 negotiate a settlement of this magnitude there's a lot
17 of things that you probably walk into it with, and as
18 you described yesterday, but part of it is to make sure
19 that you have a certain level of confidence that there
20 are going to be specific bounds. At least you know the
21 upper limits, and then you could sort of manage working
22 backwards from those upper limits, and so I think you
23 answered my question.

24 **MR. REHWINKEL:** And that is exactly what we
25 perceived, and those are some of the values that we saw.

1 **CHAIRMAN BRISÉ:** I think Mr. Brew wants to
2 chime in.

3 **MR. BREW:** Just briefly, yes. I think we took
4 pains to try to decide as best we could the costs and
5 the Duke actions from the past that we knew we had to
6 deal with and to avoid jumping to anything on things
7 that would require future actions. So for the GBRAs,
8 the decommissioning accrual, the dry cask storage,
9 things that we really didn't have information on we left
10 open for Duke to take action on, the parties to take
11 positions on, and the Commission to make decisions on.
12 And it really is dependent upon Duke to manage those
13 future things effectively. Because we didn't try to
14 come up with numbers or answers on those things because
15 that wasn't what we were trying to accomplish.

16 **CHAIRMAN BRISÉ:** All right. Thank you very
17 much.

18 Commissioners, any further questions?

19 All right. I'm going to ask once again, any
20 further questions?

21 Seeing none, we are going to conclude this
22 portion of the hearing.

23 Mr. Young, what happens next?

24 **MR. YOUNG:** Mr. Chairman, now we move into the
25 decision phase in Docket 130208. Following the closure

1 of the record and conclusion of the deliberations, the
2 Commission has several options with respect to rendering
3 a determination on the Revised and Restated Stipulation
4 Settlement Agreement. The Commission can render a bench
5 decision today, or the Commission may continue the
6 deliberations and discuss continuing deliberations to
7 the special agenda as scheduled in this docket for
8 October 24th, 2013.

9 **CHAIRMAN BRISÉ:** Okay. Thank you.

10 So at this time we will close the record and
11 we are going to enter into, in essence, our deliberation
12 phase.

13 And, Commissioners, our staff are available
14 for questions. I don't know if we have any questions
15 for our staff at this time. I know if your office is
16 like mine, we probably had numerous meetings with staff
17 going through a lot of this information.

18 So, Commissioners, any questions for staff?

19 All right. Seeing none, I think we are in the
20 posture to begin having discussions as to how we want to
21 proceed. There's two ways that we can proceed. One is
22 if you are prepared, as I am at this moment, to move
23 forward with comments and ready to vote, or it would not
24 necessarily be my preference at this time to take a
25 break and move forward.

1 Commissioner Edgar.

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

3 And as always, thank you to you for the great job that
4 you always do in helping us work through all the issues,
5 and all the moving parts and pieces yesterday.

6 As it was said numerous times, the agreement
7 that we have before us and the circumstances that are
8 addressed within the issues in the agreement that is
9 before us has many unique components to it. And as a
10 result of that, the parties in our proceedings needed to
11 be a little unique, as well.

12 I certainly, as you stated, had the
13 opportunity, as my office staff did, to meet with our
14 legal and our technical staff numerous times. As was
15 also pointed out, particularly by Commissioner Balbis,
16 this has been a set of dockets of ongoing issues that
17 have had many public proceedings. So when you are
18 ready, I am ready to make some general comments, and I'm
19 prepared to vote this afternoon per your direction.

20 **CHAIRMAN BRISÉ:** Sure. I am ready. And as
21 I'm looking across the bench here, it seems like
22 everybody is in that posture. So you're welcome to
23 begin, if you'd like.

24 **COMMISSIONER EDGAR:** Thank you. I'm always
25 appreciative of the opportunity to hear public testimony

1 and customers. I am also always appreciative when we do
2 have elected representatives who participate in our
3 processes. And I would again say thank you to
4 Representative Dudley for representing his constituents
5 here in our forum where we do our work.

6 We did hear a number of concerns and issues
7 raised that, I believe, are beyond the purview of the
8 issues and the documents and procedures that are before
9 us today, all of which are important and all of which
10 contribute well to the broader discussion, but I do
11 think it's important to point out that some of those
12 concerns were beyond what is before us this afternoon.

13 It also was discussed, dismay and even
14 stronger words, at the situation that as a state we find
15 ourselves in with the future of CR3. I certainly was
16 hopeful that that facility would be able to go on
17 producing low cost and carbon neutral generation for the
18 ratepayers of Florida, but I also recognize that that
19 facility did do that for over 20 years, I believe. And
20 it did provide the service that it was permitted and
21 constructed to do. It brought fuel diversity. It, I
22 believe, served its expected initial general lifetime,
23 and I wish that it was in a posture to continue to do
24 that. Alas, that is not the case. Those are not the
25 facts that are before us.

1 I do believe, as was discussed yesterday, that
2 the proposed settlement does bring rate stability and
3 certainty over an extended period of years. That that
4 is in the best interest of ratepayers and is something
5 that I know we strive as a Commission to try to bring to
6 our decisions when ratemaking issues come before us.

7 I also recognize that the proposed settlement
8 is that balance or an attempt at reaching the balance
9 that we strive for between risk assessment and
10 cost-effectiveness and efficiency of resources now and
11 into the future. So, again, as was stated, I wish that
12 we were in a different situation. I wish that we were
13 in the situation where CR3 could effectively continue on
14 the mission that it was constructed initially to do and
15 did for many decades, and I wish that Levy County were
16 able to move forward in a cost-effective and efficient
17 way to continue to bring additional fuel diversity. But
18 I recognize the changed circumstances, and that quite
19 frankly the costs were just getting too high, that it
20 was no longer cost-effective.

21 And so with that, Mr. Chairman, I will be
22 ready to either make a motion or support one that we
23 approve the Revised and Restated Stipulation and
24 Settlement Agreement that is before us at whatever point
25 is proper for our posture.

1 **CHAIRMAN BRISÉ:** Thank you.

2 Any further comments? All right. I'm looking
3 for some lights. Okay. Then I suppose we are in a
4 posture --

5 Commissioner Brown.

6 **COMMISSIONER BROWN:** When I first read the
7 settlement agreement, I will be candid with you all, I
8 was not thrilled with it. I thought it could have been
9 more robust; it could have given more concessions to the
10 customers; it could have given more benefits, especially
11 given the fact that these customers have paid over \$1.5
12 billion for a power plant that will never be built. You
13 know, that's a difficult thing to digest.

14 So I completely understand the frustration
15 that these customers have. I have friends and family in
16 the Tampa Bay area. I understand it. I empathize with
17 these customers.

18 To top that off, you have a situation with
19 CR3, the delam and the replacement fuel situation, which
20 customers I do believe have a right to be upset about.
21 Although there is a lot of speculation about negligence
22 and fault on the part of Duke, I do believe -- it's
23 apparent to me that there is no conclusive evidence here
24 that there's any findings to support those allegations.
25 I think that's further evident by the fact that you have

1 all these major customer groups in Duke's service
2 territory sitting here today to support this global
3 resolution.

4 To me looking at the settlement agreement and
5 all the alternatives that we have, I know with sound
6 reasoning that it provides, as Commissioner Edgar said,
7 a certain level of rate certainty for years to come, and
8 I believe Mr. Wright said it also protects customers
9 from unavoidable costs.

10 Mr. Wright also said, which I thought was very
11 compelling yesterday, that the great majority of pain is
12 shifted to the shareholders of Duke rather than the
13 customers. The fact that yesterday all of the
14 signatories that are sitting here today said that this
15 is the best deal that you could possibly get, that these
16 customers can possibly get, I think that is very
17 compelling to me.

18 I take this very seriously, and I know that
19 the pressure that these customers have, that the
20 pressure that is on these customers, and that they will
21 feel the impact of this settlement agreement for years
22 come is very grave.

23 There are no compelling alternatives. I think
24 some view this and some view our position here today as
25 us being trapped between a rock and a hard place, but I

1 think that we have an opportunity here. And I would
2 like to commend the utility and the parties here,
3 because I think that this is an opportunity to stop the
4 bleeding. As some customers have said, stop the
5 bleeding, well, I think this is the opportunity to stop
6 that.

7 So with the public interest at the forefront
8 of my decision, I think that the benefits in this
9 settlement agreement outweigh the alternatives. And
10 given the facts and the laws as we find them, this is
11 the best alternative that we have, and I'm going to
12 support it.

13 **CHAIRMAN BRISÉ:** Thank you, Commissioner
14 Brown.

15 Commissioner Balbis.

16 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
17 And I just wanted to start off -- first of all, I wanted
18 to start off thanking staff and the parties for their
19 work in this, and also with the CR3 docket. As I have
20 stated before, I have worked almost three years working
21 with staff and the parties going through that process
22 and dealing with sometimes contentious issues. So I
23 want to thank the staff and especially the parties in
24 really working together in some of those contentious
25 issues, and I think that you conducted yourselves in a

1 professional manner. So I just wanted to thank you for
2 that.

3 I didn't have any questions for the parties
4 today because, you know, a lot of them have been
5 answered, as Chairman Brisé has said. However, I did
6 spend the majority of my time over the past day really
7 thinking about different alternatives and what options
8 do we really have. And I honestly -- I don't see any
9 reason why we can't continue to operate under the 2012
10 agreement which is cheaper for customers for the next
11 four years.

12 We all heard from Duke that Levy will not be
13 constructed, so those rate impacts will never happen.
14 We have plenty of time to thoroughly review the few
15 remaining critical issues of this case. I had agreed
16 previously that a thorough review of the remaining few
17 critical issues in this case are important; I haven't
18 seen nor heard anything the past two days that have
19 changed my mind.

20 We have no expert testimony, no review of
21 these critical documents associated with Duke dealing
22 with NEIL. And, in fact, those documents were never
23 produced. And from what we heard yesterday, if Duke had
24 recovered the full policy amount, customers may not have
25 paid a dime. Given Duke's latest repair estimates, we

1 also heard yesterday that if Duke had recovered the full
2 amount, the repair of CR3 would have saved customers
3 money in all scenarios.

4 So I believe that customers deserve to know if
5 the decision to repair or retire CR3, if that decision
6 to retire was correct. I also think the customers
7 deserve to know that if Duke's leaving of \$1.4 billion
8 of their money on the table was the right decision. So
9 I cannot support this settlement agreement. I think we
10 have a viable alternative, and I just think it's
11 important that we get this information that's needed.

12 **CHAIRMAN BRISÉ:** Any further comments,
13 Commissioners?

14 All right. I think I have a few. Obviously,
15 this has been a very long process so far. All the
16 events surrounding the uprate to CR3 have been weighing
17 on most of us in this room for the last three years, at
18 least those of us who are on the bench, and some before
19 that, and weighing on us on a daily basis, frankly.

20 I personally would like to thank staff for
21 your hard work and your diligence through this process.
22 Your thoroughness in wading through the thousands of
23 pages of evidence, hundreds of hours of depositions, and
24 the constant communication with Duke, OPC, the Retail
25 Federation, FIPUG, PCS Phosphate, and all the others who

1 played a role in getting to this point.

2 So I know it has taken a lot of work to get us
3 to this particular point, and I know that independent of
4 what our individual position may be on the settlement,
5 that we are thankful to you for your willingness to work
6 hard on these issues.

7 I also would like to take the time to speak to
8 ratepayers who are interested in these issues and who
9 are impacted on a daily basis by these issues. I will
10 say my parents are Duke customers. And recognizing the
11 challenges that exist out in the community, I will tell
12 you that I believe that this settlement is in the best
13 interest of our consumers and all those that we
14 represent here.

15 And for the numerous e-mails and phone calls
16 that we have received -- I think that in terms of
17 communication coming in, we have received around
18 250-plus in some form of communication, whether it's
19 calls or e-mails coming in with respect to this issue,
20 and we have heard your concerns and we recognize your
21 concerns as they exist today.

22 I also want to commend those young persons,
23 young people who were here yesterday who took time from
24 their schedule, whether they drove up from the St. Pete
25 area or the Pinellas County area, and those who took

1 their time from here in Tallahassee to come and express
2 their views and thoughts with us surrounding this case.

3 But I think it's also important for people to
4 understand the posture that we are in. I know there was
5 a conversation about having hearings out in the service
6 area, and it's important to recognize what type of
7 hearing that we are in. And most of the dockets that
8 are combined in this settlement are clause dockets. And
9 we typically don't have customer service hearings for
10 clause dockets because, in essence, unlike a rate case,
11 there are certain factors that are not imputed here.

12 In a rate case we are concerned about quality
13 of service and customer service, which are factors that
14 we can listen and hear from the customers and that is a
15 factor within our decision. These hearings, clause
16 hearings are primarily looking at whether the company is
17 prudent in what it's doing, whether the expenses are
18 appropriate, the expense levels are appropriate, and so
19 forth. So, therefore, we hear from accountants and
20 engineers and people of those type of professions who
21 provide testimony to us for us to render a decision.

22 So I wanted to make sure that those who are
23 part of the service area sort of understood the proper
24 context that we are in. As I listened to the testimony,
25 and as we asked questions, and as I heard from the

1 intervenors, the biggest thing that came out to me was
2 that, yes, it's a difficult situation across-the-board.
3 It's not what anyone would have liked. But this
4 settlement provides the best resolution of the many
5 unknowns that exist. And so, therefore, we created a --
6 based upon the settlement, and as I listened to the
7 intervenors, there is now a fence around the things that
8 we can control. And with that, I believe that it is
9 absolutely in the public interest that we support this
10 settlement today.

11 It provides a certain level of certainty for a
12 particular amount of time. It also takes off the table
13 Levy, and it addresses many other challenges that could
14 come about, and would have to go through various
15 processes in order to get some resolution to some of
16 those issues. So I think in terms of our responsibility
17 as being an administrative body that is supposed to be
18 efficient and effective at the same time, that this
19 resolution is the best resolution at this time.

20 I don't know if there are any further
21 comments. Okay. I'm ready to entertain a motion.

22 Commissioner Edgar.

23 **COMMISSIONER EDGAR:** Mr. Chairman, thank you
24 for your comments. Thank you to my colleagues for their
25 comments and questions yesterday and continued

1 discussion today.

2 Many, many, many things that could still be
3 said, but I think at this point I will offer -- I will
4 offer a motion that we approve the Revised and Restated
5 Stipulation and Settlement Agreement that is before us
6 and resolution of the issues contained therein.

7 **COMMISSIONER GRAHAM:** Second.

8 **CHAIRMAN BRISÉ:** Okay. We have a motion and
9 it has been seconded.

10 Further discussion?

11 Okay. Seeing no further discussion, all in
12 favor say aye.

13 (Vote taken.)

14 **CHAIRMAN BRISÉ:** Any opposed?

15 **COMMISSIONER BALBIS:** Nay.

16 **CHAIRMAN BRISÉ:** All right. Thank you very
17 much. Four in favor, one opposed.

18 And, Mr. Young.

19 **MR. YOUNG:** Mr. Chairman, with that, the final
20 order in this case will be issued by November 4th, 2013.

21 **CHAIRMAN BRISÉ:** All right. Thank you very
22 much. I think we have completed our work here today.
23 Once again, I want to express my gratitude to everyone
24 for bringing us to this point. And with that we stand
25 adjourned.

(The hearing concluded at 1:49 p.m.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 21st day of October, 2013.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732