

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Nuclear Cost Recovery  
Clause**

DOCKET NO. 140009-EI  
Submitted for filing: May 1, 2014

**REDACTED**

**DIRECT TESTIMONY OF CHRISTOPHER M. FALLON**

**ON BEHALF OF  
DUKE ENERGY FLORIDA, INC.**

**IN RE: NUCLEAR COST RECOVERY CLAUSE**

**BY DUKE ENERGY FLORIDA, INC.**

**FPSC DOCKET NO. 140009-EI**

**DIRECT TESTIMONY OF CHRISTOPHER M. FALLON**

1 **I. INTRODUCTION AND QUALIFICATIONS.**

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

3 A. My name is Christopher M. Fallon. My business address is 526 South Church Street,  
4 Charlotte, North Carolina 28202.

5

6 **Q. Who do you work for and what is your position with that company?**

7 A. I am employed by Duke Energy Corporation (“Duke Energy”) as Vice President of  
8 Nuclear Development. Duke Energy Florida, Inc. (“DEF” or the “Company”) is a  
9 fully owned subsidiary of Duke Energy.

10

11 **Q. Have you previously provided testimony in Docket No. 140009-EI?**

12 A. Yes. I submitted direct testimony in this docket on March 3, 2014.

13

14 **II. PURPOSE AND SUMMARY OF TESTIMONY.**

15 **Q. What is the purpose of your May 1, 2014 direct testimony?**

16 A. The purpose of my testimony is to describe DEF’s wind-down activities for the Levy  
17 Nuclear Project (“LNP” or “Levy”), including activities related to the termination of  
18 the Engineering, Procurement, and Construction (“EPC”) Agreement with

1 Westinghouse Electric Company LLC (“WEC”) and Stone & Webster, Inc. (“S&W”)  
2 (together, the “Consortium”) and disposition of long lead time equipment (“LLE”)  
3 with WEC and its suppliers. Additionally, I present DEF’s 2014 actual/estimated and  
4 2015 projected costs for the wind-down of the LNP. Pursuant to the 2013 Revised and  
5 Restated Stipulation and Settlement Agreement (“2013 Settlement Agreement”) as  
6 approved by the Florida Public Service Commission (the “Commission”) in Order No.  
7 PSC-13-0598-FOF-EI, DEF is not including costs related to the Company’s pursuit of  
8 the Levy Combined Operating License Application (“COLA”), environmental  
9 permitting, wetlands mitigation, conditions of certification, and other costs related to  
10 the Combined Operating License (“COL”), that DEF incurs in 2014 and beyond, in its  
11 request for cost recovery under the Nuclear Cost Recovery Clause (“NCRC”). DEF  
12 will continue to incur COL costs for Levy in 2014 and 2015, but under the 2013  
13 Settlement Agreement, DEF will not seek to recover these costs from customers  
14 through the NCRC. Additionally, my testimony provides a status update on the  
15 Company’s pursuit of the Levy COL from the Nuclear Regulatory Commission  
16 (“NRC”).

17  
18 **Q. Do you have any exhibits to your testimony?**

19 **A.** Yes, I am sponsoring the following exhibits to my testimony:

- 20 • Exhibit No. \_\_\_\_ (CMF-8), a chart of the Company’s LNP LLE status;
- 21 • Exhibit No. \_\_\_\_ (CMF-9), DEF letter to the Consortium terminating the EPC  
22 Agreement;

- 1 • Exhibit No. \_\_\_\_ (CMF-10), the confidential Tioga LNP LLE final disposition  
2 settlement memorandum;
- 3 • Exhibit No. \_\_\_\_ (CMF-11), the confidential DEF letter to the Consortium  
4 accepting the Tioga LNP LLE final disposition settlement offer;
- 5 • Exhibit No. \_\_\_\_ (CMF-12), a confidential graphical representation of the LLE  
6 disposition process; and
- 7 • Exhibit No. \_\_\_\_ (CMF-13), a chart of the expected LNP COLA Schedule.

8 I am also sponsoring or co-sponsoring portions of the Schedules attached to Thomas  
9 G. Foster's testimony as Exhibit No. \_\_\_\_ (TGF-4). Specifically, I am co-sponsoring  
10 portions of the 2014 and 2015 Detail Schedules and sponsoring Appendices D and E.  
11 These Schedules reflect the 2014 and 2015 actual/estimated revenue requirement  
12 calculations, the major task categories and expense variances, and a summary of  
13 contracts and details over \$1 million.

14 All of these exhibits and schedules are true and accurate to the best of my  
15 knowledge and information.

16  
17 **Q. Please summarize your testimony.**

18 A. With the execution of the 2013 Settlement Agreement and approval by the  
19 Commission in 2013, DEF decided not to proceed with construction of Levy Nuclear  
20 Units 1 and 2. DEF is implementing a wind-down plan for in-progress Levy LLE and  
21 has dispositioned all LLE that was in active fabrication. DEF is soliciting internal and  
22 external interest in the acquisition of the remaining LLE. To this end, DEF is

1 conducting a bid event for the remaining Levy LLE. DEF anticipates making final  
2 disposition decisions for the remaining Levy LLE by the end of 2014.

3 DEF also terminated the EPC Agreement in January, 2014, pursuant to the  
4 terms of the EPC Agreement. DEF continues to work with WEC in an attempt to  
5 close-out the contract, but to date negotiations are stalled, and both DEF and WEC  
6 have initiated litigation against the other for claims under the EPC Agreement. DEF  
7 has, however, successfully negotiated a close-out of work with the other Consortium  
8 member – S&W.

9 DEF plans to continue its COLA work in order to obtain the LNP COL from  
10 the NRC, as long as it is reasonable to do so, and DEF currently anticipates COL  
11 receipt in August of 2015 based on the current NRC schedule. At present, WEC has  
12 granted DEF a revocable license to use WEC's AP1000 proprietary data for the LNP  
13 COLA and DEF is working with WEC on an agreement for WEC's continued COLA  
14 support work, which DEF needs to continue its work on the Levy COLA. WEC,  
15 however, may terminate at any time DEF's right to use WEC's proprietary AP1000  
16 information for the Levy COLA. If WEC revokes DEF's license to use the AP1000  
17 data and WEC and DEF are unable to reach an agreement for WEC's continued work  
18 to support the Levy COLA, DEF will be unable to obtain the Levy COL.

19 Remaining activities in 2015 will include wind-down support activities, WEC  
20 litigation regarding the EPC Agreement termination, and continued COLA and  
21 associated environmental permitting work, to the extent DEF is able to continue its  
22 COLA work to obtain the COL.

1 **III. STATUS OF THE LEVY PROJECT.**

2 **Q. What is the current status of the Levy project?**

3 A. The Company elected not to complete construction of the LNP pursuant to the nuclear  
4 cost recovery statute and rule, Section 366.93(6), Florida Statutes, and Rule 25-  
5 6.0423(7), Florida Administrative Code (“F.A.C.”), as amended, with its execution of  
6 the 2013 Settlement Agreement in late July 2013. As I described in my March 3, 2014  
7 testimony, subsequent to execution of and until Commission approval of the 2013  
8 Settlement Agreement, DEF commenced development of the process to start winding  
9 down the LNP in an orderly fashion. This process was fully put in place after the  
10 Commission voted to approve the 2013 Settlement Agreement on October 17, 2013.  
11 The major component of the LNP wind down process is the LLE disposition, which  
12 DEF is conducting pursuant to its disposition plan in its LLE Disposition  
13 Memorandum. The LLE Disposition Memorandum was attached as Exhibit No.  
14 \_\_\_\_ (CMF-5) to my March 3, 2014 direct testimony. In 2014, DEF continues to follow  
15 its plan to disposition the remaining LNP LLE. The current status of the remaining  
16 LNP LLE is attached as Exhibit No. \_\_\_\_ (CMF-8).

17 Additionally, on January 28, 2014, DEF notified the Consortium that DEF was  
18 terminating the EPC Agreement pursuant to Article 22.4(a) of the EPC Agreement,  
19 effective as of the date of the letter, because DEF was unable to obtain the COL by  
20 January 1, 2014. The termination letter is attached as Exhibit No. \_\_\_\_ (CMF-9).

21 The only other work that DEF is performing at this time is the COLA work  
22 necessary to obtain the COL from the NRC and major environmental permitting work  
23 necessary to obtain the Section 404 permit from the U.S. Army Corps of Engineers.

1 DEF is continuing its efforts to obtain the COL from the NRC consistent with DEF's  
2 agreement in the 2013 Settlement Agreement to exercise reasonable and prudent  
3 efforts to obtain the COL.

4  
5 **IV. LNP 2014 AND 2015 WIND-DOWN ACTIVITIES.**

6 **Q. Does DEF have actual/estimated costs in 2014 as a result of Levy wind-down**  
7 **activities?**

8 A. Yes. DEF's actual/estimated 2014 costs are [REDACTED]. See 2014 Detail LNP  
9 Schedule of Exhibit No. \_\_\_ (TGF-4) to Mr. Foster's testimony. The 2014 Detail  
10 Schedule, lines 1b and 12e and 1d, shows actual/estimated costs for 2014 in the  
11 following categories: wind-down costs in the amount of [REDACTED] and LLE  
12 disposition costs in the amount of [REDACTED], respectively

13  
14 **Q. Please describe the Levy wind-down activities and costs.**

15 A. Actual/estimated 2014 wind-down costs that are reasonably known at this time are  
16 approximately [REDACTED]. Wind-down cost were incurred and will be incurred for (1)  
17 storage, insurance, and quality assurance of the completed and partially completed  
18 Levy LLE components until disposition – approximately [REDACTED]; (2) internal  
19 Duke Energy labor to assist with disposition of the LLE – approximately [REDACTED];  
20 (3) approximately [REDACTED] in estimated costs for external WEC support to gather  
21 information from its LLE suppliers and assist with disposition of the LLE; and (4)  
22 approximately \$0.4 million for regulatory and administrative wind-down support.  
23 This category also includes payment of final invoices in the amount of approximately

1 [REDACTED] for module program development work to close out DEF's relationship  
2 with Consortium member S&W under the cancelled EPC Agreement. DEF does not  
3 include in this filing potential, future wind-down or LLE disposition costs or credits  
4 that DEF cannot reasonably quantify at this time.

5  
6 **Q. Please describe the LLE disposition activities and costs.**

7 A. LLE disposition costs include expenditures directly attributable to amounts paid for  
8 the disposition of the Levy LLE, a reversal of an accrual for a milestone payment not  
9 made in 2014, and an estimate of the upper limit of termination costs possibly due [REDACTED]

10 [REDACTED]

11 The [REDACTED] shown on Schedule 2014 Detail LNP includes a negotiated  
12 settlement payment to terminate an LLE purchase order with WEC and sub-contractor  
13 Tioga for the reactor coolant-loop (RCL) piping components of [REDACTED] in early  
14 2014, and a reversal of an accrual for an RCL milestone payment of [REDACTED] that  
15 was not made because of the cancellation of the purchase order for this equipment.

16 Also included is approximately [REDACTED], which reflects the [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]



1 **Q. Please explain DEF's settlement with WEC and Tioga for the Tioga LLE.**

2 A. Tioga is the supplier and manufacturer of the RCL piping Levy LLE. The RCL piping  
 3 started the manufacturing process in 2013. When DEF elected not to complete  
 4 construction of the LNP, DEF first authorized WEC to contact Tioga about Tioga's  
 5 willingness to place a manufacturing hold on the RCL piping to allow DEF additional  
 6 time to analyze the disposition of the equipment. Tioga responded that there would be  
 7 a cost associated with a manufacturing hold and a change order would be required.  
 8 Consequently, DEF authorized WEC to contact Tioga about its costs should DEF  
 9 decide to cancel the RCL piping purchase order and manufacturing of the piping.  
 10 Tioga provided WEC with an all-inclusive cancellation cost of [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED] DEF evaluated the Tioga settlement offer  
 13 pursuant to DEF's LLE Disposition Plan guidelines. A copy of the LLE Disposition  
 14 Plan was included as Exhibit No. \_\_\_\_ (CMF-5) to my March 3, 2014 testimony in this  
 15 docket. Based on the evaluation of the available options under the LLE Disposition  
 16 Plan, which included quantitative and qualitative factors, DEF determined that the  
 17 settlement was the most cost-effective option for DEF and its customers. Acceptance  
 18 of the settlement resulted in a minimum net savings of [REDACTED] to DEF's  
 19 customers compared to the other available options. DEF, accordingly, accepted the  
 20 offer and instructed WEC to terminate the purchase order with Tioga on January 9,  
 21 2014. My Exhibit No. \_\_\_\_ (CMF-10) further explains DEF's evaluation of the Tioga  
 22 settlement offer and the net savings to customers that resulted from acceptance of that

1 offer. Exhibit No. \_\_ (CMF-11) is DEF's letter to WEC confirming that DEF accepted  
2 the Tioga LLE disposition settlement offer.

3  
4 **Q. What is the disposition status of the remaining Levy LLE?**

5 A. The disposition status of the remaining Levy LLE is provided in Exhibit No. \_\_  
6 (CMF-8) to my testimony. Fabrication is complete for two of the remaining Levy  
7 LLE that must be dispositioned. These are the SG Tubing and Variable Frequency  
8 Drives ("VFDs"). The other Levy LLE items were suspended in 2010 as part of the  
9 April 2009 notice of partial suspension of the EPC Agreement, which was reflected in  
10 Amendment Three to the EPC Agreement and, therefore, manufacturing had not  
11 started or, if manufacturing was underway, it was suspended and the LLE remains  
12 only partially complete. The Levy LLE items that were completed and even some or  
13 all of the suspended Levy LLE components, based on the status of fabrication when  
14 the LLE purchase order was suspended and the interest in the items, may be sold to  
15 other interested parties. Accordingly, DEF has followed its LLE Disposition Plan and  
16 marketed the complete and unfinished Levy LLE components to Duke Energy  
17 affiliates, to external utilities, and to the external utility parts market. We have also  
18 worked with Duke Energy Supply Chain personnel to compile appropriate bidders  
19 lists, including AP1000 utilities, potential non-nuclear buyers, and scrap buyers. The  
20 bid event is targeted to commence in May 2014 for the Levy LLE components. DEF  
21 will evaluate any bid responses it receives and accept them if they are the most cost-  
22 effective LLE disposition option for DEF's customers.

1 **Q. How has DEF made LLE disposition decisions?**

2 A. A graphical representation of this process is attached as Exhibit No. \_\_\_(CMF-12) to  
3 my testimony. As shown there, DEF identified several LLE disposition options. DEF  
4 vetted and eliminated the option of storing the LLE for future use. As such, DEF is  
5 focusing its efforts on disposing of the Levy LLE either through sale or scrap.

6  
7 **Q. How has DEF marketed the Levy LLE to potential buyers?**

8 A. Marketing the Levy LLE is a challenge since most of the Levy LLE is specific to the  
9 AP 1000 design. To address the challenges presented by the limited market, DEF is  
10 taking a multi-pronged approach to its LLE disposition efforts in an effort to maximize  
11 the potential value of the LLE. DEF asked WEC if it was interested in the LLE, DEF  
12 asked WEC to evaluate the market for the LLE, DEF explored opportunities internal  
13 to Duke Energy for use of the LLE, and DEF reached out independently to current and  
14 potential AP 1000 customers regarding their interest. WEC was not interested in  
15 purchasing the Levy LLE and WEC was not interested in any cost-sharing  
16 arrangement to store the LLE for future WEC AP1000 projects. Other storage options  
17 for future use were not viable for reasons that I discussed in my March 3, 2014 direct  
18 testimony. As a result, DEF is pursuing the LLE disposition option.

19 DEF reached out to Duke Energy internal affiliates to gauge their interest in  
20 acquiring any of the remaining Levy LLE. DEF asked WEC to contact external  
21 utilities with existing or potential AP1000 nuclear power plants, including  
22 international projects, to see if they were interested in acquiring the Levy LLE. DEF  
23 simultaneously reached out on its own to utilities with existing AP1000 nuclear power

1 plant projects to see if they were interested in purchasing the Levy LLE. DEF is also  
2 working with WEC to determine if any of the Levy LLE suppliers are interested in  
3 purchasing the remaining LLE components for themselves or for re-sale to third  
4 parties and to determine the salvage cost and value for the remaining Levy LLE.  
5 Finally, DEF is initiating a bid event with potential buyers, including the same utilities  
6 with AP1000 projects that DEF had previously directly contacted about their interest  
7 in the Levy LLE, to determine if there is any interest in the acquisition of the  
8 remaining Levy LLE items. As a result, DEF has effectively canvassed the market for  
9 potential purchasers for the remaining Levy LLE. DEF has found no interested buyer  
10 so far, however, DEF is still waiting to hear if any of the LLE suppliers are interested  
11 in buying the Levy LLE and for the results of the bid event for the remaining Levy  
12 LLE.

13  
14 **Q. Does DEF project that it will incur costs in 2015 related to Levy wind-down and**  
15 **LLE disposition?**

16 A. Yes. While DEF expects to conclude its LLE disposition efforts in 2014, DEF is  
17 currently projecting minimal wind-down costs for 2015 as shown on lines 10 a –c of  
18 the 2015 Detail LNP Schedule attached as Exhibit No. \_\_\_(TGF-4) to Mr. Foster’s  
19 testimony. As I mentioned above, this projection does not take into account any costs  
20 that DEF simply is not able to reasonably quantify at this time.

1 **Q. Does DEF have transmission-related costs for the LNP in 2014 and 2015?**

2 A. No. The Levy transmission interconnection studies were cancelled and DEF withdrew  
3 its interconnection queue requests for the LNP. Accordingly, DEF does not have any  
4 current or future LNP transmission-related costs.

5  
6 **Q. What steps has DEF taken to minimize Levy cost expenditures under the EPC  
7 Agreement?**

8 A. As I discussed in my March 3, 2014 testimony, DEF communicated early and often  
9 with the Consortium in 2013 regarding the pending changes to the Florida Nuclear  
10 Cost Recovery statute and rule and associated qualitative risk to the project.  
11 Following the decision to cancel the LNP as part of the 2013 Settlement Agreement,  
12 DEF also took the proactive steps I described in my confidential addendum to my  
13 March 3, 2014 testimony to work with WEC to obtain LLE disposition information.  
14 DEF has only requested the limited and targeted support from the Consortium that is  
15 necessary to ensure reasonable LLE disposition decisions are made. To this end, DEF  
16 initially focused on the LLE that was being actively fabricated, because that LLE  
17 involved the most significant, on-going contractual cost obligations for customers, and  
18 DEF timely closed out these LLE purchase orders, with savings in the contractual  
19 costs otherwise owed under these purchase orders. These LLE disposition decisions  
20 are described above for the Tioga LLE and in my March 3, 2014 testimony for the  
21 Mangiarotti LLE. Also, in the first quarter of 2014, DEF finalized an agreement with  
22 S&W to close out all of DEF's obligations to S&W under the EPC Agreement. This  
23 agreement included a waiver from S&W of all claims under the EPC Agreement.

1 Finally, because DEF could not obtain the COL from the NRC by January 1, 2014,  
 2 DEF terminated the EPC Agreement in late January of 2014, after disposition of the  
 3 Tioga LLE, the final LLE component being manufactured. DEF's decision to  
 4 terminate the EPC Agreement under this provision means that DEF is not obligated to  
 5 pay WEC a termination fee. Under this provision, DEF does not have to pay WEC the  
 6 termination fee if either party terminated the EPC Agreement because DEF was  
 7 unable to obtain the COL from the NRC by January 1, 2014.

8  
 9 **Q. Has DEF minimized costs?**

10 A. Yes. Overall, the Mangiarotti and Tioga settlements represent a savings of [REDACTED]  
 11 [REDACTED] through 2015 versus what DEF otherwise was contractually obligated to  
 12 spend.

13  
 14 **Q. What is the status of DEF's relationship with WEC?**

15 A. Prior to termination of the EPC Agreement, DEF was working with WEC to  
 16 disposition the Levy LLE. As I explained in the confidential attachment to my March  
 17 3, 2014 testimony, however, DEF's attempts to work with WEC to reasonably  
 18 disposition the Levy LLE and wind down the project activities and costs were slowed  
 19 by the parties' inability to agree on reasonable commercial terms to compensate WEC  
 20 for their efforts to disposition the Levy LLE following termination of the EPC  
 21 Agreement. WEC further made claims for changes orders and for the termination fee  
 22 and additional termination costs that, in DEF's view, were unfounded and  
 23 unreasonable. The parties attempted to work through their differences, however, the

1 parties were sufficiently far apart in late 2013 that DEF concluded that the window of  
2 opportunity to reasonably work with WEC to close out the project was rapidly closing.  
3 As a result, DEF focused its efforts on the disposition of the LLE components being  
4 manufactured in 2013 and was able to settle with WEC and both suppliers of this LLE  
5 -- Mangiarotti and Tioga -- by mid-January 2014.

6 When DEF terminated the EPC Agreement, DEF did propose a time and  
7 materials agreement with WEC that is consistent with the time and materials terms in  
8 the Master Services Agreement (“MSA”), under which WEC supports the Duke  
9 Energy operating fleet, for WEC’s continued help with the disposition of the  
10 remaining Levy LLE with WEC’s suppliers, but WEC would not agree to use this  
11 MSA. The parties have been working on a commercial agreement to compensate  
12 WEC for assisting DEF with the LLE disposition with WEC’s suppliers. As of the  
13 end of April, 2014, negotiations are ongoing.

14 DEF also proposed a contractual arrangement with WEC to allow DEF to  
15 continue to use WEC’s confidential and proprietary AP1000 information for the  
16 continuing Levy COLA work with the NRC after termination of the EPC Agreement.  
17 DEF, in fact, proposed the same contractual arrangement that WEC has with Duke  
18 Energy for access to WEC’s confidential and proprietary AP1000 information for the  
19 Lee AP1000 nuclear power plant COLA and COLA support. WEC initially refused to  
20 agree to this arrangement.

21 Recently, however, WEC indicated its willingness to consider a Memorandum  
22 of Understanding (“MOU”) agreement with DEF to provide additional COLA support  
23 and grant DEF a license to use the confidential and proprietary AP1000 information

1 for the Levy COLA. In the interim, and contingent upon the execution of a  
2 satisfactory MOU agreement for COLA support work, WEC extended DEF a  
3 revocable license to use its AP1000 proprietary data for the Levy COLA.

4 As it has done since termination of the EPC Agreement, DEF will continue to  
5 work with WEC to establish a definite MOU or some other agreement for WEC's  
6 COLA support work and DEF's access to the proprietary AP1000 information for the  
7 Levy COLA.

8  
9 **Q. Was there a way to reasonably resolve WEC's claims without litigation?**

10 A. No. WEC has made it abundantly clear to DEF after DEF cancelled the Levy project  
11 in late July 2013 that WEC wants substantial additional monies from DEF for  
12 cancelling the project and terminating the EPC Agreement. These potential claims,  
13 the dates they were first made known to DEF, and WEC's and DEF's positions on  
14 them are explained in more detail in the confidential attachment to my March 2014  
15 testimony. Faced with these claims in late 2013, DEF was well aware that litigation  
16 with WEC was unavoidable and imminent. As a result, and to ensure that their  
17 disputes were resolved in North Carolina as provided in the EPC Agreement, DEF  
18 filed a lawsuit against WEC in the United States District Court for the Western  
19 District of North Carolina on March 28, 2014.

20 DEF sued WEC for breach of contract for a refund of \$54.1 million in  
21 payments to WEC for turbine generator and reactor vessel internals manufacturing  
22 work that was never started as intended when the payments were made. DEF also  
23 asked for a declaratory judgment by the Court that (1) DEF does not owe WEC the



1 \$30 million termination fee under the EPC Agreement that WEC wrongly claims DEF  
2 owes, because no such fee is owed if the EPC Agreement is terminated due to DEF's  
3 inability to obtain the COL by January 1, 2014; and (2) DEF does not owe WEC  
4 additional, substantial termination costs in excess of \$480 million for alleged WEC  
5 Standard Plant design and related work that WEC never billed DEF or requested a  
6 change order for prior to termination, and that DEF paid for through a \$9.45 million  
7 "investment recovery/royalty" payment, and \$56 million in Design Finalization  
8 payments required under the EPC Agreement and Amendment 3 to the EPC  
9 Agreement.

10 As expected, WEC filed a lawsuit outside the agreed-upon venue of North  
11 Carolina on March 31, 2014 in the United States District Court for the Western  
12 District of Pennsylvania. WEC claims DEF breached the EPC Agreement by failing  
13 to pay WEC the \$30 million termination fee and \$482 million in termination costs for  
14 Standard Plant and related work that WEC did not bill DEF for until March 2014.  
15 WEC alternatively claims that DEF owes WEC for the \$482 million in Standard Plant  
16 design and related work it never billed DEF because DEF would allegedly be unjustly  
17 enriched if it received the benefit of these alleged services without paying WEC for  
18 them.

19  
20 **Q. What does DEF plan to do with these lawsuits?**

21 A. DEF intends to vigorously pursue its claims and to vigorously defend against the  
22 claims WEC has brought. The ultimate resolution of these claims, however, will be by  
23 a Court and DEF cannot predict the outcome of this litigation at this time.

1 **Q. Has this dispute impacted DEF's ability to project its costs in 2015?**

2 A. Yes. DEF expects to incur litigation costs pursuing its claims against WEC and  
3 defending against WEC's claims against DEF. DEF, however, cannot reasonably  
4 project the extent or nature of this litigation at this time and, therefore, DEF cannot  
5 reasonably project its litigation costs with WEC. Additionally, as I mentioned above,  
6 DEF has requested information from WEC's suppliers of the remaining LLE regarding  
7 their interest in acquiring the LLE for themselves or third parties. In the event they are  
8 not interested in acquiring the LLE, DEF also requested information on the salvage  
9 costs and value of the remaining LLE. Due to these variable factors, DEF cannot  
10 reasonably predict the outcome of the results of this information, when it is received,  
11 on the final disposition decisions and costs or credits for the remaining Levy LLE.  
12

13 **V. LEVY COMBINED OPERATING LICENSE APPLICATION UPDATE.**

14 **Q. Can you provide an update on the status of the Levy COL application?**

15 A. Yes. To begin with, and as I have previously explained in prior NCRC proceedings,  
16 there are three parts to the NRC COLA review process and all three parts must be  
17 complete before the NRC will issue a COL. Those three parts of the NRC COLA  
18 review process are: (i) the environmental review process; (ii) the safety review  
19 process; and (iii) the formal hearing process. The environmental review was complete  
20 when DEF received the Levy final environmental impact statement ("FEIS") on April  
21 27, 2012. The remaining two parts of the NRC COLA review process are incomplete  
22 although steps in these review processes have been completed.

1           The Final Safety Evaluation Report (“FSER”) for the Levy COL has not been  
2 issued. The Advanced Safety Evaluation Report (“ASER”), was initially completed  
3 with no open items on September 15, 2011, however, DEF was required to revise the  
4 Levy COLA to incorporate NRC changes resulting from Fukushima and other changes  
5 required by NRC Staff. In addition, a significant required design change was  
6 identified by WEC that is critical path to completion of NRC review. The ASER must  
7 be revised to incorporate these changes before the NRC review can be finalized. The  
8 ACRS has requested to review the WEC design change after completion of NRC  
9 review and issuance of the revised ASER. This is scheduled to be complete in  
10 December 2014. The ACRS review and report is followed by NRC review and  
11 issuance of the FSER. NRC issuance of the FSER completes the NRC safety review  
12 for the LNP. The current NRC target for issuance of the LNP FSER is March 2015.

13           The final step in the NRC COLA process for the issuance of the Levy COL is  
14 the NRC formal hearing process. There are two parts to the formal hearing process:  
15 (1) a contested hearing before the NRC Atomic Safety and Licensing Board  
16 (“ASLB”), and (2) a mandatory hearing before the NRC. The contested hearing was  
17 conducted in the fall of 2012 and on March 26, 2013, the NRC ASLB issued its ruling  
18 in DEF’s favor on all issues. The mandatory hearing for the LNP COL is conducted  
19 by the NRC Commissioners. The LNP COLA mandatory hearing, however, cannot  
20 commence until the LNP FSER is issued. The Company currently expects the NRC to  
21 complete the mandatory hearing in July of 2015. This expectation is based on a four-  
22 month period for completion of NRC mandatory hearings from FSER issuance

1 currently estimated for March of 2015. Exhibit No. \_\_\_\_ (CMF-13) to my direct  
2 testimony contains the current Levy COLA schedule.

3  
4 **Q. Will the NRC's Waste Confidence Decision and Rule review affect the current**  
5 **Levy COLA schedule?**

6 A. No, DEF does not expect the NRC Waste Confidence Decision and Rule review  
7 process to impact the Levy COLA schedule. The NRC is on schedule to complete this  
8 process and issue a new Waste Confidence Decision and Rule. The NRC conducted  
9 an EIS scoping period between October 2012 and January 2013 for the proposed Rule  
10 and published a scoping summary report in early March, 2013. The NRC then  
11 published the draft generic EIS for the proposed Waste Confidence Rule in September  
12 2013. All of these steps in the NRC review process were completed on time under the  
13 NRC's Waste Confidence milestone schedule. Under that schedule, the NRC plans to  
14 issue the final EIS for the Waste Confidence Rule, the Final Waste Confidence  
15 Decision, and the Final Waste Confidence Rule in October 2014. DEF currently  
16 expects the NRC to issue the final Waste Confidence Decision and Rule by this date.

17  
18 **Q. When does DEF expect to receive the COL for Levy?**

19 A. The Company currently expects the NRC to issue the Levy COL in August of 2015.  
20  
21  
22

1 **Q. Why has the estimated receipt date for the Levy COL been extended from the**  
2 **end of 2014 to August 2015?**

3 A. There was a significant delay in the NRC Levy COLA review because WEC failed to  
4 provide information in a timely manner that the NRC needed to review a standard  
5 design change by WEC to the AP1000 design for the condensate return.

6  
7 **Q. What was the issue with the WEC condensate return design change?**

8 A. The WEC design change for the condensate return modifies the interior of the  
9 containment vessel to provide additional gutter piping to support the condensate return  
10 portion of the Passive Core Cooling System. WEC identified this issue in November  
11 2012 when testing conducted by WEC in response to the on-going review of the  
12 AP1000 design in Great Britain confirmed that the design assumption used in the  
13 AP1000 design certification for the amount of condensate return was not correct.  
14 WEC and DEF recognized in December 2012 that this design error required a  
15 departure from the approved design and inclusion of a design change in the Levy  
16 COLA to support the NRC safety review prior to issuance of the Levy COL. DEF  
17 notified the NRC that a COLA change would be submitted to address this emergent  
18 change.

19 DEF and WEC briefed the NRC on this issue in March 2013, explaining that a  
20 design change and exemption request were required. WEC informed the NRC that it  
21 would provide the NRC necessary information regarding the design change by mid-  
22 April 2013 and confirmatory calculations supporting the change by May 17, 2013 for

1 NRC review. DEF submitted its revisions to the Levy COLA and a request for  
2 exemption to implement this design change in its COLA on April 18, 2013.

3 WEC did not inform DEF that it would not meet its promised schedule to  
4 supply the supporting calculations for the design change to DEF by May 17, 2013  
5 until May 15, 2013. On May 23, 2013, WEC told DEF that the containment cooling  
6 condensate return calculations necessary to support the design change would not be  
7 available until September 2013, almost another four months. DEF notified the NRC  
8 of this delay and the NRC issued a revised schedule letter for the Levy COLA review  
9 on June 25, 2013 that delayed issuance of the Levy FSER until September 2014 citing  
10 WEC's delay in providing it with the supporting calculations for this design change as  
11 the reason for the schedule delay.

12 On August 28, 2013, WEC informed DEF that WEC would not meet its  
13 revised deadline to provide the supporting calculations for its design change by  
14 September 4, 2013. WEC's revised schedule included another 40-day schedule delay  
15 to provide the supporting calculations by October 14, 2013. WEC did not meet this  
16 revised schedule. WEC did not complete the design calculations that enabled the  
17 NRC to resume audit review of the detailed design information for this design change  
18 for the Levy COLA until January 15, 2014, and, only on February 6, 2014, did WEC  
19 finally provide DEF all of the information required to supplement the Levy COLA  
20 with respect to this design change.

21 As a result of WEC's actions, at this time, the NRC expects to complete review  
22 and preparation of the FSER for the Levy COL by March 2015. This delay is the

1 reason that DEF does not expect to receive the Levy COL until August 2015 at this  
2 time.

3  
4 **Q. What is the status of the environmental permits for the Levy COL?**

5 A. DEF expects the U.S. Army Corps of Engineers (“ACOE”) to issue the Section 404  
6 Permit for the Levy COLA in 2014. The ACOE sent DEF draft guidance for the  
7 determination of secondary impacts associated with wetlands that is necessary for  
8 issuance of the Section 404 permit and meetings were held on March 18 and April 9,  
9 2014 to discuss this guidance. As a result, DEF expects to reach a consensus with the  
10 ACOE on how to determine indirect (secondary) impacts for wetland mitigation. DEF  
11 also submitted a revised Environmental Monitoring Plan (“EMP”) along with a  
12 Request for Additional Information (“RAI”) response to the ACOE and the ACOE  
13 accepted the revised EMP for the Levy project as a condition for issuance of the  
14 Section 404 permit. This resolves an issue with the ACOE regarding planned  
15 groundwater use at the site. As a result, DEF expects to receive the Section 404  
16 permit for the Levy project from the ACOE this year.

17  
18 **Q. Are there any issues that may prevent DEF from receiving the COL?**

19 A. Possibly, yes, however DEF currently expects that these issues should be resolved. As  
20 I explained above, WEC and DEF are still negotiating an agreement for WEC to  
21 continue COLA support work and to provide DEF continued access to its proprietary  
22 AP1000 data for the Levy COLA. Finalization of this agreement is necessary for DEF  
23 to continue with its Levy COLA to obtain the COL. If DEF is unable to reach an

1 agreement with WEC to support the Levy COLA and provide DEF the access it needs  
2 to the AP1000 information, then, DEF will not be able to continue with the Levy  
3 COLA and DEF may not be able to obtain the COL from the NRC.

4  
5 **Q. What are DEF's current plans for the Levy project if DEF receives the COL?**

6 A. DEF cancelled construction of the Levy project with the execution of the 2013  
7 Settlement Agreement and DEF has now terminated the EPC Agreement. DEF,  
8 therefore, does not have a contract to build the Levy nuclear power plants and DEF  
9 has no definite plan to construct them at this time. DEF will reassess plans for the  
10 construction of nuclear power plants at the Levy site after receipt of the COL. DEF  
11 does plan to continue its work to obtain the COL by August 2015, if it remains  
12 reasonable for the Company to do so. If DEF timely obtains the COL, DEF currently  
13 plans to maintain the COL to preserve the option of building new nuclear at the Levy  
14 site based on, among other factors, energy needs, project costs, carbon regulation,  
15 natural gas prices, existing or future legislative provisions for cost recovery, and the  
16 requirements of the COL.

17  
18 **VI. PROJECT MANAGEMENT AND COST CONTROL OVERSIGHT.**

19 **Q. Has the Company implemented any additional project management and cost  
20 control oversight mechanisms for the LNP since your testimony was filed on  
21 March 3, 2014?**

22 A. No, the Company has not implemented any significant, additional project management  
23 or cost control oversight policies or procedures for the LNP since my March 3, 2014



1 direct testimony. The Company continues to utilize the Company policies and  
2 procedures that I described in that testimony to ensure that wind-down costs for the  
3 LNP are reasonably and prudently incurred. The Company will continue to review  
4 policies, procedures, and controls on an ongoing basis, however, and make revisions  
5 and enhancements based on changing business conditions, organizational changes, and  
6 lessons learned, as necessary. This process of continuous review of our policies,  
7 procedures, and controls is a best practice in our industry and is part of our existing  
8 Levy project management and cost control oversight. Additionally, the Levy project  
9 is reviewed by the Senior Management Committee (“SMC”) on at least a quarterly  
10 basis and more on an as needed basis. Financial decisions are taken to the Transaction  
11 and Risk Committee (“TRC”) and the Board of Directors as necessary pursuant to the  
12 Approval of Business Transactions (“ABT”) policy. Moreover, as I discussed in my  
13 March 3, 2014 testimony, going forward into 2014 the Company continues to ensure  
14 that all COLA-related costs are segregated out and not included in the NCRC.

15  
16 **VII. CONCLUSION.**

17 **Q. Has DEF acted in a reasonable and prudent manner to wind-down the Levy**  
18 **project and disposition the Levy LLE?**

19 A. Yes. DEF dispositioned the LLE in active fabrication and consequently reduced  
20 ongoing contractual costs, resulting in savings compared to the committed contractual  
21 payments, for DEF and its customers. DEF further reduced WEC’s activities and  
22 costs to assist with the LLE disposition and wind down the project. DEF terminated  
23 the EPC Agreement when it was unable to obtain the COL by January 1, 2014, and,

1 does not owe a termination fee under the EPC Agreement. DEF closed out its  
2 relationship with S&W in a timely and cost-effective manner for DEF and its  
3 customers. DEF intends to vigorously pursue and defend its rights under the EPC  
4 Agreement in the current litigation with WEC. DEF's actions have been and will  
5 continue to be reasonable and prudent for DEF and its customers.

6  
7 **Q. Does this conclude your direct testimony?**

8 **A.** Yes it does.

# Long Lead Equipment Current Status

Docket No. 140009-EI  
Duke Energy Florida  
Exhibit No. \_\_\_\_\_ (CMF-8)  
Page 1 of 1

Component	Supplier	Status
Variable Frequency Drives (VFD)	Siemens	Complete
Reactor Coolant Loop (RCL) Pipe	Tioga	Cancelled
Accumulator Tanks (ACT)	Mangiarotti	Cancelled
Passive RHR Heat Exchangers (PRHR)	Mangiarotti	Cancelled
Core Makeup Tanks (CMT)	Mangiarotti	Cancelled
Pressurizer (PZR)	Mangiarotti	Cancelled
Reactor Coolant Pumps (RCP)	C/W EMD	Suspend
Squib Valves	SPX	Suspend
Control Rod Drive Mechanism (CRDM)	WEC/NCM	Suspend
Reactor Vessel Internals (RVI)	WEC/NCM	Suspend
Turbine Generator	Toshiba	Suspend
Reactor Vessel (RV)	Doosan	Suspend
Steam Generator (SG) Tubing	Doosan	Complete
Steam Generator (SG) Balance	Doosan	Suspend



Duke Energy  
EC12L/526 South Church Street  
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Mailing Address:  
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f: 980.373.2551

[christopher.fallon@duke-energy.com](mailto:christopher.fallon@duke-energy.com)

January 28, 2014  
LNP-EPC-2014-0003  
Response (Action) Required YES X /NO

**SENT BY E-MAIL AND HAND DELIVERY**

Stone & Webster, Inc.  
Attn: Mr. Kevin Holderness  
Consortium Project Manager  
CB&I Stone & Webster  
128 S. Tryon Street  
Charlotte, NC 28202

Reference: Levy Nuclear Plant EPC Agreement  
Progress Energy Florida Contract No. 414310

Subject: Notice of Termination

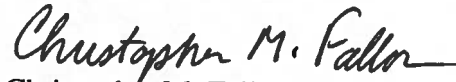
Dear Mr. Holderness:

Duke Energy Florida, Inc. (DEF, formerly known as Progress Energy Florida, Inc.) hereby gives Westinghouse Electric Company and Stone & Webster, Inc. (Contractor) notice that DEF is terminating Contract Number 414310 – the Engineering, Procurement and Construction Agreement (Agreement) for the Levy County Nuclear Plant (Levy) – under Article 22.4(a) (Failure to Obtain Regulatory Approvals), due to DEF's inability to obtain a Combined Construction Permit and Operating License (COL) for Levy by January 1, 2014.

DEF expects that Contractor shall perform all actions required of it under the Agreement upon this termination, including those set forth in Article 22.6 (Actions Required of Contractor upon Termination). DEF proposes that any such actions will be authorized, performed and paid for under the Master Agreement between the parties dated November 18, 1999 (Contract No. 3382), as amended.

Should you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Christopher M. Fallon  
Owner's Project Director  
Vice President, Nuclear Development

cc: Dhiaa Jamil (DE)  
Joe Donahue (DE)  
John Thrasher (DE)  
Bob Morgan (DE)  
Bob Kitchen (DE)  
Betsy Solakoglu (DE)  
Erik Wagner (DE)  
Mike Taylor (DE)  
Michael Franklin (DE)  
John Burnett (DEF)  
David Conley (DE)  
David Fountain (DE)  
Matt Martin (DE)  
Lawrence Denney (DE)  
Kate Nolan (DE)  
Patricia C. Smith (DE)  
Tom Weir (WEC)  
Linda Iller (WEC)  
Lee Stern (WEC)  
Cheryl Halaszynski (WEC)  
Linda Williams (WEC)  
Joni Falascino (WEC)

[LNP-EPCInbox@duke-energy.com](mailto:LNP-EPCInbox@duke-energy.com) (Duke Energy)

[LevyProjectCorrespondenceInbox@westinghouse.com](mailto:LevyProjectCorrespondenceInbox@westinghouse.com) (Westinghouse)

Westinghouse Electric Company, LLC  
Attn: General Counsel  
1000 Westinghouse Drive  
Suite 138  
Cranberry Township, PA 16066

Stone & Webster, Inc.  
Attn: Ed Hubner  
228 Strawbridge Drive  
Morristown, NJ 08057

Stone & Webster, Inc.  
Attn: E.K. Jenkins  
150 Royall Street  
Canton, MA 02021

Background:

DEF authorized WEC to contact Tioga regarding the feasibility and potential cost impact (if any) to place a manufacturing hold on the Reactor Coolant-loop (RCL) piping components currently in manufacturing, to allow DEF time to analyze the disposition of the equipment. Tioga responded that there would be a cost associated with a manufacturing hold and that a change order would need to be negotiated. On November 14, 2013, DEF authorized WEC to contact Tioga regarding its cost should DEF terminate the purchase order and cancel manufacturing of the RCL piping. On January 7, 2014 Tioga provided WEC with an all-inclusive cancellation cost of [REDACTED]. These all inclusive costs include such items as cancelling all material orders, purchase orders and existing contracts, bringing work to an orderly conclusion, demobilization costs, any cancellation charges to third parties, costs to scrap or salvage materials and a credit for the salvage or scrap value, etc. In addition, Tioga acquired and renovated a building in the US to store the RCL piping. If this offer is accepted, DEF and WEC shall have no further liability to Tioga for this purchase order and Tioga will have no further liability to DEF and WEC. Tioga indicated that because the pipes are in the queue to be bent on [REDACTED]

[REDACTED] The table below discusses the potential outcomes for the RCL piping to provide a framework for a decision on the Tioga offer.

Option	Costs	Comments
Terminate PO- stop manufacturing	Cost to terminate PO - [REDACTED]	Salvage value is included in net cost. DEF and WEC shall have no further liability to Tioga for these POs
Complete manufacturing and store RCL piping – sell when market recovers	Cost to complete manufacturing - [REDACTED] <sup>1</sup> Storage, extended warranty, etc.: [REDACTED] <sup>2</sup> PMO and RCL piping PMO [REDACTED] <sup>3</sup> Storage Plans and obtaining Storage estimates: [REDACTED] Duties and Customs: [REDACTED]	Nuclear market is speculative at this point. Great uncertainty concerning the market for this equipment or any reasonable expectation of equipment value.
Complete manufacturing and store RCL piping – unable to sell, scrap at end of storage period	Cost to complete manufacturing - [REDACTED] Storage, extended warranty, etc.: [REDACTED] <sup>2</sup> PMO and RCL piping PMO [REDACTED] Storage Plans and obtaining Storage estimates: [REDACTED] Duties and Customs: [REDACTED]	Scrap value estimated to be approximately [REDACTED] <sup>4</sup> .

<sup>1</sup> [REDACTED]

<sup>2</sup> From Levy EPC [REDACTED]

<sup>3</sup> From email from Linda Iller (WEC) on January 7, 2014.

<sup>4</sup> Estimate [REDACTED]

REDACTED

Complete manufacturing and store RCL piping – Use at Levy	Cost to complete manufacturing - [REDACTED] Storage/Extended Warranty Costs - [REDACTED] PMO and RCL piping PMO [REDACTED] Storage Plans and obtaining Storage estimates: [REDACTED] <sup>3</sup> Duties and Customs: [REDACTED] <sup>3</sup>	New Florida nuclear cost recovery legislation raises concerns over the feasibility of new nuclear in Florida. Need to develop a long-term storage plans. Earliest in-service date is beyond 2025 requiring long-term storage of RCL piping.
---	---	---

Other considerations:

[REDACTED]

- This is the last remaining equipment presently in fabrication under the Levy EPC agreement. For the rest of the equipment to be dispositioned the fabrication has been previously suspended.

[REDACTED]

[REDACTED]

Recommendation:

Given the uncertainty regarding the potential in-service date for Levy, the incremental costs to store the RCL piping and the uncertain market for the RCL piping, the offer from Tioga results in approximately [REDACTED] in savings versus completion of the equipment it is recommended that DEF terminate the Tioga purchase order and cancel manufacturing of the RCL piping.

<sup>5</sup> Have not been provided an estimate for long-term storage, escalated 5 year storage costs for an additional 7 years.





CHRISTOPHER M. FALLON  
Vice President  
Nuclear Development

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christopher.fallon@duke-energy.com

January 9, 2014  
LNP-EPC-2014-0001

Response (Action) Required YES X / NO \_\_\_

Stone & Webster, Inc.  
Attn: Kevin Holderness  
Consortium Project Manager  
CB&I Stone & Webster  
128 S. Tryon Street  
Charlotte, NC 28202

- References: 1) E-mail from Linda Iller (WEC) to Christopher Fallon (DEF), Tioga PO –  
Cancellation Offer, sent January 7, 2013  
2) Levy Nuclear Plant Project EPC Agreement PEF Contract No. 414310

Subject: Levy Long Lead Equipment Disposition for the Tioga Manufactured Equipment

Dear Mr. Holderness:

The purpose of this letter is to inform the Consortium of Duke Energy Florida's (DEF) acceptance of the cancellation offer for all components Tioga is manufacturing for Levy Units 1 and 2 as provided in Reference 1. This offer includes all cancellation costs from Tioga in the total amount of [REDACTED]

[REDACTED] After payment of this amount, DEF will have no further liability to Tioga or the Consortium for the long lead equipment to be supplied by Tioga for Levy Units 1 and 2.

We ask that you proceed with cancellation of the Tioga orders, pending the issuance of a Change Order to formalize our agreement as required by Section 22.1(h) of Reference 2 (which was added by Amendment Number Three).

DEF appreciates the Consortium's assistance in this matter. Should you have any questions, please contact either Mike Franklin (919-546-6967) or myself.

LNP-EPC-2014-0001  
Page 2 of 2

Sincerely,



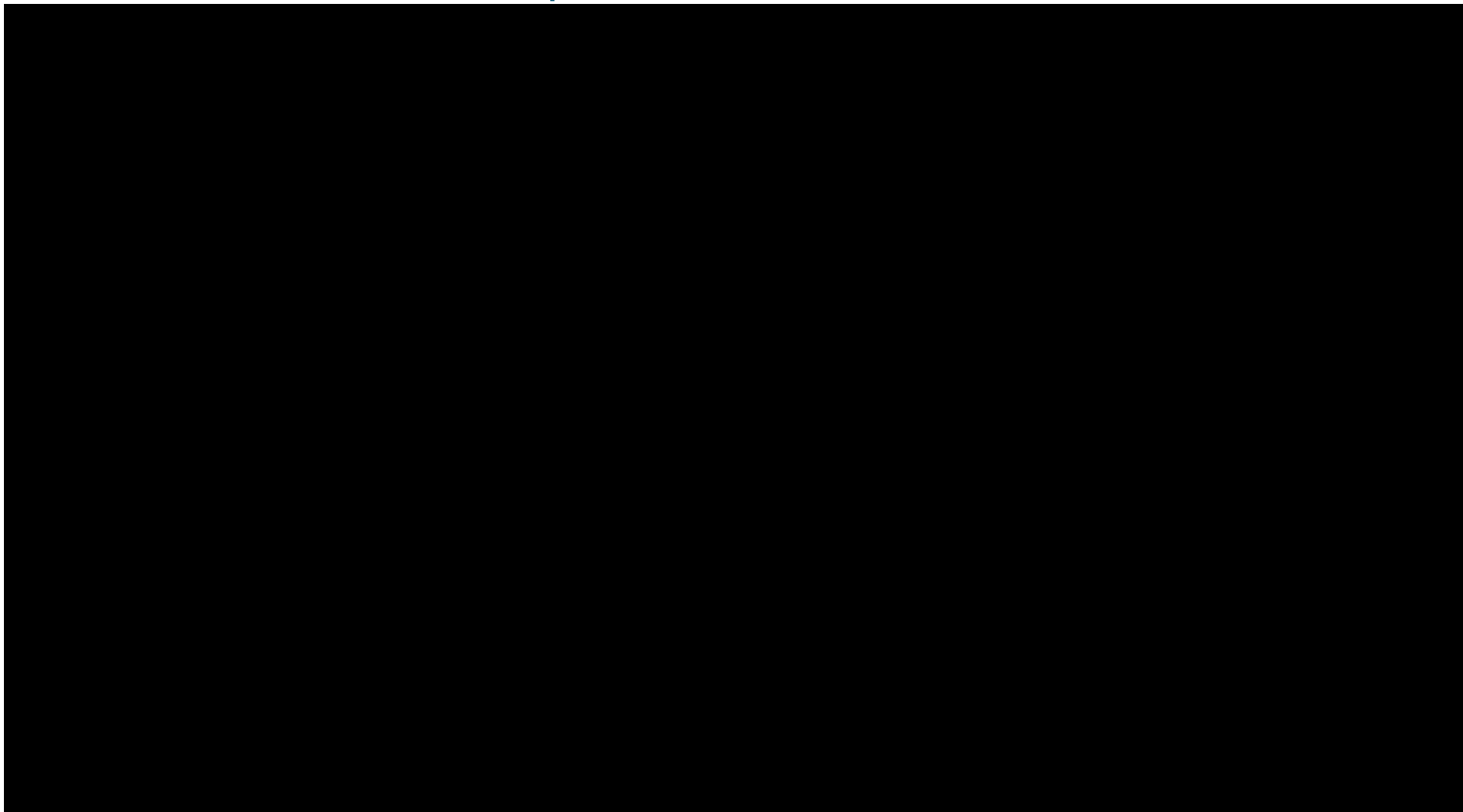
Christopher M. Fallon  
Owner's Project Director  
Vice President, Nuclear Development

cc: Dhiaa Jamil (DE)  
John Thrasher (DE)  
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REDACTED

# General Process for Disposition of LLE

Docket No. 140009-EI  
Duke Energy Florida  
Exhibit No. \_\_\_\_ (CMF-12)



# COLA Schedule

Docket No. 140009-EI  
Duke Energy Florida  
Exhibit No. \_\_\_\_\_ (CMF-13)  
Page 1 of 1

<i>Milestone</i>	<i>Current Schedule</i>
ACRS Review	12/07/11 – A 01/18/13 – A December 2014
FSER	March 2015
FEIS	April 2012 – A
Contested Hearing	11/1/12 – A
Waste Confidence Resolved	October 2014
Mandatory Hearing	July 2015
COL Issued	August 2015

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing has been filed via Web Based Electronic Filing and has been furnished to counsel and parties of record as indicated below via electronic mail this 1st day of May, 2014.

*/s/ Blaise N. Gamba*  
\_\_\_\_\_  
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Keino Young  
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