

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery
Clause.

DOCKET NO.: 140009-EI

FILED: July 2, 2014

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-14-0082-PCO-EI, issued February 04, 2014, hereby submit this Prehearing Statement.

APPEARANCES:

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On behalf of the Citizens of the State of Florida

1. **WITNESSES:**

The Citizens do not intend to call any witnesses.

2. **EXHIBITS:**

None at this time.

3. STATEMENT OF BASIC POSITION

DUKE

The focus of the 2014 NCRC hearing related to Duke Energy of Florida, Inc. (DEF or Duke), relates primarily to the wind-down and equipment disposal/salvage efforts of the Company related to both failed nuclear projects – Crystal River Unit No. 3 (CR3) and the Levy Nuclear Plant Project (LNP). The OPC’s primary effort in this docket is to have the Commission explicitly and expressly order Duke to record a credit in the 2014 cost accounting in the amount of \$54,127,100 which was previously paid by Duke’s customers for LNP equipment that was never manufactured.

At this time, the CR3 asset disposal (Investment Recovery) efforts are still in the formative stages (insofar as the testimony and discovery cycle are concerned) and not really ripe for Commission determination. The OPC submits that prudence determination by the Commission on any of DEF’s activities related to disposal of the CR3 EPU-related assets is not warranted at this time. The OPC, however, does not take a position with respect to the specific costs submitted for recovery in 2013 related to disposal of CR3 assets that have been recovered through the NCRC. Likewise, OPC does not take issue with Duke’s request for recovery of the amortization of the unrecovered EPU balance (\$262.1 million at year end 2013) in the amount of \$63.2 million (including minor project exit and wind down costs.) The Commission has previously approved recovery of the vast majority of these costs or costs associated with previously approved EPU activities. The OPC has no basis to dispute these amounts.

The OPC does object to any advance prudence determination on the course of action upon which Duke has embarked in order to dispose of CR3 assets. Since that process is underway, the only reasonable course of action is to withhold any advanced prudence

determination and to evaluate DEF's actions once they are concluded. The OPC's position is somewhat precautionary inasmuch as Duke has not overtly asked for such an advance determination on the prudence of their activities. Even so, the OPC submits that any recovery of asset disposition or wind-down costs does not carry with it the necessary implication that, overall, the investment recovery activities or efforts were necessarily reasonable or prudent. Any determination as to the prudence of the overall Duke asset disposal plan must be measured in terms of the overall disposition effort as executed by Duke, in light of all the circumstances encountered as Duke makes its decisions. At this time, only one major asset – the Point of Discharge (POD) cooling tower (which is only partially related to the EPU project) – has been sold. The secondary market sale of major utility generation components is a complicated matter that involves matters of warranty and insurance and engineering judgment, among others, and thus does not lend itself to prior prudence determination.

With respect to the LNP asset disposal attempts, the OPC's position is similar to the one taken regarding the CR3 asset disposition attempts. The OPC, however, does not take a position with respect to the specific costs submitted for recovery in 2013 related to disposal of LNP assets (LLE or Long Lead Equipment) that have been recovered through the NCRC. The LNP asset disposal process has been severely complicated by the litigation (suit and counter-suit) and ongoing commercial disputes between Duke and Westinghouse Electric Company (WEC), in combination with Duke's desire to continue to pursue the license for the LNP. As with the CR3 initiative, the LNP asset disposal attempts have not reached a point of maturity that makes that process ripe for a prudence determination. Further complicating the matter is that much of the documentation bearing on this issue is subject to a claim of confidentiality. This severely jeopardizes the public's ability to fully understand the context surrounding Duke's asset disposal

attempts. In turn, this secrecy complicates the Commission's ability to explain its rationale for whatever determination it might ultimately make as to the prudence of the DEF LNP asset disposal attempts. Given these circumstances, the OPC submits that Duke's actions in disposing of the LLE should be evaluated when the relevant facts are in. In 2014, the major factors impacting the LLE disposal will not have occurred in time to consider in the hearing process. Thus, the only reasonable course of action is to withhold any advance prudence determination and evaluate DEF's actions once they are concluded.

The OPC has raised two specific issues. The most significant one is related to \$54,127,100 in payments for LLE that Duke has asked WEC to return since WEC never initiated manufacture of the LLE and given that the LNP Engineering, Procurement and Construction (EPC) contract has been terminated as of January 28, 2014. Duke has also sued WEC in federal court seeking a return of the \$54 million. The customers have paid these amounts.

There are several factors supporting the Commission's action to ensure these moneys are recaptured for the benefit of the customers. First, the customers have already paid for these LLE items (Turbine Generators and Reactor Vessel Internals), as a part of an LNP project that has visited approximately \$1.5 billion in costs on them and which was abandoned before a single shovel of dirt was turned. Second, the Commission has jurisdiction over the payment because the Commission already found the \$54 million payment prudent (assumedly, because it was intended to result in the *actual manufacture* of these LLE) and because Duke has already collected the money from its customers. Third, Duke made a claim to WEC for the return of the payment and Duke followed up that claim by suing WEC in Federal Court for the payment's return. These factors support immediate accounting of the demanded repayment in the NCRC to the benefit of customers. These factors further distinguish the \$54 million refund demand from any other type

of WEC-related, “blue sky” claim that might be asserted in a courtroom or in this docket. Given the Commission’s mandate to protect customers and in the wake of the spectacular double failure of DEF’s two Florida nuclear projects, the exercise of positive action by the Commission is compelled. Duke’s \$54,127,100 refund demand is something that the company cannot disavow – given its claims and verified pleading in Federal court – and the full amount should be credited to the customers.

By stark contrast, any claim in Federal court by WEC – an entity not under the jurisdiction of the Florida Public Service Commission – for payment under the EPC would not even remotely meet the standard for recovery in the NCRC. Duke has steadfastly denied the validity of the WEC contract claim(s). Since executing the ill-advised and instantaneously doomed EPC on December 31, 2008, Duke has never presented dollar amounts associated with WEC’s claim to the Commission for cost recovery. More to the point, Duke has never presented to the Commission the activities underlying the WEC-claim dollars for its consideration in decisionmaking or for a prudence determination. In fact, Duke provided voluminous, enthusiastic, repetitive and unequivocal testimony (Lyash and Elnitsky) to the Commission in 2010 that affirmatively represented that there were no such costs (such as those comprising WEC’s pending Federal court allegations) that would be part of the LNP/EPC termination cost obligations. This testimony was given at the crucial juncture when cancellation was the presumptive, default position in this same testimony Duke presented in that hearing cycle; however, the Commission relied upon Duke’s representations to authorize continued recovery of LNP costs through the receipt of the COL.

There is nothing about the allegations of a non-jurisdictional third party which provide a basis for the dollars underlying WEC’s allegations to be considered in this docket. Duke can

hardly assert with a straight face before the Commission that the WEC claims that the Company vigorously denies and contests in Federal court would meet a standard of reasonableness and prudence for cost recovery. Conversely, a refund claim for a \$54 million payment which Duke induced the Commission to impose on customers in 2009 and now vigorously asks the Federal court to order repaid, must be treated as a credit in 2014 as if it is being returned to the customers. This treatment is warranted because the Commission has already evaluated and considered these costs for prudence and recovery. Duke now is essentially recanting the basis for the original recovery. Thus, reversal in the form of a credit should be automatic.

Specifically, the OPC asks the Commission to direct Duke to record, effective January 28, 2014, a credit in the amount of \$54,127,100 in the ongoing LNP cost accounting as reflected in Schedule TGF-5. This step would ensure the customers that, given Duke's assertions and verified claims in Federal court, this refund is expected and should not be compromised in litigation with WEC. Given the levelized recovery of LNP costs in 2014 and 2015, the impact of this credit may not immediately be translated to lower customer bills in 2014-2015. Nevertheless, the recognition in the parallel cost accounting schedules will provide a powerful reassurance to customers that both Duke and the Commission are committed to recover at least this \$54 million for the customers in the aftermath of the ill-fated abandoned LNP project. It is possible that the credit could impact 2015 billings, but at this time it is not known with certainty if that is the case.

The other issue raised by the OPC relates to whether the Commission should establish any conditions related to the attempts by Duke to sell, salvage or otherwise dispose of LNP LLE. This issue will be developed at hearing based on information that is now subject to claims of confidentiality (primarily by WEC, but asserted in this docket by Duke).

FPL

In this hearing cycle, as in the past, FPL appears to have appropriately limited its expenditures on planned nuclear units Turkey Point 6&7 to those activities necessary to process its Combined Operating License Application (COLA). For that reason, OPC will not oppose the Turkey Point 6&7-related amounts for which FPL seeks recovery in this proceeding.

However, based on FPL's own cost projections, the message of FPL's 2014 feasibility study is that the economic feasibility of Turkey Point 6&7 is dubious at the present time. As Dr. Sim acknowledges in his Exhibit SRS-1, of the seven comparisons between Turkey Point 6&7 and FPL's alternative performed with a 40-year horizon, only two scenarios show the nuclear units as being cost-effective for customers. The results of FPL's studies improve when it employs a 60-year horizon, but this exercise requires FPL to project even farther into the future and, therefore, involves greater uncertainty regarding the future costs of fuel, materials, and labor; regulatory developments; customer demand; and other unknowns. Even when the 60-year analyses are taken into account, on an overall basis only half of the scenarios FPL studied are predicted to be cost-effective to customers.

In testimony and exhibits, FPL isolates the fuel savings portions from the comparisons of alternatives, uses "nominal" cumulative fuel savings values (that are not expressed in net present value), and presents them separately, as though fuel benefits are independent of the massive capital costs that must be incurred to achieve them. However, focusing on an individual component of the project's cost/benefit equation does not displace the importance of *overall* cost-effectiveness or change the outcome of FPL's studies.

The equivocal nature of FPL's 2014 feasibility study, the project's poorer showing relative to a year ago, and announcements of delays and projected cost increases elsewhere in the

nuclear industry hardly instill confidence in FPL's enormously expensive nuclear undertaking. Fortunately, in addition to the annual updates required by Commission rule, the Legislature's 2013 amendment to the nuclear advance cost recovery statute now requires a utility to demonstrate economic feasibility anew when it seeks authority to incur post-COL preconstruction expenditures, and again when it seeks authority to begin construction. If it accepts FPL's less-than-compelling 2014 feasibility study for Turkey Point 6&7, the Commission should emphasize to FPL and its customers that it will use the additional milestones specified by the statute to protect customers in the event that future analyses based on better information fail to demonstrate that the project is economic.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

DEF Levy Project

Issue 1: Should the Commission find that during the years 2012 and 2013, DEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project?

OPC: No position.

Issue 2: Has DEF reasonably accounted for COL pursuit costs pursuant to paragraph 12(b) of the 2013 revised and restated stipulation and settlement agreement?

OPC: At this time, it appears that Duke has complied with the 2013 revised and restated stipulation and settlement agreement, insofar as the accounting for costs which it has directly attributed to or classified as COL pursuit and which were expended in 2013 and which the company has estimated for 2014. At this point in the 2014 hearing cycle, given the uncertainty relating to the ongoing dispute with WEC and pending discovery, the OPC will be unable to formulate a position on, but does not waive any rights with respect

to, whether Duke's efforts to achieve the LNP COL might have other associated costs that have been or will be submitted for NCRC recovery, but which are appropriately attributable to Duke's shareholders.

Issue 2A: What jurisdictional amounts should the Commission approve as DEF's final 2012 and 2013 prudently incurred cost for the Levy Units 1 & 2 project?

OPC: No position.

Issue 3: Should the Commission approve DEF's Levy Project exit and wind down costs and other sunk costs as specifically proposed for recovery or review in this docket?

OPC: No position.

Issue 4: What action, if any, should the Commission take in the 2014 hearing cycle with respect to the \$54,127,100 in Long Lead Equipment milestone payments, previously recovered from customers through the NCRC, which were in payment for Turbine Generators and Reactor Vessel Internals that were never manufactured?

OPC: The Commission should exercise its jurisdiction to direct Duke to recognize a credit in favor of Duke's customers for \$54,127,100 in Schedule TGF-5, effective January 28, 2014, to reflect Duke's position taken in a federal lawsuit that it used that amount of customer-provided funds to pay Westinghouse Electric Company (WEC) for the manufacture of equipment which never occurred AND that Duke wants its (read "the customers' money") money back from WEC. Given that the EPC contract and the LNP project have been terminated, the current NCRC hearing cycle is the first opportunity for the Commission to assert jurisdiction over Duke's demand for return of these funds. The Commission should take every measure at its disposal to protect customers from suffering even more harm as a result of the cancelled project. Recognizing the credit explicitly in Schedule TGF-5 now will ensure that customers will not be at risk of losing the value of their property (the \$54,127,000 they paid for work never done) through actions potentially taken on their behalf by Duke in the Federal lawsuit – whether by compromise of the claim or otherwise. The Commission has authority and jurisdiction over these dollars and its order directing the credit will send a strong signal to Duke that it expects the Company to retrieve these funds for its customers.

Issue 5: What restrictions, if any, should the Commission place at this time on Duke's attempts to dispose of Long Lead Equipment?

OPC: Based on evidence to be considered at hearing – much of which is subject to a claim of confidentiality – the Commission should consider placement of conditions or restrictions on steps that Duke is authorized to take (should it expect to have its actions deemed prudent by the Commission for NCRC recovery) when it disposes of LLE. The measure, if any, should be appropriately tailored to the circumstances given the information to be adduced at hearing. At this time, the Commission should withhold any advanced prudence determination on Duke's attempts and evaluate DEF's actions once they are concluded.

DEF CR3 Uprate Project

Issue 6: Should the Commission find that during the years 2012 and 2013, DEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project?

OPC: No position.

Issue 7: What jurisdictional amounts should the Commission approve as DEF's final 2012 and 2013 prudently incurred cost for the Crystal River Unit 3 Uprate project?

OPC: No position.

Issue 8: Should the Commission approve DEF's Crystal River Unit 3 Uprate Project exit and wind down costs and other sunk costs as specifically proposed for recovery or review in this docket?

OPC: No position.

DEF Ultimate Issue

Issue 9: What is the total jurisdictional amount to be included in establishing DEF's 2015 Capacity Cost Recovery Clause Factor?

OPC: The Commission should approve the amounts resulting from the Revised and Restated Stipulation and Settlement Agreement (RRSSA). For the LNP project, the customer impact is fixed as the \$3.45/month residential impact (with corresponding customer impacts as shown in Exhibit 5 to the RRSSA). For the CR3 UPU costs, the factor should be based on the amortization of unrecovered costs as set forth in the RRSSA in Paragraph 9. The Commission has previously approved recovery of the vast majority of these costs or costs associated with previously approved EPU activities. The OPC has no basis to dispute these amounts. There are also very minor exit and project wind-down costs with which OPC does not have a basis to take issue.

FPL

FPL TP 6 & 7 Project

Issue 10: Should the Commission approve what FPL has submitted as its 2014 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C?

OPC: FPL's 2014 analysis of the economic feasibility of Turkey Point 6&7 is equivocal. If the Commission approves FPL's 2014 study, its approval necessarily will be subject to FPL's obligations, under the amended advance recovery statute, to demonstrate the economic feasibility of the planned nuclear units anew when it seeks authority to incur additional preconstruction costs and again when it requests authority to incur construction costs. OPC incorporates its statement of basic position by reference.

Issue 10A: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project and is that estimated cost reasonable? [Disputed Issue – proposed by FIPUG, disputed by FPL]

OPC: No position.

Issue 10B: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility and is that estimated commercial operation date reasonable? [Disputed Issue – proposed by FIPUG, disputed by FPL]

OPC: No position.

Issue 11: Should the Commission find that FPL's 2013 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

OPC: No position.

Issue 12: What jurisdictional amounts should the Commission approve as FPL's final 2013 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

OPC: No position.

Issue 13: What jurisdictional amounts should the Commission approve as reasonably estimated 2014 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

OPC: No position.

Issue 14: What jurisdictional amounts should the Commission approve as reasonably projected 2015 costs for FPL's Turkey Point Units 6 & 7 project?

OPC: No position.

FPL EPU Project

Issue 15: Should the Commission find that FPL's 2013 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Extended Power Uprate project?

OPC: No position.

Issue 16: What jurisdictional amounts should the Commission approve as FPL's final 2013 prudently incurred costs and final true-up amounts for the Extended Power Uprate project

OPC: No position.

FPL Ultimate Issue

Issue 17: What is the total jurisdictional amount to be included in establishing FPL's 2015 Capacity Cost Recovery Clause factor?

OPC: No position.

5. STIPULATED ISSUES:

None at this time.

6. PENDING MOTIONS:

None

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR
CONFIDENTIALITY:

None.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 2nd day of July, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing **PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL** has been furnished by electronic mail on this 2nd day of July, 2014.

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