

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant
Cost Recovery Clause

Docket No. 150009-EI

In Re: Fuel and Capacity Clause

Docket No. 150001-EI

Filed: March 19, 2015

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION TO DISMISS DUKE ENERGY FLORIDA, INC'S PETITION
TO END THE FIXED LEVY NUCLEAR PROJECT RATE
COMPONENT OF THE NUCLEAR COST RECOVERY
CLAUSE CHARGES AND FOR EXPEDITED CONSIDERATION OF THE MOTION**

The Florida Industrial Power Users Group (FIPUG), pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Motion to Dismiss Duke's Petition to End the Fixed Levy Nuclear Project Rate Component of the Nuclear Cost Recovery Clause Charges and For Expedited Consideration of the Motion. The grounds for this motion are set forth below:

1. On March 2, 2015 Duke filed a Petition to end Duke's collection of a \$3.45 cent charge per 1000 kWh for residential customers that is commonly referred to as the Levy nuclear power cost recovery charge. Duke's petition is unauthorized, unnecessary, and inappropriate, as the Commission has already considered and ordered Duke to stop collecting the \$3.45 Levy nuclear power cost recovery charge, to ensure that ratepayers will be credited the sum of \$54 million dollars.

2. Duke previously sought, unsuccessfully, to recover from ratepayers \$54 million dollars for certain equipment that Duke's contractor, Westinghouse, never produced. On October 2, 2014, this Commission considered the issue, after the submission of evidence and argument, and decided that the ratepayers should be credited the sum of \$54 million dollars.

See, excerpt from Commission Agenda conference attached as Exhibit A to FIPUG's motion.

3. The Commission rightly found that Duke's ratepayers should not be charged for equipment never manufactured, and accordingly, should receive a credit of \$54 million dollars.

The following excerpts from the Commission's October 2, 2014 Agenda Conference are telling:

Commissioner Balbis: Obviously, if customers will never receive this equipment, it is not prudent. And I do believe that we have a mechanism to make the appropriate adjustment....So, I think that one other way we can make sure that customers are made whole is to make an immediate adjustment either in the non-cash accrual portion of that schedule or simply reducing the total jurisdictional uncollected amount by \$54 million.

Agenda Conference Transcript, p. 25-26. (Emphasis added).

Commissioner Brown: To me, I don't believe that it's fair that customers are being asked to pay for longer than is possibly necessary. **It's also not appropriate for customers to pay for equipment that was never provided.** And I know that \$3.45 may not sound like a lot to some people, but it is a lot and it is a lot for these Duke customers. And, Commissioners, I do believe we have the duty to do what is fundamentally fair, right and in the public interest, and deny staff's recommendation (staff had recommended that Duke recover the disputed \$54 million sum).

Agenda Conference Transcript, p. 19. (Emphasis added).

4. The Commission approved a motion by Commissioner Brown to "reflect the reduction of \$54 million," which was clarified so that the \$54 million "will in essence credit the customers the \$54 million." Agenda Conference, p. 32. There were no conditions or amendments placed on Commissioner Brown's motion and the transcript of the evidentiary hearing speaks for itself. Thus, the Commission considered, debated and approved a credit of \$54 million dollars to the Duke ratepayers that hinged on the Commission's determination that it is imprudent and inappropriate to require Duke's ratepayers to pay for equipment that was never manufactured.

5. The opening paragraph of the Commission's October 2, 2015 press release notifying the public of the Commission's decision is telling:

The three-member panel of the Florida Public Service Commission (PSC) today ordered that a credit be given to customers for \$54 million in equipment that was never received by the Levy Nuclear Project (LNP).

See, Florida Public Service Commission News Release of October 2, 2014. There were no qualifications or caveats in the announcement.

6. Duke's Petition, while styled as a petition to "end" the Levy nuclear cost recovery charge, strays into other topics, such as whether a carrying charge should be imposed and collected (or imposed and accrued) on the \$54 million dollar sum that the Commission has already determined should be credited to ratepayers. See, Duke Petition, paragraphs 12 and 15.

7. Put simply, the Commission has already considered and decided whether Duke's ratepayers should pay \$54 million for equipment never manufactured. Duke's March 2, 2015 "Petition" is simply not needed and should be dismissed. The Commission already voted that Duke's ratepayers should not have to pay \$54 million dollars for equipment never made, and thus never provided to Duke. If Duke was unsure or unclear about the Commission's Order, it should have filed a motion for reconsideration of the \$54 million dollar credit order. No such motion was filed. Duke's attempt to have the Commission reconsider its decision to have Duke stop collecting money for equipment that was never produced should not be entertained for many reasons, including its untimeliness. See, Rule 25-6.0424, Florida Administrative Code (A motion for reconsideration must be filed within 15 days after the issuance of the order). As pointed out above, two Commissioners expressly commented that charging ratepayers for equipment never produced is neither prudent nor appropriate. The Commission already directed Duke to stop collecting the monthly nuclear fee charge, and surely, does not need to so order

again.

8. Duke's Petition should be dismissed as an unnecessary, unauthorized and untimely motion for rehearing. Duke has already been ordered to stop collecting the \$3.45 cent charge per 1000 kWh for residential customers as it relates to the "asked and answered" \$54 million dollar question. Nothing more is needed. Duke's Petition should be dismissed and Duke should stop collecting the \$3.45 cent charge.

9. FIPUG asks for expedited consideration of this motion, and if necessary, Duke's Petition and the Response filed by the Office of Public Counsel, the Florida Retail Federation and White Springs Agricultural Chemicals, Inc. d/b/a PSC Phosphate. The ability of ratepayers to stop paying the \$3.45 nuclear recovery fee is important and meaningful. Accordingly, this matter should be considered on an expedited basis for the same reasons the Commission is acting expeditiously to consider FPL's Petition for Mid-Course Correction to Fuel Adjustment Factors in Docket Number 15-0001 to lower ratepayers' fuel charge.

WHEREFORE, for the foregoing reasons, FIPUG asks that the Commission dismiss Duke's Petition to end the fixed Levy nuclear project rate component of the nuclear cost recover clause charges and for such other relief as the Commission deems appropriate.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of FIPUG's Motion to Dismiss, was served by Electronic Mail this 19th day of March, 2015, to the following:

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P R O C E E D I N G S

1
2 **COMMISSIONER BRISÉ:** So we are going to
3 convene the special agenda, Docket Number 140009-EI, the
4 NCRC.

5 **MS. LEWIS:** Good morning, Commissioners.

6 **COMMISSIONER BRISÉ:** Okay. Good morning. I
7 tell you how we're going to do this. We're going to
8 take up the FPL portion first, and so you all will make
9 your introductions for the issues. And then we will go
10 through them and vote on each item and move that way.
11 Okay?

12 So starting with Issue 10.

13 **MR. GARL:** Commissioners, as you recall, you
14 approved a procedural motion in which all the parties
15 waived witness cross-examination and post-hearing briefs
16 on the remaining contested issues for FPL. The
17 Intervenors therefore did not present arguments on these
18 issues, only positions.

19 Issue 10 asks if the Commission should approve
20 FPL's 2014 analysis of the long-term feasibility of
21 completing the Turkey Point Units 6 and 7 project.
22 While the Intervenors stated that the Commission should
23 not approve FPL's filing, none provided support or
24 offered alternative analysis for their position.

25 Staff reviewed the economic, regulatory,

1 technical, funding, and joint ownership factors in FPL's
2 analysis and identified no error or flaw that would
3 render the analysis unreasonable. At this stage of the
4 project there continues to be uncertainty with respect
5 to when the NRC will issue the COL and other factors.
6 Low natural gas price forecasts and air emission
7 allowances resulted in a decline in the estimated
8 break-even range relative to last year. However, staff
9 believes the analysis demonstrates completion of the
10 Turkey Point project is feasible. Staff recommends
11 approval of FPL's analysis.

12 **COMMISSIONER BRISÉ:** Thank you very much.

13 Commissioners, are there any questions or
14 comments on Issue 10?

15 Commissioner Brown.

16 **COMMISSIONER BROWN:** We're still using the
17 lights here.

18 You know, I wanted to just reiterate,
19 Commissioners, that this is an extremely important
20 project for Florida, for FPL, for its customers. I
21 think the evidence in the record was clear, and I'm
22 confident that staff will continue to analyze annually
23 the cost-effectiveness of this very important project as
24 they move forward, so I am supportive of it.

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

1 Balbis.

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

3 I want to echo some of the comments Commissioner Brown
4 has made. I think that Florida Power & Light continuing
5 to move forward with these projects are very important
6 for the State of Florida. I think with us having
7 reduced options for baseload generation and looming EPA
8 guidelines and requirements for carbon reduction makes
9 these projects even more important.

10 Specifically in this docket in reviewing the
11 long-term feasibility for the project that is required,
12 I was comforted to see that in the 2014 break-even
13 analysis for the total cost of the plans, both with and
14 without Turkey Point 6 and 7, in each of the scenarios,
15 which depend on environmental compliance costs and fuel
16 costs, the resource plans with Turkey Point 6 and 7 were
17 cheaper than any of the resource plans without it. So
18 that on top of the other analysis that FPL has done and
19 that staff has done, I'm comfortable that the costs
20 associated with these projects are prudent for customers
21 to pay for in the next year.

22 **COMMISSIONER BRISÉ:** All right. Thank you
23 very much.

24 Is there a motion?

25 **COMMISSIONER BROWN:** Move staff

1 recommendation.

2 **COMMISSIONER BALBIS:** Second.

3 **COMMISSIONER BRISÉ:** Okay. It's been moved
4 and seconded. All in favor, say aye.

5 (Vote taken.)

6 All right. Thank you very much.

7 Moving on to 10A.

8 **MR. GARL:** Thank you, Mr. Chairman.

9 Issues 10A and 10B are both informational
10 issues asking, first, the current total estimated cost
11 of the Turkey Point project and the estimated planned
12 commercial operation date of the project.

13 Staff recommends approval of the amounts FPL
14 reported, which is a range of \$12.6 billion to
15 \$18.4 billion, and operational dates of 2022 and 2023.

16 **COMMISSIONER BRISÉ:** All right.

17 Commissioners? Commissioner Brown.

18 **COMMISSIONER BROWN:** I would move staff
19 recommendation on Issue 10A.

20 **COMMISSIONER BALBIS:** Second.

21 **COMMISSIONER BRISÉ:** Okay. It's been moved
22 and seconded. All in favor, say aye.

23 (Vote taken.)

24 Okay. 10B, I think we need a motion.

25 **COMMISSIONER BROWN:** Move staff

1 recommendation. But, Mr. Garl, please .

2 **MR. GARL:** Just reiterating, the staff
3 recommends approval of the dates reported by FPL, which
4 are 2022 and 2023. While the Intervenors speculated
5 that the actual dates would be different, no alternative
6 estimated was provided.

7 **COMMISSIONER BRISÉ:** Okay. Thank you.

8 Commissioner Balbis.

9 **COMMISSIONER BALBIS:** I have one question for
10 staff. Obviously the enacting of Senate Bill 1472 into
11 law clearly affects the Nuclear Cost Recovery Clause.
12 With the estimated in-service dates, did those take into
13 account the new statute and provisions of the statute?

14 **MR. GARL:** Yes, Commissioner, they do.

15 **COMMISSIONER BALBIS:** Okay. Thank you. With
16 that, I second Commissioner Brown's motion to approve
17 staff's recommendation on Issue 10B.

18 **COMMISSIONER BRISÉ:** All right. Any further
19 discussion? Okay. Seeing none, it's been properly
20 moved and seconded. All in favor, say aye.

21 (Vote taken.)

22 Okay. Thank you. Moving on to Issue 12.

23 **MR. BREMAN:** Issue 12 asks what jurisdictional
24 amount should the Commission approve as FPL's final 2013
25 prudently incurred costs and the final 2013 true-up

1 amount for the Turkey Point project. FPL's activities
2 during 2013 focused on efforts to secure the necessary
3 permits and licenses. FPL engaged in dependent
4 consultants to review FPL's project oversight. Each
5 concluded that FPL had prudently incurred its 2013
6 costs.

7 Staff audited FPL's financial records and
8 project management. No findings were reported. No
9 other independent review or testimony was presented.
10 Staff reviewed FPL's findings, the filings that staff
11 audit witnesses provided, and other relevant discovery.

12 Based on its review, staff recommends the
13 Commission approve \$33,045,060 as FPL's final 2013
14 prudently incurred jurisdictional costs.

15 The resulting 2013 final true-up amount is an
16 over recovery of \$463,650, which will be used as a final
17 true-up amount in Issue 17.

18 **COMMISSIONER BRISÉ:** Okay. Commissioners, any
19 questions?

20 **COMMISSIONER BALBIS:** Mr. Chairman, I move
21 approval of staff's recommendation on Issue 12.

22 **COMMISSIONER BROWN:** Second.

23 **COMMISSIONER BRISÉ:** Okay. It's been moved
24 and properly seconded. Any further discussion? Seeing
25 and hearing none, all in favor, say aye.

1 (Vote taken.)

2 All right. Thank you.

3 Moving on to Issue 13.

4 **MR. BREMAN:** Issue 13 asks what jurisdictional
5 amount should the Commission approve as reasonably
6 estimated 2014 costs and estimated 2014 true-up amounts
7 for FPL's Turkey Point project.

8 During 2014, FPL anticipated it would secure
9 its site certification and engage in efforts necessary
10 to support the NRC review process. FPL's filing only
11 indicated costs for licensing and permitting activities.
12 Consistent with staff's verification of FPL's
13 calculations and review of the records, staff recommends
14 the Commission approve as reasonable FPL's estimated
15 2014 cost of \$24,268,636. The estimated 2014 under
16 recovery true-up should be of -- \$958,251 should be used
17 in Issue 17 to calculate FPL's net recovery amount.

18 **COMMISSIONER BRISÉ:** Okay. Commissioners, any
19 questions?

20 Commissioner Balbis.

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

22 I just have one clarification. And,
23 Mr. Breman, I know you stated this, but just to confirm
24 once again that those costs that are anticipated to be
25 incurred are solely for the licensing and permitting

1 activities of the project.

2 **MR. BREMAN:** Correct.

3 **COMMISSIONER BALBIS:** Okay. Thank you. And
4 with that, I move staff's -- approval of staff's
5 recommendation on Issue 13.

6 **COMMISSIONER BROWN:** Second.

7 **COMMISSIONER BRISÉ:** Okay. It's been moved
8 and properly second. Any further discussion? Seeing
9 none, all in favor, say aye.

10 (Vote taken.)

11 All right. By your action, you have approved
12 Issue 13.

13 Moving on to Issue Number 14.

14 **MR. BREMAN:** Commissioners, Issue 14 asks what
15 jurisdictional amount should the Commission approve as
16 reasonably projected 2015 costs for FPL's Turkey Point
17 Units 6 and 7 project.

18 FPL projected that during 2015 it will be
19 implementing site certification requirements and
20 addressing any site certification appeals. FPL
21 estimated that the NRC review of its COL application
22 would come in late 2017. FPL's filing only identified
23 costs associated with licensing and permitting
24 activities.

25 Based on a review of the record and FPL's

1 calculations, staff recommends that the Commission
2 approve \$19,342,894 as FPL's reasonably projected
3 jurisdictional 2015 costs for the Turkey Point project.

4 **COMMISSIONER BRISÉ:** All right. Thank you
5 very much.

6 Commissioner Brown.

7 **COMMISSIONER BROWN:** Yes. And, Commissioners,
8 I would like to point out that only SACE opposed this
9 amount, and that stemmed from their belief and their
10 concerns in the long-term feasibility of completing the
11 project. None of the other Intervenors contested this
12 issue. And with that, I would move staff
13 recommendation. Actually I move staff recommendation on
14 Issues 14 and 17 as a fallout.

15 **COMMISSIONER BRISÉ:** Okay. Is there a second?

16 **COMMISSIONER BALBIS:** Second.

17 **COMMISSIONER BRISÉ:** There's a second to
18 moving on Issues 14 and 17. Any further discussion?
19 All right. Seeing none, all in favor, say aye.

20 (Vote taken.)

21 By your motion, we have -- by your action, you
22 have approved Issue 17, so therefore we have addressed
23 all of the issues related to the FPL issue topic, Issue
24 Numbers 10, 10A, 10B, 12, 13, 14, and 17.

25 At this time we're going to go ahead and move

1 to the Duke Energy Florida issue topic beginning with
2 Issue Number 2.

3 **MS. LEWIS:** Yes, Commissioners. Issue 2 asks
4 the Commission to determine if Duke has reasonably
5 accounted for its combined operating license pursuit
6 costs consistent with the requirements of the 2013
7 settlement agreement.

8 The 2013 settlement agreement requires Duke to
9 exclude its COL costs from the NCRC beginning in 2014
10 and going forward. Duke's testimony regarding its cost
11 estimate was not challenged by any Intervenor and staff
12 audit witnesses did not make any findings.

13 Based on our review of the record evidence and
14 the ongoing requirements of the 2013 settlement
15 agreement, staff recommends the Commission determine
16 that Duke has reasonably accounted for its COL costs.

17 **COMMISSIONER BRISÉ:** Okay. Commissioners, any
18 comments?

19 Commissioner Balbis.

20 **COMMISSIONER BALBIS:** Thank you. Just a
21 clarification from staff. The 2013 settlement agreement
22 and the discussions that were held during that process
23 indicated that Duke would pursue the COL license at
24 their own cost. So by properly accounting for it,
25 customers are not paying for those pursuits; is that

1 correct?

2 **MS. LEWIS:** Right. 2014 and going forward,
3 no.

4 **COMMISSIONER BALBIS:** Okay. Thank you. With
5 that, I approve staff's recommendation on Issue 2.

6 **COMMISSIONER BROWN:** Second.

7 **COMMISSIONER BRISÉ:** Okay. It's been moved
8 and seconded. Any further discussion? Seeing and
9 hearing none, all in favor, say aye.

10 (Vote taken.)

11 Moving on to Issue 3.

12 **MS. LEWIS:** Issue 3 asks whether the
13 Commission should approve Duke's requested Levy Project
14 exit and wind down costs and other sunk costs proposed
15 for recovery or review in this docket.

16 FIPUG took the position that the Commission
17 should expressly state that it is taking no action
18 related to the disposition of potential future costs
19 that cannot be reasonably quantified at this time. No
20 Intervenors disputed the cost or presented evidence that
21 such costs were not reasonably quantified.

22 Staff reviewed the Levy Project exit and wind
23 down costs and other sunk costs and concluded that the
24 costs Duke has presented for recovery are in compliance
25 with the NCRC statute, Commission rules, and the 2013

1 settlement agreement. Staff recommends the Commission
2 approve Duke's Levy Project estimated exit and wind down
3 costs of \$14,679,680.

4 **COMMISSIONER BRISÉ:** All right. Thank you
5 very much.

6 Commissioners? Commissioner Balbis.

7 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
8 I have a few questions for staff on this issue.

9 The exit and wind down costs of 14.68 million,
10 plus or minus, that is what would be considered the
11 jurisdictional amount; correct?

12 **MR. LAUX:** That's correct, Commissioner.

13 **COMMISSIONER BALBIS:** Okay. In a normal
14 proceeding, similar to what we just went through with
15 Florida Power & Light, in establishing the factor, a
16 portion of this factor, it would be just the recovery of
17 those jurisdictional amounts.

18 **MR. LAUX:** That is also correct.

19 **COMMISSIONER BALBIS:** Okay. And in 2012 the
20 Commission approved a settlement agreement that
21 established a \$3.45 factor for 1,000 kilowatt hours
22 usage for residential customer?

23 **MR. LAUX:** That is correct.

24 **COMMISSIONER BALBIS:** And that resulted in
25 over, about \$103 million in revenue to the company.

1 **MR. LAUX:** Approximately. When you apply that
2 factor to the different sales forecasts for each year,
3 it comes in the ballpark.

4 **COMMISSIONER BALBIS:** Okay. So obviously
5 the -- Duke is recovering more than what's typically
6 needed in an NCRC proceeding. And I asked, I believe it
7 was Witness Foster, what additional items would the,
8 would those revenues pay for. Could you explain what
9 those items will be paying for?

10 **MR. LAUX:** I'll give it my best shot.
11 Depending on what year you're looking at, there were
12 certain costs that had been approved by the Commission
13 for collection, but the actual collection of those were
14 deferred. Those were called the rate management plan
15 things.

16 I believe all of those costs will be collected
17 by the end of this year. Additionally, there were other
18 costs of which the capitalized portion of those were set
19 aside and only the carrying charges on those had been
20 flowed to the nuclear clause up until this point until
21 they ended the project. At the time that they ended the
22 project, you move in a different section of the statute
23 in which any of the other unrecovered costs are allowed
24 to be recovered over a period of time. It's that, the
25 overage above the ongoing cost that is being applied.

1 So that's the -- if you take a hundred million, subtract
2 14 from it, the difference of that is what's being
3 applied to these other costs that are investments that
4 have been incurred but have not been recovered to date
5 yet.

6 **COMMISSIONER BALBIS:** Okay. And I believe
7 that was depicted in Mr. Foster's TGF-4 exhibit?

8 **MR. LAUX:** Correct.

9 **COMMISSIONER BALBIS:** Page 5 of 15.

10 **MR. LAUX:** Correct.

11 **COMMISSIONER BALBIS:** And is that captured in
12 what's labeled as total jurisdictional uncollected
13 investment?

14 **MR. LAUX:** Yes, sir.

15 **COMMISSIONER BALBIS:** Okay.

16 **MR. LAUX:** A portion of that, yes, sir.

17 **COMMISSIONER BALBIS:** And during the hearing
18 process there was a lot of discussion on some
19 confidential exhibits on the disposition of long-lead
20 equipment items. Are the costs associated with those,
21 would those be included in that total jurisdictional and
22 collected investment or would the costs be recovered
23 through that --

24 **MR. LAUX:** The payments that have been made
25 towards those would happen. The jurisdictional amount

1 of the payments that have been made towards those would
2 be non-confidential and would have been part of the
3 ongoing costs that have been incurred from year to year.
4 The actual total payment for it would be a system cost,
5 and that is the dollar amount that is being held
6 confidential.

7 **COMMISSIONER BALBIS:** Okay. And then the --
8 in TGF-4 the total jurisdictional uncollected investment
9 that has yet to be recovered, how much is listed in that
10 account for 2015?

11 **MR. LAUX:** As of what date?

12 **COMMISSIONER BALBIS:** On page 5 of 15 for the
13 2015 amount in the first --

14 **MR. LAUX:** The end of 2015?

15 **COMMISSIONER BALBIS:** Yes. No, the beginning
16 of 2015.

17 **MR. LAUX:** 2015. Okay. If you could give me
18 one moment, please.

19 The beginning balance of that amount,
20 jurisdictional amount at the beginning of 20 -- at the
21 end of 2014 would be \$103,585,865.

22 **COMMISSIONER BALBIS:** Okay. And I'm trying to
23 get a handle on what is the amount that's being written
24 down when the jurisdictional amount is much less than
25 what they're recovering. So I just want to feel

1 comfortable that there is an amount that still needs to
2 be recovered. Now that \$103 million that's listed in --
3 I believe it's line 6H of TGF-4.

4 **MR. LAUX:** That's correct.

5 **COMMISSIONER BALBIS:** That includes reductions
6 based on non-cash accruals or any other changes to that
7 total jurisdictional amount; correct?

8 **MR. LAUX:** As of that date, yes, sir.

9 **COMMISSIONER BALBIS:** Okay. Thank you.
10 That's all the questions I have on this issue.

11 **COMMISSIONER BROWN:** Move staff's
12 recommendation.

13 **COMMISSIONER BRISÉ:** Okay. We have a motion.

14 **COMMISSIONER BALBIS:** Second.

15 **COMMISSIONER BRISÉ:** Okay. Moved and seconded
16 on Issue Number 3. Any further discussion on Issue
17 Number 3? Seeing none, all in favor, say aye.

18 (Vote taken.)

19 Okay. Moving on to Issue Number 4.
20 Commissioner Brown.

21 **COMMISSIONER BROWN:** Thank you. And, you
22 know, this is the big issue this year in this docket.
23 And, Commissioners, we've had to make challenging
24 decisions before, and often those challenging decisions
25 have involved Duke and its customers. And we have made

1 those difficult decisions, I believe, in a very balanced
2 and fair approach, always having the public interest at
3 heart regardless of any outside political pressures.
4 That's our job. That is our role as a Public Service
5 Commissioner, to be impartial, fair, and independent,
6 and I believe we do just that. We carry out the laws
7 that were set forth by the Legislature and we strive to
8 uphold them, but sometimes we must take a pause and take
9 a step back and reflect on what is right.

10 This Commission gives a great deal of thought
11 and consideration into our decisions, all of them,
12 especially those affecting 1.7 million Floridians. We
13 don't rubber stamp anything. We scrutinize everything,
14 and this matter right here is a prime example of the
15 thoughtful review and analysis that we give.

16 I believe that the intent of the nuclear cost
17 recovery statute, when it was enacted, was to promote
18 nuclear generation, but unfortunately it did not
19 contemplate some of the unintended consequences that
20 have occurred, like customers paying for work that has
21 never been performed.

22 When we approved the settlement agreement back
23 in 2013, which the Office of Public Counsel was ardently
24 supportive of, the intent was, which was quoted, "to
25 stop the bleeding for Duke's customers." Under that

1 same settlement agreement there is a provision in there
2 that provides that Duke shall use its reasonable and
3 prudent efforts to refund any and all costs that can be
4 recaptured for the benefit of the customers.

5 Duke, therefore, does have the opportunity
6 here to mitigate the tragic events that have thus
7 occurred. They have an opportunity to make the
8 necessary adjustment today, instead of waiting for the
9 potential unknowns of a lawsuit that may or may not be
10 settled or may not provide for the full amount of
11 recovery back to the customers. And I want to reiterate
12 to Duke my strong encouragement to continue pursuing the
13 full recovery under the lawsuit with Westinghouse.

14 To me, I just don't believe it's fair that
15 customers are being asked to pay for longer than is
16 possibly necessary. It's also not appropriate for
17 customers to pay for equipment that was never provided.
18 And I know \$3.45 may not sound like a lot to some
19 people, but it is a lot and it is a lot for these Duke
20 customers. And, Commissioners, I do believe we have the
21 duty to do what is fundamentally fair, right, and in the
22 public interest, and deny staff's recommendation.

23 And with that, I would like to ask staff, if
24 this is the avenue that my fellow Commissioners would
25 support, is there a way, a mechanical way of providing

1 the benefits to customers now that recognizes the
2 arguments that were made by the Office of Public Counsel
3 in this docket and the Intervenors, while also
4 preserving our past decisions by the Commission on the
5 prudence of those dollars? And I'm going to look to
6 Mr. Hinton on that.

7 **MR. HINTON:** Yes is the answer to your
8 question. Commissioners, there are a couple of concerns
9 that staff has with OPC's approach, their proposed
10 approach to addressing the \$54 million, and I believe we
11 addressed that in our recommendation.

12 However, if you were to modify their approach
13 to address those concerns, staff believes that we can
14 address the \$54 million in this year's proceeding.

15 First, OPC wants Duke to record a cash credit
16 in their books as of January 2014. Without going into
17 the accounting problems with that again, we believe that
18 you could order Duke to make an adjustment to projected
19 2015 expenses. There is a reasonable expectation that
20 the court case could be resolved in 2015, and upon that
21 basis you could order an adjustment to project the 2015
22 expenses.

23 Now, second, OPC had stated that a cash credit
24 applied back to January 2014 as they had advocated would
25 achieve full collection of the Levy costs in 2015,

1 triggering the need to terminate the fixed recovery rate
2 established by OPC's settlement with Duke. Staff is
3 uncomfortable suggesting that a termination date for the
4 recovery charge be established at this time because
5 testimony in the record indicates that final costs are
6 not yet quantifiable.

7 So instead of ordering a termination date for
8 the recovery charge at this time, staff would recommend
9 that the Commission recognize that paragraph 12C of the
10 2013 settlement agreement obligates Duke to notify all
11 parties when final costs are known and a final recovery
12 date is expected by filing an estimated final true-up.
13 That could very well be in 2015, which could even result
14 in a midcourse correction to terminate the Levy recovery
15 charge, which seems to be OPC's intent in the end of
16 this.

17 We, but we believe that the terms of the 2013
18 settlement agreement between OPC and Duke addressed the
19 termination of the recovery charge, and no specific
20 action by the Commission concerning the termination of
21 the recovery charge is needed at this time.

22 **COMMISSIONER BROWN:** So the -- we can't
23 necessarily require the utility to file a midcourse
24 correction? Is that under our rules?

25 **MR. HINTON:** Well, it's -- midcourse

1 correction -- let me back up.

2 Under the terms of the 2013 settlement
3 agreement, which is really governing the recovery for
4 Duke at the end of these projects, they're obligated --
5 when final costs, when the final recovery is
6 approaching, they're obligated to file a final true-up.
7 That's at what point which will trigger the transition
8 from the Levy nuclear cost recovery fixed rate to the
9 other recovery aspects of the settlement agreement. But
10 that is, that is the point at which time they would need
11 to come in and file the final recovery.

12 **COMMISSIONER BROWN:** And, you know,
13 Mr. Hinton, if you could, walk -- for the benefit of the
14 people that are watching, the people that are concerned,
15 can you, can you walk us through in very simple laymen's
16 terms what that \$3.45 is and what Office of Public
17 Counsel and the Intervenors have avowed in the
18 proceedings?

19 **MR. HINTON:** Yes. The \$3.45 goes towards
20 recovery of remaining Levy Project costs. And the --
21 under subsection 6 of the statute and I think
22 subsection 7 of our rules, when a project is terminated,
23 the costs are generally to be -- you take the pot of
24 money that's unrecoverable and you amortize it over a
25 certain amount of time, five to seven years. And you

1 see in Issue 9 that is what's taken place with the CR3
2 uprate project is you've got an amortization amount that
3 you're going to be doing each year.

4 For the Levy Project, during the -- under the
5 2012 settlement agreement, the \$3.45 rate was
6 established to deal with Levy nuclear cost recovery.
7 That was before the project was terminated. In the 2013
8 settlement agreement, they decided to keep that rate in
9 place and apply it towards the termination costs and the
10 final recovery of the Levy Project as opposed to taking
11 a pot and amortizing it over a certain amount of years.
12 That is why we're still -- that's why it's important to
13 recognize that the final costs of the wind down
14 termination of the project are not yet known is because
15 it's not a closed bucket that we're now amortizing.
16 It's -- we're recovering those costs going forward and
17 it's approaching.

18 **COMMISSIONER BROWN:** Okay. So let's just, in
19 real simple terms, if we make an adjustment for the
20 \$54 million and reject staff's recommendation, what
21 affect would that have on customers? Would that curtail
22 the \$3.45 sooner?

23 **MR. HINTON:** No. No. \$3.45 -- well,
24 potentially. \$3.45 is what is going to be charged as of
25 January 1st.

1 **COMMISSIONER BROWN:** My understanding was yes.

2 **MR. HINTON:** No. It's -- \$3.45 is the rate
3 that will be applied January 2015. What that
4 \$54 million adjustment will likely have an affect on is
5 the timing of the true-up. That true-up is what will
6 determine when that \$3.45 stops.

7 So if you move the true-up by this \$54 million
8 adjustment, you move the true-up forward in time, then,
9 yes, you will have an impact in how soon that \$3.45
10 ceases to be charged.

11 **COMMISSIONER BROWN:** Right. That is my
12 understanding. So customers will stop paying the \$3.45
13 that they otherwise would have paid for a longer period
14 of time under the settlement agreement that was, again,
15 supported by all of Duke's major customer groups and
16 actively -- including the Office of Public Counsel.

17 **MR. HINTON:** Correct.

18 **COMMISSIONER BROWN:** Thanks.

19 **COMMISSIONER BRISÉ:** Commissioner Balbis.

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

21 I want to address this issue on perhaps a
22 different angle than Commissioner Brown, although I
23 agree with her on many points.

24 In 2008 and 2009, this Commission deemed the
25 costs associated with those, with the generator project

1 and the other projects associated with the \$54 million
2 as prudent. However, since that time Duke has decided
3 to terminate the contract, and the termination of the
4 contract and the evidence in the record indicates
5 customers are never going to receive that equipment.
6 Fortunately, both the statute, our rule, and even the
7 settlement agreement dictate what happens once Duke
8 terminates these projects, which I think makes it a
9 little easier for us in this case.

10 And in reading from subsection 7 of Rule
11 25-6.0423, it states that, "In the event the utility
12 elects not to complete or is precluded from completing
13 construction of the power plant, the utility shall be
14 allowed to recover all prudent site selection costs,
15 preconstruction costs, and construction costs."

16 Obviously if the customers will never receive this
17 equipment, it is not prudent. And I do believe that we
18 have a mechanism to make the appropriate adjustment.

19 During the hearing in Foster and Fallon's
20 testimony there was a lot of discussion on the
21 disposition of long-lead equipment. This \$54 million
22 was included as a portion of those. Those dollars are
23 associated in that total jurisdictional uncollected
24 amount that I discussed in the previous issue. So we
25 have a mechanism in order to do that.

1 So I think that one other way that we can make
2 sure that customers are made whole is to make an
3 immediate adjustment either in the non-cash accrual
4 portion of that schedule or simply reducing the total
5 jurisdictional uncollected amount by the \$54 million. I
6 think that we have the authority to do so, and both the
7 rules, the statutes, and the settlement agreement both
8 contemplated this scenario that we're in today. So I
9 look forward for further comments from my fellow
10 Commissioners.

11 **COMMISSIONER BRISÉ:** Okay. I'd like to hear
12 from staff in terms of the mechanisms that have been
13 brought forth by Commissioner Balbis.

14 **MR. HINTON:** Let me make one quick point, and
15 then I'll -- as far as mechanisms are concerned and
16 where it would be -- could be recorded.

17 Those payments were, back in 2008 and 2009,
18 were deemed by this Commission to be prudently incurred.
19 Without a showing of fraud, perjury, or willful
20 withholding of information, you can't overturn that
21 determination of prudence. The fact that circumstances
22 have changed and the cancel -- the project was canceled
23 and that equipment will no longer be obtained by the
24 company and used by the company doesn't change the
25 determination of this Commission those costs were

1 prudently incurred back at the time that they were
2 incurred without using hindsight --

3 (Simultaneous conversation.)

4 **COMMISSIONER BALBIS:** Mr. Chairman, can I, can
5 I interrupt here?

6 **COMMISSIONER BRISÉ:** Sure.

7 **COMMISSIONER BALBIS:** I think there's a
8 misrepresentation of my statement. I in no way
9 indicated that I was going to change or overturn a
10 previous Commission's decision, and the statutes and the
11 rules clearly indicate that this Commission is the one
12 that determines what is a prudently incurred cost or not
13 and what changes it. And I'm not sure if having staff
14 tell us what we can and can't do in this case on a
15 prudence determination is appropriate. But my position
16 is that the statute and the rules contemplated what
17 happens when a project is terminated. This is part of
18 the long-lead equipment items that were discussed at
19 length in the evidence in the record, and therefore we
20 have the authority to make adjustments that we see fit.

21 **COMMISSIONER BRISÉ:** Okay. Commissioner
22 Brown.

23 **COMMISSIONER BROWN:** I agree with the last
24 statement, that we do have the authority to make the
25 adjustments, but I certainly don't want to revisit

1 decisions that have already been made by the Commission.
2 That could be and would be challengeable after a finding
3 of prudence absent those factors that Mr. Hinton and our
4 legal department have advised me on. So I don't think
5 we go down that route here at all.

6 **COMMISSIONER BRISÉ:** All right. So let me
7 give you my perspective on this issue. We recognize
8 that in 2006 the, this clause, the NCRC clause, was put
9 in place due to circumstances that were affecting our
10 state, certain gas prices and the need to look forward
11 to a different type of way to produce energy within our
12 state. Recognizing that, the Legislature decided that
13 rather than to potentially saddle or allow the
14 saddle-ment of customers with \$60 or \$70 bills at the
15 end of a project being built, they decided to pursue the
16 track of maybe establishing something similar to a
17 partnership between the consumers and the utilities
18 towards building these type of projects.

19 And as we all understand this process to be,
20 it's a pay-as-you-go process. And the Commission made
21 appropriate decisions along the way, identifying what
22 was prudent and that the costs that were brought before
23 the Commission were prudent and the expenses were
24 prudent, and all of those things went according to the
25 way it was supposed to go until a decision was made.

1 And as we all recognize, a decision was made not to move
2 forward with the Levy Project because of circumstances
3 that arose.

4 We recognize that ratepayers are frustrated
5 and that is a reality. You talk to any ratepayer that
6 resides in the Duke territory, they will tell you that
7 they are frustrated.

8 Our duty, I believe, today is to find a way to
9 address the issues that are frustrating the consumers,
10 but do it in a way that reflects our current statutory
11 framework: One that doesn't set us up for improper
12 precedence, one that recognizes our former decisions,
13 and one that recognizes that we have the authority to
14 make adjustments as necessary.

15 An adjustment is not necessarily a
16 disallowment of something. It is just an adjustment to
17 reflect the reality of what we want to do as a
18 Commission. So recognizing that reality, I believe that
19 if we find a way to make the adjustment -- and I think
20 what was brought out in terms of, if I understand it
21 properly, that if we make an adjustment for the
22 \$54 million, it could curtail the amount of time that
23 the \$3.45 that our customers will be paying moving
24 forward, it will shorten that period of time.
25 Ultimately that is our goal. That is my goal. I don't

1 know if it's the goal of my fellow Commissioners because
2 I can't speak for them, but that is my goal. My goal is
3 to ensure that the consumers see that the concept that
4 they paid for something that for some reason they
5 haven't gotten, which I don't completely agree with,
6 because the reality is that when you make a payment
7 towards something, you've made a payment towards
8 something that is going to be built in the future. And
9 if you decide not to move forward, you still made the
10 payment for something that is going to be built in the
11 future.

12 So I think the company has done the
13 appropriate thing by going after Westinghouse, and the
14 Commission has the authority to decide in advance of
15 that to make an adjustment. And so I think that that
16 is, from what I'm hearing from my fellow Commissioners,
17 that finding the mechanism to get that done is what we
18 want to accomplish today.

19 And so I think that following the approach
20 that Commissioner Brown laid out I think is the safest
21 and cleanest way to achieve that particular goal that I
22 think we all have with respect to this issue.

23 So I don't know if my fellow Commissioners
24 have any more comments. Commissioner Balbis.

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

1 And I agree with all of your comments, and I think we
2 seem to be all on the same page here. And let's not
3 forget where the \$3.45 came from. In 2012, when we
4 entered into a settlement agreement, there was an
5 estimate on how much would need to be recovered because
6 the projects were moving forward, and it was
7 \$350 million. So the intent at that time -- and I've
8 reviewed the transcripts and I've looked at everything,
9 and the final order, et cetera -- was it was an estimate
10 of what was needed. And there was always the
11 understanding that there's going to be adjustments as
12 these costs come in.

13 I think this is a very clear circumstance
14 where an adjustment is warranted, and it was
15 contemplated when the \$3.45 was first established in
16 2012 and then reestablished in 2013. So I think we not
17 only have the authority to do so, but it is the right
18 thing to do.

19 **COMMISSIONER BRISÉ:** All right. At this time
20 I think we are in the proper posture to entertain a
21 motion.

22 **COMMISSIONER BROWN:** Mr. Chairman, I would
23 approve the modification proposed by Mr. Hinton here,
24 and adjusting the \$54 million -- or, pardon me, to
25 reflect the reduction of \$54 million. Mr. Hinton, is

1 that the correct way?

2 **MR. HINTON:** As of January 2015.

3 **COMMISSIONER BROWN:** Okay. That would be my
4 motion, and to reject staff's recommendation.

5 **COMMISSIONER BRISÉ:** Okay. Is there a second?

6 **COMMISSIONER BALBIS:** I second it with -- if I
7 could have a clarification.

8 **COMMISSIONER BRISÉ:** Sure.

9 **COMMISSIONER BALBIS:** So that adjustment will
10 in essence credit the customers the \$54 million.

11 **MR. LAUX:** It will reduce the balance of the
12 uncollected capital investment in that project.
13 Therefore, if the balance goes down and you're
14 continuing to pay the \$3.45, you will end up paying off
15 that balance quicker.

16 **COMMISSIONER BALBIS:** I understand.

17 **MR. LAUX:** But there will not be an additional
18 refund check that goes to customers, if that's what
19 you're asking.

20 **MR. HINTON:** The answer is yes, Commissioner.

21 **COMMISSIONER BALBIS:** Thank you.

22 **MR. LAUX:** I didn't know what credit to
23 customers meant.

24 **COMMISSIONER BRISÉ:** Well, in my book, I view
25 that as a credit. If I had to pay X amount over two or

1 three years and ultimately I'm paying less, I'm
2 receiving a credit. That's the way I perceive it, and I
3 think that's the way our customers are going to view it,
4 that they are receiving a credit.

5 **COMMISSIONER BALBIS:** And if that's the
6 motion, I fully support it.

7 **COMMISSIONER BROWN:** Yes, sir.

8 **COMMISSIONER BRISÉ:** All right. It's been
9 moved and seconded. Any further discussion? All right.
10 Seeing no further discussion, all in favor, say aye.

11 (Vote taken.)

12 All right. Thank you very much. Moving on to
13 Issue Number 5.

14 **MR. LAUX:** Issue 5 asks what restrictions, if
15 any, should the Commission place on Duke's attempt to
16 dispose of Levy long-lead equipment items.

17 The Intervenors, through a post-hearing brief,
18 proposed that the Commission adopt a rebuttable
19 presumption that any disposition of long-lead equipment
20 to Westinghouse should reflect the original cost of
21 those items charged to Duke's consumers.

22 In addition, they proposed that the Commission
23 require Duke to seek and obtain advanced Commission
24 approval for any final action to dispose of the
25 remaining long-lead equipment items.

1 Staff's review of the record found no evidence
2 establishing a regulatory need for these actions.
3 Additionally, staff believes that the 2013 settlement
4 agreement provides Duke with adequate guidance
5 concerning the disposition of the assets in question.
6 Therefore, staff recommends that the Commission place no
7 additional restrictions at this time on Duke's attempt
8 to dispose of the Levy long-lead equipment items.

9 **COMMISSIONER BRISÉ:** Okay. Commissioners?
10 Commission Balbis.

11 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
12 The disposition of long-lead equipment items was
13 addressed in the settlement agreement, and Duke is
14 required to make every effort to maintain or gain as
15 much value as possible for that. So I don't believe
16 that any additional restrictions at this time are
17 warranted. Certainly nothing came out in the hearing
18 that would warrant additional restrictions, so therefore
19 I move to approve staff's recommendation on Issue 5.

20 **COMMISSIONER BROWN:** Second.

21 **COMMISSIONER BRISÉ:** Okay. It's been moved
22 and seconded. Any further discussion? Seeing and
23 hearing none, all in favor, say aye.

24 (Vote taken.)

25 Moving on to Issue Number 9.

1 **MR. LAUX:** Issue 9 is Duke's fallout issue
2 based on the resolution of prior issues. Consistent
3 with recommendations in those prior issues, staff
4 recommends the Commission approve the collection in 2015
5 of \$63,204,163 associated with the ongoing Crystal River
6 uprate project termination.

7 The Levy Project, based upon the fixed rate
8 established pursuant to the 2013 settlement agreement,
9 is estimated to collect \$103,991,141 in 2014. An
10 estimated total of \$167,195,304 should be used in
11 establishing the 2015 capacity cost recovery clause
12 factor for Duke.

13 **COMMISSIONER BRISÉ:** Okay. Commissioner
14 Balbis.

15 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
16 And I just want to address the extended power uprate
17 portion of this amount. And as you recall, previously
18 the prudence information or any of the testimony was
19 deferred to this proceeding. And I reviewed all the
20 documentation that Duke provided on their actions in
21 dealing with the EPU project and when they notified the
22 contractor to stop or slow down the work associated with
23 it because of the 2011 delamination, because of
24 different actions. So I believe that they acted
25 prudently at that time, and therefore they should

1 recover the costs associated with that. So with that, I
2 move approval of staff's recommendation on Issue 9.

3 **COMMISSIONER BRISÉ:** Okay. Is there a second?

4 **COMMISSIONER BROWN:** Second.

5 **COMMISSIONER BRISÉ:** Okay. It's been moved
6 and seconded. Any further discussion on Issue Number 9?

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

8 (Vote taken.)

9 All right. I think we've covered all the
10 issues with respect to this docket at this time.

11 Are there any other items that we need to
12 discuss?

13 Okay. Seeing none --

14 **MS. CRAWFORD:** Staff has none.

15 **COMMISSIONER BRISÉ:** Okay. Thank you very
16 much. Commissioners, any other items with respect to
17 this docket that we need to discuss? Okay. Seeing
18 none, we shall adjourn the Special Agenda. Thank you
19 very much for your participation.

20 We will have Internal Affairs, we're going to
21 go into Internal Affairs -- I think the Chairman
22 suggested a ten-minute break in-between, so we expect to
23 begin Internal Affairs at 12:50 Art Graham time.

24 (Proceeding adjourned at 12:40 p.m.)
25

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

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

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

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

18 DATED THIS 14th day of October, 2014.

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