



## 1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. It looks like we  
3 are we have everyone back. Thank you for your  
4 indulgence on short recess.

5 Let's move on to Item No. 4. Ms. Helton, you  
6 are still up.

7 MS. HELTON: Thank you, Mr. Chairman.

8 DEF recently appealed the Commission's Final  
9 Order and Amended Order that adopted the  
10 Administrative Law Judge's Recommended Order, where  
11 he found that DEF failed to act prudently in the  
12 operation of its Bartow Unit 4 plant in restoring  
13 the unit to service after the February 2017 forced  
14 outage, and concluded that DEF should refund \$16.1  
15 million to its customers.

16 Item No. 4 addresses DEF's motion and amended  
17 motion to stay this decision. Staff recommends  
18 that a stay be granted as DEF has fully complied  
19 with the requirements of the Commission's rule on  
20 stays pending judicial review.

21 Staff further recommends that DEF be required  
22 to provide adequate security in the form of a  
23 corporate undertaking in the amount of \$16.1  
24 million plus interest.

25 Representatives from DEF and OPC would like to

1 address the Commission, and other intervenors are  
2 on the phone and available to answer questions, as  
3 is your staff.

4 CHAIRMAN CLARK: Thank you very much, Ms.  
5 Helton.

6 Ms. Nordby -- Mr. Nordby are you on the line?

7 MR. NORDBY: Yes, I am.

8 CHAIRMAN CLARK: You are recognized.

9 MR. NORDBY: Thank you very much.

10 Good morning, Commissioners. I am Daniel  
11 Nordby from Shutts & Bowen appearing on behalf of  
12 Duke Energy Florida. I would like to make three  
13 brief points and would be glad to answer any  
14 questions.

15 On the first question, whether the final order  
16 here should be stayed pending appeal, Duke agrees  
17 with the staff analysis and recommendation that you  
18 have been provided. The clear and unambiguous  
19 language of your rule provides for a mandatory and  
20 automatic stay under the circumstances present  
21 here. It's undisputed that the order on appeal  
22 involves the refund of monies to customers, and  
23 that Duke has filed a timely motion seeking a stay  
24 pending appeal.

25 The Office of Public Counsel and other

1           intervenors in their response asked for an  
2           unwritten exception to the administrative rule in  
3           the case on the fuel clause dockets. But as your  
4           staff noted in its recommendation, however, all  
5           state agencies must follow their own rules and  
6           cannot rewrite a rule without following the  
7           rule-making process.

8           The second issue I wish to address, and the  
9           second issue before you is what conditions are  
10          appropriate in this case to secure the revenues  
11          subject to refund during the period of stay. On  
12          this point, your rule grants you broad discretion.  
13          Rule 25-22.061 mentions the posting of a bond or  
14          corporate undertaking as a potential condition, but  
15          the rule also allows for, quote, any other  
16          condition as the Commission finds appropriate to  
17          secure the revenues collected by the utility  
18          subject to refund, end quote.

19          The rule, therefore, grants to you, the  
20          Commission, the discretion to determine when to  
21          require a utility to post a bond or corporate  
22          undertaking, and when some other conditions are  
23          appropriate as a condition on the stay.

24          Under the circumstances of this appeal and  
25          this docket, Duke respectfully suggests that no

1           bond or corporate undertaking is necessary to  
2           secure the revenues at issue as a condition of the  
3           stay. Instead, the ongoing open nature of the fuel  
4           docket can provide sufficient assurance to secure  
5           the revenues at issue during the pendency of the  
6           appeal. Any refunds that would be paid in the  
7           event the appeal is unsuccessful would be  
8           implemented through a reduction in Duke's fuel  
9           collections for the refund period on this docket.  
10          In the language of Rule 25-22.061, those conditions  
11          should be considered, quote, appropriate to secure  
12          the revenues at issue.

13                 Finally I would like to address the reference  
14          in the staff analysis and recommendation to  
15          interest payments to be assessed on the amount  
16          ordered to be refunded in the final order. I would  
17          note that the Administrative Law Judge's  
18          recommended order did not provide for interest  
19          payments on the refund amount. Paragraph 125 of  
20          the recommended order specifies an amount to be  
21          refunded, quote, without interest. And the  
22          conclusion also does not order interest payments on  
23          the refund amount.

24                 The Commission's final order adopted -- in  
25          this case -- adopted and approved the recommended

1 order without modification, and also did not order  
2 interest payments. This could be compared to other  
3 cases in which the Commission did explicitly order  
4 refunds to be made with interest.

5 The stay rule and the interest rule of the  
6 Commission provide for interest to be set in  
7 cases -- in the case of refunds which the  
8 Commission orders to be made with interest, Rule  
9 25-6.109(4). Here, the refund was not ordered to  
10 be made with interest, so no interest rate should  
11 be applied to any condition on the stay that we are  
12 asking the Commission to enter in this case.

13 In conclusion, Duke Energy Florida  
14 respectfully request the Commission grant a stay  
15 pending appeal under Rule 25-22.061, and that the  
16 Commission find the ongoing nature of the fuel  
17 clause docket to be of sufficient condition to  
18 secure the revenues subject to refund.

19 Thank you.

20 CHAIRMAN CLARK: All right. Thank you, Mr.  
21 Nordby.

22 Mr. Rehwinkel.

23 MR. REHWINKEL: Thank you, Mr. Chairman.

24 Charles Rehwinkel for the Office Public Counsel,  
25 and I want to thank you, Commissioner, for allowing

1 us a brief chance to speak for the customers.

2 On December 1st, we find ourselves in the  
3 middle of the holidays in the toughest, strangest  
4 year most of us have ever experienced. Duke has  
5 been before you recently this fall touting their  
6 compassion for customers suffering the effects of  
7 COVID. We ask you to think about that.

8 This case today is about \$16 million that you  
9 ordered be returned to Duke's ratepayers. Duke's  
10 customers could use the good news of getting their  
11 money back in their holiday pandemic season.  
12 Instead, Duke is seeking to take cover behind a  
13 rule that has lost its meaning simply in order to  
14 hold on for two to three more years to this money.  
15 \$16 million is a gnat on their financial  
16 statements. Why are they doing this? It doesn't  
17 make sense. We think Duke Energy Florida is better  
18 than this. We think Duke's customers deserve  
19 better.

20 Commissioners, a stay is designed to protect  
21 the interest of a party taking an appeal. We have  
22 demonstrated that the stay is not applicable or  
23 needed for an appeal that is taken in a fuel clause  
24 case. And we would note that the very logic for --  
25 that they presented to you for not applying a

1 corporate undertaking makes our point crystal  
2 clear. It's all within the fuel clause and it all  
3 can be taken care of there, but nevertheless, they  
4 want their customers not to have this money.

5 The Florida Supreme Court more importantly in  
6 the GDE case makes it clear that your stay rule is  
7 not needed to protect the appellant when a  
8 Commission case is appealed. What Duke is asking  
9 you to do is to let them in a cynical move that has  
10 no legal significance --

11 UNIDENDIFIED SPEAKER: (Inaudible.)

12 MR. REHWINKEL: My time is up?

13 CHAIRMAN CLARK: No, I am sorry, Mr.  
14 Rehwinkel, something happened there. I don't know  
15 what that sound was.

16 MR. REHWINKEL: Oh, I am sorry. I thought I  
17 heard the word time. I apologize.

18 It is a cynical move that has no legal  
19 significance. It does have a great symbolic  
20 significance about just how much Duke actually  
21 respects its customers.

22 We believe you have the discretion to hold  
23 this rule inapplicable to the fuel clause. We urge  
24 you to determine that the rule does not apply to a  
25 fuel clause appeal.

1           Do the right thing, Commissioners, we ask.  
2           Don't address and put a stamp on this bah humbug  
3           holiday card to Duke's customers. We ask you to  
4           deny the motion.

5           We also think that Duke is raising a point  
6           about interest that is potentially going to cause  
7           more litigation. The ALJ was not asked to  
8           calculate interest. His use of the term without  
9           interest is clearly meant that he did not calculate  
10          interest because that was not something he was  
11          asked to do. You have a rule that applies interest  
12          and debits and credits in the fuel clause, and that  
13          rule should apply.

14          If Duke is saying they should keep the money  
15          for two to three more years interest free, we think  
16          that is a problem, and we think the GDE case says  
17          that that would be improper as well. So we are  
18          kind of disappointed to hear that Duke thinks that  
19          there is no interest that applies while they hold  
20          on to the customers for two to three -- money for  
21          two to three more years.

22                 Thank you.

23                 CHAIRMAN CLARK: All right. Thank you, Mr.  
24                 Rehwinkel.

25                 Commissioners, questions or comments? Anyone?

1 Commissioner Polmann.

2 COMMISSIONER POLMANN: Thank you, Mr.

3 Chairman.

4 I guess I have a number of thoughts here, and  
5 I would like to hear perhaps from the Commissioners  
6 if there is any interest in discussion --  
7 discussing any of the comments we just heard,  
8 either that or I could just move forward here with  
9 a motion. I don't want to belabor the point.

10 CHAIRMAN CLARK: Commissioners, do you have  
11 any comments or questions or discussion you would  
12 like to propose?

13 There is -- Commissioner Graham.

14 COMMISSIONER GRAHAM: I would like to move  
15 staff recommendation.

16 COMMISSIONER POLMANN: Second.

17 CHAIRMAN CLARK: All right. We have a motion  
18 and a second to approve staff recommendation.

19 Any questions?

20 All in favor say aye.

21 (Chorus of ayes.)

22 CHAIRMAN CLARK: Opposed?

23 (No response.)

24 CHAIRMAN CLARK: Motion carries.

25 Thank you very much.

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(Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
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same has been transcribed under my direct supervision;  
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DATED this 14th day of December, 2020.



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DEBRA R. KRICK  
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