

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

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

DATED this 14th day of December, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024