

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110009-EI

In the Matter of:  
NUCLEAR COST RECOVERY CLAUSE.

PROCEEDINGS: SPECIAL AGENDA

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Monday, October 24, 2011

TIME: Commenced at 9:30 a.m.  
Concluded at 12:19 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

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

2 **CHAIRMAN GRAHAM:** Good morning, everyone. Let  
3 the record show it is November 24th -- I'm sorry --  
4 October 24th. We have a Special Agenda today. It's  
5 Docket Number 110009, the Nuclear Cost Recovery Clause.

6 I'm glad you're all here, all here safely. I  
7 think we're going to have a fantastic day today. So  
8 we'll get started. If you'd like to join me for the  
9 invocation and pledge, please stand.

10 (Invocation and pledge.)

11 All right. My understanding, this is going to  
12 be quick and simple.

13 So, Mark, I believe that you have the helm,  
14 and you're going to take us through this.

15 Commissioners, I believe we're going to go  
16 through this one issue at a time. We may get to the  
17 point where we can skip a couple, but that's probably  
18 the easiest way to go, unless somebody else has got any  
19 other suggestions.

20 Mark.

21 **MR. LAUX:** Thank you, Mr. Chairman.

22 Good morning, Commissioners.

23 I'll start again. Thank you, Mr. Chairman.

24 Good morning, Commissioners. My name is Mark  
25 Laux with Commission Staff.

1 Today Staff is presenting its recommendation  
2 in Docket Number 110009, the Nuclear Cost Recovery  
3 proceeding. This docket consists of the petitions filed  
4 by Florida Power & Light and Progress Energy.

5 FPL's petition included cost recovery requests  
6 related to the uprates at existing nuclear plants at the  
7 Turkey Point and St. Lucie site, as well as proposed new  
8 generation at the Turkey Point site. These requests are  
9 addressed in Issues 1 through 19.

10 Progress Energy's petition included cost  
11 recovery related to their -- operate at the Crystal  
12 River site, as well as proposed new generation at the  
13 Levy site. These requests are addressed in Issues 20  
14 through 37.

15 Staff notes that concerns on the Crystal River  
16 uprate project became the subject of certain motions and  
17 a stipulation. The Commission addressed these motions  
18 and stipulation at hearing. Given these actions, only  
19 issues concerning the Levy site remain to be resolved  
20 today.

21 A number of Staff are here today to aid you in  
22 your discussions. Mr. Young will deal with legal  
23 concerns found in Issues 2, 15B and C; Mr. Garl and  
24 Ellis on feasibility Issues 3, 10, 20, and related  
25 Issues 3A, 4, 5, 21, and 22; Mr. Dowds on Issue 15A;

1 Mr. Breman and myself, we get all the remaining issues.

2 On Friday, October 21st, each of your offices  
3 should have received a memo from Staff that identified  
4 certain typographical errors that are found in Staff's  
5 recommendation. At your pleasure, Staff can address  
6 this errata now or as each one of the issues are  
7 presented.

8 Staff would further note that this is a  
9 posthearing decision and is limited to participation --  
10 participation is limited by Commissioners and the Staff.  
11 We're prepared to go issue by issue or in any other  
12 manner in which you choose.

13 **CHAIRMAN GRAHAM:** Let's go ahead and make  
14 those modifications, those changes that you had that I  
15 believe -- I don't know if most Commissioners got that  
16 e-mail. Let's go ahead and do those and put those on  
17 the record, and then go back to the beginning.

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

19 Commissioners, the first change is found on  
20 page 17 in Issue 3. If you look at the last paragraph  
21 on that page, the third sentence down that starts with  
22 \$0.1 billion, you'll find the numbers 12.9 billion and  
23 18.8 billion. Those numbers should be changed to -- the  
24 12.9 should be changed to 12.8; the 18.8 should be  
25 changed to 18.7.

1           If you turn to page 21, the last paragraph,  
2 the third sentence that starts with "estimated 2011," in  
3 front of the dollar amount 8,112,681, insert the word  
4 "negative." Did I go on the wrong page? I'm sorry.

5           On page 21 -- I flipped the wrong page on my  
6 thing here. In the first full paragraph on that page,  
7 the very last sentence, the same 12.9 billion and  
8 8.8 billion should be changed to 12.8 billion and  
9 18.7 billion.

10           Also on the chart up there, Figure 3.3, to the  
11 very far end you will find the numbers 8,678 and 4,910.  
12 Those numbers should be changed to 8,679 and 4,907.

13           On page 28 in the recommendation section, the  
14 second line of that, you will see the numbers  
15 8.8 billion -- well, on the first line you will see the  
16 number 12.9 billion, and on the second line you will see  
17 8.8 billion. The same changes to those. The 12.9  
18 should be 12.8. The 18.8 should become 18.7.

19           And as I was trying to hurry us along on page  
20 41 again, last paragraph, third sentence, insert the  
21 word "negative" in front of the number 812,681.

22           On page 76, recommendation section, second  
23 paragraph, third sentence, you will see a jurisdictional  
24 number of 7,061,419. That number should be changed to  
25 7,176,395. Oh, I'm sorry. I did read the -- I read to

1 you the system number. The jurisdictional number should  
2 be changed from 7,061,419 to 7,067,402.

3 On page 80, under the conclusions section, the  
4 second paragraph, the same change should be made. Once  
5 again, the jurisdictional number goes from 7,061,419 to  
6 7,067,402.

7 And finally, on page 83, first full paragraph,  
8 or first paragraph, fourth line, you'll find the number  
9 12,701,007. That should be changed to 12,706,916.

10 Thank you.

11 **CHAIRMAN GRAHAM:** Who's got Number 1?

12 **MR. BREMAN:** Commissioners, Issue 1 is should  
13 FPL be disallowed recovery of any of its rate case type  
14 expenses. The Staff recommendation is no.

15 **CHAIRMAN GRAHAM:** Actually, Commissioners,  
16 Issues 1 through 5, are there any questions of those  
17 first five issues?

18 Yes? Which issue?

19 **COMMISSIONER BROWN:** 2.

20 **CHAIRMAN GRAHAM:** Issue 2. Let's go with  
21 Issue 2.

22 **MR. YOUNG:** Good morning, Commissioners.  
23 Keino Young, legal Staff.

24 Issue 2 is do the FPL activities through 2010  
25 related to the Turkey Point Units 6 and 7 qualify as the

1 siting, design, licensing, and construction of the  
2 nuclear power plant as contemplated by Section 366.93,  
3 *Florida Statutes*?

4 Staff recommends that the Commission find that  
5 FPL's activities related to the Turkey Point 6 and  
6 7 qualify as siting, design, licensing, and construction  
7 of the nuclear power plant as contemplated by Section  
8 366.93, *Florida Statutes*, because these activities  
9 satisfy the statutory definition of preconstruction  
10 costs.

11 **CHAIRMAN GRAHAM:** Commissioner Brown?

12 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

13 Mr. Young, we discussed this in our briefing  
14 regarding whether the statute or the rule or PSC-11  
15 order -- sorry -- Order PSC-11-0095, whether it  
16 specifically calls for intent. Can you elaborate on  
17 that?

18 **MR. YOUNG:** Yes, ma'am. The statute -- the  
19 order which interprets the statute and the rule stated  
20 that the company -- as long as the utility is, as long  
21 as the utility demonstrates the intent to build the  
22 nuclear power plant, then they are -- they should --  
23 they satisfied -- they could -- and actually be --  
24 excuse me -- and engaging in, as stated in the statute,  
25 the siting, licensing, designing, construction -- or

1 construction, they meet the intent requirement of the  
2 order, which interpret -- the final order, which  
3 interprets the statute and the rule. Excuse me.

4 **COMMISSIONER BROWN:** So then is it necessary  
5 under the statute or rule that a final decision to  
6 actually construct a nuclear plant be made prior to  
7 allowing recovery?

8 **MR. YOUNG:** No.

9 **COMMISSIONER BROWN:** Thank you.

10 **MR. YOUNG:** But I would, I would note that per  
11 the final order, which -- per your final order, which  
12 you interpreted -- which interprets the statute and the  
13 rule, calls for intent. But, as stated, if the company  
14 is engaging in one of the activities, engaging in the  
15 siting, licensing, construction, or designing of the  
16 nuclear power plant, they meet the requirement, the  
17 intent requirement of your order.

18 **COMMISSIONER BROWN:** Does any other Staff  
19 member have additional comments on that?

20 **CHAIRMAN GRAHAM:** Commissioner Brisé.

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

22 I think part of the two questions that I had  
23 were posed. Obviously one of the biggest issues here is  
24 the whole question of intent as raised by some of the  
25 Intervenors. And I'm going to read the statute and sort



1 of see if my understanding is accurate of what I think  
2 it says.

3 366.93(6), "If the utility elects not to  
4 complete or is precluded from completing construction of  
5 the nuclear power plant, including new, expanded, or  
6 relocated electrical transmission lines or facilities  
7 necessary thereto, or of the integrated gasification  
8 combined cycle power plant, the utility shall" -- it  
9 doesn't say may; right?

10 **MR. YOUNG:** Yes, sir.

11 **COMMISSIONER BRISÉ:** "Shall be allowed to  
12 recover all prudent preconstruction and construction  
13 costs incurred following the Commission's issuance of a  
14 final order granting a determination of need for that  
15 power plant." I want to make sure that we, for the  
16 record, issued a determination of need on this one.

17 **MR. YOUNG:** Yes, we did issue a determination  
18 of need.

19 **COMMISSIONER BRISÉ:** Okay.

20 **MR. YOUNG:** For both utilities.

21 **COMMISSIONER BRISÉ:** For both utilities.

22 "Determination of need for the nuclear power  
23 plant and electrical transmission lines and facilities  
24 necessary thereto, or for the integrated gasification  
25 combined cycle power plant, the utility shall recover

1 such costs through the capacity cost recovery clause  
2 over a period equal to the period during which the costs  
3 were incurred, or five years, whichever is greater. The  
4 unrecovered balance during that period will accrue  
5 interest at the utility's weighted average cost of  
6 capital as reported in the Commission's earnings  
7 surveillance reporting requirement for that year."

8 So if I understand that properly, the statute  
9 provides a very broad latitude as to what is defined  
10 as -- what needs to be done in order for the  
11 construction of the ultimate plant.

12 **MR. YOUNG:** Yes, sir.

13 **COMMISSIONER BRISÉ:** So therefore any activity  
14 that is incurred that is forward progress towards the  
15 end of building a plant would be considered prudent,  
16 providing that the numbers reflect prudence?

17 **MR. YOUNG:** Yes, sir. And that's the way  
18 Staff has interpreted it in terms of any activity going  
19 towards ultimate -- going towards construction of the  
20 plant, they meet the intent requirement of the statute  
21 as interpreted by the rule and as you stated in your  
22 order.

23 **COMMISSIONER BRISÉ:** All right. And  
24 considering Order 11-00095-FOF-EI, many of the  
25 intervenors looked at the language intent as part of

1 that order and have based the questions about intent on,  
2 on that order. My understanding of that language is  
3 that as long as the utility continues to engage in  
4 activities that fall under siting, design, licensing,  
5 and construction, then the utility is demonstrating the  
6 necessary intent to meet the requirements under that  
7 statute.

8 Is that, for lack of a better term, the intent  
9 of Staff when it looked at the statute and then made its  
10 own interpretation with the order?

11 **MR. YOUNG:** Yes, sir. Absolutely. That was  
12 the intent.

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

14 **CHAIRMAN GRAHAM:** Commissioner Balbis.

15 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
16 And thank you, Commissioner Brisé and Brown. I agree  
17 with all of your statements.

18 And I just -- I want to, for the record, kind  
19 of state where I'm coming from on this and what my  
20 thought process is associated with this, this issue and  
21 other issues.

22 Most of the parties repeated an assertion that  
23 FPL and Progress are merely, quote, pursuing an option  
24 to construct the nuclear facilities, and I agree with  
25 that assertion. In fact, numerous witnesses, including

1 Florida Power & Light's CEO and president, Mr. Olivera,  
2 indicated that is exactly what they are doing. The  
3 requirement of Section 366.93 of the *Florida Statutes*  
4 provides again, as Commissioner Brisé indicated, the  
5 cost recovery for these utilities engaged in the siting,  
6 design, et cetera.

7           Additionally, the statute required that we  
8 develop a rule establishing a recovery mechanism, and  
9 that the utility shall report to the Commission actual  
10 and budgeted costs for the facilities. And we developed  
11 that rule and required that they also file a detailed  
12 analysis for the long-term feasibility of completing the  
13 project, and that we shall consider that in determining  
14 the reasonableness and prudence of these costs and  
15 approving the cost recovery factor.

16           So, using my logic, if at any time the  
17 completion of the project is infeasible, the Commission  
18 can determine that the costs related to continuing with  
19 the project after the finding of infeasibility could be  
20 imprudent. So I'm not uncomfortable with the term  
21 pursuing an option of constructing the facility. I  
22 would expect that the utility and this Commission would  
23 continue to monitor whether or not this project is  
24 infeasible from a long-term standpoint. And I think  
25 that the making of an irrevocable decision at this time

1 on a project of this magnitude may not be reasonable,  
2 considering the regulatory, technical, and other factors  
3 that are, that are changing.

4 So, again, I'm comfortable with pursuing an  
5 option. I think that follows the intent. I think the  
6 fact that we require long-term feasibility analysis  
7 annually determine that we are monitoring this and that  
8 the utilities are monitoring this. However, given that  
9 the project continues to be cost-effective and feasible,  
10 the utilities should continue to move forward with these  
11 projects and obtaining the COL for these projects.

12 So I just wanted to get that in for the record  
13 and -- because that assertion is repeated throughout  
14 numerous issues that they're pursuing an option. And I  
15 agree with the parties; however, I feel that the  
16 long-term feasibility analyses that are done indicate  
17 that we are monitoring this, the utilities are  
18 monitoring this, and making sure that an irrevocable,  
19 irrevocable decision is not made at this time.

20 So thank you.

21 **CHAIRMAN GRAHAM:** Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Thank you.

23 A question for Mr. Young. In your response to  
24 Commissioner Brisé a few moments ago, you said that  
25 Progress -- the position of Staff is that Progress met

1 the intent requirement of the statute. Where in the  
2 statute are you referring to as the intent requirement  
3 of the statute?

4 **MR. YOUNG:** If I said that, I misspoke. I  
5 said -- I meant to say that FPL is meeting the intent  
6 requirement of the order, which -- your final order,  
7 which interprets the statute and the rule, your rule,  
8 your rule and the *Florida Statutes*.

9 **COMMISSIONER EDGAR:** I appreciate that, that  
10 clarification.

11 **MR. YOUNG:** Yes.

12 **COMMISSIONER EDGAR:** That's more in keeping  
13 with my understanding of the statute, the order --

14 **MR. YOUNG:** Yes. I'm sorry.

15 **COMMISSIONER EDGAR:** -- and the discussions  
16 that we've had previously though. So thank you for  
17 that.

18 And, Mr. Chairman, when we come to the point,  
19 I do have a question on Issue 1. I was a little slow on  
20 the -- but at whatever point is best.

21 (Laughter.)

22 **CHAIRMAN GRAHAM:** Sure.

23 Commissioner Brown.

24 **COMMISSIONER BROWN:** To close up this issue, I  
25 just would like to add a few comments. I believe -- and

1 to address that option creation approach, I believe  
2 Florida Power & Light has actively pursued and obtained  
3 the licenses and approvals necessary to construct and  
4 operate Turkey Point 6 and 7. I also believe it's  
5 pursued other preconstruction activities that show an  
6 intent, so to speak, to pursue the development of these  
7 plants. I believe it has shown a risk mitigate -- risk  
8 mitigating approach that allows for progress of the  
9 project, while not necessarily committing additional  
10 sums of money that are not essential at this stage, and  
11 I would support the Staff recommendation on Issue 2.

12 **CHAIRMAN GRAHAM:** Commissioner Brisé.

13 **COMMISSIONER BRISÉ:** Thank you. Thank you,  
14 Mr. Chairman.

15 I have one question. Would there actually be  
16 a cost difference to ratepayers if the utility had  
17 conducted more of these preconstruction activities  
18 simultaneously?

19 **MR. BREMAN:** I think Issue 2 -- I'm Jim  
20 Breman. I think Issue 2 actually goes to the new build  
21 project. FPL is not pursuing simultaneous activities  
22 because it is in the permitting phase. So whenever you  
23 do things simultaneously, it's possible to incur more  
24 costs during that shorter time frame than you otherwise  
25 would incur, but the question is unresolved whether on a

1 total basis you would have incurred a total of more  
2 costs. That analysis that you're asking about with  
3 respect to Turkey Point 6 and 7 is not in the record.

4 **COMMISSIONER BRISÉ:** Okay. Thank you. And  
5 I'll make my comments with respect to where I am on this  
6 issue.

7 I find that the, that the utility has done  
8 what the statute has asked for. And on the whole notion  
9 of the option, I think that the statute, the way it's  
10 written, contemplates the option. And I think, as  
11 Commissioner Balbis expressed, that we wouldn't  
12 necessarily want a utility to be locked in and  
13 ultimately be in a position where it's not favorable to  
14 the consumer to go through with the project if in the  
15 long run it just doesn't make sense.

16 So, with that, I am very comfortable with the  
17 Staff recommendation. I actually commend Staff for, for  
18 providing such a good recommendation. And I'm also  
19 thinking about the impact of going opposite the Staff  
20 recommendation on this issue, because then it sort of  
21 flips the regulatory compact from my perspective on its  
22 head. If, if the statute says that this is allowed and  
23 then we then turn around and say that this is not  
24 allowed, then from, from those who are thinking about  
25 investing here in our state with respect to, to our



1 utilities, then it damages, from my perspective, the  
2 regulatory environment, which ultimately will end up  
3 costing the consumer a whole lot more than we are --  
4 than following what, what the statute lays out. And so  
5 that's, that's my take on, on this issue.

6 **CHAIRMAN GRAHAM:** Okay. Let's go back to  
7 Issue Number 1.

8 Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you.

10 I realize that in Issue 1 we, from a pure  
11 dollar perspective we are dealing with numbers  
12 significantly smaller than in many of the other issues.  
13 But yet I can't help but recognize that in many, many,  
14 many dockets on other issues over the years we spent a  
15 great deal of time parsing, as we should, parsing  
16 through rate case expense and comparisons and comparable  
17 treatments. And so I'm wondering if the Staff could  
18 walk me through a little bit the thought process for the  
19 recommendation on rate case expense for recovery in this  
20 issue and how this treatment compares with the way we  
21 have addressed rate case expense in other dockets.

22 **MR. BREMAN:** Commissioner, when I looked at  
23 this issue, I looked at the statute. The definition in  
24 the statute for cost is a nonexclusive listing. They  
25 give an example of cost. So the definition of cost is a

1 little bit wide open. It's kind of undefined.

2 So then we looked at -- then I looked at  
3 whether or not this cost was appropriate. And this cost  
4 is not, based on my analysis, for personnel appearing  
5 before you that are under employment with FPL on a  
6 full-time basis. Those, those would be a base rate  
7 event. Instead, I found or have the opinion that these  
8 costs are for expert witnesses that come before you.  
9 And to the extent that those expert witnesses and  
10 independents of those expert witnesses can be presented  
11 to you, I think that's a benefit to the ratepayers.

12 So that's the way I look at it, is there's no  
13 prohibition from recovering the costs. These are the  
14 same type of costs that you would probably consider in a  
15 base rate proceeding where there's expert witnesses  
16 coming before you, and those rate case type expenses  
17 would then be considered and addressed, whether or not  
18 they're fully recovered.

19 Rate cases, my understanding, and it's been a  
20 few years since I've played in one, is that those rate  
21 case expenses are large, and especially on a smaller  
22 utility it can dominate what the outcome is. And, as  
23 you said, these dollars aren't significant. And to the  
24 extent that these are separate expenses from base rate  
25 expenses, I feel fairly comfortable that the right

1 regulatory policy is being implemented.

2 **COMMISSIONER EDGAR:** Clarification. I did not  
3 say that these totals are not significant. I said that  
4 they are --

5 **MR. BREMAN:** Understood.

6 **COMMISSIONER EDGAR:** -- small numbers in  
7 comparison to the other items that we are dealing with  
8 in this case. Clearly anything --

9 **MR. BREMAN:** My response was whether or not  
10 the amount would change the factor.

11 **COMMISSIONER EDGAR:** Is the treatment that the  
12 Staff has used in this recommendation for rate case  
13 expense -- witness -- witnesses and witness support  
14 costs primarily comparable to the treatment that we have  
15 used in the past for other cost recovery clause  
16 processing?

17 **MR. BREMAN:** I think other clauses are  
18 different, Commissioner. I think like, for example,  
19 you're going to have the fuel clause in November, and  
20 those witnesses are primarily full-time employees of the  
21 company. And so that's the difference.

22 **COMMISSIONER EDGAR:** Such that those costs  
23 would be in rate base.

24 **MR. BREMAN:** Those would be rate base. That's  
25 the significant difference in my mind.

1                   **COMMISSIONER EDGAR:** Have we had -- to your  
2 knowledge, have we had expert witnesses testify in other  
3 clause recovery proceedings in the past? I think  
4 probably, but --

5                   **MR. BREMAN:** Probably they have.

6                   **COMMISSIONER EDGAR:** And have those costs been  
7 flowed through as rate case expense?

8                   **MR. BREMAN:** I do not know.

9                   **COMMISSIONER EDGAR:** Nor do I.

10                   Does anybody know? We don't know.

11                   Have we in past, realizing that this is still  
12 a relatively new statute and rule that we are  
13 implementing here, have we flowed through, approved for  
14 cost recovery the cost of expert witnesses in this  
15 clause in the past?

16                   **MR. BREMAN:** Yes.

17                   **COMMISSIONER EDGAR:** All right. Thank you.

18                   **CHAIRMAN GRAHAM:** Anyone else on Issue 1?

19                   Okay. How about Issue 3, 4, 5?

20                   Commissioner Brown.

21                   **COMMISSIONER BROWN:** Thank you. And this is  
22 for Issue 3. I have a few questions on that.

23                   **CHAIRMAN GRAHAM:** Who wants to take us into  
24 Issue 3?

25                   **COMMISSIONER BROWN:** Issue 3. Staff,

1 regarding sunk costs, have we ever added sunk costs to  
2 the cost-effective analysis?

3 **MR. GARL:** No, Commissioner. Ever since the  
4 need determination and each one of the successive  
5 nuclear cost recovery clause proceedings, sunk cost is  
6 hindsight, it's what's already been spent, where the  
7 feasibility analysis looks at from this point forward is  
8 it feasible to continue with the project.

9 **COMMISSIONER BROWN:** Can you go through the --  
10 for purposes of our interest, can you go through the  
11 economic principle behind this?

12 **MR. GARL:** Yes. Well, it's just as I said,  
13 if -- when you're proceeding from point A to point B,  
14 anything that happened prior to point A, it's illogical  
15 to consider that when you're looking at where we are  
16 today and is it feasible to continue on to completion.

17 I think one of the FPL witnesses added that in  
18 addition to a well -- well-recognized principle in not  
19 including sunk costs in a feasibility analysis, it also  
20 mentions it in the rule and the Commission order that  
21 we're looking forward to completion rather than what  
22 happened in the past. Not to say that sunk costs should  
23 be totally ignored. The Commission order specifically  
24 says that sunk costs should be recognized, and they have  
25 indeed done that.

1                   **COMMISSIONER BROWN:** Okay. Regarding the  
2 Westinghouse AP1000 design, is FPL committed to that  
3 design?

4                   **MR. GARL:** Yes.

5                   **COMMISSIONER BROWN:** Okay. And it was stated  
6 in their application, in the application?

7                   **MR. GARL:** Yes, their application to the  
8 Nuclear Regulatory Commission.

9                   **COMMISSIONER BROWN:** In the staff  
10 recommendation it suggests the design change rulemaking  
11 would be -- implement -- finalized in September. Has  
12 that occurred?

13                   **MR. GARL:** Yes. At -- later on in the hearing  
14 one of the Commissioners asked if that has happened, and  
15 the answer was yes.

16                   **COMMISSIONER BROWN:** Okay.

17                   **MR. GARL:** It's in the process and expected to  
18 be finalized early next year.

19                   **COMMISSIONER BROWN:** Okay. Just another  
20 question, if you don't --

21                   **CHAIRMAN GRAHAM:** Sure.

22                   **COMMISSIONER BROWN:** I know the Intervenors  
23 expressed doubts regarding the new nuclear units as a  
24 result of the events that occurred at Fukushima nuclear  
25 plant. However, I believe it was FPL Witness Diaz that

1 provided some convincing testimony at the hearing  
2 surrounding these concerns.

3 I wanted to take this opportunity, Staff, to  
4 ask you all to address how the Commission monitors  
5 nuclear project controls within the confines of the  
6 record.

7 **MR. GARL:** You're referring to his testimony?

8 **COMMISSIONER BROWN:** Uh-huh.

9 **MR. GARL:** Yes. On page 23 we've quoted that,  
10 Witness Diaz saying, "The current generation of nuclear  
11 power plant designs that are the subject of COLAs, such  
12 as the Westinghouse AP1000 design that is referenced in  
13 the Turkey Point Units 6 and 7 COLA, are more robust  
14 than the existing plants in the areas shown to be  
15 compromised by the earthquake/tsunami combination in  
16 Japan."

17 **COMMISSIONER BROWN:** I guess my question,  
18 Mr. Garl, is how does the Commission monitor nuclear  
19 project controls, cost activities as it relates to  
20 Turkey Point 6 and 7?

21 **MR. GARL:** By this, this very process here,  
22 the annual nuclear cost recovery proceeding, where the  
23 utilities are required to provide information on updated  
24 costs, cost-effectiveness, an overall feasibility  
25 analysis, which presents to the Commission on an annual

1 basis what the project looks like.

2 **COMMISSIONER BROWN:** And I just wanted --

3 **MR. BREMAN:** Excuse me, Commissioner. You  
4 might be actually asking a question with respect to  
5 Issue 6 or subsequent issues having to do with project  
6 management, oversight controls.

7 **COMMISSIONER BROWN:** Uh-huh.

8 **MR. BREMAN:** To the extent that the utility is  
9 engaged in monitoring things at the NRC and is  
10 responsive to the NRC, how much time they take to look  
11 at the NRC, we have a management audit team that goes in  
12 and monitors the utility's activities and then reports  
13 to you and provides testimony on their findings, and  
14 that's how we do that.

15 **COMMISSIONER BROWN:** And Mr. Breman  
16 answered -- really, that was exactly what I was trying  
17 to get at. I think the role that the Commission plays  
18 is important as it monitors cost activities at the new  
19 nuclear sites and existing sites, and I would like to  
20 reemphasize this point for purposes of this issue, so.

21 **CHAIRMAN GRAHAM:** Commissioner Balbis.

22 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
23 I'd like to focus on two small points  
24 concerning this issue. One is the updated fuel forecast  
25 for Florida Power & Light, and that none of the parties



1 really contested their forecast, but just pointed out  
2 the fact that there's been a reduction in the benefits  
3 of this project. And I just want Staff to confirm that  
4 with the updated fuel forecast and the lower, especially  
5 natural gas fuel prices, that the Florida Power & Light  
6 projects are still cost-effective.

7 **MR. GARL:** Yes, Commissioner. The analysis,  
8 the cost-effectiveness analysis that Florida Power &  
9 Light did shows the results of those lower gas prices as  
10 compared to last year. The -- not only the  
11 cost-effectiveness has dropped slightly, but also the  
12 amount of the savings over the life of the project has  
13 been reduced. So they did consider that cost reduction  
14 of natural gas in their analysis.

15 **COMMISSIONER BALBIS:** And even with those  
16 reductions in benefits and natural gas prices, again,  
17 the projects are still cost-effective.

18 **MR. GARL:** Yes, sir.

19 **COMMISSIONER BALBIS:** And my personal  
20 knowledge and information contained within the record  
21 indicates there are several ongoing issues with natural  
22 gas that could provide upward price pressure to make the  
23 project even more cost-effective.

24 The other point I wanted to make is associated  
25 with the sunk costs. There was a lot of discussion

1 during the hearing on sunk costs, and I believe it was  
2 FPL Witness Sims that -- or Sim -- that after providing  
3 several caveats that he may be violating traditional  
4 economic analysis, that even including sunk costs in  
5 this project, that it was still cost-effective. Is that  
6 correct?

7 **MR. GARL:** That is correct. Yes, sir.

8 **COMMISSIONER BALBIS:** Thank you. I have no  
9 further comments.

10 **CHAIRMAN GRAHAM:** Commissioner Brisé.

11 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

12 I want to go back to regulatory feasibility.  
13 What impact or -- yeah, what impact will the Vogtle  
14 plant in Georgia have as an indicator with respect to  
15 the AP1000 moving forward?

16 **MR. GARL:** The decision the Nuclear Regulatory  
17 Commission will issue in the case of Plant Vogtle is the  
18 dam letting go. And once they approve the latest design  
19 of the AP1000, followed by approval of the Plant Vogtle  
20 project, that's what Florida Power & Light states that  
21 they are looking for as the, the litmus test of what the  
22 NRC is doing. So that'll be a big, a big move once they  
23 approve the Plant Vogtle project.

24 **COMMISSIONER BRISÉ:** Okay. And from, from  
25 what you -- or from -- I'm sure you all as Staff are

1 also monitoring that. Are things relatively on track  
2 there?

3 **MR. GARL:** Yes. They -- as we say, sometime  
4 next year, from all we've seen, that project should  
5 receive approval as well.

6 **COMMISSIONER BRISÉ:** Okay. All right. I  
7 thought they wanted maybe to add something.

8 **MR. BREMAN:** Commissioner, I just want to  
9 point out something. We monitor things that aren't  
10 necessarily entered into the record because it's common  
11 knowledge.

12 **COMMISSIONER BRISÉ:** Understood.

13 **MR. BREMAN:** The information that we're  
14 referring to is basically reading information we get  
15 directly from the NRC through e-mail subscription and  
16 the press. So there might be some discussion on the  
17 Vogtle site about what we know is going on there that is  
18 not squarely within the four corners of the record.

19 **COMMISSIONER BRISÉ:** Thank you.

20 **CHAIRMAN GRAHAM:** Any other questions of Issue  
21 3, or Issue 4 or 5? 3A? Seeing none, I guess someone  
22 makes -- Commissioner Brown.

23 **COMMISSIONER BROWN:** I did have a brief  
24 comment on 3A. I was waiting. If any of the  
25 Commissioners had a question, I'll defer to you all.

1                   **CHAIRMAN GRAHAM:** No.

2                   **COMMISSIONER BROWN:** Okay. I'll just go ahead  
3 with my comment.

4                   I believe that there's value in obtaining the  
5 COL for Turkey Point 6 and 7. It's projected to save  
6 customers billions of dollars in fuel and environmental  
7 costs under a wide range of compliance cost scenarios  
8 that were addressed in the Staff recommendation, in  
9 addition to reducing our reliance on fossil fuels,  
10 providing fuel diversity, and reducing emissions. And I  
11 think Florida Power & Light's decision to continue  
12 pursuing the COL is, in my opinion, well reasoned, and I  
13 would support Staff recommendation.

14                   **CHAIRMAN GRAHAM:** Okay. We need a motion to  
15 approve Staff recommendation on Issues 1 through 5.

16                   Commissioner Edgar.

17                   **COMMISSIONER EDGAR:** Mr. Chairman, I move  
18 approval of the Staff recommendation on Issues 1, 2, 3,  
19 3A, 4, and 5, 3 as amended by the oral modification, and  
20 in recognition that Issues 4 and 5 are basically  
21 subsumed within the discussion that we've had on 3.

22                   **COMMISSIONER BALBIS:** Second.

23                   **CHAIRMAN GRAHAM:** It's been moved and  
24 seconded, all that stuff that she just said. Any  
25 further discussion?

1           Seeing none, all in favor, say aye.

2           (Affirmative response.)

3           Any opposed?

4           (No response.)

5           By your action you've approved 1 through 5.

6           Okay. 6 through 10. Start with the small

7 ones and go up. Questions on 6 or 7?

8           We talked a little bit about 6. Did you have

9 anything else to add to that? Because it overlapped

10 with the questions that Commissioner Brown had on 3.

11           **MR. BREMAN:** No, sir. That was all I wanted

12 to do was clarify the one question.

13           **CHAIRMAN GRAHAM:** All right. Can I get a

14 motion to approve Staff's recommendations on Issues

15 6 through 10?

16           Commissioner Edgar.

17           **COMMISSIONER EDGAR:** Move Staff recommendation

18 on Items 6, 7, 8, 9, 10, including the oral modification

19 on Issue 8.

20           **COMMISSIONER BRISÉ:** Second.

21           **CHAIRMAN GRAHAM:** It's been moved and

22 seconded, Staff recommendation on Issues 6 through 10,

23 including the oral modification on Issue 8.

24           Any further discussion?

25           Seeing -- Commissioner Brisé.

1                   **COMMISSIONER BRISÉ:** No. I failed to ask a  
2 question on Issue 10.

3                   **CHAIRMAN GRAHAM:** That's all right. Go ahead.

4                   **COMMISSIONER BRISÉ:** So if we can sort of take  
5 a step backwards. If we can have a discussion on the  
6 breakeven analysis versus the CPVRR approach and what  
7 the benefits would be of a breakeven analysis and how it  
8 may or may not be the best tool in this instance.

9                   **MR. ELLIS:** A CPVRR approach uses two  
10 competing resource plans -- in this instance, one with  
11 the EPU project and one without -- and then compares the  
12 total cost. So it provides a total savings number that  
13 you can therefore say with those assumptions of fuel and  
14 environmental costs, it will have this amount of  
15 savings.

16                   A breakeven analysis eliminates from the  
17 equation the capital or construction costs associated  
18 with the EPU project, and then takes that total sum and  
19 divides it by the capacity it provides to provide a  
20 number that represents the total cost at which the  
21 projects for construction can go, above which it would  
22 become not cost-effective. So Staff is recommending in  
23 this case the use of a CPVRR. It's traditionally been  
24 what we have used in most projects.

25                   And the breakeven analysis in this instance,

1 given that we are close to implementation, a partial  
2 uprate has already been conducted on one unit, St. Lucie  
3 2. It's more, it's typically more useful to do a CPVRR  
4 on those variety of costs.

5 **COMMISSIONER BRISÉ:** I'm going to -- sort of  
6 forgive my ignorance, all right, for, for a quick  
7 minute.

8 The average person who runs a business, they  
9 look at a breakeven analysis to determine whether  
10 something is viable or not. Can you describe to me or  
11 explain to me why the breakeven analysis doesn't make  
12 sense in a way that, you know, if I'm the guy who has  
13 the, you know, I'm just trying to sell sodas or  
14 something, understands that concept as to what are the  
15 moving parts that prohibits the traditional breakeven  
16 analysis not to work in this particular situation?

17 **MR. BREMAN:** Sure. I looked at Phillip  
18 Ellis's analysis, and I'd like to turn you to page 49,  
19 Figure 10-1. Sometimes when you get caught up in system  
20 planning you focus on a methodology, and you have an  
21 inherent understanding and it's kind of hard to explain  
22 things.

23 What you're asking is a simple question.  
24 Breakeven in Figure 10-1 would be zero all the way  
25 across. The CPVRR tells you how much customer savings

1 occur, which is our charge here. That's the difference.

2 **COMMISSIONER BRISÉ:** Thank you.

3 **CHAIRMAN GRAHAM:** Commissioner Balbis.

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

5 And I just want to add another point and have  
6 a small discussion on the, the need for separate  
7 economic analysis on, on the two FPL sites. And that's  
8 one of the requests that the several Intervenors have  
9 made is to look at the different plants and do an  
10 economic analysis on each one.

11 My question for Staff, has any new information  
12 come to light that would warrant the separation and  
13 warrant a separate economic analysis on the two plant  
14 sites since the need determination process?

15 **MR. ELLIS:** No. In this instance one of the  
16 main items cited is the number of unit years that the  
17 St. Lucie plant will run more so than the Turkey plant  
18 site. That was information that was known at the need  
19 determination in each NCRC hearing.

20 **COMMISSIONER BALBIS:** Okay. So during the  
21 need determination process the two or the four separate  
22 licensure expiration dates were known. Those have not  
23 changed. So nothing has changed that would warrant the  
24 separation; is that correct?

25 **MR. ELLIS:** That would be correct. Yes.



1                   **COMMISSIONER BALBIS:** Okay. Thank you. I  
2 have no further questions.

3                   **CHAIRMAN GRAHAM:** All right. We have a motion  
4 on the floor. It has been moved and seconded, the  
5 Staff recommended -- to approve Staff recommendations on  
6 Issues 6 through 10, including the oral modification on  
7 Issue 8. If there's no other discussion, all in favor,  
8 say aye.

9                   (Affirmative response.)

10                  Any opposed?

11                  (No response.)

12                  By your action, you've approved those issues.

13                  Let's look at Issues 11 through 14.

14                  Commissioner Brown.

15                  **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

16                  And there was a lot of discussion during the  
17 hearing regarding the fast tracking, the expedited. I  
18 know that we -- in the recommendation it talks about  
19 those terms can be used interchangeably. The question  
20 for Staff, was the concept of fast tracking presented to  
21 the Commission during the need determination, or  
22 discussed?

23                  **MR. BREMAN:** The definition of fast track was  
24 not presented to the Commission in the need  
25 determination, based on my reading of the order. The

1 transcript of the proceeding and the discovery of the  
2 need proceeding was not made part of this record. So  
3 the only thing I had to rely on was the  
4 characterizations that the various witnesses had and the  
5 order itself.

6 What I found was there was a need in 2012/2013  
7 time frame, and that was clearly expressed in the order.  
8 And FPL has adhered to putting or achieving that target  
9 in-service date with their approach to the EPU project.

10 FPL uses a different term rather than fast  
11 track. They use the word expedited. It's a difference  
12 without a distinction in this case, because whatever  
13 management policy FPL implemented has consistently tried  
14 to achieve the 2013 -- 2012/2013 in-service dates.

15 **COMMISSIONER BROWN:** So without Florida Power  
16 & Light's efforts to expedite, would they be able to  
17 achieve that 2012/2013 in-service date?

18 **MR. BREMAN:** No, ma'am. There's no dispute  
19 that had a sequential approach been implemented, the  
20 in-service date would not have made the 2012/2013 date.  
21 It would have lasted at least four years longer, and  
22 customer savings would have declined somewhere in the  
23 neighborhood of \$800 million.

24 **COMMISSIONER BROWN:** That's the second  
25 question. Thank you.

1 I have one more small question regarding FPL's  
2 efforts for recovering work stoppage costs. We  
3 discussed this. I just wanted to make sure that the  
4 Commission Staff is monitoring and will continue to  
5 monitor recovery of work stoppage costs, including the  
6 Seimens claim from third parties.

7 **MR. BREMAN:** We will.

8 **COMMISSIONER BROWN:** Okay. Thank you.

9 **CHAIRMAN GRAHAM:** Commissioner Balbis.

10 **COMMISSIONER BALBIS:** Thank you, Mr. Chair.

11 I just have a quick comment and a question for  
12 Staff. One of the risks associated with fast tracking a  
13 project is sometimes equipment procurement. Long lead  
14 time items are purchased prior to design being completed  
15 to a phase where you're more certain. The fast tracking  
16 or expediting of this project, did it result in Florida  
17 Power & Light procuring equipment or other, or other --  
18 or incurring other costs that have been stranded or will  
19 not be recovered?

20 **MR. BREMAN:** No.

21 **COMMISSIONER BALBIS:** Thank you. I have no  
22 other questions.

23 **CHAIRMAN GRAHAM:** Commissioner Brisé.

24 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

25 On page 63, and this is from Witness Jacobs,

1 he asserted that FPL failed to perform a breakeven  
2 analysis and did not have a good handle on the ultimate  
3 costs and was slow to recognize and take into account  
4 early indications that its initial estimates were  
5 inadequate. He believed that these deficiencies  
6 constitutes imprudence. He generally ascribed the  
7 imprudence to FPL employing a fast track approach. Can  
8 you explain or describe why that position is not  
9 correct? From your perspective obviously.

10 **MR. BREMAN:** Yes. Some of the discussion  
11 about fast track has already occurred, is you could not  
12 have achieved the in-service date, so that it was  
13 prudent or reasonable for the utility to try to do  
14 something out of the ordinary. So the question of fast  
15 track is sort of taken off the table.

16 I think the question you're going to is  
17 whether or not FPL understood the full scope of the cost  
18 estimate that it presented in the need case. There is  
19 no record evidence -- to answer that question, there was  
20 no record evidence presented that FPL could have or  
21 should have known the information that became  
22 self-evident after they did their analysis in 2009 and  
23 2010. There was no demonstration or no, no  
24 representation that FPL should have known that  
25 information at the time of the original need

1 determination. Essentially the best information they  
2 had at the time was presented to you. There's always  
3 hindsight, Commissioners, and we always know more today  
4 than we knew yesterday.

5 **COMMISSIONER BRISÉ:** That goes to a broader  
6 question with respect to regulating in hindsight. And  
7 what is your thought process on that? After we receive  
8 information, after things have occurred based upon going  
9 through the normal course and then to, and then take a  
10 look back and want to address things that have already  
11 been determined and agreed upon, what impact does that  
12 have from your perspective on the regulation process?

13 **MR. BREMAN:** I think the regulation of this  
14 clause is substantially a variance event, because we're  
15 looking at the variance between the original forecast  
16 and the one we have today. So we're monitoring why the  
17 prices changed, the prices of the project changed, and  
18 we have better information. And with that new  
19 information, is continuing the project feasible? And as  
20 addressed in Issue 10, it was found feasible.

21 **COMMISSIONER BRISÉ:** Okay. One last question.  
22 As part of the last line of the recommendation, it says,  
23 "Additionally, Staff recommends the Commission not adopt  
24 OPC Witnesses Smith and Jacobs' breakeven analysis for  
25 purposes of rate base." And we haven't had much

1 discussion on that in terms of what would the mechanism  
2 look like or what would the methodology look like in  
3 using the breakeven analysis as part of setting rate  
4 base.

5 **MR. BREMAN:** It's kind of hard to know  
6 something when it's -- when the analysis is yet to be  
7 presented to you. OPC's testimony is that it should be  
8 done when the project is completed. So it's kind of  
9 sight unseen you're being asked to agree to implement a  
10 process, a formula, without knowing what it says.

11 If I could, and I, and I know I did this  
12 already, but the chart on page 49, or the Figure of 10.1  
13 on page 49, and I might sound like I'm testifying  
14 because you asked me a policy question, and I'll try to,  
15 I'll try to address it from a policy basis.

16 **COMMISSIONER BRISÉ:** Sure.

17 **MR. BREMAN:** And I'm not a sworn witness, so.  
18 One of the things that I didn't put in the  
19 recommendation analysis, because I tried to stay within  
20 the four corners of the transcript, is if you did  
21 implement that as a regulatory theory, the utility would  
22 incur -- would actually be encouraged to incur capital  
23 expenditures that use up all of the fuel savings that  
24 you see in this chart. And that is another regulatory  
25 concern. If you're going to do something like this,

1 like set up a regulatory backstop, you need to do it at  
2 inception, and that testimony is in the record. And I  
3 agree with the concept that whatever performance  
4 conditions you put on a utility, you need to put it on  
5 early in the project, not two years before it's  
6 completed.

7 **COMMISSIONER BRISÉ:** So, therefore, from your  
8 perspective, if we followed that path, it would have a  
9 negative impact on the consumer ultimately?

10 **MR. BREMAN:** It's possible. Because, like I  
11 said, it might eat up the fuel savings.

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

13 **CHAIRMAN GRAHAM:** Commissioner Balbis.

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

15 I wanted to follow up on a good point and  
16 question that Commissioner Brisé asked, and that's  
17 associated with the initial cost estimates. And this is  
18 something that I discussed with Staff during our  
19 briefing, but in essence, the, the lower estimates at  
20 the time of the need determination process, did they  
21 skew the feasibility of the project in the need  
22 determination process?

23 **MR. BREMAN:** No.

24 **COMMISSIONER BALBIS:** So, in other words, the  
25 updated information that we now know is more accurate,

1 the project is still feasible and cost-effective;  
2 correct?

3 **MR. BREMAN:** Yes.

4 **COMMISSIONER BALBIS:** Okay. Thank you.

5 **CHAIRMAN GRAHAM:** Okay. Anything else between  
6 11 and 14?

7 Commissioner Brown.

8 **COMMISSIONER BROWN:** A quick question on Issue  
9 12.

10 **CHAIRMAN GRAHAM:** Sure.

11 **COMMISSIONER BROWN:** Can Staff please explain  
12 the increase incurred in licensing costs in the amount  
13 of 7.9 million for the year-end 2009, and the reason  
14 behind it?

15 **MR. BREMAN:** The increase in licensing costs  
16 as I saw it was an increase -- was responsive to a  
17 projected increase in activity level. So they'd be  
18 responding to NRC data requests and such in trying to  
19 achieve their license renewal approvals by the target  
20 dates that they need in order to turn Turkey Point Units  
21 3 and 4 back online and also complete the uprate for  
22 St. Lucie 1 and 2.

23 **COMMISSIONER BROWN:** Which Staff deems is  
24 reasonable given the time frame of the project?

25 **MR. BREMAN:** Yes, ma'am. For projection



1 purposes that is very reasonable.

2 **COMMISSIONER BROWN:** Thank you.

3 **CHAIRMAN GRAHAM:** Can I get a motion?

4 Commissioner Edgar.

5 **COMMISSIONER EDGAR:** Mr. Chairman, pursuant to  
6 our discussion, I move the Staff recommendation on Items  
7 11 and 14 and 12 and 13 as modified.

8 **COMMISSIONER BALBIS:** Second.

9 **CHAIRMAN GRAHAM:** It has been moved and  
10 seconded Staff recommendations on Items 11, 12, 13, 14,  
11 with the modifications on 12 and 13.

12 Any further discussion?

13 Seeing none, all in favor, say aye.

14 (Affirmative response.)

15 Any opposed?

16 (No response.)

17 By your action, you've approved Staff  
18 recommendation on those items.

19 Item 15. Staff, let's just get started with  
20 that one.

21 **MR. DOWDS:** Commissioners, Dave Dowds with  
22 staff.

23 Issue 15A pertains to whether or not FPL  
24 willfully withheld information from the Commission  
25 regarding the EPU project's estimated total project

1 completed costs and the EPU project's feasibility study  
2 that the Commission required to make an informed  
3 decision at the September 2009 NCRC hearings. Staff  
4 recommends that the Commission find that FPL did not  
5 willfully withhold EPU total project cost information  
6 that was necessary for the Commission to make an  
7 informed decision at the September 2009 hearings.

8 Staff also recommends that FPL continue to  
9 provide to the Commission validated, reliable updates of  
10 total project cost estimates as they are available.

11 And we're ready to answer any questions you  
12 may have.

13 **CHAIRMAN GRAHAM:** 15B.

14 **MR. YOUNG:** Commissioners, Keino Young. By  
15 your decision on 15A, 15 -- by your decision on 15A will  
16 dictate how 15B and 15C is to go.

17 **CHAIRMAN GRAHAM:** Let's just go ahead and,  
18 let's just talk us through 15B.

19 **MR. YOUNG:** Pardon me, sir?

20 **CHAIRMAN GRAHAM:** What are the options on 15B?

21 **MR. YOUNG:** If your decision on 15A is to find  
22 FPL willfully withheld information, Staff recommends  
23 that it be given an opportunity to bring forth a  
24 recommendation at the November Agenda Conference as to  
25 the next steps, including, but not limited to, should a

1 show cause be -- show cause proceeding be initiated or  
2 whether a separate proceeding should be opened to  
3 consider whether the utility was prudent and what costs  
4 should be associated with that decision.

5 **CHAIRMAN GRAHAM:** Commissioners, I just, I  
6 paused at this one because I know there was a lot of  
7 allegations that came out last year about this, and we  
8 spent a lot of time talking about it this year. So I  
9 just wanted to make sure that we are specifically  
10 talking about this one on the record so we had something  
11 to go back to.

12 Any comments, concerns on -- wow.

13 Commissioner Brisé.

14 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

15 There was a lot of discussion about this at  
16 hearing, before hearing, in the press and so forth and  
17 so on about this notion about willfully withholding  
18 information. And let's talk about what willfully  
19 withholding information means, what information is  
20 actually needed, and how Staff arrived at its  
21 recommendation to say that, you know, no, Staff  
22 recommends that the Commission find that FPL did not  
23 willfully withhold information concerning the estimated  
24 capital and so forth. So if you can walk us through how  
25 you got to that point and willful and all of that.

1                   **MR. DOWDS:** Yes, Commissioner.

2                   In the Staff analysis being on page 94, I  
3                   opted to parse the issue as phrased into three  
4                   components, because it's rather difficult addressing a  
5                   compound issue.

6                   The first one is whether willfully failed to  
7                   provide EPU updated estimates by the time of the  
8                   hearings. And the first component I looked at was  
9                   willful withholding. What does that mean? And the  
10                  record is not a model of clarity on that aspect, but  
11                  there is no argument from FPL that they were -- they  
12                  consciously made the decision not to update the  
13                  witness's testimony, and they had good reasons, which  
14                  are addressed in my second portion, which is whether or  
15                  not the witness was required to update its feasibility  
16                  study and its EPU cost estimate.

17                  FPL -- obviously OPC and Intervenors generally  
18                  argue that FPL was so obligated. However, there were  
19                  good reasons offered by FPL as to why it chose not to do  
20                  so; namely, that they were still fighting back with the  
21                  EPC, Bechtel, throughout most of 2009 and into early  
22                  2010 trying to determine the increased scope of the  
23                  project, the cost estimates, the reasonableness of  
24                  Bechtel's proposed man-hour estimates, which increased  
25                  significantly in the first quarter of 2009.

1           And they -- and senior management of FPL was  
2 not ready to sign off on any of these estimates. And to  
3 the extent that the Executive Steering Committee must  
4 sign off on such proposals before they are released  
5 publicly, they, it was -- they were not ready for prime  
6 time, in the vernacular.

7           Third was whether there was any information  
8 that the Commission didn't have in the September 2009  
9 hearings that it needed to make informed decisions. The  
10 key -- there were two sets of decisions that were made  
11 at the hearing. First was the reasonableness of the  
12 2008 costs that have already been incurred and the '09  
13 and '10 projections. They had all the information they  
14 needed in the record, and the fact that the total  
15 project cost estimates was not updated had no bearing  
16 whatsoever on that, and OPC Witness Jacobs basically  
17 agreed with that.

18           Second is whether or not the project remained  
19 feasible. Internally FPL did a, quote, sensitivity  
20 analysis, unquote, around the July-ish, the July 2009  
21 time frame wherein they essentially did some additional  
22 calculations where they substituted the tentative  
23 increased capital costs into the feasibility  
24 calculations, and they didn't even include the increased  
25 capacity, which was then known. The results of that

1 analysis indicated that the project remained feasible,  
2 and the OPC witness agreed this is the case.  
3 Consequently, there was nothing really of necessity that  
4 the witness needed to update his testimony.

5 As such, we can't find anything that, that  
6 constitutes willful withholding, because what was  
7 withheld was not reliable and was probably appropriate  
8 that it not be provided so that the Commissioners did  
9 not have to address potentially down the road erroneous  
10 information.

11 **COMMISSIONER BRISÉ:** Thank you. So let me  
12 make sure I got this right in my head. All right? So  
13 you have information that, that was available, but it  
14 hadn't gone through the normal vetting process that the  
15 company would normally use before it provided that  
16 information. And that information, the updated  
17 information would not have had an impact on the outcome  
18 of, of what was needed for our processes.

19 So, so with that in mind, yes, they withheld  
20 the information because it was not ready, but it wasn't  
21 to the level where that information would sort of skew  
22 significantly the information that was presently  
23 available at the Commission. Is that about accurate?

24 **MR. DOWDS:** That's correct.

25 **COMMISSIONER BRISÉ:** Thank you.

1                   **CHAIRMAN GRAHAM:** Commissioner Balbis.

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

3                   And to follow up again with Commissioner Brisé  
4 and his comments, and thank you, Staff, for the  
5 additional clarification on the recommendation that you  
6 provided us.

7                   And I agree with Staff. I believe Florida  
8 Power & Light did withhold information, but they  
9 withheld it because it wasn't validated, it hadn't gone  
10 through the process for approval. And when I  
11 specifically asked the FPL witness Olivera as to whether  
12 the information that was provided to the Commission went  
13 through a similar vetting process, he testified that it,  
14 that it was. And this Commission needs accurate,  
15 validated information in order to make decisions. These  
16 are large projects that are, that are constantly  
17 changing information as fluid, and we have to be in a  
18 process to receive validated information so that we can  
19 make a decision.

20                   So then I focused on what does the rule  
21 require, the statute require? And it requires that a  
22 detailed analysis, you know, may not put quotes around  
23 detailed, but a detailed analysis be provided. And what  
24 I feel is a detailed analysis, it includes validated,  
25 accurate information. So I believe FPL did withhold

1 information, but they were right to do so because it was  
2 not vetted and they were not in violation of Rule  
3 25-6.0423. Thank you.

4 **CHAIRMAN GRAHAM:** Commissioner Brown.

5 **COMMISSIONER BROWN:** Thank you.

6 Can we just take a step back and go through  
7 the formal vetting process and can you explain,  
8 elaborate, again within the confines of the record?

9 **MR. DOWDS:** Certainly. If I can point you to  
10 page 93 of the Staff recommendation. There's a very  
11 telling quote from the hearing that was during  
12 cross-examination of FPL Witness Stall, where he  
13 basically described in detail what vetting amounts to.  
14 And to kind of short-circuit for the moment, the process  
15 he describes, he indicated was the same process that  
16 they would use prior to being allowed to release to  
17 external entities, such as the SEC or the NRC, let alone  
18 this Commission, any potentially sensitive business  
19 information.

20 **COMMISSIONER BROWN:** Okay. And then you  
21 had --

22 **MR. DOWDS:** Which I -- I'm sorry.

23 **COMMISSIONER BROWN:** Go ahead.

24 **MR. DOWDS:** Which I found telling, because  
25 CEOs have a tendency to be a little antsy about signing



1 off on filings with the SEC. And if they're using the  
2 same processes here for filings with the Commission, it  
3 tends to increase my comfort level.

4 **COMMISSIONER BROWN:** That's good. Thank you.  
5 And didn't OPC Witness Jacobs testify at the hearing  
6 that the info -- that even with the information -- even  
7 with -- if they had proposed an errata with the updated  
8 information, the project would be still deemed  
9 economically feasible?

10 **MR. DOWDS:** That's correct.

11 **COMMISSIONER BROWN:** Okay. I'm comfortable  
12 with Staff recommendation as well.

13 **CHAIRMAN GRAHAM:** Okay. Do I get a motion  
14 for -- Commissioner Balbis.

15 **COMMISSIONER BALBIS:** Mr. Chairman, I move  
16 Staff's recommendation on Issue 15A.

17 **CHAIRMAN GRAHAM:** It's been moved and seconded  
18 Staff recommendation on Issue 15A. No further  
19 discussion?

20 All in favor, say aye.

21 (Affirmative response.)

22 Any opposed?

23 (No response.)

24 By your action, you've approved Staff on 15A.

25 **MR. YOUNG:** Mr. Chairman, by your decision to

1 approve Staff recommendation on 15A, Staff would note  
2 that Issues 15B and 15C are now moot and don't need a  
3 vote.

4 **CHAIRMAN GRAHAM:** As per Mr. Young, we are  
5 scratching 15B and C.

6 All right. I think it's about a good time to  
7 take a five-minute break, and we'll be back here at 10  
8 'til. Thank you.

9 (Recess taken.)

10 All right. We have one last issue dealing  
11 with Florida Power & Light, which is Issue 19. Any  
12 questions or concerns on Issue 19? Do I hear a motion?  
13 Commissioner Balbis.

14 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
15 And I will move forward with a motion and kind of frame  
16 it with during the hearing I asked, I believe it was  
17 OPC's witness, if in their review of all the information  
18 provided by Florida Power & Light, were there any costs  
19 that they considered to be imprudent, and I want Staff  
20 to confirm that the witness testified that, no, there  
21 were no costs incurred that were imprudent. Is that  
22 correct?

23 **MR. BREMAN:** That's correct.

24 **COMMISSIONER BALBIS:** So, therefore, based on  
25 the discussion we've had on the issues, especially

1 associated with the intent to construct a project and to  
2 pursue the option and all the discussion we have had, I  
3 move forward with Staff's recommendation on Issue 19 for  
4 this docket.

5 **CHAIRMAN GRAHAM:** It's been moved and seconded  
6 Staff recommendation on Issue 19. Any further  
7 discussion? Seeing none, all in favor, say aye.

8 (Affirmative response.)

9 Any opposed?

10 (No response.)

11 By your action, you have approved Issue 19.

12 Staff, I want to thank you for the Florida  
13 Power & Light portion of this. I know Commissioner  
14 Brisé and I were new on the scene when this came up last  
15 year, and it was pretty hectic and there was a lot of  
16 unanswered questions and there was a lot of craziness,  
17 in my opinion, going on, and you guys were able to get  
18 the answers that we needed and put it before us in a  
19 nice, concise manner that was very understandable. And  
20 I do appreciate everything you guys did and the way you  
21 were able, the way you were able to put it together.

22 And, Florida Power & Light, we appreciate your  
23 patience and your time and going through this vetting  
24 process so we all have a clear path moving forward.

25 That being said, we're moving on to Progress.

1 Let's start with Issues 20 through 24.

2 Commissioner Brown.

3 **COMMISSIONER BROWN:** Thanks. I'll start with  
4 the joint ownership discussion. There was a lot of  
5 discussion during the hearing regarding joint ownership.  
6 What effect, if any, does the joint ownership have,  
7 would a joint ownership scenario have on the  
8 cost-effectiveness of the Levy project under the  
9 scenarios outlined in the Staff recommendation?

10 **MR. GARL:** This is Steve Garl again,  
11 Commissioner.

12 The biggest difference -- two big differences.  
13 The immediate rate impact would decline for the PEF  
14 customers. However, at the same time, the benefits that  
15 would accrue would also decline, and that would run for  
16 the longterm. And on the, on the chart on page 106  
17 probably demonstrates that differently, because Progress  
18 Energy has looked at 100% ownership, 80% ownership, and  
19 50% ownership. And as you can see by the numbers there,  
20 that as Progress Energy's percentage of ownership  
21 declines, it would indeed turn towards less  
22 cost-effectiveness and at the same time much less  
23 savings to the customers.

24 **COMMISSIONER BROWN:** I'm happy you did point  
25 that out, and I appreciate that.

1 Does Staff believe that pursuing a joint  
2 ownership though would be beneficial for -- to mitigate  
3 the rate impact to the customers?

4 **MR. GARL:** Absolutely. It would have that  
5 effect. But, again, it's -- one has to keep in mind the  
6 balance of cost versus benefits.

7 **COMMISSIONER BROWN:** Mr. Breman?

8 **MR. BREMAN:** Sorry to chime in here. When you  
9 say costs, it's the timing of costs and the timing of  
10 rate impacts. So if a utility went to a technology that  
11 didn't have the type of cost recovery mechanism that is  
12 available through the NCRC, the cost impact would be  
13 there. It would just be later in time and it would be  
14 larger.

15 **COMMISSIONER BROWN:** But right now in the  
16 process of obtaining the COL, I believe it was on the  
17 record and in the Staff recommendation that the company  
18 is not in the best position in seeking or obtaining a  
19 joint owner because of the lack of issuance of the COL.

20 **MR. BREMAN:** It's a buyer's market today.  
21 Yes, ma'am.

22 **COMMISSIONER BROWN:** Yes. That being said, we  
23 require Progress to submit annual report -- annual  
24 reports, correct, regarding this issue and the progress  
25 of the joint ownership?

1           **MR. GARL:** That is correct, Commissioner.  
2 Each year we look at the joint ownership situation; has  
3 there been some activity going towards that? Yes, we  
4 do.

5           **COMMISSIONER BROWN:** Would it be beneficial  
6 for the Commission to have a more engaged dialogue, say,  
7 more frequent reports, maybe quarterly reports, with the  
8 caveat that if there's a significant rate impact, that  
9 it would not be beneficial obviously to the ratepayers?

10          **MR. GARL:** That's certainly something the  
11 Commission could entertain as a requirement. It's  
12 probably arguable whether an annual report of that  
13 nature or more frequent would provide additional  
14 information that would be of value, since we have the  
15 cost recovery proceeding only once a year.

16          **COMMISSIONER BROWN:** Uh-huh. Is it, would it,  
17 would it have a rate impact to require the company to  
18 produce additional reports, and what would that be, off  
19 the top of your head?

20          **MR. GARL:** I couldn't even hazard a guess what  
21 a report of that nature might cost, but there would be  
22 always some cost involved in putting out a report.

23          **COMMISSIONER BROWN:** I bet someone on Staff  
24 has an idea.

25          **MR. LAUX:** I'm not sure if I have an idea or

1 not. It would increase cost. The question becomes is  
2 the activities that, that Progress Energy would do,  
3 would they change significant -- would there be enough  
4 changes in those activities that would require updated  
5 reporting activity? And I don't believe that that --  
6 you would be receiving information that would, you know,  
7 have any impact. Partially the Commission doesn't  
8 necessarily have a direct role in requiring somebody to  
9 sign up, to become a joint owner.

10 **COMMISSIONER BROWN:** Of course.

11 **MR. LAUX:** And at this point in time Progress  
12 Energy has not shown that they are not taking activity,  
13 so that they may need a little push or incentive to move  
14 forward. They are continuing to engage in those  
15 activities. Joint owners will probably show up at the  
16 time that is right for a joint -- when that joint owner  
17 makes a decision that they want to become a joint owner,  
18 and until then it'll be the joint owner's decision.

19 So an annual review of what those activities  
20 are is probably a good balance between cost to the  
21 utility and its ratepayers and information to the  
22 Commission.

23 **COMMISSIONER BROWN:** Thank you. And how --  
24 can you refresh my memory, how this issue was addressed  
25 in the need determination?

1                   **MR. YOUNG:** Commissioner, Keino Young.

2                   During the need determination there was  
3 discussion in terms of should the order require Progress  
4 Energy to seek a joint owner before the need is granted.  
5 The Commission, at Agenda Conference, discussed it at  
6 length, and it was not memorialized, the Commission did  
7 not vote to require Progress Energy to have a joint  
8 owner in order to, to determine a need determination.  
9 So at this point they are not required to have joint  
10 ownership.

11                   **COMMISSIONER BROWN:** And nor does the  
12 Commission have the authority to require.

13                   **MR. YOUNG:** Nor does the Commission have the  
14 authority to require it.

15                   **COMMISSIONER BROWN:** That's all.

16                   **CHAIRMAN GRAHAM:** Question. When a joint  
17 owner comes around, what is our role? Do we approve the  
18 joint owner? Do we just determine if the deal was  
19 prudent? What is, what is our role as a Commission?

20                   **MR. LAUX:** As to the actual contract that the  
21 company would sign with any particular type of  
22 organization to become a joint owner, I don't believe  
23 the Commission would have overall authority to approve  
24 or deny that contract. The Commission would be able to  
25 make a decision as to whether or not entering into that



1 contract is in the ratepayers' best interest, and  
2 therefore the costs that flow from that contract, you'd  
3 be able to make a decision as to whether or not those  
4 actions, the costs that flow from those actions were  
5 prudently incurred or not.

6 It would have a fairly large impact on the  
7 utility. And my guess is, given the size of how that  
8 would change the dynamics, the company would probably  
9 come, in all likelihood, like we see in a lot of  
10 wholesale contracts that have large dollar amounts, even  
11 though the Commission doesn't necessarily again have  
12 approval as to whether or not to approve or deny the  
13 contract, when it's a large contract like that, the  
14 utility usually will bring it by the utility for its --  
15 or, I mean, bring it by the Commission for its review.

16 **CHAIRMAN GRAHAM:** Okay.

17 Commissioner Brisé.

18 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

19 I'm going to go back to the regulatory  
20 feasibility. The Intervenors mentioned many or several  
21 regulatory uncertainties. Can we walk through some of  
22 those potential uncertainties and, and why we, why Staff  
23 feels that Progress has, as the recommendation notes,  
24 the necessary things in place to, to move forward with  
25 this project, with this project?

1           **MR. GARL:** Yes, Commissioner. The folks at  
2 Progress Energy did indeed consider some of these  
3 uncertainties, as shown by their cost-effectiveness  
4 analysis. They've provided the updated cost of fuel,  
5 the updated cost of emissions, CO2 in particular, and  
6 used those figures in its cost-effectiveness analysis.

7           One other item that was mentioned by  
8 Intervenors was the impact of the incident -- incident  
9 is minimizing and I apologize for that -- but in Japan  
10 at Fukushima, and that is still under consideration by  
11 the NRC. We don't know yet, they're still working on  
12 that, but what impacts that may have. And all the  
13 testimony at the hearing suggested that we don't know,  
14 but we don't think it will be significant.

15           **COMMISSIONER BRISÉ:** Okay. So with all of  
16 that, what put Staff in a posture to feel that Progress  
17 should move forward with this project?

18           **MR. GARL:** That's correct. There was nothing  
19 shown by the Intervenors that suggested from a  
20 regulatory standpoint that the project was not feasible.

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

22           **CHAIRMAN GRAHAM:** Commissioner Balbis.

23           **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
24           And I have a question for Staff on the  
25 economic feasibility portion of Issue 20, which starts

1 on page 103. There's a statement in the recommendation  
2 on Page 107 concerning the low fuel scenario. And the  
3 question I had for Staff during the briefing was what,  
4 what fuel scenario are we in? And the statement here  
5 that the low fuel scenario in the 2011 analysis has  
6 prices below \$5 per million Btu over 30 years, which  
7 seems like -- I won't make that statement. But can you  
8 confirm that that is the case, that that low fuel price  
9 forecast is below \$5 for 30 years; is that correct?

10 **MR. GARL:** Yes, Commissioner. That is indeed  
11 accurate. It's actually in the fuel forecast for the  
12 low scenario, it's under \$4 for the next 30 years.

13 **COMMISSIONER BALBIS:** So then, just to confirm  
14 that Staff and Progress's position is that we should be  
15 more in the mid-fuel reference; is that correct?

16 **MR. GARL:** That's about the best guess. The  
17 whole purpose of providing a range of fuel costs in  
18 their forecast is the hopes that somewhere between the  
19 high and low of that range is where it will actually  
20 fall. Obviously nobody knows for sure what the future  
21 price will be. And so all I can do is hope that the  
22 actual price is in that range that they've used, mid --  
23 the midrange is probably as good a guess as any.

24 **COMMISSIONER BALBIS:** And going back to Table  
25 20-1, one concern I do have is that the only case,

1 regardless of percentage of ownership, where the LNP  
2 project is not more cost-effective than the nonnuclear  
3 alternative is the no carbon dioxide legislation; is  
4 that correct?

5 **MR. GARL:** That's correct.

6 **COMMISSIONER BALBIS:** So the question for you  
7 is, is does that take into account there's no  
8 legislation that exists today, and then obviously  
9 throughout the life of the project there's no CO2  
10 legislation, but has there been a sensitivity analysis  
11 that looks at, well, there might not be today, but there  
12 may be one in three years and five years and ten years,  
13 et cetera? Has that analysis been performed and entered  
14 into the record?

15 **MR. GARL:** Well, the sources that they use for  
16 obtaining the cost of these emissions shows that if they  
17 do occur, in some cases it won't occur until 2014 or  
18 later. It varies by the estimates that they've provided  
19 about when a cost of CO2 might be implemented, and, of  
20 course, to be sure they have used a cost of no CO2 as  
21 one of their sensitivities.

22 **COMMISSIONER BALBIS:** I'm not sure I  
23 understood that answer. If you could clarify. You  
24 indicated that the source of information that they use  
25 indicates a staggering of the implementation. And if

1 so, is that indicated in that table, as in the EPA or  
2 not? Or is that just there is or there isn't in that  
3 different rate?

4 **MR. GARL:** Well, I refer you back to page 104,  
5 and Figure 20-2 probably explains it a little more  
6 clearly than I may have stated it.

7 The EPA and the CRA estimates of the CO2 costs  
8 don't begin until 2021. So depending on those  
9 forecasts, it may or may not start within the next  
10 couple years, or until 2021, or never. They've tried to  
11 cover all those bases.

12 **MR. LAUX:** Commissioner, I think that's what,  
13 the reason why the parties will come in or the utilities  
14 come in with multiple -- or forecasts from multiple  
15 sources that may have different views on what the future  
16 will look like. And the key there is if they -- that  
17 reality is probably -- or what may happen is going to  
18 sort of be surrounded by those different types of  
19 forecasts. Whether it goes right down the middle of the  
20 forecast, it's towards one side of the forecast, or the  
21 other side of the forecast, it's probably anyone's guess  
22 and not, and really not any type of information  
23 available to be able to guess at.

24 But as long -- if, if the project continues to  
25 be cost-effective at both extremes, then as long as

1 you're in the middle, the project will remain  
2 cost-effective.

3           **COMMISSIONER BALBIS:** I agree. I just wanted  
4 to point out for the record that, that the, the  
5 different carbon dioxide legislation options do not, do  
6 not anticipate legislation existing now, because it  
7 doesn't take a rocket scientist to tell you there's no  
8 carbon dioxide legislation in place, but that we do have  
9 a range of alternatives on the different implementation  
10 of carbon dioxide legislation, which is, I think  
11 prepares us for any option a little better than just  
12 either there is or there isn't.

13           And obviously on an annual basis we will  
14 reassess the likelihood of that legislation and the  
15 effect on the cost-effectiveness of the project. Is  
16 that correct?

17           **MR. LAUX:** That's correct. Each year these --  
18 and some of the companies which produce these  
19 forecasts -- and they're in the business of making  
20 forecasts, so they want to try and be as accurate as  
21 they can be as compared to the majority of what people  
22 out there may think what the future will look like and  
23 things like that. But each year they will have a  
24 different -- they will make a different forecast, the  
25 same way as forecasts of what fuel may look like

1 20 years from now and things like that. So each year  
2 those are being updated, and it will be reflected in  
3 this chart, similar to what is on 20, Table 20-1 on page  
4 106.

5 **COMMISSIONER BALBIS:** Thank you.

6 And, Mr. Chairman, my questions, my previous  
7 questions were on Issue 20. You had mentioned Issue 20  
8 through 24.

9 **CHAIRMAN GRAHAM:** 25.

10 **COMMISSIONER BALBIS:** Through 25. I do have a  
11 question on Issue, or a comment on Issue 23, if it's  
12 appropriate at this time, or do you want to go  
13 through --

14 **CHAIRMAN GRAHAM:** It's appropriate right now.

15 **COMMISSIONER BALBIS:** I would, I would just  
16 like to reiterate the same comments on Issue 23 as I had  
17 for Florida Power & Light. I agree that Progress Energy  
18 is moving forward with an intent to pursue an option,  
19 and, again, I think that is a good decision to make,  
20 considering the annual feasibility analysis that we go  
21 through. So I believe that my comments for Florida  
22 Power & Light are also appropriate for Progress Energy,  
23 and that's all the comments I have on that issue.

24 **CHAIRMAN GRAHAM:** Okay.

25 Commissioner Brisé.

1                   **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.  
2                   On Issue 23, I want for the record to note that, you  
3                   know, my position is similar with respect to the Staff  
4                   recommendation on the siting, licensing, and  
5                   construction, and that whole question about intent.

6                   I do want to also put on the record that I've  
7                   read a lot of comments that have come into the docket,  
8                   and I am sensitive to, to the notion that there is some  
9                   angst, at least in the public, with respect to moving  
10                  forward with these projects.

11                  But as laid out by statute and by a policy  
12                  decision that was made several years ago, which sought  
13                  to -- from my understanding, because I was around at  
14                  that time -- was to bring nuclear investment into the  
15                  state, and with that in mind the statute was formulated  
16                  in this fashion to, to spur that. So with that in mind,  
17                  the companies are following what the intent of that  
18                  statute was, and with that we are, as a Commission,  
19                  implementing the statute as is prescribed by the  
20                  Legislature.

21                  So with that, I am comfortable with Staff's  
22                  recommendation, because the company is doing what is  
23                  required by statute for it to move forward, and there is  
24                  nothing that they are doing that is outside of the  
25                  bounds or that shows that they are not moving in the



1 direction of completing a project or moving towards the  
2 completion of a project.

3 So I wanted to make sure that I put that  
4 onto -- on the record as part of my thought process as  
5 to how I arrive at this decision.

6 **CHAIRMAN GRAHAM:** Thank you, sir.

7 Commissioner Brown.

8 **COMMISSIONER BROWN:** Thank you. And I  
9 appreciate Commissioner Brisé's comments. Although I do  
10 have a question, I do appreciate you making those  
11 comments.

12 On Issue 22, OPC alleges in the Staff  
13 recommendation and in their brief, in its brief that the  
14 EPC contract faces potential cancellation. Can you  
15 elaborate on that?

16 **MR. GARL:** Just about cancellation?

17 **COMMISSIONER BROWN:** Uh-huh. And whether  
18 there's supporting evidence to support that.

19 **MR. GARL:** Yes. The activities that Progress  
20 Energy has going on right now, much like Florida Power &  
21 Light, primarily focuses on the Nuclear Regulatory  
22 Commission and their pursuit of the combined operating  
23 license. That activity has not ceased and they continue  
24 looking for that and hope to receive their license as  
25 well. That in itself shows the direction they are

1 going, and as of right now there's no reason to believe  
2 that they plan to cancel that effort.

3 **COMMISSIONER BROWN:** Or the contract itself,  
4 the EPC contract.

5 **MR. GARL:** Correct.

6 **MR. LAUX:** Commissioner, the contract is still  
7 in full force. The activities that were -- the  
8 activities required under that contract have been  
9 rescheduled because of the pushback in when they are  
10 going to get their COLA license.

11 I'm a little unclear as to what your, the  
12 testimony, exactly what you're talking about, but I  
13 think I can make -- I don't know if this is exactly what  
14 it was getting at. If Progress Energy does not get  
15 their COLA, they will cancel their contract to build the  
16 plant because they cannot build the plant without the  
17 COLA.

18 **COMMISSIONER BROWN:** Right. That's an obvious  
19 answer, and I appreciate you putting that on the record.

20 **MR. LAUX:** Sometimes it's the best way.

21 **COMMISSIONER BROWN:** Thank you.

22 **CHAIRMAN GRAHAM:** Any other questions on 20  
23 through 25?

24 Commissioner Balbis.

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

1 And if there are no questions on those issues, I move we  
2 accept Staff's recommendations on Issues 20 through 25.

3 **CHAIRMAN GRAHAM:** It's been moved and seconded  
4 Staff recommendations on Issues 20 through 25. Any  
5 further discussion? None? All in favor, say aye.

6 (Affirmative response.)

7 Any opposed?

8 (No response.)

9 By your action, you have approved Staff  
10 recommendation on Issues 20 through 25.

11 Staff, take us through 27 and -- 27A and B.

12 **MR. LAUX:** If I may, Commissioner, can I  
13 address the As together and the Bs together, because  
14 they're basically the same?

15 **CHAIRMAN GRAHAM:** That sounds good to me.

16 **MR. LAUX:** Okay. 27A and 28A was a request by  
17 some of the Intervenors that the Commission should  
18 either not allow or find unreasonable certain costs that  
19 Progress Energy suggests that they're going to incur  
20 that were not related to the COLA. And the Intervenors  
21 were saying that until they receive the COLA, they  
22 should not incur those costs. Staff is recommending  
23 that the continuation of those activities is reasonable  
24 because those costs -- or those activities were on the  
25 critical path.

1                   **CHAIRMAN GRAHAM:** All right. So that's 27A  
2 and 28A.

3                   Commissioners, do we have any questions of  
4 those two Staff recommendations?

5                   Commissioner Brown.

6                   **COMMISSIONER BROWN:** Thank you.

7                   Staff, OPC is arguing to disallow non-COL  
8 costs. Yet if we limited the recommendation to that,  
9 wouldn't that push the commercial operation date past  
10 the 2021, 2022 --

11                  **MR. LAUX:** That's the evidence that I found  
12 compelling in the, that was presented by Progress Energy  
13 in the hearing, was that certain of those activities  
14 that Witness Jacobs said that the company could defer  
15 until, activity on until after they got the COL and then  
16 somehow expedite those activities are on the actual  
17 critical path for that project for a commercial  
18 operation date of 2021, 2022. And there was no real  
19 information that was presented at the hearing to say  
20 that you could actually veer off of that critical path  
21 and continue to have the project come in on 2021, 2022.

22                  **COMMISSIONER BROWN:** And it would increase the  
23 rates as well if it goes past that 2021, 2022 date?

24                  **MR. LAUX:** In all likelihood, that's correct.

25                  **COMMISSIONER BROWN:** Thank you.

1                   **CHAIRMAN GRAHAM:** Commissioner Balbis.

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

3                   And thank you, Commissioner Brown. I was going down  
4                   that exact same track, but I could not resist the  
5                   opportunity to discuss the infamous late-filed exhibit  
6                   that showed the critical path for the project. And,  
7                   again, looking at that, that exhibit and the testimony  
8                   that was provided, I agree. I could not find and the  
9                   record didn't indicate where the nonperformance of any  
10                  activities that were listed in that schedule would not  
11                  push out the project and the ratepayers would not start  
12                  receiving the benefits of these new units.

13                  So, with that, although there are activities  
14                  that they are performing that are not part of the  
15                  receipt of the COL, they are critical in order to bring  
16                  these projects online by the anticipated in-service  
17                  dates.

18                  **CHAIRMAN GRAHAM:** All right. 27B and 28B.

19                  **MR. LAUX:** Those are the -- the B portions of  
20                  those are the costs that are being requested for 2011  
21                  and 2012 estimated and forecasted costs. If the  
22                  Commission does not make adjustments in the A sections  
23                  of those, Staff is recommending that the numbers that  
24                  Progress Energy has provided are reasonable.

25                  **CHAIRMAN GRAHAM:** Commission, any questions on

1 the numbers provided in 27B or 28B? If not, I'll  
2 entertain a motion to move Staff recommendations on 27A  
3 and B and 28A and B.

4 Commissioner Brisé.

5 **COMMISSIONER BRISÉ:** Mr. Chairman, I move  
6 Staff on -- Staff recommendation on 27A and B and 28A  
7 and B.

8 **CHAIRMAN GRAHAM:** It's been moved and seconded  
9 Staff recommendations on Issues 27A and B and 28A and B.  
10 Any further discussion? Seeing none, all in favor, say  
11 aye.

12 (Affirmative response.)

13 Any opposed?

14 (No response.)

15 By your action, you have approved Staff  
16 recommendations on 27A and B and 28A and B.

17 All right. 36.

18 **MR. LAUX:** Commission, Issue 36 is how much  
19 should the Commission approve as the withdrawal from the  
20 rate management plan for recognizing recovery in 2012.  
21 You had two proposals that were present to you -- was  
22 presented to you during hearing. One was to limit that  
23 amount to \$60 million, and one was made by Progress  
24 Energy, which was approximately -- removal of  
25 approximately 115 million, plus associated carrying

1 costs.

2 Staff is recommending that the Progress  
3 proposal should be approved because it believes it's  
4 more effective at managing both short- and long-term  
5 rates. But either proposal can be approved. They're  
6 consistent with the overall objective that the  
7 Commission stated in approving the rate management plan  
8 in 2009.

9 **CHAIRMAN GRAHAM:** Commissioner Brisé.

10 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

11 If you can address the long-term rate impact  
12 for both proposals on consumers.

13 **MR. LAUX:** From the information that was  
14 presented at hearing, if the Commission chose to limit  
15 the withdrawal from the rate management plan to  
16 \$60 million, in the short-term it would have an  
17 immediate effect of -- compared to the proposal that  
18 Progress Energy had made -- and in the 2012 factor the  
19 residential rate would go down by \$1.75 a month. That's  
20 on a 1,000 kilowatt basis for a residential customer.

21 It would have -- it would add to -- since the  
22 balance is not being brought down as much as under the  
23 Progress proposal, there would be continuing carrying  
24 costs on it for the next year or two or until the  
25 balance goes away. I believe Witness Foster made the

1 presentation that it would put an additional pressure on  
2 rates for the next two years, and that would mean that  
3 you would basically take the balance, the remaining  
4 balance and spread recovery over two years of \$1.93 per  
5 month. Again, based on a 1,000-kilowatt-hour  
6 residential customer.

7 **COMMISSIONER BRISÉ:** So you primarily  
8 described the impact for the reduction by 60 million.  
9 And if there are other projects that would come online,  
10 how would that impact those as well, in terms of the  
11 rates?

12 **MR. LAUX:** I don't believe it would have  
13 this -- the full impact of which we're talking about  
14 would be the impact within the clause. So there would,  
15 it would not necessarily be an impact on the base, on  
16 base rate.

17 The only potential impact on base rates at  
18 this point in time would be the recognition of the  
19 Phase 2 completion of Crystal River 3, and I don't  
20 believe that that will be completed within the next two  
21 years.

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

23 **CHAIRMAN GRAHAM:** Commissioner Balbis.

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

25 And this is more for a discussion with the



1 Commission, because this is an issue that I had quite a  
2 few discussions with Staff and a lot of internal, as in  
3 in-my-mind discussions on what to do with this issue.

4 And --

5 **CHAIRMAN GRAHAM:** How does that work?

6 **COMMISSIONER BALBIS:** It's very busy in there,  
7 I will tell you.

8 (Laughter.)

9 But one of the things that I thought about is  
10 as opposed to our previous discussion on allowing  
11 recovery for activities that aren't for the COL, you  
12 know, obviously Progress Energy not increasing the  
13 recovery this year is not going to advance, nor the lack  
14 of recovery just limited to \$60 million is not going to  
15 push the project out. So we have, you know, a little  
16 bit of leeway and more assurances as we have some  
17 flexibility here.

18 So then I focused on, okay, what -- would  
19 there be a harm to either the ratepayers or to Progress  
20 Energy if we maintained the \$60 million per year  
21 recovery of that amount? And I want to point out that  
22 the reason we have this flexibility is because of  
23 Progress Energy's concern over rate impact, because by  
24 statute they could have requested recovery of the full  
25 amount in the first year and had a significant rate

1 impact on its customers. So I want to, you know,  
2 applaud Progress Energy for being concerned about the  
3 rate impact, but -- and allowing us this flexibility.  
4 So really, for the Commission, kind of going either way  
5 on this, and really the only harm would be the carrying  
6 cost of the \$60 million and the additional carrying  
7 costs throughout the amortization period.

8 So I'm anxious to hear my fellow  
9 Commissioners' thoughts on this. I think we have  
10 flexibility -- I'm on the fence either way -- but to  
11 hear what your thoughts are on this issue.

12 **CHAIRMAN GRAHAM:** I can tell you my thoughts.  
13 I think anything we can do to minimize the impact today  
14 is a good thing. I know, I know that the mission of  
15 our, the mission of our Governor is to do whatever we  
16 can to minimize the, the rates, the electric rates so  
17 we're encouraging more and more businesses to come here.  
18 And, you know, anything you can put off, you know, put  
19 off 'til tomorrow is a good thing with the economy that  
20 we have today.

21 Commissioner Brown.

22 **COMMISSIONER BROWN:** Thank you, Mr. Chairman  
23 and Commissioner Balbis.

24 And I'm happy to hear this dialogue, because I  
25 also struggled a little bit over this issue and weighed

1 both scenarios. But I felt, I felt more in line with  
2 OPC's Witness Jacobs when he offered testimony that  
3 provided that we need to -- encouraged us to keep the  
4 rates as low as possible, absolutely necessary, and I  
5 was leaning towards that position, keeping it capped at  
6 60 million.

7 But that being said, can Mr. Laux, can you go  
8 over real quick one more time with me, with us on what  
9 the carrying costs would be if we -- and I hate to use  
10 the word accelerated recovery -- but if we allowed the  
11 full recovery of the deferred balance within a year?

12 **MR. LAUX:** I was with you until the last  
13 moment when you said the full amount. And is the  
14 question wiping out the complete deferred amount or the  
15 Progress proposal as compared to the OPC's proposal?

16 **COMMISSIONER BROWN:** The latter. Sure.

17 **MR. LAUX:** Okay. If the Commission approved a  
18 reduction of the approximately 150 -- \$115 million, the  
19 associated carrying charge on that is 14.1 million. Now  
20 I got -- because I can't see -- that's OPC -- or the  
21 Progress scenario. I believe it's \$14.1 million.

22 **COMMISSIONER BROWN:** So that additional  
23 14.1 million will be assessed against the deferred --  
24 will be added to the deferred balance?

25 **MR. LAUX:** Oh, I'm sorry. If you, if you

1 chose to approve the project, the Progress proposal of  
2 withdrawing approximately \$115 million, then the  
3 associated carrying costs for 2012, given that change in  
4 the balance and everything, would be \$15.1 million. If  
5 you limit the amount to \$60 million, there will be  
6 carrying charges that will not be covered by that  
7 amount, and it will be flowed back into the balance. So  
8 next year that balance will be a little bit higher by  
9 whatever the noncoverage of those carrying charges are.

10 That's one way of saying it. Or saying that  
11 of the 60 -- the carrying charges of \$15.1 million would  
12 be about the same, so the actual amount that the total  
13 balance would go down by 60 million minus 15.1, so  
14 you're at 45, \$49.9 million. You won't see the full  
15 effect of \$60 million coming out of the balance.

16 **COMMISSIONER BROWN:** But overall, if we go  
17 with the OPC position, the ratepayers will be  
18 cumulatively paying more.

19 **MR. LAUX:** Yeah. It's -- the analogy is  
20 whether or not you pay your credit card bill off  
21 completely in one month or only a portion of it. It's  
22 the exact same approach.

23 **COMMISSIONER BROWN:** I'd be curious to hear  
24 from the rest of the Commission on this.

25 **CHAIRMAN GRAHAM:** Commissioner Brisé.

1                   **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

2                   And that's where I'm conflicted, in that, you  
3 know, considering the economy and what people are going  
4 through today, the reduction sounds very tempting.  
5 However, you know, none of us know what the economy is  
6 going to be like two, three, four years down the line.  
7 And the question is whether the impact today would be  
8 equivalent to the impact three or four years down the  
9 line in a similar economy.

10                   So, therefore, if the impact is greater three  
11 or four years down the line, have we then caused more  
12 harm to the consumer by this decision today, or if we  
13 all hope for the best, that the economy gets better, so  
14 therefore the -- everything remaining the same with an  
15 economy getting better, then the impact then would be  
16 potentially minimal to the consumer if we were able to  
17 provide the reduction and then, you know, handle the  
18 carrying costs later and so forth.

19                   So that's my thought. That's where, that's  
20 where my sense of, of trepidation is at this moment.

21                   **CHAIRMAN GRAHAM:** Commissioner Balbis.

22                   **COMMISSIONER BALBIS:** Thank you. Thank you,  
23 Mr. Chairman.

24                   And just to clarify, I know Staff and the  
25 parties understand and we understand, but we're not

1 talking about delaying any of these costs. These --  
2 Progress Energy anticipated a \$60 million amortization  
3 of these costs over a number of years. So the decision  
4 before us is do we maintain that 60 million or do we  
5 take advantage of an overestimation on another issue to  
6 advance the payoff of these costs? So I just want to be  
7 clear for the record that's what we're, we are deciding.

8 And to follow up on Commissioner Brown's  
9 question, I think you were close to answering the  
10 question, but not, at least not -- I wanted a certain  
11 question asked. Even if you did a net present value of  
12 the total amount, including the carrying costs, whether  
13 or not we advance it for that one year or not, what is  
14 the total dollar amount are we dealing with, as in the  
15 reduction of carrying costs by advancing the payment?

16 **MR. LAUX:** Well, I wish I had another schedule  
17 (phonetic) to see if I could get close, but I believe  
18 the answer to your question is I don't have that type of  
19 information here today to be able to answer the question  
20 with any type of accuracy. It's a, it's almost like a  
21 little do loop type thing. Depending on how much you  
22 bring down -- we know what the balance was before. I  
23 can calculate the carrying charges on that.

24 Depending on how much you bring down, you may  
25 be covering the minimum -- let's take the credit card

1 analogy again. If the \$60 million is the minimum  
2 balance of the interest rate, you're not changing the  
3 principal at all. You're not, you're not reducing the  
4 principal at all. Therefore, the carrying charges will  
5 be exactly the same next year, because all you're doing  
6 is paying for the carrying charges.

7 So I know this isn't a very good answer for  
8 what you're looking for, but I don't believe I can give  
9 you an answer very accurately.

10 **COMMISSIONER BALBIS:** Well, maybe another way  
11 of going about it. To simplify it, a hypothetical  
12 situation, what are the carrying costs of \$60 million  
13 for a period of one year?

14 **MR. LAUX:** It's going to be somewhere in the  
15 neighborhood of about -- I'm doing this in my head  
16 fairly quickly -- approximately \$7 million, \$7 to  
17 \$8 million.

18 **COMMISSIONER BALBIS:** And just as Chairman  
19 Graham is not an attorney, I'm not an accountant, but I  
20 think that could be one way we could kind of put our  
21 hands around what, what's the additional cost to the  
22 ratepayers by --

23 **CHAIRMAN GRAHAM:** Let's take a five-minute  
24 break so they can get an accountant.

25 **MR. BREMAN:** Considering I'll probably be

1 the one calculating the number, can I have more than  
2 five minutes? Can I have about 15?

3 **CHAIRMAN GRAHAM:** We're getting real close to  
4 lunch. If we're going to break, we could just break for  
5 lunch. I'm hearing a whole lot of "huh-uh" up here.

6 **MR. BREMAN:** Okay.

7 **CHAIRMAN GRAHAM:** So you've got five minutes  
8 and ten minutes, if you need it.

9 (Recess taken.)

10 I think it's time to get some answers for --  
11 was it Mr. Balbis? For Mr. Balbis.

12 Mr. Balbis, you have the floor.

13 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
14 And I guess, as I recall, I was trying to get a handle  
15 on what the cost differences were if we, we did not  
16 advance the recovery.

17 **MR. LAUX:** And, Commissioner, if you can  
18 believe it, with all this information that I have right  
19 here, I really can't get exactly to the number that  
20 you're asking for, but I'm making some simplified  
21 assumptions and how I believe things may happen in 2013  
22 and 2014.

23 I believe, if I understand your, your  
24 question, is if you did 60 million from here on out  
25 until the balance goes away, what would be the delta or



1 the difference in the amount of actual carrying costs  
2 throughout that period?

3 I believe it's going to be somewhere in the  
4 neighborhood of about \$15 million. But that's the  
5 difference between doing the 115 this year and guessing  
6 as to what they would do the next couple of years as  
7 compared to 60, 60, and then zeroing it out in 2015.

8 And that \$15 million, I can't really do a  
9 differential as to compounding because I don't have --  
10 there's some holes there of numbers that I don't have  
11 because those decisions haven't been made yet.

12 **COMMISSIONER BALBIS:** And, again, the rate  
13 plan that was approved by the Commission was a  
14 \$60 million amortization over a certain period; is that  
15 correct?

16 **MR. LAUX:** That, that is not 100% correct.  
17 The proposal, the initial proposal that Progress Energy  
18 brought to the Commission in 2009 was a straight  
19 amortization of the balance of \$60 million throughout  
20 time. The Commission accepted the concept of a rate  
21 management plan but not, but did not approve any type of  
22 an amortization schedule to go with that, so that there  
23 would be the ability to have some flexibility so that  
24 the company could flex, could maybe recover more than  
25 60 million in a year when, when maybe expenses were

1 lower, or recover less than 60 million a year when  
2 expenses were higher.

3 That -- then in 2010 -- and there was like, I  
4 think, a little bit of confusion in the order that went  
5 out, but the Commission then made it very clear in 2010  
6 that not only did they not approve any type of a  
7 schedule, but that the company had to come back in and  
8 reaffirm what their plan was every year. So in a sense  
9 it becomes a zero budget game each year.

10 **COMMISSIONER BALBIS:** Thank you.

11 **MR. LAUX:** If the Commission did approve the  
12 \$60 million, it would be exactly what you were saying.

13 **COMMISSIONER BALBIS:** And, again, I just want  
14 to point out, we're not delaying the recovery more than  
15 what was initially expected or initially proposed by  
16 Progress Energy. And I believe it was Commissioner  
17 Brisé that made the analogy on, or maybe it was Staff,  
18 on repayment of a credit card debt. Staff did that.  
19 And I think that's a good analogy.

20 And I look at it as when times are good and  
21 you have, you know, a couple extra dollars in your  
22 pocket, you look at maybe paying off a little bit more  
23 of your mortgage ahead of time or credit card payments,  
24 you know, to get ahead. I'm not sure that Progress's  
25 customers are there at this time. I agree with Chairman

1 Graham; anything we can do now to help control rates is  
2 important. I think Progress recognized that in 2009  
3 when we approved their plan, and I'm glad we have that  
4 flexibility. I'm leaning towards sticking with the  
5 \$60 million amortization per year at this time. That's  
6 all the comments I have.

7 **CHAIRMAN GRAHAM:** As I, as I kind of mumbled  
8 up here before we took the break, this is considered the  
9 wimpy financing. I will gladly pay you on Tuesday for a  
10 hamburger today.

11 Commissioner Brisé.

12 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

13 And, you know, I could live with the  
14 \$60 million aspect of the rate management plan. And as  
15 I said before, I just want to make sure that it's clear,  
16 the, the impact on ratepayers two years down the line or  
17 a year down the line. I think that that needs to be  
18 made clear, so that when we are at this juncture a  
19 couple of years down the line and we not only have to  
20 consider the 60 million, but then also consider the  
21 carrying costs that we've delayed, that that is clear  
22 today so that when we make that decision, I mean, as we  
23 make the decision and have to implement it two years  
24 down the line, that that is also clear that that is  
25 coming. And that's where I want Staff to help out in

1 clearly defining that for me.

2           **MR. LAUX:** We do have information that was put  
3 in the record that the difference between a collection  
4 of a hundred and, approximately \$115 million with the  
5 associated carrying costs, as compared to limiting it to  
6 \$60 million in 2012, will have -- if you're going to  
7 limit the amount of time that the balance will be  
8 collected to zero, it will have an impact of a dollar --  
9 an additional impact of \$1.93 per month for those two  
10 years.

11           Now the Commission is not restrained by that  
12 two years. They could say, okay, we're going to stretch  
13 it out to three years or four years or five years. That  
14 will affect the impact of that amount. But that's the  
15 information that we did have in the record through  
16 discovery.

17           **CHAIRMAN GRAHAM:** Commissioner Brisé.

18           **COMMISSIONER BRISÉ:** Thank you.

19           So you're saying that there will be an  
20 additional, additional \$1.93 if we kept it to the time  
21 as, as prescribed by, by Staff. I mean, of course, we  
22 could lengthen that and therefore the amount would be  
23 reduced.

24           **MR. LAUX:** All things being equal, and as  
25 comparing the Progress proposal as compared to basically

1 the limiting of total recovery from the rate management  
2 plan to \$60 million.

3 **COMMISSIONER BRISÉ:** Okay. Thank you very  
4 much.

5 **MR. BREMAN:** That will be 60 every year until  
6 it's totally gone.

7 **CHAIRMAN GRAHAM:** Commissioner Balbis.

8 **COMMISSIONER BALBIS:** I have one last question  
9 for Staff. Has Progress Energy, in its application or  
10 in the evidence that's in the record, have they  
11 indicated there would be any harm to them in maintaining  
12 a \$60 million per year amortization?

13 **MR. LAUX:** I believe the answer to that was  
14 no. Witness Foster was asked a number of times about  
15 the question of whether or not there would be harm. He  
16 tried to, I believe -- his answer, I believe, was yes.  
17 But I think it was much more higher on a theoretical  
18 kind of answer, in that if somebody owes you some money  
19 and you're not collecting it in the time frame that  
20 you're collecting it, then you would have to replace  
21 that money in a very, very general way by going out, and  
22 given the same types of cash flows and everything, you  
23 would have to -- and you weren't collecting that money  
24 from one person, you would have to go out and get it  
25 from the marketplace. That's the theory.

1           I don't believe this would have a major impact  
2 on cost rates of collecting money or the ability to  
3 collect funds for ongoing operations for Progress  
4 Energy. I can't disagree with the theory, but it's a  
5 very, it's a very high level theory.

6           **COMMISSIONER BALBIS:** Thank you.

7           **CHAIRMAN GRAHAM:** Commissioner Brown.

8           **COMMISSIONER BROWN:** I just want to be clear,  
9 Staff. Are we talking about the -- if we cap -- if we  
10 adopt OPC's position here at the 60 million cap, that's  
11 just for the 115 million in the deferred balance, not  
12 the total remaining deferred balance, which is 200?

13           **MR. LAUX:** The complete deferred balance is  
14 higher than \$115 million. All you would be approving at  
15 this point in time is the withdrawal of \$60 million from  
16 the rate management plan. It's a little bit of a reason  
17 why I'm having a little bit of trouble answering the  
18 question, because you may be taking \$60 million out of  
19 the fund, i.e., I'm pulling \$60 million of principal  
20 out, but I'm not covering my carrying charges, which  
21 will then get capitalized back into the fund the next  
22 year. It's kind of a circular argument.

23           If it's 60 million and first it goes towards  
24 paying carrying charges, and then the remainder is how  
25 much I pull out of the deferred balance, it's going to

1 be less than \$60 million because you pay the interest  
2 first. Just like on your credit card, I'm making a  
3 payment of \$100, and they say, well, first you're paying  
4 off the interest, and then I'll put it towards how much  
5 you owe. It's the same thing.

6 **CHAIRMAN GRAHAM:** To me, this is the way I  
7 look at it. If we're at 10.5% unemployment and a guy  
8 that doesn't have a job now would much rather not have  
9 to pay that extra money now. He may have a job  
10 tomorrow, and that of course doesn't mean he's going to  
11 have a job tomorrow. And it's going to be a little bit  
12 more money tomorrow because you didn't pay a little  
13 today and a little tomorrow. But what it comes down to  
14 is how much -- how great is the pain today?

15 Commissioner Brisé.

16 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.  
17 So then, going back to the question that  
18 Commissioner Brown asked, in order to cover the carrying  
19 costs for this \$60 million that would be pulled out of  
20 principal, we would have to add the 15 million to it to  
21 make it 75 million to sort of just make it clean.

22 **MR. LAUX:** That's sort of the difficulty. The  
23 \$15.1 million is based on a pulling out of approximately  
24 \$115 million. If you change that amount, obviously  
25 you're changing the carrying costs.

1                   **COMMISSIONER BRISÉ:** Then you have to go back.  
2 Understood.

3                   **MR. LAUX:** Commissioner Graham, I agree with  
4 you totally in the sense -- that's why I said that  
5 either one of the plans is consistent with past  
6 Commission's orders on this. So I can tell you what the  
7 economic -- I actually didn't do that good a job, but I  
8 can almost tell you what the economic effects are on  
9 different levels and all that. As to the policy effects  
10 and the equity effects, that's y'all's job.

11                   **MR. BREMAN:** Staff -- excuse me for  
12 interrupting on Mark's issue -- but Staff recommends  
13 that you don't get involved in that complicated  
14 compounding of interest adjustment.

15                   What we did in our recommendation is simply  
16 take the total amount and just net out the tension  
17 between the 114 and 60, and the net resulting number is  
18 on page 154.

19                   **MR. LAUX:** That would get into the total  
20 amount that you would approve in Issue 37.

21                   **MR. BREMAN:** \$85,951,036. If you want to do  
22 the 60 million a year this year and then take another  
23 look at, at the state of the world next year and decide  
24 on a different amount possibly next year, and just do it  
25 step by step, which is basically what Staff is



1 recommending.

2           It's just that we said you have two options;  
3 you can approve either one. And those are the two  
4 numbers, the \$114 million in the last -- the  
5 \$140 million in the last paragraph, if you think  
6 ratepayers can take the wallop today. If they can't  
7 take the wallop today, then set the factor lower.

8           **CHAIRMAN GRAHAM:** Commissioner Balbis for a  
9 motion.

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

11           Based upon, again, the fact that the  
12 maintenance of the \$60 million amortization throughout  
13 the period as originally offered by Progress in 2009  
14 would not delay the commercial in-service date of the  
15 Levy nuclear projects, and the fact that Progress did  
16 not identify any material harm throughout the hearing,  
17 I'm comfortable with moving forward with OPC's position  
18 on the, as associated with the \$60 million recovery.

19           But I do want to point out, I want to thank  
20 Progress Energy, because obviously they know their  
21 ratepayers as we do and they're concerned with any  
22 potential rate impacts. And so, again, they offered  
23 this as an option to the Commission in 2009. They  
24 certainly could have requested and we would have had to  
25 allow the full recovery at one time, which would have a

1 much higher rate impact. So I want to thank Progress  
2 Energy for bringing this option to us for consideration.

3 And I want to continue to encourage Progress  
4 and Florida Power & Light and the other utilities on  
5 giving us that type of flexibility, considering the  
6 economic conditions of the state. So I want to thank  
7 Progress for that, and I certainly don't want to  
8 discourage that type of behavior.

9 But with that, I want, I move that on Issue 37  
10 we adopt OPC's position as associated with the  
11 \$60 million.

12 **CHAIRMAN GRAHAM:** 36.

13 **MR. LAUX:** Issue 36.

14 **COMMISSIONER BALBIS:** I'm sorry. 36. With  
15 the \$60 million for the rate management plan.

16 **COMMISSIONER EDGAR:** Second.

17 **CHAIRMAN GRAHAM:** It's been moved and seconded  
18 to go with the OPC recommendation on Issue 36. Any  
19 further discussion or further clarification?

20 Staff, is that clear? No discussion.

21 All in favor, say aye.

22 (Affirmative response.)

23 Any opposed?

24 (No response.)

25 By your action, you have approved OPC's

1 recommendation on Item 36.

2 Item 37.

3 **MR. LAUX:** Commission, with your vote on  
4 Issue 36, I would recommend that the total amount that  
5 should be available for recovery for the nuclear cost  
6 recovery in 2012 be changed from the 140,919,397 to  
7 85,951,036. That would reflect limiting the recovery to  
8 \$60 million in the rate management plan.

9 **CHAIRMAN GRAHAM:** Commissioner Edgar.

10 **COMMISSIONER EDGAR:** Mr. Chairman, I would go  
11 ahead and move approval on Issue 37, with the further  
12 direction that the Staff make the necessary adjustments  
13 in light our decision on Issue 36.

14 **CHAIRMAN GRAHAM:** It has been moved and  
15 seconded for Staff to make necessary corrections on  
16 Issue 37, but basically Staff recommendation. Further  
17 discussion?

18 Commissioner Brown.

19 **COMMISSIONER BROWN:** Mr. Chairman, I don't  
20 know if this is an appropriate time to make some final  
21 comments on -- no. Okay.

22 **CHAIRMAN GRAHAM:** Any other discussion on the  
23 motion? Seeing none, all in favor, say aye.

24 (Affirmative response.)

25 Any opposed?

1 (No response.)

2 By your action, you have approved Issue 37 as  
3 stated.

4 Commissioner Brown.

5 **COMMISSIONER BROWN:** Thank you. And I just  
6 wanted to make some final comments from today's  
7 posthearing discussion.

8 Given the economy and the hardships that the  
9 ratepayers do face today, I want to be clear that we  
10 give these matters highest consideration and with great  
11 diligence, and we don't merely rubber-stamp our Staff's  
12 recommendations by any means.

13 Commission Staff, our auditors, and this  
14 Commission board has carefully scrutinized all of the  
15 data and numbers that were presented to us, and there's  
16 no evidence in the record that suggested that any of the  
17 requested costs were imprudent, and the statute requires  
18 the recovery of all prudently incurred costs. That  
19 being said, until the law changes, we must allow  
20 recovery of these prudently incurred costs.

21 And with that, I thank the Commission board,  
22 the Commission Staff for their great time and  
23 investment. It's a year-long process. And the  
24 utilities, of course. That's it.

25 **CHAIRMAN GRAHAM:** Commissioner Balbis.

1                   **COMMISSIONER BALBIS:** Thank you, Mr. Chair.

2                   And just a follow-up on Commissioner Brown and some  
3                   brief comments.

4                   Again, this is a culmination -- I believe the  
5                   utility's first filings were due on March 1st, and there  
6                   was a six-month period of interrogatories and  
7                   discoveries back and forth, leading up to the hearing, I  
8                   believe, in August, and there's a culmination of a lot  
9                   of work by Staff, a lot of work by the Intervenors, and  
10                  a lot of work by the utilities. So I want to thank  
11                  Staff, Intervenors, and the utility on this matter. I  
12                  know I am comfortable and hopefully the ratepayers and  
13                  the public is comfortable that this issue has been  
14                  thoroughly scrutinized by all parties. I want to thank  
15                  everyone's involvement and Staff for their hard work.

16                  **CHAIRMAN GRAHAM:** Commissioner Edgar.

17                  **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

18                  I recall a few years back when the statute  
19                  that we are implementing with our decisions today was  
20                  first discussed by the Legislature, ultimately voted,  
21                  voted for approval by the House and Senate, and then  
22                  signed by the Governor into law. And as part of that  
23                  statute as passed at that time, it directed the  
24                  Commission, I believe, to adopt an implementing rule  
25                  within six months, which was at the time a pretty tight

1 time frame for us to meet those deadlines coming out of  
2 the session and going into the due process requirements  
3 of rulemaking.

4 I said numerous times at the time, and I have  
5 since, and I'd like to take the opportunity to say  
6 again, that the rule that we are implementing this  
7 statute through I believe at the time was an excellent,  
8 comprehensive, and consensus work product. Our Staff  
9 did a great deal of work under a short time frame at  
10 that time, with the input of many, many, many  
11 stakeholders, all of which was greatly appreciated and  
12 also played a key role in formulating the rule that we  
13 have.

14 Also, with that, I'd point out that at the  
15 time we were promulgating the rule it was for a  
16 brand-new statute and a new process, and as  
17 Commissioners and as our Staff and those who would be  
18 participating in the process all tried to look forward  
19 and think through what issues would come up and what was  
20 the best way under the statute to adopt them. And,  
21 again, I think we did an excellent job of that. But I  
22 do know now that we have gone through as a Commission  
23 the process of utilizing that rule for the past couple  
24 of years. Probably some things have been learned  
25 through that process. I know some of the time frames

1 directed by the statute and then more prescriptively put  
2 into the rule can be somewhat problematic, and we've had  
3 some instances where we've needed and have been able to  
4 address that.

5 With all of that said, I still believe that  
6 the rule that we are implementing is a good -- it's  
7 young, but it's a very, very solid and professional  
8 mechanism to implement the statute as it was intended to  
9 be. But I do recognize that, now that we've had a few  
10 years of using it, there may be a time in the future  
11 that as a Commission we might want to take a look at it  
12 and have the opportunity for some stakeholder input and  
13 see if there are ways to improve those processes.

14 Now that we are closing out our annual cycle  
15 on this, that certainly doesn't need to be right now.  
16 There are a lot of issues going on with rulemaking going  
17 into another session, but I certainly encourage our  
18 Staff to give that some thought and, as I know they  
19 have, be thinking about if there are some ways that we  
20 can make this work even better as a Commission from our  
21 regulatory processes. And I appreciate the  
22 professionalism and thoroughness that has been applied  
23 to this process this year by all involved.

24 **CHAIRMAN GRAHAM:** Commissioner Brisé.

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

1 I had the, I guess I would call it honor,  
2 privilege, or --

3 **CHAIRMAN GRAHAM:** Duty.

4 **COMMISSIONER BRISÉ:** -- duty to be the  
5 Prehearing Officer on, on this particular docket. And I  
6 want to commend Staff for their hard work from the  
7 beginning to the end in working with all the parties. I  
8 want to thank all the parties for their input throughout  
9 the process so that we can get to or arrive at this  
10 particular point.

11 My vantage point is a little bit different  
12 from, from the rest of the Commissioners in that I had a  
13 little bit to do with some of the statute, at least had  
14 a chance to vote on parts of it, and to say that the  
15 statute was designed for a particular purpose. And I  
16 think by implementing it, we are forwarding that  
17 particular purpose, and that was to make it, make our  
18 state a state that's favorable towards nuclear  
19 development. And the statute contemplated that, and  
20 therefore by rule that was established by the Commission  
21 created a venue and a process for that to occur.

22 I think, as Commissioner Brown stated, if  
23 there are issues that individuals may want to take, that  
24 there are venues for that to occur. And this may not  
25 necessarily be the best venue to address some of those



1 issues, other than to look at what can be made better  
2 through the rulemaking process so that this process  
3 continues to provide the best opportunity for  
4 ratepayer -- ratepayers to be in the best possible  
5 position with respect to what is due to them with  
6 respect to service and, and rates.

7 So with that, Mr. Chairman, that concludes my  
8 statements with respect to this particular docket.

9 **CHAIRMAN GRAHAM:** Thank you, sir.

10 I want to thank Commissioner Brisé for being  
11 the Prehearing Officer on this. Thank you very much for  
12 that. I want to thank Progress for helping us through  
13 this process and getting us the information in as timely  
14 a fashion as possible for Staff. And, Progress, we have  
15 another big one coming up with CR3, which I believe is  
16 going to be in February or March.

17 **MR. YOUNG:** February.

18 **CHAIRMAN GRAHAM:** February. It's going to be  
19 in February. So we're halfway done with the nuclear for  
20 Progress. But I do want to thank you for what we've  
21 done so far.

22 And, OPC, I want to thank you as well. You  
23 guys do a great job of pointing out a lot of things that  
24 we need to look at and we need to discuss, and we want  
25 to thank you for that.

1           And I want to thank the Intervenors as well  
2 for that, and for allowing us to pull off, to pull out  
3 Crystal River 3 so we can deal with the things that are  
4 more straightforward and then we can deal with that on  
5 its own separate docket. I think that makes everything  
6 a lot cleaner for everybody.

7           And, Staff, I want to thank you guys all. I  
8 think you guys have done a fantastic job this year for  
9 going through the nuclear clause, and you made the  
10 process look pretty easy, pretty straightforward. We  
11 want to thank you for all your time you've done.

12           That all being said, the Staff has bought  
13 lunch for people out front. So if you're interested in  
14 a hot dog, you're welcome to come around and come join  
15 us.

16           That all being said, we are adjourned.

17           (Proceeding adjourned at 12:19 p.m.)  
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1  
2 STATE OF FLORIDA )  
3 COUNTY OF LEON ) : CERTIFICATE OF REPORTER

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

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

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

19 DATED THIS 27<sup>th</sup> day of October,  
20 2011.

21  
22 Linda Boles  
23 LINDA BOLES, RPR, CRR  
24 FPSC Official Commission Reporter  
25 (850) 413-6734