

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

EXAMINATION OF THE OUTAGE DOCKET NO. 100437-EI  
AND REPLACEMENT FUEL/POWER  
COSTS ASSOCIATED WITH THE  
CR3 STEAM GENERATOR REPLACEMENT  
PROJECT, BY PROGRESS ENERGY  
FLORIDA, INC.

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FUEL AND PURCHASED POWER COST DOCKET NO. 130001-EI  
RECOVERY CLAUSE WITH GENERATING  
PERFORMANCE INCENTIVE FACTOR.

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ENVIRONMENTAL COST RECOVERY DOCKET NO. 130007-EI  
CLAUSE.

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NUCLEAR COST RECOVERY CLAUSE. DOCKET NO. 130009-EI  
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PETITION OF PROGRESS ENERGY DOCKET NO. 130091-EI  
FLORIDA, INC. TO APPROVE  
ESTABLISHMENT OF A REGULATORY  
ASSET AND ASSOCIATED THREE-YEAR  
AMORTIZATION SCHEDULE FOR COSTS  
ASSOCIATED WITH PEF'S PREVIOUSLY  
APPROVED THERMAL DISCHARGE  
COMPLIANCE PROJECT.

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PETITION FOR LIMITED PROCEEDING DOCKET NO. 130208-EI  
TO APPROVE REVISED AND RESTATED  
STIPULATION AND SETTLEMENT  
AGREEMENT BY DUKE ENERGY FLORIDA,  
INC. D/B/A DUKE ENERGY.

VOLUME 1 (Pages 1 through 199)

PROCEEDINGS: HEARING

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

1           DATE:                   Wednesday, October 16, 2013  
2           TIME:                   Commenced at 9:33 a.m.  
                                  Concluded at 3:31 p.m.  
3  
4           PLACE:                  Betty Easley Conference Center  
                                  Room 148  
                                  4075 Esplanade Way  
5                                   Tallahassee, Florida  
6           REPORTED BY:          LINDA BOLES, CRR, RPR  
                                  JANE FAUROT, RPR  
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                                  (850) 413-6734/413-6732  
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## 1 APPEARANCES:

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10 Service Commission.

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\*\*\*\*\*No Exhibits Identified in this Volume\*\*\*\*\*

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

1  
2           **CHAIRMAN BRISÉ:** Good morning. We are going  
3 to convene this hearing, and we want to open Docket  
4 Number 130208-EI. I would ask Mr. Young if you could  
5 read the notice.

6           **MR. YOUNG:** Good morning, Commissioners. Good  
7 morning, members of the audience.

8           Subject to notice duly given, this docket was  
9 advertised for the date and time in Docket Number  
10 13020 -- 130208-EI, Petition for a Limited Proceeding to  
11 Approve the Revised and Restated Stipulation and  
12 Settlement Agreement by Duke Energy Florida,  
13 Incorporated.

14           Staff would note that it was -- that the  
15 notice was, it was also noticed for Dockets Number  
16 100437-EI, Examination of the Outage and Replacement  
17 Fuel Power Costs Associated with the CR3 Steam Generator  
18 Replacement Project; Docket Number 130001-EI, Fuel and  
19 Purchased Power Cost Recovery Clause with Generating  
20 Performance Incentive factor; Docket Number 130007-EI,  
21 Environmental Cost, Environmental Cost Recovery Clause;  
22 and Docket Number, Docket Number 130009-EI, Nuclear Cost  
23 Recovery; and Docket Number 130091-EI, Petition of Duke  
24 Energy Florida to Approve Establishment of a Regulatory  
25 Asset and Associated Three-Year Amortization Schedule

1 for Costs Associated with DEF's Previously Approved  
2 Thermal Discharge Compliance Project.

3 **CHAIRMAN BRISÉ:** Thank you. At this time we  
4 will take appearances starting to my left, your right.

5 **MR. BURNETT:** Good morning. John Burnett for  
6 Duke Energy Florida, and also with me is Mike Walls.

7 **CHAIRMAN BRISÉ:** Thank you.

8 **MR. REHWINKEL:** Good morning, Commissioners.  
9 Charles Rehwinkel, Erik Sayler, and J. R. Kelly on  
10 behalf of the Public Counsel on behalf of the people of  
11 the State of Florida.

12 **CHAIRMAN BRISÉ:** Thank you.

13 **MR. WRIGHT:** Good morning, Commissioners.  
14 Robert Scheffel Wright and John T. LaVia, III, on behalf  
15 of the Florida Retail Federation. Thank you.

16 **CHAIRMAN BRISÉ:** Thank you.

17 **MR. MOYLE:** Good morning. Jon Moyle with the  
18 Moyle Law Firm on behalf of the Florida Industrial Power  
19 Users Group, FIPUG.

20 **CHAIRMAN BRISÉ:** Okay. Thank you.

21 **MR. BREW:** Good morning. James Brew and Alvin  
22 Taylor for White Springs Agricultural Chemicals/PCS  
23 Phosphate.

24 **CHAIRMAN BRISÉ:** Okay. Thank you.

25 **MR. JACOBS:** Good morning, Commissioners.



1 Leon Jacobs here on behalf of the Southern Alliance for  
2 Clean Energy.

3 **CHAIRMAN BRISÉ:** Thank you.

4 **MR. YOUNG:** Good morning, Commissioners,  
5 again. Keino Young, Caroline Klancke, Mike Lawson, Tom  
6 Ballinger, Marshall Willis, Jim Dean, and Mark Laux for  
7 Commission staff.

8 **CHAIRMAN BRISÉ:** Thank you.

9 **MS. HELTON:** And Mary Anne Helton, advisor to  
10 the Commission. And also here today is the General  
11 Counsel, Curt Kiser.

12 **CHAIRMAN BRISÉ:** Thank you very much. Did we  
13 miss anyone that we need to take appearances for?

14 All right. Seeing none, thank you.

15 Preliminary matters.

16 **MR. YOUNG:** Mr. Chairman, this hearing is  
17 pursuant to Section 120.572, *Florida Statutes*, meaning  
18 that there is no material issues of dispute -- no  
19 material issues of disputed facts regarding the  
20 stipulation. This is still an evidentiary proceeding  
21 and the record will be open. Witnesses' testimony will  
22 be taken, as well as public testimony.

23 We have organized this hearing to analyze the  
24 Revised and Restated Stipulation and Settlement  
25 Agreement and to facilitate questions that may arise

1 concerning said agreement.

2 First, the parties will present opening  
3 statements. After opening statements, staff recommends  
4 that all witnesses, including the members of the public  
5 who wish to testify, be sworn in. Following the  
6 swearing of all the witnesses, public testimony will be  
7 taken.

8 Staff notes that the witnesses, including  
9 members of the public, may be subject to  
10 cross-examination and questions from the Commissioners.

11 After the public testimony phase of this  
12 hearing, Commission staff will provide a presentation on  
13 the agreement. In particular, Commission staff has  
14 prepared a presentation of its understanding of the  
15 Revised and Restated Stipulation and Settlement  
16 Agreement. This presentation is not a recommendation;  
17 it is merely staff's review of what the agreement  
18 entails. It will then be up to the parties to affirm or  
19 correct staff's interpretation of the agreement.

20 Following staff's presentation, the next step  
21 will be DEF and the signatories of the Revised and  
22 Restated Stipulation and Agreement to present evidence  
23 and arguments in support of its petition and agreement.  
24 The parties should also address the presentation to  
25 identify any corrections of staff -- to staff's

1 presentation, and the signatories to the Revised and  
2 Restated Stipulation and Settlement Agreement will  
3 respond to questions raised during the public testimony  
4 or respond to the questions from the Commissioners.

5 This hearing may be concluded -- this hearing  
6 may conclude early. Once the Chairman concludes the  
7 hearing and closes the record, participation will be  
8 limited to Commission and staff. Upon closure of the  
9 record, the bench decision of the Revised and Restated  
10 Stipulation and Settlement Agreement may be rendered.  
11 Thursday has been reserved for the continuation of the  
12 hearing, if necessary. Also, October 24th, 2013, has  
13 been reserved for a Special Agenda in this docket for  
14 the Commission decision on the Revised and Restated  
15 Stipulation and Settlement Agreement, if necessary.

16 **CHAIRMAN BRISÉ:** Thank you very much.

17 Commissioners, are there any questions  
18 regarding the procedure this morning? All right.  
19 Seeing none, are there any other preliminary matters  
20 that we need to take up at this time? Sure.

21 **MR. YOUNG:** Mr. Chairman, I have to bring up I  
22 saw Mr. Jacobs entered an appearance for the record.  
23 Just to clarify, to be clear, that Mr. Jacobs -- the  
24 Southern Alliance for Clean Energy is not a party to  
25 this proceeding. They were a party, they were a party

1 to 100 -- 100437. They, they requested that their,  
2 their intervention be withdrawn and an order was issued  
3 thus granting that intervention -- granting that  
4 request.

5 **CHAIRMAN BRISÉ:** Okay. Thank you.

6 **MR. JACOBS:** We don't dispute that, Mr.  
7 Chairman.

8 **CHAIRMAN BRISÉ:** Okay. Thank you.

9 All right. At this time we will move into  
10 opening statements. My understanding, that there's  
11 agreement between the parties in terms of how we will  
12 operate this morning. I believe Duke will have ten  
13 minutes or so, and then the remaining parties will have  
14 20 minutes amongst themselves and they will manage that  
15 time themselves. So at this time, Duke.

16 **MR. BURNETT:** Thank you, Mr. Chairman.

17 We are here today to answer questions on and  
18 request approval of the Revised and Restated Settlement  
19 Agreement as a fair and balanced resolution of several  
20 issues that are in the best interest of our customers.

21 The Revised and Restated Settlement Agreement  
22 replaces and supplants the 2012 Stipulation and  
23 Settlement approved by the Commission. The Revised and  
24 Restated Settlement Agreement, like the 2012 agreement  
25 before it, is between Duke Energy Florida, the Office of

1 Public Counsel, the Florida Industrial Power Users  
2 Group, the Florida Retail Federation, and White Springs  
3 Agricultural Chemicals.

4 Approval of the Revised and Restated  
5 Settlement Agreement in this limited proceeding is in  
6 the best interest of customers because it determines in  
7 a comprehensive manner the decision to retire Crystal  
8 River Unit 3, the decision to settle the CR3 insurance  
9 claims with Nuclear Electric Insurance Limited, issues  
10 involving the CR3 extended power uprate project, and  
11 certain future actions regarding the Levy Nuclear  
12 Project. It also resolves the uncertainties related to  
13 these issues that may adversely affect the company and  
14 its customers, including the future need for additional  
15 power generation brought about by the retirement of CR3.

16 It represents the settlement of remaining  
17 issues within the Commission's jurisdiction following  
18 Commission approval of the 2012 settlement agreement and  
19 provides customers substantial benefits. The resolution  
20 of these issues by approval of the Revised and Restated  
21 Settlement Agreement includes, among other provisions,  
22 rate base adjustment, customer refunds, and rate  
23 reduction adjustments in the, in the company's base  
24 rates.

25 This Revised and Restated Settlement Agreement

1 between DEF and the parties who represent customers'  
2 interest before the Commission is a fair and reasonable  
3 comprehensive resolution of unique and complex issues  
4 that is in the best interest of DEF and its customers  
5 and that is in the public interest.

6 The major components of the Revised and  
7 Restated Settlement Agreement include that the, that the  
8 settlement agreement provides the company, the parties,  
9 and the company's customers represented by the parties a  
10 comprehensive resolution of all remaining CR3 and Levy  
11 nuclear power issues, and therefore certainty with  
12 respect to these and other issues in a manner that  
13 culminates in DEF's customers receiving over  
14 \$1.5 billion in benefits, including a \$388 million  
15 refund to customers to offset replacement power costs  
16 associated with the extended outage at CR3.

17 DEF wrote off \$290 million associated with  
18 CR3 and collected \$835 million in proceeds from NEIL,  
19 which is the largest payout in NEIL history. This  
20 shareholder -- these shareholder and insurance proceeds  
21 have directly benefited customers and reduced costs  
22 collected through the, the PSC process.

23 As a result, the Revised and Restated  
24 Settlement Agreement fairly and reasonably balances the  
25 various positions of the parties on the issues resolved

1 by the settlement agreement and serves the best interest  
2 of the customers and the public interest in general.

3 With respect to the Levy Nuclear Project, Duke  
4 Energy's engineering, procurement, and construction  
5 agreement is based on the ability to obtain the Nuclear  
6 Regulatory Commission's combined operating and  
7 construction license by January 1st, 2014. As a result  
8 of delays by the NRC issuing COLs for new nuclear plants  
9 as well as increased uncertainty in the cost recovery --  
10 in cost recovery caused by recent legislative changes in  
11 Florida, Duke Energy will be terminating the EPC  
12 agreement for the proposed Levy Nuclear Project at a  
13 reasonable and prudent future time per the terms of the  
14 proposed settlement agreement.

15 Although the proposed Levy Nuclear Project is  
16 no longer an option for meeting energy needs within the  
17 originally scheduled time frame, Duke Energy Florida  
18 continues to regard the Levy site as a viable option for  
19 future nuclear generation and understands the importance  
20 of fuel diversity in creating a sustainable, a  
21 sustainable energy future. Because of this the company  
22 will continue to pursue the combined operating license  
23 outside of the Nuclear Cost Recovery Clause with  
24 shareholder dollars as set forth in the proposed  
25 agreement.

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The company will make a final decision on new nuclear generation in Florida in the future based among, on other factors, energy needs, project costs, carbon regulation, natural gas prices, existing or future legislative provisions for cost recovery, and the requirements of the NRC's combined operating license.

The proposed settlement agreement also establishes a framework for Duke Energy Florida to construct or acquire new generation on its system. The revised settlement agreement contains provisions that allow the company to petition to construct, acquire, or add to existing generation of up to 1150 megawatts of new generation with an in-service date prior to the end of 2017. Additionally, the settlement would allow Duke Energy Florida to petition the PSC to approve up to 1800 megawatts of additional generation with an in-service date in 2018. The Commission and all Intervenors would have an opportunity under the proposed settlement to consider the prudence of any and all of those future generation assets.

The proposed settlement agreement also extends the company's current base rate freeze by an additional two years through the end of 2018 and establishes a new economic development and economic redevelopment tariff on a three-year pilot basis.



1           DEF believes that the Revised and Restated  
2 Settlement Agreement is a fair -- is fair, just, and  
3 reasonable and that it resolves issues facing customers  
4 and the company in multiple existing and continuing  
5 Commission dockets primarily related to the unique and  
6 complex circumstances surrounding CR3, and believes that  
7 the Revised and Restated Settlement Agreement is in the  
8 public interest.

9           Approval of the settlement agreement promotes  
10 administrative efficiency and avoids the time and  
11 expense associated with litigating the proposed settled  
12 issues in the various existing and continuing dockets  
13 and is further consistent with the Commission's  
14 long-standing practice of encouraging parties to settle  
15 contested proceedings whenever possible.

16           Accordingly, DEF respectfully requests that  
17 the Commission approve the Revised and Restated  
18 Settlement Agreement. Company representatives are on  
19 hand to answer any questions regarding the settlement  
20 agreement at the appropriate time. I'm available to  
21 introduce those witnesses, what they do for the company,  
22 and the scope of the testimony that they could provide  
23 at your, at your leisure. Thank you.

24           **CHAIRMAN BRISÉ:** Thank you very much.

25           **MR. REHWINKEL:** Thank you, Mr. Chairman,

1 Commissioners.

2           The Public Counsel fully supports the Revised  
3 and Restated Settlement Agreement, or RRSA, as evidenced  
4 by the Public Counsel's signature indicating his  
5 statutorily defined determination on behalf of all the  
6 customers of Duke that the agreement is in the public  
7 interest.

8           Mr. Kelly signed this agreement on behalf of  
9 the customers not because he is convinced that the  
10 outcome fully vindicates deeply held views contained in  
11 litigation positions taken in this docket and not  
12 because he believes that this outcome is ideal or what  
13 our office or customers ultimately advocated for or  
14 want, but because this agreement represents a fair  
15 resolution, one in the public interest when all of the  
16 relevant risks, factors, and potential outcomes are  
17 considered.

18           The situation confronting the customer parties  
19 in 2011 and 2013 when the two relevant agreements were  
20 negotiated represented uncharted territory and factual  
21 scenarios never encountered before.

22           Consider this: Three separate basketball  
23 court-sized delaminations in the containment wall  
24 representing a repair problem never before addressed in  
25 engineering history in the world; the longest forced

1 outage in Florida history and one that under the best  
2 scenario would persist for at least five years; a steam  
3 generator repair project approved in the company's 2009  
4 rate case completed at roughly the same cost as the net  
5 book value of the CR3 plant completed but unused; an  
6 uprate underway in the CR3 that was of historical size  
7 and which costs nearly \$300 million, and 90% of that was  
8 never used. This project was approved and most of the  
9 remaining \$265 million was deemed prudent under the  
10 statutory tests in prior NCRC orders. The Daiichi  
11 Fukushima disaster struck within days of the second  
12 delamination, heightening regulatory awareness of  
13 containment structures specifically and public safety  
14 generally; a pending CR3 life extension application at  
15 the NRC and a fast approaching December 1, 2016, license  
16 expiration; an insurance company increasingly reluctant  
17 to pay off the repair claim and balking at the cost of  
18 repair approaching the \$2 billion mark; a merger that  
19 was announced days before the second delamination and  
20 which was playing out then and over the next 18 months  
21 in a relatively dramatic way.

22           Against this backdrop the issues to be  
23 resolved in 2011 and 2013 involve significant and  
24 overwhelmingly complex dimensions that appear to all  
25 parties as almost certain to take many months of

1 discovery, consultation with civil and nuclear  
2 engineering and other experts, intense hearing  
3 preparation and hearing time; in short, years of arduous  
4 and uncertain outcome litigation. In particular, these  
5 matters encompass complex issues of civil engineering,  
6 material sciences engineering, nuclear engineering,  
7 large project engineering and construction practices,  
8 procurement, corporate governance, insurance and  
9 insurance law, not to mention very complex and novel  
10 evidentiary issues.

11 It was abundantly clear to the Intervenor  
12 litigants that the full resolution of the issues in both  
13 rounds of this case would be extremely difficult to both  
14 litigate and to meet an uncertain burden of proof on,  
15 and would likely ultimately take years to finally  
16 resolve, especially if the resolution was dependent upon  
17 final court resolution of certain threshold evidentiary  
18 issues.

19 During the 2011/2012 time frame all sides in  
20 the case, all sides were acutely aware that the meter  
21 was running on a replacement power cost and that time  
22 was of a concern regarding the looming license  
23 expiration, as well as the need to begin the planning  
24 for alternative generation, if any was to be needed.

25 And I want to note that I think this is the

1 first prudence determination of this scale that was  
2 ongoing during the outage. They usually occur after the  
3 outage is over. At the same time a standoff of sorts  
4 materialized and persisted with regard to the company's  
5 repair determinations, the insurance company's coverage  
6 and payoff determinations, and the NRC's licensing  
7 determinations. Each determination depended upon  
8 substantial progress by the other two decision-makers in  
9 order to facilitate each decision-maker's own necessary  
10 decision. I mean the company, NEIL, and the NRC. This  
11 gridlock persisted during 2011 and 2012.

12 At the time of the 2012 settlement, the  
13 Commission had signaled, in the fall of 2011, that it  
14 was ready to conduct a hearing on the prudence or fault  
15 issues surrounding the October 2009 delamination. This  
16 Commission's decision precipitated an intermittent  
17 8-month negotiation process and an intense round of  
18 deposition discovery and comprehensive document review  
19 that culminated in a settlement that you approved in  
20 February of 2012. This determination became final for  
21 all purposes when the time for appeal expired in  
22 April 2012, or roughly 18 months ago, and I mean the  
23 determination of fault.

24 The 2012 agreement represented a final  
25 resolution of the issue of fault, a record payment to

1 customers initially of 288 million and ultimately  
2 388 million, and importantly at the time also  
3 established incentives for timely repair that include a  
4 \$100 million penalty to Duke for not starting the repair  
5 by the end of 2012, a substantially reduced ROE return  
6 if the plant was retired, and an ROE bonus to the  
7 company if CR3 was returned to service.

8 Because it was dealing with the planning and  
9 availability of system resources and bill impacts  
10 generally, the 2012 settlement also addressed the Levy  
11 project in two ways. It provided a Levy exit option to  
12 Duke and it provided price certainty for remaining  
13 costs, either representing exit costs or wrap-up costs  
14 in the event of a lengthy delay and representing costs  
15 attributable to the scope of the project that had then  
16 been approved by the Commission.

17 In 2012, the parties agreed also to a very  
18 modest base rate increase of \$150 million that  
19 addressed, from the customers' perspective, a correction  
20 of a revenue forecast error that was not allowed in the  
21 2009 rate case and a depreciation adjustment. Both of  
22 these were in the wake of the 2009 case. The 2012  
23 settlement did not address the value of the CR3 asset or  
24 the potential dispute related to NEIL in the event of a  
25 retirement.

1           The Commission approved the settlement in  
2 February of 2012. The parties then embarked upon a  
3 year-long process of meetings related to the hoped-for  
4 repair. In the end, however, and despite the hefty  
5 incentives to repair, Duke, in its sole discretion,  
6 decided to retire CR3, and in conjunction with that  
7 decision they settled with NEIL. Upon announcement of  
8 the retirement and the NEIL settlement, the Commission  
9 quickly restarted the dormant CR3 prudence docket, and  
10 within days the OPC and Retail Federation followed with  
11 our petition to impute Duke's shareholders' additional  
12 NEIL-like proceeds contributions for the benefit of  
13 customers and to determine the value of the CR3 asset  
14 for ratemaking to the extent practicable.

15           In the ensuing months of early 2013, the  
16 parties negotiated or settled into a litigation mode  
17 that foreshadowed the need for an intense discovery  
18 process, including a series of depositions around the  
19 country, subpoenas, and protracted legal wrangling in  
20 courts over evidentiary issues. It was -- as was the  
21 case in 2011 in the time leading up to the 2012  
22 settlement, this entrenchment and the prospect of a long  
23 case, complex and novel legal theories, and certain  
24 court appeals resulting in years of uncertainty gave  
25 renewed life to a new round of months of discussions

1 that had actually begun shortly after the Christmas  
2 holidays in 2012. Months of discussions facilitated by  
3 reprieve in the schedule resulted in the Revised and  
4 Restated Settlement Agreement, or RRSA.

5 This agreement represents a comprehensive,  
6 balanced, and fair resolution in the public interest of  
7 an unfortunate, complex, and far-ranging, and impactful  
8 set of circumstances. The agreement was and is a  
9 recognition that there would never be a winner-take-all  
10 resolution of the issues surrounding the CR3 SGR repair,  
11 delamination repairs, repair/retire decisions, insurance  
12 dealings, and related system resource planning, and  
13 acquisition decisions. These complex decisions each by  
14 itself would have required extensive Commission hearing  
15 time after discovery and testimony preparation.

16 In the end, the RRSA made sense because it is  
17 a carefully balanced compromise that provided for  
18 significant customer benefits in the public interest  
19 that in the Public Counsel's judgment might not have  
20 been achievable in the historically all-or-nothing  
21 environment of utility prudence determinations and in  
22 ensuing court appeals. These tangible benefits, both  
23 ones preserved from 2012 and new ones in 2013, include  
24 the \$288 million refund, the \$100 million refund,  
25 \$641 million of insurance refunds to customers, a



1 \$121 million insurance credit to the CR3 asset repair,  
2 the \$295 million asset write-down of the CR3 asset,  
3 \$500 million from the reduced ROE on the CR3 asset  
4 because of retirement, another \$300 million additional  
5 customer benefit in the form of avoided financing costs  
6 flowing from the CR3 asset write-down.

7           These tangible customer benefits amount to  
8 over \$2.25 billion in direct value to customers related  
9 to CR3 alone. All were achieved by negotiation and in  
10 the course of both rounds of negotiation.

11           Notably also the cancellation of Levy also  
12 represents a benefit to customers in that it avoids at  
13 this time unaffordable additional LNP costs and  
14 resulting bill impacts in a construction ramp up  
15 projected to otherwise begin in 2017. Importantly, it  
16 also provides an opportunity for salvage and other cost  
17 avoidance, which has the potential for reducing costs  
18 for which the customers are already on the hook for as a  
19 result of prior Commission orders in 2009 and 2010.

20           At the end of the day a litigant cannot make  
21 his or her decision based on preferred outcomes,  
22 bravado, or wishful thinking. Instead, prudent  
23 representation in the public interest requires a careful  
24 assessment of the risks of likely outcomes given a  
25 myriad of factors, including the complexity of the

1 issues, relative strength of each side's case, the  
2 applicable law, and outcomes achievable by negotiation  
3 and settlement.

4           Importantly, the Public Counsel's judgment  
5 about the applicable law was not based on the way he  
6 might want the law to be in an ideal sense. Instead, it  
7 was based upon the state of the law as interpreted by  
8 the Commission and courts at the time of the decisions  
9 being made, including the decisions whether to engage in  
10 negotiation and whether to ultimately settle the case.

11           In summary, Commissioners, it is -- was the  
12 collective judgment of the Intervenors generally and the  
13 Public Counsel specifically that this agreement  
14 represented a carefully balanced, best achievable, and  
15 certain outcome, and most importantly represents an  
16 outcome that is solidly in the public interest. The  
17 Public Counsel wholeheartedly supports the agreement in  
18 its entirety as clearly and unequivocally being in the  
19 public interest, and we ask you for your approval.  
20 Thank you.

21           **CHAIRMAN BRISÉ:** Thank you very much.

22 Recognizing that the time is advanced, we're going to  
23 tack on another five minutes to the Intervenors' side --  
24 time as well. So you may proceed.

25           **MR. WRIGHT:** Thank you very much,

1 Mr. Chairman.

2 I'm Schef Wright appearing on behalf of the  
3 Florida Retail Federation, and I and the federation  
4 thank you very much for the opportunity to address you  
5 on this settlement.

6 At the outset I want to say that the Retail  
7 Federation joins the Public Counsel and all the other  
8 parties here at the counsel table in our full and  
9 unequivocal support for the Revised and Restated  
10 Settlement Agreement in its entirety. It's a fair  
11 resolution of the consequences of a truly tragic series  
12 of events, events in which there are no winners but  
13 where the settlement represents a fair apportionment of  
14 the pain that all of us -- customers, Duke's  
15 shareholders, Duke's management, and Duke's line  
16 employees -- have had to endure and will have to endure.

17 As you've heard me say many times, the Retail  
18 Federation represents, when we're here before you and  
19 elsewhere, the interests of our 8,000 plus members. We  
20 work closely with the Public Counsel and other  
21 Intervenor parties in our efforts to achieve what we  
22 believe are utility results in the public interest. And  
23 you've also heard me say we want healthy utilities, we  
24 really do, because we rely on them to provide safe and  
25 reliable electric energy that, along with our customers,

1 our suppliers, and our employees, make our businesses  
2 go. We don't want them to be too healthy. We want them  
3 to be just right.

4 So what outcome was fair here? What outcome  
5 would provide fair treatment for customers, while  
6 preserving a sufficiently just right, healthy Duke  
7 Energy Florida? We believe that the settlement before  
8 you fills this bill.

9 The events of this case involve many, many  
10 complex issues, some of which were resolved in the 2012  
11 settlement, and those that are pretty much capable of  
12 being resolved remaining are resolved here. There are  
13 some that can't fully be resolved like what the future  
14 cost of spent -- of nuclear fuel storage is going to be.  
15 But pretty much everything else is resolved.

16 Mr. Rehwinkel's history was excellent and I  
17 will not replot that ground. Simply, this case shaped  
18 up to be real difficult and very protracted with many,  
19 many complex issues relating to several different  
20 disciplines of engineering. I learned more about  
21 concrete tensile strength and sheer stresses than I ever  
22 knew existed, complex project management issues,  
23 procurement issues, insurance contract coverages and  
24 interpretations of insurance contracts, discovery  
25 disputes and evidentiary issues that ultimately sometime

1 down the road would have led to very difficult decisions  
2 for the Commission on who would bear what proportions of  
3 the cost impacts of the loss of CR3.

4 In these circumstances, over a period of  
5 months the parties, the clients of all of us sitting  
6 here at the table, negotiated the settlement that we  
7 present to you today. To summarize the high points of  
8 the settlement in terms of customer benefits, the  
9 settlement has provided and will provide \$388 million in  
10 refunds, \$641 million in insurance payments credited to  
11 customers, an additional straight out \$295 million  
12 write-off of the remaining book value of Crystal River  
13 3. These are costs borne by Duke's shareholders and not  
14 by customers, plus an additional \$300 million  
15 approximately in reduced customer, customer costs  
16 through reduced revenue requirements that might  
17 otherwise have been imposed on customers had that  
18 \$295 million been, remained in rate base. These costs  
19 are borne by Duke shareholders. Plus through the  
20 reduced ROE that Duke agreed in the settlement to accept  
21 on the remaining CR3 asset, there is another  
22 \$500 million of reduced customer cost exposure that  
23 benefits the customers.

24 Now this is not a net benefit to customers.  
25 As I said earlier, this is a truly tragic situation.

1 There are no winners here. But compared to uncertain  
2 litigation, the settlement represents a fair  
3 apportionment of the pain. To the best of my knowledge  
4 this settlement imposes more pain on Duke's shareholders  
5 than has ever been imposed on a utility that suffered  
6 any sort of major loss in Florida regulatory history and  
7 perhaps anywhere else in the U.S. I'm not positive of  
8 that.

9           Additionally, the settlement's provisions --  
10 the Retail Federation, you've heard me say this a lot  
11 too, the Retail Federation and I personally support  
12 nuclear power because we believe it needs to be part of  
13 a diverse fuel supply for Florida, but the settlement's  
14 provisions for cancellation of the Levy plant protect  
15 customers from having to bear additional unaffordable  
16 costs and what would have been dramatic bill impacts  
17 starting in the near future when a construction ramp up  
18 might otherwise have started, while still preserving for  
19 Duke the opportunity to get, at its expense, the license  
20 for the project which may be useful some day. The  
21 Retail Federation hopes it will be when more practical  
22 and cost certain nuclear power technologies are  
23 available.

24           The settlement also gives customers  
25 significant rate certainty over the next five-plus

1 years, and it leaves Duke sufficiently healthy to keep  
2 the lights on. This is a fair deal, it's a deal in the  
3 public interest, and the Florida Retail Federation joins  
4 the Public Counsel, the other consumer parties, and Duke  
5 Energy in urging you to approve the stipulation -- the  
6 settlement in its entirety. Thank you very much.

7 **CHAIRMAN BRISÉ:** Thank you. You all have  
8 about seven minutes left.

9 **MR. MOYLE:** Thank you, Mr. Chairman, and thank  
10 you for the additional time.

11 Jon Moyle on behalf of the Florida Industrial  
12 Power Users Group. And I'll try to be succinct and not  
13 repetitive and make just a couple of points.

14 You all have had before you this settlement  
15 agreement I think since August 1st, and I know we're  
16 familiar with it. Staff has asked a lot of questions,  
17 and so I'm not going to spend a lot of time going, going  
18 through particulars. It's been highlighted. But I do  
19 want to make three, three points.

20 The Florida Industrial Power Users, FIPUG,  
21 supports this agreement and urges you to approve it.  
22 The negotiations that took place, and we've been -- over  
23 the years have had a lot of negotiations and  
24 settlements, and I will say that these, I think, were  
25 the most involved, complex, tough, challenging, and at

1 times, you know, quite tense negotiations. Now we don't  
2 get into, you know, the particulars, but I do want you  
3 to know that this was exceedingly difficult to put this  
4 deal together. And I think part of it was done, you  
5 know, knowing that the Commission, when all the parties  
6 can come together, have historically and traditionally  
7 looked favorably upon settlement agreements that are  
8 characterized by, you know, by appropriate give and  
9 take. And that's the third point I want to make, that  
10 this settlement agreement is characterized by give and  
11 take.

12           And no party before you today is happy with  
13 this settlement agreement. I mean, I think the  
14 adjectives that may be appropriate are that people are  
15 glad that it's been resolved, they're relieved that  
16 weeks, maybe months, maybe even years of litigation and  
17 appeals has been avoided through, through all of us  
18 coming together and reaching a settlement. And  
19 ratepayers are, I think, thankful and appreciative that  
20 there's some predictability and certainty as to what,  
21 you know, what the future looks like, so I think those  
22 adjectives are appropriate. But happy -- no one, no one  
23 is happy about this. I mean, it, it reminds me back in  
24 the, to date myself a little bit, but back in the days  
25 when there used to be tied football games. You know, it



1 kind of feels like a tied football game. Nobody walked  
2 away happy from this. The ratepayers are paying for  
3 things that will not be operational, for power plants  
4 that will not be operational. That's, that's not  
5 particularly a good fact. And Duke Energy is spending  
6 hundreds of millions of dollars of shareholder money to  
7 address this problem. That's not a particularly good,  
8 good fact for them. And so I do want everyone to know  
9 that, that the negotiations were tough, but I think they  
10 resulted in a deal that warrants your approval and  
11 support.

12 And I won't take any more time, Mr. Chairman.  
13 Thank you for the chance to make some comments.

14 **CHAIRMAN BRISÉ:** Thank you.

15 Mr. Brew, you have three minutes and forty  
16 seconds.

17 **MR. BREW:** I was almost afraid to ask.

18 Good morning, Commissioners. Without  
19 repeating what others have said, I think PCS recognizes,  
20 as the others do, that this is a fair and balanced  
21 solution to a very complicated set of problems.

22 First, PCS strongly supports Duke's decisions  
23 with respect to Levy and CR3. In our view, the time for  
24 further study and vacillation at ratepayer expense is  
25 over. They needed to make a decision; they did. What

1 we're forced to do is deal with the ratemaking  
2 consequences of that.

3           The ultimate virtue of this settlement is that  
4 that's exactly what we did. We sat down and we  
5 addressed all of the, the consequences that flowed from  
6 those decisions. And we did it in a way that I think  
7 involved the parties working cooperatively,  
8 realistically, with a fair dose of imagination and a  
9 determination to get something done that was  
10 sustainable.

11           Now with respect to Levy, PCS said from the  
12 very beginning in 2008 in the need docket that these  
13 units would not be affordable. And as Mr. Rehwinkel  
14 mentioned and as I've mentioned repeatedly in NCRC  
15 dockets, once the construction ramp up began, the  
16 ratemaking consequences through the NCRC would have been  
17 stunning and I don't think sustainable. I think that  
18 other factors have come to play in terms of the  
19 declining economics of nuclear, the new legislation. It  
20 was time for Duke to make a decision and it was an  
21 appropriate one to do.

22           It also allowed us to address the rate  
23 consequences of that going forward. Remember, much of  
24 the dollars being collected for the Levy factor now stem  
25 from the rate mitigation plan the Commission adopted in

1 2009 to mitigate the rate impacts of just the spending  
2 levels then. So it was time to make the decisions and  
3 we effectively, I think, addressed that there.

4 The one final thing that I wanted to mention  
5 and really emphasize is, is how balanced and  
6 interrelated these provisions of the settlement are. We  
7 covered a lot of ground and I think accomplished a lot  
8 more than any of the parties expected they could have  
9 accomplished through litigating a series of high stakes  
10 proceedings. And just to quickly mention a few, as  
11 mentioned, Duke took a \$295 million write-down that we  
12 could talk about forever.

13 The rate impacts flow through through an equal  
14 percentage increase primarily to usage charges, which is  
15 a huge benefit to residential and small volume customers  
16 because we're not touching the customer charge, which  
17 disproportionately placed more of the burden on larger  
18 users. We balanced that through a change to the  
19 interruptible credits primarily, although I would say  
20 that the resulting credits are still way below what  
21 FIPUG and PCS have argued in prior rate cases were  
22 justified.

23 And you could go on through there in terms of  
24 other factors. My point is simply that no one provision  
25 taken in isolation represents the collective judgments

1 of PCS or I think the other parties, but the provisions  
2 are carefully balanced to smooth out the impacts over  
3 time and to produce rate consequences that were  
4 sustainable going forward, and I think it does an  
5 excellent job of doing that. And with that notion of  
6 this being an agreement in the entirety, PCS strongly  
7 supports it as filed. Thank you.

8 **CHAIRMAN BRISÉ:** Thank you very much. Two  
9 seconds to spare. Very good.

10 All right. It is our practice that if --  
11 well, since all of you agree I don't know if you need  
12 any more time. You have in essence three, three minutes  
13 and 20 seconds on your end.

14 **MR. BURNETT:** I'm good, sir.

15 **CHAIRMAN BRISÉ:** You'll give that up. Thank  
16 you very much.

17 All right. Mr. Young, is there anything  
18 that --

19 **MR. YOUNG:** Next, Mr. Chairman, we'll move  
20 into the swearing in, swearing in of the witnesses.

21 **CHAIRMAN BRISÉ:** Thank you very much.

22 If you are here to testify today, we ask that  
23 you will stand and raise your right hand and I will  
24 swear you in.

25 **MR. JACOBS:** I'm going to do the public

1 comments section, Mr. Chairman, so I'll go ahead and  
2 stand.

3 **CHAIRMAN BRISÉ:** Sure. Thank you.

4 (Witnesses collectively sworn.)

5 All right. Thank you very much.

6 Our public testimony, you will be allotted  
7 three minutes to make your comments. Generally we  
8 provide latitude to, to individuals representing folk.  
9 So we have one of our elected officials that is here and  
10 he will go first, and that is Representative Dudley.  
11 And you will have five minutes.

12 **REPRESENTATIVE DWIGHT DUDLEY**

13 was called as a witness and, having been duly sworn,  
14 testified as follows:

15 **DIRECT STATEMENT**

16 **REPRESENTATIVE DUDLEY:** Thank you, sir.

17 Good morning, Commissioners. Dwight Dudley  
18 from District 68, St. Petersburg, Pinellas Park. I'm  
19 not going to join in the chorus of *Kumbaya* this morning.  
20 I feel like this decision to try to close the books on  
21 this without further investigation is outrageous, it's  
22 irresponsible. We talk about tragic consequences. It  
23 didn't have to happen the way it did. When, when  
24 Crystal River 3 was worked on, all the experts said that  
25 it should be done in a certain manner. It was not

1 followed. It was plain negligence. I don't know where  
2 the controversy is regarding the foolish approach that  
3 was taken that caused a, you know, multibillion dollar  
4 asset to be wasted. I don't know why ratepayers are  
5 getting stuck in a major way. This should be on  
6 shareholders and investors, not ratepayers.

7 I think some other questions should be  
8 answered too. This should be investigated. You know,  
9 you have rate hearings around the state. Nothing has  
10 been done in the rate-paying region where the people are  
11 being hurt the most. Why hasn't there been any plan or  
12 announced investigation or hearings down in the locality  
13 where citizens that are paying all this money can appear  
14 and be heard and ask questions? How does Duke justify  
15 recovering \$3 billion from ratepayers without delivering  
16 a single kilowatt of nuclear power? Why did Duke ignore  
17 pleas from industry experts while attempting to repair  
18 Crystal River 3? Why did Duke get to keep \$250 million  
19 in profits that they collected?

20 This tragic series of events that have been  
21 referred to were certainly foreseeable. There was no  
22 prudent, reasonable action taken in these circumstances,  
23 and the ratepayers should not be stuck with this and we  
24 are. And, you know, you listen to other states that had  
25 the option of going with advanced nuclear cost recovery,

1 which I believe is a major impetus for some of these  
2 failures in that there's this false economy, this money,  
3 this free money from consumers instead of shareholders  
4 or from Wall Street, and we have Crystal River, Crystal  
5 River 3 tragically destroyed by what appears to be at  
6 least negligence.

7           So I ask that you consider continuing the  
8 investigation, letting the public know about this  
9 colossal loss that's, you know, that's resulted in all  
10 of this extra money, billions of dollars, without a  
11 single watt of nuclear power generated with all this  
12 money being taken, is the right thing to do and it ought  
13 to be done. And if your mission is to make sure that  
14 consumers get utilities at a fair rate, you ought to be  
15 all over this and, and have hearings down, you know,  
16 throughout the state and get to the bottom of this and  
17 let the public know what happened and why the public is  
18 paying billions of dollars for, for the company's  
19 mistakes. Thank you very much.

20           **CHAIRMAN BRISÉ:** I don't know if there's any  
21 questions for the Representative. Commissioners?

22           All right. Thank you for your testimony  
23 today.

24           **REPRESENTATIVE DUDLEY:** Thank you.

25           **CHAIRMAN BRISÉ:** All right. We will have next

1 Dalyn Houser.

2 **MS. HOUSER:** Yes, thank you.

3 **CHAIRMAN BRISÉ:** All right. And you will have  
4 three minutes.

5 **DALYN HOUSER**

6 was called as a witness and, having been duly sworn,  
7 testified as follows:

8 **DIRECT STATEMENT**

9 **MS. HOUSER:** Okay. Thank you, sir.

10 Good morning, Commissioners. My name is Dalyn  
11 Houser. I am the Program Associate with Florida PIRG,  
12 Public Interest Research Group. It's a statewide  
13 consumer advocacy organization. And I'm here today  
14 because -- to represent the consumers and ratepayers of  
15 Duke who could not make it themselves here today since  
16 it's a five-hour drive.

17 We believe that the Public Service Commission  
18 is meant to serve the best interests of the public and  
19 that you're grossly failing to do so. I am part of a  
20 number of citizens in the Pinellas County Duke Energy  
21 ripoff group. We are Duke Energy customers who have  
22 formed an informal group to give voice to the  
23 1.7 million Duke customers who will be liable for \$3.2  
24 billion in costs for Duke Energy's multiple  
25 misadventures of abandoning, abandoning repair of the



1 Crystal River Nuclear Power Plant and stopping  
2 construction of the Levy Nuclear Power Plant if you  
3 approve the proposed settlement.

4 We do not believe the proposed settlement is  
5 fair or just because it makes customers financially  
6 responsible for the majority of Duke's double debacle at  
7 Crystal River and Levy County. Since the shareholders  
8 of Duke Energy enjoy the profits, they should incur the  
9 risks, not customers.

10 The present settlement violates free market  
11 principles. Also, it is our judgment that the actions  
12 of Duke Energy, formerly Progress Energy, violated the  
13 current advanced fee law by not using the fees prudently  
14 and reasonably as required in the law. They used the  
15 funds in an incompetent, unreasonable, and reckless  
16 manner.

17 If you approve the current proposed  
18 settlement, we believe that facts clearly will show, if  
19 a possible class action lawsuit is filed, that Duke  
20 Energy violated the advanced fee law. Therefore, we ask  
21 that you defeat the proposed settlement, conduct public  
22 hearings in the Duke service area, and develop a  
23 settlement with Duke Energy which shifts, which shifts  
24 the liability to Duke and its shareholders.

25 We've had numerous rallies over the past

1 couple of weeks where consumers have come out to protest  
2 in front of Duke Energy headquarters in St. Petersburg  
3 in the service areas where these people are affected by  
4 this.

5 We are submitting today over 600 petition  
6 signatures, and -- which we have gathered in less than  
7 two weeks, so that's quite significant. And hopefully  
8 we hope that you can resolve this matter to the  
9 satisfaction of 1.7 million Duke customers and avoid our  
10 consideration of a possible class action lawsuit. Thank  
11 you for your careful review of our request. Cancel this  
12 meeting and move the meeting to service areas where the  
13 people who are affected can have a change -- can have a  
14 voice in the future energy use.

15 Another thing I just want to say is that  
16 Germany has plans to shut down all of their nuclear  
17 power plants. They've closed down eight plants in one  
18 year and replaced that with solar and renewable energy.  
19 And this is the Sunshine State. I think that it's a  
20 crime that you've not provided us with clean and  
21 renewable energy sources that do not affect our  
22 consumers' and citizens' health. Thank you,  
23 Commissioners.

24 **CHAIRMAN BRISÉ:** If you would wait one second.

25 **MS. HOUSER:** Yes.

1           **CHAIRMAN BRISÉ:** I think there's at least one  
2 question for you.

3           Commissioner Brown.

4           **MS. HOUSER:** Yes, ma'am. Yes.

5           **COMMISSIONER BROWN:** Thank you. Thank you,  
6 Mr. Chairman, too. And thank you for making the drive.  
7 I know it's a hefty one.

8           **MS. HOUSER:** Yes. Yes, it is.

9           **COMMISSIONER BROWN:** So thank you for making  
10 it up here to Tallahassee. And I'm familiar with the  
11 group that has been rallying in front of Duke's  
12 headquarters. I just wanted to know what the  
13 composition of members is and how many members you have.  
14 You said 600 signed a petition?

15          **MS. HOUSER:** 600 petitions signed. Yes.

16          **COMMISSIONER BROWN:** How many members do you  
17 have in your org -- or your group?

18          **MS. HOUSER:** So I would say that we have  
19 around 100 members or more. I can't -- I'm not sure of  
20 the specific number, but I certainly can get back to you  
21 with that. It could be quite a larger number than 100,  
22 but at least 100.

23          **COMMISSIONER BROWN:** And I guess the primary  
24 goal that you're asking for the Commission to do is hold  
25 customer meetings in the St. Petersburg or in the

1 Pinellas County area.

2 **MS. HOUSER:** Yes, so that we can have our  
3 voices heard since this is affecting our area.

4 **COMMISSIONER BROWN:** Thank you.

5 **CHAIRMAN BRISÉ:** Okay. Commissioner Graham.

6 **COMMISSIONER GRAHAM:** Can you tell me exactly  
7 what the petition says that they signed?

8 **MS. HOUSER:** Yeah. So the petition says that  
9 we want the \$3.2 billion settlement that is being  
10 proposed today to be stopped, and that's, that's pretty  
11 much what it says. Yeah.

12 **COMMISSIONER GRAHAM:** Thank you.

13 **MS. HOUSER:** Yes.

14 **CHAIRMAN BRISÉ:** All right. Any further  
15 questions, Commissioners?

16 All right. Seeing none, thank you for your  
17 testimony. And just for the record, we don't set  
18 policy. Policy is set down the street by your  
19 representative.

20 **MS. HOUSER:** Okay. Okay. Thank you. Thank  
21 you.

22 **CHAIRMAN BRISÉ:** Thank you.

23 Ms. Alice Vickers.

24 **ALICE VICKERS**

25 was called as a witness and, having been duly sworn,

1 testified as follows:

2 **DIRECT STATEMENT**

3 **MS. VICKERS:** Thank you, Chair Brisé, members  
4 of the Commission. My name is Alex Vickers. I'm an  
5 attorney with Florida Consumer Action Network. Florida  
6 Consumer Action Network is a statewide consumer watchdog  
7 organization with about 20,000 members. It is  
8 headquartered down in the Tampa year. Fortunately I  
9 live in Tallahassee, so I did not have the lengthy ride  
10 that the others have had.

11 I join support -- supporting the others in  
12 opposition to the settlement agreement. It was  
13 interesting as an attorney for me to listen to the  
14 opening presentations from the attorneys about this  
15 settlement agreement which I have been studying over the  
16 past couple of days. I, of course, would concur this is  
17 an extremely complex area. I'm not an engineer. I am  
18 an attorney. And so we are asked to look at something  
19 that probably no single individual in this room  
20 understands the full complexities of what is going on.  
21 Probably many of us understand little pieces of it.

22 But, again, listening to the statements as an  
23 attorney, what I can tell is a huge and collective sigh  
24 of relief that this settlement has been reached because  
25 it's going to be a lot of work to litigate this issue.

1 But that's not a reason to settle. I understand that  
2 the Office of Public Counsel must very carefully weigh  
3 what they do for the citizens of Florida. It is  
4 their -- we have placed our trust in them to do the  
5 right thing. And it's very difficult, again, because  
6 these are complex issues.

7           However, if you listen to what was said by  
8 those before you, we heard the Office of Public Counsel  
9 say, this is uncharted territory never before addressed;  
10 we are uncertain of how to go forward here; that Duke,  
11 in its sole discretion, sole discretion, chose to retire  
12 CS2. I'm assuming that's probably pretty unusual, and  
13 from what the news reports I've read it is unusual.

14           So what I'm saying from the very beginning is,  
15 yes, it looks like you're in uncharted territory. Yes,  
16 it looks like you've got a tough road of litigation  
17 ahead of you. Yes, we're not sure what may happen at  
18 the end of that litigation. But I think that the Office  
19 of Public Counsel owes it to the citizens of Florida to  
20 check out this uncharted territory, to push this  
21 forward, to see what is available.

22           We've been told that insurance is covering  
23 part of this, but we don't know how much, or at least I  
24 have not been able to find that from the documents that  
25 I have looked at. We don't know the burden that's

1 actually been placed on the actual shareholders of Duke  
2 out of this. Are the citizens in Florida in the  
3 2.25 billion that we've been told by the Office of  
4 Public Counsel will go to the customers, is that  
5 insurance money? Is that shareholders' money? Is that  
6 rebates? Is that just possible amounts that they might  
7 get? Some of this is not very clear.

8 I could go on, but I think you get my point.  
9 I think that it is important to protect the consumers  
10 here, and we would ask that you not agree to the  
11 settlement that has been placed before you. Thank you.

12 **CHAIRMAN BRISÉ:** Thank you, Ms. Vickers. Are  
13 there any questions for Ms. Vickers? Thank you for your  
14 testimony today.

15 Mr. Wilkins. Wilkins, I believe.

16 **MR. WILKINS:** Wilkins.

17 **CHAIRMAN BRISÉ:** Thank you.

18 **ROBERT WILKINS**

19 was called as a witness on behalf of the Citizens of the  
20 State of Florida and, having been duly sworn, testified  
21 as follows:

22 **DIRECT STATEMENT**

23 **MR. WILKINS:** All right. I hope y'all are  
24 having a good morning this morning. I'm here to  
25 represent essentially the students of FSU and possibly

1 give you guys the perspective from a younger generation  
2 that is, you know, coming into this issue.

3 I definitely oppose the settlement. I  
4 definitely think that at a minimum we should move it to  
5 the October deadline to give us sufficient time to raise  
6 more public awareness, especially in the areas in which  
7 it is affected, as I believe Dalyn had previously  
8 mentioned.

9 Basically, you know, this is capitalist  
10 economy when a private company like Duke comes in to an  
11 area and wants to set up a nuclear power plant, things  
12 of that nature. You know, maybe things do go south for  
13 them, but I don't believe that it's fair to put the  
14 burden of, you know, that economic endeavor on the  
15 consumers, you know, of that organization.

16 I just think it's a backward direction, you  
17 know, with all these headaches that we're having dealing  
18 with the nuclear power plant. I definitely think, as  
19 she mentioned, Sunshine State, we definitely need to be  
20 pushing for more renewable and sustainable energy  
21 resources that don't have the liability of meltdown or,  
22 you know, where we're going to store the uranium, things  
23 of that nature.

24 What I gathered, you know, from sitting here  
25 and listening in was that we are essentially bailing out



1 Duke for the possibility of using the site for other  
2 uses. It just seems to me like this isn't really a  
3 situation in which there is not -- like we need to, you  
4 know, pay this money out to them. That's pretty much my  
5 two cents on the matter.

6 **CHAIRMAN BRISÉ:** Thank you, Mr. Wilkins.

7 Are there any questions for Mr. Wilkins?

8 Thank you for your testimony today.

9 All right. Next we have Ron Georgalis.

10 Hopefully I'm close.

11 **MR. GEORGALIS:** Georgalis.

12 **CHAIRMAN BRISÉ:** Georgalis. All right.

13 Forgive me.

14 **RON GEORGALIS**

15 was called as a witness and, having been duly sworn,  
16 testified as follows:

17 **DIRECT STATEMENT**

18 **MR. GEORGALIS:** Okay. Good morning,  
19 Commissioners. I'll be brief.

20 I'm here representing the Environmental  
21 Service Program of Florida State University, and I'm  
22 here to express our vehement opposition to the  
23 outrageous \$3.2 billion settlement from which Duke  
24 Energy would benefit at the expense of its 1.7 million  
25 ratepayers. We urge that the vote on this proposal be

1 postponed as long as possible so that the public be  
2 given the chance to learn more about this fraud being  
3 perpetuated upon us. Thank you.

4 **CHAIRMAN BRISÉ:** Okay. Thank you. Any  
5 questions?

6 Okay. Seeing none. Thank you for your  
7 testimony today.

8 **MR. GEORGALIS:** Thank you.

9 **CHAIRMAN BRISÉ:** Mr. Mark Klutho.

10 **MARK KLUTHO**

11 was called as a witness and, having been duly sworn,  
12 testified as follows:

13 **DIRECT STATEMENT**

14 **MR. KLUTHO:** Mark Klutho, Largo. A word to  
15 start: Decouple. I've been here several times. Here's  
16 the imaging specular reflector fixture. In here you  
17 have several times the wattage necessary. And what this  
18 says is this whole thing is a big fraud, a big farce.

19 Here is my DA-3180, back to 1970 on a nuclear  
20 weapons assembly team. I come at this from a different  
21 perspective. And here is *Non-nuclear Futures: The Case*  
22 *for An Ethical Energy Strategy*. And what this is is  
23 unethical. And yesterday, *St. Petersburg Times*, they  
24 said what happened at the Crystal River was routine  
25 maintenance. You can't get correct information from the

1 media. That was not routine maintenance. To do routine  
2 maintenance there's a big heavy steel door. That plant  
3 was supposed to be no more. It was the end of its life  
4 as it was designed.

5 And this guy sitting here says that the LEDs  
6 don't release any heat. Why do they have a heat sink  
7 built around at the base? Now everybody here with the  
8 coats, it's not cold. I mean, this is all a big farce.  
9 There isn't any rational thinking happening in this  
10 place.

11 So you think nuclear power. It's just sheer  
12 stupidity, absolute stupidity. And what are you going  
13 to do with the waste for several hundred thousand years?  
14 It's insane, absolutely insane.

15 Yeah. That was routine maintenance, cutting  
16 the hole in the containment building? There was not one  
17 single person when it was constructed that thought down  
18 the road that was going to be maintenance on that  
19 building. None. And what's happening now with these  
20 plants? It's this: Come on baby, I feel lucky.

21 (Rolling dice.) Those are for your record. You people  
22 are a bunch of fools.

23 **CHAIRMAN BRISÉ:** Thank you for your testimony  
24 today. I don't know if there's any questions for you.  
25 Commissioners?

1           Seeing none, thank you for your testimony once  
2 again.

3           Mr. Leon Jacobs.

4                           **LEON JACOBS**

5           was called as a witness and, having been duly sworn,  
6 testified as follows:

7                           **DIRECT STATEMENT**

8                   **MR. JACOBS:** Good morning, Commissioners. As  
9 I indicated, I'm here on behalf of Southern Alliance for  
10 Clean Energy. And we think that, first of all, we want  
11 to applaud the approach of holistic comprehensive review  
12 in solution to these problems. We think that's a  
13 positive approach. Many challenges in the past. We  
14 like to look forward today.

15                   And my comments will only go to three points:  
16 First of all, the systemic way in which these projects  
17 were evaluated; second of all, some options that we can  
18 all look at going forward; and third of all, a holistic  
19 view of how we should be planning for energy in the  
20 future.

21                   The cancellation -- of course, we, we  
22 advocated very actively in this process and we thought  
23 we were constructive in informing the Commission. We  
24 believe that the Commission's prudency review process  
25 took a beating. This was a rugged process for prudency

1 in the State of Florida. We would suggest to you and  
2 ask you to think seriously about that process going  
3 forward, and we would recommend you even look at  
4 rulemaking.

5 I won't reiterate all the points made by  
6 Mr. Rehwinkel, but we think they are stark, we think  
7 they are significant, and we think they go to the heart  
8 of the Commission's role in determining the prudence of  
9 very significant, very expensive capital projects in  
10 this state. So we'd urge you to look at that process  
11 stem to stern.

12 In concert with the idea of looking at a,  
13 taking a holistic view of these issues, we think, we  
14 would ask the company also to take a holistic view in  
15 its planning and investment process. Duke Energy meets  
16 only three-tenths of 1% of its demand in energy  
17 efficiency. We think that that is far below what peer  
18 utilities do in other states where the standard,  
19 certainly in progressive states, is about 1% of demand.  
20 We believe that that's a reasonable goal.

21 But Duke Florida has a great model. It need  
22 not look far to determine best practices. Duke Carolina  
23 is doing about seven-tenths of a percent in energy  
24 efficiency. While we think there's always room for  
25 improvement, absolutely, the best practices that they're

1 already in place with them now, we would urge them to  
2 bring those to Florida and become immediately a leader  
3 in the State of Florida, where the standard, I think,  
4 right now is about one-tenth of 1% from many of the  
5 other utilities. So we're actually -- and now you're  
6 going to be having proceedings coming forward -- going  
7 forward to bring on new generation. We think that  
8 there's no better time than to have those, those  
9 considerations and those practices front and center. So  
10 we'd urge the Commission to really focus on how this  
11 process can be balanced and forward-looking and really  
12 transparent for consumers.

13 We believe that, that also importantly, given  
14 the transformation in the utility industry as a whole,  
15 it is an appropriate and we think an effective time to  
16 look at the statewide planning process for energy. We  
17 believe and we've advocated before that, that you move  
18 to a more open, transparent, and rigorous integrated  
19 resource planning process. We believe Florida -- that  
20 we will be open in Florida's stakeholder participation.  
21 The transmission underway in the electric industry  
22 points up the need for better tools to conduct energy  
23 planning and to assess the demand-side management in  
24 addition to supply-side measures on a level playing  
25 field.

1           The disjointed nature of the present ten-year  
2 site planning process, while it does carry the water, is  
3 not going to be effective going forward. So we urge you  
4 to consider that. And we recognize that in this process  
5 the utilities don't have an incentive to do more energy  
6 efficiency, so we would welcome the conversation. We're  
7 looking at what it would take, what kind of incentives  
8 might should be on the table to encourage more energy  
9 efficiency participation by the utilities and make it  
10 less of a disincentive for them to look at this low  
11 cost, high efficiency demand resource. We think it's  
12 way beyond the argument that it can't be put on the  
13 grid. There are many instances of that. Companies  
14 around the country are now making it clear this is an  
15 effective part of a, of a reasonable energy planning  
16 process. We thank you for this process going forward,  
17 and we hope that you continue with it.

18           **CHAIRMAN BRISÉ:** There are questions for you,  
19 Mr. Jacobs.

20           Commissioner Edgar.

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

22           Mr. Jacobs, always nice to see you here.

23           Thank you.

24           **MR. JACOBS:** Thank you, Commissioner.

25           **COMMISSIONER EDGAR:** I do value your comments

1 and the continued involvement of SACE on the issues in  
2 particular of conservation and energy efficiency. We've  
3 had conversations in this room and other appropriate  
4 places about the desire of this Commission and many  
5 organizations to try to work together to see how we can  
6 get more out of existing and other energy efficiency  
7 measures and programs. But I know you know and I know  
8 that that's a little bit beyond the purview of what  
9 we're here for today.

10 **MR. JACOBS:** Absolutely.

11 **COMMISSIONER EDGAR:** I would like to come back  
12 though to one of your opening comments about future  
13 analysis and reexamination of the prudence review  
14 process. Again, a little beyond what we're here for  
15 today. But could you touch on that for just a moment or  
16 two again and what it is that you are suggesting?

17 **MR. JACOBS:** Absolutely. One of the  
18 fundamental tenets in this proceeding was this deferral  
19 of prudence along the way.

20 **COMMISSIONER EDGAR:** Are you referring to Levy  
21 County, or CR3, or both, or something larger?

22 **MR. JACOBS:** We were more actively involved in  
23 Levy County, but I think Mr. Rehwinkel's comments point  
24 up to the same patterns that existed in CR3 in the  
25 uprates where there were prudence determinations that



1 was subject to and conditioned upon existing decisions  
2 or even decisions in the future.

3           And so my, my statements have to do with the  
4 idea that prudence has historically been an idea of how  
5 have your investment decisions been made? And once  
6 those decisions have been made, how now do we determine  
7 the used -- the old term used and useful -- but how do  
8 we determine that it's prudent for your ratepayers to  
9 bear the expense of those? And so this process has  
10 really contorted the timing, the fluency, the, the way  
11 in which that process has evolved. And I'm sure that  
12 your staff will have ample opportunities to look at how  
13 the process -- I'm not here to suggest a process, but my  
14 suggestion to you is that we really hear the input from  
15 the parties that that process has been fairly disjointed  
16 and that there be some understanding of how we -- if, if  
17 you're going to do that, if you're going to allow those  
18 decisions to kind of, kind of be fluid and dynamic,  
19 there have to be some, some rules of the road. I think  
20 that, that's really where, where it comes down. What  
21 are the rules of the road for prudence going forward if  
22 you're going to be looking to be this dynamic and this  
23 fluid in your prudence determinations?

24           **COMMISSIONER EDGAR:** Thank you for that  
25 further elaboration. I will say I don't completely

1 agree with some of your characterization of -- well,  
2 I'll just leave it at that. I don't completely agree  
3 with some of your characterization in those comments.  
4 And I do -- but I welcome the dialogue and you know  
5 that.

6 **MR. JACOBS:** Yes. Absolutely.

7 **COMMISSIONER EDGAR:** I, you know, do believe  
8 that the annual review process under the Nuclear Cost  
9 Recovery Clause and alternative statutory financing  
10 structure was upheld by the Supreme Court, for instance,  
11 and I could go on and on about that. But the  
12 opportunity within the statutory framework that we have  
13 to continue to look at our processes on an ongoing basis  
14 I absolutely welcome, and, and the participation of your  
15 organization. So thank you.

16 **MR. JACOBS:** Thank you very much,  
17 Commissioner.

18 **CHAIRMAN BRISÉ:** Any further questions,  
19 Commissioners?

20 Okay. Seeing none, thank you for your  
21 testimony today, Mr. Jacobs.

22 **MR. JACOBS:** Thank you, Commissioner.

23 **CHAIRMAN BRISÉ:** Okay. Is there anyone else  
24 in the public that is wishing to speak before we close  
25 this section of the hearing?

1 Okay. Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
3 I'm wondering if, if he is amenable, if you would allow  
4 me to ask Representative Dudley a question or two.

5 **CHAIRMAN BRISÉ:** Sure.

6 **COMMISSIONER EDGAR:** Representative Dudley,  
7 would you, would you mind coming forward again for just  
8 a few moments?

9 Thank you.

10 **CHAIRMAN BRISÉ:** Sure.

11 **REPRESENTATIVE DWIGHT DUDLEY**

12 was called as a witness and, having been duly sworn,  
13 testified as follows:

14 **DIRECT STATEMENT**

15 **COMMISSIONER EDGAR:** Thank you. I wanted to  
16 kind of digest some of, some of your comments and also  
17 hear the other public testimony that we had with us this  
18 morning. I wanted to thank you for being here, for your  
19 participation in this proceeding today. I genuinely  
20 appreciate it. And I think this may be the first time  
21 that you've come to visit one of our proceedings.

22 **REPRESENTATIVE DUDLEY:** It is.

23 **COMMISSIONER EDGAR:** So I hope that you will  
24 join us again. There are obviously many, many issues  
25 that we work with that I know are important to many of

1 your constituents as well.

2 **REPRESENTATIVE DUDLEY:** I hope to. Right.

3 **COMMISSIONER EDGAR:** I want to thank you for  
4 the letter that you sent. I do have it in front of me,  
5 and it's always helpful to me to have comments in  
6 writing in an expression of position. I did just  
7 receive it this morning, so again I'm still kind of  
8 processing it. But in the letter that you sent, which  
9 I'm sure is part of the public record now, you say that  
10 if the proposed settlement is approved, that that will  
11 shut down any further investigation. And my  
12 understanding is that that was a decision that was made  
13 over a year ago and is not before us today.

14 So with that, are there any other items that  
15 are in the settlement that you have particular concern  
16 about so that I can try to look at those more closely?

17 **REPRESENTATIVE DUDLEY:** I guess I wasn't  
18 involved in this or it was not a matter of, a matter of  
19 concern back then obviously. But clearly it shouldn't,  
20 it shouldn't be shut down. The investigation should go  
21 forward. I mean, you have, you know, on much smaller  
22 matters much larger investigations, more public -- with  
23 public much more involved. And certainly the ratepayers  
24 are the ones suffering most from this, and why shouldn't  
25 they have the opportunity to be more involved?

1 I think that you work in some, you know, some  
2 sense in isolation here in Tallahassee, that you do need  
3 to be out in the ratepayers' regions and down in the  
4 St. Pete area holding hearings and listening to how  
5 outraged people are.

6 The last couple of Saturdays at Duke Energy in  
7 St. Petersburg have had hundreds of people completely  
8 outraged with what's, what's happening with the advanced  
9 nuclear cost recovery fee for one. Now I got involved  
10 in this process when I began studying what this advanced  
11 cost recovery was. It got me deeply interested. And I,  
12 you know, read up on the history of it and learned how  
13 it was being used and how much harm it's doing to  
14 ratepayers and that it's an outrage and unfair to  
15 ratepayers.

16 And now we have this folly involving an asset  
17 for Duke. You know, they, they're certainly capable of  
18 vetting and understanding what assets and liabilities  
19 they're assuming, and they did that with open eyes and  
20 know what they got. And it just -- it's amazing to me  
21 where billions of, billions of dollars are involved that  
22 there's not a greater looking into it, that the public  
23 is not invited to be more involved in it. I think you  
24 probably are well aware that I had a bill to reorganize  
25 the, the Public Service Commission.

1                   **COMMISSIONER EDGAR:** I am.

2                   **REPRESENTATIVE DUDLEY:** Well, I think you  
3 might, you might, you might be aware of that. I'm sure,  
4 I'm sure that you are. I got to speak with Mr. Kiser,  
5 who I've known for many years, regarding that. And my  
6 sense in talking with the public that you work somewhat  
7 in anonymity here in Tallahassee, that there should be  
8 greater public input, that there should be greater  
9 public involvement, and the public should be, there  
10 should be some facilitation of that in order to have the  
11 public involved. Energy policy in this state I think is  
12 an embarrassment, that we can do so much better.

13                   Mr. Jacobs alluded to some of the, some of the  
14 problems in terms of energy efficiency, renewables,  
15 alternatives. Where is the state regarding that? How  
16 come Florida is 14th? You know, as of last October, New  
17 Jersey is number one regarding renewable and alternative  
18 energy. It's an outrage.

19                   **COMMISSIONER EDGAR:** Representative, I look  
20 forward to hopefully again your participation in many,  
21 many more conversations on all of these issues because  
22 they are near and dear to me. If I may, just a couple  
23 of comments on that.

24                   As to our working in relative anonymity, I  
25 could not agree more. In fact, I've been involved in

1 these issues for a few years, and if I'm, say, on my way  
2 to a public service customer hearing, St. Pete, Tampa,  
3 Fort Lauderdale, Miami, and, you know, I bump into  
4 somebody, say, at the coffee shop on the way and say,  
5 "Oh, well, you know, we're having a hearing. Have you  
6 heard about it? It's in the newspaper, we put it on the  
7 radio, we have ads." And often times they haven't. Or  
8 if I'll be at a work meeting or a social, out at the  
9 baseball field for my kids and somebody says, "Well,  
10 what do you do?" and I explain. And usually they  
11 haven't heard of the PCS. They don't know what they do.

12 So anything that you and anybody has to help  
13 us, I assure you we try to do outreach, we try to get  
14 customers to participate. We're glad to have the Office  
15 of Public Counsel that the Legislature, of course,  
16 created I believe in recognition that most customers and  
17 citizens and ratepayers don't have all the time and  
18 resources to spend on all of these issues. But anything  
19 that you can do to help get people to participate, I  
20 assure you we are singing off the same hymn book.

21 **REPRESENTATIVE DUDLEY:** Well, I don't want to  
22 appear to be contentious, but I think with regard to  
23 this whole debacle in terms of Crystal River 3 and all  
24 the issues surrounding it that there's been precious  
25 little done to announce -- to invite the public in to be

1 able to have hearings in the ratepayer region. I don't  
2 believe there have been any. And, you know, I think  
3 it's a huge failing. And I believe in the public  
4 interest, if you are the Public Service Commission, that  
5 that is a crucial responsibility and that you need to,  
6 need to carry that with more seriousness and intensity  
7 in terms of getting the public involved. So I, I  
8 appreciate your sentiments, but I think we need to do  
9 better.

10 **COMMISSIONER EDGAR:** Thank you.

11 **REPRESENTATIVE DUDLEY:** Thank you.

12 **CHAIRMAN BRISÉ:** I think you have another  
13 question.

14 Commissioner Brown.

15 **REPRESENTATIVE DUDLEY:** Yes, sir. Yes, sir.  
16 Yes, ma'am.

17 **COMMISSIONER BROWN:** Thank you. Thank you,  
18 Representative Dudley, for coming up here and visiting  
19 us.

20 **REPRESENTATIVE DUDLEY:** Sure thing.

21 **COMMISSIONER BROWN:** And as a follow-up to  
22 Commissioner Edgar, I was actually going to make a point  
23 about having those public meetings that you mentioned.  
24 We all support that here on the bench; we all could not  
25 support it more. To some degree we are limited by



1 budgetary constraints. There are efforts, as  
2 Commissioner Edgar pointed out. Any help you can, you  
3 can do with regard to the budgets at the Legislature  
4 would help us out so that we have that opportunity to  
5 get out in the public and we -- and it's a topic that  
6 we're often, that we talk about, it's something that we  
7 all want to do. So we appreciate you bringing that up.  
8 It's something that I know that the Chairman feels  
9 strongly about as well. So thank you.

10 **REPRESENTATIVE DUDLEY:** Well, I appreciate  
11 hearing that. I have been speaking out about this.  
12 Like I said, at the beginning of the session Counsel  
13 Kiser came to see me, but no mention was made of -- you  
14 know, I guess maybe there wasn't a foretelling of all  
15 this, even though some might, might have seen it. But  
16 certainly if you are the Public Service Commission, and  
17 you are, you need to be in the public and you need to be  
18 where the public can communicate with you. And I think  
19 whoever is advocating for your budget should do a better  
20 job to get more money to get you in the places where the  
21 public is, or maybe you can do something like this crazy  
22 computer situation and have some teleconferencing that  
23 might not be as expensive but accomplish the same thing.  
24 Thank you.

25 **CHAIRMAN BRISÉ:** Thank you. And, once again,

1 we thank you for your service and we thank you for your  
2 willingness to stand up for your constituents and  
3 express their views. I too was in that position a few  
4 years ago, so I know what's that like. So thank you.

5 And now we're going to go ahead and move on to  
6 the next segment of --

7 **MR. YOUNG:** The next segment is staff's  
8 presentation.

9 **CHAIRMAN BRISÉ:** Thank you.

10 **MR. BALLINGER:** Good morning, Commissioners.  
11 Tom Ballinger with Commission staff.

12 What I'm going to tell you now is a little bit  
13 of repetition of what you heard in the opening  
14 statements, but hopefully just touch on the highlights  
15 of the settlement and put a few things in context. Do  
16 you need me to wait a few minutes? Sorry about that.

17 The first slide up here is a little bit of the  
18 administrative of the revised settlement. As you heard  
19 earlier, it does replace entirely the 2012 settlement  
20 agreement. Those parts that were necessary were carried  
21 forward. But it does preserve certain issues related to  
22 the CR3 regulatory asset which will be preserved issues  
23 and dealt with at a later date.

24 The term of the revised settlement is extended  
25 two years for a base rate freeze, if you will, through

1 2018, and continues the return on equity at 10.5%. And  
2 I must say too if you have any questions along the way  
3 as I go through this, please stop me. I'll answer them  
4 or I'll answer them at the end.

5 As you heard earlier, Duke Energy will reduce  
6 the net plant balance of CR3 by \$295 million. This will  
7 come out of stockholder funds to reduce the regulatory  
8 asset going forward. The regulatory asset is also  
9 capped at \$1.466 billion but can be increased for a  
10 couple of items: One being a dry cask storage or the  
11 method of spent fuel storage that is decided at a later  
12 date, and also force majeure events. NRC has new  
13 licenses, new requirements, things of this nature. If  
14 that happens though, Duke is responsible, Duke  
15 stockholders, for the first \$5 million out of every  
16 force majeure event claimed.

17 The regulatory asset, and this gets to the  
18 overall theme of the revised settlement, is a rate  
19 stabilization theme. An attempt -- we had an accounting  
20 event now is what we're dealing with is how to recover  
21 the remaining assets of CR3. And the overall attempt of  
22 this settlement is to levelize and stabilize rates for  
23 customers. And part of that is recovering this  
24 regulatory asset over a period of 20 years so it's  
25 lessening the incremental annual bill impact to

1 customers.

2 Up through December of 2018 Duke may petition  
3 to collect an additional decommissioning surcharge.  
4 I'll point out to you that the current decommissioning  
5 fund, which is money set aside to, in the event -- or  
6 when you do decommission a nuclear unit, it's specific  
7 to nuclear units. The decommissioning fund right now  
8 has a balance of about \$627 million. So it's money in  
9 the bank, if you will, to help decommission CR3. But  
10 there has not been any accruals going into that account  
11 since 2005 with other settlements with parties for rate  
12 case proceedings, things of that nature. So this  
13 surcharge, if you will, allows the company to start  
14 adding a little bit more to that decommissioning fund  
15 when we get to decommissioning of CR3 later.

16 Some items that will affect the fuel  
17 adjustment clause. This is basically a continuation of  
18 the 2012 settlement, and you see fuel revenues or fuel  
19 refunds going back through the clause various years.  
20 These total \$388 million, which will be completed by the  
21 year 2016. All of this is coming out of Duke  
22 stockholder funds to go back to customers. Again, this  
23 is a continuation of the 2012 settlement that you  
24 approved back in February of last year.

25 New to this settlement is there will be some

1 increases in the fuel charge of a dollar per megawatt  
2 hour in 2014 and 2015 and \$1.50 in 2016. This is to  
3 help offset again the regulatory asset for CR3. It's an  
4 early recovery, if you will, of the carrying charges  
5 associated with that asset. Again, the intent to  
6 stabilize rates and keep them level.

7 And finally DEF will credit the fuel clause a  
8 net of \$163 million additional incremental by 2014. As  
9 of 2014 the total NEIL refunds that have been given back  
10 to customers will be \$835 million.

11 The next slide talks about the Levy project.  
12 As you heard earlier, Duke is going to pursue  
13 termination of the EPC contract with its contractor. It  
14 will keep the current charges that are in the 2012  
15 settlement constant for recovery through the NCRC for  
16 Levy, which is the 3.45 for 1000 kilowatt hours for  
17 residential customers. It will be extended an extra  
18 year, and the hopes being that the timing of this, that  
19 the regulatory asset will not also start recovering  
20 until 2017 or until the Levy project, the 3.45 winds  
21 down all the remaining costs in the Levy thing. So,  
22 again, it's an effort to try to stabilize rates and not  
23 have a dual impact of both the CR3 asset and the NCRC  
24 hitting customers all once.

25 As noted there, if Duke decides not to pursue

1 the combined license by March 15th, 2015, then Duke will  
2 refund \$10 million through the fuel clause again out of  
3 stockholder funds.

4 It says here that Duke will give a -- has  
5 agreed to provide semi-annual progress reports on the  
6 status of Levy, if you want. But recall, they will be  
7 coming still in the NCRC proceeding and you can inquire  
8 then through that normal process of a regulatory  
9 proceeding.

10 A new aspect to this settlement that was not  
11 in the 2012 settlement was some generation base rate  
12 adjustments, or GBRAs we call them. We have seen these  
13 in other settlements where it's a recovery mechanism for  
14 future additions of power plants.

15 New to this one and new to any other  
16 settlement we have is a part that references a type of  
17 capacity, combustion turbines or CTs, uprates and  
18 purchases of existing CTs through 2017. That is new to  
19 the Commission and other settlements, and it's different  
20 because these types of facilities do not require a need  
21 determination proceeding. But the company will file a  
22 petition for cost-effectiveness, if you will, before  
23 allowing those costs to be recovered through base rates.

24 The second GBRA is more traditional than we've  
25 seen in other settlements and relates to combined cycle

1 generation in 2018. I will note for you that DEF has  
2 issued an RFP for combined cycle generation or  
3 generation at least in the year 2018. That RFP was  
4 issued on October 8th. And the current schedule in that  
5 filing shows a potential need filing here at the  
6 Commission by September of 2014. And, again, that will  
7 follow the normal course that we've seen in other ones.

8 Some other items that came up just kind of  
9 miscellaneous that I put in the last slide here is Duke  
10 is going to offer a pilot economic tariff for a period  
11 of three years. This is similar to other ones we've  
12 seen where there's two types of tariffs, one for brand  
13 new businesses and one for businesses that occupy vacant  
14 buildings. This is new to the 2013 settlement.

15 DEF will file a depreciation study, fossil  
16 dismantlement, and nuclear decommissioning before March  
17 of 2019. This is an amendment to the 2012 settlement  
18 basically shifting the dates out.

19 The retirement of CR1 and 2 basically is  
20 pointing out that there will be no incremental charge on  
21 rates, and if they are retired earlier due to EPA  
22 regulations, they will continue on their current  
23 depreciation schedule 'til 2020.

24 And lastly the revised settlement also  
25 includes additional credits for interruptible customers

1 in 2014 and 2015. In the 2012 settlement there was some  
2 increase for 2013. All total, the 2012 and 2013  
3 settlement, those equate to about \$12 million increased  
4 credits.

5 The next slide gives you basically an estimate  
6 of the residential bill impact of, of two scenarios.  
7 This first scenario would be if the world continued  
8 under the 2012 settlement agreement which is in place  
9 and approved today. What this shows you is you had some  
10 slight increases along in 2014, '15, and '16. The bulk  
11 of these were due to the \$150 million rate increase per  
12 the 2012 settlement agreement.

13 Then in 2017 under this scenario includes two  
14 things going on. The first being the startup again, the  
15 ramp up, if you will, of the Levy project, that that  
16 would start going forward -- the 3.45 charge that I  
17 mentioned earlier would go away. You would start seeing  
18 actual costs going through the NCRC potentially starting  
19 the construction of Levy and moving forward. The other  
20 part of this would be the full recovery of the  
21 CR3 regulatory asset, the full, full current value.

22 Go to the next slide and this shows what the  
23 2013 settlement looks like compared to that, and what  
24 you can see is slight increases in 2014, '15, and '16.  
25 Those come about from two components: One being the \$1



1 and \$1.50 per megawatt hour charge I mentioned earlier  
2 about the early recovery for the CR3 regulatory asset,  
3 the carrying charge, and a slight bump for the  
4 industrial interruptible credits. Then in 2017 you see  
5 the impact of two factors: Determination of the EPC  
6 Levy contract and that 3.45 just continuing and then  
7 going away, and the reduced regulatory asset value. And  
8 as you see, the settlement tries to accomplish the goal  
9 of stabilizing rates into the future.

10 And with that, I am finished. If you have any  
11 questions --

12 **CHAIRMAN BRISÉ:** Commissioner Balbis.

13 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
14 And thank you, Mr. Ballinger, for that summary.

15 I have two questions. Staff has provided to  
16 me a table that shows what the total costs are for the  
17 CR3 project and then also what the benefits are, if you  
18 will, for the NEIL payments, fuel refunds, and  
19 regulatory asset write-down. And I believe all the  
20 other Commissioners have this as well. Could you just  
21 summarize that for me?

22 **MR. BALLINGER:** Yes, sir. I don't -- and I  
23 will state up-front, I don't know that this reflects the  
24 total costs and total benefits, but this is a one  
25 snapshot way of looking at it.

1           We started out with the total costs being the  
2 existing estimate of the regulatory asset per a data  
3 request from the company.

4           First, do all Commissioners have that sheet?  
5 Okay.

6           That number was approximately \$1.2 billion,  
7 but it also included the write-off, if you will, of \$295  
8 million. So you should add that back in to get the  
9 value. That brings you to a number of \$1.498 million.

10          What's been recovered so far through the  
11 NCRC for CR3 uprate is approximately \$91 million. The  
12 remaining balance of the uprate project capital is \$265  
13 million, but that is under the nuclear cost recovery  
14 statute to be recovered and amortized over six years and  
15 it's going to stay in that statute. So the remaining  
16 carrying costs for that through 2019 is approximately  
17 \$57 million.

18          If you add those numbers together, you get  
19 approximately \$1.9 billion in what you could call  
20 current value of the CR3 asset and what's been paid. So  
21 it's a little, little mismatched because it's future  
22 values. It's also values that have been paid so far,  
23 and it also does not include the existing benefits that  
24 the unit has provided. But it gives you a number, it  
25 gives you a ball park number.

1           Then on the benefits side there's three  
2 payments, if you will, from NEIL that have, that have  
3 been collected so far and refunded to customers, or will  
4 be refunded by the end of 2014.

5           First is \$162 million for fuel. Second is  
6 \$143 million towards the capital repair of CR3. As that  
7 was going through the process they were getting some  
8 refunds from NEIL and refunded those to customers. \$530  
9 million from the NEIL recent settlement that was done.  
10 All total, that's the \$835 million I mentioned earlier.

11           Another benefit would be the fuel refunds of  
12 \$388 million, which again came from DEF stockholders,  
13 and that has been refunded -- or will be refunded by  
14 2016 per the 2012 settlement agreement.

15           And then an additional \$295 million which will  
16 also come from DEF stockholders, which is the regulatory  
17 asset write-down, which will accomplish, I believe, in  
18 this year. DEF plans to write that off immediately. So  
19 it reduces the going-forward basis. That does not  
20 include the benefit of that additional carrying cost of  
21 that 295, which would almost double that number over 20  
22 years. So what you have is a ball park cost, if you  
23 will, of \$1.9 billion and a ballpark benefit of  
24 \$1.5 billion to date.

25           **COMMISSIONER BALBIS:** Okay. Thank you. And

1 there's been a lot of numbers thrown around and there's  
2 a lot of numbers in this settlement agreement, so I  
3 appreciate staff just trying to get one ballpark look at  
4 it. And this is helpful because in looking at this  
5 chart and you walking through it, I mean one way to look  
6 at it as to CR3 total impact to customers, cost minus  
7 the benefits is \$400 million. So I appreciate that.

8 And another question, staff, you -- Mr.  
9 Ballinger, you had provided, I believe, my office and  
10 other offices with another chart that showed the 2012  
11 settlement that's in place now. And if Duke does not  
12 proceed with Levy, as they've made, as they've stated  
13 publicly that they're not -- and where is that graph? I  
14 didn't see it in your presentation.

15 **MR. BALLINGER:** No, sir, I did not include it  
16 in my presentation. It is available. If you'd like, I  
17 can hand it out.

18 **COMMISSIONER BALBIS:** I think it -- it was  
19 helpful for me, you know.

20 **MR. BALLINGER:** Okay. I understand all  
21 Commissioners have it already.

22 **COMMISSIONER BALBIS:** And do you have that in  
23 the presentation so at least the audience can see it as  
24 well?

25 **MR. BALLINGER:** No. Unfortunately I did not

1 put it in an electronic format. But there was copies,  
2 extra copies out here handed out for the audience.

3 **COMMISSIONER BALBIS:** Okay. And I wondering,  
4 and it's going to be awkward since not everyone has it,  
5 but at least us on the dais have it, and I'm not -- I  
6 don't even know if the parties have this graph. We have  
7 a no.

8 **MR. MOYLE:** I'm not sure --

9 **MR. BALLINGER:** I can explain, I can explain  
10 easily how I got to it. It was really pretty simple  
11 math, if you'd like.

12 **COMMISSIONER BALBIS:** Sure. That's fine.

13 **MR. BALLINGER:** Okay. We understand the two  
14 lines, the red and the blue lines, were taken directly  
15 from DEF's data request number 58 and revised number  
16 61 -- or 41. I'm sorry. So those are the two bill  
17 impacts that we requested the company to do.

18 In those responses they gave details of how  
19 the bill impact was accounted for. And all I did for  
20 2017, '18, and '19 was remove -- if you go to data  
21 request number 58, there was a line of the Levy  
22 build-out scenario included in there in the total bill  
23 impact. For 2017 it was \$5.67, for 2018 it was \$17.04,  
24 and for 2019 it was \$12.32. I just removed those from  
25 the blue line, if you will. That's how you come up with

1 different numbers with the green line.

2 **COMMISSIONER BALBIS:** Well, you know what  
3 might be helpful? If we just -- looking at this graph  
4 here for 2013, what would the green line be, which would  
5 be the existing settlement agreement without Levy?

6 **MR. BALLINGER:** Uh-huh. Sure.

7 **COMMISSIONER BALBIS:** And just walk through  
8 each year so we can just have it.

9 **MR. BALLINGER:** Sure. In 2014, '15, and '16,  
10 without Levy it would be identical to the blue line.

11 **COMMISSIONER BALBIS:** Okay.

12 **MR. BALLINGER:** Okay. In 2017 it would be  
13 \$13.95 versus \$12.32 for the red line or the current,  
14 the proposed settlement. In 2018 it would be \$12.12  
15 versus the \$8.78 in the proposed settlement. And in  
16 2019 it would \$11.66 versus \$8.78 in the proposed  
17 settlement.

18 **COMMISSIONER BALBIS:** Okay. And how does that  
19 green line compare to the red line starting with 2013?

20 **MR. BALLINGER:** It would show --

21 **COMMISSIONER BALBIS:** The red line would be  
22 the 2013 settlement.

23 **MR. BALLINGER:** The red line would be, again,  
24 slightly higher exactly like the differences between the  
25 blue. So you're looking at 2.08 minus 92 cents.

1           **COMMISSIONER BALBIS:** I guess the math isn't  
2 important. I just -- one thing that I noticed is that  
3 the 2012 settlement is cheaper than the 2013 settlement  
4 up until around 2017; is that correct?

5           **MR. BALLINGER:** That's correct, and that's for  
6 two factors. One being the dollar per megawatt hour  
7 charge for the early, early recovery of the carrying  
8 cost of the CR3 asset, and the other one is the increase  
9 in the interruptible credits.

10          **COMMISSIONER BALBIS:** Okay. Thank you.  
11 That's all I had.

12          **CHAIRMAN BRISÉ:** All right. Commissioner  
13 Brown.

14          **COMMISSIONER BROWN:** Thank you. And using  
15 that same chart that we have from, I guess about 2017,  
16 2018, 2019 there are a lot -- looking at the amended  
17 2013 settlement agreement, the red line, there are a  
18 variety of unknowns even in the settlement agreement --  
19 the GBRA, the mini GBRA, the potential, the  
20 decommissioning trust fund, potential surcharge, the  
21 amount, the value of the regulatory asset of CR3. So in  
22 that -- those unknowns aren't necessarily incorporated  
23 in that red line.

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

25          **COMMISSIONER BROWN:** Okay. So that could

1 fluctuate when those knowns become identified.

2 **MR. BALLINGER:** Correct.

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

4 And then a followup to the -- I think this is  
5 the chart that Commissioner Balbis was referring to that  
6 shows the cost versus the benefits with the settlement  
7 agreement, the amended settlement agreement. And I  
8 believe -- I don't know if the parties have a copy of  
9 it. Do we have extra copies?

10 **MR. BALLINGER:** I've got a handful.

11 **COMMISSIONER BROWN:** Do Commissioners have it?

12 **COMMISSIONER EDGAR:** Yes.

13 **COMMISSIONER BROWN:** Okay. And the question  
14 I'm getting, because it does somewhat -- before I ask  
15 the question while it's being handed out, I'll just  
16 preference it. It somewhat skews the information a  
17 little bit, and I wanted to see if staff has  
18 identifiable numbers without the settlement agreement  
19 what would be the benefits to the customers. And I  
20 believe we would be operating under then the 2012  
21 settlement agreement.

22 **MR. BALLINGER:** Correct. If, if I understand  
23 your question, if, if we did not have the current  
24 settlement before us in just the 2012, the top number  
25 would remain the same, the 1.9 billion, but the bottom



1 number, the benefits would, you'd have to remove the  
2 write-down, the \$295 million. So the benefits would  
3 only be 1.2 billion versus 1.5.

4 **COMMISSIONER BROWN:** Okay. Thank you. That's  
5 all.

6 **CHAIRMAN BRISÉ:** Commissioner Balbis.

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

8 And, you know, I hate to belabor this because,  
9 again, there's a lot of numbers throwing around. But to  
10 follow up with Commissioner Brown's point on the 2012  
11 settlement, that regulatory asset write-down, that would  
12 assume that if we litigated this, the 437 docket, that  
13 would assume that 100% of the difference in costs from  
14 the insurance payment would be borne by the customers;  
15 correct?

16 **MR. BALLINGER:** I think so, yes.

17 **COMMISSIONER BALBIS:** Okay.

18 **CHAIRMAN BRISÉ:** All right. I think now is a  
19 good time to take a break. We will come back to staff  
20 and give opportunities to Commissioners to continue to  
21 ask questions. We will take a five-minute break. We do  
22 want to give our court reporter an opportunity to rest  
23 her fingers. All right.

24 (Recess taken.)

25 **CHAIRMAN BRISÉ:** Okay. We're going to

1 reconvene at this time.

2 I believe staff has two corrections that they  
3 need to make.

4 **MR. BALLINGER:** Yes, sir. I misspoke on a  
5 couple of slides there. On the CR3 remaining assets,  
6 the part where I talked about DEF is responsible for  
7 \$5 million -- thank you. I can go back. This slide  
8 here, the second bullet, that last sentence, it says,  
9 "DEF responsible for the first \$5 million of force  
10 majeure costs per event." It should be per year, not  
11 per event. And I will, I will fix that on the slides  
12 going forward.

13 And also in the, on the Levy project here, the  
14 statement here is correct about the charge, what it will  
15 be and for how long. What I misspoke is that the new  
16 amendment extended it a year. It did not. The charge  
17 remains in effect through 2017 per the 2012 agreement.

18 And I think another amendment we may do to  
19 this, your permission, is add the third slide that  
20 Commissioner Balbis brought up with the third line in  
21 it, the green line. I will add that to the end of the  
22 presentation before this gets, this gets posted on the  
23 web in this docket file. That's your all's call if you  
24 want me to do it or not.

25 **CHAIRMAN BRISÉ:** Okay. All right. Any other

1 revisions to your presentation?

2 Okay. Seeing none, Commissioners, you, you  
3 still have the floor, so you may continue to ask our  
4 staff questions.

5 Commissioner Graham.

6 **CHAIRMAN GRAHAM:** Thank you, Mr. Chairman.  
7 I'm trying to get a better feel for the Levy project.  
8 And I guess, staff, you can let me, let me know if you  
9 need to answer this question or wait for the experts to  
10 answer this question, the other experts.

11 If we -- if they're currently going to  
12 terminate the EPC contract and Duke is going to move  
13 forward on their own to continue with the licenses,  
14 there's a value to that asset when they achieve that  
15 license; correct?

16 **MR. BALLINGER:** Correct.

17 **COMMISSIONER GRAHAM:** How do you determine the  
18 difference between the current value of that asset today  
19 and what that value of that asset is going to be when  
20 and if they achieve that license?

21 **MR. BALLINGER:** I'll let Marshall Willis  
22 handle that one. It's an accounting event. If I  
23 understand your question, if they get a license in a few  
24 years, it has a value then at that time. And if that  
25 license is sold or used in some way, will some monies be

1 refunded back to customers? Is that the question?

2 **COMMISSIONER GRAHAM:** Well, let me use simple  
3 numbers.

4 **MR. BALLINGER:** Okay.

5 **COMMISSIONER GRAHAM:** Maybe numbers that I  
6 understand.

7 If we're 80% of the way through the license  
8 now, but a license that's only 80% complete has very  
9 little value. So let's just say the license today has a  
10 value of a million dollars, but if they complete it, it  
11 has a value of \$100 million, and that's a 99%  
12 difference. But if you look at the cost that's been put  
13 into it so far, it may have been 80% of the cost, of  
14 what the total cost is going to be. But is the value of  
15 that license -- how do you, how do you determine what  
16 the current value of that license is, even though you  
17 couldn't sell that license right now, so it does not  
18 have a market value?

19 **MR. WILLIS:** Commissioner, let me try and  
20 address that. I think it's pretty impossible to  
21 determine the value of that license right now because I  
22 think the value would have to be determined at the time  
23 the license is actually implemented or used as far as  
24 construction of a plant on the Levy site because the  
25 license would be specific to the site itself. I don't

1 know how you could determine that. I mean, maybe the  
2 company would know, but I don't know how you would  
3 determine an actual value to that license until you got  
4 to the point where you actually owned it and could  
5 actually market that license.

6 **COMMISSIONER GRAHAM:** Well, maybe my question  
7 is do we look at how much Duke has to put into achieving  
8 that license and then you go from what has been spent so  
9 far and then what, what they've paid more, the  
10 additional that they had to spend and then that's how  
11 you proportion the difference between what's owed the  
12 ratepayers and what belongs to Duke?

13 **MR. WILLIS:** Yeah. Let me -- I think I  
14 understand your question now. If you're looking towards  
15 the consumers in the future getting any benefit from  
16 that license, it would definitely be what the license  
17 was actually sold for less the amount that was actually  
18 incurred and spent for that license.

19 In other words, that would be the gain itself.  
20 The customers would, in essence, get back what they had  
21 spent on that actual license itself, the difference.  
22 That gain would inure back to the customers. It would  
23 be split between wholesale and retail, but it would, it  
24 would -- in essence, the gain would come back to the  
25 customers in my opinion.

1           **COMMISSIONER GRAHAM:** So the customer will get  
2 back what they've spend to date for that license.

3           **MR. WILLIS:** What they've spent. Now there is  
4 a part that the company is going to go forward with.  
5 They're going to on their own nickel spend ratepayer --  
6 not ratepayer -- they're going to spend stockholders'  
7 money to go forward to obtain the license. If that  
8 happens, there will have to be a ratio-ing between what  
9 they actually have spent on their own versus what the  
10 ratepayers have spent when you determine how much of  
11 that gain would come back to the customers.

12           **COMMISSIONER GRAHAM:** So we're not looking at  
13 absolute dollars. We're looking at -- we're trying to  
14 figure out a ratio. Because if the license was complete  
15 today, it may be worth \$80 million. But if it's  
16 complete two years from now, it may be \$100 million  
17 dollars. So just because the value of it may be worth  
18 that much more than, but we're not talking the absolute  
19 dollars today. We're talking about -- we're, we're  
20 going to figure out a ratio and the customer will have  
21 that ratio whenever that license either comes back  
22 online or they, they sell it.

23           **MR. WILLIS:** Well, once the actual license is  
24 determined, we'll know what the actual cost the company  
25 incurred to get that license. And at that point we can

1 determine how much the customers fronted versus what the  
2 stockholders fronted.

3 **COMMISSIONER GRAHAM:** Okay.

4 **CHAIRMAN BRISÉ:** Okay. Just to follow up on,  
5 on that line of questions with the license. The license  
6 itself does not -- the license itself is tied to the  
7 land that it's associated with, if I'm correct, if I  
8 understand right.

9 **MR. WILLIS:** That's correct.

10 **CHAIRMAN BRISÉ:** Okay. So then it would  
11 have -- so then the license -- and if, if somebody or  
12 some entity purchased the license, they would probably  
13 purchase the land, and so therefore there would also be  
14 something that goes back to the customers for the land  
15 purchased and so forth.

16 **MR. WILLIS:** That's correct. The land  
17 currently has been transferred to rate base, to actual  
18 base rates itself.

19 **CHAIRMAN BRISÉ:** Right.

20 **MR. WILLIS:** So therefore, yes, there would be  
21 a gain that would inure from that.

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

23 Commissioner Balbis.

24 **COMMISSIONER BALBIS:** Thank you.

25 Just a quick question. And Commissioner

1 Graham brings up a very good point. From my review of  
2 the settlement agreement it's silent on the license and  
3 the ownership of it. So I'd like to hear from the  
4 company and the parties as to what their understanding  
5 is. If they obtain the license and they sell it, who  
6 gets the proceeds from that?

7 **CHAIRMAN BRISÉ:** From a, from a process  
8 perspective --

9 **COMMISSIONER BALBIS:** So we just do the staff  
10 part?

11 **CHAIRMAN BRISÉ:** Right.

12 **COMMISSIONER BALBIS:** That's fine. Then I'll  
13 save it.

14 **CHAIRMAN BRISÉ:** We're dealing primarily with  
15 staff at this point. You know, we'll, we'll get there.

16 **COMMISSIONER BALBIS:** There's the heads up  
17 then that that question is coming.

18 **CHAIRMAN BRISÉ:** All right. Commissioner  
19 Brown.

20 **COMMISSIONER BROWN:** Thank you. I'm just  
21 going to limit my questions to staff.

22 **CHAIRMAN BRISÉ:** Please do.

23 **COMMISSIONER BROWN:** Just two, I guess,  
24 procedural questions regarding the CR3 regulatory asset.  
25 And what type of proceeding do -- is intended to handle



1 the preserved issues along with the CR -- the evaluation  
2 of the CR3 regulatory asset?

3 **MR. WILLIS:** We did ask that question as far  
4 as what kind of filings would be coming in in the future  
5 from the company. I would envision that somewhere in  
6 2016 prior to the regulatory asset amortization rate  
7 being determined that the company would make a filing  
8 with what they believe the actual cost of the  
9 CR3 regulatory asset was at that point. At that point  
10 all parties would be able to get involved in that, they  
11 would be able to contest parts of the regulatory asset  
12 if they believed the company had miscalculated a portion  
13 of that or included something erroneously. That would  
14 be before the Commission and the Commission would have  
15 to make the determination of what that regulatory asset  
16 was. You would also have to determine what the rate  
17 that's going to be charged as far as amortizing it off  
18 over 20 years would be.

19 **COMMISSIONER BROWN:** Okay. And also with  
20 regard to the expiration of the 240th -- at the 240th  
21 month or 20 years from the inception of recovering the  
22 CR3 regulatory assets, what happens to a customer's  
23 bill? Does it just completely go away, that amount?

24 **MR. WILLIS:** My understanding is the  
25 collection of the regulatory assets ceases after 240

1 months according to the settlement.

2 **COMMISSIONER BROWN:** Okay. And, Mr. Chairman,  
3 if I may, just a general question. And I'm sure all of  
4 us Commissioners have had this question about what,  
5 where do we go if this Commission rejects the settlement  
6 agreement. What kind of posture are we in procedurally  
7 and what type of -- what, what would that entail?

8 **MR. YOUNG:** Commissioner, if the Commission  
9 denies the Revised and Restated Settlement Agreement, we  
10 will continue to proceed with the full administrative  
11 hearing in Docket Number 100437, the Examination of the  
12 Outage and Replacement Fuel Power Costs Associated with  
13 the CR3 Steam Generator Replacement Project by Duke  
14 Energy Florida, where three general areas remain,  
15 including was Duke Energy Florida's decision to retire  
16 CR3 reasonable and prudent, what is the amount of the  
17 regulatory asset, and the NEIL insurance policy issues.

18 **COMMISSIONER BROWN:** Okay. And if I may,  
19 just -- with regard to the CR3 delam docket that has  
20 been, that my understanding is that staff has conducted  
21 extensive discovery, data requests, could you give us an  
22 example or a, a clear picture of how much detail that  
23 staff has been involved with that?

24 **MR. BALLINGER:** Yes, ma'am. This, as we're  
25 all aware, this event happened in 2009 and it has been

1 with me ever since, and my staff. We have conducted  
2 hundreds of discovery requests, viewed thousands of  
3 documents. Progress had a room, two rooms set aside at  
4 their offices here with documents for review. Staff  
5 spent several weeks doing that. Mr. Rehwinkel suggested  
6 or said earlier there's been numerous depositions, not  
7 only in the state but out of the state in Chicago,  
8 consulting engineers, people involved in the project,  
9 numerous engineering, metallurgical people, civil  
10 engineers; numerous rounds of discovery; various  
11 hearings, with the latest one being motions on  
12 discovery, motions to compel certain confidential  
13 information, things of this nature. So this has been  
14 thousands of staff hours spent on this.

15 **COMMISSIONER BROWN:** Thank you.

16 **CHAIRMAN BRISÉ:** Okay. Thank you.

17 Commissioners, any further questions for staff  
18 at this point? Later on in the process we will, once we  
19 close the hearing portion of it, we will enter into the  
20 post-hearing section where we will again have the  
21 opportunity to, to interact with staff at that time.

22 And before we move into the next section I  
23 want to make sure that the signators, that the, that the  
24 representation that was made by staff represents their  
25 understanding of what the settlement entails. And if

1 there are corrections or adjustments that need to be  
2 identified, if that could be done at this time.

3 **MR. BURNETT:** Thank you, sir. On behalf of  
4 Duke Energy Florida, staff's presentation with the  
5 corrections they just noted is an accurate depiction of  
6 the material terms of the settlement.

7 **CHAIRMAN BRISÉ:** Okay. Signators?

8 **MR. REHWINKEL:** Mr. Chairman, do I understand  
9 you're asking about the presentation that Mr. Ballinger  
10 made?

11 **CHAIRMAN BRISÉ:** Yes, sir.

12 **MR. REHWINKEL:** Okay. I, I have -- I think  
13 Mr. Ballinger did an excellent job. If you would permit  
14 me, I would like to make one clarification.

15 **CHAIRMAN BRISÉ:** Sure.

16 **MR. REHWINKEL:** It would be one, two -- I  
17 think it's on the third page under the fuel adjustment  
18 clause.

19 **CHAIRMAN BRISÉ:** Sure.

20 **MR. REHWINKEL:** The second bullet point there.  
21 Mr. Ballinger accurately described the settlement  
22 agreement. I wanted to offer a refinement, which is the  
23 early recovery of the \$1, \$1.50, under the agreement  
24 those dollars specifically go to reduce the return on  
25 equity component of the carrying charge, which is the

1 most expensive. And that, that gives the maximum value  
2 to the customers of the early recovery. So it's not an  
3 overall credit to the, to the balance of the charge. It  
4 goes first to the ROE portion. Thank you.

5 **CHAIRMAN BRISÉ:** All right. Thank you very  
6 much. I think staff noted that. Make sure.

7 **MR. BALLINGER:** If you'd like, I can amend the  
8 slides. That's fine. So if I understand it, the  
9 carrying charge includes ROE. I understand that. I was  
10 trying to make this brief to get the gist of the thing.  
11 But if you want, I can reflect it as specific to the  
12 return on equity portion of the carrying charge, if  
13 that's amenable. Okay.

14 **CHAIRMAN BRISÉ:** That'll work. Thank you.

15 **MR. WRIGHT:** With the changes that have  
16 already been discussed we agree that this represents an  
17 accurate summary of the material terms of the settlement  
18 agreement. Thank you.

19 **CHAIRMAN BRISÉ:** Thank you, Mr. Wright.

20 Mr. Moyle.

21 **MR. MOYLE:** And sometimes it's hard to get  
22 away from your legal training, so I'm just going to say,  
23 I mean, the agreement that we have is our agreement and  
24 that speaks for itself. And I think staff did a very  
25 good job of outlining it, but, you know, the agreement

1 is the operative document and governs it. I have not  
2 spent a lot of time trying to crosswalk the stuff in the  
3 presentation to the agreement. I didn't notice  
4 anything. But, you know, if we ever had an issue, you  
5 know, the agreement would control. But from what I've  
6 heard and reviewed -- there's already been a couple of  
7 corrections -- you know, it sounded okay to me. But I  
8 just want to make sure, you know, the agreement is, is  
9 our controlling document.

10 **CHAIRMAN BRISÉ:** Absolutely. Thank you.

11 Mr. Brew.

12 **MR. BREW:** Commissioner, or Mr. Chairman, I'm  
13 fine with the summary. I do have one note, however, and  
14 that's on the slide concerning the CR3 remaining asset.  
15 And the last bullet talked about the company's ability  
16 to seek up to \$8 million for the decommissioning fund  
17 accrual. I would just want to note that the, to the  
18 extent that the company actually seeks more than the  
19 8 million -- this bullet is accurate through  
20 December 18. But if the Commission approved more than  
21 an \$8 million accrual, the excess would be deferred to a  
22 later, to a later period.

23 **CHAIRMAN BRISÉ:** Mr. Ballinger.

24 **MR. BALLINGER:** Again, I'll point out this was  
25 not meant to be comprehensive. This is a 200-some-page

1 document. I got it down to two pages of notes. I was  
2 trying to hit the highlights, as is said.

3 But he's -- Mr. Brew is absolutely correct.

4 **CHAIRMAN BRISÉ:** All right. Thank you. And  
5 we do have the full document before us. And all of us  
6 have read this document a few times, so we are  
7 intimately aware of what it entails. And I want to  
8 thank staff for, for putting the presentation together  
9 and sort of synthesizing what the document contains.

10 So with that, I think we are prepared to move  
11 to the next section. Mr., Mr. Young.

12 **MR. YOUNG:** Mr. Chairman, we're at the point  
13 now where the signatories to the agreement present  
14 evidence and arguments in support of the agreement;  
15 discuss staff's presentation, if they so desire; and  
16 respond to public questions.

17 Mr. Chairman, at this time the signatories to  
18 the settlement agreement will identify the witnesses  
19 present and provide an encapsulation of their expertise  
20 as it pertains to the Revised and Restated Stipulation  
21 and Settlement Agreement. The five witnesses will then  
22 present as a panel and will be available for questions  
23 to address the questions and topics in areas  
24 Commissioners would like to address.

25 **CHAIRMAN BRISÉ:** Thank you very much.

1           Before we, before we move forward I think some  
2 people were asking about the nagging thing we call  
3 lunch. And we plan to, to take a lunch break at about  
4 12:30 and we'll probably go for an hour for lunch. And  
5 then, and then based upon where we are at 12:30, we'll  
6 provide further instruction at that time. Okay.

7           All right. You may proceed.

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

9           Starting on my left, one of the witnesses we  
10 have today is Alex Glenn. He is our state president for  
11 Duke Energy Florida. Mr. Glenn's area of expertise will  
12 be generally all aspects of the settlement in  
13 generality, especially as they relate to the company as  
14 a whole.

15           To his left we have Javier Portuondo. He is  
16 our Director of Rates and Regulations for Florida. His  
17 area of expertise will be any financial accounting  
18 impacts of the proposed settlement as well as any rate  
19 and tariff impacts or aspects of the settlement.

20           To his left we have Garry Miller. Mr. Miller  
21 is our Senior Vice President of Nuclear Engineering, and  
22 Mr. Miller will be a technical expert for any issues  
23 related to Crystal River Unit 3.

24           To Mr. Miller's left we have Chris Fallon.  
25 Mr. Fallon is our Vice President of Nuclear Development,



1 and he will be the technical expert for any issues  
2 regarding the Levy project.

3 And then finally to his left we have Mr. Ben  
4 Borsch. He is our Director of System Planning. Mr.  
5 Borsch's area of expertise is future generation needs in  
6 our integrated resource planning.

7 I will, hopefully without you noticing, start  
8 creeping to the back and getting away from these  
9 witnesses, if I can.

10 **CHAIRMAN BRISÉ:** Thank you.

11 All right. Commissioners, the floor is, is  
12 yours to begin questions. I just want to, to caution us  
13 that -- I think all of us have questions, and that if  
14 you have a specific line of questions that you want to  
15 go down, go through the line of questions, finish with  
16 that line of questions before moving on to another line  
17 of questions so that other Commissioners may be able to  
18 ask questions and sort of do them in those lines three,  
19 four -- or two, three, four questions or so so that we,  
20 everyone has the opportunity to ask the questions that  
21 they desire to ask. Okay?

22 So at this time the floor is yours,  
23 Commissioner Brown.

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

25 Obviously this is a monumental case that we

1 have before us and we have a very challenging role for  
2 each of us. So with that, we've got a lot of questions.  
3 And I'd like to start with the Office of Public Counsel  
4 first, who represents the majority of customers. And  
5 this refers to you, Mr. Rehwinkel. I know you talked  
6 about various aspects that are in the public interest  
7 and how the settlement agreement, I guess different,  
8 different folks, different signatories and Intervenors  
9 said different things, that it's not necessarily an  
10 all-win situation and, and -- but I'd like you to  
11 specifically point out portions of the settlement  
12 agreement that you believe are in the public interest  
13 with respect to the customers as a whole. And then I'd  
14 like to go down the line with the other Intervenors and  
15 have you specifically point out how it best represents  
16 your constituents or customers, so to speak.

17 Mr. Rehwinkel.

18 **MR. REHWINKEL:** Thank you, Commissioner.

19 Let me say first of all, the entire settlement  
20 is in the public interest in our view. And I would also  
21 like to make sure that this is understood in the answer  
22 is that, yes, there was a 2012 settlement and, yes,  
23 there's a 2013 settlement that brings forward items in  
24 2012 agreement. All of the provisions from '12 and '13  
25 are taken together because they were negotiated forward,

1 if you will. So everything was resolved as one package.

2 As I said in my opening statement, the, the  
3 customer benefits, the dollars that come directly from  
4 the Duke shareholders that reduce the, the costs that  
5 customers will bear are paramount -- the \$295 million  
6 write-down. From our standpoint that is analogous to  
7 what we would have sought for NEIL recovery. The  
8 \$388 million refunds that go directly to customers in  
9 the fuel clause from 2012 through 2016 are benefits to  
10 the public, to the customers specifically.

11 The provision that says that if Duke retires  
12 the, the, the building in its discretion as provided for  
13 in the 2012 agreement, that the shareholders' return on  
14 equity is substantially reduced, has a \$500 million  
15 benefit to the customers over the time that the asset  
16 would be recovered, and that's a benefit to the  
17 customers.

18 The -- as I mentioned earlier in the  
19 clarification on the early recovery, even the early  
20 recovery provision is specifically consumer tailored in  
21 the way it's recorded in that it reduces the highest  
22 cost of the, the cost, the carrying charges that are  
23 accruing until we get to the recovery point.

24 So this interim period where they're accruing  
25 costs on the asset, the shareholder portion is reduced,

1 and that, that has a benefit -- I think it's in the  
2 \$70 million range. I could check that. But that's,  
3 that's of value to the customers. The cancellation of  
4 the Levy project, the avoidance of the, the significant  
5 increase in costs beginning in 2017 is a benefit.

6 The provisions in the agreement that require  
7 Duke to salvage not only the Levy components that I  
8 mentioned earlier but to salvage any uprate components  
9 that are salvageable and to salvage any components of  
10 the CR3 asset itself that are salvageable, those are all  
11 specific requirements in here that are imposed upon Duke  
12 by the agreement and those have the opportunity to  
13 mitigate costs that customers would otherwise bear. So  
14 those are in the public interest and we support those  
15 specifically.

16 And I'm going from memory here. The, the  
17 removal of the license cost, the COLA pursuit costs from  
18 the dollars that will be recovered through the  
19 \$3.45 charge is a benefit to the customers. I don't  
20 know exactly how much that is, but it could be in the  
21 10, 15, to \$20 million range when it's all said and  
22 done. That's a benefit to the customers.

23 The overall rate smoothing effect of the  
24 agreement that Mr. Brew talked about is, is a public  
25 interest benefit and it gives certainty to customers.

1 Without regard to the rate levels, it gives certainty to  
2 customers, small, medium, and large, so that they know  
3 what their electric bills will be. And it's not, that's  
4 not a judgment on the appropriateness of the levels or  
5 the outcome, but it's just there's that certainty there,  
6 and I think that's a benefit to the customers.

7 Commissioner, there are others in here, I  
8 could go through the agreement, but I think those are  
9 the high points of benefits to customers. I'm sure I  
10 probably have forgotten one or two.

11 **COMMISSIONER BROWN:** Mr. Rehwinkel, I greatly  
12 appreciate you walking us through, and I know you said  
13 them during that. But that's helpful in pointing out  
14 what is of interest to your customer base.

15 **MR. REHWINKEL:** Yes.

16 **COMMISSIONER BROWN:** And as we move forward.  
17 And just one question before we move to, move down the  
18 line, do you confidently believe that this is the best  
19 deal that the customers could get, given the facts and  
20 circumstances before us today?

21 **MR. REHWINKEL:** Yes, Commissioner. And I'm  
22 not saying this because I, I didn't think that, you  
23 know, we didn't have a path that I could envision or  
24 that our attorneys could design to, to go forward and  
25 make a burden of proof. Certainly we were not worried

1 about litigating this case. Anybody that knows me over  
2 the last four years knows I thoroughly enjoy working on  
3 this case. As a lawyer I've learned a lot, I've pursued  
4 a lot. I have no doubt that the issues of proof in this  
5 case were such that any prudent attorney would sit there  
6 and have to say if I go all the way down and I litigate  
7 this case and I can't make my burden of proof, will I  
8 come up with a goose egg? I can't put all the eggs in  
9 that basket and get a goose egg out of that basket. So  
10 we had to negotiate and find a resolution that has  
11 certainty to it, has value to the customers, and at the  
12 end of the day represents a, a fair and reasonable  
13 approach. Not what we would want to win, but a fair and  
14 reasonable outcome. And in my heart of hearts I am  
15 convinced that this deal overall is, is a good one for  
16 the customers and it is probably the best outcome that  
17 could be achieved under this myriad of far ranging  
18 subjects that are covered in the agreement.

19 **COMMISSIONER BROWN:** Thank you.

20 Mr. Wright?

21 **MR. WRIGHT:** Thank you, Mr. Chairman,  
22 Commissioner Brown. I feel I'm necessarily going to  
23 have to echo and reiterate a number of the things that  
24 Mr. Rehwinkel said. I represent the Florida Retail  
25 Federation. As you know, we -- I think we never take

1 positions on cost of service issues except that we say  
2 rates should be fair, just, and reasonable and spread  
3 across the board because we have customers at all  
4 levels. We have little bitty mom and pops whose usage  
5 is smaller than, smaller than some residential  
6 customers, and we have very, very large commercial  
7 customers. So we represent all customers. I will be  
8 able to focus on a few things that are particularly  
9 beneficial to commercials.

10 But in the big picture the big dollar items  
11 are the write-down of Crystal River 3, which is straight  
12 off the top \$295 million of shareholder money that, as  
13 Mr. Rehwinkel said, is comparable to what might have  
14 been applied had additional funds been gotten from NEIL  
15 or that might have been applied by the Commission  
16 pursuant to the petition that the Public Counsel and we  
17 filed. That's a big benefit to customers.

18 The \$388 million of fuel clause refunds  
19 provided for in the original settlement and carried  
20 forward is a big, big benefit to customers. The reduced  
21 rate of return on equity on the remaining written down  
22 balance of the CR3 asset is worth a lot of money. It's  
23 in the ball park of \$500 million in revenue requirements  
24 that customers will not have to pay over the remaining  
25 life and remaining recovery period of the CR3 asset.

1           We believe, as much as we like nuclear power  
2 at the Retail Federation, that canceling the Levy  
3 project was and is the right decision. From a  
4 customer's perspective the economic benefits are  
5 tremendous. You know, Mr. Ballinger's chart shows what  
6 the rate impact would have been if the company were to  
7 have continued down the path of building what by last  
8 estimate was a 24-plus billion dollar plant. That is a  
9 huge benefit to all of Progress's -- Duke's customers.

10           There, there are a couple of other little  
11 nuances in here that we -- there's a provision regarding  
12 the, the generation base rate adjustment mechanisms.  
13 The second one for the larger block, the combined cycle  
14 capacity will go through the normal process and have a  
15 GBRA associated with that if, if the project goes  
16 forward in that way. The first one though provides for  
17 building combustion turbines or purchasing existing  
18 combustion turbines. And the important thing there that  
19 benefits customers is that the provisions in the  
20 settlement provide for an additional level of scrutiny  
21 that are not normally applied. It provides for advanced  
22 prudence review of whether they're making the right  
23 decision as part of their integrated resource planning  
24 process.

25           Perhaps more specific to commercial and also



1 to industrial customers, the, the settlement agreement  
2 provides for increases in the interruptible credits and  
3 also an increase in the standby generator credit, which  
4 a number of facilities do have standby generators that  
5 can be called on and we get some, some benefit. That --  
6 those increases are particularly beneficial to  
7 industrial and commercial customers, but at the same  
8 time because of what they do. They provide additional  
9 generation when the company needs it. They provide  
10 meaningful value to all customers. And the rate  
11 certainty and smoothing that we've talked about, knowing  
12 what the rates are going to be pretty much for the next  
13 five years, say, for the vagaries of fuel markets really  
14 is a real value to the members of the Florida Retail  
15 Federation, to commercial customers. It's really good  
16 for us to be able to know what our bills are going to be  
17 for the next -- what our rates are going to be and thus  
18 our bills are going to be for the next, in this case,  
19 five years or so. And I'm guessing you want me to  
20 answer the last question you asked Mr. Rehwinkel, so I'm  
21 prepared to do so.

22 **COMMISSIONER BROWN:** Well, you said there are  
23 no winners here. But I can probably read your mind; you  
24 also said the pain is more felt on the Duke shareholders  
25 earlier in your opening remarks.

1           **MR. WRIGHT:** Well, yeah. Yes. That's --  
2           that's -- this is a, this is a tragedy. There's no  
3           other way to describe it. And, and the issue that was  
4           before us as we negotiated this settlement is ultimately  
5           the same issue that might have been before y'all in, you  
6           know, a host of issues with the ultimate issue being  
7           who's going to bear how much pain.

8                        We fully believe this is a fair settlement. I  
9           will say I believe it's the best deal that we could  
10          negotiate, you know. And it's, it's just so complex.  
11          There was so much risk, as Mr. Rehwinkel described.  
12          There's a risk that if you go through everything and  
13          prove what you think you can prove, you can still, as an  
14          attorney, you know, you can still get a goose egg and  
15          there's that real risk. I will add I hope you ask my  
16          friends at the other end of the table the same question.  
17          By, yes, we believe this is the best deal that we could  
18          have negotiated and we believe it's a fair deal, and  
19          thank you.

20                      **MR. MOYLE:** So on behalf of the Florida  
21          Industrial Power Users Group my colleagues have  
22          identified some, some key components. I, given that, I  
23          may touch on them as a, a point just to reiterate, but  
24          one provision that has not been mentioned that was  
25          particularly, I think, meaningful is paragraph 3, which

1 is a reservation of rights provision. And, you know,  
2 when you're in negotiations, a lot of it's, okay, well,  
3 what exactly is being resolved here and what is being  
4 retained if -- and nobody can see beyond the horizon,  
5 you know, if other situations arise. But, you know,  
6 I'll burden the record by, by reading, but it says, "The  
7 parties reserve all rights, unless such rights are  
8 expressly waived or released under the terms of this  
9 Revised and Restated Settlement Agreement." And it goes  
10 on to say there's not an implied waiver.

11 So we were real clear on that, and I think we  
12 identified there's an exhibit and we did -- we spent a  
13 lot of time working to clearly identify, you know,  
14 rights that were, that were expressly waived.

15 So as another reason in addition to the ones  
16 that my colleagues have articulated, you know, we, we  
17 think that we struck an appropriate balance with respect  
18 to the reservation of rights provisions.

19 Just to briefly comment, I mean our colleagues  
20 with the power company, they went to the negotiating  
21 table with NEIL. And we were not there, just like you  
22 were not, you know, involved in the negotiation. But  
23 it's always, it's always hard because negotiations take  
24 on their own feel and flavor and have their own unique  
25 life. And, you know, I think that their additional

1 concession of 295 and, you know, what we viewed sort of  
2 as insurance monies after they had already obtained a  
3 significant sum of NEIL was particularly meaningful, you  
4 know, to the consumer parties and to my clients.

5           You know, I thank Mr. Wright for mentioning  
6 the provisions related to the interruptible credit and  
7 the standby generation credit. Those are issues that  
8 are very important to the FIPUG members. We have talked  
9 about those and have brought those before you and you  
10 all are aware of those. But, you know, we argue that,  
11 that by interrupting clients who choose to take service  
12 under interruptible tariff provide a reasonable  
13 resource. So on a very hot day you don't have to  
14 necessarily, you know, rely on building a new peaker  
15 power plant. You can defer that expense. But that it's  
16 appropriate to adjust those credits as time moves  
17 forwards, because if the expense of new peaker projects  
18 go up, then you should have a corresponding increase,  
19 you know, in the value of an interruptible credit. And,  
20 you know, so that, that is a specific point as related  
21 to the standby credit that are, that are meaningful.

22           The stay-out, we've talked about the stay-out  
23 but, you know, it's a stay-out through December 2018.  
24 Right? We're getting ready to come up on December '13  
25 and, you know, that's a long stay-out. You know, you

1 all may still be here with -- but with four-terms, you  
2 know, maybe not. But it's a long, it's a long stay-out  
3 provision. And that has meaning in that we don't have  
4 to, you know, be back in and fighting it out on  
5 different things. So I think that is a provision that  
6 is of particular importance.

7 We reserve the rights under the -- you had  
8 referenced the little GBRA and the big GBRA. We reserve  
9 the rights if we're thinking that that's not in the best  
10 interest of ratepayers, we have the ability to come in  
11 and say, wait a minute, they didn't, they didn't go for  
12 the best deal. And I think that was, that was  
13 important. There was a couple of questions and  
14 clarification on this nuclear decommissioning trust  
15 fund. Mr. Ballinger indicated how much money is in  
16 there. A study is being done now by Duke, I think it's  
17 supposed to be filed by the end of the year, but, you  
18 know, I think this is the first time that a plant is  
19 going to have to go through decommissioning. I think  
20 that the cost may, may be significant. I don't know  
21 that, but I think they may be significant. So in this  
22 agreement there's a cap for the duration of the  
23 agreement at \$8 million bucks a year. So if they come  
24 in and go, oh, we gotta -- you know, we're underfunded  
25 and we need more money, you know, we're not having to

1 put that money in for the five years. It's capped at  
2 \$8 million a year. That's another significant term.

3 So, you know, I'm trying to be responsive to  
4 your question, articulate some things that were, that  
5 were meaningful. It is, you know, a puzzle that's all  
6 fit together and, you know, very, very hard to, you  
7 know, pull one piece away. But, but, you know, it was a  
8 product of I think a lot of hard work and creativity and  
9 effort to try and get it, you know, get it done.

10 Your question about is it, you know, is it the  
11 best deal? I kind of look at that a little bit like,  
12 you know, if you, you know, if you were, you know,  
13 negotiating something, you know, at a flea market or,  
14 you know, buying a house or, you know, you know, you're  
15 in the process, you go back and forth, and you strike,  
16 strike a deal that you think is a fair deal. Now could  
17 you have gotten another increment? You know, maybe,  
18 maybe not. But, you know, it surely was, was a fair  
19 deal.

20 **COMMISSIONER BROWN:** Thank you.

21 **MR. BREW:** What he said.

22 **COMMISSIONER BROWN:** Okay.

23 **MR. BREW:** Without trying to be triply  
24 redundant, I think it's helpful to start to look at what  
25 we were looking at when we started, which is illustrated

1 pretty well on the staff chart, which is in 2017 we get  
2 doubly hit with expected spin up in Levy spending. And  
3 I think -- if you look beyond the staff chart, my  
4 recollection is in 2020 and '21 it goes up substantially  
5 more from what was shown.

6 The -- we get hit with the Levy spin up, the  
7 CR3 regulatory asset, whatever came out of the final  
8 prudence review, a potential base rate case on top of  
9 that all hitting at once.

10 So in contrast to some of the other  
11 characterizations, I think this is actually an excellent  
12 deal because it does take all of those really tough  
13 issues and try to manage the costs in a way that fairly  
14 balances things.

15 Levy obviously is important, the CR3 write-off  
16 is important whether you judge you could have done  
17 better through litigation or not.

18 The interruptible credit is obviously  
19 important to PCS as an interruptible load, but also  
20 allowed us to do the other rate designs in terms of  
21 applying the rates on an equal percentage increase and  
22 making the rate design otherwise simple. Because if you  
23 just left that in isolation, you wouldn't have been at a  
24 reasonable starting point for the large loads. And so  
25 all of those things taken together are important.

1           So I guess what I would stress -- the point  
2 earlier was -- is how it smoothed those numbers. How we  
3 looked at what was going to happen in 2017 and 2018.

4           And so the tradeoffs, it's not just the, the  
5 interruptible credit or Levy. It's the tradeoffs that  
6 were made correspondingly to smooth things out so that  
7 when you get to 2018 and beyond you were still at a  
8 sustainable level of rates. So I think that is what I  
9 would consider a real benefit.

10           **COMMISSIONER BROWN:** Thank you. And thank  
11 you, Intervenors, for your responses. They are exactly  
12 what I was looking for.

13           And, Mr. Chairman, I have a multitude of  
14 extra, additional questions, but I'll defer the floor to  
15 my colleagues.

16           **CHAIRMAN BRISÉ:** Thank you.

17           Commissioner Graham.

18           **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.  
19 This question I guess is to the Duke panel. It goes  
20 right back to what Mr. Moyle said earlier about not  
21 being in the room during the negotiations. None of us  
22 being in the room during the negotiations that you had  
23 with NEIL, the question I have is why didn't NEIL give  
24 you everything you asked for, and what specifically did  
25 they reject?



1           **MR. GLENN:** Commissioner Graham, this is Alex  
2 Glenn. I can answer that.

3           As we did our analysis in looking at the  
4 repair/retire decision, and in particular in the  
5 retirement aspect, we looked at the policies and the  
6 policies that would apply with NEIL. And it's important  
7 to note, I think, with NEIL is that these aren't blanket  
8 coverage policies. These are policies of limitations.  
9 And they had certain limitations that apply regardless  
10 of fault. Fault had nothing to do with the policy  
11 provisions. These are contractual provisions that  
12 either cover or don't, you don't cover.

13           So when I looked at this and was making the  
14 recommendations to our board of directors, we had to  
15 look at in the economic analysis on the repair/retire  
16 decision, in a retirement decision how much money do we  
17 think we can reasonably get from NEIL. And so if you  
18 look at the policies, you can see that some of it is  
19 ambiguous. The provisions are not entirely clear on  
20 these policies. And so what we looked at was in a  
21 retirement scenario what are the provisions that apply.

22           And when you look at the policy, you don't get  
23 the full replacement value, the repair value in a  
24 retirement scenario. What you get is what they call  
25 actual cash value, and actual cash value is a defined

1 term in the NEIL policies. And what that looks at is  
2 the depreciated life of the asset or of the potential  
3 repair costs. And so in this instance we looked at the  
4 possible repair costs that we would get and we used as a  
5 basis the independent third-party analysis, the Zapata  
6 report, and we used a \$1.9 billion number there. The  
7 capital policies that apply have a limit of  
8 \$2.25 billion for repairs. Okay.

9 But on the retirement on the actual cash value  
10 you look at what is that potential repair cost going to  
11 be and then you depreciate it. That's essentially 50%  
12 of that \$1.9 billion repair cost, hypothetical repair  
13 cost. Then what we looked at is the additional  
14 exclusions or limitations under the policies.

15 So there are limitations on what is called  
16 your replacement cost of repair. It's defined as what's  
17 actually incurred to repair. So of that \$1.9 billion in  
18 that, in that cost estimate there was roughly about, I  
19 believe, \$535 million worth of contingency in that  
20 repair number.

21 Looking at that policy, looking at a, if  
22 you're in a retirement scenario going to arbitration, it  
23 was difficult for me to perceive that an arbitrator  
24 would award you \$535 million worth of contingency in a  
25 repair that you're not going to undertake, correct,

1 under the retirement scenario.

2 In addition, the policy has exclusions on  
3 undamaged property. It only covers costs incurred to  
4 damaged property. And this was a debate that we had  
5 with NEIL. Because as you recall, there were only two  
6 bays that were delaminated in March of 2011. The other  
7 bays, there are six bays, one we had repaired and that  
8 was repaired successfully, and then two other bays  
9 delaminated. So there were three unrepaired bays in a  
10 number of common areas. And also the dome was not  
11 damaged during the repair, but that's a separate issue.

12 So the policy would say you only recover  
13 damaged property. Our position was the entire building  
14 is damaged. NEIL's position was, no, there's only two  
15 bays damaged.

16 So would we win that argument in arbitration?  
17 That's kind of anybody's guess. Right? So what we did  
18 -- what I did in looking at what is a reasonable and  
19 rational amount is taking that, removing some of that  
20 cost of the undamaged property, and I believe that was  
21 about 100 to \$200 million if you look at the cost  
22 estimates that Zapata had.

23 There was also exclusions on or coverage only  
24 to replace identical or like kind property. So in our  
25 repair scenario, were we to repair that plant we were

1 going to have to install a significant amount of new  
2 rebar, new steel in the, in the building through all the  
3 bays, all the bays except for bay 3-4 which had been  
4 repaired with a bunch of rebar, and we would also have  
5 to replace with new concrete aggregate, different  
6 aggregate that was used in the original construction of  
7 the plant. And as you go lower in the elevations of the  
8 building there were many interferences that you would  
9 have to remove -- forty-year-old equipment and piping  
10 that you would have to cut and remove that's not made  
11 anymore, we would have to go out and buy brand new  
12 equipment to replace that with.

13 So when you look at those kind of betterment  
14 arguments, we stripped out additional dollars. And I  
15 believe in that instance, and I believe it's covered in  
16 one of our responses to a data request, but I think that  
17 was in the 100, to \$200 million range.

18 There were also other sublimits in the policy,  
19 one of which was principle. And that was a sublimit on  
20 no coverage above \$2.5 million if the repairs are  
21 related to or required by regulation. So one of the  
22 issues that arose is are the repairs to the entire  
23 building, the undamaged bays, is that in order to get  
24 your license to operate for another 20 years with the  
25 NRC, or can you do a smaller repair that has a higher

1 risk of not getting your license for another 20 years or  
2 not? So that was, that was a risk that we would run  
3 because we were saying, look, we want a repair that is  
4 actually licensable that we believe we have a high  
5 degree of confidence in getting from the NRC. And that  
6 through no fault again in any of the policies, that was  
7 an issue that NEIL would raise and say that's nice you  
8 want a high degree of confidence, but the policy doesn't  
9 require me to pay that.

10 And finally there were, there were sunk costs  
11 that are not covered under the terms of the policy that  
12 was included in the, in the Zapata report that arguably  
13 we had already been paid for in that first \$305 million  
14 payment by NEIL.

15 So there were a number of factors that when  
16 you look at that \$1.9 billion cost estimate, you take  
17 that by 50% under the policies, so you're now down to  
18 about a billion, those kind of risks that I looked at  
19 and that the company looked at reduced that down to  
20 about \$500 million. That's what we used in our economic  
21 analysis to determine on a bounding scale what is it  
22 economically does a repair versus retire look like? So  
23 I don't know, does that answer your question on kind of  
24 the risk factors that we were looking at?

25 **COMMISSIONER GRAHAM:** It does. But when you

1 started your, your, your comments, one of the first  
2 things you said was, looking at the policy regardless of  
3 if you were at fault or if you're not at fault. So what  
4 you're saying is regardless if, if, if Duke was at fault  
5 or if it was just unforeseeable fault, that the  
6 negotiations with NEIL wouldn't have changed at all.

7 **MR. GLENN:** Correct. Correct. I mean, the  
8 negotiations were based on the policies and based on the  
9 language of the policies. And so whether or not we, we  
10 were negligent or not negligent was not necessarily a  
11 factor. Just the definition of accidental property  
12 damage, which is what the policies cover, says it has to  
13 be the -- cannot be fortuitous or foreseeable. So  
14 that's an argument there that any time you're  
15 retensioning a building it could be foreseeable that you  
16 could crack the building.

17 **COMMISSIONER GRAHAM:** Well, I thought the, the  
18 main purpose of the 2012 settlement was to take the, the  
19 determination of fault off the table so you could sit  
20 down and negotiate with NEIL.

21 **MR. GLENN:** Yeah, it did. It did. And that's  
22 not to say that NEIL wouldn't argue, you know, fault and  
23 anything like that. But, but our discussions with NEIL  
24 were really surrounding the policies, number one, and  
25 all the facts and circumstances that we had with them.

1                   **COMMISSIONER GRAHAM:** All right. You lost me.  
2 If not for the '12 settlement, could you go in there --  
3 would they bring up fault during that negotiations if  
4 not for that settlement?

5                   **MR. GLENN:** They could try to bring up fault  
6 in those, in those discussions ultimately to an  
7 arbitrator.

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

9                   **CHAIRMAN BRISÉ:** All right. Commissioner  
10 Balbis.

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

12 I have a question or two for the Office of Public  
13 Counsel, and then I can close that line of questioning.

14                   Mr. Rehwinkel, you and I have been working on  
15 this for a number of years, and I still want to thank  
16 Commissioner Graham for assigning me as Prehearing  
17 Officer to this, but during this process you had and the  
18 parties had filed motions on answering the threshold  
19 question at the time, and that was how far back can we  
20 look at the NEIL issue, because that is really the  
21 majority of what's remaining now is the NEIL issue. And  
22 you made a very compelling argument that all of the  
23 information that you need for NEIL is critical for your  
24 case. And I believe I ruled in favor of the Office of  
25 Public Counsel for that. And then the next thing that

1 followed was the Office of Public Counsel and other  
2 parties were having difficulty with Duke producing these  
3 critical documents, and it was something that again you  
4 argued very compellingly that without those documents  
5 you cannot try this case and it's something that is  
6 absolutely essential for this proceeding.

7 And in that motion you requested these  
8 documents be produced and an in camera review be  
9 performed, and a due date of, I think it was June 14th.  
10 On that very same day, I believe it was about 30 minutes  
11 prior to those documents being due, you filed another  
12 motion asking for your previous motion to be held in  
13 abeyance, essentially eliminating the requirement for  
14 Duke to produce this document or these documents, and  
15 then subsequently you entered into the settlement  
16 agreement. Did you ever review those documents?

17 **MR. REHWINKEL:** The documents that we sought  
18 production of through the motion to compel were all  
19 subject to one form or another of privilege claim. And  
20 Duke never waived privilege claim for any of those  
21 documents, so we did not see any of the documents. So  
22 we didn't know what were in, were in them one way or the  
23 other.

24 **COMMISSIONER BALBIS:** Okay. So, and my  
25 question is if, again, these were so important to your



1 case in handling the insurance issue, how can you enter  
2 into a settlement agreement and determine it's in the  
3 public interest if you haven't seen the documents that  
4 are so critical for your case?

5 **MR. REHWINKEL:** Commissioner, the answer to  
6 that question -- and let me say this. I, I, on behalf  
7 of the customers, appreciate the time and effort and the  
8 rulings that you issued in that. The, the dispute over  
9 these documents was a legal dispute; it was one based on  
10 advancing certain theories about whether the documents  
11 were discoverable and viewable by the party litigants.  
12 That, that round of motions was in our view, based on  
13 the legal analysis that we spent many, many hours doing,  
14 was just the first step in a process that would require  
15 a determination by the trier of fact, possibly a second  
16 reviewable determination by the entire panel, then an  
17 appellate review by either party that did not prevail in  
18 that process, virtually guaranteed that the loser of  
19 that dispute would go to court.

20 During that whole time that this litigation  
21 would proceed, the Public Counsel and other Intervenors  
22 would not be able to see the documents. And this is  
23 what I alluded to in my opening statement is that that  
24 process alone, which we viewed as a threshold to  
25 pursuing litigation, we envisioned could take many

1 months, if not years, to fully resolve and get a final  
2 determination on.

3           So what we were doing was in, in pursuing the  
4 documents, and we were fully prepared to follow through  
5 the process at the Commission and in the courts for  
6 whatever time it took, but there's a certain amount of  
7 probabilistic analysis that you have to do, is your  
8 legal theory winnable? You know, will you prevail at  
9 the Commission? Will you prevail at the court? And  
10 even if you think you can, the full and final resolution  
11 takes a lot of time.

12           So you have to sit there and say, "Do you  
13 think you have a good case? Will you win it?" You  
14 don't know. And then only after you get the documents,  
15 after that's extended period of time, can you then put  
16 your case on. So these are layers of probabilistic  
17 analysis that you have to do, mostly on a subjective  
18 basis based on your legal training and expertise within  
19 the office, that, that take you to the point of do you  
20 try to find an alternative resolution that avoids you  
21 having to get the documents. And what we resolved, and  
22 this is part of the settlement, was -- in our view, and  
23 this is the customers' view and you've heard it all down  
24 the line -- the \$295 million write-down was analogous to  
25 what we were pursuing through the documents, which was

1 additional NEIL proceeds.

2 **COMMISSIONER BALBIS:** Yeah. And,  
3 Mr. Rehwinkel, I appreciate that. I just, I just -- I'm  
4 trying to under the documents that were so critical  
5 suddenly weren't needed and you were able to enter into  
6 a settlement agreement and you answered that.

7 You also indicated in several requests for  
8 additional time, that you needed time to hire outside  
9 experts, insurance experts, et cetera, to review Duke's  
10 testimony in order to provide an analysis. Did that  
11 occur and did they review any testimony?

12 **MR. REHWINKEL:** We did not hire a, an expert  
13 witness in the insurance side. That was, again, one of  
14 the calculations that we made about whether to spend the  
15 time and funds that were very limited based on the, the  
16 expert witness funds that we had available. And, you  
17 know, if we could find an alternative resolution to  
18 needing to do that, then we did not have to. So the  
19 answer, the short answer is, no, we did not.

20 **COMMISSIONER BALBIS:** Okay. I have a few  
21 questions for Duke, but I think we're getting close to  
22 12:30, so I'll defer to my fellow Commissioners.

23 **CHAIRMAN BRISÉ:** Sure. Yeah. We have about  
24 three minutes left. Okay. So with that, it is 12:27.  
25 I don't think that we can get a question out and get

1 answers. So we will reconvene at 12:30 -- so we'll take  
2 our lunch recess and we will reconvene at 1:30. Pardon  
3 me. So see you at 1:30.

4 (Recess taken.)

5 **CHAIRMAN BRISÉ:** All right. I hope that  
6 everyone had a healthy and nutritious lunch, for we are  
7 going until about 11:00 o'clock tonight, because we are  
8 going to try -- no. In all seriousness, we plan to  
9 finish today about 5:00 o'clock, unless we are in a  
10 posture of decision. And if we are in the posture of  
11 decision before then, we will manage that accordingly.  
12 So It may be post 5:00 p.m., because I think as we enter  
13 into that phase, Commissioners may want some time to  
14 take a step back, meet with their individual staff, and  
15 go over things a little bit more. So as the day  
16 progresses, we will reevaluate that and evaluate that  
17 and sort of provide what our next steps are with respect  
18 to that.

19 I think we are in the posture of questions.  
20 And Commissioner Balbis had a question right before we  
21 went to lunch, and I think your questions were going to  
22 be directed for Duke at this time. But in any case, you  
23 have the floor.

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

25 I mean, at this point, I've finished my line

1 of questioning for OPC, so I think it's a good  
2 opportunity to let other Commissioners jump in, if  
3 needed, before proceeding with Duke, because it's kind  
4 of a change in a line for me. So I'm good for now.

5 **CHAIRMAN BRISÉ:** I mean, in terms of -- you  
6 control your lines of questions. Another Commissioner  
7 can have questions for OPC. I'm just talking about in  
8 terms of if you're managing your line, you have four or  
9 five, do that and then you can go with whomever you  
10 want.

11 **COMMISSIONER BALBIS:** Okay. Then I'll go  
12 ahead and get started.

13 **CHAIRMAN BRISÉ:** Okay.

14 **COMMISSIONER BALBIS:** And, Mr. Glenn, it's  
15 good to see you again, and I have a few questions for  
16 you. There has been a lot of discussions about NEIL,  
17 and at least my office has received good portions of the  
18 NEIL policy. If you could very briefly just explain the  
19 NEIL, how NEIL is structured, who is a part of NEIL, and  
20 what Duke's role is in NEIL.

21 **MR. GLENN:** Sure, Commissioner. NEIL is a  
22 mutual insurance company, which means it is made up of  
23 member insureds and the member insureds of NEIL are all  
24 of the electric utilities. And I believe there are also  
25 some nuclear service providers that are members of NEIL

1 that own nuclear material. And so every electric  
2 utility in the country that has a nuclear power plant is  
3 a member of NEIL because we are required to have that  
4 insurance.

5 Duke is, I believe -- now I don't believe we  
6 are on the board of directors of NEIL. NEIL has a board  
7 of directors which includes executive officers of  
8 several electric utilities. It also has a number of  
9 independent directors, some from the auto insurance  
10 industry and other insurance type industries.

11 They operate -- we operate NEIL as a mutual  
12 insurance company. However, when it addresses claims,  
13 it has -- you know, it's an arm's-length process of  
14 investigating claims. And they do that, and they have  
15 had a number of claims in the industry over the last  
16 decade or so in which they have -- they formally  
17 investigate those claims and they make coverage  
18 determinations, and then determine whether or not they  
19 will pay any or all of the claimed under policies.

20 The policies that we have with NEIL are kind  
21 of two-fold. One is an outage policy, a business  
22 interruption policy, and that covers a fixed amount per  
23 month for a period of time for replacement power. If a  
24 power plant goes down, a nuclear power plant goes down,  
25 then there is coverage that you can seek under your

1 outage policy. And then there is a separate policy that  
2 address property damage. And there are a number of  
3 policies, there are one or two, I believe, for excess  
4 coverage for NEIL, as well.

5 **COMMISSIONER BALBIS:** Thank you. And so when  
6 there is a claim that is made and a payment made to a  
7 company, does each individual member of NEIL then pay  
8 their appropriate amount or proportionate amount?

9 **MR. GLENN:** NEIL has reserves. So claims that  
10 are made are paid out of those reserves. And it is my  
11 understanding, also, that NEIL may have also  
12 reinsurance, but they are required under the bylaws to  
13 maintain a certain amount, a dollar cap in reserves.

14 Off the top of my head, I believe that's  
15 around \$4 billion, thereabouts, it may be a little bit  
16 lower than that on reserves. So the premiums that are  
17 paid in over time by all of the utilities go into that.  
18 They have reserves, and then they pay those claims out  
19 of reserves.

20 **COMMISSIONER BALBIS:** And the companies then  
21 would replenish the reserves by -- I mean, how is that  
22 proportioned?

23 **MR. GLENN:** To the extent that they need to  
24 assess the members on those reserves, if their reserves  
25 are getting below a certain amount, then I think the

1 policy is that NEIL can assess members to replenish  
2 those reserves. They have never had to do that.

3 **COMMISSIONER BALBIS:** Will they in this case?

4 **MR. GLENN:** No, not my knowledge.

5 **COMMISSIONER BALBIS:** Okay. Sticking with  
6 NEIL. In reviewing the policy -- let me back up a  
7 little bit. You had indicated that some of the terms of  
8 NEIL are ambiguous, I think that's the term you used,  
9 and you have stated that the potential coverage amount  
10 is \$2.25 billion. And in the contract itself  
11 it lists -- excuse me, it lists some conflict resolution  
12 measures, going from early neutral evaluation,  
13 mediation, mini-trial, neutral fact finding, senior peer  
14 review, and then if that is not successful, it goes  
15 through several other processes. Which process did you  
16 go through and how many steps did you go through before  
17 settling with NEIL?

18 **MR. GLENN:** We went through the step of, one,  
19 individual negotiations with NEIL, number one, our  
20 company with the executive team of NEIL. And then  
21 second what we did is we agreed to go to nonbinding  
22 mediation where the parties selected an independent  
23 third-party neutral mediator to mediate the resolution.  
24 The next step, had we not come to resolution, would have  
25 been to proceed towards binding arbitration.



1                   **COMMISSIONER BALBIS:** And yet -- but you chose  
2 not to go through that final step, correct?

3                   **MR. GLENN:** That's correct.

4                   **COMMISSIONER BALBIS:** And one of the things  
5 that I'm curious about is you mentioned the term  
6 ambiguous for the contract terms, a maximum coverage  
7 amount of \$2.25 billion, and then for settling for,  
8 basically you left \$1.4 billion on the table,  
9 theoretically, if it's ambiguous and the maximum amount  
10 was received. And my question is why didn't Duke fight  
11 tooth and nail, exhaust every option for conflict  
12 resolution prior to settling?

13                   **MR. GLENN:** A very fair question, Commissioner  
14 Balbis. I disagree with the proposition that we didn't  
15 fight tooth and nail. But as I mentioned before, you  
16 know, some of the terms in here are not clear on their  
17 face, I would say.

18                   The second thing is none of these had ever  
19 been determined or decided and defined in any measure in  
20 any litigation with NEIL before. So we are charting new  
21 territory on a retirement of a nuclear power plant and  
22 how this policy applies. So that's an inherent risk in  
23 the overall process, number one.

24                   Number two is we evaluated this going forward.  
25 We looked at the policy provisions and made

1 determinations based on the policy provisions in a  
2 retirement scenario what we believe would be a  
3 reasonable and likely outcome. And so when we weighed  
4 all of those factors, we believed that the \$835 million  
5 was not leaving, really, anything on the table with  
6 NEIL. Recognizing that you could get zero if you go to  
7 arbitration, you could get -- very, very unlikely in a  
8 retirement situation would you ever get the full  
9 property coverage on this, particularly in the facts and  
10 circumstances of our case where we had two damaged bays.

11 We believed that the best repair approach was  
12 to replace all of the bays in order to get it licensed.  
13 We think that in a retirement scenario, that the  
14 arbitrator would look at that and say, look, that is  
15 something that I understand you want to do that, but the  
16 policy may not cover that. That was the risk of --  
17 (Inaudible; simultaneous conversation.)

18 **COMMISSIONER BALBIS:** And I think you hit on  
19 an interesting point, and this is something that as I  
20 was look looking through it I struggled with is you  
21 didn't have a situation that was clearly covered, I  
22 think, by the policy whereas, okay, this is a retire  
23 decision or it is a repair decision. You went through  
24 almost a hybrid. You spent three years repairing it,  
25 and then you went to a retire decision. And I think

1 that is something that would be worth fleshing out since  
2 it is ambiguous and/or not explicitly covered in the  
3 provisions of the insurance policy.

4 **MR. GLENN:** I think that's one of the factors  
5 that we certainly considered, and that factor is we had  
6 been paid \$163 million from NEIL on the prior repair.  
7 So how much of that money would NEIL try to claw back on  
8 a successful repair, or would the arbitrator credit that  
9 towards any future repair. That was a risk that we were  
10 facing.

11 The other risk that we were facing, too, is in  
12 litigation and arbitration, I viewed that as definitely  
13 a two-year proposition. And a two-year proposition  
14 where I'm not having that bird in the hand of  
15 \$835 million today. So if I look at that, and you look  
16 at the net present value of that, you are going to need  
17 to get probably another \$100 million from NEIL in order  
18 to -- two years from now in order to make your customer  
19 whole. So that was a risk that we were looking at, as  
20 well. And so we had to kind of evaluate that in the  
21 process as we went forward, too.

22 **COMMISSIONER BALBIS:** Okay. And then changing  
23 gears a little bit, you mentioned in the decision-making  
24 process some repair versus retire. And if one of your  
25 other associates is more appropriate to answer this --

1 and I just wanted to clarify something, because you have  
2 in your summary brief for Crystal River Unit 3 repair  
3 project, which is in response to one of staff's  
4 interrogatory requests --

5 **UNIDENTIFIED SPEAKER:** It's Question 51.

6 **COMMISSIONER BALBIS:** Thank you. And  
7 specifically Pages 7, 8, and 9, where you had the tables  
8 that show the different options or the different  
9 scenarios.

10 **MR. GLENN:** Yes, I have those.

11 **COMMISSIONER BALBIS:** Okay. And I'm just  
12 comparing that to the Zapata Report. Because you  
13 indicated in your opening statements or in answer to a  
14 question that you utilized the numbers in the Zapata  
15 Report in order to make a determination. And some of  
16 those don't match, and I just want to clarify.

17 In the Zapata Report there's an option of 1.27  
18 billion, 33 month repair; 1.49 billion, 35 month; 1.55  
19 billion, 31 month; 2.44, 60 month; and 3.43, 96 months,  
20 and yet you analyze a 1.9 billion repair which isn't in  
21 the Zapata, and then a 2.44 which is. Where did the 1.9  
22 come from? Because I talked with staff, they said there  
23 was some additional scope, and I just didn't know what  
24 that was.

25 **MR. GLENN:** Yes, that number was an initial

1 scope. In Zapata, what they came up with was in an  
2 expanded scope scenario, so let me back up for one  
3 second. When legacy Progress looked at the potential  
4 repair, back in the, I think it was the 2012 time frame,  
5 the number was roughly about 1.3 billion for a repair  
6 that was replacing all of the concrete in the bays  
7 except for Bay 3-4, which we had repaired. But it was  
8 only going down to elevation 150 in the plant.

9 Zapata looked at that and said there are risks  
10 associated with that. And in order to go down lower in  
11 the elevation, if you chose to, down to 103 elevation,  
12 so replacing substantially more concrete and pinning, I  
13 think down to 110, and then pinning in the 103 to 110  
14 elevation, that total would be about a 1.9 billion,  
15 roughly 1.85-something billion, and I rounded that up to  
16 1.9 billion in our CPVRR analysis.

17 The \$2.44 billion number was in the Zapata  
18 Report, and that included the dome, replacing the dome  
19 early in the process. So those were the two numbers  
20 that we looked at. We didn't use the initial \$1.3  
21 billion number that Progress had, because we had -- we  
22 didn't believe that that was any repair plan that we  
23 would ultimately implement, because we thought it was --  
24 to have that high degree of confidence, you have to go  
25 lower in the elevation to replace more concrete, so that

1 is where those two numbers came from.

2 **COMMISSIONER BALBIS:** Okay. And the last  
3 question on this, Table 1 and 2 that looks at  
4 repair/retire with an equal amount of payment from NEIL  
5 for the repair/retirement option, one for 1.9 and one  
6 for 2.4, and then Table 3 just looks at the 2.4 billion  
7 repair with the maximum NEIL coverage. Why didn't you  
8 look at that 1.9 billion repair that you said had the  
9 lower elevations in the dome, or did you, and what were  
10 the results?

11 **MR. GLENN:** The results would have been  
12 marginally more beneficial to a repair. That .6  
13 probably would have gone to, I think, .9 or thereabouts.  
14 Mr. Borsch could probably comment on that. We did this  
15 as a bounding analysis. And at this time, when we were  
16 looking at it, in order to really have a high degree of  
17 confidence, there was some desire to replace the dome.  
18 So what we said is looking at replacing the dome, what  
19 would that be?

20 And I wanted to make a comment just on the  
21 CPVRR tables. These are nonrisk-adjusted tables. So  
22 basically when you do your cumulative present value  
23 revenue requirements, you have to pick a number, a cost,  
24 and you have to pick a time on how long it will take,  
25 and you don't risk adjust those numbers. So this

1 assumed that we would be successful 100 percent, that  
2 there would be no cost overruns, that we would be on  
3 time in our -- in that, and there would be no licensing  
4 delays and no hiccups in the process. So this was to  
5 give us a general view of if you hit a home run with  
6 NEIL, what does it look like.

7 **COMMISSIONER BALBIS:** Okay. And as far as --  
8 you mentioned the two numbers, high CO2 to a mid CO2  
9 would become more favorable for repair?

10 **MR. GLENN:** Yes.

11 **COMMISSIONER BALBIS:** What about the no CO2,  
12 would that become positive or would it still be  
13 negative?

14 **MR. GLENN:** It would probably be slightly  
15 positive or a push on the no CO2. And it doesn't have a  
16 direct correlation necessarily with the dollar amounts  
17 of the repair. Because in the out years as the CO2  
18 price increases, then it tends to -- that tends to  
19 benefit nuclear more, so that would probably still be a  
20 push, again, non-risk adjusted.

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

22 **CHAIRMAN BRISÉ:** Commissioner Graham.

23 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

24 This will go, once again, to the Duke panel.  
25 One of the speakers earlier said, and I quote, all the

1 experts said to do it one way and they did it another  
2 way. I guess they're talking about CR3. Can you walk  
3 us through what some of the experts told you as you were  
4 trying to make the decision on fully detensioning or  
5 partially detensioning, and how you came about making  
6 that decision.

7 **MR. GLENN:** Yes, I can give you a high level,  
8 and I can turn it over to Mr. Miller. Just as a point  
9 of procedure, those issues were resolved in the 2012  
10 settlement, and I know you understood that.

11 **COMMISSIONER GRAHAM:** Just for the benefit of  
12 this record, because I know it has already -- that  
13 question has been asked before, but --

14 **MR. GLENN:** Absolutely. Absolutely. And just  
15 a second point, and then I'll turn it over to Mr.  
16 Miller. All of these issues were fully vetted in that  
17 docket. There's, I think, 1.4 million documents or  
18 thereabouts that all of the parties reviewed, including  
19 staff. Staff has been to our offices to review those  
20 documents. A number of depositions all in the public  
21 record all addressing these issues, and all responding  
22 to those issues that have been raised. But with that  
23 kind of caveat I would turn it over to Mr. Miller.

24 **MR. MILLER:** So, Commissioner, my intent would  
25 be just to go back through the history of where we got



1 here today. So --

2 **COMMISSIONER GRAHAM:** Well, actually -- I'm  
3 sorry, I don't mean to cut you off. What I need is an  
4 explanation on what led to the determination of how you  
5 are going to cut into the dome and get to the  
6 generation. Pass that -- and we don't have to go past  
7 the first delamination, but how did you get to that  
8 decision?

9 **MR. MILLER:** Okay. I understand. So going  
10 back in history, the decision was made that we need to  
11 replace the steam generators and you need to get them  
12 outside of containment. And based on all the  
13 configuration inside the containment and the difficulty  
14 in actually maneuvering these very large vessels out,  
15 the decision was made to cut a hole around 25-foot  
16 square in the side of containment which was industry  
17 practice to do that, because you are able to cut that  
18 hole in the side of the cylinder at an elevation  
19 consistent with where you can lift the generators up,  
20 rotate them on their side, and then go straight out  
21 versus removing lots of piping, equipment, concrete  
22 inside the building to take them out at a much lower  
23 elevation.

24 So we had a vendor architect/engineer work on  
25 the analysis to cut the hole and determine the amount of

1 detensioning necessary to do that. And it was typical  
2 of industry practice of what we did at the time, which  
3 was to detension a local area of the containment on one  
4 side where you would then, in essence, take those hoops  
5 to zero energy, and then you would then literally go in  
6 there and you would cut out that opening with a water  
7 demolition process almost like hydrolasing. But it is  
8 very intense, and it will actually take the concrete off  
9 the wall.

10 That created the opening, and when that  
11 occurred, obviously that is when the delamination was  
12 identified on Page 3-4. So that work had a great deal  
13 of scrutiny by our company and by other stakeholders  
14 that we had involved with the work that we were doing  
15 that would actually review that on our behalf.

16 Questions that came up were vetted out, and we  
17 made deliberate decisions, and then systematically  
18 progressed into detensioning and then beginning the  
19 process of removing the concrete. And as we said  
20 earlier, once we did that we identified the fact that  
21 the delamination had occurred.

22 There is a unique set of circumstances that  
23 came to bear in this that had never been seen in the  
24 industry before. And I'll give you some numbers which  
25 sort of put it in perspective. So our concrete has a

1 tensile capacity, and it's made of Florida limestone  
2 aggregate. And so when I talk about tensile capacity,  
3 if I had a cylinder of concrete and I literally pulled  
4 it apart, it would break at some force, in our case it  
5 is around 468 psi. That's the amount of pressure you  
6 would have to take across the cross-sectional area to  
7 break it.

8           If you look at the hoops that go up our  
9 cylinder, typically the radial stresses were not  
10 considered as part of industry practice because they are  
11 so low. In other words, if I take the cylinder, and I  
12 look at the 94 hoops, each hoop has three tendons that  
13 make it around the circle. And I look at their average  
14 force. It's on the order of 30-psi, and so such a large  
15 variance between the average radial force you see  
16 through the wall, and what you actually have as a  
17 tensile capacity of the concrete.

18           So that's why typically they were never even  
19 considered in terms of cutting these openings before.  
20 And our experience revealed a new phenomena the industry  
21 had not seen before, it was unforeseeable. And as a  
22 result of that, you know, that has got us into the  
23 repair process.

24           So that's how we got here is we followed  
25 typical industry practice, cut the hole at the

1 evaluation, it was most efficient to remove the  
2 generators and lower the overall cost for the steam  
3 generator replacement, and we actually revealed  
4 something the industry had not seen before based on the  
5 way the forces are intensified right at the hoops  
6 themselves, based on our unique design of the number of  
7 hoops we have, the force they carry as compared to the  
8 average strength of the concrete in the cylinder.

9 **COMMISSIONER GRAHAM:** Yes. Now, my  
10 understanding is the industry standard varied from  
11 detensioning the entire dome or detensioning pieces or  
12 part of the dome. How did you make the determination  
13 that you were going to detension a part of it rather  
14 than the entire dome?

15 **MR. MILLER:** Well, the amount of detensioning  
16 was always governed by your need to remove the energy  
17 locally where you're going to make the cut. So I don't  
18 recall any utility that ever detensioned the entire  
19 dome, because that's a very large cylinder and it has  
20 ramifications to the dome and to the foundation if you  
21 tried to detension the full thing. So it's typically  
22 done on one side in a localized area, and so your real  
23 question is there was variability between how close to  
24 the opening you would actually affect tendons, but all  
25 the tendons that crossed the opening in our construction

1 effort were all -- well, the word is deenergized, they  
2 were all cut and the energy was released out of them.  
3 So it varied based on the practice.

4 And in this case we had an architect/engineer  
5 who has built many power plants that was involved who  
6 did the analysis for that using a program called GT  
7 STRUDL, and created an analysis that said this is  
8 adequate for this stage of that work. Now, later on  
9 there was actually the requirement to actually detension  
10 more tendons because of the -- to put the rail system  
11 that would carry the stem drainers through the opening,  
12 you had to put more weight on the wall, and you actually  
13 had -- there was other detensioning necessary later on  
14 in that outage that was going to occur as part of the  
15 overall process.

16 **MR. GLENN:** If I could clarify one thing,  
17 because there is a lot of misunderstanding about  
18 detensioning the building. And, Gary, correct me if I'm  
19 wrong, the detensioning of the building and the number  
20 of tendons that you would detension are all a function  
21 of the plug that you put back into the wall. So  
22 basically you would detension the building, and then you  
23 are going to have to put in a new concrete piece, right,  
24 with rebar once you close up the hole. So all of the  
25 detensioning analysis that was done related to how many

1 tendons do you detension now so you can save time on the  
2 back end by putting that plug back in has nothing to do  
3 with delamination or the fear that you are going to  
4 delaminate the building. That wasn't even known to the  
5 industry. So all these articles and all these, you  
6 know, noise about detensioning misses the entire point  
7 that detensioning had nothing to do with the idea that  
8 you were going to delaminate the building at that time.

9 **MR. MILLER:** Yes. Let me echo what Alex Glenn  
10 just talked about. When you remove the hole out of the  
11 side of the containment, you can envision the fact that  
12 forces above that hole now have to redistribute around  
13 it as an example. A simple way of looking at it.

14 When you place the plug or the concrete plug  
15 back in there, which in this case is around 42 inches  
16 thick and about 25 feet across, and then you draw the  
17 tension back up, that has to act uniformly such that in  
18 an emergency where you had high pressures inside  
19 containment, like in a loss of cooling accident, that  
20 plug is not forced out, because that's what you're  
21 trying to design for.

22 And so the way it works is you would  
23 ultimately have to detension more tendons to be able to  
24 actually pull that plug back in uniformly so that  
25 cylinder wall behaves as a uniform membrane that then

1 reacts to the forces inside containment and can perform  
2 its design function, which in this case is one and a  
3 half times the pressure you would expect during a loss  
4 of cooling accident.

5 So what Alex talks about is correct. The  
6 design of the detensioning is usually generally governed  
7 by what it takes to restore the pretension back in the  
8 building to make that plug behave like part of the wall  
9 sufficiently so that it does not eject, for lack of  
10 better words, in an emergency, and that the forces are  
11 uniformly distributed across that wall itself. So  
12 that's why there was a second wave of detensioning  
13 required in this outage to be able to ensure that we had  
14 enough prestress reestablished in the solidified cured  
15 concrete plug that went back in that opening.

16 **MR. GLENN:** So based on what we know today,  
17 had you detensioned more tendons at the outset, you  
18 would have damaged the building much more?

19 **MR. MILLER:** That's correct.

20 **COMMISSIONER GRAHAM:** I just want to make  
21 sure, because that question was asked earlier -- or that  
22 statement was made earlier, and I just want to make sure  
23 that part of this record is the answer or the correction  
24 to that statement. Thank you.

25 **CHAIRMAN BRISÉ:** Commissioner Brown.

1                   **COMMISSIONER BROWN:** Thank you. And shifting  
2 to more lawyerly oriented questions, from my  
3 perspective, which I always find it so valuable having  
4 engineers on this Commission board, because I think like  
5 a lawyer and act like a lawyer, so that is always  
6 welcoming. So thank you.

7                   But I want a couple of clarifying questions in  
8 the settlement agreement, again, from a lawyer  
9 perspective. Page 26, Paragraph 16A. It's towards the  
10 bottom. And if you all can get there, and this is a  
11 question for Duke. It states that subject to the  
12 intervenor parties right to challenge the need for or  
13 prudence of any costs associated with the construction,  
14 purchase, or acquisition of any such units or uprates,  
15 Duke will have the ability to recover full prudently  
16 incurred revenue requirement. And while I understand  
17 this is an agreement between the parties, this provision  
18 was not intended by any means to limit this Commission's  
19 authority moving forward under this provision regarding  
20 the process, is that correct?

21                   **MR. BURNETT:** I better take that one. And  
22 absolutely correct; in no way does that limit any of the  
23 Commission's review on this process. So all those  
24 prudence determinations would still be there.

25                   **COMMISSIONER BROWN:** Okay. Thank you. And



1 there is another one on Page 23. This goes to Levy, and  
2 I have a few more substantive questions, but I will just  
3 stick on the technical questions.

4 Paragraph 12B states that Duke Energy Florida  
5 will account for the remaining COLA. I just have a  
6 problem with the word account. I know the intent of  
7 that provision means that Duke will be solely  
8 responsible for future costs it incurs in 2014 and  
9 beyond, but I'm assuming the word account means shall be  
10 responsible for?

11 **MR. PORTUONDO:** That's correct.

12 **COMMISSIONER BROWN:** That is my assumption.  
13 That would have been a preferable word, terminology.

14 I also want to know how you got to just 2014  
15 and not -- what about the remainder of 2013?

16 **MR. PORTUONDO:** The parties all agree that the  
17 balance being spent in 2013 would continue to be  
18 recovered through the completion of the NCRC clause for  
19 this cycle and new costs in 2014 and beyond would be on  
20 the shareholder side of the ledger.

21 **COMMISSIONER BROWN:** Thank you for that. I'll  
22 get back to you in a second.

23 Page 7 of the settlement agreement -- I'll get  
24 back to you -- this is regarding property taxes. At the  
25 top of Page 7 there is this provision here. It talks

1 about property taxes which may no longer be assessed.  
2 What does that specifically mean; in what scenario?  
3 Does Duke anticipate property taxes going away on CR3  
4 property, going down?

5 **MR. PORTUONDO:** We don't know yet. But there  
6 is the potential, once you get into a decommission  
7 state, a retired statement that the property taxes may  
8 change, so we were just putting a placeholder for that  
9 possibility.

10 **COMMISSIONER BROWN:** But they don't go away?

11 **MR. PORTUONDO:** They don't go away.

12 **COMMISSIONER BROWN:** So which may no longer be  
13 assessed --

14 **MR. PORTUONDO:** Not in totality, but some  
15 portion, a lower amount.

16 **COMMISSIONER BROWN:** Okay. Thank you for  
17 that. I have a question regarding planning with  
18 respect -- I guess that would be you. My apologies, Mr.  
19 Borsch.

20 **MR. BORSCH:** Yes.

21 **COMMISSIONER BROWN:** Okay. With respect to  
22 going forward with the retirement of CR3 and the  
23 possible retirement of CR1 and CR2 in 2020, as well as  
24 taking Levy off the table, there will obviously be a  
25 generation need for Duke. And this agreement

1 contemplates several different options of 1,150  
2 megawatts before year end 2017, and then in 2018 a  
3 maximum of 1,800 additional megawatts.

4 With respect to your ten-year site plan and  
5 given these different factors here, what are your actual  
6 needs if this Commission approves this amended  
7 settlement agreement?

8 **MR. BORSCH:** Well, the actual need is pretty  
9 close to the amounts that are stated in the settlement.  
10 I mean, what you need to recognize is that if you look  
11 back a year, say, at our 2012 Ten-Year Site Plan when  
12 all of those units continued to operate through the  
13 period of the ten-year site plan as a point of  
14 comparison, you know, from that we are removing, first  
15 of all, Crystal River 3 and its uprate. So that's, you  
16 know, almost 950 megawatts. And then in addition to  
17 that we are removing Crystal River 1 and 2, an  
18 additional 870 megawatts with the result that, you know,  
19 you have essentially taken 1,800 megawatts right off the  
20 books right there.

21 We did, and have had for a number of years  
22 some additional retirements planned, some of our aging  
23 peakers and our over 60-year-old steam units at  
24 Suwannee. So as a result, when you look at it over this  
25 time period, you know, we are subtracting from the fleet

1 a little bit over 2,100 megawatts, and as a result of  
2 that, you know, then there is also some allowance for  
3 load growth during this period.

4 So when you look at it, you can look at it and  
5 say that, well, we have a need. You know, if you just  
6 take our sort of unspecified need, which in the 2013  
7 ten-year site plan we just put sort of a placeholder for  
8 unspecified purchases in the 2013 ten-year site plan,  
9 and you look at that, and there is approximately a  
10 1,400-megawatt block of unspecified purchases to be  
11 taken up in 2016 and '17, and then on top of that there  
12 was a 1,200-plus megawatt combined cycle in 2018, and  
13 some of those purchases from the previous period  
14 continued through.

15 So the actual numbers that are in the  
16 settlement are kind of negotiated numbers that we worked  
17 out with the other parties to cover the needs in those  
18 time periods, recognizing that they may be supplemented  
19 with purchasing additional PPAs as necessary, and also  
20 recognizing that, you know, we may need somewhat less  
21 than that, depending on how the planning goes forward.  
22 But we are looking at a number that is at least  
23 1,400 megawatts right now in 2016, and additional  
24 megawatts in 2018.

25 So that covers really the need and the numbers

1 that are negotiated in the settlement provide us with  
2 substantial flexibility to find an optimum plan for  
3 making our way through that period. And I think, as has  
4 been covered already, the other important provision of  
5 the settlement is that it requires us to come before you  
6 and show that the actual actions we propose are the most  
7 optimum choices available.

8 **COMMISSIONER BROWN:** An important safeguard, I  
9 believe. Mr. Borsch, either you or Mr. Glenn, with  
10 regard to Duke's future and its reliance, heavy reliance  
11 on natural gas, is Duke cautious or fearful that it is  
12 going to be heavily relying on natural gas in the  
13 future?

14 **MR. GLENN:** I think I can address that,  
15 Commissioner Brown. I think that's certainly something  
16 that we are watching very closely. I think there is  
17 good news in the short-term. The good news in the  
18 short-term is with Marcellus shale gas and the  
19 availability to get that gas into the state. Commodity  
20 prices are largely viewed to be fairly stable. There  
21 will be periods of volatility in natural gas prices, but  
22 fairly stable in the 4 to 5 to \$6 range over the near  
23 term. And by near term, I mean next four to five years.  
24 That's a good thing.

25 It is uncomfortable, however, as a state that

1 we are right now roughly 60 percent dependent on natural  
2 gas to generate energy, and that is growing over time.

3 **COMMISSIONER BROWN:** And it will grow if we  
4 approve this amended settlement.

5 **MR. GLENN:** Yes, it will. But it would, even  
6 without this settlement. In the near term we have shown  
7 only natural gas fired plants being built on our system.  
8 So regardless of whether or not we have the retirements,  
9 we would be growing in our percentage of natural gas as  
10 a company and as a state.

11 So we are mindful of that. I know that  
12 Florida Power and Light has a pipeline, a third pipe  
13 which we support, because that gives some commodity  
14 hedging, basically physical hedging, because you are  
15 getting that gas not from the Gulf of Mexico, you are  
16 getting that on land in the Alabama/Georgia area, I  
17 believe. So that is a good thing.

18 But in the short-term I think we're good as a  
19 state, but it's something that we need to look at hard  
20 over the long-term. And, frankly, that's one of the  
21 reasons why on our shareholder's dime that we want to  
22 continue to pursue the combined operating license for  
23 the Levy site to keep that optionality of new nuclear in  
24 the future. Because who knows 10, 20, 30 years from now  
25 what's going to happen to natural gas prices, carbon

1 prices. If anybody knows that, you know, tell me and  
2 we'll --

3 **COMMISSIONER BROWN:** Well, if Duke goes ahead  
4 and gets the COL on its own dime, what benefit are  
5 customers going to share in?

6 **MR. GLENN:** One is you would have only the  
7 third operating license in the country for a new nuclear  
8 facility. So that has got value. The Levy site is an  
9 outstanding site for nuclear. It has passed all of the  
10 state environmental permitting hurdles. The only  
11 remaining hurdle is with the Army Corps of Engineers and  
12 the NRC's final hearing. That's all we are waiting on.  
13 We're about 95 percent there. So it is a very valuable  
14 option to have in the event that things change.

15 **COMMISSIONER BROWN:** Let me be more specific.  
16 If Duke ultimately gets the COL from the NRC for Levy  
17 and sells it to another utility because it is valuable,  
18 then the benefits from that, the quantifiable benefits  
19 from that, will they enure to the benefit of the  
20 ratepayers that helped pay for that COL?

21 **MR. GLENN:** Yes.

22 **COMMISSIONER BROWN:** How?

23 **MR. GLENN:** There will be -- and Mr. Portuondo  
24 can correct me if I'm wrong, but those will go to reduce  
25 the customer's bill dollar-for-dollar.

1           **MR. PORTUONDO:** That's correct. It will, in  
2 essence, flow back as a reduction in future base rate  
3 proceedings just as any other gain on sale would,  
4 consistent with the Commission's rules.

5           **COMMISSIONER BROWN:** What does Duke intend to  
6 gain from taking -- under the settlement agreement it's  
7 tricky. It says we are not pursuing Levy, but we are.  
8 So what does Duke intend to gain by just pursuing the  
9 COL? Does it intend to actually build Levy if it  
10 obtains the COL?

11           **MR. GLENN:** No. We are canceling the Levy  
12 project as it stands today. We are going to go forward  
13 and try to get that combined operating license for that  
14 site so that when we have that in hand, we can if it  
15 makes sense for customers, and going back to this  
16 Commission and saying that new nuclear makes sense, this  
17 is how we are going to do it, then you have a site that  
18 is certified that is ready to go.

19           **COMMISSIONER BROWN:** But wouldn't the new  
20 provisions of 366.93 then apply to that?

21           **MR. GLENN:** It would. It would, which is a  
22 concern to us.

23           **COMMISSIONER BROWN:** Okay.

24           **CHAIRMAN BRISÉ:** All right. Thank you. I  
25 have just one question so far for Mr. Glenn. Going back



1 to your repair versus retire decision, and tell me if  
2 I'm characterizing this properly, you basically made the  
3 decision from the context of that it's not feasible to  
4 move forward with the project financially with all the  
5 known/unknowns.

6 **MR. GLENN:** We looked at it three ways. We  
7 looked at it from a technical perspective, number one.  
8 Can we do it? Do we have a high degree of confidence  
9 that we can repair this plant on the schedule and for  
10 the costs that we think it would need to happen under?

11 Number two, we looked at it from an economic  
12 perspective. Does it make sense for the customer  
13 versus, you know, shutting it down and ultimately  
14 replacing that with new generation supply?

15 In addition, part of that economic analysis  
16 looked at what would be the price impact to customers  
17 under various scenarios, and so we looked at that, even  
18 if you were successful and what would be the price  
19 impact to customers.

20 And then lastly we had to look at  
21 decommissioning. What were the costs associated with  
22 decommissioning and the regulations associated with that  
23 so that we could make a determination. So we looked at  
24 those three principal factors, and we came to the  
25 conclusion that the most cost-effective and lowest risk

1 to the customer was to retire the plant.

2 **CHAIRMAN BRISÉ:** Okay. I'm going to go a  
3 little bit further with that and sort of going into a  
4 slight hypothetical world, but what could have been a  
5 possibility. Say the Commission had found that the  
6 decision was imprudent and so forth. Would then  
7 Progress, now Duke, be able to sustain the project  
8 financially?

9 **MR. GLENN:** On the CR3 repairs --

10 **CHAIRMAN BRISÉ:** Yes.

11 **MR. GLENN:** -- and say you repair and spend  
12 \$2 billion of shareholder dollars to repair that plant.  
13 It's hard for me to speculate, and I have not done that  
14 analysis. But given the size of our company in Florida,  
15 I can't imagine that that would be financially feasible  
16 without significant downgrades to our credit. So it  
17 would be very, very difficult to do, I think.

18 **CHAIRMAN BRISÉ:** Okay. So to me I'm sure that  
19 played a role in the broader calculation as to the  
20 ultimate decision.

21 **MR. GLENN:** No, it didn't, really. I mean,  
22 what we were looking at first and foremost, our  
23 principal issue was do we think we could do it? I mean,  
24 it wasn't guaranteed. And to take that risk with not  
25 only shareholder dollars, but customer dollars is a very

1 high bar. And so we wanted to have a high degree of  
2 confidence. And, you know, unless you replace the dome  
3 and all of the sides of the building, you probably  
4 didn't have a high degree of confidence. And that is a  
5 risky proposition in and of itself. So that was really  
6 one of the primary factors was that. And then based on  
7 that, what is the potential price impact and economics  
8 of that versus shutting it down.

9 **CHAIRMAN BRISÉ:** Okay.

10 Commissioner Balbis.

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

12 I have a couple of questions.

13 **MR. GLENN:** For somebody other than Mr. Glenn?

14 **COMMISSIONER BALBIS:** Yes.

15 (Audience laughter.)

16 **MR. GLENN:** Thank you.

17 **COMMISSIONER BALBIS:** But I was debating, and  
18 so you were almost in the crosshairs there.

19 Mr. Rehwinkel, I want to -- since there has  
20 been some discussions on Levy with other Commissioners,  
21 I wanted to follow up on that. With this 2013  
22 settlement agreement, the customers will continue to pay  
23 \$3.45 or it equates to about \$109 million per year, is  
24 that correct?

25 **MR. REHWINKEL:** Yes, that's my understanding.

1                   **COMMISSIONER BALBIS:** So even though Duke is  
2 not going to proceed with the contract, and they are  
3 going to -- customers are going to pay \$500 million in  
4 additional for the Levy projects that aren't going to  
5 move forward, how is that in the public interest for  
6 customers to continue to pay for these projects?

7                   **MR. REHWINKEL:** Well, the short answer is the  
8 \$3.45 represents expenditures that have been  
9 demonstrated by the company in prior proceedings to be  
10 either incurred because of the rate mitigation plan  
11 and/or the EPC contract that the company was legally  
12 committed to or contractually committed to, or  
13 termination costs that are prescribed by the statute.

14                   In other words, these costs have already  
15 essentially been approved. So whether the customers are  
16 going to pay \$109 million or not, to me the public  
17 interest determination really doesn't envelope those at  
18 all. What we did in '12 and in this agreement was to  
19 package the costs that had already been approved and  
20 come up with a straight line recovery basis, and we just  
21 carried that forward in this agreement. So the public  
22 interest aspect of it is the recovery mechanism and the  
23 opportunity to mitigate those costs in the next few  
24 years through salvage and other cost avoidance.

25                   **COMMISSIONER BALBIS:** Okay. Let me just stop

1 you there, because you're continuing on. Let's focus a  
2 little bit on the rate mitigation plan. How much is  
3 left in the account? Because staff indicated to me  
4 around \$29 million is remaining. Does that sound about  
5 right?

6 **MR. REHWINKEL:** Give or take. There is some  
7 that hasn't been fully recovered in '13 and then there  
8 is an amount that would hit '14.

9 **COMMISSIONER BALBIS:** Okay. But you would  
10 agree around 29 million, does that sound --

11 **MR. REHWINKEL:** Give or take; yes, sir.

12 **COMMISSIONER BALBIS:** Well, does anyone know  
13 what is left in the rate mitigation plan?

14 **MR. PORTUONDO:** You're absolutely correct, we  
15 anticipate 29 million in 2014 being recovered, and that  
16 would complete the rate mitigation plan.

17 **COMMISSIONER BALBIS:** Okay. So of the 500  
18 million, we take \$29 million off that Progress or Duke  
19 should have recovered. So now we have \$471 million  
20 left. What are customers getting for the 471 million?

21 You mentioned the cancellation of the EPC  
22 contract costs and that they are entitled to recover  
23 that. I don't remember us, at least since I have been  
24 here, approving -- with them incurring those costs or  
25 approving that. So how much is that?

1           **MR. REHWINKEL:** Well, the costs, specific  
2 costs related to termination are confidential. They are  
3 in exhibits that have been filed with the Commission.  
4 These costs are triggered by the contract and the  
5 contract was approved. So what would happen between now  
6 and the termination of the \$3.45 charge is that Duke  
7 will come in and show you what they have spent and how  
8 they spent it in accordance with what has been approved.  
9 And what has been approved was the pursuit of the COLA  
10 and nothing but pursuit of the COLA.

11                   So the costs that are in the 500 million,  
12 which is contract costs, equipment costs, and then  
13 deferred or carrying costs on those, those costs are  
14 attributable to approval of the way Duke spends the  
15 money and spending under the contract. So these  
16 termination costs are costs that are called for under  
17 the contract, and that's the best I can do to explain.

18                   The agreement does not give them the right to  
19 recover the costs. The statute has already done that.  
20 And they are going to be accounting for the costs as  
21 time goes by. So what they have to do is come in and  
22 say we spent these dollars and these dollars are in  
23 accordance with this plan that was approved in 2009,  
24 2010, and 2011, and they have to justify that. Whether  
25 they spend \$500 million or not is not a foregone

1 conclusion here today. They have to come in and still  
2 justify what they are spending.

3 **COMMISSIONER BALBIS:** No, but in accordance  
4 with this agreement they are going to collect from  
5 customers \$500 million after they terminate the  
6 contract. So I'm just trying to clarify. Because  
7 nowhere in the agreement does it state what the EPC  
8 contract termination fee is, and I respect that it is  
9 confidential, and that's fine. It's just there has been  
10 a lot of statements, or several statements from the  
11 parties that Duke is going to pursue the COLA on their  
12 own dime, when customers are paying \$500 million from  
13 today, and I'm trying to figure out what they are  
14 getting for that.

15 **MR. REHWINKEL:** Well, in my view customers  
16 aren't getting anything out of the Levy project. It's  
17 canceled, or it will be canceled, and there will be no  
18 electricity coming out of the AP1000 projects on the  
19 Levy side under the EPC contract that is enforced today.  
20 It's kaput. It won't happen. But we are not saying  
21 that we are endorsing expenditure of funds. They are  
22 the natural flow of a project that has already been  
23 approved by the Commission and is being terminated  
24 pursuant to the statute.

25 **COMMISSIONER BALBIS:** But what we are

1 approving in this settlement agreement is the \$3.45,  
2 which was approved in the 2012 agreement part and parcel  
3 to recovering the rate mitigation account, because that  
4 was one of the reasons that it happened. And then I  
5 remember the discussions back then was, okay, then once  
6 it's expired, they still have this other part of the  
7 NCRC proceedings and we will true it up, and now we are  
8 just extending that.

9 **MR. REHWINKEL:** I understand. Just to be  
10 clear, in the 2012 agreement, the 3.45 was not  
11 equivalent to recovering just the rate mitigation plan,  
12 no way, no how. That was never the intention of that.  
13 So it was a -- Mr. Elnitsky filed an exhibit, I believe  
14 it was in 2010, that showed costs that would be incurred  
15 in just pursuing the COLA and stopping, once the COLA  
16 was achieved. There was also an exhibit that was a  
17 late-filed to a deposition that looked at a similar  
18 analysis, but cancellation. That had certain types of  
19 costs that were required to be spent or spent under the  
20 contract, and it totaled into a ballpark area that  
21 allowed us to derive the 3.45. But the 3.45 was not for  
22 just mitigation, it was for all costs, all-in costs to  
23 get to either stopping at the COLA or stopping the  
24 project.

25 **COMMISSIONER BALBIS:** Okay. Then let me just



1 turn to Mr. Glenn.

2 What is Duke going to do with the \$109 million  
3 a year?

4 **MR. GLENN:** We have already bought equipment,  
5 so we are going to pay off equipment that has been  
6 bought. We are collecting carrying charges of the debt  
7 that we have gone out to secure so that we have cash to  
8 actually go buy equipment or that has been bought.

9 One thing that I want to emphasize, though, as  
10 we wind down the project and the costs, we will be  
11 before this Commission, that this Commission can review  
12 whether we have been reasonable and prudent in any of  
13 our actions to take any of that equipment to try to get  
14 value for our customers to reduce the overall bill. And  
15 so that is our obligation under this settlement, and we  
16 will be here before this Commission in proving up that  
17 we have done our best to get the most money back to the  
18 customers as we reasonably can.

19 **COMMISSIONER BALBIS:** Yes. And I think that  
20 is a good provision of the settlement as far as the  
21 selling of the assets, but I'm concerned about future  
22 expenditures.

23 **MR. GLENN:** Yes. We are not engaged, and  
24 Mr. Fallon can, I think, talk to this, but we are not  
25 going out and buying more equipment. These are already

1 things that have been on order that we are making --  
2 that we have made payments on. So we have not -- ever  
3 since -- and I'm looking around to see what, you know,  
4 when we did stop work orders and all of this, but --

5 **COMMISSIONER BALBIS:** Okay. And then how much  
6 is that? I mean, we're trying to figure out what's with  
7 the 500. I know there is a cancelation of the EPC  
8 contract, which is confidential. What else is included  
9 in that?

10 **MR. FALLON:** Well, first, I think the 3.45 was  
11 derived from a kind of rough order of magnitude estimate  
12 of a lot of potential scenarios moving forward between  
13 2013 to 2017, and naturally it was going to be trued up.  
14 So, you know, that number covered a couple of different  
15 scenarios.

16 So the actual number is going to be whatever  
17 scenario we actually pursue, which right now is we are  
18 looking to terminate the EPC agreement, and then because  
19 it is a contract, we have contractual commitments under  
20 there. We have committed to long-lead equipment, so we  
21 are going to have to pay off those, you know, we have to  
22 make those payments on those long-lead equipment, and  
23 then we also -- right now we are in the process of  
24 determining how to best unwind that contract so as to  
25 the minimize the cost to customers, and we don't know

1 what that outcome is going to be yet. We just started  
2 that process. So we don't know what the actual numbers  
3 are going to be, but it's those types of expenditures  
4 looking at the long-lead equipment that has already been  
5 under contract, and much of it is under manufacture  
6 right now. So we have to go and figure out what the  
7 cost of unwinding those contracts are.

8 **COMMISSIONER BALBIS:** Okay. And when will you  
9 know what those costs are?

10 **MR. FALLON:** Well, we are hoping to know in  
11 the six to nine months. It's a very complicated process  
12 and we have to work with the EPC consortium to work with  
13 their vendors who are making the equipment to get  
14 quotes, to get pricing information, to get long-term  
15 storage costs, things of that nature to understand what  
16 the total costs are.

17 **COMMISSIONER BALBIS:** Okay. And then to  
18 change gears a little bit on the rate design issue.  
19 Looking through the settlement agreement, there are some  
20 exhibits that show the revisions to tariff sheets, if  
21 you will. And have you determined what the overall  
22 impact would be, because everything seems to be the same  
23 except for those customers that are receiving credits,  
24 and what the impact would be to those customers? Are  
25 they going to see a net increase, a net decrease?

1           **MR. PORTUONDO:** Commissioner, are you  
2           referencing a specific exhibit?

3           **COMMISSIONER BALBIS:** Yes.

4           **MR. PORTUONDO:** And is that Exhibit Number 9  
5           that you are referring to?

6           **COMMISSIONER BALBIS:** It's Exhibit 1,  
7           Attachment B.

8           **MR. PORTUONDO:** Exhibit 1.

9           **COMMISSIONER BALBIS:** Page 4 of 6 would be a  
10          good example. And it's titled "Base Rate Detailed Unit  
11          Charges by Rate Schedule," and there's different classes  
12          on each page of the exhibit.

13          **MR. PORTUONDO:** I believe what you're looking  
14          at is associated with the 2012 settlement where we  
15          provided the tariff changes necessary to effectuate the  
16          \$150 million rate increase. I don't have that page  
17          exactly that you're looking at with me, but I believe  
18          that's what you might be looking at.

19          **COMMISSIONER BALBIS:** Okay. Yes, it states  
20          the current price for 2010, and then the 1/1/2013. But  
21          my question is you have these across-the-board increases  
22          for the energy charges for each customer class, which  
23          the 2013 agreement is going to keep the 2012 structure,  
24          correct?

25          **MR. PORTUONDO:** Right.

1           **COMMISSIONER BALBIS:** The only thing that is  
2 different is you have these credits that are now added  
3 to it.

4           **MR. PORTUONDO:** Okay.

5           **COMMISSIONER BALBIS:** So my question is, for a  
6 typical industrial or commercial customer that is  
7 receiving these credits, what is the impact of the 2013  
8 settlement? Is it a decrease, an increase, overall on  
9 the bill they pay?

10          **MR. PORTUONDO:** Well, as you refer to the  
11 interruptible credits and the curtailable credits, I  
12 believe, that is what you are focusing on, those, of  
13 course, would be a reduction to the recipients of those  
14 credits. And the increase over the 2012 agreement is  
15 about \$5 million in credits that they would be  
16 receiving.

17          **COMMISSIONER BALBIS:** And what were they  
18 getting in the 2012 agreement?

19          **MR. PORTUONDO:** I believe we gave a discovery  
20 question. In 2012, in total they were receiving about  
21 19 million in total. And in '13 in total they go to 26.  
22 So it's a little over 7 million.

23          **COMMISSIONER BALBIS:** Okay. So the total  
24 increase interruptible credits is 26 million primarily  
25 going to --

1           **MR. PORTUONDO:** That's not the total increase,  
2 that is the total annual amount of credits. The delta  
3 between '12 and '13 is about \$7 million. That would be  
4 the change contemplated by this 2013 agreement.

5           **COMMISSIONER BALBIS:** Okay. Thank you.  
6 That's all I had.

7           **CHAIRMAN BRISÉ:** Okay. Commissioner Brown.

8           **COMMISSIONER BROWN:** Thank you. A couple of  
9 follow up.

10           Regarding the EPC contract, Mr. Fallon, Duke  
11 responded in one of the staff's first data requests on  
12 Number 54 whether there was a cancellation fee to cancel  
13 the EPC contract for the Levy units, and it just  
14 answered no, but I think it was responding to a general  
15 question that preceded that. There is a cancellation  
16 fee, correct?

17           **MR. FALLON:** I guess at this point, you know,  
18 we are still in discussions with the consortium, so  
19 that's a commercial term I would prefer not to discuss.

20           **COMMISSIONER BROWN:** Fair enough. Okay.

21           **MR. BURNETT:** Commissioner, if I could  
22 clarify. We will discuss that with you, we just simply  
23 cannot without violating the confidential agreement. I  
24 can tell you the answer to that question, so could Mr.  
25 Fallon, but we would need to do it in a red envelope.

1                   **COMMISSIONER BROWN:** Okay.

2                   **MR. BURNETT:** I think it's on the record. We  
3 could probably get it out of the NCRC docket and point  
4 you in that direction. That may be easier. But I  
5 didn't want you to think he was not answering your  
6 question, he just legally can't.

7                   **COMMISSIONER BROWN:** No, that was more helpful  
8 than the response in the data request. That would have  
9 been clear in there.

10                  **MR. BURNETT:** Sorry about that; yes, ma'am.

11                  **COMMISSIONER BROWN:** No, thank you. Okay.  
12 And then a couple of other follow-ups. The 295 million  
13 write-down, Mr. Glenn, that shareholders are taking, how  
14 did you derive that particular number?

15                  **MR. GLENN:** That was part of the give and take  
16 of the negotiations. And without getting into the  
17 substance of the negotiations, was obviously a  
18 significant bone of contention among the parties. And  
19 so when we looked at the totality of all the provisions,  
20 ultimately our company decided that we would agree to  
21 that provision, given the entire settlement agreement.

22                  **COMMISSIONER BROWN:** Okay. I figured I'd ask.  
23 Thank you.

24                   I believe customer outreach is very important  
25 for all utilities, but specifically, especially for

1 Duke. And I would have liked to see how Duke plans on  
2 handling the various rate changes with regard to  
3 noticing. I would have liked to see that laid out in  
4 the settlement agreement. I also would have liked to  
5 see it in writing, status updates regarding the Levy  
6 project. And I know annually you will come before us,  
7 but -- and I'm sure the intervenor parties would like to  
8 probably have -- and I'm sure there will be a  
9 discussion, but it seems to be a more informal than in  
10 writing of how that process is going to occur.

11           Could you elaborate for the record here on  
12 how, one, Duke intends to reach out to its customers  
13 with regard to noticing on the various -- as well as how  
14 Duke plans to communicate with this Commission along  
15 with the parties with regard to seeking and pursuing the  
16 COL.

17           **MR. GLENN:** Yes. As to the former, we will  
18 follow the Commission's rules on notification of our  
19 customers on any rate changes that occur within the  
20 notice provisions, and we usually do that through our  
21 bill stuffer mechanism, as well. Mr. Portuondo is an  
22 expert in that, and he can address that. But that  
23 certainly is something that we will be doing.

24           With respect to the Levy and the COL process,  
25 we are fully committed to being transparent with staff



1 and with this Commission on updates regarding it. And  
2 if it is more frequent than the annual NCRC filing or  
3 what have you, we are more than happy to engage in a  
4 more formal update on that, and we would certainly  
5 welcome that.

6 **COMMISSIONER BROWN:** But you don't think of  
7 putting that necessarily in writing?

8 **MR. GLENN:** We did not include that in the  
9 settlement agreement, but certainly we would be willing  
10 to sit down with staff and work out a procedural  
11 schedule. I don't know what the legal process would be,  
12 but that is something that we --

13 **COMMISSIONER BROWN:** I think that is  
14 important.

15 **MR. BURNETT:** Commissioner, if I may. One  
16 good idea may be, we have a lot of interface with  
17 Commission staff starting in the beginning of the year  
18 through the audit process, and that can be a standard.  
19 There is sort of a standard DR1 that come with that. We  
20 can just make that part of our standard response is an  
21 update with the Data Request 1 that happens in about  
22 the -- late in the year or early January process. And  
23 so I will give you a stipulation right now, we will do  
24 that.

25 **COMMISSIONER BROWN:** That makes me happy.

1           **MR. BURNETT:** Yes, ma'am.

2           **COMMISSIONER BROWN:** Can we talk about  
3 salvageable assets that have been discussed and that are  
4 mentioned in the settlement agreement? You know, I  
5 really kind of wanted to get to whether that is an  
6 actual viable option, and if you have an estimate of  
7 what that quantifiable value potentially could be that  
8 would offset the customer's bills?

9           **MR. GLENN:** Yes, just at a high level on that,  
10 and then I can turn it over to Mr. Fallon. In two  
11 regards, one on Levy and one on Crystal River, we have a  
12 team dedicated on Crystal River to looking at what, if  
13 any, of the plant can be salvaged, or sold, or what have  
14 you. That's number one. We have a team looking at that  
15 right now to mitigate the costs to customers.

16           Number two is on Levy we have got a team, as  
17 well. And I think, Mr. Fallon, you could address that.

18           **MR. FALLON:** Thank you.

19           Yes, we just started this team and we are  
20 working with the EPC consortium, Westinghouse and  
21 Chicago Bridge and Iron to start the process to  
22 determine what can be salvaged from the project. So I  
23 don't have any concrete estimate for you today, because  
24 we have just started the process. And we have to work  
25 through them because they have all the subcontracts with

1 the suppliers.

2 **COMMISSIONER BROWN:** How do you propose to  
3 reduce customer's bills, on an annual basis -- I just  
4 want it from a process standpoint, when you sell the  
5 assets, how does that go in?

6 **MR. PORTUONDO:** I can speak to the process.  
7 As Mr. Fallon or others dispose of assets associated  
8 with Levy or CR3, it will work in this fashion. The  
9 Levy disposition will go to reduce any unrecovered  
10 balance that we might have. So during the period that  
11 Commissioner Balbis was discussing earlier where we are  
12 recovering that \$3.45, we will apply those credits, that  
13 sales price that we are able to get to that balance,  
14 and, therefore, allow us to possibly terminate the \$3.45  
15 at an earlier point in time.

16 As it relates to the CR3 investment, what that  
17 process would entail is similar. It's going to be a  
18 credit to the regulatory asset. So the Exhibit 10 to  
19 the settlement will otherwise be lower due to those  
20 salvaged assets and, therefore, lower the future revenue  
21 requirements to customers.

22 **COMMISSIONER BROWN:** You mentioned the \$3.45  
23 for Levy and that it is expected to generate a certain  
24 amount of money each year, but is there certainty that  
25 costs potentially could end before January 2018?

1           **MR. PORTUONDO:** I hope so. That's everyone's  
2 goal here, at least, you know, on this table from end to  
3 end. The goal is to, consistent with the settlement,  
4 minimize, wind down costs where possible, and maximize  
5 salvage where possible. And our goal is to move  
6 efficiently through that process without jeopardizing  
7 our ability to maximize salvage and minimize costs and  
8 terminate the 3.45 as soon as possible.

9           **COMMISSIONER BROWN:** That's nice to hear on  
10 the record. Thank you.

11           **MR. BURNETT:** You're welcome.

12           **COMMISSIONER BROWN:** Mr. Chairman, can I move  
13 to the decommissioning trust fund?

14           **CHAIRMAN BRISÉ:** A new line of questioning? I  
15 think there are a couple of others.

16           **COMMISSIONER BROWN:** Okay. I'll hold on.

17           **CHAIRMAN BRISÉ:** Commissioner Edgar.

18           **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
19 I have just a couple, perhaps more narrow questions on a  
20 couple of areas that I don't think we have touched on  
21 yet that I will look to the witnesses from Duke.

22           The first -- and this may be on Mr. Miller,  
23 I'm not sure, that's my guess -- is regarding  
24 specifically the language regarding the future review of  
25 costs for potential dry cask storage for long-term

1 storage for spent fuel at CR3, and I think that is  
2 discussed in Paragraph 5.

3 My understanding was that the company was  
4 still analyzing options, but yet there is language  
5 specifically providing for the review of potential costs  
6 for dry cask storage at the CR3 facility. So I guess a  
7 couple of questions. One, has the company made the  
8 decision and is committed to that process, or is it  
9 still being analyzed. And if so, does that date of, I  
10 think, January 2017 leave enough time for the work that  
11 needs to be done on that point?

12 **MR. FALLON:** Well, Commissioner, to answer  
13 your first question, we have not made a definitive  
14 decision yet whether wet storage or dry storage is the  
15 best outcome. That's in process. And as we responded  
16 to in one of our interrogatories, that would expect to  
17 end hopefully the end of this year, we would make that  
18 decision. Now, in regard to the actual dollar value and  
19 how the process would go forward, depending on what the  
20 actual true cost is of dry cask storage, I would turn  
21 that over to Javier to explain how the mechanisms in the  
22 settlement would work.

23 **COMMISSIONER EDGAR:** Okay. But before you do  
24 that, just a follow up on that decision. Has a decision  
25 been made that the storage will be there at the CR3

1 facility, or is it still an option for transport and  
2 storage at perhaps another Duke-owned facility?

3 **MR. FALLON:** Well, we certainly haven't  
4 eliminated all possibilities. Historically, legacy  
5 Progress Energy actually transported spent nuclear fuel  
6 between our sites, and actually went from, for example,  
7 Robinson in Brunswick to the Harris site, which was  
8 originally built for four units, the spent fuel pools  
9 were. They are very large.

10 In the case of moving fuel from Crystal River  
11 up to one of those facilities, our shipping casts no  
12 longer have certifications and cannot ship nuclear fuel.  
13 Those certifications have expired. Hence, we are  
14 actually building dry cask storage at the Brunswick  
15 facility, for example. And we have also built it at the  
16 Robinson facility. That's in North and South Carolina.

17 So it is highly probable that fuel will be at  
18 the site either in the wet storage of the pools as they  
19 exist today, which require support systems like  
20 electrical, water, air to run those systems to keep the  
21 pools cool, or a dry cask storage made of cast on a  
22 concrete pad somewhere near the power block is most  
23 likely what's going to occur.

24 **COMMISSIONER EDGAR:** And to ask a very  
25 simplistic and perhaps overly obvious question, that is

1 in keeping with a facility that is in the process of  
2 decommissioning?

3 **MR. FALLON:** That is correct. And it comes  
4 down to the way in which you might consider it. You  
5 have fuel in the pools that require support systems,  
6 which also requires a larger physical boundary for  
7 security to protect it. When you move it to a dry cask  
8 storage, first of all, the fuel has to be cooled down to  
9 a certain level to be able to go into a dry cask  
10 storage, meaning it has been out of the reactor over a  
11 certain number of years, and then you create that and  
12 you can shrink the security area around that dry cask  
13 storage, and you no longer need those electrical systems  
14 and water systems that are for the pools. So we have to  
15 look at both of those to see economically which is the  
16 best to do, and that is what we are looking at.

17 You know, with it in the power block, there  
18 are certain rules that still apply that we have to  
19 consider, such as Fukushima rules which are coming out  
20 that affect spent fuel pool level instrumentation is a  
21 prime example. All of those are still in play while we  
22 have fuel in the pools.

23 **COMMISSIONER EDGAR:** Thank you.

24 Mr. Portuondo.

25 **MR. PORTUONDO:** Certainly. As provided for in

1 the settlement, you will see in Exhibit 10 the dry cask  
2 storage project is separate and apart from the first  
3 column where we are quantifying those assets that are  
4 subject to the cap. The parties to the settlement  
5 contemplated that we would present to the intervenors  
6 and to the Commission the ultimate conclusion of the  
7 analysis of whether we go dry or wet, and what the  
8 corresponding costs will be associated with that project  
9 for your review and determination that it's prudent and  
10 reasonable.

11 **COMMISSIONER EDGAR:** And, again, sometime  
12 prior to January 2017?

13 **MR. PORTUONDO:** Absolutely. I mean, my goal  
14 would be to present it as soon as I knew the decision  
15 and I knew the costs associated with that decision.

16 **COMMISSIONER EDGAR:** All right. Thank you.  
17 And then on a different issue. And, again, I think  
18 perhaps to Mr. Borsch.

19 Regarding the GBRA discussion and provisions  
20 that are in Paragraph 16, it addresses recovery of up to  
21 1,150 megawatts of generation prior to the end of 2017,  
22 and then I believe projections for more in additional  
23 generation in 2018 and 2020.

24 My basic question is the way the GBRA for  
25 future generation is addressed in the settlement



1 agreement, how does that either comport or differ from  
2 what is in our ten-year site plan, or your ten-year site  
3 plan?

4 **MR. BORSCH:** Well, in general, although the  
5 numbers don't match exactly, owing to the fact that  
6 these are negotiated numbers, the overall sense of the  
7 values that are there comport with the ten-year site  
8 plan that we have in 2013, they are based on essentially  
9 the same load forecast. So essentially what we have  
10 done is to allocate the megawatts between years in a way  
11 that was reasonable to us in terms of the options that  
12 we have moving forward. Things that were under  
13 consideration both to meet our near term need up through  
14 2016 and '17, and our longer term need beginning in 2018  
15 and beyond.

16 So I think if you look in our ten-year site  
17 plan, as I mentioned a moment ago, what you would see is  
18 a large block of power purchase beginning in 2016 with  
19 the assumption of the retirement of Crystal River Units  
20 1 and 2, and then followed by a large combined cycle in  
21 2018. And actually in our plan there is another  
22 combined cycle right beyond that in 2020, another large  
23 combined cycle.

24 So what we have done in the settlement is to  
25 take those groups of megawatts and apportion them

1 through the negotiations in a way that gives us  
2 optionality to find an optimum set of options that we  
3 will bring before you between those different years.  
4 But the overall sense of the scale of the number of  
5 megawatts that we are talking about is pretty well  
6 reflected in the site plan.

7 **COMMISSIONER EDGAR:** Thank you.

8 **CHAIRMAN BRISÉ:** Commissioner Balbis.

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

10 Mr. Glenn, a few questions for you. If  
11 this --

12 **MR. GLENN:** I was using the old thing that I  
13 did in law school where I would look at the professor in  
14 the hopes that he would ask somebody else a question,  
15 but that little reverse psychology, it didn't work.

16 (Audience laughter.)

17 **COMMISSIONER BALBIS:** That actually doesn't  
18 work with me, but I appreciate it. I figured you wanted  
19 the question.

20 **MR. GLENN:** I have noted that, yes.

21 **COMMISSIONER BALBIS:** A question. If this  
22 Commission rejects the settlement agreement and we  
23 continue to operate under the 2012 agreement, will Duke  
24 continue with the Levy project or will they still stick  
25 with its decision to cancel it?

1           **MR. GLENN:** That's a good question. I think  
2 given what we have seen in the legislation, we would  
3 have to analyze that. As you know, throughout this  
4 whole process, we have looked at Levy from a  
5 quantitative and a qualitative perspective. And since  
6 May of our testimony, the quantitative factors really  
7 haven't changed much. The natural gas prices, they have  
8 gone down a little bit. Carbon is still off in the  
9 future. The project costs are still the same. So we  
10 haven't, with a caveat that I will talk about, but -- so  
11 the quantity of factors really haven't changed.

12           The qualitative factors that have changed are  
13 the legislation. And the legislation gives us concern  
14 for a couple of different reasons in moving forward with  
15 Levy that we would have to ultimately go back to our  
16 board of directors on, I think, and get an ultimate  
17 decision.

18           As we look at it, under the new legislation  
19 for preconstruction activities we can't order a single  
20 part, for example, without coming back to the Commission  
21 and getting preapproval to do that. We can't go out and  
22 order anything, any construction work, right, after we  
23 get our license, assuming a license, that is greater  
24 than one percent of the total project costs of this  
25 \$17 billion project without preapproval.

1           In addition, it adds in language regarding  
2 intent to build. And this Commission defined intent to  
3 build, and that was taken up on appeal for basically a  
4 two-year process to determine what that word meant,  
5 intent, you know, that phrase intent to build. The new  
6 legislation adds nine words. You know, whether it's  
7 committed, it's practical, it's reasonable, it's a whole  
8 slew of things which, you know, I look at the lawyers on  
9 this table and at the bench, and I'm sure we would all  
10 have different opinions on what those words mean.

11           So those are things that give us significant  
12 pause, because our contract in any large construction  
13 project is not executed in that fashion. It is executed  
14 concurrently. You get your license, you are ordering  
15 long-lead time, you are grading, you are digging  
16 foundations, you are doing all of this. And under this  
17 legislation it would grind that to a halt, we believe.  
18 So we have substantial concerns with the viability of  
19 the project just on those qualitative factors alone,  
20 which we think would actually delay and increase the  
21 cost of any facility.

22           You think about building a house. You think  
23 about under this legislation before I ordered, before  
24 the builder could order six two-by-fours, right, he  
25 would have to go and get all of his neighbor's input,

1 right, on whether or not you should order  
2 six two-by-fours, then go to the owner, you guys, and  
3 say I want to buy six two-by-fours, and that takes eight  
4 months. That's just the NCRC process, right? And then  
5 all the neighbors say, you know what, I don't like that,  
6 we are going to take you to court for another two years.  
7 Think of how long it's going to take you to build a  
8 house. So that's what we are faced with right now. So  
9 I can't give you that definite answer, but we have got  
10 significant concerns.

11 **COMMISSIONER BALBIS:** No, I agree. And you  
12 made some good points. I mean, that's something that I  
13 recognize that it would be -- I would even say highly  
14 unlikely that you would move forward with Levy if we  
15 operate under the 2012 agreement. I mean, I recall the  
16 infamous Gantt chart that Mr. Moyle objected to did not  
17 have -- did not have any lead time, and it wasn't  
18 structured in a pause and start/stop format. That there  
19 was critical paths identified, and any breakage in any  
20 of that kills the in-service date. So that's why I  
21 state that it's highly unlikely if we reject the  
22 settlement, move under the 2012 agreement, which is  
23 cheaper, that you are not going to have the spiraling  
24 costs, because it simply cannot happen with the  
25 legislation, or may not happen with the legislation. So

1 that's all I had. Thank you.

2 **CHAIRMAN BRISÉ:** Commissioner Brown.

3 **COMMISSIONER BROWN:** Thank you.

4 I'm going to move to the decommissioning  
5 trust. I think it was stated here that that number, and  
6 it is in the settlement agreement, is about 627 million.  
7 And Duke alluded to that possibly being insufficient  
8 for -- inadequate, and I just wanted that  
9 acknowledgment. Is that correct, given the unknown  
10 amount of the CR3 regulatory asset value?

11 **MR. PORTUONDO:** Commissioner, we are in the  
12 midst of doing a site-specific analysis of the cost to  
13 decommission the facility. It's separate and apart from  
14 the size of the regulatory asset itself. These are the  
15 costs to actually decontaminate and bring the site back  
16 to greenfield. We are hoping that that study is  
17 completed by the end of the year or sometime early in  
18 the first quarter of next year, and at that point we  
19 will know whether the growth in the fund is sufficient  
20 or whether there is a deficiency in the fund.

21 **COMMISSIONER BALBIS:** But there have been no  
22 annual accruals since 2005.

23 **MR. PORTUONDO:** That is correct. And the  
24 basis for not having an accrual was that we had  
25 conducted those studies, just like we are doing today.

1 Those studies were predicated on the assumption that the  
2 facility was continuing to operate through 2036. And  
3 based on that additional 20 year's worth of growth in  
4 earnings in the fund compared to the costs, we felt that  
5 it was sufficient, the growth in the earnings was  
6 covering the growth in inflation and the costs. So,  
7 therefore, no further funding was needed. That is all  
8 being reassessed now, given the retirement status that  
9 we were in.

10 **COMMISSIONER BROWN:** My concern really is  
11 after that 8 million cap is lifted with the, you know,  
12 understanding that it probably is an insufficient  
13 decommissioning trust fund, and what checks and balances  
14 that are delineated in this agreement here, if you can  
15 walk us all through that.

16 **MR. PORTUONDO:** Sure. Sure. The study that  
17 will be presented to you either, you know, later this  
18 year or early next year will be comprehensive. It will  
19 show the total funding need to keep the trust solvent  
20 and consistent with NRC minimum requirements. That  
21 number, whatever it is, will be the amount that the  
22 company will fund the trust by. The settlement provides  
23 for collection of a portion of that, or -- you know,  
24 it's a minimum of \$8 million. Anything above that \$8  
25 million -- we will still fund the trust, we will just

1 simply defer the collection of that amount until a later  
2 time. That's 2019 when we will collect that.

3 But you will be in possession of the complete  
4 story. And consistent with the rules of the Commission,  
5 we will update that study. It's required now no later  
6 than, I believe, four to five years, and we will meet  
7 that expectation, or do it more frequently now that we  
8 are in a decommissioning status to make sure that our  
9 funding keeps in pace with the spending.

10 **COMMISSIONER BROWN:** I thought there was a  
11 provision in there that said that its next study would  
12 be conducted in -- or delivered in 2008, along with  
13 dismantlement. Is that correct?

14 **MR. PORTUONDO:** A study in 2008. Oh, that was  
15 the last study. But we updated that fundamental study  
16 for inflationary effects and changes in varial  
17 (phonetic) rates, and we did an update in the 2011 time  
18 period, so we have been updating it. But you will see a  
19 study here in the very near future that is very  
20 comprehensive and consistent with the position that we  
21 are in today.

22 **COMMISSIONER BROWN:** Would property taxes on  
23 CR3, I mean, would they fall under the purview of the  
24 fund?

25 **MR. PORTUONDO:** Yes. Our understanding is



1 property taxes are eligible to be charged to the trust  
2 along with insurance and other costs of that nature.

3 **COMMISSIONER BROWN:** Okay.

4 **MR. PORTUONDO:** So we need to evaluate, once  
5 you start layering all those costs into the total  
6 decommissioning, is the fund going to keep pace with  
7 that increased cost.

8 **COMMISSIONER BROWN:** If I may, what is the  
9 impact, rate impact, let's just say for 8 million  
10 annually on a typical thousand kilowatt per hour  
11 residential customer?

12 **MR. PORTUONDO:** I'm glad you asked that.

13 **COMMISSIONER BROWN:** Thank you.

14 **MR. PORTUONDO:** It's 26 cents on a thousand  
15 kilowatt hour bill for a residential customer.

16 **COMMISSIONER BROWN:** Thank you.

17 Mr. Rehwinkel, I just have one more question  
18 for you. I appreciate your opening remarks and  
19 answering my questions earlier. They were very  
20 thorough. So just one last question.

21 Do you think that this amended settlement  
22 agreement addresses all of the customer concerns that  
23 you hear from, your office hears from concerning Duke's  
24 customers, and is there anything -- resolves, addresses  
25 and resolves -- is there anything left out?

1           **MR. REHWINKEL:** Well, I think the customers we  
2 hear from, they don't like aspects of the rate impacts,  
3 and the general subject matter that is covered by this.  
4 So putting that aside, I think this agreement fairly  
5 addresses any concerns other than that that we might  
6 hear from customers. Because I think it is fairly  
7 comprehensive in dealing with certainty about the Levy,  
8 CR3, CR3 uprate, and future generation costs. So the  
9 short answer to your question is yes, other than general  
10 unhappiness with the paying for not getting electricity  
11 in the nuclear world.

12           **COMMISSIONER BROWN:** Yes. We heard from  
13 customers today about having public meetings held in the  
14 service territory. Were you aware?

15           **MR. REHWINKEL:** That's the first I've heard of  
16 it. And I have never -- it has never been asked of our  
17 office to have hearings down there. And what I heard  
18 about hearings down there were to look into the issues  
19 that have been resolved legally, finally for 18 months.  
20 So we have never heard that, and I don't know how you  
21 would do that on investigating CR3 2009 delamination. I  
22 just don't think it could be legally done.

23           But, no, we have not had one request as far as  
24 I know, and Mr. Kelly confirms that.

25           **COMMISSIONER BROWN:** Thank you.

1           **CHAIRMAN BRISÉ:** All right. With that, I  
2 think we are going to take a ten-minute break, give our  
3 court reporter a break at this time, and then we will  
4 reconvene at 3:10.

5           (Recess.)

6           **CHAIRMAN BRISÉ:** We'll reconvene at this time  
7 and we will continue with questions.

8           Commissioner Graham.

9           **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

10           This is to Mr. Rehwinkel. Before the break,  
11 you started talking a little bit about having, being  
12 able to legally have service hearings out in the field  
13 for this type of event for the Nuclear Cost-Recovery  
14 Clause, and you said you don't know how legally you can  
15 do that. I mean, I can do my engineering way of  
16 explaining it, but since it came out there, and knowing  
17 that this is all quasi-judicial, can you kind of explain  
18 why?

19           **MR. REHWINKEL:** I probably was inartful in  
20 what I said. All I meant was on an issue that was final  
21 for all purposes, and I meant on the fault issue, the  
22 2009 delamination, that order accepting that disposition  
23 was, I think, issued in March of '12. The appeal would  
24 have run sometime in April of '12, and it's final. So  
25 you could not inquire into that any further. That is

1 all I meant.

2 As far as holding service hearings on any  
3 hearing within your subject matter, you could do it, in  
4 my opinion. That's all I meant, if that answers your  
5 question. I wasn't saying you could not legally hold a  
6 service hearing out in the field.

7 **COMMISSIONER GRAHAM:** Well, no, I guess I was  
8 just trying to get some understanding. Because I know  
9 when we have the rate cases we have the hearings out in  
10 the field because we need input when it comes to  
11 interaction with customer service and some of those  
12 other things. But since this is more specialized and we  
13 are dealing specifically with nuclear costs and nuclear  
14 cost-recovery, and it's only supposed to be expert  
15 testimony that we are listening to, I guess my question  
16 is how many nuclear experts are we going to find out in  
17 the field?

18 **MR. REHWINKEL:** Yes. All I was talking about  
19 was customer service hearings. You know, I wasn't  
20 saying that you were prohibited from doing so. I know  
21 that it's not specifically provided for in the statute,  
22 in the NCRC statute.

23 **MR. BURNETT:** Commissioner Graham, may I weigh  
24 in?

25 **COMMISSIONER GRAHAM:** Sure.

1           **MR. BURNETT:** The way I would look at it is  
2 if, let's say, the Commission said we going to go down  
3 to St. Pete and have a hearing on the NCRC process. I  
4 would offer to you that the logic behind service  
5 hearings at all are just that, so the Commission in a  
6 rate case, a base rate proceeding where our provision of  
7 service and the quality of that service is at issue and  
8 a factor you legally can determine in setting factors  
9 like return on equity, that's where you go to the field  
10 and you take that evidence which is relevant to your  
11 point of what you are considering. So you are taking  
12 evidence from a customer.

13           Now, if you had technically a service hearing  
14 where you went to St. Petersburg and said how is your  
15 service, the answer you'd likely get in NCRC, I hope,  
16 is, well, it's great, but that has nothing to do about  
17 why I'm mad about this issue, or X or Y. So I would  
18 argue that they would be inappropriate and irrelevant  
19 for that point, because you are taking evidence on  
20 service. You would be taking complaints effectively,  
21 which you have a process here at the Commission for.

22           **COMMISSIONER GRAHAM:** But complaints aren't  
23 necessarily something that goes into the decision-making  
24 factor on this.

25           **MR. BURNETT:** Exactly. Exactly. So customers

1 still have a way to be heard, but you're right, the  
2 relevant and material evidence has to be what it is.  
3 And in this specific docket in the NCRC where you have  
4 specific issues and questions, you're right, you could  
5 only accept material and substantive evidence on the  
6 issue. So likely that could -- I'll be frank with you,  
7 I would object to it going into evidence.

8 **COMMISSIONER GRAHAM:** Now, if we had somebody  
9 like, just say, that wanted to, outside of us that  
10 wanted to have a town hearing or town meeting, would you  
11 guys be willing to do something like that, to  
12 participate in something along that line?

13 **MR. BURNETT:** That is the nice time where I'm  
14 going to turn that over to our president.

15 (Audience laughter.)

16 **MR. GLENN:** I'm rubber and you're glue.

17 (Audience laughter.)

18 **MR. GLENN:** I'm not sure what, actually, that  
19 would be, but certainly if customers have issues with  
20 what we're doing and how we're doing it, we are open to  
21 talking to customers anytime. And so, in that regard,  
22 yes.

23 **COMMISSIONER GRAHAM:** I mean, I understand as  
24 we said earlier about having inserts that go into the  
25 bills as a great way of disseminating information and

1 get it out there. I know the newspapers are a great way  
2 of get information out there. If there's people who  
3 want to go a little further than that, like, say, if  
4 they want to have a town meeting, because I'm sure, you  
5 know, there were several people that wanted to be  
6 involved in this, and you guys are saying that you would  
7 be willing to, if you are asked, to kind of participate  
8 in something along that line.

9 **MR. GLENN:** Sure.

10 **COMMISSIONER GRAHAM:** Okay. Thank you.

11 **CHAIRMAN BRISÉ:** All right. Commissioners,  
12 any further questions for the signatories? Just so that  
13 everybody is aware of where we are in the process here,  
14 this is our opportunity is ask the signatories  
15 questions. Once we move past this phase we will get  
16 into our -- we will close the record, and then we will  
17 enter into discussions with our staff, and so all our  
18 questions will be directed to our staff and they will  
19 provide answers to us on a variety of topics, whatever  
20 we need, and then we would enter into the decision phase  
21 right after that. So I just want to make sure that  
22 everyone has asked all the questions that they are  
23 seeking to ask at this point.

24 Commissioner Graham.

25 **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

1 As we get into the discussion with staff, and we  
2 determine that there is another question that needed to  
3 be asked of the signatories or of the Duke panel, and I  
4 guess maybe this is to Mary Anne, how mechanically can  
5 we go about asking that question?

6 **CHAIRMAN BRISÉ:** Let me take a stab at that  
7 before we go back to Mary Anne. I think I have asked  
8 the same question. We could reopen the record and get  
9 to the signatories, but this process in terms of us  
10 asking is really a delineation of where we are in the  
11 process, but we can reverse ourselves and go back and so  
12 forth.

13 **COMMISSIONER GRAHAM:** Okay. Thank you.

14 **CHAIRMAN BRISÉ:** Commissioner Balbis.

15 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman,  
16 and thank you for clarifying where we are in the  
17 process. And I'm glad that we're going to have the  
18 opportunity to ask staff whatever questions we need to.  
19 There has been lot of information provided here today  
20 and a lot of discussion from us up here. And I  
21 certainly would appreciate some time to formulate the  
22 questions that I'm going to have for staff. So I'm  
23 looking for direction as to, you know, whether we have  
24 this evening to do that, so then come back tomorrow and  
25 that way I can be a little more focused on questions



1 that I have for staff and digest everything.

2           **CHAIRMAN BRISÉ:** Okay. I think that's fair.  
3 So if we are truly in a posture where we are done with  
4 the signatories, there's two approaches that we can  
5 take. We could recess for the day and reconvene  
6 tomorrow. I understand that there's a prehearing  
7 tomorrow morning. I know that, with a good level of  
8 certainty that we would be able to convene at about  
9 10:30 or so to continue the hearing. And at that point  
10 we could ask questions of staff and then get to the  
11 decision phase of it. Or we could have the option of  
12 asking our questions to staff, but then that creates an  
13 issue that some may not be prepared to be in that  
14 posture at this time.

15           So that really is up to my colleagues to sort  
16 of determine as to what level of comfort you have as to  
17 which approach we take. I am comfortable with pursuing  
18 the approach -- and I want to make sure that staff, that  
19 there are no issues in terms of the time that we laid  
20 out for tomorrow with staff.

21           **MR. YOUNG:** I think for us, given my  
22 experience with the fuel clause and all the clause  
23 hearings, to assume the prehearing will only last an  
24 hour is being quite ambitious, so I would probably say  
25 11:30 or after. Because you're starting at 9:30, and

1 just by taking appearances alone that is about five  
2 minutes.

3 **CHAIRMAN BRISÉ:** Okay. So can we do this, can  
4 we do upon termination of the clause hearings, and we  
5 put a 15-minute buffer there, and then we proceed?

6 **MR. YOUNG:** Yes.

7 **CHAIRMAN BRISÉ:** And we will be here, the  
8 Commissioners will be here, and we will be ready to  
9 proceed in that fashion.

10 **MR. YOUNG:** Yes.

11 **CHAIRMAN BRISÉ:** Now, the only problem that  
12 that creates is, you know, maybe someone who's out in --  
13 John Q. Public may not have a particular time certain to  
14 be here. You know, recognizing that we have already put  
15 a time staple of 10:30, so I suppose that in their mind  
16 they probably know that they need to be here around  
17 10:30 or so.

18 Commissioner Edgar.

19 **COMMISSIONER EDGAR:** I'm sorry, I'm just a  
20 little confused, because the calendar that I use to plan  
21 from says 1:00 o'clock tomorrow. So 1:00 o'clock is not  
22 meaningful?

23 **MR. KISER:** Mr. Chairman?

24 **CHAIRMAN BRISÉ:** Yes, sir.

25 **MR. KISER:** Mr. Chairman, she's right. It's

1 noticed at 1:00 o'clock there. Now, I don't think that  
2 would preclude you from still convening earlier, but I  
3 would suggest it might be a little bit more user  
4 friendly if you just announced that you'll start upon  
5 conclusion of the prehearing. However, no vote would be  
6 taken on this until after 1:00 o'clock. So that way  
7 anybody that was relying on that 1:00 o'clock time would  
8 have plenty of time to get here.

9           The only thing I think that might be a little  
10 awkward is if, you know, you'd start at 10:30 or 11:00  
11 and vote at 11:30 and somebody was planning on coming  
12 back here at 1:00, that's just a consideration, but you  
13 can do it any number of ways. The previous order that  
14 was entered on this, I think it noticed the full two  
15 days, yesterday and today. But, unfortunately, that  
16 calendar does show 1:00 o'clock for tomorrow.

17           **CHAIRMAN BRISÉ:** Yes. I'm fully cognizant of  
18 the 1:00 o'clock. We were trying to accommodate, you  
19 know, everybody's time schedule, and I guess that's one  
20 of the things that chairs do. But if the 1:00 o'clock  
21 is what is the will of the Commission, we will go with  
22 1:00 o'clock.

23           Commissioner Graham.

24           **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

25           I guess this goes back to Mr. Kiser. If the

1 record is closed, then the only people that are part of  
2 this debate would be staff and the Commissioners, who  
3 will all be here all day tomorrow, so --

4 **MR. KISER:** You have the option of going back  
5 and opening the record. There is always that  
6 possibility, so that is not ironclad that it can't be  
7 opened, and that's one possibility that could happen if  
8 something were to come as an issue.

9 **COMMISSIONER GRAHAM:** So then if we want to  
10 reopen the record, then that couldn't be done until 1:00  
11 o'clock.

12 **MR. KISER:** Well, again, all I'm trying to get  
13 to is that the actual vote -- I think if it was after,  
14 the vote was not going to be before 1:00 o'clock, that  
15 would be your insurance that you haven't misled anybody.  
16 And quite possibly if it does get to the point where you  
17 want to reopen the record, that can always be in the  
18 motion to reopen it, that you not reopen it and get  
19 started on that until 1:00 o'clock, if you wanted to  
20 still try to use that as a fixed date for people that  
21 might be relying on it. But there's a number of ways  
22 you can do that.

23 **COMMISSIONER GRAHAM:** Thank you.

24 **CHAIRMAN BRISÉ:** Commissioner Brown.

25 **COMMISSIONER BROWN:** Mr. Young, what does the

1 notice actually say? I don't think it's noticed for  
2 1:00.

3 **MR. YOUNG:** No, it's not, Madam Commissioner.  
4 The notice states that the start time for the next day's  
5 session will be announced at the conclusion of the prior  
6 day.

7 **COMMISSIONER BROWN:** Okay. So --

8 **MR. YOUNG:** And if you want me to continue,  
9 and the hearing may be adjourned early if all the  
10 testimony is concluded.

11 **COMMISSIONER BROWN:** I don't know why this is  
12 getting a little hairy here. I thought the original  
13 proposal upon conclusion of the other prehearing is  
14 legally feasible. I don't see why that would be  
15 problematic. The notice isn't for 1:00 o'clock.

16 **MR. YOUNG:** No, ma'am, the notice is not for  
17 1:00 o'clock.

18 **MR. KISER:** That's what we said. I think that  
19 is what Commissioner Edgar said. On that yellow  
20 planning sheet it says 1:00. That's all we were  
21 referring to.

22 **CHAIRMAN BRISÉ:** Okay. Thank you. We are  
23 done with this discussion. We are convening tomorrow at  
24 about 1:15. Tomorrow at 1:15. That's the time we are  
25 convening, okay? And that's what it's going be, okay?

1 All right. Any further questions for the  
2 signatories? Okay.

3 Yes, Mr. Young.

4 **MR. YOUNG:** I don't have anything.

5 **CHAIRMAN BRISÉ:** Okay. All right. So in that  
6 case we will conclude today, and we will reconvene at  
7 1:15 tomorrow, and at that point we will make a  
8 determination whether we need to close the record at  
9 that particular time and then go into our colloquy with  
10 our staff. All right. Thank you.

11 (The hearing adjourned at 3:31 p.m.)  
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STATE OF FLORIDA )

CERTIFICATE OF REPORTERS

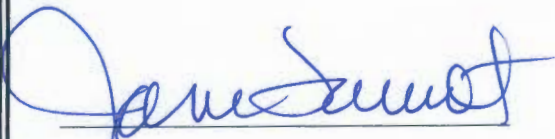
COUNTY OF LEON )


WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

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

DATED THIS 18th day of October, 2013.

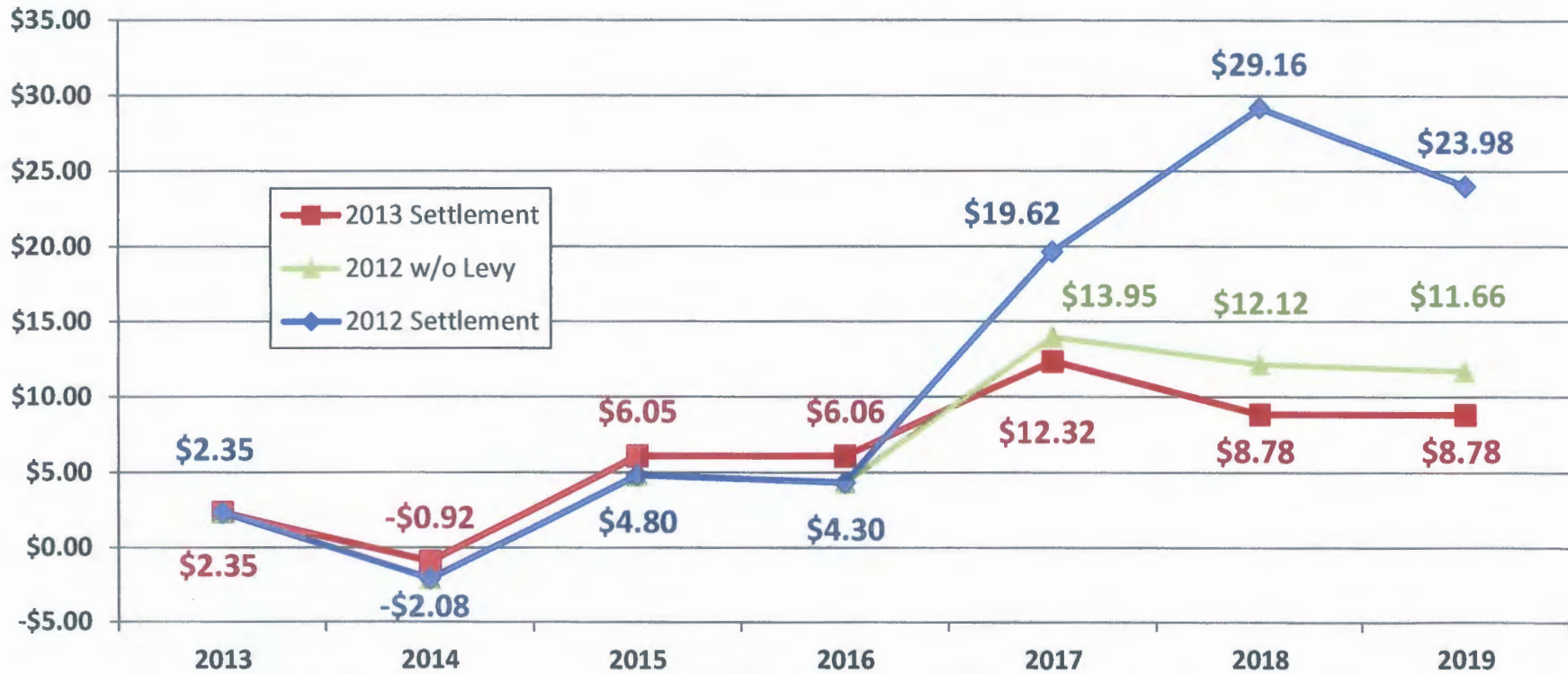
  
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JANE FAUROT, RPR

  
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## Comparison of Monthly Residential Bill Impact (\$/1,000 kWh)

Source: DEF Response to Staff Data Request Nos. 58 and 68



Notes: Bill impact in 2015 and 2016 driven by accelerated CR3 carrying charge (\$1.00 in 2015, \$1.50 in 2016) and increase in IS credits (\$0.22 in 2015 and 2016). Bill impact in 2017 and beyond driven by value of CR3 asset and termination of Levy project costs through NCRC.

Parties/Staff Handout  
 event date 10 / 16 / 13  
 Docket No. 100437, 130001, 130007,  
130009, 130091, 130208



Current estimate of CR3 regulatory asset (response to #70) ==>	\$1,498 million*
Amount recovered to date for CR3 uprate through NCRC ==>	\$91 million
Remaining balance of uprate =====>	\$265 million**
Carrying costs through 2019 =====>	<u>\$57 million**</u>
	\$1,921 million

NEIL payments – fuel =====>	\$162 million***
NEIL payments – repair =====>	\$143 million***
NEIL mediation settlement =====>	\$530 million***
Fuel refunds =====>	\$388 million***
Regulatory asset write-down =====>	<u>\$295 million***</u>
	\$1,518 million

Notes: \* Added back the \$295 million write-down shown in response to question #70.

\*\* Estimate of remaining balance for CR3 uprate to be collected through NCRC. Amortized over 6 years pursuant statute.

\*\*\* Response to question # 65.

# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

DOCKET 130208-EI

## Administrative

- ❑ The RRSSA replaces the settlement that was approved per Order PSC-12-0104-FOF-EI. The RRSSA resolves all remaining prudency issues associated with Docket No 100437-EI and preserves certain issues associated with the CR3 regulatory asset.
- ❑ The term of the RRSSA is until December 2018, a two year extension from the 2012 stipulation. ROE remains at 10.5%

# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

DOCKET 130208-EI

## CR3 Remaining Assets

- ❑ DEF will reduce the net plant balance of CR3 by \$295 million.
- ❑ The regulatory asset is capped at \$1.466 billion. Can be increased by the addition of dry cask storage costs or force majeure events. DEF responsible for first \$5 million of force majeure costs per event.
- ❑ Recovery of asset deferred until January 2017 or expiration of LNP cost recovery and amortized over 240 months.
- ❑ Up through December 2018, DEF may petition to collect a surcharge for the nuclear decommissioning fund of up to \$8 million/year.

# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

DOCKET 130208-EI

## Fuel Adjustment Clause

- ❑ Per the 2012 settlement, DEF will refund \$129 million in 2013, \$139 million in 2014, \$50 million in 2015, and \$70 million in 2016 through the fuel clause.
- ❑ DEF will increase fuel charges \$1/mWh (0.1 cents/kWh) in 2014 and 2015 and \$1.5/mWh (0.15 cents/kWh) in 2016. These funds will be used to accelerate recovery of carrying charge for CR3 regulatory asset.
- ❑ DEF will credit fuel clause a net of \$163 million associated with NEIL settlement amounts in 2014.

# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

DOCKET 130208-EI

## Levy Project

- ❑ DEF to pursue termination of EPC contract for Levy. Levy project costs continue to have an NCRC fixed charge for all customer classes (\$3.45/1000 kWh for residential customers same as 2012 settlement) until the earlier of full recovery of LNP costs or January 2018, with true-up in final year.
- ❑ DEF may pursue combined construction and operating license (COL) and can seek recovery of such costs if/when Levy project enters commercial operation (traditional regulatory method). If DEF decides not to pursue COL prior to March 15, 2015, then DEF to refund \$10 million through fuel clause.
- ❑ DEF agreed to provide semi-annual progress reports if desired.

# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

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## Generation Base Rate Adjustments

- ❑ DEF may seek recovery of new CTs, uprates, and purchases of existing CTs or CCs including transmission prior to 2017 with a cap of 1,150 MWs. DEF will supply cost-effectiveness evaluation prior to recovery through base rates.
- ❑ If the Commission grants DEF a need determination for up to 1,800 MW in 2018, then DEF is authorized to increase base rates by a GBRA in 2018. Calculation of GBRA is similar to other approved settlements and subject to true-up.

# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

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## Other

- DEF to offer a pilot economic development tariff for a period of three years.
- DEF to file a depreciation study, fossil dismantlement study, and nuclear decommissioning study by March 31, 2019 or with next rate case, whichever is sooner.
- If DEF retires Crystal River 1 & 2 coal plants, current depreciation continues through 2020. Remaining balance, if any, to be recovered in 2021.
- Credits for interruptible customers increased in 2014 and 2015.

# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

DOCKET 130208-EI

## Monthly Residential Bill Impact (\$/1,000 kWh)

Source: DEF Response to Staff Data Request No. 58



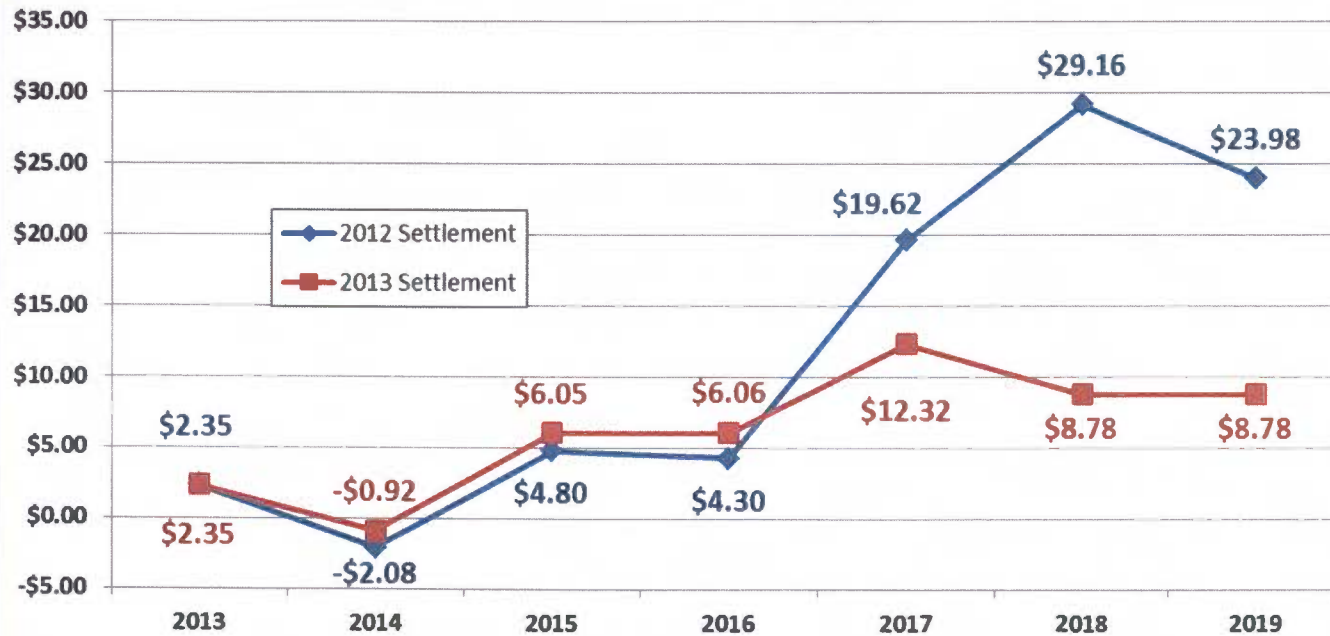


# Highlights of Revised and Restated Stipulation and Settlement (RRSSA)

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## Comparison of Monthly Residential Bill Impact (\$/1,000 kWh)

Source: DEF Response to Staff Data Request Nos. 58 and 68



Notes: Bill impact in 2015 and 2016 driven by accelerated CR3 carrying charge (\$1.00 in 2015, \$1.50 in 2016) and increase in IS credits (\$0.22 in 2015 and 2016). Bill impact in 2017 and beyond driven by value of CR3 asset and termination of Levy project costs through NCRC.