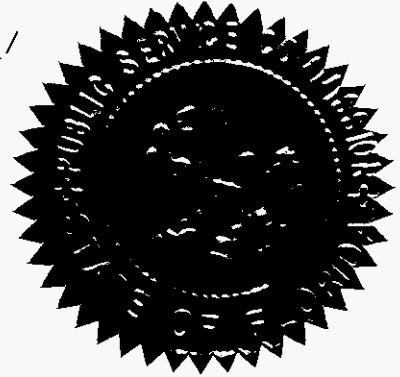


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 070703-EI

REVIEW OF COAL COSTS FOR PROGRESS  
ENERGY FLORIDA'S CRYSTAL RIVER UNITS  
4 AND 5 FOR 2006 AND 2007.



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 11

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, June 30, 2009

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

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

1  
2           **CHAIRMAN CARTER:** We will move to Item 9.  
3 Let staff get an opportunity to change out with the  
4 staff that just finished, and we will start on Item  
5 9, Commissioners.

6           Staff, you may proceed.

7           **MS. SICKEL:** Good morning, Commissioners.  
8 I'm Jeanette Sickel with Commission staff. I'd like  
9 to introduce a new member of the staff, Mr. Phillip  
10 Ellis, and he will introduce this item.

11           **MR. ELLIS:** Good morning, Commissioners.

12           **CHAIRMAN CARTER:** You know, we usually  
13 have a tradition where we haze the new people, but  
14 we won't do that this morning.

15           **MR. ELLIS:** I appreciate it. Thank you.

16           Commissioners, Item 9 is a petition from  
17 Tampa Electric Company requesting approval of its  
18 2009 standard offer contract. Staff believes that  
19 the proposed standard offer is in compliance with  
20 the Commission's rules with one exception. The  
21 proposed standard offer contract contains the right  
22 of first refusal for tradable renewable energy  
23 credits or TRECs. Staff believes the right of first  
24 refusal has a negative impact upon the interests of  
25 renewable energy providers.

1           Staff recommends the Commission deny the  
2 contract as filed and require Tampa Electric Company  
3 to file a revised standard offer contract that does  
4 not contain the right of first refusal within  
5 30 days, and that staff should be granted the  
6 administrative authority to approve the revised  
7 tariffs.

8           Staff is available to answer any questions  
9 you may have. Thank you, Mr. Chairman.

10           **CHAIRMAN CARTER:** Thank you.

11           Commissioners? Commissioner Skop, you're  
12 recognized.

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

15           I guess, not to belabor the point, but I  
16 disagree with the staff recommendation in this  
17 instance for the following reasons.

18           **CHAIRMAN CARTER:** On the right of first  
19 refusal?

20           **COMMISSIONER SKOP:** Yes.

21           **CHAIRMAN CARTER:** Okay. You're  
22 recognized.

23           **COMMISSIONER SKOP:** Thank you, Mr.  
24 Chairman.

25           And, again, I guess, you know, I would

1 look at what staff is citing as the basis for  
2 consistent outcomes between cases that have been  
3 previously heard by the Commission. I did not  
4 participate in the standard offer contract for the  
5 FPL, however, had I done so I would have likely  
6 raised the same issue. And I would distinguish the  
7 case before us from the FPL case to the extent that  
8 in the FPL case the right of refusal period was a  
9 30-day period. And I believe, if I'm correct, I  
10 don't have the standard offer contract in front of  
11 me, but in TECO it's five business days. And I  
12 guess, you know, when I look at these things, again,  
13 FPL's rationale, I went back and looked at the FPL  
14 case, and I would have adopted their reasoning, and  
15 they made the representation that the first refusal  
16 provision is reasonable and consistent with  
17 applicable rules and statute.

18 My reading of the rule is that a first  
19 right of refusal comports with that rule. It's not  
20 in direct conflict in any way, form, or manner due  
21 to the language. The rule only specifically  
22 excludes conditions upon such government incentives.  
23 It does not exclude a right of refusal. Such a  
24 right is standard industry practice. And, again, I  
25 would respectfully depart from the staff

1 recommendation to the extent that a five-day period  
2 is reasonable.

3 And should the state of Florida ever adopt  
4 an RPS where compliance would have to be shown  
5 through the purchase or acquisition of TRECs, you  
6 know, that would be something that the utilities  
7 obviously would need to comply with any given RPS.  
8 And to, you know, give up a right of refusal which I  
9 don't believe is in any way detrimental or  
10 prejudicial to the renewable generator, it just  
11 merely gives the utility the option to match the  
12 price in a short period of time to retain the RECs  
13 for compliance purposes. I think that's a good  
14 thing for ratepayers as FPL has previously  
15 articulated in its prior case to the extent that  
16 they would need those attributes, and it doesn't  
17 impose a financial penalty on the renewable  
18 generator.

19 So I guess I would respectfully disagree  
20 with the staff recommendation. Again, there is a  
21 prior decision, but I think in that decision it can  
22 be readily distinguished by the fact that the  
23 refusal period was 30 days versus a 5-day period,  
24 and I think a more reasonable period, such as TECO  
25 has requested, comports with standard industry

1 practice. And I think it would be a good thing and  
2 fair balance between the needs of making sure the  
3 ratepayers have access to things that may need to be  
4 on an affordable basis versus just having a  
5 situation where you, perhaps, could run into what  
6 has happened in the natural gas markets where you  
7 have speculation in the intercontinental exchange or  
8 such like that where you have people hoarding  
9 attributes and then suddenly there is no supply and  
10 that drives the prices up, which ultimately affects  
11 the ratepayers.

12 So it seems to me that, again, I'm not  
13 criticizing the prior decision, I'm readily  
14 distinguishing it. And, again, I would respectfully  
15 disagree with the staff recommendation to deny the  
16 right of first refusal for the reasons I've  
17 articulated.

18 **CHAIRMAN CARTER:** Thank you, Commissioner.

19 Commissioner Edgar, you're recognized.

20 **COMMISSIONER EDGAR:** I would just ask  
21 staff to elaborate a little bit on the points that  
22 Commissioner Skop has raised, and speak specifically  
23 to the reasoning in the staff recommendation on that  
24 language regarding point of first refusal. And I  
25 would ask as part of that that -- I know in my

1 thinking on the earlier case that the Commissioner  
2 has raised to us the difference between a negotiated  
3 versus a standard offer template resonated in my  
4 mind and my thinking on that issue, so I would like  
5 staff to make a comment on that point, as well.

6 **MR. TRAPP:** Yes, ma'am. Let me go first  
7 to the rule, which is 25-17.280, which staff refers  
8 to in our recommendation. It's a very short rule,  
9 so let me just read it to you. It says, "Tradable  
10 renewable energy credits and tax credits shall  
11 remain the exclusive property of the renewable  
12 generating facility. A utility shall not reduce its  
13 payment of full avoided costs or place any other  
14 conditions upon such government incentives" --  
15 meaning tradable renewable energy credits or tax  
16 credits -- "in a negotiated or standard offer  
17 contract unless agreed to by a renewable generating  
18 facility."

19 Staff has interpreted that language to  
20 mean that there should not be any encumbrance placed  
21 upon a standard offer contract on the tradable  
22 renewable energy credits. The reason being a  
23 standard offer contract is not a negotiated  
24 contract, it is a fixed firm contract. If you sign  
25 it, you have got it. There is no variation. Any

1 variation to the standard offer contract becomes a  
2 negotiated contract. So the provision about unless  
3 agreed to by the renewable generating facility is  
4 mooted by a standard offer contract.

5 This issue arose in the 2008 standard  
6 offer contracts beginning with Florida Power and  
7 Light in which the parties singularly agreed to  
8 allow that to take place in that tariff, but then it  
9 was protested by a party, and then there was a  
10 hearing held, and the Commission ruled in that  
11 hearing that those conditions should not be  
12 placed -- that the right of first refusal should not  
13 be placed in the standard offer contract. So  
14 basically the staff is relying on, number one, an  
15 interpretation of the rule, and this is an  
16 interpretation, so you are free to interpret it  
17 differently.

18 We are also relying on past Commission  
19 action in that Florida Power and Light tariff case.  
20 And then I might add that we are also relying on the  
21 fact that there is not an RPS in Florida. Tradable  
22 renewable credits at this point in time are  
23 voluntary, and it just simply occurs to staff that  
24 it's premature to start putting preconditions in a  
25 standard offer contract associated with a



1 marketplace that we haven't even seen yet.

2 So we don't believe that the ratepayers  
3 are prejudiced by this action. We think that the  
4 renewable energy market needs all the help they can  
5 get, and the standard offer contract gives them that  
6 help in terms of full avoided cost. If there is  
7 anything extra out there in terms of renewable  
8 energy credits, whether it be voluntary or  
9 mandatory, then that's the property of the renewable  
10 generator, and until such times as those costs are  
11 internalized in avoided cost, they should be able to  
12 be unconstrained in what they do with those tradable  
13 energy credits. So that's the staff's position.

14 **COMMISSIONER EDGAR:** Thank you. That's  
15 helpful.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioner McMurrin.

18 **COMMISSIONER McMURRIAN:** Actually,  
19 Commissioner Edgar I think asked the question I  
20 would have asked, so I can wait.

21 **CHAIRMAN CARTER:** We'll come back to you  
22 later?

23 **COMMISSIONER McMURRIAN:** Sure.

24 **CHAIRMAN CARTER:** Okay. Commissioner  
25 Skop.

1                   **COMMISSIONER SKOP:** Thank you, Mr.  
2 Chairman.

3                   Again, going back to the FPL decision,  
4 again. FPL asserted that the provision is  
5 reasonable consistent with the applicable rules and  
6 statute. I wholeheartedly agree. The provision Mr.  
7 Trapp read deals about such government incentives.  
8 And I think that with all due respect, I would  
9 disagree with the representation that a TREC is a  
10 government incentive. That is clearly not true.

11                   An investment tax credit is a government  
12 incentive, a production tax credit is a government  
13 incentive, but I have never heard of a tradable  
14 noncompliant TREC being a government incentive. So  
15 I think that is an absolutely incorrect  
16 interpretation that is -- again, I respectfully  
17 disagree with staff.

18                   Secondly, the period being placed on the  
19 RECs, would 30 days perhaps be overreaching?  
20 Absolutely. Would five days be consistent with  
21 giving a utility a reasonable right to, you know,  
22 purchase the RECs for compliance? Yes. But this  
23 whole notion that we are going to be in a realtime  
24 market, a spot market like we would be for  
25 electricity for RECs is patently absurd. I mean,

1 you know, I don't see a market like the New York  
2 Stock Exchange where we realtime trade RECs. I  
3 mean, I just don't see that ever materializing.

4 So, again, I'm trying to do what I feel is  
5 reasonable. But, again, I think if I take exception  
6 to some of the things that staff is suggesting, it's  
7 probably founded on me having actual real world  
8 renewable experience and knowledge of standard  
9 industry practices. And so if I feel passionately  
10 about that, that's probably me trying to make sure  
11 that we drive the correct policy. But when I hear  
12 our rule being interpreted in a manner that does not  
13 comport with, you know, reality, I guess I take a  
14 little bit of exception to that, because to my  
15 knowledge TRECs are not government incentives.  
16 Again, investment tax credits, I have no problem  
17 with. Production tax credits for wind are  
18 government incentives. But I have never heard of a  
19 TREC being deemed or considered to be a government  
20 incentive.

21 So, again, I think FPL's interpretation as  
22 properly plead in the previous case was spot on. It  
23 was accurate. Was the 30-day period perhaps  
24 excessive? Perhaps. Okay. That is a little bit,  
25 perhaps, maybe overreaching. A five-day period, I

1 mean, seems very reasonable. It is almost realtime.  
2 You give a utility, hey, we have a bona fide offer  
3 from another purchaser; do you want to, you know,  
4 purchase the attributes or do you want us to sell  
5 them elsewhere. And, again, I'm not trying to  
6 infringe the right of renewable generators; I'm very  
7 passionate about making sure that there is an  
8 equitable marketplace. You know, I support standard  
9 offer contracts. I've actually managed them in  
10 California.

11 So, again, I think that the standard offer  
12 contract historically really hasn't can kind of  
13 worked in Florida. I know it certainly works in  
14 California because PG&E gets 20 percent of their  
15 renewables -- or actually 20 percent of their  
16 generation under standard offer contracts. So,  
17 again, I would just respectfully -- not to belabor  
18 the point -- take exception to staff's reasoning and  
19 interpretation. And, again, I would reemphasize  
20 that I feel that the right of first refusal is not  
21 an undue burden or unduly prejudicial to a renewable  
22 generator so long as the period is finite in  
23 duration, and I believe five days achieves that  
24 finite period.

25 **CHAIRMAN CARTER:** Thank you, Commissioner.

1           I think that what staff was saying is that  
2 this is how they interpreted the rule and we are  
3 free to interpret it as we deem necessary. And I  
4 think Mr. Trapp was fairly clear on that.

5           Commissioners, anything further?

6           Commissioner Edgar, you're recognized.

7           **COMMISSIONER EDGAR:** I just want to make  
8 sure that I understand, and I'm not sure that I do  
9 on one point, one specific point. And that is the  
10 comments that Commissioner Skop, or the  
11 interpretation about the TREC being in a different  
12 category or a different characterization than, say,  
13 a government tax incentive.

14           Mr. Trapp, could you speak to that very  
15 narrow point, again?

16           **MR. TRAPP:** I'm not sure I have an  
17 opinion. Commissioner Skop may be technically  
18 correct on that. I just know in the context of the  
19 rule, the way I read the sentence and the way I  
20 recall the sentence being constructed, rather than  
21 reiterate the two words or the two phases, the term  
22 such government incentives was used, and I believe  
23 in the context of the sentence it embraces both  
24 tradable renewable energy credits and tax credits.  
25 If that's a technical faux pas, maybe we need to

1 clarify the rule that it is either one or the other  
2 or both. But that's at least the way we have been  
3 interpreting the rule.

4 **COMMISSIONER EDGAR:** Thank you.

5 Just to say I have gone back also and  
6 reviewed the decision that we made. It seems like  
7 much longer ago, but it was only about a month ago  
8 on the standard offer contract item that had come  
9 before us for FPL, and I'm still comfortable with my  
10 decision on that one. I am very, very sensitive to  
11 the concerns that the Commissioner has expressed,  
12 and in particular the issue about a potential RPS in  
13 the future.

14 Commissioner, I think you made the  
15 statement that the TRECs would obviously be needed  
16 to comply with an RPS, and I just have to agree with  
17 staff that I think those types of statements to me,  
18 as far as decisions that we are making at this point  
19 in time, seem a little bit premature, as well. So I  
20 guess, Mr. Chairman, I'm comfortable with the staff  
21 recommendation.

22 **CHAIRMAN CARTER:** Commissioner Skop,  
23 you're recognized for a response.

24 **COMMISSIONER SKOP:** Thank you, Mr.  
25 Chairman, and I concur with that.

1 I guess the problematic phrase to me is  
2 government incentives. If that phrase were not  
3 included in the language of the rule, I would agree  
4 with staff. However, again, I think those words are  
5 words of limiting what conditions could be placed  
6 upon such standard offer contracts. And, again, I  
7 just think based on having industry experience and  
8 renewable experience, again, I just respectfully  
9 take a different opinion.

10 I'm not looking at it in -- you know, from  
11 staff's perspective, I'm looking at it from what  
12 happens in the real world, and that is often  
13 something that I found over the course of my time at  
14 the Commission to be lacking from our  
15 recommendations as they pertain to renewables. So,  
16 again, trying to bring that real world experience  
17 and do what's fair and what is good policy is merely  
18 what I'm trying to, you know, encourage our staff to  
19 do, but often we disagree.

20 So, again, I respect Commissioner Edgar's  
21 comments. I think that certainly I probably would  
22 have the same concern with a 30-day period, that  
23 being overreaching, but a five-day period is very  
24 reasonable. And, you know, even if I were to  
25 purchase a stock today, I wouldn't get confirmation

1 of that in closing of that but for three days. So,  
2 again, I guess it's just a respectful disagreement  
3 with staff's position.

4 **CHAIRMAN CARTER:** Commissioner McMurrin.

5 **COMMISSIONER McMURRIAN:** Thank you,  
6 Chairman.

7 And I'll just say that I, of course, was  
8 persuaded by the renewable generators arguments in  
9 the FPL hearing that the 30-day period was too long,  
10 and I think that Commissioner Skop is saying that,  
11 as well.

12 I'm not sure that the five days is too  
13 long. And you'll recall, Commissioner Skop, that  
14 early on you and I shared some similar opinions  
15 about the TRECs and the right of first refusal in  
16 some of our other cases. But I'm persuaded that it  
17 is probably the better policy at this point to not  
18 include the -- well, to not include the right of  
19 first refusal in the standard offer contract. I  
20 think it's just cleaner as far as a standard offer  
21 contract not to have that kind of language in there,  
22 whether five days is too long or not, and just  
23 delete that from the -- just delete that right of  
24 first refusal provision from these contracts I think  
25 is probably the better policy now. So I am in



1 support of the staff recommendation.

2 **CHAIRMAN CARTER:** Commissioners, anything  
3 further?

4 **COMMISSIONER ARGENZIANO:** Mr. Chair.

5 **CHAIRMAN CARTER:** Commissioner Argenziano,  
6 you're recognized.

7 **COMMISSIONER ARGENZIANO:** Can you hear me  
8 okay?

9 **CHAIRMAN CARTER:** We can now, yes, ma'am.

10 **COMMISSIONER ARGENZIANO:** I am in support  
11 of staff's recommendation, also.

12 **CHAIRMAN CARTER:** Thank you, Commissioner.  
13 Commissioner Edgar, you're recognized.

14 **COMMISSIONER EDGAR:** Thank you, Mr.  
15 Chairman.

16 I make a motion at this time in favor of  
17 the staff recommendation on Item 9.

18 **COMMISSIONER McMURRIAN:** Second.

19 **CHAIRMAN CARTER:** It has been moved and  
20 properly seconded.

21 Commissioners, any further debate? Any  
22 further debate?

23 Hearing none. We have a motion and a  
24 second. All in favor, let it be known by the sign  
25 of aye.

1 Aye.

2 **COMMISSIONER EDGAR:** Aye.

3 **COMMISSIONER McMURRIAN:** Aye.

4 **COMMISSIONER ARGENZIANO:** Aye.

5 **CHAIRMAN CARTER:** All those opposed, like  
6 sign.

7 **COMMISSIONER SKOP:** Aye.

8 **CHAIRMAN CARTER:** Show it done.

9

10

11

12

13

14 **CHAIRMAN CARTER:** Let's give staff an  
15 opportunity to change out for Item 11.

16 Staff, you may proceed.

17 **MR. LESTER:** Good morning, Commissioners.

18 I'm Pete Lester with staff, and we have a new staff  
19 member who's going to introduce Item 11, Ms. Kaley  
20 Thompson.

21 **MS. THOMPSON:** Good morning,  
22 Commissioners. I'm Kaley Thompson with staff.

23 Item 11 is a post-hearing item related to  
24 the Commission's prior prudence review in Docket  
25 Number 060658. In that docket, the Commission found

1 PEF to be imprudent with their pole purchases from  
2 2003 to 2005. In this docket, the Commission must  
3 determine if PEF's management failures resulted in  
4 higher fuel costs for 2006 and 2007.

5 Issue 1 involves whether PEF incurred  
6 excess coal costs at Crystal River Units 4 and 5.  
7 Because your decision for Issue 1 is affected by  
8 Issues 1A through 1E, staff recommends that you  
9 decide those issues first. Issue 1A involves the  
10 appropriate methodology for measuring excess costs.  
11 With some modifications, staff is recommending the  
12 Commission follow the methodology established in the  
13 previous order.

14 Issues 1B and 1D address the type of coal  
15 PEF should have used as the 20 percent blend  
16 component for 2006 and 2007. For both years, staff  
17 is recommending Powder River Basin coal with a heat  
18 content of 8,800 Btus per pound and an SO<sub>2</sub> emission  
19 rate of .8 pounds per MMBtu.

20 In Issues 1C and 1E, staff calculates  
21 excess costs using inputs to the methodology,  
22 including average spot market prices, appropriate  
23 tons, and transportation costs. Staff recommends  
24 the Commission find excess costs of approximately  
25 \$7.7 million.

1           In Issue 2, staff recommends a refund of  
2 the excessive costs with interest through the 2010  
3 fuel factors.

4           In Issue 3, staff addresses future action  
5 by the Commission. Staff recommends the Commission  
6 require PEF to file a report addressing plant  
7 modifications and its efforts to prudently procure  
8 coal. A summary of the positions of the parties and  
9 staff's recommendation can be found in the table on  
10 Page 5, and staff is prepared to go issue-by-issue  
11 or proceed as you please.

12           **CHAIRMAN CARTER:** Thank you.

13           Commissioners, we'll get into our  
14 discussion. I think we're in post-hearing decision,  
15 so it is limited to Commissioners and staff. Is  
16 that correct?

17           **MS. BENNETT:** That is correct, Mr.  
18 Chairman.

19           **CHAIRMAN CARTER:** Okay. Now,  
20 Commissioners, how do you want to proceed with the  
21 questions -- Commissioner Edgar, you're recognized.

22           **COMMISSIONER EDGAR:** Mr. Chairman, I know  
23 that the staff has made the recommendation that we  
24 begin with Issues 1A through 1E, I think it is, 1E,  
25 and then go back to 1. So I guess it would be

1 helpful to me, and I realize some of this was just  
2 said, but it would also be helpful to me if they  
3 would briefly walk us through those Issues 1A  
4 through 1E, and then take questions as they may  
5 arise.

6 **CHAIRMAN CARTER:** Okay. Staff.

7 **MR. LESTER:** Issue 1A is the appropriate  
8 methodology. Staff is essentially following this as  
9 a follow-through from the previous case, so the  
10 methodology is basically the methodology of the  
11 refund order. We are making a modification to  
12 increase the capital cost part of the  
13 cost-effectiveness test based on Progress'  
14 testimony, and that's essentially 1A, and that would  
15 apply to both years.

16 1B would be the choice of coal for 2006,  
17 the appropriate proxy coal for 2006. That issue --  
18 I believe OPC's position was to use either the  
19 Kennecott Spring Creek coal or a type of PRB coal,  
20 Powder River Basin coal. Progress used the coal for  
21 2006 based on its purchase of Powder River Basin  
22 coal for its May 2006 test burn, and staff is  
23 recommending a PRB coal, a specific type, which is  
24 the standard typical type of PRB coal, which is 8800  
25 Btus per pound and an SO2 emission rate of .8 pounds

1 of SO2. That is our recommendation in both 1B for  
2 2006 and 1D for 2007.

3 1C and 1E are basically the calculations  
4 of the amounts for each year. Staff has included  
5 transportation cost and SO2 allowance cost, and then  
6 we have come up with the actual dollar amounts for  
7 each year. That's a basic summary of all the -- 1A  
8 through 1E.

9 **CHAIRMAN CARTER:** Commissioners, what  
10 staff has just done was take the grouping of 1A  
11 through 1E, so at this point in time, any questions?

12 Commissioner Skop, you're recognized.

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

15 Could also in introducing the issue, staff  
16 explain or walk the Commission through the handout,  
17 the alternate calculation that staff has prepared.

18 **MR. LESTER:** Staff has made a calculation  
19 applying the methodology a little bit differently.  
20 The methodology displaces the highest cost coal, the  
21 most expensive coal. And staff has --

22 **CHAIRMAN CARTER:** Is this the document  
23 you're looking at, Pete?

24 **MR. LESTER:** Yes, sir. That document  
25 there, yes, sir. Sorry.

1                   **CHAIRMAN CARTER:** It's entitled excess  
2 2006/2007 coal at CR-4 and CR-5 displace an average  
3 CAPP/foreign instead of highest priced CAPP/foreign  
4 coal.

5                   **MR. LESTER:** Yes, sir, that is correct.

6                   **CHAIRMAN CARTER:** I wanted to do that  
7 because Commissioner Argenziano is not here so we  
8 want to make sure we are all on the same page, we're  
9 talking about the same thing. You may proceed.

10                   **MR. LESTER:** Okay. This would compare to  
11 Attachment A in the staff's recommendation, which is  
12 the last page of the staff's recommendation. And  
13 staff has calculated -- the big difference here  
14 would be in the staff's primary recommendation, or  
15 our recommendation. We have used the actual CAPP  
16 coal prices, the coal prices actually used at CR-4  
17 and CR-5, and those come out to -- this would be the  
18 highest cost coals, which is \$3.30 per MMBtu and  
19 \$3.47 per MMBtu. In the analysis in the handout,  
20 that's Column B, instead of using the 3.30 and the  
21 3.47, it would come to 2.86 and 3.07. And that's  
22 based on -- instead of displacing the highest cost  
23 coals, the average coal is displaced. It results in  
24 no refund for 2006, and some smaller amount there by  
25 one point -- approximately \$2 million for 2007.

1           **COMMISSIONER EDGAR:** Mr. Chairman, I would  
2 just -- I'm sorry, and what you are saying, I think,  
3 is sort of the result of this analysis or one is no  
4 refund in 2006, and could you say the amount again,  
5 that the calculation would indicate for 2007.

6           **MR. LESTER:** It is \$2,057,000. It's right  
7 there at C on that handout.

8           **COMMISSIONER EDGAR:** Yes.

9           **MR. LESTER:** For 2007 it is \$2,057,108.

10          **CHAIRMAN CARTER:** Where?

11          **COMMISSIONER EDGAR:** I don't know. Okay.  
12 I'm looking at C.

13          **CHAIRMAN CARTER:** It's on the bottom on  
14 the far right.

15          **COMMISSIONER EDGAR:** Ah, I found it.  
16 Okay. I was looking under C. Oh, that C. I was  
17 doing A through --

18          **MR. LESTER:** I'm sorry.

19          **COMMISSIONER EDGAR:** No, that's okay.

20 Thank you, Mr. Chairman.

21 Got it now. Thank you.

22          **CHAIRMAN CARTER:** Okay. You may proceed.

23          **MR. LESTER:** Essentially that analysis is  
24 displacing the average coal instead of the most  
25 expensive coal. And the way we proceeded, the way



1 we recommended what we recommended is this proceeds  
2 from the refund order from the previous case for the  
3 highest cost coal that was displaced and also both  
4 Progress Witness Heller and OPC Witness Putman both  
5 agreed, or both based their methodology on  
6 displacing the most expensive coal.

7 As a part of some discovery exhibits, and  
8 Progress did respond that the methodology is  
9 conservative or may introduce bias because the  
10 highest cost coal may not always be the coal that  
11 could be displaced. So staff is recommending in  
12 Issue 3 that the methodology be changed going  
13 forward if it's ever applied again to only address,  
14 or to be done on an average basis as we have done it  
15 in this handout. That's essentially the differences  
16 between this handout and what staff is recommending.

17 **CHAIRMAN CARTER:** Okay. Commissioners,  
18 anything -- we are on Items 1A through IE is what we  
19 are discussing in this handout that we just got, was  
20 staff's -- and I don't want to mischaracterize it.  
21 Is this updated, or revised, or what are you guys  
22 calling this?

23 **MR. HINTON:** That is just an alternative  
24 calculation. Staff's recommendation is still what  
25 is contained within the recommendation that was

1 filed in this docket. This was just something that  
2 was done as a request for an alternative  
3 calculation.

4 **CHAIRMAN CARTER:** Okay. Thank you.

5 Commissioner Skop, you're recognized.

6 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

7 Just to add some clarity, I requested staff to  
8 perform this alternate calculation on the basis that  
9 I felt that the staff recommendation really did not  
10 fully explore or rebut what I thought I heard the  
11 Progress argument to be, which is different than  
12 what happened in the last refund case. In this  
13 particular case, Progress had argued that they were  
14 imprudent, but they covered and cured by burning a  
15 blend of CAPP coal and foreign bituminous coal, and  
16 that as a result of doing that, there were either  
17 nominal damages or no damages.

18 I don't know if that is true or not,  
19 because, again, I thought that the staff  
20 recommendation did not fully vet that issue and  
21 effectively rebut it. So I would ask staff to try  
22 and address what I thought the argument to be in the  
23 interest of fairness to make sure that we had all of  
24 the information before us. I think it is a very  
25 different argument that the Commission did not hear

1 last time. And last time, again, in the last coal  
2 refund case, at least from my perspective, damages  
3 were readily apparent. And in my opinion, I argued  
4 for a much larger refund than that was adopted by  
5 the Commission. But, in this case, I'm not really  
6 so sure what the right result is, and I don't feel  
7 that the staff recommendation really gave me  
8 complete vetting of the issues before us.

9 So, again, I asked that alternate  
10 calculation to be performed to kind of see not  
11 rigidly following a methodology, per se, because,  
12 again, I heard a different argument, or I thought I  
13 heard a different argument being advanced. But,  
14 again, I think that the methodology was applied  
15 consistent with what the Commission previously did,  
16 but I don't really feel that that took into account  
17 the argument that I heard advanced at the hearing.  
18 And I think that this alternate calculation I had  
19 asked staff to take a look at trying to ascertain  
20 whether if what Progress said they did and try and  
21 look at what the numbers would be assuming that were  
22 true. Because, again, in the staff recommendation I  
23 didn't feel that that was adequately covered. I  
24 just think that it was somewhat preordained that we  
25 just adopt the same previous methodology and that

1 ignores what I thought to be the central argument  
2 that I heard advanced by Progress was that, yes, we  
3 were imprudent, but we did something completely  
4 different by burning a blend of bituminous coals and  
5 as a result of that there were no damages.

6 So, again, I think in the interest of  
7 fairness a very important issue to explore. I think  
8 that, you know, refunds are certainly popular, but  
9 what's important to me is making sure that the case  
10 before us is properly decided on the merits. And I  
11 think that in the staff recommendation, again, I  
12 have some concerns that I don't have all the  
13 information that I need before me to be comfortable  
14 making a decision, and I'm not sure as to whether  
15 refunds are properly warranted or not warranted. I  
16 really don't know.

17 This one is very tough for me. Again, I'm  
18 fully in support of refunds where they are  
19 warranted. I was, you know, a pretty heavy hitter  
20 last time, but this one is not as clear cut. And  
21 what I need to do, what I think as a Commissioner to  
22 make a effective decision in the interest of  
23 fairness is convince myself that Progress' argument  
24 is not one of merit. And from what I am seeing in  
25 this alternate calculation I'm not necessarily

1 seeing that. So, again, instead of being rigidly  
2 bound to a methodology and ignoring a central  
3 argument that has been advanced in this case that  
4 was not advanced in this prior case, what's  
5 important to me is looking at the big picture and  
6 trying to ascertain whether the consumer was harmed  
7 or whether Progress actually did something that  
8 resulted in no harm to the consumer.

9 So I apologize for taking the time. But,  
10 again, I just wanted to provide some clarity as to  
11 what the intent was behind this alternate  
12 calculation that I had asked staff to take a look  
13 at.

14 **CHAIRMAN CARTER:** Okay.

15 Commissioner McMurrin.

16 **COMMISSIONER McMURRIAN:** I guess I'll  
17 start with a comment and get to a question. This  
18 one was tough for me, too, because the last one for  
19 me was by no means clear cut. So I'm at a little  
20 bit different dilemma than I think Commissioner Skop  
21 is. But having said that, and because this rec  
22 carries forward the methodology that was set up from  
23 the decision we made last time, again, that's part  
24 of the reason, you know, I'm having a tough time  
25 with it.

1                   But I want to focus in on Page 33 where  
2 staff talks about Progress' statement about  
3 introducing bias into the methodology because of the  
4 most expensive coal may not always be the coal that  
5 could have been displaced. And staff gives a  
6 reference there before the conclusion paragraph, and  
7 I just wanted to ask staff about that a little bit  
8 more. If they could elaborate there on that  
9 argument. And to the extent that this analysis that  
10 is before us averages out the CAPP prices, perhaps  
11 it's -- is this analysis aimed at addressing that  
12 issue? And if I need to address that, too,  
13 Commissioner Skop, I can, as well, if he asks for  
14 that analysis to be done.

15                   **MR. LESTER:** The analysis we are making on  
16 Page 33, that paragraph right above the conclusion  
17 is saying going forward, you know, we saw  
18 testimony -- or exhibits, responses to staff  
19 interrogatories from Progress that said it could  
20 introduce bias, the methodology, because it  
21 displaces the most expensive coal and maybe not the  
22 average, or something else.

23                   There wasn't a lot there. We have the  
24 responses available, and so that was the reason we  
25 thought going forward the methodology would need to

1 be changed. However, the case that was presented,  
2 the direct cases by both the company witness and the  
3 OPC witness, as well as the refund order, used the  
4 methodology that displaced the most expensive coal.  
5 So we chose to go with that for purposes of  
6 calculating the amounts for excess cost for 2006 and  
7 2007.

8 But then going forward, which is what  
9 Issue 3 is all about, we chose in that paragraph  
10 there to address the comments about bias that came  
11 out in the responses to staff interrogatories. And  
12 those responses are part of the record. They are in  
13 Exhibit 2.

14 **COMMISSIONER McMURRIAN:** So you haven't  
15 tried to address the concern about bias and  
16 displacing the most expensive coal, because you're  
17 stating that the witnesses on both sides of the case  
18 applied that methodology in the same way.

19 **MR. LESTER:** Yes, that's right. Since the  
20 witnesses both followed the methodology from the  
21 refund order, they both acknowledged they displaced  
22 the most expensive coal, that's what we went with  
23 for 2006/2007. There really hasn't been a  
24 quantification, shall we say, of bias or anything.  
25 There has been the statements in the responses. It

1 wasn't particularly firm, so we chose to open it up  
2 for modifying the methodology going forward, but not  
3 for the purposes of 2006/2007.

4 **MR. HINTON:** Commissioner, if I can add to  
5 it --

6 **CHAIRMAN CARTER:** Casey.

7 **MR. HINTON:** -- to what Mr. Lester just  
8 said. Going forward, what we have said in Issue 3  
9 is let's take a look at what coal would actually be  
10 displaced. And so it may not even be the average  
11 price that we end up with, but it's let's look more  
12 at what would actually have been displaced or be  
13 displaced, which could end up being the highest, or  
14 it could end up being the lowest, or what have you.  
15 So it may or may not look like this alternative  
16 calculation that you see before you. I just wanted  
17 to clarify that.

18 **COMMISSIONER McMURRIAN:** And I guess one  
19 final question.

20 **CHAIRMAN CARTER:** You're recognized.

21 **COMMISSIONER McMURRIAN:** So if we were to  
22 find that there was a bias in that type of  
23 methodology going forward, or here, or whatever, the  
24 averaging of the CAPP delivered prices might be a  
25 way to address that?



1           **MR. LESTER:** Possibly, yes, ma'am. We  
2 would have to look. We would probably need more  
3 testimony from someone saying exactly which coal  
4 would be displaced.

5           **MR. HINTON:** The record was not developed  
6 in that regard, but we thought that Progress made a  
7 compelling point that just displacing the most  
8 expensive CAPP could potentially introduce a bias  
9 towards PRB, and so it may be a more appropriate  
10 methodology of looking at what actually would have  
11 been displaced. And, you know, if you are taking  
12 the average of the total CR-4 and 5 costs could be  
13 an easy way of reaching that calculation, but we  
14 just don't have those arguments presented in the  
15 record at this time.

16           **COMMISSIONER McMURRIAN:** Okay. Thank you.

17           **CHAIRMAN CARTER:** Thank you.

18           Commissioner Skop.

19           **COMMISSIONER SKOP:** Thank you, Mr. Chair.

20           And just to add to some of the comments  
21 that Commissioner McMurrian made, I guess what's  
22 important to me here just from my perspective is  
23 ascertaining whether the consumer was harmed by the  
24 imprudence warranting refunds.

25           And then, secondly, as staff has

1 recommended in Issue 3, restoring the fuel burn  
2 flexibility associated with inherent capability of  
3 that unit. And that has been something I have  
4 harped on continuously through my opinion last time  
5 at hearing and on a forward-going basis.

6 And on Issue 3, I'm somewhere between what  
7 OPC wants in terms of independent monitoring of fuel  
8 burn for PRB, which I think is something that still  
9 needs to be done, but I also support staff's view to  
10 the extent that Progress may, with the addition of  
11 their scrubbers in 2010, decide they want to do  
12 something else.

13 So as long as we have flexibility to burn  
14 the most cost-effective fuel at any given time and  
15 have full utilization of that unit to its  
16 capabilities, that's my ultimate goal. But I think,  
17 again, what I'm very concerned with here, and I  
18 don't see it articulated because, again, I think  
19 we're in the methodology mind-set as opposed to what  
20 actually transpired in terms of damages, whether  
21 Progress' argument that they were imprudent, but --  
22 and, again, I don't know if this is an argument, I'm  
23 just basing it on what I thought I heard, which,  
24 again, is not really expanded upon in the  
25 recommendation which gives me pause because, again,

1 it is an argument that was not advanced last time.  
2 And last time, like I say, the damages were clearer  
3 and I hit them pretty hard in my opinion.

4 But this one, I'm uncertain, because I'm  
5 trying to address the validity of the argument that  
6 I thought I heard Progress raise which was we were  
7 imprudent, we covered and cured because we burnt a  
8 blend of CAPP coal and foreign bituminous coal and  
9 there were no damages or nominal damages. And I  
10 think that's what this alternate recommendation --  
11 excuse me, let me choose my words. I think that is  
12 what this alternate analysis is kind of hinting at.

13 And, again, I think looking at the average  
14 price of the bituminous coal tends to remove those  
15 biases that I think that Commissioner McMurrin had  
16 alluded to and staff had some pause with. But I  
17 think at least from what I see is that we seem to  
18 be, you know, somewhat concerned about rigidly  
19 following a methodology for the sake of methodology  
20 and we seem not to be giving any consideration or  
21 proper vetting of what may be a valid defense or  
22 argument on Progress' part, and that is my only  
23 thing.

24 I can't say at this point whether refunds  
25 are properly warranted. They may be. And if so, I

1 will fully support it. But, again, I think what we  
2 have here is a tale of two cities. If we look at  
3 the staff analysis rigidly following the  
4 methodology, you see a refund that is less than what  
5 OPC has asked for, but it is substantial. But if  
6 you were to look at trying to follow what Progress  
7 alleges they did, and try and put some numbers to  
8 that, you see a much larger refund -- excuse me, a  
9 much smaller refund, which might be reasonably  
10 expected if Progress' argument is true. And I'm not  
11 sure right now. I'm trying to make sure. Again,  
12 refunds are very popular, and I am fully supportive  
13 of refunds when they're necessary. But, again, what  
14 is important to me is we decide cases on the merits,  
15 and to me I'm trying to bring some clarity into  
16 rebutting the Progress argument before I would just  
17 adopt a staff recommendation.

18           And what I'm seeing here is the divergence  
19 between the two analysis could be substantial, and  
20 whether we're playing with the ratepayers' money  
21 which they would be entitled to via refunds, or the  
22 company's money, that's a big chunk of money that's  
23 in dispute. So it's important to me that we make  
24 the right decision on the merits.

25           And so, again, part of me would want to

1 defer this to do it, you know, but I don't think  
2 that's appropriate. So I will yield to my  
3 colleagues and just figure out where the discussion  
4 goes. But could staff point in the recommendation  
5 to where that argument was rebutted or advanced,  
6 because I really didn't see it, and that's why I  
7 asked the calculation to be performed.

8 **MR. HINTON:** Commissioner, I'll take a  
9 quick crack at it, but then hand off to Mr. Lester.  
10 And I understand your concern, and there are always  
11 nuances to positions, especially when they're  
12 presented and discussed during cross-examination.

13 Staff tried to address Progress' position  
14 as presented in their testimony. The primary  
15 position they presented throughout this case, which  
16 was, yes, that their coal purchases with their blend  
17 of foreign coals and so forth did actually save  
18 customers money when compared to PRB. But if you  
19 look at their positions step-by-step through the  
20 process when we look at what coal do they recommend  
21 as a candidate for comparison, they recommend a PRB,  
22 a particular PRB purchase -- based upon a particular  
23 PRB purchase with a particular price associated with  
24 it. And, you know, they should compare that to  
25 their actual purchases displacing the most expensive

1 CAPP coal.

2 Their case was in line with the  
3 methodology, and where staff differed with them was  
4 primarily in the selection of the PRB coal to  
5 compare to. And if you take their PRB coal with  
6 their price and plug it in, then, yes, it looks like  
7 you expressed their argument was, we covered it.  
8 You know, we may have been imprudent in '01 and '02,  
9 but our purchases covered it this time and the  
10 customers didn't lose any money.

11 When you use their price, it does look  
12 like that. When we used the average spot market  
13 price that staff recommends, it tells a different  
14 story. We show that there were excessive costs, so  
15 we thought we would try to address their concern.

16 **COMMISSIONER SKOP:** And, Mr. Chair, and to  
17 Mr. Hinton, do I agree with the staff proxy that was  
18 used for the spot price of PRB coal. Again, I'm not  
19 so sure that the Progress one was based on a small  
20 purchase. I think staff properly adjusted that.  
21 But, you know, that is the PRB coal. If you are  
22 burning a blend of CAPP coal and foreign bituminous  
23 coal, certainly the tonnage of the bituminous coal  
24 necessary to maintain the same heat content in the  
25 overpressure condition to generate the same relative

1 amount of electricity would be less.

2 So, again, I think that, you know, if we  
3 rigidly follow trying to displace the higher -- and  
4 I think what this all boils down to is depending on  
5 methodology, that's going to drive the refund. And  
6 if we rigidly follow what we did last time without  
7 really kind of considering the new argument that has  
8 been advanced, and we rigidly discount only the  
9 highest cost coal or displace the highest cost coal  
10 which kind of -- I don't know how you would do that,  
11 but it seems, you know, like what we did last time.

12 But if you were to look at the average  
13 cost of what they kind of did in terms of how they  
14 alleged they might have covered and cured by burning  
15 the CAPP coal and foreign bituminous coal, if you  
16 look at the average price over the fuel cost over  
17 the year, which I think staff did, the results are  
18 different. And it still results in a refund, but  
19 it's more favorable than the rigid analysis.

20 And, again, I'm not advocating. I want to  
21 make it crystal clear, I'm not trying to make a case  
22 for Progress. I mean, I hit them really hard last  
23 time. I mean people were probably shocked and  
24 offended by how to the jugular that concurring  
25 opinion was; but, again, I tried to go for a bigger

1 refund last time and it wasn't adopted. But, again,  
2 I still feel strongly about what I said last time.

3 In this case, you know, I feel it is not  
4 as clear to me. And, you know, when I'm dealing  
5 with people's money, whether it be the ratepayers'  
6 money or somebody else's money, again, I need to get  
7 a comfort level when I am making decisions like  
8 that. And so, again, not to belabor it, but the  
9 choice of input drives the refund here, and I'm not  
10 so sure that following a rigid methodology for the  
11 sake of following a rigid methodology versus taking  
12 a holistic approach and looking at what actually  
13 happened in reality in the big picture is something  
14 that is easily overlooked from my perspective when  
15 faced with making a decision of that.

16 But I fully agree with staff and OPC that  
17 on a forward-going basis we need to restore the  
18 inherent capabilities, the full inherent  
19 capabilities of these units to burn whatever fuel is  
20 most cost-effective at any given time. And, you  
21 know, I have no problem with that, and, you know, I  
22 think the happy compromise on Issue 3 lies somewhere  
23 between what OPC wants with some independent  
24 analysis and test burns and what staff is  
25 recommending. Do I necessarily think that, you



1 know, the sole supply of foreign coal should come  
2 from Indonesia? Well, you know, supply interruption  
3 risks happen. You know, pretty much the whole  
4 notion of buy domestic has gone out the window here  
5 when we tell them to search the world over for the  
6 most effective priced coal.

7 But, again, you know, if you were to use  
8 that as supplemental coal when you can get it  
9 cheaply, that's fine. But to do that as your  
10 primary supply bring some interruption risks where  
11 force majeure or additional costs could come into  
12 play. So I think those are all factors that  
13 Progress considers when it evaluates what coals to  
14 use. So, again, I would commend staff on, you know,  
15 rebutting the issues raised by OPC as to what coal  
16 was appropriate. But, again, I think the troubling  
17 issue to me, and, again, I don't want to kind of  
18 take over the proceeding here, I want to open it up  
19 to my colleagues, but the troubling issue is is  
20 there validity to what Progress said they did, and  
21 if they actually, you know, by mere happenstance  
22 happen to do something to cure their imprudency, if  
23 there was no harm to the consumer, then, you know,  
24 damages probably would be nominal or not warranted.  
25 And, you know, then the important point to me

1 becomes restoring that key capability of the unit to  
2 burn fuel -- I mean, flexible fuel burn, which still  
3 I don't believe has occurred yet.

4 And I know the scrubbers may play into  
5 that, so, again, I'm trying to balance what OPC is  
6 advocating for so this doesn't become a continuing  
7 issue on a year-to-year annual basis, but we need to  
8 bring some resolution in making sure that those  
9 units are restored to their inherent capability that  
10 the ratepayers paid for. And that's the primary  
11 concern, not withstanding ascertaining whether  
12 consumers were harmed or refunds were warranted.  
13 So, thank you.

14 **CHAIRMAN CARTER:** Thank you, Commissioner.  
15 Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you, Mr.  
17 Chairman. I think we have had maybe some discussion  
18 in the last few minutes on Issue 3, and I guess I  
19 would just like to say, first of all, I'm not there  
20 yet. So when we come to Issue 3, I would ask that  
21 we can have a little more discussion on that one.

22 But coming back to 1A through E,  
23 Commissioner, I try very hard to keep a sense of  
24 humor, some days I do better than others, but I do  
25 take a little bit of issue with your description a

1        few minutes ago that we are playing with the  
2        customers' or utilities' money. In this room we are  
3        never playing with anybody's money.

4                    And I also want a good decision based on  
5        good policy. So with that in mind, I'd like to ask  
6        staff this question, which I will try to state  
7        clearly. Commissioner Skop has raised a point about  
8        methodology being determinative versus an analysis  
9        of actual damages being determinative. So I would  
10       like staff to speak to that point. And if, indeed,  
11       we are able to make on the record that we have  
12       before us a determination of actual damages without  
13       use of methodology would be one question, and then  
14       if we are, is there a difference in the calculation  
15       between a calculation of actual damages versus the  
16       calculation using the methodology.

17                   **MR. LESTER:** Our application and  
18       methodology was to try to use objective inputs, and  
19       we felt like we couldn't accept the inputs from  
20       either of the witnesses on this, OPC Witness Putman  
21       or Progress Witness Heller. So, I mean, that's our  
22       basis. We are trying to use sort of the methodology  
23       from the last case and as applied by the witnesses  
24       in this case, and then move forward and we have done  
25       that as best we can and that's our recommendation.

1           I think the record is there if you want to  
2 do alternatives to the methodology. And if you find  
3 it appropriate now, I believe the record is there  
4 for making a change if you want to do that. That's  
5 the alternative sheet that was passed out. I'm  
6 sorry if I'm not getting a little closer to your  
7 question there, but --

8           **MR. BREMAN:** I'm Jim Breman. If I may,  
9 Commissioner, I would like to supplement.

10          **COMMISSIONER EDGAR:** Sure.

11          **MR. BREMAN:** The answer is yes to the  
12 question I heard.

13          **COMMISSIONER EDGAR:** I sometimes try to be  
14 clear.

15          **MR. BREMAN:** The refund amount is a direct  
16 result of whatever methodology on a regulatory  
17 principle basis you think is appropriate, okay. The  
18 primary case, as Pete pointed out, was that the  
19 prior order methodology was applied. And that was  
20 the primary case that the utility filed in their  
21 direct testimony and the one to which OPC responded  
22 in their rebuttal -- in their testimony. So that is  
23 what drove us to the point that we are at, and that  
24 is why staff's recommendation has the flavor and  
25 tone that it does, because we are responding to the

1 primary case that came forward.

2 And the answer to the question I thought I  
3 heard is yes. If you pick a different methodology  
4 will it result in a different amount, very likely.  
5 As in the alternative that Commissioner Skop asked  
6 to assess, yes, the answer is going to be a little  
7 bit different. But it all reflects what regulatory  
8 policy you all want to implement. What's the  
9 message you want to send to the utility management.  
10 And we will try to recommend numbers that are found  
11 in the record. And so far, Commissioner, we have  
12 done that.

13 **COMMISSIONER EDGAR:** Thank you.

14 And I guess I would just respond that that  
15 falls right in line with that I'm always striving  
16 for clarity. Some days that's easier than others,  
17 but clarity in our decisions, and clarity in our  
18 messages, and clarity in our analysis. Thank you.

19 **CHAIRMAN CARTER:** Thank you.

20 Commissioners, anything further on Item -- we're not  
21 voting, we're just discussing, right? Anything  
22 further on Items --

23 **COMMISSIONER ARGENZIANO:** Well --

24 **CHAIRMAN CARTER:** Commissioner Argenziano,  
25 you're recognized.

1                   **COMMISSIONER ARGENZIANO:** Yes, and just,  
2 again, for clarification. And I have been listening  
3 and trying not to meld in, I guess, both cases the  
4 one before and this one. But it seems to me that, I  
5 guess, management made a decision not to get their  
6 permits, not to modify plants, not to do all those  
7 things in both cases. And, staff, please jump in if  
8 I am incorrect anywhere, because now they are all  
9 starting to kind of mesh together, and I don't want  
10 to do that.

11                   But, in this case, I guess the same  
12 decisions have been made, and I'm not sure that you  
13 want to reward management for not making -- for  
14 making good decisions -- or making bad decisions,  
15 and it's also fair at the same time that, you know,  
16 PEF did buy coal that burnt -- that they did burn to  
17 provide the power, so the customers have to pay  
18 something. But I don't want us to reward  
19 management, or I don't want to reward management for  
20 making bad decisions, and I think staff was just  
21 indicating that's our decision to make which way we  
22 want to go.

23                   But am I correct that Progress would have  
24 bought the 20 percent PRB coal that would have  
25 reduced the cost? I'm trying to get this wrong, but

1 PEF -- I'm trying to get this right, not wrong.  
2 Sorry, I'm not doing well today with this phone and  
3 everything else -- that would have been purchased  
4 that was most expensive. Does that make sense to  
5 staff?

6 **CHAIRMAN CARTER:** Jim.

7 **MR. BREMAN:** Commissioner, this is Jim  
8 Breman. The question on whether or not the  
9 consumers would have incurred lower total fuel cost  
10 depends on which coal is being displaced by a PRB  
11 purchase.

12 **COMMISSIONER ARGENZIANO:** Right.

13 **MR. BREMAN:** And so that's the question  
14 that is being debated here, whether or not you  
15 displace the highest priced CAPP coal or something  
16 more representative of what the company actually  
17 performs at, which is the system average for the two  
18 units in question. That's the alternative analysis  
19 that was a response to questions from Commissioner  
20 Skop.

21 **COMMISSIONER ARGENZIANO:** Okay. I'll just  
22 listen to the rest and let me think about that a  
23 minute. Thank you.

24 **CHAIRMAN CARTER:** Okay. Commissioner  
25 Skop.

1           Just for what I wanted to do for the sake  
2 of clarity is that we were working on Items 1A  
3 through E, and then we'll deal with 2 and 3. But,  
4 let's kind of -- I think this is kind of like a lot  
5 of moving parts, but let's deal with these parts  
6 first.

7           Commissioner Skop, you're recognized.

8           **COMMISSIONER SKOP:** Thank you, Mr. Chair.

9           And I just wanted to, just for the sake of  
10 clarity, point out the difference between the two  
11 analyses. And, again, I appreciate staff explaining  
12 that in terms of displacing the highest cost versus  
13 looking at the average. The difference between the  
14 two calculations in the staff recommendation with  
15 the total refund using -- displacing the highest  
16 cost would be \$7.7 million. And under the alternate  
17 calculation, if I'm reading that correctly, the  
18 required refund would be \$2 million. Is that  
19 correct, generally?

20           **MR. BREMAN:** If you do -- yes, if you do  
21 it year-by-year.

22           **COMMISSIONER SKOP:** Okay. All right.

23           **MR. BREMAN:** If you take the package  
24 together as what the company did over the entire  
25 average two-year period, the answer could be



1 substantially less. It all depends on your  
2 approach.

3 **COMMISSIONER SKOP:** Okay. Well, I mean --  
4 again, I think Commissioner Argenziano raised an  
5 excellent point to the extent that, you know, there  
6 were certain imprudences, and at the end of the day  
7 I think it's incumbent to evaluate or ascertain  
8 whether the consumer was harmed financially as a  
9 result of that imprudency warranting refunds. And I  
10 think that it's highly dependent on whether you  
11 displace the highest cost coal, which, again, may  
12 have some biases to it, or whether you use a more  
13 system-wide average approach specific for those two  
14 units of what they actually bought and burned. So,  
15 again, I thank staff for its clarification on that.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioners, if there are no further questions on  
18 Items 1A through E, we will proceed with Item 2. Is  
19 everyone comfortable with that?

20 Staff, would you introduce Item 2, please.

21 **MS. ROBERTS:** Good morning, Commissioners.  
22 My name is Arlisha ckkk Roberts with staff.

23 Issue 2 deals with whether Progress Energy  
24 should issue a refund to its customers should the  
25 Commission determine that the cost of coal delivered

1 to Crystal River Units 4 and 5 during 2006 and 2007  
2 were unreasonably high.

3 It is staff's recommendation that the  
4 refund amount including interest should be  
5 recognized within the 2009 annual fuel proceedings  
6 which would affect customer bills in 2010. If the  
7 Commission determines that no refund is warranted,  
8 then this issue is moot.

9 **CHAIRMAN CARTER:** Thank you.

10 Commissioners, we are now dealing with  
11 Item 2, which is the refund method, and they are  
12 dealing with the aspects of that, fuel factors and  
13 things of that nature.

14 Commissioner Skop, you're recognized.

15 **COMMISSIONER SKOP:** Thank you, Mr.  
16 Chairman.

17 And I guess it came to my office, I didn't  
18 request it, but apparently there's another handout  
19 that staff had prepared detailing the various  
20 options in terms of the one-time credit versus doing  
21 it in the way that staff has recommended in its  
22 primary recommendation. Could staff briefly speak  
23 to that, please.

24 **MS. ROBERTS:** Yes, Commissioner Skop.

25 Staff is recommending to do it within the

1 2009 fuel proceedings. It has some advantages,  
2 which are by doing the treatment in -- it effects  
3 the 2010 fuel factors. It has the advantage of  
4 administrative simplicity, rate stability, and  
5 grants refunds to customers shortly after the  
6 decision has been made.

7 As far as the one-time credit, if the  
8 Commission determines that a refund is warranted and  
9 decides to do it in a one-time credit, then we would  
10 seek to have that done within 30 days after the  
11 Commission has ordered -- made the order of the  
12 refund, which would probably be around August. And  
13 the one-time refund credit is a reduction of about  
14 \$2.03 on the 1,000 kilowatt bill.

15 One of the other options with the  
16 remaining months of the 2009 fuel factors, which  
17 will be approximately about five months, which would  
18 result in about a \$2.29 refund over the period,  
19 about 46 cents per month, sorry. And the effect to  
20 the 2010, we don't know that yet because we are  
21 still waiting on those projections, which are  
22 expected to be filed around late August, early  
23 September.

24 **CHAIRMAN CARTER:** Thank you.

25 Commissioner McMurrian, and then I will

1 come back to Commissioner Edgar, and then  
2 Commissioner Skop.

3 **COMMISSIONER McMURRIAN:** Just one quick  
4 one. The 2010 adjustment that you all are  
5 recommending is consistent with how it was done in  
6 the last case with the refund order, right?

7 **MS. ROBERTS:** Correct.

8 **COMMISSIONER McMURRIAN:** Thank you.

9 **CHAIRMAN CARTER:** Commissioner Edgar.

10 **COMMISSIONER EDGAR:** Thank you.

11 I was just going to say that I had  
12 requested in my briefing with staff that they do  
13 this analysis, so thank you for putting that  
14 together, and, of course, distributing it, simply  
15 because I wanted to have a feel for what the numbers  
16 would be. Thank you.

17 **CHAIRMAN CARTER:** Thank you.

18 Commissioner Skop, you're recognized.

19 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

20 And I commend Commissioner Edgar for doing  
21 that because, again, I think it is important for the  
22 Commission to assess its options. I mean, these are  
23 difficult economic times, and, you know, as the  
24 Commission did in the FPL hole drilling case, I  
25 mean, we made the extraordinary decision to refund

1 that money directly to the consumers immediately.  
2 So, again, I think seeing that analysis is very  
3 helpful to me, so thank you.

4 **CHAIRMAN CARTER:** Thank you.

5 Commissioners, anything further on Item 2?

6 Okay. Staff, let's proceed to Item 3.  
7 You're recognized.

8 **MR. LESTER:** Item 3 is staff's  
9 recommendation on what additional action may be  
10 necessary. Staff is recommending that Progress --  
11 the Commission require Progress to file a report as  
12 part of its projection testimony in the fuel docket,  
13 and that would be on September 1st, 2009. The  
14 report should address their efforts to procure coal  
15 in the most prudent manner and include -- address  
16 the issues such as plant modifications and test  
17 burns, and essentially say what the company is doing  
18 to create opportunities and purchase the lowest cost  
19 coal.

20 In addition, we have recommended going  
21 forward that any further or future application of  
22 the methodology be modified to be done on a total  
23 cost basis and consider the coal that would actually  
24 be displaced and not necessarily automatically  
25 displace the most expensive coal.

1                   **CHAIRMAN CARTER:** Thank you, staff.

2                   Commissioner McMurrin, you're recognized.

3 Commissioner McMurrin.

4                   **COMMISSIONER McMURRIAN:** Thank you, Mr.  
5 Chairman. I don't really know if I have a question  
6 in here, or if it's more of a comment.

7                   **CHAIRMAN CARTER:** So make a comment,  
8 that's fine. You're recognized for a comment.

9                   **COMMISSIONER McMURRIAN:** Thank you.

10                   This, obviously, is a very important issue  
11 to talk about how we deal with this going forward,  
12 and I want to get clarification on it just to make  
13 sure I understand what we are talking about, because  
14 Commissioner Skop was talking earlier about, you  
15 know, what his goal was with respect to some of the  
16 earlier issues. And I guess my goal is to make sure  
17 we are on track with letting the company manage the  
18 company and us reviewing those decisions, because in  
19 my mind that's what our job is to do.

20                   Now, to the extent that the Commission has  
21 ordered things in the past order that Progress  
22 hasn't yet completed, I think that your  
23 recommendation is to say to Progress to file a  
24 report and let us know the status of where they are  
25 in complying with that earlier order, and I suppose

1 this one, the order that would result from this one,  
2 as well.

3 But I wanted to see whether or not what  
4 you contemplate would allow them to make a case for  
5 whatever they thought was the best action going  
6 forward. In other words, I'm not sure that I have  
7 enough information to know whether at this time they  
8 should be doing a lot of upgrades and all to make  
9 sure they are able to burn any coal in the world.  
10 And I would like to see what their analysis would be  
11 for what they suggest going forward. And even if it  
12 were -- even if they thought the best course of  
13 action going forward was to suggest that the action  
14 we suggested they take in the last order would be  
15 something different today, I would want to see that  
16 and us be able to review that.

17 It may be that we would still want them to  
18 be on track with exactly what the Commission ordered  
19 in that order, but it seems like the flexibility  
20 thing is important. Not just in the flexibility of  
21 any fuel, but the flexibility in them making the  
22 decision that's best for the ratepayers ultimately.  
23 And to me that is what I care about is making sure  
24 that the most cost-effective option for supplying  
25 power is the one that they take, and that we are

1 always able to review that decision.

2 So I guess I am sort of -- that was sort  
3 of a brain dump there about what my thoughts are  
4 going forward, and I wanted to see if that's  
5 consistent with what you think you have laid out  
6 here.

7 **MR. LESTER:** Yes, ma'am, it is. We're  
8 trying to leave it open. We're trying not to, let's  
9 say, spell out specific coal purchases or something  
10 like that, or getting into, like, what are properly  
11 management decisions. But instead we are trying to  
12 say show us how your procurement policies are  
13 prudent, and how your long-term plans regarding CR-4  
14 and 5 are prudent overall.

15 We're not specifying. We're touching on  
16 some topics like test burns, plant modifications,  
17 exploring coal supply basins, and such as that, but  
18 we are not being overly specific there. We are  
19 leaving it up to the company to come in and tell us  
20 that. And that maybe shifts away from, you know,  
21 what started this case out, which was the imprudence  
22 that began in 2001. We're trying to follow through  
23 to how they are actually currently procuring the  
24 lowest cost coal.

25 **MR. HINTON:** Commissioner, if I might add



1 to that, and really Mr. Lester just kind of  
2 addressed it. In getting to some comments that  
3 Commissioner Skop had said earlier, the Commission  
4 determined they were imprudent in 2001 and 2002 for  
5 not placing themselves in a position to burn PRB  
6 coal when it became cost-effective.

7 Issue 3 is, you know, more or less saying  
8 where are you in that process. If PRB is  
9 cost-effective, can you burn PRB? What have you  
10 done to correct that imprudence in the past? Should  
11 you move forward in that direction or what have you,  
12 as Commissioner McMurrin said and Pete said.

13 We are not trying to specify what the  
14 future should look like, but we wanted to start  
15 talking about the future and what they are doing to  
16 correct that imprudence. And to get to an earlier  
17 concern, as well, staff doesn't believe the  
18 Commission should place itself in a position of  
19 telling the utility what coal to purchase, so we are  
20 certainly not saying go out and select foreign coal.  
21 We're just saying do you have processes in place to  
22 find the most cost-effective coal procurement. And  
23 if it is 100 percent domestic, absolutely, but what  
24 is the most cost-effective and are you placing  
25 yourself in a position to burn the most

1 cost-effective coals.

2 **COMMISSIONER McMURRIAN:** Okay. And I  
3 guess one follow-up comment. I just wanted to make  
4 sure that I'm clear that I'm certainly not  
5 suggesting that the company not follow through with  
6 what we have ordered them to do in the past. But  
7 it's similar -- I was thinking about this yesterday,  
8 and to me it's similar to when we were talking about  
9 some of the pole inspections and things, and we had  
10 required a certain cycle on pole inspections, and  
11 yet, in my mind, I felt like we need to be open to  
12 someone coming in and making the case that perhaps  
13 not doing the exact cycle that we laid out might be  
14 better for them and might be better for the  
15 ratepayers, ultimately.

16 And I wanted companies to have that  
17 flexibility to come in, to feel like they could come  
18 in and tell us we think there is a better way to go  
19 about this. And to me that is what I am suggesting  
20 here. I don't know that there is a better way, I  
21 just want them to have the flexibility to be able to  
22 tell us, and let's ultimately do the right thing to  
23 make sure we get the most cost-effective fuel for  
24 the ratepayers. Thank you.

25 **COMMISSIONER ARGENZIANO:** Mr. Chairman.

1                   **CHAIRMAN CARTER:** Commissioner Argenziano.

2                   **COMMISSIONER ARGENZIANO:** A question for  
3 staff. Isn't that what you're doing in your  
4 recommendation? And as Commissioner Skop had said  
5 before, you want to prevent this from coming up  
6 every year. And under Issue 3, it wouldn't -- it  
7 won't come up again if staff does what staff  
8 recommends. And to me, and correct me here, because  
9 I understand what Commissioner McMurrian is saying  
10 also, aren't we basically telling them to reevaluate  
11 the PRB coal burning decisions and come back and  
12 tell us, you know, why, with justification just as  
13 it would not shut them down, but it would give them  
14 the flexibility that Commissioner McMurrian was  
15 talking about. Wouldn't that scenario fall through  
16 if your recommendation is adopted and staff follows  
17 that recommendation?

18                   **MR. LESTER:** Yes, ma'am. What we're  
19 saying -- yes, ma'am, I agree we're allowing them  
20 flexibility that would include addressing PRB coal,  
21 but also other options. They have scrubbers that  
22 are going to come on-line, and in some of the  
23 evidence in this case they have indicated that there  
24 is a high sulfur Illinois Basin coal that may be the  
25 lowest-cost alternative, but they need to explain

1 that as well as the PRB option, and as well as  
2 explain other coal supply options. So they would  
3 need to -- we do want to get away from the strict  
4 application methodology of going forward and allow  
5 them to prove their case.

6 **COMMISSIONER ARGENZIANO:** Right.

7 **MR. LESTER:** Prove the notion that they're  
8 purchasing the lowest cost coal.

9 **COMMISSIONER ARGENZIANO:** Right. It seems  
10 to me the way to go. Thank you.

11 **CHAIRMAN CARTER:** Thank you, Commissioner.  
12 Commissioner Skop.

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

15 I just wanted to touch upon a point that  
16 Commissioner McMurrian raised, and I do agree with  
17 her that I don't believe it's the purview of the  
18 Commission to micromanage management decisions that  
19 are made with respect to how the plant should be  
20 operated.

21 I think my concern, and that parallels  
22 with Commissioner Argenziano's concern that she just  
23 expressed, was that, you know, the scrubbers that  
24 are coming on in 2010 are going to dramatically  
25 change from an operational perspective what the

1 company is going to do and what is going to be  
2 cost-effective for the company to do.

3 I can't say. You know, 2010 is still over  
4 a year away, and I don't know what month those  
5 scrubbers are coming into play. So certainly the  
6 company's management decisions are important in that  
7 decision-making calculus. What concerns me, though,  
8 is it has been demonstrated that the unit had the  
9 inherent capability to burn PRB coal when it was  
10 cost-effective to do so. And I caveat that, when it  
11 was cost-effective to do so. So to me, restoring  
12 that inherent capability is equally important.

13 I think staff encompasses that by talking  
14 about test burns. But I do think that the OPC  
15 position on Issue 3 has some additional merit to the  
16 extent that, I don't want to make Progress do  
17 something that they don't want to do if there is  
18 going to be no need to do it on a forward-going  
19 basis with the addition of the scrubbers, but I  
20 can't be certain that at certain times a blend of  
21 PRB will not be the most cost-effective option. So,  
22 again, I think there is some merit in going through  
23 the exercise of doing the test burns with the PRB,  
24 and having that issue definitized one way or  
25 another. And I think that's what my understanding

1 of OPC is advocating for, so I'm kind of generally  
2 supportive of that.

3 It would be nice to know what the units  
4 could accomplish if a real effort was given to doing  
5 those test burns. But, again, I can't say that that  
6 option would ever be used on a forward-going basis  
7 with the addition of the scrubbers, and that would  
8 be a management decision. So what I'm kind of  
9 trying to hint at is, you know, I think the point  
10 the staff raised that, you know, they had been  
11 imprudent and they haven't yet kind of addressed  
12 that issue, so I do think it is fair for the  
13 ratepayers who paid for the inherent capability of  
14 this unit to see, you know, that capability restored  
15 in some way, form, or fashion.

16 So that's where I'm kind of in between on  
17 Issue 3 between what staff is advocating for which  
18 seems to be more broad, and what OPC is articulating  
19 which I think is very specific to addressing the  
20 issue with finality as to the capability of burning  
21 the PRB up to and including whether you could ever  
22 get a 70/30 blend, because I think the OPC, the last  
23 sentence in the recommendation, if the results  
24 support the use of a blend containing more than  
25 20 percent, PEF should amend their permit

1 appropriately.

2           Again, I don't know if you will get that  
3 high. Again, that was the subject of a lot of  
4 debate last time. So, again, that is an operational  
5 issue, to some extent, but I think it's reasonably  
6 certain and the Commission has held that they do --  
7 the unit should have the capability to burn a blend  
8 of PRB, and how that plays into management  
9 operations on a forward-going basis is not really my  
10 purview, but it is my purview to ensure that that  
11 capability exists and is restored and not just  
12 neglected or ignored.

13           And then one final question to staff.  
14 With respect to the recommendation at the bottom  
15 last sentence of Issue 3, it seems as if, getting  
16 back to what the proper methodology to use in terms  
17 of a refund, it is almost as if staff -- and correct  
18 me if I'm wrong, is suggesting a change or a  
19 modification in the methodology on a forward-going  
20 basis. And I'm wondering whether -- I know we had  
21 touched upon that early to address the bias, but I'm  
22 kind of wondering whether that is just not really  
23 kind of hinting at the fact that there may be some  
24 credibility to the alternate analysis in terms of  
25 the argument that I think was raised.

1                   **MR. HINTON:** Staff thought it was a  
2 compelling point that just comparing to the most  
3 expensive could introduce bias, and so we thought  
4 that it may be a better approach in the future to  
5 look at what is actually being displaced as opposed  
6 to just your most expensive.

7                   **COMMISSIONER SKOP:** All right. Thank you.

8                   **CHAIRMAN CARTER:** Thank you.

9                   Commissioners? Commissioner McMurrian,  
10 you're recognized.

11                   **COMMISSIONER McMURRIAN:** I was just going  
12 to respond back to some of that earlier discussion,  
13 not that last point. But I guess just to share, I  
14 think my concern with OPC's position there is that  
15 it suggests we should direct the company to conduct  
16 the test burn, and perhaps you agree with that,  
17 Commissioner Skop. For me, I think that we  
18 shouldn't direct them, but I think they would need  
19 to answer why they did or did not do that and either  
20 that passes our scrutiny or it doesn't. You know, I  
21 think that, to me, is the way it would be best to be  
22 handled. And I think the staff's recommendation  
23 would allow that. In other words, the company  
24 should take whatever action it deems is appropriate,  
25 but they are going to have to defend it before us,



1 and it may or may not pass scrutiny if they don't do  
2 that. I don't know.

3 **CHAIRMAN CARTER:** Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

5 And generally I would agree with that.

6 Again, not to beat up on Progress, but I mean they  
7 have had a couple of bites at the apple on this one.  
8 And, again, there may be, in fact, good reason, I  
9 think, as Commissioner McMurrian has alluded to, why  
10 they might not want to go through that exercise on a  
11 forward-going basis. But in the interim, we still  
12 don't have the capability to burn PRB coal when it's  
13 the most cost-effective option to do so.

14 For instance, assume for the sake of  
15 discussion, accepting what I thought Progress'  
16 argument to be in this case, which substantially  
17 differed from the last time. Assume they were  
18 imprudent, but they covered and cured by burning the  
19 blend of CAPP coal and foreign bituminous coal, and  
20 there were no damages or nominal damages, I think it  
21 is two million to the ratepayer. That's fine.

22 What happens tomorrow if there is some  
23 world international crisis in Venezuela where they  
24 get their foreign bituminous coal from and prices go  
25 sky high. Then you might have rail capability to

1 burn a PRB coal at that point where it would be more  
2 cost-effective than some of the other alternatives.

3 So to me it's a matter of contingency  
4 planning to make sure you have -- and I see staff  
5 kind of nodding in the background there. But to me  
6 it's contingency planning to make sure you have the  
7 absolute full flexibility of the inherent capability  
8 of the unit. And, again, I think that OPC's  
9 position is strong and it's kind of getting outside  
10 of my comfort level for some of the same reasons  
11 that Commissioner McMurrian has kind of alluded to  
12 because it may become obsolete. But it's a "what  
13 if" question that has not yet been affirmatively  
14 answered by the company. And those units were  
15 designed and paid for to be able to do this. And as  
16 of today, after repeated things, and that is the  
17 point I harp on, and, you know, Progress can be mad  
18 at me if they want to, but it is a legitimate  
19 technical valid point that we don't know because we  
20 have never done it yet. And I think that that's  
21 something that needs to be definitively resolved.

22 If that needs to be via a test burn, then  
23 we can do it. I recognize from an operational  
24 perspective, however, there could be some  
25 substantial cost impact to the consumer, so I would

1       like to give Progress the opportunity to  
2       demonstrate, as Commissioner McMurrian stated, why  
3       that would not be cost-effective to do so. Because,  
4       again, if you have to take a unit out of service for  
5       the sake of doing some test burn, that might be a  
6       problem in terms of base load generation and  
7       purchased power costs or make up power. But if that  
8       could be done concurrently with the normal  
9       operations of the unit, or coming out of shutdown,  
10      or a quick-look test, I think OPC's points are  
11      valid.

12                I mean, frankly given the time that has  
13      elapsed between what the Commission affirmatively  
14      ruled on last time and where we are today, I would  
15      have expected that that issue would have been  
16      already affirmatively addressed to the extent that  
17      it would not come back to bite them on a year, after  
18      year, after year basis.

19                **MR. BREMAN:** Commissioner, we believe --  
20      staff believes that Progress is capable of the same  
21      reaction that you have. They are capable of  
22      evaluating the situation. They are capable of  
23      knowing that a test burn would answer -- a sustained  
24      test burn would answer many of the unknowns that  
25      keep coming up. But it's up to the utility

1 management to make that call, and if they don't make  
2 that call they run the risk of making refunds every  
3 year.

4 **COMMISSIONER ARGENZIANO:** Mr. Chair.

5 **CHAIRMAN CARTER:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** I tend to agree  
7 with staff. While I want the company to have that  
8 ability to use the cheapest coal, of course, but  
9 they have to make -- they have to start doing things  
10 that convince us that that's the case. And they  
11 need to have that flexibility, that's true. But I  
12 think that I want to make sure that if there are bad  
13 decisions that the correct party is held responsible  
14 for the effect of those decisions. I don't want to  
15 tie their hands in not allowing them to use the  
16 cheapest fuels as that benefits not only them and  
17 their shareholders, but it benefits the ratepayers.  
18 And we don't want to micromanage these companies.  
19 But if they have the ability to do that, then they  
20 need to get to doing it, because we are going to  
21 have this problem in front of us all the time.

22 We need to hold management responsible for  
23 their decisions, okay, and they have got to start  
24 making the right ones. And I don't want to have,  
25 you know, their bad decisions kind of -- I'm sorry,

1 I'm hearing myself talk, and it's really hard  
2 because I am getting that re -- whatever it's  
3 called. Can you hear me all right? Hello?

4 **CHAIRMAN CARTER:** Yes, ma'am, we can hear  
5 you.

6 **COMMISSIONER ARGENZIANO:** Okay. I'm  
7 sorry, I am getting a reverb or whatever it's called  
8 when you hear yourself echoing, and it's very, very  
9 confusing. I don't know why it's happening, but  
10 it's probably because I'm using the Blackberry.  
11 What I don't want to do is have the reward or have  
12 the management not responsible for imprudent  
13 decisions and making the ratepayers pay for that bad  
14 decision. That's wrong, too. So we really have to  
15 be careful how we balance this.

16 But, you know, if we are going to reward  
17 these companies with higher ROEs, and that's great,  
18 they have got them, and most companies would die for  
19 them, then they have to take some responsibility.  
20 And to keep hearing about the risks the companies  
21 face, that's true, but we also have to look at the  
22 risk to the ratepayer, and the shareholders may have  
23 to be held responsibility for bad decisions.

24 Now, saying that, the company -- if the  
25 company can get with it, as staff said, they know

1 they need to get on board and let us know what they  
2 can do and what they can't do, because I think we  
3 are all after the same thing. If you can use the  
4 cheaper coal to get the efficiency and still, you  
5 know, keep prices down, then that's great. And I  
6 think staff is -- what I'm reading and what I'm  
7 hearing staff saying in this recommendation, that is  
8 what we are asking them to do.

9 So, you know, I don't want to bury a bad  
10 decision by, you know, by management, and yet I  
11 don't want to tie their hands. So let's get the  
12 company to step up to the plate and make sure we  
13 don't throw the ratepayer a bad blow by rewarding  
14 for bad decisions. It has got to be a fine line,  
15 but I think it can be done.

16 **CHAIRMAN CARTER:** Thank you, Commissioner.

17 We only have one court reporter today, so  
18 we are going to give Jane a break, and we'll come  
19 back at 35 after. We're on recess.

20 (Recess.)

21 **CHAIRMAN CARTER:** We are back on the  
22 record.

23 And, Commissioners, we had just completed  
24 our discussion.

25 Commissioner Edgar, you're recognized.

1                   **COMMISSIONER EDGAR:** Mr. Chairman, I thank  
2 you for giving us a short break. I was at that  
3 point where I needed to stretch and wanted to kind  
4 of get my thoughts together. So a few comments, if  
5 I may.

6                   **CHAIRMAN CARTER:** You're recognized.

7                   **COMMISSIONER EDGAR:** I agree completely  
8 with Commissioner Skop, and I think similar comments  
9 that have been made by the others of us here today  
10 that it is important and one of our goals and  
11 missions to ascertain harm, if any, to consumers and  
12 to ratepayers to the best of our ability. And so I  
13 really appreciate the discussion on this matter,  
14 which in my mind is very technical.

15                   I also agree with everything that has been  
16 said about the importance, I think, of using a  
17 consistent methodology in our analysis in these  
18 types of scenarios, but also the importance of the  
19 different inputs and how, obviously, different  
20 inputs could affect the result of that analysis and  
21 that methodology.

22                   I also agree very strongly with the  
23 comments that we have all, I think, expressed about  
24 wanting to walk that line correctly of not overly  
25 managing or overly being prescriptive as to utility

1 operations. Candidly, our utility managers in this  
2 state are for the most part excellent, and are paid  
3 well to be excellent.

4 But I also thinking that it is an  
5 important part of our job to provide that regulatory  
6 review that does give protection to the ratepayers,  
7 and at times serve as that substitute for the  
8 marketplace with a monopoly regulatory scheme as we  
9 have here.

10 So with all of that said, I am of the  
11 opinion that there may not be one exact crystal  
12 clear the right number that is able to be determined  
13 because of the length of time and the different  
14 scenarios and different decisions and calculations  
15 and all of that through the whole process. I do, as  
16 I said, think it's important that we do the due  
17 diligence on behalf of the public, on behalf of the  
18 ratepayers, and I know that that is what we are  
19 striving for here.

20 So with that in mind, I would like, Mr.  
21 Chairman, if this is the appropriate time, to make a  
22 motion in favor of the staff recommendation on all  
23 issues. Again, with the understanding that I don't  
24 know that we can get the exact most accurate number  
25 to the dollar, to the penny, but with the



1 information that we have available I think that the  
2 staff recommendation is clear, gives clarity, gives  
3 us some guidance going into the future, and also  
4 closes out this issue in an appropriate manner.

5 **CHAIRMAN CARTER:** Thank you.

6 Is there a second?

7 **COMMISSIONER ARGENZIANO:** (Inaudible.)

8 **COMMISSIONER McMURRIAN:** I'll second the  
9 motion. You all are probably wondering why I was so  
10 reluctant. If I can just --

11 **CHAIRMAN CARTER:** You're recognized.

12 **COMMISSIONER McMURRIAN:** -- make a comment  
13 there.

14 **COMMISSIONER ARGENZIANO:** Mr. Chairman, I  
15 did second the motion. I don't think you heard me.

16 **CHAIRMAN CARTER:** Thank you, Commissioner.  
17 I appreciate that. Sometimes -- I know when I was  
18 calling in on my Blackberry, I got that feedback  
19 that you are getting. It sounds like a  
20 reverberation in your ear.

21 **COMMISSIONER ARGENZIANO:** Yes.

22 **CHAIRMAN CARTER:** But thank you for your  
23 second. We're in debate, Commissioner.

24 Commissioner McMurrin, you're recognized  
25 in debate.

1                   **COMMISSIONER McMURRIAN:** Thank you. And  
2 thank you, Commissioner Argenziano. I was just  
3 going to say, of course my position on the earlier  
4 round of this, the last case, I dissented from that  
5 opinion. But I do recognize that that was a  
6 Commission decision to issue a refund in that case,  
7 and I think that carrying forward that methodology  
8 here, while it's not, as Commissioner Edgar, may not  
9 be perfect, and it's hard to get to that perfect  
10 number.

11                   And I do also appreciate the analysis that  
12 Commissioner Skop asked staff to do. I do think  
13 that that is something we definitely should look at  
14 going forward with respect to the discussions we had  
15 on Issue 3 because of the concerns that were raised  
16 about bias in looking at just the high end,  
17 displacing the high end of those fuel numbers, but I  
18 will support the motion.

19                   **CHAIRMAN CARTER:** Thank you.

20                   Commissioners, we're in debate. In  
21 debate.

22                   Commissioner Skop, you're recognized in  
23 debate.

24                   **COMMISSIONER SKOP:** Thank you, Mr. Chair.

25                   Just one quick question with respect to, I

1 think, Issue 3. Again, I've considered that a  
2 little bit further. I do think that, you know, OPC  
3 raised some valid points, but, you know, the Clean  
4 Air Act and CAIR required installation of scrubbers,  
5 and I think I may have overlooked it, but my  
6 understanding is that ultimately in 2010 the  
7 installation of scrubbers may impede the ability to  
8 cost-effectively burn PRB.

9           So, again, I think the staff approach,  
10 although part of me would like to see a test burn  
11 done, and that may actually happen as a result of  
12 some of the comments that have been made here today  
13 in the interim before the scrubbers get put on, but,  
14 you know, if Progress under the staff recommendation  
15 could justify a reason for why that would not be the  
16 appropriate thing to do on a forward-going basis in  
17 light of the scrubbers that are being installed,  
18 then certainly I think that that should be part of  
19 the decision-making calculus that the Commission  
20 considers whether to accept or reject the  
21 explanation provided.

22           So I have more of a comfort now with Issue  
23 3 in terms of adopting the staff recommendation. As  
24 to the Commission's motion, again, I support the  
25 will of the Commission. I will probably be writing

1 a concurring opinion, though, expressing the fact  
2 that I don't feel that the staff recommendation  
3 really gave full vetting to what I thought that the  
4 crux of the argument that Progress raised in its  
5 defense was. But, again, if it's the will of the  
6 Commission to adopt the staff recommendation, I will  
7 be in support of that.

8 **CHAIRMAN CARTER:** Thank you.

9 Commissioners, we're in debate. Any  
10 further debate? Any further comments?

11 Hearing none. We have a motion and a  
12 second on the floor. All in favor, let it be known  
13 by the sign of aye.

14 (Simultaneous aye.)

15 **CHAIRMAN CARTER:** All those opposed, like  
16 sign.

17 Show it done.

18 Commissioner, get well soon. We're  
19 looking forward to seeing you soon, and praying for  
20 a speedy recovery for you.

21 **COMMISSIONER ARGENZIANO:** Thank you very  
22 much.

23 **CHAIRMAN CARTER:** With that we are  
24 adjourned.

25 \* \* \* \* \*

1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4  
5 I, JANE FAUROT, RPR, Chief, Hearing Reporter  
6 Services Section, FPSC Division of Commission Clerk,  
do hereby certify that the foregoing proceeding was  
heard at the time and place herein stated.

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

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

14 DATED THIS 14th day of June, 2009.

15 

16 JANE FAUROT, RPR

Official FPSC Hearings Reporter

(850) 413-6732

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Docket No. 070703-EI - Review of coal costs for Progress Energy Florida's Crystal River Units 4 and 5 for 2006 and 2007.

	CAPP - Most Expensive	CAPP - Average	PRB - Staff's Proxy
<b>2006</b>			
\$/MMBtu	3.30	2.86	3.11
Heat Content (Btu/lb)	12,400	12,356	8,800
Average lbs. SO2/MMBtu	1.07	1.03	0.80
<b>2007</b>			
\$/MMBtu	4.47	3.07	2.88
Heat Content (Btu/lb)	12,400	12,281	8,800
Average lbs. SO2/MMBtu	1.13	1.04	0.80

EXH 2, pp. 86-87, 2919-2920  
 TR 259-260  
 EXH 9, 20, 24

*(alternative calculation)*  
 Parties Staff Handout  
 Internal Affairs/Agenda  
 on 6.130.109  
 Item No. 11  
 070703-EI

**Excess 2006-2007 Coal at CR4 and CR5 - Displacing Average CAPP/Foreign Instead of Highest Priced CAPP/Foreign Coal**

**A. Excess 2006-2007 Coal Costs at CR4 and CR5 and Fuel Refund (exclusive of SO2 credit adjustment and interest adjustment)**

a	b	c	d	e	f	g	h	i	j
Year	<u>CAPP Average Delivered Price (\$/MMBtu)</u>	<u>PRB Adjusted Evaluated Price (\$/MMBtu)</u>	<u>Price Difference (\$/MMBtu)</u>	<u>PRB in Tons</u>	<u>MMBtu</u>	<u>Net Excess Costs (\$/MMBtu)</u>	<u>PRB (Proxy) Delivered Price (\$/MMBtu)</u>	<u>Difference of CAPP and PRB Delivered Prices</u>	<u>Coal Costs Refund (via Fuel Clause)</u>
2006	2.86	3.24	-0.38	432,229	7,607,230	(\$2,901,808)	3.11	-0.25	(\$1,901,808)
2007	3.07	3.00	0.07	462,200	8,134,720	\$545,597	2.88	0.19	\$1,545,597
<b>TOTAL EXCESS COAL COSTS, 2006-2007</b>						<b>(\$2,356,210)</b>			<b>(\$356,211)</b>

**B. Excess 2006-2007 Costs Related to SO2 Allowances at CR4 and CR5**

a	b	c	d	e	f	g	h	i
Year	<u>Avg. Lbs SO2 per MMBtu (CAPP)</u>	<u>Avg. Lbs SO2 per MMBtu (PRB Proxy)</u>	<u>Increased SO2 (lbs per MMBtu)</u>	<u>MMBtu</u>	<u>Excess SO2 lbs.</u>	<u>Excess SO2 tons</u>	<u>SO2 Price (\$/ton)</u>	<u>Excess SO2 Cost</u>
2006	1.03	0.80	0.23	7,607,230	1,749,663	875	731	\$639,502
2007	1.04	0.80	0.24	8,134,720	1,952,333	976	524	\$511,511
<b>TOTAL EXCESS SO2 COSTS, 2006-2007</b>								<b>\$1,151,013</b>

**C.**

Year	<u>Coal Costs Refund (via Fuel Clause)</u>	<u>Excess SO2 Cost</u>	<u>Totals</u>
2006	(\$1,901,808)	\$639,502	(\$1,262,306)
2007	\$1,545,597	\$511,511	\$2,057,108
	(\$356,211)	\$1,151,013	\$794,802

(Attorney's Calculator)  
 Parties/Staff Handout  
 Internal Affairs/Agenda  
 on 6/30/09  
 Item No. 11  
 070703-E1