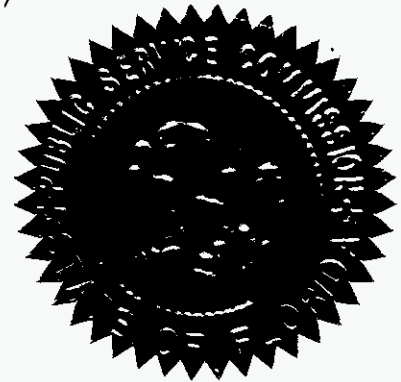


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

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P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** Let's give staff an
3 opportunity to change out for Item 11.

4 Staff, you may proceed.

5 **MR. LESTER:** Good morning, Commissioners.
6 I'm Pete Lester with staff, and we have a new staff
7 member who's going to introduce Item 11, Ms. Kaley
8 Thompson.

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

11 Item 11 is a post-hearing item related to
12 the Commission's prior prudence review in Docket
13 Number 060658. In that docket, the Commission found
14 PEF to be imprudent with their pole purchases from
15 2003 to 2005. In this docket, the Commission must
16 determine if PEF's management failures resulted in
17 higher fuel costs for 2006 and 2007.

18 Issue 1 involves whether PEF incurred
19 excess coal costs at Crystal River Units 4 and 5.
20 Because your decision for Issue 1 is affected by
21 Issues 1A through 1E, staff recommends that you
22 decide those issues first. Issue 1A involves the
23 appropriate methodology for measuring excess costs.
24 With some modifications, staff is recommending the
25 Commission follow the methodology established in the

1 previous order.

2 Issues 1B and 1D address the type of coal
3 PEF should have used as the 20 percent blend
4 component for 2006 and 2007. For both years, staff
5 is recommending Powder River Basin coal with a heat
6 content of 8,800 Btus per pound and an SO2 emission
7 rate of .8 pounds per MMBtu.

8 In Issues 1C and 1E, staff calculates
9 excess costs using inputs to the methodology,
10 including average spot market prices, appropriate
11 tons, and transportation costs. Staff recommends
12 the Commission find excess costs of approximately
13 \$7.7 million.

14 In Issue 2, staff recommends a refund of
15 the excessive costs with interest through the 2010
16 fuel factors.

17 In Issue 3, staff addresses future action
18 by the Commission. Staff recommends the Commission
19 require PEF to file a report addressing plant
20 modifications and its efforts to prudently procure
21 coal. A summary of the positions of the parties and
22 staff's recommendation can be found in the table on
23 Page 5, and staff is prepared to go issue-by-issue
24 or proceed as you please.

25 **CHAIRMAN CARTER:** Thank you.

1 Commissioners, we'll get into our
2 discussion. I think we're in post-hearing decision,
3 so it is limited to Commissioners and staff. Is
4 that correct?

5 **MS. BENNETT:** That is correct, Mr.
6 Chairman.

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

10 **COMMISSIONER EDGAR:** Mr. Chairman, I know
11 that the staff has made the recommendation that we
12 begin with Issues 1A through 1E, I think it is, 1E,
13 and then go back to 1. So I guess it would be
14 helpful to me, and I realize some of this was just
15 said, but it would also be helpful to me if they
16 would briefly walk us through those Issues 1A
17 through 1E, and then take questions as they may
18 arise.

19 **CHAIRMAN CARTER:** Okay. Staff.

20 **MR. LESTER:** Issue 1A is the appropriate
21 methodology. Staff is essentially following this as
22 a follow-through from the previous case, so the
23 methodology is basically the methodology of the
24 refund order. We are making a modification to
25 increase the capital cost part of the

1 cost-effectiveness test based on Progress'
2 testimony, and that's essentially 1A, and that would
3 apply to both years.

4 1B would be the choice of coal for 2006,
5 the appropriate proxy coal for 2006. That issue --
6 I believe OPC's position was to use either the
7 Kennecott Spring Creek coal or a type of PRB coal,
8 Powder River Basin coal. Progress used the coal for
9 2006 based on its purchase of Powder River Basin
10 coal for its May 2006 test burn, and staff is
11 recommending a PRB coal, a specific type, which is
12 the standard typical type of PRB coal, which is 8800
13 Btus per pound and an SO2 emission rate of .8 pounds
14 of SO2. That is our recommendation in both 1B for
15 2006 and 1D for 2007.

16 1C and 1E are basically the calculations
17 of the amounts for each year. Staff has included
18 transportation cost and SO2 allowance cost, and then
19 we have come up with the actual dollar amounts for
20 each year. That's a basic summary of all the -- 1A
21 through 1E.

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

25 Commissioner Skop, you're recognized.

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

3 Could also in introducing the issue, staff
4 explain or walk the Commission through the handout,
5 the alternate calculation that staff has prepared.

6 **MR. LESTER:** Staff has made a calculation
7 applying the methodology a little bit differently.
8 The methodology displaces the highest cost coal, the
9 most expensive coal. And staff has --

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

12 **MR. LESTER:** Yes, sir. That document
13 there, yes, sir. Sorry.

14 **CHAIRMAN CARTER:** It's entitled excess
15 2006/2007 coal at CR-4 and CR-5 displace an average
16 CAPP/foreign instead of highest priced CAPP/foreign
17 coal.

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

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

23 **MR. LESTER:** Okay. This would compare to
24 Attachment A in the staff's recommendation, which is
25 the last page of the staff's recommendation. And

1 staff has calculated -- the big difference here
2 would be in the staff's primary recommendation, or
3 our recommendation. We have used the actual CAPP
4 coal prices, the coal prices actually used at CR-4
5 and CR-5, and those come out to -- this would be the
6 highest cost coals, which is \$3.30 per MMBtu and
7 \$3.47 per MMBtu. In the analysis in the handout,
8 that's Column B, instead of using the 3.30 and the
9 3.47, it would come to 2.86 and 3.07. And that's
10 based on -- instead of displacing the highest cost
11 coals, the average coal is displaced. It results in
12 no refund for 2006, and some smaller amount there by
13 one point -- approximately \$2 million for 2007.

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

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

21 **COMMISSIONER EDGAR:** Yes.

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

23 **CHAIRMAN CARTER:** Where?

24 **COMMISSIONER EDGAR:** I don't know. Okay.
25 I'm looking at C.

1 **CHAIRMAN CARTER:** It's on the bottom on
2 the far right.

3 **COMMISSIONER EDGAR:** Ah, I found it.
4 Okay. I was looking under C. Oh, that C. I was
5 doing A through --

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

7 **COMMISSIONER EDGAR:** No, that's okay.
8 Thank you, Mr. Chairman.
9 Got it now. Thank you.

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

11 **MR. LESTER:** Essentially that analysis is
12 displacing the average coal instead of the most
13 expensive coal. And the way we proceeded, the way
14 we recommended what we recommended is this proceeds
15 from the refund order from the previous case for the
16 highest cost coal that was displaced and also both
17 Progress Witness Heller and OPC Witness Putman both
18 agreed, or both based their methodology on
19 displacing the most expensive coal.

20 As a part of some discovery exhibits, and
21 Progress did respond that the methodology is
22 conservative or may introduce bias because the
23 highest cost coal may not always be the coal that
24 could be displaced. So staff is recommending in
25 Issue 3 that the methodology be changed going

1 forward if it's ever applied again to only address,
2 or to be done on an average basis as we have done it
3 in this handout. That's essentially the differences
4 between this handout and what staff is recommending.

5 **CHAIRMAN CARTER:** Okay. Commissioners,
6 anything -- we are on Items 1A through 1E is what we
7 are discussing in this handout that we just got, was
8 staff's -- and I don't want to mischaracterize it.
9 Is this updated, or revised, or what are you guys
10 calling this?

11 **MR. HINTON:** That is just an alternative
12 calculation. Staff's recommendation is still what
13 is contained within the recommendation that was
14 filed in this docket. This was just something that
15 was done as a request for an alternative
16 calculation.

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

18 Commissioner Skop, you're recognized.

19 **COMMISSIONER SKOP:** Thank you, Mr. Chair.
20 Just to add some clarity, I requested staff to
21 perform this alternate calculation on the basis that
22 I felt that the staff recommendation really did not
23 fully explore or rebut what I thought I heard the
24 Progress argument to be, which is different than
25 what happened in the last refund case. In this

1 particular case, Progress had argued that they were
2 imprudent, but they covered and cured by burning a
3 blend of CAPP coal and foreign bituminous coal, and
4 that as a result of doing that, there were either
5 nominal damages or no damages.

6 I don't know if that is true or not,
7 because, again, I thought that the staff
8 recommendation did not fully vet that issue and
9 effectively rebut it. So I would ask staff to try
10 and address what I thought the argument to be in the
11 interest of fairness to make sure that we had all of
12 the information before us. I think it is a very
13 different argument that the Commission did not hear
14 last time. And last time, again, in the last coal
15 refund case, at least from my perspective, damages
16 were readily apparent. And in my opinion, I argued
17 for a much larger refund than that was adopted by
18 the Commission. But, in this case, I'm not really
19 so sure what the right result is, and I don't feel
20 that the staff recommendation really gave me
21 complete vetting of the issues before us.

22 So, again, I asked that alternate
23 calculation to be performed to kind of see not
24 rigidly following a methodology, per se, because,
25 again, I heard a different argument, or I thought I

1 heard a different argument being advanced. But,
2 again, I think that the methodology was applied
3 consistent with what the Commission previously did,
4 but I don't really feel that that took into account
5 the argument that I heard advanced at the hearing.
6 And I think that this alternate calculation I had
7 asked staff to take a look at trying to ascertain
8 whether if what Progress said they did and try and
9 look at what the numbers would be assuming that were
10 true. Because, again, in the staff recommendation I
11 didn't feel that that was adequately covered. I
12 just think that it was somewhat preordained that we
13 just adopt the same previous methodology and that
14 ignores what I thought to be the central argument
15 that I heard advanced by Progress was that, yes, we
16 were imprudent, but we did something completely
17 different by burning a blend of bituminous coals and
18 as a result of that there were no damages.

19 So, again, I think in the interest of
20 fairness a very important issue to explore. I think
21 that, you know, refunds are certainly popular, but
22 what's important to me is making sure that the case
23 before us is properly decided on the merits. And I
24 think that in the staff recommendation, again, I
25 have some concerns that I don't have all the

1 information that I need before me to be comfortable
2 making a decision, and I'm not sure as to whether
3 refunds are properly warranted or not warranted. I
4 really don't know.

5 This one is very tough for me. Again, I'm
6 fully in support of refunds where they are
7 warranted. I was, you know, a pretty heavy hitter
8 last time, but this one is not as clear cut. And
9 what I need to do, what I think as a Commissioner to
10 make a effective decision in the interest of
11 fairness is convince myself that Progress' argument
12 is not one of merit. And from what I am seeing in
13 this alternate calculation I'm not necessarily
14 seeing that. So, again, instead of being rigidly
15 bound to a methodology and ignoring a central
16 argument that has been advanced in this case that
17 was not advanced in this prior case, what's
18 important to me is looking at the big picture and
19 trying to ascertain whether the consumer was harmed
20 or whether Progress actually did something that
21 resulted in no harm to the consumer.

22 So I apologize for taking the time. But,
23 again, I just wanted to provide some clarity as to
24 what the intent was behind this alternate
25 calculation that I had asked staff to take a look

1 at.

2 **CHAIRMAN CARTER:** Okay.

3 Commissioner McMurrin.

4 **COMMISSIONER McMURRIAN:** I guess I'll
5 start with a comment and get to a question. This
6 one was tough for me, too, because the last one for
7 me was by no means clear cut. So I'm at a little
8 bit different dilemma than I think Commissioner Skop
9 is. But having said that, and because this rec
10 carries forward the methodology that was set up from
11 the decision we made last time, again, that's part
12 of the reason, you know, I'm having a tough time
13 with it.

14 But I want to focus in on Page 33 where
15 staff talks about Progress' statement about
16 introducing bias into the methodology because of the
17 most expensive coal may not always be the coal that
18 could have been displaced. And staff gives a
19 reference there before the conclusion paragraph, and
20 I just wanted to ask staff about that a little bit
21 more. If they could elaborate there on that
22 argument. And to the extent that this analysis that
23 is before us averages out the CAPP prices, perhaps
24 it's -- is this analysis aimed at addressing that
25 issue? And if I need to address that, too,

1 Commissioner Skop, I can, as well, if he asks for
2 that analysis to be done.

3 **MR. LESTER:** The analysis we are making on
4 Page 33, that paragraph right above the conclusion
5 is saying going forward, you know, we saw
6 testimony -- or exhibits, responses to staff
7 interrogatories from Progress that said it could
8 introduce bias, the methodology, because it
9 displaces the most expensive coal and maybe not the
10 average, or something else.

11 There wasn't a lot there. We have the
12 responses available, and so that was the reason we
13 thought going forward the methodology would need to
14 be changed. However, the case that was presented,
15 the direct cases by both the company witness and the
16 OPC witness, as well as the refund order, used the
17 methodology that displaced the most expensive coal.
18 So we chose to go with that for purposes of
19 calculating the amounts for excess cost for 2006 and
20 2007.

21 But then going forward, which is what
22 Issue 3 is all about, we chose in that paragraph
23 there to address the comments about bias that came
24 out in the responses to staff interrogatories. And
25 those responses are part of the record. They are in

1 Exhibit 2.

2 **COMMISSIONER McMURRIAN:** So you haven't
3 tried to address the concern about bias and
4 displacing the most expensive coal, because you're
5 stating that the witnesses on both sides of the case
6 applied that methodology in the same way.

7 **MR. LESTER:** Yes, that's right. Since the
8 witnesses both followed the methodology from the
9 refund order, they both acknowledged they displaced
10 the most expensive coal, that's what we went with
11 for 2006/2007. There really hasn't been a
12 quantification, shall we say, of bias or anything.
13 There has been the statements in the responses. It
14 wasn't particularly firm, so we chose to open it up
15 for modifying the methodology going forward, but not
16 for the purposes of 2006/2007.

17 **MR. HINTON:** Commissioner, if I can add to
18 it --

19 **CHAIRMAN CARTER:** Casey.

20 **MR. HINTON:** -- to what Mr. Lester just
21 said. Going forward, what we have said in Issue 3
22 is let's take a look at what coal would actually be
23 displaced. And so it may not even be the average
24 price that we end up with, but it's let's look more
25 at what would actually have been displaced or be

1 displaced, which could end up being the highest, or
2 it could end up being the lowest, or what have you.
3 So it may or may not look like this alternative
4 calculation that you see before you. I just wanted
5 to clarify that.

6 **COMMISSIONER McMURRIAN:** And I guess one
7 final question.

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

9 **COMMISSIONER McMURRIAN:** So if we were to
10 find that there was a bias in that type of
11 methodology going forward, or here, or whatever, the
12 averaging of the CAPP delivered prices might be a
13 way to address that?

14 **MR. LESTER:** Possibly, yes, ma'am. We
15 would have to look. We would probably need more
16 testimony from someone saying exactly which coal
17 would be displaced.

18 **MR. HINTON:** The record was not developed
19 in that regard, but we thought that Progress made a
20 compelling point that just displacing the most
21 expensive CAPP could potentially introduce a bias
22 towards PRB, and so it may be a more appropriate
23 methodology of looking at what actually would have
24 been displaced. And, you know, if you are taking
25 the average of the total CR-4 and 5 costs could be

1 an easy way of reaching that calculation, but we
2 just don't have those arguments presented in the
3 record at this time.

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

5 **CHAIRMAN CARTER:** Thank you.

6 Commissioner Skop.

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

8 And just to add to some of the comments
9 that Commissioner McMurrian made, I guess what's
10 important to me here just from my perspective is
11 ascertaining whether the consumer was harmed by the
12 imprudence warranting refunds.

13 And then, secondly, as staff has
14 recommended in Issue 3, restoring the fuel burn
15 flexibility associated with inherent capability of
16 that unit. And that has been something I have
17 harped on continuously through my opinion last time
18 at hearing and on a forward-going basis.

19 And on Issue 3, I'm somewhere between what
20 OPC wants in terms of independent monitoring of fuel
21 burn for PRB, which I think is something that still
22 needs to be done, but I also support staff's view to
23 the extent that Progress may, with the addition of
24 their scrubbers in 2010, decide they want to do
25 something else.

1 So as long as we have flexibility to burn
2 the most cost-effective fuel at any given time and
3 have full utilization of that unit to its
4 capabilities, that's my ultimate goal. But I think,
5 again, what I'm very concerned with here, and I
6 don't see it articulated because, again, I think
7 we're in the methodology mind-set as opposed to what
8 actually transpired in terms of damages, whether
9 Progress' argument that they were imprudent, but --
10 and, again, I don't know if this is an argument, I'm
11 just basing it on what I thought I heard, which,
12 again, is not really expanded upon in the
13 recommendation which gives me pause because, again,
14 it is an argument that was not advanced last time.
15 And last time, like I say, the damages were clearer
16 and I hit them pretty hard in my opinion.

17 But this one, I'm uncertain, because I'm
18 trying to address the validity of the argument that
19 I thought I heard Progress raise which was we were
20 imprudent, we covered and cured because we burnt a
21 blend of CAPP coal and foreign bituminous coal and
22 there were no damages or nominal damages. And I
23 think that's what this alternate recommendation --
24 excuse me, let me choose my words. I think that is
25 what this alternate analysis is kind of hinting at.

1 And, again, I think looking at the average
2 price of the bituminous coal tends to remove those
3 biases that I think that Commissioner McMurrian had
4 alluded to and staff had some pause with. But I
5 think at least from what I see is that we seem to
6 be, you know, somewhat concerned about rigidly
7 following a methodology for the sake of methodology
8 and we seem not to be giving any consideration or
9 proper vetting of what may be a valid defense or
10 argument on Progress' part, and that is my only
11 thing.

12 I can't say at this point whether refunds
13 are properly warranted. They may be. And if so, I
14 will fully support it. But, again, I think what we
15 have here is a tale of two cities. If we look at
16 the staff analysis rigidly following the
17 methodology, you see a refund that is less than what
18 OPC has asked for, but it is substantial. But if
19 you were to look at trying to follow what Progress
20 alleges they did, and try and put some numbers to
21 that, you see a much larger refund -- excuse me, a
22 much smaller refund, which might be reasonably
23 expected if Progress' argument is true. And I'm not
24 sure right now. I'm trying to make sure. Again,
25 refunds are very popular, and I am fully supportive

1 of refunds when they're necessary. But, again, what
2 is important to me is we decide cases on the merits,
3 and to me I'm trying to bring some clarity into
4 rebutting the Progress argument before I would just
5 adopt a staff recommendation.

6 And what I'm seeing here is the divergence
7 between the two analysis could be substantial, and
8 whether we're playing with the ratepayers' money
9 which they would be entitled to via refunds, or the
10 company's money, that's a big chunk of money that's
11 in dispute. So it's important to me that we make
12 the right decision on the merits.

13 And so, again, part of me would want to
14 defer this to do it, you know, but I don't think
15 that's appropriate. So I will yield to my
16 colleagues and just figure out where the discussion
17 goes. But could staff point in the recommendation
18 to where that argument was rebutted or advanced,
19 because I really didn't see it, and that's why I
20 asked the calculation to be performed.

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

1 Staff tried to address Progress' position
2 as presented in their testimony. The primary
3 position they presented throughout this case, which
4 was, yes, that their coal purchases with their blend
5 of foreign coals and so forth did actually save
6 customers money when compared to PRB. But if you
7 look at their positions step-by-step through the
8 process when we look at what coal do they recommend
9 as a candidate for comparison, they recommend a PRB,
10 a particular PRB purchase -- based upon a particular
11 PRB purchase with a particular price associated with
12 it. And, you know, they should compare that to
13 their actual purchases displacing the most expensive
14 CAPP coal.

15 Their case was in line with the
16 methodology, and where staff differed with them was
17 primarily in the selection of the PRB coal to
18 compare to. And if you take their PRB coal with
19 their price and plug it in, then, yes, it looks like
20 you expressed their argument was, we covered it.
21 You know, we may have been imprudent in '01 and '02,
22 but our purchases covered it this time and the
23 customers didn't lose any money.

24 When you use their price, it does look
25 like that. When we used the average spot market

1 price that staff recommends, it tells a different
2 story. We show that there were excessive costs, so
3 we thought we would try to address their concern.

4 **COMMISSIONER SKOP:** And, Mr. Chair, and to
5 Mr. Hinton, do I agree with the staff proxy that was
6 used for the spot price of PRB coal. Again, I'm not
7 so sure that the Progress one was based on a small
8 purchase. I think staff properly adjusted that.
9 But, you know, that is the PRB coal. If you are
10 burning a blend of CAPP coal and foreign bituminous
11 coal, certainly the tonnage of the bituminous coal
12 necessary to maintain the same heat content in the
13 overpressure condition to generate the same relative
14 amount of electricity would be less.

15 So, again, I think that, you know, if we
16 rigidly follow trying to displace the higher -- and
17 I think what this all boils down to is depending on
18 methodology, that's going to drive the refund. And
19 if we rigidly follow what we did last time without
20 really kind of considering the new argument that has
21 been advanced, and we rigidly discount only the
22 highest cost coal or displace the highest cost coal
23 which kind of -- I don't know how you would do that,
24 but it seems, you know, like what we did last time.

25 But if you were to look at the average

1 cost of what they kind of did in terms of how they
2 alleged they might have covered and cured by burning
3 the CAPP coal and foreign bituminous coal, if you
4 look at the average price over the fuel cost over
5 the year, which I think staff did, the results are
6 different. And it still results in a refund, but
7 it's more favorable than the rigid analysis.

8 And, again, I'm not advocating. I want to
9 make it crystal clear, I'm not trying to make a case
10 for Progress. I mean, I hit them really hard last
11 time. I mean people were probably shocked and
12 offended by how to the jugular that concurring
13 opinion was; but, again, I tried to go for a bigger
14 refund last time and it wasn't adopted. But, again,
15 I still feel strongly about what I said last time.

16 In this case, you know, I feel it is not
17 as clear to me. And, you know, when I'm dealing
18 with people's money, whether it be the ratepayers'
19 money or somebody else's money, again, I need to get
20 a comfort level when I am making decisions like
21 that. And so, again, not to belabor it, but the
22 choice of input drives the refund here, and I'm not
23 so sure that following a rigid methodology for the
24 sake of following a rigid methodology versus taking
25 a holistic approach and looking at what actually

1 happened in reality in the big picture is something
2 that is easily overlooked from my perspective when
3 faced with making a decision of that.

4 But I fully agree with staff and OPC that
5 on a forward-going basis we need to restore the
6 inherent capabilities, the full inherent
7 capabilities of these units to burn whatever fuel is
8 most cost-effective at any given time. And, you
9 know, I have no problem with that, and, you know, I
10 think the happy compromise on Issue 3 lies somewhere
11 between what OPC wants with some independent
12 analysis and test burns and what staff is
13 recommending. Do I necessarily think that, you
14 know, the sole supply of foreign coal should come
15 from Indonesia? Well, you know, supply interruption
16 risks happen. You know, pretty much the whole
17 notion of buy domestic has gone out the window here
18 when we tell them to search the world over for the
19 most effective priced coal.

20 But, again, you know, if you were to use
21 that as supplemental coal when you can get it
22 cheaply, that's fine. But to do that as your
23 primary supply bring some interruption risks where
24 force majeure or additional costs could come into
25 play. So I think those are all factors that

1 Progress considers when it evaluates what coals to
2 use. So, again, I would commend staff on, you know,
3 rebutting the issues raised by OPC as to what coal
4 was appropriate. But, again, I think the troubling
5 issue to me, and, again, I don't want to kind of
6 take over the proceeding here, I want to open it up
7 to my colleagues, but the troubling issue is is
8 there validity to what Progress said they did, and
9 if they actually, you know, by mere happenstance
10 happen to do something to cure their imprudency, if
11 there was no harm to the consumer, then, you know,
12 damages probably would be nominal or not warranted.
13 And, you know, then the important point to me
14 becomes restoring that key capability of the unit to
15 burn fuel -- I mean, flexible fuel burn, which still
16 I don't believe has occurred yet.

17 And I know the scrubbers may play into
18 that, so, again, I'm trying to balance what OPC is
19 advocating for so this doesn't become a continuing
20 issue on a year-to-year annual basis, but we need to
21 bring some resolution in making sure that those
22 units are restored to their inherent capability that
23 the ratepayers paid for. And that's the primary
24 concern, not withstanding ascertaining whether
25 consumers were harmed or refunds were warranted.

1 So, thank you.

2 **CHAIRMAN CARTER:** Thank you, Commissioner.
3 Commissioner Edgar.

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

10 But coming back to 1A through E,
11 Commissioner, I try very hard to keep a sense of
12 humor, some days I do better than others, but I do
13 take a little bit of issue with your description a
14 few minutes ago that we are playing with the
15 customers' or utilities' money. In this room we are
16 never playing with anybody's money.

17 And I also want a good decision based on
18 good policy. So with that in mind, I'd like to ask
19 staff this question, which I will try to state
20 clearly. Commissioner Skop has raised a point about
21 methodology being determinative versus an analysis
22 of actual damages being determinative. So I would
23 like staff to speak to that point. And if, indeed,
24 we are able to make on the record that we have
25 before us a determination of actual damages without

1 use of methodology would be one question, and then
2 if we are, is there a difference in the calculation
3 between a calculation of actual damages versus the
4 calculation using the methodology.

5 **MR. LESTER:** Our application and
6 methodology was to try to use objective inputs, and
7 we felt like we couldn't accept the inputs from
8 either of the witnesses on this, OPC Witness Putman
9 or Progress Witness Heller. So, I mean, that's our
10 basis. We are trying to use sort of the methodology
11 from the last case and as applied by the witnesses
12 in this case, and then move forward and we have done
13 that as best we can and that's our recommendation.

14 I think the record is there if you want to
15 do alternatives to the methodology. And if you find
16 it appropriate now, I believe the record is there
17 for making a change if you want to do that. That's
18 the alternative sheet that was passed out. I'm
19 sorry if I'm not getting a little closer to your
20 question there, but --

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

23 **COMMISSIONER EDGAR:** Sure.

24 **MR. BREMAN:** The answer is yes to the
25 question I heard.

1 **COMMISSIONER EDGAR:** I sometimes try to be
2 clear.

3 **MR. BREMAN:** The refund amount is a direct
4 result of whatever methodology on a regulatory
5 principle basis you think is appropriate, okay. The
6 primary case, as Pete pointed out, was that the
7 prior order methodology was applied. And that was
8 the primary case that the utility filed in their
9 direct testimony and the one to which OPC responded
10 in their rebuttal -- in their testimony. So that is
11 what drove us to the point that we are at, and that
12 is why staff's recommendation has the flavor and
13 tone that it does, because we are responding to the
14 primary case that came forward.

15 And the answer to the question I thought I
16 heard is yes. If you pick a different methodology
17 will it result in a different amount, very likely.
18 As in the alternative that Commissioner Skop asked
19 to assess, yes, the answer is going to be a little
20 bit different. But it all reflects what regulatory
21 policy you all want to implement. What's the
22 message you want to send to the utility management.
23 And we will try to recommend numbers that are found
24 in the record. And so far, Commissioner, we have
25 done that.

1 **COMMISSIONER EDGAR:** Thank you.

2 And I guess I would just respond that that
3 falls right in line with that I'm always striving
4 for clarity. Some days that's easier than others,
5 but clarity in our decisions, and clarity in our
6 messages, and clarity in our analysis. Thank you.

7 **CHAIRMAN CARTER:** Thank you.

8 Commissioners, anything further on Item -- we're not
9 voting, we're just discussing, right? Anything
10 further on Items --

11 **COMMISSIONER ARGENZIANO:** Well --

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

14 **COMMISSIONER ARGENZIANO:** Yes, and just,
15 again, for clarification. And I have been listening
16 and trying not to meld in, I guess, both cases the
17 one before and this one. But it seems to me that, I
18 guess, management made a decision not to get their
19 permits, not to modify plants, not to do all those
20 things in both cases. And, staff, please jump in if
21 I am incorrect anywhere, because now they are all
22 starting to kind of mesh together, and I don't want
23 to do that.

24 But, in this case, I guess the same
25 decisions have been made, and I'm not sure that you

1 want to reward management for not making -- for
2 making good decisions -- or making bad decisions,
3 and it's also fair at the same time that, you know,
4 PEF did buy coal that burnt -- that they did burn to
5 provide the power, so the customers have to pay
6 something. But I don't want us to reward
7 management, or I don't want to reward management for
8 making bad decisions, and I think staff was just
9 indicating that's our decision to make which way we
10 want to go.

11 But am I correct that Progress would have
12 bought the 20 percent PRB coal that would have
13 reduced the cost? I'm trying to get this wrong, but
14 PEF -- I'm trying to get this right, not wrong.
15 Sorry, I'm not doing well today with this phone and
16 everything else -- that would have been purchased
17 that was most expensive. Does that make sense to
18 staff?

19 **CHAIRMAN CARTER:** Jim.

20 **MR. BREMAN:** Commissioner, this is Jim
21 Breman. The question on whether or not the
22 consumers would have incurred lower total fuel cost
23 depends on which coal is being displaced by a PRB
24 purchase.

25 **COMMISSIONER ARGENZIANO:** Right.

1 **MR. BREMAN:** And so that's the question
2 that is being debated here, whether or not you
3 displace the highest priced CAPP coal or something
4 more representative of what the company actually
5 performs at, which is the system average for the two
6 units in question. That's the alternative analysis
7 that was a response to questions from Commissioner
8 Skop.

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

12 **CHAIRMAN CARTER:** Okay. Commissioner
13 Skop.

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

20 Commissioner Skop, you're recognized.

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

22 And I just wanted to, just for the sake of
23 clarity, point out the difference between the two
24 analyses. And, again, I appreciate staff explaining
25 that in terms of displacing the highest cost versus

1 looking at the average. The difference between the
2 two calculations in the staff recommendation with
3 the total refund using -- displacing the highest
4 cost would be \$7.7 million. And under the alternate
5 calculation, if I'm reading that correctly, the
6 required refund would be \$2 million. Is that
7 correct, generally?

8 **MR. BREMAN:** If you do -- yes, if you do
9 it year-by-year.

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

11 **MR. BREMAN:** If you take the package
12 together as what the company did over the entire
13 average two-year period, the answer could be
14 substantially less. It all depends on your
15 approach.

16 **COMMISSIONER SKOP:** Okay. Well, I mean --
17 again, I think Commissioner Argenziano raised an
18 excellent point to the extent that, you know, there
19 were certain imprudences, and at the end of the day
20 I think it's incumbent to evaluate or ascertain
21 whether the consumer was harmed financially as a
22 result of that imprudency warranting refunds. And I
23 think that it's highly dependent on whether you
24 displace the highest cost coal, which, again, may
25 have some biases to it, or whether you use a more

1 system-wide average approach specific for those two
2 units of what they actually bought and burned. So,
3 again, I thank staff for its clarification on that.

4 **CHAIRMAN CARTER:** Thank you.

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

8 Staff, would you introduce Item 2, please.

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

11 Issue 2 deals with whether Progress Energy
12 should issue a refund to its customers should the
13 Commission determine that the cost of coal delivered
14 to Crystal River Units 4 and 5 during 2006 and 2007
15 were unreasonably high.

16 It is staff's recommendation that the
17 refund amount including interest should be
18 recognized within the 2009 annual fuel proceedings
19 which would affect customer bills in 2010. If the
20 Commission determines that no refund is warranted,
21 then this issue is moot.

22 **CHAIRMAN CARTER:** Thank you.

23 Commissioners, we are now dealing with
24 Item 2, which is the refund method, and they are
25 dealing with the aspects of that, fuel factors and

1 things of that nature.

2 Commissioner Skop, you're recognized.

3 **COMMISSIONER SKOP:** Thank you, Mr.

4 Chairman.

5 And I guess it came to my office, I didn't
6 request it, but apparently there's another handout
7 that staff had prepared detailing the various
8 options in terms of the one-time credit versus doing
9 it in the way that staff has recommended in its
10 primary recommendation. Could staff briefly speak
11 to that, please.

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

13 Staff is recommending to do it within the
14 2009 fuel proceedings. It has some advantages,
15 which are by doing the treatment in -- it effects
16 the 2010 fuel factors. It has the advantage of
17 administrative simplicity, rate stability, and
18 grants refunds to customers shortly after the
19 decision has been made.

20 As far as the one-time credit, if the
21 Commission determines that a refund is warranted and
22 decides to do it in a one-time credit, then we would
23 seek to have that done within 30 days after the
24 Commission has ordered -- made the order of the
25 refund, which would probably be around August. And

1 the one-time refund credit is a reduction of about
2 \$2.03 on the 1,000 kilowatt bill.

3 One of the other options with the
4 remaining months of the 2009 fuel factors, which
5 will be approximately about five months, which would
6 result in about a \$2.29 refund over the period,
7 about 46 cents per month, sorry. And the effect to
8 the 2010, we don't know that yet because we are
9 still waiting on those projections, which are
10 expected to be filed around late August, early
11 September.

12 **CHAIRMAN CARTER:** Thank you.

13 Commissioner McMurrin, and then I will
14 come back to Commissioner Edgar, and then
15 Commissioner Skop.

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

20 **MS. ROBERTS:** Correct.

21 **COMMISSIONER McMURRIAN:** Thank you.

22 **CHAIRMAN CARTER:** Commissioner Edgar.

23 **COMMISSIONER EDGAR:** Thank you.

24 I was just going to say that I had
25 requested in my briefing with staff that they do

1 this analysis, so thank you for putting that
2 together, and, of course, distributing it, simply
3 because I wanted to have a feel for what the numbers
4 would be. Thank you.

5 **CHAIRMAN CARTER:** Thank you.

6 Commissioner Skop, you're recognized.

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

8 And I commend Commissioner Edgar for doing
9 that because, again, I think it is important for the
10 Commission to assess its options. I mean, these are
11 difficult economic times, and, you know, as the
12 Commission did in the FPL hole drilling case, I
13 mean, we made the extraordinary decision to refund
14 that money directly to the consumers immediately.
15 So, again, I think seeing that analysis is very
16 helpful to me, so thank you.

17 **CHAIRMAN CARTER:** Thank you.

18 Commissioners, anything further on Item 2?

19 Okay. Staff, let's proceed to Item 3.
20 You're recognized.

21 **MR. LESTER:** Item 3 is staff's
22 recommendation on what additional action may be
23 necessary. Staff is recommending that Progress --
24 the Commission require Progress to file a report as
25 part of its projection testimony in the fuel docket,

1 and that would be on September 1st, 2009. The
2 report should address their efforts to procure coal
3 in the most prudent manner and include -- address
4 the issues such as plant modifications and test
5 burns, and essentially say what the company is doing
6 to create opportunities and purchase the lowest cost
7 coal.

8 In addition, we have recommended going
9 forward that any further or future application of
10 the methodology be modified to be done on a total
11 cost basis and consider the coal that would actually
12 be displaced and not necessarily automatically
13 displace the most expensive coal.

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

15 Commissioner McMurrin, you're recognized.
16 Commissioner McMurrin.

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

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

22 **COMMISSIONER McMURRIAN:** Thank you.

23 This, obviously, is a very important issue
24 to talk about how we deal with this going forward,
25 and I want to get clarification on it just to make

1 sure I understand what we are talking about, because
2 Commissioner Skop was talking earlier about, you
3 know, what his goal was with respect to some of the
4 earlier issues. And I guess my goal is to make sure
5 we are on track with letting the company manage the
6 company and us reviewing those decisions, because in
7 my mind that's what our job is to do.

8 Now, to the extent that the Commission has
9 ordered things in the past order that Progress
10 hasn't yet completed, I think that your
11 recommendation is to say to Progress to file a
12 report and let us know the status of where they are
13 in complying with that earlier order, and I suppose
14 this one, the order that would result from this one,
15 as well.

16 But I wanted to see whether or not what
17 you contemplate would allow them to make a case for
18 whatever they thought was the best action going
19 forward. In other words, I'm not sure that I have
20 enough information to know whether at this time they
21 should be doing a lot of upgrades and all to make
22 sure they are able to burn any coal in the world.
23 And I would like to see what their analysis would be
24 for what they suggest going forward. And even if it
25 were -- even if they thought the best course of

1 action going forward was to suggest that the action
2 we suggested they take in the last order would be
3 something different today, I would want to see that
4 and us be able to review that.

5 It may be that we would still want them to
6 be on track with exactly what the Commission ordered
7 in that order, but it seems like the flexibility
8 thing is important. Not just in the flexibility of
9 any fuel, but the flexibility in them making the
10 decision that's best for the ratepayers ultimately.
11 And to me that is what I care about is making sure
12 that the most cost-effective option for supplying
13 power is the one that they take, and that we are
14 always able to review that decision.

15 So I guess I am sort of -- that was sort
16 of a brain dump there about what my thoughts are
17 going forward, and I wanted to see if that's
18 consistent with what you think you have laid out
19 here.

20 **MR. LESTER:** Yes, ma'am, it is. We're
21 trying to leave it open. We're trying not to, let's
22 say, spell out specific coal purchases or something
23 like that, or getting into, like, what are properly
24 management decisions. But instead we are trying to
25 say show us how your procurement policies are

1 prudent, and how your long-term plans regarding CR-4
2 and 5 are prudent overall.

3 We're not specifying. We're touching on
4 some topics like test burns, plant modifications,
5 exploring coal supply basins, and such as that, but
6 we are not being overly specific there. We are
7 leaving it up to the company to come in and tell us
8 that. And that maybe shifts away from, you know,
9 what started this case out, which was the imprudence
10 that began in 2001. We're trying to follow through
11 to how they are actually currently procuring the
12 lowest cost coal.

13 **MR. HINTON:** Commissioner, if I might add
14 to that, and really Mr. Lester just kind of
15 addressed it. In getting to some comments that
16 Commissioner Skop had said earlier, the Commission
17 determined they were imprudent in 2001 and 2002 for
18 not placing themselves in a position to burn PRB
19 coal when it became cost-effective.

20 Issue 3 is, you know, more or less saying
21 where are you in that process. If PRB is
22 cost-effective, can you burn PRB? What have you
23 done to correct that imprudency in the past? Should
24 you move forward in that direction or what have you,
25 as Commissioner McMurrian said and Pete said.

1 We are not trying to specify what the
2 future should look like, but we wanted to start
3 talking about the future and what they are doing to
4 correct that imprudency. And to get to an earlier
5 concern, as well, staff doesn't believe the
6 Commission should place itself in a position of
7 telling the utility what coal to purchase, so we are
8 certainly not saying go out and select foreign coal.
9 We're just saying do you have processes in place to
10 find the most cost-effective coal procurement. And
11 if it is 100 percent domestic, absolutely, but what
12 is the most cost-effective and are you placing
13 yourself in a position to burn the most
14 cost-effective coals.

15 **COMMISSIONER McMURRIAN:** Okay. And I
16 guess one follow-up comment. I just wanted to make
17 sure that I'm clear that I'm certainly not
18 suggesting that the company not follow through with
19 what we have ordered them to do in the past. But
20 it's similar -- I was thinking about this yesterday,
21 and to me it's similar to when we were talking about
22 some of the pole inspections and things, and we had
23 required a certain cycle on pole inspections, and
24 yet, in my mind, I felt like we need to be open to
25 someone coming in and making the case that perhaps

1 not doing the exact cycle that we laid out might be
2 better for them and might be better for the
3 ratepayers, ultimately.

4 And I wanted companies to have that
5 flexibility to come in, to feel like they could come
6 in and tell us we think there is a better way to go
7 about this. And to me that is what I am suggesting
8 here. I don't know that there is a better way, I
9 just want them to have the flexibility to be able to
10 tell us, and let's ultimately do the right thing to
11 make sure we get the most cost-effective fuel for
12 the ratepayers. Thank you.

13 **COMMISSIONER ARGENZIANO:** Mr. Chairman.

14 **CHAIRMAN CARTER:** Commissioner Argenziano.

15 **COMMISSIONER ARGENZIANO:** A question for
16 staff. Isn't that what you're doing in your
17 recommendation? And as Commissioner Skop had said
18 before, you want to prevent this from coming up
19 every year. And under Issue 3, it wouldn't -- it
20 won't come up again if staff does what staff
21 recommends. And to me, and correct me here, because
22 I understand what Commissioner McMurrian is saying
23 also, aren't we basically telling them to reevaluate
24 the PRB coal burning decisions and come back and
25 tell us, you know, why, with justification just as

1 it would not shut them down, but it would give them
2 the flexibility that Commissioner McMurrian was
3 talking about. Wouldn't that scenario fall through
4 if your recommendation is adopted and staff follows
5 that recommendation?

6 **MR. LESTER:** Yes, ma'am. What we're
7 saying -- yes, ma'am, I agree we're allowing them
8 flexibility that would include addressing PRB coal,
9 but also other options. They have scrubbers that
10 are going to come on-line, and in some of the
11 evidence in this case they have indicated that there
12 is a high sulfur Illinois Basin coal that may be the
13 lowest-cost alternative, but they need to explain
14 that as well as the PRB option, and as well as
15 explain other coal supply options. So they would
16 need to -- we do want to get away from the strict
17 application methodology of going forward and allow
18 them to prove their case.

19 **COMMISSIONER ARGENZIANO:** Right.

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

22 **COMMISSIONER ARGENZIANO:** Right. It seems
23 to me the way to go. Thank you.

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

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

3 I just wanted to touch upon a point that
4 Commissioner McMurrin raised, and I do agree with
5 her that I don't believe it's the purview of the
6 Commission to micromanage management decisions that
7 are made with respect to how the plant should be
8 operated.

9 I think my concern, and that parallels
10 with Commissioner Argenziano's concern that she just
11 expressed, was that, you know, the scrubbers that
12 are coming on in 2010 are going to dramatically
13 change from an operational perspective what the
14 company is going to do and what is going to be
15 cost-effective for the company to do.

16 I can't say. You know, 2010 is still over
17 a year away, and I don't know what month those
18 scrubbers are coming into play. So certainly the
19 company's management decisions are important in that
20 decision-making calculus. What concerns me, though,
21 is it has been demonstrated that the unit had the
22 inherent capability to burn PRB coal when it was
23 cost-effective to do so. And I caveat that, when it
24 was cost-effective to do so. So to me, restoring
25 that inherent capability is equally important.

1 I think staff encompasses that by talking
2 about test burns. But I do think that the OPC
3 position on Issue 3 has some additional merit to the
4 extent that, I don't want to make Progress do
5 something that they don't want to do if there is
6 going to be no need to do it on a forward-going
7 basis with the addition of the scrubbers, but I
8 can't be certain that at certain times a blend of
9 PRB will not be the most cost-effective option. So,
10 again, I think there is some merit in going through
11 the exercise of doing the test burns with the PRB,
12 and having that issue definitized one way or
13 another. And I think that's what my understanding
14 of OPC is advocating for, so I'm kind of generally
15 supportive of that.

16 It would be nice to know what the units
17 could accomplish if a real effort was given to doing
18 those test burns. But, again, I can't say that that
19 option would ever be used on a forward-going basis
20 with the addition of the scrubbers, and that would
21 be a management decision. So what I'm kind of
22 trying to hint at is, you know, I think the point
23 the staff raised that, you know, they had been
24 imprudent and they haven't yet kind of addressed
25 that issue, so I do think it is fair for the

1 ratepayers who paid for the inherent capability of
2 this unit to see, you know, that capability restored
3 in some way, form, or fashion.

4 So that's where I'm kind of in between on
5 Issue 3 between what staff is advocating for which
6 seems to be more broad, and what OPC is articulating
7 which I think is very specific to addressing the
8 issue with finality as to the capability of burning
9 the PRB up to and including whether you could ever
10 get a 70/30 blend, because I think the OPC, the last
11 sentence in the recommendation, if the results
12 support the use of a blend containing more than
13 20 percent, PEF should amend their permit
14 appropriately.

15 Again, I don't know if you will get that
16 high. Again, that was the subject of a lot of
17 debate last time. So, again, that is an operational
18 issue, to some extent, but I think it's reasonably
19 certain and the Commission has held that they do --
20 the unit should have the capability to burn a blend
21 of PRB, and how that plays into management
22 operations on a forward-going basis is not really my
23 purview, but it is my purview to ensure that that
24 capability exists and is restored and not just
25 neglected or ignored.

1 And then one final question to staff.
2 With respect to the recommendation at the bottom
3 last sentence of Issue 3, it seems as if, getting
4 back to what the proper methodology to use in terms
5 of a refund, it is almost as if staff -- and correct
6 me if I'm wrong, is suggesting a change or a
7 modification in the methodology on a forward-going
8 basis. And I'm wondering whether -- I know we had
9 touched upon that early to address the bias, but I'm
10 kind of wondering whether that is just not really
11 kind of hinting at the fact that there may be some
12 credibility to the alternate analysis in terms of
13 the argument that I think was raised.

14 **MR. HINTON:** Staff thought it was a
15 compelling point that just comparing to the most
16 expensive could introduce bias, and so we thought
17 that it may be a better approach in the future to
18 look at what is actually being displaced as opposed
19 to just your most expensive.

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

21 **CHAIRMAN CARTER:** Thank you.

22 Commissioners? Commissioner McMurrian,
23 you're recognized.

24 **COMMISSIONER McMURRIAN:** I was just going
25 to respond back to some of that earlier discussion,

1 not that last point. But I guess just to share, I
2 think my concern with OPC's position there is that
3 it suggests we should direct the company to conduct
4 the test burn, and perhaps you agree with that,
5 Commissioner Skop. For me, I think that we
6 shouldn't direct them, but I think they would need
7 to answer why they did or did not do that and either
8 that passes our scrutiny or it doesn't. You know, I
9 think that, to me, is the way it would be best to be
10 handled. And I think the staff's recommendation
11 would allow that. In other words, the company
12 should take whatever action it deems is appropriate,
13 but they are going to have to defend it before us,
14 and it may or may not pass scrutiny if they don't do
15 that. I don't know.

16 **CHAIRMAN CARTER:** Commissioner Skop.

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

18 And generally I would agree with that.

19 Again, not to beat up on Progress, but I mean they
20 have had a couple of bites at the apple on this one.
21 And, again, there may be, in fact, good reason, I
22 think, as Commissioner McMurrian has alluded to, why
23 they might not want to go through that exercise on a
24 forward-going basis. But in the interim, we still
25 don't have the capability to burn PRB coal when it's

1 the most cost-effective option to do so.

2 For instance, assume for the sake of
3 discussion, accepting what I thought Progress'
4 argument to be in this case, which substantially
5 differed from the last time. Assume they were
6 imprudent, but they covered and cured by burning the
7 blend of CAPP coal and foreign bituminous coal, and
8 there were no damages or nominal damages, I think it
9 is two million to the ratepayer. That's fine.

10 What happens tomorrow if there is some
11 world international crisis in Venezuela where they
12 get their foreign bituminous coal from and prices go
13 sky high. Then you might have rail capability to
14 burn a PRB coal at that point where it would be more
15 cost-effective than some of the other alternatives.

16 So to me it's a matter of contingency
17 planning to make sure you have -- and I see staff
18 kind of nodding in the background there. But to me
19 it's contingency planning to make sure you have the
20 absolute full flexibility of the inherent capability
21 of the unit. And, again, I think that OPC's
22 position is strong and it's kind of getting outside
23 of my comfort level for some of the same reasons
24 that Commissioner McMurrian has kind of alluded to
25 because it may become obsolete. But it's a "what

1 if" question that has not yet been affirmatively
2 answered by the company. And those units were
3 designed and paid for to be able to do this. And as
4 of today, after repeated things, and that is the
5 point I harp on, and, you know, Progress can be mad
6 at me if they want to, but it is a legitimate
7 technical valid point that we don't know because we
8 have never done it yet. And I think that that's
9 something that needs to be definitively resolved.

10 If that needs to be via a test burn, then
11 we can do it. I recognize from an operational
12 perspective, however, there could be some
13 substantial cost impact to the consumer, so I would
14 like to give Progress the opportunity to
15 demonstrate, as Commissioner McMurrian stated, why
16 that would not be cost-effective to do so. Because,
17 again, if you have to take a unit out of service for
18 the sake of doing some test burn, that might be a
19 problem in terms of base load generation and
20 purchased power costs or make up power. But if that
21 could be done concurrently with the normal
22 operations of the unit, or coming out of shutdown,
23 or a quick-look test, I think OPC's points are
24 valid.

25 I mean, frankly given the time that has

1 elapsed between what the Commission affirmatively
2 ruled on last time and where we are today, I would
3 have expected that that issue would have been
4 already affirmatively addressed to the extent that
5 it would not come back to bite them on a year, after
6 year, after year basis.

7 **MR. BREMAN:** Commissioner, we believe --
8 staff believes that Progress is capable of the same
9 reaction that you have. They are capable of
10 evaluating the situation. They are capable of
11 knowing that a test burn would answer -- a sustained
12 test burn would answer many of the unknowns that
13 keep coming up. But it's up to the utility
14 management to make that call, and if they don't make
15 that call they run the risk of making refunds every
16 year.

17 **COMMISSIONER ARGENZIANO:** Mr. Chair.

18 **CHAIRMAN CARTER:** Commissioner Argenziano.

19 **COMMISSIONER ARGENZIANO:** I tend to agree
20 with staff. While I want the company to have that
21 ability to use the cheapest coal, of course, but
22 they have to make -- they have to start doing things
23 that convince us that that's the case. And they
24 need to have that flexibility, that's true. But I
25 think that I want to make sure that if there are bad

1 decisions that the correct party is held responsible
2 for the effect of those decisions. I don't want to
3 tie their hands in not allowing them to use the
4 cheapest fuels as that benefits not only them and
5 their shareholders, but it benefits the ratepayers.
6 And we don't want to micromanage these companies.
7 But if they have the ability to do that, then they
8 need to get to doing it, because we are going to
9 have this problem in front of us all the time.

10 We need to hold management responsible for
11 their decisions, okay, and they have got to start
12 making the right ones. And I don't want to have,
13 you know, their bad decisions kind of -- I'm sorry,
14 I'm hearing myself talk, and it's really hard
15 because I am getting that re -- whatever it's
16 called. Can you hear me all right? Hello?

17 **CHAIRMAN CARTER:** Yes, ma'am, we can hear
18 you.

19 **COMMISSIONER ARGENZIANO:** Okay. I'm
20 sorry, I am getting a reverb or whatever it's called
21 when you hear yourself echoing, and it's very, very
22 confusing. I don't know why it's happening, but
23 it's probably because I'm using the Blackberry.
24 What I don't want to do is have the reward or have
25 the management not responsible for imprudent

1 decisions and making the ratepayers pay for that bad
2 decision. That's wrong, too. So we really have to
3 be careful how we balance this.

4 But, you know, if we are going to reward
5 these companies with higher ROEs, and that's great,
6 they have got them, and most companies would die for
7 them, then they have to take some responsibility.
8 And to keep hearing about the risks the companies
9 face, that's true, but we also have to look at the
10 risk to the ratepayer, and the shareholders may have
11 to be held responsibility for bad decisions.

12 Now, saying that, the company -- if the
13 company can get with it, as staff said, they know
14 they need to get on board and let us know what they
15 can do and what they can't do, because I think we
16 are all after the same thing. If you can use the
17 cheaper coal to get the efficiency and still, you
18 know, keep prices down, then that's great. And I
19 think staff is -- what I'm reading and what I'm
20 hearing staff saying in this recommendation, that is
21 what we are asking them to do.

22 So, you know, I don't want to bury a bad
23 decision by, you know, by management, and yet I
24 don't want to tie their hands. So let's get the
25 company to step up to the plate and make sure we

1 don't throw the ratepayer a bad blow by rewarding
2 for bad decisions. It has got to be a fine line,
3 but I think it can be done.

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

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

8 (Recess.)

9 **CHAIRMAN CARTER:** We are back on the
10 record.

11 And, Commissioners, we had just completed
12 our discussion.

13 Commissioner Edgar, you're recognized.

14 **COMMISSIONER EDGAR:** Mr. Chairman, I thank
15 you for giving us a short break. I was at that
16 point where I needed to stretch and wanted to kind
17 of get my thoughts together. So a few comments, if
18 I may.

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

20 **COMMISSIONER EDGAR:** I agree completely
21 with Commissioner Skop, and I think similar comments
22 that have been made by the others of us here today
23 that it is important and one of our goals and
24 missions to ascertain harm, if any, to consumers and
25 to ratepayers to the best of our ability. And so I

1 really appreciate the discussion on this matter,
2 which in my mind is very technical.

3 I also agree with everything that has been
4 said about the importance, I think, of using a
5 consistent methodology in our analysis in these
6 types of scenarios, but also the importance of the
7 different inputs and how, obviously, different
8 inputs could affect the result of that analysis and
9 that methodology.

10 I also agree very strongly with the
11 comments that we have all, I think, expressed about
12 wanting to walk that line correctly of not overly
13 managing or overly being prescriptive as to utility
14 operations. Candidly, our utility managers in this
15 state are for the most part excellent, and are paid
16 well to be excellent.

17 But I also thinking that it is an
18 important part of our job to provide that regulatory
19 review that does give protection to the ratepayers,
20 and at times serve as that substitute for the
21 marketplace with a monopoly regulatory scheme as we
22 have here.

23 So with all of that said, I am of the
24 opinion that there may not be one exact crystal
25 clear the right number that is able to be determined

1 because of the length of time and the different
2 scenarios and different decisions and calculations
3 and all of that through the whole process. I do, as
4 I said, think it's important that we do the due
5 diligence on behalf of the public, on behalf of the
6 ratepayers, and I know that that is what we are
7 striving for here.

8 So with that in mind, I would like, Mr.
9 Chairman, if this is the appropriate time, to make a
10 motion in favor of the staff recommendation on all
11 issues. Again, with the understanding that I don't
12 know that we can get the exact most accurate number
13 to the dollar, to the penny, but with the
14 information that we have available I think that the
15 staff recommendation is clear, gives clarity, gives
16 us some guidance going into the future, and also
17 closes out this issue in an appropriate manner.

18 **CHAIRMAN CARTER:** Thank you.

19 Is there a second?

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

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

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

25 **COMMISSIONER McMURRIAN:** -- make a comment

1 there.

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

4 **CHAIRMAN CARTER:** Thank you, Commissioner.
5 I appreciate that. Sometimes -- I know when I was
6 calling in on my Blackberry, I got that feedback
7 that you are getting. It sounds like a
8 reverberation in your ear.

9 **COMMISSIONER ARGENZIANO:** Yes.

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

12 Commissioner McMurrian, you're recognized
13 in debate.

14 **COMMISSIONER McMURRIAN:** Thank you. And
15 thank you, Commissioner Argenziano. I was just
16 going to say, of course my position on the earlier
17 round of this, the last case, I dissented from that
18 opinion. But I do recognize that that was a
19 Commission decision to issue a refund in that case,
20 and I think that carrying forward that methodology
21 here, while it's not, as Commissioner Edgar, may not
22 be perfect, and it's hard to get to that perfect
23 number.

24 And I do also appreciate the analysis that
25 Commissioner Skop asked staff to do. I do think

1 that that is something we definitely should look at
2 going forward with respect to the discussions we had
3 on Issue 3 because of the concerns that were raised
4 about bias in looking at just the high end,
5 displacing the high end of those fuel numbers, but I
6 will support the motion.

7 **CHAIRMAN CARTER:** Thank you.

8 Commissioners, we're in debate. In
9 debate.

10 Commissioner Skop, you're recognized in
11 debate.

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

13 Just one quick question with respect to, I
14 think, Issue 3. Again, I've considered that a
15 little bit further. I do think that, you know, OPC
16 raised some valid points, but, you know, the Clean
17 Air Act and CLAIRE required installation of
18 scrubbers, and I think I may have overlooked it, but
19 my understanding is that ultimately in 2010 the
20 installation of scrubbers may impede the ability to
21 cost-effectively burn PRB.

22 So, again, I think the staff approach,
23 although part of me would like to see a test burn
24 done, and that may actually happen as a result of
25 some of the comments that have been made here today

1 in the interim before the scrubbers get put on, but,
2 you know, if Progress under the staff recommendation
3 could justify a reason for why that would not be the
4 appropriate thing to do on a forward-going basis in
5 light of the scrubbers that are being installed,
6 then certainly I think that that should be part of
7 the decision-making calculus that the Commission
8 considers whether to accept or reject the
9 explanation provided.

10 So I have more of a comfort now with Issue
11 3 in terms of adopting the staff recommendation. As
12 to the Commission's motion, again, I support the
13 will of the Commission. I will probably be writing
14 a concurring opinion, though, expressing the fact
15 that I don't feel that the staff recommendation
16 really gave full vetting to what I thought that the
17 crux of the argument that Progress raised in its
18 defense was. But, again, if it's the will of the
19 Commission to adopt the staff recommendation, I will
20 be in support of that.

21 **CHAIRMAN CARTER:** Thank you.

22 Commissioners, we're in debate. Any
23 further debate? Any further comments?

24 Hearing none. We have a motion and a
25 second on the floor. All in favor, let it be known

1 by the sign of aye.

2 (Simultaneous aye.)

3 **CHAIRMAN CARTER:** All those opposed, like
4 sign.

5 Show it done.

6 Commissioner, get well soon. We're
7 looking forward to seeing you soon, and praying for
8 a speedy recovery for you.

9 **COMMISSIONER ARGENZIANO:** Thank you very
10 much.

11 **CHAIRMAN CARTER:** With that we are
12 adjourned.

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER


COUNTY OF LEON)

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

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

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

DATED THIS 28th day of July, 2009.



JANE FAUROT, RPR
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