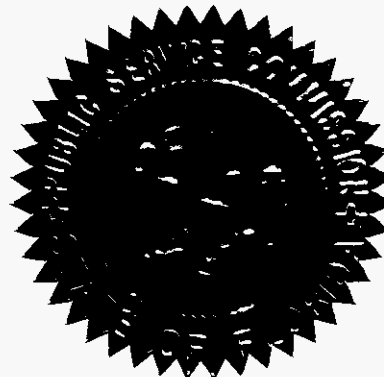


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090009-EI
NUCLEAR COST RECOVERY CLAUSE.

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PROCEEDINGS: SPECIAL AGENDA

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Friday, October 16, 2009

TIME: Commenced at 9:38 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
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DOCUMENT NUMBER - CAT

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FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** Good morning. I'd like to
3 call this special hearing to order. Commissioners,
4 we've got a few technical difficulties, but we'll work
5 through those. Chris is going to have to activate the
6 mikes manually. And also for staff, we've got a system
7 worked out where when they lower their mike, he'll know
8 which staff's microphone to turn on and all like that.
9 So we'll go from there.

10 Anything preliminary, Commissioners, before we
11 begin?

12 Okay. Staff, you're recognized. Mr. Hinton.

13 **MR. HINTON:** Mr. Chairman, Commissioners, I'm
14 Cayce Hinton with Commission staff.

15 The item before you is staff's recommendation
16 in Docket Number 090009, the nuclear cost recovery
17 proceeding. This recommendation addresses petitions by
18 FPL and Progress Energy for cost recovery related to
19 nuclear projects pursuant to Section 366.93, *Florida*
20 *Statutes*, and Rule 25-6.0423, Florida Administrative
21 Code.

22 FPL's petition includes costs related to the
23 uprate of existing nuclear plants Turkey Point Units 3
24 and 4 and St. Lucie Units 1 and 2, as well as the
25 proposed new generating plants Turkey Point Units 6 and

1 7. Progress Energy's petition includes costs related to
2 the uprate of the existing nuclear plant Crystal River
3 3, as well as the proposed new generating plants Levy
4 Units 1 and 2.

5 To aid you in addressing questions you may
6 have, Jim Breman to my immediate right is the lead
7 analyst on issues related to FPL, Mark Laux is lead on
8 issues related to Progress Energy, Robert Graves
9 addressed long-term feasibility analysis issues for both
10 utilities, and Mr. Slemkewicz and myself handled policy
11 Issues 2 and 3 respectively.

12 I also would like to note that a number of
13 issues were partially stipulated and voted out at the
14 hearing. Those issues are identified in Attachment A to
15 the recommendation beginning on Page 76. If it is your
16 preference, staff is prepared to proceed through the
17 recommendation issue by issue as represented in the
18 table of contents on Page 5 of the recommendation.

19 But before we begin, I would like to note that
20 we have identified a handful of corrections that need to
21 be made to the recommendation. We have provided an
22 errata sheet describing these modifications. Staff is
23 available to, to answer questions regarding the errata
24 sheet or to proceed with the review of issues at your
25 pleasure.

1 **CHAIRMAN CARTER:** Commissioner Skop.

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

3 Just a quick question for staff. I had asked
4 that a graph be prepared that would better, just in a
5 snapshot, quantify what, what percentage of the costs
6 sought to be recovered were related to the uprate and
7 what costs were related to new nuclear construction. I
8 was wondering if, if they had that.

9 **MR. HINTON:** (Inaudible.) Pass it out right
10 now.

11 **COMMISSIONER SKOP:** Okay. All right. Thank
12 you.

13 **CHAIRMAN CARTER:** We didn't get your
14 transmission on that.

15 **MR. HINTON:** Would you like me to restate?

16 **CHAIRMAN CARTER:** When you do that, give them
17 a chance. They've got to do it manually.

18 **MR. HINTON:** Sorry.

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

20 **MR. HINTON:** We completed that graph late last
21 night and are prepared to distribute that right now.

22 **COMMISSIONER SKOP:** Thank you.

23 **CHAIRMAN CARTER:** Okay. You may do so now.

24 Commissioners, anything further? What I was
25 going to do is that since staff has kind of had, laid it

1 out, we can walk through the issues. They're fairly
2 logically laid out and we can deal with all of the
3 issues first, and then we'll come back and decide on a
4 disposition. Is that okay? Okay. Are you going to
5 pass out -- have you got one for everyone? Party
6 favors.

7 What we'll do, Mr. Hinton, we'll have you tee
8 it up. And, well, you said Mr. Breman has FPL; is that
9 right?

10 **MR. HINTON:** We will begin with the policy
11 issues 2 and 3. Mr. Slemkewicz will introduce Issue 2.

12 **CHAIRMAN CARTER:** Okay. Let's do that then.
13 You're recognized.

14 **MR. SLEMKEWICZ:** I'm John Slemkewicz with
15 staff. Issue 2 concerns the determination of the
16 appropriate carrying charge to be accrued on
17 Commission-approved deferrals of costs that would
18 otherwise be recovered in the NCRC.

19 Staff recommends that the appropriate pretax
20 AFUDC rate for NCRC purposes is the appropriate carrying
21 charge on the deferred amounts.

22 **CHAIRMAN CARTER:** Commissioners, any questions
23 on Issue 2? We may come back to that. Thank you. You
24 may proceed.

25 Commissioner Skop, do you have a question

1 on -- you're recognized, sir.

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

3 Just a quick point of reference on Issue 2.
4 With respect to the AFUDC that is allowed pursuant --
5 that's basically specified by statute that was
6 subsequently adopted by rule; is that correct?

7 **MR. SLEMKEWICZ:** That's correct for, you know,
8 need petitions before December 10th, 2010 -- I mean,
9 December 31st, 2010.

10 **COMMISSIONER SKOP:** Okay. All right. Thank
11 you.

12 Staff, you may proceed.

13 **MR. HINTON:** Commissioners, Issue 3 addresses
14 whether utilities should be permitted to track and
15 record the difference between the carrying charge set
16 forth in the statute and their Commission-approved AFUDC
17 rate.

18 FPL's position is that their approved AFUDC
19 rate should be applied to all construction projects in
20 CWIP, but that only the carrying charge set forth in the
21 statute and rule would be permitted to pass through the
22 clause. The difference between these two rates would
23 continue to be recorded in CWIP for recovery in base
24 rates once the plant enters commercial service.

25 Progress Energy's position is that the statute

1 and rule establish a fixed carrying charge to be applied
2 to eligible nuclear projects regardless of the utility's
3 AFUDC rate applied to other projects. Intervenors took
4 no position on this issue. Staff agrees with Progress
5 Energy on this issue and recommends the Commission find
6 that the statute and rule establish a fixed carrying
7 charge to be applied to nuclear projects eligible for
8 recovery pursuant to the statute and rule, and a company
9 should not track the incremental or decremental
10 difference between the two rates for recovery at a later
11 time.

12 **CHAIRMAN CARTER:** Commissioners, any
13 questions? Again, Commissioners, we will, as we get
14 into it, we can come back on any of these. We're not
15 bound by -- we can come back. But I wanted them to kind
16 of give us a general overview.

17 Commissioner Edgar, you're recognized.

18 **COMMISSIONER EDGAR:** Thank you. Cayce, can
19 you tell us very briefly what the impact of the
20 different positions between the two companies would be?

21 **MR. HINTON:** For Progress Energy right now, I
22 believe that their approved AFUDC rate is not different
23 than the one that is, would be applicable under the
24 statute. The statute says that for need petitions filed
25 before December 31st, 2010, as Mr. Slemkewicz said, the

1 AFUDC -- the carrying charge applied would be the AFUDC
2 rate in effect in 2007 when the law became in effect or
3 the rule.

4 For Progress Energy, I believe right now
5 there's no difference between those two rates. For FPL,
6 the rate that would apply under the statute is
7 7.42 percent. Later their AFUDC rate was, was, was
8 raised to I believe 7.65 percent, but then again it was
9 changed back down to 7.14 percent. So right now their
10 approved AFUDC rate is a little lower than the one
11 that's applicable under the statute.

12 **COMMISSIONER EDGAR:** And the mechanism that
13 changed the rates was what?

14 **MR. HINTON:** The normal process that the
15 Commission does to establish an approved AFUDC rate for
16 the utilities.

17 **COMMISSIONER EDGAR:** Thank you.

18 **MR. HINTON:** Uh-huh.

19 **CHAIRMAN CARTER:** Commissioner Skop.

20 **COMMISSIONER SKOP:** Thank you.

21 Just a follow-up question on that, on that
22 point with respect to -- I guess Progress's position is
23 to basically allow the AFUDC rate permitted by statute
24 and our rule; whereas, the FPL position differs to the
25 extent that they want it to vary in accordance with

1 whatever AFUDC may be at the time. Is that generally
2 correct?

3 **MR. HINTON:** To clarify, they, they would
4 apply the -- the AFUDC rate that was in effect on, in
5 2007 would be what would pass through the clause. And
6 what they would do is record the difference, whether
7 higher or lower, between that rate and their currently
8 approved AFUDC rate. They would, they would continue to
9 record that and see what -- which would then get rolled
10 into base rates later on.

11 **COMMISSIONER SKOP:** Okay. So, so if, if that
12 difference were to go up or if the AFUDC rate were to go
13 up, then obviously there would be, they'd be seeking to
14 recover additional costs over and above what's currently
15 specified by statute and our rule; is that correct?

16 **MR. HINTON:** Correct.

17 **COMMISSIONER SKOP:** Okay. All right. So I
18 guess the staff recommendation then is to be consistent
19 with the statute and rule as applied.

20 **MR. HINTON:** Yes. That, that the statute and
21 rule place a fixed carrying charge to these projects,
22 and these projects are considered -- the recovery
23 mechanism established by the statute and rule is a
24 separate mechanism, is a separate regulatory treatment
25 with a fixed carrying charge applied.

1 **COMMISSIONER SKOP:** Thank you.

2 **CHAIRMAN CARTER:** And that's, Mr. Hinton,
3 that's why staff is recommending that we use the same
4 procedure as Progress has proposed?

5 **MR. HINTON:** Yes. That's, that's the
6 methodology that they have implemented, and we, we agree
7 with their methodology.

8 **CHAIRMAN CARTER:** And it should be applied to
9 both companies.

10 **MR. HINTON:** Correct.

11 **CHAIRMAN CARTER:** Okay. Commissioners,
12 anything further?

13 Okay. Let's move on. Next issue, Issue 7.

14 **MR. BREMAN:** Commissioners, I'm Jim Breman.
15 Issue 7 is on Page 17 of the recommendation. This issue
16 addresses the reasonableness and prudence of FPL's 2008
17 project management for both its uprate and its new, new
18 power plant.

19 Apart from matters associated with contracting
20 and feasibility, no Intervenor contested FPL's project
21 management. Staff's recommendation is based on audits
22 of FPL's project management. There were two audits; one
23 was performed by staff.

24 Staff's audit comprised two parts and we
25 looked at financial as well as overall project

1 management tools and how, how the utility implements
2 those tools. The other audit was performed by FPL using
3 an external party. Based on that, staff recommends that
4 the Commission find FPL was prudent in its project
5 management.

6 **CHAIRMAN CARTER:** Commissioners, any questions
7 on 7?

8 Commissioner Edgar, you're recognized.

9 **COMMISSIONER EDGAR:** Thank you.

10 Mr. Breman, can you talk to me briefly about
11 the interrelationship between stipulated Issue 6 and
12 this issue?

13 **MR. BREMAN:** I think there is
14 interrelationship because if you don't have prudent
15 project management, it's very unlikely you would be able
16 to come to a conclusion that you've incurred prudent
17 costs.

18 **COMMISSIONER EDGAR:** I did say briefly.

19 (Laughter.)

20 **MR. BREMAN:** Was the question which issues are
21 affected by this vote or --

22 **COMMISSIONER EDGAR:** No. No. I guess I'm
23 trying to understand how if the parties and the
24 Commission have agreed that the accounting and cost
25 oversight controls were reasonable and prudent, isn't

1 that a large part of project management?

2 **MR. BREMAN:** Yes.

3 **COMMISSIONER EDGAR:** So Issue 6 would be a
4 subset of Issue 7?

5 **MR. BREMAN:** Yes. They're interrelated.
6 They're not entirely separate.

7 **MR. HINTON:** Yeah. Just to clarify, I think
8 the two issues need to be addressed separately. They
9 are separate mechanisms, but they are very interrelated.
10 Yes.

11 **COMMISSIONER EDGAR:** I guess that's the point
12 I was, was wanting to make sure that I understood
13 clearly. Okay. Thank you.

14 **CHAIRMAN CARTER:** Thank you.

15 Commissioners, anything further on Issue 7?

16 7A, Mr. Breman.

17 **MR. BREMAN:** In 2008, FPL took steps to
18 address something other than a turnkey engineering
19 procurement and construction contract cost for Turkey
20 Point 6 and 7. FPL took this action in response to some
21 of the things that they saw in what Shaw and
22 Westinghouse were offering them. FPL believed that what
23 they were looking at offered them limited ability to
24 address construction costs and schedule certainty.

25 The Intervenor, OPC, specifically argued that

1 a turnkey single source EPC or engineering procurement
2 and construction contract is a better approach and to do
3 otherwise would likely increase costs.

4 And contrary to that general premise in this
5 case FPL identified specific concerns and took steps to
6 address those concerns. And so FPL is considering
7 separating the contract from a turnkey one contract to
8 just EP, the engineering and procurement, and they're
9 going forward with that piece first, and at a later date
10 they'll commit to a contract for the construction part
11 of the project.

12 Staff recommends that FPL appropriately
13 responded to concerns it identified in 2008 and has
14 delayed a commitment to a construction contract in
15 attempt (phonetic), and they're trying to address that
16 on a competitive basis and trying to minimize their
17 construction costs and schedule certainties.

18 **CHAIRMAN CARTER:** Commissioners? Commissioner
19 Skop, you're recognized.

20 **COMMISSIONER SKOP:** Thank you.

21 Just on Page 20 of that same recommendation, I
22 guess it would be correct to understand, and, again, the
23 hearing was held quite some time ago, but the
24 proprietary portion of the Turkey Point 6 and 7 projects
25 is about approximately 3 billion of the projected

1 \$18 billion cost; is that correct?

2 **MR. BREMAN:** That was the testimony. Yes,
3 sir.

4 **COMMISSIONER SKOP:** Okay. So the, outside of
5 the \$3 billion that has to be proprietary, the remainder
6 of the 15 million (sic.) in terms of construction work,
7 is that the entirety of what FPL is looking at other
8 alternatives for?

9 **MR. BREMAN:** That would be a substantial
10 portion of the construction side. Yes, sir.

11 **COMMISSIONER SKOP:** Okay. Thank you.

12 **MR. BREMAN:** At a minimum the 3 billion will
13 be the engineering and procurement part.

14 **COMMISSIONER SKOP:** Okay. But, but that's
15 proprietary, that Westinghouse has to, has to do its
16 own. Thank you.

17 **MR. BREMAN:** Yes, sir.

18 **CHAIRMAN CARTER:** Anything further? Okay.
19 Eight, Issue 8.

20 **MR. GRAVES:** Good morning, Commissioners.
21 Robert Graves from Commission staff. Issue 8 addresses
22 the sufficiency of FPL's May 1, 2009, long-term
23 feasibility analysis for Turkey Point Units 6 and 7.

24 The Intervenors believe that FPL's analysis is
25 insufficient largely based on the lack of updated

1 construction cost estimates. One Intervenor
2 additionally argued that FPL used high natural gas price
3 forecasts and high carbon cost forecasts. Staff
4 believes that FPL's use of a cost, of a capital cost
5 estimate range remains appropriate. Staff would note
6 that FPL has yet to enter into an EP contract which was
7 discussed in Issue 7A. When FPL does enter into an EP
8 contract, the capital cost estimates will become more
9 refined and will be reviewed in future NCRC proceedings.

10 Staff also believes FPL's use of a range of
11 fuel and carbon costs is reasonable at this time, and
12 would additionally add that the utility's forecasts are
13 the same as those presented in the utility's Ten-Year
14 Site Plan.

15 Staff is recommending approval of FPL's May 1,
16 2009, feasibility analysis. In addition, after
17 reviewing the analysis, staff believes that continuation
18 of the projects remains feasible at this time.

19 **CHAIRMAN CARTER:** Questions?

20 Okay. 8A.

21 **MR. GRAVES:** Commissioners, because, because
22 you have agreed with staff's recommendation in Issue 8,
23 there's no need to visit Issue 8A.

24 **COMMISSIONER SKOP:** I haven't voted.

25 **CHAIRMAN CARTER:** You mean if. You mean if.

1 **MR. GRAVES:** Oh, if.

2 **CHAIRMAN CARTER:** If. Hang on a second.

3 Commissioner Argenziano, you're recognized.

4 **COMMISSIONER ARGENZIANO:** We don't press any
5 buttons; right? We're on.

6 **CHAIRMAN CARTER:** You don't have to press
7 anything.

8 **COMMISSIONER ARGENZIANO:** Going back to 8, the
9 concern that there was lack of details, staff feels that
10 once they enter into the contract, we can still look at
11 the prudence in that contract in the future? So we're
12 comfortable, staff is comfortable with that as far as --

13 **MR. GRAVES:** Yes, ma'am.

14 **MR. YOUNG:** Yes, ma'am.

15 **COMMISSIONER ARGENZIANO:** -- we'd still have
16 that capability of looking at the prudence and the
17 details when provided once they get into a contract?

18 **MR. GRAVES:** Yes.

19 **MR. YOUNG:** Yes, ma'am.

20 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

21 **CHAIRMAN CARTER:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

23 Also on that same point, I wanted to go back
24 to, to 7A. With respect to the staff recommendation in
25 7A, that's just whether it is prudent and reasonable to

1 pursue an alternative to the EPC contract, not
2 necessarily whether the actual contract that may be
3 entered into itself is prudent and reasonable; is that
4 correct?

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

6 **COMMISSIONER SKOP:** Okay. So that would be
7 done at, at a later time. We're not rendering any
8 prudence on anything they have not yet done.

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

10 **COMMISSIONER SKOP:** Thank you.

11 **CHAIRMAN CARTER:** Just kind of, as you go,
12 staff, let's do it this way. Like 7, if, if we do 7, we
13 don't need 7A or vice versa; is that correct?

14 **MR. HINTON:** Issue 8.

15 **CHAIRMAN CARTER:** Say again.

16 **MR. HINTON:** Issue 8 leads to Issue 8A. Issue
17 23 leads to Issue 23A and B. So those are the two
18 issues that are the "if then."

19 **CHAIRMAN CARTER:** So 7 does not lead to 7A
20 then?

21 **MR. HINTON:** Correct. They're separate
22 issues.

23 **CHAIRMAN CARTER:** Okay. I feel like I'm in a
24 -- Commissioner Edgar.

25 Hang on. Commissioners, let's -- we just, we

1 lost video this time. And of course the air conditioner
2 just kicked in. Yeah. Let's take a break. Ten
3 minutes.

4 (Recess taken.)

5 We are back on the record. And,
6 Commissioners, we're going to recognize Commissioner
7 Skop. Then I'm going to recognize staff to kind of
8 bring us back, kind of get us going.

9 Commissioner Skop, you're recognized, sir.

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

11 Just I guess on the comments staff made with
12 respect to the "if then" issues, which I believe are
13 Issues 8 and 8A and 23 and 23A; is that correct? Just I
14 guess in the future, it might be helpful too just for
15 ready reference, if maybe we could do one of those flow
16 chart things like y'all had done before. I think that
17 helps identify those issues where there's "if then." So
18 if y'all could just --

19 **MR. HINTON:** Okay. We'll take note of that
20 for next year's proceeding.

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

22 **CHAIRMAN CARTER:** Okay. Mr. Hinton, kind of
23 bring us, bring us in line chronologically so we can
24 kind of move from there. I know we're getting ready to
25 go from 8 to 8A, but just kind of bring us back around

1 and put us in --

2 **MR. HINTON:** Yes, sir. I was going to have
3 Mr. Breman --

4 **CHAIRMAN CARTER:** One second. Commissioner
5 Edgar. One second. Commissioner Edgar.

6 **COMMISSIONER EDGAR:** Hello. Thank you. Thank
7 you. And I know we, before the short break for
8 technical purposes that we discussed 8 I think a little
9 bit, but could we start at 8? Could we have staff
10 present 8 to us again?

11 **MR. HINTON:** Yeah. I was actually going to
12 have Mr. Breman clarify the relationship between 7 and
13 7A, and then we can go into 8 again, if you'd like.

14 **COMMISSIONER EDGAR:** Thank you.

15 **CHAIRMAN CARTER:** Okay. That would be helpful
16 because I was confused on -- not necessarily confused,
17 but certainly wasn't -- let's, let's take -- Mr. Breman,
18 you're recognized.

19 **MR. BREMAN:** Thank you. The project
20 management is addressed in Issue 7 and 7A. The
21 company's filed feasibility analysis and your
22 disposition of that analysis is Issues 8 and 8A. 8
23 is do you approve it? Staff recommends yes. If you
24 don't approve it, then that's the fallout issue of 8A,
25 what do you do if you don't approve the feasibility

1 analysis? And with that, we'd turn to Robert, who will
2 reintroduce Issue 8.

3 **CHAIRMAN CARTER:** Is that -- are we clear
4 on -- we'll probably have to come back to that. I guess
5 the Cliff's notes version of the introduction kind of
6 works a little bit. Mr. Hinton.

7 **MR. HINTON:** I just want to clarify that a
8 little bit more.

9 **CHAIRMAN CARTER:** I appreciate it.

10 **MR. HINTON:** 7 and 7A are not an "if then,
11 what do you do" issues.

12 Just 7A is almost a subset of 7 in the same
13 category. That's why it's the same number with a
14 letter. In Issue 8, you do actually have if you don't
15 like this, then what do you do about relationship
16 between 8 and 8A. So there is a difference between
17 those two categories.

18 **CHAIRMAN CARTER:** Okay. Now to Issue 8.

19 **MR. GRAVES:** Good morning, Commissioners.
20 Robert Graves from Commission staff.

21 Issue 8 addresses the sufficiency of FPL's
22 May 1, 2009, long-term feasibility analysis for Turkey
23 Point Units 6 and 7. The Intervenors believe that FPL's
24 analysis is insufficient largely based on the lack of
25 updated construction cost estimates.

1 One Intervenor additionally argued that FPL's
2 use of high natural gas forecasts and high carbon
3 forecasts is not appropriate. Staff believes that FPL's
4 use of a capital cost estimate range remains
5 appropriate.

6 Staff would note that FPL has yet to enter
7 into an EP contract which was discussed in Issue 7A.
8 When FPL does enter into an EP contract, the capital
9 cost estimates will become more refined and will be
10 reviewed in future NCRC proceeding.

11 Staff also believes FPL's use of the range of
12 fuel and carbon costs is reasonable at this time, and
13 would additionally add that the utility's forecasts are
14 the same as those presented in the utility's Ten-Year
15 Site Plan. Staff is recommending approval of FPL's
16 May 1, 2009, feasibility analysis.

17 In addition, after reviewing the analysis,
18 staff believes that continuation of the projects remains
19 feasible at this time.

20 **CHAIRMAN CARTER:** That's Issue 8.

21 Commissioner Argenziano, you're recognized.

22 **COMMISSIONER ARGENZIANO:** Thank you.

23 Just to, just to go back.

24 **CHAIRMAN CARTER:** Then, then Commissioner
25 Edgar.

1 **COMMISSIONER ARGENZIANO:** Thank you. I didn't
2 jump in.

3 **COMMISSIONER EDGAR:** No. No.

4 **CHAIRMAN CARTER:** No. No. Go ahead.

5 **COMMISSIONER ARGENZIANO:** To go back, if they
6 enter -- is there a time frame or anything for them to
7 enter into to get the feasibility study done? Because I
8 know that was a concern of at least trying to get some
9 kind of a time frame.

10 **MR. GRAVES:** The rule requires it by May 1 of
11 each year.

12 **COMMISSIONER ARGENZIANO:** It is by May 1?

13 **MR. GRAVES:** Yes, ma'am.

14 **COMMISSIONER ARGENZIANO:** Okay. So -- okay.
15 I think that -- and we did the prudency. Fine. Thank
16 you. I got it.

17 **CHAIRMAN CARTER:** Commissioner Edgar.

18 **COMMISSIONER EDGAR:** And I'm just trying to,
19 to be clearer than I am in my mind right now, which is
20 my understanding from the staff recommendation and other
21 discussion is that, at hearing is that, that staff is
22 saying that we have the information we need in order to
23 be able to determine the reasonableness and prudence in
24 looking at estimates in the future, but yet the
25 intervenors are saying that the information has not been

1 updated sufficiently. And can you speak to, to whether
2 it has been updated sufficiently or it has not?

3 **MR. GRAVES:** Yes, ma'am. I believe once they
4 enter into their EP contract, then the costs will become
5 more refined. But staff also looked at the range that
6 FPL is using, and in a comparison with other plants in
7 this area in the southeast all those costs fall within
8 FPL's range. So we believe their range is reasonable
9 for planning purposes.

10 **COMMISSIONER ARGENZIANO:** I'm sorry.

11 **COMMISSIONER EDGAR:** That's okay.

12 **CHAIRMAN CARTER:** Commissioner Argenziano.

13 **COMMISSIONER ARGENZIANO:** That goes back
14 though -- you say that on one hand some of the costs are
15 in the range, but yet you don't have the information.
16 And I'm trying to figure out why is it not important to
17 have more details, I guess, and I'm really trying to get
18 to the, to the crux of it.

19 If the Intervenors are saying, or those
20 opposed are saying there's not enough detailed
21 information, and that's what I heard you say, once they
22 enter into the contract, then we get more information.
23 I don't know how that affects the decision today. And
24 should we have that information today or -- in --

25 **MR. GRAVES:** I think until they enter into a

1 contract there is no way to actually have the numbers.
2 So what they've provided us is a range of what the costs
3 could be.

4 **COMMISSIONER ARGENZIANO:** And so you're, what
5 you're saying is that the range, you feel the range.
6 And what I don't understand is why if -- let me ask it
7 this way.

8 The -- I guess it was OPC and the others who
9 are, who are indicating there was lack of details,
10 didn't they see that range also? What is their comment?
11 I don't -- all I remember reading and seeing was that
12 they just had problems with lack of details.

13 **MR. GRAVES:** They didn't have a problem with
14 the lack of details.

15 **COMMISSIONER ARGENZIANO:** That's what they
16 said.

17 **MR. GRAVES:** They had issue with the fact that
18 the number hadn't been updated. I think the details was
19 from the pipeline need determination. I was -- in this
20 they're merely arguing that the costs haven't been
21 updated.

22 **MR. BREMAN:** With respect -- this is Jim
23 Breman. I apologize, and maybe I'm adding to the
24 confusion, I don't know. But with respect to FPL's
25 project, FPL's position in that project is it is

1 currently negotiating the, the capital cost or the
2 construction cost of the project. And the Intervenors
3 are saying FPL needs to provide updated capital costs of
4 the project.

5 So you're sitting, being asked to make a
6 finding that FPL needs to file updated capital costs on
7 the project at the same time that FPL is in the process
8 of trying to negotiate those very items.

9 **COMMISSIONER ARGENZIANO:** Right.

10 **MR. BREMAN:** What FPL filed is a vanilla
11 range. It is not disclosing confidential information,
12 it's not disclosing where they think they're going to
13 come in at and it's not disclosing anything else. They
14 were consistent with their need determination filing in
15 that methodology. Staff feels that's a reasonable
16 filing, and therefore the feasibility analysis that FPL
17 filed should be approved.

18 At such time that FPL has refined capital cost
19 numbers it needs to supplement its analysis methodology
20 and reflect that new information in that data.

21 Now at hearing FPL said, well, the number we
22 think is starting to move more towards this upper
23 percentile of the range. That doesn't cause staff to be
24 uncomfortable with the information they already filed.
25 It's still within the four corners of the analysis, and

1 the four corners of the analysis support feasibility no
2 matter how hard you shake the box unless things really
3 go askew. And we really won't know if they go askew
4 until we look at the feasibility analysis next year.

5 **COMMISSIONER ARGENZIANO:** So then, if I may,
6 so then that did not aid, as you just described, that
7 did not help the others feel more comfortable.
8 Obviously something more than what I've just read, what
9 I'm reading is that that didn't make them happy. Staff
10 feels it's within the range, but obviously some, the
11 other side doesn't think that that was enough to make
12 them feel comfortable.

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

14 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

15 **CHAIRMAN CARTER:** Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you. And you may
17 have already addressed this, but looking at 8 and 8A
18 together, in 8 staff is recommending that FPL be
19 required to file updated capital costs in the next NCRC
20 filing, and in 8A it would be basically file updated
21 costs with the May 1st, 2010, filing. So what would be
22 the practical difference between those two?

23 **MR. BREMAN:** Not a lot. It's a matter of
24 degree of comfort for y'all. If y'all feel like you
25 need more refined numbers, then you ask FPL to file the

1 more refined numbers that it has to date. That's all.

2 **MR. GRAVES:** Let me clarify. If you vote to
3 approve staff's recommendation in Issue 8, you will not
4 need to vote on Issue 8A.

5 **COMMISSIONER EDGAR:** Right. But I'm trying to
6 --

7 **MR. GRAVES:** That issue will be moot at that
8 point.

9 **COMMISSIONER EDGAR:** Yeah. I've got that.
10 But I'm trying to understand the practical difference
11 between 8 and 8A as far as the information that would be
12 coming in and when it would be coming in, and that I'm
13 not, still not completely clear on.

14 **MR. BREMAN:** Staff's position on 8A is very
15 much the same as 8.

16 **CHAIRMAN CARTER:** Mr. Ballinger, did you have
17 a comment on this?

18 **MR. BALLINGER:** No. I think I'll withhold. I
19 think they, they cleared it up already.

20 **CHAIRMAN CARTER:** Okay. All right.
21 Commissioners, again, as I said when we began, we'll
22 probably have to come back to some of these because, I
23 mean, as we go along there are other questions that come
24 up and see how they're interrelated. I thought there
25 was a little more difference in 8 and 8A in what we just

1 heard, so --

2 **COMMISSIONER SKOP:** Mr. Chair.

3 **CHAIRMAN CARTER:** Commissioner Skop.

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

5 Just on Issue 8 -- and I think this is a
6 Commission, a question that came from Commissioner
7 Argenziano. With respect to feasibility analysis, that
8 feasibility analysis is a continuing, ongoing process
9 that the utilities have to update annually by their
10 May 1st filing; is that correct?

11 **MR. GRAVES:** Yes, sir.

12 **COMMISSIONER SKOP:** Okay. And with respect to
13 the two new nuclear construction projects, you have FPL
14 obviously with Turkey Point 6 and 7 and you have
15 Progress with the Levy 1 and 2 units.

16 With respect to the FPL projects for Turkey
17 Point 6 and 7, those are still at the early stages of
18 project development and contract negotiation, is that
19 correct, whereas, whereas Progress has already entered
20 into an EPC contract? So --

21 **MR. GRAVES:** Yes, sir, that's correct.

22 **COMMISSIONER SKOP:** Okay. So would it be true
23 to understand that based upon, you know, the differences
24 and where they are in the project development process,
25 that FPL's costs are still not fully definitized and,

1 and merely estimates by virtue of the fact that they
2 have not yet entered into that EPC project; whereas,
3 Progress's costs should be a little bit more definitized
4 by virtue of the fact that they have entered into that
5 contract; is that, is that correct?

6 **MR. GRAVES:** Yes, sir. I agree with that.

7 **COMMISSIONER SKOP:** Okay. So it, I guess to,
8 to have a better handle on what the costs will be and,
9 and feasibility, it depends where you're at in the
10 process: Whether you've actually physically entered
11 into the contract or not versus the projected estimates
12 until such time as you enter into the contract; is that
13 correct?

14 **MR. GRAVES:** Yes, sir.

15 **COMMISSIONER SKOP:** Okay. All right. Thank
16 you.

17 **CHAIRMAN CARTER:** Commissioner Argenziano.

18 **COMMISSIONER ARGENZIANO:** And, as you say, we
19 hate to beat a dead horse, and you know what I say.

20 Just, just so I get this right, because I
21 don't want to not ask any question that I'm not fully
22 feeling comfortable with, and I think you've answered
23 it, but I just need to make sure because we are looking
24 at prudence. If the costs are not included, one would
25 suggest that how can you deem it prudent if it's not, if

1 you don't know it, if you don't know the details? And I
2 want to make sure what you're saying is that because it
3 falls within this range, you feel it does meet the
4 prudence. But -- and if it doesn't fall within the
5 range, what if we get down the line and they enter into
6 the contract and it goes outside of the range, what is
7 the, what is the remedy? I think I know, but I want
8 to --

9 **MR. BREMAN:** Right. The, the issue on the
10 table with respect to 8 or 8A is a feasibility analysis.
11 A feasibility analysis basically shakes the box and says
12 are there stop signs out there? And we think that the
13 analysis that FPL provided is robust. It covers the
14 four corners of where we think the numbers might come in
15 at, and that's what we know today. We don't know what's
16 going to happen tomorrow or next year. That's why it's
17 appropriate to have an annual feasibility analysis
18 filed, and that provides information to the
19 Commissioners that gives them, gives y'all assurance
20 that the project doesn't have any stop signs or does,
21 one or the other.

22 **COMMISSIONER ARGENZIANO:** But is it not more
23 than appropriate to wait for one to be filed?

24 **MR. HINTON:** Commissioner, let me, let me
25 clarify one thing for you. That we're not looking at

1 the prudence on these issues. These aren't prudence
2 issues because we're looking at projected costs. You
3 would only address prudence for actual costs, previous
4 years' costs that we have, the books are closed. So at
5 this point any analysis of these costs related to the
6 feasibility analysis are projected. You're looking at
7 are they reasonable to proceed, and they will be subject
8 to a further review and true-up at a later date.

9 **COMMISSIONER ARGENZIANO:** Perhaps I used the
10 wrong word. I guess reasonable would have been the
11 right word.

12 Go ahead.

13 **MR. BREMAN:** I'm sorry. I didn't mean to
14 interrupt.

15 **COMMISSIONER ARGENZIANO:** Sorry. No. Go
16 ahead.

17 **MR. BREMAN:** You used the word "excluded cost"
18 or the phrase in your question. And if I may, there are
19 no excluded numbers or costs in the feasibility
20 analysis. The feasibility analysis covers the four
21 corners of the entire project.

22 **COMMISSIONER ARGENZIANO:** Okay. Well, then,
23 then what is missing? And I'm sorry, but I have to ask
24 the question. I'm not going to sit here and pretend to
25 know.

1 **MR. BREMAN:** The Intervenors, the Intervenors
2 believe that there's missing refined capital cost
3 numbers that FPL should be providing and is holding
4 back.

5 **COMMISSIONER ARGENZIANO:** Okay.

6 **MR. BREMAN:** I don't know if I'm
7 characterizing it correctly, but that's it in layman's
8 language.

9 **COMMISSIONER ARGENZIANO:** Right. And that's
10 what's making it difficult for me. I'm trying to,
11 trying to characterize it and I'm not sure if I'm, I've
12 done -- I obviously have not done a good job at it and
13 that's what I'm trying to get at.

14 **MR. HINTON:** Yeah. Commissioner, I don't
15 think necessarily staff feels like anything is missing
16 from their feasibility analysis just due to the stage in
17 the project where we are.

18 **COMMISSIONER ARGENZIANO:** It's just not --

19 **MR. HINTON:** Certain details just aren't
20 available.

21 **COMMISSIONER ARGENZIANO:** Just can't be there.

22 **MR. HINTON:** Right.

23 **COMMISSIONER ARGENZIANO:** Okay. Okay. Thank
24 you.

25 **COMMISSIONER SKOP:** Mr. Chair.

1 **CHAIRMAN CARTER:** Thank you.

2 Commissioner Skop.

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

4 Just as, as a point of clarification, I think
5 that that was also the point, feasibility versus
6 prudence. Prudence is not at issue at this point in the
7 Commission's decision-making processes; is that correct?

8 **MR. HINTON:** Definitely not related to Issue 8
9 and 8A.

10 **COMMISSIONER SKOP:** Okay. So with respect to
11 just feasibility, and I think, as staff mentioned, it's
12 based on projected costs, so if staff had seen something
13 where the projected costs were outside, way outside of
14 what would be in staff's opinion cost-effectiveness,
15 then that would be one of the red flags that would
16 indicate that the project would no longer be feasible;
17 is that correct?

18 **MR. HINTON:** Yes. And at that point you can
19 begin to entertain the idea of -- that's when prudence,
20 the idea of prudence may come into play. If, if a lot
21 of stop signs, as Mr. Breman commented, if you begin to
22 see stop signs through these feasibility analyses, at
23 that point you go, well, is it prudent to continue?

24 **COMMISSIONER SKOP:** Okay. But, but that's,
25 that's done annually.

1 **MR. HINTON:** Correct.

2 **COMMISSIONER SKOP:** So it's an incremental
3 process. It's not just we look at feasibility as a
4 snapshot in time today and then ignore it until the
5 projects get built. We look at this continuously on an
6 annual, periodic, what I would call an industry
7 management review as to whether we should continue to
8 move forward with the projects because they are viable.

9 **MR. BREMAN:** That's correct. And in any one
10 year you may not have enough indicators to tell you
11 whether the project is feasible or not, but what you
12 look for is trends as the project develops and where
13 costs are going and that, and that type of thing.

14 **COMMISSIONER SKOP:** And because with respect
15 to Turkey Point 6 and 7, because we're still in the very
16 early stages of the development of the project and the
17 contracts have not yet been entered into, then staff has
18 to rely on the estimates as the basis for its
19 feasibility analysis; is that correct?

20 **MR. HINTON:** Yes. Estimates or ranges. Yes.

21 **COMMISSIONER SKOP:** Okay. And so, and so I
22 guess just -- and the final question then. The ranges
23 are consistent with the ranges projected in the need
24 determination at this point in time; is that correct?

25 **MR. HINTON:** I'll defer to Mr. Graves on that

1 one.

2 **MR. GRAVES:** Yes, sir.

3 **COMMISSIONER SKOP:** Okay. So there's been no
4 deviance outside of the scope of costs that were
5 presented to the Commission that formed the basis for
6 our need determination?

7 **MR. GRAVES:** That's correct.

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

9 **CHAIRMAN CARTER:** So let me see if I hear this
10 right. I need to say this before I lose it. Is that
11 on, on Issue 8 the Intervenors are saying that
12 technically the, the assumptions were updated but the
13 estimate or the costs were not. And they're saying
14 that, in essence that the feasibility is, for lack of a
15 better word, is not, my word is not proper. I think
16 they said worthless.

17 But in Issue 8A they said that the, the, the
18 company should be required to use a proper updated
19 feasibility study by a time certain. Help me understand
20 the differentiation between those two. I mean 8 and 8A,
21 there's got to be some differences; right?

22 **MR. BREMAN:** Yes. We struggled with trying to
23 present 8A to you because it's what do you do in case
24 you don't like the feasibility analysis? You're not
25 convinced that the feasibility analysis is adequate,

1 sufficient, something is missing, you need new
2 information, you don't want to make a decision because
3 of that lacking of information.

4 The Intervenors brought up the question of 8A
5 in order to address the alternative of not approving
6 FPL's feasibility analysis. And so they said, well,
7 make FPL file a new feasibility analysis with the
8 numbers we think they have that they haven't filed with
9 you and do it by time certain. So that's the
10 distinction.

11 And then the other Intervenor takes a position
12 that if you deny the feasibility analysis or you don't
13 approve the feasibility analysis that FPL has, then the
14 whole project is gone. It's not justified, it's not
15 supportable. So that's basically the, the points that
16 are being brought up in 8A, which is what do you do in
17 the event that you don't accept or don't adopt or don't
18 approve the feasibility analysis that FPL filed?

19 **CHAIRMAN CARTER:** Okay. Commissioner
20 Argenziano, then Commissioner Skop.

21 Commissioner Argenziano.

22 **COMMISSIONER ARGENZIANO:** Just to that, what
23 would be the benefit of making them -- I mean, if we
24 have, and you've explained it now, but what would be the
25 benefit of the Intervenor's position of making them come

1 back and what would be the benefit to, to doing that?

2 **MR. BREMAN:** The, well --

3 **COMMISSIONER ARGENZIANO:** Coming back and,
4 having them come back and redo the feasibility.

5 **MR. BREMAN:** Okay. I'll go through the three
6 options on Page 27 of the recommendation.

7 The three options that we think we found in
8 the record and supported by the parties is the deferred
9 decision option. That's the one that staff would say if
10 you don't approve the feasibility analysis, do the
11 deferred decision. In other words, don't make a
12 decision on feasibility today because we know we're in a
13 state of flux. Let's just wait on a decision on
14 feasibility until we have new information and see what
15 the company files next year on the typical filing cycle.
16 Okay?

17 **COMMISSIONER ARGENZIANO:** Uh-huh.

18 **MR. BREMAN:** If -- that's option one. The
19 second option is if you are convinced that FPL does have
20 updated information, if you're convinced of that, and
21 we're not, we're not supporting that position, so we
22 don't know where the evidence in the record is there,
23 but under the hypothetical that you are convinced that
24 they do have updated information and it is substantive
25 and it's dispositive of assessing the feasibility

1 analysis, then you should order FPL to update their
2 feasibility analysis with this new vital information and
3 file it by date certain, and I think January 1. Okay.
4 And that's by January 1. Okay?

5 And the third option is, is the one where you
6 basically are convinced that the feasibility analysis is
7 adequate to say that there are show stoppers and that
8 you should begin not allowing cost recovery.

9 **COMMISSIONER ARGENZIANO:** You just said in
10 your number two in the doing the redo, you included the
11 term, I think you said new -- if you, if you thought
12 they didn't have the most, excuse me, updated
13 information, that it would, that you would ask them to
14 update, redo by January 1st and include vital
15 information. Is that what you said?

16 **MR. BREMAN:** Well, yes. That's the missing
17 information. That's the information that you think is
18 pertinent and that you need in order to make a decision
19 on the feasibility analysis.

20 **COMMISSIONER ARGENZIANO:** Were there any
21 indicators that staff could find that the Intervenors
22 had some knowledge of information that was there that we
23 don't have? As far as you're saying if we redid and
24 asked them to provide updated information, if they don't
25 have updated information, I don't know how you'd get it.

1 **MR. BREMAN:** You're sort of where we are,
2 Commissioner.

3 **COMMISSIONER ARGENZIANO:** Okay.

4 **CHAIRMAN CARTER:** Thank you.

5 Commissioner Skop.

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

7 And I guess I had the same question and
8 concern. You know, I'm trying to understand the benefit
9 of the Intervenor's argument, but as well as the
10 detriment of I guess, and it may just be semantics, but,
11 you know, as the issue is framed, if the Commission does
12 not approve the long-term feasibility analysis, you
13 know, it would immediately suggest, and maybe wrongfully
14 so, that something was wrong and the project was not
15 feasible. So to me that, a lot of, a lot of risk hangs
16 in the semantics on that one. But, you know, I'm
17 certainly open to if there is additional information,
18 which I think in response to Commissioner Argenziano's
19 question staff believes does not exist over and above
20 the Intervenor's suggestion that it does, then, you
21 know, if there were additional information, then perhaps
22 that might be the basis for conducting an updated
23 analysis. Not necessarily that anything had been
24 intentionally omitted, but maybe new information is
25 available to better refine the analysis.

1 So, so I guess where I'm at, I'm reading the
2 proposed actions in 8A, and I guess in principle they're
3 good recommendations, but in, in practice I guess some
4 of the language or the wording of those gives me some
5 pause and concern when, when I see FPL failed -- you
6 know, I don't think staff knows or I don't know whether
7 they did or didn't. You know, if there's additional
8 information that supports the Intervenor's position,
9 then certainly that's something that's relevant to the
10 analysis and might form the basis for an updated
11 feasibility analysis maybe sooner rather than later.

12 But, you know, unilaterally just saying that
13 if we did not approve the long-term feasibility
14 analysis, I think the peril of that is suggesting that
15 something's wrong early in the process, and I wonder,
16 you know, what, what time of ramifications might
17 ultimately result from that. So I guess I'm caught in
18 the middle here between the semantics because it seems
19 very specific to the decisions that we're being asked to
20 make. Those, those have consequences.

21 **MR. BREMAN:** Is your, is your question with
22 respect to the third option, which is deny future cost
23 recovery?

24 **COMMISSIONER SKOP:** No. I hadn't really
25 gotten to that yet. I'm looking to, you know, to

1 Commissioner Argenziano's point, which I thought was a
2 good one, to better understand if there is a basis for
3 the Intervenor's assertion that there is some additional
4 information that needs to be updated. Not necessarily,
5 as staff has stated, that something was intentionally
6 omitted, but maybe there is better information that
7 would support updated analysis.

8 But from what I heard staff say in response to
9 her specific question was that staff does not believe
10 that there is that additional information at this time
11 that would change staff's opinion as to the validity of
12 making a long-term feasibility analysis at least for
13 this particular year. That might change next year, but.

14 **MR. BREMAN:** Right. Robert can check me on
15 this. For FPL I believe there was record discussion
16 that FPL's range wasn't as broad as their feasibility
17 analysis showed. That FPL's at hearing view of the
18 world was a little bit narrower.

19 **COMMISSIONER SKOP:** Can y'all speak up a
20 little bit too or can we raise the microphone level?

21 **MR. BREMAN:** I can swallow the mike.

22 **COMMISSIONER SKOP:** Okay.

23 **MR. BREMAN:** Is that better?

24 **COMMISSIONER SKOP:** Yes.

25 **MR. BREMAN:** I think there was discussion that

1 FPL's project cost numbers are the median, FPL used the
2 median for a lot of its analysis, has moved more towards
3 the higher side than the lower side. And so that's the
4 only refinement that staff is aware of that's in the
5 record that would support saying, FPL, give me a new
6 analysis, and eliminates this lower side that doesn't
7 look realistic to you today.

8 **COMMISSIONER SKOP:** Okay. So even with the
9 shift to the upward project cost, it's still within the
10 range of reasonableness that was presented as the basis
11 for approval of the need determination.

12 **MR. BREMAN:** Yes.

13 **COMMISSIONER SKOP:** Okay. So we're still
14 within I guess what we previously approved and we've not
15 departed from that; is that --

16 **MR. BREMAN:** Yes.

17 **COMMISSIONER SKOP:** Okay.

18 **MR. HINTON:** If I could clarify something as
19 well. Just to sort of contextualize this conversation,
20 and it'll be probably even more evident when we start
21 discussing Progress's feasibility analysis in Issue 23,
22 this is the second year of the nuclear cost proceeding.
23 This is the first year with the feasibility analysis
24 really included since the first feasibility analysis was
25 right after the need determinations.

1 The term feasibility analysis is not defined
2 in the rule. There is added definition given to it in
3 the need determination orders, but even those two orders
4 for the two companies are not identical. So there's
5 going to be a certain measure of uncertainty as to what
6 should be part of the feasibility analysis in this first
7 year and we're working through that in this. That's
8 part of why staff is recommending let's clarify what
9 needs to be part of this and make sure next year's
10 includes, you know, whether it's an economic analysis or
11 this cost or that cost. We're clarifying that this
12 year.

13 **CHAIRMAN CARTER:** Commissioner Argenziano.

14 **COMMISSIONER ARGENZIANO:** Let me just ask this
15 question and I may be way off the mark, but if, if FPL's
16 numbers have moved from the median and up to the higher
17 and it's not redone to reflect the higher, the move
18 upward, is that not -- would the Intervenors maybe
19 complain to be that it's kind of skewed, it's not
20 reflecting what is actually, you know, that actual move
21 upward is? I guess that would be the complaint.

22 **MR. BREMAN:** I think that's the record
23 evidence that supports that argument, that you can
24 reasonably come to the conclusion that FPL needs to
25 sharpen the pencil just a little bit better and file a

1 more updated feasibility analysis with a more narrow
2 range.

3 **COMMISSIONER ARGENZIANO:** Okay. So if one
4 comes to the conclusion because actually now it's a
5 reasonable assumption that that could be, then the best
6 approach is, could be to wait and let it go until they
7 finally redo a feasibility study? Because out of the
8 three it was -- I'm on the wrong page now.

9 **CHAIRMAN CARTER:** 27?

10 **COMMISSIONER ARGENZIANO:** Yeah. Got it. The
11 deferred decision and then there's the required updated
12 2009 and then deny. And so with knowing that there is
13 somewhat a reasonable, I guess -- I don't even know the
14 word I want to use. Basically if what you just said to
15 me, that there is a reasonable assumption because those
16 numbers have shifted up on the Intervenor's part, that
17 perhaps then a wait and see is a better -- I'm trying to
18 figure out if you feel it's a reasonable assumption that
19 that could be made, that is made, and actually it has
20 been made and now we're talking about it, what is the
21 best, what is the staff's opinion on the best approach
22 to take?

23 **MR. BREMAN:** It's a wait --

24 **COMMISSIONER ARGENZIANO:** I know you've given
25 three and I'm trying to narrow you down I guess.

1 **MR. BREMAN:** We don't see any show stoppers
2 even with that upward movement in, in the median price.
3 That's why we recommend in Issue 8A the wait and see
4 approach. If you're not comfortable with the
5 feasibility analysis that the company has filed this
6 year, there will be another one by May. There's not a
7 lot of time difference between January and May.

8 **COMMISSIONER ARGENZIANO:** So the impact is
9 really not that significant.

10 **MR. BREMAN:** Not that significant.

11 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

12 **CHAIRMAN CARTER:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you.

14 I just have one follow-up on that specific
15 point, because, again, I'm trying to ascertain the
16 differences between 8 and 8A, which I feel to be you
17 might as well flip a coin.

18 I want to make sure I understand this though.
19 Feasibility is a determination that has to be made by
20 this Commission each year; is that, is that correct? We
21 would, staff would bring a recommendation as to the
22 feasibility of the project, and then the Commission
23 would look at this on an annual basis: Is the project
24 still feasible, is the project still feasible? Is that
25 correct?

1 **MR. BREMAN:** I think that's a correct
2 representation.

3 **COMMISSIONER SKOP:** Okay. Well, I don't -- we
4 need to be sure.

5 **MR. YOUNG:** Yes.

6 **COMMISSIONER SKOP:** Thank you. All right.
7 I'm looking for sure answers here. Maybe I need to
8 tighten my questions, but we need to make sure.

9 So if we -- you know, I see, I see merits in
10 both approaches, but I'm trying to understand the, the,
11 any detriment that might result from doing one over the
12 other. I mean, certainly a deferred decision until next
13 year, you know, could be an option I think that is
14 listed in 8A, but then you've basically punted on
15 feasibility for, for a year.

16 What is the detriment, if any, if the
17 Commission were to move forward as staff has recommended
18 in Issue 8 with stating at least for this particular
19 time the project is feasible? Wouldn't that be looked
20 at immediately with new information next year as to
21 whether it was still feasible and viable?

22 **MR. BREMAN:** Yes.

23 **COMMISSIONER SKOP:** Okay. And as stated in,
24 on Page 27 at the bottom of the deferred decision,
25 irrespective of what we do, whether we approve

1 feasibility, this iteration for this year and then
2 consider it next year, any way you cut it, there's no
3 adjustments to any recoverable amount. So it's not a
4 financial issue, is it?

5 **MR. BREMAN:** Correct.

6 **COMMISSIONER SKOP:** Okay. So it's just
7 strictly a, a snapshot determination of whether we think
8 that the project is moving along appropriately for where
9 it is in its stage of the process and that there are no
10 critical stop signs that warrant the Commission taking
11 substantial action to, to render whether the project is
12 still viable and prudent.

13 **MR. BREMAN:** Correct.

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

15 **CHAIRMAN CARTER:** Thank you.

16 Commissioners, anything further on 8 and 8A?

17 Okay. That's clear as mud.

18 How about 11?

19 **MR. BREMAN:** 11, Page 28. Issue 11 is an
20 issue brought up by the Office of Public Counsel. The
21 Office of Public Counsel maintains that the appropriate
22 approach to determine what costs are separate and apart
23 from costs that otherwise have been necessary had there
24 been no uprate project is a 20-year component by
25 component analysis. FPL didn't do that and so the

1 Intervenor assert FPL didn't prove its case.

2 There is no requirement, either order or by
3 rule, that requires a 20-year component by component
4 analysis. What FPL did is it developed four criteria
5 and applied those four criteria in developing its costs
6 and project activities that it would include in its EP,
7 its uprate project. One of them is a seven-year
8 engineering analysis to identify plant modifications
9 associated with outages. The other one is that it
10 validates that none of the modifications were included
11 in prior plans. And the third one is to validate that
12 none of the modifications were included in prior license
13 applications with the NRC. And then it does a cross
14 function review to make sure that all the other
15 departments of accounting and engineering and business
16 operations also do not identify those activities.

17 And staff believes FPL's method is reasonable,
18 and staff is not convinced that the 20-year component by
19 component analysis is appropriate -- is reasonable for a
20 project that's very short lived. So staff recommends
21 that FPL was prudent and reasonable in its activities to
22 identify costs that were separate and apart.

23 **CHAIRMAN CARTER:** Thank you.

24 Commissioner Edgar, then Commissioner
25 Argenziano.

1 **COMMISSIONER EDGAR:** Thank you.

2 What is the significance of a 20-year study
3 versus a 10 or a 15 or a 25? Why 20?

4 **MR. BREMAN:** That's one of the things that
5 staff struggles with. What you're doing is you're
6 looking out in time, you're forecasting the assets that
7 would be, have to be replaced or modified or changed.
8 So the significance is you have more uncertainty as to
9 what you would do the further out you go in time both on
10 an activity basis, on a project failure basis and on a
11 cost basis.

12 **CHAIRMAN CARTER:** Commissioner Argenziano.

13 **COMMISSIONER ARGENZIANO:** Why would it be --
14 why is it identified by OPC that it's, that it would be
15 the applicable standard, a 20-year component by
16 component study?

17 **MR. BREMAN:** That's their position.

18 **COMMISSIONER ARGENZIANO:** Well, where do they
19 get it from? Is there, is there a standard somewhere or
20 has there been in the past?

21 **MR. BREMAN:** No, ma'am.

22 **COMMISSIONER ARGENZIANO:** I mean, did they
23 just pluck it out of the air? It's kind of like he
24 said/she said, and it's really difficult, you know, to
25 get to the nuts and bolts, and that's what I'm trying to

1 get at. Is there an applicable standard out there? And
2 I know it's been a long time since we've done this, but
3 is there an applicable standard? I mean, do they base
4 it on -- does staff look at where they base this from?
5 How do you determine then that there isn't one if -- you
6 know, how did you find there isn't an applicable
7 standard maybe is the question to ask?

8 **MR. BREMAN:** To the best of my knowledge,
9 Florida is probably unique in what it's doing on a
10 regulatory basis with respect to nuclear projects, so
11 there isn't a standard. Whatever standard is there is
12 what you all set.

13 **COMMISSIONER ARGENZIANO:** That's what I'm
14 trying to get at. I'm reading and I'm finding that
15 there's a, they're saying there's an applicable
16 standard. And I guess that's the logical question: Is
17 there?

18 **MR. BREMAN:** That's their position.

19 **COMMISSIONER ARGENZIANO:** Well, did they
20 identify where the standard would be?

21 **MR. BREMAN:** It's --

22 **COMMISSIONER ARGENZIANO:** And it's been a long
23 time.

24 **MR. BREMAN:** It's simply their position.

25 **MR. HINTON:** No. They -- nobody quoted to a

1 statute, a rule or code of federal -- they may indicate
2 that, you know, it's an industry standard, but it's not
3 really nothing supportable in the evidence to my
4 knowledge that sets this apart as the applicable
5 standard.

6 **COMMISSIONER ARGENZIANO:** Okay. That's what I
7 was asking. Is there, is that in practice or has been
8 in the past, is that part of, when we're building
9 nuclear plants is that part of the practice? And I
10 guess you're telling me no.

11 **MR. BREMAN:** No. Right. And the standard
12 we're trying, you're being asked to address is one, is
13 one that would apply to a project that is rather short
14 lived. In other words, we've got a five-year project --

15 **COMMISSIONER ARGENZIANO:** Uh-huh.

16 **MR. BREMAN:** -- and we're trying to identify
17 costs associated with that project that would not
18 otherwise have occurred. And OPC maintains that you
19 need to do a 20-year analysis even though the project is
20 only five years long.

21 **COMMISSIONER ARGENZIANO:** Okay.

22 **COMMISSIONER SKOP:** Mr. Chair.

23 **CHAIRMAN CARTER:** Commissioner Skop.

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

25 If I could ask staff on that issue to turn to

1 Page 30 at the bottom of the first paragraph on that
2 page. And the EPU project or extended power uprate
3 project is estimated to be complete in 2013; is that
4 correct?

5 **MR. BREMAN:** Yes, sir.

6 **COMMISSIONER SKOP:** And that will provide
7 additional nuclear capacity for that generating unit; is
8 that correct?

9 **MR. BREMAN:** Yes.

10 **COMMISSIONER SKOP:** Okay. And that saves
11 fuel?

12 **MR. BREMAN:** Yes.

13 **COMMISSIONER SKOP:** Okay. All right. And I
14 guess as staff has noted, and perhaps this could be just
15 explained a little bit better, the 20-year analysis that
16 I guess is being advocated by the Intervenors, that
17 period would extend well beyond the time frame in which
18 the EPU project would be in commercial operation; is
19 that correct?

20 **MR. BREMAN:** Yes.

21 **COMMISSIONER SKOP:** Okay. And so I guess in
22 staff's view, and I think they may have stated this,
23 but, you know, there's nothing that the Intervenors have
24 pointed to, statute, rule or otherwise, that suggests
25 that the staff analysis is in error; is that correct?

1 **MR. BREMAN:** FPL's analysis is not --

2 **COMMISSIONER SKOP:** I'm sorry. Staff's
3 analysis of FPL's methodology is in error.

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

5 **COMMISSIONER SKOP:** It's early morning still.

6 Okay. The -- I guess I'll just defer my other
7 comment. I had one other thought and I'm trying to
8 figure out how to best articulate it. So thank you, Mr.
9 Chair.

10 **CHAIRMAN CARTER:** We'll, we can come back to
11 it, Commissioner. It'll, it'll all fall out in the
12 wash, as they say. But we'll come back to that. We're
13 just kind of going through them.

14 Are you ready? Commissioner Skop.

15 **COMMISSIONER SKOP:** Okay. So with respect to
16 I guess what the Intervenors were trying to ascertain,
17 and I'm going to put it in real basic, simple terms,
18 they're saying that, you know, why they're wanting to do
19 a 20-year analysis versus a more limited analysis is I
20 guess they're saying that if you had a, say a pump that
21 was going to be replaced otherwise in some time in the
22 future versus being replaced in the EPC or the EPU
23 project, which is the extended power uprate, they're
24 trying to say that basically because that pump
25 ultimately at some future time that we don't know might

1 have to be replaced, that it should not be allowed for
2 recovery within the project if it's chosen to be an
3 integral part of that modernization project; is that
4 correct?

5 **MR. BREMAN:** That could be one interpretation
6 of the 20-year study. Yes, sir.

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

9 **CHAIRMAN CARTER:** Thank you.

10 Okay. Commissioners, if there's nothing
11 further, we'll move on to 12. Anything further on 11?
12 Issue 12.

13 **MR. BREMAN:** Issue 12 is FPL's request
14 regarding the reasonableness of its projected and
15 estimated 2009 project costs for the uprates at St.
16 Lucie and Turkey Point.

17 None of the Intervenors raised concerns with
18 respect to FPL's requested amounts. Staff identified a
19 \$191 amount associated with the resolution of Issue 3,
20 and staff's recommendation makes an adjustment for that
21 amount. Absent that, we -- with that adjustment, staff
22 recommends approval of FPL's numbers.

23 **CHAIRMAN CARTER:** Commissioners? Anything
24 further on Issue 12?

25 Commissioner Edgar, you're recognized.

1 **COMMISSIONER EDGAR:** The adjustment was how
2 much?

3 **CHAIRMAN CARTER:** I think he said \$191.

4 **MR. BREMAN:** \$191. It's a base rate revenue
5 requirement that is calculated for the last couple of
6 months of 2009. And it is one of those things where
7 it's trying to track the incremental carrying costs
8 associated with the higher AFUDC rate that FPL had prior
9 to the one that's currently in effect, and that's why
10 it's a positive amount that has to be adjusted out.

11 **COMMISSIONER EDGAR:** And to state the obvious,
12 this is the first item that would actually be approving
13 cost recovery.

14 **MR. BREMAN:** Right. Staff also believes that
15 new policy should be implemented on a prospective basis.
16 So even if you approve FPL's methodology in Issue 3,
17 staff recommends that you make this adjustment even if
18 you approve it, because policy in our, in our mind
19 should be on a prospective basis.

20 **MR. HINTON:** Yes, Commissioner. This is the
21 first dollar amount that you'll be approving.

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

23 **CHAIRMAN CARTER:** Thank you. Commissioners,
24 anything further on Issue 12? Issue 13.

25 **MR. BREMAN:** Issue 13. Issue 13 is the 2010

1 version of Issue 12. And there are more parts of the
2 uprate project going into commercial service, and
3 similar to the \$191 adjustment that staff recommends in
4 Issue 12, staff recommends an adjustment of \$113,427 to
5 FPL's amounts. No Intervenors took positions concerning
6 FPL's amounts, and with that adjustment staff recommends
7 approval of FPL's projected amounts for 2010.

8 **CHAIRMAN CARTER:** Commissioners, any questions
9 on -- Commissioner Skop, you're recognized.

10 **COMMISSIONER SKOP:** Thank you. Just with
11 respect to both Issue 12 and 13, the majority of costs
12 that FPL is seeking to have approved for 2010 are for
13 the extended power uprates to the reactors, not
14 necessarily new nuclear construction; is that correct?

15 **MR. BREMAN:** On a true-up basis, yes, sir.

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

17 **CHAIRMAN CARTER:** Commissioners, anything
18 further on either 12 or 13?

19 Okay. Commissioner Edgar, you're recognized.

20 **COMMISSIONER EDGAR:** Just to note that there
21 is a change in one of the dollar figures on Issue 13
22 from the errata; correct?

23 **MR. BREMAN:** Yes, ma'am, the errata sheet.

24 **CHAIRMAN CARTER:** What is the amount?

25 **MR. BREMAN:** The recommendation paragraph has

1 an amount of \$15,887,677. The errata sheet changes that
2 amount to \$15,877,677. There's a transposition of an
3 eight and a seven right in the middle of the number.

4 **CHAIRMAN CARTER:** Oh. Dyslexic, huh?

5 **MR. BREMAN:** Yes, sir.

6 **CHAIRMAN CARTER:** We're not calling any names.
7 Anything further on 12 or 13, Commissioners?

8 **CHAIRMAN CARTER:** Commissioners, Issue 16.

9 **MR. BREMAN:** Issue 16 is FPL's request
10 regarding projected 2009 estimated/actual costs for the
11 Turkey Point 6 and 7 project. There are no adjustments
12 to this amount. No intervenors identified amounts to be
13 adjusted out of this issue or what FPL projected. Staff
14 recommends approval as reasonable the amounts that FPL
15 has shown for Issue 16.

16 **CHAIRMAN CARTER:** Commissioners, any questions
17 on Issue 16? Okay. Issue 17.

18 **MR. BREMAN:** I'm sorry, I stand corrected.

19 **CHAIRMAN CARTER:** You stand corrected on Issue
20 16?

21 **MR. BREMAN:** Yes.

22 **CHAIRMAN CARTER:** Okay. Let's back up to
23 Issue 16, Commissioners.

24 Mr. Breman.

25 **MR. BREMAN:** Yes. Because SACE subjects to

1 the Commission allowing recovery for the Turkey Point 6
2 and 7 units on a projected basis, and that effects years
3 2009 and 2010. And their objection is based on the
4 feasibility analysis, so they believe that if you deny
5 the feasibility analysis that you can't find their
6 projections to be reasonable. Therefore, you shouldn't
7 allow cost-recovery for 2009 and 2010. And that would
8 be Issues 16 and 17 respectively.

9 **CHAIRMAN CARTER:** Commissioner Argenziano.

10 **COMMISSIONER ARGENZIANO:** Well, does the rule
11 require there to be a -- what they are saying is that
12 they believe, SACE believes that FPL has not
13 demonstrated long-term feasibility as required by the
14 rule. Number one, is that totally accurate, or is it
15 accurate, and then, number two -- well, let's answer
16 that first.

17 **MR. BREMAN:** That is SACE's belief, yes,
18 ma'am.

19 **COMMISSIONER ARGENZIANO:** How about staff's
20 belief, have they followed the rule?

21 **MR. YOUNG:** Yes, Commissioner. Based on Issue
22 8, staff is recommending that FPL's long-term
23 feasibility analysis will be approved, thus meeting the
24 requirements of the rule. And that's Issue 8.

25 **COMMISSIONER ARGENZIANO:** Okay.

1 **MR. YOUNG:** However, if you move to Issue 8A,
2 then that is SACE's position, that because -- if you
3 find that FPL had not met the long-term feasibility
4 analysis, they recommend that you don't approve any
5 dollars for 2009 and 2010.

6 **COMMISSIONER ARGENZIANO:** This seems to be
7 getting more tangled.

8 **CHAIRMAN CARTER:** It does.

9 **MR. HINTON:** If I could, let me just read the
10 portion of the rule. It is one sentence that includes a
11 feasibility analysis, so you will know where we stand on
12 this. Section 5(c)(5) of the rule states, "By May 1st
13 of each year, along with the filings required by this
14 paragraph, the utility shall submit for Commission
15 review and approval a detailed analysis of the long-term
16 feasibility of completing the power plant."

17 That does not state anything about denying
18 cost-recovery or even what is supposed to be in the
19 feasibility analysis, so I just wanted to clarify that.
20 Even if you determined that the feasibility analysis was
21 insufficient, the rule doesn't require that that finding
22 lead to a denial of cost-recovery on a projected basis.

23 **COMMISSIONER ARGENZIANO:** Well, then what is
24 the rule asking, that just a feasibility study be done?
25 For what purpose if not for details?

1 **MR. HINTON:** I think the purpose of the
2 feasibility analysis in the rule is looking forward for
3 those stop signs to -- you know, the location within the
4 rule is just prior to the section that addresses
5 cost-recovery if the project is discontinued, and this
6 is a sentence added within the rule that I believe is
7 giving us the ability to look at the road signs and then
8 take a look into the future to determine the direction
9 things are going so that we don't get caught flat-footed
10 by a project that all of a sudden is falling apart
11 around us.

12 **COMMISSIONER ARGENZIANO:** Okay. So basically
13 the rule doesn't say -- is really says a feasibility
14 study, but it doesn't say it has to have anything,
15 really. It says detailed analysis.

16 **MR. YOUNG:** Long-term.

17 **COMMISSIONER ARGENZIANO:** So it could be
18 detailed analysis of pretty much anything.

19 **MR. HINTON:** That's correct. The need
20 determination orders provide a little bit more detail,
21 and we are hoping as staff through this process as part
22 of our normal lessons learned that we do at the end of
23 every proceeding is we want to clarify, all right, guys,
24 we are going to do this. This is what the long-term
25 feasibility analysis are going to look like going

1 forward.

2 **COMMISSIONER ARGENZIANO:** Is there any
3 statutory language?

4 **MR. YOUNG:** No.

5 **MR. HINTON:** No.

6 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

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

8 Is there anything further on -- okay. Let's
9 move to Issue 17.

10 **MR. BREMAN:** Issue 17 is the 2010 version of
11 16. In this FPL asks that you make a finding of
12 reasonableness on their projected amounts. SACE is the
13 intervenor that says that you should not allow
14 cost-recovery until you approve the project feasibility
15 analysis. So they don't think that FPL filed a
16 feasibility analysis and that it should be approved,
17 and, therefore, they hold that you should not allow
18 cost-recovery.

19 **CHAIRMAN CARTER:** That's the same as what we
20 just went through?

21 **MR. BREMAN:** That's the same as what we just
22 went through.

23 **CHAIRMAN CARTER:** I didn't mean to cut you
24 off. You were about to say something. You said we
25 don't --

1 **MR. BREMAN:** We don't agree with SACE. We
2 think the project is viable, at least for this year, and
3 so on a projected basis the costs should be allowed to
4 be recovered subject to continuing review and subject to
5 a prudence review at some time in the future.

6 **CHAIRMAN CARTER:** Okay.

7 Commissioners, questions?

8 Commissioner Skop, you're recognized.

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

10 Just a question directed to Mr. Young, our
11 legal counsel. With respect to, I guess, the two issues
12 that we just discussed, is it correct to understand that
13 none of the intervenors other than Southern Alliance for
14 Clean Energy has taken an adverse position towards
15 recovery of the cost? So Public Counsel is not opposed
16 to recovery or have taken no position?

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

18 **COMMISSIONER SKOP:** Okay. Thank you.

19 **CHAIRMAN CARTER:** Thank you.

20 Commissioners, anything further on 17? Okay.
21 Let's proceed to Issue 18.

22 Staff.

23 **MR. BREMAN:** Yes. Issue 18 is the ultimate
24 fallout issue for FPL in this proceeding, and in Issue
25 18 we tried to present all the different options of all

1 the parties that sort of pointed you in a direction that
2 adjustments should be made to FPL's filing. So we show
3 staff's adjustments. We also show an estimate of SACE's
4 adjustments. The amounts shown for SACE are subject to
5 the errata sheet modifications, and staff recommends
6 that you vote for the fallout numbers shown for staff,
7 which is 62,676,366 be used in the capacity
8 cost-recovery clause for setting the capacity
9 cost-recovery clause factors for 2010.

10 **CHAIRMAN CARTER:** Let me ask this before I
11 lose it. On Issue 18 you are saying that the positions
12 of the parties were no position, and then in your
13 analysis you still put in the SACE adjustments. Kind of
14 walk me through on how that happened.

15 **MR. BREMAN:** I understand your confusion.

16 **CHAIRMAN CARTER:** Yes, sir.

17 **MR. BREMAN:** What we're trying to show is
18 Issue 18 is a fallout issue, and the intervenors
19 sometimes take positions that are hard to follow, which
20 is what happened here. They took positions on the
21 issues of substance that impact the fallout issue and
22 that's what we are showing.

23 **MR. HINTON:** Mr. Chairman.

24 **CHAIRMAN CARTER:** Yes, sir.

25 **MR. HINTON:** To help clarify that a little bit

1 more, this specific issue, the parties didn't submit a
2 policy or a position statement, so we don't record a
3 position for them on this particular issue.

4 In the previous Issues, 16 and 17, SACE had a
5 position on those issues that those costs be denied. So
6 Mr. Breman has recorded here if you look in the column
7 on the left describing where these adjustments are
8 recommended, you will notice that those are from Issues
9 16 and 17. Of course, we would implement those if you
10 approved them. We would implement them in this fallout
11 issue, but the intervenors didn't take separate
12 positions in this issue.

13 **CHAIRMAN CARTER:** I wanted to ask -- I guess I
14 should have asked before when you guys were talking
15 about SACE, is that based upon the record, your
16 recommendation -- let me see if I can ask the question
17 properly. But based upon the record, staff's
18 recommendation is to not accept those adjustments from
19 SACE based upon your interpretation of the rule and
20 based upon their interpretation of the rule, is that
21 correct?

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

23 **CHAIRMAN CARTER:** Mr. Young.

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

25 **CHAIRMAN CARTER:** I just wanted to make sure I

1 was on the same page with you guys on that.

2 Commissioners, anything?

3 Commissioner Skop, you're recognized.

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

5 Just a quick, I guess, point on the table
6 shown on Page 40 of the staff recommendation with the
7 bottom number from the staff adjustments for total 2010
8 recovery amounts. That final number, the \$62,676,366
9 includes the adjustment that staff previously made in a
10 prior issue of, I believe, 113,000 and change. That's
11 why that number is different from the FPL requested
12 amount, is that correct?

13 **MR. BREMAN:** Correct.

14 **COMMISSIONER SKOP:** Okay. Thank you.

15 **CHAIRMAN CARTER:** Commissioners, anything
16 further on Issue 18? Thank you. Issue 21.

17 And, Commissioners, what my plans are is
18 that -- I'm sorry, Jane, we went straight through with
19 Linda -- is that after we finish Issue 21, Staff, I was
20 looking for a breaking point that we can take a break
21 before -- Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Mr. Chairman, I think
23 this would maybe be a good point because I believe we
24 are switching from FPL and moving to Progress, so this
25 might be a good --

1 **CHAIRMAN CARTER:** This might be a good
2 breaking point, then. Okay. Let's do this, we will
3 come back -- it is ten after, is that what it is? We
4 will come back at 25 after.

5 (Recess.)

6 **CHAIRMAN CARTER:** We are back on the record.
7 And when we last left we had just completed Part 1 going
8 through the issues pertaining to FPL. Now, let's
9 proceed with Progress Energy.

10 Staff, Issue 21. You're recognized.

11 **MR. LAUX:** Good morning, Commissioners. Mark
12 Laux, Commission Staff.

13 Issue 21 can be found on Pages 42 through 45
14 of the staff recommendation. Issue 21 addresses the
15 reasonableness and prudence of Progress Energy's project
16 management, contracting, and oversight controls in place
17 during 2008 for the Levy Units 1 and 2 and at Crystal
18 River Unit 3 uprate. None of the parties to the docket
19 challenged the actual prudence of the actual systems,
20 controls, and costs. However, the Office of Public
21 Counsel, PCS Phosphate, and SACE raised questions
22 concerning certain management decisions made by Progress
23 during 2008 concerning these projects.

24 The first question which was presented by the
25 Office of Public Counsel and supported by PCS Phosphate

1 concerns the reasonableness of Progress' decision to
2 incur construction costs for the balance of plant
3 construction activities at Crystal River 3 prior to
4 obtaining an NRC license approval of the license
5 amendments requests for that project. Progress believes
6 that the way that they have sequenced -- Progress'
7 position on this is the way that they have sequenced the
8 construction activities was an appropriate balance
9 between project costs and the benefits that came from
10 that project, or will come from that project.

11 The second question that was raised was by
12 SACE, and it concerns the reasonableness of Progress'
13 decision to incorporate a limited work authorization
14 request in its COLA application for the Levy projects.
15 A limited work application -- do I need to -- okay.

16 Progress Energy stated that their project
17 management information systems appropriately identified
18 and allows the company to track project risks. They
19 also state that the use of an LWA was reasonable since
20 it is a viable construction scheduling management tool
21 allowed by the NRC and supported by the NRC for new
22 nuclear projects.

23 Staff believes the record supports a finding
24 that PEF implemented a project management approach that
25 maintains a reasonable balance between the levels of

1 project risk and the timing of project benefits. Staff
2 recommends that the Commission find that Progress
3 management control -- or project management control and
4 oversight controls in place during 2008 were reasonable
5 and prudent.

6 **CHAIRMAN CARTER:** Thank you.

7 Commissioners, on Item 21. Commissioner Skop,
8 you're recognized.

9 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

10 Just a quick question of staff with respect to
11 the position of party for Public Counsel. With respect
12 to the -- they did not take a position, but there is a
13 statement in there that costs expended for projects yet
14 to be licensed, although recoverable at this time, may
15 be subject to prudence review if not licensed. Is that
16 strictly in relation to the uprate project to the extent
17 that there may be some certainty as to licensing, or is
18 that a more general statement?

19 **MR. LAUX:** I believe the answer to your
20 question is yes.

21 **COMMISSIONER SKOP:** You know what's funny is I
22 had actually, probably a long time ago, was it 1985,
23 they had Oliver North respond to that question the same
24 way. He said the answer to your question is yes.

25 **MR. LAUX:** I don't feel very comfortable with

1 my answer, then. (Laughter.)

2 **CHAIRMAN CARTER:** You picked up on that.

3 **MR. LAUX:** Yes. The issue that Public Counsel
4 brought up in this particular item is towards the uprate
5 for CR-3, and they are talking about Progress Energy
6 continuing to incur construction costs through a time
7 before they actually got the license. They believe the
8 more appropriate approach to sequencing the construction
9 activities was to get approval of the NRC request prior
10 to doing the construction activities. Therefore, the
11 actual construction, if you did it their way, would push
12 the project out, two, three, four years. It would slow
13 down or make the benefits from that project much further
14 out into the future. So it's a question -- they were
15 questioning the timing or how the project is put
16 together. The approach that Progress is doing in
17 taking -- working on those things that they can work on
18 that aren't safety related before getting the actual
19 license approved by the NRC.

20 **COMMISSIONER SKOP:** And just as a follow-up to
21 that. Is it standard industry practice to obtain
22 licensing concurrently with doing such uprates?

23 **MR. LAUX:** I believe the answer to that again
24 is yes. The reason I'm hesitating in answering it
25 completely yes is that each one of these uprate projects

1 that we have history on are a little bit different.
2 There is no cookie-cutter approach.

3 **COMMISSIONER SKOP:** Right.

4 **MR. LAUX:** Most of the projects that we saw
5 and were reviewed, the licensing application was in the
6 process of the construction phase.

7 **COMMISSIONER SKOP:** Okay. So prior uprates,
8 although each reactor design is independent and not
9 standardized, so each of the respective instances would
10 be separate and distinct, but for all previous uprates
11 to the existing reactor fleet in Florida licenses have
12 been done concurrently with the uprates themselves to
13 staff's knowledge?

14 **MR. LAUX:** Yes.

15 **COMMISSIONER SKOP:** Okay. Thank you.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioners, anything further on 21? And we
18 do have a 21A.

19 Commissioner Argenziano.

20 **COMMISSIONER ARGENZIANO:** I don't know if it
21 is the right time, and maybe it is, but I jotted down a
22 bunch of different things, and this may fit into here.
23 And I guess the question to staff is in the NRC
24 permitting issue that -- doesn't the federal court's
25 validation of the opposing party's right to go forward,

1 does that make our determination today premature? And
2 that's a big question I have.

3 **MR. LAUX:** I think I would like to defer to
4 legal counsel on that.

5 **CHAIRMAN CARTER:** Mr. Young.

6 **MR. YOUNG:** Commissioner, can I ask you to
7 repeat the question, again?

8 **COMMISSIONER ARGENZIANO:** Okay. Excuse me, I
9 think I have to take an allergy pill from being in this
10 room. Something in the room gets me choking all the
11 time. I think I'm going to have to just bring an
12 allergy with me. I may be allergic to the wall or
13 something.

14 **CHAIRMAN CARTER:** Well, probably because of
15 the loss of air conditioning and there was some humidity
16 this morning.

17 **COMMISSIONER ARGENZIANO:** I think it happens
18 when I come in the room. I don't know, maybe I'm just
19 allergic to something in the room. But I notice every
20 time I come in I start to have this like bronchial --
21 it's annoying. I know it's annoying to me; it has got
22 to be annoying to everybody else.

23 **CHAIRMAN CARTER:** Maybe when we get a break
24 from our multiple hearings we can have DMS to clean the
25 walls and the carpet for us.

1 **COMMISSIONER ARGENZIANO:** No, I will just take
2 an allergy pill; we don't to do that.

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

4 **COMMISSIONER ARGENZIANO:** In the NRC
5 permitting issue, doesn't the court's validation of the
6 opposing party's right to go forward, I'm not saying
7 that they are right in their argument or anything else,
8 but their right to go forward make our determination
9 today premature for prudence?

10 **MR. YOUNG:** I'll let Jim go first and then
11 come back. I must admit, you stumped me on that
12 question.

13 **MR. BREMAN:** So clearly it's not a legal
14 opinion.

15 **COMMISSIONER ARGENZIANO:** Right.

16 **MR. BREMAN:** My understanding of the NRC
17 permitting process, and I think your question goes
18 towards the Levy site, is that the NRC has a process in
19 place like you all do where people are allowed to
20 intervene if they have standing, where parties are
21 allowed to intervene if they have standing. So upon a
22 finding of standing they intervene. So there is a due
23 process review throughout the permitting process, and
24 that would be for anything that the NRC goes through and
25 issues operating permits and construction permits on.

1 And the NRC has not issued a license yet, so
2 the review period is still open. And until the NRC
3 actually issues a license, you don't know whether the
4 utility will actually be able to take fuel at that site
5 and construct the safety related part of the power plant
6 and so on.

7 The question of prudence is is the utility
8 prudent to even try to get that license. Is it acting
9 prudently in its efforts to get that license. So that's
10 the question of prudence that we are entertaining today.

11 **COMMISSIONER ARGENZIANO:** No, I think there is
12 a bigger question that I have that I'm trying to, I
13 guess, get the answer to when it comes to prudency, and
14 I guess is it -- if somewhere down the line, let's say
15 the license -- the opposing party should win their
16 argument, whatever their entire argument is, and we were
17 to commit -- was it \$450 million without an essential
18 component, I guess, license to move forward. Is it
19 prudent -- then would it be prudent for me, as a
20 Commissioner, to say that maybe -- you know, maybe the
21 argument, whatever their argument is prevails in court,
22 then we have placed upon the ratepayer that money, those
23 monies that may have not been on a prudent decision to
24 buy the land for whatever the purpose is. And I'm
25 looking at -- do you follow what I'm saying? I'm having

1 a hard time understanding how, if it doesn't become --
2 if it is not licensed in the future that we have wasted
3 a lot of ratepayer dollars. And, you know, I'm having a
4 hard time not thinking of that as is that prudent. What
5 if the company bought land, and I'm not saying this is
6 the case, but I guess some of the problems some people
7 have is that it is a wetland, or it is not a wetland,
8 and what if it is and what if that wasn't a prudent
9 decision to build a nuclear power plant in a wetland?

10 **MR. HINTON:** Commissioner, one part -- sort of
11 what you have to understand is they are in the
12 application process for this for their license. In
13 order to apply for a license, you have to have a site,
14 and you have to do these environmental studies, and you
15 have to do these engineering things. So I'll defer to
16 Jim and Mark on the amount of cost related to licensing
17 has been recovered or has been a part of this process to
18 this point, but I think that's the majority of what we
19 are talking about is the process that you undergo to get
20 a license. So going to Jim's point, is it prudent to
21 expend costs to get a license --

22 **COMMISSIONER ARGENZIANO:** I understand that
23 part of it, but I also have another part of prudence and
24 it is was it prudent to buy the land to begin with. And
25 it may have been; I'm not making judgment on that. And

1 I know there's savings in the recoveries rather than
2 spreading it over the long period of time, and there's
3 pros and cons. I know that, but part of prudence also
4 has to be asked was it prudent to buy -- if you can't
5 get a license ultimately, and I don't know if that is
6 the case. It may be determined that yes, they can, and
7 it is perfectly fine. But to me one of the sticking
8 points is that if I have to make that decision before I
9 know they can even get a license, then I am wondering
10 was that a prudent decision. What if the court says,
11 well, it is a swamp or something and you shouldn't have
12 bought it to put a -- and we have then burdened the
13 taxpayer or wasted their money, the ratepayers' dollars.
14 And I'm not sure that waiting for that determination may
15 be the smarter way to go, and that's where I'm looking.
16 I understand what you are saying the prudence of what
17 they have expended. I understand all that, but there is
18 another part of prudence.

19 **CHAIRMAN CARTER:** Wait a minute.

20 Ms. Brubaker.

21 **MS. BRUBAKER:** Thank you. Jennifer Brubaker
22 for Legal Staff.

23 I appreciate your concern, Commissioner
24 Argenziano, and that is one of the more complicated
25 aspects of the whole nuclear process. It is a very

1 long-term process. The process of getting a license on
2 the federal level can take years. And the way the
3 statute is written, the Legislature has established a
4 framework to provide some security for utilities on a
5 going-forward basis, and it is a policy decision that
6 the Commission --

7 **COMMISSIONER ARGENZIANO:** Maybe I did this
8 wrong, again, because I tend to do that. Maybe what I
9 said was license and that's not what I mean. Probably
10 what I mean is a determination by the court. If the
11 opposing side has any merit at all to their -- you know,
12 and maybe not enabling a plant to be built there.
13 Forget the licensing. I know the long period it takes.
14 But in the determination, the court validated that there
15 was a -- there is a valid concern here, and we're going
16 to hold off until we address that. And I'm thinking,
17 well, if you held off to -- why shouldn't I hold off to
18 make sure that it was a prudent decision? Because, you
19 know, some people are out there, and we have heard
20 people -- I mean, if you want to build a plant in the
21 wetland, well, of course it is not going to work. And
22 it may, I don't know.

23 But since the court validated that concern,
24 I'm starting to think maybe I should, too, and wait.
25 And not to -- what I'm coming down with when I look at

1 this case, because it is complicated and it's very
2 difficult. As I said, there's pros and cons. There's
3 pros to collecting ahead of time because it saves a lot
4 of money, and then there's cons, and what we have heard
5 from people saying I may not enjoy the benefit of it.
6 The same thing with the power plants. Some people say,
7 you know, it needs to be done and other people say not
8 in that place it ain't going to happen. And I don't
9 know.

10 So I'm saying with that validation of that
11 judge saying there's a valid complaint here, should I --
12 I don't know that prudence doesn't fit in there. If I
13 say today that it is prudent and all of a sudden it
14 comes up that is not a good place to put it, then I
15 don't know if it was prudent on the company buying in a
16 wetland, and then we have expended all that money
17 because we said it is prudent today rather than waiting.

18 **MR. HINTON:** I think I understand your
19 concern. Yes, I was confused versus the COLA versus the
20 court case. And, you know, that could be a legitimate
21 concern the Commission wants to take into account.

22 There are a couple of ways that you could
23 proceed in that regard. If you don't feel good about
24 prudence determinations prior to that court case, then
25 you can defer prudence. Allow cost-recovery on a

1 reasonable basis subject to true-up. Following the
2 court case, you can determine prudence at that point.

3 The other option is complete deferral of
4 cost-recovery until a court case, which I think would
5 have drastic consequences to the projects as a whole.

6 **COMMISSIONER ARGENZIANO:** Now, you said that,
7 but now let's go into that. Drastic consequences to the
8 projects as a whole. If the court says that you can't
9 build on there, or determines somehow that you can't
10 build on there, I think that is the most drastic thing
11 you are going to find. And then to compound that, if
12 that is the case, and I'm not saying it is, but I have
13 to look at all scenarios. If that is the case, then
14 even to compound on that drastic determination is
15 another one that we have allowed the recovery of money
16 that may have not been prudently spent on land where you
17 shouldn't have built a nuclear power plant.

18 **MR. HINTON:** And that's where the -- the
19 deferral of the prudence determination addresses that,
20 and those monies would be subject to going back to the
21 customers if you determine later there was imprudence.

22 My comment about the drastic consequences is I
23 don't know when the end date of this court case is. The
24 consequences I was speaking of denying cost-recovery
25 until that date could effectively kill the projects,

1 just because the security set-up by the statute to allow
2 for cost-recovery at that point, if you are denying
3 cost-recovery until this date of the court case, that
4 effectively would negate the security that the statute
5 was designed to set up and the companies may walk away
6 from these projects. That's speculation, I don't know.

7 **COMMISSIONER ARGENZIANO:** Well, and the
8 statute also says if the company walks away from all the
9 projects, they get to keep all the money that they
10 collect. So what I'm trying to do is I don't want to
11 hold up a project that we determine there was a need
12 for. That's not it. What I'm trying to do is get down
13 to what it really means here, other than just hearing he
14 said she said, what it really means to be prudent. And
15 what it means today, because I take it so seriously for
16 the utility and for the ratepayer, because I do take it
17 that seriously. And the amount of money -- I mean,
18 if -- I mean, it's a serious thing. If it is determined
19 that that land is not usable and we say it is prudent or
20 allow the recovery for land that is not usable, we have
21 made the decision today that, you know, that company
22 then gets it no matter what happens.

23 Now, if it wasn't -- and I'm not saying it is,
24 but that's something I have to look at because a judge
25 made it a valid concern. Now, if it turns out in the

1 court that they can build there, and everything is fine,
2 I don't want to hold up -- I wouldn't want to hold up
3 something that is determined, or that is, you know, the
4 statute says this is what you need to do. But there is
5 conflicting language in the statutes also when you look
6 at some of the language, and I'll get into that, I
7 guess, later with reasonableness and, you know, public
8 acceptance about certain things. And it is kind of
9 difficult, but, I guess -- and I will just say it one
10 more time, I just have to look at what if the outcome is
11 you can't use the land and today we make the decision
12 that you can recover these costs? Once we make that
13 decision, according to the statute, they can -- you
14 know, they can collect from the ratepayer what the law
15 says they can. But if it wasn't prudent to buy the land
16 and it turns out to be that way, then they really
17 didn't -- then prudence has to -- you have to look at
18 that and say, well, then maybe it shouldn't have been
19 determined prudent.

20 You're saying you can have the option of
21 saying that -- deferring prudence but allowing the
22 costs?

23 **MR. HINTON:** Withholding a finding of
24 prudence, yes.

25 **COMMISSIONER ARGENZIANO:** And then to see

1 if -- I don't know how long the case will take in court.
2 I would hope that they move quickly on it because of
3 the -- I don't know how long it would be, but if it's
4 determined that the land is usable for the plants, then
5 here we go.

6 But if you defer waiting for an outcome and it
7 is not a good outcome for the company, or it says
8 they can't build the plant there for whatever reason, or
9 you have to do so many other things to get to be able to
10 build the plant there, and you have made -- you have
11 allowed the cost-recovery today, then what happens if in
12 the future they can't, I mean, build the plant there?
13 What happens to the cost-recovery?

14 **MR. YOUNG:** If the decision is based on
15 reasonableness and you withhold the prudence decision,
16 you have an opportunity to look at whether that decision
17 was prudent, and if you find that the decision to
18 purchase the land was imprudent, you can refund those
19 dollars back to the customers. And I think that's what
20 Mr. Hinton was indicating in his answer to you.

21 **COMMISSIONER ARGENZIANO:** Okay. Okay. I got
22 it. Thank you.

23 **CHAIRMAN CARTER:** That will be your -- that
24 would be a refund with interest, is that right,
25 Mr. Young?

1 **MR. YOUNG:** Yes.

2 **COMMISSIONER ARGENZIANO:** But then there is
3 still -- but there is still another issue that I haven't
4 talked to yet that I'm going to go to both sides of the
5 coin on it, that people today may not benefit from this.
6 And that's a concern I have, also, because I have heard
7 it from people out there, and I'm not sure how it fits
8 in, but it has been loud and clear. And I'm not sure
9 that that doesn't fit into the -- because when you look
10 at fair, just, and reasonable, what does that mean? You
11 know, and you have to start really searching the
12 statutes or your mind on what does reasonable mean. And
13 when people come up to you in a service hearing or write
14 to you and say this is not reasonable that you should
15 charge me for something I will not benefit from, does
16 that fit into what the statute says, and I think it
17 does. So I'm not sure how I look at fair, just, and
18 reasonable. Because on one side, you know, it is very
19 fair, and you want the company to recover what the law
20 says it can. But on the other side the law is saying
21 reasonable and you are hearing from people who are
22 saying this is not reasonable.

23 How is it -- do you know what I mean? There
24 are several different things. It's not just the
25 prudence issue. And I guess at the proper time I may go

1 through a list of pros and cons and may -- I'm trying to
2 flesh it out to see if staff can aid in, you know,
3 trying to determine, I guess, what the statute is
4 telling me is reasonable. Is that a reasonable -- the
5 concerns I have heard from ratepayers who say it is not
6 reasonable or not just to put up front costs in
7 something I may never benefit from, isn't that a
8 legitimate part of the statute, I mean, that I can
9 consider or should consider?

10 **MR. LAUX:** Commissioner, we may only have --
11 or at least I have two things maybe to respond to.

12 **COMMISSIONER ARGENZIANO:** Okay. It may help.

13 **MR. LAUX:** One is maybe just an example. You
14 are using the land issue as a potential example. The
15 Levy site has been approved as a utility site as of
16 August, so the State of Florida approved that site to be
17 used as a utility generation site with the idea that a
18 nuclear plant was going to be built on that.

19 **COMMISSIONER ARGENZIANO:** But it is also --
20 now the feds have postponed because of the court's
21 decision, I guess.

22 **MR. LAUX:** But there are certain things right
23 now that utilities -- well, the NRC process is a long
24 process that you have to go through which includes a
25 number of different evaluations. An environmental

1 evaluation, safety of the design evaluation, and things
2 like that before they make a decision as to whether or
3 not they are going to give you a license.

4 I'm not sure of exactly the point that you are
5 getting at; if it was the point that was in the hearing
6 about a 20-month delay, that had to do with a request
7 about doing a limited -- the request by Progress Energy
8 for a limited work authorization, which would have
9 allowed the utility to start construction before they
10 actually -- on certain nonsafety-related aspects of the
11 project.

12 **COMMISSIONER ARGENZIANO:** That is not what I
13 was referring to.

14 **MR. LAUX:** Okay. The other is the utility is
15 doing what they need to do at this point to file the
16 application. The NRC requires the utility to identify
17 the site, to identify a project that is going -- a
18 design that is going to be on that site, and then
19 provide them with a number of different studies about
20 that site and things like that. That is the process
21 that they are in right now.

22 **COMMISSIONER ARGENZIANO:** I understand that.

23 **MR. LAUX:** And so those are the costs that the
24 utility is requesting.

25 **COMMISSIONER ARGENZIANO:** Right. And I know

1 that, and I understand that. That is not what I was
2 talking about.

3 **MR. LAUX:** The next item that's suggested, and
4 I don't know if -- this is the standard that staff uses
5 for deciding whether a cost is prudent or something, and
6 that standard is to look at the time that the decision
7 or cost is incurred as to whether a reasonable person or
8 reasonable utility management should have known -- did
9 they know or should have known certain aspects of
10 something that may happen in the future.

11 So at this point there is no utility manager
12 that can tell you -- there is no nobody actually that
13 can tell you today whether or not the NRC is ultimately
14 going to approve a COLA license. There is nobody here
15 that can -- not even the NRC Commissioners can do that.

16 **COMMISSIONER ARGENZIANO:** That's not what I'm
17 saying. I understand that perfectly well. What I'm
18 saying, and I understand -- and I think there could
19 be -- well, it's just the way it is with the judge
20 saying the opposing party, whoever they are, certain
21 groups I think have cited some environmental concerns.
22 The judge basically said it's valid and you will be
23 heard. He didn't say that you are going to win, or
24 you're right, and that's not what I'm saying here today.
25 What I'm saying, the fact that it was validated that it

1 should be at least heard tells me that I'm a little
2 nervous because what if it is not able to be built on
3 that site. Now, I don't know whether the company -- I
4 don't know the extent of the wetlands. I only know what
5 I have read, but if you are talking about like a one
6 square mile of wetlands and it comes that you can't
7 build on it -- I don't know that to be the case, but if
8 that is the outcome, then maybe it wasn't so prudent to
9 buy the land. But I don't know what assurances the
10 company had. They may have had assurances from the
11 state, but that needs to pan out somewhere. And until
12 it does, I don't know that I feel comfortable with the
13 prudence issue, because then I'm committing ratepayer
14 dollars. And it just then commits those ratepayers to a
15 prudency determination that I'm not sure will eventually
16 be if there's real concern with the opposition.

17 **MR. YOUNG:** Commissioner Argenziano, you raise
18 some valid points, but one of the concerns Legal staff
19 has is that if you are looking at the prudency of the
20 decision to buy the land, that decision was -- that
21 issue was teed up as a preliminary matter at the
22 hearing, which the Commission approved, thus it brings
23 us into a sort of --

24 **COMMISSIONER ARGENZIANO:** But the Commission
25 didn't know what was going to happen, that there would

1 be somebody opposing and winding up in court for a
2 determination. We didn't know those issues were going
3 to occur. I'm not talking about what we did in the
4 past, because you can go back to the need determination,
5 and I think that's what you are saying that we approved,
6 but we didn't know the outcome of what we have today.

7 **MR. YOUNG:** Exactly. And that brings us up to
8 sort of a very peculiar procedural matter. Because
9 these issues were approved as a preliminary matter
10 during the beginning of the hearing, there is no
11 evidence in the record as relating to the prudence to
12 purchase the land at this time, thus it sort of puts us
13 into a due process stance where a company can -- a
14 company or an intervenor can allege that their due
15 process rights were violated if the Commission votes on
16 this issue in terms of going to overturn the stipulation
17 and voting to deny the costs because there is no
18 evidence in the record at this time.

19 **COMMISSIONER ARGENZIANO:** Well, isn't it known
20 in the record that there is a challenge and that they
21 don't have -- that they are being delayed?

22 **MR. HINTON:** My understanding of the sequence
23 of events is the challenge and the intervention by the
24 environmental groups occurred several months ago prior
25 to parties stipulating issues related to '06, '07, and

1 '08 costs in this case. Nobody has presented that as an
2 issue, nobody has challenged the purchase of this land,
3 therefore, there hasn't been testimony presented in the
4 record to address this issue on.

5 And I think that's the concern that Mr. Young
6 was expressing that -- the discussion of these
7 intervenors and the court case has not been developed
8 and included within the record, and so we are very
9 hesitant in making a determination based upon that
10 information.

11 **COMMISSIONER ARGENZIANO:** Well, based upon the
12 delay is what I am worried about when it comes to the
13 prudence issue. I can't help but do that. It's the
14 same thing when you look back -- you know, I look back
15 at the need determination. We could say that back then
16 there were many things that when we went to the need
17 determination have changed since. So what do you do?
18 Do you not look at them, or do you consider them? You
19 know, there's a lot at stake for the company and for the
20 people, and I don't know how you -- how I could speak to
21 prudence today without bringing up the fact that, you
22 know, there's a pending matter that could change what
23 the prudence really means. And I'm not saying it is.

24 **MS. HELTON:** It sounds to me, Commissioner
25 Argenziano, that what you're saying is that since you

1 approved -- and the other Commissioners approved the
2 stipulation with respect to the costs for the 2006,
3 2007, and 2008 costs back when we started this
4 proceeding, I quite frankly don't remember which month
5 that was now, but --

6 **COMMISSIONER ARGENZIANO:** I don't know how you
7 remember stuff so far back.

8 **MR. HINTON:** It was the September hearing. It
9 was the first thing we did at the hearing.

10 **MS. HELTON:** You approved a stipulation. What
11 I hear you saying is that there is a change in
12 circumstance that's making you go through the thought
13 process asking whether you should revisit, and the other
14 Commissioners should revisit that stipulation that you
15 approved with respect to cost-recovery associated with
16 the purchase of the land only because of this
17 intervening court case.

18 **COMMISSIONER ARGENZIANO:** And it may be that
19 that is the procedural way. I don't know how else you
20 do it, but I can't ignore that, and maybe that is it and
21 even to the need determination with some things. No, I
22 won't even go there. I'm just trying to -- I'm trying
23 to sit back and look at how far apart we do things and
24 how things change.

25 **MS. HELTON:** I think we are past the need

1 determination stage.

2 **COMMISSIONER ARGENZIANO:** Right.

3 **MS. HELTON:** I think what Mr. Young was trying
4 to tell you was that if you collectively decide to go
5 back and revisit that decision with respect to the cost
6 for the land, that that's not a decision -- a new
7 decision you could make today because the record has not
8 been developed with respect to that part. The parties
9 have not had an opportunity to flesh it out.

10 **COMMISSIONER ARGENZIANO:** Right. I don't
11 think that's really what I'm saying.

12 **MS. HELTON:** Okay.

13 **COMMISSIONER ARGENZIANO:** Because at the time
14 the facts before us were different, and now the facts
15 before me anyway are -- well, if it comes down to
16 prudence -- not just prudence on costs. Did they, you
17 know, bid out -- did they get things at the best price,
18 did they do the right things. Prudence of the land
19 could be in question, or the possibility of, you know,
20 the prudence of building the plant on the land could be
21 in question. And I'm just concerned.

22 **MR. HINTON:** A couple of points. First, I'm
23 not aware of -- I remember reading about the court case
24 and intervention. This was pretty early in the process
25 that we began this year, so just as a point of record,

1 the parties have had an opportunity to raise that as an
2 issue.

3 Aside from that, I'm not familiar with a delay
4 in either the company's schedule or their COLA
5 application related to that court case. The only delay
6 I'm familiar with is related to the limited work
7 authorization request that the NRC said they weren't
8 going to be able to approve on the time line that
9 Progress Energy had requested. That's the only delay
10 I'm familiar with, so I just want to make sure that --
11 you had mentioned the delay was your big concern, but
12 I'm not aware of a delay associated with that court
13 case.

14 **COMMISSIONER ARGENZIANO:** My big concern, my
15 real concern, and I have probably said it five times
16 now, is really the prudence of the land. If you can't
17 build a nuclear plant on it because somehow they say
18 it's a wetland or whatever, if that is the
19 determination, I'm not saying that it is, but if you
20 can't, then was the purchase of the land prudent, and
21 I'm just not sure. Should you have known that it's a
22 wetland and, you know, that this can occur?

23 It may get to court and they say no problem,
24 you can do this, you can do that. The company did a
25 great job, that is a good site to go and -- that's my

1 main concern. And saying that there was prudence in
2 that area, I don't know that I can. I can say that they
3 spent the money prudently on the site development or all
4 the other things that are before us, but that's one
5 sticking point that I can't, because I don't know what
6 the outcome is going to be. Right now it looks like
7 it's up in the air whether, you know, what a
8 determination will be, whether they can continue. And
9 they may be able to, but I don't know that today, and
10 that just -- that's why I am speaking to it. I don't
11 know. I'm trying to figure out how that fits in because
12 it may not be a regular issue that we have dealt with
13 here, and yet when I try to look at, well, what is
14 prudence, and I look at the costs, and was it proper
15 costs. But then I have to look at, well, is part of
16 prudence the land purchase, and if you can't build on
17 that land.

18 **MR. BREMAN:** Do you want me to go ahead? I
19 don't know if this will help you with a comfort level.
20 There is a technical/legal procedure matter that Keino
21 will probably talk about in a minute, but the amount of
22 money that the utility actually spent to buy the land
23 has not been recovered, and our regulatory process
24 addressing the land for Levy was that -- or is that it
25 will be addressed at the time that the land is sold or

1 disposed of. So I don't know if that is helping you
2 any, but the company has not recovered the cost of the
3 land, nor is it expected to.

4 **COMMISSIONER ARGENZIANO:** Okay. Then let me
5 do it this way. If you can't build on the site, then
6 the site preparation and everything else was -- it's
7 going to be money ill spent if you can't build on it.
8 So that's really the nut of what I'm talking about, and
9 then was it prudent to buy the land in the first place
10 and expend the dollars to go there.

11 And it may have been. So it's not -- and the
12 technicalities of the land, when the land is bought or
13 when it is not, any costs that you spent on it so far if
14 you can build a nuclear power plant on it, I mean, what
15 good do we do than just, you know, saddle the ratepayer.
16 And remember -- you know, that's where it goes to. And
17 it really is difficult, because I'm trying to be as fair
18 as I can in looking at it from all sides. And looking
19 at prudence I see all sides, not just was it prudent in
20 the site preparations, was it prudent in the other costs
21 that you have that may have been -- very well have been
22 prudent to do, but that issue just keeps coming up. If
23 you can't ultimately use the land, how is anything then
24 not a waste of dollars?

25 **MR. HINTON:** And, Commissioner, again, I

1 understand your question. That is difficult to address.
2 That hasn't been identified as a specific issue asking
3 that specific question because in the power plant siting
4 process we address the economic need as you know, then
5 it goes over to DEP, and then eventually approved by the
6 Governor's Cabinet. And that process has taken place at
7 this point, the Governor's Cabinet has signed off on it,
8 so we would not have specifically asked those particular
9 issues.

10 **COMMISSIONER ARGENZIANO:** Of course not,
11 because you didn't even know they were going to be out
12 there. And it happened to be I think at one of the
13 service hearings awhile ago, or something that somebody
14 had mentioned that, and said if the land -- it was an
15 environmentalist or somebody who came you and spoke.
16 And it made me think, well, what if that is the case? I
17 mean, that would be a shame for the company as well as
18 everybody else. I mean, but then, what if that is the
19 case, and that is when I started thinking, well, does
20 that then tie into the word prudent.

21 **MR. HINTON:** Me, in thinking about this issue,
22 I would have expected if that was the case, then the DEP
23 would have addressed that in their analysis of the
24 siting.

25 **COMMISSIONER ARGENZIANO:** Oh, I don't know,

1 because now a court gave validation to be heard, so
2 something else could happen. I'm not saying it will. I
3 feel more comfortable that DEP did, you know, but a
4 judge says, well, there is reason here; and it may just
5 be so that somebody has the opportunity to say what they
6 need to say. But we don't know what the outcome is.
7 What if it is the other way? What if, you know, DEP is
8 wrong and the feds say, sorry, you're wrong and you
9 can't do that?

10 **MR. HINTON:** I would think that the solution
11 potentially is to -- as we discussed earlier, which is
12 the withholding of the finding of prudence so that those
13 costs can be addressed at a later date if a ruling is
14 unfavorable at that point.

15 **COMMISSIONER ARGENZIANO:** Okay.

16 **MR. YOUNG:** And thus it brings us into, from
17 what I'm hearing, your concern is has a substantial
18 change in circumstances a compelling public interest for
19 the reason to defer a prudence decision. And, again, it
20 takes us into the very peculiar procedural standpoint of
21 we approved the stipulation, now we have to -- it will
22 take the Commission to vote to approve to reopen the
23 stipulation, thus deferring the decision on the prudence
24 of the land. The carrying costs for the purchase of the
25 land for the 2006, 2007, 2008 numbers.

1 **COMMISSIONER ARGENZIANO:** But I don't think
2 you could do that now anyway, because if the court
3 hasn't made a decision -- I mean, if the court makes a
4 decision and said, hey, it's fine; it's okay; we see
5 your concerns on the other side and it's fine, then, you
6 know, there is no problem. But how would you go back in
7 now, and say was it prudent for you to buy the land and
8 not know what the determination of this court decision
9 is going to be.

10 **MR. YOUNG:** Well, I think we are talking
11 about -- from this proceeding's standpoint we are
12 talking about the carrying charge, the AFUDC rate as it
13 relates to those costs which are included in the 2006,
14 2007, and 2008 issues, which is Issue 28 and 29. Thus,
15 you will have to go back and get a majority of the
16 Commissioners to vote to reopen to vacate the
17 stipulation and deferring the decision to --

18 **COMMISSIONER ARGENZIANO:** I got you.

19 **MR. YOUNG:** -- to grant leave to take evidence
20 as it relates to the prudence of those purchases. I
21 hope I answered your question.

22 **COMMISSIONER ARGENZIANO:** You did. Thank you.
23 It is peculiar, and it is tough, but it's just a
24 question that came up and I didn't know how to really
25 deal with. And it's not easy.

1 **CHAIRMAN CARTER:** We could still withhold
2 prudence without going back into the stipulation, okay?
3 Withhold the determination of prudence until a later
4 date, we could still do that, couldn't we?

5 **MR. YOUNG:** Not on the cost for 2006, 2007,
6 and 2008 unless you agreed to vacate the stipulation.

7 **CHAIRMAN CARTER:** Okay. All right, then.
8 That answers my question.

9 Commissioner Skop.

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

11 Just a quick question on the land issue
12 stemming back to a prior order, or prior approval of the
13 stipulation. And it has been a long time ago, so -- and
14 it would probably be helpful to see the stipulation if
15 there's a copy of it. But is it correct to understand,
16 you know, and I remember it because I was one of the
17 people on the Commission that approved it. But with
18 respect to the proposed Levy site, I believe the
19 Commission approved -- is it a stipulation, or did we
20 actually approve the purchase of the land and provide
21 for a recovery of costs?

22 **MR. YOUNG:** I think you provided for the
23 recovery of costs for the 2006, 2007, and 2008 carrying
24 costs, which is the AFUDC rate.

25 **COMMISSIONER SKOP:** Not the land itself?

1 **MR. YOUNG:** Not the land itself.

2 **COMMISSIONER SKOP:** Okay. Can we --

3 **MR. YOUNG:** And Mr. Breman can -- and I think
4 the question you asked is if you can see the
5 stipulation. It's on Page 79 of the order -- I mean of
6 the recommendation, staff's recommendation, and it is
7 under Issues 28 and 29. Page 79. It's the last page of
8 the -- I think Mr. Hinton mentioned the attachment.

9 **COMMISSIONER SKOP:** And can you repeat the
10 issues, please?

11 **MR. YOUNG:** 28 and 29.

12 **COMMISSIONER SKOP:** All right. And I guess
13 previously in the stipulation, I seem to remember at the
14 time there were some exhibits showing the land. It
15 might have been with the need determination, so I don't
16 want to mix apples and oranges, but I'm trying to test
17 my memory at 42, which isn't as sharp as it was when I
18 was 18. But I think at some point in a prior
19 proceeding, whether it be the need determination or
20 whether it be the stipulation, there was some data
21 provided to the Commission that showed the proposed
22 site. It showed where the proposed reactors would be
23 located within the site. It showed some of the existing
24 wetlands, and also I think there were some other at
25 least preliminary engineering analysis or geological

1 data that was provided. Can staff help refresh my
2 memory on that?

3 **MR. LAUX:** Yes, Commissioner. At 57 sometimes
4 it's harder for me to remember. In the procedure -- in
5 the information that was collected last year, in the
6 last year docket there was a fair amount of information
7 that was collected and was part of the record through
8 testimony and evidence concerning the site that Levy is
9 going to be --

10 **COMMISSIONER SKOP:** And now I remember because
11 that was all confidential, I think.

12 **MR. LAUX:** A lot of it was confidential
13 because at that time not all the land had been
14 completely closed on. There were a number of different
15 activities, and I'll try and step through them as
16 quickly as possible. Everything that you identified
17 were exactly right. There were aerial photos as to
18 where they believed they were going to put the power
19 block and how it interacted with waterways, the canal,
20 existing transmission lines, roads, and a number of
21 things.

22 The actual process, and I don't know,
23 Commissioner Argenziano, if this helps you or not,
24 Progress looked at -- when they were out looking for,
25 trying to locate where they wanted to place this power

1 plant, they looked at a number of different sites that
2 would be available, and then they vetted each one of
3 those particular sites. That may be the process that
4 you are thinking about or talking about in that they
5 assured themselves without actually purchasing the land at
6 that point which would be the best site for them, which
7 included not only environmental concerns, but also
8 location to load centers, transmission, and things like
9 that. And then they chose the sites that they believed
10 would meet all of those types of qualifications and then
11 had a third party go out and actually purchase the site
12 so that the person that they were buying it from didn't
13 necessarily know that they were selling it to a utility
14 or something to keep the costs down, things like that.

15 All of those things were things that were kind
16 of looked at maybe not in the hearing last year, but it
17 was all testimony and evidence that was in the record
18 from last year that was available to all the different
19 parties. I don't believe that there were anything --
20 there was any testimony in last year's hearing or in
21 this year's hearing that guaranteed that the site will
22 pass any type of review into the future. There were
23 certain tests that were done on the site before the
24 actual contract was closed on the site to give an early
25 warning as to whether or not it would meet certain

1 environmental characteristics.

2 Commissioner Skop, I believe -- I'm trying to
3 remember the last part of your question there, but -- I
4 guess the key point there was was the site vetted to be
5 able to put prior -- was there a vetting process prior
6 to the actual purchase of the site so that a power plant
7 could be put on there, and the answer to that question
8 was yes.

9 **COMMISSIONER SKOP:** Okay. So I think if I
10 remember correctly they did, you know, some -- I don't
11 remember what was in the folders, and I won't speculate,
12 but just generally speaking I think it was preliminary
13 engineering studies, geological data borings, boring
14 results or whatever. They had done some due diligence,
15 I think, in the vetting process to convince themselves
16 that at least from their perspective that was a
17 reasonable site to select for moving forward with the
18 licensing project, and I think the precursor for
19 applying for the license is you have to have site
20 selection, and I think staff stated that, is that
21 correct?

22 **MR. LAUX:** Correct. The only thing that I
23 remember from this year, the aerial photographs and
24 things that were presented at the hearing was one of the
25 aerial photographs where Highway 19 didn't exactly meet

1 between the two. But beyond that --

2 **COMMISSIONER SKOP:** The bridge to nowhere.

3 **MR. LAUX:** Yes.

4 **COMMISSIONER SKOP:** Anyway. Okay. So getting
5 to Commissioner Argenziano's concern -- and, again, I'm
6 trying to have a better understanding of refreshing my
7 memory as to I think we approved recovery of the
8 carrying costs for the land, but not necessarily the
9 actual cost of the land itself, is that correct?

10 **MR. LAUX:** That's correct. The land goes into
11 a CWIP account and will stay in the CWIP account until
12 the plant goes into commercial operation, which it then
13 becomes a portion of rate base. Land, as compared to
14 other assets that are in rate base, do not get
15 depreciated. Therefore, the land is always there, the
16 cost of the land is always there at the purchase price,
17 and what gets included in rates once it goes into rate
18 base is the carrying cost on that investment. It's
19 exactly the same cost that is now being flowed through
20 the capacity cost-recovery clause.

21 **COMMISSIONER SKOP:** Okay. So they are just
22 getting either AFUDC or CWIP on the purchase price of
23 the land as a carrying cost?

24 **MR. LAUX:** It's the carrying cost, yes. And
25 the carrying cost would in the end -- the nuclear

1 cost-recovery clause is the AFUDC rate at the time --
2 that was in place at the time of when they made their
3 application.

4 **COMMISSIONER SKOP:** And that's pursuant to
5 statute and rule.

6 **MR. LAUX:** Correct.

7 **COMMISSIONER SKOP:** Okay. To Commissioner
8 Argenziano's point as to the, I guess, pending
9 litigation -- and, again, I haven't been following it
10 all that closely. I know that there was intervention
11 and does staff know, or Legal staff know whether that
12 was an administrative proceeding at the NRC level, or
13 was that at the federal court level?

14 **MR. LAUX:** Not being a lawyer, but I believe
15 the longer Commissioner Argenziano was talking about
16 that I started to recall certain things, and in the NRC
17 process of review there is the opportunity for other
18 parties to be able to come in and intervene in that
19 process to make sure that their voices are heard as the
20 NRC goes through and reviews the site and does the
21 economic analysis or environmental analysis on the site.
22 The safety analysis and all of that, and I believe the
23 process if I understand what I can remember was these
24 parties being recognized as having an interest,
25 therefore, they could be a party in the decision that

1 the NRC will make on the COLA.

2 **COMMISSIONER SKOP:** A quick question. Was the
3 purchase price of the land acquired confidential or is
4 it still confidential?

5 **MR. LAUX:** It was at one time.

6 **MR. BREMAN:** I don't think 18 months has
7 expired.

8 **MR. LAUX:** Okay. All right.

9 **COMMISSIONER SKOP:** All right. So let me see
10 how I can frame the question. Let's go worst-case
11 scenario, and let's say assuming for the sake of
12 discussion that there has been intervention in what
13 would be a federal administrative licensing process, and
14 that they have been given opportunity or shown that they
15 have standing to have their concerns vetted in the
16 licensing process. Say ultimately through whatever long
17 tribulation path that this has to go through that a
18 determination is made that either the land requires
19 additional mitigation or the more extreme example that
20 the land is unsuitable for a site.

21 So in the worst-case scenario, you have land
22 that has been purchased by Progress that may not be able
23 to be used for a nuclear project. Could that land be
24 utilized for other things on a forward-going basis,
25 either maybe combined cycle, other utility uses or even

1 restored to conservation should the utility choose to do
2 it?

3 **MR. LAUX:** The standards between the different
4 types of -- the environmental standards that have to be
5 met given the different types of technologies that you
6 would put on that would be different. The standard for
7 putting a coal plant on there or a combined cycle
8 natural gas plant would be less than the environmental
9 standards that would have to be met if you were putting
10 a nuclear plant on there.

11 **COMMISSIONER SKOP:** Okay. So let's just
12 hypothetical worst-case solution say that the site was
13 through extensive litigation, and given the litigious
14 nature of our society, you know, I imagine that that
15 could linger on for years. But if the NRC ultimately
16 determined that that site was not suitable for nuclear
17 construction, then obviously the certification for
18 combined cycle is probably far less stringent. You
19 know, hypothetically you could put something else there
20 and have a substantial conservation easement around it,
21 or you could just make it a conservation easement at
22 some future point in time, would that be correct?

23 **MR. LAUX:** Yes. If Progress Energy does not
24 acquire approval from the NRC for their COLA
25 application, they still have an order from this

1 Commission saying that they have a need that they have
2 to satisfy. And I'm assuming they will have to then
3 come back to this Commission and show that they need to
4 put a different -- satisfy that need using a different
5 technology. And that different technology may be
6 suitable to be placed on that site at Levy, since that
7 site has now been approved by the State of Florida, the
8 Cabinet of the State of Florida as a generation site.

9 **COMMISSIONER SKOP:** Okay. I want to go back
10 to the concern, and I think that they were -- Legal
11 staff was responding to Commissioner Argenziano's
12 concern as to looking back at what was done in terms of
13 the stipulation in the 2006/2007 time frame. Would it
14 be correct to understand that administrative finality is
15 attached to that absent a material change in
16 circumstances?

17 **MS. HELTON:** This is kind of a sticky
18 situation, because as I understand it, when you approved
19 the stipulation at the beginning of the hearing -- you
20 approved the stipulation at the beginning of the hearing
21 with respect to the prudence of the carrying costs, but
22 we have obviously not finished the proceeding. You
23 haven't voted on all of the issues, and we have not
24 entered a final order. And so has administrative
25 finality attached or not? I honestly don't know the

1 answer to that question, because we haven't finished the
2 proceeding.

3 Can you apply the standard there has been a
4 change in circumstances, if there has been one, that
5 seems to me to be a fair and reasonable approach to why
6 you might want to go back and revisit your approval of
7 the stipulation. Which is, as I recall from case law,
8 one of the -- if there is a change in circumstances one
9 of the reasons why you could go back and look at a
10 decision that administrative finality has attached to.

11 **COMMISSIONER SKOP:** Okay.

12 **MS. HELTON:** I'm not sure if I answered your
13 question or not, Commissioner.

14 **COMMISSIONER SKOP:** Well, again, I'm trying
15 to -- again, I think the concern that Commissioner
16 Argenziano raised is certainly one worthy of fully
17 vetted discussion, and I think that we are having that,
18 and I think staff has tried to address the concerns that
19 she raised. And I'm trying to better understand the
20 perspective as to the land and where we are in the
21 process in terms of procedurally because, again, it has
22 been a number of years. And I think if I understand,
23 based upon responses to Commissioner Argenziano's
24 questions, as well as staff's, is that all we have done
25 at this point is acknowledge the fact that in

1 conjunction with a need determination and in conjunction
2 with the siting board approval with respect to the
3 parcel that is being used as the site of the proposed
4 nuclear generating units, the only thing that we are
5 allowing for recovery on that land cost now is the
6 carrying costs, not necessarily the purchase price of
7 the land.

8 **MR. YOUNG:** Yes.

9 **COMMISSIONER SKOP:** So it's just a mere
10 fraction of what the total cost would be if we had
11 already allowed recovery of the land.

12 **MR. BREMAN:** Yes.

13 **COMMISSIONER SKOP:** Okay. And, Ms. Helton, if
14 I understand you correctly, that because the proceeding
15 has not been fully closed and administrative finality
16 has not -- I know it's a big question mark, but it would
17 seem to me that in response to Commissioner Argenziano's
18 concern that if there were an issue that we had to go in
19 and look at the actual purchased price of the land
20 itself later there would be at least some procedural
21 means for addressing Commissioner Argenziano's concerns,
22 is that correct?

23 **MS. HELTON:** My concern would be that if you
24 decided to do that that you not make a decision -- if
25 you decided to go back and revisit your stipulation with

1 respect to the prudence for the carrying costs, that you
2 not go back today and decide that decision again. That
3 you give the parties their due process opportunities to
4 flesh out whether the carrying costs associated with
5 that land is prudent.

6 **COMMISSIONER SKOP:** Okay.

7 **MS. HELTON:** Did that help?

8 **COMMISSIONER SKOP:** Yes. And I don't
9 believe -- I mean, we are not being asked to do that
10 today with respect to the land itself. I mean, that's
11 an ongoing issue right now. It's going through the
12 licensing process. They've selected a site, which is a
13 prerequisite for proceeding with the license
14 application, and it's just tied up in the NRC process
15 that, you know, is supposed to go smooth, but obviously
16 has already shown some hiccups.

17 But I guess with respect to the issues before
18 us today in terms of prudence, we're only basically
19 rendering a prudence determination on management
20 decisions, not necessarily costs for the most part, is
21 that correct? At least on Issue 21A it seems to be a
22 prudence determination as to the decision of Progress
23 Energy Florida's management to execute an EPC contract,
24 not necessarily making a prudence determination as to
25 the cost of that contract. It's just was management

1 prudent knowing what it knew at the time for signing on
2 the dotted line and moving forward to proceed with
3 construction of the plant or the things that are
4 necessary to preserve the in-service date of the plant,
5 including the licensing and the procurement contracts,
6 and all of those things that stem from a need
7 determination and siting approval.

8 **MR. LAUX:** Yes, it's close. The issues in 21
9 have to do with the license amendment for the uprate
10 project and not the EPC contract. The EPC contract is
11 in Issue 21A, which we haven't quite got to yet.

12 **COMMISSIONER SKOP:** That's what I thought. I
13 am looking at 21A, and I have got it all highlighted.
14 But I guess in a nutshell, the concerns that
15 Commissioner Argenziano raised which are, again, worthy
16 of consideration, certainly could be addressed at a
17 later point by the Commission should the need arise, is
18 that correct? I see a lot of head nodding, but --

19 **MR. HINTON:** And I have been sitting here
20 trying to think through Commissioner Argenziano's
21 concerns and how we can address that, and I think the
22 concern that you communicated was really not as much
23 whether it's the carrying costs or this, it is about
24 should they have purchased this land in the first place.

25 **COMMISSIONER ARGENZIANO:** Can I --

1 **CHAIRMAN CARTER:** Commissioner Argenziano, did
2 you want to explain your question?

3 **COMMISSIONER ARGENZIANO:** Yes. And that was a
4 concern, but because we have been discussing it, if the
5 company had to rely -- did what they had to rely on and
6 that was with DEP as I heard here a little while ago,
7 then you can't fault the company. Okay. So that has
8 already now in discussing it and looking at it, then I
9 can't say that the company -- they did what they had to
10 do. If the DEP made the mistake, well, then it is their
11 mistake, not the company's. So in vetting this and
12 looking at it, it was -- from what I heard it was
13 vetted. They did the vetting through the proper venues,
14 DEP. So I can't fault the company then to say that, you
15 know, should they have known. If DEP didn't give
16 them -- there may have been -- they did what they were
17 required to do. There may be other circumstances that
18 may ultimately come down, but they did that. So in
19 looking at that, then I have to say, okay, well then I
20 can't say the company -- you know, they did what they
21 had to do. I guess if they had had indicators from DEP
22 at that time that this is not a good place to do that,
23 then I would have said, hey, that's probably not a
24 prudent thing.

25 But that doesn't mean that the issue of if the

1 company can't build a plant there that that is not still
2 a very significant issue in my mind. What happens then
3 to the money that the ratepayers put up? Remember,
4 shareholders are not making decisions here. This is
5 going to the ratepayers, so I have to look at that side,
6 too. But it still brings up the point -- in one of the
7 points that I wrote to myself last night and this
8 morning, that the question of going forward without an
9 NRC permit in place, while the statute doesn't appear to
10 have any kind of requirement for, but it's surely --
11 surely prudence does. And that's maybe a concern. And
12 that is why the discussion was to help, I guess, in the
13 prudence issue. So I still have concerns about the
14 environmental -- what's going to happen, but I can't say
15 to the company that, you know, you didn't do what you
16 had to do.

17 In looking at it and talking about it I
18 realized, well, if the company did the right steps, then
19 you can't say they didn't do that. So that is -- I'm
20 moving that aside. But I still have problems with the
21 fact that if it doesn't come, what happens? You know,
22 it may not be the company's fault, and I understand
23 that, and then there are costs that the statute says
24 they can collect. But then going back to not having the
25 NRC permit in place, maybe you could speak to that.

1 **MR. HINTON:** Well, when you speak of the NRC
2 permit, are you talking about the combined operating
3 license?

4 **COMMISSIONER ARGENZIANO:** Right.

5 **MR. HINTON:** And Jim or Mark might better
6 answer this than I can, but -- so I'll answer anyway.
7 The construction process is a ten-year process where the
8 first five is basically you're going after your permit,
9 and in the second five you're actually building once you
10 receive it. So the systems and the processes and the
11 schedules that the companies have in place are in
12 keeping with how utilities build nuclear plants, that
13 the licensing/permitting process is this amount of time
14 where you have to spend this amount of money to get
15 these things in place. Then you get the COLA or the
16 COL, and then that kicks you into the next phase of
17 construction of containment vessels and all that good
18 stuff.

19 So it's staff's understanding and our view
20 that they are following standard industry practices in
21 the process of constructing these plants with regards to
22 licensing, permitting, and how they're going about
23 achieving those things. That's part of the, you know,
24 the issue that we are discussing, their project
25 management issues.

1 **COMMISSIONER ARGENZIANO:** Okay. So then that
2 really gets to the point that since the Legislature --
3 and I was there. Of course, we never discussed that, to
4 my knowledge, but since the Legislature felt that the
5 policy should be that preconstruction costs shall be
6 recovered, I guess under the traditional way, before the
7 law had changed, if a company -- when it went into
8 commercial use is when the ratepayer started paying off.
9 And, of course, there's negatives to that that you are
10 going to pay more because you wait longer, and I think
11 there is a significant difference there, but then there
12 is negatives according to the ratepayers that they are
13 going to pay for it up front. But in the traditional
14 way before the law was changed in Florida, it was done
15 when it was in commercial operation. It started then.

16 Now it seems as a result of the statutory
17 change, if you were in a dilemma where possibly --
18 possibly a court somewhere says, or the feds say you
19 can't build a nuclear power plant there now, because the
20 statute allows the upfront recovery that that is
21 really -- could be the compounding problem is that the
22 statute probably didn't contemplate that what if you
23 can't build -- well, it may have because it says -- it
24 says even if you can't build or you choose not to, you
25 can still recover.

1 **MR. HINTON:** Yes, Commissioner. But my
2 reading of the statute it was very purposefully
3 intending to create as good an environment as possible
4 to build nuclear plants and provide that security of
5 allow cost-recovery during the process and then --

6 **COMMISSIONER ARGENZIANO:** Yes, I agree. But
7 it didn't contemplate what I'm looking at right now, the
8 possibility of somewhere down the line that if the
9 company was denied for the nuclear power plant --

10 **MR. HINTON:** Well, that's where I was going,
11 that one specific provision that states in the event the
12 utility elects not to complete or is precluded from
13 completing the construction of the nuclear plant, and
14 then it goes on to say that they can recover costs.

15 **COMMISSIONER ARGENZIANO:** Right.

16 **MR. HINTON:** So I think that was just a couple
17 of facets to the -- here is the security so you'll go
18 out and build these plants. One is we are going to
19 allow for favorable cost during the construction
20 process; two, if things fall apart, you're going to get
21 your costs back.

22 **COMMISSIONER ARGENZIANO:** Right, and I
23 understand that in reading it afterwards, because
24 actually when I was there I never got to hear that part
25 of it. But what it also does, though, is it puts you in

1 the -- it gives the security for the company. It says
2 go out and build these plants that there is a need to
3 do, or a determination of need to do, but it's then
4 without regard for a situation like this that could
5 occur.

6 And I'm not saying it's going to occur, but it
7 could. So the way the statute is written it could cost
8 the ratepayers a lot, a lot of money one way or the
9 other. I mean, if the company elected not to build,
10 which I don't think that's what they would do, or if
11 somehow they could not build there. The statute is for
12 security of building the plant for the company, but no
13 security for the ratepayer in case something like that
14 happened.

15 **MR. HINTON:** I think you are correct, yes.

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

17 **COMMISSIONER SKOP:** Mr. Chair.

18 **CHAIRMAN CARTER:** Commissioner Skop.

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

20 Again, I have been listening to the
21 discussion, and I guess with respect to the statute
22 itself, it seemed, you know, as written, I think as
23 staff just elaborated that it seeks to, I guess, with
24 the provision that allows recovery of all
25 preconstruction costs irrespective of plant completion

1 or other costs that have been incurred irrespective of
2 plant completion seems to try and be an attempt to
3 remove the regulatory uncertainty as to the recovery of
4 stranded costs as an incentive mechanism for encouraging
5 utilities to move forward with nuclear, I guess. Is
6 that staff's understanding?

7 **MR. HINTON:** That is.

8 **COMMISSIONER SKOP:** Okay. I guess with
9 respect to the land that was purchased, and ultimately
10 if I understand Commissioner Argenziano's concern, which
11 is a good one, to be correct, at least I guess I can
12 take some comfort in currently the ratepayer has not
13 paid for the land itself, but has only incurred the
14 incremental carrying costs associated with the
15 procurement of the land for the proposed project, is
16 that correct?

17 **MR. HINTON:** I would defer to Mark on that.

18 **MR. LAUX:** That is correct.

19 **CHAIRMAN CARTER:** Commissioner Argenziano.

20 **COMMISSIONER ARGENZIANO:** I think I clarified
21 that that wasn't -- that was part of it, but with the
22 same respect, remember, I said -- at that point I pushed
23 that aside because I realized that the company -- if the
24 company followed the rules as far as selecting the land,
25 and DEP said that's okay, it can't be the company's

1 fault. So I pushed that aside.

2 But when I was talking about that, what I was
3 saying was that -- it was that even if it's the costs,
4 the site preparation and everything else, if you can't
5 build a nuclear power plant then it is a waste of a lot
6 of ratepayer dollars.

7 **COMMISSIONER SKOP:** Right. And I think that
8 under the current statute obviously those would be, you
9 know, recovered irrespective of plant completion. I
10 guess what I was trying to better understand if the
11 concern was related to the, you know, sunk costs that
12 was made in terms of the investment for the site, and
13 that site ultimately was deemed to be not suitable for
14 nuclear construction irrespective of the vetting and the
15 preliminary studies that were done and the DEP
16 approvals, and the borings, and all the geotechnical
17 stuff that they have done to date. Assuming that the
18 NRC decides, hey, you can't do this, at least there is
19 some comfort to me, from my perspective, that the
20 ratepayers have not yet paid for that full amount, which
21 is probably a lot smaller than any of the numbers we are
22 being asked to approve today in terms of the purchase
23 price.

24 But ultimately, under the statute, if the
25 company has done nothing wrong they would recover the

1 acquisition costs of that land. But I think that that
2 land ultimately could be used for something else later,
3 whether it be held in the company as a conservation
4 easement or used for a combined cycle with the
5 conservation easement around it, I think there's other
6 ultimate uses that the land could be used for if it was
7 not for nuclear construction. So I have some comfort
8 there that the ratepayers, while they will probably be
9 paying for the land itself, there could be some public
10 benefit that would result from --

11 **COMMISSIONER ARGENZIANO:** Can I just tell you
12 why I may not be as comfortable with that?

13 **COMMISSIONER SKOP:** Okay.

14 **COMMISSIONER ARGENZIANO:** Because it's not in
15 the shareholders -- again, we have the shareholders,
16 and, I'm sorry, but it's the only I can look at it. If
17 it is -- let me see if I can say this the right way. If
18 the shareholders -- or the board of directors, I should
19 say, not the shareholders -- the board of directors may
20 not be as interested if they have collected everything
21 they have. You know, if they have collected from the
22 ratepayer, they are not -- there may be a difference at
23 that time that, you know, hey, there's land there. We
24 recovered our dollars and we really don't, you know --
25 so, you know, that may weigh into that.

1 **COMMISSIONER SKOP:** But I think that's where
2 the prudence, ultimate prudence comes in. You have
3 recovered the costs for this, the ratepayers have
4 incurred the expense, you have site certification for
5 determination of need for a generating unit on that
6 project, and say, you know, 20 or 30 years down the line
7 that, you know, if they need to go build a new combined
8 cycle plant and they have this land sitting there, and
9 if it were ultimately determined you couldn't use it for
10 nuclear construction, then I think it would be a big
11 issue if they wanted to go out and buy additional land
12 over and above -- what about using the existing land
13 parcel that you have already paid for.

14 **COMMISSIONER ARGENZIANO:** I would just hope
15 that if they couldn't use the land that they would sell
16 it and not keep it for 20 or 30 years. I don't think
17 that would be in their best interest to do that.

18 **COMMISSIONER SKOP:** They might sell it to the
19 Nature Conservancy or sell it to the state for
20 conservation or whatever. But ultimately right now, as
21 it stands now that has been the site that has been
22 approved and is the basis of site selection for the
23 licensing of the project. And until the NRC makes a
24 final determination, which is probably a couple of years
25 out as to the suitability of issuing a combined

1 operating license for that proposed project, and the
2 site, and all the nuclear safety issues and
3 environmental issues that still need to be addressed and
4 fully vetted at the NRC review level, you know, what the
5 NRC does I can't control and Progress can't control, but
6 at least -- from my understanding of what staff has said
7 and my understanding of the NRC license process, you
8 can't apply for a license without having your ducks in a
9 row. And one of those ducks is saying here is where we
10 are going to build the thing, and then you need to
11 determine here is what we are going to build, and then
12 you have to go do all the geological and geotechnical
13 and all the other things you need to do to ensure
14 nuclear safety and construction standards and
15 environmental concerns are maintained and mitigated.

16 So at least at this point in the path I'm not
17 so sure that, you know, I can say one way or another
18 what the NRC would do ultimately, but I think that the
19 concerns that you have raised are certainly valid ones.

20 **COMMISSIONER ARGENZIANO:** Mr. Chair.

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

22 **COMMISSIONER ARGENZIANO:** And I understand
23 that and am trying, as you see, to vet it and look at
24 it, and it is difficult on all sides of the issue. And
25 your point that it's better that they -- if it's going

1 lose, if they can't build there, that it's this amount
2 rather than everything. Well, that's understood, but
3 you don't know how long it may take and how much more
4 cost will it incur.

5 I think, and it may not be the company's
6 fault, but if it winds up -- that's just a guess. I
7 mean, I shouldn't say guess. I'm just saying it's a
8 possibility. And if it does, then any amount is a shame
9 because it is coming from the ratepayers, and it's a
10 waste then, a total waste. And I'm not saying it's the
11 company's fault. If they hadn't followed, I guess, the
12 rules that are before them, then you would say, well,
13 okay, prudence. Until we talked about it, it hit me
14 that how can you blame the company if they followed the
15 rules. So I get that. It is still a concern for me,
16 though, that that is pending out there. And then
17 perhaps, you know, a permit is an essential component in
18 determining, and perhaps -- you know, I don't know. And
19 in looking at the current statute, I understand it was
20 for some certainty, but it also neglected to look at the
21 ratepayer. Because what if now you have this
22 circumstance now that what if, let's say, that you
23 expend this money and the ratepayers spend -- it's
24 coming from the ratepayer, and the company spent it.
25 The costs were prudent costs and the ratepayer is paying

1 for it, and then all of a sudden there is a
2 determination from the feds that they can't build a
3 plant there. Then the statute didn't protect at all the
4 ratepayer.

5 And I don't know what I can do as a
6 Commissioner because my hands are tied. There are other
7 things that I have problems with as far as, like I said
8 before, the reasonableness of hearing from people out
9 there on both sides. People say, you know, we need to
10 move on, we need to make sure that Florida has got the
11 energy it needs for the future, and then the other side
12 that says, hey, it's not fair, it's not reasonable for
13 me to have to pay for something I'm not going to benefit
14 from.

15 So there's still those concerns, but I have
16 moved away from that one. Not saying that I don't have
17 a concern. I have a real concern about ratepayers'
18 dollars, you know, maybe being wasted. And I'm not
19 saying that they are going to be, but it's something
20 that I just have to look at. I understand what you are
21 saying about, you know, it's better to lose a little
22 than a lot. I think it's a darn shame if you have to
23 lose anything that the ratepayer alone has to pay. But
24 I understand what you're saying, and, you know, I guess
25 we just have to move on.

1 **COMMISSIONER SKOP:** Mr. Chair.

2 **CHAIRMAN CARTER:** Commissioner Skop.

3 **COMMISSIONER SKOP:** Briefly..

4 And I think those are all excellent points,
5 and, again, we have got as long as time to, you know,
6 vet issues, and I think that is a good thing to have a
7 full vetting of issues that affect the ratepayers. And
8 I tend to agree, you know, that the sunk costs could be
9 substantial if ultimately a capital intensive project of
10 this magnitude were not built either through the NRC
11 disapproval or ultimate intervening events that are
12 beyond any of our control, or the company's control.
13 But, you know, as the statute is written, you know, that
14 is the law and that's the law that I'm bound to follow.

15 But I'm equally sensitive to the concerns I
16 have heard as you have also expressed as to the
17 ratepayers and what have you. But those are equally
18 tempered by the need to provide adequate, reliable
19 energy supply, new baseload generation that, you know,
20 has a propensity to be emission free and save billions
21 of dollars of fuel on a forward-going basis, if it gets
22 built. But, again, that's a lot of things that, you
23 know, that the NRC process was supposed to be new and
24 improved, and I'm not so sure it is fully tested and
25 robust at this point. I guess we are going to have to

1 wait and see.

2 But, again, I think anything in life takes
3 risk and you have to move forward and try and do those
4 things to advance and move ahead. And I think that, you
5 know, the Legislature has seen fit to incentivize and
6 encourage the adoption of additional nuclear power in
7 the state as well as uprates, and we will see ultimately
8 whether the state and federal mesh on that.

9 So I don't know what to say other than I'm
10 optimistic, but the points are extremely well stated by
11 you. If things don't work out the way that they are
12 intended to, the sunk costs could be substantial.

13 **COMMISSIONER ARGENZIANO:** But what I want to
14 make clear is that I'm still very concerned. I'm not
15 saying at this point -- I was originally, because I was
16 thinking about it for days, and then last night I really
17 thought about it a lot, and thought, well, you know,
18 maybe the company wasn't prudent in buying in the land.
19 But then when you look at it and say, well, okay, they
20 followed what they had to follow. So I can't say
21 that -- I can't use that in any way because that's not
22 true. It wouldn't be true.

23 But I guess I'm back to the statute again.
24 The statute basically, you know, when it provided for
25 the nuclear cost-recovery basically eliminated -- I look

1 at it this way, and I can't help it, but it limited the
2 need for a board of directors to be interested in the
3 outcome. And I know that's the way I look at it, and it
4 may be for some good reasons, but because it is all on
5 the ratepayer now, I can only look at that the statute
6 didn't contemplate or the law didn't contemplate that
7 there could be a situation that could arise like this,
8 and I guess it didn't. But the law is the law. And I
9 just want to make it clear that that concern was one
10 that I came in with this morning of the prudence of the
11 company, but you can't say here is what you have to
12 follow and then say we are going to hold you -- because
13 you can't do that.

14 **COMMISSIONER SKOP:** You can't change the rules
15 of the game midstream.

16 **COMMISSIONER ARGENZIANO:** Right.

17 **COMMISSIONER SKOP:** So it is what it is.

18 **CHAIRMAN CARTER:** I think that the significant
19 thing is in these days and times people are talking
20 about folks are looking at what we're doing in Florida.
21 I would hope that the NRC would look at the fact that
22 Florida provides for early recovery and they would get
23 off the dime and move forward with this, because you are
24 correct, Commissioner, the statute does provide --
25 regardless of the terminus point, if the company doesn't

1 build it for those reasons or, you know, cost
2 beneficial, or the NRC denies it later on, the
3 ratepayers still pay. So I'm hopeful -- as you say,
4 Commissioner, optimistic. I'm hopeful that the NRC
5 because they went down this road saying they have a
6 streamlined process, they have off-the-shelf types of
7 plants that they would approve, and they were going to
8 expedite the process and all. So now it's time for them
9 to expedite the process because we have got ratepayer
10 money on the line, and I'm hopeful that they will move
11 forward on that, as well.

12 **COMMISSIONER SKOP:** Mr. Chair.

13 **CHAIRMAN CARTER:** Commissioner Skop.

14 **COMMISSIONER SKOP:** Absolutely. I think that
15 the NRC has had skin in the game from the getgo with the
16 new and improved processes trying to apply lessons
17 learned from the previous nuclear construction cycle
18 that happened decades ago that, you know, had
19 substantial cost overruns and licensing delays. And
20 they were one of a kind reactors, you know, but I hope
21 this is not a case where the NRC is over-promised and
22 under-delivered because, again, the rate impacts to
23 consumers in states that have tried to move forward with
24 bringing additional nuclear power to the United States
25 or to any given state, you know, if the licensing

1 process is -- you know, if history repeats itself and
2 that licensing process falls flat on its feet, we are
3 going to just repeat history and have the same problems
4 that we did before. We are not going to be able to
5 accomplish anything either as a state or a nation. So
6 I'm hopeful that the NRC up in Washington will try and
7 do what is necessary not only to ensure nuclear safety
8 and environmental issues and its licensing process is
9 maintained and robust, but to equally try and move the
10 process forward in the manner in which that they
11 represented it to the various states utilities in their
12 capacity as the NRC.

13 **CHAIRMAN CARTER:** Particularly in these times,
14 Commissioner, where as you know the other states are
15 beginning to look at the Florida Statutes, and if that
16 is the case then we don't need the NRC to be the
17 bottleneck. You know, other states are saying, well,
18 you know, Florida has early cost-recovery, maybe we can
19 use that same legislative regime in our states to
20 promote nuclear plants and all.

21 **COMMISSIONER ARGENZIANO:** (Inaudible.
22 Microphone off.)

23 **CHAIRMAN CARTER:** Commissioner Argenziano.

24 **COMMISSIONER ARGENZIANO:** And to bring out
25 both sides, there are other states who have rejected the

1 upfront recoveries also, and with good reason, too. But
2 I think they have tried to implement some type of
3 language that says, hey, we don't want -- you know, if
4 we are going to go this way we don't want to be stuck,
5 but it wasn't quite the same. I think in Missouri they
6 denied it, and in some other places because of the
7 problems they saw. And I think because we started it,
8 other places are starting to look at it and say, okay,
9 maybe we can get to where we want to go, but maybe not
10 quite like Florida because of the problems that could
11 arise. And, I don't know, the Legislature is going to
12 do what they are going to do, and then they come back
13 and fix, or amend, or change, and that happens all the
14 time. But, I guess, you know, at the proper time I just
15 have some comments.

16 **CHAIRMAN CARTER:** I just wanted to stick my
17 nose in there because I do think that the NRC promised
18 streamlining processes and all like that, and let me
19 just say, Commissioner, some states want to go this way,
20 some states -- and they are looking at us, we are in the
21 front of the line. So to our colleagues and sister
22 agency in the NRC, I would appeal to your sense of
23 urgency to move forward on these matters so that we
24 can -- at least if you are not going to approve the
25 plants, lessen the impact to the ratepayers.

1 Commissioner Skop and then we will be done on
2 21A, and then we will move to 23. Commissioner Skop.

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

4 And briefly to the points you just made, I
5 concur wholeheartedly. In the best case you would build
6 new nuclear plants and they would be on time and under
7 budget and, you know, provide substantial economic
8 benefits to the state in the time of the recession and
9 the ratepayers would ultimately get good value from the
10 investment in terms of fuel savings and environmental
11 benefits. But, again, it's currently falling on the
12 shoulders of the NRC to move the United States forward,
13 and to whether we are going to see some new nuclear
14 generation.

15 And the problem is not just with adding new
16 baseload generation, this is going to be more of a
17 problem on a forward-going basis to the extent that you
18 do have an aged nuclear fleet and you are going to have
19 to replace those existing reactors notwithstanding new
20 nuclear generation. So, again, they need to grab the
21 bull by the horns on this one and figure out how we are
22 going to replace what we have and add to it on a
23 forward-going basis. France has obviously figured this
24 out, and it's sad that here in the United States with
25 all the technological advances that our great country

1 has made, whether it be the Hoover Dam or the interstate
2 highway system, we are still sitting around scratching
3 our heads. So I hope that we get it right this time and
4 also that it benefits the ratepayers and we learn from
5 history.

6 **CHAIRMAN CARTER:** Thank you, Commissioners.

7 We are going to move forward from 21 and 21A
8 unless there are further questions on those two.

9 Okay, 23. We might want to just do 23 and 23A
10 together. That would make sense. Do you guys think
11 that will make sense?

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

13 **CHAIRMAN CARTER:** Okay. Let's do that. Hang
14 on a second. Commissioners, I hadn't anticipated us
15 going this long, but since we are on the verge of --
16 okay. Let's see how far we can get. Okay. Let's go.

17 **COMMISSIONER SKOP:** Mr. Chair, does the court
18 reporter need a brief break?

19 (Off-the-record discussion.)

20 **CHAIRMAN CARTER:** Okay. Let's go.

21 **MR. GRAVES:** Issue 23 addresses the
22 sufficiency of PEF's May 1, 2009, feasibility analysis
23 for Levy Units 1 and 2. Although there is some debate
24 over the appropriateness of PEF's forecast and cost
25 assumptions, all intervening parties agree that PEF's

1 May 1 feasibility analysis is deficient due to the lack
2 of an economic analysis. Staff believes that the
3 absence of an economic analysis renders PEF's May 1
4 feasibility analysis insufficient. However, through
5 discovery staff did obtain the necessary information and
6 analyses for compliance with Rule 25-6.0423, and upon
7 review staff believes that continuation of the projects
8 remains feasible at this time.

9 If the Commission concurs with staff's
10 recommendation regarding the insufficiency of PEF's
11 May 1 feasibility report, staff recommends that the
12 Commission require PEF to include updated assumptions
13 and an economic analysis of the proposed project in
14 future feasibility filings in the NCRC proceedings.
15 This action is described in Issue 23A, which addresses
16 the actions the Commission should take if PEF's analysis
17 is found insufficient.

18 **COMMISSIONER EDGAR:** Commissioners, obviously
19 a similar to what we discussed earlier today as
20 pertaining to the FPL part of this docket. Are there
21 any questions or comments on these issues? No?

22 Okay. Then we will come back to that as we
23 move forward. But you can please move on to the next
24 issue.

25 **MR. GRAVES:** Issue 23B addresses what, if any,

1 further actions beyond the issues -- or beyond the
2 actions taken in Issue 23A should be taken. Staff
3 recommends that no further action should be taken.

4 **COMMISSIONER EDGAR:** Okay. That brings us to
5 26.

6 **MR. LAUX:** Commissioner, Issue 26 can be found
7 on Page 62 through 63 of the staff recommendation. This
8 issue addresses Progress Energy's request concerning the
9 reasonableness of estimated 2009 project costs and
10 true-up amounts for the CR3 uprate project.

11 Staff notes that PEF's post-hearing position
12 on this item did not reflect -- completely reflect all
13 of the changes that were presented during the hearing.
14 Staff's recommendation incorporated all of those changes
15 which were sponsored. Beyond that, no other party
16 challenged any of the costs in this item.

17 **CHAIRMAN CARTER:** Questions on Issue 26?
18 Issue 30.

19 **MR. LAUX:** Issue 30 can be found on Page 64
20 through 65 of staff's recommendation. This issue
21 addresses PEF's request concerning the reasonableness of
22 estimated 2009 Levy project costs and true-up amounts.
23 None of the parties in here challenged any of the costs,
24 but as you heard earlier with Florida Power and Light,
25 SACE challenged the reasonableness of Progress Energy's

1 feasibility analysis, and if you agree with their
2 challenge their remedy is to deny cost-recovery of all
3 2009 Levy costs. So the only challenge to this would be
4 that if you agree with the position of SACE, then you
5 should reject staff's recommendation in this item and
6 approve zero amount for 2009 -- recovery of 2009 costs.

7 **CHAIRMAN CARTER:** Questions? Issue 31.

8 **MR. LAUX:** Commissioners, sorry to bring this
9 up.

10 **CHAIRMAN CARTER:** Sorry to bring what up?

11 **MR. LAUX:** We probably should address Issue 32
12 first before we go to Issue 31. Issue 32 deals with the
13 rate management plan.

14 **CHAIRMAN CARTER:** I thought you were going to
15 ask to borrow money from me. I was going to say I can't
16 help you. (Laughter.) Hang on a second. You say we
17 should probably go 32 and then --

18 **MR. LAUX:** The decision in 32 will have an
19 impact on the actual cost in 2010, so once you make a
20 decision on -- once you hear about Issue 32, then I will
21 come back and describe Issue 31 and then Issue 32A and
22 B.

23 **CHAIRMAN CARTER:** So you want to do 32, then
24 go back to 31, then come to 32A and 32B, or do you want
25 to --

1 **MR. LAUX:** Yes, sir, I'm sorry.

2 **CHAIRMAN CARTER:** I actually heard you right,
3 didn't I?

4 **MR. LAUX:** Yes, sir, you did.

5 **CHAIRMAN CARTER:** Okay. Let's go do 32.
6 You're recognized.

7 **MR. HINTON:** Commissioners, Issue 32 addresses
8 Progress Energy's request to establish a rate management
9 plan. Progress Energy proposes to defer recovery of
10 certain preconstruction site selection costs approved
11 during this proceeding and to spread recovery of those
12 costs over subsequent years.

13 The only intervenor that took a position on
14 this issue was PCS Phosphate, who supported the rate
15 management plan provided that deferred costs were
16 determined to be reasonable. Staff agrees with PEF that
17 this approach could provide rate relief to customers
18 during 2010, and staff recommends that the Commission
19 approve a rate management plan for PEF. Staff
20 recommends that the deferred amount be treated as a
21 regulatory asset with carrying charges applied pursuant
22 to the statute and rule.

23 Now, Progress Energy originally proposed that
24 the deferred amount be amortized over a five-year
25 period. However, staff believes greater flexibility to

1 manage rates should be retained and that Progress Energy
2 should be permitted to annually reconsider changes to
3 the deferred balance and the recovery schedule.

4 Staff notes that if the Commission approves
5 staff's recommendation on this issue, the total 2010
6 recoverable amounts for PEF are addressed in -- well, I
7 guess in Issue 31 and 32A. If the Commission denies
8 staff's recommendation, the 2010 recoverable amounts are
9 addressed in Issue 32B.

10 **CHAIRMAN CARTER:** Okay. Now, this is based
11 upon a perspective that allows an opportunity for less
12 of a rate shock to the ratepayers by stretching the
13 process out and lowering their costs because Progress
14 will have more time to recover the costs, is that
15 correct? Am I reading that right?

16 **MR. HINTON:** Yes. They will take
17 approximately half of what under the rule they would say
18 that they are entitled to recover in 2010, they would
19 take approximately half of that and put it in a
20 regulatory asset and spread recovery out over subsequent
21 years. So, yes, it would be an effort to diminish rate
22 impact in 2010 and give them the flexibility to adjust
23 the rate impact in years following depending on how much
24 they decide to recover in any given year.

25 **CHAIRMAN CARTER:** Okay. Commissioners, any

1 further questions on Issue 32? Now let's back up to
2 Issue 31.

3 **MR. LAUX:** Commissioner, Issue 31 can be found
4 on Page 66 through 68. This issue addresses PEF's
5 request concerning the reasonableness of projected 2010
6 project costs for the Levy project. No parties
7 supported any adjustments to the actual costs, however,
8 as we discussed in other areas, or in other issues, if
9 you agree with SACE's position on PEF's project
10 feasibility analysis, the amount that should be approved
11 in this item is zero.

12 Also, PCS Phosphate suggested, again, that
13 Progress did not meet their burden for the feasibility
14 analysis, and, therefore, they are suggesting that 2010
15 costs be suspended until Progress meets their burden on
16 the feasibility analysis. Those were the only two
17 challenges to this amount.

18 The actual amounts, if you agree with staff
19 recommendation on the feasibility analysis and you agree
20 with staff's recommendation on the rate management plan,
21 are those costs that are identified at the top of Page
22 66. If you do not agree with staff's recommendation on
23 the rate management plan, then the actual amount for
24 this will be found in Issue 32.

25 **CHAIRMAN CARTER:** Okay. So the rate --

1 **MR. LAUX:** 32B, excuse me.

2 **CHAIRMAN CARTER:** Okay. I was about to say
3 the rate management plan is 32.

4 **MR. LAUX:** Yes, 32B.

5 **CHAIRMAN CARTER:** Okay. All right.

6 Commissioners, any questions? We're going to
7 need some spaghetti to keep track of how these things
8 interrelate to one another.

9 Okay. No questions on 32. Let's go to 32A
10 now.

11 **MR. LAUX:** Commissioner, this is the fallout
12 issue that reflects your decisions on all prior issues.
13 If you agree with the office -- excuse me, if you agree
14 with the rate management plan and you agree with staff's
15 recommendations, then what staff would be recommending
16 would be the amount that you would find on the bottom of
17 Page 72 under staff adjustments. As you note as you are
18 going down the column under staff adjustments in Issue
19 26, there was actually a \$6.3 million adjustment to the
20 amount that Progress was actually asking in this
21 hearing.

22 If you agree with PCS's position that Progress
23 Energy did not meet its burden for its feasibility
24 analysis and that all 2010 costs be suspended, then the
25 amount that you would approve would be found at the

1 bottom of the PCS column, similarly with SACE. The last
2 column shows what PEF was actually requesting.

3 **CHAIRMAN CARTER:** Okay. Commissioners, any
4 questions on 32A? Okay, 32B.

5 **MR. LAUX:** 32B shows the same chart, but
6 reflects the numbers if you do not agree with
7 implementing a rate management plan. You can find the
8 same information on the chart as what I just went over.

9 **CHAIRMAN CARTER:** Okay. Commissioners, any
10 questions on 32B? Okay. How about this, Commissioners,
11 as we proceed toward the -- disposition, that was the
12 word I was looking for. When I get hungry sometimes my
13 brain gets a little slow -- toward disposition, if we
14 can look on issues grouped 2 through 18, not necessarily
15 consecutively, but that first group of issues that we
16 dealt with dealing with FPL would be 2 through 18.

17 Is that right, Staff, or did I miss something?

18 **MR. HINTON:** Issues 2 and 3 would apply to
19 both companies. Those are policy issues.

20 **CHAIRMAN CARTER:** Okay. All right, then.
21 Well, let's do this. Let's take 2 and 3 out. So then
22 Issues 7 through 18 would be FPL, that's correct? And
23 then Issues 21 through 32 would be for Progress. Okay.

24 Let's do this, Commissioners. Let me have
25 staff kind of re-tee up Issues 2 and 3, since those are

1 the policy issues pertaining to both companies, and
2 we'll see what happens from there.

3 Staff, you're recognized. Who's on first?
4 Are you ready?

5 **MR. SLEMKEWICZ:** I'm ready.

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

7 **MR. SLEMKEWICZ:** Issue 2 concerned the
8 determination of the appropriate carrying charge to be
9 accrued on Commission-approved deferrals. And staff is
10 recommending that the appropriate pretax AFUDC rate for
11 NCRC purposes is the appropriate carrying charge.

12 **CHAIRMAN CARTER:** Commissioner Skop.

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

14 Again, with respect to Issues 2 and 3, I don't
15 know how contentious they would be, if they would be at
16 all, but I would respectfully at the appropriate time
17 move staff recommendation as to Issues 2 and 3.

18 **CHAIRMAN CARTER:** 2 and 3. Commissioner
19 Edgar, you're recognized.

20 **COMMISSIONER EDGAR:** I second.

21 **CHAIRMAN CARTER:** Commissioners, these policy
22 Issues 2 and 3, since they pertain to both companies,
23 I've got a motion and a second on those. Discussion?
24 No discussion. Any debate?

25 Hearing none, it has been moved and properly

1 seconded that we approve staff recommendation on Issues
2 2 and 3. All in favor, let it be known by the sign of
3 aye.

4 (Vote taken.)

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

7 Okay. Commissioners, now we get into the
8 sticky wickets. Staff, as we go through this let's
9 don't drop the ball on -- not suggesting that you would,
10 but there's a lot of spaghetti strings on this. As we
11 go through this, what do you call it -- those
12 combination and permutation, Ps and Qs, that sort of
13 stuff. Let's not get into that.

14 I did this before, got into it with 7 and 7A,
15 and you told me that they are not related. So if we get
16 into a situation like that, let's kind of tee those
17 issues up so that we don't do that, okay? Just for sake
18 of clarity. Just for the sake of clarity.

19 Commissioner Edgar, you're recognized.

20 **COMMISSIONER EDGAR:** Before we go into the
21 individual issues, this may not be necessary, but just
22 in case, can I go ahead and make a motion that for our
23 discussion and subsequent votes on all issues that the
24 changes in the errata be included as appropriate?

25 **CHAIRMAN CARTER:** Okay. Commissioners, the

1 errata sheet, as you know, staff provided that with the
2 updated numbers and corrections and all. We have got a
3 motion on that.

4 **COMMISSIONER SKOP:** Second.

5 **CHAIRMAN CARTER:** Motion and properly
6 seconded. And this clarifies the report that's in front
7 of us. They went back through and took care of those
8 kinds of things. It has been moved and properly
9 seconded. Any comments, questions, debate? Hearing
10 none, all in favor, let it be known by the sign of aye.

11 (Vote taken.)

12 **CHAIRMAN CARTER:** All those opposed, like
13 sign. Show it done.

14 Thank you, Commissioner, for that housekeeping
15 matter.

16 Okay. Here we are. Recommendations on
17 proceeding, Commissioners. Now, Staff, correct me, 7
18 and 7A are separate, right?

19 **MR. BREMAN:** Yes.

20 **CHAIRMAN CARTER:** Okay. Let's tee up Issue 7,
21 staff. You're recognized.

22 **MR. BREMAN:** Issue 7 is a request that the
23 Commission find for the year 2008 FPL's project
24 management and contracting and oversight controls were
25 reasonable and prudent for the Turkey Point Unit 6 and 7

1 project, as well as the extended power uprate project.
2 Staff recommends approval.

3 **CHAIRMAN CARTER:** Commissioner Argenziano.

4 **COMMISSIONER ARGENZIANO:** Are we going to vote
5 issue-by-issue on these or block?

6 **CHAIRMAN CARTER:** Well, what's your pleasure?
7 It's fine with me.

8 **COMMISSIONER ARGENZIANO:** I think we all know
9 where we are. Why don't we just do block?

10 **CHAIRMAN CARTER:** Okay.

11 **COMMISSIONER ARGENZIANO:** If everybody else
12 agrees.

13 **CHAIRMAN CARTER:** Let's do this, then, if we
14 are going to do the block. Let's take the -- I know
15 that 8A and 8 is -- we probably need to deal with that
16 one, because one cancels the other one out. Is that the
17 only one like that, Commissioners?

18 **COMMISSIONER EDGAR:** Mr. Chairman, if that is
19 your pleasure and my colleagues' pleasure, I can make a
20 stab at a group motion and then see if there is any
21 discussion for changes.

22 **CHAIRMAN CARTER:** Let me come back to you in a
23 second.

24 **COMMISSIONER EDGAR:** Okay.

25 **CHAIRMAN CARTER:** I want to make sure about

1 this 8 and 8A.

2 Mr. Hinton.

3 **MR. HINTON:** Eight and 8A, 23, and 23A and

4 B --

5 **CHAIRMAN CARTER:** We're not there yet.

6 **MR. HINTON:** Yes, we're not there, but I was
7 going to flag all of them.

8 **CHAIRMAN CARTER:** No, don't give me too much.
9 I'm hungry now, so I can't think very well. We're
10 dealing with the --

11 **MR. BREMAN:** 8 and 8A are the only ones for
12 FPL.

13 **MR. HINTON:** Correct, those are the only ones
14 for FPL that are the if/then type issues.

15 **CHAIRMAN CARTER:** Okay. Commissioner Edgar,
16 you're recognized for a shot at a motion.

17 **COMMISSIONER EDGAR:** Okay. Thank you, Mr.
18 Chairman. I make a motion at this time that we adopt
19 the staff recommendation for Issues 7, 7A, 8, 11, 12,
20 13, 16, 17, and 18.

21 **COMMISSIONER SKOP:** Second.

22 **CHAIRMAN CARTER:** Okay. Commissioners, it has
23 been moved and properly seconded on Issues --

24 **COMMISSIONER EDGAR:** Everything but 8A.

25 **CHAIRMAN CARTER:** Everything but 8A. Staff,

1 you've got the list in front of you?

2 **COMMISSIONER ARGENZIANO:** Are there
3 comments -- we're going to vote on these now?

4 **CHAIRMAN CARTER:** Comments now. You're
5 recognized.

6 **COMMISSIONER ARGENZIANO:** Just a few comments
7 to get on the record. And I appreciate the discussion
8 this morning. Some of mine took a little longer, and I
9 apologize, but it helped. I just want to make a comment
10 that, you know, I always felt that nuclear is clean, it
11 goes in reducing CO2, which is an incredible -- I think,
12 in my opinion, incredible problem we're all facing, and
13 the state has taken a lead in trying to reduce those CO2
14 emissions, and I even see benefits to some of the
15 upfront cost recoveries because it does save a lot of
16 money in the long-run. But I do have to say that I have
17 some concerns and want to express those very quickly.

18 I still have problems. I guess, the
19 statute -- the law is the law, but I see conflicts in
20 the statute, also. And some of what I guess the statute
21 did in providing the nuclear cost-recovery, as I said
22 before, eliminated the, I thought, oversight by a board
23 of directors which would be interested in an outcome of
24 anything the company does. So that kind of makes me a
25 little apprehensive. Not to say that that is to vote

1 one way or the other, that is just there.

2 And I still have some question of going
3 forward without an NRC permit in place, or more secure.
4 And I think there's another issue that just comes to
5 mind I just need to talk about. I know we're going to
6 address it at some other point, but I think that there
7 is a question of -- it would be imprudent, I guess, to
8 ignore the direction of conservation that takes place in
9 this issue, too, ultimately. That's not going to make a
10 decision on this issue, but I just think we've -- I
11 don't know, I won't even go into that. I guess I did
12 already, but not to the extent I was going to.

13 And still I have some problems with the
14 feasibility studies that some of the intervenors had
15 expressed, and that's a concern. But I think the thing
16 that really gets me is when I look at the statute and
17 it's not, as I say, in a way of being anti-nuclear. I
18 never have been. I've thought it's clean, and I thought
19 when you have a need it is a way to go, although I love
20 looking at renewables, too. But the statute, when I get
21 down to the statute, and the one that came off the plate
22 was the company's prudence in purchasing the land. The
23 discussion helped me to bring that to a close right here
24 that they did what was required of them.

25 And 366.06, I just keep looking at, and it

1 keeps going through my mind. And in the bottom of that
2 (1) where it says, "In fixing fair, just, and reasonable
3 rates for each customer class, the Commission shall to
4 the extent practicable, consider the cost of providing
5 service to the class as well as the rate history, value
6 of service, and experience of the public utility, the
7 consumption and load characteristics of the various
8 classes of customers, and public acceptance of rate
9 structures." And what I have is when I look at fair,
10 just, and reasonable for all sides, for the company and
11 for the ratepayer, you know, for the users in general,
12 all classes.

13 When it comes to fair, I remember hearing a
14 lot of people saying how is it fair to charge me for
15 something I may not ever, ever get to benefit. And in
16 looking at one part of the statute that says you shall
17 give them upfront recoveries, I also have to look at is
18 it fair, just, and reasonable. And in value of service,
19 and I remember one man talking to me, an elderly
20 gentleman in particular, I can still see his face, and
21 it was a theme that was repeated over and over again,
22 how is it of value to me if I'm never going to get to
23 benefit from it. And that is a serious -- you know, it
24 is a serious problem out there. It is a very loud one
25 out there. And I couldn't answer him other than to say

1 if you can't benefit from it I guess there is no value
2 to him or her. And those are things that I had to look
3 at.

4 And I guess before voting, and just saying it
5 is a horrible, horrible economic time. Everybody knows.
6 I think the company knows that, their employees know it,
7 we know it, everybody knows it, and it made this
8 decision, I think, for me even harder. Because, as I
9 say, I'm not anti-nuclear, and I just will have to look
10 at conflicting language, and I don't know how you give
11 upfront recoveries without being unfair to that
12 gentleman, or the ladies, or the people. I am just
13 having a real conflict with that.

14 So with that said, those are the reasons that
15 I still have problems with it, and I don't know what the
16 Legislature is ultimately going to do. Maybe they can
17 tweak and change things in just trying to be fair all
18 the way around and looking at everybody that we have to
19 please. And, boy, that's a job and a half.

20 I just wanted to get on record my concerns,
21 and I think it comes down to me for what is fair, just,
22 and reasonable. And I'm having a real hard time
23 listening to all those people out there who said I don't
24 know how this is fair, or just, or reasonable for me.
25 So I'm really conflicted, but I have to vote the way I

1 have to vote today.

2 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

3 We're in comments, Commissioners; comment phase.

4 Commissioner Skop.

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

6 And that was one -- Commissioner Argenziano's
7 point was one I had hoped to explore, but it eluded me
8 when I was going to present that question to Legal
9 staff. But, I guess my only comments deal specifically
10 with Issue 8 versus 8A. I have read the SACE concerns
11 and listened to their testimony in the record. Again,
12 also I have read the staff recommendation. At least to
13 me, you know, the feasibility analysis is an annual
14 recurring approval process, it's not a one-time
15 approval, so it's something that happens with regular
16 frequency on an annual basis. I think that the -- you
17 know, as the process moves forward you should have more
18 definitive costs. You know, certainly contracts will be
19 signed and you will be able to have a better certainty
20 as to whether the cost of completion is still within the
21 range of reasonableness as approved by the need
22 determination.

23 So it gives me some comfort in terms of going
24 with 8 over 8A. The 8A decision, I guess it boiled down
25 to semantics with me. I could see a lot of benefit for

1 perhaps deferring something, but a lot of equal
2 detriment as to what might be read in inadvertently into
3 the Commission's decision to take such action to the
4 extent that it would be an effective denial of the
5 feasibility analysis. So to me the better course of
6 action driven primarily by the fact that the deferral --
7 let me slow down -- driven primarily by the fact that
8 the feasibility analysis is a nonfinancial issue, it's
9 just a matter of is the project still on track and still
10 viable has nothing to do with any of the cost-recovery.
11 So, again, I think that gives me some comfort that 8 was
12 the way to go, and certainly the concerns raised will be
13 incorporated as lessons learned on a forward-going
14 basis, and, you know, applied and the burden is on the
15 company to show annually that the project is still
16 feasible. So that boils down to why I support Issue 8
17 over 8A.

18 With respect to Commissioner Argenziano's
19 comments as to 366.061, the fair, just, and reasonable
20 standard, again, we have heard a lot of customer
21 testimony, people are very hurting out there right now,
22 it is a very tough economic environment. So, again, in
23 terms of the conflicting language, how do you reconcile
24 the two statutory provisions? Because on one hand, you
25 know, one statute tells us that we must ensure the fair,

1 just, and reasonable standard; the other more specific
2 provision, nuclear cost-recovery under 366.93, tells us
3 you shall do this. So, again, there is some underlying
4 tension there. And, again, from a legal perspective it
5 seems the more specific statute controls and, you know,
6 basically provides for the cost-recovery that we are set
7 to approve or disapprove here today.

8 So, again, how you harmonize competing
9 interests there, as Commissioner Argenziano, I think,
10 hit right on point, it's a tough balancing act, and it
11 is. But, again, the one specific statute, I think, at
12 least in my mind, tells us we shall do something and
13 until, you know, it is modified that is the law of the
14 land, and that is what I feel compelled to follow as a
15 Commissioner.

16 **CHAIRMAN CARTER:** Thank you. We're in
17 comments.

18 **COMMISSIONER ARGENZIANO:** (Microphone off.)

19 **CHAIRMAN CARTER:** Commissioner Argenziano.

20 **COMMISSIONER ARGENZIANO:** Just one other, and
21 I respect that opinion. And just getting to the -- I
22 think Commissioner Skop said the -- I guess you referred
23 to it as the specific -- did you say overriding statute?

24 **COMMISSIONER SKOP:** No. It just seems to me
25 that 366.63 is very -- it's more specific than the

1 general fair, just, and reasonable, and so, you know,
2 just strictly from a legal analysis standpoint the more
3 specific statute typically controls. I don't want to
4 say that is right or wrong, but, again, that's how I
5 would reconcile that tension that you have rightfully
6 identified that there is conflicting language telling us
7 to do two different things, because one may be contrary
8 to the other. But, again, I think that is where you
9 have to default with the specific statute that is
10 directly on point which deals with nuclear
11 cost-recovery, which is what we're doing. So that's how
12 at least from my own perspective reconcile the tension.
13 Does that make it right? No, but it's what --

14 **COMMISSIONER ARGENZIANO:** I'm not questioning
15 whether it is right or wrong in your opinion. I respect
16 your opinion. I looked at that, too, and I said, well,
17 it's clear that the Legislature intended that there be
18 upfront recoveries. And I was there at the time, but as
19 I said before it really wasn't discussed except in maybe
20 one committee, and I'm not sure what happened there.

21 But I looked at that, too, and thought, well,
22 the 366.06 has been around awhile, and if they didn't
23 intend for it to stay around, and the words of being
24 fair, just, and reasonable, and you could use fair,
25 just, and reasonable for both sides, or for all sides,

1 and that I just couldn't answer, well, you want me to
2 give upfront recoveries, but you still want me to
3 consider fair, just, and reasonable. So I had to look
4 at what I heard from all sides. And I heard an awful
5 lot of people out there say that it just wasn't just and
6 it wasn't fair. So I didn't look at one being more
7 specific than the other in the respect it is more
8 specific as saying you will give upfront recoveries, but
9 it didn't take out fair, just, and reasonable. So I
10 felt that that was then the Legislature's intent was
11 that I still consider fair, just, and reasonable and
12 that's why I chose that. But I understand.

13 **COMMISSIONER SKOP:** I think we are in
14 agreement. Your point is well taken. It's just that
15 you do have that tension there between them.

16 **COMMISSIONER ARGENZIANO:** Absolutely. And I
17 really wish the Legislature would figure out what they
18 want us to do. But thank you.

19 **CHAIRMAN CARTER:** And I appreciate --
20 Commissioner Edgar, I will come to you in one second. I
21 just wanted to say this before I forgot it. I
22 appreciate that it is complicated. And what staff tried
23 to do was kind of bridge those interlocking statutory
24 considerations and all like that. The statute is new.
25 It was designed to create an environment to provide for

1 nuclear power, which is obviously a nonfossil fuel, and
2 we shouldn't be buying fuel from people that are trying
3 to kill us. That's just one of those things.

4 **COMMISSIONER ARGENZIANO:** I kind of agree with
5 that, too.

6 **CHAIRMAN CARTER:** But it's also not a
7 greenhouse gas pollutant type. But based upon where we
8 are in Florida, the Legislature and the Governor signed
9 off on this saying this is what we need to do. I think
10 it's a good law. Do I think it's perfect? No. But I
11 think that based upon what we have been able to do now,
12 and I'm sure they will be listening to us in terms of
13 how we have gone through our deliberations and if they
14 decide to want to tweak it some and to do that. But I
15 do think that we are -- and Florida is a leader, and
16 that's why I was saying what I said about the NRC. They
17 need to understand that we have got ratepayers' money on
18 the line, so they don't need to be dilly-dallying. They
19 need to go ahead on and approve these matters.

20 But I just wanted to say to our staff they
21 tried as much as possible to try to bridge those
22 different interlocking relationships and all like that,
23 and I'm comfortable supporting this.

24 Commissioner Edgar for comment.

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

1 Just briefly. I do recall the need
2 determination very well, as I'm sure we all do on this,
3 and I know at that point in time when we -- prior to the
4 vote when we were having discussions, many of us talked
5 about some of the advantages of additional nuclear power
6 in this state. I know I did, and those thoughts are
7 still in my mind. The need for fuel independence as we
8 have just referred to for reliability, for reliable
9 service into the future, and for the benefits of fuel
10 diversity. And I still believe that those are very
11 important things and always impact my decisions here
12 before us.

13 I also recognize, again, to state the obvious
14 that the issues that are before us right now encompassed
15 in my motion are just the FPL portion of the docket, so
16 just pertaining to the Turkey Point piece following
17 through on the need determination that we granted. And,
18 Mr. Chairman, I think we have had great discussion today
19 and I appreciate all the questions that have been asked.

20 **CHAIRMAN CARTER:** Okay. Commissioners, we
21 have a motion and a second. Any further debate? We are
22 in debate.

23 Commissioner Skop, you're recognized for
24 debate, sir.

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

1 Just one final comment that I made before.
2 Again, the ball is clearly in the NRC's court. I hope
3 they don't drop the ball.

4 **CHAIRMAN CARTER:** Okay. Commissioners,
5 anything further?

6 We have a motion and a second. All in favor,
7 let it be known by the sign of aye.

8 **COMMISSIONER SKOP:** Aye.

9 **CHAIRMAN CARTER:** Aye.

10 **COMMISSIONER EDGAR:** Aye.

11 **CHAIRMAN CARTER:** All those opposed, like
12 sign.

13 **COMMISSIONER ARGENZIANO:** Aye.

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

15 Commissioners, now we move to the second
16 grouping, which will start at 21 through -- there are a
17 lot of moving parts to this one, Commissioners. This
18 one has a lot of moving parts because we have got a 21
19 and a 21A, we have got a 23A and a 23B, you have got 31
20 you go to before -- well, you have got 32 then back up
21 to 31 and then 32A and B. So, recommendations?

22 Commissioner Edgar.

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

24 A comment, if I may.

25 **CHAIRMAN CARTER:** You're recognized for

1 comment.

2 **COMMISSIONER EDGAR:** Before we move forward,
3 and I realize that this is jumping around a little bit,
4 but it is trying to help us have an orderly discussion.
5 And partly the way my thoughts are just to make this
6 comment. If indeed as a body, or a majority of our
7 body, does approve cost-recovery at this time for this
8 project and any related issues, I am in favor of the
9 rate management plan that is expressed in Issue 32. I
10 think that is consistent with an approach that we have
11 used in the past for storm cost-recovery, for fuel
12 cost-recovery, and probably some other items, as well.
13 And I certainly am in favor of using the authority that
14 we have under our ratemaking directives to use whatever
15 tools are there to soften any rate impact on customers,
16 and I think that this provision, as I understand it, is
17 a method of doing that.

18 **CHAIRMAN CARTER:** And I agree with you,
19 Commissioner, because I did ask staff on this, and this
20 gives a longer period of time, taking into consideration
21 the economy being what it is now. And, you know, folks
22 are hurting out there, and we have the discretion at
23 this point in time to, you know, to give them a break.
24 And whenever we have the discretion, it has been my
25 experience since being here is that we have always, you

1 know, erred on the side of giving the benefit to the
2 ratepayers.

3 I remember, it seems like forever ago
4 Commissioner Argenziano and Commissioner Edgar were
5 talking about it was a recovery for -- overrecovery, and
6 I think it came around the holidays or something like
7 that, and we were able to stretch it out for instead of
8 the three months we would stretched it out for a year to
9 kind of ease the impact on that. So I certainly
10 appreciate staff's effort to come up with this
11 structured program here, because I think it works best
12 for the ratepayers.

13 Commissioner Skop.

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

15 I also tend to agree with that. I mean,
16 having the Commission flexibility to approve proposals
17 that manage rates has the benefit of providing relief to
18 ratepayers by deferring costs that would otherwise be
19 incurred in 2010. So ultimately consumers are going to
20 have to pay for those costs, but if you defer a portion
21 of them, then, you know, it certainly helps keep rates
22 stable in difficult economic times.

23 **CHAIRMAN CARTER:** Commissioner Edgar, that was
24 a good idea to go to 32, because I think that if we deal
25 with that then that will eliminate some of the -- well,

1 maybe not yours, but some of my confusion on 31 versus
2 32, then 32 versus 32A and 32B.

3 Now, staff, let me ask you this, if we deal
4 with 32, which of those other related issues does this
5 eliminate?

6 **MR. HINTON:** You will not address 32B if you
7 vote in the affirmative on Issue 32.

8 **CHAIRMAN CARTER:** The affirmative of 32
9 eliminates 32B, right?

10 **MR. HINTON:** (Indicating yes.)

11 **CHAIRMAN CARTER:** This may be tedious,
12 Commissioners, but we might need to break this up a
13 little.

14 Commissioner Edgar.

15 **COMMISSIONER EDGAR:** Mr. Chairman, I do have
16 one additional question along those lines, if I may, to
17 staff.

18 **CHAIRMAN CARTER:** Okay.

19 **COMMISSIONER EDGAR:** Mr. Hinton, I'll start
20 with you. If the Commission were to vote in favor of
21 Issue 23, then I understand that that would eliminate
22 the need for a vote on 23A. And can you speak to me
23 about 23B, or anybody.

24 **MR. HINTON:** I believe if you vote in the
25 affirmative on Issue 23, you will not have to address

1 23A or B.

2 **COMMISSIONER EDGAR:** Thank you for that
3 clarification.

4 **CHAIRMAN CARTER:** Okay. Just for the sake of
5 a refresher, tee up 23, Mr. Hinton.

6 **MR. GRAVES:** I can do that, Mr. Chairman.

7 **CHAIRMAN CARTER:** Okay. Robert, go ahead.

8 **MR. GRAVES:** Issue 23 was the sufficiency of
9 PEF's May 1, 2009, feasibility analysis. And staff's
10 recommendation was that the Commission require PEF to
11 include updated assumptions and an economic analysis in
12 future NCRC proceedings.

13 **CHAIRMAN CARTER:** Okay. Commissioners, any
14 questions on 23? Robert, give us a quick run-through
15 one more time.

16 **MR. GRAVES:** Yes, sir. Issue 23 was the
17 sufficiency of PEF's 2009 feasibility analysis for Levy
18 Units 1 and 2, and staff's recommendation was that the
19 Commission require PEF to provide updated economic
20 assumptions and an economic analysis in future NCRC
21 proceedings.

22 **CHAIRMAN CARTER:** And if we approve 23 that
23 would eliminate the need for 23A and 23B, and if we
24 approve 32 that will eliminate the need for 32A and --
25 wait a minute. Mr. Hinton, I'm getting too carried

1 away, aren't I?

2 **MR. HINTON:** Let me clarify one thing. I
3 think I may have made a mistake. If you vote in the
4 affirmative on Issue 23, you will not have to address
5 23A. 23B is another issue that just says what further
6 action should be taken, and I think you should probably
7 vote on that. It is not dependent upon your decision in
8 23. So I think you need to vote on 23 and if you vote
9 in the affirmative on 23, you can skip 23A and go
10 straight to 23B.

11 **CHAIRMAN CARTER:** Okay. Recommendations.
12 Commissioner Edgar.

13 **COMMISSIONER EDGAR:** Mr. Chairman, similarly,
14 I can take a stab at wrapping them altogether or
15 individually if other Commissioners have --

16 **CHAIRMAN CARTER:** What's your pleasure,
17 Commissioners. Altogether? Okay.

18 Commissioner Edgar, you're recognized to give
19 it a shot.

20 **COMMISSIONER EDGAR:** All right. Thank you,
21 Mr. Chairman.

22 First, just a very brief comment. Recognizing
23 that, of course, with this project being at a greenfield
24 site completely not collocated with other facilities, as
25 is the case in the FPL portion of the docket that we

1 have just approved, does certainly raise other issues.
2 We have discussed issues, you know, with the site,
3 realizing that there are many, many, many pieces and
4 moving parts, lots of processes and procedures to an
5 undertaking of -- to any undertaking of this magnitude,
6 any nuclear project, of course. But, again, additional
7 issues with this one being at a greenfield site.

8 And one of those additional issues, as we have
9 touched on, is the fact that that makes it more
10 expensive. I mean, I wish it were not so, but it does
11 make it more expensive. And that, of course, brings
12 into play many of the issues that we have discussed here
13 with our need to try to balance and to always minimize
14 any impacts on ratepayers.

15 But with that recognition, I do, again,
16 recognize that we have voted for a need determination
17 for this project for the reasons that were discussed at
18 the time, and I think, in my opinion, those still stand.
19 So, with that, Mr. Chairman, I at this time would make a
20 motion that we approve the staff recommendation for the
21 remaining issues in this way, 21, 21A, 23, 23B, 26, 30,
22 31, 32, and 32A.

23 **CHAIRMAN CARTER:** Staff, have you got that?

24 Okay.

25 **COMMISSIONER EDGAR:** And I think that that

1 would close out then everything that is before us today.

2 **CHAIRMAN CARTER:** All right. I just want to
3 make sure you guys got all of that in there.

4 Commissioner Argenziano.

5 **COMMISSIONER ARGENZIANO:** Just a brief
6 comment. Pretty much the same as far as the statute is
7 concerned as far as fair, just, and reasonable.

8 **CHAIRMAN CARTER:** Let me see if I get a second
9 and then we will get into comments.

10 **COMMISSIONER ARGENZIANO:** Oh, I'm sorry.

11 **COMMISSIONER SKOP:** Second.

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

14 **COMMISSIONER ARGENZIANO:** And I understand
15 that, and I do appreciate the longer deferred payments.
16 I think that was -- that's significant. It's
17 appreciated I'm sure by many. Maybe not by all, but by
18 many. And also to go to the need determination and
19 just -- I think things have changed even from the need
20 determination. The population growth changed, the cost
21 to the build the plants changed, the NRC decision, of
22 course, came in to postpone for awhile. So things have
23 changed, even though the main issues, you know, I know
24 for me was reduction of CO2 quickly, as quickly as you
25 can, and the need for power for the people of the state

1 of Florida.

2 So those things still remain, but some things
3 did change. And then just going back to what I said
4 before about fair, just, and reasonable, although I
5 think Progress did a really good job as far as trying to
6 make it as least impactive as possible. I just say,
7 again, and it has nothing to do with Progress, it has to
8 do with unfortunately the economy and where people are
9 today and having the need to look at that fair, just,
10 and reasonable even closer than might have been in a
11 normal economy. Saying that, I'm ready to go.

12 **CHAIRMAN CARTER:** Commissioner Skop.

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

14 And, again, I guess how it -- you know, I
15 think many of the points raised by my colleague,
16 Commissioner Argenziano, are true, and I'm cognizant of
17 the fact that we did approve a need determination that
18 is subject to administrative finality. Reopening or
19 readdressing that would present a whole host of legal
20 issues.

21 But, again, I think the underlying tension,
22 again, is the fair, just, and reasonable requirement
23 versus the specific statutory provision in 366.93 which
24 basically says you shall provide for recovery of
25 prudently incurred costs.

1 So, again, I think that just following the
2 statute, you know, that is at least to me applicable to
3 the facts before me, I will be voting in favor of the
4 cost-recovery for those specific issues.

5 **CHAIRMAN CARTER:** Thank you.

6 Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** I can't let it go
8 without being said; I'm following the statute, also.

9 **COMMISSIONER SKOP:** It's a tug of war.

10 **COMMISSIONER ARGENZIANO:** It is really
11 difficult. And I respect -- I really do -- I respect
12 each one's opinion. This is not an easy one.

13 **CHAIRMAN CARTER:** Further comments?

14 No further comments. Debate? We are in
15 debate. We have got a motion and a second. We are in
16 debate.

17 No further debate. We have got a motion and a
18 second. All in favor, let it be known by the sign of
19 aye.

20 **COMMISSIONER EDGAR:** Aye.

21 **COMMISSIONER SKOP:** Aye.

22 **CHAIRMAN CARTER:** Aye. All those opposed,
23 like sign?

24 **COMMISSIONER ARGENZIANO:** Aye.

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

1 Staff, let me ask you, the issues that are
2 stipulated, we have already taken care of those?

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

4 **CHAIRMAN CARTER:** So is there any other
5 outstanding matters on these two?

6 **MR. YOUNG:** No, sir.

7 **CHAIRMAN CARTER:** Okay. Commissioners,
8 anything further? We're adjourned.

9 (The Special Agenda concluded at 1:40 p.m.)

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STATE OF FLORIDA)

CERTIFICATE OF REPORTERS


COUNTY OF LEON)

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.


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

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

DATED THIS 19th DAY OF OCTOBER, 2009.

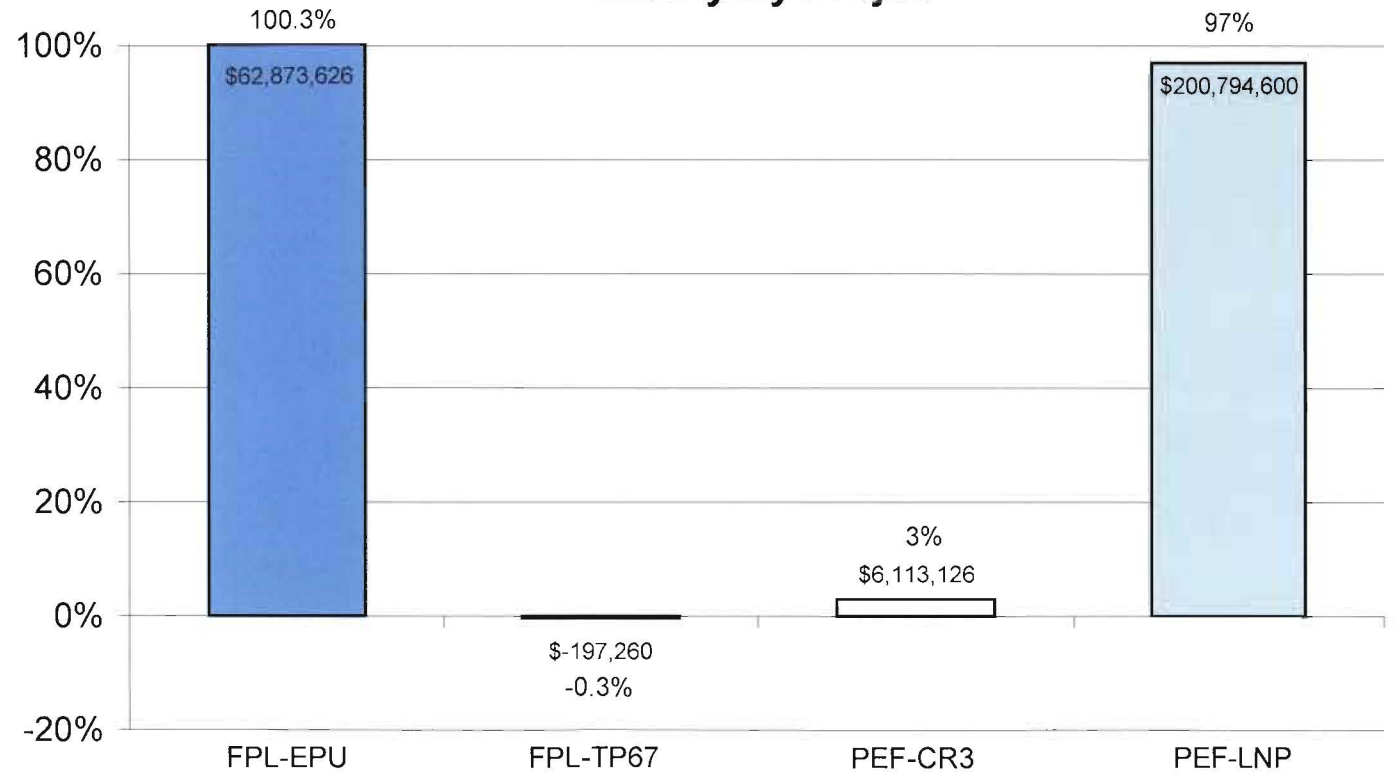


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Staff's Recommended NCRC Net Recovery By Project



Source: Staff Recommendation in Issues 18 and 32A.
Percentages are based on the total amount for each company.