

**INTEROFFICE COMMUNICATION**

General Manager

**DATE:** May 30, 2014

**TO:** Honorable Mayor and City Commissioners

**FROM:** Kathy E. Viehe, Interim General Manager

**Title**

Settlement Agreement between Duke Energy Florida, Inc. (Duke) and the City of Gainesville d/b/a Gainesville Regional Utilities (GRU) for the settlement, release, and acquisition agreement regarding ownership interest in Crystal River Unit 3 (CR3)

**Explanation**

In 1975, GRU became one of eight minority Owners ("Minority Owners") in Duke's Crystal River Unit 3 nuclear power plant and has an ownership interest of 1.4079 percent. In addition to having an ownership interest in CR3, GRU was also a wholesale purchaser ("Wholesale Purchaser") with a five-year Purchase Power Agreement for 50 MW of a blend of system average power from Duke that expired December 31, 2013.

In February 2013, Duke announced its intention to retire CR3 prior to the license expiration in 2016. The eight municipal Minority Owners and seven Wholesale Purchasers selected the Florida Municipal Power Agency (FMPA) to negotiate on their behalf with Duke concerning the failed CR3 plant.

On August 1, 2013 the City Commission voted to (1) authorize the General Manager, or his designee, to pay FMPA up to a total of \$110,000 for FMPA's efforts on GRU's behalf, inclusive of all amounts already incurred and paid by GRU for the CR3 negotiations with Duke; and (2) authorize the General Manager, or his designee, to execute the Authorization for Increased FMPA Costs and Expenses, agreeing to pay up to \$110,000 to FMPA on GRU's behalf.

After more than a year of negotiations with Duke, the eight municipal minority owners and the seven Wholesale Purchasers have reached a settlement. The resulting settlement is structured as a global settlement agreement intended to resolve all disputes between the Minority Owners, Wholesale Purchasers and Duke in regard to CR3. Each of the Minority Owners and Wholesale Purchasers are seeking approval and execution of the agreement in June 2014.

**Fiscal Note**

Pursuant to the Settlement Agreement, the terms provide for the following: (1) \$55,000,000 lump sum cash settlement payment to Minority Owners at closing, of which \$9,560,243 will be paid to GRU; (2) Minority Owners allowed to withdraw \$429,560 of the decommissioning funds previously set aside, prior to transfer to Duke, of which \$92,757 will be refunded to GRU; (3) as of Oct 1, 2013, Minority Owners are not responsible for payment of any CR3 related Operating and Maintenance (O&M),

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Administrative and General (A&G), Capital, or any other CR3-related costs that would otherwise be payable pursuant to the CR3 Participation Agreement, and additionally Duke will refund monies paid subsequent to October 1, 2013, in the amount of \$1,311,402, of which \$219,000 will be refunded to GRU; (4) additional indemnities and release from obligations of undetermined long-term costs; and (5) \$8,400,000 lump sum payment for the Wholesale Purchasers at closing, of which \$618,534 will be paid to GRU. Also, as part of the settlement, all Minority Owners will transfer decommissioning funds to Duke. GRU's portion is about \$11 million as of the April 30, 2014 bank statement. Please note, all numbers in this document are based upon information received as of May 29, 2014, as provided by FMPA.

**Recommendation**

The City Commission (1) authorize the System to transfer all of the City's ownership interests in CR3 to Duke; (2) find and determine that the System's transfer of all such ownership interests in CR3 to Duke will not impair the City's ability to comply during the current or any future fiscal year with the provisions of Section 710 of the City's Utilities System Bond Resolution (the "rate covenant"); (3) as permitted by the City's Utilities System Bond Resolution, authorize the application of the proceeds of the transfer of the City's ownership interests in CR3 either for (i) the acquisition of other property necessary or desirable for the safe or efficient operation of the System or (ii) deposit in the System's Utilities Plant Improvement Fund; (4) approve the draft settlement agreement and authorize the Interim General Manager, or her designee, to execute and deliver the attached settlement agreement documents to Duke with such changes thereto, as long as the settlement agreement documents are in substantially the same form, as the Interim General Manager, or such designee, shall approve as necessary or desirable and in the best interests of the City, such approval to be evidenced conclusively by the execution of such documents, and subject to the approval of the City Attorney as to form and legality; and (5) authorize the Interim General Manager, or her designee, to execute such other documents as may be necessary or desirable to proceed with the transaction authorized above, subject to the approval of the City Attorney as to form and legality, and to take such other actions as may be necessary or advisable to proceed with such transaction in accordance with this City Commission authorization.

Prepared by: \_\_\_\_\_  
Kathy E. Viehe, Interim General Manager

Submitted by: \_\_\_\_\_  
Kathy E. Viehe, Interim General Manager