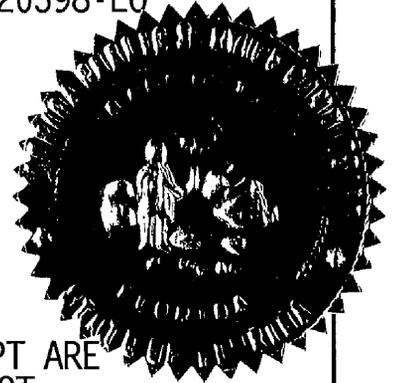


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020398-E0

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In the Matter of
PROPOSED REVISIONS TO RULE
25-22.082, SELECTION OF
GENERATING CAPACITY



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PROCEEDINGS: WORKSHOP

BEFORE: CHAIRMAN LILA A. JABER
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER BRAULIO L. BAEZ
 COMMISSIONER MICHAEL A. PALECKI
 COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Friday, July 19, 2002

TIME: Commenced at 9:30 a.m.
 Concluded at 4:10 p.m.

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

REPORTED BY: JANE FAUROT, RPR
 TRICIA DeMARTE
 Official FPSC Reporter
 (850) 413-6734

DOCUMENT NO.
07885
July 29, '02

1 IN ATTENDANCE:

2 MARTHA CARTER BROWN and MARK FUTRELL, representing
3 the Commission Staff.

4 JEFFREY A. STONE, representing Gulf Power Company.

5 MICHAEL L. BORDEN, representing GenEnergy.

6 ERNEST BACH, representing Florida Action Coalition
7 Team.

8 MIKE TWOMEY, representing Florida Action Coalition
9 Team.

10 GARY SASSO, representing Florida Power Corporation and
11 the IOUs.

12 DONNA BLANTON, representing Florida Power and Light
13 Company.

14 JOE McGLOTHLIN, representing Reliant Energy.

15 MICHAEL C. GREEN, representing Florida Partnership for
16 Affordable Competitive Energy.

17 SCHEFFEL WRIGHT, representing Calpine Eastern
18 Corporation.

19 RICHARD ZAMBO, representing Solid Waste Authority of
20 Palm Beach County, FICA and City of Tampa.

21 GUSTAVO CEPERO, representing Florida Crystals.
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P R O C E E D I N G S

1
2 CHAIRMAN JABER: Good morning. Let's go ahead and
3 get started. Let me welcome everyone here to the workshop this
4 morning. We have a lot to do. We are going to go ahead and
5 get started. Ms. Brown, we are going to skip the opening
6 remarks from the Chairman and the Commissioners and let you get
7 this started with the notice.

8 MS. BROWN: Thank you, Madam Chairman. By notice
9 issued May 29th, 2002, this time and place was set for a rule
10 development workshop by the Commission in Docket Number
11 020398-EQ, in re, proposed revisions to Rule 25-22.082, Florida
12 Administrative Code, selection of generating capacity. The
13 purpose of the rule development workshop is set out in the
14 notice.

15 My name is Martha Carter Brown representing the
16 Commission staff this morning. We can take appearances from
17 parties as they give their presentations, and I think everyone
18 got an agenda. We had some out here. The first or the second
19 part of our plans for this morning are a quick staff review of
20 the current draft rule amendment proposals, and Mr. Futrell was
21 going to present that to the Commission.

22 CHAIRMAN JABER: Go ahead.

23 MR. FUTRELL: Thank you, Chairman Jaber. I want to
24 give a brief summary of the rule and the revisions we have made
25 to it based on from the last workshop in February. The draft

1 revisions to the rule are designed to give the Commission a
2 tool to better implement the policies of the Florida
3 Legislature. Those policies call for utilities to have
4 adequate electric resources and that reliable electric service
5 is provided to ratepayers at rates that are fair and
6 reasonable.

7 Now, staff has modified the prior draft in several
8 ways. The minimum threshold for applicability is what is now
9 termed a major capacity addition of 150 megawatts in addition
10 to units subject to the Power Plant Siting Act. This was done
11 to allow utilities flexibility in the event small additions,
12 such as combustion turbines, were needed quickly to maintain
13 reliability. We have also inserted language in Section 2 which
14 summarizes statutory requirements of public utilities and have
15 stated that an RFP is a tool to ensure compliance with those
16 statutory requirements. Section 2 also includes language
17 encouraging the use of an RFP prior to selecting resource
18 additions not covered by the rule.

19 The language in Section 6, Page 6 of the draft has
20 been modified to clarify that utilities subject to the rule
21 should evaluate proposals that would collocate facilities on
22 utility property. The purpose of this section is to ensure
23 that utilities not preclude such proposals that could be
24 cost-effective to ratepayers. The purpose is not to allow an
25 unwanted taking of utility property.

1 We have also modified Section 14 on Page 8 by
2 removing the language that would allow the Commission to select
3 an alternative proposal to that included in the utility's
4 petition. The current draft language recognizes existing
5 regulatory processes for Commission review of a utility's
6 decision following the RFP process. This would include a need
7 determination proceeding, a prudence review either before or
8 after construction, consideration of a purchased power
9 contract, or consideration in the annual purchased power
10 recovery clause process.

11 And in some materials we provided to the
12 Commissioners and the parties we have prepared a two-page table
13 summarizing changes to the existing rule and we have also
14 provided some of our rationale behind those changes. Now, the
15 intent of the draft is to protect ratepayers. The philosophy
16 of the rule is the same as it was when it was adopted in 1994.
17 The utility which has the statutory obligation to serve retail
18 consumers is responsible for deciding which generation
19 resources it should build or buy in order to ensure reliable
20 and cost-effective power to consumers. The Commission's role
21 is to review the prudence of utility decisions. We believe
22 this to be the direction given by the Florida Legislature in
23 Chapter 366.

24 And that conclude's my comments, Chairman Jaber.

25 CHAIRMAN JABER: Thank you, Mr. Futrell.

1 Ms. Brown, I think the plan was to go right into the
2 presentations from here, is that correct?

3 MS. BROWN: Yes.

4 CHAIRMAN JABER: And I'm looking at the agenda you
5 have given me, it looks like you have got presentations from
6 10:00 to 12:30. We are ahead of schedule, which is good. We
7 should start with the investor-owned utilities according to
8 your agenda?

9 MS. BROWN: Yes, we thought that would be the most
10 reasonable.

11 CHAIRMAN JABER: Okay. Ms. Blanton, Mr. Sasso, have
12 you designated a person to make your presentation?

13 MR. SASSO: Yes, ma'am.

14 CHAIRMAN JABER: Go for it.

15 MR. SASSO: Good morning. I'm Gary Sasso
16 representing Florida Power Corporation, and I am also speaking
17 on behalf of the other investor-owned utilities who submitted
18 consensus comments, namely Florida Power and Light, TECO, and
19 Gulf. And with us today are Donna Blanton for FPL, Jim Beasley
20 for TECO, and Jeff Stone for Gulf.

21 We are pleased to be able to discuss our views on
22 this matter today, and hopefully provide the basis for a
23 resolution of the concerns. We seem to find ourselves at an
24 impasse on the issue of statutory authority for rulemaking in
25 this area. We have submitted extensive comments on this issue,

1 which I will not belabor today. Suffice it to say that we are
2 in fundamental disagreement with other participants in this
3 proceeding and perhaps the Commission staff, so what we have
4 tried to do is we have tried to push all of those legal issues
5 to one side. And we have asked ourselves can we do something
6 to address the underlying concerns.

7 And we believe that the principal concern that has
8 been identified by the staff and by the Commissioners in prior
9 workshops has been increasing the transparency of the IOU RFP
10 process and also the transparency of our decisions to repower
11 generating facilities.

12 Understanding the importance of these issues for all
13 concerned, including the Commission, we have worked long and
14 hard among the four IOUs to try to come up with something that
15 we could all agree to and sponsor before this Commission. As
16 everybody is aware, the policy and the legal issues in this
17 matter are very complex, and each of the IOUs I can assure you
18 has legitimate and deep-seated convictions about the issues on
19 the table today.

20 And we have had to make a number of compromises among
21 ourselves and with our own companies even to be able to present
22 a compromise to the Commission today, but we are very pleased
23 to be able to offer a proposed stipulation that has been
24 entered into by all four IOUs which procedurally by-passes all
25 of the legal issues that we would otherwise have to confront

1 about the Commission's statutory authority to deal with the
2 issues in this area, and offers an opportunity for all of us to
3 make immediate progress toward a solution rather than getting
4 bogged down in legal problems. And we hope that we have
5 addressed the underlying concern that has driven this docket.

6 Now, what we have done is we have attempted to follow
7 the model that we used in the reserve margin docket, and I will
8 explain more about that in a moment, but that was our
9 procedural precedent, if you will. And we prepared a written
10 stipulation which we have distributed to the Commissioners
11 today which we finalized literally late yesterday. And upon
12 its completion, we faxed it to all of the parties who had
13 submitted comments. We were unable to reach one, and I believe
14 that we have cured that this morning by providing that to that
15 party.

16 We have the original here for filing, but we provided
17 signed copies to the Commissioners and the clerk. In addition,
18 we have tried to make informal contact with representatives of
19 the other participants in this proceeding, but given the
20 shortness of time we have been able only to go so far down that
21 road.

22 We believe that the stipulation we propose is both
23 simple but also very, very powerful. Under this stipulation,
24 the IOUs would agree to adopt as voluntary business practices
25 the following procedures: To begin with, we are proposing

1 several important changes in the way we administer the RFP
2 process under the existing rule. First, we would invite the
3 Commission staff to attend key milestone meetings conducted by
4 the IOUs as part of their RFP process under the existing bid
5 rule. This would permit the staff and indirectly the
6 Commission to get information about our RFP process on the
7 front end, not just after the fact, which we understand from
8 the workshops conducted today is a key concern of staff. This
9 would also permit an opportunity for an informal exchange of
10 ideas between staff and the IOUs concerning these milestones.

11 Second, in the same connection we would invite staff
12 to observe contract negotiations between the IOU and bidders
13 that might take part of the RFP process. Again, this would
14 offer the benefit of increasing the transparency of a key part
15 of our RFP process. Now, various commenters have encouraged
16 the introduction of a so-called neutral third party into this
17 process to review and somehow participate in our RFP
18 activities.

19 But we believe that these comments and other comments
20 that have as their thrust an effort to either characterize or
21 place the IOUs in a position as just another bidder at the
22 table fundamentally overlook the key difference between us.
23 And that is the IOU's obligation to serve. You heard Mr.
24 Futrell mention that this morning, and during the agenda during
25 the adoption of the original rule and during subsequent

1 proceedings, staff and the Commission has repeatedly reaffirmed
2 this distinction, that the IOUs have an obligation to serve.
3 We cannot delegate that to a neutral third party. We cannot
4 delegate that to IPPs. It is an obligation we take very
5 seriously.

6 Now, of course, our decisions are subject to
7 Commission oversight, as Mr. Futrell mentioned, and our
8 stipulation reflects that. Third-party involvement was
9 explicitly rejected when the bid rule was first adopted.
10 Mr. Ballinger explained to the Commission agenda at that time
11 that it would be inappropriate to have a third party involved
12 because the IOUs have an obligation to serve and also because
13 nobody is really beyond reproach with respect to the issue of
14 independence other than the Commission and its staff. And we
15 have attempted to embrace and address that reality in our
16 stipulation by increasing the transparency of the RFP process
17 where it really matters to the Commission and the staff.

18 Third, we would designate a liaison within the IOU
19 who is both knowledgeable about and accountable within the IOU
20 for the RFP process who would be responsible for working with
21 the staff on such projects. And this would further promote
22 transparency and help ensure that the staff understands our
23 problems, our processes, et cetera.

24 Beyond this, our stipulation includes a proposal that
25 goes beyond the scope of the existing bid rule addressing the

1 issue of repowering. Specifically, responding to concerns
2 about repowerings that fall outside the scope of the existing
3 bid rule, each IOU would adopt the business practice of making
4 an evaluation presentation to Commission staff concerning the
5 decision to undertake the repowering before the decision is
6 implemented. And, again, the purpose of this and the benefit
7 of it is that we would be providing additional information and
8 transparency, if you will, to the staff on the front end rather
9 than after the fact.

10 Now, the stipulation makes clear that we retain the
11 obligation to make the capacity selection decisions at issue.
12 We are not suggesting that we would ask the staff to
13 participate in making those decisions with us or for us. We
14 understand that we need to maintain our respective roles and
15 that the IOU makes management decisions and the Commission
16 reviews them, as Mr. Futrell has mentioned this morning.

17 I would like to discuss an important procedural
18 aspect of this proposal. The stipulation that I have described
19 is being offered in an effort to reach closure in this docket
20 and it is expressly conditioned on the closing of the docket.
21 And as I mentioned, we have attempted to follow the precedent
22 of the reserve margin stipulation. You may recall that in that
23 docket the Commission opened the reserve margin docket to
24 investigate reserve margins and reserve practices of the IOUs
25 in Peninsular Florida. Various independent power producers

1 intervened in that proceeding alleging that their interests
2 were substantially effected. Prefiled testimony was prepared
3 and filed by the IOUs, by IPPs and by staff, and a hearing was
4 scheduled for November 2nd, 1999, which was a Tuesday.

5 On Friday, October 29th, the three IOUs in Peninsular
6 Florida arrived at a stipulation and presented it to the
7 Commission as a means to resolve that docket. You may recall
8 that in that stipulation the IOUs agreed voluntarily to
9 increase their reserve margin planning criteria from 15 percent
10 to 20 percent within four years.

11 The Commission upon receipt of that stipulation
12 continued the hearing so that all parties would have an
13 opportunity to consider the stipulation and discuss it and
14 ultimately the IPPs were unwilling to sign the stipulation.
15 And, in fact, they opposed the closing of that docket on the
16 basis of the stipulation arguing that because they had been
17 permitted to intervene to protect their substantial interests
18 they had a right to go forward to hearing. And staff counsel,
19 Mr. Elias, advised the Commission that the Commission had no
20 obligation to hold a hearing, that it had opened the docket and
21 it had the discretion to close the docket, and that would not
22 effect anyone's substantial interests. And the Commission
23 accepted that recommendation, accepted the stipulation as a
24 basis to close the docket, and did so. The key is that by
25 doing so the Commission was not taking any affirmative agency

1 action that affected anybody's substantial interests or that
2 would give rise to legal battles in an appeal. And that is
3 true here, all the more, so because this isn't even a 120.57
4 proceeding.

5 The Commission opened this docket to consider
6 rulemaking, and the Commission has complete discretion to close
7 the docket without undertaking rulemaking. That would not
8 affect anybody's substantial interest. The procedural
9 advantage of that is that it moots out all the legal issues
10 about the Commission's statutory authority to act in this area.
11 What we are proposing is something we are proposing to do to
12 ourselves, if you will, as in the case of the reserve margin
13 docket. But as in the case of the reserve margin docket, this
14 would take us a step forward in resolving the concerns that
15 underlie the docket, that gave rise to the docket in the first
16 place.

17 Although the stipulation we propose here, as in the
18 case of the reserve margin docket, is a voluntary undertaking
19 by the utilities, we treat it every bit as solemn as the
20 undertaking that we committed to observe in the reserve margin
21 docket and the Commission is aware that we have lived up to
22 that. We are in the process of living up to that commitment.
23 If this is accepted as a basis to close this docket, it becomes
24 a part of the way we do business, and therefore it can be
25 considered by the Commission as background in exercising your

1 discretion in order to determine whether we need rulemaking or
2 not. It just becomes part of the way we do business and
3 therefore it can become a basis for the Commission to decide
4 that there is no need at this time to pursue rulemaking.

5 Now, importantly, in this instance as in the case of
6 the reserve margin docket, this stipulation explicitly provides
7 that if the Commission relies upon our voluntary undertaking as
8 a basis for closing this docket, the Commission is not tying
9 its hands, it is not waiving any right or ability pursuant to
10 governing law, to initiate any proceeding in the future, or
11 take any action in the future for which it has jurisdiction and
12 authority. If in the future the Commission decides based on
13 evolving information that it needs to take some action,
14 initiate a rulemaking or take some other action, the Commission
15 has the discretion to do so. All we are asking is that the
16 Commission give this a chance.

17 In summary, I would like to review what our proposed
18 stipulation does do and what it does not do. What it does do
19 is it accomplishes the following positive things. First, the
20 IOUs, the Commission, and Commission staff and other
21 stakeholders are able to take an immediate step forward in
22 gaining greater transparency concerning our RFP process and
23 power plant repowerings, so it is a win/win.

24 Second, this would further the Commission's goal of
25 ending disputes through a consensual process rather than

1 litigation. And we avoid the delay, cost, disruption, and
2 equally important an uncertain outcome of potential litigation
3 that will almost certainly ensue if we go forward with
4 rulemaking. We are all losers if that occurs.

5 Third, this will put the Commission in a better
6 position to inform itself about our RFP process, about our
7 challenges and some of the practical difficulties that we try
8 to communicate to the Commission in these workshops, because it
9 will be able to get first-hand information through staff. So
10 if the Commission later determines that rulemaking or some
11 other action is warranted, it can do so based on a more
12 complete understanding of the practical issues and policy
13 issues involved.

14 There are several things that the proposal does not
15 do. Again, it does not require the Commission to take action
16 that will be subject to legal challenge and will lead to an
17 uncertain outcome. Second, as I mentioned, it does not bind
18 the Commission's hands if the Commission determines in due
19 course that it needs to take further action. So viewed in this
20 way, the stipulation we propose and the solution we propose is
21 not in the discussion of these important issues. It advances
22 the ball.

23 Now, we are fully aware that what we are proposing
24 does not offer all that some of the commenters have requested.
25 It does not reflect all of the technical changes in the straw

1 proposal, but this is offered in the spirit of a true
2 compromise. And, again, I can assure you that the IOUs have
3 made many compromises to get here and have struggled and worked
4 very hard in good faith to attempt to address what we perceive
5 to be the underlying concerns in this docket. Thank you.

6 CHAIRMAN JABER: Mr. Sasso, I want to give the
7 Commissioners an opportunity to ask question about your
8 proposal, and certainly we want to give all the commenters an
9 opportunity to comment the best they can today.

10 But, Commissioners, before we get started on that it,
11 is my intention to consider the proposal, but be prepared to
12 move forward today as scheduled because this has been noticed
13 as a workshop on the straw proposal that was provided by staff
14 for the benefit of the commenters. We do have planned
15 presentations and I'm not interested in deviating from the
16 schedule, but I am very interested in allowing everyone an
17 opportunity to consider the proposal and ask questions and
18 having all the commenters commenting. Okay.

19 Questions on the proposal?

20 COMMISSIONER DEASON: My preference is to hear if
21 there are any responses. I know that there has been a short
22 turnaround as explained by Mr. Sasso, and I understand that,
23 but if anyone wishes to comment on it, I would be certainly
24 eager to hear what they have to say.

25 CHAIRMAN JABER: Well, let's see. Mr. Green. Well,

1 let's talk about how you all prefer to go forward.

2 Mr. Sasso, do you want to go forward as you were
3 originally planning with your presentation, or do you want to
4 reserve some time to respond to the others presentation?

5 Mr. Twomey, you have got a comment?

6 MR. TWOMEY: Yes, ma'am, Madam Chairman. I would
7 suggest to you that you consider hearing from the other people,
8 the other parties, participants, and perhaps get this thing
9 over with and resolved and then move on. That would be my
10 suggestion.

11 CHAIRMAN JABER: So you would be ready to comment on
12 the specific proposal, is that what you are suggesting?

13 MR. TWOMEY: You mean on their stipulation?

14 CHAIRMAN JABER: Right.

15 MR. TWOMEY: Yes, right now.

16 CHAIRMAN JABER: Okay. Go ahead.

17 MR. TWOMEY: I'm almost amused, Madam Chairman,
18 Commissioners, that the united IOUs are here this morning at
19 something short of 10:00 o'clock presenting what they call a
20 stipulation, something that they have reached in the spirit of
21 compromise that was presented to me by facsimile copy last
22 evening, or yesterday afternoon late at 5:30, an unsigned copy.
23 I don't know about the rest of the participants that had
24 previously submitted comments on the rule, whether they were
25 consulted on this stipulation or not, but I wasn't. FACT was

1 not.

2 Now, as to the specifics, what the utilities have
3 proposed to offer up in my estimation and in FACT's estimation
4 doesn't amount to anything of consequence. It doesn't address
5 the fundamental problem you all are here to participate and
6 decide on that the parties have made comments on. FACT is here
7 asking the Commission to take a process, a bidding rule process
8 that is fundamentally unfair on the surface of it and make it
9 fairer for reasons or by ways which we will tell you when we
10 have our presentation. But we want you to take a fundamentally
11 unfair process and make it fair. We are not here interested in
12 accepting a stipulation that takes the unfair process and makes
13 it more transparent. Seeing what they are doing to reach an
14 unfair result isn't adequate. So that's it.

15 I mean, what they have offered doesn't accomplish
16 anything of consequence toward the goal of making sure that
17 this Commission can meet its statutory obligation to see that
18 the power plants that are approved in the need determination
19 statute are the best cost, least cost, most efficient, and
20 likewise at the same time help you make a determination later
21 that when you put these plants in rate base that they are least
22 cost, most efficient. So we would urge you, FACT would urge
23 you to not accept this stipulation which has been brought to
24 you this morning by one of -- only one of many participants in
25 this docket. Thank you.

1 CHAIRMAN JABER: Thank you, Mr. Twomey. Mr. Wright.

2 MR. WRIGHT: Thank you, Chairman Jaber. I would like
3 to defer to Mr. Green for PACE. I may have something to add,
4 but I think he is our guy.

5 CHAIRMAN JABER: Mr. Moyle.

6 MR. MOYLE: Before Mr. Green goes, I was hoping to be
7 able to take you up on your offer to ask questions of the
8 stipulation.

9 CHAIRMAN JABER: I think that's fair. Mr. Sasso, Mr.
10 Moyle would like to ask you questions to better understand the
11 stipulation.

12 MR. SASSO: Sure.

13 MR. MOYLE: The first question I have is pretty much,
14 I think, a legal question. But assuming that parties were
15 agreeable to the stipulation, which I'm not sure is a valid
16 assumption, but for the purposes of the question let's assume
17 that. Do you envision that this stipulation would be signed by
18 all parties? And, if so, would it then be binding on all
19 parties and only subject to change in the situation in which
20 all parties agreed to a change?

21 MR. SASSO: Well, we have envisioned that it would be
22 signed by the IOUs only as in the case of the reserve margin
23 docket, but we would certainly entertain the possibility of
24 entering into a stipulation with all parties.

25 MR. MOYLE: Okay. I guess kind of where I'm going is

1 how could this document you changed? Obviously a stipulation
2 that I am used to in a circuit court, parties sign it, it is
3 binding on the parties, it can only be changed by the parties
4 agreeing to change it. So I was trying to ascertain whether
5 you thought that this stipulation, you know, would be binding
6 on you in terms of your business practices provided some IPPs
7 signed it, or whether, you know, it uses the term voluntary
8 practice, whether it could be changed without having to go back
9 and get the parties to the stipulation to agree to the change.

10 MR. SASSO: Assuming that no one else signed it and
11 we just had the signatures of the IOUs, it would stand in the
12 same legal posture as our stipulation in the reserve margin
13 docket. We deviate at our peril. We have the discretion to do
14 it, but that would become immediately known to the Commission
15 and presumably nobody would depart from this undertaking unless
16 there were a compelling reason to do so. The Commission could
17 then act, or any party would be free to act in the event that
18 we felt something compelling in the future led us to change our
19 practice. But the intent is to live up to this undertaking for
20 the indefinite future. It is self-policing because the crux of
21 it is to involve staff, so staff will immediately know if we
22 are not obliging.

23 MR. MOYLE: Okay. And you are a good lawyer and I
24 respect your opinion, but provided I were to sign it on behalf
25 of my client, CPV, then I would presume it would work like any

1 other stipulation, and that any changes would have to also
2 receive the consent of CPV, correct?

3 MR. SASSO: And it would be bilateral.

4 MR. MOYLE: One other question. This may have been
5 implied in here, but, you know, there is a legal dispute, I
6 guess, in papers that have been filed about the authority of
7 the Commission with respect to the Bid Rule. Is it implicit in
8 here that you all would not challenge the existing Bid Rule
9 legally as it currently sits?

10 MR. SASSO: If we enter into this stipulation or if
11 we don't?

12 MR. MOYLE: Well, I understand you have already
13 entered into the stipulation, you have signed it and provided
14 it to the Commissioners, so --

15 MR. SASSO: It is conditioned on the closing of this
16 docket. And if that doesn't occur, all parties are reserving
17 all legal rights.

18 MR. MOYLE: Well, assume it is accepted.

19 MR. SASSO: We would have to reflect on that.

20 CHAIRMAN JABER: Mr. Sasso, I think Mr. Moyle's
21 question is consistent with what I heard you say, which is if
22 the Commission approves the stipulation as it has been executed
23 by the IOUs, this in your opinion satisfies or sets aside, I
24 think, by-passes the legal authority argument. And I think
25 that is the heart of Mr. Moyle's question. If the Commission

1 approves your stipulation, are you acknowledging that that will
2 resolve your concerns with legal authority?

3 MR. SASSO: It would resolve all concerns with the
4 proposed rulemaking. I simply don't have authority as I sit
5 here to make a representation on that, but I can probably do so
6 with a short break.

7 MR. MOYLE: Okay. Well, obviously he needs to
8 consult with his clients and I look forward to a reply. That
9 was really all the questions I have. I just received it this
10 morning and have not had a chance to go through it thoroughly,
11 so other questions may arise. I would applaud the
12 investor-owned utilities for recognizing that there is a
13 problem with the repowerings that they have, I think, addressed
14 in the stipulation in terms of providing Commission oversight
15 of the repowerings, because previously those were not subject
16 to the Bid Rule. And whatever direction you all go in, whether
17 it is a stipulation or to move forward with the rulemaking, I
18 think repowerings ought to be something that is focused upon.

19 And, finally, I would just make the comment, and I
20 know that the chair, I think, has asked the parties about this,
21 but Mr. Twomey talked about receiving this late and not having
22 much of a chance to go over it or whatnot. But you, I think,
23 Madam Chair, have inquired about negotiated rulemaking at some
24 point. And, you know, this isn't much of a negotiation where
25 we are doing it like this, but it may possibly open an avenue

1 for some discussions as we move forward.

2 CHAIRMAN JABER: Thank you, Mr. Moyle, I appreciate
3 that. Mr. Green.

4 MR. GREEN: Thank you, Madam Chairman. I will make a
5 brief comment representing PACE. But before I do that, as I
6 guess I beat Mr. Moyle, I received this last night during
7 dinner, so I have a stain of Merlot on it to prove that. But I
8 would like to have -- obviously the lawyers of all the PACE
9 members have several questions, and I'm not going to belabor
10 your time to do that, but I would like to offer Mr. McGlothlin
11 one question before I make some general comments for PACE,
12 please.

13 CHAIRMAN JABER: Sure.

14 MR. MCGLOTHLIN: Mike, if you want to go ahead with
15 your comments, we were going to sort of decide who is next on
16 the spot here. I have more than a question, I have some
17 comments about the proposal, and if you want me to go ahead --

18 MR. GREEN: No, I will go ahead.

19 MR. MCGLOTHLIN: Okay. Go ahead, Mike.

20 MR. GREEN: You can see we are on the fly here. I'm
21 representing PACE, and I appreciate your offer for us to come
22 speak to you. There are several representatives of PACE
23 members that have traveled for this hearing today, so I do
24 appreciate the opportunity perhaps later to make our comments
25 relative to the workshop.

1 But relative to the stipulation itself, clearly
2 transparency is one of the key issues that the staff's
3 recommendation has addressed, and I think has been the subject
4 of the list of issues that this Commission has been trying to
5 deal with. And we do commend the IOUs in the stipulation of
6 taking, as Mr. Sasso says, a first step or a step towards
7 resolution of one of these issues. So with that commendation,
8 we thank that opportunity for compromise. However, there are
9 several other very key issues that we feel are very important
10 that the Commission needs to consider.

11 Again, the policy or the goal here is not really
12 complex. The policy and the goal is pretty simple; do what is
13 in the best interest of the ratepayers. Not what is it in the
14 best interest of the IPPs that PACE might represent, not in the
15 best interest of the IOUs, but what is in the best interest of
16 the consumers, the ratepayers of the state. An open and
17 transparent bidding process is clearly one of those issues that
18 the consumers should be considered in. But there are several
19 other issues as the staff has identified and as previous PACE
20 comments have identified that we feel really need to be
21 considered. And so we urge the Commission to certainly
22 consider the transparency issue as one, but do not forego
23 consideration of the other very critical issues that are
24 important to the consumers of the state.

25 With that, Joe, maybe you want to say something.

1 CHAIRMAN JABER: Thank you, Mr. Green.

2 MR. GREEN: Thank you, ma'am.

3 MR. McGLOTHLIN: Commissioners, I'm Joe McGlothlin.
4 I represent Reliant Energy Power Generation, Inc. With other
5 members of PACE, Reliant participated in the preparation of the
6 pre-workshop comments that were distributed earlier.

7 The proposal of the IOUs has an underlying premise
8 which is this, there is a dispute over whether the Commission
9 has statutory authority to proceed with rulemaking, therefore,
10 the Commission should accept this proposal and avoid that
11 dispute, which could, in Mr. Sasso's words, have a bad result
12 for everyone.

13 While there are both legal and practical dimensions
14 to the proposal that I think have to be addressed early on, the
15 legal dimension is a question of statutory authority. And,
16 Commissioner Bradley, I know that you in particular have voiced
17 concern over that subject and asked to be shown the basis for
18 the Commission's ability to act. And so I think the starting
19 point should be a very quick identification of what is the law
20 on your statutory authority to adopt rules.

21 And I'm not going to go through chapter and verse of
22 everything that has been briefed, but I want to summarize it
23 this way. I think even the IOUs would acknowledge that the
24 seminal case on this subject is the Save the Manatee case. And
25 in that case, the first DCA said this, "It follows that the

1 authority for an administrative rule is not a matter of degree.
2 The question is whether the statute contains a specific grant
3 of legislative authority for the rule, not whether the grant of
4 authority is specific enough. Either the enabling statute
5 authorizes the rule at issue or it does not."

6 And the same court referred to this case again in a
7 Florida Board of Medicine case, also briefed in our comments.
8 And it said, "As Save the Manatee makes clear, whether the
9 grant of authority is specific enough is beside the point."
10 And, again, in the same opinion, "As previously indicated, the
11 degree of specificity of the grant of authority is irrelevant."

12 I will ask you to keep that in mind as you entertain
13 the contention of the IOUs, because boiled down in their
14 comments they say again and again the Commission doesn't have
15 specific statutory authority. Well, we have demonstrated that
16 you have both elements that are needed to satisfy the standard
17 of the Administrative Procedures Act. You have the general
18 grant of rulemaking authority in 366.051, and then you have the
19 specific power that such a rule would be implemented in, again,
20 your ratemaking powers, where you have the power to prescribe
21 those practices that affect rates.

22 So, we think that in view of both the general and
23 specific grants of authority, and in view of the case law
24 interpreting the current APA to mean that the degree of
25 specificity is beside the point, you have a firm basis on which

1 to go forward. And just one final thought on the rulemaking
2 authority, and I will move on to more practical considerations.
3 We have mentioned earlier the Osheyack case, Osheyack v.
4 Garcia, Supreme Court of Florida case involving a PSC rule.
5 The statute in question was 364.19, which says only the
6 Commission may regulate by reasonable rules the terms of
7 telecommunications service contracts between telecommunications
8 companies and their patrons.

9 The rule that was challenged in that case said that
10 local telephone companies could disconnect customers for
11 nonpayment of long distance bills. Now, draw the parallel.
12 One could at the time this was before the Commission say it is
13 not specific enough. The statute doesn't say local telephone,
14 it doesn't say anything about disconnect, and certainly doesn't
15 say anything about disconnect for nonpayment of long distance
16 bills.

17 But the Supreme Court of Florida looked at this,
18 applied the Save the Manatee criterion and concluded that the
19 Commission was within its powers to affirm that rule. And I
20 think that is a direct parallel to this situation where the
21 IOUs are saying not specific enough, not specific enough, and
22 yet you have a strong basis in current case law to support
23 going forward. Now, that is the legal angle.

24 There is a very important practical consideration.
25 As Save the Manatee said, the analysis of an agency's authority

1 to engage in rulemaking is going to necessarily be developed on
2 a case-by-case basis. That means that you will never be in a
3 situation where it will be impossible for someone who doesn't
4 like a rule to say you don't have statutory authority. The
5 same court said the statute will always -- the rule will always
6 be more detailed than the statute. So that argument is always
7 going to be there.

8 What should you do when that argument is raised?
9 Well, the IOUs say, oh, well, we have to avoid this. Let's
10 just by-pass that legal argument and do something along the
11 lines of our proposal. Well, I will suggest to you that the
12 case law, the message of the case law is that when an agency is
13 confronted with an issue like that it should go forward on a
14 valid basis, on a good-faith basis and do what it thinks is
15 necessary to carry out its functions.

16 Because otherwise, if you step aside or fall short
17 every time you are challenged on the basis of lack of specific
18 authority, this agency is going to be paralyzed. You won't be
19 able to do anything. That argument is always going to be
20 there. That is the practical consideration.

21 And so the question before you is does this proposal
22 give you what you need to do your job to protect ratepayers.
23 If not, then you have a very strong basis on which to go
24 forward with rulemaking. And just to carry that to the next
25 step, if after listening to the arguments of PACE and Reliant,

1 the other IPPs and customers you believe that the arguments, if
2 pursued, would lead to a result that is worthwhile for
3 ratepayers, and if you go forward on the basis that there is in
4 the case law and under your statutory authority a reason to
5 believe you have the power to do so, and if that is challenged
6 and you lose, at least you will know what you need from the
7 legislature to do your job. So those are the practical
8 dimensions of all the issues confronting you today.

9 Now, does the proposal presented by the IOUs
10 yesterday evening and this morning, which they have
11 characterized as a compromise -- that I will remind you it
12 takes both sides to compromise -- does it take you where you
13 need to go? I suggest that it does not for these reasons. The
14 staff's strawman is designed to broaden the rule to encompass
15 the repowerings and mandate that they be the subject of an RFP
16 process. Currently they are not. The proposal is for the IOUs
17 to make a, quote, presentation, end quote, to the staff
18 designed to justify their decision to repower. That does not
19 address the concern that is encompassed within the staff's
20 strawman, because that, quote, presentation will be devoid of
21 the benefits that can be gained only through a competitive
22 process, a bid process. So that is not addressed by the
23 proposal.

24 In the PACE proposal which we have put forward
25 because in our view with all respect the staff strawman falls

1 short of everything that you need to encompass within the Bid
2 Rule to protect ratepayers, we have said that the rule should
3 require the IOUs to present a proposed RFP before it is issued.
4 We said that because absent such advance consideration and a
5 point of entry, it is possible that an RFP will contain either
6 commercially infeasible terms or discriminatory terms that
7 would have the effect of, A, discouraging potential providers
8 from bidding, or, B, requiring those bidders to factor in their
9 bids unnecessarily, a fudge factor designed to cover their risk
10 associated with the owners terms or commercially infeasible
11 terms, thereby depriving the customers of the best bids. That
12 element is not addressed by the IOUs' proposal.

13 In the PACE proposal we have said that the scoring
14 should be performed by an independent evaluator because of the
15 inherent conflict of interest the IOU has in being both a
16 contestant and the judge. The IOUs' proposal does not address
17 that very important consideration.

18 We have also said that the IOUs should be required to
19 submit bids in the same -- at the same time and in the same
20 manner as other bidders and that those bids should be binding.
21 Otherwise, you always have the possibility that the IOU will,
22 quote, low ball its bid long enough to get the award, only to
23 claim that it is entitled to a greater recovery after the fact,
24 after it has won the game. That is not addressed by the
25 proposal that has been made by the IOUs last night and this

1 morning.

2 For those reasons, we respectfully suggest that the
3 proposal falls short of what you need, that you should decline
4 to accept it, and that you have a valid basis on which to claim
5 the statutory authority to move forward to adopt a rule that
6 does protect ratepayers. I will hold comments. We may have
7 further presentations later, but I felt it necessary to
8 incorporate some of those comments in the response to the IOUs'
9 proposal.

10 CHAIRMAN JABER: Thank you, Mr. McGlothlin. Mr.
11 Wright. Mr. McWhirter, did you have a comment on the proposal,
12 too, because I will come back to you if you do? I will come
13 back to you.

14 MR. WRIGHT: Madam Chairman, I don't have anything to
15 add. Calpine is a member of PACE and we agree with everything
16 Mr. McGlothlin said and with Mr. Twomey that this doesn't do
17 anything of substance.

18 CHAIRMAN JABER: Okay. Thank you, Mr. Wright.

19 MR. McWHIRTER: Madam Chairman, when you started out,
20 I think you received the utilities' proposed stipulation which
21 was one way to resolve the rule proceeding, and then you wanted
22 to hear from the other people. Rather than making that the
23 principal focus of this session, my preference would be to now
24 let's hear from the other people. And I would like to make a
25 brief presentation on behalf of the consumers, and at the

1 appropriate time we will do that and will bring into my
2 presentation our thoughts on the utilities' solution to the
3 issue.

4 CHAIRMAN JABER: Thank you, Mr. McWhirter. Mr.
5 Sasso, I am going to -- there is no one else that wants to
6 comment on the proposal?

7 Okay. Mr. Sasso, I want you to respond to some of
8 the concerns raised, but I do have questions of the stipulation
9 just to get the discussion going. And, Commissioners, I'm sure
10 you will, too.

11 On Page 2, one of the provisions involves inviting
12 staff to attend milestone meetings. And my question is basic,
13 is there sort of an understanding of what those milestone
14 points are, or will we assume the Commission is interested in
15 accepting some sort of stipulation after, of course, it has
16 been considered by everyone who needs to consider it, will
17 there be a solid understanding of what those milestone meetings
18 are?

19 MR. SASSO: I think that may vary from utility to
20 utility and maybe even from project to project. I know, for
21 example, our process was a little different in Hines 2 than in
22 Hines 3. In the RFP process that we recently completed for
23 Hines 3, there were between seven and ten milestones depending
24 on how you count them. I can tell you what they were if that
25 will help, but there were a number of junctures during the

1 process that we would characterize as milestones where we feel
2 that the project has progressed to some logical point where it
3 would make sense to have a discussion with staff.

4 CHAIRMAN JABER: Okay. I will tell you where I'm
5 going with it, if this is a good idea at the end of the day. I
6 don't want to entertain disputes between Commission staff and
7 the companies on what they consider a very important part in
8 the evaluation process and perhaps it is not so important from
9 your perspective. I don't know.

10 MR. SASSO: That might be something that would
11 benefit from a discussion between us and the staff.

12 CHAIRMAN JABER: Okay. With respect to the
13 repowering, you all are willing to make an evaluation
14 presentation to Commission staff concerning the decision to
15 undertake the repowering before the decision is implemented. I
16 mean, not in there, but I am assuming a willingness to make
17 that same presentation to the Commission. Commissioners.

18 MR. SASSO: We have talked about it in terms of staff
19 as opposed to a formal presentation partly because of our
20 concern. Part of our concern about the straw proposal, if you
21 will, is creating opportunities for litigation. That would be
22 my only hesitation about agreeing to that, creating something
23 that amounts to some type of proceeding where people could ask
24 to be heard and intervene or what have you. That would be my
25 big concern about that.

1 CHAIRMAN JABER: Well, let me give you an example.
2 When I see presentation, I think of Internal Affairs, you know,
3 I think of informal workshops. There is nothing to preclude
4 that sort of presentation from happening in that setting,
5 either of those settings.

6 MR. SASSO: Yes, that is something we certainly could
7 consider and may be consistent with the spirit of the proposal.

8 CHAIRMAN JABER: And certainly the Commission could
9 require you to make such a presentation, don't you think?

10 MR. SASSO: I haven't considered that.

11 CHAIRMAN JABER: Oh, I can't imagine you don't --
12 surely we have got the authority to require you to make a
13 presentation at Internal Affairs. You don't dispute that?

14 MR. SASSO: No, I don't.

15 CHAIRMAN JABER: I didn't think so. Now, in that
16 presentation, if we question not having a comfort level with
17 respect to the least-cost alternative, and we said, you know,
18 Power Corp, just to be sure, why don't you issue an RFP for the
19 repowering. Is that something you would be willing to do?

20 MR. SASSO: I'm certainly not in a position to commit
21 to that. We don't have any agreement on issuing RFPs outside
22 the scope of the existing rule.

23 CHAIRMAN JABER: But it's something -- did you
24 discuss it or you haven't gone that far?

25 MR. SASSO: We have discussed it and there is a great

1 deal of reluctance to depart from the current restrictions and
2 flexibility.

3 CHAIRMAN JABER: And in terms of making the
4 settlement more attractive to accept, I'm sure you could
5 discuss it further.

6 MR. SASSO: We can, but I can't give the Commission
7 any expectation that the utilities are prepared to agree to
8 issue RFPs beyond what is contemplated under the existing rule.
9 I am fairly certain there is a consensus against that.

10 CHAIRMAN JABER: All right. With respect to -- I
11 think there was still some language in the staff modified
12 strawman proposal related to land. If you set aside for the
13 moment the notion of collocation and --

14 (Reporter note: Sound system interruption.)

15 CHAIRMAN JABER: This means that I have been talking
16 too much, Mike. Let's take a five-minute break.

17 (Off the record.)

18 CHAIRMAN JABER: Let's go back on the record. I
19 can't ask Mr. Sasso questions if he's not sitting there.

20 MS. BROWN: Madam Chairman, while he is sitting down,
21 could I just remind the parties to make an appearance for their
22 representative entity before they speak.

23 CHAIRMAN JABER: Okay. Sure. Thank you for the
24 reminder, Ms. Brown.

25 Mr. Sasso, before I ask you the question regarding

1 land, there were two questions you were going to consult with
2 your client. Have you had an opportunity to do that?

3 MR. SASSO: Yes, ma'am. With respect to the -- I'm
4 sorry.

5 CHAIRMAN JABER: Mr. Moyle asked you a question
6 related to if the settlement is approved and accepted by the
7 Commission, inherent in the settlement is an understanding that
8 you would not challenge the legal standing of the current rule.

9 MR. SASSO: The way we review this proposal and the
10 current posture of this discussion is we are talking about a
11 proposed rule and we are attempting to dispose of the issues
12 concerning proposed rulemaking, and that is the extent of the
13 proposal. We are hoping to moot out those issues. While I
14 think it is the case that we have no present intention to
15 challenge the existing rule, that is simply not on the table
16 today and it is not addressed by our proposed stipulation.

17 CHAIRMAN JABER: And the second question I think you
18 wanted to consult with --

19 COMMISSIONER DEASON: May I follow up on that point
20 before we go to a different one?

21 CHAIRMAN JABER: Yes.

22 COMMISSIONER DEASON: Mr. Sasso, you need to help me
23 with the legality of this question, but have you by the fact
24 that you have acquiesced or accepted the rule for some eight
25 years now means that you have by some operation of law given up

1 your authority or your ability to question the legality of that
2 rule, or can you question the basis for a rule at any time?

3 MR. SASSO: I believe the latter. It would take the
4 form of a challenge that would need to be filed at DOAH. There
5 is no current challenge. No one has filed one. One might ask
6 that question if a challenge were filed. I must say that the
7 current effort to amend the existing rule is what surfaced this
8 issue, but at this time no one has filed a challenge. If this
9 docket is closed there is no open docket in which the matter
10 would be addressed. Somebody would need to take the initiative
11 to do so.

12 CHAIRMAN JABER: I think the second open question
13 related to if the Commission in an effort to be absolutely
14 certain on the least-cost alternative involved with repowering,
15 if we directed, requested, that an RFP be issued for any
16 particular repowering, is that something your client would
17 be -- the industry would be willing to do?

18 MR. SASSO: Again, I think the key point we wish to
19 make here is that each utility may for good and sufficient
20 reasons decide to use an RFP in a repowering or not. We don't
21 believe that there is any basis to compel one legally, and I
22 don't wish to debate that issue today. But if staff expressed
23 a concern we would certainly take that to heart. But I think
24 the fundamental point is that ultimately the utility would have
25 to make a business decision, a management decision whether that

1 was in the best interest of the customers on a case-by-case
2 basis.

3 CHAIRMAN JABER: With respect to the land issue, if
4 you set aside the collocation part of the strawman proposal and
5 focus on the transparency in the RFP process, would the
6 industry as part of this proposal be willing to specifically
7 outline whether their land was available for negotiation for
8 use, or if not, why not?

9 MR. SASSO: You mean up front in the RFP?

10 CHAIRMAN JABER: Yes.

11 MR. SASSO: I think that the IOUs would be willing to
12 identify or indicate one way or the other whether a site is
13 being offered. I know that Florida Power addressed that issue
14 explicitly in both of its recent RFPs. Explaining the basis
15 for its business decision is another matter. There will
16 probably be some reluctance to that because the reasons may be
17 proprietary. These sites, the land is purchased by investors,
18 it is not expensed, it is not depreciated, it is an investor
19 property. And, again, each utility will make a business
20 judgment on a case-by-case basis whether the advantages of
21 offering a site outweigh the disadvantages, but that may
22 involve a number of considerations.

23 CHAIRMAN JABER: And my final question relates to
24 compromises going forward. I thought, I guess it was Mr.
25 McGlothlin, but this site collectively talked about this not

1 being a compromise if it is only a compromise among the IOUs.
2 I don't know that I would go that far, frankly, having
3 day-to-day had to deal with the IOUs in these proceedings. It
4 was probably quite an accomplishment to have these four
5 companies communicate, much less have communication that is
6 broader. So I want to compliment the efforts, I don't want to
7 take away from your good efforts to come together. But it's
8 not done.

9 So my question is this: Do you find a benefit
10 associated with weekly conference calls among the parties until
11 this issue is resolved to its completion or even a staff
12 facilitator? Because compromise has to be broader than this.
13 At least the effort needs to be broader. So do you have any
14 ideas in that regard, Mr. Sasso?

15 MR. SASSO: We would be open to discussing these
16 matters with the other participants. This isn't a formal
17 adjudication where we have formal parties and the like, but we
18 understand there are a number of people at the table who have
19 opinions, and interests, and concerns, and we would be open to
20 discussing those. I suspect perhaps an informal procedure
21 would be superior to a formal procedure. In my experience the
22 formal procedures are often not as conducive to candid and
23 productive discussions, but I think that I can represent that
24 we would be open to talking to other stakeholders.

25 CHAIRMAN JABER: Mr. Green, the Commissioners I'm

1 sure will have more questions about this, and then we are going
2 to pick up with the normal presentation. But I would note
3 this, whether this stipulation is accepted or not, whether it
4 is a good idea or a bad idea, the fact is it was an effort.
5 And, yes, perhaps it was later than you all would have liked,
6 but, you know, I have to commend this side of the table for
7 making this effort. I would challenge you to meet the effort,
8 too. This is out there, it is Step 1. I'm looking for Step 2
9 from this side of the table.

10 MR. GREEN: So noted, Madam Chairman.

11 CHAIRMAN JABER: Commissioners, do you have questions
12 about this specific proposal? Commissioner Bradley.

13 COMMISSIONER BRADLEY: Yes. Just to follow up on
14 what you just said, Madam Chair, you know, I have always been
15 of the opinion that these agreements are better when the two
16 parties who have a vested interest in the outcome will take the
17 time to sit down and come up with a stipulated agreement. I
18 would encourage that, also.

19 CHAIRMAN JABER: Thank you, Commissioner.

20 COMMISSIONER BAEZ: Madam Chair.

21 CHAIRMAN JABER: Commissioner Baez.

22 COMMISSIONER BAEZ: I have just got a couple of
23 questions for Mr. Sasso. And one of them, I will take you back
24 to one of the questions that the Chairman asked regarding the
25 milestone meetings and specifically the invitation of

1 Commission staff to observe the process. Absent an invitation
2 by the IOUs, for instance, if the staff requested to be in
3 attendance, I mean, is that the kind of thing that might be
4 possible?

5 MR. SASSO: Do you mean to suggest that if we go
6 forward with the stipulation --

7 COMMISSIONER BAEZ: No, absent a stipulation. I
8 mean, if the Commission staff or if the Commission itself
9 expressed some interest in observing the RFP process, is there
10 any prohibition from that happening?

11 MR. SASSO: I can't speak for all the utilities on
12 past practice or even absent this type of undertaking whether
13 that would be something that would be welcomed or resisted in
14 any way.

15 COMMISSIONER BAEZ: Well, you already used the phrase
16 at your peril before, and I guess those rules apply.

17 MR. SASSO: What I was speaking about, Commissioner
18 Baez, is if we commit to do something we intend to fulfill that
19 commitment. And if we decline to do so that would be at our
20 peril. Now, I guess we are always at our peril in dealing with
21 the Commission and its staff and we take very seriously what we
22 hear from the Commission and its staff. That's why we are here
23 today. That's why we have a proposal on the table because we
24 understand that these issues are of great concern to the
25 Commission and its staff.

1 And it has been our goal here, again, to try to push
2 to one side the legal problems and stop lawyering it and ask
3 ourselves what can we do to try to deal with the concerns.
4 And, it is a fair question that if, you know, in the absence of
5 this we had a question from staff, yes, we would take that to
6 heart and consider whether and in what circumstances to invite
7 staff into the process.

8 The problem, of course, every time we agree to
9 something like this, and our reluctance in doing so and the
10 reason it did take quite an effort to get there is we are
11 imposing a degree of formality and constraint on ourselves.
12 And that can create delays, it can create scheduling issues, it
13 can create potentially even a change in the way decisions are
14 made, not necessarily for the better. And every business in
15 this country is interested in less regulation, not more. And
16 every commitment that we make is a regulatory burden that may
17 have a cost. And so this is a very serious commitment. And
18 even absent it, of course, we are a regulated entity and we do
19 our best to be responsive to the Commission and its staff.

20 COMMISSIONER BAEZ: And I guess that would really be
21 my point. I'm trying to gauge what exactly the commitment is,
22 or what the value of the IOUs' offer in this case is. And I'm
23 trying to gauge it against the fact that if, as the regulatory
24 body, the Commission -- I don't want to get into an argument
25 over authority, so I'm not going to use that, but you get my

1 meaning. If the Commission had some concerns along those lines
2 and expressed a desire to invite itself, if you will, then that
3 to me means, you know, that lessens the value of accepting this
4 as a business practice, especially in light of all this talk
5 about reserving all the rights and certainly in the document
6 itself you reserve all the discretion and obligations to making
7 the decisions. So --

8 MR. SASSO: That's a fair point.

9 COMMISSIONER BAEZ: -- I guess I'm having trouble
10 where you are giving and where you are taking.

11 MR. SASSO: I understand. Again, what we are trying
12 to deal with are the practical realities of this situation.
13 And I can say as a practical matter that this represents a
14 stark change in practice. The last two projects that I have
15 been involved in for Florida Power Corporation were operated
16 very, very differently. There were no staff members present at
17 our milestone events. We invited staff to the bidders
18 conference, but there were no staff members present at our
19 milestone meetings. And this will introduce a level of
20 formality that has not previously existed. It may shape the
21 way decisions are made, and information is developed and
22 presented, and that will have a cost associated with it, but it
23 is a dramatic change in actual practice.

24 Now, whether absent this and if we hadn't surfaced
25 this idea, whether this would happen anyway, I can't speak to

1 that. I can just say that is not what was happening. And this
2 is in our estimation a serious and substantial change in the
3 way we do business. And, again, we are trying not to get into
4 the legalities of it, whether a government agency can compel
5 attendance by its members into business meetings or not. I'm
6 trying not to debate those issues. There are all kinds of
7 legal issues associated with that. But what we are looking at
8 is what we have been doing, the concerns about what we have
9 been doing, and how can we address those to make it better.

10 COMMISSIONER BAEZ: Another question if that is all
11 right. Taking the business, this business practice model that
12 seems to be the theme of the proposal, is that model, would
13 that model theoretically be available as a procedural by-pass
14 even to changes that are contained in the straw proposal?

15 MR. SASSO: Do you mean could we adopt some of
16 those --

17 COMMISSIONER BAEZ: For instance, you know, I heard
18 mention, one that comes to mind certainly that the IPPs had
19 initially proposed was some sort of advance look by the
20 Commission staff to the RFP itself. And while we can debate a
21 little later on whether that implies some determination or not,
22 but certainly the concept of having some advance -- some
23 advance review of sorts in order to -- in order to identify red
24 flags like, you know, commercial conditions that are infeasible
25 or things of that nature. Would something like that fit within

1 your business practice concept?

2 MR. SASSO: I can say two things to address this.

3 First, we have considered the straw proposal and the comments
4 of the other parties and we have scoured them in an effort to
5 see if there is some way we can incorporate those thoughts and
6 so on, and this is what we come up with. Our concern
7 fundamentally about many of the suggestions in the straw
8 proposal is that they really -- with all respect, and I mean no
9 disrespect by this -- but they do amount to micromanagement of
10 our process and create formalities and a level of detail that
11 will be very cumbersome and we think detrimental to our ability
12 to do our best job for our customers. Just like the Commission
13 makes many decisions on its own, if the legislature imposed too
14 many restrictions on your ability to function day-to-day, that
15 would be an impediment.

16 COMMISSIONER BAEZ: You mean like specific grants?

17 MR. SASSO: No, we have very definite limitations, as
18 does this Commission, but there is a point at which we both
19 have to do our jobs. And we have considered the proposals with
20 that in mind. And, again, many of them, while well-intended,
21 we think result in a level of inflexibility that is undesirable
22 and unwise. Each of us runs its RFPs in a different way, its
23 capacity addition decisions in a different way. There is a
24 level of experimentation, and different business structures,
25 and personnel issues, and staffing issues, and management

1 issues and so on, and any one of the utilities at any one time
2 might wind up doing some of these things. They may be doing
3 some of them now. But to impose them rigidly through a rule on
4 all of us we think is detrimental. It imposes a cost of doing
5 business and a cumbersomeness and an inflexibility that is
6 ultimately deleterious to the way we do our job for the benefit
7 of the customer.

8 Now, having said that, having looked at all of this
9 and having given it our best shot, I'm not here to say we are
10 completely close-minded. We did not come here with the intent
11 to negotiate and say we are only going to put half on the table
12 of what we are prepared to do. We gave it our best shot and we
13 proposed this with the hope that we could come here today and
14 close the docket today. Now that may be naive and unrealistic.

15 CHAIRMAN JABER: Yes, that is not going to happen.

16 MR. SASSO: That is not going to happen. But the
17 point is that was the intent, was to try to give it our best
18 shot and not play cute and not negotiate. But if the
19 Commission or the other stakeholders want to ask these
20 questions and raise these issues, we will consider them in good
21 faith.

22 COMMISSIONER BAEZ: And I didn't mean to put you on
23 the spot by saying will you take A. I'm not trying to
24 negotiate with you. I guess I'm trying to make the point or at
25 least elicit from you what your understanding or what your

1 intentions of this, you know, approach that you are suggesting,
2 being that you have used it before as you say, how open the
3 concept is to be the model for some further discussions as have
4 been suggested and I hope suggested strongly enough.

5 MR. SASSO: I believe there may be some flexibility.
6 All I can say is that it was very difficult to get even to this
7 point, and I'm not in a position to commit specifically what
8 any utility would agree to on any variation from this document.

9 COMMISSIONER BAEZ: And I wouldn't expect you
10 certainly to have anything of that nature today. Really what
11 I'm interested in is if we were sort of moving towards some
12 level of further discussions or an opportunity for further
13 discussions, that at least have an understanding that this
14 model -- I mean, this model is not an impediment to that.

15 MR. SASSO: Yes, sir.

16 COMMISSIONER BAEZ: If what you are avoiding -- if
17 what your interest is in avoiding rulemaking and certainly what
18 you feel is a legal position that can be sustained, you know,
19 try to avoid all of that, that your model is receptive to that
20 kind of -- that concept is receptive to that kind of
21 discussion.

22 MR. SASSO: Yes, sir. If we were persuaded that
23 something made good sense for all of us to do, then, yes, this
24 is certainly a vehicle that could accommodate that.

25 COMMISSIONER BAEZ: And lastly, B2, I know the

1 Chairman had asked some questions before and I just wanted to
2 follow up on, you know, you have already said that you don't --
3 you didn't anticipate or you haven't contemplated that that be
4 a formal process necessarily. But I guess a more direct
5 question is what would you contemplate to be the product of
6 that evaluation presentation? It's just informative, you know,
7 the equivalent of what certainly your company's regulatory
8 people and the other IOUs regulatory people do in terms of
9 maybe making a phone call or writing a letter and saying, hey,
10 we are thinking about do this, and, oh, by the way, this is our
11 reasoning on it.

12 MR. SASSO: This is Number 2?

13 COMMISSIONER BAEZ: Yes. Repowerings, I'm sorry.

14 MR. SASSO: Well, what we contemplated was something
15 a little more formal than a phone call. Really, an occasion
16 where --

17 COMMISSIONER BAEZ: Some of the formalities.

18 MR. SASSO: Yes, where we could sit down with staff
19 and give them the benefit of our evaluation of the situation.

20 COMMISSIONER BAEZ: And that's the end of it. I
21 mean, basically it's this is what we are doing, this is why we
22 are doing it, but there is nothing further. Or is there some
23 other concerns to be raised. Is there room for concerns to be
24 raised? I mean, are you going in with an informative matter of
25 fact, from a matter of fact kind of perspective or is it this

1 is what we are thinking of doing? Is there some input from
2 staff contemplated where it is reasonable to you? I mean, I
3 think where it fits with your reasoning and with your decision,
4 I suppose, but that concerns can be raised.

5 MR. SASSO: Yes. It was intended to be giving the
6 staff the benefit of a decision that the company has made, but,
7 of course, there is likely to be discussion. And as we have
8 already discussed with respect to the issue of the RFP, if
9 staff raises concerns we will listen.

10 COMMISSIONER BAEZ: Thank you.

11 CHAIRMAN JABER: Commissioner Bradley, you had a
12 question.

13 COMMISSIONER BRADLEY: Yes. To go back to my initial
14 statement about stipulation. I'm looking at 1A and 1B, and I
15 would like for both parties to respond to this, because in my
16 opinion, my thinking is that in all my dealings with RFPs and
17 with bids in the past and some other activities that I have
18 been involved with this process has always in my opinion been a
19 science as well as an art. And under A -- well, the bid
20 process has always been a science as well as an art. The
21 stipulation that the IOUs have put forth would allow for an
22 invitation to go to staff to come and to sit and to participate
23 in the process that would occur between the IOUs and the
24 bidders.

25 With that in mind, would this process allow for staff

1 to have the ability to review the process, to determine if it,
2 in fact, is transparent and fair from a scientific as well as
3 an artistic perspective? That is, you know, as I see these
4 bids, these bids scientifically are the same but different as
5 we go from bid to bid.

6 And having staff there it seems to me would allow for
7 the stipulation and of certain things that can be agreed, staff
8 would be there to mediate, staff would also be there to
9 determine transparency and fairness. And if that is not the
10 case, then staff would have the authority, in my opinion, based
11 upon what I'm reading here to come to the Commission and say
12 well, hey, you know, this is something that the Commission
13 itself needs to deal with because we don't feel that there is
14 transparency and fairness between the parties as it relates to
15 this process. And I would like for both parties to respond to
16 this question.

17 MR. SASSO: Commissioner Bradley, I think what you
18 have described is an inevitable consequence and a benefit of
19 this proposal that, as you put it, staff will be there and will
20 be able to determine whether one process is as good as another
21 or different from another. Whether something should be
22 changed, something should be improved, and will be able to come
23 back to the Commission with the benefit of that firsthand
24 observation and draw its own conclusions. And the Commission
25 will be informed about what takes place during this process.

1 So, it is an opportunity for scientific observation, if you
2 will, of something that normally is outside staff's view and
3 outside the view of the Commission. And the hope is also that
4 it does give assurance to our friends at the other end of the
5 table that there is a neutral in the room during that process.

6 CHAIRMAN JABER: Mr. Green, I think Commissioner
7 Bradley wanted all of you to be able to respond to that.

8 MR. GREEN: Yes, Ms. Chairman. Commissioner Bradley,
9 I will respond and I guess I will seek support from the other
10 PACE members that are here. But, you know, generally speaking,
11 once again, you know, as the Chair had said, we commend the
12 investor-owned utilities for getting themselves together with
13 some very minor step forward. However, it is kind of
14 disappointing that out of all the comments and all the
15 suggestions that both the staff, the PACE members and others
16 have introduced into this proceeding that this very minor step
17 is the only sort of a point of compromise that can be found.
18 However, it is a step and we recognize it as that.

19 And relative to Points 1A and 1B, you know, my
20 initial read of this and some of my concerns, it gives the
21 Commission staff the ability to attend and to observe is the
22 way I read the verbs in this stipulation. I'm not sure what
23 attendance and observation will do as far as benefitting the
24 consumers of the state unless there is some clear authority to
25 go along with that attendance and observation role.

1 The issues, just to talk about some of the issues
2 that have been identified both in the staff workshop, the staff
3 proposals, and other proposals, it is not clear to me whether
4 the PSC staff in its attendance and observation role has the
5 ability to preapprove or to have any input upon the rating
6 qualifications and criteria that will go into the final
7 evaluation process. This talks about, you know, meeting or
8 attending and observing the milestone meetings. I'm not sure
9 when these milestone meetings start. Is it after bids have
10 been submitted or not? I don't know. It's not clear to me
11 whether the PSC staff in this observation and attendance role
12 has any role relative to requiring binding bids from the
13 investor-owned utilities as it would binding bids from the
14 independent power producers. I don't see any mention of that
15 in this observation and attendance role.

16 The IOU is still the judge in this process. I'm not
17 real clear -- and I share your concern, Commissioner Bradley,
18 I'm not sure what role the PSC staff would have if they
19 disagree with the judgment of the judge in the beauty contest.
20 If they disagreed with that, what is their role? That is not
21 clear in this stipulation. Several issues that are, you know,
22 uncertain as yet. It is not clear to me if the IOUs get to
23 modify their bids after all the other bids have been submitted.
24 Does the PSC staff in their observation and attendance role
25 have the ability to question that process or what do they do

1 with that fact if that occurs.

2 You know, if onerous conditions are put on bidders
3 that are not put on the IOU self-build option, is that subject
4 to some PSC staff role as far as, you know, reporting back to
5 the Commission. That's not clear. And probably most
6 critically and most importantly, and this gets back to rating
7 and evaluation criteria, you know, committing consumers to a
8 30-year irreversible revenue requirement revenue stream to the
9 IOUs for self-build option and avoiding and never considering
10 the benefits of a shorter term contract offered by PPAs. Is
11 the evaluation criteria in that attendance and observation role
12 ever up for debate? Can the PSC staff make suggestions during
13 these milestone meetings or are they simply observing and
14 attending? Many questions that we would have. And we are
15 going to expand on some of these in our presentation.

16 COMMISSIONER BRADLEY: Madam Chair.

17 CHAIRMAN JABER: Commissioner Bradley.

18 COMMISSIONER BRADLEY: But also I am observing that
19 as a part of this stipulation that this is not permissive
20 language. It says will invite. So will in my opinion
21 strengthens invite. It is almost as if the stipulation is
22 saying that the PSC staff will be in attendance. It says will
23 invite, which means that at each of these bid meetings, PSC
24 staff will be in attendance to observe and to assess the
25 process. That is not permissive language. Would you comment

1 on that. It seems to me that this is saying they shall, which
2 is much different from may.

3 MR. GREEN: In response to that, I'm not a lawyer,
4 but clearly if they are invited I'm sure the PSC staff will
5 attend and they will observe. But this stipulation gives them
6 authority to observe and attend when they are invited. And I'm
7 sure when they are invited they will go. Our questions are
8 does that attendance and observation role that they will now
9 have provide any assurances to the consumers that all of these
10 issues that have been identified for the past six months will
11 be addressed in the RFP process. And in this, what, two-page
12 stipulation, I'm not sure that is covered.

13 COMMISSIONER BRADLEY: Okay. Let me ask the IOUs,
14 what does will mean in this agreement?

15 MR. SASSO: Will means that we shall invite staff.
16 And, of course, we can't make staff attend, but staff would
17 have the discretion to decline, but we expect that they would
18 accept the invitation and attend. But we are committing
19 ourselves to invite them. Will, shall, same difference there.
20 With respect to Mr. Green's point to clarify the role we
21 envision for staff, we are not suggesting that we will put
22 staff in the position of making the decisions or participating
23 in making the decisions which would give rise to all kinds of
24 issues about whether the Commission ought to be accountable for
25 the decision and not the IOU. We are accountable for the

1 decision. Staff will be there, will be able to observe and
2 report and ask questions and so on, and provide comments. But
3 ultimately we bear the responsibility for making the decision
4 and we are accountable to this Commission for those decisions.

5 We do not intend that staff would be in the room as a
6 proxy for the Commission to order the kinds of conditions
7 contained in the straw proposal or in the commenters proposal
8 so that they could say you will do such and such with the bids
9 given to you by third parties, you will have a neutral mediate,
10 you will do this, you will do that. That is not our intent,
11 and I don't believe that the staff would purport to assume that
12 responsibility on behalf of the Commission. That is not our
13 suggestion at all.

14 COMMISSIONER BRADLEY: And by no means am I implying
15 that staff would be there to micromanage the process. Staff
16 will be there to observe. And if staff feels that the process
17 has not been transparent and fair, that staff would report
18 back. And we in turn at the Commission would take action to
19 ensure transparency and fairness of the process. That is
20 basically what I'm getting at. But also with the understanding
21 that this would cause the two parties to -- not the two
22 necessarily, but the parties who are involved in the bidding
23 process to have to sit down and pay close attention to
24 transparency and fairness, knowing that if it is not
25 transparent and fair that the Commission is going to get

1 involved. With the thought in mind that if that occurs then we
2 have less of a need to have attorneys and other people come
3 before the Commission to help to negotiate out these
4 agreements, which means that ultimately the cost of this
5 process, the cost goes up and that cost gets passed onto the
6 consumer or the ratepayer at some point.

7 MR. SASSO: Exactly, Commissioner. To be clear, we
8 are not intending that this create some type of legal formal
9 involvement by staff, we don't anticipate counsel would be
10 there for the company. This is an opportunity for the staff
11 experts to get together with the IOUs' experts and observe the
12 process. And by the same token, the review that would take
13 place by the Commission would take place in the normal course
14 under the rule and the statute when the company came forward
15 with a project that needed Commission approval. At that point
16 all of this would be laid out and the Commission would review
17 and pass judgment on whether the company lived up to the
18 obligations under the rule and under the statute.

19 We don't anticipate that there would be interlocutory
20 review or appeals because of something taking place that
21 somebody might have been unhappy with during the process. But
22 certainly this would be an opportunity for staff to see what
23 happened, or to discuss with the company at these milestone
24 events the key junctures of the process and to draw conclusions
25 from that and to be a source of information for the Commission.

1 CHAIRMAN JABER: Commissioner Palecki.

2 COMMISSIONER PALECKI: Yes, I have a couple of
3 questions for Mr. Sasso and one question for Mr. Green. First,
4 Mr. Sasso, I wanted to ask you about the repowering situation.
5 If this stipulation was accepted, and the utility put on a
6 presentation to the Commission staff regarding its repowering
7 proposal, if staff came back and reported to the Commission and
8 the Commission felt that that repowering project was not the
9 least-cost option, was not the most efficient option, and was
10 not in the ratepayer's best interest, would this Commission
11 have any authority to prevent the repowering project from
12 moving forward?

13 MR. SASSO: I would have to consider that,
14 Commissioner Palecki. Obviously that raises a whole host of
15 legal issues that are not presented directly by the docket
16 today, but I would have to consider the circumstances. The
17 Commission does have obviously a number of enumerated powers in
18 the Grid Bill and so on. If the Commission believes that
19 capacity needs to be added, it can act. The Commission has
20 occasions provided for in the statute to review decisions the
21 company makes for cost-recovery. And the way the system has
22 worked, as everybody is aware, is that we always know that that
23 is out there and that we have to make a decision. And that was
24 recognized during the agenda for the consideration of the
25 initial rule. There was a lot of discussion about that.

1 And that we are motivated to make the right decision
2 for the customer knowing that at some point we have to come
3 before the Commission for review. And because there are
4 provided for occasions for that review, I am reluctant to say
5 that in the middle of a decision the Commission could intervene
6 and direct how the business is to be conducted. That is
7 something that I would have to look at closely.

8 COMMISSIONER PALECKI: And the reason I ask the
9 question is because I'm trying to determine what the value is
10 of the presentation to the Commission staff if the Commission,
11 after such a presentation, would not really have any authority
12 to do anything about the situation.

13 MR. SASSO: Again, we structured this with practical
14 considerations rather than legal formalities in mind. And the
15 intent there was to improve transparency in the sense of
16 providing a window for the Commission into the decision before
17 the decision becomes implemented rather than after the fact.
18 As a practical matter that creates an opportunity for there to
19 be an exchange of communications with staff and the company as
20 we have discussed, and hopefully that will be a benefit to both
21 sides. Getting away from whether if the Commission were
22 unhappy with that there could be some measure of legal
23 compulsion, we just didn't address that.

24 COMMISSIONER PALECKI: Thank you. My next question
25 concerns the strawman proposal. You characterized it earlier

1 as micromanagement and stated that it would impose strict
2 requirements upon the utilities on a one-size-fits-all
3 situation. What if we crafted a rule that did not impose a
4 strict requirement, but instead offered a benefit to the
5 utility if it followed the procedures in a rule? And by a
6 benefit to the utility, I am thinking in terms of a presumption
7 of prudence if the rule is complied with. And if the rule is
8 not complied with, a situation where the utility would build at
9 its own risk. Would that alleviate your concerns with regard
10 to micromanagement?

11 MR. SASSO: Not at all, because we would be very
12 fearful about how that presumption would be applied because it
13 would have a very coercive effect. If the Commission said
14 these are ten things that you should do and if you do them
15 we'll have a presumption that you will get cost-recovery, but
16 if you don't all bets are off, that would be a very coercive
17 situation to be operating under.

18 COMMISSIONER BAEZ: But aren't all bets off now?

19 MR. SASSO: Well, all bets are off --

20 COMMISSIONER BAEZ: Theoretically.

21 MR. SASSO: -- but when we come before the Commission
22 we are not coming before the Commission with a weight on one
23 side of the scale. We can come before the Commission and lay
24 out the facts that were important to us in making a decision
25 and be prepared to defend the prudence of that decision without

1 having a presumption against us coming in.

2 COMMISSIONER BAEZ: Nobody said anything about a
3 presumption against you. I mean, I think what Commissioner
4 Palecki is suggesting -- and I'm sorry for interrupting, if we
5 see A, B, C, and D, we don't have a problem anymore. Or
6 something goes away on the back end where we don't, you know,
7 you don't have such a burden to prove later on. I guess what
8 got me started was your statement that all of a sudden all bets
9 are off.

10 MR. SASSO: I understand.

11 COMMISSIONER BAEZ: Well, I don't think --
12 Commissioner Palecki, did you imply that somehow there was a
13 change in the status quo absent that?

14 COMMISSIONER PALECKI: Not at all. It would be
15 exactly the same circumstance that we have today absent
16 following A, B, C, and D under the procedures. And I guess I
17 would like to just take the question a little further. If we
18 did structure a rule in that manner, wouldn't that really under
19 -- I know that the utilities have been questioning the
20 Commission's authority because we have been suggesting a
21 command and control type of rule. But if this rule was an
22 option available to give a benefit to the utility, would not
23 that really take away your authority argument?

24 MR. SASSO: I misunderstood your earlier question,
25 Commissioner Palecki. I do think that what you are suggesting

1 would be a very different approach from what has been put on
2 the table, and we would have to consider that. But I do agree
3 that it is very different from what is currently proposed.

4 COMMISSIONER BRADLEY: Madam Chair.

5 CHAIRMAN JABER: Commissioner Bradley, do you have a
6 follow-up?

7 COMMISSIONER BRADLEY: Just to kind of --
8 Commissioner Palecki just struck a vein here. You know, the
9 IOUs have put something on the table for us to consider that is
10 different from what we were looking at initially, and I'm just
11 wondering when the IPPs are going to do the same? You know,
12 these things just don't work too well when parties take a hard
13 stand. That is, you know, one party says I'm staying in my
14 corner and the other party says I'm staying in my corner and
15 then they bring it to the Commission and they tell us, well,
16 you all make a decision.

17 Well, I think that that doesn't bode very well with
18 the environment that we are working within. I thought that we
19 were moving towards less regulation and more cooperation and
20 creativity among the parties who are out there within the
21 environment. And I thought you all wanted the Commission to be
22 less involved in your business practices. And it seems now
23 that what is happening to me is that you all are going to force
24 us to make a decision for you. Well, you know, I don't think
25 that you want us to do that, because, you know, we may have two

1 unhappy parties here. So, I'm just wondering when there is
2 going to be some movement. There has been some movement from
3 the left over here, and I'm identifying the left as being the
4 IOUs, and on the right over here, this party seems to be
5 staying in the corner.

6 I mean, at what point are we going have some movement
7 towards the center from the party on the right side of this
8 argument just for the sake of us trying to figure out what
9 would work best and how we can have less of an impact upon your
10 business practices and have a better outcome for the
11 ratepayers, but still have some reform as it relates to the bid
12 process?

13 MR. McGLOTHLIN: Do you want to answer, Mike?

14 MR. McWHIRTER: Madam Chairman, could I say
15 something?

16 CHAIRMAN JABER: Yes, Mr. McWhirter.

17 MR. McWHIRTER: I heard a story one time about a
18 lawyer making an opening statement, and it was a powerful
19 opening statement and after it there was some debate about a
20 procedural issue and the jury was asked to leave the room and
21 go into the jury room. And after a little while, the foreman
22 of the jury knocked on the door and the bailiff went to the
23 door and said, "What is it?" And the jury said, "We have made
24 up our mind and we want to render a judgment." And the problem
25 was that they had never heard what the other side said.

1 We have been here now since 9:30, two hours, and we
2 have heard what the utilities' comments were, and that somehow
3 has become the focus of this entire proceeding when it wasn't
4 intended to be. And I would strongly recommend as a procedural
5 matter you hear what the other people have to say and then
6 maybe ask some specific questions about the utility
7 presentation and how it fits in with the general body of
8 thought.

9 CHAIRMAN JABER: Mr. McWhirter, I always respect what
10 you have to say, but in all fairness I started out this
11 workshop making real clear that I was going to allow the
12 Commissioners enough time to ask questions. I hear what you
13 are saying. But you also know me well enough to know you are
14 going to get your opportunity to respond. So hold on. But is
15 there anything specific you would like to say in response to
16 Commissioner Bradley's point?

17 MR. McWHIRTER: Yes.

18 CHAIRMAN JABER: I'm sure you would want to emphasize
19 your willingness to think about Step 2. He raises a very good
20 point, and obviously the dialogue and the benefit to having the
21 Commissioners ask questions about the proposal is it gives you
22 something to think about and I'm trying to help you with
23 thinking about this further.

24 MR. McWHIRTER: Well, let me comment on it, because I
25 think Commissioner Bradley has hit right at the heart of the

1 matter, and that is essentially what we are here about.
2 Commissioner Palecki came up with a solution. And what we are
3 dealing with is a situation, and I'm here for a consumer group,
4 as you understand. I am Item 3C, and from the consumers'
5 viewpoint the question with us is when is it we become
6 obligated to pay?

7 Now, historically we thought we became obligated to
8 pay after there was a general rate case and the prudence of a
9 decision made by a utility to invest in a very expensive power
10 plant was presented and all the facts that went into that
11 decision were presented and fully aired and then the Commission
12 could make a decision on whether the utilities made the right
13 decision in its power plant investment.

14 But then in 1974 the legislature enacted the
15 certificate of need legislation that gave an environmental fast
16 track to new power plants, and the first step in that procedure
17 was, well, do we really need a power plant. Environmentalists
18 were concerned that we were building too many power plants, so
19 the decision was do we really need one. And so the Commission
20 had the first step there. And in the legislation, Commissioner
21 Bradley, they put a provision that the Commission not only had
22 to determine whether there was a need for a new power plant,
23 but what was the least cost-effective way to do it.

24 So these decisions were made. And then we got to
25 rate cases after these very expensive power plants went

1 on-line, and we found out that way back two or three years ago,
2 before any consideration of rates was made, the Commission
3 looked at what the utility was doing and said that is the least
4 cost-effective way of meeting the need and, therefore,
5 consumers are obligated because we made a decision three years
6 ago to build this specific power plant.

7 So, essentially, the decision was preempted. And
8 that gave people concern because the public really didn't have
9 an entry point anyway at that time. So, as matters progressed,
10 the Commission said, well, if we are going to commit customers,
11 obligate customers at the time a power plant is built, let's at
12 least put it out to bid so we can see that they are getting the
13 best bid. And the rule came about. And the utilities didn't
14 like the rule because it intruded on what they felt was their
15 proper domain.

16 COMMISSIONER BRADLEY: Excuse me, though. I love
17 what you are saying --

18 MR. McWHIRTER: I'm glad you do.

19 COMMISSIONER BRADLEY: -- but could you be more to
20 the point, though. I'm trying to -- my question goes back
21 to --

22 MR. McWHIRTER: Your question is if --

23 COMMISSIONER BRADLEY: -- negotiated or stipulated
24 agreements. You know, to me what we are going through right
25 now is what we are going to go through if there isn't

1 transparency and fairness in the bid process or the RFP process
2 in the future. And what I'm trying to do is to get some idea
3 as to -- and I respect what you said about, you know, the fact
4 that you need to present your case and we need to get there.
5 But the fact of the matter is that we are discussing the
6 proposal that has been put on the table by the IOUs. And I'm
7 trying to get some sense or get a feel as to how you all might
8 respond or what you all would suggest.

9 We have a suggestion from the folks on the left, now
10 we are trying to get a suggestion from the folks on the right.
11 And it may be that you all are not prepared to make a
12 suggestion today --

13 MR. McWHIRTER: I'm prepared.

14 COMMISSIONER BRADLEY: -- and I can respect that.
15 And I'm just trying to get an answer to, a concrete and
16 specific answer to the question.

17 MR. McWHIRTER: All right. Let me give you a
18 specific answer. If the decision is that the utilities can go
19 in and build a power plant or repower a power plant and spend a
20 billion dollars, say, on repowering, at what point do the
21 consumers get bound? And the utilities say that we don't like
22 the Bid Rule as it is, but we will put out -- we will let the
23 Commission staff, some member of the Commission staff come in
24 and sit in on parts of our deliberations that we invite them to
25 come in on, and then when we build the power plant the

1 consumers are bound.

2 If the utilities are saying by the stipulation
3 entered into by the four of them that consumers get bound
4 because some staff member is invited to parts of their
5 decision-making process, then I would tell you from this side
6 of the bench that is foolish.

7 But I would agree with Mr. Palecki if the consumers
8 aren't bound and let the utilities try any process they want to
9 to build a power plant or buy power, and if we are not
10 obligated to pay for it until after they bring it in and show
11 us what they did transparently after the fact, then I don't
12 have any problem with that.

13 COMMISSIONER BRADLEY: Okay. That's what they have
14 put on the table. Now I'm asking you to put something on the
15 table.

16 MR. McWHIRTER: Well, I'm asking you to make a
17 decision. And the decision is if the consumers are bound
18 because some staff member visits their bid-making process --

19 COMMISSIONER BRADLEY: Well, how would you change it,
20 then? I mean, that is their proposal. What is your proposal?

21 MR. McWHIRTER: My proposal is --

22 COMMISSIONER BRADLEY: And I'm looking for something
23 other than just a critique of their proposal. I'm looking for
24 a new idea.

25 MR. McWHIRTER: An open bid process where anybody can

1 bid on the program and the public knows what is being bid on
2 and what is being paid for in advance. The consumers would be
3 happy if it is a transparent process. A public bid goes out,
4 everybody know what the bid is. Bidders come in, the bids are
5 open, and somebody says I can build it for \$300 a kilowatt, and
6 somebody else says \$500, and somebody else says \$1,000, and
7 they select the low bid that is a reasonable bid. Maybe 300 is
8 too low because they didn't consider everything.

9 If you did that process, as a consumer I would feel
10 happy that when it went into the rate base and rates were
11 considered that there had been a fair consideration up front.
12 As a consumer representative, I'm not happy with a situation in
13 which you have a secret process that they can change the plan
14 at any time, build whatever they want to, and by inviting a
15 Public Service Commission staff member in an in camera session
16 that is not publicized, it is not transparent, that the
17 consumers would be bound by this decision that is made three
18 years before the fact.

19 Our concern is where do we enter? Do we enter at the
20 time of the certificate of need, do we enter at a rate case, or
21 do you have some process that gives public assurance up front
22 that we are getting the lowest and best bid? And the Bid Rule
23 does that. But the problem is the Bid Rule that is in place
24 hadn't resulted in anybody but utilities winning the bids. And
25 they don't tell us why because everything is secret.

1 Now, having a staff member go in there and look
2 behind the door of the secret process, I don't think an
3 investigative reporter would think you were doing your job.
4 Who is this staff member? What power does he have? Why should
5 consumers be bound on a four or \$500 million annual cost in
6 their rates because some staff member eavesdropped on parts of
7 the process that the utilities went through. That proposal,
8 Mr. Bradley, if you give any substance to it without listening
9 to what other people have to say, is in my opinion not very
10 well considered.

11 CHAIRMAN JABER: Mr. McWhirter, let me stop you there
12 because I saw two hands go up in response to Commission
13 Bradley's question. Mr. Green and then Mr. Twomey.

14 MR. GREEN: Thank you, Commissioner Jaber. And I
15 will try to respond to Commissioner Bradley's specific
16 questions, I think which are two-fold. One was when are you
17 going to see movement that from the IPP side; and, number two,
18 I think he talked about command and control or too much
19 regulation. I think he made some comments on that.

20 Relative to the movement from the IPPs, with all due
21 respect, the PACE organization submitted formal comments back
22 in March, submitted other documents and filings in June. I
23 think June 28th, which gave specific comments to the staff
24 recommendation that was put out there. We have made our
25 positions very clear in this process and our proposal, our

1 movement is out there. To my knowledge, I know of no comments
2 that the investor-owned utilities have made relative to
3 specific proposals. The only thing I have seen from them is
4 that perhaps this Commission doesn't have the authority to
5 consider the rule in my nonlawyer terms.

6 But I haven't seen any specific recommendations from
7 the investor-owned utilities until I was on my second glass of
8 Merlot last night. And that stipulation is pretty short in
9 length and very unclear in its detail and what it truly
10 accomplishes.

11 So with all due respect, you know, PACE members I can
12 commit to you right now are more than willing to take the
13 stipulation that the investor-owned utilities have put forth
14 and we are willing to comment on that and put forth what we
15 think is a compromise. But, quite frankly, it will be
16 significantly further stretching the existing rule that exists
17 today towards what our comments were both in March and in June
18 than what this stipulation says today, because it really does
19 not go very far at all in addressing the concerns that I think
20 Mr. McWhirter has mentioned relative to the concerns of the
21 consumers.

22 And as I look at what is done in the six or seven
23 other states that we detailed in our March filings, when we
24 look at what was done in Louisiana, or Michigan, or Colorado,
25 or Georgia, where binding bids are required, where independence

1 when a utility is going to bid on that capacity is mandatory,
2 that perhaps that is not excessive regulation, perhaps that is
3 appropriate regulation. And I don't think it is the goal of
4 this Commission or of anybody just to do away with regulation.
5 Appropriate regulation is important and you ought to have
6 appropriate regulation on this issue to ensure the consumers
7 are getting the best deal.

8 CHAIRMAN JABER: Thank you, Mr. Green. Mr. Twomey.

9 MR. TWOMEY: I will let Mr. McGlothlin go first.

10 CHAIRMAN JABER: Go ahead.

11 MR. MCGLOTHLIN: I will just follow up briefly on
12 what Mike had to say on behalf of Reliant Energy. Mr. Bradley,
13 Commissioner Bradley, I will make this point. The point of
14 departure for this rule development workshop is the staff's
15 strawman. In response to the staff's strawman, early on the
16 IOUs said we don't want to change the rule, you don't have the
17 authority to change the rule, and we are not even sure about
18 the existing rule. In response to the staff's strawman, PACE
19 and PACE's members provided a complete markup of the existing
20 rule and the rationale supporting each of the changes that
21 Mr. Green will summarize when we get to the other
22 presentations.

23 Today the IOUs have presented this proposal, but I
24 think it's fair to look at it and find out exactly what
25 movement, in quotation marks, is there. In essence, they are

1 saying don't change the Bid Rule. As a matter of fact as a
2 condition of this we want you to close down the docket, and by
3 the way, we don't commit to refuse to challenge your existing
4 Bid Rule. And if the staff comes down and thinks we ought to
5 conduct an RFP on repowering after being invited to this
6 session, we are not going to commit to do that, either. So I
7 see no movement either in the initial response to the RFP or,
8 as a practical matter, in the proposal that has been floated.

9 Now, we will take this proposal as an initial
10 proposition, and we will be glad to work with the IOUs. But I
11 think that should be in the context of consideration of the
12 PACE proposal which is yet to be vetted before this forum. And
13 in the context of a rule proceeding in which the Commission
14 considers their arguments, proposes to adopt rule language, and
15 the parties are participating both in the formal proceeding and
16 in negotiations at the same time.

17 And bear in mind, as Mr. Green will develop later, in
18 the next several years several billions of dollars are going to
19 be spent on the capacity necessary to meet the growth and
20 demand. And so to the extent there is a formal proceeding that
21 involves lawyers time and consultants and parties involvement
22 to get it right, I think this is going to be an effort and
23 resources well spent.

24 CHAIRMAN JABER: Okay. Mr. Twomey, I know you had
25 some comments, and after Mr. Twomey I would really like to get

1 back to Commissioner Palecki's questions. I think we
2 interrupted him.

3 MR. TWOMEY: Yes, ma'am, and I will be brief.

4 CHAIRMAN JABER: I just called you Commissioner
5 Twomey. You missed it.

6 MR. TWOMEY: I'm hard of hearing anyways. This
7 workshop has been noticed, scheduled for I think in excess
8 of -- well in excess of a month. I'm not opposed to
9 opportunities, Commissioner Bradley, for compromise, reaching
10 stipulations, doing things that are beneficial to both sides,
11 both sides giving a little bit to get a little bit and saving
12 money in the process and saving your valuable time. But we
13 have had over a month to be approached for that.

14 Absent any meetings and schedulings and so forth and
15 proposals from one side in a timely manner, we came here with
16 the expectation, all of us, of presenting to you and informing
17 you through the workshop process of the positions that we have
18 given in our various filings and comments. That is what today
19 was noticed for, and I know, Madam Chair, that you and the
20 Commissioners intend to go through with that because you
21 noticed it for that purpose legally and out of fairness, as
22 well.

23 But, Commissioner Bradley, with a month to go, the
24 IOUs blindsided us. Now, maybe what they offered in terms of
25 substance means something. I don't personally, FACT doesn't

1 think that it means nothing. But in terms of their timing they
2 didn't do this a week ago, two weeks ago, three weeks ago, two
3 days ago, they blindsided us with the expectation, I think, or
4 with the result that they come in here and we get all tied up
5 over what they are doing and whether it is fair or not.

6 Now, to answer what I heard your question,
7 Commissioner Bradley, and I appreciate and respect where you
8 are coming from in terms of trying to get things done amicably,
9 it is too late for the people on this side of the table, today
10 certainly, to get together and try and retreat from our
11 respective corners, which are not all the same corner, of
12 course, to come and meet them halfway. It's too late to do
13 that today. Maybe we could do that after this workshop,
14 depending upon what the Commission does in terms of scheduling
15 a formal rule hearing. But we just can't do it now, and it is
16 not fair to expect us to do that when they gave us notice
17 yesterday evening, and in some cases some people this morning.

18 So, I appreciate and I respect where you are coming
19 from. I think what we have to do, though, is go ahead and hear
20 what the various parties have to say in their presentations
21 today. And I think, even though you may see it as being in our
22 corners, which is where we are stuck at the moment,
23 Commissioner Bradley, that you will see we are over here, they
24 are over there, we make some good arguments, they make some
25 good arguments. And I, for one, in fact, are quite happy if in

1 the end you have to make a decision. If there is not a
2 settlement, stipulation, agreement, that is you all's job.

3 And I am confident that after hearing the
4 presentations today you will decide whether or not to go
5 forward with a formal rule hearing. And if you have a formal
6 rule hearing, I am confident that you will make your decisions
7 on how to modify the rule or not modify it based upon the
8 information you are given. So, I appreciate again where you
9 are coming from, but I think it is too late for us to move
10 today.

11 COMMISSIONER BRADLEY: And, Madam Chair, I know you
12 want to get back to Commissioner Palecki. Mr. Twomey, let me
13 thank you for your candid comments. You answered my question.

14 CHAIRMAN JABER: Thank you, Commissioner.
15 Commissioner Palecki.

16 COMMISSIONER PALECKI: I have just one question for
17 Mr. Green. Mr. Green, you have stated earlier that under
18 PACE's proposal, one of the most significant changes you would
19 like to see is that there be an independent evaluator of these
20 bids. That is an evaluator other than the utility, the
21 utilities themselves. If we took the stipulation that the
22 utilities have entered into and added one additional paragraph
23 that in addition to giving staff the opportunity to attend the
24 milestone meetings, et cetera, that the Commission and its
25 staff would have some voice in the selection and evaluation

1 process, would that satisfy your concerns?

2 And I don't want to define exactly what that voice
3 might be, but if there was some voice allowed to this
4 Commission and its staff, and we take the stipulation exactly
5 as it is with that additional paragraph, would you be
6 satisfied?

7 MR. GREEN: Briefly, no. There are too many issues.
8 Again, we have had maybe 12 hours to look at this thing, and to
9 try to figure out what we might do to push the ball forward
10 from this point is unclear. But, quite frankly, that is not
11 enough to have some voice when, for example, what you have
12 before you soon, if you don't already, is a \$1.1 billion need
13 determination. Probably the largest that this state has ever
14 seen. And you are going to have another one from FPC for Hines
15 3, which is another -- I don't know what it is, \$300 million.
16 You have got another four to \$6 billion of power plant capacity
17 additions coming down the pike in the next eight years.

18 To have some voice in that and not clarifying what
19 some voice is, I don't think would be adequate to protect the
20 consumers. I think consumers need to have absolute
21 independence. If you look at what is done in so many other
22 states, where if the incumbent utility is proposing a
23 self-build option, there is independence, true and impartial
24 independence in that judging of all of those bids. And to have
25 some voice in that, I don't think is going far enough, quite

1 frankly.

2 COMMISSIONER PALECKI: Thank you.

3 MR. GREEN: Yes, sir.

4 CHAIRMAN JABER: Commissioner Deason.

5 COMMISSIONER DEASON: Madam Chairman, I thought I had
6 questions, but I don't. All of my questions have been asked
7 and answered.

8 CHAIRMAN JABER: Thank you, Commissioner.

9 Ms. Brown, here is what I would like to do. I would
10 like to move to IIIB in the agenda and let the independent
11 power producers it looks like on your agenda and co-generators
12 present what you expected to be your presentation and then we
13 will move on to consumers, other, and then we are going to come
14 back and let you all respond to each other. All right. Did
15 you have a list under independent power producers?

16 MS. BROWN: Yes, we have established and I have
17 informed the parties that PACE will go first, Calpine second,
18 the Solid Waste Authority of Palm Beach, FICA, and the City of
19 Tampa next, and Florida Crystal is last.

20 CHAIRMAN JABER: Mr. Green.

21 MR. GREEN: Thank you, Madam Chairman, again. I find
22 I have marked up my notes pretty effectively here now. I will
23 try not to repeat things I have already said, but I may have to
24 repeat some to make some points.

25 I am Mike Green, I am representing Florida PACE.

1 There are several members of Florida PACE that are in
2 attendance here today and to help me answer questions that you
3 may have. We appreciate the opportunity to present our
4 thoughts and recommendations to you today at this workshop.

5 Florida PACE does commend the staff and this
6 Commission for initiating this docket. We think it is an
7 extremely important issue. Again, several, several billions of
8 dollars of investment are going to be made in this state by
9 someone, and it is important that the consumers are getting the
10 absolute best deal, the most cost-effective and least risk
11 imputed upon them in those decisions. We commend the general
12 direction of the staff's May 29th proposed modifications. We
13 had some comments on that, but we do commend the general
14 direction of that, and we support continuing these proceedings
15 with a formal hearing concluding as quickly as possible due to
16 the magnitude of the investments that are facing the state.

17 I would like to summarize very briefly just some of
18 the key issues that we have made in our previous filings. I
19 would perhaps like to touch on why the current bidding process
20 is not working. And, again, finally issue a plea for quick
21 action by this Commission, but appropriate action. By quick I
22 don't mean to rush into something that doesn't fully address
23 all the issues, but as quickly as we can address all the
24 issues.

25 As our earlier filings indicate, Florida PACE simply

1 seeks -- and we think that the Florida consumers absolutely
2 need -- a truly fair, impartial, objective, and transparent
3 process for selecting and permitting new power plants that
4 produce the most cost-effective result for the Florida electric
5 consumers with the least risk imputed. PACE's proposal seeks,
6 I would limit it down to three key elements, we would seek,
7 number one, that the Public Service Commission have preapproval
8 authority of an investor-owned utility's RFP if they intend to
9 have a self-build option to be a consideration to ensure that
10 the evaluation criteria is clear, fair, equitable and in the
11 best interest of the consumers.

12 Secondly, we seek equitable treatment of all the
13 participants' bids, including the IOUs, to make sure that the
14 RFP process, again, is in the best interest of the consumers.
15 This would include the submitting of binding bids at the same
16 time by all the participants in the bidding process.

17 And, thirdly, once again, impartial evaluation of the
18 bids by a truly independent evaluator. Obviously you have key
19 decisions to make. You are going to have lots of proposals.
20 You have something from PACE, you have something from the
21 staff, you now have something from the investor-owned utility
22 community, but there are probably some key criteria, key
23 guiding principles PACE would really recommend that you keep in
24 minute as you consider all the options that you have before
25 you, because the decisions that you make will truly determine

1 how much investment risk the consumers of this state will take
2 in the next decade or so.

3 These guiding principles would be obviously to obtain
4 the most cost-effective, most reliable, and least risky power
5 supply as possible for Florida's consumers. Secondly, to
6 maximize the efficiency and the cost-effectiveness of Florida's
7 power supply system. Thirdly, to make sure that the procedures
8 that you decide upon are credible and politically acceptable,
9 because that is the reality of the thing. And finally to make
10 sure that it is fair and equitable to all parties. Again, all
11 parties. That includes the retail serving IOUs, their utility
12 customers, the IPP community and others.

13 In addition, PACE believes that the concept of an
14 auction process such as recently suggested by Calpine Eastern
15 may have merit, and we would encourage the consideration of
16 that. And the Calpine representative will be -- Tom Kaslow
17 will be discussing that in a little more detail sometime in the
18 agenda. I don't know if it is after me or later.

19 One other point I would like to make, I would urge
20 the Commission to recognize that the PACE proposal is neither
21 deregulation nor is it wholesale competition. Rather, PACE's
22 proposal is a simple exercise of the Commission's authority
23 within the existing legislature or legislative and regulatory
24 framework.

25 If I could, let me just talk about some of the key

1 problems that we see with the current process and our previous
2 filings detail these shortcomings in some detail, but let me
3 just touch on it. And I apologize if I repeat some of these
4 again today.

5 Again, the judge of the selection process is also one
6 of the bidders. The IOU have a profit incentive to select its
7 own projects, it's clear. Now, certainly IPP bidders have a
8 profit incentive, as well. There is no question about that.
9 But the IPP bidders have never been asked to evaluate the bids,
10 either. To allow someone with a profit incentive in a bid to
11 be the judge just is not the most credible process to ensure
12 the consumers are getting the best deal.

13 Secondly, the IOUs get to modify their bids after
14 seeing the other proposals. Once again, under the fairness
15 guiding principle and equitable treatment guiding principle, no
16 other bidders get that opportunity, and I would suggest that is
17 a shortcoming of the existing process.

18 Thirdly, once an IOU has identified its bid it is not
19 bound to meet the terms of that bid. If an IPP, however, signs
20 a power purchase agreement with a retail serving utility, that
21 IPP is bound by the terms of that contract. If the final cost
22 of an IOU self-built plant, however, turns out to be greater
23 than the winning bid, those additional costs are most likely
24 going to find its way into rate base and become a part of the
25 revenue requirement stream from the consumers. As opposed to

1 the power purchase agreement signed with an IPP, an IOU
2 self-build project does not protect ratepayers from potential
3 cost overruns.

4 CHAIRMAN JABER: Mr. Green, if I can ask you a
5 question on that point. Something that has always confused me
6 with respect to that argument, and I couldn't really know how
7 to address it. If an IOU self-bids and there are cost overruns
8 or just the cost of constructing a plant, those costs come into
9 rate base and are included in rates only to the degree the IOU
10 files a rate case. It's just the nature of the beast, right?

11 MR. GREEN: Yes, ma'am.

12 CHAIRMAN JABER: If an IOU selects an IPP, and I hate
13 to even look at it as a merchant plant versus IOU issue, I have
14 really tried to not look at it that way. But let's say a
15 company that has responded to an RFP executes a purchased power
16 agreement with a company calling for proposals, purchased power
17 costs go through recovery clauses, don't they?

18 MR. GREEN: I believe, Madam Chairman, that the
19 capacity payments, and I would have to ask my friends down here
20 on the IOU side, but I believe that the capacity payments that
21 they sign up for relative to a PPA might fall under rate base
22 recovery, and I defer to my friends to the right here. That is
23 not right?

24 CHAIRMAN JABER: Staff, PPA costs go through what?

25 MR. FUTRELL: They go through the capacity

1 cost-recovery clause. And then the fuel, the payments
2 associated with the fuel component go through the purchased
3 power recovery clause.

4 CHAIRMAN JABER: Okay. So the argument that the
5 self-build option or anytime a company builds its own plant to
6 meet needs, those are included in revenue requirement and rate
7 base, that argument is only as good as the fact that the
8 company files for a rate case. So in Florida where you have a
9 situation where the IOUs really have committed to not filing
10 rate cases and they are embracing other kinds of approaches in
11 lieu of rate cases, that argument is less critical to our
12 decision, isn't it?

13 MR. GREEN: It may be. But if I could, could I defer
14 to some of my legal brain to the left of me. But I would make
15 the point that --

16 CHAIRMAN JABER: Why don't we hold on to it until you
17 get there, Mr. McGlothlin. That's fine.

18 MR. GREEN: Perhaps most critically, and this may be
19 further questions on this issue, I think, but there is no
20 protection provided to Florida consumers with an IOU self-build
21 option. If for some reason technology improvements, or market
22 changes, or whatever happens sometime in the next 30 years that
23 would cause an IOU self-build plant to become uneconomic, the
24 cost for that plant will be recovered for the next 30 years.
25 If that plant runs or doesn't run, the cost for that plant will

1 be recovered in some fashion through consumers. You know,
2 prudent evaluation of any commitment of consumers to assume the
3 responsibility for repayment of many billions of dollars of
4 what I will call irreversible investment, once it's in there,
5 it's in there and you're going to pay for it, requires a
6 reasonable assessment of what value exists for consumers in
7 potentially deferring that long-term 30-plus year commitment in
8 favor of some shorter term. You know, PPAs with renewable or
9 reupping clauses. And this is what Tom Kaslow, I think, is
10 going to expand upon in just a few minutes.

11 CHAIRMAN JABER: Mr. Green, could you also prepare --
12 the reason I'm asking the clause questions, I'm looking for all
13 kinds of places to be innovative when you all sit down to
14 negotiate. To the degree any of those costs can be taken on by
15 the company that is participating in the RFP process in lieu of
16 those costs going through any clause or any of those costs
17 going to the consumer, so that -- to level the playing field,
18 so that it is on equal footing. Would you all think about that
19 and address it in later presentations?

20 MR. GREEN: Most certainly. I mean, clearly we are
21 in favor of -- if it turned out that way, if all bidders of
22 power supply capacity in the state were to take that risk upon
23 their shareholders, we are in favor of all of that. Let the
24 IOUs propose, you know, non-ratebased facilities and compete
25 openly, fairly, equitably in the market, we are all over it.

1 We are there. But we will make more detailed comments on that.

2 Timely PSC action, I believe, is very critical. The
3 Public Service Commission, we urge you to act quickly so the
4 consumers are ensured of the very important decisions that are
5 soon to be made relative to power supply in this state. As I
6 said, I think the PSC currently has before it the largest need
7 determination proceedings in the state's history with FPL's
8 Manatee 3 project and its sister application for Martin 8
9 expansion, which seeks approval of 1,900 megawatts of new
10 capacity.

11 Together with the anticipated need determination
12 application by Florida Power Corporation for its 540-megawatt
13 Hines 3 plant, these three cases will seek to add more than 5
14 percent to Florida's generating fleet. And I go back to what I
15 have said for three years in this state, more generation is
16 good than less, and that is a good thing to have more
17 generation. But make sure that you are clear who is going take
18 the risk for all of that new generation.

19 These three applications are going to represent, by
20 my Tennessee math, about \$1.4 billion of consumer investment
21 risk. That if these plants go forward, they will indeed be --
22 the risk of the consumers, whether they run or don't run,
23 regardless of what happens for the next 30 years. In addition,
24 there will be another 8,000 megawatts by your staff's ten-year
25 site plan summaries that will be added in this state in the

1 next ten years, another 8,000 megawatts. You can take your
2 numbers, whether it is \$500 a kilowatt, or \$600 a kilowatt, or
3 \$700 a kilowatt, but somewhere between four and \$6 billion of
4 additional investment on top of this \$1.4 billion of investment
5 are going to be coming before you in the next several years.
6 This is a tremendous investment that good decisions need to be
7 made upon to make sure that the consumers are getting the best
8 deal that they can.

9 I will try to quickly wrap up. Florida consumers
10 deserve a transparent, fair, credible bidding process that
11 results in a cost-effective supply at minimum cost and minimum
12 risks. PACE strongly believes that the selection process used
13 by IOUs today does not meet these goals. And, quite frankly,
14 the stipulation that was offered last night or this morning,
15 though it is a step, it is such a minor step that it is nowhere
16 near what is needed by this state.

17 PACE urges the Commission to act quickly and
18 decisively in this Bid Rule docket to implement improved
19 selection processes that will produce the best results for all
20 Floridians, including protection from the risks that utility
21 built projects impose upon them.

22 You know, and this is not something that is like
23 asking Florida to step out ahead of the other states. Our
24 March 15th, I think, filing identified several states that have
25 taken steps towards more transparent competitive selection

1 processes, more appropriate regulation, if you will, to ensure
2 that their consumers are protected. Several states like
3 Colorado, or Texas, or Pennsylvania, or Virginia, or Georgia,
4 New Hampshire recently got away from net present value to look
5 at avoided risks, and, you know, several states have stepped
6 out to be more protective of their consumers. Is it more
7 regulation? Perhaps so. But it is appropriate regulation at
8 this time when there are other options for meeting capacity
9 needs going forward.

10 COMMISSIONER PALECKI: Mr. Green, on that point, if
11 you were to select one state as a model of those states that
12 you have mentioned, which one do you believe has the rule that
13 is the best rule for the ratepayers?

14 MR. GREEN: I will defer to some of my colleagues
15 here, but personally I don't know if there is one that is the
16 model. I mean, each of them have elements that I think you
17 ought to consider. I think there are nuggets in each of the
18 states that we have given you some detailed recommendations
19 upon that I think are worthy of your consideration and
20 discussion. Some of the states had these binding bids where
21 the investor-owned utility submits a bound bid. Some of these
22 states have very independent evaluators brought in. Some let
23 the Commissions do the evaluations. I don't think there is one
24 state that I would say is the ideal. I would urge the
25 Commission and the staff to take a look at the various nuggets

1 in each of the states and pull out that which works best for
2 this state.

3 COMMISSIONER BRADLEY: Madam Chair.

4 CHAIRMAN JABER: Commissioner Bradley.

5 COMMISSIONER BRADLEY: First of all, I want to
6 strongly emphasize on the record that this Commission is
7 strongly committed to getting the best rate for the ratepayers
8 of the State of Florida. And one of the things that I have
9 kind of heard from the PACE group is an implication that this
10 Commission is not giving strong consideration to getting the
11 best rate for the ratepayers, so I would like to straighten
12 that out.

13 And with all due respect to you, Mr. Green, I would
14 just like to also emphasize that as a part of that process
15 sometimes -- and I know government functions around this
16 premise, but cheapest is not the best, because there can be
17 some problems that are associated with the bid process. When
18 you limit it, when you limit that process to the cheapest
19 possible product that the government can purchase, there are
20 some problems that are associated sometimes with the lowest
21 bid. And I do have a problem with not having a provision for
22 cost overruns to ensure that the consumer is receiving the
23 highest quality product available on the market and not
24 necessarily the cheapest because sometimes when you get into
25 the cheapest contractors start to manipulate the process. They

1 do shoddy work. And the power plant in this instance might not
2 last for the life expectancy that we would have for our
3 consumers, which will create some additional problems in terms
4 of the cost to the consumer.

5 But to get specifically to my question here, in
6 Number 2 you say that the IOU selects the proposed neutral
7 third party to score the proposals. Would you be so kind as to
8 describe the characteristics of the neutral third party and how
9 we can -- what we can give consideration to if we approve this
10 to identify how we would have neutrality in terms of who will
11 be the neutral third party, how would a neutral third party be
12 selected, and what assurances are you going to have in place to
13 ensure that the neutral party is neutral so that we don't have
14 a situation where we have a dispute about some of the outcomes
15 of some of the decisions that may be made by the neutral third
16 party?

17 MR. GREEN: Well, if I could respond, first of all, I
18 would like to -- you know, for the record, as well, I don't
19 think I ever suggested or implied that PACE feels that the
20 Commission is not looking out for the consumers.

21 COMMISSIONER BRADLEY: Well, that is the perception
22 that is coming from Commissioner Bradley.

23 MR. GREEN: Well, I hope I can correct that
24 perception at this time, because PACE applauds the Commission's
25 evaluation of the consumer benefits in all the issues they have

1 looked at. I have been in this state for four years, and never
2 once have I questioned the Commission's dedication and
3 aggressiveness in making sure that the consumers are getting
4 the best deals they can within the --

5 COMMISSIONER BRADLEY: Well, thank you for spreading
6 that across the record.

7 MR. GREEN: Sir?

8 COMMISSIONER BRADLEY: Thank you for spreading that
9 across the record as it relates to this particular
10 Commissioner.

11 MR. GREEN: Okay. And secondly on your point, I
12 think you used the word cheapest. I don't think I used that
13 word. I said the guiding principles in the selection of
14 capacity ought to meet certain criteria. I did mention
15 cost-effectiveness. I also threw in there most reliable. And
16 that gets back to your term you need to make sure it isn't just
17 the cheapest in your terminology, but it is indeed a plant that
18 will be here for the life that you expect it to be, will be
19 reliable, but is also cost-effective. I also added least risky
20 so that there is no unneeded risk burdened upon the consumers
21 in the process. And I know that this Commission will take a
22 look at all of these issues.

23 So, I agree with you, Commissioner Bradley, cheapest
24 is not the sole determination in this thing. I agree with you
25 100 percent. It has got to be a credible firm, it has got to

1 be a company that can build a reliable plant, but it also has
2 to be a plant that is built cost-effectively and with minimal
3 risk.

4 Relative to your question on the neutral party that
5 will be responsible for selecting the winner of these bids, I'm
6 not sure I am in a position to tell you how to do that just
7 yet. Again, I would encourage the Commission and the staff to
8 take a look at what is done in the other states that select
9 neutral parties to evaluate those bids. Several states do it
10 different ways.

11 And I'm just reminded, since I am over 50, that in
12 our proposal of June 28th we did propose a way about
13 independent evaluators. And let me just give you the
14 qualifications that we stated in there. It's just one
15 paragraph, if I may. This is on Page 1 of Attachment A under
16 definitions. Independent evaluator: A firm that is qualified
17 by virtue of its impartiality and its experience and expertise
18 in the economics, technological, and commercial aspects of the
19 power generation industry to apply criteria and scoring factors
20 that have been approved by the Commission to the proposals
21 submitted in response to the RFP of a public utility and the
22 competing proposal, if any, of a public utility. Score and
23 rank all of the proposals and identify the proposal or
24 combination of proposals that constitutes the most
25 cost-effective of the public utility's generation supply

1 options. That is the criteria we would recommend that --

2 COMMISSIONER BRADLEY: So who covers the cost of the
3 neutral party, is it the consumer, or is it the person who wins
4 the bid, or who is it?

5 MR. GREEN: Well, Commissioner Bradley, in the
6 current process I believe all bids we have to submit -- I think
7 it might change from utility to utility. We submit \$10,000
8 application fees at one stage of the bidding process, I believe
9 we submit other fees at other stages of the bidding process,
10 and I would assume that the cost of evaluation -- and that is
11 what these fees in part are defined as currently, you know,
12 that the incumbent utility charges the bidders these fees such
13 to cover their evaluation costs. So I would assume that the
14 evaluation costs, regardless of who does the evaluation, will
15 be covered by these fees.

16 COMMISSIONER BRADLEY: So the cost would not be
17 passed on to the ratepayer?

18 MR. GREEN: It would not be my proposal that that be
19 done. I think the way it is done today is that the bidding,
20 the application fees cover that evaluation cost. I don't think
21 that should change, personally. It's just who is that fee paid
22 to. Is it paid to the investor-owned utility to do the
23 evaluation or some impartial third party to do the evaluation.

24 CHAIRMAN JABER: Mr. Green, were you done with your
25 presentation?

1 MR. GREEN: Yes, ma'am. I'm sorry, that concludes my
2 remarks, and thank you.

3 CHAIRMAN JABER: Uh-huh.

4 MR. McGLOTHLIN: Chairman Jaber, if you would like I
5 will just follow up and add to Mr. Green's answer to the
6 question you posed. It is true that the utilities' contract
7 payments to an IPP are recovered through the capacity
8 cost-recovery clause and the fuel cost-recovery clause, whereas
9 if it builds its own unit those are reflected -- the fixed
10 costs are reflected in base rates or recovered through base
11 rates. Mr. Green's point goes to our contention that you need
12 to have an apples-to-apples comparison on the bid process both
13 to assure fairness to parties and to get the best result to the
14 ratepayers.

15 That has two aspects of it. The IPP bidders are
16 required to provide price certainty in that they are going to
17 be held to their bids and to the terms of their contracts. It
18 is possible under the current way of doing business for the IOU
19 either to review those bids, low ball its own estimate for the
20 purpose of getting the opportunity to go forward, and then ask
21 the Commission for recovery of an increased amount later on.
22 And it really doesn't matter whether it happens in a rate case
23 or in the absence of a rate case, the ratepayers will pay for
24 that. Because if the utility places that greater investment in
25 rate base that would have the effect of artificially reducing

1 the earned rate of return that you see in your surveillance
2 reports.

3 When if the appropriate amount were included in rate
4 base, that return would be greater and possibly great enough to
5 warrant a rate increase -- excuse me for misspeaking -- a rate
6 decrease. So either by keeping rates higher than they should
7 be, or by imposing on the ratepayers costs that are greater
8 than its original bid or original submission, under the current
9 regime the IOU has the ability to, through its last look, get a
10 result that increases costs ultimately to the ratepayers.

11 If they were required instead to submit a bid to an
12 independent evaluator at the same time and under the same
13 conditions as other bidders, first of all, you would have that
14 apples-to-apples comparison, a fair contest. And, secondly, if
15 they were required to be held to their bid, there would be no
16 opportunity to game the situation, and the ratepayers would not
17 be exposed to the risk of price increases associated with the
18 IOUs that is not associated with the contractual terms of the
19 IPPs. I think that is the fuller answer to the point that the
20 RFP process should accomplish this apples-to-apples comparison.

21 By way of a quick illustration that comes to mind, if
22 you go to a local car dealer and the sticker price on the car
23 is \$20,000, and you say, well, the guy across town will sell it
24 to me for 19. And this salesman says, well, thanks for
25 bringing that to me. Now that I know that I will charge you

1 18.5. Well, maybe you think you got the best deal. But if
2 instead you contacted all the dealers at the same time and said
3 on Saturday give me your best shot, maybe that guy's price
4 isn't 18.5, maybe it is 17.5. You don't know unless everything
5 is apples-to-apples.

6 Also, if you buy a car from that salesman and later
7 on he says, well, gee, I will just increase the cost of
8 delivery another 600 bucks so it's not 18,000 anymore like I
9 already agreed to. I think you would be pretty upset. So
10 there are some examples in more or less what a lot of people
11 would consider the real world that ought to be brought to bear
12 on the way the IOUs go about procuring capacity, as well.

13 CHAIRMAN JABER: Thank you. Commissioner Bradley.

14 MR. BRADBURY: Yes. Apples to apples and
15 cost-effectiveness, realistic costs of constructing a power
16 plant, this whole bid process and how the independent evaluator
17 is going to score the proposals and what has been put forth by
18 PACE, what if one party submits a bid that is higher than the
19 other party's bid and the independent evaluator accepts the
20 high bid rather than the low bid because the high bid is more
21 realistic in terms of allowing for the construction of a high
22 quality plant. One that is going to be reliable, one that is
23 going to be durable, one that is going to perform as it should
24 perform.

25 Then what type of situation are we going to run into

1 then if the independent evaluator decides that, well, Bidder A
2 is higher than Bidder B, but Bidder A's proposal is more
3 realistic. Then A is going to feel that they have been rained
4 upon because they have submitted the lowest bid. And this kind
5 of gets back to the argument that we are dealing with here
6 between the two parties. If the IOU opens up the bid and the
7 IPP has a lower bid, but the IOU decides that the IPP's bid is
8 unrealistic even though it is lower, and they decide that in
9 order to construct a high quality plant or a plant that is
10 going to be reliable, durable, and one that is going to perform
11 as it should perform, then it would seem to me that it is in
12 the public's interest to have the high bid rather than the low
13 bid.

14 And this is what I'm struggling with as it relates to
15 this whole bid process, and I'm trying to figure out how the
16 independent evaluator is going to struggle with that in your
17 proposal. If the independent evaluator says, well, you know,
18 based upon my information, then I should accept this bid rather
19 than that bid. Or maybe the independent evaluator decides
20 that, you know, I will accept a bid that is in between the two,
21 the high and the low bid. I mean, you know, as I said, the
22 process is a science as well as an art and I'm trying to figure
23 out where the art comes into the process. I understand the
24 science somewhat, but where does the art come into accepting
25 the bid?

1 MR. McGLOTHLIN: I understand your question. As I
2 understand it, this relates to your earlier point about
3 cheapest is not necessarily the best. And like Mr. Green, I
4 think Reliant Energy will agree with that, that the criterion
5 should not be cheapest, it is the most cost-effective. And the
6 term cost-effectiveness takes into account more than price
7 alone. And to answer your question, the solution is to
8 concentrate at the front end on the criteria that should be
9 governing the selection process. And those criteria would
10 identify the type of unit that is the best choice for the
11 ratepayers, and the criteria would also assure the
12 creditworthiness of the providers being considered along with
13 the IOU.

14 Now, in terms of your other -- the other part of your
15 question, I think it is important to point out that typically
16 the terms of a contract between an IPP and the IOU are such
17 that the IPP gets paid on the basis of performance. So, unless
18 the IPP has built the type of unit that will enable the IPP to
19 deliver on the terms of the contract, then the IPP gets paid
20 less. And that is your assurance that there is going to be the
21 type of unit that is going to be providing the reliability
22 benefits.

23 COMMISSIONER BRADLEY: Well, what are we going to
24 have in place to ensure that the IPP delivers and does not slip
25 out the back door and say, well, you know, this was a bad

1 business deal for us, we can't deliver. So, you know, we are
2 just going to disappear into thin air.

3 MR. McGLOTHLIN: That will be covered by the terms of
4 the contract that provide both the criteria or the standards to
5 be met and the sanctions, or the penalties, or payments in the
6 event of non-performance.

7 COMMISSIONER BRADLEY: So then it becomes a legal
8 issue if the IPP decides that this is just not a good business
9 deal and we are not going to continue to throw good money at a
10 nonprofitable venture.

11 MR. McGLOTHLIN: Mr. Green is going to answer that,
12 he is more on the business side.

13 CHAIRMAN JABER: Mr. Green.

14 MR. GREEN: Not anymore I'm not. To answer your
15 question, you know, performance bonds are provided, letters of
16 credits are provided in these bids. There are step-in clauses
17 with the unforeseen case if someone was to go belly-up or
18 something, they have step-in clauses in most all of these PPA
19 proposals where someone steps in and runs the plant. The
20 energy still flows. You have seen there are several cases
21 around the country where financial woes come upon a company,
22 the plant still runs, the energy is still provided, the
23 capacity is still there. There are assurances to make sure
24 that that IPP plant output will be there for the buying
25 utility. The contracts provide for that. The buying utility

1 -- these are smart people over here, they do not enter into
2 PPAs unless they are fully covered, unless their consumers are
3 fully covered for almost any eventuality. And they do enter
4 into PPAs today with IPPs. Several of the people in this room
5 today have power purchase agreements with the investor-owned
6 utilities today and they are fully covered on that.

7 And I would also agree with you, Commissioner
8 Bradley, on one point you made that if a truly independent
9 impartial evaluator chooses, you know, the IOU bid or any bid
10 over a cheaper bid and the criteria is fair and well
11 established of what that criteria is, then clearly that is the
12 best decision, and PACE supports that.

13 COMMISSIONER BRADLEY: Yes. And under your proposal
14 of the third party is there going to be an appeal process if
15 you feel that the independent evaluator has been unfair as it
16 relates to their selection process, or is it that that
17 selection is just going to be binding with --

18 MR. GREEN: I might ask Shef or Joe to add onto my
19 response to that, but our proposal is based on a predefinition,
20 a preapproval. Here is what the criteria -- you know, resolve
21 all of these issues of what fairness and equability is on the
22 front end before the RFP goes out. Therefore, you don't have
23 those issues on the tail end. If the evaluation criteria is
24 established and everybody agrees to it and it's fair on the
25 front end, you send the bids out and an impartial judge picks,

1 I'm not sure you have a lot of grounds for griping about who
2 they choose. And that is a non-lawyer speaking.

3 COMMISSIONER BRADLEY: That kind of goes back to what
4 I was trying to get at when we were discussing the previous
5 issue about stipulated agreements and trying to get something
6 to put on the table. And that's why I told Mr. Twomey he did
7 answer my question. He said that, you know, at this point you
8 all have not had enough time to really assess and evaluate and
9 respond. So, you know, that kind of gets to, as I said, what I
10 was referring to or implying when I asked my question earlier.

11 MR. McGLOTHLIN: Commissioner Bradley, to further
12 answer your most recent question, under the PACE proposal once
13 the independent evaluator has scored and indicated the outcome
14 of the process, under our proposed rule language there would be
15 only a limited opportunity at that point for review of the
16 independent evaluator's decision. And that would be based on
17 the argument that the independent evaluator incorrectly applied
18 the previously approved criteria, the criteria approved earlier
19 by the Commission in that process.

20 CHAIRMAN JABER: Mr. Wright.

21 MR. WRIGHT: Mr. Thomas Kaslow has a presentation to
22 make on the Calpine Eastern Corporation, not me.

23 CHAIRMAN JABER: And, Ms. Brown, I'm assuming I'm not
24 going against the order that you all had previously
25 established, right?

1 MS. BROWN: No. And I apologize to Mr. McGlothlin, I
2 left him out. I'm glad he just jumped in.

3 CHAIRMAN JABER: Go ahead.

4 MR. KASLOW: Thank you, Madam Chair and
5 Commissioners, for the opportunity to make a few comments. I'm
6 not going over elements of our written comments that overlap
7 with what PACE submitted, and fortunately I understand the
8 presentation after me actually deals with the auction concept,
9 so I don't need to touch on that, either.

10 However, there was one element of what was included
11 in our written comments that may not have been clear on its
12 face, and it's something that I think is very related to the
13 discussion that is going on today, and also the basis for a Bid
14 Rule that does have sufficient assurances to reflect all of the
15 risks that consumers are exposed to. And we offer these
16 comments as hopefully opportunities for improvement, not any
17 criticisms of how things have been done in the past.

18 CHAIRMAN JABER: Would you do me a favor before we
19 get started, would you spell your last name for me?

20 MR. KASLOW: I'm sorry, I meant to introduce myself
21 as well. It is Tom Kaslow, K-A-S-L-O-W. And I am the Director
22 of Market Policy and Regulatory Affairs for Calpine Eastern.

23 The issue that I wanted to elaborate on a little bit
24 more was referred to in our comments. However, it wasn't
25 detailed very well. And it's an element that is considered by

1 utilities in other areas, and it has to do with what is
2 referred to as option value. And it gets at the evaluation
3 process itself. As I understand processes that have currently
4 been used or historically been used in Florida, that a lot of
5 emphasis is put on the net present value. And one of the
6 things that is useful in discussing in this context is that
7 that type of an evaluation is prone to -- if not addressing
8 other risk is prone to exposing those who will bear the
9 investment risk to some costs going forward.

10 And the chart that I have put up before you talks
11 about, well, are there risks that aren't reflected in NPV
12 analysis, and the answer that I would provide is yes. And part
13 of this has to do with the assumptions that are used in
14 developing the relative savings, which also is an important
15 issue with respect to what procedure is used. I think that one
16 of the main emphasis that Calpine tried to put into its
17 comments was whether or not the assumptions that are picked by
18 a utility are the best and that they use the best efforts to
19 understand what future outcomes will be, no one is perfect, and
20 that future outcomes will be different than we think they are
21 today.

22 Clearly the events in the IPP industry would never
23 have been predicted last year if that is any type of indicator
24 of the type of uncertainties we face. And as a consequence,
25 Calpine is suggesting that in whatever is developed going

1 forward that we acknowledge that had these risks exist and find
2 a way to include them in the considerations.

3 What is the value of evaluating this risk? Well, one
4 of the types of alternatives that has been discussed in certain
5 examples in prior discussions has been the repowering decisions
6 or self-build options. And one of the problems in that type of
7 a solution is that it requires that there is the recovery of
8 the investment generally over its book life, which could
9 probably be in the 30-year time frame.

10 Well, over a period of 30 years is a significant
11 amount of uncertainty. If I can't predict -- and I certainly
12 can't predict in terms of stock performance, and I have given
13 that practice up -- of what is going to happen in the next
14 year, then to the degree you want to consider a long-term
15 irreversible investment, you need to figure out, well, what is
16 the spectrum of different outcomes. Should I just take at face
17 value that the assumptions that are included in a particular
18 net present value analysis will deliver the savings that they
19 advertise? Well, that's a good starting point, but it's not
20 enough.

21 To the extent that future outcomes are more negative,
22 that is either the costs of the project are higher or the cost
23 of other alternatives in future years in the market is cheaper,
24 in either of those scenarios it could turn out that entering
25 into a very long term commitment today could actually require

1 the consumers be in a very disadvantageous position in the
2 future. So, I would like to run through an example, which
3 would be the next chart here, that just gives you a little bit
4 idea of how this can work. And these numbers were randomly
5 picked, they are not related to any specific projects.

6 And the example I present is that there is just two
7 alternative being considered here. And if one were to just use
8 a straight net present value approach, which has historically
9 been used, it would appear that offer one in the example I
10 provide would be the best solution. However, in the example I
11 have offered when one considers what the future possibilities
12 are, and the fact that in the example I provided offer two has
13 greater flexibilities, the fact that you could get out of the
14 obligation and not be stuck paying for the investment, perhaps
15 after -- I think I used ten years, but I'm not sure if I
16 included it, that there is greater option value to the
17 selection of offer two, which I think is on the next chart.
18 That indeed offer two may be the best choice.

19 Now, this seems to be consistent with some of the
20 comments that Commissioner Bradley offered that there are
21 things beyond just the straight net present value approach and
22 the cheapest in that sense, because the cheapest in that sense
23 indeed may not be the cheapest in the long-term sense for
24 consumers. Now, obviously Calpine isn't looking for the
25 Commission to accept that this type of an approach is the right

1 way to go in this proceeding or in this workshop. We are
2 actually raising this point to identify that this and a number
3 of other factors that do affect the value to consumers needs to
4 be considered. We are not aware of this particular facet being
5 considered by the utilities today, and you have heard PACE talk
6 about others. To provide a little bit of a variation on a
7 comment -- just checking the name -- Mr. Sasso made a comment
8 earlier to give the stipulation a chance.

9 And I think it would be consistent with PACE and
10 Calpine's comments to say that we are just asking through
11 procedure to give ratepayers the best chance through a
12 consideration of these other choices. That is not to discount
13 the invitation that you made for us to consider some type of a
14 reply to the utilities' stipulation. However, I would point
15 out that Calpine is a little bit concerned if that type of a
16 process were not to include some type of a default. Because
17 experience that at least I personally have had is that
18 voluntary discussions along settlement lines generally go very
19 slow and are unproductive if there isn't a default. And the
20 default that we would hope in this case would be they have some
21 type of mutual agreement, that there would be a hearing so that
22 we could resolve these issues. If that isn't required, that is
23 wonderful. And those are my comments. Thank you very much.

24 CHAIRMAN JABER: Thank you, sir.

25 Ms. Brown, who was next?

1 MS. BROWN: Solid Waste Authority. Mr. Zambo, I
2 think, of Palm Beach County, FICA, and the City of Tampa.

3 MR. ZAMBO: Madam Chair, Commissioners, I appreciate
4 the opportunity to speak to you this morning. My name is
5 Richard Zambo. I'm here today on behalf of the Solid Waste
6 Authority of Palm Beach County, the City of Tampa, and the
7 Florida Industrial Cogeneration Association. I am kind of in
8 an attendance and observance mode today, so I'm going to be
9 very brief.

10 We filed very brief comments on behalf of those three
11 parties, and just to give you a very brief background, the
12 Solid Waste Authority and the City of Tampa both operate waste
13 energy facilities that produce electricity from municipal solid
14 waste. They sell that into the Florida market. They also are
15 very large consumers of electricity, so their interests here
16 are two-fold, both as a supplier of electricity and also as a
17 consumer.

18 Likewise, members of the Florida Industrial
19 Cogeneration Association generate power through cogeneration.
20 They use most of that internally, some of it is sold into the
21 grid, but they are also large consumers of electricity from the
22 utility system.

23 Generally, we support the positions that have been
24 presented by PACE and the IPPs and by Mr. McWhirter
25 representing the consumers, but we have two issues that are

1 perhaps unique to us that I don't think have been raised and we
2 don't want to be left out of the process. We are fairly small
3 providers of electricity. For example, the Solid Waste
4 Authority of Palm Beach County is about 65 megawatts, much
5 smaller than your typical IPP. The City of Tampa is about 25
6 megawatts, and the Industrial Cogeneration Association in
7 aggregate is around 400 megawatts with units ranging from 60
8 megawatts down to as small as 15. So we are a little different
9 than the typical IPP or merchant power plant, and as I said we
10 want to make sure we don't kind of fall through the cracks
11 here.

12 We have basically two issues that I wanted to raise,
13 which were also addressed in our written comments. And one of
14 those I kind of come to you with my hat in hand to see if there
15 could be some accommodation for local governments in terms of
16 the cost, the fee for participating in the RFP process. We
17 talked about the ratepayers not absorbing the costs of the RFP,
18 but in the case of a local government the citizens within the
19 taxing authority of that local government would, in fact,
20 absorb those costs if we are required to pay those fees. And
21 we would have some suggestions in addition to an outright
22 waiver perhaps the fee should be based on the size of the
23 facility or the size of the capacity that is being bid into the
24 RFP.

25 The second point we wanted to make is in some cases

1 both with the local governments, but predominately in the
2 industrial setting is industrial customers can generate --
3 often can and often do generate electricity, but they find it
4 more economically beneficial to use it internally rather than
5 to sell it on the grid. And the Bid Rule as it currently
6 exists and the Bid Rule as it is being proposed to be modified
7 does not recognize reductions in demand as an alternative to
8 building additional generating capacity, and I would urge the
9 Commission to consider that as a possibility. In other words,
10 the customer would guarantee to remove a certain amount of load
11 from the system for a certain period of time using their own
12 generation.

13 And I guess that really -- that pretty much
14 summarizes my comments. We would like to be a party to the
15 on-going discussions that take place here in trying to reach a
16 settlement and we will file more detailed comments with
17 recommended changes to the rule language. And I appreciate the
18 opportunity to be here.

19 CHAIRMAN JABER: Thank you, Mr. Zambo. Could you
20 give me just a little bit more detail on the fees, the
21 application fees? Can you give me a range of where they have
22 been. Are they the same for all of the companies?

23 MR. ZAMBO: I believe the rule doesn't address fees
24 specifically. They put a maximum. I do know that when Florida
25 Power and Light had an RFP it was, I believe, sometime late

1 last year, and they did provide an accommodation for renewable
2 fuel bidders. I think the fee was either waived or greatly
3 reduced.

4 CHAIRMAN JABER: And was that delineated in the RFP?

5 MR. ZAMBO: Yes, it was.

6 CHAIRMAN JABER: Okay. Thank you.

7 Ms. Brown, who is next?

8 MS. BROWN: The consumers come next. Mr. McWhirter
9 did not file comments, so he hasn't been on my list, but I have
10 allowed him to go first.

11 CHAIRMAN JABER: Mr. McWhirter, Mr. Twomey, which?

12 MR. McWHIRTER: Thank you very much. And I will be
13 brief. And I apologize for appearing to be so strident, Mr.
14 Bradley, in response to your questions, and I will try not to
15 be in the future.

16 COMMISSIONER BRADLEY: You were not being strident,
17 you were just being -- you were discussing your point.

18 MR. McWHIRTER: Thank you, sir.

19 COMMISSIONER BRADLEY: I respect you. I respect
20 that.

21 MR. McWHIRTER: Thank you, sir. We are at, and the
22 opinion of me as a representative of consumers, at a seminal
23 point in the history of Florida because we are at a point where
24 new construction has to take place. And the issue before you
25 is how do you go about it and who does it? And we have been

1 discussing that issue tangentially for about three or four
2 years. And we have come to the conclusion that this rule that
3 you are considering is the best avenue to come up with new
4 capacity in a fashion that will assure the lowest cost
5 ultimately to the consumers and the greatest reliability.

6 And it is an issue that is not necessarily a legal
7 issue discussing the parameters of the rule before you, it is
8 an issue that needs to be addressed somewhat in a public forum
9 so that everybody understands what is going on. And FIPUG
10 concluded that what we needed to do was hire a consultant that
11 had knowledge. We wanted somebody that knew about the
12 reliability problems in Florida, and specifically in Florida
13 alone, not somebody that came here from another state. We
14 wanted to have somebody that had experience in government,
15 understood the legislative process, was concerned about --
16 deeply concerned about the consumer interest. Somebody that
17 could express himself not stridently, but logically and
18 intelligently. And we wanted to have somebody essentially with
19 naturally curly hair, and so what we did is we went out and we
20 have entered into an agreement which we will sign today with
21 somebody that meets all of these qualifications. And I'm going
22 defer to that gentleman to make a brief presentation on behalf
23 of the industrial consumers.

24 MR. GARCIA: Let me begin by saying thank you,
25 Commissioner Bradley, for saying you respect --

1 CHAIRMAN JABER: Let me interrupt you and welcome you
2 officially. Former Chairman Joe Garcia, welcome.

3 MR. GARCIA: It's a pleasure being here. And I begin
4 by thanking Commissioner Bradley for saying he respects the
5 words of John McWhirter right before he entered that very
6 eloquent presentation of myself before this body.

7 Commissioners, it is an honor to be here and to
8 participate in this proceeding, and I will also be brief in
9 particular because it will be difficult to live up to that
10 introduction. But what we have here before us is a process
11 that began awhile ago. Some of us participated in that process
12 as staff, some of us participated in that process as
13 Commissioners, and it is a process of trying to find a certain
14 amount of transparency for the people of Florida. Not only so
15 that the people of Florida can participate in this complex
16 process, but I think more importantly so that the Commissioners
17 have a way of finding out what is the best and the least-cost
18 alternative for the citizens of the State of Florida.

19 And Mr. McWhirter and the clients that he represents
20 and through him I represent, FIPUG, which are consumers of the
21 state, aren't about to tell this body what is the best system
22 of finding transparency. Commissioner Bradley, there is an
23 infinite number of possibilities that can be used to figure out
24 a very directed process whereby we can create a system whereby
25 it can be scored. We can figure out what we want and what is

1 the best and least-cost service that we can find for our
2 ratepayers.

3 And more importantly, I think, from a Commissioner
4 perspective is that you will be able to hold that up. Some of
5 you will be here longer than others, but you will be able to
6 hold that up when you are criticized about how this Commission
7 made decisions and said, look, we had a cheaper cost
8 alternative. We began this process, I voted on this rule that
9 is before you today, if I'm not mistaken, and we began it as a
10 process.

11 Unfortunately, it hasn't been as successful as we
12 would have liked. Since that rule was passed over 3,500
13 megawatts have been put out to bid. Commissioners, not one
14 megawatt has been won by a competitor. I think the opportunity
15 is here to create a transparency in the system. And,
16 Commissioners, let us be honest, because it is not in the
17 interest of FIPUG to have outsiders win this process. It is
18 simply a process so that all Florida ratepayers are able to
19 look and see what is the least-cost alternative to serve, and I
20 believe that this process goes a long way to going down that
21 road.

22 And I think we can move expeditiously, because unlike
23 other states, Florida has never leaped into doing things that
24 are risky for its ratepayers. And that is why we have, I
25 think, not made the big mistakes of other states. But now

1 there are many states which have tried and tested methods for
2 this particular process, and I think we can use the best
3 practices in all of those states to produce a formula that will
4 accrue to the benefit of all Florida ratepayers. And with
5 that, thank you for the honor of appearing before you, and I
6 look forward to this process.

7 CHAIRMAN JABER: Thank you, Mr. Garcia. Okay.
8 Mr. Twomey. Is Mr. Twomey next on the list?

9 MS. BROWN: Actually, Florida Crystals is next.

10 CHAIRMAN JABER: Okay. Now, let me give Florida
11 Crystal and Mr. Twomey a choice. We are going to break at 1:00
12 o'clock for an hour. I don't want to interrupt your
13 presentations. So if, Florida Crystals, you believe you can
14 finish your presentation in 15 minutes, great. I don't want to
15 be put in the position of interrupting your presentation.

16 MR. CEPERO: Thank you. I won't take but just a few
17 minutes. My name is Gus Cepero, I am an officer with Florida
18 Crystals. We are the owners of two biomass-fired steam
19 electric generating facilities located in western Palm Beach
20 County. And I appreciate the opportunity this morning to give
21 you the perspective of someone who owns relatively small
22 generating facilities in the context of the State of Florida,
23 and the kind of facilities that are being discussed here this
24 morning.

25 My comments are really very surgical, and they deal

1 with the definition offered, at least, by the staff in the
2 strawman proposal of major capacity additions. It looks like
3 the staff is recommending that relatively small capacity
4 additions, they use the break point of 150 megawatts or less,
5 or relatively short commitments to purchase power, they use
6 three years or less, should be outside this RFP process. And
7 we understand that logic and we support the logic that certain
8 types of facilities and decisions that don't have the large
9 long-term impact that additions of hundreds or thousands of
10 megawatts have, should have the flexibility of not having to go
11 through the RFP process.

12 The definition, however, that is included in the
13 strawman proposal has another component to it. It says that
14 additions greater than 150, or additions that would trigger the
15 Power Plant Site Act would have to go through the RFP process.
16 And our issue is with the component that deals with the Power
17 Plant Site Act, because you can have certainly a facility that
18 is less than 150 megawatts and, in fact, you can have like in
19 our case we are considering adding about a 40-megawatt addition
20 to our plant that would push us over the 75-megawatt threshold
21 and would put us into the Power Plant Site Act.

22 And we understand that, and we will go through the
23 Power Plant Site Act, but it appears to us to be inconsistent
24 and probably inequitable to say facilities under 150 megawatts
25 don't have to go through the RFP, but small additions that

1 happen to trigger the Power Plant Site Act still have to go
2 through the RFP. So our proposal is really quite simple. We
3 would suggest that the definition of major capacity additions
4 focus exclusively on the size of the additions, and say
5 anything 150 megawatts or above goes through the RFP and
6 remains silent or not include the Power Plant Site Act as a
7 triggering criteria.

8 So that is really -- and we did submit comments that
9 propose specific language that will accomplish that. Obviously
10 that doesn't mean that -- you still have to go through the
11 determination of need and you still have to go through a
12 cost-effectiveness test and demonstration, so we are not
13 proposing to be excused from that. We are simply proposing
14 that if we are going to have a threshold, megawatt threshold to
15 be outside the RFP, that it should apply evenly and not leave
16 the Power Plant Site Act as yet another criteria. Those are my
17 comments, and I thank you for your time.

18 CHAIRMAN JABER: Thank you, sir. Mr. Twomey, what
19 say you?

20 MR. TWOMEY: Madam Chairman, I think we will take
21 more than ten minutes, and to be safe I would appreciate your
22 offer to go after lunch immediately.

23 CHAIRMAN JABER: Okay. Commissioners, let's go ahead
24 and break for lunch.

25 MS. BROWN: Madam Chairman?

1 CHAIRMAN JABER: Yes.

2 MS. BROWN: Mr. Borden has his presentation to make
3 on --

4 CHAIRMAN JABER: GenEnergy.

5 MS. BROWN: Yes. GenEnergy, and his presentation --
6 am I right, sir, is only about ten minutes?

7 MR. BORDEN: By definition it will be less than ten
8 minutes.

9 MS. BROWN: Could he go now?

10 CHAIRMAN JABER: I have a hunger headache, and so I
11 wouldn't be very good for you. My advice would be we take a
12 break right now for an hour. We will come back at ten till
13 2:00.

14 (Lunch recess.)

15 CHAIRMAN JABER: Commissioners, we're going to get on
16 the record and get started. Mr. Twomey, I understand that
17 you've given up the order of your presentation to GenEnergy.

18 MR. TWOMEY: Yes, ma'am.

19 CHAIRMAN JABER: Go ahead, Mr. Borden.

20 MR. BORDEN: Hello. My name is Mike Borden. I'm
21 from GenEnergy; we're an energy consulting group. I am not
22 here on anybody but the behalf of GenEnergy. I didn't get
23 invited by the IPPs nor by the IOUs, although I have spoken
24 with both groups. We're offering a service here which we hope
25 will be valuable. If it's not valuable, don't use it, like

1 everything else. And we're hoping that hopefully this
2 presentation will shed a little light on one aspect of what
3 you're struggling with which has to do with the possible use of
4 an auction mechanism to replace or as a substitute for the
5 bilateral contract negotiations you have in most RFPs today,
6 including the ones we think that take place in Florida for
7 capacity.

8 I've got to figure out how to work this, so -- and I
9 will say that my group is based in California, so any
10 strangeness that comes out of this we will blame on them. But
11 the good news on that side is, California has an abundance of
12 experience, not all good, of course, with energy innovations,
13 and we think -- our group is actually located in San Francisco
14 where Pacific Gas and Electric is. We've had some experience
15 with their struggles, and we are working with them on some
16 energy issues that hopefully will be helpful as we design our
17 service to help serve this market, which is any energy market
18 where power is procured rather than just produced.

19 I am not saying that the typical RFP process that we
20 are giving a picture into here is typical of anything that you
21 have in Florida. We suspect there will be some elements that
22 are -- that this is true. This is not meant to say that this
23 is what Florida Power & Light's RFP that just concluded what
24 this looked like. This is not meant to say that this is what
25 happens with Hines 3 or anything TECO is doing. All right.

1 But this is, in general, what we found to be true of paper --
2 what I call paper RFPs, is that you issue your RFP. You're
3 looking for an apple. All right. Your intention is to buy the
4 biggest apple, or to find the biggest apple, and quite often
5 your responses are going to be a combination of things, most of
6 which don't look like apples. So the comparisons you're making
7 could very well be either irrelevant or improper.

8 And quite often, the process that you've gone through
9 in conducting this RFP is very difficult to explain to the
10 outside world. That outside world might include the people who
11 are bidding on your RFP. If they don't understand what you've
12 done to select the winner, right, that creates a credibility
13 problem for your suppliers. All right. It will also have
14 ramifications in what your ensuing RFPs look like. Will they
15 even participate in those RFPs if the process continues to
16 result in no winners other than the issuer of the RFP in the
17 self-build case, for instance?

18 And quite often in this, you don't learn much from
19 continuing to conduct these RFPs in the same way. You go
20 through the same process. You incur all the same up-front
21 costs over and over again because you basically have to start
22 from scratch, or you end up starting from scratch, on these
23 RFPs rather than building up -- spending a little bit more time
24 up front and making sure the world knows you want an apple,
25 spend some more time up front if you want a green apple, even

1 define it that way.

2 The next RFP you will have will be conducted with a
3 lot lower transactions costs if everybody knows this is the way
4 you do business. We believe -- "we" being GenEnergy believes,
5 because we're in this business, that conducting an auction
6 rather than simply employing bilateral negotiations and coming
7 to a deal has advantages. The auction, we believe, has
8 advantages, the kind of advantages that we expect that the
9 Commission and the consumers of Florida care about.

10 One, we believe that the auction, if you design it
11 properly, will by its nature be an open, verifiable, and
12 documentable process that the external world understands. What
13 was it you were after? And how did you get to conclusion that
14 that thing was the biggest green apple? An auction is -- lends
15 itself to those results.

16 An auction also makes the suppliers feel the heat of
17 competition unlike in one-on-one negotiations. If you don't
18 offer the best price, you don't get the deal. There's no good
19 substitute for the fire of competition or the heat of
20 competition. That's how you get better prices, by having
21 competition. And the auction -- we believe an auction is one
22 of the -- a proven method for making people compete and, in
23 this case, lowering their prices.

24 You also lower your transactions costs because you'll
25 do -- you'll probably do more up front if you run the auction

1 properly and in standardizing what you're looking for. In
2 other words, the world has to come to understand that you're
3 looking for the green apple. Maybe I should use megawatts.
4 All right. But I think everybody understands. Since we've
5 heard apples-to-apples comparisons so much, I'm going to
6 continue with the apples example just in certain megawatt where
7 you need to -- or megawatt hours where you need to.

8 We believe that you'll do more up front in defining
9 what you're looking for. For instance, if you're looking for
10 base load to intermediate type capacity, ask for it. If that's
11 what you want the people to bid on and you want to take the
12 lowest cost bid, if that's your criterion, right, that's what
13 you should be asking for rather than, please give us innovative
14 bids. In which case, you're going to get what you ask for,
15 bananas, grape juice, and everything else. And if you're
16 lucky, you'll have two apples to compare at the end of the day.
17 So we think you can lower your transaction costs by -- in an
18 auction that we think works and we've conducted these. By the
19 time the bidders get the auction, they have already signed the
20 deal for everything but the important price parameters.
21 They've signed the deal, and if they're going to bid and
22 they're going to submit a binding bid, you've already
23 negotiated all of the important commercial terms up front
24 except for price. Of course, that's the critical thing, but by
25 the time you get there, things like availability, if you're

1 using a tolling structure, for instance, your heat rate, your
2 contractual heat rate, or your heat rate tables will be built
3 into the deal already. Your penalties for nonperformance will
4 be known up front. The term of your contract will be known up
5 front. So you do all of that up front, and then focus the
6 competition or the bidding on your important parameters like
7 price. Mostly what you focus on is price.

8 If you want to include other criteria, sometimes you
9 hear about, well, if this is a greener technology, maybe you
10 give a bonus for a green technology, which is allow it to win
11 at a higher price. I'm suggesting that you need to keep it as
12 simple as possible. If you want to do green initiatives,
13 especially if they're smaller scale, they're probably outside
14 of the scope of this anyway. All right. So try to keep it
15 real simple, and try to focus it on the thing you're after. If
16 it's base load to intermediate capacity, then ask for that.
17 All right. But you negotiate up front, and then the auction
18 takes place over an incredibly short period of time. And some
19 of the energy auctions we've done, the deal is done in an hour
20 and a half even though they have known about it for three
21 months. It might take you three months to get to the point
22 where they all know it's a green apple, but in an hour and a
23 half they've bid, and by five minutes later, they've signed a
24 contract that's binding.

25 We also believe -- and we get this from the trading

1 world of which virtually all the folks on this table are either
2 representing clients who are in the trading and marketing
3 world, be it, the IOUs or their affiliates or the IPPs. The
4 longer you've got to keep a bid open, the higher it's going to
5 cost -- the more it's going to cost you as a consumer.

6 All right. In the trading world, for a peak power
7 service for one day, if I'm on a Friday and I ask the supplier
8 to keep it open until Monday for Tuesday delivery, I'm going to
9 probably pay a couple of bucks a megawatt hour just for keeping
10 it open. You pay dearly for making the suppliers hold their
11 bids binding for any longer than is necessary, which is why an
12 auction works well because you only ask them to keep it open
13 and binding for the duration of the auction. And you don't
14 have them stretching it out -- their bid to be -- it's supposed
15 to be open for two, three, four, five months. That costs you
16 in the long run.

17 I've pretty much already talked through this screen
18 here. The idea here is to get an apples-to-apples comparison
19 through a well-designed auction. And I've talked about the
20 things -- the one-time effort to develop -- you do spend time
21 up front, but frankly, from what we've seen, you're already
22 doing this. Florida Power & Light, for instance, has spent a
23 heck of a lot of time coming to the decision that they think
24 they need 1,900 megawatts of capacity. They didn't just wake
25 up one morning thinking, oh, well, let's go for 1,900

1 megawatts. There are resource plans and strategies and
2 everything already built into that. So a lot of this work that
3 I talk about that has to be done up front has to be done up
4 front no matter what you do, no matter what your RFP process
5 looks like.

6 And we strongly emphasize standardizing the contract.
7 Rather than have people bid on 18 different attributes like
8 location, term, and all those things, figure out what you want,
9 put that in the contract, and that becomes -- if someone
10 doesn't want to do a 20-year contract into Florida Power &
11 Light at Duval, you can't force them to do that. But if that's
12 where you want the power coming into your system and you want
13 it to be a 20-year deal, go for that. Get the best price for
14 that and maybe you do your next auction on something else.

15 We think by using an auction -- remember, this is
16 just a part of the RFP process. We're not saying throw out the
17 RFP process. This becomes the pricing mechanism for the RFP
18 process. And hopefully, if you've done it right and the
19 bidders know what you're asking for, you will end up with an
20 apples-to-apples comparison, and you will get the cheapest
21 power in the time frame that you're looking for by comparing,
22 hopefully, a large number of competitive bids.

23 One thing that we need to emphasize here is that in
24 order to participate -- in order encourage participation, our
25 experience has been, you've got to create a credible process

1 that the suppliers think they can win. You can imagine flying
2 to London to buy a painting, and if the auction rules aren't
3 designed so that you can buy that painting if you win the bid,
4 you're going to waste a lot of time, and you're never going to
5 do that again.

6 All right. If you go there -- if you're going to go
7 to London and bid at one of the London auction houses on a
8 world famous painting, you want to be darn sure before you get
9 on the plane that if you offer the highest price for that
10 artwork, you're going to buy it. You're going to be allowed to
11 buy it. So it's extremely important in the short and the long
12 run to make sure that the suppliers, be it, the IPP group or
13 any other group who's thinking of participating needs to know
14 that they have a chance of -- a legitimate chance of winning the
15 bid. Once you've destroyed that credibility, you're done,
16 basically. So your procurement process has to have
17 credibility, and we believe that an auction process has to have
18 in its rules the way that the winner will be determined. And
19 that has to be known up front.

20 We think the key -- and I've gone over these already.
21 The keys to a successful auction are preparation and
22 credibility. You need to first choose an appropriate contract
23 structure. And I'm trying to talk about these in the context
24 of the capacity bidding process as I know it in Florida, which
25 my own knowledge of it may be flawed, but that's another topic.

1 You need to choose an appropriate contract structure. If
2 tolling is the way that people do these deals, if that's the
3 way -- suppliers are used to it and that's the way the IOUs
4 want to do it, go with the tolling structure. A tolling
5 structure or capacity -- or a conversion services agreement is
6 something that's different than a straight purchase and sales
7 agreement where you're just offering to buy at a certain dollar
8 per kilowatt capacity price and then the associated energy
9 charge which may be fixed or indexed.

10 My understanding, having come from the IPP business
11 relatively recently, is that throughout the country, most of
12 the capacity deals that are done today are tolling
13 arrangements, for instance, where the buyer is responsible for
14 bringing fuel to the unit, for instance, and then taking
15 responsibility for marketing the output of the unit. And in
16 the case of the Florida IOUs, they're already well equipped to
17 do this, for instance. All right. They supply fuel to their
18 own units using their capacity on FGT and hopefully on
19 Gulfstream now. All right. And they also market the output
20 either in the wholesale market or in the retail market to their
21 own customers. So you need to choose a contract structure, all
22 right, as being part of the focus of your auction.

23 You need to standardize all the nonprice elements.
24 We've just gone through those. Importantly, things like
25 availability. If you're going to do tolling, you'll need a

1 heat rate structure. All right. You'll need the term and the
2 other thousand conditions that are in your basic tolling
3 agreement or your purchase and sales agreement.

4 You need to develop transparent, easy to understand,
5 objective selection criteria. Are you going to choose the
6 winner based on cost, or are you going to try to build in some
7 assessment of risk? Are you going to try to get green
8 economics in here somehow? You can do all those things, but
9 you better lay it out up front, otherwise, no one is going to
10 understand what they're bidding on. And you -- like I said
11 before at the end of the last slide, you need to create a
12 process that the participants or the bidders think they have an
13 opportunity to win.

14 The next slide is an actual example that we've
15 cleaned up for confidentiality reasons. We conducted an
16 auction for an industrial customer in Ontario, and this is how
17 it went. What we're trying to show here is the interplay of
18 the pricing competition. This was a fairly short duration. We
19 did a two-stage auction here, what we call an Anglo-Dutch
20 hybrid, "Anglo" being the open part of the auction where the
21 prices proceeded. In most of the auctions that you're aware of
22 or that you're familiar with, the prices, when you're buying,
23 continue to go down until a winner is reached. All right.

24 We have a second stage here, a closed bid stage, all
25 right, where the two or three lowest bidders are invited into a

1 sealed bid round. All right. And then the winner of that last
2 stage becomes the winner overall or the low-price bidder
3 overall. But the reason we normally do these things, the
4 reason, we don't want to have just a more complex auction
5 mechanism, but the things that the public policymakers should
6 worry about are things like collusion. I think this has
7 happened in the telecommunications business, for instance, as
8 bandwidth was auctioned off.

9 You ought to be worried about, well, what if we get a
10 ridiculously high cost result because the supplier's colluded.
11 I'm not saying any of these good folks in here would do that,
12 all right, but from a policy's perspective that's something you
13 always have to be worried about. So you need to be careful
14 with your auction designs so that you eliminate collusion. And
15 quite often having a hybrid bid like an Anglo first stage,
16 Dutch second stage, Dutch being the closed or the sealed bid,
17 is a way to eliminate collusion in case you were worried about
18 it.

19 So as you see in this example here, we had a one hour
20 first stage and then a half hour second stage, and we -- as you
21 can imagine, like a lot of these auctions, it takes something
22 to kick it off. This blue -- the blue -- I think it appears
23 blue to most people. The blue-priced bid was really the second
24 bid. The first bid was about 10 or 15 minutes into the
25 auction. Someone put in a bid. Apparently this was a

1 generator who knew he had a high heat rate machine and just put
2 the bid in, could never do any better than that. They knew
3 what the fuel price was. This is for, I think, a hundred
4 megawatt deal that lasts two years starting this past May.

5 All right. They put a bid in. They knew they
6 couldn't do any better. They got topped after about, it looks
7 like about a half hour later. The blue bid topped it, and then
8 the action really got started towards the -- as you would
9 imagine for most of these things, the last half -- you know,
10 the last 15 minutes of the auction, which got extended by --
11 preset rules got extended by five-minute increments. All
12 right. And then we basically chose the three -- we identified
13 the three lowest priced bids, and then we took them into the
14 final round, and the price continued to go down. By
15 definition, it has to continue to go down by these rules.

16 We gave them about an hour in between the two rounds
17 to shake off the dust and do last minute calculations as to
18 where they thought the market was. And the deal was done by --
19 the auction was done by a little after 12:00, and the deal got
20 signed by 1:00 p.m. You can imagine that this imposes minimal
21 risk on the trading company that is bidding in this. You're
22 open for a couple of hours here, much like you would be open in
23 normal trading, all right, and then you're out of it within a
24 few hours. So you don't go into the weekend with, like, a
25 hundred megawatt open position, which can kill you. So that

1 allows you to put your best bid in because you know you
2 wouldn't be hanging out there for very long.

3 There is some question as to whether something as
4 complex as capacity lends itself to an auction and my
5 contention is, absolutely. The technical capability is there.
6 This is done in several other states already. It's been done
7 in other businesses, furniture auctions, other commodities, for
8 quite a while. We have the Web sites, and we have the
9 communications capability to do electronic auctions today. It
10 works fine and it's seamless. You don't have to do paper RFPs
11 anymore. So the technology is there to conduct the auctions,
12 clearly. It's also commercially feasible as long as you pay
13 attention up front. So we think you can define things well
14 enough up front even though you have to make arbitrary
15 decisions about some things.

16 For instance, you could do a tolling contract. You
17 could fix the heat rate at 7,000, all right, and let people bid
18 a capacity charge, for instance. I'm simplifying even further
19 than this example here. And let's say I was a bidder and my
20 heat rate -- I know my heat rate is 7,200. I can't get there.
21 What do I have to do to play in that auction? All right. I
22 think I have a 7,200 heat rate, well, I'm going to need a
23 higher capacity charge to overcome that. All right. In other
24 words, for me to make the return that I think I need in order
25 to go into this construction, if I have a 7,200 heat rate when

1 it's stipulated up front that the heat rate is -- the
2 contractual heat rate is 7,000, I better bid fatter on the
3 capacity, otherwise, I'll go in the whole.

4 Conversely, if I have a more efficient machine that
5 I'm bidding, let's say, a G machine relative to a H machine --
6 excuse me, a G machine relative to a F machine in today's
7 technology world -- sorry for using GE nomenclature; that's all
8 I know. Okay. The Westinghouse and Siemens stuff, I think
9 everybody understands what a F machine is compared to a G who's
10 in the business. But if I have a lower heat rate, then I'll
11 bid -- that allows me to bid a lower capacity charge.

12 If I have a 6,500 heat rate that I'm thinking of
13 building and the contractual heat rate is 7,000, I can bid a
14 lower capacity charge knowing I'm going to make money on the
15 energy differential. I have sort of a spark spread amplifier,
16 for instance. So I know I'm making it more simple than it
17 really is, but you can auction off capacity. You can conduct
18 the same kind of auction for capacity as you do for energy,
19 you've just got to be smarter about it up front, but the
20 technology is there to do it.

21 And one last note that I don't have a slide for is,
22 we're in this business, and we conduct auctions for people or
23 for companies that either are buying or selling energy or
24 capacity. And the credibility thing I've got to emphasize as
25 my last point here. If you're going to have an auction in this

1 world, this capacity world for Florida, the investor-owned
2 utilities have got to participate in the auction. Our company
3 won't conduct an auction for someone if they're not committed
4 to buying, for instance. If you're just going to go out and do
5 an auction for price -- if all you're going to do it is for
6 price discovery, you'll do that one time and then you're done
7 because no one is going to pay attention any longer. You've
8 got to have a process where the bidders think they can win, and
9 we think that requires the investor-owned utilities to
10 participate in the auction either by submitting a sealed bid or
11 a reserve price up front or by actually bidding into the
12 auction itself.

13 We believe there are any number of ways where you
14 could actually have credibility. A hybrid might be something
15 like the investor-owned utility submits a reserve price up
16 front that's not known, all right, otherwise, you're just going
17 to make it a target. All right. They submit a sealed reserve
18 price, but it's also understood up front as part of the auction
19 rules that the winners of the -- if people beat that reserve
20 price that they don't know, some portion of those people who
21 beat the reserve price will get a minimum amount of capacity
22 award where the IOU still has the opportunity through its own
23 bids to come in and take everything, including the remainder of
24 the capacity that isn't awarded to people who take capacity
25 under the reserve bid.

1 So there are a lot of ways to do this that create
2 credibility where you don't have -- where actually you bring
3 the maximum pricing pressure to bear, because clearly -- we
4 don't want to go into auction theory, or I don't want to go
5 into auction theory right now, but you end up with a better
6 result the more serious bidders you have. And the IOUs are
7 clearly serious bidders; right? They may win every auction in
8 the future as well. You don't know that. They may have the
9 resources, and they're in places and locations on their own
10 grid such that it may be a long time before you see any IPP
11 displace them. Although, it is interesting that Seminole
12 conducted an RFP a while back where an IPP actually won the
13 capacity for that. So at least there's some sense that IPPs
14 are not inherently disadvantaged in these things. All right.

15 But the point is, you want your investor-owned
16 utility, which is clearly at least potentially a serious
17 bidder, you want them -- their bid to actually place downward
18 pressure on the overall price structure. If you leave them
19 out, you've lost something. You've lost a serious bidder.

20 Okay. That's enough of my speech. And I'm with
21 GenEnergy, and you should know there are things out there
22 already that work. GenEnergy isn't the only auction service
23 that works, but we're one among several. And this isn't just
24 somebody's dream that might come true in five years. It's here
25 now.

1 CHAIRMAN JABER: Thank you, Mr. Borden.

2 Commissioner Palecki, you had a question?

3 COMMISSIONER PALECKI: Yes, I have just a couple of
4 questions about the chart that you've included that was the --

5 MR. BORDEN: Oh, the price chart.

6 COMMISSIONER PALECKI: The price chart that was the
7 confidential situation. When you talk about a bid, what is the
8 information that the bidder provides to make a bid? Is it a
9 single number?

10 MR. BORDEN: In this case it was. It was a dollar
11 per megawatt hour number for this particular product, which I
12 think this was two years' worth of 5 by 16 or peak power
13 starting in May 2002, for instance.

14 COMMISSIONER PALECKI: And I think you mentioned that
15 that included fuel in this particular example?

16 MR. BORDEN: Yeah, this wasn't a tolling example, so
17 this is dollar per megawatt hour however they came about it.

18 COMMISSIONER PALECKI: So where you have a situation
19 like this where fuel is actually included in the calculation,
20 the bidder is taking all of the risk with regard to what the
21 fuel market will be over the next couple of years?

22 MR. BORDEN: Yes.

23 COMMISSIONER PALECKI: If one of Florida's utilities
24 went ahead and conducted an auction of this type and not -- no
25 one really submitted any serious bids, is there any way that

1 the ratepayers can be protected against a situation where all
2 of the bids are very high and no one really comes down to what
3 we would consider a reasonable price for our ratepayers here in
4 Florida?

5 MR. BORDEN: Well, in that case, if that was a fear
6 you had going in, you might want to require that a reservation
7 price be established so that you don't end up having -- I
8 really believe this has happened sort of in the opposite way in
9 the telecommunications business, I think, in southern
10 California, where I think in that case one of the Bell
11 companies basically came out with a newspaper statement that if
12 you're going to win the market in Los Angeles, you're not going
13 to make any money because we're going to underbid you no matter
14 what you do. That had the effect of people staying away and
15 not bidding, and they came in and they took the bid for --
16 compared to forecast, pennies on the dollar.

17 So you should worry about that for this kind of bid
18 at all -- also that someone could come in and bid -- I'll make
19 up numbers now, but -- because we all know this is -- given
20 where the IPP business is today, you know, \$10 a kilowatt
21 month, if you could get that, you'd do it all day long; right?
22 Someone comes in at \$10 a kilowatt month for capacity for 7,000
23 heat rate capacity, you know that's too expensive. All right.
24 So you might want to establish a reservation price through --
25 the IOUs, they know what it costs to build this equipment.

1 They're doing this all over the country, some of their
2 affiliates. All right.

3 Florida Power & Light, Florida Power Corp, TECO, Gulf
4 Power, all these people know what it costs to build combined
5 cycle power stations. You should be able to get a sense from
6 them what is a safe bet. If you put the number in there -- the
7 reservation number that's in too low, you won't do yourself any
8 good either, right, because no one will go below it. And so
9 what have you got? Well, you've got an unattainable outcome.
10 All right. But you probably want to think about a sensible
11 reservation price in a case like that.

12 COMMISSIONER PALECKI: So in that case, the
13 investor-owned utility would put in a sensible reservation
14 price and if no one underbid the investor-owned utility, then
15 that would be the price that the utility would get for building
16 its own plant.

17 MR. BORDEN: Right. I mean, you have lots of issues
18 still. Certainly if it came across like that, I didn't mean it
19 to. You've got, I think, technical regulatory issues to deal
20 with concerning rate base versus how you flow through capacity
21 charges and things like that, but generally, yes. The answer
22 is yeah. They -- I think to the extent that you can obligate
23 them to build then, that's what they would receive for their
24 generation that they built.

25 COMMISSIONER PALECKI: Are there any other mechanisms

1 you can think of that could help protect the ratepayers to
2 ensure that the ratepayers achieve the best bang for their
3 buck?

4 MR. BORDEN: I guess strategically -- remember,
5 that's the beauty of California. You've got lots of examples
6 of how not to do it out there. For instance, you don't go out
7 to negotiate long-term contracts during the middle of a crisis.
8 Timing is important. All right. We're having another 100
9 degree day today. You want to go out there when the conditions
10 are right. The good thing about this business right now for
11 Florida consumers is, the rest of the world is sort of off in
12 terms of capacity development. That business is extremely slow
13 right now. So this is a good time to be thinking about adding
14 generation capacity certainly compared to a year and a half
15 ago. Sort of -- the IPPs' world started coming apart last
16 April or May, roughly. All right.

17 So you want to protect yourself by going out for the
18 capacity at the right time. Probably in that same spirit, you
19 might want to do it in smaller chunks. I don't know if you
20 want to do 2,000 megawatts at a time, maybe you want to do
21 500 megawatts at a time. So doing it in smaller chunks
22 probably helps as well, but very importantly, get the crowd of
23 suppliers to be as big and as bloodthirsty as possible.

24 COMMISSIONER PALECKI: Now, you mentioned earlier
25 about before the bidding even starts, maybe for three months or

1 six months, for a long period before that, the preparations for
2 the bidding begin, and would that include an entire contract so
3 that when someone places a bid it's, you know, protected --

4 MR. BORDEN: It's just like signing the contract
5 pretty much at that point because you're bound by it, you know,
6 with the condition that you win. I mean, there are provisions
7 for the -- that the -- they issue or releasing you from your
8 bid when they discover that you're not the winner any longer.
9 For instance, the example we gave with the prices there, we
10 released all those suppliers. The green one and the blue one
11 and so forth, those guys got released in between rounds, all
12 right, so they can get on with their business, and they weren't
13 exposed any longer.

14 COMMISSIONER PALECKI: Thank you.

15 MR. BORDEN: But yeah. So the answer is, yeah,
16 you're at contract signing time essentially at that point.

17 COMMISSIONER PALECKI: And that's why you need maybe
18 a six- or three-month for a large chunk of capacity so that all
19 of the parties have an opportunity to familiarize themselves
20 with the entire contract.

21 MR. BORDEN: Yeah, I mean, a tolling agreement is
22 going to be thick. I mean, you're going to have -- you'll
23 probably have 30 pages of heat rate conversion tables where the
24 heat rate of your machine or your output of your machine will
25 be temperature dependent, humidity dependent, loading level

1 dependent and so forth. So you're going to get all the GE
2 tables thrown in there, for instance, or whoever the
3 manufacturer is.

4 Capacity is technically difficult. It's a lot more
5 difficult than firm liquidated damages energy that you hear
6 about. That's quite a bit simpler, for instance. So it's
7 going to take several months. And if you get to a point -- you
8 could get hung up on something like credit. I mean, credit is
9 one of the biggest issues today in the power business because
10 of Enron and PG&E bankruptcy and so forth. You've got to
11 resolve the credit issues up front too. All right. And that's
12 not trivial. But I suggest you're better off doing it up front
13 than after, because once you conduct the auction and you've got
14 a winner, now you're one-on-one, and all the leverage you were
15 using to get to the best price before the auction is gone.

16 If you leave the important things undone like credit
17 and some of the other things undone, then you're one-on-one
18 negotiating, right, after the auction is done, and the fire of
19 the competition is gone. So you do that up front, and I submit
20 that it's possible and desirable.

21 COMMISSIONER PALECKI: A few days ago Howard Troxler
22 in the St. Petersburg Times wrote an article wherein he pointed
23 out that the investor-owned utilities have an obligation to
24 serve that they have honored very strictly in the state of
25 Florida and that the independent power producers don't have

1 that obligation to serve. And he advised this Commission to
2 take steps to ensure that Florida's ratepayers are protected in
3 the event of failure of a nonutility generator to perform. How
4 can we ensure that our ratepayers are protected from
5 nonperformance? Can that be accomplished through the contract?

6 MR. BORDEN: I think that's probably really the best
7 way, because you might have, for example, something like the
8 investor-owned utility has a right to take over those
9 facilities or to buy them out at a preset price if they don't
10 perform. They may not be performing for financial reasons that
11 don't have anything to do with the operation of that power
12 plant, for instance. And you don't want that to affect the
13 power that's delivered to the retail customers.

14 So you might have something in there that if they
15 fail to perform, that the IOU steps in and has a right to buy
16 out the facility and take over the operations, for instance.
17 You might even want that to apply to the construction phase,
18 all right, because what happens if someone doesn't get through
19 the process on building a power plant, for instance? All
20 right.

21 When Enron collapsed, Enron had a very, very active
22 EPC contract or as part of Enron called NEPCO. They were out
23 building lots of power plants throughout the country. So the
24 company that I -- I won't name them, but the company that I was
25 with had four large contracts with NEPCO, and that put us

1 upside down in an incredible number of ways as we were trying
2 to meet our obligations to get our power plants on-line per the
3 contractual requirements.

4 The beauty of it, though, is that there's nothing
5 like money and the possibility that you're going to go out of
6 business for getting you to do it right. All right. But you
7 do have to have the failure provisions in your contract up
8 front, and I suggest you want those up front rather than after
9 you've settled on price.

10 COMMISSIONER PALECKI: Thank you.

11 CHAIRMAN JABER: Mr. Borden --

12 MR. BORDEN: Yes.

13 CHAIRMAN JABER: -- if I could follow up on a couple
14 of things I just don't understand. With respect to -- you said
15 early on that the bidders in an auction should have assurances
16 that their highest bid -- if they come in with the highest bid,
17 it will be accepted.

18 MR. BORDEN: Probably the lowest bid in what we're
19 talking about.

20 CHAIRMAN JABER: Okay. That's what I need to
21 understand, because the conversation seemed to focus on the
22 highest price as it related to the bid. And my question was
23 this: Are you suggesting we get away from looking at the
24 lowest cost alternative --

25 MR. BORDEN: Oh, no. If I said "highest bid," I was

1 thinking of the other auction where you're bidding to buy
2 something, where the highest bid, you know, buys the art.

3 CHAIRMAN JABER: Okay.

4 MR. BORDEN: All right. So if I said that, I just
5 had it backwards.

6 CHAIRMAN JABER: All right. And in the auction
7 process, is there room to accept -- and I don't know if from a
8 technological standpoint this is even realistic, but let's say,
9 Calpine comes in with a bid that has a combined cycle unit for,
10 you know, 500 megawatts at "X" price. And for whatever reason,
11 Florida Power Corporation has the same combined cycle unit, and
12 through economies of sale or, you know, technical expertise or
13 just the design of the system, I don't know, actually comes in
14 with a lower price, but they are identical units for all
15 intents and purposes, but Calpine's bid higher, let's say,
16 again with the clarification you just made. Is there room in
17 an auction for this Commission to say, well, you know, there's
18 nothing wrong with a self-build? Will it have that sort of
19 flexibility? And assume that it is a Florida Power Corp --

20 MR. BORDEN: Yeah, I suggest that you place the
21 burden on the exceptions because you're out for the lowest
22 price, and if you're going to accept something other than the
23 lowest price, the burden ought to be on that, because otherwise
24 you're sort of back in the muddle world of, well, what other
25 criteria? And if someone thinks it's going to be price and if

1 you're thinking of including something other than price -- and
2 if you're going to include risk, be very careful how you do it,
3 all right, because we had a speaker up here earlier who talked
4 about the relative riskiness of a longer term commitment
5 relative to a shorter term commitment. You better quantify
6 that and tell people how you're going to quantify that;
7 otherwise, they're not going to know what to do with it.

8 CHAIRMAN JABER: Okay. And then my final question
9 relates to self-build versus the PPA arrangement. I've read
10 the comments and listened to you explain the auction process,
11 and I gather that your definition of the auction process really
12 has everyone participating in a PPA process, not a self-build
13 option at all. It would be moving the companies away from the
14 self-build approach.

15 MR. BORDEN: Well, no, that's probably really about
16 the deal structure. If you have an auction and they
17 participate, they have to participate like other people do. I
18 mean, presumably we got to these RFPs here because people were
19 I think -- my understanding is, by law, if you're going to
20 self-build, you know, within a certain scope, you have to go
21 through an RFP process that has these characteristics; none of
22 which I've ever read has ever ruled out using an auction. And
23 I've never heard the IOUs ever talk about ever excluding the
24 possibility of running their own auctions. I expect to be
25 talking with Florida Power & Light and these other

1 investor-owned utilities about conducting auctions for some of
2 their shorter term stuff. We've already approached some of
3 them.

4 CHAIRMAN JABER: Okay. Mr. Wright, that was probably
5 a better question for you. I was looking at the Calpine
6 comments, and it really -- the focus was on the PPA
7 arrangements and how companies would all be participating in
8 closed bids for purposes of auction. Can you clarify my
9 thinking on that? Is that a movement away from allowing the
10 self-build option?

11 MR. WRIGHT: The IOU is welcomed under our scenario
12 as I think it should be. The IOU -- all the IOUs in Florida
13 either in their own names or through subsidiaries, affiliates
14 are welcome to bid.

15 CHAIRMAN JABER: And they win the bid.

16 MR. WRIGHT: Pardon?

17 CHAIRMAN JABER: And they win the bid.

18 MR. WRIGHT: Yep.

19 CHAIRMAN JABER: They would just self-build.

20 MR. WRIGHT: Well, they would self-build, but the bid
21 they would win would be for the parameters that you would set.
22 In our conceptual framework that we've laid out in our comments
23 to date, in the conceptual framework we've laid out, you would
24 set the parameters of what is being bid on, and that might be a
25 10-year PPA; it might be a 15-year PPA; it might be a 30-year

1 PPA. It might be a 10-year PPA with a 5-year reopener, but
2 whatever it is, it would be known on the front end. Everybody
3 would be welcome to bid. The lowest price should win.

4 CHAIRMAN JABER: I know I'm missing something
5 fundamental here, so bear with me.

6 MR. WRIGHT: If the utility wins, it builds its
7 plant.

8 CHAIRMAN JABER: Right.

9 MR. WRIGHT: And it's obligated to deliver the power
10 pursuant to its bid. If it says, we're going to deliver this
11 power for \$5.00, you know, whatever, let's say, \$5.75 a kW
12 month for 15 years, they win; they get that revenue
13 requirement.

14 CHAIRMAN JABER: Okay. But that's not a PPA
15 arrangement; right?

16 MR. WRIGHT: No -- well, it could be. If it was
17 through a subsidiary, there could be a PPA. If it was through
18 a self-build, there wouldn't necessarily have to be a PPA, but
19 they would be bound to deliver on the same terms as anybody
20 else who was bidding would have been bound by the PPA.

21 If you're bidding 5.75 a kW month for delivering
22 500 megawatts at a 94 percent equivalent availability factor
23 over 15 years and there are penalties in the PPA that says, if
24 you only make 91, you get 4 percent off, if you make 89, you
25 get 7 percent off, whatever you-all say the terms are going to

1 be -- and remember, too, in our proposal, the IOU in question
2 will propose the contract on the front end. They will lay it
3 out. And I know FPL has a standard form contract. I know that
4 EEI is in the process of -- has a big working group working on
5 a standard form contract. This isn't, you know, big, big news.

6 The winner would win and would get the benefit of the
7 bargain that it offered, and then on the other side, the
8 ratepayers would get the benefit of the bargain that was
9 offered by the lowest cost bidder. If it was self-build, there
10 might not be a PPA. I'm --

11 CHAIRMAN JABER: Right.

12 MR. WRIGHT: There might not be a PPA, but there
13 would be ratemaking treatment that would be identical to that
14 which would have obtained had there been a PPA or had the
15 winner been an IPP like Calpine or Reliant or Mirant or PG&E or
16 Duke or whomever had won and then executed a PPA on the terms
17 set forth.

18 CHAIRMAN JABER: Mr. Borden.

19 MR. WRIGHT: And then if FPL Energy bid in FPL's RFP,
20 they'd get it.

21 CHAIRMAN JABER: Okay. Mr. Borden, were you done
22 with your presentation?

23 MR. BORDEN: Yes.

24 CHAIRMAN JABER: Commissioners, did you have any
25 other questions?

1 Thank you.

2 MR. BORDEN: Thank you for giving me the opportunity
3 to put GenEnergy at least on somebody's radar. I appreciate
4 it.

5 CHAIRMAN JABER: Thanks.

6 Mr. Twomey.

7 MR. TWOMEY: Madam Chairman, Ernie Bach, the
8 executive director of the Florida Action Coalition Team, has
9 some short comments, and I'd like to follow those with some
10 more technical legal comments.

11 CHAIRMAN JABER: Mr. Bach.

12 MR. BACH: Good afternoon, Madam Chair,
13 Commissioners. My name is Ernie Bach. I'm the executive
14 director of the Florida Action Coalition Team. First, let me
15 thank the Commission for scheduling this workshop and what I
16 sincerely hope will be any further necessary workshops and
17 formal sessions on this issue. Also, I'd like to commend the
18 Staff on their significant efforts and their recommendations.

19 The fact is, there's a statewide coalition comprised
20 of individuals, groups, and associations, a majority of which
21 are citizens and electric users and ratepayers in the major
22 service areas. So let me please dispel immediately the myth by
23 some at the other side of this room that I'm here without
24 reason or standing. We thank Commissioner Deason on the record
25 for his decision last week in making us an intervenor in the

1 associate issue on this.

2 Late yesterday, I also received a copy of the
3 aforementioned stipulation filed by the major IOUs, and both I
4 and Mr. Twomey, our attorney, will reply to that ridiculous
5 self-serving document. As to the stipulation, I am not a
6 lawyer. And as with the Chair, I do appreciate the effort to
7 mediate. However, to this layman, it's rather obvious that
8 that stipulation is not ready, and it should not be acted on by
9 the Commission other than to turn it down.

10 We also had a lot of notes on this, and I'll just
11 briefly, rather than be redundant, touch them. We had a
12 question of what a milestone was, where it came into play, the
13 process of the invitations to the Staff to observe the
14 negotiations, a toothless tiger, in our estimation. We had no
15 problem with designating a liaison who will be responsible for
16 working with the Staff. That sounds good. But making the
17 evaluations and making decisions remaining within the power of
18 the IOU we're opposed to, significantly.

19 In our mind, if you agree to this, which is part
20 Number 3 of the stipulation, there's no use for parts 1 and 2.
21 Number 4 states that the stipulation is conditioned upon a
22 decision by the Commission to close this docket. Again, I'm a
23 layman. I would profess not being too legalistically capable
24 on this, but it would seem to me, from what I understand and
25 what I've heard this morning, that there was going to be no

1 chance to close this docket; therefore, it would seem to me
2 like that stipulation agreement is a moot question at this
3 point.

4 But to put that stipulation based upon a Commission
5 decision to close the docket, absolutely not. Why? Because it
6 keeps, and this is what they have been trying to do, keep the
7 voice of the ratepayer from a seat at the table. You must not
8 allow this kind of governing.

9 And to their last point, Number 6, the stipulation
10 will not apply to or affect RFPs or related capacity additions
11 that are currently underway, we believe absolutely not. This
12 is a primary reason for our participation to this issue. As
13 mentioned previously, and as I think I said last time when I
14 came and testified to this Board, there is no reason why a
15 three- or six-month moratorium should not be held on the
16 current applications while ills are being cured. It's not
17 going to cause Florida to fall into the sea.

18 With that course of action in mind, it's our
19 expressed desire that the PSC set a quick time line to move
20 forward but to do so with that moratorium on the existing
21 applications currently underway so that any mindful, any
22 necessary changes to the rules would then include that doctrine
23 that we've heard so much about this morning of the fairest and
24 best to these major applications in place before the fact,
25 before the fact, rather than exclusively after the fact.

1 This is big. Even Mr. Sasso admitted this morning.
2 It's a billion bucks. It's a big deal. Let's do the right
3 thing before the fact, not try to compensate for it after the
4 fact.

5 As to the Bid Rule, it's beyond the public's
6 comprehension to understand the rule book which permits, and
7 let me give a few analogies here, the card game where the
8 dealer gives everybody that's playing their cards. They look
9 at them. They make their draw, and then the dealer looks at
10 all the rest of the cards that are available and picks out the
11 best hand that he can play against them. There's the analogy
12 of the beauty contest where you have all these beauties lined
13 up against a wall, and the judge is one of the beauties who
14 happens to be the IOU. Who gets the award and the trophy? And
15 of course, there's the old fox in the hen house. But in this
16 case, the fox just does not attack the hen house, he's living
17 in there. He's getting fat.

18 Now, it's our hope and our desire that the PSC not
19 only consider but will institute necessary changes in these
20 scenarios and the Bid Rule by some form of implementing an
21 objective review and a decision-making process by some
22 qualified individual or group other than the IOU implementing
23 the RFP.

24 With respect to the public and its broad outlines and
25 perspective regarding this Bid Rule, we point to the fact that,

1 as you well know and a gentleman spoke earlier that he voted on
2 this when he was on the Commission, the fact that the passage
3 in 1994 and the ensuing RFPs that have been led since then, the
4 fact remains that the Florida IOUs have always awarded
5 themselves the contract. Is it any wonder, is it any wonder
6 that the public views this process with distain? They look at
7 it as fictitious, imaginary, and illusionary. Is it any wonder
8 that the public, the ratepayers, do not feel assured that they
9 are receiving the most transparent and the fairest options? Is
10 it any wonder that the public does not have confidence in the
11 utilities' actions and, unfortunately, a waning confidence in
12 the Public Service Commission?

13 I'd like to bring your attention to a recent event
14 that occurred in Long Island. I picked this up off a news wire
15 last week. Long Island up in New York. It appears that New
16 York with its open rules have just awarded Florida Power &
17 Light with a contract to supply electric generation by the
18 building of a merchant plant. Interesting. We see that as an
19 obvious success story and that the rules permitting outside
20 applications and awarding contracts to companies outside the
21 state does work, in this case, especially for FPL.

22 I'd also like to point out that statewide media, as
23 I'm sure you're aware of, Commissioner Palecki mentioned
24 Mr. Troxler's column last week, actually came out all across
25 the state in strong support of our consumer perspective and our

1 comments and suggestions regarding the opening of this issue
2 regarding a review and a revision of the Bid Rule.

3 A couple of earlier comments regarding changes in
4 rulemaking, quote, makes a loser of us all, unquote. I mean,
5 that's ludicrous. Good change always has winners. So that
6 kind of statement gains nothing. Another quote from this
7 morning. The stipulation advances the ball, end quote. And we
8 agree. But once again, it does so to the rule benefit of the
9 IOUs' gain and it's obvious. And a comment on one of
10 Mr. Green's statements which we strongly agree with, all of
11 this, your positions, this agency, the issue, this as well as
12 others that you face similarly, should and must be in the best
13 interest of the ratepaying public, period, period.

14 Am I being too naive? I don't know. All morning
15 long we heard every speaker, every lawyer, every lobbyist,
16 every representative expounding on that very statement. Now,
17 if I'm naive, then they're not telling the truth. So let me
18 close by recapping five points, if I may. Number one, we would
19 like you to stop the current bids. Number two, we would like
20 you to ensure the transparent and fair rules for all players,
21 for all players. We don't necessarily care who gets the
22 contract as long as it's the best deal for the consuming
23 public. Number three, act on these in an expeditious manner.
24 Number four, put the common interests first, as in your
25 mission, as in your obligation. And lastly, reject the IOUs'

1 stipulation. I thank you for the time, Madam Chair.

2 CHAIRMAN JABER: Thank you, Mr. Bach.

3 Mr. Twomey.

4 MR. TWOMEY: Madam Chairman, thank you. Mr. Bach is
5 handing out the poor man's PowerPoint. It's a three-page
6 outline I want to use to address my points to you. The
7 first thing I want to point out, which is obvious here, I
8 think, but the goal is, of course, the identification of the
9 most cost-effective alternative available. And that
10 requirement is placed upon this Commission not just as a nice
11 thing to do, but it's a statutory mandate that appears both in
12 Chapter 403 and as well as in Chapter 366.

13 We've had a lot of debate today. We've had earlier
14 debate in the comments in the workshop proceedings before
15 wherein the IOUs essentially say to you, you cannot do this.
16 You cannot modify the rule as the other parties want. Or as
17 the Staff has suggested, we don't think you have the statutory
18 authority to, in fact, necessarily have the rule that you have
19 currently. The IPPs essentially say, as I read them, this is
20 something you should do.

21 Okay. What fact is to you essentially is, is that we
22 think that you have a statutory obligation to effect your rules
23 to achieve better tools in order to ensure, guarantee the
24 outcome of the statute that you find the most cost-effective
25 alternative available.

1 And, Commissioner Bradley, it's not, at least from
2 our perspective, it's not -- and I think it was true of the
3 IPPs, it's not a criticism of the Commissioners either
4 individually or collectively to say here that we don't think
5 the process is working right. Okay. It's not we're saying
6 that you're not doing your job. We're not trying to do your
7 job. What we're saying, at least what fact is saying, is that
8 we think you have available to you a new tool, or you have a
9 tool that's new in 1994, the Bidding Rule, and that you need to
10 fine-tune it to better obtain the results that the Florida
11 Legislature directed you to obtain; that is, they want you to
12 fine the most cost-effective alternative available. It's not
13 permissive, it's mandatory. So does the current rule lead us
14 to that result? Can we guarantee it? I would suggest that it
15 does not. Okay.

16 We've got two major problems I'm going to talk about.
17 One of them is the self-bidder's extra card Mr. Bach just
18 talked about. Everybody that looks at this, virtually
19 everybody looks at this and says, on the face of it, man, this
20 is just fundamentally unfair. How can you let people have a
21 bidding process and then let one other party take an extra wack
22 at it? You know, it's not fair. There's nobody that can
23 explain how it's fair.

24 Now, I've heard a lot of people over the months
25 defend it as being in the public interest because they say,

1 well, it still gets us the best price even though it doesn't
2 appear to be fair, because you've got the lowest bidder, and
3 then you always get a better deal because you let the IOU
4 undercut the low bid, which by definition some people would
5 think leaves you to the best result for the consumer.

6 Mr. McGlothlin earlier today addressed that in the
7 business of going out and looking for a car. Okay. You make
8 everybody sharpen their pencil and bid at the same time and
9 fully aware that they don't have the right to come in and
10 undercut, namely, the IOU, and you will probably get a lower
11 price yet. If you use Mr. Borden's methodology described where
12 you have the English-Dutch auction, okay, then you still
13 maintain, as I understand the process he described, you still
14 maintain the ability to have a second bite of the bid apple, if
15 you will, allowing a person to undercut the first level winner,
16 but you let everybody do it. You let everybody do it so that
17 if the IOU in that process is one of the two or three or
18 whatever number you've maintained for the Dutch portion, the
19 sealed bid, they might come in with a substantially lower bid
20 than they would if they were self-dealing their extra card.

21 For example, Florida Power & Light, I've read
22 recently, said their selection of their own self-bid options at
23 the Martin and Manatee plant sites, they project to save their
24 customers something on the order of \$80 million. How do we
25 know that if they had to go through the English-Dutch auction

1 process, that it wouldn't have been 85 million or 90 or 100?
2 And the simple answer is, is that we can never know that. They
3 got to look at everybody else's bids. They decided they would
4 come in with a certain amount of money, and they would call
5 80 million the best deal possible and go with it. That's not
6 fair. It's not the most productive way to do it. I think what
7 Mr. Borden showed you is not only fairer but it is guaranteed
8 to give you lower prices than what we're getting now. And you
9 can't argue against it.

10 Now, the current process has a second problem, and
11 that is, is that you've let the IOUs -- I say you let them,
12 this is what they have been doing -- self-build. They undercut
13 the IPPs, which as Mr. Borden pointed out, after a while these
14 people, the IPP folks, are going to get tired of beating their
15 head against the wall, and they're going to quit doing it.
16 That's not good for us, any of us. But you let the IOU come in
17 and underbid, and it says, we've got the winning deal; it's
18 \$80 million; we promise. Part of the problem historically, as
19 best I can tell, is there's no real supervision to see if they
20 keep their bids. That's why it makes so much sense that
21 whether it's for a contract capacity or energy or whatever it
22 is, that the IOUs have to submit the same type of bid. And if
23 they win, they have to play by the same type of rules that they
24 would hold the IPP to. It just makes sense. I mean, you can't
25 do it any other way.

1 Now, I want to address something that I've got in a
2 later note, but the IOUs this morning -- I think it was
3 Mr. Sasso, but I'm not sure which one -- said, we're a special
4 case. We've got an obligation to serve. We have to own our
5 generation. I guess that's what he said. That's not true.
6 They're not special. There are utilities all over these United
7 States and including a good number in the state of Florida that
8 don't own the first generator or battery, they buy it, all over
9 the country. And we're talking about -- and they protect
10 themselves by the use of proper contract conditions, credit,
11 Mr. Borden said; right? You draw up the contracts right,
12 you're protected. The IPPs fold financially, IOUs take over
13 the plant, march in with their guys, run the stuff, keep the
14 same people, use the same fuel, you name it. That's not a
15 problem. It is done all the time. All utilities have an
16 obligation to serve. These people aren't unique, and that's
17 the misconception, in my view, that we need to discard right at
18 the beginning so they don't get special consideration for that.

19 Now, the next couple of positions I have here, I've
20 taken the time -- I don't mean to bother -- or bore you on
21 this, Commissioners, and take too much time on this, but the
22 IOUs have said consistently, you don't have the statutory
23 authority to do this. Now, Mr. McGlothlin cited you to the
24 Oshansky (phonetic), or whatever that name of that case is.

25 MR. MCGLOTHLIN: Osheyack.

1 MR. TWOMEY: I could never pronounce that. Thank
2 you, and I'll get it later. I read that case to say basically
3 that the Florida Supreme Court said, you all, the Public
4 Service Commission, if you say you're going to do something in
5 the exercise of a specific or even a general statute in the
6 public interest, there's not much you can't do. I mean, if you
7 read that case closely, it says you can do it.

8 Now, Commissioner Bradley, I know how sensitive you
9 are on legislative awareness and towing the line and
10 everything. The Roman Number IV I've got there on the
11 first page at the bottom, Chapter 366.01, it says -- it's the
12 very first section of 366, okay -- regulation of public
13 utilities, meaning the gas and electrics, is declared to be in
14 the public interest. It's an exercise of the police power for
15 the protection of the public welfare, and the most important
16 point, I think, Commissioners, vis-a-vis what your authority
17 is, is that all the provisions hereof shall be liberally
18 construed for the accomplishment of that purpose.

19 Well, let's keep in mind, Commissioner Bradley, this
20 is the Legislature that wrote this language. And when they
21 said, these provisions shall be liberally construed for the
22 accomplishment of the purposes of the whole statute, the whole
23 chapter, that was a message not only to you-all to be liberal
24 in your interpretations of what you can do in order to try and
25 protect the public interest as you see the statute is to

1 require it, it's also a message to the appellate courts that
2 they're to look at these statutes and liberally construe them
3 to allow you to do the things that you think you're supposed to
4 do.

5 As an aside, when I was here for almost ten years, I
6 frequently advised Commissioners and senior Staff and
7 management that it was my view, and it's consistent with what
8 Mr. McGlothlin told you this morning, is if there's a close
9 call, it's not just your right to try and exercise your
10 jurisdiction, in my view it's your obligation. Do what you
11 think is best. Do as much as you think you should do and can
12 do liberally construing these statutes and make somebody else
13 tell you you've gone too far if you think what you're doing is
14 the proper thing.

15 On the next page, since you're supposed to act in
16 protecting the public interest, what defines the public
17 interest? Is it IOUs? Is it the IPPs? Co-generators? Large
18 customer groups? Is it the 16-million-plus residents of this
19 state who consume electricity? Or is it a mix of all those?
20 It's probably a mix of all those. I will repeat to you what
21 Mr. Bach said, from fact's perspective and I think from the
22 perspective of consumers throughout the state, we don't care if
23 the IOUs get each and every contract they put out to bid or if
24 the IPPs get 50 percent of them so long as we can be confident
25 that the result, the bidding process was fair, and that we can

1 be confident that the lowest cost alternative available got it.
2 Okay.

3 Now, I'm not going to go through the rest of the
4 statutes in any depth that I've got on the rest of the page,
5 but I included them on this little outline because they are
6 replete with directions to you from the Florida Legislature
7 that you find out when setting rates what the cost of service
8 is. And when you read closer and you go in the case law, as
9 you all know, it says, you've got to find out what's prudent,
10 you've got to find out what's used and useful and all that
11 other stuff, but you've got to essentially make sure that these
12 people and all the companies you regulate got the best deal
13 that they could; otherwise, by definition, they're imprudent.
14 And the Commission has in the past made disallowances. It's
15 your job. I just wanted to point that out because consistent
16 again with that Supreme Court case that I can't pronounce, you
17 don't need specific directions in the statute that you can have
18 a rule on this and this and this. Based on what Mr. McGlothlin
19 said, and I won't repeat, you've got general authority. You've
20 got very precise language about what you're supposed to do in
21 terms of protection of the public, and you've got Chapter
22 403 that says, the most cost-effective alternative, and 366 is
23 replete with sections that say, you've got to find the lowest
24 price.

25 How do you find the lowest price? I've done a lot of

1 rate cases in this state for this Commission. When you go to
2 an FP&L rate case or a Florida Power Corporation rate case or
3 any of the rest of them and they have a fleet of trucks,
4 typically you don't have to worry about whether they got the
5 best deal if they bought their fleet pursuant to a competitive
6 bid, a fair bidding process, the same with their staples, the
7 same with their fuel oil and the like. Okay. If there was a
8 competitive bid process involved in the procurement of any
9 goods going into the production of electricity or the services
10 involved, you could be confident, you could be highly confident
11 that they had the best price if it was bid. Okay.

12 Some of the biggest problems, conversely, that this
13 Commission has experienced, at least when I worked here, was
14 when utilities, any regulated company self-dealt. Okay. I
15 think it was GTE and the telephone services, that was a
16 problem. When I worked here, we spent years dealing with
17 trying to figure out whether two of the companies, TECO and
18 Power Corp, got the best price of coal and coal transportation
19 because they were dealing with subsidiaries and affiliates.
20 Okay. Anymore, Commissioners, particularly with the advent of
21 the combustion cycle units -- I mean, the combined cycle units,
22 generators are becoming more of a commodity than they were back
23 when they built one off clean sheet of paper units. There is
24 no reason why power plants any longer or energy in today's
25 market, especially if there was a glut, temporarily at least,

1 can't be treated like everything else. And it is the only way
2 we can know with confidence that the IOU, if they win, or if
3 the IPP wins is the lowest cost. So we think that's your
4 obligation to do that.

5 Now, on the -- I'll wrap up quickly, if I can. The
6 third page, we've covered the dispelling of the common
7 misconception. The rulemaking authority, we think you've got
8 it. We think you need to use it to modify this rule. The
9 needed improvements, the Staff recommendation is excellent.
10 Again, we commend the Staff for their good work on this. It
11 doesn't go far enough. Mr. Borden pointed out, I think
12 excellently, through the use of his slides and the other
13 speakers did as well, you've got to have a standardized
14 Commission-approved -- maybe not Commission-approved, you have
15 to have a standardized RFP. If you're going to get people
16 bidding for apples and red apples and that kind of stuff, you
17 have to say so, and you can't leave a fruit salad out there.

18 You've got to have a neutral third-party bid
19 evaluator. It might be the Commission itself. I thought one
20 of the IOU attorneys this morning said the Commission was the
21 only disinterested party in this process. It could be you. It
22 could be a firm like Mr. Borden's. It could be somebody else
23 that everybody agreed on, but you have to have the same numbers
24 going in at the start, and you have to have a dispassionate
25 neutral person to judge it. You can do the English auction or

1 the Dutch or both of those kind of things and you get a winner.
2 Okay.

3 You have to have, as we said before and it's been
4 said repeatedly for good reason, you have to have binding bids
5 for the IOUs. It's essential. It's essential. Otherwise,
6 they will come in of necessity and jack up the prices, and then
7 when you do that, if you allow it, you kill the whole bidding
8 process.

9 Time. Time is of the essence here, Commissioners.
10 The -- I pointed out in the fact comments we presented a couple
11 of weeks ago, according to the Governor's 2020 Energy Study
12 Panel, there's going to be some 29,400 megawatts of new
13 generation by the year 2020. That's a lot of power. If you
14 price it at, I think, \$450,000 dollars per megawatt that I
15 used -- and I think that's okay, maybe -- you come up with
16 \$13.2 billion in new construction that has to be paid for by
17 consumers. As we pointed out in our other comments which are
18 longer, even a small percentage of savings on that amount
19 returns savings of billions over the lives of the unit. It's
20 just the math. If you can save 5 percent on the cost of those
21 plants, if they're going into rate base, if you can save
22 5 percent on the cost of the purchased power contracts, the
23 savings accrue rapidly over time, and you're into the \$2,
24 \$3 billion savings just with, like, 5 percent.

25 So the -- in conclusion, we think there's an obvious

1 problem here. Everybody sees it. We're not blaming it on the
2 Commission. We're saying the tool that you came up with in
3 '94 isn't working properly. Most people recognize that and
4 recognize the need for change. We say that you have the
5 statutory authority, indeed, the statutory obligation to make
6 the change so that you can tell the Legislature, you can tell
7 the Florida people that when you approve a need determination,
8 that you know with something approaching 100 percent confidence
9 that it is the low cost alternative available.

10 We'd like you to make these changes with as great as
11 haste possible, because if we've missed this last round of
12 plants, the Martin and Manatee, if that's out of our grasp, we
13 don't want to miss too many more because they're big chunks of
14 plant. They're big chunks of money. And I'll close by saying,
15 we would ask you to decide as a result of what you've heard
16 today that you need this change, and to go ahead and direct
17 your Staff to prepare a draft rule for your consideration at an
18 agenda conference as soon as reasonably possible in the future,
19 maybe a special agenda conference, at which the parties here
20 could come forth and critique, again, what the Staff proposes
21 based upon what they've heard today. Okay. And then you all
22 take it up, debate it and make your decision. That wouldn't
23 preclude -- and do that again as fast as possible because time
24 is of the essence here. That wouldn't preclude the people on
25 this side of the table and the people on that side of the table

1 from negotiating. Okay.

2 We could start as early as Monday; we could start
3 tomorrow; whatever they want to do. We could get to the point
4 where Commissioner Bradley says, hey, you come out of your
5 corner a little bit, if they think it's to their advantage; the
6 people on my side of the table to come out of their corner a
7 little bit. If we think it's to our advantage, fine. They may
8 come a little bit further. But you don't want to start, in my
9 opinion, Madam Chair, Commissioner, you don't want to start out
10 saying to people, well, let's have some negotiations and see
11 where it goes from there. We need to have a clock. We need to
12 have a time certain that the Chairman's Office would establish,
13 presumably, that says, Staff's going to review this stuff as
14 fast as possible. They're going to give us a good
15 recommendation. We're going to hear it at an agenda conference
16 three months hence, two months, whatever it is, and if people
17 can settle before then, fine. Then we'll achieve all the great
18 goals you find in settlement and arbitration and that kind of
19 thing. If not, you take it, make your decision, promulgate a
20 rule or propose it, however we do it now, and let people take
21 their best grasp after that. So that's what fact I would urge
22 you to do, Commissioners, and we appreciate your time greatly.

23 CHAIRMAN JABER: Thank you, Mr. Twomey.

24 Ms. Brown, did you have any other presenters on your
25 list?

1 MS. BROWN: I don't think we have anyone else unless
2 there's anyone from the public in the audience or anyone else
3 who'd like to speak.

4 CHAIRMAN JABER: All right. Is there anyone in the
5 audience that has not signed up but does wish to address the
6 Commission?

7 Okay. And I'm going to give a final opportunity for
8 response from all of the commenters, and then we're going to
9 open it up to discussion by the Commission, because,
10 Commissioners, I'm interested in getting some feedback from all
11 of you on going forward. I have some ideas. At the right time
12 I will bring them up but, if you could, be thinking about that
13 as well. Okay.

14 Mr. Sasso.

15 MR. SASSO: Thank you, Madam Chair. I'd like to
16 begin by saying that I don't intend to address the issue of
17 statutory authority unless the Commissioners have any
18 questions. In which event, Ms. Blanton is prepared to address
19 that issue. We'll say only that counsel for our friends at the
20 other end of the table have relied on this Osheyack case,
21 that's an unpublished order of the Florida Supreme Court that
22 did not arise in the context of a rule challenge, and we did
23 discuss that at Pages 13 and 14 of our comments submitted on
24 March 15th, which were submitted as Exhibit A to our most
25 recent comments. And again, I don't feel any compulsion to

1 provide our views on the issue of statutory authority, but
2 we're more than happy to answer any questions if any of the
3 Commissioners have any.

4 We find ourselves in the odd position of defending
5 the policy judgments reflected in the current rule. And I say
6 "odd position" because, as Commission Deason pointed out in our
7 last workshop when we were all together on this subject, this
8 isn't a rule that we asked for. It's not a rule that the IOUs
9 drafted, crafted, or shaped. This was a rule that was crafted
10 by Staff and this Commission, and we didn't like it very much.
11 And there are aspects about it that we still aren't very happy
12 with, but we have operated under it; we have debated it openly
13 before this Commission; various IOUs have asked for waivers of
14 it and the rule has been further explained. And the fact is
15 that the current rule reflects a compromise. It reflects an
16 effort by this Commission to balance competing considerations.
17 It's not an IOU initiative, and yet we find ourselves defending
18 it as the baseline. Okay. Now, that's the given. That's the
19 IOU position. Now, let's go to the other end of the spectrum
20 and do what detractors would like, but that is not the IOU
21 baseline. We were somewhere else. And the Commission struck
22 the balance where we find ourselves with respect to the
23 existing rule, and I think it's important to understand that
24 because this reflects a considered judgment by this body about
25 what is in the best interest of the customer, not what's in the

1 best interest of the -- not in the best interest of the IOUs.

2 Importantly, the existing rule was enacted against
3 the background of our prevailing system of regulation in this
4 state, against the background of our prevailing regulatory
5 framework, which recognizes that we are not like any other
6 bidder. We do have an obligation to serve. That's not a free
7 ticket. That's a heavy responsibility. And the utilities view
8 it that way, and the Commission views it that way. And so
9 we're not like any other bidder. We can't delegate to an
10 auction house our decision about what's in the best interest of
11 our customers. We can't involve third parties who are not
12 accountable to this Commission in that decision. We have an
13 obligation to look at the information that comes in, carefully
14 evaluate it, make our best decision in our customers' interest,
15 and then present that to this Commission for its review and
16 approval.

17 Now, at this point in history, unfortunately, we find
18 ourselves in a position where whatever we say about these
19 matters is viewed with scepticism. We're an advocate of our
20 position. They're an advocate of their position. So what we
21 say about these policy judgments and so on is viewed with
22 scepticism. So for that reason, I think it will be helpful and
23 informative to consider what the Commission has said and what
24 the Staff has said about the policy decisions that underlie
25 this rule.

1 There was extended discussion about that when the
2 rule was first adopted, and it was recognized at that time that
3 this is not like any other bid process. In fact, Commissioner
4 Kiesling said in a DOAH hearing, I've seen lots of bid
5 challenges; this is not like any other bid process. And the
6 Commission and the Staff recognize that, recognize that this is
7 not like any other bid proceeding involving commodities or
8 contracts because of the obligation to serve. And the rule was
9 enacted with that in mind.

10 This next came before this body for extensive
11 consideration when Gulf Power asked for a waiver of an
12 important aspect of the rule in 1998. Gulf said, well, since
13 you enacted this rule, there is now more competition, and we
14 don't want to publish our number. This is an extraordinary
15 obligation that we have in conducting this RFP process. We
16 don't submit a sealed bid where nobody knows our numbers. We
17 have to publish our numbers out front. In the Hines 2 case, we
18 hired a consultant who said, that's not the way this works in
19 other parts of the country. You have an extraordinary burden.
20 You have to put your number out front and people can shoot at
21 it. And Gulf came in and said, that's not in our customers'
22 best interest. It's certainly disadvantageous competitively
23 for us to have to put our number out first. You're going to
24 get price convergence. Everybody is going to hover around our
25 number. And this was hotly debated before this Commission.

1 And these are the comments that were made by the various
2 Commissioners and Staff in this connection.

3 Commissioner Garcia pointed out, well, that's true,
4 that you have to put your number out, but you get another
5 chance. You have both an opportunity and an obligation to come
6 back after those numbers come in and take another shot at this.
7 This is what Commissioner Garcia said. He said, Gulf Power
8 comes. After all this process, we evaluate. Gulf Power
9 evaluates that bid, and then they can say, and I can do it even
10 better. And if the concern was everyone was going to be
11 hovering around that number, I agree with you, Gulf Power is
12 going to want to beat it, or the Southern Company is going to
13 want to beat it because it has certain advantages with it being
14 its own generator. And the ratepayers have that advantage.
15 Our comfort level would probably be greater when Gulf comes in
16 under everyone else. As a regulator, so be it. I mean, I've
17 got a tremendous benefit because we forced the price even lower
18 than what Gulf thought it could do.

19 Commissioner Deason pointed out, if they're required
20 to give their very best bottom-line price and be held to it,
21 speaking about Gulf, when they present their RFP, then they're
22 placed at a competitive disadvantage.

23 Mr. Jenkins, Joe Jenkins replied, I don't think
24 they're held to their RFP price. Gulf Power will get to draw a
25 second card; the bidders won't. Mr. Jenkins went on to

1 explain, that means that Gulf puts out its number in the RFP;
2 the bidders respond; they know they have to beat that price.
3 And when all of those prices come in through the passage of
4 time, say, in about two or three months, then Gulf Power can
5 come out with still another number. They're not held to that
6 number.

7 Chairman Johnson, then tell me again why they put
8 that number -- why we're making them put that number on the
9 table in the first place.

10 Mr. Jenkins, to prevent like we saw in Tallahassee,
11 some real high prices coming in. And Tallahassee did not
12 reveal in its RFP its number. So without the IOUs putting
13 their bogey on the table, this is what our number is, what was
14 happening? The IPPs were submitting high prices, and so the
15 Commission Staff said, we've got to start by making the IOUs
16 put their number on the table, the number they have at that
17 time when they start the process. We're not going to hold them
18 to it. They can come back and try to do better, but we've at
19 least got to do that to get some low prices in.

20 Commissioner Garcia said, this just keeps forcing
21 them all to go lower.

22 Mr. Jenkins, and again, I come back to Gulf Power
23 will get to draw from the deck again. And he's not saying this
24 pejoratively. This is his recommendation. Gulf Power will get
25 to draw from the deck again after it -- you know, a second

1 time. And as far as fairness goes, if you wanted to be totally
2 fair, at one time we discussed where the Commission would
3 evaluate the bids and not the utility. The bids would be
4 submitted to the Commission, and we would open them and
5 evaluate them, but we wanted to get out of that. So the
6 compromise was for the utility to issue a target for people to
7 shoot at, knowing that they're not held to it. And then later
8 on, the utility gets to draw from the deck again with a new
9 number and come in and justify it. It forces the utility to
10 rethink and become more efficient.

11 Let's say, initially Gulf proposes \$100 a kilowatt.
12 And all the bidders come in at, say, you know, 95 or 90. And
13 Gulf says, aha, if I want the business, I've got to do better.
14 I've got to go down to 85. And that's what we see in these
15 bidding processes.

16 Commissioner Garcia, but conversely, Joe, they can
17 come in and say, these 90 or 95 aren't in the best interest of
18 Florida because they're not as reliable. That's not something
19 you can deal with in an auction. He says, you can't count on
20 them. We're going to have all sorts of problems. And we could
21 still settle on their 100.

22 Mr. Jenkins, and frankly, if the bids were close, I
23 would prefer that Gulf build it because it goes in the rate
24 base and not through a cost recovery clause, Chairman Jaber's
25 earlier comment.

1 Commissioner Garcia continues, no matter how good the
2 bid is, Gulf Power is going to look at it one more time. And
3 clearly, with all the advantages that Joe spoke about. If I
4 can meet your price, I'm going to say good-bye Duke because
5 it's Gulf, because I know them, because it's part of the
6 system, because we feel comfortable with that. And I think the
7 Staff recommendation would probably go with them; correct?

8 Let me give you my -- I'd probably feel more
9 comfortable -- all things being equal, I'd probably go with
10 Mr. Stone's company, all things being equal. Because for the
11 ratepayer, Joe Cresse, who is representing TECO in this
12 proceeding, stated, there are certain advantages in the long
13 run.

14 This goes on. Commissioner Clark, I will admit that
15 it gives the person who has the last opportunity the ultimate
16 advantage. And in this case, if I understand it, it's the
17 utility.

18 Mr. Ballinger, and I think they should. As long as
19 we have a regulated environment in generation and as long as
20 they have the obligation to serve, I think they should have
21 that second advantage.

22 Commissioner Clark. Now, this is when the Commission
23 was about to act on Gulf's request for a bid waiver. And
24 Commissioner Clark gave her reasoning for denying the waiver.
25 She said, I'm comfortable denying the waiver only because Gulf

1 has a second chance. She says, the last evaluation will be
2 Gulf Power's, and they will have an opportunity to put in yet
3 another bid showing that they can meet the price. And in the
4 end that will result, in my view, at least under the scenario
5 we've presented, with the least cost to the customers. So a
6 need for the waiver which was to benefit the ratepayers has not
7 been demonstrated.

8 Chairman Johnson goes on. She says, I see the
9 arguments on both sides. In fact, I came in here, I was
10 prepared to grant the waiver, she says, but as we've had the
11 dialogue I've changed my mind, she says. So when Gulf made
12 their argument as to what putting this bid out there would do
13 and the fact that that would start the bidding process higher,
14 and that independents would come in right under Gulf, to the
15 extent that is true, that is ameliorated by the fact that Gulf
16 can then come back in. And in my mind, if we do have a lot of
17 providers in the market, we're dealing with a competitive
18 market, I'm hopeful that that would not happen; that is, that
19 the bids all come up right under Gulf's.

20 But we have a check in place because it does give you
21 another opportunity. That I was not clear, and when
22 Mr. Jenkins said that I thought, well, okay. But it has been
23 repeated several times in such a way that I find some comfort
24 in knowing that we're probably going to get the lowest price
25 because, Gulf, you have to provide us with all this delineated

1 information, you're going to put it out there on the table as
2 to cost, the companies are going to come in, and yet you get to
3 come in one more time. And to my satisfaction, I think that
4 will lead to the lowest price for the ratepayers. So for that
5 reason, I will support the motion and second.

6 Now, this is the Commission's deliberation about
7 appropriate policy and how the balance was appropriately
8 struck.

9 CHAIRMAN JABER: Mr. Sasso, what year was that? Give
10 me some sort of --

11 MR. SASSO: This is 1998.

12 CHAIRMAN JABER: '98?

13 MR. SASSO: Yes, ma'am. Now, we have heard a lot of
14 discussions about outcomes. What are the outcomes of these RFP
15 proceedings? The utility always wins. And so there's a
16 presumption of guilt that something is being done unfairly,
17 something is underhanded about this, the process is being
18 cooked. That's belied by the actual facts, we submit. For one
19 thing, I think I heard Mr. Borden say that even if we
20 instituted an auction process, we could expect for the IOUs to
21 win for some time. It might be a while before the market is
22 such that the IPPs can expect to win these, but we have to ask
23 ourselves, is the problem the process, the way the RFP rule
24 currently is framed, or the way it is administered by the
25 utilities and the Commission defective, or is the problem just

1 that the bids are too high? And we would submit it's the
2 latter.

3 In those cases that have been concluded and presented
4 fully and fairly to this Commission for review in adversarial
5 proceedings with intervenors and evidence and arguments and the
6 like, this Commission has upheld the utility's decision. In
7 our last case not only did the Commission uphold the decision,
8 it was appealed to the Florida Supreme Court. And the Florida
9 Supreme Court upheld the decision and commented very favorably
10 on the RFP process. Among other things pointed out, that there
11 was a lack of rigidity in the process which encouraged creative
12 bidding and the like. And so if we look at the actual results,
13 that belies the assertion that there is something wrong with
14 the way this is conceived and the way it's being administered.

15 And in fact, we would submit that this whole business
16 about the unfairness and the second bite is largely academic,
17 the fact that we do get a second bite, because if you look at
18 what happened in Hines 2, we didn't take a second bite. The
19 reason that the utility beat the bids in that case wasn't
20 because we had all the bids come in and then we looked at them,
21 and then we went back in and changed our number. We beat them
22 the first time. They were just too high the first time.

23 You're going to find the same thing is true with
24 Hines 3. And in fact, in that case, even though we didn't have
25 to, as we went through the process and lowered our self-build

1 option numbers, we advised the bidders. They didn't beat the
2 number the first time. They didn't beat the number the second
3 time. So this is largely an academic concern about our
4 prerogative which I would submit to the Commission, in view of
5 the Commission's discussion, is not so much a prerogative as it
6 is a responsibility on our part. When all the information is
7 on the table in front of us and we have bids from IPPs and we
8 look at them and we can do better for the customer, I would
9 submit that we have an obligation to consider that. It's not
10 just an opportunity or some competitive advantage we have that
11 we haven't had the concrete occasion to exercise in any event.

12 Let me say a word about this auction, which is sort
13 of the epitome of the opposite end of the spectrum on this,
14 because it precedes (sic) from a completely different paradigm
15 from the one we have in Florida where the utility does not have
16 an obligation to serve, is not charged with the duty to operate
17 this decision process, this decision-making process, to do the
18 evaluation and to make decisions, having that obligation, we're
19 just like any other bidder at the table. Well, we've heard --
20 we've seen an example about a two-year energy sale, and we've
21 heard about furniture and art auctions and so on, but I think,
22 as Mr. Borden described the situation, he admitted that there's
23 a lot of complexity when you're talking about capacity sales,
24 that this can take months, that a number of things have to be
25 worked out in front.

1 For example, you have to evaluate the financial
2 viability of the bidder. You have to work out contract terms.
3 You have to hammer out a lot of things up front, and it could
4 take months, and then at some point, you finally get around to
5 talking about price. Well, we would submit to you that that's
6 essentially what we do now, that we have a process whereby we
7 solicit exactly that kind of information from bidders. We had
8 a response package with Hines 3, as you can see it's maybe an
9 inch thick, which contains schedules and key terms and
10 conditions in an effort to try to come to closure on contract
11 terms.

12 One bidder refused even to engage in a dialogue about
13 the key terms and conditions. This whole idea that we're going
14 to have all this hammered out so everybody can just sort of
15 throw their numbers into a computer was just not reality. We
16 had other people line through and send stuff back. We spent
17 weeks and weeks going back and forth to try to get information
18 we needed for the evaluation. So you do all of that, and yes,
19 there are numbers. And at some point, you can focus on
20 numbers, but there's a lot of complexity to this when we have
21 an obligation to look out for reliability, technical and
22 financial feasibility and economics, a lot of different
23 factors, and it's essentially what we do now.

24 So we don't have a problem in Florida. We don't have
25 something that's broken. We don't have something that is

1 operating in a way that was not intended. The Bid Rule was
2 carefully conceived by the Staff and by this Commission, and
3 it's operating exactly the way it was intended. It's operating
4 the way it has to operate in a regulated environment where we
5 have the obligation to serve subject to review and oversight
6 and ultimate approval or rejection of our decisions by this
7 Commission. Thank you.

8 CHAIRMAN JABER: Thank you, Mr. Sasso.

9 Any other participants with final remarks?

10 Mr. Green, are you the last one?

11 MR. GREEN: Madam Chair --

12 MR. WRIGHT: Mike's going to go first. I do think I
13 have something afterwards.

14 CHAIRMAN JABER: Okay. Mr. Wright, you will be the
15 last one to comment.

16 MR. GREEN: Just very briefly. You know, clearly I
17 wasn't here in 1994, but the current Bid Rule was probably put
18 together to resolve a set of issues, a set of concerns that
19 existed at that time. The Bid Rule was put in place to
20 represent how the market looked, what -- and I agree with
21 Mr. Sasso. You know, energy and capacity is a very complicated
22 issue. Energy and capacity in Florida has probably changed
23 today than what it was in 1994. You do have independent power
24 producers with plants running in the state of Florida. You
25 have -- Constellation has plants. Calpine is going to have a

1 plant. Reliant has plants. The market conditions in Florida
2 are different today than they were in 1994. I see absolutely
3 no flaw in the logic to suggest that the Commission shouldn't
4 go forward, evaluate the current Bid Rule against the current
5 environment, not what the environment was in 1994, and see if
6 there's some improvements that can be made once again to
7 satisfy the obligation to ensure that the consumers are getting
8 the best deal now.

9 As Mr. Sasso characterized the stipulation as the
10 compromise, compromise is a step forward. PACE is more than
11 happy to go forth and try to see if we can't, as Commissioner
12 Bradley says, step out from our corner a little further, and
13 see if the other party steps out from their corner a little
14 bit. But we would encourage a time clock be put on that,
15 because if the parties are not successful, getting too far away
16 from the cut men, then, yeah, maybe the Commission does need to
17 step in and see what needs to be done further.

18 And I guess I'd ask Mr. Wright if he has a comment.

19 CHAIRMAN JABER: Thank you.

20 Mr. Wright.

21 MR. GREEN: Thank you, ma'am.

22 MR. WRIGHT: Thank you, Madam Chairman. Schef Wright
23 for Calpine Eastern and PACE. Just very briefly, I agree with
24 what Mike Green said and what Mike Twomey said, that it's
25 important to keep this on track. We are fully willing to

1 participate in negotiations toward a true compromise here.

2 Here are a couple of points: Since 1994, if I'm
3 correctly remembering the numbers presented by your Staff at
4 the February 7th workshop, the IOUs have either built or
5 permitted 8,500 megawatts of capacity of which 3,500 has gone
6 through the Bid Rule. Zero megawatts during that time had been
7 awarded to IPPs. During the same time frame significant
8 amounts of capacity have been awarded to IPPs by nonIOU
9 utilities in Florida: Seminole Electric Co-op, FMPA, Orlando
10 Utilities, and Kissimmee Utility Authority.

11 I'd submit to you that the proposed compromise is
12 really, from my perspective, from our perspective, not much of
13 a compromise. It keeps the present system intact with the
14 addition that your Staff will be invited to observe milestone
15 meetings, and it shuts down the docket. It forecloses any
16 further opportunity under the proceeding that you have now
17 started to amend this rule. That, you know, would save us the
18 cost of our legal fees for participating in the rule docket,
19 but really and truly that's about it. But more importantly, I
20 think this whole suggestion of a stipulation really addresses
21 the IOUs' self-interests with a suggestion that it will save
22 the parties some litigation time. And I'd suggest to you, this
23 is the wrong paradigm for taking a look at this. I think the
24 right paradigm, you know, is, forget the IOUs, forget us,
25 forget us lawyers, forget the IPPs, focus on the customers,

1 focus on the Florida electric customers whom I believe is your
2 primary function to protect in these kind of processings under
3 Chapter 366.

4 What you want is a system that is going to produce
5 the best possible result for the ratepayers, you know. And if
6 you're going to consider a compromise, consider what it's going
7 to leave you with in terms of a process at the end of the day.
8 We don't think the present process works. We can point to a
9 lot of what we believe to be defects. We think -- I think,
10 frankly, the proof is in the pudding, that it doesn't work
11 based on the numbers of megawatts awarded by the IOUs, zero, as
12 compared to the megawatts awarded by Seminole and some of the
13 municipal utilities in this case. Now -- and we'll try to
14 negotiate. There may be a way to not go forward with amending
15 the rule at this time if some other procedures can be put in
16 place for the selection of meaningful blocks of new capacity.
17 We'll try to comprise, but we'd ask you to keep this process on
18 track. And if we do do some experimental processes for
19 selection and if Mr. Sasso does turn out to be right, I'll be
20 surprised, but if he does -- you know, if they win the bid,
21 they should win the bid. If they put the lowest price and
22 agree to be bound by the price they put on and agree to
23 guarantee the price they present to the ratepayers so their
24 ratepayers get the benefit of that bargain, they should win.
25 Thank you.

1 CHAIRMAN JABER: Thank you, Mr. Wright.

2 Commissioners, I want to get feedback on what your
3 desire is, just to throw out some ideas for discussion.
4 Recognize, I'm not wed to how we arrive at our conclusion.
5 Procedurally I think -- and, Martha, you can correct me along
6 the way if I'm wrong, I think we've got some options. What I
7 would like to address in our procedure for going forward is
8 making sure that there is a short period of time where if
9 participants want to comment in writing to the settlement
10 proposal, they are able to do that, or at least notify us that
11 your comments today can stand instead.

12 I'd like for Staff to give us a recommendation on the
13 settlement proposal and any other modifications thereto. And I
14 don't see that mutually exclusive, Commissioners, from Staff
15 working on a draft rule amendment. It may not be necessary at
16 all if the parties are able to reach a compromise, but in the
17 event that they can't, I don't see the two mutually exclusive.
18 I think you can address the settlement proposal and be ready to
19 address rule changes, if necessary. That's not to say that
20 there will be any. I just -- you know, I don't think one part
21 of your work has to stop because you're addressing the
22 settlement.

23 With respect to Staff facilitating some meetings and
24 calls, I can't remember who brought it up, but I heard both
25 sides, recognize that there would be some value to that, that

1 the informal process can be going on at the same time. And I
2 think, Staff, in that regard what I'd like to see you do is a
3 call a week, a meeting a week, a call a week, I don't know, but
4 there will be weekly contact between all of you.

5 And then, finally, Mr. Twomey had the good idea of
6 keeping the time certain. You know, it's time for us to
7 resolve it. And again, that's not mutually exclusive from
8 negotiations. Commissioners, I was looking at the
9 September 3rd agenda conference. I think, based on prior
10 conversations with Ms. Brown, that's probably doable. That's
11 not to say a special agenda date can't be found, Ms. Brown, but
12 Commissioners, I don't want to take this much further than
13 September. It's time for us to resolve it one way or another,
14 preferably with a consensus from the companies.

15 MR. WRIGHT: Madam Chairman, just a question. What
16 would be decided on September 3rd?

17 CHAIRMAN JABER: Well, that's what the Commissioners
18 are going to talk about right now.

19 COMMISSIONER DEASON: Let me start off by asking that
20 question. And I do want to make a few comments on what you've
21 kind of laid out, and I appreciate, Madam Chairman, you taking
22 the opportunity to kind of lay things out for us to kind of get
23 things out on the table and get them discussed.

24 It's my understanding that what we would take up on
25 September the 3rd, and correct me if I'm wrong, would be a

1 recommendation from our Staff whether we should go forward into
2 formal rulemaking and to have a recommended rule, should we
3 chose to go forward, a recommended rule for us to propose. And
4 obviously we've had the benefit of workshops, which I agree
5 have been extremely helpful, but when we go into formal
6 rulemaking, we first have to propose a rule, and that would
7 initiate the formal process. And I guess that's my question.
8 Is that what you anticipate on September the 3rd?

9 CHAIRMAN JABER: Yeah, the work I was suggesting
10 Staff continue to do would involve amendments to the rule, if
11 necessary. But I think probably the foundation issue to
12 address would be approving the settlement proposal,
13 Commissioner, and maybe this all takes care of itself.

14 COMMISSIONER DEASON: Well, that's my next question.
15 You mentioned that we probably at some point need a
16 recommendation on the proposed stipulation settlement. Do you
17 envision that that would be part of Staff's recommendation for
18 consideration on September the 3rd?

19 CHAIRMAN JABER: I did, but what's your pleasure? Is
20 there a better way of doing that? I really did, I envisioned,
21 you know, Issue 1 addressing the stipulation, and ideally, it
22 would be more encompassing of what the concerns were today, and
23 we'll get back to some of the concerns that the Commissioners
24 have identified.

25 COMMISSIONER DEASON: Well, let me just say this,

1 that I'm certainly not opposed to that. What I've heard here
2 today, and I don't mean to overly simplify or summarize it, is
3 that there's been a good faith effort and a lot of work has
4 gone into the IOUs coming forward with a step forward. Some
5 people have characterized that as an extremely small step, and
6 the IPP community and I think the customer representatives here
7 have indicated that they are appreciative of that, but they
8 think it is woefully deficient. And I think I'm characterizing
9 that correctly, but I have also heard a willingness from
10 everyone to continue to discuss it, which I think is extremely
11 valuable and is a positive development.

12 So I think that we probably need some flexibility
13 that between now and September the 3rd, if that is to be the
14 date, that if there are further negotiations and there is
15 another product that comes out of that, there may not be a need
16 to discuss the specific stipulation that's in front of us right
17 now. We may have a different product, and I would not want to
18 foreclose that possibility.

19 CHAIRMAN JABER: Right. It was not my intent to.

20 COMMISSIONER DEASON: Okay.

21 CHAIRMAN JABER: As a matter of fact, that actually
22 goes to the heart of why I want Staff to facilitate the calls
23 and the meetings because I don't envision that this actually
24 becomes the -- it is not my hope that this is the stipulation
25 that we take up September 3rd.

1 COMMISSIONER DEASON: Okay. And another thing,
2 you've also indicated that we probably need to allow parties
3 the opportunity to respond to the proposed settlement, and I
4 totally agree with that, but in all honesty and from a
5 practical standpoint, I don't know that we need any more
6 response than what we've gotten today. I mean, I know that
7 some of the participants maybe didn't have the luxury of having
8 a great deal of time to study that and come forward with their
9 responses, but I think they've done a pretty good job. I don't
10 know so much more that they can add than what they have already
11 responded to, but if they do, I don't have -- I guess what I'm
12 saying is that if they feel the necessity to respond, we should
13 probably give them that opportunity. I'm not so sure there's a
14 necessity at this point.

15 CHAIRMAN JABER: He's talking to you because that's
16 exactly what I said.

17 COMMISSIONER DEASON: So the other thing that I
18 wanted to talk about briefly was your suggestion that Staff
19 facilitate meetings and calls. I'm certainly not opposed to
20 that, but I'm not so sure that we need to actually formally
21 require that. And the only reason I say that is, sometimes,
22 now I don't know if this is the case or not, I would leave it
23 more to the participants to determine this, sometimes the
24 participants, the stakeholders can have more candid discussions
25 if it's just between them and Staff is not there, because they

1 know ultimately at some point Staff is going to be the one
2 making the recommendation to the Commissioners. And people may
3 -- the participants may, and I'm not saying they shall --
4 would, may be reluctant to really roll up their shirtsleeves
5 and get down to the nitty-gritty because they know right there
6 participating with them is going to be the folks who are going
7 to be making the last recommendation we see before we vote.

8 So I would just not -- I would prefer there be
9 flexibility to certainly have Staff play the facilitator. But
10 if those negotiations reach a point to where the participants
11 feel like it may be more beneficial not to have Staff there at
12 that particular time, that we defer to the participants to make
13 that call if they think that's the best way to proceed, just
14 some flexibility there.

15 CHAIRMAN JABER: Yeah, absolutely. And, Commissioner
16 Deason, I hope that our Staff has, and I know that they do, has
17 the common sense to know when to get out of the way. And
18 certainly just because Staff is participating in a call or a
19 meeting once a week doesn't preclude the parties from getting
20 on separate calls. The reason I want Staff facilitation or at
21 least getting it started, Commissioner, candidly, it's been a
22 year, and I have to be candid even more so than I've been so
23 far.

24 Staff took the first step this week. I mean, I do
25 not want to take any -- I want to continue to applaud the

1 efforts of the companies, but let's get realistic here. It
2 took our Staff pushing this week to get this ball started. And
3 if that's the way we're going to play this game, then Staff can
4 continue to stay involved. That does not preclude companies
5 having other negotiations and other meetings. And, you know,
6 Staff, you need to have the flexibility and the understanding
7 to stay out of the way when necessary.

8 COMMISSIONER DEASON: And that could change with
9 time --

10 CHAIRMAN JABER: That's right.

11 COMMISSIONER DEASON: -- depending on how
12 negotiations proceed. Those are my thoughts and comments.

13 MS. BROWN: May I just comment for a second? I think
14 it would be helpful, Commissioner Deason, if once in a while we
15 could be there because we have some interest in the rule side
16 of it and the particular proposed rule provisions we have
17 and --

18 COMMISSIONER DEASON: Let me make it clear. I'm not
19 suggesting that you not be involved. I think you should be.

20 MS. BROWN: All right.

21 COMMISSIONER DEASON: Make yourself available and
22 participate, but at some point I think you need to show some
23 sensitivity to the interested parties that they may feel it's
24 more conducive for them just to have negotiations between
25 themselves without you being there.

1 MS. BROWN: Absolutely.

2 CHAIRMAN JABER: Commissioner Baez.

3 COMMISSIONER BAEZ: And just a suggestion on that, I
4 think that can be -- if we just encourage the parties to stay
5 in contact with the Staff and let them know what's going on.
6 Now, whether that has to be Staff-driven or party-driven, I
7 think we should -- we owe everyone that kind of flexibility.

8 Two things that I wanted -- that I thought of and one
9 of them is, you know, we've got -- on one level we've got a
10 mild disagreement, pardon the understatement, on legal issues.
11 And a very small part of me would agree with Mr. Sasso, let's
12 try to avoid this. Yeah, it's probably better to avoid it if
13 we can come up with a reasonable solution. The other part of
14 me says, let's clear it up once and for all. And while I would
15 share at least two of the desires that have been so far
16 expressed in some kind of solution from some collaborative
17 process from some cooperation from the parties and as
18 Commissioner Bradley has so thoughtfully put it, let's
19 everybody start taking steps out of our corners. And I think
20 for our part, the Staff may start taking steps out of its
21 corner as well.

22 But that being said, I think we need to have some
23 consequences at the end of the day because the only way to
24 incent cooperation is if there is some fate worse than death at
25 the end of that road assuming you don't reach it. So I would

1 definitely, definitely be in favor of having certainly a date
2 certain by which we're going to take temperature here. And if
3 that means that we have to vote out a straw proposal in
4 whatever shape or form it's in at that point in time given
5 whatever point the negotiations have been going so far, then so
6 be it. And if it has to get decided in a court, so be it. You
7 know, everybody's got to do their job. And part of this
8 Commission's job I don't believe is to sit idly by assuming
9 that it's the Commission's determination that there is -- that
10 something isn't working.

11 Again, I don't mean to prejudge the issue, but if
12 there is a disagreement as to the effectiveness of the rule and
13 if there is a determination on the part of the Commission that
14 some changes to whatever degree may be necessary, then we
15 should not be -- we should not be shy about making or proposing
16 those changes. And the companies, whoever they may be, should
17 not be shy about challenging those changes if they believe that
18 another position exists that's more valid. And that's what the
19 process is there for. You know, I don't have any pride of
20 ownership. I'm just going to be sitting up here trying to do
21 what I feel is right in making the decisions as best I can.
22 And if somebody disagrees with me, great, because that's what
23 it's all about. Hopefully we'll all be in agreement at the end
24 of the day, I sincerely hope that, but we need consequences at
25 the end.

1 And, Madam Chair, I don't know if this is some kind
2 of -- a way of refining what your contemplation is on the
3 September 3rd agenda date, but it would be my idea that we're
4 either going to be voting out some kind of stipulated
5 agreement, some kind of stipulated -- or we're going to be
6 voting out a rule. And, you know, I daresay, I would even
7 think that going -- I don't know if it's even possible at a
8 workshop, but going straight to hearing might sound -- you
9 know, I'd be curious to know what those options are there.

10 MS. BROWN: The rule proposal process is a good one
11 because we come to you with a proposed rule that we recommend
12 you vote out. That then sort of crystallizes what the language
13 is and focuses everybody into what their real problems are and
14 their real suggestions for fixing it are. And they get to come
15 in, and they say, well, use this term instead of that term, and
16 then everything is okay. And then if you have a rule hearing,
17 you have evidence, you have testimony to backup that thing, and
18 you've got something firm. If you go to hearing without
19 something firm first, it's a little harder to focus the
20 evidence.

21 COMMISSIONER BAEZ: But correct me if I'm wrong,
22 something firm does exist now, doesn't it? In the sense that
23 if pressed, you know, there could be a -- you know, there's a
24 proposed --

25 MS. BROWN: There's language, yes.

1 COMMISSIONER BAEZ: There's language out there that
2 everybody can touch and see and smell, you know.

3 MS. BROWN: Yes. It was my feeling that after this
4 workshop Staff would have a little bit -- or was hoping to have
5 a little bit better idea where the weakness is in that -- where
6 the parties thought the weaknesses in that strawman proposal
7 were. I'm not sure we have that yet. I'll have to go back and
8 read the transcript. So I had anticipated that there might be
9 changes to the draft language.

10 COMMISSIONER BAEZ: And I'm just --

11 MS. BROWN: But we do have it there.

12 COMMISSIONER BAEZ: I'm just asking really for my
13 knowledge and so that I can understand that process. I have no
14 objection with the September 3rd date if that's the soonest
15 that we can have it and, you know, perhaps light a fuse to this
16 process.

17 CHAIRMAN JABER: There are several agendas in August,
18 but I was -- you know, when you back into the recommendation
19 time period, it really doesn't give Staff a full month, which
20 that's the only reason I suggested the first week of September.

21 Commissioner Palecki.

22 COMMISSIONER PALECKI: Thank you, Madam Chairman. I
23 would like to join my fellow Commissioners in commending the
24 investor-owned utilities for coming forward with this
25 stipulation. I think it's a very good faith effort to try to

1 make some movement, and I think it's movement in the right
2 direction. So I do appreciate the work you've done on the
3 stipulation.

4 I personally don't believe the stipulation goes far
5 enough to satisfy my concerns. And I'm a little bit concerned
6 about withholding our vote on this stipulation until
7 September 3rd because nobody knows whether we're going to vote
8 out in favor or against this stipulation until September 3rd.
9 I'm concerned that the parties might not be very motivated to
10 start working on a different stipulation that goes further than
11 this. And my preference would be to see a much earlier vote on
12 this particular stipulation so that when we do get together on
13 September 3rd, we'll be beyond this.

14 With regard to the issues at hand, I think that to
15 some extent our current rule up until now has served the
16 ratepayers fairly well. I know in the 1980s there were
17 numerous cost overruns with regard to power plants in the state
18 of Florida. This Bidding Rule was put in place, and a lot
19 independent power producers came forward and have put in bids.
20 Yes, they've never been awarded a bid, but the plants that have
21 been built have been built at low cost, and we have not seen
22 the cost overruns that we saw in the past. And I think our
23 investor-owned utilities have done a very good job of
24 responding to the threat of competition and our ratepayers have
25 benefited.

1 My concerns were very well expressed, I believe, by
2 Mr. Borden. Mr. Borden told us that in order to have a
3 successful bid process, the bidders need to have a realistic
4 belief that they can win the bid. And if this doesn't happen,
5 your process loses credibility, and the players won't come
6 forward with a meaningful bid. And I'm afraid that under our
7 current Bid Rule, that's where we may stand today. I think
8 we're reaching a point where the independent power producers
9 that have come to the state of Florida have reached a high
10 degree of frustration.

11 We keep hearing that 3,500 megawatts have been
12 awarded through the Bid Rule and none have been awarded to the
13 IPPs. I know for a fact that some of the IPPs are packing up
14 and leaving the state of Florida. For example, Duke Power has
15 recently closed their Florida office and have left the state.
16 I'm concerned that our current Bid Rule will no longer serve
17 the customers of this state well unless we make changes to it,
18 changes that will ensure the bidders, the nonutility bidders,
19 that they do have a realistic expectation that they can win the
20 bid. And I don't believe they have that realistic expectation
21 today. I would like to see this Commission move forward with
22 rulemaking.

23 CHAIRMAN JABER: Commissioner Palecki, with respect
24 to your suggestion we take the settlement to an earlier vote,
25 I'm sure, you know, if we have enough time to notice it, that

1 that's not legally impossible, but let me ask Mr. Green,
2 Mr. Twomey, Mr. Wright this question.

3 It seems to me that the companies have done a great
4 job coming together and putting a document together that you
5 can work from. There's a momentum that's been gained in the
6 document, regardless of what happens to the stipulation at the
7 end of the day, that really serves to everyone's benefit. To
8 vote on this stipulation sometime in August, if there's an
9 assumption that you all agree with it, great, but if the
10 assumption is, you don't agree with it, and for whatever reason
11 the Commission does agree with this stipulation, then you
12 really haven't achieved -- or you've lost an opportunity to
13 achieve more than what this gives you. Does that make sense?

14 MR. TWOMEY: You mean we shouldn't die until we have
15 to, or make -- present ourself that potential?

16 CHAIRMAN JABER: You know, I don't really look at it
17 as living or dying or merchant versus IOU, Mr. Twomey, I really
18 don't. In terms of your preference and your ability to
19 negotiate on all issues that are on the table, which would
20 serve you better?

21 MR. TWOMEY: Right, and I didn't mean to be smart.
22 If you're saying what is better, to have an early vote in
23 August and risk losing it all, if you -- which is what I'm
24 hearing you say, if you accepted the stipulation and closed the
25 docket, or would fact prefer to have a later decision in

1 September? Then the answer would be September.

2 CHAIRMAN JABER: Okay. Commissioners, honestly, you
3 know, whatever you desire. If it makes more administrative
4 sense to have this come to a vote in August, I can support
5 that. The only reason I suggested that it all come to a
6 September vote, I think it gives everyone an opportunity to
7 have a full month of discussions and Staff a full month of
8 participating in that discussion and reviewing all of it.

9 COMMISSIONER BRADLEY: Madam Chair, for a suggestion.

10 CHAIRMAN JABER: Commissioner Bradley.

11 COMMISSIONER BRADLEY: I would think that the time
12 certain should be September without an earlier vote. I think
13 that gives adequate time for all parties to thoroughly digest
14 this stipulation. It's apparent that the IOUs have thoroughly
15 digested it, but -- it has been digested by the IOUs, but I
16 think it gives adequate time for the IPPs and others to digest
17 this and decide if it's fair and something that they can live
18 with or to recommend modifications.

19 CHAIRMAN JABER: Yes. I focus on something Mr. Moyle
20 asked early, early on in the workshop. He said, did the IOUs
21 envision, you know, another signatory or some of the
22 participants being able to sign on the contract? Well, you
23 know, that may be a legitimate way to go. And to give those
24 participants an opportunity to think about that, I don't see
25 where anyone can go wrong. Okay.

1 Commissioners, I hear a consensus on shooting for
2 September 6th.

3 COMMISSIONER BAEZ: 6th or --

4 COMMISSIONER DEASON: It's 3rd, I believe.

5 CHAIRMAN JABER: Yeah, I'm looking in August.
6 September 3rd on a recommendation that will address whatever
7 settlement is on the table, if any, and whatever amendments to
8 the rule are appropriate, and inherent in that I would ask that
9 there's a sufficient analysis and recommendation on the
10 jurisdictional issue.

11 What else, Commissioners?

12 And during that time that the parties continue to
13 negotiate with Staff facilitation, and Staff would have the
14 common sense to know when to stay out of the way and when to
15 contribute, and I know that the parties have common sense
16 enough to know when Staff's good work will benefit all of you.

17 Anything else, Commissioners?

18 COMMISSIONER DEASON: Well, Madam Chairman, let me
19 just say one thing in conclusion, is that I think this workshop
20 has been extremely beneficial, been educational. And one of
21 the best lessons I've learned today is be careful what you say
22 because Mr. Sasso may read it back to you one day.

23 CHAIRMAN JABER: That's exactly right. That's
24 exactly right. Let me take an opportunity to thank all the
25 parties. It's been a long day, but it has been a very good

1 workshop. I want to commend the parties for coming together
2 and forming a document that did serve as the beginning of the
3 discussion.

4 I want to commend this side of the participants for
5 their patience in allowing us to go through that discussion. I
6 think it was very beneficial, and I would encourage the
7 dialogue to continue. Please do not let us down because what
8 you have heard all the Commissioners say is we hear the
9 consensus. There's plenty of places for consensus. I hope you
10 maximize the opportunity. Good luck.

11 (Workshop concluded at 4:10 p.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

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5 WE, JANE FAUROT, RPR, and TRICIA DeMARTE, Official
6 Commission Reporters, do hereby certify that the foregoing
7 proceeding was heard at the time and place herein stated.

8 IT IS FURTHER CERTIFIED that we stenographically
9 reported the said proceedings; that the same has been
10 transcribed under our direct supervision; and that this
11 transcript constitutes a true transcription of our notes of
12 said proceedings.

13 WE FURTHER CERTIFY that we are not relatives, employees,
14 attorneys or counsel of any of the parties, nor are we a
15 relative or employee of any of the parties' attorneys or
16 counsel connected with the action, nor are we financially
17 interested in the action.

18 DATED THIS 29th DAY OF JULY, 2002.

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