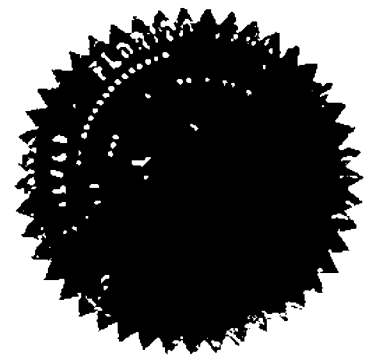


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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of  
  
Petition for determination that  
plan for curtailing purchases  
from qualifying facilities in  
minimum load conditions is  
consistent with Rule 25-17.086,  
F.A.C., by FLORIDA POWER  
CORPORATION.  
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**PROCEEDINGS:** PREHEARING CONFERENCE

**BEFORE:** CHAIRMAN SUSAN F. CLARK  
Prehearing Officer

**DATE:** Wednesday, April 26, 1995

**TIME:** Commenced at 9:30 a.m.  
Concluded at 11:20 a.m.

**PLACE:** FPSC Hearing Room 122  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida

**REPORTED BY:** ROWENA NASH HACKNEY  
Official Commission Reporter

## 1 APPEARANCES:

2                   **JAMES A. MCGEE**, Florida Power Corporation, Post  
3 Office Box 14042, St. Petersburg, Florida 33733-4021,  
4 Telephone No. (813) 866-5786, appearing on behalf of Florida  
5 Power Corporation.

6                   **KAREN WALKER**, Holland & Knight, 315 South Calhoun  
7 Street, Suite 600, Tallahassee, Florida 32302, Telephone  
8 No. (904) 224-7000, appearing on behalf of **Auburndale Power**  
9 **Partners, Limited Partnership.**

10                   **ROBERT SCHEFFEL WRIGHT**, Landers & Parsons, 310 West  
11 College Avenue, Tallahassee, Florida 32302, Telephone No.  
12 (904) 681-0311, appearing on behalf of **Montenay-Dade, Ltd. and**  
13 **Metropolitan Dade County and Lake Cogen, Ltd.**

14                   **MARSHA RULE**, Wiggins & Villacorta, P. A., Post  
15 Office Drawer 1657, Tallahassee, Florida 32302, Telephone No.  
16 (904) 222-1574, appearing on behalf of **Orange Cogeneration**  
17 **Limited Partnership, Polk Power Partners, L.P., and Tiger Bay**  
18 **Limited Partnership.**

19                   **RICHARD A. ZAMBO**, Richard A. Zambo, P. A., 598 S. W.  
20 Hidden River Avenue, Palm City, Florida 34990, Telephone No.  
21 (407) 220-9163, appearing on behalf of **Ridge Generating**  
22 **Station, L.P.**

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24

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## 1 APPEARANCES CONTINUED:

2 JOSEPH A. MCGLOTHLIN, McWhirter, Reeves, McGlothlin,  
3 Davidson and Bakas, 315 South Calhoun Street, Suite 716,  
4 Tallahassee, Florida 32301, Telephone No. (904) 222-2525,  
5 appearing on behalf of Orlando CoGen, Limited, L.P.

6 AUSLEY WATSON, JR., Macfarlane, Ausley, Ferguson and  
7 McMullen, P.O. Box 1531, Tampa, Florida 33601, Telephone No.  
8 (813) 273-4200, appearing on behalf of Pasco CoGen, Ltd.

9 KARA OAKLEY, Johnson & Associates, P.O. Box 1308,  
10 Tallahassee, Florida 32302, Telephone No. (904) 222-2693,  
11 appearing on behalf of Panda-Kathleen.

12 MARTHA CARTER BROWN and VICKI D. JOHNSON, Florida  
13 Public Service Commission, Division of Legal Services, 101  
14 East Gaines Street, Tallahassee, Florida 32399-0863, Telephone  
15 No. (904) 487-2740, appearing on behalf of the Commission  
16 Staff.

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**I N D E X**

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**ISSUES**

<b>Issue No. 1</b>	<b>20</b>
<b>Issue No. 2</b>	<b>23</b>
<b>Issue No. 3</b>	<b>25</b>
<b>Issue No. 4</b>	<b>25</b>
<b>Issue No. 5</b>	<b>33</b>
<b>Issue No. 6</b>	<b>35</b>
<b>Issue No. 7</b>	<b>36</b>
<b>Issue No. 8</b>	<b>37</b>
<b>Issue No. 9</b>	<b>41</b>
<b>Issue No. 10</b>	<b>43</b>
<b>Issue No. 11</b>	<b>44</b>

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

(Hearing convened at 9:30 a.m.)

COMMISSIONER KIESLING: Call the prehearing to order. Would you please read the notice?

MS. BROWN: By notice issued April 5, 1995, this time and place was set for a Prehearing Conference in Docket No. 941101-EQ. In Re: petition for determination that plan for curtailing purchases from qualifying facilities in minimum load conditions is consistent with Rule 25-17.086, Florida Administrative Code, by Florida Power Corporation.

The purpose of the prehearing conference is set out in the notice.

CHAIRMAN CLARK: We'll take appearances.

MR. MCGEE: James McGee, Post Office Box 14041, St. Petersburg 33733, appearing on behalf of Florida Power Corporation.

MS. WALKER: Karen Walker with Holland & Knight, 315 South Calhoun Street, Suite 600, Tallahassee, Florida 32302, appearing on behalf of Auburndale Power Partners, Limited Partnership.

MS. RULE: Marsha Rule, Wiggins & Villacorta, 501 East Tennessee, Tallahassee, Florida 32302, appearing today on behalf of Orange Cogeneration Limited Partnership, Polk Power Partners and Tiger Bay Limited Partnership.

MR. WRIGHT: Robert Scheffel Wright, Law firm of

1 Landers & Parsons, 310 West College Avenue in Tallahassee  
2 32301, appearing on behalf of Lake Cogen, Limited and  
3 Montenay-Dade, Limited, and more or less on behalf of Dade  
4 County who is Montenay-Dade's partner.

5 CHAIRMAN CLARK: So that's the way you want it in  
6 the Prehearing Order, "more or less"?

7 MR. WRIGHT: No, thank you.

8 CHAIRMAN CLARK: We should not list Dade County as  
9 you representing them?

10 MR. WRIGHT: No. My formal representation  
11 relationship is with Montenay-Dade, Limited.

12 CHAIRMAN CLARK: Okay. Mr. McGlothlin?

13 MR. MCGLOTHLIN: Joseph A. McGlothlin, McWhirter,  
14 Reeves, McGlothlin, Davidson, Rief & Bakas, 315 South Calhoun  
15 Street in Tallahassee. I appear for Orlando CoGen, Limited.

16 MR. WATSON: Ansley Watson, Jr., Macfarlane  
17 Ferguson -- excuse me. Macfarlane, Ausley, Ferguson &  
18 McMullen, P.O. Box 1531, Tampa, Florida 33601, appearing on  
19 behalf of Pasco Cogen, Limited.

20 MR. ZAMBO: Richard Zambo, 598 S.W. Hidden River  
21 Avenue, Palm City, Florida 34990, appearing on behalf of Ridge  
22 Generating Station, L.P.

23 MS. OAKLEY: Cara Oakley, Johnson & Associates, P.O.  
24 Box 1308, Tallahassee 32302, appearing on behalf of  
25 Panda-Kathleen.

1 MS. BROWN: Martha Carter Brown and Vicki D. Johnson  
2 representing the Florida Public Service Commission Staff.

3 I can't see all the way down there; I don't know if  
4 I cut somebody off or not.

5 CHAIRMAN CLARK: You didn't.

6 MS. BROWN: Okay.

7 CHAIRMAN CLARK: Okay. Ms. Brown, how do you  
8 propose that we proceed in this prehearing conference?

9 MS. BROWN: Chairman Clark, we have one preliminary  
10 matter that's identified in the back of the Prehearing Order.  
11 It's a motion to file supplemental testimony that Orlando  
12 CoGen Limited filed yesterday afternoon. I think we should  
13 probably address that first, and then go down the issues.

14 There are several contested issues in the case: The  
15 wording, the scope. As we go down each issue, I can point you  
16 to the issue, the other wording of the same general issue, and  
17 we can perhaps compare them in that way, if that's  
18 satisfactory to the parties.

19 CHAIRMAN CLARK: Okay. You recommend we take up the  
20 motion to file supplemental testimony first?

21 MS. BROWN: I think that would be a good idea, if  
22 that's amenable to everyone.

23 CHAIRMAN CLARK: The motion I have indicates counsel  
24 for Florida Power Corp has been contacted, but you have not  
25 yet either objected or filed a response.

1 MR. MCGEE: Madam Chairman, I'm not sure which  
2 counsel for Florida Power that is. It wasn't me. I became  
3 aware of the filing of the testimony last evening and have  
4 seen the motion and the testimony for the first time this  
5 morning.

6 I know Florida Power does have some very serious  
7 concerns about it. I won't be able to fully embellish what  
8 those concerns might be because we just haven't simply had  
9 enough time to determine what's going to be involved if we  
10 were to have to analyze the testimony.

11 I can state for you some of the more significant  
12 concerns that we have that we think justify a denial of the  
13 motion.

14 MR. MCGLOTHLIN: If you are going to do that,  
15 Chairman Clark, I'd like to speak in support of the motion  
16 first.

17 CHAIRMAN CLARK: Ms. Brown, how much time do we  
18 normally -- when was supplemental testimony supposed to be  
19 filed, or was there a date given?

20 MS. BROWN: There was no date given for supplemental  
21 testimony.

22 CHAIRMAN CLARK: But in Mr. Slater's prefiled  
23 testimony, he indicated that he might need to file --

24 MS. BROWN: Yes, he did.

25 CHAIRMAN CLARK: -- supplemental testimony.



1 MS. BROWN: He did.

2 CHAIRMAN CLARK: When would you propose to file a  
3 response or indicate you are not going to object to it,  
4 Mr. McGee? Let me just stop a minute.

5 Mr. McGlothlin, who did Ms. Kaufman contact about  
6 this motion?

7 MR. MCGLOTHLIN: It was I who contacted Mr. Tempest  
8 who was also --

9 CHAIRMAN CLARK: Mr. who?

10 MR. MCGLOTHLIN: Mr. Ron Tempest who's associated  
11 with the Florida Power Corporation in this case.

12 CHAIRMAN CLARK: Okay. Mr. McGee, when would you be  
13 prepared to respond to this motion?

14 MR. MCGEE: Commissioner, that's the difficulty I  
15 have. How much time is going to be required to respond would  
16 depend on how long it takes for us to acquire through  
17 discovery the background, the working papers for Mr. Slater to  
18 evaluate it, to put testimony together and get it filed.

19 CHAIRMAN CLARK: Well, it seems to me that -- I want  
20 to know if you are going to protest the supplemental  
21 testimony. I would assume rebuttal testimony has not been  
22 filed, and you would address his supplemental testimony in  
23 your rebuttal, and you may need more time for your rebuttal  
24 testimony.

25 MR. MCGEE: That would definitely be the case. If

1 it's a matter of formally taking a position at this time,  
2 while we haven't fully developed it, the grounds that might be  
3 available to us for an objection, I think we have sufficient  
4 grounds to make a formal objection at this time. We ask that  
5 the motion be denied.

6 CHAIRMAN CLARK: Well, Ms. Brown, do you have any  
7 suggestions, because I realize the hearing is coming up fairly  
8 quickly. I would like to get this motion resolved.

9 MS. BROWN: I spoke to Mr. McGee a little earlier  
10 about this, and I suggested that he speak to Mr. McGlothlin to  
11 get some handle on what discovery they would need to do and  
12 what documentation they would need to have.

13 Apparently one of their initial concerns with the  
14 testimony is that it gives Mr. Slater's conclusions, but does  
15 not back it up with any information or any methodology used to  
16 get there. They are interested in finding out how he reached  
17 those conclusions.

18 It seems to me, perhaps, if we could take just a  
19 10-minute break, perhaps Mr. McGlothlin and Mr. McGee could  
20 get together to find out how OCL could expeditiously get  
21 documents and information to Florida Power Corporation.  
22 Mr. Slater is also scheduled for a deposition tomorrow up here  
23 in Tallahassee. There would be some rather quick opportunity  
24 to question him, depose him on the testimony. And, then, if  
25 Florida Power Corporation needs more time to file rebuttal,

1 that could be arranged.

2 The hearing starts the 8th. Perhaps -- they are  
3 scheduled to file their rebuttal testimony -- is it the 1st or  
4 the 2nd?

5 MR. MCGEE: It will go out on Monday for a filing on  
6 Tuesday the 2nd.

7 MS. BROWN: Perhaps they could have until that  
8 Friday to file rebuttal testimony, and then Orlando CoGen  
9 would just simply have to deal with it the best they could.

10 To me, this whole situation has kind of been the  
11 responsibility of both parties. There have been foul-ups with  
12 all this computer stuff from both sides, and that's caused  
13 some of the problems. And I think both parties just need to  
14 shorten the time for cooperating on discovery and go forward  
15 that way.

16 MR. MCGLOTHLIN: Well, let me address that for a  
17 moment. And it concerns me that so far the discussion has  
18 been about FPC's problems primarily.

19 I know, Chairman Clark, you are somewhat familiar  
20 with the way this has developed. But just to put this in  
21 context, Florida Power Corporation has offered testimony based  
22 on the results of calculations made with this unit commit  
23 program that we want our expert to review; and if we want it,  
24 critique. And while it's true that one thing led to another  
25 and there have been snags and difficulties, the bottom line

1 result was that he did not get the same program that FPC used  
2 for their calculations until April 4th and then discovered  
3 that it was replete with source code aberrations that their  
4 mainframe computer would tolerate, but his PC would not.

5 CHAIRMAN CLARK: Mr. McGlothlin, I have read your  
6 motion.

7 MR. MCGLOTHLIN: I see.

8 CHAIRMAN CLARK: And what I'm going to suggest is  
9 I'm not going to resolve it today; but after the prehearing is  
10 done, I suggest you two to get together and work this out. If  
11 you can't work it out, I will, and both of you may not be  
12 happy with it.

13 MR. MCGLOTHLIN: The only thing I want to add then  
14 is that Mr. Slater is scheduled for Thursday deposition. We  
15 have offered to make him available Friday instead, if that  
16 would give Power Corp more time.

17 CHAIRMAN CLARK: Well, I'm going to leave it to both  
18 of you, and I feel confident you can work it out. And, then,  
19 you might talk about expediting discovery and changes in the  
20 date for filing rebuttal testimony, because I am anxious for  
21 the Commission to have the necessary information and have an  
22 analysis from both parties that they feel they want to present  
23 but that the other party has had time to review and is  
24 prepared to do cross examination on.

25 So I will leave it to have you all work it out and

1 report back to Ms. Brown as to what you can work out in terms  
2 of dates and expediting discovery. I understand that Florida  
3 Power Corporation may still take the position they are going  
4 to object to it. And in that case you would have to file an  
5 expedited response.

6 Okay. Are there any other motions?

7 MS. BROWN: No, Chairman Clark. There are no other  
8 outstanding motions.

9 CHAIRMAN CLARK: Now, I understand from Ms. Brown  
10 that there are some issues that there may not be agreement on,  
11 and there are issues that have been proposed that are not yet  
12 included in the --

13 MS. BROWN: In the primary list.

14 CHAIRMAN CLARK: -- in the primary list of issues.  
15 What I propose to do is simply go case-by-case, and I will  
16 hear from each party with respect to the wording of the issue  
17 and any corrections to their positions and then any issues  
18 they would like to add. So let's just start on Page -- I  
19 guess --

20 MS. BROWN: Chairman Clark, I think we probably  
21 ought to see if the parties have any corrections to all of the  
22 preliminary --

23 CHAIRMAN CLARK: Yeah. I was going to say, are  
24 there any corrections up and through Page 7, just before we  
25 get to the basic positions? Are there any changes to the

1 orders of witnesses, too?

2 MR. MCGLOTHLIN: I have a request to make on Page 4.  
3 Under post-hearing procedures, the standard reference to  
4 post-hearing statement of 50 words is there. I think in terms  
5 of the number of parties stating positions and the number of  
6 issues involved, we have a situation that is quite manageable.  
7 And in my experience it's awfully tough to get something that  
8 is informative in 50 words. I would like to ask that you  
9 allow parties 75 words for that purpose.

10 CHAIRMAN CLARK: Is this in the post-hearing  
11 statement?

12 MR. MCGLOTHLIN: Yes.

13 CHAIRMAN CLARK: I would like to reserve any ruling  
14 on that until after the hearing. And at this time I would not  
15 grant that request.

16 MR. MCGLOTHLIN: All right.

17 MR. WATSON: I understand the ruling's reserved, but  
18 Pasco would join in in that request.

19 CHAIRMAN CLARK: Okay. What I would like you to do  
20 is bring it up at the end of the hearing; and if you still  
21 feel you need 75 words, you can make your argument at that  
22 time.

23 MS. BROWN: And, Chairman Clark, I can mention it in  
24 the Prehearing Order that you will issue also.

25 CHAIRMAN CLARK: Okay.

1 MR. WRIGHT: Chairman Clark?

2 CHAIRMAN CLARK: Let's start with Mr. McGee, and  
3 we'll just move down the line. Do you have any changes?

4 MR. MCGEE: No. I'd note that we have identified  
5 issues for each witness and those may change depending on how  
6 the issues are developed after.

7 CHAIRMAN CLARK: Okay.

8 MS. BROWN: Chairman Clark, I think this might be a  
9 good time to bring up something that I want to mention. Staff  
10 has not taken any positions on the issues in this case. They  
11 have said they have no position at this time. The reason for  
12 that is that rebuttal testimony has not been filed yet and  
13 discovery is still proceeding. Staff doesn't have all the  
14 information that it needs to take a position.

15 We would like permission to -- of course, we don't  
16 always have to take a position in everything, but we will try  
17 to take a position by the time, the date, that the Prehearing  
18 Order will be issued. And I would suggest that other parties  
19 who have not at this point taken positions on issues be  
20 allowed that courtesy. They can contact me, and I can put  
21 their positions in before the order is issued.

22 CHAIRMAN CLARK: All right. If the hearing starts  
23 on May 8th, do you recommend a May 5th deadline which is that  
24 Friday?

25 MS. BROWN: Yes. That would be good.

1 CHAIRMAN CLARK: Okay. Then I would expect Staff to  
2 have their positions on the issues by May 5th.

3 MS. BROWN: And with the understanding that there  
4 may be some issues that we cannot take positions on before the  
5 hearing.

6 CHAIRMAN CLARK: That will be fine. And that other  
7 parties who need further discovery to take positions on issues  
8 would likewise have until the 5th.

9 MS. BROWN: Yes. That would be fine. And they can  
10 then contact me, and I'll put their positions in the  
11 Prehearing Order before it goes out.

12 CHAIRMAN CLARK: Okay.

13 Mr. McGee, anything else?

14 MR. MCGEE: No, ma'am.

15 CHAIRMAN CLARK: No change to the order of  
16 witnesses?

17 MR. MCGEE: No. Other than as Ms. Brown mentioned,  
18 that list will need to be supplemented by our rebuttal  
19 witnesses when those are filed.

20 CHAIRMAN CLARK: All right.

21 MR. WRIGHT: Not my time?

22 CHAIRMAN CLARK: Just a minute.

23 MS. RULE: Chairman Clark, on Page 6 of the  
24 Prehearing Order, I notice that Mr. Smith is listed four times  
25 for four different parties. This witness is sponsored jointly



1 by the parties. It may be a little less confusing to indicate  
2 that he's only appearing once.

3 CHAIRMAN CLARK: We'll do that.

4 All right. Any other changes?

5 Mr. Wright?

6 MR. WRIGHT: Thank you, Chairman Clark. I was just  
7 going to suggest, in light of the limited scope of Mr. Smith's  
8 testimony which is sponsored by my two clients and two others,  
9 that he be the last of the direct witnesses. It seems logical  
10 that we then have Florida Power's direct case, the larger  
11 presentation in opposition to that direct case by OCL and  
12 Pasco and then Mr. Smith addressing what is now Issue 6.

13 CHAIRMAN CLARK: Is there any objection to that?

14 MS. BROWN: Staff has no objection to that.

15 MR. MCGLOTHLIN: I do not.

16 CHAIRMAN CLARK: Okay. Then we'll show Mr. Smith as  
17 the last witness on direct.

18 MR. WRIGHT: Thank you.

19 CHAIRMAN CLARK: Mr. McGlothlin?

20 MR. MCGLOTHLIN: On Page 7, the parenthetical,  
21 "direct and supplemental testimony," should be under  
22 Mr. Slater's name and not Dr. Shanker's.

23 MS. BROWN: I had trouble doing that.

24 Mr. McGlothlin, do you use Word Perfect much?

25 CHAIRMAN CLARK: Just a minute. You are on Page 6?

1 MR. MCGLOTHLIN: Page 7 of the latest draft.

2 CHAIRMAN CLARK: Maybe I don't have the latest  
3 draft. Mine is on Page 6.

4 MS. BROWN: There may be some page changes. We gave  
5 you that yesterday, midday.

6 CHAIRMAN CLARK: Thank you. Mr. Watson, do you need  
7 a --

8 MR. WATSON: Draft No. 5?

9 CHAIRMAN CLARK: Yeah. Mine has 3/25. That should  
10 have been my first clue, I guess, on the front of it. Does  
11 yours have 3/25? You need a 4/25.

12 All right. Mr. McGlothlin, I think we are all on  
13 the same page now.

14 MR. MCGLOTHLIN: When I first looked at it, I  
15 thought that parenthetical was out of place and was intended  
16 to belong to Dr. Shanker. But if Martha's saying that it had  
17 to be this way for some other reason -- so long as it's  
18 understood that it is Mr. Slater who is offering supplemental.

19 MS. BROWN: It only has to be this way because I  
20 couldn't fix it to put it under. I'll have my secretary do it  
21 right when we get to issuing the final one.

22 CHAIRMAN CLARK: Are there any other changes you  
23 have?

24 MR. MCGLOTHLIN: Well, Ansley, I guess would just  
25 point out that -- Ansley and I would point out that, as is the

1 case with the other witness, Dr. Shanker and Mr. Slater appear  
2 once on behalf of Pasco and OCL.

3 CHAIRMAN CLARK: Okay.

4 MS. BROWN: I can fix that as I'm going to fix the  
5 Auburndale and Tiger Bay witness.

6 CHAIRMAN CLARK: All right. Thank you. Anything  
7 else, Mr. McGlothlin, on those first seven pages?

8 MR. MCGLOTHLIN: I see nothing else.

9 CHAIRMAN CLARK: Okay. Mr. Watson?

10 MR. WATSON: Nothing on the witness order.

11 CHAIRMAN CLARK: Mr. Zambo?

12 MR. ZAMBO: No, ma'am.

13 CHAIRMAN CLARK: Ms. Oakley?

14 MS. OAKLEY: No.

15 CHAIRMAN CLARK: Okay.

16 All right. Are there any changes to basic  
17 positions?

18 MS. BROWN: Chairman Clark, if I might interrupt for  
19 a minute. Panda did not file a prehearing statement, and  
20 that's why they're not included so far in the appearances or  
21 in the position list. Now that they're here, when I put  
22 together the final Prehearing Order, I'll include them. I  
23 just wanted to let them know.

24 MS. OAKLEY: Thank you.

25 CHAIRMAN CLARK: Do you intend to file a prehearing

1 statement?

2 MS. OAKLEY: We intend to reserve our position and  
3 not state a position on any of these issues until May 5th as  
4 you've given permission for the parties to do.

5 CHAIRMAN CLARK: All right. You understand you  
6 won't be able to add issues at that point?

7 MS. OAKLEY: Yes.

8 CHAIRMAN CLARK: You'll take it as you find it.

9 MS. OAKLEY: Yes. Thank you.

10 CHAIRMAN CLARK: Okay. Mr. McGee, any changes to  
11 your basic position?

12 MR. MCGEE: No, ma'am.

13 CHAIRMAN CLARK: Ms. Walker?

14 MS. WALKER: No.

15 CHAIRMAN CLARK: Okay. Mr. Wright?

16 MR. WRIGHT: No, ma'am.

17 CHAIRMAN CLARK: Mr. McGlothlin?

18 MR. MCGLOTHLIN: No.

19 CHAIRMAN CLARK: Mr. Watson? Mr. Zambo?

20 MR. WATSON: No.

21 CHAIRMAN CLARK: Okay. From now on, I'll just count  
22 on you to speak up. Any changes to Issue 1?

23 MS. BROWN: Chairman Clark, Issue 1 is one of the  
24 issues that is in dispute in the case. If you will turn to  
25 Page 22, that's the page where the alternative issues proposed

1 by the parties start. And at the bottom of that page, you  
2 will see OCL and Issue 1, and their proposed wording of Issue  
3 1. You will also see that Staff recommends that the issue not  
4 be included as OCL has worded it, but that the wording in the  
5 primary issue list remain.

6 We are of the opinion that the position that OCL  
7 presents for its Issue 1 can be fully addressed under Issue 1  
8 of the primary issues which is more broadly and more  
9 objectively worded.

10 CHAIRMAN CLARK: Mr. McGlothlin?

11 MR. MCGLOTHLIN: Without agreeing that the primary  
12 issue is more objective than the alternative we've shown  
13 there, Commissioner, I've reviewed this and other issues  
14 involved. I prefer the wording that appears on Page 22. I  
15 feel less strongly about this one than two or three others,  
16 and, so, I'm going to accept the primary position.

17 CHAIRMAN CLARK: Okay.

18 Okay. Is Auburndale ready to take a position at  
19 this time?

20 MS. WALKER: No, Chairman Clark, we are not.

21 CHAIRMAN CLARK: Mr. McGee, is there any change to  
22 your position on this issue?

23 MR. MCGEE: No, ma'am, there's not.

24 CHAIRMAN CLARK: Okay.

25 Mr. McGlothlin, let me ask you a question. Is it

1 your intention to -- I notice as you word it, you talked  
2 about -- it seems to me in the way you've worded the first  
3 issue, you introduce a notion of burden of proof. And I'm not  
4 sure you have -- have you included that in your position on  
5 Issue 1, and do you wish to change that at all?

6 MR. WATSON: While Mr. McGlothlin is thinking,  
7 during several of the issue identification conferences that we  
8 had with the Staff and Florida Power, it seemed to be the  
9 consensus of the entire group, including counsel for Florida  
10 Power, that Florida Power does have the burden of proof on all  
11 the issues in this proceeding.

12 MS. BROWN: That's correct, Chairman Clark. And  
13 Issue 1 is intended to assume that Florida Power Corporation  
14 has the burden of proof by saying: "Has Florida Power  
15 Corporation adequately demonstrated that the minimum load  
16 conditions," etcetera, etcetera.

17 CHAIRMAN CLARK: Okay.

18 MR. MCGEE: Florida Power doesn't contest that it  
19 has the burden as the petitioner.

20 CHAIRMAN CLARK: All right. Then, Mr. McGlothlin,  
21 is your position as stated satisfactory to you?

22 MR. MCGLOTHLIN: First of all, the reason I was  
23 willing to go with the wording in Issue 1 was that I was  
24 persuaded that the burden of proof is implicit in the issue.  
25 And for that reason, I think what we have there is all right.

1           CHAIRMAN CLARK: Okay. Any other changes on Issue  
2 1?

3           Issue 2?

4           MS. BROWN: Chairman Clark, on Issue 2 we have two  
5 alternate proposed issues, one from Florida Power Corporation  
6 and one from Orlando CoGen. If I might address Orlando  
7 CoGen's first.

8           If you turn to Page 23, you will see Orlando's Issue  
9 2. And you will see that Staff has recommended that the  
10 substantive part of the issue is the same as Issue 2 in the  
11 primary issue list. The first phrase is really unnecessary to  
12 the resolution of the substantive issue, and we don't think  
13 it's necessary. And we recommend that it be deleted, and that  
14 primary Issue 2 remain the same.

15           Now, I don't know if you want to discuss that first,  
16 and then we'll talk about Florida Power Corporation's proposed  
17 issue?

18           MR. MCGLOTHLIN: I could comment briefly.

19           CHAIRMAN CLARK: Go ahead, Mr. McGlothlin.

20           MR. MCGLOTHLIN: I think it is helpful to note at  
21 some point in Issue 2 that if the answer to Issue 1 is not in  
22 the affirmative, Issue 2 becomes moot. And, perhaps, the  
23 sentence-long phrase that I'd attach to each of those  
24 following issues is unnecessary, but I would propose to have  
25 something shortened like that. Maybe a parenthetical that

1 says: If the answer to No. 1 is affirmative, then the rest  
2 would follow.

3 CHAIRMAN CLARK: I don't object to that. It seems  
4 to me that it would clearly put before the Commission the  
5 understanding that if you reach a negative conclusion on  
6 Issue 1, you would not have to proceed and vote on Issue 2.

7 MS. BROWN: May I just consider that for one second?

8 CHAIRMAN CLARK: Uh-huh.

9 MS. BROWN: Chairman Clark, Staff -- now, if you  
10 want it that way, that's fine. It just seems to me that it's  
11 fairly obvious that if Issue 1 is denied, everything else  
12 becomes moot.

13 CHAIRMAN CLARK: Okay. Florida Power Corp has  
14 indicated they have a different wording to Issue 2. Would you  
15 respond to that, Staff?

16 MS. BROWN: Yes. Let me give you some background on  
17 that.

18 Staff originally proposed an issue on mitigation.  
19 As our discussions were continuing, and we were fleshing out  
20 some of Orlando CoGen's concerns in this case, it became  
21 apparent to me that mitigation seemed to be an important issue  
22 to be addressed, that Florida Power Corporation needed to do  
23 whatever reasonably possible to avoid curtailment if it could,  
24 so I proposed this issue that Florida Power Corporation has  
25 presented to you as a way to address mitigation.



1 Mr. McGlothlin had three issues on mitigation  
2 because he wanted it fleshed out even more, and Staff agreed;  
3 was reasonably comfortable with that.

4 Staff's position now is whichever way you want to do  
5 it is fine with us. We are comfortable with the broader  
6 mitigation issue that Florida Power has proposed. We can live  
7 with the more specific mitigation issues that Mr. McGlothlin  
8 has proposed.

9 Chairman Clark, if I might point out one more thing.  
10 It appears to me from reading Orlando CoGen's responses to the  
11 mitigation issues, that they can all be addressed in the  
12 broader mitigation issue.

13 CHAIRMAN CLARK: Mr. McGlothlin, would you respond  
14 to the idea of using the broader issue of mitigation, and then  
15 the issues that are listed as 3 and 4. Is it just 3 and 4?

16 MS. BROWN: 2, 3, and 4.

17 MR. MCGLOTHLIN: There are three issues that relate  
18 to --

19 CHAIRMAN CLARK: Oh, it's 2, 3, and 4. But 2 would  
20 be the broader issue, and then it would incorporate in each  
21 position to one issue. Then the points about sales and  
22 decreasing other sources of generation could be in the  
23 parties' positions on the issue.

24 MR. MCGLOTHLIN: Commissioner Clark, my view is that  
25 if it were desirable, we could come up with two or three very

1 broad issues; but I don't know it's the objective. I think  
2 the objectives are twofold. First of all, to inform the  
3 Commissioners precisely what are the matters of dispute, and,  
4 secondly, on behalf of the parties to present, in a  
5 crystallized way, their contentions to the Commissioners for a  
6 vote.

7           With respect to the broad category of mitigation,  
8 our witnesses have taken issue with the testimony of FPC in  
9 three specific areas. And my contention is that the parties  
10 have met the issues and have precipitated three significant  
11 questions, all of which are important for the Commission to  
12 understand, and all of which are important for OCL to present  
13 for explicit determinations. One relates to advance planning  
14 and whether the minimum load can be avoided by a different  
15 forward commitment of units. That is a very significant  
16 subject relating to the overall approach to the problem and  
17 the way we operate our system.

18           The other relates to whether, as we see it, there's  
19 a responsibility to subordinate utility purchases to affirm QF  
20 contracts. That's a very significant item, and we think it's  
21 worthy of presentation for information and for explicit  
22 decision.

23           And the third is whether there's a responsibility to  
24 price excess energy to other utilities and to the broker in a  
25 very different way than was being done. That, again, is a

1 very significant issue and, in my view, should not be deluded  
2 by being included in a very broad issue that depends on an  
3 inspection of positions to really appreciate.

4 CHAIRMAN CLARK: Mr. McGee, do you have a response?

5 MR. MCGEE: Yes. In Florida Power's view, the  
6 overall case presents several distinct general or umbrella  
7 issues, if you will. One of which is mitigation. Another one  
8 is the existence of operational circumstances as defined in  
9 the regulations. Another one is the establishment of negative  
10 avoided costs, and another area is the evaluation of the  
11 actual curtailments that have taken place so far.

12 Any one of these areas could conceivably and  
13 probably very easily be broken down into greater and greater  
14 levels of detail. But I don't know that that really  
15 accomplishes anything, other than obscuring where the main  
16 issues are and where subdivisions of main issues are.

17 CHAIRMAN CLARK: Okay.

18 MR. MCGEE: And I think the way that Staff had  
19 proposed it to begin with is an appropriate way to deal with  
20 the mitigation subject.

21 CHAIRMAN CLARK: You mean with Issues 2, 3 and 4?

22 MR. MCGEE: Yeah. I think 2, 3 and 4 can be  
23 subsumed within a general mitigation issue, and that's what we  
24 proposed.

25 CHAIRMAN CLARK: Okay. Does any other party wish to

1 comment?

2 Mr. Wright?

3 MR. WRIGHT: Briefly. Thank you, Chairman Clark.

4 I agree with Mr. McGlothlin that it's important to  
5 identify precisely what's in dispute here. The three  
6 potential methods for mitigation: Alternate commitment of  
7 generation and planning; the issue of primacy of generation  
8 purchases; and the opportunity to make other retail and  
9 wholesale sales as a means to mitigate, the need to curtail QF  
10 purchases. I think all invoke different analyses. Some are  
11 technical. Some relate to PURPA for the PURPA rules and the  
12 interplay between PURPA and the PURPA rules and the  
13 Commission's rules and general policy considerations.

14 I think because they invoke different analyses they  
15 ought to be treated differently and separately.

16 CHAIRMAN CLARK: Okay. Mr --

17 MR. WATSON: I would join in that, Madam Chairman.  
18 You know, it's not like we are looking at an increase from 50  
19 to 60 issues. We are talking about 10 versus 8. And this is  
20 a case of first impression under this rule.

21 CHAIRMAN CLARK: Okay. I would suggest, though, we  
22 list 2 and 3 as A and B. We have done that before to indicate  
23 they are related to the main issue of mitigation.

24 MS. BROWN: Well, Chairman Clark, let me just  
25 explain one thing. The broad, the umbrella issue that we are

1 talking about is the issue proposed by Florida Power  
2 Corporation which is on --

3 CHAIRMAN CLARK: Page 22?

4 MS. BROWN: -- Page 22.

5 CHAIRMAN CLARK: Okay.

6 MS. BROWN: That would be the broad umbrella issue.

7 CHAIRMAN CLARK: Okay.

8 MS. BROWN: And let me just read it for you. "Has  
9 Florida Power Corporation adequately demonstrated that its  
10 plan incorporates all appropriate measures to mitigate the  
11 need for curtailment during minimum load conditions."

12 If you want to do it that way, perhaps we could then  
13 put the Primary Issues 2, 3, and 4 as A, B, and C as a  
14 possible way to do.

15 MR. MCGLOTHLIN: We agree with that, that approach.

16 CHAIRMAN CLARK: Okay. We'll show then we used  
17 Florida Power Corp's overall umbrella issue; and then what is  
18 currently 2, 3, and 4 will become A, B, and C. And I think  
19 that it may be clearer to the Commission that those are issues  
20 of mitigation.

21 MR. MCGLOTHLIN: So long as it's understood that  
22 those would then be presented for independent determination  
23 when it comes to a vote; is that correct?

24 CHAIRMAN CLARK: Well, I'm not sure about that,  
25 Mr. McGlothlin, but you can certainly remedy that by asking

1 for findings of fact.

2 MR. MCGLOTHLIN: All right.

3 MS. BROWN: Chairman Clark, I like doing it that way  
4 because perhaps a party may have another mitigation matter  
5 that they want to bring up that wouldn't be precluded from  
6 your consideration if we had these specific issues.

7 CHAIRMAN CLARK: I'm trying to give you an honest  
8 answer. I think if it's 2A and B, we don't normally break it  
9 down into votes. I'm just trying to recall how we've done it  
10 before.

11 MR. MCGLOTHLIN: Well, again, if that's not the  
12 case, then I'm not as happy as I once was with the idea of  
13 putting them as corollaries under an umbrella issue.

14 CHAIRMAN CLARK: Well, I guess what I would say,  
15 whether or not the Commission feels each item should have a  
16 vote on it is something that the Commission decides. And if  
17 you feel that there is a particular finding of fact, you can  
18 specifically separate that out and request the finding of fact  
19 on that.

20 Mr. Wright?

21 MR. WRIGHT: I'm a little uncomfortable with the  
22 prospect of trying to remedy this solely with findings of  
23 fact, because as Mr. Watson noted, this is a case of first  
24 impression under the rule. And as I note it, I think there  
25 are different analyses here. I think there may be different

1 legal and policy arguments that are not at least readily  
2 capable of being addressed in findings of fact.

3 For example, we could make the arguments and then  
4 find them dismissed as being legal arguments and not  
5 appropriate to a finding of fact.

6 CHAIRMAN CLARK: But you can submit recommended  
7 conclusions of law.

8 MR. WRIGHT: Yeah. That we could do. I think I'd  
9 rather see the Commission vote on each analytical point at  
10 least on these three issues.

11 And we're not -- again, as Mr. Watson pointed out,  
12 we are not talking about expanding this from 10 to 75 issues  
13 by addressing each and every minute detail and line of  
14 analysis. We are talking about three major points, grounds or  
15 methods of mitigation.

16 MR. MCGLOTHLIN: Yes, ma'am. And when I agreed that  
17 it would be appropriate to list them all under one issue  
18 identified as mitigation, I was agreeing from the standpoint  
19 that that is a logical organization of issues and not agreeing  
20 that there's any less of a need to identify and get a vote on  
21 each of those very significant items.

22 CHAIRMAN CLARK: Let's go ahead and list it as A --

23 MS. BROWN: -- B, C.

24 CHAIRMAN CLARK: -- B, C. And one thing Staff can  
25 indicate is the parties have requested they be voted on

1 separately. Whether or not that comes about will certainly be  
2 up to the Commission. Because even if something is identified  
3 as an issue, we have sometimes decided it was something we  
4 needed to take a vote on to decide the case.

5 Mr. Wright?

6 MR. WRIGHT: May we ask that the Staff's  
7 recommendation address A, B, and C separately with a  
8 recommended decision on each? Would that be an appropriate  
9 request at this point?

10 CHAIRMAN CLARK: I think that recommendation is up  
11 to the Staff --

12 MS. BROWN: Thank you, Chairman Clark.

13 CHAIRMAN CLARK: -- but it's noted that the parties  
14 would request that they be voted on separately.

15 Okay. Now, are there any positions that need to be  
16 changed with respect to Issue 2A, B, and C?

17 MR. MCGEE: Chairman Clark, let me ask just for  
18 clarification purposes. Would you envision that we would have  
19 a position under the general umbrella issue, as well as three  
20 positions under each one?

21 CHAIRMAN CLARK: Yeah. I guess my view was the  
22 issue would be Issue 2A, B, and C. And then, likewise, the  
23 response would be Issue 2 and then response to A, B, and C.

24 MR. MCGEE: Florida Power may need then to revise  
25 it. We have under -- our position under the current Issue 2



1 is the same one that we had included with the umbrella issue.  
2 It includes all three of those components. So we would  
3 probably include that under the umbrella and then either make  
4 an attempt to break it apart for the three or, say, "see  
5 above." But we will give that some thought.

6 MS. BROWN: And if they can get that to me before  
7 the 5th, that will be fine.

8 MR. MCGEE: Yes, definitely.

9 MS. BROWN: Chairman Clark, you are thinking about  
10 this. Let me suggest this, that the parties can provide  
11 answers to this issue with its subissues as they see fit. If  
12 they want to break it apart, they can. If they don't want to,  
13 they don't think they need to, they don't have to. Does that  
14 help?

15 CHAIRMAN CLARK: No. I'm just trying to think back.  
16 I have seen it -- we have had other cases where we have had  
17 subissues, and I'm trying to think back of how we did it. And  
18 I'm pretty sure we did it as listing it as A, B, and C so it  
19 was clear that they were related issues.

20 Okay. We will leave it as such, and we will again  
21 note that the parties are requesting that votes be taken on  
22 each issue, each subpart of the issue.

23 Issue 5?

24 MS. BROWN: Chairman Clark, there is not a  
25 corresponding Orlando CoGen issue, as I understand it, a

1 contested one with this.

2 Is that right, Mr. McGlothlin?

3 MR. MCGLOTHLIN: That's correct.

4 MS. BROWN: This is a Staff proposed issue that no  
5 other parties have --

6 CHAIRMAN CLARK: All right. Tell me about what's on  
7 Page 24 though. There's an Issue 5 listed that's different.

8 MS. BROWN: We can get there.

9 These are the issues that Orlando CoGen -- it's this  
10 one, and I think it's Issue 6 as well, are issues that --  
11 Issues 5 and 6 that Orlando CoGen has proposed are issues that  
12 Staff just doesn't see why they need to be included.

13 CHAIRMAN CLARK: Oh, they are extra issues not in  
14 response to 5?

15 MS. BROWN: Yes.

16 CHAIRMAN CLARK: All right.

17 MS. BROWN: Issues 5 and 6, Staff believes, are  
18 perfectly well subsumed in Issue 8 of the primary issue list.

19 CHAIRMAN CLARK: Okay. Let me suggest this. There  
20 is no objection or substitute issue suggested for what is  
21 currently Issue 5?

22 MS. BROWN: That's my understanding.

23 CHAIRMAN CLARK: Okay.

24 MR. MCGLOTHLIN: We could probably fix that if you  
25 give us a few minutes. (Laughter)

1 CHAIRMAN CLARK: Issue 6?

2 MS. BROWN: Issue 6, Chairman Clark, "Has Florida  
3 Power Corporation adequately demonstrated that its proposed  
4 plan allocates justifiable curtailments among QFs in a fair  
5 and not unduly discriminatory manner?" That wording has been  
6 fairly well accepted by all of the parties.

7 This is an issue in the case that has to do with  
8 allocation of Power Corporations' curtailment needs between  
9 groups of QFs that have individual agreements with Florida  
10 Power Corporation to curtail under individualized  
11 circumstances. And then there are some QFs that have not  
12 agreed with Florida Power Corporation to curtail. They are  
13 treated differently under the plan, and that's why we have  
14 this issue.

15 Orlando CoGen's proposed Issue 8 -- if I may get  
16 there -- is pretty close to the Primary Issue 6, we think.  
17 Well, actually it is the same, isn't it?

18 I'm sorry, Joe.

19 They're the same, so Issue 6 is really not contested  
20 yet. But I did put down here that Orlando CoGen had it as  
21 their proposed Issue 8 to keep it straight, and then I  
22 confused myself.

23 CHAIRMAN CLARK: Okay. Any objections to Issue 6?

24 MR. MCGLOTHLIN: No. We withdraw 8 and accept 6.

25 CHAIRMAN CLARK: Okay. Issue 7?

1 MS. BROWN: Orlando CoGen objects to the wording of  
2 this issue, and let me get to theirs.

3 They have raised this as Issue 9 on Page 26.

4 CHAIRMAN CLARK: Issue 9?

5 MS. BROWN: Yes. And it's really the same issue.  
6 They don't like the way we've worded it.

7 We don't think it needs to be rephrased, but we  
8 don't object to the following wording if it would solve  
9 everybody's problem. That would be: "If the procedures set  
10 forth in Florida Power Corporation's curtailment plan are  
11 consistent with Rule 25-17.086, did Florida Power Corporation  
12 properly implement the procedures during the curtailments that  
13 occurred from October '94 through January '95."

14 We have no objection to including that, if that  
15 would solve everybody's problem.

16 CHAIRMAN CLARK: Mr. McGlothlin, I see the only  
17 difference between their 9 and your 7 is you add "1995" and  
18 you say "has" instead of "did."

19 MS. BROWN: Well, what I was responding to was  
20 Orlando CoGen's just general comment that the issue appears to  
21 presume the validity of a matter in dispute. It should be  
22 rephrased; that's what I was responding to. They don't  
23 suggest how to rephrase it, but I wanted to address that.

24 CHAIRMAN CLARK: I'm sorry, then. I'm on Page 26.  
25 And what's listed as Issue 9 and then OCL's paragraph is just

1 you all take issue with the way it's worded now, but you  
2 didn't suggest any alternative issue?

3 MR. MCGLOTHLIN: At the time we prepared our  
4 statement, we did not.

5 CHAIRMAN CLARK: All right.

6 MR. MCGLOTHLIN: I believe I had a note on that.  
7 Let me find it.

8 CHAIRMAN CLARK: Let me ask you specifically. The  
9 new rewording Staff has given at the bottom of Page 26, is  
10 that satisfactory to you? And does anyone else object to  
11 that?

12 MR. MCGLOTHLIN: I believe that is an improvement  
13 that would satisfy us.

14 CHAIRMAN CLARK: Okay. Well, we'll show Issue 7 as  
15 reworded as shown on Page 26.

16 MR. MCGLOTHLIN: And we'll revise our position to  
17 correspond with that.

18 CHAIRMAN CLARK: Good.

19 MR. WATSON: I would just like to note that Pasco's  
20 position on Issue 7 should be moved to Issue 8. And the Pasco  
21 position on Issue 8 should be moved to Issue 7. And we'll  
22 provide a rewrite of that also.

23 CHAIRMAN CLARK: Anything further on Issue 7?  
24 Issue 8?

25 MS. BROWN: Chairman Clark, this is the proposed

1 issue, the umbrella issue, as Mr. McGee mentioned, on negative  
2 avoided costs, which is an important consideration in the  
3 case. Orlando CoGen has proposed two other issues. Issues 5  
4 and 6 that deal with -- on Page 24 and 25 -- that deal with  
5 negative avoided costs and break it down more. Then they have  
6 also responded to Issue 7 which is very much like Issue 8 in  
7 the primary issue list.

8 Our point is that Issue 5 and Issue 6 are clearly  
9 capable of being addressed in Issue 8. We don't think they  
10 are necessary. OCL can present its position on both the time  
11 frame to measure costs and what costs should be included under  
12 the Primary Issue 8. And it is Staff's position that OCL's  
13 position on Issue 7 or on Issue 8 on the primary issue list  
14 demonstrates that its Issues 5 and 6 are clearly covered and  
15 don't need to be included.

16 CHAIRMAN CLARK: Mr. McGlothlin?

17 MR. MCGLOTHLIN: One of the principal issues in the  
18 case concerns whether Power Corp would experience negative  
19 avoided cost if they were to continue to purchase firm QF  
20 energy.

21 Power Corp has provided testimony and OCL and Pasco  
22 CoGen have provided testimony addressing the methodology that  
23 should be followed to arrive at the conclusion. There are two  
24 primary disagreements between the QFs and the PPC. One  
25 relates to the time frame that should be measured in

1 calculating avoided costs.

2 FPC proposes what we consider to be a too-short time  
3 frame, and our witnesses disagree and take a position and  
4 support a longer time frame. The other disagreement is with  
5 respect to which costs are going to be captured in the  
6 comparison.

7 We maintain as a variable production cost, FPC in  
8 some scenarios, in some comparisons adds some life-cycle  
9 costs. With respect to those two very key differences, we  
10 think they warrant separate issues that would inform the  
11 Commissioners what is in dispute between the parties and would  
12 also on behalf of the cogenerators who object to the plan  
13 present those two disagreements for separate resolution by the  
14 Commission.

15 And having resolved those two issues, the Commission  
16 will then apply those decisions to the bottom line question  
17 which is what are those avoided costs.

18 Again, they're very significant items that we think  
19 deserve single attention, and there's no burden in terms of  
20 case management by having those two issues addressed  
21 separately before the fallout issue occurs.

22 It's very similar to a rate case situation which, as  
23 you know, before you ask what is the investment of rate base,  
24 you go through some individual issues to get at that point.

25 CHAIRMAN CLARK: Mr. McGee?

1 MR. MCGEE: Commissioner, this is somewhat like the  
2 question we discussed before on mitigation. They have some  
3 criticisms of the methodology that Florida Power has used and  
4 they've identified two of them, and I guess we feel flattered  
5 that they've only found two. But that doesn't mean that every  
6 time a point is made that it needs to be dignified by building  
7 a whole issue around it. I think this clearly can be dealt  
8 with under one umbrella issue.

9 MS. BROWN: Chairman Clark, could I respond, also,  
10 just to clarify something? Mr. McGlothlin was explaining  
11 Orlando CoGen's position and he said that these were the  
12 objections that the QFs had to Florida Power Corporation's  
13 plan.

14 There are some QFs that have objections to Florida  
15 Power Corporation's plans, but I think he's speaking a little  
16 broadly to assume that all the parties in this case have the  
17 same objections that he does.

18 MR. MCGLOTHLIN: I wasn't implying that at all. I  
19 said earlier in my statement that witnesses for OCL and Pasco  
20 CoGen had made those disagreements.

21 MS. BROWN: Okay.

22 CHAIRMAN CLARK: I'm going to allow them to be  
23 listed as an A and B. I have no objection to focusing the  
24 Commission on those issues, but, again, you can note that they  
25 requested separate votes on them. But whether or not the



1 Commission believes it's necessary to reach a resolution will  
2 be up to us to decide if we want to vote on it.

3 MR. McGLOTHLIN: All right.

4 CHAIRMAN CLARK: Okay. Issue 8?

5 MS. BROWN: I think we've done Issue 8, Chairman  
6 Clark, haven't we?

7 CHAIRMAN CLARK: Yes. I'm sorry.

8 MS. BROWN: So we are on Issue 9 which is a legal  
9 issue. There are some differences in the way Pasco and  
10 Orlando CoGen have worded the legal issue.

11 I think they are not really substantive differences.  
12 Staff proposes that the issue should stay as it's worded in  
13 the primary issue list.

14 We don't think that Pasco's additional explanatory  
15 phrase in its rewording of the issue is necessary. It seems  
16 to limit the scope of the Commission's consideration of that  
17 issue more than is appropriate.

18 MR. WATSON: Chairman Clark, I think Pasco at least  
19 would be willing to drop the parenthetical at the end of its  
20 issue. However, there is perhaps a larger change in the  
21 Staff's statement of Issue 9 when it refers to the Florida  
22 Commission's rule as an implementation of Section 210 of PURPA  
23 rather than as an implementation of the FERC's Rule  
24 292.304(f). In other words the --

25 MS. BROWN: I think that's a distinction without a

1 difference, also. I mean, FERC's rule implement PURPA to  
2 start with, and then our rules also implement PURPA.

3 CHAIRMAN CLARK: Just a minute. What is your  
4 objection, Mr. Watson, to the way Staff has phrased Issue 9?  
5 Isn't that basically what you've phrased it as without the  
6 parenthetical?

7 MR. WATSON: I don't believe so. Let's see.

8 CHAIRMAN CLARK: Well, explain to me the difference.

9 MR. WATSON: Mine says: "What is the permissible  
10 scope of Rule 25-17.086 in view of the federal standards of  
11 18 CFR 292.304 implementing PURPA?"

12 In other words, the FERC rule implements PURPA and  
13 the FERC order adopting the rules required the states to  
14 implement the FERC rules.

15 CHAIRMAN CLARK: All right. The difference being  
16 not only do we have to comply with 210, it has to be a correct  
17 implementation of the FERC rule?

18 MR. WATSON: Correct.

19 CHAIRMAN CLARK: Well, I think that's a fair  
20 addition to make. If it is appropriate that our rule is in  
21 furtherance of a specific FERC rule and there's no debate that  
22 that is the rule we need to look to, I have no objection to  
23 including that in the issue.

24 MS. BROWN: All right, Chairman Clark. The wording  
25 would be -- let me get to Pasco's.

1 CHAIRMAN CLARK: Well, could we take Pasco's wording  
2 without the parenthetical?

3 MS. BROWN: Yes, that would be fine. I'd like to  
4 include the appropriate PURPA section.

5 CHAIRMAN CLARK: That's fine.

6 MS. BROWN: I'll put that in.

7 CHAIRMAN CLARK: Mr. McGlothlin, do you have an  
8 objection to that? It's your Issue 10, right? As I see on  
9 Page 27, your 10 is what is currently 9?

10 MR. MCGLOTHLIN: I don't think I have an objection  
11 to what is worded as Issue 9, Commissioner. I would like the  
12 opportunity to think about whether I want to change our  
13 position, but I'll let Staff know that in the very near  
14 future.

15 CHAIRMAN CLARK: Okay.

16 Any other changes to Issue 9?

17 Issue 10?

18 MS. BROWN: Chairman Clark, Issue 10 is sort of the  
19 ultimate resolution of the case issue. I don't think the  
20 parties really object to it. There are a couple of extra  
21 issues that Orlando CoGen has proposed.

22 CHAIRMAN CLARK: Okay. So Issue 10 is no objection  
23 to that? Okay.

24 And what other issues does Orlando CoGen wish to  
25 add?

1 MS. BROWN: Let me see. Let me get there.

2 Issue 11, I think, is the only remaining -- Issue 11  
3 on Page 27 is the only remaining Orlando CoGen issue that we  
4 need to look at. And it is the same issue that Pasco has  
5 proposed as their Issue 10.

6 CHAIRMAN CLARK: Okay.

7 MS. BROWN: Staff's position on Issue 11 as proposed  
8 by Orlando CoGen is that it should not be included as a  
9 separate issue in the case. That the substance of the issue  
10 is subsumed in Issue 9 and 10 of the primary issue list, and  
11 it can be adequately and fully addressed there, and a separate  
12 issue is not necessary.

13 CHAIRMAN CLARK: Mr. McGlothlin?

14 MR. MCGLOTHLIN: I continue to believe that there is  
15 a need to have Issue 11 or something close to it. Because  
16 while the thrust of the parties' testimony deals with whether  
17 FPC has shown an operational circumstance within the meaning  
18 of the FERC Rule 292.304, there are some references to  
19 alternative -- the potential alternative justification which  
20 would be a system emergency. And, simply, to ensure that we  
21 have covered all possible avenues, we would like to have an  
22 issue that speaks to that because our position as presented by  
23 Dr. Shanker is that there's been no showing adequate to  
24 justify it on that alternative basis.

25 So unless we have something like 11, I don't think

1 there's an issue that corresponds to one of the parties'  
2 contentions.

3 MR. WATSON: I join in that, Madam Chairman. The  
4 FERC rules appear to permit curtailment under only two sets of  
5 circumstances. One is spelled out in 292.304(f) and the other  
6 in 292.307; the latter being the operational or system  
7 emergency situation. And if we are going to see whether  
8 Florida Power has any right at all to curtail, I think both  
9 those sections of the FERC regulations need to be addressed  
10 separately.

11 CHAIRMAN CLARK: Well, let me ask a question of  
12 Florida Power Corporation. Have you alleged that you are  
13 going under the -- is it 07?

14 MR. WATSON: 307 would be the system emergency.

15 CHAIRMAN CLARK: 307? Is that the basis of your  
16 petition?

17 MR. WATSON: The basis of our petition -- as a  
18 matter of fact, the caption in the upper left-hand corners  
19 calls it the Petition for Determination, the plan for  
20 curtailing purchases from qualifying facilities and minimum  
21 load conditions is consistent with Rule 25-17.086. That's all  
22 we've asked for.

23 CHAIRMAN CLARK: Well, it strikes me it's not at  
24 issue.

25 MR. MCGLOTHLIN: Well, if counsel for PPC will

1 stipulate that there's no contention that 17.086 implements  
2 both of those criteria, that it implements only the  
3 operational circumstance, then I think we're all right.

4 MR. MCGEE: Well, we already have Issue 10 which  
5 raises the question of whether the plan is justified under  
6 25-17.086.

7 MS. BROWN: Chairman Clark, I'm afraid that this is  
8 an issue that's attempting to narrow the Commission's  
9 consideration of things like this. And if OCL and Pasco want  
10 to address this matter in the legal issue, they certainly can.  
11 But I don't want the Commission to limit the scope of its  
12 consideration of curtailment matters in this case by deciding  
13 an issue that doesn't need to be decided because there are no  
14 facts to support it. That's what I am concerned about here.

15 MR. MCGLOTHLIN: There's no desire on my part to  
16 narrow the consideration. All we need to understand is  
17 whether FPC contends that the curtailments are justified by  
18 reference to some system emergency standard. If that's the  
19 contention, then we have a position and we want an issue.

20 If they're not contending that, if they're  
21 attempting to justify the proposed plan and the  
22 curtailments -- not by system emergency but by the operation  
23 of circumstance -- and, then, there need not be an issue  
24 addressing that. And nothing of what I've said narrows the  
25 Commission's consideration. It really depends upon what FPC's

1 contentions are in the case.

2 CHAIRMAN CLARK: Mr. McGlothlin, do I understand  
3 that you wish a decision from the Commission indicating that  
4 the only other basis for curtailment would be on the basis of  
5 an emergency, and that's what you want the Commission to  
6 decide? Even though it's not been put forth as a basis in  
7 this proceeding.

8 MR. MCGLOTHLIN: I'm having to think that through  
9 because I think there are two things, perhaps, at play. One  
10 is whether FPC is attempting to justify curtailments on one or  
11 both of the two grounds identified in the rules of the FERC  
12 pertaining to curtailment.

13 The other possible contention is whether they, FPC,  
14 is attempting to justify curtailments on some contention that  
15 17.086 permits more than that. And, so, we have issues that  
16 go to each of those possibilities.

17 MS. BROWN: And, Chairman Clark, that is my concern.  
18 I think the effect of having this issue is going to get the  
19 Commission to make a decision that very much limits perhaps  
20 the scope of its interpretation of its own curtailment rule in  
21 a case that really doesn't call for it or need it because the  
22 facts are not there. That's the concern that I see from this  
23 issue.

24 MR. MCGLOTHLIN: Well, we've already identified, I  
25 think it was Issue No. 9, a legal issue, which is what is the

1 permissible scope as an implementation of PURPA. And in  
2 deciding that, the Commission will address whether its rule  
3 reflects the FERC standard or whether it's permissible to do  
4 anything beyond that.

5           What we are addressing now, it is more a reflection  
6 of the allegations of FPC with respect to the grounds for  
7 curtailment. And all I'm asking is that FPC identify whether  
8 it maintains that system emergencies constitute a  
9 justification for the curtailments.

10           If that's the case, then I think it warrants an  
11 issue that addresses that because we have a position on it.  
12 If that's not a contention in the case, then I think we'd be  
13 in a position to withdraw the issue.

14           CHAIRMAN CLARK: Mr. McGee?

15           MR. MCGEE: Commissioner, we have contended that  
16 operational circumstances on our system consist of these --  
17 what has been referred to as minimum load conditions. I'm not  
18 sure, at least at this stage, that I'm prepared to make  
19 whatever subtle decisions might be involved in determining  
20 whether that constitutes an emergency or whether that's simply  
21 an operational condition or whether it's both. Our  
22 curtailment plan refers to actual curtailments themselves as  
23 we get closer and closer to the time when load and  
24 generation --

25           CHAIRMAN CLARK: But your position is that you are



1 in compliance with 17.086, and you are not arguing that there  
2 is another basis for your proposed curtailment plan?

3 MR. MCGEE: That's correct.

4 CHAIRMAN CLARK: I don't think it's at issue,  
5 Mr. McGlothlin.

6 MR. MCGLOTHLIN: Well, if he's contending that he's  
7 in compliance with 17.086 and there's some issue as to what  
8 .086 encompasses, whether it's one --

9 CHAIRMAN CLARK: But that's already what is the  
10 permissible scope of 17.086. That's the legal issue.

11 MR. MCGLOTHLIN: Yes. And if one assertion in  
12 response to that issue is that the permissible scope includes  
13 system emergencies, then we have to have some opportunity to  
14 contend that FPC has not satisfied that contention with a  
15 factual showing.

16 CHAIRMAN CLARK: Well, your opportunity is the  
17 response to that issue, not whether -- I mean, the issue, as  
18 you phrased it, "Is there some other basis other than 17.086?"  
19 And they're not contending it is.

20 Now, the question of what .086 is, is a debate. I  
21 understand that.

22 MR. MCGLOTHLIN: Well, perhaps the problem is the  
23 way I've phrased that issue. If we could rephrase it to say:  
24 "Has FPC demonstrated a system emergency that would warrant  
25 curtailment," could we then have that and address it?

1 MS. BROWN: But --

2 CHAIRMAN CLARK: Ms. Brown?

3 MS. BROWN: Well, I mean, there are no facts; and  
4 they haven't asked for that. I'm afraid --

5 MR. MCGLOTHLIN: Excuse me, but --

6 CHAIRMAN CLARK: Just a minute.

7 MS. BROWN: Yes, thanks.

8 CHAIRMAN CLARK: Mr. McGlothlin, we are going to  
9 decide the issues that we need to decide for this case. And  
10 I, for one, do not like to go beyond what we have to decide  
11 because you could never predict the factual circumstances that  
12 may come up in the future when you are faced with particular  
13 circumstances, how you would interpret things.

14 It is my desire to limit it to the facts as proposed  
15 in the petition.

16 MR. MCGLOTHLIN: Yes, ma'am. But Mr. McGee a moment  
17 ago said he was unwilling to say that their proposal is not  
18 justified by system emergencies. And so long as Power Corp  
19 believes that is at play in the case, we're entitled to an  
20 opportunity to say they haven't made that case, and an issue  
21 that addresses it for the Commission to decide.

22 CHAIRMAN CLARK: Well, it seems to me it would be in  
23 response to whether or not it's in the permissible scope of  
24 17.086. If they don't allege or support that it's an  
25 emergency circumstance, then that's not the basis on which

1 they're arguing their case, so it's not at issue.

2 MR. WATSON: Could we have just a moment?

3 CHAIRMAN CLARK: I'd like to finish this up. And  
4 let me ask: Do you have anything further to add?

5 MS. BROWN: No, Commissioner Clark. You said what I  
6 was going to say.

7 CHAIRMAN CLARK: All right. Let me ask one thing.  
8 Do we have any changes to -- I assume that when the final  
9 order, Prehearing Order, is put out, then the exhibit list  
10 will be revised as necessary.

11 MS. BROWN: Yes, Chairman Clark. And, in fact, we  
12 do have one more issue to deal with that I overlooked.

13 CHAIRMAN CLARK: Okay.

14 MS. BROWN: My Staff has pointed it out to me. On  
15 page -- I think it's Page 22. It's Dade County's Issue 1A.  
16 It's right there in the middle. Staff recommends that it not  
17 be included as a separate issue. It can be adequately  
18 addressed in Issue 1.

19 CHAIRMAN CLARK: I'm momentarily at a loss to --

20 MS. BROWN: -- Mr. Wright.

21 CHAIRMAN CLARK: Who is it? Mr. Wright?

22 MS. BROWN: Uh-huh.

23 CHAIRMAN CLARK: Mr. Wright?

24 MR. WRIGHT: Yes, ma'am. I wasn't sure if you had  
25 recognized me to speak. Issue 1, Chairman Clark, is whether

1 Florida Power has adequately demonstrated that the minimum  
2 load conditions comply with the Commission's rule.

3 We believe that ample evidence will be introduced in  
4 this case. It's already been submitted in the form of  
5 prefiled testimony and exhibit-type evidence to support a  
6 finding that FPC consciously decided not to seek  
7 dispatchability in the contract with the QF with whom it now  
8 seeks to curtail.

9 Our issue is whether, assuming that that evidence  
10 supports a factual finding, that FPC made that conscious  
11 decision. Can FPC attempt to achieve by invoking the  
12 curtailment rule what they decided not to pursue in contract  
13 negotiations? This is different from Issue 1, and we think it  
14 ought to be in there.

15 CHAIRMAN CLARK: Well, let me ask you this. I mean,  
16 isn't your response that they haven't adequately demonstrated  
17 it because they entered into nondispatchable contracts and  
18 that does not allow them to raise the minimum load issue.  
19 Isn't that part of your position?

20 MR. WRIGHT: It is part of our position, but I'm not  
21 sure it's part of our position with respect to Issue 1 which  
22 says: Have they demonstrated that the minimum load conditions  
23 comply with the grounds for a curtailment provided for in the  
24 rule.

25 Now, what we might say is that this might be

1 regarded as some kind of preissue or preliminary issue,  
2 threshold issue, that would have to be addressed. Can they  
3 even get to invoking the rule given their past behavior?

4 CHAIRMAN CLARK: Staff?

5 MS. BROWN: Chairman Clark, I think they can fully  
6 address the question of dispatchable contracts in Issue 1.  
7 And Staff has pointed out to me that an awful lot of this  
8 Issue 1A is really a proposed finding of fact and can be  
9 addressed that way.

10 CHAIRMAN CLARK: Florida Power Corporation, do you  
11 have anything to say?

12 MR. MCGEE: To concur with Ms. Brown; that this  
13 issue is fully included within Issue No. 1. And if Florida  
14 Power has complied with -- if the minimum load conditions  
15 comply with the rule, the fact that something else, some  
16 different means of remedying the situation may or may not have  
17 been available at an earlier time is really not germane to the  
18 question that's posed by Issue 1. If we satisfy the rule, we  
19 are entitled to curtail. And if this causes us not to satisfy  
20 the rule, then Issue 1 is the appropriate place to deal with  
21 it.

22 MR. WRIGHT: Chairman Clark?

23 CHAIRMAN CLARK: Go ahead, Mr. Wright.

24 MR. WRIGHT: Very briefly. I mean, at the very  
25 least this is an issue of fact that also includes a conclusion

1 of law, you know, the legal question being: If Florida Power  
2 has done what we believe they've done, are they even entitled  
3 to invoke the rule? And I think kind of a factual question  
4 and a legal question come together to form an issue.

5 CHAIRMAN CLARK: I'm inclined to allow it as an  
6 issue. It seems to me the question being raised is not  
7 whether they haven't complied with it, but whether or not some  
8 other actions preclude them from taking advantage of that  
9 rule. Does the rule speak to it at all.

10 MS. BROWN: No, it does not. And the actions that  
11 are being considered are actions that took place six, seven,  
12 eight years ago. It would tend to me to quite significantly  
13 enlarge the scope of this proceeding and require the  
14 Commission to use hindsight to go back to see if actions taken  
15 by Power Corp were prudent at the time. And I don't know if  
16 these are really the issues that are relevant here.

17 CHAIRMAN CLARK: Well, I'm having a little  
18 difficulty understanding the explanation because what  
19 Mr. Wright has put forward is the notion that there are some  
20 circumstances under which the rule does not apply. Is that a  
21 fair statement of your position?

22 MR. WRIGHT: (Nodding head)

23 MS. BROWN: Then perhaps that should be proposed as  
24 a legal issue. I mean, it certainly -- the rule or anything  
25 that I've read in federal rules doesn't address anything like

1 that. I think it's sort of out of the scope of this whole  
2 proceeding. And, perhaps, I'm not satisfying your concerns  
3 because I, frankly, don't understand what the problem is with  
4 Issue 1 and addressing it there.

5 CHAIRMAN CLARK: Mr. Wright, have you filed  
6 testimony on this point?

7 MR. WRIGHT: My clients have not. The other parties  
8 have.

9 CHAIRMAN CLARK: Who's filed testimony on this?

10 MR. WRIGHT: Mr. Shanker on behalf of OCL and Pasco  
11 and exhibitory evidence that tends to support the factual  
12 underpinning.

13 CHAIRMAN CLARK: Mr. Wright, you can include that as  
14 a position under Issue 1. I think that one answer to whether  
15 or not they have adequately demonstrated the need for  
16 curtailment can be that their prior actions preclude them to  
17 do it. And you can ask for it being a proposed finding of  
18 fact if you desire that.

19 MR. WRIGHT: And conclusion of law?

20 CHAIRMAN CLARK: If that's what you think it is.  
21 That will be fine.

22 MR. WRIGHT: Thank you.

23 Now, Mr. Watson, you asked for a minute. Do you  
24 still need?

25 MR. WATSON: Yes. I would like to come back to what

1 you were discussing with Mr. McGlothlin on --

2 CHAIRMAN CLARK: -- the final legal issue.

3 MR. WATSON: Yes, the 307 issue.

4 CHAIRMAN CLARK: Yes.

5 MR. WATSON: And if I understood correctly, you've  
6 already agreed to reword Issue 9 on Page 19.

7 CHAIRMAN CLARK: Yes. It would be reworded as you  
8 suggested.

9 MR. WATSON: As Pasco suggested on Page 27, minus  
10 the parenthetical at the end.

11 CHAIRMAN CLARK: Right. That's my understanding.

12 MR. WATSON: Maybe one way to address this -- I  
13 think we've got to go back. FPC's petition asked the  
14 Commission to determine whether its plan is consistent with  
15 Commission Rule 25-17.086, okay? To the extent that 25-17.086  
16 was intended to implement more than the federal standard under  
17 Section 304, i.e, in addition, 307 System Emergency Standard,  
18 maybe we ought to reword the legal issue and say: What is the  
19 permissible scope of Rule 25-17.086 in view of the federal  
20 standards implementing PURPA without referring to any  
21 particular section number. That way that gives the option to  
22 argue that both 304 and 307 were intended to be implemented.

23 Now we've got all these factual issues on the  
24 negative avoided cost, operational circumstances, mitigation  
25 that would be subsumed under Section 304, I still think we



1 need a factual issue as to whether Florida Power has  
2 adequately demonstrated that it can implement its plan due to  
3 a system emergency under 307.

4 CHAIRMAN CLARK: So you are suggesting changing 9 to  
5 what is the permissible scope of 25-17.086.

6 MR. WATSON: In view of the federal standards  
7 implementing PURPA. In other words, we'd draw above the  
8 18 CFR Section 292.304.

9 CHAIRMAN CLARK: Would we say implementation of  
10 Section 210 of PURPA?

11 MR. WATSON: Implementing Section 210 of PURPA? I  
12 think that's acceptable.

13 CHAIRMAN CLARK: Then we go back to what was  
14 originally the legal issue then, as I understand it.

15 MS. BROWN: Chairman Clark, I think that is an  
16 improvement on the legal issue, but not if the implication is  
17 that we then need this unnecessary factual issue to go along  
18 with it. Because, once again, these parties are requiring you  
19 to decide something that's really not before you.

20 CHAIRMAN CLARK: Well, I think what Mr. Watson is  
21 proposing is that parties can then argue that it doesn't even  
22 implement the emergency situation. They haven't even met the  
23 requirement of the emergency situation.

24 MR. WATSON: You could argue that.

25 MS. BROWN: And there are other issues that can be

1 dealt with, that can address that, you can address that under.

2 MR. MCGLOTHLIN: I hesitate to say anything because  
3 I don't want to appear argumentative, but I just think there's  
4 something missing in the analysis.

5 What we've done with Issue 9 -- and I agree with  
6 Ansley's improvement on that -- given that there are two  
7 standards in the FERC rules addressing curtailment, the  
8 parties should be allowed to argue that .086, incorporation  
9 with one or both. And that legal issue dealing with the scope  
10 of the PSC's rule is then available as a vehicle for the  
11 parties' positions.

12 CHAIRMAN CLARK: Okay. So then you agree?

13 MR. MCGLOTHLIN: So far.

14 CHAIRMAN CLARK: Okay.

15 MR. MCGLOTHLIN: But as to whether factually FPC has  
16 made a case that would justify approving a plan of particular  
17 curtailments on the basis of finding on a system emergency is  
18 not covered by Issue 9.

19 CHAIRMAN CLARK: Have they done that in their direct  
20 testimony?

21 MR. MCGLOTHLIN: Well, that's the question I posed  
22 earlier. We see some references to system emergency. As I  
23 said, the vast thrust of the case is devoted to the  
24 operational circumstance.

25 CHAIRMAN CLARK: Has your party, your witnesses,

1 responded that there isn't an emergency basis that  
2 justifies --

3 MR. MCGLOTHLIN: Yes.

4 CHAIRMAN CLARK: Okay.

5 MR. MCGLOTHLIN: Yes. Dr. Shanker says that they  
6 have made no such showing, and that's why, you know, I posed  
7 the question of FPC. If they don't contend that they qualify  
8 on that basis, then, perhaps, there's no need for a factual  
9 issue, but they're not willing to say that that's not part of  
10 their case. And so long as that's the case, we need an issue  
11 to deal with it.

12 CHAIRMAN CLARK: Go ahead, Mr. McGee.

13 MR. MCGEE: I think that doesn't quite characterize  
14 the testimony properly. Dr. Shanker is contending that  
15 operational circumstances, the other requirement beside system  
16 emergencies, requires some kind of extraordinary conditions to  
17 exist that are in the nature of an emergency and that we  
18 haven't met his definition of operational circumstances.

19 MR. MCGLOTHLIN: That's not correct, sir.

20 CHAIRMAN CLARK: Well, we will leave the issue as  
21 what is the permissible scope of 25-17.086 Florida  
22 Administrative Code as an implementation of Section 210 of  
23 PURPA.

24 MR. WATSON: I thought we were going to say, "In  
25 view of the federal standards implementing Section 210 in

1 PURPA."

2 CHAIRMAN CLARK: That's fine.

3 And to the extent -- Mr. McGlothlin, I'm not  
4 convinced yet there's an issue that needs to be added on that  
5 point.

6 MR. MCGLOTHLIN: Is that because FPC is not  
7 contending that they want to make that case? Because I'm  
8 still not clear as to what their position is on that.

9 CHAIRMAN CLARK: Well --

10 MR. MCGLOTHLIN: And just so we clarify, one point  
11 that came out earlier, on Page 7 of Dr. Shanker's testimony  
12 after referring to the two possible standards, the question is  
13 posed: "With respect to the other exception that you  
14 mentioned earlier, do you believe that FPC can discontinue QF  
15 purchases during the alleged light load periods by claiming  
16 the existence of a system emergency," and then it refers to  
17 FPC's Witness Dolan's testimony.

18 And in response to that question, Dr. Shanker  
19 testifies that FPC has failed to make that case.

20 MS. BROWN: Chairman Clark, I thought this case was  
21 about Florida Power Corporation putting together a curtailment  
22 plan for minimum load operational circumstances and asking the  
23 Commission to approve it, period.

24 CHAIRMAN CLARK: Mr. McGlothlin?

25 MR. MCGLOTHLIN: Yes.

1           CHAIRMAN CLARK: I don't understand that, too. They  
2 could still do it in emergency situations without a plan. Is  
3 that the point you are making?

4           MS. BROWN: Yes. I'm making the same point again,  
5 that I think we're expanding the scope of what this case is  
6 about. And it concerns me to do that outside of a particular  
7 set of facts that apply to that circumstance.

8           MR. MCGLOTHLIN: Well, the Company proposes a  
9 curtailment plan to deal with the minimum load situation and  
10 then offers testimony in support of its request for approval  
11 of the plan. And while the basic thrust of that offered  
12 support deals with operational circumstances, there are some  
13 references to the other criterion. And if there's a ruling  
14 that their case does not include that standard or cannot be  
15 approved on the basis of that standard, then, you know, I  
16 think I'm satisfied. But that isn't clear to me.

17           CHAIRMAN CLARK: Well, let's go back to your  
18 Issue 10 as proposed. You are not at this point asking for it  
19 to be worded in that way.

20           MR. MCGLOTHLIN: No. I'm accepting Mr. Watson's  
21 revision of a legal issue and suggesting that we need a  
22 factual issue that poses a question: Has FPC justified its  
23 proposed plan and individual curtailments on the basis of  
24 system emergencies.

25           CHAIRMAN CLARK: Well, can't that be answered in

1 response to the final issue which is the catchall issue: Have  
2 they demonstrated -- should the Commission approve the plan --  
3 is it approved that Florida Power Corporation's curtailment  
4 plan is being in compliance with Rule 25-17.086.

5 MR. MCGLOTHLIN: Well, I think that was designed to  
6 be a summary fallout type of question of what went before. If  
7 we are looking for someplace else to put this, possibly we  
8 could have, again, a subissue under No. 1, which is: Have  
9 they complied with 17.086, so long as there's an opportunity  
10 to identify the system emergency standard and a position that  
11 they haven't read it.

12 CHAIRMAN CLARK: I think it can be answered in your  
13 position to No. 1. I would assume that your position would be  
14 that neither complied on an operational basis or an emergency  
15 basis.

16 MR. MCGLOTHLIN: That's correct.

17 CHAIRMAN CLARK: Okay.

18 MR. WATSON: I would agree with that, too, Chairman  
19 Clark, but it also may ultimately demonstrate the need for  
20 more than 50 words in the positions to be stated on these  
21 issues.

22 CHAIRMAN CLARK: Okay. The only reason I am  
23 hesitant to allow the extra number of words is I personally  
24 like to hear the case and gain my own assessment of the  
25 complexity of it. And I do think it's to your benefit to be

1 as concise as you can in the wording. I mean, we have an  
2 awful lot to read, and I think it's a better product when it's  
3 as short and concise as it possibly can be. And that was my  
4 reason for reserving a ruling on that.

5 I think that takes care of everything we need to  
6 resolve.

7 MS. BROWN: As far as I know, Chairman Clark, unless  
8 the parties have something more to add.

9 CHAIRMAN CLARK: The only thing I think that -- I'm  
10 sorry, Mr. Wright, go ahead.

11 MR. WRIGHT: I didn't mean to interrupt. I just  
12 wanted to ask a procedural timing question about rebuttal  
13 testimony.

14 What I was thinking is that if FPC would file its  
15 rebuttal testimony, other than that rebutting Mr. Slater's  
16 supplemental testimony on the currently scheduled date May  
17 2nd, that would help all parties. And I would like to see  
18 that be the order of events. If they need extra time to  
19 respond to Mr. Slater's supplemental testimony, you know,  
20 certainly they ought to be entitled to it; and we'll deal with  
21 it in the same way that everybody else will.

22 CHAIRMAN CLARK: Mr. McGee?

23 MR. MCGEE: I guess I'm not sure I understood the --

24 CHAIRMAN CLARK: What Mr. Wright is suggesting is  
25 that there has been supplemental testimony filed from

1 Mr. Slater and that may be a justification for further time  
2 being allowed to you to respond to that supplemental  
3 testimony. But other rebuttal testimony responding to the  
4 other party's direct should still be filed on -- is it the  
5 2nd?

6 MR. WRIGHT: 2nd.

7 CHAIRMAN CLARK: 2nd.

8 MR. MCGEE: Yes, ma'am. And we plan to do that. I  
9 didn't mean to suggest that the problem with Slater's rebuttal  
10 would have anything to do with our normal file date.

11 CHAIRMAN CLARK: Right. So rebuttal testimony will  
12 be filed on the 2nd. To the extent you need to file  
13 supplemental rebuttal testimony to address Mr. Slater's  
14 supplemental direct, that will be done at a later date, if  
15 necessary.

16 MR. MCGEE: Right.

17 CHAIRMAN CLARK: And just to resolve it clearly, I  
18 understand you and Mr. McGlothlin will get together to see  
19 what you can work out. And get in touch with Staff as to what  
20 you've agreed to or the points on which you've failed to  
21 agree; and, if necessary, I will set some time limitations.

22 MR. MCGLOTHLIN: We are available to do that  
23 immediately.

24 CHAIRMAN CLARK: Okay. Mr. McGlothlin, did you have  
25 anything else?



1 MR. MCGLOTHLIN: Yes. I can report to you that this  
2 morning OCL and FPC signed a stipulation that deals with the  
3 scope of OCL's presentation and the corresponding agreement of  
4 FPC to withdraw outstanding discovery directed to OCL. And  
5 perhaps it would be appropriate to list that in the  
6 stipulation section of the Prehearing Order.

7 CHAIRMAN CLARK: Okay. You want an addition to the  
8 Prehearing Order?

9 MR. MCGLOTHLIN: We have reached such a stipulation.  
10 I believe it's typical to reflect stipulations.

11 CHAIRMAN CLARK: And I don't understand what the  
12 stipulation was in reference to.

13 MR. MCGLOTHLIN: There was a point earlier in the  
14 case when FPC directed discovery to OCL and other QPs and to  
15 which we responded with objections.

16 CHAIRMAN CLARK: Okay.

17 MR. MCGLOTHLIN: In light of an agreement between  
18 the parties as to what we intend to present at hearing in  
19 exchange for that agreement, FPC has agreed to withdraw that  
20 outstanding discovery; and so it resolves what would otherwise  
21 be, you know, issues regarding our objections to discovery.

22 CHAIRMAN CLARK: All right. So then there has been  
23 objections filed?

24 MR. MCGLOTHLIN: Yes.

25 CHAIRMAN CLARK: Okay. So you will show that as a

1 stipulation.

2 MS. BROWN: Well, Chairman Clark, is it necessary  
3 for me to put this particular stipulation on this issue in the  
4 Prehearing Order?

5 CHAIRMAN CLARK: The only --

6 MS. BROWN: Several other parties have stipulated as  
7 well with Florida Power Corporation with respect to this. It  
8 has to do with whether any of the QFs in the case were going  
9 to show that they were harmed by Florida Power Corporation's  
10 curtailment.

11 Florida Power Corporation then issued discovery on  
12 that point. "Well, if you are going to contend you're harmed,  
13 show us this, that, and the other thing."

14 The QFs objected to that and have now agreed that  
15 they will not present the issue of harm to QFs in the case.  
16 And Florida Power Corporation, with several other QFs, has  
17 agreed to withdraw its motion to compel discovery. And I had  
18 not planned to include all of those agreements in the  
19 Prehearing Order, and I'm not sure it's necessary to do it for  
20 Orlando CoGen.

21 MR. MCGLOTHLIN: Well, if that's the case --

22 CHAIRMAN CLARK: Let me just -- I like the record to  
23 reflect closure on motions. That's all.

24 MS. BROWN: All right.

25 MR. MCGLOTHLIN: But in our case there was no

1 pending motion to compel, so --

2 CHAIRMAN CLARK: Okay.

3 MS. BROWN: Yes, because they are withdrawn.

4 CHAIRMAN CLARK: If that's the case, if the record  
5 shows the disposition of a motion, then I'm not sure that we  
6 have to include it in the Prehearing Order.

7 MR. MCGLOTHLIN: The other item is that OCL would  
8 like to plan to make an opening statement at the outset of the  
9 hearing.

10 CHAIRMAN CLARK: Okay. I think that would be a good  
11 idea. That has occurred in other cases, and I found that  
12 helpful. But I think it would be the desire of the  
13 Commissioners to have it be a short statement.

14 Does FPC wish to make an opening statement?

15 MR. MCGEE: Yes, we do.

16 CHAIRMAN CLARK: How about Auburndale?

17 MS. WALKER: At this time, we don't know.

18 CHAIRMAN CLARK: Ms. Rule?

19 MS. RULE: Polk, Orange and Tiger Bay aren't  
20 prepared to make a decision until we see the final issues.

21 CHAIRMAN CLARK: Okay. Mr. Wright?

22 MR. WRIGHT: Chairman Clark, I think we would want  
23 to make a brief opening statement on the order of one or two  
24 minutes, something like that.

25 CHAIRMAN CLARK: Okay. Mr. Watson?

1 MR. WATSON: Probably.

2 CHAIRMAN CLARK: Mr. Zambo?

3 MR. ZAMBO: Yes, probably, also.

4 CHAIRMAN CLARK: Ms. Oakley?

5 MS. OAKLEY: Probably as well. We'd like to reserve  
6 that right.

7 CHAIRMAN CLARK: Let the Prehearing Order reflect  
8 that there will be opening statements. What I would suggest  
9 is maybe limit it to 10 minutes, and I would suggest to the  
10 parties in opposition to the petition that you coordinate your  
11 opening statements so there's not any redundancy, that you  
12 don't cover the same ground and that you cover only areas  
13 peculiar to your clients. You might select one of you to give  
14 sort of the leading opening statement and then add to it as  
15 necessary.

16 MR. MCGEE: Is the 10-minute limit intended to be  
17 per side or per party?

18 CHAIRMAN CLARK: Good question.

19 Mr. Wright, you indicated only one or two minutes?

20 MR. WRIGHT: Very brief. I mean, certainly no more  
21 than five, even if I have a bad day.

22 CHAIRMAN CLARK: Why don't we limit opening  
23 statements to 20 minutes per side, and then you all divide it  
24 up as necessary. But I would suggest to you, please don't  
25 take 20 minutes. And just because the cogeneration parties

1 are taking 20 minutes doesn't mean that it's necessary for PPC  
2 to take that long either.

3 MR. MCGEE: I understand.

4 MS. BROWN: I have nothing further, Chairman Clark.

5 CHAIRMAN CLARK: Okay. Anything further?

6 Thank you very much. The prehearing is adjourned.

7 (Thereupon, the hearing concluded at 11:20 p.m.)

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1 STATE OF FLORIDA)  
2 COUNTY OF LEON )


CERTIFICATE OF REPORTER

3 I, ROWENA NASH HACKNEY, Official Commission  
4 Reporter,

5 DO HEREBY CERTIFY that the Prehearing Conference in  
6 Docket No. 941101-EQ was heard by the Florida Public Service  
7 Commission at the time and place herein stated; it is further

8 CERTIFIED that I stenographically reported the said  
9 proceedings; that the same has been transcribed under my  
10 direct supervision; and that this transcript, consisting of 69  
11 pages, constitutes a true transcription of my notes of said  
12 proceedings.

13 DATED this 1st day of May, 1995.

14  
15   
16 ROWENA NASH HACKNEY  
17 Official Commission Reporter  
18 (904) 488-5981

19 STATE OF FLORIDA)  
20 COUNTY OF LEON )

21 The foregoing certificate was acknowledged before me  
22 this 1st day of May, 1995, by ROWENA NASH HACKNEY, who is  
23 personally known to me.

24   
25 PATRICIA A. CHURCH  
Notary Public - State of Florida

