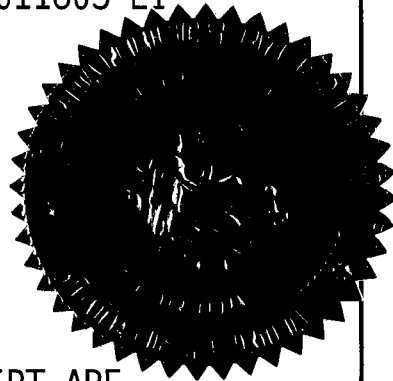


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 011605-EI

In the Matter of

REVIEW OF INVESTOR-OWNED  
ELECTRIC UTILITIES' RISK  
MANAGEMENT POLICIES AND  
PROCEDURES.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER MICHAEL A. PALECKI  
Prehearing Officer

DATE: Monday, August 5, 2002

TIME: Commenced at 1:35 p.m.  
Concluded at 2:20 p.m.

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

REPORTED BY: TRICIA DeMARTE  
Official FPSC Reporter  
(850) 413-6736

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## 1 APPEARANCES:

2 RUSSELL BADDERS, Beggs & Lane, 3 West Garden Street,  
3 Suite 700, Pensacola, Florida 32576, appearing on behalf of  
4 Gulf Power Company.

5 JOHN T. BUTLER, Steel, Hector & Davis, LLP, 200 South  
6 Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398,  
7 appearing on behalf of Florida Power & Light Company.

8 JOHN W. McWHIRTER, JR., McWhirter, Reeves,  
9 McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, 117  
10 South Gadsden Street, Tallahassee, Florida 32301, appearing on  
11 behalf of Florida Industrial Power Users Group.

12 DOUGLAS W. HALL, Carlton, Fields, 215 South Monroe  
13 Street, Suite 500, Tallahassee, Florida 32301, appearing on  
14 behalf of Florida Power Corporation.

15 JAMES D. BEASLEY, Ausley & McMullen, 227 South  
16 Calhoun Street, Post Office Box 391, Tallahassee, Florida  
17 32302, appearing on behalf of Tampa Electric Company.

18 ROB VANDIVER, Associate Public Counsel, c/o The  
19 Florida Legislature, 111 West Madison Street, Room 812,  
20 Tallahassee, Florida 32399-1400, appearing on behalf of the  
21 Citizens of the State of Florida.

22 WM. COCHRAN KEATING, IV, FPSC General Counsel's  
23 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
24 32399-0850, appearing on behalf of the Commission Staff.

25

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

1  
2 COMMISSIONER PALECKI: We'll call this prehearing  
3 conference to order. Staff, could you please read the notice.

4 MR. KEATING: Pursuant to notice issued July 22nd,  
5 2002, this time and place has been set for a prehearing  
6 conference in Docket Number 011605-EI, review of investor-owned  
7 electric utilities' risk management policies and procedures.

8 COMMISSIONER PALECKI: We'll take appearances,  
9 starting down at this end.

10 MR. BUTLER: John Butler of the law firm of Steel,  
11 Hector & Davis, L.L.P., appearing on behalf of Florida Power &  
12 Light Company.

13 MR. BEASLEY: I'm Jim Beasley with the law firm of  
14 Ausley & McMullen representing Tampa Electric Company.

15 MR. BADDERS: Russell Badders with the law firm of  
16 Beggs & Lane representing Gulf Power Company.

17 MR. HALL: Doug Hall with Carlton, Fields Law Firm  
18 representing Florida Power Company.

19 MR. VANDIVER: Rob Vandiver appearing on behalf of  
20 the Citizens of the state of Florida.

21 MR. McWHIRTER: John McWhirter of the McWhirter,  
22 Reeves Law Firm appearing on behalf of the Florida Industrial  
23 Power Users Group.

24 MR. KEATING: Cochran Keating appearing on behalf of  
25 the Commission Staff.

1           COMMISSIONER PALECKI: Staff, do we have any  
2 preliminary matters that we need to tend to?

3           MR. KEATING: There are none that I am aware of.

4           COMMISSIONER PALECKI: Do any of the parties have any  
5 preliminary matters that they'd like to discuss at this time?

6           Okay. Let's move on to the prehearing order. Does  
7 everyone have a copy of the prehearing order?

8           All right. We'll go ahead and walk through this  
9 section by section to determine whether or not any corrections  
10 are necessary. Are the appearances correct on the prehearing  
11 order? Any changes to the appearances?

12           We'll move on to the -- let's move on to both  
13 Sections I and II and III. These are, more or less,  
14 boilerplate sections. We don't have --

15           MR. KEATING: Commissioner, you will and the parties  
16 will notice in Section II in the case background in the third  
17 paragraph there is an order cite which is not complete and that  
18 is for a consummating order that is expected to be issued  
19 today. And when that is issued that order number will be  
20 inserted.

21           COMMISSIONER PALECKI: All right.

22           MR. KEATING: And that appears again in the -- I  
23 believe under Issue 6 the same change will be made.

24           COMMISSIONER PALECKI: Any changes to Section IV,  
25 posthearing procedures? Hearing none, I move on to Section V,

1 prefiled testimony and exhibits and witnesses. Here, we  
2 usually do have some changes or corrections. If all the  
3 parties have had a chance to review the order of witnesses as  
4 well as the issues that they will be testifying to, are there  
5 any changes there?

6 MR. HALL: Commissioner, the indication of the issues  
7 under Pamela Murphy, because those have been reorganized,  
8 should be corrected to read "1B," "1C," and "7A." And also,  
9 Javier Portuondo and Pamela R. Murphy should be added as  
10 rebuttal witnesses for Florida Power Corp on Issue 7A.

11 COMMISSIONER PALECKI: And that was Portuondo and who  
12 else?

13 MR. HALL: Pamela R. Murphy.

14 COMMISSIONER PALECKI: And Murphy. Okay. All right.  
15 Are there any other changes to the order of witnesses?

16 MR. BEASLEY: Commissioner, on Page 6 of the draft  
17 prehearing order, the issues listed for Witness W. Lynn Brown  
18 for Tampa Electric Company are shown as 7A and 7B. If I could,  
19 add to that 1B, 2, 3, and 4.

20 COMMISSIONER PALECKI: All right. Anything else?

21 MR. McWHIRTER: Mr. Chairman, Lee Gooch is coming in  
22 from Chicago, and we would appreciate it if the Commission  
23 could accommodate his schedule and let him testify the  
24 first day. It's entirely possible that that will happen in the  
25 ordinary course of events, but in the event that it doesn't,

1 we'd like to announce that that is a need on our part. He  
2 needs to get back in Chicago on Tuesday.

3 COMMISSIONER PALECKI: We always try to accommodate  
4 witnesses that have travel schedules that need to be met. Do  
5 any of the parties have any objection if we do need to take  
6 Mr. Gooch early so that we can take him before his flight  
7 leaves and that he can testify on the first day? Hearing no  
8 objections, we'll go ahead and do what we can to accommodate  
9 Mr. Gooch's schedule.

10 MR. McWHIRTER: Thank you, sir.

11 COMMISSIONER PALECKI: Section VII, statement of  
12 basic positions, any changes, modifications, or corrections?

13 MR. BUTLER: There is for FPL. On the statement of  
14 basic position here would be replaced by the following: FPL is  
15 prepared to accept Staff's proposed resolution of issues dated,  
16 and I'm sorry, I'm not sure of the date, it's July 31 or  
17 August 1, 2002, with the addition of the phrase, quote, and/or  
18 physical, unquote, between, quote, financial, unquote, and,  
19 quote, hedging, unquote, in the first sentences of paragraphs  
20 three and four.

21 COMMISSIONER PALECKI: Thank you. Do any of the  
22 other parties have any changes they'd like to make?

23 MR. HALL: Commissioner, on Page 17, Issue 4, the  
24 sponsoring witness for Florida Power Corporation will be  
25 Javier Portuondo; that's not noted.

1           COMMISSIONER PALECKI: All right. We were just on  
2 basic positions, but as long as we have that, we'll go ahead  
3 and take that up now. That's Issue 4. And could you repeat  
4 the change, please.

5           MR. HALL: It's just to add Portuondo as the  
6 sponsoring witness at the end of that position.

7           COMMISSIONER PALECKI: All right. All right. And  
8 now are there any changes to either basic positions or changes  
9 on the parties' positions on any of the issues?

10          MR. BUTLER: There are for FPL on some of the  
11 specific issues. Do you want me to give you those all now, or  
12 are you going to go through them one at a time?

13          COMMISSIONER PALECKI: No. Let's go ahead, and why  
14 don't do it party by party rather than issue by issue? So  
15 we'll take all of Florida Power & Light's at once.

16          MR. BUTLER: Okay. For 1A, the position would become  
17 the same as the statement of basic position that I had just  
18 read. Unless you want me to, I won't read it again.

19          COMMISSIONER PALECKI: Unless the court reporter  
20 would need that again -- is that suitable? So that will be the  
21 same as your statement of basic position that you've just read  
22 to us?

23          MR. BUTLER: That's right. On Issue 1B, the last  
24 sentence that begins "FPL believes that approval of its  
25 proposed risk-sharing plan" should be deleted.

1 COMMISSIONER PALECKI: Is that the entire sentence to  
2 be deleted?

3 MR. BUTLER: Yes, the entire sentence would be  
4 deleted. That's right.

5 On Issue 2, the statement of position would be  
6 deleted down to after "oil," end paren, comma, on the beginning  
7 of Page 14. You go up to the top of 14 after it starts on the  
8 bottom of 13, it says, "oil," end paren, comma, and then "the  
9 gains from."

10 COMMISSIONER PALECKI: Yes, I see where --

11 MR. BUTLER: The sentence which starts with capital  
12 "T," "the gains from futures contracts."

13 COMMISSIONER PALECKI: And you'll delete everything  
14 prior to "the gains from"?

15 MR. BUTLER: That's right. In the position on --

16 COMMISSIONER PALECKI: Before we move on, does  
17 everyone have that? I know that there's different page  
18 numbering on the different versions of draft prehearing orders.  
19 On my version, it's on the bottom of Page 14. But it's my  
20 understanding that Florida Power & Light would delete the  
21 entire first portion. And if you would look at the bottom of  
22 their statement of position on Issue 2 after the words "fuel  
23 oil" in parentheses, you will see the words "the gains from  
24 futures contracts." The position would start off with the  
25 words "the gains from;" is that correct?



1 MR. BUTLER: That's right, yes, sir.

2 COMMISSIONER PALECKI: Does everyone have that change  
3 on their versions of the prehearing order? All right.

4 What about Tampa Electric Company? Do you have --

5 MR. BUTLER: Not done yet.

6 COMMISSIONER PALECKI: You still have more for  
7 Florida Power & Light?

8 MR. BUTLER: Yes, sorry.

9 COMMISSIONER PALECKI: All right.

10 MR. BUTLER: On Issue 3, it's essentially the same  
11 change. It's on my Page 15, but all down to -- in the fourth  
12 line from the bottom where again there's residual fuel oil, end  
13 paren, comma, strike down through there and start with "the  
14 premiums received for options contracts."

15 COMMISSIONER PALECKI: If you could, please repeat  
16 that for me.

17 MR. BUTLER: Okay. Everything would be struck in  
18 FPL's position down to the four lines from the bottom. There's  
19 a parenthetical that ends "residual fuel oil," end paren,  
20 comma. It would then start with "the premiums received for  
21 options contracts."

22 COMMISSIONER PALECKI: Does everyone have that? We  
23 are basically deleting about the first two-thirds of FPL's  
24 position as stated in the draft and starting off with the words  
25 "the premiums received."

1 MR. BUTLER: On Issue 4, which is on my Page 16, the  
2 last two lines where it says "irrespective of whether the  
3 Commission approves FPL's proposed risk-sharing program" would  
4 be struck. So the statement of position would end with "fuel  
5 adjustment clause," period.

6 COMMISSIONER PALECKI: All right.

7 MR. BUTLER: On Issue 7A on the top of Page 18, for  
8 me, the position there should be struck and replaced by the  
9 same position as FPL's statement of basic position that I read  
10 earlier.

11 COMMISSIONER PALECKI: Thank you.

12 MR. BUTLER: And finally, Issue 7B, the same thing.  
13 The entire position should be struck, and the statement of  
14 basic position substituted.

15 COMMISSIONER PALECKI: Thank you. And before we move  
16 on to Tampa Electric Company's changes and/or corrections,  
17 Staff, you had mentioned to me that there may be a change that  
18 needs to be made on one of the issues. Why don't we take care  
19 of that now, make sure there are no objections to that change?  
20 And I'd like to make sure we do that now so that all the  
21 parties can make sure that their positions correspond to the  
22 change in the wording of the issue.

23 MR. KEATING: What Staff would propose is a change in  
24 the wording of Issue 2. For the parties' benefit, Staff  
25 realizes that on Issues 2, 3, and 4 we discuss regulatory

1 treatment for gains and losses on futures contracts for options  
2 premiums and for transaction costs, and another type of  
3 transaction that's come up in discovery and in discussions has  
4 been swaps which is not explicitly covered. Regulatory  
5 treatment for swaps settlements is not explicitly covered in  
6 these issues, so we would propose to add it to Issue 2, which  
7 looks to be as good a place as any, and reword the issue to  
8 say: What is the appropriate regulatory treatment for gains  
9 and losses on futures contracts and net settlements associated  
10 with swaps an investor-owned electric utilities incurs from  
11 hedging fuel and purchased power transactions?

12 COMMISSIONER PALECKI: So basically what we're doing  
13 is adding other transactions such as swaps that a utility can  
14 utilize in order to hedge or minimum risk.

15 MR. KEATING: Right.

16 COMMISSIONER PALECKI: Does any party have any  
17 objection to that modification of Issue 2? Hearing no  
18 objection, we will go ahead and allow that modification, and  
19 that will be the current wording on Issue 2. And that will  
20 give the parties a little more flexibility to talk about some  
21 of these other mechanisms.

22 MR. BEASLEY: I'd like to reserve the right to see  
23 that issue and make sure that our position squares with it, but  
24 we'll be happy to work with the Staff on making sure our  
25 position is properly stated.

1 COMMISSIONER PALECKI: All right. You have no  
2 objection to the issue. You just want to make sure that you  
3 can correspond your position to the issue.

4 MR. BEASLEY: That's right.

5 COMMISSIONER PALECKI: Staff, there's no problem  
6 there, is there?

7 MR. KEATING: No. We will -- understanding that this  
8 is a new wording of the issue and that some of these positions  
9 may need to change to reflect that, we will get with the  
10 parties after the prehearing --

11 COMMISSIONER PALECKI: And if you could, let the  
12 parties see that in black and white as soon as possible --

13 MR. KEATING: Yes.

14 COMMISSIONER PALECKI: -- so they can do whatever  
15 they need to to modify their positions on Issue 2.

16 All right. With that, we'll go ahead and ask Tampa  
17 Electric Company to outline any changes.

18 MR. BEASLEY: Commissioner Palecki, we don't have any  
19 changes at this time. There have been some discussions among  
20 the parties and the Staff. And if those discussions come to  
21 fruition, we'd like to reserve the right to modify our position  
22 on the issues to reflect that, but at this time we have no  
23 changes.

24 COMMISSIONER PALECKI: Certainly. I understand that  
25 some of the parties are still engaged in discussions with

1 Staff. I just want to let you know that myself and the other  
2 Commissioners very much appreciate the fact that you're working  
3 and making efforts to try to resolve some of these issues.

4 Staff, there's no problem there, is there?

5 MR. KEATING: I'm sorry?

6 COMMISSIONER PALECKI: Is there any problem with  
7 allowing the parties the opportunity to modify positions based  
8 upon their discussions? I understand they're supposed to be  
9 meeting immediately following this prehearing conference.

10 MR. KEATING: Correct. We've met this morning and  
11 are going to continue our meeting this afternoon to see if we  
12 can get any further towards a resolution of the issues in the  
13 docket.

14 COMMISSIONER PALECKI: All right.

15 MR. KEATING: So I don't see any problem with  
16 allowing the flexibility for parties to change their positions  
17 if something can be agreed to.

18 COMMISSIONER PALECKI: Good. And that's true for all  
19 parties, not just for Tampa Electric Company.

20 Gulf Power.

21 MR. BADDERS: We have one change and one addition.  
22 The change is on Issue 1C at Line 19. That line begins  
23 "savings for customers." Insert the word "is" after  
24 "customers." So that entire sentence will read, "This  
25 incentive to manage the program in a manner that achieves

1 savings for customers is in exchange for the company's  
2 willingness to provide certain caps on the customers' exposure  
3 under the proposed hedging program."

4 On Issue Number 2 --

5 COMMISSIONER PALECKI: Let's make sure everyone has  
6 that. Does everyone have that change to Issue Number 1?

7 All right. Issue Number 2.

8 MR. BADDERS: To coincide with the change made by  
9 Staff, we will insert "or swaps" after "through futures" on  
10 Line 2.

11 COMMISSIONER PALECKI: On Issue 2 and that would be  
12 on the first sentence?

13 MR. BADDERS: Yes, sir.

14 COMMISSIONER PALECKI: "Through futures," and you  
15 would insert the words "or swaps."

16 MR. BADDERS: "Or swaps."

17 COMMISSIONER PALECKI: Thank you.

18 MR. BADDERS: That is all the corrections we have.

19 COMMISSIONER PALECKI: Thank you.

20 Florida Power & Light.

21 MR. HALL: Yes, sir. I would note that there is no  
22 position for Florida Power noted on Issue 7B, and that I have  
23 provided Mr. Keating with a statement of our position on that  
24 issue. And also, we would also like to include that we reserve  
25 the right on Issue 2 to look at that issue as restated and make

1 any necessary changes and also to make any necessary changes  
2 that may be occasioned by the ongoing settlement discussions.

3 COMMISSIONER PALECKI: Certainly.

4 MR. BUTLER: Commissioner Palecki, I'm sorry, I think  
5 you just referred to his company as "Florida Power & Light."

6 COMMISSIONER PALECKI: Oh, I'm sorry.

7 MR. BUTLER: I just wanted to make sure for the  
8 record that you were talking about Florida Power Corporation.

9 COMMISSIONER PALECKI: Florida Power Corporation.

10 MR. HALL: That's who I was talking about.

11 COMMISSIONER PALECKI: We should make that clear for  
12 the record. Thank you, Mr. Butler.

13 MR. BUTLER: Thank you.

14 COMMISSIONER PALECKI: And let me make sure I'm  
15 clear. On Issue -- is it Issue Number 1? I'm sorry, there was  
16 one issue you said that you had no --

17 MR. HALL: There is the prehearing order -- the draft  
18 prehearing order does not reflect a position for Florida Power  
19 Corp for Issue 7B, and I just wanted to note that we have  
20 provided that this morning to Mr. Keating.

21 COMMISSIONER PALECKI: So you've provided that to  
22 Staff. Have you provided a copy of that to the court reporter?

23 MR. HALL: No, but I have one here.

24 COMMISSIONER PALECKI: Good. If you could provide  
25 that to the court reporter, I'd appreciate it.

1 MR. HALL: Yes, sir.

2 COMMISSIONER PALECKI: All right. Office of Public  
3 Counsel.

4 MR. VANDIVER: We have no changes at this time, but  
5 we would also like to reserve the right to make our changes  
6 consistent with the changed Issue 2 --

7 COMMISSIONER PALECKI: Certainly.

8 MR. VANDIVER: -- and incorporate whatever ongoing  
9 discussions may take place.

10 COMMISSIONER PALECKI: Good. And FIPUG.

11 MR. McWHIRTER: Ditto.

12 COMMISSIONER PALECKI: All right. Thank you. All  
13 right. So we've gone through the positions of the parties  
14 except for Staff.

15 Staff, do you have any changes or corrections?

16 MR. KEATING: Staff has no changes or corrections to  
17 its position at this point. Of course, if we do come to a  
18 proposed resolution of -- not a proposed resolution but an  
19 actual resolution of the issues, I'm sure that our positions  
20 may change accordingly.

21 COMMISSIONER PALECKI: Thank you. Okay. Let's go to  
22 Section IX, exhibits. And why don't I go through the exhibit  
23 list in the order in which the witnesses are proffered? And I  
24 see that we have Mr. Portuondo with Florida Power Corporation  
25 first. Are there any changes, additions, modifications?



1 MR. HALL: No, sir.

2 COMMISSIONER PALECKI: Okay. Next, Korel M. Dubin  
3 with Florida Power & Light and Joseph Stepenovitch -- how is  
4 that pronounced?

5 MR. BUTLER: No changes.

6 COMMISSIONER PALECKI: No changes. All right.

7 (Laughter.)

8 COMMISSIONER PALECKI: Gulf Power, W. N. McKenzie.

9 MR. BADDERS: We have no changes.

10 COMMISSIONER PALECKI: Tampa Electric, Joann T.  
11 Wehle.

12 MR. BEASLEY: No changes, sir.

13 COMMISSIONER PALECKI: FIPUG.

14 MR. McWHIRTER: No changes.

15 COMMISSIONER PALECKI: Okay. Now, we have a Staff  
16 witness, Todd Bohrmann.

17 MR. KEATING: No changes. And this may be the  
18 appropriate point for Staff to bring this up. If we do not  
19 reach a resolution informally of the issue -- Staff doesn't  
20 tend to use various discovery responses provided by the parties  
21 as exhibits -- we will attempt to work with the parties on this  
22 list to see if -- on those particular items to see if those are  
23 matters that can be stipulated into the record at hearing.

24 And we will get with the parties -- I will get with  
25 the parties this afternoon to provide them with the specific

1 discovery responses that Staff is going to ask their permission  
2 to stipulate into the record, if possible.

3 COMMISSIONER PALECKI: Good. Well, we appreciate  
4 those efforts. If you can get the exhibits stipulated  
5 beforehand, it would save a lot of time for the Commission at  
6 the hearing, so we appreciate that.

7 Let's look at the rebuttal witnesses. And we'll  
8 start off with Florida Power & Light and it's Stepenovitch.  
9 Isn't that not correct?

10 MR. BUTLER: That is correct. And the exhibits are  
11 correct.

12 COMMISSIONER PALECKI: Well, why don't I ask -- well,  
13 there's only one witness listed under rebuttal, and so no  
14 changes at all --

15 MR. BUTLER: No.

16 COMMISSIONER PALECKI: -- in the rebuttal section?

17 All right. Are there any proposed stipulations? Are  
18 there any pending motions?

19 Now, I see there are numerous pending confidentiality  
20 matters. Staff, where do we stand on these confidentiality?

21 MR. KEATING: We have listed here seven pending  
22 confidentiality requests. I know that an eighth has been  
23 recently filed towards the end of last week that's not  
24 reflected on this list. Four of the requests come from each of  
25 the four IOUs with regard to information included in Staff's

1 management audit of the utilities' risk management procedures  
2 for fuel procurement. Those are in the process of having an  
3 order drafted as well as the other three confidentiality  
4 requests that are listed here in this draft prehearing order  
5 which relate to either responses to Staff discovery or, in one  
6 case, Florida Power Corporation -- part of Florida Power  
7 Corporation's proposed hedging program.

8           COMMISSIONER PALECKI: When you say the orders will  
9 be issued shortly, you're still not expecting that they'll be  
10 issued prior to the hearing, or are you?

11           MR. KEATING: I would expect that we will have orders  
12 drafted on the two -- at least if not all of these are done, at  
13 least on the two items that are discovery responses to Staff.  
14 In the event that any of that information -- any party wishes  
15 to use that information at hearing, and most definitely with  
16 respect to Florida Power's request for a portion of its hedging  
17 program, that is clearly something that will become part of the  
18 record.

19           With respect to the four requests regarding the Staff  
20 management audit, I believe those are not -- do not necessarily  
21 need to be resolved prior to the hearing. I don't anticipate  
22 that that material would be used at hearing and would need a  
23 ruling prior to hearing. However, Staff is working towards  
24 getting those orders drafted prior to the hearing as well.

25           COMMISSIONER PALECKI: Thank you. Let me ask the

1 parties: Do any of the parties anticipate any difficulty if  
2 these pending requests for confidentiality are not ruled upon  
3 prior to the hearing? Will there be any evidentiary problems  
4 that we anticipate?

5 MR. BUTLER: No.

6 COMMISSIONER PALECKI: No?

7 MR. BEASLEY: Not for us.

8 MR. BADDERS: Not for us.

9 COMMISSIONER PALECKI: Good. All right. Thank you.

10 MR. BUTLER: Before you leave that section,  
11 Commissioner Palecki, I would note that FPL has a discovery  
12 response to Staff due today for which we will be filing a  
13 notice of intent to request confidential classification, but I  
14 do not see that as raising any evidentiary problems for the  
15 hearing.

16 COMMISSIONER PALECKI: All right. Thank you. Staff,  
17 do you have -- anticipate any evidentiary problems from those  
18 pending discovery matters? I know that you're asking for  
19 discovery to get information that you may wish to enter at the  
20 hearing. Is that something you can work out with the parties?

21 MR. KEATING: Yes, I believe it is.

22 COMMISSIONER PALECKI: Thank you. Okay. Are there  
23 any other matters? Anything else whatsoever?

24 MR. McWHIRTER: Mr. Chairman, Florida Power & Light  
25 from Mr. Butler's statement apparently has made a fairly

1 significant change in its position. The testimony of both  
2 Mr. Stepenovitch and Ms. Dubin relates to a program that will  
3 appear to now be abandoned. It would facilitate  
4 cross-examination of those witnesses if the testimony could be  
5 redacted to eliminate the portions of that testimony and the  
6 portions of the exhibit that are now obviated by the new  
7 position, if I understood the new position correctly. It also  
8 might entail changes in our testimony.

9 MR. BUTLER: We're not prepared to make the  
10 redactions, but I think we could agree that portions of the  
11 testimony that relate to issues that we would not be  
12 supporting, we could eliminate and certainly not have that  
13 subject to hearing.

14 COMMISSIONER PALECKI: Well, how can we work this out  
15 so that FIPUG does not have to cross-examine on various  
16 portions of issues that are no longer at issue? I understand  
17 you don't want to redact, but how can we make this a workable  
18 situation?

19 MR. BUTLER: Actually, I'm saying I think we can  
20 redact. I can't do it as I sit here right now --

21 MR. McWHIRTER: No, I wouldn't want you to do that.

22 MR. BUTLER: -- but I think we can do that. And we  
23 can do it before the hearing. I would think probably within  
24 the next, you know, couple of days we can do that, and it  
25 certainly would give Mr. McWhirter time to decide what he needs

1 to cross-examine.

2 COMMISSIONER PALECKI: Good. Yes. If you could,  
3 please contact Mr. McWhirter, and just let him know when he can  
4 expect to see those changes, we'd appreciate it. And then  
5 you'll provide those to the other parties as well, I assume?

6 MR. BUTLER: Certainly.

7 COMMISSIONER PALECKI: Thank you. Is there anything  
8 else?

9 MR. BADDERS: Yes, Commissioner Palecki. It  
10 appears -- I may be wrong, but it appears that Issues 2, 3, and  
11 4, that we're all in agreement. Am I correct about that?

12 MR. KEATING: I'm not entirely sure. And the reason  
13 why is, Staff has taken the position that gains and losses  
14 on -- sorry, gains and losses on futures contracts, net swaps  
15 settlements, options premiums, and transactions costs involved  
16 with those types of transactions should be allowed for recovery  
17 through the fuel clause if they are -- if they have been  
18 prudently incurred.

19 In discovery, there has been -- from certain  
20 witnesses we had certain hesitation as to whether the witnesses  
21 would agree that cost recovery should be limited to prudently  
22 incurred costs in that area. That's my only hesitation.  
23 Otherwise, it seems to me that the parties are generally in  
24 agreement that these types of costs should be allowed through  
25 the fuel and purchased power cost recovery clause. It's just a

1 matter of whether we can all agree that they're subject to  
2 prudence review.

3 COMMISSIONER PALECKI: Well, let's talk to the  
4 parties. Do you have any problem with the Staff's position  
5 that these expenditures can be recovered under the fuel clause  
6 if they are prudently incurred?

7 MR. BADDERS: We are not asking for anything  
8 imprudent to be approved, and we can live with Staff's  
9 language.

10 MR. BEASLEY: As can we.

11 MR. BUTLER: As --

12 COMMISSIONER PALECKI: Florida Power & Light.

13 MR. BUTLER: -- can we. Yes, for FPL.

14 COMMISSIONER PALECKI: Florida Power Corporation?

15 All right. FIPUG, do you have any --

16 MR. McWHIRTER: FIPUG has a phraseology concern that  
17 I raised with Staff this morning. The way it is stated is that  
18 the utility can recover the gains on hedging transactions and  
19 can recover the premiums that they receive for contracts that  
20 they sell, and that customers will pick up the cost of premiums  
21 that they pay and the losses. And our understanding of the  
22 case as was originally presented was that it was a win-win  
23 situation for the utilities. It was explained to me this  
24 morning and I think the idea is -- and I broach it now because  
25 we're still using the word "recovery" -- that anytime there's a

1 profit on a hedging transaction, that profit is credited to the  
2 benefit of the customer's account in the fuel clause, and  
3 anytime there's a cost, the customers bear the total cost.  
4 With that -- if that's what everybody has agreed upon, then we  
5 don't have any problem with stipulating to those two issues.

6 COMMISSIONER PALECKI: Well, let me get back to the  
7 other parties and find out if that's satisfactory. You've  
8 heard Mr. McWhirter.

9 MR. BUTLER: We discussed --

10 COMMISSIONER PALECKI: I'm not sure I understand the  
11 distinction between what you've stated, Mr. McWhirter, and what  
12 the Staff has stated, but do the parties have any objection to  
13 that?

14 MR. BUTLER: Commissioner Palecki, in the meeting we  
15 had this morning, as I understand Mr. McWhirter's concern, he  
16 wants to make sure that if there are -- basically if there are  
17 gains, that those are credited to the benefit of the customers,  
18 you know, sort of as the parallel to if there are losses or  
19 costs, that those are charged to the customers. And FPL  
20 understood that to be Staff's position, and it is our position.  
21 We think it ought to work both ways.

22 MR. BEASLEY: Same with Tampa Electric.

23 MR. BADDERS: We're in agreement also.

24 COMMISSIONER PALECKI: All right. And Florida Power  
25 Corporation?



1           MR. HALL: We can agree with Staff's position on  
2 Number 3. I don't think we're at this point prepared to  
3 stipulate to Staff's position on 2, but we will continue those  
4 discussions.

5           COMMISSIONER PALECKI: All right. And why don't we  
6 show that we have a stipulation on Issue 3? Florida Power  
7 Corporation, if you could continue to discuss Issues 1 and  
8 2 with Staff, we would appreciate it.

9           And, Staff, if you do come to a stipulation on those  
10 issues, if you could, please conform the final order on  
11 procedure to indicate that there is a stipulation on those  
12 issues, if you reach a stipulation. And what I mean --  
13 actually, I should be more clear -- the final version of the  
14 prehearing order that you'll take to me for my signature.

15           MR. KEATING: Understood. And I think -- just to be  
16 clear, I think that Mr. McWhirter will find that the Staff  
17 positions on Issues 2, 3, and 4 as stated in the draft  
18 prehearing order are perhaps a little more artfully worded than  
19 the document we were discussing this morning and make it more  
20 clear that we would be covering gains and losses through the  
21 clause.

22           COMMISSIONER PALECKI: All right. Office of Public  
23 Counsel, we haven't heard from you on that --

24           MR. VANDIVER: I think our position would be  
25 consistent with what Mr. McWhirter said.

1           COMMISSIONER PALECKI: All right. Is there anything  
2 else, anything further from any of the parties? Staff?

3           MR. KEATING: I would just point out that in Florida  
4 Power & Light's changes to some of its positions, it references  
5 a proposed resolution of issues that's been the subject of some  
6 discussion today and will continue to be the subject of some  
7 discussions after the prehearing conference. It may -- to add  
8 the appropriate context to the positions that Florida Power &  
9 Light has taken, I'm not sure what they have in mind as to  
10 include that proposed resolution as part of this prehearing  
11 order for the Commissioner's reference. It seems to me that  
12 that may make more clear what the position actually is that  
13 they're taking.

14           MR. BUTLER: I think that would be a good idea  
15 because the one that we're referencing is actually what I think  
16 is described as the second version of the proposal. There may  
17 be other versions after today, and to get the proper frame of  
18 reference, I concur with Mr. Keating's suggestion.

19           COMMISSIONER PALECKI: Do all the parties concur?

20           MR. BADDERS: I don't have any objection for him  
21 attaching it with regard to his position, but it's not  
22 something that we've agreed to at this point.

23           MR. BEASLEY: That would apply with respect to Tampa  
24 Electric, although we're hopeful that we can come to a  
25 resolution.

1 MR. HALL: And that's also Florida Power's position.

2 COMMISSIONER PALECKI: All right.

3 MR. KEATING: And that's pretty much what I had in  
4 mind, was simply to flush out what Florida Power & Light's  
5 position was and perhaps not to indicate that that proposed  
6 resolution is anything that anybody else has agreed to at this  
7 point.

8 MR. McWHIRTER: I think that's procedurally  
9 appropriate.

10 COMMISSIONER PALECKI: All right.

11 MR. KEATING: If I have Mr. McWhirter's approval,  
12 then I think that's a good idea.

13 COMMISSIONER PALECKI: I don't think there's any  
14 objection from any of the parties. There is -- well, there's  
15 actually two other matters I'd like to discuss. The first one  
16 has to do with whether we take up direct and rebuttal at the  
17 same time. That is almost always my preference, that we have  
18 the witness go ahead and do both direct and rebuttal, but if  
19 there are any extraordinary circumstances or complicated,  
20 difficult issues that require that they be done separately, I'd  
21 like to hear them.

22 Staff, I think -- had you indicated that you would  
23 like to see separate direct and rebuttal, and if so, why?

24 MR. KEATING: I don't think that Staff would have a  
25 strong preference one way or the other.

1           COMMISSIONER PALECKI: Do any of the parties have a  
2 preference? Because if not, we'll go ahead and take up direct  
3 and rebuttal at the same time unless any party has an  
4 objection.

5           MR. BADDERS: While we would prefer to take them in  
6 the normal course, we won't object, but I think it may be  
7 somewhat confusing if our witness gets on the stand and starts  
8 talking about some of the issues if they haven't already been  
9 discussed by that witness who he's rebutting. It may work out  
10 in the normal course of the witnesses, but I haven't been able  
11 to read through that to make sure.

12           COMMISSIONER PALECKI: Well, why don't I do this?  
13 I'll strongly encourage the parties to take up both direct and  
14 rebuttal at the same time; however, if you find it's necessary  
15 to do them separately, we will grant you leave to do that.

16           MR. BADDERS: Thank you.

17           MR. KEATING: Commissioner, just to add another point  
18 to that discussion. It may be -- and we may have to see how  
19 the hearing actually goes, but if we are to allow Witness Gooch  
20 for FIPUG to testify on the first day if we are running short  
21 on time, it may be that addressing the direct and rebuttal  
22 separately would better allow him to increase his chances of  
23 being done on the first day.

24           COMMISSIONER PALECKI: Well, we'll take that up when  
25 we come to it. And that brings me into the next issue I wanted

1 to discuss. This hearing is scheduled for two days,  
2 August 12th and 13th. And it's my understanding that there's a  
3 very good possibility that we can finish this hearing in one  
4 day. I think there are many fewer contested issues today than  
5 there were a couple months ago, and just wanted encourage the  
6 parties so that anything the parties could do to move this  
7 hearing along so we can finish in a single day would be  
8 appreciated. And I think you should all come to this hearing  
9 with the expectation that we'll finish in a day, and that if we  
10 need to go late, we'll go late into the early evening hours, if  
11 necessary.

12 All right. Does anyone have anything else? I  
13 adjourn the prehearing conference.

14 (Prehearing conference concluded at 2:20 p.m.)

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

CERTIFICATE OF REPORTER

4  
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby  
6 certify that the foregoing proceeding was heard at the time and  
7 place herein stated.

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

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

18 DATED THIS 7th DAY OF AUGUST, 2002.

19 *Tricia DeMarte*

20 \_\_\_\_\_  
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22 FPSC Official Commission Reporter  
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24  
25