

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

ENVIRONMENTAL COST RECOVERY CLAUSE / Docket No. 030007-EI

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10 PROCEEDINGS: PREHEARING CONFERENCE

11 BEFORE: COMMISSIONER BRAULIO L. BAEZ  
12 Prehearing Officer

13 DATE: Thursday, October 23, 2003

14

15 TIME: Commenced at 9:40 a.m.  
16 Concluded at 12:42 p.m.

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

19 REPORTED BY: LINDA BOLES, RPR  
20 OFFICIAL FPSC REPORTER  
(850) 413-6734

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## 1 APPEARANCES:

2 JOHN T. BUTLER, ESQUIRE, Steel, Hector & Davis,  
3 Suite 4000, 200 South Biscayne Boulevard, Miami, Florida  
4 33131-2398, appearing on behalf of Florida Power & Light  
5 Company.

6 JAMES BEASLEY, ESQUIRE, LEE WILLIS, ESQUIRE, and  
7 KENNETH R. HART, ESQUIRE, Ausley & McMullen, P.O. Box 391,  
8 Tallahassee, Florida 32302, appearing on behalf of Tampa  
9 Electric Company.

10 VICKI KAUFMAN, ESQUIRE, and JOHN McWHIRTER, JR.,  
11 ESQUIRE, McWhirter Reeves Law Firm, 117 S. Gadsden,  
12 Tallahassee, Florida 32301, appearing on behalf of the Florida  
13 Industrial Power Users Group.

14 RUSSELL BADDERS, Beggs & Lane, P.O. Box 12950,  
15 Pensacola, Florida 32520-0780, appearing on behalf of Gulf  
16 Power Company.

17 ROB VANDIVER, ESQUIRE, Office of Public Counsel,  
18 c/o The Florida Legislature, 111 W. Madison St., #812,  
19 Tallahassee, Florida 32399-1400, appearing on behalf of the  
20 Office of Public Counsel.

21 GARY PERKO, ESQUIRE, Hopping Law Firm, P.O. Box 6526,  
22 Tallahassee, Florida 32314, appearing on behalf of Progress  
23 Energy Florida.

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1 APPEARANCES CONTINUED:

2           MARLENE STERN, ESQUIRE, and ADRIENNE VINING, ESQUIRE,  
3 FPSC General Counsel's Office, 2540 Shumard Oak Boulevard,  
4 Tallahassee, Florida 32399-0850, appearing on behalf of  
5 Commission Staff.

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

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2 COMMISSIONER BAEZ: All right. We'll call the  
3 hearing to order. Counsel, can you read the notice.

4 MS. FLEMING: Pursuant to notice issued by the clerk  
5 of the Commission on September 24th, 2003, this time and place  
6 has been set for a prehearing in Docket Numbers 030001-EI,  
7 030002-EG, 030003-GU, 030004-GU, 030007-EI.

8 COMMISSIONER BAEZ: All right. And we're going to  
9 take appearances. And, as you can see, we've got, by my count,  
10 five dockets. So if you would kindly enter your appearance and  
11 declare the dockets that you're entering an appearance for.

12 Mr. Beasley, we can start with you.

13 MR. BEASLEY: Yes, sir, Commissioner. I'm James D.  
14 Beasley appearing with Lee L. Willis and Kenneth R. Hart from  
15 the law firm of Ausley & McMullen in Tallahassee, and we're  
16 representing Tampa Electric Company in Docket Numbers 030001,  
17 2 and 7.

18 MR. BADDERS: Good morning. I'm Russell Badders.  
19 I'm appearing on behalf of Gulf Power Company in the 01, 02 and  
20 07 dockets.

21 MR. PERKO: Good morning. I'm Gary Perko of the  
22 Hopping, Green & Sams Law Firm. I'm appearing on behalf of  
23 City Gas Company of Florida in the 03 and 04 dockets, and  
24 Progress Energy Florida in the 07 docket.

25 MR. MCGEE: I'm James McGee, Post Office Box 14042,

1 St. Petersburg, 33733, appearing on behalf of Progress Energy  
2 in the 01 and 02 dockets.

3 MR. HORTON: I'm Norman H. Horton, Jr., of Messer,  
4 Caparello & Self. I'm appearing on behalf of Florida Public  
5 Utilities Companies in the 01, 02, 03 and 04 docket, and  
6 Sebring Gas System in the 03 docket.

7 MR. VANDIVER: Robert Vandiver appearing on behalf of  
8 the citizens of the State of Florida in the 01, 02, 03 and 07  
9 dockets.

10 MS. KAUFMAN: Good morning, Commissioner. Vicki  
11 Gordon Kaufman with John McWhirter, Jr., of the McWhirter,  
12 Reeves Law Firm. We're appearing on behalf of the Florida  
13 Industrial Power Users Group in the 01, 02 and 07 dockets.

14 MR. WRIGHT: Thank you, Commissioner. Robert  
15 Scheffel Wright and John T. LaVia, III, Landers & Parsons,  
16 310 West College Avenue, Tallahassee, appearing on behalf of  
17 CSX Transportation in the fuel and purchased power cost  
18 recovery docket. We filed our petition to intervene in that  
19 docket this morning.

20 MR. COSTA: Matt Costa, TECO Energy, here on behalf  
21 of Peoples Gas in the 03 and 04 dockets.

22 COMMISSIONER BAEZ: I'm sorry. Mr.?

23 MR. COSTA: Costa.

24 COMMISSIONER BAEZ: Costa, C-O-S-T-A?

25 MR. COSTA: Yes, sir.

1 COMMISSIONER BAEZ: Thank you.

2 MR. SCHIEFELBEIN: Good morning. Wayne Schiefelbein,  
3 Rose, Sundstrom & Bentley, appearing on behalf of the Florida  
4 Division of Chesapeake Utilities Corporation in the 04 docket.

5 COMMISSIONER BAEZ: Is there anyone else that needs  
6 to enter an appearance?

7 MR. TWOMEY: Ron, you need to use a mike so the court  
8 reporter can hear you.

9 COMMISSIONER BAEZ: Can you step up -- I'm sorry, Mr.  
10 Twomey. Can you step up to a microphone, Mr. Rogers.

11 MR. LAFACE: I'm sorry. Ron LaFace and John Rogers  
12 appearing for the Florida Retail Federation in the 01, 02 and  
13 07 (sic.) docket.

14 MR. GUYTON: Charles Guyton and John Butler with the  
15 law firm of Steel, Hector & Davis, appearing on behalf of  
16 Florida Power & Light Company. I'm appearing in the 02 docket.  
17 Mr. Butler is appearing in the 01 and the 07 dockets.

18 MR. TWOMEY: Good morning, Commissioner. Mike  
19 Twomey, Post Office Box 5256, Tallahassee 32314-5256, appearing  
20 in the 01 docket on behalf of Katherine Claypool and  
21 eight other residential ratepayers of TECO Electric.

22 COMMISSIONER BAEZ: Is that everybody? Mike, we  
23 don't have anyone participating on the phone that you know of?  
24 Okay. Great. All right.

25 MR. KEATING: We do need to enter appearances for the

1 staff counsel.

2 COMMISSIONER BAEZ: I'm sorry. After so many of them  
3 today.

4 MR. KEATING: Cochran Keating on behalf of the  
5 Commission in Docket 01.

6 MS. FLEMING: Katherine Echternacht-Fleming on behalf  
7 of the Commission in Docket 03.

8 MS. HOLLEY: Lorena Holley on behalf of the  
9 Commission for Dockets 02 and 04.

10 MS. STERN: Marlene Stern and Adrienne Vining on  
11 behalf of the Commission in Docket 07.

12 COMMISSIONER BAEZ: All right. Just a quick, a quick  
13 note here for all the parties. We're going to try and follow  
14 some order and get certain dockets out of the way first.

15 We're going to be following the following order:  
16 It's 03, 04, 02, 07 and 01. We'll see if we can get some of  
17 you all out on time.

18 Counsel, we need to address some excusals, I believe.

19 MS. FLEMING: Yes. That is correct. St. Joe Natural  
20 Gas Company has requested to be excused from the prehearing and  
21 hearing in the 03 and 04 dockets.

22 COMMISSIONER BAEZ: All right. Let the record  
23 reflect that St. Joe Natural Gas has been excused from the  
24 prehearing conference and the hearing in the 03 and 04 dockets.

25 \* \* \* \* \*

1 COMMISSIONER BAEZ: And we're now on the 07 docket.  
2 Moving on to the order of witnesses, Section VII.

3 MS. STERN: Excuse me, Commissioner.

4 COMMISSIONER BAEZ: I'm sorry.

5 MS. STERN: We have some preliminary matters that  
6 just arose.

7 COMMISSIONER BAEZ: Oh, I'm sorry.

8 MS. STERN: Yeah.

9 COMMISSIONER BAEZ: Take them up then.

10 MS. STERN: Okay. Two things, actually three things.  
11 Well, first, I want to give notice to the parties that staff is  
12 planning to meet with representatives of Gulf Power Company to  
13 discuss the scrubber study, which is Issue 12A, and we're  
14 planning to meet after all these prehearing conferences are  
15 over, at the conclusion of the 01 prehearing conference, and  
16 we'll initially gather in the lobby outside the General  
17 Counsel's Office on the third floor. So if any of the parties  
18 are interested in attending that meeting, please come up to the  
19 lobby out there at the conclusion of the 01 prehearing  
20 conference.

21 The other thing is, I believe as we were taking  
22 appearances a party, Florida Retail Regulation, put in an  
23 appearance in the 07 docket. Did I hear that right?

24 COMMISSIONER BAEZ: Mr. LaFace?

25 MR. LaFACE: Yes.



1 COMMISSIONER BAEZ: Okay.

2 MS. STERN: Okay. This is the first we've heard of  
3 that. We -- are you asking to intervene?

4 MR. LaFACE: No. If we haven't intervened in that  
5 docket, I'm not. I just didn't have all the docket numbers  
6 with me.

7 MS. STERN: I don't believe you've intervened in the  
8 07.

9 MR. LaFACE: Okay.

10 MS. STERN: That's the environmental cost recovery  
11 clause.

12 MR. LaFACE: I'll withdraw that.

13 MS. STERN: Okay.

14 COMMISSIONER BAEZ: Thank you, Mr. LaFace.

15 MS. STERN: Okay. And I believe we also have a  
16 preliminary motion that Progress wants to bring up.

17 COMMISSIONER BAEZ: All right, Mr. Perko.

18 MR. PERKO: Commissioner Baez, this is a preliminary  
19 issue that relates to items or Issues 11A and 11C in the  
20 prehearing order. We had placed those issues in, which  
21 essentially asks whether the Commission should approve two new  
22 ECRC programs that Progress Energy has proposed. And as you  
23 can see, staff, at least at this point, takes the position that  
24 these issues should, are unnecessary because the new programs  
25 are being addressed in a separate docket, 030711.

1           We think it would be more appropriate, Your Honor,  
2 Commissioner, to consolidate the two dockets so that all the  
3 issues related to the two new programs can be resolved in this  
4 single proceeding.

5           Just to give you some background. Progress filed a  
6 petition for the two new programs in July of this year thinking  
7 that the PAA process would be finalized before we got to this  
8 point. Unfortunately, there was a delay and the staff  
9 recommendation didn't come out until tomorrow. Staff does  
10 recommend approval of the two programs, and the matter has been  
11 set for consideration at the agenda conference on November 3rd.  
12 But we're in the position that the final order in that docket  
13 can't be issued until after the hearing in this matter. And  
14 because the approval of those two programs has a bearing on the  
15 issues in this case, we feel that it would be appropriate to  
16 consolidate those two cases so the issues can be resolved all  
17 in one proceeding. That's essentially the process or what is  
18 done when a company files a petition for a new program directly  
19 in the 07 docket as Gulf Power and FPL have in this case. We  
20 don't see any prejudice to any of the parties because in our  
21 testimony in this proceeding we included the two new programs  
22 and explained the regulatory requirements that made it  
23 approvable under the ECRC clause, and that testimony has been  
24 available to the parties since August.

25           Under the uniform rules, specifically Rule

1 28-106.108, there's basically four factors to consider on a  
2 motion to consolidate. First is whether two matters involve  
3 similar issues of law or fact. I think we clearly have that in  
4 this case insofar as approval of the two new programs will  
5 directly have a bearing on this proceeding.

6 Second, whether the same parties are involved. We  
7 also have that in this case, Your Honor, because Progress  
8 Energy, Office of Public Counsel and staff are the only parties  
9 in the 0711 docket, and they're also parties, of course, in  
10 this proceeding.

11 And then third, whether consolidation would promote  
12 the just, speedy and inexpensive resolution of the proceedings.  
13 And we certainly think that's the case because what we do here  
14 is avoid having two separate proceedings proceeding on  
15 different schedules.

16 And then finally, whether any parties would be unduly  
17 prejudiced. And as I mentioned, I don't think that's the case  
18 because the testimony is already there.

19 I've spoken with counsel for the Office of Public  
20 Counsel and I believe he has no objection to this motion. I  
21 don't want to state Ms. Stern's position, but I think she may  
22 have an issue with that.

23 MS. STERN: Yeah.

24 COMMISSIONER BAEZ: Hold on. Mr. Vandiver, words  
25 have been put in your mouth, sir.

1 MR. VANDIVER: I read the testimony. It was  
2 discussed earlier in the testimony, and on that basis I have no  
3 objection.

4 COMMISSIONER BAEZ: Thank you, Mr. Vandiver. Thank  
5 you.

6 Ms. Stern.

7 MS. STERN: Staff's position is that we need more  
8 time to consider the pros and cons of consolidating the two  
9 dockets.

10 First I want to make a correction. The  
11 recommendation in the 711 docket was filed yesterday, not -- it  
12 won't be filed tomorrow.

13 Staff has -- generally there are questions of  
14 interpreting the statute that staff is trying to decide are  
15 they better discussed through the, addressed through the PAA  
16 process at an agenda conference or in a hearing, and we're  
17 trying to decide on the pros and cons of that.

18 I don't think there's any urgency in making a  
19 decision today. I think a decision needs to be made on this  
20 motion before the agenda conference on November 3rd when the  
21 07 docket, I mean when the 711 docket is scheduled to, is  
22 scheduled for a decision. So it's staff's recommendation on  
23 this motion that we be given more time to decide.

24 COMMISSIONER BAEZ: That's a heck of a  
25 recommendation.

1 MS. KAUFMAN: Commissioner Baez.

2 COMMISSIONER BAEZ: Yes. Ms. Kaufman, thank you.

3 MS. KAUFMAN: If I could be heard on this. I wasn't  
4 aware that we were going to have this argument and I don't have  
5 a position on the program, but I would just suggest to you that  
6 if the staff feels that they need more time to take a look at  
7 it, I would certainly support that. Because often times I --  
8 FIPUG relies on the staff to, to look at these matters and come  
9 to a conclusion. So based on what Ms. Stern has told you that,  
10 that there seems to be no prejudice to the company, we would  
11 support her approach.

12 COMMISSIONER BAEZ: Thank you, Ms. Kaufman.

13 Mr. Perko, do you have, on the face of it, any  
14 problem not getting a decision on this motion today in light of  
15 what Ms. Stern has said?

16 MR. PERKO: We'd be willing to work with staff and  
17 try to get it resolved as long as it's before the November 3rd  
18 hearing.

19 COMMISSIONER BAEZ: And I think you have a commitment  
20 from staff to get that resolved one way or the other before  
21 November the 3rd. So I appreciate that.

22 MR. PERKO: Thank you.

23 COMMISSIONER BAEZ: Thank you. We're going to  
24 hold -- we're going to take the motion under advisement and  
25 we'll hold off on that.

1 MR. PERKO: Thank you.

2 COMMISSIONER BAEZ: Is that it for the preliminaries?

3 MS. STERN: I believe so.

4 COMMISSIONER BAEZ: Okay.

5 MS. STERN: And so I guess we can pick up now with  
6 the witness list.

7 COMMISSIONER BAEZ: I've lost my mark on my page mark  
8 here.

9 MS. STERN: Page 6.

10 COMMISSIONER BAEZ: Okay. Thank you. We're back on  
11 Page 6, order of witnesses. Are there any changes that need to  
12 be made, Mr. Guyton? Oh, I'm sorry. Mr. Butler. Please  
13 forgive me.

14 MR. BUTLER: No changes.

15 COMMISSIONER BAEZ: Okay. Mr. Badders.

16 MR. BADDERS: Yes, we have one change. With the  
17 addition of Issue 5, we need to put Issue 5 down for Witness  
18 Ritenour.

19 COMMISSIONER BAEZ: All right. So Witness Ritenour  
20 will now also be addressing Issue 5. Mr. McGee or --

21 MR. PERKO: That would be me, Your Honor.

22 COMMISSIONER BAEZ: Oh, I'm sorry, Mr. Perko.

23 MR. PERKO: No changes.

24 COMMISSIONER BAEZ: Okay. And Mr. Beasley.

25 MR. BEASLEY: We have no changes.

1 COMMISSIONER BAEZ: Thank you. We're on, we're on  
2 the positions and issues now. And I guess, Mr. Butler, do you  
3 have any changes?

4 MR. BUTLER: On the positions and issues?

5 COMMISSIONER BAEZ: Yes.

6 MR. BUTLER: The only thing -- Ms. Stern may need to  
7 confirm this, but I believe on Issue 10H, which is the  
8 allocation of the costs for the addition of the Manatee plant  
9 to the WSDER project, I believe that staff agrees with FPL on  
10 its position there at this point. We had a discussion of that  
11 this morning.

12 COMMISSIONER BAEZ: Well, I'm not showing a staff  
13 position on that issue.

14 MS. STERN: Yes. Staff is changing its position now  
15 to, to agree with FP&L.

16 COMMISSIONER BAEZ: Okay. All right.

17 MS. STERN: And could I make a suggestion?

18 COMMISSIONER BAEZ: Please.

19 MS. STERN: It might, it might be -- in this docket  
20 it might be the easiest thing to do to go through issue by  
21 issue because some of the parties haven't taken positions yet.  
22 And so instead of going through utility by utility, go through  
23 issue by issue. We want to change our position on several  
24 issues.

25 COMMISSIONER BAEZ: Very well.

1 MS. STERN: And I think it'd just be easier.

2 COMMISSIONER BAEZ: So we'll go back to the basic  
3 positions. Are there any changes? Mr. Butler, you don't have  
4 changes to the basic?

5 MR. BUTLER: No.

6 COMMISSIONER BAEZ: Mr. Badders.

7 MR. BADDERS: No changes.

8 COMMISSIONER BAEZ: Mr. Perko.

9 MR. PERKO: No changes.

10 COMMISSIONER BAEZ: Mr. Beasley.

11 MR. BEASLEY: No, sir.

12 COMMISSIONER BAEZ: All right. Thank you. FIPUG.

13 MS. KAUFMAN: No changes.

14 COMMISSIONER BAEZ: You're not holding any positions  
15 on any -- or you do have some?

16 MS. KAUFMAN: I do on the actual specific issues.

17 COMMISSIONER BAEZ: Okay. Mr. Vandiver.

18 MR. VANDIVER: No.

19 COMMISSIONER BAEZ: All right. Staff.

20 MS. STERN: No changes.

21 COMMISSIONER BAEZ: Issue 1, Mr. Butler.

22 MR. BUTLER: No changes.

23 COMMISSIONER BAEZ: All right. Any of the other  
24 parties? Just raise your hand and I'll call on you.

25 MS. KAUFMAN: Commissioner Baez, FIPUG -- I'm sorry.



1 COMMISSIONER BAEZ: Yes.

2 MS. KAUFMAN: FIPUG will take no position on Issue 1.

3 COMMISSIONER BAEZ: Thank you. Staff, you don't have  
4 any changes?

5 MS. STERN: No changes.

6 COMMISSIONER BAEZ: Issue 2.

7 MR. BUTLER: No change.

8 COMMISSIONER BAEZ: Okay. Issue --

9 MS. STERN: Staff has a change on Issue 2.

10 COMMISSIONER BAEZ: You have a change? Okay.

11 MS. STERN: I'm sorry. Yes.

12 COMMISSIONER BAEZ: Just speak right up. All right.

13 MS. STERN: Okay. On staff position for Progress,  
14 PEF, we want to change 11A-E, we want to change that E to a D.  
15 We also want to add a sentence. "If all projects are approved,  
16 staff agrees with Progress."

17 COMMISSIONER BAEZ: Very well. Any other changes,  
18 Ms. Stern?

19 MS. STERN: No.

20 COMMISSIONER BAEZ: No? Okay. Issue Number 3.

21 MS. STERN: Staff has a change to that issue.

22 COMMISSIONER BAEZ: Okay.

23 MS. STERN: And it's the same as we made on Issue 2.  
24 For Progress change 11A through E to D, and add the sentence,  
25 "If all projects are approved, staff agrees with Progress."

1 COMMISSIONER BAEZ: Very well. Issue Number 4.

2 MS. STERN: Staff wants to make that same change.

3 COMMISSIONER BAEZ: Okay. Issue 5.

4 MR. BEASLEY: Commissioner Baez, Tampa Electric  
5 agrees with staff on Issue 5.

6 MS. STERN: Staff wants to make the same change as it  
7 did to Issues 2, 3 and 4.

8 COMMISSIONER BAEZ: As to Progress?

9 MS. STERN: Yes.

10 COMMISSIONER BAEZ: Okay.

11 Issue 6.

12 MR. BUTLER: Excuse me, Commissioner Baez.

13 COMMISSIONER BAEZ: I'm sorry.

14 MR. BUTLER: I just noticed that -- I'm sorry. It's  
15 there. It's out of order.

16 COMMISSIONER BAEZ: Are we all right?

17 MR. BUTLER: Yes. I'm all right. Yeah.

18 COMMISSIONER BAEZ: Okay. Issue 6. Issue 7.

19 Issue 8. Issue 9. 10A. 10B. 10C. 10D. 10E, F, G, and H.

20 MS. STERN: 10H, I'm sorry. Staff wants to change  
21 its position to "Agrees with FP&L."

22 COMMISSIONER BAEZ: Okay. The Progress Issues 11A  
23 through, A through D, any changes?

24 MR. PERKO: I would just note, Commissioner, that  
25 depending upon the resolution of the motion, A and B, or A and

1 C rather may be adjusted.

2 COMMISSIONER BAEZ: So noted.

3 The Gulf issues, 12A through F.

4 MS. STERN: Staff has, staff has a change it wants to  
5 make to Issue 12A. And the staff position where we cite the  
6 statute, we want to cite 366.8255. Put a 5 in there.

7 COMMISSIONER BAEZ: I'm sorry. Can you state that  
8 again?

9 MS. STERN: Yes.

10 COMMISSIONER BAEZ: Sub 5?

11 MS. STERN: We want to change the citation of the  
12 statute to 366.8255. We want a second 5 put in there and then  
13 (1).

14 COMMISSIONER BAEZ: (1). Very well. Any other  
15 changes to any of the number 12 issues? Ms. Stern?

16 MS. STERN: No.

17 COMMISSIONER BAEZ: No? Okay.

18 The Tampa Electric issues, 13 -- I'm only showing A  
19 and B.

20 MS. STERN: That's all there are.

21 COMMISSIONER BAEZ: Any changes? No changes. Okay.

22 On to the exhibit list. Mr. Butler, do you have any  
23 changes to your exhibit list?

24 MR. BUTLER: I have a couple of minor wording items.  
25 On RRL-1, it looks like on the copy that I have that the

1 citation to the rule is to 62-761, and then there's, it looks  
2 like "S00," S-0-0, and it should be 62-761.500. And on RRL-2,  
3 the next page, Page 27, the words "Tank Systems" should be  
4 added after "Existing Underground Storage."

5 COMMISSIONER BAEZ: Any others?

6 MR. BUTLER: No. Thank you.

7 COMMISSIONER BAEZ: Mr. Badders.

8 MR. BADDERS: No changes.

9 COMMISSIONER BAEZ: No changes? Mr. Perko.

10 MR. PERKO: One minor change, Commissioner. On Page  
11 29, Exhibit JP-2, the description has a parenthetical "Revised  
12 9/5/03." We revised that again on 10/17/03.

13 COMMISSIONER BAEZ: I'm showing that change. Very  
14 well.

15 MR. PERKO: And also I guess we could include the  
16 same parenthetical for the next exhibit, as those were revised  
17 on 10/17/03 as well.

18 COMMISSIONER BAEZ: Mr. Beasley.

19 MR. BEASLEY: No changes, sir.

20 COMMISSIONER BAEZ: Thank you. Ms. Stern, I'm not  
21 showing any proposed stipulations.

22 MS. STERN: Well, we wanted to see what the final  
23 positions of some of the parties were going to be. There are  
24 some proposed -- well, I think I'd like to propose some  
25 stipulations now.

1 COMMISSIONER BAEZ: Okay.

2 MS. STERN: First of all, we want to stipulate that,  
3 with FP&L and see if anybody disagrees that their Title  
4 5 permit for operating the Port Everglades facility be a  
5 stipulated exhibit.

6 MS. KAUFMAN: We have no objection.

7 COMMISSIONER BAEZ: Mr. Vandiver? Okay.

8 MS. STERN: Okay. For the company-specific issues we  
9 can stipulate to FP&L's -- we can stipulate all of FP&L's  
10 issues.

11 COMMISSIONER BAEZ: Ms. Kaufman?

12 MS. KAUFMAN: Commissioner, we don't have a problem  
13 with that, but we would just like to show our position as being  
14 no position, except where it's otherwise reflected.

15 COMMISSIONER BAEZ: Very well.

16 MS. KAUFMAN: That's a distinction we always try to  
17 make.

18 COMMISSIONER BAEZ: That's fine.

19 MR. VANDIVER: No position.

20 COMMISSIONER BAEZ: Okay.

21 MS. STERN: Can I ask FIPUG a question? Your, your  
22 position on all the issues is basically no position.

23 MS. KAUFMAN: Except where we have taken a position  
24 on the rate allocation.

25 MS. STERN: Okay. We can also -- we'd like to

1 propose stipulations on all of TECO's issues.

2 COMMISSIONER BAEZ: Mr. Vandiver or Ms. Kaufman?

3 MS. KAUFMAN: It would be the same --

4 MR. VANDIVER: Same caveat.

5 COMMISSIONER BAEZ: Okay. Very well. Ms. Stern.

6 MS. STERN: We can propose stipulations on some of  
7 Gulf's issues, 12B, 12C, 12D.

8 COMMISSIONER BAEZ: I'm sorry. That was 12D?

9 MS. STERN: 12D. 12E and 12F.

10 MS. KAUFMAN: I'm sorry, Commissioner. That's fine.

11 COMMISSIONER BAEZ: We're okay? Mr. Vandiver.

12 MR. VANDIVER: Same.

13 COMMISSIONER BAEZ: All right.

14 MS. STERN: I also believe we can -- we have a  
15 stipulation with all the parties on Issue 1, except FIPUG and  
16 OPC take no position.

17 We have a stipulation with all the parties -- we have  
18 a stipulation with FPL, Gulf and TECO on Issue 2, with FIPUG  
19 and OPC taking no position.

20 MR. VANDIVER: That's correct.

21 MS. KAUFMAN: Correct.

22 MS. STERN: On Issue 3 we have a stipulation with  
23 FPL, Gulf and TECO, with FIPUG and OPC taking no position.

24 On Issue 4 we have a stipulation with TECO and FPL,  
25 with FIPUG and OPC taking no position.

1           On Issue 5 we have a stipulation with TECO and FPL,  
2 with FIPUG and OPC taking no position.

3           On Issue 6 we, staff agrees with all the IOUs, and  
4 FIPUG and OPC take no position.

5           Issue 7, staff also is in agreement with all the  
6 IOUs, with FIPUG and OPC taking no position.

7           Issue 8, staff has a stipulation with FPL and TECO,  
8 with FIPUG and OPC taking no position.

9           And Issue 9, staff can stipulate with FPL, Gulf,  
10 Progress, TECO and FIPUG, with OPC taking no position. And  
11 that's, that's it.

12           COMMISSIONER BAEZ: All right. Good work.

13           MR. PERKO: Commissioner Baez, if I may. Gary Perko  
14 on behalf of Progress.

15           It appears that for many of these issues, at least  
16 1 through 5 and 8, I believe, we're close to a stipulation with  
17 staff on those issues subject to the approval of those two new  
18 programs. So I just wanted to point out that we'd like to work  
19 with staff to see if we could potentially get stipulations on  
20 those issues as well.

21           COMMISSIONER BAEZ: There's no time limit, Mr. Perko.

22           MR. PERKO: The other thing I would just ask staff,  
23 it looks like for issues, Progress-specific Issues 11B and C,  
24 I'm sorry, D, there appears to be no disagreement on that. So  
25 I would think that --

1           COMMISSIONER BAEZ: Ms. Stern, would you like to  
2 address those? What issues were those, Mr. Perko?

3           MR. PERKO: 11B and D.

4           MS. STERN: Yeah. They're -- we can stipulate to  
5 those. We -- so that would be actually a stipulation with  
6 Progress, FIPUG and staff, with everybody else taking no  
7 position. And I think it would be the same with 11B.

8           COMMISSIONER BAEZ: Are there any similar -- I mean,  
9 any of the other companies in the same position that we haven't  
10 mentioned of the company-specific?

11          MS. STERN: I don't think so.

12          COMMISSIONER BAEZ: Okay.

13          MS. STERN: I think we -- did we -- we stipulated  
14 with Gulf on, on the -- yeah.

15          MR. BADDERS: With regard to the numbers, the fallout  
16 issues, Ms. Ritenour, I think we would be able to excuse her.  
17 And we would still have Witness Vick for our specific issues.

18          MS. STERN: Wait. I'm sorry. Are you asking if  
19 there are anymore stipulations or are you asking about  
20 witnesses?

21          COMMISSIONER BAEZ: Well, Mr. Perko, Mr. Perko was  
22 looking at his company-specific issues and showed that there  
23 was agreement on all parts. I'm trying to ascertain -- you  
24 know, it's a pretty lengthy document, so it's kind of hard to  
25 picture it.



1 MS. STERN: No. We've already -- Gulf -- we have  
2 similar issues with Gulf, and we did stipulate to those  
3 already. That's the only other utility where the question  
4 would arise. So it's --

5 COMMISSIONER BAEZ: Very well. Thank you. Oh, well,  
6 Mr. Badders mentioned something about excusing a witness.

7 MR. BADDERS: Right. We have one remaining  
8 company-specific issue, and to that we have a witness and then  
9 we also have a fallout witness, a witness who just testifies to  
10 the numbers. I believe she would be able to be excused because  
11 I don't think the numbers are truly in dispute. I think if  
12 it's approved, our numbers are good numbers.

13 COMMISSIONER BAEZ: Ms. Stern.

14 MS. STERN: That's fine. Yeah. It's all subject to  
15 all the Commissioners approving it by November 5th.

16 COMMISSIONER BAEZ: Right. That witness, is it  
17 Ritenour, you said?

18 MR. BADDERS: Ritenour.

19 COMMISSIONER BAEZ: Ritenour is reflected as --

20 MS. STERN: Yes. We agree with that, that Ritenour  
21 can be excused. We -- I mean, I can go through the list and  
22 say which, which witnesses we believe can be excused, subject  
23 to approval by the Commission.

24 COMMISSIONER BAEZ: If you want to do that so that  
25 everyone else can have an idea of who they are, at least be on

1 notice.

2 MS. STERN: Okay. Dubin, Labauve, Ritenour. We want  
3 to hold off on Javier for right now.

4 COMMISSIONER BAEZ: Okay.

5 MS. STERN: Actually we want to hold off on all the  
6 Progress witnesses for right now.

7 COMMISSIONER BAEZ: All right.

8 MS. STERN: And we can excuse Mr. Bryant and  
9 Mr. Nelson.

10 COMMISSIONER BAEZ: Pending confirmation; right?

11 MS. STERN: Right.

12 COMMISSIONER BAEZ: Are all the parties in agreement  
13 as to those names? Okay.

14 Ms. Stern, I'm showing no pending motions and no  
15 pending confidentiality matters.

16 MS. STERN: There are none. That's correct, there  
17 are no pending.

18 COMMISSIONER BAEZ: Very well.

19 MR. PERKO: Commissioner, I guess we do have the  
20 pending motion to consolidate.

21 COMMISSIONER BAEZ: That's aside from the motion to  
22 consolidate, which I know that y'all are -- we're going to take  
23 sometime before the November 3rd. Other than that, nothing  
24 else is pending or I'm not showing anything else pending, so  
25 we'll, we'll move on. That concludes 07.

1 MR. PERKO: Commissioner Baez, if I could just --

2 COMMISSIONER BAEZ: Yes.

3 MR. PERKO: One housekeeping matter. We filed  
4 revised testimony for Javier Portuondo on September 17th at the  
5 request of staff, and I just wanted to make sure that there's  
6 no objection to us introducing that testimony into the record  
7 as opposed to the originally filed testimony.

8 COMMISSIONER BAEZ: Ms. Kaufman.

9 MS. KAUFMAN: No objection, Commissioner.

10 MR. VANDIVER: No objection.

11 COMMISSIONER BAEZ: I'm not showing any objection.

12 Okay.

13 MR. PERKO: Thank you.

14 COMMISSIONER BAEZ: Thank you, Mr. Perko.

15 All right. Moving right along. We are on the  
16 01 docket.

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1 STATE OF FLORIDA     )  
2 COUNTY OF LEON        )

## CERTIFICATE OF REPORTER

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

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

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

17 DATED THIS 28TH DAY OF OCTOBER, 2003.

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LINDA BOLES, RPR  
FPSC Official Commission Reporter  
(850) 413-6734