

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

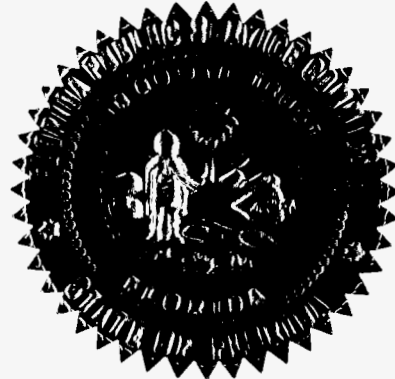
In the Matter of

PETITION FOR RATE INCREASE BY
FLORIDA POWER & LIGHT COMPANY.

DOCKET NO. 050045-EI

2005 COMPREHENSIVE DEPRECIATION
STUDY BY FLORIDA POWER & LIGHT
COMPANY.

DOCKET NO. 050188-EI



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PROCEEDINGS: PREHEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
Prehearing Officer

DATE: Wednesday, August 10, 2005

TIME: Commenced at 9:30 a.m.
Concluded at 11:39 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

1 APPEARANCES:

2 R. WADE LITCHFIELD, ESQUIRE, NATALIE F. SMITH,
3 ESQUIRE, BRYAN S. ANDERSON, ESQUIRE, RICHARD A. DUROSE,
4 ESQUIRE, and MITCHELL S. ROSS, ESQUIRE, Florida Power & Light
5 Company, 700 Universe Blvd., Juno Beach, Florida 33408-0420;
6 KENNETH A. HOFFMAN, ESQUIRE, Rutledge, Ecenia, Purnell &
7 Hoffman, P.A., P.O. Box 511, Tallahassee, Florida 32302; SUSAN
8 F. CLARK, ESQUIRE, Radey Thomas Yon & Clark, P.A., 301 South
9 Bronough Street, Suite 200, Tallahassee, Florida 32301; JOHN T.
10 BUTLER, ESQUIRE, Steel Hector & Davis, LLP, 200 South Biscayne
11 Blvd., Suite 4000, Miami, Florida 33131, appearing on behalf
12 of Florida Power & Light Company.

13 MIKE B. TWOMEY, ESQUIRE, AARP, P. O. Box 5256,
14 Tallahassee, Florida 32314-5256, appearing on behalf of AARP.

15 MARK F. SUNDBACK, ESQUIRE, KENNETH L. WISEMAN, GEORGE
16 E. HUMPHREY, ESQUIRE, GLORIA J. HALSTEAD, ESQUIRE and JENNIFER
17 L. SPINA, ESQUIRE, Andrews & Kurth Law Firm, 701 Pennsylvania
18 Avenue, N.W., Suite 300, Washington, DC 20006, appearing on
19 behalf of South Florida Hospital and Healthcare Association.

20 ALAN JENKINS, ESQUIRE, McKenna Law Firm, One
21 Peachtree Center, 303 Peachtree Street, N.E., Suite 5300,
22 Atlanta, Georgia 30308, appearing on behalf of the Commercial
23 Group.

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25

1 APPEARANCES (continued):

2 MAJOR CRAIG PAULSON, c/o AFCESA/ULT, 139 Barnes
3 Drive, Tyndall Air Force Base, Florida 32403, appearing on
4 behalf of Federal Executive Agencies.

5 ROBERT SCHEFFEL WRIGHT, ESQUIRE and JOHN T. LAVIA,
6 III, ESQUIRE, Landers Law Firm, P.O. Box 271, Tallahassee,
7 Florida 32302, appearing on behalf of Florida Retail
8 Federation.

9 TIMOTHY J. PERRY, ESQUIRE, McWhirter Law Firm, 117
10 South Gadsden Street, Tallahassee, Florida 32301, appearing on
11 behalf of Florida Industrial Power Users Group.

12 HAROLD MCLEAN, ESQUIRE, CHARLIE BECK, ESQUIRE, PATTY
13 CHRISTENSEN, ESQUIRE, and JOHN MARKS, IV, ESQUIRE, Office of
14 Public Counsel, c/o The Florida Legislature, 111 West Madison
15 St., Room 812, Tallahassee, Florida 32399-1400, appearing on
16 behalf of the Citizens of the State of Florida.

17 ATTORNEY GENERAL CHARLIE CRIST, CHRISTOPHER M. KISE,
18 SOLICITOR GENERAL, and JACK SHREVE, SPECIAL COUNSEL, Office of
19 the Attorney General, PL 101, The Capitol, Tallahassee, Florida
20 32399-1050, appearing on behalf of the State of Florida.

21 COCHRAN KEATING, ESQUIRE, KATHERINE FLEMING, ESQUIRE,
22 and JEREMY SUSAC, ESQUIRE, FPSC General Counsel's Office, 2540
23 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
24 appearing on behalf of the Florida Public Service Commission
25 Staff.

P R O C E E D I N G S

1
2 CHAIRMAN BAEZ: Good morning. Call this prehearing
3 to order.

4 Counsel, will you read the notice, please. The
5 pronouncement of the notice.

6 MR. KEATING: I will try to give it due respect.

7 Pursuant to notice, this time and place have been set
8 for a prehearing conference in consolidated Docket Numbers
9 050045-EI, petition for rate increase by Florida Power and
10 Light Company, and Docket Number 050188-EI, 2005 comprehensive
11 depreciation study by Florida Power and Light Company.

12 CHAIRMAN BAEZ: We'll take appearances.

13 MR. LITCHFIELD: Mr. Chairman, Wade Litchfield and
14 Natalie Smith of Florida Power and Light. Ken Hoffman of the
15 firm Rutledge, Ecenia, Purnell and Hoffman. And I would also
16 note Mr. Bryan Anderson, Dick Durose and Mitchell Rose, also of
17 Florida Power and Light, who are not present today but who will
18 be appearing on behalf of Florida Power and Light. And,
19 likewise, Ms. Susan Clark of the Radey, Thomas, Yon and Clark
20 firm, and Mr. John Butler of Steel Hector also will be
21 appearing on behalf of Florida Power and Light in this matter.

22 CHAIRMAN BAEZ: Okay.

23 MR. WRIGHT: Robert Scheffel Wright, Landers and
24 Parsons, 310 West College Avenue, Tallahassee, 32301, appearing
25 on behalf of the Florida Retail Federation.

1 MR. BECK: Good morning, Mr. Chairman. My name is
2 Charlie Beck, Office of the Public Counsel, 111 West Madison
3 Street, Room 812, Tallahassee, Florida 32399-1400, appearing on
4 behalf of the citizens of Florida.

5 And during the course of the proceedings I would also
6 like to make appearances for Harold McLean, Public Counsel,
7 Patricia Christensen, and John Marks, IV, also of the Office of
8 Public Counsel.

9 MAJOR PAULSON: Good morning, sir. Major Craig
10 Paulson, representing the Federal Executive Agencies. My
11 address is 139 Barnes Street, Suite 1, Tyndall Air Force Base,
12 Florida 32403.

13 MR. WISEMAN: Good morning, Mr. Chairman. Kenneth
14 Wiseman from the law firm of Andrews Kurth, representing the
15 South Florida Hospital and Healthcare Association. My address
16 is 1701 Pennsylvania Avenue, Northwest, Washington, D.C. 20006.
17 And I would also enter the appearances of a number of counsel
18 also with Andrews Kurth who are not present today: George E.
19 Humphrey, Mark Sundback, Gloria Halstead and Jennifer Spina.

20 MR. PERRY: Timothy J. Perry and John W. McWhirter
21 of the McWhirter Reeves law firm on behalf of the Florida
22 Industrial Power Users Group.

23 MR. JENKINS: Alan Jenkins of the law firm McKenna
24 Long and Aldridge on behalf of the Commercial Group. My
25 address is 303 Peachtree Street, Atlanta, Georgia 30308.

1 MR. TWOMEY: Good morning, Mr. Chairman. Mike
2 Twomey, Post Office Box 5256, Tallahassee, Florida 32314-5256,
3 appearing on behalf of AARP.

4 MR. WRIGHT: Mr. Chairman, if I may, I would just
5 like to also note an appearance by my partner, John T. Lavia,
6 III, as indicated on the prehearing order. Thank you.

7 MR. KEATING: And Cochran Keating, Jeremy Susac, and
8 Katherine Fleming on behalf of the Commission.

9 CHAIRMAN BAEZ: Is that everyone at this point? It
10 looks like it. Okay.

11 Mr. Keating, we have some preliminary matters.

12 MR. KEATING: We do have some pending motions in the
13 docket. And to the extent -- we may be able to take some of
14 these up today, and an order on some of these could be issued
15 separately. We do have a petition to intervene by the Office
16 of the Attorney General that is pending, and the response time
17 for -- the time for filing responses to that petition has not
18 yet run.

19 CHAIRMAN BAEZ: When does it run?

20 MR. KEATING: I believe the response time runs
21 probably within the next day or two.

22 CHAIRMAN BAEZ: Is anyone anticipating any objection
23 to the intervention?

24 MR. LITCHFIELD: No, Mr. Chairman. FPL does not
25 object to the intervention of the Attorney General's Office.

1 Of course, subject to taking the case as they find it.

2 CHAIRMAN BAEZ: Very well. And I'm assuming none of
3 the intervenors have any objections?

4 MR. TWOMEY: No, sir.

5 CHAIRMAN BAEZ: Very well. At this point we can
6 dispense with this motion, I think, and grant the intervention.
7 And, Mr. Shreve, I see you sitting there. We'll enter an
8 appearance. Can you go ahead and make it official, because I'm
9 sure you have many more like you.

10 MR. SHREVE: Thank you, Mr. Chairman. Jack Shreve.
11 I would like to have an appearances on behalf of the Attorney
12 General. I would like to also mention that Chris Kise and
13 Attorney General Crist will also be making appearances. The
14 address is the Capitol Building, Tallahassee, Florida.

15 Thank you, and thank the parties for no objection.

16 CHAIRMAN BAEZ: Thank you, Mr. Shreve.

17 I'm also showing Public Counsel's motion to strike,
18 Mr. Keating.

19 MR. KEATING: Yes. That motion asked --

20 CHAIRMAN BAEZ: I have already ruled on this,
21 correct?

22 MR. KEATING: That is the ruling that you provided,
23 and we have let FPL and Public Counsel know of your ruling. An
24 order has not been issued yet. If you would like, that
25 decision can be reflected in this prehearing order, or we can

1 issue a separate order.

2 CHAIRMAN BAEZ: Why don't we save some time and money
3 and have it reflected as part of this prehearing. And just to
4 remind you all, the ruling was to allow FPL to sponsor the
5 updated depreciation study, and we have also slid forward the
6 dates corresponding to that. I'm showing here Public Counsel,
7 Mr. Beck, you all have the opportunity to file responsive
8 testimony by the 15th of August. And as comes with trying to
9 strike a deal, there is no opportunity for rebuttal, Mr.
10 Litchfield.

11 MR. LITCHFIELD: Pardon me?

12 CHAIRMAN BAEZ: There is no opportunity for rebuttal.

13 MR. LITCHFIELD: We would not have an opportunity to
14 file responsive testimony, if necessary?

15 CHAIRMAN BAEZ: No. That is part of trying to get as
16 much information or as good information as we can, and we are
17 running out of time. Okay.

18 And you can have that reflected in the order.

19 Next I'm showing a joint motion to consolidate, the
20 joint petition for the rate decrease.

21 MR. KEATING: Right. The joint petition for a rate
22 decrease was assigned a separate docket when it was filed. We
23 just received a motion to dismiss that petition from Florida
24 Power and Light yesterday, and a response to the motion to
25 consolidate. It may be premature at this time to rule on the

1 motion to consolidate, not knowing what is going to happen with
2 the separate joint petition for rate decrease. In any event,
3 it is something that I don't believe requires a ruling at this
4 time.

5 CHAIRMAN BAEZ: Well, there being a motion to dismiss
6 on the table, that is not something that I guess one person
7 alone can take up. So I think we're going to stay the ruling
8 on those motions. I think we will have ample time to deal with
9 them at a future date.

10 Is there anything else? Any other pending or
11 preliminary matters, Mr. Keating?

12 MR. KEATING: I know that there are, perhaps, some
13 other motions that are outstanding that would get addressed by
14 separate orders. Perhaps motions for temporary protective
15 order that are fairly recent, but nothing that is listed in the
16 prehearing order.

17 CHAIRMAN BAEZ: Nothing we need to dispense with here
18 today?

19 MR. KEATING: Correct.

20 CHAIRMAN BAEZ: Very well. We're going to move on,
21 we're going to discuss the hearing framework a little bit.

22 Ladies and gentlemen, I'm going to state the obvious
23 here. We have got 51 sets of testimony, we have eight days to
24 do it in. So in my discussions with staff, and trying to find
25 some efficient way of moving this hearing along and getting it

1 in in the time that we have allotted, we have tried to discuss
2 some basic frameworks and maybe some guidelines that will help
3 all of us along, and try and make the best use of our time.

4 The first one -- let's start with the little ones
5 first. The opening statements. There are many of us here. It
6 is a very complex case, I realize that, but I'm going to ask
7 you all for some indulgence here. Try and understand that I
8 think the Commissioners have been well aware of the issues that
9 are cropping up on the docket. For that reason, we are going
10 to limit opening statements.

11 Mr. Litchfield, you and your client will have 20
12 minutes to give your opening statements. I think that should
13 be enough time to be able to get the essence of the case out,
14 which is really what we need to do.

15 And the intervenors collectively, there are, by my
16 count, eight of you at this point. A lot of you, as I have
17 read through the prehearing positions that you have offered,
18 there is a lot of agreement amongst you on different issues and
19 so forth. We are going to allot 45 minutes whole, to the whole
20 of you. And I will trust that you all put your heads together
21 and find out a way to apportion that time amongst yourselves in
22 a way that allows you all to get, again, the essence of your
23 case before the Commissioners as part of your opening
24 statements.

25 In terms of the structure of the hearing, as I said,

1 we have got eight days, 51 pieces of testimony. Some of that
2 will be taken up -- not all of the witnesses are going to be
3 taking up cross and rebuttal, direct and rebuttal together. So
4 we have to provide for rebuttal time. We tried to sit down,
5 think about a way to use that time, those eight days
6 efficiently. I think we tried to harken back to one of our
7 dearly departed Commissioners who did such a fine job in
8 setting up the TRO docket and tried to mold that structure,
9 tried to translate it into this.

10 What we have come up with is -- and these are
11 estimated, but they are hard estimates, ladies and gentlemen, I
12 want you to keep that in mind. Half a day for opening and
13 preliminary matters, three days for the direct case, three days
14 for intervenor and staff direct case, and approximately one and
15 a half, that gives us one and a half days for rebuttal.

16 Having set that out, I think that should give some
17 kind of -- it is a two-week case, a lot of your witnesses
18 should not have to be sitting around idle waiting to be called.
19 I'm hoping that setting forth these types of guidelines will
20 allow you to get into the details of how you order, how you may
21 order your witnesses other than what has been reflected here in
22 the prehearing statement. And it will try and keep to a
23 minimum the idle time for your witnesses, if you have those
24 kinds of issues. But it will at least give you a fair estimate
25 of when you have got to be on.

1 MR. BECK: Mr. Chairman, may I provide some input, at
2 least give you my reaction to that, if I could?

3 CHAIRMAN BAEZ: Sure, please.

4 MR. BECK: I would suspect, at least I know for our
5 case that we are going to focus more on the rebuttal testimony
6 than the direct. And it would seem to me, almost, that the
7 time frames are -- I would expect, at least personally, to
8 spend more time on rebuttal. And I suspect it may be similar
9 for other intervenors.

10 CHAIRMAN BAEZ: Well, and the purpose of this, all
11 right, the purpose of my laying out this type of time frame is
12 only for you all to use your time as wisely as possible because
13 we are going to be gaining time. I mean, if it is as you say,
14 Mr. Beck, we are going to be gaining time. But you have been
15 through these before, and these are complex cases, I think you
16 know the line shifts. You know, we are sort of making up
17 timing as we go along. But I'm hoping that if we start with
18 this kind of estimate, then it will be a little easier to
19 adjust upwards if we are gaining time. And, you know, when we
20 need our rebuttal witnesses available.

21 Mr. Litchfield.

22 MR. LITCHFIELD: Thank you, Mr. Chairman. With
23 respect to Mr. Beck's point, I don't suppose from FPL's
24 standpoint we are concerned about whether they spend their time
25 on direct or rebuttal. However, for planning purposes and

1 scheduling purposes, it would make a lot of sense if, in fact,
2 we knew indeed that collectively they would take, or plan to
3 take a day and a half on the front end, so that we knew when
4 our three days started and when our witnesses needed to be
5 there.

6 CHAIRMAN BAEZ: Mr. Wright.

7 MR. LITCHFIELD: And I have one other comment to come
8 back to later.

9 CHAIRMAN BAEZ: Okay.

10 MR. LITCHFIELD: The other point was three days, I
11 think that is adequate for us provided that it is truly our
12 three days and not half a day, or a day, or a day and a half of
13 friendly cross.

14 CHAIRMAN BAEZ: We are going to get to that. I was
15 saving that for later, because I have given that a lot of
16 thought. And since you brought it up, ladies and gentlemen, my
17 intention is that there be no friendly cross. I don't think
18 friendly cross adds a whole lot to the situation. It makes it
19 very difficult to move forward. And since we are trying to
20 make use of the very little time that we have allotted for a
21 lot of testimony that has to get laid out for the Commission,
22 friendly cross sort of impinges on everyone's ability to make
23 their case and to get their testimony out. I haven't found it
24 to be a very valuable exercise.

25 Because we have such little time, it is a big case,

1 it is over 160 issues that have to get covered one way or
2 another, friendly cross is not something that we are going to
3 allow in this hearing. So, there you have it. And if you will
4 just hold off whatever remarks or whatever thoughts you may
5 have on that issue.

6 Going back to -- Mr. Litchfield, I think that that
7 fact will give you, you know, will give the time that we have
8 tried to framework to be true time, so to speak. I was wanting
9 to mention something as well, now that I've got you all here.
10 My preference is to run late, if possible, early in the
11 hearing, because we don't know what's going to happen late in
12 the hearing. So you can all make arrangements to run more or
13 less until 6:00 o'clock the first few days, and we'll adjust
14 that, depending on how it is going. If we haven't gotten
15 bogged down, then that will get a little lighter later into the
16 hearing.

17 Mr. Wright, you were about to say something?

18 MR. WRIGHT: Thank you, Mr. Chairman. In terms of
19 planning within your rough but hard estimates, you mentioned
20 that not all the witnesses will be doing both direct and
21 rebuttal. Is it your intention that those witnesses who have
22 sponsored both direct and rebuttal will present both of their
23 testimonies at the same time, or is it going to be all the
24 direct, all the intervenor and staff, and then all the
25 rebuttal?

1 CHAIRMAN BAEZ: No, I have never been one to -- I
2 like taking -- this is just a personal opinion, I like taking
3 direct and rebuttal together. It's much more efficient; it is
4 less time consuming; it saves money for everybody involved.
5 Now, I realize that that is not always practical -- as a
6 practical matter, that is not always possible. So insomuch as
7 this is a complex case, I'm not going to hold anybody to -- as
8 the prehearing officer, I'm not going to force anybody to do
9 direct and rebuttal if they don't believe that that is what
10 they need to be doing. However, any treatment or any taking of
11 witnesses direct and rebuttal together is highly appreciated,
12 because I think it adds to the speed of the --

13 MR. WRIGHT: And on that point, if we could just
14 leave here today with an indication from FPL as to what their
15 intention is going to be in that regard, it will help us to
16 plan a lot better within the, sort of, schedule of the case
17 that you laid out for us.

18 CHAIRMAN BAEZ: Mr. Keating, I think you have an
19 understanding, or at least there have been some -- Mr.
20 Litchfield, you correct me if I'm wrong, there have been some
21 representations made as to what those witnesses may be. My
22 understanding is that they are not all -- all of your rebuttal
23 witnesses are not --

24 MR. LITCHFIELD: That's correct, Mr. Chairman. At
25 this time we would suggest that Mr. Stamm, Mr. Yaeger,

1 Mr. Mennes, Ms. Santos, and Ms. Slattery could present their
2 rebuttal at the same time that they present their direct.

3 CHAIRMAN BAEZ: Okay. That is a total of five
4 witnesses. Did everybody get that?

5 MR. WISEMAN: Your Honor, if I could just ask a
6 clarification. And I think it is clear, but I just want to
7 make sure. So it will be up to the company at its election to
8 determine whether a witness will be available for direct and
9 rebuttal at the same time, or will it be at the option of the
10 cross-examiner?

11 CHAIRMAN BAEZ: Mr. Wiseman, no, it's not an option.
12 We are trying to nail that down here as much as possible. And
13 I don't anticipate that, certainly, the company would change
14 their representations to us, because it is, you know, it is as
15 much a planning tool for the direct case as it is for the
16 intervenors. So I think what you heard at this point, Mr.
17 Wiseman, is Mr. Litchfield offer up his -- what are five
18 witnesses that can be taken up together, and the assumption is
19 that all the others are going to be taken. Now, they will all
20 be available, that is not what we are talking about.

21 MR. WISEMAN: Thank you, Your Honor.

22 CHAIRMAN BAEZ: Thank you, sir. Where were we?

23 MR. LITCHFIELD: Mr. Chairman, may I ask for a
24 clarification, as well?

25 CHAIRMAN BAEZ: Sure.

1 MR. LITCHFIELD: In the hopeful, but not necessarily
2 probable, event that FPL were to take less than three days, I
3 suppose I would like a clarification that that doesn't add to
4 the time for intervenors on FPL's rebuttal case? In other
5 words, I don't want to be --

6 CHAIRMAN BAEZ: Well, let's put it this way, any time
7 that any party gives back is mine, not anybody else's. Is that
8 fair?

9 MR. LITCHFIELD: Fair enough.

10 CHAIRMAN BAEZ: And it is the Commission's to give
11 back. So to the extent that you all are planning on cross and
12 testimony and whatnot, work within the framework. Do not
13 assume that any time saved on the front end is time that gets
14 added on the back end. Because, clearly, if we don't need to
15 be here eight days, we won't be here eight days. And I'm sure
16 that you all may feel the same after four days.

17 Mr. Beck, you were poised to say something.

18 MR. BECK: It's simply my same concern. From my
19 framework, the amount of time for direct and rebuttal should
20 be flipped.

21 CHAIRMAN BAEZ: And that is on the record, and I
22 think everybody understands it. This was done, or this
23 thinking was done without the benefit of your personal, or
24 anyone else's personal estimate of whether time is going to get
25 allocated and so forth.

1 Now, that is something different than what I think
2 Mr. Litchfield is referring to, which I happen to agree with.
3 It is not so much -- you know, let's don't -- I don't want to
4 incent neither the company from going longer than it has to to
5 feel it has made its case, and likewise any of the intervenors
6 to go longer than they have to just to fill space. That is not
7 what we want to incent here. We want to try and have everybody
8 have enough time to get their case out, enough to get their
9 cross and redirect out, but no more than that, no more than
10 necessary.

11 And I understand your situation, and we are going to
12 work that way. What I would suggest is if there is any
13 tweaking that has to be done between the allocations that I
14 have set out, the unofficial, if you will, allocations that we
15 have discussed here, why don't you talk to Mr. Keating to see
16 if we can't get that part straightened out. But I assure you
17 that it is for planning purposes. It's something that I'm
18 going to try and keep to in my mind, because what it winds up
19 being is a running clock. So the more I know about what your
20 intentions are, the better.

21 MR. BECK: I don't think the intervenors have had an
22 opportunity to discuss this between themselves, because we
23 didn't know there was this sort of time frame. But if you are
24 flexible on it, and we can --

25 CHAIRMAN BAEZ: I'm flexible -- you know, there's two

1 lines. You have got two buckets, the intervenors do, the way I
2 see it. You have got -- such as it is, you have the
3 flexibility of discussing amongst yourself and seeing where the
4 allocation between rebuttal time and the intervenors' direct
5 case is, or the intervenors' side of the case is concerned.
6 Obviously there is some flexibility there, but I do want to
7 keep some clear line so that we can all keep this moving
8 forward.

9 MR. LITCHFIELD: Mr. Chairman, I don't know if a
10 short break would allow them to confer and come up with an
11 estimate.

12 CHAIRMAN BAEZ: We can go ahead and take a break, if
13 Mr. Beck wants it. I don't know if that is a calculation that
14 he can have at the ready -- I don't want to give you just five
15 minutes to decide what you want to do or come up with an
16 estimate. But I don't think this is something that we have to
17 fix today officially. This is something that is going to take
18 place off-line.

19 Mr. Wright.

20 MR. WRIGHT: Mr. Chairman, I think we are all
21 committed for self-interest and for every other good reason to
22 not having this hearing take any longer than it needs to. And
23 I believe it is fair to say that we are all willing to work
24 late on the early days, et cetera. My concern is that the
25 implication of Mr. Litchfield's comment is that if somehow

1 their direct case only takes two and a half days, then the
2 implication is we are going to quit on Friday at noon,
3 September the 2nd at noon, no matter what. That doesn't make
4 sense to me.

5 My feeling would be that the Commission has scheduled
6 eight days of hearing time with a commitment to run long to the
7 extent necessary. And I think we are all committed to not
8 running long. And all I would say is if it takes eight days,
9 it ought to take eight days. And trying to artificially
10 constrain it if somebody's direct case takes two and a half
11 days --

12 CHAIRMAN BAEZ: Let me tell you this, Mr. Wright.
13 The eight days were set up because the staff and the Commission
14 decided that it was eight days is what we needed to process
15 this case in terms of hearing time. All right. And if it
16 turns out that our estimate was conservative, all right, that
17 we erred on the side of caution because we were reacting to
18 what the companies, or what the petitioners case seemed to be,
19 I'm not going to turn it into a freebie to have what would
20 otherwise have been a case of a certain amount on the
21 intervenors' side into free time to fill. Do you see the kind
22 of --

23 MR. WRIGHT: Yes. But I think my statement, which I
24 think would go for every attorney here, that we are all
25 operating in good faith not to try to make this take any longer

1 than it needs to take. But as you have observed, we've got 51
2 sets of testimony and eight days running late might be barely
3 enough. I'm concerned about --

4 CHAIRMAN BAEZ: And I would agree with you, I think
5 eight days may barely be enough. So if that turns out to be
6 the case, then we don't have anything to worry about and we
7 don't have anything more to discuss on it.

8 What I do want to impress upon all of you is that I'm
9 trying to get this thing in in the allotted time, which as you
10 have acknowledged may not be enough, and that makes it all the
11 more necessary for us not to run long on things like opening
12 statements, not to run long on things like summaries of
13 testimony. We need to dedicate as much time as possible to
14 building the record, those official parts that belong in the
15 record.

16 MR. WRIGHT: And, Mr. Chairman, I think I certainly
17 -- and I think everybody else here is fully in agreement with
18 that. And as I said, I think we are all going forward in good
19 faith and not make it take any longer than it needs to take.
20 I'm just concerned that the implication of Mr. Litchfield's
21 comment was that if somehow they put on their case in 2-1/2
22 days, there might be some potentially artificial constraint of
23 quitting at noon on Friday the 2nd. That is my problem.

24 CHAIRMAN BAEZ: I don't think what -- I think what
25 you need to worry about is if you have an hour, or if you have

1 20 minutes of estimated cross on a witness, just because the
2 petitioner took less time and left, let's say, an extra two
3 hours, that doesn't translate into -- you're going to make your
4 point, all right. You're going to make your points on cross,
5 you're going to get every opportunity to do that.

6 Just because you say, oh, I got a little bit of extra
7 time here, let me go make more points. We are talking in the
8 abstract, Mr. Wright, but I think we have all been in these
9 hearings long enough to know that some cross goes a little too
10 long. And I will tell you from the perspective of someone who
11 has to listen to it and take it all in, you know, if you give
12 me more chaff to separate from the wheat, you know, it just
13 makes it --

14 MR. WRIGHT: I understand.

15 CHAIRMAN BAEZ: Do you see what I'm saying?

16 MR. WRIGHT: Yes, sir. You missed the pleasure of
17 sitting through the 1994 conservation goals hearings. A number
18 of us here did not miss that pleasure.

19 CHAIRMAN BAEZ: I got in just over the wire.

20 MR. WRIGHT: And we can recall that there was one
21 attorney, in particular, who seemed to take an inordinately
22 long time on cross. And all I'm saying to you is I think all
23 of us here have a good faith commitment to you and to the
24 Commission not to do that. We have been there. That hearing
25 went five days longer than it was planned to.

1 CHAIRMAN BAEZ: And I appreciate your commitment
2 especially, Mr. Wright, and I just want you to know that I'm
3 going to try and hold you to it, not in the interest of
4 shutting any intervenor down. I repeat, you will have every
5 opportunity to complete your cross. The reason we didn't set
6 it up on a one-hour per witness and so forth is because I can't
7 break out an hour glass and cut cross examination off. I'm
8 trying to give you a framework so that you all can plan, all
9 right, knowing full well that this can go down hill very
10 quickly. But I assure you I'm going to do everything possible
11 that I can not to let that happen, and you should be aware of
12 that.

13 MR. WISEMAN: Mr. Chairman, I wonder if I could make
14 a suggestion.

15 CHAIRMAN BAEZ: Sure.

16 MR. WISEMAN: And I'm not saying that this is the
17 appropriate time to do it, but if we could do it maybe sometime
18 this morning. We have your guidelines, and obviously we all
19 have to operate within those guidelines. We understand that.
20 At the same time we are talking a little bit in a vacuum.

21 CHAIRMAN BAEZ: We are.

22 MR. WISEMAN: Because we don't know how much
23 cross-examination any of the parties are going to conduct with
24 respect to a particular witness, and we also have the problem
25 that we have in all proceedings is witnesses unfortunately have

1 days when they are unavailable because of their other
2 commitments. I wonder if it makes sense to at some point this
3 morning take a break and let all the parties get together and
4 discuss witness availability, whether FPL's witnesses should
5 have more time on the front end or more on the back end.
6 First, I share Mr. Beck's view -- I know my cross is going to
7 be more on the back end, on the rebuttal. I think if we take a
8 break and talk about this among ourselves, we can probably iron
9 it all out.

10 CHAIRMAN BAEZ: Absolutely. And it is my intention
11 to take that break and give you as much time as you feel you
12 need to be able to come back with some better sense of what it
13 is -- where we need to draw these fictional lines to try to get
14 it to move forward. My only intent is to let you know how we
15 have tried to think about it, and how we have tried to
16 apportion our planning time for your benefit so that the
17 hearing can run on time.

18 Unfortunately, you're absolutely right, we are
19 talking in a vacuum. We all know that once we get into the
20 hearing, nobody knows what happens. I can tell you that given
21 a case of this magnitude, my limited skills in trying to keep
22 control over these things from spinning out of control are
23 going to be at their highest. I'm lifting weights, I'm eating
24 right, I'm -- you know, because it is about as big a case as we
25 are going to see come around.

1 And, you know, it is important that we let everybody
2 get -- we have to maintain due process in order to do that as
3 best as possible. We have got to maintain a rather keen eye
4 towards the timing of it, because otherwise we are going to run
5 out of time. It is a very abstract thing. It is going to be a
6 work of art in some sense. It is kind of hard to put solid
7 lines and put people in a box, and really that is not my
8 intention, but it is, if you understand what I mean.

9 Mr. Twomey, you had --

10 MR. TWOMEY: I'm sorry, I was just --

11 CHAIRMAN BAEZ: I have known you so long, sometimes
12 you lean forward, and when you do this, it's like --

13 MR. TWOMEY: My hand was up, but it wasn't -- my hand
14 wasn't up. Thank you, though. I was daydreaming.

15 CHAIRMAN BAEZ: If there aren't any other questions
16 or any other discussion on this matter, perhaps Mr. Wiseman and
17 others suggestion is good at this point in time. I'm figuring
18 if we can take ten minutes to have you all discuss amongst
19 yourself, maybe we can come back with some better idea -- and I
20 want you to focus on what your allocation issues are. By and
21 large, we are dealing with rebuttal and the intervenors direct
22 case.

23 And, Mr. Keating, by your silence -- I know that you
24 all have witnesses as part of this bucket, as well. You need
25 to pipe up.

1 MR. KEATING: We have just three witnesses. I
2 believe -- if none of the intervenors intend to cross-examine
3 those witnesses, I have been given an indication this morning
4 that FPL may not have any cross-examination for those
5 witnesses. And we can, hopefully, be part of the solution
6 there, stipulate our witnesses.

7 CHAIRMAN BAEZ: It is good because you have got to
8 come home later, right? You have got to stay in the building
9 after it's all over. That's good. Why don't we recess for ten
10 minutes, let you all get your thoughts together and see what we
11 can make of the intervenor direct and the rebuttal cross. We
12 will recess for ten minutes.

13 (Recess.)

14 CHAIRMAN BAEZ: We'll go back on the record and
15 perhaps hear some good news. Or news, anyway.

16 Mr. Beck.

17 MR. BECK: Thank you, Mr. Chairman. I'm not sure we
18 have 100 percent unanimity on it, but I think that we generally
19 do.

20 CHAIRMAN BAEZ: That would be too much to hope.

21 MR. BECK: I think generally how we would see the
22 hearing proceeding is that after the half-day for the opening
23 and preliminaries that you mentioned, that we think from an
24 intervenor's standpoint that we could finish direct in the next
25 day and a half, so that it would be finished Tuesday evening.

1 We would view, then, the next three days would be the
2 intervenors coming up, and the company having their chance to
3 cross-examine the intervenor witnesses. And then, generally,
4 the three days of the next week would be both for the company's
5 rebuttal witnesses and intervenor cross-examination of that.
6 Nobody knows exactly how it's going to proceed, but I think
7 that is how we would see it.

8 CHAIRMAN BAEZ: Mr. Litchfield.

9 MR. LITCHFIELD: Thank you, Mr. Chairman. I think
10 that certainly works for us in terms of an allocation of time
11 with the one clarification that Mr. Beck has agreed to, and
12 maybe not all of the intervenors, but that if we, for example,
13 were to finish our examination of the intervenor testimony
14 earlier than Friday evening, that we would be prepared to put
15 on FPL's rebuttal case at that point, put on our first witness,
16 and, again, not adding to the time that they have, the four and
17 a half day time that they have the following week.

18 CHAIRMAN BAEZ: I said earlier, Mr. Litchfield, you
19 know, that we try and hold fast to these because my bet is that
20 we run out of time, you know, that we are running out of time
21 rather than having all the extra. Naturally, a lot of that
22 possibility is in the control of the attorneys on this. I'm
23 sitting here still without any inkling of -- and I'm not asking
24 for it, either, but any inkling of how long you have got for
25 individual witnesses and so on. Only you know exactly how

1 much -- and maybe you don't even know that, but have a good
2 idea of exactly how much time you are really talking about.

3 The purposes of my bringing up this discussion is to
4 try and keep people focused on, you know, two purposes, really.
5 Let's get people to focus on the crux of the matter. I mean, I
6 cannot stress -- I cannot stress either from a human point or
7 from a Commissioner's point, and sometimes the two get mixed
8 together, how important it is to make your point, and as
9 forcefully and as briefly and as concisely as possible, because
10 that is what sticks in the mind.

11 If we are worried about how long, you know, if we are
12 worried about how long we are taking without actually making a
13 point, now you can see the problem with that. And I don't have
14 to tell you, you all are very experienced attorneys, and you
15 know what I'm talking about. And that is a very difficult line
16 or that is a very difficult axis to run, I realize that.

17 The purpose of my trying to set some kind of
18 estimates on how much time is is two-fold, to get you to focus
19 on that fact, that what we clearly are looking for is to build
20 a complete record, but not an excessive record. A record that
21 is lean and to the point and complete with as little extraneous
22 goings on as possible. And the second is to try and stay
23 within the times that we have.

24 Believe it or not, this is not the only case that the
25 Commission has to take up in very short order. And I don't say

1 it -- and many of you are involved in some of the other cases,
2 as well, so I don't have to remind you of that. And I don't
3 even say it from the perspective of the Commissioners sitting
4 up here listening to testimony, but somebody has got to go back
5 into the kitchen and cook all of this stuff up. There is a
6 little bit of compassion there, anyway. I know I have
7 interrupted somebody. Mr. Beck, you were --

8 MR. BECK: Mr. Chairman, I think this will work.

9 CHAIRMAN BAEZ: I know it will, I have ever
10 confidence that it will. The mere fact that you all spent
11 twenty minutes kind of working things out and were talking to
12 each other, I'm very proud of you, I've got to tell you. I'm
13 glad with the results that are coming back.

14 MR. BECK: Each of us have some issues with specific
15 witnesses. I think we would like collectively to ask that our
16 out-of-town witnesses for the intervenors not have to be
17 present until Wednesday the 24th. I think there are some
18 exceptions to that. Viewing that we think that it is likely
19 that the first two days will be the company's direct, in any
20 event, I think all of us can have some witnesses available if
21 that ends earlier. I know, for example, Ms. Merchant is in our
22 office, she could be here on Tuesday, if necessary. But we
23 would like, generally, to ask for permission not to have our
24 witnesses be here or required to be here prior to Wednesday.

25 CHAIRMAN BAEZ: I think I can accommodate that.

1 Major.

2 MAJOR PAULSON: Along those lines, can we have some
3 flexibility on the order of some of the out-of-town witnesses?

4 CHAIRMAN BAEZ: And that is something that I'm
5 willing to entertain, as well. I mean, I understand, gentlemen
6 and ladies, that there are a lot of variables, and there are a
7 lot of moving parts to this. And, Major, I don't know if you
8 were here on the last revenue requirement, this may be --

9 MAJOR PAULSON: My first Florida case.

10 CHAIRMAN BAEZ: -- your first Florida case. And you
11 can ask anybody else, I try and be as flexible as possible with
12 those kinds of things. I have always thought with such a long
13 witness list that you have to factor in some flexibility into
14 it and, you know, trying to get what amounts to about over
15 thirty witnesses in total, you're going to have those kinds of
16 issues. And I'm perfectly willing to try and accommodate them
17 to the best of everybody's ability.

18 MR. BECK: I was wondering if you could give each of
19 us an opportunity, because I think we need to disclose to the
20 company, too, because they will want to know to be prepared.

21 CHAIRMAN BAEZ: Absolutely. And I never intended --
22 and I think I mentioned this to Mr. Keating, as well, I don't
23 know if he communicated it to you, the order of witnesses as
24 reflected in this draft I view as just that, a guidance docket.
25 We're not going to reduce anything to finality.

1 And certainly the flexibility, Major, is going to
2 remain even beyond that. We will have to shift on the fly at
3 some point in time on several different issues, I have no doubt
4 of that. I'm merely trying to nail down as much of the easy
5 stuff as I can so we can really dedicate ourselves to the
6 tougher issues. But you will have some flexibility, and you
7 can get together with counsel as you see necessary to do that.

8 MAJOR PAULSON: Thank you.

9 MR. LITCHFIELD: Mr. Chairman, I would just ask that
10 we work together and get those clarifications made sooner
11 rather than later, even by the end of this week, I think.

12 CHAIRMAN BAEZ: End of the week is a good jumping off
13 point. There are two things, and we are probably going to get
14 to it later. And maybe if we are done talking about the
15 allocation issue, we are going to start moving into the actual
16 positions and stuff, and I will just say this as a segue.
17 Whatever order of witness issues that you have come up with,
18 let's have them discussed and finalized, quote, unquote, with
19 all the caveats that I have tried to lay out by the end of the
20 week so that everybody can be on notice as to what an intended
21 order of witnesses is going to be. That will give you enough
22 time to try and check availability and so forth.

23 And as for the positions, any changes to positions, I
24 know that staff counsel may have informed you of an opportunity
25 to do it in writing. I don't know if a lot of you brought

1 whatever modifications or revisions needed to be made to your
2 particular positions. If you brought them today in writing,
3 they could be given to the court reporter and handed out to the
4 parties.

5 If you didn't do that, there are 168 issues. In
6 terms of grammar and nits and modifications of the positions to
7 which you are entitled, I don't have a problem with them. We
8 can entertain them off-line. Otherwise we could be here all
9 day, if there are many, in a document of this type. So you can
10 provide them either electronically or in writing by the end of
11 the week so that we can incorporate them into the final order.
12 I don't think it will be a good use of everybody's time to be
13 considering specific changes to your particular positions. We
14 can do that off-line, and they will be accepted in due course.

15 Does anybody got a problem with that? No. All
16 right. I did neglect -- I implied something earlier in our
17 discussions of the allocation of time and how we were going to
18 try and make this a little leaner a process. I did intimate
19 something about trying to gain some time or save some time on
20 the witness summaries. I would propose to limit witness
21 summaries to three minutes. I think that is ample time for a
22 witness to, as a wise man once told me, bulletize your
23 testimony. There is no need for more than that. I think
24 summaries are very helpful to the Commissioners if they are
25 done, again, concisely and to the point.

1 So we will have the order reflect that summaries will
2 be three minutes, no more than three minutes in length.

3 MR. LITCHFIELD: Excuse me, Mr. Chairman.

4 CHAIRMAN BAEZ: Mr. Litchfield.

5 MR. LITCHFIELD: Two points of clarification. Three
6 minutes, I think, is acceptable to us. I would, however, ask
7 in the instances where we are combining presentation of both
8 direct and rebuttal that the company be given a little
9 latitude.

10 CHAIRMAN BAEZ: Four minutes. You know, look,
11 Mr. Litchfield --

12 MR. LITCHFIELD: Fair enough.

13 CHAIRMAN BAEZ: You have got to understand. The
14 summaries are good. And I don't want -- I mean, I can tell you
15 there was some discussion with doing away with them altogether.
16 So I think that does put the onus on your witness to be as
17 direct and thoughtful and get their point across as quickly and
18 as concisely as possible. And I don't want to lose that
19 impetus.

20 MR. LITCHFIELD: Well, I have one other request to
21 make, and that is that Mr. Olivera, who will lead off and sort
22 of present the big picture, be extended a couple of additional
23 minutes. And we promise we will find those two minutes from
24 somebody else's summary.

25 CHAIRMAN BAEZ: Well, you know, I would have much

1 rather had Mr. Olivera come and beg for the two extra minutes
2 personally, but we will make that accommodation, as well. And
3 I will take you at your word that you will find that extra time
4 somewhere else.

5 Mr. Beck, you were going to say something?

6 MR. BECK: No.

7 CHAIRMAN BAEZ: Okay. I don't want to force you to
8 say anything.

9 MR. BECK: I could.

10 CHAIRMAN BAEZ: By no means. You know, that's not
11 the point. Please don't feel -- any other comments of where we
12 are? You have until the end of the week to provide whatever
13 changes need to be made to the position statements.

14 Mr. Keating, what else do we have on this subject?

15 MR. KEATING: I think other than covering what we
16 have already covered in terms of pending motions and witness
17 summary times and some other matters, we could go through the
18 draft prehearing order at this time.

19 CHAIRMAN BAEZ: Right. And we talked about the
20 changes to the positions. I also understand that there may be
21 some issues with issues?

22 MR. KEATING: There are some proposed changes to the
23 issues at this point in time.

24 MR. LITCHFIELD: Mr. Chairman.

25 CHAIRMAN BAEZ: Mr. Litchfield.

1 MR. LITCHFIELD: Are we moving past Section IV? I'm
2 sorry, Section V and Section VI, post-hearing procedures and
3 prefiled testimony and exhibits, or were we going to go back to
4 those?

5 CHAIRMAN BAEZ: Oh, okay, I'm sorry. I should
6 remember the order of my -- we'll go to Section V, everybody.
7 There has been a request for an increase in the page limit for
8 the briefs. I find that reasonable. I also find the 100 page
9 limit to be reasonable, as well. Unless you had something to
10 say, or that someone had something to say about it, I'm sorry.

11 MR. LITCHFIELD: Yes, Mr. Chairman, we went back and
12 checked. I mean, as you indicated, this is an enormous case
13 with a lot of issues. In fact, we have at this count in excess
14 of 160 issues. Now, that may be winnowed down slightly, but,
15 nevertheless, that is more issues than were identified in the
16 1983 case. The last time FPL asked for a base rate increase
17 there were 129 issues only, a substantial number less than we
18 have in this docket. And the brief that FPL filed was 339
19 pages. We think that a limit of 100 pages, it's going to take
20 more than 40, maybe 50 pages alone just to state the issue, and
21 then the 50-word summary of our position on that issue. So
22 effectively we are left with 50 pages to brief 160 issues,
23 which just really doesn't allow us to take advantage of eight
24 days of transcripts.

25 CHAIRMAN BAEZ: And I will take a quick poll of the

1 rest of the attorneys. Anything to add on that, Mr. Wright?

2 MR. WRIGHT: Mr. Chairman, I know that I forwarded to
3 staff a request that we go to 80 words and 100 pages as the
4 word and page limits respectively. I sure don't have any
5 objection to a longer page limit on the briefs. If you would
6 ask Mr. Litchfield does he have a proposal, I would be happy to
7 respond.

8 CHAIRMAN BAEZ: Let me continue with a quick poll
9 unless -- I want to know if there is any objections to at least
10 considering some extension of the page limits. I would
11 imagine --

12 MR. JENKINS: We will be way less than that amount
13 anyway, so whatever you decide.

14 CHAIRMAN BAEZ: So there is no problem with
15 considering some additional page limitation.

16 Mr. Litchfield.

17 MR. LITCHFIELD: I would point out that most of the
18 intervenors are going to be able to simply say agree with OPC
19 or agree with somebody else. Some of them have only addressed
20 or intend to address maybe 20 or 25 of the issues in this case.
21 We, on the other hand, are going to have to address each and
22 every issue in a way that allows us to carry our burden of
23 proof.

24 CHAIRMAN BAEZ: I think you are failing to take yes
25 for an answer, I think. (Laughter.)

1 What I want to do is hear from Mr. Keating, because
2 at the end of the day somebody has got to read all of this.
3 And if Mr. Keating or staff has a suggestion, and then we can
4 get Mr. Litchfield's reaction to it and everyone else.

5 MR. KEATING: I would probably just be pulling a
6 number out of thin air, but certainly it --

7 CHAIRMAN BAEZ: Then let's hear from Mr.
8 Litchfield -- somewhere south of 339 would be a good number.

9 MR. KEATING: Certainly staff is going to have to
10 read through this, but it helps to have a coherent argument,
11 and if we can't get that in 100 pages, then we are certainly
12 amenable to --

13 CHAIRMAN BAEZ: I'm trying to be equal parts
14 compassionate and practical. So what would you propose?

15 MR. LITCHFIELD: We would propose that, again, with
16 more issues today, we would propose to do this in fewer pages,
17 250.

18 CHAIRMAN BAEZ: Do we have a courter -- going once,
19 going twice. I would hope you wouldn't need that much, but I
20 can understand if you do.

21 MR. TWOMEY: That's fine with AARP.

22 CHAIRMAN BAEZ: Thank you, Mr. Twomey.

23 MR. BECK: We have no objection.

24 MR. KEATING: And if you are looking for confirmation
25 from staff, that page limit is fine with staff, as well.

1 CHAIRMAN BAEZ: Very well, then 250. And there was
2 also a word limit on post-hearing positions. I'm trying to
3 remember how that jibes with what the limitations are on the
4 prehearing positions.

5 MR. KEATING: I believe the prehearing positions,
6 there is no limit on words, it's just for the post-hearing
7 positions. Now, if that limit was increased, to the extent a
8 party made its position more wordy, that is less pages it can
9 spend in its arguments on the briefs.

10 CHAIRMAN BAEZ: Do we even need to address this
11 limitation? Mr. Litchfield.

12 MR. LITCHFIELD: We have no objection one way or the
13 other to the 50 or the 80-word limit on the statement of
14 position.

15 CHAIRMAN BAEZ: Mr. Wright.

16 MR. WRIGHT: I think you only need to address it
17 because it is in the draft prehearing order as it has been in
18 so many, every prehearing order that I'm aware of. I think
19 that I pulled the 80 words --

20 CHAIRMAN BAEZ: And I'm interested in knowing how
21 many stayed under the 50.

22 MR. WRIGHT: I don't think I ever filed a
23 post-hearing position statement that did not satisfy the
24 requirements of the order. It took a lot of time to get under
25 50 words.

1 CHAIRMAN BAEZ: I'm just curious. It was general
2 curiosity.

3 MR. WRIGHT: But I think that I pulled the 80 words
4 from what we did in one or both of the storm dockets, Mr.
5 Chairman. You know, 80 is fine with me. Fifty, frankly, on
6 many issues is very difficult.

7 CHAIRMAN BAEZ: Objections or suggestions from the
8 rest of the parties?

9 Mr. Twomey.

10 MR. TWOMEY: Mr. Chairman, I think moving it to 80
11 would probably be helpful. I have experienced the same thing
12 Mr. Wright is talking about in terms of you have got your word
13 processor, and you make it paint that, and you count the words
14 and you have got 44, so you go back and take another shot at
15 it. To the extent people don't need 80, then they can go
16 shorter. I would recommend 80.

17 CHAIRMAN BAEZ: Eighty seems to be an acceptable
18 number, so we have that addressed, as well.

19 MR. WRIGHT: Eighty words and 250 pages, Mr.
20 Chairman?

21 CHAIRMAN BAEZ: Yes.

22 We discussed the witnesses already. And there are
23 some -- and I think the Major's issues are probably going to be
24 taken up.

25 Major, can you lay out to me what your issues on the

1 order of witnesses are?

2 MAJOR PAULSON: Just flexibility in the order based
3 on their schedules and so on. If we need to move them a day or
4 two, or whatever, something like that.

5 CHAIRMAN BAEZ: I'm sorry, did someone say something?
6 Okay.

7 I think we can likely accommodate that.

8 MAJOR PAULSON: And I think you instructed us by the
9 end of the week we need to get with the company and give them
10 an idea of availability, so --

11 CHAIRMAN BAEZ: And don't forget to let staff counsel
12 know, as well --

13 MAJOR PAULSON: Yes, sir.

14 CHAIRMAN BAEZ: -- to the extent that there are
15 issues with it that we need to resolve.

16 MR. KEATING: And in the section on witnesses, staff
17 will provide issue numbers associated with its witnesses for
18 the final prehearing order.

19 CHAIRMAN BAEZ: Very well.

20 Mr. Keating, we are on issues and positions now?

21 MR. KEATING: Correct. And we can go through
22 these -- I don't propose we go through issue-by-issue with 161.
23 We could go through them as a block and take up any potential
24 changes to the issues, or go through by section. The issues
25 are divided into about eight or nine subject matter sections.

1 CHAIRMAN BAEZ: I know that there may be issues that
2 can be withdrawn. Do we want to do that or will we just go in
3 numerical order?

4 MR. KEATING: We can discuss -- there are a few that
5 staff proposes to drop, and we have had discussions with some
6 of the parties on these, not necessarily with all the parties.
7 Some of these are proposed changes to the issue list, and I can
8 go through those in the order they are presented here.

9 CHAIRMAN BAEZ: Okay.

10 MR. KEATING: The first one would be Issue 17 under
11 the rate base section, and that is on Page 38 of the draft
12 prehearing order. That issue asks, "Should adjustments in
13 plant-in-service be made for the rate base effects of FPL's
14 transactions with affiliated companies?" That was an issue
15 that staff had raised. It is an issue that staff doesn't
16 believe it needs to pursue. To the extent that other parties
17 still believe that is something they wish to pursue, we don't
18 have any objection to keeping the issue, but it is just one
19 that we could propose dropping at this time.

20 CHAIRMAN BAEZ: Mr. Beck, you seem to have --

21 MR. BECK: We have already talked with staff about
22 that, and we are agreeable to dropping it.

23 CHAIRMAN BAEZ: Okay. If there are no objections, we
24 are going to show Issue 17 withdrawn or dropped. I don't know
25 if there is a magic word for it.

1 Next.

2 MR. KEATING: There is a set of issues in the net
3 operating income section starting with Issue 65, and that
4 begins on Page 77 of the draft prehearing order. The issues
5 are 65, 67, 68, 72, 74, 75, and 87. These were issues that FPL
6 had raised in its prehearing statement. We have discussed it
7 further with FPL, and FPL has agreed with staff that those
8 issues could be dropped. These are not --

9 MR. BECK: Could you repeat the issue numbers?

10 MR. KEATING: Yes. 65, 67, 68, 72, 74, 75, and 87.
11 Each of these issues, in general, asks whether the level of
12 expense in a grouping of accounts was an appropriate amount.
13 Staff was simply going to have difficulty knowing how any
14 potential adjustments were going to affect the specific
15 accounts. We do have a broad O&M issue, total O&M issue that
16 would address any adjustments without the need to have these
17 subgroupings of accounts, and that was what we discussed with
18 FPL. I believe all of those issues are very similarly worded
19 and fall into that same category.

20 CHAIRMAN BAEZ: Comments or objections from the
21 parties?

22 MR. WISEMAN: I just want to make sure that I heard
23 the last comment. The intent is not to drop adjustments that
24 parties propose to O&M, to the O&M expenses as a whole, it
25 would simply be to drop the issues that are specific to the

1 particular accounts that are referenced in the particular
2 issues that you identified, is that right?

3 MR. KEATING: We felt that any adjustments that the
4 parties wish to propose -- there were several issues that
5 called for or asked whether a specific adjustment should be
6 made. There was also a fallout issue that asked is the total
7 O&M level appropriate. We feel that between those specific
8 issues and that fallout issue we can cover any potential
9 adjustments on the O&M issues.

10 CHAIRMAN BAEZ: You got your answer, Mr. Wiseman?

11 MR. WISEMAN: Yes.

12 CHAIRMAN BAEZ: Very well. Any other questions or
13 comments?

14 MR. BECK: We have no problem with it.

15 CHAIRMAN BAEZ: If there are no objections, show
16 Issues 65, 67, 68, 72, 74, 75, and 87 dropped.

17 MR. KEATING: We have a couple more to go through.
18 The next one we were looking at is Issue 78, that is on Page --

19 MR. LITCHFIELD: Before we move on to that next
20 issue, Mr. Chairman, if I might, FPL is amenable to having
21 those issues dropped, but I think we would request that some of
22 the witnesses who otherwise were sponsoring those issues be
23 moved to Issue 91.

24 CHAIRMAN BAEZ: And I think one of the contemplations
25 is that whatever realignments of the witnesses with the

1 corresponding issues have to take place will take place
2 accordingly. I think that's what you're asking.

3 MR. LITCHFIELD: Yes.

4 CHAIRMAN BAEZ: To make sure they're listed under the
5 proper issue.

6 MR. LITCHFIELD: Exactly.

7 CHAIRMAN BAEZ: And I think Mr. Keating can see to
8 that.

9 MR. KEATING: Yes. If as a result of any issues that
10 are dropped or modified in any way here today, the issue
11 numbers associated with particular witnesses in the order of
12 witnesses section needs to be modified, we can probably go
13 through that and do it ourselves with respect to these
14 particular issues knowing that you would like those put under
15 Issue 91. But to the extent any other parties need a change to
16 the issue numbers associated with their witnesses based on
17 these adjustments, that's something that we can do after the
18 prehearing. Feel free to call the staff or e-mail those
19 changes.

20 CHAIRMAN BAEZ: Mr. Keating, you were referring to
21 another issue.

22 MR. KEATING: Issue 78 asked whether the level of
23 Account 920, administrative and general salaries, was
24 appropriate. We believe that issue can be addressed under
25 Issue 89, which asks whether FPL's level of salaries for the

1 2006 projected test year is appropriate. And I believe we had
2 spoken to FPL about that, because Issue 78 was an issue that
3 they had raised, and I believe they had agreed that we could
4 drop 78 with the understanding that that issue could be covered
5 basically under Issue 89.

6 CHAIRMAN BAEZ: Mr. Litchfield.

7 MR. LITCHFIELD: That's correct, Mr. Chairman.

8 CHAIRMAN BAEZ: Comments or objections from the
9 parties?

10 MR. BECK: We agree.

11 CHAIRMAN BAEZ: Very well. Without objection, show
12 Issue 78 dropped.

13 MR. KEATING: And actually turning back a page from
14 Issue 78, 76 and 77, just to provide for what we felt was a
15 more logical flow of the issues, staff would propose just
16 reversing the order of those issues. Not dropping either
17 issue, simply changing the order of issues.

18 CHAIRMAN BAEZ: If there is no objections, we will
19 show Issue 76 and 77 reversed in order. You are just going to
20 renumber them?

21 MR. KEATING: Yes. 76 will become 77, and vice
22 versa.

23 CHAIRMAN BAEZ: Very well.

24 MR. KEATING: And then finally for the issues that
25 staff -- there are two more that staff would propose that

1 perhaps can be dropped. The first one is Issue 98. This issue
2 asks -- I'm sorry, this is on Page 105 of the draft prehearing
3 order. This issue asks whether a parent debt adjustment should
4 be made for the projected test year, and, if so, what is the
5 appropriate amount of the adjustment. Staff had, I think,
6 initially raised that issue. Staff does not have an issue
7 there anymore. Unless any of the intervenors or FPL wish to
8 have that issue identified, staff can drop the issue.

9 CHAIRMAN BAEZ: Mr. Litchfield.

10 MR. LITCHFIELD: We have no objection to it being
11 dropped.

12 CHAIRMAN BAEZ: Mr. Beck?

13 MR. BECK: No objection.

14 CHAIRMAN BAEZ: Any objection from the intervenors?
15 No. Very well. Without objection, show Issue 98 dropped.

16 MR. KEATING: And, finally, for the issues that staff
17 believes we may be able to drop is Issue 126. And that is
18 shown on Page 132 of the draft prehearing order. That issue
19 asks, "What are the appropriate curtailment credits?" Under
20 Issue 127, the following issue, that issue asks whether the
21 curtailable rate schedule should remain open and what credit,
22 if any, should be provided under the curtailable rate schedule.
23 We believe that Issue 126 is essentially covered under 127
24 already.

25 CHAIRMAN BAEZ: Any objections to dropping Issue 126?

1 Without objection, show Issue 126 dropped.

2 MR. KEATING: In addition to the issues that were
3 dropped, staff has identified three new issues that were
4 provided to the parties this morning that arose as part -- in
5 response to rebuttal testimony filed by FPL, or as a result of
6 responses to some deposition questions that were asked in a
7 recent deposition of an FPL witness. I know when parties have
8 approached us with making changes to the issue list, we have
9 been pretty militant in defending the sanctity of the issue
10 list, so I do this expecting halfway to get barked at later.

11 CHAIRMAN BAEZ: This is an interesting ground for
12 you, then, Mr. Keating.

13 MR. KEATING: I believe all the parties have a copy
14 of these three proposed issues.

15 CHAIRMAN BAEZ: Does everyone have a copy? Is there
16 anyone who doesn't have a copy? Very well.

17 MR. KEATING: And I guess I would just ask if there
18 is any objection to including these issues at this time or if
19 the parties need any additional time.

20 MR. LITCHFIELD: I'm sorry, were you working on just
21 the first one or any of the three?

22 MR. KEATING: I brought the three up together.

23 MR. LITCHFIELD: Okay, fair enough. FPL has no
24 objection to one and two. There are one-hundred-and-something
25 issues, 160 issues in here. We thought that the OPEB issue was

1 already addressed somewhere, but we just haven't had time to
2 run through every issue to confirm that or not.

3 CHAIRMAN BAEZ: To the extent --

4 MR. KEATING: We looked at --

5 CHAIRMAN BAEZ: Go ahead, Mr. Keating.

6 MR. KEATING: We looked at that, as well. There is
7 an issue on FPL's level of employee benefits for the 2006
8 projected test year. I believe staff felt like that that issue
9 may have been intended to cover the current employee benefits
10 as opposed to the post-employment benefits. That is why we
11 wanted to make sure that there was a separate issue for this,
12 if that was the proper reading of -- I believe it is Issue 90
13 on Page 99 of the draft prehearing order.

14 MR. LITCHFIELD: I think our view of it would be
15 certainly capable of being addressed under Issue 90.

16 MR. KEATING: Could we, perhaps, expand the language
17 on Issue 90 to say, "Is FPL's level of employee benefits,
18 including other post-employment retirement benefits, for the
19 2006 test year appropriate?"

20 MR. LITCHFIELD: Sure, absolutely.

21 CHAIRMAN BAEZ: Then we will show Issue 90 modified
22 as Mr. Keating stated to include other post-employment
23 retirement benefits, if there is no objection to the changes
24 made. Very well. Let the record reflect the change to Issue
25 90.

1 Mr. Litchfield, you did state that to the first two
2 proposed issues you had no objection. Are there any objections
3 or comments to the rest of the parties? Seeing none, Mr.
4 Keating, how do you propose we address these or we deal with
5 these? Just tack them onto the end?

6 MR. KEATING: That is something that, yes, I had not
7 discussed with the staff and given a lot of thought to. The
8 first issue on the list would go in the rate base section, the
9 section issue would go in the net operating income section,
10 that is the nature of those two issues. I'm not sure if it is
11 important where they fall in the issue list or not.

12 MR. LITCHFIELD: I don't think we have a strong
13 feeling where they go. But I guess I would ask at this point
14 in the interest of preserving some integrity to the numbering
15 system with which we have all been working thus far, if to the
16 extent we add issues, if we could add them as 101A, for
17 example, so it doesn't disturb all of the numbering otherwise.
18 And where we have withdrawn issues, simply note issue
19 withdrawn. Or if staff has another alternative that would
20 work, that's fine.

21 CHAIRMAN BAEZ: I think that is appropriate. To the
22 extent that you have to add a number, just 1A, 1B, that sort of
23 thing. And I will leave it to staff to find out where the most
24 appropriate location of the issues needs to be. It sounds like
25 you already know where they need to go, and given the numbering

1 terms it shouldn't be too hard.

2 MR. KEATING: And just to confirm, the issues that
3 were withdrawn, we will not renumber the issues in the
4 prehearing order as a result of that. We will simply show that
5 those were withdrawn.

6 CHAIRMAN BAEZ: Those numbers are retired.

7 MR. KEATING: We will defend the sanctity of the
8 numbering.

9 CHAIRMAN BAEZ: They will not be used again in this
10 hearing. Very well.

11 Any other questions or any other issues?

12 MR. KEATING: Just one.

13 CHAIRMAN BAEZ: Just one more. Go ahead, sir.

14 MR. KEATING: I have one additional issue that was
15 not included in the list that was provided to the parties this
16 morning. And I do apologize for that, this one was overlooked.
17 I will read it into the record, and if the parties need any
18 time to look at this and consider it, I would understand that.

19 The issue is: "Should an adjustment be made to test
20 year rate base, pursuant to Rule 25-14.0123, that is Subsection
21 3, Florida Administrative Code, for the unfunded accumulated
22 post-retirement benefit obligation?"

23 This was an issue that staff had not previously
24 raised, or if we did we had dropped it from a prior list
25 because we felt that -- I guess we did not realize until a

1 deposition yesterday the extent of our potential disagreement
2 with the company on this issue.

3 MR. LITCHFIELD: Mr. Chairman, I think I can react
4 fairly quickly to the suggestion to include that issue at this
5 point. I don't know that the company -- given that it was not
6 identified earlier in the proceeding, I don't know that the
7 company has any testimony filed on this issue. And so I think
8 it would be unfair to the company in terms of being able to
9 carry its burden of proof and present its case on this issue
10 given that it just hasn't been raised until today at this very
11 moment.

12 CHAIRMAN BAEZ: Mr. Keating.

13 MR. KEATING: I don't think we have typically limited
14 identification of issues to what is necessarily covered in the
15 company's direct case. We didn't identify issues in this case
16 until after FPL and the intervenors and staff had filed direct
17 testimony. If there is no record basis for making an
18 adjustment, I think we would have to deal with that at the
19 time.

20 As far as the timing of raising the issue, while it
21 was not in our prehearing statement, I believe the procedural
22 order in the case allows any party to raise an issue up until
23 the time of the prehearing, and that is typically what we have
24 done and we have cut it off at that point.

25 CHAIRMAN BAEZ: Can you explain to me, again, the

1 issue that you wish to add?

2 MR. KEATING: The issue asks whether an adjustment
3 should be made, pursuant to our rules, to test year rate base
4 for what is referred to as unfunded accumulated post-retirement
5 benefit obligation. In a deposition yesterday we clarified
6 with FPL's witness what we believe was a misstatement by FPL in
7 prior discovery responses that led us to believe that we simply
8 had a miscommunication on the issue. What we did do in the
9 deposition yesterday was end up confirming that. It was not a
10 misstatement, but learned that FPL's position was perhaps
11 different from what staff's position would be in that
12 particular area.

13 CHAIRMAN BAEZ: And help me understand how we
14 overcome Mr. Litchfield's assertion that there is no, I don't
15 want to say fair warning, but I think you just didn't have an
16 opportunity to address the issue or prepare the issue ahead of
17 time?

18 MR. LITCHFIELD: We didn't in contrast to other
19 issues that were identified subsequent to our direct, but prior
20 to our rebuttal. For example, an issue that Public Counsel,
21 Mr. Beck, asked us if we would address in our rebuttal, which
22 we agreed to do. We had an opportunity at that point to pick
23 it up in our rebuttal. At this point we have no such
24 opportunity. And I guess the concern I have is that to the
25 extent that the company is told it has the burden of proof on

1 these issues, if there is no record evidence, as Mr. Keating
2 suggests, it just simply facilitates the argument in brief of
3 any one of the parties to my left or staff, for that matter, to
4 say, well, the company didn't carry its burden of proof. There
5 is no evidence in the record, and therefore the adjustment
6 ought not to be allowed or the dollars not to be recoverable.

7 So I just think it is just way late in the game,
8 given all of the other issues that we have been dealing with,
9 to add something like that at this point.

10 MR. KEATING: Mr. Chairman, if I could address that.
11 The level of this account is something that is represented in
12 the company's MFRs, is my understanding. Those MFRs are
13 sponsored by its witnesses, and that is part of its direct
14 case. We have a rule that discusses unfunded accumulated
15 post-retirement benefit obligation. And I believe that staff
16 sees a potential problem with whether the rule was followed or
17 not with respect to the accounting for this particular account.
18 It would be an appropriate issue in a rate case.

19 CHAIRMAN BAEZ: And, again, I don't think the debate
20 is whether it would otherwise be an appropriate issue in the
21 rate case. I guess the question is all you have is a number as
22 part of an MFR, but there is little more than that. And I
23 guess I'm having trouble marrying up -- you know, what I would
24 like to hear is, you know, the testimony is there or this has
25 been, you know, there is enough to create a record. You don't

1 want to, by raising the issue now, create a void in the record
2 that necessarily disallows or militates towards disallowing
3 recovery.

4 MR. KEATING: The company's MFRs are a stack of five
5 volumes about that high. The testimony that they file is not
6 going to cover every account and every item that it is in those
7 MFRs. And I think staff has typically in a rate case looked at
8 going through, and done its discovery, and looked at the
9 particular accounts regardless of whether they are discussed in
10 testimony or not. We understand that it can't all be discussed
11 in the testimony. And I don't believe that had been a
12 limitation to raising issues in prior cases.

13 Like I said before, none of the issues that were
14 identified in this case were raised in terms of parties filing
15 prehearing statements or preliminary issue statements until
16 after all the testimony was filed here.

17 CHAIRMAN BAEZ: Is it then your suggestion that the
18 mere fact that only a number is suggested as part of the MFRs
19 with no coverage in terms of testimony doesn't immediately
20 create that presumption that a burden hasn't been carried?

21 MR. KEATING: Well, each of the witnesses indicates a
22 section of the MFRs that they have sponsored or co-sponsored.
23 And although their testimony does not go into that level of
24 detail on every account on every schedule that they may have
25 sponsored or co-sponsored, that witness is more or less

1 responsible for that section of the MFRs, and that's something
2 that staff can address through cross-examination. I mean, by
3 sponsoring the MFRs they have essentially adopted that data,
4 those numbers into their testimony.

5 CHAIRMAN BAEZ: And the suggestion being that
6 whatever support or defense of those numbers can be adduced at
7 hearing, is that your --

8 MR. KEATING: I believe so. I mean, I don't think in
9 the past we have, you know, for any potential adjustment that
10 staff is looking at that we have been required to put on our
11 own witness to propose it, that we were allowed to question the
12 company's numbers.

13 CHAIRMAN BAEZ: Mr. Litchfield, do you have your
14 microphone on.

15 MR. LITCHFIELD: It's true, we have got a lot of
16 numbers in the MFRs. And we can't, by definition, address each
17 and every number. But I think by the same token the company,
18 as a matter of due process, is entitled to know with some
19 reasonable degree of confidence what are going to be the issues
20 in this case from the standpoint of the intervenors and staff.
21 And we have a pretty good idea going in generally, when we
22 filed the initial testimony with the MFRs, but that obviously
23 is clarified, if you will, or refined as we move through the
24 process but prior to when we file our rebuttal testimony. So I
25 think we typically will address issues in rebuttal that have

1 been brought by intervenors. This is one that was not.

2 I think -- I mean, staff is certainly free to -- I'm
3 not saying that staff could not cross-examine the witness who
4 is sponsoring that particular MFR. I'm just suggesting that I
5 don't think it is appropriate at this point to identify it and
6 break it out as a separate issue. If there is some other way
7 they can address it through the existing issues, fair enough.
8 I think all of the MFRs are open territory for
9 cross-examination.

10 CHAIRMAN BAEZ: And, Mr. Litchfield, I appreciate
11 your argument, okay, and I would agree -- I'll get to you in a
12 second -- and I would agree that fair warning is part of due
13 process, and I think that it does arise a little late in the
14 game. However, we have mentioned the fact that there are 168
15 issues. It is a very complex case, I don't have to tell you
16 that. That would be understating it a bit, I think. And if
17 this one happened to slip through, I don't think it would have
18 been by any design, frankly. I think you will accept that
19 there is miscommunication. And the problem that I'm seeing is
20 that to the extent that an issue of disagreement does arise as
21 a result of -- what was perceived as a miscommunication does
22 arise at the deposition stage, then we have never maintained an
23 opportunity to address it.

24 I'm not sure that we get to the same place, at least
25 for the Commission's purposes, to just say, you know what, it

1 is just like every other number that is undiscussed, quote,
2 unquote, as part of the MFRs. Because then you don't get to,
3 you don't get to address it, and perhaps those numbers benefit
4 from there not being any disagreement. Now all of a sudden
5 here is the elephant in the room, do we ignore it.

6 MR. LITCHFIELD: Fair enough. Let me propose
7 something that I think might get us over this hurdle.

8 CHAIRMAN BAEZ: Can you hold on? Because I don't
9 know if Mr. Twomey has been waiting to make a comment, and
10 perhaps that will impact your --

11 MR. LITCHFIELD: This may short-circuit Mr. Twomey's
12 comment, but I will defer to Mr. Twomey.

13 MR. TWOMEY: I was just going to say, Mr. Chairman,
14 on behalf of AARP I was going to say pretty much what I think I
15 just heard you say in supporting the staff's request as being a
16 reasonable one. And I would go so far as to suggest that you
17 give the staff the additional issue and give FPL an additional
18 two pages on their brief to deal with it. That is my --

19 CHAIRMAN BAEZ: Thank you, Mr. Twomey.

20 Mr. Litchfield, you were going to propose --

21 MR. LITCHFIELD: Right. The brief is less a concern,
22 the record is more of a concern. And so what I would propose
23 is -- and I don't know, I assume it would be Mr. Davis who
24 would address this, and I don't know that he would need the
25 opportunity, but to the extent that he felt like he did, that

1 he be afforded a little latitude either in his presentation or
2 through cross to elaborate on the issue, if that's acceptable.

3 CHAIRMAN BAEZ: Well, I think he is going to get -- I
4 think, as a matter of course, he would have probably been
5 crossed on it. So doesn't that imply latitude on it? I don't
6 if that is what you are talking about.

7 MR. LITCHFIELD: Indeed, if he is crossed on it, I
8 expect fully that he will have a chance to explain.

9 CHAIRMAN BAEZ: Was there ever a doubt as to an
10 opportunity to explain? Maybe I'm missing something.

11 MR. LITCHFIELD: Well, just in terms of it being
12 considered direct or not. I don't know that he has addressed
13 it at all in his direct testimony, because it was never thought
14 that it was going to be an issue in this case. You know, in
15 cross sometimes lawyers will say, "Well, that is nonresponsive
16 to my question. I just asked a very limited question." I'm
17 asking that latitude be afforded Mr. Davis to fully explain our
18 position on the issue, his view on the issue, without being cut
19 off in that respect.

20 CHAIRMAN BAEZ: Mr. Keating, you were going to say
21 something?

22 MR. KEATING: I have a pretty good track record of
23 letting witnesses go on as long as they want, so I --

24 CHAIRMAN BAEZ: I already promised I wouldn't.

25 I think the witness is going to get afforded -- and

1 since it's you and me talking, we don't even have to remind
2 anyone. The witness will get afforded the leeway during his
3 cross, but I think that the issues is going to get listed. So
4 I'm inclined to -- the new issue will be added.

5 Mr. Keating, can you restate the issue for the
6 record?

7 MR. KEATING: The issue reads, "Should an adjustment
8 be made to test year rate base pursuant to Rule 25-14.012(3),
9 Florida Administrative Code, for the unfunded accumulated
10 post-retirement benefit (OPEB) obligation?"

11 CHAIRMAN BAEZ: And as part of our discussion, is it
12 Mr. Davis, Witness Davis will be -- we are anticipating some
13 questions, and he will be given -- I know Mr. Keating will do
14 whatever he needs to to get the full story, and we will be
15 mindful of that, as well.

16 Mr. Keating, are there any other issues? Issues with
17 the issues.

18 MR. KEATING: I think that is the last one. That is
19 probably good for me to stop there.

20 CHAIRMAN BAEZ: Stop while you're ahead.

21 MR. KEATING: Correct.

22 CHAIRMAN BAEZ: All right. Do any of the parties
23 have issues or comments on this section? Mr. Wright.

24 MR. WRIGHT: Just to make sure I understood your
25 earlier instruction, if there are corrections to our positions,

1 we'll just communicate those to staff independently of this?

2 CHAIRMAN BAEZ: Yes. Corrections to the positions,
3 to the extent that you control them, maybe we don't need to
4 engage in that here.

5 MR. WRIGHT: That is what I thought, I just wanted to
6 make sure.

7 COMMISSIONER DEASON: And you have got a Friday
8 deadline, if everybody got that.

9 MR. KEATING: And, Chairman, if the parties would
10 also provide the staff with positions on any of the new issues
11 that have been raised so we can incorporate those into the
12 prehearing order.

13 CHAIRMAN BAEZ: Good point. That Friday deadline
14 would also include any positions the parties wish to take on
15 the additional issues. Any changes to the exhibits?

16 MR. KEATING: I would just note that staff is
17 preparing a comprehensive list of prefiled exhibits, as we have
18 done in recent dockets, as well as documents that staff -- this
19 is mostly consisting of discovery materials that staff may wish
20 to enter into the record. We will, as soon as we have that
21 list prepared, provide that to the parties to try to get a
22 feel, as soon as possible, as to whether there is going to be
23 any objection to any of the prefiled exhibits, or what staff
24 would propose to stipulate in as exhibits.

25 CHAIRMAN BAEZ: And if I can back up for a moment,

1 are there any possibilities of stipulated issues at this point?
2 If there are any ongoing discussions or considerations, maybe
3 we could add that to the list of things to do by Friday,
4 hopefully.

5 MR. LITCHFIELD: Mr. Chairman, I would note, while we
6 are looking at the exhibit page, that obviously all of these
7 exhibits have been and are available to all of the parties.
8 But we would just advise that we may or may not blow up a few
9 of these exhibits just to make it easier during the hearing
10 process. But if we do so, they would be exhibits that are
11 already prefiled.

12 CHAIRMAN BAEZ: No objections?

13 MR. BECK: I guess I don't understand. Blow them up
14 for what purpose?

15 MR. LITCHFIELD: Blow them up for presentation
16 purposes.

17 MR. BECK: In the summary or --

18 MR. LITCHFIELD: No. We would simply reproduce them
19 on a placard, on an easel.

20 MR. BECK: So it would be ready in case somebody
21 cross-examines them on that?

22 MR. LITCHFIELD: No. For purposes of their direct
23 and rebuttal presentation. In lieu of saying as shown on my
24 Exhibit X, and we all look at an 8-1/2 X 11, it is just a
25 larger version.

1 MR. BECK: I have no problem with that.

2 CHAIRMAN BAEZ: Okay. The exhibits list. We don't
3 have proposed stipulations? Nothing? Still holding out hope
4 here.

5 MR. KEATING: None that I'm aware of.

6 CHAIRMAN BAEZ: Pending motions. I think we have
7 dealt with that as part of the preliminaries. And I think we
8 also mentioned that whatever was pending on confidentiality
9 matters would be done by separate order, as well. The rulings
10 will get reflected accordingly.

11 Are there any other matters, Mr. Keating?

12 MR. KEATING: There are no other matters that staff
13 is aware of.

14 CHAIRMAN BAEZ: Any other matters from the parties?
15 No?

16 All right. Well, I won't say it was record time, but
17 I think it went rather smoothly for such a mammoth case. So
18 thank you all. When is the first day of hearing, the 22nd?

19 MR. KEATING: August 22nd.

20 CHAIRMAN BAEZ: August 22nd. See you all. Thank
21 you.

22 We're adjourned.

23 (The prehearing concluded at 11:39 a.m.)

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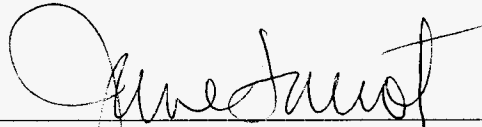
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I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 12th day of August, 2005.



JANE FAUROT, RPR

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