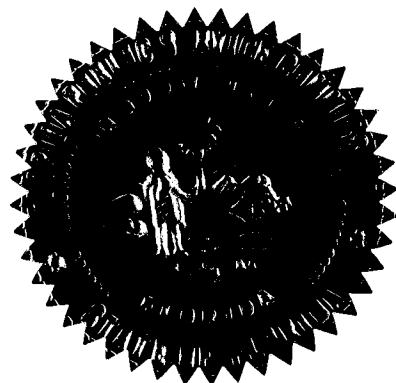


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060635-EU

In the Matter of

PETITION FOR DETERMINATION OF NEED FOR
ELECTRICAL POWER PLANT IN TAYLOR COUNTY
BY FLORIDA MUNICIPAL POWER AGENCY, JEA,
REEDY CREEK IMPROVEMENT DISTRICT, AND
CITY OF TALLAHASSEE.



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER KATRINA J. TEW
Prehearing Officer

DATE: Thursday, December 21, 2006

TIME: Commenced at 9:35 a.m.
Concluded at 12:20 p.m.

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

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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3 VIRGINIA DAILEY, ESQUIRE, Hopping Law Firm, Post Office Box
4 6526, Tallahassee, Florida 32314, representing Florida
5 Municipal Power Agency, JEA, Reedy Creek Improvement District,
6 and the City of Tallahassee.

7 SUZANNE BROWNLESS, ESQUIRE, 1975 Buford Boulevard,
8 Tallahassee, Florida 32308, representing the Natural Resources
9 Defense Council.

10 BRETT M. PABEN, ESQUIRE, WildLaw - Florida Office,
11 1415 Devils Dip, Tallahassee 32308-5140, representing John Carl
12 Whitton, Jr.

13 E. LEON JACOBS, JR., ESQUIRE, Williams Law Firm, Post
14 Office Box 1101, Tallahassee, Florida 32302-1101, representing
15 the Sierra Club, John Hedrick, Brian Lupiani, Dr. Anthony
16 Viegbesie and Rebecca J. Armstrong.

17 JENNIFER BRUBAKER, ESQUIRE; KATHERINE FLEMING,
18 ESQUIRE; and LORENA HOLLEY, ESQUIRE, FPSC General Counsel's
19 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
20 32399-0850, appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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COMMISSIONER TEW: Call this prehearing to order.

Good morning, everyone. Staff, would you please read the notice.

MS. BRUBAKER: Certainly. Pursuant to notice, this time and place has been set aside for the purpose of conducting a prehearing conference in Docket 060635-EU. The purpose of the prehearing conference is set forth more fully in the notice.

COMMISSIONER TEW: Okay. We'll move on and take appearances. And I suppose we'll start on this end and go to the right and then end with staff.

MR. PERKO: Good morning, Commissioner. My name is Gary Perko of the Hopping, Green & Sams Law Firm on behalf of Florida Municipal Power Agency, JEA, Reedy Creek Improvement District and the City of Tallahassee, whom I'll refer to as either the Applicants or the participants throughout this. Also appearing with me is my partner, Carolyn Raepple, and my associate, Virginia Dailey.

COMMISSIONER TEW: Thank you.

MS. BROWNLESS: Good morning.

COMMISSIONER TEW: Good morning.

MS. BROWNLESS: My name is Suzanne Brownless and I'm appearing on behalf of NRDC.

MR. PABEN: Good morning. My name is Brett Paben.

1 I'm appearing on behalf of John Whitton.

2 MR. JACOBS: Good morning. My name is Leon Jacobs.

3 I'm appearing on behalf of the Sierra Club, John Hedrick,
4 Brian Lupiani, Dr. Anthony Viegbesie and Rebecca Armstrong.

5 I'll be coming as counsel for Dr. Viegbesie and Ms. Armstrong
6 today.

7 COMMISSIONER TEW: Thank you. And staff.

8 MS. BRUBAKER: Entering appearances on behalf of the
9 General Counsel for the Commission is Jennifer Brubaker,
10 Katherine Fleming and Lorena Holley.

11 If I could get a clarification, please, on the
12 record. Mr. Jacobs, you are going to serve as counsel for
13 Ms. Armstrong and Dr. Viegbesie?

14 MR. JACOBS: That's correct.

15 MS. BRUBAKER: Okay. For the sake of clarification,
16 neither Ms. Armstrong nor Dr. Viegbesie filed a prehearing
17 statement in this proceeding. The order establishing procedure
18 provides that failure of a party to timely file a prehearing
19 statement shall be a waiver of any issue not raised by other
20 parties or by the Commission. So just for clarification's
21 sake, they will not be -- they should not be able to raise any
22 additional issues other than those which are contemplated here.

23 MR. JACOBS: We understand and we're ready to abide
24 by that provision.

25 MS. BRUBAKER: Also, the OEP provides that the

1 failure to file, timely file a prehearing statement precludes
2 the party from presenting testimony in support of its position
3 on each such issue. So, again, just so we're clear, their
4 participation would be limited to the issues and positions that
5 are decided here today.

6 MR. JACOBS: First -- well, I think we're in
7 agreement on that, on that position. Originally I think there
8 was anticipation that the testimony of Mr., Dr. Steve Smith
9 would be cosponsored. But Dr. Smith's testimony has been
10 withdrawn on behalf of NRDC and we are likewise withdrawing our
11 support of that testimony as well.

12 MS. BRUBAKER: Okay.

13 COMMISSIONER TEW: Thank you, Mr. Jacobs.

14 Does that resolve the issues we need to clarify
15 there?

16 MS. BRUBAKER: Yes. Yes.

17 COMMISSIONER TEW: So we'll move on to any
18 preliminary matters. Staff, are there preliminary matters that
19 we need to address before proceeding to the draft prehearing
20 order?

21 MS. BRUBAKER: Yes. Actually we should probably
22 acknowledge for the record that there has been a substitution
23 of witnesses by the NRDC for, that were originally sponsored by
24 Ms. Armstrong and Dr. Viegbesie, and perhaps NRDC would like to
25 address the matter.

1 MS. BROWNLESS: Yes, Your Honor. We have adopted the
2 witnesses Steven Urse and Ms. Deevey -- not Ms. Deevey. I'm
3 sorry. We originally adopted the testimony of Steven Urse and
4 Steven Smith, and we've withdrawn the testimony of Mr. Smith.
5 So Mr. Smith will not be appearing at the hearing at all.

6 COMMISSIONER TEW: And we probably need to discuss
7 that a little bit further. Are we -- should we go ahead and
8 take that up at this time, the withdrawal of Mr. Smith's
9 testimony and whether it might have any impact on rebuttal
10 testimony?

11 MS. BRUBAKER: I think just the withdrawal is
12 sufficient, unless the parties wish to address the matter.

13 COMMISSIONER TEW: Okay.

14 MS. BROWNLESS: Commissioner, we assume that to the
15 extent any rebuttal addresses Dr. Smith's testimony, that the
16 Applicants would be willing to withdraw that as well.

17 MR. PERKO: Commissioner, that may have a bearing on
18 one of the pending motions, that may have a bearing on one of
19 the pending motions, namely the motion to file supplemental
20 testimony, because some of the information provided in the
21 rebuttal to Mr. Smith is essentially background evidence for
22 that supplemental testimony. So to the extent that we may need
23 to supplement, provide that information as supplemental
24 testimony, and I don't know if the parties would oppose that,
25 but that's my only caveat on that situation. But to the extent

1 it doesn't relate to that supplemental testimony and just
2 relates to other remarks by Dr. Smith and his testimony, we
3 would be willing to withdraw that.

4 MS. BROWNLESS: And, Your Honor, we have no objection
5 to the inclusion of the supplemental testimony, so.

6 MR. PERKO: Well, it goes beyond -- there's -- what I
7 was saying is we've filed the motion to supplement the
8 testimony of Bradley Kushner. Some of the information provided
9 in the rebuttal testimony of Christopher Klausner and
10 Paul Hoornaert is evidence that is, is expressed or relied upon
11 in the supplemental testimony of Mr. Kushner. So we may need
12 to provide that as supplemental testimony to make sure that the
13 record is clear.

14 MS. BROWNLESS: Well, to the extent that you've
15 provided us with a motion for supplemental testimony, and we've
16 looked at the supplemental testimony, we can state that we have
17 no objection to it as it stands.

18 COMMISSIONER TEW: Perhaps we'll take that up a
19 little bit later as far as the supplemental testimony. And
20 with respect to the other, perhaps it would be helpful if you
21 all would get together at the end of the prehearing conference
22 and perhaps work out which testimony you believe is affected by
23 the withdrawal of Mr. Smith's testimony and see if you can come
24 to some kind of agreement and get it to staff by the end of the
25 day.

1 MR. PERKO: We're prepared to do that.

2 MS. BROWNLESS: Sure.

3 COMMISSIONER TEW: And then we can --

4 MS. BRUBAKER: Staff -- I'm sorry.

5 COMMISSIONER TEW: I was just going to say we could
6 work it out then in the prehearing order under the ruling
7 section after that. But to the extent that you all can agree
8 to something, then we can reflect it as such in the prehearing
9 order. And if not, we'll make a ruling as to which testimony
10 should remain.

11 MS. BRUBAKER: Staff would request to the extent the
12 parties are unable to reach resolution by day's end, and some
13 resolution needs to be brought back to the Prehearing Officer,
14 that written filings be made -- it would need to happen quickly
15 obviously -- I would suggest December 27th, no later than
16 December 27th for resolution by the Prehearing Officer. I feel
17 confident we'll be able to reach resolution by day's end, but
18 as a backup plan.

19 MR. JACOBS: No problem.

20 COMMISSIONER TEW: I guess moving along to other
21 preliminary matters.

22 MS. BRUBAKER: Okay. I believe that brings us -- if
23 we could simply have acknowledged in the record, and I'll find
24 a suitable place to put this in the prehearing order, that
25 there's a correction that needs to be made to the order

1 establishing procedure regarding the date of the publication of
2 notice. The OEP reflects the prior statutory language of 45
3 days, with the person responsible for publication of the notice
4 being the Commission. The current statute is 21 days, with the
5 Applicants being the party responsible to make sure that is
6 timely filed. And so for simply clarity of the record to have
7 that acknowledged, that the new statutory language is the
8 applicable one to this proceeding.

9 COMMISSIONER TEW: So acknowledged.

10 MS. BRUBAKER: There are a number of pending motions
11 before us. There's a number -- I believe it's five motions to
12 strike issues with associated requests for oral argument on
13 those issues. I believe my recommendation is simply to take
14 those up after we go through the body of the prehearing order.
15 In my opinion, it may be that by the time we go through the
16 issues, those motions to strike may be moot or resolved.

17 There's also a pending motion for supplemental -- of
18 Mr. Kushner's testimony. We can take that up. And there's
19 also a number, I believe it's three motions to strike testimony
20 and associated exhibits with regard to Intervenor witnesses.
21 And if you like, we can take up the supplemental testimony
22 issue first.

23 COMMISSIONER TEW: But you're recommending we take up
24 all the pending motions after we proceed through the prehearing
25 order; correct?

1 MS. BRUBAKER: Certainly. We can do that.

2 COMMISSIONER TEW: Okay. Then I think we'll start
3 with that.

4 We'll start with Section I under the case background.
5 In fact, we'll just take up Sections I through IV. Are there
6 any changes to the prehearing order in Sections I through IV
7 proposed by any of the parties?

8 MR. PERKO: Excuse me, Commissioner.

9 COMMISSIONER TEW: Sure.

10 MR. PERKO: Just one minor thing. If we could list
11 Ms. Dailey under the appearances. Thank you.

12 COMMISSIONER TEW: Certainly. Any changes to the
13 prehearing order, Sections I through IV?

14 MR. JACOBS: And I'd -- we probably need to go and
15 modify the appearances for myself to include the additional
16 parties.

17 COMMISSIONER TEW: We will take care of that.

18 Okay. Section V on Page 3, prefiled testimony and
19 exhibits, and Section VI, order of witnesses. I think we need
20 to talk about this section some.

21 MS. BRUBAKER: Yes. Staff would request direction
22 from the parties regarding whether to take direct testimony and
23 rebuttal separately or together. We welcome any comments from
24 the parties.

25 COMMISSIONER TEW: Mr. Perko, go ahead.

1 MR. PERKO: My preference would be to take the direct
2 first and then followed by rebuttal. I think the -- otherwise,
3 the flow of the hearing is diminished somewhat. It's easier to
4 understand what the Intervenors' witnesses are saying, and then
5 our witnesses come back for rebuttal so you keep the train of
6 thought. So that would be our preference.

7 MS. BROWNLESS: That is NRDC's preference as well.

8 MR. JACOBS: The concern I have -- I think I'm
9 basically in agreement with that. The concern I have is
10 timing. But other than that, I think that that will be fine.

11 COMMISSIONER TEW: Mr. Paben, do you have any?

12 MR. PABEN: That's fine with me as well. Thank you.

13 MS. BRUBAKER: May staff make a note?

14 COMMISSIONER TEW: Sure. Sure.

15 MS. BRUBAKER: Staff doesn't have a strong preference
16 except to the point that the Commissioners may have a
17 preference. I think although the flow perhaps is a little more
18 logical perhaps when you take rebuttal and direct separately,
19 it is a real time savings to take them together. It also
20 affords the witnesses the ability, once they've concluded
21 testimony, to be excused from the hearing. And so there is a
22 time issue there.

23 We have been unable at this point to poll the
24 Commissioners about their preference, and I would perhaps ask
25 the parties, to the extent the Commissioners' preference on the

1 panel is to take it together, would there be any objection to
2 doing so?

3 MR. PERKO: We would not object.

4 MS. BROWNLESS: I guess our strong preference is to
5 keep them separate for exactly the reason that Mr. Perko said
6 to start with. It's much more logical in that way and it more
7 correctly develops the record and presents the case, and we'd
8 like to preserve that for appellate review.

9 COMMISSIONER TEW: Mr. Paben, do you have any?

10 Mr. Jacobs?

11 MR. JACOBS: No, I don't have any objection to that.

12 COMMISSIONER TEW: I have to say that I'm a little
13 bit concerned about the timing as well just because we have
14 such a large number of witnesses particularly by the
15 Applicants. And I noted that, I think, Michael Lawson,
16 Paul Hoornaert, Matthew Preston, Ryan Pletka, Christopher
17 Klausner, Myron Rollins and Bradley Kushner, as I've noted, all
18 have direct and rebuttal testimony. And I'm concerned with the
19 timing of the hearing, and particularly given the Commission's
20 usual means of taking public testimony, and I suspect that we
21 may have a great deal of public testimony in this case, that we
22 are going to be pressed for time given the current schedule.

23 MS. BRUBAKER: I would point out, Commissioner, that
24 it is a procedural matter rather than a substantive one well
25 within your discretion to make the call.

1 MR. PERKO: Commissioner, if I could just make one
2 point. Depending on how the parties resolve the issue about
3 supplemental testimony, it may be that Paul Hoornaert and
4 Christopher Klausner would not be needed on rebuttal but would
5 be filing supplemental testimony to be provided on direct.

6 COMMISSIONER TEW: I have to ask you to clarify that
7 for me. Depending on the ruling on the supplemental testimony,
8 you're saying that they would not necessarily need to come back
9 as rebuttal witnesses? Is that my understanding?

10 MR. PERKO: Yes, Commissioner. Just to give some
11 background, Mr. Kushner's testimony relates to the
12 cost-effectiveness analysis following an upgrade cost estimate
13 for the Taylor Energy Center. Some of the background
14 information that Mr. Kushner relied upon came from the rebuttal
15 testimony of Paul Hoornaert and Chris Klausner, and that was in
16 rebuttal to Dr. Smith. Since Dr. Smith is no longer
17 testifying, if that information is not in the record, we feel
18 like it needs to be inserted as supplemental testimony. And if
19 that were the case, they could do that on direct so they would
20 not be presented as rebuttal witnesses.

21 COMMISSIONER TEW: Okay. And as I've said earlier,
22 we'll take up the supplemental later, but perhaps it's better
23 to go ahead and take it up at this time and resolve that issue.
24 Let me find my notes.

25 At the -- as of yesterday my understanding was that

1 we hadn't heard from the other parties as to whether they had
2 any objection. I've heard Ms. Brownless say that she had no
3 objection to the supplemental testimony, but I wanted to get on
4 the record whether the other Intervenor representatives here
5 today had objection to the supplemental testimony.

6 MR. PABEN: I have no objection. I thought I emailed
7 staff.

8 MS. BRUBAKER: For clarification, what we're talking
9 about now is the supplemental testimony of Mr. Kushner;
10 correct?

11 COMMISSIONER TEW: Correct.

12 MS. BRUBAKER: Okay. There's actually at this point
13 two separate issues regarding supplemental testimony, the first
14 of which we've had a filing already regarding Mr. Kushner's
15 proposed supplemental. And, again, as Mr. Perko has pointed
16 out, depending on the, the outcome of the parties' discussions
17 about the withdrawal of Mr. Smith's testimony and the effect on
18 the Applicants' rebuttal, to the extent there remains in the
19 rebuttal something the Applicants wish to propose as
20 supplemental, there would be a separate supplemental issue.

21 So just for clarity, we're first taking up
22 Mr. Kushner's; correct?

23 COMMISSIONER TEW: Right. The supplemental filed
24 December 12th, as I understand it.

25 MS. BRUBAKER: Okay.

1 COMMISSIONER TEW: And I shouldn't have represented
2 that we -- I think we had heard from some parties but not all
3 parties, so I just wanted to get on the record today what your
4 position was.

5 Mr. Jacobs, do you have an objection to --

6 MR. JACOBS: No, we don't have an objection to the
7 filing of the supplemental.

8 COMMISSIONER TEW: Thank you.

9 Staff, do you have any?

10 MS. BRUBAKER: No objection.

11 COMMISSIONER TEW: I think we'll go ahead and show
12 that the motion for leave to file supplemental testimony
13 exhibits of Bradley Kushner filed December 12th is granted.

14 MS. BRUBAKER: The additional issue regarding the
15 potential of supplemental testimony I think is not ripe at this
16 time, unless the parties wish to discuss it further. I think
17 that will come of the discussions after the prehearing
18 conference is my understanding.

19 MS. BROWNLESS: Well, if I understand what Mr. Perko
20 is saying, and correct me if I have misstated, as I understand
21 this, Dr. Smith has raised the issue of increased costs for the
22 TEC unit. That was responded to in the rebuttal testimony of
23 certain witnesses. We certainly think that evidence and
24 testimony about the increased cost of the TEC unit needs to be
25 in the record. And if it's contained in rebuttal, we have no

1 objection to leaving it in the rebuttal if that gets it in the
2 record.

3 If -- I mean, I hate to make you hop through a
4 procedural hoop to get that evidence in the record. And if
5 that's the only evidence we're talking about, then I'm
6 perfectly happy to agree to leave that in the rebuttal
7 testimony so that Mr. Kushner's supplemental is appropriate. I
8 think everybody thinks that additional information needs to be
9 in the record.

10 MR. PERKO: I'm sorry. There's only two things. I
11 think you're aware of Mr. Hoornaert's rebuttal testimony which
12 provides the updated cost itself and the explanation.

13 MS. BROWNLESS: Yes.

14 MR. PERKO: That would pretty much remain the same.
15 And I would think just for clarity we would relabel it
16 supplemental testimony.

17 MS. BROWNLESS: Okay.

18 MR. PERKO: But Mr. Klausner's testimony rebutted,
19 provided rebuttal in response to Mr. Smith, included some
20 discussion of what the market factor impact was on other
21 alternatives.

22 MS. BROWNLESS: Okay.

23 MR. PERKO: Coal-based alternatives, natural gas
24 supply alternatives. That information was used by Mr. Kushner
25 in his updated analysis that's presented in his supplemental

1 testimony. So that's the information from Mr. Klausner that we
2 feel needs to be in the record. The remaining testimony of
3 Mr. Klausner relating to Dr. Smith would not need to be in
4 there. So we could -- and it would be a very short three-page
5 testimony. Just pull the rest of the stuff out, submit it as
6 supplemental testimony. I think that would be the cleanest
7 thing to do.

8 MS. BROWNLESS: And we certainly don't have any
9 objection to that.

10 MR. PERKO: Okay.

11 MS. BROWNLESS: All we're trying to do is make sure
12 that whatever testimony is associated with the increased costs
13 of the TEC unit gets in the record somewhere.

14 MR. PERKO: Commissioner, I think maybe the best way
15 of resolving this is we can go back to the office this
16 afternoon, pull out what we think needs to be supplemental from
17 those two witnesses, pull out what needs to be taken out of the
18 other rebuttal witnesses who are responding to Mr. Smith, send
19 those to the other parties and see if they have any objections.
20 And we'd call the other parties' rebuttal witnesses revised
21 rebuttal testimony, but it'll exclude the Dr. Smith rebuttal.
22 I think that probably would be the best way of handling it.

23 MS. BROWNLESS: That's fine.

24 MR. JACOBS: That's fine.

25 MR. PERKO: Thank you.

1 COMMISSIONER TEW: Thank you all. I think that helps
2 clarify. It seems like we have some agreement. And as
3 Mr. Perko suggested, I think it's a good idea to try to nail
4 that down specifically on paper sometime today. But it looks
5 as if the rebuttal testimony rebutting Mr. Smith's testimony
6 which has been withdrawn, to the extent it covers the increased
7 capital cost issue, that it would remain included, and that the
8 only other portions that may be stricken in response to
9 Mr. Smith's testimony would be those that are on other issues.

10 Okay. Well, I guess that takes us back to where we
11 were with respect to taking direct and rebuttal at the same
12 time.

13 Let me bring up this issue first, and this may help.
14 I do understand the need to try to have some kind of sense of
15 flow in the hearing, taking up direct and rebuttal in the
16 normal fashion, although our normal fashion truly has become
17 taking up direct and rebuttal witnesses at the same time to
18 move things along. Let me ask the parties if they're willing
19 to forego witness summaries when a witness comes on the stand.
20 I think we're going to have some concerns about timing, and to
21 the extent we take up direct and rebuttal witnesses separately,
22 I think that we need to make some accommodation somewhere else.
23 And in my mind, the witnesses' summaries, frankly, lead us down
24 a path of objections and very time-consuming motions from both
25 sides. And if there is agreement to do that, I think we could

1 take up the direct and rebuttal in subsequent fashion instead
2 of putting the witnesses' direct and rebuttal testimony at the
3 same time. So I'll look to you for some guidance on that.

4 MR. PERKO: Commissioner, I guess I'm reluctant to do
5 that because I do think that summaries do provide some context
6 to frame the debate. I think that depending upon discussions
7 that I assume that we're going to have, if not today, in the
8 near future, about potential stipulation of witnesses, that
9 concern about timing may be mitigated somewhat. So I, I guess
10 I'm not prepared at this point to, to say that, yes, we would
11 agree to waiving witness summaries.

12 MS. BROWNLESS: Commissioner, I think that's a very
13 good suggestion and I'd be certainly willing to do that for my
14 witnesses.

15 MR. PABEN: I don't really have an opinion on the
16 matter right now. I wouldn't object either way.

17 MR. JACOBS: I can agree with that, that process.

18 COMMISSIONER TEW: I think my suggestion is at least
19 to limit that at some point. I was intending to bring that up
20 at the end of the prehearing conference, but it seemed to fit
21 in now.

22 I guess for the time being I will leave the direct
23 and rebuttal witnesses in the, in the order that we have them
24 in the prehearing order and suggest that the parties get
25 together as soon as possible to talk about stipulating

1 witnesses. And if the order of the witnesses needs to change,
2 for instance, I do note that some of the rebuttal witnesses are
3 in different order than they appear in the direct, and I know
4 with the inclusion of the supplemental testimony now that we've
5 ruled on that it could change how some of you want to order
6 these witnesses.

7 MS. BRUBAKER: Staff will be happy to work with the
8 parties if there's any necessary changes in the order,
9 particularly as it's listed in the draft prehearing order.

10 MS. BROWNLESS: Commissioner, we are prepared at this
11 time to advise the staff on which witnesses we could stipulate
12 into the record.

13 COMMISSIONER TEW: Certainly. Go ahead.

14 MS. BROWNLESS: We could stipulate Mr. Fetter,
15 Mr. Heller, Mr. Breton and Mr. Norfolk.

16 COMMISSIONER TEW: Would you repeat those one more
17 time for me, Ms. Brownless?

18 MS. BROWNLESS: Yes, ma'am. Mr. Fetter, Mr. Heller,
19 Mr. Breton and Mr. Norfolk.

20 COMMISSIONER TEW: Mr. Perko, do you have --

21 MR. PERKO: Commissioner, depending upon the results
22 of the pending motions to strike, we may be in the position of
23 stipulating to some of the witnesses, but I think we need to
24 rule on those motions first.

25 And I apologize, but we had a snafu, I guess, in our

1 filing yesterday. We requested oral argument before the full
2 Commission and that was unintentional. And if the parties are
3 prepared to address those motions today, I'd just as soon get
4 that over.

5 I think it would be more efficient, however, to go
6 through the issues because depending upon your rulings on some
7 of these issues that are currently contested, that may have a
8 bearing on those motions.

9 COMMISSIONER TEW: That's what I was going to say as
10 well. But if anyone else wants to go on record as to witnesses
11 that they can stipulate to, then we can do that now just so we
12 have note of that.

13 MS. BROWNLESS: And I would add that these witnesses
14 are witnesses with regard to the pricing of cargo ships, they
15 are the pricing of railroad transportation and railroad cars,
16 that kind of thing. They are not any witnesses that deal with
17 integrated resource planning for any of the utilities, they're
18 not any witnesses that deal with load demand, any of the real
19 nuts and bolts. These are basically people who are providing
20 testimony with regard to rail transportation or shipping
21 transportation for coal.

22 COMMISSIONER TEW: Mr. Perko.

23 MR. PERKO: One clarification. I recognize that we
24 may be able to stip more depending upon the results of the
25 motion to strike. I think at this time we are prepared to

1 stipulate Steven Urse for the NRDC.

2 COMMISSIONER TEW: And I'll go back to the Intervenor
3 side. Ms. Brownless, do you have any thoughts about
4 stipulating Mr. Urse?

5 MS. BROWNLESS: I need to ask some questions about
6 that. With regard to Mr. Urse, would you be -- are you
7 stipulating both his testimony as well as the exhibits
8 attached?

9 MR. PERKO: Yes.

10 COMMISSIONER TEW: Mr. Paben, do you have anything to
11 add about stipulating witnesses or the proposals that the other
12 parties have suggested?

13 MR. PABEN: At this point I'd go ahead and I would
14 stipulate to the same witnesses that NRDC mentioned, and that's
15 all I have for now.

16 COMMISSIONER TEW: That's fine. Thank you.

17 Mr. Jacobs.

18 MR. JACOBS: If I may, I'd like to get with counsel.
19 Probably I'll be able to get them a list tomorrow. I'd just
20 like to get through everything today and then come back with a
21 list, if that's okay.

22 MS. BROWNLESS: And we'd like to reserve on Mr. Urse,
23 have an opportunity to speak with him.

24 COMMISSIONER TEW: Okay. My suggestion is to try to
25 get with staff by the end of today.

1 MR. JACOBS: Okay.

2 COMMISSIONER TEW: But tomorrow, if you need to get
3 to -- if you can't get to it until tomorrow, I think that we
4 can do that. But I think we need to try to get some of this
5 wrapped up before everyone leaves for the holidays.

6 MR. JACOBS: That's fine.

7 MS. BRUBAKER: Absolutely. That would be my concern
8 as well, Commissioner.

9 MR. JACOBS: We'll work to get to them today.

10 COMMISSIONER TEW: Thank you.

11 MS. BRUBAKER: Just for clarification, staff has no
12 objection to the stipulation of these witnesses and any
13 associated exhibits with their testimony. I would note, of
14 course, as always, that to the extent a Commissioner would have
15 questions on these witnesses, they would need to appear. I
16 will attempt to determine as quickly as possible to the extent
17 we identify any witnesses that the parties, the Intervenors and
18 the Applicants can stipulate and staff has no objection to, I
19 will attempt to determine as quickly as possible whether any
20 Commissioners would have questions for those witnesses. And if
21 not, they can certainly be excused.

22 COMMISSIONER TEW: Sounds good. I suppose that will
23 move us along to positions.

24 MS. BRUBAKER: Actually before we leave this section,
25 Commissioner, I would note also that the NRDC does need to

1 provide issue numbers.

2 MS. BROWNLESS: And we will do that.

3 MS. BRUBAKER: Okay. Thank you.

4 MR. PERKO: And one other thing along those lines,
5 Commissioner. Under the rebuttal of Michael Lawson, I believe
6 the only issue that that rebuttal would address is the, what
7 we've been referring to as additional Issue 5, which is one of
8 the issues that I think we need to talk about as to whether
9 that is appropriate. But the other issues would not be
10 addressed on rebuttal listed for him.

11 MS. BRUBAKER: And also, I'm sorry, before we leave
12 this section, Sierra Club also needs to provide its issues for
13 its witnesses.

14 COMMISSIONER TEW: For Witness Powell?

15 MS. BRUBAKER: Yes.

16 MS. BROWNLESS: Mr. Perko, I'm trying to understand
17 what you just said. For rebuttal for Mr. Lawson, we just
18 strike out 2, 2A, 2B and it's just additional Issue 5?

19 MR. PERKO: Correct. The one about DOE funding.

20 MS. BROWNLESS: Okay. Okay.

21 MS. BRUBAKER: I'll be jumping the gun a little here,
22 Commissioner. As we go through the issues, there are a number
23 of issues which all the parties and staff are in agreement on.
24 There are a number of issues that are designated as new issues
25 or additional issues that appear at the end. They're currently

1 numbered, just for ease of reference, 1st Issue, 2nd Issue, 3rd
2 Issue. To the extent those issues -- those are the issues we
3 believe there will be some discussion on about whether they
4 should be included as issues or not. To the extent they are,
5 they will need to be moved into the body of the prehearing
6 order along with the other issues. And with the parties'
7 indulgence, I believe that staff will be able to recommend
8 where they would appear, and we'll certainly run that past the
9 parties for their approval. I feel confident we'll be able to
10 find a place for them.

11 To the extent these additional issues are included,
12 we will probably just renumber and then we will ask for the
13 parties to provide additionally with respect to those new
14 issues which witnesses will be addressing them. Is that clear?

15 COMMISSIONER TEW: I see nodding of heads, so I think
16 we can move along.

17 MS. BRUBAKER: Okay.

18 COMMISSIONER TEW: On Section VII, basic positions, I
19 assume there are no changes.

20 Section VIII, issues and positions. Are there any
21 preliminary matters? I think we're going to -- I think it
22 might be best to take up the eight issues and then take up the
23 additional issues proposed separately.

24 So with respect to the first eight issues, I know
25 we're going to have some discussion on Issue 5, are there any

1 changes or issues that someone wants to raise before we turn to
2 Issue 5?

3 MR. JACOBS: One minor point I neglected, and this is
4 back in Section VI, to list the issues for our witness,
5 Mr. Powell. And I can just list those now or --

6 COMMISSIONER TEW: Certainly.

7 MR. JACOBS: Okay. It'll be Issue 1 with all
8 subparts, Issue 2 with all subparts, Issue 3 and all subparts,
9 Issue 4 and all subparts and Issue 6 and all subparts.

10 COMMISSIONER TEW: So just for clarity, 1, 2, 3,
11 4 and 6 and all subparts.

12 MR. JACOBS: Yes, ma'am.

13 COMMISSIONER TEW: Thank you, Mr. Jacobs.

14 Mr. Perko, did you --

15 MR. PERKO: Yes, Commissioner. I did have one thing
16 that I think I would like to discuss regarding the first eight
17 issues.

18 For the most part, I think exclusively Issues
19 1 through 4 and Issues 6 through, I guess it's 7, I believe,
20 there are -- those issues relate to the statutory, specific
21 statutory criteria and are the issues that are normally
22 addressed in all need for power proceedings. And the
23 intervenors have suggested that we separate those out, those
24 issues out in subparts for each of the Applicants. And we
25 don't feel like that's appropriate because all those issues are

1 subsumed within the statutory criteria and I don't see a need
2 for separate issues. And I think that it would simply be more
3 work for all the parties and the staff and the Commission if we
4 were to separate them out.

5 And there's also distinctions between addressing it
6 individually and on a whole broader context as to whether the
7 unit is needed because it not only relates to the individual
8 Applicants but the state as a whole, and whether it's
9 cost-effective and will provide fuel supply diversity to the
10 state as a whole. So I think it's more appropriate to keep
11 those issues under one issue rather than segregating them out
12 for all the Applicants.

13 COMMISSIONER TEW: Ms. Brownless.

14 MS. BROWNLESS: Yes, ma'am. With regard to that,
15 obviously I believe they should be separated separately. And
16 the reason for that is that if you look through the positions
17 that have been summarized on the prehearing order, you see that
18 for some of these issues, which obviously are the statutory
19 issues the Commission must consider, the positions that we've
20 taken are different. For example, with regard to demand-side
21 management we have taken different positions on issues. With
22 regard to fuel diversity we have taken different issues because
23 these four utilities have, in fact, different postures on
24 different issues. I don't think there's any question that the
25 Commission is required to look both individually at each of

1 these utilities as well as at a -- as a composite level.

2 In the past need determinations we used to have
3 separate issues for is this unit needed from a statewide basis
4 versus is this unit needed from an individual utility basis?
5 Over the past ten years the Commission has, in my opinion,
6 unduly restricted the number of issues. I understand the
7 Commission's desire to do that, but I think here at a minimum
8 it is necessary to consider each one of these Applicants. In
9 this case, none of these four Applicants has committed totally
10 to the construction of this plant. They all have the ability
11 to make a final go-no-go decision in December of 2008 when they
12 currently project all permitting requirements will have been
13 met or not, as the case may be. And because of that, I think
14 it's particularly important here that each individual Applicant
15 be considered separately. They certainly have very disparate
16 approaches to demand-side management, for example, how they
17 manage and what programs they have, what programs they don't
18 have. And I just don't think the Commission can adequately
19 evaluate this from an individual utility standpoint unless it
20 does look at it and specifically look at each individual for
21 these criteria.

22 COMMISSIONER TEW: Mr. Paben, do you have anything to
23 add?

24 MR. PABEN: The only thing I have to add is that also
25 because the utilities have different approaches and it's going

1 to affect each Applicant differently, it's also going to affect
2 the different ratepayers, the customers for each utility
3 differently as well.

4 COMMISSIONER TEW: Thank you.

5 Mr. Jacobs?

6 MR. JACOBS: That essentially is my view as well, and
7 we've noted that in several issues that we've given different
8 responses. But I think in this particular docket there is
9 clear evidence of diversion in how the Applicants themselves
10 have addressed certain issues. But, more importantly, there is
11 clear evidence that the impacts of this on the different
12 Applicants will vary. And I think we need to understand those
13 and be very clear on those in the final decision.

14 MS. BROWNLESS: And, Commissioner, if I may just add
15 one other point. Usually when one is coming to the Commission
16 for a need determination, the person requesting the plant is an
17 investor-owned utility over whom the Commission has regulatory
18 control of their rates and service. All of the entities
19 involved in this application are non-rate-based regulated
20 utilities, they're munis or, in the case of FMPA, an
21 aggregation of nonjurisdictional utilities. This is the only
22 opportunity that the Florida Public Service Commission will
23 have to look at the need for this plant, the cost of this plant
24 for each one of these munis. There will be no opportunity
25 through the fuel adjustment clause, through subsequent rate

1 increases or any cost, capital cost or conservation cost
2 recovery mechanisms or clauses for the Commission to tweak this
3 decision. So that is another reason I think it vitally
4 important that the only time that the Commission look at this,
5 they look at it in great depth and for each utility.

6 MR. PERKO: Just very briefly, Commissioner. I don't
7 mean to waste your time.

8 COMMISSIONER TEW: Please.

9 MR. PERKO: But I think that we, that we're not
10 assuming the Commission wouldn't address each of these
11 Applicants, but I think it can be done under single issues to
12 make it simply an easier exercise for the parties to address
13 administratively.

14 I would point out that there have been instances
15 where groups of municipalities, including FMPA and other
16 municipals, have filed need applications. And I believe in
17 those circumstances the Commission addressed the issues
18 individually but with each of the Applicants. So I don't think
19 we're departing from any precedent here and I don't think
20 there's any need to do so, so.

21 COMMISSIONER TEW: Thank you.

22 Ms. Brubaker.

23 MS. BRUBAKER: Just to kind of put this in context,
24 when this application was first filed, staff talked internally
25 about whether we would suggest preliminary issues as the more

1 standard single kind of statutory issues or whether we would
2 break it out by Applicant. And ultimately what we decided is
3 it would be best to have it as the single statutory issue. Now
4 we accommodated the Intervenor concerns in this draft
5 prehearing order by breaking it out separately, and we knew
6 that was probably going to be a topic of discussion at today's
7 prehearing.

8 A couple of concerns about having them broken out
9 separately. One is efficiency. The ultimate issue is the
10 ultimate issue. And by consolidating these into a single
11 issue, are the parties in any way foreclosed from addressing
12 that either through testimony at the hearing or in the briefs?
13 Absolutely not. It will be the same analysis for staff. We
14 intend to address each and every Applicant. That certainly
15 won't change whether the issues are apart or together. What
16 does change, I think, is a certain amount of flow and logic and
17 also economy of space. By having to discuss each Applicant
18 separately, we're -- you know, there's the potential for having
19 redundant discussion in the recommendation, I would presume
20 also in the briefs. I think the cleanest flow is to discuss
21 each Applicant and then come down to the ultimate issue, and I
22 think that can all be addressed under a single issue.

23 MS. BROWNLESS: And if I may just follow up on that a
24 bit, Commissioner. With regard to the Commission's procedure,
25 if we have one issue, then for each issue there is a 40-word

1 capped summary. There are also brief caps. So what one
2 accomplishes by having an issue for every individual utility is
3 giving the Intervenors an opportunity to adequately and
4 appropriately address each individual person. If we have to
5 squish that all into 40 words, then we're compromised in that
6 way.

7 COMMISSIONER TEW: Ms. Brownless, you're ahead of me,
8 and I was going to get there. My preference is to consolidate
9 the parts A, B, C and D into single issues as staff has
10 suggested for the same reasons, but I do see a need to increase
11 the number of word count. And I think it would be fair to
12 increase that -- I believe it's 50 words per issue, and I
13 believe it would be fair to increase that to 200 words and then
14 that would cover each of the four entities involved. And I
15 think the page count of the briefs we need to discuss. We'll
16 discuss that a little bit later. But I think, of course, given
17 that we're allowing 200 words per issue, that we definitely
18 need to increase the page number. But we'll talk about that a
19 little bit later about exactly what that page number would be.

20 But I agree with staff that with one issue you can
21 still break out the positions on each entity and I think that
22 it will be cleaner. For instance, it may be that with respect
23 to three of the parties that your positions are relatively the
24 same, but for one that there may be some distinction. And it
25 may make for a very, very, much cleaner recommendation. I'm

1 trying to think ahead. It may make for a cleaner
2 recommendation to consolidate some of that so that we don't
3 have so much redundancy.

4 But to the extent there is any difference with
5 respect to individual entities on the Applicant side, I
6 encourage you to make those arguments. And I think staff will
7 address each of them separately. For instance, on the DSM that
8 you mentioned, I think that staff will talk about the
9 individual utilities' DSM programs and how that fits into this
10 case individually in the recommendation.

11 MS. BROWNLESS: And here's my concern, Commissioner.
12 When one is on the staff drafting a final order after a
13 Commission vote has been taken, the reason we used to include
14 individual, more detailed issues within each subcategory of
15 statutory requirement was so that the Commission, so that the
16 staff would get direct feedback from the Commissioners on each
17 specific item addressed. And I honestly think that this is a
18 due process issue for Intervenors; that at an evidentiary
19 hearing part of what the finder of fact, part of what their job
20 is is to acknowledge and address the issues that are being
21 raised. I don't think there's any question that these issues
22 are relevant. I don't think anybody is questioning that. But
23 I guess I would respectfully request that it is, in fact, the
24 Commission's job to specifically address these issues. And
25 when one lumps them in a big category, one does not get

1 specific direction from the Commission with regard to the
2 statutorily significant points that if each utility were in
3 here proposing this coal facility or any facility with a steam
4 component over 75 megawatts, they would, in fact, individually
5 have to address. So I guess that's our concern that we're
6 looking for specific feedback from the Commission.

7 MS. BRUBAKER: Commissioner, may I?

8 COMMISSIONER TEW: Sure.

9 MS. BRUBAKER: I would just -- you know, with
10 respect, I have to disagree that it's a due process issue.
11 Everybody is on notice today that all four Applicants are to be
12 addressed in the single issue. I don't think any Commissioners
13 are going to be confused on that point. And certainly when
14 it's taken up at Agenda, if the Commissioners feel it's
15 appropriate to break out an Applicant in a given issue and
16 address them separately, they can certainly do so. We get
17 modifications from the staff recommendation all the time,
18 either in agreement with us, differ from us, or the Commission
19 can, on its own motion, make whatever, point out whatever facts
20 that are Applicant-specific it feels appropriate to do so.

21 MR. JACOBS: If I may, just briefly.

22 COMMISSIONER TEW: Briefly.

23 MR. JACOBS: I would reiterate with all due respect
24 that in a case such as this where we're seeing a shifting
25 landscape even as this matter comes to hearing, it becomes

1 incredibly important that the Commission understand the impacts
2 of these, of these market and other modifications as they apply
3 not only to the, to the application as a whole but where this
4 application rests so fundamentally on, on the collective, then
5 I think it needs to understand how well that collective holds
6 together under the pressure of these changing conditions. And
7 that's why I think it's a due process issue.

8 COMMISSIONER TEW: I understand your concerns,
9 Mr. Jacobs and Ms. Brownless. I think that what we can do -- I
10 still believe it's the right thing to do to consolidate the
11 issues for the reasons that staff has laid out. I believe that
12 the Commissioners are aware, as Ms. Brubaker pointed out, that
13 there are four entities involved, and, of course, one of those
14 entities involves a number of other entities. And I think to
15 the extent that's the case with these issues, I believe the
16 Commission will know that if there is any difference of opinion
17 with regard to one of the four entities, that we can break out
18 a vote. I don't think we have to have separate issues 1A, 1B,
19 1C and 1D to have a different vote on different entities. And
20 I believe that staff will make sure that that is expressed to
21 the Chairman, and I'm sure she's well aware of that already, in
22 fact. And we can make sure that, if need be, that we take
23 separate votes with regard to those separate entities. I think
24 we've done that before. As the Commission has voted on things,
25 to the extent we've needed to change things up a bit from

1 exactly the way they're listed, I think we've done so.

2 MS. BRUBAKER: And, again, just for the sake of
3 clarity, we have handled multiple applicants in a single issue
4 before. It's not a novel concept.

5 COMMISSIONER TEW: With that, I think we'll move
6 along, I think, to Issue 5, unless there's anything else in
7 Issue 1 through 4.

8 MR. JACOBS: Issue 4, Sierra Club would revise our
9 positions.

10 MS. BRUBAKER: And actually if I -- beg your pardon,
11 Mr. Jacobs. I'll just interrupt briefly. With the
12 consolidation of Issues 1 through 4 and Issue 6 from the
13 subparts to a single issue, we will need revised positions from
14 the parties with respect to those issues. If you wish to have
15 your position reflect yes or no or whatever it might be with
16 any given Applicant, please feel free to do that. But we will
17 need those revised positions by end of the day tomorrow.

18 COMMISSIONER TEW: I guess that takes us to Issue 5.
19 And I think --

20 MR. JACOBS: We'd just note on the record that for
21 Issue 4 all of ours are changing from no to yes in addition.
22 But we'll -- that won't be addressed by the consolidation issue
23 because it's the same for all.

24 MS. BRUBAKER: With regard to Issue 5, there is a
25 proposal by all the Intervenors to add the phrase "to meet

1 current and reasonably anticipated state and federal
2 environmental requirements" to the issue, and I believe the
3 parties will most likely wish to address this.

4 MR. PERKO: Commissioner, since I'm the one objecting
5 to that addition, I guess I'll go first. We do not contest the
6 issue as to whether the TEC generating unit includes the costs
7 for environmental controls necessary to meet current state and
8 federal environmental regulations. That's something that the
9 Commission has always required in need determination
10 proceedings. What we do contest is the additional language "to
11 meet current and reasonably anticipated state and federal
12 requirements." First of all, reasonably anticipated to us is
13 extremely vague and it's not entirely clear to me what that
14 would include.

15 In any event, the Commission has previously held, and
16 I'd refer you to the Gulf Power case that we've cited in our,
17 our position statement here, that the Commission can't make
18 findings of fact based on possible future regulations. And I
19 think the reason for that is very clear, that the Commission
20 doesn't have a crystal ball and shouldn't be getting into
21 speculative matters. So we would object to that additional
22 language. And, furthermore, to the extent that this is an
23 attempt to deal with the CO2 issue, I think that we can address
24 that with regard to additional Issue 1, I think, is coming down
25 the pike here.

1 COMMISSIONER TEW: Ms. Brownless.

2 MS. BROWNLESS: Yes, ma'am. The reason that I think
3 it's appropriate to add this is when we were developing these
4 issues at the workshops, obviously this is intended to cover
5 CO2 cost emission allowances, the impact of which the
6 Applicants have provided a sensitivity study to address. So
7 clearly I think it is reasonable to infer that during the life
8 of a 40-year coal plant, CO2 emissions are going to become a
9 cost issue. And what we're seeking to do here by adding
10 "reasonably anticipated" is to address the issue of
11 CO2 emissions and their cost. We are not seeking to talk about
12 any environmental impacts of burning coal versus natural, none
13 of that. We're clearly focused upon the cost of CO2 emissions.
14 We were told at the staff workshops that this would be the
15 issue in which we could discuss that.

16 So here's kind of where I am. As I understand it,
17 the staff is supposing a specific issue dealing with adequate
18 -- has the -- I think our issue is something like: Have the
19 Applicants adequately dealt with the cost of CO2 emissions or
20 with the CO2 emission allowances? If the staff is supposing
21 that, then I need to have some place to discuss CO2 emission
22 allowances because I think they are reasonably foreseen
23 expenses over the 40-year life of this plant. And I also
24 believe that they are capable of being reasonably forecast
25 because the Applicants' own witness, Mr. Preston, has, in fact,

1 prepared a forecast which has done so.

2 In the past the Commission has addressed and included
3 issues to address environmental costs which were not enacted,
4 and that took place in the Cypress Energy case, and that is
5 Docket PSC 92-0827.

6 In that docket, Buck Oven testified and the
7 Department of Environmental Regulation was a party. And what
8 Buck testified to in that docket was -- this docket was started
9 in 1992, which is right at the time that SO2 emissions were
10 being finalized at the national level and in the process of
11 being worked upon at the state level. There are specific
12 issues, and I've brought a copy of the prehearing statement,
13 which dealt with SO2 emissions, the cost of SO2 emissions, the
14 type of technology that -- this was -- the Cypress Energy
15 Partners Project was a pulverized coal plant -- with the type
16 of technology necessary to meet those proposed emissions which
17 at that time were not finalized and in the process of going
18 through. But it was obvious -- but it was Buck's testimony in
19 this docket that he didn't believe a pulverized coal plant
20 without scrubbers could meet those anticipated SO2 emissions,
21 and he didn't believe that there was any currently available
22 technology scrubbers that could be added to the type of
23 pulverized coal plant Cypress Energy was proposing be built in
24 the need determination. Those were specifically identified
25 issues. They were addressed in both the prehearing order, they

1 were addressed in the final order.

2 So I don't think that the Commission is without
3 precedent to include and address reasonably foreseen
4 environmental regulations. I don't think the Commission is
5 limited to just looking at what environmental regulations are
6 in place today with a definitive numeric number associated with
7 them. And that's the view, of course, that the utilities are
8 taking.

9 COMMISSIONER TEW: Mr. Paben.

10 MR. PABEN: I believe the Commission also dealt with
11 this issue with regards to Mercury back in the early '90s. If
12 you look at the FPL Martin and FPL Lauderdale need
13 determination dockets, 89-0974 and 89-0973, the Commission
14 specifically stated that they found FPL took into account the
15 reasonably anticipated cost of environmental compliance. So, I
16 mean, that phrase has actually, you know, been used by the
17 Commission in the past when we were dealing with future
18 environmental uncertainties.

19 COMMISSIONER TEW: Thank you.

20 Mr. Jacobs?

21 MR. JACOBS: I would, I would incorporate the
22 comments of my co-counsel. But it's incredibly important in
23 this docket because if the Commission -- as Ms. Brownless
24 indicated earlier, for these Applicants the Commission will
25 have no opportunity to come back and assess the impact of any

1 costs that come from this regulation. They are reasonably
2 foreseeable. They are. There are existing markets today for
3 assessing this risk for the, in the industry. There are
4 industry practices in place today to address the risk of this,
5 of this expense.

6 More importantly, there are clear demands on owners
7 of these plants to address this risk. And if in this
8 proceeding there is no indication or no understanding of how
9 these Applicants have analyzed and processed this risk, then
10 essentially they go forward with no determination, with no plan
11 in place of addressing it. At least the Commission needs to
12 understand what plan there is to address this risk on a
13 reasonable level, and to look at this in the context of
14 reasonably foreseeable expenses is absolutely appropriate.

15 COMMISSIONER TEW: Mr. Perko, very briefly, please.

16 MR. PERKO: Yes, ma'am. Fortunately in a prior life
17 I actually practiced air pollution control law, so I know a
18 little bit about what Ms. Brownless was talking about.

19 In the FPL case where she was talking about sulfur
20 dioxide allowances, that was a 1993 case. And, in fact, at
21 that time there was a sulfur dioxide regulation in place; it
22 was through the enactment of the Clean Air Act amendments in
23 1990. We do not have that situation in this case. There is no
24 regulation, no statute, nothing on the books that imposes
25 carbon dioxide regulation on these Applicants. So that is a

1 clear distinction. That was a clear regulatory program that
2 needed to be complied with. As far as Mr. Paben's comment, I
3 believe he referred to reasonably anticipated costs. That's
4 much different than how the issue is proposed to be worded:
5 "Reasonably anticipated state and federal environmental
6 requirements." We have addressed reasonably anticipated costs
7 of existing federal, state and federal requirements in
8 accordance with prior Commission precedent. This is a wholly
9 different issue that is opening up a whole new area of inquiry
10 for the Commission that it has never done before.

11 And I would point you to the Gulf Power case that we
12 cited in our position statement. And in that case, the
13 Commission specifically said -- rejected a proposed finding of
14 fact that Gulf did not evaluate specific, specification of
15 Mercury content of fuel as a potential means of compliance --
16 I'm sorry. Strike that. Gulf did not provide an air toxic
17 sensitivity analysis in its filing in this docket. We reject
18 this finding as speculative, immaterial and irrelevant to our
19 approval or denial of Gulf's Clean Air Act compliance plan.
20 Air toxics regulations have not been promulgated by Florida or
21 the EPA.

22 So the Commission has consistently held that they're
23 not going to make speculative findings of fact regarding future
24 regulatory programs. So for that reason, we would ask you to
25 reject the additional language that has been suggested for this

1 issue by the Intervenors.

2 COMMISSIONER TEW: Ms. Brubaker, I think I know where
3 I am on this, but if you'd like to give your opinion.

4 MS. BRUBAKER: I don't know that I have anything
5 particular to add, except that to the extent the sensitivity
6 analyses do -- we can address, you know, a certain level of
7 robustness in the models. Perhaps some of the concerns can be
8 accounted for there.

9 Also to the extent that this additional language is
10 meant to specifically target the CO2 emissions, that's also
11 addressed in the 1st Additional Issue: "Have the Applicants
12 appropriately evaluated the cost of CO2 emission mitigation
13 costs in their economic analyses?" And I don't know -- the
14 phrase, "to meet current and reasonably anticipated state and
15 federal environmental requirements" is a little nebulous, and
16 it does trouble me that we have a phrase -- I don't have a
17 clear understanding, I don't think staff has a clear
18 understanding of what's meant to be captured there.

19 COMMISSIONER TEW: Thank you, Ms. Brubaker. And I
20 think that this is going to require jumping ahead a bit. As I
21 reviewed the additional nine issues, it seemed to me that the
22 1st Issue, the 2nd Issue, and the 7th Issue all dealt with some
23 form of environmental requirement, whether currently in place
24 or at least some would think reasonably anticipated. And I do
25 think that there needs to be a place to address those issues.

1 I do think that it is Issue 5. I don't agree that the words,
2 the wording "and reasonably anticipated" need to be included in
3 that issue. But I do think that there is some way to include
4 the 1st, 2nd and 7th issue in the additional issues within
5 Issue 5. For instance, some sort of subparts of Issue 5 so
6 that we have a place that we definitely deal with those issues.

7 My suggestion is not to necessarily just insert those
8 three issues as subparts as worded, but to somehow work among,
9 work with the other parties to come up with some kind of
10 language there for Issue 5. But my intent would be that
11 Issue 5 is the place to discuss the cost of CO2 emission,
12 emissions, as well as the CAIR and CAMR standards, as well as
13 Mercury, NOx and SO2 particulate emissions. I do have some
14 concerns about the wording in the seventh issue about "and
15 other applicable environmental and public health standards,"
16 But that's not to say that I don't think that you, that I would
17 think that you are prohibited from going into those kind of
18 things within Issue 5. I think that in listing certain
19 requirements, we're not trying to exclude others. So I think
20 that the Intervenors and the Applicants would be able to cover
21 the current state and federal standards and any discussion
22 about anticipated standards within Issue 5. So it is my, my
23 suggestion that we work on the wording of Issue 5 perhaps after
24 the prehearing conference, and I will give you a chance to
25 respond.

1 MS. BRUBAKER: And if I may for the sake of clarity,
2 with regard to Issue 7, the phrase "and other applicable
3 environmental and public health standards," my only concern is
4 that to the extent the Commission's jurisdiction -- that that's
5 observed. And there's discussion on another additional issue
6 that may touch on that. I believe that's Issue --

7 COMMISSIONER TEW: It is Issue --

8 MS. BRUBAKER: The 3rd Additional Issue.

9 COMMISSIONER TEW: 3rd Additional Issue.

10 MS. BRUBAKER: But my concern is we not read that
11 phrase, to the extent that phrase would remain, to broaden
12 somehow what the Commission has the statutory authority to look
13 at.

14 COMMISSIONER TEW: I agree. I think it's my intent
15 that Issue 5 be broadened. And maybe that's not even the right
16 terminology, because I believe Issue 5 gives you a place as
17 currently worded to argue the things that I believe you want to
18 argue about CO2. But I think, just to make it clear, that that
19 is the place to argue about CO2 and some of these other
20 requirements; I don't have any problem with expanding it in
21 such a way that it's clear that that's where that issue goes,
22 those issues go.

23 But I agree with Ms. Brubaker, I do have some
24 concerns about wording about public health standards in
25 particular, and we will talk about that on the 3rd Additional

1 Issue later. But I think we'll just stay with respect to
2 Issue 5 now. But that's, that's my preference. And I'll let
3 you all speak to that briefly.

4 MR. PERKO: Thank you, Commissioner. Just one
5 comment. I fully agree with you that as far as the other
6 issues relating to CAIR, CAMR, SO2 and particulates, since
7 those are existing programs, I think it's fully appropriate to
8 deal with those under Issue 5. But if you're going to keep
9 CO2 as an issue, as it seems that you are, I would prefer that
10 that be a separate issue because it does have ramifications
11 beyond those other existing programs. Because it is something
12 that the Commission has never done before, raises legal issues
13 that would need to be dealt with, as well as what is the
14 appropriate test for determining whether the Applicant has
15 appropriately addressed those. So it's not a matter of, you
16 know, simply checking to see if we put in appropriate costs for
17 our scrubbers to meet our SO2 standards. It relates to whether
18 our fuel forecast, our allowance forecast, for example, is
19 reasonable. And given the lack of any regulatory program
20 that's in effect, that is a very complicated issue that I think
21 needs some more fleshing out beyond the typical issue of how do
22 you address the cost of existing programs?

23 COMMISSIONER TEW: So to clarify, you would prefer
24 that the CO2 issue would remain as worded in the 1st Additional
25 Issue and have it broken out as a separate issue.

1 MR. PERKO: If it's going to stay in there, yes. I
2 would prefer that it come out. But if it stays, I would prefer
3 it to be a separate issue.

4 COMMISSIONER TEW: And just for clarification, I
5 don't think that having an issue about the cost of
6 CO2 emissions is, is dispositive of whether or not
7 CO2 emissions makes the proposed plant cost-effective or not.

8 MR. PERKO: I understand.

9 COMMISSIONER TEW: And I think -- but I think that
10 the parties need a place to be able to argue that and its
11 impact on the case, and I think the Commissioners will want to
12 hear that. And whether it's broken out as a separate issue or
13 subsumed in Issue 5, I want to make sure that the parties have
14 an ability to argue that at some place in this docket.

15 MR. PERKO: Fair enough.

16 COMMISSIONER TEW: Ms. Brownless.

17 MS. BROWNLESS: I certainly would agree that the
18 CO2 issue needs to be a separate issue for the reasons stated
19 by Mr. Perko. And obviously I'm happy with the wording of
20 Issue 1, the additional Issue 1, which is, "Have the Applicants
21 appropriately evaluated the cost of CO2 emission mitigation
22 costs in their economic analysis?" And I'd be -- with regard
23 to the inclusion of Issue --

24 COMMISSIONER TEW: The 2nd Additional Issue as well
25 as --

1 MS. BROWNLESS: Yes, ma'am. The 2nd Additional
2 Issue. I'm trying to check against my paper here. And the
3 CAIR and CAMR, as well as Mercury, NOx and SOx and particulate
4 emissions, I think those can be addressed under Issue 5. And
5 my preference, just because I think it does make it clearer, is
6 to just keep the separate issues under there if that's what
7 we're going to do. And now that we're going to have a separate
8 issue for CO2, I'm happy to say "meet current federal and
9 state" and then specifically address under that NOx, SOx,
10 particulate emissions, CAIR and CAMR.

11 COMMISSIONER TEW: Ms. Brownless, just to be clear,
12 do you find a need to have subparts of Issue 5 about NOx and
13 SOx and Mercury, for instance, or do you think that it's clear
14 enough in our discussion today to just leave Issue 5 as worded
15 and address those things from the additional Issue 2 and 7
16 within Issue 5? It may be cleaner than trying to come up with
17 wording. That's what I'm getting at.

18 MS. BROWNLESS: Well, let me tell you my concern
19 about CAIR and CAMR. As I understand the testimony that's been
20 presented by the Applicants and also as I understand the
21 regulation of Mercury, there's different phases of Mercury
22 regulation, Phase I and Phase 2, in which different levels of
23 Mercury, a decreasing level of Mercury will allow, will be
24 allowed to be emitted.

25 So my preference always, Commissioner, is to have a

1 specific issue that addresses a specific thing because I think
2 it helps the parties focus rather than lump them together.

3 COMMISSIONER TEW: Mr. Paben, if you have anything to
4 add.

5 MR. PABEN: No. Thanks.

6 COMMISSIONER TEW: Mr. Jacobs?

7 MR. JACOBS: I'm of the view, excuse me, that it's
8 probably better to at least have subparts for most of the
9 reasons that Ms. Brownless gave. I think there's going to be
10 considerable discussion of CO2. I think the Applicants have
11 contrasted that with their discussions of CAIR and CAMR. And
12 so to, to contrast the discussion that the parties have raised,
13 I think it would be useful to have that as a separate item.
14 And then the other item, the NOx and SOx probably could be,
15 maybe put together. But if they're separated, I don't think
16 that's a problem for me either.

17 COMMISSIONER TEW: Let me ask, and I'm being fairly
18 optimistic, do the parties believe that there is an ability to
19 agree on the wording of Issue 5? If we leave the 1st
20 Additional Issue as a separate issue, as everyone seems to be
21 in agreement about about CO2, do you believe there's reason to
22 think that you can come to some agreement on the wording of
23 Issue 5 to include the 2nd Additional Issue and the 7th
24 Additional Issue, excluding, of course, the discussion about
25 public health standards, but to somehow include those

1 environmental requirements in Issue 5 just so that it's clear
2 that's where that discussion lies? Do you believe that that
3 kind of an agreement can be reached today or at least by
4 tomorrow?

5 MR. PERKO: With the assumption that the additional
6 language "reasonably anticipatable or" --

7 COMMISSIONER TEW: I think we're past that.

8 MR. PERKO: Okay. I think we could work that out.

9 COMMISSIONER TEW: Okay. And --

10 MR. JACOBS: I agree.

11 MR. PABEN: Agree.

12 MS. BROWNLESS: Agree.

13 COMMISSIONER TEW: Okay. It looks like we're getting
14 somewhere. Ms. Brubaker, do you have --

15 MS. BRUBAKER: Staff is cautiously optimistic that
16 we'll be able to, to reach an agreement on the rephrasing of
17 Issue 5, and that the first new issue will remain broken out is
18 my understanding.

19 Just to note as an aside, I think Issue 5 encompasses
20 those matters regardless, and certainly it was always staff's
21 intention to look at those under Issue 5 anyway. But if it's
22 the Prehearing Officer's preference, and also the parties can
23 agree to work cooperatively towards that, we're happy to assist
24 in any way we can.

25 COMMISSIONER TEW: And it doesn't necessarily have to

1 be Issue 5A and 5B. If there's some way to just modify the
2 question in Issue 5 to include those things, parentheses to say
3 that those are included. And to the extent that you can't
4 reach agreement by some time tomorrow, then we will reach one.

5 MS. BROWNLESS: We will try our best, Commissioner.

6 COMMISSIONER TEW: Thank you. Okay. Moving on to
7 Issues 6 through 8. Are there any changes to positions or any
8 other concerns about Issue 6 through 8?

9 MS. BROWNLESS: Again, our position with regard to
10 Issue 6 was to have the cost-effectiveness evaluated on the
11 basis of each individual utility as well as composite.

12 COMMISSIONER TEW: Any additional concerns? I think
13 with regard to the subparts we've decided that, and, again, I
14 think it's best to include -- to not have them broken out in
15 subparts. But, again, I think that we're going to make
16 accommodations in the position statements and the number of
17 pages of the briefs to allow you to do, to make your arguments
18 with respect to each entity involved. And the staff
19 recommendation, of course, will go through each of those
20 entities and, and reflect those arguments of the parties.

21 I guess that takes us back to the additional issues.
22 Since we have resolved or discussed the 1st Additional Issue,
23 we'll move on to the second additional -- actually the 2nd
24 Additional Issue as well, I believe.

25 MS. BROWNLESS: May I back up just a minute, please,

1 ma'am?

2 COMMISSIONER TEW: Certainly.

3 MS. BROWNLESS: To Issue 7. So I don't think there's
4 any -- at least we have no objection to Issue 7. And then
5 Issue 8 -- I just wanted to make sure 7 and 8 are squared up.

6 COMMISSIONER TEW: Ms. Brownless, can you clarify
7 what you're concerned about 7 and 8?

8 MS. BROWNLESS: Well, I just -- I thought we went, we
9 discussed everything except 7 and 8, and all I wanted to make
10 sure of is that everybody was on board with 7 and 8. We
11 certainly are.

12 COMMISSIONER TEW: And maybe this is a good time to
13 add, I've noted that on several of these positions the position
14 statements are rather brief. And I'm fine with that. I'm not
15 suggesting you need to change your positions. But to the
16 extent any party wants to change their positions, I think today
17 is the deadline for that, as I understand it, unless there's
18 some good cause shown to be able to change your position going
19 forward, and to the extent the parties want to get additional
20 wording to staff today to reflect their position.

21 MS. BRUBAKER: That's correct, to the extent that a
22 party has not taken a position on the issue, except for staff,
23 of course, staff's positions are always subject to change
24 depending on what evidence is adduced at the hearing. But to
25 the point that a party has not taken a position on an issue,

1 their ability to do so waives by the prehearing conference.

2 Now there's a number of positions where the answer is
3 a simple no or a simple yes. Of course, is that sufficient as
4 a position? Technically yes, although staff does encourage the
5 parties, to the extent they can, to elaborate their positions.
6 It is an enormous help to staff to help guide our discussion,
7 our preparation of the hearing to understand more thoroughly
8 what the parties' concerns are with those given issues.

9 It is, it is not uncommon for a party to wish to
10 rephrase, develop, modify its position subsequent to the
11 prehearing in light of conversation had at the prehearing.
12 Certainly if the parties wish to elaborate or modify or correct
13 their positions by day's end, we're happy to make those changes
14 as we receive them.

15 COMMISSIONER TEW: Let me just add to that that it
16 also helps the Commission to have a good understanding of what
17 each party's position is. And I realize that, of course, after
18 the hearing that you will be able to expand on that. But
19 definitely to the extent we've collapsed some of the subparts,
20 for instance, I know that some of the parties may want to
21 elaborate on their positions, but also to the extent you just
22 want to elaborate on positions where you've taken a simple yes
23 or a no, I believe that would be helpful and that's my
24 suggestion. But, again, I'm not trying to tell you that you
25 need to change your positions in any way. It's just a

1 suggestion.

2 MS. BRUBAKER: I'm sorry. I've touched on this
3 already, but to the extent the issues, I believe it's
4 1 through 4 and Issue 6 are now going to be condensed, staff,
5 of course, will be revising those issues. But since the
6 parties are aware of what that collapsed issue is going to be,
7 to the extent that would change your position, please provide
8 it also by the end of the day.

9 MS. BROWNLESS: And I just want to make sure I have
10 the timing for this right. I know that after the prehearing
11 conference we'll be spending some time trying to work out the
12 language this afternoon. And if we could have until tomorrow
13 afternoon, we have depositions tomorrow afternoon, so if we
14 could have until then, that would be greatly appreciated to get
15 our revised positions there. And I might even beg since this
16 is Christmas weekend --

17 MS. BRUBAKER: We're happy to accommodate that.

18 MS. BROWNLESS: -- that we have until Tuesday
19 morning. Because I know many of us are going to try and
20 actually spend some time with our family this weekend.

21 MR. PERKO: I'd be willing to get on my knees next to
22 Ms. Brownless for that request.

23 COMMISSIONER TEW: My only concern is having a
24 finalized prehearing order to you all in some kind of time
25 frame to prepare for your case. But if you all are willing to

1 forego that --

2 MS. BRUBAKER: My additional concern is to the extent
3 that parties have been instructed to rework the wording of
4 issues, to the extent they're not able to do so, if we don't
5 know that until Tuesday, that puts us at a disadvantage. Can
6 we get a commitment that we will have revised language by day's
7 end?

8 MS. BROWNLESS: We will stand on our head to do that
9 if we can get until Tuesday to --

10 MS. BRUBAKER: And are we talking close of business
11 Tuesday or are we talking noon Tuesday, are we talking open of
12 business?

13 MR. PERKO: Noon.

14 MS. BROWNLESS: Noon is good.

15 MS. BRUBAKER: Okay. Noon on Tuesday is fine with
16 staff.

17 COMMISSIONER TEW: Okay. All right. I think moving
18 right along to the 3rd Additional Issue, which I believe is on
19 Page 22 of the prehearing order. Mr. Perko, did you have --

20 MR. PERKO: Is this the third?

21 COMMISSIONER TEW: Yes. 3rd Additional Issue.

22 MR. PERKO: Yes, Commissioner. I guess our concern
23 about this issue is two-fold. Number one, we're not exactly
24 sure what it means, given the fact that we don't see any
25 requirements of Section 366.1 that apply to this proceeding.

1 That provision specifically provides the legislative intent for
2 the Florida Energy Efficiency Conservation Act or FEECA, which
3 only puts requirements on utilities that exceed 200 gigawatt
4 hours by a certain date. As far as need for -- and it requires
5 them to develop conservation goals and submit them to the
6 Commission for approval in separate proceedings.

7 The only discussion of the Power Plant Siting Act is
8 a provision that says that FEECA provisions as well as 403.519,
9 which is a provision of the Siting Act, are to be liberally
10 construed in a certain manner that's laid out in our pleading.
11 That clearly is a guide to statutory construction, not a
12 substantive requirement. So I don't see how this issue is
13 really something that the Commission could make a conclusion on
14 because there are no requirements that are applicable under
15 366.88 or 81 in this proceeding.

16 COMMISSIONER TEW: Ms. Brownless.

17 MS. BROWNLESS: This is what we were trying to get at
18 with regard to this issue. This is not an issue that I wrote.
19 I believe this was an issue that was raised by Brian Armstrong
20 on behalf of Ms. Armstrong and Dr. Viegbesie.

21 I think what they're trying to get at is that Section
22 366.81 clearly, as Mr. Perko indicates, does not apply to the
23 Applicants in this case because they're too small. However,
24 the intent of Section 366.81 is that all reasonably achievable
25 energy efficiency measures, demand-side management measures be

1 taken, and that clearly the appropriate use of demand-side
2 management measures and consideration of demand-side management
3 measures is a statutory criteria for need determination cases.
4 So I think the idea here was to recognize that the intent
5 expressed in Section 366.81 is the same as that expressed in
6 the Commission's mandate with regard to need determinations to
7 consider demand-side management and other load shifting and
8 load reducing programs.

9 COMMISSIONER TEW: Mr. Paben, do you have anything to
10 add?

11 MR. PABEN: No.

12 COMMISSIONER TEW: Mr. Jacobs?

13 MR. JACOBS: I would concur. I originally had a
14 similar issue to this which asks whether the approval should be
15 consistent with Senate Bill 888 and the legislative intent that
16 was expressed there. And I pulled that in lieu of this because
17 I think this covers the idea that there is a legislative intent
18 which promotes efficiency, conservation and demand-side
19 management, and to what extent should those concerns and
20 considerations and issues be balanced in a need determination.

21 COMMISSIONER TEW: Thank you.

22 Staff?

23 MS. BRUBAKER: I guess a couple of, a couple of
24 points. Should Section 366.81 apply to this proceeding? No, I
25 don't believe it should. In fact, I believe the only

1 municipalities that would be under its purview would be JEA and
2 OUC. The others are simply not large enough.

3 It's a little difficult to be clear on what this
4 issue is meant to address. When I look at the positions of the
5 parties, it's not particularly clarifying except Mr. Whitton
6 submits a position talking about the health, environmental and
7 general welfare of Florida citizens. To the extent we're
8 talking about public health concerns, I think we've already
9 touched on that those are not appropriate to a proceeding here
10 under our need determination statute. It's not something we're
11 given statutory authority over. The Commission is the
12 exclusive forum for the determination of need. Public health
13 concerns, who addresses those may be DEP, may be local health
14 departments. I don't know. That's not an area over which I
15 have any expertise.

16 I think the issue is not applicable, I don't think
17 it's relevant to this proceeding and I would recommend it be
18 stricken.

19 MS. BROWNLESS: Commissioner, if I may say, if I
20 understand the statement of Ms. Brubaker, she concedes that
21 FEECA applies to JEA; is that correct?

22 MS. BRUBAKER: In an overall sense in this
23 proceeding, no.

24 MS. BROWNLESS: Okay. I understand that. But I
25 guess what I'm saying is if JEA is a FEECA-regulated utility

1 due to its size and JEA is an Applicant in this proceeding,
2 then the requirements of 366.81 apply to JEA. And JEA's
3 participation in this facility impacts its demand-side
4 management programs, the development of those programs impact
5 its conservation goal requirements under 366.81.

6 COMMISSIONER TEW: Ms. Brubaker.

7 MS. BRUBAKER: If I may, conservation is being
8 addressed in this proceeding through other issues. We do not
9 need the separate issue to address conservation. It's not only
10 how it applies to JEA, but all the four Applicants as well.

11 MR. JACOBS: Well -- I'm sorry.

12 COMMISSIONER TEW: Mr. Jacobs, briefly.

13 MR. JACOBS: I have a certain ambivalence to
14 discussing my issue in the context of this statute as well
15 because what I really believe we want to get at is what's the
16 most cost-effective energy resource for this capacity addition,
17 and I think this is too narrow a context to address that
18 discussion. But if it's the jurisdictional forum that we want
19 to address this in, fine. But really what we are -- and here's
20 a concern, is in this application the parties say that they
21 have the most cost-effective proposal because they could find
22 no other alternatives that were cost-effective using regulatory
23 standards that fall under your FEECA regulation.

24 What we'd really prefer is some way of saying what
25 are the most cost-effective capacity additions, given all the

1 mechanisms that should be considered?

2 COMMISSIONER TEW: I understand that, Mr. Jacobs. I
3 believe that the issues as drafted -- I believe Issue
4 4 specifically, and perhaps staff can help me with others, but
5 I think that the issues that we've already got laid out in this
6 case give you an opportunity to argue that. I believe to the
7 extent you think Section 366.81 is persuasive with regard to
8 those issues, I think you have an ability to raise that through
9 testimony and to bring that up through cross, but staff can
10 correct me if I'm wrong. But my feeling is that this 3rd
11 Additional Issue should be removed. But I will let staff give
12 you any additional detail about where you should make those
13 types of arguments because I think there needs to be a place in
14 the case for them and I do think that we've provided that. I
15 understand the need to, or the preference to have a specific
16 place where you think it's going to, we're going to narrowly
17 focus on that. But, again, I believe that the issues as
18 currently drafted will give you a place to argue those things.

19 Ms. Brubaker.

20 MS. BRUBAKER: If I may, certainly to the extent that
21 FEECA would be a matter to be brought in the position of the
22 parties for conservation, Issue 4, cost-effectiveness, Issue 6,
23 I think there's ample opportunity to, and as part of the
24 position of the parties to raise FEECA. They may certainly do
25 so in the existing issues.

1 COMMISSIONER TEW: Thank you. Then the 3rd
2 Additional Issue will be removed.

3 The 4th Additional Issue, I'll just go ahead and say
4 I believe that that relates to Issue 6 as well, but I will
5 allow each of the parties to give some input on the
6 4th Additional Issue.

7 Mr. Perko.

8 MR. PERKO: Yes, Commissioner. As we've stated in
9 our response, we believe that the fuel prices and
10 transportation costs are components of the economic analysis
11 that really goes to cost-effectiveness that are dealt with in
12 the standard issues under the statutory criteria. So we don't
13 really see a need to list that out separately.

14 MS. BROWNLESS: Same old song. What we'd like to do
15 in order to focus attention on these specific issues, obviously
16 they're part of is this most, is this the least cost option
17 available, and we'd just like those all listed as subparts of
18 Issue 6.

19 COMMISSIONER TEW: Mr. Paben.

20 MR. PABEN: Same position. I mean, I think it does,
21 could fall under Issue 6. It's just a matter of space and
22 being able to focus attention on specific issues.

23 COMMISSIONER TEW: Mr. Jacobs?

24 MR. JACOBS: I won't add any further. I think my
25 comments previously addressed this.

1 COMMISSIONER TEW: I would -- before I ask Ms.
2 Brubaker to comment, I'd also remind everyone that we've
3 already talked about adding additional wording space to make an
4 argument in the position statements with respect to this 4th
5 Additional Issue, if you so choose. But, Ms. Brubaker, do you
6 have anything to add?

7 MS. BRUBAKER: With regard to --

8 COMMISSIONER TEW: 4th Additional Issue.

9 MS. BRUBAKER: -- the fourth issue, frankly it's my
10 opinion that it falls neatly under Issue 6. It's certainly
11 where staff intends to address the purchase prices and
12 transportation costs for natural gas and coal. It's where we
13 typically would do so.

14 Is it necessary to have it broken out? I don't --
15 not in my opinion, no, or in staff's.

16 COMMISSIONER TEW: My ruling and preference is to
17 address this under Issue 6. I believe that this is something
18 that typically is covered in Issue 6. I believe there's
19 probably testimony with respect to this under Issue 6, and I
20 believe that's the best place for it for better efficiency.

21 For the 5th Additional Issue, Mr. Perko.

22 MR. PERKO: Yes. Thank you, Commissioner. This
23 relates to whether the Applicants have requested available
24 funding from DOE to construct an IGCC unit. We consider this
25 issue to be irrelevant. There's nothing in the statute or any

1 other condition precedent that requires Applicants to seek
2 federal funding for any other type of project. We are in sort
3 of a dilemma particularly in this issue because the way the
4 process is supposed to work under the APA, the other side is
5 supposed to provide evidence that corroborates their issues and
6 we can respond through rebuttal.

7 In this case, Dr. Smith did provide some evidence on
8 this issue. But since he's been -- and we did provide some
9 rebuttal, which I think covers the issue adequately. But now
10 that Dr. Smith has been taken out, there's sort of a dearth of
11 record on this. So I don't think that given the record this
12 issue could be addressed anyway. And, again, I just don't see
13 how it's relevant to this proceeding.

14 MS. BROWNLESS: Well, even if Dr. Smith's testimony
15 is withdrawn on this point, I do think anything that has to do
16 with available funding -- obviously we're back down to the cost
17 of the unit. Have you done everything that you can to mitigate
18 the cost of this unit? There's testimony in this record that
19 one of the reasons an IGCC plant was not considered was that it
20 was more, it cost more. Okay? And that is the testimony of
21 Mr. Rollins, I believe, as well as Mr. Kushner.

22 If -- to the extent the DOE funding is available to
23 mitigate that cost and make the price of an IGCC unit more
24 compatible to that of the supercritical pulverized coal unit
25 that they're advocating here it clearly is relevant. We're not

1 saying that the Applicants have to, have to go -- we're not
2 saying that's a statutory requirement for them to do. What we
3 are saying is that it's relevant to the cost of the IGCC unit
4 that they used in their supply-side alternatives and when they
5 were screening their supply-side alternatives.

6 We would also point out that I think OUC and the
7 Southern Company is in the process of preparing a need
8 application for an IGCC unit in which part of their application
9 is we went to DOE and got X number of dollars in order to
10 mitigate the price differential for this unit, and that's
11 really what we're seeking to address. And I don't think it is
12 necessary that there be direct testimony presented by the
13 Intervenors on this point for this to be a relevant issue in
14 this proceeding.

15 COMMISSIONER TEW: Mr. Paben, anything to add?

16 MR. PABEN: Nothing to add. It's just it goes toward
17 costs.

18 COMMISSIONER TEW: Mr. Jacobs?

19 MR. JACOBS: Nothing to add.

20 COMMISSIONER TEW: Staff?

21 MS. BRUBAKER: You know, staff is halfway tempted to
22 suggest to the parties that they stipulate the issue because
23 essentially the positions, although more elaborated by the
24 Applicant, is no, no, no, no. Of course, I'm sure there's a
25 difference of opinion about what the significance of that no

1 means. So to the extent they can't stipulate --

2 MR. PERKO: I would disagree that our position was
3 no. I think the question asked "Have the Applicants requested
4 available funding?" We did investigate available funding from
5 DOE and presented testimony in rebuttal in response to
6 Mr. Smith on that point. So if the Applicants take issue with
7 that, I guess we do have a disputed issue.

8 MS. BRUBAKER: Again, what staff has struggled
9 with --

10 MR. PERKO: The Intervenors. I'm sorry.

11 MS. BRUBAKER: I'm sorry. What staff has struggled
12 with on this issue is how it fits into the proceeding overall.
13 You know, factually have they done it? That's fairly easily
14 addressed. So whether we would particularly suggest leaving
15 this issue in, I don't think there's any harm in doing so.

16 MR. PERKO: Well, the only harm, Commissioner, is
17 that we weren't put on notice that this is a requirement of our
18 filing. It's never been a part of any filing before. So if
19 it's, if it's dressed as a burden of proof matter, we need to
20 have the opportunity to put something in the record on that.
21 We did that through rebuttal when Dr. Smith raised this in his
22 testimony. But now that Dr. Smith is no longer testifying, I'd
23 like to submit the rebuttal testimony to prove that we have
24 done this as supplemental testimony.

25 MS. BRUBAKER: Perhaps I could clarify then. To the

1 extent this is an issue of cost, certainly it could be covered
2 in a position under Issue 6. So from that standpoint with that
3 understanding --

4 COMMISSIONER TEW: Let me try this. I'm inclined to
5 leave it in. But I want to address whether or not the
6 Intervenors would be willing to leave the testimony, the
7 rebuttal testimony to Mr. Smith's testimony that has been
8 withdrawn in the record to address Mr. Perko's concern that he
9 has no testimony in the record on this point.

10 MS. BROWNLESS: I'm certainly agreeable. Sure. He's
11 entitled to present his case.

12 COMMISSIONER TEW: And, Mr. Perko, I don't believe
13 that anyone is suggesting that it's a criteria under the
14 statute.

15 MS. BRUBAKER: Absolutely. Staff would certainly
16 concur with that. That's not staff's opinion at all.

17 COMMISSIONER TEW: But I think it's, I think it's
18 fine to have a place to discuss this. I think that it's good
19 to have a placeholder just to address that. I think that that
20 is something that has come up and I just frankly think it would
21 be a good placeholder to address that.

22 MR. PERKO: Thank you.

23 COMMISSIONER TEW: The 7th Additional Issue, Ms.
24 Brubaker.

25 MS. BRUBAKER: Yeah. Actually just to make sure I'm

1 clear, with the inclusion of this issue, it is also with the
2 understanding that the rebuttal that would address, would
3 otherwise be withdrawn from Mr. Smith's testimony or --

4 MS. BROWNLESS: Sure.

5 MS. BRUBAKER: You all know what I'm talking about.

6 MS. BROWNLESS: Yeah.

7 MS. BRUBAKER: That will stand; correct?

8 MS. BROWNLESS: Yes.

9 MR. PERKO: What we could do is just tack that on to
10 his direct so you wouldn't have a rebuttal witness.

11 MS. BRUBAKER: If everyone is agreement with that, I
12 think that's a workable solution.

13 MS. BROWNLESS: Yes, ma'am. We just -- yeah.
14 Whatever mechanism allows the Applicants to put that testimony
15 in the record is fine with us.

16 COMMISSIONER TEW: As long as everyone understands
17 that the testimony is what the testimony is. I mean, if there
18 is no testimony in dispute, we, you know, we have what we have
19 in the record and that's what the Commissioners will be basing
20 a decision on2q.

21 MR. PERKO: Commissioner, what I would propose is
22 just to file revised sets of testimony to make all this clear
23 so we have the right portions in the record and there's no
24 questions about whether it's this or that.

25 COMMISSIONER TEW: Mr. Perko, when do you foresee

1 having that filed?

2 MR. PERKO: Tuesday afternoon.

3 MS. BRUBAKER: Can I have a moment to confer with
4 staff?

5 COMMISSIONER TEW: Sure.

6 MS. BRUBAKER: Thank you.

7 (Pause.)

8 MS. BRUBAKER: Mr. Perko, may I have some
9 clarification? You're discussing refileing what or filing what
10 exactly on Tuesday?

11 MR. PERKO: Perhaps we could do this afterwards. I
12 don't think it's going to take much work.

13 MS. BRUBAKER: Okay.

14 MR. PERKO: What I wanted to do is rather than
15 strike, you know, get on the stand and strike rebuttal, strike
16 rebuttal, just have a clear set of testimony for each witness
17 so there's no confusion.

18 MS. BRUBAKER: Is that specifically rebuttal
19 testimony or are you also talking about it affecting the direct
20 as well?

21 MR. PERKO: It would affect, I think for Mr. Lawson,
22 his rebuttal testimony would in fact be included in his direct.

23 MS. BRUBAKER: So it would be for Mr. Lawson only
24 with regard to this specific issue?

25 MR. PERKO: Yes. Now the other circumstances where

1 things would change, some of the rebuttal witnesses had
2 rebuttal to Mr. Smith. That would be deleted from their
3 testimony. The two witnesses that I explained earlier,
4 Mr. Klausner and Mr. Hoornaert, had testimony related to the
5 updated costs in Mr. Kushner's analysis. Those particular
6 statements would become supplemental testimony. I would file
7 them separately. That's how I would perceive doing it.

8 MS. BRUBAKER: Staff has no objection to the concept
9 at all. It's not that. Our concern is being able to assemble
10 the information timely for the hearing. And if Tuesday noon is
11 acceptable, we will make every effort to do so. We do urge to
12 the extent it could be filed sooner, please do so.

13 MR. PERKO: We will make our best effort and possibly
14 get that to you tomorrow.

15 COMMISSIONER TEW: Mr. Perko, could you state that
16 again?

17 MR. PERKO: I'm sorry. We'll make our best efforts
18 and hopefully get it to you tomorrow, but I just can't commit
19 on that right now.

20 MS. BROWNLESS: And I guess, Commissioner, we're just
21 going to want to go on record as saying that whatever mechanism
22 allows Ms. Perko to straighten out his testimony we certainly
23 will not object to.

24 COMMISSIONER TEW: Good.

25 MR. PERKO: Thank you.

1 COMMISSIONER TEW: Nice we're all in agreement today.
2 Moving on to the 6th Additional Issue. Mr. Perko.

3 MR. PERKO: Again, Commissioner, I don't see this as
4 a relevant issue. The Commission has never before made it a
5 requirement of Applicants for a need determination to, to
6 provide evidence that their board has approved a final
7 construction of a project prior to the approval of the need
8 application, let alone a site certification application. Our
9 Applicants are in no different situation than a typical IOU who
10 is going through the process and, once that process is
11 complete, will evaluate whether it makes -- it would be prudent
12 to go forward with that project. So I really don't see how
13 this issue is relevant.

14 COMMISSIONER TEW: Ms. Brownless.

15 MS. BROWNLESS: Yes, ma'am. I do think there's
16 Commission precedent for this type of issue and for this type
17 of information to be discussed. And I would go back to that
18 Cypress Energy case that I cited before, let me see, which is
19 Docket 92-0520.

20 That docket, the Cypress Energy Power Partners
21 Limited Partnership was an IPP and they were building a
22 pulverized coal unit on behalf -- to satisfy FPL's need. And
23 the Commission required quite extensive testimony with regard
24 to the power plant citing contract, what the exact terms and
25 conditions of that were, what was FP&L's ability to back out of

1 that contract, that type of thing. I think it's common sense
2 that where a unit is being supported by four separate entities
3 who have four different political entities or groups of people
4 to answer to and where there is no one applicant whose need is
5 being satisfied -- I mean, if you look at the division of the
6 megawatts here, if two of these people drop out, the need for a
7 750-megawatt power plant radically drops down to 200 megawatts.
8 I mean, there's a significant difference depending on who stays
9 in and who stays out. And that's why I think here, unlike when
10 you have one applicant or even two applicants, it is really
11 significant because you have an aggregation of such small load
12 in essence. So I think that's why it ought to be a separate
13 issue because it has a significant impact on the need for
14 capacity.

15 COMMISSIONER TEW: Mr. Paben, anything to add?

16 MR. PABEN: No, nothing.

17 COMMISSIONER TEW: Mr. Jacobs?

18 MR. JACOBS: I would add that if you were to approve,
19 if the Commission were to approve this, this need and one of
20 those members indeed does not go through to full build out,
21 there was just a modification of your decision without your
22 review. In this case that would happen -- that could happen.
23 And I think for that, for that very, for that very reason it's
24 absolutely relevant to your decision.

25 COMMISSIONER TEW: Mr. Perko, briefly. I can tell.

1 MR. PERKO: Yes, ma'am. Well, first of all, I don't
2 see that any of the arguments that have been made have tied
3 this issue to any of the statutory criteria. And, secondly,
4 there is no proposal at this time for any of the Applicants to
5 pull out of this project and you can't assume that they will.
6 If, in fact, that were to happen at some date, I'm sure that
7 the Intervenors would bring that to your attention and suggest
8 one way or the other that you revisit this or that the Governor
9 and Cabinet require you to do so. Now I'm not saying that
10 would be the appropriate thing to do at that time, but unless
11 and until there's a change in the number of Applicants, it's
12 simply not an issue.

13 MS. BROWNLESS: And with all due respect, Your Honor,
14 what mechanism exactly do we have other than here, the body
15 that is the exclusive body to determine the need for capacity?
16 Where would we go? I believe if what Mr. Perko hypothesizes
17 were to happen, we would get before the Governor and Cabinet
18 and they would say, "Oops, too bad. The exclusive forum for
19 determination of capacity need was the Florida Public Service
20 Commission. You lose." So basically this is our only
21 opportunity to explore those options with you.

22 COMMISSIONER TEW: Ms. Brubaker.

23 MS. BRUBAKER: Let me sort my thoughts a moment. I
24 agree with some and I disagree with some and then I agree with
25 some.

1 There are a couple of things. One is I have to agree
2 this is certainly not required, a part of the statutory
3 requirements for a need application. In theory, any applicant
4 or applicants that come before us may decide, even after the
5 need has been determined and approved by this Commission, not
6 to pursue to construction for any number of reasons. There may
7 be some change in the market that makes it suddenly not
8 cost-effective. There may be some other changes with those,
9 those governing bodies that make it somehow something they do
10 not pursue. That's not a determination we make. That's not
11 something we look at.

12 Do they have the approval to see it through this
13 proceeding? Certainly. That's something I think that we could
14 appropriately address. But that's not what's being discussed
15 here.

16 At the same time, the comment regarding this is the
17 only forum to address this concern, all of these are
18 self-regulating bodies that have some mechanism to hear public
19 comment past -- up through the point of the construction. So,
20 for instance, with the City of Tallahassee, if there's some
21 concern about whether they're going to have approval through
22 construction, well, that's something that Tallahassee would
23 address, not the Commission.

24 At the same time, although this is not something that
25 our statutes in any way require us to look at, I think this is

1 the only place where the Intervenors could address this issue.
2 To me, looking at the issues that are currently in, I don't see
3 any other spot for this to be addressed. So the question of
4 relevance is certainly a good one. But just in terms of
5 availability to argue it, I don't know that there are any
6 existing issues where they could posit this in their
7 discussions.

8 COMMISSIONER TEW: I agree. My inclination is to
9 leave it in for that very reason. Again, Mr. Perko, I don't
10 believe that that's any suggestion that this is required by the
11 statutes. I don't believe that the other parties have
12 suggested that either. But, again, I believe it's appropriate
13 to leave it in and give them a clear place to address that
14 issue for the Commission's benefit.

15 MR. PERKO: Fair enough.

16 COMMISSIONER TEW: The 7th Additional Issue I believe
17 we addressed earlier with regard to Issue 5. The 8th
18 Additional Issue, Mr. Perko.

19 MR. PERKO: Again, I think this is another one that's
20 subsumed in the cost-effectiveness issues and doesn't need to
21 be segregated out separately.

22 COMMISSIONER TEW: Ms. Brownless.

23 MS. BROWNLESS: I've repeated myself on that and you
24 know how I feel about it. I just think specific issues give a
25 better sense to the Commissioners, direction, and result in a

1 final order that is more appropriate for review on appeal.

2 COMMISSIONER TEW: Mr. Paben, anything to add?

3 MR. PABEN: Nothing to add.

4 COMMISSIONER TEW: Mr. Jacobs?

5 MR. JACOBS: Very briefly. It might give the
6 Commission a good bit of reference to understand the extent to
7 which this is an industry trend at this point, which it seems
8 to be, and to that extent give considerable wisdom as to how to
9 address this issue on a going-forward basis.

10 COMMISSIONER TEW: Staff?

11 MS. BRUBAKER: I would have to agree that there are
12 opportunities to discuss this in the existing issues. For
13 instance, when it comes to the sensitivity analyses, that could
14 be addressed under Issue 6. To the extent the concern is cost
15 escalations, I think probably Issue 2 would be a place that
16 could be addressed. In my mind there's ample opportunity to
17 discuss it and it would not need to be broken out separately.

18 COMMISSIONER TEW: That's my feeling as well. I do
19 think, of course, that's a legitimate issue to look at. I just
20 believe that the existing issues give all parties perhaps a
21 couple of places to argue that. So I'm going to remove the 8th
22 Additional Issue.

23 The 9th Additional Issue, Mr. Perko.

24 MR. PERKO: Very briefly, Commissioner. This is
25 another issue that I'm not quite sure I understand. It appears

1 to suggest that the Commission require the Applicants to submit
2 any changes to capital cost estimates and perform a cost
3 effectiveness analysis at any time, whether it be prior to the
4 Governor or Cabinet's review of the project or even afterwards.
5 And I don't think there's anything in the statute that gives
6 the Commission authority to do that. The Commission's need
7 determination is a first step in the site certification
8 application, and I think we need to get beyond that step and at
9 some point the record has to close. So I think that this is an
10 appropriate issue as I understand it, and I may not understand
11 it correctly.

12 COMMISSIONER TEW: Ms. Brownless?

13 MS. BROWNLESS: I think when this issue first came
14 up, and this was not my issue, there was some concern that
15 revised capital costs would not be provided. I think the
16 Applicants have provided revised capital costs. They are
17 submitting supplemental testimony on revised capital costs. We
18 have all requested, and I have no reason to believe the
19 Applicants will not provide additional discovery on sensitivity
20 analysis associated with those costs. So for my part, since
21 that's what I understand this was trying to get at, it can be
22 stricken as far as I'm concerned.

23 COMMISSIONER TEW: Mr. Paben, anything to add?

24 MR. PABEN: I'll defer to Mr. Jacobs.

25 COMMISSIONER TEW: Mr. Jacobs?

1 MR. JACOBS: I would agree that in this particular
2 case the parties have been very gracious in complying with
3 additional information requests.

4 One fundamental thought that comes out of this, and
5 particularly with an Applicant -- let me just digress for one
6 moment. You do this already in the investor-owned community.
7 At some point in time they're going to have to undergo prudence
8 issues, they're going to have to undergo clause issues, so
9 there's no groundbreaking issue here with regard to that.

10 The question becomes is in the context of a decision
11 of the energy policy of the state, can, can you as a
12 decision-making body come to some kind of hard and fast
13 conclusion as to what's happening in the industry? What we're
14 seeing now, particularly in a period as we're experiencing at
15 this point in time where there's substantial volatility, where
16 there's substantial evolution of cost, how can you get a handle
17 on what your state is actually experiencing unless you see it?
18 And I propose that even if you don't use this in going back and
19 reviewing your need determination, which I don't know that, I
20 don't know that I would recommend, I think just as you do now
21 in your ten-year site planning, just as you do now with IOUs
22 and prudence reviews, there may be a need in this particular
23 period of time to understanding what's happening in this
24 particular activity across the board. And that would be my
25 justification.

1 COMMISSIONER TEW: Thank you.

2 Ms. Brubaker, anything?

3 MS. BRUBAKER: I would point out that Mr. Jacobs is
4 correct. In the last few need proceedings regarding IOUs we
5 have had required cost reporting. But then again we also have
6 rate base regulation of those utilities. These are
7 municipalities in this docket and other entities that are
8 self-regulated over which we do not have that authority.

9 And Ms. Brownless is also correct that we have had
10 revised capital costs provided both through discovery and
11 through testimony and it has been the subject of quite a bit of
12 discussion at the depositions.

13 So I think to an extent we do have some updated
14 numbers with which staff and the parties are all pursuing. You
15 know, this is not something I think is contemplated in the
16 statute. It's certainly not something I would be prepared in
17 this docket to pursue with regard to a municipality. Again,
18 I'm not sure on what basis we would even do that. I think my
19 recommendation is it should be stricken.

20 COMMISSIONER TEW: I agree. I'm going to strike
21 Issue 9, and just add for the record I believe that that's
22 something to be raised before the appropriate governing bodies,
23 that issue in the case where we have the types of Applicants
24 that we have before us. So we're going to strike Issue 9.

25 So I believe that gets us through all the additional

1 issues that have been proposed. Move on, I guess we can move
2 on to Section IX on the exhibit list.

3 Ms. Brubaker.

4 MR. PABEN: Excuse me. I had a quick question about
5 the issues. Are we going to renumber these issues? Because if
6 we're trying to get our new positions to staff --

7 MS. BRUBAKER: Thank you, Mr. Paben. Yes. Staff
8 will revise the issues. We're going to take those that were
9 provided from the additional -- those that were approved from
10 the additional issues list and try to find a place where they
11 best fit, and certainly we welcome any comments from any of the
12 parties about whether that's agreeable or not.

13 Ms. Brownless?

14 MS. BROWNLESS: If I may make the suggestion, since
15 we all are going to be trying to work out our issues with
16 regard to the expansion of Issue 5, maybe we could all try to
17 get together, and that way we would know what the staff intends
18 to number them so we could go home and try to get you our
19 responses in the correct order as soon as --

20 MS. BRUBAKER: We'd be happy to meet with you after
21 the prehearing, if that suits --

22 MS. BROWNLESS: If we could.

23 COMMISSIONER TEW: There are pros and cons to either
24 adding the issues onto the end or inserting them in. Because I
25 will note that you will have to change which issues each

1 witness addresses if we change the numbering substantially,
2 unless we insert issues in with As and Bs and that sort of
3 thing. So it's just something to consider. But I suppose
4 staff will get their proposed renumbering to everyone and then
5 you can work on that and hopefully get that resolved today.

6 MS. BRUBAKER: If we could have a small break at the
7 conclusion of the prehearing conference and then resume
8 discussion, perhaps we can work out the numbering at least so
9 we know how that should go in development of the positions for
10 the parties.

11 MS. BROWNLESS: And with the Commissioner's
12 indulgence, if I could have about five minutes, that would be a
13 wonderful thing, a five-minute break.

14 COMMISSIONER TEW: Sure. We're in recess for five
15 minutes.

16 (Recess taken.)

17 COMMISSIONER TEW: I think we'll go back on the
18 record now.

19 MS. BROWNLESS: Thank you so much.

20 COMMISSIONER TEW: Thank you.

21 Ms. Brubaker, I understand that everyone's in a very
22 agreeable mood after the break, so.

23 MS. BRUBAKER: We haven't actually been able to speak
24 with Mr. Paben yet, and we're happy to accept any comments he
25 has, but staff has taken the opportunity during the break to

1 work out how we think the issues would be incorporated and
2 revised the numbering. And if you like, we can walk through
3 that. Okay. And this may get a little confusing, but I'll try
4 to keep it as simple as possible.

5 When I refer to old issue, it's going to be as they
6 appear in the draft prehearing order Issues 1 through, I think
7 it's, what, 8, 7, and then 1st Additional Issue, 2nd Additional
8 Issue and what not, and then I'm going to renumber them. And
9 so with that, old Issue 1 is new Issue 1. Old Issue 2 is new
10 Issue 2. Old Issue 3 is new Issue 3. Old Issue 4 is new Issue
11 4. 1st Additional Issue becomes new Issue 5. Old Issue
12 5 becomes new Issue 6. The 5th Additional Issue becomes new
13 Issue 7. The 6th Additional Issue becomes new Issue 8. Old
14 Issue 6 becomes new Issue 9. Old Issue 7 becomes new
15 Issue 10. Old Issue 8 becomes new Issue 11. Does anybody need
16 me to repeat those or -- okay.

17 Also, we were kind of projecting the additional
18 information we're expecting to receive from the parties. And
19 with the indulgence of the parties, if by noon on Tuesday we
20 could receive, not full-blown revised prehearing statements,
21 but essentially that changed information for each new
22 additional issue including which new issues their witnesses
23 address, that sort of thing. And if we could just get a
24 comprehensive complete repeat of that information rather than a
25 piecemeal where we have to kind of figure out exactly where

1 it's supposed to go, that would be immensely helpful to staff.
2 And also if we could get that in Word format. Again, it just
3 really accelerates things for us if we could get that.

4 COMMISSIONER TEW: Any concerns with that? Good.

5 I guess that takes us back to the exhibit list.

6 MS. BRUBAKER: Yes, it does. Staff would like to
7 note for the record that for any number of the last hearings a
8 mechanism that staff has been using that we found particularly
9 helpful and really helps accelerate the hearing process, staff
10 intends to prepare a comprehensive stipulated exhibit list that
11 will consist of prefiled exhibits to enter into the record at
12 hearing, and staff will also provide a proposed stipulated
13 exhibit list of parties which we expect will include things
14 that would normally be entered as cross exhibits, deposition
15 transcripts possibly, discovery responses, interrogatories,
16 that sort of thing, we will provide that in advance to the
17 parties to see if there are any objections. And to the extent
18 there are no objections, that information would be submitted
19 into the record without having the necessity of it being
20 identified and, you know, essentially go through that process
21 individually. To the extent there are objections, of course,
22 we're happy to take those up. And I understand there are some
23 objections to some of the testimony exhibits at this time.

24 COMMISSIONER TEW: Ms. Brownless.

25 MS. BROWNLESS: I'm trying to think in my mind about

1 the mechanics of how this works. I understand with regard to
2 witnesses that we would stipulate to, that their evidence would
3 be stipulated into the record. And is, and is what you're
4 saying in addition to that, if they sponsored any deposition
5 exhibits that have been identified, those would go into the
6 record as well? I guess that's the part I'm a bit --

7 MS. BRUBAKER: With the stipulated witnesses,
8 provided they are ultimately stipulated, both their testimony
9 and their exhibits are entered into the record as though read
10 and as though identified at the hearing.

11 MS. BROWNLESS: And I guess what I'm --

12 MS. BRUBAKER: What we're talking about is in
13 addition to those witnesses and exhibits, the prefiled exhibits
14 that come with the various sets of testimony are identified.
15 And provided there's no objection to any given exhibit, those
16 exhibits are entered upfront at the hearing, and that way you
17 dispense with having to introduce the individual exhibits at
18 hearing. It's one big move into the record of the exhibits,
19 unless there's objection.

20 COMMISSIONER TEW: Basically, Ms. Brownless, it's
21 basically a time-saving mechanism. And as I understand it,
22 staff will propose a stipulated exhibit list to you all and you
23 all will have the opportunity to say if you don't agree with
24 any of those stipulations.

25 MS. BROWNLESS: And to the extent that a witness

1 might be stipulated in the record, his testimony might be
2 stipulated in where he sponsored responses to staff
3 interrogatories or responses to our interrogatories, are those
4 also put on that list and placed in the record? That's what
5 I'm trying to --

6 COMMISSIONER TEW: It's my understanding that they
7 could be listed on there. But if they were listed on the
8 proposed list, that you would have an opportunity to object to
9 that. But Ms. Brubaker may correct me.

10 MS. BRUBAKER: I'm sorry. If I could have you
11 repeat. I beg your pardon. I was --

12 COMMISSIONER TEW: The question is whether or not if
13 a witness's testimony and exhibits were on the stipulation
14 list, whether the deposition transcripts and such might also be
15 on there and whether or not, if they were proposed on there, if
16 they objected to the depositions being included as a stipulated
17 exhibit, that they would have the opportunity to raise that and
18 it would not go forward on the stipulated list. Am I making
19 any sense?

20 MS. BRUBAKER: Well, there's actually two stipulated
21 lists we're talking about. One is for prefiled exhibits and
22 one has to do with what we call the staff composite exhibit.
23 And it essentially is composed of whatever cross-examination
24 exhibits staff would otherwise be required to provide to the
25 witness and cross-examine. And if those are stipulated to,

1 they're simply entered into the record as admitted. And those
2 consist typically of deposition transcripts, interrogatory
3 responses, production requests. Am I answering the question?

4 MS. BROWNLESS: Yeah. And I guess what I'm trying to
5 get at is this. To the extent that there are exhibits attached
6 to the depositions, that would be included, late-filed
7 deposition exhibits? I mean, you know, I understand what
8 you're trying to do is get the most bang for your hearing time.
9 And I guess the mechanics, what I don't understand is exactly
10 what's, what's included. Do you -- because usually you just --

11 MS. FLEMING: If I may clarify. Staff is preparing a
12 list of exhibits that staff would like included into the
13 record, and that would be provided to the parties by email by
14 tomorrow afternoon. And with that list we will have the
15 parties -- we're going to provide the list. It may include
16 depositions, it may include late-filed exhibits to the
17 depositions. The list will be inclusive of what staff would
18 like included into the hearing record.

19 At that time if any of the parties object to any of
20 those exhibits, we request that you respond, and we will
21 provide that information in the email. If there are any
22 objections to those exhibits that staff would like to stipulate
23 into the record, staff will not put them in as a stipulated
24 exhibit but will either deal with them through
25 cross-examination or what have you at the hearing.

1 MS. BROWNLESS: Or we'll introduce them like one
2 normally does, did you prepare this exhibit, blah, blah, blah;
3 right? And let the other side object.

4 MS. FLEMING: Yes, that's correct. Yes.

5 MS. BROWNLESS: Thank you. I'm sorry to be --

6 COMMISSIONER TEW: No problem. I want everyone to
7 understand the sort of guidelines we use. It has worked quite
8 well in a number of cases, I'll add.

9 Moving on to Section X, proposed stipulations. I'll
10 be optimistic and ask if anyone is proposing any stipulations.

11 MS. BROWNLESS: Before we leave the exhibit list, I
12 just want to make sure that I clarify Dale Lashof's exhibits.

13 COMMISSIONER TEW: Could you tell me what page, Ms.
14 Brownless?

15 MS. BROWNLESS: Let me see. Page 30. Oh, I'm sorry.
16 Dale Bryk's exhibits, Bryk's exhibits. And -- wait a minute.
17 Her first exhibit, Portfolio Management: Protecting Customers
18 in an Electric Market that Isn't Working Well, Pages 1 through
19 52, and that also includes Appendix A through D. The second
20 exhibit, Synapse, Portfolio Management, Pages 1 through 77.
21 The third, California Secret Energy Surplus Potential for
22 Energy Efficiency, Pages 1 through 56 and Appendix A through D.
23 And I was concerned, Mr. Perko, that we didn't get that exactly
24 straight at her deposition.

25 COMMISSIONER TEW: Perhaps that's something that can

1 be discussed afterwards. It looks as if Mr. Perko needs some
2 time to look back.

3 MR. PERKO: I think we've cleared it up.

4 COMMISSIONER TEW: Could you -- I was going to ask
5 you, could you say that for the court reporter?

6 MR. PERKO: I think we've cleared that up.

7 COMMISSIONER TEW: Ms. Brownless, are you clear?

8 MS. BROWNLESS: Yes, ma'am. And what I will do is
9 identify my description or modify my description so it includes
10 those appendices so we're all straight because it was a bit
11 muddled.

12 COMMISSIONER TEW: Okay. Any other changes to the
13 exhibit list? I know there might be some with respect to other
14 decisions that have been made about the withdrawal of testimony
15 and such, but any other changes that staff needs to be aware
16 of? And to the extent that you find some later today, I think
17 we'll be working on this order for the next couple of days, so
18 just get those to staff.

19 Section X, proposed stipulations. And again I'll ask
20 optimistically, any proposed stipulations at this time? Seeing
21 none, move on to Section XI.

22 MS. BROWNLESS: And I want to apologize again. We do
23 want to identify as an additional exhibit the responses to the
24 NRDC second set of interrogatories number 1 through 8 to the
25 Applicant.

1 MS. BRUBAKER: The section listed here for exhibits
2 is for prefiled exhibits. If it's a cross exhibit, that's
3 fine, that's done separately. That does not appear in the
4 prehearing order.

5 MS. BROWNLESS: Oh, okey-dokey.

6 MS. BRUBAKER: The prehearing order provides that
7 parties are, are -- reserve the right to produce additional
8 cross-examination exhibits. That would include things like
9 discovery responses.

10 MS. BROWNLESS: Thank you.

11 COMMISSIONER TEW: Pending motions. And as I
12 understand it, we have several pending motions. It's probably
13 best to take up these in groups. We have five motions to
14 strike issues. And based on the earlier discussions of issues,
15 I think that we might have some of these that will be rendered
16 moot or resolved by the earlier decisions. But perhaps I will
17 turn to you all to give any input on those five.

18 MR. PERKO: Commissioner, I believe those are my
19 motions, so I believe that all those would be mooted or
20 resolved at this point, given the fact that many of the issues
21 that were addressed in there were not carried over into the
22 issues list and others have been addressed in this hearing. So
23 I don't think there needs to be separate rulings on those
24 motions. I just want to make it clear that I still reserve
25 rights to oppose or to dispute the relevance of some of those

1 issues, namely the CO2 regulation and, and some of the other
2 ones. But I'm not sure that we need a specific ruling on those
3 issues. But we'll make our position clear in our prehearing
4 order and our posthearing brief.

5 COMMISSIONER TEW: I agree. To the extent that you
6 think any issue is irrelevant, I think you can still, you can
7 still take such a position on those issues. And if something
8 comes up later on these issues that you have missed, just make
9 sure you get that to staff and let the other parties know.

10 But we'll show those motions to strike as -- should
11 we show them as withdrawn or just moot?

12 MS. BRUBAKER: If Mr. Perko has a preference.

13 MR. PERKO: I guess I'd show them as moot.

14 MS. BROWNLESS: And if I may have a qualification on
15 that, please. I think that's -- I understand that with regard
16 to the relevancy of issues raised. Two other issues were
17 raised in these motions. One was expertise of witnesses.

18 MR. PERKO: I think those are two different motions.

19 COMMISSIONER TEW: Mr. Perko, can you say that --
20 thank you.

21 MR. PERKO: I think we're thinking about two
22 different motions. The first five motions listed are motions
23 to strike issues raised in the petitions. I think those have
24 been mooted.

25 MS. BROWNLESS: Oh, okay. I'm sorry. I'm confused.

1 COMMISSIONER TEW: That's okay. So for the first
2 five motions to strike issues, actually the only five motions,
3 the only motions to strike issues, we will render those moot.

4 And now we'll move on to the motion to file
5 supplemental testimony. Actually I think we already addressed
6 that earlier.

7 MS. BRUBAKER: That has been addressed.

8 COMMISSIONER TEW: And that was granted. And then we
9 have received some additional motions as of yesterday, motions
10 to strike Intervenor testimony and exhibits. And I will turn
11 to staff to go over that briefly and then to the parties.

12 MS. BROWNLESS: Commissioner, I'm sorry, but there is
13 one other motion, which was a confidentiality motion with
14 regard to staff --

15 COMMISSIONER TEW: Yes. We'll get to that, I should
16 have said, but we'll get to that next. Let's take them up in
17 groups, please. Thanks.

18 MS. BRUBAKER: Yes. Yesterday, December 20th, there
19 were three motions to strike portions in testimony and exhibits
20 filed by, respectively, NRDC, Mr. Whitton and the Sierra Club.
21 And with each of those motions to strike there's an associated
22 request for oral argument. If it's the preference of the
23 parties, I suppose we could address it now. One concern staff
24 has is that it might be useful to give the Intervenors an
25 opportunity to more fully review those motions and perhaps

1 submit a response. Given the time frame we're under, it would
2 have to be not probably the full seven days response typically
3 allowed, but that is a discretionary length of time. But
4 barring a strong desire on the part of the Intervenors to
5 address it here orally, I think that would be a reasonable
6 accommodation to make.

7 COMMISSIONER TEW: I'll turn to the Intervenors first
8 to see whether or not you're prepared to make oral argument on
9 these motions to strike today.

10 MS. BROWNLESS: Well, no, ma'am, and let me tell you
11 why. First of all, when I looked at the motions to strike
12 which we received yesterday -- and I certainly don't fault the
13 Applicants for doing that, the prehearing procedure order
14 requires them to file their motions by the Prehearing
15 Conference if they're going to make any challenges to expertise
16 or qualifications. I looked at their request for oral argument
17 and noted that that said that they wanted it considered before
18 the full Commission. And so I guess I thought, oh, okay, we
19 won't be taking those up tomorrow.

20 I also reviewed Rule 28-106.2041 of the Florida
21 Administrative Code, which does allow seven days to file
22 written responses to any motions to strike. As I read these
23 motions, they are motions to strike under Rule of Civil
24 Procedure 1.140(F) as well as hearsay objections under
25 90.702 and 90.705, as well as the hearsay portion of

1 Chapter 90. And, frankly, between 3:00 yesterday afternoon
2 when I was getting this stuff and today I did not have an
3 adequate opportunity to prepare, so I would request that we be
4 allowed more time to respond.

5 I also want to ask that we be allowed to respond kind
6 of in two pieces. With regard to the Rule 1.140(F) which goes
7 to redundancy and materiality, I think those are appropriately
8 addressed in writing. And with regard to the issue of hearsay
9 and the use of hearsay in Chapter 120 proceedings and striking
10 on that basis, I think that can be addressed adequately in a
11 written response.

12 But with regard to the qualifications of the
13 witnesses, normally what one does is one puts a witness on the
14 stand, one asks them their experience, training or expertise
15 that will allow them to render the expert testimony they're
16 about to give. You tender them as an expert in a specific area
17 and then the other side is allowed to voir dire. For the
18 witnesses that the Applicants have challenged, I think that one
19 cannot be limited to the information that was provided in the
20 prefiled testimony. We have conducted depositions, the
21 Applicants have. Additional information has been given to them
22 with regard to training, skill, expertise. And I think that
23 those, rather than being addressed, for example, at the
24 beginning of the hearing, the actual hearing on January 10th by
25 means of review of written motions, those should be reserved

1 and actually addressed as those witnesses are put on the stand.
2 Because I honestly think that that's what the Florida Rules of
3 Civil Procedure require, and I think those rules need to be
4 followed in this proceeding.

5 COMMISSIONER TEW: Let me just jump in and say too, I
6 think Mr. Perko clarified earlier that his motion incorrectly
7 stated that it was to go before the full Commission and that he
8 intends for the Prehearing Officer to rule on that. So I just
9 wanted to mention that.

10 Mr. Paben, do you have anything to add?

11 MR. PABEN: Nothing to add, just that I'm not really
12 prepared at this time to make those arguments.

13 COMMISSIONER TEW: Certainly. Mr. Jacobs?

14 MR. JACOBS: I basically would have the same
15 comments.

16 One additional point, many of -- I think if we were
17 to give some time to this, as I've looked at the motion there
18 are some issues there where the dispute in my mind goes to a
19 marginal point and we may be able just to take out a one- or
20 two-word reference and get away from that particular issue. So
21 we may counter with some progress so we won't have to argue
22 this. That's my thought.

23 COMMISSIONER TEW: Well, on that point it seems that
24 maybe the parties could discuss those issues after this. I'm
25 not inclined, of course, to rule on them today. And I think

1 that oral argument is not necessary, at least not at this
2 point. If after, if after we've given the parties time to
3 respond, and I think the full seven days is fine given that
4 it's December 27th -- the sooner the better, but I know that
5 you've got some other things you're trying to do, you know, by
6 Tuesday, but December 27th, I think, would be the normal
7 response time. If after that point we find a need for oral
8 argument, we'll find some way to do that, by telephone or
9 something. But my guess is that after everyone has responded,
10 that we'll be able to make a ruling on that without, without
11 doing so.

12 So essentially on those three motions to strike
13 portions of testimony, I will take all those under advisement
14 after we've received the responses from the parties and issue a
15 ruling at that time.

16 I think that leaves pending confidentiality matters.

17 MS. BRUBAKER: There are currently no actual requests
18 for confidentiality. However, a notice of intent to file for
19 confidentiality has been filed. Under the applicable rule
20 there are 21 days until the actual request needs to be filed.
21 We simply note that in the draft for information's sake.
22 Typically we wouldn't necessarily put notices of intent there
23 since they're not actually the request for confidentiality
24 itself.

25 COMMISSIONER TEW: Are there any other pending

1 confidentiality matters that we need to be aware of, motions?

2 MS. BROWNLESS: No, ma'am. With regard to the one,
3 with regard to the POD Number 9, NRDC has no objection to it
4 being granted confidentiality as long as we're allowed to have
5 the documents subject to appropriate confidentiality
6 agreements. And we're perfectly willing to return it at the
7 conclusion of the proceeding.

8 MR. PERKO: We'd be willing to work through that. In
9 fact, Mr. Preston, who is the author of that document, is being
10 deposed tomorrow. There may be other confidential matters
11 discussed in that deposition. So what I would propose to do is
12 send the Intervenor's counsel a draft of the confidentiality
13 agreement that I've used in other matters, and maybe we could
14 work that out at the beginning of the deposition.

15 MS. BROWNLESS: That's terrific. Thank you.

16 COMMISSIONER TEW: Okay. Moving on to Section XIII,
17 posthearing procedures. I know we need to have some discussion
18 about word count and page numbers for the briefs. As we stated
19 earlier, I think 200 words for each position is ample, given
20 the consolidation of some of the Parts A through D on some of
21 these issues. You don't have to use the 200 words, but I do
22 want to hear from all of you on what you think as to the number
23 of pages necessary. Mr. Perko.

24 MR. PERKO: I try to write very briefly, so I'd like
25 to keep it as small as possible. Perhaps 80 pages --

1 COMMISSIONER TEW: Ms. Brownless?

2 MR. PERKO: -- if that.

3 MS. BROWNLESS: I'm trying to think about how these
4 things are actually organized. If one Applicant gets 40 pages,
5 there's four Applicants, I guess I would try to go for more
6 than 80. But nobody wants to write too much more than that, so
7 maybe cap it out at 100 pages just because that's a nice even
8 number.

9 COMMISSIONER TEW: Mr. Paben?

10 MR. PABEN: I would think 100 pages would be
11 sufficient.

12 MR. JACOBS: Absolutely.

13 COMMISSIONER TEW: Okay. 100 pages it is.
14 Mr. Perko, you can consolidate yourself into 80 pages still, if
15 you'd like.

16 MR. PERKO: I'll try to do less than that.

17 COMMISSIONER TEW: And we did do a little research on
18 some other cases to see what the page requirements were, so I
19 think 100 is reasonable, given the research we've done.

20 MS. BROWNLESS: We will, NRDC will today stipulate
21 that we will do our very best to limit the number of pages in
22 the brief.

23 COMMISSIONER TEW: Thank you. The next section is on
24 rulings. And, of course, there will be some things there as a
25 result of the decisions made today. I guess this is an

1 appropriate time to take up any other matters.

2 MS. BRUBAKER: Well, there's also -- provided that
3 opening statements are to be at issue in this proceeding, if
4 the parties are willing to waive it, certainly we welcome that
5 as a means to further expedite things.

6 To the extent they are not and they are interested in
7 making opening statements, staff would recommend that opening
8 statements not exceed ten minutes per side. And by that, what
9 I'm thinking is that there are actually four Applicants and
10 four Intervenors and that should help provide an opportunity
11 for an opening statement but not to unnecessarily belabor the
12 proceeding.

13 COMMISSIONER TEW: Mr. Perko, do you have thoughts?

14 MR. PERKO: That's acceptable to me.

15 MS. BROWNLESS: And I just need to understand, I just
16 need to understand the mechanics of that. The Intervenors as a
17 group would have ten minutes?

18 COMMISSIONER TEW: Yes. That's the proposal.

19 Mr. Jacobs, while Ms. Brownless thinks about that, do
20 you have thoughts?

21 MR. JACOBS: I'm just trying to think through. I
22 think under the makeup that we have now, that should be okay.

23 MS. BROWNLESS: Did -- and help me out here. I'm
24 having a senior moment. Did we decide that the summaries for
25 the witnesses were in or did we decide that the summaries of

1 the witnesses were out?

2 COMMISSIONER TEW: We did not. But I think this is
3 probably as good a time as any to decide that. Some people
4 prefer the witness summaries, some people don't. I don't think
5 particularly they add a whole lot, but I think they open up, I
6 think they open the door to a great number of objections and
7 time-consuming discussion. But seeing as how the parties want
8 that, I would suggest maybe limiting it to two minutes. I
9 think that most people can summarize what they need to
10 summarize out of their testimony in two minutes. But I, I will
11 leave it to you to give me feedback about whether you think you
12 can do it in two minutes. I note that particularly on the
13 Applicants' side we have an awful, awfully long number of
14 witnesses, and I think two minutes apiece is going to take up a
15 significant amount of time. But if you have concerns, feel
16 free to share them.

17 MR. PERKO: I think we could live with two minutes
18 apiece.

19 COMMISSIONER TEW: Could you repeat that?

20 MR. PERKO: I think we could live with two minutes
21 apiece.

22 MS. BROWNLESS: And I guess having had a second here
23 to think about this, what I would suggest perhaps, because
24 there's basically going to be three counsel participating for
25 the Intervenors, I would be willing to go with 15 minutes per

1 side since our opening, since the opening statement for each
2 witness is going to be very limited, and that way the
3 Applicants can have 15 minutes, they don't have to use it, but
4 we can have 15 minutes, which allows us to have five minutes
5 apiece. That's easy for everybody to track with, and I don't
6 think it, you know, significantly increases the amount of time
7 devoted to it.

8 COMMISSIONER TEW: That's acceptable to me. Staff,
9 are you --

10 MS. BRUBAKER: Just as long as the clarification is
11 it's five minutes per Intervenor representative rather than a
12 total of 15 minutes. If one doesn't use their full five
13 minutes --

14 MS. BROWNLESS: Oh, we won't do more than 15 minutes.

15 MS. BRUBAKER: All right.

16 COMMISSIONER TEW: Mr. Perko, do you have --

17 MR. PERKO: That's fine.

18 MR. JACOBS: Let's be clear. When you say the same
19 thing, are you saying that if we don't use our allotted five
20 minutes, we can transfer it over to, to another counsel?

21 MS. BRUBAKER: That's -- I have no strong feelings
22 about that one way or the other.

23 MR. PERKO: I don't have any strong feelings about
24 that either.

25 COMMISSIONER TEW: I think it should be up to 15

1 minutes per side. So to the extent Ms. Brownless takes two
2 and, Mr. Jacobs, you take seven --

3 MR. JACOBS: I just wanted to get that in.

4 COMMISSIONER TEW: That's perfectly fine. You all
5 can work that out however. I think 15 minutes per side and
6 trying to keep the witness summaries to about two minutes,
7 particularly given that we're going to take the direct and
8 rebuttal separately as we discussed earlier, I think this may
9 help move things along a little bit.

10 MS. BROWNLESS: And along that line I have one final
11 question, and this is just so I can understand what the actual
12 hearing order will be. Normally what does the Commission
13 intend to do with regard to the January 10th hearing? Do they
14 intend to take appearances and then public testimony and then
15 whatever motions are still flapping around and then do the
16 hearing or how -- kind of -- what are we going to do about
17 that?

18 COMMISSIONER TEW: My understanding, and I'll leave
19 it for staff to correct me, is that we intend to take public
20 testimony first.

21 MS. BROWNLESS: Prior to appearances? By
22 appearances, I just mean I'm here for this person, I'm here for
23 this person, I'm here for --

24 COMMISSIONER TEW: That is a good question as far as
25 oral argument and taking appearances. Is there a reason to do

1 that before individual customers come and give testimony?

2 Sometimes we do do that, so I --

3 MS. HELTON: I think that we do need to take, read
4 the notice first, then take appearances first. I believe that
5 the order, prehearing order contemplates the ability to conduct
6 cross-examination of the public witnesses, so, therefore, I
7 think we should take appearances before we do that.

8 COMMISSIONER TEW: And with respect to oral argument,
9 do we do that before? Sometimes we -- I know at the customer
10 hearings and service hearings we've had sometimes we do allow
11 the parties to make opening statements before individual
12 customers.

13 MS. BRUBAKER: Are you talking about oral argument as
14 to any motions that are as yet unresolved or are you talking
15 about --

16 COMMISSIONER TEW: I meant opening statements.
17 Excuse me. I meant openings statement for each side. The 15
18 minutes per side, should we do that before or should we leave
19 that to the Chairman to decide?

20 MS. BRUBAKER: That's probably really the Chairman's
21 call. I certainly don't have any strong opinion. I would
22 leave it to her discretion.

23 MS. BROWNLESS: So I guess what the consensus is, at
24 least to the extent we have one today, we'd start the hearing,
25 enter appearances and then let the Chairman go from there?

1 COMMISSIONER TEW: And either we will take up opening
2 statements or proceed to the customer testimony.

3 MS. BROWNLESS: Thank you.

4 COMMISSIONER TEW: And at the conclusion of that we
5 would begin with whatever is left of the technical hearing.

6 MS. BROWNLESS: And that would be any outstanding
7 motions, resolve any outstanding motions before we get to the
8 rock and roll part.

9 COMMISSIONER TEW: Well, I'm optimistic we won't have
10 outstanding motions at the time we get to the hearing.

11 MS. BROWNLESS: So am I, Your Honor.

12 COMMISSIONER TEW: But, yes.

13 MR. PERKO: Commissioner, I assume that this is
14 something for the Chair, but do we have any sense of the amount
15 of time public commenters are going to be provided and how the
16 order is going to be determined?

17 COMMISSIONER TEW: Excuse me. Well, I think it's
18 typical Commission practice that we try to find out which
19 customers want to come forward. We do normally suggest that
20 they try not to repeat each other. But it's my understanding
21 that we don't intend to put any kind of limit on the testimony
22 from the public, which is normal Commission practice, if that
23 helps you.

24 Any other matters?

25 MS. BRUBAKER: Was there also a question about the

1 order in which they speak?

2 MR. PERKO: Yes. How do you typically handle that?

3 MS. BRUBAKER: Actually it depends is the answer.
4 With agendas and most proceedings it's the order in which
5 persons sign up. We have also made accommodation, for
6 instance, in the rate case and storm dockets that we have the
7 service hearings out of, out of Tallahassee where if there are
8 representatives from local government or what have you that
9 have contacted us beforehand, that we'd make an accommodation
10 to have them speak first.

11 MR. PERKO: Okay.

12 MS. BRUBAKER: But what specifically we will do in
13 this instance I do not know.

14 MR. PERKO: Thank you.

15 COMMISSIONER TEW: Normally we have a sign-up sheet,
16 and whatever order the sign-up, that the customers have signed
17 up on the sign-up sheet we generally abide by with the
18 exception that Ms. Brubaker noted. And then at the conclusion
19 of that public testimony we will move right into the technical
20 hearing.

21 Ms. Brubaker, are there any other matters that we
22 need to take up at this time?

23 MS. BRUBAKER: Staff is aware of none, but welcome
24 comments from the parties.

25 COMMISSIONER TEW: Okay. Just a reminder to work

1 with staff and the other parties on the outstanding issue
2 wording and any clarifications, particularly with respect to
3 which witness will address which issues now that they've been
4 renumbered.

5 MS. BRUBAKER: May I make a comment?

6 COMMISSIONER TEW: Certainly.

7 MS. BRUBAKER: Again just to reiterate that we have
8 quite a number of things that are due variously on the 26th and
9 27th, 26th at noon, 27th close of business. Please send
10 whatever it is you send in Word format to staff. It's a
11 tremendous help in our getting things drafted quickly and
12 efficiently. Also, please don't wait for those time frames if
13 you actually happen to have it beforehand. We welcome --
14 sooner is better. Thank you.

15 MS. BROWNLESS: Will we be getting an email that
16 tells us exactly what we're supposed to be doing in case we
17 messed it up?

18 MS. BRUBAKER: We'll be happy to.

19 MS. BROWNLESS: Thank you.

20 MR. PERKO: Commissioner, one thing. Just to make
21 sure on the supplemental revised rebuttal testimony that I went
22 through at some length, is it my understanding I can go ahead
23 and file that without leave, granting of an order granting
24 leave? And if a party sees something in there that they don't
25 like, they can obviously bring it up at the hearing.

1 COMMISSIONER TEW: I think that's accurate. And I
2 think parties, if they do have anything to bring up, I'm not
3 sure what the normal time frame is, but we might want to speed
4 it up in this case since we're getting so close.

5 MR. PERKO: It'll all be things they've seen before,
6 so.

7 MS. BRUBAKER: And to extent that there are any
8 concerns or objections, again, sooner is better. Please let
9 staff know as soon as they've been identified.

10 COMMISSIONER TEW: I think that's everything we
11 needed to get through today, and thank you all for bearing with
12 us. And this prehearing is adjourned.

13 (Prehearing Conference adjourned 12:20 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, CRR, RPR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 26th DAY OF DECEMBER, 2006.



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