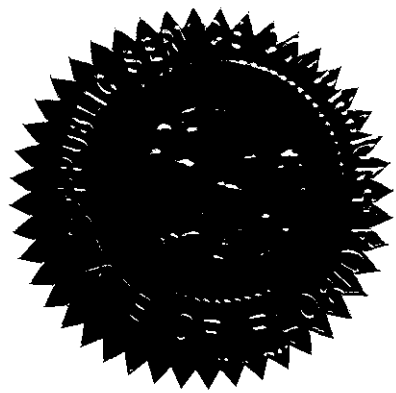


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070626-EI

In the Matter of:

REVIEW OF FLORIDA POWER & LIGHT
COMPANY'S SUNSHINE ENERGY PROGRAM.



PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 12

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
 COMMISSIONER LISA POLAK EDGAR
 COMMISSIONER KATRINA J. McMURRIAN
 COMMISSIONER NANCY ARGENZIANO
 COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, July 29, 2008

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

REPORTED BY: LINDA BOLES, RPR, CRR
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1 APPEARANCES:

2 ALEXANDRIA LARSON, appearing pro se (via telephone.)

3 WADE LITCHFIELD, ESQUIRE, appearing on behalf of

4 Florida Power & Light Company.

5 ROBERT THOMAS, appearing on behalf of Green Mountain

6 Energy Company.

7 MICHAEL COOKE, GENERAL COUNSEL, KATHERINE FLEMING,

8 ESQUIRE, TIM DEVLIN and DENISE VANDIVER, appearing on behalf of

9 Commission staff.

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P R O C E E D I N G S

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3 CHAIRMAN CARTER: With that, Commissioners, we are
4 now on Item --

5 COMMISSIONER EDGAR: 12.

6 CHAIRMAN CARTER: -- 12. It was right in front of
7 me. Item 12. Give staff an opportunity to get settled in for
8 Item 12.

9 Now we do have, I believe we have someone calling in.
10 Ms. Larson, are you there?

11 MS. LARSON: Yes, dear.

12 CHAIRMAN CARTER: Let me kind of lay the groundwork
13 as staff is getting ready is that we've had a tremendous amount
14 of information and discussion on this issue before, and what
15 we're going to do, Commissioners, we're going to pick up where
16 we left off rather than starting over from scratch so we can go
17 forward with that. With that, staff, you're recognized.

18 MR. DEVLIN: Thank you, Mr. Chairman. Commissioners,
19 Item 12 is, as the Chairman acknowledged, a continuation of
20 consideration of the staff recommendation that was discussed at
21 the July 1st Agenda Conference involving FPL's Sunshine Energy
22 Program. Staff's recommendation has not changed, but based on
23 some questions at the July 1st agenda the staff provided to the
24 Commissioners on July 15th a four-page document identifying
25 certain cost recovery issues and prudence issues that may need

1 to be dealt with in the event the program is terminated. This
2 information is included in the docket file.

3 Staff recommends that any related issues to the
4 Sunshine Energy Program be addressed in the upcoming ECCR, ECCR
5 hearings scheduled in November.

6 Commissioners, in the event you decide to terminate
7 the program, you might consider requiring the escrow of the
8 voluntary contributions collected after the effective date of
9 termination, and Commission Rule 25-30.360 governs the escrow
10 of monies.

11 Mr. Chairman, at this point you might want to
12 consider taking up the discussion that you had last July 1st
13 Agenda Conference, or we can go back and address the staff
14 recommendation issue by issue, whatever your preference is.

15 CHAIRMAN CARTER: Let me do this, Commissioners,
16 before we get into our deliberations. Let me do this.
17 Ms. Larson, you're recognized for a brief statement.

18 MS. LARSON: Sorry. I have a bit of a cold. I'm
19 allowed to speak?

20 CHAIRMAN CARTER: Yes, ma'am.

21 MS. LARSON: Oh, okay. I read staff's
22 recommendation. I was -- I think the Sunshine Energy Program
23 should be terminated. You did talk about that on your last, at
24 the last meeting on July 1st. I don't -- I think there should
25 be a public apology. I think that we should hold FPL's feet to

1 the fire on this issue. This was not done in a manner that was
2 profitable or commendable to Florida. We have, we have very
3 many issues here in the State of Florida. Solar should be
4 number one on the list of any, any project. I know that
5 they've put articles out in the paper that they're going to do
6 110 megawatts, but it's a day late and a dollar short. It was
7 done after July 1st, they just, they regurgitated issues that
8 were already brought to the forefront many months ago that they
9 were going to do these programs.

10 When I went to Treasure Coast Regional Planing
11 Council, up to 2017 they will only be doing one-tenth of
12 1 percent of alternative ideas to bring power to Florida. I
13 have some grave concerns on this issue because our reliance on
14 fossil fuel is tremendous and it's only natural gas, oil, coal
15 or nuclear. These are the only alternatives that were
16 presented. And we have got to look at other issues, we have
17 to.

18 And the Sunshine Energy Program was presented to the
19 people of Florida that were buying things in Florida. Nothing
20 was ever bought in Florida, and it isn't right and it isn't
21 fair. I really took a little bit of -- I was taken aback, I
22 guess, by an FPL testifier saying that the word "fraud" is a
23 problem for them. This was. And I'm sorry that they feel bad
24 that I said that. Maybe the emperor has no clothes, but we
25 have an issue. Florida has big issues.

1 Your consumers, our consumers, everyone in Florida is
2 feeling the pinch, and maybe solar, while the cost might be
3 up-front, once you have the system in place, we have, it won't
4 cost as much and it will cut -- they had an energy program back
5 in the late '70s, early '80s where they were putting at least
6 solar hot water heaters on a house and it cut, it can cut from
7 8 to 10 percent. These are the numbers that were presented to
8 the public, and the public needs to be aware. I don't think
9 they should have a free pass until November. I think this
10 thing should be dealt with accordingly and quickly. And it
11 should be, maybe a new program should be utilized. Maybe
12 they'll come up with another program that would be nothing but
13 Florida investment. They've got 4.4 million customers that
14 believe that they're doing alternatives, and that's not true.
15 We are not working on alternatives. And the average person,
16 the 4.4 million do not go to Treasure Coast Regional Planning
17 Council and do not know what's going on in the State of
18 Florida, and I hope the Commission will take that into
19 consideration. Thank you.

20 CHAIRMAN CARTER: Thank you. Commissioners?

21 Commissioner Skop, you're recognized.

22 COMMISSIONER SKOP: Thank you, Mr. Chairman. I just
23 have a few questions for staff, and then would like to just
24 make a few points in summation, if I could so be permitted.
25 But I guess my questions are to the auditor, Ms. Vandiver, if

1 she is available. Good morning.

2 MR. VANDIVER: Good morning.

3 COMMISSIONER SKOP: Just to briefly follow up where
4 we left off before. In light of FPL's audit response letter
5 and the audit that your team conducted, do you stand, still
6 stand by your audit results?

7 MR. VANDIVER: Yes. At this time we have nothing
8 else that has changed our opinion.

9 COMMISSIONER SKOP: Okay. And in your professional
10 opinion is there still a lack of transparency in terms of how
11 Green Mountain Energy actually used the money it received from
12 the voluntary ratepayers who participated in the Sunshine
13 Energy Program?

14 MR. VANDIVER: Right. We've not been able to see
15 where that money has gone.

16 COMMISSIONER SKOP: Okay. So other than taking the
17 word of Green Mountain Energy at face, we don't actually know
18 whether the money went to marketing, salaries, direct overhead,
19 profit, other marketing channels or even maybe found its way
20 back to FPL.

21 MR. VANDIVER: We don't know where that money went.

22 COMMISSIONER SKOP: Thank you.

23 I guess, Mr. Chairman, just making a few points in
24 summation, and I'll make this brief, I guess applying a
25 reasonable person's standard, no reasonable person would have

1 contributed to the Sunshine Energy Program had they known that
2 nearly 80 percent of the money wasn't going to renewables.
3 And, you know, at least from my perspective Green Mountain
4 Energy failed to perform its contractual obligations under the
5 existing contract. To that point I'd referenced the Commission
6 to Section 13.1 where Green Mountain Energy failed to enroll
7 25,000 new customers on a year-to-year basis. Current
8 enrollment to date is less than 39,000 total customers.
9 However, Green Mountain Energy alleges that it spent millions,
10 millions of dollars on marketing.

11 Also, Section 18.1 and 18.2, clearly Green Mountain
12 did not meet its obligations there. Again, if there's any
13 doubt to that, I would refer the Commission to confidential
14 document 04021. That's the document that you have before you
15 with the yellow piece of paper stapled to the top. And if the,
16 the Commission could, my colleagues could briefly just take a
17 look at the, that for a second and I'll move on.

18 Also, too, FPL failed to manage performance of Green
19 Mountain Energy to ensure full compliance with the contract,
20 although FPL was paid a fee to do so. And, you know, I could
21 debate the fine points of the existing contract until the cows
22 come home, but, I mean, it suffices to say that the contract
23 was poorly managed from its inception to date.

24 If we were to look at the, the staff sheet, and we're
25 going to pass that out real quick, it's the printout that staff

1 prepared, the review of FPL Sunshine Energy Program docket, the
2 issues. On -- let me make sure everyone has it. On Page 3 and
3 4 of that staff document it speaks to billing system correction
4 as well as Green Mountain expense report correction. And I
5 think those are two more illustrative examples of how poorly
6 the existing program has been managed. It's almost as if
7 management of the program is an afterthought secondary to
8 marketing.

9 The other points that I'd like to briefly raise in
10 the same document is that FPL, or staff alleges that FPL has
11 stated that it plans to seek recovery under the ECCR for
12 various costs and such that it alleges that it has incurred.
13 And, you know, frankly, if I have anything to say about it,
14 that's not going to happen on my watch. I just think that
15 what's going on here, we need to have some clear accountability
16 where the nearly \$12 million to date has gone.

17 And then just some additional points in passing. The
18 second document that was passed out during the last Agenda
19 Conference, FPL alleged several times that the solar build-out
20 requirement was secondary or ancillary or whatever. The first
21 page shows a printout from after the Agenda Conference held on
22 July 1st where clearly it's very prominently featured, if not
23 an inducement in the solicitation of that requirement. The
24 requirement is also shown in the marketing literature also in
25 English and Spanish, as well as numerous other Commission

1 documents. So I'm just going to let that go.

2 And, like I say, I can debate the fine points until,
3 you know, again, until I'm blue in the face. But, again, it
4 all boils down to the fact that a reasonable person would not
5 have contributed to this program had they known that 80 percent
6 of the money was not going to its intended purpose. And I
7 think, at least in terms of where I'm at and what I'd like to
8 see my colleagues and the Commission go in the direction of,
9 certainly, you know, I'm very in support of renewables
10 consistent with the legislative and executive policy of the
11 state, a strong advocate for that. I think I've provided
12 during the last presentation some illustrative examples of what
13 this program could have been and what it could have offered the
14 voluntary ratepayers and the State of Florida had it been
15 better managed and the monies better utilized.

16 Essentially you have an underutilized \$5 million
17 recurring cash flow that could be put to much better use, such
18 as, you know, building additional solar projects in the state
19 or even the wind turbine example that I gave. But that's what
20 that amount of cash could have accomplished had it been
21 deployed and utilized properly. But as a result, FPL seems to
22 be the victim of being in a poor contract, and I guess our
23 General Counsel could speak to that. But I'm not inclined to
24 have the general body of ratepayers incur any expense
25 associated with this.

1 And where I'd like to see the Commission go is
2 basically three points. First and foremost, I think this
3 program, as my colleagues, the majority of my colleagues
4 indicated last time, should be terminated, and that would
5 entail not only the, suspending the existing tariff, but
6 denying the other tariff in Issue 3. But also, too, I think
7 that the, any, that the program should be ended effective today
8 to prevent any more money going to Green Mountain. Any funds,
9 as Mr. Devlin spoke to, that were collected after today, such
10 as it may be incurring in the bills that may be outstanding,
11 should be escrowed and probably returned to the customers of
12 record as of July 1st. I think that that would solve the
13 immediate problem.

14 And then moving forward, as staff has recommended,
15 certainly addressing the issues of prudence and a refund within
16 the ECCR proceedings is certainly a posture that the Commission
17 will probably find itself in one way or another. I mean, I'd
18 like to be able to resolve it today, but I'm a realist. I
19 recognize that if we were to rule, it's going to be probably
20 protested and we're going to be in a hearing posture anyway.
21 So I just think that, you know, raising the points, I mean,
22 it's easy to debate the fine points, there can be differences
23 of opinion. I stand by my, what I state. I think we heard
24 from our auditor. There is no transparency at the present.

25 So, again, I would like to see this Commission end

1 this program unfortunately, but that's the way it needs to be.
2 But, again, I think that that's something that we should do and
3 then move ourselves into a hearing posture where staff could do
4 additional discovery with respect to prudence, whether the
5 program was managed properly, as well as any refunds that may
6 be due to FPL's voluntary ratepayers. But I am, I am adamantly
7 opposed to putting any costs on the general body of ratepayers
8 associated with this program and the manner in which it's been
9 managed to date. Thank you.

10 CHAIRMAN CARTER: Thank you, Commissioner.

11 Commissioners, before we go further, I think I want
12 to hear from the company. I probably should have heard from
13 them up-front, and I apologize to you, Commissioners, for that.

14 Mr. Litchfield, you're recognized, sir.

15 MR. LITCHFIELD: Thank you, Mr. Chairman.

16 With respect to Commissioner Skop's statement, I
17 would suggest that I think we addressed most of those points on
18 July 1st, and I would not propose that we get into another
19 discussion on many of those points. I think the record is
20 pretty clear in terms of our position.

21 I would though, with respect to a couple of points,
22 suggest that we need to clarify the record here today somewhat.

23 COMMISSIONER ARGENZIANO: Hello.

24 MR. LITCHFIELD: In terms of the audit transparency

25 --

1 CHAIRMAN CARTER: One second.

2 Commissioner Argenziano?

3 COMMISSIONER ARGENZIANO: Yes, Mr. Chair.

4 Mr. Litchfield keeps going in and out. I don't know
5 if he's moving away from the mike, but I'm hearing every other
6 word.

7 CHAIRMAN CARTER: She's having trouble hearing you.
8 Can you, do you mind starting over, Mr. Litchfield?

9 MR. LITCHFIELD: Thank you. I'll speak a little
10 louder and get a little closer to the mike.

11 With respect to Commissioner Skop's comments this
12 morning, I won't try to get us into another discussion loop on,
13 on most of those points. I think those were adequately
14 addressed and responded to on July 1st. But a couple of issues
15 have been raised this morning that I feel should be clarified
16 for purposes of the record before the Commission votes.

17 With respect to the audit transparency, I think it's
18 important to point out, and staff can speak to this as well,
19 that Green Mountain and FPL and staff have had at least one
20 conversation and also exchanged additional e-mails and
21 telephone calls relative to developing a framework for an audit
22 that could be convened in order to verify the dollars that to
23 date the staff auditors had indicated they have not been able
24 to source the documentation for. And I think that process is,
25 frankly, working very well and we're close to finalizing what

1 will be acceptable to all parties concerned. And at the end of
2 the day we expect to be in a position, we and Green Mountain
3 expect to be in a position to firm up and support, you know,
4 every dollar that was spent in connection with this program.
5 And we're working with staff and the audit staff to that end,
6 Mr. Chairman.

7 With respect to the marketing materials that Mr. Skop
8 has referred the Commission to, I would note that the one copy
9 that he handed out is, was part of the pilot program. You'll
10 see that Bill Hamilton was Vice President of Customer Service
11 and Marketing at that time. That's at this point been years
12 ago. I have here today, as they say in the industry today,
13 leave behinds for the Commission, a stack of marketing
14 materials about a half an inch thick highlighted to show what
15 portions of the representations and paragraphs relate to the
16 TREC program and what lines or instances refer to the, to the
17 solar commitment. We've never indicated that, that we have not
18 indicated that the solar commitment, the 150 kW per 10,000
19 customer commitment was not a part of the program. What we've
20 said is in terms of the scope, in terms of the magnitude, in
21 terms of the impact it was always a very minor portion of the
22 program, and the numbers, of course, speak to that quite
23 clearly. As you recall, we discussed the equivalent megawatt
24 total that has been procured as a result of this program
25 through the, the Green Mountain Sunshine Energy Program, and

1 that was about 600 megawatts in contrast to the less than half
2 a megawatt commitment that represents the solar program.

3 With respect to the termination of the program, if
4 that's the Commission's intent today and will to go ahead and
5 terminate the program for, for reasons of policy or what have
6 you, keep in mind that we have to date in excess of 38,000
7 customers that are still participants in this program. I'll
8 tell you that in the month of July -- and, you know, obviously
9 we went back and looked at this to see what impact the July 1st
10 Agenda Conference had on customer enrollment. And we have a
11 normal attrition through the program, as you might expect.
12 Customers leave the system, they move, in some cases they pass
13 away and the accounts are closed, and we have a normal
14 attrition rate of something in the order of eight-tenths of
15 1 percent. Is that right, Mr. Brandt? He's confirming that
16 that's accurate.

17 In the month of July we had an additional, on top of
18 that an additional 60, that's six zero, customers over and
19 above our normal attrition rates that dropped out of the
20 program. And, you know, frankly, from my personal perspective,
21 I know in my neighborhood July is the month where you see a lot
22 of moving vans where people are trying to time their moves to
23 accommodate the start of a new school season. So that,
24 frankly, doesn't surprise me. In our view, it's, frankly it is
25 rounding error or noise in the system at that point.

1 So with deference to the 38,000 customers that
2 continue to find value in this program and continue to be
3 subscribers, there is a process by which we can safely and
4 reasonably unwind this program, but it can't happen on a dime
5 and we can't do it as of today. I would suggest to you that,
6 that we can and should approach it in this fashion, that, you
7 know, we can, within about two weeks of the final consummating
8 order we will have, we believe we'll be able to have gotten
9 through the last billing cycle. But effectively I guess I
10 would suggest to you that it really ought to be the greater of
11 two weeks or until the last billing cycle occurs on the system,
12 whereby we have sufficient time to alert customers that the
13 green pricing is no longer available and they're allowed to
14 move off earlier if they choose, but tell them the date by
15 which their, their, their program will be terminated and the
16 contributions will no longer be accepted. So those are the
17 points that I would make, Mr. Chairman.

18 CHAIRMAN CARTER: Thank you, Mr. Litchfield.

19 Commissioner Edgar, you're recognized.

20 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

21 As you've noted, we did have a lot of discussion at
22 the last Agenda Conference that this item was before us, and
23 I'd just like to reiterate a couple of points that I think came
24 up in the discussion and a couple of points that I tried to
25 make at that point in time.

1 I've met with staff a couple of different times since
2 then, prior to that and since, and have spent a good amount of
3 time going back over the material and the additional
4 information that the staff had provided to us that was
5 specifically on some of the questions I had raised about the
6 impact of terminating the program and trying to get a better
7 understanding as to what some of the contractual obligations
8 were, what the status of some of the ongoing projects is and
9 how that would be impacted, and I think that was very useful
10 information that helped me in my thought process.

11 But I also think even with that additional
12 information that many of the facts are still the facts, and
13 that is, my understanding is that FPL did comply with the
14 tariff that was put into place, that this was a pilot project
15 that was done. It was put in place at a time when our state's
16 energy policy was still evolving and was evolving perhaps
17 differently and even a little more slowly than where we are
18 today. I think this program and other efforts that this
19 Commission has done and that other entities of government and
20 consumer groups and environmental groups over the past few
21 years have done to try to bring attention to the issue of
22 alternative energy and renewable energy development in this
23 state, that clearly the evidence is there that we have had some
24 success. It's just amazing how much more aware the entire
25 state is on these issues and how everybody wants to try to

1 pitch in, and that's certainly evidenced by the approximately
2 38,000 people who have participated in this program.

3 I know that we're all very excited, I am, about the
4 Rothenbach project, which is certainly a piece of this program
5 or one of the results of this program. I think it's important
6 that that continue to move forward. And I would like to touch
7 on that at some point, if the program is terminated, what the
8 impact on that specifically would be. I'd like to hear from
9 FPL on that.

10 But I guess my larger point is, again, I think we've
11 moved beyond. I think that this program was, had a lot of good
12 intentions, has done some good work, as evidenced by the
13 Rothenbach proposal, and a much smaller scale, but the
14 coordination with FAU is my understanding it's a good program.
15 But I think we take what we've learned and we put the energy
16 and the efforts into some of the other efforts that this, that
17 the state is doing. I know we mentioned before the work that
18 this Commission is doing for an RPS. And I think we see where,
19 where we are with those sorts of efforts, and then look at
20 what's the best way to devote all of our collective efforts and
21 desires to continue to build an alternative and renewable
22 generation commitment in this, in this state.

23 So I, as I was before, I am still at revoking the
24 current tariff, to not working towards a new tariff or a new
25 program, but taking again the lessons learned and trying to

1 coordinate better with some of the other things that we are
2 doing. Thank you, Mr. Chairman.

3 CHAIRMAN CARTER: Thank you. Commissioner
4 Argenziano, I was going to ask a question, but if you'd prefer,
5 I'll defer to you at this point in time.

6 COMMISSIONER ARGENZIANO: Mr. Chair?

7 CHAIRMAN CARTER: Yes, ma'am. Did you --

8 COMMISSIONER ARGENZIANO: Are you talking to me?

9 CHAIRMAN CARTER: Yes, ma'am. Let me try it again.
10 I was going to, I was going to ask a question, but I would
11 defer to you if you had one at this point in time.

12 COMMISSIONER ARGENZIANO: Well, just, I guess, some
13 comments and maybe a couple of questions for staff.

14 CHAIRMAN CARTER: You're recognized.

15 COMMISSIONER ARGENZIANO: I'm hearing conflicting
16 information, I've been reading conflicting information, and
17 I'd like staff's opinion on whether the contract has not been
18 met or whether it has been met. Commissioner Skop came up with
19 some, some issues, Commissioner Edgar came up with some issues
20 that seem to be contrary to one another in a sense, and I
21 really for me would like to know whether there's been a
22 violation of the contract or not and I'd like to hear that from
23 staff from their professional opinion so I have an idea.

24 My comments basically are -- also another question,
25 I'm sorry, is I'm most concerned with what happens if you

1 terminate the program to those existing customers? They're the
2 ones I am concerned with. Because to be honest with you, I
3 think pretty much everybody except maybe Green Mountain would
4 want to terminate the program at this point, even FPL. That's
5 my opinion. I'm not putting words into FPL's mouth. So I
6 don't see that as anybody's objection in terminating the
7 program.

8 But I am concerned with the existing customers. I've
9 heard from a few of the existing customers who have a concern,
10 and I'd like to know staff's opinion in black and white what
11 happens to those existing customers if we terminate the program
12 today.

13 COMMISSIONER EDGAR: And, Mr. Chairman, before we do
14 that, I would like to clarify what I said is it's my
15 understanding that FPL has complied with the tariff.

16 COMMISSIONER ARGENZIANO: The tariff. I'm sorry.
17 Okay.

18 COMMISSIONER EDGAR: And as part of the response to
19 Commissioner Argenziano, I would put that to staff as well, is
20 that a correct understanding that the tariff as it exists has
21 been complied with?

22 CHAIRMAN CARTER: One second. While staff is
23 getting -- Commissioner Argenziano?

24 COMMISSIONER ARGENZIANO: Yes.

25 CHAIRMAN CARTER: I'm glad you asked that question

1 because what I was going to ask staff to do is to, because, you
2 know, I'm on record as saying I'm in favor of terminating of
3 the program. I wanted staff to speak to the implications and
4 the, and the perspective on that whole issue of termination.
5 So I appreciate you raising that question. Staff, you're
6 recognized. I'll come back before -- Commissioner Skop?

7 COMMISSIONER SKOP: Thank you, Mr. Chairman.

8 With respect to the tariff itself, I think that that
9 question is deftly framed to the extent that apparently there
10 was an error made in the tariff to the extent that it does not
11 embody the solar build-out requirement. It just speaks to the
12 --

13 CHAIRMAN CARTER: Commissioner, let's hear from staff
14 on that and then we'll come back to you.

15 Mr. Cooke, you're recognized.

16 MR. COOKE: I think what Commissioner Skop is
17 referring to is the tariff that was issued in this case refers
18 to the requirement under the order to purchase blocks of
19 kilowatt hours. It didn't incorporate the language regarding
20 the 150 kilowatts of solar to be constructed, which was
21 referenced in the order itself.

22 CHAIRMAN CARTER: So break it down real simple. Just
23 break it down real simple.

24 MR. COOKE: Well, let me -- I think the tariff has
25 been complied with.

1 CHAIRMAN CARTER: Okay.

2 MR. COOKE: Now there's a question of whether we
3 perhaps should have incorporated an additional provision in the
4 tariff, but I think the tariff has been complied with.

5 COMMISSIONER ARGENZIANO: Excuse me. But what
6 additional provision, to do what?

7 MR. COOKE: The order that was issued on the final
8 program required FPL in this program to purchase 1,000 kilowatt
9 hours of TRECs essentially, via TRECs. I may not be using the
10 terms technically correctly, but essentially 1,000 kilowatt
11 hours for the \$9.75 charge that each volunteer contributed.
12 The order also referenced that we wanted to have 150 kilowatts,
13 I believe, of solar constructed for every 10,000 customers.
14 That's in the order. That provision was not articulated in the
15 tariff itself. It is still part of the order. So if that was
16 not constructed, that would be a violation of the order.

17 We did not in the order set a time frame for the
18 construction. And you could very easily argue that -- I think
19 at this point my legal view would be that they constructed the
20 number of kilowatts of solar that are necessary, but you could
21 really argue that it was not done on a timely basis.

22 All of this -- I -- one of the things I want to point
23 out is normally when we issue an order and look at contracts,
24 et cetera, when they are negotiated contracts we normally don't
25 have significant ongoing oversight or we don't take the

1 position that we are here to interpret the contract. That is
2 jurisdiction that belongs in a civil court. It is informative
3 for us because, as Commissioner Skop pointed out, we have real
4 questions about how well-managed this was. And if FPL wasn't
5 putting Green Mountain's feet to the fire to comply with that
6 contract, then that informs us about the management. That's
7 what the audit was focused on. The audit was focused on was
8 the program well-managed, was the money usefully spent. Those
9 are all issues that we as a Commission have oversight over and
10 should be looking at, and I think the audit itself reflects we
11 have real concerns about how the program was operated.

12 COMMISSIONER ARGENZIANO: Can I, can I interrupt
13 there for a moment?

14 MR. COOKE: Certainly.

15 CHAIRMAN CARTER: You're recognized.

16 COMMISSIONER ARGENZIANO: Okay. And I understand
17 your point. But if we are given this oversight and yet you say
18 that the contractual part of this, which is a main component of
19 whether this is, if they're meeting their contracts, but yet
20 you're saying we don't have jurisdiction over that, that's,
21 that's a legal issue that belongs in a different court. So how
22 do you properly do that as the PSC if you can't look at the
23 contract? Because I'm hearing you segregate the two. And if
24 we have no jurisdiction there, then how do we give it proper
25 oversight? How would we, you know, how do you then audit the

1 program without understanding if they're meeting their
2 contractual agreements?

3 MR. COOKE: Well, I think we look at the contract and
4 we draw conclusions for our own use, but it's not determinative
5 of whether the contract has been complied with or not. In
6 other words, we're not the ones -- it is a private agreement
7 between private parties. When we have had negotiated contracts
8 such as in the, in the renewable energy field come before us,
9 we have by orders that have been upheld argued that it's not up
10 to us to resolve disputes between the parties to that contract.

11 COMMISSIONER ARGENZIANO: Okay. So then my --

12 MR. COOKE: That doesn't mean we can't look at the
13 contract and based on our inferences that we draw from the
14 language of it get a, get a sense as to whether, whether it's
15 being well-managed or not.

16 COMMISSIONER ARGENZIANO: No. And, Mr. Chair, if I
17 may.

18 CHAIRMAN CARTER: You're recognized.

19 COMMISSIONER ARGENZIANO: I, I, I understand what
20 you're saying. I'm just trying to say if that doesn't belong
21 on the table, then let's get it off the table. I'm just trying
22 to figure out -- and I understand the contract between two
23 parties. But it kind of melds into the issue of whether the
24 program has been -- I mean, tell me one more time what you
25 believe the audit focused on, not the contract, but what the

1 audit was focusing --

2 MR. COOKE: The audit focused on what the money was
3 spent for and trying to get a handle on how, how it was used,
4 whether it went to administrative, whether it went to the
5 purchase of TRECs, whether it went to the construction of solar
6 projects. And we have real concerns about how much money was
7 spent on actual assets or TRECs versus simply what we can't
8 account for and that's one of our concerns. And I think that
9 --

10 COMMISSIONER ARGENZIANO: That really -- I didn't
11 mean to cut you off. So then taking the contractual issue off
12 the table, because that seems to be out of our jurisdiction and
13 that's between the two parties, then the real issue, the real
14 focus is on where the money has been spent. And as
15 Commissioner Skop had indicated, we don't know, and that's what
16 you're telling me, we don't know.

17 MR. COOKE: That's my view. Yes, Commissioner.

18 COMMISSIONER ARGENZIANO: I'd like the company, Mr.
19 Chairman --

20 CHAIRMAN CARTER: Yes, ma'am.

21 COMMISSIONER ARGENZIANO: -- to maybe, maybe address
22 that issue and maybe clarify that to me, and then I'm ready to
23 move on.

24 CHAIRMAN CARTER: Mr. Litchfield.

25 MR. LITCHFIELD: I'm sorry. Which issue do I need to

1 clarify, Mr. Chairman?

2 CHAIRMAN CARTER: About the, about the spending of
3 the resources. Is that right, Commissioner Argenziano?

4 COMMISSIONER ARGENZIANO: Yes. Because it seems to
5 me that the question comes down to where the money went, and I
6 guess that was our audit. Our audit indicates that we don't
7 know where the money went, and I'd like some kind of
8 clarification as to what your take on that is.

9 MR. LITCHFIELD: Right. Right. I think that is, I
10 think that is one of, if not the remaining question, certainly
11 one of the remaining questions. And, you know, in
12 connection -- as we'd indicated, as we indicated on July 1st,
13 there was a significant amount of the funds that were plowed
14 back into the program to market it to increase subscription
15 rates, to increase penetration, and that's what pushed the
16 program into the top five programs in the country as ranked by
17 the Department of Energy, the renewable energy laboratories.
18 That takes a lot of money to push the program.

19 As the subscription rate increases, that increases
20 Green Mountain's commitment and obligation under the contract
21 to purchase an additional REC for every additional subscriber,
22 which again represents 1,000 kilowatt hours of energy from
23 renewable sources. And that, frankly, put the, as I indicated,
24 that, that totals about the equivalent of 602 megawatts of
25 power procured from renewable sources over that period.

1 The, you know, where we are today is the staff was
2 unable to complete its audit in time to finish its
3 recommendation to verify that in fact those dollars were spent
4 on marketing and program administration and that's where we are
5 with Green Mountain today. They are prepared to work with
6 staff, work with us in order to facilitate access to those
7 books and records that would remove that remaining question
8 mark in staff's mind, and we fully expect to be able to do that
9 over the coming weeks.

10 With respect to, you know, our administration of the
11 contract, I'll just say this, that, you know, keep in mind we
12 do recognize that we have an obligation to manage our contracts
13 properly, efficiently and prudently. In the context again
14 though, we, you know, we had Green Mountain that was meeting
15 every TREC obligation under the contract consistently, and as
16 indicated in the numbers, representing, you know, probably
17 99.9 percent of the total contract commitment were REC
18 commitments and they were meeting those. And, yes, they were
19 late on the 150 kW commitment in the first few years of the
20 contract and were working to catch up. And we were working
21 with them to ensure that that happened, and Rothenbach Park was
22 a big piece of that. To date they are compliant. And so, you
23 know, when you're managing a contract, you have to look at it
24 as a whole and decide where to push and where not to push and
25 whether the interests of the contract overall are being met.

1 And that's, that was our conclusion, that they were in the
2 overall, in the aggregate being met.

3 COMMISSIONER ARGENZIANO: Mr. Chair?

4 CHAIRMAN CARTER: Yes, ma'am.

5 COMMISSIONER ARGENZIANO: I appreciate that. I guess
6 I'm still having difficulties, and Commissioner Skop indicating
7 that they hadn't met their contractual agreement, and I guess
8 maybe we're going in different places here and then finding out
9 they have met certain contract agreements. I mean, if it comes
10 down to marketing, that they spent most of their money on the
11 marketing, which seems to be what I keep focusing in on I
12 guess, but I think any business has to market, and I'm not
13 trying to defend the company because I'm very, very concerned
14 about a lot of what Commissioner Skop has indicated, but if
15 marketing gets you to where you need to go, isn't that what a
16 business is supposed to do? And maybe staff could address that
17 a little bit more as far as -- and I don't want to belabor it.
18 I just want to have a really good understanding; are we
19 chastising the company because they did not get to a certain
20 number in a timely manner? Because as has just been indicated,
21 I guess we're going to find out, have more transparency in the
22 next few weeks on where the money went and how it's been used.
23 But isn't marketing part of, part of what you're trying to do?
24 And I want, I guess maybe Commissioner Skop could
25 then maybe focus in on what he's talking about briefly, if he

1 can, on, you know, where marketing is not a good thing when
2 you're trying to get more customer base. And maybe, maybe just
3 hashing that out just one more time may help me to make a
4 decision. And, again, I do want staff to answer what happens
5 to those existing customers, because I think that's really my,
6 my main point at this juncture.

7 CHAIRMAN CARTER: Okay. Mr. Devlin, and then we'll
8 go to Commissioner Skop.

9 Mr. Devlin.

10 MR. DEVLIN: Commissioner Argenziano, this is Tim
11 Devlin. And the main, the main purpose of the audit is to
12 figure out exactly how the money was spent. We do recognize
13 that marketing is a very critical component of this program,
14 but at this juncture we don't know how much money was spent on
15 that versus how much money perhaps was retained by the company.
16 And it's really -- we're trying to go into it with an open mind
17 that these costs may be verifiable and legitimate. We don't
18 know because we haven't been able to get to, you know, the
19 necessary records.

20 COMMISSIONER ARGENZIANO: Tim, can I ask you a
21 question to that? Mr. Chairman, I hate to do this.

22 CHAIRMAN CARTER: Yes, ma'am. You're recognized.

23 COMMISSIONER ARGENZIANO: But if -- this is what I'm
24 trying to get down to, and I'm not giving right or wrong. It's
25 just a piece of information I need. If in the contracts or in

1 the tariffs or whatever we have that we have established with
2 FP&L and Green, and then with Green Mountain, have indicated
3 that this is, these are, these are the measures you have to
4 meet, and if we tell them if you meet them -- then, I mean, I
5 don't know if it's written anywhere that, you know, a certain
6 amount go into your, to your profits. If you reach this
7 number, then hi-dee-ho, you have the rest for you to keep. You
8 know what I'm saying? Was there, was there an indication
9 somewhere, was there, was there a bad contract?

10 I mean, I'm trying to, trying to, I guess, put my
11 finger on if I'm the company involved and I said, okay, here, I
12 did this for you, I may be a little late on this, but I'm top,
13 one of the top five companies doing this, I'm meeting
14 contractual agreements, according to what I've heard half of
15 the parties say, I'm meeting the tariffs, then is there
16 anything indicated there that the money can't go as profit?
17 And I'm not saying it should. I'm just trying to figure out is
18 there any prohibition there? So if you've met your agreement,
19 then you can keep the profits or whatever it is. Am I -- I
20 don't know if I'm articulating myself well, but I'm trying to
21 figure out where that may be. Is it in a contract between FPL
22 and Green Mountain that says if you meet these, you know, hey,
23 this is your profit?

24 CHAIRMAN CARTER: Mr. Devlin.

25 MR. DEVLIN: Commissioner Argenziano, I understand

1 from the accountant's viewpoint it's not so much the contract.
2 It really comes down to what Commissioner Skop said, sort of
3 the reasonable person viewpoint. And that's, I know that's a
4 subjective criteria, but is it reasonable that 80 percent of
5 the money did not go for, you know, renewable type energy? And
6 that --

7 COMMISSIONER ARGENZIANO: And I understand that. But
8 I guess what I'm trying to get at, and I'm not happy with that
9 either, but what I'm trying to get at is if the company is told
10 in contracts or whatever that as long as you reach this
11 benchmark, well, then that's fine. You know, I'm not saying
12 it's a good thing, but how do you tell someone in a contract
13 this is what you've got to do? And if it's only 20 percent
14 that goes into this, if that's the megawatts we're going to get
15 to, if that's the customer base we're going to get to, how do
16 you afterwards say, okay, now we had this agreement and you
17 shouldn't have kept 80 percent -- or we don't even know if it's
18 80 percent because we don't know where the money went at this
19 point.

20 What I'm trying to get at I guess in a more legal
21 way, and I'm not an attorney by any means and I'm probably
22 doing a very bad job of articulating it, how do you come in
23 afterwards? To me it would be in a contract. This is what you
24 meet. If you meet these benchmarks, well, then, heck, the rest
25 of it goes wherever. And I'm not saying it's a good thing.

1 I'm trying to figure out if that was the legal framework.

2 MR. COOKE: Commissioner, Mike Cooke. I think your
3 point is very-well taken and that's why from a legal standpoint
4 I have not focused on whether the contract itself has been
5 complied with or not. I don't think -- I think the problem is
6 it's a \$9.75 flat fee for the purchase of kilowatt hours.

7 Our concern is two things at least: One is we don't
8 know how much is being spent on purchasing TRECs, which is why
9 we think based on our audit that a significant portion of the
10 money is going to, into the pockets of somebody or into
11 administration or whatever. Now that doesn't mean that they're
12 doing anything wrong with that, but at this point in time do we
13 want that to continue I think is where we are.

14 COMMISSIONER ARGENZIANO: Right.

15 MR. COOKE: And secondly --

16 COMMISSIONER ARGENZIANO: But I guess without knowing
17 that though it's hard to conclude.

18 MR. COOKE: Well, but that's the other problem here.
19 We have tried diligently to get to the bottom of this. And
20 because it is a private agreement with a third party, Green
21 Mountain, we don't have our normal easy oversight of the
22 dollars. And we have tried -- I believe Ms. Vandiver and
23 Mr. Devlin can speak to the efforts we've made to try to get
24 transparency, and I don't think we're comfortable that we've
25 gotten as much cooperation as we would like. And normally

1 that's something that raises red flags for us. Let me just put
2 it that way.

3 COMMISSIONER ARGENZIANO: Okay. I got you. I got
4 you. I just see, you know, I see some contractual agreements
5 that I guess are harder for us to deal with because it's
6 between a private company and another private company and we
7 have no real idea of how much money of the consumers' money is
8 actually going into the renewables, even though the contracts
9 may indicate that you only have to reach certain benchmarks.
10 So we're kind of stuck.

11 So now I guess, Mr. Chairman, the last question I
12 have, because that helps me understand a lot in this whole,
13 whole scenario, and I think the only thing I want to hear from
14 staff now is what happens to the existing customers that I've
15 heard from that are saying, "Hey, I'm part of this; now what
16 are you going to do," you know, and I'd like to know what
17 happens to them.

18 CHAIRMAN CARTER: Is that, Commissioner, is that in
19 the context of termination because --

20 COMMISSIONER ARGENZIANO: Yes, Mr. Chair. Yes.

21 CHAIRMAN CARTER: Because I definitely want to hear
22 about that.

23 Staff, you're recognized.

24 COMMISSIONER ARGENZIANO: Yes.

25 MR. DEVLIN: Mr. Chairman, Tim Devlin again.

1 Of course, I'd like to point out the staff
2 recommendation wasn't to terminate the program for the very
3 reason that Commissioner Argenziano mentions. We have tried to
4 give some great deference to the 38,000 contributors and we
5 thought a better route would be to direct some major changes to
6 the program. But absent that and if termination is the will of
7 the Commission, I don't have a very good answer for
8 Commissioner Argenziano other than that we would have to notify
9 these persons that the program is being terminated. The
10 question on whether there will be refunds or not is, cannot be
11 answered at this juncture in my opinion, so that's for another
12 day.

13 COMMISSIONER ARGENZIANO: Well, Mr. Chair, can I ask
14 a question again?

15 CHAIRMAN CARTER: You're recognized.

16 COMMISSIONER ARGENZIANO: To that point, if the
17 Commission decides that they terminate the program -- and it's
18 hard to, I guess hard to answer this. I can't answer whether
19 the people got what they paid for because obviously we have no
20 clue. But what, I guess what my concern is, if people paid
21 their monthly monies going towards that renewable, can we
22 answer them or can we look at them and speak directly to them
23 and say, you know, you got what you paid for or -- you know, I
24 don't know how we do this.

25 And I guess some people have indicated that they

1 would be harmed in one way or another if the program were
2 terminated or if, maybe if it were terminated too quickly. I'm
3 just not sure. And I guess anything else that can be added to
4 that, maybe one of the Commissioners could help me there as to
5 what happens to those people who are currently on that program.
6 I'm not, I'm not just talking about the monthly payment that
7 they're giving. Of course that would be terminated. But I'm
8 sure you've heard with some of the consumers out there who have
9 called me, I know they've called some of you guys, and with
10 concerns about what happens to them, and I'm not sure I'm
11 comfortable with what happens to the people when the program is
12 terminated. And if it's terminated today versus tomorrow, what
13 are the ramifications?

14 CHAIRMAN CARTER: Commissioner, that's a good
15 question. I'm still, as I said, I'm still -- I mean, I was in
16 favor of terminating the program and I still am, but I'm in
17 favor of doing it in a manner to where we don't harm. We've
18 got roughly 40,000 people that are concerned about providing
19 alternative and renewable energy in Florida and that's nothing
20 to sneeze at.

21 Secondly, it's a voluntary program and people have --
22 I mean, the people haven't done anything, they have not done
23 anything wrong. They support the program. I do think that I'm
24 looking for a best-case scenario on the recommendation from
25 staff as to how do we go forward maybe looking at protecting

1 the people's opportunity to participate in programs like this
2 but maybe, it may not necessarily be this program. I'm, I'm
3 thinking out loud, Commissioner, with you, but I agree with you
4 about the termination issue. Staff, if you can kind of help me
5 and maybe help Commissioner Argenziano with this. I think
6 we're all struggling with the same thing. Commissioner Skop, I
7 haven't forgotten. I'll come back to you.

8 MR. DEVLIN: Tim Devlin again. I'll take a stab at
9 it and then General Counsel. I think Commissioner Edgar kind
10 of hit the nail on the head in that respect, that maybe the
11 program has outlived its usefulness. It had great intentions
12 in the beginning. And there are other opportunities now for
13 consumers. In FPL's case there's 110 megawatts of solar power
14 that these 40,000 people as well as the other, the other
15 general body of ratepayers will be contributing to get that put
16 into place.

17 CHAIRMAN CARTER: Commissioner Skop, you're
18 recognized, sir. I'll come back to Commissioner Edgar.

19 COMMISSIONER SKOP: Mr. Chairman, I have an
20 additional handout for the benefit of my colleagues. Then I'm
21 going to briefly respond to Commissioner Argenziano's point
22 that she asked me to, as well as some of the comments that our
23 General Counsel made.

24 CHAIRMAN CARTER: Make sure you describe it so
25 Commissioner Argenziano will know what you're talking about.

1 COMMISSIONER SKOP: Yes, sir. What I have before us
2 for the benefit of Commissioner Argenziano is the order that
3 this Commission issued on November 6th, 2006, and it's
4 basically the order approving FPL's Green Pricing Program.

5 Our General Counsel made some representations that I
6 adamantly disagree with. First and foremost, he mentioned the
7 contract we have no jurisdiction over. Well, surprisingly if
8 we have no jurisdiction over the contract, if you were to look
9 at Page 2 at the bottom of the page under the Green Power
10 Program, it expressly references the contract between FPL and
11 Green Mountain. It says, "Pursuant to the contract between FPL
12 and Green Mountain Energy, Green Mountain Energy will continue
13 to," blah, blah, blah. "This arrangement will continue under
14 the permanent program until August 2013." Those terms came
15 directly from the contract. In my view as an attorney, this
16 contract is incorporated by reference. It was part of what the
17 Commission relied on in granting final approval of this
18 program.

19 With respect to the audit, as Ms. Vandiver mentioned,
20 we don't know whether this money went to marketing. We have no
21 transparency. It could be all profit. I think Commissioner
22 Argenziano's point is very well-taken to the extent that the,
23 frankly, the contract nor the order provide any guidance or
24 procedural safeguards. And, I mean, frankly, it appears that,
25 you know -- I'm just up here shaking my head because, I mean, I

1 can't believe that a lack of oversight by this Commission may
2 potentially cost voluntary ratepayers over \$9 million. I mean,
3 the sole reason we're here is that the Commission failed to put
4 safeguards into this program in, within the order or overview
5 in the contract. You know, there are some allegations that the
6 contract provisions have been met. Again, I'm probably the
7 only one at the agency that has hands-on renewable energy
8 experience. I'm also an attorney. You've heard from -- you
9 don't have to take my word because Mr. Trapp, in my question to
10 him at the last Agenda Conference, clearly stated that the
11 provisions of 18.1 and 18.2 of the solar build-out obligation
12 have not been met in accordance with the terms of the contract.
13 Okay. That's not my word. That's Mr. Trapp's testimony in
14 response to a question I asked him. On Section 13.1, Green
15 Mountain Energy clearly failed to enroll the 25,000 new
16 customers per year on a year-to-year basis and, you know, yet
17 they spent millions and millions of dollars.

18 You know, there's been a lot of discussion about
19 being a top five program. Well, maybe it would be ranked
20 number one if 80 percent or more of the money was going to
21 renewables, but it's not. So I'm not really worried about
22 bragging rights here. I'm worried about protecting the
23 consumer. And, you know, there's just a lot of he said, she
24 said, whatever. But the bottom line is I just think it's just
25 appalling if the voluntary ratepayers that contributed to this

1 program, if 80 percent of their money just went somewhere and
2 we don't know where it went to. I mean, we've heard that from
3 our own auditor again. These are not my words.

4 But, frankly, there's been some suggestion that, you
5 know, from Mr. Litchfield that we wind down this program or
6 wait until the consummating order or wait two weeks. You know,
7 for every month that, or two weeks, at the beginning of every
8 month nearly half a million dollars flows to Texas to Green
9 Mountain, yet we have no transparency of that, Commissioners.
10 Why would we allow that to happen? That is -- I'm not -- I
11 just can't support that in good faith.

12 You know, it's just -- it seems to be my word against
13 the world. And the bottom line is, is I'm probably the most
14 pro-renewable person that I can think of, and, you know, this,
15 this clearly is mismanaged from the inception. The bottom line
16 comes down to the audit. We still don't have transparency. I
17 mean, I can nitpick the contract again here until the cows come
18 home. But the bottom line is 80 percent of the money is
19 unaccounted for, we don't know where it's going. Consumers
20 that are enrolled in this program to date -- I wouldn't give my
21 money to this. I mean, just no reasonable person would do
22 that.

23 But, you know, to hear our General Counsel, you
24 know -- I just disagree with what he said and, I mean, we can
25 leave it at that. But, I mean, frankly, if it all boils down

1 to a lack of oversight by this Commission, by our failure to
2 review the contract or whatever, to put things in the tariff
3 that should have been caught, you know, at the end of the day,
4 you know, this Commission probably should have put some
5 procedural safeguards, you know, in the contract.

6 And, you know, Commissioner Edgar spoke to the fact
7 that lessons learned. Well, you know, I'm a little surprised
8 to, you know, kind of hear that. Because, I mean, you know,
9 frankly, this happened on your watch and under your leadership
10 as Chair of the Commission. And, you know, in reviewing the
11 transcript, there wasn't any questions asked.

12 CHAIRMAN CARTER: Commissioner, I think you're,
13 you're beyond the pale, Commissioner. First of all -- wait.
14 Wait. Wait. Hold on now. We can agree to disagree but we
15 don't have to be disagreeable.

16 First of all, is that of the projects and orders that
17 have been signed by this Commission over, since 1887, no one
18 particular Commissioner has the right or responsibility of all
19 of the orders that have been signed.

20 Secondly, this program was a pilot program that was
21 started. There was oversight from it, and from the oversight
22 of that program they started to initiate a new program. It's a
23 new program. Commissioner, we're talking about the issue, is
24 that I take issue with you taking or subscribing nefarious
25 motives to this Commission, which I serve honorably with and I

1 serve proud. And I think that the people of Florida deserve us
2 to deliberate based upon the facts of the case, not upon
3 personalities. So, Commissioner, I would ask you to refrain
4 from that.

5 COMMISSIONER SKOP: And I'll refrain from that and
6 I'll apologize. But if we were to review the transcript again,
7 the reason we're here now today asking these questions is that
8 they were not asked in the past. That's a reasonable
9 inference. That's not singling anyone out. It's just -- but
10 my problem is to hear us say all the sudden we have no
11 jurisdiction -- and Commissioner Argenziano, I think, raised a
12 good point. What about the voluntary ratepayers? I mean,
13 we've seen the e-mails and they're just kind of -- you know,
14 they were enticed and induced to contribute to a program in
15 good faith where they had a reasonable expectation that, you
16 know, their monies were going to go where they had to go to.
17 And I don't know whether it's a victim of a, of a just clearly
18 poor contract or whatever, but we have no transparency of where
19 nearly \$9 million went to. And, you know, frankly, if that's
20 okay with the Commission, that's okay with the Commission.
21 It's not okay with me. And, you know, so whatever we want to
22 do, but I can't in good faith allow this program to continue
23 and have half a million dollars a month go to Texas into a
24 black hole where we have no transparency still as to where this
25 money is going.

1 And, you know, I put forth an alternative that, you
2 know, perhaps there could be a contribution in aid of
3 construction to the recently approved 110 megawatt solar
4 projects. I mean, I think that that was a reasonable
5 suggestion to remedy the situation. I mean, FPL's customers
6 and reputation are two of the most important things to it.
7 And, you know, in that regard, you know, maybe they could
8 demonstrate their commitment to their customers, to the state
9 and to the environment by doing something like that, because
10 clearly this is just not right.

11 I mean, even, even if we, you know, even if the
12 contract or the order or there were no safeguards in our order
13 to make sure that the lion's share, nearly 80 percent of the
14 money didn't go into -- I don't know where it went to. But,
15 you know, clearly that's not in the best interest of the
16 voluntary ratepayer. I mean, staff has noted that in the
17 recommendation.

18 And, I mean, I'm sorry if I'm frustrated, but, I
19 mean, I'm just, I'm trying to do the right thing here. I'm
20 trying to advance the renewable policy of the legislative
21 branch and the Governor. And, you know, frankly, this is just
22 underutilized. This program, you know, it's a lot of marketing
23 hype but very little substance. And, you know, they can make
24 gross characterizations of, oh, in terms of order of magnitude
25 the TRECs they bought, some of which were from affiliates

1 through a third party, you know, that's a bigger magnitude than
2 building solar in the state. But if I get a chance or
3 opportunity between sending money out of our state, very
4 analogous to the Universal Service Fund argument that this
5 Commission constantly notes, you know, it's buying thin air out
6 of state. It does nothing for our economy, nothing for our
7 state, nothing for our environment here in the State of
8 Florida.

9 And, you know, frankly, I'm just, I'm just appalled
10 that, you know, frankly, that there seems to be no appetite for
11 addressing this issue head-on and it's merely to chalk it off
12 as a lesson learned. Well, you know what, some of the letters
13 I've seen from voluntary ratepayers aren't comfortable with
14 that. So I have the appetite to address the issue. I hope my
15 colleagues will. I apologize if I said anything. But,
16 frankly, you know, the sole reason we're here asking these
17 questions now is those questions were not asked in the past and
18 the proper procedural safeguards were not put in place to
19 ensure that 80 percent of the money wouldn't just go off into a
20 black hole, so.

21 COMMISSIONER ARGENZIANO: Mr. Chair.

22 CHAIRMAN CARTER: Commissioner Argenziano.

23 COMMISSIONER ARGENZIANO: First of all, Commissioner
24 Skop, I know you've done a lot of work on this and you feel
25 passionate about it, but I want to assure you that you're not

1 the only one in the world who has a care about this issue.

2 Okay?

3 Number two, what I think what I'd like to see right
4 now is if we have no clue where the money was spent, did I hear
5 earlier that in the next couple of weeks we may be able to find
6 out where the money was spent? Because regardless of what we
7 do today, I'd still like to know where the money went to.

8 CHAIRMAN CARTER: Mr. Devlin.

9 MR. DEVLIN: Commissioner Argenziano, yes, we are in
10 the midst of working with Green Mountain and FPL to ascertain,
11 first of all, what records Green Mountain has since they aren't
12 under our jurisdiction and, second, what they'd be willing to
13 let us review and audit. And we're just, we're planning on
14 another meeting, I think, later on this week.

15 COMMISSIONER ARGENZIANO: Can I ask a question? When
16 I was Chair of Gov Ops in the legislative process and we had to
17 deal with an entity, a private company who did business with
18 the state and then who subcontracted or had another contract
19 with another private entity, we were able to subpoena records
20 from the other company. I'm not indicating we have to do that
21 if the company is willing to work with us. But I think that
22 what I'd like to know and I think the people who paid into the
23 program should get a better view of what happened to that
24 money. And if you're telling me that we're working on that but
25 not sure that the company will provide or have to provide the

1 information -- because to me, Mr. Chairman and colleagues, I
2 think that finding out maybe what happened to the money would
3 be a very good thing to do. And if that could happen, I don't
4 know if we can, we can -- I'm hoping that Green Mountain
5 would -- I mean, if they're top five, then I think that they
6 should be able to work with us and I'm hoping that they will do
7 that. But I'd like some kind of an understanding today that we
8 will get a better view of what happened with the consumers'
9 voluntary \$9.75 a month that they've spent into this program.

10 CHAIRMAN CARTER: Here's what we'll do. Here's what
11 we'll, Commissioner Argenziano, here's what we'll do. First
12 we'll hear from Mr. Cooke, and then we'll go to Commissioner
13 Edgar, then Commissioner McMurrian and we'll come back.

14 Mr. Cooke.

15 COMMISSIONER ARGENZIANO: Thank you.

16 MR. LITCHFIELD: Mr. Chairman, I also have the
17 General Counsel from Green Mountain here who can address
18 Commissioner Argenziano's point on squarely, if that's
19 acceptable. And he's prepared to speak in whatever order you
20 choose, of course.

21 MR. COOKE: Commissioners, I think what staff is
22 saying is that, I believe what staff's suggestion is if this
23 program is terminated, to look at this issue, where the money
24 went further through our ECCR clause. In other words, this
25 would be an issue in that energy conservation clause we have,

1 and we would conduct an evidentiary hearing to the extent we
2 needed to. In the course of that, we can pursue discovery,
3 data requests. I'm not sure I know offhand literally whether
4 we could successfully enforce a subpoena. But if we needed to
5 go that far, we'd be willing to push and get as much
6 information as we can.

7 One of the things to keep in mind is if we can't get
8 cooperation and answers from a party, that gets weighed into
9 the decision-making that this Commission makes as to what to do
10 with any sort of recovery that entity is trying to obtain or
11 what's happened to that money. So if we get stonewalled, et
12 cetera, we don't get answers, that's something you all take
13 into account.

14 CHAIRMAN CARTER: Thank you.

15 Let me just ask you one question for Green Mountain.
16 Just no elaboration, just one question. Are we going to get
17 cooperation from your company, yes or no, for this audit? Just
18 push the button.

19 MR. THOMAS: Mr. Chairman, Robert Thomas, Chief Legal
20 Officer for Green Mountain Energy.

21 The Commission and the Commission staff has received
22 our cooperation in providing documents, cooperation beyond what
23 we're required to do in our contract, but we have provided that
24 cooperation in the past. We've been working intensely with FPL
25 on the issues raised by Mr. Devlin, and we will continue to

1 work with the staff to provide the information that's being
2 requested.

3 We are very interested in demonstrating where the
4 money went and what it was spent for. The money was spent for
5 legitimate marketing expenses and other business expenses. We
6 built a successful program. And we're looking forward to
7 answering the questions in the audit so that we can satisfy
8 those, the issues that have been raised.

9 CHAIRMAN CARTER: Thank you. Commissioner Edgar.
10 One second, Commissioner.

11 Commissioner Edgar.

12 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

13 A couple of thoughts that I've been kind of waiting
14 to try to make, and this references back to a little bit of the
15 earlier discussion. And I appreciate Commissioner Argenziano
16 helping to get this clarification out as part of the
17 discussion.

18 The tariff, in my view the tariff and the order and
19 the contract are, they are separate documents, they are
20 separate legal tools, all related absolutely, but they are
21 separate documents with separate, related but separate
22 purposes. And sometimes as we're discussing things those terms
23 may get used interchangeably, and I think some of the
24 distinctions as to what the purpose of each of those documents
25 is can be important as we think through the entire program.

1 Secondly, there has been some discussion about not
2 knowing where some of this money has gone. I think it's
3 incredibly important, and a number of us have said this,
4 incredibly important that transparency be there. I also
5 recognize that a thorough, careful, professional audit takes
6 time and does take some back and forth, and I think it's very,
7 very, very important that audit activities continue and that
8 those answers are there and are transparent. And my
9 understanding from the discussion that we've had with staff is
10 that is an ongoing process. And, absolutely, I have every
11 expectation and indeed requirement that the entities involved
12 will participate fully to the extent of their ability in
13 helping our staff with that audit process and in bringing
14 additional and necessary transparency to, to, you know, follow
15 the money. Absolutely.

16 I'd like to come back then with those comments to the
17 question that Commissioner Argenziano asked earlier and she
18 beat me to, which is, and ask FPL to respond to the question
19 that was raised as what -- if indeed the program is terminated,
20 which I think we have all expressed some support for, and we
21 take what we've learned and continue to work on alternative and
22 renewable development in many ways, then what does happen to
23 those current customers? We've talked about winding down the
24 program, we've talked about doing the audit of the dollars.
25 There are some ongoing commitments. I mentioned earlier I'd

1 like to hear about Rothenbach, which, you know, I recognize
2 back in '06 was announced as a Sunshine Energy related program,
3 and then in '08 we had the actual initiation of that project.
4 So, again, you know, to the question asked earlier, what
5 happens to those current customers, what happens to the
6 Rothenbach project if this program is terminated rather than
7 amended? And I think I had a third point, but I may have to
8 come back to it.

9 CHAIRMAN CARTER: Mr. Litchfield.

10 MR. LITCHFIELD: Thank you, Mr. Chairman.

11 Commissioner Edgar, with respect to what happens to
12 the customers, 38,000 customers who are currently subscribers,
13 if the Commission's decision today was to terminate the
14 program, you know, at some reasonable date in the future we
15 would begin to communicate as soon as practicable to those
16 customers the ultimate termination date of the program, which
17 would allow them to either move off the program or either
18 remain full participants until the full termination date. So
19 that would be their option.

20 You know, as to what happens, you know, after the
21 ultimate termination of the program, well, they would obviously
22 be free to pursue other renewable programs around the country,
23 if that was their, their choosing. But effectively I think
24 you're right in pointing out that we can also suggest to them
25 that, that there are other significant renewable efforts that

1 are ongoing in the state as promoted by this Commission. And
2 I'm speaking specifically of the solar commitment that
3 Mr. Devlin referred to earlier, the 110 megawatts of solar that
4 will be constructed by Florida Power & Light Company, the
5 pending discussion on the renewable portfolio standard and
6 other policy shifts in the state that, as you point out, may,
7 may have superceded the original intent and scope of this
8 program.

9 So that's the communication that we'd begin to
10 undertake and give them adequate time to notice the termination
11 of the program and also adequate time for us to, in fact,
12 correct and fix our billing system so that we're not billing
13 customers as of the end of the effective date of the program.

14 Consistent with that, we also would be in a position
15 to, along with Green Mountain, to represent that the terms of
16 the tariff as well as the solar commitment would continue to be
17 met through the end of the program termination date. And then
18 with respect to the dollars that are collected during the
19 remaining few weeks of that program, those, of course, as
20 you've indicated, would be subject to the audit that we're all
21 talking about and contemplating. And action, if any, that
22 might be deemed warranted could be taken in connection with the
23 ECCR docket.

24 COMMISSIONER ARGENZIANO: Mr. Chair?

25 CHAIRMAN CARTER: Yes, ma'am.

1 COMMISSIONER ARGENZIANO: Is there a way to suspend
2 the program until we find out where the dollars were spent?
3 Because I would hate to cancel out or terminate a program that
4 goes for renewables if we find out later that the dollars, we
5 do find out that they were spent in the way that either the
6 contract, the tariff or the way they were indicated that maybe
7 could be changed somehow in the future and keep the program
8 alive. Is there a way to do that, just suspend taking any
9 money from the consumer at this point until we find out further
10 where the monies went?

11 CHAIRMAN CARTER: I'm going to ask staff to weigh in
12 on that, Commissioner.

13 MR. DEVLIN: Tim Devlin of staff.

14 I'd have to think that through a little bit. Perhaps
15 there is a way where we again could escrow the monies. Maybe
16 that would be a form of suspension, I suppose. But we would
17 probably want to deliberate and make sure that that makes
18 sense.

19 COMMISSIONER ARGENZIANO: Because, and the reason I
20 asked for that, because we, we don't have transparency right
21 now, and yet we have a commitment that we're going to be
22 looking at that. And I, and I would hate to be the one that
23 says pull the plug on, I don't mean to use the pun, but to pull
24 the plug on a project that is promoting renewables if we could
25 make it better, or then find out that, wait a minute, okay, it

1 wasn't, you know, the money was spent according to how it was
2 laid out in a contract but they met their obligations in other
3 areas. And I, in plain words I'd hate to terminate a program
4 if we could make it better and keep those volunteers. I don't
5 want to disenfranchise those volunteers. And I think that if
6 there's a way to do that and put that in escrow and suspend it
7 until that time we see where the money was spent, I think that
8 gives us a better idea then what, what our final outcome may
9 be.

10 CHAIRMAN CARTER: We've got staff talking to legal.
11 Mr. Devlin, are you ready, or Mr. Cooke?

12 MR. COOKE: I think we would need to deliberate
13 carefully about that. But I think what Mr. Devlin said was
14 putting the money into an escrow account subject to our being
15 able to get to the bottom of some of our audit questions might
16 achieve that result. I'm not sure whether we could just
17 temporarily suspend a tariff like that or not or what kind of
18 complications that might create. But if we put subject to
19 coming into an escrow and control so that the money doesn't go
20 to Green Mountain, for example, then we have control over those
21 funds.

22 COMMISSIONER ARGENZIANO: That would, that would
23 satisfy me until we found out a little bit more if it could be
24 done.

25 CHAIRMAN CARTER: Okay. Let me -- I'm going to go

1 back to Commissioner Edgar, then Commissioner McMurrian.

2 Commissioner Edgar.

3 COMMISSIONER EDGAR: Thank you.

4 And I think it's related. I had asked about,
5 specifically about the Rothenbach project and the commitments
6 to that and, and how that would be impacted if the program were
7 to be terminated. And I think that relates also to the point
8 that Commissioner Argenziano has just raised, if it were, for
9 lack of a better term, a temporary break. I think those points
10 are related. And so if I could ask FPL to speak to that
11 project specifically.

12 MR. LITCHFIELD: Thank you, Mr. Chairman,
13 Commissioner Edgar. And I realized as soon as I finished I had
14 neglected to address part two of your question, so I apologize
15 and was hoping for the opportunity to come back to that.

16 It is true that there are ongoing financial
17 obligations to the Rothenbach Park project, which today is the
18 largest solar array constructed in the State of Florida. And
19 obviously it is in the interest of both FPL and Green Mountain
20 that that project continue as conceived.

21 We would look to be discussing how that project would
22 continue to be funded through its term with Green Mountain as
23 part of the termination of the program. But suffice it to say
24 that the obligation would continue, and so to escrow the funds
25 and to prevent them from being used to continue the obligations

1 under the program would present somewhat of an impediment.

2 Not only do we have financial obligations under the
3 program going out to Rothenbach Park, but also to Publix
4 grocery stores where some solar facilities have been installed,
5 and also for the continued purchase of the RECs. For each
6 program participant, per the tariff, one REC must be purchased
7 for each contribution. So technically an escrow would be
8 feasible and certainly we're amenable to doing whatever the
9 Commission would have us do, but recognize that there are
10 continuing financial obligations under the program that would
11 have to be met. And, of course, I'm not sure that the escrow
12 in itself would, would provide this Commission with any other
13 remedy that it otherwise wouldn't have in the course of the
14 ECCR docket.

15 CHAIRMAN CARTER: Thank you. Thank you.

16 Commissioner McMurrian, thank you for your patience.

17 COMMISSIONER McMURRIAN: That's okay, Chairman. I
18 think we've moved on past the points I wanted to make and we
19 probably need to focus on this new, this new point that
20 Commissioner Argenziano has raised at this time. So thank you.

21 CHAIRMAN CARTER: Commissioners, I think that, as I
22 said, is that we, we do need to bring this plane in for a
23 landing, and I think that we're talking in the context of maybe
24 suspending the program, with escrowing the funds. I was on the
25 plane for termination of the program based upon the will of the

1 Commission. If that is the will of the Commission to suspend
2 the program with escrowing the funds, then let's do that. But
3 certainly I think that it's incredible to have this number of
4 people that are willing to do something to protect and make
5 Florida more green. And I think that from the Governor and the
6 Legislature and from this Commission we have upheld the
7 responsibilities of being good stewards of our ecology of this
8 state. And so, Commissioners, let's kind of move forward here.
9 We need to bring the plane in for a landing. We need to give
10 some direction to staff and we need to give some direction to
11 the parties on that.

12 So, Commissioner Skop, you're recognized.

13 COMMISSIONER SKOP: Thank you, Mr. Chair. Just one
14 quick point and then we can bring it in for a landing.

15 With respect to the Rothenbach, Rothenbach Park
16 project, I guess staff in their report summarized the
17 obligation, and FPL would have no obligation if the Commission
18 terminates the program and FPL offers green pricing -- you
19 know, if they're in that blackout period, there is no
20 obligation unless Green Mountain defaults.

21 But I have the Power Purchase Agreement before me.
22 It's an eight-year Power Purchase Agreement where FPL purchased
23 all of the electrical output, not net, all of the electrical
24 output from the facility, and it's the rate schedule COG-1. So
25 essentially the owner of the array retains the attributes. So

1 basically the only obligation that FPL has that I see
2 essentially is the obligation to purchase power from the array.
3 They may or may not buy the attributes. But essentially, you
4 know, I recognize that's a benefit to the state. But, you
5 know, they're under that agreement, and that agreement would,
6 would exist even if the Commission were to terminate that
7 program. That's a pre-existing Power Purchase Agreement for an
8 eight-year term. So to me I don't see a problem with
9 Rothenbach, you know. But, again, I just wanted to make that
10 point of clarification. I think staff did an excellent job of
11 articulating each of the respective projects and obligations
12 that would result in response to Commissioner Edgar's initial
13 inquiry on July 1st. So I don't see it as a, as a problem.

14 But, again, going to the Commission's point and
15 Commissioner Argenziano's point, you know, if 80 percent of the
16 money is going to marketing, I just, I can't see the benefit to
17 the state, to our environment or to the voluntary, voluntary
18 ratepayer. So I just can't in good faith support 80 percent of
19 the money just going off to its unintended purpose. I don't
20 think there's value there. Perhaps if the, if the tariff had
21 been originally set much lower, we might not even be having
22 this discussion. But we are and I can't help that. But I'm
23 pretty passionate about bringing renewables to our state and
24 I'm not in the business of buying thin air in other parts of
25 the country. So, again, just not a big fan of what's going on

1 here.

2 I think that we're limited significantly by a very
3 poor contract that clearly favors Green Mountain on many
4 different provisions. And I'm just not -- you know, there's
5 leveraging. But if you look at legally from the agreements,
6 you know, you've got assignments on top of assignments on
7 top -- it's just really hard to follow this. It's like a
8 tortuous maze. And, you know, I'm pretty up to speed on what's
9 going on here. But, like I say, I just can't in good faith
10 support this. You know, I'd like to advance the policies of
11 our Legislature and our Governor, but this is not it, not in
12 its current form.

13 CHAIRMAN CARTER: Commissioner McMurrian.

14 COMMISSIONER McMURRIAN: Thank you, Chairman. To
15 the -- I agree it's hard to follow, Commissioner Skop. To the
16 point about the 80 percent of the costs though on marketing and
17 admin -- and I thought it was 74, but I'm not going to quibble
18 about 74 versus 80. I guess my understanding was if we, if we
19 do what I think staff is recommending and then we take up some
20 of these issues in the ECCR clause, that we would be looking
21 at, to Commissioner Argenziano's points and actually all of my
22 colleagues' points, about where the money went and that's some
23 of the things that they'll be looking at in this audit report
24 and working with Green Mountain Energy and FPL. And we don't
25 know what we'll find out about that, but that will be taken up

1 in the ECCR, as I understand it.

2 And the same thing with the 80 percent of the costs
3 or 74 percent of the costs, I'm not at this time able to say
4 whether I think that's reasonable or not. I know that the last
5 time we were here FPL gave us some information showing us how
6 other utilities had used a certain percentage of the costs. It
7 may not have all been apples to apples, I'm not sure. But at
8 this point I'm not able to say whether that's unreasonable or
9 not because I think it gets into how long should you spend a
10 certain percent and how, what the results were with that
11 80 percent of the money. And it seems like they've gotten a
12 lot of people signed up and that perhaps, perhaps that these
13 types of programs take that type of marketing cost. I just
14 don't know and don't feel comfortable making a judgment today
15 whether or not 80 percent is reasonable or not. I don't feel
16 like I have all those facts.

17 So I feel more comfortable with putting those kinds
18 of decisions aside to when we have more information on where
19 the actual dollars were and how they were spent. And if it all
20 went to the marketing costs, do we think that's reasonable,
21 giving all the parties a chance to put testimony in the record
22 and consider that. So I just wanted to say that with respect
23 to the 80 percent.

24 I, Commissioners, I think I'm still where I was last
25 time about terminating the program, but I am interested to hear

1 thoughts on the suspension thing. I just hadn't, hadn't
2 thought of that, so I don't know where we are with that
3 suggestion, but.

4 COMMISSIONER ARGENZIANO: Well --

5 CHAIRMAN CARTER: Commissioner Argenziano.

6 COMMISSIONER ARGENZIANO: Well, I look at it this
7 way. And I am a, and always have been for most of my life a
8 very strong proponent of renewables. But I also noticed in,
9 maybe in the past 40 years the country has not really moved
10 forward with renewables. There have been no incentives there
11 to move forward, and sometimes you provide incentives. I'm not
12 saying that 80 percent or 50 percent, I'm hoping that that
13 changes, and I'm hoping with the missing component here of
14 finding out how the money was spent that we learn more and
15 maybe can reshape a program. And if it has to be terminated,
16 it needs to be terminated, something needs to be done.

17 But what I don't want to do is discourage people, the
18 38,000 who are willing participants, as saying that, you know,
19 we're not going to let your dollars just be taken away and
20 given, given to some other state and not used the way they need
21 to be used. But we need to find that missing component first
22 in my mind. I need to find out where the money was spent. If
23 then it comes in that it was done imprudently and wrongly or it
24 needed to be done, the opposite, it needed to be done to get
25 the marketing that got people on board and maybe we can reshape

1 it, well, that's great. And if not, then we terminate the
2 program. But without that missing component I'm probably
3 wanting to wait, hold things in escrow, because then it gives
4 Green Mountain an incentive also to cooperate and work with our
5 Commission to get the answers and maybe make the program a more
6 successful program. And if not, it could be terminated.

7 But at this point -- and I fully understand
8 Commissioner Skop's arguments, I do understand the differences
9 between the contracts and the tariffs and I have to hold, have
10 those kept separately, and they're hard to do but they must be
11 kept separately, although I have real concerns with them,
12 especially the contracts. But at this point I think that if
13 you terminate the program now, there's no incentive for Green
14 Mountain, and I'm worried about the 38,000 existing customers.
15 And I'm not saying I'm not going to terminate, that may not be
16 my, you know, decision in the future. It may be to terminate.
17 But I really would like to know where the money went first and
18 then find out if we can salvage a program, make it better and
19 see.

20 But I do realize that in today's world there has to
21 be incentives and you have to go out and you have to get
22 people. The public is very willing, very willing, as we've
23 noticed, to contribute and to be part of renewable and to be
24 part of the policies that the Legislature put forward and our
25 Governor has put forward. So we need to make sure,

1 Commissioner Skop is 100 percent correct, we need to make sure
2 that they have confidence in doing so and that their money goes
3 to the best place. But I don't think either one of us, any one
4 of us right now, without having that hole filled as far as
5 where the money has been spent, should make a decision without
6 having that information.

7 And I'm sure that there are a lot of people who want
8 to terminate the program and that may be ultimately what
9 happens. But I'm not going to throw away something without
10 knowing a main component first. And if we have a few weeks
11 that we can do that and safeguard the people of the State of
12 Florida, I'd feel a lot more comfortable with that information
13 and the monies held in escrow. And I guess that's where I'm
14 at, Mr. Chair. And I just think it's critical to find out
15 where those dollars went to. And I think that if Green
16 Mountain, you know, did the best they could in this program,
17 we'll find out. And maybe it can continue and maybe it won't.

18 CHAIRMAN CARTER: Thank you, Commissioner.

19 Commissioner Edgar.

20 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

21 To follow up on some of the points that Commissioner
22 Argenziano has, has just made, I think what I'm hearing her say
23 is something a little closer to what is in the, actually in the
24 staff recommendation before us, which was to continue, which
25 was to suspend the tariff and then allow FPL to work with staff

1 and other entities to amend the program and bring back a new
2 and improved, for lack of a better term, and I want to come
3 back to that point.

4 I absolutely agree, I think we're all saying it, that
5 it is very important to, to safeguard, and I think that that,
6 the current and the ongoing audit is intended to do just that.
7 At least that's the way I see it, that that audit will, is
8 intended to answer some of those questions, will answer some of
9 those questions. And that, again, is how we will be adding
10 further transparency and safeguard to the investment that
11 consumers have made into this program. And I do think that
12 that is an absolutely critical component of whatever action we
13 take.

14 At our meeting July 1st, I think it was, we had some
15 discussion about turning, I forget who said it, so whoever gets
16 credit, about turning lemons into lemonade and to maintaining
17 the goodwill of the customers who were participating in this
18 project, in maintaining, maintaining and improving credibility.
19 We had some concern about loss of credibility. I know that
20 that is a concern for all of us. And wanting to keep, as
21 Commissioner Argenziano has said, the good things of this
22 program and all other programs that this state and our
23 utilities have done to contribute to furthering the renewable
24 and alternative generation effort.

25 So I agree with so much of what I'm hearing, but I

1 guess I still come down to where I was before. And I'm open to
2 moving, but I still think that terminating is probably the best
3 thing to do at this point. I recognize, Commissioner
4 Argenziano, and agree with your points about wanting to keep,
5 keep what's good and maybe even improve. But I come back to my
6 earlier point, which was I think that as a state we have kind
7 of moved beyond this program. And I'm just not sure that the
8 best bang for the dollar and for retaining and keeping and
9 growing that goodwill and interest that has been generated in
10 consumers, that going kind of back and forth with this program
11 is the best way to do that. So, you know, I would like to find
12 a way again to keep that goodwill, to keep and improve
13 credibility, to keep the good projects going. But I think to,
14 to use and attribute Commissioner McMurrian's comment earlier
15 about it's had its day in the sun I think is still where I'm
16 at. Thank you, Mr. Chairman.

17 CHAIRMAN CARTER: Thank you.

18 COMMISSIONER ARGENZIANO: Mr. Chairman, can I ask --

19 CHAIRMAN CARTER: You're recognized.

20 COMMISSIONER ARGENZIANO: If, if the program is
21 terminated and in a few weeks from now you find out that the
22 money was spent properly or the opposite, improperly, and then
23 the question comes up as refunds, what would you do then?
24 Maybe Commissioner Edgar could respond. Because I'm just not
25 sure without having that information, because I was ready to

1 terminate the program also. But then it occurred to me that
2 the question could come up in a few weeks that, you know, there
3 may be a refund issue once you find out if it was not spent
4 properly, or if it was spent properly and that's how, you know,
5 you got the program rolling to begin with. Because let's face
6 it, there haven't been too many people out there in the past
7 two or three decades pushing alternatives at any kind of rates
8 that would be acceptable to where we needed to be today. But
9 what happens then if it comes back that, you know, they show
10 you where the money was spent? You go, okay, it's a different
11 number, I understand or whatever, no, I don't understand,
12 what's the scenario then if that comes up? And I'm not sure
13 where that puts us in a few weeks.

14 COMMISSIONER EDGAR: Commissioner Argenziano, this is
15 Commissioner Edgar, and I'll, I'll give it a try.

16 My thinking and my understanding is that as we move
17 through, again, the additional audit process, that those
18 findings then would be and could be taken up as part of the
19 review that we will do later this year with the ECCR clause and
20 docket. And if, if there were -- I would use the word credit
21 rather than refund. But if indeed it is shown and this
22 Commission and our staff findings lead us to believe that some
23 of that money needs to be returned, so to speak, that again
24 that would be dealt with through the conservation clause. And
25 I'm welcome to have staff correct me if I, if I got that wrong,

1 but that is my understanding and thinking.

2 CHAIRMAN CARTER: Staff?

3 MR. COOKE: I think staff agrees with that, that we
4 would look at those numbers in the ECCR and come to closure one
5 way or the other.

6 I thought what maybe Commissioner Argenziano was
7 asking is what happens to the customers that have been signed
8 up and the program is terminated. They're going to be gone. I
9 think that's the issue she's trying to address.

10 COMMISSIONER ARGENZIANO: Right.

11 MR. COOKE: It's not really the mechanics of
12 recovery, et cetera, but do we know enough now? I mean, this
13 is a policy question for you all. It's not a legal question.

14 CHAIRMAN CARTER: Commissioner Skop.

15 COMMISSIONER SKOP: Thank you, Mr. Chairman.

16 And I just wanted to briefly touch upon two points
17 that were raised, first Commissioner McMurrin's and then
18 Commissioner Argenziano's.

19 I do agree with Commissioner McMurrin, also
20 Commissioner Edgar, that I am in favor of terminating the
21 program.

22 With respect to the, what we do after that, again, I
23 think in sole agreement with staff, Commissioner McMurrin and
24 probably also Commissioner Edgar with respect to looking at
25 where the money went, finding the transparency, conducting a

1 full-blown audit and then finding out whether management was
2 prudent or whether things were not done appropriately. And
3 then that becomes, I think as Commissioner Edgar so pointed
4 out, an accounting adjustment to the ECCR, which would be
5 reconciliation. And, you know, that, I think that's the same
6 clause that that 110 megawatt solar project flows through. So
7 that was my whole suggestion.

8 To Commissioner Argenziano's point, I guess, you
9 know, when you get into a refund issue spanning over a couple
10 of years, this is problematic to identify the affected class of
11 the consumers. And I think to that point that's why I thought
12 that the best win-win solution would be that if a, if an
13 accounting adjustment or refund or whatever the proper
14 terminology is would be warranted, which I feel it is -- but,
15 again, I'm open-minded to see what the audit results hold.
16 But, again, 80 percent of the money not going to renewables is
17 problematic for me.

18 But what I thought was an innovative suggestion which
19 benefits the voluntary ratepayers who thought when they
20 enrolled in this program they would see benefit in Florida, as
21 well as the general body of ratepayers that are going to be
22 paying for this 110 megawatt solar project, is that any credit
23 would be applied to that as an accounting adjustment and maybe
24 call it a contribution in aid of construction to those big
25 solar projects. And I think that that's a win-win for the

1 Commission, a win-win for staff, a win-win for FPL to the
2 extent that, you know, we're looking out for the consumers,
3 we're looking out for the reputation, we're restoring that
4 confidence and we're showing a manifest sign of a commitment to
5 the customers, the state and our environment by moving forward
6 with those projects in the course of whatever appropriate
7 accounting adjustment may be made based on the evidentiary
8 record that we would hear in November based on additional
9 discovery.

10 So I'm in favor of terminating and then, and let the
11 discovery go where the discovery leads us. But I do think
12 that, you know, it's an innovative win-win solution, that if a
13 credit is due or an accounting adjustment or refund or whatever
14 you call it, that that be applied towards the contribution in
15 aid of construction of those solar projects, and I think
16 everyone wins with that solution.

17 COMMISSIONER ARGENZIANO: Mr. Chair.

18 CHAIRMAN CARTER: Yes, ma'am. You're recognized.

19 COMMISSIONER ARGENZIANO: I have no problem -- I
20 guess I have some problem with termination I think, I think
21 without having the other information because you're terminating
22 a program before you actually know the nuts and bolts of what
23 had happened. I'm not happy with the 80 percent either, but I
24 understand, and you look at contracts which we had nothing to
25 do with, how these things go. And I'm not sure, you know, if

1 that remains at that level, I don't know what happens until you
2 get a program off and running. I'm not sure.

3 But I'm fearful that if you terminate the program
4 today, there is no incentive for Green Mountain to, you know,
5 to really comply.

6 And, and I think -- I don't know. I think that
7 there's probably a lot of people who want to see the program
8 terminated. I'll vote to terminate if that's the will of the
9 Commission, but I think then that you have reduced the
10 incentive for Green Mountain to ever comply and you will not
11 get what you need in a few weeks. So that's my concern. And
12 at this point I'm ready to, to either hear a motion or make a
13 motion and move forward.

14 CHAIRMAN CARTER: Okay. Commissioner Skop.

15 COMMISSIONER SKOP: Thank you. Mr. Chairman.

16 And to Commissioner Argenziano's point, I think it
17 was a good one. The, the termination, again, I think that, you
18 know, that's at least the direction I want to go to. But she
19 had mentioned something, and again I'm having a brief mental
20 lapse, but it was an important point that she had made and for
21 the life of me -- I guess I'm thinking about 10 million things
22 so I've since forgotten it. Commissioner Argenziano, if you
23 could refresh my memory just --

24 COMMISSIONER ARGENZIANO: You mean what I just said?

25 COMMISSIONER SKOP: Yes, ma'am.

1 COMMISSIONER ARGENZIANO: I was talking about the
2 incentive for, for Green Mountain.

3 COMMISSIONER SKOP: Yes. Okay. Yes. And I'm sorry
4 because I had that mental lapse.

5 COMMISSIONER ARGENZIANO: That's all right.

6 COMMISSIONER SKOP: The incentive I think is that,
7 again, as our General Counsel has pointed out, we really have
8 no jurisdiction over Green Mountain. The incentive to, to
9 Green Mountain I guess would be implemented either through
10 other entities with jurisdiction or compelled by FPL or handled
11 in a civil litigation process. But certainly FPL has the
12 incentive to encourage Green Mountain to comply with the
13 Commission request since we regulate FPL. And at the end of
14 day if we can't get the data, then through that ECCR FPL may
15 find itself on the hook. So I think that they have the
16 incentive to -- because, you know, again, they were paid a
17 million dollars to manage this program, and obviously there's
18 some difficulties here. But certainly I think the incentive
19 and the burden is on FPL to, to induce Green Mountain to fully
20 comply with us getting to the bottom of the transparency
21 issues. Because if they, if they don't, then at the end of the
22 day if we can't get the information we need to make a decision,
23 that we need to make a judgment call as to what was
24 appropriate, and I think staff has kind of identified some of
25 that, but at the end of the day, you know, when we get down to

1 the ECCR time, FPL may be on the hook for the accounting
2 adjustment.

3 COMMISSIONER ARGENZIANO: Well, Mr. Chairman.

4 CHAIRMAN CARTER: Yes, ma'am. You're recognized.

5 COMMISSIONER ARGENZIANO: With all due respect to
6 Commissioner Skop, that may be your, your take on that. I
7 think that when you have two private companies a very different
8 scenario would occur. When you're terminating a program that
9 Green Mountain is, is, you know, a part of, a very large part
10 of that contract with FP&L, I don't think they have to give
11 anything to FPL and FPL could be out there stuck on their own
12 afterwards anyway.

13 My, my point is the incentive is there if there's --
14 if Green Mountain has been up and up, even though they may have
15 spent more on marketing, and I'm not going to argue that at
16 this point because I'd like more money to go into the
17 renewables, but there may be a good reason to look at how they
18 spent that money before terminating, and that was my point
19 before. Because of the fact that if you now terminate, there
20 is no incentive. And with due respect, I don't think FPL --
21 they may say, look, we'd like you to do this, but there's no
22 incentive for Green Mountain then to comply. If they have a
23 possibility that the program exists in the future because maybe
24 they did or do have better results to show us in two weeks, and
25 I have no clue that they do, but the incentive is much greater

1 for them to, to participate.

2 And with due respect also, as I said before, if FP&L
3 is contracting, you know, if they're -- if we're regulating
4 FP&L, I believe that, as I said before, that since they either
5 subcontract or contract with another entity, we probably do
6 have some type of power or jurisdiction. I don't know how
7 limited it could be, but I would imagine that our counsel can
8 check on that. And I think I may be correct in determining --
9 you know, maybe we can get additional information from Green
10 Mountain. I don't know.

11 But as I said before, Mr. Chairman, we've spent a lot
12 of time on this. You know, my original view was to terminate
13 the program. But I'd like to have that information where those
14 dollars went to. I know that there's 38,000 people who, who
15 are still members of that program and I'm sure want to know
16 that their money is being spent well.

17 So with the will of the Commission, if it's to
18 terminate, then I'm there. I still hope that we could get the
19 information on how the money has been spent, although I think
20 that that's doubtful if we terminate today.

21 CHAIRMAN CARTER: Thank you, Commissioner.

22 And then as we have our staff deliberating, win, lose
23 or draw, we still want to know that information.

24 Commissioner McMurrian, you're recognized.

25 COMMISSIONER McMURRIAN: Thank you, Chairman.

1 And I just wanted to say to Commissioner Argenziano I
2 share some of your concerns about the incentive to Green
3 Mountain. But in thinking about that I did think of one other
4 incentive I think that Green Mountain has, and I think that's
5 that Green Mountain wants to work in other states and I think
6 that they're going to have some incentive to work with us.

7 And to the extent that their reputation has been
8 questioned throughout all this, I think they've got an
9 opportunity to try to help show that they have spent the money
10 properly or at least spent it on whatever they've spent it on,
11 and then we make the judgment as to whether or not we think
12 that that was a prudent way for the, for the customers' money
13 to have been spent. But I think there is some incentive there.
14 But I do share your concerns and I, and I think that your
15 points are well-taken.

16 And I'm also happy to say I think that most of us
17 share the same concerns, despite some of the things that have
18 been said today. I think there's been far more agreement than
19 disagreement on a lot of these issues. And I think we
20 definitely all care about what happens to those 38,000
21 customers who use -- who contributed this money to further
22 renewables. And I think that that has happened. Perhaps it
23 could have been done in a better way.

24 And also I wanted to say that perhaps, perhaps the
25 Commission should have had more oversight in some way. I think

1 that -- I should add that my name was on that final order too,
2 Commissioner Skop, and I believe that it was a unanimous
3 decision of the Commission. I think we're in a different time.
4 That's been said many times throughout this. I think that that
5 was a very different time for the Commission. We didn't have
6 these renewable projects getting off the ground at that time.
7 I think it was the right decision for the Commission at that
8 time. But I will say -- you might expect me to be defensive,
9 but I will say that perhaps we should have had better oversight
10 in a couple of areas. But we are where we are and I do think
11 at this time it's probably the more appropriate thing to
12 terminate the program and focus on those things that the
13 Legislature and the Governor is wanting us to focus on with the
14 RPS and a lot of the projects that we have before us.

15 So, Commissioners, I'm still in favor of terminating
16 the program. I agree with Commissioner Argenziano, we do need
17 to find out how the money was spent, and I think it's staff's
18 intent to continue that process and take those issues up in the
19 ECCR.

20 CHAIRMAN CARTER: You're recognized for a motion.

21 COMMISSIONER McMURRIAN: Okay.

22 MR. THOMAS: May I be heard on one quick point, Mr.
23 Chairman?

24 CHAIRMAN CARTER: Okay. You're recognized.

25 MR. THOMAS: Thank you very much. It's on the

1 question of whether we'll cooperate.

2 CHAIRMAN CARTER: One second.

3 Commissioner Argenziano?

4 COMMISSIONER ARGENZIANO: Yes.

5 CHAIRMAN CARTER: Let me kind of explain to you where
6 we are. We're going to -- Commissioner McMurrin has been
7 recognized for a motion. We're going to hear from the general
8 counsel from Green Mountain before she makes her motion.

9 COMMISSIONER ARGENZIANO: And, Mr. Chair, before,
10 before we do that, can I make one comment to Commissioner
11 McMurrin?

12 CHAIRMAN CARTER: You're recognized.

13 COMMISSIONER ARGENZIANO: Thank you.

14 The issue -- and I'm in agreement. I just think that
15 terminating a program is a black mark for Green Mountain
16 because -- and my point was to be fair to everyone because I
17 wanted to make sure that we were terminating for the right
18 reasons, and I don't feel like we have that information. And
19 I, and I think it is a black mark for Green Mountain in other
20 states. And I don't mean that disparagingly because I don't
21 know what the, what the answers are to the questions that we
22 were being asked: "Where did the money go?" And I'm not sure
23 that's fair to Green Mountain, I'm not sure it's fair to the
24 consumer, I'm not sure of those things without having that
25 information. So, and I'm not pro -- I'm not opposed to Green

1 Mountain. I don't have the numbers. That was my point,
2 Commissioner McMurrian, thinking that it was really a negative
3 for Green Mountain because the program is terminated in the
4 State of Florida.

5 But, you know, I'm, I would like to say one other
6 thing. If we are going to do these types of programs, I'd like
7 to know from our General Counsel that we have the authority to
8 look before into, you know, how much money goes from the
9 consumer to the actual, you know, initiatives versus marketing
10 and so on and so on. So, I mean, if we're going to do anything
11 like this in the future, like this in the future, I'd hope we
12 would make sure that we have the jurisdiction to, to put our
13 two cents in as to how much money goes where and how the
14 breakdown is. And I'm not sure you're going to have businesses
15 who are going to appreciate that or can do business that way,
16 but I don't know. That would be a further discussion, I guess,
17 for General Counsel and myself later on.

18 CHAIRMAN CARTER: Yes, ma'am.

19 COMMISSIONER ARGENZIANO: Thank you, Mr. Chair.

20 CHAIRMAN CARTER: Thank you.

21 MR. THOMAS: Mr. Chairman, thank you very much.

22 Green Mountain appeared today, we expected the
23 Commission very likely could terminate the program and we
24 accept that. There are obviously sound policy reasons for
25 doing that, and we didn't appear, we didn't attend today's

1 conference with the intent to challenge the policy decision.

2 Expecting that the program might be terminated we
3 still remain committed to cooperate to the extent we can with
4 staff and FPL to provide the information this Commission is
5 looking for. We want to do that because of our belief in the
6 program, that it was well-run and it was a good program, and
7 we'd like to, we'd like to have that demonstrated. So we will
8 continue to cooperate with staff and FPL to work out some
9 procedure for doing that audit.

10 Our goal is pretty narrow at this point. We
11 recognize the need to terminate the, that the Commission may
12 terminate the program. Accepted. What we want to do is be
13 treated fairly and have our performance of this contract
14 accurately reflected in this Commission's orders and formal
15 documentation. We're very concerned about -- we believe we
16 performed the contract, Mr. Chairman. We believe we built a
17 good program and we believe we have cooperated with the staff
18 beyond what our contract required and will continue doing that.
19 And that's our reason for being here today and that's our
20 reason for continuing to cooperate with the staff and FPL, to
21 provide you with the information you need to better understand
22 this program, what it was all about, what it did deliver and
23 whether it met the terms of the tariff and the contract we had
24 with FPL. Thank you.

25 CHAIRMAN CARTER: Thank you for your comments.

1 COMMISSIONER ARGENZIANO: Mr. Chair? Mr. Chair, I'm
2 sorry. Just one other -- I'm sorry because I know we've spent
3 a long time on this.

4 CHAIRMAN CARTER: You're recognized.

5 COMMISSIONER ARGENZIANO: What this gentleman just
6 said is part of my angst in this whole thing. Everybody knows
7 I've been a pro-consumer. I think we all are. Okay? So
8 there's no question on my concerns for the consumers' dollars.
9 Okay? None. None should be, should even be thought of for any
10 of us.

11 My concern is, in being fair is that you've just
12 heard the gentleman, and I don't know whether it's true or not,
13 I believe it is from the contractual part, maybe not the
14 tariff, I'm just not sure anymore, but I don't like to punish
15 people who have met their contract. It's not their fault if
16 the contract didn't specify that, oh, 60 percent should go to
17 marketing or 40 percent should. I'm not sure of those things.
18 So, but the part of me that's trying to be fair and
19 pro-consumer at the same time is saying, now, wait a minute,
20 you know. I'm looking at this as we're punishing Green
21 Mountain because they maybe spent a lot more, and I'm not
22 saying it's a good thing or a bad thing because I don't know at
23 this point, but if they've met their contractual agreements, I
24 think it's really unfair. And the part of me that's
25 pro-consumer is going, wait a minute, you know, there's a big

1 cry out here, but the fair part of me is saying I don't think
2 it's fair that you punish a company if they've met their
3 contractual agreements. And to be honest with you, I still, if
4 we go to a motion now and we vote on this, I still don't know
5 that they have not met their contractual agreements. Whether
6 the contract was written well or not, that's not the point. I
7 think you understand what I'm saying. It could be a great
8 contract, it could be a poorly written contract. But if
9 they've met their, their contractual agreements, then I feel
10 like we are punishing somebody who met their contractual
11 agreements. We may phrase it differently and say that, you
12 know, maybe the contract wasn't the best thing for the consumer
13 or this was the way that it had to be done.

14 And I guess I had to express that because I feel, I
15 just feel in the effort of trying to be fair I haven't come to
16 the conclusion whether they've met their contractual agreement
17 or not. And it just disturbs me that we're, we're terminating
18 a program that whether the contract was written good or not, I
19 wish, I wish it was written a little differently. And I guess
20 I just had to express that. And I'm ready to move on. And I
21 appreciate you allowing me to go on on that.

22 CHAIRMAN CARTER: Thank you, Commissioner.

23 And when, when this process is over and done and when
24 the audit is done, whatever we do, we will not -- I mean, if
25 the company comes out showing that everything, they met the

1 terms and conditions of the contract, we should not as a
2 Commission use that as a barrier to prohibit them from any
3 further business in the State of Florida.

4 I just, you know, I just, I don't want you to
5 think -- and I feel your pain, Commissioner, is that we're not
6 sending out signals that Florida is not open for opportunities
7 for renewable energies. And so I think we want to be fair with
8 everyone. I think that's what you're saying, Commissioner.

9 COMMISSIONER ARGENZIANO: Yes. I think it's, you
10 know, if they've met their contractual agreement, it's pretty
11 hard to say, slap you on the hand. You know, if that's the
12 contract, you know, if it was written poorly, well, then that's
13 another thing. But -- and I think you got it, Mr. Chairman.

14 CHAIRMAN CARTER: Thank you.

15 Commissioner Skop, then Commissioner McMurrian for a
16 motion. Commissioner Skop.

17 COMMISSIONER SKOP: Thank you, Mr. Chair. And I'll
18 make it brief.

19 Again, people can reasonably agree to disagree on the
20 facts. But, again, I stand behind my, my interpretation and
21 looking at the performance under the contract and the
22 management of the contract, as well as Bob Trapp on Commission
23 staff who basically stated openly that they had not met some of
24 their obligations, and as well as under Section 13.1 where they
25 clearly did not meet their obligations. But I'll leave it at

1 that because, again, we can debate the fine points.

2 But the bigger concern to me is the consumers and the
3 people that, the nearly 39,000 voluntary ratepayers who were
4 asked to give \$9.75 of their hard-earned money to contribute to
5 a program. And, you know, while -- just it's not good value
6 and that's what's unfortunate. Because if there would have
7 been better value along the lines of some of the slides that I
8 articulated what this program could have been, it would have
9 been win-win and we wouldn't be here today. But unfortunately
10 that time is behind us and I think it's appropriate for a
11 motion. So I look forward to hearing it.

12 CHAIRMAN CARTER: Commissioner McMurrian.

13 COMMISSIONER McMURRIAN: Thank you, Chairman.

14 And I guess before I make the formal motion I guess I
15 would just agree with what Commissioner Argenziano said about
16 it could look like punishment, and I agree that we shouldn't be
17 prejudging Green Mountain's involvement at this time. So I
18 would like to say I would like our order not to be interpreted
19 as prejudgment. I don't know if there's some kind of language
20 we can put in there that makes that clear or if it's just the
21 order stands for itself that there's nothing in there that
22 would suggest some kind of prejudgment. But I'm going to throw
23 that out, but I can go ahead and make the motion or --

24 Okay. On Issue 1 I move to, I think it would be
25 appropriate to modify staff's rec to end with -- staff's

1 recommendation reads, the first full sentence reads, "Well, no.
2 The Sunshine Energy Program does not currently serve the
3 interest of the program's participants and it does not align
4 with current state renewable energy policies." And I think
5 that would be -- and then deleting the rest of the staff
6 recommendation, I believe, would put us in the posture. And
7 then also adding that we would terminate the current program
8 and cancel the current tariff and escrow all the voluntarily
9 contributed monies collected as of, I guess, July 29th and
10 beyond as staff has suggested. So that would be my motion on
11 Issue 1. Should I go ahead and go through all the issues?

12 CHAIRMAN CARTER: Yes. So we can do an omnibus,
13 we'll just do it at one time. You're recognized.

14 COMMISSIONER McMURRIAN: Okay. On Issue 2, I believe
15 that issue would be moot.

16 CHAIRMAN CARTER: Okay.

17 COMMISSIONER McMURRIAN: On Issue 3 I would move to
18 deny the staff rec and cancel the new tariff or the newly
19 proposed tariff.

20 In Issue 4 on closing the docket, I believe the
21 docket should not be closed because of the normal protest
22 language. I'm not sure that the language at the end, I'm not
23 sure the language at the end is appropriate. I believe maybe
24 that last sentence shouldn't be there. But the intent would be
25 that the docket would -- on "Should this docket be closed?"

1 "No. If no substantially affected person files a protest to
2 Issue 1, this issue will become final upon the issuance of the
3 consummating order." I believe that would be my motion on
4 Issue 4.

5 CHAIRMAN CARTER: Thank you. Commissioners?
6 Commissioner Skop, have you got a question on the
7 motion? Okay. You're recognized.

8 COMMISSIONER SKOP: Thank you, Mr. Chairman.

9 I think that was an excellent motion. Just a point
10 of clarification with respect to Issue 1. I guess the, on the
11 motion that's pending on the table that we would terminate the
12 program as of today, July 29th, and escrow any monies collected
13 after that date and maybe return them to the customers of
14 record as of a certain date, like July 1st or whatever that
15 would be.

16 But the one question I also had with respect to the
17 ECCR, the direction we're going to head, I'm not so sure
18 whether the existing staff recommendation encompasses that
19 direction, so we may need a little bit of an add-on that we --

20 CHAIRMAN CARTER: I think -- staff, can you speak to
21 that? I think it does.

22 MR. DEVLIN: The existing staff recommendation
23 didn't, but the supplemental information that we provided and I
24 spoke to earlier did. And that was our suggestion, I would
25 say, that it's part of our recommendation to do that.

1 COMMISSIONER SKOP: Great. Thank you.

2 CHAIRMAN CARTER: Commissioner Edgar.

3 COMMISSIONER EDGAR: I, I think on a similar point I
4 would ask Commissioner McMurrian if she would consider adding
5 some language recognizing specifically the discussion we've had
6 about directing the continuation of the audit and with the
7 understanding that that information would be available to the
8 Commission in the future.

9 CHAIRMAN CARTER: You're recognized.

10 COMMISSIONER McMURRIAN: I readily accept that
11 friendly amendment to the motion.

12 COMMISSIONER EDGAR: And then I second.

13 CHAIRMAN CARTER: Commissioners, it's been moved and
14 properly seconded.

15 MS. FLEMING: Commissioners, if I may. I'm sorry to
16 interject. With respect to Issue 4, I think we need to address
17 some additional issues. One of those being since we're
18 canceling the tariff, we need to allow FPL time to remove the
19 tariff from, or remove the program from its tariff and we need
20 to allow about 30 days for doing so.

21 We also need to look at noticing, with respect to FPL
22 noticing its customers as far as the program being terminated,
23 we think that it would be appropriate for FPL to notice its
24 customers, provide notice of the termination of this program
25 through its, within its next billing cycle or whatever is

1 appropriate.

2 We also need to discuss, I guess, the escrow of the
3 voluntary contributions. And I think Commissioner McMurrin
4 stated that July 29th; is that correct?

5 CHAIRMAN CARTER: That is correct.

6 Commissioners, how about we allow staff to draft that
7 language to the order based upon what they've heard us say
8 today. Commissioner Argenziano, are you comfortable with that?

9 COMMISSIONER ARGENZIANO: Yes, sir.

10 CHAIRMAN CARTER: Okay. Commissioners?

11 Okay. Staff, anything further?

12 MS. FLEMING: That's it, Commissioner. Sorry for
13 interrupting.

14 CHAIRMAN CARTER: It's been moved and properly
15 seconded. Commissioners, any further debate or discussion?
16 Hearing none, all those in favor, let it be known by the sign
17 of aye.

18 (Unanimous affirmative vote.)

19 All those opposed, like sign. Show it done.

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, 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 6th day of August, 2008.

Linda Boles
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FPSC Official Commission Reporter
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