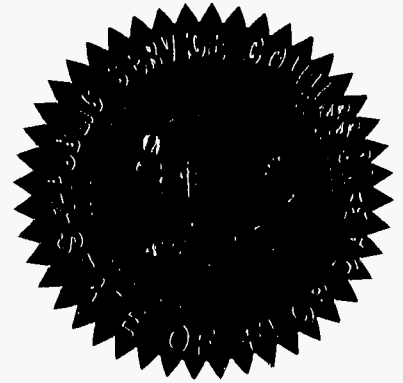


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080009-EI

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In the Matter of:  
NUCLEAR COST RECOVERY CLAUSE.



PROCEEDINGS:                   PREHEARING

BEFORE:                           COMMISSIONER KATRINA J. McMURRIAN  
                                      PREHEARING OFFICER

DATE:                             Wednesday, August 27, 2008

TIME:                             Commenced at 9:30 a.m.  
                                      Concluded at 2:50 a.m.

REPORTED BY:                    JANE FAUROT, RPR  
                                      LINDA BOLES, CRR, RPR  
                                      Official FPSC Reporter  
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7 behalf of Florida Industrial Power Users Group

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13 ESQUIRE, Office of Public Counsel c/o The Florida Legislature,  
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17 JAMES BREW, ESQUIRE, and F. ALVIN TAYLOR, ESQUIRE,  
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APPEARANCES (continued):

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Commission Staff.

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

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**COMMISSIONER McMURRIAN:** Let's call this prehearing to order.

Staff, would you please read the notice.

**MS. BENNETT:** Pursuant to notice duly given, this hearing in Docket Number 080009-EI, nuclear cost-recovery clause, has been set of for this date and place.

I said prehearing conference, didn't I?

**COMMISSIONER McMURRIAN:** Thank you. Now we will take appearances.

**MR. ANDERSON:** Good morning. Bryan Anderson appearing on behalf of Florida Power and Light Company. I would also like to enter the appearances of my colleagues Wade Litchfield and Carla Pettus, P-E-T-T-U-S. Thank you.

**MS. TRIPLETT:** Good morning. Dianne Triplett from the law firm of Carlton Fields on behalf of Progress Energy Florida, and with me is John Burnett on behalf of the company, Progress Energy Florida.

**MR. BURGESS:** Commissioner, I'm Steve Burgess. I'm here with Joe McGlothlin and we are both here representing the Office of Public Counsel.

**COMMISSIONER McMURRIAN:** Thank you.

**MR. McWHIRTER:** John McWhirter, the address is appropriate in the prehearing order, and my representation is the Florida Industrial Power Users Group.

1           **MR. BREW:** Good morning, Commissioner. I'm James  
2 Brew. I'm with Brickfield, Burchette, Ritts and Stone. I'm  
3 here for PCS Phosphate White Springs, and I would also like to  
4 note the appearance of F. Alvin Taylor.

5           **COMMISSIONER McMURRIAN:** Thank you.

6           **MS. BENNETT:** Lisa Bennett and Keino Young on behalf  
7 of the Public Service Commission. And, Commissioner McMurrin,  
8 I would like to note that AARP, Mike Twomey had intervened in  
9 this docket, and I don't see him this morning yet.

10           **COMMISSIONER McMURRIAN:** I don't, either. I guess he  
11 didn't want to join us. Thank you. At this time, are there  
12 any preliminary matters we need to address before we get to the  
13 draft prehearing order, Ms. Bennett?

14           **MS. BENNETT:** Staff is not aware that there are any  
15 preliminary matters that we need address before the draft  
16 prehearing order. We would note that there are several  
17 decisions that the parties have asked the prehearing officer to  
18 make regarding the order of witnesses and the inclusion of  
19 certain issues, and those can be taken up as we go through the  
20 draft prehearing order. There are also several partial  
21 stipulations, and I think that those probably should be taken  
22 up as they come in order of the issues that they pertain to.

23           **COMMISSIONER McMURRIAN:** Thank you.

24           Any other preliminary issues from the parties? Okay.  
25 I guess we'll proceed through the draft prehearing order. I

1 will identify the sections, and let me know if there are any  
2 corrections or changes to be made.

3 Section I through Section IV. That's case  
4 background, conduct of proceedings, jurisdiction, and procedure  
5 for handling confidential information. Any changes or issues  
6 with those? Okay.

7 Section V, prefiled testimony and exhibits, witnesses  
8 on Page 4. And there I'll note that five minutes is provided  
9 for witness summaries. I will just remind everyone witnesses  
10 should make sure their summaries track their testimony, and  
11 they should prepare to use the allotted five minutes or less.  
12 They are always invited to use less. And I thank everyone in  
13 advance for that, and it should result in moving the proceeding  
14 along efficiently and save time for the questions from the  
15 parties and from the bench. So hopefully we can stick to the  
16 five minutes or less. Are there any other questions or  
17 concerns on that section? Okay.

18 We'll move along to the order of witnesses in  
19 Section VI. And as you can see, in this section we have  
20 included two options for the order of witnesses. Option A, the  
21 typical clause style that, again, is typical for the clauses,  
22 and Option B by company, almost as if we had two separate  
23 dockets. And I wanted to give each party that has a preference  
24 for Option A or Option B a chance to speak to their reasons for  
25 that preference, and then I will ask for staff's

1 recommendation.

2           So I guess we would start -- is there any particular  
3 order we should start that in, Ms. Bennett?

4           **MS. BENNETT:** I think you could start with FPL, then  
5 Progress, and then OPC. And then if any other parties -- those  
6 are the three that I'm aware of who have positions on those.

7           **COMMISSIONER McMURRIAN:** Okay. Mr. Anderson.

8           **MR. ANDERSON:** Thank you. FPL believes either  
9 approach is lawful. We would observe that this is a clause  
10 proceeding and that the clause type of proceeding has served  
11 the parties and the Commission well for many years. I  
12 particularly just observe that, you know, for the convenience  
13 of intervenor and Staff's witnesses appearing once is better  
14 than twice. So all in, our feeling would be the Option A  
15 clause style would be preferable. Particularly thinking ahead  
16 as we go through this over a number of years to make this as  
17 much like other clause things from an administrative  
18 perspective, but that is the extent of our thinking.

19           **COMMISSIONER McMURRIAN:** Okay, thank you.

20           Ms. Triplett.

21           **MS. TRIPLETT:** Thank you.

22           Progress Energy takes the position that while this is  
23 a clause proceeding, it is quite different from other clauses  
24 in the sense that this Commission will be asked to determine  
25 this year the prudence of uprate costs, and that prudence

1 determination cannot be revisited under the statute and the  
2 rule, and so it is a complex issue. And in order to ensure  
3 that both utilities are -- their cases are fairly presented,  
4 and that there is no confusion between the two projects and the  
5 two companies and the issues that are involved, that we  
6 strongly feel that the cases should be separated by company and  
7 that they should proceed as though they were two separate  
8 cases.

9           For example, in this proceeding, OPC's expert witness  
10 Mr. Jacobs, his testimony is confusing when you read it to  
11 determine which companies he's addressing. And in order to  
12 make sure that his testimony at the hearing is very clear in  
13 the transcript, that at a particular point he is addressing  
14 only Progress Energy Florida's case and at the next point it is  
15 only Florida Power and Light's uprate case, we feel that it  
16 would be more fair and it would serve due process for the two  
17 cases to be separated.

18           And to the point about administrative efficiency, in  
19 this proceeding in particular, we feel that Progress Energy's  
20 case, that the issues in play are quite limited as compared to  
21 FPL and that it would be just as efficient for Progress to go  
22 first, have its case presented, and then for FPL to go.

23           **COMMISSIONER McMURRIAN:** Mr. Burgess and  
24 Mr. McGlothlin.

25           **MR. MCGLOTHLIN:** OPC prefers Option A. In Doctor



1 Jacobs' testimony, Doctor Jacobs carefully delineates between  
2 those remarks that are addressed to FPL's projects and those  
3 remarks that are addressed to Progress Energy's projects.  
4 There is no basis for the contention that his testimony is  
5 confusing.

6 In addition, the Option B would be inefficient in  
7 that it is likely to require OPC to pay for not one, but two  
8 trips from Atlanta to Tallahassee, and not one, but two  
9 appearances by the witness. So in terms of efficiency and  
10 budget considerations, as well as the fact that Doctor Jacobs  
11 has informed me that he has a conflict on the last day that's  
12 allotted for the hearing, the 19th, it makes sense to go with  
13 Option A.

14 **COMMISSIONER McMURRIAN:** Okay, thank you.

15 Mr. McWhirter.

16 **MR. McWHIRTER:** We would adopt the position of OPC as  
17 a convenience to the expedition of the hearing.

18 **COMMISSIONER McMURRIAN:** Mr. Brew.

19 **MR. BREW:** Commissioner, we would actually favor  
20 Option B. I note that the hearing schedule has been already  
21 bifurcated with the 11th and 12th and then we have a break.  
22 So, all the parties, including the intervenors, even those not  
23 sponsoring testimony, will have to be back for a second day.  
24 So Option B from an efficiency standpoint I think works better.

25 **COMMISSIONER McMURRIAN:** Okay.

1           And, Ms. Bennett, before you give me your  
2 recommendation, remind me, the four dates for the hearing that  
3 we have on the calendar, I forgot the calendar, the 11th and  
4 12th?

5           **MS. BENNETT:** The 11th and 12th and 17th and 18th. I  
6 forgot my calendar, too.

7           **COMMISSIONER McMURRIAN:** Mr. McGlothlin said they  
8 weren't available on the 19th. Is it the 18th and 19th,  
9 instead, or is it -- I was thinking it was --

10          **MS. BENNETT:** I think that the 19th is a calendar  
11 hold, but that the 17th and 18th are the days scheduled for  
12 the --

13          **MR. MCGLOTHLIN:** I misspoke. It was the last of the  
14 four days reserved for the hearing.

15          **COMMISSIONER McMURRIAN:** It is the 18th that he is  
16 unavailable. Okay.

17               Ms. Bennett, if you could share with us what staff's  
18 thinking is on the two options.

19          **MS. BENNETT:** Staff has gone back and forth on this  
20 several times, but we at this point, after reading all the  
21 testimony, believe that Option B would be the better option in  
22 this particular case. There is a lot of voluminous testimony  
23 for each of the companies, and in order to avoid confusion and  
24 to make the decision process for the Commission simpler, it  
25 seems that the wiser choice would to be put the cases by

1 company rather than to do it clause style.

2 **COMMISSIONER McMURRIAN:** Thank you.

3 And I will echo some of what Ms. Bennett just said  
4 about going back and forth. This is probably a little bit of  
5 thinking out loud, but I will go ahead. When this first came  
6 up, when staff first told me that there was some interest in  
7 doing it by company, I have to say my first inclination was I  
8 liked that approach. And the reason is because I felt that  
9 even though we normally do it this way in the clause, to be  
10 honest, I always like dealing with an issue at a time in a  
11 sense. And I think there is going to be some confusion in  
12 trying to talk about Progress' case, FPL's case, then going to  
13 the intervenor's testimony, and then back to FPL and Progress.

14 I think there is going to be some confusion in going  
15 back and forth between the two, since we are talking about two  
16 new units and two uprate projects. And just for clarification  
17 for the Commissioners in trying to keep everything straight, my  
18 preference was that.

19 I am concerned about the cost that your witness will  
20 incur in possibly coming back twice. I'm not sure exactly how  
21 to guess at how the days are going to work out if we do do it  
22 by company. I'm not sure if we might be efficient enough that  
23 we get everything done on the 11th and 12, or if we are  
24 definitely going to be coming back on the 17th and 18th. I  
25 think given the issues we have before us, it's probably likely

1 that we will be coming back some on the 17th and 18th.

2 Mr. McGlothlin, you said he is not available on the  
3 18th, but would he be available the full day on the 17th?

4 **MR. MCGLOTHLIN:** That is my understanding, yes.

5 **COMMISSIONER McMURRIAN:** My preference is in  
6 agreement with staff, that I think it's better in this case,  
7 and especially this first time to try this by company. I think  
8 that that is going to just help us keep it straight between the  
9 two different -- and I think we should be treating it that way,  
10 that it should be whether Progress has made their case with  
11 respect to the uprates and the new units at Levy, and whether  
12 FPL has made their case with respect to their new units and the  
13 uprate projects.

14 So I think in this case, especially with such  
15 similarity in all the projects, that it might be better to do  
16 it that way this time. But what we probably haven't talked  
17 about except with respect to Progress is who would go first.  
18 And I don't know if Progress has indicated they would have a  
19 preference for going first.

20 Mr. Anderson.

21 **MR. ANDERSON:** First of all, we are fine with doing  
22 it in company order. Progress has indicated an interest in  
23 doing it separately. We are happy if they want to go first.  
24 If they go first, I think we would want to take up the idea of  
25 do we bring all of our folks up then on the 17th and 18th

1 instead, since we would have a whole bunch of people  
2 potentially on hold pending the conclusion of their case.

3 **COMMISSIONER McMURRIAN:** Mr. McGlothlin, what is your  
4 input on that? Do you have a preference for which one would go  
5 first?

6 **MR. McGLOTHLIN:** I don't think we feel strongly about  
7 it one way or the other.

8 **COMMISSIONER McMURRIAN:** Okay. And Mr. McWhirter and  
9 Mr. Brew?

10 **MR. McWHIRTER:** No preference.

11 **MR. BREW:** I would prefer Progress to go first.

12 **COMMISSIONER McMURRIAN:** I suspected that, Mr. Brew.  
13 I think that's the way we would like to do it. But, Staff,  
14 what is your take on whether or not we start with Progress on  
15 the 11th and whether or not FPL should bring its witnesses up  
16 until the 17th? I guess I'm also concerned that Mr.  
17 McGlothlin's witness may not be available on the 18th, so  
18 should we try to start -- if we are ready to go on the 12th,  
19 should we try to start at the end of the 12th with FPL? That  
20 is the competing concerns.

21 **MS. BENNETT:** Well, as to which company goes first,  
22 most of the intervenors are involved with Progress, their  
23 docket. So that's a consideration. Other than that, we don't  
24 really have a preference.

25 I would think for the convenience of the Commission,

1 if Progress were to finish, I'm being optimistic, but on the  
2 11th if they were to finish, Florida Power and Light should be  
3 ready to jump in and go. So to set a time certain on the 17th  
4 for FPL might unnecessarily extend the proceedings. They call  
5 me Pollyanna. But those are our suggestions.

6 **COMMISSIONER McMURRIAN:** Mr. Anderson, I agree with  
7 that. I think we are better off to do that. In fact, we are  
8 already talking about Mr. McGlothlin's witness having to come  
9 back. So I think that that is the way we are going to have to  
10 do it. And just for the sake of efficiency to be ready to go,  
11 since the Commissioners have already set aside that time to  
12 take up these hearings.

13 I'm not sure if this is going to turn out to be the  
14 best way or not, but I think it is a good -- I think this  
15 situation presents the best time to try this, even though it is  
16 different than the way we usually do the clause dockets. And  
17 so ultimately I was swayed with what I thought was best for the  
18 Commissioners hearing the case. So that is my reasoning.

19 But I think we will start with the 11th with  
20 Progress, go through the direct -- this will be consistent with  
21 Option B, and I'm not sure if Option B has it laid out as  
22 Progress going first or FPL, so let's look at that.

23 **MS. BENNETT:** It does have Progress going first.

24 **COMMISSIONER McMURRIAN:** Okay. So it will be  
25 consistent with Option B going through the direct for Progress,

1 and then taking up Mr. Jacobs, Mr. Small, and then the panel of  
2 Carl Vinson and Robert Lynn Fisher and then going to the  
3 rebuttal for Progress, and then we should pick up the direct  
4 for FPL as soon as we complete that.

5 Now, Mr. Anderson, I think it is a safe bet that we  
6 will at least take the whole day on the 11th, but I don't know  
7 if we should talk about that.

8 **MR. ANDERSON:** Probably the best thing for us to do  
9 would to be have our first witness or so available, I would  
10 think. If not everybody here on the 11th, just be prepared to  
11 open.

12 **COMMISSIONER McMURRIAN:** And I certainly don't want  
13 to discount the possibility that there could be stipulations,  
14 but I think that there is some likelihood that there be  
15 questions and all anyway from the bench. So I think that even  
16 if we have a significant amount of stipulations, we might very  
17 well have some witnesses appear. So it is probably the best  
18 way to go to have witnesses ready to start on the 11th.

19 **MR. ANDERSON:** Our inclination would be to be  
20 prepared to put as many witnesses on as the 11th permits, I  
21 think.

22 **COMMISSIONER McMURRIAN:** Okay.

23 **MR. ANDERSON:** Just to see if we can get it all done  
24 on the 11th and 12th, if we can.

25 **COMMISSIONER McMURRIAN:** Okay. Mr. McGlothlin, I

1 hope that we are efficient enough that perhaps your witness  
2 wouldn't have to come back on the 17th.

3 **MR. McGLOTHLIN:** We'll work for that end, and we will  
4 ask the cooperation of the other parties in accommodating his  
5 scheduling needs with respect to the conflict at the end of the  
6 hearing.

7 **COMMISSIONER McMURRIAN:** Okay. Thank you.

8 And, again, if this doesn't work out well, I will not  
9 be stuck to it the next time, but I do think that if it does  
10 work well, we might even want to talk about next year possibly  
11 even setting it up so that we have the docket number with an A  
12 and a B track. I think still we would look at picking the  
13 number of days that we think were necessary for the hearing.  
14 We still would probably have the same issue of when one company  
15 would be able to start their case. I think that that would  
16 probably go the same way. We probably wouldn't want to get  
17 into trying to schedule a certain number of days for one  
18 company and a certain for the other just so that we can benefit  
19 from that efficiency in starting the next one right after the  
20 first.

21 But, if it works out, that would be my thinking, and  
22 that perhaps next time we would talk about filing testimony  
23 such that for staff and for the intervenors, that they separate  
24 their testimony with respect to the different companies'  
25 proposals. I think that that would make that somewhat easier.



1 And we have talked with staff, I have discussed how we will  
2 take up Mr. Jacobs' testimony. I think that it would be  
3 sufficient at the time that we take up entering in his  
4 testimony to enter in the full testimony twice. I realize that  
5 his testimony goes back and forth with Progress and FPL and  
6 there is no direct split between Progress and FPL. So I think  
7 we could enter it twice, but we would have to have some kind of  
8 clarification that when we enter it the first time it would  
9 really only be with respect to the testimony pertaining to  
10 Progress. And then when we get to FPL do the same thing.

11 Does that work? And I'm not sure if I was entirely  
12 clear. I see nodding of heads. Ms. Bennett, do you think  
13 that -- okay. Okay. Moving on.

14 At this point are the parties willing to stipulate to  
15 any witnesses?

16 **MR. BURGESS:** Commissioner, we have been in  
17 discussion with Progress on stipulating some of their  
18 witnesses. We have not reached an actual agreement on any  
19 specific ones, but I am pretty confident from where we stand on  
20 it and from the discussions we have had that there will be  
21 Progress witnesses that we will be willing to stipulate to  
22 their testimony going in without cross-examination.

23 **COMMISSIONER McMURRIAN:** Okay. I think we need to  
24 talk about then perhaps a deadline of when you can let us know  
25 whether or not those -- because staff will need to go through

1 the exercise of consulting each Commission office to see if  
2 they have questions so that we can let you all know in a timely  
3 way if your witnesses need to be here.

4 **MR. BURGESS:** I think we can arrive at some  
5 understanding in very short order, or get a conclusion on this  
6 in very short order. I don't know Progress' schedule.

7 **COMMISSIONER McMURRIAN:** Would September 3rd close of  
8 business work for everyone? That is not the next day after the  
9 holiday, but the following Wednesday after the holiday.

10 **MR. BURGESS:** It would work for us.

11 **MS. TRIPLETT:** It will work for Progress.

12 **COMMISSIONER McMURRIAN:** Okay.

13 **MS. BENNETT:** Commissioner McMurrrian, it might be  
14 appropriate at this time, I have not had an opportunity to talk  
15 with Progress or OPC, but staff does have two witnesses,  
16 Jeffery Small, who does the financial audit, and Carl Vinson  
17 and Robert Lynn Fisher. There may not be any questions of  
18 these witnesses on cross. We have not had depositions of them,  
19 so I pose the question on whether those could be stipulated.

20 **MR. BURGESS:** As we are bifurcating by company now, I  
21 think that it's very likely that we would be able to stipulate  
22 their testimony with regard to the Progress case without  
23 cross-examination. I need to consider that in a little bit  
24 more depth, but I think we might be able to with regard to  
25 Progress. With Florida Power and Light it may be a different

1 situation.

2 **COMMISSIONER McMURRIAN:** Okay. So I guess we will  
3 leave it finding out by September 3rd or sooner if you can let  
4 us know.

5 Ms. Triplett.

6 **MS. TRIPLETT:** I was going to say that's fine.

7 **COMMISSIONER McMURRIAN:** Okay. Mr. Anderson, do you  
8 have anything to add?

9 **MR. ANDERSON:** We will take the same consideration  
10 looking at the staff's testimony also to see if that's  
11 something we can stipulate. Just to think out loud from a  
12 process perspective, I think it is really good to set a date  
13 for picking stipulation times. You know, as we go through the  
14 prehearing order today you will see there are some issues that  
15 OPC and our company are seeing eye-to-eye on from a stipulation  
16 perspective. I'm hopeful that there may be other issues, too,  
17 down the road. And I want to think about how we ensure that we  
18 permit sufficient time to capture any additional stipulations  
19 like that and also to permit other parties, of course, to have  
20 an opportunity to consider that, too.

21 I think to get through this on the 11th and 12th, to  
22 the extent we can really focus on putting a fine point on  
23 issues that we really need the proofs on would really be  
24 beneficial, and that is the lens we are going to look at things  
25 through and I just wanted to suggest that thought.

1                   **COMMISSIONER McMURRIAN:** Okay. Are you comfortable  
2 with the September 3rd? I think that would be the same date we  
3 would propose in letting us know about stipulations on issues.  
4 Just because we have to finalize the prehearing order and,  
5 again, with regard to the witnesses we have to check with each  
6 Commission office.

7                   **MR. ANDERSON:** I'm sorry, I just don't recall what  
8 day of the week that is.

9                   **COMMISSIONER McMURRIAN:** It is Wednesday. Monday is  
10 a holiday and then Wednesday.

11                   **MR. ANDERSON:** I think Wednesday, Thursday, anywhere  
12 in there is probably --

13                   **COMMISSIONER McMURRIAN:** I think how we came up with  
14 September 3rd, just so you will know, we talked about the  
15 discovery would not be completed until September 3rd. So that  
16 at least gives you that full day if you are doing any  
17 discovery, and hopefully by the end of that day. And if for  
18 some reason you need until the next morning, for instance, if  
19 you have got depositions going on, just let staff know. But we  
20 thought that September 3rd should give you the time to complete  
21 your discovery and let us know if you had witnesses, or with  
22 respect to the issues what your positions would be. And we  
23 will take that up when we get to the issues, too.

24                   Ms. Bennett, is there anything else with regard to  
25 the order of witnesses?

1           **MS. BENNETT:** Just as a matter of clarification, for  
2 those witnesses that are stipulated, staff will be able to let  
3 the parties know prior to the hearing. So we are going to say  
4 September 8th for those witnesses so that you will be able to  
5 make travel arrangements.

6           I would also like to note that there's a couple of  
7 blank spots on the order of witnesses on issues. It appears  
8 that Steven Sim for FPL doesn't have an issue identified with  
9 his name. We have read the testimony. We think that it is  
10 probably Issue 2A that he testifies about, but I wanted to  
11 confirm that with Florida Power and Light.

12           And then Mr. Jacobs' testimony does not have a  
13 specific issue identified either for FPL or Progress. I know  
14 that he is testifying about numerous issues throughout, or his  
15 testimony affects numerous issues throughout the prehearing  
16 statement, so I would need some assistance from OPC in  
17 identifying what issues he testifies to.

18           **MR. McGLOTHLIN:** We will supply that by tomorrow, if  
19 that's okay.

20           **MR. ANDERSON:** And we are happy to work with staff,  
21 too. Doctor Sim provides that annual update on economics that  
22 is required under the rule, which is really not a triable issue  
23 as I understand it in the case, so it is really a submission of  
24 that updated economic report.

25           **COMMISSIONER McMURRIAN:** I guess my thinking is it's

1 probably best to find some issue that fits the best, or barring  
2 that even coming up with a phrase to describe what he is  
3 testifying to.

4 **MR. ANDERSON:** That would be great. We will work  
5 with staff counsel in that respect.

6 **COMMISSIONER McMURRIAN:** Okay. I think that takes us  
7 to basic positions. Any changes? Okay.

8 And then Section VIII, Issues and Positions on Page  
9 13. Ms. Bennett.

10 **MS. BENNETT:** We are going to suggest that we go  
11 through the issues. I think Florida Power and Light, Mr.  
12 Anderson suggested this before, but one at a time because there  
13 are certain positions that need to be clarified, and there are  
14 some places where the parties have taken no position or no  
15 position on some of these issues or no position at this time.

16 **COMMISSIONER McMURRIAN:** Thank you. And that is  
17 where I was referring to earlier also about September 3rd. I  
18 think as we go through these we have several that are  
19 identified as no position, or no position at this time. And I  
20 think today we need to either have that continue to show no  
21 position, either tell me what your new position is, or  
22 demonstrate why no position can be taken at this time and talk  
23 about getting that position by at least September 3rd or close  
24 of business, if perhaps it is related to discovery issues and  
25 you are not able to take a position at this time. And I think

1 that is consistent with the language in the OEP about taking a  
2 position by the prehearing conference.

3 And staff would like me to note that if a party fails  
4 to take a position, the party shall have waived the entire  
5 issue and the party's position shall be shown as no position in  
6 the prehearing order. So that said, I think we will just go  
7 through -- start with Issue 1A and go through each, and if you  
8 would like to change your position now or explain why you need  
9 more time, then we can do that.

10 Ms. Bennett, let's start with 1A.

11 **MS. BENNETT:** I would like to note that we began  
12 discussions with Progress on Issue 1A, and we may have a  
13 stipulation for this, but not quite yet. And, of course, any  
14 stipulation with Progress we would have to have all of the  
15 parties joining in because this is a policy decision.

16 **COMMISSIONER McMURRIAN:** Mr. Brew, I notice that you  
17 have no position at this time.

18 **MR. BREW:** Commissioner, we would endorse the  
19 position of OPC at this time.

20 **COMMISSIONER McMURRIAN:** Are there any other changes  
21 to the positions on Issue 1A?

22 Hearing none. Staff, do we need any further  
23 clarification on 1A in any respect?

24 **MS. BENNETT:** No, I don't believe so.

25 **COMMISSIONER McMURRIAN:** Issue 1B.

1           **MS. BENNETT:** On Issue 1B, we note that FIPUG's  
2 position appears incomplete. I think there might be some  
3 additional language at the end.

4           **COMMISSIONER McMURRIAN:** Mr. McWhirter, we noticed  
5 that on your issue that it ends with "and", and we just wanted  
6 to give you the opportunity to complete your thought.

7           **MR. McWHIRTER:** Let me reflect upon it momentarily,  
8 if I may.

9           **COMMISSIONER McMURRIAN:** Okay, absolutely.  
10 And I will go ahead and ask Mr. Brew, you have no  
11 position at this time. Do you intend to take a position?

12           **MR. BREW:** I intend to, but I would like to hear what  
13 Mr. McWhirter's revised position is first.

14           **MR. McWHIRTER:** I would say put a period after  
15 return.

16           **COMMISSIONER McMURRIAN:** Okay. And that completes --

17           **MR. McWHIRTER:** Yes, ma'am.

18           **COMMISSIONER McMURRIAN:** Okay, thank you.

19           Mr. Brew.

20           **MR. BREW:** And PCS will support OPC's position on  
21 that issue.

22           **COMMISSIONER McMURRIAN:** Staff, I think that is  
23 everything for 1B.

24           **MS. BENNETT:** I believe so, unless the parties had  
25 anything else.



1           **COMMISSIONER McMURRIAN:** Okay, 1C.

2           Mr. Brew.

3           **MR. BREW:** Commissioner, I would note that PCS is  
4 also supporting OPC on that issue.

5           **COMMISSIONER McMURRIAN:** Thank you. Anything else on  
6 1C?

7           **MS. BENNETT:** Did I hear correctly it was OPC's  
8 position that --

9           **COMMISSIONER McMURRIAN:** Mr. Brew takes the same as  
10 OPC.

11          **MR. BREW:** Yes, that's correct.

12          **COMMISSIONER McMURRIAN:** Okay. 1D.

13                 Here it appears that the parties are in agreement.  
14 All parties have responded yes, except for the additional  
15 language that staff has added to its position statement, and I  
16 wanted to just take this opportunity to ask and discuss are the  
17 parties in agreement about this issue, or can you agree with  
18 the staff language? I guess I will start with Mr. Anderson.

19          **MR. ANDERSON:** Yes, we are fine with staff's language  
20 for that issue.

21          **COMMISSIONER McMURRIAN:** Okay. Ms. Triplett.

22          **MS. TRIPLETT:** Progress is fine with staff's  
23 language.

24          **COMMISSIONER McMURRIAN:** Mr. Burgess and Mr.  
25 McGlothlin.

1           **MR. BURGESS:** The one thing that we added there,  
2 obviously, is as parties to the case we expect to be informed,  
3 as well. I know that as just part of the process that that  
4 would be done if it was done through a docket, but I just want  
5 to make that clear, that the notification would include  
6 notification for the parties, as well. And I don't know that  
7 that makes it any more burdensome to state as a position. So  
8 what I would like to do, I don't have a problem with staff's  
9 language and approach, if we could make sure that it  
10 incorporates something that reflects notification of parties to  
11 the dockets.

12           **COMMISSIONER McMURRIAN:** Staff, do you have any  
13 proposed language to just incorporate that? Perhaps timely  
14 notification of all parties and the Commission.

15           **MS. BENNETT:** Something similar to that. I had, yes,  
16 timely notification to Commission and parties will allow the  
17 Commission to make any required adjustments within or outside  
18 of the nuclear cost-recovery clause, and then the second  
19 sentence would remain the same.

20           **MR. BURGESS:** That sounds good.

21           **COMMISSIONER McMURRIAN:** Okay, thank you.

22           Mr. McGlothlin, I guess the same for you.

23           **MR. MCGLOTHLIN:** Yes, ma'am.

24           **COMMISSIONER McMURRIAN:** Mr. McWhirter, any concerns?

25           **MR. McWHIRTER:** No, ma'am.

1                   **COMMISSIONER McMURRIAN:** Do you agree with the staff  
2 position?

3                   **MR. McWHIRTER:** I agree.

4                   **MR. BREW:** I'm sorry, I didn't catch the correction  
5 that staff was making.

6                   **MS. BENNETT:** After timely notification, we would add  
7 to Commission and parties.

8                   **MR. BREW:** Okay. That's fine.

9                   **COMMISSIONER McMURRIAN:** Thank you, Mr. Brew.

10                  **MR. ANDERSON:** Just a suggestion is you might want to  
11 clarify that that would be in any open nuclear cost-recovery  
12 docket. Given the nature of these dockets, they open at the  
13 beginning of the year, they close at the end, but that will  
14 just let people know what you all mean by parties. We are okay  
15 with that, with or without additional language, but parties is  
16 very broad and limited, if you think about it, to docketed  
17 proceedings.

18                  **COMMISSIONER McMURRIAN:** So we would say and parties  
19 to this docket, or for the docket number?

20                   Ms. Bennett, do you have --

21                  **MS. BENNETT:** I would suggest and parties to the  
22 NCRC.

23                  **MR. ANDERSON:** Parties that have appeared in the NCRC  
24 proceeding open at the time or something like that.

25                   Just think about it. We don't know if there will

1 ever be an agreement what year it would be in. And you want to  
2 make sure that your notification would not necessarily relate  
3 to parties in this docket, but probably whoever is interested  
4 at that time in that open docket.

5 **COMMISSIONER McMURRIAN:** I guess, Mr. Anderson, are  
6 you saying that if you looked at the parties of record at the  
7 time, if there was a change in ownership or control, if you  
8 looked at the parties that are listed in the docket at the  
9 time, and that is who you notified, is that what you are  
10 thinking, or were you --

11 **MR. ANDERSON:** That is what I'm thinking, because  
12 that is something that is administrable, and there is no  
13 question that we have notified the right people in that event.

14 **COMMISSIONER McMURRIAN:** And I think it would be the  
15 parties to the docket at that time, not the parties necessarily  
16 to the docket now.

17 **MR. ANDERSON:** Correct.

18 **COMMISSIONER McMURRIAN:** So if there were more  
19 parties that had joined, you would also notify them. Are we on  
20 the same page?

21 **MR. ANDERSON:** That is exactly right.

22 **COMMISSIONER McMURRIAN:** Ms. Triplett, is that your  
23 understanding?

24 **MS. TRIPLETT:** Yes, ma'am.

25 **COMMISSIONER McMURRIAN:** Okay. I see nodding of

1 heads. So I guess -- what is our final language? Ms. Bennett,  
2 do you have a suggestion?

3 **MS. BENNETT:** Yes, I do. I would, again, say, yes,  
4 timely notification to Commission and to parties to the NCRC  
5 docket at the time of the filing will allow the Commission to  
6 make any required adjustments within or outside of the nuclear  
7 cost-recovery clause, and then the second sentence.

8 **COMMISSIONER McMURRIAN:** Okay.

9 **MR. ANDERSON:** Works great.

10 **COMMISSIONER McMURRIAN:** Everyone seems okay with  
11 that. I think we can show that as a stipulated issue, proposed  
12 stipulation?

13 **MS. BENNETT:** Yes, I believe we can.

14 **COMMISSIONER McMURRIAN:** Thank you. We have one.

15 Issue 1E. And Issue 1E, I realize FIPUG has proposed  
16 this issue. I'm sorry, someone was --

17 **MR. BREW:** Commissioner.

18 **COMMISSIONER McMURRIAN:** Mr. Brew.

19 **MR. BREW:** PCS had listed no position. It should  
20 read that we support OPC's position, but not as a tentative  
21 position.

22 **COMMISSIONER McMURRIAN:** But not as a --

23 **MR. BREW:** Tentative.

24 **MR. McGLOTHLIN:** Well, here's my contribution. We'll  
25 strike the word tentative from our statement.

1           **MR. BREW:** In that case we support OPC.

2           **MR. McGLOTHLIN:** The process works.

3           **COMMISSIONER McMURRIAN:** Okay. And I know we need to  
4 talk about this. I have reviewed the memoranda with respect to  
5 this proposed issue. I would still like to afford any party  
6 that wants to address it briefly today to do so at this time.  
7 But I have a couple of specific concerns that I would ask that  
8 you address, because I did, again, review the memoranda and  
9 understand FIPUG's position, and I believe Progress is the only  
10 one that really spoke to that issue. I think FPL said they  
11 didn't have a problem with it, and I believe OPC addressed it,  
12 as well.

13                   If you could address my concerns that the issue is  
14 better handled on a fact based case-by-case basis, and that  
15 Issue 1D that we have just worked on and proposed a stipulation  
16 for provides for the timely notification of any change in  
17 ownership, which would then trigger such procedural questions  
18 as, I think, that are raised in this proposed Issue 1E. So I  
19 wanted to get your input on that. And, again, those concerns  
20 are that it is better handled on a fact based case-by-case  
21 basis, you know, given what contracts may be entered into  
22 between parties and any potential joint owners at the time.

23                   And, secondly, that the Issue 1D that we have just  
24 worked on will at least give all the parties notification of  
25 that. It also contemplates a workshop to discuss any issues

1 that may result from that kind of a joint ownership  
2 arrangement, that do we need Issue 1E. It seems like -- my  
3 initial thoughts are that it seems like it is getting the cart  
4 before the horse.

5 But I will let you all respond to those, and if you  
6 want to repeat some of the things that you stated in your  
7 memoranda, that's okay, as well, but I will give each party  
8 whatever time they need on that. I guess we should start  
9 with -- should I start with Mr. McWhirter?

10 **MS. BENNETT:** I believe it's his proposed issue, so  
11 he might be the best to start.

12 **MR. McWHIRTER:** Commissioner, the daily press  
13 indicates that FMPA, Tampa Electric Company, JEA, and others  
14 are interested in buying parts of this plant. The plant that  
15 is proposed is substantially greater than the demands of  
16 current customers who are going to be paying for it. It's a  
17 plant that is proposed to meet the demand as it arises many  
18 years from now. But in the meantime, current customers are  
19 paying the carrying costs for portions of that plant that may  
20 no longer be available to retail customers.

21 There's no problem if a secondary purchaser comes in  
22 and buys, say, 10 percent of the plant four years from now in  
23 cutting off the recovery prospectively, but another problem is  
24 if retail customers have been paying for that plant up to that  
25 point in time, there should be some mechanism for refunding

1 those customers. And if that mechanism is set out with clarity  
2 at this time, people negotiating with Progress or Florida Power  
3 and Light will be aware of the obligation not only to start  
4 making payments later, but also to refund to the retail  
5 customers what has transpired up to that date.

6 If you don't have a provision like that, what would  
7 happen is a sale may be made four or five years from now, and a  
8 contract negotiated with a municipality for a joint ownership  
9 relationship with that generator, but they may not think about  
10 the refund to the existing retail customers. So the retail  
11 customers would be left holding the bag for the five years, and  
12 it seemed only fitting to me that retail customers should get  
13 some surcease not only in the discontinuance of the charge, but  
14 also reimbursement in the form of credits against future  
15 charges, perhaps, or however it should be done. And so that is  
16 the essence of my thinking on that, which I tried to state more  
17 succinctly than I have verbally.

18 **COMMISSIONER McMURRIAN:** I did want to ask you,  
19 though, with respect to the negotiating process, do you think,  
20 though, that us trying to carve that out now would be somewhat  
21 premature in that we don't know what the proposal might be. It  
22 might even be better for the ratepayers somehow.

23 **MR. McWHIRTER:** Well, that's a secondary thought that  
24 I didn't deal with in my previous comment, and that is this is  
25 a policy question, and this nuclear plant should be available



1 to all the utilities in the state. And maybe you would want to  
2 put an obligation on the two utilities that are making these  
3 plants to go out and try to sell parts of them to other  
4 utilities so that the benefits of that could be dispersed  
5 through the state.

6           And in my brief brief on the subject, I pointed out  
7 what happened with the Tampa Electric case in 1985. The  
8 Commission -- in that case, Tampa Electric came in and they had  
9 built a plant that was bigger than was needed for current  
10 customers, and they said this is really great, we ought to put  
11 it all in the rate base now and we are going to get money back  
12 through the fuel clause because we have sold part of that to  
13 FPL.

14           And the Commission in its wisdom said that's good,  
15 we'll put it all in the rate base, but we will give customers  
16 credit right now for the fact that you are going to sell it to  
17 FPL, and so instead of giving you the 125 million you are  
18 asking for now, we will only give you \$80 million. So current  
19 customers were relieved from part of the obligation and Tampa  
20 Electric was strongly incented to go out and sell that plant.

21           As long as these two nuclear utilities are able to  
22 get a return on investment they are not going to be encouraged  
23 to go out and sell it elsewhere. Other people are going to  
24 have to come to them begging, and so they may be tougher  
25 negotiators in those transactions. So I think there is a dual

1 benefit in the approach in that customers will get a rebate,  
2 customers will not see the big increase at the outset, and  
3 utilities say, well, wait a minute. If we aren't getting this  
4 money, we may better go out and sell this to the people who  
5 have expressed an interest in it. Everybody is a winner.

6 **COMMISSIONER McMURRIAN:** Thank you, Mr. McWhirter.  
7 Mr. Brew.

8 **MR. BREW:** Yes, Commissioner. We didn't submit a  
9 brief on this, but just to briefly comment.

10 The nuclear cost-recovery rule is very explicit about  
11 how costs are to be recovered, and it goes to great pains to  
12 that in order to really eliminate uncertainty as to these types  
13 of issues. So that strongly argues for -- as you recall in the  
14 need docket, there was a lot of questions regarding the need  
15 for the second unit, and the possibility of sale was a big part  
16 of that discussion. So it would seem to me that in order to  
17 carry through that notion of being very clear about the  
18 cost-recovery landscape, if you will, and the knowledge that  
19 the possible sell of some of the capacity or output is very  
20 much in play, that it actually makes sense for all the  
21 participants to have an understanding going in of what, you  
22 know, would happen with the sale in terms of dollars already  
23 paid in by ratepayers. So we would strongly support FIPUG's  
24 phrasing of the issue and keeping it in this docket.

25 **COMMISSIONER McMURRIAN:** Okay. Mr. McGlothlin.

1           **MR. McGLOTHLIN:** This is FIPUG's issue. We did not  
2 raise it or brief it, but I support the inclusion of the issue.  
3 And I would note that as framed it applies to a situation of  
4 which the utility has been collecting costs of the nuclear unit  
5 that is the subject of the sale.

6           I would remind everyone here that this alternative  
7 ratemaking treatment of the nuclear cost-recovery clause  
8 imposes some extraordinary burdens on ratepayers compared to  
9 the usual ratemaking methodology. And I think it's  
10 appropriate, in light of that, for the Commission to establish  
11 as a matter of policy in this docket that in the event of a  
12 sale of this nature the policy will be to ensure that  
13 ratepayers -- that the benefits of that flow to ratepayers in a  
14 manner that is commensurate with the burdens they have  
15 shouldered to that point. And for that reason, I think it is  
16 appropriate to include it in this prehearing order.

17           **COMMISSIONER McMURRIAN:** Thank you, Mr. McGlothlin.  
18 Mr. Anderson.

19           **MR. ANDERSON:** Thank you.

20           First, there has been considerable discussion mainly  
21 focusing on Progress's Levy unit. I want to focus on the FPL  
22 status in relation to this idea for a moment. Mr. McWhirter's  
23 comments go considerably beyond the issue as stated, and talked  
24 about affirmative obligations of marketing, and this and that.  
25 That is something that for FPL is actually addressed, and we

1 are under a requirement, as you know, to meet with prospective  
2 parties about co-ownership and report. And just so people  
3 know, that is exactly what we are doing. We are holding those  
4 meetings. We will provide the appropriate reports. I don't  
5 think there is any need to have those discussions in this  
6 cost-recovery docket.

7 I do think that the prehearing officer's observation  
8 that, you know, the actual format of any transaction that is  
9 negotiated, you know, is probably best left open to discussion  
10 and negotiation at the time. You just don't know how costs  
11 would be best handled. Would it be as a credit or offset. It  
12 would be -- it would have to do with the price paid. There are  
13 a lot of different ways of handling an economic issue in a  
14 contract.

15 And my only concern is if one were to go down the  
16 path of prescribing, basically, a contract element at this  
17 juncture, it really is a cart before the horse situation. That  
18 is why we have no problem with the concept of talking about  
19 these things, but seeing the position we had is -- it really  
20 should depend on what contract is negotiated at the time. Of  
21 course, we are subject to the Commission's review as to the  
22 appropriateness of that contract, and then we are obligated to  
23 ensure that we correctly account for that and provide whatever  
24 benefits, but we just can't say right now what any such  
25 transaction would look like.

1                   **COMMISSIONER McMURRIAN:** Thank you, Mr. Anderson.  
2                   Ms. Triplett.

3                   **MS. TRIPLETT:** Thank you. We would just echo,  
4 Commissioner, your thoughts as well as Mr. Anderson's concerns.  
5                   And just one other point. I really think it is  
6 inappropriate at this time in a hypothetical scenario to try to  
7 determine all the possible factual permeations of any potential  
8 negotiation, and really if that were to be the Commission's  
9 pleasure, perhaps it would be better addressed in a workshop,  
10 but certainly not as an affirmative issue in a proceeding where  
11 there are no agreements right now that are being currently  
12 negotiated. And I would also point out that there is always a  
13 danger of hamstringing negotiations by prescribing a  
14 contractual term before that agreement is even reached.

15                   **COMMISSIONER McMURRIAN:** Okay. Thank you all.

16                   Mr. McWhirter, I still have the same concerns. I do  
17 believe that it's better to wait until we actually have some  
18 kind of proposal before us and see how it is proposed. I  
19 assure you we are not going to forget about looking at how the  
20 dollars are flowed between ratepayers and what's the fair  
21 treatment. And I think that the position on Issue 1D that you  
22 all have agreed to sets up a process so that if you get timely  
23 notification, you all can sit together and talk about what  
24 should that treatment be. I'm not suggesting that you all  
25 would be able to agree to it. It may be that the contract is

1 not to your liking and ultimately the Commission will make a  
2 determination about that. But I believe we have a process set  
3 up for that. Even if we didn't have workshops, I believe that  
4 that is something that would come up and that the Commission  
5 would have to make decision on in the future if we got some  
6 kind of joint ownership agreement proposed to us.

7           So, in my opinion, it's best not to have Issue 1E. I  
8 believe we are getting ahead of ourselves a little bit with  
9 that issue. And to the extent that there is some kind of  
10 notification from one of the utility's about such a contract,  
11 that you all will be notified, given the stipulation we have on  
12 1D, and that staff could conduct workshops to address some of  
13 that issue about how the dollars should be flowed.

14           So with that, we will move on to Issue 2A, and thank  
15 you all for that.

16           Ms. Bennett.

17           **MS. BENNETT:** Commissioner McMurrian, at this point,  
18 before we go in to discuss the individual factual issues in the  
19 stipulations, staff would note that there are proposed partial  
20 stipulations between OPC and FPL, and also between OPC and  
21 Progress, and the language is a little bit different for each  
22 of the parties. And I'm going to state kind of my  
23 understanding of the purpose, and then maybe ask for your  
24 indulgence to ask the parties to address that.

25           Staff's understanding is that both of the

1 stipulations would have the Commission addressing only the  
2 reasonableness and the amount of the costs of the new nuclear  
3 power plants. That would be Levy 1 and 2 and Turkey Point  
4 6 and 7 in this year's NCRC proceeding. And, if approved, the  
5 stipulations appear to agree that the Commission would decide  
6 the prudence of those same costs in 2009, and that result would  
7 be that if the Commission approves the costs this year, but  
8 determines some or all of them are imprudent next year, then  
9 those costs would be refunded to the customers, those costs  
10 that were determined to be imprudent. And that's our  
11 understanding of the bottom line purpose of these two  
12 stipulations.

13           We suggest at this juncture it might be beneficial  
14 for the prehearing officer to have the stipulating parties  
15 discuss their stipulations, and in their discussions to also  
16 identify which issues they are actually stipulating to and that  
17 the stipulations pertain to, and to confirm that the  
18 stipulations do not apply to the uprates. I don't believe they  
19 do. They only apply to the new nuclear, I think.

20           Finally, it would be helpful if the parties to the  
21 stipulation would explain their understanding of the difference  
22 between a prudence review and a reasonableness review in the  
23 NCRC docket.

24           **COMMISSIONER McMURRIAN:** Okay. I guess we will,  
25 perhaps, start with the stipulations that are proposed between

1 FPL and OPC.

2 **MS. BENNETT:** I think that would be appropriate,  
3 since 2A is FPL, and FPL and OPC have entered into a  
4 stipulation that FPL says applies to 2A.

5 **COMMISSIONER McMURRIAN:** Do we want to start with  
6 Mr. Anderson or Mr. McGlothlin?

7 Mr. Anderson, go ahead.

8 **MR. ANDERSON:** First, I'm happy to -- I know Mr.  
9 McGlothlin will chime in, as necessary. What we are trying to  
10 do here at this juncture, and recalling that we are open and  
11 seeking to stipulate a broader range of issues in this case,  
12 too, focusing on this, what would this particular stipulation  
13 do? What this would do -- it's best to look at Page 18 of the  
14 prehearing order. Looking at Subitem 2 under FPL, which, I  
15 think, is consistent with where OPC would be on this, too, I  
16 hope, is that the bottom line for Turkey Point, you know, we  
17 couldn't make a March 1 filing this year because we didn't have  
18 an order yet. That meant that for our site selection costs,  
19 our preconstruction costs during 2007, and all of these other  
20 things, there hasn't been the full cycle of time permitted for  
21 that review. By the same token, the thinking is that it is in  
22 the public interest to include the appropriate amount of those  
23 costs for the clause collection so as to not build up interest  
24 on interest, so to speak, between now and some future time.

25 The purpose of this would be to preserve the



1 Commission's determination of the prudence of all of those  
2 costs until the next cycle, and another off-shoot of this is  
3 that at this juncture reasonableness of costs would still be in  
4 play. We think that might be a stipulatable issue.

5           Let's focus for a moment on Turkey Point 6 and  
6 7 costs. You know, part of our filing is the '08  
7 actual/estimated and the '09 projection. Thinking ahead,  
8 because I think that OPC's issues probably extend to those  
9 ideas also, our thought was, you know, that it probably made  
10 more sense, to the extent OPC wishes to pursue those issues,  
11 try them once in the prudence determination case, you know, say  
12 next year.

13           In contrast, what we do think are clearly at issue at  
14 this juncture is, for example, the prudence of all the  
15 '07 uprate costs. I'm sorry, this is a little meandering, but  
16 there are a lot of elements at play in here. And, you know, we  
17 are discussing off-line with OPC other possible language which  
18 with all respect they need to review and get back to us on.

19           The scope that we have agreed on thus far, though, is  
20 that the focusing on the new nuclear plants, that there should  
21 be inclusion in the clause and in the factor the site selection  
22 costs, the '07 preconstruction costs, and the appropriate  
23 amounts for the '08 and '09, and that we would be preserving  
24 the determinations for a future proceeding.

25           Is that fair, Mr. McGlothlin? And if I have

1 misstated, please help me.

2           **MR. McGLOTHLIN:** I think I agree with most everything  
3 you said. I would like to, more or less, read it back from my  
4 perspective so that the record is clear, and perhaps the  
5 additional communication might clarify some things.

6           The stipulation between OPC and FPL relates only to  
7 the new units and only to site selection and preconstruction  
8 costs incurred during the periods '06 and '07. And solely  
9 because of the timing complications due to the fact that FPL  
10 did not meet the timelines set out in the rule, and, therefore,  
11 we were not able to have the full opportunity to investigate.  
12 And also because of the possibility that a decision to refuse  
13 to include those costs this year could result in a doubling up  
14 later for the ratepayers of the company, and we considered that  
15 it is appropriate to enter a stipulation in which under this  
16 agreement FPL will be able to collect those preconstruction and  
17 site selection costs for the new units in this cycle, but with,  
18 a clear understanding that we have not waived our right to  
19 challenge disallowance of those costs in the next hearing  
20 cycle.

21           That is the full extent of the stipulation between  
22 OPC and FPL, and that is set out in our position statement.  
23 The reason why this becomes a bit complicated is that as  
24 phrased, 2A refers to both the Turkey Point 6 and 7 project to  
25 which the stipulation applies and the extended power uprate

1 project to which it does not apply. We have sponsored the  
2 testimony of Doctor Jacobs, and Doctor Jacobs has a Ph.D. in  
3 nuclear engineering, and he has reviewed the contracting  
4 practices of FPL and has formed some conclusions with respect  
5 to what he describes as deficiencies. And those contracts apply  
6 to several different periods and to both types of projects and  
7 cannot be confined to a single issue in terms of the fallout of  
8 the decision on his general treatment of the contracting issue.

9           And so with respect to 2A, the stipulation applies to  
10 the agreement to defer consideration of the prudence of the  
11 site selection and preconstruction costs associated with the  
12 new units. But because the other project or the uprate is  
13 included, the summary of Doctor Jacobs' testimony also needs to  
14 be in there, and that's why we have included it.

15           Staff asked that we comment on what we believe to be  
16 the distinction between prudence and reasonableness. And I  
17 think that from our perspective it's a very practical  
18 consideration. Perhaps prior to the statute and the rule that  
19 set in motion this nuclear cost-recovery clause activity, there  
20 was a tendency of regulators and parties alike to commingle  
21 reasonable and prudent as being, perhaps, related and meaning  
22 the same thing.

23           Because of the statute and the rule, and because of  
24 that aspect of the statute and rule that says once prudence is  
25 determined it is not to be revisited, we think there is a very

1 practical need to confine the term prudence for purposes of  
2 this docket to that point in time at which the Commission is  
3 going to make the decision that afterwards is unassailable  
4 absent some extraordinary considerations. And that's why with  
5 respect to those time periods for which there is no final  
6 determination being made with true-ups to follow, we think it  
7 is appropriate to use the term reasonable to apply to the  
8 decision made there and to reserve the prudence appellation to  
9 those determinations that have the final binding effect.

10 **COMMISSIONER McMURRIAN:** So you are saying that --  
11 excuse me for jumping in -- so that when we have an actual  
12 period, when those costs are closed and you have something to  
13 audit, and the audit is done, I know this period is a little  
14 bit different because we have a shorter time frame, we would be  
15 determining prudence -- your reading of the statutes and the  
16 rules, we would be determining prudence only on those actual  
17 costs, but the projected piece of it would not be for a  
18 prudence determination, is what I think I heard you say.

19 **MR. McGLOTHLIN:** I agree with that, and it is a very  
20 practical way of delineating those decisions that are not yet  
21 final because of opportunities to come and the final decision  
22 which has a binding effect.

23 **MR. ANDERSON:** And for FPL we think that that is  
24 exactly right. The right distinction is prudence is on  
25 actuals.

1                   **COMMISSIONER McMURRIAN:** And the nature of your  
2 stipulation this time because of the not meeting the  
3 March 1 deadline because of the need determination coming after  
4 that, you're saying that this time, even though you have actual  
5 costs for '06 and '07, I believe that's right --

6                   **MR. ANDERSON:** Yes.

7                   **COMMISSIONER McMURRIAN:** -- that you are not asking  
8 the Commission, or your stipulation would be that you are not  
9 asking the Commission to make a prudence determination on those  
10 costs this time, although we might be doing that next year with  
11 regard to those actual costs because of the nature of this  
12 first instance.

13                   **MR. McGLOTHLIN:** That's correct.

14                   Ordinarily, absent the timing complications, the  
15 Commission would be in a posture to make a prudence  
16 determination. Because of the timing issues, by stipulation  
17 the parties have agreed that even though this is going to be  
18 coming up again, we are not foreclosed from challenging the  
19 prudence.

20                   **MR. ANDERSON:** And just as a practical matter, what  
21 that results in, if you think about it, for Turkey Point 6 and  
22 7 next year would be '06 and '07 would be subject to a prudence  
23 determination at that time, also the '08 actuals you would have  
24 at that time.

25                   **COMMISSIONER McMURRIAN:** Okay. I do notice that, you

1 know, there is some stipulation on that. But, of course, the  
2 issue position, the positions as stated are different. Do you  
3 all intend to sort of work out exactly what the language would  
4 be that you have a stipulation on so that we know how to  
5 reflect the stipulation?

6 **MR. McGLOTHLIN:** I think we have accomplished that.  
7 The language that appears is something that we have worked on  
8 together.

9 **COMMISSIONER McMURRIAN:** Under FPL's position or  
10 under yours, because the wording is --

11 **MR. McGLOTHLIN:** Under FPL(2), that paragraph is the  
12 product of a negotiated stipulation.

13 **COMMISSIONER McMURRIAN:** Okay. So is it correct,  
14 then, Mr. McGlothlin, that the paragraph that you have  
15 remaining under the OPC's position statement there, is that all  
16 with respect to the EPU project? Let me read back through it.  
17 Would it be that, for instance, what is left there would be  
18 consistent -- well, would be matching up with the way FPL has  
19 numbered it, would be with respect to (1) EPU project, and that  
20 you would be agreeing with the way they have stated (2), Turkey  
21 Point 6 and 7 project. Am I oversimplifying?

22 **MR. McGLOTHLIN:** The testimony of Dr. Jacobs with  
23 respect to contracts and practices relates to both projects,  
24 and so he will be providing testimony of a general nature  
25 addressing several time frames in both projects. And within

1 that context we have agreed that with respect to the uprate,  
2 with respect to the new units, the preconstruction and site  
3 selection costs will be deferred. So there are both things  
4 going on there, and that perhaps is a bit confusing, but the  
5 reason is that he has testimony that addresses both.

6 **COMMISSIONER McMURRIAN:** I think I understand you,  
7 Mr. McGlothlin, I'm just concerned with how we actually show  
8 what the stipulation is in the prehearing order for the  
9 Commission so that they clearly understand what the distinction  
10 is. Because as I hear, you're saying that the single source or  
11 sole source contracts concern is respective to both the EPU and  
12 Turkey Point 6 and 7.

13 **MR. McGLOTHLIN:** Correct.

14 **COMMISSIONER McMURRIAN:** So I guess that raises a  
15 question for me, do we actually have a stipulation or is there  
16 some way on the Turkey Point 6 and 7 to add that caveat? I  
17 think what I understand that you are doing is trying to save  
18 that -- are you trying to save that argument for when Turkey  
19 Point 6 and 7 comes back up for a prudence review?

20 **MR. McGLOTHLIN:** That is the point at which with  
21 respect to those projects and with respect to site selection  
22 and preconstruction, the import of his testimony will be  
23 considered in terms of whether there will be a disallowance or  
24 not.

25 **COMMISSIONER McMURRIAN:** Ms. Bennett.

1 Or, Mr. Anderson, did you want to jump in?

2 **MR. ANDERSON:** If is all right, for just a moment.

3 **MS. BENNETT:** Go ahead.

4 **MR. ANDERSON:** Thank you.

5 Just looking at how we laid it out in our position,  
6 and thinking how this set of hearings goes and what is at  
7 issue, to sum up as to the first point, for the 2007 uprate  
8 costs, those in our view, and I think Mr. McGlothlin's, the  
9 issues are framed, they are past costs, we know the actuals,  
10 they are ripe for a prudence determination, kind of period, end  
11 of story.

12 Focusing on the Turkey Point 6 and 7, the agreement  
13 is to defer that prudence consideration for that time period,  
14 '06 and '07, until next year. Something we have thought about  
15 is this, particularly to think about an efficient hearing is --  
16 counsel for staff talked about reasonableness, let's focus on  
17 reasonableness for a moment, which is not a final prudence  
18 determination. For this year we have the '08 actual/estimated  
19 and the '09 projection. First and foremost, we'll put up proof  
20 as to whatever the Hearing Officer decides is in scope here,  
21 but we were thinking, just as a practical matter for everyone's  
22 consideration, that as to the '08 reasonableness,  
23 '09 reasonableness, that that is not a final binding prudence  
24 decision.

25 Our thought was respecting OPC's right to pursue



1 those issues, it might make more sense to try those, you know,  
2 when those issues are ripe, when you can look at actual  
3 '08 costs, look at actual '09 costs, and see under the tests  
4 that OPC has offered and in relation to our proof whether those  
5 costs are product. You know, kind of do it one time.

6           That is not in the scope of our stipulation yet. But  
7 for people's thinking, that idea, if it worked for everyone,  
8 but people have yet to consider this, what that would leave us  
9 with, I think, particularly for a first year nuclear cost  
10 recovery, it would give us the flat out clear prudence  
11 determination opportunity to get our prudence machine working.  
12 A clear consideration on the uprates and then get the right  
13 costs on a stipulated basis, you know, beginning to be  
14 recovered while preserving the opportunity to look at, you  
15 know, the prudence in the following year as to that package of  
16 issues that OPC is talking about.

17           So, you know, potentially what that would result in  
18 would be this, it would be Mr. Jacobs' opinions and criticisms  
19 in relation to uprate fully in play, we fully respond,  
20 Commission decides. Our thought is that's probably a less  
21 useful exercise for '08 and '09 projections and actual/estimate  
22 at this point, with all respect, in part, because they are not  
23 real specific in relation to what dollars or this type of  
24 thing.

25           But, again, what I'm trying to do at this point is I

1 think there is an understanding of the limited nature of the  
2 stipulation, as there is, and just to share our thought of how  
3 this case might be made very precise focusing on the  
4 '07 uprates, and preserve, you know, OPC's entitlement in the  
5 prudence determination of '08 and '09 for Turkey Point 6 and 7.  
6 And, again, that is for the parties to think about. We can't  
7 require that, of course, but we have just been trying to think  
8 about how to begin this process. And I just wanted to share  
9 that thought.

10 **COMMISSIONER McMURRIAN:** Mr. McGlothlin, do you want  
11 to respond to that before we go to Ms. Bennett?

12 **MR. McGLOTHLIN:** Yes.

13 **COMMISSIONER McMURRIAN:** Because I do have -- I guess  
14 I'm trying to think from my perspective, we need to know -- the  
15 Commissioners will need to know what it is you all have  
16 stipulated to, and it sounds like you are stipulating to the --  
17 that we will only be determining reasonableness here, but then  
18 you have got these other concerns that are noted in Mr. Jacobs'  
19 testimony, but we really won't be determining prudence. So  
20 would you be bringing up those concerns when we take up  
21 prudence again next year for that same period, or do you intend  
22 to -- well, I'll just turn it over to you.

23 **MR. McGLOTHLIN:** The only stipulation relates to site  
24 selection and preconstruction costs of the new units for  
25 '06 and '07. He didn't say it, but I interpret Bryan's

1 suggestion to mean that Doctor Jacobs' critique of contracting  
2 practices and specifically his contention that there are some  
3 deficiencies in how FPL is going to vet it would not be  
4 litigated, it would be deferred. At this point I think that  
5 would be a mistake. Because among other things, what we have  
6 suggested through Doctor Jacobs' testimony and our position is  
7 that at this early point this is the time for the Commission to  
8 establish the parameters it expects to see with respect to the  
9 utilities' filings when they file petitions seeking recovery  
10 costs.

11           And, specifically, we contend that with respect to  
12 the uprate costs the burden is on the utility to demonstrate  
13 that it has included only costs that are related to the uprate  
14 costs and are not related to maintaining the unit and that  
15 would not have been have incurred but for the uprate. So that  
16 is one aspect.

17           The other aspect is that with respect to contracting  
18 practices, we think the Commission should put the utilities  
19 on notice after considering Doctor Jacobs' testimony and  
20 rebuttal thereto that it regards competitive bidding as a  
21 standard not to be taken lightly, and that it is going to  
22 require full demonstration and justification for any departure  
23 from the competitive bidding standard, and full proof of the  
24 reasonableness of any costs that are incurred in the absence of  
25 competitive bidding.

1           We think both of those aspects of Doctor Jacobs'  
2 testimony are important for the Commission to consider now in  
3 this first phase, so that on a going-forward basis the  
4 utilities will know more clearly what's expected of them in  
5 terms of their cases in chief.

6           **COMMISSIONER McMURRIAN:** Ms. Bennett.

7           **MS. BENNETT:** I think that the Commission, whatever  
8 the stipulation is, needs to understand very clearly what it is  
9 that they are voting on. I'm hearing OPC say we want the  
10 Commission to make a decision on the project management, that  
11 this is not an appropriate mechanism that FPL is following.  
12 I'm not sure how that coincides with the actual stipulation,  
13 and whether -- if the Commission decides that that is not a  
14 reasonable practice, how that translates into how can the  
15 Commission then approve the costs as even reasonable to go  
16 through the clause for Turkey Point 6 and 7. There is kind of  
17 a problem with saying these are not reasonable, but we are  
18 going to let the costs go.

19           **COMMISSIONER McMURRIAN:** Let me ask this one question  
20 and then we will take a break, and then maybe it would be good  
21 for you all to huddle and talk about this a little bit more.  
22 And maybe that helps and maybe it doesn't, but we will try and  
23 we will give Jane a break, as well.

24           Is there another issue, and I know we will be talking  
25 later about the incremental issue, but is there another issue

1 that somehow takes up the competitive bidding concern that Mr.  
2 McGlothlin has raised such that if you were to stipulate as to  
3 the reasonableness versus prudence that I think that they have  
4 already stipulated to about what we will be determining this  
5 time such that the competitive bidding issue is addressed  
6 somewhere else.

7 **MS. BENNETT:** This would be the issue.

8 **COMMISSIONER McMURRIAN:** This would be it. Okay. We  
9 will take a ten-minute break, or do you all need longer?

10 **MR. MCGLOTHLIN:** Fifteen.

11 **COMMISSIONER McMURRIAN:** A fifteen-minute break. So  
12 we will come back at 11:15.

13 (Recess.)

14 **COMMISSIONER McMURRIAN:** Okay. We will go back on  
15 the record. We were all the way up to Issue 2A.

16 Ms. Bennett.

17 **MS. BENNETT:** After a lengthy discussion with FPL and  
18 OPC, I think we have come to an understanding of how those  
19 stipulations will interact and what decisions the Commission  
20 would be making.

21 I believe OPC is going to submit a little bit  
22 different position statement tracking more what FPL's position  
23 statement is, and I'm going to take a stab at my understanding  
24 of the agreement. And we'll get a confirmation from FPL and  
25 OPC if I said it correctly.

1           My understanding is that for the 2006 and 2007 Levy  
2 site selection and preconstruction costs, that's a  
3 reasonableness determination. But Mr. Jacobs' testimony which  
4 applies to the Levy 6 and 7 -- oh, I'm sorry, Turkey Point  
5 6 and 7 applies to even some of those costs in 2006 and 2007.  
6 So Mr. Jacobs, whose testimony is addressing reasonableness, is  
7 saying that even those costs are perhaps not even reasonable,  
8 and he has a suggestion on the solution for what you would do  
9 if you agreed with him. And there are three alternatives.

10           So the Commission could make a decision that those  
11 costs were not reasonable, or certain of those costs were not  
12 reasonable, and choose one of his solutions or another  
13 solution, and then that topic would come back the following  
14 year and be a subject of a prudence determination if FPL were  
15 to present additional proof unless, of course, Option A was  
16 chosen by the Commission.

17           Did I say that correctly?

18           **MR. McGLOTHLIN:** I think that was very close. The  
19 only slight distinction I would make is that as we discussed  
20 during the break, and as I explained, Doctor Jacobs essentially  
21 addresses FPL's contracting activities on an overall basis.  
22 And his critique is general in nature and he uses individual  
23 examples to make his point. And then in his conclusion he  
24 offers remedies that are in three parts.

25           The first part would be in the nature of a

1 disallowance, and, in my view, if the Commission were to agree  
2 with his presentation and to adopt that particular approach,  
3 there would not be a revisiting.

4 His second suggestion, in the event the Commission  
5 declines to implement the first, is to withhold a portion of  
6 the costs sought to be recovered now, and to give FPL an  
7 opportunity next year to prove up reasonableness at that point,  
8 in which case they may or may not receive the withheld portion,  
9 depending on the Commission's decision at that time.

10 The third alternative in his menu of choices would be  
11 to make no adjustment, but to use this occasion as the  
12 opportunity to delineate the standard that the Commission  
13 expects to adhere to in the future. So with that in mind, it  
14 appears to us that the only thing that the draft prehearing  
15 order needs and that I will supply would be to use the same  
16 format that FPL used, and that is to include both the  
17 stipulation language and the language that summarizes the  
18 contracting subject matter in response to 2A.

19 **COMMISSIONER McMURRIAN:** Okay. And so it would  
20 remain that it was a partial stipulation more to the scope of  
21 the issue. It essentially modifies the issue in a way for this  
22 year, that it would just be a reasonableness determination.  
23 That is really what you have agreed to, and that is really the  
24 limit of that, as I understand it.

25 **MR. McGLOTHLIN:** Yes, subject to Doctor Jacobs'

1 opportunity to advocate an adjustment that applies to all time  
2 frames using one contract as a surrogate for an overall  
3 adjustment.

4 **COMMISSIONER McMURRIAN:** I think we're on the same  
5 page.

6 Mr. Anderson.

7 **MR. ANDERSON:** Not to belabor things, I think the  
8 words are in the stipulation where we need to be. The one  
9 thing I wanted to kind of triple underscore, though, was  
10 something that Mr. McGlothlin just said of the possibility of  
11 the Commission finding some portion of the costs not  
12 reasonable, and that precluding presentation of those costs for  
13 prudence determination, I don't think that's correct at all.  
14 Because that would have the effect of making a final prudence  
15 determination in advance of the costs being occurred, if you  
16 think about the looking-forward costs. So I just wanted to  
17 caution that the legal implications of, you know, the  
18 determinations, you know, we may be briefing and talking about  
19 some more.

20 **COMMISSIONER McMURRIAN:** I noted that, too, but I  
21 think that's something, especially given that his testimony  
22 includes those options, that maybe his understanding of the  
23 option it would be up to the Commission to determine which  
24 option, and, of course, it would be up to you all to cross him  
25 on that point, and try to convince the Commission otherwise.



1 So I think that that preserves everybody's right to argue that  
2 one way or the other.

3 Okay. So, Mr. McGlothlin, you're going to provide  
4 your changed language, how you would like it to be shown to  
5 staff?

6 **MR. MCGLOTHLIN:** Yes. Essentially we will add to  
7 what is already there the summary of the position on the  
8 contracting activities to make clear that both paragraphs apply  
9 to 2A.

10 **COMMISSIONER McMURRIAN:** Okay. Ms. Bennett, does  
11 that get what we need?

12 **MS. BENNETT:** Yes, it does.

13 **COMMISSIONER McMURRIAN:** Okay. Do we want to go  
14 ahead and proceed to 2B with respect to FPL, or do we want to  
15 at this time talk about the stipulations with respect to  
16 Progress and OPC and try to get a clarification on those in a  
17 general nature, or, again, do we want to go to the next issue?  
18 How do you want to proceed?

19 **MS. BENNETT:** I think it might be okay to go ahead  
20 with 2B at this time. They are very similar.

21 **COMMISSIONER McMURRIAN:** Okay.

22 **MR. ANDERSON:** Could I beg your indulgence? I just  
23 didn't follow the last thing that Mr. McGlothlin said about  
24 what change was being made. Could that just be stated again,  
25 because I didn't want to leave until I understand.

1           **COMMISSIONER McMURRIAN:** Mr. McGlothlin.

2           **MR. McGLOTHLIN:** I'm going to add to our position  
3 statement the stipulation language that already appears under  
4 FPL's position.

5           **MR. ANDERSON:** That's what I thought, and thank you  
6 for the clarification.

7           **MR. McWHIRTER:** Ms. McMurrian, at this point in time  
8 FIPUG will take a position in agreement with OPC.

9           **COMMISSIONER McMURRIAN:** Okay, thank you. I missed  
10 that.

11           Okay. So I think that brings us to 2B.

12           **MS. BENNETT:** Yes, it does, Madam Chairman. And,  
13 again, this has the same partially stipulated issue, but this  
14 time OPC takes no position on 2B. And I'm not certain how that  
15 plays out with this particular stipulation.

16           **MR. McGLOTHLIN:** With respect to Turkey Point 6 and  
17 7, we should have entered our stipulation language.

18           **COMMISSIONER McMURRIAN:** So it will be consistent  
19 with that paragraph numbered two, Turkey Point 6 and 7 project  
20 for FPL, that would be your --

21           **MR. McGLOTHLIN:** Yes.

22           **COMMISSIONER McMURRIAN:** And Mr. McWhirter?

23           **MR. McWHIRTER:** Agree with OPC.

24           **COMMISSIONER McMURRIAN:** Okay. I think that brings  
25 us to Progress with Issue 3A.

1           **MS. BENNETT:** Just for clarification, OPC said as far  
2 as Turkey Point 6 and 7, they agree with the stipulation, but  
3 are they taking no position on the EPU project for the  
4 accounting?

5           **MR. McGLOTHLIN:** That's correct.

6           **MS. BENNETT:** And then FIPUG agrees with OPC, which  
7 means they take no position, also.

8           **MR. McWHIRTER:** That's correct.

9           **MS. BENNETT:** And currently AARP has no position.

10           **COMMISSIONER McMURRIAN:** Perhaps for the sake of the  
11 Commissioners, just keeping it straight, perhaps whenever  
12 Mr. McGlothlin revises his issue on these issues, perhaps we  
13 can go ahead and have delineated (1) EPU project, and maybe you  
14 say no position with respect to that. And then (2) Turkey  
15 Point 6 and 7 include the same language as FPL. Does that make  
16 sense? Just so it might be clear to us with respect to the  
17 EPU, that there is no position with respect to that accounting  
18 and cost oversight controls.

19           **MR. McGLOTHLIN:** That's our intent.

20           **COMMISSIONER McMURRIAN:** Okay.

21           **MR. McWHIRTER:** Ditto FIPUG.

22           **COMMISSIONER McMURRIAN:** Okay. Thank you.

23           3A and Progress. I guess, Ms. Triplett or Mr.  
24 Burnett, if you want to talk about -- or Mr. McGlothlin or Mr.  
25 Burgess, if you wanted to generally explain the stipulations

1 with respect to Progress and OPC.

2 **MS. TRIPLETT:** Sure, I can take a stab at that. And,  
3 Mr. Burgess, if you disagree please correct me.

4 Our stipulation applies only to the new Levy nuclear  
5 units, and it essentially recognizes that given the timing of  
6 the need determination that we are going to agree that the site  
7 selection, preconstruction, construction, O&M, and return on  
8 accumulated deferred tax costs as reflected in PEF's NFRs for  
9 the Levy units will be -- that the prudence of those costs will  
10 be deferred until the 2009 proceeding, and those would be the  
11 2006 and 2007 actual costs.

12 In addition, the stipulation specifies that the Levy  
13 site selection costs will be recovered in the same manner as  
14 preconstruction costs are recovered, pursuant to Rule  
15 25-6.0423. And in terms of what issues the stipulation would  
16 apply to, this would basically be 5A to 5C, which are the site  
17 selection costs.

18 **COMMISSIONER McMURRIAN:** 5A through 5C?

19 **MS. TRIPLETT:** 5A, 5B, and 5C, yes, ma'am.

20 **COMMISSIONER McMURRIAN:** Okay.

21 **MS. TRIPLETT:** And then 7A, 7B, 7C, and 7D, which  
22 would be the 2007 preconstruction and construction costs. And  
23 I think we might be able to agree, but I think we are still  
24 working on whether this stipulation would also apply to the  
25 Levy portion of 3A and 3B. But I think we were still

1 discussing that, because we were trying to work on other  
2 stipulations, as well.

3 **COMMISSIONER McMURRIAN:** Okay. Mr. Burgess.

4 **MR. BURGESS:** Yes. Let me start with the last point  
5 raised first. With regard to 3A and 3B, the stipulation does  
6 apply to the Levy project's aspect of that issue, but the issue  
7 subsumes both. So we simply tailored our position to that,  
8 rather than trying to say that we have got a stipulation on  
9 this half and it and we don't have a stipulation on that half.  
10 I don't mind if you think it would be better clarification to  
11 try to work that out.

12 **COMMISSIONER McMURRIAN:** Perhaps similar to what we  
13 did with FPL's, perhaps separate the uprate from the other  
14 piece part.

15 **MR. BURGESS:** Yes, except we don't have the  
16 complicating factor with regard to Progress that we do have  
17 with regard to FP&L trying to define that, because we don't  
18 have the same issue with the single source contracting that we  
19 had with Florida Power and Light. So it may actually be  
20 simpler if you want us to separate it out.

21 **COMMISSIONER McMURRIAN:** There's no need to.

22 **MR. BURGESS:** It looked to me like the issue was  
23 project management contracting and oversight controls and that  
24 is not what we are actually getting at with what we stated as  
25 our position. What we stated as our position is what gets into

1 7H, but we didn't want to foreclose our opportunity to apply  
2 that to these costs, if we do convince the Commission, or if  
3 the Commission is convinced that there are adjustments that  
4 need to be made in 7H.

5           The only other thing that I would add to Dianne's  
6 statement of the stipulation and its application is just to  
7 point out that when you go to its application in 5A, B, and C,  
8 and in the 7s, our position has the stipulation that we agree  
9 to, and that language is identical to what Progress has put on  
10 theirs, except that Progress has on a number of their positions  
11 added a sentence at the end which states its position as regard  
12 to the result of the stipulation. And we are not in agreement  
13 with the last sentence. We are not -- we are not saying we  
14 find any issues with it, we are simply not taking a position on  
15 the number.

16           And Progress is aware of that. We have talked about  
17 that with Progress, that the stipulation language that we have  
18 is common to both positions, and then Progress adds a sentence  
19 saying that based on that our testimony would indicate that the  
20 amount of recovery is this amount.

21           **COMMISSIONER McMURRIAN:** Okay. I'm fine with that.  
22 Thank you.

23           **MS. TRIPLETT:** Commissioner, if I may?

24           **COMMISSIONER McMURRIAN:** Certainly.

25           **MS. TRIPLETT:** Mr. Burgess is right. The last

1 sentence when we give the actual dollar amount, we were  
2 intending to indicate that although the issue asked for what  
3 are the prudently incurred costs, we were pointing out that at  
4 this point because of the stipulation's prudence it was only  
5 going to be a reasonableness determination at this point and  
6 the dollar figure, and that the stipulation was not to include  
7 the dollar figure as reasonable.

8 **COMMISSIONER McMURRIAN:** Ms. Bennett.

9 **MS. BENNETT:** There are a couple of concerns that  
10 staff wanted to talk with the parties about and have them  
11 address the prehearing officer. One of them is that the  
12 stipulation doesn't talk about carrying costs on construction  
13 and site selection. Was that intentionally excluded? Will the  
14 Commission be making a prudence determination on those carrying  
15 costs for '06 and '07?

16 **MS. TRIPLETT:** I think our position was that the  
17 Commission makes prudence determination on actual construction  
18 costs, but that the carrying costs was a mathematical  
19 calculation, so it wasn't intended to include a carrying cost.

20 **MR. BURGESS:** Well, I didn't intentionally -- I tend  
21 to agree with that, but if there are issues in the question of  
22 the carrying costs, that is how is it to be calculated or what  
23 overall rate of return is to be used, then our position is that  
24 the same general agreement that we discussed being driven by  
25 the timing of everything would apply; that is, that for the

1 Levy County projects, the entirety of -- although the capital  
2 expenditures and the carrying costs associated with them would  
3 be subject to reasonableness review with the right of the  
4 Commission to -- or the authority of the Commission to examine  
5 for prudence in a subsequent true-up, in the hearing for the  
6 subsequent true-up actual numbers on the same dollars or the  
7 same pot of dollars.

8           So from our standpoint, it wasn't an intention to  
9 take the carrying cost factor out and say it receives some  
10 treatment different from what we are recommending on all of  
11 this other category of costs.

12           **MS. BENNETT:** I think we would agree with that.

13           **COMMISSIONER McMURRIAN:** Okay.

14           **MR. BURGESS:** So if that is confusing, I mean, from  
15 out standpoint, if you want that rolled in and think that would  
16 be clarifying to the Commission, from our standpoint I would be  
17 happy to add that to the stipulation.

18           **MS. BENNETT:** I think staff would be more comfortable  
19 seeing that in the stipulation so that it's not a question next  
20 year when we do the prudence review.

21           **COMMISSIONER McMURRIAN:** Does anyone have proposed  
22 language of how you would include carrying costs?

23           **MS. TRIPLETT:** Maybe in the third line after "in  
24 PEF's NFRs, including the calculation of carrying costs, may be  
25 included." Does that work?



1           **COMMISSIONER McMURRIAN:** Are we in your position  
2 under 3A?

3           **MS. TRIPLETT:** No, I'm under -- we can go to 5A, the  
4 stipulation.

5           **MR. BURGESS:** The stipulations we didn't use as  
6 applying to anything other than the 5s and the 7s, the  
7 beginning 5s and the beginning 7s.

8           **COMMISSIONER McMURRIAN:** That's right. You're still  
9 working on 3A and 3B. Okay. So after NFRs, Ms. Triplett?

10          **MS. TRIPLETT:** Yes. And then another clause,  
11 "including the calculation of the carrying costs, may be  
12 included." Or maybe it goes better after construction.

13          **COMMISSIONER McMURRIAN:** After construction.

14          **MR. BURGESS:** I think the second, after construction  
15 before PEF's --

16          **COMMISSIONER McMURRIAN:** It might read,  
17 "Preconstruction, construction, and calculation of the carrying  
18 costs in PEF's NFRs"?

19          **MS. TRIPLETT:** Yes, we would be fine with that.

20          **COMMISSIONER McMURRIAN:** Thank you. I guess we  
21 should go back to 3A.

22          **MS. BENNETT:** The other item that the parties haven't  
23 discussed, they may be in agreement with FPL's position and  
24 Mr. McGlothlin's position on the difference between  
25 reasonableness review and prudence review. It might be

1 beneficial to understand what we are doing in 2009.

2           **COMMISSIONER McMURRIAN:** For Progress, correct, Ms.  
3 Bennett? Did you mean for Progress?

4           **MS. BENNETT:** I mean for Progress, yes.

5           **COMMISSIONER McMURRIAN:** Mr. Burnett.

6           **MR. BURNETT:** Thank you.

7           I think we largely agree with what we have heard. I  
8 think for the -- I don't know if you still want, like, a  
9 definition of what I consider reasonable or prudent to be --  
10 but I think that for reasonableness the Commission is going to  
11 look at factors to see if the costs are actually related or  
12 resulting from a project. If they are within the realm of  
13 amounts on their face, they are in line with what would be  
14 expected to see, that they are incurred at a time where they  
15 are necessary, apparently necessary, and they are reasonable  
16 mechanisms for incurring the costs, that to me is sort of a  
17 flavor of what I think the Commission is looking at with  
18 reasonableness. And then, of course, the prudence  
19 determination would include a final determination that is not  
20 subject to review except for limited circumstances.

21           OPC, I think, would be free to make any specific  
22 challenges to prudence that they would want at that time during  
23 the prudence determination phase, applying the standard, of  
24 course, that we have to by law, the reasonable range of  
25 business judgments given the particular facts and

1 circumstances. So I think that for the reasonableness phase,  
2 the Commission is going to look at sort of the higher level  
3 aspects that I have spoke of, but then OPC would be free to  
4 raise any particular challenges to prudence that they would  
5 want in the prudence phase.

6 **MR. BURGESS:** I would just go back. I agree with  
7 what Mr. Burnett said, and I kind of go back to what Joe had  
8 said earlier, that before this rule and its application, most  
9 of us probably would not have even tried to make a distinction  
10 between what is reasonable and what's prudent, and we would  
11 have used the two terms conjunctively to mean some particular  
12 concept. And now that we are trying to, perhaps, define a  
13 difference based on the practicalities of how they are used.

14 And in that regard, to be blunt about it, from our  
15 standpoint is reasonable means that which you are going to  
16 allow them to collect, that which looks like it is reasonable  
17 for them to collect in the next time period. Prudent means  
18 that which you are going to allow them to keep which they have  
19 collected in a past time period. And I don't know,  
20 conceptually within the definitions of the word it may be  
21 something that we end up as we hit controversies on this that  
22 the two words begin to take on particular definitions that show  
23 the distinctions. But right now from our standpoint, the  
24 distinctions are more that practical side of reasonable means  
25 the companies should collect it in the future period based on

1 what they have estimated, estimated/actual, and prudent means  
2 what you have decided of what they have collected that has  
3 become historic they should be entitled to keep.

4 **COMMISSIONER McMURRIAN:** Thank you both. Is that  
5 what you needed?

6 **MS. BENNETT:** I think so. Thank you.

7 **MR. BREW:** Commissioner, with all of that  
8 explanation, on 3A White Springs will support OPC's position.

9 **COMMISSIONER McMURRIAN:** I'm sorry, I forgot about  
10 you, Mr. Brew. Thank you.

11 I believe that brings us back to 3A now.

12 Ms. Triplett, they are still working on language with  
13 OPC and trying to stipulate that? I notice with FIPUG we have  
14 got no position at this time.

15 **MR. McWHIRTER:** I'm still adequately confused. I  
16 would like to delay.

17 **MS. BENNETT:** Commissioner McMurrrian, in developing  
18 the stipulation or a position, it appears that the FPL position  
19 where they have done the EPU and then the Turkey Point  
20 separately is easier to follow, and perhaps we could do the  
21 same for 3A and 3B here, if that's not --

22 **MS. TRIPLETT:** That would be fine.

23 **MR. BURGESS:** We're fine.

24 **COMMISSIONER McMURRIAN:** Okay, thank you.

25 And then with respect to Mr. McWhirter, he wants to

1 give us a position later. Any thoughts on that?

2 Mr. McWhirter, are you going to be involved in trying to  
3 negotiate a stipulation, as well, on that issue?

4 **MR. McWHIRTER:** No. I think I could take the  
5 position that we demand strict proof of the propositions. I  
6 believe I have come to an elemental understanding of what's  
7 going on. Reasonable means what's projected, and prudent means  
8 what has been accomplished. And I'm not sure whether OPC has  
9 indicated that he agrees that what is projected is reasonable,  
10 or if that's the case, I would want to say demand strict proof.  
11 If there is still an opportunity for him to examine the  
12 reasonableness, then I might be in a position to adopt the  
13 OPC's position.

14 **COMMISSIONER McMURRIAN:** How about we just -- well,  
15 we don't need to note it, but take note here that the parties  
16 are still working on some stipulated language on this, and when  
17 they share that with Mr. McWhirter, if he wants to either agree  
18 with OPC or take a separate position, then he can do that at  
19 that time, but by all means try to have everything done by  
20 September 3rd.

21 **MR. McWHIRTER:** I think that's a good approach.

22 **COMMISSIONER McMURRIAN:** Okay. And, Mr. Brew, the  
23 same for you?

24 **MR. BREW:** No. Our White Springs agreement on 3A  
25 carries over to 3B, as well, in terms of agreeing with OPC.

1           **COMMISSIONER McMURRIAN:** Okay. I show you as no  
2 position at this time, but you want it to be agree with OPC?

3           **MR. BREW:** Based on the discussion and subject to  
4 seeing the actual stipulation language.

5           **MS. BENNETT:** Okay. I think that takes care of 3A  
6 and probably 3B, also, if all the parties take the same  
7 position for 3B.

8           **COMMISSIONER McMURRIAN:** I see nodding. Okay. I  
9 think we can move along to 4A.

10          **MS. BENNETT:** Staff notes that this is a question  
11 that requires a yes or no answer. It appears that everyone is  
12 agreeing that site selection costs would go through the nuclear  
13 cost-recovery clause and the stipulation would apply to the, of  
14 course, reasonableness versus prudence review. But we might  
15 want to get confirmation that all the parties do agree that,  
16 yes, the site selection costs will go through the nuclear  
17 cost-recovery clause.

18          **COMMISSIONER McMURRIAN:** Mr. Anderson.

19          **MR. ANDERSON:** Yes, that's our understanding.

20          **MR. McGLOTHLIN:** Yes, we have agreed to the inclusion  
21 of the costs in this clause proceeding subject to the  
22 stipulation.

23          **COMMISSIONER McMURRIAN:** Mr. McWhirter.

24          **MR. McWHIRTER:** Yes for FIPUG.

25          **COMMISSIONER McMURRIAN:** Oh, this doesn't pertain to

1 Mr. Brew. And I guess we have a similar thing when we get to  
2 Progress, we will have that same question for them. Do you  
3 want to ask it now?

4 **MS. BENNETT:** I believe that is 5A, isn't it?

5 **COMMISSIONER McMURRIAN:** And I think they have got a  
6 stipulation, but we can go ahead and ask.

7 Ms. Triplett, is that your understanding?

8 **MS. TRIPLETT:** Yes, it is our understanding -- the  
9 answer is yes. And then, also, that they should be recovered  
10 in the same manner as the preconstruction costs, because that  
11 is in the stipulation.

12 **MR. BURGESS:** And we have got that in the  
13 stipulation. I don't know if you want any clarification. Do  
14 you want us to look at that for potentially changing that, or  
15 do you think this is clear the way it's worded here?

16 **MS. BENNETT:** I think it is fine. It appears that it  
17 is almost completely stipulated, and I wanted to make sure that  
18 it was completely stipulated when we present this in the  
19 prehearing order.

20 **COMMISSIONER McMURRIAN:** Okay. Mr. Brew, is that  
21 your understanding?

22 **MR. BREW:** Yes, Commissioner.

23 **COMMISSIONER McMURRIAN:** And, Mr. McWhirter?

24 **MR. McWHIRTER:** Yes, ma'am.

25 **COMMISSIONER McMURRIAN:** So that takes care of 4A.

1 And 4B?

2 **MS. BENNETT:** 4B is a partially stipulated item, and  
3 I believe that we are -- I think we have hammered out the  
4 stipulation so that we understand what the parties are going to  
5 ask the Commission to rule on. And so then 4B would just be  
6 dollar amounts, and those dollar amounts are not part of the  
7 stipulation.

8 **MR. ANDERSON:** The amounts are stated in the FPL  
9 position, and we think that if people want to examine them and  
10 reflect on them that they might be an appropriate amount for  
11 stipulation, also.

12 **MR. McGLOTHLIN:** We have not attempted to take issue  
13 with the amount specified by FPL in its filing. As phrased,  
14 the issue refers to approving a final 2007 true-up of prudently  
15 incurred, so I think it's appropriate to include the  
16 stipulation language in response to that.

17 **COMMISSIONER McMURRIAN:** Do you want the stipulation  
18 to include the dollars amounts? I guess that's the confusion  
19 we have is that your positions are almost the same, but the  
20 dollar amounts are not included.

21 **MR. McGLOTHLIN:** I don't take issue with FPL's  
22 representation of the amount included in the filing, and so I  
23 think that should serve.

24 **COMMISSIONER McMURRIAN:** Ms. Bennett.

25 **MS. BENNETT:** So you're taking no position as far as



1 the dollar amounts, is that what I'm hearing?

2 **MR. McGLOTHLIN:** Correct.

3 **MS. BENNETT:** FIPUG has to position at this time.

4 **MR. McWHIRTER:** You can strike at this time.

5 **COMMISSIONER McMURRIAN:** Ms. Bennett, do we show that  
6 as a partial stipulation or a full stipulation? I guess that  
7 is my confusion with this dollar amount issue.

8 **MS. BENNETT:** I think the only party that -- and we  
9 are not really a party, but the only entity on this issue that  
10 hasn't taken no position is staff, and I was checking with  
11 staff to see if this was something that we wanted to explore  
12 further or if we were in agreement with the numbers.

13 **COMMISSIONER McMURRIAN:** Well, I'm not trying to rush  
14 you. I just noticed that we have proposed stipulation between  
15 OPC and FPL here, and I'm sort of questioning that. It seems  
16 like we have it, and he is not taking issue with the numbers,  
17 but we have the numbers in the position. So, again, I come  
18 back to that. What do we put as the stipulated position  
19 between OPC and FPL. Do we include the dollars amounts or do  
20 we not?

21 Mr. Anderson, do you have any thoughts on how to deal  
22 with that?

23 **MR. ANDERSON:** You know, as a practical matter, you  
24 know, we have stated the amount and it is all subject to  
25 subsequent prudence review. We would ask with respect to -- if

1 people would be okay with just agreeing that this is the amount  
2 to be collected, which is set out, and it is subject to the  
3 prudence review next year. You know, we are vouching for the  
4 figure. Nobody has had any comment or disagreement with  
5 respect to it. I think it is just much simpler if we can just  
6 state this is the figure for inclusion and it is subject to the  
7 stipulation in relation to consideration of prudence next year.

8 **COMMISSIONER McMURRIAN:** Mr. McGlothlin, if you want  
9 to take some more time to think about it, I'm not trying to  
10 pressure you here, but the question does say what amount should  
11 the Commission approve. So if you are, indeed, stipulating  
12 with FPL, it seems like the amount is in play.

13 **MR. MCGLOTHLIN:** I'll stipulate, I'll accept his  
14 representation as to what is included. We take no issue with  
15 that, so we have got a full stipulation.

16 **COMMISSIONER McMURRIAN:** Okay, thank you. That  
17 brings us to 5A and 5B, and I think we have already talked a  
18 little bit about 5A. Ms. Bennett, did we get the cover that we  
19 needed on 5A from both parties?

20 **MS. BENNETT:** Staff is a little confused still about  
21 5A. Was that a full stipulation that we had to 5A other than  
22 staff not taking a position yet?

23 **COMMISSIONER McMURRIAN:** 4A and 4B. Sorry, we are  
24 going back to 4B. I think Mr. McGlothlin said that he could  
25 stipulate to FPL's wording of the issue.

1           **MR. McGLOTHLIN:** Yes.

2           **MS. BENNETT:** Okay.

3           **COMMISSIONER McMURRIAN:** Thank you. I realize that  
4 you all haven't taken a position, and FIPUG has no position.

5           **MR. McWHIRTER:** FIPUG agrees on 5A.

6           **COMMISSIONER McMURRIAN:** I'm sorry, we are back on  
7 4B, Mr. McWhirter.

8           **MR. McWHIRTER:** I'm sorry.

9           **COMMISSIONER McMURRIAN:** And you said for us to  
10 change your position to just no position and strike "at this  
11 time"?

12           **MR. McWHIRTER:** That's correct.

13           **COMMISSIONER McMURRIAN:** Ms. Bennett.

14           **MS. BENNETT:** And what we have done in the past is  
15 there are two sections in the prehearing order, those that the  
16 issue is fully stipulated and all the parties join into that  
17 stipulation, and those show up in one section of the prehearing  
18 order, and then there is a second section where two parties  
19 stipulate and everyone else takes no position. So because  
20 FIPUG has taken no position, this will show up in the part that  
21 only certain parties have agreed to.

22           **COMMISSIONER McMURRIAN:** Okay. Back to 5A. I think  
23 earlier we got clarification from Ms. Triplett and Mr. Burgess  
24 with respect to their understanding, and we even talked about  
25 some language to include the carrying costs. With that, it

1 appears we might have a stipulation with the parties on that  
2 one, as well.

3 **MS. BENNETT:** So we will show that as fully  
4 stipulated, 5A.

5 **COMMISSIONER McMURRIAN:** And I guess I should clarify  
6 to make sure. Mr. McWhirter, are you in agreement with OPC and  
7 the company on 5A?

8 **MR. McWHIRTER:** Yes, ma'am.

9 **COMMISSIONER McMURRIAN:** Okay. And the same thing  
10 for you, Mr. Brew?

11 **MR. BREW:** Yes.

12 **COMMISSIONER McMURRIAN:** Okay. 5B.

13 **MR. BREW:** When we get to 5B, does the number change  
14 when you include carrying costs?

15 **MS. TRIPLETT:** Hold on. I'm looking to my numbers  
16 person. Could we just have a moment so he can look at it?

17 **COMMISSIONER McMURRIAN:** While we are taking a  
18 moment, I will mention we will take a break at 1:00 for lunch.  
19 If we are done, we won't be taking a break for lunch, we'll  
20 just be done. But if we are not done, we are going to take a  
21 break at 1:00 for changing out court reporters and take a lunch  
22 break. Just to let everybody know.

23 **MS. TRIPLETT:** The number doesn't change. It does  
24 include the carrying costs.

25 **COMMISSIONER McMURRIAN:** So with that on 5B.

1           **MR. McWHIRTER:** FIPUG takes no position on 5B, strike  
2 "at this time".

3           **COMMISSIONER McMURRIAN:** Okay. Mr. Brew, do you  
4 agree with the position of OPC, which is in agreement with  
5 Progress?

6           **MR. BREW:** Yes, Commissioner.

7           **MS. BENNETT:** Does OPC agree with the dollar amount  
8 also, or is that a no position?

9           **MR. BURGESS:** That is no position with regard to the  
10 dollar amount. The agreement is with regard to the categories  
11 of costs. We are not taking issue with the dollar amount, but  
12 we are not stipulating to it.

13           **COMMISSIONER McMURRIAN:** Isn't this similar to what  
14 we just went through with 4B?

15           **MS. BENNETT:** Yes, it is, Commissioner. It would  
16 show up in the stipulated section as an item that the  
17 parties --

18           **COMMISSIONER McMURRIAN:** What I'm talking about is  
19 the dollar amount. It seems to me, Mr. Burgess, that, again,  
20 and I apologize if I seem to be trying to pressure you all, but  
21 the issue is what amount should the Commission -- so, again,  
22 I'm trying to just fill the boxes with the stipulated language  
23 if we have a stipulation. If we don't, that's fine, too.

24           **MR. BURGESS:** Here is the problem with that for us.  
25 The issue of what is the amount starts off with the question of

1 what categories of costs should be allowed in what level of  
2 review whether it's reasonableness or prudence. And that's  
3 where you get into that matrix of, you know, depending on  
4 whether it was the uprate that was filed at a particular time  
5 or the new plants that were filed at a different time, and the  
6 amount of time for review of the historic. And so we got into  
7 an agreement with Progress in its entirety as to which  
8 categories of costs should be put into it for collection.

9           But we have not reached an agreement with the amount  
10 of money. And so from our standpoint, our position if it were  
11 separated out into two issues, what categories of costs should  
12 be approved, we would have an absolute stipulation. And if the  
13 second Issue B on that was what -- or since it is B already,  
14 B2, what is the amount of cost, we would take a no position.  
15 So I don't know how you want to -- what the best way to do it  
16 to clarify that for the Commission is, but that is where we are  
17 on it.

18           **MS. BENNETT:** I have a -- it is very similar to the  
19 fuel clause where the parties would present a number and the  
20 rest of the parties would take no position, and so the  
21 Commission would make a ruling on that number. And it's a  
22 reasonableness ruling, so the next year the Commission would  
23 make a prudence determination on that same number.

24           **COMMISSIONER McMURRIAN:** Would it make sense to  
25 possibly include some sentence at the end of the stipulated

1 language that says while -- that somehow reflects what Progress  
2 believes is the number, but that notes that OPC hasn't agreed  
3 to the specific number, so that the wording itself reflects  
4 the --

5 **MR. BURGESS:** That would be fine with us,  
6 Commissioner, if you would put that in there. And it was clear  
7 in that sentence, basically almost using the words that  
8 Progress uses, but some reflection that this is not a number  
9 that OPC is stipulating to as being the proper amount.

10 **COMMISSIONER McMURRIAN:** If I'm making more of it  
11 than it is, then just let me know and we can move on. But,  
12 Ms. Triplett, do you have any input there? And we might need  
13 to go back to Mr. Anderson on the 4B issue on this, too.

14 **MS. TRIPLETT:** Well, my thoughts, I think, were  
15 similar to Mr. Anderson's. If OPC is not taking a position, it  
16 seems to me that -- I'm just not sure what anyone loses by just  
17 going ahead and making it a full stipulation with the  
18 understanding that the prudence of the costs would be at issue  
19 in the next proceeding.

20 But barring that, if we want to have the language at  
21 the end just say something like the Commission should approve  
22 as reasonable, and striking this language pursuant to  
23 stipulation, and have the number, and then add something about  
24 that no parties take a position, I think we get to the same  
25 place, and that would be fine.

1           **MR. McGLOTHLIN:** That approach is a more accurate  
2 description of OPC's position on 4, also, if we could go back  
3 and do something similar there.

4           **COMMISSIONER McMURRIAN:** Ms. Bennett, you said it is  
5 similar to the fuel, but in the fuel I don't recall we usually  
6 have a long paragraph that reflects a stipulation, and then a  
7 no position on the number included in the same issue. And that  
8 is, I guess, the confusion I have. So it seems to me that  
9 something like that might work. I don't know exactly what the  
10 wording would be, but something that reflects the number that  
11 the company believes is reasonable, but just indicates that the  
12 stipulation doesn't really pertain to that number.

13           **MS. BENNETT:** I think that following the mechanism  
14 that FPL used in talking about 2A and 2B where you subdivide  
15 your issue, you could do the same thing as to the  
16 reasonableness versus prudence review, and then the actual  
17 number is the second subpart. And then each of the parties  
18 could stipulate as to the reasonableness versus prudence review  
19 no position on the number.

20           **COMMISSIONER McMURRIAN:** Okay.

21           **MR. BURGESS:** But maybe -- well, we have a fine  
22 distinction that we are making we understand that with regard  
23 to saying we are not challenging the number, but we are not  
24 going to affirmatively agree to it. I understand that is a  
25 fine distinction, but it is one we are making. But, also, it



1 is complicated somewhat by the language of the issue, if we  
2 agree to it, which talks about -- which uses the term prudence.  
3 And so any agreement on the number in response to that issue  
4 seems to create a problem, as well.

5 **MS. BENNETT:** Could that be resolved by saying no  
6 position as to the number subject to a prudence review in 2009?  
7 Would that resolve your concern?

8 **MR. BURGESS:** Yes. Well, I mean, I thought that was  
9 sort of what we were -- if you're speaking about just the  
10 amount, then I guess we have got to address that. But as far  
11 as subject to a prudence review, that is what we have got in  
12 the verbiage in the stipulation.

13 I guess I don't know what you're asking. Are you  
14 asking would we agree to a stipulation that said there is no  
15 position with regard to the amount subject to a prudence review  
16 in 2009, or would we agree to taking the position that we agree  
17 to that number subject to a prudence review? And that's where  
18 I was telling the Commissioner that, no, it is a fine  
19 distinction, but, no, we don't take that position. We do not  
20 agree to it affirmatively even subject to a prudence review.

21 **COMMISSIONER McMURRIAN:** All right. You don't  
22 necessarily agree that that number has met the reasonableness  
23 standard either, because of Mr. Jacobs' testimony. You are  
24 saying there could be -- that you might be taking the position  
25 that the number should be something less.

1           **MR. BURGESS:** Or even beyond the testimony of Mr.  
2 Jacobs. What we're saying is we have looked at this, we take  
3 no issues other than what you see in the testimony, but that  
4 does not necessarily lead us to affirmatively -- to be willing  
5 to affirmatively say we support that number as Progress does.

6           I mean, Progress has gone through and they say we  
7 support this number and we are confident that it is the right  
8 number. From our standpoint it is we have looked at it and we  
9 take no issue with it, but we don't take the same position that  
10 we support it affirmatively. And I realize that's a fine line,  
11 but that's where we are in our position on the actual amount.

12           **COMMISSIONER McMURRIAN:** But it seems to me that  
13 Ms. Bennett's suggestion to sort of almost bifurcate the issue  
14 in that you have the agreed upon language about prudence versus  
15 reasonableness and sort of what we are doing this year because  
16 of the situation we are in, and then having sort of a second  
17 paragraph that clarifies what the number that the company  
18 believes is reasonable, but that shows a distinction that you  
19 aren't in agreement with the number. You have no position on  
20 that part.

21           **MR. ANDERSON:** One way to do that, if I might just  
22 jump in, because I think your idea works, would be to put a  
23 Subissue 1, amount for inclusion for clause recovery, something  
24 like that. Each utility would just state its figure. The  
25 other parties could say no position if they want, then have a

1 Sub 2 issue, or whatever, call it stipulation for a prudence  
2 review, which is the embodiment of the agreement for the  
3 prudence review. I'm just trying to see if there is a way to  
4 get here to there.

5 **COMMISSIONER McMURRIAN:** Maybe.

6 **MS. BENNETT:** I'm just concerned as you are -- that  
7 we need to make it clear what the Commission is going to vote  
8 on, and so I'm not trying to ask for stipulations on dollar  
9 amounts or to put words into the mouths of parties. I just  
10 want to make sure that when the Commission votes they  
11 understand what it is they are voting on and to make it as  
12 clear as possible.

13 **COMMISSIONER McMURRIAN:** Right. From what I  
14 understand now it looks like the Commission would be -- of  
15 course, we would be making a decision as to the stipulation,  
16 too, but the Commission would also have to make a decision on  
17 what that number should be. Because if we don't make a  
18 decision on what the number should be, we are not going to have  
19 factors and the whole process falls apart. So I think that  
20 maybe Mr. Anderson's suggestion might work. But it is clear  
21 that the Commission -- there might be a recommendation, for  
22 instance, to approve a stipulation on part of the issue, but  
23 the other the part of the issue remains subject to the  
24 Commission's determination after we get all the evidence.

25 Mr. Breman.

1           **MR. BREMAN:** Seeing how I have to write  
2 recommendations, why don't we just say that the resolution of  
3 Issue 5B is deferred until the proceeding of 2009. The amount  
4 to be included in the factor this year is X. And then the  
5 parties can add whatever language they need to say, you know.  
6 But that is sort of where I'm going.

7           I don't know that you need two separate issues. But  
8 if we state up front that the resolution of the issue is being  
9 deferred until 2009, then I think it's clear direction what it  
10 is you are doing. That's just my comment.

11           **COMMISSIONER McMURRIAN:** Is this something that  
12 everyone sort of agrees what we need to do, but as far as the  
13 exact wording, we can just work on later between the parties?

14           **MR. BURGESS:** Yes, that's fine. But with one  
15 understanding. Even if you separate that and we separate out  
16 what the agreement in concept is, if we have an issue, a  
17 subissue, or a second issue of each one of these that says what  
18 is the amount, I mean, this is just -- to let you know at least  
19 our thinking now, if it stays with the amount of prudently  
20 incurred as a separate issue, I mean, we are going to have to  
21 say zero. Because if it says how much should the Commission  
22 approve as a prudently incurred, given that we have spoken  
23 about the meaning of prudence versus the meaning of  
24 reasonableness, our concern is something that says what is the  
25 amount that the Commission should allow as prudently incurred

1 costs would mean that it couldn't be reexamined later.

2 **COMMISSIONER McMURRIAN:** Mr. Burgess, I think that if  
3 the language stays as proposed by Progress, and I think with  
4 respect to FPL it is probably worded the same, that if you  
5 still have the language something about the Commission should  
6 approve as reasonable, I believe that will get it as long as  
7 that stays there.

8 Mr. Brew.

9 **MR. BREW:** Commissioner, if Progress's answer began  
10 with, "As stated in the stipulation to 5A, the prudence of  
11 these costs is not being determined. Subject to that  
12 stipulation, the amount for collection in 2009 should be the  
13 18 million." The other parties, it seems to me, can simply  
14 take no position so that they are not endorsing the dollar  
15 amount, but you have what you want for the record.

16 **COMMISSIONER McMURRIAN:** Is the position statement on  
17 5B exactly the same as 5A with the exception of the dollar  
18 amount sentence?

19 **MR. BREW:** It restates it except for that last  
20 sentence, yes.

21 **MS. TRIPLETT:** Yes, that's right. That's what it was  
22 intended to do.

23 **COMMISSIONER McMURRIAN:** So that seems to be a good  
24 suggestion, that if the position were to say something like  
25 subject to the stipulation on 5A.

1           **MR. BREW:** As long it's explicit that in referencing  
2 the stipulation and not finding prudence -- the issue, as Mr.  
3 Burgess pointed out, the statement of the issue refers to  
4 prudence. So as long as we are explicit that we are not  
5 reaching the prudence issue, but you want to have a specific  
6 dollar amount for collection, and we phrase it that way, then I  
7 think everybody is fine. And then the other parties can simply  
8 take no position consistent with the discussion you had a  
9 minute ago.

10           **COMMISSIONER McMURRIAN:** That seems to work, but Ms.  
11 Triplett --

12           **MS. TRIPLETT:** We're fine. I mean, I think that is  
13 what we tried to do, but maybe if we just make it shorter it  
14 would be clearer to everyone.

15           **COMMISSIONER McMURRIAN:** Mr. Anderson with respect to  
16 4B. We're going backwards now.

17           **MR. ANDERSON:** I don't see a problem with the  
18 approach.

19           **COMMISSIONER McMURRIAN:** I think the discussion is  
20 good to have here now. I guess we don't have to get to the  
21 exact language, but I think that something like that would  
22 work. I don't think it would necessarily be necessary, Mr.  
23 Burgess, to repeat everything from 5A in 5B, as long as your  
24 statement referred back to the stipulation under 5A. Okay.  
25           So that brings us to 5C.

1           **MS. BENNETT:** I think 5C is pretty much the same.

2 Well, no.

3           **COMMISSIONER McMURRIAN:** Is it the same statement  
4 with the dollar amount? A different dollar amount, of course.

5           **MS. BENNETT:** It is.

6           **COMMISSIONER McMURRIAN:** So I think the same  
7 discussion would possibly apply here. With that, however, we  
8 have FIPUG agree with OPC.

9           **MR. McWHIRTER:** I'm a little bit unclear. 5B shows  
10 \$18 million for -- well, I thought it was 2007, and then 5C  
11 shows 19,800,000 for costs through 2009. Are we looking at  
12 37 -- I said thousand, I mean million -- 37 million, or are we  
13 looking at a total of 19 million?

14           **COMMISSIONER McMURRIAN:** It think it's 37.

15           **MS. TRIPLETT:** It's 37. 5B is for 2007 and 5C is for  
16 2008.

17           **MR. McWHIRTER:** And when you say through 2009, that  
18 doesn't include 2007, that's for 2008 and 2009?

19           **MS. TRIPLETT:** Are you getting the through 2009  
20 language from the stipulation?

21           **COMMISSIONER McMURRIAN:** Are you on Line 4 of the  
22 Progress position?

23           **MR. McWHIRTER:** Yes.

24           **COMMISSIONER McMURRIAN:** I think that is through the  
25 2009 capacity cost-recovery factor. I don't think that is

1 intending to say through 2009 as a date.

2 **MR. McWHIRTER:** I see. Okay.

3 **COMMISSIONER McMURRIAN:** If I am reading that  
4 correctly.

5 **MS. TRIPLETT:** Thank you, yes.

6 **MR. McWHIRTER:** What you are really saying is  
7 37 million is what we are looking at. I think rather than  
8 saying no position, I would rather say demand strict proof.

9 **COMMISSIONER McMURRIAN:** Is this on 5B?

10 **MR. McWHIRTER:** Yes. But that would negate the  
11 possibility of a stipulation on the subject. Is everybody else  
12 stipulating that 37 million is the right number?

13 **COMMISSIONER McMURRIAN:** It seems like with respect  
14 to the amounts on 5B and 5C, Mr. McWhirter, it seems that with  
15 respect to the amounts on 5B and 5C that, as I understand it,  
16 OPC would be taking no position with respect to the amount.

17 **MR. McWHIRTER:** OPC is agreeing to 37 million? Is  
18 that right, OPC?

19 **MR. BURGESS:** No, that gets back to the whole issue  
20 of where we are with regard to the amounts. That we are not  
21 making issue with them, but we do not step forward and say this  
22 is the amount we urge the Commission to approve for collection.  
23 We simply don't take a position on the amount that is filed by  
24 the company.

25 **MR. McWHIRTER:** Well, then they would still entail



1 proof of that amount, so you are not stipulating that 37 is  
2 right. They have still got to come forward and prove that they  
3 spent that and they have spent it in an appropriate manner.

4 **MR. BURGESS:** When you use the past tense that would  
5 be the 5B spent that amount, and that is where, as I understand  
6 it, everyone is agreeing that we would examine it for prudence  
7 in the future. And 5C is for the amounts of 2008, some of  
8 which is projected, and when that is spent, the Commission will  
9 examine that in the 2010 hearings.

10 **MR. McWHIRTER:** You're keeping your powder dry on the  
11 19 million, but going along with 18, is that the deal?

12 **MR. BURGESS:** No. I'm hoping our powder is dry for  
13 both the 18 and the 19 million.

14 **MR. McWHIRTER:** Okay.

15 **COMMISSIONER McMURRIAN:** Mr. McWhirter, I think on 5B  
16 and 5C, the language for Progress' position -- and please jump  
17 in -- would change to something. We talked about this earlier.  
18 Mr. Brew made the suggestion to somehow incorporate the  
19 agreement about prudence versus reasonable, to incorporate  
20 those into that agreement into 5B and 5C by somehow referring  
21 back to 5A. Subject to the stipulation on Issue 5A, and then  
22 including the amount at issue for that time. And then, as I  
23 understand it, OPC is going to take no position with respect to  
24 the amounts. That their position would be no position. Am I  
25 correct? So that you wouldn't have stipulations really on 5B

1 and 5C.

2 **MR. McWHIRTER:** I think he is leaving the door open  
3 to coming back on 2008 and 2009 to contest the prudence of that  
4 after the money is already spent. In 2007, you're agreeing  
5 that the money that is spent is okay?

6 **MR. BURGESS:** No. Not for the Levy County, for the  
7 Levy County sites. We are not agreeing that the amount is  
8 okay. And as I understand it, Progress is also agreeing that  
9 it is fair game for even those costs that are currently  
10 historical to be examined by the Commission and all parties for  
11 prudence in the 2009 hearings.

12 **MS. TRIPLETT:** That's right for Levy only.

13 **MR. BURGESS:** I guess what still bothers me a little  
14 bit in this, and we have talked about it with staff, and so  
15 they have heard this before, is 4, 5B, and C, even separating  
16 them out as amounts, what has got me troubled is in the issue  
17 it says prudently after we have pretty much said that's not  
18 going to be a standard.

19 **COMMISSIONER McMURRIAN:** And I talked with staff  
20 yesterday about that very issue, Mr. Burgess, and we questioned  
21 whether to change the issue, but the thinking was that we are  
22 going to be using these same issues in perpetuity and let's not  
23 change it this year to reasonably and change it back to  
24 prudently next year. Because I think if we are clear in what  
25 the language would be, I think if when you say the amount you

1 say -- and I have got to get back to that language here, but I  
2 believe the way that Progress had proposed it was the  
3 Commission should approve as reasonable, and then the amount.

4 **MR. BURGESS:** Yes.

5 **COMMISSIONER McMURRIAN:** And then if the other  
6 parties are taking no position, that doesn't mean you agree  
7 with the amount as being reasonable, either, I believe. And we  
8 would not have a stipulation on the B and C parts. But we will  
9 need to hash out what that language is. But I think it  
10 definitely should somehow include -- and, of course, it is your  
11 stipulated language, but the way I understand the discussion  
12 here is it should definitely include something to indicate that  
13 that is a request for approval as reasonable, not prudent  
14 because of the issue language, how it is worded prudent.

15 **MR. BURGESS:** It would probably help us if it even  
16 included but not prudent or something like that. You know,  
17 with the issue saying what is the prudently incurred costs and  
18 an amount being down there, it leaves us somewhat exposed to  
19 say, well, we take into position on that. That is our concern  
20 that we have. And nobody is trying to pull it, I know that,  
21 and I understand the point, it's just this is going to be in  
22 black and white for a long time, and these discussions don't  
23 necessarily carry on as far as the actual black and white of  
24 the order does.

25 **MS. TRIPLETT:** Not to belabor the point, but how

1 about saying something like subject to the stipulation on Issue  
2 5A, with the understanding that prudence will be deferred  
3 consistent with that stipulation, the Commission should approve  
4 as reasonable. I just want to make sure. I don't want to say  
5 something like, you know, that we are not doing prudence. I  
6 want to explicitly make it clear that we are incorporating the  
7 stipulation, because the stipulation says -- I mean, you see it  
8 as a whole paragraph, and so I think if we refer to the  
9 stipulation and that the prudence deferral is consistent with  
10 that stipulation, and then we go to reasonable, would that  
11 work?

12 **MR. BURGESS:** I think Ms. Triplett's suggestion is  
13 good, and I think that helps us a great deal. I still would be  
14 more comfortable without the word in the issue. I see it  
15 there, so it's is there.

16 **COMMISSIONER McMURRIAN:** I understand. Mr. Anderson,  
17 would you be comfortable with the same sort of language back  
18 on, I believe, 4B?

19 **MR. ANDERSON:** The same kind of language. I was just  
20 toying with it. I was inserting -- kind of breaking it out.  
21 The reasonable amount that should be approved for inclusion,  
22 and then the figure, and then other people would take the no  
23 position or whatever. You know, we have already got the  
24 subject to the provisions for prudent review language, you  
25 know, really calling out clearly that this is subject to the

1 stipulation, then setting out the step, is that square with  
2 where --

3 **COMMISSIONER McMURRIAN:** I think so, but I think that  
4 Mr. Burgess says he would like that language in that position  
5 under 4B, and then 5B and 5C to also make extra clear that it  
6 wouldn't be for prudence. And I think that Ms. Triplett's  
7 language, I think, got us there.

8 **MR. McGLOTHLIN:** I concur with that.

9 **COMMISSIONER McMURRIAN:** And if maybe she could read  
10 that again for you.

11 **MR. ANDERSON:** Okay. That would be helpful, the  
12 specific language.

13 **MS. TRIPLETT:** Okay. Subject to the stipulation on  
14 Issue 5A -- of course, for FPL it would be 4A -- comma, that  
15 prudence of these costs will be deferred consistent with that  
16 stipulation, comma, the Commission should approve blank dollars  
17 as reasonable.

18 **COMMISSIONER McMURRIAN:** As reasonable. Does that  
19 get us there?

20 **MR. BURGESS:** And we would take no position on this.

21 **COMMISSIONER McMURRIAN:** And on 4B you would take no  
22 position, as well, Mr. McGlothlin?

23 **MR. McGLOTHLIN:** The same approach, yes.

24 **COMMISSIONER McMURRIAN:** Okay. And, Mr. McWhirter,  
25 on 4B, 5B, and 5C --

1           **MR. McWHIRTER:** No position.

2           **COMMISSIONER McMURRIAN:** Okay. And, Mr. Brew?

3           **MR. BREW:** Our answer would be specifically to say  
4 subject to the stipulation in 5A, we take no position on 5B  
5 and C.

6           **COMMISSIONER McMURRIAN:** Okay.

7           **MR. BURGESS:** I think we would like to do that, as  
8 well. Thank you.

9           **COMMISSIONER McMURRIAN:** Okay. Mr. McWhirter, ditto?  
10 Okay.

11           Mr. Anderson, are you with us?

12           **MR. ANDERSON:** I didn't catch the latest gloss on  
13 that, I'm very sorry.

14           **COMMISSIONER McMURRIAN:** That's okay.

15           Mr. Brew, could you repeat that?

16           **MR. BREW:** Sure. It was our answer to 5B and C would  
17 be to explicitly reference, basically, subject to the  
18 stipulation stated in 5A, we take no position on 5B and C.

19           **COMMISSIONER McMURRIAN:** And for OPC and for FIPUG  
20 with respect to your docket, I think they want to use that same  
21 language, but referencing 4A.

22           **MR. ANDERSON:** I think that gets us to the same  
23 place, yes. Thank you.

24           **COMMISSIONER McMURRIAN:** It is good we are hashing  
25 through this now and not at the hearing. I know it is slow,

1 but we will get there. 6A.

2 Ms. Bennett.

3 **MS. BENNETT:** 6A is a partial stipulation, but the  
4 testimony of Mr. Jacobs, I think, affects 6A pretty much the  
5 way we talked about 2A. Maybe we could have OPC and Florida  
6 Power and Light discuss how that proposed situation will effect  
7 Issue 6A and the decision of the Commission.

8 **MR. ANDERSON:** Do you want me to comment? I'm sorry.

9 **COMMISSIONER McMURRIAN:** Sure, go ahead.

10 **MR. ANDERSON:** I think that this lays things out  
11 pretty plainly. We are saying what the amount is that should  
12 be included in the factor, so to speak. We will hear proofs  
13 concerning reasonableness for the Commission's consideration  
14 this year, and in the ordinary course we would have a prudence  
15 determination next year within the scope of this stipulation.

16 **COMMISSIONER McMURRIAN:** Mr. McGlothlin.

17 **MR. MCGLOTHLIN:** It appears to me that the approach  
18 that we eventually hammered out with respect to the last couple  
19 of issues would work for this, as well. And I think we  
20 should -- I think OPC needs to add here the reference to the  
21 contracting issue in some form, so that it is clear that it may  
22 have application.

23 **COMMISSIONER McMURRIAN:** Ms. Bennett, are you  
24 suggesting a two-part issue, again. I'm just not clear. I  
25 realize that one of the positions has a dollar amount and one

1 doesn't. But other than that, are you -- and then Mr.  
2 McGlothlin just raised the single-source issue.

3 **MS. BENNETT:** That was staff's confusion. We  
4 understood that Mr. Jacobs' testimony would perhaps apply to  
5 this, the reasonableness of the numbers, and so we were  
6 concerned about how the stipulation would affect the  
7 Commission's hearing that information and what they would do  
8 with the numbers that FPL is proposing.

9 I think we discussed at length with 2A that the  
10 numbers are still subject to reasonableness, and so the  
11 Commission could make a ruling on the reasonableness of those  
12 numbers. It might be beneficial for the parties to provide a  
13 little built clearer position statement. I think maybe OPC on  
14 that.

15 **MR. ANDERSON:** It would seem to me that one way --  
16 just looking at the language under our FPL position, you could  
17 break it, again, into two chunks. One, the reasonable amount  
18 that would be for inclusion, and that would be our position.  
19 Then as to a Subitem 2, you would have the balance of the  
20 language. That would thereby preserve, you know, in the first  
21 part that even our position is subject to the provisions for  
22 prudence review.

23 Mr. McGlothlin was suggesting calling out some of his  
24 individual theories to be stated in the stipulation portion as  
25 being preserved. As a legal matter, I don't think it's



1 necessary, but if it is a few additional words, I don't see a  
2 legal problem with it.

3           **MR. McGLOTHLIN:** Well, this is very similar to our  
4 earlier discussion in that Doctor Jacobs addresses contracting  
5 procedures and recommends alternative adjustments if his points  
6 are accepted by the Commission. That approach is designed to  
7 be a general overall assessment and adjustment, but it may have  
8 application to these individual periods. So consistent with  
9 what I agreed to do in the earlier issue, I think with respect  
10 to the amount they seek approval of, we would take no issue  
11 with respect to what their representation of what they have  
12 requested, but we would also use language that would indicate  
13 that that is subject to consideration of Doctor Jacobs'  
14 recommended adjustments as affecting this and other periods.

15           **COMMISSIONER McMURRIAN:** So I am hearing we need to  
16 break the dollar amount out so that you can say that the dollar  
17 amount would be subject to the considerations of Doctor Jacobs'  
18 testimony somehow?

19           **MR. McGLOTHLIN:** Yes. And to that end, in addition  
20 to the stipulation that applies to preconstruction costs for  
21 2007, we would include the summary of the position on  
22 contracting issues, as well.

23           **COMMISSIONER McMURRIAN:** Does that get us where we  
24 need to be? We need to just work on that language sometime  
25 later today or --

1           **MS. BENNETT:** What I'm hearing Mr. McGlothlin say is  
2 he is going to present us with a revised position statement,  
3 and I think Mr. Anderson has also said that he would revise his  
4 position statement. So maybe they can come back later today  
5 with those revisions. If not, then we would have to have them  
6 submit it before September -- or by the close of business on  
7 September 3rd.

8           **MR. ANDERSON:** I would think that would make sense.

9           **COMMISSIONER McMURRIAN:** Mr. McGlothlin.

10          **MR. MCGLOTHLIN:** Yes. It would be difficult to do  
11 today, but I can meet the September 3rd.

12          **COMMISSIONER McMURRIAN:** Okay.

13          **MR. ANDERSON:** If I get the gist of it, the first  
14 issue would be about the reasonable amount, and we call that a  
15 figure. OPC sounds like they would be saying some figure  
16 subject to their theories. And then the core element of the  
17 stipulation that remains is, you know, whatever amounts are  
18 considered reasonable, that is the amount for inclusion, and we  
19 go at it again next year if people choose to, right?

20          **MR. MCGLOTHLIN:** Yes.

21          **MR. ANDERSON:** Okay.

22          **COMMISSIONER McMURRIAN:** That does make sense to me.

23          Mr. McWhirter, yours reflects no position at this  
24 time on 6A.

25          **MR. MCWHIRTER:** Make that no position.

1           **COMMISSIONER McMURRIAN:** Okay. 6B.

2           **MS. BENNETT:** I believe 6B would have the same  
3 implications as 6A. I believe Mr. Jacobs' testimony  
4 potentially can affect 6B.

5           **MR. McGLOTHLIN:** We will use the same approach for  
6 this.

7           **COMMISSIONER McMURRIAN:** Mr. Anderson.

8           **MR. ANDERSON:** I would think that would make sense.

9           **COMMISSIONER McMURRIAN:** Okay. And, Mr. McWhirter?

10          **MR. McWHIRTER:** No position.

11          **COMMISSIONER McMURRIAN:** Okay. 6C. Is that the same  
12 issue again?

13          **MS. BENNETT:** No, 6C is the uprate, and the parties  
14 have taken positions. Well, FIPUG has not taken a position.

15          **COMMISSIONER McMURRIAN:** Mr. McWhirter on the uprate  
16 for 6C, uprate final true-up.

17          **MR. McWHIRTER:** Can you let me think another couple  
18 of minutes?

19          **COMMISSIONER McMURRIAN:** Sure.

20          **MR. McWHIRTER:** I think I will go with no position.

21          **COMMISSIONER McMURRIAN:** Okay. And, Mr. McGlothlin,  
22 is the position that is reflected there, is that --

23          **MR. McGLOTHLIN:** On the carrying charges, no  
24 position.

25          **COMMISSIONER McMURRIAN:** No, on 6C. I'm just

1 confirming that that is the position that you want to be  
2 reflected.

3 **MR. McGLOTHLIN:** Yes.

4 **COMMISSIONER McMURRIAN:** And 6D on carrying charges.  
5 And on this we show that OPC has no position.

6 **MR. McGLOTHLIN:** That's correct.

7 **COMMISSIONER McMURRIAN:** Do you want to leave that?  
8 Okay.

9 And, Mr. McWhirter, are you leaving your position as  
10 stated?

11 **MR. McWHIRTER:** Yes, ma'am.

12 **COMMISSIONER McMURRIAN:** Okay. Ms. Bennett, anything  
13 else on 6D? Or, Mr. Anderson.

14 **MS. BENNETT:** I'm sorry. I just got a word from  
15 technical staff, I need to confirm something.

16 **COMMISSIONER McMURRIAN:** Okay.

17 **MS. BENNETT:** On Issue 6D, staff wants to change its  
18 position to agree with FPL.

19 **COMMISSIONER McMURRIAN:** On 6 -- I'm sorry.

20 **MS. BENNETT:** 6D, we agree with FPL.

21 **COMMISSIONER McMURRIAN:** Okay. 6E. We have all  
22 parties taking to position or no position at this time. Is  
23 this an issue that can be stipulated? I guess we will start  
24 with OPC.

25 **MR. McGLOTHLIN:** We are on 6E?

1           **COMMISSIONER McMURRIAN:** Uh-huh. Yes.

2           **MR. McWHIRTER:** It looks to me like there needs to be  
3 a dollar amount. Are we are talking about 6 echo?

4           **COMMISSIONER McMURRIAN:** Yes.

5           **MR. McWHIRTER:** Shouldn't there be a dollar amount?

6           **COMMISSIONER McMURRIAN:** FPL says no costs to be  
7 recovered, so it looks like a zero.

8           **MR. McWHIRTER:** Well, we agree with that. We agree  
9 with FPL.

10          **COMMISSIONER McMURRIAN:** I thought you might.

11          **MR. McGLOTHLIN:** We stipulate to zero, yes.

12          **COMMISSIONER McMURRIAN:** So do we want to show agree  
13 with FPL, or do we just want to reflect it as stipulated?

14          **MR. McWHIRTER:** I would like to say agree with FPL.

15          **COMMISSIONER McMURRIAN:** Mr. McGlothlin.

16          **MR. McGLOTHLIN:** We will agree to zero.

17          **MS. BENNETT:** Staff also agrees with FPL.

18          **COMMISSIONER McMURRIAN:** So I think we have a  
19 stipulation on 6E. 6F. Now, this time we'll consider the  
20 inclusion of Issue 6F and 7H since they are the same issue with  
21 respect to the two companies. It's my understanding that staff  
22 handed out a proposal for the wording of this issue.

23                   Is that correct, Ms. Bennett?

24          **MS. BENNETT:** Yes.

25          **COMMISSIONER McMURRIAN:** And I also have, I believe,

1 OPC's suggested language that's different than the original  
2 proposal somewhat. I think incremental is changed to separate  
3 and apart from.

4 **MR. McGLOTHLIN:** Yes. And there is also -- we  
5 deleted a reference to the operating license and substituted a  
6 reference to the useful life of the unit.

7 **COMMISSIONER McMURRIAN:** How do you want to proceed  
8 on this? I mean, I know we are talking about taking a break at  
9 1:00 anyway, and we have these several different proposals  
10 floating out here. Have you all had time to look at the  
11 proposals and speak to what staff has put out, and I guess any  
12 other proposals that are out there that I may not have? I do  
13 have the OPC language, and then I have, of course, the language  
14 that has been proposed in the memoranda. So how do you propose  
15 to proceed with this? Do you want to go ahead and talk about  
16 the --

17 **MR. McGLOTHLIN:** It's OPC's issue, so perhaps Steve  
18 and I could at least tee it up and get started before you  
19 break. I think that might be worth spending the time to do.

20 **COMMISSIONER McMURRIAN:** And, Mr. Anderson, what did  
21 you --

22 **MR. ANDERSON:** As a possible shortcut, first, we are  
23 prepared to discuss in all detail, but staff's proposed  
24 alternate language absolutely works for us. So if it works for  
25 other folks, we might be at a point of agreement. If it

1 doesn't, we are happy to discuss, you know, at any length.

2           **MS. TRIPLETT:** And staff's proposed issue also works  
3 for Progress, if that helps.

4           **MR. BURGESS:** I have difficulty with staff's  
5 proposal, or the specific language.

6           **COMMISSIONER McMURRIAN:** Okay. Well, we can go ahead  
7 and let you tee it up, and you can talk about what you are  
8 proposing and then maybe also speak to any deficiency you see  
9 in staff's proposed language, perhaps.

10           **MR. BURGESS:** The specific wording that I have got a  
11 problem with is in staff's language where it says whether the  
12 costs are related to or resulting from the uprates. And what I  
13 am concerned about is whether that language actually presents  
14 the distinction that we are trying to bring into issue for the  
15 Commission to examine. And, basically, what we are trying to  
16 do is it seems like all parties have agreed that what we are  
17 looking to do is pass on through the nuclear cost-recovery  
18 clause only those costs associated with the uprate.

19           In other words, if you backed up and said there were  
20 no uprates, then none of the costs associated with Crystal  
21 River 3, for example, would be passed through the nuclear  
22 cost-recovery clause, that it goes through a different clause.  
23 And so our concern is that all costs that you are going to  
24 examine in this are only associated with the uprate, with the  
25 additional production of kilowatts.

1           And so what we are concerned about is that when you  
2 do that, when you uprate an existing plant you may be involved  
3 in an awful lot of work that you would have had to be engaged  
4 in in one process or another anyway, even without the uprate.  
5 So what we are trying to do is get an issue that we make sure,  
6 first, that everybody agrees that it's the uprate only that  
7 gets the Commission's attention in the NCRC, and that only  
8 uprate costs go through. That any costs that otherwise would  
9 have been spent in the production of the amount of kilowatts  
10 that were before the uprate, that that is not proper subject  
11 matter for this particular case.

12           And so if you imagine any element of it, any element  
13 of construction that is done or redone in the uprate project  
14 that also may have had to be somehow tooled or some work done  
15 on it without the uprate, then we are trying to make sure that  
16 it is only the incremental portion. And my concern is with  
17 that language that's disjointed with the or, it is either  
18 related to or resulting from, that you can get costs that are  
19 related to the uprate, but they would have been incurred  
20 without the uprate. And so you could get costs that fit this  
21 description that would not be appropriate, in our view, and  
22 it's my understanding in the view of -- well, I better not  
23 speak for other parties, but would not be appropriate for  
24 pass-through in this particular provision.

25           So what we are trying to look for is language that



1 defines what the actual distinction is. And our language  
2 actually was from the language that Progress Energy submitted  
3 in their brief, or in their memorandum to the Commission, which  
4 I believe it is separate and apart from, which defines it more  
5 for us than, we think, the related to. Because we see an awful  
6 lot of costs that are going to be related to the uprate, but  
7 that a portion of which would have been incurred even without  
8 the uprate. And it is those costs that we want to make sure  
9 don't go through the NCRC.

10 **COMMISSIONER McMURRIAN:** Okay. I want to hear from  
11 everyone, but perhaps it will be good to hear from staff on the  
12 language about related to or resulting from. I know the  
13 relating to or resulting from came from that language in the  
14 statute.

15 **MR. BURGESS:** Right. And it's appropriate for that,  
16 but that was -- I mean, it was written generally with the  
17 notion of -- like the Levy County project, that it would be,  
18 that the projects would be separate, and that it wouldn't be --  
19 I mean, the language was not necessarily contemplating an  
20 uprate where you have got this commonality of expenditures and  
21 you are looking to separate out those which would have been  
22 incurred anyway even though they are being spent on this  
23 project. They are related to the uprate project, but some of  
24 which would have been spent even without the uprate project.

25 **COMMISSIONER McMURRIAN:** The way I read staff's

1 version here, it seems like it does sort of contemplate in a  
2 sense a but-for test, and I think that is what you are getting  
3 at with your incremental language. And I see that you have  
4 change that to separate and apart from. So I think everyone is  
5 sort of trying to get to the same thing, but I hadn't really  
6 contemplated the related to or resulting from issue that you  
7 have raised. So I guess I will let staff speak to the two  
8 issues, their proposed Issues 6F and 7H.

9           **MS. BENNETT:** Staff attempted to track the language  
10 of the statute in order to present this issue. It is in part a  
11 fact and in part a policy decision. And I think that it sounds  
12 to me as if OPC is making more of a policy argument, which  
13 could, in my opinion, as a position under the response to 6F  
14 and 7H be, no, that they have not -- that the rule requires or  
15 the statute requires a utility to only recover incremental  
16 costs, and they have not shown that those costs are  
17 incremental. So they have not lost the right to present this  
18 to the Commission, but we still have the factual issue which is  
19 presented in the testimony and in the rebuttal testimony.

20           **MR. McGLOTHLIN:** With respect, I think this calls for  
21 a separate issue. I think in terms of educating the  
22 Commissioners, that is what the cases about, it is important to  
23 break this out. And I would like to make the point that as far  
24 as I can determine there is no disagreement among FPL, or  
25 Progress Energy, or Public Counsel with respect to the proper

1 application of the rule. FPL has said to me that they would  
2 not attempt to pass through the nuclear cost-recovery clause  
3 costs that were not necessary to accomplish the uprate project,  
4 and Progress Energy has said that in testimony. And, so, with  
5 respect to the interpretation of the rule, I don't think there  
6 is any disagreement.

7           Our concern is the potential to have the nuclear  
8 cost-recovery clause be enlarged and receive and pass through  
9 costs that were not specific to the uprate, but had more to do  
10 with the maintenance and operation of the unit and would have  
11 been spent for that purpose even without the uprate. And in  
12 that situation where those costs already -- where the unit is  
13 already in base rate, in rate base and covered by base rates,  
14 you have the potential for a double recovery. And so we think  
15 that in the nuclear cost-recovery clause where an uprate is  
16 involved, the utility should be called upon to make the  
17 affirmative showing that it has went over those costs and has  
18 segregated and has presented for recovery only those things  
19 that are necessary to the uprate. As Bryan Anderson put it, he  
20 said you mean you are talking about a but-for test, and I said  
21 that's right.

22           And in response to the two comments that we received  
23 at the time of the Issue ID Meeting, we have modified the  
24 language from what originally appeared there. Progress Energy  
25 said we don't like the use of the word incremental. We think

1 that has a particular connotation and might be confusing, so we  
2 agreed to their use of separate and apart. FPL said we don't  
3 like the reference to the extended operating license, and that  
4 is why in what I passed out today I deleted that reference and  
5 referred instead to the useful life of the unit.

6 So we have, I think, tried hard to accommodate the  
7 legitimate points or concerns of the two utilities, and what we  
8 have here is something that accomplishes that. And in  
9 comparison to the staff's wording, does more to acquaint the  
10 reader with the alternatives. Existing unit uprate, uprate  
11 existing unit, and we think that explicit reference is needed  
12 to inform the reader, and that while staff's language goes part  
13 of the way towards something that meets our needs, it doesn't  
14 have that explicit reference.

15 **COMMISSIONER McMURRIAN:** Okay, thank you. Did the  
16 other parties want to comment at this time about the --

17 **MR. McWHIRTER:** FIPUG agrees with OPC on the subject.

18 **COMMISSIONER McMURRIAN:** Okay. Mr. Brew.

19 **MR. BREW:** (Indicating yes.)

20 **COMMISSIONER McMURRIAN:** You agree with OPC, as well?

21 **MR. BREW:** Yes, Commissioner.

22 **COMMISSIONER McMURRIAN:** And, Mr. Anderson, you look  
23 eager.

24 **MR. ANDERSON:** First, FPL agrees with the draft  
25 position staff has issued for the reasons they have stated. We

1 do want to be very clear that we are only using this clause for  
2 the purpose intended here. These are nuclear uprate costs, et  
3 cetera. And in the general scheme of things over the course of  
4 the projects we want OPC and everybody to feel very comfortable  
5 that is exactly how this is administered.

6 That said, particularly at the first time through our  
7 nuclear cost-recovery proceedings, we feel it very important to  
8 keep the issues clearly grounded in the law. And the  
9 touchstone for recovery ultimately is are these prudently  
10 incurred costs, and we talked about when those are determined,  
11 then the definition of cost just couldn't be more clear. And  
12 staff correctly has included the words related to or resulting  
13 from. That's straight out of the statute and rule, and that is  
14 where we should be.

15 We believe this does permit OPC to discuss their  
16 issue, and the proper proofs then would be an assertion that a  
17 certain cost is not related to or not resulting from. And done  
18 in that way, we keep correct alignment with the costs and the  
19 rules, and don't get into potentially rewriting the legal  
20 standard. That's our fundamental challenge in having this  
21 stated as an issue, because a Commissioner might think this is  
22 the law, this is how we are to provide it, and that is not the  
23 case.

24 **COMMISSIONER McMURRIAN:** Ms. Triplett or Mr. Burnett.

25 **MS. TRIPLETT:** Thank you. Progress would echo that.

1 As demonstrated in our rebuttal testimony, the company was very  
2 careful to only include the proper costs related to -- the  
3 but-for costs for the uprate. And we would support staff's  
4 language for the reasons already stated, it does reflect the  
5 language in the statute. It sticks to the statute and the  
6 rule, and it does incorporate a but-for test, and it allows  
7 parties to make arguments based on that.

8 **COMMISSIONER McMURRIAN:** Let me ask both of you, both  
9 of the companies, do you think that the wording that OPC has  
10 thrown out, which I do believe that they have tried to  
11 incorporate some of the concerns that they heard, at least that  
12 are listed in the memoranda, do you think that that wording of  
13 the issue -- well, let me just ask you what do you think about  
14 that wording of the issue, because I have one sort of separate  
15 concern, but I will bring that up after I hear from you all.

16 **MR. ANDERSON:** For FPL, looking at this language, it  
17 is not consistent with the statute or rule in several respects.  
18 First, in the second line of the proposed issue there is the  
19 introduction of this separate and apart concept, and I  
20 understand the genesis of that. That goes directly to our  
21 point about what the definition states in the rule and statute.  
22 This is not that. Also, in conjunction with providing safe and  
23 reliable service, that injects another element. Of course,  
24 that is what we are about, providing safe and reliable service,  
25 but that would be another element of proof in relation to this

1 issue.

2 Third, this injection of the during the useful life  
3 of the unit is extremely indistinct. We are talking, you know,  
4 20 years of additional life, hopefully, plus through life  
5 extension of plants. And think about the uprates just very  
6 tangibly. For each unit we will implement the uprates. We use  
7 a work order for the uprate work, period, end of story. We  
8 have use other work orders for other things, refueling and  
9 things. When the work is done, when it comes on-line, that  
10 gets you to the base rate increase provided for under the rule.  
11 We are pretty much done then from a ratemaking perspective, we  
12 think, with the uprates.

13 This language about during the useful life of the  
14 unit, our concern is that injects the idea that one has to, in  
15 deciding this issue, think ahead 10 or 15 years about some  
16 possible costs sometime, and we don't think that is an  
17 appropriate inquiry.

18 So you can see the fundamental objection is that this  
19 is not the law. And, second, in addition to not being the law  
20 is, you know, it's not the standard of proof we should be held  
21 to in the proceeding.

22 **COMMISSIONER McMURRIAN:** Ms. Triplett.

23 **MS. TRIPLETT:** Progress would prefer to go with  
24 staff's issue because it does track the language and it is just  
25 the safer bet. However, I think we could live with OPC's

1 proposed language with a couple of exceptions.

2 First, we would need to strike -- in the first line  
3 it refers to uprate related costs, and I think we would feel  
4 better if it would just say uprate costs, because what does  
5 uprate related add.

6 And, in addition, the during the useful life of the  
7 unit, again, this adds a potentially ambiguous term. It  
8 doesn't add anything to the issue, and we just don't think that  
9 that clause is really necessary. But, again, to emphasize, our  
10 preference is to go with staff's issue because it does track  
11 the language and it's a clear standard, it is in the statute  
12 and the rule. But we could live with OPC's issue with those  
13 two changes.

14 **COMMISSIONER McMURRIAN:** Okay. And one more  
15 question. Oh, I'm sorry.

16 **MR. McGLOTHLIN:** We are prepared to accept those two  
17 modifications to our language. We would delete related and the  
18 hyphen that goes it, and we would delete during the useful life  
19 of the unit.

20 **COMMISSIONER McMURRIAN:** Okay. And one more  
21 question, and I will start with you all. If you were to take  
22 staff's language and delete the related to or, would you all be  
23 amenable to that?

24 **MR. BURGESS:** I think if it contains something on the  
25 resulting part, had an additional modifier like exclusively or



1 something like that.

2 **COMMISSIONER McMURRIAN:** Mr. Anderson.

3 **MR. ANDERSON:** First, we are on the same page about  
4 what types of costs we are trying to recover here. The  
5 challenge I am seeing is that is a deletion of a material  
6 portion of the statute and the rule. And for that reason, we  
7 think that it is better phrased as related to or resulting  
8 from.

9 **MR. MCGLOTHLIN:** Commissioner, what bothers me about  
10 Mr. Anderson's insistence on that point is that it sounds to me  
11 that his argument is designed to keep the door open for the  
12 opportunity at some future point to present costs for recovery  
13 that do not meet a separate and apart test and are broader than  
14 that. I think in concept the utilities have agreed with us  
15 that the separate and apart or the but-for test is what the  
16 rule is designed to implement with respect to an uprate  
17 project.

18 **MR. ANDERSON:** That's not the case at all. You know,  
19 we are doing exactly what I said we are doing. We are only  
20 doing uprate work. We are only charging those costs to the  
21 right work order. That is all this is about.

22 What we are concerned about here, and the reason I am  
23 being very particular about this related to or resulting words,  
24 remember, this is not just about the uprates. This is the  
25 governing statute and rule in relation to all of our nuclear

1 project costs. We are at the outset of probably ten years of  
2 litigation and resulting relating to the construction of our  
3 nuclear plants, and at this early time we do not support  
4 deviation or changes in an informal way from what has been  
5 provided by the Legislature and by the Commission in rule.

6           Perhaps over time there will be some need seen for  
7 some change in some aspect of the rule or the statute. There  
8 are processes for that. But for our company and for, you know,  
9 everyone's comfort in knowing what the law is, we are trying to  
10 be as open book as possible as we can in these cases. But we  
11 want to know what the standard is, we want to see it clearly  
12 applied in these cases, and that is why we are drawing this, I  
13 feel, very legally clearly principled approach to -- and  
14 holding the line that the statute says what it says, the rule  
15 says what it says, and that's why the issue should be stated  
16 that way.

17           **MR. BURGESS:** May I?

18           **COMMISSIONER McMURRIAN:** One more and then --

19           **MR. BURGESS:** I think that you need to consider the  
20 genesis of the issue. We raised the issue. Our witness says  
21 he has concerns with costs that may be considered as related to  
22 the uprates, but they would have been incurred even without the  
23 uprates. And I want you to make -- and I believe the  
24 Commission should make the companies demonstrate that they have  
25 not included any of those such costs.

1           But in our formulation of the issues, which we have a  
2 right to do as a party, we presented it as costs that should  
3 not be included unless they are exclusively incurred as a  
4 result of the uprate. And our concern is that we would -- that  
5 part of the issue is we are concerned about costs that may be  
6 considered, that somebody could define as considered as related  
7 to, perhaps, but that aren't exclusively caused by the uprates.  
8 And that's how we have defined the issue, and we have asked the  
9 Commission to address it.

10           And so that's the issue that we would like the  
11 Commission to address. And we are concerned about language  
12 that changes the issue that we have brought before the  
13 Commission.

14           **COMMISSIONER McMURRIAN:** Okay. Ms. Triplett.

15           **MS. TRIPLETT:** I think the outstanding question to us  
16 is whether we would agree to striking related to or from  
17 staff's issue, and we would not be in agreement with that. We  
18 would want the full statutory language as set forth in staff's  
19 issue, or we could live with the amended OPC version as  
20 discussed earlier.

21           **MS. BENNETT:** Commissioner.

22           **COMMISSIONER McMURRIAN:** I was going to come back to  
23 you definitely. Did any other parties want to speak to it  
24 before I go to staff? Any other comments on it? And then  
25 after I go to staff, we will break for lunch and then we will

1 come back and resolve that and then move on.

2 Ms. Bennett, go ahead.

3 **MS. BENNETT:** I don't know whether I'm adding to the  
4 confusion or if this might be a resolution, but if we were to  
5 take staff's proposed alternate language and at the end after  
6 the word from the uprates add the phrase "which costs are  
7 separate and apart from costs that would have otherwise been  
8 incurred in the absence of an uprate". So we have combined  
9 both of the issues into one.

10 **MR. BURGESS:** We're good with that.

11 **COMMISSIONER McMURRIAN:** Run that by me again one  
12 more time. Which costs are separate and apart from --

13 **MS. BENNETT:** Costs that would have otherwise been  
14 incurred in the absence of an uprate.

15 **MR. BURGESS:** Commissioner, that captures the issue  
16 that we want to raise. Thank you.

17 **COMMISSIONER McMURRIAN:** Mr. Anderson.

18 **MR. ANDERSON:** Let me confer with my colleagues for a  
19 moment.

20 **COMMISSIONER McMURRIAN:** Okay. And, Ms. Triplett.

21 **MS. TRIPLETT:** One moment to confer.

22 **COMMISSIONER McMURRIAN:** Okay. And then we will take  
23 a break, Jane. I promise.

24 **MR. ANDERSON:** Commissioner McMurrrian, I have  
25 consulted with my colleagues here. We really feel for the

1 reasons we have stated in our memorandum on additional issues  
2 and arguments today that the better approach would be to track  
3 the rule language. What staff has proposed -- we really  
4 appreciate the spirit in which it is offered, but, again, it  
5 becomes a modification, or an appendage, or a qualification of  
6 what we feel is very clear language. So, with respect, we  
7 don't agree.

8 **COMMISSIONER McMURRIAN:** Okay.

9 **MS. TRIPLETT:** With all due respect, I think we like  
10 the newest version the least, but in the spirit of resolution  
11 we would be willing to accept the OPC version with our striking  
12 related and during the useful life of the unit.

13 **COMMISSIONER McMURRIAN:** Okay. And one more question  
14 for Mr. Anderson. What do you think -- because I don't think I  
15 asked you. What do you think about OPC's further modification  
16 with respect to their proposal?

17 **MR. ANDERSON:** I have the same fundamental  
18 considerations.

19 **COMMISSIONER McMURRIAN:** Okay.

20 **MR. McGLOTHLIN:** And to be clear, we agree with ours  
21 or we agree with staff's most recent formulation.

22 **COMMISSIONER McMURRIAN:** Okay. All right. Thank you  
23 all.

24 I think that this is going to be the most time  
25 consuming issue we had left, but I think we need to take a

1 break now for lunch. How long? Would everyone be able to be  
2 back at 2:00? Does that give everyone enough time to go get  
3 some lunch and be back? Okay. We will resume at 2:00 p.m.

4 (Lunch recess.)

5 **COMMISSIONER McMURRIAN:** We're back on the record.

6 Ms. Bennett, I think we were just short of making a  
7 decision on Issue 6F, proposed Issue 6F and 7H, and I think you  
8 threw out some language at the end. But do you all -- I  
9 neglected to ask for your recommendation. Given all the input  
10 we heard earlier, what is your recommendation for the wording  
11 of --

12 **MS. BENNETT:** Let me confer just a moment.

13 **COMMISSIONER McMURRIAN:** Sure.

14 (Pause.)

15 **MS. BENNETT:** Staff has informed me, and I agree,  
16 that the language that OPC and Progress ultimately agreed to on  
17 Progress's proposed, the one they submitted this morning would  
18 be fine. Or in the alternative, if the Commissioner wants us,  
19 we could continue to work with the parties on the language that  
20 staff proposed. But we would certainly be comfortable using  
21 the language that OPC and Progress have agreed to for 6F and  
22 7H.

23 **COMMISSIONER McMURRIAN:** Okay. And let's review that  
24 language one more time. I have, "Has Progress or FPL  
25 demonstrated that the uprate costs it seeks to recover in this

1 docket are separate and apart from those it would incur in  
2 conjunction with providing safe and reliable service, had there  
3 been no uprate project?" Okay. And does staff prefer their  
4 language or are you just saying what the options are? I just  
5 --

6 **MS. BENNETT:** Staff is comfortable with this  
7 language.

8 **COMMISSIONER McMURRIAN:** Okay.

9 **MS. BENNETT:** Staff is comfortable with that  
10 language.

11 **COMMISSIONER McMURRIAN:** I guess the only, the only  
12 struggle I'm having is whether or not we maintain some language  
13 from the statute and then -- so I guess I was, I was expecting,  
14 since you all had thrown out that language at the end earlier,  
15 that clause added to the one we had from your proposed  
16 language, I guess that's what sort of caught me offguard.

17 I'm not sure that there is a whole lot of difference  
18 in either one. I think they both get at the but-for test, but  
19 I've been leaning to preserving some of the statutory language.

20 I guess let's move forward. We will have an issue in  
21 6F and 7H that will get at that. Let me, let me think about  
22 that a little bit more and decide which version. I won't take  
23 long to decide, I'll try to do that today, but let me take that  
24 under advisement and render a decision on that later. But we  
25 will have, we will have issues for 6F and 7H, so we'll have

1 placeholders there for those. There will be some version of  
2 that language.

3 Okay. So I guess we'll move on to 7A. And I think  
4 we talked about 7A through D somewhat earlier, but I'm not sure  
5 if we resolved any confusion on those.

6 **MS. BENNETT:** 7A is another partial situation. I  
7 think we've discussed briefly how that would -- I apologize.  
8 I'm trying to catch up here. 7A is partially stipulated.  
9 Again --

10 **COMMISSIONER McMURRIAN:** This may be another where we  
11 need to separate out the number?

12 **MS. BENNETT:** No. I don't believe that there are  
13 numbers on 7A.

14 **COMMISSIONER McMURRIAN:** Right.

15 **MR. BURGESS:** This is what we spoke about, isn't it,  
16 Ms. Triplett, as far as --

17 **MS. TRIPLETT:** Yes.

18 **MR. BURGESS:** From where Progress and OPC stand, the  
19 resolution that we, that we arrived at the earlier issues with  
20 the, with the positions and the statement of the issues can  
21 apply to 7A through D as well as far as we're concerned. And I  
22 guess it was 5A through C that we, that we arrived at agreement  
23 on positions and issues. Do I have that?

24 **MS. TRIPLETT:** Yeah. That's correct. And I think  
25 that here we would be again referring to the stipulation in 5A.



1           **COMMISSIONER McMURRIAN:** Okay.

2           **MS. TRIPLETT:** But I think maybe Ms. Bennett's point  
3 is we don't have any 2007 preconstruction costs for the Levy  
4 Units in 7A. So maybe 7A is more of zero that everyone can  
5 agree with, zero dollars.

6           **MR. BURGESS:** We can agree.

7           **COMMISSIONER McMURRIAN:** Mr. McWhirter, do you want  
8 to jump on that one?

9           **MR. McWHIRTER:** Count me in, too.

10          **COMMISSIONER McMURRIAN:** Okay.

11          **MS. BENNETT:** And, of course, staff agrees.

12          **COMMISSIONER McMURRIAN:** Okay.

13          **MR. McWHIRTER:** I'd like to address 7B, if you're  
14 about to pass away from that.

15          **COMMISSIONER McMURRIAN:** We're not. We'll take it  
16 up. Let me see, make sure. And Mr. Brew -- no, he had to step  
17 out.

18                   And, OPC, do you want to agree with Progress if  
19 Progress is going to change their position to just there are no  
20 2007 preconstruction costs?

21          **MR. BURGESS:** Oh, you're on A. Yes.

22          **COMMISSIONER McMURRIAN:** On A.

23          **MR. BURGESS:** Yes. We agree. Yeah.

24          **COMMISSIONER McMURRIAN:** Okay. That way that kind of  
25 takes care of Mr. Brew because he agrees with your position.

1 Okay. I'll check with him when he comes back.

2 Okay. 7B.

3 **MS. TRIPLETT:** I think 7B through 7D are, we can  
4 handle similarly to what we did with 5B and 5C.

5 **COMMISSIONER McMURRIAN:** Okay.

6 **MS. TRIPLETT:** Meaning, referencing the stipulation  
7 in 5A and then setting, and setting forth the figure as  
8 reasonable. And then I'll let OPC and the others speak to  
9 their position, but I'm assuming it would be the same.

10 **COMMISSIONER McMURRIAN:** So it would be something  
11 along the lines of subject to the stipulation in Issue -- would  
12 it be 5A or would you refer back to --

13 **MS. TRIPLETT:** I think it's 5A because 5A is the  
14 question that really didn't have a dollar figure. It said that  
15 was where the stip, the whole entire stipulation was set forth.

16 **COMMISSIONER McMURRIAN:** Okay.

17 **MS. TRIPLETT:** 7A now just says zero.

18 **COMMISSIONER McMURRIAN:** And then again you all would  
19 be able to work on some language that made sure it was clear  
20 that it wasn't a prudence number, that it was a reasonableness  
21 number. And then the other parties would want to take no  
22 position?

23 **MR. BURGESS:** We, what we were going to do was, was  
24 say subject to the stipulation in 5A we take no position, so.

25 **COMMISSIONER McMURRIAN:** Okay. That's right.

1 Mr. McWhirter.

2 **MR. McWHIRTER:** In 7B there's a dollar number of  
3 \$61,471,000 so forth. Is that in addition to the \$37 million  
4 or is the \$37 million subsumed into the \$61 million?

5 **MS. TRIPLETT:** It is in addition to.

6 **MR. McWHIRTER:** And when you have a base rate case,  
7 the Commission will award a number as revenue requirements, say  
8 in this instance it would be \$60 million. But then when the  
9 tariffs are filed, the revenue collected from the customers  
10 includes a tax markup on the equity component. You find out  
11 what the equity component is in the rate structure and then you  
12 mark that up by 62 percent. And in this event if \$61 million  
13 were the total number that you're seeking and then the equity  
14 component was 50 percent of that, it would be 30 percent, then  
15 you mark that up 60, that would be another \$18 to \$20 million.  
16 Is the \$61 million the total number you're going to collect  
17 from customers including income tax or is it the number before  
18 the income tax gross up?

19 **MS. TRIPLETT:** I'm sorry. May we have a moment to  
20 confer?

21 **COMMISSIONER McMURRIAN:** Sure.

22 **MS. TRIPLETT:** Thank you.

23 **COMMISSIONER McMURRIAN:** And while we're there I'll  
24 check with Mr. Brew about 7A. And do you want to leave your  
25 position agreeing with the position of OPC? This is going to

1 be similar to the discussion we went through on 5B and C where  
2 we --

3 **MR. BREW:** Yes. My position would be as stated.

4 **COMMISSIONER McMURRIAN:** Okay.

5 **MS. TRIPLETT:** Commissioner, if it's okay, I'd like  
6 Mr. Foster to answer the question.

7 **COMMISSIONER McMURRIAN:** You might want to state your  
8 full name for the court reporter though.

9 **MR. FOSTER:** I'm sorry? Say again.

10 **COMMISSIONER McMURRIAN:** If you would state your full  
11 name for the court reporter though.

12 **MR. FOSTER:** I'm Geoff Foster, and it's G-E-O-F-F.

13 On 7B, as I understand your question, you're asking  
14 if the \$61 million is actually what we're asking to collect in  
15 '09. And I believe 7B is really directed at what are the  
16 construction category from the rule costs that we will incur in  
17 that period, I'm sorry, or that we incurred in that '07 time  
18 period.

19 And then I think when you look at 7C, it asks about  
20 the carrying costs, which is more, I think, in line with what  
21 your question was, unless I misinterpreted it.

22 **MR. McWHIRTER:** Well, as I understand the statute and  
23 the rule, until your site is clear the construction costs that  
24 you spend are fully collectible rather than just the carrying  
25 costs on those construction costs.

1           My first interpretation was, yeah, \$61 million is the  
2 construction costs and the number we're really looking at is a  
3 carry-on matter. But you've got a bunch of other things that  
4 you collect the full cost on and included in it. Can you break  
5 down the \$61 million?

6           **MR. FOSTER:** I don't have a breakdown of exactly  
7 what's in that \$61 million right now. You know, primarily I  
8 believe this was a lot, had to do with some land that we  
9 acquired. And I think we've kind of maintained through all our  
10 testimony that we would be treating that as a construction cost  
11 and therefore only, as far as early recovery goes, recover the  
12 return, the carrying costs on that.

13           **MR. McWHIRTER:** Only the return and not the full  
14 construction cost.

15           **MR. FOSTER:** That's correct.

16           **MR. McWHIRTER:** And some of the other items that are  
17 listed in 7B are funds that you collect the full cost on such  
18 as preconstruction and construction if they, if they are  
19 incurred before the site is cleared.

20           **MR. FOSTER:** The \$61 million is specifically  
21 construction costs. I think the language up at the top is more  
22 of a general stipulation. And I guess OPC, you know, correct  
23 me if --

24           **MR. BURGESS:** Yeah. We, we put this, well, I see  
25 Progress did too, put the stipulation language. The

1 stipulation language was basically to address that whole  
2 threshold question of given the timing and all those issues,  
3 which types of costs will be included for what, for what type  
4 of review. And so it was, it was couched in real general terms  
5 and we covered all the costs that could be associated. And  
6 when it, when it is plugged in as an answer to each of these  
7 specific areas like construction costs, it really doesn't have  
8 as good an application, as direct an application as it does,  
9 you know, for the general notion.

10 My understanding from, and I -- my understanding from  
11 the testimony is that they wouldn't have construction costs but  
12 for the issue of what would they -- they've considered the, the  
13 purchase of the land cost as construction. I thought that's  
14 what most of that was, if not all of that was.

15 **MR. McWHIRTER:** Well, Ms. Triplett indicated that the  
16 \$61 million was money that was going to be collected from the  
17 consumers in addition to the \$37 million we talked about  
18 before. But what I understand you to be saying now is you're  
19 only looking at a 20 percent -- or your carrying costs are only  
20 about 20 percent return on \$61 million. Is that it?

21 **MR. FOSTER:** Well, it's not 20 percent. But, yes,  
22 we're looking for our carrying costs. We would be getting our  
23 carrying costs on that consistent with the rule and the  
24 legislation.

25 **MR. McWHIRTER:** And then in the carrying costs you

1 include an equity component and a, and a debt component?

2 **MR. BURNETT:** Commissioner, Commissioner, I'm sorry.

3 It may be more beneficial if we could maybe take this up  
4 offline and help answer Mr. McWhirter's questions rather than  
5 --

6 **COMMISSIONER McMURRIAN:** Mr. McWhirter, if you -- my  
7 thought on that was that if you want to take no position at  
8 this time and you want to do some more discovery or have  
9 discussions with the company and then take a position by  
10 September 3rd, that's okay as well. But I don't -- I'm a  
11 little bit worried with the details of the tax issues and all  
12 that we're getting more into cross than we are --

13 **MR. McWHIRTER:** Well, is there a need to put the  
14 \$61 million in this since that's a number to be developed at  
15 some later time? We're just talking about philosophy in 6 --  
16 in 7B.

17 **COMMISSIONER McMURRIAN:** Well, I don't -- well, maybe  
18 I should look to staff. I don't necessarily -- I think we have  
19 to have some kind of number because this is talking about a  
20 final true-up and we are going to be developing factors based  
21 on whatever the Commission determines is reasonable, if I  
22 understand correctly.

23 **MR. McWHIRTER:** If we're going to use a number, I  
24 think we ought to be entitled to know whether that number  
25 includes or excludes a gross up for income taxes on the equity

1 component.

2 **COMMISSIONER McMURRIAN:** No, I'm not suggesting that  
3 you don't, that you shouldn't know that. I guess what I'm  
4 suggesting is maybe you should do that through discovery.

5 **MR. McWHIRTER:** Well, they get 30 days to answer my  
6 discovery, and you want an answer by September 3rd, which is, I  
7 think, next Wednesday, is that the deal, or Tuesday?

8 **COMMISSIONER McMURRIAN:** Ms. Bennett.

9 **MS. BENNETT:** I was beginning to wonder if we were  
10 actually going into the substance of the issue, which is what  
11 the Commission is going to decide. The \$61 million amount that  
12 Progress proposes is not necessarily what the Commission will  
13 decide.

14 **COMMISSIONER McMURRIAN:** Right.

15 **MS. BENNETT:** And so either through discovery or  
16 through cross-examination we can vet that issue more fully.

17 The purpose of the Prehearing Conference is to  
18 establish the issues and the parties' positions. And certainly  
19 Mr. McWhirter could do something such as demand strict proof  
20 that this is the correct amount and ask that the Commission  
21 fully consider it.

22 **MR. McWHIRTER:** All right. Well, I'll change our  
23 position then to stipulate as to the principles concerning the  
24 application of the money, but demand strict proof of the amount  
25 of money.



1           **MR. BURGESS:** John, I think the tax factor is 7C. If  
2 there's a tax factor, it would be in 7C, which is the carrying  
3 costs on these.

4           **MR. McWHIRTER:** Well, what you've stipulated to is  
5 that all of these items that you've enumerated can be recovered  
6 through the cost recovery clause. So that's -- I agree with  
7 that.

8           The second aspect is the amount of money, and the  
9 amount of money I would like to see proven. And I think that's  
10 essentially where you are. But rather than -- I'd like to make  
11 it very clear that we are concerned about the amount of money.

12           **COMMISSIONER McMURRIAN:** Okay. Did we get that? Did  
13 we get Mr. McWhirter's position?

14           **MS. BENNETT:** Yes, I believe so.

15           **COMMISSIONER McMURRIAN:** Okay. Okay. Mr. Brew.

16           **MR. BREW:** On Section -- on 7C?

17           **COMMISSIONER McMURRIAN:** On 7B.

18           **MR. BREW:** 7B. No, our position is as stated.

19           **COMMISSIONER McMURRIAN:** Okay. Thank you.

20           Okay. 7C.

21           **MS. BENNETT:** I think, as Ms. Triplett said, 7C and D  
22 would follow the same changes in language as the 5A, B and C  
23 where Progress would say this is all subject to the  
24 stipulation. And then the responses of the party would be  
25 subject to the stipulation, we take no position on those dollar

1 amounts.

2 **MS. TRIPLETT:** That's correct.

3 **MR. BURGESS:** Yes.

4 **COMMISSIONER McMURRIAN:** Okay. And, Mr. McWhirter,  
5 you want to preserve your position on 7C as it's stated there  
6 or are you also taking no position subject to the stipulation  
7 in Issue 5A?

8 **MR. McWHIRTER:** I want to use my stated position.

9 **COMMISSIONER McMURRIAN:** Okay.

10 **MR. McWHIRTER:** Would you like me to elaborate on why  
11 I said what I did?

12 **COMMISSIONER McMURRIAN:** If that's your position, I  
13 think that's good enough for the purposes here.

14 **MR. McWHIRTER:** Good. All right.

15 **COMMISSIONER McMURRIAN:** You can, you can elaborate  
16 in opening statements when we get to that at the hearing for  
17 ten minutes probably.

18 Okay. Seven -- does that bring us to 7E?

19 **MS. BENNETT:** And PCS Phosphate, I -- are they, are  
20 you changing your position to reflect what we did in 5A through  
21 5D where it's --

22 **MR. BREW:** Yes.

23 **MS. BENNETT:** Okay.

24 **COMMISSIONER McMURRIAN:** Which issue are you asking  
25 with respect to, Ms. Bennett?

1           **MS. BENNETT:** That would be 7C, but it would also be  
2 7D.

3           **COMMISSIONER McMURRIAN:** Right. And I think that  
4 that's what they were -- I think that was consistent with what  
5 Mr. -- I think everyone has agreed except for Mr. McWhirter.

6           **MR. McWHIRTER:** FIPUG would --

7           **COMMISSIONER McMURRIAN:** 7D though I don't -- you're  
8 right.

9           **MR. McWHIRTER:** On 7D we'll agree with OPC because it  
10 rhymes.

11           **COMMISSIONER McMURRIAN:** And you do realize,  
12 Mr. McWhirter, that OPC's position would be stated something,  
13 subject to the stipulation in Issue 5A, we take no position on  
14 the --

15           **MR. McWHIRTER:** Yes, ma'am.

16           **COMMISSIONER McMURRIAN:** Okay. Okay. We're all on  
17 the same page.

18           7E.

19           **MS. BENNETT:** It appears that this one is a pure  
20 dollar amount and there are no stipulations. Each of the  
21 parties has taken a position except for FIPUG.

22           **MR. McWHIRTER:** I'll agree with OPC.

23           **COMMISSIONER McMURRIAN:** So the same is true for 7F?

24           **MS. BENNETT:** The same is true for 7F.

25           **COMMISSIONER McMURRIAN:** Mr. McWhirter?

1           **MR. McWHIRTER:** The same is true for FIPUG.

2           **COMMISSIONER McMURRIAN:** 7G. Mr. McWhirter, agree  
3 with OPC?

4           **MR. McWHIRTER:** I'm a slow reader, Ms. McMurrian.

5           **COMMISSIONER McMURRIAN:** That's okay. Take your  
6 time.

7           **MR. McWHIRTER:** I'll agree with OPC.

8           **COMMISSIONER McMURRIAN:** Okay. 7H we're back to --  
9 that's back to 6F. We'll reserve that for later.

10           That takes us to 8A. Ms. Bennett.

11           **MS. BENNETT:** The remaining issues 8, 9, 10, 11, 12  
12 and 13 -- well, 8 through 13 do not have stipulations. And  
13 I'd suggest that we can take them as a group, Issue 8A, and  
14 just check and see if there are any changes to positions in 8A  
15 through E and then go to Issue 9.

16           **COMMISSIONER McMURRIAN:** Okay. So 8A through 8E, any  
17 changes to positions? Mr. Anderson.

18           **MR. ANDERSON:** Since we're not in a stipulating mood  
19 and we were focusing on that "reasonableness" word, at the  
20 beginning of each FPL position where we say the amount of, we'd  
21 just add in the word the "reasonable" amount, which plays into  
22 the rule framework. And that would be true for 8A, 8B, 8C, 8D,  
23 the same idea on 8E.

24           **MR. McWHIRTER:** FIPUG dittos OPC on all those issues.

25           **COMMISSIONER McMURRIAN:** Okay.

1           **MR. MCGLOTHLIN:** OPC has no changes to what is in the  
2 draft.

3           **COMMISSIONER McMURRIAN:** Okay. Thank you.

4           Now, Mr. McWhirter, on 8D do you want to change it to  
5 agree with OPC?

6           **MR. McWHIRTER:** No, ma'am.

7           **COMMISSIONER McMURRIAN:** Okay. Okay. 9A through 9G.

8           **MR. BURGESS:** Commissioner, on 9A through D, 9A  
9 through 9D, we would like to change our position slightly to  
10 basically the language that we have been talking about using in  
11 the seven series and in the five series.

12           **COMMISSIONER McMURRIAN:** Okay.

13           **MR. BREW:** Commissioner, may I ask, is, is Progress  
14 going to leave some of the numbers redacted still for the final  
15 version?

16           **MS. TRIPLETT:** Progress will be filing amended  
17 confidentiality requests and withdrawals on this Friday, the  
18 29th. And so at that time we can circulate a prehearing  
19 statement that has the numbers unredacted, or maybe we should  
20 wait to see, to try to, because I know we changed a lot of the  
21 issues and a lot of the wordings. We can do whatever is  
22 easiest. Did you hear that, Ms. Bennett?

23           **MS. BENNETT:** I'm sorry. I was having a sidebar over  
24 here. I didn't, I didn't listen.

25           **MS. TRIPLETT:** The question is about the releasing of

1 some of these numbers that we have been holding as  
2 confidential. And when it, when we do release those numbers on  
3 Friday, what is the best way to circulate to the parties the  
4 unredacted numbers? Should we just use the same format of our  
5 prehearing statement and just -- or should we try to change?  
6 Because I know a lot of the positions have changed and the  
7 issues have changed.

8 **MS. BENNETT:** I would just use the same format as the  
9 prehearing statement to release the information and then we can  
10 include those in the Prehearing Order.

11 **MS. TRIPLETT:** Okay. Then we'll do that.

12 **MS. BENNETT:** Thank you.

13 **MR. McWHIRTER:** And that will be Friday?

14 **MS. TRIPLETT:** Yes.

15 **MR. McWHIRTER:** Thank you.

16 **COMMISSIONER McMURRIAN:** All right. Mr. McWhirter,  
17 do you want to change your position on any of the nine series,  
18 the ones that have no position at this time?

19 **MR. McWHIRTER:** The ones that have no position I'll  
20 change to the same as OPC.

21 **COMMISSIONER McMURRIAN:** Okay.

22 **MR. McWHIRTER:** On 9D my response is presently  
23 redacted.

24 **COMMISSIONER McMURRIAN:** On 9D your response is  
25 redacted, is that what you said?

1           **MR. McWHIRTER:** No. I'll go with OPC.

2           **COMMISSIONER McMURRIAN:** Oh, I'm sorry. I've lost  
3 it.

4           Okay. I didn't see any other no positions at this  
5 time or anything that we needed to check on. So everyone is  
6 good with 9A through G.

7           All right. Issues 10A through E.

8           **MR. ANDERSON:** For FPL we'd just like to add that  
9 "reasonable" word in. For example, in our position, "as FPL's  
10 reasonable 2009 projected preconstruction costs." 10B, "The  
11 Commission should approve reasonable site selection," et  
12 cetera. 10C, "The Commission should approve as FPL's  
13 reasonable 2009 projected." And 10D, "reasonable" before  
14 "carrying charges" in the first line. Same change, please, for  
15 10E. And that's, that's it for the changes on 10. Thank you.

16           **COMMISSIONER McMURRIAN:** Okay. Thank you.

17           And, Mr. McWhirter, you have no position at this time  
18 on several of these.

19           **MR. McWHIRTER:** Change all of them to OPC.

20           **COMMISSIONER McMURRIAN:** Okay.

21           **MR. McGLOTHLIN:** Commissioner?

22           **COMMISSIONER McMURRIAN:** Sure, Mr. McGlothlin.

23           **MR. McGLOTHLIN:** On 10E, OPC will modify its position  
24 statement and we'll say, "The decision should take into  
25 consideration OPC's assertions regarding contracting

1 practices."

2 **MS. BENNETT:** I didn't hear that. Could you repeat  
3 that, please?

4 **MR. McGLOTHLIN:** Instead of no position, our position  
5 is that, "The decision should reflect the Commission's  
6 consideration of OPC's assertions regarding contracting  
7 practices."

8 **COMMISSIONER McMURRIAN:** Did you get that,  
9 Ms. Bennett? Did you get it?

10 **MS. BENNETT:** I will probably pick it up from the  
11 transcript.

12 **COMMISSIONER McMURRIAN:** Okay. I think I have it,  
13 too.

14 Okay. Issues 11A through G. We can probably take  
15 off FPL's no position there. Okay.

16 Ms. Triplett, I suppose I should ask you, are you  
17 wanting to insert the word "reasonable" anywhere in your  
18 positions as well?

19 **MS. TRIPLETT:** If the Commission, I mean, is fine  
20 with it -- we're fine without it or we can put it in, if you  
21 want us to.

22 **COMMISSIONER McMURRIAN:** Okay. Mr. McWhirter, on  
23 this series, no position at this time. Do you want the same as  
24 OPC?

25 **MR. McWHIRTER:** Same as OPC. And change that also



1 where, on 11E where I've talked about projected construction  
2 costs, I put in the wrong response there. That should be OPC.

3 **COMMISSIONER McMURRIAN:** 11E, as in echo?

4 **MR. McWHIRTER:** Yes, ma'am.

5 **COMMISSIONER McMURRIAN:** Okay.

6 **MR. McWHIRTER:** And where it's blank on FIPUG for  
7 11F, move the redacted language from Page 48 on 11E over to  
8 that point.

9 **COMMISSIONER McMURRIAN:** Ms. Bennett, did you get  
10 that?

11 **MS. BENNETT:** I did not.

12 **COMMISSIONER McMURRIAN:** I think Mr. McWhirter wants  
13 to move the position statement that he's striking from 11E and  
14 changing -- on 11E he's changing it to the same as OPC and  
15 striking that. But that language that he redacted from that  
16 position he wants moved to 11F.

17 **MS. BENNETT:** Okay. Thank you.

18 **COMMISSIONER McMURRIAN:** Right, Mr. McWhirter?

19 **MR. McWHIRTER:** That's right on the money.

20 **COMMISSIONER McMURRIAN:** Okay. Issue 12.

21 Mr. McWhirter, do you want to leave yours no position or --

22 **MR. McWHIRTER:** No, ma'am. I'll go with OPC. Well,  
23 he has no position too. Leave mine no position.

24 **MR. BURGESS:** We agree with FIPUG.

25 **MR. McGLOTHLIN:** I'm going to make the same change

1 here that I made to the last one. Instead of no position, our  
2 position is "The amount should reflect adjustments made in  
3 consideration of OPC's assertions regarding contracting  
4 practices."

5 **COMMISSIONER McMURRIAN:** Okay. That's slightly  
6 different than what I had. Could you repeat it one more time?  
7 The amount --

8 **MR. McGLOTHLIN:** I think I change it a little bit  
9 each time just to, just to keep you offguard.

10 **COMMISSIONER McMURRIAN:** I think I had, "The decision  
11 should take into consideration OPC's assertions regarding  
12 contracting practices."

13 **MR. McGLOTHLIN:** What I penned in for this one was  
14 "The amount should reflect adjustments made in consideration of  
15 OPC's assertions regarding contracting practices."

16 **COMMISSIONER McMURRIAN:** Okay. Assertions made  
17 regarding --

18 **MR. McGLOTHLIN:** Contracting practices.

19 **COMMISSIONER McMURRIAN:** Practices. Okay.  
20 Okay. Mr. McWhirter, do you agree with OPC?

21 **MR. McWHIRTER:** Yes, ma'am. Agree with OPC.

22 **COMMISSIONER McMURRIAN:** Okay. Issue 13.

23 **MR. BURGESS:** Commissioner, for OPC, if you would  
24 allow me by the deadline to simply come up with language that  
25 just reflects, that just reflects the issues upon which this

1 might rest; in other words, some of the issues where we  
2 recommend the Commission take certain examinations that I  
3 incorporate into our position here, a recognition of those  
4 areas.

5 **COMMISSIONER McMURRIAN:** Okay. So September 3rd?

6 **MR. BURGESS:** And I'll supply that, yes, to  
7 Ms. Bennett.

8 **MR. McWHIRTER:** And whatever that is, we'll agree  
9 with it.

10 **COMMISSIONER McMURRIAN:** Okay. And the same thing  
11 for you, Mr. Brew, you'll agree with it?

12 **MR. BREW:** Yes, Commissioner.

13 **COMMISSIONER McMURRIAN:** Okay. That was -- okay.  
14 Okay. Issue 14.

15 **MS. BENNETT:** Commissioner McMurrian, when we, when  
16 staff prepared the preliminary issue list, I neglected to  
17 include a close the docket issue for Docket Number 080149-EI,  
18 which is the discovery docket for Progress Energy's Levy Unit  
19 1 and 2. Progress had petitioned that all of the information  
20 that was in Docket 080149 be moved to the '09 docket and that  
21 they be permitted to amend their petition to include the costs  
22 of Levy in this year's nuclear cost recovery clause. They also  
23 asked in that petition that was filed in this docket if Docket  
24 080149 should be closed, could be closed. And that's an item  
25 that we believe is appropriate for the Commission as a whole to

1 make a decision on. So we'd ask that that Issue 14 be  
2 included, and staff's response would be yes. Each of the other  
3 parties needs to take a position on that.

4 **COMMISSIONER McMURRIAN:** Ms. Triplett.

5 **MS. TRIPLETT:** Just to clarify, I think this is  
6 right, but I think I saw an order that granted the transfer of  
7 the documents into this docket. Is that correct?

8 **COMMISSIONER McMURRIAN:** Yes.

9 **MS. TRIPLETT:** I think you did it. Well, with that  
10 then our position would be yes. Thank you.

11 **MR. BURGESS:** Yes. Ours is yes as well.

12 **COMMISSIONER McMURRIAN:** Okay. Thank you.

13 **MR. BREW:** Yes.

14 **COMMISSIONER McMURRIAN:** Mr. Brew.

15 **MR. McWHIRTER:** Yes.

16 **COMMISSIONER McMURRIAN:** Okay. Okay. And before we  
17 leave that issue, I should say that I did hear from Mr. Twomey  
18 and I've granted him leave to be excused from the Prehearing  
19 Conference. And he is going to get with Ms. Bennett or  
20 Mr. Young and make sure that his positions are reflected  
21 accurately. I believe, my understanding is that they are  
22 probably as reflected in the Prehearing Order already, but  
23 generally agree with OPC or no position I think is what is  
24 shown throughout. I do notice that here we don't have a  
25 position for AARP, so I guess that's one that you would have to

1 make sure that you get from him.

2           Okay. I think that brings us to the exhibit list on  
3 Page 51. Ms. Bennett.

4           **MS. BENNETT:** Commissioner McMurrrian, we'll note that  
5 staff is going to prepare a comprehensive exhibit list  
6 consisting of all of the prefiled exhibits for the purposes of  
7 numbering and identifying the exhibits at hearing. In the  
8 Prehearing Draft Order we went through Option A and Option B.  
9 Of course, we'll use Option B and do it by company as, so that  
10 the exhibit list will be company specific.

11           Staff will also provide the exhibit list to the  
12 parties as soon as possible. And, additionally, staff intends  
13 to prepare a proposed stipulated exhibit list composed of  
14 certain discovery, responses and maybe some deposition  
15 transcripts, and we'll provide that to the parties in advance  
16 of the hearing in the hopes of stipulating those into the  
17 record also.

18           You might want to make certain that Option B, the  
19 list of exhibits is correct.

20           **COMMISSIONER McMURRIAN:** Does anyone have any changes  
21 to the exhibit list? And if you catch something later, you can  
22 get it to staff. Any changes?

23           Hearing none, move on to Section X, proposed  
24 stipulations.

25           **MS. BENNETT:** Staff is not aware of any proposed

1 stipulations other than those we've discussed under the issues.

2 **COMMISSIONER McMURRIAN:** Section XI, pending motions.

3 **MS. BENNETT:** Commissioner McMurrian, there are  
4 several pending motions listed by Progress Energy. I can go  
5 over them briefly. A lot of them don't appear to be things  
6 that you need to rule on as the Prehearing Officer.

7 For instance, the first one, the request for cost  
8 recovery, that's an item that the entire Commission rules on,  
9 so that shouldn't appear in the Prehearing Order.

10 Then there's a petition to open the '08, the  
11 discovery docket, 080149. That was done. That's an  
12 administrative type item and, again, the Prehearing Officer  
13 doesn't really need to rule on that.

14 And, finally, there was a petition to intervene in  
15 Docket 080149 by White Springs, and that discovery docket was  
16 moved to this docket and White Springs is a party to this  
17 docket. So I don't believe there needs to be a ruling on that  
18 petition to intervene.

19 **MR. BREW:** We'll accept that that's become moot.

20 **COMMISSIONER McMURRIAN:** Okay. And, Ms. Triplett, on  
21 those, does Progress accept that they're moot or to be handled  
22 by the full Commission? Okay.

23 **MS. TRIPLETT:** We agree. Thank you.

24 **COMMISSIONER McMURRIAN:** Okay. Any other pending  
25 motions that -- hearing none, pending confidentiality matters.

1           **MS. BENNETT:** Commissioner McMurrin, there are  
2 several pending confidentiality, confidentiality requests, and  
3 they'll be addressed by separate order.

4           **COMMISSIONER McMURRIAN:** Okay. Posthearing  
5 procedures.

6           **MR. McGLOTHLIN:** Commissioner, I request that the  
7 parties be given 100 words per issue rather than the 50 in the  
8 Draft Prehearing Order. I always find that 50 is very limiting  
9 and 100 is not going to cause anybody to have to read page  
10 after page.

11           **COMMISSIONER McMURRIAN:** Any other input?

12           **MR. ANDERSON:** That was going to be the same  
13 suggestion I had. We try to keep them as short as we can, but  
14 50 words is basically just a few sentences on some rather  
15 complex issues.

16           **MS. TRIPLETT:** We're fine either way.

17           **MR. BREW:** We would support it.

18           **COMMISSIONER McMURRIAN:** Mr. McWhirter, do you agree  
19 with OPC?

20           **MR. McWHIRTER:** 100 words is plenty.

21           **COMMISSIONER McMURRIAN:** Okay. All right. We'll do  
22 the 100 words for the statement of positions.

23                   And what about the length of the posthearing  
24 statements? We usually do 40 pages. Does everyone think that  
25 we can still work with that? I believe that's in here.

1           **MR. ANDERSON:** You know, just, I'd like --

2           **COMMISSIONER McMURRIAN:** Is there a page length in  
3 here, Ms. Bennett?

4           **MS. BENNETT:** Yes, Commissioner McMurrin. It is 40.  
5 And I would remind the parties that if there is a posthearing  
6 recommendation, that the time frame between the time the  
7 recommendation, between the time the bench hearing is held and  
8 the recommendation is due is extremely short and so the brief  
9 writing is an extremely short time period. So I don't know if  
10 you have time to write a 40-page brief.

11           **MR. ANDERSON:** I'd request that you consider bumping  
12 that to 50. Again, we'd try to keep it shorter.

13           **COMMISSIONER McMURRIAN:** No other input? I assume  
14 everyone is okay with the 50.

15           **MR. McGLOTHLIN:** No objection.

16           **COMMISSIONER McMURRIAN:** Of course you can get below  
17 that; right?

18           **MR. ANDERSON:** Right.

19           **COMMISSIONER McMURRIAN:** Okay. 50 pages.

20                   And let's talk about opening statements under the  
21 rulings section.

22                   Ms. Bennett, what do you recommend?

23           **MS. BENNETT:** We've recommended ten minutes. It is a  
24 complex docket and it's the first year, and ten minutes, I  
25 think, would be appropriate to give each party.



1                   **COMMISSIONER McMURRIAN:** Everyone seems in agreement.  
2 Okay. Ten minutes.

3                   And I suppose -- are there other matters that need to  
4 be addressed before we adjourn?

5                   I realize -- I will make a decision about Issue 6F  
6 and 7H shortly, probably today, and try to get word to you all  
7 what that final language will be so that you can move forward  
8 with that.

9                   Any other matters before we adjourn? Okay. Well,  
10 thank you all for bearing with us. Hopefully this has been  
11 productive for the hearing. We are adjourned.

12                   (Prehearing conference adjourned at 2:50 p.m.)

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1 STATE OF FLORIDA )  
 : CERTIFICATE OF REPORTERS  
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WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 29th day of August, 2008.

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