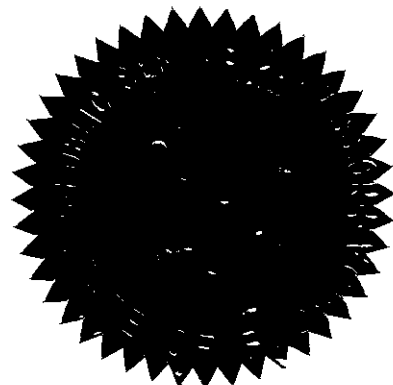


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080001-EI

In the Matter of

FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE INCENTIVE
FACTOR.



VOLUME 1

Pages 1 through 110

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PROCEEDINGS: HEARING

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

DATE: Tuesday, November 4, 2008

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
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DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

10419 NOV-68

FPSC-COMMISSION CLERK

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P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** Commissioners, as we prepare for
3 our next case, which will be Docket Number 080001-EI, prior to
4 getting into that docket, let me just kind of give you the lay
5 of the landscape so we can kind of plan for the day. My plans
6 are is that to break by 5:00 today to give staff an opportunity
7 to go and exercise their franchise. We want to make sure that
8 everyone has an opportunity to do that. So we are going to go,
9 but I want to be able to -- so kind of help me remember that
10 5:00 o'clock breaking point so staff can go and take care of
11 that very, very important process and franchise, and that is
12 what separates us from the rest of the world.

13 I was reading something the other day about one of
14 the countries I will leave nameless, and the way they change
15 governments is that somebody's brother-in-law knocks them off
16 and then they get to be the president. But we don't do that
17 here. We go by and have our fellow citizens vote. And I think
18 that is a better way to do it, too.

19 So just let me lay the landscape on how we are going
20 to proceed further on Docket Number 080001-EI. Before I
21 recognize staff on this matter, I want to just kind of let you
22 know, Commissioners, that the order of this docket we want to
23 take Progress first, and then we'll have FPL last, but all the
24 other companies will fall within the purview of that. So just
25 kind of organizationally, okay?

1 All right.

2 Staff, you're recognized.

3 **MS. BENNETT:** Thank you, Commissioners.

4 The first matter I have before you is you have a
5 compiled proposed set of stipulations. Normally we look at the
6 stipulations at the end, but in this proceeding because there
7 are so many, and if there are any that are removed from your
8 bench vote then you'll have an opportunity to hear testimony
9 about those.

10 But in your handouts there is a Docket Number
11 080001-EI, Proposed Stipulations, November 1, 2008. Staff is
12 available for answers to any of the proposed stipulations.

13 **CHAIRMAN CARTER:** Let's do this. Commissioners, we
14 have a list of proposed stipulations. Let me just ask staff,
15 does that -- in the process of these proposed stipulations,
16 Staff, have all the parties agreed to them?

17 **MS. BENNETT:** Commissioners, the utilities have
18 agreed with staff's positions on these items. All of the other
19 parties have taken no position on these matters, so they have
20 not joined into the stipulations, but they do not object to it.
21 I think that is a fair assessment of their positions.

22 **CHAIRMAN CARTER:** I just wanted for the record to
23 make sure that we all -- Commissioner Argenziano.

24 **COMMISSIONER ARGENZIANO:** So then am I to take that
25 as the intervenors have no objection to staff's

1 recommendations?

2 **MS. BENNETT:** Yes.

3 **COMMISSIONER ARGENZIANO:** Okay.

4 **CHAIRMAN CARTER:** That's the way I read it, too,
5 Commissioner. So that way if we dispose of the stipulations,
6 that way we would have done so with all the parties having the
7 opportunity to be heard and having their positions known. So
8 with that, staff, let's do this -- let me kind of get my
9 thoughts together here.

10 **COMMISSIONER EDGAR:** Mr. Chairman.

11 **CHAIRMAN CARTER:** Commissioner Edgar, you're
12 recognized.

13 **COMMISSIONER EDGAR:** I'm sorry, I do have one very
14 brief question on one of the proposed stipulations.

15 **CHAIRMAN CARTER:** You're recognized now.

16 **COMMISSIONER EDGAR:** Thank you. And partly because I
17 do agree this is a good time for any of us to ask questions.
18 So, very quickly. On Issue 13H, which on the proposed
19 stipulation document that Ms. Bennett just referred to is on
20 Page 9, right in the middle of the page. And it just seemed
21 that the position I wasn't completely sure answered the issue
22 statement, so I would just like to have staff address that very
23 briefly. In Issue 13H it says what is the appropriate
24 calculation of fuel savings, and then the position statement
25 says the calculation is appropriate. And that just seemed a

1 little circular to me, so if somebody could speak to that
2 briefly.

3 **MR. LESTER:** Pete Lester with staff. I think what we
4 intend there is that the methodology they used in calculating
5 the savings is correct, and the methodology is appropriate.

6 **COMMISSIONER EDGAR:** And I'm not trying to throw a
7 huge curve here at all, but I'm just wondering if maybe a
8 slight -- and I will look to the parties, again, if they have a
9 suggestion -- but if indeed we are referring to a methodology,
10 would it be possible to be a little more specific or reference
11 that methodology? Again, to me it just seems like the issue --
12 the position statement doesn't really answer the question in
13 the issue.

14 **MS. BENNETT:** I think it would be appropriate to
15 include FPL's position with our position and that would give
16 you the explanation that you are looking for.

17 FPL's position that they provided in the prehearing
18 statement is that FPL utilized its POWRSYM model to quantify
19 the benefits of WCEC Units 1 and 2, which is the same model
20 that FPL uses to calculate the fuel costs that are included in
21 FPL's projection filing. For this analysis, FPL ran two
22 individual cases for each unit, one with the new unit and one
23 without the new unit to determine fuel costs, and then compared
24 the two cases to determine the savings for each unit.

25 So if we included that with staff's position, I think

1 that would give a full explanation of what we are agreeing to.

2 **COMMISSIONER EDGAR:** And, Mr. Chairman, I would just
3 say -- and I recognize it's a little unusual to suggest
4 possibly adding to a position statement that has already gone
5 through the review by the parties. And if I'm misreading it, I
6 am welcome to having that pointed out to me. It just, again,
7 to me seemed like the position statement didn't completely
8 answer the issue. So I will defer, Mr. Chairman, as to how to
9 address what Ms. Bennett has suggested. It sounds like a more
10 thorough and clear response to me; but, of course, I would
11 certainly be glad to hear from the parties or any other
12 Commissioner if you have any further thoughts.

13 Thank you.

14 **CHAIRMAN CARTER:** Let me just ask the parties. This
15 was the understanding that in the process and all the parties
16 had the opportunity to hear this?

17 **MR. BUTLER:** FPL took the position that Ms. Bennett
18 just read as part of our prehearing statement, so the parties
19 have been aware that that is our position on the issue for
20 sometime now.

21 **CHAIRMAN CARTER:** Is there any concern from the
22 parties -- although the intervenors had no position on that,
23 does this change your mind, any of you? Okay. Hearing none.

24 Commissioner, are you comfortable with that?

25 **COMMISSIONER EDGAR:** Mr. Chairman, I am, and

1 obviously would want to make sure that we all are if we are
2 looking at possible stipulations. To me that just sounds like
3 a clarification and not a change is the way I interpret that.

4 **CHAIRMAN CARTER:** And, staff, just for the record,
5 you can transpose that language in the appropriate place.

6 **MS. BENNETT:** We will.

7 **CHAIRMAN CARTER:** Okay. Commissioners, anything
8 further from the bench on this? What I wanted to do before we
9 got into the meat of -- got further is to kind of deal with the
10 stipulations and make sure that we are all on one accord. And
11 I noticed from what has been presented to us, the parties
12 either have no position or are comfortable with the way things
13 are. The companies have agreed with staff, and staff has
14 agreed with the companies on these positions as pertains to the
15 proposed stipulations. And staff is recommending approval of
16 the stipulations.

17 **MS. BENNETT:** That's correct. Staff is recommending
18 approval of these proposed stipulations.

19 **CHAIRMAN CARTER:** And, Commissioner, the staff are
20 recommending that we approve this prior to, so as we go further
21 that will be a little less for us to deal with at the
22 appropriate time, and those issues will be off the board and we
23 can move forward and fully prosecute the claim, so to speak.
24 Those are my terms, not staff's terms.

25 Any further questions on the stipulations,

1 Commissioners? Hearing none. We are open for a motion on the
2 acceptance of the stipulations as presented.

3 Commissioner Edgar, you're recognized.

4 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

5 I make the motion that the Commission approve the
6 proposed stipulations listed on the document headed Docket
7 Number 080001-EI, Proposed Stipulations, November 1st, with the
8 addition to the position statement on Issue 13H that
9 Ms. Bennett read to us a few moments ago.

10 **COMMISSIONER SKOP:** Second.

11 **CHAIRMAN CARTER:** It has been moved and properly
12 seconded.

13 Commissioners, we have this list of the stipulations
14 here, it is part of our paperwork here. I wanted to make sure
15 that you saw that, and also with the incorporation of the
16 language proposed by Ms. Bennett.

17 It has been moved and properly seconded on the
18 stipulations. Any further questions? Any further debate? Any
19 further concerns?

20 Hearing none. All those in favor let it be known by
21 the sign of aye.

22 (Simultaneous aye.)

23 **CHAIRMAN CARTER:** All those opposed, like sign.

24 Show it done.

25 Ms. Bennett.

1 **MS. BENNETT:** Mr. Chairman, I would ask that this
2 docket number -- that the proposed stipulations that were just
3 voted in be included into the record as Exhibit Number 52 on
4 our Comprehensive Exhibit List.

5 **CHAIRMAN CARTER:** Without objection, show it done.
6 (Exhibit Number 52 marked for identification.)

7 **CHAIRMAN CARTER:** Ms. Bennett.

8 **MS. BENNETT:** I do want to note that FPUC has a
9 change to its position in the prehearing order that they would
10 like to address at this point.

11 **MR. HORTON:** Mr. Chairman, on Issue Number 5, which
12 is on Page 11 of the prehearing order -- let me make sure I've
13 got the right -- the position of Florida Public Utilities to
14 Issue Number 5 should read as follows: The total
15 jurisdictional fuel cost for Marianna is \$20,468,423, which is
16 the number shown. The total jurisdictional fuel cost for
17 Fernandina Beach is \$21,531,537.

18 **CHAIRMAN CARTER:** Will you read those numbers again,
19 please.

20 **MR. HORTON:** Yes, sir. Marianna is as shown,
21 20,468,423; Fernandina Beach would be 21,531,537.

22 **CHAIRMAN CARTER:** Okay. Do all the parties have this
23 information?

24 **MR. HORTON:** We had provided that to the parties that
25 are involved with us, and it just didn't get picked up as a

1 revision.

2 **CHAIRMAN CARTER:** Okay. Show it done.

3 **MR. HORTON:** Thank you.

4 **CHAIRMAN CARTER:** Ms. Bennett.

5 **MS. BENNETT:** Staff has no further questions of this
6 witness, and also there are several -- because of the
7 stipulations, there are several additional witnesses that staff
8 has no questions of, and we have contacted the parties and they
9 did not have questions of these witnesses. I will give you the
10 list, and at this time, if the Commissioners also don't have
11 questions, might be excused.

12 **CHAIRMAN CARTER:** And these are the witnesses that
13 were related to the stipulated areas?

14 **MS. BENNETT:** Yes, Commissioner.

15 **CHAIRMAN CARTER:** You're recognized.

16 **MS. BENNETT:** They are Cheryl Martin, Curtis Young,
17 and Mark Cutshaw for FPUC. Carlos Aldazabal, Benjamin Smith,
18 and Joann Wehle for TECO. Will Garrett and Joseph McCallister
19 for Progress Energy Florida.

20 Now, I will say that they relate to the stipulated
21 areas, but some of the big number questions, I think -- I'm not
22 sure which TECO witness would be responsible for that, whether
23 it would be Ms. Wehle or Mr. Aldazabal.

24 **CHAIRMAN CARTER:** Why don't we just ask them now?

25 **MR. BEASLEY:** You are talking about the fallout

1 issues?

2 **MS. BENNETT:** The fallout issues.

3 **MR. BEASLEY:** Mr. Aldazabal. But those, I think, are
4 the calculations based on the other issues that have been
5 covered.

6 **CHAIRMAN CARTER:** So does that answer your question,
7 Ms. Bennett, in terms of if we were to agree to excuse the
8 witnesses based upon the stipulation, these witnesses that we
9 are excusing will not necessarily be the primary witness for
10 the issues that remain?

11 **MS. BENNETT:** By excusing Mr. Aldazabal you would not
12 have a TECO witness available to answer any of the fallout
13 questions, but all of the other issues -- when I say fallout
14 questions, those are the big numbers, the 2007, 2008, 2009.

15 Staff does not have any questions of those witnesses,
16 and neither do any of the parties. But if Commissioners still
17 have questions about any of the items you might want to keep
18 Mr. Aldazabal here to answer those questions and not excuse
19 him.

20 Likewise, I believe that --

21 **CHAIRMAN CARTER:** Hold on. Back up for a second.
22 Let's take it from the top. Let's deal with FPUC. Let's just
23 do it this way. Now, are there any witnesses from FPUC, Martin
24 Young, Cutshaw? Those are the three?

25 **MS. BENNETT:** Those are the three for FPUC.

1 **CHAIRMAN CARTER:** Mr. Horton, any of these witnesses
2 that are going to be relied upon for the -- what is that,
3 fallout? Is that the word you said?

4 **MS. BENNETT:** That is the word I said.

5 **CHAIRMAN CARTER:** I hate to use fallout when we are
6 talking about power. Maybe we need to get another word.

7 **MR. HORTON:** Yes, sir. Two things. First of all,
8 Ms. Martin is shown to address Issue Number 1, and she was not
9 able to attend. Mr. Young would adopt her testimony and
10 exhibits, but Mr. Young is identified as testifying on Issues
11 2 through 11, which would be the fallout issues, I think, that
12 you are talking about.

13 **CHAIRMAN CARTER:** So Mr. Young would still be here?

14 **MR. HORTON:** Hopefully not; but, yes, sir.

15 **CHAIRMAN CARTER:** Okay. Now, let me back up for a
16 second to both staff and to the parties. What we are trying to
17 do here is obviously we believe in judicial economy. If you
18 want to have these witnesses stipulated to and excused, then
19 let's do so with full transparency. If there are no major
20 issues for the witnesses, I don't have a problem with it, but
21 if there are issues I don't want to be sandbagged, and neither
22 do I want to the intervenors to be sandbagged. If there are
23 issues that are going to come about, then --

24 **MR. HORTON:** Mr. Chairman, I understand that, and I'm
25 sorry for that comment.

1 But Mr. Young is identified for those issues. Staff
2 has not taken a position. My understanding is that there are
3 no parties that have any questions of any of the FPUC witnesses
4 on any of the issues, nor does staff. They are here, they are
5 available for questions, but unlike years past where we have
6 stipulated these issues, these fallout issues, those apparently
7 have not been stipulated at this time.

8 **CHAIRMAN CARTER:** Commissioners, here is what I think
9 we will do is that we will just go through the flow and at the
10 end of the time when we deal with one case, if the witnesses --
11 if we don't need them, we will just go ahead on and go from
12 there. But let's move on from there. This is about as
13 confusing as -- well I don't want to -- anyway. Let's just
14 take it from the top. We will just defer that for now. Let's
15 move forward. Now, we are on --

16 **MS. BENNETT:** We do have four witnesses that did get
17 excused. They are the GPIF witnesses, the generating
18 performance incentive factor witnesses. And as we get to those
19 witnesses, I will identify them and we could move their
20 testimony and exhibits into the record at that time.

21 **CHAIRMAN CARTER:** Okay. Let's do that for all of the
22 ones that they are recommending to stipulate to, and that is
23 probably a better course to take. So we are going to take in
24 Docket 080001-EI, we are going to take Progress first, is that
25 correct?

1 **MS. BENNETT:** That's correct. I do want to mention
2 that the Comprehensive Exhibit List is -- that there is a
3 Comprehensive Exhibit List which includes staff's composite
4 exhibit. When we get to the record and are ready to swear in
5 the witnesses, staff will ask that it be moved into the record.

6 There are two corrections from Progress Energy to
7 that Comprehensive Exhibit List, and I think they wanted to
8 address that. Now would be an appropriate time.

9 **CHAIRMAN CARTER:** Mr. Burnett, you're recognized.

10 **MR. BURNETT:** Thank you, sir.

11 With respect to the Comprehensive Exhibit List, the
12 Exhibit JM-2P, as in Papa, it actually is -- it should be
13 titled "Unrealized Hedge Values for 2009." It just currently
14 reflects an improper title. And then we are actually missing
15 an exhibit, which should be JM-3P, and, if appropriate, that
16 could be assigned Hearing ID Number 53. It was simply omitted,
17 and that would be titled "January through July 2008 Hedging
18 Report."

19 **CHAIRMAN CARTER:** Show it done without objection.

20 Ms. Bennett, any further preliminary matters?

21 **MS. BENNETT:** Yes. I believe that Progress Energy
22 Florida has a motion in limine that they are requesting to
23 address the Commission now, and I believe FIPUG has got -- I
24 may be ahead of myself on the official recognition of the
25 ten-year site plan. Those are both before the Commission.

1 **CHAIRMAN CARTER:** Ms. Helton on order.

2 **MS. HELTON:** Maybe it would be simpler to take up the
3 motion more official recognition first and then go to the
4 motion in limine.

5 **CHAIRMAN CARTER:** Okay. Let's do that.

6 **COMMISSIONER EDGAR:** Mr. Chairman.

7 **CHAIRMAN CARTER:** One second.

8 **COMMISSIONER EDGAR:** I apologize. But to staff, I
9 have lots of paper here, but I cannot find a Comprehensive
10 Exhibit List for this docket, so if somebody over there could
11 maybe bring me an extra copy that would be much appreciated.
12 And I apologize for breaking in. It just seems like that would
13 be easier. Thank you, Mr. Chairman.

14 **CHAIRMAN CARTER:** No problem. Let's kind of hold up.
15 We won't leave the building. Let's kind of hold in place while
16 we get this document. One second, Mr. McWhirter.

17 (Pause.)

18 **CHAIRMAN CARTER:** Mr. McWhirter, you're recognized.

19 **MR. MCWHIRTER:** Mr. Chairman, utilities file
20 information with you from time to time, and on April 1st of
21 each year they file with you their ten-year site plans which
22 you rely on heavily in determining things like need for
23 generation and so forth. I have requested that in this
24 proceeding you take official recognition of the ten-year site
25 plans filed by Florida Power and Light and Florida Progress on

1 2008 that shows what their generation projection plans are for
2 the next ten years, the tenth year being 2017. And the reason
3 I asked for that was to demonstrate the capacity that will be
4 available for customers when the nuclear plants come on line.

5 You have looked at this in the need proceedings. You
6 have looked at it in the '09 proceedings. This is the
7 proceeding in which you set the rates for the customers, and I
8 think it is appropriate to have that document as part of the
9 official record in these proceedings.

10 Under Florida Statute 90.202, you are authorized --
11 there are certain things you must take judicial recognition of,
12 and there are other things that you can take judicial or
13 official recognition of, and one of those, of course, is your
14 own records. And, secondly, things that everybody knows and
15 they are beyond dispute, so that it can come into evidence like
16 testimony that hasn't been disputed. I think it's appropriate
17 that that document be part of the record of these proceedings
18 and respectfully request that you do it.

19 **CHAIRMAN CARTER:** Thank you, Mr. McWhirter.

20 Before I go to the opposing side, let me just ask any
21 of the intervenors or other parties would you like to be heard
22 in support of Mr. McWhirter's motion?

23 **MR. TWOMEY:** Mr. Chairman, yes, sir. AARP would
24 support the motion. Thank you.

25 **MR. BREW:** Mr. Chairman, PCS would support it, as

1 well.

2 **MR. WRIGHT:** The Florida Retail Federation supports
3 FIPUG's motion.

4 **MR. BURGESS:** We support.

5 **CHAIRMAN CARTER:** The Office of Public Counsel
6 supports the motion.

7 **MS. WHITE:** Sir, FEA supports the motion.

8 **CHAIRMAN CARTER:** Ms. Bradley?

9 **MS. BRADLEY:** We support the motion.

10 **CHAIRMAN CARTER:** Okay. The Attorney General's
11 Office supports it.

12 Okay. Now opposing. Mr. Burnett, you're up.

13 **MR. BURNETT:** Thank you, sir.

14 Progress Energy Florida has no objection to the
15 motion for official recognition, but as to the substance, sir,
16 that will touch on the motion in limine that I wish to make.
17 So just preserving my ability to make that motion in limine
18 without speaking to the substance.

19 **CHAIRMAN CARTER:** Okay. Mr. Butler.

20 **MR. BUTLER:** We have no objection to the official
21 recognition of FPL's ten-year site plan.

22 **CHAIRMAN CARTER:** Any other companies? Okay. Ms.
23 Helton, recomendación.

24 **MS. HELTON:** It is within your discretion to allow
25 official recognition of the ten-year site plans. Although I am

1 a little bit hesitant to the say this, but I do feel like that
2 I should. Section 90.202 says that a court -- and we generally
3 follow this provision, even though we are not a court, per se.
4 Facts that are not subject to dispute because they are
5 generally known within the territorial jurisdiction of the
6 court and the facts that are not subject to dispute because
7 they are capable of accurate and ready determination by resort
8 to sources whose accuracy cannot be questioned, or those
9 matters which you have the discretion to allow judicial notice
10 for those types of information.

11 I'm not sure that projections, per se, fall into that
12 category, but it seems to me that no one here objects, so since
13 no one objects, I do think you have the discretion to allow
14 official recognition.

15 **CHAIRMAN CARTER:** And also, too -- Commissioner
16 Argenziano.

17 **COMMISSIONER ARGENZIANO:** I would like to ask that we
18 allow the ten-year site plan to be included.

19 **CHAIRMAN CARTER:** Show it done.

20 Next motion. Ms. Bennett.

21 **MS. BENNETT:** The next motion would be Progress
22 Energy Florida's motion in limine.

23 **CHAIRMAN CARTER:** Mr. Burnett.

24 **MR. BURNETT:** Thank you, sir. Progress' motion
25 addresses Issues Number 27 and 29A, as in alpha. And,

1 specifically, the motion goes to what it appears -- a question
2 that FIPUG and perhaps PCS Phosphate will have on Issue 27 as
3 well as 29. Commissioner, the crux of that issue is that FIPUG
4 is encouraging the Commission to apply a 15 percent reserve
5 margin in some fashion to effectuate a reduction of the NCRC,
6 or nuclear cost-recovery clause costs that this Commission
7 issued an order on in the 09 docket.

8 This is improper for several reasons to even have
9 questioning on this issue. First of all, this is nothing more
10 than a collateral attack on the need order that this Commission
11 has already granted for the Levy units. Any issues about
12 reserve margins, the propriety of the nuclear units with
13 respect to reserve margins has already been litigated in the
14 need proceeding. Those arguments were actually made in that
15 proceeding and were addressed in the Commission's order as
16 appropriate. So it is improper for that reason.

17 Also, the nuclear cost-recovery clause proceeding in
18 the 09 docket, the Commission has already determined the
19 appropriate amounts to be included in the capacity clause in
20 this proceeding, and the Commission has also determined the
21 proper jurisdictionalization of those amounts. So, again, to
22 suggest that the Commission should do something differently
23 here is a collateral attack on that order, as well.

24 Furthermore, Mr. McWhirter and FIPUG's arguments are
25 a collateral attack on the reserve margin requirements that are

1 currently in place in the state. Effectively, Mr. McWhirter is
2 asking the Commission to reset or apply a different reserve
3 margin and to abandon the current requirements for reserve
4 margins in the state without any hearings, without any
5 witnesses, or any testimony whatsoever on reserve margins and
6 the appropriateness of doing anything with those reserve
7 margins.

8 And, fourth, Mr. McWhirter's position seems to be
9 asking the Commission to take action that is directly in
10 conflict with at least the policy of the nuclear cost-recovery
11 statutes and the rules, if not the plain language, as well.
12 And we would suggest it did.

13 And then, finally, there is not a witness in this
14 proceeding that can address this issue at all. Mr. McWhirter
15 is simply encouraging the Commission, I suppose from a legal or
16 a policy perspective, that the Commission should abandon one,
17 if not several of its prior orders, and revisit what the
18 appropriate amounts to be included in the capacity clause are
19 here for the NCRC proceeding.

20 As a legal matter, certainly none of the PEF
21 witnesses can and should address legal issues. Certainly, we
22 don't have a policy witness from anyone on those issues in the
23 proceeding, so this is nothing that any witness can take up
24 appropriately in this. So for all of these reasons, Progress
25 Energy would request that any questions or any suggestion that

1 the Commission should take any action beyond the ministerial
2 function of saying that the numbers to be included from the
3 09 are, in fact, accurately transcribed and have been properly
4 converted into factors would be inappropriate.

5 **CHAIRMAN CARTER:** Thank you.

6 Mr. McWhirter.

7 **MR. MCWHIRTER:** That's very persuasive, but I would
8 like to deal with the items that he raised seriatim.

9 As you know, Progress Energy has proposed Levy 1 and
10 2. They did that in the filing that was filed in March. You
11 had hearings on it in July and in August you issued a
12 certificate of need. And I would like to quote to you what you
13 found in that certificate of need. My friend from PCS
14 Phosphate suggested that it wasn't needed now, and clearly the
15 statement of which you just admitted into the record shows that
16 at the time this plant comes on line it will be 33 percent in
17 excess of the firm demand of the customers of Progress Energy.

18 Now, that means that customers at that time will be
19 paying for something that is 33 percent more than they need.
20 This was raised to you. We all were of the opinion, and I am
21 still of the opinion that nuclear power is a good thing for
22 Florida's future. The problem we have is that power plants are
23 built by utilities. When you looked at the need, you looked at
24 what the state needed. And that was, I perceived, to be your
25 overriding concern.

1 What you said in Order 518, or it's 08-0518, is
2 Progress demonstrated a reliability need for additional base
3 load capacity by 2016. Units 1 and 2 will add 2200 megawatts
4 of nuclear capacity which is needed to keep pace with the
5 increasing demand for reliable power and the steady population
6 growth in the state of Florida, not for the customers of
7 Progress Energy. You went on to say, next, Levy Units 1 and
8 2 represent a critical component in Progress Energy's efforts
9 to maintain a diverse fuel mix and reduce the state's
10 dependence on natural gas and fuel oil, maintaining a balanced
11 fuel portfolio which will result in less volatile fuel cost
12 over time.

13 Now, earlier in that order, you recognized that what
14 you are doing in this case is placing an unusual burden on
15 Progress Energy's customers. And the Witness Lyash testified
16 that that is true, but they are considering joint ownership.
17 So my thought that I believe is worthy of your consideration is
18 that we like nuclear power, we think it has great merit, but we
19 don't think the customers of one utility, which constitutes
20 maybe 25 percent of the investor-owned utilities in the state,
21 that that utility ought to -- the customers of that utility
22 ought to provide the capacity for the state at large.

23 The second thing I would like to point out to you are
24 the statutes that were mentioned. One of the statutes that
25 wasn't mentioned is 366.06, and it tells -- what that section

1 of the statute does is tells the Commission what it must do in
2 ratemaking proceedings. The Commission shall investigate and
3 determine the actual legitimate costs of the property of each
4 utility company actually used and useful in the public service.
5 The net investment of each utility company in such property
6 which value as determined by the Commission shall be used for
7 ratemaking purposes and shall be the money honestly and
8 prudently invested by the utility company in such used and
9 useful property.

10 Now, it is perfectly clear that at the present time
11 when you are going to impose this charge, you are increasing a
12 rate on the customers of Progress Energy, this plant is not in
13 used and useful service. If that were the only statute that
14 governed your proceedings, clearly as a matter of law this rate
15 proceeding could not go forward.

16 So what happened? In 2006, and 2007, and 2008, the
17 legislature readdressed this issue, and it came up with the
18 second statute that Mr. Burnett mentioned, which is 366.93.
19 And this is a guideline that the legislature has given to you,
20 and in that guideline it defined cost, and it said cost
21 includes but is not limited to all capital investments. Okay.

22 Now, I would like to bring your attention back to
23 what it is we are doing in this proceeding. What we are doing
24 in this proceeding, first, given the amount of money the
25 utilities must collect for the money they didn't get to cover

1 their costs in 2007 and what they project they won't get in
2 2008. That's money that has been expended.

3 The third thing that you do is to look at what the
4 utilities project that their costs will be in the forthcoming
5 year. Not what they're getting for facilities that are in used
6 and useful service, but what they project will be spent. And
7 because a major portion of Progress Energy's investment is for
8 construction cost, not the return on an investment that
9 93 talks about, but the total construction cost of certain
10 elements of their nuclear plants, they are asking you to
11 increase customers' rates today for costs that they say they
12 are going to expend in 2009. It's not for an investment that
13 has been made, which is your requirement under Section 366.06,
14 and it is not for a cost for a capital investment, which is
15 under 366.93, it is a projection of what is going to be spent.

16 When we got to the prehearing conference in this
17 case, it was determined that because things had happened so
18 rapidly, the petition filed in March, the need hearing in July,
19 the order in August, that we couldn't clearly determine the
20 prudence of all the expenditures. A lot of them are secret.
21 And so the suggestion was we'll figure out what that is in the
22 proceedings next year. So prudence -- not only have the costs
23 not been spent, but the prudence of those costs is going to be
24 decided next year. So the question is with the background in
25 history that you have in your regulatory process, whether it is

1 wise in these times to ask customers to not pay a return on a
2 utility's investment, but in major portion the total cost of
3 the money they say they are going to expend a year before it's
4 spent.

5 Now, I think it is legitimate to raise that question
6 about what customers ought to have to pay for. So the big
7 issue then comes to reserve margin. And I don't know if you
8 know the history of reserve margin, but I will tell you what it
9 is. And I don't want to take too much of your time, but back
10 in 1990 some people raised the issue that our existing utility
11 plants didn't have the capacity to serve their customers, and
12 that independent power producers ought to be allowed to come
13 into the state of Florida to provide capacity, especially when
14 they said they could do it cheaper than the existing utilities.

15 We had a year-long litigation over that subject, and
16 finally the utilities agreed upon themselves that they would
17 stipulate that by 2004 they would have a 20 percent reserve
18 margin. Now, that is kind of unusual because you have a rule
19 that says that all we need for the statewide reserve margin is
20 15 percent.

21 So what we have got here now is a situation which
22 Progress Energy -- I'm going to focus on Progress Energy. It
23 is somewhat similar, but not quite as bad with Florida Power
24 and Light. What we have got, they are asking for the customers
25 to pay for a plant that is not in used and useful service.

1 They are asking to pay for the money. Not a return on their
2 investment, but the total investment a year before it is made,
3 and they are asking to do that because at a point ten years
4 from now -- not ten years from now, but in 2016 and 2017 they
5 are going to bring on a plant that is going to be 33 percent in
6 excess of the customers' needs at that time. And, of course,
7 it is 50 to 60 percent more than current customers' needs.

8 So I think as a matter of policy at the time when the
9 rubber meets the road, which is now, you have gone through the
10 need proceedings, you have gone through the 09 proceedings, you
11 have had a vote on 09, but that has not been reduced to an
12 order yet, and this is where you set the rates, and this is
13 where I think the rubber meets the road. And when you set the
14 rates, I think you ought to look at what the legislature has
15 told you to do. It reduced the impact of 366.06 when it
16 adopted the promotion for nuclear plants. We don't know what
17 facts the legislature had before it as to what nuclear plants
18 were going to cost, and certainly at the time that was done
19 they didn't know what the impact on customers was going to be.

20 So I think what we need to do is look at this
21 logically. And the logical way to look at it is look at your
22 rule which requires a 15 percent reserve margin, not the
23 utilities' stipulation that they agreed to a 20 percent return
24 margin, nor Florida Progress' proffer for a 33 percent reserve
25 margin, which you said is okay because of a statewide need in

1 your order. I think today's customers, if they are going to
2 pay for something in advance, which is highly questionable,
3 ought to be restricted at least to this 15 percent criteria.
4 The problem is we don't know exactly how that scopes out, but I
5 think in generalities the motion should be denied, and we ought
6 to have an opportunity at least think about that prospect and
7 talk about it.

8 **CHAIRMAN CARTER:** Thank you, Mr. McWhirter.

9 Ms. Helton.

10 **MS. HELTON:** First, let me say what a motion in
11 limine is, because I know we have a couple of non-lawyers
12 sitting on the bench, and for some of you it may have been a
13 while, like for me when we actually studied what a motion for
14 limine is in law school. It's an option that is available to
15 parties to a proceeding to seek some kind of a preliminary
16 ruling on the admissibility of evidence or an argument at a
17 trial. And so I was floundering a little bit this morning,
18 because in my mind I thought that a motion in limine should be
19 made prior to the start of a hearing.

20 So I pulled out some of my favorite Judge Philip
21 Padovano's book on trial practice, and he has a section in
22 there, 22.2, on preliminary rulings. He first talks about the
23 purpose of a motion in limine is to obtain a ruling on an issue
24 that cannot be effectively addressed by objecting in the
25 presence of the jury. So the whole point is it is really a

1 tool that is mainly used in jury trials, and obviously we are
2 not here in a jury trial. You can use it, and I have seen done
3 before, in administrative proceedings and in Commission
4 proceedings. But we also have to keep in mind, I think, that
5 you all have the expertise to decide whether evidence is
6 relevant or not to your decision and to give it some weight.
7 So it's not as vital a tool, in my mind, in an administrative
8 proceeding before you as it would be in a jury trial.

9 The point that really concerned me, though, was the
10 timing. And Judge Padovano says that some motions in limine
11 are made orally at the start of a trial and without much notice
12 to the opposing party. If the motion is the equivalent of an
13 evidentiary objection, then it is not necessary for the moving
14 party to give notice. In contrast, however, if the effect of
15 the motion would be to adjudicate a part of the opposing
16 party's case, then the court should not rule on the motion
17 unless the opposing party has received adequate notice. In
18 this regard, the courts have observed that a motion in limine
19 cannot be used as a substitute for a motion for summary
20 judgment. If the effect of the order on a motion in limine
21 would be to summarily decide all or part of the case, the court
22 must require compliance with the notice requirements of Rule
23 1.510, which, if you were to look that up, it's the rule on
24 summary judgments.

25 I tried to listen very carefully to the arguments

1 made by Mr. Burnett and Mr. McWhirter's response, and it seems
2 to me that what Mr. Burnett is doing is going beyond that of a
3 mere objection to the evidence. That he is going to the heart
4 of Mr. McWhirter's argument. So my suggestion to you, Mr.
5 Chairman, is to deny the motion in limine here, but to give
6 leave to Mr. Burnett to raise objections to questions that Mr.
7 McWhirter or any others may raise at the appropriate time
8 during the course of the proceedings if it's going to evidence
9 that Mr. Burnett believes is irrelevant or has already been
10 decided by the Commission in a previous docket.

11 **CHAIRMAN CARTER:** Thank you, Ms. Helton.

12 Commissioners, having heard from our counsel on this
13 matter -- have you got a question, Commissioner Argenziano?

14 **COMMISSIONER ARGENZIANO:** Yes. Can I hear from, I
15 guess, Mr. McWhirter on what staff just recommended, please.

16 **MR. MCWHIRTER:** What do you want to hear about from
17 me?

18 **COMMISSIONER ARGENZIANO:** Well, do you agree with
19 her?

20 **MR. MCWHIRTER:** Yes, ma'am; absolutely. She's right
21 on the money.

22 **CHAIRMAN CARTER:** Commissioner Skop.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

24 Just a quick question to clarification of a point
25 that Mr. McWhirter raised. With respect to the assertion --

1 and I am, again, looking at the statement at the position
2 paper. He made a lot of the 33 percent reserve margin. Does
3 that statement take into account co-ownership or generating
4 asset retirement pursuant to Florida Statute 366.934?

5 **MR. McWHIRTER:** No, sir. And I think the answer to
6 this plant is co-ownership. I think the other utilities and
7 the municipalities in Florida ought to have the opportunity to
8 participate with this for the benefit of their customers. As
9 you know, JEA is already contracting with the Southern Company
10 for nuclear power out of Georgia, and that to me seems like a
11 terrible shame when we have got it right here in the state of
12 Florida that is available with this new transmission system for
13 JEA, and there ought to be a great encouragement to get the
14 munis on board and the other utilities on board so that the
15 statewide need for nuclear power can be addressed out of this
16 plant.

17 Now, I don't want to do anything to discourage
18 Progress Energy from going forward with the plant as they have
19 designed it. My only objection is to having the consumers pay
20 for that in advance, especially before the money has even been
21 spent and before the legislature has a chance to see the real
22 impact of the legislation that was enacted to see if the
23 homeowners in Florida can really tolerate these kind of
24 expenses. We need to share, share that cost statewide.

25 **COMMISSIONER SKOP:** And to that point, one quick

1 question, and then we will get to the procedural motion before
2 us. In the need determination that you mentioned, I wrote a
3 concurring opinion that goes to your concern about consumers
4 being asked to pay more -- for more capacity than should be
5 utilized.

6 So just two points in passing. First and foremost, I
7 believe that the legislature has directed the Commission to
8 allow cost-recovery pursuant to the nuclear statute, 366.93, as
9 you have mentioned. But also with respect to the concern that
10 you raised about having consumers pay for additional capacity,
11 again, in my concurring opinion I stated that I would fully
12 expect that any co-owner be expected to pay their full pro rata
13 cost share, including all amounts previously recovered under
14 the nuclear cost-recovery clause. So, again, that would
15 protect the consumers at least in my view. I'm not speaking
16 for the majority or what have you, but, you know, if you are
17 going to buy a piece of the pie, you are going to pay for the
18 whole thing. You are not going to get a discount.

19 So that, I think, alleviates part of the concern that
20 I thought I heard you express. With respect to the excess
21 reserve margin, you know, certainly your assertion does not
22 encompass what may happen in the future in terms of
23 co-ownership or the retirement of existing generating assets,
24 and I could use CR-1 and 2 coal plants, for example, that is
25 addressed in the same statute.

1 So, again, I just wanted to give you an opportunity
2 to respond real quick if you have any response. But some of
3 the concerns, I mean, I know we are going to get in a
4 procedural motion, but, again, we have been directed as a
5 Commission to decide certain things that have been decided, to
6 allow costs that have been decided, and, you know, I do tend to
7 agree to some point it seems to be an after-the-fact collateral
8 attack on prior orders of the Commission.

9 Now, I agree that there are some legitimate concerns
10 that need to be addressed on a forward going basis, but I think
11 we will get there in due time.

12 **MR. McWHIRTER:** Did you want me to respond to that?

13 **COMMISSIONER SKOP:** Sure, briefly.

14 **MR. McWHIRTER:** Well, the question is should
15 customers today advance money to build a power plant in
16 anticipation if there is joint ownership later on. The person
17 that lives in my house, if I'm still alive, maybe me, will get
18 the money back. That's nice, but it's a question of timing.
19 And I would suggest to you that the statutory system which you
20 have built regulation around is based on customers only paying
21 what they have the use -- and the idea that we pay for
22 something now, not just the return on investment, but the total
23 amount to be spent in anticipation that in the 10 or 15 years
24 from now there may be some fuel savings, or as part of the
25 plant is sold, maybe the person that lives in my house will get

1 a bit of a refund doesn't ring logical to me. And I respect
2 your logic, because you are very wise and perspicacious, but
3 that doesn't make a lot of sense.

4 **COMMISSIONER SKOP:** And to briefly address what you
5 said, I think Commissioner Argenziano as well as my other
6 colleagues have raised this many times. When it comes down to
7 policy, we are not the policymakers. We follow the statute. I
8 am an attorney, I follow the law. The law is what it is. It
9 is pretty clear on its face, 366.93 seems directly on point to
10 me. I know we have sole discretion over determination of need,
11 which we have done. And I agree that the issues you raise are
12 important. But in terms of advocating for change in how
13 cost-recovery is allowed, I think this is the wrong forum. We
14 are just following what the legislature has directed us to do.

15 You know, with respect to the statutory construction
16 argument, too, 366.93 seems, again, directly on point. I know
17 you are referring us to the other statute that says we have a
18 little bit more discretion. But, again, I just wanted to hear
19 and better understand the argument that is being articulated,
20 and I think there was one additional question.

21 **MR. MCWHIRTER:** Well, you are guided by the
22 legislature in 366.93, the one that allows the advanced
23 payments says cost included, but is not limited to all capital
24 investments. What you are doing in this proceeding is paying
25 for prospective investments during the year 2009, and you are

1 not going to check on the prudence of them until next November.
2 So it seems to me that perhaps in the public interest in these
3 trying times it might be wise to postpone this additional
4 burden on customers.

5 **COMMISSIONER SKOP:** And I think your point is well
6 taken. Again, trying to adhere to the statute, again, we have
7 the Commission rule, we have the statute to guide us. Again, I
8 think we have in previous situations tried to resolve some
9 tension between the statute and our rule. But with respect to
10 the prudence question that you raised, if prudence is not
11 rendered it's still subject to disallowance, and I use that
12 word very gingerly. But those costs, as was previously, I
13 believe, stipulated by the parties, including FIPUG, stipulated
14 to address prudence -- and correct me if I'm wrong, but
15 stipulated to address prudence next year of those costs.

16 **MR. MCWHIRTER:** I certainly agree for prudence next
17 year since there was no evidence of it this year. I didn't
18 agree that we would pay for it in advance, only that the
19 decision would be made later, and certainly after the money has
20 been spent. So I don't see any real problem with postponing it
21 until next year, and I didn't stipulate that we would pay for
22 it before prudence was determined.

23 **COMMISSIONER SKOP:** Thank you for that clarification.
24 Appreciate it.

25 **CHAIRMAN CARTER:** Thank you, Commissioners.

1 Commissioners, based upon the recommendation and
2 input from counsel, I am going to rule based upon Ms. Helton's
3 recommendation.

4 Commissioner Argenziano.

5 **COMMISSIONER ARGENZIANO:** Just a question for Mr.
6 McWhirter, because it is -- I guess what I'm trying to figure
7 out is where in the statute do you see that we can disallow
8 that up-front recovery?

9 **MR. MCWHIRTER:** I'd like to respond to that.

10 There is nothing in the statutes that tells you that
11 you must require customers to pay for any cost before the money
12 is spent. There is nothing in the statute that calls for that.
13 It happened back in the middle 1980s when Commissioner Cresse
14 was the dominant force on this Commission, and the Florida
15 Supreme Court eliminated the year-end rate base, and said you
16 had to use an average rate base in base rate cases.
17 Commissioner Cresse in his wisdom said, well, we will use a
18 test year that is a projected year.

19 There's nothing in the statute that permits a
20 projected year, and there's nothing in the statute that permits
21 a projected cost. We have gone along with it because it makes
22 some high degree of sense with respect to cost-recovery items
23 when you have volatile costs to go ahead and let the utility
24 collect its money as quickly as possible rather than postponing
25 it until after the costs have occurred. And we haven't fussed

1 about the volatile portion of fuel costs in the past. And I
2 think it is appropriate what the Commission did even though the
3 legislature didn't authorize it. The Commission back in
4 '86 did what it thought the legislature would think was
5 appropriate. The legislature has never even approved the fuel
6 cost-recovery clause, as you know. That was implemented by
7 Commission incentive and it was done properly. I have no
8 objection to the way it was done, and I think the legislature
9 by its inaction later has put its stamp of approval on it.

10 But what you are doing today with a very major cost
11 of the nuclear facilities, they are going to spend a billion
12 dollars in preconstruction construction over the next three
13 years, as they have told us, and you are going to ask customers
14 to pay for that before it is even spent, and the total cost
15 rather than the return, which is what the legislature had in
16 mind? I think that is going way too far.

17 **CHAIRMAN CARTER:** Commissioner Argenziano.

18 **COMMISSIONER ARGENZIANO:** Can staff respond to that
19 question?

20 **CHAIRMAN CARTER:** Ms. Helton or Ms. Bennett.

21 **MS. BENNETT:** I'm glad I was on the nuclear
22 cost-recovery clause docket, because most of this discussion is
23 in reference to issues that we have already decided in the
24 nuclear cost-recovery clause docket. I disagree with
25 Mr. McWhirter. I think the statute is very clear in your

1 responsibilities as the Commission to --

2 **COMMISSIONER ARGENZIANO:** Would you point to exactly
3 where in the statute, because I would like to flesh this issue
4 out. I would like to know what I have and don't have statutory
5 authority to do, and what I appear to think it does when I read
6 it, and if we can just point directly to it I would like to do
7 that, Mr. Chairman, if we can.

8 **CHAIRMAN CARTER:** You're recognized. No problem.
9 Staff.

10 **MS. BENNETT:** 366.932 is the beginning of it. It
11 says within six months after the enactment of this act, the
12 statute, the Commission shall establish -- you don't have any
13 choice, you have to establish by rule -- alternative
14 cost-recovery mechanisms for the recovery of costs incurred in
15 the siting, design, licensing, and construction of a nuclear
16 power plant, including new, expanded, or relocated electrical
17 transmission lines and facilities that are necessary thereto.
18 I'm going to skip a little bit. Such mechanism shall be
19 designed to promote utility investment in nuclear or integrated
20 gasification combined cycle power plants, and allow for the
21 recovery in rates of all prudently incurred costs and shall
22 include, but not be limited to, recovery through the capacity
23 cost-recovery clause of any preconstruction costs, recovery
24 through an incremental -- and it goes on.

25 So you have got specific direction. And the

1 Commission -- what is important is that the state legislature
2 recognized the existence of the capacity cost-recovery clause
3 in the statute, so they understand that it is a perspective.
4 That we are looking at a 2007, 2008, 2009. You are looking at
5 last years, this years, and next years when they were talking
6 about the capacity cost-recovery clause.

7 **MR. MCWHIRTER:** I would like to quickly respond to
8 that.

9 **CHAIRMAN CARTER:** Wait a second. Just hold on.
10 You're recognized.

11 **COMMISSIONER ARGENZIANO:** Mr. McWhirter, I just don't
12 see where what you are saying applies. I'm looking for it.

13 **MR. MCWHIRTER:** Let me help you. Let's look at what
14 she just read to you.

15 **COMMISSIONER ARGENZIANO:** 366.932.

16 **MR. MCWHIRTER:** What Ms. Bennett just read to you.
17 She read 366.93, Subsection 2, and it requires you to enact or
18 adopt a rule which cost-recovery mechanisms for the recovery of
19 costs. Now, the word that she didn't emphasize, but I want to
20 emphasize for you is costs incurred shall be -- such as, and
21 then they list some costs that were incurred.

22 What you are doing in this proceeding is not looking
23 at costs that have been incurred or costs that have been
24 determined to be prudent, but costs that they might spend in
25 2009. That's a lot different than the legislative mandate that

1 you have.

2 **COMMISSIONER ARGENZIANO:** Mr. McWhirter, hang on a
3 second. To that point, it does say costs incurred. These
4 costs have not been incurred. So if you have another
5 definition stuck in there somewhere that I don't see, if they
6 are not incurred are we supposed to do a Carnack and say that
7 the legislature thought these were to be incurred over a period
8 of time? I mean, there is a point there.

9 **MS. BENNETT:** There is a point that we also need to
10 consider that this is an attack on what occurred in the
11 09 docket. We are discussing now what we made decisions on in
12 the nuclear cost-recovery docket. So I want you to keep that
13 in mind as we discuss this.

14 **COMMISSIONER ARGENZIANO:** Wait a minute. While I'm
15 keeping that in mind, so you are saying if we did it wrong back
16 then, we shouldn't look at it now? Because obviously I have
17 been trying to look for that and thinking, and actually
18 probably read this a number of times, and it just didn't click
19 that way. Are you saying that because we did it that way
20 before that we shouldn't look at it now as cost incurred?

21 **MS. BENNETT:** I'm saying that he is collaterally
22 attacking an order that you, as a Commission, spent many days
23 and many hours of hearing and then a post-hearing
24 recommendation to think about and make a decision on in a
25 docket that is really not appropriate for this type of

1 consideration.

2 The order will be issued shortly on that docket. It
3 makes it very difficult, just from my standpoint, I mean, to be
4 called upon to go back through all of the history that we have
5 done on the nuclear cost-recovery docket and answer those
6 specific arguments in the fuel docket is a little different.

7 But to answer your question on the incurred costs, it
8 is the rule that also applies to how we consider and put those
9 costs through. It is not just the statute, it is the statute
10 and the rule that we adopted because we had to, because the
11 state legislature told us to adopt the rule, and so this is how
12 we did it.

13 **COMMISSIONER ARGENZIANO:** Mr. Chairman, with all due
14 respect, and I was part of that, so I obviously didn't get that
15 part answered or it wasn't brought up at that time. With all
16 due respect to rulemaking, the statute to me is the primary
17 thing that I am looking at. And I understand, and I'm not a
18 lawyer, and thankfully so because it would take me a lot longer
19 to say what I want to say or get to the point. When I listen
20 to some of the lawyers here, you guys are really good, but my
21 point is if it does say costs incurred, then Mr. McWhirter is
22 right regardless of a rule. Costs incurred. These costs are
23 not incurred. It is just blank, point blank simple to me, and
24 I need more than because we do it in the rule, just being an
25 average person trying to understand what that means. And he

1 just brought up a very good point. If it is not incurred, how
2 are we then just because we said the rule -- in the rule now we
3 have disregarded what the statute said. And you are shaking
4 your head no, but in layman's terms, in the everyday Joe the
5 plumber, Nancy the whatever, can you tell me why he doesn't
6 have a good point there.

7 **MR. BURNETT:** Commissioner, I can.

8 **CHAIRMAN CARTER:** Hang on a second. I'm going to
9 give a stab at it and then we will bring on -- I think
10 fundamentally is that it is the forum. That in this matter, as
11 I read what staff is saying, is that Mr. McWhirter is trying to
12 collaterally attack an issue that has already been litigated
13 before us. We have already ruled on that, and he could have
14 made whatever objections that he wanted to make during that
15 time, and this docket is a separate --

16 **COMMISSIONER ARGENZIANO:** I understand that.

17 **CHAIRMAN CARTER:** And I think that that is the
18 threshold you will have to reach to say whether or not you are
19 in the right forum at the right time. And I think that it is
20 kind of like -- I don't want to use inflammatory language, but
21 it is trying to hijack this docket.

22 **COMMISSIONER ARGENZIANO:** I get that part of it, but
23 it still doesn't make it right.

24 **CHAIRMAN CARTER:** That's a threshold, though. The
25 threshold is that you have got to be in the right place at the

1 right time.

2 **COMMISSIONER ARGENZIANO:** That's why we never get
3 anything done in the legal realm. I'm sorry. And with all due
4 respect, again, I understand that, and I understand the
5 difficulty that creates. But in my mind I can't say that that
6 is not what it says if that is what it says. And if we are
7 going to move forward and impose or possibly impose some costs
8 upon the consumer out there, then I want to know that we are
9 following the statutes and to try to lessen the burden as much
10 as possible and get things done for the company, too. But, I
11 am not going to disregard what the statute says.

12 To be honest with you, I have looked at that a number
13 of times and it just didn't stick with me that way. I looked
14 at it as we shall allow these, and I didn't think about the
15 projected costs that were involved. And so I'm stuck then
16 because of the way the forum difficulty is facing, you know,
17 that we are facing.

18 **CHAIRMAN CARTER:** And also, Commissioner, just in the
19 process, and I'm not trying to shut off debate, I'm just kind
20 of getting my thoughts out before I forget them, is that in the
21 process of that, looking at the statute and developing the
22 rules, all of the parties had an opportunity to be heard. We
23 went through the process. We took feedback, we took testimony,
24 we took information, we looked at the statute, we went through
25 the process on the interpretation of that. We went through the

1 rule. Any party that had any concerns or whatsoever on that.
2 That was the time to attack and say you misread the statute.

3 **COMMISSIONER ARGENZIANO:** I obviously did, too.

4 **CHAIRMAN CARTER:** Yes, but I'm saying that the
5 parties had a vested interest in it, and they were a party,
6 too.

7 **COMMISSIONER ARGENZIANO:** Sure.

8 **CHAIRMAN CARTER:** And they chose, for whatever
9 reason, not to do that. But after the cattle have left the
10 barn, you know, it's useless to close the door. And I don't
11 mean to use that as a joke, but the forum that we are in now
12 doesn't lend itself to what Mr. McWhirter is trying to do
13 because he should have done that at a different forum. Where
14 we are now is based upon the law as is based upon -- all of
15 these representations are made upon the statute and the rules
16 as we have gone further from here, and so we are a little
17 further down the road.

18 Now, still if he thinks it is of that magnitude that
19 the PSC totally misread the statute, I think that the Florida
20 Supreme Court would be the proper jurisdiction for that matter.

21 **COMMISSIONER ARGENZIANO:** Well, then I would
22 probably --

23 **MR. McWHIRTER:** Mr. Chairman, let me hasten to say I
24 don't think you misread the statute. I don't think you did
25 wrong, except perhaps today misinterpreting the impact of your

1 vote, we don't have an order yet in the 09 proceeding. People
2 came in and testified that that was the amount of money they
3 were going to spend and you said, okay, that's the amount of
4 money you are going to spend. The 09 docket after the need
5 proceeding only dealt with the amount they said they were going
6 to expend in 2009. It didn't say that customers were -- that
7 proceeding did not set rates. Now, you're setting rates, and
8 you are setting rates that are to be fair, just, and reasonable
9 as Mr. Wright just slipped me a note.

10 In our opinion, it is not fair, just, and reasonable
11 to charge people money that they are going to spend in
12 anticipation that they won't sell part of the unit somewhere
13 else and that they may not change their mind about what they
14 are going to spend. Well, I'm not going to go any further on
15 that.

16 **CHAIRMAN CARTER:** Let's hear from Mr. Burnett.

17 **MR. MCWHIRTER:** I'm not collaterally attacking what
18 they said they were going to spend, which you have voted on in
19 09.

20 **CHAIRMAN CARTER:** Mr. Burnett.

21 **MS. BENNETT:** Thank you, sir. I'll be brief.

22 And, Commissioner Argenziano, I think I can offer you
23 a Joe-the-plumber explanation. All costs always have to be
24 incurred, and I think the legislature has always recognized
25 that in any of the statutory clauses, the ECRC, the ECCR, and

1 the fuel clause. The Commission has recognized that.
2 Ultimately, we, as a utility, can never collect a cost that we
3 don't actually incur. But by specifically referencing the
4 capacity clause, as Ms. Bennett recognized, the legislature
5 understands and has given you the discretion not only in this
6 matter, but in all of your other clauses that you can have a
7 projected basis, you can have an actual, and you will have a
8 true-up. So ultimately through the process of having a
9 projection, an actual, and a true-up, the customers will only
10 pay for costs that are ultimately incurred. So those go
11 perfectly hand-in-hand together.

12 So that is the process by which you are allowed to
13 say, utility, you may recover these costs on a projected basis.
14 But if you don't actually incur them in the true-up process,
15 you are going to make a refund, you are going to make it
16 subject to paying interest, as well. So ultimately all costs
17 will be incurred. I think it is somewhat disingenuous for Mr.
18 McWhirter especially to suggest that this is not a process that
19 has been long recognized in all of your statutory clauses, and
20 you have the absolute discretion to make a rule, especially
21 with a reference and a mandate from the legislature to do this
22 in the capacity clause.

23 **COMMISSIONER ARGENZIANO:** But then he is also correct
24 in saying that it doesn't have to be the total projected cost.

25 **MR. BURNETT:** I disagree. No, ma'am, the costs are

1 what they are and they are subject to --

2 **COMMISSIONER ARGENZIANO:** But you are only
3 anticipating these costs. You don't know what they are. They
4 are projected.

5 **MR. BURNETT:** Yes, ma'am, but that is the same
6 process in all the clauses. That is why we have the true-up.
7 Ultimately in the true-up it is going to be what it is. And
8 that works both ways. That works a lot of times to the
9 customers' benefit just as well. But the true-up ultimately is
10 what it is, and the customer is always made whole. If it cuts
11 against the customer, the customer has a refund interest with
12 interest, as well.

13 **COMMISSIONER ARGENZIANO:** The only difficulty that I
14 see there, Mr. Chairman, is that we are in a time of great
15 difficulty with people being able to afford something that
16 later on they may not be here to get back if it is not the
17 exact amount. So I guess that -- and you did help clear that
18 up, and I appreciate that, but I guess Mr. McWhirter's points
19 go duly noted, also. It's not easy. But, thank you.

20 **MR. BURNETT:** Yes, ma'am. Thank you.

21 **CHAIRMAN CARTER:** Well, Commissioners, we have kind
22 of beat a dead horse to sleep on this issue. We will consider
23 that matter, but as we proceed further we will look at the
24 qualified and competent evidence on any issue before us today.

25 Let's do this. We are in the process now to -- we

1 have kind of ruled on all the -- there are no more preliminary
2 matters, correct?

3 **MS. BENNETT:** Staff does not have any.

4 **MR. BURNETT:** No, sir.

5 **CHAIRMAN CARTER:** Any of the parties? None. Okay.

6 Let's do this, Commissioners, prior to me swearing in
7 the witnesses and moving forward. Let's give our court
8 reporter a break and then we will start anew.

9 **MR. BUTLER:** Mr. Chairman.

10 **CHAIRMAN CARTER:** Mr. Butler.

11 **MR. BUTLER:** John Butler for FPL. When would it be
12 appropriate in your procedural posture for the docket for FPL
13 to make its opening statement? I know that we have made
14 arrangements for the other utilities to go before us in order,
15 and we could either do it right when we come back, or if you
16 would prefer we can wait until we get to the FPL witnesses, but
17 I just wanted to raise that so we can be clear on the timing.

18 **CHAIRMAN CARTER:** Mr. Burgess.

19 **MR. BURGESS:** Yes. I have a question more or less
20 along the same lines as Mr. Butler. I have a preliminary
21 matter that I would like to raise and have the Commission
22 consider, but it applies only to Florida Power and Light, and I
23 was of the understanding that you were going to move through
24 company-by-company, and so I was holding back on that.

25 **CHAIRMAN CARTER:** You are correct.

1 **MR. BURGESS:** Okay, thank you.

2 **CHAIRMAN CARTER:** Hold your fire.

3 Let's do this, Commissioners, so we can kind of get
4 some of this wheat and chaff separated with this stack in front
5 of us here and the ones behind us, is that we will take a break
6 and we will come back and we'll start, we'll swearing in the
7 witnesses and we will proceed with Progress Energy's case.
8 After we complete that matter, then we will go with the other
9 companies, and FPL will be batting cleanup today. So we will
10 do it in that manner.

11 I guess I better look at the clock on the wall that
12 you guys can see. I'm saying at five of we will be back.

13 (Recess.)

14 **CHAIRMAN CARTER:** We are back on the record.

15 And as I said when we left, we are getting ready for
16 opening statements. But just before we do, for the record, I
17 did rule on the motion based upon the recommendation from our
18 counsel. I accepted the recommendation of our counsel, and I
19 ruled based upon her recommendation, so, therefore, the motion
20 for the motion in eliminate is denied.

21 You're recognized.

22 **COMMISSIONER ARGENZIANO:** Not to belabor the point,
23 but I have to express, in reading the statute -- and, first of
24 all, I want to say I wasn't here for the rulemaking. It was
25 April '07, so I wasn't here for that, so I have no idea what

1 the dialogue was in the rulemaking. But to make it perfectly
2 clear, and not being an attorney, understanding the forum,
3 understanding all of that, that is not my -- I understand it is
4 a difficulty, but my concern goes down to nuts and bolts of the
5 statute. And what I don't see in 366.93 under -- when you
6 point to the -- I'm sorry, (2)(a), as the recovery through the
7 capacity cost-recovery clause or any other -- or any
8 preconstruction costs that -- that is the fuel clause that
9 allows the projection. But what I don't see is a statutory
10 definition of what the capacity cost-recovery clause is, and so
11 as not having no statutory definition, and not seeing where it
12 expressly says one way or the other whether I can say -- or
13 whether I must give total projection costs, so I don't even --
14 if we argue through the fuel clause that it says that that
15 language allows projection through the fuel clause, then having
16 no statutory definition of the capacity cost-recovery clause,
17 number one, is a problem. And, number two, for me, does not
18 anywhere expressly say that I have to grant in total any
19 projected costs, or does it prohibit me from that. So I have
20 no direction there other than feeling extremely uncomfortable
21 about a rule that I don't think has -- or may not comply with
22 the intent of the statute, because I really don't know.

23 Reading the statute, I do not see where it prohibits
24 me from saying that I can grant less than the projected cost or
25 prohibits me from doing that. So in expressing that, I really

1 do feel very uncomfortable with the rule, understanding that
2 this Commission had set in place that rule, not knowing the
3 particulars of the rule, and that is the reason of my
4 questioning. Because I just don't see where it prohibits me or
5 denies me -- I mean, prohibits me or grants the ability for me
6 to do one or the other. So I am still left scratching my head
7 saying, okay, if I do not feel like that a projected cost,
8 according to the statute, has to be granted in full, I still
9 don't have an explanation as to why I can't, or Mr. McWhirter
10 can't bring up the point of saying, hey, let's not give the
11 whole thing now. I don't see where the direction is.

12 And just by going back to the rule, I just don't get
13 how you get there because you have a rule that may not fully
14 comply or does not reflect the statute. I don't know if I'm
15 being articulate enough, but I hope somebody out there
16 understands what I'm saying, because it's very clear to me.

17 **CHAIRMAN CARTER:** Commissioner McMurrian.

18 **COMMISSIONER McMURRIAN:** Commissioner Argenziano, I
19 am trying to help here just to make sure I am clear, too. I
20 wanted to ask the staff with respect to Issue 29A, which I
21 believe is the issue that Mr. McWhirter took a position on that
22 Progress Energy does not agree with, and perhaps other parties,
23 as well, but that issue remains for us to decide at the
24 conclusion of this case. Am I right?

25 **MS. BENNETT:** Yes. And that issue is did they

1 correctly apply the information from that order in this clause.

2 **COMMISSIONER McMURRIAN:** So the ruling on the motion
3 in limine in no way precludes the Commission from taking
4 whatever position it concludes is the right one at the
5 conclusion of the hearing on Issue 29A. So we are not in any
6 way -- and I'm not sure if this was unclear or not, but I just
7 wanted to make sure I'm clear that we are not precluded from
8 hearing the evidence that is put on, and the cross examination
9 during the course of the hearing and deciding whatever we feel
10 is appropriate on 29A based on reading of the statute and the
11 information we get at the conclusion of the hearing.

12 **MS. BENNETT:** That's correct.

13 **COMMISSIONER McMURRIAN:** I don't know if that helps.

14 **COMMISSIONER ARGENZIANO:** Not precluded from either
15 granting part or all of the projected costs?

16 **MS. HELTON:** Let me speak for Ms. Bennett. I think
17 Ms. Bennett was trying to ask Commissioner McMurrian -- or
18 answer Commissioner McMurrian's question about whether
19 Mr. McWhirter could ask questions with respect to Issue 29A
20 under the ruling of the Chairman, and Ms. Bennett's answer was
21 yes, Mr. McWhirter can ask questions. They are always going to
22 be subject to the appropriate objection at that time.

23 **COMMISSIONER ARGENZIANO:** That's fine. That point is
24 fine with me. But the other point I was trying to make was
25 the -- I think staff had indicated to me that you cannot on the

1 other issue of -- and whether I am going one way or the other
2 it is to clarify to me what we have the ability to do or not to
3 do, whether I take that even into consideration. And then the
4 point is if you point to the statute and tell me that, you
5 know, Mr. McWhirter is wrong about the incurred -- the recovery
6 of costs incurred, and then point to the fuel clause that
7 allows projection, that brings on another question as to what
8 is the statutory authority of -- I mean, the definition of
9 capacity cost-recovery. And then does it allow or does it not
10 allow to give part or in whole. And that is what I am probably
11 looking for as an answer, you know, somewhere down the line. I
12 understand you have a rule. I wasn't here for the rule, and I
13 didn't have the benefit of the arguments while you were setting
14 the rule.

15 **CHAIRMAN CARTER:** That will be --

16 **COMMISSIONER ARGENZIANO:** I think what I heard was I
17 cannot do what I think the statute says I can do, and that's
18 where I'm having a hard time.

19 **MS. BENNETT:** I think I'm understanding you to say
20 could the Commission postpone the projection portion of the
21 order in the nuclear cost-recovery clause; do you have that
22 authority in this docket? Is that my understanding of your
23 question?

24 **COMMISSIONER ARGENZIANO:** Not necessarily postponing
25 it. Basically, finding out if we have the authority to limit

1 the amount of the projection cost upfront. And I'm not saying
2 that is what I want to do. I just want to know what is the
3 avenues we have in going forward with this point that Mr.
4 McWhirter brings up.

5 **MS. BENNETT:** I would ask for permission to have some
6 time at lunch to be able to give you a better and fuller answer
7 of that question, because I think it's going to take me a
8 little bit of research and review of the nuclear rule, and the
9 capacity cost-recovery dockets, and some consultation with
10 counsel.

11 **COMMISSIONER ARGENZIANO:** That's basically what I
12 need. That's what I'm looking for. Thank you.

13 **CHAIRMAN CARTER:** And my ruling does allow that issue
14 to be discussed on 29A. With that, let's kind of give a
15 heads-up to the parties. We are in the Progress portion, and
16 those parties that have been identified on that, we are ready
17 to proceed with the Progress Energy case. And we are going to
18 proceed with opening statements of the parties, and I'm trying
19 to see my notes. Was it 30 seconds that we allowed for opening
20 statements? I can't find them. Can you help me, Ms. Bennett?

21 **MS. BENNETT:** It was ten minutes.

22 **CHAIRMAN CARTER:** Oh, I tried. I really did.

23 Mr. Burnett, you're recognized.

24 **MR. BURNETT:** I will add to the clock right now. No
25 opening statement, sir.

1 **CHAIRMAN CARTER:** Okay. Mr. Burgess.

2 **MR. BURGESS:** No opening.

3 **CHAIRMAN CARTER:** Mr. Wright.

4 **MR. WRIGHT:** No opening statement, Your Honor.

5 **CHAIRMAN CARTER:** Mr. McWhirter.

6 **MR. MCWHIRTER:** I'm sorry, Mr. Chairman.

7 **CHAIRMAN CARTER:** Of course. I knew that. I fully
8 expected it.

9 **MR. MCWHIRTER:** I've got three issues that I think
10 are worthy --

11 **CHAIRMAN CARTER:** But you have only got ten minutes,
12 though.

13 **MR. MCWHIRTER:** Okay. I'm not going to take that
14 long.

15 **CHAIRMAN CARTER:** Thank you.

16 **MR. MCWHIRTER:** I have three issues that I think are
17 worthy of your consideration. And the first has to do with an
18 order you issued last year which says that to determine whether
19 there is a midcourse correction, we no longer deal with
20 comparing actual costs year-to-date to the projected costs that
21 were given in these kinds of proceedings in November of each
22 year, but you measure projected revenues to projected costs.
23 And so what happened in July of this year was the utilities
24 made new projections and justified midcourse corrections.

25 What we have got here in this proceeding is actual

1 costs for 2007/2008, and then we have got projected costs for
2 2009 in the fuel proceedings, and the projections were made in
3 August and September. Florida Power and Light projected that
4 the cost of natural gas would be \$9.95 per MCF. Progress
5 Energy projected \$9.75 per MCF. Yesterday the price went up
6 again and it's now \$7 per MCF on the NYMEX.

7 What we have is a substantial change in cost since
8 the original projections were made in September. My first
9 point is that maybe things have happened in the last three
10 months that justify your requiring the utilities to make new
11 cost projections. Florida Progress did it, and they filed
12 projections on October 13th. And Progress Energy filed new
13 projections, but those projections still have relatively high
14 numbers in them.

15 And so the question is these costs as the year goes
16 on may fall. And apparently in our economy today the demand
17 for fossil fuels has fallen a lot and costs have fallen a lot.
18 So you are going to set factors today, and those factors will
19 be in place for the rest of the year unless the utility makes
20 new projections. There's no requirement that the utilities
21 make new projections. So unless the utilities make new
22 projections, the factors that you set today will go on for the
23 rest of the year.

24 My first suggestion to you is that you direct the
25 utilities to make new projections now for what they see based

1 upon what has happened between their original projections in
2 September and the costs as they are projected on the futures
3 market in November.

4 The second issue I have is based upon a concern
5 about -- it happened in the Florida Power and Light midcourse
6 correction. It projected that its annual sales -- it sells
7 about -- it originally projected it was going to sell
8 105 million megawatt hours of electricity. And in June, it
9 filed a petition for a midcourse correction and said we think
10 customers are going to start conserving as a result of
11 increased prices, and our sales are going to fall off by
12 5 million megawatt hours.

13 Sales haven't fallen off in that amount, but in their
14 petition they said because sales have fallen off, we are going
15 to have to raise our rates \$329 million. And that put a big
16 question mark in my mind about our conservation programs. If
17 we are going to encourage people to conserve electricity, and
18 if they conserve costs are going to go up, there is something
19 that is wrong. So I raised an issue in this case, are there
20 fixed costs in the fuel clause that cause costs to go up when
21 people conserve. And so we have deposed the witnesses that
22 presented testimony, and it doesn't look like there is a whole
23 lot of fixed costs in these fuel costs, and that's very
24 perplexing. So one of the things we are going to ask about is
25 why is it that costs go up when sales go down. If you are

1 buying less fuel, the cost ought to go down proportionately,
2 not up.

3 And the third point I had, of course, was the nuclear
4 plant issue. And there is a big hunk of money that is going to
5 be charged to customers based upon anticipated expenditures,
6 and whether you go with incurred costs or projected costs is a
7 big deal. I think the legislature told you to go to incurred
8 costs. We have used projected costs in other things, and the
9 people I represent have not complained about that, because
10 there is some reasonableness in the approach, because it did
11 away with regulatory lag.

12 But I think in this proceeding it has gotten to an
13 outrageous point. Something like executive compensation.
14 People are paying too much -- are being paid too much, and
15 that's fine, but when a utility comes in and asks for a whole
16 lot of money in a different kind of procedure, the question is
17 do we want to deal with that on projections or do we want to
18 take other things into consideration. And I think there are
19 other things that you can take into consideration in making
20 your final determination.

21 I won't tell you what Progress Energy told the
22 legislature the increased costs would be when it sought this
23 legislation, but I don't think anybody anticipated it would be
24 400 million in 2009, another additional 400 million in 2010,
25 and an additional 400 in 2011. These are big rate increases

1 for a utility that sells 40 million kilowatt hours a year -- or
2 megawatt hours a year. That's ten bucks each year just on that
3 particular item.

4 So is there some other way that we can deal with
5 these projections that are still in keeping with the
6 legislative mandate to encourage nuclear plants, which I would
7 like to see encouraged, but still not have too much of an
8 adverse impact on customers.

9 So those are the three things that are of interest to
10 me. And as you see, I don't understand most of them, so I hope
11 that the witnesses that we have today will give us the
12 explanation that justifies the amount of money they want.
13 Thank you.

14 **CHAIRMAN CARTER:** Thank you, Mr. McWhirter.

15 **MR. McWHIRTER:** Did I make it within ten minutes?

16 (Laughter.)

17 **CHAIRMAN CARTER:** Well, no. Mr. Brew.

18 **MR. BREW:** Thank you, Mr. Chairman.

19 And I will try not to repeat what Mr. McWhirter has
20 been through, but I want to be very brief, and starting by a
21 statement of the obvious which is that this is the first time
22 in which the Commission has dealt with recovering the nuclear
23 early construction costs in rates from consumers. And Murphy's
24 law being what it is, it couldn't have come at a worst time.
25 Particularly in this year we are looking at two body blows for

1 consumers in terms of the rising of fuel costs increase driven
2 in part, ironically, by the expected outage of the existing
3 nuclear unit combined with \$418 million in nuclear
4 cost-recovery.

5 And our concern is that in part here what we are
6 going to ask to be addressed is that -- and without getting
7 into the earlier discussion at all, is that we addressed the
8 issues that should have been addressed in the need docket. We
9 addressed the issues that should have been addressed in the
10 cost-recovery docket. The issues relating to, in this docket,
11 of how do you treat the \$418 million is properly here. But
12 what we are going to focus on is actually asking the Commission
13 to put some flesh on the bones of what Commissioner Skop put in
14 his concurring opinion on the need case, which is that in the
15 need case the company's witnesses described that they were
16 exploring joint ownership in the units. And to the extent that
17 that does, you have to remember that we are going to be billed
18 for it now, and the \$418 million is being entirely to Progress
19 Energy retail loads.

20 And so to the extent that slacking demand -- Progress
21 announced on Friday that they have lost 2,000 customers.
22 Changes in need projections, other factors come into play. The
23 Commission in this docket where they are approving the rates
24 needs to make sure that Progress' retail load are adequately
25 protected and fully reimbursed to the extent that ownership or

1 long-term capacity rights to these units go to somebody else.

2 Thank you.

3 **CHAIRMAN CARTER:** Thank you. Mr. Twomey.

4 **MR. TWOMEY:** Yes, sir, Mr. Chairman, Commissioners.
5 Mike Twomey. As you all are well aware, unless the numbers
6 change, my client, AARP, has over 3 million members in this
7 state. On my client's behalf, I want to adopt the comments
8 made by Mr. McWhirter and Mr. Brew, as well. And I want to
9 expand upon them just briefly. And I want to start by laying
10 the foundation, which you all know, in these recovery clauses
11 we are not talking about a utility not getting money that was
12 reasonably and prudently expended or incurred, to use that
13 word.

14 It's a timing issue. So, for example, if in these
15 projections and whatever clause charges you approve for
16 January 1st, if they aren't sufficient and the company spends
17 more money next year, then they will get it back from the
18 customers the following year along with interest at the
19 commercial paper rate. So it is not an issue of them being
20 derived of any of this money. And that is true with all of
21 these charges, whether it is the fuel, the conservation, and
22 with the nuclear cost-recovery charge that we are addressing
23 for the first time this year.

24 Now, that being the case, I would urge you in this
25 environment particularly, or suggest to you that you should be

1 looking for every possible excuse to reasonably limit the
2 amount of the charges that you approve effective January 1st.
3 It is a separate deal of sorts, but we were just down in Tampa
4 and Winter Haven the last week or so, and you heard from real
5 live customers who were having difficulty paying the bills as
6 they are now, the base rates, the current fuel charges.

7 People are hurting at every turn. Whether it is
8 foreclosures, insurance costs, property, and the like. Job
9 loss, that type of thing. So you should be looking for every
10 possible reason to reduce these charges within reasonable
11 bounds. So with respect to the fuel, as Mr. McWhirter said,
12 the companies have made projections that are arguably outdated
13 given changes in the market. We have seen gasoline fall from
14 \$4 per gallon or close to it down to 2-whatever it is now,
15 2.20, or whatever. Oil per barrel has gone from 140 or
16 whatever it was down to 63.

17 I'm not suggesting that those necessarily translate
18 to these companies' costs for next year, but they could. And
19 as Mr. McWhirter suggested, you ought to have them make new
20 projections. And if the new projections suggest that they
21 don't need as much money and to take as much money the next 12
22 calendar months from the customers of these utilities, my
23 client's members, or anybody else who may be on the margins,
24 then you ought to be able to -- you ought to reduce those
25 charges as much as you reasonably can under the new

1 projections. You ought to require them to do that. Reduce the
2 charges as much as possible.

3 The same is true with the early cost-recovery for the
4 nuclear plants. No one is suggesting that once the monies are
5 spent next year that the company shouldn't have recovery of
6 those monies. Mr. McWhirter has raised the possibility of
7 reducing the amount that you would approve starting January 1st
8 by what their reserve margin could be under the Commission's
9 prior policy versus what it is going to be. That would give
10 you an opportunity, if you took it, to reduce the \$11.40 that
11 otherwise would appear on the monthly bills of a customer for
12 Progress that only uses 1,000 kilowatts per month, which you
13 know is below average, so that the impact is going to be higher
14 for the average customer.

15 If they spend that money -- if you made the
16 adjustment suggested by Mr. McWhirter, then the company would
17 have a portion of it, half perhaps. If they spent more, as
18 they, in fact, projected, then they would get it the next year
19 with interest. So, again, I am just suggesting that given the
20 dire straits that many of the consumers in this state are
21 clearly suffering, you should consider wherever possible
22 reducing these charges that you approve January 1st where it is
23 reasonable and prudent given the evidence before you, or that
24 could be brought before you with new projections, and I would
25 encourage you to do that. Thank you.

1 **CHAIRMAN CARTER:** Thank you, Mr. Twomey.

2 In this matter we are dealing with Progress Energy.
3 Are there any other intervenors related specifically to the
4 Progress case? Okay. So we have disposed of our opening
5 statements. Would all the witnesses in this case, would you
6 please stand and raise your right hand so we can swear you in.

7 **COMMISSIONER EDGAR:** Mr. Chairman, before we do that,
8 may I?

9 **CHAIRMAN CARTER:** You're recognized, Commissioner
10 Edgar.

11 **COMMISSIONER EDGAR:** Thank you. I would just like to
12 say -- and, of course, I'm only speaking for myself. I have no
13 idea how my fellow Commissioners feel about this, of course,
14 but I, quite frankly, would have appreciated the courtesy of
15 the opportunity to hear from the other parties for an opening
16 statement. We have reams and reams and reams of testimony, we
17 have numerous witnesses still to come, and I am looking forward
18 to hearing from them as the actual experts, but because we do
19 have so much before us, the opportunity to have heard the other
20 parties highlight some of those points that they think are
21 useful in these deliberations would have been very useful to
22 me.

23 Thank you.

24 **CHAIRMAN CARTER:** Anything further from the bench?
25 Hearing none -- oh, yeah. I just thought about something. I

1 probably didn't say anything to you guys about lunch, did I?
2 We will cross that bridge when we come to it.

3 Those witnesses in the Progress matter, would you
4 please stand and raise your right hand.

5 (Witnesses sworn.)

6 **CHAIRMAN CARTER:** Thank you. You may be seated.
7 Mr. Burnett.

8 **MS. BENNETT:** Mr. Chairman.

9 **CHAIRMAN CARTER:** Ms. Bennett, yes. Am I moving too
10 fast?

11 **MS. BENNETT:** Just a little bit ahead. We need to
12 enter the Comprehensive Exhibit List and Staff's Composite
13 Exhibits 2 and 3.

14 **CHAIRMAN CARTER:** Show it done without objection.
15 (Exhibits 1, 2, and 3 admitted into the record.)

16 **MS. BENNETT:** And also Exhibit 52, which was the
17 additional stipulations.

18 **CHAIRMAN CARTER:** That's right, the stipulation as it
19 relates to this. Without objection, show it done.

20 (Exhibit 52 admitted into the record.)

21 **CHAIRMAN CARTER:** Any further preliminary matters
22 before we --

23 **MS. BENNETT:** No, sir.

24 **CHAIRMAN CARTER:** Mr. Burnett, before you call your
25 witness, remember what I ruled on about whether or not those

1 would be stipulated to. If we don't need those witnesses, you
2 know, let it be known at this point in time and then we will go
3 with the witnesses that we actually need. It just was kind of
4 ragged at the beginning, so that's why I wanted to kind of --
5 but you remember my ruling on that.

6 **MR. BURNETT:** Yes, sir, I do. And to do exactly what
7 you are suggesting, sir, I would suggest that we take
8 Ms. Olivier. She is the only remaining witness that wouldn't
9 be touched by the stipulations. Mr. McCallister and
10 Mr. Garrett would be subject to excusal if the Commission did
11 not have questions for them, but Ms. Olivier is not eliminated
12 by the stipulations, so if we take her first and you didn't
13 have any additional questions --

14 **CHAIRMAN CARTER:** Excellent. Let's do that.

15 **MR. BURNETT:** Thank you, sir. We would call
16 Ms. Olivier.

17 **CHAIRMAN CARTER:** One second, Ms. Olivier, before you
18 get going there. You may proceed.

19 **MR. BURNETT:** Thank you, sir.

20 MARCIA OLIVIER

21 was called as a witness on behalf of Progress Energy Florida,
22 and having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BURNETT:

25 Q Good afternoon, Ms. Olivier. Will you please

1 introduce yourself to the Commission and provide your business
2 address.

3 **A** Good afternoon, Commissioners.

4 My name is Marcia Olivier, and my business address is
5 299 First Avenue North, St. Petersburg, Florida 33701.

6 **Q** And, Ms. Olivier, I believe I just saw you be sworn,
7 is that correct?

8 **A** Correct.

9 **Q** Okay. Who do you work for and what is your position?

10 **A** I work for Progress Energy Florida, and my position
11 is Supervisor of Regulatory Planning Strategy.

12 **Q** And have you prefiled direct testimony and exhibits
13 in this proceeding?

14 **A** Yes, I have.

15 **Q** And do you have a copy of your prefiled testimony and
16 exhibits in this proceeding with you today?

17 **A** Yes, I do.

18 **Q** Do you have any changes to make to your prefiled
19 testimony and exhibits?

20 **A** No, I do not.

21 **Q** If I asked you the same questions in your prefiled
22 testimony today, would you give the same answers that are in
23 your prefiled testimony?

24 **A** Yes.

25 **MR. BURNETT:** Mr. Chairman, we would request that the

1 prefiled testimony be entered into the record as if read today.

2 **CHAIRMAN CARTER:** The prefiled testimony of the
3 witness will be entered into the record as though read.

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1 **PROGRESS ENERGY FLORIDA**

2 **DOCKET No. 080001-EI**

3 **Fuel and Capacity Cost Recovery**
4 **Estimated/Actual True-Up Amounts**
5 **January through December 2008**

6 **DIRECT TESTIMONY OF**
7 **MARCIA OLIVIER**

8
9 **Q. Please state your name and business address.**

10 A. My name is Marcia Olivier. My business address is 299 1st Avenue
11 North, St. Petersburg, Florida 33701.

12
13 **Q. By whom are you employed and in what capacity?**

14 A. I am employed by Progress Energy Service Company, LLC as
15 Supervisor of PEF Regulatory Planning Strategy.

16
17 **Q. Have you previously filed testimony in this docket?**

18 A. No, I have not filed testimony in this docket.

19
20 **Q. Please provide a brief outline of your educational background and**
21 **business experience?**

22 A. I received a Bachelor of Science degree in Finance in 1991 and a
23 Bachelor of Science degree in Accounting in 1995 from the University of
24 South Florida. I have worked for Progress Energy for seventeen years,
25 holding various positions in Accounting, Tax and Regulatory Planning. I

1 have been in my current role for one year, and I am responsible for the
2 fuel, capacity, environmental and energy conservation cost recovery
3 clause estimated/actual true-up and projection filings. My
4 responsibilities also include rate case filings and various strategic
5 analyses.

6
7 **Q. What is the purpose of your testimony?**

8 A. The purpose of my testimony is to present, for Commission approval,
9 Progress Energy Florida's (PEF or the Company) estimated/actual fuel
10 and capacity cost recovery true-up amounts for the period of January
11 through December 2008.

12
13 **Q. Do you have an exhibit to your testimony?**

14 A. Yes. I have prepared Exhibit No.__(MO-1), which is attached to my
15 prepared testimony, consisting of two parts. Part 1 contains Schedules
16 E1-B through E9 which contain the calculation of the Company's 2008
17 estimated/actual fuel and purchased power true-up balance and the
18 supporting calculations. Part 2 contains the Company's 2008
19 estimated/actual capacity true-up balance and supporting calculations.
20 The calculations in my exhibit are based on actual data from January
21 through June 2008 and estimated data from July through December
22 2008.

FUEL COST RECOVERY

1
2 **Q. How was the estimated true-up under-recovery of \$225,094,914**
3 **shown on Schedule E1-B, sheet 1, line 20, developed?**

4 A. The estimated true-up calculation begins with the actual under-recovered
5 balance of \$31,669,749 taken from Schedule A2, page 2 of 2, line 13, for
6 the month of June 2008. This balance plus the estimated July through
7 December 2008 monthly true-up calculations comprise the estimated
8 \$225,094,914 under-recovered balance at year-end. The projected
9 December 2008 true-up balance includes interest which is estimated
10 from July through December 2008 based on the average of the
11 beginning and ending Commercial Paper rate applied in June. That rate
12 is 0.203% per month.

13
14 **Q. Does this ending true-up under-recovered balance incorporate the**
15 **additional \$106 million midcourse correction revenues from August**
16 **through December 2008 as authorized by the Commission at the**
17 **July 1st agenda conference?**

18 A. Yes, as can be seen on Schedule E1-B, sheet 1, line 2, the projected
19 jurisdictional fuel factors have been increased to reflect the additional
20 rate increase of approximately .6¢ per kWh.

21
22 **Q. Does the projected 2008 under-recovery of \$225 million indicate the**
23 **need for another mid-course correction?**

24 A. Order No. PSC-07-0333-PAA-EI in Docket No. 070001 indicates that a
25 utility should file for a mid-course correction when the absolute value of

REVISED

1 the estimated end-of-period total net true-up (less any previous periods'
2 true-ups for which recovery has been deferred, by order, until after the
3 current recovery period) divided by the current period's total actual and
4 estimated jurisdictional fuel revenue applicable-to-period will be ten
5 percent or greater. PEF's projected under-recovery of \$225 million less
6 the \$106 million the Commission ruled on July 1, 2008 (Order No. PSC-
7 08-0495-PCO-EI in Docket No. 080001) would be deferred consideration
8 until 2009, produces an under-recovery of \$119 million. This is only
9 5.74% of the Actual/Estimated fuel revenues of \$2,072 million (Schedule
10 E1-B, sheet 1, line 7) for the period ending December 31, 2008. PEF
11 does not believe a mid-course correction is appropriate at this time.

12
13 **Q. What are the primary reasons for the \$225 million projected fuel**
14 **year-end 2008 under-recovery?**

15 **A.** There are three primary factors contributing to the \$225 million projected
16 year-end under-recovery. First, \$106 million of this under-recovery is
17 attributable to the remaining 50% of PEF's \$212 million mid-course
18 correction filing submitted on May 30, 2008. On July 1, 2008, the
19 Commission voted to allow PEF to recover 50% of the \$212 million in
20 2008 and 50% in 2009. Second, approximately \$80 million is due to fuel
21 price increases over and above those projected in the mid-course
22 correction filing. Coal and natural gas costs (including hedges) have
23 been, and are expected to remain higher than forecasted in the 2008
24 mid-course correction filing. This is primarily due to the increasing
25 worldwide demand for energy. Third, actual under-recoveries for May

1 through June 2008 were \$41 million higher than estimated in the mid-
2 course correction filing.

3
4 **Q. How does the current fuel price forecast for July – December 2008**
5 **compare with the same period forecast used in the Company's 2008**
6 **Mid-Course Correction filed on May 30, 2008?**

7 A. Coal prices increased \$.45/mmbtu or 12% due to new spot purchases to
8 fulfill burn requirements and to replace a defaulted Venezuelan coal
9 contract. Natural gas prices increased \$0.26/mmbtu or approximately
10 2.5%. Heavy oil prices decreased \$.31/mmbtu or 3%. Light oil prices
11 increased \$1.80/mmbtu or 8%.

12
13 **Q. Does PEF expect to exceed the three-year rolling average gain on**
14 **other power sales in 2008?**

15 A. No, PEF estimates the total gain on non-separated sales during 2008 will
16 be \$2,059,150, which does not exceed the three-year rolling average for
17 such sales of \$2,083,339.

18
19 **CAPACITY COST RECOVERY**

20 **Q. How was the estimated true-up over-recovery of \$15,292,976 shown**
21 **on Part 2, page 1, line 50, developed?**

22 A. The estimated true-up calculation begins with the actual under-recovered
23 balance of \$18,086,376 for the month of June 2008. This balance plus
24 the estimated July through December 2008 monthly true-up calculations
25 comprise the estimated \$15,292,976 over-recovered balance at year-

1 end. The projected December 2008 true-up balance includes interest
2 which is estimated from July through December 2008 based on the
3 average of the beginning and ending Commercial Paper rate applied in
4 June. That rate is 0.203% per month.
5

6 **Q. What are the primary reasons for the \$15 million capacity projected**
7 **year-end 2008 over-recovery?**

8 A. The \$15 million over-recovery is driven by a decrease in capacity costs
9 of \$37 million. This decrease is due mainly to including expected
10 capacity purchases of \$26 million from CP&Lime in the original
11 projection. In late 2007, after the projection was filed, CP&Lime chose
12 not to sign the contract with PEF. In addition, PEF's capacity payments
13 to Pinellas County Resource Recovery will be reduced from July through
14 December 2008 by \$12 million due to a generator failure. This decrease
15 in capacity costs is partially offset by a decrease in capacity revenues of
16 \$23 million. Retail sales are expected to decrease in 2008 by 2.1 million
17 mWhs. Finally, \$2.2 million of the over-recovery is attributable to the
18 final 2007 capacity true-up balance.
19

20 **Q. Does this conclude your estimated/actual true-up testimony?**

21 A. Yes.
22
23
24

PROGRESS ENERGY FLORIDA

DOCKET No. 080001-EI

**Fuel Cost Recovery
Estimated/Actual True-Up Amounts
January through December 2008
And Projection January through December 2009**

**SUPPLEMENTAL DIRECT TESTIMONY OF
MARCIA OLIVIER**

OCTOBER 13, 2008

1 **Q. Please state your name and business address.**

2 A. My name is Marcia Olivier. My business address is 299 1st Avenue
3 North, St. Petersburg, Florida 33701.

4
5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Progress Energy Service Company, LLC as
7 Supervisor of PEF Regulatory Planning Strategy.

8
9 **Q. Have your duties and responsibilities remained the same since your**
10 **testimony was last filed in this docket?**

11 A. Yes
12
13
14

1 **Q. What is the purpose of your supplemental direct testimony?**

2 A. The purpose of my supplemental direct testimony is to update the
3 Company's 2008 estimated/actual fuel calculations presented in my direct
4 testimony and Exhibit No. ____ (MO-1) of August 4, 2008, and the
5 Company's 2009 projected fuel factors presented in my testimony and
6 Exhibit No. ____ (MO-2) of August 29, 2008. These revisions have been
7 necessitated by significant decreases in fuel commodity prices since my
8 original filings.

9
10 **Q. Are you sponsoring an exhibit to your supplemental direct testimony?**

11 A. Yes. I am sponsoring Exhibit No. ____ (MO-3), which includes three parts.
12 Part 1 contains updated 2009 fuel price forecast assumptions. Part 2
13 contains revised 2009 fuel projection schedules, including a calculation of
14 variance from my original projection filing, Schedules E1 through E10, a
15 calculation of the inverted rate, and Schedule H1. Part 3 contains revised
16 2008 fuel estimated/actual schedules, including a variance from the mid-
17 course correction filing and my original estimated/actual true-up filing, and
18 Schedules E1-B and E2 through E9.

19
20 **Q. What significant updates have been made to the fuel cost recovery**
21 **2008 estimated/actual and 2009 projection filings since they were**
22 **originally filed?**

23 A. PEF has updated the commodity prices for all fuel sources used in

1 generation and has re-dispatched the system for the period of October
2 through December 2008 and all of 2009. In addition, PEF has updated its
3 2008 estimated/actual fuel schedules with actual data through September
4 2008. The updated commodity costs are based on forward curves as of
5 September 22, 2008. These costs continue to be fair and reasonable as of
6 the date of this supplemental filing. Given the changes in commodity prices,
7 PEF has also updated its cost of purchased power and revenues from non-
8 separated wholesale sales. The methodology used to dispatch the system
9 in order to forecast generation and purchases is the same as that discussed
10 in my direct testimony filed on August 29, 2008.

11
12 **Q: What is the impact of this amended filing on the residential rate?**

13 A: The total residential rate is \$137.88 per 1,000 kWh, an increase of 24.7%
14 over the 2008 rate of \$110.59 per 1,000 kWh. This is a reduction of \$7.21
15 from the original projection rate of \$145.09, which was an increase of
16 31.2% over the 2008 rate.

17
18 **Q. What is the change in total retail fuel costs for 2009 compared to the**
19 **2008 estimated/actual and 2009 projection filings since they were**
20 **originally filed?**

21 A. The 2008 under-recovery was reduced by \$78.9 million, from \$225.1
22 million to \$146.2 million. Total 2009 fuel costs were reduced by \$206.5
23 million, from \$2,752.2 million to \$2,545.7 million (including GPIF and

1 Revenue Taxes). The combined reduction for 2008 and 2009 is a total of
2 \$285.4 million.

3

4 **Q. What are the appropriate estimated/actual fuel adjustment true-up**
5 **amounts for the period January through December 2008?**

6 A. \$129,347,835 under-recovery

7

8 **Q. What are the appropriate total fuel adjustment true-up amounts to be**
9 **collected/refunded from January 2009 through December 2009?**

10 A. \$146,154,866 under-recovery

11

12 **Q. What are the appropriate projected net fuel and purchased power cost**
13 **recovery amounts to be included in the recovery factor for the period**
14 **January 2009 through December 2009?**

15 A. \$2,691,843,085

16

17 **Q: What is the appropriate levelized fuel cost recovery factor for the**
18 **period of January 2009 through December 2009?**

19 A: The appropriate levelized fuel cost recovery factor is 6.616 cents per kWh
20 (adjusted for jurisdictional losses). This is a reduction of .701 cents per
21 kWh from my original projection filed on August 29, 2008 of 7.317 cents
22 per kWh.

23

1 **Q. What are the appropriate fuel cost recovery factors for each rate**
 2 **class/delivery voltage level class adjusted for line losses?**

3 **A.**

<u>Metering Voltage</u>	<u>First Tier Factor Cents/Kwh</u>	<u>Second Tier Factor Cents/Kwh</u>	<u>Levelized Factors Cents/Kwh</u>	<u>-----Time of Use-----</u>	
				<u>On-Peak Multiplier 1.461</u>	<u>Off-Peak Multiplier 0.788</u>
1. Distribution Secondary	6.290	7.290	6.623	9.232	5.418
2. Distribution Primary	--	--	6.557	9.140	5.364
3. Transmission	--	--	6.491	9.048	5.310
4. Lighting Service	--	--	6.131	--	--

4
5

6

7 **Q. What is the appropriate estimated benchmark level for calendar year**
 8 **2009 for gains on non-separated wholesale energy sales eligible for**
 9 **a shareholder incentive?**

10 **A. \$2,017,095**

11

12 **Q. Does this conclude your revised supplemental testimony?**

13 **A. Yes.**

PROGRESS ENERGY FLORIDA**DOCKET No. 080001-EI****Fuel and Capacity Cost Recovery Factors
January through December 2009****DIRECT TESTIMONY OF
MARCIA OLIVIER**

1 **Q. Please state your name and business address.**

2 A. My name is Marcia Olivier. My business address is 299 1st Avenue North,
3 St. Petersburg, Florida 33701.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Progress Energy Service Company, LLC as Supervisor of
7 PEF Regulatory Planning Strategy.

8

9 **Q. Have your duties and responsibilities remained the same since your**
10 **testimony was last filed in this docket?**

11 A. Yes.

12

13 **Q. What is the purpose of your testimony?**

14 A. The purpose of my testimony is to present for Commission approval the
15 levelized fuel and capacity cost factors of Progress Energy Florida (PEF or
16 the Company) for the period of January through December 2009.

17

1 **Q. Do you have an exhibit to your testimony?**

2 A. Yes. I have prepared Exhibit No.__(MO-2), consisting of Parts 1, 2 and 3. Part
3 1 contains our forecast assumptions on fuel costs. Part 2 contains fuel cost
4 recovery (FCR) schedules E1 through E10, H1 and the calculation of the
5 inverted fuel rate. Part 3 contains capacity cost recovery (CCR) schedules.

6

7

FUEL COST RECOVERY CLAUSE

8 **Q. Please describe the fuel cost factors calculated by the Company for the**
9 **projection period.**

10 A. Schedule E1 shows the calculation of the Company's basic levelized fuel cost
11 factor of 7.317 ¢/kWh. This factor consists of a fuel cost for the projection
12 period of 6.75355 ¢/kWh (adjusted for jurisdictional losses), a GPIF reward of
13 0.00533 ¢/kWh, and an estimated prior period under recovery true-up of
14 0.55323 ¢/kWh. Utilizing this basic factor, Schedule E1-D shows the
15 calculation and supporting data for the Company's final levelized fuel cost
16 factors for service taken at secondary, primary, and transmission metering
17 voltage levels. To perform this calculation, effective jurisdictional sales at the
18 secondary level are calculated by applying 1% and 2% metering reduction
19 factors to primary and transmission sales, respectively (forecasted at meter
20 level). This is consistent with the methodology used in the development of
21 the capacity cost recovery factors. The final levelized fuel cost factor for
22 residential service is 7.326 ¢/kWh. Schedule E1-D shows the Company's
23 proposed tiered rates of 6.993 ¢/kWh for the first 1,000 kWh and 7.993

1 ¢/kWh above 1,000 kWh. These rates are developed in the "Calculation of
2 Inverted Residential Fuel Rate" schedule in Part 2.

3

4 Schedule E1-E develops the Time of Use (TOU) multipliers of 1.420 On-peak
5 and 0.806 Off-peak. The multipliers are then applied to the levelized fuel cost
6 factors for each metering voltage level which results in the final TOU fuel
7 factors to be applied to customer bills during the projection period.

8

9 **Q. What is the amount of the 2008 net true-up that PEF has included in the
10 fuel cost recovery factor for 2009?**

11 A. PEF has included a projected under-recovery of \$225,094,914. This amount
12 includes a projected actual/estimated under-recovery for 2008 of
13 \$208,287,884 plus the final true-up under-recovery of \$16,807,030 for 2007
14 that was filed on March 3, 2008.

15

16 **Q. What is the change in the levelized residential fuel factor for the
17 projection period from the fuel factor currently in effect?**

18 A. The projected levelized residential fuel factor for 2009 of 7.326 ¢/kWh is an
19 increase of 2.112 ¢/kWh or 40.5% from the 2008 mid-course correction
20 levelized fuel factor of 5.214 ¢/kWh.

21

22 **Q. Please explain the reasons for the increase in the levelized fuel factor
23 compared with the 2008 forecast used in the Company's May 2008 mid-
24 course correction filing.**

1 A. The increase in the levelized fuel factor is driven, in part, by the \$225 million
2 under-recovery for 2008, which includes the remaining \$106 million from the
3 mid-course correction that was approved in Order No. PSC-08-0495-PCO-EI.
4 Note that the fuel factor charged to customers during 2008 was reduced by a
5 \$169 million prior period over-recovery. In addition to the increase due to the
6 2008 under-recovery vs. the 2007 over-recovery, system fuel and purchased
7 power costs are projected to increase, primarily due to a shift in generation
8 mix and increases in fuel prices. The increase due to generation mix results
9 from planned outages at Crystal River nuclear and coal plants, which are
10 expected to result in an increased use of natural gas as a replacement fuel.
11 The increases in fuel prices, including transportation and hedging) are as
12 follows: Coal 24.7% increase, natural gas 11.4% increase, heavy oil 34.6%
13 increase and, light oil 45.3%. These fuel price increases continue to be driven
14 by the worldwide supply and capacity limitations coupled with increased
15 global demand and geopolitical uncertainty. As discussed in more detail in
16 the Direct Testimony of Joseph McCallister, the Company has entered into
17 hedging contracts to mitigate the price volatility risk of natural gas and oil.

18

19 **Q. Why is PEF proposing to continue use of the tiered rate structure**
20 **approved for use in 2006?**

21 A. In light of continually increasing fuel costs, the Company is proposing to
22 continue use of the inverted rate design for residential fuel factors to
23 encourage energy efficiency and conservation. Specifically, the Company
24 proposes to continue a two-tiered fuel charge whereby the charge for a

1 customer's monthly usage in excess of 1,000 kWh (second tier) is priced one
2 cent per kWh more than the charge for the customer's usage up to 1,000 kWh
3 (first tier). The 1,000 kWh price change breakpoint is reasonable in that
4 approximately 2/3 of all residential energy is consumed in the first tier and 1/3
5 of all energy is consumed in the second tier. The Company believes the one
6 cent higher per unit price, targeted at 1/3 of the residential class's energy
7 consumption, will promote energy efficiency and conservation. This type of
8 inverted rate design was incorporated in the Company's base rates approved in
9 Order No. 02-0655-AS-EI.

10

11 **Q. How was the inverted fuel rate calculated?**

12 A. I have included a page in Part 2 of my exhibit that shows the calculation of
13 the levelized fuel cost factors for the two tiers of residential customers. The
14 two factors are calculated on a revenue neutral basis so that the Company will
15 recover the same fuel costs as it would under the traditional levelized
16 approach. The two-tiered factors are determined by first calculating the
17 amount of revenues that would be generated by the overall levelized residential
18 factor of 7.326 ¢/kWh shown on Schedule E1-D. The two factors are then
19 calculated by allocating the total revenues to the two tiers for residential
20 customers based on the total annual energy usage for each tier.

21

22 **Q. What is included in Schedule E1, line 3, "Coal Car Investment"?**

23 A: The \$422,370 on Line 3 represents the estimated return on average
24 investment in rail cars used to transport coal to Crystal River.

1

2 **Q. What is included in Schedule E1, line 4, "Adjustment to Fuel Cost"?**

3 A. The \$5,621,247 on Line 4 represents the return on coal inventory in transit,
4 which was calculated and included in accordance with the Stipulation and
5 Settlement Agreement in Docket 050078-EI.

6

7 **Q. Are there any costs associated with natural gas storage included in the
8 2009 fuel factor?**

9 A. Yes. To further enhance system reliability, PEF has entered into gas storage
10 contracts with Bay Gas Storage Company, LTD. and SG Resources
11 Mississippi, L.L.C. These contracts will primarily increase PEF's gas supply
12 reliability and mitigate price risk. The total storage cost for 2009 is \$3.1
13 million.

14

15 **Q. How do PEF's projected gains on non-separated wholesale energy sales
16 for 2009 compare to the incentive benchmark?**

17 A. The total gain on non-separated sales for 2009 is estimated to be \$3,312,676
18 which is above the benchmark of \$2,201,929 by \$1,110,747. Therefore,
19 100% of gains below the benchmark and 80% of gains above the benchmark
20 will be distributed to customers based on the sharing mechanism approved by
21 the Commission in Order No. PSC-00-1744-PAA-EI. Further, consistent
22 with this Order, \$222,149 or 20% of the gains above the benchmark will be
23 retained for the shareholders. The benchmark of \$2,201,929 was calculated

1 based on the average of actual gains for 2006 and 2007 and estimated gains
2 for 2008 in accordance with Order No. PSC-00-1744-PAA-EI.

3

4 **Q. Please explain the entry on Schedule E1, line 17, "Fuel Cost of Stratified**
5 **Sales."**

6 A. PEF has several wholesale contracts with SECI. One contract provides for
7 the sale of supplemental energy to supply the portion of their load in
8 excess of SECI's own resources. The fuel costs charged to SECI for
9 supplemental sales are calculated on a "stratified" basis in a manner which
10 recovers the higher cost of intermediate/peaking generation used to
11 provide the energy. There are other SECI contracts for fixed amounts of
12 base, intermediate and peaking capacity. PEF is crediting average fuel
13 cost of the appropriate strata in accordance with Order No. PSC-97-0262-
14 FOF-EI. The fuel costs of wholesale sales are normally included in the
15 total cost of fuel and net power transactions used to calculate the average
16 system cost per kWh for fuel adjustment purposes. However, since the
17 fuel costs of the stratified sales are not recovered on an average system
18 cost basis, an adjustment has been made to remove these costs and the
19 related kWh sales from the fuel adjustment calculation in the same manner
20 that interchange sales are removed from the calculation. This adjustment
21 is necessary to avoid an over-recovery by the Company which would result
22 from the treatment of these fuel costs on an average system cost basis in
23 this proceeding, while actually recovering the costs from these customers
24 on a higher, stratified cost basis. Line 17 also includes the fuel cost of

1 sales made to the City of Tallahassee in accordance with Order No. PSC-
2 99-1741-PAA-EI, as well as sales to TECO, Reedy Creek, Gainesville, and
3 the City of Homestead.

4

5 **Q. Please give a brief overview of the procedure used in developing the**
6 **projected fuel cost data from which the Company's basic fuel cost**
7 **recovery factor was calculated.**

8 A. The process begins with a fuel price forecast and a system sales forecast.
9 These forecasts are input into the Company's production cost simulation
10 model along with purchased power information, generating unit operating
11 characteristics, maintenance schedules, and other pertinent data. The model
12 then computes system fuel consumption and fuel and purchased power
13 costs. This information is the basis for the calculation of the Company's
14 levelized fuel cost factors and supporting schedules.

15

16 **Q. What is the source of the system sales forecast?**

17 A. System sales are forecasted by the PEF Finance Department using normal
18 weather conditions, population projections from the Bureau of Economic and
19 Business Research at the University of Florida and economic assumptions
20 from Economy.Com.

21

22 **Q. Is the methodology used to prepare the sales forecast for this projection**
23 **period the same as previously used by the Company?**

1 A. Yes. The methodology employed to produce the forecast for the projection
2 period is consistent with the Company's most recent filings and was
3 developed with an econometric forecasting model.

4

5 **Q. What is the source of the Company's fuel price forecast?**

6 A. The fuel price forecasts for natural gas and fuel oil (residual #6 and distillate
7 #2) are based on observable market data in the industry and are prepared
8 jointly by the Company's Enterprise Risk Management Department and
9 Regulated Fuels Department. For coal, a third party forecast is used.
10 Additional details and forecast assumptions are provided in Part 2 of my
11 exhibit.

12

13 **Q. Are current fuel prices the same as those used in the development of
14 the projected fuel factor?**

15 A. No. Fuel prices have been very volatile these past few months and can
16 change significantly from day to day, particularly in the storm season. Since
17 the date the projection model run was completed, natural gas and oil prices
18 have decreased somewhat. Consistent with past practices, PEF will continue
19 to monitor fuel prices and update the projection filing prior to the November
20 hearing if changes in fuel prices warrant such an update.

21

22 **CAPACITY COST RECOVERY**

23 **Q. How was the Capacity Cost Recovery factor developed?**

- 1 A. The calculation of the capacity cost recovery (CCR) factor is shown in Part 3
2 of my exhibit. The factor allocates capacity costs to rate classes in the same
3 manner in which they would be allocated if they were recovered in base rates.
4
- 5 **Q. Please provide a brief explanation of Part 3 to your exhibit.**
- 6 A. Page 1, Projected Capacity Payments, provides system capacity payments to
7 Qualifying Facilities (QF) and other power suppliers as well as the recovery of
8 nuclear preconstruction and AFUDC pursuant to Rule 25-6.0423 F.A.C. The
9 retail portion of the capacity payments is calculated using separation factors
10 as agreed to in the Stipulation and Settlement Agreement under Docket
11 050078 as detailed in the Rebuttal Testimony of William C. Slusser Jr.
12 Page 2, Estimated/Actual True-Up, which was included in Exhibit __MO-1 to
13 my direct testimony in the 2008 estimated/actual true-up filing, calculates the
14 estimated true-up balance for calendar year 2008 of \$15,292,976. This
15 balance is carried forward to Page 1 to be refunded during January through
16 December 2009.
- 17 Page 3, Capacity Contracts, provides dates and MW associated with the
18 various contracts.
- 19 Pages 4 and 5, Calculation of Capacity Clause Recovery Factor, provide the
20 calculation of the capacity cost recovery factor for each rate class based on
21 average 12 CP and 1/13 annual average demand. The CCR factor for each
22 secondary delivery rate class in cents per kWh is the product of total
23 jurisdictional capacity costs (including revenue taxes) from Page 1, multiplied
24 by the class demand allocation factor, divided by projected effective sales at

1 the secondary level. The CCR factors for primary and transmission rate
2 classes reflect the application of metering reduction factors of 1% and 2%
3 from the secondary CCR factor.

4

5 **Q. Please explain the increase in the CCR factor for the projection period**
6 **compared to the CCR factor currently in effect.**

7 A. The projected average retail CCR factor of 1.847 ¢/kWh is 81.43% higher
8 than the 2008 factor of 1.018 ¢/kWh. The increase is primary due to
9 nuclear recoveries associated with preconstruction and AFUDC on Levy
10 units 1 & 2 of \$395 million and AFUDC on the Crystal River unit 3 uprate of
11 \$25 million, offset by an expired QF contract of \$39 million, lower capacity
12 purchases of \$24 million and a refund of the prior period over-recovery of
13 \$15 million compared to a prior period under-recovery collected in 2008 of
14 \$15 million.

15

16 **Q. Has PEF included incremental security charges in the 2009 projected**
17 **capacity amount?**

18 A. Yes. PEF has included \$7.3 million of estimated incremental security costs
19 for 2009 in accordance with the Stipulation and Settlement Agreement in
20 Docket 050078-EI. Of this amount, \$4.2 million is associated with the
21 Nuclear Regulatory Commission, \$2.0 million is associated with the Maritime
22 Transportation Security Act, and \$1.1 million is associated with the North
23 American Electric Reliability Council (NERC) Cyber Security Standards CIP-
24 002-1 through CIP-009-1, effective June 1, 2006.

1

2 **Q. Does this conclude your testimony?**

3 **A. Yes.**

PROGRESS ENERGY FLORIDA**DOCKET No. 080001-EI****Fuel and Capacity Cost Recovery Factors
January through December 2009****SECOND SUPPLEMENTAL DIRECT TESTIMONY OF
MARCIA OLIVIER****October 15, 2008**

1 **Q. Please state your name and business address.**

2 A. My name is Marcia Olivier. My business address is 299 1st Avenue North,
3 St. Petersburg, Florida 33701.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Progress Energy Service Company, LLC as Supervisor of
7 PEF Regulatory Planning Strategy.

8

9 **Q. Have your duties and responsibilities remained the same since your
10 testimony was last filed in this docket?**

11 A. Yes.

12

13 **Q. What is the purpose of your Second Supplemental Direct Testimony?**

14 A. The purpose is to amend the capacity costs and related capacity cost
15 recovery factors of Progress Energy Florida (PEF or the Company) for the

1 period of January through December 2009 presented in my Direct Testimony
2 of August 29, 2008.

3

4 **Q. Are you sponsoring an exhibit to your Revised Direct Testimony?**

5 A. Yes. I am sponsoring Exhibit No. __ (MO-4), which contains PEF's revised
6 2009 capacity costs and capacity cost recovery factors and a revised
7 Schedule E10, which is the residential bill comparison for 2008 versus 2009.

8

9 **Q. What revisions were made to the capacity costs and capacity cost
10 recovery factors included in your Direct Testimony?**

11 A. The capacity costs and capacity cost recovery factors were revised to reflect
12 a decrease of \$1,233,433 for the Measurement Uncertainty Replacement
13 (MUR) phase of the Crystal River nuclear plant (CR3) uprate project and a
14 decrease of \$616,747 in incremental security costs.

15

16 **Q. Why were capacity costs revised for the MUR phase of the CR3 Uprate
17 project?**

18 A. In Docket No. 080009-EI, the FPSC and PEF stipulated that PEF would
19 remove from the Capacity Clause \$1,233,443 of 2009 projected costs and file
20 a separate petition for approval of a base rate increase for 2009 revenue
21 requirements. On September 19, 2008, PEF filed a separate petition in
22 Docket No. 080603-EI for approval of a base rate increase for the 2009
23 revenue requirements of the MUR phase, and on October 14, 2008 the

1 Commission approved this process which removes those costs from this
2 proceeding.

3

4 **Q. Why were capacity costs revised for incremental security?**

5 A. Exhibit No. __ (MO-4), page 1, line 16 reflects a \$616,747 decrease in
6 capacity costs as a result of obtaining more recent incremental security cost
7 estimates, which primarily reduced nuclear security and NERC cyber security
8 projections for 2009.

9

10 **Q. What are the appropriate projected net purchased power capacity cost**
11 **recovery amounts to be included in the recovery factor for the period**
12 **January 2009 through December 2009?**

13 A. The appropriate amount, as shown on Exhibit No. __ (MO-4), page 1, is
14 \$748,873,246. This is a reduction of \$1,812,947 from the amount filed in
15 Exhibit No. __ (MO-2) attached to my 2009 projection testimony on August
16 29, 2008.

17

18 **Q. What effect did the decrease in MUR and incremental security costs**
19 **have on the CCR factor?**

20 A. The effect on the average retail CCR factor is a .004¢/kWh decrease.
21 PEF's revised retail factor of 1.843 ¢/kWh and revised residential factor of
22 2.166 ¢/kWh are shown on my Exhibit No. __ (MO-4), page 3.

23

24 **Q. Does this conclude your testimony?**

1 A. Yes.

1 BY MR. BURNETT:

2 Q Ms. Olivier, do you have a summary of your prefiled
3 testimony?

4 A Yes, I do.

5 Q And will you please summarize your prefiled testimony
6 for the Commission?

7 A Okay. Good afternoon, Commissioners.

8 The purpose of my testimony is to address Progress
9 Energy Florida's estimated/actual fuel and capacity
10 cost-recovery true-up amount for the period January through
11 December 2008, and the projection amounts for 2009. In my
12 August 4th, 2008, testimony, PEF's fuel adjustment true-up
13 amount to be included in the 2009 fuel factor was an
14 underrecovery of \$225,094,914. In my August 29th, 2008,
15 testimony, PEF's total projected fuel costs for 2009, including
16 the prior period underrecovery, GPIF, and revenue taxes were
17 \$2,977,251,945.

18 Due to significant decreases in fuel prices after my
19 initial testimonies were filed, I submitted supplemental
20 testimony dated October 13th, 2008, to update my initial
21 testimony filed in August. Based on this supplemental
22 testimony, the adjusted true-up underrecovery to be included in
23 the 2009 fuel factor was reduced by \$78,940,048 to
24 \$146,154,866. This is made up of the 2007 final underrecovery
25 of \$16,807,029, and the 2008 actual/estimated underrecovery of

1 \$129,347,835.

2 Approximately 106 million of the 2008 underrecovery
3 is attributable to the deferral of 50 percent of the
4 212 million from the midcourse adjustment approved in Order
5 Number PSC-08-0495-PCO-EI. PEF's total projected fuel cost to
6 be recovered in 2009, including the prior period underrecovery,
7 GPIF, and revenue taxes were adjusted to be 2,691,843,085, a
8 total reduction of \$285,408,860 from my original testimony.

9 In my August 4th, 2008, testimony, PEF's capacity
10 true-up amount to be included in the 2009 capacity factor was
11 an overrecovery of \$15,292,976. This was made up of the 2007
12 final overrecovery of \$2,181,228, and the 2008 actual/estimated
13 overrecovery of \$13,111,748.

14 In my August 29th, 2008, testimony, PEF's total
15 projected capacity costs to be recovered in 2009, including the
16 prior period overrecovery, revenue taxes, and nuclear costs
17 were \$750,686,213. On October 15th, 2008, I filed my second
18 supplemental testimony to remove the costs associated with the
19 first phase of the Crystal River nuclear plant uprate. The
20 Commission approved recovery of those costs through base rates
21 beginning in 2009. I also reduced incremental security costs
22 based on a more recent estimate.

23 Final adjusted total projected capacity costs to be
24 recovered in 2009, including the prior period overrecovery,
25 revenue taxes, and the nuclear recovery are \$748,873,246, which

1 is a reduction of \$1,812,967 from my original testimony.

2 Thank you, Commissioners. This concludes my summary.

3 **MR. BURNETT:** Sir, we would tender Ms. Olivier for
4 cross examination.

5 **CHAIRMAN CARTER:** Mr. Burgess.

6 **MR. BURGESS:** We have no questions. Thank you, Mr.
7 Chairman.

8 **CHAIRMAN CARTER:** Mr. Wright.

9 **MR. WRIGHT:** No questions.

10 **CHAIRMAN CARTER:** Mr. McWhirter.

11 CROSS EXAMINATION

12 BY MR. McWHIRTER:

13 **Q** You filed MO-3, Part 2. Would you look at MO-3, Part
14 2, Page 1 of 36?

15 **A** Okay, I'm there.

16 **Q** And tell us what that exhibit is.

17 **A** That shows the variance between the original
18 projection filing that was made on August 29th and the update
19 that was made on October 13th.

20 **Q** And what happened to the jurisdictional fuel costs
21 between August 29th and October 13th?

22 **A** Total jurisdictional fuel costs decreased by
23 \$206,263,465.

24 **Q** And I presume that that number is your projected
25 number for the year 2009?

1 **A** Yes.

2 **Q** When was the projection made for the October 13th
3 filing?

4 **A** The projection was made during approximately a
5 three-week period prior to that filing. Fuel prices were based
6 on market prices as of September 22nd.

7 **Q** September 22nd, 2008?

8 **A** Correct.

9 **Q** What has happened to fuel prices between
10 September 28th and the current date? Have they gone up or
11 down?

12 **A** While I'm not the expert on actual fuel prices, it is
13 my understanding that the fuel prices have come down since
14 then. And specifically it's my understanding that the gas and
15 oil prices have come down. I'm not sure where the coal prices
16 are, or nuclear.

17 **Q** And when will you make a new projection? Is there
18 any Commission requirement that you make monthly projections,
19 or quarterly projections, or only the requirement that you make
20 an annual projection?

21 **A** I'm not familiar with any Commission requirements
22 that we make periodic projections. But I can tell you that
23 from a company perspective, we project periodically throughout
24 the year, approximately six or seven times during the year.
25 And we are actually in the process of providing a November fuel

1 and operations forecast which will reproject those costs.

2 **Q** And is that for internal purposes only, or do you
3 publish that in some fashion?

4 **A** We would not necessarily publish that. However,
5 based on the knowledge that we get from those projections, we
6 are required to notify the Commission if we find that we have a
7 variance greater than 10 percent.

8 **Q** Does the Commission compel you to make periodic
9 projections in its order?

10 **A** I'm not sure.

11 **Q** You say the Commission requires you to file a
12 midcourse correction, I guess that is what you are saying?

13 **A** Correct.

14 **Q** What is that requirement, where is that found?

15 **A** The requirement to notify the Commission is in an
16 order, and I don't have that order number with me, or the order
17 with me. But we are required per an order to notify the
18 Commission if we find that we are going to exceed that
19 threshold by 10 percent. We are not necessarily required to
20 file at that time, but oftentimes utilities do.

21 **Q** Does the order require you to make projections ever
22 so often?

23 **A** I'm not familiar --

24 **MR. BURNETT:** Objection, asked and answered.

25 **MR. McWHIRTER:** I'm sorry, I didn't understand.

1 **MR. BURNETT:** Asked and answered was my objection.

2 **MR. McWHIRTER:** Has been answered? I'm sorry, you
3 know I'm hard-of-hearing, John.

4 **MR. BURNETT:** I'm sorry. I objected to that question
5 as previously being asked and previously being answered by this
6 witness.

7 **MR. McWHIRTER:** Well, this time she said she didn't
8 know.

9 **THE WITNESS:** Could you please repeat the question.

10 BY MR. McWHIRTER:

11 **Q** Are you required to file or to make projections on a
12 periodic basis, as far as you know?

13 **A** As far as I know, we are required to notify the
14 Commission when we find that we reach that 10 percent
15 threshold. But I'm not familiar with any requirement that we
16 have to make a projection on a periodic basis.

17 **Q** And are you the person who would know if there were
18 such a requirement?

19 **A** I think we could read the past orders and see if we
20 see any. I'm not familiar with any.

21 **Q** Would it be fair to say if there's no requirement to
22 make a projection, you don't do it?

23 **A** I think that utilities just reforecast various things
24 periodically throughout the year. So I think that utilities do
25 that because they need to know where their fuel prices and

1 costs are expected to be.

2 Q You need to do it for your hedging activities anyway,
3 don't you?

4 A I'm not the expert on hedging, but that would be my
5 understanding.

6 Q Let's go to the next page of Exhibit E-1. And am I
7 correct that on Line 26 of that exhibit you anticipate that in
8 2009 you will sell 40,687,467 megawatt hours?

9 A That's correct.

10 Q Now, in 2007, this time last year, you made a
11 projection for your sales in 2008. Did you sell what you
12 anticipated you would sell in 2008, or will you?

13 A I would have to go back and look at the
14 '07 projection, or the '08 projection that was filed in Docket
15 070001 and look to see what we had projected.

16 Q If sales fall off because demand falls off, what is
17 the impact that has on your fuel cost-recovery?

18 A Generally speaking, all other things being equal, if
19 sales go down, then generation would go down. And, therefore,
20 if you generate less then you would experience lower fuel
21 costs.

22 Q You would have lower fuel costs?

23 A If all else being equal.

24 Q What are some of the things that might not be equal?

25 A Fuel prices. I think fuel prices have a very large

1 impact on our total fuel costs, and if fuel prices go up more
2 than the benefit that we are seeing from the decrease in sales,
3 then you might see an increase in fuel costs.

4 **Q** Well, if fuel prices go up and you don't sell fuel,
5 it would seem to me that you would -- customers would derive a
6 benefit because they wouldn't have to incur that cost of the
7 higher price because less was sold, if you understand that
8 question, which I'm not sure I do.

9 **MR. BURNETT:** I will go ahead and object. I don't,
10 either. Vague and confusing.

11 **CHAIRMAN CARTER:** Try to rephrase it, Mr. McWhirter,
12 that will help all of us.

13 BY MR. McWHIRTER:

14 **Q** Well, let me rephrase your answer. Your answer, as I
15 understood it, was if fuel prices go up and you sell less, then
16 your costs will go up. Is that essentially what you said?

17 **A** I think I said if fuel prices -- the effect of fuel
18 prices goes up more than the benefit that you would see from
19 the decline in sales, then you would see costs go up. They
20 counteract each other, and depending on which one is higher or
21 lower, you can see the effect that way.

22 **Q** But isn't it also true that if you sold another
23 million megawatt hours you would have to buy the fuel at higher
24 prices to cover that million megawatt hour sale?

25 **A** Not necessarily. Fuel prices could come down and we

1 could be purchasing more fuel at lower prices. So if those
2 fuel prices come down enough to offset the increased
3 generation, then you could see that impact being negated.

4 Q So let me see if I understood what you said. You
5 said if fuel prices go up and sales go down, that the increase
6 in fuel prices might require an increase. And then you said if
7 sales go up and fuel prices go up, you would not save because
8 fuel prices might go down, is that what you said?

9 A I think I said that if sales go up, but fuel prices
10 go down, they offset each other. And depending on the impact
11 of either one, you could see an increase in fuel costs or a
12 decrease in fuel costs, total fuel costs.

13 Q If fuel prices have gone up and sales go up, why
14 would fuel prices go down?

15 A I think there might be some confusion about the term
16 fuel prices.

17 Q I see.

18 A And so when I say fuel prices I am referring to the
19 prices that we pay as a company for our fuel, for our
20 commodities and our transportation. So I'm looking at the
21 total fuel price of the fuel to the company, and you are
22 probably thinking about the prices that the customers pay for
23 fuel.

24 Q I see. Well, I guess what you are saying is you have
25 got the cost of fuel, and then there are some other costs in

1 there besides fuel that are included in your fuel charge. Is
2 that correct?

3 **A** I believe that all of our costs are fuel related that
4 are included in our fuel charge.

5 (Transcript continued in sequence with Volume 2.)

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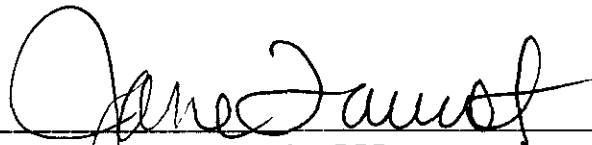
COUNTY OF LEON)

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

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

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

DATED THIS 6th day of November, 2008.



JANE FAUROT, RPR
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