

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.
_____ /



VOLUME 8

Pages 1618 through 1760

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PROCEEDINGS:	HEARING
COMMISSIONERS PARTICIPATING:	CHAIRMAN NANCY ARGENZIANO COMMISSIONER LISA POLAK EDGAR COMMISSIONER NATHAN A. SKOP COMMISSIONER ART GRAHAM COMMISSIONER RONALD A. BRISÉ
DATE:	Friday, August 27, 2010
TIME:	Commenced at 9:30 ^{9:57} a.m. - ac Concluded at 5:34 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732
APPEARANCES:	(As heretofore noted.)

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I N D E X

WITNESSES

NAME:

PAGE NO.

JOHN J. REED

Questions by Commissioners

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EXHIBITS

NUMBER:	ID.	ADMTD.
240, 242, 243 and 244		1633

P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 7.)

4 **CHAIRMAN ARGENZIANO:** So we can resume.

5 And I believe we had an objection, and then,
6 Commissioner Skop, did you want to --

7 **COMMISSIONER SKOP:** Madam Chair, what I would
8 like to do at the Chair's pleasure is withdraw my prior
9 question. I will reframe at a point in time, but I
10 would at this time yield back to the Chair to allow
11 other Commissioners to ask questions.

12 **CHAIRMAN ARGENZIANO:** Okay. Commissioner,
13 would you like to ask your questions now?

14 **COMMISSIONER BRISÉ:** Thank you, Chairwoman.

15 I have just a couple of questions for Mr.
16 Reed. The first question goes to some of the testimony
17 that you provided this morning, that you provided 14
18 recommendations for the company to look at, and you
19 mentioned that 13 of those the company either has or is
20 in the process of adopting. I'm curious to know what is
21 the 14th recommendation, if you are allowed to state
22 that, and does it have anything to do with information
23 flow?

24 **THE WITNESS:** It does. The 14th
25 recommendation is that the company should consider

1 changing the reporting relationship of the project
2 controls group within the EPU. I should start by saying
3 is this a very difficult recommendation to implement,
4 because right now project controls reports to the
5 Vice-President of EPU. Classic project controls
6 organization would indicate that the project controls
7 group should not report within the project, but to
8 someone outside of the project. However, here because
9 the project is so large and has such a high level direct
10 reporting relationship, essentially right up to the
11 Chief Nuclear Officer, if you remove project controls
12 and move them up to somewhere else in the organization,
13 the question becomes to where.

14 So it's something we've asked them to
15 consider. I think they are considering it. No
16 decision, as I understand it, has been made with regard
17 to whether either a solid line or a dotted line
18 reporting relationship would change, but that is the
19 recommendation. And it's intended to create a
20 structural remedy to ensure that if project controls has
21 concerns about whether their information is being heard
22 and acted upon, they have a way to go beyond the project
23 to see that that's addressed.

24 **COMMISSIONER BRISÉ:** Being a former CEO of a
25 publicly traded company, would you classify the

1 company's actions in the last year as responsible or
2 irresponsible by the information that you have gathered
3 through your investigation?

4 **THE WITNESS:** I would describe them as
5 responsible and consistent with all the standards of
6 this type of conduct, with the exception, this one
7 exception of the piece of testimony in the
8 September 8th, 2009, hearing. Again, I don't think this
9 is indicative of a larger problem. I don't think it is
10 consistent with the FPL nuclear organization that I have
11 come to know over the past 12 years. And, again,
12 primarily that's across the table from FPL. So I view
13 it as an exception as opposed to a trend or the rule,
14 but, obviously, this one exception is something that's a
15 concern that we felt needed to be raised.

16 **COMMISSIONER BRISÉ:** And the final question,
17 considering the fact that you mentioned the testimony
18 that might have had some issues with it, you mentioned
19 that the cost and impact you had an opinion upon what
20 that had on the cost and impact. I want you to sort of
21 reiterate that for me so I can be clear on what your
22 position is relative to that with respect of the
23 information that you gathered through your
24 investigation.

25 **THE WITNESS:** Yes, Commissioner. Thank you.

1 We went back and examined the 2009 proceeding
2 with two fundamental questions in mind. How, did the --
3 if we accept that this information was out of date,
4 incomplete, if we go back and say what affect did that
5 have in 2009, we concluded two things. First, that the
6 decision to move forward with the EPU project based upon
7 its cost-effectiveness was the correct decision. Even
8 using the updated cost forecast, the cost-effectiveness
9 of the EPU is still solidly in favor of the customer and
10 the decision to move forward was the right decision.
11 The economics changed somewhat, the cost-effectiveness
12 changes somewhat, but it's still cost-effective and
13 should have been pursued as it was.

14 The second question was with regard to whether
15 any of the costs incurred in 2009 were imprudently
16 incurred; that is, the product of an imprudent decision
17 or management action. And, again, our conclusion was
18 there are no imprudently incurred costs as a consequence
19 of this improper or this out-of-date information being
20 provided.

21 Again, the focus of the investigation and of
22 the employee concerns was on the cost estimation
23 process, not on the incurrence of costs, not on the
24 construction, not on any other aspect of cost
25 incurrence. And I should reiterate something that is in

1 the report. When the employee who wrote the letter was
2 asked directly by me do you believe that anything that
3 you have alleged in this report -- in this letter has
4 resulted in imprudently incurred costs, his answer was
5 quite definitely, no, he did not think so. Obviously,
6 this employee at that stage did not have any reason to
7 be anything other than completely direct with me. And
8 his answer was, no, he did not think there were any cost
9 consequences in terms of imprudent costs being incurred.

10 **CHAIRMAN ARGENZIANO:** Any other questions?

11 Commissioner Skop. Okay.

12 **COMMISSIONER SKOP:** Thank you, Madam Chair.

13 Mr. Reed, to that point with respect to
14 Commissioner Brisé's questions that were posed to you in
15 terms of the inaccuracy and incompleteness of what you
16 testified to be material information to the Commission,
17 and looking at the -- retrospectively looking at the
18 impact, you would agree, would you not, that prudence is
19 separate and distinct from providing accurate and
20 complete information to the Public Service Commission?

21 **MR. ROSS:** Again, I would object. Again, the
22 use of the word materiality was not defined and that
23 previous question was withdrawn. So I would request
24 that it be rephrased without a materiality qualifier.

25 **COMMISSIONER SKOP:** Madam Chair, I will

1 reframe. It will take a little longer, but I will
2 reframe, and I will do it in smaller questions.

3 Mr. Reed, you testified that the testimony
4 given under oath to the Florida Public Service
5 Commission on September 8th, 2009, by Mr. Ken Karp
6 (phonetic) was inaccurate and incomplete, is that
7 correct?

8 **THE WITNESS:** Yes.

9 **COMMISSIONER SKOP:** You also testified in
10 response to a question from Mr. Moyle that the
11 information that was withheld was material, is that
12 correct?

13 **THE WITNESS:** Yes.

14 **COMMISSIONER SKOP:** Okay. Would you agree
15 that there is a difference between a prudence
16 determination and withholding material information from
17 the Florida Public Service Commission?

18 **THE WITNESS:** Yes. My conclusions with regard
19 to prudence and my conclusions with regard to the
20 appropriateness or inappropriateness of the conduct of
21 that witness are different issues.

22 **COMMISSIONER SKOP:** Okay. With respect to the
23 effectiveness of the EPU project or the
24 cost-effectiveness, irrespective of the information, I
25 would assume that would be based on a present net value

1 analysis -- net present value analysis, is that correct?

2 **THE WITNESS:** Yes. It's based upon a
3 cumulative present value revenue requirements analysis,
4 or CPVRR.

5 **COMMISSIONER SKOP:** Okay. And in the need
6 determination process there would have been a projected
7 cumulative net present value revenue requirement
8 savings, is that correct?

9 **THE WITNESS:** Yes.

10 **COMMISSIONER SKOP:** Okay. And as a result of
11 cost escalation, there would also be a more current
12 cumulative value net present -- I mean, cumulative net
13 present value revenue requirement number that exists
14 today, is that correct?

15 **THE WITNESS:** Yes. There is one presented in
16 the 2010 case, as well.

17 **COMMISSIONER SKOP:** Okay. Now, if costs have
18 escalated, could they not be higher, or could the
19 cumulative net present value revenue requirement, or the
20 benefit to the customers actually be lower than what it
21 was originally projected to be by virtue of cost
22 escalation?

23 **THE WITNESS:** Yes. Let me address that in two
24 parts. As the cost projection increases, the
25 cost-effectiveness of the project decreases, all other

1 things being equal. What we had here were two moving
2 parts. One was the projected cost increased, but also
3 the number of megawatts that they expected to get out of
4 the uprate also increased. The company, after receiving
5 the revised cost estimate in July of 2009, did run a
6 number of CPVRR analyses, and concluded that while the
7 cost-effectiveness had changed and had decreased
8 slightly, it was overall still very cost-effective.

9 **COMMISSIONER SKOP:** With respect to those
10 analyses, the forecast was not updated until September
11 of 2009, is that correct --

12 **THE WITNESS:** No.

13 **COMMISSIONER SKOP:** -- after the testimony was
14 provided on September 8th?

15 **THE WITNESS:** By forecast, you mean the cost
16 forecast?

17 **COMMISSIONER SKOP:** The cost forecast.

18 **THE WITNESS:** No, that's not correct. The
19 cost forecast that was presented in July 25th, 2009, to
20 the PSC is what was used at that same time to run new
21 CPVRR analyses. So they did use the new cost estimate
22 as submitted to the PSC, and that had the results I just
23 talked about.

24 **COMMISSIONER SKOP:** Okay. But at the time of
25 the September 8th proceedings that information had not

1 been at that time provided to the Florida Public Service
2 Commission to demonstrate that point that, in fact, it
3 was still cost-effective?

4 **THE WITNESS:** Right. That information was
5 strictly for internal use and did not get presented at
6 that time to the Commission.

7 **COMMISSIONER SKOP:** Okay. And then I want to
8 ask one final question, and, hopefully, I'll overcome an
9 objection, but we'll see.

10 In regards to the employee complaint letter
11 that was sent to Mr. Hay that you have reviewed and your
12 investigation report is predicated upon, would you agree
13 that that employee letter raised concerns regarding the
14 flow of information to the Florida Public Service
15 Commission?

16 **THE WITNESS:** Yes, it did.

17 **COMMISSIONER SKOP:** Okay. Now, I want to ask
18 a hypothetical based on that premise. If Entity A was
19 retained to perform a review of that same employee
20 letter and determined it was not related to anonymous
21 complaint letters received in the same period of time,
22 and then Concentric was retained to investigate the
23 letter, and as a result of that investigation made its
24 findings related to the veracity of the testimony
25 provided to the Florida Public Service Commission by the

1 FPL witness, then as it pertains to the accuracy of
2 information provided to the Commission, should not
3 Entity A -- or, in your opinion, should not Entity A
4 review those findings to the extent that it may have
5 changed their previous opinion, if you can offer an
6 opinion?

7 **THE WITNESS:** Not necessarily. My opinion is
8 that it's certainly possible that Entity A was retained
9 with a very narrow scope, was to investigate other
10 items, not to investigate the February 2010 employee
11 letter. Having determined that that letter was not part
12 of their scope, they would have stopped their
13 activities, and appropriately so.

14 **COMMISSIONER SKOP:** And appropriately so. My
15 follow-up question is given -- if there were, if there
16 was a common element regarding the accuracy or veracity
17 of information provided to the Florida Public Service
18 Commission, and your findings in the Concentric report
19 substantiated an employee complaint, then in your
20 professional opinion should not Entity A take another
21 look at Concentric's findings?

22 **THE WITNESS:** Only if it's within the scope
23 assigned to Entity A.

24 **COMMISSIONER SKOP:** Okay. But the --

25 **THE WITNESS:** I understand your point with

1 regard to the common element. I don't think that
2 necessarily brings it within their scope.

3 **COMMISSIONER SKOP:** But you did testify that
4 the accuracy and truthfulness of information provided to
5 the Florida Public Service Commission is very important,
6 is that correct?

7 **THE WITNESS:** Yes.

8 **COMMISSIONER SKOP:** All right. Thank you.

9 **CHAIRMAN ARGENZIANO:** Any other questions?

10 Well, I have one question since most of my
11 questions have been answered and the others do not --
12 are not confined specifically to the Concentric report,
13 can you or have you provided a copy of the initial
14 unedited Concentric report to the Commission?

15 **THE WITNESS:** Yes. We have provided all
16 20 drafts as well as the final report, so you can check
17 all of our spelling, punctuation, and grammatical
18 errors.

19 **CHAIRMAN ARGENZIANO:** I am going to check.
20 No. (Laughter.)

21 **THE WITNESS:** There are a lot of split
22 infinitives, so, hopefully, we caught those.

23 **CHAIRMAN ARGENZIANO:** Okay. And, staff, we do
24 have the drafts?

25 **MS. BENNETT:** Yes, we do.

1 **CHAIRMAN ARGENZIANO:** Okay. Thank you.
2 That's all I needed to ask you. Now, I believe we --
3 thank you.

4 Is there are any other questions for the
5 witness? Hearing none, you are excused. Thank you very
6 much.

7 **THE WITNESS:** Thank you.

8 **CHAIRMAN ARGENZIANO:** Now, I believe we are at
9 a point of discussion, and as the Chair's prerogative, I
10 want to discuss -- go ahead.

11 **MS. HELTON:** Madam Chairman, before we go any
12 further, should we admit exhibits?

13 **CHAIRMAN ARGENZIANO:** Yes. That would be a
14 good thing.

15 **MS. HELTON:** I don't know if the company had
16 redirect for the witness.

17 **CHAIRMAN ARGENZIANO:** I'm sorry.

18 **MR. ROSS:** We have no redirect. Thank you.

19 **CHAIRMAN ARGENZIANO:** No redirect. Okay.
20 Exhibits.

21 **MS. BENNETT:** Staff has Exhibits 240, 242,
22 243, and 244 that we would like to move into the record.
23 We did mark an Exhibit 241 for identification purposes,
24 but the witness was not familiar, so we are not going to
25 move that into the record.

1 **CHAIRMAN ARGENZIANO:** 241 is stricken, is not
2 being moved into the record?

3 **MS. BENNETT:** Correct.

4 **CHAIRMAN ARGENZIANO:** Okay. Hearing no
5 objections, so moved.

6 (Exhibits 240, 242, 243, and 244 admitted into
7 the record.)

8 **MS. BENNETT:** 242 is the complete POD
9 responses, all 20 drafts, and it is a compact disk. It
10 is confidential.

11 **CHAIRMAN ARGENZIANO:** Okay.

12 **MR. ANDERSON:** We'd like to -- we do object to
13 admission into the record of that response to the Fourth
14 PODs. The record should reflect it's probably about a
15 foot of paper. Our suggestion for that would be to go
16 ahead and mark it, that's fine, but for this portion of
17 the hearing were really not at issue. If the Commission
18 votes to defer, then I think there is no need for it to
19 be in the record. If the Commission votes for there to
20 be a hearing, well, then, it can be brought up at the
21 proper time.

22 **MR. MOYLE:** I'd like to be heard on that as
23 well, if I could.

24 **CHAIRMAN ARGENZIANO:** Mr. Moyle.

25 **MR. MOYLE:** We would support it being included

1 in the record from a standpoint of we have spent almost
2 two days talking about the Concentric report and gone
3 through reams and reams of questions related to it. So
4 to the extent that there is ever going to be, you know,
5 a review, or an appeal at some other point, it just
6 makes sense to have everything contained within the
7 record. Otherwise, you are like, well, what was part of
8 this document, you're not sure, you know, this
9 confidential exhibit. You know, I think the better
10 practice is to admit it and make it part of the record.
11 So we would urge that it be part of the record.

12 **CHAIRMAN ARGENZIANO:** We'll hear counsel's
13 opinion, and I'll make a ruling.

14 **MS. HELTON:** Madam Chairman, I believe, and I
15 believe Professor Ehrhardt would agree with me, and I
16 believe under Chapter 90 of the Evidence Code that any
17 objections made to an exhibit being admitted into the
18 record should be contemporaneous with the time that the
19 exhibit was first brought to someone's attention, and
20 Florida Power and Light did not do that, so I believe
21 that the documents can be appropriately admitted into
22 the record and given the weight that they deserve.

23 **CHAIRMAN ARGENZIANO:** Okay. Then the
24 objection is overruled, and it will be admitted into the
25 record. Thank you.

1 Are we at the point now -- have all exhibits
2 been entered? I think so. Okay.

3 Are we at the point now, staff, where we are
4 in discussion from the motion earlier yesterday that we
5 decided to hear our witnesses? Are we at that point?

6 **MR. YOUNG:** Yes, ma'am, all the exhibits have
7 been entered, and I think we are at that point.

8 **CHAIRMAN ARGENZIANO:** Okay. I would like
9 to -- the Chair's prerogative. I have heard from a lot
10 of people, and I have sat pretty quiet. So I'm going to
11 make my statements first, and then I'm going to shift to
12 Commissioner Graham, who has been very patient in
13 waiting to make some comments of his own.

14 I appreciate the discussion and the questions
15 that were asked. Many questions that were asked helped
16 me to understand better, but -- and I want to, I guess,
17 phrase this the right way. You know, in regards to
18 nuclear preconstruction costs, the utilities have little
19 exposure, I think, to the possibility of investment
20 loss. And possibly less incentive to control, not
21 saying they do, but possibly a less incentive to control
22 costs other than what we find in this hearing to be
23 unreasonable or imprudent. And for the reason that this
24 Commission is the sole check on these costs, and because
25 the amount of these costs are very high, I believe that

1 holding the full evidentiary hearing is the appropriate
2 course of action.

3 I believe that we have sufficient evidence
4 before us relating to questions about the state of
5 knowledge at the time of the testimony by blankety-blank
6 in September to compel further inquiry. My concern here
7 is explicit, that there may have been fraud, there may
8 have been misinformation perpetrated on the Public
9 Service Commission and, thereby, the people of the state
10 of Florida. And I say may.

11 I believe that it is incumbent on this
12 Commission to act to inquire, and that the failure to do
13 so would constitute malfeasance on the Commission's
14 part. I also believe that an investigation into the
15 truth is the best way to provide NextEra the opportunity
16 to dispose of the potential adverse impact to its
17 reputation. It gives it the opportunity to have what we
18 heard here today cleared, and an investigation will do
19 that. And I feel very strongly that if we did not -- if
20 the Commission decided not to hold a full evidentiary
21 hearing, that I have no -- that I'd have to refuse to be
22 a party to stipulations which may have been based on
23 incorrect information which may be false.

24 And I reiterate may and possibly, possibly
25 could be an effort to mislead the Commission. So I,

1 therefore, believe it is incumbent upon us to have a
2 full evidentiary hearing and ask my colleagues to
3 consider that today in making our decision. With that I
4 move to Commissioner Graham.

5 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

6 I think you took most of the words out of my
7 mouth. I don't think I would have used as many may's as
8 you did, but I think your point was very well made. I
9 think a lot of information that we got from the witness
10 today led me to believe to the same conclusion as Madam
11 Chair, that there's still some facts that need to be put
12 on the table. There's still some more digging that we
13 need to do, and I think that we do need to have the full
14 hearing like we did with Progress earlier this week.

15 At this point, I'm not to the point that I
16 think that we need to compel the CEO to come. I think
17 that FPL can provide -- can provide testimony or
18 witnesses to people that can speak to the meeting, and I
19 believe that meeting was July 25th, '09, as one of the
20 meetings that was spoken to quite a bit. And they can
21 also speak to what happened with the LAR and the
22 disconnect on how that information got here.

23 I do understand that, as I believe it was
24 Mr. Jones mentioned yesterday, that there was a lot that
25 was going on at the time when they were trying to decide

1 what to do with the LAR, and that -- I guess my scenario
2 is if your house is on fire, the first thing you want to
3 do is put the fire out before you call the insurance
4 company.

5 So I understand that there is a little
6 disconnect. He had his meeting with his group on the
7 18th, I believe it was. I guess their effort of trying
8 to decide what does this mean as far as the scope of the
9 project and what does this mean financially, and then
10 after you got all the information put together, then it
11 was time to pass out the information to everybody else.
12 But I guess there needs to be a motion on the floor, and
13 my motion would be that we --

14 **COMMISSIONER SKOP:** Madam Chair, a point of
15 order.

16 **CHAIRMAN ARGENZIANO:** To the point.

17 **COMMISSIONER SKOP:** To the point. Previously
18 the motion was made by Commissioner Graham to hear from
19 two witnesses. We did so. I had made a request this
20 morning to hear from Mr. Olivera at the Chair's
21 discretion based on the point of order raised by
22 Commissioner Graham. That prior motion was implemented,
23 and the Chair explained to me that I would be able to
24 make my motion to request Mr. Olivera to appear at that
25 time prior to taking up the motion, I believe is my

1 recollection. So I believe that a motion to move
2 forward with respect to the evidentiary hearing, I think
3 the sequence was I have an interest in hearing from Mr.
4 Olivera. And I respect Commissioner Graham's
5 disagreement with that point, but, again, I have my
6 point I want to preserve.

7 **CHAIRMAN ARGENZIANO:** Commissioner Skop, could
8 I -- excuse me. Who said something?

9 **MR. KISER:** Well, I was waiting to comment on
10 the point.

11 **CHAIRMAN ARGENZIANO:** Well, I'm not going
12 to -- there's more that I have to say that might address
13 this. And I'll get to it now, and then if you want -- I
14 just thought we would decide on whether there is a full
15 evidentiary hearing, but I understand Commissioner
16 Skop's -- Commissioner Skop, just move forward if you
17 want to do that.

18 **COMMISSIONER SKOP:** Madam Chair, the only
19 reason I'm doing this is to preserve my opportunity,
20 because what I see moving forward is an evidentiary
21 hearing with the motion that would be seconded and would
22 exclude my opportunity. So I feel that I need to
23 preserve my previous request.

24 So at this time, based on the testimony that
25 the Commission has heard from Witness Jones and Witness

1 Reed as it relates to, amongst other things, the
2 accuracy and the timeliness of information provided to
3 the Florida Public Service Commission in direct relation
4 to documents in this docket, in this docketed
5 proceeding, I would move that the Commission require Mr.
6 Olivera to appear before the Commission to answer any
7 questions that may be posed regarding this docket.

8 **CHAIRMAN ARGENZIANO:** Do I hear a second?

9 I'll second the motion.

10 All those in favor, aye.

11 **COMMISSIONER SKOP:** Aye.

12 **CHAIRMAN ARGENZIANO:** Aye.

13 All those opposed?

14 **COMMISSIONER EDGAR:** Aye.

15 **COMMISSIONER GRAHAM:** Aye.

16 **COMMISSIONER BRISÉ:** Aye.

17 **CHAIRMAN ARGENZIANO:** The motion fails.

18 And, Commissioner Graham.

19 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

20 My motion is that we move forward with the
21 full hearing, and I believe we probably just need to
22 pick a scheduled time. And I guess we can get into the
23 logistics, but we move forward with the full hearing. I
24 don't think at this time it is necessary to call the
25 CEO, but I leave that option open if we are not getting

1 the answers that we need or we feel like there is more
2 information we need at the end, we can at that time ask
3 voluntarily for him to appear. And if need be, we can
4 go further and past that.

5 **CHAIRMAN ARGENZIANO:** Do we have a second?

6 **COMMISSIONER BRISÉ:** Second.

7 **CHAIRMAN ARGENZIANO:** All those in favor say
8 aye. Wait, wait, wait.

9 **COMMISSIONER EDGAR:** Can we have some
10 discussion?

11 **CHAIRMAN ARGENZIANO:** Yes. Let's have a
12 discussion, because I'm not sure what the motion really
13 said. Was your motion incorporating not -- was your
14 motion to have a full evidentiary hearing? And, first
15 let me do this, Commissioner Brisé, could I ask you to
16 withdraw the second until we --

17 **COMMISSIONER BRISÉ:** Sure. So I withdraw the
18 second.

19 **CHAIRMAN ARGENZIANO:** It's withdrawn. Okay.
20 Now, discussion. And the question I have and
21 then --

22 **MR. KISER:** Point of order, Madam Chairman. I
23 have discussion on this issue. I suggest to you you
24 need to have a second in order to get it in the proper
25 posture for discussion.

1 **CHAIRMAN ARGENZIANO:** Well, discussing the
2 issue of which way to go may not have anything to do
3 with the motion after all.

4 **MR. KISER:** Well, there's always the option of
5 amending or substituting the motion if you decide
6 to take a different --

7 **CHAIRMAN ARGENZIANO:** You're saying because we
8 have a motion on the floor --

9 **MR. KISER:** You have a motion on the floor,
10 and in order to discuss it, you have got to have a
11 second. It's that simple.

12 **CHAIRMAN ARGENZIANO:** Well, let's do this.
13 Since we have a motion on the floor -- and I'm not sure
14 what the motion is. Can we have another description of
15 what the motion actually is?

16 **COMMISSIONER GRAHAM:** Sure, Madam Chair. For
17 the most part, the motion is the exact same as
18 Commissioner Skop, except for -- with the compelling of
19 the CEO as a witness at this time. But we still leave
20 that option open at the end of the hearing if we decide
21 we need that witness to appear.

22 **CHAIRMAN ARGENZIANO:** I would not be in favor
23 of that. I would be in favor of a motion to either go
24 for a full evidentiary hearing or not.

25 **MR. KISER:** Madam Chairman, again, I'm trying

1 to keep us in the proper posture, and you need to have a
2 second first before we discuss.

3 **CHAIRMAN ARGENZIANO:** Okay. I got you. I got
4 you. We are getting beyond.

5 **COMMISSIONER EDGAR:** May I, Madam Chair --

6 **CHAIRMAN ARGENZIANO:** He did withdraw the
7 second. He did withdraw. Well, it's either up to
8 Commissioner Graham to withdraw the motion or we go back
9 to a second. So I am going to leave it up to my
10 colleagues.

11 Commissioner Skop, Commissioner Edgar.

12 **COMMISSIONER SKOP:** Thank you, madam Chair.

13 **CHAIRMAN ARGENZIANO:** Not to the motion.

14 **COMMISSIONER SKOP:** Not to the motion. I
15 think there are different perspectives. Certainly,
16 again, I have expressed my interest to have a full
17 evidentiary hearing, but also to have the opportunity to
18 have Mr. Olivera appear and avail himself of questions
19 before this Commission. What I sense is there is also a
20 motion regarding the proposed stipulations by the
21 intervenors and FPL. There seems to a tremendous amount
22 of concern by the intervening parties as well as staff
23 as to the preparation for moving into a full evidentiary
24 hearing. That's just what I sense. I'm not saying that
25 we could not conduct one. I'm just wondering whether

1 the parties seem to be prepared, because, again, they
2 entered into the stipulation, and I think everyone might
3 have thought that it may have been a foregone conclusion
4 that the stipulation would be approved. But I am in
5 very much favor of having a full evidentiary hearing and
6 being able to call any witnesses that the Commission may
7 want to call.

8 My concern with the proposed stipulation,
9 however, is that the Commission has not rendered the
10 reasonableness of any costs prior to allowing
11 cost-recovery as proposed in the stipulation. So I
12 think the two options that the Commission has, Madam
13 Chair, is to have the full evidentiary hearing,
14 including the witnesses that the Commissioners may wish
15 to hear from, or to defer in its entirety, including
16 cost-recovery, basically denying the stipulation, but
17 saying that if the parties want to defer, that
18 everything needs to be deferred including cost-recovery
19 because the Commission, I don't believe, can make that
20 reasonableness determination absent an evidentiary
21 hearing pursuant to my prior comments this morning. So
22 I will look to the Chair.

23 **CHAIRMAN ARGENZIANO:** Excuse me. We have a
24 motion with no second. So right now the status of that
25 is in limbo.

1 **MR. KISER:** I was not clear. Commissioner
2 Brisé had made a second. You encouraged him to withdraw
3 it. I didn't hear -- he did withdraw it. Does he want
4 to reinstate it?

5 **CHAIRMAN ARGENZIANO:** No.

6 **COMMISSIONER BRISÉ:** Not at this point.

7 **CHAIRMAN ARGENZIANO:** Before we go to that,
8 there is a withdrawn second. There is no second at the
9 moment, and what I would like to do is address -- to
10 address issues brought in light of this docket that have
11 come out most notably in the Concentric report. I order
12 the General Counsel to issue subpoena pursuant to
13 Section 120.569(2)(f) to Mr. Kundalkar, Mr. Anderson,
14 and Mr. Olivera. With that said, now if we want to
15 continue with discussion on the evidentiary hearing
16 that's the way it has to be.

17 **COMMISSIONER SKOP:** Sure. Would the Chair --
18 we have a motion. I don't know if there's a second.
19 I'm prepared to make --

20 **CHAIRMAN ARGENZIANO:** There was no second.

21 **COMMISSIONER SKOP:** Okay. So is the floor
22 open for a motion?

23 **COMMISSIONER EDGAR:** Madam Chair, I have
24 waited quite awhile.

25 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Thank you.

2 And I am not sure where we are right now, and
3 I was not sure where we were a few moments ago. I'm not
4 even sure if that was 30 seconds ago or five minutes ago
5 at the moment, but when Commissioner Graham first
6 started to make a motion or did make a motion, I had
7 wanted to ask before that point sort of where we are for
8 my better understanding procedurally.

9 And one thing about this position and this
10 forum, which probably applies to many others, as well,
11 but sometimes it seems like things move awfully slowly
12 and then sometimes things seem to move pretty quickly.
13 And I'd like to take this opportunity to just slow down
14 for just a moment, because I'm not clear. And just as
15 we have afforded and tried to afford every Commissioner
16 the opportunity to ask all of their questions, I would
17 like the ask the same to just understand better where we
18 are procedurally.

19 **CHAIRMAN ARGENZIANO:** You're recognized.

20 **COMMISSIONER EDGAR:** Thank you.

21 Madam Chair, in your kind of opening comments
22 when we concluded with the testimony portion of our
23 discussions so far today, you raised some points that I
24 think you were telling us that you still had some
25 concerns about and had some questions and felt needed to

1 be addressed.

2 One of the things that I'm not clear on is
3 that it seemed to me that the stipulation that had been
4 filed with this Commission a week, two weeks ago,
5 whatever the exact date was, that was represented to us
6 that the intervenors had agreed to, did provide a
7 mechanism for addressing many of those concerns. In
8 other words, my understanding of it was that it gave
9 additional time, and that part of the purpose of it was
10 to give additional time to our staff, to the
11 intervenors, certainly to Commissioners, and all
12 participants to spend more time delving into many of the
13 issues that are part of this docket or may have arisen
14 as part of the discussions that we've had prior to and
15 to these next two days.

16 I am also a little unclear as to what the
17 intent and the reality of the use of the term full
18 evidentiary is. And I'm not trying to be argumentative.
19 I am truly trying to understand. I think I had heard
20 the term in the last few days that we needed to have an
21 evidentiary hearing, but it is my belief that we have
22 been having an evidentiary hearing, and we are still,
23 indeed, within an evidentiary hearing.

24 **CHAIRMAN ARGENZIANO:** To that, Commissioner
25 Edgar, it was my belief that the motion that was made by

1 Commission Graham limited what we were to do and talk
2 about and I couldn't ask questions beyond what was
3 specified in that motion. So I don't think it was a
4 full evidentiary hearing. And as I read Rule
5 25-6.04235(c)(2), Florida Administrative Code, there is
6 a specific tie-in to the Commission's shall duty to
7 conduct an ongoing auditing and monitoring program of
8 construction costs and related contracts. So I tie it
9 all in, and I don't believe that the full evidentiary
10 hearing as Florida Statute indicates that was taking
11 place because of the limitations on the motion that you
12 all voted in favor of.

13 **COMMISSIONER EDGAR:** What I was saying, if I
14 may respond.

15 **CHAIRMAN ARGENZIANO:** Sure. You're
16 recognized.

17 **COMMISSIONER EDGAR:** Thank you.

18 Was that I am unclear as the term has been
19 used a couple of different times as to what we are
20 meaning when we include full evidentiary hearing within
21 a motion, and whether I were to vote for it or against
22 it if we get to that point, I'd like to understand what
23 that term means and is intended to mean.

24 What I also said is that it is my belief that
25 we have been and still are in an evidentiary hearing.

1 And, therefore, it is the addition of the term full that
2 is just not completely clear to me, and that was the
3 point I was trying to get.

4 **CHAIRMAN ARGENZIANO:** Let Commissioner Edgar
5 finish.

6 **COMMISSIONER EDGAR:** Thank you.

7 And, again, understanding or discussing that
8 term may not be meaningful to everybody, but it is to me
9 for the posture that I feel that I am in as one member
10 of this group. So if, indeed, there is -- let me back
11 up.

12 I would like to ask our staff, again, just to
13 have a better understanding, since we were moving a
14 little slower and then we started to move faster, I'd
15 like to start here or continue here and ask our staff
16 from the perspective of staff to this Commission, what
17 the effect would be if, and I do mean if right now for
18 my understanding, the proposed stipulations were to be
19 adopted.

20 **MR. WILLIS:** Commissioners, if the proposed
21 stipulation were to be adopted, we would move forward in
22 further discovery on all of these matters, including
23 next year's preparation for the hearing in October, or
24 the hearing in September and August to bring these very
25 issues back to the Commission. It would basically

1 postpone any kind of decision on the prudence issue of
2 the year 2009, I believe, going forward until next year
3 in that. It would also allow the costs to go into
4 effect pending that prudence determination.

5 **COMMISSIONER EDGAR:** And to follow along those
6 lines, again, so I understand, from the staff's
7 perspective is there -- from the staff's perspective is
8 there a harm, or a detriment, or a negative financial
9 impact to the ratepayers if those stipulations were to
10 be adopted at this point in time?

11 **MR. WILLIS:** Commissioner, I'll answer it in
12 this way. The effect of the stipulation would allow
13 recovery of these costs now, which would not require the
14 addition of AFUDC to be added on while they sat in the
15 account for another year. If the costs were found to be
16 reasonable and prudent next year, that would be an
17 additional amount that would be added onto those costs
18 when they were recovered in the following year.

19 **COMMISSIONER EDGAR:** Let me just think for a
20 moment just to see if I've rounded it out. If as we
21 determine as a group how to proceed, I would like to
22 have a better understanding of what the term full means
23 when added to evidentiary, if, indeed, that's the term
24 that we are going to use. And I also -- and it is not
25 determinative in my mind one way or the other, but it is

1 a question I would like to have the opportunity to ask
2 at the point in time as to -- as a result of the
3 discussions that have been had publicly, and the
4 testimony that we've heard, and the questions asked and
5 answered to each of the parties who represented to us
6 that they were in favor of the stipulation if, indeed,
7 that has changed from when we started, whatever day that
8 was this week, to where we are now. That is information
9 that I'd like to include within my consideration.

10 And it probably goes without saying, but I
11 will say it anyway. A stipulation, or stipulations, or
12 settlement agreements that are put forward to this
13 Commission for consideration I take very seriously our
14 responsibility to weigh them and consider them fully
15 before we act individually and collectively. But I also
16 consider it very relevant in my deliberations and my
17 thought process if, indeed, those who are tasked as a
18 party before us are representing to us that they believe
19 a certain action is in the public interest and/or is in
20 the best interest of the customers that they represent
21 before us. So that are questions that I would like to
22 have the opportunity to ask and have answered as we
23 decide procedurally what is the best way to move
24 forward.

25 And, Madam Chairman, thank you for letting me

1 ask a few questions and think this through and slow down
2 just for a moment so that I have a better understanding
3 of where we are.

4 **CHAIRMAN ARGENZIANO:** Absolutely.

5 Commissioner Skop, and then maybe we can get
6 to the questions -- the answers to the Commissioner's
7 questions, and I have a few for the stipulators.

8 **COMMISSIONER SKOP:** All right. Thank you,
9 Madam Chairman.

10 In response to Commissioner Edgar's concerns
11 that she raised, my understanding of our current
12 procedural posture was that the Commission decision
13 whether to move forward with a full evidentiary hearing
14 was not taken up at the time of the prior motion made by
15 Commission Graham. I believe that Commissioner Graham's
16 motion was to allow staff to ask questions of two
17 witnesses which would not preclude the intervening
18 parties or any other parties from asking full and
19 complete questions during the course of the full
20 evidentiary hearing, or evidentiary hearing, however you
21 want to do it. I'm not going to mince words.

22 However, no decision has been made by the
23 Commission at this point, as I understand it, to have an
24 evidentiary hearing. So I would respectfully suggest
25 that I disagree with Commissioner Edgar's understanding

1 of our current procedural posture.

2 Now, with respect to the Commission rule that
3 Chairman Argenziano raised, that is the exact same rule
4 that I raised earlier this morning and in my original
5 comments at the start of the FPL portion of the
6 proceeding. The Commission shall conduct an annual
7 hearing. There is a lot in that chapter, but what it
8 boils down to for me and why the stipulations are
9 problematic to me, notwithstanding what the parties want
10 to do, is it boils down to this. It is real simple.
11 Without a determination of the reasonableness of the
12 costs proposed by recovery by FPL in this proceeding,
13 none of the costs can be recovered under the NCRC rule.
14 It requires a determination of reasonableness and that
15 determination in my professional legal judgment cannot
16 be made without conducting an evidentiary hearing and
17 having a staff recommendation and voting on the issue.

18 I also am looking at the stipulation that it
19 allows the upfront recovery of those costs. So it
20 stands in stark contrast to the plain reading of the
21 rule. There has been no rule waiver requested in the
22 stipulation. So, again, from a legal aspect I think the
23 Chairman is correct. I concur wholeheartedly that that
24 is a legal impediment to the Commission adopting the
25 stipulation in its current form to the extent that you

1 are allowing upfront cost-recovery and litigating later.
2 Okay.

3 However, I am also in full agreement with the
4 Chairman's comment that an evidentiary hearing needs to
5 be conducted in regards to the FPL portion of this
6 docket. Such hearing has not yet been conducted, and I
7 am in full favor of subpoenaing the three witnesses that
8 the Chairman mentioned. I believe that was Witness
9 Olivera, Witness Anderson, and Witness Kundalkar. And I
10 don't know what our subpoena authority would be with
11 respect to him, but certainly I would like to have the
12 opportunity to ask him questions. So, again, I would
13 support the Chair's motion to move forward, or I would
14 make the motion at the appropriate time to move forward
15 with that full evidentiary hearing, subpoenaing those
16 witnesses, and take it from there.

17 Now, I know the intervenors have come to an
18 agreement. Again, I'm not so sure that some things may
19 have been disclosed prior to entering into that
20 agreement, but as I had previously stated, the parties
21 have their own respective interests in reaching the
22 proposed stipulations; whereas, the Commission has a
23 separate and distinct interest in performing its
24 regulatory oversight function separate and independent
25 from the interests of the parties. And in light of what

1 I know and the testimony I have heard, again, outside of
2 an evidentiary hearing, I cannot in good faith support
3 the stipulations prior to conducting that full hearing.
4 And legally I don't believe the Commission under our own
5 rule has the authority to grant cost-recovery in advance
6 of rendering a determination that the costs incurred
7 were reasonable.

8 So, Madam Chair, I would support making the
9 motion at the appropriate time to incorporate -- moving
10 forward with the hearing in the manner you suggested. I
11 recognize that the majority of the Commission may feel
12 differently. But, again, at some point the stipulations
13 as they are currently framed are not acceptable to me,
14 noting that it promotes cost-recovery in advance of
15 determination of reasonableness, and it's inconsistent
16 with our rule. Thank you.

17 **MR. ANDERSON:** May FPL be heard briefly?

18 **CHAIRMAN ARGENZIANO:** Yes, please. And then
19 Commissioner -- let Commissioner Brisé, please.

20 **MR. ANDERSON:** Of course.

21 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.

22 I think I agree with what was brought forward
23 by Commissioner Edgar, that maybe we need to have a
24 discussion and talk to the intervenors before we
25 actually get to -- have ample time to have this

1 discussion before we actually get to a motion. And I
2 certainly hope that we can move in that direction so
3 that we can weigh to see if a hearing, an evidentiary
4 hearing is most appropriate or if we need to move in
5 another direction.

6 **CHAIRMAN ARGENZIANO:** Mr. Anderson.

7 **MR. ANDERSON:** Thank you, Chairman Argenziano.

8 I think Commissioner Brisé and Commissioner
9 Edgar's point, I think, is a good starting point. I
10 think it would be worthwhile to learn, just to ensure if
11 people are still supporting the stipulation. That's a
12 fair point. The second thing, then, if that's the case,
13 we would like to be permitted to present the legal
14 arguments which, in our view, very clearly support the
15 Commission's authority and discretion to enter into a
16 stipulation in this case under, you know, very good
17 clear law. I have some relevant authorities that can be
18 provided to you, as well.

19 We really do feel it's a good balancing of
20 interests of customers and the company. The Nuclear
21 Cost-Recovery Clause is very important to encouraging
22 new nuclear development and additional generation in the
23 state. At the same time, we fully recognize the need to
24 fully protect customers. And as staff has indicated,
25 any collections would be made only subject to refund

1 through the clause, and that the deferral, of course,
2 would permit a time for all the parties to get into as
3 much detail as anyone wishes. Discovery can start next
4 week if they wish, all of those things.

5 But if there is still a stipulation before the
6 Commission, and I hope and believe so, then I would be
7 asked to provide the legal support that I believe
8 demonstrates that the Commission is entitled to proceed
9 in that way to provide additional time to the parties
10 and to meet the balancing need of encouraging new
11 nuclear development in the state.

12 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Madam Chair.

14 Again, a plain reading of our rule and looking
15 at our prior Commission order, I'm not aware of any
16 precedent that would permit allowing recovery in advance
17 of making a determination of the reasonableness of the
18 costs. And I think some of the costs are at issue. The
19 projected costs for 2011 are \$81 million.

20 I agree with Mr. Willis to the extent that if
21 you were to include such costs now, they would not
22 accrue AFUDC carrying charges during the remaining 12
23 months. They would not incur the carrying charges
24 during the time until this matter is fully litigated.

25 However, where I disagree with Mr. Willis is

1 on two points: The first point is legal authority; a
2 plain reading of our rule says it requires an
3 evidentiary hearing and a determination of
4 reasonableness, so I don't believe the cost-recovery is
5 appropriate nor legally allowed under our rule. There
6 is no rule waiver that has been submitted and the
7 stipulation was sent to the Commission on or about
8 August 17th. So it was a late, you know, stipulation
9 that the parties came up with.

10 The second part I would recognize with -- the
11 exception that I would take to Mr. Willis' suggestion is
12 that if you do not allow the recovery of the costs --
13 and I'm not talking about a disallowance, but the
14 parties have requested deferral of the issue in terms of
15 litigating the issue, but allowing cost recovery on the
16 front end. And to me that does not comport with the
17 rule.

18 So in a nutshell, where Mr. Willis' argument,
19 again, I think does not -- is not supported by legal
20 authority, the other part is if these costs are subject
21 to being reviewed and there are disallowances, then the
22 disallowances ultimately may offset any carrying costs
23 that were incurred. So, again, I'm not comfortable with
24 the proposed stipulations, and we need to do a hearing.

25 **CHAIRMAN ARGENZIANO:** Okay. I just feel so

1 strongly that it is our obligation to seek out the truth
2 of the various matters that came before us today that I
3 could not, as I said before, in good conscious and just
4 will not -- I have to refuse to be a party to the
5 stipulations that do not or may be based on incorrect
6 information. And as a Commissioner sitting here, I want
7 to make sure that, and give the opportunity to the
8 company to able to convince me that there was not the
9 possibility of fraud placed before us to make a
10 decision. I'd like more information.

11 But given that, I have heard Commissioner
12 Graham indicate that he felt -- that he thought what he
13 heard today may warrant a further investigation. I
14 heard Commissioner Skop. I have heard Commissioner
15 Edgar ask for additional information and Commissioner
16 Brisé. So I would like to move forward with getting
17 answers for the two Commissioners who wanted some
18 answers.

19 Just because you all may still agree with the
20 stipulation doesn't change my opinion on what I've heard
21 and what I feel. So that's -- but I understand those
22 questions. So let's try go to do that, and then I may
23 even have some questions for the stipulators, also.

24 So, Commissioner Edgar, if you feel the time
25 is right to ask the questions, please go ahead.

1 **COMMISSIONER EDGAR:** Thank you.

2 A couple of questions. And, again, maybe I'm
3 just not understanding it. It happens. Madam Chair,
4 what I think I have heard you and Commissioner Skop
5 share with us, and Commissioner Graham, as well, I
6 think, is that questions have come up -- existed and/or
7 come up that you believe this Commission needs to seek
8 additional information. And my read of the stipulations
9 is that they were intended for there to be further
10 information gathered. And that's why I'm wondering if
11 we are actually saying the same thing or not. And that
12 is where at least a piece of confusion is.

13 My understanding was that the parties and our
14 staff and others wanted additional time to look into
15 some issues, and that the stipulation was put forward by
16 the parties, and I believe had at least not strong
17 objection from our staff if they were asked for a
18 recommendation, because it was to allow further review,
19 further data gathering, further investigation, if that
20 is the appropriate word, but, yet, did give protection
21 to the ratepayers for there to be a true-up should that
22 be what the facts require or the policies require.

23 And so when I thought I heard you say, Madam
24 Chair, that you had questions, and you wanted there to
25 be additional information gathered; and, therefore, you

1 could not support the stipulation, my read of the
2 stipulation is that they are intended to further
3 additional data gathering, but yet also further that
4 balance between the stated policies of the statute or
5 the stated intent of the statute and the protection that
6 this Commission is to afford. So that may not have
7 sounded like a question, but actually it was. Do I need
8 to put it more in the form a question?

9 **CHAIRMAN ARGENZIANO:** I think I understand
10 what you are staying, and all I can tell you is that
11 I -- first of all, I do not think that -- as I said
12 before, I just can't be a party to stipulations that may
13 be based on incorrect information. I have an obligation
14 as a sitting Commissioner. I may not be here at a later
15 time, but I am here now, and I have an obligation to
16 want to determine if there was incorrect information,
17 and I want to make sure it is done in a timely manner.

18 And I don't -- maybe I'm not getting your
19 question or did not understand your question. I don't
20 feel that we have followed the rules. I don't feel that
21 it is proper to go ahead with the stipulations that
22 contradict the rule, and I don't feel that it's proper
23 to go ahead with the stipulations in any way, shape, or
24 form that may have been obtained or derived from
25 incorrect information. I don't know if that answers

1 your question or not, because I'm not sure what the full
2 question was.

3 **COMMISSIONER EDGAR:** The question was my read
4 of the stipulations is that they were intended, in large
5 part, to allow for additional information gathering by
6 the -- through the discovery process and the hearing
7 process, the evidentiary hearing process, but yet I
8 thought you were saying that you didn't agree with the
9 stipulations because you felt like there needed to be
10 more data gathering. And that's where my confusion
11 lies.

12 **CHAIRMAN ARGENZIANO:** My read of the rule is
13 that we should not violate it, and I think the
14 stipulations without following the rule do that, and I
15 also believe that my read of what we have been doing is
16 not an evidentiary hearing. So I don't know if that
17 answers your question, but that is the best I can do.

18 Commissioner Brisé, Commissioner Skop,
19 Commissioner Graham.

20 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.
21 And I don't know if this is for us up here or for staff,
22 probably for staff. Going through the evidentiary
23 hearing, the complete one, would that get us to the
24 point of getting all the information that would be
25 collected over the year, potentially, if we went into

1 the stipulated agreement?

2 **MR. WILLIS:** Commissioners, staff in its own
3 testimony, the staff witnesses indicated in the
4 testimony presented to you, which will be part of that
5 larger evidentiary hearing, that they believe it would
6 be best to go forward and obtain more information before
7 any kind of prudency decision is made in this docket.
8 I'm not sure that once you get done with a complete
9 evidentiary hearing with all the witnesses who are to be
10 presented in this case you would not come to that same
11 conclusion. I can't tell you that for sure. I'm just
12 telling you that based on what I have seen, that has
13 been presented in prefiled testimony, our own witnesses'
14 testimony, I kind of arrive at the same conclusion.

15 **CHAIRMAN ARGENZIANO:** Commissioners.

16 **COMMISSIONER SKOP:** Thank you, Madam Chair.

17 Again, I agree with the Chair wholeheartedly
18 on this. The stipulations are in stark contrast to the
19 requirements of the rule.

20 To staff, I recognize that staff's position is
21 that we need additional information. Commissioners have
22 expressed the desire to have additional information. My
23 question would be this to staff, noting that there would
24 need to be some additional discovery performed, you
25 know, we have a substantial number of open dates in

1 September and October available to conduct a full -- I
2 mean, excuse me, to conduct an evidentiary hearing and
3 allow time for additional discovery prior to that
4 hearing such that we could meet our statutory obligation
5 pursuant to our adopted rules to conduct a hearing,
6 evidentiary hearing, and make a determination on
7 reasonableness. But I cannot in good faith, knowing
8 what I know, support a reasonable determination without
9 having a full evidentiary hearing. I can't support the
10 stipulations without having that hearing. And I have
11 additional questions to ask upon witnesses, as I'm sure
12 many of the parties do.

13 So it would seem to me that the problem with
14 the stipulation is the fact that it ignores the
15 requirements of the rule. And, you know, had that been
16 given some forethought we might not be in this posture.
17 But, again, I would reasonably suggest from a legal
18 bias, without rendering a determination as to the
19 reasonableness of the costs, that you can't allow
20 recovery of those costs pursuant to our own rule. And
21 that is exactly what the stipulation does. It says pay
22 us now and we will litigate later. That's not -- I'm
23 not going to be in support of that.

24 I support the Chairman's motion -- the
25 motion -- I mean, the intent of the Chair to move

1 forward with an evidentiary hearing, to subpoena those
2 three witnesses, and I believe that we can do so in a
3 time frame either September 15th through the 22nd, which
4 are open dates, or October 19th through the 22nd, or any
5 open dates in between there, and still support having a
6 hearing while we still have the current composition of
7 the Commission.

8 And it is important to me as a Commissioner,
9 although I will be leaving the Commission at the
10 beginning of January, I'm here to do my job. And there
11 are significant red flags, or numerous red flags that
12 warrant having a constructive discussion as to project
13 controls and the reasonableness and prudence of costs
14 that are being requested for recovery, and that is
15 consistent with performing our regulatory oversight
16 function pursuant to our own validly adopted rule. And
17 I think that we need to have a hearing.

18 So, Madam Chair, that's what I had to say.

19 **CHAIRMAN ARGENZIANO:** Commissioner Graham.

20 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

21 I guess I've got two things here. The first
22 one was to answer Commissioner Edgar's question about
23 the stipulation or going forward with a full hearing.
24 The way I view the two differences is the full hearing
25 means that we are going get the answers now, and if we

1 go with the stipulation, basically, we are going to
2 figure out what we are going to do as far as how to
3 handle the ratepayers, and then get the full answers a
4 year from now.

5 And from what I heard that Marshall said
6 earlier, that he doesn't think we can get all the
7 answers we need now, so the staff still stands that we
8 should basically defer all of this until next year, and
9 we should have all the answers there. So the difference
10 is, get them now while they're fresh or get them later.
11 And that was the answer to Commissioner Edgar.

12 But before, I guess, I release the microphone,
13 I'd like to ask the intervenors, as Commissioner Edgar
14 said earlier, where they stand and if they are still in
15 full agreement with the stipulations or just any general
16 comments. I guess we can start on this end.

17 **MR. McGLOTHLIN:** Commissioners, I'll be
18 covering some of the same ground I covered when I spoke
19 on the first day, but it has been awhile so maybe it's
20 worth doing. Our interests stem from the fact we saw
21 the staff's testimony and its audit report, and in the
22 audit report the staff concluded that there were some
23 performance issues, management performance issues
24 associated with the restructure and replacement of the
25 EPU uprate management team. And that those performance

1 issues, in staff's estimation, could or may have
2 resulted in unnecessary costs prior to that overhaul or
3 afterwards. And staff said in its testimony we think
4 this area warrants additional examination in either a
5 separate docket or in a deferral to next year. And that
6 is why we said in our position statements in the
7 prehearing order we agree with that. And it seemed to
8 us a logical next step to say if we are on record as
9 agreeing with staff that there should be a deferral or a
10 spin-off, we're on record as saying that, and it just
11 makes sense that we would stipulate to the same thing.

12 So that has been our original interest. We
13 continue to think that if we were having the hearing
14 tomorrow there would not have been enough time to
15 thoroughly flesh out those questions about whether there
16 were or were not additional costs associated with the
17 management performance issues that the staff has
18 identified. And so that is why we think that there
19 was -- a deferral was appropriate.

20 The stipulation is broader than that, and we
21 are a party to it in part because with respect to some
22 of the other issues we were not -- some of the other
23 questions were not really at issue, and so we were
24 willing, but that was not -- that is not where our
25 interest originated. I don't know if that helps.

1 **CHAIRMAN ARGENZIANO:** I have a question for
2 Mr. McGlothlin. If I can do that now and then you can
3 go down the line while -- or would you -- do you mind?
4 Actually, I have a couple of questions. Maybe we just
5 better let Commissioner Graham's questions get asked,
6 and then I will go ahead and --

7 **MR. DAVIS:** Mr. Graham, in response to your
8 question, Gary Davis on behalf of SACE. As I mentioned
9 when we discussed the stipulation at the beginning of
10 this hearing, SACE was primarily focused on the Turkey
11 Point 6 and 7, and we weren't focused on the uprate.
12 However, after hearing what I have heard in the
13 presentations thus far, we do have grave concerns about
14 the uprate and about the veracity and the reliability of
15 all of FPL's information that we are likely to hear in
16 this hearing coming forward. And as a result of that,
17 our position was we did not object to the stipulation.
18 We didn't support it, but now SACE would withdraw that
19 and we do object to the stipulation.

20 **CHAIRMAN ARGENZIANO:** Mr. Moyle.

21 **MR. MOYLE:** Thank you. And I got a sense that
22 this question was coming and stepped out briefly to try
23 to reach my client, because I think while we signed the
24 stipulation, the last two days have had some testimony.
25 I was not able to reach my client, but I think it's

1 prudent for FIPUG, for my client contact, to discuss the
2 issue with him. But at this point -- I mean, we entered
3 into a stipulation. You know, I would like to speak
4 with the client, but I don't know of any reason why that
5 stipulation would not continue to be honored as we go
6 forward.

7 **CHAIRMAN ARGENZIANO:** Excuse me.

8 Commissioner Skop.

9 **COMMISSIONER SKOP:** Thank you, Madam Chair.

10 Mr. McGlothlin, again, the problem I have with
11 the proposed stipulation, notwithstanding the fact that
12 we have not conducted an evidentiary hearing, is that it
13 provides for cost recovery prior to reaching a
14 determination by this Commission as required by rule as
15 to the reasonableness and prudence of such costs that
16 have been requested for recovery. How do you overcome
17 the reasonableness requirement of our own rule?

18 **MR. MCGLOTHLIN:** Commissioner, I haven't had a
19 chance to thoroughly review the things that you brought
20 up earlier today. I have seen one order in which the
21 Commission acknowledged that certain prudence costs,
22 because of timeliness, would not be considered but would
23 be deferred until the next round.

24 **COMMISSIONER SKOP:** But there was a
25 reasonableness determination made in accepting that

1 stipulation, and, also, there was a finding of prudence
2 in that determination as stated in the order. So,
3 again, I think you can readily distinguish that from the
4 current stipulation which seeks to provide for cost
5 recovery of over \$81 million of EPC -- EPU-related costs
6 without reaching any determination of reasonableness,
7 without any determination of prudence, without
8 litigating those issues in the course of an evidentiary
9 hearing. That's the problem I have with the
10 stipulation, because it is inconsistent with the
11 Commission's duty under its own rules. There was no
12 rule waiver. I'll let you respond.

13 But, also, the point of it, too, is that as
14 time goes on, the Commission -- the composition of the
15 Commission changes, witnesses move away, you know,
16 memories get foggy. There seems to be some sort of
17 inherent risk there in waiting. And in the meantime,
18 you are just allowing recovery. So, again, if you need
19 more time to review it, I just don't see how you
20 overcome the reasonableness determination.

21 **MR. McGLOTHLIN:** I understand that the rule
22 contemplates that there is going to be a finding of
23 that. What happens in a situation in which the
24 Commission is in a posture in which there are issues
25 that have not been resolved? In that circumstance I

1 think there is a way to go forward.

2 **COMMISSIONER SKOP:** I think the go-forward way
3 is to, if you were to consider a stipulation, which in
4 the current form I'm not willing to do, because I want
5 to have a hearing and while I am here I want to ask my
6 questions, the way to have done it would have been to
7 submit a stipulation that conforms to the rule and not
8 provide for cost-recovery until the issue was litigated.
9 And that seems to be a stipulation that would be
10 consistent with the proposed rule. But, anyway, let me
11 move on to the next down the line.

12 **MR. DAVIS:** May I just respond to that,
13 Commissioner Skop?

14 **CHAIRMAN ARGENZIANO:** Yes; you're recognized.

15 **MR. DAVIS:** We would support a stipulation
16 that would not provide for cost-recovery. SACE would do
17 that. But without our support there is no such thing as
18 a stipulation, and what we have would be a motion on the
19 part of those parties who agree with our objection.

20 **COMMISSIONER SKOP:** Okay. And, Mr. Moyle, if
21 I could briefly hear from you. I mean, certainly I
22 think you're in a difficult situation because you have
23 not been able to reach your client with respect to the
24 developments and what is happening here before us today.
25 But I know that FIPUG has entered into the stipulation;

1 but, again, the question I would pose to you, in light
2 of the fact that FIPUG may have not had complete
3 transparency at the time it entered into the stipulation
4 and the reasonableness issue that I have raised in terms
5 of being legally consistent with the Commission's rule,
6 do you have anything additional to offer?

7 **CHAIRMAN ARGENZIANO:** Commissioner, can I ask
8 this question of Mr. Moyle since he couldn't reach his
9 client? Would you like to have time to reach your
10 client?

11 **MR. MOYLE:** It probably would help just so
12 that, you know, I'm on firm ground. But I can comment,
13 if I could --

14 **CHAIRMAN ARGENZIANO:** Okay. Sure.

15 **MR. MOYLE:** -- as long as we are clear on
16 that. You know, the legal question you asked about
17 reasonableness, you know, I haven't delved into that in
18 great detail until you brought that up. You know, FPL
19 apparently has some arguments to make. As you read the
20 rule it talked about, you know, reasonableness on an
21 annual basis or, you know, when they build it. There
22 was an or in there. And I have been around enough to
23 know that there is great discretion afforded to agencies
24 in their interpretations of rules. So, you know, I
25 don't know if it's a model of clarity or not, but the or

1 seems to suggest that A or B with respect to that point.

2 The other thing I think that I'm not
3 particularly clear on with the discussion is there seems
4 to be two issues. One is related to the past testimony
5 and then the other is the cost. Some time was spent on
6 this recent withdrawal. And I think FIPUG's position,
7 and one of the reasons that it entered into the
8 stipulation and I thought it made sense is because this
9 was a late development with respect to the withdrawal of
10 that application. And I'm not sure we got a good handle
11 on what those costs are. So we thought additional time
12 to delve into that, you know, would be beneficial.

13 So we still think that with respect to the
14 withdrawal issue, because that has not yet played out as
15 to what those costs might be. But, you know, I hope
16 that addresses kind of your comments. But, you know, I
17 would feel better with respect -- like I said, the last
18 communications with my client were the stipulation is
19 fine, and I haven't been able to reach him, so I am
20 assuming it is still fine.

21 **COMMISSIONER SKOP:** Okay. And then just one
22 follow-up, Madam Chair, to --

23 **CHAIRMAN ARGENZIANO:** Follow-up and then
24 Commissioner Graham.

25 **COMMISSIONER SKOP:** -- Mr. Moyle, if I can --

1 **MR. ANDERSON:** May FPL be heard, also, at some
2 point, please?

3 **CHAIRMAN ARGENZIANO:** Absolutely.

4 Follow-up?

5 **COMMISSIONER SKOP:** Yes. With respect to the
6 deferral, would that not essentially double the workload
7 in terms of all the issues that would come into play
8 because, again, not only are you dealing with what we
9 have essentially punted from this year to next year when
10 I won't be here to ask my questions, but you are also
11 going to have to be dealing with the same proceeding
12 that you would normally deal with this year. It's like
13 combining two proceedings into one in a very
14 time-shortened manner. So my concern -- do you have any
15 concerns with that, because the workload appears to be
16 double?

17 **MR. MOYLE:** I think it's probably an order of
18 magnitude. I mean, if they ever get around to revising
19 the statute, I don't know that a biennial review might
20 not make sense, because a lot of time is spent, you
21 know, on this proceeding. I mean, every year we are
22 here and having the conversation. But I don't have
23 strong feelings either way on the workload, Commissioner
24 Skop.

25 **COMMISSIONER SKOP:** Thank you.

1 **CHAIRMAN ARGENZIANO:** Commissioner Graham.

2 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

3 It appears to me, for lack of a better term,
4 that we are beating a dead horse. SACE, being one of
5 the intervenors, has already said that they want out of
6 the stipulation. So, therefore, there is no stipulation
7 in front of us. So I think the question comes down to
8 is do we have the full hearing with or without
9 subpoenaing the witnesses? And I guess someone needs to
10 make that motion one way or the other.

11 **CHAIRMAN ARGENZIANO:** Well, I've already
12 subpoenaed them. I already ordered the subpoenas.

13 **COMMISSIONER GRAHAM:** Now, can you
14 unilaterally do that, or is that a -- I guess I'm asking
15 legal that question, I don't know.

16 **CHAIRMAN ARGENZIANO:** Yes. According to the
17 statute, I have -- the presiding officer.

18 **MR. KISER:** That is what the statute says,
19 it's at the discretion of the Chairman. I would like to
20 point out, though, that in the legal process of issuing
21 a subpoena, if one of the parties -- one of the parties
22 that's being subpoenaed wants to question that, they
23 have legal procedures that they can use to protect
24 themselves.

25 And in this case, it would usually be a motion

1 to quash. And if that is filed, it comes back before
2 this body for a ruling on the motion to quash. So in
3 that process if it gets disputed, it's probably going to
4 be back before you.

5 **CHAIRMAN ARGENZIANO:** Mr. Kiser, I'm certain
6 they know that.

7 Commissioner Skop.

8 **COMMISSIONER SKOP:** Madam Chair, and to our
9 General Counsel's comment, and Commissioner Graham,
10 again, the plain reading of the statute provides for the
11 presiding officer to issue subpoenas. Certainly,
12 subpoenas can be challenged. It would be much easier if
13 witnesses would just appear so you don't have to
14 subpoena them.

15 But, again, that is a legal process that will
16 play out in due course. But I'm in support of moving
17 forward, as the Chair has stated, with subpoenaing those
18 witnesses. And at the appropriate time I'd be
19 recognized for that motion.

20 **MR. ANDERSON:** May FPL be heard on the law,
21 please. Now would be good, if you don't mind.

22 **CHAIRMAN ARGENZIANO:** Okay. Mr. Anderson.

23 And just to correct that, I'm not moving on
24 subpoenaing; I ordered the General Counsel.

25 Mr. Anderson.

1 **MR. ANDERSON:** Thank you. I'd like to speak
2 briefly to some legal points in relation to the
3 stipulation and motion for deferral.

4 The Florida Supreme Court case law and the
5 Commission's 2004 storm order of this Commission confirm
6 very clearly that temporary, preliminary, or interim
7 charges can be collected even without a hearing so long
8 as they are subject to refund, and that is exactly what
9 this stipulation calls for.

10 Here you have held a limited evidentiary
11 hearing for the purposes of addressing the
12 appropriateness of deferral, so you have held a hearing.
13 Finally, I believe the rule states that a hearing should
14 be conducted to determine reasonableness, but there is
15 no preclusion that we see that a hearing must be
16 conducted before preliminary charges are collected
17 subject to refund. We would also recall that the 2008
18 deferral was done, again, without a rule waiver, also.

19 Then just addressing some, I think, very key
20 policy interests and then turning to some
21 practicalities. It's useful to take a couple of steps
22 back and just remember why we are all here. We are here
23 because of the interest expressly stated by our
24 Legislature in Section 366.93 in terms of providing for
25 cost-recovery encouraging additional nuclear generation.

1 That's what this is about. It is a vital part of
2 Florida regulation that encourages utilities to proceed
3 with working to provide additional nuclear generation
4 for the state of Florida, with the fuel cost savings,
5 the fuel source diversification, greenhouse gas emission
6 reductions, and many other benefits that nuclear energy
7 provides to FPL customers and the state of Florida.
8 That's the bottom line of why we sit here today.

9 Granting the deferral, FPL submits is
10 consistent with law, as I have indicated, and reasonably
11 balances the interests of FPL's customers whom our
12 company serves. The stipulation or our request for
13 deferral provides that FPL would collect its costs.
14 They would go from 65 cents per thousand kilowatt hours
15 in 2010 down by more than 50 percent to 33 cents.
16 Again, fully subject to refund, based upon the future
17 proceeding. I will reemphasize, that recovery is
18 preliminary in nature, subject to full consideration of
19 all issues. Subject to refund in the form of a true-up
20 based upon determinations.

21 We have heard over the last couple of days a
22 great deal of additional detailed information that
23 highlights, I think, some of the points we heard from
24 the Office of Public Counsel and staff. We are fully
25 cognizant that staff's testimony in this proceeding

1 recommended additional consideration in a future
2 proceeding, and that is a good part of what caused our
3 company to support the idea of deferring the proceeding.

4 I understand and respect Commissioner Graham's
5 point about we all would like to know things sooner
6 rather than later. The challenge presented, as I
7 believe -- think about the testimony you have heard over
8 the last couple of days. Think how difficult it is to
9 tease out the strands of the facts on these mammoth
10 projects. The EPU project alone, the EPU project alone,
11 probably the largest ongoing nuclear construction -- one
12 of the largest nuclear construction programs in the
13 country, period. And it's far in advanced to new
14 nuclear.

15 So, you know, we very much support the idea,
16 and we are willing to be fully cooperative. I believe
17 the parties would agree we have provided mammoth amounts
18 of discovery. We are extraordinarily cooperative, I
19 believe, and forthcoming in discovery. And we, as a
20 company, are prepared to, you know, meet those ongoing
21 obligations beginning immediately after these hearings.

22 I think one of the key things that is
23 illustrated through these things is those of us who have
24 been involved in any type of litigation, think of needs
25 cases, they look to the future. So you are dealing with

1 projections. Think about other types of litigation,
2 contract cases or things that occur about the past. You
3 know, you search the facts and you determine what goes
4 on in the past. The challenge for the Commission, and
5 we are all working through this here, I believe, is that
6 these are projects with a mammoth amount of information
7 going on at all times, and we are all grappling with the
8 difficulty of ensuring that everyone knows everything
9 that they can reasonably provide at any given point in
10 time. And that, I think, is an area for improvement.
11 That is an area that was recognized in the Concentric
12 report.

13 So, you know, for all those reasons we feel
14 that the best course of action to permit full
15 exploration of all these considerations is consistent
16 with a deferral. And, again, I would indicate that, you
17 know, both staff and OPC are long-standing people, you
18 know, accountable to the state of Florida who are
19 schooled in the difficulties and challenges of these
20 cases. They know what it takes just as we do to get
21 into all the details and facts, and we suggest that that
22 is the best course for ensuring a full hearing on all of
23 these matters. Thank you.

24 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you, Madam Chair.

1 Would it be possible for our court reporter to
2 read back Commissioner Graham's original motion, because
3 I have heard Mr. Anderson suggest that we are conducting
4 an evidentiary hearing. However, I don't believe and
5 it's not my recollection that that was the intent of the
6 motion. So I would like --

7 **CHAIRMAN ARGENZIANO:** Commissioner Skop, the
8 reason there was a motion is because they didn't want to
9 go into a full evidentiary hearing.

10 **COMMISSIONER SKOP:** I understand that. I
11 think that is what concerns me is the candor of the
12 representations that Mr. Anderson makes to this
13 Commission. I mean, I recognize his advocacy, but when
14 you are saying one thing and it is really not that, I
15 mean, he still has obligations of candor to the
16 Commission. And --

17 **CHAIRMAN ARGENZIANO:** Let's do this. Let's do
18 this. I had some questions for OPC. Since SACE already
19 has made its comments about their concern about moving
20 into -- moving with the stipulations, I will not ask
21 them the questions I was going to ask them. I will ask
22 OPC, and then if we want to take a break, a lunch break,
23 or whatever, and have -- if you can specify to the court
24 reporter when and which motion.

25 **COMMISSIONER SKOP:** Also, too, Madam Chair,

1 just one follow-up question. Mr. Anderson represented
2 the stipulation was entered into as a result of staff's
3 recommendation. The staff testimony was filed on or
4 about July 20th, 2010. I would note for the record that
5 the stipulation was not filed with the Commission until
6 August 17th. There was a substantial amount of time
7 between the stipulation and the event that Mr. Anderson
8 alluded to. But moreover, the stipulations are off the
9 table at this point because they are not concurred to.

10 So what I would suggest, if we are going to go
11 on a lunch break, is for our staff to take a look at
12 some hearing dates that would support having the
13 required hearing that would, you know, be sufficient to
14 allow some time for limited discovery to go into these
15 issues, allow the parties to prepare, whether it be, you
16 know, mid-September, you know, October. But, again,
17 clearly we need to conduct an evidentiary hearing and
18 the subpoenas have already been issued. And so I think
19 that's consistent with staff's intent is to have some
20 additional information, and once we get the discovery we
21 are ready to go to hearing.

22 **CHAIRMAN ARGENZIANO:** We don't have to go to
23 lunch if we don't want to, if we can get done. But I do
24 have some questions that I'd like to ask Mr. McGlothlin.

25 **MR. MOYLE:** Madam Chair, could I take you up

1 on your kind offer about giving me five minutes to try
2 to reach the client on that?

3 **COMMISSIONER EDGAR:** I don't need a full lunch
4 break, but we had said at 1:30 -- I had scheduled a
5 couple of things for personal time. If we could take
6 even ten that would be helpful.

7 **CHAIRMAN ARGENZIANO:** Okay. What I did the
8 1:30 were for the court reporters while they switched
9 out. But let's go ahead and take a ten-minute break
10 now, and that will give us all time.

11 (Off the record.)

12 **CHAIRMAN ARGENZIANO:** Okay. We are back.
13 Okay. Let's put ourselves in the proper posture. We
14 have no stipulation, and what we are going to do then is
15 to -- we looked at dates, and, staff, could you tell us
16 the dates we're going to move forward with?

17 **MR. YOUNG:** Yes, ma'am. Commissioners, we
18 have several dates, 8th and 9th of September; 20th,
19 21st; we are checking on the 27th and the 23rd of
20 September.

21 **CHAIRMAN ARGENZIANO:** Again, 8th and 9th, 20,
22 21st, not the 22nd?

23 **MR. YOUNG:** We are checking on the 22nd and
24 then the 23rd of September.

25 **CHAIRMAN ARGENZIANO:** Okay.

1 **MR. YOUNG:** A Commissioner has a hold on that
2 date, and we are checking on that date to see if it can
3 be moved.

4 **CHAIRMAN ARGENZIANO:** Okay.

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Yes. Can they repeat
7 those dates for me?

8 **MR. ANDERSON:** May FPL please be heard,
9 because I think there was an important point that was
10 missed.

11 **CHAIRMAN ARGENZIANO:** Okay. Once second.
12 Commissioner Skop, and then we'll go right to you. He
13 is asking me something about a date.

14 **COMMISSIONER SKOP:** Mr. Young, did I hear
15 correctly the September 20th, 21st, and 22nd?

16 **MR. YOUNG:** Potentially -- yes, sir.
17 Potentially, the 22nd and the 23rd, if needed.

18 **COMMISSIONER SKOP:** Okay.

19 **CHAIRMAN ARGENZIANO:** Mr. Anderson.

20 **MR. ANDERSON:** Thank you.

21 To be very clear, the Southern Alliance for
22 Clean Energy was not a party to the stipulation. They
23 had agreed not to object. Their change in position does
24 not change the fact that what we presented contains the
25 stipulation among FPL, OPC, and FIPUG, and we ask for a

1 ruling on our motion.

2 The other two very brief points, there was an
3 assertion made earlier that we have not been in an
4 evidentiary hearing for the past two days. I would just
5 point out that we have had the calling, the swearing,
6 interrogating of witnesses, presentation of documentary
7 evidence. If that is not an evidentiary hearing, I
8 don't know what one is.

9 **CHAIRMAN ARGENZIANO:** Then we do need the
10 transcript, because I was under the impression that we
11 were voting because certain Commissioners did not want
12 to go into an evidentiary hearing. So we will pull the
13 transcript if it hasn't been, and we will address that.
14 And then we will go to staff.

15 Commissioner Skop.

16 **COMMISSIONER SKOP:** Yes. Madam Chair, on the
17 issue of the transcript, again, I have it before me.
18 Commissioner Graham made a motion and, you know, it's a
19 liberal interpretation of going through the motions, but
20 the idea is that there was no waiver. Mr. Moyle made
21 that clear on the record. FPL concurred. We didn't
22 hear a lot of cross. There was no redirect. You know,
23 there is a substantial difference between the full
24 hearing -- and this is Commissioner Graham. Basically,
25 what I'm saying is staff is going to call their

1 questions of the two witnesses. The Commission will ask
2 those questions of the two witnesses. And at the end of
3 those interviews of those witnesses, we can decide if we
4 move forward with the stipulation or go back to a
5 full-blown hearing.

6 **MR. ANDERSON:** The distinction, though, is
7 very clear. We made clear at all points that the
8 parties were not waiving their right to proceed in full
9 with respect to all witnesses. That is the evidentiary
10 hearing on the merits that we were deferring. We have
11 had two days of evidentiary hearing.

12 (Simultaneous conversation.)

13 **CHAIRMAN ARGENZIANO:** One at a time.

14 **MR. ANDERSON:** Thank you.

15 **COMMISSIONER SKOP:** Let's not belabor that
16 point. Let's get to what is important. FPL has
17 requested that the Commission render a ruling on its
18 motion to adopt the proposed stipulation, and at this
19 time I respectfully move to deny approval of the
20 proposed stipulation to the extent that it's
21 inconsistent with the Commission's own rule to maintain
22 a finding of reasonableness and prudence as a result of
23 having a hearing.

24 **CHAIRMAN ARGENZIANO:** That was a motion?

25 **COMMISSIONER SKOP:** Yes.

1 **CHAIRMAN ARGENZIANO:** Second.

2 **COMMISSIONER BRISÉ:** I have a question.

3 **CHAIRMAN ARGENZIANO:** Discussion.

4 **COMMISSIONER BRISÉ:** If I understand the
5 motion properly, if we -- if the Commission moves
6 forward and denies the stipulation, then we can never
7 revisit that even after the full evidentiary hearing, if
8 I understand that properly. And if I am mistaken, maybe
9 we can get some advice from our legal counsel.

10 **MS. HELTON:** Can I take a stab at the
11 stipulation question?

12 **CHAIRMAN ARGENZIANO:** Yes.

13 **MS. HELTON:** And if I say something that one
14 of our lawyers disagrees with, I hope that they will
15 jump up and let me know. I have been here as a
16 full-time attorney since 1991, I think is when I
17 started, and I have seen a lot of stipulations come, and
18 I have seen a lot of stipulations go. I have seen a lot
19 of proceedings where dates are established in a rule or
20 in a statute where either the petitioner or the parties
21 at issue agree to waive those dates that enure to their
22 benefit without any kind of a rule waiver. And I think
23 most people would agree that we can't really waive a
24 statute unless it's something that enures to the benefit
25 of the stakeholders and they are agreeing not to go

1 forward with the benefit that that statute or that rule
2 gives them.

3 Based on my limited knowledge of working here
4 at the Commission, which does not extend into private
5 practice, does not extend to any other agency, I believe
6 that the parties have the ability to stipulate to
7 something that goes beyond the confines of the rule. I
8 believe that if it is the pleasure of the company and
9 the pleasure of the parties to the case who have entered
10 into the stipulation for the Commission not to rule on
11 the reasonableness or the prudence of these costs, that
12 in order to give all interested persons the time to
13 conduct additional discovery, to conduct an additional
14 audit if that's what the audit staff thinks is
15 necessary, that you all have it in your discretion to do
16 that.

17 If you decide that at this time that you do
18 not agree with what the parties are requesting, it's
19 within your discretion to bring it to a head now to come
20 to a hearing. I believe that once the hearing is held,
21 and this is where I'm hoping that Ms. Cibula is
22 listening to me carefully, but once the hearing is held,
23 if you have still not gathered enough information, in
24 your mind, to make a decision on the reasonableness and
25 on the prudence, then it is within your discretion to

1 still spin that issue out to another proceeding or to
2 defer the decision on that until the next year.

3 And can I turn around to Samantha and make
4 sure she agrees?

5 **CHAIRMAN ARGENZIANO:** Sure.

6 **MS. CIBULA:** The only difference of opinion I
7 might have is that Subsection, I guess, (2)(c) of the
8 rule, the one that Commissioner Skop alluded to, it says
9 the Commission shall prior to October 1st of each year
10 conduct a hearing and determine the reasonableness of
11 the projected preconstruction expenditures and the
12 prudence of the actual preconstruction expenditures, and
13 it goes on. And I think that if the stipulation wasn't
14 there the Commission before October 1st would have to
15 make that determination of prudence and reasonableness
16 at that time, and they wouldn't have the option any more
17 to spin it out.

18 **CHAIRMAN ARGENZIANO:** But up until
19 October 1st?

20 **MS. CIBULA:** We would have until October 1st.

21 **MS. HELTON:** And, Madam Chairman, if I could
22 speak to the question of what type of proceeding are we
23 in. I would love to give you my sense of where we are.
24 I think we are in a form of an evidentiary proceeding,
25 otherwise, we would not have taken sworn testimony.

1 Otherwise --

2 **CHAIRMAN ARGENZIANO:** Okay. Ms. Helton, let
3 me ask you a question to that, because I have heard that
4 over and over. When we had a motion that we voted on, I
5 know my nay vote to that motion was because I wanted a
6 full evidentiary hearing. And the motion was not ever
7 presented as a full evidentiary hearing. And as
8 Commissioner Skop just read the comments to that motion
9 by -- I was going to say Representative Graham --
10 Commissioner Graham, that he even announced that then we
11 could go into a full evidentiary hearing. So even
12 though that may be the case, that wasn't his intent in
13 his motion, according to his own words.

14 So let me do this. Let me do this. Hang on
15 to your thought for a minute. Commissioner Skop is
16 jumping out of his chair here, let me let him -- to that
17 point?

18 **COMMISSIONER SKOP:** To that point. I believe
19 we have taken sworn testimony. It was described as
20 somewhat bifurcated from the normal process where FPL
21 would put on its case in chief and call its first
22 witness. Definitely at a minimum we took witnesses out
23 of sequence. But, again, there is on the record
24 indication that none of the parties waived their rights.
25 There was limited cross, limited -- I mean, there was

1 cross, but limited cross by the intervening parties, no
2 redirect that I heard and limited questions by staff,
3 limited questions from the bench.

4 Again, to me, the situation becomes is that
5 the Commission has the obligation under the rule. I
6 agree with Ms. Helton and Ms. Cibula to the extent that
7 if the Commission denies the proposed stipulations
8 pursuant to the motion pending before the Commission,
9 the Commission can conduct additional discovery. There
10 are some proposed hearing dates. We can move forward.
11 And I still think that it is inherent upon the
12 Commission's ability at that time, after hearing the
13 testimony, if it desires, to push off the proceeding,
14 then you could look at the reasonableness of what you
15 had before you and do some other things. But I don't
16 think our hands are tied, necessarily constrained,
17 because, you know, what happens under that rule if you
18 had an act of God or a hurricane that prevented
19 something from happening, you know. So I think that
20 there is a little bit of flexibility there.

21 But I agree with the hybrid of what I have
22 heard. But it seems to me that that addresses
23 Commissioner Brisé's point that if you deny the motion
24 for stipulations, there is no harm, no foul, because we
25 just go through what we should have done or what we

1 could have done from the onset is to have the hearing.
2 And then if we still need more information, we still
3 have resources available and options available to the
4 Commission, I believe.

5 **CHAIRMAN ARGENZIANO:** You said we had the
6 ability then to stipulate up until October 1st?

7 **MS. CIBULA:** According to the rule,
8 October 1st is when the Commission has to make its
9 decision on prudence or reasonableness.

10 **CHAIRMAN ARGENZIANO:** Okay. So that would
11 give you enough time to maybe get some answers to some
12 questions that Commissioners may have and then still be
13 able to go into a stipulation.

14 Commissioner Brisé.

15 **COMMISSIONER BRISÉ:** Yes. I just have a
16 couple of comments. I'm sure we're going to vote soon.

17 **CHAIRMAN ARGENZIANO:** You're.

18 **COMMISSIONER BRISÉ:** I would like to see it
19 done in reverse, that if we want to go into a hearing, a
20 full hearing, I mean, using the term full loosely, that
21 we decide to do that and leave the stipulation out of it
22 altogether. We address that issue. If we decide we
23 agree on the dates and we move forward. And I think it
24 would be a lot easier that way so, therefore, even in
25 perception we don't tie our hands and so forth.

1 **MR. MOYLE:** Madam Chair, just briefly. You
2 were very gracious in extending me the opportunity to
3 reach my client, and just so that you have a complete
4 record, I reached my client contact and they are
5 comfortable with the stipulation as entered into. I
6 just wanted you to be aware of that.

7 **CHAIRMAN ARGENZIANO:** Okay. Who's waving?

8 **MS. HELTON:** If y'all don't mind, and if I
9 could beg your indulgence to --

10 **CHAIRMAN ARGENZIANO:** I would rather not go
11 back, backwards. I'd rather go forward.

12 **MS. HELTON:** I would love to talk about the
13 hearing, because this is my fear.

14 **CHAIRMAN ARGENZIANO:** Okay.

15 **MS. HELTON:** Having sat here for two days
16 listening to testimony, I would hate for anyone to make
17 the argument that we aren't in some kind of an
18 evidentiary hearing where the staff could not rely on
19 the testimony from the last two days, and you cannot
20 rely on the competent substantial evidence, which I
21 believe has been gathered for the last two days in
22 making a decision. That is the point that I very much
23 wanted to make. Thank you.

24 **CHAIRMAN ARGENZIANO:** Okay. But I also do not
25 want it perceived that I voted for a motion that said we

1 were going into a full evidentiary hearing.

2 **MS. HELTON:** And, ma'am, I don't think we have
3 gone into a full hearing, because we have not followed
4 the prehearing order, which is the map of the
5 proceeding. We have not entered testimony. We have not
6 entered prefiled exhibits, except to the extent that
7 some of the exhibits that have already been entered were
8 prefiled. We still have a whole process to go through.
9 I just would hate for anyone in this room to think that
10 we have to go back and tread ground that we have gone
11 over the last two days.

12 **CHAIRMAN ARGENZIANO:** Right.

13 **COMMISSIONER EDGAR:** Madam Chair.

14 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

15 **COMMISSIONER EDGAR:** Thank you.

16 You know, I have said over the years here a
17 number of times I think the words that we use are
18 important, and I also think that we need to give each
19 other and all the parties and witnesses the benefit of
20 the doubt. And I think that those two things can go
21 together, should go together, and most of the time do go
22 together.

23 So whether a stipulation disappears because
24 one party has perhaps restated some things -- I'm not
25 quite frankly sure what even they were doing or what the

1 meaning of that is as far as a motion that was filed and
2 was pending before us. We seemed to have moved beyond
3 that. I would have liked to have asked that if there
4 had been time before we moved on.

5 Commissioner Skop read from the transcript, or
6 the draft transcript, whichever status it is in right
7 now from yesterday morning. But he, I think to give the
8 full picture, should have taken it a little further.
9 And he did quote from what we have before us, that
10 Commissioner Graham had offered a motion. At the time,
11 if you recall, I said that I didn't completely
12 understand what the effect of the motion would be, and,
13 therefore, I asked to restate it in my words, which I
14 did. And which Commissioner Graham, here in the
15 transcript, said yes, yes.

16 So, as Commissioner Skop was reading to us
17 from the transcript, I think it might have been helpful
18 if he had gone on, because there was more discussion
19 from that point. And what I said at that point is,
20 "What I want to do is restate it," the motion, "and if
21 I'm understanding it correctly, then I was going to
22 second it, but I didn't want to second it if I didn't
23 understand it correctly. My understanding of the motion
24 that Commissioner Graham has made is that we would ask,
25 that the Commission would ask FPL to call Witness Jones.

1 There would be an opportunity for his testimony and for
2 questions from all the parties and Commissioners, which
3 would, of course, include staff. And at the conclusion
4 of all of that, then we would ask FPL to call Witness
5 Reed, go through that same evidentiary process, and then
6 at that point there would be the opportunity for a
7 motion as to how to proceed further. Am I correct that
8 that was the intended effect of the motion?" .

9 "Commissioner Graham: That was the effect, if
10 it is a legal motion."

11 And I said, "I believe that it is. And in
12 that case I second." Then we had discussion, and then
13 we voted, and that motion passed on a three-to-two.

14 Now, I chose my words in that very carefully,
15 because I wanted to make sure that I understood the
16 motion that had been made, and that if I were to second
17 it, that I knew what it was that we were putting forth
18 for consideration. And those words go through that same
19 evidentiary process. I thought it was clear then, I
20 think it is clear now. I think it is clear, in my
21 opinion, that we have been in an evidentiary proceeding.

22 I also asked earlier today what the meaning of
23 using the descriptive term full in front of evidentiary
24 meant if, indeed, we are going to use that term in
25 another motion to help then guide us as we continue to

1 move through the issues that were before us. Now I am
2 told that whether it is evidentiary, or whether it's
3 full evidentiary or, I guess, partial does not have
4 meaning, and I have to say I disagree with that. I
5 think that it is important that we are clear with what
6 we are doing to the best of our ability, with what we
7 intend, and with what will then flow from that.

8 So it is my belief that it was clear from the
9 motion that was before us, that it was clear from the
10 vote that we took, and that it is also clear from the
11 way we proceeded from that point forward until now that
12 we have been in an evidentiary proceeding. I am still
13 not sure what the term full would mean if, indeed, that
14 is what we are going to use.

15 Now, I also have heard earlier today that
16 there are concerns about the -- what was put before us
17 as a motion for approval of stipulation and for a
18 deferral of consideration of issues. If an item is
19 filed in the docket file, and it is styled as a motion
20 and it is before us, I think that it probably needs to
21 be acted upon. And I thought that was one of the things
22 that we were going to do. Now I'm told that the
23 stipulation has just disappeared and that we're
24 scheduling other dates. So I am, again, not as clear as
25 I would like to be as to where we are procedurally.

1 I also thought that I understood, and I tried
2 to clarify this earlier, that concerns by one or more
3 Commissioners about considering deferral, the
4 stipulation and for deferral of consideration of issues,
5 that those concerns resided primarily around a desire
6 for more information. And I also believe that I heard
7 that at least some of the parties and our staff believed
8 that a deferral, as put before us in the motion, would
9 allow for additional time.

10 Now, before I was able to share some of my,
11 again, thoughts on this, we have a motion before us that
12 says -- that, in my opinion, draws a legal conclusion
13 about what we are allowed to do legally under the
14 statute and the rule. And if, indeed, that motion were
15 to pass, I would have some concerns about how that would
16 tie our hands. Whether, indeed, that is legal precedent
17 or not. I will leave it at that.

18 I don't agree with that interpretation of the
19 rule that was styled in the motion, and I have a little
20 bit of a concern procedurally about whether a motion
21 intended to set hearing dates is how we should be
22 drawing legal conclusions or legal interpretations of
23 rules before us.

24 So I'm going to ask our staff, please, have
25 they done a legal review and analysis as to whether a --

1 whether the motion for approval of stipulation and for
2 deferral of consideration of issues is allowable legally
3 under the rule that is before us or under the rule that
4 we are referring to during these discussions.

5 **MS. HELTON:** I think what I stated earlier on
6 the record was our legal analysis, and I think that I
7 have full agreement with the staff that as long as you
8 have taken some action stating how you are going to rule
9 on whether there is a reasonableness or prudence of
10 costs, and you can do that by way of approving the
11 stipulation, because it's my understanding that the
12 stipulation speaks to that, how you should treat those
13 costs, then you may vote affirmatively for the
14 stipulation and meet the requirements of the rule.

15 **COMMISSIONER EDGAR:** Okay.

16 Then, Madam Chair, you have often said on this
17 point, as with many, I agree with you completely, that
18 sometimes it's just easier to speak plainly. I am not
19 clear on what it is we are trying to do or why. Is
20 it -- you know, again, I think a motion and a second is
21 before us that draws some legal conclusions that I am
22 not comfortable with as to what we can or cannot do in
23 keeping with the rule.

24 So to now try to speak more clearly, is there
25 a desire, perhaps, by a majority of this Commission to

1 continue with an evidentiary -- continue with additional
2 evidentiary proceedings in this docket within a more
3 immediate time frame than what is laid out in the
4 stipulation which would, I believe, with discovery, and
5 all of the processes, and the notice requirements, and
6 scheduling would take us into next year. Is it that we
7 need to do this now, because we don't have enough
8 information; is it that the stipulation does not meet
9 the requirements of the rule; or is there another? I
10 mean, I feel like I am hearing a couple of different
11 things.

12 And I'm not trying to be argumentative. I
13 really think it is important that we are clear, and I
14 want to make sure that I am clear.

15 **CHAIRMAN ARGENZIANO:** And if you are asking
16 me, and I will let everybody answer for themselves, but
17 if you are asking me, you know, Commissioner, I could
18 tell you when we talk about clear, I think -- and with
19 all due respect, I think attorneys go to school never to
20 be clear. So it's very difficult for non-attorneys who
21 are sitting here to ever understand some of you and what
22 you really mean by what you say. So it puts my brain in
23 overgear because I have to look beyond what you are
24 actually saying, because I have seen it many, many times
25 throughout my life, and here is no exception.

1 So as far as the concerns you enumerated, all
2 of them, all of the above are concerns of mine, and I
3 think I have expressed them. If you want me to read
4 word-for-word what I said before again, I will do that.
5 I have grave concerns about moving forward. I don't
6 want to be a party to a stipulation that may have been
7 based on incorrect information. And I want to make
8 sure, and I think the company would like to also make
9 sure for their own sake that there have been some -- and
10 I have said it myself that there could be, could be, or
11 may have been misinformation given to this Commission.

12 And could there be fraud? I don't know, but I
13 would like answers to those questions. To me sooner
14 than later is better, and for all the reasons plus more.
15 So if that's the answer, and I don't know if we are not
16 splitting hairs, and I don't know what your legal reason
17 is for why you want to say we are in a full, or not in a
18 full, or if it's a full, or it's not a full, but people
19 at home are probably going what the heck is -- what are
20 you guys doing.

21 I understand Ms. Helton's point because
22 everything that we have done here in the last couple of
23 days is extremely important, so I will say that that is
24 a point well taken. But I also, as I said before, want
25 to make darn sure that it is understood that I know I

1 voted in the negative to move forward to any kind of
2 curtailing of information that I may be able to get in a
3 reasonable amount of time so that I would not have to
4 defer stipulations that I felt could be concluded or
5 could have been made upon -- with inaccurate or
6 misleading information.

7 And then to hear an individual who was sitting
8 there saying they were part of the stipulation say I
9 don't agree with this anymore after what I have heard,
10 and if we need to go, I will ask the stipulators the
11 questions I had planned to ask you, because there are
12 some that are -- I'd like some enlightening answers from
13 you, from what I read from the original concerns to
14 where you wound up in stipulations.

15 And instead of going there right now, what I
16 would like to do for my opinion, and then I'm going to
17 let everybody speak for themselves, is I would like to
18 move forward with dates to move forward to and get this
19 information out there.

20 And if the 8th, or the 9th, or the 21st, or
21 the 22nd -- it may be that on those days I could have my
22 questions answered. I could feel a little better and
23 for all the reasons that you've mentioned, that may
24 solve the problem. So if there is, you know, real
25 objection to curtailing that or to moving forward, then

1 so be it. But I'm still where I was before, and I'm
2 going to let each one of you answer for yourselves.

3 Commissioner Skop and then --

4 **MR. ANDERSON:** May I speak for FPL very
5 briefly, just to clarify.

6 **CHAIRMAN ARGENZIANO:** Yes, Mr. Anderson.

7 **MR. ANDERSON:** It has been stated clearly and
8 correctly that there is before this Commission a motion,
9 and it does contain an active live stipulation of the
10 Office of Public Counsel, the Florida Industrial Power
11 Users Group, and Florida Power and Light Company. SACE
12 previously was never a party to that. So that is a live
13 stipulation. I think it should be considered in the
14 nature of a joint motion. However styled, however
15 styled, we believe it's appropriate to proceed in
16 relation and approve the request for a stipulation for
17 all the reasons we have indicated.

18 And we do request a ruling on that request,
19 which we filed this more than a week ago. We have been
20 through two days, and before considering the setting of
21 any other hearings, this is a potentially dispositive
22 motion which would permit all the time that has been
23 indicated and desired for additional investigation, all
24 the things I have said before. But I do believe from a
25 process perspective, from a due process perspective, we

1 do wish a ruling.

2 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, Madam Chair.

4 And if I could be so kind, may I ask that you
5 afford me courtesy and withdraw your second to my
6 motion, so I can withdraw my motion and --

7 **CHAIRMAN ARGENZIANO:** I withdraw the second.

8 **COMMISSIONER SKOP:** All right. I withdraw my
9 prior motion.

10 What I have heard from my colleagues,
11 Commissioner Edgar, she had problems with, perhaps, the
12 wording of a motion. I heard problems or concerns
13 raised about preserving the ability to address the
14 stipulation at the end of the hearing. So, again, this
15 brings me back to the point I made on the very first day
16 of the FPL proceeding, that I was adamantly opposed to
17 and vigorously object to considering the proposed
18 stipulations prior to hearing all of the FPL witness
19 testimony in this docket.

20 And it seems to me that, you know, if the
21 concern is still having the stipulations available to
22 us, then I could not agree more with Commissioner -- I
23 mean, Chairman Argenziano to go forth and set the
24 hearing dates for September 20th, 21st, and 22nd. And
25 in furtherance of that, I would move to defer

1 consideration of the motion until the conclusion of the
2 FPL portion of the docket.

3 **CHAIRMAN ARGENZIANO:** And I would second that.
4 Discussion.

5 **COMMISSIONER EDGAR:** Could I hear it one more
6 time?

7 **CHAIRMAN ARGENZIANO:** Could you repeat the
8 motion?

9 **COMMISSIONER EDGAR:** And as I ask that, I also
10 say, you know, thank you for listening to my concerns
11 about some of the wording prior. I appreciate that.
12 But, again, it has been a long day, and I want to make
13 sure that it has just sunk in. And so a friendly
14 request, if you could, please --

15 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Very well. And this was
17 my original motion that apparently got deferred, so I'm
18 reverting back to that.

19 My motion would be to defer considering the
20 proposed stipulations prior to hearing -- excuse me, let
21 me restate. My motion would be to defer considering the
22 proposed joint stipulations prior to hearing all of the
23 FPL witness testimony in this docket, and that would
24 include those witnesses that are under subpoena as
25 indicated by Chairman Argenziano.

1 **CHAIRMAN ARGENZIANO:** Okay. We have a motion
2 and a second. Any further discussion?

3 Commissioner Graham.

4 **COMMISSIONER GRAHAM:** Yeah. I guess my
5 clarification, if --

6 **MR. KISER:** Madam Chairman, I didn't hear a
7 second to that motion.

8 **CHAIRMAN ARGENZIANO:** I seconded it.

9 **COMMISSIONER GRAHAM:** I guess my clarification
10 is if they are under subpoena, and that is done
11 unilaterally by the Chair, is there a need to have that
12 in a motion?

13 **COMMISSIONER SKOP:** Again, I believe it
14 preserves the intent of Chairman Argenziano's action
15 taken by the presiding officer, but the FPL witness
16 testimony could be construed otherwise without that
17 being in the motion.

18 **COMMISSIONER GRAHAM:** So did you take that out
19 of the motion or is it in the motion?

20 **COMMISSIONER SKOP:** No, it's included in the
21 motion.

22 **COMMISSIONER GRAHAM:** Okay. Then I'm sorry, I
23 can't vote for it that way.

24 **CHAIRMAN ARGENZIANO:** Understanding what the
25 motion is?

1 **COMMISSIONER EDGAR:** Not completely.

2 **CHAIRMAN ARGENZIANO:** Okay. Then let's
3 continue discussion. Really --

4 **COMMISSIONER SKOP:** So you can recognize
5 colleagues for discussion.

6 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
7 Edgar.

8 **COMMISSIONER EDGAR:** I was trying to write
9 while you were speaking, and I thought I heard you say
10 defer consideration of the proposed stipulation until
11 the FPL witness testimony in this docket -- and, again,
12 I apologize, but --

13 **COMMISSIONER SKOP:** I will try --

14 **COMMISSIONER EDGAR:** Bounce it back and forth,
15 but I do want to be clear.

16 **COMMISSIONER SKOP:** I will try to the best of
17 my ability. And, Janie, correct me if I'm wrong. I
18 believe the motion that I made was to defer
19 consideration of the motion regarding the proposed joint
20 stipulations prior to hearing all of the FPL witness
21 testimony in this docket, including the three witnesses
22 that are under subpoena. And I believe that was the
23 intent of the motion as properly seconded.

24 **CHAIRMAN ARGENZIANO:** Commissioner Brisé.

25 **COMMISSIONER BRISÉ:** My only concern with that

1 motion is that if for some reason the subpoena is
2 challenged, and we have issues there, do we then stop
3 and get stuck for a couple of weeks?

4 **COMMISSIONER SKOP:** Very good point.

5 **CHAIRMAN ARGENZIANO:** That's a good point. Do
6 we actually have to have it in a motion?

7 **COMMISSIONER SKOP:** No.

8 **CHAIRMAN ARGENZIANO:** If we have a subpoena,
9 whether they quash it or not, or whatever happens,
10 wouldn't the motion just indicating that we wanted to
11 defer the stipulations until after testimony that we
12 wanted to hear --

13 **COMMISSIONER SKOP:** Okay. If you withdraw
14 your second, I will restate.

15 **CHAIRMAN ARGENZIANO:** I withdraw the second.

16 **COMMISSIONER SKOP:** All right. Okay. The
17 motion, revised motion would be to defer consideration
18 of the motion regarding the proposed joint stipulations
19 prior to hearing the FPL witness testimony in this
20 docket -- prior to hearing all of the witness -- excuse
21 me, its late.

22 The motion: Defer considering the motion
23 regarding the proposed joint stipulations until hearing
24 all of the FPL witness testimony in this docket. And
25 the intent behind that motion is recognizing the fact

1 that in addition to the stated witnesses, there is a
2 subpoena for three additional witnesses, which if they
3 appear, they appear. But the motion is what it is.

4 **CHAIRMAN ARGENZIANO:** That is not in the
5 motion, so I'm going to second the motion that you
6 stated. Second to that motion. Any other discussion on
7 the motion now, excluding --

8 Okay. Commissioner Graham.

9 **COMMISSIONER GRAHAM:** I think I am
10 sufficiently confused now.

11 **CHAIRMAN ARGENZIANO:** It is exactly now
12 without what you objected to before.

13 **COMMISSIONER GRAHAM:** Okay. So it's the same
14 motion except for it does not stipulate anything about
15 the subpoenas.

16 **CHAIRMAN ARGENZIANO:** Right.

17 Commissioner Edgar.

18 **COMMISSIONER EDGAR:** Just procedurally, I
19 understood -- I heard that we were looking at some dates
20 that -- I think what we're talking about is a
21 continuation of this hearing at some dates next month.
22 How does that put us -- and I know we have talked about
23 it, but I am going to ask again. If that is the way we
24 proceed, where would that put us time line as far as
25 information gathering, if depositions, interrogatories,

1 further information gathering is necessary between now
2 and then, and then also as far as the time needed and
3 notice requirements for a staff recommendation and for
4 an actual decision-making proceeding to come before us?

5 **MS. HELTON:** Can we have five minutes with the
6 staff to talk about that?

7 **CHAIRMAN ARGENZIANO:** I thought we had talked
8 about that so we knew we had everything. Okay. All
9 right. Let's do that. How about we give you guys --
10 well, wait a minute. Did you want to comment right now?

11 **COMMISSIONER SKOP:** Yes, I did, just briefly.

12 **CHAIRMAN ARGENZIANO:** Let's do this.
13 Commissioner Skop and then we'll get an answer. I'm
14 sorry, Commissioner Graham was first and then
15 Commissioner Skop.

16 **COMMISSIONER GRAHAM:** Madam Chair, I would --
17 if we are going to take five minutes for staff to talk
18 about this, if we hear from FPL, so if there is
19 something that they are adding to it, they can also talk
20 about that, as well.

21 **CHAIRMAN ARGENZIANO:** Absolutely. I'm sure
22 they will jump in any time.

23 Commission Skop and then -- I'm sorry.
24 Mr. Anderson, why don't you do that, and then we will go
25 to Commissioner Skop, and then we will go to staff and

1 take five minutes, okay?

2 Mr. Anderson.

3 **MR. ANDERSON:** Thank you. We just note that
4 we think that the process that would be created by this
5 motion would not be a good one. If such a process were
6 to be followed, it should include the testimony of all
7 the parties' witnesses, not just the FPL witnesses.

8 **COMMISSIONER SKOP:** And, again, I will need to
9 thank you for that point. It's getting late. I need to
10 amend my motion again.

11 **CHAIRMAN ARGENZIANO:** I withdraw the second.

12 **COMMISSIONER SKOP:** Sorry. We will get this
13 right.

14 **CHAIRMAN ARGENZIANO:** That's all right. I
15 would rather do it right than not.

16 **COMMISSIONER SKOP:** We will get this -- trust
17 me, we will get this right.

18 **CHAIRMAN ARGENZIANO:** Nobody is going to get
19 this perfect the first time anyway.

20 **COMMISSIONER SKOP:** The motion is this, and I
21 can be beat up, but, you know, it has been -- it's 4:00
22 o'clock, and we have been here a long day.

23 **CHAIRMAN ARGENZIANO:** No, I think we're okay.

24 **COMMISSIONER SKOP:** The motion is this, to
25 defer considering the motion regarding the -- excuse me.

1 I'm sorry. I'm trying to articulate things.

2 The motion is defer considering the motion
3 regarding the proposed joint stipulations prior to
4 hearing all of the witness testimony in the FPL portion
5 of this docket.

6 **CHAIRMAN ARGENZIANO:** I think that covered
7 everything. Any problems with that now before we go to
8 a second?

9 **MR. JACOBS:** Madam Chairman.

10 **CHAIRMAN ARGENZIANO:** I'm sorry, Mr. Jacobs.

11 **MR. JACOBS:** Very briefly. I don't want to
12 interject too much into this. I heard Florida Power and
13 Light's position that you continue to be considering
14 whether or not to consider a joint stipulation. What I
15 would suggest principally is that we come back and have
16 it be determined when a stipulation is really a
17 stipulation if a party has objected.

18 **CHAIRMAN ARGENZIANO:** Yes. Okay.

19 **MR. JACOBS:** And we can go with what that
20 determination is, but we would like to make sure that we
21 are clear on that.

22 **CHAIRMAN ARGENZIANO:** Well, that would be a
23 good thing to clear up.

24 **MR. JACOBS:** All right.

25 **CHAIRMAN ARGENZIANO:** So what do we do first?

1 Staff.

2 Did we finish the motion?

3 **COMMISSIONER SKOP:** Yes.

4 **CHAIRMAN ARGENZIANO:** Okay. I'm sorry. Then
5 I second the motion.

6 Now, any discussion on the motion? Okay. All
7 in favor of the motion, say aye.

8 (Simultaneous conversation.)

9 **COMMISSIONER EDGAR:** I had asked a question.

10 **CHAIRMAN ARGENZIANO:** I'm sorry. I'm sorry.
11 Okay. Okay. Look, I have been pretty good all day.

12 **MR. ANDERSON:** And, I'm sorry, but I didn't
13 hear or understand the words of the motion, either.

14 **CHAIRMAN ARGENZIANO:** Okay. All right. Let's
15 do this. Everybody buck up here and straighten up.
16 Let's take a deep breath and let's repeat the motion.
17 And I did say buck up, okay? Take a deep breath, so
18 that we all get it, and let's go over this slowly, and
19 let's make sure everybody gets it correctly.

20 Commissioner Skop, if you would repeat the
21 motion.

22 **COMMISSIONER SKOP:** Madam Chair, if I could
23 ask the court reporter to read the motion back.

24 **CHAIRMAN ARGENZIANO:** Okay. Let's do that,
25 since we had it right that time.

1 **MR. ANDERSON:** While the court reporter is
2 finding that, let me just offer this suggestion. And
3 the suggestion is that please consider voting on the
4 motion up or down, otherwise it really is -- becomes
5 irrelevant. Vote on our motion.

6 **CHAIRMAN ARGENZIANO:** The court reporter can't
7 look for something and not type your words, so hang on.

8 **MR. ANDERSON:** I'm sorry, I'll hold.

9 **CHAIRMAN ARGENZIANO:** Let's take five minutes.

10 **COMMISSIONER EDGAR:** Thank you.

11 (Off the record.)

12 **CHAIRMAN ARGENZIANO:** We're ready. Everybody
13 take their seats, please.

14 **MS. HELTON:** Thank you, Madam Chairman. I
15 think --

16 **CHAIRMAN ARGENZIANO:** Well, we had a --
17 Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

19 Madam Chair, at this time I move to defer
20 consideration of the pending motion regarding the
21 proposed joint stipulations until hearing all of the
22 witness testimony in the FPL portion of this docket.
23 And let me repeat that, so it's clear. At this time I
24 move to defer consideration of the pending motion
25 regarding the proposed joint stipulations until hearing

1 all of the witness testimony in the FPL portion of this
2 docket.

3 **CHAIRMAN ARGENZIANO:** Second.

4 **MR. ANDERSON:** And FPL asks that our motion be
5 taken up and ruled on.

6 **CHAIRMAN ARGENZIANO:** Well, we're going to
7 rule on this one first.

8 **COMMISSIONER EDGAR:** Madam Chair, I think
9 where we were when were talking about that final
10 language is I had posed a question to the staff about
11 timing.

12 **CHAIRMAN ARGENZIANO:** Absolutely.

13 **COMMISSIONER EDGAR:** And whether that was on
14 this motion or the one previous, I think the question
15 remains the same, and if the staff could talk to us
16 about timing as we look at what is required.

17 **MR. KISER:** Let me set the framework. We have
18 substantial concerns and thoughts that we want to share
19 with you, and we just ask that if as much as you can,
20 clear the paper and let's start from ground zero,
21 because this is not as simple and as easy as some people
22 are suggesting. It's not. It's more complicated than
23 that. And we've got some precedent; we've go some other
24 things, and Ms. Helton is going to address some of those
25 issues.

1 **MR. WILLIS:** If you don't mind, I'd like to
2 start off, Chairman. Marshall Willis with Commission
3 Staff.

4 What I would like all Commissioners to
5 understand is that I have heard a lot of talk about
6 going forward and doing more discovery. And the amount
7 of time you are talking about, I'm telling you now that
8 my staff cannot conduct an investigation of any more
9 information in that limited amount of time. We are
10 dealing with the October date. If your choice is to go
11 forward for a hearing, to continue this hearing, we can
12 certainly hear all the evidence and all -- and
13 everything that has been put forth at this point. What
14 I want you all to know is if you have expectations that
15 my staff is going to be out there doing more discovery,
16 extremely limited.

17 **CHAIRMAN ARGENZIANO:** I got that, but let me
18 ask you this question. To that point, what were you
19 going to do if there was no stipulations? I mean, if it
20 didn't -- if the Commission didn't defer the -- I mean,
21 did defer the stipulations, then what was the plan? I'm
22 trying to figure out, were you prepared?

23 **MR. WILLIS:** Chairman, we were ready to go
24 forward at that point.

25 **CHAIRMAN ARGENZIANO:** Okay. So would it

1 enable them to be able to get additional information --
2 you are not saying we wouldn't be able to get additional
3 information, are you?

4 **MR. WILLIS:** What I'm telling you is that the
5 normal discovery process does not enable us between now
6 and that amount of time to gather much information,
7 additional information. That's what I'm talking about.

8 We've done our discovery for this year. We
9 have done a tremendous amount of discovery this year.
10 We have a team of staff auditors who have done a
11 complete investigation, which you heard about. They
12 filed testimony in this case.

13 We will do that every single year. We start
14 that right after this hearing all over again for the
15 next year. That is where we -- since this is a
16 revolving docket that keeps going on, we just continue
17 adding on to the investigation from the previous year.
18 That is what happens next year. The problem that I
19 wanted you all to know, because I keep hearing staff
20 will get us answers to some of our questions. If they
21 are not already in this docket filed with staff
22 testimony, I'm not sure we can get it in that amount of
23 time by the October 1st deadline.

24 **CHAIRMAN ARGENZIANO:** Understood. But having
25 witnesses come before us, they will be able to answer

1 questions.

2 **MR. WILLIS:** That is correct.

3 **CHAIRMAN ARGENZIANO:** So then we can get
4 additional information.

5 **MR. WILLIS:** That's correct. And that's
6 different than my staff conducting --

7 **CHAIRMAN ARGENZIANO:** I understand that.

8 **MR. WILLIS:** Yes.

9 **CHAIRMAN ARGENZIANO:** I understand that. But
10 that is what, I think, the heart of the discussion is
11 and much of the information that we are asking would
12 come from those witnesses, not from staff.

13 **MR. WILLIS:** And that is correct, Chairman. I
14 just wanted to make sure all five Commissioners
15 understood that when you are talking about my staff
16 conducting more --

17 **CHAIRMAN ARGENZIANO:** Sure. And that's a good
18 point.

19 **MR. WILLIS:** Okay.

20 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
21 Skop, a question?

22 **COMMISSIONER SKOP:** Thank you, Madam Chair.
23 And with respect to the motion on the floor that has
24 been properly seconded, again, that preserves taking up
25 the stipulations at the end of hearing that testimony.

1 So, again, there's no harm/no foul. And, you know, if
2 we feel that additional time is necessary, then at that
3 point we can entertain the merit of the proposed
4 stipulations.

5 **MR. KISER:** Madam Chairman.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop, then
7 you are saying that would give our staff more time to go
8 get the information that they would ordinarily have.

9 **MR. KISER:** Madam Chairman, we still haven't
10 finished what we were going to share with you.

11 **CHAIRMAN ARGENZIANO:** I didn't say you have,
12 but I'm still talking. So, Mr. --

13 **MR. WILLIS:** Mr. Willis.

14 **CHAIRMAN ARGENZIANO:** Mr. Willis. I was going
15 to say Mr. Marshall.

16 **MR. WILLIS:** Either one is okay with me.

17 **CHAIRMAN ARGENZIANO:** Marshall, so then if you
18 still had -- if we still, after maybe asking questions
19 of people that we may have questions for, because that
20 is what it sounded like to me, and I know that's what I
21 have. I didn't have questions of staff. I had
22 questions of the individuals. Then if it was decided by
23 the Commissioners to go ahead, and we still have the
24 time to stipulate before October 1st, after the hearing,
25 then you would be able to derive that information as you

1 normally would in the amount of time if we chose to
2 stipulate.

3 **MR. WILLIS:** Based on the testimony of the
4 record.

5 **CHAIRMAN ARGENZIANO:** Okay.

6 **MR. WILLIS:** That's one of the problems that I
7 think legal staff needs to talk to you about. That is
8 some of the other information we wanted to give you to
9 make sure you understood the whole ramifications of
10 doing this going forward.

11 **CHAIRMAN ARGENZIANO:** Yes. And we will get to
12 that, but my question to you is yes or no, if we move on
13 and have witnesses come in and answer questions that
14 Commissioners may have or whatever else, what it is we
15 need to ask, and then decide to go ahead with the
16 stipulations, will that give you enough time -- will
17 that change the time? I mean, if we are talking
18 October 1st, will you still be able to go out and do
19 what you said that you normally do, go every year to
20 year?

21 **MR. WILLIS:** Oh, that's irregardless of that.
22 We continue that.

23 **CHAIRMAN ARGENZIANO:** So that's not going to
24 stop you from doing that?

25 **MR. WILLIS:** No.

1 **CHAIRMAN ARGENZIANO:** You are just telling us
2 that within this short time frame you are not going to
3 be able to do what you normally do, but if we go ahead
4 and decide to stipulate before October 1st, you can
5 still go ahead and do that, and we can get our answers.

6 **MR. WILLIS:** That's correct, Chairman. No
7 matter what you do in this case right now, we will
8 continue our investigation for the next year.

9 **CHAIRMAN ARGENZIANO:** Okay.

10 Commissioner Skop, and then --

11 **COMMISSIONER SKOP:** Then to our General
12 Counsel.

13 Again, I think that by preserving these
14 additional hearing dates -- the Commission has not heard
15 from many of the FPL witnesses. We have not heard
16 direct from Mr. Scroggs, Mr. Diaz. We have heard some
17 limited prefiled testimony from Mr. Jones. We have not
18 heard from Ms. Powers. We have not heard from Mr. Sims.
19 We have heard a little bit from Mr. Reed. And we have
20 heard none of the rebuttal testimony of Scroggs, Diaz,
21 Jacobs, Jones, Sims, or Reed.

22 You know, I think that notwithstanding the
23 concerns that counsel may have, again, by having the
24 witnesses available, asking questions, hearing the
25 testimony, at that point we're in a position to say we

1 need to conduct some additional discovery or we can
2 entertain moving forward with the stipulations. That
3 doesn't mean we have to have a gun to our head and make
4 a decision there. You can easily entertain the
5 stipulations and the merit thereof upon hearing all of
6 the testimony in the FPL portion of the docket.

7 **CHAIRMAN ARGENZIANO:** Ms. Helton.

8 **MS. HELTON:** Thank you, Madam Chairman and
9 Commissioners, for indulging me once again. I know it
10 is getting late on a Friday.

11 I have two points I'd like to make. The first
12 one is with respect to Mr. Jacobs' question about the
13 stipulation and whether all parties should be or must be
14 party to a stipulation or not. We have precedent here
15 at the Commission where a party to a rate case did not
16 agree with the stipulation to the remaining party --
17 with the stipulation of the remaining parties that was
18 approved by the Commission with respect to where rates
19 should be set and the stipulation that settled a rate
20 case. The Supreme Court found there that that party did
21 not need to -- it did not matter that that party was not
22 a party to the stipulation.

23 Here, I'm not sure that there is any
24 difference between some of the situation and facts that
25 were in that case here. So it is not so bothersome to

1 me that -- I'm sorry, I know I'm not being very
2 articulate right now. It is not so bothersome to me
3 right now that SACE is not a party to the stipulation.

4 I have been a little bit slow today in
5 understanding what Commissioner Skop's point was with
6 respect to the dates and the rule. And I think it's now
7 finally all starting to click in, after listening to
8 him, after listening to Ms. Cibula, and I think I may
9 not have been -- I may have led you astray a little bit.

10 I am comfortable with going beyond the
11 October 1st date in the rule as long as all the parties
12 stipulate to that. If the parties do not stipulate to
13 that and for some reason were to withdraw the
14 stipulation, if we don't act by October 1st as is set
15 out in the rule, then I have concerns about what that
16 means. We have, to my knowledge, never met this
17 October 1st date in the rule since it was established
18 several years ago.

19 **CHAIRMAN ARGENZIANO:** Well, now that you say
20 that, is that because we always stipulated?

21 **MS. HELTON:** If I understand it correctly, if
22 it wasn't a formal stipulation, it was by agreement or a
23 gentleman's agreement of all the parties that it's okay
24 to go past it a little bit. The big push here is to get
25 a number set, a factor set so it can be plugged into the

1 November hearing setting the fuel prices. And so as
2 long as we have been able to roll along and do that, no
3 one has complained about it.

4 Here we are maybe in a little bit different
5 posture, and I'm not sure what that means. And so that
6 may mean, if we have a September hearing, that we will
7 be doing a bench decision.

8 **CHAIRMAN ARGENZIANO:** But that's within the
9 prerogative -- I mean, that we can do.

10 Commissioner Skop.

11 **COMMISSIONER SKOP:** And thank you, Madam
12 Chair.

13 To that exact point, Ms. Helton --

14 **MS. HELTON:** And Ms. Crawford just reminded me
15 that parties may have to waive briefs or would have to
16 waive briefs. And I think -- is that what you wanted to
17 say, Marshall?

18 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

19 Commissioner Skop.

20 **MS. HELTON:** And I saw Mr. Anderson shaking
21 his head in disagreement with what I was saying, so I
22 would love to hear what he had to say on that subject.

23 **CHAIRMAN ARGENZIANO:** First, what I'm going to
24 do is recognize Commissioner Skop.

25 **MR. ANDERSON:** (Inaudible.)

1 **CHAIRMAN ARGENZIANO:** Excuse me, Mr. Anderson.
2 Three times I've tried to recognize him, and I
3 understand you had to get information in there, but I'm
4 going to keep order.

5 Commissioner Skop, then Mr. Anderson.

6 **COMMISSIONER SKOP:** Thank you, Madam Chair.

7 To Ms. Helton's point. Again, by having
8 additional hearing dates allowing the Commissioner to
9 hear from the witnesses in the FPL portion of the
10 docket, as proposed, those additional hearing dates
11 would be September 20th, 21st, and 22nd. At the end of
12 the hearing date -- or also maybe spilling over to the
13 23rd. But at the end of that hearing date, the
14 Commission could render a bench decision or it could
15 not. It could -- you know, obviously, getting an order
16 issued by the 1st would be, you know, perhaps
17 problematic, but some form of direction could be given.
18 But what provides an opportunity there is that at the
19 end of the conclusion of the testimony in the docket to
20 make to make a decision on taking up the merits of the
21 proposed stipulation.

22 And, again, I think that that provides the
23 Commission with sufficient latitude to not only hear
24 additional testimony, because we haven't heard a lot of
25 the testimony, but also the flexibility to consider what

1 is the best course of action, noting that there is the
2 October 1st date, but also noting that the option for
3 considering the proposed stipulation is preserved. So I
4 think it provides the Commission with a lot of inherent
5 flexibility, and, you know, I think that we still have
6 options. So until we get to October 1st there is no
7 reason not to proceed with hearing additional testimony
8 because we don't have to make a decision until then.

9 **MR. ANDERSON:** May I be heard, please?

10 **CHAIRMAN ARGENZIANO:** Mr. Anderson.

11 **MR. ANDERSON:** I'm sorry if shaking my head
12 was mistaken. I agree with staff's statement of the
13 law. To be very clear, we would like a ruling on our
14 motion, which is the subject of the stipulation we have
15 described. We would like an up or down motion on that
16 here today. If there is a motion to defer that
17 consideration with a thought that that would permit
18 rolling past the October 1 deadline, we do not agree to
19 that. And we will withdraw our motion as soon as we
20 can, probably Monday. But our position is stated.

21 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Madam Chair.

23 It's late in the day, and I'm trying to
24 remember what happened a few moments previous. No, no.
25 Actually, hold on.

1 Mr. Anderson, you have made your request
2 multiple times. It is almost as if, you know, you are
3 articulating exactly what the company's position is, and
4 I understand that. What I wanted to add to that
5 discussion, however, is that is not the pending motion
6 on the table that has been properly seconded. And every
7 time I make that motion, I get the same, well, no, we
8 want this. So, again, we have a motion on the table.

9 **CHAIRMAN ARGENZIANO:** We do have a motion on
10 the table, and we were discussing the time frames that
11 Commissioner Edgar wanted. And if there is discussion
12 as to the motion, now is the time, because we are about
13 to vote on the motion. There is a second and we need to
14 vote on the motion, otherwise, we will be here all
15 night.

16 Commissioner Graham.

17 **COMMISSIONER GRAHAM:** Yes, Madam Chair.

18 I just want to make sure that staff was done,
19 because they kept on getting stopped. I just want to
20 make sure after their pow-wow that they had all their
21 facts on the table.

22 **CHAIRMAN ARGENZIANO:** Actually, they didn't
23 get stopped, they kept going. And I wanted them to keep
24 going. At any time you just keep going. If you need to
25 let us know, just definitely wave or say something. So

1 I made sure I thought they were done, and, of course, we
2 want to make sure they are done.

3 So, now, Commissioner Edgar, did you have a --

4 **COMMISSIONER EDGAR:** I do, and I thank you for
5 remembering, Madam Chair. Although I probably would
6 have reminded if you hadn't, but I appreciate you
7 remembering that I did ask questions, which I consider
8 to be germane to the motion. And, therefore, the
9 posture that we are in now, which is discussing the
10 motion. I think that questions about the timing and
11 what would flow from it and how we would conduct our
12 business and what options would or would not be
13 available to us, again, I believe is germane. And I
14 consider that a friendly question to the motion so that
15 I understand, and we all do. And so -- but then also
16 speaking, hopefully, even more clearly and more plainly
17 as we have talked about, part of the motion is to leave
18 available to the full Commission the opportunity to vote
19 on the motion, the proposed stipulation that is before
20 us. That is what I understood to be a central part of
21 the motion was to leave that available to us, but yet we
22 are hearing from a party that it would not be available
23 to us.

24 And, therefore, is it practical, again, trying
25 to understand the timing -- I'm still trying to

1 understand the timing of what it would or would not be.
2 So with that and, again, wanting to keep it in the
3 posture of the discussion of the motion before us and
4 what it would mean in reality, may I pose to Mr.
5 Anderson, it may be obvious, but pose the question
6 anyway as to why is the company taking the position now
7 that if the motion made by Commissioner Skop were to
8 pass today that the stipulations would not be available
9 to us, practically. Thank you.

10 **MR. ANDERSON:** Because the purpose of the
11 motion is exactly what we stated, it would permit all of
12 the time for consideration of all the different issues
13 we have talked about. For there to be a thorough and
14 deliberate consideration of all matters just as we have
15 said, and then have a hearing on those issues which
16 include all the issues which are on the issues list
17 before us. In contrast, if we proceed through the case
18 in chief and all the evidentiary hearing, we will have
19 mooted entirely the intention of that process.

20 **CHAIRMAN ARGENZIANO:** Well, I just
21 respectfully disagree with that.

22 **MR. KISER:** Madam Chairman.

23 **CHAIRMAN ARGENZIANO:** Mr. Kiser, go ahead.

24 **MR. KISER:** It has been stated several times,
25 it's already late in the day, and I know a number of

1 us --

2 **CHAIRMAN ARGENZIANO:** Can I just please say
3 this: Most people work until 5:00 or 6:00 o'clock, so
4 it is not late yet. So let's get off that. It may seem
5 like that, but it is really not that late. Because
6 anybody watching is going to go, hey, wait, I've got to
7 work until 5:00 or 6:00 o'clock, what's wrong with these
8 people? Okay. I'm sorry, please continue.

9 **MR. KISER:** Going through the issues as
10 complex as they are, it seems like we are imposing some
11 self-deadlines on ourselves that we don't need to have.
12 And trying to rush to a judgment now here in the next
13 few minutes on something that apparently is not really
14 clear to everybody, I don't know that it is good idea to
15 try to make a vote on this right now. I think that
16 there are still questions out there. I think that, as
17 counsel for FPL has stated, that one of the reasons for
18 the stipulation was to give more time. And that is now
19 what we are bumping up against. We are trying to set
20 ourselves on a course of action, and in my 40 years of
21 law practice and 20 years in the Legislature, I have
22 known from experience to expect the unexpected.

23 And to hear now that this stipulation may not
24 be available after a certain time is something that --
25 it's a new wrinkle, and I just think we need to really

1 be careful where we tread at this point and not rush
2 into something that we're not real certain about what
3 all the ramifications are because it is not all that
4 clear. And as much as -- (inaudible).

5 **CHAIRMAN ARGENZIANO:** Mr. Kiser, I appreciate
6 that. I appreciate that, and I wasn't born yesterday
7 either, and didn't fall off the turnip truck yesterday,
8 either. If FPL decides that -- I don't want to be
9 extorted by something that says -- in any way that says
10 if you don't do this today, I'm not going to give you
11 this tomorrow. And I don't like that feeling.

12 So if they decide that that is not what they
13 want to do, unfortunately, does it -- then if we move
14 forward with deferring with the motion that is on the
15 table now, does that then mean that FPL Monday may turn
16 around and say the stipulation is off the table. Does
17 that mean that it's precluded? That, you know, they
18 may, as we go down the line, they may change their mind
19 and want a stipulation.

20 **MR. KISER:** No, all I am suggesting is nothing
21 says we have to make this decision in the next 15, 20,
22 30 minutes.

23 **CHAIRMAN ARGENZIANO:** I understand that.

24 **MR. KISER:** If we need to come back Monday and
25 address this while it's still hot, we do it.

1 **CHAIRMAN ARGENZIANO:** Hold on. Hold on.

2 Excuse me, Mr. Kiser. I think that we have got to make
3 a decision today. We have spent hours and hours and
4 hours, and it is up to the Commission. You want it up,
5 down, whatever you're going to do, win, lose, draw,
6 whatever it is. I think we are ready for a decision and
7 we move forward from there whatever it is.

8 I appreciate the concern. I do understand it,
9 but I also understand that we have heard enough. We are
10 only going to come back and say the same things, I
11 think. And we know these are the possibilities. If
12 that is what the company says, it is their prerogative
13 to do that. But I'm not going to be -- it's not -- I'm
14 not going to -- I don't think they are using it as a
15 threat. I wouldn't say they are, but I don't want it to
16 feel like that is a threat. And I don't want -- but on
17 the same hand, I don't want to lose something that is
18 beneficial for everybody all the way around. So with
19 that said, I think we have a motion on the table and we
20 are going to rule on that motion.

21 Is there another question to the motion?

22 **COMMISSIONER SKOP:** Yes, ma'am, briefly.

23 To Mr. Kiser's point, we can't come back
24 Monday because this hearing is not scheduled for Monday.
25 But beyond that --

1 **CHAIRMAN ARGENZIANO:** We have a motion on the
2 table.

3 **COMMISSIONER SKOP:** We have a motion on the
4 table.

5 **MR. KISER:** We can continue it.

6 **COMMISSIONER SKOP:** We have a motion on the
7 table. We will vote on that motion, I would hope. The
8 issue is -- the very issue -- I share the Chairman's
9 concerns. I had the same thing happen to me as
10 Prehearing Officer the afternoon before the evidentiary
11 hearing. At the bottom of the paper it said take it or
12 it's off the table. That late in the day we went to
13 evidentiary hearing. So it is what it is.

14 **CHAIRMAN ARGENZIANO:** Commissioner Skop.
15 Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Madam Chair, a moment,
17 could I take just a moment. I think you were getting
18 ready to call for a vote. And if so, I would like just
19 a moment. I have a question that I would like to ask.

20 **CHAIRMAN ARGENZIANO:** One moment. We're in a
21 brief recess.

22 (Off the record.)

23 **CHAIRMAN ARGENZIANO:** Okay. If everyone would
24 return to their seats.

25 **COMMISSIONER EDGAR:** Thank you, Madam Chair.

1 **CHAIRMAN ARGENZIANO:** You're welcome.

2 **MR. ANDERSON:** Might we have just a point of
3 clarification, and the clarification is a simple one.
4 Earlier I remember the motion had been the witnesses --
5 FPL's witnesses, and then we wanted to make sure that it
6 is all the witnesses of the entire hearing, right.

7 **CHAIRMAN ARGENZIANO:** That's what the
8 amendment -- that's what the motion stated.

9 **MR. ANDERSON:** We just wanted to be clear in
10 our understanding of the motion.

11 **CHAIRMAN ARGENZIANO:** Okay. We're now on the
12 motion with a second. All those in favor say aye.

13 **COMMISSIONER SKOP:** Aye.

14 **CHAIRMAN ARGENZIANO:** Aye.

15 Opposed? (Inaudible.)

16 I'm sorry, I thought we were done with
17 discussion.

18 **COMMISSIONER EDGAR:** I am not -- I would like
19 to say this. I am not resistant to -- I'm not overly
20 resistant to hearing from the remaining witnesses that
21 are in the docket. Again, I was just trying to
22 understand in a practical sense what it really would
23 mean. And I did have some confusion, and I still have a
24 little, as to if, indeed, the desire of the Commission
25 or a majority of the Commission is for more information,

1 when we had our staff and we had at least almost all
2 parties saying that more time would provide them and us
3 the ability to have more information to make our
4 decisions, that then just going on for a couple of weeks
5 as opposed to a few months that would have allowed
6 discovery was not a better and more thoughtful way to
7 proceed.

8 I am not resistant to trying to get more
9 information. I was just not sure that the path we were
10 going down was really maybe the best way to do that when
11 our staff and the parties were -- May I finish? -- were
12 telling us that more time rather than what going into a
13 September continuation would deliver. And I hope I said
14 that clearly. And so that's what I was trying to get
15 clear.

16 I am not sure that going into a September
17 hearing is going to answer the questions that I think I
18 have heard Commissioners and staff and parties raise.
19 But if the majority of the Commission believes that that
20 is, indeed, going to do that -- I just don't want to go
21 through all that time and all that and then have us end
22 up at the point where we say, we really -- you know,
23 gosh, we really do need more time, we really do need to
24 have more discovery, we really do, because that doesn't
25 seem efficient. And not because I'm trying to preclude

1 any question being asked.

2 And I just hope that that is very, very clear,
3 because I don't want to be accused at some point of
4 trying to stifled or resisted the opportunity for
5 questions. I do want us to follow, as a Commission, as
6 I know other Commissioners did before I was here, while
7 I'm here, and after I will be long gone, a process that
8 helps us as a body and as an institution do things in
9 the best way we possibly can.

10 **CHAIRMAN ARGENZIANO:** And, Commissioner Edgar,
11 this is highly -- this is strange, because we're in the
12 middle of a vote. But to that point, because maybe I
13 didn't realize you still had discussion.

14 **COMMISSIONER EDGAR:** Thank you.

15 **CHAIRMAN ARGENZIANO:** I think those things
16 have been discussed thoroughly. I think that the
17 question of us moving forward, that we will -- they can
18 have more time. If this same body that sits here now
19 decides during those times when we have witnesses before
20 us, if we decide to move forward, staff had indicated
21 that they could have all the time as they normally would
22 anyway. And what it does is, I think it -- and answered
23 for me is that it just gives Commissioners time to ask
24 questions of those witnesses that they would like to ask
25 questions of.

1 Now, we are in the middle of a vote, so this
2 is really highly unusual. And at this point, I think we
3 need to -- I need to repeat we have a -- I did that for
4 Commissioner Edgar, because I think she had a legitimate
5 discussion to give, but we are in the middle of a vote.
6 So at this point we have a motion, a second. All those
7 in favor signify by aye.

8 Aye.

9 **COMMISSIONER SKOP:** Aye.

10 **CHAIRMAN ARGENZIANO:** All those opposed? The
11 motion passes. It prevails.

12 Now, at this point we were discussing dates.
13 And, Ms. Helton, you had talked to me about the 8th and
14 the 9th as being a better date.

15 **COMMISSIONER SKOP:** Madam Chair.

16 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Yes, Madam Chair. The
18 motion passed. However, I'm not -- I didn't hear any
19 nays, but I don't believe I heard five yeses, so would a
20 roll call vote be appropriate?

21 **CHAIRMAN ARGENZIANO:** Well, I didn't hear any
22 nays, so I'm going to assume, I think everybody can
23 assume that it was -- everybody voted. You can't sit
24 here and not vote. So you either -- everybody -- maybe
25 somebody said it very low, but I didn't hear anybody

1 opposed. So the motion, it passed.

2 **COMMISSIONER SKOP:** All right.

3 **MR. KISER:** Madam Chairman, I think under the
4 Sunshine Law, it's got to be clear what the votes are
5 and --

6 **CHAIRMAN ARGENZIANO:** Okay. Then there is a
7 roll call. We have a roll call. If we're going to do
8 this, then there is a roll call. If our staff -- do we
9 do it the same way, or am I going to call the roll?
10 Okay. Just have who call the roll, that's my question
11 to you.

12 **MS. HELTON:** I will do it.

13 **CHAIRMAN ARGENZIANO:** Okay.

14 **MS. HELTON:** I think Commissioner Brisé wants
15 to say something.

16 **CHAIRMAN ARGENZIANO:** Yes.

17 **COMMISSIONER BRISÉ:** Yes. I had my hand up
18 before, because I wanted to get some information from
19 the company prior to the vote.

20 **CHAIRMAN ARGENZIANO:** It's too late. The vote
21 was taken. I'm sorry. We tried to do -- I mean, I was
22 very open letting everybody -- I didn't see your hand,
23 and I have been very open letting people ask questions.
24 So we just went to the vote.

25 **COMMISSIONER BRISÉ:** Okay.

1 **CHAIRMAN ARGENZIANO:** I didn't see it. I will
2 be happy to ask the company now, but we have already
3 voted. And if you want to establish it by having a roll
4 call -- I mean, I didn't hear any objections. Now, if
5 you want to have a roll call --

6 **MR. KISER:** Let me ask this question, then.
7 Does the recorder over there, do you have all the votes
8 listed and how they voted?

9 **CHAIRMAN ARGENZIANO:** Well, how do you always
10 do it here? I've never -- I've been here three and half
11 years, and we've never had a roll call.

12 **MR. KISER:** Well, Commissioner Skop raised the
13 question that he didn't hear all the votes taken, and I
14 have no idea who voted yes and who voted no.

15 **CHAIRMAN ARGENZIANO:** Okay. Here is the way
16 it is. I heard no objections. And after I said it, I
17 didn't hear anybody say they objected. So I'm going to
18 assume -- and not assume, I know that no one objected.
19 No one has responded that they objected. The motion was
20 voted on and it passed. Now, we need to talk about
21 dates.

22 I'm sorry, Mr. Anderson.

23 **MR. ANDERSON:** Thank you.

24 Commissioner Argenziano, to be very clear, at
25 this point FPL has proceeded today to begin with its

1 case. We have our witnesses here. There is no longer
2 any purpose to the effort we made in very good faith
3 with the other parties to provide the extended period of
4 time to permit the additional consideration.

5 At this time, we are at issue on the issues in
6 the 2010 Nuclear Cost-Recovery Proceeding. This is to
7 indicate to you our witnesses are present, prepared, and
8 I am ready to open at your convenience. Thank you.

9 **CHAIRMAN ARGENZIANO:** We will discuss dates.

10 **MS. HELTON:** Yes, ma'am.

11 I had come to you and asked that the dates
12 that be set be the dates that are earlier in September,
13 September 8th and 9th. I think --

14 **CHAIRMAN ARGENZIANO:** Well, I think that may
15 be good.

16 **MR. YOUNG:** Yes, ma'am.

17 **CHAIRMAN ARGENZIANO:** And let's talk about why
18 it may be good, because we want to make sure that
19 everybody can file their briefs.

20 **MR. YOUNG:** We want to make sure everyone can
21 file their briefs. Also, we have to render a decision
22 by the 1st.

23 **CHAIRMAN ARGENZIANO:** Right.

24 **MR. YOUNG:** So in order for us to give the
25 parties an opportunity to file briefs --

1 **CHAIRMAN ARGENZIANO:** The earlier the better.

2 **MR. YOUNG:** -- the earlier the better. So the
3 8th and 9th, and possibly we are looking for a special
4 agenda on the 30th or possibly the 29th of September.

5 **CHAIRMAN ARGENZIANO:** Okay. Hold on one
6 second.

7 Commissioner Skop, to the dates.

8 **COMMISSIONER SKOP:** Madam Chair, previously we
9 had talked about three days, if not four. The 8th and
10 9th constrains it down to two. I would ask staff to
11 look at the availability of the 7th, 8th, 9th, and 10th
12 as possible hearing dates.

13 **CHAIRMAN ARGENZIANO:** I'm sorry, 8th, 9th, and
14 10th?

15 **COMMISSIONER SKOP:** No. Madam Chair, what had
16 been previously proposed was September 20th, 21st, 22nd,
17 and possibly the 23rd, which was four days. Staff just
18 proposed two dates, which is half the allotted time. I
19 would ask staff to take a look at the availability of
20 the equal number of dates that were considered before,
21 which would be September 7th, 8th, 9th, and 10th, such
22 that the notice is properly given.

23 **CHAIRMAN ARGENZIANO:** Okay. I don't have a
24 schedule in front of me, so I'm going to have to depend
25 on staff to take a look at it.

1 **MR. YOUNG:** Madam Chairman, and the reason
2 why, as previously stated, but we have -- there are
3 certain things already docketed. For example, on the
4 10th is an undocketed, and its Rule 25-22.033 between
5 Commissioners and parties.

6 **MS. HELTON:** That's the staff communication
7 rule, so I think that could probably be -- that could be
8 changed.

9 **MR. YOUNG:** That, and then we have another
10 matter on the 7th, the ATMS compliance. I'm sorry. So
11 possibly 7th, 8th, and 9th.

12 **CHAIRMAN ARGENZIANO:** Okay.

13 **MR. YOUNG:** And 10th.

14 **CHAIRMAN ARGENZIANO:** Well, let's look at that
15 just in case.

16 **MR. JACOBS:** If I may, Madam Chairman.

17 **CHAIRMAN ARGENZIANO:** Mr. Jacobs.

18 **MR. JACOBS:** In anticipation of hearing dates,
19 we had contacted our witnesses, and I have checked with
20 Florida Power and Light, and they would want to have our
21 witnesses appear. And I am informed that neither of my
22 witnesses can be here on those dates.

23 **CHAIRMAN ARGENZIANO:** On the 7th, 8th, 9th,
24 and 10th?

25 **MR. JACOBS:** Yes. Specifically I'm informed

1 that Mr. Gunderson is obligated up until the 21st of
2 September and Mr. Cooper is obligated up until the 15th
3 of September.

4 **MR. YOUNG:** Have those witnesses been
5 stipulated?

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

7 **MR. JACOBS:** They have been -- that stipulation
8 was in lieu of FPL's proposed, possible proposed motion.
9 Since that motion is no longer on the table, FPL has
10 informed me that they are going to call SACE's witness
11 to cross-examine those witnesses.

12 **CHAIRMAN ARGENZIANO:** Okay.

13 **COMMISSIONER SKOP:** Excuse me. The document I
14 have before has asterisks indicating these witnesses
15 have already been excused from the hearing, and I don't
16 see that subject on the document I have to any
17 prerequisites.

18 **MR. YOUNG:** I will let FPL speak to that.

19 **CHAIRMAN ARGENZIANO:** Mr. Anderson.

20 **MR. ANDERSON:** SACE has offered certain
21 witnesses. In connection with our discussions about
22 deferral, we agreed that we would not examine their
23 witnesses if they continued not to object. They changed
24 their position. Therefore, that arrangement is gone.

25 Because there is going to be a full

1 evidentiary hearing, all the witnesses should be heard.
2 We do have questions for those witnesses. I would also
3 just like to make sure that the record does reflect
4 withdrawal of our August 17th motion for approval of
5 stipulation and for deferral.

6 **COMMISSIONER SKOP:** And, Mr. Anderson, you
7 will be filing that formally with the Commission?

8 **MR. ANDERSON:** We will file that withdrawal,
9 that's correct.

10 **COMMISSIONER SKOP:** Okay. And when will that
11 be provided to the Commission?

12 **MR. ANDERSON:** I expect Monday.

13 **COMMISSIONER SKOP:** Okay. All right. So --
14 Madam Chair, Mr. Anderson has informed the
15 Commission that apparently the stipulation of the
16 witnesses, SACE witnesses, is no longer in effect,
17 contrary to the document I have before me.

18 Okay. Yes. Mr. Anderson has informed the
19 Commission that the stipulation of the SACE witnesses is
20 no longer in effect. I guess that's contrary to the
21 previous excusal of those witnesses from the hearing.
22 Again, I think he indicated that based on SACE's
23 objection, that FPL is now asserting they have the
24 desire to ask questions of the SACE witnesses. Also,
25 Mr. Anderson represented to the Commission that for the

1 record, that they have withdrawn the proposed
2 stipulation, to which I asked Mr. Anderson when the
3 formal filing of that withdrawal would occur, and he
4 indicated that would likely be on Monday. So I guess
5 where this would leave us is we need talk to Mr. Jacobs
6 to see what can be done to make his witnesses available.

7 **CHAIRMAN ARGENZIANO:** Well, let me ask this
8 question. Can the witnesses be available by video
9 conferencing and oath taken on the other end? I know we
10 have done that before, and it's been done before. Is
11 that possible, Mr. Jacobs? I mean, is it possible to
12 get your witnesses to --

13 **MR. JACOBS:** I'm sorry. Excuse me. We would
14 make every effort, Madam Chairman, to make them
15 available by video conference. I do not have their
16 scheduling right now, but I will get that answer for you
17 as quickly as I can.

18 **MR. ANDERSON:** That appearance would not be
19 acceptable to FPL.

20 **COMMISSIONER EDGAR:** Madam -- I'm sorry.

21 **CHAIRMAN ARGENZIANO:** Commissioner Skop and
22 then Commissioner Edgar.

23 **COMMISSIONER SKOP:** Thank you, Madam Chair,
24 and this will be brief.

25 Again, I guess I'm trying to understand as to

1 how witnesses that have been previously excused are now
2 unexcused. And when I was asked to excuse the witness,
3 I did not recognize it was contingent upon the joint
4 stipulation. That condition was not represented to me.

5 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.
6 Wait. Commissioner, would you mind if I yield to the
7 staff for a moment?

8 **COMMISSIONER EDGAR:** Actually, I'm sorry,
9 Mr. Young, but I just want to talk first.

10 **MR. YOUNG:** Go ahead. Go right ahead.

11 **CHAIRMAN ARGENZIANO:** (Inaudible.)

12 **COMMISSIONER EDGAR:** Well, I'm hoping that
13 what I am about to say will actually be helpful. The
14 motion that we voted on, which passed, and which I did
15 vote affirmatively and speak up and vote for with the
16 understanding of the concerns that I had expressed. But
17 the motion was that we would hear from all of the
18 witnesses in this docket. That was the motion. I did
19 vote for it, and I heard and I think that it's a
20 reasonable interpretation of that motion that all of the
21 witnesses in the docket meant all of the witnesses in
22 the docket. And, therefore, that was my -- all of the
23 witnesses being before us and available to all
24 Commissioners to ask any questions was what I thought
25 what we were trying to accommodate.

1 And, therefore, I would like to hear, Mr.
2 Jacobs, from your witnesses. And I recognize that with
3 any continuation there will be multiple scheduling
4 issues. Again, that goes back to some of my earlier
5 concerns, but I think all witnesses means all witnesses.
6 Thank you.

7 And thank you, Mr. Young.

8 **MR. JACOBS:** Madam Chair, if I may?

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you. Madam Chair --

11 **CHAIRMAN ARGENZIANO:** Commissioner, and then
12 Keino, please, Mr. Young.

13 **COMMISSIONER SKOP:** Commissioner Edgar, with
14 respect to your point. I respect your desire to ask
15 questions of witnesses, but when I was asked to
16 stipulate to the witnesses I was informed by staff that
17 I was the last Commissioner to excuse those witnesses.
18 And every other Commissioner had, in fact, excused the
19 witnesses from the hearing. So are you telling me that
20 now that you have previously excused someone who now you
21 wish to ask questions from is my question to you.

22 **COMMISSIONER EDGAR:** I think the answer to
23 that is yes. Again, we have had discussion about
24 allowing all Commissioners to ask questions. The motion
25 said all witnesses. It did not say all witnesses except

1 for Mr. Jacobs' witnesses. And I think all witnesses
2 means all witnesses. And it's not trying to be
3 difficult, but I think if we are going to hear the whole
4 hearing, I want it to be the whole hearing.

5 **CHAIRMAN ARGENZIANO:** I think all witnesses is
6 fair; and as I said before, attorneys are trained in a
7 certain way, and I am so glad I'm not one of you,
8 because I understand exactly what's going on. And let
9 tell you, as I am presiding over this hearing the
10 witnesses are going to speak up and we're going to move
11 very quickly. So I am telling you that ahead of time.

12 **MR. YOUNG:** Madam Chairman.

13 **CHAIRMAN ARGENZIANO:** I see what's happening.
14 Excuse me. Mr. Young, go right ahead.

15 **MR. YOUNG:** Maybe if I can clarify a point of
16 information.

17 Since we bifurcated the hearing, as relates to
18 FPL's case, the FPL case, FPL's witnesses have not
19 formerly been excused at this time. Commissioner Skop
20 was right, it was going to be taken up during the FPL's
21 case in terms of excusing SACE's Witnesses Cooper and
22 Gunderson. So at this point in time, FPL's witnesses --
23 I mean, excuse me, SACE's witnesses have not been
24 excused.

25 **CHAIRMAN ARGENZIANO:** Okay.

1 Commissioner Skop, briefly.

2 **COMMISSIONER SKOP:** Thank you. Thank you,
3 Madam Chair, because I also appear to see what may be at
4 issue here.

5 I would ask -- I am Prehearing Officer for
6 this docket and you are the presiding officer, I would
7 ask the presiding officer at this point to rule upon the
8 order of witnesses and include taking up those witnesses
9 that are set to be subpoenaed first. And you are
10 Presiding Officer.

11 **CHAIRMAN ARGENZIANO:** I need a five-minute
12 break.

13 (Off the record.)

14 **CHAIRMAN ARGENZIANO:** Let's do this, Let's
15 just give everybody time to get back to their seats, and
16 then we'll -- hold on one second, Mr. McGlothlin.

17 Everybody is coming back in. All the
18 Blackberries are going back in the jackets. They're
19 probably ready.

20 **MR. MCGLOTHLIN:** Our Witness Jacobs was here
21 until about 5:15, and we had cleared with him the
22 September 20 and 21 dates, when it appeared that was the
23 direction you were heading. He left to catch a plane,
24 and after we learned what the new dates are, we tried to
25 catch up to him. We have not been able to at this

1 point. I just wanted to let you know what that status
2 is.

3 **CHAIRMAN ARGENZIANO:** Hold on. I guess we're
4 back on the record. Wait a second. I hear whispering.
5 Commissioner Skop, did you want to say
6 something?

7 **COMMISSIONER SKOP:** Yes, Madam Chair. Before
8 we adjourned for a break, I guess my request as
9 prehearing officer, or you, as presiding officer, to
10 make a ruling on the record regarding taking up the
11 order of the witnesses and having the subpoenaed
12 witnesses appear first when we reconvened for the
13 hearing.

14 **CHAIRMAN ARGENZIANO:** What I have done -- I
15 feel that since SACE expressed a concern about the dates
16 and so on, and we are still trying to get an answer. I
17 guess if we --

18 **MR. JACOBS:** Madam Chairman, the best we could
19 do with our witnesses are for the dates that
20 Mr. McGlothlin has mentioned, the 21st through the 22nd
21 of September.

22 **CHAIRMAN ARGENZIANO:** Where does that leave us
23 on those dates? So we're saying we have a hearing that
24 no witnesses could show up to on the days that we want
25 to have the days.

1 **MR. MCGLOTHLIN:** We don't know.

2 **CHAIRMAN ARGENZIANO:** Mr. McGlothlin doesn't
3 know. And you are not --

4 **MR. JACOBS:** We reached one of my witnesses,
5 and he was clear on that, and we're still trying to
6 reach the second, but we reached him earlier and they
7 had agreed to those dates.

8 **COMMISSIONER SKOP:** Madam Chair.

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you, Madam Chair.

11 Again, we have a group of witnesses, FPL
12 witnesses that could be here on the 7th, I would
13 imagine, for reconvening the hearing as well as those
14 witnesses that would be subpoenaed, if the subpoena
15 holds. And then also, too, given the flexibility of the
16 hearing dates, we might be able to bifurcate the hearing
17 to accommodate the witnesses.

18 **CHAIRMAN ARGENZIANO:** Well, that's what I'm
19 getting to, but what I wanted to do is find out if we
20 did that, if we had the SACE witnesses come up and
21 possibly OPC's witnesses, we don't know yet, come up on
22 the -- I think after the 20th, Mr. Jacobs, did you say?

23 **MR. JACOBS:** The 21st and 22nd.

24 **CHAIRMAN ARGENZIANO:** So the 21st and 22nd
25 they would be available?

1 **MR. JACOBS:** Yes, ma'am.

2 **CHAIRMAN ARGENZIANO:** Okay. So If we
3 bifurcated that, what does that do?

4 **MS. HELTON:** That leaves for a very short
5 briefing timing and a very short time in which staff can
6 put together a recommendation, and a very short time
7 period for you to review it before we go to a special
8 agenda date.

9 **CHAIRMAN ARGENZIANO:** So then what do you do
10 when your witnesses are not available?

11 **MS. HELTON:** Mr. Young.

12 **MR. YOUNG:** Ms. Bennett has pointed out to me
13 that also puts in a position where the company, whether
14 they want to take direct and rebuttal up at the same
15 time.

16 **CHAIRMAN ARGENZIANO:** Right.

17 **MR. YOUNG:** Because the way the order is laid
18 out it's direct, the intervenors, then rebuttal.

19 **CHAIRMAN ARGENZIANO:** Okay. Then where do we
20 go -- what do you do when you are in a position when you
21 have hearings and the witnesses are not going to be
22 there? Do you have to subpoena everybody? What do you
23 do? Any answers?

24 **MR. YOUNG:** One of the things that Mr. Willis
25 has pointed out to me, Mr. Hinton has pointed out to me,

1 is possible, from a possible standpoint, we can start on
2 the 7th, if need bifurcate for the witnesses for the
3 21st, 22nd, 23rd, and 24th. But that means staff will
4 have -- will not be a written -- possibly a written
5 recommendation, but will be an oral recommendation at
6 the special agenda. And I think the Commission has
7 to --

8 **CHAIRMAN ARGENZIANO:** Okay. What I'm going to
9 do then, it is my desire to have the three subpoenaed
10 witnesses up first, and FPL's witnesses up first, and we
11 will then -- and that is on the 7th. Tell me again the
12 dates.

13 **MS. HELTON:** The 7th, 8th, 9th, and 10th.

14 **CHAIRMAN ARGENZIANO:** And 10th, and then we
15 will bifurcate as necessary to accommodate even OPC's
16 witnesses. And, Mr. McGlothlin, you will let us know.

17 **MR. MCGLOTHLIN:** The moment we hear, I will
18 report to you. I hope that will resolve itself.

19 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

20 And I, of course, reserve the right, as
21 always, for us to go out of order.

22 **MR. YOUNG:** Madam Chairman, if we can also
23 encourage SACE to make sure, to the best possible, to
24 make sure their witness are here possibly on the 7th,
25 8th, 9th, and 10th it would greatly help staff.

1 **CHAIRMAN ARGENZIANO:** Well, I would strongly
2 suggest to Mr. Jacobs that -- you know, if someone is a
3 teacher, maybe they can get a substitute, or something
4 else, or if we can do video conferencing. I would
5 strongly suggest that you try to accommodate that with
6 your witnesses. I understand sometimes it is
7 impossible.

8 **MR. JACOBS:** I will confirm with staff by
9 Monday.

10 **CHAIRMAN ARGENZIANO:** Okay. And, again, I
11 would say that we may -- as far as taking up witnesses,
12 we just may go out of order at any time, whatever is
13 going to accommodate to getting what we need to be done.

14 With that said, Mr. Young.

15 **MR. YOUNG:** I don't know your next step, but
16 if it was to adjourn the meeting, I think the best
17 posture for us to be in is to continue this hearing
18 until the 7th -- until the 7th at whatever time.

19 **CHAIRMAN ARGENZIANO:** Yes. So we will
20 continue the hearing, we would just recess?

21 **MR. YOUNG:** Recess until the 7th.

22 **CHAIRMAN ARGENZIANO:** Until the 7th.

23 **MR. YOUNG:** Then make sure it's in the record
24 that we are continuing it until the 7th.

25 **CHAIRMAN ARGENZIANO:** Well, I'm going to put

1 it in the record. We are continuing on the 7th at
2 9:30 that morning.

3 **MR. YOUNG:** But I think Commissioner Edgar --

4 **CHAIRMAN ARGENZIANO:** I'm sorry. Commissioner
5 Edgar.

6 **COMMISSIONER EDGAR:** I did have a question.
7 And that's all good, and I'm fine with that. But I
8 thought I heard you say that we might bifurcate. And,
9 again, I'm not trying to split hairs, but if we are
10 continuing, what are we bifurcating?

11 **CHAIRMAN ARGENZIANO:** Well, because what we
12 may have to do is -- I have a feeling there will be so
13 many questions and so many -- so much time on the 7th,
14 8th -- I'm forgetting, do we go to the 10th?

15 **MR. YOUNG:** Yes, ma'am.

16 **CHAIRMAN ARGENZIANO:** And if Mr. -- if SACE
17 cannot get their witnesses here, we will then have a
18 time -- a date certain when those witnesses can be here,
19 and that would be the bifurcation on the 21st or the 22nd.

20 **COMMISSIONER EDGAR:** So --

21 **CHAIRMAN ARGENZIANO:** So we just continue.

22 **COMMISSIONER EDGAR:** So when you said -- when
23 you are using that term bifurcate now, what you're
24 meaning is it would be continuing into some later dates
25 for still the same docket, the same hearing, the same

1 proceeding?

2 **CHAIRMAN ARGENZIANO:** Absolutely. Absolutely.
3 Just continuing on. And I just used staff's word.

4 **MR. ANDERSON:** Chairman Argenziano, from a
5 scheduling perspective, FPL would indicate its intent to
6 reserve order of witness, namely to follow the
7 intervenors case and staff witnesses with its rebuttal
8 case, because we have the right to open and close.
9 Thank you.

10 **MR. YOUNG:** They do have that right, Madam
11 Chairman.

12 **CHAIRMAN ARGENZIANO:** Yes, absolutely. That's
13 fine. Anything else?

14 Mr. Moyle.

15 **MR. MOYLE:** There is a lot of talk about
16 additional information. I was curious as to whether
17 there needed to be any consideration or adjustment to
18 discovery with respect to the, you now, order on
19 discovery, whether that needs to be extended.

20 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you, Madam Chair.

22 As prehearing officer, if you would delegate
23 it to me, I could establish a revised -- a revised order
24 establishing procedure and address the discovery cutoff
25 date and the continuation hearing dates, if that would

1 be appropriate, or look to staff.

2 **MS. HELTON:** I'm sorry, I know you said it's
3 not a long day, but it's been a long day for me when I
4 have to eat lunch at 3:00. I'm not sure. I guess it is
5 within the prehearing officer's discretion, I think, to
6 tack on additional discovery time, given that we are
7 continuing the hearing, I think. But I would like to --
8 if Ms. Cibula is still in the room, I would like to get
9 her thoughts on that.

10 **CHAIRMAN ARGENZIANO:** Okay. Well, it would be
11 one of, you know --

12 **MS. HELTON:** I think so, but I think as a
13 practical matter, I'm not sure that you could really do
14 any interrogatories or production of documents. I think
15 what we are talking about are depositions.

16 **CHAIRMAN ARGENZIANO:** Right.

17 **MR. MOYLE:** And just to the point, I mean, it
18 is a little unusual in that we are going to have some
19 live witnesses here. So if FPL can indicate that the
20 only issue that they are going to talk about with
21 respect to their direct relates to that report, that may
22 address a concern. But if, you know, these live
23 witnesses are going to get up and talk about a whole
24 bunch of other things, then I may want to take a
25 deposition. I can talk to them off-line about it.

1 **CHAIRMAN ARGENZIANO:** Okay.

2 **MR. ROSS:** I'm sorry, Mr. Moyle, you were
3 looking for the company's position on subpoenas?

4 (Laughter.)

5 **MR. MOYLE:** No, no. I just -- we're going
6 to -- I mean, most of the time we have prefiled
7 testimony.

8 **MR. ROSS:** Right.

9 **MR. MOYLE:** It sounds like we are not going to
10 have prefiled testimony with respect to three witnesses.
11 I'm assuming that, you know, that you are not going to
12 have a lot of direct with them. But I don't want to --
13 you know, there's a saying, assume nothing. And so to
14 the extent that, you know, you are going to use them to
15 put on or bolster your case, I'd like to know that.

16 **MR. ROSS:** Well, my question might have
17 sounded humorous, but I think that the answer is driven
18 by the subpoenas. And we haven't been served with
19 subpoenas, and the company doesn't have a position,
20 because this is fairly late breaking. So I can't say
21 how that witness issue is going to play out.

22 The company will react to and deal with the
23 subpoenas for its employees when they are served. One
24 of the subpoenas is for a former company employee, and I
25 don't think I can even speak to that.

1 **CHAIRMAN ARGENZIANO:** I think that's fair.
2 Mr. Moyle, anything else?

3 **MR. MOYLE:** No, ma'am.

4 **CHAIRMAN ARGENZIANO:** Where does that leave
5 us? Just the dates that we will continue, will be,
6 again, the 7th at 9:30 a.m.

7 Is there anything else that we need to discuss
8 now before we go into recess?

9 **MR. JACOBS:** Continuance.

10 **CHAIRMAN ARGENZIANO:** I'm sorry?

11 **MR. JACOBS:** Before we continue.

12 **CHAIRMAN ARGENZIANO:** To continue, yes. To
13 continue on the 7th. We are going to continue. We are
14 going to leave now and continue on the 7th at 9:30.

15 Everybody have a good night.

16 (The hearing adjourned at 5:34 p.m.)

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STATE OF FLORIDA)
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COUNTY OF LEON)

CERTIFICATE OF REPORTER

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 3rd day of September, 2010.



JANE FAUROT, RPR

Official FPSC Hearings Reporter
(850) 413-6732