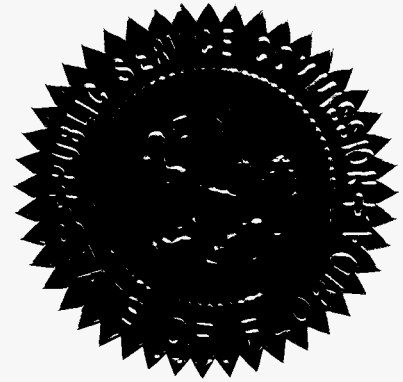


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100001-EI

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



VOLUME 4

Pages 452 through 515

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PROCEEDINGS:	HEARING
COMMISSIONERS PARTICIPATING:	CHAIRMAN ART GRAHAM COMMISSIONER LISA POLAK EDGAR COMMISSIONER NATHAN A. SKOP COMMISSIONER RONALD A. BRISÉ
DATE:	Tuesday, November 2, 2010
TIME:	Commenced at 9:30 a.m. Concluded at 11:20 a.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.)

DOCKET NUMBER DATE

109139 NOV-02

FPSC-COMMISSION CLERK

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

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

4 **CHAIRMAN GRAHAM:** Good morning, everyone. I  
5 apologize for starting a little late. But now that  
6 we are getting restarted, if I can get you all to stand  
7 for the invocation and pledge.

8 (Invocation and Pledge of Allegiance.)

9 **CHAIRMAN GRAHAM:** Commissioners, good morning.  
10 Let's see. We left off, and we were trying to figure  
11 out what we were going to do with Exhibit 71, and we  
12 left it in the very capable hands of our staff and the  
13 parties. So let's go to, I guess, Ms. Bennett. Where  
14 are we?

15 **MS. BENNETT:** With good news. Staff will  
16 indicate that the parties agree to the admission of the  
17 remaining Exhibit 71. At your pleasure, Commissioners.

18 **CHAIRMAN GRAHAM:** Okay. Are there any  
19 objections to Exhibit 71, or concerns? Yes, sir.

20 **MR. BREW:** Mr. Chairman, since I was the cause  
21 of the ruckus last night, I would like to express my  
22 appreciation to the staff, and the company, and the  
23 other parties for taking the time to walk through the  
24 exhibit and to make sure that everybody was comfortable  
25 with the numbers. So I don't have any objection, but I

1 just wanted to express my appreciation for everybody's  
2 work.

3 **CHAIRMAN GRAHAM:** Don't ever apologize for  
4 slowing the process down and make sure we get it right.  
5 We would much rather get it right the first time.

6 Any other objections? Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you. Just a  
8 question.

9 I know that Mr. Brew had raised a point of  
10 there maybe being an error, or some numbers that didn't  
11 seem to flow from what we had had before us before, and  
12 since everybody is nodding and saying that it's okay, I  
13 assume that has been either been corrected or clarified.  
14 But if you could just, for the record, tell me exactly  
15 where we are today on that from where we ended  
16 yesterday.

17 **MR. BURNETT:** Yes, ma'am. It was my  
18 ineptitude with math. I was comparing apples to  
19 oranges. Just looking at the wrong schedules, ma'am.  
20 There was no error. It was just me not understanding  
21 the document.

22 **COMMISSIONER EDGAR:** So with a little more  
23 additional time to look at it, everybody is comfortable  
24 that this is the appropriate --

25 **MR. BURNETT:** Yes, ma'am.

1                   **COMMISSIONER EDGAR:** All right. Thank you  
2 very much.

3                   **CHAIRMAN GRAHAM:** Seeing that there is no  
4 objections, we will move Exhibit 71 into the record. If  
5 there's nothing else to enter into the record, no last  
6 minute concerns, questions, exhibits?

7                   **MS. BENNETT:** I don't believe there is any. I  
8 do note that Mr. Moyle asked to make a statement to the  
9 Commissioners. He asked this morning.

10                  **MR. MOYLE:** Yes, I did. And I think the  
11 parties have also entered into a stipulation. I guess  
12 at some point we're going to have the stipulation read,  
13 is that right?

14                  **MS. BENNETT:** That's correct. When we get  
15 into the decision process, we'll present that. The  
16 Commissioners do have the stipulation in front of them.

17                  **MR. MOYLE:** Okay. Well, first of all, thank  
18 you. It was a good discussion after we adjourned last  
19 night and again this morning, and I think everyone is  
20 comfortable with where we are. So the point that I  
21 was -- wanted to just briefly raise with you all is, as  
22 I indicated yesterday, I am not a veteran of the fuel  
23 proceeding, but everyone has been patient, and I am told  
24 that most times that the Commission will vote out  
25 decisions on the fuel proceeding because there is some

1 timing issues.

2 At the Prehearing Conference with Commissioner  
3 Skop, I had indicated on behalf of FIPUG that we wanted  
4 to have the opportunity to brief the Crystal River 3  
5 replacement cost issue, you know, whether to recover it  
6 now, later, or some portion thereof, that we wanted to  
7 file briefs on that.

8 Upon reflection, and also because, as I  
9 understand it, Progress is going to be making a revised  
10 filing, and it would be easier for them not to have to  
11 do, you know, two or three variations to kind of know  
12 the decision today, because then it would drive their  
13 subsequent filing on November 10th. We are fine on not  
14 filing post-hearing briefs with respect to that Crystal  
15 River 3, and would be supportive of a decision, a bench  
16 decision on that issue today.

17 I have talked with the intervening parties,  
18 and Mr. Burnett and I have talked, and I think he is in  
19 agreement that -- you know, we argued the issue pretty  
20 extensively yesterday. I think we have given you all  
21 the information that you need to make the decision, so I  
22 just wanted to state on the record that FIPUG would not  
23 object to a bench decision on that issue today.

24 **CHAIRMAN GRAHAM:** Thank you, sir.

25 Ms. Bennett.

1           **MS. BENNETT:** I don't believe we have any  
2 other items before you close the docket.

3           **CHAIRMAN GRAHAM:** If there's nothing else, we  
4 will go ahead and close the record.

5           **MS. BENNETT:** This docket we don't close.  
6 (Laughter.)

7           And I think now we are prepared for the bench  
8 decision, and I did want to let the Commissioners know  
9 that for TECO and Gulf the only remaining issues are the  
10 hedging issues and what we fondly refer to as the  
11 fallout issues, which are really the final big numbers  
12 and the factors.

13           For Progress, the remaining issues are  
14 hedging, and whether the replacement power costs should  
15 be recovered up front for CR3 outage, subject to refund,  
16 and the reforecasting issue. And the parties have  
17 reached an agreement on reforecasting that we handed  
18 out, and we'll discuss a little bit later with you.

19           With that, staff is prepared to make an oral  
20 recommendation on all remaining issues. Alternatively,  
21 the Commission may request a written recommendation on  
22 all or any portion of the remaining issues. With that,  
23 we are prepared.

24           **CHAIRMAN GRAHAM:** Commission board, I guess I  
25 need to find out what you guys want to do to move

1 forward. If you want to go with a bench decision, it  
2 sounds like staff is prepared to give us their oral  
3 recommendations. If you want briefs, or I guess we can  
4 decide -- we can go through this one at a time and  
5 figure out which ones you want to make a bench decision  
6 on -- or let me just back up and hear what you have to  
7 say.

8 Commissioner Edgar.

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

10 Of course, I'm interested in how everybody  
11 would like to proceed. A suggestion from my  
12 perspective. I would like to hear, of course, the staff  
13 recommendation on the items that maybe we are able to  
14 move forward on the hedging issues for all three  
15 companies, and then the Gulf and TECO fallout issues,  
16 could maybe move forward on those after we have heard  
17 from staff and have our discussion, and then come back  
18 to the Progress 1D issue and then the fallout issues as  
19 the stipulation that has been proposed would address.  
20 So that is a suggestion as to how to proceed.

21 I do know that yesterday Commissioner Skop  
22 made some requests about the potential of some issues to  
23 be briefed related to Issue 1D, and so I would be  
24 interested in whether that's something that he still has  
25 an interest in or if that has changed.

1           **CHAIRMAN GRAHAM:** Commissioner Skop.

2           **COMMISSIONER SKOP:** Thank you.

3           I think with respect to 1D, Mr. Moyle in his  
4           remarks this morning, I believe, waived briefs. So, you  
5           know, I will respect the wishes of the parties as to  
6           that and just decide that issue on the merits in a fair  
7           and impartial manner as I deem fit. Thank you.

8           **CHAIRMAN GRAHAM:** All right. Well,  
9           Ms. Bennett, it looks like we are going to move forward  
10          with a bench decision. Start off the most organized way  
11          you can figure it out.

12          **MS. BENNETT:** I will start it off with, I  
13          believe, Mr. Lester. Or, 1A is Mr. Franklin.

14          **MR. FRANKLIN:** Good morning, Commissioners.  
15          Kenneth Franklin, Commission Staff.

16          Issue 1A for Progress, "Should the Commission  
17          approve as prudent Progress Energy Florida, Inc.'s  
18          actions to mitigate the volatility of natural gas,  
19          residual oil, and purchased power prices as reported in  
20          Progress Energy Florida, Inc.'s April 2010 and  
21          August 2010 hedging reports?"

22          Yes, staff recommends that the Commission  
23          approve as prudent PEF's actions to mitigate the  
24          volatility of natural gas, residual oil, and purchased  
25          power prices for the 12-month period ending July 31st,



1 2010. Staff notes that PEF entered into hedging  
2 positions at market prices. Staff has audited the  
3 company's hedging activity and results for this period  
4 and has found that the company has followed its risk  
5 management plan when entering into hedging positions.  
6 Therefore, staff finds the company's hedging results for  
7 this period are prudent.

8 Staff believes the appropriate overall  
9 objective of a utility hedging program is to mitigate  
10 fuel price volatility. With a prudently managed hedging  
11 program, the utility will incur hedging gains or savings  
12 in some periods, and will incur hedging losses or costs  
13 in other periods.

14 Staff believes the appropriate determinants of  
15 prudent hedging activities do not lie within hedging  
16 gains or losses, but rather in whether the utility  
17 entered into hedging positions at market prices,  
18 followed its risk management plan, and did not speculate  
19 on future market conditions.

20 Staff is available for any questions.

21 **CHAIRMAN GRAHAM:** Commission board.

22 So from this point, we're going to --  
23 Commissioner Edgar.

24 **COMMISSIONER EDGAR:** A comment.

25 **CHAIRMAN GRAHAM:** Sure.

1                   **COMMISSIONER EDGAR:** I went back yesterday on  
2 one of the breaks and asked staff to pull some  
3 information for me looking at cumulative over a period  
4 of a few years as to where the -- for Progress in  
5 particular, what sort of the upshot, the balance over  
6 the course of years was from the hedging program.  
7 Because I remember sitting here at the fuel dockets in  
8 '05 and '06, and being just relieved as an individual  
9 Commissioner, and I think perhaps even as part of a  
10 Commission, that the hedging had resulted in gains when  
11 the natural gas prices were so volatile and were  
12 definitely increasing. So that the upshot of all of  
13 that is for Progress I know.

14                   For the other companies we weren't able to  
15 pull those records, but I do know that for Progress  
16 specifically that there were significant gains as a  
17 result of the financial hedging efforts that were made  
18 to the benefit of the customers from the period '04 to  
19 '08 cumulatively. That '09 is obviously a completely  
20 different year in many ways, but certainly in this  
21 significant regard, and there are significant losses  
22 which has been discussed yesterday at length.

23                   Recognizing that the hedging is a rate  
24 stabilization mechanism, in my mind, and that that did  
25 work or at least seemed to make a positive contribution

1 from those years '04 to '08, recognizing that '09 is a  
2 different result, either an anomaly or the beginning of  
3 a different trend, no way to know that at this point in  
4 time.

5 So with that I am comfortable moving forward  
6 with the staff recommendation on 1A. I know that  
7 Mr. Moyle and maybe some others have suggested that  
8 because '09 has been a different year with different  
9 results that we may, as a Commission, want to take  
10 another look at the hedging requirements and procedures  
11 and guidelines. I know Commissioner Skop and I  
12 participated in that effort back in '08, and it was  
13 discussed by one of the witnesses, Ms. Wehle, I think,  
14 in particular, that that was a pretty in-depth  
15 examination and analysis and further discussions, but  
16 yet if it's something that this Commission is interested  
17 in doing or that other parties and stakeholders are  
18 interested in doing, I certainly would be supportive of  
19 taking a look at the overall program again. Maybe in  
20 the spring. Mr. Chair, I would look to your leadership  
21 and the staff to see if a workshop would be something  
22 that might be productive.

23 So with all of that discussion, looking back  
24 at the history of this program, I am comfortable moving  
25 forward with the staff recommendation in 1A. I would

1 move that at the appropriate time, Mr. Chair. And then  
2 also as part of the discussion, look to the Chairman's  
3 office and our staff to see if we want to do some  
4 additional review of the program as a whole early next  
5 year.

6 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
7 Edgar. Is there any further discussion on the staff's  
8 position on Issue 1A?

9 Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you.

11 Just to the point that has arisen in the  
12 testimony that was taken yesterday with respect to the  
13 IOUs. I know that we went through a long and lengthy  
14 rigorous process in 2008. And, again, when times are  
15 good and savings are being recognized, there's no  
16 concern. But in those times where natural gas  
17 precipitously drops off and the hedging losses accrue,  
18 then that's the times that we hear the vocal opposition  
19 as to the merits of hedging in isolation in those  
20 instances.

21 It seems to me that the Commission in 2008  
22 took a very hands-on approach in a very lengthy process  
23 in addressing the concerns not only from the intervening  
24 parties, Public Counsel, FIPUG, and as well as trying to  
25 balance the interest of the utilities with respect to

1 having regulatory certainty when it came to hedging  
2 practices. And as a result of that, what was adopted  
3 was the hedging guidelines and the hedging plans. And  
4 those have worked well.

5 I think, because of regulatory certainty and  
6 the risk involved, the respective IOUs have followed  
7 those plans religiously, very prescriptively, and at  
8 least from my perspective I'm fine with the staff  
9 recommendation. I have always supported hedging as a  
10 methodology for trying to mitigate fuel price volatility  
11 for the respective ratepayers of the IOUs.

12 What I would ask the IOUs to consider,  
13 however, is, you know, just kind of like the Gators, I'm  
14 going to use that as an analogy. Sometimes the Gators  
15 lately are following their playbook a little bit too  
16 prescriptively with very bad results. So sometimes if  
17 there are opportunities that the respective IOUs see  
18 that when natural gas is at historic lows, and I know  
19 for hedging, generally speaking, without giving  
20 confidential information, we hedge X percent in this  
21 month, X percent in this month, X percent in this month  
22 in the total year's fuel requirement, but I see no  
23 reason, at least from my perspective, that the utilities  
24 have to follow that plan prescriptively.

25 If they were to come to the Commission and

1 say, hey, here's what we want to do in this very  
2 specific time for this year only, can we get your  
3 approval. And I don't think the Commission would have  
4 problems understanding nor approving, and I don't want  
5 to speak for my colleagues, but something that saves  
6 ratepayers money.

7 So just because we have the hedging plans in  
8 place and we are following those prescriptively, if the  
9 opportunity arises, you know, I would not want that  
10 prescriptive methodology to foreclose the utilities  
11 proposing something that they think is a good idea, but  
12 are hesitant to do so because of, you know, the need for  
13 regulatory certainty. I think that we can find a  
14 win/win.

15 I think that Mr. Moyle spoke to that, too,  
16 yesterday. If you could hedge gas at a dollar and it  
17 goes down to fifty cents, I don't think we are going to  
18 armchair quarterback that decision if it saves money for  
19 ratepayers as well as industrial customers. So that's  
20 just what I wanted to add to the discussion. Thank you.

21 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
22 Skop.

23 Commissioner Brisé.

24 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.  
25 And I think I'm pretty much on the same page

1 with Commissioner Skop and Commissioner Edgar. I look  
2 at the hedging issue as it is before us today. It is  
3 really, from my perspective, a procedural type thing.  
4 These are the rules, we played by the rules, we did what  
5 you asked us to do, so here is the plan based upon that.

6 Do we need further discussion? From my  
7 perspective, I think we might need to look at further  
8 discussion and to see how we provide more flexibility in  
9 the process so that consumers can gain the most  
10 possible, and that companies can also be in a position  
11 where they can make the adjustments necessary midcourse  
12 to address the issues that arise.

13 So at this point I'm comfortable with the  
14 staff's recommendation, hoping that at some point we  
15 will be able to take a second look at the whole hedging  
16 issue.

17 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
18 Brisé.

19 Commissioner Skop.

20 **COMMISSIONER SKOP:** Thank you. Just one  
21 follow up. I appreciate the comments of my colleagues.

22 In terms of, you know, additional workshops,  
23 again, I won't be on the Commission at that point.  
24 Certainly it's the will of the majority to engage in  
25 that if they choose to do so. I think, at least from

1 what I have seen in my experience is the 2008 process  
2 that was very rigorous that put those hedging guidelines  
3 and plans in place works very well, and I'm not so sure  
4 there's a need, at least from my perspective, on further  
5 workshops.

6 I think what we have now works well, but, you  
7 know, what I would like to see, if I were king for the  
8 day, would be instead of having workshops that the  
9 utilities on a one-up basis as they deem appropriate  
10 come to the Commission for, hey, we want to depart from  
11 the approved hedging plans and guidelines for this very  
12 specific reason to save our customers money.

13 And, I think, you know, on a case-by-case  
14 basis, you know, which I don't think would happen very  
15 frequently, but you never know, that might be a better  
16 alternative than engaging in a lengthy workshop process.  
17 But I'm all for locking in gas at historical low prices  
18 when companies are able to do so without second guessing  
19 if it goes lower.

20 So thank you.

21 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
22 Skop.

23 I think everybody up here seems to be on the  
24 same page, and I think it would be prudent for us to  
25 talk about this at the next Internal Affairs that we



1 have, just because it would be fresh on everybody's  
2 mind. And we won't call that a workshop, but we will  
3 just from the 50,000-foot level kind of figure out what  
4 our next steps are going to be and when we plan on going  
5 down that path. And I think it would be good to do that  
6 while Commissioner Skop is still with us, because he has  
7 got some of the institutional knowledge of what they  
8 went through in '08, as well as Ms. Edgar -- I'm sorry,  
9 Commissioner Edgar still being us. So, staff, if we  
10 make sure that we are going to have that in Internal  
11 Affairs, and we will talk about that next Tuesday.

12 That all being said, Commissioner Edgar, it is  
13 appropriate now.

14 **COMMISSIONER EDGAR:** Thank you. And I, as  
15 well, appreciate the comments that everybody has made  
16 and are supportive of all of them.

17 And I would move that we approve the staff  
18 recommendation on Item 1A.

19 **COMMISSIONER SKOP:** Second.

20 **CHAIRMAN GRAHAM:** It has been moved and  
21 seconded that we approve the staff recommendation on 1A.

22 Any further discussion? Seeing none, all in  
23 favor say aye.

24 (Vote taken.)

25 **CHAIRMAN GRAHAM:** Those opposed?

1           By your action you have approved the staff  
2 recommendation on 1A.

3           It looks like we are on 1B.

4           **MR. FRANKLIN:** Issue 1B. Should the  
5 Commission approve Progress Energy Florida, Inc.'s 2011  
6 risk management plan?

7           Yes. Staff believes PEF's 2011 risk  
8 management plan complies with Commission guidelines.  
9 Staff notes that the Commission has established  
10 guidelines for a utility's risk management plan by Order  
11 Number PSC-08-0667-PAA-EI. Staff notes that these  
12 guidelines specify the utility must file a minimum  
13 quantity of volumes of fuel to be hedged, ensure  
14 separation of duties when carrying out hedging  
15 activities, and ensure the utility is dealing with  
16 credit-worthy counterparties.

17           By following their 2011 risk management plan,  
18 PEF would accomplish the Commission goal of utility  
19 hedging by reducing fuel price volatility and would not  
20 engage in speculative hedging activities. Staff notes  
21 that PEF's risk management plan has not changed  
22 significantly from the company's previously approved  
23 risk management plan.

24           Staff is available for any questions.

25           **CHAIRMAN GRAHAM:** Thank you, Mr. Franklin.

1 Anything from the board? Can I get a motion?

2 **COMMISSIONER SKOP:** I move to approve Issue  
3 1B.

4 **COMMISSIONER BRISÉ:** Second.

5 **CHAIRMAN GRAHAM:** It has been moved and  
6 seconded to approve Issue 1B. Any further discussion?

7 All in favor say aye.

8 (Vote taken.)

9 **CHAIRMAN GRAHAM:** Those opposed?  
10 By your action you have approved the staff  
11 recommendation for 1B. 1D.

12 **MR. BARRETT:** Good morning, Commissioners.  
13 I'm Michael Barrett of staff. Issue 1D,  
14 "Should Progress Energy Florida be permitted to collect  
15 through the fuel clause amounts related to replacement  
16 power --

17 **COMMISSIONER EDGAR:** Mr. Chair, I apologize.  
18 A suggestion. I'm wondering if it might make more sense  
19 to take up the very, very similar hedging issues for  
20 Gulf and for TECO, and kind of wait, since we may have  
21 some more discussion on 1D, and that involves a  
22 different kind of issue, policy set.

23 **CHAIRMAN GRAHAM:** That sounds good to me.  
24 Staff.

25 **COMMISSIONER EDGAR:** Thank you.

1 Staff, does that work for you?

2 **MS. BENNETT:** It does.

3 **COMMISSIONER EDGAR:** Okay. I apologize for  
4 interrupting you. I just think it would maybe flow, and  
5 it would be helpful to me.

6 **CHAIRMAN GRAHAM:** It looks like we are going  
7 to 4A.

8 **MR. FRANKLIN:** Issue 4A for Gulf Power  
9 Company. "Should the Commission approve as prudent Gulf  
10 Power Company's actions to mitigate the volatility of  
11 natural gas, residual oil, and purchased power prices as  
12 reported in Gulf Power Company's April 2010 and  
13 August 2010 hedging reports?

14 Yes. Staff recommends that the Commission  
15 approve as prudent Gulf's actions to mitigate the  
16 volatility of natural gas, residual oil, and purchased  
17 power prices for the 12-month period ending July 31st,  
18 2010.

19 **CHAIRMAN GRAHAM:** Thank you, Mr. Franklin.

20 Can I get a motion?

21 **COMMISSIONER EDGAR:** Mr. Chair, I would move  
22 approval of the staff recommendation on Issue 4A, also  
23 noting all of the earlier comments from each of us as  
24 related to 1A and sort of adopt them along with it, and,  
25 therefore, I move the staff rec.

1                   **COMMISSIONER SKOP:** Second.

2                   **CHAIRMAN GRAHAM:** It has been moved and  
3 seconded to approve the staff recommendation on Issue  
4 4A. Any further discussion?

5                   All in favor say aye.

6                   (Vote taken.)

7                   **CHAIRMAN GRAHAM:** Those opposed?

8                   By your action you have approved staff  
9 recommendation on 4A.

10                  4B, sir.

11                  **MR. FRANKLIN:** 4B. "Should the Commission  
12 approve Gulf Power's Company's 2011 risk management  
13 plan?"

14                  Yes. Staff believes Gulf's 2011 risk  
15 management plan complies with Commission guidelines.

16                  **CHAIRMAN GRAHAM:** Can I get a motion?

17                  **COMMISSIONER EDGAR:** I move the staff rec.

18                  **COMMISSIONER SKOP:** Second.

19                  **CHAIRMAN GRAHAM:** It has been moved and  
20 seconded to approve staff recommendation on 4B.

21                  All in favor say aye.

22                  (Vote taken.)

23                  **CHAIRMAN GRAHAM:** Those opposed?

24                  By your action you have approved 4B.

25                  I guess -- let's go to 5A.

1                   **MR. FRANKLIN:** Issue 5A. "Should the  
2 Commission approve as prudent Tampa Electric Company's  
3 actions to mitigate the volatility of natural gas,  
4 residual oil, and purchased power prices as reported in  
5 Tampa Electric Company's April 2010 and August 2010  
6 hedging reports?"

7                   Yes. Staff recommends that the Commission  
8 approve as prudent TECO's actions to mitigate the  
9 volatility of natural gas, residual oil, and purchased  
10 power prices for the 12-month period ending July 31st,  
11 2010.

12                   **CHAIRMAN GRAHAM:** Board, any discussion on 5A?  
13 Seeing none, can I get a motion?

14                   **COMMISSIONER EDGAR:** Move the staff rec,  
15 again, incorporating our earlier comments from 1A.

16                   **COMMISSIONER SKOP:** Second.

17                   **CHAIRMAN GRAHAM:** It has been moved and  
18 seconded to move staff recommendation on Issue 5A.

19                   Any further discussion? Seeing none, all in  
20 favor say aye.

21                   (Vote taken.)

22                   **CHAIRMAN GRAHAM:** Those opposed?

23                   By your action you have approved staff  
24 recommendation on 5A.

25                   5B, please.

1                   **MR. FRANKLIN:** Issue 5B. "Should the  
2 Commission approve Tampa Electric Company's 2011 risk  
3 management plan?"

4                   Yes. Staff believes TECO's 2011 risk  
5 management plan complies with Commission guidelines.

6                   **CHAIRMAN GRAHAM:** We are on 5B. Any further  
7 discussion on 5B?

8                   Seeing none, can I get a motion, please?

9                   **COMMISSIONER SKOP:** Move staff recommendation  
10 on Issue 5B.

11                   **COMMISSIONER EDGAR:** Second.

12                   **CHAIRMAN GRAHAM:** It has been moved and  
13 seconded on the staff recommendation on 5B. Any further  
14 discussion?

15                   Seeing none, all in favor say aye?

16                   (Vote taken.)

17                   **CHAIRMAN GRAHAM:** Those opposed?

18                   By your action you have approved 5B. This is  
19 where it gets --

20                   **MS. BENNETT:** Mr. Chairman, I'm sorry. It  
21 might be appropriate or easy to deal with all of the  
22 rest of the Gulf issues and then all of the rest --

23                   **CHAIRMAN GRAHAM:** You took the words right out  
24 of my mouth.

25                   **MS. BENNETT:** I'm sorry.

1           **CHAIRMAN GRAHAM:** I was getting ready to say  
2 let's just go ahead and take Gulf and TECO. Let's start  
3 with Issue 8, and then we will go back to Progress when  
4 we are done with those two.

5           **MR. LESTER:** Commissioner, I'm Pete Lester  
6 with staff, and I'd like to do a group recommendation  
7 for the Gulf remaining issues. Those are Issues 8, 9,  
8 10, 12, 13, and 15.

9           And staff recommends for those issues for Gulf  
10 Power Company that the Commission approve the positions  
11 as stated in the prehearing order.

12           **CHAIRMAN GRAHAM:** Pete, are you an attorney?

13           **MR. LESTER:** No, sir.

14           **CHAIRMAN GRAHAM:** You're not an attorney.  
15 That's why you know about efficiency. I like that.  
16 (Laughter.)

17           Okay. Board.

18           **COMMISSIONER SKOP:** I move the staff  
19 recommendation on Issues 8, 9, 10, 12, 13, and 15 for  
20 Gulf Power.

21           **COMMISSIONER BRISÉ:** I'll second that.

22           **CHAIRMAN GRAHAM:** It has been moved and  
23 seconded, the staff recommendation on 8, 9, 10, 12, 13,  
24 and 15 for Gulf Power. Any further discussion?

25           Seeing none, all in favor say aye.



1 (Vote taken.)

2 **CHAIRMAN GRAHAM:** Those opposed?

3 By your action you have approved those  
4 recommendations.

5 Pete, you're in my good graces. Continue.

6 **MR. LESTER:** Shall I continue?

7 **CHAIRMAN GRAHAM:** Yes, sir.

8 **MR. LESTER:** Okay. For Tampa Electric Company  
9 for Issues 8, 9, 10, 12, 13, and 15, staff recommends  
10 that the Commission approve the company position as  
11 stated in the Prehearing Order.

12 **CHAIRMAN GRAHAM:** Thank you. Back to the  
13 board.

14 **COMMISSIONER SKOP:** I move that we approve the  
15 staff recommendation on Issues 8, 9, 10, 12, 13, and 15  
16 for TECO.

17 **COMMISSIONER BRISÉ:** Second.

18 **CHAIRMAN GRAHAM:** It has been moved and  
19 seconded to approve the staff recommendations on 8, 9,  
20 10, 12, 13, and 15 for TECO. Any further discussion?

21 Seeing none, all in favor say aye.

22 (Vote taken.)

23 **CHAIRMAN GRAHAM:** Those opposed?

24 By your action you have approved those  
25 recommendations.

1           Now, let's go back up to -- I guess we're  
2 going back to 1D? Sounds good.

3           **MR. BARRETT:** Good morning, again. Issue 1D,  
4 Commissioners, "Should Progress Energy Florida be  
5 permitted to collect through the fuel clause amounts  
6 related to replacement power due to the outage at  
7 Crystal River Unit 3 prior to the Commission's  
8 determination of prudence of such costs in a separate  
9 docket?"

10           Staff recommends that, yes, Progress Energy  
11 should be permitted to collect, subject to refund,  
12 amounts related to replacement power due to the CR3  
13 extended outage in the 2011 fuel factor. Consistent  
14 with the Commission's finding in Order Number  
15 PSC-97-0359-FOF-EI, staff believes that it was  
16 reasonable for Progress Energy to purchase replacement  
17 power due to the CR3 outage and that delaying recovery  
18 of these costs until after a prudence determination in a  
19 separate proceeding could put a significant burden on  
20 customers at some future period. That burden will be  
21 heightened by interest which will accumulate on the  
22 unrecovered costs.

23           As the Commission found in Order Number  
24 PSC-97-0608-FOF-EI, to require proof of prudently  
25 incurred expenses is appropriate in a final decision on

1 cost recovery, but it is inapplicable to a fuel  
2 adjustment proceeding in which the Commission allows  
3 cost-recovery on an interim or projected basis subject  
4 to refund.

5 The Commission stated in that order that the  
6 evidence to be adduced for prospective fuel  
7 cost-recovery is the reasonableness of the utility's  
8 cost projections. Staff believes that Progress Energy  
9 has shown that replacement power -- excuse me,  
10 replacement fuel costs related to the CR3 extended  
11 outage are reasonable. And we are available to address  
12 your questions.

13 **CHAIRMAN GRAHAM:** Thank you, Mr. Barrett.

14 Commission board?

15 I have a question for you, and this is a  
16 curiosity question. If those funds aren't paid now and  
17 they are paid later, you said there's an interest  
18 rate -- there is an interest that is attached to that.  
19 Is there a set interest rate, or is that tied to some  
20 kind of indicator?

21 **MR. HINTON:** The commercial paper rate would  
22 be applied to that amount.

23 **CHAIRMAN GRAHAM:** Okay.

24 I hear crickets. (Laughter.)

25 **COMMISSIONER EDGAR:** Mr. Chair.

1                   **CHAIRMAN GRAHAM:** Commissioner Edgar.

2                   **COMMISSIONER EDGAR:** Comments. As the staff  
3 has pointed out, and as Mr. Burnett pointed out in his  
4 closing argument yesterday, it does seem that there is  
5 case law that relatively clearly points out that there  
6 is precedent for the interim cost-recovery on this  
7 issue, realizing that we will be looking at prudence in  
8 a spunout proceeding later. I think April, but early  
9 next year.

10                   We also heard from Mr. Moyle, and from  
11 Mr. Beck, and I think from Mr. Brew, as well, that from  
12 their perspective that we do have some discretion. And  
13 I know that there is case law and precedent that this  
14 Commission has made similar decisions for cost-recovery  
15 on an interim basis with a prudency determination to be  
16 later, but that this Commission does on an individual  
17 case-by-case basis have discretion.

18                   It is still murky in my mind, Commissioners,  
19 and Mr. Chair, as to which is the better way to go in  
20 this. The arguments that we hear from the intervenors  
21 are always compelling, but particularly in these times,  
22 very compelling to say, you know, let the customers hold  
23 on to every penny that they possibly can. It's also  
24 compelling, in my mind, though, to realize that part of  
25 what we are trying to do is, again, rate stabilization

1 and spread out costs rather than pile on at a later  
2 date.

3 So, in my mind, Commission Skop had pointed  
4 out some points with some of the different cases and  
5 precedents that we had that were perhaps -- that were  
6 certainly worthy of additional discussion and  
7 consideration, so I guess I would ask each of you if you  
8 think that you have the information at this point and  
9 have had the time needed to think it through, looking at  
10 the cases and looking at the specific facts to make a  
11 decision today, or if you would prefer that additional  
12 time that could be afforded to us to come forward at a  
13 date -- help me, Ms. Bennett, what is the date that we  
14 talked about for --

15 **MS. BENNETT:** The next agenda would be  
16 November 30th.

17 **COMMISSIONER EDGAR:** Or whether having that  
18 additional time and to have a written recommendation  
19 from staff with maybe a little more analysis as to the  
20 case law and precedent would be helpful.

21 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
22 Edgar.

23 I know from listening to this yesterday, and  
24 it is a complexing issue, Mr. Moyle made a lot of good  
25 points as far as maybe now is not the time to collect

1 all of those funds up front. Of course, I asked staff  
2 if it's within our control if we decided that we are  
3 going to, I guess from Solomon's day, split the baby and  
4 get a little now and get a little later.

5 If we were to do that, I'm sure the numbers  
6 aren't here now, and then we would have to either go  
7 back and brief this and get a written recommendation  
8 from the staff, or do something else along those lines.  
9 The other side of that, and this is the complexing part,  
10 is Progress has done nothing wrong. I mean, they came  
11 forward with what they were supposed to have done. Now,  
12 granted they have had the outage at Crystal River 3, and  
13 there is still some determination of what is going to  
14 happen there, and they are coming back with that.

15 But should they be penalized because it is  
16 tough economic times right now? And so that's the issue  
17 that is on the table in front of us.

18 Commissioner Brisé.

19 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

20 And I understand that this a complex issue,  
21 and there are some challenges, but on that same token,  
22 should customers be then responsible for paying for  
23 something that they are not really getting anything out  
24 of at this time? So, personally, I would be a lot more  
25 comfortable if we got a written recommendation, got a

1 little more time to look at everything that we have  
2 available to us. Do some additional research and so  
3 forth so I can arrive at a conclusion that I'm  
4 comfortable with. At this point today I wouldn't be  
5 comfortable with a decision, because I don't think I  
6 have everything before me for me to make that decision.

7 **CHAIRMAN GRAHAM:** Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you.

9 A question for legal staff regarding the  
10 technical staff recommendation. In looking at the  
11 PSC-98-0049-FOF-EI order, which wasn't referenced in the  
12 staff recommendation, how does the staff recommendation  
13 comport with Mr. Moyle's concern regarding the  
14 requirement or the prior order to demonstrate in  
15 prefiled the reasonableness of costs? I just want to  
16 hear staff's perspective. I've got my own opinion.

17 **MS. BENNETT:** In my opinion, and I believe the  
18 first order that you were talking about, the 98-0494  
19 order --

20 **COMMISSIONER SKOP:** Yes.

21 **MS. BENNETT:** -- was the decision in the 1998  
22 fuel docket. I found it. My understanding is -- and my  
23 interpretation is that we read the three orders  
24 together. There is the 1997 decision in the fuel  
25 docket, which is 97-0359-FOF-EI, which is what Mr. Moyle

1 referred to, and that's where the Commission expressed  
2 its concern about extended outages and passing through  
3 those costs through to ratepayers. The Commission said  
4 we're going to let that go through, but we want to have  
5 a generic docket, which is the 97-1513 docket, and that  
6 is Order Number 98-0049, which technical staff  
7 referenced.

8 In that the Commission said, you know, if it  
9 gets to be five percent above the fuel factor, we want  
10 to have a determination of reasonableness, a  
11 demonstration of reasonableness in the prefiled  
12 testimony. And so staff was a little bit concerned,  
13 technical staff and legal staff about what that term  
14 reasonableness meant. But then in the, back in the fuel  
15 docket, in 970001 there was a motion for  
16 reconsideration, and that was Order Number 97-0608-FOF,  
17 which did talk about what the standard of reasonableness  
18 is. And basically the standard of reasonableness was  
19 the E13 schedules and some testimony supporting it.

20 Reasonableness -- Mr. Moyle's position was  
21 that the first order said reasonableness had to go to  
22 not only the cost, the appropriateness of the costs, but  
23 the reasonableness of the outage itself. The actions of  
24 the utility on the outage. The subsequent order, the  
25 motion for reconsideration talks about just the



1       appropriatenesses of the costs, and that was what the  
2       Commission meant when they said we want to have a  
3       reasonableness demonstration.

4               **COMMISSIONER SKOP:** Okay. I'm not sure that  
5       really got me there in terms of what I understood Mr.  
6       Moyle's concern would be. Again, where this hangs in  
7       the balance for me or turns on is the prior order on the  
8       98-0049 order where it was specifically ordered that  
9       prior to interim recovery a utility shall demonstrate in  
10      prefiled testimony reasonableness of costs could exceed  
11      threshold for increases in fuel adjustment filing  
12      factors set forth in the order. I appreciate staff's  
13      perspective.

14              I think my perspective on this is looking at  
15      the precedent of the Commission, looking at the  
16      PSC-97-0359-FOF-EI says in part, in the future when a  
17      utility seeks to recover costs which have a significant  
18      impact on the utility's fuel adjustment factor, the  
19      utility must affirmatively demonstrate that the actions  
20      or event that gave rise to the need for recovery and the  
21      underlying costs are reasonable. And then we have the  
22      98-0049-FOF-EI order which, you know, adds some  
23      additional requirements.

24              It seems to me from this perspective -- I have  
25      heard the intervenors, and I have heard the arguments,

1 and I respect those arguments. I have also heard Mr.  
2 Burnett's argument. It seems to me that, you know,  
3 trying to harmonize the various orders as well as a  
4 recent decision of the Commission that I will get to in  
5 a second, that it is well understood what gave rise to  
6 the need for recovery. There is the outage on the  
7 nuclear plant, so you have to -- you know, it doesn't  
8 take a nuclear engineer or rocket scientists to figure  
9 out that you need to have replacement power to carry the  
10 load of a baseload generating nuclear unit that is no  
11 longer in service. So I think that that addresses part  
12 of the '97 order.

13 As to the underlying costs are reasonable, Ms.  
14 Olivier, you know, spoke to some of the things that have  
15 been done. At least it's a colorful argument that there  
16 was a showing of reasonableness of such costs, although  
17 I think Mr. Moyle would probably take exception, and  
18 Progress did not amend its testimony to include more  
19 detail. But looking at the '98 order, which required  
20 the showing in the prefiled testimony, I think between  
21 the testimony provided and the schedule showing that  
22 there is detail as to the replacement power costs and  
23 fuel costs for the CR3, as well as the scope of the  
24 insurance coverage. I mean, there is a specific  
25 statement in Ms. Olivier's testimony that additional

1 estimated incremental replacement power costs net of  
2 insurance proceeds with the estimated CR3 outage  
3 duration was -- there is a line item entry in there.

4 So as far as the Commission orders, I think  
5 there is precedent of the Commission to allow for  
6 interim cost-recovery. The reasonableness of those  
7 costs and the prudence of those costs is going to be  
8 determined next year.

9 Now, putting these historical orders in the  
10 fuel docket in the context of more recent decisions made  
11 by the Commission, I know the intervenors recently  
12 argued that recovery should be allowed in one instance  
13 when you're going to, you know, have prudence and  
14 reasonableness spun off. But in this instance, they are  
15 arguing that you shouldn't, so I'm having trouble  
16 reconciling those inconsistent positions.

17 However, the Commission decided to do that,  
18 which is a more recent decision of the Commission, and  
19 granted it's a different docket, but it is very  
20 analogous to the situation because it is a clause  
21 proceeding. So it seems to me, Commissioners, that  
22 there are protections to ensure that the ratepayers are  
23 not harmed. Unlike a recent Commission decision, there  
24 were questions asked, there was cross-examination. At  
25 least from my perspective there is a comfort level that

1 the nature of what gave rise to the need for recovery is  
2 well understood. As far as the underlying costs are  
3 reasonable, I think that, you know, we have some  
4 testimony that is before the Commission subject to  
5 cross-examination that speaks, at least to some extent,  
6 about those costs, but ultimately the reasonableness and  
7 prudence of those costs will be determined at hearing in  
8 the matter that was spun off to next year.

9 So I think my position is I'm comfortable  
10 moving forward today for interim recovery on Issue 1D  
11 based on precedent of the Commission and the comments  
12 that I have made. And if Commissioner Brisé wants a  
13 brief, I'll respect the will of the panel, as others  
14 have afforded me that courtesy in the past when I have  
15 had concerns and wanted a written brief.

16 **CHAIRMAN GRAHAM:** Commissioner Edgar.

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

18 And, thank you, Commissioner Skop, for your  
19 comments and analysis.

20 I recognize that, as Commissioner Skop has  
21 said, we are attempting to harmonize past precedent and  
22 past case law with the factual situation that we have  
23 before us, both the facts and the procedural aspect of  
24 it, and that this particular issue has been bifurcated,  
25 and that we have not had a great deal of -- as a result

1 of that, a great deal of testimony on this issue  
2 specifically.

3 I also recognize that whatever decision we  
4 make on this Issue 1D probably has a high likelihood of  
5 being cited as precedent at some point in the future on  
6 another factual situation. And for that reason, among  
7 others, I would prefer to take a little bit more time on  
8 this and request the staff to do a written  
9 recommendation.

10 The parties certainly have the right to  
11 briefs, and I believe have waived that, recognizing that  
12 we had full presentations from both sides on that issue  
13 and we have the case law. Mr. Burnett did raise another  
14 opinion, which was back on the coal rebate case a couple  
15 of years ago that you pointed to. I have not had the  
16 chance to go back and look at that since yesterday  
17 evening, so that is one that I would like to take a look  
18 at and maybe ask the staff to, as well.

19 So to sum up, Mr. Chair, realizing the  
20 comments that we have had, I would ask that we reserve  
21 and not make a bench decision on 1D at this time. Ask  
22 our staff to do a more detailed analysis and  
23 recommendation, and that that would come forward to us  
24 at the November 30th Agenda Conference. And I believe  
25 that from the proposed stipulation that was passed out

1 at the beginning of this proceeding that we will still  
2 need to discuss, that if indeed we were to do that, to  
3 reserve judgment on 1D until we have a more lengthy and  
4 detailed written analysis, that we would still be able  
5 to move forward on the remaining issues.

6 **CHAIRMAN GRAHAM:** As far as 1D goes, I know  
7 the intervenors had waived briefs. Now it looks like we  
8 are not going to be making a bench decision on this. I  
9 won't hold you to waiving those briefs, if you want to  
10 brief the staff.

11 Mr. Moyle.

12 **MR. MOYLE:** We would appreciate the  
13 opportunity. I mean, I think Commissioner Edgar is on  
14 track with respect to this being a decision that may be  
15 one that you confront more than one time in terms of the  
16 precedent. So we would like the opportunity to put more  
17 information in and make the legal arguments. I think it  
18 will build a better record and give staff more to react  
19 to. So we appreciate the opportunity to brief it.

20 **CHAIRMAN GRAHAM:** Staff, I need a time for  
21 those briefs to be in to you so you can get back to us  
22 in a timely manner.

23 **MS. BENNETT:** Certainly. November 8th.

24 **CHAIRMAN GRAHAM:** November 8th.

25 **MS. BENNETT:** Correct. And we do have

1 next-day transcripts available, so those will be  
2 available today for the parties to begin building their  
3 briefs.

4 **CHAIRMAN GRAHAM:** Okay. And, staff, when you  
5 come back to us with a written recommendation, you heard  
6 what we had to say up here so far. Maybe you need to  
7 give us some options on what we're going to do when we  
8 make that final decision.

9 **MS. BENNETT:** Yes. I think I heard both  
10 Commissioner Skop yesterday and Commissioner Edgar today  
11 reference certain orders that they would like briefed.  
12 I think I also heard the Chairman indicate if there is  
13 some availability to split the baby, so we will come  
14 back with options.

15 **CHAIRMAN GRAHAM:** Thank you.

16 **MS. BENNETT:** And discussions on all those  
17 orders.

18 **CHAIRMAN GRAHAM:** All right. That being said  
19 on 1D, the fact that we're holding off on 1D -- what  
20 else can we approve on the Progress side of this?

21 **MS. BENNETT:** In my estimation, and I'm going  
22 to look to the parties to shake their head yes or no,  
23 the stipulations will still be able to address Issues 8,  
24 9, 10, 12, 13, and 15, and you will also be able to  
25 decide 30, 31, and 33.

1           **CHAIRMAN GRAHAM:** Okay. I see noddings of  
2 heads, so -- Commissioner Skop.

3           **COMMISSIONER SKOP:** Thank you. Just a  
4 question with respect to Item 13, the 2011 fuel  
5 cost-recovery factors. Would those factors change as a  
6 result of the Commission's ultimate decision in 1D? And  
7 if so, would it be appropriate to move forward on that  
8 specific Issue 13 until such time as we decide 1D? I  
9 don't want to hold anything up, but I just wanted to  
10 make sure before we jump.

11           **MS. BENNETT:** My understanding, and I'm going  
12 to look to Progress to follow up with this, Exhibit 71,  
13 which is referenced in the stipulation, included a  
14 position where CR3 costs of recovery of replacement  
15 power are included, and another position that includes  
16 costs excluded. I think given in there would be a range  
17 of numbers in between that also, which would address the  
18 Chairman's question.

19           **COMMISSIONER SKOP:** Okay. So 13, if I  
20 understand you correctly, the Commission decision in 13  
21 when the motion is styled needs to embody whether or not  
22 the ultimate disposition of Item D1 is identified in  
23 Exhibit 71, is that correct?

24           **MS. BENNETT:** That is correct.

25           **CHAIRMAN GRAHAM:** Mr. Burnett.



1           **MR. BURNETT:** Yes, sir. That is exactly  
2 right. Exhibit 71 does include a contingency with or  
3 without the CR3 cost, and our midcourse that we are also  
4 preparing, we will prepare schedules for both of those  
5 contingencies, as well.

6           **CHAIRMAN GRAHAM:** Thank you, sir.

7           **MR. BREW:** Excuse me.

8           **CHAIRMAN GRAHAM:** Yes, sir.

9           **MR. BREW:** Just to clarify, then. The amounts  
10 shown on Issue 13 in the Prehearing Order have been  
11 modified by what is in Exhibit 71?

12          **MR. BURNETT:** Yes.

13          **CHAIRMAN GRAHAM:** Okay. Staff.

14          **MS. BENNETT:** I will begin by presenting the  
15 stipulation, and then I'll turn it over to Mr. Lester to  
16 give you the specific numbers for Issues 8 -- the  
17 fallout issues.

18                 In the stipulation that we discussed both last  
19 night and this morning is that the Commission should  
20 approve the revised positions and supporting schedules  
21 found in Exhibit 71. PEF will file a midcourse  
22 correction with its most recent reforecasted numbers on  
23 or before November 10, 2010. When the Commission  
24 reaches its decision on Issue 1D, the actual fallout  
25 numbers will be as indicated on Exhibit 71 either

1 including or excluding the CR3 replacement costs as  
2 determined by the Commission. The midcourse correction  
3 will become effective with the first billing cycle of  
4 2011.

5 Staff is available for questions, and I'd ask  
6 that you vote on the stipulation.

7 **CHAIRMAN GRAHAM:** You seem a bit nervous.

8 **MS. BENNETT:** Suddenly there were four pairs  
9 of eyes looking at me.

10 (Laughter.)

11 **MR. MOYLE:** Can I just ask a clarifying  
12 question, if I might?

13 **CHAIRMAN GRAHAM:** Yes, sir. Mr. Moyle.

14 **MR. MOYLE:** Because we met, again, last night  
15 and again this morning, and worked I think in good faith  
16 to try to hammer this out, and there are some timing  
17 issues that come along and the stipulation was put  
18 together this morning. But to the extent that there is,  
19 you know, a split-the-baby approach, would that be  
20 something that could be done, to the extent you all  
21 voted to do that, with the timing, I guess, is sort of  
22 the question, or should there be a change or an  
23 amendment to the stipulation to say, you know, all in,  
24 nothing in, or a 50-percent proposition so that, you  
25 know, at least if you all want that flexibility you have

1 it and are not precluded process-wise from doing  
2 something like that.

3 **CHAIRMAN GRAHAM:** Ms. Bennett, is this  
4 stipulation going to tie us and take away that option?  
5 It sounds like it is.

6 **MS. BENNETT:** In my opinion, no. Let's look  
7 to the parties and make sure that they agree that it  
8 doesn't tie us to the all in or all out position, and  
9 specifically Progress. But I think it is based upon  
10 your decision on 1D on November 30th.

11 **CHAIRMAN GRAHAM:** Mr. Burnett.

12 **MR. BURNETT:** Thank you, sir. The way I read  
13 the stipulation it says that you have two decisions to  
14 make. You can either vote up or vote down on the CR3,  
15 and if look to the Issue 13, it is going to tell you the  
16 original position with or without. I don't see that  
17 this could effectuate any sort of percentage if you came  
18 to that decision.

19 **MS. BENNETT:** Then I think the answer to your  
20 question is we need to have some alternatives in Exhibit  
21 71. Perhaps a break for me to discuss with the parties  
22 right now and let's see if we can hammer out some  
23 alternatives for you so that you have some comfort with  
24 going forward with the stipulation would be appropriate.  
25 Otherwise, we will have to brief everything.

1           **MR. BURNETT:** Mr. Chair, if I may. I may be  
2 able to save some time. I will not, unfortunately, be  
3 in a position to agree to a stipulation with any sort of  
4 percentage of recovery. So, you know, I don't know if  
5 that helps on the front end. I'm certainly saying that  
6 is a decision you can make, certainly, and, you know, we  
7 will do whatever we need to do on that. But as far as  
8 us stipulating that that is appropriate, I'm not sure I  
9 can do that today.

10           **CHAIRMAN GRAHAM:** We'll hear from Commissioner  
11 Skop and -- let's hear from Commissioner Skop.

12           **COMMISSIONER SKOP:** Thank you.

13           Just with respect to the discussion at hand, I  
14 think, Mr. Burnett, when you were describing Exhibit 71  
15 you used a word which has eluded me, but there was -- I  
16 want to say contingency, or was the either or approach.  
17 I mean, it either is this or it's that, which doesn't,  
18 in my mind, provide the flexibility as you alluded to to  
19 consider a percentage. If the Commission wants to do  
20 that, it is certainly within our prerogative and  
21 discretion. But it seems to me just holistically from a  
22 legal analysis is they are either legally entitled to  
23 recovery or they are not. And I don't understand how  
24 there can be a middle ground on that one, because half  
25 you are entitled to, half you're not. It just doesn't

1 seem to comport with -- you know, it seems to me there  
2 is a legal standard, and whatever the Commission  
3 ascertains that precedent and legal position to be  
4 controls whether it's approved or denied in toto so --

5 **CHAIRMAN GRAHAM:** Commissioner Edgar.

6 **COMMISSIONER EDGAR:** I was just going to say  
7 one of the reasons that I wanted to take the additional  
8 time and have a written recommendation and have the  
9 opportunity to spend a little more time with the case  
10 law myself, and maybe even some cases that we have  
11 referred to, but that I don't have in front of me, is  
12 that I am unclear as to whether it is a legal standard  
13 that is pretty much already dictated to proceed one way  
14 versus another, or whether, indeed, we do have a little  
15 grayer area and more discretion. And that is one of the  
16 reasons that I would like to take a little additional  
17 time and have the written analysis.

18 If, indeed, it is individually or collectively  
19 a decision that we determine that is somewhat  
20 discretionary to the particular instance before us, in  
21 that case then we may want to consider something in  
22 between. The whole point is I don't know that yet from  
23 my own perspective. So I guess with that, I would ask,  
24 Mr. Chair, if maybe we can take a short break, and I'll  
25 do some thinking, as well, but ask the parties and our

1 staff to get together. It seems to me, and I understand  
2 the comments that Mr. Burnett has made on behalf of his  
3 client, of course, but yet it may be that there is a  
4 tweak to this language that everybody could be  
5 comfortable with, if we just take a few minutes and a  
6 step back.

7 **CHAIRMAN GRAHAM:** I think we shall -- it looks  
8 like it's about 10:30. Let's go until about 10:45, take  
9 about 15 minutes or so, and figure out where we are, and  
10 figure out how we are going to close this thing out for  
11 today and move forward in the next couple of weeks. So  
12 let's recess now until 10:45.

13 **COMMISSIONER EDGAR:** Thank you.

14 (Recess.)

15 **CHAIRMAN GRAHAM:** Staff, are you guys ready to  
16 wow me?

17 **MS. BENNETT:** I guess not. Hang on just a  
18 minute.

19 **MR. BADDERS:** Mr. Chairman, if we could  
20 address maybe a small preliminary matter while we have a  
21 second?

22 **CHAIRMAN GRAHAM:** Sure.

23 **MR. BADDERS:** Russell Badders on behalf of  
24 Gulf Power. It appears that all of my issues have been  
25 voted on, and I would ask to be excused at this time, if

1 possible.

2 **CHAIRMAN GRAHAM:** I don't think we have closed  
3 the docket yet. Are you sure you want to go?

4 **MR. BADDERS:** Well, I don't think -- this  
5 docket never closes, it just reinvents after the first  
6 of the year, so -- I would like to go home, if possible.  
7 (Laughter.)

8 **CHAIRMAN GRAHAM:** Staff, can we split this  
9 docket and send those two home, or do we have to --

10 **MS. BENNETT:** We certainly can, if you want,  
11 or we can make them stay. (Laughter.)

12 **CHAIRMAN GRAHAM:** You guys want to make them  
13 stay? I don't see any reason to keep both TECO and Gulf  
14 here. So that being said, we will close the TECO and  
15 Gulf portion of Docket 100001.

16 **MR. BEASLEY:** Thank you.

17 **CHAIRMAN GRAHAM:** You guys enjoy the day.  
18 Staff.

19 **MS. BENNETT:** Bear with me as I read my  
20 chicken scratch to you. We no longer have a  
21 stipulation. We do have a staff recommendation for you,  
22 and this recommendation is for Issues 8, 9, 10, 12, 13,  
23 and 15. And after I state staff's recommendation, I  
24 think the parties would like to address that  
25 recommendation to give you their views on staff's

1 recommendation. It's a little unusual, but we would  
2 suggest you listen to them. That didn't sound --  
3 anyway.

4 The staff's recommendation is the Commission  
5 should approve the revised positions and supporting  
6 schedules found in Exhibit 71 as preliminary amounts.  
7 Progress will file a midcourse correction with its most  
8 recent reforecasted numbers on or before November 10th,  
9 2010. Included in that midcourse, Progress should  
10 include the CR3 replacement power costs being all  
11 included, the CR3 replacement power costs being all  
12 excluded, and 50 percent of the replacement power costs  
13 for CR3 included in the factors. That would be staff's  
14 recommendation for Issues 8, 9, 10, 12, 13, and 15, and  
15 we would certainly seek direction from the Commission if  
16 50 percent is not the number you were looking for.

17 **CHAIRMAN GRAHAM:** Okay, thank you.

18 Mr. Burnett.

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

20 And just briefly, we just wanted the record to  
21 be clear that that is a recommendation from staff. This  
22 Commission can take whatever action on that, but we are  
23 no longer stipulating or in any way endorsing the  
24 inclusion of a percentage amount. So that's all we  
25 wanted to say. Thanks.



1           **CHAIRMAN GRAHAM:** Okay. Intervenors, anyone?

2           **MR. BREW:** Mr. Chairman, PCS is comfortable  
3 with the staff recommendation.

4           **CHAIRMAN GRAHAM:** So say you all?

5           **MR. MOYLE:** I think it's a good resolution.  
6 The original document that we had had language about the  
7 midcourse correction being effective with the first  
8 billing cycle of 2011. I assume that's still the case  
9 with respect to the midcourse. But with that point of  
10 clarification, then I think, you know, that makes sense.  
11 And we will continue to file the briefs with respect to  
12 the Crystal River 3 issue; and I guess as Mr. Burnett  
13 said, it is a question as to whether you want more  
14 options as compared to just 50 percent.

15           **CHAIRMAN GRAHAM:** Thank you, sir.

16           Mr. Burnett, a question for you. You are  
17 against the staff recommendation for the reason of the  
18 splitting?

19           **MR. BURNETT:** Yes, sir, or any percentage  
20 share that would be included in the recommendation.

21           **CHAIRMAN GRAHAM:** If the staff recommendation  
22 was all or nothing, you would be fine with that?

23           **MR. BURNETT:** Yes, sir. I think that takes us  
24 back to where we were with the stipulation.

25           **CHAIRMAN GRAHAM:** I just wanted the

1 clarification.

2 **MR. BURNETT:** Yes, sir. Yes, sir.

3 **CHAIRMAN GRAHAM:** Board?

4 I can tell you from my perspective, I like the  
5 staff recommendation; I like the option. Like I said,  
6 it is a difficult area. It's a gray area. I need for  
7 staff to come back and give me case law. Let me know  
8 where we do have the ability to split the payment  
9 because with the option of it being all or nothing it  
10 kind of forces your hand. You know, if you are not  
11 comfortable all on, then you want to go all off, and so  
12 sometimes that half step kind of works for me.

13 Commissioner Skop.

14 **COMMISSIONER SKOP:** Thank you.

15 To staff, can you -- am I correct to  
16 understand that for Issues 8, 9, 10, 11 -- excuse me, 8,  
17 9, 10, 12, 13, and 15, that in resolution of those  
18 issues the staff recommendation, as it has been now  
19 apparently revised, seeks to include 50 percent of the  
20 replacement power costs for the CR3 outage in those  
21 factors, is that correct?

22 **MS. BENNETT:** That is correct, with the  
23 direction to the utility that when they file their  
24 midcourse they also provide the Commission with a set of  
25 factors that have 50 percent of CR3 replacement power

1 costs included in those factors, as well as the 100  
2 percent, and as well as all excluded.

3 **MR. HINTON:** Commissioner, if I could clarify  
4 one thing Lisa just said. Our recommendation on those  
5 issues is that you approve the amounts that are  
6 contained within Exhibit 71, and then part of  
7 recommendation is that Progress Energy be required to  
8 file a midcourse correction. Within that midcourse  
9 correction would be the option of 50 percent along with  
10 all in or all out.

11 **COMMISSIONER SKOP:** Well, apparently that's  
12 not what I'm hearing, which at least from my perspective  
13 has further confused the overall issue. I guess I'm at  
14 a loss, noting that Exhibit 71 has been entered into the  
15 record, how staff could find a legal basis for just  
16 picking the midpoint between two discreet sets of  
17 numbers that comprise the factors with the replacement  
18 power fuel costs and without as identified in Exhibit  
19 71.

20 There's two options there, and it seems to me  
21 that -- as I come late in my term, I continue to shake  
22 my head at the legal analysis, because it just seems to  
23 ebb and flow as opposed to what has been done during my  
24 four-year tenure on the Commission. So just looking at  
25 the supporting schedules it shows including CR3

1 replacement fuel costs in 71, and then there is another  
2 exhibit excluding CR3 replacement fuel costs, but  
3 nowhere in the record evidence do I see nor has a  
4 provision been made to get that into the record evidence  
5 what the 50 percent would be, unless you are just going  
6 to take those numbers and split them which, I don't  
7 know, I just think it is a slippery slope and shaky  
8 ground. That is just my two cents.

9 **MR. BREW:** Excuse me?

10 **CHAIRMAN GRAHAM:** Yes, sir.

11 **MR. BREW:** Mr. Chairman, to Commissioner  
12 Skop's point, it's our understanding that the  
13 recommendation gets the recommended rates and amounts  
14 from Exhibit 71 to be adopted on a preliminary basis.  
15 What's missing here is that Exhibit 71 doesn't provide  
16 for the midcourse correction that was provided for in  
17 the stipulation. And I think staff is trying to get to  
18 that same point, recognizing the midcourse correction  
19 will be filed in November, and add to that a requirement  
20 that the 50 percent be included. So the recommendation  
21 is adding to that missing piece from Exhibit 71, which  
22 was that we are going to get a midcourse correction in a  
23 couple of weeks.

24 **MS. BENNETT:** And if I might add, it really is  
25 just to get the numbers before you, the legal analysis,

1 the complete legal analysis is what will be provided to  
2 you in the recommendation on whether or not we can  
3 include 50 percent or not include 50 percent, the all in  
4 or the all out.

5 **CHAIRMAN GRAHAM:** Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you. I think the  
7 Commission has discretion to do whatever the Commission  
8 as a collegial body deems to be appropriate. I think  
9 what's causing me angst is that -- or interpret -- let  
10 me think of the right word. These braces make it  
11 difficult to pronounce this. Interpolating the 50  
12 percent numbers from data contained in 71, but yet I  
13 have heard no request by staff to have a late-filed  
14 exhibit to lock down in evidence what those specific  
15 numbers are going to be. So it seems to me like it's  
16 this ad hoc midpoint number crunching from an exhibit  
17 which seems to be, you know, on the fly somewhat  
18 arbitrary and capricious.

19 And I respect the positions of the intervening  
20 parties. I respect Mr. Burnett's argument, but it just  
21 seems that we are -- you know, we're getting down a road  
22 that I have never been on during my tenure on the  
23 Commission. It teams to be very ad hoc and on the fly,  
24 and I note that two of my colleagues have requested  
25 briefings on Issue 1D, but, you know, this is a new

1 twist in terms of inserting something in that, you know,  
2 I was previously comfortable voting on the staff  
3 recommendation on Issues 8, 9, 10, 12, 13, and 15, and  
4 others that we could vote on without, you know,  
5 compromising what the Commission needs to decide on 1D,  
6 but just in the gist -- you know, I don't know where  
7 this originated from or came from, but it has given me a  
8 little bit of uncomfort level. Because, you know, we  
9 are just sticking something in splitting hairs, and  
10 obviously the company has not taken a position on it.

11 At least one of the intervenors, Mr. Brew, I  
12 believe, spoke in favor of it. Staff is certainly, you  
13 know, I think trying to provide the Commission with  
14 options, but if the Commission wants to go that  
15 direction, that's fine, but I'm just getting a little  
16 bit uncomfortable with the way that the staff  
17 recommendation is evolving on the fly. So I just wanted  
18 to speak my mind. Thank you.

19 **CHAIRMAN GRAHAM:** I think what we're asking  
20 the staff to do is to give us options. So we are not  
21 making a decision to go either all in, or all out, or  
22 50 percent. And I can't speak for the rest of my  
23 colleagues, but that's why I wanted to see the legal  
24 precedent behind it all. If I don't feel that we have  
25 the legal authority to do that, or it doesn't make any

1 sense, then at that time we can make that judgment. But  
2 I think right now we are just moving forward with as  
3 many options as we can, and we can work this out as we  
4 progress forward. No pun intended.

5 Mr. Hinton.

6 **MR. HINTON:** Yes. And just to clarify, and  
7 you are exactly right that the 50 percent was just  
8 trying to be responsive to the options that you are  
9 requesting. The 50 percent is not being applied to  
10 Exhibit 71. Exhibit 71 contains all in or all out, and  
11 those are the preliminary numbers that staff is  
12 recommending that you approve.

13 What staff's recommendation does, though, is  
14 ask the utility in their midcourse correction, based  
15 upon their latest numbers that they will have in the  
16 midcourse correction to include an option that is  
17 50 percent. So the 50 percent does not apply to Exhibit  
18 71, just to what's in the midcourse correction when they  
19 have their latest numbers.

20 **CHAIRMAN GRAHAM:** And I think -- well, let's  
21 just hear what the rest of the board has got to say. I  
22 don't know if there's any comments. I'm fine moving  
23 forward with the staff recommendation.

24 Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you.

1           Just on the issues that staff provided this  
2 revised recommendation on. Issue 8, being the 2009  
3 true-up, I don't think has any bearing on the CR3  
4 outage, is that correct? Is Issue 8 impacted by that?

5           **MR. HINTON:** I believe -- Pete can confirm,  
6 but I believe there are CR3 replacement costs from  
7 December.

8           **COMMISSIONER SKOP:** And so the outage was in  
9 December of 2009?

10          **MR. HINTON:** It occurred in December of 2009,  
11 yes.

12          **COMMISSIONER SKOP:** Okay. So 8 is impacted, 9  
13 is impacted. All right. So I have a little bit better  
14 understanding of this. Again, it seems -- it seems to  
15 me a second ago staff did not seek to include those  
16 numbers in there, and we were going to vote those issues  
17 out. And then, you know, ultimately what the Commission  
18 decided on 1D would impact the final numbers as the data  
19 contained independently in Exhibit 71, but now we are  
20 putting in 50 percent. I don't know. I'll just leave  
21 it to the discretion of the board.

22          **CHAIRMAN GRAHAM:** Do I hear a motion?

23          **COMMISSIONER EDGAR:** Mr. Chair, every time in  
24 my experience that we have taken up the fuel docket,  
25 which is always about this time of the year every year,



1 it seems like every time there are one or two issues  
2 that are unique and that we have to work our way through  
3 with all of the parties and with our staff procedurally.

4 My understanding of what the staff has just  
5 recommended to us is that it is in keeping with the  
6 comments that I made that I would like some additional  
7 time and some additional detail on the legal analysis.  
8 And having the additional calculation of the 50 percent  
9 figure, in my mind, is just that, it is an additional  
10 calculation. So there is rarely one perfect right way  
11 to proceed, but I think by giving the additional time,  
12 and from the discussion that we have had, and having a  
13 written analysis and recommendation that may have  
14 options before us, depending on how that develops on the  
15 staff side, is in keeping with what we have requested.  
16 It enables this Commission to move forward in a timely  
17 manner, and also to have, as a result, probably a  
18 written order that is more clear than maybe it would be  
19 if we moved forward today.

20 So with that, I would move that we approve the  
21 staff recommendation as it was given to us by Ms.  
22 Bennett.

23 **CHAIRMAN GRAHAM:** Do I have a second?

24 **COMMISSIONER BRISÉ:** Second.

25 **CHAIRMAN GRAHAM:** It has been moved and

1 seconded to move the staff recommendation. Any further  
2 discussion?

3 Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you.

5 Again, my concern with this is -- you know, I  
6 appreciate Commissioner Edgar's comments. What I heard  
7 staff -- and this may be the point of confusion -- is  
8 that notwithstanding providing the additional  
9 calculation in the midcourse correction for the  
10 50 percent of the replacement fuel costs for the CR3  
11 outage, which, you know, obviously addresses  
12 Commissioner Edgar's concerns about providing options,  
13 what I heard staff say is that that is being placed in a  
14 placeholder for the factors, as a preliminary  
15 placeholder and that gave me some significant pause.  
16 So, again, I just wanted to state that for the record.

17 I'm all for providing options, but I am not  
18 for sticking in what appears to be an arbitrary and  
19 capricious factor into a placeholder, which was a  
20 subject, if I heard it correctly, of the revised staff  
21 recommendation. I just don't have a comfort level with  
22 that.

23 **CHAIRMAN GRAHAM:** Staff, do you want to add  
24 any clarification to the concerns that Mr. Skop has?

25 **MS. BENNETT:** I apologize for the lack of

1 clarity. It is not our intention to require or make the  
2 50 percent a placeholder. The first line of the  
3 recommendation is that the Commission should approve the  
4 revised positions and supporting schedules found in  
5 Exhibit 71 as preliminary amounts. So those are your  
6 placeholders. We are asking that the Commission direct  
7 Progress to file a midcourse correction with its most  
8 recent reforecasted numbers on or before November 10th,  
9 2010.

10 When Progress files those midcourses --  
11 midcourse corrections, we want three sets of numbers.  
12 We want Progress to -- three sets of numbers, schedules,  
13 everything. We want Progress to include a set that  
14 includes CR3 replacement power costs for the 2011; we  
15 want a set of schedules that excludes CR3 replacement  
16 power costs; and we want a set that includes only  
17 50 percent of the replacement power costs.

18 **CHAIRMAN GRAHAM:** Thank you, Ms. Bennett.

19 Commissioner Brisé.

20 **COMMISSIONER BRISÉ:** Just for perfect clarity  
21 for me, I think I'm clear on it, but I just want to make  
22 sure. So what we are doing right now is we are going  
23 with the recommendation as it would have been anyway  
24 without the 50 percent, with the only exception that  
25 when you come back, or when Progress comes back they are

1 going to come back with a 50 percent explanation, and  
2 the all in -- what we would call the all in, the all  
3 out, and a 50 percent.

4 **MS. BENNETT:** Yes.

5 **COMMISSIONER BRISÉ:** Thank you.

6 **CHAIRMAN GRAHAM:** There is a motion before us  
7 that has been moved and seconded. If there is no other  
8 discussion, all in favor of the option signify by  
9 saying -- I'm sorry. All in favor of the staff  
10 recommendation for Issues 8, 9, 10, 12, 13, and 15,  
11 signify by saying aye.

12 **COMMISSIONER EDGAR:** Aye.

13 **COMMISSIONER BRISÉ:** Aye.

14 **CHAIRMAN GRAHAM:** Aye.

15 Those opposed?

16 **COMMISSIONER SKOP:** Aye.

17 **CHAIRMAN GRAHAM:** By your action you have  
18 approved the staff recommendation for 8, 9, 10, 12, 13,  
19 and 15.

20 Now, are there any other matters to be  
21 addressed?

22 **MS. BENNETT:** There are capacity Issues 30,  
23 31, and 33. And I promise they won't be as hard.

24 **CHAIRMAN GRAHAM:** Okay.

25 **MR. LEE:** Commissioner, Daniel Lee with staff.

1 I'll address Issue 30 and 31. The parties has reached  
2 an agreement on both issues. Issue 30, "What are the  
3 appropriate total capacity cost recovery true-up amounts  
4 to be collected or refunded during the period  
5 January 2011 through December 2011?"

6 The staff recommendation is \$52,311,070  
7 overrecovery as stated in the Prehearing Order. Staff  
8 is available for any questions you may have.

9 **COMMISSIONER SKOP:** Thank you, sir.

10 Any questions or concerns for staff?

11 Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you.

13 Mr. Lee, with respect to the issues remaining,  
14 30, 31, and 33, they are not impacted as they are  
15 capacity recoveries from the issues that the Commission  
16 just voted on, is that correct?

17 **MR. LEE:** That's correct. The net effect is  
18 offset by the new repayment reimbursement as staff  
19 addressed in Issue 31.

20 **COMMISSIONER SKOP:** Okay. So they are  
21 separate and distinct and don't have any fallout from  
22 the CR3 related issues?

23 **MR. LEE:** That is correct.

24 **COMMISSIONER SKOP:** Okay. Great. Thank you.

25 **CHAIRMAN GRAHAM:** Any other questions or

1 concerns? Can I get a motion?

2 **COMMISSIONER SKOP:** I move to approve the  
3 staff recommendation on Issues 30, 31, and 33 for  
4 Progress.

5 **COMMISSIONER BRISÉ:** Second.

6 **COMMISSIONER SKOP:** It has been moved and  
7 seconded to approve Issues 30, 31, and 33.

8 Any other discussion?

9 **MR. HINTON:** To be clear, Mr. Lee had just  
10 done a recommendation on 30, but staff's recommendation,  
11 I believe, would be to approve the amounts contained  
12 within the Prehearing Order for all three of those  
13 issues. So if you wanted to vote in block, you may.

14 **CHAIRMAN GRAHAM:** The motion on the floor was  
15 to all three in block, and seconded. Any other  
16 discussion?

17 Seeing none, all in favor say aye?

18 (Vote taken.)

19 **CHAIRMAN GRAHAM:** Those opposed?

20 By your action you have approved 30, 31, and  
21 33.

22 Now, are there any other issues to come before  
23 us? Any other matters?

24 **MS. BENNETT:** No other matters. I do want to  
25 note for the record and for the parties' benefit that

1 hearing briefs, if any, would be due November 8th, 2010.  
2 Staff will file its recommendation on November 16th,  
3 2010, and that will be presented to you for the  
4 November 30th, 2010, Agenda Conference.

5 **CHAIRMAN GRAHAM:** Okay. Anything else?

6 Seeing none, we will adjourn Docket Number  
7 100001, the Progress portion of it, because we had  
8 already adjourned the TECO and the Gulf portion of that.  
9 That all being said, we will adjourn that piece of the  
10 docket. And I guess we are going to adjourn this  
11 hearing as a whole.

12 That being said, thank you very much for your  
13 time and your patience, and I look forward to seeing you  
14 guys very soon.

15 (The hearing concluded at 11:20 a.m.)  
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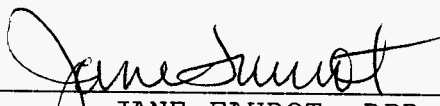
CERTIFICATE OF REPORTER

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 November, 2010.

  
\_\_\_\_\_  
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