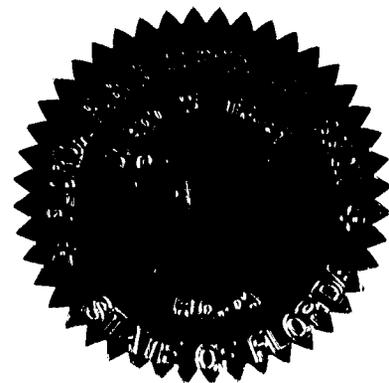


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
:
Generic investigation :
into the aggregate :
electric utility :
reserve margins planned:
for Peninsular Florida :

DOCKET NO. 981890-EU



PROCEEDINGS: **AGENDA CONFERENCE**
 ITEM NO. 13

BEFORE: CHAIRMAN JOE GARCIA
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER JULIA L. JOHNSON
 COMMISSIONER E. LEON JACOBS, JR.

DATE: **Tuesday, July 27, 1999**

TIME: Commenced at 12:15 p.m.
 Concluded at 1:30 p.m.

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

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR
 FPSC Commission Reporter

DOCUMENT NO.
09003-99
July 29

1 **PARTICIPATING:**

2 **GARY SASSO**, Carlton Fields, P.O. Box 3239,
3 Tampa, Florida 33601, appearing on behalf of **Florida**
4 **Power Corporation.**

5 **JON MOYLE**, Moyle, Flanigan, Katz, Kolins,
6 Raymond & Sheehan, 210 South Monroe Street,
7 Tallahassee, Florida 32301, appearing on behalf of
8 **PG&E Generating Company.**

9 **CHARLES GUYTON**, Steel, Hector and Davis, 215
10 South Monroe Street, Suite 601, Tallahassee, Florida
11 32301-1804, appearing on behalf of **Florida**
12 **Power & Light Company.**

13 **ROBERT J. SCHEFFEL WRIGHT**, Landers &
14 Parsons, 310 West College Avenue, P.O. Box 271,
15 Tallahassee, Florida 32302, appearing on behalf of
16 **Duke Energy Power Services and Utilities Commission of**
17 **the City of New Smyrna Beach, Florida.**

18 **JAMES D. BEASLEY**, Ausley and McMullen, 227
19 South Calhoun Street, Tallahassee, Florida 32302,
20 appearing on behalf of **Tampa Electric Company.**

21 **DEBRA SWIM**, Legal Environmental Assistance
22 Foundation, 1115 North Gadsden Street, Tallahassee, Florida
23 32303, appearing on behalf of **Legal Environmental Assistance**
24 **Foundation (LEAF).**

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PARTICIPANTS CONTINUED:

LESLIE PAUGH, FPSC Division of Legal Services, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
appearing on behalf of the **Commission Staff**.

JOE JENKINS, FPSC Director, Division of Electric and
Gas.

P R O C E E D I N G S

(Hearing convened at 12:15 p.m.)

CHAIRMAN GARCIA: We are now on Item No. 13;
is that correct?

MS. PAUGH: Commissioners, before we
commence Item No. 13 I'd like to make a correction to
the recommendation. There is a rule citation in Issue
1 to Rule 25-22.058 that is incorrect. The correct
citation is 25-22.0376. I apologize for any confusion
I may have caused.

This comes to you as motions for
reconsideration of the prehearing officer's order
following the status conference in this docket; status
conference, preliminary prehearing conference. That
conference was held at the request of FP&L, FPC and
TECO motions for the conference. It was held on
June 30th. The Order was issued on July 1st.

The Order essentially denied everything that
the utilities were claiming were procedural due
process problems with this and stated very clearly
that this proceeding is appropriate as an
investigation that proceeds as a formal evidentiary
hearing. That is the challenge.

The parties say we cannot investigate as a
formal evidentiary proceeding. The prehearing officer

1 disagreed with that and Staff thoroughly disagrees
2 with that in the recommendation. That is an incorrect
3 analysis of the law frankly.

4 With respect to the motions for
5 reconsideration, they should be denied because they
6 simply reargue all of the issues raised in the motions
7 for the status conference and at that long and
8 difficult status conference. That is not a basis for
9 reconsideration. Reconsideration has to establish a
10 mistake of fact or law or something the Commission, in
11 this case the prehearing officer, overlooked. The
12 parties have not done that. Staff's recommendation is
13 to deny the motions for reconsideration.

14 There is also motions -- request for oral
15 argument. The Commissioners have the discretion to
16 grant that or not.

17 **COMMISSIONER CLARK:** Mr. Chairman, you know,
18 I've read the briefs and I understand the highly
19 legalistic sort of arguments that we're probably about
20 to hear and I really think that -- you know, I don't
21 disagree with the conclusions with respect to the law.
22 But I want to ask, I just sort of want to explore as a
23 Commission how we want to proceed with respect to not
24 only margin of reserves, but merchant plant issues and
25 those sorts of things. And if you would indulge me

1 for a minute, I would like to sort of indicate how I
2 think the process should go and what I was
3 envisioning.

4 I don't disagree with Staff that I think
5 most of the issues that have been identified have to
6 be resolved at some time. But I was looking at this
7 docket to answer the question that Joe Jenkins has
8 continued to say to us that he's uncomfortable with,
9 and that is; what is the methodology we are going to
10 be comfortable with in determining how much reserve
11 margin we do have. Is it an LOLP and --

12 **MS. PAUGH:** LOLP.

13 **COMMISSIONER CLARK:** -- is it a strict
14 percentage? And let's focus on that issue and decide
15 what we can live with; what is the appropriate
16 methodology for making that determination.

17 Then once we make that determination I think
18 it is appropriate for us to decide how much are
19 companies who have the obligation to serve customers
20 should be required to carry and should be allowed into
21 the rate base. I think we need to make that decision.

22 Then the next decision ought to be, to what
23 extent, what further margin of reserve and what impact
24 on the required margin of reserve is -- flows from
25 allowing merchant plants in Florida.

1 In other words, you might say with respect
2 to the incumbent companies, it's okay to carry 5% of
3 your reserve as demand side management as
4 interruptible rates or load control, because we could
5 rely on a wholesale market that for those people who
6 may not decide to be interrupted and maybe there would
7 be an opportunity for a buy-through.

8 Whereas, if you don't have the opportunity
9 for a buy-through and you have some 100-degree days
10 like they've had up north, I don't think that's
11 satisfactory for the people of the state of Florida,
12 and we experienced that about a year ago.

13 So, what influence does a merchant plant
14 have on the required margin of reserve, and would you
15 limit merchant plants to say, providing a 20% -- 10%,
16 20% cushion? And that factors into our developing
17 policy on merchant plants.

18 I would indicate that I think it's very
19 important to make sure that if we decide to have --
20 well, we have decided to have merchant plants.

21 One of the issues I think we need to make
22 sure of is that we, in fact, have a robust wholesale
23 market, because if you look at what we had to decide
24 with respect to the fuel and purchase power cost, one
25 of the -- at least what Gulf Power has alleged is

1 because people are getting higher prices on the
2 wholesale market, their costs have gone up to
3 regulated customers and we need to be aware that
4 because you now have that wholesale market, your price
5 is being determined by the market and not by embedded
6 cost to serve of other incumbent utilities, which you
7 could rely on to holding that cost down somewhat. It
8 will be whatever the market bears. And if that's
9 true, we have to make sure that there is robust
10 wholesale market.

11 I am concerned with respect to this that it
12 appears we're trying to make all the decisions at once
13 and I would feel more comfortable with a step-by-step
14 decision. I would like us to be clear on the
15 methodology we're going to use; find out what that
16 produces with respect to our margin of reserve; are we
17 comfortable with that margin of reserve.

18 And then, I guess, there are decisions with
19 respect to individual companies and how much they're
20 carrying for their margin of reserve, and then a
21 recommendation as to should we limit the number of
22 merchant plants or should we let the market decide,
23 and what do we do if the market does not produce
24 enough plants.

25 I would direct your attention to an article

1 I think that was forwarded to all of you about the
2 reserve margins in California. They're getting
3 extremely tight, notwithstanding the fact that they
4 have had retail and wholesale competition.

5 They were relying on power coming from other
6 states and as other states restructure their market
7 that power is no longer available and it is driving up
8 prices.

9 So we have to be concerned that when there
10 is a demand for that power we have, in fact, fostered
11 a wholesale market that will be there to provide that
12 demand at a reasonable rate.

13 I just see it as more a step process. I
14 don't think I disagree with the notion that we could
15 do it all at once. And I think we ought to decide how
16 we want to handle it. You know, I just throw that out
17 for your discussion on how we should proceed and I --
18 we could do it all at once, but to that extent, do
19 you -- do you get the focus you need on each issue?

20 **CHAIRMAN GARCIA:** You're not disagreeing
21 with the prehearing officer's ruling. You're simply
22 saying, do we break this up a little bit.

23 **COMMISSIONER CLARK:** Because clearly I think
24 what we wanted -- as I recall that internal affairs,
25 what we were concerned about was what the issue Joe

1 raised in how they were figuring margin of -- their
2 reserve margin was not the way we had done it in the
3 past; is that correct, Joe?

4 **MR. JENKINS:** Yes. Somewhat, yes. What was
5 happened, the LOLP calculation has no longer become
6 the driver and what happened now is they've used a new
7 methodology which they then arrive at the 15%.

8 **COMMISSIONER CLARK:** I wanted to have a
9 decision that this is the methodology we agree with
10 that we are comfortable with. In fact, gives us the
11 correct reserve margin, or gives us the correct method
12 of determining what our reserve margin is.

13 **MR. JENKINS:** My only concern is, with
14 looking at the methodology, maybe you're saying the
15 same thing, and then looking at the result. I'd like
16 to have some idea of what are the consequences of that
17 result that we come up.

18 **COMMISSIONER CLARK:** I agree with that, but
19 I don't want us to focus on the consequences and not
20 do a good job making those, what I would call base
21 decisions first.

22 **MR. JENKINS:** I think the two are
23 intertwined.

24 **CHAIRMAN GARCIA:** All right.

25 **COMMISSIONER JOHNSON:** That was -- Susan, to

1 your point, and your point is well taken, because as I
2 looked at this I was trying to determine and I kept
3 saying to Staff, are we biting off more than we can
4 chew anyway, and are there too many issues here and
5 how do -- not getting to procedurally how we handle it
6 because I think the process that would allow for
7 discovery and those kind of things need to happen.

8 But with respect to the primary question
9 being the methodology for determining margin reserve,
10 and as I discussed it and would continue to discuss it
11 with Staff, how do you bifurcate out that one issue.

12 The first thing that crops up when you're
13 looking at methodology, it almost seems intuitive that
14 you'd also start looking at the sufficiency for
15 Peninsular Florida. And it was hard to find bite
16 sizes to take one proceeding after the next. So I
17 thought that this process, knowing that the parties
18 would ask for reconsideration, that we could ferret
19 that out and determine how we proceed; if we needed to
20 break out these issues, how we would break them out.
21 But it is hard to find a logical breaking point
22 because there are some connectivities with respect to
23 determining the methodology, whether we use LOLP or
24 the percentage of, and then looking at the
25 methodology. And it almost seems because of what is

1 happening in other states, too, it's hard for me to
2 take the sufficiency off the table, making sure we
3 have the right methodology and what are the -- what's
4 adequate for Peninsular Florida.

5 **COMMISSIONER CLARK:** I'm comfortable with
6 those two questions being answered in the same docket.

7 **COMMISSIONER JOHNSON:** Okay.

8 **COMMISSIONER CLARK:** But then I think, now
9 what. Once we've made those determinations, I do
10 agree that we need to do the next steps. I don't want
11 to lose our focus that that is the primary thing I'd
12 like to see come out of these hearings. I don't
13 disagree that we need to -- at that point, we need to
14 go further in the process. We need to say, all right,
15 how much is appropriate to require those companies
16 that have the obligation to serve to carry, either
17 through investment or firm contracts or demand side
18 management. And I do understand that that level may
19 change if you have merchant plants and if you don't
20 have merchant plants.

21 **MR. JENKINS:** At the March 13th workshop on
22 merchant -- Commission workshop on merchant plants,
23 the decision at the close of the workshop was not to
24 discuss merchant plants in this docket. And so what I
25 did is I simply put in uncommitted capacity because

1 there's plenty of that around from merchant plants and
2 from other non -- you know, more traditional sources.

3 That limits -- that had the nice effect of
4 limiting the docket to reserve margins and reliability
5 without getting into all these issues of cost
6 effectiveness and what have you. That was my
7 interpretation of what you directed me at the
8 workshop.

9 **CHAIRMAN GARCIA:** Tell me where this puts
10 us. I mean, I don't think Julia disagrees.

11 **COMMISSIONER JOHNSON:** Yeah. And one of the
12 things, the reason why I wanted to attach and go ahead
13 and make some preliminary determinations as to the
14 issues is because I wanted the other Commissioners to
15 have the opportunity to look at those issues. And to
16 the extent that they are -- if we're going to use a
17 bifurcated process, which issues do we tee up first in
18 the first docket and whether there are those that
19 would be better addressed in secondary dockets, I
20 don't have a problem with that. But --

21 **CHAIRMAN GARCIA:** It makes sense to address
22 the two issues that Susan was discussing.

23 **MR. JENKINS:** Commissioner Clark, could you
24 restate those two issues again?

25 **COMMISSIONER CLARK:** Here's what I hope we

1 accomplish from the docket. I want to know, what is
2 the methodology we should use and that you're
3 comfortable with in determining what margin of reserve
4 we, in fact, have in Florida.

5 **MR. JENKINS:** Okay. And the second part?

6 **COMMISSIONER CLARK:** What margin of
7 reserve -- so -- and using that methodology, what
8 margin of reserve do we have in Florida.

9 **CHAIRMAN GARCIA:** If at all. If at all in
10 either one of those, right?

11 **MR. JENKINS:** If at all. And do you include
12 in that --

13 **COMMISSIONER CLARK:** Wait a minute. Wait a
14 minute. If at all --

15 **CHAIRMAN GARCIA:** You're requiring it from
16 the companies. In other words --

17 **COMMISSIONER CLARK:** No. I want some base
18 line figures.

19 **MR. JENKINS:** Right.

20 **COMMISSIONER CLARK:** And then, a decision
21 from that point. It has to do with, then it sort of
22 moves to how we structure the wholesale market. How
23 much are we -- and let me just indicate that I have
24 been thinking about how do we structure a wholesale
25 market in Florida because I think we need to be very

1 careful that it is a robust market or we will see our
2 purchase power and capacity cost -- purchase power and
3 fuel adjustment prices go up.

4 **MR. JENKINS:** On your sort of Phase 1, your
5 two items, do you include in there testing the results
6 against historical weather and historical events?

7 **COMMISSIONER CLARK:** I view that as being
8 part of deciding that the methodology is appropriate.

9 **MR. JENKINS:** Okay. Good.

10 **COMMISSIONER JACOBS:** That would include, as
11 well, the whole issue of undue reliance on DSM?

12 **CHAIRMAN GARCIA:** No.

13 **COMMISSIONER CLARK:** I think the next step
14 is --

15 **MR. JENKINS:** Wait a minute. When you say
16 DSM, you mean load management particularly?

17 **CHAIRMAN GARCIA:** I think, yes, that would
18 be part --

19 **MR. JENKINS:** I would have to be in
20 Commissioner Clark's Phase 1, yes. Not DSM, you know,
21 for ceiling insulation and things of that.

22 **COMMISSIONER CLARK:** Part of determining the
23 reserve margin would be how much margin you have
24 that's attributable to interruptible and load control.

25 **MR. JENKINS:** Correct.

1 **COMMISSIONER CLARK:** Okay.

2 **CHAIRMAN GARCIA:** Okay.

3 **MS. PAUGH:** Commissioner Clark, if I could
4 interject here for a moment. I'm intimately familiar
5 with the issues in this docket because we've been
6 through a number of permutations of those issues, and
7 it is my firm belief that the issues that we have as
8 stated from the prehearing officer from the July 1st
9 order, do exactly what you're proposing. There are no
10 merchant issues per say in this docket. There were,
11 but there aren't now.

12 So, I really believe that's the --

13 **COMMISSIONER CLARK:** I didn't bring that
14 down with me and it's being brought down to me right
15 now.

16 **COMMISSIONER JOHNSON:** And that's one of the
17 things, if -- to go through these issues because I met
18 with Staff for quite a while trying to focus and keep
19 them narrowly defined, and I thought the input of the
20 other Commissioners as to, no, that one is way outside
21 the scope and it's going to far, what works and what
22 does not work, would be a useful exercise for all of
23 us here, and Leslie is right. We kept trying to
24 whittle them down.

25 **CHAIRMAN GARCIA:** All right. Well, does

1 that get at the heart of what is before us today,
2 though?

3 **MS. PAUGH:** No, it doesn't.

4 **CHAIRMAN GARCIA:** Let me just say, I
5 understand Commissioner Clark's position and I
6 wouldn't mind scheduling a conference for that type of
7 discussion. I just think it's too broad and
8 far-reaching to have here under these confines.

9 So it strikes me, and perhaps unfortunately
10 you and Julia can't sit down and discuss this, but
11 maybe we could have another conference on this case
12 and maybe find a way to bifurcate some of the issues.
13 Although you -- I understand Leslie feels comfortable
14 that that's what the issues presently before us do. I
15 take it from Susan's comment that she does not, and
16 narrowing those down a little bit I don't think hurts
17 us, but that's not the issue that brings us here
18 today.

19 **MS. PAUGH:** No, it's not.

20 **CHAIRMAN GARCIA:** Okay. So maybe the
21 prehearing officer can do that and speak with my staff
22 and we will set a date as early as possible and we
23 don't necessarily all have to be here, but we could
24 certainly do it by conference call.

25 **COMMISSIONER JOHNSON:** For the

1 Commissioners?

2 **CHAIRMAN GARCIA:** Yes. For the
3 Commissioners and the parties to discuss some of these
4 issues that we may not feel comfortable with and it
5 will make you more comfortable with the prehearing,
6 and if we need to bifurcate and break off another
7 hearing on some of these issues after we finish the
8 preliminary ones, I'm fine with that. But I don't --
9 if that's all right with you, Susan. I just don't
10 think we need to get carried on to this because I'm
11 not ready to discuss --

12 **COMMISSIONER JOHNSON:** That's what I would
13 need because candidly the list is probably as whittled
14 down as I'm going to whittle it without you all's help.
15 So you all are going to have to tell me what needs to
16 come out.

17 **CHAIRMAN GARCIA:** All right. That said
18 then -- so then, if that's all right, Leslie, you
19 should speak to Julia on --

20 **COMMISSIONER DEASON:** Let me -- I'm having a
21 little difficulty with that. Again, it's an extreme
22 departure from normal procedure, in that the
23 Commission lays -- as a body lays out its desire to
24 proceed with a proceeding, whether it's an
25 investigation or some other proceeding, and I know

1 there is some legal connotations with calling it an
2 investigation. But however we are going to proceed,
3 whatever characteristics the proceeding is going to
4 take on, generally. The Commission defines the
5 parameters and then it is up to the prehearing officer
6 to define the issues within those parameters. And I'm
7 not so sure that we want to go to the step of having a
8 full Commission act as prehearing officer in this
9 proceeding. I think that is a departure that we need
10 to be very hesitant about making.

11 **CHAIRMAN GARCIA:** Commissioner, while I
12 agree with you, I think the prehearing officer is
13 looking for some guidance on this and I don't know
14 what other way we can do this except by scheduling
15 some discussion of the issues. The policy
16 implications of the decision that would come from this
17 hearing are quite large and if the prehearing officer
18 sort of has some hesitancy and wants to address some
19 other issues or some of the Commissioners want to
20 narrow some issues, I think that that's why.

21 I certainly am not second-guessing the
22 prehearing officer. I am simply trying to meet some
23 of her concerns on this issue. I'm not trying to
24 change the way we do things, nor am I doing this
25 because the parties are asking for it. I'm simply

1 doing it because I think the prehearing officer has
2 asked for some guidance, which these issues are so
3 far-reaching for the policy issues that this
4 Commission touches on. I think it's relevant to give
5 her that guidance. If some --

6 **COMMISSIONER JOHNSON:** Let me be clear.
7 It's not that I'm asking for guidance. What I think
8 we have here is an explanation as to how I feel what
9 we meant when we said margin reserve methodology, and
10 these are the issues -- and I thought the industry did
11 an excellent job of arguing or of stating, well, maybe
12 that's not what the Commissioners meant when you all
13 had that internal affairs and you were discussing
14 methodology.

15 But from one Commissioner's perspective and
16 looking at the record myself and trying to determine,
17 well, I think our goal is to determine the reserve
18 margin methodology, and in order to do that there is
19 certain things we needed to do. And that's what I
20 laid out in the prehearing order.

21 And in order to fulfill those components, I
22 whittled out the issues that I thought necessarily
23 needed to be addressed. I think this is the
24 industry's opportunity to say whether I erred or not.
25 And, in the course of -- if we allow them to have oral

1 argument, in the course of those discussions maybe
2 some Commissioners might say, well, they agree or they
3 disagree and this was that opportunity to do so.

4 I feel comfortable with the issues that have
5 been laid out and with respect to my interpretation of
6 what we intended to do and how we proceed, but I also
7 look to others to say, well, that's not, you know,
8 gone astray or bifurcated and this process is too
9 large and to help and walk through some of those
10 procedural matters. So -- and however we get there.

11 **CHAIRMAN GARCIA:** Susan.

12 **COMMISSIONER CLARK:** I think it's
13 appropriate now to proceed with the recommendation.

14 **CHAIRMAN GARCIA:** Okay.

15 **COMMISSIONER DEASON:** I move we deny Staff
16 on Issue 1 and entertain oral argument.

17 **COMMISSIONER JOHNSON:** Second.

18 **COMMISSIONER CLARK:** Second.

19 **COMMISSIONER JOHNSON:** Perhaps we could
20 limit it, though.

21 **CHAIRMAN GARCIA:** What?

22 **COMMISSIONER JOHNSON:** The prehearing went
23 all day. We might want to put some time limits.

24 **CHAIRMAN GARCIA:** I'd appreciate that. Give
25 us some type of time frame.

1 **COMMISSIONER DEASON:** At the discretion of
2 the chairman.

3 **CHAIRMAN GARCIA:** Okay. Thank you. You're
4 in trouble guys. There is a motion and a second. All
5 those in favor signify by saying "Aye". Aye.

6 **COMMISSIONER DEASON:** Aye.

7 **COMMISSIONER JOHNSON:** Aye.

8 **COMMISSIONER CLARK:** Aye.

9 **COMMISSIONER JACOBS:** Aye.

10 **MR. MOYLE:** This is on the oral argument
11 request?

12 **COMMISSIONER JOHNSON:** Yes.

13 **CHAIRMAN GARCIA:** That is also -- is that
14 similar to Issue No. 2? We're going to hear the oral
15 argument and then move to that, to No. 2?

16 **COMMISSIONER DEASON:** Yes.

17 **CHAIRMAN GARCIA:** Okay. Gentlemen, I know
18 you've probably prepared a long time. Five minutes.
19 I know these are complex issues and you took all day.
20 We've read through this to some degree and I'm sure
21 that if there are issues that need to be hashed out
22 we'll get there. All right.

23 **MR. SASSO:** We will do our best to keep our
24 remarks very brief. Shall I begin?

25 **CHAIRMAN GARCIA:** Mr. Sasso, go right ahead.

1 **MR. SASSO:** Gary Sasso with Carlton Fields
2 representing Florida Power Corporation. I've listened
3 with a great deal of interest to the discussion so far
4 because it does point out some of the reasons that
5 brought us to the table today.

6 Mr. Jenkins mentioned the word consequences
7 which really puts the spotlight on what we're
8 concerned about. I believe that there is a
9 fundamental misunderstanding about what we are
10 concerned about. Let me be clear that we are not
11 challenging this Commission's ability to do its job to
12 conduct an investigation by compelling witnesses,
13 asking them to testify under oath, or by subpoenaing
14 records, evidence and other information helpful to the
15 Commission in conducting an investigation.

16 And a large part of the Staff recommendation
17 labors to argue that the Commission can proceed using
18 those types of procedures and we don't quarrel with
19 that.

20 What we are concerned about is that this
21 docket, which was begun very distinctly as an
22 investigation, has been somehow confused with an
23 adjudication. We asked for a status conference in
24 order to address that concern. And what we learned in
25 the course of the staff conference -- status

1 conference concerned us even more because during the
2 course of that we were advised that, in fact,
3 decisions may be made against specific utilities based
4 on whatever comes out of this proceeding on the
5 evidence in the record. The July 1st order that we
6 asked the full Commission --

7 **COMMISSIONER DEASON:** Mr. Sasso, let me
8 interrupt.

9 **MR. SASSO:** Yes.

10 **COMMISSIONER DEASON:** If the Commission were
11 to go forward and to adopt a methodology for
12 determining reserve margins, is that something that is
13 adjudicated or is that something that can be the
14 result of an investigation?

15 **MR. SASSO:** Actually, I think that would
16 probably be something that would have to be done by
17 rulemaking. And I think that there was a consensus
18 around that. I don't want to speak for everybody.
19 But Duke, in its memorandum filed with the Commission,
20 indicates that if we were actually going to go forward
21 and adopt industry-wide practices or policies, that
22 would be done by rulemaking, and I think even
23 Mr. Elias acknowledged that during the status
24 conference, and that's certainly our position.

25 And fundamentally what we're suggesting is

1 that the Commission should proceed to conduct an
2 investigation to inform itself, but that if it is
3 going to make any decisions, particularly decisions
4 that would be binding and effect the substantial
5 interests of any utility, they cannot be done in this
6 proceeding. If I had the time I would explain.

7 **COMMISSIONER DEASON:** Again, cannot or
8 should not?

9 **MR. SASSO:** Cannot.

10 **COMMISSIONER DEASON:** Cannot.

11 **MR. SASSO:** Cannot. Yes, sir. The
12 Administrative Procedure Act has been amended to
13 change some of the rules of the game in that regard.
14 Uniform rules have been adopted, which limit what
15 agencies can and cannot do in that regard. We've
16 tried to elaborate on some of that in our papers and
17 I'd be happy to answer any questions about that. But
18 in order for an agency to take action that can affect
19 the substantial interests of any party, a very
20 particular kind of notice has to be given in advance.
21 Particular facts have to be alleged. The proposed
22 agency action has to be announced. The relief
23 requested has to be identified so that everybody knows
24 what is at stake; everybody knows what information to
25 bring to the table. And then the agency is in a

1 position to make an informed adjudication of those
2 issues.

3 This docket was begun as an investigation.
4 We have no quarrel with the Commission conducting it,
5 using testimony, discovery to inform itself as a
6 preliminary matter, than perhaps to identifying a
7 proposed rulemaking or taking other agency action in a
8 later proceeding.

9 **COMMISSIONER DEASON:** Let me ask another
10 question. The way you envision this, if we went
11 forward with our investigation and conducted
12 discovery, took evidence, what would be the result?
13 Would an order be issued or how would we not violate
14 your concerns that we're somehow adjudicating your
15 rights in an investigation docket?

16 **MR. SASSO:** Yes, sir. An order would not be
17 entered and that was sort of the red flag to us,
18 because some of the procedural documents in this
19 docket indicated that the matter was being conducted
20 under 120.57 and certain procedures and rules that
21 apply to an adjudication under 120.57 would apply,
22 including a final order at the end of the process.
23 And we don't believe that that is appropriate to an
24 investigation. It is appropriate to an adjudication.

25 The purpose of an investigation is for an

1 agency to inform itself by calling the regulated
2 parties before it to provide information to respond to
3 questions and that can then be used as a basis to move
4 into the Phase 2, Phase 3 process that Commissioner
5 Clark has outlined perhaps, but cannot be used to
6 enter findings of fact, conclusions of law, adoptions
7 of policies in this proceeding.

8 **COMMISSIONER DEASON:** Is the Commission free
9 to create a structure or some type of a procedural
10 outline to inform the parties as to what information
11 is to be produced and solicited?

12 **MR. SASSO:** Oh, absolutely. Yes. In fact,
13 what we recommended at the status conference was that
14 the Commission tell us what issues it wanted to
15 investigate, set a date by which we would provide
16 written submissions and have us appear before the
17 Commission to provide information and respond to
18 questions. But, absolutely. That's part and parcel
19 of any investigation.

20 **COMMISSIONER DEASON:** So it's permissible to
21 define issues, but it's not permissible then to make
22 an order addressing the outcome of those issues? The
23 investigation is basically just a preliminary to
24 taking that next step; is that correct?

25 **MR. SASSO:** Exactly, Commissioner Deason.

1 It is an information gathering process. Decisions can
2 be made either through adjudication after proper
3 notice of proposed action under the Uniform Rules or
4 through rulemaking.

5 **COMMISSIONER DEASON:** Now, from the
6 practical standpoint, if we do that, we call this an
7 investigation, identify issues, take testimony,
8 conduct discovery. We do everything except issue an
9 order, and we do make the decision that we're going to
10 take the next step and we're going to adjudicate your
11 rights, are we going to redo what we've already done,
12 and how efficient is that?

13 **MR. SASSO:** Well, actually, Commissioner
14 Deason, I mean, we would have some concern about that.
15 We would submit that, yes, before a proposed agency
16 action could be taken we would have the right to
17 litigate the issues that would be at stake in
18 connection with that proposed agency action. The
19 danger of trying to make decisions in the context of
20 an investigation, it's far-reaching. We have general
21 issues on the table. All the parties are appearing in
22 good faith to try to discuss this openly.

23 But if in the course of the investigation
24 parties say something or the Commission gets a certain
25 impression, and out of that general investigatory

1 context, decides to make a specific fact finding, it
2 will catch us out of the blue as it were. Then if you
3 then propose agency action based on that fact finding
4 it really isn't due process at all because you've
5 already made up your mind on the issue that now is
6 identified to be in controversy.

7 In fact, one of was the cases that Duke
8 cites stands for that proposition. It's a Florida
9 Supreme Court decision where an agency took action to
10 remove a judge based on certain identified charges.
11 During the proceeding, the agency concluded that the
12 judge had given false testimony and removed him for
13 that reason. The Florida Supreme Court set it aside
14 saying, you proceeded on certain charges, you can't
15 make decisions based on other things that just
16 happened to come up on the record in the case before
17 you. You have to amend your charges and give notice
18 that that is what you're doing.

19 And here we really have no notice of any
20 proposed agency action as such. We've been told that
21 there may be findings made on certain issues that
22 emerged somehow in the course of the proceeding or
23 that certain decisions may be made of a policy nature
24 based on what happens in the proceeding. But we think
25 that approach is fraught with danger because until the

1 Commission has focused its attention on particular
2 proposed action, and therefore, the parties have had
3 an opportunity to focus their attention on a proposed
4 remedial action or a proposed agency action or a
5 proposed rule, no one is really in a position to give
6 the kind of meaningful attention to that proposed
7 action that is required.

8 **CHAIRMAN GARCIA:** Okay. Leslie, do you want
9 to respond directly to that, because I'm just curious
10 what your response is to his outlining of what we can
11 or cannot do.

12 **MS. PAUGH:** Certainly. I disagree with him
13 wholeheartedly. This Commission has full authority to
14 investigate in a formal evidentiary hearing. The
15 allegation that they don't have notice as to what the
16 charges is, is unthinkable to me. They have the
17 issues before them. They know what we're going to be
18 investigating. I just -- I can't even conceive of
19 their argument, frankly.

20 And with respect to the argument that we'll
21 be making decisions on anything of which the parties
22 don't have notice, Staff is very sensitive to the
23 requirement of competent substantial evidence. It is
24 inconceivable that we would lead the Commission down
25 that kind of path. They know what the issues are.

1 They have notice, and they bring these issues up in
2 the context of an evidentiary hearing at which they
3 have full due process rights right now.

4 **CHAIRMAN GARCIA:** Mr. Sasso, that's -- I
5 guess it goes to the question that Mr. Deason made.
6 What kind of efficiency are we talking about here?
7 You're asking us to what? Hold two proceedings on the
8 same issue?

9 **MR. SASSO:** Well, actually what we had
10 proposed to avoid that was to proceed informally at
11 first, provide information to the Commission on an
12 informal basis, responding to specific issues
13 identified. And then the Commission would be in a
14 better position to proceed to Phase 2. But, yes,
15 sometimes due process is inexpedient. But --

16 **CHAIRMAN GARCIA:** I mean, what you're
17 arguing is completely different. You're arguing, here
18 we are in a proceeding. You know what the issues are.
19 The prehearing officer has taken great pains to listen
20 to those issues and narrow them down in her mind. And
21 she's willing to work with you more on that, but there
22 we are. And you're saying to us that in that
23 proceeding that's not enough. We have to repeat this
24 so that you understand what the outcome of this
25 proceeding will be?

1 **MR. SASSO:** Well, we know what issues are to
2 be addressed in the context of an investigation. No
3 proposed agency action has been announced. No
4 proposed rule has been announced. So we're going to
5 show up in a couple of weeks with general testimony to
6 address in a general manner the issues that have been
7 identified in the context of an investigation.
8 Ms. Paugh mentions that we should know what the
9 charges are. Well, there haven't been any charges
10 made.

11 **CHAIRMAN GARCIA:** So what you're asking is
12 that Staff prejudge the matter, put out it's decision
13 before we begin the proceedings so that then we can
14 either prove up our decision or not?

15 **MR. SASSO:** No. We're not asking that Staff
16 prejudge the issues. We're perfectly prepared to go
17 forward to provide information in the context of an
18 investigation. It seems to me that Chairman Garcia
19 may be correct or Commissioner Deason may be correct
20 in suggesting that there may be some duplication of
21 effort involved. But that's very common and, in fact,
22 it's inherent in the way agencies proceed. First
23 there may be an investigation, but then that's
24 followed by some formal decision making process.
25 That's very, very common. Agencies generally

1 proceed --

2 **CHAIRMAN GARCIA:** Let's me just understand
3 how we would fit it in to where we are. We have this
4 investigation docket. The Staff proposes some final
5 order as PAA and then we go to hearing on that order,
6 on that position.

7 **MR. SASSO:** I mean, part of the problem here
8 is, I think, identified by Commission Clark at the
9 very inception. This started as a focused docket.
10 The Commission directed the Staff to open a docket to
11 consider the methodology used to determine reserve
12 margin. And now, we have 27 -- some 27 issues. I
13 think that may be the number.

14 **COMMISSIONER CLARK:** 19.

15 **MR. SASSO:** I'm sorry. 19. We started with
16 27. At some point I guess Commissioner Johnson
17 narrowed it to 19. But we have a host of issues. And
18 included in, I guess, this collection of issues,
19 according to the prehearing officer's order, are
20 issues about what may be the appropriate level of
21 reserve margins, the remedial action, if any, which
22 must be taken to assure adequate reserve margins.

23 We are going far beyond the original concept
24 of this docket. We're going from Phase 1 to Phase 2
25 to Phase 3 that Commissioner Clark outlined. We're

1 going from identifying what methodology that the
2 utilities are using to determine reserve margins, to
3 discussing the appropriate level of reserve margins
4 for individual utilities in Peninsular Florida, to
5 discussing appropriate remedial action for whatever
6 may come of this docket with respect to individual
7 utilities in Peninsular Florida, and we're biting off
8 the whole nine yards. And to know what any individual
9 utility may face in this proceeding is very difficult.
10 It's a very, very different kind of proceeding than an
11 adjudication might be or a proposed rule.

12 **CHAIRMAN GARCIA:** Thank you.

13 **COMMISSIONER CLARK:** Let me ask a question.
14 Have you gone through the issues as outlined and
15 specifically stated that ones that you don't think are
16 appropriate for this proceeding as opposed to the ones
17 that are?

18 Just looking through them, it strikes me
19 that the first two are, you know, what is the
20 appropriate methodology for planning purposes and what
21 is the appropriate methodology for evaluating
22 individual utilities; calculating and then evaluating
23 the reserve margins.

24 And then it strikes me that there are
25 some -- some of the subsequent issues go to answering

1 that question, and they're just simply stated as
2 issues. For instance, with respect to the question or
3 the issue on the Reliability Coordinating Council's
4 planning criteria, I think the issue there is, is it
5 the appropriate methodology. And the other issues are
6 part of that, which you would have to answer the
7 question, have they been appropriately tested and how
8 do others do it.

9 I think those are questions that you look at
10 when you're trying to settle on the methodology. I
11 can see where you might take issue with the notion of
12 No. 10; do the following utilities appropriately
13 account for historical winter and summer temperatures
14 for purposes of establishing present -- planning
15 criteria.

16 I can see where you would say, well,
17 that's -- we need to know that you think that they're
18 inappropriate and proceed on an individual utility
19 basis. Maybe what we're really looking for is, how do
20 you account for it. We want to know how you account
21 for it and get some comfort that across the board
22 everybody's doing it the same so we can factor that in
23 to whether or not we think the methodology is correct.

24 But I'd be curious as to what specific
25 issues you think go outside determining the

1 appropriate methodology and what our current reserves
2 are.

3 **MR. SASSO:** Well, we haven't looked at the
4 issues with that in mind because whether or not we
5 have a concern with the issues is a function of what
6 we're going to do in this docket. If we're doing an
7 investigation and the Commission is interested in
8 receiving information on all of these issues to inform
9 itself, we're happy to participate in that and provide
10 information on all of these issues.

11 **COMMISSIONER CLARK:** You don't think we can
12 make a decision as to what the appropriate methodology
13 for determining the margin of reserve existing in
14 Florida is?

15 **MR. SASSO:** You mean to adopt a rule?

16 **COMMISSIONER CLARK:** Well, I will concede
17 the point if we want to do that. At some point we
18 have to go to rulemaking.

19 **MR. SASSO:** And rulemaking is a very well
20 defined process under the statute and it doesn't begin
21 with an investigation is our point.

22 **COMMISSIONER CLARK:** I think it can.

23 **MR. SASSO:** Well, it can as a precursor to
24 notice of development of a proposed rule, but then you
25 can't prejudge the issue going into the rulemaking

1 process; you can't have all ready made the decision.
2 It has to be a fair --

3 **COMMISSIONER CLARK:** I think we can.

4 **CHAIRMAN GARCIA:** Yes.

5 **COMMISSIONER CLARK:** We can put out a
6 proposed rule that says, this is what we think, and
7 then afford you a hearing to yet again tell us why you
8 don't think that.

9 **MR. SASSO:** Fair enough. Yes. We then have
10 to roll into a full blown rulemaking, yes. But to say
11 that you're essentially going to make the decision
12 after the investigation and that the rulemaking
13 process then is of no moments, or you're concerned
14 about it because it's a duplication of effort, I think
15 is inconsistent with all respect with what we're
16 required to do under the statute in connection with
17 the adoption of a rule.

18 **CHAIRMAN GARCIA:** I guess that begs the
19 question, isn't that where we end up? Don't we end up
20 at a rule hearing if we go down this road?

21 **MS. PAUGH:** Quite possibly, yes.

22 **COMMISSIONER JOHNSON:** At the prehearing
23 that was one of the elements that I thought all of the
24 parties agreed on; even if we go through this process,
25 the next step will most likely be a proposed rule.

1 And then to the extent -- because I'm very sympathetic
2 to the arguments as it relates to specific utilities,
3 that their substantial interests are protected in such
4 a way that they're given due process.

5 When we say this is exactly what you're
6 level for Florida Power Corp. will be, that we
7 probably -- we would end up going through a -- having
8 a proposed rule and allowing you the opportunity to
9 respond with respect to how these things impact your
10 specific utility when we have more than an incipient
11 policy when we've decided this is the policy and this
12 is the rule that will be applied to you.

13 I thought the parties on all sides agreed
14 that there would be another step. It was just how we
15 get there and I was having a hard time following the
16 arguments of the IOUs that we couldn't get there
17 through a full blown evidentiary process.

18 **MR. SASSO:** No, I think there was a
19 misunderstanding, and it continues today. If we were
20 to read Duke's memo we can see that Duke argues that
21 action can be taken against a specific utility.
22 Mr. Elias, during the status conference, gave the
23 opinion that at the conclusion of this investigation
24 the Commission could take action against a specific
25 utility. We will have had our due process.

1 Now, we weren't on notice going in that we
2 were on trial for anything, but on the basis of some
3 remarks that may be made in the course of the
4 investigation, we will have had our due process and he
5 suggested specific findings could be made against
6 individual utilities. He said he would draw the line
7 between industry-wide action and specific utility
8 focused action. If we are --

9 **CHAIRMAN GARCIA:** I'm sorry. Action as to
10 what?

11 **MR. SASSO:** Well, the illustration that he
12 gave was, for example, on the basis of testimony in
13 this investigation, the Commission could find that a
14 particular utility had failed to maintain adequate
15 reserves and needed to take some specific remedial
16 action to address that. And we don't believe that
17 that would be appropriate.

18 **COMMISSIONER CLARK:** Ms. Paugh, let me ask
19 you that. On Item 12 -- Issue 12, it's what
20 percentage is currently planned for each of the
21 following utilities and is it sufficient. Do you
22 envision us saying, for instance, the City of
23 Tallahassee is not carrying sufficient reserves and we
24 order them to take appropriate action to carry the
25 sufficient reserves? Would that be a final order?

1 **MS. PAUGH:** That --

2 **COMMISSIONER CLARK:** Or would we do proposed
3 agency action? And I think that may be the focus of
4 their point.

5 **MS. PAUGH:** We have the jurisdiction to
6 order utilities to build generation if we find that
7 there is a reason to do that, if there is competent
8 substantial evidence --

9 **CHAIRMAN GARCIA:** All right.

10 **MS. PAUGH:** -- in the record indicating that
11 that is the case, yes, we could make that order. It
12 is not envisioned that the purpose of this docket is
13 truly the methodology. We may find out once we get
14 into the discovery -- which the parties say we're not
15 allowed to do by the way -- we may find out that they
16 are bigger problems than we thought. We have a
17 statutory jurisdiction both to do the investigation,
18 do it as a formal hearing and order construction if
19 that's appropriate and if we have the evidence.

20 **COMMISSIONER CLARK:** But Staff envisions
21 doing that as part of Issue 12. You do envision
22 finding, for instance, that the City of Tallahassee is
23 not carrying adequate reserves and ordering them to
24 take action?

25 **MS. PAUGH:** If there is competent

1 substantial evidence to that effect, yes, that could
2 happen.

3 COMMISSIONER CLARK: Okay.

4 CHAIRMAN GARCIA: And that does not require
5 a rule to do that?

6 MS. PAUGH: No.

7 MR. SASSO: May I respond briefly?

8 CHAIRMAN GARCIA: Yes.

9 MR. SASSO: With all respect, I think what
10 Ms. Paugh has just said is that at the conclusion of
11 this investigation the Commission could order Florida
12 Power Corporation to build a plant based on the
13 record. We would vehemently disagree.

14 That is exactly the kind of action that has
15 to be proceeded by a notice of proposed agency action,
16 and then we have to have an opportunity for a hearing
17 on those issues without findings already being made
18 against us, knowing what is at stake, knowing
19 specifically what the concern of the Commission is,
20 and then having an opportunity to defend. We roll
21 into a general investigation, where we're talking
22 about the plethora of issues on this list. We cannot,
23 at the conclusion of that, be ordered to build a
24 plant. And that is our concern and evidently the
25 confusion still exists.

1 **CHAIRMAN GARCIA:** You're ordered to build a
2 plant, let's use that as an example. If we decided
3 that and what we would require is to issue a PAA --

4 **MR. SASSO:** Yes.

5 **CHAIRMAN GARCIA:** -- specifically on that
6 issue.

7 **MR. SASSO:** Yes, sir.

8 **CHAIRMAN GARCIA:** Does the City of
9 Tallahassee need to build a plant and then we have a
10 hearing?

11 **MR. SASSO:** Exactly. Yes.

12 **CHAIRMAN GARCIA:** Even though we may have
13 heard -- I understand because the specifics of the
14 issue that you're interested in is way too broad for
15 it to be addressed in this docket.

16 **MR. SASSO:** Absolutely. I mean --

17 **CHAIRMAN GARCIA:** Let me ask you something.
18 It harkens when we get into these goals dockets and
19 things like that -- which you're all over the place.
20 We're going for days, you file rooms full of stuff and
21 then we make a decision at the end, which you live
22 with, which everyone sort of lives with. Isn't that
23 the same process?

24 **MR. SASSO:** Well, I can't speak to that
25 based on my personal knowledge. I'd have to know --

1 **CHAIRMAN GARCIA:** All right. I understand.
2 You make -- I understand the point. You did pretty
3 good. You got us curious and you turned 5 into 25.
4 Mr. Guyton.

5 **MR. GUYTON:** Commissioners, my name is
6 Charles Guyton. I represent Florida Power & Light
7 Company. We are in accord with everything that
8 Mr. Sasso has told you this morning. I want to
9 suggest to you, and I think you have three reasonable
10 options to proceed. But none of those options are the
11 option that is set forth in the procedural order and
12 that is to conduct an investigation as a 120.57
13 proceeding where you would determine substantial
14 interests.

15 The reason that's not available to you is
16 that both the Administrative Procedure Act, by its
17 specific terms, and the Uniform Rules, by its specific
18 terms, say that you are not to conduct an
19 investigation pursuant to 120.57.

20 Section 120.57(5) states, this section --
21 referring to Section 120.57 -- does not apply to
22 action investigations preliminary to agency action.

23 **COMMISSIONER DEASON:** Mr. Guyton, let me
24 interrupt. By us proceeding and labeling this an
25 investigation, are you saying that that limits what we

1 can do and if we had called it something else to begin
2 with, that that would have been okay?

3 **MR. GUYTON:** No, Commissioner Deason, I'm
4 not.

5 **COMMISSIONER DEASON:** You need to clarify
6 the distinction for me.

7 **MR. GUYTON:** I'm saying that you decided to
8 conduct this as an investigation, not to conduct this
9 as a proceeding to determine substantial interest.
10 So, you're not, under the APA, allowed to conduct a
11 proceeding to determine substantial interest under
12 120.57(5). And under the --

13 **COMMISSIONER DEASON:** That's because we
14 chose to label this an investigation.

15 **MR. GUYTON:** No. If you had chosen instead
16 an alternative course of conduct, what were your other
17 two alternatives? If you're going to make policy
18 determinations, if you're going to establish rules of
19 general applicability, then the appropriate procedural
20 posture would be to initiate a rulemaking. So if
21 you're going to come up with a methodology that you're
22 going to prescribe by rule, then you ought to proceed
23 pursuant to rulemaking.

24 If you didn't feel like you needed to move
25 to policy but you wanted to determine a party's

1 substantial interest, and you didn't need an
2 investigation to determine whether you needed to take
3 that action, you were ready to go right then, then you
4 should have proposed agency action. You wouldn't have
5 created a proceeding and said, "Here are 19 issues.
6 We are going to make you a party. Create 19 issues
7 and tell you -- not tell you what the proposed agency
8 action is on the front end."

9 Instead you would have -- as the APA
10 envisioned, you would have taken a proposed agency
11 action, and then if a party who had substantial
12 interest was adversely effected, they could request a
13 hearing and then you would be joined on the very
14 specific action that you propose. We'd know what the
15 action was, how it effected our substantial interest
16 and what your rationale for it was. That's what the
17 APA envisioned.

18 **COMMISSIONER DEASON:** Let me ask you. So
19 you're saying that the procedure that has been
20 proposed at this point is deficient because then it's
21 an investigation and we cannot make a decision
22 involving a party's substantial interest. But if we
23 had, we could have not gone to the investigation, we
24 could have issued a PAA that said, Florida
25 Power & Light, build a 500 megawatt unit with this

1 technology located at this place; issue that as PAA,
2 and that would be fine.

3 **MR. GUYTON:** That would be fine and we would
4 have an opportunity at that point to either accept
5 that as the mandate or to request a hearing. And
6 that's the way -- if you're going to determine
7 substantial interest, that's the way the APA envisions
8 it will work. But that's not the procedure that we've
9 been left with with the procedural orders here.

10 The procedure we've been left with is that
11 you are going to not have the proposed agency action
12 first, you're going to have a hearing first. You're
13 going to have a hearing and you're going to identify
14 issues, but you're not going to identify the potential
15 proposed agency action or the rationale for it. So
16 how does that prejudice me?

17 Well, the way it primarily prejudices my
18 client is that that leaves me in a position where I
19 don't know what -- of the myriad agency actions that
20 you potentially could take with all of Peninsular
21 Florida and all the individual utilities involved, I
22 don't know what action you might take. So what I have
23 to do, I have to try to conceive of every potential
24 action that you might take.

25 **COMMISSIONER DEASON:** Well, let me interrupt

1 you again. If we had gone the PAA route and we had
2 issued that PAA indicating a 500 megawatt unit located
3 at "X" using such and such technology, and we -- and
4 you protested that and we went through a lengthy
5 proceeding and we took evidence which demonstrated
6 that, "no, that's not the correct action. It's a 250
7 megawatt plant located at "Y" which is the best
8 thing." Are we free to order that or do we have to
9 issue another PAA saying, "Well, we were wrong on the
10 500 but now we're going to order you to do 200," and
11 then take all the evidence again, and put you on
12 notice that it's not a 500 megawatt, it's a 250
13 megawatt plant located somewhere else?

14 I mean, I'm trying to look at the practical
15 standpoint in the work load of this Commission and how
16 we protect your rights and still get our job done in
17 an effective and efficient manner.

18 **MR. GUYTON:** Commissioner Deason, I'm
19 completely sympathetic with that and I understand
20 that. I, on the other hand, have a perspective of,
21 I'm simply trying to find out how my client's interest
22 may be adversely affected and I need to have some
23 appraisal when this hearing starts.

24 **CHAIRMAN GARCIA:** So you would agree with
25 his point? In other words, if it was about building

1 new generation, that is specific enough and that we
2 could effect your -- you know, if we were talking
3 about you needing to build new generation we don't
4 have to say, 500 megawatt plant located in Miami
5 Beach, and you're going to build it on this day.

6 But if we were speaking specifically to
7 that -- to your interest about new generation,
8 because, Mr. Deason -- Commission Deason, which I
9 think missed his calling, he should have been an
10 attorney, is absolutely right. I mean, if you specify
11 it that much, any deviation we make gets us back down
12 to zero and we've got to start the process all over.

13 **MR. GUYTON:** I agree with your concept, but
14 that's not where we find ourselves in this position.
15 In this proceeding right now, we are far afield from
16 that; that type of a scenario. The scenario we have
17 here is that the Commission has said, we were going to
18 conduct an investigation but now we're going to
19 conduct an investigation to determine substantial
20 interest. Something that you're not suppose to do
21 under the APA, but set that aside.

22 What's the appropriate way to determine
23 substantial interest? It's for you to take a proposed
24 action and let us address the specifics of that
25 proposed action. It's not --

1 **CHAIRMAN GARCIA:** And you would be
2 comfortable if Staff does this investigation, which I
3 think we all understand it's very broad, and I think
4 even the prehearing officer agrees with that. But we
5 get to some proposed agency action on the -- at the
6 back end. We say, "well, from now on there's a 15%
7 margin reserve required of all the IOUs in Florida,
8 two, three or four others and those would all be
9 proposed agency actions." And then from that point
10 then you could then take us to hearing on some
11 specific findings and others just let them be,
12 correct?

13 **MR. GUYTON:** Commissioner Garcia, I think so
14 with one correction.

15 **CHAIRMAN GARCIA:** Okay.

16 **MR. GUYTON:** It may be that we don't go to
17 PAA on it. Some of it you may go to rulemaking on
18 because you may be establishing policy.

19 **CHAIRMAN GARCIA:** Correct. You're
20 absolutely right. And in that case, we would be
21 establishing -- for example, if that is what's
22 required of setting up a 15% margin of reserve, well,
23 then Staff says, this is the rule that we envision and
24 we start the process, but we don't have to state the
25 specific rule. I don't want to end up where

1 Commissioner Deason -- and he is quite right. That we
2 would simply state a rule and that rule would evolve
3 through the hearing, but you'd know what we were
4 talking about and what we were heading to in the final
5 product, correct?

6 **MR. GUYTON:** Then you would have a
7 rulemaking proceeding that --

8 **CHAIRMAN GARCIA:** Right.

9 **MR. GUYTON:** -- you would --

10 **CHAIRMAN GARCIA:** Correct.

11 **MR. GUYTON:** -- adopt the rule and you would
12 have the procedures attended to a rulemaking
13 proceeding to address and refine it, if it needs to be
14 refined further.

15 **CHAIRMAN GARCIA:** Correct.

16 **MR. GUYTON:** But the dilemma that we're
17 faced with here, and I've repeated, it's just the
18 opposite of what is envisioned by the APA. Instead of
19 a proposed agency action and a hearing with specifics,
20 you have, let's have a hearing, and we may or may not
21 issue a proposed -- or take agency action.

22 **CHAIRMAN GARCIA:** You don't disagree with
23 the fact that if we are not going to end up where you
24 want us to, you do agree that we do have the right to
25 have this hearing, we have a right to investigate this

1 information and require it? We just do not have a
2 right to effect your substantial interest because you
3 don't know where this hearing is going to end up. But
4 we have a right to find out all this information that
5 may take us somewhere in the end.

6 **MR. GUYTON:** We do not contest your ability
7 to investigate here.

8 **CHAIRMAN GARCIA:** Great.

9 **MR. GUYTON:** What we contest is the fashion
10 in which you're attempting to conduct the
11 investigation, and it looks like you're trying to
12 create a hearing with a record that may allow you to
13 act in some unspecified -- unspecified action up front
14 which we can't protect against in the course of a
15 hearing. It's just the opposite of what the APA
16 envisioned.

17 **COMMISSIONER CLARK:** I have a question.

18 **COMMISSIONER JOHNSON:** You know, and I'm
19 sympathetic to what you all are saying and, you know,
20 I thought we tried to address those issues in the
21 order, and to the extent that we have a full blown
22 evidentiary proceeding and issues are resolved in the
23 manner of a final order and you're substantial rights
24 have been protected, to the extent that you haven't
25 had the opportunity and the process to fully litigate

1 those things, that'll end up being a proposed agency
2 action in my mind. I was agreeing with what Mr. Sasso
3 was saying.

4 In my mind there will be proposed agency
5 actions issued, to the extent that there is
6 specificity required by each of these utilities like
7 stated in Issue 10 or 12, or some further rulemaking
8 that will need to occur. Else you'll have the direct
9 appeal. You'll be the ones able to say, wait a
10 minute, we had no due process. We didn't even know
11 this was an issue, there's nothing in the record upon
12 which to base this particular decision. We had no
13 idea we were not on notice.

14 You will have all of those procedural
15 protections that are guaranteed to you by law. And I
16 just -- and maybe it's my faith in this process and in
17 the Commission that provides me with some comfort that
18 when we get to the end of this proceeding to the
19 extent that there are proposed actions that will
20 impact Florida Power & Light, Florida Power Corp. in a
21 detrimental way and they've not had the opportunity to
22 fully litigate that, that we would have it proposed
23 and continue on, and maybe you just don't have the
24 same comfort that I have.

25 But I think we've tried to lay out a process

1 here that would allow us to fully educate ourselves.
2 That would allow us to fully debate, explore and
3 provide the discovery on all of the issues necessary,
4 and for us to make some decisions and that there be no
5 surprises at the end that we're telling you to build
6 three or four plants. But that if we were to propose
7 something like that, it would be done through a
8 proposed agency action.

9 **COMMISSIONER CLARK:** Well, you know, let me
10 ask Staff something with respect to -- let me ask you
11 with respect to Issue 12 particularly. Suppose we
12 determine through this proceeding that the way to
13 determine the percent margin of reserve is just, for
14 example, the methodology currently being used by the
15 FRCC. And then we would say, well, we think that's
16 the way it should be done, and based on that, the
17 percent reserve margin currently being planned for
18 these entities is "X" and it's not sufficient. And I
19 think what you're saying is we -- as a result of this,
20 we could issue a final order that says it's not
21 sufficient, you need to take action to address that.

22 **MS. PAUGH:** That's correct, Commissioner.

23 **COMMISSIONER CLARK:** All right. Let me stop
24 you right there.

25 **MS. PAUGH:** Okay.

1 **COMMISSIONER CLARK:** Once we do that, do we
2 run into any problems that we have applied the policy
3 without putting it into a rule?

4 **MS. PAUGH:** Quite possibly. When I said
5 that we have the option of ordering construction for
6 the City of Tallahassee, that is true. That's our
7 statutory ability. However, the way the issues are
8 framed, it is highly unlikely that this proceeding
9 will get to that point because it's not looking at
10 that.

11 **COMMISSIONER CLARK:** Well, I want to address
12 the specific question, if we did do that, would we be
13 vulnerable on appeal that we have applied a policy
14 that we have not --

15 **MS. PAUGH:** Yes. That is quite possible and
16 if we do establish --

17 **COMMISSIONER CLARK:** Not possible. Do you
18 agree that we --

19 **MS. PAUGH:** We will be vulnerable, yes. And
20 we are very sensitive to nonrule policy, and what in
21 all likelihood --

22 **COMMISSIONER CLARK:** What happens if we do
23 that? What happens if we apply nonrule policy? What
24 latitude does the court have --

25 **MS. PAUGH:** Staff counsel advises that you

1 don't. We would go to rulemaking, yes.

2 **COMMISSIONER CLARK:** Okay. All right.

3 **CHAIRMAN GARCIA:** Okay.

4 **COMMISSIONER CLARK:** So I think there may
5 have been a misinterpretation here as to what I think
6 the Staff is saying with respect to those kinds of
7 issues; that we're going to have to go to rulemaking
8 and then we're going to have to go enforce those
9 rules. But I think, and I would urge the parties to
10 kind of look at the issues specifically and say, which
11 ones don't relate to determining the appropriate
12 methodology and then assessing our current status
13 against that methodology.

14 **CHAIRMAN GARCIA:** Okay. Mr. Beasley.

15 **MR. BEASLEY:** Just say, Tampa Electric
16 shares the concerns that have been talked about by
17 Mr. Sasso and Mr. Guyton and we support their
18 position.

19 **CHAIRMAN GARCIA:** Thank you for your
20 brevity. LEAF.

21 **MS. SWIM:** Deb Swim for LEAF. I'm neutral
22 on this. I just want to make sure that the
23 opportunity to present our position is included in the
24 issues.

25 **CHAIRMAN GARCIA:** Okay. Thank you. Scheff.

1 **MR. SCHEFFEL WRIGHT:** Thank you,
2 Mr. Chairman. Robert Scheffel Wright, law firm of
3 Landers and Parsons, appearing on behalf of Duke
4 Energy New Smyrna Beach Power Company, an electric
5 utility in Florida under the Commission's order
6 granting the need determination, and Duke Energy North
7 America, an intervenor in this docket pursuant to
8 order.

9 Commissioners, I will be as brief as I can.
10 I want to address some practical aspects of this
11 proceeding. These are important --

12 **CHAIRMAN GARCIA:** You've got five minutes.
13 Everyone else got five.

14 **MR. SCHEFFEL WRIGHT:** All right. I'm going
15 to be quick, boss.

16 **CHAIRMAN GARCIA:** We asked for longer. But
17 you got five.

18 **MR. SCHEFFEL WRIGHT:** I am not asking for
19 longer. I will be done in five minute.

20 These are important issues. To my personal
21 certain knowledge issues relating to the adequacy of
22 reserve margins in this state have been on the table
23 and under active consideration by your staff since at
24 least August of 1997, nearly two years ago. These
25 issues should be addressed. They should be addressed

1 sooner, rather than later.

2 I don't think you need to take 18 months to
3 address them when you can probably do it in something
4 more like eight from now or what will turn out to have
5 been 13 or 14 from the time you initiated the formal
6 docket back in December of 1998.

7 Extra delay associated with addressing these
8 issues imposes extra risk on the reliability of
9 service to the customers, the ratepayers and the
10 people of the state of Florida.

11 We would support inclusion of all the issues
12 identified and included by Commissioner Johnson in
13 Order 99-1274.

14 Now having said that, you, the
15 Commissioners, can do what you see fit here. You can
16 do something less formal. You can do it step wise, or
17 you can proceed to, in my opinion, to an evidentiary
18 proceeding on -- and make findings and issue an order
19 on the issues set forth in Commissioner Johnson's
20 Procedural Order 99 --

21 **CHAIRMAN GARCIA:** Mr. Scheffel Wright, you
22 have to be a little bit more specific than where we
23 are on the record to decide issues to that degree.

24 **MR. SCHEFFEL WRIGHT:** Well, Chairman Garcia,
25 I --

1 **CHAIRMAN GARCIA:** For example, if we went to
2 this hearing and we ended up, when we finished this
3 hearing and we ordered no more merchant plants should
4 be built in Florida, I think you'd have a problem with
5 that.

6 **MR. SCHEFFEL WRIGHT:** I would have a problem
7 with that just as I think Florida Power Corporation or
8 Florida Power & Light Company would have a problem
9 with a final order coming out of this proceeding based
10 on these issues. I'm trying to follow Commissioner
11 Clark's thinking, I believe here, and that is, look at
12 the issues you all. We'd have a problem, just as
13 they'd have a problem, if we came out of this
14 proceeding based on these issues saying, you all go
15 build power plants because I don't see an issue in
16 here that says, should any utility --

17 **CHAIRMAN GARCIA:** Certainly not without
18 letting you get a crack at them, right?

19 **MR. SCHEFFEL WRIGHT:** Thank you very much.
20 Yes, sir. I don't see an issue in this case that
21 says, should any utility, should Florida Corporation
22 or should Florida Power & Light or anybody else be
23 fined for having an insufficient reserve margin if it
24 is determined that they do. I don't see an issue in
25 here that says, should Florida Power Corporation or

1 Florida Power & Light or Tampa Electric Company or the
2 Utilities Commission of New Smyrna Beach or anybody
3 else be required to install facilities.

4 The issues here are predominantly
5 methodological. There are some that address findings,
6 factual determinations to be made and some that
7 address the possibility of action. And the ones that
8 address the possibility of action go to, should the
9 Commission adopt a reserve margin standard.

10 **CHAIRMAN GARCIA:** Right.

11 **MR. SCHEFFEL WRIGHT:** That's what's really
12 on the table here. There's nothing in here about
13 should the Commission order anybody to install
14 facilities.

15 **COMMISSIONER DEASON:** Mr. Wright --

16 **MR. SCHEFFEL WRIGHT:** Yes, sir.

17 **COMMISSIONER DEASON:** -- I think you're
18 addressing Issue 15. Is that -- you just gave that
19 example.

20 **MR. SCHEFFEL WRIGHT:** Well, 14 and 15 and
21 16, actually.

22 **COMMISSIONER DEASON:** Look at Issue 15.

23 **MR. SCHEFFEL WRIGHT:** Yes, sir.

24 **COMMISSIONER DEASON:** Should the Commission
25 adopt a reserve margin standard for Peninsular

1 Florida.

2 MR. SCHEFFEL WRIGHT: Yes, sir.

3 COMMISSIONER DEASON: And then the next part
4 of that issue is, if so, what should be the
5 appropriate reserve margin criteria. Is that --
6 should that be done in a rulemaking proceeding?

7 MR. SCHEFFEL WRIGHT: I am not --

8 COMMISSIONER DEASON: Do you know what the
9 appropriate reserve margin criteria is -- are?

10 MR. SCHEFFEL WRIGHT: I am not persuaded
11 that that -- that may need to be done in a rule
12 proceeding. It may not. There's --

13 CHAIRMAN GARCIA: But, would you agree that
14 we need a separate proceeding for it? Let's assume --

15 MR. SCHEFFEL WRIGHT: No.

16 CHAIRMAN GARCIA: No. This would be --

17 MR. SCHEFFEL WRIGHT: Not to make a
18 determination here. Now, if you want to have a rule
19 that says we are going to evaluate 10 year site plans,
20 or we're going to require such and such and such and
21 such in terms of reserves, then, yes, you need to have
22 a rule.

23 COMMISSIONER CLARK: To enforce it, to say
24 with respect if we wanted to take actions specific to
25 a utility mentioned in 12 that their reserve margin is

1 not sufficient, we should have -- we should have in
2 the rule what we consider a sufficient reserve margin.

3 **MR. SCHEFFEL WRIGHT:** Or the criteria by
4 which sufficient reserve margins can be determined.

5 **COMMISSIONER CLARK:** Can be determined.

6 **MR. SCHEFFEL WRIGHT:** And that may well be
7 one outcome of this docket is that you may make some
8 findings that reserve margins are insufficient and
9 that the criteria to be included ought to be such and
10 such and you may proceed to rulemaking.

11 You may make factual findings that -- that
12 are so -- that indicate that the need for additional
13 capacity is so urgent that you may then turn around
14 and under your Grid Bill authority convene a
15 proceeding as required by law to use the language of
16 the statute to determine what, if anything, should be
17 done about that. That would be the next step.

18 **CHAIRMAN GARCIA:** That would be a separate
19 next step.

20 **MR. SCHEFFEL WRIGHT:** Yep. The assertion by
21 my colleagues from the investor-owned utilities that
22 no proposed agency action has been announced, I think,
23 is just wrong. I think Commissioner Johnson laid out
24 exactly what actions you all are considering. You're
25 considering making some decisions, taking evidence,

1 making some decisions on methodology, and making some
2 decisions on whether you should adopt a reserve margin
3 standard.

4 These issues are on the table. Building new
5 power plants isn't. Fining them is not on the table.
6 You know, in the context of the inquiry concerning
7 Davey case that we cite, I think it would be wrong for
8 you all to go into this case with these issues and
9 then come out and say, "oh, by the way, FPC, we're
10 going to fine you \$5,000 a day retroactive December
11 16, 1998." That would be a no, no in my opinion.

12 **CHAIRMAN GARCIA:** I think you're probably
13 right. That legal standard is probably right; a no,
14 no.

15 **MR. SCHEFFEL WRIGHT:** And on the simple
16 legal issues, you got adequate notice and due process
17 and I submit to you that all the guts issues that
18 wound up in Commissioner Johnson's order of July 1st
19 were in the Staff's issues list on May 28th, and
20 your -- and that, I believe, is sufficient notice for
21 a hearing that even then was going to be held on
22 September 28th and 29th and now is going to be held on
23 November 2nd and 3rd and --

24 **COMMISSIONER CLARK:** When is it?

25 **MR. SCHEFFEL WRIGHT:** Now it's November 2

1 and 3, Commissioner Clark. And your procedures do,
2 indeed, provide for due process.

3 **CHAIRMAN GARCIA:** Let me tell you. I don't
4 think you're too far from where the parties are. In
5 fact, I don't even think that the prehearing officer
6 is very far from where we ended up. Maybe I'm wrong.
7 Mr. Moyle.

8 **MR. MOYLE:** Thank you. Jon Moyle on behalf
9 of PG&E Generating. I would just remind every one I
10 think that the issue before us is a motion for
11 reconsideration. And that the law, as articulated by
12 the Supreme Court, does not permit a reargument of
13 what was argued before the prehearing officer and we
14 have a transcript. I believe a lot of this is simply
15 a rehashing of what has all ready been argued and has
16 been decided, in my view, correctly.

17 To me, it's inherent within your power to be
18 able to find out whether the state has enough
19 electricity on a going forward basis. You made that
20 decision when you opened the docket to look at that.
21 The Grid Bill gives you the power to order new
22 construction. Clearly, this is an investigation that
23 ought to proceed and go forward.

24 **CHAIRMAN GARCIA:** Well, I understand the
25 concern that the parties have here. Perhaps now it's

1 been stated a little bit more rationally and a little
2 bit less dramatic than it was at the prehearing
3 conference. But I think with just some degree we've
4 limited where we're going to the issues that are at
5 hand. And this is not a vehicle to set up some type
6 of policy. It's a vehicle to figure out what's going
7 on in Florida and from there move forward.

8 **MR. MOYLE:** Yes and no. I'm a little
9 confused by some of the arguments in that it seems to
10 me that some of the earlier decisions you had before
11 you today, the standard offer contract where you say
12 we're going to go down to 5 years rather than 10, that
13 for the same reason that you did that, you know, is
14 that a policy somebody who may not be here is unaware
15 and due process rights could be affected by your
16 failure to engage in rulemaking? That argument wasn't
17 made in that proceeding.

18 It's kind of an attack on how you do
19 business is the way I see it and, you know, a similar
20 argument could be made with respect to your decision
21 on that Texas El Paso case. I think you put some
22 things in there that arguably could be policy that
23 needs to be done through rulemaking.

24 So, I guess, my answer to your question is,
25 I'm a little confused about the arguments that

1 anything that would substantially affect them has to
2 be done through rule, yet we have, I think, a whole
3 series of situations even before you today where
4 matters substantially effecting people have been done
5 not through a rule.

6 **CHAIRMAN GARCIA:** Point well taken.

7 **MR. MOYLE:** Again, the motion, I think,
8 before you is for reconsideration, which I think the
9 arguments have been made. It's a repeat of the
10 arguments that have been made before the Commission,
11 and I think the motion for reconsideration ought to be
12 denied and you ought to continue with the
13 investigation.

14 **COMMISSIONER CLARK:** Let me -- unless there
15 are more questions, I'm prepared to make a motion, but
16 I -- you know, reading over the issues I can see where
17 some concern was raised as to what the action -- what
18 potential action might have been suggested.

19 For instance, if you look at Issue 9. It
20 says, "should the import capability of Peninsular
21 Florida be accounted for in measuring." And then
22 Issue 10, "do the following utilities appropriately
23 account for historical winter and summer peak
24 temperatures."

25 You know, kind of sounds accusatory in

1 there. And I think really, with respect to Issue 9,
2 what we're looking for is how should that capability
3 be accounted for. Is that what we're looking for?
4 How should they? And part of that answer may be that
5 they shouldn't be.

6 Let me turn to 10 and be more specific. It
7 says, "do the following utilities appropriately
8 account for" -- I think what we want to know, first of
9 all, is how do they account for it, and is it
10 appropriate for planning purposes.

11 **MR. JENKINS:** I think that's correct, but
12 all that feeds into --

13 **COMMISSIONER CLARK:** Absolutely. The
14 reserve margin issue. I agree. And then with respect
15 to Issue 11 it says, has the FRCC reserve margin be
16 adequately -- been adequately tested. And I think
17 really the issue is, is it appropriate for planning
18 purposes and the subissues are, has it been adequately
19 tested and how does it compare to others. Those are
20 sort of what I think you -- they're issues because
21 those are the things you want to evaluate in
22 determining the reserve methodology.

23 **MR. JENKINS:** That's correct.

24 **COMMISSIONER CLARK:** Okay.

25 **CHAIRMAN GARCIA:** Maybe --

1 **COMMISSIONER CLARK:** Mr. Chairman, I'm
2 prepared to move Staff on this item. I think we have
3 had an adequate discussion to give you an indication
4 and I don't think there's much disagreement among the
5 parties as to what the outcome -- what the outcome is
6 that we're planning. And I think Staff is looking for
7 a methodology and then some evaluation as to where we
8 currently stand.

9 **CHAIRMAN GARCIA:** Very good.

10 **COMMISSIONER CLARK:** And then the next
11 opportunity -- next steps will be rulemaking, if we
12 think it's appropriate, and then taking action to
13 enforce, which I think is consistent with what you
14 have raised as concerns. And to that end, I think we
15 have adequately considered it and the prehearing
16 officer has adequately considered it.

17 **CHAIRMAN GARCIA:** We'll take that as a
18 motion and I will take a second from the prehearing
19 officer --

20 **COMMISSIONER JOHNSON:** Second.

21 **CHAIRMAN GARCIA:** -- if she wants to add
22 anything.

23 **COMMISSIONER JOHNSON:** No. I think she's
24 absolutely right. Issues will be handled, some of
25 them to the extent that they haven't been fully

1 debated and explored through either a PAA process and
2 some of them rulemaking. The issues, we can continue
3 to wordsmith and make sure that they adequately
4 reflect what we're trying to accomplish here. And I
5 can second the motion.

6 **CHAIRMAN GARCIA:** Very good. Is there any
7 discussion?

8 **COMMISSIONER DEASON:** Just let me. I think
9 that what we're here on is a petition for
10 reconsideration and there is a standard for that. You
11 know, I don't think that standard's been met so I
12 believe that I'm going to have to vote with the motion
13 to not grant the reconsideration.

14 I think there is a more fundamental question
15 here, though, beyond that, and that is basically,
16 should the Commission take a reassessment of where we
17 are in this process and should we, perhaps take a
18 different viewpoint as to what we want to try to
19 accomplish.

20 I think there is some merit to the argument
21 that perhaps we should do this in a bit more
22 bifurcated manner and take smaller bites than what
23 we're trying to take at this point. I think there
24 would be some merit to that.

25 But I realize that's really not the issue in

1 front of us. I think Commissioner Johnson's done an
2 outstanding job with what was presented to her and
3 with her understanding of what the Commission desired
4 as a result of our direction to Staff at the internal
5 affairs meeting and I don't fault her one bit for the
6 issues that have been delineated and I can support
7 those.

8 But I personally would prefer breaking this
9 up and the Commission addressing the question of the
10 appropriate methodology first without any finding that
11 there's going to be an appropriate methodology. Take
12 all of that evidence and then after we've got all of
13 that information and we're fully educated, direct our
14 Staff to then come forward with their proposed
15 methodology and issue that as a rulemaking.

16 **CHAIRMAN GARCIA:** Okay.

17 **COMMISSIONER CLARK:** I don't think that's
18 much different from where we're headed.

19 **CHAIRMAN GARCIA:** I agree. I think we've
20 helped the prehearing officer and Staff understand
21 what we see here and, you know, and we can --

22 **COMMISSIONER CLARK:** I would take the notion
23 of some more wordsmithing as probably to be an answer
24 to some of the concerns so that the issues are
25 appropriately identified as being -- we want an

1 investigation. We want to know what the methodology
2 should be. And I think it would be okay to do where
3 we stand on it. And then once we've done that, well,
4 what are we going to do now. And that's for another
5 day and other proceeding.

6 **CHAIRMAN GARCIA:** All right.

7 **MR. MOYLE:** Just for clarification, though,
8 I think the -- and Commissioner Clark stated earlier,
9 if I understand the direction, it's to examine
10 methodology and sufficiency, and possibly, you know,
11 you mentioned ensuring a wholesale robust competitive
12 market. I'm not sure they can be done in isolation.
13 But that -- you know, the primary focus here is
14 methodology and sufficiency for the state.

15 **COMMISSIONER CLARK:** Right. And what we do
16 with respect to how merchant plants might figure in.
17 And I see that as sort of another step.

18 **CHAIRMAN GARCIA:** Very good.

19 **COMMISSIONER DEASON:** Just let me say one
20 thing further. I think that's a little bit of the
21 difficulty that I'm having, the sufficiency part. I
22 think that we need to develop the standard and then
23 once that is clearly defined, everyone understands
24 what the rules of the game are, our utilities can go
25 take that standard, apply it to their situation. And

1 they've got to file 10 year site plans every year, and
2 I don't know when the next filing is due, but it's
3 probably not that far off because it seems like they
4 come around every six months. Take that standard and
5 use that standard in making that filing and then we
6 can evaluate that, applying that standard, and then
7 they know up front how they're going to be evaluated.
8 I understand we're in a different process and I can
9 live with that, too. We just need to go forward.

10 **CHAIRMAN GARCIA:** All right. We have a
11 motion and a second. All those in favor signify by
12 saying "aye". Aye.

13 **COMMISSIONER CLARK:** Aye.

14 **COMMISSIONER JOHNSON:** Aye.

15 **COMMISSIONER DEASON:** Aye.

16 **COMMISSIONER JACOBS:** Aye.

17 **CHAIRMAN GARCIA:** Good. It passes
18 unanimously. Next item.

19 (Thereupon, the proceedings on Item 13 were
20 concluded at 1:30 p.m.)

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