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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Generic investigation into : DOCKET NO. 981890-EU  
the aggregate electric utility :  
reserve margins planned for :  
Peninsular Florida :  
\_\_\_\_\_ :

PROCEEDINGS: PREHEARING CONFERENCE  
  
BEFORE: COMMISSIONER GARCIA  
PREHEARING OFFICER  
  
DATE: OCTOBER 18, 1999  
  
TIME: COMMENCED AT 1:30 P.M.  
CONCLUDED AT 2:50 P.M.  
  
PLACE: BETTY EASLEY CONFERENCE CENTER  
ROOM 148  
4075 ESPLANADE WAY  
TALLAHASSEE, FLORIDA  
  
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Smyrna Beach Power Company, Ltd., L.L.P.

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APPEARANCES (CONT'D):

THOMAS J. MAIDA, ESQUIRE, Foley & Lardner, 300 East Park Avenue, Tallahassee, Florida 32301. On behalf of Seminole Electric Cooperative.

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\* \* \* \*

P R O C E E D I N G S

1  
2 CHAIRMAN GARCIA: All right. We'll call this  
3 hearing to order.

4 Counsel, will you please read the notice?

5 MR. ELIAS: Notice issued by the Clerk of the  
6 Florida Public Service Commission advises that this time  
7 and place have been reserved for a prehearing conference  
8 in Docket 981890-EU. That is the generic investigation  
9 into the aggregate electric utility reserve margins  
10 planned for Peninsular Florida.

11 CHAIRMAN GARCIA: Very good. We'll take  
12 appearances. We'll start with you, Ms. Swim.

13 MS. SWIM: I'm Deb Swim here on behalf of the  
14 Legal Environmental Assistance Foundation.

15 MS. BUFORD: Tasha Buford, representing the  
16 City of Lakeland, the Kissimmee Utility Authority, and  
17 Orlando Utilities Commission.

18 CHAIRMAN GARCIA: Okay.

19 MR. WILLIAMS: Thornton Williams, FRCC.

20 MR. SEXTON: Paul Sexton, also appearing for  
21 the FRCC.

22 MR. CHILDS: Matthew Childs and Charles Guyton  
23 appearing on behalf of Florida Power and Light Company.

24 MR. SASSO: Gary Sasso and James McGee here for  
25 Florida Power Corporation.

1 MR. BEASLEY: James D. Beasley. I'm  
2 representing Tampa Electric Company.

3 MR. McGLOTHLIN: Joseph A. McGlothlin for  
4 Reliant Energy Power Generation, Inc. Reliant Energy has  
5 a pending petition to intervene and has filed a  
6 prehearing statement and testimony subject to the ruling  
7 on that.

8 CHAIRMAN GARCIA: Okay.

9 MR. MOYLE: John Moyle representing PG&E  
10 Generating Company. We also have a petition to intervene  
11 pending.

12 CHAIRMAN GARCIA: Okay.

13 MR. LaVIA: Jay LaVia on behalf of Duke Energy  
14 North America and Duke Energy New Smyrna Beach Power  
15 Company.

16 MS. GORDON KAUFMAN: Vicki Gordon Kaufman of  
17 the McWhirter, Reeves law firm on the behalf of the  
18 Florida Industrial Power Users Group.

19 MR. MAIDA: Tom Maida on behalf of Seminole  
20 Electric Cooperative.

21 MR. HOFFMAN: Kenneth A. Hoffman on behalf of  
22 the City of Tallahassee.

23 MR. BRYANT: Frederick M. Bryant on behalf of  
24 Florida Municipal Power Agency.

25 MR. ELIAS: I'm Bob Elias, and with me are

1 Cochran Keating and Grace Jaye on behalf of the  
2 Commission staff.

3 CHAIRMAN GARCIA: Okay. Counselor, any  
4 preliminary matters?

5 MR. ELIAS: Well, as you know, there are a  
6 number of pending discovery matters and petitions to  
7 intervene that we can take up now or as we go through  
8 the -- get to that point in the prehearing order,  
9 depending on your preference.

10 CHAIRMAN GARCIA: Well, if we're going to -- if  
11 they're going to participate in the prehearing order, do  
12 we need to rule on the pending motions to intervene at  
13 least?

14 MR. ELIAS: I think that would be advisable.

15 CHAIRMAN GARCIA: All right. Which ones do we  
16 have? Let's go through them. Reliant Energy Inc.'s  
17 petition to intervene?

18 MR. ELIAS: And PG&E Generating.

19 CHAIRMAN GARCIA: Is that it? No one else had  
20 a motion to intervene? No. All right. I'm going to  
21 grant both of those motions.

22 All right. Then we go to -- that's all we  
23 needed to go through this, right?

24 MR. ELIAS: Yes.

25 CHAIRMAN GARCIA: Good. Then we're going to go

1 through the prehearing order. If you have something to  
2 say, say it. Speak up. And then we'll correct that, and  
3 then we'll go from there, go through the exhibits. We'll  
4 go through the entire order, and then we'll go through  
5 the pending motions.

6 MR. ELIAS: Mr. Chairman, if I can just say a  
7 couple of things. This is one of the lengthier  
8 prehearing orders that we've had around here, certainly  
9 in the energy industry in the recent past; and due to  
10 some problems with our network last week, it wasn't  
11 available until late Friday afternoon. And several of  
12 the parties didn't provide their prehearing statements on  
13 disk, so we did our best to transcribe accurately what  
14 was on the written pages. But in the event that there is  
15 a mistake in transcription or other error in a party's  
16 position or other information, I'd encourage the parties  
17 to take time to review it in quiet reflection; and if  
18 there are changes that need to be made on the basis of  
19 that kind of error, we can certainly do that. We have  
20 two weeks plus a day to the start of the hearing, and we  
21 can set a reasonable deadline for the parties to have an  
22 opportunity to review their particular statements to make  
23 sure that they're correct.

24 CHAIRMAN GARCIA: Okay. Good. All right.  
25 Let's go through changes or corrections of the case

1 background.

2 MR. CHILDS: Well, I think that's -- I mean I  
3 think there are a number of points that may be subject to  
4 debate, but we see what it says, and we've argued about  
5 that before.

6 CHAIRMAN GARCIA: Okay.

7 MR. CHILDS: I'm just bringing that up because  
8 I think we respectfully disagree, and I don't want to  
9 waive our position.

10 CHAIRMAN GARCIA: Okay. All right. I  
11 understand, and I know that we've been trying on that.

12 All right. Corrections or changes to the order  
13 of witnesses?

14 MR. MCGLOTHLIN: Mr. Chairman, Reliant Energy  
15 filed the testimony of Lance McElroy. Because of a  
16 conflict, Mr. McElroy will not be at the hearing. By  
17 letter I advised staff and parties that Mr. Charles  
18 Griffey will attend and will adopt the prefiled testimony  
19 that was originally submitted for Mr. McElroy.

20 CHAIRMAN GARCIA: Charles Griffey?

21 MR. MCGLOTHLIN: G-r-i-f-f-e-y, yes, sir.

22 CHAIRMAN GARCIA: Okay.

23 MR. SASSO: Mr. Chairman, Gary Sasso for  
24 Florida Power Corporation. Our rebuttal witness was  
25 omitted from the list.



1 CHAIRMAN GARCIA: Okay.

2 MR. SASSO: John B. Crisp. FPC Issues 1  
3 through 19.

4 CHAIRMAN GARCIA: Issues 1 through 19. Very  
5 good. That was just an omission?

6 MR. ELIAS: Absolutely.

7 CHAIRMAN GARCIA: Okay. Do we have to --  
8 Should we put him in any particular order, Mr. Elias?  
9 Should we put him right after the FPL witness, I would  
10 assume, the FPL rebuttal witnesses or there's no --

11 MR. ELIAS: There's no particular --

12 CHAIRMAN GARCIA: I just meant to confirm with  
13 what you had done. No, you're right. No. Just to  
14 confirm with what we had on the first page, but that's  
15 fine. Okay.

16 MR. CHILDS: As to order, Commissioner, I would  
17 suggest that staff appropriately goes first.

18 CHAIRMAN GARCIA: Okay.

19 MR. CHILDS: These are all the staff's issues,  
20 I believe, and I think that if this is going to be  
21 conducted as a proceeding to affect substantial interest,  
22 then it's appropriate to identify them as -- or someone  
23 anyway -- as the one who is going to support the  
24 affirmative on the issue and assume that burden.

25 CHAIRMAN GARCIA: Mr. Elias.

1 MR. ELIAS: Staff has no objection to putting  
2 our witnesses on first.

3 CHAIRMAN GARCIA: Okay.

4 MR. SEXTON: Mr. Chairman, on Mario Valar, we'd  
5 like to clarify the issues that his testimony will be  
6 touching on too. We have them listed as Issues 1 through  
7 19.

8 CHAIRMAN GARCIA: I understand Mr. Valar wants  
9 us to travel down to Miami to see him. That's usually  
10 not the standard practice.

11 MR. SEXTON: I'm sorry?

12 CHAIRMAN GARCIA: I understand that for  
13 Mr. Valar that you've requested that we travel down to  
14 Miami to visit with him. That's usually not been the  
15 standard practice of this Commission.

16 MR. SEXTON: Well, Commissioner, that's not the  
17 issue I was mentioning.

18 CHAIRMAN GARCIA: No, I know. Just out of  
19 curiosity since it struck me. Since Mr. Valar's name was  
20 mentioned, I wanted to ask.

21 MR. SEXTON: Well, the FRCC is a participant in  
22 this proceeding not as an investor-owned utility but as  
23 an independent organization, and Mr. Valar is -- has a  
24 very busy schedule and has limited ability to make  
25 himself available; and so we're doing this primarily for

1 the sake of his schedule and to allow him to be deposed  
2 in Dade County.

3 CHAIRMAN GARCIA: Okay. Maybe staff can ask  
4 whether it needs to do that at all. Maybe surprising him  
5 here would be better.

6 What are the issues that Mr. Valar will be  
7 testifying to?

8 MR. SEXTON: The issues that he will not be  
9 testifying to are Issues 7, 8, 10, 12. And on Issue 2,  
10 he will only be testifying as to the peninsular portion  
11 of that issue.

12 MR. ELIAS: So that's all issues but 7, 8, 10  
13 and 12?

14 MR. SEXTON: And the --

15 CHAIRMAN GARCIA: Partially 2.

16 MR. ELIAS: And partially 2.

17 MR. SEXTON: And partially 2.

18 CHAIRMAN GARCIA: On Peninsular Florida issues.

19 MR. SEXTON: Issue 2 has the appropriate  
20 methodology for planning purposes for the reserve margins  
21 for individual utilities and for Peninsular Florida, and  
22 Mr. Valar will only be testifying as to Peninsular  
23 Florida and not to the individual utilities.

24 CHAIRMAN GARCIA: Okay.

25 MR. ELIAS: Does that go for the rebuttal

1 testimony as well?

2 MR. SEXTON: Yes, it does.

3 MR. LaVIA: Mr. Chairman, Jay LaVia for Duke.  
4 Just to clarify that Duke's witness Ken Slater will be  
5 testifying for all 19 issues, 1 through 19.

6 CHAIRMAN GARCIA: 1 through 19, very good.  
7 That's right. Mr. Valar is both a direct and a  
8 rebuttal. Yeah, there it is. Okay.

9 MR. MOYLE: Mr. Chairman.

10 CHAIRMAN GARCIA: One second. Okay.

11 MR. MOYLE: John Moyle for PG&E, Stephen S.  
12 Green will be testifying on all issues, 1 through 19.

13 CHAIRMAN GARCIA: Okay.

14 MR. MAIDA: Mr. Chairman, Tom Maida for  
15 Seminole Electric. Garl Zimmerman, who is listed as a  
16 direct witness, will also testify as a rebuttal witness  
17 on 1 through 19.

18 CHAIRMAN GARCIA: Mr. Maida, who is the  
19 witness? I'm sorry.

20 MR. MAIDA: Garl Zimmerman, he's listed as a  
21 direct witness, Mr. Chairman.

22 CHAIRMAN GARCIA: I'm looking for him.

23 MR. MAIDA: Fourth one down.

24 CHAIRMAN GARCIA: There we go. And 1 through  
25 19?

1 MR. MAIDA: Yes, sir.

2 CHAIRMAN GARCIA: And he will also be a  
3 rebuttal?

4 MR. MAIDA: Yes, sir.

5 CHAIRMAN GARCIA: Okay.

6 MR. HOFFMAN: Mr. Chairman, Ken Hoffman for the  
7 City of Tallahassee. David Byrne is the witness for the  
8 City of Tallahassee. He has direct testimony only. He  
9 addresses only three issues. I believe I have a  
10 stipulation with the staff to introduce his testimony  
11 into the record without objection, and I would ask for a  
12 stipulation to admit Mr. Byrne's direct testimony.

13 CHAIRMAN GARCIA: Is there any objection?

14 MR. MCGLOTHLIN: I would want an opportunity to  
15 review that before I could join in the stipulation.

16 CHAIRMAN GARCIA: All right. Well, you can  
17 come back to us, Mr. Hoffman.

18 MR. HOFFMAN: Okay.

19 CHAIRMAN GARCIA: The request is out there.  
20 Please take a look at it and get back to us.

21 MS. SWIM: Chairman Garcia, Deb Swim for LEAF.  
22 Witness Marsha Elder would be -- we'd offer her on all  
23 issues except for 9, 10, 11 and 13.

24 CHAIRMAN GARCIA: Okay. Anyone else?

25 MR. BEASLEY: Chairman Garcia, Jim Beasley for

1 Tampa Electric Company.

2 CHAIRMAN GARCIA: Yes, Mr. Beasley.

3 MR. BEASLEY: Mark Ward's rebuttal testimony  
4 can be indicated to refer to Issues 1 to 19 to the extent  
5 that they're addressed by Mr. Ballinger and Mr. Trapp in  
6 their testimony.

7 CHAIRMAN GARCIA: Okay.

8 MR. ELIAS: And Mr. Trapp does address Issues 1  
9 to 19. I'm going to double check before I specifically  
10 state which issues Mr. Ballinger is addressing.

11 CHAIRMAN GARCIA: Both of them do 1 through  
12 19.

13 Okay. Very good. Mr. Hoffman, you'll get back  
14 to us if you get --

15 MR. HOFFMAN: Yes. I'll speak with  
16 Mr. McGlothlin and get back with you.

17 CHAIRMAN GARCIA: Mr. McGlothlin, and I think  
18 Mr. Beasley also had a question with that, so you'll have  
19 to check with all of them if possible.

20 MR. MCGLOTHLIN: I'd like to take a moment and  
21 make a similar offer. Our witness addresses only one  
22 issue, 16, and judging from the parties' positions, I  
23 don't think it's controversial. He recommends that any  
24 reserve margin standard be a floor and not a ceiling, and  
25 I would inquire of parties whether that can be moved into

1 the record without cross.

2 CHAIRMAN GARCIA: This is Mr. Griffey?

3 MR. McGLOTHLIN: Correct.

4 CHAIRMAN GARCIA: Okay.

5 MR. CHILDS: I wonder if it would be  
6 acceptable, Commissioner, to do that review, and I don't  
7 know that I can do that this afternoon, and call counsel  
8 or the staff and tell them that we do or do not have an  
9 objection.

10 CHAIRMAN GARCIA: Correct.

11 MR. CHILDS: All right.

12 CHAIRMAN GARCIA: However, what we'll do is  
13 we'll put the onus on the counsel, and you don't have to  
14 call our staff also. We will take their word for it.

15 MR. CHILDS: All right.

16 CHAIRMAN GARCIA: All right. Very good.  
17 Corrections or changes to the basic positions?

18 MR. SASSO: Mr. Chairman.

19 CHAIRMAN GARCIA: Yes.

20 MR. SASSO: Gary Sasso for Florida Power.  
21 Right here. Yes, we have a couple of typographical  
22 corrections, and also an addition.

23 CHAIRMAN GARCIA: Okay.

24 MR. SASSO: With respect to the corrections in  
25 our position, we have "adjudication's" twice on the page

1 with an apostrophe. There should not be an apostrophe.

2 CHAIRMAN GARCIA: Tell me where you're at,  
3 Mr. Sasso.

4 MR. SASSO: Okay. The first one is in quotes.

5 CHAIRMAN GARCIA: But are you on Page 7 at the  
6 bottom?

7 MR. SASSO: Yeah, my -- It's Page 8, I'm  
8 sorry. Page 8, Florida Power Corporation.

9 CHAIRMAN GARCIA: Page 8. Where in the page?

10 MR. SASSO: About the middle of the page, two  
11 words in quotes, see "investigation" and  
12 "adjudication's."

13 MR. ELIAS: We -- is that the version that we  
14 sent to you electronically? Because I think on the  
15 version that most of us are working from it's the first  
16 paragraph on Page 8.

17 MR. SASSO: Yeah, that's what I'm looking at.

18 CHAIRMAN GARCIA: Okay. First paragraph on  
19 Page 8. What do you want? I'm sorry.

20 MR. SASSO: Just take out the apostrophe in  
21 "adjudication's" where it appears twice on that  
22 paragraph.

23 CHAIRMAN GARCIA: Okay.

24 MR. SASSO: And then we have an addition.

25 CHAIRMAN GARCIA: Okay.



1           MR. SASSO: After the cite, the first cite to  
2 the Florida Administrative Code, we'd like to add the  
3 following sentence --

4           MS. SWIM: Is that in that first paragraph?

5           MR. SASSO: The first paragraph, Page 8, FPC's  
6 basic position.

7           MS. SWIM: Okay.

8           MR. SASSO: We'd like to add the following  
9 sentence: "The Commission may not legally adopt policy  
10 of general applicability at the conclusion of this  
11 investigation without first instituting rulemaking  
12 proceedings."

13           And we would like to add that same statement  
14 identically to certain specific positions, and if you  
15 prefer, I'll wait until we get to those, to certain  
16 specific issues, or I can identify them now.

17           CHAIRMAN GARCIA: Well, if you're going to  
18 put -- Do you just want to put them as a line all the  
19 way through in all of them, or do you want them in  
20 particular places in each one of those basic positions?

21           MR. SASSO: Well, there are three basic -- I'm  
22 sorry, there are three position statements on particular  
23 issues. I'd like to put that as the last line on those  
24 issues.

25           CHAIRMAN GARCIA: Okay. Good. No, let's get

1 it that way. Do you have that, Mr. Elias?

2 MR. ELIAS: Yeah. Which three issues?

3 MR. SASSO: Okay. Issue 14. Let's see, two  
4 sided copying makes this a little cumbersome for me.  
5 Issue 13 -- I'm sorry, Issue 15. Not 13, but Issue 15.  
6 I've got Issue 15 and Issue 16, right? And 14. 14, 15,  
7 and 16. That identical language would be the last line  
8 in those issues.

9 CHAIRMAN GARCIA: Got that, Mr. Elias?

10 MR. ELIAS: Yes. Thank you.

11 CHAIRMAN GARCIA: Okay. Good. Thank you,  
12 Mr. Sasso.

13 MR. SASSO: Thank you.

14 CHAIRMAN GARCIA: Anyone else?

15 MS. SWIM: Yes. Chairman Garcia, LEAF's  
16 statement has in the last -- it's on Page 15, the second  
17 to last line. Instead of saying "to for," it should just  
18 say for. So in other words, delete the word "to" in the  
19 second to last line. And this same typo occurs  
20 repeatedly in LEAF's statement, so if you could correct  
21 it wherever it occurs, I will not need to repeat myself.

22 MR. ELIAS: Okay.

23 CHAIRMAN GARCIA: Thank you, Ms. Swim.

24 Anyone else?

25 MR. CHILDS: Commissioner, I have -- Matt

1 Childs for Florida Power and Light. It's not on our  
2 statement of basic position, but I have a comment and an  
3 objection to the statement of position as framed by the  
4 staff; and if it's appropriate, I'd like to address that  
5 now.

6 CHAIRMAN GARCIA: All right. Well, let's --  
7 That's with staff's position?

8 MR. CHILDS: Yeah, it is the statement of basic  
9 position.

10 CHAIRMAN GARCIA: With staff, all right. Does  
11 anyone have any changes to their basic positions in the  
12 document? And then we can argue about staff's position.

13 (NO RESPONSE)

14 CHAIRMAN GARCIA: All right. Go ahead,  
15 Mr. Childs.

16 MR. CHILDS: This is on Page 17 where this is  
17 addressed as well. There's an issue that's identified on  
18 Page 83 that relates, which is paraphrasing,  
19 What-do-we-do-now kind of an issue. My reaction is, if  
20 you will look to the first sentence of that statement of  
21 position, there's a statement by staff as to their belief  
22 as to the provisions of Section 120.54(2)(a) and (b) and  
23 the condition, I guess, of practicability being addressed  
24 in this proceeding. I realize this is their statement of  
25 position, but our reaction is we object. We object to

1 this being raised at this time, and we would certainly  
2 object to it being -- to the Commission addressing this  
3 matter this way.

4           We have from the beginning pointed out and  
5 argued that it is improper to go forward with matters of  
6 policy absent rulemaking. We were told that we could not  
7 have any issues other than those that were proposed by  
8 the staff, and now we have an issue of practicability, as  
9 I read it. If it's just an observation, okay, but except  
10 that the staff's recommendation is that you apply this  
11 policy in the State of Florida but that you not go  
12 through with rulemaking currently, and so we would object  
13 to that.

14           CHAIRMAN GARCIA: Staff.

15           MR. ELIAS: And I'm not quite sure exactly how  
16 to respond to an objection that's poised in our statement  
17 of basic position. We've got 19 enumerated issues, and  
18 one of them is: What should we do now? And I think the  
19 comments that Mr. Childs made, you know, are -- indicate  
20 to me that that might be one reasonable resolution to  
21 this docket, and I don't know what the basis for his  
22 objection is.

23           MR. CHILDS: My basis for objection -- I'm  
24 sorry. If I interrupted, I'll --

25           MR. ELIAS: No.

1           MR. CHILDS: My basis is simply, as I read the  
2 statement of position, is that the staff would urge the  
3 Commission in conjunction with its position on the issue  
4 that is addressed on Page 83, would urge the Commission  
5 that you would recognize that rulemaking is not  
6 practicable. And our point is that I believe that is not  
7 only a matter of pleading, it's a matter of proof, and I  
8 don't think it's appropriate to raise that in this  
9 proceeding now. We have addressed it for months as to  
10 whether rulemaking is required, and this is an exception.

11           CHAIRMAN GARCIA: You're just saying that it  
12 shouldn't be part of our basic position, what we do --  
13 You're not arguing with what we should do now. You're  
14 just saying that the issue of whether we can or not has  
15 already been decided by us?

16           MR. CHILDS: I think that the issue of how  
17 you're going to address it, yes, I do. I think it has  
18 been decided by you. We've argued as -- number one, as  
19 to whether this is rulemaking.

20           CHAIRMAN GARCIA: Right.

21           MR. CHILDS: And the position was now we're  
22 going to go ahead with a 125.69, 125.7 proceeding. Now  
23 that it seems that -- And when we talked from the  
24 beginning about if the Commission wants to take the next  
25 step, if it's a matter of policy, is rulemaking required,

1 that's no surprise to anybody. We thought that the  
2 consequences flowed from that. However, and as I read  
3 this statement of position, it's the first time I've  
4 heard it in this proceeding, the suggestion that the  
5 Commission conclude that it's not possible to go forward  
6 with rulemaking because it's not practicable under the --  
7 in this case. And I don't think that's something the  
8 Commission ought to be addressing. If you want to  
9 address practicability, then everybody should have been  
10 put on notice, and we should have addressed it that way.

11 CHAIRMAN GARCIA: Mr. Elias.

12 MR. ELIAS: And I can only respond that, you  
13 know, based on what we see so far and the applicable law  
14 which has been available to everybody during the pendency  
15 of this proceeding, that that is one possible resolution  
16 to this proceeding that appears to us to be within the  
17 range of reasonableness, and I think --

18 CHAIRMAN GARCIA: I don't think that -- I  
19 don't think he's arguing the -- Are you arguing the  
20 20%, or are you --

21 MR. ELIAS: I don't see this as being a new  
22 issue.

23 CHAIRMAN GARCIA: Right.

24 MR. ELIAS: I see this as being our position on  
25 an issue that I think we've supported through testimony

1 and I think that we can develop through cross  
2 examination.

3 CHAIRMAN GARCIA: Maybe I'm the one having a  
4 problem here. Mr. Childs, you're arguing whether we can  
5 take that step, and you're making the argument that this  
6 is being argued as a position, correct?

7 MR. CHILDS: That's right. I'm not arguing  
8 now, although we would address the merits of the position  
9 in the case. I'm simply saying that from the very  
10 beginning we argued about rulemaking as opposed to  
11 another procedure. We argued about whether rulemaking  
12 procedures had to be followed. We're -- our position was  
13 you're adopting policy, and if you're adopting policy,  
14 you have to follow rulemaking. That was our position.  
15 We didn't win on that.

16 CHAIRMAN GARCIA: Correct.

17 MR. CHILDS: And we maintain our objections on  
18 that. Now it's said to you, well, it may not be prac --  
19 it is argued that staff believes this particular section,  
20 120.54(2)(a) and (b) apply, which recognize that  
21 rulemaking may not be practicable. And then they  
22 recommend ultimately, and the issue that I identified on  
23 Page 83 is saying, so what you should do is apply this  
24 policy to them as a non -- but it's not a rule, and that  
25 gets us into all kinds of legal issues as to what's a

1 rule and what's not a rule; but I think that it's late to  
2 raise the issue of practicability. That's a factual  
3 matter, as well as a matter that should have been pled.  
4 It's an issue that should have been addressed.

5 MR. ELIAS: And I would just respond by saying  
6 that it's not a new issue. It's a proposed resolution or  
7 a possible resolution of one of the issues that's been on  
8 the table for close to four months now.

9 CHAIRMAN GARCIA: Mr. Elias, but if it is such,  
10 if it is such and we -- you as well as this Commission  
11 feels that we can do it, why restate it here as an issue  
12 in the case? In other words --

13 MR. ELIAS: It's not been restated as an issue  
14 in the case. I mean it -- and the issue in the case is  
15 based on the resolution of Issues 1 through 18, what  
16 follow-up action, if any, should the Commission pursue?  
17 And it is something that we have supported in testimony  
18 so that the question of surprise is --

19 CHAIRMAN GARCIA: But I'm sorry, what have you  
20 supported in testimony? Neither of the people that are  
21 testifying are attorneys. Are they testifying to our  
22 agency's powers to act?

23 MR. ELIAS: That the Commission should not  
24 adopt the 20% standard recommended in testimony as a rule  
25 at this point in time for various factual reasons.



1           CHAIRMAN GARCIA: Oh, I see the argument you're  
2 making. You're not justifying what we may do. You're  
3 simply arguing about this particular issue.

4           MR. ELIAS: Yes.

5           CHAIRMAN GARCIA: Okay. Mr. Sasso.

6           MR. SASSO: Yes, Mr. Chairman, we would like to  
7 join in this objection, and we're really not quite sure  
8 procedurally what to make of this. And, fundamentally,  
9 this goes to the concern we've been raising from the  
10 inception of the proceeding, that this was --

11          CHAIRMAN GARCIA: Let's not argue that --

12          MR. SASSO: No, I'm not going to. But I just  
13 want to make sure that the concern is that the first time  
14 the argument or the issue or the assertion surfaced that  
15 rulemaking could be dispensed with here because of the  
16 impracticality consideration was in staff's prehearing  
17 statement.

18          MR. ELIAS: And the onus is on this agency to  
19 demonstrate that fact, if challenged, and if we can  
20 develop a record.

21          CHAIRMAN GARCIA: Mr. Elias, let's let  
22 Mr. Sasso finish.

23          MR. SASSO: That is exactly our concern. The  
24 staff put together the original set of 19 issues. They  
25 did not include among them whether the Commission should

1 adopt non-rule policy because of the impracticality of  
2 adopting rulemaking through this or some other  
3 proceeding. The first time the question surfaced whether  
4 they might -- whether staff might recommend that the  
5 Commission proceed through non-rule policy because of  
6 impracticality was in the prehearing statement.  
7 Mr. Elias just said that the staff has the onus of  
8 demonstrating this could be done. Staff should present  
9 it and prove it, we agree, but the first time it surfaced  
10 is in the prehearing statement. Staff was instrumental  
11 in putting together the original set of issues, and it  
12 comes awfully late.

13 MR. ELIAS: First of all, the issues that we're  
14 going to hearing on are the 19 that are listed in the  
15 prehearing order that were identified in the order issued  
16 on July 1st, 1999. Secondly, it's not incumbent on the  
17 staff to demonstrate anything. It's incumbent on the  
18 Commission to show by a preponderance of the evidence  
19 that rulemaking is not practicable; and if after this  
20 proceeding and after all the parties have an opportunity  
21 to cross examine all the witnesses the Commission  
22 determines that that's in fact correct, I see no  
23 procedural infirmity with making that decision at that  
24 time; and nor have any of the other parties identified a  
25 position on the issue before filing their prehearing

1 statement, and I don't know that that's ever been  
2 required in Commission practice before.

3 MR. SASSO: We would just like to make clear  
4 for the record our objection to any action that the  
5 Commission might take after this hearing that amounts to  
6 non-rule policy.

7 MR. BEASLEY: Tampa Electric would join in that  
8 objection, Mr. Chairman.

9 CHAIRMAN GARCIA: Very good. Your objection is  
10 noted. I will say though that, Bob, that it strikes me  
11 as odd that you're citing to a legal justification for a  
12 position we may take. Is that what you're doing, sort of  
13 a procedural course you may take? And I think we've  
14 already decided that, so why restate it?

15 MR. ELIAS: There are factual aspects to this  
16 case, and there are legal aspects of this case.

17 CHAIRMAN GARCIA: Right.

18 MR. ELIAS: Your view of the facts is going to  
19 drive how you see the law as applicable, and after  
20 considering all of the testimony that's been filed, this  
21 was what we felt, based on what we've seen so far.

22 CHAIRMAN GARCIA: All right. Objection of  
23 TECO, FPL and FPC are noted for the record with --

24 MR. SEXTON: Chairman Garcia, FRCC would join  
25 in that.

1 CHAIRMAN GARCIA: Okay.

2 MR. SEXTON: And just state very briefly, I  
3 think the crux of the issue is providing the parties with  
4 notice that the Commission is going to consider an issue  
5 so it can be addressed in testimony as opposed to raising  
6 it after all the prefiled is in and then addressing it  
7 somehow through cross or some other means.

8 MR. ELIAS: And we did raise this issue in our  
9 testimony, which the parties had an extensive period to  
10 respond to. I mean Mr. Trapp flat says in there that the  
11 Commission should not adopt the 20% standard as a rule,  
12 so --

13 MR. SEXTON: That's not a practicability  
14 question. It's a policy question.

15 CHAIRMAN GARCIA: Okay. All right. The  
16 objections are noted for the record.

17 Does anyone have any other corrections in the  
18 basic positions?

19 (NO RESPONSE)

20 CHAIRMAN GARCIA: All right. We'll start with  
21 the issues.

22 MR. SEXTON: Mr. Chairman, Paul Sexton with  
23 FRCC.

24 CHAIRMAN GARCIA: Yes.

25 MR. SEXTON: I notice that the format of the

1 order describing procedures is not necessarily being  
2 followed here. We had a requirement that there be  
3 statements of issues of fact, law, and policy; and I'm  
4 not seeing that separation of the issues any more. Is  
5 that order not being followed any more?

6 MR. ELIAS: The order that was issued July 1st,  
7 1999 identified these 19 issues as the ones that would be  
8 addressed in the prehearing statements.

9 MR. SEXTON: Right, but it also required the  
10 parties to identify which issues are factual issues,  
11 legal issues, and policy issues. I don't see that being  
12 done in this order, so it's no longer following the  
13 format that was laid out.

14 MR. ELIAS: I'm going to have to check on that,  
15 Paul. I don't have an answer for you. I have to go back  
16 and take a look at the order establishing procedure.

17 MR. SEXTON: Okay. And the other aspect of it  
18 is FRCC raised two legal issues that appear on Pages 2  
19 and 3 of its prehearing statement, and I'm not finding  
20 those in the draft prehearing order unless I just passed  
21 by them.

22 CHAIRMAN GARCIA: I'm sorry, what -- was this  
23 raised at a previous hearing or --

24 MR. SEXTON: We have two legal issues stated in  
25 our prehearing statement, which is -- our Issue Number 1

1 is whether this proceeding constitutes a formal  
2 proceeding pursuant to Sections 125.69 and 120.57, which  
3 of course has been an issue all along; and then a burden  
4 of proof issue, which is our Issue Number 2. And the --  
5 I believe that Seminole Electric's new issues were put on  
6 Page 84. I just don't see ours.

7 MR. ELIAS: Paul, it's quite possible that they  
8 were just missed.

9 MR. SEXTON: Yeah.

10 CHAIRMAN GARCIA: Okay. So you'll get those to  
11 staff.

12 MR. BEASLEY: Tampa Electric had one legal  
13 issue as well that doesn't appear in the draft prehearing  
14 order, and I'll be happy to get Bob a copy of it.

15 CHAIRMAN GARCIA: Okay. All right. Issue  
16 Number 1, any corrections, changes, additions?

17 MR. CHILDS: Commissioner, I have two. I  
18 can -- They're both word changes, and I can give them to  
19 staff. They're minor, but I'll go ahead.

20 CHAIRMAN GARCIA: If there are just two, why  
21 don't you go ahead and give them to us.

22 MR. CHILDS: Line 5 after the position by FPL,  
23 the third word from the end of the line, strike the word  
24 "has" and make that "have."

25 CHAIRMAN GARCIA: Okay.

1 MR. CHILDS: Below that, under the definition  
2 of the Term C, in parentheses, in the last line, strike  
3 apostrophe S after FPL.

4 CHAIRMAN GARCIA: Okay. Any other changes?

5 MS. SWIM: Commissioner, LEAF's position on  
6 Issue 1 should be changed from "No position at this  
7 time," to a sentence which reads: "A methodology should  
8 be used which appropriately ensures the cost-effective  
9 provision of reliable energy services."

10 CHAIRMAN GARCIA: Read it one more time for us,  
11 Ms. Swim.

12 MS. SWIM: "A methodology should be used which  
13 appropriately ensures the cost-effective provision of  
14 reliable energy services."

15 CHAIRMAN GARCIA: Okay. Anyone else?

16 (NO RESPONSE)

17 CHAIRMAN GARCIA: Good. We're completed with  
18 Issue 1.

19 Issue 2?

20 (NO RESPONSE)

21 CHAIRMAN GARCIA: No comments. Go to Issue 3.  
22 Let me skip this. Does anybody have any comments to add  
23 as we go through this on any of the issues? You've just  
24 got one, right, which is Issue 16?

25 MR. HOFFMAN: Issue 14.

1 CHAIRMAN GARCIA: 14, I'm sorry.

2 MR. SASSO: Issue 19.

3 CHAIRMAN GARCIA: 19. Anybody else?

4 MS. BUFORD: Mr. Chairman, Tasha Buford for  
5 Lakeland KUA and OUC. We've conferred with our three  
6 parties over a conference call on Friday, and we've  
7 prepared a consolidated position on all of our issues in  
8 a matrix form that we can provide to the staff to  
9 simplify our position.

10 CHAIRMAN GARCIA: Is it the same position for  
11 your three clients stated as --

12 MS. BUFORD: For the most part. Some of  
13 them -- in some cases they've adopted the position of one  
14 of the other parties.

15 CHAIRMAN GARCIA: Okay. Why don't you pass  
16 this out so we --

17 (DOCUMENT DISTRIBUTED)

18 CHAIRMAN GARCIA: While they pass that, let me  
19 just understand this. What you're doing is that, say, on  
20 Issue 10, that Lakeland, KUA and -- Well, that's a bad  
21 one. On Issue 16, that Lakeland, KUA, and OUC will adopt  
22 Lakeland's position?

23 MS. BUFORD: That is correct.

24 CHAIRMAN GARCIA: Okay. This should save some  
25 trees. Okay.



1 MS. BUFORD: Yes.

2 CHAIRMAN GARCIA: Okay.

3 MS. BUFORD: We have one small revision on  
4 Issue 15, a wording revision.

5 CHAIRMAN GARCIA: All right. Is there anything  
6 before 15?

7 MR. HOFFMAN: Yes, Mr. Chairman, on Issue 14.

8 CHAIRMAN GARCIA: All right. Let's take up 14  
9 then.

10 MR. HOFFMAN: In Tallahassee's prehearing --

11 CHAIRMAN GARCIA: Can you tell us what page  
12 you're on? I got it, 65. Page 65 in the City of  
13 Tallahassee's should be Page 66, which is: "No position  
14 at this time?"

15 MR. HOFFMAN: Correct, Mr. Chairman. We did  
16 file a position on this issue. Our position is: "No, the  
17 Commission should not adopt a uniform reserve margin  
18 standard for individual utilities. Reserve margin  
19 planning and thresholds should continue to be performed  
20 and applied on an individual utility basis." And I'll  
21 provide a copy of this to Mr. Elias.

22 CHAIRMAN GARCIA: Read it one more time for us.

23 MR. HOFFMAN: Our position is: "No, the  
24 Commission should not adopt a uniform reserve margin  
25 standard for individual utilities. Reserve margin

1 planning and thresholds should continue to be performed  
2 and applied on an individual utility basis."

3 CHAIRMAN GARCIA: We've got it. Okay. Good.  
4 We'll go to 15. That was 14, so we'll go to 15.  
5 Lakeland.

6 MS. SWIM: Commissioner Garcia, I just wanted  
7 to mention, on Issues 9, 10, 11 and 13, we had taken a no  
8 position at this time, and it would now be converted to  
9 no position.

10 CHAIRMAN GARCIA: No position, okay. What was  
11 that 9, 10 --

12 MS. SWIM: 11 and 13.

13 CHAIRMAN GARCIA: And 13.

14 MS. SWIM: And 11.

15 CHAIRMAN GARCIA: Right, 9, 10, 11 and 13.

16 MS. SWIM: That's right.

17 CHAIRMAN GARCIA: No position.

18 MS. SWIM: That's right.

19 CHAIRMAN GARCIA: Okay. All right. We're  
20 going to 15.

21 MS. BUFORD: Yes. Mr. Chairman, we would like  
22 to add the words to KUA's position -- on Page 69 please  
23 insert the words: "No, but if they did, comma."

24 CHAIRMAN GARCIA: Okay. What page are you on?

25 MS. BUFORD: Page 69, Kissimmee Utility

1 Authority, please at the words: "No, comma, but if they  
2 did, comma."

3 CHAIRMAN GARCIA: Okay. Good. That's 15. 16?

4 (NO RESPONSE)

5 CHAIRMAN GARCIA: 17, 18. 19, Mr. Sasso.

6 MR. SASSO: Yes, sir.

7 CHAIRMAN GARCIA: What page are you on,  
8 Mr. Sasso?

9 MR. SASSO: This is Page 85.

10 CHAIRMAN GARCIA: Okay.

11 MR. SASSO: I'm advised that maybe the page  
12 numbering is off.

13 CHAIRMAN GARCIA: 85?

14 MR. SASSO: 81.

15 CHAIRMAN GARCIA: 81.

16 MR. SASSO: Issue 19, at the end of our current  
17 statement of position we would add the following: "In  
18 addition, it would be worthwhile for the Commission to  
19 become better informed about how distributed resources,  
20 comma, both supply side and demand side, comma, can be  
21 cost effectively used to help meet Florida's energy  
22 service reliability needs." And I have some language  
23 that I can provide to Mr. Elias.

24 CHAIRMAN GARCIA: Okay. Read it one more time  
25 for us.

1 MR. SASSO: Sure. "In addition, it would be  
2 worthwhile for the Commission to become better informed  
3 about how distributed resources, comma, both supply side  
4 and demand side, comma, can be cost effectively used to  
5 help meet Florida's energy service reliability needs."

6 MR. ELIAS: Could I just ask Mr. Sasso a  
7 question?

8 MR. SASSO: Yes, sir.

9 MR. ELIAS: Is there any discussion in  
10 distributed generation in any of the testimony?

11 MS. SWIM: Yes, there is in LEAF's testimony.

12 MR. ELIAS: In Florida Power Corporation's  
13 testimony?

14 MR. SASSO: I don't believe it's in our  
15 testimony.

16 CHAIRMAN GARCIA: Okay.

17 MS. GORDON KAUFMAN: Chairman Garcia, I need to  
18 go back to Issue 18.

19 CHAIRMAN GARCIA: Sorry.

20 MS. GORDON KAUFMAN: That's okay. On Page 80,  
21 middle of the page, there is no position reflected for  
22 FIPUG, and our position would be: "Yes."

23 And then on Issue 19, Page 83, near the top.

24 CHAIRMAN GARCIA: Yes.

25 MS. GORDON KAUFMAN: Our position would be:

1 "The utility should be required to maintain an adequate  
2 reserve margin."

3           Additionally, Chairman, some of the parties  
4 have mentioned additional issues that have not been  
5 included in this draft, and we'd like to reserve the  
6 right to take a position on those if it's appropriate.

7           CHAIRMAN GARCIA: Okay. The exhibit list, any  
8 corrections or changes?

9           MR. LaVIA: Mr. Chairman, one minor one. Jay  
10 LaVia for Duke.

11           CHAIRMAN GARCIA: Yes.

12           MR. LaVIA: On Page 92, at the very bottom.

13           CHAIRMAN GARCIA: Why don't you pull the mike  
14 closer to you.

15           MR. LaVIA: On Page 92 at the very bottom, the  
16 last line, "the end times method" needs an S. The very  
17 last line -- second to last line.

18           CHAIRMAN GARCIA: End times. An S?

19           MR. LaVIA: With an S, yes, sir. Thank you.

20           CHAIRMAN GARCIA: Okay. Any other corrections  
21 or changes?

22           (NO RESPONSE)

23           CHAIRMAN GARCIA: Okay. That brings us to the  
24 pending motions.

25           MR. CHILDS: Commissioner, one matter, if I

1 could, before you get to that, this is a plea as it  
2 relates to Page 5 under post-hearing procedures. The  
3 last sentence of the first paragraph has the sanction of:  
4 If you don't file a post-hearing statement, the parties  
5 shall have waived all issues and may be dismissed from  
6 the proceeding. Way back in the old rules, there used to  
7 be a rule to that effect. That's no longer a rule, and I  
8 would suggest that parties who may not wish to address in  
9 further detail should be encouraged to do so rather than  
10 discouraged with this ultimate sanction. I mean I think  
11 that it -- I mean I don't see any reason for it. It's  
12 not a rule requirement, and if a party can, chooses not  
13 to file a post-hearing statement, I don't know why you'd  
14 drop them from the case.

15 MR. ELIAS: The uniform rules provide that the  
16 presiding officer can make such orders as is necessary to  
17 promote the just, expedient, efficient resolution of the  
18 issues that have been identified; and I think that the  
19 requirement that a party file a post-hearing statement  
20 clearly falls within that purview. As a practical  
21 matter, it's tough to know where somebody stands if they  
22 don't file a post-hearing statement, and that's  
23 information that's beneficial to the commissioners.

24 MR. CHILDS: Well, I mean what has happened is  
25 that all of the old rules that you used to have on

1 procedure that were eliminated under the uniform rules  
2 now find their way into the prehearing order. I mean I  
3 just think that, you know, you can file something else or  
4 you may show that you're not particularly interested, but  
5 you've clearly got an issue in the case; and the sanction  
6 of dismissing someone from a case under that -- we're not  
7 going to be in that position, but it seems like it's a  
8 bit extreme, even if it does help in preparing some  
9 recommendation. So we -- you know, if you want to keep  
10 it in.

11 CHAIRMAN GARCIA: All right. We'll keep it in.

12 All right. We've got, I guess they're  
13 listed -- We granted the first two. Let me not use the  
14 royal "we." I granted the first two. We are going to  
15 deny TECO's motion for protective order. We are going to  
16 grant FIPUG's motion to compel. Going to grant FIPUG's  
17 motion to compel. One was to Tampa. The other one is to  
18 the Reliability Coordinating Council.

19 Yes.

20 MR. BEASLEY: Excuse me. Could I be heard on  
21 the Tampa Electric one briefly?

22 CHAIRMAN GARCIA: Very briefly.

23 MR. BEASLEY: We filed preliminary objections  
24 on (inaudible; mike not on). We submitted answers to all  
25 but three sub parts of one interrogatory and three

1 requests for production of documents. The interrogatory,  
2 we still object to that because they ask for years worth  
3 of historical data that has, we contend, no relevance in  
4 this case and would require many hours of preparation  
5 sifting through documents to pull it altogether, and it's  
6 just a -- it's not relevant. It's a make-work exercise,  
7 and it also would call for the disclosure of confidential  
8 price data.

9           The same applies to two of the requests for  
10 production which FIPUG has submitted, and those are  
11 Requests Number 3 and 4. They have to do with  
12 operational aspects of the company and not reserve margin  
13 planning criteria. So they are off base as far as their  
14 relevance, and it would put the company to an extreme  
15 burden to require them to sift through documents and try  
16 to assemble that.

17           CHAIRMAN GARCIA: Ms. Kaufman.

18           MS. GORDON KAUFMAN: Chairman Garcia, we agree  
19 with your ruling. I think you've already ruled, but if  
20 you'd like me to argue the merits of the particular  
21 request, I'd be glad to do so. We think --

22           CHAIRMAN GARCIA: Why don't you argue the  
23 merits of the issue which troubles TECO, since they've  
24 met a large part of what you requested.

25           MS. GORDON KAUFMAN: Well, Mr. Beasley referred



1 to POD 3 and 4. POD Number 3 asks for information about  
2 what occurred prior to curtailments only for the period  
3 1996 through 1999, so I think, contrary to what he said,  
4 it's not years and years worth of data. It's four years  
5 worth of data. We think it's very relevant in regard to  
6 how this system operates, when curtailments occur, and  
7 when there is sufficient reserve margin.

8           POD Number 4 asks for information for the same  
9 four-year period, '96 through '99, again, relating to the  
10 conditions on the system prior to and after curtailment  
11 relating to when the company had to buy-through which we  
12 think, of course, goes to whether there is an adequate  
13 reserve margin or not. So we think those two PODS are  
14 highly relevant. We're only asking for four years of  
15 data, so we don't think it's at all burdensome.

16           We take great exception to the characterization  
17 of it being make-work. I don't know which interrogatory  
18 he was referring to, so if you'd tell me, I can address  
19 that as well.

20           MR. BEASLEY: Commissioner, it was all three of  
21 the production of document requests, as well as the three  
22 sub parts that I mentioned, and the one interrogatory  
23 that we objected to. And we've done --

24           CHAIRMAN GARCIA: She wants to know what  
25 interrogatory.

1 MS. GORDON KAUFMAN: Which one?

2 MR. BEASLEY: Interrogatory -- it's Subparts B,  
3 C, and D of Interrogatory Number 8.

4 MS. GORDON KAUFMAN: Okay. Interrogatory 8  
5 relates to the PODS I just discussed. B, C, and D relate  
6 to the conditions that occurred prior to a buy-through  
7 and what the circumstances were before and after that  
8 buy-through which, again, is directly related to the  
9 adequacy of reserve margin. And the time frame for that,  
10 we're asking only for the last five years, which is  
11 certainly a relevant time frame for your inquiry.

12 MR. BEASLEY: Commissioner, that's historical  
13 operating information. It doesn't have to do with  
14 planning reserve margin criteria.

15 CHAIRMAN GARCIA: Ms. Kaufman, why the  
16 buy-through? Why is that significant for us to do this?

17 MS. GORDON KAUFMAN: Because buy-through  
18 relates to whether or not Tampa Electric is maintaining  
19 an adequate reserve margin, and Mr. Beasley says this is  
20 historical operating data. Absolutely, but it's fairly  
21 current, the last five years, and we think that relates  
22 to how Tampa Electric has planned its system in the  
23 recent past and how it will plan it in the future, and  
24 it's highly relevant to the inquiry in this docket.

25 CHAIRMAN GARCIA: Mr. Beasley, I tend to agree

1 with her.

2 MR. BEASLEY: Can I request that it be done  
3 pursuant to a confidentiality agreement so as not to  
4 disclose any pricing information or customer information  
5 that we don't disclose to the public generally?

6 MS. GORDON KAUFMAN: I will discuss that with  
7 Mr. Beasley. I don't view any of this information that's  
8 being requested as being confidential; and at this point,  
9 no, I would not agree to that.

10 CHAIRMAN GARCIA: Well, let's talk with  
11 Mr. Beasley and let's see if we can get that. Part of  
12 the purpose of this docket is to inform us, and you're  
13 bringing us information here, and I think that part of  
14 that is served by us figuring what this is. So maybe you  
15 can get together and come to some agreement on that.  
16 Very good.

17 MR. SEXTON: Mr. Chairman, Paul Sexton with  
18 FRCC.

19 CHAIRMAN GARCIA: Yes.

20 MR. SEXTON: If I could be heard very briefly  
21 on the motion to compel by FIPUG. This is on a response  
22 to interrogatories. We have, of course, the option to  
23 produce documents that provide the information  
24 requested. Our objection is, in fact, due to the fact  
25 that the Commission has the documents that answer this

1 question; and, in fact, FIPUG obtained copies from the  
2 Commission. They have the document that they are now  
3 asking that we be required to provide to them.

4 MS. GORDON KAUFMAN: Mr. Chairman, FIPUG does  
5 not have the documents. I don't even know what  
6 Mr. Sexton is referring to.

7 CHAIRMAN GARCIA: He's saying that the  
8 Commission has the documents.

9 MR. SEXTON: I'm also saying that FIPUG has the  
10 documents. It's the 1999 Load and Resource Plan. That's  
11 the only document that's responsive that FRCC has and  
12 that contains the information.

13 CHAIRMAN GARCIA: Ms. Kaufman.

14 MS. GORDON KAUFMAN: Mr. Chairman, FIPUG asked  
15 FRCC a total of one question, and the question was to  
16 provide a reserve margin calculation. In discussing this  
17 with my expert, I have been told that that plan does not  
18 contain all the information that he would need to perform  
19 the calculation himself. And when I made that reference  
20 in my motion to compel, my offer was: If you give us all  
21 the documents that are necessary to perform the  
22 calculation, we will perform it. It's my understanding  
23 that those numbers and the information we need, it is not  
24 all included in the document Mr. Sexton referred to.

25 MR. SEXTON: That's the place, that is --

1 FRCC's calculation of the Load and Resource Plan contains  
2 FRCC's calculation of the amount of direct load  
3 management and curtailable service assumed for purposes  
4 of planning, and that's the number that we have, and  
5 that's the only number that we have.

6 MS. GORDON KAUFMAN: Mr. Chairman, I can just  
7 read you my response. Again, I do not think Mr. Sexton  
8 is being accurate in regard to the kind of information we  
9 would need to perform the calculation. In order to make  
10 the calculation we requested, we would need to know for  
11 each utility how many megawatts the individual utility  
12 has on each load management program, each curtailable  
13 program and each interruptible program. And in addition,  
14 for each megawatt on each program, we would need to know  
15 what the notice requirements are for changing to firm  
16 service and when the change to firm service would  
17 actually be implemented; and that information is not in  
18 the plan.

19 MR. SEXTON: And FRCC does not have that  
20 information. We don't use that for the planning  
21 services. The utilities give us numbers.

22 CHAIRMAN GARCIA: They don't give you  
23 interruptible customers?

24 MR. SEXTON: They give us their estimates for  
25 the planning period. We do not apply their tariffs and

1 make assumptions about who is on and who is off any  
2 particular service. The utilities take care of that  
3 process.

4 MS. GORDON KAUFMAN: Mr. Chairman, in order to  
5 make the calculation, which is part, as I understand it,  
6 of FRCC's responsibility calculated in the peninsular  
7 reserve margin, this kind of information is necessary.  
8 Now I'm hearing something a little different than what  
9 the FRCC said in response to our motion to compel, which  
10 is, oh, you've already got everything that you need to do  
11 this calculation; and that is not the case.

12 MR. SEXTON: I believe that FIPUG is simply  
13 asking the wrong person for the information. FRCC does  
14 not go through the process that FIPUG is describing to  
15 generate the numbers for planning purposes.

16 MS. GORDON KAUFMAN: Mr. Chairman, all we're  
17 asking the FRCC to do is to provide an alternate  
18 calculation of reserve margin, which is like the same  
19 calculation they performed and provided in the plan.  
20 There's nothing mysterious about our request.

21 MR. SEXTON: The load and resource plan  
22 contains the number for interruptible and direct load  
23 control service that was assumed by the FRCC.

24 CHAIRMAN GARCIA: And that assumption came from  
25 where?

1 MR. SEXTON: Came from the individual  
2 utilities.

3 CHAIRMAN GARCIA: And what she's asking you is  
4 that information from the individual utilities.

5 MR. SEXTON: We can give you the information  
6 from the individual utilities, but it's not going to  
7 provide the determination of the cancellation provisions  
8 for the individual tariffs and all those kinds --

9 CHAIRMAN GARCIA: I don't think that's his  
10 responsibility, but I think he can give you what he just  
11 said he can give you.

12 MS. GORDON KAUFMAN: Mr. Chairman, it would be  
13 satisfactory if he gives us the underlying information  
14 from which the FRCC performed their original calculation.

15 CHAIRMAN GARCIA: Very good. By company, and  
16 you will give her that.

17 MR. SEXTON: All right. We can provide --  
18 Those numbers are in the plan, the individual numbers for  
19 demand and for load control and interruptible.

20 CHAIRMAN GARCIA: All right. Now we're --

21 MR. SEXTON: Those numbers are in there.

22 CHAIRMAN GARCIA: It's in the report. All  
23 right. Let's do this, get back with your expert to make  
24 sure that we're looking for the same thing here, all  
25 right? Because we may be having an argument and dancing

1 around something that we're asking the wrong party to  
2 give us. If it is -- I think FRCC has stated that  
3 they're going to give us anything that they use to reach  
4 that, as long as it's not confidential or anything like  
5 that, correct?

6 MR. SEXTON: Yes, sir.

7 MS. GORDON KAUFMAN: Mr. Chairman, I don't want  
8 to be in the position of having that plan provided to me  
9 again, since we're all gathered here together.

10 CHAIRMAN GARCIA: No, no, I agree. I agree.  
11 So what we will do is either right after this or  
12 tomorrow, so your expert can participate in this, we'll  
13 bring some engineers into the room, so we know what we're  
14 talking about, and then we'll figure out what it is.

15 And if that is an issue, Mr. Elias, you'll  
16 bring it back to me, all right?

17 MS. GORDON KAUFMAN: Thank you, Mr. Chairman.

18 CHAIRMAN GARCIA: So then we are going to  
19 temporarily hold on that. That was Number 5, right?

20 All right. 6, FIPUG's motion to compel Florida  
21 Power Corp. We are granting that.

22 MR. SASSO: Mr. Chairman, may we be heard  
23 briefly on that?

24 CHAIRMAN GARCIA: Very briefly.

25 MR. SASSO: All right. Mr. Chairman, what



1 FIPUG has asked us for are extensive data and logs, et  
2 cetera, concerning curtailment and interruptible customer  
3 arrangements which are outside the scope of the issues in  
4 this docket. Let me just give you an example. In their  
5 interrogatories, they ask for each day during the period  
6 '96 through '99 that of FPC exercised curtailments or  
7 third-party buy-through options --

8 CHAIRMAN GARCIA: Mr. Sasso, isn't -- I may be  
9 mistaken, but isn't there a rule that requires you to  
10 file that when you do that with this Commission?

11 MR. SASSO: I'm sorry?

12 CHAIRMAN GARCIA: Isn't there a rule -- Just so  
13 I know because I thought you were asked -- Companies  
14 had to keep these records anyway; am I mistaken in --  
15 Joe, why don't you tell me because I was almost certain  
16 that companies were required to keep those records  
17 anyway.

18 MR. JENKINS: They're required to keep the  
19 records and -- well, let me just say, they're required to  
20 file the notice of interruptions with us.

21 CHAIRMAN GARCIA: Everyday, every time --

22 MR. JENKINS: Every time.

23 CHAIRMAN GARCIA: -- a customer is interrupted?

24 MR. JENKINS: Right.

25 CHAIRMAN GARCIA: Okay.

1 MR. SASSO: Yes, Mr. Chairman. It's not a  
2 question of whether we have information. We do.

3 CHAIRMAN GARCIA: Okay.

4 MR. SASSO: But the question is whether it's  
5 relevant to the scope of this proceeding, and is it worth  
6 the burden that FIPUG seeks to impose upon us. They want  
7 copies of protocols that FPC dispatchers rely upon to  
8 exercise curtailments for the 24-hour period immediately  
9 prior to each day there was a curtailment or a  
10 third-party buy-through option, a copy of all FPC  
11 reports, logs, energy schedules, memorandum, orders,  
12 other documents, generation logs, FPC's system and area  
13 load sheets, interchange and scheduling reports.

14 Mr. Chairman, the staff had obtained some  
15 discovery from the parties and --

16 CHAIRMAN GARCIA: Hold on one second.

17 MR. SASSO: Yes, sir.

18 CHAIRMAN GARCIA: Staff, I'm going to ask you  
19 for an opinion when Ms. Kaufman speaks, so you might want  
20 to get your heads together on this.

21 MR. SASSO: Yes. The staff pursued some  
22 discovery in these areas, and we provided extensive  
23 information to the staff in these areas. The staff has  
24 put together its position and its testimony and omitted  
25 to really involve itself in any of these issues or to use

1 these data. FIPUG has filed its testimony. Its expert  
2 has done whatever he's going to do, or she's going to do,  
3 and at this point in the course of the proceedings,  
4 Mr. Chairman, we believe it would be just gratuitously  
5 burdensome on the utilities to ask for the production of  
6 these detailed documents and logs and data. This is the  
7 Commission's investigation. The Commission has not  
8 chosen to delve this deeply into these issues. At best,  
9 this is tangentially related to the issues that the  
10 prehearing officer has put before us.

11 At a minimum, Mr. Chairman, we would also  
12 appreciate the same accommodation that, to the extent  
13 we're going to produce anything, we have the opportunity  
14 to discuss with FIPUG appropriate confidentiality  
15 arrangements.

16 CHAIRMAN GARCIA: Okay. Ms. Kaufman.

17 MS. GORDON KAUFMAN: I will try to start  
18 backwards. Number 1, whether or not the staff has asked  
19 for certain documents and/or received them doesn't have  
20 anything to do with FIPUG's request. The fact that  
21 testimony has already been filed is also irrelevant. We  
22 are now in the phase of preparing for cross examination.  
23 These documents are relevant for the same reason that  
24 you've just ruled that the other curtailment information  
25 from the other utilities is relevant. When, why, and

1 how utilities curtail is directly related to the adequacy  
2 of the reserve margin. There's nothing burdensome about  
3 this request. It's just another stonewalling tactic and,  
4 again, we're getting back into for the fourth, fifth or  
5 sixth time the nature of the proceeding, and the  
6 utilities' continued objections to it. FIPUG is an  
7 intervenor. They've been granted intervenor status, and  
8 they are entitled to this information to prepare for  
9 hearing.

10 CHAIRMAN GARCIA: Staff.

11 MR. ELIAS: We believe that FIPUG has met the  
12 discovery standard, which is reasonably calculated to  
13 lead to admissible evidence. When you look at the 19  
14 enumerated issues in this case, we think that it's well  
15 within the scope given that most of this information has  
16 already been created by the utilities. We question  
17 whether or not it can be fairly described as unduly  
18 burdensome and would recommend that the motion be  
19 granted.

20 CHAIRMAN GARCIA: Mr. Sasso, you'll get  
21 together with Ms. Kaufman about any confidentiality  
22 issues that come up with those.

23 MS. GORDON KAUFMAN: Mr. Chairman, can I just  
24 have one more moment on that because --

25 CHAIRMAN GARCIA: Ms. Kaufman, you should quit

1 when you're ahead.

2 MS. GORDON KAUFMAN: I know, but I just wanted  
3 to address the confidentiality problem because I don't  
4 want the documents now additionally withheld based on  
5 claims of confidentiality and FIPUG's refusal to sign a  
6 protective agreement. There's nothing confidential about  
7 this information, and I don't want the utilities to have  
8 another opportunity, since we're getting close to  
9 hearing, to withhold it.

10 CHAIRMAN GARCIA: Well, I would expect that the  
11 companies aren't going to request frivolously  
12 confidentiality. And, clearly, since the companies have  
13 an obligation to file it with this Commission and those  
14 are public records filed with this Commission, I don't  
15 expect them, at least the majority of what we've been  
16 talking about, to be confidential, but -- I don't know  
17 if that's a preview of what I will say when it comes to  
18 me, but hopefully it's a guide.

19 MS. GORDON KAUFMAN: Thank you.

20 CHAIRMAN GARCIA: Number 7, FIPUG's motion to  
21 compel Florida Power & Light, we are going to grant it.  
22 Thank you, Mr. Childs.

23 Number 8, LEAF's motion to compel first set of  
24 interrogatories from FPL we are going to grant.

25 And Number 9, LEAF's motion to compel response

1 to Interrogatory 9 by Orlando Utility we are going to  
2 grant.

3 Yes, Mr. Moyle.

4 MR. MOYLE: Mr. Chairman, PG&E's petition to  
5 intervene was inadvertently omitted from this list.

6 CHAIRMAN GARCIA: No, no, we granted that from  
7 the start.

8 MR. MOYLE: Does it have to be listed here in  
9 the order?

10 MR. ELIAS: It will be shown as being granted  
11 in the order.

12 MR. MOYLE: Thank you very much.

13 CHAIRMAN GARCIA: Right. It will be shown as  
14 granted as well as Reliant Energy's petition to  
15 intervene.

16 Is there anything else that needs to be taken  
17 up?

18 MR. HOFFMAN: I have something, Mr. Chairman.

19 CHAIRMAN GARCIA: Mr. Hoffman.

20 MR. HOFFMAN: Thank you, Mr. Chairman. I have  
21 been authorized by Mr. Wedner (phonetics), who is the  
22 lawyer for the JEA, to advise you that Mr. Randy J.  
23 Boswell -- and I would refer you to Page 6 of the draft  
24 prehearing order. Mr. Boswell is the vice president for  
25 power supply services for the JEA, and it is Mr. Boswell

1 who will be adopting and sponsoring the prefiled  
2 testimony of Mr. Tracy Denise. So I wanted to put all  
3 parties on notice of that change as to Issues 1 through  
4 19.

5 CHAIRMAN GARCIA: Boz (phonetics)?

6 MR. HOFFMAN: B-o-s-w-e-l-l.

7 CHAIRMAN GARCIA: Boswell, okay.

8 MR. HOFFMAN: Thank you.

9 MR. SEXTON: Mr. Chairman.

10 CHAIRMAN GARCIA: Yes, sir.

11 MR. SEXTON: I noticed in the draft prehearing  
12 order you had made a reference to our request for  
13 confidential classification but it's not in the  
14 replacement Page 95. Has that already been ruled on?

15 CHAIRMAN GARCIA: I'm sorry?

16 MR. SEXTON: FRCC's request for confidential  
17 classification of certain responses to staff discovery.

18 MR. ELIAS: It will be addressed separately.

19 MR. SEXTON: All right.

20 CHAIRMAN GARCIA: Okay.

21 MR. LaVIA: Mr. Chairman, Jay LaVia for Duke.  
22 This is a housekeeping matter, I guess. You've referred  
23 to the deposition of Mr. Valar which is, I believe, two  
24 days from now down in Miami. Technically -- A little  
25 background. The staff noticed these depositions last

1 week. There are five individuals that they noticed.  
2 Duke cross noticed at the end of last week. We would  
3 like to move to extend the discovery deadline so that we  
4 all don't go down there and have an objection that it's  
5 outside of the discovery period.

6 The discovery period closed October 11th  
7 pursuant to one of the prehearing orders, and we think  
8 it's appropriate to extend it. There has been an  
9 extension of time to file rebuttal testimony granted of  
10 about two weeks. We're asking for a two-week extension  
11 of time approximately to do this discovery.

12 MR. GUYTON: I'd like to be heard.

13 CHAIRMAN GARCIA: Mr. Guyton, it's always a  
14 pleasure to hear you. Go right ahead.

15 MR. GUYTON: Thank you. Charles Guyton  
16 appearing on behalf of Florida Power & Light Company.

17 Mr. Chairman, the discovery deadline in this  
18 case was established a number of months ago as October  
19 the 11th. No party prior to today has asked for an  
20 extension of a discovery deadline. All the depositions  
21 that have been noticed are out of time. The deadline for  
22 filing rebuttal testimony as to one small aspect of it  
23 was extended two weeks, and that was the deadline to  
24 respond to staff. The deadline to respond to all the  
25 other parties continued along the original schedule that



1 was established by the prehearing order.

2           There is, under the circumstances, no grounds  
3 for a motion for an extension of a discovery deadline.  
4 There has been no showing. There's no justification for  
5 it. And the only party that would be affected by it  
6 would be staff because they're the only party that had  
7 the deadline extended as to them and as to their  
8 witnesses. So I think as to any other party, they've  
9 just missed their opportunity because they haven't been  
10 diligent.

11           Now as to staff, we'd submit they've missed  
12 their opportunity too because the deadline was October  
13 the 11th, two weeks after the filing of rebuttal  
14 testimony to their witnesses. They didn't notice the  
15 depositions in time either. They show a similar lack of  
16 diligence. We would submit that there shouldn't be any  
17 further discovery. The deadline has passed, and it  
18 should be honored.

19           CHAIRMAN GARCIA: Mr. Elias, do you have  
20 anything to add?

21           MR. SEXTON: Mr. Chairman.

22           CHAIRMAN GARCIA: I'm sorry.

23           MR. SEXTON: This also applies to FRCC, and we  
24 would adopt Florida Power & Light's argument. We're in  
25 the last several weeks prior to hearing, and the function

1 of a discovery deadline allows the parties to refocus  
2 their efforts toward trial preparation and not discovery,  
3 and I think that under the circumstances, given the  
4 amount of time the prefiled direct has been available and  
5 the time available for depositions, that there is not  
6 good cause to extend the discovery deadline.

7 CHAIRMAN GARCIA: Mr. Elias.

8 MR. ELIAS: Just a couple of points.  
9 Typically, we establish, by order of the prehearing  
10 officer, a discovery deadline that concludes one week  
11 before the start of a hearing; and in this case, for  
12 various reasons, the discovery deadline was established  
13 approximately four weeks before the hearing.

14 Secondly, there was an extension granted to the  
15 parties to file staff's rebuttal testimony, and let's  
16 see, one, two, three -- I believe every single person,  
17 save one that we're deposing, did file rebuttal testimony  
18 addressing staff's testimony. I don't see the prejudice,  
19 and we did, several days in advance of the deadline,  
20 attempt to schedule these depositions; and given the  
21 complexities of people's schedules and what have you, we  
22 weren't able to notice them until last Thursday.

23 CHAIRMAN GARCIA: Let me -- so are you agreeing  
24 with Mr. Lavene (phonetics) about Mr. Valar's testimony?

25 MR. ELIAS: As far as?

1 CHAIRMAN GARCIA: Mr. Lavene (phonetics) asked  
2 for an extension of discovery for Mr. Valar.

3 MR. LaVIA: I actually asked for all four.  
4 It's an extension of time to allow us to complete the  
5 noticed depositions.

6 It's Mr. LaVia, by the way.

7 CHAIRMAN GARCIA: I'm sorry?

8 MR. LaVIA: LaVia.

9 CHAIRMAN GARCIA: LaVia, I'm sorry.

10 MR. LaVIA: Sorry about that.

11 It was our intention to coordinate our  
12 discovery schedule with staff, and we have been  
13 coordinating with staff. That's why we didn't cross  
14 notice until staff noticed.

15 CHAIRMAN GARCIA: And what do you need,  
16 Mr. Elias?

17 MR. ELIAS: We would like to take the  
18 depositions. We believe it would save the Commission  
19 some time once we get to the hearing.

20 CHAIRMAN GARCIA: Well, the correct -- I don't  
21 understand what the -- Do you have an outstanding --

22 MR. ELIAS: They're out of time -- No, we've  
23 not filed a motion.

24 CHAIRMAN GARCIA: Okay. I know they're out of  
25 time.

1 MR. ELIAS: We're out of time too.

2 CHAIRMAN GARCIA: You're out of time too.

3 Well, you know what, you're out of time too. All right.

4 We're not going to grant that request, Mr. LaVia.

5 That's it?

6 (NO RESPONSE)

7 CHAIRMAN GARCIA: Gentlemen, ladies, thank you  
8 very much for your cooperation.

9 MR. ELIAS: Okay. Before we conclude, we will  
10 cancel the depositions that have previously been noticed.

11 CHAIRMAN GARCIA: The depositions will be  
12 cancelled.

13 (WHEREUPON, THE HEARING WAS CONCLUDED)

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CERTIFICATE

STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 23rd day of October, 1999.

  
NANCY S. METZKE, CCR, RPR

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