

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

VOLUME 2
Pages 85 through 141

PROCEEDINGS:	HEARING
BEFORE:	CHAIRMAN JOE GARCIA COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER E. LEON JACOBS
DATE:	November 30, 1999
TIME:	Commenced at 1:30 p.m. Concluded at 2:45 p.m.
LOCATION:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR NOTARY PUBLIC IN AND FOR THE STATE OF FLORIDA AT LARGE

APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 1.)

CHAIRMAN GARCIA: All right. We are going to reconvene this hearing. Do we need to read the notice again?

MR. ELIAS: No, this is the continuation. There is no need for that.

CHAIRMAN GARCIA: One of the good things about not being an expert on this is that I read these documents and they seem very similar. So hopefully the little dissimilarities we can work this out, because I think it is in all of our interests to work this out.

MR. ELIAS: Let me just briefly recap how we got to where we are now, and at least my expectation of what we are going to do today. At the hearing on November 2nd, the three investor-owned utilities that are parties to this docket provided a proposal which was the subject of some discussion, and the intervenors were given the opportunity to submit a proposal by close of business November 17th. That proposal is before the Commissioners as well as the current version of the IOU proposal.

The parties were directed to meet on November 29th to attempt to reach an agreement as to all issues

1 concerning the proposals. We did that yesterday.
2 There was some movement, not complete movement, and
3 the version of the investor-owned utilities
4 stipulation that you have it in front of you reflects
5 all the changes that were agreed to through yesterday.

6 CHAIRMAN GARCIA: Bob, let's just -- because I've
7 got three different versions in front of me. I want
8 to make sure that we are all looking at the same one.
9 There is one that has got strike-throughs. Is that
10 the one we are talking about?

11 MR. ELIAS: The strike-through is the unclean
12 version of the agreed upon --

13 CHAIRMAN GARCIA: So this is the one --

14 MR. ELIAS: That is the one that probably is not
15 fully stipulated among all the parties, but is the
16 most recent product. And I will let the parties speak
17 to the points of disagreement as to --

18 CHAIRMAN GARCIA: Before we let them, because
19 once they speak they get entrenched. Let's avoid that
20 for right now. Do you know what the problems, the
21 disputes are in this document?

22 MR. ELIAS: My understanding, I have --

23 CHAIRMAN GARCIA: Why don't you walk us through
24 the major points of dispute so that we get the
25 perspective from you, and you summarize their

1 positions. Because once we let them get started, we
2 will go for awhile. Maybe Mr. Ballinger can do it,
3 and just go through it so that we understand what
4 their disagreement is with, and then maybe we can hear
5 from the parties.

6 MR. BALLINGER: Okay. We are on the clean
7 version, is that correct?

8 CHAIRMAN GARCIA: I don't care what version.
9 Yes, we are looking at the clean version. You are
10 about to get it -- you muck it up for us a little bit.

11 MR. BALLINGER: No, I hope not. My understanding
12 is a lot of it was cleared up yesterday. There was
13 one contention about -- and it still remains, I
14 believe, with FIPUG in that in the definition of
15 reserve margin --

16 CHAIRMAN GARCIA: Okay. Go to the point on the
17 stipulation, because since we have worked on this
18 document, maybe we should try to stick to it.

19 MR. BALLINGER: It would probably be Paragraph 4
20 where it has been defined, where there is a formula
21 for reserve margin.

22 CHAIRMAN GARCIA: Uh-huh.

23 MR. BALLINGER: And it carries over there.

24 CHAIRMAN GARCIA: Right.

25 MR. BALLINGER: And really the discrepancy here

1 is the very last three words, where it says demand
2 side resources. The IOUs, and a few of the
3 non-utility generators, and I believe now LEAF have
4 agreed that in getting to the incremental 20 percent,
5 IOUs can add load management, interruptible load, or
6 other conservation measures such as attic insulation.
7 I believe FIPUG still believes and would prefer that
8 the increment be made up only of machines or firm
9 contracts.

10 CHAIRMAN GARCIA: Now, that would be a change,
11 though, in our policy of figuring out what the reserve
12 is. We have never had that distinction. Reserve is
13 made up of reserve, but we have never made that
14 distinction.

15 MR. BALLINGER: Correct.

16 CHAIRMAN GARCIA: Secondly, if I'm not mistaken,
17 we are looking at having some hearings precisely on
18 the issue of interruptibles and demand-side and how we
19 calculate that, correct?

20 MR. BALLINGER: I don't know about hearings. I
21 think later on in the same proposal, the Commission is
22 encouraged to have a couple of workshops dealing with
23 non-firm, and staff supports that of going that
24 measure there to talk about how much --

25 CHAIRMAN GARCIA: I think the companies have also

1 supported that. I mean, everybody understands we are
2 going to look at this?

3 MR. BALLINGER: Yes. I think that part of having
4 workshops everybody agrees to.

5 CHAIRMAN GARCIA: All right. FIPUG just wants us
6 to define this here a little bit more?

7 MR. BALLINGER: Yes.

8 CHAIRMAN GARCIA: All right. That would be a
9 change of policy, how we have defined reserve in the
10 past?

11 MR. BALLINGER: I think so.

12 CHAIRMAN GARCIA: Okay. Go on.

13 MR. BALLINGER: And the only other part I know
14 of, and I'm not real clear on why it is a
15 disagreement, and I will have to look real quick to
16 see if it is in here.

17 MS. SWIM: Excuse me, Chairman Garcia. I just
18 wanted to make LEAF's position clear because it might
19 have been confusing from what Tom just said on that
20 last point. We are okay with the draft that is not
21 marked up here. We were also okay with excluding load
22 management resources from the increment.

23 CHAIRMAN GARCIA: Okay.

24 MS. SWIM: The former draft allowed energy
25 efficiency resources to be used to meet the increment,

1 but not load management, and we were okay with that.

2 CHAIRMAN GARCIA: Okay. All right. Tom, what
3 was the other one?

4 MR. BALLINGER: The last part, and it is not in
5 the version here, and I believe it was an issue with
6 Reliant, that if the Commission does not accept this
7 stipulation in its entirety, that it would be null and
8 void. In other words, the Commission could not pick
9 and choose portions of this to adopt, and therefore
10 close the docket. I don't understand the
11 ramifications entirely. Perhaps Mr. McGlothlin would
12 discuss that, or it may not be an issue anymore, I
13 don't know.

14 MR. MCGLOTHLIN: I am advised by Mr. Sasso that
15 the IOUs are willing to place that back in the
16 document. And if that is so, it is a moot point.

17 CHAIRMAN GARCIA: Okay. Good.

18 MR. BALLINGER: One other point that is not here
19 that was in a counter-proposal was making the 20
20 percent a standard or a formal action and that any
21 change to that standard would require further
22 Commission formal action.

23 CHAIRMAN GARCIA: All right. That, I think, was
24 the sticking point with the investor-owned utilities.

25 MR. BALLINGER: Yes.

1 CHAIRMAN GARCIA: Okay.

2 MR. MCGLOTHLIN: Chairman Garcia, there is
3 another related issue that was communicated to me
4 after I talked to Tom, so he doesn't have this
5 information. Reliant Energy's position is that if the
6 document moves away from a criterion that is binding
7 on the utilities, unless and until the Commission
8 modifies it and it becomes a voluntary criterion,
9 Reliant Energy is going to accept that if there is
10 also an obligation in the stipulation requiring the
11 IOUs to give notice if and when they change from 20
12 percent to something else.

13 CHAIRMAN GARCIA: All right. Does anybody have a
14 disagreement with Mr. Ballinger's characterization of
15 this? So then we are only going to talk about these
16 small items and the rest I think we are all in
17 agreement to? All right. So --

18 MR. MOYLE: John Moyle on behalf of PG&E
19 Generating. I can hold my peace, but at the
20 appropriate time I would like to speak on behalf of
21 PG&E Generating with respect to its view of the
22 proceeding and the stipulation. We have some areas of
23 discomfort, but why don't I just hold those until you
24 have been able to go through and hear from others.

25 CHAIRMAN GARCIA: All right. So we are looking

1 at, then, two distinct things. One is FIPUG's
2 position of the definition of reserve in this, and the
3 other one is the IOUs and whether this is binding.

4 Let's take the binding issue first.

5 MR. ELIAS: And I think it is binding. The
6 question is whether or not Commission action to change
7 it is required.

8 COMMISSIONER JACOBS: Can you explain Paragraph 6
9 to me in that context?

10 CHAIRMAN GARCIA: Well, that is precisely the
11 point, Commissioner. Let's deal -- that is the
12 paragraph, right? So let's do this. Let's hear from
13 the IOUs and then we will hear from the others on 6,
14 if that is all right.

15 COMMISSIONER CLARK: I have one thing I want to
16 request initially. At some point, the term IOUs is
17 used, and at other points it is FP&L, FPC and TECO.
18 Is there an intent to mean something different?

19 MR. SASSO: No. No, ma'am.

20 COMMISSIONER CLARK: Then why don't we
21 consistently use either FP&L, FPC and TECO, or IOUs?

22 MR. SASSO: We can do that.

23 COMMISSIONER CLARK: Which is appropriate?

24 MR. SASSO: Either one would be fine. We
25 defined --

1 COMMISSIONER CLARK: Well, IOUs is a bigger
2 universe, I think.

3 MR. SASSO: Well, we defined IOUs at the front of
4 document to be these three utilities. In the very --
5 well, in the third whereas clause. So since that is a
6 defined term, we would be comfortable using that in
7 this document.

8 COMMISSIONER CLARK: Okay.

9 MR. SASSO: Should I proceed to address the issue
10 whether this should be binding?

11 CHAIRMAN GARCIA: Yes, go ahead.

12 MR. SASSO: Just again, as a matter of context, I
13 think it is important to recall that our original
14 proposal and this proposal is a very simple one. Mr.
15 Elias characterized it yesterday I think very fairly
16 in our discussions. He said basically everything is
17 the same or would be the same after the proposal as
18 before, except one thing, the number would change.
19 And that is the spirit of our proposal. We are
20 basically proposing to change the --

21 CHAIRMAN GARCIA: I'm sorry. Mr. Sasso, I made a
22 mistake earlier. Address both issues so we don't have
23 to go back and forth. In other words, address the
24 reserve issue that FIPUG has and address this one so
25 we get through this with one shot.

1 MR. SASSO: With respect to the binding nature of
2 this proposal, again, our proposal is basically that
3 the three IOUs will voluntarily change their reserve
4 margin planning criterion from 15 percent to 20
5 percent. It is really as simple as that. The current
6 process, the current procedure, would remain
7 unaffected. And, in fact, a large part of our
8 discussions among all of the parties was an attempt to
9 clarify that we intended nothing more than that.

10 What FIPUG has proposed is really something
11 fundamentally different. They have proposed that the
12 Commission order a standard that would be binding upon
13 the IOUs. Our position on that is even if we had gone
14 forward with the hearing, and even if they had won the
15 hearing in some sense, whatever that may mean, that is
16 not relief they could have appropriately obtained in
17 this docket.

18 I believe all parties were in agreement that
19 before the Commission could take action of that
20 nature, it would require rulemaking, and we don't
21 believe that that should be on the table. In any
22 event, that was not the basis on which we were
23 proposing to resolve this docket. We were hoping to
24 address the concern that we understood the staff to
25 have and directly, therefore, the Commission to have

1 about declining reserves.

2 The current regime does not involve a standard.
3 It involves the use of planning criteria by the
4 various utilities. The staff and the Commission, as
5 we understand it, has not had a concern about the
6 absence of a standard. They have had a concern about
7 actual practices, and those are the practices that the
8 proposal means to address. And so I guess our
9 position on whether this should be binding is
10 two-fold. First, that is not that we were proposing
11 or proposing to agree to. And, second, that would not
12 be appropriate absent rulemaking.

13 With respect to the issue of the definition of
14 reserves, there was some confusion over this last time
15 and in the discussions among the parties due to the
16 use of terminology and so on. And so we attempted to
17 address that confusion simply by setting forth in this
18 proposal the well-accepted formula for calculating
19 reserve margins. And as the Chairman indicated, our
20 use of this formula is consistent with current policy.

21 To adopt the approach that FIPUG has suggested
22 and I believe Mr. Moyle's client has suggested really
23 would involve a change in policy, a change in
24 methodology, which again would require rulemaking. We
25 think to adopt a provision that requires an allocation

1 of demand-side and supply-side when talking about
2 reserves is potentially confusing and really
3 fundamentally inconsistent with the spirit of even
4 FIPUG's proposals, which says neither the adoption by
5 the IOUs of the minimum 20 percent standard, as they
6 put it, nor the approval of that standard by the
7 Commission shall be deemed to create any presumption
8 that capacity additions must be through any particular
9 mix of generation and/or demand-side resources. That
10 is what they said in their proposal.

11 They also provided for the use of a workshop to
12 address this issue more fully, and we have agreed to
13 support the use of a workshop to explore this more
14 fully. So basically we see as a side issue the
15 question how utilities ought to allocate their use of
16 demand-side resources and supply-side resources from
17 what we are attempting to accomplish here, which is
18 directed at the reserve margin planning criterion.
19 And it is an issue that does bear some further
20 discussion and exploration, which we propose to
21 accomplish through the workshop vehicle.

22 But we think it would be premature and
23 inappropriate to prejudge the outcome of those
24 discussions by fixing arbitrarily some allocation in
25 this document. And, again, that is not what we are

1 proposing to do.

2 CHAIRMAN GARCIA: Okay. Mr. Childs, do you want
3 to add anything?

4 MR. CHILDS: No.

5 CHAIRMAN GARCIA: Well, who wants to speak for
6 your side? I guess you, Ms. Kaufman?

7 MS. KAUFMAN: Yes. I am Vicki Kaufman and I am
8 here on behalf of the Florida Industrial Power Users
9 Group. And I would like to respond to some of Mr.
10 Sasso's comments.

11 First all, I think we need to step back for a
12 minute and remember how we got here. I think we got
13 here because there was a concern on the Commission's
14 part, the staff's part, and the intervenors' part in
15 this docket in regard to whether the reserve margin,
16 the level it was at and the way in which it was
17 calculated was sufficient.

18 FIPUG and the other intervenors here were granted
19 intervenor status, meaning that the Commission has
20 determined that our substantial interests are going to
21 be affected by this docket. And, as you know, and as
22 you have heard in other forums, FIPUG is very
23 concerned about the level of the reserve margin here
24 in Florida, and we think that we are in a capacity
25 shortfall situation.

1 We have -- after the initial proposal that was
2 made to you by the utilities, we prepared a counter
3 proposal in the spirit of attempting to stipulate and
4 to resolve the issues in this case. Generally, a
5 stipulation involves some give and take by both
6 parties. What the utilities have presented to you is
7 essentially the same thing they presented to you the
8 last time that we were here.

9 All that being said and done, our main concern,
10 if you look at the red line draft, has to do with
11 Paragraph Number 5, and it has to do with the language
12 that was stricken from our proposal. When I say our,
13 I mean the non-IOU proposal, which has been agreed to,
14 as Ms. Swim indicated, by LEAF, by FIPUG, and by the
15 other independent generators. And our concern is
16 this: We believe, and we have said before, that there
17 is too much reliance on load management in terms of
18 the reserve margin.

19 We were willing to enter into this agreement to
20 allow the utilities to go to 20 percent, with the
21 understanding that that 5 percent increment from 15 to
22 20 would not be made up of load management. In our
23 view, that is a compromise, and that is a compromise
24 that would have the effect of not having to proceed to
25 hearing in this docket. So we offer that in the

1 spirit of a compromise of our position. And, as you
2 can see, it was deleted from the counter-counter
3 proposal in its entirety.

4 I would also suggest to you that there have been,
5 I believe, 19 issues identified in this case for
6 hearing. The stipulation deals with just a small
7 minority of those issues. So our recommendation to
8 you is that we should go to hearing.

9 Secondly, we would say to you today that we
10 cannot sign onto this stipulation the way that it is.

11 But, thirdly, I would say to you, recognizing
12 that there is some momentum here to go this way, that
13 in the event that that is the Commission's pleasure,
14 that they should do so, but that FIPUG would not be
15 able to be a party to the stipulation.

16 On the issue of whether or not the stipulation
17 should or should not be binding to you, I would
18 suggest to you, though, it is generous of the
19 utilities to want to enter into what is essentially a
20 nonbinding promise on their part that, you know, they
21 should either belly-up to the bar, as it were, and
22 commit, or all we really have on their part is a
23 promise that they will try to do it and if they can't,
24 so be it. And we certainly don't think that is
25 sufficient. So to the extent you entertain the idea

1 of a stipulation, certainly it should be binding on
2 the parties that agree to it. And that is FIPUG's
3 position.

4 CHAIRMAN GARCIA: All right. Very good. Does
5 anybody have a distinction here?

6 MR. MOYLE: I will just for the record adopt the
7 comments on behalf of PG&E.

8 CHAIRMAN GARCIA: I don't think you all have to
9 say that. If you don't speak up, I will consider it
10 that you are in agreement.

11 MS. SWIM: Well, I just want to clarify LEAF's
12 position again, because every time someone tries to
13 speak for us, I'm afraid they might give you a
14 different perspective. We believe there is not enough
15 energy efficiency, and so we would like to see that
16 counted to meet the increment. We are neutral about
17 including load management or not. So I wouldn't agree
18 with the statement that we don't -- that we believe
19 there is too much load management.

20 CHAIRMAN GARCIA: Okay.

21 MS. SWIM: Thank you.

22 MR. SASSO: Mr. Chairman, may I just call the
23 Commission's attention to a paragraph that we agreed
24 to provide in lieu of making this a binding standard.
25 I think this might be helpful to articulate our

1 perspective on this.

2 This is in our new Paragraph 6, which states the
3 IOUs agree to adopt the 20 percent reserve margin
4 planning criterion with the good faith intention of
5 maintaining that planning criterion for the indefinite
6 future. But each IOU must reserve the prerogative
7 individually to modify its planning criteria and to
8 adapt to relevant circumstances. By the same token,
9 it is understood that the Commission remains free to
10 initiate an investigation or to take other appropriate
11 action to review and to respond to any changes that
12 the IOUs may make in the future regarding their
13 planning criteria.

14 CHAIRMAN GARCIA: Mr. Sasso, the only problem I
15 have with that, and I think it goes some way, is that
16 I understand the philosophy that you are trying to put
17 out here, and clearly this is a planning criterion.
18 You can change your plans from year-to-year as long as
19 we at the Commission feel that reliability is an
20 issue.

21 The only thing is that we need some assurance
22 that -- and it sort of troubles me that you wouldn't
23 feel comfortable coming to the Commission and saying,
24 look, I've got a problem with this reserve of 20
25 percent, and, therefore, I need you to -- I'm going to

1 not do it. In other words, letting us know what you
2 are doing so that we have -- we and others who are
3 depending on a planning of 20 percent, have some way
4 to react to it. And we clearly stand in for the
5 people of Florida. Your competitors, or your client's
6 stand in that position also in a different
7 perspective. And they need to have some type of
8 assurance. And so --

9 MR. SASSO: I think we would do that because
10 currently we are obligated to do that through the
11 ten-year site plan process, and there is an informal
12 aspect to the process, also. Our planners are in
13 constant communication with the Commission staff, and
14 that type of thing would be surfaced as part of those
15 discussions. There would be no effort to hide the
16 ball here. It is the same process that the Commission
17 and the state has used for many years.

18 MR. MCGLOTHLIN: Chairman Garcia, may I follow up
19 with a point that is related to your -- Reliant
20 Energy, in response to the change in the document that
21 moved this provision away from a binding obligation on
22 the part of the IOUs to stick with the 20 percent
23 unless and until modified by the Commission to what is
24 now a voluntary nonbinding effort.

25 Reliant Energy's response to that was we will

1 agree with that, but we don't think -- we think you
2 ought to at least notify parties to this proceeding
3 and the Commission if and when you do change. And
4 looking at the same paragraph that Mr. Sasso
5 identified, it says, by the same token, it is
6 understood that the Commission remains free to
7 initiate an investigation or to take other appropriate
8 action to review and respond to any changes. How is
9 anybody going to respond if we don't do a changes
10 notice?

11 I would suggest that we find out through scouring
12 a ten-year site plan in view of the fact that the
13 Commission and parties were poised to go to a hearing
14 to address this idea. I don't think it is asking too
15 much to include in the stipulation an obligation on
16 the part of an IOU that now has a voluntary 20 percent
17 criterion to notify the Commission and parties to this
18 docket if and when it is something other than 20
19 percent.

20 CHAIRMAN GARCIA: Mr. Sasso, what is wrong with
21 that? In other words, if you notify this Commission
22 and the parties to this docket 60 days before you make
23 this change. I mean, let's not become entrenched with
24 positions that we came in here with. Notifying us, I
25 think you are correct. The planning process has an

1 informal information gathering process that goes on
2 all the time.

3 So simply to give us a heads up before you are
4 going to make this change, which you and I both
5 realize is minimal in many respects because we are
6 looking at a ten-year time frame. So when you're
7 talking 60 days, you and I both know we are not
8 talking that much, but it at least seems to offer some
9 assurance to the parties here and brings us closer to
10 where we are going.

11 MR. SASSO: Well, we are trying not to be
12 entrenched. And, in fact, we have discussed this at
13 some length since Mr. McGlothlin presented it earlier
14 today. And our concerns were several.

15 We were concerned about taking on an obligation
16 that isn't in the current rules or legislation
17 regarding our reporting obligations, an obligation
18 that might be perpetual in some sense, which might
19 easily be missed or overlooked inadvertently by one of
20 our companies at some point in the future if personnel
21 change or what have you. And one that would be very
22 difficult to monitor and enforce and it would simply
23 give rise to disputes.

24 It might give rise to disputes over whether we,
25 in fact, had made a change, when we made a change,

1 what constitutes a change, was it adequate notice, was
2 it timely notice. And we didn't think it was prudent
3 to enter into that type of obligation merely to
4 provide, as you put it, really infinitesimally greater
5 notice over a ten-year planning horizon of something
6 that would appear for all the world to see in our
7 ten-year site plans.

8 Obviously to the extent that the utilities are
9 working with the staff, that is a vehicle for the
10 Commission to become aware of. But Mr. McGlothlin's
11 proposal was to provide some type of formal notice to
12 all the signatories to this agreement, and that is a
13 different matter.

14 MR. MCGLOTHLIN: Well, it is different from their
15 perspective because they are --

16 CHAIRMAN GARCIA: How about if that notice were
17 simply to this Commission? In other words, if you are
18 going to make a change in an internal policy that is
19 for planning purposes, and clearly I don't think our
20 staff is stuck on this. I think they understand that
21 as this process rolls through they get to see it, but
22 certainly -- I understand that we make you do a lot of
23 things and you have got to keep records on a lot of
24 things, but you and I both realize that in the
25 infinite wisdom or the infinite universe you are

1 talking about where we are not going out further than
2 ten years.

3 We realize that there is great change going on in
4 this industry, and this is certainly something we are
5 going, at least from a staff perspective as I
6 understand it, to offer certain assurances to
7 Floridians that we have the reserves that we are --
8 you know, that it puts us in a better position. Offer
9 this Commission a 60-day notice before you change.

10 COMMISSIONER CLARK: I have a question. I'm
11 confused as to whether it is the vehicle of the notice
12 or the timing of the notice that is at issue, or is it
13 both?

14 CHAIRMAN GARCIA: I think he mentioned both.

15 COMMISSIONER CLARK: Well, I guess you mentioned
16 scouring the ten-year site plans. If they put in the
17 ten-year site plans that this is based on a 20 percent
18 reserve margin and it is included in their ten-year
19 site plans, does that satisfy your concern?

20 MR. McGLOTHLIN: No, Commissioner. If the
21 utility changes its planning criterion in September,
22 we think it is reasonable to ask them for notice of
23 that change prior to the April filing of the ten-year
24 site plan.

25 COMMISSIONER CLARK: Why?

1 MR. MCGLOTHLIN: Because it gives us a chance to
2 evaluate whether it is in our interest to do anything
3 about it.

4 COMMISSIONER CLARK: But you won't have the plan
5 until April. I don't understand the advantage of
6 having it in advance of the ten-year site plan when we
7 don't, as I recall, look at those ten-year site plans
8 and make a decision until the fall. Does that not
9 provide --

10 MR. MCGLOTHLIN: But it has been pointed out many
11 times that the ten-year site plan is a snapshot of
12 something dynamic, and those in the business of
13 wholesale generation would need to know how the IOUs
14 plan their system. And if in September they start
15 planning a different way, you know, it is in our
16 interest to know of that sooner rather than later for
17 our own --

18 COMMISSIONER CLARK: What advantage does -- you
19 need to tell me why it is absolutely critical that you
20 know in advance as opposed to a statement in the
21 ten-year site plan as to what their planning criteria
22 is.

23 MR. MCGLOTHLIN: Well, for instance, this
24 stipulation contemplates that if it is perceived that
25 one is affected by a change, one would ask the

1 Commission to respond and to take action accordingly.
2 And if you start with the premise that parties have
3 rights in this proceeding and among -- and are
4 affected by changes in a planning criterion, then it
5 would be prejudicial to require the party to wait
6 until April to have the information necessary to
7 assess whether it wants to do anything about it or
8 not, either for the purpose of modifying its own
9 business plan or asking the Commission for some kind
10 of relief.

11 COMMISSIONER DEASON: Mr. McGlothlin, I'm having
12 some difficulty. It seems to me that you are imposing
13 another layer of responsibility on the utilities and
14 perhaps on this Commission that is not even
15 contemplated in the ten-year site plan to begin with.
16 That is what the ten-year site plan is is that once
17 every year we are going to be informed of what the
18 planning is. And when that plan is filed, that is
19 your advance notice of what is anticipated over the
20 next ten years.

21 MR. MCGLOTHLIN: But throughout the year the
22 companies continue to assess their plans and they may
23 change the criterion. The ten-year site plan, I
24 think, as has been said many times, is subject to
25 change. And to the extent that the planning criterion

1 changes at a point in time other than April 1st, I
2 think it is reasonable for the parties to know that.

3 And granted that is not a requirement that exists
4 in the rule on ten-year site plans, but remember where
5 we are. We were headed toward a hearing in a formal
6 proceeding, and one of the outcomes of that formal
7 proceeding would have been some sort of formal action
8 affecting the criterion that the utilities use.

9 In lieu of that, the parties who have been
10 granted intervention status to participate in the
11 shaping of that formal outcome have said okay, now you
12 guys want to go informal, nonbinding. We will
13 compromise. We will forego the hearing if we can have
14 as part of the outcome a simple requirement that if
15 and when they voluntarily modify the 20 percent to
16 something other than that, they notify the Commission
17 and the parties. What is burdensome about that?

18 If an IOU can manage a nuclear outage, can't it
19 remember that it has changed -- does it know when it
20 changes its planning criterion and can it manage to
21 notify the parties that it has changed? I don't think
22 it is asking too much.

23 CHAIRMAN GARCIA: All right.

24 COMMISSIONER JACOBS: Well, it is my
25 understanding that this generally occurs in those

1 horizons where there is a high reliance on demand-side
2 management and where the prospect exists that that
3 increase or decrease in reserve would increase the
4 frequency of possible interruptions.

5 MR. McGLOTHLIN: Commissioner, there is some
6 danger of talking about two different subjects, and I
7 think we should sort them out. FIPUG's concern, and
8 the reason why FIPUG contributed Paragraph 5 to the
9 first counter proposal, was that there is too great of
10 a reliance on load management currently. And to
11 lessen the present degree of reliance the move to the
12 20 percent should be in the form of either firm
13 contracts or other items different than load
14 management.

15 COMMISSIONER JACOBS: Okay.

16 MR. McGLOTHLIN: Reliant Energy is making a
17 different point. It is unrelated to how much of the
18 reserves should be constituted --

19 COMMISSIONER JACOBS: I understand. I
20 understand. Go ahead and finish your point.

21 MR. McGLOTHLIN: Okay. The utilities say they
22 want to go back to the situation where nothing has
23 changed except the number. I think it is fair to
24 remember that absent a stipulation, that is not where
25 we are. We are headed toward a hearing with several

1 parties that have been granted intervenor status, who
2 have participated in the framing of issues, who have
3 exercised their discovery rights, who have prefiled
4 testimony, and who have the ability to participate at
5 hearing. And Reliant Energy has said in lieu of the
6 formal outcome we will agree to the informal criterion
7 and nonbinding criterion that they want, but we think
8 it is reasonable to, as part of that compromise
9 result, receive notice if and when the number changes
10 from 20 to something else.

11 COMMISSIONER JACOBS: I understand. And the
12 benefit of that notice in my mind is most salient in
13 the set of circumstances that FIPUG is concerned most
14 about. In other words, if you get that notice, the
15 one thing that is going to concern you the most, if
16 those circumstances arise, i.e., that there is a
17 greater likelihood for future interruptions. The
18 thought occurs to me how do we -- what are we doing,
19 what is the Commission doing in that same set of
20 circumstances?

21 I can understand where the parties' concerns
22 might be, but here we are with what we have already
23 said is a declining -- however we want to define it,
24 but declining reserve for purposes of our discussion.
25 How would we have proper notice as to the impact of

1 any action by one of these parties on that trend, what
2 the present status of it is? And how would we assess
3 what the actions that we might want to take in
4 response to that?

5 MR. BALLINGER: I think we get -- staff gets
6 notice in a variety of ways. Primarily the first one
7 is a ten-year site plan. If there is any changes,
8 that is at least once a year. But virtually almost
9 any docket that at least system planning deals with
10 deals with utilities' expansion plans, and part of
11 that is the reliability criteria in what is used. So
12 if there is a change, staff will know about it.

13 As Mr. Sasso said, our staff is in pretty much
14 constant contact with their planners of what is going
15 on. And from there, staff can take a view of what we
16 should do, if we should open a docket or anything like
17 that. So it is not a one-time notice that we get a
18 change, it happens throughout the year.

19 COMMISSIONER DEASON: Let me ask Mr. Sasso a
20 question. The language which now appears in the clean
21 version for Paragraph 6, there is language that says
22 each IOU must reserve the prerogative individually to
23 modify its planning criterion to adapt to relevant
24 circumstances. And I understand the reason that
25 language is in there. But it appears that if you want

1 that prerogative to deviate from the 20 percent which
2 you are agreeing to, that there is some period of time
3 when you -- and when I say you, I'm talking about the
4 company and the management and the appropriate
5 planning personnel. There is a decision made that,
6 no, 20 percent is no longer the appropriate criterion.
7 It is 18, or it is 22, or it is 15 and three-fourths.
8 I don't know, but whatever, there is some point where
9 that decision is made by somebody and it gets approved
10 by somebody. What is wrong when that happens, just
11 notifying folks that that is what has happened?

12 MR. SASSO: Well, I guess in some sense there is
13 nothing wrong with that. The point at which that
14 arises may be a moving target as a practical matter
15 because these matters are discussed internally and
16 there is give and take. But at some point you are
17 correct, there must be a point in time where the
18 appropriate executives within the organization say,
19 okay, we can change our planning criterion.

20 Our concern is do we want to get into a dispute
21 about when that occurs with the parties who happen to
22 intervene in this proceeding, or is this a matter that
23 is better handled through the vehicles that the
24 legislature in its wisdom and this Commission in its
25 wisdom have set up for reporting purposes, namely the

1 ten-year site planning process.

2 There are rules in place to deal with that
3 contingency and they have worked rather well for many,
4 many years. And just because we have an investigation
5 now is no occasion necessarily to change those
6 reporting requirements. Obviously we have no concern
7 in discussing these matters informally with the
8 Commission. That takes place all the time.

9 COMMISSIONER DEASON: And I understand the role
10 of the ten-year site plan. It seems to be getting
11 more and more attention than it is getting -- perhaps
12 it is growing beyond what it was originally
13 contemplated. But nevertheless for you to file that
14 ten-year site plan, at some point before you actually
15 come to the Commission's door and file that plan, you
16 have to know what your planning criterion is going to
17 be.

18 MR. SASSO: That is correct.

19 COMMISSIONER DEASON: And I suppose it is
20 conceivable that, you know, it could change maybe
21 several times in the year. I don't know. But at some
22 point before you file that, you must know what you are
23 going to be using as the criterion when you file that
24 report. And I don't know if it is 30 days before you
25 file, 60, or 90, or whatever, but it just seems that

1 it is not -- it wouldn't be burdensome just to give
2 notification as to what the criterion is going to be
3 for each year's ten-year site plan before it is filed.

4 MR. SASSO: You are correct, Commissioner Deason,
5 and we may well be prepared to do that. The concern I
6 guess we have philosophically with that is there are a
7 set of rules and regulations in place for reporting.
8 Do we want to have separate rules for these three IOUs
9 versus the other utilities in the state? Do we want
10 to have separate rights of notice for the parties who
11 happen to intervene in this docket as opposed to
12 others who may be interested in the material in the
13 ten-year site plan? That is a philosophical concern.

14 I think each of the three IOUs will be prepared
15 voluntarily to agree to provide advanced notice to the
16 Commission of a determination that 20 percent no
17 longer seemed appropriate. I think that they could
18 make that commitment.

19 COMMISSIONER DEASON: Well, could we just include
20 language to the effect that if you exercise your
21 prerogative, you will just make a good faith effort to
22 notify the Commission of that change?

23 MR. SASSO: The answer is yes.

24 MR. MCGLOTHLIN: May I speak to that,
25 Commissioner? Mr. Sasso's choice of words orally and

1 in this document is careful and purposeful. If you
2 will remember he spoke in terms of an investigation,
3 and in this paragraph in addition to the reference to
4 the IOU reserving its prerogative, it says that the
5 Commission remains free to initiate an investigation.

6 Recall that from the IOU's perspective, they have
7 used the word investigation in a very binding and
8 limited way that ties the Commission's hands. That
9 makes no room for intervenors or parties who have
10 rights. That is not where we are. That view of this
11 proceeding has been repudiated twice along the way.
12 And we are headed toward a hearing, one outcome of
13 which could have been an order imposing a reserve
14 margin criterion, or alternatively, a rulemaking
15 hearing which would have had as a final outcome some
16 specific requirements with respect to the criterion.

17 And I don't think it is farfetched to imagine
18 that that outcome would have required some obligation
19 to check in in some way with any changes. One of the
20 IOU's objectives and the recrafting of this document
21 is to cling to their theory of the case, which says it
22 is just between us and you, Commissioners.

23 We can work this out. You don't have to pay any
24 attention to the parties. They don't have any
25 bonafide status in this case and they don't have any

1 rights. That has been rejected along the way. And I
2 think it is fair to say that as a compromise in the
3 stipulation of the proceeding in the state we find it
4 today, any obligation to report a change in the
5 criterion should be made not only to the Commission
6 but to the parties who participated in this work out.

7 CHAIRMAN GARCIA: Well, I mean, clearly you
8 aren't the whole universe of people who are going to
9 participate in this field. I, as someone who thinks
10 there should be a robust wholesale market, we may find
11 ten other companies are going to be in Florida. We
12 may find that three of the companies that are sitting
13 there with you today are one company by a different
14 name.

15 So if they inform this Commission, some formal
16 procedure or some informal procedure whereby they say,
17 hey, we are going to change the methodology, I assume
18 you are going to find out. But, I mean, why should
19 they go have to find those who were in this specific
20 docket to tell them about this change when there may
21 be six other people sitting here six months from now
22 who would want to participate in this hearing and want
23 to intervene and you leave them out of it.

24 MR. MCGLOTHLIN: Well, two responses, both brief.
25 First of all, the universe of parties who have been

1 given intervenor status is a short list, and they
2 don't have to go out and find that list.

3 CHAIRMAN GARCIA: Right.

4 MR. McGLOTHLIN: Secondly, if the mechanism that
5 is being contemplated is that that is going to be made
6 available to the Commission and then there is some
7 mechanism whereby the Commission publishes that and
8 makes it readily available to those who are interested
9 in knowing as soon as the change happens, that may be
10 something that Reliant Energy could accept. I would
11 have to check with them. Right now, my instructions
12 are absent some meaningful notice mechanism Reliant
13 Energy cannot support this document. But I do believe
14 that is some movement where there is a commitment by
15 the IOUs to inform the Commission and some mechanism
16 for making that readily available to those who need to
17 know that information.

18 CHAIRMAN GARCIA: Let's proceed, if we can, to
19 the other issue, which is FIPUG's issue, which to some
20 degree is troubling to me. And that is the issue of
21 changing how we determine the margin of reserve. Is
22 it the margin of reserve or reserve margin? Reserve
23 margin, I'm sorry.

24 It strikes me that by having a series of
25 workshops on this issue and by not changing what the

1 definition of that is, we stand in a better position
2 to look at precisely the issue. By changing the
3 definition of that, I think we complicate things
4 unnecessarily at this point. While I understand that
5 your clients, this is a central concern to them, I
6 think that central concern is what we are having these
7 workshops for. I think it is to figure out how much
8 reserve we should have, whether we should have the
9 amount we now have, how that should be calculated,
10 whether we should change that calculation.

11 I think those are all fair issues that are going
12 to be discussed at this workshop. And I hope it to be
13 a Commission sponsored workshop and I think I have
14 spoken to staff to some degree about having associated
15 hearings with it, not only to hear from you and Mr.
16 McWhirter who are very excellent advocates for your
17 client, but the possibility of speaking to your
18 clients in some type of scenario where we allow them
19 to express their frustration with the system and how
20 it affects their business and Florida's ability to be
21 competitive and their businesses' ability to be
22 competitive.

23 So my thinking is, Ms. Kaufman, that if we can
24 leave that out of this proceeding and issue this -- my
25 hope is to issue this without your definition that you

1 have at least my assurance as Chairman of this
2 Commission presently and I'm not intending to go
3 anywhere, and I think likewise for Mr. Jenkins and his
4 staff, to look very seriously at this issue because I
5 think it is not just you and Mr. McWhirter who are
6 concerned about this and your clients, but there are
7 members of the legislature who on many different
8 occasions have expressed great interest in this. And
9 so I think as a matter of public policy for the
10 legislature and this state, it is something that we
11 need to look at, as I am sure the utilities realize we
12 are going to look at.

13 So what I am hoping is that we can issue this --
14 I'm hoping that Mr. Sasso will convey some type of a
15 formalization of what we have just discussed, give us
16 some type of notice so that all of us are aware. And
17 when I say all of us, it is this Commission. And if
18 you need for us to do something specific, although I
19 just -- there aren't any secrets in this building. I
20 have learned that through great pain, that you can't
21 keep a secret in the PSC.

22 So when they inform us of a change, which I think
23 they will, they have agreed to a 20 percent increase,
24 which I think benefits us, everyone on that side of
25 the table to a great degree and relieves some concerns

1 that staff had, and I certainly felt that staff had
2 good reason. We have accomplished a major portion of
3 what this docket was intended to do. And, likewise, I
4 think you have our commitment to move forward on
5 looking at those definitions and those issues that are
6 a great concern to your clients, and that are a great
7 concern to Florida and these utilities.

8 MS. KAUFMAN: Mr. Chairman, we appreciate your
9 commitment here. You hit the nail on the head. These
10 are issues of extreme importance to my clients, and,
11 as you said, to others, as well. And I appreciate
12 your gentle persuasion of nudging us toward this
13 document.

14 COMMISSIONER JACOBS: If I may, I don't think
15 there was ever an opportunity for them to respond to
16 your compromise proposal. If that is okay, I think we
17 should do that. Ms. Kaufman's compromise proposal of
18 the 5 percent, the extra 5 percent not being --

19 CHAIRMAN GARCIA: I thought Mr. Sasso did, but go
20 ahead.

21 MR. SASSO: Yes. I don't understand that to be a
22 compromise proposal. I think that was the original
23 proposal, that 5 percent of the reserve margin be
24 treated in a special way, as distinguished from 15
25 percent. We have a number of concerns about that.

1 One is what does it mean.

2 Another is is it redundant in any event of what
3 is expressed in the formula that we use to calculate
4 reserve margin.

5 And I guess the final concern is it seems to be
6 prejudging an issue that Ms. Kaufman's own stipulation
7 says she does not intend to prejudge. Namely, what is
8 the appropriate allocation of supply-side and
9 demand-side resources in utility planning.

10 Keep in mind that the formula that we have set
11 forth incorporates a lot of Ms. Kaufman's definition
12 of how one defines and calculates reserve margin.
13 Under that definition, total firm capacity is based on
14 generating capacity owned by the utilities or capacity
15 for which there is a firm commitment to those
16 utilities in the form of a contract. That is language
17 out of her original definition, so there really is no
18 disagreement there.

19 There is another aspect of defining the
20 methodology, and that is how one calculates peak firm
21 demand. And it has been well accepted for a long time
22 that peak firm demand is total demand minus
23 demand-side resources. And to the extent Ms. Kaufman
24 is proposing to change that, that does represent a
25 drastic alteration in existing policy and practice,

1 and we can't support that. So for all of those
2 reasons we are reluctant to accept her proposal.

3 CHAIRMAN GARCIA: All right. Commissioners, here
4 is what I'm willing to do. I can't make a motion. I
5 guess I can hand over the gavel. My thinking is that
6 we accept what we have before us, that we accept the
7 movement that Mr. Sasso has made. The only thing I
8 would request, you wanted us to be bound some way to
9 advertise it. I don't know -- I could put it in front
10 of the agenda. I ask the executive director, but I
11 don't think anybody looks at that, to be quite honest,
12 except my grandmother, so I don't know where you want
13 us to advertise this. But I think they have a duty to
14 come to this Commission and tell us, and it is your
15 duty to figure it out for your client. I understand
16 that you want some kind of notice. They are agreeing
17 to make that notice to us.

18 MR. McGLOTHLIN: Are they agreeing to put some
19 mechanism of that nature in this stipulation document,
20 that they will notify the Commission promptly upon
21 change of the planning criterion?

22 MR. SASSO: I think Commissioner Deason
23 articulated a statement that we would be happy to put
24 into the stipulation, recognizing that you weren't
25 dictating it, but we would get as close to it as we

1 could.

2 CHAIRMAN GARCIA: Okay.

3 COMMISSIONER DEASON: I would make a good faith
4 effort, but I don't recall the exact language.

5 MR. SASSO: That is the idea, and we are
6 comfortable with that.

7 COMMISSIONER CLARK: I wrote part of it down. I
8 think it is if any IOU exercises its prerogative to
9 individually modify its planning criteria, it shall
10 make a good faith effort to provide notice of the
11 change to the Commission.

12 MR. SASSO: That would be fine.

13 COMMISSIONER CLARK: I think there was one other
14 thing that was mentioned, and maybe it was resolved
15 and I didn't hear it. It is the notion of the
16 stipulation being accepted in its entirety.

17 MR. MCGLOTHLIN: Yes, that was in the counter
18 proposal that was presented and discussed earlier
19 yesterday. The clause said just that if the
20 Commission declines to approve the stipulation in its
21 entirety, then the stipulation becomes null and void.
22 And that was put in there because -- and I can
23 appreciate this perhaps more than most because I've
24 served as a something of a scrivener of collecting the
25 input of several parties, and this is a conglomeration

1 of items that were identified by various parties as
2 the conditions of which they would be willing to
3 compromise in lieu of a hearing. And it would be
4 prejudicial and unfair to present something to the
5 Commission that would allow it to pick and choose,
6 thereby giving some parties their wish list but
7 denying it to others when it was a compromise
8 settlement approach.

9 COMMISSIONER CLARK: I guess my question was did
10 that need to be in the stipulation?

11 MR. MCGLOTHLIN: Yes. Based on my discussion
12 with Mr. Sasso earlier today, I think they have agreed
13 to put that back into the document. It is not there
14 now.

15 COMMISSIONER CLARK: Oh, okay.

16 MR. MCGLOTHLIN: Commissioners, I do need to --
17 before I can say whether or not Reliant Energy would
18 be a signatory to this revised document, I would have
19 to confer with them regarding the approach to the
20 notice mechanism that has been discussed at this
21 point.

22 CHAIRMAN GARCIA: Okay.

23 MS. KAUFMAN: Mr. Chairman, certainly that would
24 be the case for FIPUG, and as I suggested --

25 CHAIRMAN GARCIA: What if we just issue this PAA,

1 what we have here. That gives you all a chance to
2 look at it, because I think to continue talking about
3 it is useless. I don't think anybody is going to move
4 any more. I think we have asked you to sort of give a
5 little bit on each side. And then if somebody objects
6 to it, they object to it, and we have to set a
7 hearing. We will bone up Mr. Ballinger again and we
8 will get ready for a hearing and we will find some
9 time and we will do this, if that is what your wish
10 is.

11 But I think we have to realize that part of the
12 overall process is to be efficient and save time.
13 This is the third day we have been at this, or fourth
14 day for some of you. We might have -- already the
15 question comes should we have had the hearing? That
16 isn't where we want to go. At least that is why we
17 are doing this.

18 So that said, if that is all right with you, I
19 guess I can hand the gavel to Commissioner Deason. I
20 think basically what I have said is that I move to
21 accept this with the changes that were added by
22 Commissioner Deason. And then we approve this PAA, is
23 that right, Mr. Elias, and all of the parties have an
24 opportunity to disagree with it. I hope you will work
25 through it with staff if you have any particular

1 little issue that we missed here today. I know you
2 have some big issues that you think we may be
3 incorrect on, but it helps us move forward with this.
4 Is that all right?

5 MR. CHILDS: Could I comment?

6 CHAIRMAN GARCIA: Absolutely. Although it
7 worries me greatly, but go ahead.

8 MR. CHILDS: I would ask that you consider not
9 proceeding through PAA. The reason is is that I think
10 we have expended a lot of effort and you have too
11 trying to get where we are. The proposal was made on
12 the basis of a good faith approach to address
13 concerns. Some of the parties are not all the way
14 there yet, but our recommendation and position was
15 that the Commission who had initiated the
16 investigation could make a decision as to whether it
17 was satisfied enough to go forward. Some of the
18 points that have been raised are ones that we are
19 going to workshop on which contemplate potential
20 further action, and I would certainly hope that we not
21 go PAA because that has the potential to totally
22 unwind in the future.

23 COMMISSIONER CLARK: I have a question. Is it a
24 matter of -- do I understand your position, Ms.
25 Kaufman, that the workshop is not enough, that you

1 must have that method of treating demand-side
2 management in the agreement?

3 MS. KAUFMAN: Commissioner Clark, if we don't go
4 to hearing, we certainly hope that you will go forward
5 and conduct the workshop. We certainly hope that and
6 we think that you will do that. Our problem with the
7 process is that from our viewpoint, this isn't really
8 a stipulation. We don't think that the utilities have
9 given up anything, and to our way of thinking, FIPUG's
10 concerns have not been addressed.

11 Having said that, as I said earlier, we welcome
12 your commitment to the workshop. We suggest that you
13 accept this stipulation, if that is your pleasure,
14 without FIPUG's signature on it.

15 MR. SASSO: May I speak briefly to the procedural
16 point? I think it is important to recognize that we
17 are not asking FIPUG to give up anything. We are not
18 asking for release. This isn't a typical type of
19 settlement where they are being bound in some nature
20 in respect to their legal rights. They have not
21 petitioned for any affirmative relief in this docket.
22 And this resolution leaves them free to do so in the
23 future if they think they are entitled to some
24 affirmative relief and they have not obtained it. So
25 they have not given up any substantial rights by

1 virtue of this Commission approving this proposal as a
2 basis to close this investigation.

3 COMMISSIONER DEASON: Let me ask Mr. Elias a
4 question. I think we may have discussed this to some
5 extent before. Given the nature of this
6 investigation, do we have the authority to issue a
7 final order adopting what is contained in this
8 stipulation without issuing it as PAA?

9 MR. ELIAS: My assessment of this agreement is
10 that the only substantial interests that are affected
11 are those of the proponents, the three investor-owned
12 utilities. And I do not believe that you have taken
13 any action which affects the substantial interests of
14 the other parties.

15 COMMISSIONER DEASON: And the intervenors have
16 intervened in the investigation. They have not
17 petitioned for any type of relief, and there is
18 nothing in this which is -- maybe it's not all that
19 they want, but there is nothing here that is against
20 their interests. Do you agree with that?

21 MR. ELIAS: Yes. Well, the only substantial
22 interests that are affected positively or negatively
23 by the resolution that is proposed here are those of
24 the investor-owned utilities. Now, I would hasten to
25 add that you can always do something PAA. I mean, you

1 can go out and you can give more process than is due
2 and not be faulted for it other than on the efficiency
3 of the process. But I do believe that the sum and
4 substance of this agreement as to its effect on
5 anyone's substantial interest is limited to the three
6 investor-owned utilities that are proposing it.

7 And I would add, too, that we identified 19
8 issues that we were going to go to hearing on. And as
9 the discussion here has reiterated, we haven't reached
10 some of those issues with this proposal. Some of
11 those issues, had they been addressed on the merits,
12 would have affected the substantial interests or could
13 have affected the substantial interests of some of the
14 intervenors. So the issues that are being addressed
15 by this proposal, and I also need to add that that was
16 staff's core concern was the adequacy of the reserve
17 margin, are the impact as I believe limited to the
18 three proponents of the proposal.

19 COMMISSIONER JACOBS: There were a couple of
20 other issues that I thought were important. The one
21 that comes to mind most readily is that of the
22 practices during maintenance and the occurrence -- and
23 whether or not we should look at some best practices,
24 for lack of a better term, during maintenance time.
25 That does not appear to be reached by this agreement.

1 MR. ELIAS: Not directly, but indirectly. And I
2 think that the issue that you are speaking to is the
3 fact that while utilities were planning to meet
4 seasonal peaks, where we were experiencing problems
5 was in the shoulder months when there was scheduled
6 maintenance and in combination with a forced outage in
7 extreme weather in a non-peak month. And just by
8 virtue of the fact that the planning standard has been
9 raised from 15 to 20 percent, at least indirectly --

10 COMMISSIONER JACOBS: That is still a peak,
11 though, right?

12 MR. ELIAS: It's still peak, but, you know,
13 presumably the resources are still going to be there.
14 It is a 20 percent standard and the associated amount
15 of resources would be there in the shoulder months.
16 In other words, the bar is just that much higher.

17 COMMISSIONER JACOBS: I'm uncomfortable resolving
18 that issue in that way. I don't want to hold up -- if
19 there is a minimum on this today, I don't want to hold
20 it up, but I am uncomfortable resolving that issue in
21 this way.

22 COMMISSIONER DEASON: I'm sorry. Resolving which
23 issue?

24 COMMISSIONER JACOBS: The issue of the shoulder
25 months, i.e., the period of time when there is -- as I

1 understood it in the last couple of summers -- or, I'm
2 sorry, the last couple of shortage periods, that there
3 has not been the capacity issues that -- well, it is
4 not directly. It is the fact there was not a peak
5 time and plants were down for maintenance and
6 therefore there was an inadequate ability to address
7 the shortage at that particular time. It was not a
8 planned peak time. It was not -- as I understand what
9 is happening here, we want to increase the reserve
10 during peak and with the anticipation that there would
11 be inherent added capacity on the system to address
12 that time period. Is that an accurate description of
13 what you are saying?

14 MR. BALLINGER: I think it is correct. If you
15 add it at peak, you are adding it at off-peak, as
16 well, and that was one concern that during maintenance
17 periods is when you can get in trouble. If the level
18 of planning was raised to 20 percent, that alleviates
19 a lot of those concerns.

20 COMMISSIONER JACOBS: Okay. Well, you are the
21 experts. I will bow out on that.

22 COMMISSIONER DEASON: We have a motion.

23 COMMISSIONER CLARK: Let me ask a question. So
24 that I am clear with respect to adding of the notice
25 and not changing the calculation of reserve and adding

1 back in there the notion of it being accepted in its
2 entirety, is it only FIPUG that will not sign onto it
3 as a stipulation?

4 MR. MCGLOTHLIN: Reliant Energy would have to
5 consult. I would have to talk to my client as to
6 whether this notice mechanism satisfies its concern.

7 MR. MOYLE: And PG&E has concerns, as well.

8 COMMISSIONER CLARK: My question is very
9 straightforward. Would you sign onto the stipulation?

10 MR. MOYLE: No.

11 MS. SWIM: Commissioner Clark, one thing that
12 gives LEAF a level of comfort to allow us to sign on
13 is our understanding that the workshop on distributed
14 resources, which we haven't verbally talked about
15 today, is something that is going to proceed, and I --

16 COMMISSIONER CLARK: That is in the preview,
17 though.

18 MS. SWIM: Well, in the agreement it says that
19 the parties encourage the Commission to hold this
20 workshop. And if I had a level of comfort that the
21 Commission itself wanted to act on that encouragement,
22 it would be helpful.

23 COMMISSIONER CLARK: I think we have dates for
24 it. It seems like it is the 1st and 2nd of March.

25 CHAIRMAN GARCIA: She said she has looked at the

1 calendar on it, so we are ready.

2 MS. SWIM: All right. Well, then we are fine
3 with signing on.

4 CHAIRMAN GARCIA: I think we have even got a
5 place and everything.

6 COMMISSIONER CLARK: It is going to be a workshop
7 on one day, but a more comprehensive meeting on the
8 day before.

9 MS. SWIM: Thank you.

10 COMMISSIONER DEASON: Commissioners, I do have
11 the gavel and there has been a motion made. Is there
12 a second or is there a modification to the motion?

13 COMMISSIONER JACOBS: I will second it.

14 COMMISSIONER DEASON: The motion is to issue it
15 as PAA, correct?

16 CHAIRMAN GARCIA: Right.

17 COMMISSIONER DEASON: It has been moved and
18 seconded that we adopt the stipulation. I'm using the
19 term stipulation loosely. The agreement, with the
20 modifications as indicated by Commissioner Clark, and
21 that it be issued as PAA. And that has been moved and
22 seconded.

23 Let me state that before we take a vote, my
24 preference is to issue it as a final order.

25 COMMISSIONER CLARK: As is mine.

1 CHAIRMAN GARCIA: Well, then I will modify my
2 motion if the second will stand. We will issue it as
3 a final order. Commissioner, I just wanted to give
4 the parties the option to try to explore it with their
5 clients. I don't want to force this agreement,
6 document, down their throats.

7 My whole thinking was to issue it PAA to give
8 them some time to look at what we have got before us.
9 You know, we have all been forcing them down this
10 chute, all of them. Let them look at it. They may
11 find that it is in their best interest, although right
12 now it tells them that they are not for it.

13 I understand we can issue it PAA. I just think
14 it doesn't hurt us. Either way it doesn't hurt us.
15 PAA just gives them some time to think about it.

16 COMMISSIONER DEASON: Well, it seems to me that
17 if we issue it PAA and there is a protest, we are
18 obligated to go to hearing and we have not
19 accomplished anything. I agree with the legal
20 assessment by Mr. Elias that this was an investigation
21 that we opened. We can open it, we can close it. If
22 we feel satisfied that this is a proper remedy to the
23 situation given the many caveats here, and the
24 workshops that we are going to have, and the
25 Commission is not bound, that we can do anything we

1 want at any time --

2 CHAIRMAN GARCIA: I accept the friendly amendment
3 if the second still holds.

4 COMMISSIONER CLARK: If the second doesn't hold,
5 I second it.

6 CHAIRMAN GARCIA: That's a nice nudge there,
7 Leon.

8 COMMISSIONER CLARK: You know, if that was too
9 abrupt, I apologize. I just thought I would let you
10 know.

11 COMMISSIONER JACOBS: No, no. I tell you, my
12 hesitance in this is I have some -- I am somewhat
13 persuaded by the argument that while we go to hearing,
14 we may not have accomplished a whole bunch in terms of
15 the expediency of this process. I am real concerned
16 about what we have defined in terms of what the
17 investigation was originally anticipated to do. If
18 I'm not mistaken, we were looking to come up with a
19 good hard and fast planning criteria. What we have
20 here is a proposal that is muddy at best. I'm willing
21 to do that because the experts tell me that it will
22 help us on the process and we have a momentum of
23 agreement here. But to do so in an expedient manner
24 gives me great trouble.

25 COMMISSIONER DEASON: Well, just let me say I

1 respectfully disagree that we have an ambiguous
2 standard here. We started with planning criteria. By
3 this agreement it changes to 20 percent. That is a
4 crystal clear number. We have even defined how it is
5 to be calculated. That is a crystal clear
6 calculation.

7 COMMISSIONER JACOBS: For today, when we sign
8 this -- I'm sorry for interrupting. I'm sorry. Go
9 ahead and answer.

10 COMMISSIONER DEASON: But I think it is important
11 for our utilities to have the flexibility to change as
12 they think change needs to be addressed. To just have
13 a 20 percent reserve planning criterion and say it is
14 never going to change again unless you come before us
15 and have an evidentiary hearing and say that it needs
16 to be changed, I think that puts too much of a burden
17 on our utilities to be able to respond to changing
18 economic conditions and changing facts as they apply
19 to this situation.

20 So I think that we have accomplished a lot. If
21 we are going to issue this PAA, I'm just as soon
22 inclined to say, no, let's just go to hearing and
23 let's address all of this. But I'm comfortable that I
24 think that we have got a very workable plan that
25 provides some very specific criteria that are going to

1 be applied in a specified manner. I think that it is
2 a major step forward.

3 COMMISSIONER JACOBS: When you have said all
4 that, and in view of the attenuating circumstances,
5 the second stands.

6 COMMISSIONER DEASON: We have a motion and a
7 second. All in favor say aye.

8 (Unanimous affirmative vote.)

9 COMMISSIONER DEASON: All opposed?

10 COMMISSIONER DEASON: The motion carries
11 unanimously.

12 MR. TRAPP: Commissioners, one point of
13 clarification. Section 9 of the stipulation that you
14 have just adopted speaks to encouraging us to have a
15 workshop. Would you now instruct staff to hold a
16 workshop?

17 CHAIRMAN GARCIA: You are directed.

18 MR. TRAPP: Thank you.

19 (The hearing concluded at 2:45 p.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 85 through 140 are a true and correct record of the proceedings.

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

DATED THIS 17th day of December, 1999.


JANE FAUROT, RPR
ACCURATE STENOGRAPHY REPORTERS
100 Salem Court
Tallahassee, Florida

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