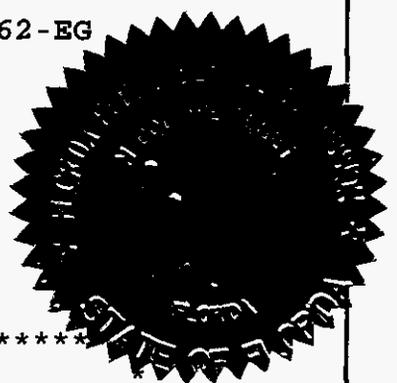


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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of
PETITION FOR DETERMINATION
OF NEED FOR AN ELECTRICAL
POWER PLANT IN OKEECHOBEE
COUNTY BY OKEECHOBEE
GENERATING COMPANY, L.L.C.

: DOCKET NO. 991462-EG
:
:



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER E. LEON JACOBS, JR.
Prehearing Officer

DATE: Friday, March 3, 2000

TIME: Commenced at 2:30 P.M.
Concluded at 4:35 P.M.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting

1 APPEARANCE

2 GARY SASSO and JILL HENNINGER BOWMAN, Carlton and
3 Fields, One Progress Plaza, St. Petersburg, Florida 33701,
4 and JAMES A. MCGEE, Post Office Box 14042, St. Petersburg,
5 Florida 33733-4042, appearing on behalf of Florida Power
6 Corporation.

7 MATTHEW M. CHILDS and CHARLES A. GUYTON,
8 Steel, Hector & Davis, 215 South Monroe Street, Suite 601,
9 Tallahassee, Florida 32301, appearing on behalf of Florida
10 Power & Light Company.

11 ROBERT SCHEFFEL WRIGHT, Landers & Parsons, 310
12 West College Avenue, Tallahassee, Florida 32301, and JON
13 MOYLE, Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan,
14 P.A., 210 South Monroe Street, Tallahassee, Florida 32301,
15 appearing on behalf of Okeechobee Generating Company,
16 L.L.C.

17 WILLIAM COCHRAN KEATING, FPSC Division of Legal
18 Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida
19 32399-0850, appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER JACOBS: Okay. We will go on the
3 record.

4 Counsel, read the notice.

5 MR. KEATING: Pursuant to notice issued
6 January 27th, 2000, this time and place have been set for
7 a prehearing conference in Docket No. 991462-EU, Petition
8 for Determination of Need for an Electrical Power Plant in
9 Okeechobee County by Okeechobee Generating Company, LLC.

10 COMMISSIONER JACOBS: Great. Take appearances.

11 MR. WRIGHT: Robert Scheffel Wright, the law
12 firm of Landers and Parsons, 310 West College Avenue,
13 Tallahassee 32301, appearing on behalf of Okeechobee
14 Generating Company.

15 MR. MOYLE: Jon Moyle, Jr., with the Moyle
16 Flanigan law firm, also appearing on behalf of Okeechobee
17 Generating Company.

18 MR. GUYTON: Charles A. Guyton and Matthew M.
19 Childs from the law firm of Steel, Hector, and Davis, 215
20 South Monroe Street, Suite 601, Tallahassee, Florida
21 32301, appearing on behalf of Florida Power & Light
22 Company.

23 MR. LONG: Harry W. Long, Jr., TECO Energy, P.O.
24 Box 111 Tampa, Florida 33601, appearing on behalf of
25 Tampa Electric Company.

1 MR. SASSO: Gary Sasso with Carlton, Fields, St.
2 Petersburg, Florida, appearing for Florida Power
3 Corporation.

4 MR. MCGEE: And James McGee, Post Office Box
5 14042, St. Petersburg, also appearing on behalf of Florida
6 Power Corporation.

7 MR. KEATING: Cochran Keating appearing on
8 behalf of the Commission Staff.

9 COMMISSIONER JACOBS: Very well. Are there any
10 preliminary matters that we need to deal with?

11 MR. KEATING: I guess we can approach it a
12 couple of difference ways. I'm aware of one motion that I
13 think has been recently filed regarding the revised
14 procedural schedule that we could take up now, or we could
15 take up as we go through the prehearing order and get to
16 the motions portion of the order.

17 COMMISSIONER JACOBS: It's my understanding that
18 that motion is agreed to by everyone?

19 MR. WRIGHT: This is the motion on the extension
20 of time for intervenor testimony on the models.

21 COMMISSIONER JACOBS: Correct.

22 MR. WRIGHT: Right.

23 COMMISSIONER JACOBS: Okay. We'll grant that,
24 then. That takes care of preliminary matters?

25 MR. KEATING: Unless the parties have any

1 preliminary matters.

2 COMMISSIONER JACOBS: Okay. None? All right.
3 This is going to be a congenial crowd today I see.

4 MR. GUYTON: Commissioner, I don't want to
5 suggest otherwise. I do want to give notice to the bench
6 that we intend to file an additional motion to strike
7 testimony, it just hasn't been filed yet. I just want to
8 make you aware of it. It is anticipated in next week.

9 COMMISSIONER JACOBS: Very well. What I would
10 like to do then is -- the normal practice is just go
11 through the prehearing order. And we will go
12 section-by-section. And if there are any revisions you
13 can let me know, and we will move on. Okay.

14 We will start with the -- the conduct of
15 proceedings is boilerplate. And unless there is any
16 particular change there we will go to Section 2, case
17 background. Any modifications there?

18 MR. SASSO: Before we get there, can we add an
19 additional person in appearances for Florida Power
20 Corporation? We left off Jill H. Bowman.

21 COMMISSIONER JACOBS: Last name again.

22 MR. SASSO: BOWMAN, B-O-W-M-A-N. Also with
23 Carlton, Fields appearing for Florida Power Corporation.

24 MR. MOYLE: And if we are doing things
25 officially for the record, no H in Jon on Moyle in the

1 appearance.

2 COMMISSIONER JACOBS: We will go off the record
3 momentarily.

4 (Off the record briefly.)

5 COMMISSIONER JACOBS: We are back on the record.

6 That takes care of all issues and appearances.
7 And Section 1, case background. Any modifications there?
8 Okay. None. We will go to procedure, Section 3,
9 procedure for handling confidential information.

10 MR. GUYTON: Commissioner Jacobs, looking at
11 that provision, right now I'm not aware of an ability to
12 comply with it, but I want to raise a concern about that.
13 As you know, we are in the process of looking at models in
14 the possession of OGC's witnesses that had been ruled to
15 be confidential. And we have signed guarantee agreements
16 that allow us to testify as to what our findings are in
17 that case.

18 And I don't anticipate either from your ruling
19 or from the agreements that have been signed that we won't
20 be able to testify based upon whatever runs and analyses
21 that we do. But those analyses are on-going. And if for
22 some reason OGC feels like some of that should be treated
23 as confidential proprietary information, those analyses
24 may run right up to the eve of hearing.

25 And there is a provision on Page 3 of the order

1 that says any party wishing to use proprietary business
2 information shall notify the prehearing officer and all
3 parties of record no later than seven days prior to
4 hearing. And we may have a situation, and I don't think
5 it will rise because I think any inputs or outputs that we
6 use in those model runs are not going to be proprietary as
7 I understand the agreements. But if Altos or OGC claims
8 that it is, we may not have the ability to provide that
9 seven-day notice pursuant to the order.

10 COMMISSIONER JACOBS: I understand your
11 predicament. I don't know that it is preferable to -- I
12 wouldn't want to do away with in advance of knowing
13 whether or not you need it. My suggestion would be,
14 unless you have any different recommendation, is that we
15 wait and see what arises. I will be available at a
16 moments notice. And we can make a determination of
17 whether or not to waive that then. I assume if you filing
18 it we will need to see a waiver anyway, but we will take
19 that under consideration at the time.

20 MR. GUYTON: That's fine. I just didn't want to
21 be precluded from it by this provision saying it required
22 seven days notice prior to hearing.

23 COMMISSIONER JACOBS: I understand.

24 MR. ELIAS: This is Bob Elias with the
25 Commission staff. And I think the purpose of that

1 provision in the prehearing order is to assure that if
2 confidential information is to be used at the hearing,
3 that arrangements are made to protect the confidentiality
4 of the information. And, you know, I think to the extent
5 that you can craft a procedure designed to do that should
6 the need arise and have that prepared to submit at the
7 same time, that will help smooth the process.

8 MR. GUYTON: I understand. And we would
9 undertake to try to do that, Bob. We just didn't want to
10 be precluded from doing it if we find we needed -- if we
11 discover the information three days before trial, we
12 didn't want to be precluded from using it.

13 COMMISSIONER JACOBS: Very well. If there are
14 no other issues under the confidentiality section, we will
15 go to Section 4, post-hearing procedures, which is pretty
16 much boilerplate. Section 5.

17 MR. GUYTON: If I might, and perhaps we can
18 address this a little bit later, or perhaps at the
19 hearing. We tried a case not too terribly long ago that
20 was not dissimilar to this case. We agreed to a 75-page
21 page limit on briefs. And I would like to at least
22 inquire of the parties as to whether there was a similar
23 interest in this case.

24 COMMISSIONER JACOBS: I will kind of go down the
25 line.

1 MR. WRIGHT: I'm okay on it.

2 MR. MOYLE: I would just, I guess, ask a
3 question with respect to either a 60-page or a 75-page
4 limit there. And not to jump ahead, but there are a
5 number of issues such as is OGC -- how does the bid rule
6 effect OGC, whether OGC is a proper applicant. Those
7 issues have been previously raised and dealt with in
8 motions to dismiss. I'm much more comfortable if we kind
9 of can all agree that those issues having already been
10 briefed and decided don't need to be rebriefed and
11 redecided post-hearing, since it has already been done
12 once. That those page limits are then much more
13 comfortable.

14 COMMISSIONER JACOBS: Mr. Long.

15 MR. LONG: I don't think that we are willing to
16 agree to that limitation. The 75 page limit is fine with
17 us.

18 COMMISSIONER JACOBS: Mr. Sasso.

19 MR. SASSO: Seventy-five pages is fine with us,
20 also, without committing at this time what we would like
21 to brief and what we don't need to brief.

22 COMMISSIONER JACOBS: Okay. Well, it sounds
23 like there is a request to modify this to 75 pages. I
24 don't have a problem with that, so we will grant that
25 request. I should ask staff, they are the ones who have

1 to read most of it.

2 MR. KEATING: We don't have to write it.

3 COMMISSIONER JACOBS: Okay. Prefiled testimony
4 and exhibits.

5 MR. SASSO: I have a minor suggestion here. The
6 very first sentence says, "Testimony of all witnesses to
7 be sponsored by the parties has been prefiled." Due to
8 the schedule in place, some of the intervenor testimony
9 and some of the rebuttal testimony has not yet been filed.
10 So I think it would be more appropriate to say testimony
11 of all witnesses to be sponsored by the parties has been
12 or will be prefiled.

13 COMMISSIONER JACOBS: Okay. You anticipate this
14 order going out when?

15 MR. KEATING: I had thought about that briefly.
16 We are going to have testimony it looks like with the
17 motion that you granted at the start of the prehearing as
18 late as March 16th, which is just about a couple of
19 business days before we get started at the hearing. I
20 could --

21 COMMISSIONER JACOBS: I don't have a problem
22 with the modification, but my caveat would be is that
23 consistent with the established order in this docket,
24 because any filing dates we have agreed to already, right?

25 MR. SASSO: Yes, sir.

1 COMMISSIONER JACOBS: Okay. So I wouldn't want
2 us to get to the day before the filing date and we start
3 having arguments about whether or not something was filed
4 on time.

5 MR. SASSO: We could add in accordance with
6 prehearing orders.

7 COMMISSIONER JACOBS: Okay. That will be fine
8 with me. How about OGC?

9 MR. WRIGHT: (Indicating yes.)

10 COMMISSIONER JACOBS: Let's do that.

11 MR. MOYLE: Just so we are clear, it will say
12 has been filed or will be filed in accordance with the
13 prehearing or the previous order entered in this --

14 COMMISSIONER JACOBS: Something similar. In
15 fact, that language is fine with me.

16 MR. KEATING: That sounds good.

17 COMMISSIONER JACOBS: Very well. Any other
18 modifications of that section?

19 MR. GUYTON: Commissioner Jacobs, I just want to
20 assure myself that this paragraph that talks about the
21 procedure in which testimony will be introduced does not
22 preclude voir dire of a witness. It has certainly not
23 been the Commission's practice to preclude that, and I
24 anticipate there may be a need for that at some point in
25 the hearing.

1 COMMISSIONER JACOBS: I'm not familiar with the
2 process we were doing. I know it should be allowed for,
3 so I'm not aware of any restrictions there might be to
4 limit that. So we can agree that it will be allowed.

5 MR. KEATING: We don't see anything in the
6 language that is here that would preclude that, and we
7 wouldn't interpret it to preclude that.

8 COMMISSIONER JACOBS: Very well. So we are on
9 to order of witnesses. I'm sorry, I should have asked
10 were there any other changes in that section? That was
11 it.

12 Order of witnesses, Section 6.

13 MR. WRIGHT: Commissioner Jacobs, one of our
14 witnesses is out of order. Mr. Gerard Kordecki should be
15 our sixth witness. That is, he should be listed after
16 Dale Nesbitt and before Roger Clayton.

17 COMMISSIONER JACOBS: Okay. No rebuttal?

18 MR. WRIGHT: Sorry. We will be filing today,
19 Commissioner Jacobs, rebuttal testimony by Mr. Kordecki
20 and by Doctor Nesbitt.

21 COMMISSIONER JACOBS: Okay.

22 MR. WRIGHT: Today is the first day upon which
23 rebuttal testimony is due.

24 COMMISSIONER JACOBS: Good.

25 MR. KEATING: And, Commissioner Jacobs, there

1 are, as we established in the previous procedural orders,
2 a couple of different dates for intervenor testimony to be
3 filed in this docket and a couple of different dates for
4 rebuttal testimony to be filed.

5 We will see some rebuttal today. I believe we
6 will see some intervenor testimony next week, and then
7 rebuttal testimony to that intervenor testimony on
8 March 16th.

9 So we won't be able to list, unless the parties
10 are willing to or can tell us today who some of those
11 witnesses would be, we aren't able to list those in the
12 prehearing order at this time.

13 COMMISSIONER JACOBS: Do we have any idea what
14 the order will be? If the intervenors are fine, and I
15 assume you wouldn't care which order the intervenors go
16 in, so if the intervenors are fine about which order they
17 go in, I don't have a problem with not listing them. But
18 if we need to at least get it down to which intervenor
19 will go where, we can do that today. But I'm fine if you
20 guys will agree on that.

21 MR. GUYTON: I think we are fine with the way
22 the order is set forth, Commissioner Jacobs. We will
23 probably have some additional witnesses at the time that
24 they are due, and we will just add them within our order
25 of witnesses.

1 COMMISSIONER JACOBS: Okay. I assume that --
2 you had something, Mr. Wright?

3 MR. WRIGHT: No.

4 COMMISSIONER JACOBS: I'm trying to think
5 through whether or not there will be any need to modify
6 the schedule when we get to hearing. And I don't think
7 that will be a problem if we get to hearing and we need to
8 modify what has been filed, or actually we probably will
9 need to identify what has been filed and then figure out
10 what the exact order is. We can do that the first thing
11 at hearing. But I think we ought to do that as soon as
12 possible. In other words, get the Commissioners a list of
13 everything as soon as possible and just sit down at
14 hearing and get it all ordered out first thing.

15 MR. KEATING: As soon as this is available, the
16 Staff will get the names of the witnesses to the
17 Commissioners so that they can prepare for the hearing.

18 COMMISSIONER JACOBS: Very well. Let me make
19 sure I know who all the intervenors are. Of course, Power
20 & Light, Power Corp, and TECO. Are there any others?

21 MR. KEATING: I believe the only other
22 intervenor is LEAF. LEAF did not file a prehearing
23 statement and they aren't present today. I don't know if
24 any of the other parties have any more information on how
25 much they intend to participate, but --

1 COMMISSIONER JACOBS: I just want to be sure who
2 all we are talking about is going to file.

3 MR. MOYLE: I think by rule you have up until
4 five days prior to the hearing. But at this point that is
5 it, LEAF and the other folks at the table.

6 COMMISSIONER JACOBS: Okay. So are we clear
7 enough and can proceed on that? Very well. Let's move to
8 basic positions. Any modifications? None.

9 MR. SASSO: There are some typographical errors
10 made in the translation on our basic position. If the
11 prehearing officer wishes, we can take those up with
12 counsel after the --

13 COMMISSIONER JACOBS: That will be good. Okay.
14 If there are no others, then we will move to the issues
15 and positions. Very well. What I would like to do is go
16 issue-by-issue and see if we can just come up with a --
17 and identify the list that we would like to go forward
18 with. Okay. We will start with Issue 1.

19 MR. LONG: Commissioner, Tampa Electric's
20 position under Issue 1 should be listed as no.

21 COMMISSIONER JACOBS: Very well. Any other
22 modifications?

23 Moving on to Issue 2, then.

24 MR. LONG: Commissioner, again, Tampa Electric's
25 position should be listed as no.

1 COMMISSIONER JACOBS: Okay. Further
2 modifications?

3 Issue 3.

4 MR. LONG: Commissioner, again, on Issue 3,
5 Tampa Electric's position should be listed as no.

6 COMMISSIONER JACOBS: Okay. Got it.

7 On to, then, Issue 4.

8 MR. WRIGHT: There is a typographic error in our
9 statement. It should simply say reasonably available to
10 OGC, and not the joint petitioners.

11 MR. LONG: Commissioner, on Issue 4, Tampa
12 Electric's position should be no for the reasons given by
13 FPC.

14 COMMISSIONER JACOBS: Okay. Any other -- Issue
15 5.

16 MR. LONG: Commissioner, on Issue 5, Tampa
17 Electric's position should be stated as no.

18 COMMISSIONER JACOBS: Got it.

19 MR. SASSO: Likewise, FPC's position would be
20 no. And since we are indicating where witnesses may be
21 expected to address issues, we would indicate that Doctor
22 Cicchetti may have testimony relevant to this issue.

23 MR. WRIGHT: Our listing of witnesses supporting
24 our position on Issue 5 was omitted. I think it is in
25 our -- I believe it is in our prehearing statement, and if

1 it can just be picked up from there that will solve that.

2 MR. KEATING: We will do that. We will pull it
3 up from the prehearing statement.

4 MR. WRIGHT: No, we left it off. No, it's on
5 there. It's in our prehearing statement. It was on the
6 next page, however.

7 COMMISSIONER JACOBS: Okay. That will be easy
8 enough to do. That's it for Issue 5.

9 Then on Issue 6.

10 MR. SASSO: Commissioner Jacobs, FPC's position
11 should be listed as OGC has failed to address this issue
12 adequately.

13 MR. LONG: Commissioner, Tampa Electric's
14 position on Issue 6 should be no position at this time.

15 COMMISSIONER JACOBS: Okay. All right. Very
16 well. And no further modifications.

17 We will go to Issue 7.

18 MR. LONG: Commissioner, Tampa Electric's
19 position with regard to Issue 7 is no.

20 MR. SASSO: FPC's position is no. The witness
21 is Cicchetti.

22 COMMISSIONER JACOBS: Very well. All right.
23 Any others to Issue 7, then?

24 Issue 8.

25 MR. LONG: Commissioner, Tampa Electric's

1 position on Issue 8 is no.

2 COMMISSIONER JACOBS: Very well.

3 MR. GUYTON: Commissioner Jacobs, this looks to
4 me to be the ultimate issue in this case. I think perhaps
5 it may serve everyone better if this were listed at the
6 end of all the issues.

7 MR. KEATING: I think perhaps once we have
8 worked through all the issues today, I agree that that
9 would be more appropriate at the end the issue list and
10 then followed by what we have as Issue 9 right now, should
11 the docket be closed.

12 COMMISSIONER JACOBS: Okay. I agree with that.
13 Now, what I would like to do then is go through the
14 following issues, and we will make a determination as to
15 which are to be included further and how so. Some of
16 these, I assume have been -- and I assume that they are
17 listed by who proposed the issue.

18 If we can do this very quickly. I will give
19 that party an opportunity to clarify or suggest briefly
20 why that issue should be here. There were some instances
21 where I wasn't clear, at least, on what some of the issues
22 were. So if you would just briefly clarify what the issue
23 seeks to elicit and why it should be in the case. So
24 first we will begin with Issue 10.

25 MR. WRIGHT: Commissioner Jacobs, as a basic

1 matter, we don't have any objection to consolidating all
2 the issues down to the first nine listed here. But I will
3 tell you that our Issues 10, 11, 12, 13, and 14 are all
4 included in our issues because they were issues that were
5 voted on by the Commission in the Duke New Smyrna need
6 determination case. Accordingly, we thought that they
7 were issues that the Commission would find it appropriate
8 to vote on in this proceeding. That's why they are there.

9 COMMISSIONER JACOBS: Okay. Let me do this up
10 front, perhaps. Well, no, let me stay with the procedure
11 we were going by. We will just stay issue-by-issue. As
12 to Issue 10, I understand what the focus of the issue is,
13 and it was essentially addressed in the majority decision
14 in Duke. Staff and I had a very good discussion about
15 this this morning. What I'd like to do with this issue is
16 defer ruling on it until hearing.

17 The import of that is I have a concern that we
18 not unduly foreclose options for parties in this, and so
19 this is actually in an abundance of caution that we not
20 rule out -- and probably the full panel will then take the
21 opportunity to determine whether or not this is an issue
22 that should go forward.

23 This probably would be -- I guess this is mixed
24 fact and law, so it could a matter that could be brought
25 up in hearing. So if you feel the need to bring forward

1 evidence to support this, I would have it ready, begin --
2 but I think this will be an issue that will be decided at
3 the beginning of hearing as to whether or not we proceed
4 with producing evidence on this issue. Does everybody
5 understand what we are doing with this one?

6 MR. GUYTON: Commissioner Jacobs, FPL has no
7 objection to this issue. And just for the record, we
8 would like to see it stand.

9 COMMISSIONER JACOBS: Okay.

10 MR. SASSO: We have no objection to the issue.
11 I would like to indicate that our position on this would
12 be no, if it is included. And, in fact, on Issue Number
13 9, the draft order does not indicate our position, and we
14 would like the order to reflect that our position on Issue
15 9 is yes, after the petition is dismissed or denied.

16 MR. WRIGHT: And, correspondingly, OGC's
17 position on Issue 9 should be yes, after the Commission's
18 order becomes final. I should say after the Commission's
19 order granting the requested determination of need becomes
20 final.

21 COMMISSIONER JACOBS: A little optimism never
22 hurts. Okay.

23 So then that takes us to Issue 11. Well, do you
24 need to reexplain? I understand what your -- let me ask
25 you this. As to 11, and 12, and 13, are there objections

1 to any of those issues?

2 MR. GUYTON: 11 and 12?

3 COMMISSIONER JACOBS: 11, 12, 13 -- and you said
4 14, too, Mr. Wright, also?

5 MR. WRIGHT: Yes, sir.

6 MR. GUYTON: FPL has no objection to Issues 11,
7 12, or 13. We think Issue 14 is worded in a fashion that
8 presumes a fact that is not established and is not worded
9 in a fashion that is, if you will, objective. It assumes
10 that the state needs a robust competitive wholesale power
11 supply market, and also assumes that that is something
12 within the Commission's purview. And we just think the
13 issue is probably not worded appropriately.

14 COMMISSIONER JACOBS: Could we not -- could not
15 these issues be subsumed, in fact, into earlier issues?
16 The thought occurs to me that Issue 11, 12, 13, and --
17 well, 11, 12, and 13 could be answered through Issue 1.

18 MR. MOYLE: I would say I think that would be
19 something that would probably prove acceptable if we could
20 deal with a lot of these issues, both those -- our issues
21 and then the other issues. A lot of them are subsumed by
22 these other issues.

23 COMMISSIONER JACOBS: If there is not any
24 disagreement, what I would like to do is as to Issues 11,
25 12 and 13, have them -- if we can agree that the essence

1 of those issues are covered in Issue 1, we would remove
2 those.

3 MR. GUYTON: Commissioner Jacobs, I'm afraid
4 that we are in a position to suggest that -- we caution
5 against trying to subsume factual issues within broader
6 larger factual issues. I mean, the purpose of the hearing
7 is to have the Commission deliberate on disputed issues of
8 material fact. I mean, that's why we have a hearing here.

9 To the extent that we try to subsume those or
10 fail to differentiate those points of contention within a
11 broad issue, I think we defeat the purpose of a hearing.
12 We would suggest that the Commission is better served by
13 trying to identify the facts that have been specifically
14 identified by the parties as being material and in
15 dispute.

16 COMMISSIONER JACOBS: I understand. Any others,
17 any other position on that?

18 MR. WRIGHT: Commissioner, you can do it either
19 way. I think in the interest of efficiency it makes some
20 sense to try to consolidate down. I have been in a number
21 of cases before this Commission in which my clients have
22 wanted to advance more specific factual issues, but what
23 we have been told is that they are subsumed, and if we
24 wanted to address them in a specific way then we should do
25 so as proposed findings of fact. But it's your call.

1 COMMISSIONER JACOBS: Staff, do you have a
2 recommendation on that?

3 MR. KEATING: I guess to the extent there is an
4 agreement among the parties that a specific issue should
5 remain, we would be a little bit reluctant to recommend
6 that it be taken away and call it subsumed in another
7 issue.

8 However, at the same time we recognize in light
9 of our experience in the Duke docket that proceeding with
10 a long list of factual issues or policy issues, we may
11 just get a vote on what we consider the essential issues
12 and that is -- at least in the first eight or nine that is
13 what staff has tried to boil down the issue list to in
14 this case. But, again, to the extent that the parties
15 agree something should be an issue, I would be reluctant
16 that we remove that issue.

17 COMMISSIONER JACOBS: Okay. Let's do this.

18 MR. MOYLE: We would be willing to do 1 through
19 9.

20 COMMISSIONER JACOBS: I think we agreed to 1
21 through 9, and now essentially I'm looking at some of
22 these later issues and to the extent to say that we can
23 bring some of those into some of the earlier issues.
24 Okay.

25 Issue 10 I think we have agreed on, as well.

1 Issue 11, we will let that stand. Issue 12, I think if we
2 are going to let issue 11 stand, Issue 12 should at least
3 be going with that.

4 MR. KEATING: Is that Issue 12 would be
5 addressed under issue 11?

6 COMMISSIONER JACOBS: Let me make sure. Let me
7 read it again.

8 MR. KEATING: I think staff could recommend that
9 it be subsumed either under Issue 1 or under Issue 11.

10 COMMISSIONER JACOBS: Yes. We will go with 11,
11 I think it is closer.

12 Issue 13. Let me see what this says here.

13 MR. WRIGHT: Commissioner, I will point out to
14 you that this is a standard issue in need determinations.
15 I think it could be subsumed under Issues 1 and 2, but it
16 is a standard issue. It was voted on in the Duke case and
17 it does specifically flow out of one of the rule
18 requirements, which is that we present a statement of the
19 adverse consequences that would befall the state if the
20 proposed power plant were not constructed in the amount
21 and time sought.

22 So, again, it is your call. We can deal with it
23 under 1 and 2, but it is a standard issue. And if we are
24 going to try to consolidate these down to a small number
25 of issues, we would be willing to forgo this issue and

1 have it subsumed. If we are not, then we might feel
2 differently.

3 COMMISSIONER JACOBS: No, no, my feeling was
4 that it should go under Issue 1. I really think -- the
5 only hesitancy I have is if we could get out of Issue 13
6 some more discussion on specific factors. But I think
7 that can happen under Issue 1, as well. What would be the
8 factors that would lead to the adverse consequences? But
9 I think we can get that out of Issue 1, as well.

10 Issue 14 I will let stand. Issue 15, although I
11 think it really could go under Issue 7, but there is
12 enough of a difference there that I think we can let that
13 stand.

14 MR. LONG: Commissioner, if Issue 15 is going to
15 remain, Tampa Electric's position should be noted as no.

16 COMMISSIONER JACOBS: As to Issue 15, that is
17 going to be one that for the moment I'm going to defer
18 ruling on. Again, along the same reasoning as I indicated
19 under issue -- what was it, 10. And that would apply also
20 to Issue 16.

21 MR. MOYLE: On Issue 15, I think it might -- if
22 that is going to stay in, it might be clearer to simply
23 ask the question, it is a legal question, whether the
24 Commission has statutory authority to render a need
25 determination under Section 403.519 for OGC, question

1 mark, rather than all of this kind of loaded merchant type
2 language.

3 MR. WRIGHT: For the proposed power plant. And
4 I would assume that the intervenors' argument would be
5 that, no, it doesn't because of what the rest of the
6 question says.

7 MR. GUYTON: Well, I mean, is there any
8 contention that they are a merchant plant or that they
9 don't have an agreement in place for the sale of firm
10 capacity energy to a state-regulated utility? I mean,
11 can't we stipulate those facts?

12 MR. MOYLE: I mean, this is sort of the start of
13 the line of conversation I'm sure we are going to get into
14 with a lot of the FPL issues where they are just written
15 in a way that it is -- it's not the objective question, it
16 is the leading question type of thing. I mean, they will
17 get into the statutory obligation to serve and what all of
18 that means. I mean, there is just a lot there.

19 I think the pure legal question for you is do
20 you have the statutory authority to render a need
21 determination for OGC. And that is kind of the plain
22 question, the project that is presented in this case.

23 COMMISSIONER JACOBS: I can go along with the
24 language for the proposed plant as -- let's go off the
25 record for a moment.

1 (Off the record briefly.)

2 COMMISSIONER JACOBS: Back on the record. I can
3 buy off on the language as proposed in this docket.

4 Does that capture your concern, Mr. Guyton? Is
5 that sufficient enough?

6 MR. GUYTON: I think we can address the issue
7 that way, Commissioner. I don't think that this factual
8 statement is at all loaded. I think it is an accurate
9 representation of the facts that OGC has plead in its
10 petition. It's not my issue. I think FPC did a good job
11 of framing the issue without loading it. But I think we
12 all understand what the facts are. So we can address it
13 in the abbreviated form. FPL's position would be no.

14 MR. SASSO: May we just have the new formulation
15 restated so I can understand what it is.

16 COMMISSIONER JACOBS: Does the Florida Public
17 Service Commission have the statutory authority to render
18 a determination of need under Section dah-dah-dah. I
19 shouldn't say that on the record. Under 403.519, Florida
20 Statutes, for a merchant plant as proposed in this docket
21 Okay.

22 MR. SASSO: Commissioner Jacobs, excuse me, we
23 have now gone through a number of issues determining
24 whether they will stay in the case or not. But as to
25 several of these, the draft prehearing order does not list

1 FPC's position. When it is convenient, I would like to go
2 back and indicate what our position is on these issues.

3 MR. KEATING: I think we will have that -- we
4 will have that problem to deal with on a few of these
5 issues. And we could have the positions stated on the
6 record today, or if the parties would like to provide the
7 positions to staff after the prehearing, we can add them
8 to the prehearing --

9 COMMISSIONER JACOBS: That's fine with me. Will
10 that suit you?

11 MR. SASSO: That's fine with me.

12 MR. WRIGHT: You will get us a list of the
13 issues that come out of this proceeding this afternoon and
14 we will send you back our positions.

15 MR. KEATING: I think that it would be a good
16 idea to compile what we have left and reorder them
17 appropriately.

18 MR. MOYLE: Save time that way.

19 COMMISSIONER JACOBS: Okay. That takes us to --
20 where were we, 14. Did we deal with 12? We said 12 goes
21 into 11. 13, you said stays, right?

22 MR. SASSO: I think you indicated that it would
23 go into 1.

24 COMMISSIONER JACOBS: Right. I'm sorry, I did
25 say that. I did say that. Let me write myself notes

1 here.

2 MR. SASSO: And on 14, Commissioner Jacobs, you
3 indicated that the issue would stand, but we did have a
4 question about the wording of that issue, as well.

5 COMMISSIONER JACOBS: Uh-huh. What is your
6 question?

7 MR. SASSO: As Mr. Guyton indicated, this
8 appears to be a loaded issue or statement. It presumes
9 that there is a need for a robust competitive wholesale
10 power supply market and that that is properly within the
11 Commission's province. There should be a more neutral way
12 to state this.

13 MR. WRIGHT: Commissioner, I didn't bring the
14 Duke staff recommendation or prehearing order with me, but
15 I think this is -- if not identical, very, very close to
16 identical to the issue that the Commission saw fit to vote
17 on in the Duke New Smyrna case.

18 MR. SASSO: We would submit, Commissioner
19 Jacobs, that this is clearly subsumed in Issue 1. To the
20 extent that the Commission has any interest in the need
21 for power, that is articulated in the statutory criteria.

22 COMMISSIONER JACOBS: Well, actually I like
23 Issue 7 better. What do you think? Does that help you?

24 MR. MOYLE: I thought we had made the decision
25 this stays in, and then the only question is how it's

1 worded. Or you could do two questions. If Mr. Sasso
2 doesn't necessarily believe that the state has a need for
3 a robust competitive wholesale market, that could be a
4 question. Does the state have a -- or should the state as
5 a matter of policy have a robust competitive wholesale
6 market.

7 MR. SASSO: No, our disagreement is more
8 fundamental. It concerns whether this an appropriate
9 issue in this docket. The statute defines what the need
10 issues are, and they are listed in 1, 2, 3 as initially
11 proposed by the staff. And we think to the extent that
12 this is relevant at all, it is subsumed in those issues.

13 MR. KEATING: Commissioner, staff looking
14 through these, our opinion was that that issue could be
15 subsumed under Issue 7, which is sort of a general policy
16 issue regarding the public interest involved in this
17 determination.

18 MR. WRIGHT: Just for the record, Commissioner,
19 we think that this issue is well within the Commission's
20 province and interests. Again, as I have said earlier
21 today, if what we are trying to do is get to an
22 abbreviated list of issues, we are happy to support that
23 effort and we could address this within the context of
24 Issue 7.

25 On the other hand, we think it is a significant

1 and valid issue within the Commission's jurisdiction that
2 the Commission did see fit to vote on in the Duke New
3 Smyrna case. And if we are going to be leaving a lot of
4 issues in, then we think this one probably ought to stay.

5 COMMISSIONER JACOBS: We will move this issue
6 into Issue 7, and I will tell you why. While I understand
7 your argument, it begs another question, to what extent
8 does our authority here require that we promote a robust
9 wholesale market. Which I think probably is more
10 accurately addressed in the public interest discussion
11 rather than getting off into the jurisdiction for
12 wholesale market. That's why I think it would be better
13 to do it that way.

14 MR. KEATING: And, Commissioner, I would just
15 like to point out, even though I don't intend this to
16 support the idea that staff would like to have more issues
17 than the basic few that we have identified, but the need
18 determination statute beyond identifying the first four
19 issues that are listed here in this draft prehearing order
20 allows for the Commission to consider other matters --

21 COMMISSIONER JACOBS: Okay.

22 MR. KEATING: -- that are within its
23 jurisdiction.

24 COMMISSIONER JACOBS: Okay. That takes us to
25 Issue 15. That is Power Corp's issue?

1 MR. SASSO: Yes, sir. You indicated that you
2 were inclined to defer ruling on Issues 15 and 16.

3 COMMISSIONER JACOBS: Right, I did. I'm sorry.
4 And 16.

5 MR. SASSO: And 16. And that is acceptable to
6 us.

7 COMMISSIONER JACOBS: Okay.

8 MR. SASSO: On Issue 17, which is also our
9 issue, we would agree to have that subsumed in Issue 7,
10 because that is basically another way of stating the same
11 thing.

12 COMMISSIONER JACOBS: Great. Thank you. That
13 takes us to Issue 18. That is Florida Power & Light's
14 issue. I think this is FPL's issue.

15 Are you going to take care of that, Mr. Childs?

16 MR. CHILDS: Well, we think this is a material
17 issue and we dispute it as we read part of the case that
18 has been filed by OGC. And so we have attempted to frame
19 that in a neutral way and ask if that is true so that we
20 can address it.

21 MR. WRIGHT: Commissioner, is this an
22 appropriate time for me to speak on this?

23 COMMISSIONER JACOBS: Yes, go ahead.

24 MR. WRIGHT: We believe that a number of FPL's
25 issues addressing prices, prices and costs and the

1 methodologies employed in the Altos models are
2 appropriately subsumed under Issue 2 and perhaps Issue 3,
3 which are the adequate electricity at a reasonable cost
4 issue and the most cost-effective alternative issue.

5 And I would -- I mean, just to tell you where we
6 are coming from, I think that is true of 18, 19, 20, 21,
7 22, 23, partly 25, although I think 25 can also be
8 subsumed under Issue 5, which is the sufficiency of
9 information issue, 26, 27, 28, and 29.

10 COMMISSIONER JACOBS: You can respond.

11 MR. CHILDS: Well, maybe this is a way to
12 illustrate it. Mr. Guyton said earlier, and it is our
13 firm belief that what we are here for is to identify
14 disputed issues of material fact. That is the entire
15 purpose of having these contested hearings. Issue 2 and 3
16 to me, particularly Issue 3, which counsel for OGC has
17 suggested is the home for these separate issues we have
18 identified, I think is more in the nature of an ultimate
19 issue.

20 And I think that illustrates our point is that
21 they would like to prove the case about whether it is the
22 most cost-effective alternative. And we believe that one
23 of the necessary components or material parts of that is
24 the case that they have presented here which makes -- and
25 the reason the quotation marks, for instance, on Issue 18

1 are there, the reason those quotation marks are there is
2 because they are terms that are used in the testimony of
3 their witness. And so we are posing that as an issue,
4 that is what he is testifying to, and we are posing that
5 as an issue.

6 Now, I think that it does go ultimately to some
7 other issues. The ultimate issue should this be approved,
8 is it in the public interest. But this is the way that
9 we -- and it is really the only effective way that we can
10 identify for the trier of fact just exactly what our
11 disagreement is, just exactly what we maintain requires
12 proof, and just how that result fits into the ultimate
13 issue. So we think they are appropriate.

14 I don't think that it is helpful to take an
15 issue that has been identified as being material and in
16 dispute and moving it when there is, I think, a basis to
17 address it in the testimony and therefore a necessity for
18 a decision.

19 MR. KEATING: Commissioner, I was just going to
20 add that staff does tend to agree with Okeechobee, at
21 least on some of the issues, that they could be subsumed
22 within the broader issues. And we would point out, and
23 this probably doesn't address Mr. Childs' concern, but we
24 do believe that Florida Power & Light is not precluded
25 from addressing these more particular specific factual

1 issues within the broader ultimate issues of fact.

2 MR. CHILDS: And I don't mean any disrespect.
3 My response is that I don't think we would be precluded,
4 but I don't think that is what we are doing here. I mean,
5 as a practical matter to say we are not precluded from
6 addressing it means that if it is subsumed and not
7 specifically identified as a matter on which the
8 Commission will vote, then you may or may not get your
9 decision on the basis of the disputed issue of material
10 fact.

11 So I have raised it because we think it is
12 material and we dispute it. If it is not material, you
13 know, then that is something we can talk about. But it is
14 address in their testimony and we think it is material.
15 If it is in dispute and it is material, then we think it
16 is in all cases an appropriate issue.

17 I will try, you know, if there is some effort to
18 consolidate to -- and I'm just not aware of any,
19 Commissioner -- if there is some effort to consolidate
20 issues that, you know, where there is a redundancy we are
21 certainly willing to do that, but I don't want to remove
22 it for that reason.

23 COMMISSIONER JACOBS: Here is what I would
24 like -- first of all, let me kind of give you my approach
25 on this. I understand the arguments. And I'm persuaded

1 that many of the issues here are probably, can probably be
2 answered. But, again, in an abundance of caution here,
3 what I would like to do is, and let me try and make sure I
4 state it as best I can. What I hear you saying is that
5 not only do you wish to make argument as to the ultimate
6 issue, you wish to give some scrutiny to the process by
7 which that ultimate conclusion was reached, i.e., is it
8 reasonable for the Commission to make this final
9 conclusion given the support that was offered by OGC. And
10 specifically you go through the particular issues of the
11 analyses process, the methods and assumptions, the method
12 of qualification.

13 MR. CHILDS: Right.

14 COMMISSIONER JACOBS: I would like to make that
15 one issue, i.e., kind of what I just said, is it
16 reasonable for the Commission to reach its ultimate
17 conclusion under Issue 2, given OGC's proof. And if you
18 wish to list those specific issues, that's fine, but I
19 think that is broad and general enough. It sounds to me
20 like that would get you where you want to go.

21 MR. CHILDS: Well, it may. And maybe I could
22 talk to the staff further about trying to implement that.
23 What I'm trying to do is to illustrate, and maybe this
24 fits there, is let's say we have a petitioner that
25 petitions and submit proof to you and they say, "You

1 should grant our relief because A, B, and C." And I think
2 I'm entitled to challenge A, B, and C, which is their
3 proof. And not simply say, "Well, should the relief be
4 granted?" I mean, I want to -- because it is a matter of
5 proof, and so I want to raise it because I dispute it. If
6 I didn't dispute it, I wouldn't raise it. But since we do
7 dispute it, we do. I think it should be addressed. It
8 may be that we can incorporate it that way.

9 And as I understand what you are saying, it
10 would be that we would list this general issue and then
11 specifically incorporate subsidiary subparts to that.

12 COMMISSIONER JACOBS: With some degree of
13 hesitancy -- well, I don't know that we need to do the
14 subparts to the issue. I think you can address it in the
15 issue. What I want to make sure, though, we make
16 available to you is the opportunity to make that argument
17 that you just raised. I'm fine with that. I would like
18 to do it in one issue. I wouldn't like for that issue to
19 take on a new life with its subsections, but I would like
20 for one issue to be -- for you to be able to challenge the
21 proof, that is it reasonable for the Commission to reach
22 its ultimate conclusion given that here is the proof that
23 was offered. And within that issue you could then
24 challenge all subparts of that proof that you would like
25 to do, as you would like to do.

1 MR. CHILDS: But this is my concern,
2 Commissioner. I believe that somewhere someone has a
3 burden of proof. And they have a burden of proof on
4 material issues, and that's why they are material. And if
5 we don't identify them as being material, then I'm a
6 little concerned that when we get to the ultimate issue
7 that it will be perceived perhaps that it is being
8 addressed differently than as it relates to the material
9 issues that are in dispute.

10 I mean, we are -- these are not, these are
11 generally, and I think all of them without exception are
12 matters that relate to the proof that has been offered.
13 And we haven't talked about reducing their testimony so
14 that it says, should it be approved. And so we have
15 attempted to come -- or I have attempted to come up with
16 specific issues so that they are clear for the Commission,
17 that they understand that as it relates to this case, for
18 instance, when they go into this case, that there is a
19 dispute, for instance, about Issue 19 about the proposed
20 prices. I want them to know that. And that they know
21 that is a factual dispute that is material to their
22 decision and not believe that we are just sort of
23 independently throwing pebbles at the ultimate issue, but
24 that this is material.

25 COMMISSIONER JACOBS: I understand.

1 MR. CHILDS: So I really would. I mean, maybe I
2 misunderstood. But I thought that if you were saying they
3 would be incorporated and incorporated by reference, okay.
4 One of the other practical matters in terms of
5 incorporating issues is that when you incorporate and then
6 you tell parties that their filings on the issues are
7 limited to a certain number of words, you have kind of
8 compounded that problem. But, anyway, that's where I am.

9 COMMISSIONER JACOBS: Okay. Mr. Wright.

10 MR. WRIGHT: Commissioner, the ultimate issue in
11 this case is whether the determination of need should be
12 granted. There are several factual issues that the
13 Commission is charged to consider, and those are the
14 criteria set forth in 403.519, including other matters
15 within its jurisdiction.

16 We have come forward and asked for relief based
17 on general allegations in our petition that we satisfy
18 each of the statutory criteria. And we have put forth,
19 you know, fairly extensive evidence on detailed ways by
20 individual questions and answers by individual exhibits
21 and so on as to how our evidence proves that as matters of
22 fact we satisfy the factual criteria that hopefully will
23 lead you to your decision to grant the need determination.

24 Other than predicate questions and introductory
25 questions and things like that, most every question and

1 answer that is posed in this case presents an issue that
2 is very likely to be a disputed issue of material fact.
3 That is probably true with respect to most of these
4 substantive questions and answers that our witnesses have
5 put into evidence. And from our perspective it is pretty
6 much true with respect to the questions and answers that
7 FPL's and FPC's -- or at this point FPL's witnesses have
8 put into evidence.

9 You know, I think what you are trying to do is
10 get to a manageable list of issues. I think most of these
11 issues really go to the category of electricity at a
12 reasonable cost factual criterion issue or the
13 cost-effectiveness issue. And then Issue 25, and they all
14 kind of tie around to Issue 25, as well, because they all
15 relate to the Altos models. Issue 25, which is whether
16 the model and associated assumptions is capable of
17 valuation or verification so as to be relied upon for the
18 purposes presented by the OGC. I presume that means to be
19 relied upon by the Commission. And that really is
20 directly subsumed under Issue 5, which is whether the
21 Commission has sufficient information to assess the need
22 for the proposed power plant.

23 MR. CHILDS: Well --

24 COMMISSIONER JACOBS: Briefly, Mr. Childs.

25 MR. CHILDS: You know, I want to return -- this

1 is all helpful. But what it says is I won't let you
2 identify an issue that challenges what I have presented to
3 the Commission. And I go back and say that the rules
4 under the Administrative Procedure Act, we are talking
5 about disputed issues of material fact, that's why we have
6 this 120.57(1).

7 The rules require, the uniform rules require
8 uniformly that one of the functions is to identify the
9 disputed issues of material fact. Not only so they can be
10 tried, but so there can't be surprise. I mean, if we said
11 so you can avoid surprise. But, you know, now I have laid
12 them out, and you say, well, let's subsume them. It's not
13 just a function, Commissioner, of the Commission saying,
14 "Well, we have heard everything, and we can decide what to
15 do."

16 I think it is a function of affording the
17 parties who have participated in the process, who are
18 participating in the process the opportunity to address
19 the issues with evidence and to challenge the evidence
20 that has been presented in a meaningful way. And I don't
21 think that it is meaningful to say, well, we think you can
22 do what you want, number one; and, number two, we think it
23 ought to be subsumed.

24 Well, maybe so, and I think that is helpful to
25 the issue of I can just put on a general case. I have

1 tried to identify what specifically is in dispute. I am
2 laying the case out for you. And I think that we are
3 entitled -- number one, I think we are supposed to do
4 that. Number two, I think we are entitled to a vote of
5 the Commission that way.

6 So, please don't under any thought of sort of
7 generally simplifying lose sight that we are trying to
8 protect our interests in this case to make sure that the
9 contention that is presented is addressed. And by
10 analogy, by analogy. And you think about what the
11 Commission does in a fuel adjustment hearing. The
12 ultimate issue is -- always there are ultimate issues --
13 what are the fuel adjustment factors for the forecast
14 period?

15 Then you go through all the individual issues
16 for each of the companies that ask the particular points.
17 And if there is a fact in dispute, we routinely identify
18 the fact of dispute and we try it. And, you know, I don't
19 think that -- I think that illustrates that when we are
20 really trying to focus on the proof that we don't have
21 this dispute about the issues.

22 COMMISSIONER JACOBS: Okay. Do I have a
23 response from staff?

24 MR. KEATING: Again, I think an important point
25 that Okeechobee made is that part of what we are trying to

1 do here is come up with a manageable list of issues for
2 this case. And we agree that 403.519 sets the criteria or
3 considerations that the Commission is required to take a
4 look at in this case, and that each of these -- that many
5 of these issues raised by Florida Power & Light, they will
6 have the opportunity to make argument on those issues
7 without having them identified as separate issues if they
8 are subsumed in one of the broader issues.

9 COMMISSIONER JACOBS: Okay. Here is what I
10 would like to do. I want to follow the course that I
11 described earlier. And let me be very specific. We will
12 craft a -- and here is what I would like the issue to get
13 to. Is it reasonable for the Commission to reach its
14 conclusion under issue -- what was it, 2? I think it was
15 2, right? That is the one on -- right. Is it reasonable
16 for the Commission to reach its conclusion under Issue 2,
17 given proof presented by OGC? And I think I may be
18 swinging to allowing subparts here. One subpart would
19 seek to get to what you are asking for in Issues 18 and
20 19. I'm sorry, Issues 19 and 20, i.e., the inputs and
21 price for the output. Okay.

22 And then the other would get to the methodology
23 which would attempt to get to what you are asking in Issue
24 18, 22, 23 and 26. Okay. So one subpart will be asking
25 for inputs and outputs, reasonable assumptions and

1 statement of costs. The other would be methodologies.
2 And I skipped over an issue here that I didn't put in
3 there. 24. No, that is different. I skipped over 21?
4 No, I meant 21 should go under methodology. Let me make
5 sure here. 24.

6 MR. KEATING: Commissioner.

7 COMMISSIONER JACOBS: Yes.

8 MR. KEATING: I guess before we go on I wanted
9 to make sure. I wasn't exactly following what we were
10 going to do with -- and I guess we covered 18, 19, 20, 21,
11 22, 23, and 26. Is that right?

12 COMMISSIONER JACOBS: Yes. Now I want to cover
13 the ones that I didn't cover. That's what you were going
14 to bring up to me?

15 MR. KEATING: Well, I wanted to make sure I knew
16 what we were doing with the ones that you didn't cover.

17 COMMISSIONER JACOBS: I'm essentially subsuming
18 those into this one issue, into one of those subparts.
19 Actually it doesn't matter to me. If I misstate the
20 subpart they can get it under that issue. Whatever
21 evidence that we are going to present hopefully under each
22 of these issues they can present under that one issue.

23 So please don't take my categorization of the
24 subparts as being really hard and fast. I want to give
25 you the flexibility to make the arguments that you would

1 under those issues into this one issue. But that's how I
2 logically saw it. One would be the assumptions and costs
3 of inputs and outputs; and then the other would be the
4 methodology itself. And watch me on this to make sure I'm
5 keeping myself straight. That means Issue 24, that I will
6 let stand.

7 MR. WRIGHT: Commissioner, if that is your
8 decision, that's fine. But I think it is a lot like Issue
9 10.

10 COMMISSIONER JACOBS: You're right. Which I
11 said I would defer. So I will do that on this one, too.
12 I'm subsuming this into Issue 10, which I said I would
13 defer ruling on.

14 MR. GUYTON: I think you need to understand that
15 Issue 24 is broader than Issue 10.

16 COMMISSIONER JACOBS: Help me understand that.
17 Walk me through that.

18 MR. GUYTON: Issue 24 goes beyond pleading
19 requirements.

20 COMMISSIONER JACOBS: Walk me through that, how
21 they differ.

22 MR. GUYTON: Well, Issue 24 -- or Issue 10
23 applies only to pleading requirements under a specific
24 rule, 25-22.081. If you look at the scope of the language
25 under Issue 24, it is whether the request for

1 determination is in compliance with the applicable rules
2 of the Commission. There are other rules that are
3 applicable other than just the Rule 25-22.081.

4 COMMISSIONER JACOBS: Okay.

5 MR. WRIGHT: Commissioner, maybe you could
6 subsume 10 under 24 and then carry that forward.

7 COMMISSIONER JACOBS: Yes. That's probably a
8 better way to do that.

9 MR. MOYLE: Also 16 is the bid rule. It's a
10 specific rule. And if you are going to have a broad Issue
11 24 with respect to all rules --

12 COMMISSIONER JACOBS: Make that a subpart
13 because that was important. That one was -- I wanted to
14 make sure that stays clear. Okay. 25. I think that is
15 covered in Issue 5. I'm persuaded by that.

16 26 we covered, right?

17 MR. KEATING: Yes.

18 COMMISSIONER JACOBS: 27 will stand, we will
19 keep that issue.

20 28. I'm at a loss on that one. Help me out,
21 Mr. Childs.

22 MR. CHILDS: A fundamental and repetitive part
23 of the pleading and of the case presented is that you
24 should approve this because -- you should approve this
25 project because it will provide power to customers of

1 Florida at no risk. And so this is an issue that they
2 have raised and we are specifically joining that issue so
3 that you can decide it. I mean, it is part of the
4 petition. They define merchant plant. They define
5 merchant plant as one that doesn't impose any risk. So,
6 you know, and then they address you and say that you
7 should make your decision on the basis that it doesn't
8 impose a risk.

9 And so we are trying to address this question,
10 does it impose a risk. It's material. It's material in
11 the pleadings and it is material to the decision because
12 of the way they framed their case. And so we are trying
13 to join on that issue.

14 MR. MOYLE: And we would argue that risk is part
15 of the overall reliability and integrity issue, which is
16 number one. That in order for you to determine whether
17 something is reliable and it can be counted on and has
18 integrity, that the risk associated with it is part of
19 that. I don't think it needs to be broken out as a
20 separate issue.

21 MR. CHILDS: I think reliability and integrity,
22 with all due respect, Commissioner, has routinely,
23 historically been understood to go to need as it relates
24 to capacity need, need as to relates to the Commission's
25 power under the grid bill. I'm talking about risk as they

1 have identified it, which is economic risk associated with
2 the decision to buy from what they call the more costly
3 inefficient utility plants or from the merchant plants
4 which impose no risk. I mean, this is their case, and I
5 don't know why they would be afraid to address the issue.

6 COMMISSIONER JACOBS: Staff.

7 MR. KEATING: I guess staff's concern with the
8 issue at first glance was just the term no risk. And I
9 think Mr. Childs has clarified that a little bit and
10 clarified that it is economic risk that we would be
11 referring to.

12 MR. CHILDS: If you want, I can reword it to say
13 risk in quotation marks, or risk as asserted or urged by
14 OGC in this proceeding somehow. Because I'm not trying to
15 be vague about it, I'm trying to join their issue.

16 COMMISSIONER JACOBS: Give me an explanation of
17 Issue 30. Skip ahead for a moment.

18 MR. CHILDS: Issue 30 poses -- they have
19 proposed a case about all of the benefits that they are
20 going to provide, and they attempt to quantify them. They
21 talk about them at length, and they have a methodology to
22 do that. And they also -- they also testify as to whether
23 their project is viable. They do. They offer testimony.
24 And I think it's -- not only that, I think it is material.
25 I think it is material in this regard. This is a need

1 determination proceeding that involves -- that is part of
2 an overall process looking to impact on the environment
3 under Section 403. They have told you that they will
4 produce benefits. And I think a corresponding or
5 necessary part of their discussion of benefits is if the
6 project is built and goes forward, is it economically
7 viable under the conditions they have proposed.

8 You know, so I think that is necessary. I mean,
9 you don't want to have a plant that is there that goes
10 belly-up in five years because it can't survive and have
11 an adverse impact.

12 COMMISSIONER JACOBS: Okay. We will let Issue
13 30 stand. I think Issue 27 can be -- is it 27? No, 28,
14 I'm sorry. 28 can be covered within that, so 28 would be
15 subsumed in that. Let's go back to 29. Help me
16 understand that one. I'm sorry, 28 is subsumed into Issue
17 30. Now we are back to Issue 29.

18 MR. SASSO: Commissioner Jacobs, before we move
19 off of 28 and 30, may I be heard briefly?

20 COMMISSIONER JACOBS: I'm sorry, go right ahead.

21 MR. SASSO: I think they really do address two
22 separate issues.

23 COMMISSIONER JACOBS: Okay.

24 MR. SASSO: And we have not proposed either of
25 these issues, but I'm beginning to perceive the necessity

1 of having them on the table. And I guess part of our
2 frustration is the petitioner has essentially proposed the
3 case outside the framework of Issues 1 through 4. Now,
4 because of the Duke decision we are obliged to address the
5 framework of 1 through 4, but the fact is they have
6 proposed approval of this project based on factors such as
7 that reflected in Issue 28 and that reflected in Issue 30.
8 And unless we identify those factors explicitly, we are
9 not addressing the real issues in this case.

10 Issue 28 concerns economic risk to ratepayers,
11 to the people in the State of Florida. Issue 30 really
12 addresses risk, if at all, only to the developer of the
13 project. Those are two fundamentally different concepts.
14 And I don't think we can subsume one into the other. And
15 we would request that we keep both of them on the table.

16 MR. CHILDS: By risk under Issue 28, when I said
17 I would be happy to identify it to be risk as OGC speaks
18 of it, OGC poses a situation that they urge is a proper
19 way to view the purchase and sale of power in the state.
20 And they say that if utilities purchase from a merchant
21 plant, there is no risk to retail Florida electric
22 customers because utilities don't have to buy from us
23 unless they want to. Therefore, we are better. We are
24 better. We are better than a plant that is built by a
25 utility. Because a utility, if they built the plant,

1 would impose a risk on a customer.

2 That is the fundamental basis for their case
3 here. And we are trying to raise the point is that true.
4 They have addressed it, they have evidence on it, and we
5 are saying we want to address whether that is true. And
6 our position is that it is not true.

7 COMMISSIONER JACOBS: What about Issue 7, good
8 old Issue 7?

9 MR. SASSO: That is the broad public interest
10 issue.

11 MR. CHILDS: That is -- well, maybe this is to
12 try to go to what I'm trying to express. I think that
13 Issue 28, for instance, goes to an issue of whether this
14 is the least-cost alternative, which is one of the
15 explicit factors. I think it clearly is something that is
16 affecting your decision on Issue 7. I think it affects
17 your decision on Issue 7. I don't think it is subsumed,
18 because it is one of the material facts that relates to
19 whether it is consistent with the public interest. The
20 material fact is is there a risk to the customer? And it
21 is is there a risk to the customer from the merchant
22 plant, and is there a risk to the customer from the
23 alternative of a utility constructed plant?

24 They answer the question for you in their
25 testimony and in their case. They petition on that basis

1 and we are saying it may be relevant to your decision in
2 Issue 7, and we think it probably is. We think it is
3 relevant to your decision on whether it is the least-cost
4 alternative. But this is sort of a subsidiary issue of
5 that, and it is the basis that they urge you to decide
6 Issue 7.

7 COMMISSIONER JACOBS: I'm persuaded to go -- I'm
8 going to leave it in Issue 7. I don't think it stands.
9 In fact, their response to Issue 7 is consistent with
10 that.

11 MR. MOYLE: Is that for 28 and 30?

12 COMMISSIONER JACOBS: No, 30 I'm going to let
13 stand. I'm persuaded that that is a different issue.
14 Although -- let me not say that. I almost was persuaded
15 against that. 31, I'm going to defer ruling on that,
16 again, on the same rationale as the earlier ones. 32.

17 MR. WRIGHT: Commissioner, I apologize for the
18 interruption. But did you also indicate that Issue 29 is
19 to be subsumed under Issue 7?

20 COMMISSIONER JACOBS: Oh, I'm sorry. We never
21 got to 29, did we? Did I will rule on that?

22 MR. WRIGHT: I wasn't sure, frankly.

23 COMMISSIONER JACOBS: I'm torn on this one.
24 First of all, let me continue. Let me have you give me an
25 explanation of where this issue is taking us.

1 MR. CHILDS: Well, I think it is important to
2 know that whether the decision that you are being asked to
3 make is, in fact, going to have a burden on the Florida
4 utilities as well as a burden on the customers. And there
5 is testimony on this issue already. But because of your
6 decision about the impact -- for instance, if we were
7 going to talk about stranded investment, okay, this is a
8 potential illustration of stranded investment.

9 You know, this is simply a cost, and this is a
10 way to address it. This is also a way to address, for
11 instance, they make a case that there is a need for the
12 facility for economics. And at the same time say, "But
13 you don't have to buy." And I think it is important,
14 because the Commission is looked to as the one to tell us
15 what to do, to say, well, are you simply dividing the
16 question in a way to say, Commission, I don't want you to
17 look at it time now. And then I'm going to presume that
18 after you have made that decision, oh, yes, of course it
19 is going to result. And we are trying to identify what
20 those consequences are down the road in the context of you
21 making your decision.

22 COMMISSIONER JACOBS: This very same discussion
23 we have had.

24 MR. MOYLE: I was just going to make the point
25 that -- I mean, to me those issues smack of public policy.

1 He is talking about stranded cost and economic, and for
2 the very same reason that our issue that we framed up,
3 which is does this contribute to a robust competitive
4 wholesale market in the State of Florida, that you ruled
5 that that is subsumed within Issue 7 about the consistent
6 with the public interest and the best interest of the
7 electric consumers. Clearly in my view this obligation
8 issue, Number 29, is part of that issue, as well.

9 COMMISSIONER JACOBS: Well, actually I'm
10 persuaded both ways. I think that is an issue, and I have
11 that timing problem, as well. But as to the determination
12 of needs on this issue -- there goes my chance to play
13 golf, I guess. That wasn't rain? I won't be able to play
14 anyway.

15 As to this issue, it would appear to me that as
16 to the petition for need for this project, to what extent
17 there is some corollary obligation on the parties to pay,
18 particularly given the nature of this project, we are
19 broaching on some very extended ground.

20 I think there are arguments there. But I think
21 to the extent that those arguments can be raised, they are
22 more appropriately raised on the public interest issue,
23 more so than under the issue of whether or not some
24 utility is obligated to buy from this plant.

25 MR. CHILDS: I don't mean to be argumentative,

1 but I have a fundamental problem with trying to know what
2 to do next. They have testimony that says specifically
3 our plant will impose no obligation on Florida utilities.
4 I want to challenge that. But I have been told -- as I
5 understand your ruling, I have been told that that is not
6 a proper issue. I mean, they are permitted to therefore
7 go forward with the testimony and I can't challenge it.

8 COMMISSIONER JACOBS: That is exactly not what
9 I'm concluding. What I'm concluding is that you have
10 every right to refute that argument. And without putting
11 words into your mouth, it would be my view that whatever
12 those obligations are, there would be natural adverse
13 consequences, that is one issue that they have raised.
14 But also there would be natural public policy concerns of
15 this Commission that it would need to address in putting a
16 plant like this in what arguably is a novel situation and
17 that we should give very serious concerns to in terms of
18 protecting the public's interest in allowing such a plant
19 to be built.

20 So in my mind I think you have every obligation
21 and right to raise that argument. What I'm suggesting to
22 you is that in a determination of need, and, again, this
23 is a real weird situation, but in a determination of need,
24 we, in my mind, take the discussion away from its proper
25 course when we start trying to figure out to what extent

1 we are setting up obligations for other utilities. We are
2 talking about the need for this plant given what is out
3 there.

4 MR. CHILDS: But I think that this may focus
5 back on one of the reasons that we have this difficulty.
6 That they have structured a case before you that attempts
7 to establish need on a basis in addition to or other than
8 the pure need for additional generating capacity to assure
9 they're meeting some established reliability criterion.
10 They are doing it on an economic basis. That is the
11 principle basis of their case, that economics dictate that
12 you make this decision.

13 You have a rule, we have raised it, but you have
14 a rule that specifically says that if a party seeks to do
15 that, then they shall identify all costs and benefits in
16 their petition. And it is our case that they haven't done
17 that. But they do talk about some things, and they
18 specifically talk about as one of the reasons for you to
19 decide, under their economic analysis they say one of the
20 reasons for you to decide that this is appropriate is
21 there is no obligation on the utilities to buy from us.
22 They say there is no obligation and therefore that is a
23 way of addressing the side of the argument about what are
24 the costs. Now, you have talked about some savings, but
25 what are the costs? And they say, well, there is no

1 obligation to buy, and there is no obligation. And so
2 this says is that true? That is all it is trying to do.

3 COMMISSIONER JACOBS: And I understand. I'm
4 tempted to digress for a moment, but every step I digress
5 will get me in trouble for the prospect of having
6 prejudged the issue. But let me suffice it to say I think
7 it will be reasonable to address the issues that you --
8 the natural issues that you would have in refuting that
9 testimony. And I think within the other issues, either 7,
10 1, 2, or -- I'm sorry, was it 2 or 3. And I think you
11 could adequately address those issues within the context
12 of those, those concerns within the context of those
13 issues. So, that will be the ruling on Issue 29. And we
14 did 30, and 31 I'm going to defer .

15 32.

16 MR. WRIGHT: We think this is not framed
17 objectively. It poses an either/or. And the or is
18 suggesting that you all would be abdicating your
19 responsibility.

20 COMMISSIONER JACOBS: Let me ask, this is Power
21 & Light, your issue, as well. Let me ask you to explain
22 it for me, please.

23 MR. GUYTON: Okay. In the petition there are
24 repeated references to given this -- and, I'm sorry, I
25 didn't bring it with me. There is a pattern set of

1 presumptions and assumptions that the petitioner asked the
2 Commission to embrace. And they conclude, therefore this
3 project will necessarily be cost-effective. None of those
4 conditions are subject to proof. They ask you simply to
5 accept a logic chain.

6 You were asked years ago to accept a similar
7 logic chain by qualifying facilities and your staff, and
8 they said since a qualifying facility is going to sell at
9 no more than avoided cost, it is necessarily
10 cost-effective. And the Commission said, "I agree with
11 that logic. Therefore, in QF need determinations, I'm
12 going to presume that that cost-effectiveness criteria has
13 been met."

14 The Commission became troubled with that, having
15 accepted that logic chain over time, and it decided to
16 reject it and instead hold QFs to a determination as to
17 whether or not they were the most cost-effective instead
18 of presuming it. That was challenged and it was raised to
19 the Supreme Court of Florida. The Supreme Court of
20 Florida said, "Commission, you were right. It would have
21 been an abrogation of your responsibility to presume
22 cost-effectiveness."

23 Now, what we are trying to raise is that you are
24 just being asked to accept a similar logic chain and a
25 similar set of presumptions in this case. And we think

1 the court has spoken to it. And we think you should be
2 apprised of the fact that that is what you are being asked
3 to do. You should also be apprised of the fact that the
4 Supreme Court has already said that it is inappropriate
5 for this Commission to presume that a criteria is going to
6 be met, instead there should be proof of it. And that is
7 what we perceive as being done and being requested by the
8 petitioner in this case, and that's why we phrased the
9 issue.

10 COMMISSIONER JACOBS: Can I suggest an
11 alternative phrasing here.

12 MR. GUYTON: Certainly.

13 COMMISSIONER JACOBS: Float this out. Is that
14 it would say is it reasonable -- wait a minute. As soon
15 as I started saying that to myself it became problematic.
16 Here is what I had in mind. Would the market, and I won't
17 state it in terms of a particular wording, but the concept
18 would be is it reasonable that a market that includes this
19 project would produce -- a wholesale market that includes
20 this project would produce, I guess, bulk power consistent
21 with the criteria set out in 403.519?

22 MR. GUYTON: Commissioner, with all due respect,
23 I think that becomes a factual issue. And what we are
24 trying to raise here is a legal issue. Now, the legal
25 issue --

1 COMMISSIONER JACOBS: Let's state that. Can the
2 Commission legally defer, is that what you are saying?

3 MR. GUYTON: That, or can the Commission
4 presume? If it is an either/or proposition, let's
5 separate the two propositions.

6 COMMISSIONER JACOBS: Okay, Jon.

7 MR. MOYLE: This question, I mean, if it was
8 asked in a deposition it would be objected to on the basis
9 that it is compound. It is somewhat like asking me, "Jon,
10 are you fat or obese?" I mean, there is no right answer
11 to it that way with respect to -- but it says to presume
12 the need criteria which Mr. Guyton has already said that
13 can't be done, the Supreme Court said can't be done, or
14 defer to the market to determine whether the criteria will
15 be met.

16 I mean, if it is an objective question, it ought
17 to be with respect to Section 403.519, does the project
18 comply with this section? And it is very objective, and
19 I'm sure it is somewhere else with respect to do we comply
20 with all the rules and statutes. But we are going to go
21 forward and meet our burden of proof on that. But the way
22 this question is worded is just not fair.

23 COMMISSIONER JACOBS: Staff.

24 MR. KEATING: Just a minute.

25 COMMISSIONER JACOBS: I think I'm about to where

1 I want to be.

2 MR. GUYTON: It is easy enough to cure. If the
3 problem is whether it is compound, it is easy enough to
4 cure that. You can separate it into two issues. May the
5 Commission presume that the need criteria in 403.519 are
6 met? And then may the Commission defer to the market to
7 determine whether the criteria are met?

8 COMMISSIONER JACOBS: I understand the legal
9 issue that you are proposing now. And in that
10 understanding it falls again within those issues that I
11 would like to take a look at to the extent to see if it
12 stands outside of the ruling in the prior order in this
13 docket.

14 But let me state to you my understanding so we
15 don't leave with any misunderstanding. My understanding
16 of what you are asking is is it reasonable for the
17 Commission to forgo its normal analysis under 403.519 in
18 lieu of the allegations made in this case that a naturally
19 operating market will meet those criteria.

20 MR. GUYTON: Essentially, yes, Commissioner, I
21 think you understand.

22 COMMISSIONER JACOBS: That was long-winded and
23 not articulate.

24 MR. GUYTON: We think that is what you are being
25 asked to do. And given that is what we think you are

1 being asked to do, we think you should ask the question of
2 yourselves and ask the parties to brief whether that is
3 appropriate or something you can do.

4 COMMISSIONER JACOBS: I see. I understand.

5 MR. KEATING: If I could just ask the parties,
6 the reworded Issue 15, and maybe this would be asking
7 Florida Power & Light or any of the parties if they
8 believe that what is currently listed as 32 could be
9 subsumed in that reworded Issue 15, which asks if the PSC
10 has the statutory authority to render a determination of
11 need under 403.519 for a merchant plant as proposed in
12 this docket.

13 MR. MOYLE: From OGC's perspective that is a
14 very broad-based question with respect to statutory
15 authority, and it would also include the statutory
16 authority in 403.519. I think it would be appropriate to
17 be there.

18 MR. GUYTON: Cochran, the simplest way to answer
19 this is to say this. You could subsume every issue we
20 have had today into should this determination of need be
21 granted. We do not think the Commission is well-served by
22 rolling all the legal issues up into one broad legal
23 issue. We think there are a half dozen or so issues that
24 ought to be confronted directly. And we don't think the
25 Commission or the parties are well-served by rolling them

1 up into the one Issue 15. Just as we don't think the
2 factual issues -- that the parties or the Commission are
3 well-served by trying to roll them up.

4 Could you subsume it? We think they are
5 separable issues. But you could subsume all the legal
6 issues into one. But we think the Commission is
7 well-served by hearing argument on the specific issues
8 that have been identified. I could break them down
9 further, I have chosen not to in the interest of
10 consolidating.

11 COMMISSIONER JACOBS: Okay. I'm going to stand
12 by my first statement on that. And what I will do is I
13 will get that back to -- I said I was going to defer that
14 to the Commission, but what I would like to do is go ahead
15 and try to reach a first ground, go a first round on that
16 myself so that you guys have awareness of that. If there
17 are any questions that come up, they can be dealt with
18 initially at hearing. But I'm going to go ahead and take
19 a first stab at that myself.

20 MR. WRIGHT: Commissioner, I just did not
21 understand what you meant when you said you are going to
22 take a first stab at it yourself.

23 COMMISSIONER JACOBS: Originally I said those
24 issues that I was deferring, we were going to defer to
25 hearing for the --

1 MR. WRIGHT: So you are going to take them under
2 advisement and rule on them in the meantime. Perhaps.

3 COMMISSIONER JACOBS: Yes.

4 MR. WRIGHT: I understand. Thanks.

5 COMMISSIONER JACOBS: Okay. That took care
6 of -- Issue 33, help me with that one.

7 MR. GUYTON: The petitioner has requested the
8 determination of need based upon not the need of any
9 specific -- not it's own need, not based on the need of a
10 specific utility, but instead upon a Peninsular Florida
11 need.

12 And there is prior precedent of both this
13 Commission and the Supreme Court of Florida to the effect
14 that the criteria of the statute are unit and utility
15 specific. So we think the Commission should take a look
16 at that issue.

17 COMMISSIONER JACOBS: That's one of those, too.
18 We will defer on that one.

19 MR. WRIGHT: Commissioner, did you just say you
20 were going to defer that one?

21 COMMISSIONER JACOBS: Yes.

22 MR. WRIGHT: Can I just briefly voice my
23 position on it?

24 COMMISSIONER JACOBS: Okay, go ahead.

25 MR. WRIGHT: I think that is really subsumed in

1 Issue 15. It says, "Does the Commission have the
2 statutory authority." This issue has been argued ad
3 infinitum -- well, maybe not quite, but extensively over
4 the last two years before this Commission.

5 And our position is the Supreme Court said what
6 it said, and the Commission said what it said, and that
7 all of those decisions were specifically in the context of
8 cogeneration pricing in annual planning hearings.

9 COMMISSIONER JACOBS: Very well. That takes us
10 through the issues. Now, the exhibit list.

11 MR. SASSO: Commissioner Jacobs, because we will
12 be filing testimony later under the existing schedule, we
13 have not filed it to date. We have not had the
14 opportunity or occasion to identify our exhibits yet. We
15 expect to be able to do so by the beginning of this coming
16 week, perhaps Monday or Tuesday. And we would like the
17 opportunity at that time for the benefit of all the
18 parties to provide that information to staff counsel,
19 identify the exhibits and that have included in the
20 prehearing order.

21 COMMISSIONER JACOBS: Very well. Is that
22 acceptable to staff?

23 MR. KEATING: Yes.

24 MR. GUYTON: I'm afraid that we may not be quite
25 as far along as Florida Power Corporation. We certainly

1 can identify it to the staff once we have filed the
2 exhibits, which would be next Thursday, I guess.

3 COMMISSIONER JACOBS: Okay.

4 MR. KEATING: That will be fine.

5 COMMISSIONER JACOBS: Okay. Stipulations.

6 MR. WRIGHT: Commissioner, as I mentioned
7 earlier, hopefully it has happened by now, we are filing,
8 if we have not already done so, we will be filing rebuttal
9 testimony today. So at the end of the exhibit list there
10 should be a rebuttal exhibit listed for Mr. Kordecki
11 proffered by OGC. In our nomenclature it is designated
12 Exhibit GJK-R -- for rebuttal -- dash 1. And the brief
13 description is IOU testimonies in incentives docket.

14 COMMISSIONER JACOBS: Okay. Very well.

15 MR. KEATING: And if I could ask while we are
16 here, is that the only rebuttal witness?

17 MR. WRIGHT: No. As a mentioned earlier, Doctor
18 Nesbitt is also filing rebuttal testimony today, but he
19 has no exhibits to dispatch of rebuttal testimony. We
20 expect that FPL and FPC will be filing testimony attacking
21 the models. And we anticipate that Doctor Nesbitt will be
22 filing rebuttal testimony to that testimony when it comes
23 in. There may or may not be exhibits with that. We will
24 find out.

25 COMMISSIONER JACOBS: Okay. Any other

1 stipulations, if we have any, that would be nice.
2 Motions, pending motions. We dealt with the one, and it
3 is my understanding -- I will let you explain what is
4 happening with that, Cochran.

5 MR. KEATING: The motion that we dealt with at
6 the start of the hearing is not listed here. That one we
7 will indicate the ruling in the prehearing order.

8 COMMISSIONER JACOBS: I'm sorry.

9 MR. KEATING: The motion that you ruled on
10 earlier today, that ruling will be indicated in the
11 prehearing order. Staff recommends that the motion,
12 Florida Power Corporation's motion to strike portions of
13 certain witnesses' testimony in this docket be handled at
14 the start of the hearing.

15 COMMISSIONER JACOBS: That's fine with me.

16 MR. KEATING: And Okeechobee's motion to compel,
17 I think we talked earlier with Commissioner Jacobs, we are
18 in the process of putting together an order on those
19 motions.

20 COMMISSIONER JACOBS: With a ruling -- there
21 shouldn't be any delay caused regardless of what the
22 ruling is on that, is there? Well, let's just get them
23 out as quick as possible, then we will figure out where we
24 are then. Let's get those out as quick as possible, and
25 then let's figure out where we need to go. And those are

1 the three at the bottom there?

2 MR. KEATING: There is one other motion that is
3 listed here. The first one, Florida Power & Light's
4 motion for protective order regarding Okeechobee's
5 Interrogatory Number 54. There hasn't been a ruling on
6 that. I didn't see that motion listed in Florida Power &
7 Light's prehearing statement, so I guess I'm curious as to
8 whether that motion needs a ruling still or not.

9 MR. GUYTON: I believe subsequent to that
10 Okeechobee communicated to us that a more limited response
11 as to that interrogatory would be appropriate and we
12 provided that.

13 MR. WRIGHT: That is the one about your business
14 plans in other states?

15 MR. GUYTON: Yes.

16 MR. WRIGHT: I think we are square on that.

17 MR. GUYTON: I think that is resolved.

18 MR. MOYLE: We would withdraw the motion.

19 MR. WRIGHT: It's moot, I think.

20 COMMISSIONER JACOBS: And we can include in the
21 stipulation the schedule changes.

22 MR. KEATING: I think we would include that in a
23 separate section under rulings on that particular motion
24 for a revised procedural schedule.

25 COMMISSIONER JACOBS: Very good.

1 Any other, matters to come before us today?

2 MR. GUYTON: Commissioner, I just want to make
3 you aware that there may be another matter that is
4 submitted to you regarding access to the Altos models. We
5 have raised some concerns with counsel for OGC right now.
6 We are trying to work through those. And I anticipate
7 that if we don't work through those we will be needing to
8 access you fairly quickly early next week. But we are
9 going to try to work it out between ourselves.

10 COMMISSIONER JACOBS: Very well.

11 Anything else, staff?

12 MR. KEATING: I don't believe so.

13 COMMISSIONER JACOBS: Thank you all very much.

14 Have a good day.

15 The hearing is adjourned.

16 (The prehearing conference concluded at 4:35 p.m.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
FPSC Commission Reporter, do hereby certify that the
Prehearing Conference in Docket No. 991462-EG was heard by
the Florida Public Service Commission at the time and
place herein stated.

It is further certified that I stenographically
reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
transcript, consisting of 69 pages, constitutes a true
transcription of my notes of said proceedings.

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

DATED this 6th day of March, 2000.



JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting
(850) 413-6732