

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FLORIDA POWER CORPORATION'S EARNINGS, INCLUDING EFFECTS OF PROPOSED ACQUISITION OF FLORIDA POWER CORPORATION BY CAROLINA POWER & LIGHT. DOCKET NO. 000824-EI

REVIEW OF FLORIDA POWER & LIGHT COMPANY'S PROPOSED MERGER WITH ENTERGY CORPORATION, THE FORMATION OF A FLORIDA TRANSCO, AND THEIR EFFECT ON FLORIDA POWER & LIGHT'S RETAIL RATES. DOCKET NO. 001148-EI

REVIEW OF TAMPA ELECTRIC COMPANY AND IMPACT OF ITS PARTICIPATION IN GRIDFLORIDA, A FLORIDA TRANSMISSION COMPANY, ON TECO'S RETAIL RATEPAYERS. DOCKET NO. 010577-EI

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Volume 1

PROCEEDINGS: ISSUE IDENTIFICATION CONFERENCE

BEFORE: COMMISSIONER BRAULIO L. BAEZ  
Prehearing Officer

DATE: Monday, July 9, 2001

TIME: Commenced at 3:00 p.m.  
Concluded at 5:55 p.m.

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

REPORTED BY: KORETTA E. STANFORD, RPR  
Official FPSC Reporter  
(850) 413-6734

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NO.  
08553-01  
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## 1 APPEARANCES:

2 HARRY LONG, Post Office Box 111, Tampa, Florida  
3 33601-0111, appearing on behalf of Tampa Electric Company.

4 LEE WILLIS, Ausley & McMullen, Post Office Box 391  
5 Tallahassee, Florida 32302, appearing on behalf of Tampa  
6 Electric Company.

7 MATTHEW CHILDS and WADE LITCHFIELD, Steel, Hector,  
8 Davis, 215 S. Monroe Street, Suite 601, Tallahassee, Florida  
9 32301, appearing on behalf of Florida Power & Light Company.

10 JIM McGEE and JIM FAMA, Post Office Box 14042,  
11 St. Petersburg, Florida 33733-4042, appearing on behalf of  
12 Florida Power Corporation.

13 DIANE KIESLING, Landers Law Firm, Post Office Box 271,  
14 Tallahassee, Florida 32302-0271, appearing on behalf of Mirant  
15 Americas Development, Inc., Calpine Eastern, and Duke Energy  
16 North America.

17 VICKI GORDON KAUFMAN, McWhirter Reeves Law Firm, 117  
18 South Gadsden Street, Tallahassee, Florida 32301, appearing on  
19 behalf of Reliant Energy Power Generation.

20 JOHN McWHIRTER, McWhirter Reeves Law Firm, Post Office  
21 Box 3350, Tampa, Florida 33601-3350, appearing on behalf of the  
22 Florida Industrial Power Users Group.

23 ROGER HOWE and JACK SHREVE, Office of Public Counsel,  
24 W. Madison Street, Suite 812, Tallahassee, Florida 32399,  
25 appearing on behalf of the Citizens of the State of Florida.

## 1 APPEARANCES (Continued)

2 JON MOYLE, JR., Moyle Law Firm, 118 North Gadsden  
3 Street, Tallahassee, Florida 32301, appearing on behalf of CPV  
4 Atlantic, Ltd.

5 DANIEL FRANK, Sutherland, Asbill & Brennan, 1275  
6 Pennsylvania Avenue NW, Washington, D.C. 20004-2415, appearing  
7 on behalf of the Walt Disney World Company.

8 NATALIE FUTCH, Katz, Kutter Law Firm, 106 East College  
9 Avenue, 12th Floor, Tallahassee, Florida 32301, appearing on  
10 behalf of Enron Corporation.

11 COCHRAN KEATING and DEBORAH HART, FPSC Division of  
12 Legal Services, 2540 Shumard Oak Boulevard, Tallahassee,  
13 Florida 32399-0850, appearing on behalf of the Commission  
14 Staff.

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

2 COMMISSIONER BAEZ: All right. Let's call the  
3 prehearing to order. Mr. Keating, are you ready to read the  
4 notice, please?

5 MR. KEATING: Pursuant to notice issued June 25th,  
6 2001, this time and place have been set for a Prehearing Issue  
7 Identification Conference in docket number 000824-EI, review of  
8 Florida Power Corporation's earnings, including effects of  
9 proposed acquisition of Florida Power Corporation by Carolina  
10 Power & Light, docket number 001148-EI, review of Florida Power  
11 & Light Company's proposed merger with Entergy Corporation, the  
12 formation of a Florida transco and their effect on Florida  
13 Power & Light's retail rates, and docket number 010577-EI,  
14 review of Tampa Electric Company and impact of its  
15 participation in GridFlorida, a Florida transmission company on  
16 TECO's retail ratepayers.

17 COMMISSIONER BAEZ: Okay. We'll take appearances.

18 MR. LONG: Commissioner, Harry Long appearing on  
19 behalf of Tampa Electric Company.

20 MR. WILLIS: Lee Willis, P.O. Box 391, Tallahassee,  
21 Florida, 32302, appearing on behalf of Tampa Electric Company.

22 MR. CHILDS: Matthew Childs and Wade Litchfield  
23 appearing on behalf of Florida Power & Light Company.

24 MR. MCGEE: Jim McGee and Jim Fama on behalf of  
25 Florida Power Corporation.

1 MS. KEATING: Diane Kiesling on behalf of Mirant,  
2 Calpine, and Duke.

3 MS. KAUFMAN: Vicki Gordon Kaufman of the McWhirter  
4 Reeves law firm. I'm here today on behalf of Reliant Energy.  
5 Mr. McGlothlin could not be here today because of a death in  
6 his family.

7 MR. McWHIRTER: I'm John McWhirter of the McWhirter  
8 Reeves law firm appearing on behalf of the Florida Industrial  
9 Power Users Group.

10 MR. HOWE: Roger Howe with the Office of Public  
11 Counsel.

12 MR. MOYLE: John Moyle, Jr. on behalf of CPV  
13 Atlantic.

14 MR. KEATING: Cochran Keating on behalf of Commission  
15 Staff.

16 MS. HART: Deborah Hart for Commission Staff.

17 COMMISSIONER BAEZ: Is there anyone else? This is a  
18 pretty crowded room for a prehearing. Is there anyone else  
19 that needs to make an appearance? Sir?

20 MR. FRANK: My name is Dan Frank. I'm from the  
21 Washington, D.C. firm --

22 COMMISSIONER BAEZ: Can you come up and find a  
23 microphone so the reporter can -- one of these gentlemen will  
24 be nice enough to loan you theirs.

25 MR. FRANK: Thank you. My name is Dan Frank with the

1 Washington, D.C. law firm Sutherland, Asbill & Brennan,  
2 appearing on behalf of Walt Disney World Company. We filed a  
3 petition to intervene on last Friday, July 6th.

4 MS. FUTCH: Natalie Futch with Katz, Kutter law firm.  
5 We filed a petition to intervene on behalf of Enron Corporation  
6 today.

7 COMMISSIONER BAEZ: Okay. Anyone else? No? As to  
8 the petitions to intervene, we're not going to be ruling on  
9 those today. We're going to hold them pending. But for  
10 purposes of this prehearing and Issue ID conference, everyone  
11 that's filed a petition and has a petition pending will be  
12 considered an intervenor for purposes -- for these limited  
13 purposes today, and we'll try and get the intervention orders  
14 out as soon as possible. Thanks.

15 I just want to start off by making a couple of  
16 comments before we get started in all of this and that will  
17 give some of you time to read the proposed issues list that  
18 Staff has probably provided you with. If there's anybody that  
19 doesn't have one, please see Staff counsel. I'm sure -- I  
20 think, he might have some extra copies.

21 This conference is held at the behest of the three  
22 GridFlorida participants for the purpose of establishing the  
23 issues to be addressed regarding their respective participation  
24 in GridFlorida RTO. Order 01-1372, the Commission set forth  
25 the structure which should be followed in addressing the

1 GridFlorida issues.

2           The structure consists of two phases. Phase 1 would  
3 deal with RTO issues on an expedited basis, in order to provide  
4 some level of certainty which the participants might use to  
5 further evaluate their continued participation in GridFlorida  
6 as well as their continued pursuit of necessary approvals at  
7 FERC.

8           Phase 2 would address specific ratemaking aspects of  
9 RTO participation and formation, including but not limited to  
10 cost recovery of the same. The order's quite clear expressing  
11 the Commission's intent that any ruling or decision rendered by  
12 the Commission in Phase 1, as I've identified, shall in no way  
13 preclude the Commission from taking specific rate action in the  
14 Phase 2 portion of the dockets.

15           I want to underscore that particular portion of the  
16 order, because it'll have a considerable impact on the results  
17 we're going to achieve here today. In reviewing the  
18 tentatively proposed issues from the several parties, it's no  
19 surprise that the issues range from the very general, as  
20 outlined in the respective petitions from the participants, to  
21 more specific proposed issues as Staff and others have  
22 introduced.

23           Our purpose here today is to ease the tension between  
24 those two extremes through some form of compromise, and I want  
25 you to really keep that word in mind today. We're going to try

1 and use a healthy dose of inclusion in that. We've got a  
2 balance, the Commission Staff and other parties need for  
3 specifics, but in particular the Staff's, their need for  
4 specifics so that they can order -- so that they can render a  
5 responsible analysis and a responsible recommendation on these  
6 issues. We have to balance that with the petitioner's  
7 prerogative to try to make their case as they see fit. The  
8 risks of that prerogative should be evident by now, so I hope  
9 that the participants or the petitioners take that to heart.

10 With that, I thank you all for coming and I'm going  
11 to turn it over to counsel for any comments on the proposed --  
12 so he can introduce the proposed issues which have been handed  
13 out.

14 MR. KEATING: I believe, everybody should have a  
15 copy, first, of the compiled list of issues that was faxed out  
16 the end of last -- I guess, it was last Thursday. That list  
17 included all the issues that were listed by the utilities and  
18 intervenors and Staff. This is what we had available last  
19 Thursday. If you don't have a copy of that, there are some  
20 additional copies on the ledge back here to my left.

21 Also, since that time, I've received an issue list  
22 from FIPUG. I can't tell from my perspective here if there's  
23 any additional copies of that, but parties feel free to pick  
24 that list up, and if we're out of copies we'll make some  
25 additional copies.



1           Just a few minutes before this prehearing issue  
2 conference, Staff distributed a proposed list of issues since  
3 the time that we conducted informal issue ID meetings with the  
4 parties last Monday. We've tried to come up with an issue list  
5 that allows the parties to address the issues that appears they  
6 need to or think they need to address and make the case as they  
7 see fit in this proceeding, while allowing room for the Staff  
8 to conduct the review that it needs to conduct.

9           And, I think, in this list that the Staff has given  
10 up some of its specifics and we realize that one of the -- you  
11 know, one of the downsides of that is that we don't get the  
12 sort of detailed information -- we may not get the sort of  
13 detailed information that we want up front in the testimony  
14 filing, and we'd have to do that through discovery, but it's  
15 our attempt to give and to give and take here so that we have  
16 an issue list that can be agreed to by the parties and Staff  
17 and everyone can present their case as they see fit.

18           I know the parties would probably benefit from a few  
19 moments of looking that over, and I apologize that we couldn't  
20 put something out sooner in that form, but this is as quickly  
21 as we could get it, unfortunately.

22           COMMISSIONER BAEZ: Thank you, Mr. Keating.

23           MR. KEATING: The handout includes first page Issues  
24 of Fact and the second page with Legal Issues. We've tried  
25 under the Issues of Fact and the Legal Issues to identify where

1 we think the specific issues raised by the parties could fall.  
2 And the issue numbers referenced there are the issue numbers  
3 set forth in the compilation that was sent out last Thursday,  
4 if there's any confusion as to how to cross-reference those.

5 COMMISSIONER BAEZ: Well, it seems at least most of  
6 the parties haven't had a whole lot of time to look at it. And  
7 we're going to try -- since this is sort of a new thing, not  
8 just for me, but I think we're trying to accommodate the  
9 process that we need to make up as we go along.

10 If anyone has any comments for beginners, you know,  
11 we don't have to follow any particular order, but at this  
12 point, whoever's gotten a better look at the proposed issues  
13 and has a comment on it, please feel free. We're going to work  
14 from my left to right, but don't feel forced to make a comment  
15 at this time if you're not comfortable making it. Mr. Long or  
16 Mr. Willis?

17 MR. KEATING: Commissioner Baez, if --

18 COMMISSIONER BAEZ: Yes, I'm sorry.

19 MR. KEATING: I was just going to make a suggestion.  
20 If you'd like, I could sort of walk through the proposed issues  
21 and that may allow the parties a little more time to think  
22 about it.

23 COMMISSIONER BAEZ: That will be fine, thank you.

24 MR. KEATING: The first issue on the list under  
25 Issues of Fact, as Staff has worded it is "What costs will be

1 incurred by the utility as a result of its participation in  
2 GridFlorida, regardless of how such costs may ultimately be  
3 allocated between ratepayers and shareholders?" In referencing  
4 this to the -- cross-referencing this to the compilation of  
5 issues that were sent out last Thursday, we believe that the  
6 utilities Issue 4, and that would be -- let me take just a step  
7 back.

8           The numbering is going to be the same on the  
9 compilation of issues for each utility until you get to the end  
10 of the list, and public counsel has some slightly different  
11 issues for the different utilities towards the end of the list,  
12 but we felt that the companies could address their Issue 4;  
13 that is, the utilities, under that new proposed Issue 1, that  
14 CPV Atlantic could address their Issue 7 and 8, that Reliant  
15 could address its Issue 18, and that Staff could address its  
16 Issue 28. I don't know if it'll be easier to maybe take  
17 feedback on an issue-by-issue basis or --

18           COMMISSIONER BAEZ: I think, it would probably be  
19 more organized, and I had already called on TECO  
20 representative, so if you want to lead off, please.

21           MR. LONG: Well, Commissioner, I have a few  
22 preliminary comments. I haven't had a great deal of time to  
23 look at the most recent compilation issues by the Staff, but as  
24 a general matter, I guess, Tampa Electric has two concerns with  
25 regard to Phase 1.

1           In our petition we tried to articulate for the  
2 Commission the issues that we need some guidance on before we  
3 can make a decision as to whether or how to go forward with  
4 regard to an RTO. I think that we attempted to frame those  
5 issues in a way that was neutral but in a way that at least  
6 identified the key guidance that we need from the Commission to  
7 go forward.

8           My concern in looking through the longer list of  
9 issues that we received a few days ago is that some of the  
10 issues are not neutral in the sense that they limit or narrow  
11 the way in which our prudence can be evaluated. To be more  
12 specific, one of the series of questions seems to really focus  
13 on the idea that prudence is simply a function of a quantified  
14 cost benefit analysis and one simply has to add up the numbers  
15 and the numbers then tell you whether or not the actions of  
16 Tampa Electric were prudent.

17           If there are parties who want to make that argument,  
18 make that case to the Commission, we certainly have no interest  
19 in preventing that, but we would like to have the issues framed  
20 in a way that does not require us, essentially, to offer a case  
21 that is not the case that we want to present. And I have that  
22 concern about a number of the issues, and when we talk more  
23 specifically we can identify those issues.

24           So, I guess, the key for us would be to get some  
25 guidance on the specific questions that we pose to the

1 Commission and to have the issues framed in a way that's  
2 neutral, that allows each party, essentially, to address the  
3 question of prudence in the way that they think is appropriate.

4 COMMISSIONER BAEZ: Mr. Long, I think, some of your  
5 points are very well taken. I believe, certainly in my  
6 meetings with the Staff and leading up to today actually, one  
7 of the attitudes that we wanted to take is to not impinge upon  
8 anyone's rights, certainly not TECO's or any of the other  
9 participants' rights to put their case on as they saw fit.

10 Now, as I said before, I think, that has its pitfalls  
11 as well. We all understand here that there are at least two  
12 sides to this argument and certainly two requirements for  
13 information, and I think one of those is Staff's. So, I meant  
14 what I said before is that, you know, certainly we can't  
15 approach this in an entirely general way. I think, you  
16 appreciate that.

17 I think, you can see that the order does require some  
18 type of MFR filings and would expect the company to adhere to  
19 that as well, but by no means should the issues, and I think we  
20 should all endeavor that the issues do not limit strictly to  
21 any quantifiable manner, if it's the company's choice to argue,  
22 and I say this for lack of a better word, but intangible  
23 factors, that's your prerogative. And, I think, that the  
24 issues -- I mean, going over them, and I'm sure we're going to  
25 discuss them back and forth, should reflect that as much as

1 possible, but certainly the intent of any issues that we come  
2 out of here with shouldn't be taken to limit it to some  
3 number-crunching kind of activity.

4 MR. LONG: And Commissioner, if I could address that.  
5 I want to make it clear that we intend to cooperate fully with  
6 the Commission and Staff --

7 COMMISSIONER BAEZ: I'm glad to hear that.

8 MR. LONG: -- in providing information. And I would  
9 just like to say that providing information as requested is  
10 sort of a different process than framing the issues in a  
11 neutral way. I mean, we don't want to frame the issues in a  
12 way that prevents any party from submitting whatever evidence  
13 or information they think is appropriate for the record.

14 COMMISSIONER BAEZ: Agreed. Thank you.

15 MR. CHILDS: Commissioner, I'm surprised to see this  
16 list of issues from the Staff. I'm happy that they've made the  
17 effort, but it was unanticipated, because we have met before  
18 and we had discussed them and I thought we had somewhat of an  
19 impasse and we ourselves had attempted to come up with an  
20 approach to address the issues for the case which is that we  
21 were going to talk about today. It's not really the same as  
22 what the Staff has on their list distributed when we came in.

23 COMMISSIONER BAEZ: Understood.

24 MR. CHILDS: I do have a few comments, too, because I  
25 hope you understand that we do take the task seriously, but we

1 are very much concerned about how we go forward and what we can  
2 potentially look to from the Commission in terms of it  
3 evaluating the decisionmaking process that the utilities went  
4 through.

5           And I want to point out that the order -- I'm sure  
6 you're aware, but it addressed the utilities to file a petition  
7 specifically setting forth the issues that the utility wanted  
8 the Commission to decide and the relief that it sought. And it  
9 also asked that the petition indicate the decisions that the  
10 utility believes it needs in order to proceed. We are at that  
11 point where we do need to be clear as to what matters -- what  
12 the theory of the case, so to speak, is going to be for the  
13 Commission.

14           We have tried, I think, to come up with the issues  
15 that generally permit this decision to be evaluated by the  
16 Commission in a broad way, but also accommodates a perspective  
17 that we have been presenting about the role of the FERC, the  
18 role of national policy. Whether someone agrees or disagrees  
19 with that it is our position that that's important, it's our  
20 position that that's critical.

21           So, when I look -- have looked at the issues that  
22 have been presented before, they seem to insist upon not just a  
23 dollar and cent cost benefit analysis but that it be done on a  
24 utility-by-utility basis. It suggests when we discussed it  
25 before that that was appropriate because compliance with the

1 FERC Order 2000 was voluntary. We had that discussion with the  
2 Staff.

3           When I look at this most recent list of issues that's  
4 presented, it is still framed as though the evaluation is going  
5 to be on a utility-by-utility basis. We have Issue 8 in this  
6 list of the proposed issues that was submitted right before we  
7 started here, appears to pick up our Issue 1 or at least it  
8 says it does, but it's only -- I guess, to permit us the  
9 opportunity in what's identified as Issue 8 by the Staff to  
10 talk to you about whether our decision is the most prudent  
11 alternative in light of FERC Order 2000.

12           I don't think that's really an adequate way to do it,  
13 and I'll also point out that our Issue 2 does not appear, as I  
14 see it, to be even covered. Maybe it is, but I don't see it.  
15 But all these issues seem to be identified as though they're  
16 going to be address on a utility-by-utility basis and that  
17 they're going to be a cost benefit approach.

18           We take exception. We think there is a way, and I  
19 and others are prepared to talk about an alternative which we  
20 think is a -- perhaps a better way to go forward. It gives  
21 everyone an opportunity to address the issues fully to the  
22 Commission, but it does not lose sight of what we think we need  
23 to know in order to make a decision about going forward.

24           One other point that I want to bring up. It is as to  
25 Florida Power & Light Company's Issue number 4, which talks



1 about estimated cost to retail customers and participation in  
2 GridFlorida and then it asks, "and how should these costs be  
3 recovered?" The "and how should these costs be recovered?" is  
4 intended by us to address a methodology. We, very seriously,  
5 considered what we needed to know in order to be able to go  
6 forward with this GridFlorida proposal, and it is our belief  
7 that we do need to know and establish a methodology for cost  
8 recovery, that the Commission understands and all parties  
9 understand in advance; not that we quantify the cost, but that  
10 there is an acceptance of a methodology. We do not want to be  
11 in the situation of believing that the decision was prudent and  
12 the Commission perhaps is satisfied that it's prudent, and then  
13 end up with significant costs and no vehicle for recovery, so  
14 we think we need that methodology established.

15           Once again, I would hope that it's permissible for us  
16 to present an alternative way of addressing what we think are  
17 the concerns of all of the parties that were set out in that  
18 other list of issues, the compilation of proposed issues, that  
19 the Staff put together last week. We think it would work, and  
20 if we could return to that, I'd appreciate that opportunity.

21           COMMISSIONER BAEZ: Mr. McGee.

22           MR. MCGEE: We would concur with the comments of  
23 Mr. Childs. We have spent a good bit of time and effort in  
24 going through the issues that we had understood would be  
25 discussed today, which was the compilation that was prepared by

1 Staff last week for us to address the points that we think  
2 really ought to be made in terms of clarifying the issues so  
3 that we do have the guidance that we need to go forward when  
4 this proceeding is done. We're going to better -- we're in a  
5 better position to be able to address those by looking at the  
6 material that we've had the chance to give some thought to, and  
7 that would be the list that was handed out last week.

8 COMMISSIONER BAEZ: Ms. Kiesling.

9 MS. KIESLING: Thank you. I can be fairly brief. We  
10 support the comments of the various utilities at this point. I  
11 do have one area of concern and observation, though, that I do  
12 want to convey to you and that is what appears to be a  
13 limitation in the issues, both as were handed out last Friday  
14 and now just today that seems to go to the idea of prudence  
15 being a quantifiable and only a quantifiable concept.

16 And it is our concern that prudence needs to be  
17 looked at in a broader sense and that there are both  
18 quantifiable and not easily quantifiable benefits and perhaps  
19 costs, but certainly benefits that need to be at issue here.  
20 And for that reason, we support first and second issue as  
21 proposed by each of the utilities as being the threshold issues  
22 in this proceeding, and that is a general question about is the  
23 formation or the decision to participate in the RTO a prudent  
24 decision in light of what's in FERC Order 2000 taken all  
25 factors.

1           So, we do not want to just jump at the first issue as  
2 to what are the quantifiable costs, what are the quantifiable  
3 benefits, but we would like the opportunity and would support  
4 an inclusion of umbrella issues that relate to the prudence of  
5 the decision to participate, not just the prudence of the  
6 quantifiable costs and quantifiable benefits.

7           With that, however said, we do think that the issues  
8 that were raised in our petitions to intervene can fit within  
9 -- once we pass that threshold prudence issue, can fit within  
10 some of the issues that are framed by Staff as long as they are  
11 framed generally enough to include things such as the benefits  
12 of increased competitive wholesale market, the benefits of  
13 elimination of discrimination and the other issues that we  
14 raised which we think have to be considered in a prudence  
15 evaluation about the RTO issues.

16           MR. KEATING: Commissioner Baez, if I can jump in for  
17 a moment. I just wanted to clarify what Staff has handed out  
18 today in its proposed issues, it talks about costs and benefits  
19 and that sort of analysis, but we intended that these issues  
20 not be limited to quantifiable costs and benefits.

21           We tried to use language that was, although, perhaps  
22 there's a better way to say it, though, than we've said it, but  
23 our intent was to allow the parties to argue the cost and  
24 benefits that they're not as easy to quantify, and I wanted to  
25 make that clarification, because I've heard that concern from a

1 few of the parties already, and I wanted to let ya'll know that  
2 was our intent before we went further.

3 COMMISSIONER BAEZ: Thank you, Mr. Keating.  
4 Ms. Kaufman -- I'm sorry.

5 MS. KIESLING: Can I just, in response to that, say  
6 one thing?

7 COMMISSIONER BAEZ: Yeah.

8 MS. KIESLING: I completely agree. I think that  
9 that's good, but what I would suggest is maybe using the  
10 language that the utilities proposed as their issues as the  
11 threshold issues to get to the rest of them, because I think  
12 that that does frame it in a way that makes an easy segue into  
13 the issues as Staff has now put them out.

14 COMMISSIONER BAEZ: Thank you, Ms. Kiesling.  
15 Ms. Kaufman.

16 MS. KAUFMAN: Thank you, Commissioner Baez.

17 There's an impressive number of issues on the  
18 document that some of the parties worked from last week.  
19 Reliant raised only three issues, and we appreciate the Staff's  
20 efforts to try to categorize them within broader issues, but at  
21 this point we believe that three issues that we have raised are  
22 important, that they are worded so as to elicit the sort of  
23 information that this Commission should consider when it is  
24 reviewing the factual matters in this docket, and at this point  
25 we would prefer that the three issues, as we have worded them,

1 remain as we originally submitted them.

2 COMMISSIONER BAEZ: Thank you, Ms. Kaufman.  
3 Mr. McWhirter.

4 MR. McWHIRTER: Mr. Baez, the organization I  
5 represent is composed of consumers, and consumers  
6 wholeheartedly endorse the concept of a nondiscriminatory open  
7 access transmission system in Florida.

8 It seems to us, however, though, that the cardinal  
9 issue that needs to be address by the Commission, and I don't  
10 really see it addressed in the proposed issues, is if  
11 GridFlorida is deemed to be prudent, what then? How do we go  
12 forward in our relationship as consumers with respect to this  
13 transmission authority?

14 Clearly, GridFlorida will be a regulated utility  
15 under the provisions of 366.03, Florida statutes, but having  
16 said that does that really mean that this Commission still  
17 retains some sort of jurisdiction over that entity itself or  
18 will the jurisdiction then completely be preempted by the  
19 Federal Energy Regulatory Commission under the constitution?

20 As consumers, we just want to know where to go to try  
21 to address things that may be of concern to consumers. As they  
22 arise from time to time, where do we go to complain? Can we  
23 use this 800 number here or do we have to use the comparable  
24 number in Washington? And, I think, the Commission should  
25 address what its relationship will be visa the Federal

1 Regulatory Energy Commission as one of the legal issues in this  
2 case.

3 The principle concern we have has to do with  
4 reliability, and that is one of the issues that is addressed in  
5 the Staff's issues, but does this Commission have authority to  
6 require GridFlorida to build transmission lines or to provide  
7 ancillary services where they are needed in order to provide  
8 the kind of transmission system we all desire to see? And I  
9 don't think that issue is addressed, and I'd surely like to see  
10 both of those concepts considered in the Commission's  
11 discussion.

12 And the main reason I'd like to have them addressed  
13 as issues is I'd like to have the utilities and the  
14 participants in GridFlorida explain what their approach is  
15 going to be. Are they going to still come to this Commission  
16 or will they feel that they're subject to this Commission or  
17 will their determination, henceforth, be that Florida  
18 regulation is no longer germane to anything that goes along  
19 with this entity?

20 So, having spoken at undue length on the subject, my  
21 principle concern is that the issues that we've addressed  
22 really don't deal with the cardinal issue of concern and that  
23 is what will be the relationship of this Commission's  
24 jurisdiction after the RTO goes into service.

25 COMMISSIONER BAEZ: Thank you, Mr. McWhirter.

FLORIDA PUBLIC SERVICE COMMISSION

1 Mr. Howe.

2 MR. HOWE: Thank you, Commissioner Baez.

3 Just a couple points. The issues we had identified  
4 are pretty much covered under the category of Legal Issues. I  
5 would just like to point out for Legal Issue 3, I would assume,  
6 although it addresses the sale of retail transmission assets,  
7 it would also cover transferal operational control.

8 And one issue we had raised, which I don't believe is  
9 covered here, perhaps Staff could give some guidance, is we had  
10 asked what value should be placed on the divested transmission  
11 assets for purposes of identifying any gain on sale. And  
12 perhaps we could make that -- excuse me a second -- perhaps we  
13 could make that fit in some other categories, but I don't see  
14 it specifically referenced.

15 COMMISSIONER BAEZ: Thank you, Mr. Howe, thank you.

16 Well, Staff, we've had a fair amount of comment --

17 MR. KEATING: Commissioner, I believe, there's --

18 there may be one other party around the corner.

19 COMMISSIONER BAEZ: Oh, I'm sorry. Mr. Moyle.

20 MR. MOYLE: That's all right. I got bumped out there  
21 by public counsel.

22 COMMISSIONER BAEZ: You've got to stop hiding. My  
23 peripheral vision is not what it used to be.

24 MR. MOYLE: I was going to kiddingly say by going  
25 down the line you run the risk of everybody putting their two

1 cents and having done that, let me put my two cents in on  
2 behalf of CPV Atlantic.

3           The list of issues handed out by Staff, having not  
4 had time to thoroughly review them, first blush it looks like  
5 it's a pretty good start. I guess, the only point I would  
6 raise with respect to that is, is that with respect to CPV  
7 Atlantic, which is an entity developing nontraditional merchant  
8 plant facilities in Florida, an issue that we've identified  
9 that we feel, as this is a factual 120571 proceeding that is  
10 well within the scope of the facts to be adduced at this  
11 proceeding is our Issue 6, which asks, "Will the formation  
12 administration of GridFlorida lead to the development of a  
13 robust competitive wholesale market?"

14           I think that issue, particularly, we feel strongly  
15 needs to remain as an issue that is out there that can receive  
16 testimony and evidence, and I would note also that that very  
17 same issue was identified by a number of other intervenors in  
18 this case. I think, both Duke identified it, as did Calpine,  
19 as did Reliant.

20           So, while we're going through this process of culling  
21 and consolidating, I would argue that would be one that could  
22 easily be consolidated with the issues that were also presented  
23 by Duke and Calpine and Reliant and would echo similar comments  
24 with respect to our Issue number 7.

25           That being said, I am sympathetic and, I believe, in



1 agreement with some comments made by counsel for the  
2 investor-owned utilities with respect to the need to decide  
3 certain threshold issues first. And I think that is important,  
4 and we would support those decisions being rendered with  
5 respect to, say, Issues 1 and 2, I think, as they were  
6 originally framed by the investor-owned utilities.

7 Thank you for allowing me to make those comments.

8 COMMISSIONER BAEZ: Thank you, Mr. Moyle.

9 Staff, I was actually going to ask a question, and  
10 Mr. Moyle reinforced it in my mind. Can you go through what  
11 your reasoning was in your effort to consolidate some of these  
12 issues, and as to any specific issues that were identified by  
13 the parties' comment where you feel it would be the intent of  
14 the Staff to take up or address those types of issues as it  
15 exists in the list here that you've proposed?

16 I guess, what I would like to do is to try and --  
17 what I've heard from the parties, at least up to this point,  
18 are concerns that they are not going to get to address the  
19 issues in the way that they see fit or certainly present  
20 testimony or facts that would help them address issues as they  
21 presented, how can you reconcile that with the type of attitude  
22 you've employed in consolidating these issues?

23 MR. KEATING: Well, I guess, I could start off by  
24 saying that in developing these issues, we went back to the  
25 order on the joint motion to have this proceeding. And we felt

1 that there were some issues, particularly the utility's Issue  
2 2, that went beyond what this order said we were going to do in  
3 this proceeding.

4 And, I think, the order pretty clearly at the bottom  
5 of Page 3 and at the top of Page 4 states that "Each regulated  
6 utility must now demonstrate that its decision to participate  
7 in GridFlorida is in the best interest of its retail  
8 customers." There's further language that talks about the  
9 impact of individual participation.

10 It is my understanding that when the Commission set  
11 up this proceeding that we were to look at each utility's  
12 decision on a system-by-system basis and not to look at this as  
13 a whole, whether the decision was reasonable and in the best  
14 interest of their ratepayers. That's the basis, the broad  
15 basis, for our proposed list of issues.

16 We didn't feel that an issue that asked whether the  
17 proposal advanced by all three was prudent, given the  
18 parameters established by FERC, was something the Commission  
19 intended to include in this proceeding.

20 COMMISSIONER BAEZ: I guess, I had -- I have a  
21 question with that, and any one of the petitioners can answer  
22 this or perhaps all of them. That Issue 2, which I suspect  
23 sounds like it's the same for all three looking at the several  
24 petitions, it seemed to me that it puts us in a -- it puts the  
25 Commission certainly in a position to review what FERC's

1 decision already was, and I'm wondering how you would address  
2 that or --

3 MR. WILLIS: Well, Commissioner, when you look at  
4 prudence, you look at all the facts and circumstances that a  
5 person or utility knew or should have known at the time and  
6 that is one of the central circumstances that is involved here.  
7 And it's not to second-guess it at all. It is in light of that  
8 decision did we make the right decisions.

9 COMMISSIONER BAEZ: And it's your feeling that  
10 generally speaking that in the proposed issues that Staff has  
11 set forth, and I note -- again, I note that you've had very  
12 little time to go over all of them, but at least the  
13 opportunity to present that type of case before the Commission  
14 is not being afforded to you?

15 MR. WILLIS: We don't believe so, Commissioner. The  
16 way, I guess, it's Staff's Issue 8 is now drafted, we don't  
17 think it's adequate with respect to our Issues 1 and 2. I  
18 think that those are square issues that we need to present to  
19 the Commission. The answers to those questions are the answers  
20 that we need to know in order to guide us about what to do  
21 next. If we avoid that, we are not able to make those  
22 judgments.

23 COMMISSIONER BAEZ: Well, given that, let me ask you  
24 this: We seem to be concentrating on the prudence issue, and  
25 I'm wondering in light of the language of this Commission's

1 order expediting, we can call it the RTO order if you want for  
2 better clarity, in light of the language there, what is it  
3 about a prudence review up front that is going to give you,  
4 specifically, the comfort or what is it about answering that  
5 question if, in fact, the company or rather the Commission is  
6 at least suggesting in the order that it would withhold any  
7 ratemaking issues to the end of the docket? I mean, there  
8 seems to be some divorcing of the cost recovery, which would  
9 seem to me to be a very important determination that you would  
10 need to decide to go forward or not. I mean --

11 MR. WILLIS: Well, Commissioner, we believe that you  
12 should make a very crisp, clear decision with respect to the  
13 company's actions on the prudence of going forward with  
14 GridFlorida in order for us to, in fact, proceed. If that  
15 issue is avoided or put off, then our actions are necessarily  
16 put off. And we may, through the actions here, may lose  
17 opportunities to -- that we would otherwise have if we delay  
18 this.

19 COMMISSIONER BAEZ: Well, and again, going back to  
20 the order, what is your contemplation? What does Phase 2 of  
21 the order mean to you? What does it suggest to you?

22 MR. WILLIS: Well, with respect to Tampa Electric, we  
23 may not have a Phase 2.

24 COMMISSIONER BAEZ: I'm sorry, didn't mean to put you  
25 on the spot. I know that you're slightly different. Forgive

1 me for that but, I guess, the question could go to any of the  
2 other two companies. You know, if this is some bifurcated  
3 process, then what is it that's contemplated by Phase 2 of this  
4 order or is it all going to get decided in Phase 1, if that's  
5 your understanding of it?

6 MR. CHILDS: Well, speaking for Florida Power & Light  
7 my thought was not that you were going to decide the whole case  
8 in Phase 1, but I think you raised the point about the wording  
9 of the order that perhaps we need to address straight on. I'm  
10 looking at Page 4 which says once the -- this is right below  
11 where there is an identification of issues and it says, "Once  
12 the issue of prudence of cost has been addressed, the second  
13 issue is who should pay, ratepayers or stockholders?"

14 And so, one of the things that I'm trying to make  
15 clear here without being argumentative about it is we don't  
16 want to leave the issue on the table, that as this language  
17 might suggest that there is some residual question of prudence  
18 that is going to be resolved later on. We are -- and, I think,  
19 you know, we're asking you to look at the GridFlorida at how  
20 it's supposed to operate, why it was done and decide, based on  
21 that, whether it was prudent.

22 COMMISSIONER BAEZ: Well, Mr. Childs, is what you're  
23 suggesting is that a determin-- and forgive my ignorance,  
24 perhaps, but when I -- traditionally, when we speak of prudence  
25 we speak on an all or nothing basis somehow and that once a

1 determination of prudence pretty much decides cost recovery is  
2 available, and there's not too much discussion of whether  
3 that's a partial recovery or not, at least I'm not aware of  
4 anything that we --

5 MR. CHILDS: Well, I think -- I don't know. I've  
6 thought myself what are examples. I know there have been times  
7 when companies that we did, we asked for approval of an  
8 acquisition adjustment, you know, in advance of the acquiring  
9 of power plant that we're purchasing. We've come to this  
10 Commission quite frequently, as other utilities have, and  
11 presented cases to the Commission about power plants and the  
12 costs associated with a decision as to the technology to  
13 pursue. For instance, we wouldn't expect that if we had  
14 presented a case to the Commission about the technology that we  
15 thought was appropriate for a new power plant, we wouldn't  
16 expect to then have to relitigate that decision when we came  
17 back later for cost recovery.

18 So I'm hoping that the distinction between Phase 1  
19 and 2 is that Phase 1 is the -- is to address the issues of  
20 prudence so that the utilities can decide that you're satisfied  
21 or the Commission is satisfied and satisfied enough that it  
22 should go forward and commit substantial amounts of money and  
23 that Phase 2 is to look at the procedure for cost recovery, the  
24 quantification and, you know, and clearly, if someone has gone  
25 out and has done something that is clearly unreasonable in

1 implementing what was a prudent decision, that's not beyond  
2 evaluation, but the fundamental decision is should you go ahead  
3 with GridFlorida, we would maintain, ought to be addressed all  
4 in Phase 1.

5 And that's why the issues that we thought were  
6 framed, particularly Issues 1 and 2, permit that. They permit  
7 everyone, I think, who has a point of view or a disagreement or  
8 an issue that they want evaluated, it permits them to address  
9 it under what are really neutral issues in Phase 1. And once  
10 again, I do have a proposal or we do have a proposal as to how  
11 to address issues.

12 COMMISSIONER BAEZ: We're going to try and get to  
13 that.

14 MR. CHILDS: Okay.

15 COMMISSIONER BAEZ: Mr. McGee, nothing further?  
16 Ms. Kiesling.

17 MS. KIESLING: Yeah, if I could just address one  
18 point very quickly. When we look at what is in the order, the  
19 RTO order as you're calling it, and compare that to the  
20 discussion on the record and the transcript of that hearing on  
21 the joint motion, I think that it is clear from the transcript  
22 that what was contemplated by the Commissioners or certainly  
23 the majority of the Commissioners was something that went  
24 beyond just the pure prudence of the cost. It contemplated a  
25 look at prudence and the prudence of the decision to

1 participate in GridFlorida as being the totality of the issue.

2 COMMISSIONER BAEZ: Yes.

3 MS. KIESLING: And so, therefore, I just would like  
4 to express a small concern with the language of the order, not  
5 that there's anything wrong with it and not that we don't think  
6 that the actual costs should be part of Phase 1, but we think  
7 Phase 1 is broader than what is contained in this order, if you  
8 look back at the transcript of what is contemplated.

9 COMMISSIONER BAEZ: And, I think, you've -- at least  
10 if I'm not mistaken, you've heard the Staff agree with you, in  
11 essence, I mean, that it's not just about quantifiable  
12 benefits, certainly. It's not just about quantifiable cost. I  
13 mean, it's a little bit broader than that.

14 I guess, what I would like to do is -- and again, I  
15 hear the petitioners, you know, sticking tough by the issues  
16 that they have in their petition and I understand that, but if  
17 it comes down to trying to create or craft language in an issue  
18 that makes it available for everyone, recognizes that this is  
19 not just about cost but at the same time allows for cost to be  
20 adduced in the process, where is the -- I mean, I'm not hearing  
21 disagreement that that's probably the way it should work out.

22 Certainly if, as Mr. Childs and I'm assuming  
23 Mr. McGee suggests that a prudence determination -- and I'm  
24 leary of using that word, but we use it anyway, a prudence  
25 determination carries with it some determination on cost



1 recovery on the back end, why wouldn't we want to craft issues  
2 that allow for all of that to be taken into consideration? Why  
3 have issues as -- and I called them general earlier, but you  
4 know, I think, maybe we can find another word for them but it  
5 says, you know, in the context issues as you've proposed that  
6 only identify the context of, for instance, FERC Order 2000,  
7 the parameters of FERC Order 2000, isn't it a little bit more  
8 than that, too?

9 MR. LONG: Well, Commissioner, I think, you have to  
10 read Issues 1 and 2 as we've proposed them together. And, I  
11 think, Issue 1 presents the threshold issue. The fact is that  
12 the three utilities are subject to the jurisdiction of the  
13 Federal Energy Regulatory Commission for certain aspects of  
14 their business.

15 So, confronted with Order 2000, which is a fact, a  
16 reality, the first question says, "Was the decision to  
17 participate in an RTO the most prudent alternative given the  
18 fact of Order 2000? Seems to me that has to be a threshold  
19 question, and one can conclude no, that was not the most  
20 prudent response or yes, it was. But it seems to me you have  
21 to answer that first question, given the fact that Order 2000  
22 is a reality, how should the utilities have responded to it?

23 If you conclude that responding to order 2000 by  
24 deciding to join an RTO of some kind was the most prudent  
25 alternative, then you get to the next prudence question was,

1 well, given what the utilities proposed, was that a prudent  
2 response to Order 2000? So, it doesn't require the Commission  
3 simply to review FERC's guidelines and parameters in Order  
4 2000. The first issue presents to the Commission the threshold  
5 question of prudence, was it a prudent decision to decide to  
6 join an RTO in response to Order 2000 in the first place?

7           And I think that first question takes into its  
8 purview a number of the subsidiary issues that have been  
9 raised; for instance, the question of whether participation is  
10 voluntary or mandatory. There are lots of issues that can be  
11 raised in answering that first question. And that's why it was  
12 our firm belief that that question was phrased neutrally. It  
13 does not preclude anyone from arguing any position and yet it  
14 does not predetermine how that decision should be made. It  
15 invites the parties to present their best evidence on prudence.

16           MR. CHILDS: And our decision to participate in an  
17 RTO, that's Florida Power & Light's decision to participate in  
18 an RTO, was not in isolation, it was in response to Order 2000,  
19 and it was because of Order 2000, and so we believe that that's  
20 the appropriate context in which to look at that decision.

21           And the second question, you know, the reason, I  
22 think, it has the word "given the parameters," was the -- "Is  
23 the GridFlorida proposal prudent given the parameters  
24 established by FERC?" is FERC said something about how RTOs  
25 were to be structured. And so, what we're trying to get before

1 the Commission is, is that looking at what those parameters are  
2 is GridFlorida the appropriate vehicle to do that?

3 And Commissioner, one other comment about sort of  
4 whose issues you look at. One of the things that I'm hoping  
5 that is clear is that we're trying to frame this as an issue  
6 that says was that decision, was that action prudent? And, I  
7 think, that's all together different. I believe, that's a  
8 neutrally-framed issue. That's all together different than a  
9 series of issues which pose the question of what are the costs  
10 and what are the benefits, because ultimately the Commission is  
11 going to be asked to rule on that.

12 And so, it puts us in the situation with these issues  
13 that are suggested of saying, well, we don't agree that you  
14 ought to look at the costs, you ought to look at something  
15 else. And our point is, is that we believe that the issue  
16 ought to be framed from the beginning, which permits the  
17 parties to present to you their theory of the case and does not  
18 presume a theory of the case. We ought to have that  
19 opportunity open to us.

20 COMMISSIONER BAEZ: Well -- and I appreciate what  
21 you're saying and, I guess, I'm having trouble picturing a  
22 scenario where all the information -- I mean, I accept that a  
23 petitioner, you know, from Florida Power & Light, Florida  
24 Progress or TECO would have a theory of the case and that that  
25 theory of the case can hinge, basically, on the parameters of

1 Order 2000 or what your reaction to Order 2000 was. But when  
2 it gets down to it, as a Commission, we -- if the tact that we  
3 have to take is based on our protection or our consideration of  
4 what the impact of your actions are going to be on the  
5 ratepayers, then we've got a -- I mean, it seems to me almost  
6 if you picture it, you're working your way down from something  
7 and the Commission is going to have to work its way up to  
8 something.

9           And while I'll accept -- and I guess that was, from  
10 my initial statement, what I would expect or hope the attitude  
11 would be on all of this is to allow for everyone to --  
12 certainly Staff -- to get the information that they feel they  
13 need and for you to express a theory of the case that you feel  
14 you need, but the two cannot be exclusive concepts. They have  
15 to somehow work in unison, because in the end, Mr. Childs, if I  
16 hear you correctly, if there is a determination of prudence,  
17 there's going to be -- you know, inevitably, there's going to  
18 have to be some numbers tied to it.

19           Whether the decision to accept those numbers or not  
20 had to do with consideration of issues that were broader than  
21 those numbers, in the end it's going to come down to that. I  
22 mean, there has to be a point in which you say, all right, what  
23 is the -- you know, where's the price tag to all of this? And  
24 if you're in agreement with it at least -- you know, I may not  
25 have stated it so artfully, but if you're in agreement with the

1 notion that even as you consider the broader issues as you've  
2 stated or had the opportunity to present issues in a broad  
3 sense as you've stated or are wanting to that there is still  
4 some detail that has to be attached to it so that the  
5 Commission can make a proper decision.

6 MR. CHILDS: Right. Well, what --

7 COMMISSIONER BAEZ: I we can take it all into  
8 consideration. I mean, this is --

9 MR. CHILDS: You know, I think, it does. There has  
10 to be -- and we were -- we have an Issue 3, which raises the  
11 question of benefits, what -- and maybe I'm there,  
12 Commissioner, which is sort of to tiptoe into a way that we  
13 thought that the issues that have been raised by various  
14 parties could be melded in to what we have proposed as our  
15 starting issues. And in looking at it, I'm probably going to  
16 leave some categories out, but it looks to us like there are --  
17 there's a large series of issues raised by individual parties  
18 and Staff that raise the question of benefits associated with  
19 the decision to implement GridFlorida.

20 We believe that Issue 3 that we have proposed permits  
21 those series of questions on benefits to be addressed or that  
22 if that's not workable that some umbrella issue that raises,  
23 you know, the listing of the benefits associated with  
24 GridFlorida to be addressed, costs and benefits.

25 There's another issue which -- another grouping that

1 if you want to make a distinction that raises the question of  
2 reliability and adequacy of the system. And those could either  
3 be under Issue 3 or it could be -- I think, they could be  
4 addressed under some umbrella type issue as well. And that  
5 would permit the Commission to have sort of as a starting point  
6 it would be able to address the fundamental bottom line  
7 questions of was the decision to form an RTO prudent and is  
8 this one prudent and also explore the benefits and explore the  
9 impact on the adequacy and reliability of the system.

10 Those are most of the issues. There are some issues  
11 as well that were in the legal area. There are a few that I'm  
12 not sure whether they remain now with the Staff's new list, and  
13 then there was a grouping of some that were raised by the  
14 office of public counsel, which I'm not sure I understand yet.  
15 We would like to be sure that before the issue is included for  
16 formulation and addressing here that we're clear as to what the  
17 issue means.

18 You know, for instance, I look at in this compilation  
19 of the issues, Issue 32 is -- it talks about unbundling retail  
20 electric service. I don't think we did, I don't understand how  
21 that could occur, and so I would initially take the position  
22 that's not an appropriate issue, but if there's a way to  
23 preserve that and come back to it we'd be willing to do that,  
24 too. So, my reaction is that there is a way and that is, is  
25 that most all these questions that are proposed relate to

1 benefits and relate to -- or the adequacy and reliability,  
2 other than the broad issues on prudence.

3 COMMISSIONER BAEZ: Would you --

4 COURT REPORTER: Microphone.

5 COMMISSIONER BAEZ: I'm sorry.

6 Let me see if I understand what you're suggesting is  
7 if we went -- and I don't want to put words in your mouth, but  
8 if we went down this list of Staff's proposed issues, and it is  
9 possible to find or to list even these issues under any one of  
10 these -- is it five issues that you've proposed, I mean, in a  
11 mechanical sense?

12 MR. CHILDS: Except for the ones that are in the  
13 category of some Legal Issues --

14 COMMISSIONER BAEZ: Right, with the exception of the  
15 Legal Issues.

16 MR. CHILDS: And, I think, it is except there's the  
17 issues that the Staff has raised that are 26, 27, 29, maybe 28,  
18 which are on this compilation which appear to us -- I mean, we  
19 would raise a question about including the word, "appropriate"  
20 in the framing of these issues, but it also seems to us that  
21 these are issues for Phase 2 of the proceeding. And as I say,  
22 I don't know where those went in this new list that the Staff  
23 had.

24 COMMISSIONER BAEZ: Mm-hmm.

25 MR. CHILDS: But I believe that that gets us, that

1 approach of either including it under our Issue 3 or some other  
2 umbrella issue that addresses benefits, permits all of the  
3 participants to raise their issues about benefits and address  
4 them to the Commission and that has the added benefit that it  
5 includes -- I mean, it includes almost more than 50% of the  
6 remaining issues that way.

7           COMMISSIONER BAEZ: Can I ask the petitioners this:  
8 Is it possible for each of you to get the determinations to  
9 your issues as you've listed them in your petitions and at the  
10 same -- and for any -- and to also get answers to the proposed  
11 issues, to any other proposed issues? I mean, is it a question  
12 of folding in or would you accept that there are some subissues  
13 that are --

14           MR. MOYLE: Commissioner, I don't want to put words  
15 in his mouth, but it sounded like the concept had some appeal  
16 with respect to, you know, if you develop an umbrella issue  
17 that allows sort of a listing of some of the issues that others  
18 may be concerned about, you know, reliability, I think, is  
19 important and some of those things that that may be workable.

20           COMMISSIONER BAEZ: And I don't want to put words  
21 into Mr. Childs' mouth either, but it sounds like if there are  
22 umbrella issues, and just assuming for argument's sake that  
23 these umbrella issues were substantially similar to the five  
24 issues that the petitioners have identified in their petitions  
25 that certainly there would be room for subissues or some



1 subdeterminations leading up to that, leading up to the  
2 umbrella issues. I mean, is that fair? I haven't heard you --

3 MR. CHILDS: I think, there could be. And a major  
4 part of what I'm trying to convey in terms of my reaction to  
5 the issues, Commissioner, is that really I'm concerned that the  
6 specific wording of some issues can suggest an outcome and that  
7 I'm interested in.

8 For instance, I don't want the Commission to take the  
9 view that the only way it can decide that GridFlorida is  
10 prudent is if it looks at a cost benefit analysis for each  
11 utility and decides that there's perfect timing, et cetera,  
12 because I think we're going to argue about lots of things and  
13 create a lot of confusion, and so it could be something that  
14 the Commission wants to consider. And to the extent it wants  
15 to consider matters, even over our view of the way we think you  
16 should decide the case, clearly it can.

17 COMMISSIONER BAEZ: Well, and I think that that's  
18 certainly my interest is in preserving as much ability or  
19 opportunity to consider what we would feel to be everything and  
20 then to give weight to what we would feel to be as much as  
21 possible and not be limited because of the generality of an  
22 issue in considering what we may think. You know, there may be  
23 some specific aspect to that issue that makes or breaks the  
24 situation or the decision and, I think, you'll agree with me  
25 that we have to have the ability, I mean, whether the thought

1 process fits with that or not, but there has to be the  
2 opportunity and ability to do that.

3           And I think that -- I think, what my suggestion would  
4 be is -- and, I think, we're running about an hour so maybe we  
5 can take ten minutes to discuss this amongst yourselves, but to  
6 entertain the possibility that at least some of these more  
7 specific issues, as you've identified, can somehow fit, if we  
8 identify your five issues as umbrella issues that we can find a  
9 slot for each of these so that no one and no particular issue  
10 gets left out, even in the context of your general treatment of  
11 them.

12           MR. CHILDS: Sure, and I think we can. We've had  
13 some discussion to try to find out where issues would go and  
14 see whether we thought they'd fit, so I think we can.

15           COMMISSIONER BAEZ: All right. I'm sorry, Cochran.

16           MR. KEATING: If I could just speak briefly to the  
17 utilities Issues 1 and 2. And let me say that to start to be  
18 honest, we had some difficulty in wrestling with the word  
19 prudent, reasonable.

20           In coming up with our proposed list of issues that  
21 was distributed today we looked back at the order and tried to  
22 figure out what determination did the Commission say needed to  
23 be made here? We ended up with the language in the best  
24 interest of its ratepayers in this version, mostly because we  
25 felt that in looking at the order and reading the order saying

1 that cost recovery was something to be dealt with in the second  
2 part of this proceeding, we felt that the word prudence may be  
3 a little loaded and that implied prudence for cost recovery.

4 Specifically, on Issue 1, "Is it the utility's  
5 decision to participate in an RTO the most prudent alternative  
6 in light of FERC's Order 2000?" I'm not sure how useful it is  
7 to ask the question is their decision to participate in an RTO  
8 prudent? We have GridFlorida and that's, essentially, what  
9 came out of the whole process and that's what Staff believes  
10 needs to be looked at.

11 MR. CHILDS: I'm sorry, I'm not hearing you.

12 MR. KEATING: We weren't sure how useful Issue 1  
13 would be in the Commission's determination, "Is the utility's  
14 decision to participate in an RTO the most prudent alternative  
15 in light of FERC's Order 2000?" And the reason why is because  
16 we have a specific RTO that's been formed, it's been looked at  
17 by FERC, and Staff felt like that's what we needed to base our  
18 evaluation on was whether the decision to participate in  
19 GridFlorida was reasonable as we've stated in our proposed  
20 issues that we handed out today, was it in the best interest of  
21 the utility's ratepayers.

22 And as far as the language in Issues 1 and 2 going  
23 towards Order 2000, I think, the utilities have stated Order  
24 2000 is a fact and, in my mind, it's there and it's something  
25 that we ought to keep in mind, but it's case background. I

1 don't know that it's something that needs to be in an issue  
2 that the Commission decides.

3           COMMISSIONER BAEZ: Well, I just want to say, I  
4 think, Staff makes a good point. The fact that we established  
5 Order -- you know, do anything in light of Order 2000 is  
6 somehow placing that above all else. And, I mean, I think, it  
7 rightfully belongs as part of the discussion and certainly  
8 belongs as a fact of the decision process that any company  
9 took, but to highlight it seems a little derogatory to  
10 everything else that's involved in the decision.

11           I'm sorry, Mr. Long.

12           MR. LONG: Commissioner, I'd just like to respond to  
13 one thing that Staff counsel said. In looking at our Issues 1  
14 and 2, if I understood him correctly, his point was, well, we  
15 have GridFlorida, so it doesn't make sense to talk about  
16 participation in an RTO in the abstract, and I think that maybe  
17 this is sort of a key misunderstanding in terms of our position  
18 anyway.

19           We have made a proposal to the Commission, to FERC,  
20 for a specific RTO, and we think that proposal is prudent and  
21 makes sense. But if this Commission feels that our proposal  
22 isn't prudent, you know, GridFlorida is not something that  
23 we're prepared to move forward to until we get that issue  
24 resolved. So, to say that GridFlorida is the only thing that  
25 needs to be looked at really misses the point. We're not going

1 to do anything that this Commission feels isn't prudent.

2 COMMISSIONER BAEZ: I'm not sure that I heard  
3 Mr. Keating suggest that in particular. I think, what he was  
4 taking exception to or highlighting, at least, is that as  
5 general as, you know, as Issue 1 and 2 by the companies sounds  
6 that perhaps there's a more general issue that makes Order 2000  
7 part of the mix.

8 And I think that's really what we're talking about is  
9 that, you know, whatever conditions exist or whatever  
10 conditions were being reacted to in light of Order 2000 that  
11 that is part of the mix, that that does get considered in terms  
12 of a broad view of what the realities are about your decision,  
13 but they certainly don't, you know, they'll be given the weight  
14 that they're due along with whatever other factors may be  
15 considered. Again, I don't want to presume to understand  
16 completely what he was talking about, but it seems to me that  
17 that's really what we're --

18 MR. LONG: Well, if that's -- and I'm not sure -- if  
19 that's, in fact, what counsel was saying, I'm not sure what  
20 those other considerations are that are broader than the  
21 threshold question of --

22 COMMISSIONER BAEZ: It's not a broader consideration,  
23 it's that it's a broader question of participating in an RTO at  
24 all. I mean, that would give you an opportunity say here we  
25 have FERC Order 2000 and this is what we're reacting to and

1 this is the total set of facts that we are considering or that  
2 we considered as part of our decision and certainly an  
3 important part of that is the federal order. I mean, it  
4 shouldn't -- it seems that what Staff was suggesting, at least  
5 in my mind, is perhaps this is not about Order 2000, that Order  
6 2000 is part of something bigger, part of a broader decision or  
7 a broader issue, which is entering into a transmission -- an  
8 RTO at all. That's what I heard him say is that Order 2000 is  
9 a fact.

10 MR. KEATING: Well, now, after all this discussion,  
11 I'm not sure what I said.

12 SPEAKER: Did I confuse you?

13 MR. KEATING: I just -- I think, I had a couple other  
14 brief comments. And one was, again, Staff's position on Issue  
15 2 is that it goes beyond what the Commission had approved or  
16 had intended in this proceeding and that it suggests we make a  
17 decision on GridFlorida as a whole, the company's  
18 participation, and I mentioned that before.

19 COMMISSIONER BAEZ: I'm sorry and, I guess, I just  
20 have a -- wouldn't your first -- wouldn't Issue 2, this --  
21 given the parameters of the issue that says is the GridFlorida  
22 proposal advanced prudent given the parameters established by  
23 Order 2000? I mean -- and I may have said this before, but it  
24 seems like that puts us in a position of interpreting the  
25 parameters of Order 2000. I mean, wouldn't this get subsumed

1 under some general issue of whether it was prudent or not?

2 MR. WILLIS: Commissioner, I think, your suggestion  
3 of taking a short break is a good one and let us confer for a  
4 minute.

5 COMMISSIONER BAEZ: We'll recess for ten minutes.

6 MR. WILLIS: Okay.

7 (Recess taken.)

8 COMMISSIONER BAEZ: Is everybody back? I hope no  
9 one's double parked.

10 We broke and I'm assuming everyone had their  
11 discussions, and I guess we had left with a question or we were  
12 trying to address how we could structure what seemed like more  
13 specific issues as proposed by the Staff into more general  
14 issues similar to those proposed by the petitioners.

15 MR. WILLIS: Commissioner, I think that one thing  
16 that we can do to address the points that you made would be  
17 with respect to the company's Issues 1, after the word, "most  
18 prudent alternative" we could just put a period. That would  
19 address the situation that you raised that the reference of  
20 FERC's Order 2000 was just one of other circumstances that  
21 could be considered and whether -- what FERC's order said would  
22 be one of the circumstances and there may be others, and it  
23 would be neutrally worded so that any party could present facts  
24 and circumstances.

25 COMMISSIONER BAEZ: Mr. Willis, and I would direct

1 this question to the rest of the applicants, you used the word  
2 "alternative." Do you -- I guess, as part of your theory of  
3 the case, and I'm not asking you to give anything up that you  
4 don't want to give up, but is it that you contemplate matching  
5 the GridFlorida RTO against other alternatives that you might  
6 have considered? I mean, is this the depth or the breadth of  
7 the theory that you're going to pursue?

8 MR. WILLIS: Well, this would be is it a decision to  
9 participate in an RTO, any RTO. And, frankly, we've heard a  
10 number of comments from the bench which we don't fully  
11 understand that you're not trying to interfere with the  
12 decision to form an RTO and don't want to, you know, be  
13 involved in that, but you want to do something else. We're not  
14 -- some of those comments are confusing to us, but it seems  
15 like --

16 COMMISSIONER BAEZ: My apologies.

17 MR. WILLIS: The very threshold here, is it prudent  
18 for us to join an RTO?

19 COMMISSIONER BAEZ: Well -- and I think -- but I  
20 guess, I go back. As an alternative to what? I mean, are we  
21 talking not joining, I mean --

22 MR. WILLIS: Yes, any alternative.

23 COMMISSIONER BAEZ: I see Mr. Long --

24 MR. LONG: Yes.

25 COMMISSIONER BAEZ: -- answering that.



1 MR. WILLIS: An alternative other than doing an RTO.

2 COMMISSIONER BAEZ: So, there'll be a presentation or  
3 you would contemplate having some presentation of what  
4 alternatives were considered? I mean, is this what we're  
5 looking at?

6 MR. WILLIS: Yes.

7 MR. LONG: Yes.

8 COMMISSIONER BAEZ: Secondly -- and, I guess, while I  
9 understand the purpose of doing that, aren't we -- and I go  
10 back to the RTO order, haven't we already fixed on an RTO?

11 MR. WILLIS: Not necessarily.

12 COMMISSIONER BAEZ: And why don't you feel that?

13 MR. WILLIS: I mean, because you are challenging  
14 whether or not it was prudent for us to do what we've done and  
15 whether or not we will recover our cost and that's pretty --

16 COMMISSIONER BAEZ: Well, if anything -- I'm sorry,  
17 go ahead, I didn't mean to interrupt.

18 MR. WILLIS: And that's pretty fund-- I mean, that is  
19 the most fundamental thing that can be challenged for us, if  
20 whether we have taken an action that we shouldn't have taken  
21 so, therefore, we don't recover costs we -- I think, you need  
22 to go back and then give us very definitive direction on that  
23 particular question as well as the question of GridFlorida. If  
24 you don't answer that question, we don't know what to do after  
25 that.

1           COMMISSIONER BAEZ: No, I understand. And I think  
2 that the question somehow, whether it's phrased that way or  
3 another way, it has to be answered. And I'm wondering going  
4 back to the proposed issues, if you look at number 8 and it  
5 says, "Was the utility's decision to participate in GridFlorida  
6 prudent --" I'm sorry, "Was the decision to participate in  
7 GridFlorida in the best interest of its ratepayers?" If we had  
8 the concept of prudence in that issue as stated, would that  
9 resolve anything? Would that address what you're --

10           MR. WILLIS: It would help us with respect to Issue  
11 2, but not Issue 1. I mean, that's what Issue 2 is, "Is the  
12 GridFlorida proposal advanced prudent?" I mean, we could  
13 concede, again, to take out the phrase, "given the parameters  
14 established by FERC in Order 2000" out of there. We think with  
15 that, again, both of those issues are framed neutrally and  
16 fairly and that each party can argue its theory of the case.

17           COMMISSIONER BAEZ: Staff, do you have any thoughts  
18 on that? I'm sorry, Mr. Childs, yes.

19           MR. CHILDS: Well, just -- you asked a question about  
20 hasn't the decision been made to participate and I'm just being  
21 clear, no, and not from Florida Power & Light's perspective  
22 that if the decision by the Commission is not prudent and it's  
23 not cost recovery we won't.

24           COMMISSIONER BAEZ: Well, I understand that. I mean,  
25 it's not --

1 MR. CHILDS: Okay.

2 COMMISSIONER BAEZ: Your decision hasn't been set in  
3 stone because you're, in fact, here trying to get some level --

4 MR. CHILDS: Right.

5 COMMISSIONER BAEZ: -- some blessing, if you will, to  
6 continue along that side, but what my meaning to -- I mean,  
7 you're not going to change your -- the vehicle, I guess.

8 It's --

9 MR. CHILDS: Or we could.

10 COMMISSIONER BAEZ: Or you could, okay.

11 MR. CHILDS: We could, because believe that the  
12 decision and the alternatives selected has been challenged and,  
13 therefore, we're not -- I mean, I realize it may have been  
14 argued that the decision has been made and thus we've moved on  
15 to a separate stage of the evaluation process, and in our mind  
16 it has not; that if there's not going to be a Commission  
17 conclusion that this is appropriate, then we don't want to go  
18 forward. And also, really, we're trying to find out right now,  
19 you know, is it -- can there be a way of it framing issues so  
20 we can get that answer.

21 COMMISSIONER BAEZ: Exactly, but something that you  
22 said kind of takes me back to the RTO order and the fact that  
23 saying I would grant that implicit in any prudence requirement  
24 you have the implied alternative of doing nothing at the very  
25 least. I'm not so sure certainly that the order contemplated

1 going through an analysis of all the separate -- all the other  
2 alternatives that you might have gone down.

3 To me, it more contemplated saying, all right, a  
4 decision, whether final or not, has been made to pursue an RT0,  
5 a peninsular Florida RT0, and this is what we're going to look  
6 at, and what is the prudence of this particular alternative,  
7 whether it's compared to doing nothing or as a result of some  
8 consideration of, you know, what the costs, what the impacts to  
9 ratepayers are and, you know, if there's any intangible  
10 benefits that are involved in there -- I mean, is there a net  
11 benefit to the ratepayers and not concentrate so much on what  
12 your process -- and what the process of elimination of other  
13 alternatives was going to be.

14 MR. CHILDS: I don't know because we're not as far  
15 along as, I think, we'd like to be but, I believe, what we're  
16 trying to do is be able to address credible alternatives in the  
17 process that we went through so that, you know, the question is  
18 there whether -- and, I think, the Commission Staff asked  
19 questions about it in the past year about was this the right  
20 way to go. And so, we're trying to address that and really  
21 trying to make sure that we are presenting a case that  
22 addresses that.

23 COMMISSIONER BAEZ: Staff, I noticed that none of the  
24 proposed issues, this recent proposed issues list, it doesn't  
25 even utter the word alternative. What's your -- what was your

1 understanding or what is your -- what's your understanding of  
2 what the order -- what the RTO order actually contemplated?

3 MS. HART: Commissioner, my reading of the order is  
4 that it strictly deals with GridFlorida and does not  
5 contemplate an examination of whether a decision about an RTO,  
6 in general, should have been made. The order discusses that  
7 the companies were well along the way in creating GridFlorida  
8 and the way that it would be structured and that the  
9 Commission, therefore, was going -- would like to look at that  
10 decision. Therefore, I'll say that Issue number 1, as phrased,  
11 even as altered by Mr. Willis, goes beyond the scope of the RTO  
12 order.

13 MR. LONG: If I might, I'm not sure how you can  
14 evaluate prudence and isolation. Prudence, by definition, is a  
15 function of what was known and the quality of the decisions  
16 made at the time. I don't see how the Commission can assess  
17 prudence without looking at what the alternatives were.

18 COMMISSIONER BAEZ: Well --

19 MR. LONG: And it seems to me that the other  
20 alternatives may have provided fewer benefits, all of the  
21 alternatives may have provided no benefits, and the one that  
22 was selected was the least detrimental. I mean, prudence has  
23 to be reviewed in some context.

24 COMMISSIONER BAEZ: Well, that may be so, but I'm not  
25 sure that I agree with the context you're identifying. If

1 you're identifying prudence -- I mean, somehow as I said  
2 before, one alternative implied is not doing anything; I mean,  
3 leaving the ratepayers, for our purposes anyway, leaving the  
4 ratepayers whole or leaving them not harmed, and perhaps that's  
5 the standard that we need to use.

6 I don't think that we can afford to enter into  
7 evaluating different alternatives actually leading to some kind  
8 of transmission organization. This has been the decision that  
9 was made and we're going to try -- it seems to me that we  
10 should be trying to -- at least my reading of the order is to  
11 look at the GridFlorida RTO as proposed and see if, based on  
12 all the facts surrounding it, there is a net -- the GridFlorida  
13 RTO leaves a net benefit to the Florida ratepayers or to the  
14 peninsular Florida ratepayers, because that's really what we're  
15 talking about, whether the value of wholesale competition adds  
16 to it, whether your need to comply or determination that you  
17 needed to comply with Order 2000 adds to it, all those things  
18 put together, whether we get a net benefit for the ratepayer or  
19 not. It seems to me that that's what the order was  
20 contemplating.

21 MR. WILLIS: Commissioner, I think, it's important  
22 when the day is over and you've rendered a decision that you've  
23 given us definitive guidance about what to do. If you have not  
24 answered question 1, then we would not know what to do if you  
25 answered question 2 and found that we were imprudent for

1 forming GridFlorida.

2 COMMISSIONER BAEZ: Well --

3 MR. WILLIS: We need to know your position is that  
4 RTOs are just inappropriate and that we should have stood by  
5 and done nothing or done some other alternative.

6 COMMISSIONER BAEZ: It's possible that standing on  
7 its own the determination of imprudence is, you know, to  
8 determine it imprudent is a possibility. I guess, you know,  
9 that's a definitive answer based on whatever factors were  
10 considered.

11 MR. WILLIS: Well, it is, but it doesn't give us the  
12 guidelines of whether to go and try to form a different RTO or  
13 join a different RTO or whether to stand down and do nothing.

14 COMMISSIONER BAEZ: Would the Commission have the  
15 authority in denying the prudence or finding something  
16 imprudent, and maybe Staff can help me with this, would they  
17 have as part of their decision to give direction and go back  
18 and explore another alternative? I mean, is that -- was that  
19 within our authority?

20 MR. WILLIS: Well, I think, it's probably within your  
21 authority to give us suggestions, but -- and that's what we  
22 want you to do with respect to Issue 1.

23 COMMISSIONER BAEZ: But couldn't we do that even  
24 taking GridFlorida in a vacuum, if you will?

25 MR. LONG: Commissioner, I guess, we'd appreciate

1 whatever guidance we get, but I think the point that we're  
2 making is unless we get definitive guidance, we're not going to  
3 move forward. I mean, there's no point in moving forward and  
4 risk doing something that this Commission will find imprudent.  
5 It just doesn't make any sense.

6 COMMISSIONER BAEZ: And, I guess, you would -- my  
7 reading of the order says that you would get that determination  
8 in Phase 1. You're going to get a determination of -- and  
9 we'll use the word prudence, if you want. You're going to get  
10 a determination of prudence, whatever that means, consistent  
11 with the order. Is that definitive enough?

12 MR. McWHIRTER: Mr. Baez?

13 COMMISSIONER BAEZ: Yes.

14 MR. McWHIRTER: I'm probably more confused than  
15 normal.

16 COMMISSIONER BAEZ: That makes two of us.

17 MR. McWHIRTER: But on Page 3 of your order, your RTO  
18 order, if I may quote, it says, "The form and function of a  
19 peninsular Florida RTO has been defined, GridFlorida is to be a  
20 for-profit, stand-alone transmission company." It seemed to me  
21 when I read that, that that meant that that decision has been  
22 made and it is chiseled in stone and --

23 COMMISSIONER BAEZ: Subject to our prudence  
24 determination, but yes.

25 MR. McWHIRTER: Well, but if you make it a prudence



1 determination, what does that mean? Obviously, it doesn't mean  
2 you can change the form and function, because that's already  
3 been made by another regulatory agency. Now, Mr. Childs and, I  
4 think, Mr. Willis indicated that perhaps you could go in and  
5 say to the utilities we would prefer you to have an independent  
6 organization as opposed to a Transco, but that would only be a  
7 suggestion and I don't know that it would be given any  
8 credence, but I'd like to hear some discussion as to whether or  
9 not utilities think you have that authority to change the form  
10 and function as it's now approved by FERC.

11 COMMISSIONER BAEZ: Well, it seems to me that some  
12 determination of prudence is going to put an end to or allow  
13 something to continue in this case. So, I mean, you know, and  
14 I go back to my question do we have authority to give that type  
15 of guidance? This wasn't good enough; do something else. I  
16 mean, is that something that you would be in the event that  
17 there was a decision?

18 MR. CHILDS: I'm not trying to avoid responding to  
19 that question, but let me try to present it the way we've  
20 looked at it. What we're after is as to that question of  
21 guidance is not -- and we're not looking for the guidance so  
22 much as we're looking for your determination as whether a  
23 structuring of it this particular way results in a decision  
24 that is prudent. And, you know, I suspect that if it were  
25 proved and the Commission concluded that with this feature or

1 that feature associated with the RTO that you didn't think it  
2 was prudent that that's what you'd find based upon the record  
3 evidence.

4 But we're not to the point of saying that, as this  
5 order says, this order's wrong to the extent it says that,  
6 okay? I don't recall -- I mean, I know this was the Staff  
7 position, but I don't recall that the Commission, when they  
8 discussed it and voted upon it, endorsed it. This is a  
9 position of fact. And what we're here for is to really to try  
10 and say we did what we did in terms of proposing this RTO, we  
11 structured it the way we did, we realize that there are  
12 questions. Are we prudent? And if we're not, for one reason  
13 or other, okay.

14 COMMISSIONER BAEZ: Mr. Childs, forgive me. You want  
15 us -- you want me, at least, because I'm the only one sitting  
16 up here today, unfortunately, but you want me to accept the  
17 fact that your decision to enter into a -- to pursue an RTO is  
18 not a final decision. And the only validity I can find in that  
19 statement is that somehow it's pending on a determination that  
20 this Commission is going to make.

21 But I guess, I would ask you if tomorrow you had a  
22 determination of prudence, are you going to turn around and not  
23 do an RTO? I mean, are you going to decide on something else  
24 or is it final in that regard?

25 MR. CHILDS: Well, I guess, I thought that the

1 exercise was that it had been suggested and it had been argued  
2 to the Commission that the various decisions associated with an  
3 RTO were imprudent and that because they were imprudent, there  
4 should not be cost recovery. And so, what we're here about is  
5 before we can go forward, we think, and incur expenses that  
6 we're not going to recover, we want to know whether we're  
7 prudent.

8 I can't tell you what the decisionmaking process will  
9 be, but I would suspect that if a decision is, is that going  
10 forward, it's not prudent, that that would receive serious  
11 consideration in deciding are we going to go forward at all, or  
12 if there's a decision that we're not prudent because of some  
13 particular finding, is there a way to address that?

14 But what we're trying to do is to have a way for  
15 those issues to be presented and ruled on. And, I guess, I  
16 thought that the issue alternative meant, you know, at the  
17 beginning point that anyone could have formed an RTO or not,  
18 and that's at least one alternative. But I also thought that  
19 there were others and it had been suggested, for instance, that  
20 maybe it shouldn't have been for-profit, maybe it should have  
21 been structured another way. Those are the alternatives that I  
22 thought we were talking about with this issue.

23 MR. SHREVE: Commissioner?

24 COMMISSIONER BAEZ: Yes.

25 MR. SHREVE: I see no way that this Commission can

1 make a decision in a vacuum on whether or not it would be a  
2 prudent alternative to participate in an RTO. They've got a  
3 lot of information to put before you before you can ever get to  
4 that point. I think you and the Staff and, I think, I  
5 understand where you're coming from rather than  
6 misunderstanding it, are moving in the right direction.

7 Utilities can put as much information out there as  
8 they want and they'll argue whatever they want to, and I think  
9 there are enough issues here that will cover just about  
10 anything they want. Maybe it's not etched in stone, but right  
11 now that's all we have to work with, that's all we've been told  
12 about, and that's what we're dealing with.

13 Now, if they have other things that they're going to  
14 put on the table and other information and other evidence that  
15 they're going to put out there during this and, I think, there  
16 are a lot of places that they can put it in here, then I'm sure  
17 the Commission will consider it. But to ask for a decision on  
18 is Florida Power's decision to participate in an RTO the most  
19 prudent alternative? You can't do that in a vacuum.

20 There may be other alternatives that are out there  
21 that people might agree with or disagree with, and you may have  
22 some changes in position of the parties. They can put that  
23 information in there. I think, you're moving in the right  
24 direction, I think the Staff is moving in the right direction  
25 on this, and I think there are plenty of places there for them

1 to put the information in that only they have, then you're  
2 going to make a decision.

3 COMMISSIONER BAEZ: Thank you, Mr. Shreve.

4 See, here's what I'm having trouble with. I think,  
5 we need to -- as I said in the beginning, we need to find a way  
6 to kind of consolidate some issues, have them be as broad as  
7 possible so that -- in a way that doesn't disturb your theory  
8 of the case, whatever that theory may be, but that doesn't  
9 preclude the Staff and ultimately the Commission from having  
10 the type of information that they need available to them and  
11 presented to them so that they can make a decision on prudence.

12 If that includes the companies bringing up other  
13 alternatives as part of their case, so be it. That's just  
14 going to add weight for one alternative or another or one  
15 theory of the case over another, and that's fine. I mean, I  
16 think, anyone else up here would anticipate as much information  
17 as possible being available to them so that they can make an  
18 informed decision.

19 I'm sorry that I confuse you if I tell you that we  
20 don't want to disturb your ability to do that. However, in  
21 your doing that, it is still necessary to have, and the order  
22 clearly states and suggests that MFRs are available and that,  
23 to me, suggests a level of specificity in terms of numbers,  
24 frankly speaking, that are going to be available to the Staff  
25 for them to be able to determine and provide some analysis

1 along those lines.

2           Whether that is the theory of the case that the  
3 Commission ultimately accepts or not is irrelevant, at this  
4 point, it does have to be available. And I don't see without  
5 any -- without a little more specificity to the proposed issues  
6 giving full validity to the issues that you've suggested, but I  
7 don't see that without a little bit more specificity in the  
8 proposed issues that the Staff or the Commission can get  
9 anywhere down that road.

10           So, I guess -- and, Mr. Long, if you'll just bear  
11 with me a second, I think that the Staff has done a very good  
12 job of trying to get your issues involved and included in their  
13 proposed list of issues. And I'm inclined to adopt these  
14 proposed issues with the understanding, and I don't know what  
15 is going to -- what kind of document is going to issue from  
16 this prehearing, but with the understanding that these issues,  
17 even as they're phrased, should not be interpreted to preclude  
18 the introduction of anything that would -- let me restate that  
19 -- to preclude the applicant's pursuit of the case as they see  
20 fit. That includes consideration and information on broader  
21 issues, intangible benefits, all of that should be included if  
22 that is the company's -- if that is the individual company's  
23 case.

24           Another problem that I see with the issues that have  
25 been proposed by the companies is that they're too general and

1 they don't get down to the level of specificity that stays  
2 consistent with the Order's statement that there are  
3 company-specific issues that need to be addressed. And I  
4 believe that that's what the companies -- rather, that's what  
5 the Staff's proposed issues try to get at in the end, with full  
6 understanding that there are broad issues that are applicable  
7 to all the companies.

8           Before I make a ruling, I'm going to let Mr. Long  
9 have his shot, if there's something that you wanted to say. I  
10 know that I kept you from speaking.

11           MR. LONG: No, Commissioner, it sounds as though  
12 you've essentially made your ruling. I was just going to point  
13 out, once again, we are fully prepared to cooperate in terms of  
14 providing whatever information the Commission and the Staff  
15 need to evaluate this case. And my only point was that there's  
16 a distinction between providing the information and framing the  
17 issues.

18           If the Staff, based on the information that it  
19 requests and receives, wants to put on a case or wants to  
20 present a certain argument to the Commission, it seems to me  
21 that they would have the unfettered ability to do that as long  
22 as they have the information.

23           COMMISSIONER BAEZ: And Mr. Long, I understand what  
24 you're saying, and I think that some consideration has to be  
25 given because you're sort of -- you're looking to use this

1 Commission's ultimate determination as a basis for moving  
2 forward with GridFlorida or not, that it has to be, and our  
3 determinations have to be in some type of form that would allow  
4 you to go to Washington with it. I understand that. And I  
5 think that the Commission and certainly the Staff should take  
6 care to consider the form in which these determinations are  
7 going to be made so that the definitiveness that you seek, one  
8 way or the other, is going to be there in the end.

9           However, I don't feel confident that having and only  
10 having such general issues, and I haven't heard any possibility  
11 that these -- that a proposed issues list might be included in  
12 some rephrased issues by the -- or under some rephrased issues  
13 by the company that would find more middle ground. But that  
14 said, you know, I think, it would be incumbent upon us to try  
15 and give you the type of definitiveness that you require so  
16 that you can move forward to, you know, whatever decision you  
17 make based on our determinations.

18           I'm not convinced that you can get that type of  
19 definitiveness with issues that have been proposed by the  
20 Staff, understanding fully that as are outlined here that there  
21 are some guidance in terms of the issues that have been  
22 suggested that have been rolled into, I guess, these eight  
23 issues.

24           MR. CHILDS: Commissioner?

25           COMMISSIONER BAEZ: Yes.



1 MR. CHILDS: When we broke, seemed like an hour ago,  
2 when we broke, one of the things I thought we were charged with  
3 doing was to address a way to address the issues. We haven't  
4 presented that to you yet.

5 COMMISSIONER BAEZ: Well, I only said that I'm  
6 inclined. If you have a way, if you want to --

7 MR. CHILDS: Well, if you want the way --

8 COMMISSIONER BAEZ: And what would you suggest?

9 MR. CHILDS: -- we're going to try to discuss that.  
10 You know, I think that in terms of the specificity  
11 here that under these proposed issues that you just reiterate  
12 that our concern is not the specificity. Our concern is that  
13 it represents a way to address the case, but we are -- I would  
14 hope to move beyond that and try to talk about a way where the  
15 various issues that have been raised can be addressed and  
16 identified in a prehearing order so we all know what the issues  
17 are and the basis of every party's position as to how the  
18 Commission should make its decision.

19 COMMISSIONER BAEZ: Well, Mr. Childs, again, I'm not  
20 -- I think, from the outset that the Staff had, and I think  
21 they clearly stated what their intention was and how they  
22 arrived at these issues was to try and roll in and include  
23 everyone's concerns and certainly everyone's issues that they  
24 saw needed addressing, including yours and the rest of the  
25 applicants. To try and get to a place where we're not impeding

1 anyone's ability to pursue whatever case they want to pursue in  
2 their determination --

3 MR. CHILDS: Well, then, I would object, then, to --  
4 I mean, in terms of impeding, because we were asked to prepare  
5 our issues that we thought were needed, and we met with Staff  
6 and the result was -- is that we couldn't resolve that. We  
7 need the findings on prudence, and on these consolidated issues  
8 it's not there.

9 COMMISSIONER BAEZ: Well --

10 MR. CHILDS: With the Staff having said that they  
11 wanted to have it something else, some other wording, best  
12 interest of the customers, I'd like to go to a way that we have  
13 discussed to try to respond to where I thought we were before  
14 the break --

15 COMMISSIONER BAEZ: If we change --

16 MR. CHILDS: -- to put issues together.

17 COMMISSIONER BAEZ: Mr. Childs, if we change Issue 8  
18 to read, "Was the utility's decision to participate in  
19 GridFlorida prudent and in the best interest of the  
20 ratepayers?" Does that get your determination of prudence that  
21 you require? And Staff, would you be okay with that  
22 modification?

23 MS. HART: Commissioner, I have some concern about  
24 the word "prudence," because I think it's a loaded word that  
25 carries with it certain presumptions about cost recovery.

1 However, with that said, that is what the companies are asking  
2 for with the understanding, as stated in the order, that no  
3 decision in Phase 1 is going to bind the hands of the  
4 Commission as far as a determination of allocation or cost  
5 recovery.

6 COMMISSIONER BAEZ: Well, I think that that's pretty  
7 clear in the order. I'm concerned more with at least giving an  
8 opportunity to get an answer to a specific question in a  
9 general sense, I guess --

10 MS. HART: Right.

11 COMMISSIONER BAEZ: -- to get to a definitive answer  
12 on prudence. And then, you know, given the hedging in the RTO  
13 order, I think it's everybody's understanding that prudence  
14 isn't binding later on cost recovery, although I don't think it  
15 rises to the level of having to relitigate prudence, but there  
16 will be an allocation and there will be discussion on  
17 allocation and cost recovery as part of the general rate  
18 proceedings.

19 TECO's case is different in that sense, and I'm not  
20 sure that we've -- I'm not sure that Staff contemplated that  
21 difference. And, I think, perhaps we have some work left in  
22 order to address that specific situation. I mean, I would urge  
23 you to get with the company and perhaps we've got some work  
24 left to do there, because we're not contemplating, at least to  
25 my knowledge, having an allocation or cost recovery later on so

1 they don't necessarily fit into the mold that we're --

2 MS. HART: Right. With that said, I can live with my  
3 reluctance about the word prudent.

4 MR. CHILDS: My -- I think, until that was said I  
5 thought maybe we had an avenue. I am uncomfortable with the  
6 idea of whatever we do in Phase 1 does not bind the  
7 Commission's hands to deny cost recovery in Phase 2. That's  
8 just very open. Maybe we can move beyond that.

9 And Commissioner, one other thing on this, I come  
10 back. I don't think this list of issues necessarily permits  
11 the addressing of GridFlorida as to its impact on the state as  
12 opposed to individual utilities, which we would hope could be  
13 addressed. And we have a -- as I said before, a specific  
14 question as to cost recovery methodology that we think needs to  
15 be something that is addressed. Maybe this is a way for us to  
16 start working on it so that we fully understand the parameters  
17 of what the potential issues would be.

18 COMMISSIONER BAEZ: Mr. Keating or Ms. Hart, I do  
19 notice that there is an -- I'm not sure that you've included an  
20 issue that at least addresses some cost recovery. Is that  
21 because cost recovery, in terms of a mechanism that was going  
22 to be employed or what the preferred method would be, is going  
23 to be considered as part of the rate case?

24 MR. KEATING: That was my understanding as to --

25 COMMISSIONER BAEZ: That was your understanding.

1 MR. KEATING: -- why that issue was not included.

2 COMMISSIONER BAEZ: Given the fact that we have only  
3 two of the companies that are petitioning, is this something  
4 that we need to consider addressing while not in a final way,  
5 because the order doesn't contemplate that but certainly, you  
6 know, I'm wondering how far can you go to consider cost  
7 recovery mechanisms or at least take notice of cost recovery  
8 mechanisms as part of Phase 1? And I'm not sure how it jibes  
9 with TECO's situation. Is that something that you need to  
10 think about?

11 MR. KEATING: I'm not sure if that's something that  
12 -- I'm not sure if that's something that, in agreeing to an  
13 expedited proceeding, if the Commission had in mind, you know,  
14 limiting its review to certain things and whether --

15 COMMISSIONER BAEZ: And I agree with you, but --

16 MR. KEATING: -- and whether leaving out the cost  
17 recovery mechanism review was part of the reason for -- or part  
18 of some reason to have an expedited proceeding, I don't know.

19 COMMISSIONER BAEZ: I think, as Mr. Childs came out  
20 and said he thought the order was wrong on some points, I  
21 think, I won't go so far as to say it was wrong, but I will at  
22 least from my part admit that certain things, it seems to me at  
23 least, weren't contemplated in light of the different postures  
24 of the companies. And I think that we need to try and address  
25 that or make -- I'm pretty sure I'm not making this up, but you

1 know, we need to -- I think, we've got a problem here.

2 MR. KEATING: I don't think in an -- I guess, an  
3 issue conference would be the time to do it. I suppose that  
4 some sort of motion for reconsideration, if that's -- you know,  
5 if the parties sought some clarification or more thought on  
6 that order would be the appropriate place --

7 COMMISSIONER BAEZ: I'm more concerned, and perhaps  
8 I'm out of bounds here, but I'm more concerned with trying to  
9 adapt to what we've already done into a workable situation that  
10 works for everyone given their respective postures. If that is  
11 not possible because the Order has issued and we've actually  
12 got a process to try and readdress where we may have missed  
13 some spots, you know, I understand, but I --

14 MR. KEATING: And I just fear that given that the --

15 COMMISSIONER BAEZ: I think, we need to -- I think,  
16 there's something that we need to address. I would leave it to  
17 you to decide what the best way to address it is.

18 MS. HART: Can I --

19 COMMISSIONER BAEZ: Yes.

20 MS. HART: Can I ask you to go back to what your  
21 question was about cost recovery methodologies or mechanisms?  
22 Maybe Roberta can speak to that.

23 COMMISSIONER BAEZ: I think, it was Mr. -- was it  
24 Mr. Childs? I'm sorry, Mr. Childs, you had had a comment about  
25 the cost recovery, and I guess my question -- my question

1 was -- and it really was more related to what we just had a  
2 conversation on, the relative posture of the different  
3 companies. But cost recovery, understanding that the Order  
4 leaves cost recovery to the general rate proceedings and  
5 intending, as much as possible, to stay consistent with that.

6           However, we do have an issue. We've got a company  
7 here that has -- is in a different situation, I think, you'd  
8 agree, than the other two because there is no rate proceeding  
9 before us. So, I guess, my question is how do we stay  
10 consistent in addressing everything that needs to be addressed  
11 as part of the RTO issue and stay consistent with this order  
12 if, in fact, we have a company that's in a different posture?  
13 I mean, there is no Phase 2, it seems, for Tampa Electric.

14           MR. WILLIS: Well, Commissioner, I would like to  
15 point out with respect to Tampa Electric, we did not ask that  
16 issue to be decided so that it's relevant to --

17           COMMISSIONER BAEZ: So, you're going to -- you're  
18 going to sit with a general prudence? I mean, you get a  
19 determination of prudence and live to fight or address it  
20 another day? I mean, is this what you're contemplating?

21           MR. WILLIS: Yes.

22           COMMISSIONER BAEZ: All right. Then, you've answered  
23 my question. Thank you.

24           MS. KIESLING: Commissioner?

25           COMMISSIONER BAEZ: Yes.

1 MS. KIESLING: If I could just briefly, I'm not  
2 planning or interested in rehashing Issues 1 and 2, but it  
3 would seem to me that under an issue, a generic Issue 3 that  
4 would be something like, "What are the benefits associated with  
5 formation and operation of GridFlorida," that we could fit all  
6 of the benefit issues raised by different parties and that  
7 similarly under a generic issue of what are the estimated costs  
8 of participation in GridFlorida, that we could fit all the  
9 costs ones and still let everybody get their issues at least  
10 somewhat listed, for example.

11 COMMISSIONER BAEZ: I'm sorry, Ms. Kiesling, which  
12 Issue 3 are you reading off of first of all?

13 MS. KIESLING: I'm reading off the compilation of  
14 proposed issues since I never saw the new one until today.

15 COMMISSIONER BAEZ: Okay, I'm sorry.

16 MS. KIESLING: So, if we had a general issue, for  
17 example, that said, "What are the benefits associated with  
18 formation and operation of GridFlorida?" Then, under that we  
19 could have, for example, Duke's and Calpine's Issue 12, "What  
20 are the expected benefits attributable to the elimination of  
21 discrimination through open transmission access resulting from  
22 the company's participation in GridFlorida?"

23 We could have a number --

24 COMMISSIONER BAEZ: That's 12?

25 MS. KIESLING: Yeah, 12 on that same list. Same



1 thing with 13 on that same list. Same thing with 14 on that  
2 list. Same thing with 15, what are the benefits to retail --  
3 "What are the benefits of a robust competitive wholesale power  
4 market?" I think that we can fit benefits under a generic, you  
5 know, 3-A, 3-B, 3-C, 3-D, whatever.

6 MS. HART: Commissioner?

7 COMMISSIONER BAEZ: Isn't it -- and again, am I  
8 seeing -- am I not seeing what the inadequacy of the Issue 3  
9 that's on that proposed list? I mean, where is it that you're  
10 falling short if it's listed there that somehow it's  
11 anticipated that these Issues 12, and I forgot what the other  
12 numbers that you identified were, are anticipated to be rolled  
13 into that.

14 MS. KIESLING: From my various client's perspective  
15 the inadequacy of 3, as I see it on here, is that it's looking  
16 at what are the benefits to be realized by the utility, and  
17 there is a whole range of other benefits out there that may not  
18 be utility-specific but that are general benefits, such as grid  
19 reliability, such as development of a wholesale market in the  
20 whole state of Florida or peninsular Florida, things of that  
21 nature. And the way Staff has stated it ties it to the utility  
22 and, I think, it limits the ability of those of us who are not  
23 one of these utilities but who have a very strong interest in  
24 the development of an RTO, it limits us in being able to put on  
25 a case.

1 COMMISSIONER BAEZ: Right. Staff?

2 MR. KEATING: One of the earlier iterations to this  
3 proposed issue included after the words, "realized by the  
4 utility and its ratepayers." And the reason it was limited  
5 there instead of being broader and saying in the state of  
6 Florida is, again, looking back to the Commission's order,  
7 setting up this proceeding, it was our understanding that what  
8 we were doing was looking at each utility's decision on a  
9 system-by-system basis; hence, we tied the benefits to the  
10 utility we could add -- I wouldn't be opposed to the phrase,  
11 "and its ratepayers."

12 COMMISSIONER BAEZ: "and its ratepayers"?

13 MR. KEATING: I would think that -- I would hope that  
14 some of the other parties besides the utilities, would be able  
15 to address those types of issues under that issue. I mean, our  
16 intent was to allow those broader intangibles into -- you know,  
17 obviously, since they aren't quantifiable it's harder to tie  
18 them to the specific utility, but I think in terms of what  
19 we're doing is that they need to be --

20 COMMISSIONER BAEZ: I mean, I think, Ms. Kiesling has  
21 a point. It doesn't really allow you to look at broad -- I  
22 mean, to the extent that their theory of having, you know,  
23 robust wholesale market is a benefit to the ratepayers. You  
24 know, it may not be a benefit to utilities. That seems to be a  
25 limitation on what they're trying to -- what they're trying to

1 introduce or address by their comments.

2           Is there -- I mean, even "and its ratepayers" is sort  
3 of a limitation as well. Is there any way we could free that  
4 up so that you can have the intent that you had by listing  
5 Calpine Issue 12, for instance, as able to be addressed under  
6 that issue?

7           MR. KEATING: That issue is really tied to the Issue  
8 1 in the proposed issue list that was handed out today.  
9 Because the order did ask us to look at each utility's  
10 decisions, and we felt that looking at the cost and benefits,  
11 whether they be quantifiable or other, for each utility was  
12 something that we had to do pursuant to that order. I don't  
13 know if perhaps a separate issue, if something like that would  
14 be appropriate.

15           COMMISSIONER BAEZ: Well, and I'm not sure that --  
16 and Ms. Kiesling, help me here. Is it something that you're  
17 looking at as the state of Florida or is it something that  
18 could be limited to the GridFlorida area? I mean, the  
19 ratepayers in the GridFlorida, I think, to some extent the  
20 benefits that you'd be proposing would be the same from the  
21 perspect-- you know.

22           MS. KIESLING: I can understand limiting it to  
23 peninsular Florida as being the area that is covered by  
24 GridFlorida, but when one looks at some of the other  
25 implications of the FERC order, such as interconnections

1 between two RTOs, I think, there are portions of the state of  
2 Florida that we would like the opportunity to be able to put on  
3 a case, if there is a case to be put on, that there are  
4 benefits beyond the boundaries of GridFlorida.

5 COMMISSIONER BAEZ: But are they benefits to the  
6 ratepayers? Is that --

7 MS. KIESLING: I think, they could be.

8 COMMISSIONER BAEZ: So, would benefits such as  
9 interconnection, I mean, and we're just pulling that one,  
10 because --

11 MS. KIESLING: That's the one I grabbed, yeah.

12 COMMISSIONER BAEZ: Could you make that argument that  
13 it was a benefit -- I mean, could you make that argument for  
14 someone that was a ratepayer of a GridFlorida utility? I mean,  
15 it seems the point that you're making is --

16 MS. KIESLING: I'm not saying that I couldn't make  
17 that argument. It might not be the argument that my clients  
18 would like to be making, but --

19 COMMISSIONER BAEZ: But you understand how we have  
20 to -- I mean, there's --

21 MS. KIESLING: Certainly, I do. I think, one of the  
22 problems, if I could offer this, is that we just got this  
23 proposed list of issues today.

24 COMMISSIONER BAEZ: I understand.

25 MS. KIESLING: And perhaps there would be a way if we

1 were to not, like, conclude this proceeding but to allow us all  
2 to go out, now that we've seen this latest list, and come up  
3 with some suggestions in the spirit of compromise that you  
4 spoke of in your opening comments and see if we can come up  
5 with some lists that -- of issues that may satisfy most, if not  
6 all, of the people sitting here and then come back with it,  
7 because it is difficult for me to analyze what I just was  
8 handed today and also follow the proceeding, so...

9 COMMISSIONER BAEZ: I appreciate --

10 MS. KIESLING: And I don't want to have my hands tied  
11 by agreeing to something that I haven't had the chance to  
12 analyze completely.

13 COMMISSIONER BAEZ: I appreciate your situation, and  
14 I'm sure you're not the only one out there. As a matter of  
15 fact, you're not the only one in this room, myself included,  
16 but that said, I guess, I'm not comfortable in, and perhaps  
17 Staff can give me a sense of what the timeline is on this, of  
18 walking out of this prehearing without an issue list. I don't  
19 know what kind of -- because, I think, you can appreciate that  
20 we've put ourselves under a time frame as well, and we have  
21 time commitments that we have to keep.

22 MS. KIESLING: I mean, I was thinking, like, by the  
23 end of this week. I was not planning to push it off a long  
24 way, but just some time to analyze what's here.

25 COMMISSIONER BAEZ: What kind of time constraints? I

1 mean, I really wish that this list would have been out on  
2 Friday, but that being the case, I know that it was impossible  
3 to do, but at the same time, I mean, I can't ignore the fact  
4 that, oh, so many people have said that, you know, looking at  
5 this real time is certainly not as productive as it could be,  
6 and I'm wondering what kind of time constraints we're under or  
7 the Staff is under in order to be able to give this a better  
8 look and to take back what we've all said today and try and  
9 make some --

10 MR. KEATING: Yeah, I think, the constraint we're  
11 under is it's my understanding that the reason behind this  
12 Issue Conference was to try to set issues so that the utilities  
13 could try to track those issues or address them in testimony  
14 filed at the end of this month, and that filing date's set in  
15 the Commission's order, I believe.

16 So, I think, we're -- where are we, in July 9th?  
17 We're three weeks from the testimony filing. There's not --  
18 it's not something that -- it's not a burden that would fall on  
19 Staff, and I don't know how the utilities feel about --

20 COMMISSIONER BAEZ: And I understand it's a third  
21 party that's kind of making the request. Ms. Kiesling, I  
22 guess, what I would be inclined to do is not disturb the ball  
23 that's rolling now. However, perhaps we can modify this issue  
24 to make it a little broader so that you can -- so that what I'm  
25 assuming was the real intent of the Staff in crafting this

1 issue to allow you to address your proposed issues within it  
2 can be realized, and I'm wondering if, you know, just changing  
3 it to "by the utility and/or its ratepayers" would help open  
4 that up.

5 MR. MOYLE: Mr. --

6 COMMISSIONER BAEZ: I'm sorry, yes.

7 MR. MOYLE: Well, she's raised an issue that is  
8 important, also, to a number of our clients.

9 COMMISSIONER BAEZ: I understand that.

10 MR. MOYLE: And, I think, both of us would probably  
11 have a little bit of egg on our face if we went back to our  
12 clients with an issue that didn't allow the benefits to our  
13 clients to be considered. And the way it's phrased now, the  
14 benefit's to the utilities and/or the ratepayers.

15 COMMISSIONER BAEZ: Well --

16 MR. MOYLE: I mean, I just -- it points out a little  
17 bit the danger, I think, of kind of doing it.

18 COMMISSIONER BAEZ: Well -- and see, here's the  
19 thing. I mean, having -- you know, if what you're intending is  
20 coming in and saying this would be great for my company, I  
21 mean, although, I think that's probably implied, I'm not sure  
22 that that's the kind of positions that are going to be  
23 persuasive in all of this. Somehow everything has to get tied  
24 back to the ratepayer, because that's really what we're looking  
25 at. And I'm wondering if by changing this issue slightly to

1 make it a little broader so that the issue of a robust  
2 competitive market, wholesale market, can be introduced, that  
3 that's not really serving your purpose.

4 MR. MOYLE: Well, it starts getting difficult,  
5 because there are benefits to an individual company in terms of  
6 not having to deal with five entities to try to move power from  
7 point A to point B, that you can deal with one entity, you  
8 know, the pricing issues. There are benefits to the company  
9 that probably will flow down to the ratepayers as well.

10 COMMISSIONER BAEZ: Right.

11 MR. MOYLE: But it's just --

12 COMMISSIONER BAEZ: I mean, is that your tenuous  
13 connection to make --

14 MR. MOYLE: No, I just thought that given that this  
15 issue list has just been put on the table today that her  
16 suggestion was not a bad one to try to give us, you know, a  
17 couple more days to try to work it out.

18 COMMISSIONER BAEZ: I'm not saying that her  
19 suggestion was a bad one. All I'm saying is that we're under  
20 some tight time frames here and, I think, you know, I'm not  
21 hearing any interest from Staff in doing it. Certainly, if  
22 we've got to get a decision out in 90 days, we've already spent  
23 three hours on this, so I mean, you can see how it's going.

24 MR. MOYLE: I mean, I don't know if this is the  
25 appropriate time to raise it but, you know, the utilities, I



1 hear them wanting an answer to the prudency question. Folks  
2 that Ms. Kiesling and I represent are trying to make investment  
3 decisions about Florida, some of which is predicated on are you  
4 going to have an RTO in place.

5           And if I understand, you now have Issue 8, which is  
6 the utility's decision to participate in GridFlorida, is it in  
7 the best interest and -- is it prudent and in the best interest  
8 to the ratepayers? I would sure hate to see, you know, an  
9 issue which is how should that be recovered -- if the answer is  
10 yes, how should that be recovered from ratepayers be an issue  
11 that is deferred and then hangs them up for another six months  
12 from a decision as to whether to go forward or not, because  
13 right now things are stalled.

14           So, if -- you know, if -- in my opinion, if the  
15 answer to number 8 is yes, it's prudent and in the best  
16 interest, then is it that much more to basically say, assuming  
17 the answer is yes, what would be the appropriate mechanism to  
18 recover the cost of that decision?

19           COMMISSIONER BAEZ: Well, whether I agree with you or  
20 not is not important right now, but I think we've got an order  
21 out here that we've got to stay true to in some sense, and it  
22 says that cost recovery is not going to be the subject of a  
23 Phase 1 and --

24           MR. MOYLE: I don't mean to be argumentative.

25           COMMISSIONER BAEZ: No, I appreciate where you're

1 coming from.

2 MR. MOYLE: Yeah, but the prehearing order and the  
3 prehearing officer, you know, you're vested with that  
4 authority. If I recall the motion, it was a motion to  
5 expedite. So, I'm a little confused as to how a motion to  
6 expedite, which was denied, then turns the vehicle by which  
7 everything was established.

8 COMMISSIONER BAEZ: Well, you're going to have to ask  
9 someone that's a lot smarter than I am. All I know is that  
10 we've got an order issued that I'm feeling a little bit  
11 compelled to stay consistent with.

12 Mr. Long.

13 MR. LONG: Commissioner, a couple of questions.  
14 Again, looking at the list of issues the Staff provided us with  
15 this afternoon --

16 COMMISSIONER BAEZ: Yes.

17 MR. LONG -- under the Legal Issues. The first one, I  
18 believe, is attributed to OPC. I think, Mr. Childs raised the  
19 point earlier that this issue is very confusing. Tampa  
20 Electric has not proposed to unbundle its retail electric  
21 rates, so I'm not sure what this issue means.

22 The same would apply to the second issue, because  
23 Tampa Electric has not proposed to stop providing retail  
24 electric service to its customers. So again, these two issues  
25 are very confusing.

1           COMMISSIONER BAEZ: Mr. Shreve or Mr. Howe, I'm  
2 sorry, would you like to lend some clarification?

3           MR. HOWE: Commissioner Baez, first of all, as I  
4 think we phrased the issues in a list we had provided to Staff,  
5 I think, at first we referred to transmission service not to  
6 retail electric service in general.

7           MR. KEATING: Right. On number 2, we've got a little  
8 typo in there in putting public counsel's issues on this list.  
9 Number 2 is --

10          MR. HOWE: And as to the reason of the issue, it's my  
11 understanding that right now in Florida we have integrated,  
12 vertically-integrated utilities that provide generation,  
13 transmission, and distribution. And in FERC's view, that is a  
14 bundled service, and FERC has no jurisdiction over the  
15 transmission portion of that.

16          It is my understanding that FERC's pronouncements  
17 have been that if that is in any way disrupted by voluntary  
18 action of the utility or a retail competition initiative within  
19 a state that it is then unbundled. And so, we get down to the  
20 simple fact that if it is bundled when FERC has no  
21 jurisdiction, I think, we're faced with a fact that it will be  
22 unbundled if FERC has jurisdiction over the transmission  
23 portion of retail service, and that's what's going to happen.

24          I think, the distinction that is being drawn is a  
25 very narrow one. If the company continues to provide a bill to

1 its customers for electric service, but it will not be  
2 providing that bill as a vertically-integrated utility  
3 providing all three services, I think, under FERC's  
4 pronouncements that would be clearly unbundling. If you want  
5 to, you might make a separate issue, "Would it bring about an  
6 unbundling?" and then the next issue could be "Is Commission  
7 authorization required before they can unbundle?"

8 MR. LONG: Well, Commissioner, I restate the point.  
9 We are not proposing to unbundle our retail rate, regardless of  
10 what FERC has said. And again, OPC is not being very specific  
11 about that. The fact remains we're not unbundling our retail  
12 rate. So again, I wouldn't know where to begin in terms of  
13 making a legal argument on this point.

14 MR. HOWE: Commissioner Baez, I'm hard-pressed to  
15 accept that explanation. The reality is that the company is  
16 currently providing a bundled service and they are proposing to  
17 change that service. They will no longer be a  
18 vertically-integrated utility to their customers. That is  
19 unbundling.

20 If the definition causes some problems, they can  
21 explain that in their position, but I think there is going to  
22 be a change. And if the current status quo is bundled retail  
23 service, if the companies are proposing a change to stop being  
24 vertically-integrated utilities, then there is a change in the  
25 bundled service, almost by definition it is then unbundled.

1           MR. LONG: Commissioner, the fact remains that we  
2 will continue to buy and provide transmission service on a  
3 bundled basis for our retail customers. Our retail customers  
4 are not buying transmission service from GridFlorida under this  
5 proposal.

6           MR. CHILDS: You know, one of the things, the  
7 difficulty for us, I'm not sure whether it's productive to  
8 pursue, but is that under that analogy we're providing  
9 unbundled wholesale service already, because we do buy power  
10 from other suppliers, and if that's what makes it unbundled,  
11 then we're already doing that. It's just not transmission;  
12 it's, instead, generation. And, you know, I don't understand  
13 it. I want to try to work with them about it, but I don't  
14 understand the distinction, because we do buy it, we do recover  
15 it, we recover it through a clause right now and have for a  
16 number of years.

17           COMMISSIONER BAEZ: Mr. Howe, he's got a point.  
18 That's already going on.

19           MR. HOWE: I understand the point. And my answer  
20 would be and, I believe, it's in FERC Order 888-A where FERC  
21 addresses exactly that scenario and FERC says that "Where a  
22 transmission provider takes purchased power and transmits that  
23 electricity over its own facilities and then over its own  
24 distribution facilities it remains bundled retail service."

25           The distinction that FERC seems to draw is that if

1 the transmission piece is in any way changed in form of billing  
2 or in form of provider that that effects an unbundling of the  
3 service, and at that point the jurisdiction transfers to the  
4 FERC.

5           The point they seem to be making, and I'm not going  
6 to pretend that it's completely clear to me at all stages, is  
7 FERC's jurisdiction is over the wholesale delivery of energy  
8 and the transmission of electricity in interstate commerce.  
9 And FERC has drawn on its line and it has said that where a  
10 retail customer receives bundled service that it is not  
11 transmission and interstate commerce, but if that anything  
12 happens to change it from that bundled delivered retail energy  
13 that at that point jurisdiction transfers to FERC.

14           This is one of the issues that the states that have  
15 gone through competitive initiatives at the retail level have  
16 been faced with. I think, they were surprised. FERC stepped  
17 in and said now that you've opened it up to competition in the  
18 retail market, we consider that transmission unbundling, and  
19 we're taking that jurisdiction.

20           One of the positions that this Florida Commission  
21 took before FERC, which is also reflected in, I'm pretty sure,  
22 Order 888-A, is that they thought FERC was wrong, that that  
23 type of thing would effect an actual change in jurisdiction,  
24 because it would introduce FERC into the retail market. And  
25 FERC took the position that Florida was incorrect. Any form of

1 unbundling, it's a jurisdictional shift.

2 MR. LONG: Well --

3 MR. HOWE: But having said that -- having said that,  
4 I think, you can still get to the point you have relevant  
5 issues. One issue you might want to ask, will it effect an  
6 unbundling, make that an issue. Second, if it is an  
7 unbundling, does it require the Commission's prior  
8 authorization? And then in answer to that issue, of course,  
9 you would expect a party to state whether or not it should be  
10 permitted because of the result that is obtained.

11 MS. KAUFMAN: Commissioner Baez?

12 COMMISSIONER BAEZ: Yes.

13 MS. KAUFMAN: I don't know if we're going to have  
14 further discussion of the Legal Issues. I wanted go back to  
15 Issue number 3, though, whenever it's appropriate.

16 COMMISSIONER BAEZ: Can you give me a second, because  
17 I wanted to ask Staff a question. I mean, Staff, you seem to  
18 have adopted -- first of all, you mentioned there's a typo. I  
19 mean, is that -- is that number 2 should be retail transmission  
20 service?

21 MR. KEATING: Yes, in number 2.

22 COMMISSIONER BAEZ: I'm sorry?

23 MR. KEATING: Yes, in number 2 under the Legal  
24 Issues.

25 COMMISSIONER BAEZ: And number 1?

1 MR. KEATING: Yes.

2 COMMISSIONER BAEZ: Are we okay there or no?

3 MR. KEATING: It needs --

4 COMMISSIONER BAEZ: I think, number 1 might be all  
5 right. What you've done is adopted them.

6 MR. KEATING: Yeah, I want to make sure that it  
7 properly states what public counsel put in its issue. I  
8 believe, number 1 is correct, number 2 isn't, and just  
9 restating the issues presented by public counsel.

10 COMMISSIONER BAEZ: Mr. Long, you know, this is a  
11 legal issue, and it seems to me you should be able to answer it  
12 as a legal issue without having -- I mean, if you want to  
13 preface it by saying, hey, we're not trying to unbundle or we  
14 haven't requested to unbundle our retail rate, that's fine,  
15 too, but it seems that you can answer, you can provide what  
16 your view is of this question on a legal basis without actually  
17 having it --

18 MR. LONG: We can certainly point out, Commissioner,  
19 that the question, as posed, assumes facts that are incorrect.  
20 I mean, based on public counsel's discussion of FERC Order 888,  
21 the point is that FERC, under the GridFlorida proposal, would  
22 not set the rate for each of our retail ratepayer classes and  
23 define what transmission charge goes on each bill that goes to  
24 our retail customers. That is asserting jurisdiction, and that  
25 is not happening under the GridFlorida proposal. So, counsel's



1 argument is based on a false premise, but we'd certainly be  
2 happy to point that out if you feel that it's appropriate to  
3 have the issue, but it makes no sense --

4 COMMISSIONER BAEZ: If that's an argument that you  
5 can make. I mean, I suspect that public counsel has a  
6 different argument to make, and it's something that we can take  
7 under consideration.

8 Second, the second issue I think that changed -- I  
9 mean, I don't know that there was an objection to that, was  
10 there, to the second -- I'm sure you will have one at this  
11 point but, you know, you were going to say, I'm sorry.

12 MR. LONG: At the risk of being predictable --

13 COMMISSIONER BAEZ: It's no risk, believe me.

14 MR. LONG: As phrased, it's obviously incorrect,  
15 because we're not going to cease providing retail electric  
16 service. To the extent that that --

17 COMMISSIONER BAEZ: No, I think, it should say retail  
18 transmission service.

19 MR. LONG: To the extent that it's changed to read  
20 retail transmission service, I would say again, that we will  
21 continue to buy and provide on a bundled basis transmission  
22 service for our retail customers. So, again, I think, the  
23 question, even as corrected, makes no sense, but we'd be happy  
24 to argue that, if --

25 COMMISSIONER BAEZ: Thank you.

1 Ms. Kaufman, you wanted to return to which issue?

2 I'm sorry.

3 MS. KAUFMAN: Issue 3 on the list that we received  
4 today.

5 COMMISSIONER BAEZ: Right.

6 MS. KAUFMAN: Ms. Kiesling and Mr. Moyle were  
7 discussing perhaps a broader look at the benefits, and I was  
8 going to try to offer a simplistic suggestion --

9 COMMISSIONER BAEZ: Please.

10 MS. KAUFMAN: -- and then make a plea for one of my  
11 issues that has been deleted.

12 I think that if you simply eliminate "by the utility"  
13 from the first line, you broaden the issue enough to allow the  
14 parties to argue benefits to whomever they think it is  
15 appropriate, and perhaps that would give some comfort to some  
16 of the other non-utility parties who might wish to discuss  
17 benefits that might float from an RTO.

18 MS. HART: Commissioner?

19 COMMISSIONER BAEZ: Yeah.

20 MS. HART: We have another alternative that --

21 COMMISSIONER BAEZ: Well, I was going to ask. I  
22 mean, somehow, that runs counter to what your justification for  
23 having that issue is, but I'm wondering if you want to try  
24 your --

25 MS. HART: Exactly.

1           COMMISSIONER BAEZ: I'd like to find a way to be able  
2 to spread this out a little more.

3           MS. HART: I actually have two suggestions. The  
4 first is that to add after "by the utility" add the words, "or  
5 others." The second suggestion is that as the hour grows late  
6 and we admittedly provided this list of issues at a late time  
7 relative to this conference, that the parties be given several  
8 days, maybe until Thursday, to provide written alternatives.  
9 I'd really like to see what Mr. Childs is proposing, in  
10 particular, so that's an alternative.

11           COMMISSIONER BAEZ: It doesn't appear to me that any  
12 of the parties are going to object to it, but I didn't hear  
13 from the companies on the original request, so we've got  
14 perhaps two sides onboard if Mr. Childs is amenable and feels  
15 his contribution might be valuable, and I trust it will be.

16           MS. HART: And I didn't mean just on this issue.

17           COMMISSIONER BAEZ: No, I understand.

18           MR. CHILDS: Why don't we -- we would ask that we be  
19 given a few more days to talk to Staff and see whether we can't  
20 reach an accommodation.

21           COMMISSIONER BAEZ: I think, the Staff had suggested  
22 Thursday. I'm not sure how that --

23           MR. CHILDS: We'll do that.

24           COMMISSIONER BAEZ: Thursday's fine? All right. Do  
25 we need to stand in recess? Are we going to come back and

1 finalize this at a prehearing or is this something that can --  
2 if we all reach agreement, can it just become part of the  
3 standard prehearing process?

4 MS. KIESLING: I wouldn't hold out hope that we can  
5 all reach agreement on every issue, but I think we can greatly  
6 improve on where we are.

7 COMMISSIONER BAEZ: I'm an optimist, but I'm not that  
8 optimistic.

9 MS. KIESLING: I am, too.

10 COMMISSIONER BAEZ: However, I think, we've had  
11 plenty of discussion today. I've perhaps said too much, but at  
12 the same time, you know, I think, I meant what I said. And if  
13 we can all take it back and try and work on it, we've got a few  
14 extra days. But again, I didn't get an answer to my question.  
15 Is this something that we've got to reconvene or how would you  
16 anticipate?

17 MR. KEATING: You could reconvene, you could -- I  
18 suppose -- and I'm not sure from the discussion that just took  
19 place if we'd still have parties filing any responsive comments  
20 to this proposed issue list, we could take those and bring  
21 those to you for your consideration without reconvening. I  
22 suppose, if we -- I'm just trying to think of the notice  
23 requirements for reconvening and finding the time.

24 COMMISSIONER BAEZ: If we're standing in recess, I  
25 mean, if --

1 MR. KEATING: Yeah, then, I think, we're okay. It's  
2 just a matter of finding the time and place on the -- we can do  
3 that, if you'd like.

4 MS. HART: Or, I think, an alternative is you can  
5 take it under advisement knowing that they're including the  
6 written comments that will come in and then make your ruling  
7 without us reconvening.

8 COMMISSIONER BAEZ: We can hold that. Since it was  
9 the parties' request to have the prehearing conference and have  
10 a prehearing officer present, you know, I'm going to leave it  
11 to their -- I guess, I'm going to ask what their input would be  
12 on whether you would require a reconvening. I suspect at this  
13 point, you know, you may not even want me in the room, but at  
14 the same time I have to offer you the opportunity --

15 MR. WILLIS: To the contrary, I think that we  
16 should --

17 COMMISSIONER BAEZ: -- since it's your motion.

18 MR. WILLIS: I think, it would be helpful for you to  
19 be present so that we can bring this to a conclusion.

20 COMMISSIONER BAEZ: All right. Then --

21 MR. WILLIS: And so, I think, we should just adjourn  
22 to a time to be --

23 COMMISSIONER BAEZ: Decided later.

24 MR. WILLIS: -- decided, yeah.

25 COMMISSIONER BAEZ: I think -- perhaps Noreen has a

1 date that's open. Yes.

2 MS. HART: Commissioner, we're looking at the  
3 schedule. It looks like Friday you have a prehearing  
4 conference.

5 COMMISSIONER BAEZ: Mm-hmm.

6 MS. HART: I don't know what you might, otherwise,  
7 have on your schedule Friday morning, but --

8 COMMISSIONER BAEZ: I think, I'm clear. Friday  
9 morning, I've been told, is --

10 MS. HART: Okay. And that is with the idea that the  
11 parties would file any written comments by Thursday, close of  
12 business Thursday.

13 COMMISSIONER BAEZ: Close of business Thursday, and  
14 then we'll reconvene Friday. Is 9:00 -- 9:30, let's keep it  
15 consistent, 9:30 Friday? That's July 13th.

16 SPEAKER: Don't do anything on that day.

17 COMMISSIONER BAEZ: If you're a fan of irony, then  
18 this is it for you. Anything else? Am I missing anything?

19 MR. KEATING: At this point, I don't think there is  
20 anything else. And I'll just let you know I gladly won't be  
21 here on Friday the 13th.

22 COMMISSIONER BAEZ: All right. Thank you all for  
23 coming, and we'll see you Friday.

24 (Transcript continues in sequence in Volume 2.)

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1 STATE OF FLORIDA     )  
2                             :     CERTIFICATE OF REPORTER  
3 COUNTY OF LEON        )

4

5                     I, KORETTA E. STANFORD, RPR, Official Commission  
6 Reporter, do hereby certify that a Prehearing Conference was  
heard at the time and place herein stated.

7                     IT IS FURTHER CERTIFIED that I stenographically  
8 reported the said proceedings; that the same has been  
transcribed under my direct supervision; and that this  
9 transcript constitutes a true transcription of my notes of said  
proceedings.


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

13                    DATED THIS Friday, July 13, 2001.

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KORETTA E. STANFORD, RPR  
FPSC Official Commissioner Reporter  
(850) 413-6734

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