

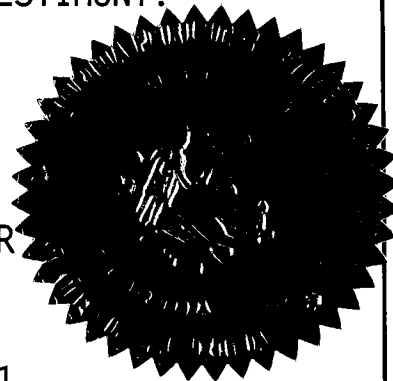
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010001-EI

In the Matter of

FUEL AND PURCHASED POWER  
COST RECOVERY CLAUSE AND  
GENERATING PERFORMANCE INCENTIVE  
FACTOR.

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER  
Prehearing Officer

DATE: Thursday, November 8, 2001

TIME: Commenced at 9:30 a.m.  
Concluded at 1:35 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Service  
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## 1 APPEARANCES:

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4 Florida 32302-1876, appearing on behalf of Florida  
5 Public Utilities Company (FPUC).

6 JAMES A. McGEE, Post Office Box 14042,  
7 3201 34th Street South, St. Petersburg, Florida  
8 33733, appearing on behalf of Florida Power  
9 Corporation.

10 JEFFREY A. STONE Beggs & Lane, 700 Blount  
11 Building, 3 West Garden Street, Post Office Box  
12 12950, Pensacola, Florida 32576-2950, appearing on  
13 behalf of Gulf Power Company.

14 LEE L. WILLIS and JAMES D. BEASLEY, Ausley  
15 & McMullen, Post Office Box 391, Tallahassee,  
16 Florida 32302, appearing on behalf of Tampa  
17 Electric Company (TECO).

18 JOHN W. MCWHIRTER, JR, and VICKI GORDON  
19 KAUFMAN, McWhirter, Reeves, McGlothlin, Davidson,  
20 Decker, Kaufman, Arnold & Steen, P.A, 117 South  
21 Gadsden Street, Tallahassee, Florida 32301,  
22 appearing on behalf of Florida Industrial Power  
23 Users Group (FPIG).

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1 APPEARANCES CONTINUED:

2 MATTHEW M. CHILDS, Steel, Hector & Davis,  
3 215 South Monroe Street, Suite 601, Tallahassee,  
4 Florida 32301, appearing on behalf of Florida Power  
5 & Light Company (FPL).

6 ROBERT D. VANDIVER, Associate Public  
7 Counsel, Office of Public Counsel, 111 West Madison  
8 Street, Room 812, Tallahassee, Florida 32399-1400,  
9 appearing on behalf of the Citizens of the State of  
10 Florida.

11 PETER ANTONACCI, Gray, Harris and  
12 Robinson, P. A., 201 South Bronough Street, Suite  
13 600, Tallahassee, Florida 32301, appearing on behalf  
14 of Publix Super Markets, Inc.

15 WILLIAM COCHRAN KEATING, IV, Florida  
16 Public Service Commission, Division of Legal  
17 Services, 2540 Shumard Oak Boulevard, Tallahassee,  
18 Florida 32399-0870, appearing on behalf of the  
19 Commission Staff.

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

1  
2 COMMISSIONER JABER: Do you want to read the notice,  
3 Mr. Keating, for Docket Number 01?

4 MR. KEATING: Pursuant to notice, this time and place  
5 have been set for a prehearing conference in Docket Number  
6 010001-EI, fuel and purchased power cost-recovery clause and  
7 generating performance incentive factor.

8 COMMISSIONER JABER: Let's take appearances in the  
9 order that they appear on the draft.

10 MR. McGEE: James McGee, Post Office Box 14042, St.  
11 Petersburg 33733, appearing on behalf of Florida Power  
12 Corporation.

13 MR. CHILDS: Matthew Childs of the firm of Steel,  
14 Hector and Davis appearing on behalf of Florida Power and  
15 Light.

16 MR. HORTON: Norman H. Horton, Jr., of Messer,  
17 Caparello, and Self on behalf of Florida Public Utilities  
18 Company.

19 MR. STONE: Jeffrey A. Stone of Beggs and Lane on  
20 behalf of Gulf Power Company.

21 MR. BEASLEY: James D. Beasley and Lee L. Willis of  
22 the law firm of Ausley & McMullen representing Tampa Electric  
23 Company.

24 MR. ANTONACCI: Peter Antonacci of Gray, Harris, and  
25 Robinson appearing for Publix Supermarkets.

1 MS. KAUFMAN: Vicki Gordon Kaufman and John McWhirter  
2 of the McWhirter Reeves law firm on behalf of the Florida  
3 Industrial Power Users Group.

4 MR. VANDIVER: Robert Vandiver appearing on behalf of  
5 the citizens of the State of Florida.

6 MR. KEATING: Cochran Keating appearing on behalf of  
7 Commission staff.

8 COMMISSIONER JABER: Mr. Antonacci, you have filed a  
9 petition to intervene. Is there an objection to Publix'  
10 petition to intervene in this docket?

11 MR. KEATING: We just had a discussion about that off  
12 the record, and it appears that there would be no objection  
13 from the parties. But, on the record, if anybody has an  
14 objection, I guess now would be the time.

15 COMMISSIONER JABER: That's why I asked. Without  
16 objection, show Publix's petition to intervene in this docket  
17 granted.

18 Preliminary matters. Mr. Keating, before we start  
19 talking about the issues, anything else?

20 MR. KEATING: There are some outstanding motions,  
21 some pending motions, but we can take those up preliminarily or  
22 after we go through the issues. Besides the petition to  
23 intervene, we have Public Counsel's motion to defer certain of  
24 the issues that are listed in the draft prehearing order. We  
25 also have -- I suppose it could be addressed as a preliminary

1 matter, the supplemental testimony filed by Florida Power and  
2 Light on the matter of revising certain of the forecasts and  
3 establishing recovery for security costs.

4 COMMISSIONER JABER: Okay. Now, how would you  
5 recommend we handle the issues? I know that you have had time  
6 to discuss whether some of the issues could be stipulated. Do  
7 you have sort of a sense of a grouping of those issues so we do  
8 not need to discuss them issue-by-issue, or --

9 MR. KEATING: I think it may be easier to go through  
10 issue-by-issue.

11 COMMISSIONER JABER: Let's do it. Let's get started  
12 then.

13 MR. KEATING: A lot of the issues are interrelated.

14 COMMISSIONER JABER: Let's get started. Issues 1  
15 through 4.

16 MS. KAUFMAN: Commissioner Jaber, I didn't want to  
17 interrupt, but at some point we want to talk about witness  
18 order. And, in addition, we informed the parties off the  
19 record that there is confidential information contained in the  
20 testimony of Mr. Collins and that we may be using some of Tampa  
21 Electric's confidential information on cross-examination.

22 COMMISSIONER JABER: Ms. Kaufman, can I just count on  
23 you to remind me at the very end, because I think if there are  
24 possible stipulations there may be witnesses whose testimony is  
25 withdrawn, so let's do it all sort of together.

1 MS. KAUFMAN: Fine. Thank you.

2 COMMISSIONER JABER: But remind me. All right. I'm  
3 interesting in getting started on the issues and then at the  
4 very end we will figure out what we have left out and what we  
5 still need to do. I've got that Issues 1 through 4 are  
6 potential stipulations. Staff.

7 MR. KEATING: 1 through 4, I believe, can be shown as  
8 stipulated with respect to Florida Public Utilities Company.  
9 Staff is in agreement with the -- I believe in agreement with  
10 the positions of -- excuse me just a moment. I'm sorry. With  
11 respect to the other companies, at this point staff still has  
12 no position, and I believe that is pending further review of  
13 discovery. I believe we have the information now, it's just  
14 being reviewed and we are verifying the positions.

15 COMMISSIONER JABER: And which issue are you talking  
16 about?

17 MR. KEATING: 1, 2, and 3.

18 COMMISSIONER JABER: And you just said you don't have  
19 positions, you are waiting to talk to the company?

20 MR. KEATING: No. I believe 1, 2, and 3 could be  
21 shown as stipulated with respect to Florida Public Utilities.  
22 With respect to the other four utilities, we are formulating a  
23 position probably as we speak.

24 COMMISSIONER JABER: All right. To the degree the  
25 positions change and you have a potential stipulation, just

1 identify it as such before the order is issued.

2 MS. KAUFMAN: Commissioner Jaber, there will not be a  
3 stipulation with regard to Tampa Electric, and we have  
4 reflected that in our position. I understand these will be  
5 fallout issues pending your resolution of the company-specific  
6 issues.

7 COMMISSIONER JABER: Okay. Issue 5, I had made a  
8 note to myself to ask Publix whether they have had an  
9 opportunity to read everyone else's positions, because it looks  
10 like -- and this is the effective date of the clause, Mr.  
11 Antonacci, and do you think that after reading the positions of  
12 the other parties you could agree to stipulating as to the date  
13 of the clause? I understand that you have problems with the  
14 substantive issue. You need a microphone, don't you?

15 MR. ANTONACCI: We will agree with the date.

16 COMMISSIONER JABER: Okay. Staff, you have a  
17 possible stipulation on Issue 5?

18 MR. KEATING: Yes, I believe Issue 5 can be shown as  
19 stipulated.

20 MR. CHILDS: I'm sorry to backtrack, but,  
21 Commissioner, on Issue 4 --

22 COMMISSIONER JABER: Yes.

23 MR. CHILDS: -- Florida Power and Light Company filed  
24 a revised petition to reflect the changes due to a change in  
25 the sales forecast and some security costs. I'm going to use



1 this simply as an opportunity to point out we have filed  
2 revised numbers. I don't think staff has had a chance to  
3 incorporate them, but those numbers changed and they are all  
4 set forth in what we filed, and I can give the revised set to  
5 staff here so we don't have to do that item-by-item, if that is  
6 acceptable.

7 COMMISSIONER JABER: Yes, that's fine. Is it a copy  
8 that you could also leave for the court reporter, though?

9 MR. CHILDS: We can do that.

10 COMMISSIONER JABER: Yes, I think that would be the  
11 most efficient way of handling it.

12 MR. KEATING: The position should just be stated as  
13 FPL's revised prehearing statement.

14 MR. CHILDS: They are. As it relates to the -- as  
15 the revised prehearing statement, and this is one where we have  
16 a slight change in the factor.

17 COMMISSIONER JABER: Right. That all is contingent  
18 on whether we decide to accept your additional testimony.

19 MR. CHILDS: That's correct.

20 COMMISSIONER JABER: Issue 6.

21 MR. KEATING: Well, while we are on Issue 4, as  
22 well --

23 COMMISSIONER JABER: Yes.

24 MR. KEATING: -- I think with respect --

25 COMMISSIONER JABER: I don't want to keep going

1 backwards, okay.

2 MR. KEATING: I know. Staff is going to have to  
3 change its position with respect to Power Corp and Gulf to no  
4 position at this time, and I believe that that is because it is  
5 a fallout issue that depends on the resolution of some other  
6 company-specific issues.

7 COMMISSIONER JABER: Then why don't we just say that  
8 so that the Commissioners are not confused by why staff has not  
9 taken a position. Just say that the actual number is dependent  
10 on the resolution of other issues.

11 MS. KEATING: And where that is the case throughout,  
12 we can do that.

13 COMMISSIONER JABER: Let's move forward. Issue 6.

14 MR. KEATING: Issue 6, I believe, can be shown as a  
15 stipulated issue.

16 COMMISSIONER JABER: Without objection we will  
17 reflect that Issue 6 is a stipulation. Issue 7.

18 MR. KEATING: Seven, again, is a fallout issue. I  
19 believe we can show it stipulated with respect to Florida  
20 Public Utilities Company only at this point.

21 MS. KAUFMAN: Commissioner, FIPUG needs to change its  
22 position on Issue 7 to be consistent with the prior issues.  
23 And our position would be Tampa Electric's fuel factor should  
24 not be increased pending the outcome of a Commission  
25 investigation into its wholesale practices. I believe that is

1 the same language we have on the earlier issues.

2 COMMISSIONER JABER: Staff, do you have that?

3 MR. KEATING: I just want to make sure I understand,  
4 I know which of the other issues you are referring to.

5 MS. KAUFMAN: Issue 1, I believe, 2 and 3.

6 MR. KEATING: Okay.

7 MR. McWHIRTER: With respect to 7, we would like to  
8 conduct further inquiry at the hearing. And we don't want to  
9 be in a position of saying we take no position. We want to  
10 make inquiry with respect to each of the utilities on that.

11 COMMISSIONER JABER: I understand. It may be that  
12 after hearing the answers you ultimately agree that this could  
13 be stipulated, but you want to reserve the right to sort of ask  
14 a little bit further.

15 MR. McWHIRTER: Well, let me give you a little bit of  
16 background. This issue deals with the time-of-day charges.

17 COMMISSIONER JABER: Uh-huh.

18 MR. McWHIRTER: And there are wide swings with  
19 respect to the time-of-day charges compared to standard  
20 charges, and they are based upon information that is not yet in  
21 the record. And this is forecast information to go on for a  
22 year. We just don't want to be in a position of saying we  
23 agree to the factors that are set here without leave to come  
24 back and examine in more detail the information that underlies  
25 the development of those factors. It appears that each utility

1 has done something a little bit different and we don't know  
2 exactly what that is.

3 COMMISSIONER JABER: That's fine. Public Counsel,  
4 you have no position at this time on this issue?

5 MR. VANDIVER: That is correct.

6 COMMISSIONER JABER: Leave it that way?

7 MR. VANDIVER: Yes, ma'am.

8 COMMISSIONER JABER: You're waiting on cross  
9 examination?

10 MR. VANDIVER: Yes.

11 COMMISSIONER JABER: Anything else on Issue 7?

12 MR. ANTONACCI: Publix's position would be consistent  
13 with Ms. Kaufman's clients.

14 COMMISSIONER JABER: Okay. Staff, on Issue 7 you are  
15 going to change Publix's position to agree with FIPUG. FIPUG's  
16 new position will be as reflected in their position on Issue 1.  
17 Any other changes to Issue 7?

18 MR. MCGEE: There may be one fuel factor listed for  
19 Florida Power Corporation at the bottom of Page 20 under  
20 distribution primary that may be the result of a typo, and I  
21 just don't have the information to verify that, but I will get  
22 with staff on that.

23 COMMISSIONER JABER: Sounds great.

24 MR. KEATING: Let me ask, FIPUG indicated that they  
25 had questions regarding all the companies' fuel factors in

1 Issue 7, did that include Florida Public Utilities?

2 MR. McWHIRTER: No, they are off the hook. That's  
3 because Mr. Horton gave me his seat.

4 COMMISSIONER JABER: I don't see Mr. Childs moving.

5 MR. McWHIRTER: Mr. Childs is still in.

6 MR. CHILDS: He is waiting for a greater reward.

7 COMMISSIONER JABER: Any other changes to Issue 7?

8 Issue 8. I've got that Issue 8 looks attractive for  
9 stipulation.

10 MR. KEATING: I believe that is one that can be  
11 stipulated.

12 COMMISSIONER JABER: Going, going, gone. All right,  
13 stipulation on Issue 8.

14 Issues 9 and 10, stipulation at least as it relates  
15 to TECO?

16 MR. KEATING: Correct. And it is my understanding we  
17 are either just receiving or reviewing information that would  
18 allow -- staff, that is -- that would allow us to take a  
19 position on those issues and potentially stipulate them.

20 MR. STONE: Commissioner, if I may, Gulf has a  
21 revised position on Issue 9. The number should read 886926.

22 COMMISSIONER JABER: 886926.

23 (Phone ringing.)

24 COMMISSIONER JABER: Let the record reflect that was  
25 not my telephone.

1           Okay. Mr. Stone, anything else?

2           MR. STONE: Not on Issue 9.

3           MR. KEATING: And I believe with that change to  
4 Gulf's position on Issue 9, staff can show with the agreement  
5 of Public Counsel and FIPUG that that can be stipulated with  
6 respect to Gulf.

7           COMMISSIONER JABER: Cochran, I intend to be flexible  
8 here as it relates to these positions. If there are changes  
9 along the way between now and the hearing, just give your  
10 positions to staff, they will get incorporated into the final  
11 prehearing order. But, you know, I would encourage everyone to  
12 work with staff as quickly as possible. The more time you  
13 allow the Commissioners to have the hearing order, the more  
14 effective we are at the hearing in understanding the issues.

15           Issue 10.

16           MR. KEATING: I think I brought up 9 and 10 together  
17 as ones we are looking at, but I don't know if any of the  
18 parties had any changes on their positions for Issue 10.

19           COMMISSIONER JABER: All right. I've got that 11  
20 through 14 are the hedging issues, and there is a Public  
21 Counsel motion to defer issues related to hedging. Is there an  
22 objection to that motion?

23           MR. CHILDS: We don't object, but this is somewhat of  
24 a sensitive area and we would ask that it be understood that  
25 the utilities are not expected to be discouraged in terms of

1 their attempt to manage that risk as they go forward. We had  
2 not objected, however, to deferring. But we are a little  
3 concerned about leaving it as though there is an implication of  
4 some problem when I think what we are trying to do is study the  
5 question further.

6 COMMISSIONER JABER: Actually, I think the  
7 Commissioners and I have done quite the opposite, which is to  
8 encourage all parties to be proactive in managing risk and  
9 certainly looking at their hedging practices. As I recall  
10 these issues got in here to begin with because the  
11 Commissioners expressed an interest in looking at it in  
12 conjunction with the fuel hearing. But I think that Public  
13 Counsel raises excellent points in its motion, and I am  
14 inclined to grant the motion to defer all of the issues related  
15 to hedging. I will count on staff and Public Counsel and the  
16 parties to make sure that I have a good understanding of what  
17 those issues are.

18 But I will tell you, I'm not interested in pushing  
19 them off too much, Staff, and I know from talking to you that  
20 there is a separate study that staff is undergoing to look at  
21 hedging issues and maybe there is a way to consolidate all of  
22 that. I would ask that staff and the parties, Mr. McNulty and  
23 Mr. Cochran and Mr. Elias get together and find out when all of  
24 the issues could be brought back to the Commissioners. Maybe  
25 it can be handled before the fuel adjustment hearing next year,

1 but I will leave that up to you, and just come back and see me  
2 and let me know what procedures we should follow. Don't push  
3 these issues off too long. All right.

4 Your motion is granted. And the first group of  
5 issues that I have that fit that category are 11 through 14.

6 MR. KEATING: That is correct. And even though the  
7 issue is being deferred, staff had indicated at the issue ID  
8 conference a change to the wording of Issue 11. And since the  
9 issues are just being deferred and not eliminated, we would  
10 like to go ahead and make sure that on a going-forward basis  
11 that that wording is reflected, that the parties are aware of  
12 what issue we would be looking at in the future.

13 COMMISSIONER JABER: Well, let's leave that for a  
14 discussion that you will have with the parties. Since we are  
15 deferring those issues, I think that is supposed to be a hint  
16 to me that I need to direct the parties to work with staff on  
17 the wording of Issue 11. That's understood.

18 MR. KEATING: I think we are in agreement on it.  
19 It's a very minor change. Instead of saying have they taken  
20 reasonable measures, are they taking reasonable measures. It  
21 was intended to be a look at the present and going forward  
22 rather than necessarily a look into the past.

23 COMMISSIONER JABER: Great. I'm on Issue 15. Any  
24 changes to Issue 15? Any changes to Issue 16?

25 MR. BEASLEY: Was 15 going to change on the reference



1 to the old Order 14546? There was some discussion of that  
2 earlier.

3 MR. KEATING: Yes, there was some discussion at the  
4 issue ID conference on rewording Issue 15 to reflect that what  
5 it asked is a change in the policy established in a previous  
6 Commission order. Staff would suggest that the issue read,  
7 "Should the Commission modify its policy set forth in Order  
8 Number 14546 concerning the appropriate regulatory treatment  
9 for capital projects that are expected to reduce long-term fuel  
10 costs?"

11 COMMISSIONER JABER: Is there disagreement as to the  
12 wording of the issue? Go ahead, Mr. McWhirter.

13 MR. McWHIRTER: If you put in a more efficient power  
14 plant that is going to save fuel, that would be a capital  
15 project and we would not want to see that passed through the  
16 fuel clause.

17 COMMISSIONER JABER: Mr. McWhirter, turn on your  
18 microphone for me.

19 MR. McWHIRTER: I thought I just did that. I just  
20 turned it off. Do I need to repeat what I just said? All  
21 right. We think that you ought to go on a case-by-case basis  
22 and determine whether a specific capital project is one that is  
23 modest and has specifically to do with fuel savings or whether  
24 it is a significant capital item. And as a general rule all  
25 capital items should be included in base rates and not in fuel

1 costs.

2 COMMISSIONER JABER: But I don't think the wording of  
3 the issue precludes you from putting that caveat into the  
4 position.

5 Staff, read your proposed issue again.

6 MR. KEATING: And I did have something --

7 COMMISSIONER JABER: Listen, Mr. McWhirter, to the  
8 language. I don't think this precludes you from putting your  
9 language into the position. Go ahead, Cochran.

10 MR. KEATING: It asks, "Should the Commission modify  
11 its policy set forth in Order Number 14546 concerning the  
12 appropriate regulatory treatment for capital projects that are  
13 expected to reduce long-term fuel costs?" I would add to that,  
14 as well, if the Commission decides it would like to modify its  
15 policy, perhaps there should be a follow-up either as part of  
16 that same issue or as a separate issue that says, if so, what  
17 regulatory treatment should be approved and when should it be  
18 effective.

19 COMMISSIONER JABER: Well, Cochran, let me see if you  
20 have sort of opened up a can of worms here. If the generic  
21 issue stays the way it is, what is the appropriate regulatory  
22 treatment, parties are able to, in their positions, identify  
23 what the current practice is, elaborate on whether that  
24 practice should be modified, and then conclude with here is  
25 what the policy going forward should be.

1 MR. KEATING: I agree that that could be stated in  
2 the companies' positions. And the companies indicated or at  
3 least some had indicated at the issue ID that they would like  
4 to see the issue made clear that there was a policy in place  
5 and that essentially what the issue is asking is -- well, it  
6 doesn't necessarily ask should we change it, because the result  
7 could be that the policy stays the same, but to reflect that  
8 there is potential that the existing policy could be altered  
9 under this issue. It could be reflected in the --

10 COMMISSIONER JABER: Let's talk about the evidence.  
11 Did anyone file testimony with regard to what the policy should  
12 be going forward?

13 MR. McGEE: Yes.

14 MR. CHILDS: That's the only -- I don't think there  
15 is evidence that it should be changed.

16 COMMISSIONER JABER: Wait. Mr. Childs, the testimony  
17 you all have filed is that we have a current policy, here is  
18 what it is, and that it should go on.

19 MR. McWHIRTER: With that understanding, why don't we  
20 just eliminate the issues, because I guess that's where you are  
21 going.

22 COMMISSIONER JABER: Yes.

23 MR. CHILDS: Well, I think staff was reacting to my  
24 request. Well, I think staff was reacting to my request about  
25 identifying in the issue that there was a policy, and I asked

1 them to do that because I thought it was appropriate when the  
2 Commission was considering setting policy that it know and  
3 explicitly recognize that it is being asked to change a policy,  
4 and that is the reason for the wording change.

5 COMMISSIONER JABER: Who was asking that the policy  
6 be changed?

7 MR. CHILDS: Staff.

8 MR. KEATING: We weren't asking necessarily that it  
9 be changed, we were asking what it should be going forward, and  
10 that suggests the possibility of a change. We have done some  
11 discovery on this issue, and at least at this point in time it  
12 is my understanding that we have not taken a position on that  
13 issue yet.

14 COMMISSIONER JABER: Did you file testimony?

15 MR. KEATING: No, we did not.

16 COMMISSIONER JABER: Did anybody file testimony that  
17 disagrees or rebuts what FPL has filed?

18 MR. McGEE: Yes, Florida Power has.

19 COMMISSIONER JABER: To rebut? You are aligned.

20 MR. McGEE: Yes.

21 COMMISSIONER JABER: I'm thinking I'm new, but I'm  
22 not that new.

23 MR. McGEE: Missed a key word there, I'm sorry.

24 COMMISSIONER JABER: All right. So you two have  
25 filed testimony on what the current practice is. Staff unless

1 you have a real dire need to have this issue in, I'm thinking  
2 it's not necessary. Was there a Commissioner that expressed an  
3 interest in this issue?

4 MR. KEATING: Yes. I just reminded myself that that  
5 was an issue that a Commissioner had expressed an interest in  
6 addressing.

7 COMMISSIONER JABER: It wasn't me, was it?

8 MR. KEATING: I don't think so.

9 COMMISSIONER JABER: Okay.

10 MR. KEATING: And that would -- Issue 16 is a related  
11 issue.

12 COMMISSIONER JABER: Okay. Here is what you need to  
13 do, Cochran. You need to reflect -- well, let me make sure the  
14 parties are in agreement. Is there agreement that we have a  
15 current policy in place, can we stipulate as to what the  
16 current policy is?

17 MR. STONE: Yes.

18 COMMISSIONER JABER: Cochran, move this language into  
19 the stipulation section. Go see that Commissioner and say that  
20 there is a statement as to what the current policy is, but that  
21 there was no testimony to indicate -- and, parties, I want you  
22 to listen to this, because if you disagree you need to tell me.  
23 I want you to say to the Commissioner that there wasn't  
24 testimony that indicates an interest in changing the policy or  
25 supporting a change in the policy. And for that reason, the

1 prehearing officer dropped the issue.

2 MS. KAUFMAN: Commissioner Jaber, I'm sorry to jump  
3 in here late, but we do, FIPUG does have a small amount of  
4 testimony on that issue from Mr. Pollock. But I think that as  
5 Mr. McWhirter explained, the case-by-case analysis, you know,  
6 works for us. But I wanted it to be clear that on Page 18 at  
7 the bottom to the top of 19, Mr. Pollock does address that  
8 issue generally.

9 MR. BEASLEY: Commissioner Jaber, I think that Order  
10 14546 does prescribe a case-by-case analysis.

11 COMMISSIONER JABER: So you are all in agreement?  
12 Okay. So in the stipulation you can say that all parties agree  
13 there is a current practice that allows the Commission to look  
14 at this issue on a case-by-case basis, and then also use the  
15 language that is in the FPC position as a stipulation. All  
16 right.

17 MR. KEATING: And I believe FPL's position includes  
18 the specific order language from 14546, it allows us to look at  
19 it on a case-by-case basis. We will work that into a  
20 stipulation.

21 COMMISSIONER JABER: Okay. And if that Commissioner  
22 has questions of any witnesses on this issue, since there are  
23 at least two witnesses that have touched on it, he is welcome  
24 to ask questions. Okay. So Issue 15 is dropped. Issue 16.

25 MR. KEATING: I believe Issue 16 could be --

1 MR. McWHIRTER: FIPUG says federal funds rate.

2 COMMISSIONER JABER: FIPUG says what?

3 MR. McWHIRTER: Federal funds rate should be used  
4 after 2002. No, I do not say that.

5 COMMISSIONER JABER: I'm writing it down. I'm going  
6 to quote you on it later.

7 (Laughter.)

8 MR. McWHIRTER: Okay. That's a good idea.

9 COMMISSIONER JABER: Issue 17. Can Issue 17 be  
10 dropped, Staff?

11 MR. KEATING: Issue 17 can be dropped.

12 MR. STONE: I'm sorry, I got confused by Mr.  
13 McWhirter's reference. Did Issue 16 get stipulated or dropped?

14 COMMISSIONER JABER: Actually I don't think Issue 16  
15 could be stipulated yet. I could be wrong. Mr. Keating.

16 MR. KEATING: I would ask the parties if they --

17 COMMISSIONER JABER: Mr. Stone, do you agree with --  
18 you have no position, Staff. What is your position on Issue  
19 16?

20 MR. KEATING: I believe our position on Issue 16 is  
21 essentially to maintain the status quo, so that there would be  
22 no change. Leave the rate of return that is currently used as  
23 the authorized midpoint.

24 COMMISSIONER JABER: And the parties would agree with  
25 that. So do we have a stipulation, then, on Issue 16? Great.

1 Thank you, Mr. Stone.

2 Issue 17 can that now be dropped, Staff?

3 MR. KEATING: Yes, Issue 17 can be withdrawn.

4 COMMISSIONER JABER: Okay. Mr. Vandiver, I have that  
5 17A -- no. 17A can be deferred, Staff?

6 MR. KEATING: Yes. This is an issue that came up  
7 after we received testimony in this docket. And considering  
8 the time in which staff became aware of the issue, and the time  
9 remaining to prepare for hearing, we felt that it could be  
10 deferred to the 2002 fuel hearing.

11 COMMISSIONER JABER: Is there an agreement on that?

12 MR. STONE: No objection.

13 COMMISSIONER JABER: Okay. 17A is deferred. Mr.  
14 Vandiver, I have that 18A is a hedging issue.

15 MR. VANDIVER: That is correct.

16 COMMISSIONER JABER: And that will be deferred until  
17 a later time to be announced later.

18 18B, Staff, potential stipulation if FPL agrees with  
19 staff?

20 MR. KEATING: Yes. There have been some discussions  
21 this morning between staff and FPL, and I believe we are just  
22 to the point where we are working out language.

23 COMMISSIONER JABER: Let me get some clarification,  
24 excuse me, from Publix. Publix is only taking positions on  
25 TECO issues?



1 MR. ANTONACCI: TECO-related.

2 COMMISSIONER JABER: So for these company-specific  
3 issues that do not involve TECO, we are going to take you off.

4 MR. ANTONACCI: We have no position.

5 COMMISSIONER JABER: Okay. Mr. Childs, I'm sorry.

6 MR. CHILDS: I think we are in agreement on the  
7 language on this issue, aren't we?

8 MR. KEATING: Okay. There may have been some  
9 language that was worked out between the technical staff and  
10 FPL just this morning.

11 COMMISSIONER JABER: Okay. There is a stipulation  
12 for 18B. 18C. FIPUG, OPC, any changes to your positions on  
13 18C?

14 MR. McWHIRTER: We have no position on 18C.

15 MR. VANDIVER: No change.

16 COMMISSIONER JABER: Staff and FPL?

17 MR. KEATING: No changes.

18 COMMISSIONER JABER: So there is no stipulation on  
19 that one?

20 MR. KEATING: No.

21 COMMISSIONER JABER: 18D.

22 MR. CHILDS: There is a wording change. It just got  
23 dropped on FPL's position in the second line where it says  
24 revenues from sales of. After the word of, insert "natural gas  
25 and" so that it parallels the issue.

1 COMMISSIONER JABER: Staff, did you get that?

2 MR. KEATING: Yes.

3 COMMISSIONER JABER: Any other changes to 18D? All  
4 right. I have made a note to myself that staff wanted to drop  
5 Issues 18E, 18F, and 18G, is that correct?

6 MR. KEATING: Yes. We brought this up at the issue  
7 ID meeting. Staff believes that those three issues would be  
8 more appropriately addressed in the docket that is open for  
9 review of FPL's rates at this time.

10 COMMISSIONER JABER: Great. Show them gone. 18H.

11 MR. KEATING: 18H I believe we can stipulate using  
12 the language in staff's position.

13 COMMISSIONER JABER: There has been an offer to  
14 stipulate this issue using staff's language. FPL?

15 MR. CHILDS: Yes.

16 COMMISSIONER JABER: You have a stipulation, staff.  
17 FIPUG, I am assuming you and OPC have no position.

18 MR. VANDIVER: Correct.

19 COMMISSIONER JABER: 18I.

20 MR. KEATING: The same is true for 18I. I believe we  
21 can stipulate using the language in staff's position.

22 MR. CHILDS: Agree.

23 COMMISSIONER JABER: You have a stipulation. 18J.  
24 Staff, I need your position on 18J.

25 MR. KEATING: 18J, this is another one that we were

1 working on some language with Florida Power and Light this  
2 morning as a potential stipulation. I believe if that hasn't  
3 been agreed to already, and I'm looking around to see if that  
4 language has been agreed to, that we will have something to  
5 include in the prehearing order as a stipulated position on  
6 that issue.

7 COMMISSIONER JABER: Staff, do you have some language  
8 now?

9 MR. KEATING: I'm sorry.

10 COMMISSIONER JABER: Do you want a few minutes to  
11 determine if you have some language now. Take some time.  
12 (Pause.)

13 MR. KEATING: I think we can agree to FPL's position  
14 on that issue.

15 COMMISSIONER JABER: Okay. We have a stipulation on  
16 18J using FPL's language. FIPUG, OPC, you have taken no  
17 position.

18 MS. KAUFMAN: Correct.

19 COMMISSIONER JABER: And Publix.

20 MR. ANTONACCI: That is correct.

21 MR. VANDIVER: That is correct.

22 COMMISSIONER JABER: 19A. I've got that 19A, 19B,  
23 and 19C could be stipulated, is that correct?

24 MR. KEATING: I believe that is correct, yes.

25 MR. CHILDS: We have two more 18s.

1 COMMISSIONER JABER: No, 18J is the last 18 I have.

2 MR. KEATING: They aren't -- there is no additional  
3 FPL-specific issue listed in the draft prehearing order. There  
4 was an additional FPL-specific issue raised in the revised  
5 prehearing statement that didn't get incorporated.

6 MR. CHILDS: Right, I'm sorry.

7 COMMISSIONER JABER: 19A, 19B, and 19C, stipulation  
8 using, what, Staff, your language?

9 MR. KEATING: Staff would propose using its language  
10 for the stipulated position.

11 MR. McGEE: That's fine.

12 COMMISSIONER JABER: Great. 19D is a hedging issue,  
13 Mr. Vandiver. I have that that can be deferred.

14 MR. VANDIVER: That's correct, Commissioner.

15 COMMISSIONER JABER: Okay. Staff, 19E, I need a  
16 staff position.

17 MR. KEATING: On 19E, staff's position would be no  
18 position pending further review of discovery. I think there is  
19 some recent discovery that we are evaluating.

20 COMMISSIONER JABER: All right.

21 MR. KEATING: I don't know if I can say that we feel  
22 like we can stipulate on that or not at this point.

23 COMMISSIONER JABER: All right. So you are going to  
24 change your position to be no position pending further  
25 development of the record. And, Publix, FIPUG, you take no

1 position. OPC.

2 MR. KEATING: If that is an issue that we can reach  
3 agreement on --

4 COMMISSIONER JABER: Reflect it as such later. 19F,  
5 I need a staff position.

6 MR. KEATING: Staff is working on finalizing the  
7 position on that issue. We will be able to stipulate with  
8 Florida Power Corporation, I think it's just a matter of the  
9 wording of the issue at this point, the position.

10 COMMISSIONER JABER: Well, but I don't think -- it  
11 doesn't look like FIPUG.

12 MR. McWHIRTER: FIPUG doesn't agree -- doesn't object  
13 to the collection of the money from customers, but we think  
14 that the collection period should be strung out over the life  
15 period of the time that the issue was in dispute.

16 COMMISSIONER JABER: Well, let me ask you this, Mr.  
17 McWhirter. If staff and the company reach agreement on the  
18 actual wording, the response to the actual wording of the issue  
19 in 19F, will you have any objection to that?

20 MR. McWHIRTER: Well, I'm concerned about the money  
21 rather than the wording. And if we are dealing with \$5 million  
22 in one year, that's fine. If we are dealing with \$100 million  
23 in one year, that's not fine. We would rather do it over a  
24 six-year period as it -- (Microphone not on.)

25 COMMISSIONER JABER: I think we are saying the same

1 thing. But my suggestion to you is if you read Issue 19F it  
2 doesn't ask the question you want to answer.

3 MR. McWHIRTER: Okay.

4 COMMISSIONER JABER: So my question was, if staff and  
5 the company agree on the answer that addresses the question in  
6 19F, do you want to sort of -- perhaps it's that --

7 MR. McWHIRTER: FIPUG agrees that they can collect  
8 the money. We say yes, we would agree with the company, it's  
9 just the amortization period. And that isn't addressed and  
10 that it should be dropped in as an after thought and we would  
11 object to that.

12 COMMISSIONER JABER: Staff, do we need to modify the  
13 question here?

14 MR. KEATING: Perhaps there could be an Issue 19G.

15 COMMISSIONER JABER: Well, why not. Ms. Kaufman, Mr.  
16 McWhirter, why don't you come up with some language for a new  
17 issue. I hear what you're saying. What I'm suggesting to you  
18 is that doesn't get you there.

19 MR. McWHIRTER: I understand that, and I agree.

20 MR. McGEE: One difficulty I think is that we don't  
21 have any testimony that addresses that particular aspect of it.  
22 Florida Power has testimony on the general subject of the money  
23 in the fuel adjustment clause, but has not addressed anything  
24 in terms of special treatment for the period of recovery. So  
25 I'm not sure --

1 COMMISSIONER JABER: Wouldn't that be Mr. McWhirter's  
2 problem? He would have to get that evidence during cross  
3 examination, right?

4 MR. McGEE: Well, if he is limiting his  
5 cross-examination to the witness' testimony, then, again, we  
6 would have somewhat of a problem.

7 MR. McWHIRTER: What is the magnitude of the dollars?

8 MR. McGEE: \$20 million.

9 MR. McWHIRTER: FIPUG is going to withdraw its  
10 objection at this time.

11 COMMISSIONER JABER: Thank you, Mr. McWhirter. So,  
12 Staff, work with Mr. McWhirter and the company on some  
13 stipulated language there. 20A.

14 MR. KEATING: I believe 20A can be shown as a  
15 stipulated issue.

16 COMMISSIONER JABER: Parties.

17 MR. HORTON: 20A and 20B can both be shown as  
18 stipulated and we will use the staff language.

19 COMMISSIONER JABER: Thank you. 21A. 21A, FIPUG, I  
20 was going to ask you about this. I sort of had the same  
21 question as it relates to this issue that I was just talking to  
22 you about. Your position doesn't seem to address the question  
23 that is being asked, and do you want some time to modify your  
24 position or think about it a little bit more?

25 MR. McWHIRTER: You are exactly right. The issue was

1 initially raised by the staff. Our position is that we think  
2 it has been over ten years since that policy was established  
3 and it's time to review the policy. So we can't answer the  
4 question. I mean, our response is not responsive to the  
5 question the way it is stated, but I think our response is  
6 subsumed into the general thrust of the question. We think  
7 possibly a spin-off into another docket, and we would recommend  
8 the Commission go into that again.

9 MR. BEASLEY: Commissioner, there has been no  
10 testimony filed by FIPUG or anyone else concerning the need to  
11 reopen or look again at the benchmark methodology which is  
12 Commission-approved, which we have been complying with, and  
13 which has worked apparently to the satisfaction of the  
14 Commission and its staff. Anyone can always feel free to file  
15 a petition, I would suppose, but there is nothing in the record  
16 here to justify any new look.

17 COMMISSIONER JABER: Mr. McWhirter, I am inclined to  
18 agree with that. We can do a couple of things. We can leave  
19 your position the way it is. It's your position, you are  
20 entitled to do that, and the burden is on you to try to  
21 establish whatever you want during cross examination. Or we  
22 could allow you to modify your position here and seek to  
23 petition the Commission as you deem appropriate whenever you  
24 want.

25 MR. McWHIRTER: I think it would be probably more



1 appropriate -- we responded to issues that were raised by other  
2 people as to the philosophy we thought should be adopted. We  
3 haven't prepared testimony in this case, do not plan to go  
4 forward with a presentation. So if the staff has reached an  
5 agreement, if we want to raise the issue at another time we  
6 will file a complaint and do it. So we would be happy to knock  
7 out Issues 21A and 21B.

8 COMMISSIONER JABER: Thank you, Mr. McWhirter. And  
9 with that clarification, Staff and Mr. Beasley, do you have a  
10 stipulation there?

11 MR. BEASLEY: Yes, ma'am.

12 COMMISSIONER JABER: There is a stipulation on 21A  
13 and 21B, Cochran. 21C. Oh, wait. I think I just put in 21B  
14 incorrectly. No, Mr. McWhirter, you said 21A and 21B, correct?

15 MR. McWHIRTER: Yes, we have no objection.

16 COMMISSIONER JABER: 21C.

17 MR. BEASLEY: Commissioner, I had a problem with  
18 FIPUG's position on this issue. This hearing in November has  
19 been noticed for a year now. The parties have had plenty of  
20 opportunity to develop their cases and engage in discovery.  
21 And this is the docket for which these issues has been noticed.  
22 And it's the one they should be decided in and not simply punt  
23 the ball into another docket somewhere down the road.  
24 Everybody has got a lot of time invested in this proceeding, we  
25 need to get it involved on the merits.

1           MR. McWHIRTER: Maybe we can do as we did with the  
2 issues earlier and go ahead and defer those to another  
3 proceeding. FIPUG has been examining this, as you are well  
4 aware, since March of this year. And we have developed  
5 discovery and we have presented testimony which indicates a  
6 prima facie case that Tampa Electric's treatment of its  
7 wholesale transactions is not in keeping with the Commission's  
8 policy.

9           And we have done no more than found the smoke from a  
10 smoldering fire. And there is not enough evidence in this  
11 proceeding to quantify the dollar amount involved, and it would  
12 belabor the time of the Commissioners in this proceeding to do  
13 it, but we suggest to you that there is enough there to justify  
14 a specific investigation on Tampa Electric's wholesale  
15 transactions, and that is in keeping with our response in all  
16 of these other issues, as well.

17           So I would suggest to you that it is not moot, it is  
18 a real issue. We have developed enough evidence to know that  
19 something is wrong, but we haven't developed enough to tell you  
20 the specific dollar amount.

21           MR. BEASLEY: Commissioner, that would be, of course,  
22 FIPUG's position. We think this proceeding is what this issue  
23 was designed to be addressed in. FIPUG has submitted  
24 testimony, they have taken their best shot, they should be  
25 required to go forward on the merits, get this issue behind us.

1 If we don't do that, it's going to exacerbate demonstrably the  
2 amount of money that customers may have to pay down the road in  
3 true-up, and we don't want that to happen. We don't want that  
4 to mount up and then become a severe burden on all of our  
5 customers.

6 COMMISSIONER JABER: Well, Mr. Beasley, let me make  
7 sure I understand what you are seeking, because it sounds like  
8 you are really arguing the merits. FIPUG and Publix just  
9 disagree with your position. You are not asking me to drop the  
10 issue because you identified the issue, right?

11 MR. BEASLEY: Well, it was a staff-raised issue, and  
12 we addressed it in our testimony. FIPUG filed some testimony  
13 that indirectly addresses it. We are ready to proceed at  
14 hearing week after next on this issue and get it resolved, and  
15 all I'm opposing is any thought that when FIPUG sees that its  
16 evidence doesn't measure up to what it had hoped to have that  
17 we get put off and deferred and the fuel adjustment mechanism  
18 ground to a halt just because FIPUG wants to stop the recovery  
19 of any recovery. If it were going the other way, I think their  
20 position would be entirely different.

21 COMMISSIONER JABER: The gist of your problem is  
22 FIPUG's position after the word no.

23 MR. BEASLEY: That is correct. You nailed it.

24 MS. KAUFMAN: Commissioners, that is FIPUG's  
25 position. We have testimony, our witness speaks to the need

1 for you all to investigate this in a separate docket, and I can  
2 understand Tampa Electric's disagreement, but that is an issue  
3 for the Commissioners to decide.

4 COMMISSIONER JABER: Yes. Mr. Beasley, it's their  
5 position. I think you are going right to the merits. I  
6 can't -- I can refine their positions, I can encourage them to  
7 refine their positions if they file testimony, I can't make  
8 them change their position. But you certainly can sit down  
9 with FIPUG and get a better understanding of what it is they  
10 are seeking and perhaps there is a middle ground that you can  
11 reach. But I think you are going to the merits, so I'm going  
12 to allow the issue to stay. I'm going allow the positions to  
13 stay and encourage you all to sit down and talk about this  
14 further. OPC, no position?

15 MR. VANDIVER: That's correct.

16 MR. KEATING: Staff would change its position to no  
17 position pending review of further discovery and evidence  
18 adduced at hearing.

19 COMMISSIONER JABER: 21E.

20 MR. KEATING: I'm sorry, I believe we are on 21D.

21 COMMISSIONER JABER: 21D.

22 MR. KEATING: Staff would change its position on 21D  
23 to the same as 21C.

24 COMMISSIONER JABER: Okay. You have outstanding  
25 discovery for TECO?

1 MR. KEATING: I'm sorry.

2 COMMISSIONER JABER: You have outstanding discovery  
3 for TECO?

4 MR. KEATING: I believe we will be getting some  
5 discovery responses early next week.

6 COMMISSIONER JABER: So you have it or you don't have  
7 it?

8 MR. KEATING: I don't believe we have all the  
9 discovery on this issue yet, and I believe we also want to hear  
10 what is discussed at the hearing with FIPUG and TECO before we  
11 take a position.

12 COMMISSIONER JABER: All right. Issue 21E. Staff, I  
13 need a position.

14 MR. KEATING: Staff's position would be no position  
15 pending evidence adduced at hearing.

16 COMMISSIONER JABER: FIPUG, Publix?

17 MS. KAUFMAN: We have no position on this issue,  
18 Commissioner.

19 MR. ANTONACCI: No position from Publix.

20 COMMISSIONER JABER: 21F.

21 MR. KEATING: I believe 21F can be shown as a  
22 stipulated issue.

23 COMMISSIONER JABER: Using staff's language?

24 MR. KEATING: Using staff's language.

25 COMMISSIONER JABER: TECO?

1 MR. BEASLEY: Yes, that looks good.

2 COMMISSIONER JABER: FIPUG, Publix?

3 MR. McWHIRTER: Yes.

4 MR. ANTONACCI: No objection.

5 COMMISSIONER JABER: Stipulation on 21F, staff. 21G.

6 MR. KEATING: Staff's position would be no  
7 evidence -- no position pending evidence adduced at hearing.  
8 We hope there is some evidence.

9 MR. BEASLEY: Commissioner Jaber, on Issue 21F we may  
10 have some difficulty with timing on complying with the staff's  
11 proposed stipulation language with the movement of the issue  
12 decision at the agenda conference. I just wanted to make that  
13 comment as a qualification of our agreement to that language.

14 COMMISSIONER JABER: Because the decision is coming  
15 to the next agenda?

16 MR. BEASLEY: The 19th. It has been moved one more.

17 COMMISSIONER JABER: Oh, it has been moved back? All  
18 right. So for Issue 21F, the underlying decision will be made  
19 by the Commission tentatively scheduled December 4th. And,  
20 Staff, the clarification is the agreement to stipulation on 21F  
21 is sort of contingent on the scheduling of that December 4th  
22 vote. Do you understand what they're saying?

23 MR. KEATING: I believe so. I think we will include  
24 language to that effect in the stipulated position and make  
25 sure that is clear with the company and the intervenors.

1           COMMISSIONER JABER: Okay. 21G. Staff has changed  
2 its position to indicate no position pending evidence adduced  
3 at the hearing. Any other changes? 21H.

4           MS. KAUFMAN: Commissioner, 21H is an issue that we  
5 discussed at our pre-issue ID meeting, and we have reworded the  
6 issue. And it appears in your draft, I think, on Page 68  
7 toward the bottom. And that was an attempt to make it Tampa  
8 Electric specific and be responsive to some of the concerns  
9 that the staff had raised about the prior wording.

10          COMMISSIONER JABER: Right. Is there any objection  
11 to using FIPUG's new language as shown on Page 68 of the draft  
12 prehearing order, staff?

13          MR. BEASLEY: Yes, we have difficulties with that,  
14 and we want to adhere to the position as stated in the  
15 prehearing order.

16          COMMISSIONER JABER: All right. Ms. Kaufman, explain  
17 to me the differences and we will talk about it.

18          MS. KAUFMAN: The differences between the new issue?  
19 The issue that we proposed was in response to questions at the  
20 issue identification meeting that originally it had been a  
21 generic issue and that it had been covered by the March order  
22 that is cited. So we wanted to make the issue as clear as  
23 possible in regard to what our concern was and what we were  
24 asking the Commission to resolve so all the parties were aware  
25 of it, and that is what we did. We don't think that that order

1 that I think Mr. Beasley is going to refer to really addresses  
2 the question. And so we have attempted to frame the issue more  
3 narrowly and specifically.

4 COMMISSIONER JABER: Mr. Beasley.

5 MR. BEASLEY: Their issue is -- well, their position  
6 we certainly don't agree with.

7 MS. KAUFMAN: We can't stipulate this issue? Oh,  
8 okay.

9 MR. BEASLEY: We will have to discuss this.

10 COMMISSIONER JABER: We have this wonderful mediation  
11 team.

12 MR. BEASLEY: Commissioner Jaber, back on Issue 21E,  
13 if I might, briefly.

14 COMMISSIONER JABER: You are going backwards again.  
15 Okay.

16 MR. BEASLEY: Is that stipulated, because I think  
17 there was no position.

18 COMMISSIONER JABER: No, staff has modified its  
19 position to indicate that they need to review discovery and  
20 listen to cross-examination on that issue.

21 MR. BEASLEY: I think, though, everyone else has said  
22 no position, which would suggest to me that there would be no  
23 cross-examination or any problem on the part of the other  
24 parties.

25 MR. KEATING: I think the cross-examination would



1 come from staff.

2 MR. BEASLEY: Fine.

3 COMMISSIONER JABER: So are you ready to talk about  
4 21H, Mr. Beasley?

5 MR. BEASLEY: If we can confer briefly.

6 COMMISSIONER JABER: Yes, take a few minutes.

7 (Pause.)

8 MR. BEASLEY: We desire to stick by the original  
9 wording of 21H, because the second version proposed by FIPUG  
10 characterizes what the Commission requirements are, and we  
11 think those orders speak for themselves. So we would adhere to  
12 21H as originally proposed.

13 COMMISSIONER JABER: I see what you are saying, the  
14 actual wording of the issue states a position?

15 MR. BEASLEY: Yes, ma'am.

16 COMMISSIONER JABER: Ms. Kaufman.

17 MS. KAUFMAN: It's the same position that is in  
18 current 21H. Separated wholesale sales be charged to average  
19 system fuel and nonseparated incremental.

20 COMMISSIONER JABER: No, I think what --

21 MR. BEASLEY: I think the original is should it, and  
22 the second one says does the Commission requirement, and  
23 Commission's requirements are set forth in the orders involved  
24 in 1997 and subsequent orders, and we would like to be able to  
25 look at those and let them say what they say.

1           COMMISSIONER JABER: Well, is it that you possibly  
2 disagree that the Commission required that wholesale sales be  
3 charged to average system fuel? I mean, is there disagreement  
4 on what we required?

5           MR. BEASLEY: There is in some circumstances. That  
6 was a prospective policy applied on a going-forward basis which  
7 specifically said in the Commission order it didn't apply to  
8 then existing contracts. So that qualification is something  
9 that makes FIPUG's proposal inconsistent with the order. It  
10 suggests in all cases.

11           COMMISSIONER JABER: Do you have substitute language?  
12 I mean, I think Ms. Kaufman is just trying to make this issue  
13 more specific to TECO and the circumstances that FIPUG objects  
14 to. I mean, I think she is trying to refine the issue, so do  
15 you have substitute language that can accommodate that?

16           MS. KAUFMAN: Commissioner, I might be able to help  
17 you out here. We are fine with the original language. This  
18 was in response to TECO. But what we would like to do is move  
19 our position from the revised issue back to original 21H.

20           COMMISSIONER JABER: That's fine, Ms. Kaufman. Thank  
21 you. Staff, do you understand what we have done? We have left  
22 the original 21H and we have taken FIPUG's modified position  
23 and substitute that for the original 21H.

24           MR. KEATING: Yes, thank you.

25           MS. KAUFMAN: Thank you.

1 COMMISSIONER JABER: 22A. I need a staff position on  
2 22A.

3 MR. KEATING: At this point it is my understanding  
4 that we are reviewing some recent discovery responses. And at  
5 this point our position would be no position pending review of  
6 the discovery. But I think that is one that is a potential --  
7 has the potential for a stipulation ultimately, and if we could  
8 reflect that in the prehearing order if we reach that  
9 stipulation.

10 COMMISSIONER JABER: All right. And this issue is  
11 just between you and Gulf Power it looks like. So you need  
12 to -- and correct me if I'm wrong, but TECO's positions,  
13 FIPUG's positions, and Publix's positions can be taken out  
14 here, right?

15 MR. BEASLEY: That's right.

16 MR. STONE: That's correct.

17 MR. ANTONACCI: Correct.

18 COMMISSIONER JABER: So, Staff, if you get a  
19 stipulation just reflect it as such.

20 Mr. Vandiver, I don't mean to leave you out. Is it  
21 no position on this one?

22 MR. VANDIVER: Correct.

23 COMMISSIONER JABER: 22B.

24 MR. KEATING: I believe that 22B and 22C -- I'm  
25 sorry, just 22B at this point could be shown as stipulated. If

1 we could use the -- if we could base that on the staff  
2 language.

3 COMMISSIONER JABER: Gulf Power, there has been an  
4 offer to stipulate 22B using staff's language. Mr. Stone, do  
5 you have a problem with that?

6 MR. STONE: Commissioner, I think it would be helpful  
7 to the Commission to have the last sentence of our position,  
8 which is not stated in the staff's position.

9 COMMISSIONER JABER: The error was found, documented,  
10 and provided to the PSC auditor during the audit.

11 Staff, do you have a problem with adding that  
12 sentence to the position, to the stipulation?

13 MR. KEATING: I'm trying see if there is anyone  
14 who -- just to make sure, that can verify that for me. I don't  
15 doubt that it's true.

16 COMMISSIONER JABER: All right. Work that out. Work  
17 it out. If you do, reflect it as a stipulation. Work it out,  
18 reflect it as a stipulation.

19 22C. Staff position. Staff, I need a position.

20 MR. KEATING: Yes. Staff's position -- at this time  
21 staff is formulating a position, and I believe that that is one  
22 that we can work towards agreement on.

23 COMMISSIONER JABER: Excellent. Issue 23, 24, you  
24 refer to an Attachment A.

25 MR. KEATING: Yes, that attachment was not included

1 erroneously. And staff as it happens has revised the data in  
2 that attachment.

3 MR. STONE: Commissioner Jaber, if I may, if we are  
4 in stipulation on 22C, then I can agree with staff's language  
5 on 22B. The only concern I had is if there was any doubt that  
6 the adjustment had been made, then I wanted the Commission to  
7 be aware that we had --

8 COMMISSIONER JABER: Hang on, you are taking us  
9 backwards again. So let me go back.

10 MR. STONE: I didn't want to officially say we were  
11 going backwards, but --

12 COMMISSIONER JABER: I noticed. All right. 22B.  
13 You said you are willing to stipulate to staff's language, but  
14 you would like us to add that last sentence in your position.  
15 What are you saying now?

16 MR. STONE: What I'm saying now is I just heard for  
17 the first time that staff is willing to stipulate to 22C.

18 COMMISSIONER JABER: Yes.

19 MR. STONE: And since they are willing to stipulate  
20 to 22C, then I can stipulate to staff's language on 22B.

21 COMMISSIONER JABER: Staff, that might be an offer  
22 you can't refuse. What do you think, do you need more time?

23 MR. KEATING: It sounds pretty good. I think that's  
24 one, since we don't have a position to state yet on 22C, that  
25 once we work that out, we can agree on both of them.

1           COMMISSIONER JABER: Why don't you have staff meet  
2 with Mr. Stone afterwards and -- what information is it you  
3 need on 22C that you don't have yet?

4           MR. KEATING: I'm not sure that there is any  
5 additional information needed. I think it's just staff to  
6 confirm that they are okay with that position.

7           COMMISSIONER JABER: Mr. Stone, they will work it out  
8 with you. And if there is a stipulation, it can be reflected  
9 as such in the final version.

10          MR. STONE: Thank you, Commissioner.

11          COMMISSIONER JABER: All right. Issues 23 and 24 you  
12 refer to an Attachment A. Can you tell me what Attachment A  
13 is?

14          MR. KEATING: Attachment A includes the GPIF rewards  
15 and penalties for January through December 2000 period. And  
16 the company's positions provide a total reward amount, I think  
17 our attachment goes through on a -- I believe it's on a  
18 unit-by-unit basis. I will provide the detail behind that  
19 number.

20          COMMISSIONER JABER: I always have problems when you  
21 start attaching documents to the prehearing order, because a  
22 lingering question comes up in my mind all of the time about  
23 whether this attachment is going to be in the record. Is this  
24 based -- is this a document based on amounts that are in the  
25 record in someone's testimony?

1 MR. KEATING: Yes, it is.

2 COMMISSIONER JABER: Tell me how, because we went  
3 through this last year. And as I recall there was some  
4 discussion about a document in the last fuel hearing that  
5 didn't make it into the record, so --

6 MR. KEATING: We can incorporate this information  
7 into our position, into staff's position. I think typically  
8 this has been an issue that we have stipulated, and I think  
9 that is what we are on course for this year. We could put all  
10 the information into our position.

11 COMMISSIONER JABER: I think that is excellent. And  
12 the parties, on this issue there might be a potential for  
13 stipulation on Issues 23 and 24?

14 MR. KEATING: And since this revised attachment was  
15 just provided to the parties today, we handed it out during the  
16 break, I don't know if they have all had a chance to look over  
17 it in enough detail to be able to tell you today that they  
18 agree with what is in it.

19 COMMISSIONER JABER: Great. Well, just in the spirit  
20 of remaining flexible, if you reach a stipulation just reflect  
21 it as such. And the stipulation may be that you just identify  
22 this as an exhibit. My only caution is that if you all need  
23 this, that somehow you figure out how to get it in the record.

24 Issue 24A.

25 MR. STONE: Commissioner, before we actually have to

1 go back, I would like to speak to 24. We discovered that there  
2 was an error in our table on our position for Issue 24 with  
3 regard to the numbers on Daniel 1 and Daniel 2. And as it  
4 turns out the numbers that are in staff's Attachment A are  
5 correct. So the table can be -- our table of our position can  
6 be adjusted so that it conforms to what is in staff's  
7 attachment.

8 COMMISSIONER JABER: Thank you, Mr. Stone. Mr.  
9 Keating, do you have that?

10 MR. KEATING: Yes, thank you.

11 COMMISSIONER JABER: Anything else? Okay. I'm on  
12 24A.

13 MR. KEATING: I believe 24A and 24B can be shown as  
14 stipulated using staff's language.

15 COMMISSIONER JABER: Okay. Parties, there has been  
16 an offer by staff to stipulate 24A using its language. TECO,  
17 you have taken a position. This is company-specific to TECO?

18 MR. KEATING: Yes.

19 MR. BEASLEY: We are fine with that proposed language  
20 of the staff.

21 COMMISSIONER JABER: Okay. FIPUG, Publix, no  
22 position. 24B.

23 MR. BEASLEY: The same with respect to Tampa  
24 Electric.

25 COMMISSIONER JABER: Staff, you have a stipulation on



1 24B.

2 MR. KEATING: Yes, I think we can stipulate 24B using  
3 staff's language.

4 COMMISSIONER JABER: Public Counsel, I am assuming --  
5 Rob, I'm just going to count on you to stop me if I am --

6 MR. VANDIVER: That's fine, Commissioner.

7 COMMISSIONER JABER: 25.

8 MR. KEATING: I believe that 25 could be shown as  
9 stipulated with respect to all four utilities.

10 COMMISSIONER JABER: It looks that way. Companies,  
11 do you agree there is a stipulation on Issue 25, FIPUG, Publix,  
12 OPC?

13 MR. CHILDS: FPL does as to FPL.

14 MR. BEASLEY: As does Tampa Electric.

15 MR. STONE: As does Gulf.

16 MR. MCGEE: As does Florida Power.

17 COMMISSIONER JABER: All right. Issue 26.

18 Staff, I need a position on Issue 26, positions.

19 MR. KEATING: I believe that we are in agreement with  
20 the positions of the utilities on Issue 26, and that we could  
21 show Issue 26 is a stipulated issue.

22 COMMISSIONER JABER: Okay. 26 is stipulated.

23 27, 28, I need staff positions.

24 MR. KEATING: On Issue 27, I believe we are also in  
25 agreement with the utilities' positions as stated in the draft

1 prehearing order. And that 27 could be shown as stipulated.

2 COMMISSIONER JABER: 27 is stipulated. 28.

3 MR. KEATING: I believe there was a handout to the  
4 parties concerning positions on these issues during the break.  
5 I may have some updates to that, even.

6 MR. CHILDS: 28.

7 COMMISSIONER JABER: All right. Why don't you read  
8 your updates for everyone's benefit. Issue 28.

9 MR. KEATING: On 28 for Florida Power Corporation,  
10 staff would have no position pending resolution.

11 COMMISSIONER JABER: How about we give you a few  
12 minutes and you all work that out.

13 MR. KEATING: Okay. This will probably just take a  
14 couple of minutes. Thank you.

15 COMMISSIONER JABER: Okay.

16 (Pause.)

17 COMMISSIONER JABER: Go back on the record. Issue  
18 28, Staff.

19 MR. KEATING: Thank you for allowing us the time to  
20 put our heads together on that one. Issue 28, staff's position  
21 at this point is no position because this would be a fallout  
22 issue with respect to an issue that we will discuss in relation  
23 to Florida Power and Light's supplemental testimony. And that  
24 is an issue concerning whether other utilities as well should  
25 file revised forecasts.

1           COMMISSIONER JABER: So are you suggesting we come  
2 back to Issue 28 after we talk about the FPL supplemental  
3 testimony?

4           MR. KEATING: We could come back to 28. If an issue  
5 that has been proposed, that will be proposed by staff in  
6 relation to FPL's supplemental testimony is included and asks  
7 whether the utility should be required to revise their  
8 forecasts, that would remain an open question at hearing and  
9 depending on the forecast, we will have a different number for  
10 Number 28. I think we could agree to some of the numbers based  
11 on the forecasts that have been provided.

12           COMMISSIONER JABER: Okay. Let's come back to 28.  
13           29.

14           MR. KEATING: 29. I believe we can stipulate 29 with  
15 respect to FPL and Gulf. And I believe we can stipulate to  
16 TECO's position on the appropriate jurisdictional separation  
17 factor as it is stated. With respect to Florida Power  
18 Corporation, we would take no position pending further review  
19 of discovery.

20           COMMISSIONER JABER: All right. Any objection to  
21 that, disagreement with that? Issue 30.

22           MR. KEATING: Issue 30. Staff's position is similar  
23 to that of 28. It's a fallout from -- it's effected by 28,  
24 which is in turn effected by the additional issue that staff  
25 will discuss.

1           COMMISSIONER JABER: Then why don't we do this for  
2 Issue 30. Why don't we change your position to the resolution  
3 of this issue is dependent upon other issues.

4           MR. KEATING: That would be fine.

5           COMMISSIONER JABER: Issue 31.

6           MR. STONE: Commissioner, I handed out during the  
7 break, and you have received a copy and the court reporter has  
8 also received a copy, of Gulf's revised position on Issue 31.  
9 Quite frankly, until we saw staff's position we weren't aware  
10 of what they were really trying to get at in the issue, so our  
11 original position really didn't -- although it was accurate, it  
12 didn't hit at the heart of what staff was trying to get at. So  
13 we believe we have a better communication now with our revised  
14 position.

15           COMMISSIONER JABER: Staff, does this new position  
16 change your position at all?

17           MR. KEATING: Staff has reviewed the revised position  
18 that was provided. I think we still have some, maybe some  
19 discomfort with some of the language in it. I believe that we  
20 agree to the amount that is included in Gulf's revised  
21 position, and at this point we would just need to work through  
22 the language of the stipulated position.

23           COMMISSIONER JABER: FIPUG, do you want some more  
24 time to think about your position? You have got such  
25 transactions should be removed.

1 MS. KAUFMAN: I apologize, Commissioner, if you will  
2 tell me which issue we are on.

3 COMMISSIONER JABER: It's okay. Issue 31. Issue 31,  
4 Gulf has handed out a revised position. You gave the parties a  
5 copy, Mr. Stone?

6 MR. STONE: I did.

7 COMMISSIONER JABER: And my question to you and to  
8 staff is does this revised position affect your position?

9 MR. McWHIRTER: We take no position.

10 COMMISSIONER JABER: Okay. Changing your position in  
11 Issue 31 to reflect that you have no position.

12 MS. KAUFMAN: Yes, ma'am.

13 COMMISSIONER JABER: OPC, the same?

14 MR. VANDIVER: Yes, ma'am.

15 COMMISSIONER JABER: Publix the same. Okay. Staff,  
16 think about the language and work this out with Gulf, if you  
17 can. All right. That brings us to Issue 32, which makes it  
18 appropriate to take up FPL's supplemental testimony.

19 It is my understanding, Staff, that you have some  
20 revised issues to address FPL's supplemental testimony. Have  
21 you passed those issues out to the parties?

22 MR. KEATING: Yes, we have.

23 COMMISSIONER JABER: So everyone has had an  
24 opportunity to think about that. FPL, why don't you -- Mr.  
25 Childs, why don't you tell us what your request is, what you

1 have done and let's start talking about it.

2 MR. CHILDS: Well, what we have done is filed  
3 testimony that addresses FPL's proposed change for FPL to  
4 reflect the revision in the sales forecast as a result of the  
5 events of September 11th. That is one change. And we have run  
6 those, the effect of those changes through the various costs  
7 and factors that are considered in this docket, and we filed  
8 that and identified those specifically.

9 In addition, we have filed testimony that asks for  
10 the recovery of certain security costs at power plants,  
11 security that is associated with concern about terrorist  
12 attacks that has been undertaken recently. And we have  
13 identified that and have asked for that to be recovered. And I  
14 believe we have quantified our estimate of approximately 1.8  
15 million forecast for the going forward. That, I think,  
16 summarizes what we did.

17 And we did that not only because we thought it was a  
18 change that needed to be brought to your attention, but because  
19 we believe that that is the procedure and has been the  
20 procedure at least as to the sales forecast event. That has  
21 been the procedure in this docket for sometime to bring changes  
22 to assumptions to the Commission's attention.

23 COMMISSIONER JABER: Is there any objection to FPL's  
24 supplemental testimony and their revision to the forecasts, Mr.  
25 McWhirter?

1 MR. McWHIRTER: We have no objection to it and  
2 compliment Florida Power and Light for bringing an updated  
3 forecast to the hearing. We do, however, object to  
4 establishing a whole new cost-recovery proceeding that would  
5 deal with recovering security concerns through a cost-recovery  
6 mechanism rather than through base rates. And so we would  
7 object to that proposition, which is Issue 17B as handed out by  
8 Florida Power and Light.

9 COMMISSIONER JABER: Any other objections? Any other  
10 comments in response to Mr. Child's request?

11 MR. STONE: In the category of comments, it appears  
12 to me, and I'm assuming that this handout was from Mr. Childs,  
13 Issue 17C --

14 COMMISSIONER JABER: No, actually the handout that  
15 has 17B, 18L, and 17C, it's my understanding that those are  
16 questions that staff put together to address FPL's testimony.

17 MR. STONE: I apologize for my inaccurate assumption.

18 COMMISSIONER JABER: It's all right, go ahead.

19 MR. STONE: Is 17C intended to take the place of  
20 Issue 32?

21 COMMISSIONER JABER: Right. Actually these three  
22 issues are intended to take the place of Issue 32.

23 MR. STONE: That satisfies my concerns. I just  
24 didn't want to have duplicate issues.

25 COMMISSIONER JABER: Any other comments?

1 MR. BEASLEY: Could we have three or four minutes to  
2 discuss it?

3 COMMISSIONER JABER: Absolutely.

4 (Off the record.)

5 COMMISSIONER JABER: Let's go back on the record.  
6 Mr. Beasley, you had some questions or concerns?

7 MR. BEASLEY: Yes, Commissioner Jaber. It concerns  
8 Issue 17C. Tampa Electric has not made any revised forecasts.  
9 We think it is premature at this time. We have a concern that  
10 we don't think we could make any revised forecasts if we had to  
11 and have them done and considered at the hearing and  
12 implemented January of 2002.

13 But we think that if there is any change that is  
14 required in the near future as a result of September 11th and  
15 the events surrounding that, that we could make whatever  
16 changes that may turn up be necessary under the Commission's  
17 existing procedures.

18 COMMISSIONER JABER: Staff, let me tell you the  
19 reason I wanted to go back to Issue 28, because something you  
20 said also troubled me as it relates to requiring the utilities  
21 to come in. I understand the need, perhaps, to have an Issue  
22 17B and 18L obviously in light of the very extraordinary tragic  
23 circumstances, but 17C, I am questioning the need for that.  
24 These are companies that are quite capable of letting us know.

25 MR. KEATING: And this issue is, I guess, essentially



1 the issue or rewording of the issue that Public Counsel had  
2 raised, and our attempt to perhaps reword that issue. I don't  
3 want to speak for Public Counsel on what their --

4 COMMISSIONER JABER: Yes. And I have not yet heard  
5 from Mr. Vandiver. Go ahead, Rob.

6 MR. VANDIVER: The reason that Public Counsel raised  
7 the issue, Commissioner, was that in deposition -- in the  
8 course of depositions we heard differing accounts from the  
9 differing utilities as to the effect of the September 11th  
10 attacks. And we thought it appropriate to bring that to the  
11 attention of the Commission in this docket, and simply put the  
12 issue on the table for Commission consideration. And FPL's  
13 filing speaks to that, and we think it is appropriate to be  
14 considered. Of course, we will be taking positions on 17B and  
15 so forth at the appropriate time. I guess it is the prehearing  
16 officer's pleasure as to what to do with the appropriate  
17 issues.

18 COMMISSIONER JABER: I mean, I guess from a  
19 logistical standpoint, Mr. Vandiver, we do not have the benefit  
20 of allowing time to have these companies file testimony.

21 MR. VANDIVER: Right. And I really can't speak to  
22 the company's capabilities as to what they can or cannot file.  
23 I think that is more appropriate for them to speak to.

24 COMMISSIONER JABER: But as it relates -- well, from  
25 a consumer's standpoint, it seems to me we would want the

1 benefit of having the revisions to the forecasts because  
2 of the --

3 MR. VANDIVER: Right. The consumer's concern is  
4 accurate up-to-date information so that we get accurate  
5 information, and the most accurate information that we can get  
6 so that we have a true picture of what the costs are.

7 COMMISSIONER JABER: And, FPL, you have done that.  
8 And you have done it through the supplemental testimony.

9 MR. CHILDS: Yes.

10 COMMISSIONER JABER: TECO, how difficult would it be  
11 to sort of try to handle the same issue with the witnesses you  
12 already have testifying? I'm looking for options here, and  
13 this is going to be a free flow communication on these three  
14 issues. This is information that certainly will affect the  
15 factors, and in that regard it is beneficial to have in this  
16 proceeding. These are very extraordinary circumstances and no  
17 one could have expected that we would be in this sort of  
18 situation. But if we need to be flexible and allow the  
19 witnesses to testify to revised factors, maybe that is a way of  
20 handling it.

21 MR. BEASLEY: I don't know that they would be able to  
22 because we don't have the predicate for them to talk about any  
23 kind of reforecast that has been done. We haven't done one.  
24 We would certainly be the first to let you know if the  
25 situation looks like we are going to need to do that and come

1 back before you, you know, as soon as that is determined. But  
2 we don't have the information right now with which to make that  
3 determination.

4 MR. STONE: Commissioner Jaber, if I may also speak  
5 to the issue from Gulf's perspective. Our position is very  
6 similar to TECO's. And I would also point out that there are  
7 substantial differences between the companies and the customers  
8 that they serve and the potential effects of the events of  
9 September 11th on the different companies. And so while it may  
10 have had one type of effect on, say, Florida Power and Light,  
11 it may still be uncertain as to what, if any, effect it is  
12 having on Gulf Power Company.

13 And so we certainly are not in a position that we  
14 could rerun forecasts and rerun everything to develop new  
15 factors in the approximately ten days that are left between now  
16 and the hearing. And we would not be able to have revised  
17 forecasts and have factors go into place on January 1, 2002.

18 We believe based on what we know about our  
19 circumstances in light of the events of September 11th that the  
20 true-up mechanism provides the appropriate means. And if  
21 necessary, if the forecasts change that the opportunity for a  
22 midcourse correction would provide further protection for the  
23 customers. And we will continue to monitor that and act in  
24 that fashion.

25 But in terms of actually being required to provide a

1 revised forecast, it is just not practical for hearing and for  
2 factor revision dates that are set in this docket. At some  
3 point you have to close the door to further revisions and just  
4 take the best information you had available at that time.

5 COMMISSIONER JABER: Staff, were you contemplating in  
6 Issue 17C that it would actually be revised in time for  
7 implementation with this hearing, or were you sort of thinking  
8 that you could require them and handle it in a midcourse  
9 correction? Think about it some more. I'm going to go to  
10 Florida Power Corporation and see what their position is while  
11 you all talk about it. Mr. McGee.

12 MR. MCGEE: We have a study underway to make an  
13 assessment of the impact of the September 11th events. That is  
14 not completed yet, and the parties had a meeting on this on  
15 Monday, and I think we expressed our position that we thought  
16 right now it was premature to expect that process to be  
17 completed. We also don't know that the magnitude of the change  
18 that might be shown by whatever revised forecast is done would  
19 really warrant kind of a last-minute change in the overall fuel  
20 factors.

21 This also could impact not just the fuel side, but  
22 the recovery of the costs for capacity that are reflected in  
23 here. Those two tend to offset each other in many instances,  
24 and so the net effect of the change could be fairly small.

25 COMMISSIONER JABER: Okay.

1 MR. CHILDS: Could I comment very briefly on this  
2 question?

3 COMMISSIONER JABER: Yes.

4 MR. CHILDS: We did not propose an issue, and we  
5 certainly were not suggesting that this was a step that other  
6 utilities necessarily needed to take. We simply don't know.  
7 But, as to FPL, we did have the information and we thought we  
8 needed to call it to your attention. And I mentioned the prior  
9 Commission practice, and what I am referencing is the 1984  
10 order from the Commission, and it is Order 13694.

11 And just briefly it does point out about updating and  
12 providing changed assumptions by the time of the hearing. But  
13 it also makes the point, too, that I think is perhaps  
14 indicative of the different treatment. It makes a point that a  
15 certain element of judgment will have to be exercised in  
16 updating assumptions of limited materiality, and also says, I  
17 think, that you don't necessarily have to change your forecast  
18 if the impact of the changed assumption is not equal to the 10  
19 percent rule.

20 We thought it was material, and we thought we were  
21 providing that update as we would, say, when a witness took the  
22 stand and they are testifying to something that has changed and  
23 we call that to your attention. So that's why we didn't  
24 provide a separate issue on that, because we thought we were  
25 following through with the directions for the docket.

1           COMMISSIONER JABER: Right. But the testimony you  
2 filed is an additional witness that testifies just on the  
3 September 11th effect on the factor.

4           MR. CHILDS: Right, to update the assumption on  
5 the -- to go through the assumptions on the sales and the  
6 impact of that on the various factors.

7           COMMISSIONER JABER: Okay. Staff.

8           MR. KEATING: It was our intent with this issue and  
9 the way it was worded to find out if the other utilities, other  
10 than FPL, should file them; and perhaps if there are material  
11 changes the Commission would find that they should file revised  
12 forecasts. And if it would impact the factor for 2002, we  
13 would hope it could be reflected in the 2002 factor. We  
14 haven't really -- I'm not sure if it is practical or not. We  
15 don't know if it is practical or not for that to be done. Now,  
16 with FPL, we have received their revisions, they have already  
17 gone through that exercise, so we would obviously expect as  
18 they have asked that any changes be effective for the 2002  
19 period beginning January 1st.

20           COMMISSIONER JABER: To not allow the issue, I think,  
21 as worded puts me in the posture of sort of deciding the issue  
22 for the Commissioners, and I don't want to do that. I think  
23 the way to handle this is to allow these issues to be  
24 identified, allow the parties in their position to reflect for  
25 us where you are on your determination of the effect of

1 September 11th.

2 Mr. Stone, just to use you as an example. What you  
3 said here today really should be your position. It is a  
4 discussion worth having even if the vote at the hearing is that  
5 we don't have enough information to require the companies to  
6 file. But at least it gives the Commissioners an accurate  
7 reflection of where we are, what we have talked about. To not  
8 allow it, I don't want to preclude that discussion by the other  
9 Commissioners by not allowing the issues.

10 And, Mr. McWhirter, I would echo the same for you.  
11 Put in your position what you have said here today.

12 MR. McWHIRTER: Yes, ma'am.

13 COMMISSIONER JABER: All right. So here is what we  
14 will do. We will identify some place in here where you find it  
15 appropriate, Mr. Keating, 17B, 18L, and 17C. And is that where  
16 you want them to go? These are part of -- under 17 and 18?

17 MR. KEATING: Yes. 18L now may actually have, I  
18 think we ended on 18J, it may actually be 18K if we put it in  
19 the order of issues.

20 COMMISSIONER JABER: Okay. Wherever they belong, but  
21 the three will stay in. Now, the parties need time to develop  
22 positions and get those to you. When do you want the  
23 positions?

24 MR. KEATING: Since Monday is a holiday, perhaps  
25 Tuesday so that they can be incorporated in the prehearing

1 order.

2 COMMISSIONER JABER: Can that be done by next  
3 Tuesday, parties? Now, Mr. Childs, I would caution you to  
4 something you said, you said when the witnesses come up on the  
5 stand we ask them what changes have been made since the  
6 testimony was originally filed. I'm assuming you mean changes  
7 and minor corrections that you are going to let the parties  
8 know ahead of time. As it relates to the security issues, you  
9 have filed supplemental testimony that I should probably  
10 officially allow today.

11 MR. CHILDS: I don't intend that the security  
12 testimony fits within that characterization of mine by changes.

13 COMMISSIONER JABER: Okay. The security witness,  
14 what is the name?

15 MR. CHILDS: Mr. Hartzog and Ms. Dubin.

16 COMMISSIONER JABER: Ms. Dubin and --

17 MR. CHILDS: J. R. Hartzog, H-A-R-T-Z-O-G, and Ms.  
18 Dubin.

19 COMMISSIONER JABER: All right. So, Mr. Keating, you  
20 can reflect the additional testimony filed by Ms. Dubin and  
21 Mr. Hartzog.

22 MR. KEATING: Yes.

23 MR. CHILDS: And we do have Mr. Green, who is talking  
24 about the sales forecast.

25 COMMISSIONER JABER: And Mr. Green.



1 MR. STONE: Commissioner Jaber.

2 COMMISSIONER JABER: Yes.

3 MR. STONE: I don't want to beat a dead horse on this  
4 issue, but I would point out that by leaving this issue in and  
5 letting us state positions on the issue, we put at risk the  
6 fact that we will get to the hearing date and if the Commission  
7 were to say the answer is yes, then we have put in jeopardy --  
8 well, actually I think we have not just put in jeopardy, but we  
9 have actually stated that we cannot implement factors on  
10 January 1, 2002. Because we will -- in order to implement  
11 factors on January 1, 2002, we have to a decision at the  
12 hearing. We will not have revised forecasts at the hearing.

13 COMMISSIONER JABER: Uh-huh.

14 MR. STONE: And so that is my concern about the issue  
15 coming up in this fashion. Certainly I agree with the actions  
16 that FPL has taken. They have evaluated their situation, they  
17 have revised their forecasts and they have provided that. But  
18 my concern is the issue as phrased and leaving it in at this  
19 late date puts us in the position that we have a substantial  
20 uncertainty as to whether or not we will have new factors on  
21 January 1.

22 COMMISSIONER JABER: And I appreciate that. Is there  
23 a way to sort of work on the language in the issue to  
24 accommodate everyone's concerns? Here is my concern as the  
25 prehearing officer. You don't want to limit the discussion

1 that the Commissioners can have by precluding an issue that  
2 might be legitimate.

3 MR. STONE: I agree.

4 COMMISSIONER JABER: So perhaps after the prehearing  
5 you could meet with staff, meet with FIPUG, meet with the rest  
6 of the parties and work on language that could accommodate both  
7 of those goals. I understand the predicament you are in, but  
8 the predicament that the staff and the Commissioners would be  
9 in is to the degree they even want to talk about it there isn't  
10 a vehicle that allows them to, absent this issue. So, maybe  
11 it's just a question of taking out the implementation dates,  
12 staff?

13 MR. STONE: Well, I may have opened a can of worms  
14 that I didn't intend to. If you are taking out the  
15 implementation date, that actually fulfills the prophecy that I  
16 just articulated that we have, no certainty as to when our  
17 factors are going to be implemented.

18 My suggestion would be to reword this issue so that  
19 if there are any changes mandated by the Commission, that for  
20 those utilities that have to supply revised forecasts, that  
21 they be dealt with in some sort of midcourse adjustment and  
22 that we would be able to move forward with factors on  
23 January 1, 2002 based on the existing forecasts, whether they  
24 be the ones we originally filed or the revised one that FPL has  
25 filed.

1           COMMISSIONER JABER: Staff, what is wrong with that?  
2 In some form or fashion, I would like this issue to be  
3 identified for the Commission. It's just a matter of working  
4 out -- it's just a matter of working out the language. I think  
5 that Mr. Stone brings up a good point with respect to, you  
6 know, what if the Commission does say, yes, they are required  
7 to. It can't physically be done in time for January 1st.

8           MR. CHILDS: I don't know if it would help or not,  
9 but one of the things that was in that order that I thought was  
10 appropriate as it related to the question of judgment, and I  
11 don't think it says you can't make a change, but it says that  
12 lastly we should make clear that informing the Commission of  
13 changed assumptions will not necessitate a revised filing and a  
14 revised factor unless the revision would otherwise require  
15 filing a midcourse correction under the 10 percent guidelines.

16           And I think there is a point of evaluating what the  
17 change in assumptions are, and then there is a question of do  
18 you make the change. And I read this language to say that the  
19 Commission is not going to get into the problem that Mr. Stone  
20 has identified.

21           COMMISSIONER JABER: Unless it is necessary to make  
22 the change.

23           MR. CHILDS: That's right.

24           COMMISSIONER JABER: You know, discuss it. You know  
25 what I'm trying to accomplish, there has to be a way to get

1 there. If you can't, come back and see me, Staff, and we will  
2 do what we need to do.

3 Mr. McWhirter, do you have any concern with that?

4 MR. McWHIRTER: No, ma'am.

5 COMMISSIONER JABER: Public Counsel?

6 MR. VANDIVER: No, ma'am.

7 COMMISSIONER JABER: Great. All right. That brings  
8 us to the exhibit list. Any changes to the exhibit list?

9 MR. CHILDS: We have changes, but that is on that  
10 list of material that I discussed earlier that we were going to  
11 give the court reporter and staff. In fact, I can do that now.

12 COMMISSIONER JABER: The new witnesses will have  
13 exhibits attached to their testimony and you need to identify  
14 those.

15 MR. CHILDS: Yes, we have that.

16 MR. KEATING: And that is the information in the  
17 revised prehearing statement, too?

18 MR. CHILDS: Yes.

19 MR. KEATING: Okay. We can incorporate that.

20 COMMISSIONER JABER: Mr. Childs, rather than read  
21 them into the record now, what I will do is allow you to give  
22 that list -- make sure that staff has the accurate list and  
23 they will modify the prehearing order.

24 MR. CHILDS: And I have a copy for the court  
25 reporter, too.

1 COMMISSIONER JABER: Excellent.

2 MR. KEATING: Staff would like to identify some items  
3 that aren't included here that it would intend to -- at least a  
4 preliminary view is that we would intend to offer these as  
5 exhibits and we would expect that this list will be pared down  
6 as we get towards hearing. Some of these will be offered as  
7 well to support, some more record support for potentially  
8 stipulated issues.

9 COMMISSIONER JABER: Okay. Do you have a list?

10 MR. KEATING: Yes. Those items would include  
11 deposition transcripts for several of the witnesses. I will  
12 list those. Witness Dubin, Witness Yupp, Witness Portuondo,  
13 the panel deposition of Witnesses Murphy and Niekum for Florida  
14 Power Corporation, for Witness Connolly for Florida Power  
15 Corporation, for Witnesses Jordan, Wehle, Brown, and Hornick  
16 for TECO.

17 COMMISSIONER JABER: Is this a list that you have  
18 distributed to the parties, Cochran?

19 MR. KEATING: This is a list that we have not  
20 distributed to the parties at this time, but we plan to do so.  
21 And I don't want to suggest at this point that we are talking  
22 about necessarily the entire deposition transcript. I realize  
23 that some of the depositions went towards issues that are no  
24 longer part of this proceeding.

25 COMMISSIONER JABER: Wehle.

1 MR. KEATING: TECO Witnesses Jordan, Wehle, Brown,  
2 and Hornick. Gulf Witnesses McMillan and Oaks.

3 COMMISSIONER JABER: Staff has indicated that they  
4 would like to make a composite exhibit of those deposition  
5 transcripts. Is there on objection?

6 MR. STONE: I don't know that I have an objection,  
7 but I would like to review those depositions and see that they  
8 aren't dealing with issues that have been dropped or deferred.

9 COMMISSIONER JABER: Staff, prepare a list,  
10 distribute it to the parties, and hopefully there is no  
11 objection. And just identify it as a stipulated exhibit at the  
12 beginning of the hearing.

13 MR. KEATING: We plan to work with the parties as we  
14 pare down that list and get more specific.

15 COMMISSIONER JABER: Okay. What else?

16 MR. BEASLEY: Commissioner, we may wish to offer the  
17 deposition transcripts of FIPUG Witnesses Collins and Pollock  
18 into the record to streamline our cross-examination.

19 COMMISSIONER JABER: Mr. McWhirter?

20 MR. McWHIRTER: No objection.

21 COMMISSIONER JABER: Do you want to do it in the form  
22 of a stipulated exhibit at the beginning of the hearing?

23 MR. BEASLEY: That sounds good.

24 MR. KEATING: There are a few other items that staff  
25 would like to go ahead and identify now.

1 COMMISSIONER JABER: Uh-huh.

2 MR. KEATING: Those would include Florida Public  
3 Utilities' responses to Staff Interrogatories 1 through 6; TECO  
4 responses to Staff Interrogatories 2 through 8, and 148 through  
5 157. I think there may be some confidential information on at  
6 least one of those sets of interrogatories, but we will -- and  
7 we intend to work with the company on how we are going to work  
8 with that. Finally, the testimony of W. Lynn Brown that was  
9 filed by TECO in Docket Number 990001.

10 COMMISSIONER JABER: Uh-huh.

11 MR. KEATING: And the most recent TECO contract with  
12 Hardee Power Partners.

13 COMMISSIONER JABER: Okay. I think for all of this,  
14 Mr. Keating, prepare a list, make sure the parties have notice  
15 of what you are suggesting be identified as a stipulated  
16 exhibit, and let's handle it at the beginning of the hearing in  
17 that fashion. But you need to give them the list and give them  
18 notice so that if there are objections they can tell you.

19 MR. KEATING: We will.

20 COMMISSIONER JABER: Great. And that offer extends  
21 to the parties, too. You might have exhibits that no one  
22 objects to, let's just handle it that way. All right.

23 Under pending motions we have handled the first two,  
24 what is the third one, Staff?

25 MR. KEATING: The third one is a TECO motion for

1 protective order and related motion to compel.

2 COMMISSIONER JABER: Are you working on an order?

3 MR. KEATING: Yes. I expect that we could have an  
4 order to you tomorrow regarding those motions.

5 COMMISSIONER JABER: Bring it to me Tuesday. Let's  
6 get it done Tuesday. Confidentiality matters.

7 MR. McWHIRTER: I have an ore tenus motion I would  
8 like to raise.

9 COMMISSIONER JABER: Go ahead, Mr. McWhirter.

10 MR. McWHIRTER: Within the cutoff period for  
11 discovery, I served a request for admissions on Florida Power  
12 and Florida Power and Light, but the 30 days does not expire  
13 until after the hearing. And I would respectfully -- with the  
14 request, we asked the utilities to respond sooner, but I would  
15 like to move at this time that they file their response by the  
16 19th of November.

17 COMMISSIONER JABER: When did you serve it, Mr.  
18 McWhirter?

19 MR. McWHIRTER: We served it on Tuesday.

20 COMMISSIONER JABER: This last Tuesday?

21 MR. McWHIRTER: This week, uh-huh.

22 COMMISSIONER JABER: Which was November 6th. Thank  
23 you. Florida Power and Light, Florida Power Corps?

24 MR. CHILDS: We are going to respond. I don't really  
25 want to argue about the timing, but we are going to respond.



1 COMMISSIONER JABER: It sounds like you have a  
2 representation by both that they will certainly respond by the  
3 19th.

4 MR. McGEE: Yes.

5 COMMISSIONER JABER: Great. Based on that  
6 representation, Mr. McWhirter, I'm not --

7 MR. McWHIRTER: I'm fine with that.

8 COMMISSIONER JABER: Good. Anything else?

9 MR. BEASLEY: Commissioner, I had two witnesses to  
10 add to the witness list.

11 COMMISSIONER JABER: Yes. And we need to go back to  
12 the witness list. But before we do that, anything else under  
13 pending motions? All right.

14 Pending confidential matters, Staff?

15 MR. KEATING: Items 1 through 4 on that list include  
16 requests for confidential treatment from each of the four of  
17 the IOUs concerning a staff set of interrogatories. Those  
18 orders are in the process of being drafted right now, and I  
19 understand there is a second Gulf Power request related to  
20 those interrogatories. Gulf Power filed a supplemental  
21 response to its original response which included confidential  
22 information, as well.

23 COMMISSIONER JABER: Let me ask you this. You want a  
24 separate order on these requests for confidential matters or  
25 are you suggesting we not rule on them today?

1 MR. KEATING: Right. I am suggesting that staff  
2 prepare, and staff is working on written orders for those  
3 requests at this time. At least for Numbers 1 through 4 and  
4 the Gulf request that was not included in this list.

5 COMMISSIONER JABER: Okay. And what about TECO's  
6 request for confidential classification of an exhibit in Ms.  
7 Wehle's testimony?

8 MR. KEATING: I believe that that order has been  
9 drafted.

10 COMMISSIONER JABER: Oh, I have that?

11 MR. KEATING: I think so.

12 COMMISSIONER JABER: Okay. Number 6.

13 MR. KEATING: Number 6 is a TECO request for  
14 confidential classification of certain information that was  
15 provided in FIPUG's testimony.

16 COMMISSIONER JABER: Excuse me, let me go back to  
17 Number 5. Is that a ruling you need in a separate order?

18 MR. KEATING: I believe the separate order would -- a  
19 written order may be helpful in that it would provide a  
20 line-by-line justification, and make the ruling on a  
21 line-by-line justification. I couldn't give you a  
22 recommendation line-by-line today.

23 COMMISSIONER JABER: Okay. Number 6.

24 MR. KEATING: Number 6 concerns confidential  
25 information that was provided in the testimony of FIPUG Witness

1 Brian Collins, and it is confidential with respect to Tampa  
2 Electric Company. I have not had the chance to go back and  
3 look at this, but I think it may be the case that this is  
4 information that was provided in discovery that confidential  
5 treatment had been provided for already. And I would ask -- I  
6 think Tampa Electric and FIPUG may be more familiar with that  
7 information.

8 COMMISSIONER JABER: Was there an objection to TECO's  
9 request?

10 MR. McWHIRTER: At the outset of this hearing, during  
11 the off-the-record portion, I announced that Mr. Collins'  
12 testimony had TECO confidential information in it. And in  
13 accordance with your procedural prescription, we were going to  
14 follow that and give the proper envelopes and all of that stuff  
15 at the hearing.

16 COMMISSIONER JABER: All right.

17 MR. BEASLEY: As far as the confidentiality request  
18 goes, though, we filed a justification after FIPUG submitted a  
19 notice of intent to seek confidential classification, we  
20 followed up within the 21-day period, and that's what Cochran  
21 has.

22 COMMISSIONER JABER: Right. But, Mr. McWhirter, do I  
23 understand your comment to be that you really don't have an  
24 objection to the request for confidential classification and  
25 intend to follow the procedure? Here is where I'm going, I am

1 inclined to grant this request today unless there is an  
2 objection.

3 MR. McWHIRTER: Well, I may not be accurately  
4 perceiving what is going on, but Tampa Electric gave us  
5 confidential information that was incorporated in Mr. Collins'  
6 testimony. We acknowledged that it was confidential  
7 information and it was treated as such, and will continue to be  
8 treated as such. And I don't think any specific additional  
9 action is needed at this time.

10 COMMISSIONER JABER: Staff.

11 MR. KEATING: I guess my concern, and this may be why  
12 TECO filed the motion, is that there is another document at  
13 records that is stashed away with confidential information and  
14 that a ruling would be needed to protect that.

15 MR. BEASLEY: We submitted the motion -- or FIPUG  
16 submitted the notice of intent to seek confidential  
17 classification. Since it is our information, we followed up  
18 within 21 days with a justification for confidential treatment.  
19 I think we probably are in need of a ruling on that  
20 confidential treatment.

21 COMMISSIONER JABER: Yes. Just show that TECO's  
22 request for confidential classification of the information  
23 included in the testimony and exhibit of Witness Collins filed  
24 November 2nd is granted. So Number 6 is taken care of,  
25 Cochran. That is one less order you have to do.

1 MR. KEATING: I appreciate that.

2 COMMISSIONER JABER: All right. Let's go back to the  
3 witness list.

4 MR. BEASLEY: On Page 7, we have two rebuttal  
5 witnesses that would go after Mr. Pollock and before Ms. Welch,  
6 and that would be W. Lynn Brown and J. Denise Jordan.

7 COMMISSIONER JABER: Staff, it looks like we have  
8 left out the rebuttal witnesses.

9 MR. KEATING: It appears that they did not make it in  
10 this draft.

11 COMMISSIONER JABER: Okay. Just put all the rebuttal  
12 witnesses in here.

13 MR. BEASLEY: And then as a note at the top where Mr.  
14 Buckley's testimony is referred to, his testimony will be  
15 adopted by Mr. Keselowsky, as is his exhibit, and we mentioned  
16 that in the exhibit list, we just failed to mention it in the  
17 witness list.

18 COMMISSIONER JABER: Okay. Staff, make a note that  
19 Mr. Keselowsky will adopt the testimony of Mr. Buckley.

20 Anything else?

21 MR. BEASLEY: I did have one pending motion. A  
22 motion to compel FIPUG's answers to Tampa Electric's discovery  
23 request.

24 MS. KAUFMAN: I think an order has been entered on  
25 that.

1 MR. McWHIRTER: An order came out yesterday.

2 MR. BEASLEY: I haven't seen it.

3 MS. KAUFMAN: Commissioner, I wanted to talk about  
4 the witness order itself whenever we are ready to do that.

5 COMMISSIONER JABER: Yes. But let me ask staff, now  
6 it is my understanding, Staff, that Ms. Welch has testimony  
7 that may contain some confidential information, and my request  
8 to the parties is do you really need to have Ms. Welch appear  
9 at the hearing? Can you all agree to stipulating her testimony  
10 in without cross?

11 MR. CHILDS: We are not sure yet. She is apparently  
12 the only witness on two of the issues that have been raised for  
13 us on gas matters, and I will try to talk to staff about what  
14 we can do on that, but I'm just not sure that we can agree to  
15 waive examination.

16 COMMISSIONER JABER: Okay. I would just caution the  
17 parties on all of the confidential information, please follow  
18 the procedure.

19 MR. CHILDS: Right.

20 MR. KEATING: For Ms. Welch, we can eliminate Issues  
21 18E, 18F, and 18G as issues that she is testifying in relate  
22 to.

23 COMMISSIONER JABER: Actually I think the direction  
24 to staff on any of these issues that have been eliminated, just  
25 drop them off of the witness list.

1 Mr. Horton.

2 MR. HORTON: Commissioner, with respect to Florida  
3 Public Utilities, it appears that all of our issues have been  
4 stipulated. Mr. Bachman is shown as our witness. I would ask  
5 that he not be required to attend, that his testimony be  
6 inserted into the record. And I would also ask that we be  
7 excused from further participation at the prehearing today.

8 COMMISSIONER JABER: Yes, absolutely. And, I'm  
9 sorry, we should have done that early on.

10 MR. HORTON: That's okay. You didn't have a chance.

11 COMMISSIONER JABER: Mr. Keating, show that  
12 Mr. Bachman, there is agreement this his testimony can be  
13 inserted into the record. Now, that is subject, of course, to  
14 the Commissioners not having questions.

15 MR. HORTON: Correct.

16 MR. BEASLEY: We would offer the same with respect to  
17 the testimony and exhibits of Witnesses Buckley and Keselowsky  
18 for Tampa Electric.

19 COMMISSIONER JABER: Yes. All right.

20 Ms. Kaufman, you wanted to talk about the order of  
21 witnesses.

22 Mr. Childs, we will come back to you.

23 MR. CHILDS: Sure.

24 MS. KAUFMAN: Yes. Commissioner, I wanted to request  
25 a little bit of a change in the order, and that is because our

1 two witnesses, Mr. Collins and Mr. Pollock are coming here from  
2 St. Louis. And given the fact that we seem to have more issues  
3 and more witnesses than usual, and that they are looking at  
4 traveling back on the Wednesday before the Thursday of  
5 Thanksgiving, and Mr. Collins' wife is expecting a baby  
6 imminently --

7 COMMISSIONER JABER: That should have been the first  
8 reason.

9 MS. KAUFMAN: Okay. I should have put that first.  
10 What we would propose, I don't know that there is -- if there  
11 is any magic in the way the utilities have been ordered here,  
12 but what we would propose would be that Tampa Electric  
13 witnesses go first, and if it makes a difference we really are  
14 only talking about Ms. Jordan and Mr. Brown that address the  
15 same issues that Mr. Pollock and Mr. Collins addressed. So we  
16 would suggest that TECO witnesses go first, followed by  
17 Mr. Collins and Mr. Pollock, and then at your pleasure to  
18 revert back to the order that is listed here. We certainly  
19 don't want them to have to come back again if we do have to go  
20 to that third day.

21 COMMISSIONER JABER: I will tell you, I think some of  
22 that takes care of itself. Because if you look at a lot of the  
23 witnesses, there will probably be -- their testimony may be  
24 inserted into the record. But, Mr. Beasley, do you have any  
25 objection to taking your witnesses out of order and sort of



1 presenting -- actually, presenting them first before the  
2 Florida Power Corporation witnesses?

3 MR. BEASLEY: We are always willing to accommodate an  
4 expectant father.

5 COMMISSIONER JABER: That's what I'm saying. Okay.  
6 TECO first, FIPUG second. Do the parties have any objection to  
7 using that order?

8 MR. CHILDS: We don't have anybody with the added --

9 COMMISSIONER JABER: There is a woman someplace up  
10 north that is going to be very grateful.

11 MR. CHILDS: They do want to get home for  
12 Thanksgiving, though.

13 MS. KAUFMAN: Thank you, Commissioner.

14 COMMISSIONER JABER: I think you control that  
15 destiny, too. Okay. That's what we will do.

16 And, Mr. Childs, you had some changes or concerns?

17 MR. CHILDS: The only thing in addition was we had a  
18 couple of witnesses that I believe could be excused, Mr. Yupp  
19 and Mr. Silva. And pending our review of the issues and  
20 positions, we would ask that they tentatively be identified as  
21 subject to being excused and have their testimony inserted.

22 COMMISSIONER JABER: Yes.

23 MR. CHILDS: Thank you.

24 COMMISSIONER JABER: Gulf, any changes?

25 MR. BEASLEY: The only one that we know for sure

1 should be stipulated is Mr. Douglas, as all of his witnesses  
2 were stipulated. All of his issues were stipulated. The  
3 others, only ones that appear to be outstanding are either  
4 potential stipulations or are fallout issues, and we will work  
5 with staff on those.

6 MR. KEATING: And could we excuse Ms. Ritenour, as  
7 well?

8 MR. STONE: Her issue has been eliminated, so she  
9 would be deleted from the prehearing, I think.

10 COMMISSIONER JABER: You will withdraw it. Show Ms.  
11 Ritenour's testimony withdrawn.

12 MR. BEASLEY: Commissioner, if we could, to preserve  
13 the flow we would like to put our rebuttal witnesses right  
14 after Mr. Collins and Mr. Pollock, so there would be some  
15 continuity of that discussion.

16 COMMISSIONER JABER: Yes. I think that is a good way  
17 of handling it, Ms. Kaufman. Any objection to that?

18 Staff, do you understand what we have done there?

19 MR. KEATING: Yes.

20 COMMISSIONER JABER: Okay. Mr. McGee, do you have  
21 any changes to the order of witnesses, or any comments on the  
22 witness list?

23 MR. MCGEE: I think three of the five Florida Power  
24 witnesses could be excused. Their issues are stipulated. That  
25 would be Witness Jacob and Murphy and Niekum. Murphy and

1 Niekum relate to the hedging issues.

2 COMMISSIONER JABER: Actually, were they only  
3 testifying on the hedging issues?

4 MR. MCGEE: That's correct.

5 COMMISSIONER JABER: Can't we just show their  
6 testimony withdrawn for Murphy and Niekum?

7 Staff, how to handle that? It's not in the record  
8 until someone inserts it into the record, but we have deferred  
9 the issues, so shouldn't the testimony just be --

10 MR. KEATING: Yes. There is no need to have that  
11 testimony in the record since there is no issue to resolve  
12 related to that testimony.

13 COMMISSIONER JABER: Go ahead, Mr. Childs.

14 MR. CHILDS: I don't know if we can extract it from  
15 ours. We can try to do that if we have got an overlap between  
16 them, we can try to do that.

17 COMMISSIONER JABER: Now, as it relates to the  
18 witnesses that have other testimony into the record, I would  
19 just ignore it. Parties wouldn't even refer to it in the  
20 briefs or in cross-examination. But I think as it relates to  
21 Murphy and Niekum, as I recall their testimony was limited to  
22 hedging, right?

23 MR. MCGEE: Also, Mr. Portuondo filed supplemental  
24 testimony that did address the hedging issues, as well. And  
25 fortunately that can be easily segregated from his main

1 testimony. Witness Jacob is the generation performance  
2 incentive factor witness, and those two issues for Florida  
3 Power Corporation were stipulated, so we would ask that he be  
4 excused.

5 COMMISSIONER JABER: Okay.

6 MR. McGEE: The issue for Mr. Connolly, that relates  
7 to Issue 19E, and as Mr. Keating indicated, that is subject to  
8 a stipulation depending on the evaluation of some deposition  
9 transcripts.

10 COMMISSIONER JABER: Great. Mr. Keating, it looks  
11 like there are some witnesses that you don't have listed here,  
12 and some supplemental testimony that wasn't listed, so make  
13 sure someone has an accurate picture of what was filed gets  
14 listed. The witnesses that only cover hedging, show that  
15 testimony withdrawn. As it relates to the witnesses that  
16 included testimony on issues that we have either dropped or had  
17 withdrawn, don't worry about segregating that testimony out, it  
18 is just not referred to in the briefs or in cross.

19 MR. KEATING: I believe what we have done in the  
20 draft is we haven't made a distinction between direct testimony  
21 filed on a certain date versus supplemental direct testimony.  
22 Would you like that distinction?

23 COMMISSIONER JABER: Yes, that needs to be clear.  
24 You have to remember that a secretary looks at this and pulls  
25 up testimony for us. And if it is not on this, I don't get it.

1 Okay. Any other changes?

2 MR. BEASLEY: We have one other witness who no longer  
3 has any issues because they are stipulated, and that is Joann  
4 Wehle for Tampa Electric. We would ask that her testimony be  
5 stipulated.

6 COMMISSIONER JABER: All right.

7 MR. STONE: And, Commissioner, on behalf of Gulf, Mr.  
8 McMillan's testimony related to stipulated issues and deferred  
9 issues, so it appears as though he could be stipulated into the  
10 record.

11 COMMISSIONER JABER: Excellent. Does that leave  
12 anyone else? That's it? Now, along the way, though, if there  
13 are other witnesses, staff, go ahead and reflect that their  
14 testimony can be inserted into the record, subject to checking  
15 with Commissioners' offices.

16 MR. KEATING: We will do that.

17 COMMISSIONER JABER: That is all I have on my list of  
18 things we had to cover today. Have we forgotten anything?

19 Okay.

20 I commend the parties. I appreciate your willingness  
21 to work with staff to date, and afterwards.

22 Staff, if you have any other questions or need to  
23 make changes from today, let me know. Thank you.

24 MR. KEATING: Before we go off the record --

25 COMMISSIONER JABER: Go ahead, Cochran.

1 MR. KEATING: -- let me ask one quick question.  
2 Regarding discovery in relation to the new issues, the Florida  
3 Power and Light supplemental testimony --

4 COMMISSIONER JABER: Yes.

5 MR. KEATING: -- I think FIPUG's oral motion today  
6 would have -- went to that in part, but it was a very specific  
7 motion for a very specific extension. And I would ask if there  
8 is any interest from the other parties in pursuing discovery on  
9 those issues, and if they should have the opportunity to do  
10 that, or perhaps be given some leeway at the hearing.

11 COMMISSIONER JABER: Mr. Keating is asking if there  
12 is an interest in having discovery of the parties on Issue 17B,  
13 18L, 17C.

14 MR. KEATING: And I think staff may be interested in  
15 perhaps even having a deposition or having the witness  
16 available for deposition.

17 COMMISSIONER JABER: Okay. We extended the discovery  
18 cutoff period a week for the purpose of -- remind me.

19 MR. KEATING: I think with respect to Florida Power's  
20 supplemental testimony.

21 COMMISSIONER JABER: All right. Then to the degree  
22 anyone is interested in having discovery on 17B, 18L, and 17C,  
23 they have got that same week. If they need more time, you file  
24 a petition saying so.

25 MR. KEATING: That would be a week from the time the

1 testimony was filed or --

2 COMMISSIONER JABER: No. Doesn't the cutoff period  
3 end today? Today is the end of the discovery period?

4 MR. KEATING: It was the 6th.

5 COMMISSIONER JABER: A week from today.

6 MR. KEATING: Thank you.

7 COMMISSIONER JABER: Now, we said we would go back to  
8 Issue 28. It's my understanding that Issue 28 will be  
9 dependent on the resolution of the three issues we identified  
10 related to security costs and revised forecasts. So you have  
11 my permission to revise those positions accordingly.

12 MR. KEATING: Thank you.

13 COMMISSIONER JABER: Thank you.

14 (The prehearing concluded at 1:35 p.m.)

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STATE OF FLORIDA )

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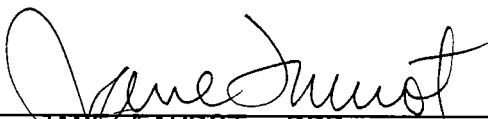
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 13TH DAY OF NOVEMBER, 2001.



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JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
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