

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 020233-EI - Review of GridFlorida
Regional Transmission Organization (RTO)
Proposal.

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI
COMMISSIONER RUDOLPH BRADLEY

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 20

DATE: Tuesday, August 20, 2002

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Tallahassee, Florida

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STAFF RECOMMENDATION

ISSUE 1: Do the following changes to the structure and governance of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. Acting by written consent by the Board of Directors; and
- b. Participating in or listening to Board of Directors' conference calls?

RECOMMENDATION: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI.

ISSUE 2A: Do the following changes to the structure and governance of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. Quantity of members and composition of the Board Selection Committee;
- b. Role of the Stakeholder Advisory Committee in regard to the Board of Directors on the Board Selection Committee;
- c. Adequacy of Information Policy to provide guidance on public versus confidential RTO information;
- d. Exclusion of the Board of Directors from the Sunshine Requirements;
- e. Applicants "causing" candidates for the Board of Directors to become Directors;
- f. Guidelines to determine discretionary closed meetings of the Board of Directors; and

g. Elimination of "Planning Bill of Rights"?
RECOMMENDATION: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI.

ISSUE 2B: Do the following changes to the structure and governance of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. Board, committee, subcommittee, and working group meetings being open to the public; and
- b. Sufficiency of the proposed Code of Conduct?

RECOMMENDATION: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI.

ISSUE 2C: Should the Commission order GridFlorida to make additional changes to its structure and governance related to:

- a. Board, committee, subcommittee, and working group meetings being open to the public; and
- b. Sufficiency of the proposed Code of Conduct?

RECOMMENDATION: Yes. The Commission should order GridFlorida to clarify that all meetings of the Advisory Committee, subcommittees, and working groups are noticed and open to the public. In addition, the Commission should order GridFlorida to clarify the Code of Conduct by inserting, on page 8, Section K, the words "and GridFlorida's Independent Compliance Auditor to" at the end of the sentence between "FRC" and "audit"; and in Section II.D.1, the words "GridFlorida Independent Compliance Auditor" should replace the words "Board of Directors of GridFlorida."

ISSUE 2D: Do the following changes to the planning and operations aspects of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

- a. MISO and GridFlorida planning protocol;
- b. Eminent domain;
- c. Initial adoption of Participating Owners' existing Ten-year Site Plans;
- d. Requirement to evaluate generation and demand side management alternatives;
- e. Quality and quantity of public information;
- f. Ad Hoc Working Groups;
- g. The FRCC and NERC role in the RTO;
- h. Exemption from certain operating

requirements; and

i. 69kV demarcation point?

RECOMMENDATION: Yes. The Commission should find that the changes made to the planning and operations aspects of the GridFlorida RTO proposal are in compliance with Commission Order No. PSC-01-2489-FOR-EI.

ISSUE 2E: Do the following changes to the planning and operations aspects of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

a. Determination of Available Transmission Capacity (ATC), Capacity Benefits Margin (CBM), and other line ratings;

b. Transmission provider project rejection;

and

c. Competitive bidding process for transmission construction projects?

RECOMMENDATION: Yes. The Commission should find that the changes made to the planning and operations aspects of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-249-FOF-EI.

ISSUE 2F: Should the Commission order GridFlorida to make additional changes to the planning and operations aspects related to:

a. Determination of Available Transmission Capacity (ATC), Capacity Benefit Margin (CBM), and other line ratings;

b. Transmission provider project rejection;

and

c. Competitive bidding process for transmission construction projects?

RECOMMENDATION: Yes. The Commission should order GridFlorida to adopt the language identified in the analysis portion of staff's August 8, 2002 memorandum to clarify: that CBM is taken into account when calculating the ATC used by GridFlorida; that the requirement to reject projects is clearly conferred upon the transmission provider; and that the bidding process is not biased towards POs.

ISSUE 2G: Does the proposed transmission rate structure consisting of charges for (1) existing embedded facilities, (2) an adder to recover T.U, facilities not included in the zonal rate, (3) new network facilities, and (4) Grid Management comply with Commission Order No. PSC-01-2489-FOF-EI?

RECOMMENDATION: No. The proposal preserves Commission jurisdiction over only existing bundled

retail transmission costs, and only for the initial five-year period of RTO operations. The Commission's December 20 order provides that the Commission should retain jurisdiction over the total cost of transmission to retail customers on a going-forward basis. At the end of the initial five-year operation of the RTO, the Commission should review the transmission rate structure, given the operation of the RTO and the competitive market conditions in Florida.

ISSUE 3A: Were the following changes to the planning and operations aspects of the GridFlorida proposal necessary to comply with Commission Order No.

PSC-01-2489-FOF-EI:

- a. Comparability of service to all LSEs; and
- b. POs and Third Party Agreements?

RECOMMENDATION: Yes. The Commission should find that the changes to the planning and operations aspects of the GridFlorida proposal were necessary and therefore comply with Commission Order No.

PSC-01-2489-FOF-EI.

ISSUE 3B: Were the following changes to the planning and operations aspects of the GridFlorida proposal necessary to comply with Commission Order No.

PSC-01-249-FOF-EI:

- a. Attachment T cutoff date; and
- b. POMA determination provision?

RECOMMENDATION: No. The Commission should find that the original language in Attachment T was appropriate in setting December 15, 2000, as the demarcation date and that the new language should be stricken. The Commission should find that sections 4.3 and 5.6 of the POMA should be eliminated.

ISSUE 4A: Should the Commission approve the proposed method for mitigating the cost shifts resulting from the loss of revenues under existing long-term transmission agreements?

RECOMMENDATION: Yes. The Commission should, however, re-examine the potential impact of the phase-out of existing long-term contract revenues at the end of the initial five-year period of RTO operations.

ISSUE 4B: Does the proposed method for alleviating cost shifting from the elimination of short-term transmission revenues comply with Commission Order No. PSC-01-2489-FOF-EI?

PRIMARY RECOMMENDATION: No. Transmission owners should be fully compensated for the loss of short-term transmission revenues for the first five years of RTO operation.

ALTERNATIVE RECOMMENDATION: Yes. The proposed method of alleviating cost shifting from the elimination of short-term transmission revenues complies with the Commission order. It provides immediate benefits to the participants in the RTO and should be implemented. Any adversely affected utility must balance the benefits of participating in the RTO with the commensurate costs.

ISSUE 4C: Should the Commission approve the proposed method to recover incremental transmission costs as included in the GridFlorida proposal?

RECOMMENDATION: Yes. While the Commission's December 20 order did not make a determination of the most appropriate mechanism for recovery of costs associated with GridFlorida, staff believes sufficient information is available for the Commission to make such a determination. The Commission should authorize each applicant to recover its incremental transmission costs approved by the FPSC through the capacity cost recovery clause.

ISSUE 5: Does the market design included in the modified GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI?

RECOMMENDATION: No. The revised market design includes (1) financial transmission rights for transmission capacity allocation; (2) unbalanced schedules with a voluntary day-ahead market; (3) market clearing prices for balancing energy and congestion management; and (4) sharing of gains on real-time energy sales. As such, the revised GridFlorida market design is not in compliance with Commission Order No. PSC-01-2489-FOF-EI, which required (1) physical transmission rights; (2) balanced schedules; and (3) get-what-you-bid pricing for balancing energy and congestion management. The revisions proposed by GridFlorida may be beneficial to retail ratepayers and assist in the efficient operation of the RTO. In order to adequately justify the new provisions, the GridFlorida companies should be directed to file a petition not later than 30 days from the Commission's vote on this issue. Such a filing will allow the Commission to conduct an expedited evidentiary hearing on the merits of the revised market design proposal and would be consistent

with the requirements of Order No. PSC-01-2489-FOF-EI.

ISSUE 6: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run on those issues resolved as final agency action, or upon issuance of a consummating order on those issues resolved by proposed agency action, whichever occurs later. If no person whose substantial interests are affected by proposed agency action taken by the Commission on any issue in this docket files a protest, the docket should be closed after the time for filing an appeal has run on the issues resolved as final agency action, or upon issuance of a consummating order on the issues resolved by proposed agency action, whichever occurs later.

PROCEEDINGS

1
2 CHAIRMAN JABER: Okay, staff, we're on Item
3 20.

4 MS. BASS: Item 20 is staff's
5 recommendation regarding the GridFlorida
6 compliance filing. There are essentially three
7 filings referred to in the recommendation. The
8 transco filing refers to the GridFlorida
9 proposal that was the subject of the hearing
10 held by this Commission in October of last
11 year. The Commission's decision after that
12 hearing is reflected in the Commission's
13 December 20th order, and that's the way it's
14 referred to in the recommendation.

15 In March of this year, the GridFlorida
16 companies made a compliance filing to encompass
17 certain changes that were identified in that
18 order. Specifically, the Commission ordered
19 that the RTO should be restructured from a
20 transco to an ISO that controlled, but did not
21 own, transmission facilities.

22 As a result of the Commission workshop held
23 in May, the GridFlorida companies proposed
24 additional changes and a modified compliance
25 filing. Staff's review of the compliance and

1 the modified compliance filings included
2 identifying those changes to the transco filing
3 and determining whether those changes were
4 consistent with the Commission's direction that
5 the RTO be restructured as a non-asset-owning
6 ISO. In addition, the RTO was restructured as a
7 not-for-profit entity.

8 The issues in the recommendation are
9 divided in this manner:

10 Issue 1 reflects changes that staff
11 believes are consistent with the Commission's
12 December 20 order, and there has been consensus
13 reached regarding compliance among the parties
14 to the docket.

15 Issue 2 and its subparts address those
16 changes that have been identified as being
17 appropriate for compliance with the Commission's
18 December 20th order, but the parties are not in
19 agreement as to whether the proposed change is
20 the appropriate change.

21 Issue 3 and its subparts address those
22 changes that have been questioned by staff and
23 other parties in the docket as to their
24 necessity to comply with the December 20 order.

25 Issue 4 and its subparts address rate

1 design and pricing protocols there were not
2 specifically addressed in the Commission's
3 December 20 order.

4 And Issue 5 addresses the revised market
5 design proposed by the GridFlorida companies.

6 I have three verbal corrections that I need
7 to make to the recommendation. On page 72, it's
8 Issue 4B, the second sentence of the alternative
9 staff recommendation, after the word "revenues,"
10 you need to insert "complies with the
11 Commission's December 20 order."

12 The second change is also in Issue 4B.
13 It's on page 72 --

14 COMMISSIONER BRADLEY: Excuse me. What is
15 that again?

16 MS. BASS: Okay. It's on page 72, the
17 second sentence of the alternative staff
18 recommendation that ends with the word
19 "revenues." You need to insert after revenues,
20 "complies with the Commission's December 20
21 order."

22 The second change is on page 75. Under the
23 heading "Cost to Transmission Owners," in that
24 paragraph on the eighth line down, it refers to
25 T.U. facilities. That should be changed to

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T.D.U.

And on page 77, under "Staff Analysis," on the third line where it says T.U., it should be changed to T.D.U. also.

CHAIRMAN JABER: That's it?

MS. BASS: Those are the corrections. We're ready to answer questions, and I would suggest that we proceed issue by issue.

CHAIRMAN JABER: Good idea. Commissioners, before we get started, I want to take a very brief moment to tell you that I was in a unique situation with this case, being Prehearing Officer, and was able to observe staff's participation in this process and the development of the recommendation. And before we get too far, regardless of how this vote turns out, I just want to take a minute to tell you that I have been so incredibly proud of the way our staff has approached this proceeding, the way our staff has approached communicating with the companies and the consumer groups in this proceeding. All of the feedback I've received from Ms. Bass about her staff and the companies' perception of the staff has been outstanding. I know that the consumer advocates

1 have felt the same way. You know, they're here
2 working long hours. I just wanted to take a
3 minute to make sure the Commissioners had an
4 appreciation for how much work went into this
5 proceeding.

6 The second point I wanted to make to the
7 Commissioners is to remind you where we've been,
8 what we thought we were accomplishing through
9 the hearing, and hopefully what we will
10 accomplish today.

11 In a unified fashion, when we first voted
12 on the RTO issues, we were very clear on what
13 our goals were. We understood the policy
14 direction the FERC was moving in. We understood
15 that the PSC has the sole responsibility of
16 protecting, for lack of a better word, but
17 certainly addressing the concerns that would be
18 raised by consumers affected by the formation of
19 an RTO and reaching a comfort level that the
20 retail ratepayers would not be negatively
21 affected by the formation of an RTO, but also
22 receive all the benefits that a Florida-specific
23 RTO would bring. We specified limited issues
24 that needed additional discussion, so we went to
25 hearing.

1 I would hope that today we keep our clear
2 goals and focus and not digress from those
3 goals, and recognize today, though, that there
4 is a definite goal to move forward before FERC
5 does anything that will negatively impact the
6 state.

7 And then finally, I want to remind you, and
8 I'll bring this up later at the right time, when
9 we made our initial decision, we sent a cover
10 letter to FERC with a copy of the order. It
11 would be my hope that whatever happens today,
12 that we handle communicating with FERC in the
13 same fashion, that our order goes up to FERC
14 with a cover letter from the PSC.

15 And with that, Commissioners --

16 COMMISSIONER DEASON: Madam Chairman, I
17 know that there's maybe a preference to go issue
18 by issue, and I certainly don't object, but
19 you've kind of touched on some things that I
20 would like to discuss for a moment, and I guess
21 they probably pertain to -- I believe it's Issue
22 5. Is that the issue we were talking about
23 taking some issues to hearing?

24 CHAIRMAN JABER: Yes.

25 COMMISSIONER DEASON: Just let me -- I'm

1 not necessarily opposed to doing that, but let
2 me express some concern. It seems to me that it
3 is -- this entire matter is time sensitive, and
4 that we have asserted our jurisdiction and we
5 have been, I think, a positive force. And I
6 want to also compliment the staff on the very
7 fine work they've done, and the parties, to this
8 point. I think that we are in a relatively
9 unique situation. We certainly think Florida is
10 unique. I believe it is. And we have an
11 opportunity here, I believe, to have a
12 state-specific RTO approved, hopefully. But I
13 think that is a question that when it's
14 presented to FERC, it needs to be presented in a
15 timely manner.

16 And I don't mean to use a poor analogy, but
17 when I was discussing this with staff, I said,
18 you know, "What is our goal here? Are we going
19 to send an ugly baby to FERC and hopefully have
20 FERC adopt it, or do we want to try to craft a
21 perfect baby, and then by the time we get it to
22 FERC, they've decided that a Florida RTO is not
23 the right approach?" And those are my concerns.

24 And also I have the concern that the issues
25 that we're addressing or propose to be

1 addressing at the hearing are very significant
2 issues. They're market design issues. I think
3 that the original direction that we crafted is
4 not appropriate, so I think that we do need to
5 recraft that. The question is, is it more
6 efficient and better for us to fully participate
7 at the FERC in the rulemaking that they have
8 going on as opposed to trying to do that here
9 and then take that to FERC and say, "We've
10 answered all of the problems as they pertain to
11 Florida," and then FERC say, "Fine, but we've
12 got rulemaking of our own and we're involved
13 with it. We'll just wait and finish our
14 rulemaking. And besides, the title of this
15 rulemaking is 'Standard Market Design,' so we
16 think it's standard, and when we finish, we'll
17 just apply that to Florida."

18 So are we wasting our time when it comes to
19 these issues in Florida? I don't know the
20 answer to that. I'm looking for some feedback
21 as to --

22 CHAIRMAN JABER: I hope not is the answer I
23 would give you. I hope we're not wasting our
24 time. I think -- and I think that's all the
25 more reason to go issue by issue, because it

1 might be that what staff is recommending needs a
2 hearing may take care of itself by the time we
3 get to Issue 5. I look forward to hearing from
4 the parties on the issues they can discuss and,
5 of course, Issue 5 is one of them. So I'm
6 hoping that there's enough that staff included
7 in Issue 5 that your point may take care of
8 itself.

9 But strategically, Commissioner, just
10 talking out loud, it may be that we want to
11 preserve our right. It might be whatever comes
12 out of our vote is actually better than the
13 standard market design that is being addressed
14 by FERC. And, you know, I think we can make a
15 strong argument that GridFlorida comprehensively
16 deserves recognition by FERC so that Florida
17 gets an exception to the standard market design.
18 At the same time, I don't want to not
19 participate in the rulemaking, because you don't
20 know what's going to get done unto you. So --

21 COMMISSIONER DEASON: Oh, I absolutely
22 agree.

23 CHAIRMAN JABER: I'm hoping your --

24 COMMISSIONER DEASON: My question is, do we
25 have a two-front war or a one-front war? You

1 know, maybe we're dividing our resources and our
2 interests in asking all the parties to
3 participate in a Florida-specific docket to do
4 market design. And are we taking resources away
5 that need to be focused upon the FERC
6 proceeding?

7 And in all honesty, Madam Chairman, I may
8 be wrong, but I think when all is said and done,
9 when FERC completes their standard market
10 design, they're going to be convinced that that
11 is the appropriate structure, and even if we
12 have gone through a process, and even though it
13 may have been preliminarily blessed by FERC,
14 once they finalize it, they're going to impose
15 it on GridFlorida.

16 CHAIRMAN JABER: I disagree with you, and
17 here's why. And a year from now, everyone can
18 say, "You were wrong. I was right, and I told
19 you so." But here's why I disagree with you.
20 We thought FERC was absolutely wed to what came
21 out of their mediation order. We thought FERC
22 was absolutely wed to the expediency in which
23 they were, you know, conducting their
24 proceedings. What I've learned about the FCC
25 and FERC with respect to their notice of

1 proposed rulemaking that they issue is that it
2 almost takes that aggressive approach, and
3 compromises get made in the process.

4 So to defer to FERC automatically on market
5 design, I'm worried we lose an opportunity. You
6 know, while everyone was telling us that FERC
7 was moving so quickly, and, Florida, you better
8 get on board, let me just remind you, we're done
9 with our proceeding, and they haven't done the
10 first thing.

11 COMMISSIONER PALECKI: One of the things
12 that I wonder is how flexible or inflexible the
13 FERC will be when all is said and done after
14 their proceedings. And it's quite possible that
15 what we come up with here in Florida may well be
16 compatible with the FERC standard market design.
17 I think what we need to look at is what is
18 FERC's intent in issuing the NOPR, and what are
19 they trying to accomplish. And I think what
20 they're trying to do is to make it possible to
21 move power over many states and to have market
22 designs that work with each other. I'm not sure
23 that they're looking for a single market design
24 and a one-size-fits-all solution for all states.

25 So my feeling is that I would like to see

1 us move forward with this and see whether what
2 we accomplish here, one, can be helpful to FERC
3 in accomplishing what they're trying to
4 accomplish, and also to wait and see if maybe
5 what we're doing will be compatible or compliant
6 with what the FERC is moving towards as well.

7 CHAIRMAN JABER: Yes. And there's one more
8 aspect, Commissioner Deason, that I neglected to
9 mention. This may actually empower the
10 companies and all the stakeholders to go to FERC
11 and say, "Here are some ideas from GridFlorida."
12 You know, I'm not -- again, I look forward to
13 hearing from the participants on Issue 5. I'm
14 not sure that a Florida-specific market design
15 structure doesn't necessarily assist the
16 stakeholders and the consumer advocates in this
17 case, and the municipalities. I just don't
18 know the answers to those questions.

19 COMMISSIONER DEASON: I don't either, but I
20 hope you're right in the final analysis. I hope
21 that if we go through a proceeding, and even
22 though we do it on -- I know that we're very
23 talented here in Florida, and smart and
24 efficient, but we're planning on doing something
25 in a few months that's probably going to take

1 FERC several years to finally get done, and
2 we're thinking that we're going to come up with
3 the very -- and maybe we will come up with the
4 very best situation for Florida. I hope that is
5 the case.

6 That's part of the dilemma, is that we need
7 to -- I agree, we need to do it in an expedited
8 manner if we do it at all. But my concern is
9 that if we do it in an expedited manner, is the
10 best we're going to be able to come up with are
11 just some broad principles, which probably we
12 could craft those anyway without a hearing and
13 send that and incorporate that as part of the
14 filing along with all of the governance and
15 everything else, and then we've got GridFlorida
16 there in front of FERC, and go ahead and get our
17 stake in the ground.

18 And I don't know the answer. That's why
19 I'm asking the questions. And I appreciate your
20 feedback. I just think -- I am convinced of one
21 thing, that we're better off to go ahead and get
22 a product in front of FERC as quickly as
23 possible.

24 CHAIRMAN JABER: Absolutely. And you do
25 know that as it relates to the last issue, what

1 staff recommends and I will ultimately support
2 is that the order does go up to FERC even if we
3 have the expedited hearing on market design.

4 But the only thing that I am sure about as
5 it relates to Issue 5, Commissioner Deason, is
6 that I don't want to be wrong, because I don't
7 want to hear you say, "I told you so."

8 COMMISSIONER DEASON: Oh, I would never
9 tell you that.

10 COMMISSIONER PALECKI: The other question I
11 have on Issue 5 has to do with the finality of
12 our order in that issue. Certainly there is a
13 level of finality to all of our votes, but I
14 think this is an area where we're all kind of
15 receiving an education right now. We're going
16 by the seat of our pants. At the same time, the
17 FERC is engaging in some very contentious
18 proceedings. You know, I've expressed a desire
19 that we don't see an inflexible order come out
20 of FERC. At the same time, I would hate for
21 this Commission to be inflexible. And if we see
22 six months down the road that the direction we
23 went in might not really be where we want to go,
24 I hope we can revisit this issue if we need to.

25 CHAIRMAN JABER: Issue 1.

1 COMMISSIONER DEASON: I move staff on Issue
2 1.

3 COMMISSIONER PALECKI: Second.

4 CHAIRMAN JABER: There is a motion and a
5 second to approve staff on Issue 1. All those
6 in favor say aye.

7 (Simultaneous affirmative responses.)

8 CHAIRMAN JABER: Issue 1 is approved.
9 Issue 2A. Let me make sure I don't have
10 questions.

11 Issue 2A is also Commissioners and staff.
12 Staff, let me ask you, I don't know if it
13 was just late when I read this and I didn't
14 understand. On page 19 as it relates to the
15 sunshine requirements -- is that the same
16 issue?

17 MS. BUCHAN: Yes.

18 CHAIRMAN JABER: There's a comment that
19 Article III, Section 11 of the bylaws states
20 that no person may be considered for the board
21 unless his or her immediate families have no
22 financial interest. Does that section also have
23 a statement that the director cannot have a
24 financial interest in the company? Am I just
25 reading that incorrectly?

1 MS. BUCHAN: No, it also does say -- it
2 says a director, officer, or employee will have
3 no financial interest in any market
4 participants.

5 CHAIRMAN JABER: Okay. So you'll make that
6 clear in order?

7 MS. BUCHAN: Yes. I'm sorry.

8 COMMISSIONER DEASON: Madam Chairman, I
9 have a question on Issue 2A, Item c., if now is
10 the appropriate time.

11 CHAIRMAN JABER: Yes, uh-huh.

12 COMMISSIONER DEASON: Specifically, I'm
13 looking at the bottom of page 18 and the top of
14 page 19, and this particular section addresses
15 the Market Monitor's role to determine whether
16 information should be treated confidential or be
17 made open to the public. And I know that the
18 FMG had made a recommendation that the Florida
19 Commission should be involved, and I'm not so
20 sure that perhaps we should be involved to the
21 extent that they recommend. But I notice that
22 staff believes that there is a review function
23 for FERC in this matter, and my question is one
24 of would it be better for the Florida Commission
25 to be in the position of exercising that review

1 as opposed to FERC.

2 And the reason I ask that is that, first of
3 all, I think we have a better understanding of
4 our market and what should or should not be
5 confidential, and I think that the market
6 participants probably would -- I don't know.
7 Maybe we should ask them, but I think that
8 perhaps they would feel better that we would get
9 a more expeditious decision on confidential
10 information, or the review, rather, if it were
11 done at the Florida Commission as opposed to
12 FERC.

13 And so that's the question. I don't know
14 the answer to it. I'm just asking it to see if
15 staff has any thoughts on that. And if it's
16 permissible, Madam Chairman, I would perhaps
17 open that up to the parties to see if they have
18 any feel for that particular matter. But first
19 of all, I would let staff answer the question.

20 CHAIRMAN JABER: Yes, let's go to staff and
21 see if they've received input from the
22 stakeholders.

23 Commissioner, again, the only caution --
24 obviously, it's your discretion, but the caution
25 is the way this item was noticed for that issue.

1 COMMISSIONER DEASON: Yes, ma'am, you're
2 correct on that. I think, though, that
3 everybody is here, but I may be mistaken. But I
4 will be very judicious in the exercise of asking
5 questions.

6 MS. BUCHAN: Okay. Yes, sir. I would like
7 to walk you through. If the Market Monitor
8 rules that an item can be held confidential, the
9 first step is, if a party has a concern with
10 that and thinks that it should not be, they can
11 go through the dispute resolution process that's
12 set aside. At that point, at the end of the
13 dispute resolution, if they come to agreement,
14 then there will be no longer be a problem. If
15 they do not come to an agreement, usually the
16 final arbiter's decision is final.

17 However, that might be the place that the
18 Florida Public Service Commission might want to
19 play a role in that. If at that point there
20 isn't a firm decision, it can come before the
21 Public Service Commission as the final arbiter
22 or in addition to that.

23 And setting that aside for a moment, the
24 reason why FERC's process is -- once a decision
25 has been made, if it is to grant confidential

1 status to something, the reason why it has to go
2 to FERC is that they must modify the public
3 information tariff. That's why it goes to FERC
4 for final review, because it must go through the
5 tariff process. But if we wanted to discuss the
6 role of the Public Service Commission --

7 COMMISSIONER DEASON: Well, I guess I'm a
8 little confused then. There is -- if there ever
9 is a decision through the arbitration process
10 which determines that there is additional
11 information which needs to be kept confidential,
12 that necessitates a change in the tariff at
13 FERC?

14 MS. BUCHAN: Even if it doesn't go through
15 the dispute resolution process, if the Market
16 Monitor comes up and says, "We believe this
17 category of information should be held
18 confidential. It truly is sensitive market
19 information that should not be made public," and
20 nobody protests it, then GridFlorida must still
21 take it before FERC, because they must modify
22 their public information tariff to codify that,
23 yes, this group of information should be held
24 confidential. And at that point, FERC will
25 review, yes, we agree with it, or no, we don't

1 agree with it, and then they will approve the
2 tariff.

3 COMMISSIONER DEASON: Okay. Madam
4 Chairman, I'm satisfied. I just -- I guess my
5 initial reaction is, if that's going to be part
6 of the normal FERC process and they've got
7 procedures in place to handle that on an
8 expedited basis, I just -- it seems to me that
9 it is important that the participants in the
10 market, in the Florida market, and the
11 participants in this process have confidence
12 that decisions will be made accurately and that
13 information that needs to be public is indeed
14 public, and information that needs to be
15 confidential is held confidential, and that
16 needs to be done on a timely basis. And if FERC
17 can handle that on a timely basis, they
18 anticipate that, they've got procedures to
19 handle that, that's fine.

20 It's just so many times I've heard stories
21 to the contrary, that things are filed at FERC
22 and they just languish there. And that's my
23 concern, is that sometimes it's very time
24 sensitive as to whether something is
25 confidential or not, and if it goes through the

1 process and then it's ultimately determined,
2 "oh, it's not confidential. It should have been
3 public," well, time has gone by, and it's almost
4 moot or irrelevant anyway. And that's what my
5 concern is.

6 CHAIRMAN JABER: May I follow up on that?

7 MS. BASS: Can I answer one thing?

8 CHAIRMAN JABER: Yes, go ahead.

9 MS. BASS: It goes a little bit further. I
10 don't believe they're looking for FERC to make a
11 determination that information is confidential
12 or not. The Market Monitor makes a
13 determination, and then the GridFlorida
14 companies take that determination, and they file
15 it with FERC as an amendment to their
16 information policy. It's at that point that
17 FERC may review it and question it, but there is
18 no delay in waiting for it to be determined
19 confidential or not by FERC, because it's deemed
20 to -- I mean, there is a determination. It's
21 only if FERC wants to review it that they will,
22 as an amendment to the information policy.

23 COMMISSIONER DEASON: Okay. Thank you.

24 CHAIRMAN JABER: Any other questions on
25 that issue, or a motion?

1 COMMISSIONER PALECKI: I move staff's
2 recommendation.

3 COMMISSIONER DEASON: Is that for all of
4 Issue 2A?

5 COMMISSIONER PALECKI: Yes.

6 COMMISSIONER DEASON: Second.

7 CHAIRMAN JABER: There has been a motion
8 and a second to approve Issue 2A. All those in
9 favor say aye.

10 (Simultaneous affirmative responses.)

11 CHAIRMAN JABER: Issue 2B.

12 COMMISSIONER DEASON: I move staff on Issue
13 2B.

14 CHAIRMAN JABER: I'm sorry, Commissioner
15 Deason. May I ask a quick question?

16 COMMISSIONER DEASON: Sure.

17 CHAIRMAN JABER: The complaint procedure,
18 Ms. Buchan, Ms. Bass, who would process the
19 complaints exactly? This is on page 27.

20 MS. BASS: Where specifically on page 27?

21 CHAIRMAN JABER: Page 27, the middle of
22 the paragraph, it says, "Section II.0
23 establishes a complaint procedure for alleged
24 violations of the Code of Conduct. Staff
25 considers it important that this complaint

1 procedure be in place in order to allow all
2 market participants to provide an adequate check
3 and balance." They would complain to
4 GridFlorida?

5 MS. BUCHAN: No, ma'am. I need to verify
6 that, go back over it, but I believe it's with
7 the Independent Compliance Auditor. I believe
8 they're the ones who enforce the Code of
9 Conduct.

10 CHAIRMAN JABER: Okay. And that's real
11 clear in the bylaws?

12 MS. BUCHAN: I will verify that.

13 COMMISSIONER BRADLEY: I have a question.

14 CHAIRMAN JABER: On this point?

15 COMMISSIONER BRADLEY: Well, just in
16 general. And I've been listening to
17 Commissioner Deason, and I think I'm hearing
18 what he's saying, and that is that as we
19 carefully scrutinize and put GridFlorida
20 together, what -- and this is a question to
21 staff.

22 CHAIRMAN JABER: If you're going to pose a
23 question, Commissioner, can we wait on this one
24 and then -- you want to hold that thought?

25 COMMISSIONER BRADLEY: Okay.

1 MS. BASS: The quotation is that
2 GridFlorida shall establish and maintain a
3 complaint procedure for alleged violations, so
4 it does look like it is GridFlorida itself. The
5 complaint procedure shall provide for the
6 opportunity of alternative dispute resolution.
7 So it appears that it would go to GridFlorida
8 and then into the dispute resolution process for
9 violations of the Code of Conduct.

10 CHAIRMAN JABER: And let's say that -- walk
11 me through that entire procedure. Let's say the
12 alternative dispute resolution process isn't
13 satisfactory. What happens? Does it get kicked
14 to the PSC or kicked to FERC? Who's the
15 ultimate --

16 MS. BASS: The dispute resolution process
17 sets out that first there will be an internal
18 negotiation, that the person making the
19 complaint in GridFlorida will each appoint an
20 individual to do the negotiation. If there is
21 no resolution internally, then there are
22 procedures set out to contract with an
23 independent arbitrator, and there's a process
24 for if they don't agree on one, how they go
25 about getting one, and the decision of the

1 arbitrator is final and binding.

2 CHAIRMAN JABER: Okay. Commissioner
3 Bradley, was your question on this issue?

4 COMMISSIONER BRADLEY: Yes. My question
5 is this: what do we have in place in order to
6 try and predict how FERC is going to deal with
7 this same issue, or is it that we're just
8 putting together what we hope that FERC will
9 accept? Is this going to be -- is this standard
10 procedure within federal government?

11 MS. BUCHAN: Are you referring to the Code
12 of Conduct specifically?

13 COMMISSIONER BRADLEY: Yes.

14 MS. BUCHAN: I believe --

15 MS. BASS: Commissioner Bradley, I think
16 that this was -- and I'll have to go back and
17 double-check, but this was part of what was
18 originally filed with FERC when they made the
19 original GridFlorida filing. And I believe it
20 was -- the whole filing was given provisional
21 approval, so I believe this has been something
22 that FERC might have looked at, but I'm not
23 going to say for certain it is. But I think
24 that it would be consistent with what had been
25 filed with FERC before.

1 COMMISSIONER BRADLEY: Okay.

2 CHAIRMAN JABER: Okay. I thought I heard
3 a motion on this issue.

4 COMMISSIONER BAEZ: Second.

5 CHAIRMAN JABER: I did hear a motion?

6 COMMISSIONER PALECKI: I would move staff's
7 recommendation.

8 COMMISSIONER BAEZ: Second.

9 CHAIRMAN JABER: There's a motion and a
10 second on Issue 2B. All those in favor say aye.
11 (Simultaneous affirmative responses.)

12 CHAIRMAN JABER: Issue 2B is approved.
13 Issue 2C is parties may participate.

14 COMMISSIONER DEASON: Madam Chairman, I
15 have a question on Item 2C. Or are we going to
16 let parties address this up front? Is that the
17 procedure? I can hold my question then.

18 CHAIRMAN JABER: I think that's the way it
19 was contemplated. Is that how you discussed it
20 with the parties, Ms. Bass?

21 MS. BASS: I believe Mr. Cochran talked to
22 them about it.

23 MR. KEATING: I haven't been called
24 Mr. Cochran for a while.

25 MS. BASS: I mean Mr. Keating. Excuse me.

1 MR. KEATING: It's never going to end,
2 so --

3 MS. BASS: wait until Casey is older. His
4 friends will call you Mr. Cochran.

5 MR. KEATING: I had talked to the parties
6 about Issues 2C and 2F. They are aware that
7 they can provide comment on those issues if they
8 have any comments to provide on them.

9 CHAIRMAN JABER: Yes. Commissioner Deason,
10 I think we let all the parties present if there
11 are presentations, and then we open it up for
12 questions.

13 COMMISSIONER DEASON: Just as long as they
14 are mindful of the hour.

15 CHAIRMAN JABER: That's right.

16 COMMISSIONER PALECKI: If the parties do
17 participate, I would like them to address the
18 issue of whether this can go forward as a final
19 agency action rather than a PAA.

20 MR. KEATING: if I could address that just
21 briefly before the parties do -- and they may
22 say something completely different. I attempted
23 to poll the parties to the extent I can on this
24 issue and Issue 2F, which is also listed as a
25 PAA issue. I don't believe, from the parties

1 I've spoken to, that there is disagreement on
2 what staff is proposing in Issue 2C. But again,
3 I haven't spoken to everyone.

4 CHAIRMAN JABER: Okay. Let's let them
5 speak for themselves.

6 MR. KEATING: Yes.

7 CHAIRMAN JABER: But thank you,
8 Mr. Cochran.

9 CHAIRMAN JABER: Ms. Brownless, did you all
10 have a -- is there a suggested order of
11 presentations?

12 MS. BROWNLESS: We have no comment.

13 CHAIRMAN JABER: Okay. Mr. Hoffman?

14 MR. HOFFMAN: Chairman Jaber, I'm Ken
15 Hoffman. With me is Mike Naeve on behalf of the
16 GridFlorida companies. We do not intend to make
17 a presentation on this issue. We're just here
18 to answer questions.

19 CHAIRMAN JABER: Ms. Paugh?

20 MS. PAUGH: Leslie Paugh on behalf of
21 Mirant, DENA, and Calpine. My companies support
22 the staff position on 2C.

23 CHAIRMAN JABER: Now, before we get
24 further, does that -- by virtue of your
25 supporting the staff recommendation and not

1 having comments to address Commissioner
2 Palecki's question --

3 MR. PAUGH: It can go final, yes.

4 CHAIRMAN JABER: Thank you. Thank you.
5 Mr. Bryant?

6 MR. BRYANT: Madam Chairman, if I might, I
7 want to express a concern that I have, a
8 procedural concern. I don't want to have this
9 Commission nor the parties find ourselves in a
10 procedural morass from which there is no
11 extrication, or at least not an easy one. And
12 I'm somewhat troubled by this, and perhaps those
13 who are must wiser than I on procedural matters
14 can respond.

15 But heretofore, the items that you all have
16 just approved were not PAA items, and thus not
17 subject to parties' comments, and my client, the
18 Florida Municipal Power Agency, may or may not
19 have had substantial concerns with the staff's
20 recommendations and with the action that the
21 Commission just took. And I'm not sure that my
22 client nor others have had an opportunity for a
23 hearing on those items, and if that's true, then
24 it would seem that if the Commission issues an
25 order on those items, that that order then would

1 be subject to an immediate appeal to the
2 appropriate appellate court, which I believe
3 would be the Supreme Court. And if those who
4 took the appeal were correct on the procedural
5 error, then the remedy would be an order from
6 the court to go back and have a hearing, which
7 would then occur some -- probably 18 months, two
8 years from now.

9 In addition, I'm concerned that as we now
10 go into Items 2C and others, where the
11 Commission is asking some parties, hopefully all
12 parties, if there's consensus, and therefore can
13 that item go into a regular order instead of a
14 PAA order, that if one of the multiple parties
15 that are in this docket happened to be silent,
16 happened to not be here, or happened to be in
17 agreement at this point, but be in disagreement
18 at a later point, that that again has put the
19 Commission in a procedural morass, because you
20 can't bind the parties by a show of hands, I
21 don't think. You can't bind the parties who are
22 not here by a show of hands. And again, there
23 has been no hearing.

24 Hear me loud and clear --

25 COMMISSIONER DEASON: I thought we had a

1 hearing.

2 MR. BRYANT: Sir?

3 COMMISSIONER DEASON: I thought we had a
4 hearing.

5 MR. BRYANT: Well, let me respond.

6 COMMISSIONER DEASON: Weren't you there at
7 the hearing? Didn't you participate in that
8 hearing?

9 MR. BRYANT: Let me respond. It's not the
10 Florida Municipal Power Agency's desire to have
11 a hearing on any of these issues. It's not our
12 decision to have an appeal on any of these
13 issues. And I simply raise the question in an
14 abundance of caution for all concerned, because
15 we want to marshal my company's assets on having
16 a final resolution of this proceeding from this
17 Commission and a final resolution of the FERC
18 proceeding, and hopefully the two of those
19 proceedings will be in sync. It's not my
20 company's intent to want to have an appeal, want
21 to have a hearing, but to find the best solution
22 for Florida.

23 And if any of you have even dared to look
24 at the standard market design, 600 and some
25 pages that FERC has put out -- and I will tell

1 you that I have dared, but I have put it back on
2 my desk -- you will see that it goes beyond
3 market design. It goes into issues of
4 governance. It goes into issues of rates. And
5 who knows what FERC in its wisdom will
6 ultimately end up with and when.

7 But I just wanted to express some cause for
8 concern and not to state that this is my
9 company's position in any way, except I don't
10 want to be arguing in forums where it's a
11 diminution of our resources. I want to get to a
12 resolution of this issue here as quickly as
13 possible and as procedurally correctly as
14 possible.

15 For example, some of the items that we
16 weren't allowed to talk about in the previous
17 hearing, for example, maybe the exercise of the
18 power of eminent domain --

19 CHAIRMAN JABER: Mr. Bryant, are you going
20 to talk to us about Issue 2C?

21 MR. BRYANT: Yes, ma'am, but I was
22 responding to the Commissioner's question.

23 CHAIRMAN JABER: I think his question was
24 did we have a hearing.

25 COMMISSIONER DEASON: Yes. You were saying

1 that we're making --

2 MR. BRYANT: I'm not sure that's --

3 COMMISSIONER DEASON: -- decisions without
4 a hearing, and it was my understanding that
5 we've had a hearing.

6 MR. BRYANT: I'm not sure, though,
7 Commissioner, there was a hearing on the issue
8 of the exercise of eminent domain powers, for
9 example, and that's a significant legal issue,
10 could be. And that's my concern. And that's
11 just one example. Without stating the position
12 of my company, that's a concern I have,
13 Commissioner.

14 COMMISSIONER DEASON: How do we fix your
15 concern?

16 MR. BRYANT: Sir?

17 COMMISSIONER DEASON: How do we fix your
18 concern?

19 MR. BRYANT: I would make all the items
20 PAA, and then if no one asks for a hearing on
21 that particular item, then they've waived their
22 potential objection. That's to me, sir. And I
23 don't want a hearing on any of the items.

24 COMMISSIONER DEASON: Okay. Thank you.

25 CHAIRMAN JABER: Do you have specific

1 concerns with Issue 2C before we move on?

2 MR. BRYANT: No, ma'am.

3 CHAIRMAN JABER: I don't want you to lose
4 that opportunity.

5 MR. BRYANT: No, ma'am. I just didn't want
6 us to get too far down this track without all of
7 us being comfortable with where we're headed.

8 CHAIRMAN JABER: Okay. Mr. Bryant, let me
9 just address this head on. I'm real comfortable
10 now, because I go back to the history of this
11 proceeding. Let me remind you that if Florida
12 had not brought the applicants into a Florida
13 proceeding, you wouldn't have had a voice at
14 all. I also am comfortable that I have read all
15 your positions, I have listened to all the
16 comments at the workshop, and we had a hearing,
17 and I have read every page of the transcript.
18 So I am real comfortable that we're going about
19 this the right way procedurally.

20 who from the jump seat needs to say
21 something?

22 That's it?

23 Okay. Commissioners, do you have questions
24 on Issue 2C?

25 COMMISSIONER DEASON: Madam Chairman, I

1 have a question on Item 2C.b, specifically on
2 page 30 of the staff recommendation. I'm
3 looking at the language at the top of the page,
4 and I know staff is recommending that there be a
5 change there and that -- if I understand that
6 change, that we would be replacing the reference
7 to the Board of Directors with a reference to
8 the Independent Compliance Auditor. Is that
9 correct?

10 MS. BUCHAN: Yes, sir.

11 COMMISSIONER DEASON: And maybe I'm
12 misreading this and I'm being too literal on my
13 interpretation, but the way I read this, and
14 maybe staff can correct me, is that if there is
15 a prospective director, officer, or employee
16 that has a pension account with a market
17 participant, that they -- if they have the
18 opportunity to transfer and if they can do it
19 without adverse financial consequences, they
20 will do it.

21 Now, what that means to me is that if for
22 some reason it's not permissible to transfer it,
23 or even if it's permissible to transfer it and
24 they're going to suffer adverse financial
25 consequences, they don't have to do it. So we

1 could have, for example, a high level manager or
2 a director or whatever that has a -- potentially
3 has a pension account whose performance is based
4 upon the profitability of a market participant,
5 and I'm not so sure that's a good thing.

6 So how does staff interpret this?

7 MS. BUCHAN: Okay, sir. I'll have to take
8 some blame for this paragraph being somewhat
9 misleading, in that it's the tail end of a
10 larger paragraph, and in an abundance of trying
11 to keep the recommendation shorter, we --

12 COMMISSIONER DEASON: And we appreciate you
13 trying do that, by the way.

14 MS. BUCHAN: -- truncated the top part. But
15 if I could read to you just a portion of what
16 immediately precedes that, it says that a
17 director, officer, or employee may continue his
18 or her pre-existing participation as long as the
19 benefits to the director, officer, or employee
20 do not vary with economic performance of the
21 market participant, and then this follows that.
22 So right up front it says if they belong to any
23 kind of a pension program that does vary with
24 economic performance of the market participant,
25 they will not be hired, or they will not be able

1 to retain that pension.

2 COMMISSIONER DEASON: That solves my
3 problem. I'm glad I asked you about that, and
4 I'm glad you looked up the answer.

5 MS. BUCHAN: Yes, sir.

6 CHAIRMAN JABER: Staff, I share
7 Mr. Bryant's concern with respect to this
8 particular issue being final or PAA if the
9 parties haven't reached a consensus on the
10 individual recommendations, so I guess this is
11 more of a question for legal. I don't see how
12 we can make it final agency action. This is
13 sort of recognizing there are changes to the
14 compliance filing.

15 MR. KEATING: I think it's probably a safer
16 route to go PAA here. We don't -- I know at
17 least one of the parties I have not heard from,
18 and now that I've looked at my list, I don't
19 think they're present today. So that may be the
20 safer route to go on these issues.

21 CHAIRMAN JABER: There are parties in this
22 proceeding that are not present today?

23 MR. KEATING: I don't believe that Reedy
24 Creek is present today. That's the only one
25 that I'm aware of.

1 CHAIRMAN JABER: Commissioners,
2 Mr. Bryant's point with respect to just because
3 it's PAA doesn't mean you get a protest or that
4 there's delay might be -- is probably correct.
5 But before I even get to the point of whether we
6 have a protest or not, I think that staff is
7 recommending changes to the compliance filing
8 that by law we have to recognize someone
9 substantially -- some person could be
10 substantially affected by it.

11 COMMISSIONER DEASON: Now, let me ask
12 this, Madam Chairman. That is the standard? If
13 there are no changes to the compliance filing
14 and we are approving that, that can be done as
15 final action?

16 MR. KEATING: Correct.

17 COMMISSIONER DEASON: That's the
18 distinction we're making. And if there are
19 changes to that, we -- to the compliance filing
20 that we believe need to be made, we can propose
21 those changes as PAA?

22 MR. KEATING: Right. What staff is
23 proposing is that anything that we propose to
24 require that goes beyond what's required to
25 comply with our December order should be issued

1 as proposed agency action.

2 COMMISSIONER DEASON: Anything that goes
3 beyond what was required by the December order?

4 MR. KEATING: Correct.

5 CHAIRMAN JABER: Questions, a motion?

6 COMMISSIONER PALECKI: I would move staff's
7 recommendation as a PAA as it appears in the
8 recommendation.

9 COMMISSIONER DEASON: Second.

10 CHAIRMAN JABER: Motion and a second on
11 Issue 2C. All those in favor say aye.

12 (Simultaneous affirmative responses.)

13 CHAIRMAN JABER: Issue 2C is approved.
14 Issue 2D, Commissioners and staff.

15 COMMISSIONER DEASON: If there are no
16 questions, I can move staff in its entirety on
17 Issue 2D.

18 COMMISSIONER PALECKI: Second.

19 CHAIRMAN JABER: Hang on a second.

20 Staff, on the eminent domain discussion,
21 pages 33 and 34, that provision was included in
22 -- give me the history of this provision,
23 Ms. Bass. Where was it first included?

24 MS. BASS: I'm going to ask that Melinda
25 respond to that.

1 MS. BUTLER: I have it there in the
2 recommendation that it was ultimately included
3 in the applicants' post-workshop comments. If
4 you like, I can go and look and see if it was
5 included prior to that.

6 CHAIRMAN JABER: Well, my specific question
7 is this. Is the eminent domain provision
8 outside the compliance filing such that it's a
9 change?

10 MS. BUTLER: It's not outside of the
11 compliance filing, in that the compliance filing
12 was going from a for-profit transco to a
13 not-for-profit ISO, and that the changes made in
14 the eminent domain section were necessary in
15 terms of the need to revisit that question in
16 light of the new situation and who essentially
17 has liability in this business method of
18 organization versus the other.

19 CHAIRMAN JABER: And is that -- the
20 modified compliance filing as it relates to
21 eminent domain, what specifically changed as a
22 result of the transco model shifting to an ISO
23 model? why did it need to be readdressed?

24 MS. BUTLER: In the previous instance, the
25 for-profit transco itself would be an owner of

1 the transmission assets, and therefore, it was
2 presumed that in any instance in which eminent
3 domain had to be exercised, that they would have
4 direct eminent domain, whereas in this
5 situation you have the participating owners who
6 would continue to own the assets, and that it
7 needed to be addressed specifically in the
8 situation in which it might be possible that the
9 participating owner wasn't on board with the
10 project that was being contemplated, what would
11 happen in terms of the eminent domain.

12 CHAIRMAN JABER: And on that note, it may
13 be premature now, but I would expect that the
14 stakeholders in this entire process, once in the
15 foreseeable future GridFlorida is implemented,
16 that some sort of specific statutory authority
17 as it relates to the eminent domain power of
18 participating owners in GridFlorida would be
19 appropriate.

20 MS. BUTLER: Yes.

21 CHAIRMAN JABER: It seems premature now
22 because this is all hypothetical until it all
23 gets implemented, but -- I'm talking out loud to
24 just give some direction to the stakeholders
25 that it may be appropriate in the foreseeable

1 future to address that legislatively.

2 MS. BUTLER: Yes.

3 CHAIRMAN JABER: Commissioners, do you have
4 any questions on that issue?

5 Questions on 2D, a motion on 2D?

6 COMMISSIONER DEASON: I can move --

7 COMMISSIONER BAEZ: I think we have one.

8 COMMISSIONER DEASON: I think I moved
9 staff.

10 COMMISSIONER PALECKI: Second.

11 CHAIRMAN JABER: There has been a motion
12 and a second to approve staff on Issue 2D. All
13 those in favor say aye.

14 (Simultaneous affirmative responses.)

15 CHAIRMAN JABER: Issue 2D is approved.

16 2E, questions?

17 COMMISSIONER DEASON: Madam Chairman, I
18 have a question on 2E, Item a., and I'm looking
19 at page 46 of the recommendation. The first
20 full paragraph addresses the need for the
21 transmission owners to make the determination of
22 line ratings. Am I in the correct section? I
23 believe I am.

24 CHAIRMAN JABER: What page are you on?

25 COMMISSIONER DEASON: On page 46.

1 CHAIRMAN JABER: Yes.

2 COMMISSIONER DEASON: And then if there is
3 -- under the contemplated process, if there is a
4 question about those line ratings, then it
5 ultimately goes to the dispute resolution
6 process. Am I characterizing that correctly?

7 MR. FLOYD: That's right.

8 COMMISSIONER DEASON: Okay. Now, the
9 question that I have, I guess it pertains to the
10 Commission's jurisdiction more so than just
11 perhaps the process that's contemplated here.
12 What happens if there is a situation where there
13 is some issue as to the line ratings, and it
14 goes through a process, and that process results
15 in a resolution or a determination of what those
16 line ratings should be, and this Commission is
17 made aware of that, and we feel like that is
18 inappropriate, in the sense that under our Grid
19 Bill authority, we have ongoing jurisdiction
20 over the integrity and the reliability of the
21 grid in Florida? How -- does this in any way
22 change our jurisdiction, or our jurisdiction
23 remains intact?

24 MR. KEATING: I'll answer that. I don't
25 believe that this in any way changes what our

1 jurisdiction is under the Grid Bill. There is a
2 provision --

3 COMMISSIONER DEASON: And let me just say
4 that this question I guess is specific to this
5 provision, but this question may have some
6 broader implications, in that maybe there are
7 some other things where -- what I'm trying to
8 get at is, I want to make sure there's nothing
9 that we would be signing off on or agreeing in
10 this that somehow is compromising our
11 jurisdiction under the Grid Bill.

12 And this is one that really in my mind
13 highlights or is a good example, but even though
14 I bring this one up, there may be others in here
15 too. And so I guess kind of inherent in my
16 question is, are there any other things that we
17 need to be made aware of that potentially could
18 jeopardize -- I'm not sure -- if we do have
19 jurisdiction, I'm not so sure by us approving
20 this that we can relinquish our jurisdiction,
21 and I guess that's what I want you to comment
22 on.

23 MR. KEATING: Right. I think regardless of
24 what you do here, our jurisdiction under Chapter
25 366 of the Florida Statutes and under the Grid

1 Bill remains the same.

2 And I understand your concern. I know
3 there is a provision in at least a portion of
4 the planning protocol, and I'm not sure -- and
5 perhaps this is where Roland can help out -- if
6 this particular part of what we're looking at is
7 from the planning protocol. But there is a
8 provision where GridFlorida in the tariff
9 recognizes that although it will make a final
10 determination in its planning process, subject
11 to the dispute resolute procedure set forth in
12 the tariff, that ultimately is subject to
13 whatever jurisdiction the PSC or FERC may have
14 over that sort of determination.

15 COMMISSIONER DEASON: So is it fair to say
16 that when we're approving a process within the
17 RTO framework where there is dispute resolution,
18 that we're not saying that we're bound by
19 whatever comes out of that dispute resolution,
20 that we still maintain or retain our
21 jurisdiction?

22 MR. KEATING: I believe so. I believe the
23 parties to that dispute resolution are bound by
24 it, but again, it's subject to our jurisdiction,
25 or if FERC has jurisdiction over some subject

1 that's the subject of that decision, that we
2 would continue to maintain our jurisdiction in
3 that area.

4 COMMISSIONER DEASON: Okay.

5 CHAIRMAN JABER: Commissioners, any other
6 questions on 2E or a motion?

7 COMMISSIONER DEASON: I believe I had one
8 other question on 2E, and this one is on page --
9 it regards Item c., and it's on page 48. I'm
10 looking at the second full paragraph. Here
11 again, there's another reference to the dispute
12 resolution process, and this is in terms of the
13 bidding process.

14 First of all, if staff could just explain
15 to me their understanding of what the role of
16 the bidding process is and how it is affected by
17 the dispute resolution process. How is that
18 contemplated to work?

19 MS. HARLOW: It's contemplated that the
20 initial RFP is issued. It's issued by the PO if
21 they choose to build the transmission addition.
22 If there's any dispute on the RFP process itself
23 or on the selection, that would go initially
24 through the dispute resolution process, and the
25 decision of the final arbiter would be final in

1 that process.

2 It's my belief that anyone who was a party
3 to that RFP would still have the avenue to come
4 before this Commission and file a petition if
5 they had a remaining dispute.

6 COMMISSIONER DEASON: Okay.

7 CHAIRMAN JABER: What kind of petition?

8 MS. HARLOW: The same type of petition we
9 could get as part of perhaps a need
10 determination, not a petition, but then they
11 would intervene in the process. We also have a
12 need --

13 CHAIRMAN JABER: I just didn't hear what
14 you said. You said a petition on a what
15 dispute?

16 MS. HARLOW: A dispute over the bidding
17 process. If it were a transmission addition
18 that did not require a need determination before
19 the Commission -- and I'm not an attorney, but I
20 believe that they would have -- still have the
21 avenue of the Commission.

22 COMMISSIONER DEASON: Mr. Keating, do you
23 agree with that?

24 MR. KEATING: Well, I have to apologize. I
25 missed the very beginning of your question, so

1 I'm not sure I followed it entirely. I was --
2 COMMISSIONER DEASON: Well, I don't know if
3 I can restate it or not. It's a question of --
4 this is another example of where we've got a
5 dispute resolution process. This one just
6 happens to affect bidding. And I guess my
7 concern is how does this affect our
8 jurisdiction.

9 MR. KEATING: I have to admit, it's not a
10 question I've given a whole lot of thought to.
11 That's the reason for the pause. I don't
12 believe that it would affect our jurisdiction.
13 As I said before, I believe the dispute
14 resolution, it may resolve the question with
15 respect to the parties in that dispute, but it
16 does not release them from whatever jurisdiction
17 the Commission has over --

18 COMMISSIONER DEASON: Well, first of all,
19 let's review -- what is the Commission's
20 jurisdiction when it comes to the construction
21 of transmission projects? There's the
22 Transmission Siting Act, which is just certain
23 facilities which qualify under that, but then we
24 also have -- and I guess this maybe is the real
25 big question. What ongoing ability do we have

1 to assure ourselves that whatever facilities are
2 constructed, they're constructed in a prudent
3 manner and those prudent costs are somehow
4 reflected in rates? Does this in any way affect
5 our ongoing jurisdiction in that regard?

6 MR. KEATING: I don't believe so, because
7 we would still have jurisdiction to determine
8 what costs were prudent for purposes of cost
9 recovery.

10 COMMISSIONER DEASON: Madam Chairman, this
11 is one time when I wish I could get some input
12 from some of the participants, but I really
13 don't want to violate the rule that we've set
14 out here.

15 CHAIRMAN JABER: Let's ask Mr. McLean about
16 all of that. Mr. General Counsel, Roberta took
17 your seat. Harold, Commissioner Deason and I
18 have a question for you.

19 This is always a struggle, Mr. McLean. We
20 don't -- it has been noticed one way. The
21 question is, we want to get some clarification
22 on the stakeholders' legal position with respect
23 to the bidding process. What discretion do we
24 have to ask today?

25 MR. MCLEAN: As you say, it's the eternal

1 dilemma as to whether it was -- how it was
2 noticed. If I were you, given that there's an
3 obvious ambiguity here, I would prefer you hear
4 from the parties on this limited issue. That's
5 my advice.

6 COMMISSIONER DEASON: I'm sorry. I didn't
7 quite understand what --

8 MR. MCLEAN: I think I would hear from the
9 parties on the issue, on that limited inquiry.
10 Because it is a legal issue, I would like to --
11 for my own purposes, I would like to hear what
12 they have to say.

13 COMMISSIONER DEASON: Madam Chairman, I
14 appreciate that advice, but I'm not going to
15 break the rule. We'll just --

16 COMMISSIONER BAEZ: Well, can I chime in?

17 COMMISSIONER DEASON: Sure.

18 CHAIRMAN JABER: Commissioner Baez, do you
19 want to break the rule?

20 COMMISSIONER BAEZ: I'm not ready to say
21 that yet, but I did want to point out that since
22 there was some discussion earlier on Issue 5,
23 and that seems to have been noticed as well as
24 post-hearing on the front of the agenda --

25 CHAIRMAN JABER: Issue 5?

1 COMMISSIONER BAEZ: Yes.

2 CHAIRMAN JABER: Yes, that's right.

3 COMMISSIONER DEASON: So you want to ask a
4 question as it pertains to Issue 5?

5 COMMISSIONER BAEZ: Well, since we're -- I
6 mean, since we're trying to broach the subject
7 as to whether we're going to open up
8 post-hearing issues that have been noticed as
9 post-hearing and Commissioners and staff only to
10 discussion, and taking into account that there
11 was a fair amount of -- I'm not going to say
12 disagreement, but certainly there were several
13 opinions, and that was an issue that was going
14 to be addressed and certainly contemplated to be
15 addressed by the parties as well, I think we
16 should answer this question once and for all.
17 Otherwise --

18 CHAIRMAN JABER: Yes. Frankly, I forgot
19 that Issue 5 is not participation is open. It's
20 Commissioners and staff. Early on I referenced
21 to looking forward to hearing from the parties
22 on Issue 5. And I still do, so --

23 COMMISSIONER BAEZ: And if it's -- you
24 know, if we're going the stick to the rule,
25 that's fine by me. But there has been at least

1 some expectation created in the room, and
2 whatever the classification --

3 COMMISSIONER DEASON: Let me just say --

4 COMMISSIONER BAEZ: -- is, it should apply
5 to everything.

6 COMMISSIONER DEASON: -- that it is my
7 position that whatever jurisdiction we have, we
8 have. And if we approve a process that has
9 dispute resolution or other things in there that
10 we think is a good process and we endorse and
11 it's an appropriate structure for the RTO, I
12 don't think that means that we relinquish our
13 jurisdiction, that if there is a decision made
14 at a dispute resolution or whatever, we're not
15 bound by it. We have not only the jurisdiction,
16 but I think the responsibility that if there's
17 something that comes out of that that we think
18 affects our jurisdiction, for example, affects
19 the reliability of the grid in Florida, we have
20 an obligation to pursue that.

21 And I know there may be some ambiguities
22 out there as it pertains to what entities
23 constitute utilities that are subject to our
24 jurisdiction and whether an RTO would or would
25 not. I'm not really sure. Maybe these are

1 things that we need some clarification on. But
2 I just don't want to mislead anybody out there
3 that if this Commission approves measures in
4 here, I don't -- it's not my intent to be
5 relinquishing any of our jurisdiction that the
6 Legislature has deemed fit to grant to this
7 agency, and I just want to make that clear. And
8 I've cited a few examples.

9 COMMISSIONER BAEZ: well, and let me just
10 say this. I think it should -- at least by
11 implication, I don't think that anything we're
12 going to be approving -- as part of this
13 recommendation, I don't recall there being an
14 affirmative relinquishment of any jurisdiction,
15 so I think it's --

16 CHAIRMAN JABER: I don't think we can.

17 COMMISSIONER BAEZ: Exactly.

18 COMMISSIONER DEASON: I don't think we can
19 either.

20 CHAIRMAN JABER: We can't.

21 COMMISSIONER BAEZ: Precisely. So that
22 should be understood out of hand, that nothing
23 that we're doing should create that --

24 MR. KEATING: We did address that in the
25 December order. There was some discussion as to

1 what role the Commission could have in the
2 planning process, and we stated, "while we
3 generally concur with these inclusions" -- and
4 this referred to where the Commission would be
5 included in the process -- "it should be made
6 clear that they in no way bind this Commission
7 in the exercise of its jurisdiction." I think
8 it certainly wouldn't hurt --

9 COMMISSIONER BAEZ: Carry over?

10 MR. KEATING: -- to add similar language to
11 the order that comes out of this proceeding if
12 you wish to do that.

13 CHAIRMAN JABER: That would be very wise, I
14 think.

15 COMMISSIONER DEASON: I think that would be
16 good.

17 CHAIRMAN JABER: But if I could add also,
18 it's not our intent to, and I don't think we can
19 legally, and no one is trying to, but
20 furthermore, this is a decision that allows the
21 FERC filing to be structured in a fashion that's
22 going to be most beneficial for the Florida
23 ratepayers. I envision, honestly, when it gets
24 closer to implementation, the stakeholders are
25 going to have to reflect back on everything and

1 do a comprehensive analysis on everything and do
2 a comprehensive analysis on what additional
3 state authority might be appropriate. I don't
4 want anyone to lose sight of the fact that some
5 legislative address may be appropriate. It
6 really depends on what ultimately gets approved
7 and how it gets implemented and what happens
8 after it's implemented.

9 Commissioners, do you agree with that? Am
10 I the only one that -- am I wrong in my thinking
11 there, staff?

12 MR. KEATING: No. And I don't want to
13 mislead the Commission. Clearly, there's some
14 concern that GridFlorida doesn't fall under --
15 as an ISO structure, doesn't fall under the
16 definition of an electric utility or a public
17 utility under the statute. Our Grid Bill
18 provisions are broad enough where they aren't
19 dependent on the definition of any particular
20 type of utility, and that gives me some comfort
21 that this Commission could exercise jurisdiction
22 over GridFlorida. But that said, it certainly
23 wouldn't hurt to have clarification in the
24 statutes that we operate under as to where
25 GridFlorida falls.

1 COMMISSIONER DEASON: And let me say this.
2 I don't think there's any -- I don't believe
3 there's any attempt upon the applicants or the
4 participants to try to circumvent what otherwise
5 would be a legitimate exercise of our
6 jurisdiction. I just don't want there to be any
7 action or any -- anything that could be
8 misunderstood that somehow, even if we could --
9 and I agree that we can't. If we've got
10 jurisdiction, we can't give it away. I just
11 think it's something that we need to be open
12 about and make sure that it's our position that
13 whatever jurisdiction we have --

14 COMMISSIONER BAEZ: We're keeping.

15 COMMISSIONER DEASON: -- over whatever
16 entities that qualify, that we continue to
17 assert that jurisdiction, and that in the future
18 if the situation arises, we may have to take
19 some action. And I just want to put that up
20 front that that is contemplated and part of the
21 overall approval of this structure.

22 CHAIRMAN JABER: And, Commissioner Baez,
23 with respect to Issue 5, that was my error, so I
24 need to be consistent. I think with respect to
25 what Commissioner Deason and I discussed early

1 on, we need to flesh that out with the
2 Commissioners. I don't necessarily think we
3 disagree. I think we just need to flesh out the
4 approach we want to take.

5 COMMISSIONER BAEZ: That's fine with me.

6 MR. MCLEAN: Madam Chairman, let me say
7 too, when I tendered an answer before, I wasn't
8 quite up to speed. I think that you and
9 Commissioner Deason have set out the law
10 exactly, and that is that you can't relinquish
11 jurisdiction.

12 CHAIRMAN JABER: Okay. Thank you. It's
13 good to know that Commissioner Deason's legal
14 opinion is correct.

15 COMMISSIONER DEASON: It usually is.

16 CHAIRMAN JABER: Yes.

17 Issue 2E, do we have a question or a
18 motion?

19 COMMISSIONER DEASON: I can move the
20 recommendation on Item 2E.

21 COMMISSIONER PALECKI: Second.

22 CHAIRMAN JABER: There has been a motion
23 and a second to approve staff on Issue 2E. All
24 those in favor say aye.

25 (Simultaneous affirmative responses.)

1 CHAIRMAN JABER: Issue 2E is approved.
2 2F, parties may participate.

3 Ms. Brownless?

4 MS. BROWNLESS: Thank you, Commissioners.

5 We agree with the staff recommendation with
6 regard to clarifying the calculation of
7 available transmission capacity to include
8 capacity benefit margin designated by
9 utilities. This is a significant issue for JEA,
10 because as we discussed before, capacity benefit
11 margin is the means by which JEA helps to
12 satisfy its reserve margin requirements and meet
13 the reliability standards imposed by the FRCC.
14 So we simply speak in support of the staff's
15 recommendation with regard to this item.

16 CHAIRMAN JABER: Thank you. Mr. Hoffman?

17 MR. HOFFMAN: Chairman, we do not intend to
18 present on the staff recommendation and
19 certainly have no objection to the staff
20 recommendation.

21 CHAIRMAN JABER: Okay. Ms. Paugh?

22 MS. PAUGH: Madam Chairman, my clients
23 oppose the staff recommendation on the inclusion
24 of the CBM. It is, in their opinion, a
25 discriminatory withholding of transmission

1 capacity. It should be treated like all other
2 capacities.

3 CHAIRMAN JABER: I need you to bring the
4 microphone closer to you.

5 MS. PAUGH: I'm sorry. My clients oppose
6 the CBM calculation being included. It is, in
7 their opinion, a discriminatory withholding of
8 capacity.

9 MR. MCGLOTHLIN: Joe McGlothlin for Reliant
10 Energy. Reliant Energy also opposes the staff
11 recommendation and cannot agree to incorporate
12 the change by agreement of parties. Reliant
13 Energy feels that this measure is tantamount to
14 a set-aside. Reliant feels that those who use a
15 resource should pay for it, and therefore
16 cannot agree with this proposal.

17 CHAIRMAN JABER: Any other comments?

18 MR. STRICKLAND: Wes Strickland for
19 Seminole Electric. We wanted to note that with
20 respect to Item c. that Seminole does not
21 believe that staff's recommendation addresses
22 its concern with respect to rights of first
23 refusal for the POs, that that should still be
24 eliminated.

25 CHAIRMAN JABER: Thank you. Any other

1 comments?

2 Okay. Staff, could you respond to the
3 concerns raised by Ms. Paugh -- Mr. Bryant, did
4 you have a comment?

5 MR. BRYANT: No.

6 CHAIRMAN JABER: Okay. Ms. Paugh and
7 Mr. McGlothlin.

8 MR. FLOYD: Yes. On CBM?

9 CHAIRMAN JABER: Yes, and then Seminole
10 Electric.

11 MR. FLOYD: Okay. It's very -- CBM is very
12 controversial, I'll admit that. And we're not
13 saying in this recommendation -- CBM can be
14 zero. It can be 100 megawatts, or it can be
15 zero megawatts. We're just saying you need to
16 take this factor into account.

17 Let me just say what CBM is first. CBM is
18 an amount of transfer capability that can be
19 reserved by a load-serving entity only, like
20 FPL, JEA, and so forth, utilities that have
21 load. It's an amount of capacity that they can
22 reserve in order to get access to generation on
23 interconnected systems so that they can meet
24 their reliability requirements. If you're not
25 allowed to do that, if they couldn't reserve

1 this capacity, what you have to do is build more
2 installed capacity on your system and not take
3 advantage of the interconnected system.

4 CBM is well recognized through the National
5 Electric Reliability Council. NERC has
6 standards on how it's calculated. All the ten
7 subregions have standards on how it's
8 calculated. There's a lot of controversy on how
9 much. You know, the marketers worry, well,
10 you're going to use up all the available
11 transmission or transfer capability by, you
12 know, calculating too high a number. Well, that
13 can be -- you know, that's something that needs
14 to be worked out. But we're just saying it
15 should be taken into account and it's well
16 recognized around the country, this concept.

17 Even if this clarification was not put in
18 there, I made the point in the recommendation
19 that it's really not essential, because if you
20 look at the formulas that are referred to in
21 other places that FRCC uses to calculate ATC,
22 it's right in there, TRM, transmission reserve
23 margin, CBM. It's right in the formula. But we
24 thought since JEA raised it and it made them a
25 little more comfortable, we would clarify it and

1 say yes, you do need to take this into account.
2 It's taken into account anyway in the formula.
3 But the big problem is how much do you set
4 aside, and we don't need to deal with that in
5 this recommendation.

6 COMMISSIONER PALECKI: When you say that
7 needs to be worked out, how does that get worked
8 out? What is the process?

9 MR. FLOYD: The reliability regions can
10 work that out. The FRCC and all the other nine
11 reliability regions in the country have -- they
12 were required by NERC, the national
13 organization, to come up with a methodology for
14 calculating ATC, and specifically CBM and TRM
15 also. And so that's the arena where this needs
16 to be worked out.

17 COMMISSIONER PALECKI: Would all of the
18 parties in this room have access to that
19 proceeding?

20 MR. FLOYD: I do know that the regions are
21 a lot more open now. I'm not up to date on the
22 exact governance of all the reliability regions,
23 but we're concerned about FRCC. I know that
24 they've recently changed their voting structure
25 and so forth to allow a more balanced

1 participation by independents and others, but I
2 can't really speak specifically on exactly how
3 it works.

4 COMMISSIONER PALECKI: And once that's
5 determined by the region, what voice does this
6 Commission have?

7 MR. FLOYD: Well, we could always step in.
8 If we thought that somebody was trying to pump
9 too many megawatts into a line and it wasn't
10 reliable, I think under the Grid Bill we could
11 say, "No, you" -- for example, say it's a
12 certain line rating that determines what the
13 final ATC would be. We might come down and say,
14 "No, you're going to have to use this lower line
15 rating rather than this one, because we think
16 there's a reliability problem here." So I don't
17 think it affects our jurisdiction to move in if
18 we need to.

19 COMMISSIONER DEASON: What about our
20 jurisdiction in the other way, where we don't
21 think it affects the reliability, but we think
22 that perhaps they're being overly cautious, and
23 perhaps there's some capacity that could be
24 utilized for market enhancement purposes? Do we
25 have any jurisdiction in there?

1 MR. FLOYD: I guess I'll turn to
2 Mr. Cochran on that.

3 COMMISSIONER DEASON: And what is
4 contemplated -- what if the market participants
5 believe that there is an inappropriate amount of
6 CBM? What is their recourse?

7 MR. KEATING: I don't believe that Chapter
8 366 in the Florida Statutes, which is where we
9 primarily derive our jurisdiction for electric
10 utilities, gives the Commission any authority to
11 ensure competitive markets or anything of that
12 nature on the electric side. We have language
13 to that effect on the telephone side. So to me,
14 it's a little more questionable as to where our
15 jurisdiction is to step in if we think they've
16 been overly cautious.

17 COMMISSIONER DEASON: I don't necessarily
18 disagree with that. Is there any procedure here
19 for a market participant to have some recourse
20 -- it might not be here at the Commission. Is
21 there some recourse within the structure of the
22 RTO, or is there some recourse at FERC? Where
23 is the recourse?

24 MR. FLOYD: I think this comes under the
25 dispute resolution procedures also. If there's

1 a dispute about it, it can be resolved. But I
2 thought your question had to do with how they
3 would -- would they come to the Commission,
4 could they come to the Commission here. I'm not
5 sure how that would work. But there are dispute
6 resolution procedures that would be in place if
7 there's a dispute about line ratings or any of
8 this stuff.

9 COMMISSIONER DEASON: Okay.

10 CHAIRMAN JABER: Commissioners, any other
11 questions on 2F?

12 COMMISSIONER DEASON: Well, Seminole had a
13 comment about the right of first refusal as it
14 pertains to the construction of transmission
15 projects. Does staff want to comment on that?

16 MS. HARLOW: Commissioner Deason, it's my
17 understanding that the concept of right of first
18 refusal was approved in Issue 2E.c. To speak
19 directly to the changes that staff had suggested
20 here, we think that Seminole's concerns or
21 concerns in particular about right of first
22 refusal were mitigated by the change in the
23 language that GridFlorida made, and that
24 language was included on page 48 of staff's
25 recommendation.

1 We feel the language that we've included on
2 page 52 in 2F.c further mitigates concern on
3 right of first refusal. In particular, I have
4 to say that it was my initial concern when I saw
5 right of first refusal to make sure that in any
6 cost recovery proceeding, in particular before
7 this Commission, that we look at their bid, if
8 they do give a low bid to match a bid, and make
9 sure that that's not a false bid. And to me,
10 that removes the incentive for them to give any
11 false bid just in order to self-build a project.

12 The other language that --

13 COMMISSIONER DEASON: Will we have access
14 to that information, the bidding information?

15 MS. HARLOW: We definitely would as part of
16 a need determination.

17 COMMISSIONER DEASON: What if it's a
18 project that's not subject to need, but it's a
19 project, for example, that's an issue in a rate
20 case?

21 MS. HARLOW: Yes, sir, I believe we would
22 have access to that information. And I've
23 checked with Mr. Keating on that second opinion.

24 MR. KEATING: I think we could certainly
25 ask for it in discovery in a cost recovery

1 proceeding.

2 CHAIRMAN JABER: Staff, I just have a
3 question related to page 52, as you're outlining
4 that the PO has an opportunity to match a bid,
5 and therefore self-build.

6 MS. HARLOW: Yes.

7 CHAIRMAN JABER: I don't know enough about
8 the transmission aspect in bidding, but would
9 you ever have a situation where the least cost
10 bid is not necessarily the best bid? So would
11 GridFlorida have the discretion to select a bid
12 as the most appropriate one because of -- I
13 don't know, it implements a better technology?
14 I don't really know what other factors outside
15 of cost they would consider.

16 MS. HARLOW: It's my understanding that
17 this is not a straight bidding process as if we
18 were bidding for office supplies. These are
19 very complex projects. The best comparison to
20 me is the need determination for generation,
21 because that's what I work most often with. And
22 when we see this process work, we generally see
23 the utility narrow it down to a short list, and
24 then they go back to the table with that short
25 list, and they get them to sharpen their pencil.

1 There are also concerns that you might have
2 about financial viability of the bidders. There
3 are many other reasons why the least cost bid
4 may not be the right bid. And this is another
5 reason why I think it's appropriate for there to
6 be a right of first refusal, as long as this
7 Commission has the opportunity to review that
8 bid and make sure that it is not a false bid.

9 CHAIRMAN JABER: So is it the right of
10 first refusal that gives GridFlorida the
11 flexibility to select a bid that's not
12 necessarily the least cost?

13 MS. HARLOW: I believe that's the case, and
14 I believe that's consistent with our current
15 capacity selection rule, which is 25-22.082.

16 CHAIRMAN JABER: And you think the bylaws
17 are real clear in that regard?

18 MS. HARLOW: I believe so.

19 CHAIRMAN JABER: Okay. Commissioners, do
20 you have any other questions on 2F or a motion?

21 MS. PAUGH: Madam Chairman, if I could just
22 make a point --

23 CHAIRMAN JABER: Go ahead, Ms. Paugh.

24 MS. PAUGH: -- with respect to the staff
25 recommendation. The indication is that it would

1 go final if there's agreement on these issues,
2 and there's not, so perhaps PAA is the better
3 way to go.

4 CHAIRMAN JABER: Actually, I'm assuming
5 they are PAA unless I hear otherwise.

6 MR. KEATING: Yes. I assumed that we would
7 treat them the same as the items in Issue 2C, as
8 PAA.

9 CHAIRMAN JABER: Commissioners, a motion
10 or questions on 2F?

11 COMMISSIONER DEASON: Move staff on 2F.

12 COMMISSIONER BAEZ: Second.

13 CHAIRMAN JABER: There's a motion and a
14 second to approve staff on Issue 2F. All those
15 in favor say aye.

16 (Simultaneous affirmative responses.)

17 CHAIRMAN JABER: Issue 2F is approved.

18 2G, again, Commissioners and staff. Too
19 bad Mr. Naive can't speak today.

20 MR. KEATING: Mr. Cochran doesn't sound so
21 bad now.

22 CHAIRMAN JABER: See, it's all relative,
23 isn't it?

24 COMMISSIONER DEASON: Madam Chairman, if
25 there are no questions, I can move staff's

1 recommendation on 2G.

2 COMMISSIONER PALECKI: Second.

3 CHAIRMAN JABER: There has been a motion
4 and a second to approve staff on 2G. All those
5 in favor say aye.

6 (Simultaneous affirmative responses.)

7 CHAIRMAN JABER: Issue 2G is approved.
8 3A, again, Commissioners and staff.

9 COMMISSIONER DEASON: If there are no
10 questions, I can move staff on 3A.

11 COMMISSIONER PALECKI: Second.

12 CHAIRMAN JABER: There has been a motion
13 and a second on 3A. All those in favor say aye.

14 (Simultaneous affirmative responses.)

15 CHAIRMAN JABER: Issue 3A is approved.
16 3B.

17 COMMISSIONER DEASON: Madam Chairman, I've
18 got a question on 3B, Item a., found on page 65
19 of the staff recommendation.

20 I'm having some difficulty here, and I need
21 some further explanation. It was my
22 understanding that the original filing contained
23 the reference to December 15, 2000, as the
24 cutoff date, and that was contemplating action
25 by FERC at a date, of course, which never

1 materialized. However, staff is still of the
2 position that we need to retain that date. why
3 is that?

4 MS. BUTLER: I'm sorry. I didn't hear the
5 last part of --

6 COMMISSIONER DEASON: Why are we retaining
7 that date, when that was first proposed
8 contemplating action at FERC that never
9 materialized? Or am I misunderstanding the
10 issue, because you look puzzled.

11 MS. BUTLER: I think that the way you posed
12 the question is a little bit outside of the
13 logic that we were using, so maybe I can start
14 with the logic that we were using, and then we
15 can get back to your question.

16 COMMISSIONER DEASON: That's fine.

17 MS. BUTLER: The question that we were
18 posing originally was, were the changes that
19 were made in the compliance filing necessary
20 relative to the change from the for-profit
21 transco to the not-for-profit ISO. And
22 essentially, the demarcation date changed for
23 existing transmission agreements from, as you
24 say, December 15th to January 1 of the year the
25 transmission provider begins commercial

1 operation. And Seminole and the Joint
2 Commenters requested that the Commission find
3 that the change was in fact in excess of what
4 was necessary to comply with the Commission's
5 December 20th order, and FMG supported
6 Seminole's position.

7 The applicants responded at the workshop
8 that the date that was originally targeted was
9 no longer applicable because of delays, and they
10 further argued in their post-workshop comments
11 that the key dates are interrelated, and that in
12 fact the RTO implementation date was related to
13 the demarcation date. The applicants put forth
14 that if these dates were divorced from each
15 other in the manner suggested by the
16 intervenors, that cost shifting wouldn't be
17 mitigated.

18 And essentially, there were arguments made,
19 again by the intervenors, that essentially --
20 that they were not persuaded that the applicants
21 were sincere about the connection of those two
22 dates, the reason being that there was a
23 compliance filing that was made at the FERC on
24 May 29th of 2001, and at that point the
25 applicants were aware that the December 15th

1 commercial date wouldn't go into effect, but
2 they in fact did not modify their filing, and
3 that the change in the date was not necessitated
4 by the Commission's December 20th order as were
5 some other things that were changed in the
6 filing.

7 Staff addressed the question of the
8 possible exacerbation of the cost shifting and
9 concluded that it was of minimal concern,
10 because if the original date had gone into
11 effect, the cost shifting wouldn't in fact have
12 been extra, it would have been the same as what
13 it was going to be if the date hadn't changed.

14 So in short, essentially, the logic was did
15 it need to be changed as a result of the
16 compliance filing or was it in compliance as it
17 was, and we came to the conclusion it didn't
18 need to change and was in compliance as it was.

19 COMMISSIONER DEASON: Okay. Well, that
20 raises two questions. I understand your point
21 about whether it needed to be changed. I guess
22 the question is, should it have been changed.
23 And you're saying that's outside the scope of
24 your review, or at least that's what I hear, or
25 you didn't give me a reason to address should

1 it have been changed.

2 And then the other position that you've
3 taken is that these costs would have been -- if
4 the date had not been postponed, if the original
5 target date had been achieved, these costs would
6 have been treated as we're doing here. But my
7 concern is that the costs may be treated the
8 same, but we did not implement the RTO, and we
9 have not seen the savings that were contemplated
10 by having these costs incurred to begin with, so
11 I think there's a mismatch there. would you
12 agree with that?

13 MS. BUTLER: Okay. I'll start with the
14 first question.

15 COMMISSIONER DEASON: Sure.

16 MS. BUTLER: And then maybe you can remind
17 me, just give me a prompt as to what the second
18 question was.

19 COMMISSIONER DEASON: No problem.

20 MS. BUTLER: Should it have been changed?
21 I didn't analyze in my recommendation whether it
22 should have been changed. However, in my own
23 mind, I did analyze whether I thought it should
24 be changed. And I came to the conclusion -- in
25 that I was weighing basically the benefits of

1 changing against the costs of changing it, and I
2 weighed the idea of promoting nonpancaked rates
3 and promoting a competitive wholesale market
4 against the idea that there would be a certain
5 minimal amount of extra costs that would be
6 incurred on the applicants' side in terms of the
7 additional cost shifting, and I came to the
8 conclusion in my own personal judgment that I
9 thought that the goal of eliminating pancaked
10 rates and promoting a competitive wholesale
11 market weighed more heavily.

12 However, I believe that it's not only a
13 judgment call, but a policy matter, and that's
14 basically why I did not rely on that in my
15 recommendation, because I believe that given the
16 parameters of the recommendation, I preferred
17 not to make that judgment, but it was consistent
18 with my thoughts on that matter.

19 And the second question you had, could you
20 refresh me just --

21 COMMISSIONER DEASON: Sure.

22 MS. BUTLER: A mismatch between the --

23 COMMISSIONER DEASON: Yes, if there's a
24 mismatch between the incurrence of costs that
25 would be included by keeping the December 15th

1 date and the beginning of benefits that are to
2 be derived from RTO.

3 MS. BUTLER: I didn't see those two dates
4 to be connected in that way. I looked at the
5 date for the demarcation for the transmission
6 agreement as being more a date that went into
7 the business decisions of the entities who were
8 deciding to build, because it gave them
9 information regarding the cost of transmission,
10 and that in fact, their decision to build,
11 because of the length of time that a build
12 takes, needed to have some information in order
13 to make a good decision.

14 So to me, the date of the implementation of
15 the RTO is not as important as the idea that the
16 RTO was going to come about, and that the
17 entities who are making the build decision had
18 to go with the best information available,
19 which was at the time, I believe, what was
20 approved at the FERC, tentatively approved at
21 the FERC. So I didn't specifically make the
22 same connection in terms of the relationship of
23 those two dates.

24 COMMISSIONER DEASON: Okay.

25 COMMISSIONER BAEZ: Madam Chair.

1 CHAIRMAN JABER: Commissioner Baez.

2 COMMISSIONER DEASON: Madam Chairman, I
3 have some concerns about this issue. And I
4 understand staff's review, and I'm not
5 quarreling with it. I think they looked at it
6 under their understanding of what their
7 assignment was, and that was to basically
8 evaluate it on a standard of was this change
9 required by the compliance filing. And if that
10 is the scope of what we're doing here today, I
11 think I probably would tend to agree. If that's
12 the narrow parameters, that's probably correct.

13 I would suggest this, that if we are going
14 to go to hearing, that this may be something we
15 want to explore and not look at is it something
16 required, but is it something that should be one
17 way or the other, because I'm uncomfortable
18 making -- and staff indicates that there are
19 some policy ramifications of this. And I
20 remember this matter being discussed somewhat at
21 the workshop, but if we are going to go to
22 additional hearing, and while it needs to be
23 expedited and I want that hearing to be as
24 focused as possible, I think that the
25 incremental time and expense of addressing this

1 issue probably would be worth it. So I'm just
2 throwing that out for some feedback from fellow
3 Commissioners.

4 CHAIRMAN JABER: And maybe just to add to
5 that, Commissioner Deason, maybe the time until
6 we get to hearing allows the parties to talk
7 about this issue a little bit more.

8 COMMISSIONER DEASON: Well, absolutely.
9 If there can be some accommodation reached, I'm
10 not opposed to that either.

11 CHAIRMAN JABER: Commissioner Baez, you
12 were about to say something.

13 COMMISSIONER BAEZ: I wanted to get into --
14 I wanted to get straight in my head how many
15 dates are we dealing with. And there seems to
16 be an issue as to, you know, which of those
17 dates need to be seamless in a transition. I
18 mean, you've got cutoff dates for new
19 facilities, and then you've got the contract
20 dates. I mean, are we dealing with --

21 MS. BUTLER: When I addressed this issue,
22 the issue was the issue of the demarcation date
23 for existing transmission agreements, and any
24 reference to facilities was a reference to
25 generation facilities in my recommendation.

1 It has come to my attention that there's
2 another date in the entire filing that deals
3 with the existing transmission facilities. The
4 staff has discussed whether or not there's a
5 connection between the existing transmission
6 facilities date and the existing transmission
7 agreement date and came to the conclusion that
8 there was not a legitimate connection in terms
9 of those two dates. However, that's a
10 complicated matter as well, and if you want to
11 further discuss that, there may be some people
12 who might disagree with that conclusion, not
13 amongst staff, but in the general population.

14 MS. BASS: Commissioner Baez, the date that
15 was changed, the subsequent date, the other date
16 that we're talking about for existing
17 facilities, was included in the compliance
18 filing, and it was filed, and there was no one
19 who expressed a concern with that date being
20 changed. And a lot of the change that we keyed
21 off of or that we identified, we keyed from
22 people who had concerns with the dates that had
23 proposed them. Either we were concerned with
24 the change that was made or the intervenors were
25 concerned with the date, and there was no

1 concern expressed with the change of that date,
2 which was changed to January 1 of the year of
3 the commercial operation of the RTO. That was
4 only -- this came up subsequent to all of that.

5 CHAIRMAN JABER: Well, Ms. Bass, on that
6 note, if you set aside the -- it was in
7 compliance, and therefore no changes are
8 appropriate, what would in your opinion be a
9 good compromise here as a resolution?

10 MS. BASS: If the Commission believes that
11 January 1 of the year the transmission provider
12 begins commercial operations is the appropriate
13 date for the Attachment T cutoff date, then they
14 can recommend -- you know, they can not approve
15 what staff has suggested as not being necessary,
16 if they believe that that was a necessary
17 change, or the change complies with the
18 Commission's December 20th order. And I think
19 that that's the basis we're looking at, is
20 whether or not it is consistent with the
21 Commission's directions in that order.

22 CHAIRMAN JABER: Commissioners, where I
23 was going with it, and I don't know what the
24 right bottom line is, but what we may want to do
25 is exercise our expertise in addressing what the

1 appropriate date should be, or how to address
2 the date mismatch, as you said it, Commissioner
3 Deason, and issue that as a PAA.

4 MS. BUTLER: Chairman Jaber --

5 CHAIRMAN JABER: I don't know if you have
6 enough there, Ms. Butler and Ms. Bass, to
7 recommend something.

8 MS. BUTLER: May I address this? And I
9 think Mr. Cochran can help me. It was my
10 understanding that in either instance, either
11 way, if you were to adopt what the staff is
12 recommending, you would default back to the
13 original transco filing that occurred prior to
14 your December 20th order, and that if you were
15 to approve the alternate language, the alternate
16 language is actually part of the applicants'
17 current filing, so I don't know that you would
18 actually need to go PAA. But that's essentially
19 a question for Mr. Keating.

20 CHAIRMAN JABER: Okay. I'm not sure I
21 just understood what Ms. Butler said, Cochran,
22 so --

23 MR. KEATING: I'm not sure either, but I
24 will try to answer Ms. Melinda's question.

25 I believe you've got some discretion here.

1 On Issue 3B, you could find, as staff has
2 recommended, that the change was not necessary
3 to comply with our prior order, or you could
4 deny staff and find that it was required to
5 comply with our final order from December, and
6 issue either of those decisions as final
7 action, saying whether something does or does
8 not comply with the order. Or we could propose
9 -- I believe, even though this has been noticed
10 as just Commissioners and staff participating, I
11 believe you have the discretion to take a
12 proposed agency action, to put something out
13 there for discussion, and if it's challenged,
14 perhaps roll it into a hearing if you choose to
15 go to a hearing as part of Issue 5.

16 CHAIRMAN JABER: Okay. My question really
17 is not so much procedural. Here's what I would
18 like to do. We're going to take a 10-minute
19 break. You all talk about this amongst
20 yourselves, Roberta, and when we come back on
21 the record, what I'm -- what would be that PAA
22 recommendation?

23 COMMISSIONER BAEZ: Well, can I just ask a
24 clarifying question? You've outlined three
25 alternatives. Now, the one that's implied that

1 would come out as final action, correct me if
2 I'm wrong, is denial of staff's recommendation
3 in favor of what was filed. Is that what you
4 just said? And that doesn't get into a PAA?

5 MR. KEATING: Right. The PAA option is out
6 there if you want to hear from parties. If
7 there's a concern, I believe that gives
8 everybody a point of entry.

9 MS. BASS: Commissioner Baez, let me --
10 what Melinda I think was explaining, the
11 December 15, 2000, was in the original filing,
12 and so -- in the original transco filing, which
13 the Commission approved subject to changing the
14 structure, so that date is out there. What has
15 been changed to January 1 of the year of
16 commercial operation is included in the
17 compliance filing.

18 So if you determine that this change was
19 necessary to be consistent with the Commission's
20 December order, then it could be adopted as
21 compliance, as final. If the Commission
22 determines that the change -- excuse me. If the
23 change was necessary, then it would be
24 compliance final. If you decide the change was
25 not necessary, then it would be final too,

1 because it's just a matter of the compliance,
2 does it or does it not comply. And if you found
3 that it did not comply, then with the
4 Commission's -- this change did not comply with
5 the Commission's order, then it would revert
6 back to the December 15th, which was the transco
7 filing.

8 COMMISSIONER BAEZ: And that very same
9 thing goes for Commissioner Deason's, the
10 matching issue, or the mismatching issue, as it
11 were, or is that something that falls outside of
12 these alternatives? How do we address that?

13 COMMISSIONER DEASON: PAA.

14 MS. BASS: PAA.

15 COMMISSIONER BAEZ: Essentially; right?

16 MS. BASS: PAA, or set it specifically as
17 an issue. If the Commission subsequently
18 determines that a hearing is necessary in Issue
19 5, then it could be a very specific issue within
20 that.

21 COMMISSIONER BAEZ: And just so that I
22 understand, I mean, there are obviously timing
23 issues involved. Anything that you issue PAA
24 that gets protested becomes part of this
25 expedited hearing; right? I mean, there are no

1 dual tracks or anything like that?

2 CHAIRMAN JABER: well, just talking out
3 loud, it was always my intent as I read this
4 recommendation to roll them all into the
5 expedited proceeding.

6 COMMISSIONER BAEZ: well, I understand
7 that we're going to go --

8 COMMISSIONER DEASON: Assuming we don't
9 have a court challenge.

10 CHAIRMAN JABER: Exactly, exactly.

11 COMMISSIONER BAEZ: I understand that we're
12 going to go to a break and try to figure out --

13 CHAIRMAN JABER: No, that's good point too.
14 so we're going to take a 10-minute break.

15 (Short recess.)

16 CHAIRMAN JABER: All right. We're on
17 Issue 3B. Now, Ms. Bass, you all can have more
18 time if there's some settlement discussions
19 going on.

20 Issue 3B. Commissioner Baez, I confess, I
21 missed the last two or three minutes of your
22 questions.

23 COMMISSIONER BAEZ: well, it started from
24 the point that I'm really trying -- I'm trying
25 to get a handle on how many dates we're dealing

1 with as part of the compliance filing, and which
2 of those are not being accepted by staff, and to
3 what extent we need to discuss the logic behind
4 them not being accepted or not. And I know that
5 off-line I may have -- it's just a thought. If
6 anyone else seems to share some lack of clarity
7 as to what the situation is and whether they're
8 being moved up or moved back or not at all
9 accordingly, and whether we shouldn't find a way
10 to flesh out that issue, not just amongst
11 ourselves, but amongst the parties, and have the
12 positions laid out a little clearer. And that's
13 just from someone seeking clarity to all of this
14 so that I can understand what it is we're voting
15 on and whether I agree with it or not.

16 MS. BASS: Commissioner Baez, there's
17 another date that's included in this filing that
18 talks about the date for existing facilities.
19 That date was changed to be consistent with this
20 January 1 of the year the transmission provider
21 begins commercial operations.

22 COMMISSIONER BAEZ: And just so that I can
23 understand, the January 1, et cetera, date, the
24 January 1 after commercial implementation, that
25 is currently part of the filing?

1 MS. BASS: That was a change that was made
2 and included in the compliance filing.

3 COMMISSIONER BAEZ: That's part of the
4 compliance filing.

5 MS. BASS: Yes.

6 COMMISSIONER BAEZ: Okay. So that change
7 -- and staff is seeing that change as consistent
8 and necessary?

9 MS. BASS: Yes. That change was not
10 identified by any intervenors as being a problem
11 date, that there was a concern about the change
12 to that date. There was some concern expressed
13 concerning the change in the date of the
14 existing transmission agreements, the ETAs --

15 COMMISSIONER BAEZ: The grandfathering --

16 MS. BASS: Which is the Attachment T cutoff
17 date.

18 COMMISSIONER BAEZ: The grandfathering
19 issue.

20 MS. BASS: Yes.

21 COMMISSIONER BAEZ: And just so that I can
22 understand what your recommendation is
23 concerning the grandfathering dates, is that a
24 change that is consistent or not consistent with
25 our order, in your determination? Was it

1 necessary or not?

2 MS. BASS: The change for the existing
3 facilities we said, yes, was consistent with the
4 Commission order. I believe --

5 COMMISSIONER BAEZ: The grandfathering
6 date.

7 MS. BASS: Yes. I believe that the
8 Commission, if they wish, can find there is a
9 need for consistency for the Attachment T cutoff
10 date.

11 COMMISSIONER BAEZ: Which is not the
12 existing facilities. It is the existing
13 contracts date.

14 MS. BASS: The existing transmission
15 agreements, yes.

16 COMMISSIONER BAEZ: Right. The ETAs;
17 right.

18 MS. BASS: You can find that that is
19 consistent.

20 COMMISSIONER BAEZ: That consistency is
21 necessary with other --

22 MS. BASS: Consistency is necessary, and
23 therefore, the change for the existing
24 transmission agreements to January 1 of the year
25 of commercial operation is appropriate and is

1 consistent with the Commission's December 20
2 order.

3 COMMISSIONER BAEZ: And would that leave
4 all three dates in concert, I guess?

5 MS. BASS: That would make the dates
6 consistent in the compliance filing.

7 COMMISSIONER BAEZ: Okay. And I guess
8 staff -- just to be clear, staff has a
9 disagreement as to the existing agreement date
10 being necessarily or having a need to be
11 consistent with that January 1st in-service?

12 MS. BASS: Yes.

13 COMMISSIONER BAEZ: And the reason being?
14 Ms. Melinda?

15 MS. BUTLER: Okay. The way in which we
16 were looking at it was that the existing
17 transmission agreements having their date
18 changed affected the pancaking in terms of what
19 was going to be faced by an entity who was
20 covered by the agreement. However, if you're
21 looking at the existing transmission facilities,
22 what you would need to conclude in terms of its
23 relationship to the existing transmission
24 agreements is that changing the date of the
25 existing transmission agreements changed the

1 cost of the transmission facilities. But the
2 transmission facilities are lumpy, and so it
3 could be -- lumpy in the sense that their
4 investments are large, and then --

5 COMMISSIONER BAEZ: Is this a pancake
6 term? I'm sorry.

7 MS. BUTLER: No, it's an economic term.
8 Their investments are large, and there's -- you
9 can add load, but you don't necessarily have to
10 incur more costs, because the facilities already
11 exist.

12 So we were not convinced that we could see
13 that changing the dates of the existing
14 transmission agreements affected the costs of
15 the existing transmission facilities. If it was
16 clear that they did affect the costs, then you
17 would want to change the date for the existing
18 transmission facilities, because you would want
19 to increase the recovery, or you would want to
20 vary the recovery from the way it was being
21 collected to make sure that the additional costs
22 were covered.

23 But we weren't convinced that there was --
24 that a case had been made that the existing --
25 that the costs in fact were increased or

1 changed. And David is the cost person, so he
2 can go further with that analysis.

3 MR. WHEELER: If I could just briefly
4 explain the implications for changing the
5 definition of what is a new versus existing
6 facility. Where that comes into play is where
7 those costs are recovered, whether they're
8 recovered through the zonal charges or the
9 system-wide charge. So everything that's
10 considered existing facilities will be recovered
11 through zonal rates. Everything that's
12 considered a new facility will be recovered
13 through the system-wide rates. So it has
14 implications for how costs are recovered.

15 COMMISSIONER BAEZ: And that's not -- that
16 is not the same case for the transmission
17 agreements?

18 MR. WHEELER: For the transmission
19 agreements, it involves how you -- which
20 contracts are considered grandfathered. And
21 there's a methodology in the OATT that describes
22 a treatment for existing long-term contracts
23 under which there is rate pancaking, so it
24 affects which contracts are considered
25 grandfathered contracts.

1 COMMISSIONER BAEZ: And as the
2 recommendation stands, that cutoff date on
3 grandfathering, if you will, is well before the
4 implementation date?

5 MR. WHEELER: Right, right.

6 MS. BUTLER: The December 15th date is.

7 COMMISSIONER BAEZ: I'm sorry?

8 MS. BUTLER: The December 15, 2000 is the
9 date that's well before the implementation
10 date.

11 MR. WHEELER: For the contracts.

12 MS. BUTLER: For the contracts.

13 COMMISSIONER BAEZ: Now, doesn't that
14 create a mismatch as well, I mean, where you're
15 not getting --

16 MS. BUTLER: Can I go back for one second,
17 because David and I have a slightly different
18 perspective, although it's not inconsistent.

19 The way I look at it is, in terms of the
20 existing transmission agreements, it's not a
21 matter of cost, it's a matter of revenue,
22 because when you change the date for the
23 existing agreements, what happens is that if you
24 were to move it forward to the date that we're
25 proposing that's not the December 15th date, you

1 would have more projects that would have to pay
2 pancaked rates. So what happens is that the
3 applicants, by moving it back to the December
4 15th date, are forgoing additional revenue, the
5 pancaked revenue.

6 So in the existing transmission agreement
7 issue, you have who's going to suffer in terms
8 of loss of revenue or not having to pay as much
9 for a service, whereas in the existing
10 transmission facilities, you actually have an
11 issue of costs changing, because you have to
12 build something.

13 COMMISSIONER BAEZ: I'm just -- and again,
14 forgive my inability to understand this. I'm
15 just having -- it sounds to me that what you're
16 saying is, you know, it's perfectly fine to do
17 away with pancaked rates before the mechanism
18 that was contemplated to do away with pancaked
19 rates is ever implemented. Is that --

20 MS. BUTLER: well, that may occur also with
21 the January date as well, because if you
22 contemplate, for instance -- as I understand it,
23 but I haven't really gone through this, if
24 you're talking about January 1 of the year in
25 which the RTO comes into operation, it could be

1 that the RTO comes into operation on December
2 30th, and you have, you know, 11 and a half
3 months of not having the RTO in service, and
4 that would count.

5 So to me, there's something about it that
6 -- there's kind of an arbitrariness of when you
7 draw the line.

8 COMMISSIONER BAEZ: Well, but are we
9 dealing with -- I mean, in that example that you
10 gave, by saying a January 1st date, then you're
11 limiting the exposure of that situation for, at
12 most, 364 days; correct? whereas, you know, if
13 you're still holding tight to a December 15,
14 2000 date, now all of a sudden we're talking
15 about longer -- a fairly longer period of time.

16 MR. WHEELER: Well, we're talking about a
17 cutoff date.

18 COMMISSIONER BAEZ: Right.

19 MR. WHEELER: A date where we're saying
20 anything you entered into before this date is an
21 existing contract. And we have provisions to
22 grandfather that contract and grandfather its
23 pancaked rates. Everything after that date,
24 you take RTO rates. The pancaking is
25 eliminated. So if you move the date forward,

1 you'll be grandfathering fewer contracts.

2 COMMISSIONER BAEZ: I understand what the
3 effect of it is. The hurdle that I can't get
4 over is that -- why are we creating -- although
5 it may be a benefit to someone, why are we
6 creating, or how are we creating benefits before
7 the vehicle to create those benefits, you know,
8 is not in place.

9 MS. BUTLER: Let me try one more angle to
10 see -- it was my understanding -- and I don't
11 know if this is correct or not, but it's my
12 understanding that you can enter into an
13 agreement prior to the build, prior to the
14 project being completed. So essentially, I
15 wasn't assuming that when the agreement was
16 entered into that that necessarily corresponded
17 to the date upon which the transmission system
18 would be accommodating this generator under the
19 RTO situation.

20 so theoretically, in my view, it could be
21 feasible that no one would come on line before
22 the RTO and actually benefit from this
23 situation, but more likely, that there was a
24 lead time in these things that had been entered
25 into as an agreement, because the way I

1 envisioned the business being done was that
2 contracts and kind of the things that needed to
3 bring everything up on line would occur like
4 prior to the completion of the build. And so I
5 don't -- in my mind, I don't see there being --
6 the RTO like being after these people are
7 getting this benefit.

8 COMMISSIONER BAEZ: Thank you.

9 CHAIRMAN JABER: Commissioners, any more
10 questions on 3B or a motion?

11 Commissioner Deason, I recognize, of
12 course, your concern. I don't know how you all
13 would propose we address it.

14 I think there was a desire, Commissioners,
15 on the part of Commissioner Deason to flesh this
16 out a little bit more in a hearing setting. And
17 whether that's PAA and get a protest or straight
18 to hearing, I don't know what your desire was,
19 Commissioner.

20 COMMISSIONER BAEZ: well, if we ratchet
21 down the decision and say it's PAA, does that
22 mean parties can participate now, or it's just a
23 back end procedural issue?

24 COMMISSIONER DEASON: That's a good
25 question. I don't know.

1 CHAIRMAN JABER: Mr. Keating, Mr. McLean?

2 MR. KEATING: I believe --

3 CHAIRMAN JABER: It would be a change.

4 MR. KEATING: I believe we could allow the
5 parties to participate. I think you have a
6 little bit more difficulty moving from a -- I
7 don't think you have as much difficulty moving
8 from something noticed as final action to PAA,
9 since any PAA action that you take, even if
10 there's a party not here to address it, they
11 would have the opportunity to protest it if they
12 felt strongly enough.

13 COMMISSIONER BAEZ: And again, I just asked
14 the question because I want to know, you know,
15 what responsibilities we have. I don't have a
16 problem saying we'll issue it PAA and then, you
17 know, not have participation, if that's within
18 our discretion, Mr. McLean. At this point, the
19 hour is late.

20 COMMISSIONER PALECKI: Commissioners, I
21 support the staff recommendation, but I have no
22 problem with being further educated in this area
23 through a hearing process, especially if it's an
24 expedited hearing.

25 COMMISSIONER DEASON: Well, why can't we

1 just issue -- approve staff's recommendation as
2 PAA?

3 COMMISSIONER BAEZ: I could --

4 COMMISSIONER PALECKI: I would second that
5 motion.

6 COMMISSIONER BAEZ: I could support that.

7 COMMISSIONER DEASON: Very well. Well,
8 then that is a motion.

9 CHAIRMAN JABER: Okay. There has been a
10 motion and a second to approve staff's --

11 COMMISSIONER DEASON: And this is as it
12 relates to just the cutoff date. I don't have a
13 problem with section b.

14 CHAIRMAN JABER: Okay.

15 COMMISSIONER DEASON: Unless another
16 Commissioner does and wants to include both a.
17 and b. as part of the PAA.

18 CHAIRMAN JABER: I don't have any questions
19 on b. Anyone else?

20 Now, you want to clarify your motion,
21 Commissioner Deason?

22 COMMISSIONER DEASON: I would move that
23 for Issue 3B, Section a., that we approve
24 staff's recommendation and issue it as PAA.

25 COMMISSIONER PALECKI: Second the motion.

1 CHAIRMAN JABER: There has been a motion
2 and a second to approve staff's recommendation
3 in its entirety, but that Part a. of the issue
4 is done as a PAA. There was a second. All
5 those in favor say aye.

6 (Simultaneous affirmative responses.)

7 CHAIRMAN JABER: Issue 3B is approved with
8 that modification.

9 Issue 4A, parties may participate.

10 Ms. Brownless?

11 MS. BROWNLESS: We agree with staff's
12 recommendation.

13 CHAIRMAN JABER: Okay. Thank you.

14 Mr. Hoffman?

15 MR. HOFFMAN: We're fine with the staff
16 recommendation.

17 MS. PAUGH: My companies take no position.

18 CHAIRMAN JABER: Okay. And remind me,
19 Ms. Paugh, Mirant --

20 MS. PAUGH: DENA and Calpine.

21 CHAIRMAN JABER: Thank you. Mr. Bryant?

22 MR. BRYANT: No position.

23 CHAIRMAN JABER: Okay. Any other parties
24 here to address us on Issue 4A?

25 Now, staff, is this one of those that you

1 noticed as PAA, but were recommending that if
2 parties reached consensus, it could be done as a
3 final?

4 MR. KEATING: No. This one was noticed
5 strictly as proposed agency action.

6 CHAIRMAN JABER: Okay.

7 COMMISSIONER DEASON: Move staff.

8 COMMISSIONER PALECKI: Second.

9 CHAIRMAN JABER: There has been a motion
10 and a second to accept staff's recommendation.
11 All those in favor say aye.

12 (Simultaneous affirmative responses.)

13 CHAIRMAN JABER: Issue 4A is approved.

14 Issue 4B, there is a primary and an
15 alternative, and parties may participate.

16 MS. BROWNLESS: Yes, ma'am. This is an
17 issue that is very significant for JEA, because
18 it basically represents \$10 million in annual
19 revenue to them, and that's revenue that's
20 generated from the sale of short-term wheeling
21 over JEA's portion of the 500 kv lines.

22 We support the primary staff analysis.
23 Essentially, what the primary staff analysis
24 says is that this short-term wheeling revenue
25 should be treated the same way as existing

1 transmission agreements, basically allow us to
2 recover the short-term wheeling revenue for the
3 first five years. And then at the end of five
4 years, the issue, as the issue in 4A for
5 existing transmission agreements, would be
6 readdressed.

7 CHAIRMAN JABER: Thank you, Ms. Brownless.
8 Mr. Hoffman?

9 MR. HOFFMAN: Very briefly, Madam Chairman,
10 we support the alternate. It's consistent with
11 our filing.

12 CHAIRMAN JABER: Ms. Brownless or
13 Mr. Hoffman, have either of your clients done a
14 long-term analysis of which recommendation would
15 be most beneficial from a consumer perspective?
16 I want to know which is most beneficial to the
17 retail ratepayer. Does that make sense?

18 MS. BROWNLESS: Well, certainly in terms
19 of most beneficial to JEA, JEA's customers would
20 take an immediate \$10 million annual hit, which
21 means that they would suffer an immediate rate
22 increase.

23 Now, we have done no other -- we've
24 calculated that for us, that's a 90 cents per
25 kwh charge. There are other short-term revenue

1 wheeling revenues that are associated with TECO,
2 Power Corp., and FP&L, and I think they've
3 indicated that between the three of them, there
4 would be an \$8.1 million loss of revenue for
5 this type of revenue, but that is a six cents
6 per kilowatt-hour hit for them.

7 So what we're saying is that
8 proportionately for JEA, this is a very
9 significant issue, and it is an issue that if we
10 cannot somehow get it resolved, makes us joining
11 GridFlorida an extremely difficult proposition.

12 CHAIRMAN JABER: But your preliminary
13 numbers indicate if we go with the alternative
14 staff that it would in a 90-cent increase per
15 kilowatt-hour for the JEA customers?

16 MS. BROWNLESS: Yes, ma'am.

17 CHAIRMAN JABER: Okay.

18 COMMISSIONER PALECKI: Ms. Brownless, I
19 just wanted to ask about the statement you just
20 made. JEA does have the discretion to
21 participate in the RTO or not; correct?

22 MS. BROWNLESS: Oh, sure.

23 COMMISSIONER PALECKI: And at this point,
24 you haven't made any commitment either way to
25 participate in the RTO?

1 MS. BROWNLESS: What we have said is that
2 -- we've made quite a lot of effort to contact
3 the applicants here and have basically indicated
4 to the applicants that if we can get a
5 satisfactory resolution of the CBM issue, which
6 is 4B, and the short-term revenue wheeling
7 issue, that we will happily join GridFlorida.
8 JEA's preference is to join GridFlorida. We're
9 in Florida. We've worked with these Florida
10 utilities. We own portions of the 500 kv lines
11 jointly with Florida utilities. It is by far
12 our preference. However, we cannot leave \$10
13 million a year on the table.

14 COMMISSIONER PALECKI: And if you don't
15 participate in the RTO, you will recover that
16 \$10 million; is that correct?

17 MS. BROWNLESS: My understanding is that
18 the method of dealing with this is the seTrans
19 proposal, which is the RTO that if we didn't
20 become part of GridFlorida, we would become part
21 of. seTrans would allow the method of recovery
22 that we're suggesting here. In other words,
23 they would allow us to retain short-term
24 wheeling revenue for a period of years and then
25 have it phased out.

1 COMMISSIONER DEASON: Isn't there
2 mitigation due to short-term transmission sales?

3 MS. BROWNLESS: Well, sure, there are
4 some.

5 COMMISSIONER DEASON: Have you made any
6 attempt to -- the number that you have
7 identified, is that in any way mitigated, or is
8 that the gross amount?

9 MS. BROWNLESS: Well, I would like to defer
10 to Mr. Basford, if I could, and let him give you
11 the technical issue on that, because I didn't
12 calculate that number.

13 MR. BASFORD: I'm sorry, Commissioner. I
14 didn't hear the question.

15 COMMISSIONER DEASON: Well, under the
16 alternative recommendation, which I know that
17 you do not agree with, but under that, wouldn't
18 there be some mitigation available? wouldn't
19 there be some revenues that would mitigate your
20 direct impact that you've identified of some \$10
21 million?

22 MR. BASFORD: Under the alternative,
23 there's 20% declining steps over the five years,
24 and that would -- over the five years, it would
25 cost JEA probably in the neighborhood of \$6

1 million.

2 COMMISSIONER DEASON: Well, I'm looking at
3 page 75 of --

4 MR. BASFORD: Oh, I'm sorry. It would cost
5 more. The first year it would cost JEA \$2
6 million, and by the last year it would cost JEA
7 \$8 million, so over the five years, the amount
8 is in the neighborhood of \$20 million.

9 COMMISSIONER DEASON: Well, I'm looking at
10 page 75 of the recommendation, and the top
11 paragraph, at the bottom of that paragraph
12 there's this sentence that says that this,
13 meaning the loss, may be mitigated by
14 reimbursements from transmission revenues
15 arising from short-term firm and nonfirm
16 transmission revenues realized by the RTO.

17 MR. BASFORD: And those revenues would be
18 used as mitigation, but it would be on the
19 declining rate. It would not be the full amount
20 as in the primary recommendation. The primary
21 recommendation is that those revenues would be
22 derived and applied to the full amount. The
23 alternate is that those revenues would be
24 derived and applied on the declining rate over
25 the first five years.

1 CHAIRMAN JABER: Thank you, Mr. Basford.
2 Mr. Hoffman, Mr. Naeve, I asked whether
3 your clients had done some preliminary
4 calculations. Have you had time to think about
5 that?

6 MR. NAEVE: We just did them, and the
7 answer is, essentially, assuming JEA were to
8 join GridFlorida, we would be better under the
9 alternative analysis.

10 CHAIRMAN JABER: Assuming JEA joins
11 GridFlorida, you would be better under --

12 MR. NAEVE: Let me explain the logic on
13 this.

14 CHAIRMAN JABER: Yes.

15 MR. NAEVE: To the extent that we would
16 -- the applicants will be losing revenues from
17 selling short-term transmission service over
18 their system. At the same time, they will be
19 avoiding having to pay revenues to the extent
20 they're buying off-system power for their native
21 load. So there's somewhat of a -- both a gain
22 and a loss at the same time happening. To the
23 extent that we're only talking about buying and
24 selling power inside the state of Florida, each
25 of the applicants will be losing the revenues

1 they might be getting from the other applicants,
2 but gaining the advantage of not having to pay
3 the other applicants the revenues.

4 If JEA were not to join under the staff's
5 proposal, the initial proposal, the primary
6 proposal, we might be slightly worse off,
7 assuming JEA does not join, because under that
8 circumstance, there are some municipalities and
9 co-ops that would otherwise be paying revenues
10 to us for transmission service that we would not
11 receive. It's not a significant factor, but we
12 would be somewhat worse off.

13 However, if JEA chooses to join, then
14 we're better off under the alternative analysis,
15 and the reason is, we would otherwise be paying
16 JEA this \$10 million a year in charges that we
17 would use that we wouldn't otherwise have to
18 pay. So assuming JEA joins the RTO, we're
19 better off under the alternative analysis. So
20 it kind of depends on whether JEA joins or
21 doesn't join. And I presume, depending on which
22 direction you go on this, it would influence
23 whether they join or don't join. So it's kind
24 of a --

25 CHAIRMAN JABER: Thanks for all your help

1 in this matter.

2 Ms. Paugh?

3 MS. PAUGH: I'll be simple. My clients
4 support the alternative recommendation. No
5 tautologies here.

6 CHAIRMAN JABER: Thank you, Ms. Paugh.

7 COMMISSIONER PALECKI: And why?

8 MS. PAUGH: The full reimbursement defeats
9 the purpose of the depancaking, in our opinion.
10 The declining rate should -- it should apply to
11 everyone. There's no reason that JEA should get
12 all of these dollars. Somebody is going to pay
13 these dollars, and it just makes more sense to
14 do what was proposed.

15 COMMISSIONER PALECKI: And if JEA does not
16 join the RTO because we go with the alternate
17 recommendation, does that not have a negative
18 effect on your clients?

19 MS. PAUGH: We haven't analyzed that,
20 Commissioner. I can't really answer that
21 sitting here today.

22 CHAIRMAN JABER: What about -- Mr. Naeve,
23 have you analyzed whether there are negative
24 implications, perhaps unintended negative
25 implications if JEA doesn't join because we

1 accept staff's alternative recommendation?

2 MR. NAEVE: You mean if they do not join,
3 are there negative implications for us? well,
4 if they do not join, and if they have the
5 ability to stay out of an RTO, then we will
6 continue to have to purchase these services from
7 them as we do today, and they will recover their
8 10 million in revenue from the various
9 applicants, so our customers will be paying that
10 \$10 million if they don't join. If they do join
11 and if the staff alternative -- I mean if the
12 staff recommendation, the primary recommendation
13 is adopted, they will still be recovering that
14 \$10 million, but it will be re-evaluated after
15 five years, and there may be some phase-out
16 after that.

17 So, you know, one might say that if that
18 were to cause JEA to join and you adopted the
19 staff primary analysis, then there would be some
20 option in the future for our retail customers to
21 pay less of that charge.

22 CHAIRMAN JABER: Mr. Bryant?

23 MR. BRYANT: No position.

24 CHAIRMAN JABER: Okay. Any other members
25 of the audience that want to address us on this

1 issue?

2 Staff, let me ask you a question with
3 respect to the focus on retail rates. Have you
4 done just a quick and dirty assessment of the
5 effect on rates under the primary and the
6 alternative?

7 MS. KUMMER: No, ma'am, we did not. Again,
8 as we discussed another issue, given the focus
9 of the issues, it was a compliance issue. And
10 although we did not address the pricing issues
11 in any great detail in the first order, it did
12 end up being more of a compliance issue than a
13 cost/benefit analysis.

14 CHAIRMAN JABER: But conceptually, doesn't
15 it hold true -- what Mr. Naeve just said, that
16 to the degree JEA joins, if we go with the
17 primary staff recommendation, the benefits that
18 have got to inure, I would think, to the
19 ratepayers is that it's re-evaluated after five
20 years. Doesn't it hold true that rates will --
21 rate impact will be -- I don't want to say
22 minimal, because I don't know that, but
23 minimized?

24 MS. KUMMER: As Mr. Naeve pointed out,
25 there is the -- at the end of the first

1 five-year period, if you re-evaluate and at that
2 point decide you want to phase out or something
3 like that, for the first five years, nothing
4 will change from today. FPL will still be
5 paying JEA exactly what they're paying today.
6 They will still be getting exactly what they're
7 getting from everybody they wheel power for.
8 Nothing will change under the primary
9 recommendation. So to the extent that you don't
10 want to change the status quo, people are paying
11 what they're paying and people are getting what
12 they're getting, then that's what the primary
13 does.

14 COMMISSIONER PALECKI: And does that
15 minimize the benefits of having an RTO?

16 MS. KUMMER: That was my argument in the
17 alternative, yes.

18 COMMISSIONER PALECKI: Without just
19 referring to JEA, doesn't this decision have a
20 large effect throughout the state? I mean,
21 we're talking right now about JEA because they
22 -- certainly they oppose this alternate
23 recommendation, but what other effect in the
24 rest of the state would we see if we go with the
25 primary recommendation?

1 MS. KUMMER: I think probably, at least in
2 my mind, the most compelling argument is that if
3 utilities -- and again, I think these will
4 primarily be the munis and the co-ops. If they
5 don't see a benefit through depancaking, they
6 really have no incentive to join the RTO,
7 because they're going to keep paying what
8 they're paying today, and on top of that,
9 they're going to have to pay the RTO costs.

10 So I think the real danger is that the
11 scope of the RTO may well be limited to the
12 current applicants, at least from the short
13 term, and there's the danger that the benefits
14 envisioned under an RTO in terms of planning and
15 operation might not be realized if you do not
16 get the participation statewide.

17 COMMISSIONER PALECKI: If we go with the
18 alternate recommendation and JEA is part of the
19 RTO, is that a taking? I mean, are we not
20 giving JEA their fair share based upon the
21 investment that they've made in their
22 transmission facilities? Or is it just
23 something that they're fortunate because they're
24 in the northeast corner of the state, they're
25 kind of in a bottleneck area where everyone has

1 to go through JEA to get their power into the
2 State of Florida?

3 MS. KUMMER: I think part of it is luck of
4 the draw. I won't speak to the taking issue.
5 I'll let Mr. Keating address that.

6 But there is -- as the Chairman pointed
7 out, there is a mechanism in the tariff to
8 provide a phase-out for the loss of these
9 revenues. But that reimbursement, if you will,
10 is dependent on the through-and-out revenue
11 received by the RTO. If that revenue doesn't
12 meet the total needs, if they don't generate
13 enough to give JEA its total lost revenues, then
14 they will be out that shortfall.

15 So there's no guarantee under the
16 reimbursement that anyone who loses wheeling
17 revenue will get everything back. That's the
18 danger in that, if you're looking at that in
19 terms of an impact. It is a type of
20 mitigation. There is no guarantee that it will
21 totally mitigate the loss.

22 MR. WHEELER: Just to add to that, I think
23 you have to understand that when you go -- you
24 migrate towards a system-wide rate, there's
25 going to be winners and losers. JEA happens to

1 be a loser. But in terms of --

2 CHAIRMAN JABER: He didn't mean it the way
3 it sounded.

4 MR. WHEELER: In terms of, you know, is
5 this unfair or not unfair, well, it's just the
6 nature of the beast, I think. When you move
7 from paying rates based on individual
8 transmission systems to zonal rates and then a
9 system-wide rate, it's inevitable that you're
10 going to have winners and losers.

11 This addresses kind of a mitigation
12 procedure that will soften the blow, and the
13 question is, is the mitigation procedure that
14 the applicants have proposed, which begins
15 phase-out immediately, is that appropriate, or
16 should we keep them whole for the first five
17 years, which I would -- one of the intervenors
18 commented that this would be consistent with the
19 treatment of long-term contracts, because under
20 the treatment of long-term transmission
21 agreements, they are left whole for the first
22 five years and are phased out in years 6 to 10.
23 So one of the intervenors didn't notice that
24 there's kind of a mismatch between the treatment
25 that you're affording short-term versus

1 Long-term.

2 MR. NAEVE: Could we make one
3 observation?

4 CHAIRMAN JABER: Yes, Mr. Naeve. And
5 before you do, because I want you to address
6 this as well, staff, is there any magic
7 associated with the five years? The initial
8 proposal for five years came from --

9 MS. KUMMER: It was just the applicants'
10 proposal.

11 CHAIRMAN JABER: Okay. Mr. Naeve, where
12 was the five years? What makes that time period
13 critical, and is that an opportunity to
14 compromise between the primary and alternative
15 by making the time period shorter?

16 MR. NAEVE: Well, we wanted to have a
17 phase-out that was as gradual as possible to
18 eliminate the cost shifts as much as possible to
19 make it more tenable for companies to
20 participate in the RTO, so that's why we wanted
21 to have a long phase-out.

22 As to the issue of disparate treatment
23 between long-term and short-term, I would point
24 out that on the long-term, it seems to me the
25 way that issue works is, parties who had

1 long-term contracts would continue to pay the
2 terms under those contracts, at least for the
3 first five years, and then we were going to at
4 the end of five years begin to transfer them to
5 the new RTO rates. They would no longer be
6 paying pancaked rates.

7 As to the short-term -- but in that
8 circumstance, there was a source of revenue
9 there to kind of pay for the cost mitigation.
10 In fact, it was just going to be from the
11 revenues that were paid by the transmission
12 customers. They would be paying these long-term
13 transmission rates as they always have, and the
14 particular utility that was a transmission
15 provider in that circumstance would continue to
16 receive those revenues, so that was a source of
17 revenue.

18 with respect to the staff's proposal, under
19 the -- for short-term transactions, as I
20 understand it, the applicants would be made
21 whole for their lost revenues, but there's no
22 description in their proposal as to where these
23 revenues are going to come from to make them
24 whole. And that was a question we had, because
25 as I heard the staff description, it occurred to

1 me what their -- the source of the revenue is,
2 you simply wouldn't eliminate pancaked charges.
3 We had assumed that there would be an
4 elimination of pancaked charges, but there would
5 be a source of revenue to make up for the loss.
6 But, frankly, I'm not sure where that source of
7 revenue would come, and if it's merely a
8 continuation of pancaked rate charges, that
9 would probably be perceived as inconsistent with
10 one of the primary purposes of creating an RTO.

11 MR. WHEELER: If I could --

12 CHAIRMAN JABER: Ms. Brownless wants to --

13 MS. BROWNLESS: Yes, I simply want to make
14 two comments. My understanding of the original
15 proposal for the phase-out of the short-term
16 revenues submitted by the applicants is that the
17 revenue dollars associated with that would come
18 from the through-and-out rates.

19 CHAIRMAN JABER: From the what?

20 MS. BROWNLESS: Through-and-out rates. And
21 to the extent that enough revenue was generated,
22 it would be passed along, and to the extent it
23 wasn't, it would be carried forward. That was
24 my understanding.

25 Our suggestion would be that a similar

1 mechanism would be used for 100% of the recovery
2 with the same type of thing. To the extent you
3 get it, you get it and carry it forward.

4 with regard to other implications for the
5 State of Florida, if JEA does not participate in
6 the GridFlorida RTO, as I understand, JEA has to
7 be in either an ITP or an RTO. At this time,
8 the options appear to us to be GridFlorida or
9 SeTrans. If we become a member of SeTrans, then
10 our facilities are operated and managed by
11 SeTrans.

12 So there are other implications for Florida
13 customers which could very well have rate
14 impacts. And I can't sit here and quantify them
15 today, but at a minimum, I believe that then
16 capacity that is transmitted on JEA's portions
17 of the 500 kv lines -- which, by the way, JEA is
18 the only person that has any excess capacity, if
19 you will, on those lines -- would be at a rate
20 that would be the through-and-out rate for the
21 SeTrans system. So there are other
22 considerations when JEA joins SeTrans.

23 CHAIRMAN JABER: Staff, you were trying to
24 say something.

25 MR. SPRINGER: Yes. I would like to

1 clarify that short-term firm and nonfirm
2 point-to-point transmission service revenues
3 would be applied to the short-term revenue
4 transmission shortfalls. That's on page 73 on
5 the last full paragraph. It's in the last
6 sentence.

7 CHAIRMAN JABER: Mr. Naeve, is that your
8 understanding? Is that correct?

9 MR. NAEVE: Well, I guess I'm not sure
10 what that means. We had proposed that the lost
11 revenues would be added to the through-and-out
12 rate and recovered that way.

13 MS. BROWNLESS: That's what I think the
14 original proposal was.

15 MR. WHEELER: That is what that says, or
16 what it's intended to say.

17 MR. NAEVE: That's what you meant to say,
18 the through-and-out --

19 MR. WHEELER: Through-and-out revenues;
20 right.

21 MR. NAEVE: Through-and-out revenues.

22 MR. WHEELER: I think the terminology that
23 was used in the tariff is what we put here, but
24 I think in truth, it was intended to be
25 through-and-out revenues.

1 MR. NAEVE: I see. There is a
2 complication. It's a broader complication that
3 affects a lot of what we're doing here, but in
4 FERC's standard market design, they're also
5 proposing a change in the nature of transmission
6 service, and they're going to eliminate firm
7 point-to-point service and network service and
8 replace it with a single service called network
9 access service, and they are not going to allow
10 the charging of through-and-out rates.

11 So that's a problem with our proposal as
12 well as with the staff proposal, as to where
13 would we turn to recover these revenues. We
14 would like to recover these revenues, but if
15 we're not going to be allowed to charge
16 through-and-out rates, we would have to find
17 some other source for the revenue, and I'm not
18 sure what that would be.

19 CHAIRMAN JABER: Well, you're assuming that
20 they would bring you under the standard market
21 design.

22 MR. NAEVE: At least with respect to the
23 tariffed service, that's right. I mean,
24 frankly, we're all going to have to speculate as
25 to how much of that they'll apply to us and how

1 much they'll be willing to grant us an
2 exception. And it could be that for some
3 aspects we could get exceptions, and for other
4 aspects they would want to see consistency. You
5 know, my guess is that it's not going to be a
6 black and white issue. It's going to be issue
7 by issue.

8 COMMISSIONER PALECKI: well, Mr. Naeve, if
9 we want to fulfill the objective of eliminating
10 pancaking or minimizing it, and we also wanted
11 to make our RTO attractive to JEA, what do we
12 do? Is there some middle ground? Where do we
13 go?

14 MR. NAEVE: well, it seems to me -- you
15 know, this is a very difficult issue. Let me
16 tell you my perspective on this from two
17 different angles. From JEA's angle, they
18 currently are earning revenues from providing
19 transmission service which, if they had to
20 provide transmission service on a pure cost of
21 service basis, they would not collect. And
22 consequently, it would not make much sense for
23 them to join if they have to give up substantial
24 revenues. And in a world in which there could
25 be a -- well, I mean, that's one of the factors

1 confronting them. The other factor confronting
2 them is, over time, if entities like them don't
3 participate, they may well at some point
4 through legislation or other means be required
5 to participate, so they have to factor that in
6 as well.

7 On the flip side, the additional revenues
8 which they are earning are revenues which a
9 jurisdictional utility would never be allowed to
10 earn, because they would be considered monopoly
11 rents. They are significantly above the cost of
12 service. And if a traditional utility attempted
13 to collect the value of the service on a
14 facility that's a choke point or bottleneck
15 facility and tried to charge for transmission
16 service based on the value, they would be told
17 you can't do that, that you collect the cost of
18 service rate, and we'll provide you a fair
19 return on your investment, but to the extent
20 that anything is above that, we won't allow you
21 to charge that. And it's that additional amount
22 they would like to be compensated for, which
23 other transmission providers in the state could
24 never charge in the first place.

25 So that's the dilemma we face. Do you

1 allow them to collect an amount which a normal
2 transmission provider would never be allowed to
3 collect to get them to participate in the
4 system? And if they choose not to participate,
5 you're probably going to end up paying that
6 amount anyway, because if they don't
7 participate, they can collect it by virtue of
8 where they are and the assets they own.

9 So it strikes me at some point a compromise
10 in which they -- there is a transition period in
11 which they are not penalized for joining the
12 RTO, and then over time there is a phasing out,
13 may well be the right place to go. That
14 protects them in the short run over their
15 revenues. It also protects them in the long run
16 that they might be required to participate and
17 give up those revenues immediately. So it
18 strikes me there's got to be someplace in the
19 middle like that where you come out and it
20 benefits all the parties.

21 If they don't join, those additional
22 revenues that I described are probably going to
23 be paid by us anyway, so it's probably to our
24 advantage to have them in and have their
25 facilities as part of the system.

1 COMMISSIONER PALECKI: How much would it
2 cost to build a transmission line around JEA?

3 MR. NAEVE: I don't know.

4 CHAIRMAN JABER: Well, more than 10
5 million, or 50 million.

6 MR. NAEVE: That's right.

7 CHAIRMAN JABER: On the FERC NOPR, walk me
8 through -- FERC issues the NOPR, there's a
9 comment period and --

10 MR. NAEVE: That's correct.

11 COMMISSIONER DEASON: -- an opportunity for
12 discussion.

13 MR. NAEVE: That's right.

14 CHAIRMAN JABER: FERC issues what? A
15 recommended order?

16 MR. NAEVE: They'll issue a final order
17 then. The comment period is now set for -- I'm
18 sorry. Comments are due in October. I forget
19 the exact date. October the 15th. And then
20 FERC has proposed to issue a final order in
21 February, and then in their order, they have a
22 phased implementation schedule, so it would not
23 all be implemented day one.

24 CHAIRMAN JABER: Okay. Commissioners, any
25 other questions?

1 COMMISSIONER DEASON: Let me -- do you
2 think that schedule is going to be maintained?

3 CHAIRMAN JABER: We won't tell them what
4 you said.

5 MR. NAEVE: I think there's some
6 opportunity for slippage in the February date,
7 just given the complexity of the issues they
8 have to deal with. They certainly provided a
9 very detailed proposal, but even in their
10 detailed proposal, it's clear that the issues
11 are so complex, they have a lot still to think
12 about. And I'm sure the volume of comments
13 they're going to receive will be enormous, and
14 then having to deal with all those comments and
15 come up with a final rule in which they address
16 the comments and reflect them in their proposed
17 rule I think will take a lot of effort and
18 time.

19 So consequently, I think the February date
20 is a little bit ambitious. But I also know, you
21 know, that they are very determined to do this
22 as quickly as possible, because they see it as
23 the ability to cure some of the market flaws
24 that they confront in other parts of the
25 country.

1 COMMISSIONER PALECKI: Commissioners, I
2 would point out that this is a PAA, and in the
3 last issue that wasn't a PAA, or one of the two
4 subparts, we moved into the PAA arena so that we
5 could quickly have a hearing and become
6 educated. And my thought is that perhaps we
7 could go ahead and move this issue as a PAA --
8 well, not perhaps. I'm certain that someone
9 will protest whether we go with the primary or
10 the alternative. And apart from going to
11 hearing and further educating ourselves on the
12 issue, I think it would give the parties an
13 opportunity to negotiate with JEA and perhaps
14 reach that middle ground that Mr. Naeve was
15 discussing.

16 So with that, I would move the staff's
17 alternative recommendation.

18 COMMISSIONER DEASON: Second.

19 CHAIRMAN JABER: There has been a motion
20 and a second to approve staff's alternative on
21 Issue 4B. All those in favor say aye.

22 (Simultaneous affirmative responses.)

23 CHAIRMAN JABER: Opposed, nay.

24 Okay. Issue 4B is approved.

25 Issue 4C.

1 MR. MCWHIRTER: Madam Chairman --

2 CHAIRMAN JABER: Hang on a second.

3 Ms. Brownless, were you going to say something?

4 MS. BROWNLESS: No, ma'am.

5 CHAIRMAN JABER: I heard a voice over here.
6 Was that you, Mr. McWhirter?

7 MR. MCWHIRTER: I'm not a member of your
8 staff. I'm the confused consumer curmudgeon,
9 but I would like to address 4C if we're at that
10 point.

11 CHAIRMAN JABER: Let me see. How is that
12 one? What is that? Parties may -- go ahead,
13 Mr. McWhirter.

14 MR. MCWHIRTER: I would propose to you
15 that you issue a PAA that is not the same as the
16 staff recommendation. The staff has recommended
17 that the costs attributable to the RTO be flowed
18 through a capacity cost recovery clause, and the
19 alternative that I would recommend to you is
20 that the costs be maintained in the base rates
21 of the utilities which own the transmission
22 system.

23 I was confused principally when I read the
24 columns on page 78, if you'll look at that. The
25 column for 2004, when you add up the numbers,

1 indicates that the rate increase that consumers
2 will anticipate through the capacity cost
3 recovery clause will be \$122 million in that
4 year. The next year, there was a question in my
5 mind whether the cost went up 149%, by 182
6 million more, or whether they only went up 49%
7 by a \$60 million increase.

8 I'm advised by staff that the numbers are
9 cumulative and not additive, and therefore, in
10 the year 2008, the annual price that consumers
11 will be expected to pay for the operation of the
12 RTO will be \$320 million in a rate increase
13 through the capacity recovery clause.

14 And that was very perplexing, because the
15 whole theory of an RTO is that it should reduce
16 costs. They presently have 17 control centers,
17 and that will be reduced to one or two control
18 centers. And after the setup is completed,
19 costs should go down, and costs that will go
20 down will be the costs that are presently being
21 incurred by the three investor-owned
22 utilities. So what I perceive will happen is
23 that costs will be shifted, that are now being
24 borne by the investor-owned utilities will be
25 shifted to the RTO, and they will employ people

1 and so forth. And as a result, there will be a
2 situation in base rates as we know them now that
3 include costs that will no longer be there
4 because they're going to be shifted to the RTO.

5 I find that the two reasons that the
6 applicants give for the recommendation to
7 collect these costs through a cost recovery
8 clause are that the Commission will not
9 continually have to be resetting base rates.
10 Well, I think that's an argument in favor of
11 putting it in base rates, because if costs are
12 going to be moved from the investor-owned
13 utilities to the RTO, then base rates should be
14 reset. But if the costs aren't moved to the
15 RTO, or if base rates already include most of
16 these costs, they can be paid from existing base
17 rates.

18 There are two other really serious factors
19 with base rates that we've experienced over the
20 past few years when we had no rate cases. Each
21 utility, as you know, has a large capital
22 investment, and the base rates were essentially
23 set when that capital investment went in, and it
24 depreciates every year. For the three
25 utilities, the depreciation amount is somewhere

1 like \$840 million for the assets that are in the
2 ground now. If they add new assets, of course,
3 that takes up part of the revenue that's being
4 collected. But if you don't, that's a number
5 that is there that can be utilized to absorb
6 these costs.

7 Another very major number is about \$5
8 billion that's sitting out in deferred taxes.
9 As you may recall, when you had rate cases early
10 on, the concept was that you would charge
11 customers for taxes -- in the year of the rate
12 case, you would charge them for taxes that the
13 utility did not have to pay at that time,
14 because you wanted to spread it over the useful
15 life of the system. And what happened was, the
16 theory was that in the early years, consumers
17 would pay more taxes than they needed to, but in
18 the later years, those taxes would flow back
19 through a reduction in the depreciation costs of
20 the assets.

21 So that's another very large sum of money
22 that is available to offset these costs, and you
23 can use those costs, or those revenues to pay
24 these transmission costs without having to
25 continually reset base rates. In fact, the

1 corollary of the argument in favor of the staff
2 recommendation is that if the utilities don't
3 add considerable new assets to their rate bases,
4 you should be in there continually reducing the
5 charges to customers, because their costs are
6 going down over time.

7 We didn't have a rate reduction or a rate
8 case for Florida Power & Light for a number of
9 years. This proceeding that we're in now
10 triggered a rate case because you were concerned
11 that if they got rid of their transmission
12 assets and turned them over to a transco,
13 customers would be paying too much in the base
14 rates that were already there. You left them in
15 the rate base of the utilities, and Florida
16 Power & Light still had a 9% reduction, and
17 Florida Power had a 7% reduction. Tampa
18 Electric was able to absorb its new coal
19 gasification plant with no rate increase because
20 the base rates were already high.

21 So I would suggest to you strongly that if
22 you're interested in protecting consumers, one
23 very good way to do it is to allow these costs
24 to be in base rates. If the costs are still
25 there, there's no prohibition against a utility

1 coming for a base rate case. We anticipate that
2 Tampa Electric, Florida Power, and Florida Power
3 & Light will be coming in for general rate cases
4 very shortly anyway because of the construction
5 that's now underway.

6 The other reason that is given for
7 recovering this cost through the capacity cost
8 recovery clause is that these costs are outside
9 of the applicants' control. They're being
10 incurred by the RTO, and therefore they can't do
11 anything to minimize the costs. Well, it would
12 suggest to me that what that means is that if
13 the costs are by the RTO and they're levied by
14 the Federal Energy Regulatory Commission and
15 approved by that Commission rather than you, you
16 lose control, whereas if you keep the costs in
17 base rates as the Public Counsel has suggested
18 in his presentation on this issue, you don't
19 have to worry about being preempted by the
20 Federal Energy Regulatory Commission over costs
21 that you will have no further control.

22 So I would respectfully suggest to you that
23 what you might want to do is have a PAA that
24 puts these costs -- collects these costs through
25 base rates. So you won't get an objection from

1 the group that I represent if you do that. And
2 perhaps as the utilities think it through, and
3 the issues that are facing them otherwise, they
4 may recognize this, and you'll save consumers a
5 \$2,422 million rate increase with increments of
6 50% going up thereafter.

7 Thank you very much.

8 CHAIRMAN JABER: Thank you, Mr. McWhirter.
9 Ms. Brownless, did you have anything on
10 this issue?

11 MS. BROWNLESS: No, ma'am.

12 CHAIRMAN JABER: Mr. Hoffman?

13 MR. HOFFMAN: Very briefly, Madam Chairman.
14 Just for purposes of clarification, on this
15 issue, what the GridFlorida companies filed was
16 a proposal that we recover our incremental
17 transmission costs through the capacity cost
18 recovery clause, and so we're talking about
19 incremental costs, which would be transmission
20 costs, only those are that above and beyond
21 transmission costs included in base rates
22 already.

23 We think that the staff has provided you
24 with the appropriate recommendation in this
25 case. The use of the capacity cost recovery

1 clause is appropriate, as it would give us an
2 opportunity to capture costs that are
3 fluctuating, and to do so in a way which would
4 ensure that there would not be any over-recovery
5 or under-recovery of costs. We also think that
6 the use of that clause is administratively
7 efficient, as the GridFlorida companies are
8 obviously already utilizing the Commission's
9 capacity cost recovery clause for cost recovery
10 already for a number of costs.

11 So for those reasons, we think that the
12 staff has entered a good recommendation on this,
13 and we support it.

14 CHAIRMAN JABER: Thank you, Mr. Hoffman.
15 Ms. Paugh?

16 MS. PAUGH: No position.

17 CHAIRMAN JABER: Mr. Bryant?

18 MR. BRYANT: No, ma'am.

19 CHAIRMAN JABER: Staff, if you could
20 address two things Mr. McWhirter raised. With
21 respect to -- I think Mr. McWhirter said if the
22 costs are determined by FERC anyway, then why
23 would the Commission want to be accepting of
24 those costs through the capacity clause as
25 opposed to, I assume, some sort of earnings

1 review associated with a rate base proceeding.
2 And I missed the distinction. Even if it's a
3 rate case that we're looking at the cost, isn't
4 it correct that we would be bound by whatever
5 costs that FERC has agreed with the company
6 would be prudent?

7 MS. BASS: I think our position has been,
8 and it was stated in the Commission's December
9 20th order, that they wanted to retain retail
10 rate jurisdiction over transmission assets. And
11 I would assert that we would be -- or the
12 Commission could review those costs that are
13 recovered through this clause in the same manner
14 that they review any other costs that are
15 recovered through any of the clauses.

16 CHAIRMAN JABER: Okay. And with respect to
17 the fluctuations of the costs, they are
18 incremental transmission costs, but these are
19 also the highly variable costs; right? So to
20 process them through rate cases could actually
21 create rate cases every year?

22 MR. BOHRMANN: Yes, it would be more
23 administratively efficient through a cost
24 recovery clause as opposed to having a rate case
25 each year or every two years.

1 COMMISSIONER PALECKI: What is meant when
2 we talk about incremental transmission costs? I
3 know that we've been told by Mr. Hoffman that
4 that would just be the costs over and above what
5 the utilities are paying today. How is that
6 going to be calculated? Will, for example, the
7 O&M that the investor-owned utilities would
8 otherwise have spent on the transmission, will
9 that be factored out, and is this going to be a
10 very, very complicated procedure for us to
11 figure out what an incremental cost is?

12 MR. WHEELER: I think that's an excellent
13 question. I think it was contemplated by the
14 staff that what is truly incremental would be
15 determined in the recovery clause proceeding.

16 I want to emphasize that the applicants
17 have represented that they believe that the
18 entire costs of the grid management charge, the
19 T.D.U. adder, and the system charge are by
20 definition incremental. In other words, it's my
21 understanding that they're seeking or will seek
22 recovery of 100% of those three charges without
23 regard to base rate recovery.

24 I don't think that's necessarily the way to
25 go. I think there will have to be some

1 consideration of base rate recovery of
2 transmission costs. And the reason that I say
3 that is because the way the RTO rates are
4 structured, for the first five years of
5 operation, the investor-owners will not pay
6 zonal rates on behalf of their retail load.
7 Instead, those costs of the existing
8 transmission system, and again, existing based
9 on whichever cutoff date you pick, those
10 existing costs will remain kind of on the base
11 rate side.

12 So that pot will be essentially -- well, I
13 don't want to say frozen, but the facilities in
14 that pot will remain the same over time. And as
15 new facilities are added, those are recovered
16 through the system charge. So really, you've
17 got a situation where base rates are covering
18 the costs of the existing system, and the costs
19 -- those existing costs really aren't going to
20 change, or that existing investment won't
21 change. The costs in terms of O&M may change.
22 But essentially you've frozen that pot, and as
23 sales grow, presumably you're recovering more
24 from the ratepayers to support that kind of
25 frozen pot.

1 So from my perspective, we can't just say
2 that those three components are by definition
3 incremental, and I think that's where we depart
4 from the position of the applicants in terms of
5 cost recovery. We're saying, yes, capacity cost
6 recovery is a legitimate mechanism for truly
7 incremental costs. Exactly how those are
8 defined, I think that's where we part company
9 with the applicants.

10 COMMISSIONER PALECKI: And we don't have to
11 decide that here today.

12 MR. WHEELER: No. It was our anticipation
13 that again that would be considered at the time
14 they come in for cost recovery.

15 COMMISSIONER PALECKI: Mr. Hoffman, how do
16 we determine what the incremental cost is?

17 MR. HOFFMAN: Commissioner Palecki, before
18 I respond to that, Madam Chairman, with your
19 indulgence, I believe Mr. Naeve needs to get
20 going, and maybe now might be the right time --

21 CHAIRMAN JABER: We all need to get going.

22 MR. HOFFMAN: He's got a flight to catch,
23 and so I was hopeful with your indulgence that
24 you might permit Mr. Naeve to be excused.

25 CHAIRMAN JABER: Commissioner Palecki, is

1 your question of Mr. Naeve or Mr. Hoffman?

2 COMMISSIONER PALECKI: Well, if Mr. Naeve
3 could give us the benefits of his knowledge
4 before he leaves.

5 CHAIRMAN JABER: And then you're excused.
6 So repeat your question.

7 COMMISSIONER BAEZ: If it's a good answer.

8 MR. HOFFMAN: Well, I think it was -- let
9 me take a shot at it.

10 COMMISSIONER PALECKI: What is incremental
11 cost? You know, it sounds good when Mr. Hoffman
12 tells us that we're only going to have to put
13 the dollars through the clause that are over and
14 above, you know, what would normally already be
15 paid by the utility, but I'm not sure how easy
16 that will be to calculate.

17 MR. HOFFMAN: Ms. Greely would like to
18 respond.

19 CHAIRMAN JABER: Mr. Naeve, thank you.

20 COMMISSIONER PALECKI: Thank you,
21 Mr. Naeve.

22 MS. GREELY: Mr. Wheeler was correct that,
23 you know, we did have a difference in how we
24 were going to calculate it, and there was a
25 difference between the staff recommendation and

1 our proposal, but we agree with the staff
2 recommendation. I think they're saying rather
3 than look at whether it's just existing
4 facilities that are included in base rates and
5 you're going to recover through the clause grid
6 management and new facilities, the most
7 straightforward way to do it is look at the
8 dollar amount that's included in base rates and
9 then compare that to the charge or the bill that
10 you would get from GridFlorida. So I think
11 although it's different from our initial
12 proposal, we support the staff's recommendation,
13 and incremental would just be what's in base
14 rates versus the bill that you receive from the
15 RTO.

16 CHAIRMAN JABER: Commissioners, any other
17 questions or a motion?

18 COMMISSIONER DEASON: Let me ask a
19 question. It's not too often I get to ask
20 Ms. Greely a question, so I need to take
21 advantage of --

22 MS. GREELY: No one looks forward to it
23 less than me.

24 COMMISSIONER DEASON: The amount that is
25 in base rates, do you contemplate that that

1 amount would grow as sales grow, or is that a
2 static number?

3 MS. GREELY: I think it could be done
4 either way.

5 COMMISSIONER DEASON: And we can address it
6 at the fuel hearing, or rather the capacity cost
7 recovery --

8 MS. GREELY: Exactly, exactly. Analogous
9 now -- you know, we have other charges where you
10 just look at when you set base rates what was
11 the dollar amount that was included in base
12 rates. So I think you could look at it as a
13 static amount. But that's one of the --

14 COMMISSIONER DEASON: But you're aware
15 staff has a different idea on that.

16 MS. GREELY: I'm aware of that. And I
17 think that staff has heard, you know, comments
18 from us that either way -- in fact, we submitted
19 testimony that you should look at the impact of
20 load growth. So I think either way is
21 appropriate.

22 But again, I think that's the advantage of
23 a recovery clause, because it's not -- you know,
24 sometimes it will be higher than it was the year
25 before, but sometimes it will be lower. But a

1 clause allows you to look at load growth as well
2 as what charges, what bill did we receive from
3 the RTO that year.

4 COMMISSIONER DEASON: Thank you.

5 CHAIRMAN JABER: Any other questions,
6 Commissioners, or a motion on 4C?

7 COMMISSIONER PALECKI: I would move staff's
8 recommendation.

9 COMMISSIONER DEASON: Second.

10 CHAIRMAN JABER: There's a motion and a
11 second on 4C. All those in favor say aye.

12 (Simultaneous affirmative responses.)

13 CHAIRMAN JABER: 4C is approved.

14 That takes us to Issue 5, Commissioners,
15 and again, we need to just have a discussion in
16 this regard, but let me tell you what I've
17 done. In anticipating -- if we assume the
18 Commission will approve staff's recommendation,
19 we did take a look at the calendar, and if it's
20 a one-day hearing, there is a possible date in
21 October, and there is a -- well, there are two
22 days in October. One would be the third week,
23 and one would be the tail end of October, first
24 of November.

25 If we use those hearing dates, it would

1 necessitate modifying staff's recommendation to
2 require the 30-day petition to be filed along
3 with -- I'm throwing it all out there -- along
4 with testimony -- I don't know if any of this is
5 feasible -- along with testimony from the
6 applicants, an expedited time period for
7 intervenor testimony, and then a vote in
8 December.

9 Now, that's one possibility. But I think
10 we need to establish first of all what our
11 approach needs to be. And if requires -- if our
12 approach is to have a hearing, I would like to
13 have some feedback from the Commission on
14 whether you want that to be an expedited
15 hearing.

16 COMMISSIONER BAEZ: Madam Chair, I've got a
17 question, perhaps of the General Counsel. If we
18 were to -- if we set a hearing on the market
19 design issue, to what extent does that -- and
20 given the FERC time lines for comment, to what
21 extent does having a docket open preclude us or
22 limit our ability to fully participate in the
23 rulemaking at FERC? Or is that a ghost? You
24 know, is that just something that's not there?

25 MR. MCLEAN: well, Commissioners, it

1 strikes me like a Cindy Miller question, to tell
2 you the truth. I'm not that familiar with FERC
3 practice to be able to say one way or the other,
4 frankly.

5 COMMISSIONER BAEZ: Well, I'm more
6 concerned from a state perspective, I think the
7 key being the fact that we have an open docket
8 concerning market design.

9 MR. MCLEAN: Yes, sir.

10 COMMISSIONER BAEZ: would that fact -- you
11 know, I think the case can be made that by
12 participating at the rulemaking, we run the risk
13 of prejudging issues that are open at hearing.

14 CHAIRMAN JABER: There's Ms. Miller, but I
15 would remind you, Commissioner Baez, for
16 whatever it's forth -- and maybe this is a whole
17 different situation, but that has always been
18 the case as it relates to GridFlorida and the
19 RTO proceedings at FERC --

20 COMMISSIONER BAEZ: Understood.

21 CHAIRMAN JABER: -- anyway. And I think
22 what we've done is participated in those
23 proceedings by reminding FERC that we've got
24 this state proceeding.

25 COMMISSIONER BAEZ: And I guess that's part

1 of my point. We need to have that -- I don't
2 think "caution" is the word, but I think we need
3 to flesh out, you know, how we're going to deal
4 with our participation at the FERC, if it's
5 going to be consistent with the way that we've
6 always done it.

7 And given that, we need to weigh the
8 relative value of that as well, whether a
9 participation in the rulemaking that's full of
10 caveats, you know, "By the way, don't" -- you
11 know, "We're just saying something to say
12 something, because we really have an open
13 docket." I mean, that may have played before,
14 but I'm wary of what the diminution of value of
15 our participation is going to mean to us in the
16 long run if we have an open docket concerning
17 the market design. And I'm not saying that we
18 shouldn't have an open docket. I just want to
19 try and throw that out there so that we can
20 discuss it.

21 MR. MCLEAN: To be absolutely frank, I'm
22 having a hard time grasping -- I'm sorry. I'm
23 having a hard time -- to be frank, I'm having a
24 hard time grasping your concern.

25 COMMISSIONER BAEZ: If I'm discussing -- if

1 I'm entertaining market design issues in an open
2 docket at this Commission, I'm limited, severely
3 or otherwise -- to some extent, I'm limited in
4 what I can say before FERC and the suggestions
5 and the comments that I can make relative to --

6 MR. MCLEAN: I see.

7 COMMISSIONER BAEZ: -- our very posture on
8 the matter.

9 MR. MCLEAN: Yes, sir.

10 COMMISSIONER BAEZ: And I guess I'm trying
11 to get a feel in my mind as to what the value is
12 of our participation in the rulemaking relative
13 to our participation in a formal hearing process
14 concerning market design issues. Maybe I'm
15 making it more complicated --

16 MR. MCLEAN: Could be.

17 COMMISSIONER BAEZ: -- than it really is,
18 but --

19 MR. MCLEAN: I don't grasp it as a legal
20 issue. I see the value in your resolving the
21 issues at the state level for the benefit of the
22 state ratepayers here and now. If you ask me,
23 as I gather --

24 CHAIRMAN JABER: Commissioner, may I try?

25 MR. MCLEAN: Please do. I'm not doing so

1 well with it.

2 CHAIRMAN JABER: As an example, purely as
3 an example -- I don't know what we'll do with
4 financial transmission rights versus physical
5 transmission rights, but let's say one day FERC
6 as part of the standard market design entertains
7 the debate over whether financial transmission
8 rights or physical transmission rights are
9 appropriate. The question is, are we limited in
10 taking a position, an open position in the FERC
11 proceeding on financial transmission rights
12 versus physical transmission rights when that's
13 the very issue we'll be addressing in a state
14 proceeding? Does that capture --

15 COMMISSIONER BAEZ: Have I introduced my
16 translator, Chairman Jaber?

17 CHAIRMAN JABER: It's late. I'm sorry.

18 COMMISSIONER BAEZ: But I think beyond that
19 -- and you're right. It's probably not a legal
20 issue, because the answer to that is probably
21 yes. But --

22 MR. MCLEAN: Madam Chairman, I thought you
23 were going to take a shot at the answer. I'm
24 sorry.

25 CHAIRMAN JABER: No, no.

1 MR. MCLEAN: I think the answer is you
2 should move with extreme caution if you are
3 communicating with someone else -- you're
4 communicating with someone else about a pending
5 docket at the agency, and --

6 CHAIRMAN JABER: See, that's what happens
7 to him when you don't feed him either.

8 COMMISSIONER BAEZ: No, and I guess -- but
9 I think Mr. McLean was right at the outset. It
10 probably isn't a legal question. I guess I just
11 want to throw out a concern that can be resolved
12 one way or the other. It really doesn't matter
13 at this point to me, but just for purposes of
14 discussion, I think we need to -- I would ask
15 my fellow Commissioners to consider the value of
16 full-on unfettered participation as part of a
17 rulemaking which is at this point today at 7:27
18 our posture right now, compared to having an
19 open docket and suffering the loss of that
20 unfettered participation. I don't know what the
21 answer is. I don't know which one carries more
22 weight or which one preserve our rights better.

23 CHAIRMAN JABER: well, I think it's a great
24 question, and I don't know what the answer is
25 either, but there's the opposite question too.

1 what value do we have in negotiating and
2 posturing and lobbying FERC for -- I can't find
3 a better way to say that -- with implementing a
4 Florida-specific model on market design if we
5 don't have the open proceeding and we can show
6 movement? I mean, I think we've been successful
7 thus far -- and again, I don't know if this is
8 applicable or not, but we've been successful
9 thus far with FERC because we've been able to
10 say, "Back off of Florida. We've got this
11 proceeding. We'll get back to you." And I
12 think that the FERC Commissioners have stepped
13 back and said, "We can see movement in Florida.
14 They're really not in the radar."

15 Ms. Miller, do you sense that's the general
16 posture we're in?

17 MS. MILLER: That all sounds correct to me.
18 And the only other thing I was going to mention
19 is, staff has been reviewing the rulemaking, as
20 you know, and we have found a lot of overarching
21 jurisdictional matters that you can definitely
22 comment on that wouldn't weigh in on particular
23 -- like financial transmission rights versus
24 physical transmission rights. So there's some
25 overarching and really important things that you

1 can be comfortable in answering, and then on the
2 other, cautious.

3 CHAIRMAN JABER: Ms. Bass?

4 MS. BASS: I was going to say, we're
5 somewhat in that situation now, in my non-legal
6 opinion, in that we've been trying very
7 carefully in responding to FERC comments that
8 the comments are consistent with what the
9 Commission has already acted on and voted on.

10 And we find ourselves in that situation now
11 because the standard market design, the NOPR,
12 encourages or recommends or suggests financial
13 transmission rights and unbalanced markets and
14 two-day markets, a completely different market
15 design than what this Commission had previously
16 approved for GridFlorida. So we're already --
17 the Commission has already made a decision on a
18 market design, and now we would be moving away
19 from that in comments if we were to support it
20 in a way which is more consistent with what the
21 applicants have included in the revised market
22 -- you know, the revised filing. So we're kind
23 of in a sticky situation to begin with.

24 COMMISSIONER BAEZ: Well, reading between
25 the lines, it probably suggests to me that we

1 might need an order to move away from an order.
2 I mean, is that sort of what you're saying?

3 MS. BASS: well, I think that's why we're
4 suggesting that we need to go to hearing,
5 because our order -- the December order
6 recognized that on the first blush, the market
7 design that was proposed appeared to be the
8 appropriate one, based on our -- you know, our
9 limited information, but the Commission had
10 enough to decide that that was the best to
11 protect the ratepayers of Florida.

12 However, it recognized that there may be
13 something that was better for the ratepayers out
14 there, and if it was deemed to be that, then the
15 applicants were more than welcome to file a --
16 you know, to come back and justify it and talk
17 about the benefits to the ratepayers, and then
18 the Commission could adopt a different market
19 design if they deemed it appropriate.

20 CHAIRMAN JABER: And there's one more thing
21 that nags at me. The FERC NOPR is not in this
22 record, and the other benefit of a hearing with
23 a defined scope would be to take that NOPR and
24 whatever decisions come out of FERC in the
25 meantime officially into the record. It may be

1 that this thing develops into something everyone
2 is comfortable with.

3 MS. BASS: And like Cindy said, there's a
4 lot of issues, and it goes beyond -- I mean,
5 market design is the big issue. I mean, that's
6 the main part of the NOPR. But there are other
7 issues that are addressed, as in structure and
8 governance and some of the planning and those
9 types that the Commission, based on its vote
10 today and what will be included in the
11 order, that they can address those specifically
12 as to what we believe is the best for Florida
13 compared to what they're proposing.

14 so that is another -- besides the
15 overarching jurisdictional type issues, there
16 will be some issues that we can specifically
17 address.

18 COMMISSIONER BAEZ: Cindy, when does the
19 comment period run?

20 MS. MILLER: The comment period ends
21 October 15th.

22 COMMISSIONER BAEZ: And with rumblings that
23 it may get extended?

24 MS. MILLER: Right. We believe there will
25 be a petition filed to seek that it be changed

1 to mid November, and there seemed to be a
2 possibility that would happen.

3 COMMISSIONER BAEZ: And the Chairman laying
4 out some dates -- Chairman Jaber, you had a
5 possible vote in December?

6 CHAIRMAN JABER: Yes. If the Commission's
7 desire is to expedite this issue, and, of
8 course, the possible protest of other PAA
9 issues, there is an October 25th tentative
10 date. I mean, Commissioners, I haven't even
11 looked to see if you're all available, but
12 October 25th and October 31st. Seems like
13 Halloween would be appropriate. But again,
14 that's only if you want to expedite it.

15 COMMISSIONER PALECKI: Well, if we decide
16 we want to expedite this, my question is, if we
17 used one of those dates for a rulemaking
18 hearing, it would then allow us to deal with
19 FERC on the market design issues without having
20 our hands tied.

21 CHAIRMAN JABER: For what hearing? You lost
22 me.

23 COMMISSIONER PALECKI: Rulemaking. Hasn't
24 it been discussed that we go forward with a rule
25 rather than -- I thought that --

1 CHAIRMAN JABER: If it did, it completely
2 flew by me.

3 COMMISSIONER BAEZ: I'm sorry. I don't --

4 COMMISSIONER PALECKI: Maybe -- I thought
5 that's what Commissioner Baez --

6 COMMISSIONER BAEZ: No, I'm referring to
7 the rulemaking at FERC.

8 COMMISSIONER PALECKI: Oh, I'm sorry. I
9 misunderstood you.

10 I certainly think that an expedited --

11 COMMISSIONER BAEZ: But we can come up with
12 a rule if we want, I guess. Can we do that? I
13 don't know.

14 COMMISSIONER PALECKI: No, I was just
15 wondering if we could do our market design as a
16 rulemaking, which does not put ex parte
17 considerations out there and would then give us
18 more of a free hand at dealing with the FERC
19 proceeding.

20 But the problem I have is that from what
21 I've seen, our rulemakings go at a snail's pace,
22 and I'm not sure if we could expedite it to the
23 extent that we're expediting this hearing.

24 CHAIRMAN JABER: No, that wouldn't be
25 expedited.' But the other part of that,

1 Commissioner Palecki, is there are PAA issues
2 that might get protested, so we're looking at a
3 hearing either way, and I'm not sure that the
4 concern gets alleviated that way.

5 Commissioners, other questions, feedback,
6 wish lists?

7 COMMISSIONER BAEZ: Wish list.

8 COMMISSIONER PALECKI: If we go with the
9 staff's recommendation, I guess we're not voting
10 one way or the other for the market design.
11 We're simply setting it for a hearing.

12 CHAIRMAN JABER: Right. I'm glad you said
13 that.

14 Staff, I got the impression that there was
15 agreement on the change from physical
16 transmission rights to financial transmission
17 rights. Is that correct?

18 MR. BALLINGER: I think that's a pretty
19 good statement.

20 CHAIRMAN JABER: Now, why can't we separate
21 that from Issue 5 and make that decision PAA
22 instead of setting that for hearing?

23 MR. BALLINGER: There may be portions of it
24 -- I hadn't quite thought of it that way. I did
25 a little bit overnight last night of what

1 possibly could be PAA and what could possibly be
2 final. Using financial transmission rights,
3 there seems to be agreement of the parties to
4 this docket to go that route. Using locational
5 marginal pricing, that's another one, and the
6 two-day settlement type provision.

7 Originally there was some contention about
8 the allocation of the rights, but if you look on
9 page -- and this came to me actually late last
10 night, on page 82, that actually the allocation
11 of transmission rights would remain an annual
12 allocation to the LSEs and not an auction, which
13 is a big contentious issue going on at the FERC
14 SMD. So possibly that part of the order could
15 go out as final. It's in compliance with the
16 original order.

17 The other part of the revised market design
18 that was not discussed at all was the incentive
19 plan proffered by the utilities, and that one,
20 if you want to approve it, it clearly has to go
21 out as PAA.

22 CHAIRMAN JABER: Commissioners, I don't
23 know how you feel about that, but as I was
24 reading that portion of the recommendation, it
25 became clear to me that there was consensus on

1 the financial transmission rights issue, and now
2 staff is saying LMP, and perhaps even the
3 two-day settlement. I'm willing to take the
4 risk that some part of this goes out PAA,
5 because it may not be protested, and then the
6 hearing is refined even more, but I don't know
7 how you feel.

8 COMMISSIONER BAEZ: Do we have even have to
9 determine that right now? Can it fall out as a
10 part of the hearing process that gets stipulated
11 or --

12 COMMISSIONER PALECKI: Madam Chairman, what
13 if we went ahead with the revised market design
14 in its entirety as a PAA? Well, I guess the
15 problem that we would have is that we could --
16 allowing the 21 days for a protest, it would
17 back that hearing way up, so never mind.

18 CHAIRMAN JABER: Commissioner Baez, I think
19 the answer -- what did you just ask?

20 COMMISSIONER BAEZ: Well, right now we're
21 trying to identify on the fly where the
22 consensus is. I think, you know, the process
23 might even allow as a part of the prehearing
24 process even for those issues to really be
25 identified' definitively, and they will fall out

1 in due course as well and have the same effect.

2 CHAIRMAN JABER: Right. The only reason I
3 could see some value to doing it PAA and having
4 it get resolved in some final fashion at the end
5 of a protest period is that that information
6 goes up to FERC in a final fashion.

7 COMMISSIONER BAEZ: I'm sorry. The
8 information goes up to FERC after the protest
9 period?

10 CHAIRMAN JABER: Yes. At some point, I
11 would envision if it's not the PSC, it would
12 certainly be the applicants. They would
13 communicate to FERC that, "Okay. The PSC
14 decision as it relates to the transmission
15 rights is final and effective."

16 COMMISSIONER BAEZ: Well, do we have a
17 ready list? I mean, I don't have a problem with
18 that in principle.

19 CHAIRMAN JABER: Staff, could you comment
20 on this discussion? Do you envision that being
21 the case, that there is consensus on these
22 issues that's not a question in your mind?

23 MR. BALLINGER: I mean, it's based on the
24 history of this whole proceeding going on, that
25 the intervenors, the marketers, the IPPs, and

1 most of the munis wanted locational marginal
2 pricing, an unbalanced schedule, and things of
3 that nature. We've got very little details on
4 the things, so I can't tell you if there is
5 consensus or not. I think -- you know, my gut
6 is telling me, yes, there is. There was
7 significant movement there.

8 One sticking point, like I said, was the
9 allocation, the initial allocation. And to me,
10 it almost seems like the filing is a compliant
11 filing with the original order, that even the
12 revised market design still has allocation on an
13 annual basis. That probably should not even be
14 an issue on the table. I mean, that's one
15 avenue.

16 And then the incentive is a whole new twist
17 to the thing. I don't have any feel for how
18 the other parties feel about that portion.

19 MR. KEATING: I would add to the extent we
20 do have consensus now, setting the matter for
21 hearing would allow that to be more thoroughly
22 developed. Perhaps we could reach more
23 consensus on those details. And I would hope
24 that to the extent we have consensus now, we
25 don't lose that as we go forward. And perhaps

1 by a late October hearing date, we'll have
2 enough consensus that we're comfortable and that
3 -- you know, I'm not sure we'll have consensus
4 on every detail of the proposal, but perhaps
5 we'll have enough that we can send something to
6 FERC at that point without going through an
7 entire process of post-hearing recommendation
8 and vote and order. Obviously, we would still
9 have an order, but perhaps there would be
10 something to approve as some sort of
11 stipulation.

12 COMMISSIONER PALECKI: What if we went
13 ahead, if we approved the staff's recommendation
14 and requested and encouraged the parties to
15 identify the areas of consensus for a
16 stipulation at a very early stage so there
17 wouldn't be testimony filed, et cetera, and then
18 we did a bench vote after the hearing on those
19 areas that have already been stipulated to?

20 MR. KEATING: I think that's following
21 along the lines that I had in mind.

22 COMMISSIONER BAEZ: Yes. I mean, we can
23 count at least three agendas leading up to it.
24 I mean, you're going to have three stages in
25 which to try and identify -- I don't even know

1 if that's proper, and to identify stipulated
2 issues, and we go accepting them on a running
3 basis. That might -- I'm just, you know,
4 thinking off the top of my head, but just along
5 the lines of what Commissioner Palecki was
6 saying. You know, we do have some opportunities
7 coming up regularly in which to go winnowing
8 down these issues as they're identified and
9 agreed upon.

10 And again, I don't have a problem, you
11 know, throwing out a PAA list right now if we
12 can come up with one. I'm not sensing --

13 CHAIRMAN JABER: Eagerness?

14 COMMISSIONER BAEZ: Well, eagerness or
15 confidence is really what I was going to say --

16 CHAIRMAN JABER: Which is it?

17 COMMISSIONER BAEZ: -- on the part of staff
18 that --

19 MR. BALLINGER: I would say confidence.

20 COMMISSIONER PALECKI: And I guess the
21 other thing is that I want the benefit of a
22 staff recommendation as well. It's one thing to
23 have all the parties agree, but I want our staff
24 to tell us if we can protect the ratepayers.
25 You know, I guess I would feel more comfortable

1 if the Office of Public Counsel was down here
2 and, you know, was giving us some of their
3 opinions on these issues as well.

4 CHAIRMAN JABER: Okay. Commissioner
5 Deason, you've been quiet. We initially had
6 some discussion on Issue 5. With the discussion
7 we just had, does it address some of your
8 concerns, makes your concerns worse?

9 COMMISSIONER DEASON: I'm not sure, Madam
10 Chairman. I wish I could say with a degree of
11 confidence.

12 It seems to me that whatever we do, we need
13 to move quickly. If there is the possibility of
14 gaining time by doing some things PAA, I'm not
15 opposed to that. I'm tempted to just say let's
16 have a very quick and dirty hearing and have
17 some -- just come up with some broad market
18 design principles, and let's put a bow on this
19 package, and let's send it to FERC. I'm not
20 sure that we can do that.

21 I understand that the -- what we have in
22 front of us now is part of the compliance
23 filing, but there are changes such that for us
24 to be legally consistent and appropriate, we
25 need to have some type of hearing. And I also

1 hear Commissioner Palecki indicating that he
2 wants the benefit of a staff recommendation, and
3 that's certainly a laudable thing as well.

4 So I guess at this point I'm just kind of
5 -- whatever the will of the Commission is, I'm
6 willing to do my part.

7 COMMISSIONER BAEZ: Before we move and
8 vote, I just -- Commissioner Deason did bring up
9 some words that I had tried to make a mental
10 note way back at the beginning of this day, or
11 certainly this item. What are our clear goals?
12 What are we expecting to get out of this? Is it
13 going to be a full-blown, neatly packaged
14 market design with all the bells and whistles
15 and details determined, or are we, as
16 Commissioner Deason put it, going to come out
17 with an order that says our best market design
18 is going to include A, B, C, and D, and those be
19 general principles, in essence, and not anything
20 to the detail that --

21 COMMISSIONER DEASON: You know, my take on
22 that is that I think that we may want to shoot
23 for more, but trying to be a realist, I think
24 probably what we're going to come out with is
25 more of a statement of some broad principles.

1 CHAIRMAN JABER: I agree with that.

2 COMMISSIONER BAEZ: And I'm fine with that.
3 I just want us all to be -- you know, I think we
4 should all understand that that's what we're
5 getting, and also give the parties the benefit
6 of knowing what we intend as well.

7 CHAIRMAN JABER: Yes, I agree with that.
8 And staff, you're going to have to correct me if
9 I'm wrong, but I read that into your
10 recommendation, especially in light of the fact
11 that you were recommending an expedited hearing,
12 that this -- the hope is that it's something
13 more than conceptual, as much detail as
14 possible.

15 And I want to be careful here, because I
16 don't want to send the applicants and the
17 stakeholders a signal to just give us your bare
18 minimum. I mean, I know expedited would put a
19 lot of pressure on folks to file testimony
20 quickly, but these are also issues they've been
21 thinking about for a long time, so I would
22 imagine -- and, you know, Mr. Ramon, he has
23 probably been living it and breathing it for the
24 last two years, so I have a feeling we're going
25 to get really, really good testimony.

1 So I don't want to send folks a signal that
2 we're looking for too broad information. We
3 want to reach that comfort level that whatever
4 we approve is the best for the Florida
5 ratepayers.

6 COMMISSIONER PALECKI: I know that for me,
7 market clearing prices make me a little nervous.
8 I need some -- I need to hear some testimony
9 that leads me to believe that we'll be able to
10 go forward with the market design as modified in
11 a manner that allows us to protect our
12 ratepayers. That's my concern, and that's why I
13 would like to go ahead and move the staff's
14 recommendation and set this thing down for
15 hearing as quickly as possible.

16 CHAIRMAN JABER: Commissioner Palecki, just
17 in case that's a motion, would you consider that
18 the companies file their petition no later than
19 30 days from the vote and that testimony and
20 whatever supporting information they believe --

21 COMMISSIONER PALECKI: Absolutely.

22 CHAIRMAN JABER: -- appropriate would come
23 in within the 30 days? And I would imagine it
24 would include a direction to staff to expedite
25 the order?'

1 COMMISSIONER PALECKI: Yes. If
2 Mr. Cochran could please take care of that, we
3 would appreciate it.

4 CHAIRMAN JABER: And there's one more thing
5 that Joann wrote me a note on with respect to
6 the PAA portions. Would your motion also
7 include direction to staff that if there are
8 protests to any PAA portion of the order, that
9 that gets rolled into the proceeding?

10 COMMISSIONER PALECKI: Yes. Madam
11 Chairman, I wonder if there's any way, since
12 we're expediting this to such a great extent,
13 that we would perhaps want to abbreviate the
14 protest period on the PAAs. I know we've done
15 that in the past, and it sometimes works well
16 when we're trying to move things forward
17 quickly.

18 CHAIRMAN JABER: Yes. Let me let legal --
19 well, they're consulting. I think that only
20 applies to water now, Commissioner Palecki. I'm
21 not sure. We can do a 14-day protest period,
22 staff? It's just water, isn't it? It's that
23 other industry.

24 MR. KEATING: I'll let Mr. McLean address
25 that.

1 MR. MCLEAN: We think it's 21 days
2 statutory.

3 COMMISSIONER PALECKI: So we were wrong
4 all the time we used to do it --

5 CHAIRMAN JABER: No, I wasn't. I think it
6 had to do with changes to the APA.

7 MR. MCLEAN: I'm advised that it's by
8 rule, but we don't have the discretion to waive
9 it.

10 I wonder if you could let us look at that
11 issue, and can your vote -- I don't see any
12 problem with your vote. Let us shorten it if we
13 can, and if we're prohibited from shortening the
14 protest period, then obviously we can't. Can we
15 preserve that issue in your vote?

16 COMMISSIONER PALECKI: Absolutely. And
17 obviously, we don't want to violate the law. We
18 would like to comply 100% if that's the
19 requirement.

20 MR. MCLEAN: And the issue -- and the order
21 which emanates from this vote right now will
22 reflect either the 14-day period or -- I
23 understand your motion is to shorten it to 14
24 days if we can do that.

25 COMMISSIONER PALECKI: Yes.

1 MR. MCLEAN: Yes, sir. My suspicion is
2 that we can't, but if we can, the order will so
3 reflect.

4 COMMISSIONER PALECKI: Thank you.

5 Madam Chairman, with your help, that would
6 be my motion.

7 CHAIRMAN JABER: Commissioners, discussion
8 or a second?

9 COMMISSIONER BAEZ: Can I get some
10 clarification? So then we're not voting
11 anything out PAA on this issue? We're not
12 excluding anything as PAA on this issue; right?
13 So then should we -- and if not, should we
14 include some kind of direction that perhaps --

15 COMMISSIONER PALECKI: Yes. As part of
16 that motion, I would include a directive and
17 encourage the parties to identify areas of
18 consensus, and as quickly as possible let staff
19 know what are those areas where we can reach
20 stipulation, for two reasons: One, so the
21 parties don't need to provide testimony on those
22 issues, and also so that we can vote those
23 issues out as quickly as possible.

24 COMMISSIONER BAEZ: I can second that.

25 CHAIRMAN JABER: There has been a motion

1 and a second to resolve Issue 5. All those in
2 favor say aye.

3 (Simultaneous affirmative responses.)

4 CHAIRMAN JABER: Issue 5 is approved as
5 modified.

6 Issue 6.

7 MR. HOFFMAN: Madam Chairman, before you go
8 to Issue 6, may I ask a point of clarification
9 to avoid some mishaps down the road?

10 CHAIRMAN JABER: Yes, Mr. Hoffman.

11 MR. HOFFMAN: As I understand what the
12 Commission has voted on, it would be to have the
13 companies file testimony and a petition within
14 30 days of today. Is that correct?

15 CHAIRMAN JABER: That's my understanding of
16 the motion, Mr. Hoffman, and that's certainly
17 what I wanted to vote on, because of the
18 expedited nature.

19 MR. HOFFMAN: Okay. And at the same time,
20 we have the PAA issues where there is a 21-day
21 protest period following the date of the order.
22 And without some coordination there, we could
23 find ourselves in a position where we have to
24 file our testimony in 30 days without knowing
25 what's going to be protested that we may also

1 want to address.

2 CHAIRMAN JABER: Right. That's an
3 excellent point. But what I envisioned with the
4 30 days, the petition and the testimony, it
5 would be to address Issue 5. And I really
6 anticipate having a procedural order on this
7 aspect of the hearing really, really soon. Why
8 don't we cross the bridge of protests to the PAA
9 portions as they come in. We're not assuming
10 we're getting protests.

11 Commissioners, is that your desire?

12 COMMISSIONER BAEZ: Well, yes. The 30 days
13 only applies to Issue 5; right?

14 CHAIRMAN JABER: Right.

15 MR. MCLEAN: Madam Chairman, I'm satisfied
16 also that the protest period is 21 days and
17 can't be shortened.

18 CHAIRMAN JABER: Okay. Thank you,
19 Mr. McLean.

20 Issue 6, the docket be closed.

21 Commissioners, if you notice, on the bottom
22 of page 87, staff is recommending that a cover
23 letter be sent to FERC with our order. That's
24 consistent with how we handled the initial
25 decision, but I would request, if it's all right

1 with you, that you give me enough direction to
2 sign a letter without it going to internal
3 affairs. I don't recall -- and staff can
4 correct me if I'm wrong. I don't think --

5 COMMISSIONER BAEZ: I don't think the first
6 one did either.

7 CHAIRMAN JABER: The first one didn't go to
8 internal affairs. We talked about it at agenda.
9 The Chairman's office sent the letter, and it
10 was consistent with the vote.

11 MS. BASS: Okay. We can do that.

12 CHAIRMAN JABER: Well, Commissioners, is
13 that your --

14 COMMISSIONER PALECKI: I agree, yes.

15 COMMISSIONER DEASON: Madam Chairman,
16 before -- I'm really hesitant to bring this up,
17 but I have a question or a matter I think that
18 we need to address that really didn't neatly fit
19 into any of the other issues, so I've waited
20 until the very last to bring it up. And I had
21 some discussions with staff about this
22 yesterday, I believe. The days start running
23 together when it gets to be this late at night.

24 The question that I had is, if we approve a
25 governance' and RTO structure and we know that

1 it's got to be a living, breathing organization,
2 and it's got to have flexibility, and it's got
3 to be able to change with time, and there are
4 procedures in there, and I assume that matters
5 can come before the board, and they may choose
6 to change some of the internal procedures and
7 change some things, and I think it should work
8 that way. And obviously, the entity has got to
9 be able to respond to changes in markets and
10 changes in the way that it can most efficiently
11 run its own organization.

12 The question I have is, what do we do if
13 two, three, four, years down the road, the board
14 decides to change some fundamental aspect of the
15 RTO that this Commission doesn't necessarily
16 agree with? Do we have any say about that, or
17 is our recourse to contest that at FERC? What
18 do we do? Do we have the ability to kind of
19 maintain some jurisdiction over what we've
20 approved, or is this our once-in-a-lifetime
21 opportunity, and after that it's kind of like
22 we're sending this child off to college, and you
23 don't know what it does after that?

24 CHAIRMAN JABER: Well, they keep coming
25 back.

1 COMMISSIONER BAEZ: And then they only come
2 when they run out of money. Is that what --

3 CHAIRMAN JABER: There you go.

4 COMMISSIONER DEASON: We will see them
5 once a year during the capacity cost recovery
6 clause.

7 CHAIRMAN JABER: But that's the answer to
8 your question.

9 I have an opinion on that, but, staff, I
10 think that question was to you.

11 MR. KEATING: Yes. I'll take a shot at
12 answering that briefly.

13 I don't think this is our one shot. Going
14 forward, as I've said before, and it's probably
15 a broken record, our jurisdiction is what it
16 is. To the extent that changes are made in
17 structure and governance or what have you, for
18 the same reasons that we had jurisdiction to
19 look at this GridFlorida filing in this
20 proceeding, I believe we would have the
21 jurisdiction to look at changes to GridFlorida
22 in future proceedings.

23 And based on our discussion yesterday, I
24 went back and looked at the order we issued in
25 December in this -- well, not in this docket,

1 but concerning GridFlorida, we stated there that
2 "GridFlorida will be subject to our jurisdiction
3 under Chapter 366. As such, GridFlorida and its
4 management will be held responsible for the
5 prudence of the actions that they take that
6 impact our jurisdiction. And one of our
7 principle concerns is that if we approve the
8 formation of GridFlorida, the Board should not
9 be able to take unilateral action to change the
10 organizational structure or operation of
11 GridFlorida without this Commission's prior
12 review regarding prudence and public impact."

13 So we did speak to that in the December
14 order, and I think I suggested earlier with
15 respect to our continuing jurisdiction in this
16 area that it wouldn't hurt to perhaps restate
17 that in the order that comes out of this
18 proceeding.

19 And in conclusion, I believe that we would
20 have continuing jurisdiction to look at changes.

21 COMMISSIONER DEASON: I'm a little
22 concerned about one aspect of what you just
23 indicated, and that's prior approval. I'm not
24 necessarily -- I'm not sure that we need every
25 action that the board takes that could be

1 interpreted that there's somehow a change in the
2 governance or the structure that they've got to
3 come here.

4 But at the same time, I think there needs
5 to be some recognition that we have an
6 obligation to guard our jurisdiction and
7 exercise it. And if that means that we need to
8 at some point review changes or whatever and
9 seek some type of change that we think is more
10 appropriate, perhaps we need to exercise that.
11 I'm just not sure how we go about doing that.
12 We're plowing totally new ground here, and we're
13 trying to navigate some very difficult
14 jurisdictional separations, and I'm not really
15 sure. I'm just -- I'm looking for some comfort.

16 CHAIRMAN JABER: Let me try addressing
17 your concerns this way. What you just
18 identified went to the heart of why we required
19 a move from Transco to ISO. We have continuing
20 jurisdiction of the IOUs that participate in
21 GridFlorida, so I have comfort there.

22 I don't think it's ever -- it should never
23 be postured as a debate or a dispute between us
24 and FERC. I would hope that we're all real
25 clear on where our jurisdiction begins and where

1 FERC's jurisdiction begins. But, you know, I'm
2 comforted that we sufficiently addressed our
3 jurisdiction and put the companies on notice
4 that to the degree any changes affect retail
5 ratepayers, we're going to bring them in.

6 COMMISSIONER DEASON: So you think that our
7 real clincher is that we do have authority over
8 the rates that are paid by customers on the
9 retail level, and transmission being a
10 significant part of that, and through the
11 transmission owners' ability to have impact with
12 the board and that sort of thing, that that is
13 the way we can express our concerns?

14 CHAIRMAN JABER: Right. And that's
15 precisely how we initiated this proceeding.
16 That is precisely how this proceeding got
17 initiated. You may recall where we were two
18 years ago with the companies and why they're
19 here today. It's because we had concerns as it
20 relates to the impact on the retail ratepayers.

21 COMMISSIONER PALECKI: I recall it felt
22 like everything was passing us by, and we didn't
23 feel as if we had a voice. And certainly having
24 gone thus far through these proceedings, it does
25 feel that we have some level of control. We do

1 have a voice. And it still remains to be seen
2 the dynamics as they'll work out between our
3 agency and the FERC, but I am confident that we
4 will have some level of control and we'll reach
5 some working arrangement with the FERC, but
6 those things will just have to work out over
7 time.

8 COMMISSIONER DEASON: well, my concern is
9 not so much us versus FERC as it is a question
10 of as the markets evolve, as the RTO has to
11 evolve to be able to effectively carry out its
12 mission, are we left out of any say whatsoever
13 as to how the RTO evolves? Is it that once we
14 approve this, well, then this is the last say
15 that we have or not? And that's the concern
16 that I have.

17 CHAIRMAN JABER: Is Ms. Miller still here?
18 with respect to -- if we sort of take it out of
19 the context of retail rates and there are
20 organizational changes to the RTO, Commissioner,
21 I wonder if Cindy would tell us we would have
22 to, you know, intervene in the FERC proceeding
23 and give our concerns that way. But with
24 respect to what the company has proposed, any
25 company has proposed, and what effect their

1 proposals are to FERC, I would expect that under
2 our jurisdiction, we can bring those companies
3 in and say, "This has an effect on retail rates.
4 We don't like it. Modify it." But I'm really
5 speaking now as -- that's my decision. Am I
6 legally -- is that legally correct?

7 MR. MCLEAN: I think so.

8 COMMISSIONER PALECKI: Well, I also think
9 reliability under the Grid Bill gives us a large
10 amount of authority.

11 MR. MCLEAN: You're going to have to feed
12 me to get better answers.

13 COMMISSIONER DEASON: Well, Madam Chairman,
14 I apologize for kind of bringing up this matter
15 so late. I really didn't know where else to do
16 it, because it really wasn't --

17 CHAIRMAN JABER: This is appropriate,
18 Commissioner. We all really -- yes, this is
19 appropriate.

20 COMMISSIONER DEASON: I guess I'm just kind
21 of letting folks know out there that -- I guess
22 it's the same thing. Our jurisdiction is what
23 it is, and I think that by approving this
24 structure, it doesn't necessarily mean that we
25 are giving up any future say as to how that

1 structure should be in the future. Whether the
2 changes that the RTO undertakes on its own are
3 good or bad, or whether we think there should be
4 changes undertaken at the RTO, I think there's
5 got to be some means to express that.

6 CHAIRMAN JABER: And then reconcile that
7 with recognizing some flexibility is probably
8 warranted.

9 COMMISSIONER DEASON: Oh, absolutely. We
10 should not -- just like the utilities that we
11 clearly regulate now, we do not manage them, nor
12 do we want to manage them, but we certainly are
13 interested in management's decisions and how
14 they affect customers. And I think we need to
15 have the same relationship with the RTO. The
16 board of directors and the managers, they need
17 to manage it, but we need to have some way to
18 review that, particularly the impacts that it
19 has both on reliability and on rates for
20 customers.

21 CHAIRMAN JABER: Yes. Ms. Bass, has there
22 been anything in your discussions or in the
23 pleadings that has indicated to you that the
24 stakeholders don't hold that same thought?

25 MS. BASS: No. And I agree with everything

1 that has been said, especially about our
2 continuing jurisdiction. I think where the
3 dollars are is where we have the jurisdiction,
4 and the impact on the retail ratepayers.

5 And I think this is not something that
6 you're approving and it goes away and we never
7 see it again. I fully expect that the
8 Commission will be involved in GridFlorida. We
9 have been -- as part of the proposal, the
10 Commission will be invited to all the
11 stakeholder advisory meetings as a nonvoting
12 member. So I think we'll continually be
13 involved. We'll see them in review of planning
14 documents and all of that. So I think we'll
15 continue to be involved on an ongoing basis.
16 And I think both under our jurisdiction under
17 366 and under the Grid Bill, for reliability and
18 safety in that, and our involvement through the
19 FRCC, and our involvement on the cost recovery
20 issues, I think we're still very much an
21 integral part of it.

22 COMMISSIONER PALECKI: Our jurisdiction is
23 the authority that the Legislature gives us, as
24 interpreted by the courts, and it's the
25 authority we choose to exercise as well.

1 Sometimes we exercise our jurisdiction and
2 sometimes we don't. But with regard to these
3 issues, I think we have to plan carefully how we
4 intend to exercise our jurisdiction. And if we
5 see we don't have authority we need, we need to
6 go to the Legislature and ask them to give us
7 authority if we don't have adequate authority to
8 protect our ratepayers.

9 CHAIRMAN JABER: Okay. Commissioners, I --
10 did we vote on Issue 6?

11 COMMISSIONER DEASON: No, I think we --

12 MS. BASS: Issue 6, the docket should not
13 be closed. If we're going to have a hearing, I
14 would suggest that the hearing -- the expedited
15 hearing be held within -- in this docket.

16 CHAIRMAN JABER: Okay. And with respect
17 to the letter going to internal affairs, I don't
18 think that requires a vote. It's not in your
19 recommendation statement, and I heard the
20 Commissioners approve that.

21 okay. Is there a motion?

22 COMMISSIONER PALECKI: I would move that
23 the docket not be closed.

24 COMMISSIONER BAEZ: Second.

25 CHAIRMAN JABER: There has been a motion

1 and a second.

2 Commissioners, before we vote, I think it
3 would be appropriate here to send a really big
4 message to all of the stakeholders and to our
5 staff that this has been a long process, and we
6 understand that, but at the end of the day, we
7 all can say, I believe, that it has been given
8 thorough review, it has been completely thought
9 through, and where a collaborative process
10 could work, it absolutely worked, and where
11 further discussion needed to be had, it was
12 had. And my compliments go to everyone's hard
13 work, my appreciation goes to everyone's hard
14 work, and this is what I expect to see more of
15 real soon.

16 Commissioners, any other comments before we
17 vote?

18 okay. There's a motion and a second. All
19 those in favor say aye.

20 (Simultaneous affirmative responses.)

21 CHAIRMAN JABER: Issue 6 is approved.

22 (Conclusion of consideration of Item 20.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 189 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 24th day of August, 2002.



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