

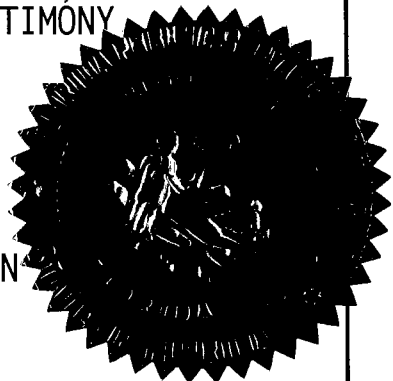
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION TO DETERMINE NEED FOR DOCKET NO. 020262-EI  
AN ELECTRICAL POWER PLANT IN  
MARTIN COUNTY BY FLORIDA POWER &  
LIGHT COMPANY

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PETITION TO DETERMINE NEED FOR DOCKET NO. 020263-EI  
AN ELECTRICAL POWER PLANT IN  
MANATEE COUNTY BY FLORIDA POWER &  
LIGHT.

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON  
Prehearing Officer

DATE: Monday, September 23, 2002

TIME: Commenced at 9:30 a.m.  
Concluded at 3:48 p.m.

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

REPORTED BY: LINDA BOLES, RPR  
TRICIA DeMARTE  
Official FPSC Reporters

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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## 1 APPEARANCES:

2 CHARLES A. GUYTON, Steel, Hector & Davis, 215 South  
3 Monroe Street, Suite 601, Tallahassee, Florida 32301, and  
4 R. WADE LITCHFIELD, Florida Power & Light Company, 700 Universe  
5 Boulevard, Juno Beach, Florida 33408, appearing on behalf of  
6 Florida Power & Light Company.

7 JON C. MOYLE, JR., Moyle, Flanigan, Katz, Raymond &  
8 Sheehan, P.A., The Perkins House, 118 North Gadsden Street,  
9 Tallahassee, Florida 32301, appearing on behalf of  
10 CPV CANA, Ltd./CPV Gulfcoast, Ltd.

11 JOSEPH A. McGLOTHLIN, McWhirter, Reeves, McGlothlin,  
12 Davidson, Dekker, Kaufman, Arnold & Steen, 117 South Gadsden  
13 Street, Tallahassee, Florida 32301, appearing on behalf of  
14 Florida Partnership for Affordable Competitive Energy.

15 VICKI GORDON KAUFMAN, McWhirter, Reeves, McGlothlin,  
16 Davidson, Dekker, Kaufman, Arnold & Steen, 117 South Gadsden  
17 Street, Tallahassee, Florida 32301, appearing on behalf of the  
18 Florida Industrial Power Users Group.

19 D. BRUCE MAY, Holland & Knight, LLP, 315 South  
20 Calhoun Street, Suite 600, Tallahassee, Florida 32301,  
21 appearing on behalf of South Pond Energy Park, LLC.

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1 APPEARANCES CONTINUED:

2                   MICHAEL B. TWOMEY, P. O. Box 5256, Tallahassee,  
3 Florida 32314-5256, appearing on behalf of Florida Action  
4 Coalition Team.

5                   MARTHA CARTER BROWN and LARRY HARRIS, FPSC General  
6 Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee,  
7 Florida 32399-0850, appearing on behalf of the Commission  
8 Staff.

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

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2 COMMISSIONER DEASON: Call the prehearing conference  
3 to order. Could I have the notice read, please?

4 MS. BROWN: By notice issued September 3rd, 2002,  
5 this time and place is set for a prehearing conference in  
6 Docket Numbers 020262-EI, petition to determine need for an  
7 electrical power plant in Martin County by Florida Power &  
8 Light, and Docket Number 020263-EI, petition to determine need  
9 for an electrical power plant in Manatee County by Florida  
10 Power & Light. The purpose of the prehearing conference is set  
11 out in the notice.

12 COMMISSIONER DEASON: Thank you. Appearances.

13 MR. GUYTON: Charles A. Guyton with the law firm of  
14 Steel, Hector & Davis, LLP, Suite 601, 215 South Monroe Street,  
15 Tallahassee, Florida 32301, appearing on behalf of Florida  
16 Power & Light Company.

17 MR. LITCHFIELD: Wade Litchfield, Florida Power &  
18 Light Company, 700 Universe Boulevard, Juno Beach, Florida  
19 33408, also here on behalf of Florida Power & Light.

20 MR. MOYLE: Jon Moyle, Jr., with the Moyle, Flanigan  
21 Law Firm here in Tallahassee. I'm appearing on behalf of.  
22 CPV Gulfcoast. And I'll also enter an appearance on behalf of.  
23 CPV Cana just for the record, though they have been struck as a  
24 party.

25 MR. MAY: Bruce May with the law firm of Holland &

1 Knight, LLP, 315 South Calhoun Street, Suite 600, here in  
2 Tallahassee, appearing on behalf of South Pond Energy Park.

3 MR. MCGLOTHLIN: Joe McGlothlin, the McWhirter,  
4 Reeves Law Firm, 117 South Gadsden Street, Tallahassee. I  
5 appear for Florida PACE.

6 MS. KAUFMAN: Good morning. Vicki Gordon Kaufman of  
7 the McWhirter, Reeves Law Firm, 117 South Gadsden Street,  
8 Tallahassee, 32301. I'm here on behalf of the Florida  
9 Industrial Power Users Group.

10 MR. TWOMEY: Michael B. Twomey, P.O. Box 5256,  
11 Tallahassee, Florida 32314-5256, appearing on behalf of the  
12 Florida Action Coalition Team, and also entering an appearance  
13 on behalf of Thomas P. and Genevieve E. Twomey, who will be  
14 filing a petition to intervene this morning.

15 MS. BROWN: Martha Carter Brown and Larry Harris on  
16 behalf of the Commission.

17 COMMISSIONER DEASON: Okay. Thank you. Before we  
18 get started this morning, let me put everyone on notice that I  
19 have an emergency dental appointment this morning at 11:30. I  
20 will be departing here about 11:00. If we can conclude by that  
21 time, fine. If we can't, we will reconvene this afternoon when  
22 I return, and I can't tell you when that's going to be. So I  
23 just want everybody to be aware of the situation. So let's try  
24 to accomplish as much as we can.

25 MR. MOYLE: I guess it would probably be in our best

1 interest to conclude by 11:00, if you're going to be back  
2 having gone to the dentist, huh?

3 COMMISSIONER DEASON: My mood may be better or worse.  
4 I don't know.

5 Ms. Brown, do we have any preliminary matters?

6 MS. BROWN: I am not aware of any, but I would defer  
7 to the parties on that matter. We have no preliminary matters  
8 at this time.

9 COMMISSIONER DEASON: I'll just work down this way.  
10 Mr. Guyton.

11 MR. GUYTON: We have no matters that can't be  
12 addressed in the course of reviewing the prehearing order.

13 COMMISSIONER DEASON: Very well. Any other parties  
14 have any preliminary matters? Mr. McGlothlin?

15 MR. MCGLOTHLIN: The draft prehearing order says that  
16 opening statements, if any, would be ten minutes per party. So  
17 that is clear, Florida PACE requests leave to make an opening  
18 statement and would like a ruling on that.

19 COMMISSIONER DEASON: Well, the draft says that the  
20 opening statements, if any, shall not exceed, shall not exceed  
21 ten minutes. You're saying that you would like the prehearing  
22 order to indicate that there will be opening statements and  
23 that you're willing to abide by the ten minutes.

24 MR. MCGLOTHLIN: Yes. I regard this as something --  
25 an item of business for today. And so that it doesn't slip my

1 mind, I wanted to make sure someone brought it up.

2 COMMISSIONER DEASON: Yeah. I had a note to ask  
3 parties about that, also. Is there any objection to  
4 prehearing, I mean, I'm sorry, to opening statements?

5 MR. GUYTON: Commissioner Deason, we don't object to  
6 opening statements, but we would suggest that it would be more  
7 appropriate that it be ten minutes per side as opposed to ten  
8 minutes per party, given that we're looking at four or five  
9 parties aligned against Florida Power & Light Company. It  
10 seems --

11 COMMISSIONER DEASON: What I'm going to do is I'm  
12 going to allow each party ten minutes. But I would request  
13 that to the extent that opening statements can be coordinated  
14 and so that we don't have a lot of repetition, that there may  
15 be some issues that can be divided up, and that if you do not  
16 need ten minutes, please don't take ten minutes.

17 Mr. Guyton, I will have it in the order to allow you  
18 the ability to have ample time to, to provide ample argument or  
19 opening statement in response, and I know that it may take  
20 longer than ten minutes, given the number of parties and the  
21 complexity of the issues. So, Ms. Brown, however you can lay  
22 that out in the prehearing order so that the Chairman can have  
23 guidance and have an understanding of what was agreed to here  
24 today, I would appreciate it.

25 MS. BROWN: Will do.

1           COMMISSIONER DEASON: Okay. Any other preliminary  
2 matters? Hearing none, I would propose that we just proceed  
3 through the draft prehearing order. I am working from a draft  
4 which I carried home with me this weekend which I think may be  
5 the next to last iteration. I don't think it is the final  
6 iteration. So if I refer to a page that is not exactly  
7 consistent with the latest draft, that's the reason. So I do  
8 have the latest draft in front of me and I'm going to try to  
9 coordinate, with Ms. Brown's assistance, the best extent that I  
10 can, but we will proceed through this.

11           Having said that, we will proceed then through,  
12 through the prehearing order section by section.

13           Section I, we've already addressed the need for  
14 opening statements and how that time is to be allocated. Any  
15 further questions or clarification needed there?

16           Hearing none, Section II as to case background.  
17 Section III, jurisdiction. Section IV --

18           MR. GUYTON: Commissioner Deason, there are a couple  
19 of typos in Section III that I think you may want to change.

20           COMMISSIONER DEASON: Could you just share those with  
21 Ms. Brown?

22           MR. GUYTON: I'd be happy to.

23           COMMISSIONER DEASON: Very well. Section IV,  
24 procedure for handling confidential information. I believe  
25 this appears to be fairly standard. Any questions or



1 clarifications?

2 MR. GUYTON: We had a question about -- we intend --  
3 we have confidential appendices to the Need Study which we have  
4 filed and indicated and have been ruled as being confidential.  
5 We wanted to give the parties notice, as is required by 2(a)  
6 here, that we intend to introduce those at trial, but I don't  
7 think that there's going to be a need to actually discuss them.  
8 Six of the seven matters are EGEAS runs, they're fairly massive  
9 computer runs, documents, and the seventh is a summary of all  
10 the bid data, which I would anticipate that the parties would  
11 be reluctant to discuss out loud.

12 We can, as is suggested in 2(c) here, prepare  
13 multiple copies of that information for the Commissioners and  
14 the parties, if necessary. But because of the sensitive  
15 nature, and most of that's sensitive because of the bidders,  
16 it's the bidders' confidential information or the intervenors'  
17 confidential information, we're wondering if it's necessary to  
18 submit additional copies for the Commission or the parties'  
19 review. We can, but it doesn't appear to us to be necessary.  
20 We would anticipate that we're not going to specifically refer  
21 to them in our direct case.

22 COMMISSIONER DEASON: Any response to Mr. Guyton's  
23 comments, concern? Staff?

24 MS. BROWN: We have no concerns with that. It's  
25 really -- as far as I'm aware, we have no questions that go

1 specifically to that information. It would depend on what the  
2 parties have to say.

3 COMMISSIONER DEASON: Mr. Guyton, my only concern is  
4 that I don't anticipate it but it's possible that there may be  
5 a Commissioner who has a question or wishes to refer to it, so  
6 it may be advisable to at least have one copy that could be  
7 made available to the Commissioners, and obviously with the  
8 necessary precautions and safeguards to make sure that it is so  
9 identified. So -- but I don't think that would be too  
10 burdensome. And there may not be any Commissioners that have  
11 them, but if there are Commissioners, I would, that have  
12 questions or wish to look at some of that information during  
13 the course of the hearing, I think it may be advisable to at  
14 least have it available.

15 MR. GUYTON: Thank you.

16 MR. MOYLE: I would just -- on behalf of  
17 CPV Gulfcoast, obviously confidentiality is important, and I  
18 think the parties have treated documents thus far in that, in  
19 that way.

20 We filed a notice this morning of documents we intend  
21 to possibly use at the proceeding, of which some of them are  
22 confidential. But obviously to the extent they are, I'll work  
23 with Mr. Guyton and make sure that it's done in accordance with  
24 PSC procedure. I just wanted to make that comment. I think  
25 there has been a lot of sensitive information thus far and the

1 parties have tried to keep it that way, so I hope we continue  
2 to do that throughout the proceeding.

3 COMMISSIONER DEASON: Very well. Any other questions  
4 or comments then on Section IV, confidential information?

5 Hearing none then, Section V, posthearing procedures.

6 MR. McGLOTHLIN: Commissioner Deason?

7 COMMISSIONER DEASON: Yes.

8 MR. McGLOTHLIN: It's been my experience that a  
9 50-word limitation on post-hearing statements of position is so  
10 binding as to almost make it impossible to say anything  
11 meaningful for the Commissioners or the staff to review. In  
12 past cases I've been the one to suggest something like 80. I  
13 believe that would not be burdensome on the reader and would  
14 give parties enough room to say something coherent in their  
15 position statement.

16 COMMISSIONER DEASON: Any objection to changing that  
17 to 80, staff?

18 MS. BROWN: No, not really.

19 COMMISSIONER DEASON: Very well. We'll just change  
20 that to 80.

21 Section VI, prefiled testimony and exhibits.

22 MR. GUYTON: We -- there is a statement in here,  
23 Commissioner Deason, that each witness should be limited to  
24 five minutes in their summary. We'd ask leave for Mr. Silva,  
25 who is the lead witness and kind of, if you will, the traffic

1 cop that explains all the other witnesses and the Need Study,  
2 if he may give a more extensive summary of his testimony to  
3 kind of set the groundwork for the remainder of the company's  
4 case.

5 COMMISSIONER DEASON: Is ten minutes sufficient?

6 MR. GUYTON: I'd like to ask for 15, if I might.

7 COMMISSIONER DEASON: We're going to -- any objection  
8 to ten minutes? We're going to limit it to ten. We've got  
9 three days, we've got a lot of ground to cover, so let's just  
10 try to keep things expedited. Any objection to ten minutes for  
11 that one witness, other witnesses limited to five?

12 MR. MOYLE: No objection.

13 COMMISSIONER DEASON: Hearing no objection, Ms.  
14 Brown, just show that in the prehearing order so that the  
15 Chairman will know the accommodation which was made here today.

16 MS. BROWN: All right.

17 COMMISSIONER DEASON: Okay. Section VII, order of  
18 witnesses.

19 MR. GUYTON: Commissioner Deason, we'll get with  
20 staff. The order of witnesses that we gave was in alphabetical  
21 order in our prehearing statement. If we need to give -- we  
22 don't intend to offer the witnesses in this order. If we need  
23 to, we can get with staff and give them the proper order of  
24 witnesses as they appear.

25 COMMISSIONER DEASON: Well, I would encourage you

1 certainly to do that, and it can be included in the order and  
2 parties then can have some guidance as to preparing for hearing  
3 --

4 MR. GUYTON: Okay.

5 COMMISSIONER DEASON: -- if you could provide that,  
6 the order in which you intend to call your witnesses.

7 Other questions or concerns about the order of  
8 witnesses?

9 MR. McGLOTHLIN: With respect to Kenneth Slater, I  
10 have language to provide staff, a summary description of the  
11 subject of his testimony to be included in the right-hand  
12 column there under "Issues."

13 COMMISSIONER DEASON: Very well. Just provide that  
14 to Ms. Brown and she will incorporate it.

15 MR. GUYTON: And, similarly, we have language as to  
16 FPL's rebuttal witnesses in lieu of what staff included. We'll  
17 provide that to staff.

18 COMMISSIONER DEASON: Very well.

19 MS. BROWN: Commissioner Deason, if I might interject  
20 a request that I get that information as soon as possible. We  
21 want to get the prehearing order brought up-to-date and to you  
22 to be issued as soon as possible.

23 I would also ask that the parties identify for me  
24 which issues their witnesses are going to address when they get  
25 back to me on the others.

1 COMMISSIONER DEASON: Very well. The parties have  
2 heard that request.

3 MR. GUYTON: Commissioner Deason, I think we have a  
4 couple of witnesses for CPV that should be removed in light of  
5 your ruling on the motion in limine; Mr. Caldwell at the bottom  
6 of Page 7 and Mr. Green at the top of Page 8.

7 COMMISSIONER DEASON: Those witnesses were shown as  
8 witnesses in my, in the draft I'm working from. But I have  
9 reviewed the more up-to-date draft; I think they have been  
10 eliminated.

11 MS. BROWN: Yes, they have.

12 MR. GUYTON: I apologize. I had not seen that.

13 COMMISSIONER DEASON: Okay.

14 MR. MOYLE: Yeah. The only, I think, correction that  
15 needs to be made with respect to that ruling is there's an  
16 asterisk that says, "no prefiled testimony," which probably  
17 needs to be removed because that asterisk went to Mr. Caldwell  
18 and to Mr. Green.

19 COMMISSIONER DEASON: Yeah. We can make that cleanup  
20 there as well.

21 MR. GUYTON: Commissioner, we'd also like to inquire  
22 some at, get an understanding of the adverse witnesses that  
23 have been identified for CPV Gulfcoast.

24 I understand the inability to prefile testimony of an  
25 adverse witness, but we have a question as to whether any of

1 these witnesses need to be called. It seems to us that they  
2 are totally cumulative of other witnesses that FPL has already  
3 called in its direct case. And I understand that both  
4 Mr. Waters and Ms. Iglesias have been deposed; there is a  
5 fairly extensive deposition transcript for both of them. And  
6 we will, if necessary, reserve the right to resist them being  
7 called as witnesses. We're prepared to argue that this morning  
8 or we're prepared to argue that at hearing.

9 As to Mr. Evanson, we will argue that once there is  
10 service of a trial subpoena, we will move to quash that  
11 subpoena. We'd note that all those witnesses live in excess of  
12 100 miles from Tallahassee, and under the Rules of Civil  
13 Procedure there's a 100-mile limit. But we're still trying to  
14 work out with, with counsel for CPV whether or not Mr. Waters  
15 or Ms. Iglesias would be called. And I think he's still also  
16 reserving the right as to Mr. Evanson. He has not yet been  
17 deposed.

18 But we're prepared to argue it today. It may not  
19 be -- it may be somewhat premature, given that Mr. Evanson has  
20 not been deposed yet, but I just wanted to make sure it was  
21 clear that we reserve the opportunity to contest those  
22 witnesses being called as live at trial.

23 COMMISSIONER DEASON: Mr. Moyle?

24 MR. MOYLE: Yeah. I would -- it sounds like we're  
25 not ready to have that argument today. I had not, you know,

1 anticipated it.

2 I can tell you basically, you know, Chapter 120, I  
3 think, allows parties to present evidence that supports their  
4 case. Based on the E-mails that we've discovered to date,  
5 there are a host of E-mails back and forth between Mr. Waters  
6 and Mr. Evanson. FPL has answered interrogatories about who  
7 made the ultimate decision as to whether to build or to buy as  
8 being Mr. Evanson. I've worked with Mr. Guyton and we're  
9 taking that deposition later this week. So I think partially  
10 it's going to depend on how that deposition goes, and we'll  
11 decide as to whether to, to call Mr. Waters and Mr. Evanson or  
12 to move to introduce those depositions, if, you know, if  
13 they're beyond the 100-mile limit. But I do reserve the right  
14 to present the case as we've outlined.

15 COMMISSIONER DEASON: I believe that both sides are  
16 preserving all rights that they think they have, and I'm sure  
17 that the, when we get to hearing that those rights will be  
18 preserved to the extent that the Commission deems appropriate.  
19 I would just request, Mr. Moyle, that this matter and,  
20 Mr. Guyton, that this matter try to be resolved as quickly as  
21 possible because there needs to be travel plans made, possibly  
22 travel plans made. And, of course, the Commissioners would  
23 like to know which witnesses are going to be appearing and  
24 whether they are adverse or not and whether they're going to be  
25 appearing live or whether it's going to be an introduction of a



1 deposition. So to the extent that this can be resolved  
2 quickly, that would be my request.

3 MR. MOYLE: We'll work on it. Ms. Iglesias --  
4 Mr. Guyton and I have talked -- she is going to be here at the  
5 proceeding. So that issue is not, not, not there with respect  
6 to Ms. Iglesias. I think probably it is with respect to  
7 Mr. Waters and to Mr. Evanson.

8 COMMISSIONER DEASON: Staff, do you have anything to  
9 add on this?

10 MS. BROWN: No, Commissioner. We can address this at  
11 the start of the hearing, if you want. I would just refer you  
12 to Rule 1.330, Rules of Civil Procedure, which permits a  
13 deposition to be used as evidence in a proceeding for a witness  
14 that is at a greater distance than 100 miles, but also (2) of  
15 that rule says, "The deposition of a party or of anyone who at  
16 the time of taking the deposition was an officer, director or  
17 managing agent or a person designated under rule" -- and it  
18 gives the rules -- "to testify on behalf of a public or private  
19 corporation, a partnership or association, may be used by an  
20 adverse party for any purpose." So that's just there for the  
21 parties to consider when they're negotiating resolution of  
22 this.

23 COMMISSIONER DEASON: Very well. Section -- I'm  
24 sorry. Mr. Guyton?

25 MR. GUYTON: The only other matter is -- and, quite

1 frankly, I'm a little bit out of the loop on this, but did we  
2 ever resolve whether Mr. Stallcup was going to be a witness or  
3 not?

4 MS. BROWN: We -- Mr. Stallcup did not file prefiled  
5 testimony. And my understanding is that he has a prior  
6 engagement on behalf of the Commission when the hearing is  
7 taking place, and that was the reason he didn't file direct  
8 testimony.

9 If the prehearing officer wishes or if the Commission  
10 wishes, I'm sure he can be available at the hearing. But in  
11 lieu of that, his deposition was taken on Friday for about  
12 three and a half, four hours testing his statistical analysis  
13 of Exhibit ALM-4, which is filed as part of Andrew Maurey's  
14 prefiled testimony. So we're open to a reasonable resolution  
15 of this.

16 COMMISSIONER DEASON: Well, let's just -- Ms. Brown,  
17 what do you want -- do you want to have the deposition entered  
18 as, as an exhibit or what are you proposing be done?

19 MS. BROWN: I am proposing that because Mr. Stallcup  
20 did not file prefiled testimony, if Florida Power & Light has  
21 concerns or objections to the document that he created, his  
22 deposition is available to test his production of that document  
23 and is there for the Commission's review, and we would propose  
24 to submit it in lieu of his testimony.

25 COMMISSIONER DEASON: And, Mr. Guyton, what do you

1 propose be done?

2 MR. GUYTON: We propose to review the deposition and  
3 see if that's adequate. But if we determine that it's not  
4 adequate, we propose either the opportunity to call  
5 Mr. Stallcup or move to strike the portion of Mr. Maurey's  
6 testimony that's based upon Mr. Stallcup's analysis.

7 COMMISSIONER DEASON: Well, it seems to me that  
8 there's an either/or there and you need to review that  
9 deposition and determine what you think you need to do and  
10 discuss it with staff counsel. And, and if you -- it seems to  
11 me that she can either produce the witness or else be subject  
12 to a motion to have that part of Mr. Maurey's testimony  
13 stricken. So I'll leave it to you, the staff and you to, to  
14 work out the, the situation. And if it cannot be resolved, we  
15 will discuss that at hearing.

16 MR. GUYTON: Very good. Thank you, Commissioner.

17 MS. BROWN: Thank you, Commissioner.

18 COMMISSIONER DEASON: Section VIII, basic positions.  
19 Any changes, corrections?

20 MR. GUYTON: We have, we have a few typos that we'll  
21 get to Ms. Brown.

22 COMMISSIONER DEASON: Please just do that with Ms.  
23 Brown. Any other parties? Mr. McGlothlin?

24 MR. MCGLOTHLIN: I intend to add a phrase in PACE's  
25 statement that I can supply to staff.

1           COMMISSIONER DEASON: Very well. Section IX, issues  
2 and positions, and we will begin with Issue 1. I just would  
3 note that in reviewing the draft prehearing order, that FP&L in  
4 their position had indicated that there was a question as to  
5 whether this issue is actually needed. Mr. Guyton, what's,  
6 what is the reason for that statement?

7           MR. GUYTON: Well, I think this is kind of an  
8 outgrowth of some of the uncertainty that arose from the TECO  
9 Electric versus Garcia decision as to whether or not an entity  
10 is, power plant is fully committed to retail electric  
11 customers.

12           I think it's really uncontroverted that Florida Power  
13 & Light Company is building these power plants to the benefit  
14 of its retail customers.

15           COMMISSIONER DEASON: Is there any party that wishes,  
16 that plans to contest whether the, if this unit is, is  
17 constructed as planned, whether it would be fully committed?  
18 Is this, is this at issue with any party?

19           MR. MOYLE: Not with CPV Gulfcoast.

20           MR. MCGLOTHLIN: Not for Florida PACE. I don't want  
21 to go on record as agreeing with the premise that if it's being  
22 built by a retail utility, there's no, there's no such issue in  
23 any circumstance, but Florida PACE does not intend to --

24           COMMISSIONER DEASON: For purposes of this proceeding  
25 and the limited scope of this proceeding you do not intend to

1 pursue this as an issue.

2 MR. McGLOTHLIN: That is correct for Florida PACE.

3 MR. MAY: That same rationale applies to South Pond.

4 MS. KAUFMAN: And the same would be true for FIPUG.

5 COMMISSIONER DEASON: Mr. Twomey?

6 MR. TWOMEY: Same.

7 COMMISSIONER DEASON: Okay. What I hear then, it is  
8 not necessary to actually have this as a contested issue and  
9 have it listed as such in the prehearing order. Does staff  
10 have a problem with that?

11 MS. BROWN: Not at all.

12 COMMISSIONER DEASON: Very well. Would the same  
13 apply to Issue 2?

14 MR. GUYTON: It does for FPL.

15 COMMISSIONER DEASON: It would be my intention then  
16 to treat Issue 2 in the same way, unless I hear an objection  
17 from any party. Hearing no objection from any party, show the  
18 same for Issue 2.

19 MR. GUYTON: Will that be stipulated or will it be  
20 dropped, Commissioner?

21 COMMISSIONER DEASON: It will just be dropped as an  
22 issue. There's no stipulation here. It's just not an issue  
23 that's going to be contested.

24 Is that sufficient for your needs, Mr. Guyton?

25 MR. GUYTON: Yes.

1           COMMISSIONER DEASON: Okay. Issue 3. Questions,  
2 changes, clarifications?

3           MR. McGLOTHLIN: Again, I have a phrase that I will  
4 add to PACE's position.

5           COMMISSIONER DEASON: You can just share that with  
6 Ms. Brown.

7           MS. BROWN: Commissioner Deason --

8           COMMISSIONER DEASON: Yes.

9           MS. BROWN: -- if I might interject. We would  
10 suggest a change in the wording of Issue 3 to include the  
11 phrase "in 2005," after "Martin Unit 8." So the issue would  
12 read, "Does Florida Power & Light Company have a need for  
13 Martin Unit 8 in 2005, taking into account the need for  
14 electric system reliability and integrity?"

15           MR. GUYTON: Commissioner, I think that the issue is  
16 fine the way it's worded. But if we're going to add a time  
17 frame, I think the time frame should be in 2005 and 2006.  
18 That's the need that's been set forth in FPL's testimony.

19           MS. BROWN: That would be fine with staff.

20           COMMISSIONER DEASON: Any objection to including the  
21 phrase "in 2005 and 2006"?

22           MR. McGLOTHLIN: Yes. I think I object to 2006. The  
23 in-service date is projected to be 2005, and that should be the  
24 question.

25           COMMISSIONER DEASON: I'm just going to strike --

1 there's no -- there's going to be no reference to any time  
2 frame. The issue will just stand as is.

3 MR. TWOMEY: Commissioner Deason, FACT will adopt  
4 CPV's position on 3.

5 COMMISSIONER DEASON: Very well. Ms. Brown, you can  
6 make that change.

7 MS. BROWN: I'm sorry. Could --

8 MR. TWOMEY: I'm sorry, Ms. Brown. FACT will adopt  
9 CPV's position on Issue 3.

10 MS. BROWN: All right.

11 COMMISSIONER DEASON: Issue 4. And I think there's  
12 some question as to whether this really is at issue as it  
13 relates to Manatee Unit 3, so let me ask, is this at issue with  
14 any party?

15 MR. McGLOTHLIN: Yes, sir.

16 COMMISSIONER DEASON: It is at issue?

17 MR. McGLOTHLIN: Yes, sir.

18 COMMISSIONER DEASON: Very well. Any changes or  
19 corrections to, to positions?

20 First of all, let me ask this -- I'm sorry.  
21 Mr. McGlothlin, the reason I ask that question, I reviewed your  
22 position and you indicated it appears that FP&L has a need for  
23 the capacity represented by Manatee 3, but then you go on to  
24 question cost-effectiveness. And I thought cost-effectiveness  
25 was a separate issue.

1 MR. McGLOTHLIN: PACE has a different position,  
2 Commissioner.

3 COMMISSIONER DEASON: I'm sorry. You're not  
4 representing FIPUG, Mr. McGlothlin. Ms. Kaufman is  
5 representing FIPUG. Okay. Let me review that position for  
6 just a moment.

7 (Pause.)

8 So that position that you state there, you are  
9 questioning whether this particular unit is needed for purposes  
10 of reliability and integrity.

11 MR. McGLOTHLIN: Yes, sir.

12 COMMISSIONER DEASON: Very well. I just didn't quite  
13 get that connotation there.

14 MR. TWOMEY: FACT will adopt PACE's position, 4.

15 COMMISSIONER DEASON: Okay. FACT will be adopting  
16 PACE's position on Issue 4.

17 Any other changes or corrections on Issue 4? Issue  
18 5? Issue 6?

19 MR. McGLOTHLIN: Again on 5 I will add a sentence and  
20 I'll supply that to staff.

21 COMMISSIONER DEASON: Very well. Please provide that  
22 to Ms. Brown.

23 Issue 7. And when I was reviewing my draft, I just  
24 made a note to myself and asked the question, can this  
25 particular issue be stipulated? And that's the question I will



1 ask the parties.

2 MR. GUYTON: FPL is prepared to stipulate.

3 COMMISSIONER DEASON: I guess the question is can you  
4 stipulate or can you represent that this is an issue which will  
5 be contested at hearing?

6 MS. KAUFMAN: Commissioner, FIPUG would just take no  
7 position on this issue.

8 COMMISSIONER DEASON: No position? So you will not  
9 be contesting it at hearing and -- you cannot stipulate, but  
10 you will be taking no position.

11 MS. KAUFMAN: Exactly.

12 COMMISSIONER DEASON: Is there any other parties -- I  
13 indicate that, at least in my draft, that there's no position  
14 stated by any of the parties other than FP&L and staff's  
15 position as stated. So -- and I believe FP&L and staff are in  
16 agreement. I'm just trying to tailor this prehearing order and  
17 make it as efficient as possible. So if it's not going to --  
18 if we're not going to have this as a contested issue, can we  
19 just indicate that this is a noncontested -- how should we do  
20 this, Ms. Brown?

21 MS. BROWN: Well, I think you should ask each of the  
22 parties what their positions are on this issue. They've said  
23 no position at this time. Under our procedural rules it is at  
24 the prehearing conference that they're required to take --

25 COMMISSIONER DEASON: Let me ask the parties this: Is

1 it permissible to change your positions to no position, period,  
2 and not no position at this time?

3 MR. MCGLOTHLIN: Commissioner Deason, let me address  
4 that for just a second.

5 Some information was developed in the course of  
6 depositions that I believe bears on PACE's response to this.  
7 And I don't know if I can do it on the spot, but I'm reluctant  
8 to say it isn't an issue because as presently worded I think  
9 the issue implies the question is whether FPL can find  
10 700 megawatts plus of conservation programs to avoid an entire  
11 unit. Given that FP&L has acknowledged that if it has Manatee,  
12 all it needs in addition to that capacity to meet the  
13 20 percent criterion is 15 megawatts, and for that they're  
14 offering, they're proposing to build this entire unit -- I  
15 think that sheds a little different light on this question.  
16 And so we would want to state our position is that FPL should  
17 be required to demonstrate it can't find 15 megawatts of  
18 conservation programs, which would then effectively defer the  
19 need for the Martin Unit. And I'm thinking on the spot here,  
20 but I would like a chance to --

21 COMMISSIONER DEASON: Well, you know, and I don't  
22 have a problem with you pursuing an issue at hearing. My  
23 problem is at prehearing conference saying you don't have a  
24 position and then at the hearing all of the sudden changing  
25 your position and saying I have a position and I'm contesting

1 it. If you want to contest it, that's fine, just tell me right  
2 now and we'll list it in the prehearing order that it's  
3 contested and the reason you're contesting it.

4 MR. McGLOTHLIN: It's contested, and we will supply a  
5 position.

6 COMMISSIONER DEASON: Very well. Will the same be  
7 true for Issue 8, Mr. McGlothlin?

8 MR. McGLOTHLIN: Not for Florida PACE, we would not  
9 be at issue on Issue 8.

10 COMMISSIONER DEASON: Okay.

11 MS. BROWN: I'm sorry. I couldn't hear  
12 Mr. McGlothlin.

13 MR. McGLOTHLIN: With respect to Issue 8 and Manatee,  
14 we do not intend to take a position on that.

15 COMMISSIONER DEASON: Let me ask, is there any party  
16 here that plans to take a position on Issue 8? So we can  
17 just -- for all parties we can just list then no position on  
18 Issue 8; is that fair?

19 MR. GUYTON: Except for FPL, yes.

20 COMMISSIONER DEASON: Except for FP&L and I think  
21 except for staff.

22 Let me back up to Issue 7. With the exception of  
23 Mr. McGlothlin, can all the parties' positions there be stated  
24 as no position, period? Mr. May?

25 MR. MAY: Mr. Chairman, South Pond will adopt the

1 position of PACE articulated by Mr. McGlothlin.

2 COMMISSIONER DEASON: Mr. Moyle?

3 MR. MOYLE: Gulfcoast would also adopt that position.

4 COMMISSIONER DEASON: Okay. Mr. Twomey?

5 MR. TWOMEY: Yes, sir. The same as the others.

6 COMMISSIONER DEASON: Okay. And, Ms. Kaufman, I

7 think the same for you then; is that correct?

8 Okay. So long as we get it clear in the prehearing

9 order.

10 MS. BROWN: Was this true for FIPUG as well?

11 COMMISSIONER DEASON: Yes.

12 MS. BROWN: All right. Thank you.

13 COMMISSIONER DEASON: Okay. And I think we've

14 already addressed Issue 8.

15 Issue 9. I'm sorry. Issue 8.

16 MR. MOYLE: I just want to be clear with respect to

17 Issue 7. Mr. McGlothlin, I think, talked about, you know, a

18 15-megawatt shortfall and whether that could be made up with

19 conservation measures, and I think asked whether the issue

20 could be reflective of that.

21 COMMISSIONER DEASON: I think the issue, as worded,

22 is adequate.

23 MR. MOYLE: Okay.

24 COMMISSIONER DEASON: It says mitigate. That could

25 mean one megawatt or 100. I don't know.

1 MR. MOYLE: Just so we're clear, I don't think anyone  
2 is going to take the position that, you know, there's over  
3 600 megawatts of mitigation available, but I think it's going  
4 to be related to --

5 COMMISSIONER DEASON: I think the issue is adequate  
6 as is currently stated.

7 Issue 9.

8 MS. BROWN: Commissioner Deason, I'm sorry to take  
9 you back to Issue 8 for a minute.

10 COMMISSIONER DEASON: Yes.

11 MS. BROWN: With the parties taking no position and  
12 the staff and FPL being in agreement, that appears to me to be  
13 a stipulated issue.

14 COMMISSIONER DEASON: I don't think the parties are  
15 willing to stipulate, but I think for purposes of the  
16 prehearing order it can show that there is, there is no adverse  
17 position taken --

18 MS. BROWN: All right.

19 COMMISSIONER DEASON: -- to this issue. And I think  
20 that this probably needs to be preserved as an issue because I  
21 think the order needs to address this because it's part of our  
22 statutory responsibility.

23 MS. BROWN: All right.

24 COMMISSIONER DEASON: Okay. Issue 9. Changes or  
25 corrections, questions?

1 Issue 10. Issue 11. Issue 12.

2 MR. GUYTON: Florida Power & Light has a change to  
3 its position, which it will provide to staff.

4 COMMISSIONER DEASON: Is it a substantive change,  
5 Mr. Guyton?

6 MR. GUYTON: Yes. We've deleted most of the response  
7 and added a sentence that FPL evaluated all proposals  
8 consistently with the terms of the supplemental RFP.

9 COMMISSIONER DEASON: Very well. I have a question  
10 to the parties. At least in my draft I don't have positions  
11 taken by any of the other parties. Is this just an error in  
12 the draft or is it the fact that you're taking positions on  
13 other issues that you're requesting be included is the reason  
14 there are no positions stated here?

15 MR. TWOMEY: FACT should read the same as the FACT  
16 position in 11.

17 COMMISSIONER DEASON: So it should be the same as 11?

18 MR. TWOMEY: Yes, sir.

19 COMMISSIONER DEASON: Very well. Mr. Moyle?

20 MR. MOYLE: Yeah. Mr. McGlothlin and I worked on  
21 putting together these issues. I think it may be that this is  
22 the result of positions taken on issues that we identified.  
23 Staff prepared the document. It may be helpful to understand  
24 whether that was an oversight or whether this was reflective of  
25 the other issues that some of the intervenors prepared.

1 MS. BROWN: I'm sorry. I don't understand  
2 Mr. Moyle's question.

3 COMMISSIONER DEASON: Let me clarify my question  
4 first and then that may help. I want to know are there  
5 positions being taken by other parties on Issue 12? And  
6 Mr. Twomey has indicated he is taking a position. I don't have  
7 any others listed for any other parties, and that's what I'm  
8 trying to ascertain.

9 MS. KAUFMAN: Commissioner, I think, subject to my  
10 colleagues, that we had submitted an alternative issue. I  
11 think, if I'm following how this was put together, that it's  
12 Issue 16.

13 COMMISSIONER DEASON: Okay. Issue 16.

14 MS. KAUFMAN: And that's on my draft on Page 28. And  
15 it has a number of subparts to it as well.

16 COMMISSIONER DEASON: Well, maybe we need to go ahead  
17 and address that then, if there's no objection to going ahead  
18 and skipping over to joint Intervenor's Issue 16 along with the  
19 subparts.

20 MR. MCGLOTHLIN: Actually, Commissioner, we're to  
21 that point because that issue and others arise as our suggested  
22 counterparts or subparts to staff's Issue 13, and I think we're  
23 to that point now.

24 COMMISSIONER DEASON: Okay. So you're proposing that  
25 in lieu of staff Issue 13, that Issue 16 and the various

1 subparts be incorporated?

2 MR. McGLOTHLIN: 15 and 16 --

3 COMMISSIONER DEASON: 15 and 16. Very well.

4 MR. McGLOTHLIN: -- of the intervenors. And if I may  
5 take a moment to explain that.

6 Commissioner, this will probably be the one area of  
7 the issues section that will require a little bit of time  
8 because it was the source of the principal debate, and it  
9 turned out to be a debate amicable but strongly held between  
10 staff on the one hand and parties other than FPL on the other.

11 The debate has to do with how to strike the right  
12 balance between an issue that is worded generally on the one  
13 hand and issues that we think require some degree of  
14 specificity on the other.

15 And if you'll look at 13 for just a second, staff's  
16 13 says, was FPL's evaluation of Martin Unit 8, Manatee Unit  
17 3 and projects filed in response to a supplemental request for  
18 proposals issued on April 26th reasonable and appropriate?

19 We took this approach: FPL filed its presentation,  
20 and then the intervenors in their presentations and in their  
21 case preparation identified certain aspects of that  
22 presentation that they intend to challenge and have challenged.  
23 And to that end we've offered issues, our Issues 15 and 16 with  
24 some subparts to identify specifically those aspects of the FPL  
25 presentation that we think are flawed or biased or have



1 shortcomings of some sort.

2           And to give you an example, our 16 tees up the  
3 following subjects:

4           (A) asks about -- asks whether FPL assigned  
5 reasonable operating parameters, meaning heat rate and  
6 availability parameters, to its own units when comparing them  
7 to the projects of the bidders.

8           (B) asks whether FPL was consistent in its treatment  
9 of variable O&M on the one hand, for bidders on the one hand  
10 and for its own units on the other when it modeled each.

11           (C), an important aspect of the comparison was how  
12 FPL went about comparing projects of different durations; a  
13 contract of three, or six or ten years versus a 25- or 30-year  
14 ownership. And there is a component of that that PACE's  
15 witness addresses.

16           Did FPL assume appropriate gas transportation cost  
17 in its analysis? The FPL model cycling and start-up costs, we  
18 have a witness who addresses that specific aspect of the  
19 analysis. Did FPL take into account the seasonal variations on  
20 heat rate and output of units in its modeling process?

21           That gives you the flavor of the types of issues,  
22 subissues that arise under the category of FPL's assumptions  
23 and methodology.

24           Our Issue 15 was our version of the process issue.  
25 And there CPV has teed up the issue of whether FPL intended to

1 administer the evaluation process to give bidders a fair  
2 opportunity to win. And CPV intends to offer evidence  
3 indicating that the design, the RFP was designed to permit only  
4 one outcome, and that was FPL to win. So we think that  
5 deserves a stand-alone issue. Did FPL apply to its self-build  
6 options the same standards and criteria that it applied to  
7 respondents' bids, and were those evaluation criteria disclosed  
8 fully to bidders? Those are the components of our 15 and our  
9 16 that we've proposed to set up in the form of specific  
10 issues.

11 Now in response to each of those -- and there are, I  
12 think, ten in all -- staff says that can be addressed in our  
13 Issue 13. But I want to ask you to consider what the  
14 presentations and what the recommendation and what the  
15 decision-making process would be like if all of that were  
16 smushed into one general issue.

17 The purpose of the prehearing order is two-fold, I  
18 contend. The first is to educate the Commission as to what  
19 they're going to, what the parties' contentions are, what  
20 they're going to hear when they come to the hearing and what is  
21 the ruckus all about. The second is for the benefit of the  
22 parties because when it comes time to, for the Commissioners to  
23 deliberate and cast their votes, the parties are entitled to  
24 know how the Commissioners disposed of the presentations they  
25 made. And if you have a recommendation that, that addresses

1 all these ten issues, how can, how can the parties know if the  
2 Commissioners say, well, I agree or disagree with the staff,  
3 how will we ever know whether and to what extent the  
4 Commissioners focused on those things that the parties felt  
5 important enough to go to the time and expense of making a  
6 presentation?

7           So both from the vantage point of the Commissioners  
8 who want to understand what the case, what the parties'  
9 contentions are and from the parties who want to know what the  
10 vote is, we think it makes some sense to break out these  
11 important topics.

12           The purpose of the prehearing is to streamline the  
13 process to avoid duplication, to come to some agreement as to  
14 how issues are phrased, and the parties have done that. At the  
15 last -- at the last Issue ID meeting the parties other than FPL  
16 had collaborated on a single set of issues worded the same way,  
17 and so to that extent the purpose of the prehearing process has  
18 been accomplished.

19           I think the purpose of prehearing is not necessarily  
20 to preclude parties from teeing up those things that are  
21 important to them. And the APA says that parties are entitled  
22 to offer evidence and argument on all the issues. It doesn't  
23 say evidence and argument on the issue. And if you go far  
24 enough, you can compress everything into a single general  
25 issue. It is a matter of balance; I understand that. And if

1 we were in a rate case trying to whittle 200 issues down to a  
2 manageable 125, you know, we might well spend some time on, on  
3 identifying things that can, that can go. We're not anywhere  
4 near that point. We've got the subissues that we'd like to be  
5 incorporated because we think each is a standalone topic that  
6 is important, deserving of individual attention.

7           It was brought out during the last Issue ID meeting  
8 that at one point there was no standalone issue identified for  
9 the equity penalty. The staff was the one who recognized a  
10 need to do that and they were correct in doing so. But I think  
11 --

12           COMMISSIONER DEASON: I'm sorry. Could you repeat  
13 that? Staff was correct in doing what?

14           MR. McGLOTHLIN: In breaking out from a general issue  
15 the single subject of should there be an equity penalty. That  
16 goes to process and assumptions and fairness, too. And  
17 conceivably you could just roll that into 13, also, but it  
18 would be a mistake to do so and would not serve your interests  
19 or the parties' interests to do so. And by the same token,  
20 these other topics are, are, these other subjects are  
21 important, significant and distinguishable from others and we  
22 think it doesn't, it is not burdensome on the Commission, staff  
23 or parties to go to this level of specificity.

24           COMMISSIONER DEASON: Thank you. Mr. Guyton?

25           MR. GUYTON: Commissioner, I'll be happy to respond.

1 I just want to make sure that Mr. McGlothlin is speaking for  
2 all the intervenors. I don't want to find my remarks  
3 sandwiched.

4 COMMISSIONER DEASON: Very well. I'll ask other  
5 intervenors, do you agree with Mr. McGlothlin or do you have  
6 separate statements you wish to make?

7 MR. MAY: South Pond endorses the remarks of  
8 Mr. McGlothlin.

9 COMMISSIONER DEASON: Mr. Moyle?

10 MR. MOYLE: We agree with the remarks. We could go  
11 on, but given the time limitations, we'll just adopt those for  
12 the purposes of the decision.

13 COMMISSIONER DEASON: Ms. Kaufman?

14 MS. KAUFMAN: Yes. Commissioner, FIPUG agrees with  
15 Mr. McGlothlin.

16 COMMISSIONER DEASON: Mr. Twomey?

17 MR. TWOMEY: Yes, sir. Same.

18 COMMISSIONER DEASON: Very well.

19 MR. GUYTON: Thank you, Commissioner Deason.

20 There's already been a fairly significant elaboration  
21 of the issues. All of these, quote, subissues are subordinate  
22 to, subsumed within the question of whether the two units in  
23 question are the most cost-effective alternative. That issue  
24 has been identified.

25 Now in addition to that, FPL agreed to other issues

1 that had been identified at the most recent meeting of the  
2 parties, including the equity penalty issue and several other  
3 issues that are already identified in the prehearing order and  
4 identified in staff's list. And in addition to that, although  
5 it wasn't there early on, it certainly wasn't in our issue  
6 list, we've agreed to a separate question about process and a  
7 separate question, which I think is Issue 12 in your draft  
8 prehearing order and Issue 13 as to the evaluation.

9           So we've already gone from the general to the  
10 specific here. What you have before you this morning is an  
11 attempt to get, what I would call, hyperspecific. The  
12 intervenors have taken every individual point that they've made  
13 in their testimony and they've asked you to create a ruling on  
14 it so that they can focus the Commission's decision on that.  
15 If we had done that, you would literally be looking at hundreds  
16 of issues that we had identified in our testimony. We  
17 recognized that that was not appropriate and so we didn't  
18 respond in kind.

19           I think you're confronted with does the Commission  
20 need this to decide the case and what's fair to the parties? I  
21 think Mr. McGlothlin probably fairly characterized the two  
22 considerations. Does the Commission need this to process the  
23 case? No. You have issues that are adequate to process this  
24 case that are already set forth in terms of the  
25 cost-effectiveness issue, the process issue and the evaluation

1 issue. And is it fair to the parties, are those issues fair to  
2 the parties? Of course it is. Those issues allow them to  
3 present all the evidence that they've presented in this case,  
4 those issues allow them to argue all the arguments that they  
5 hope to make as regards those issues. There's no preclusion  
6 going on here. They're entitled under the APA to argue and to  
7 present evidence, and these broader issues in no way restrict  
8 their ability to do that.

9           If they want the Commission to look at specific  
10 issues, they can, under the APA, file proposed findings of fact  
11 as to their specific issues. That's the remedy that's  
12 available to them if they want to go down to the hyperspecific  
13 detail. That's available to them under the APA; that shouldn't  
14 be denied.

15           But we shouldn't clutter the prehearing order by  
16 essentially doubling the issues at issue here, particularly  
17 when the issues are redundant, duplicative and cumulative. So  
18 we would submit that the staff has identified the appropriate  
19 balance here and we should proceed with the orders that have  
20 been identified by staff in the draft prehearing order.

21           COMMISSIONER DEASON: Mr. Guyton, are you indicating  
22 that the -- that there are -- there's redundancy and duplicity  
23 within the individual subparts themselves or that taken as a  
24 whole the subparts are redundant and duplicative of more  
25 general issues?

1 MR. GUYTON: Well, I would say that the subparts are  
2 duplicative of the master issues. If you look at Issue 16,  
3 there's Issue 16 and then there are A through, I forget what  
4 subparts, but they are all raised within 16.

5 But then I would suggest that 16 is duplicative of 13  
6 that's already been identified in the prehearing order. And,  
7 similarly, 15 and its subparts are duplicative of Issue 12  
8 that's already been identified by staff and worded more  
9 neutrally in the prehearing order. So I think the prehearing  
10 order already accommodates the concerns that the intervenors  
11 have raised here, except it doesn't get down to the  
12 hyperspecific level that they're asking you to get to.

13 COMMISSIONER DEASON: Staff?

14 MS. BROWN: Well, Commissioner, our positions are  
15 laid out in the draft prehearing order. I would simply  
16 describe for a minute the process that we went through trying  
17 to accommodate the intervenors' concerns with the RFP process.  
18 Usually we wouldn't have these additional issues in a need  
19 determination. But we conceived of this as a bid rule exists,  
20 FPL -- we wanted to know if FPL's performance in its request  
21 for proposals was consistent with the bid rule, and then did it  
22 follow what it said it was going to do when it issued its RFP,  
23 and then was the evaluation process reasonable and appropriate?  
24 All of these subissues that the parties have raised, in my  
25 mind, are actually answers to those larger issues and should be



1 addressed as such. And those issues can accommodate all of the  
2 parties' positions, and where there is, there are nuances or  
3 difference between them, those can be addressed.

4 I would point out that in this -- when the parties  
5 file their posthearing statements and proposed issues of fact,  
6 as Mr. Guyton mentioned, they can address many particulars.  
7 And the Commission will, when it reviews its staff  
8 recommendation, have before it the positions of the parties on  
9 all of those evidentiary and factual matters and will have it,  
10 take it into consideration when it issues its decision. That's  
11 all I have.

12 MR. TWOMEY: Commissioner Deason, at the risk of  
13 pushing your tooth, can I make just a short statement?

14 There's elements of a tempest in a teapot here, if I  
15 understand what that means.

16 The, the joint intervenors went to some considerable  
17 expense of time and effort trying to reduce the number of  
18 issues that were out there from the beginning. You heard the  
19 staff suggest to you that they think it should be shorter, but  
20 they haven't really given, in my estimation, any good reason  
21 why there should be -- there's no harm to come from having a  
22 few additional issues. Likewise, FP&L hasn't given you, in my  
23 opinion, any good reasons why the additional issues shouldn't  
24 be accepted except maybe to save a few pieces of paper here and  
25 there.

1           The joint intervenors on the other hand have told you  
2 that they find advantage in it, in being able to address the  
3 Commission and focus the Commission more specifically on the  
4 issues that they think are important in the case.

5           So I think you're left with -- while there's clearly  
6 an understandable desire to have a compact document with your  
7 signature on it, you've heard a number of parties here, the  
8 joint intervenors say that they find significant advantage in  
9 having these extra issues and you have the staff and FP&L say  
10 they just don't see the need for it but they don't see any real  
11 harm, if I heard what they said. So I would encourage you to  
12 let us have those additional issues. Thank you.

13           MR. GUYTON: Commissioner Deason, if I might respond  
14 briefly.

15           COMMISSIONER DEASON: Sure.

16           MR. GUYTON: I don't mean to suggest that by a lack  
17 of comment to this effect that I feel like that there's an  
18 advantage to the intervenors and a disadvantage or no  
19 corresponding disadvantage to us. There is a disadvantage  
20 here. And we've not gone into the specifics of this because  
21 one general argument serves it, but many of these issues are  
22 value-laden and are not objectively worded and they imply a  
23 position. And they all are designed to address certain aspects  
24 of the fairness and to advance arguments that the process was  
25 unfair. And I think I did mention that we certainly could have

1 focused attention with more specific issues on parts that are  
2 not contested that clearly were fair, but we chose not to do  
3 that.

4 I think it does give great advantage to the  
5 intervenors, and unfairly so. The Commission is much better  
6 served by having a general issue that's not designed to give  
7 advantage or disadvantage to either party.

8 COMMISSIONER DEASON: Very well. Let me ask this  
9 question. I'll direct it to Mr. McGlothlin. Issues 15 with  
10 subparts and 16 with subparts, in your proposal they would take  
11 the place of Issues 12 and 13?

12 MR. McGLOTHLIN: I believe that's correct,  
13 Commissioner.

14 COMMISSIONER DEASON: Can you take just a moment and  
15 review that to make sure that is the case? 12 addresses  
16 process and 13 addresses evaluation.

17 MR. McGLOTHLIN: That is correct, Commissioner. The  
18 wording that staff in its response to subissues is, I think  
19 could be incorporated or subsumed in 13. But I think as a  
20 practical matter what we've offered in our 15 and 16 with  
21 subparts is offered in lieu of staff's 12 and 13.

22 COMMISSIONER DEASON: Okay. I have a question as it  
23 relates to joint intervenors' Issue 15, not the subparts, but  
24 the general issue 15 as it relates to staff's Issue 12. The  
25 wording is very similar, except at the very conclusion of the

1 issue statement the joint intervenors' Issue 15 concludes with  
2 "fair, reasonable and appropriate," and staff's concludes with  
3 "consistent with the terms of the supplemental request for  
4 proposals." Is that just different words to mean the same  
5 thing or is there a substantive difference in these issues?

6 Mr. McGlothlin, if you can respond to that, then I'll  
7 ask staff to respond.

8 MR. McGLOTHLIN: I see some difference. I don't  
9 think one means the same as the other. I think in Issue,  
10 staff's Issue 12 there's only one criterion or one subject  
11 being pursued, and that is whether there's consistency between  
12 what was published and what was pursued. And I think our --

13 COMMISSIONER DEASON: Staff's is consistency with  
14 what was proposed, with the terms of the request for proposals.

15 MR. McGLOTHLIN: Yes.

16 COMMISSIONER DEASON: And then your joint intervenor  
17 Issue 15 is one of a standard of fair, reasonable and  
18 appropriate.

19 MR. McGLOTHLIN: And is not limited to whether it was  
20 consistent with what was published or not. So I think it  
21 covers more ground.

22 COMMISSIONER DEASON: Okay. And then that raises  
23 another question. What is the purpose of this hearing: To  
24 make sure the process is fair, just and reasonable or that it  
25 complied with the RFP as issued?

1 MR. McGLOTHLIN: I think it's the former. I don't  
2 think you're -- I don't think the inquiry is limited to whether  
3 the process applied was fully consistent with what was  
4 published.

5 COMMISSIONER DEASON: Okay. Mr. Guyton -- Mr. Moyle,  
6 go ahead.

7 MR. MOYLE: Just briefly, I would indicate to you  
8 that I don't believe the two are mutually exclusive and that  
9 both of them are issues for consideration. One, was it  
10 consistent with the terms of the supplemental RFP; and then the  
11 other, was it administered in a way that was fair, reasonable  
12 and appropriate? In my view they're two different issues.

13 COMMISSIONER DEASON: Mr. Guyton?

14 MR. GUYTON: I think they were designed to get at the  
15 same thing, but I'd be hard-pressed to tell you that, that they  
16 don't in their specificity ask for two different things,  
17 Commissioner. I mean, I think the parties' intent was to try  
18 to come up with the same type of issue, but the qualifiers at  
19 the end, I think, are somewhat different. The fair, reasonable  
20 and appropriate is probably broader than whether it complied  
21 with the terms of the supplemental RFP.

22 COMMISSIONER DEASON: What's the purpose of this  
23 hearing? What is the Commission to ascertain as a result of  
24 this hearing?

25 MR. GUYTON: Actually I think the purpose of the

1 hearing is whether or not you have the most cost-effective  
2 alternative, and this is a subordinate issue to that. I don't  
3 know that either one of these are necessary to issue the  
4 statutory criteria, and that is whether it's cost-effective or  
5 not. We have nonetheless agreed to go to a subordinate issue  
6 on process. But I think the purpose of the hearing is whether  
7 or not the statutory standard has been satisfied, and that is  
8 whether the alternative is the most cost-effective.

9 COMMISSIONER DEASON: All right. What we're going to  
10 do is I'm going to, I'm going to allow the joint intervenors'  
11 Issue 15 in lieu of the Issue 12 as stated there but without  
12 subparts. I think that the issue as stated, fair, reasonable,  
13 and appropriate is broad enough, and I'm not so sure that the  
14 particular subparts add anything in terms of efficiency or  
15 being any more informative or helpful to the Commissioners. So  
16 that will be the case for, for Issue 12. We will substitute  
17 Issue 12, the joint intervenors' general Issue 15.

18 Now as to Issue 13, I find that the more specific  
19 issues contained within joint intervenors' Issue 16, that being  
20 all of the subparts, I guess that's (A) through (G) -- in  
21 reviewing that, it appeared to me that these subparts, that  
22 they were informative and helpful to the Commissioners in  
23 reviewing for this case and that it added a certain amount of  
24 efficiency to the case, even though sometimes it's difficult to  
25 equate efficiency with an additional number of issues, but in

1 this case I think it accomplishes that.

2 My only concern is that I've heard Mr. Guyton  
3 indicate that some of these issues are not objectively written.  
4 That concerns me. I've also heard Mr. Guyton indicate that  
5 there's some redundancy or duplicity. I'm concerned about the  
6 redundancy, if there's redundancy between subparts, just not  
7 the fact that it's redundant of what could be considered a more  
8 general issue.

9 So, Mr. Guyton, I'm going to allow you the  
10 opportunity to review these subparts for the objectiveness of  
11 the issues as written. If they are not objective, I will  
12 entertain suggestions for more objective language. And if  
13 there are -- if there is redundancy or duplicity within the  
14 specific subparts themselves, I will also entertain a  
15 suggestion that there needs to be some type of combination of  
16 subparts to eliminate that redundancy or duplicity.

17 And I know that this is probably -- at this point it  
18 is probably unfair to ask you to evaluate that and comment back  
19 now. I do notice that we're approaching the hour of 11:00. It  
20 may be that we're going to need to reconvene anyway this  
21 afternoon, so that may probably give you ample opportunity to  
22 review those issues and advise me as to your position on the  
23 objectiveness of these issues and whether there is any  
24 duplicity.

25 MR. GUYTON: I will endeavor to do so.

1 COMMISSIONER DEASON: Very well. Realizing that --  
2 first of all, let me ask this question. We -- there are -- let  
3 me review my notes.

4 (Pause.)

5 I would propose that we continue through the draft  
6 prehearing order for the other issues and we make efficient use  
7 of the time that we have until the hour of 11:00. And with  
8 that, I think then that we can proceed to, and correct me if  
9 I'm incorrect, but that we can proceed to Issue 14.

10 MR. GUYTON: Commissioner Deason, I don't mean to  
11 correct you. I just want clarification. Are the Issues 16  
12 that you've asked me to respond to to be in lieu of 13?

13 COMMISSIONER DEASON: Would be in lieu of 13. That's  
14 correct. And it would be the general Issue 16 with all its  
15 subparts.

16 MR. GUYTON: Thank you.

17 COMMISSIONER DEASON: Uh-huh.

18 MR. MOYLE: Just so I'm clear, the current Issue 12  
19 that's in staff's proposal, what happens to that?

20 COMMISSIONER DEASON: Current Issue 12 will go away  
21 and we will substitute that with the general Issue 15 without  
22 subparts. And we will be using the language -- I think it's  
23 fair and reasonable or something of that nature. It's included  
24 there.

25 13 will also be eliminated and it will be replaced



1 with the, with Issue 16 with the subparts. But that is  
2 contingent upon Mr. Guyton evaluating that for the  
3 objectiveness of the language and for duplicity of those  
4 subparts.

5 MR. GUYTON: Thank you.

6 COMMISSIONER DEASON: Issue 14?

7 MR. GUYTON: Commissioner Deason, Florida Power &  
8 Light's position on this was omitted in the draft prehearing  
9 order. We will provide a position to staff.

10 COMMISSIONER DEASON: Very well.

11 MS. BROWN: Commissioner Deason, I don't think there  
12 is much disagreement on this issue. When staff first proposed  
13 this separate issue for equity penalty at the very beginning of  
14 this proceeding really it included in it the section that it  
15 has now taken out about whether the penalty was appropriately  
16 calculated. I don't think that's contested. So we can really  
17 have it either way, but I don't -- I think the parties have  
18 already included --

19 COMMISSIONER DEASON: Well, now I'm reading Issue 14,  
20 it just indicates whether an adjustment is appropriate.

21 MS. BROWN: Yes. That's correct. We left out the  
22 section on whether it was reasonably calculated. But the  
23 parties have included that issue, that part of the issue in  
24 their prehearing statements, I think, only because we included  
25 it when we began this.

1           COMMISSIONER DEASON: Okay. The parties have heard  
2 Ms., Ms. Brown's inquiry. Is the actual calculation at issue  
3 or is it just a matter of a question as to whether it is  
4 appropriate to include any type of equity adjustment?

5           MR. McGLOTHLIN: Our basic position is that it's  
6 inappropriate to include it at all. But I think we would go  
7 further and say if the Commission does entertain it, we would  
8 want to be heard on whether FPL has quantified it correctly.

9           COMMISSIONER DEASON: Ms. Brown, it is at issue.

10          MS. BROWN: We have no objection to that. It's fine.

11          COMMISSIONER DEASON: Very well. Okay. Joint  
12 intervenor Issue 17 is the determination of whether it was  
13 calculated correctly. So what we will do is -- am I correct,  
14 Ms. Brown, in assuming that we would just utilize joint  
15 intervenor Issue 17 in lieu of 14 or they need to be separate?

16          MS. BROWN: No. I don't think they need to be  
17 separate. That would be fine with us.

18          COMMISSIONER DEASON: Okay. Just then show that we  
19 would use the language for joint intervenor 17 and that it  
20 would take the place of Issue 14.

21                    Issue 15?

22          MR. GUYTON: Florida Power & Light Company's position  
23 will be provided to staff.

24          COMMISSIONER DEASON: Do other parties have positions  
25 on Issue 15?

1 MR. MOYLE: CPV Gulfcoast has one issue with respect  
2 to those transmission costs being aggregated as compared to  
3 being broken out separately.

4 COMMISSIONER DEASON: Can you provide a position  
5 statement to staff?

6 MR. MOYLE: I will. I will.

7 COMMISSIONER DEASON: Other parties, you need to  
8 provide a position statement or else your position will be  
9 shown as no position. Fair enough? Fine.

10 Joint intervenors' Issue 11. I guess there's a  
11 question as to whether this issue needs to be included, joint  
12 intervenors' 11 as well as joint intervenors' Issue 12. I  
13 will -- whoever is advocating the inclusion of these issues,  
14 I'll allow you the opportunity to indicate why they need to be  
15 included.

16 MR. McGLOTHLIN: These appeared on the joint  
17 intervenors' single set of issues. PACE believes it should be  
18 included and PACE's position is no.

19 COMMISSIONER DEASON: Okay. Other parties wish to  
20 add anything to Mr. McGlothlin's statement?

21 MR. TWOMEY: Just adopt what he says.

22 COMMISSIONER DEASON: Very well. Same for Mr. Moyle?

23 MR. MOYLE: Same.

24 COMMISSIONER DEASON: And I assume the same for Ms.  
25 Kaufman?

1 MS. KAUFMAN: Yes, sir.

2 COMMISSIONER DEASON: Okay. Mr. Guyton?

3 MR. GUYTON: Commissioner Deason, this issue is  
4 really a holdover from staff's initial issue list in this case.  
5 Staff raised these issues very early on. They've kind of had a  
6 life of their own in terms that they've kind of found their way  
7 onto the issue list. We don't perceive these as having been  
8 contested. There is no testimony that specifically addresses  
9 these issues in either FPL's direct or rebuttal or any of the  
10 intervenor testimony or staff testimony because they did not  
11 appear to be contested. I mean, we have, we have general  
12 testimony that the costs that have been included are  
13 reasonable, but there's nothing that's specific as to this. I  
14 mean, if they're at issue, you know, we'll put, you know, we  
15 can tee them up, but we didn't really understand that they were  
16 contested.

17 COMMISSIONER DEASON: Ms. Brown?

18 MS. BROWN: I think that's, what Mr. Guyton has said  
19 is correct, Commissioner. If the parties can point us to  
20 evidence that they have that this is in dispute, that would be  
21 helpful.

22 COMMISSIONER DEASON: Mr. McGlothlin?

23 MR. MCGLOTHLIN: It is not in any testimony we've  
24 filed. I would like the opportunity though to assess whether  
25 we want to cross-examine on the subject and that's the reason I

1 would be --

2 COMMISSIONER DEASON: I'm going to find that the  
3 other issues are sufficiently large enough in scope to allow  
4 you the opportunity to pursue it on cross-examination, subject  
5 to objections and ruling of the Chairman at hearing, and  
6 there's no need to identify these as separate issues.

7 Issue 17. Issue 18. Issue 19.

8 MS. BROWN: Commissioner, could I stop you for a  
9 minute?

10 COMMISSIONER DEASON: Certainly.

11 MS. BROWN: Could we go back to Issue 16?

12 COMMISSIONER DEASON: Yes.

13 MS. BROWN: This is a staff-proposed issue here, not  
14 a joint intervenor issue. We're -- you didn't mention it.  
15 It's still in; correct?

16 COMMISSIONER DEASON: Yes. We were just reviewing  
17 it. Nobody said anything, so it stands.

18 MS. BROWN: Okay. All right. Thank you.

19 MR. MOYLE: And CPV Gulfcoast will take a position.  
20 I'll supply it to staff.

21 COMMISSIONER DEASON: Very well. So I think we've  
22 addressed Issue 16, 17 and 18. Issue 19. I'm moving rapidly,  
23 so you need to advise me if there's questions or concerns.  
24 Okay. Joint intervenor Issue 18.

25 MR. GUYTON: We're prepared to speak to that. Would

1 you prefer to hear the people that propose the issue?

2 COMMISSIONER DEASON: Let me ask, who's proposing  
3 this issue? This is joint intervenors proposing.

4 Mr. McGlothlin, do you stand to speak for --

5 MR. MCGLOTHLIN: The joint intervenors agree that I  
6 think this began with CPV. We agreed that CPV should have the  
7 right to raise the issue and address it. I'll let Mr. Moyle  
8 take it from there.

9 COMMISSIONER DEASON: Mr. Moyle?

10 MR. MOYLE: Yeah. And I'm sorry. I'm -- this is  
11 Issue 18 in the draft prehearing?

12 COMMISSIONER DEASON: I have it listed as joint  
13 intervenor 18 in the, in the draft, yes. And it reads, "Did  
14 FP&L negotiate with the short-listed bidders in good faith?"

15 MR. MOYLE: Okay. Yeah. We have this issue out  
16 there in light of some of the deposition testimony that was  
17 produced. I mean, obviously with respect to the initial RFP,  
18 we would take the position that they did not and that there  
19 were never any negotiations whatsoever.

20 With respect to the supplemental RFP, we have as  
21 evidence a contract that was provided to the short-listed  
22 bidders, and I think testimony would be adduced as to the time  
23 frame in which prospective bidders were able to review that  
24 comment and raise issues related to it. We would argue that  
25 that would be evidence that supports the proposition that good

1 faith negotiations did not ensue.

2 Further, the way in which bids were evaluated, they  
3 were all lumped together, so you had --

4 COMMISSIONER DEASON: Do you have testimony on this?

5 MR. MOYLE: No. I just was trying to -- oh, yeah, on  
6 cross-examination we will.

7 COMMISSIONER DEASON: No. I'm talking about do you  
8 have direct testimony filed on this?

9 MR. MOYLE: I think we do with respect to the draft  
10 IPP contract that was provided that it was onerous and  
11 one-sided.

12 COMMISSIONER DEASON: Mr. Guyton?

13 MR. GUYTON: Commissioner, we would respectfully  
14 submit that the only appropriate entities that would be in a  
15 position to raise this issue were the issues with whom FPL  
16 conducted negotiations, that being Florida Power Corporation in  
17 El Paso, they're conspicuously absent, as to suggesting that  
18 there was anything other than good faith negotiations ongoing.

19 This issue is more than covered by the process and  
20 evaluation issue that you've now allowed in, as well as the  
21 overall cost-effectiveness issue.

22 There is -- once again, this has not been framed in  
23 terms of, in testimony. There is one observation by a CPV  
24 witness that the PPA that was provided had onerous terms and  
25 that's it. I mean, that's the sum and substance of the

1 testimony.

2 COMMISSIONER DEASON: Very well. We're going to  
3 eliminate this issue. And, Mr. Moyle, to the extent you need  
4 to pursue this on cross-examination, you certainly can pursue  
5 it subject to objection and ruling by the Chairman at hearing,  
6 but it will not be a separately listed issue. I believe that  
7 other issues are certainly inclusive enough.

8 Joint intervenors Issue 20.

9 MS. KAUFMAN: Commissioner, I think you might have  
10 skipped over 19 and --

11 COMMISSIONER DEASON: I'm sorry. Skipped over?

12 MS. KAUFMAN: I think you may have skipped over 19,  
13 and 19 and 20 are somewhat related.

14 COMMISSIONER DEASON: Okay. Yes, I did. I'm sorry.

15 MS. KAUFMAN: I'd be prepared to speak to those. I  
16 think there's a disagreement as to whether they should be  
17 included.

18 COMMISSIONER DEASON: Give me a moment just to review  
19 the issue for a second.

20 (Pause.)

21 19 and 20 are related; correct?

22 MS. KAUFMAN: Yes, sir.

23 COMMISSIONER DEASON: Okay. You want to address  
24 both?

25 MS. KAUFMAN: I'd be glad to.



1 COMMISSIONER DEASON: Very well.

2 MS. KAUFMAN: Issue 19 that the joint intervenors  
3 have raised deals with the question of if FPL is ultimately  
4 selected as having the most cost-effective project, whether  
5 they should essentially be bound by their bid. I think there's  
6 a lot of testimony in this case on both sides. FPL says, yes,  
7 we've done the right thing, we've selected the most  
8 cost-effective project. The joint intervenors think if that's  
9 your ultimate decision and if that's FPL's decision, they  
10 should be bound by their bid just like anyone else would be.

11 In addition, I believe, and I'm going to look to  
12 Mr. Moyle for this, but I believe that this issue was raised in  
13 the beginning of this case when the Commission was dealing with  
14 the waiver questions, and CPV was told at that time, well, this  
15 isn't an appropriate matter to be considered in the context of  
16 the waiver, but we will look at it when we come to the main  
17 substantive part of the case.

18 So we think that Issue 19 is something that the  
19 Commission needs to consider in this case.

20 COMMISSIONER DEASON: Refresh my memory. The  
21 question of the waiver, how did --

22 MS. KAUFMAN: Again, I'm somewhat fuzzy on that, but  
23 I believe there were several waiver petitions pending. I  
24 believe that Mr. Moyle's clients objected or raised an  
25 objection as to one of the waivers and raised this issue about

1 the binding nature of the bid. And they were told that in the  
2 context of the Commission ruling on the waiver of the time  
3 frames for the determination of need, the binding nature of the  
4 bid question was not appropriate, but that the Commission would  
5 consider it when they got to the merits of the case.

6 COMMISSIONER DEASON: Uh-huh.

7 MS. KAUFMAN: That's my recollection of that issue,  
8 of how it's related to the waiver question.

9 COMMISSIONER DEASON: Okay.

10 MS. KAUFMAN: Related to Issue 19 is joint intervenor  
11 Issue 20, which is a follow-up issue. And it says, If the  
12 Commission were to determine in Issue 19 that FPL need not be  
13 bound by its bid and could later come in and suggest that they  
14 were entitled to additional cost overruns, is that something  
15 that the Commission should take into account as it evaluates  
16 whether FPL has actually selected the most cost-effective  
17 project?

18 So Number 20 relates to the evaluation of the bids  
19 and the proposals that were made. We think that both of these  
20 issues are relevant to the case and that the Commission should  
21 consider them as they hear the evidence.

22 COMMISSIONER DEASON: Okay. Any of the other  
23 intervenors have anything to add. Mr. Moyle?

24 MR. MOYLE: Just briefly. We did raise this issue in  
25 the context of a waiver petition and had an extensive argument

1 and discussion about it, and I believe the waiver was denied.  
2 And my recollection was their discussion -- there was  
3 discussion about this might be something that's appropriately  
4 considered at the hearing.

5 I guess the other point that I would just like to  
6 make by way of argument that the issue should be included is  
7 that there's a statutory requirement that the most  
8 cost-effective alternative be selected. And I think from an  
9 evidentiary standpoint it would be very difficult for the PSC  
10 to reach a conclusion that the most cost-effective alternative  
11 was selected if there is not any kind of a representation or  
12 commitment that the numbers set forth will be binding; you  
13 know, in the context of where you have bids that are submitted  
14 and, if they were selected, they would be a contract that you  
15 would be reviewing for the most cost-effective alternative as  
16 opposed to, you know, FP&L's case in which there are estimates  
17 and there is no guarantee that those numbers are firm. One way  
18 to make them be firm numbers is to require that they are not  
19 able to come back in and seek those adjustments. So we would  
20 argue that for reaching the statutory objective of the most  
21 cost-effective alternative, that that's an important issue.

22 COMMISSIONER DEASON: Mr. Guyton -- I'm sorry. Mr.  
23 McGlothlin.

24 MR. MCGLOTHLIN: I'd like to speak to that. And I  
25 support the inclusion of both issues and I agree they are

1 somewhat related. I see 19 as including a legal issue as to  
2 whether the Commission can require FPL to be limited and, if  
3 they, if the Commission has that authority, should it impose it  
4 in this case? And 20 is a factual issue that, that relates to  
5 that if either -- because either the Commission has the  
6 authority and does not impose it or because the Commission  
7 can't and the company does not voluntarily accept the  
8 limitation, then I think it matters very much to the  
9 Commission, recognizing that, that FPL is not limited to what  
10 it can recover, to want to know as to whether the basis for, I  
11 guess, projections of cost is sound and based on estimates that  
12 are reasonable and can be documented and verified. That, that,  
13 I think, comes into play in terms of the evaluation of FPL's  
14 self-build option as compared to the projects it compared to,  
15 it has a place.

16 COMMISSIONER DEASON: Mr. Guyton.

17 MR. GUYTON: Commissioner Deason, this is a  
18 determination of need case. This is not a proceeding in which  
19 cost recovery for these units is going to be decided either  
20 preliminarily or finally. The Commission has made it very  
21 clear from both prior need determination cases as well as prior  
22 rate case proceedings that its determination, that it's not  
23 bound by its determinations in a need case and that a need case  
24 is not meant to be a cost recovery proceeding.

25 These issues go to cost recovery. They also attempt

1 to kind of stand Chapter 366 on its head because there's a  
2 statutory criterion there for the inclusion of matters in rate  
3 base, which is what the Commission appropriately follows.

4           These issues seem to suggest that the Commission  
5 should ignore the statutory rate base guidance given in 366 and  
6 should impose conditions in a determination of need case. So  
7 we would submit to you it's inconsistent with your prior  
8 precedent, as well as the fundamental framework of 366, as well  
9 as the need statute.

10           COMMISSIONER DEASON: Mr. Guyton, I'm going to ask  
11 you a question and you may need to think about it during the  
12 break.

13           Does the Commission have the legal ability to  
14 consider what was bid or what was bid during a need  
15 determination and the cost information provided by FP&L when  
16 and if that plan is included in rate base in a subsequent  
17 proceeding? That's kind of a convoluted question. But what  
18 I'm getting at is do you agree that the Commission has the  
19 ability, if and when FP&L seeks to include a plan in rate base,  
20 they can go back and review what was provided in terms of cost  
21 in a need determination in considering the prudence of the  
22 amount that is requested to be included in rate base?

23           MR. GUYTON: Yes, Commissioner. I don't need to  
24 consider that. You can go back and consider that evidence.  
25 You cannot go back and revisit the determination as to whether

1 a particular matter was the most cost-effective alternative.

2 But in terms of judging prudence as to whether, what  
3 should go into rate base, yes, both of those items could be  
4 considered on the prudence issue.

5 As to the remainder of the arguments here, this issue  
6 was discussed in the earlier rule waiver request. FPL never  
7 took the position there that this was ever an appropriate  
8 decision to be made in the need case. It's always taken the  
9 position that cost recovery is not an appropriate consideration  
10 in a need determination case.

11 And there is testimony in the record as to whether  
12 bids and cost estimates are binding. There is no testimony in  
13 the record that would suggest that the Commission should  
14 attempt to address cost recovery in this case or somehow limit  
15 what goes into rate base.

16 I would suggest to you that, as was pointed out in  
17 argument, this goes to evaluation. You already have extensive  
18 issues, particularly now in light of your ruling, that goes to  
19 the propriety of the evaluation that more than adequately cover  
20 that in those issues rather than identifying an additional one.  
21 This also goes to the issue as to whether it's the most  
22 cost-effective alternative. There's another issue under which  
23 this argument can be raised there.

24 And then finally I would respond to the remark that  
25 the false dichotomy that's been created or attempt to be

1 created that bids somehow that were submitted in this case were  
2 binding but that FPL's estimates are not, neither one are  
3 binding. The bids that were submitted are full and replete of  
4 caveats, contingencies, conditions, all of which are subject to  
5 negotiation and would have, in all likelihood, changed in some  
6 minor, if not significant, fashion had negotiations ensued. So  
7 to suggest that FPL's estimates are any less binding than the  
8 bids sets up a false dichotomy. The bids indeed were not  
9 binding.

10 So I would suggest for all those reasons these issues  
11 are inappropriate and can more than adequately be covered in  
12 the issues that have already been identified.

13 MR. McGLOTHLIN: Commissioner, could I have the  
14 minute before 11:00?

15 COMMISSIONER DEASON: Yeah. I think you've got one  
16 minute.

17 MR. McGLOTHLIN: The notion that these issues go to  
18 cost recovery is a misconception. It's not correct. It's a  
19 mistake. They go to evaluation and they go to evaluation this  
20 way.

21 Let's say the bidders come in and their projects are  
22 offered in the range of \$100 million to \$200 million, and FPL  
23 says I can do that for \$16.95. Well, clearly that's the lowest  
24 bid. But I think the Commission would have some question as to  
25 whether there's any realistic possibility that FPL is going to

1 deliver on that estimate. And knowing that FPL is not limited  
2 to its proposal here, it would be, I think, a matter of  
3 interest and it would be relevant and germane to inquire, well,  
4 on what do you base that \$16.95? Do I have any confidence that  
5 you have selected the most cost-effective option if your bid is  
6 not, if you can't back that up with some sound basis for  
7 estimating?

8           The point about the caveats, if a bid was selected  
9 that would result in a power purchase contract, and those  
10 terms, contractual terms would be binding on the bidder. So I  
11 think that's not a basis to say that there's a double dichotomy  
12 going here.

13           The relationship between 19 and 20 has to do with the  
14 authority of the Commission to require FPL to be limited or, in  
15 the absence of that authority, whether it's a relevant  
16 consideration to inquire as to whether the, the proposal, the  
17 IOU has, is based on a sound and reasonable estimate or whether  
18 it is simply a desire to win the bid no matter what it takes to  
19 present the cost.

20           COMMISSIONER DEASON: Thank you. And with that,  
21 we're going to recess. I apologize for the need to do this and  
22 the inconvenience it places upon you. But if it wasn't  
23 necessary, believe me, I would not be doing it.

24           Having said that, I think probably the best thing to  
25 do is try to plan at a time certain, a reasonable time certain



1 that we can reconvene. I don't know what I'm going to  
2 encounter when I arrive at the dentist's office, but let's plan  
3 on reconvening at 2:00. Is that sufficient? Very well.

4 And if for some reason I'm not back by that hour,  
5 staff will be here and they will advise you to, to my status.  
6 But if you hear nothing different, we will reconvene at 2:00.  
7 Thank you.

8 (Recess taken.)

9 COMMISSIONER DEASON: Call the prehearing conference  
10 back to order. Once again, let me express my appreciation for  
11 your patience. I endured a temporary crown as a result of a  
12 cracked tooth that I experienced over the weekend. So I think  
13 I'll be feeling better later.

14 Okay. Back to work. As I recall, we were discussing  
15 joint intervenor Issues 19 and 20. And I believe I had heard  
16 discussion from the applicant as well as the intervenors.

17 Staff, did you have anything to add?

18 MS. BROWN: No, Commissioner. Well, let me see. Let  
19 me get there. I shouldn't say that so quickly. I think that  
20 we agree with Florida Power & Light that these issues are  
21 premature and should be addressed at the time of cost recovery.

22 COMMISSIONER DEASON: Well, let me ask this question.  
23 And I guess this gives me some pause. And it's just the actual  
24 wording of the issue itself which leads to -- gives credence to  
25 the position that maybe this issue is premature because Issue

1 19 is -- begins, "If the Commission grants the petition for a  
2 determination of need." Well, that's what this whole purpose  
3 of this hearing is, is to determine if there is a  
4 determination -- if there is a need and whether it should be  
5 granted as it has been applied for. So why is it necessary for  
6 us to consider anything outside the scope of that?

7           And, Mr. McGlothlin, I'm going to give you an  
8 opportunity to address that. Do you understand the question?  
9 It's prefaced by the fact that if FP&L is successful in their  
10 application, what should we do then? And I guess my question  
11 is, that's the whole sum and substance of this hearing, is to  
12 determine if there's a need, and once that's determined, why is  
13 there any need to litigate any further issues?

14           MS. KAUFMAN: Commissioner Deason, I'd be glad to  
15 take a crack at that --

16           COMMISSIONER DEASON: Okay.

17           MS. KAUFMAN: -- and then certainly --

18           COMMISSIONER DEASON: Very well.

19           MS. KAUFMAN: -- Mr. McGlothlin can chime in.

20           COMMISSIONER DEASON: Please do.

21           MS. KAUFMAN: I think that, you're right, the issue  
22 before you, you have an application here by Florida Power &  
23 Light asking you to grant their determination of need and their  
24 allegation that the process they've used, their evaluation has  
25 led them to choose the most cost-effective option here. One

1 result of this hearing could be that you agree with them.  
2 Obviously, a different result could be that you don't agree,  
3 and if that's the decision the Commission reaches, then you  
4 don't need to reach Issue 19.

5 But if you were to decide in the applicant's favor in  
6 this case, then I think it's important that the Commission take  
7 up Issue 19, and we've already had some discussion in regard to  
8 the binding or nonbinding nature of the proposals that have  
9 been submitted by competitors as well as FPL's proposal. We  
10 think it's critical that the Commission look at this issue, and  
11 in the event that they do agree with Florida Power & Light,  
12 that, of course, it would be our view that the Commission would  
13 make a ruling stating that if and when you come in for the  
14 recovery of these costs, you will be limited in that  
15 application to the amount that you have bid.

16 And then we've already discussed Issue 20 as being  
17 related to the evaluation, and it's sort of a testing, a  
18 reality test, if you will, of the nature of the costs that FPL  
19 has submitted as their proposal in this proceeding. But I do  
20 think you're right. You know, there's sort of two tracks that  
21 it could go on, but at this point, we don't know which way the  
22 Commission is going to go.

23 COMMISSIONER DEASON: Okay. Mr. McGlothlin, do you  
24 need to add anything to that?

25 MR. MCGLOTHLIN: I agree with the thrust of

1 Ms. Kaufman's remarks. And it may be that the wording of 19  
2 needs to be tweaked, because it wasn't the intent to assume  
3 that this question is limited to a scenario in which FPL's  
4 petition has been granted. I think the thrust of the question  
5 goes -- of the two questions goes like this: Does the  
6 Commission have the authority, and should it in this case limit  
7 FPL to its proposal? And if the answer to that is no, then  
8 does the fact that FPL is not so limited a factor that the  
9 Commission should consider when evaluating its proposal and  
10 others in terms of the likelihood that FPL or other proposals  
11 could deliver the numbers that they've -- on which they based  
12 their bid?

13           COMMISSIONER DEASON: Okay.

14           MR. MCGLOTHLIN: And if that helps clarify the  
15 rationale and the purpose of the questions, we'd be glad to  
16 work on the wording of it.

17           COMMISSIONER DEASON: Okay. I'm prepared to make my  
18 ruling. I'm going to agree with my staff's recommendation, and  
19 I'm going to rule that joint intervenor Issue Number 19 is not  
20 needed and should not be included in the prehearing order.

21           I also believe that the specific issue as described  
22 by joint intervenor Issue Number 20 is not needed. I think it  
23 goes to evaluation and cost-effectiveness. I think I've shown  
24 a great deal of latitude including a number of issues --  
25 subissues on the evaluation on the cost-effectiveness.

1           I think the question of binding or nonbinding nature  
2 of the bids, that probably will come out in hearing. If there  
3 are specific objections to particular testimony or lines of  
4 questioning concerning binding or nonbinding bids, I'll just  
5 leave that for the hearing, and we'll let the Chairman rule on  
6 any objections that may exist.

7           Now, we can move along to -- I believe the next issue  
8 is Issue 21.

9           MR. GUYTON: Commissioner, that's a Florida Power &  
10 Light Company issue. It relates to whether FACT has proved up  
11 the allegations of standing set forth in its petitions to  
12 intervene. When they petitioned to intervene, we reserved our  
13 right as we're entitled to do under the APA for them to have to  
14 prove that up. And we think consequently it's an -- unless  
15 this matter is resolved prior to hearing, which right now  
16 there's not an opportunity for an evidentiary proceeding prior  
17 to hearing, then we think the appropriate place for this to be  
18 addressed is at the hearing.

19           I will say, I don't want to mislead you or FACT in  
20 this regard. We do intend to file either today or tomorrow a  
21 motion to remove FACT as a party in light of their conduct as  
22 well as their failure to prove that up with prefiled testimony.  
23 But in the absence of action on that motion, we think this is  
24 an entirely appropriate issue for the hearing.

25           COMMISSIONER DEASON: Okay. Just before we broke,

1 earlier today Mr. Twomey indicated that he was not going to be  
2 able to be in attendance at this late hour in the day and I  
3 excused him. But I would anticipate that he will be providing  
4 a position on this issue to staff.

5 In fact, has Mr. Twomey discussed this with you,  
6 Ms. Brown?

7 MS. BROWN: He hasn't discussed this issue with me,  
8 but if he doesn't contact me, I will contact him to get a  
9 position on the issue.

10 COMMISSIONER DEASON: Very well. So we will include  
11 Issue 21, and please contact Mr. Twomey concerning this.

12 It's my understanding, and just so that everyone is  
13 clear, that there's going to be a matter taken up at the  
14 first agenda in October.

15 Can you clarify that, Ms. Brown?

16 MS. BROWN: Yes, Commissioner. There are outstanding  
17 at the moment, FACT's motion for a protective order to the full  
18 Commission contesting your order compelling discovery from  
19 FACT. There is also a motion to quash the subpoena of Ernie  
20 Bach outstanding, and it is my understanding that today FACT  
21 will file a petition for review of the Prehearing Officer's  
22 decision in that order.

23 We'll be filing a recommendation for the October 1st  
24 agenda probably Wednesday to be heard at the October 1st agenda  
25 as an emergency item for the Commission to review and make a

1 decision on that.

2           And then if I might take a minute, I sort of -- I  
3 would kind of like the parties' and the Prehearing Officer's  
4 views on how to proceed if the Commission supports the  
5 Prehearing Officer's order and directs FACT to submit to  
6 discovery, and then we will have to address how to deal with  
7 the standing issue. The timing will be short before the  
8 hearing starts so that discovery, FACT, I would assume, could  
9 produce the afternoon of the first or the second and third, and  
10 then we would have some evidence to present at the hearing.

11           And I was thinking we could do that at the end of the  
12 hearing in order to get through the substantive issues and then  
13 have a little sort of subevidentiary proceeding with  
14 affidavits, argument of counsel, and then staff would write a  
15 recommendation on whether FACT had proved its standing, just  
16 like it would address every other issue in the case.

17           The other alternative is to do it up front before the  
18 hearing starts. And I have just been trying to figure out how  
19 that would happen, and would appreciate other parties'  
20 suggestions.

21           COMMISSIONER DEASON: Well, I don't mind discussing  
22 it. Let me be quite honest and up front with you. I believe  
23 this is going to be a call for the Chairman to make at the time  
24 the hearing begins.

25           MS. BROWN: All right.

1           COMMISSIONER DEASON: And I don't really -- I think I  
2 want to give her the amount of latitude that she deserves. And  
3 I think she can deal with it.

4           MS. BROWN: All right.

5           COMMISSIONER DEASON: The parties probably -- I think  
6 by your discussion the parties at least have been advised as to  
7 what some of the possible outcomes are, and they need to be  
8 prepared to make that argument at the beginning of hearing, or  
9 I said there will be a chance to make argument, I assume, at  
10 the agenda conference in October. That would be noticed for  
11 such, I assume.

12          MS. BROWN: Yes, that's correct.

13          COMMISSIONER DEASON: All right. I don't plan to  
14 dispose of that today one way or the other.

15          MS. BROWN: All right. That's fine. Thank you.

16          COMMISSIONER DEASON: Very good. Mr. Moyle.

17          MR. MOYLE: Just so I'm clear in my mind in terms of  
18 case preparation and whatnot. Then would it be correct to  
19 assume that the decision is likely to be made by the Chair on  
20 the morning that the hearing would start? And if she decides  
21 that the issue is something for which testimony should be  
22 taken, that we would have in effect a minitrial on the morning  
23 of hearing related to standing before the case proceeds, or  
24 would that minitrial, if it is to be had, would it be had on  
25 the date of the agenda conference? I'm just not particularly



1 clear as to --

2 COMMISSIONER DEASON: Well, I'm not really clear  
3 either. And I'm hopeful that maybe the full Commission, once  
4 they dispose of Mr. Twomey's reconsideration, they can give  
5 some guidance as to how they envision it to proceed, because we  
6 are all laboring under a very -- a short time frame given the  
7 fact that the hearing is to commence the first week of October,  
8 same week that we're going to have the agenda conference. So I  
9 would just request that all parties that have an interest in  
10 this advise the full Commission at the agenda, and to the  
11 extent that the Commission feels inclined to give any guidance,  
12 that may be helpful. I guess that's as much guidance that I  
13 can give you right now.

14 MR. MOYLE: And my interest was merely in terms of  
15 scheduling of witnesses and that kind of thing as to whether it  
16 were to take place the morning of hearing or prior to that.

17 COMMISSIONER DEASON: Mr. Guyton, do you have  
18 anything to add?

19 MR. GUYTON: Commissioner, no. I'd be a little bit  
20 reluctant to say anything in the absence of FACT's counsel. I  
21 don't want to put him in a position where he feels prejudiced.

22 COMMISSIONER DEASON: Very well. I appreciate that  
23 sensitivity.

24 Okay. I believe we're on Issue 21.

25 MS. KAUFMAN: Commissioners, I can address Issue

1 21 if you like. This is a legal issue. We would not expect it  
2 to be one on which there has been -- or will be any testimony  
3 taken but one that would be addressed in the parties' brief to  
4 the extent parties wish to address it. And basically it goes  
5 to the effect that any decision that the Commission might make  
6 on Florida Power & Light's application would have in regard to  
7 subsequent requests for recovery and whether or not consumers  
8 are -- I think we phrased it estopped from challenging that  
9 investment in a subsequent proceeding.

10 COMMISSIONER DEASON: Well, I guess I'm a little  
11 uncomfortable. It seems that at the time -- if and when  
12 there's a request to include any construction costs for Manatee  
13 3 or Martin 8 in a rate proceeding, it seems to me that that --  
14 that a person wishing to challenge that does or does not have  
15 standing, and that rests upon the facts at that time, why is  
16 this something that we need to decide today -- I mean, need to  
17 decide as a course of this hearing.

18 MS. KAUFMAN: Well, as I said, I think it's a legal  
19 issue that is relevant, especially as we talked about in the  
20 other issues if Florida Power & Light's request is granted. I  
21 think that the legal standard that would apply is something  
22 that the Commission should take into consideration in this  
23 case.

24 COMMISSIONER DEASON: Okay. Any other comments  
25 concerning this issue?

1 Mr. Guyton.

2 MR. GUYTON: We would simply observe that we think  
3 this is at best a premature issue. This is an issue that  
4 should be addressed, if at all, in a subsequent rate case when  
5 cost recovery actually arises. Here, it's just an unnecessary  
6 request for a declaratory statement.

7 COMMISSIONER DEASON: Ms. Brown.

8 MS. BROWN: We do believe that this issue is awfully  
9 speculative at the moment. Whether consumers would be estopped  
10 from contesting it would depend on what they were contesting,  
11 how they were contesting it, what they were saying at the time  
12 that they came in, and that we can't determine here. It's  
13 premature.

14 COMMISSIONER DEASON: Well, my ruling is that this  
15 issue goes beyond the scope of this hearing and is not required  
16 necessary and is not appropriate.

17 Intervenor Issue Number 22.

18 MR. MCGLOTHLIN: PACE has proposed that issue.  
19 PACE's view is that FPL does have the burden of proof to  
20 demonstrate by evidence of the quality of the evaluations made  
21 that it has chosen the most cost-effective alternative. I  
22 would like an issue to that effect. And I think -- if you will  
23 see the staff's note, they will talk about the implicit burden  
24 of proof that FPL has to address the merits. That's the same  
25 burden of proof that we have in mind there, and we would like

1 an explicit issue on it.

2 MR. MOYLE: And just for the record, CPV Gulfcoast  
3 also would support this issue as being set forth as a legal  
4 issue related to the burden of proof.

5 COMMISSIONER DEASON: Well, Mr. McGlothlin, let me --  
6 any other parties wish to add anything?

7 Mr. McGlothlin, let me ask you this question: Why is  
8 the need for a separate issue above and beyond or in addition  
9 to the issue just concerning whether the proposed units are the  
10 most cost-effective alternatives available? And don't we -- we  
11 do have an issue to that effect, I believe.

12 MR. MCGLOTHLIN: Yes, sir, it is a legal issue.

13 COMMISSIONER DEASON: This is a legal issue as to  
14 whether they have met their burden.

15 MR. MCGLOTHLIN: Correct.

16 COMMISSIONER DEASON: Well, I guess I'm having  
17 difficulty. If the Commission agrees with the applicants, you  
18 would assume from that the Commission agrees they've met their  
19 burden. And if the Commission decides that the applicant  
20 should be denied, I would assume you could take from that the  
21 Commission feels like Power & Light did not meet their burden.  
22 What additional -- I must be missing something, and so please  
23 explain the significance of this.

24 MR. MOYLE: In my view, I would think that -- I mean,  
25 obviously, cost-effectiveness is something that has to be

1 demonstrated, and you have an issue that talks to  
2 cost-effectiveness. I think it's probably more accurate to ask  
3 whether the applicant who has a burden of coming forward to  
4 demonstrate cost-effectiveness has met the burden. You know,  
5 it's a legal question. Trials and administrative proceedings  
6 where evidence is adduced, you know, one party has a burden to  
7 go forward and demonstrate with evidence that it has met a  
8 particular burden. And I think it's more clear to frame it in  
9 terms of a -- has the burden of proof been met with respect to  
10 the cost-effectiveness.

11 COMMISSIONER DEASON: Okay. Any other comments?

12 Mr. Guyton.

13 MR. GUYTON: Commissioner Deason, I think you've hit  
14 the nail on the head. One cannot reach the resolution of the  
15 cost-effectiveness issue without addressing necessarily whether  
16 or not the applicants met the burden of proof here. And I  
17 would respectfully suggest that it's not a pure legal issue,  
18 but it's the question of the application of the facts to the  
19 law which necessarily has to be addressed in the overall  
20 cost-effectiveness issue. This is very clearly a redundant and  
21 unnecessary issue.

22 COMMISSIONER DEASON: Staff, do you have anything to  
23 add?

24 MS. BROWN: Yes. I'd also point the Prehearing  
25 Officer to Issue 19 which says, "Based on the resolution of the

1 foregoing issues, should the Commission grant Florida Power &  
2 Light Company's petition for determination of need?" That  
3 issue of burden of proof can also be addressed there.

4 COMMISSIONER DEASON: Okay. I believe there's a  
5 fundamental burden which Florida Power & Light as applicant has  
6 to carry in this case, and I think it's implicit. I don't  
7 think there's a need for a separate issue, so therefore, Issue  
8 22 will not be listed as a separate issue.

9 Intervenor Issue 23. Who is proposing this issue?  
10 Mr. McGlothlin.

11 MR. MCGLOTHLIN: Florida PACE. And this is based  
12 upon and is keyed on some testimony on Florida PACE's  
13 consultant who addresses the relative risks to ratepayers of  
14 choosing the wrong project now on the one hand and the risk  
15 that the ratepayers may be adversely affected in the form of  
16 unserved energy on the other. And to give the issue a list --  
17 a spot for that presentation, we propose this issue.

18 COMMISSIONER DEASON: Any other comments in support  
19 of the issue?

20 MS. KAUFMAN: Commissioners, FIPUG supports this  
21 issue because we think it's critical to know the answer to that  
22 question in deciding on whether both -- either one of these  
23 plants is most cost-effective, when they're needed, and  
24 importantly, as the issue states, what impact would there be on  
25 the ratepayers if the applications, either one or both, were

1 denied.

2 COMMISSIONER DEASON: Okay. Mr. Guyton.

3 MR. GUYTON: I think this issue is fairly clearly  
4 redundant of Issues 4 and 5 which talks about whether there's a  
5 need for Manatee or Martin based on electric system reliability  
6 and integrity, as well as 6 and 7 that address whether there's  
7 a need for the two units based upon need for adequate  
8 electricity at a reasonable cost. It does key on the  
9 testimony, and it is a value-laden issue in the sense that it  
10 asks what's the consequence if the petition were denied.

11 We're not talking about this not being teed up -- I  
12 mean, the testimony is there. The issue can be properly  
13 considered under the issues that have already been identified.  
14 We would respectfully submit that this is a redundant issue  
15 that should be dropped.

16 COMMISSIONER DEASON: Ms. Brown.

17 MS. BROWN: Commissioner, I would add that I find the  
18 wording of the issue to be very broad and quite vague. And  
19 while there is limited testimony in the case so far with  
20 respect to certain matters that PACE has brought up, the  
21 question of the impact on ratepayers is broad and very, very  
22 hard to determine based on the evidence in this case so far.

23 So on top of it being an issue that's really implicit  
24 in this entire need determination case, I find it -- that it  
25 would be difficult to answer because of its ambiguity and

1 vagueness.

2           COMMISSIONER DEASON: I'm going to deny the issue,  
3 but in doing so let me state this: I think that the impact on  
4 ratepayers is the ultimate question the Commission is going to  
5 have to resolve. And I'm a little disturbed by the particular  
6 wording of this issue in that it being in the negative if the  
7 applications, one or both, were denied.

8           I believe that there are numerous other issues in  
9 which we can explore impacts on ratepayers, impacts on  
10 ratepayers if the applicants' applications are granted and  
11 impact on ratepayers if they are denied. I think that there's  
12 ample opportunity to explore that within the context of other  
13 issues.

14           So having said that, though, the specific issue as  
15 described as Intervener Issue 23 will not be shown as a  
16 separate issue.

17           I believe we need to go back to a previous issue in  
18 which I asked -- I believe it's Issue 16. I asked Mr. Guyton  
19 to make a review of that, of the subparts, to describe  
20 particular subparts which were not objectively written, and if  
21 there was any redundancy or duplicity in those subparts.

22           Mr. Guyton, have you had an opportunity to do that?

23           MR. GUYTON: Yes, Commissioner, I have. And I've  
24 also attempted to narrow the issue a little bit so that it --  
25 they struck me as a bit wordy and a little bit difficult to



1 follow at times, so if I might as well offer some wording  
2 changes as well.

3 In terms of the -- what's been identified as Issue  
4 16, this is a question about evaluation and the concept of  
5 employing fair and reasonable assumptions and methodologies. I  
6 understand the concept of employing reasonable assumptions and  
7 methodologies, but I don't understand fairness as kind of an  
8 analytical concept.

9 We would respectfully suggest that this issue would  
10 be less value-laden and lend it itself to a clear answer with  
11 the deletion of that language, which you will see that I  
12 suggest we delete from several of the other subordinate issues  
13 as well.

14 COMMISSIONER DEASON: You're suggesting strike "fair"  
15 and just make it "reasonable"?

16 MR. GUYTON: Yes, as to 16.

17 COMMISSIONER DEASON: Okay. Please proceed.

18 MR. GUYTON: As to --

19 MR. McGLOTHLIN: Will I have a chance to comment  
20 on --

21 COMMISSIONER DEASON: I'm going to let him go through  
22 his entire -- and then we'll go back and get comments.

23 MR. GUYTON: As to 16A, I think in the way that  
24 you've asked me to address that, Commissioner Deason, it -- I  
25 suggested there were redundancies in those issues, and I think

1 all of A through G are redundant of 16. Having said that, I  
2 won't repeat myself throughout.

3 We toyed with the idea of expanding the scope of this  
4 to whether the assumptions on all the operating parameters were  
5 appropriate rather than just FPL, but I understood that to be a  
6 little bit outside the scope of what you'd asked me to do. So  
7 we have not reworded 16A.

8 COMMISSIONER DEASON: All right.

9 MR. GUYTON: On 16B -- and I had a brief opportunity  
10 to speak to Mr. McGlothlin about this, but not enough time for  
11 him to react -- this was one that we thought was relatively  
12 hard to follow in terms of its wording. And we would just pose  
13 the question -- can we reword the issue in this fashion: Did  
14 FPL appropriately model variable O&M costs in its analysis?

15 We don't have to have all the language and the  
16 verbiage. I think it is objectively worded in terms of -- and  
17 gets at the same issue.

18 COMMISSIONER DEASON: Okay.

19 MR. GUYTON: On 16C, in the interest of cleaning it  
20 up and also consistent with my earlier comment as to 16, could  
21 we refrain this to read, strike the introductory language so  
22 that it just says: Did FPL appropriately compare the costs of  
23 project having different durations?

24 COMMISSIONER DEASON: Okay. Please proceed.

25 MR. GUYTON: On 16D, similar type of edit. "Did FPL

1 employ reasonable assumptions regarding gas transportation  
2 costs for the proposals?"

3 COMMISSIONER DEASON: Okay. Please proceed.

4 MR. GUYTON: Now, I'm a bit concerned about this  
5 issue and the position that PACE has taken because I think PACE  
6 has taken a position that's at odds with its testimony in this  
7 case.

8 COMMISSIONER DEASON: Are you on D or E?

9 MR. GUYTON: 16D.

10 COMMISSIONER DEASON: D. Okay.

11 MR. GUYTON: As I understand the testimony they have  
12 offered, it's that FPL didn't appropriately model or use the  
13 appropriate assumptions for gas transportation costs for the  
14 filler units in its analysis. That's what I understand  
15 Mr. Slater's testimony to be.

16 This issue though says, "Did FPL employ appropriate  
17 gas transportation costs for the proposals?" And I'm somewhat  
18 concerned about whether the issue matches the testimony and  
19 whether we're going to confuse the Commission with the way the  
20 issue is framed. I mean, the way FPL modeled the gas  
21 transportation for the proposals was the way that the bidders  
22 submitted the bid. If they said FGT, we modeled them FGT. If  
23 they said Gulfstream, we modeled them Gulfstream. And I don't  
24 think that's necessarily the issue that Mr. Slater, PACE's  
25 witness, raises in his testimony, and I'm just a little bit

1 concerned as to whether we're going to confuse the Commission  
2 here.

3 COMMISSIONER DEASON: Okay. We'll hear from  
4 Mr. McGlothlin shortly and maybe he can show us.

5 MR. GUYTON: Okay. And on 16E, we would just drop  
6 the introductory language. "Did FPL appropriately and  
7 adequately take cycling and start-up costs into account?"

8 And on 16F, drop the introductory language. "Did FPL  
9 appropriately and adequately take into the account," the rest  
10 of the issue as it reads there.

11 And on 16G, we're quite concerned about the way this  
12 issue is framed because it has an improper factual premise in  
13 it, and that is that FPL chose not to consider a TECO proposal  
14 on the basis of TECO's reserve margins might be impaired. What  
15 FPL did in deciding who to advance to the short list, it  
16 decided not to advance a portfolio that included TECO and  
17 another bidder for several reasons. One of which was that FPL  
18 had a concern as to whether if the sale was made by TECO to  
19 FPL, whether they would preserve a 20 percent reserve margin,  
20 but an equally important aspect of that decision was that FPL  
21 was very concerned about the financial viability or lack  
22 thereof of one of the other bidders that were in that  
23 portfolio. But I don't think that one decision is necessarily  
24 distinguishable from another, and so consequently, I think this  
25 focuses on one aspect of the decision to the exclusion of the

1 broader decision in terms of put it in context.

2 COMMISSIONER DEASON: Well, help me. What language  
3 within the proposed Issue 16G do you find objectionable? Or  
4 how would you correct the language that is there?

5 MR. GUYTON: Well, if I were to correct it, I would  
6 say: Did FPL act in an appropriate manner in not considering a  
7 portfolio or the portfolios that included TECO and other  
8 bidders in its short list?

9 COMMISSIONER DEASON: Okay. Does that conclude your  
10 comments?

11 MR. GUYTON: Yes, Commission Deason, other than to  
12 say thank you for the opportunity to review them.

13 COMMISSIONER DEASON: Okay. Mr. McGlothlin, let's  
14 start at the beginning with Issue 16 and the suggestion that  
15 the term "fair" be eliminated from the general issue.

16 MR. MCGLOTHLIN: Yes. I heard that several times and  
17 almost would be like saying "I rest my case," because it seems  
18 to me that FPL objects to any requirement that it be fair in  
19 its evaluation. And if there's no -- and if that is a  
20 value-laden concept, I think it's a value that very much  
21 belongs in the equation because it is FPL who is conducting the  
22 evaluation. So I disagree that with the notion that fairness  
23 has no place in the criteria on which it's going to be gauged.  
24 So I object to the removal of the word "fair" here and in the  
25 other areas.

1           The first note I had, if I heard Charlie right, he  
2 said with respect to 16B he would rephrase it to be, "Did FPL  
3 appropriately model" -- did you say O&M costs or did you say  
4 variable O&M costs?

5           MR. GUYTON: Variable, variable O&M costs.

6           MR. McGLOTHLIN: Okay. We can accept -- I believe we  
7 can accept that rewrite.

8           COMMISSIONER DEASON: Very well. I assume that the  
9 other intervenors are allowing Mr. McGlothlin to speak on their  
10 behalf since this is a joint issue. And if you disagree with  
11 Mr. McGlothlin, speak up, or otherwise I'm going to assume  
12 that's the case.

13           MR. MOYLE: I just had brief comments I'll just add  
14 at the end. Most of them I'll incorporate and adopt from  
15 Mr. McGlothlin if that's okay.

16           COMMISSIONER DEASON: Very well. Please proceed,  
17 Mr. McGlothlin.

18           MR. McGLOTHLIN: 16C, the first of our contention  
19 with respect to the comparison of projects having different  
20 durations was that it was not fairly done, and so I object to  
21 removing the concept of fairness in the manner which those  
22 comparisons are made.

23           COMMISSIONER DEASON: Do you have any problem with  
24 striking the opening phrase on Issue 16C?

25           MR. McGLOTHLIN: Well, 16C is pretty short and sweet

1 the way it is, and I think it may help the reader to understand  
2 that this is a modeling issue which would be lost if shortened  
3 any more.

4 COMMISSIONER DEASON: Okay. Please proceed.

5 MR. McGLOTHLIN: 16D was intended to address the  
6 assumptions attending the filler units. Those -- certain  
7 assumptions were made for the proposals that were bid as  
8 opposed to FPL's own. And if that isn't clear, I would agree  
9 to reword it accordingly. I think, again, the word "fairness"  
10 was taken out, and I object to that.

11 COMMISSIONER DEASON: And the same position on the  
12 opening phrase of that issue?

13 MR. McGLOTHLIN: Yes, sir.

14 COMMISSIONER DEASON: Okay. Please proceed.

15 MR. McGLOTHLIN: I believe there was no change to  
16 16E.

17 COMMISSIONER DEASON: Just the introductory language,  
18 I think, for 16E and F, and then that brings us to 16G.

19 MR. McGLOTHLIN: Again, I think the reference to  
20 modeling is helpful, and that is not a cumbersome issue as  
21 worded.

22 COMMISSIONER DEASON: Did you have a particular  
23 problem with the language as proposed by Mr. Guyton?

24 MR. McGLOTHLIN: My note was that he said 16E was  
25 okay the way it was. Am I wrong?

1 COMMISSIONER DEASON: No, I'm sorry. I'm sorry. I'm  
2 on 16G.

3 MR. MOYLE: I think with respect --

4 MR. McGLOTHLIN: I'll let Mr. Moyle address that one.

5 COMMISSIONER DEASON: Okay. Mr. Moyle.

6 MR. MOYLE: I just -- so we're all on the same page,  
7 I think, Joe, with respect to E and F, the change that FPL  
8 proposed was deletion of the reference of modeling and  
9 quantifying the cost of all options.

10 COMMISSIONER DEASON: Yeah, I think that's -- we've  
11 discussed that as similar as to others. Let's discuss 16G.

12 Mr. Moyle, is that your issue?

13 MR. MOYLE: Yes, it is. And, you know, there's been  
14 testimony that's come out in depositions related to FP&L's  
15 treatment of a bid from TECO as to how they evaluated it and  
16 its possible impact on TECO's reserve margin. So, simply, we  
17 were trying to have that issue presented and framed in a way  
18 that brought attention to it.

19 I think, you know, Mr. Guyton in his response to it  
20 indicated that, I think, FPL will be able to indicate what  
21 happened in terms of how it was evaluated. He mentioned about  
22 the proposals being lumped together and whatnot. But I think  
23 the issue as framed draws the attention to the issue, and FPL  
24 clearly has the ability to set forth their position on it.

25 The comment -- other comment I would just like to



1 make is with respect to the use of the term "fairness." And  
2 "fair" is used in 16G that we believe that, you know, it's  
3 difficult to distinguish between reasonable and fairness in  
4 terms of, you know, value-laden judgments. I think both of  
5 them require that you do some evaluating and some weighing. I  
6 would just note, I believe we had this discussion earlier in  
7 some meetings, and somebody made the point they thought fair,  
8 just, and reasonable was used repeatedly throughout  
9 Chapter 366 with respect to rates and whatnot. So we would  
10 argue for an inclusion of the word "fair" in not only 16G but  
11 all the other issues where it appears.

12 COMMISSIONER DEASON: Mr. Moyle, I understand that  
13 Mr. Guyton's concern with the wording of 16G is that it is  
14 based on an improper factual premise, and that apparently he  
15 believes that it needs to be reconciled with the inclusion of  
16 the concept of a portfolio consisting of TECO and other  
17 bidders. Did you hear the language he proposed? And if not,  
18 maybe we need to review that. And if you did hear it, is there  
19 a problem with his language?

20 MR. MOYLE: I think he said -- my notes said, advance  
21 portfolio which included the TECO unit and others, is the note  
22 I have.

23 COMMISSIONER DEASON: Well, let me review. I think  
24 he said something to the order of, "Did FPL act appropriately  
25 in not considering a portfolio of TECO and other bidders in its

1 short list," or something to that effect.

2 Am I correct in that, Mr. Guyton?

3 MR. GUYTON: I think you probably have a better  
4 recollection than I do because I was not reading it. I was  
5 shooting from the hip, Commissioner Deason. I don't have the  
6 words in front of me, but I think what you're saying is an  
7 accurate recollection.

8 COMMISSIONER DEASON: And that corrects the factual  
9 imprecision in the way that the issue is currently written?

10 MR. GUYTON: Yes, Commissioner. It wasn't just a  
11 TECO-specific determination, and that's the problem that we  
12 have with the issue. It makes it look like TECO was looked at  
13 in isolation, and it was portfolio decision involving TECO and  
14 another bidder.

15 COMMISSIONER DEASON: Do you disagree with that,  
16 Mr. Moyle?

17 MR. MOYLE: There's been testimony to that, so maybe  
18 we just need to clarify it by saying, "a portfolio which  
19 included a proposal."

20 COMMISSIONER DEASON: Okay. Let's go back through  
21 then and review Issue 16 and its subparts. I believe we can  
22 leave the general Issue 16 as is and include the term "fair."

23 16A is okay as it is listed in the draft prehearing  
24 order.

25 I believe Mr. McGlothlin agreed to modify the

1 language of 16B consistent with that suggested by Mr. Guyton.

2 We will make no change to 16C, no change to 16D --

3 I'm sorry. 16D, Mr. McGlothlin indicated that he would be  
4 willing to reword that issue to make it consistent with  
5 testimony. And I would just ask that Mr. McGlothlin and  
6 Mr. Guyton get together and provide that to Ms. Brown as  
7 quickly as possible.

8 There will be no change to 16E or 16F.

9 There will be a change to 16G to make reference to  
10 the portfolio concept of the TECO proposal. And I would ask  
11 Mr. Moyle and Mr. Guyton to get that language to Ms. Brown as  
12 quickly as possible.

13 I believe that exhausts all of the issues that have  
14 been included in the draft prehearing order. Are there other  
15 issues which we need to address at this time?

16 I know that all the parties are not totally happy  
17 with my rulings, but given that the rulings are as they are,  
18 are there any other issues?

19 Mr. Moyle.

20 MR. MOYLE: Yeah, just a couple of issues that I  
21 would want to bring to your attention. Mr. Egan has an  
22 availability problem on the last day of the hearing and the  
23 afternoon of the second to the last day. So I would ask that I  
24 be allowed to work with staff and parties to try to have him go  
25 on out of order to accommodate a conflict that he has.

1           COMMISSIONER DEASON: I'm sure that the parties would  
2 be willing to work with you on that and an accommodation  
3 reached. And I would just ask that if an accommodation is  
4 reached, that be expressed to the Chairman as quickly as  
5 possible on the first day of hearing so she plan accordingly.

6           MR. MOYLE: Okay. The other thing that I have not  
7 conclusively made the determination but am considering and will  
8 likely raise but I didn't want it to be a surprise is the  
9 invocation of the rule at the hearing.

10           COMMISSIONER DEASON: And, Mr. Moyle, what rule is  
11 that?

12           MR. MOYLE: That's the rule that is known by, quote,  
13 unquote, the rule. And I think I've researched it once and --

14           COMMISSIONER DEASON: Does this have to do with the  
15 witnesses being excluded from the hearing room?

16           MR. MOYLE: Right.

17           COMMISSIONER DEASON: We've never done that before,  
18 Mr. Moyle.

19           MR. MOYLE: I'm sorry?

20           COMMISSIONER DEASON: I'm sorry. I don't believe  
21 we've done that before, but I -- unless it's an extreme  
22 circumstance. Can you indicate to me why that is necessary?

23           MR. MOYLE: Sure. My practice in terms of trying  
24 cases in courts and at the Division of Administrative Hearings  
25 is, is there's a rule that is known as, quote, the rule which

1 essentially says that witnesses who are to testify should not  
2 be in the room in order to hear the testimony of the witnesses  
3 that go on before them, and that, I think, there is some case  
4 law that supports it. It seems that in my practice, anyway,  
5 when the rule has been invoked, it has always been put in place  
6 by either the judge or the hearing officer, whatnot, to exclude  
7 the witnesses essentially on a fairness question. So while it  
8 may not have been done here, I do think it's warranted in  
9 accordance with the practice in the state courts of Florida and  
10 in 120.57(1) hearings.

11 COMMISSIONER DEASON: Any other comments on the rule?

12 MR. GUYTON: I guess we'd reserve the right to  
13 respond to it more fully once we've had an opportunity to take  
14 a look at it. But I think it is hard to find that it has a  
15 place given that the testimony has been prefiled and the  
16 witnesses are already fully apprised to what the other  
17 witnesses' direct testimony are. I think it makes the, quote,  
18 the rule relatively meaningless in this context given the  
19 Commission's practice.

20 COMMISSIONER DEASON: Let's me say that it has been  
21 my experience that having witnesses here in the hearing room  
22 usually makes for a more fuller record, and I think that's one  
23 of the things we want to accomplish. However, Mr. Moyle, I  
24 will allow you certainly to raise that with the Chairman on the  
25 first day of the hearing.

1 MR. MOYLE: Okay. Thank you.

2 COMMISSIONER DEASON: And that can be done before  
3 witnesses are sworn in, and if they are to be excluded, well,  
4 then we can ask them to leave the room if that's the Chairman's  
5 desire. But I'm not going to make a ruling on that today.

6 MR. MOYLE: That's fine. And I wasn't anticipating  
7 that you would. I just wanted to bring it to your attention so  
8 there wouldn't be any claim of surprise or anything like that.

9 COMMISSIONER DEASON: Okay. I think we can proceed  
10 then to Section X, the exhibit list. Are there any questions  
11 or changes to that list?

12 MR. GUYTON: Commissioner Deason, I suppose it may be  
13 helpful to the Commission, we'd like to move the Need Study as  
14 Exhibit 1 and the appendices as the following exhibit since  
15 they're going to be supported by various FPL witnesses as they  
16 take the stand. I think it may facilitate the handling of the  
17 case if we preidentify the Need Study and Appendices A through  
18 C7 as Exhibits 1 through 23.

19 COMMISSIONER DEASON: Any objection to identifying  
20 the Need Study as Exhibit 1 and the appendices attached  
21 thereto, A through C7, as Exhibits 2 through 23?

22 Does staff have a problem with that?

23 MS. BROWN: No, Commissioner.

24 COMMISSIONER DEASON: I would just ask that you  
25 communicate that to the Chairman as quickly as possible so

1 she's prepared to know that there are already exhibits that  
2 have been identified.

3 MS. BROWN: Yes, sir.

4 MR. GUYTON: Commissioner Deason, we'd just simply  
5 ask if there is a need for us to identify exhibits in the order  
6 of the witnesses, or is it sufficient that the exhibits have  
7 been identified here, whether it would be in the order in which  
8 they'll be offered or not.

9 COMMISSIONER DEASON: No, I think this is just to put  
10 everyone on notice as to what the exhibits are and the subject  
11 matter. I don't believe that the order is particularly  
12 relevant for purposes of the prehearing order unless there's a  
13 party who believes that it needs to be changed. And I will --  
14 am I understanding your question correctly, Mr. Guyton?

15 MR. GUYTON: Yes. Yes, Commissioner Deason. That's  
16 all I was asking, was about the order of it.

17 COMMISSIONER DEASON: All right. Any concern about  
18 the order of the exhibits as contained in the draft prehearing  
19 order? Apparently not.

20 MR. GUYTON: Commissioner Deason, FPL will not -- I  
21 don't envision that FPL has any additional direct exhibits that  
22 it may offer. It may offer some boards or demonstratives for  
23 purposes of summary. If we do, it will be information taken  
24 from the testimony or the exhibits. And we have reserved the  
25 opportunity to submit cross-examination exhibits and obviously

1 late-filed deposition exhibits that are not yet filed, yet  
2 cannot be identified for purposes of prehearing statement.

3 COMMISSIONER DEASON: And I believe the other parties  
4 are probably retaining their rights to do the same.

5 MR. MOYLE: Yeah, if I could just briefly raise a  
6 point. I today filed a notice of filing. As I read the  
7 prehearing order, it asked that exhibits be provided that were  
8 marked and identified. So I've done a list of notice of  
9 filing. Since a lot of CPV's case is going to be based on  
10 cross-examination, I have done that. But -- so I think so long  
11 as we're on the same page, the exhibits that will be available  
12 include those that we've listed and those that have been used  
13 in depositions. Is that your understanding?

14 COMMISSIONER DEASON: Well, I believe that if you're  
15 to utilize those in conjunction with the cross-examination or  
16 perhaps even in lieu of cross-examination, you will have the  
17 responsibility to identify them at that time and see if there  
18 are any objections.

19 MR. MOYLE: At the hearing.

20 COMMISSIONER DEASON: At the hearing.

21 MR. MOYLE: Okay.

22 COMMISSIONER DEASON: That's the way I envisioned it.  
23 Now, if that is incorrect, I would like to hear from other  
24 parties as to how they believe that procedure should go.

25 Mr. McGlothlin.



1 MR. McGLOTHLIN: The procedure with which I'm  
2 familiar is that we identify those exhibits that we sponsor by  
3 the witness in direct and rebuttal, but that parties may  
4 cross-examine and have for their use exhibits that have not  
5 been identified in the prehearing order.

6 COMMISSIONER DEASON: That's correct. That's my  
7 understanding as well. And that's what I tried to relay.

8 Staff, is that also your understanding?

9 MS. BROWN: Yes, Commissioner. We appreciate the  
10 information, but I don't think Mr. Moyle is precluded from  
11 introducing those.

12 COMMISSIONER DEASON: Very well.

13 MR. MOYLE: Okay. Thank you for the clarification.

14 COMMISSIONER DEASON: Let me at this point ask a  
15 question. And it has been a long day. We had some discussion  
16 earlier this morning concerning a deposition transcript of  
17 Mr. Stallcup. Did we -- how did we conclude that, or is there  
18 still something hanging out there?

19 MR. GUYTON: I think we were instructed to -- that  
20 FPL and staff were instructed to get together to discuss that.

21 COMMISSIONER DEASON: That sounds like a fair  
22 resolution.

23 MR. GUYTON: I certainly wouldn't argue with that.

24 MS. BROWN: We've begun those discussions,  
25 Commissioner. I'm not sure Mr. Litchfield and I have really

1 reached an absolute conclusion with respect to that. The  
2 options are -- I guess we talked about this earlier -- to  
3 exclude Mr. Maurey's ALM-4 exhibit, to provide Mr. Stallcup for  
4 cross-examination at the hearing, to admit his deposition to  
5 support that exhibit. We haven't really reached any final  
6 conclusion.

7           Mr. Litchfield is waiting for some late-filed  
8 deposition exhibits to Mr. Stallcup's testimony which are  
9 supposed to come -- tomorrow? Tomorrow? Are they coming  
10 tomorrow? I think, if my memory serves me, they will be coming  
11 tomorrow to Mr. Litchfield, and then we'll continue. And if we  
12 can't resolve it, I suppose we'll have Mr. Stallcup here, and  
13 we could make the decision before the hearing.

14           COMMISSIONER DEASON: Very well. Just continue your  
15 discussions.

16           MS. BROWN: Thank you.

17           COMMISSIONER DEASON: Any more discussion on  
18 Section X, exhibits? Section XI, proposed stipulations. My  
19 draft indicates that there were a number of issues which  
20 Florida Power & Light believes may not be necessary. I think  
21 we've already discussed all of the issues, and we made  
22 decisions on those that will be included and those that will be  
23 excluded. So I think that merits no further discussion at this  
24 point.

25           Ms. Brown, please review pending motions at this

1 point.

2 MS. BROWN: Still pending is FPL's motion to compel  
3 discovery from CPV Gulfcoast and CPV's related motion for  
4 protective order. Still pending is FACT's, as I've discussed  
5 earlier, FACT's motion for protective order and the other  
6 motions with respect to FACT's standing to be addressed by the  
7 Commission October 1st.

8 There is also a motion for official recognition that  
9 FPL has filed. No responses have been filed to that. I don't  
10 think the time has run yet. I've heard from CPV Gulfcoast that  
11 they intend to object to some of that motion. And that's --  
12 other than some requests for confidentiality, I think there are  
13 now two which will be addressed shortly. Those are the  
14 outstanding motions at present.

15 COMMISSIONER DEASON: Okay. Are the parties aware of  
16 any other outstanding motions other than those that have been  
17 described? Very well.

18 MR. GUYTON: Commissioner Deason, I just wanted to  
19 remind you that we intend to file that motion as to FACT to  
20 remove them as a party. It has not yet been filed, so it's not  
21 characterized as an outstanding motion, but it should be filed  
22 today or tomorrow.

23 COMMISSIONER DEASON: Very well.

24 MS. BROWN: Commissioner, I forgot to mention that  
25 there is also a motion to compel PACE to submit to discovery,

1 but I have been told by Mr. Guyton that that's going to be  
2 withdrawn. I have not seen the document yet, though.

3 MR. GUYTON: We understand there's supplemental  
4 discovery responses headed our way, and in light of that, we  
5 don't intend to press it at this time.

6 COMMISSIONER DEASON: Ms. Brown, FP&L's motion to  
7 compel and CPV's response, is that ready for a ruling?

8 MS. BROWN: Not quite, Commissioner, but it will be  
9 by tomorrow.

10 COMMISSIONER DEASON: Okay. Just get that to me as  
11 quickly as possible.

12 MS. BROWN: Yes.

13 MR. MOYLE: Do you want to entertain argument on that  
14 or no?

15 COMMISSIONER DEASON: Do I want to entertain argument  
16 on that? Not today. Are you prepared to do that, seriously,  
17 today? Were you intending to do that today?

18 MR. MOYLE: Well, I came prepared to do it, but, you  
19 know --

20 COMMISSIONER DEASON: Your pleadings are --

21 MR. MOYLE: -- you've had a long day which included  
22 part of the time spent in the dentist's chair. So, you know,  
23 we're comfortable with what we filed. If -- I was going to  
24 bring to the Court's attention two more cases which maybe I can  
25 just do and not argue it if that's --

1           COMMISSIONER DEASON: Why don't you at the conclusion  
2 of this share that with Mr. Guyton? And then maybe you can  
3 share that with Ms. Brown, if Mr. Guyton has no objection.

4           MR. GUYTON: I have no objection. And, Commissioner,  
5 we're perfectly willing for that to be ruled on on the paper  
6 without argument.

7           I would note for your benefit, Ms. Brown's aware of  
8 it, we have narrowed the scope of that motion to compel fairly  
9 considerably, and she's aware, as is Mr. Moyle, to the extent  
10 to which it's been narrowed.

11           MR. MOYLE: We have worked on trying to resolve it.  
12 I think that there's a -- financial documents remain sort of a  
13 pivotal issue that we're not able to work through and agree on,  
14 so --

15           COMMISSIONER DEASON: Well, I appreciate all the  
16 effort that you've tried -- have had to narrow that.

17           MR. GUYTON: Commissioner Deason, there's one other  
18 matter that we need to discuss with you. My client would like  
19 to make arrangements for daily copy of a transcript in this  
20 proceeding and on an expedited basis more rapidly than the  
21 Commission's court reporters prepare expedited and daily copy.  
22 And we have discussed this with Ms. Bayó and Ms. Brown and the  
23 court reporter, Ms. Faurot.

24           What we would like leave to do, if we may, is just  
25 simply set up a court reporter behind the rail back here so

1 that they can take daily copy, not within the area that the  
2 court reporters normally occupy, nor counsel, or the witnesses.  
3 And it's just simply a trial preparation tool that Florida  
4 Power & Light Company would like to employ.

5           And I want to state this on the record: It is no  
6 reflection -- adverse reflection on the Commission's court  
7 reporters, which I think are very, very capable. It's just  
8 simply that we'd like to have transcripts sooner than the  
9 Commission's court reporters would otherwise make it available.  
10 And I understand that I need to get leave from the Prehearing  
11 Officer to make sure that that's okay that we set it up back  
12 behind the railing.

13           COMMISSIONER DEASON: Are you going to be able to  
14 interface with the sound system or is --

15           MR. GUYTON: We would like to be able to. We're  
16 still exploring whether there is that capability or not. We  
17 would hope there would be. If not, Ms. Bayó has informed me  
18 that we may be able to use the assisted listening devices to  
19 access in that fashion. I have not even discussed that with  
20 the court reporters yet to see if that would facilitate it. It  
21 would be helpful if we could access the audio feed of the  
22 Commission. And if we can, we're perfectly willing undertake  
23 whatever we need to in terms of technically to implement that.  
24 If we do, I would think it would just simply be a line behind  
25 the chairs over there behind the table to back behind the

1 railing.

2 COMMISSIONER DEASON: Other parties have comments on  
3 the request?

4 MR. MOYLE: I guess the only comment I would have is,  
5 is that potentially -- and I'm not sure because I don't know  
6 what use the transcripts would be made, but to the extent that  
7 the rule is invoked, then obviously the transcripts would not  
8 be available to other witnesses for review. To the extent that  
9 counsel needed it for preparation and whatnot, that would be  
10 fine, but to the extent that CPV does invoke the rule and that  
11 request is granted, then I would think that the transcripts  
12 consistent with the ruling or anticipated ruling in terms of  
13 imposing the rule would not be available to witnesses.

14 COMMISSIONER DEASON: Well, I appreciate you bringing  
15 that up. And I would think that it certainly should not be --  
16 the use of daily transcripts should not circumvent the rule  
17 being imposed if that is the desire of the Commission.

18 You agree with that, Mr. Guyton?

19 MR. GUYTON: Absolutely.

20 COMMISSIONER DEASON: Other comments on the request?

21 MS. KAUFMAN: I just have a question about that as  
22 well. Would it be correct to assume, however, that the  
23 Commissioners' court reporters' transcript, that will be the  
24 official transcript of the proceeding for appellate purposes or  
25 other purposes, brief, citations.

1           COMMISSIONER DEASON: That was -- yes. I appreciate  
2 you bringing that up. It would be my understanding that the  
3 transcript -- the official transcript would be that that would  
4 be prepared by the official court reporters. And I assume  
5 that's what would be used for citations and briefs and things  
6 of that nature.

7           MR. GUYTON: And that's certainly our intent as well,  
8 Commissioner Deason. This is just simply during a trial  
9 working tool.

10           COMMISSIONER DEASON: Okay.

11           MS. BROWN: Commissioner, if we could also include in  
12 that the distribution of exhibits, and that the Commission  
13 court reporters would be exclusively in charge of the official  
14 exhibits as well.

15           COMMISSIONER DEASON: They would be -- yes. They  
16 would be the curators of those exhibits, or whatever the  
17 appropriate term is. The official exhibits would reside with  
18 the official court reporter. And we'll go off the record for  
19 just a second.

20           (Discussion off the record.)

21           COMMISSIONER DEASON: Okay. We'll go back on the  
22 record. Anything in addition to add on the request before I  
23 make a ruling on that?

24           Just let me clarify that the official transcript will  
25 be provided by the official court reporters, the Commission



1 court reporters, and that the use of the term "transcript" for  
2 your daily copy, I wouldn't want that to somehow be implied  
3 that that is another version of an official transcript. It is  
4 not. It's for your own internal purposes and use as you see  
5 fit.

6 And I think that's the nature of your request;  
7 correct?

8 MR. GUYTON: Yes, sir.

9 COMMISSIONER DEASON: Okay. Well, consistent with  
10 the discussion we've had here today and with the understanding  
11 that the court reporters you will be employing will be located  
12 in an area that will not impede the official court reporters,  
13 then -- and consistent with the discussion, well, then your  
14 request is granted. And I think we will try to work with you  
15 to the extent possible to see that everything comes about in a  
16 smooth and orderly way, as we always do.

17 MR. GUYTON: Thank you, Commissioner.

18 MR. MOYLE: Can I ask a question on that? And I  
19 think your ruling was clear on that, but is it everyone's  
20 understanding these, quote, unquote, unofficial transcripts  
21 will be used solely and exclusively for preparation of FP&L,  
22 and they won't be then used at hearing in effect?

23 COMMISSIONER DEASON: Mr. Guyton.

24 MR. GUYTON: It's my anticipation that they will be  
25 used by FPL for their preparation for the hearing the next day

1 or maybe two days out, but it's for FPL's preparation for the  
2 hearing.

3 COMMISSIONER DEASON: I understand, Mr. Moyle, that  
4 the court reporters here at the Commission anticipate to have  
5 next day copy available. It won't be available for the evening  
6 before for preparation for the next day's hearing. I think  
7 that's what FPL is trying to accomplish. So I think that if we  
8 get to a point to where there's some reference to what took  
9 place the day before, that we will have from our own court  
10 reporters a transcript available to verify the correctness of  
11 what transpired the day before. I'm seeing the heads being --

12 MR. MOYLE: Okay. The reason I was asking, I was  
13 trying to ascertain as to whether we were going to have  
14 situations where witnesses are being shown, you know, testimony  
15 from the day before and used in that type of situation, which  
16 as I understand it, that's not necessarily what FP&L is  
17 intending to do with it. They're simply using it to help them  
18 prepare internally for the next day's proceedings, in which I'm  
19 fine.

20 COMMISSIONER DEASON: And I think that's the  
21 understanding. But let me be clear. It's also my  
22 understanding that our court reporters will have next day  
23 transcripts available. And to the extent it becomes necessary  
24 to refer to that official transcript, then it's permissible for  
25 all parties to have that available, and they will be using the

1 same transcript for that purpose.

2 MR. MOYLE: Yeah, and we're fine on that. We have no  
3 objection to the request that FP&L made with, you know, the  
4 understanding as we've articulated and reached.

5 COMMISSIONER DEASON: Okay. Staff, you're okay with  
6 that, too, I take it?

7 MS. BROWN: Yes, with some reservation, but we are.

8 COMMISSIONER DEASON: Very well.

9 MR. MAY: Mr. Chairman?

10 COMMISSIONER DEASON: Yes, sir.

11 MR. MAY: One point back on -- I guess it's Issue  
12 Number 12. Through your ruling you identified, I guess, joint  
13 intervenors' Issue Number 15 without the subparts as that  
14 issue?

15 COMMISSIONER DEASON: Yes, that's my recollection.

16 MR. MAY: Will we be given an opportunity to submit  
17 our positions on that one issue to staff? I just wanted to  
18 confirm that.

19 COMMISSIONER DEASON: Yes, if you do it quickly.

20 MR. MAY: Okay.

21 COMMISSIONER DEASON: When do you need that,  
22 Ms. Brown? Sometime tomorrow.

23 MS. BROWN: Yes. We need by tomorrow. We need it  
24 early tomorrow. We're hoping to be finished with the changes  
25 by tomorrow afternoon.

1           COMMISSIONER DEASON: Can you get that to them by  
2 noon tomorrow?

3           MR. MAY: We should be able to get it in before that,  
4 the first thing in the morning.

5           COMMISSIONER DEASON: I appreciate your efforts to do  
6 so.

7           Mr. Guyton.

8           MR. GUYTON: I'm sorry, Commissioner, I was  
9 distracted.

10          COMMISSIONER DEASON: I thought you had something  
11 else to add.

12          MR. GUYTON: No, no. No, Commissioner, I don't. I  
13 appreciate your patience given your dental condition today.

14          COMMISSIONER DEASON: It has been a long day.

15          MR. McGLOTHLIN: (Inaudible. Microphone off.)

16          COMMISSIONER DEASON: Well, you know, maybe I should  
17 recommend Novocain for all of the Commissioners come hearing  
18 time. It might make it a little more palatable. No, I'm  
19 optimistic things will go well. And I want to compliment the  
20 parties for your conduct here to today and for your conduct  
21 prior to today in trying to get a lot of these things resolved.

22                 I also want to compliment staff in the role that you  
23 all have played. I'm sure that we're going to have an intense  
24 three days of hearings. Everybody be prepared for that, but we  
25 can also do it in a manner to try to expedite where possible

1 and do it in an open and friendly way as possible. And I know  
2 that you've always conducted yourselves that way in the past,  
3 and I expect no different in this hearing as well.

4 MR. GUYTON: Commissioner, I spoke prematurely. I do  
5 have one other matter.

6 COMMISSIONER DEASON: Uh-oh, I was about to bang the  
7 gavel, Mr. Guyton.

8 MR. GUYTON: I know. I just barely got it in.

9 COMMISSIONER DEASON: Please proceed.

10 MR. GUYTON: I guess I had an inquiry as to whether  
11 or not any of FPL's witnesses might be excused in light of the  
12 resolution of the issues. I had been hopeful that Mr. Brandt,  
13 who was the conservation witness, might be but apparently not  
14 in light of the fact that the conservation issue is still  
15 contested.

16 Is there a prospect of any other witnesses?  
17 Specifically I guess I would ask about Mr. Green who testifies  
18 as to the load forecast, which I don't think has been contested  
19 in any fashion.

20 COMMISSIONER DEASON: What I'm going to do,  
21 Mr. Guyton, I'm going to ask all of the parties to review that  
22 this evening and communicate with you tomorrow morning and with  
23 staff hopefully by noon. If there are any issues -- I'm sorry,  
24 any witnesses that can be excused, please indicate that to  
25 Ms. Brown. She can include that.

1           And I would just ask the parties to be mindful that  
2 if there are issues you do not plan to pursue at hearing, even  
3 though you may want to brief something, please be cognizant of  
4 the fact that there may not need for a witness actually to sit  
5 through three days of hearings if there's not going to be any  
6 cross-examination. And let me warn all the participants in  
7 this hearing that our Chairman has been very vocal about having  
8 witnesses in attendance sitting for days after days, and when  
9 they take the witness stand, nobody has any questions. So  
10 please be mindful. You may see the -- you may get a question  
11 from the Chairman as to why a person was required to be in  
12 attendance if there were no questions for that person.

13           Mr. Moyle.

14           MR. MOYLE: I guess -- I'm sorry, I know you're  
15 trying to get out of here. There was, I guess, in my notes one  
16 outstanding issue that we were going to identify the order of  
17 witnesses in order to assist with the preparation. Have we  
18 been able to do that or --

19           MR. GUYTON: I'm prepared to give that to staff  
20 tomorrow.

21           COMMISSIONER DEASON: Okay. Early tomorrow; right?

22           MR. GUYTON: Yes, Commissioner.

23           COMMISSIONER DEASON: Okay.

24           MR. MOYLE: Okay. Thanks.

25           COMMISSIONER DEASON: Anything else? Thank you all.

1 And one again, I appreciate your patience with me as I was  
2 having to take care of other business today. Thank you.

3 (Prehearing conference concluded at 3:48 p.m.)

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3 COUNTY OF LEON        )

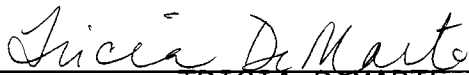
4  
5 WE, LINDA BOLES, RPR, and TRICIA DeMARTE, Official  
6 Commission Reporters, do hereby certify that the foregoing  
7 proceeding was heard at the time and place herein stated.

8 IT IS FURTHER CERTIFIED that we stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under our direct supervision; and that this  
11 transcript constitutes a true transcription of our notes of  
12 said proceedings.

13 I FURTHER CERTIFY that we are not a relative, employee,  
14 attorney or counsel of any of the parties, nor are we a  
15 relative or employee of any of the parties' attorneys or  
16 counsel connected with the action, nor are we financially  
17 interested in the action.

18 DATED THIS 24th DAY OF SEPTEMBER, 2002.

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22 LINDA BOLES, RPR  
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