

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020398-EQ

In the Matter of  
PROPOSED REVISIONS TO RULE  
25-22.082, SELECTION OF  
GENERATING CAPACITY.

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VOLUME 2

Pages 141 through 281

PROCEEDINGS: SPECIAL AGENDA CONFERENCE

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

DATE: Monday, September 30, 2002

TIME: Commenced at 9:30 a.m.  
Concluded at 5:40 p.m.

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

REPORTED BY: JANE FAUROT, RPR, Chief  
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## P R O C E E D I N G S

1  
2 (Transcript continues in sequence from  
3 Volume 2.)

4 CHAIRMAN JABER: Let's go ahead and get started.  
5 Commissioner Palecki, you were about to ask a question?

6 COMMISSIONER PALECKI: Yes, I have a question for  
7 Ms. Clark. And one of the reasons I want you to answer this  
8 question is because it relates, I believe, to a situation that  
9 existed, I believe, when you were a Commissioner, it might have  
10 been before that when you were the general counsel. But I --

11 CHAIRMAN JABER: Ms. Clark is going, do you want me  
12 to remember that?

13 COMMISSIONER PALECKI: I am very comfortable with the  
14 utilities in Florida being a significant provider of  
15 generation, and even the dominant provider of generation. And  
16 I understand your fear of a rule like this bidding rule because  
17 I think you believe that it threatens that position. And the  
18 question I wanted to ask, and I can't remember for sure if it  
19 was the Cypress generation case or Indiantown, but I recall  
20 very specifically that there was a deal that was negotiated,  
21 and I believe it was Florida Power and Light with one of the  
22 independent power producers. And that deal would have allowed  
23 the IPP to provide service under contract for a year or two  
24 years, and then the power plant would be turned over to the  
25 utility.

1           And I guess the question I have is if we do have  
2 defined criteria up front, doesn't that allow the utilities to  
3 ensure their place as a significant or dominant generator in  
4 the State of Florida, and can't they do that by just putting in  
5 a provision in a contract that would say that, oh, after seven  
6 years of providing service, payment would be made to the IPP  
7 and the power plant would then be turned over to the utility?  
8 And couldn't that be done for numerous time periods and  
9 wouldn't that give the utility quite a bit of control over  
10 their generation destiny?

11           MS. CLARK: First of all, Commissioner Palecki, I am  
12 not sure that what is motivating the response to the proposals  
13 on the bid rule is motivated by the notion of keeping them as  
14 the dominant provider of capacity. I think the motivation is  
15 that particularly with respect to what the IPPs are proposing,  
16 it is unwise public policy and will not lead to the most  
17 cost-effective choice.

18           With respect to the notion of putting in the contract  
19 a requirement that the power plant be turned over to the  
20 utility, I would suspect that you will chill a lot of  
21 proposals. It seems to me that one of the ways they will  
22 likely make money is being able to operate that plant for a  
23 long time in the future when they paid off some of their  
24 investment in that plant.

25           I believe there have been contracts where it does

1 provide for the utility to take over under certain  
2 circumstances, but it is not a motivating factor that in the  
3 end they are the sole provider of generation. It is to find  
4 the most cost-effective.

5 COMMISSIONER PALECKI: Thank you.

6 CHAIRMAN JABER: Commissioner Baez and then  
7 Commissioner Deason.

8 COMMISSIONER BAEZ: You mentioned there are  
9 contractual, there exists contractual terms today that allow an  
10 IOU to step in in the event of any failure by an IPP to run,  
11 you know, I don't know what the contingencies might be, but  
12 there are contingencies along those lines?

13 MS. CLARK: I want to state this positively. I  
14 believe that there are, and there are circumstances where if  
15 the power has not come on line when it is committed or some  
16 other failure of contract performance that the utility can step  
17 in to operate the plant.

18 COMMISSIONER BAEZ: Thank you.

19 MS. CLARK: But, you know, I would have to --

20 COMMISSIONER BAEZ: Off the top of your head you  
21 don't know specifically, but you suspect that there are. Thank  
22 you.

23 COMMISSIONER PALECKI: And let me just ask one  
24 follow-up, and I promise the Chairman it would only be one  
25 question, but --

1 CHAIRMAN JABER: It's quite all right, it's your  
2 lunch.

3 COMMISSIONER PALECKI: You have talked about a  
4 chilling effect if there was a provision like that that would  
5 require turnover of the plant after a certain number of years  
6 of operation, but would it really be a chilling effect or would  
7 it more be a cost that would be considered by the bidding  
8 community, including if bids were required by the utility  
9 itself, including the utility itself, isn't that just another  
10 cost that would be incorporated into the bid by whoever  
11 happened to be involved in submitting a proposal?

12 MS. CLARK: I guess I have sort of three responses to  
13 that. The notion that I don't think -- I think one of the  
14 things you want to maintain is creativity in responding to the  
15 bids, you stated that in your rule. I would suspect if you  
16 have in there the notion that after seven years or whatever you  
17 have to turn over your plant, it will drive up the short-term  
18 costs, because they will want to get value for making that  
19 proposal on the power. I said there were three things, didn't  
20 I? And I think it will have the effect of limiting who will  
21 put in bids for that particular capacity addition.

22 COMMISSIONER PALECKI: Thank you.

23 CHAIRMAN JABER: Commissioner Deason, did you have  
24 any questions?

25 COMMISSIONER DEASON: Yes, Madam Chairman. First of

1 all, let me say in light of Mr. Twomey's comments from the  
2 religious analogy that this decision may be one that requires a  
3 lot of fasting and prayer, I didn't know the fasting part was  
4 going to be so literal.

5 CHAIRMAN JABER: I can't help it, Commissioner  
6 Deason.

7 COMMISSIONER DEASON: But given the hour, I will be  
8 precise in my question. My question is to staff, and it  
9 pertains to PACE's principle number three, and the question is  
10 this: Does staff agree or disagree with that principle? If  
11 you agree with it, where is it incorporated in your proposed  
12 rule. And if you disagree with it, why do you disagree?

13 MR. BALLINGER: Okay. This is a discussion of having  
14 a neutral third party do the evaluation, correct?

15 COMMISSIONER DEASON: No. Requirement three, I am  
16 looking at PACE's letter dated September 25th, and it is a  
17 requirement that the utility submit a binding proposal at the  
18 same time and in the same manner as all other RFP participants.

19 MR. BALLINGER: That has been talked about before.  
20 Your question is does staff agree with that principle or not?

21 COMMISSIONER DEASON: Yes.

22 MR. BALLINGER: I would say no, we do not agree with  
23 that as a principle. And it really focuses on what is meant by  
24 the word binding. I think today utilities are in a sense bound  
25 by their bid in an RFP process. Because staff looks at that as

1 a benchmark come time for cost-recovery, and we look at are you  
2 at or above or below what you told us in the bid process. If  
3 you come in above that we ask for justification. And I think  
4 it is reasonable to assume that there will be changes as we go  
5 forward in the cost overruns. Things may come about that  
6 weren't contemplated and things of this nature. I think it  
7 would be unwise to be inflexible and have a binding bid for a  
8 determined length of time. Contracts are not binding as well.  
9 We have had litigation, relitigation of contracts when things  
10 go awry, so I think it goes both ways.

11           And I would contend right now that in a way they are  
12 binding. That utilities when they put out their RFP and they  
13 put their costs in there, that is kind of what staff focuses on  
14 from the need determination as we go forward, and cost-recovery  
15 is kind of a benchmark.

16           CHAIRMAN JABER: Commissioners, can we at this point  
17 sort of sum up. Do you want to take a lunch break? I suppose  
18 I should have actually posed that question before? Okay.  
19 You're just going to make me feel bad. Can we sort of assess  
20 where we are -- hang on, Mr. Twomey -- and gauge any other  
21 questions, target any other questions to the strategy the  
22 Commission wants to undertake.

23           As one Commissioner, I have to tell you I have a lot  
24 of trouble accepting the stipulation for a number of reasons.  
25 A few I have already articulated, but we will do it again. I

1 commend all of the stakeholders. I know just by reading all  
2 the comments and following the procedure that there was a real  
3 effort to reach compromise on a very difficult issue. I agree  
4 with Commissioner Bradley on the points he made with respect to  
5 the principles, but I would note similar to the way we could  
6 accept or reject the stipulation, we could accept or reject the  
7 principles. Just the fact that parties have articulated them,  
8 that doesn't mean those are the ones we wind up with at the end  
9 of the day.

10           The stipulation gives me problems for the following  
11 reasons. It is not a mutually agreed-upon stipulation with all  
12 of the stakeholders in the process. I also can't accept it  
13 because I can't explain to a customer what the stipulation does  
14 to enhance the current process. That is not to say what is not  
15 in the stipulation is a good starting point or a legitimate  
16 effort by the IOUs to reach compromise, I think it is all of  
17 that. I am just looking for a way to make the current process  
18 better so that benefits flow back to the ratepayers. And I  
19 don't think what the stipulation offers gets me there  
20 philosophically.

21           And then finally, I think with respect to the  
22 assumption that the stipulation goes a long way in addressing  
23 my concerns with statutory authority, it really doesn't. Once  
24 and for all let's have the statutory authority issue answered,  
25 and if that means a rule -- and, again, this is just from my



1 standpoint -- if it means a rule has to be proposed so that the  
2 court can address the statutory authority issue, that is okay  
3 with me. That is what courts do; this is what the PSC does.  
4 But I also think that the statutory authority issue may be  
5 minimized depending on what the rule looks like at the end of  
6 the day.

7           And I would like to leave it at that and see,  
8 Commissioners, where you are. My questions go to staff's  
9 strawman proposal and things I want to take out of staff's  
10 proposal, and things I want to add to staff's proposal. But  
11 all of that is for naught if you all want to accept the  
12 stipulation. Commissioner Bradley.

13           COMMISSIONER BRADLEY: Yes. Thank you, Madam Chair.  
14 Just to cite your -- I wouldn't say argument, but your  
15 statement sort of gets to the heart of what I was trying to get  
16 done the last time we met on some of the preliminary matters as  
17 it relates to where we are today, and that was to ask the two  
18 parties to get together and to do some give and take on both  
19 sides. And also it gives me displeasure because that hasn't  
20 happened. And in my opinion, and it is just one opinion, I do  
21 see movement on one side but not movement on the other. And it  
22 creates a quandary because we are being put in the position of  
23 deciding for the two parties. And I just thought that it would  
24 be better if they could come up with something that they could  
25 live with. And it's just not a good situation to have, because

1 that means that if -- someone is going to be unhappy here. My  
2 preference would be to have two unhappy parties. But it  
3 probably is going to force me to have to choose between one or  
4 the other, and I'm prepared to do that.

5 CHAIRMAN JABER: Thank you, Commissioner Bradley.

6 COMMISSIONER PALECKI: Chairman Jaber, I don't have a  
7 problem with most of what is contained in the primary staff  
8 recommendation, but I would like to see the addition of the  
9 three principles that have been outlined numerous times today  
10 by PACE and the other intervenors. When I was first appointed  
11 to the Florida Public Service Commission, I promised Governor  
12 Bush that I would always try to do what is best for Florida  
13 while at the same time acting within the statutory authority  
14 that has been granted to us by the legislature.

15 I have discussed the issue regarding our statutory  
16 authority with what I believe are some of the finest legal  
17 minds that are available to us here at the Florida Public  
18 Service Commission on numerous occasions. I have read the  
19 pleadings, I have listened carefully to the argument of  
20 counsel. I have conducted my own independent research. And at  
21 this time my conclusion is that we have adequate authority to  
22 enact a meaningful bid rule.

23 And I say at this time because my suggestion is that  
24 we move forward with rulemaking. And I will go into rulemaking  
25 with an open mind, and if I hear legal authority that leads me

1 to change my mind, I will do that. But at this time I support  
2 the three suggestions that have been made by PACE. I believe  
3 they are in the best interest of the State of Florida. I have  
4 a few reasons for that. First is we have a statutory  
5 obligation to determine what is the most cost-effective  
6 alternative available. And that is something that I don't  
7 believe we can possibly determine under the current situation.  
8 Secondly, I see that we have seen some very good benefits from  
9 the existing rule. I believe that the utilities have sharpened  
10 their pencils, and I believe that we have seen some very, very  
11 good deals for the ratepayers. And I'm talking about a change  
12 from what was occurring in the '80s when there were many cost  
13 overruns. And I think that change occurred because there were  
14 many interested parties that participated in our RFP rule and  
15 pencils were sharpened by the utilities, and they beat the best  
16 price, and they built good power plants at low cost.

17 I am concerned that the process is falling apart. I  
18 am aware of at least five bidders from the past who have  
19 decided to move out of the State of Florida, who have decided  
20 no longer to participate in this process because they believe  
21 that an independent power producer does not have a chance to  
22 win a bid, and they cite to the fact that in the course of  
23 eight or nine years none of them ever have been awarded a  
24 project.

25 This issue is not about competition. This issue is

1 about ratepayers and what is the most cost-effective  
2 alternative. And I think that the process as it exists is  
3 driving the players away from the State of Florida, and we no  
4 longer have that healthy situation we have had where the  
5 utilities are forced to sharpen their pencils, where we have a  
6 lot of players coming in with a lot of creative ideas and the  
7 utilities are forced to beat the best deal. Well, when  
8 everyone decides to go home and not play the game, the utility  
9 customers are going to be the ones that suffer.

10 I believe that we should have a draft rule that  
11 incorporates the three suggestions that have been made by PACE.  
12 I believe that we should move forward and set a hearing to  
13 enact a rule and listen to the evidence, listen to the argument  
14 regarding our authority, keep an open mind. And I'm not saying  
15 that because I believe these three criteria should be included  
16 in the draft that we put together now that that is what we  
17 should end up with after the rulemaking. I'm saying that it  
18 sounds to me like that would result in the best deal to the  
19 ratepayer. And I am willing to listen to testimony, and  
20 evidence, and argument of the parties, and I might change my  
21 mind. But I think right now the best thing for us to do is go  
22 ahead and set this thing now for a rulemaking.

23 CHAIRMAN JABER: Okay, Commissioner Palecki.  
24 Commissioner Bradley.

25 COMMISSIONER BRADLEY: Yes. And I have a very

1 interesting communique on my desk here today, and I will tell  
2 you, I don't think there is anyone on this Commission who is  
3 not willing to adhere to and to stand behind free market  
4 principles. However, I would like to just remind my fellow  
5 Commissioners that we as a body are here to implement current  
6 law and to not be an activist body by creating law. And also I  
7 agree that we do have the statutory authority to change the bid  
8 rule to ensure that it is fairer and more transparent, but my  
9 concern is with the legislative intent. When the statute was  
10 passed, no one was considering restructuring or deregulation.  
11 And as I said, I have a communique here, and I want to -- I  
12 think this somewhat sums up what our quandary is. It say here,  
13 I am going read just three excerpts from this communique. "At  
14 its hearing on Monday, the PSC must choose between three  
15 courses of action. Number one, do nothing and allow IOUs to  
16 continue to deny consumers the benefit of competition in power  
17 generation. Competition. Number two, make cosmetic changes to  
18 the existing bid rule process and further facilitate  
19 anticompetitive practices. Anticompetitive practices. Or,  
20 number three, create meaningful change to protect Florida's  
21 consumers from artificially high utility rates which benefit  
22 excessive corporate bottom-line profits."

23           And this what is my quandary is, this says  
24 competition is an issue that should be considered. The  
25 appropriate venue to consider deregulation of competition is

1 not here within this environment or before the Public Service  
2 Commission, that is an issue that needs to be addressed by the  
3 Florida Legislature. We are here to implement and not to -- to  
4 implement policy and not to develop policy. And irrespective  
5 of what my personal beliefs are, I took an oath to do just  
6 that. And that is to implement the statutes of the State of  
7 Florida and to not be an activist commissioner. So I find it  
8 very difficult in order -- I find it very difficult to support  
9 these three principles that have been put forth by PACE. I  
10 think that it steps across the line. These principles force  
11 the Commission to step across the line and to get into  
12 policymaking rather than implementation of policy or existing  
13 statute.

14 CHAIRMAN JABER: Commissioner Baez, and then I'm  
15 going to try to move this forward into a motion.

16 COMMISSIONER BAEZ: You know, Commissioner Bradley, I  
17 agree with you. I think that competition is something that has  
18 to be discussed in the legislative arena, and as a Commission  
19 we need to wait on, or wait for, or not worry about at all  
20 whether there is competition in this state or not. The way  
21 that I have gone about -- the way that I have come at this rule  
22 is that we do have a responsibility. We have got a  
23 responsibility to ensure that the ratepayers are paying fair  
24 and reasonable rates. Part of paying fair and reasonable rates  
25 involves a function of determining that the expenditures and

1 that the costs of the companies are acceptable in order to be  
2 passed on through rates. To me this bid rule, first of all, I  
3 think is a misnomer. I'm sure you all have heard that before.  
4 This is not about bidding, this is about how much, and what  
5 kind, and how good information this Commission gets in order to  
6 perform its functions.

7           The only way for us to perform our function is to be  
8 comfortable with the quality of the information and the  
9 reliability and the integrity of the information that we are  
10 receiving. If a company, if an IOU comes in and says a plant  
11 costs this much, and here is the information we have to prove  
12 up that, part of the information or part of the processes that  
13 are used is a competitive bid process. It is a rule that has  
14 been on the books since '90 -- for over ten years, was it '94?  
15 Okay, almost ten years, forgive me. And it has been used and  
16 it has been employed. And at the time there was great  
17 participation. And at the time there wasn't -- you know, the  
18 Commission made a decision at that time, and all of that is  
19 well and good.

20           And I would submit that times haven't necessarily  
21 changed. But I feel less and less confident about the  
22 information that I get when need determinations come up in the  
23 speed in which I receive it, at the time in which I receive it,  
24 that I can feel confident that any number that gets thrown out  
25 there is a good one and feel confident in approving it. So

1 part of the purpose that I saw this opportunity here providing  
2 this Commission with is an opportunity to change the timing in  
3 which we receive the information so that I am not in the middle  
4 of a need determination where construction has to begin within  
5 a few months later saying, all right, everybody hurry up, hurry  
6 up. Is this information good, isn't it good? Well, I don't  
7 know, but we don't have time, you know, I have been trying to  
8 stop the clock here and it's not stopping. And I'm looking at  
9 three years down the line we have got a supply problem; the  
10 only reason these need determinations exist.

11           So if I can get information that I feel is good, that  
12 I feel is reliable, that I feel has been subject to an integral  
13 process, I feel a lot more comfortable at that need  
14 determination nine months down the line. That was one of the  
15 purposes that I saw this providing an opportunity to me.

16           Secondly, and I go back to an earlier point, it's not  
17 about competition, it's about the information and when we get  
18 it and how we get it. The only way for information to be  
19 reliable is if we feel that it is reliable. If it is a bid  
20 process, then let the bidders feel that it is reliable, as  
21 well. The bid process is only as good as the motivation behind  
22 the participants. And if the participants are not motivated to  
23 participate, we don't have -- you know, they might as well  
24 throw up a number. Let's pull a number out of the air as far  
25 as I'm concerned.



1           Lastly, as to the statutory authority and, you know,  
2 we have been up and down this at workshops and other, you know,  
3 I think one of the things that we owe the companies, the IOUs  
4 in particular is certainty. And if there is a question, an  
5 honest debate, an honest disagreement as to what this  
6 Commission's authority is, I, for one, am not going to start  
7 from the position that I don't have authority. I can't do it.  
8 As soon as someone throws up a statutory authority argument and  
9 I say, well, you know what, you might be right, let me sit back  
10 and not do it. If I'm not convinced 100 percent, and I am  
11 not, I can't start from that point because then I'm not doing  
12 my job.

13           There is a place and a time to have those  
14 discussions, and they are in front of a judge in challenge  
15 today a rule, in challenge to a decision that this Commission  
16 makes in a court of law. Sometimes it is great to avoid  
17 litigation. Sometimes it can't be avoided. And sometimes the  
18 sooner we get started on litigation the better, because that in  
19 the end provides certainty to the companies.

20           Frankly, I don't care whether I win or lose on this.  
21 I mean, if a court says that we don't have statutory authority  
22 to be even making a bid rule, and as I have heard the IOUs  
23 maintain at some point, I mean, somehow the line of origin has  
24 moved back during this debate, now all of a sudden we don't  
25 have statutory authority to even have a bid rule, much less

1 change it. But that said, you know, that is not for me to say,  
2 and certainly not for me to accept.

3           If every time someone said you don't have statutory  
4 authority we had to buy into it and feel doubtful about our  
5 authority, we are not going to get any work done. So that is a  
6 long way of saying that I think, you know, at least for me the  
7 writing is on the wall, Commissioners. I think we need to  
8 adopt a rule today, we need to set it for hearing on our own  
9 motion so that we can actually take some evidence on this. I  
10 think it was Mr. Moyle that kind of pointed up what I thought  
11 made a very good point.

12           There has been no evidence on this. There is, you  
13 know, so far it is just the attorneys, God bless them all,  
14 speaking their mind, you know, and telling us what we can and  
15 what we can't do, and some of them are more reassuring than  
16 others. But we haven't taken a stitch of evidence on this.  
17 And I think that it would benefit me, in particular, to hear  
18 and to have all of these facts getting thrown around as part of  
19 a record so that we can come up with the best decision that we  
20 can on the back end.

21           And then let's let the process move forward. Let's  
22 let the courts say what they will, let's let the arguments be  
23 made somewhere else for a change. So I would support moving  
24 ahead with the rule and actually setting it for hearing on our  
25 own motion. I think I heard Commissioner Palecki suggest it,

1 so I would support that.

2 CHAIRMAN JABER: Thank you, Commissioner Baez, that  
3 is perfect in moving us forward. Can we go ahead and dispose  
4 of Issue 1? Is there a motion to deny staff's recommendations  
5 plural on Issue 1?

6 COMMISSIONER BAEZ: Well, actually I've got a  
7 question as to form. I mean, there is a --

8 COMMISSIONER BRADLEY: Madam Chair.

9 CHAIRMAN JABER: Hang on one second, Commissioner  
10 Bradley.

11 COMMISSIONER BAEZ: I guess the primary  
12 recommendation is denial, in essence, but if we can clarify  
13 that even with staff's condition, if you will, I would vote it.

14 CHAIRMAN JABER: Yes. My question went to even with  
15 the condition. Hang on, Commissioner Bradley might have a  
16 question on that, too.

17 COMMISSIONER BRADLEY: Yes, I have a suggestion.

18 CHAIRMAN JABER: Okay.

19 COMMISSIONER BRADLEY: I think it might be better to  
20 vote on the alternative recommendation first, and on Issue 1  
21 last.

22 CHAIRMAN JABER: They are both -- we can do that. We  
23 can -- I was just suggesting we dispose of them together. It  
24 really doesn't matter to me if you want to have a motion on the  
25 alternative. I have to tell you, staff, I know, Mr. McLean, I

1 am always appreciative of options when they are really options,  
2 but you are the general counsel, and I don't want to ever make  
3 you think I want an option just for the sake of letting me know  
4 that I can accept the stipulation so, take that for what it is  
5 worth to you. I know I have as an alternative the ability to  
6 accept the stipulation, so I hope you didn't put that language  
7 in there --

8 COMMISSIONER BRADLEY: He put it in at my request.

9 CHAIRMAN JABER: Okay, good. I know I have that  
10 option. So give me the out-of-the-box options, just for future  
11 clarification. I know that the opposite of yes is no. It is  
12 the last time I checked.

13 COMMISSIONER BRADLEY: Mr. McLean was -- this was  
14 added to the process at my request, just to make that clear.

15 CHAIRMAN JABER: Okay, Commissioner Bradley. My only  
16 point is that two paragraphs doesn't give me an option. I  
17 didn't find that very helpful to me, but maybe that is exactly  
18 what you asked for, I don't really know.

19 COMMISSIONER BRADLEY: Well, I can explain why.  
20 Again, it goes back to a statement that I made several times  
21 today. I have seen movement on the part of the IOUs but none  
22 on the part of the IPPs. And I think it is bad public policy  
23 when one group takes a hard stand and forces the Commission to  
24 make a decision in their favor because they just out and out  
25 refuse to compromise. I think that the alternative

1 recommendation is excellent.

2 CHAIRMAN JABER: So do you have a motion on the  
3 alternative?

4 COMMISSIONER BRADLEY: Yes. I would like to make a  
5 motion that we accept the alternative recommendation.

6 CHAIRMAN JABER: You want to accept the stipulation?  
7 I am probably confused by your earlier comments.

8 COMMISSIONER BRADLEY: Yes. I do want to accept the  
9 stipulation by the IOUs, and I will tell you why.

10 CHAIRMAN JABER: Okay.

11 COMMISSIONER BRADLEY: I am very concerned about the  
12 legislative intent. Sure we have the ability to alter the rule  
13 and to deal with this issue, but we have to recognize the fact  
14 that when the statute was passed, when the statute was passed a  
15 few years ago, no one was considering restructuring or  
16 competition. And I think that we are teetering on this  
17 Commission making a policy decision, and that should be left to  
18 the discretion of the legislature. And I just don't feel  
19 comfortable with the road that we are traveling. If the  
20 legislature says we shall deregulate or we shall restructure,  
21 then I would be the one who would be out here leading the  
22 bandwagon, but that is not the direction that we have received  
23 from the legislature. The legislature says that we are here to  
24 implement the statute and not to create policy. So I think  
25 that the alternative recommendation is in line with that

1 philosophy.

2 CHAIRMAN JABER: Okay. There is a motion to accept  
3 the alternative recommendation. Is there a second? Okay.  
4 Motion fails for lack of a second, Commissioner Bradley.

5 Let's have a -- is there another mention on Issue 1?

6 COMMISSIONER BAEZ: Madam Chair, just going back, I  
7 mean, and maybe perhaps legal can -- the appropriate motion is  
8 to deny staff on Issue 1, and that will be -- that is clear  
9 enough?

10 MS. BROWN: Yes, Commissioner.

11 COMMISSIONER BAEZ: I can move staff. Staff denial;  
12 forgive me.

13 CHAIRMAN JABER: Okay. There is a motion to deny  
14 staff on Issue 1.

15 COMMISSIONER PALECKI: Second.

16 MS. BROWN: Wait.

17 COMMISSIONER BAEZ: I just want to get the form  
18 right, that's all.

19 MS. BROWN: And I think you have it reversed.

20 COMMISSIONER BAEZ: I'm not interested in accepting  
21 the staff's recommendation because it contains partial -- some  
22 receptiveness subject to a condition, and I'm not interested in  
23 --

24 MR. BALLINGER: Perhaps this would help. You would  
25 approve the primary staff recommendation, just the very first

1 sentence.

2 CHAIRMAN JABER: I think, Commissioner Baez, the  
3 answer to the question is we can probably modify the  
4 recommendation to clarify that we are not accepting the  
5 stipulation in any form.

6 COMMISSIONER BAEZ: I don't want to leave a condition  
7 out there. That is really my point.

8 COMMISSIONER BRADLEY: Okay. The question is should  
9 the Commission approve the proposed -- am I reading it  
10 correctly?

11 CHAIRMAN JABER: Uh-huh.

12 COMMISSIONER BRADLEY: Should the Commission approve  
13 the proposed stipulation offered by the investor-owned  
14 utilities dated August 20th, 2002. Is that correct?

15 CHAIRMAN JABER: That is the issue. So my suggestion  
16 is that someone make a motion to just not accept the  
17 stipulation that is offered by the IOUs.

18 COMMISSIONER PALECKI: I am prepared to make the  
19 motion, Madam Chairman. Despite the fact that there are many  
20 things that I like about the industry stipulation, and there  
21 are many things I like with the staff's primary recommendation,  
22 I would move that both be rejected. I don't believe that  
23 either goes far enough.

24 COMMISSIONER BAEZ: Second.

25 CHAIRMAN JABER: There is a motion and a second. All

1 those in favor say aye.

2 COMMISSIONER PALECKI: Aye.

3 COMMISSIONER BAEZ: Aye.

4 COMMISSIONER DEASON: Aye.

5 CHAIRMAN JABER: Before we vote, Commissioner  
6 Bradley, I want to make an effort to give you some comfort.  
7 Because philosophically I don't disagree with you. I think we  
8 are getting to the same place differently. So in an effort --  
9 I want a unified position because I don't think philosophically  
10 we are saying different things. Regardless of the principles  
11 that were offered by the IPPs, I do not think this proceeding  
12 should be designed to change the framework of the electric  
13 industry as it is governed today. And I wholeheartedly agree  
14 with you and Commissioner Baez that that is within the purview  
15 of the Commission.

16 COMMISSIONER BRADLEY: The legislature.

17 CHAIRMAN JABER: I'm sorry, the legislature. Oops.  
18 I wholeheartedly believe that changing the framework of how the  
19 electric industry is governed or whether it is deregulated is  
20 within the purview of the legislature. The reason I can't  
21 accept the stipulation is for the reasons I have already  
22 articulated. I can't explain how the stipulation makes it  
23 better for the consumer in assisting us in figuring out what  
24 the most cost-effective alternative. I offer that just for  
25 your consideration. I am prepared to support the motion.



1           COMMISSIONER BRADLEY: Okay. And I just need some --  
2 I need to make sure that I understand. By not accepting Issue  
3 1's recommendation or accepting the alternate recommendation,  
4 what we are doing is putting a third recommendation on the  
5 table?

6           CHAIRMAN JABER: What we are doing is moving forward  
7 to Issue 2 and talking about what the rule should have in it  
8 and whether it should be set for hearing. What the effect of  
9 the motion is, we are not accepting the stipulation, that is  
10 Issue 1. Issue 1 is should you accept the stipulation or not.

11           COMMISSIONER BRADLEY: Well, I think I made it pretty  
12 clear that I feel very strongly that the stipulation should be  
13 accepted and I don't mind being a dissenter.

14           CHAIRMAN JABER: Okay. Fair enough. All those in  
15 favor of the motion say aye. Aye.

16           COMMISSIONER PALECKI: Aye.

17           COMMISSIONER BAEZ: Aye.

18           COMMISSIONER DEASON: Aye.

19           CHAIRMAN JABER: Opposed to the motion?

20           COMMISSIONER BRADLEY: No.

21           CHAIRMAN JABER: Okay. We are on Issue 2. And,  
22 Commissioners, based on dialogue I think you all have gathered  
23 that I do not believe repowerings and the language related to  
24 150 megawatts or more belongs in a proposed rule. I really do  
25 not believe that language keeps us within the purview of the

1 need statute.

2 COMMISSIONER PALECKI: And I think also based upon  
3 what we have heard today, there is not really a compelling  
4 reason for any language regarding repowering. I think we have  
5 heard that there are no plans on the horizon for any repowering  
6 projects, so I'm not really certain that this is critical in  
7 any way.

8 CHAIRMAN JABER: Well, can we -- depending again on  
9 where the Commissioners are, can we at least dispense of that  
10 and then focus on what --

11 COMMISSIONER BAEZ: And I guess maybe staff can clear  
12 this up for me. My concern was to -- I feel that the bid rule  
13 somehow is integral to our siting responsibilities, to our need  
14 determination responsibilities. And consistent with that, I  
15 had a little bit of trouble, for instance, regarding the  
16 combustion turbines that don't need siting, that aren't subject  
17 to the Act. And I just want to make sure we are talking about  
18 the same thing. Obviously repowerings aren't' subject to the  
19 Act, as well. But is your -- are your comments directed at the  
20 whole so that we can draw a line between PPSA and non-PPSA  
21 projects?

22 CHAIRMAN JABER: Exactly. Just talking out loud,  
23 what I really thought would be the most efficient way of  
24 handling a hearing, Commissioner Palecki, is to get the rule as  
25 targeted as possible to the Power Plant Siting Act so that the

1 comments and the evidence we get is better. This isn't a wish  
2 list. And I didn't interrupt you when you were talking about  
3 the principles. I'm not going to agree with you in having all  
4 of the principles encompassed in the rule. I want to set that  
5 aside for a moment and talk about what we think we have got the  
6 statutory authority to include, and then also putting a rule  
7 out there that gets us the best evidence and the most targeted  
8 comments so that the process is the most efficient that it  
9 could be. And that may or may not be consistent with the  
10 principles that have been outlined by the IPPs. But the reason  
11 repowerings are important, Commissioner Baez, I think staff, a  
12 lot of staff's changes to the strawman proposal went toward  
13 repowerings and CTs, and it seems like we can just give them  
14 general direction to take that language out without going  
15 line-by-line. But how do you all -- just my reading of the law  
16 left me with the impression that repowerings and CTs were not  
17 part of the legislative intent.

18           COMMISSIONER DEASON: Madam Chairman, let me say that  
19 I agree with you. The Power Plant Siting Act, that is where  
20 the most cost-effective standard is in place. The bidding  
21 rule, of course, is to be utilized to help us accomplish  
22 meeting that standard with some assurance that what we have in  
23 front of us and what we ultimately approve is the most  
24 cost-effective. The Power Plant Siting Act, of course, has the  
25 limitations in there and it does not address combustion

1 turbines, and it does not address generation below 75  
2 megawatts, and these are exceptions which are in the Act  
3 itself.

4           And I was listening very carefully to Mr. Sasso in  
5 his presentation, and he indicated that this would be one of  
6 the most vulnerable aspects that would be subject to a  
7 jurisdictional challenge. And while I think that we need to go  
8 forward and assert our ability to protect customers, that we  
9 don't need to subject ourselves to areas that perhaps are more  
10 vulnerable to jurisdictional challenge when there is not a  
11 really crying need to do so.

12           COMMISSIONER BAEZ: Without judging whether it is a  
13 good thing or a bad thing, whether in the future repowerings  
14 were the subject of some kind of rulemaking, I see it, again,  
15 you know, if we are trying to stay close to our  
16 responsibilities and obligations along need determination  
17 obligations, then I see this as something entirely different.  
18 To me it is about the quality of the information and the timing  
19 of the information and not where -- how much more we are going  
20 to be looking at or what kinds of things we are going to be  
21 looking at. So I feel the same way. I think I can support  
22 striking whatever references or applications --

23           CHAIRMAN JABER: Okay. Commissioner Bradley and then  
24 Commissioner Palecki.

25           COMMISSIONER BRADLEY: So are you ready to entertain

1 a motion?

2 CHAIRMAN JABER: No. Commissioner Palecki has some  
3 questions.

4 COMMISSIONER BRADLEY: Go ahead.

5 COMMISSIONER PALECKI: I just had a comment that I  
6 agree but for a different reason than was expressed by  
7 Commissioners Deason and Baez. I believe that we do have the  
8 statutory authority under our ratemaking authority over the  
9 repowerings. I am also concerned about cost overruns in  
10 repowering projects. However, whatever rule we come up with is  
11 not going to apply to existing repowerings, and we have already  
12 heard comments from each one of the utilities that there are no  
13 repowerings on the horizon out ten years. So I just doesn't  
14 think that this is a really critical issue that needs to be  
15 addressed, and I'm willing to not address this issue at this  
16 time.

17 CHAIRMAN JABER: Okay. I'm still not ready for a  
18 motion, Commissioner Bradley. The other questions on the rule  
19 itself go to staff. I thought Ms. Clark raised some very, very  
20 good questions about the language of the rule itself that I  
21 really want you to address. The notion of -- let's see, where  
22 was it. The whole idea of the complaint process, participants  
23 can file complaints, the expedited hearings, all of that, give  
24 me an idea of procedurally how you think it will work. And I  
25 will tell you, Martha, what I am really interested in, as

1 Commissioner Baez says, making sure on the front end we have  
2 the data. You know, I live for the day where need cases are  
3 not controversial. To me that should be a streamlined process  
4 by the time we get to it, and that means you do more on the  
5 front end. But when I hear and see people can file complaints,  
6 I think PAA process, protest, hearing, is that what you are  
7 talking about?

8 MS. BROWN: And I think what you are saying is that  
9 it is already there, and there really doesn't need to be  
10 specific language in the rule that addresses the usual  
11 processes we use. Is that right?

12 CHAIRMAN JABER: No.

13 MS. BROWN: Well, the reason I brought that up is we  
14 have had this discussion amongst ourselves, and I would need to  
15 confer with staff, but I frankly don't have a problem taking  
16 all of that out if that would make you all feel more  
17 comfortable.

18 CHAIRMAN JABER: But how would the concerns be  
19 resolved. Let's say we have the pre-bid meeting as  
20 contemplated by the strawman proposal, and participants do have  
21 a complaint that they want to bring to the Commission's  
22 attention about whether the criteria were followed or not. Did  
23 you envision the resolution of that complaint being final so  
24 that it doesn't hold up the need process?

25 MS. BROWN: Well, it depends on when the need process

1 is brought to us, also, and whether the utilities are holding  
2 us to the 90-day time frame. It is tough to do, to resolve a  
3 complaint in that time.

4 MR. BALLINGER: Commissioner Jaber, the example we  
5 just went through with Florida Power and Light when they issued  
6 their first RFP. And when they came in for the need  
7 determination the units had changed. That spurred complaints  
8 from some people down the table here. It went on -- I think  
9 Mr. McGlothlin characterized it as FPL went and did a redo.  
10 They reissued their RFP, and basically it solved the complaint,  
11 if you will. The complaint went away, Reliant withdrew its  
12 complaint and the problem got solved. That one was a difficult  
13 one because the complaint was after the end of the process and  
14 then we were really in a tight time frame. A lot of this  
15 complaint is on the structure of the RFP itself. We haven't  
16 had any to date, but I would envision that we would do all we  
17 could to keep the process moving if there was a need  
18 determination. So, really, it was staff's intent with that  
19 language to put down in writing what is currently available to  
20 the parties today; nothing more, nothing less.

21 COMMISSIONER BAEZ: This is something -- you know,  
22 this kind of process or this kind of front-loading of the  
23 process, I mean, first of all, Commissioners, I think that  
24 including this in the rule is merely -- and to borrow a word  
25 from Mr. Sasso, it is institutionalizing something that is

1 already there. But I also think that it has an added advantage  
2 in that it might offer us an opportunity to fix time lines so  
3 that we can keep the process moving forward. But I do want to  
4 raise one issue, a question, I mean. You know, we have to have  
5 adequate time, whether it be on an expedited basis or not, to  
6 address any problems that may crop up. Whether it is something  
7 that we see by our participation in monitoring the bid process  
8 or whether it is raised by a participant. What effect does  
9 that have -- I mean, you know, is it appropriate to have some  
10 kind of tolling that operates in order to let us do this? And  
11 I know, Martha, that you are grimacing over there, but I think  
12 in the interest of having a more streamlined approach on the  
13 need determination you are going to have to give everybody time  
14 to settle this.

15 MS. BROWN: Well, there are two time frames in the  
16 need determination process; one is statutory that is provided  
17 in the Siting Act.

18 COMMISSIONER BAEZ: That is after it gets filed,  
19 correct?

20 MS. BROWN: After it gets filed. The others are our  
21 own time limitations in our rules that were crafted in order to  
22 accommodate the time schedules in the statutory scheme. I  
23 would have to go back and look to see how the two could be  
24 arranged. Where a utility agrees to a waiver of those time  
25 frames, then the problem is really taken care of, but we can't



1 count on that.

2 COMMISSIONER BAEZ: But you are anticipating -- okay.  
3 I guess in my mind it --

4 MS. BROWN: The limitation that I see on it is our  
5 rule time frames could be changed, but we are still -- we still  
6 have to keep in mind the statutory time frames.

7 COMMISSIONER BAEZ: But that is once a need  
8 determination gets filed. And a need determination doesn't get  
9 filed until the RFP process is done. And if what we are doing  
10 is creating a complaint process, for lack of a better word, I  
11 don't want to scare anybody by the words that I'm using, but  
12 if what you are doing is creating a point of entry, almost  
13 before the need determination is what you are doing, so the  
14 timing lines you are not, you wouldn't be tolling --

15 MS. BROWN: You're right.

16 COMMISSIONER BAEZ: -- you wouldn't be tolling a need  
17 determination which would be under a statutory time, what you  
18 are doing is tolling the RFP process from coming to conclusion,  
19 because you have a pending -- and, again, these complaints are  
20 subject to all the challenges of merit, on the basis of merit  
21 or what other grounds capable lawyers are able to think of, you  
22 know, just like anything else. But there does have to be some  
23 stop and let's talk about this.

24 MS. BROWN: I have a suggestion and it has to do with  
25 the competitive bidding process that state agencies are

1 required by statute to implement. I am familiar with that  
2 because I have worked on the Florida Relay Contract Request for  
3 Proposals. There is in 120, and I can't remember the number of  
4 the competitive bidding statute, that has a process by which a  
5 party who is unhappy with the proposal document itself has a  
6 limited amount of time to object to that document. And then if  
7 they don't -- it's like 15 days from the date of issuance or  
8 something -- if they don't do it within that time, they waive  
9 their rights to object thereafter. It helps streamline the  
10 process in the front end as you have been talking about.

11           If you want, I can go back and look at those time  
12 frames that are in there and see if we can craft some timing  
13 that would be similar to that. There is another process -- I  
14 haven't looked at this in a long time. Once that objection to  
15 the request for proposals, the document itself, time passes,  
16 then the document issues, then there is another opportunity at  
17 the back end after the selection is made to contest at DOAH the  
18 process of the selection if it is flawed, or if something was  
19 missed, or the selection didn't actually follow the request for  
20 proposals document, that sort of thing. We are very much  
21 talking about the same things. If you would like, I will go  
22 back and put some time frames in that are similar.

23           CHAIRMAN JABER: To the degree we get into the  
24 hearing phase, I think that could be fleshed out even more in  
25 the hearing.

1           COMMISSIONER BAEZ: I mean, Commissioners, I just  
2 threw that out as a topic for discussion. And I understand  
3 that the proper language may not even be available, but it  
4 sounds like there is an analog out there.

5           MS. BROWN: Yes, there is.

6           CHAIRMAN JABER: And to be clear, my concern was not  
7 just timing, but also finality and time for the need case. You  
8 don't want two hearings going on at the same time. There needs  
9 to be a certainty well in advance of the need case being filed.

10          MS. BROWN: And the certainty that you are interested  
11 in is the certainty that the document itself, the request for  
12 proposals --

13          COMMISSIONER BAEZ: Is not subject to challenge  
14 anymore.

15          MS. BROWN: Right. And these statutes do -- I mean,  
16 that is what they are getting at, they are getting at this  
17 two-phased thing. The first is does the document look okay.  
18 The second phase could happen in the need determination as it  
19 does now, the evaluation of the results of that document wasn't  
20 adequate or needs to be resolved, that is done in the need  
21 determination now.

22          CHAIRMAN JABER: The other point that Commissioner  
23 Clark -- that Ms. Clark raised related to the site-specific and  
24 whether that could be used to dictate collocation of land, I  
25 thought that the stakeholders, at least the IPP side of the

1 stakeholders gave up on that issue. So I'm wondering why  
2 that --

3 MR. BALLINGER: Staff never envisioned a mandatory  
4 collocation, but we do envision utilities exploring all  
5 options. We just wanted to keep it open in case they decided  
6 to offer it as Florida Power did one time in their RFP. So it  
7 is not a mandate by any means, it is just to keep it open as an  
8 option.

9 CHAIRMAN JABER: In several of the workshops we asked  
10 that question. And as I recall, Mr. Sasso, you need to tell me  
11 if I'm wrong, you said that where the land was available to be  
12 included in the option, the RFP could so state.

13 MR. SASSO: That is correct. If the utility elects  
14 to make the site available, the utility could say that in the  
15 RFP.

16 CHAIRMAN JABER: There is a fine line. Let me tell  
17 you, I thought one of the greatest things Mr. Sasso said today  
18 was the notion of you have got to trust the IOUs to run their  
19 business. And that is true about all companies, Mr. Sasso, not  
20 just the regulated IOUs. I would expect that the IPPs can also  
21 evaluate things like that in figuring out whether they want to  
22 submit proposals to your bid or not. I don't want to  
23 micromanage their negotiations. So to the degree the site  
24 specific language could come out --

25 MR. BALLINGER: Well, the other reason it is in

1 there, as I said earlier, is everybody is building the same  
2 plants and we are wondering why the cost difference is there.  
3 And by getting this information up front it may tell us why the  
4 IOU has an advantage of building on its own site. It has the  
5 existing infrastructure. It gives us a sanity check of the  
6 numbers.

7 CHAIRMAN JABER: But isn't that one of the things  
8 that could also come up in the pre-bid meeting or whatever it  
9 is? Yes, pre-bid meeting you called it.

10 MR. BALLINGER: I suppose it could. But I think from  
11 the evaluation standpoint, staff would still look at those  
12 numbers to see if the IOU won, let's say, by \$50 million, is  
13 that because of the land? If so, fine, and maybe that is an  
14 appropriate --

15 CHAIRMAN JABER: Why do I care why they won? Aren't  
16 I looking at the bottom-line cost?

17 MR. BALLINGER: It gives us the sanity of the  
18 process. If they are building the same plants, why are they so  
19 different in cost.

20 CHAIRMAN JABER: But remember, we are putting more on  
21 the front end in terms of the process. So if I've got a  
22 transparent, open, fair process on the front end, by the time  
23 I'm looking at it for need, I am not going to be  
24 second-guessing the cost, am I?

25 MR. BALLINGER: Probably not, but it is something we

1 consider. Quite frankly, we haven't considered --

2           CHAIRMAN JABER: Something you consider now. You  
3 have got the current bidding rule, and our problem with the  
4 current bidding is by the time -- my problem with the current  
5 bidding rule is by the time I've got the need case, I am  
6 looking at a plant that needs to be constructed real soon. And  
7 to the degree I am second-guessing costs, I am put in that  
8 awkward position of asking them to rebid and having the  
9 companies incur more costs which could be subjected to the  
10 ratepayer.

11           What I am suggesting is in the new transparent open  
12 process those sorts of considerations have taken care of  
13 themselves by the time I get the application for need. Is my  
14 thinking flawed here?

15           COMMISSIONER BAEZ: See, I'm seeing -- and that is  
16 why some of my questions earlier were trying to clear up what  
17 the two -- if there is a two-fold, and I don't want to say  
18 requirement, or if there is half a requirement here and half,  
19 you know, wishful thinking, or encouragement, whatever that  
20 means. But, you know, do you have to provide the cost of land,  
21 does that have to be --

22           MR. BALLINGER: I don't know. And, quite frankly, we  
23 have taken a little turn from what staff was originally going  
24 with, what we thought the rule was to look like. What I'm  
25 hearing you say now is we are going to probably keep the rule

1 to do need determination projects only. And initial blush is I  
2 think keep the existing rule as it is. I think it covers it.  
3 I think the utilities have a fairly open process. People know  
4 what is going on. We have heard some complaints about this.  
5 Staff needs to go back and focus, all right, can we tweak  
6 process a bit more to make it more transparent. I think we  
7 have tried, but we may have missed the mark.

8           COMMISSIONER BAEZ: I'm not sure that we need to get  
9 into a debate of whether, you know, leave it as it is or not.  
10 Here is the strawman proposal. I guess my question or what I'm  
11 trying to get straight, Madam Chairman, and I don't know if  
12 it -- is your problem the same, and I will step back and get  
13 out of your way, is exactly -- is it information that is being  
14 required, is it consideration of proposals containing  
15 collocation that is being required, what is it that is being  
16 required exactly? If anything, and, you know, that might be  
17 all right, too.

18           MR. BALLINGER: I think the part about the cost of  
19 land is information to put out there to let others know what  
20 the utilities' value their property as. Whether they choose to  
21 open it up to others or not, that is their choice. And it is  
22 just there for staff so we have kind of a benchmark to go from  
23 when the need determination comes in to see why proposals shook  
24 out the way they did. So it is an information gathering.

25           MR. FUTRELL: It is also information for the bidders

1 so that they will know -- have a clear picture of what target  
2 they are shooting at so that they will know these are costs  
3 that they need to factor into their planning when they  
4 formulate a bid. Not just for the staff and the Commission,  
5 but for the bidders to see what it exactly is, have a clear  
6 picture of what their target is. And that is separate from  
7 this collocation argument about, well, whether or not to  
8 preclude such an arrangement. It is two separate things.

9 COMMISSIONER BAEZ: Right. And I sensed that there  
10 was a problem on the part of the IOUs, and certainly Ms. Clark  
11 expressed it that way when I asked her about it, is that some  
12 of the language in the proposed rule as it is now has the --  
13 might have the effect of actually creating a requirement that  
14 notwithstanding the fact that an IOU may not choose to make the  
15 land or the site available to the other participants, that a  
16 proposal by a participant that includes collocation would also  
17 have to be -- would be de facto meeting requirements and  
18 subject to consideration.

19 And I think -- I tend to agree with her that that may  
20 be an unintended consequence. If the purpose of at least some  
21 of the language is to have that information be known likewise  
22 as a reality check for the Commission as well as the company so  
23 that they can kind of see where the costs are going, I'm not  
24 adverse to that. But I don't want to create -- and I think it  
25 would be wrong to create a requirement that says, IOU, you have



1 to consider me even though I am proposing to collocate on your  
2 land, even though you are not offering the land up for  
3 collocation.

4 MR. BALLINGER: I don't think that was the intent. I  
5 can tell you that from my perspective, it wouldn't be the  
6 intent to force that. But we do want the utilities to consider  
7 what is out there.

8 COMMISSIONER BAEZ: And that would come under the  
9 creativity portions of the rule, correct? I mean, it doesn't  
10 preclude anyone from proposing collocation, but I think it is  
11 probably more appropriately within the company's discretion to  
12 decide what it wants to do with its land, at least at this  
13 point.

14 MS. BROWN: Commissioner Baez, the section in  
15 question was Section 6, which states the public utilities shall  
16 allow participants to formulate creative responses to the RFP.

17 COMMISSIONER BRADLEY: What page is that on?

18 MS. BROWN: I'm actually looking on Page 11 of the  
19 recommendation.

20 COMMISSIONER BAEZ: Six and 7 of the rule.

21 MS. BROWN: It's Page 45 of the rule. The reason I'm  
22 looking at the recommendation is because the part that Ms.  
23 Clark was concerned about was the staff's explanation that  
24 follows that section. If you like that section, the part that  
25 the utilities seem to be concerned about was how staff was

1 explaining it, not the --

2 COMMISSIONER BAEZ: And I took the language in the  
3 recommendation to be just an example. But at the same time, by  
4 listing that as an example I don't want the language at the  
5 end -- and I will note that the language in the rule does say  
6 shall evaluate all proposals. Now, I guess I don't understand  
7 enough to say exactly what evaluate means, because there was  
8 also another question about screening and, you know, what does  
9 it mean to you, evaluate?

10 MR. BALLINGER: It could be as simple as a screening.  
11 If it came in and a proposal did not meet their screening  
12 criteria, it would be gone. But at least they considered it.  
13 They didn't just out and out deny it.

14 COMMISSIONER BAEZ: I mean, I know that doesn't solve  
15 all of -- you know, that doesn't address all of your concerns  
16 on it, but it is a concern that I share. I don't want to  
17 create a requirement when there probably shouldn't be one. So  
18 at least on that point --

19 MS. CLARK: I would just make two points. First of  
20 all, with regard to providing that information, and staff says  
21 it is important for them to evaluate, that's appropriate. They  
22 can get that information, they will get it as part of discovery  
23 and when they look at the need coming in. By putting it in the  
24 rule, and by their recommendation they are suggesting it being  
25 used for another purpose, and that is the evaluation that it

1 can be included in bids that include locating on their property  
2 and they must evaluate that bid.

3 COMMISSIONER BAEZ: But I think we just tried to  
4 clarify that evaluation -- I mean, as Mr. Sasso said, an RFP  
5 can at the company's discretion and in the company's judgment  
6 include or not include offer of a site for use by the  
7 participants. Did I grasp it correctly?

8 CHAIRMAN JABER: I think they tried to clarify that,  
9 Commissioner Baez. But I have to tell you, I would rather take  
10 that language out of a proposed rule because it provides -- if  
11 anything, leaving it in the rule just creates confusion. With  
12 the understanding that if we go forward with the pre-bid idea  
13 and a pre-RFP meeting idea, that those are the kinds of things  
14 that should be discussed in identifying what the criteria are.  
15 Because you can think of land right now, what about all the  
16 other things that we can't think of. I would expect that  
17 companies that participate in the process in exercising their  
18 management positions would talk about all of these things as  
19 the possibility of identifying them as criteria.

20 COMMISSIONER BAEZ: So when you say we should take  
21 that out, are you talking about (a)(10), 5(a)(10)?

22 COMMISSIONER PALECKI: Could I make a suggestion that  
23 we take that out and look at Paragraph 2 of the PACE proposal,  
24 which is very simple and straightforward and replace these  
25 paragraphs with Paragraph 2 on Page 1 of the PACE proposal.

1 That is the one that is dated September 25th.

2 CHAIRMAN JABER: Okay. What Commissioner Palecki is  
3 suggesting is that we take out -- Commissioner Palecki, on Page  
4 43 of staff's recommendation we take out Number 10 and  
5 substitute with Paragraph 2 of PACE's proposal?

6 COMMISSIONER PALECKI: Yes. And I'm not sure exactly  
7 how it fits in, but PACE's proposal doesn't have any laundry  
8 lists. It doesn't really contain any of the highly specific  
9 criteria, it just basically states that the utility shall file  
10 its RFP package with the Commission, that then the potential  
11 bidders will have an opportunity to address those RFP  
12 provisions and provides for a complaint procedure if there is a  
13 disagreement.

14 CHAIRMAN JABER: Commissioner Bradley.

15 COMMISSIONER BRADLEY: I have a suggestion. It seems  
16 that we are getting bogged down in a very complicated  
17 discussion. I would suggest that maybe what we do is consider  
18 changing the language when we get into the formal hearing  
19 process.

20 CHAIRMAN JABER: I understand the suggestion,  
21 Commissioner Bradley, but the way the rulemaking process works  
22 here is the comments and the testimony that gets filed goes to  
23 the rule, goes to the draft rule. They are going to be  
24 prefiling their comments talking about the proposed rule that  
25 comes out of this. And I know that this is a tedious process,

1 but the better we make the strawman proposal, the more  
2 efficient the comments will be. But, you know, I stand to be  
3 corrected.

4 Commissioners, do you generally agree with that?

5 COMMISSIONER DEASON: Well, I guess I'm somewhere in  
6 between. I don't think we are going to perfect this rule  
7 today. We are going to get testimony filed not only on the  
8 rule proposal as whatever form it comes out of here today, but  
9 what form it should be in the eyes of everyone that is going to  
10 be participating. So I am all for it. If there are some major  
11 items in staff's proposal that we feel need to be clarified, or  
12 deleted, or whatever, I think we need to do that. But our goal  
13 should not be to try to perfect staff's proposal today.

14 COMMISSIONER BAEZ: And I don't think that would be  
15 possible, frankly.

16 COMMISSIONER DEASON: And let me say that in terms of  
17 Item 10, which is cost information, I guess the question that I  
18 have is what is relevant about a company's booked costs? We  
19 are talking about making informed decisions and considering  
20 proposals which are based upon current market costs and what a  
21 company -- if the company bought land 30 years ago, what  
22 relevance is that now to whether who has the most  
23 cost-effective proposal in front of us? That is the difficulty  
24 I'm having. And so if we are going to get into some detail, I  
25 guess I will ask the questions. So why do we even have it in

1 here at all?

2 MR. BALLINGER: This whole thing about utility  
3 property came about when we saw a need determination that came  
4 in here with Orlando where they worked out a deal with an  
5 independent provider on their land, had a long-term lease back  
6 for the property. It got staff wondering is that an option  
7 that utilities should pursue.

8 COMMISSIONER DEASON: Well, now you said lease.  
9 Lease is based upon current market prices. You are talking  
10 about information that you probably have access to or you can  
11 just file a discovery question and say give us your book costs  
12 for all this information, to the extent it is relevant at all.  
13 I'm not so sure that we need to be hung up on this in the  
14 context of what has to be required to be filed up front in a  
15 rule.

16 MR. BALLINGER: I was getting there. The reason the  
17 cost is up front, we wanted to use that to compare to what the  
18 asking price was for the lease to see was it three times book,  
19 four times book and have it all in one place.

20 COMMISSIONER DEASON: Well, what if it is ten times  
21 book, what relevance is that?

22 MR. BALLINGER: That's fine. At least we know what  
23 the market was -- or what they were asking for in market.

24 COMMISSIONER DEASON: It may depend on whether they  
25 bought the land six months ago or 50 years ago.

1 MR. BALLINGER: Yes. And what we tried to do in this  
2 whole thing in part of it in other parts with the -- for  
3 instance, the load forecasts and stuff like that is to have it  
4 in one package of the most up-to-date data. Not to have to  
5 pick a piece from here and a piece from there. So a lot of  
6 this data, you're right, does exist, we were just trying to get  
7 it all packaged together in one rule in one location. So I do  
8 agree with you, you're right, the cost data is available, we  
9 were just trying to get it in one package in the one rule.

10 CHAIRMAN JABER: Ms. Brown.

11 MS. BROWN: Chairman Jaber, I just wanted to remind  
12 you that we are at the point of proposing a rule, which means  
13 that we publish it in the FAW. We send a copy of that to the  
14 Department of State and to the Joint Administrative Procedures  
15 Committee. And if you all are not comfortable with the rule  
16 yet, if you think it needs more work, I would prefer perhaps  
17 for us to come back to you.

18 CHAIRMAN JABER: You know, it's not that I mind  
19 coming back, here is what I think this industry deserves. This  
20 industry deserves us to be done with this to the point where we  
21 can get to hearing. We have got to -- and I know this is a  
22 tedious process, but it has been a year and a half. And where  
23 you all were directed to be, which mind you is from a January  
24 2000 directive to look at repowering, admittedly is not where  
25 this Commission is today. I understand that.

1           But I want it to be a meaningful hearing process, and  
2 I want it to be -- who knows, even the optimist, maybe we don't  
3 get to a hearing, but Commissioner Deason's points are well  
4 taken. I don't want repowerings and CTs covered in this rule.  
5 I want to take out the collocation language. The other  
6 question I had related to Ms. Clark's point about evaluating  
7 all proposals, putting that sort of restriction on the IOUs  
8 when maybe they are -- and I don't know if this ever happens,  
9 maybe this is just completely exaggerated, I don't know. To  
10 the degree there are companies who submit proposals that are  
11 nowhere near the RFP, then why should they go through the  
12 expense of evaluating those proposals? I would ask that we  
13 think about that language, Commissioners.

14           The equity penalty, we haven't really talked about  
15 the equity penalty. Mr. Green, I don't know what exactly gives  
16 you heartburn about the equity penalty. Maybe you can just  
17 take a few minutes and help me understand that a little more.  
18 What is it you would like this Commission to do as it relates  
19 to the equity penalty?

20           MR. GREEN: Relative to the equity penalty, I think,  
21 you know, my heartburn as you referred to it, I think, was the  
22 fact that on the initial RFPs the equity penalty wasn't ever  
23 called out. We didn't know it was there. The equity penalty  
24 was not called out in the RFPs as something that was going to  
25 be considered.



1 CHAIRMAN JABER: I'm sorry, I didn't hear you. The  
2 equity penalty was not set forth in the RFP?

3 MR. GREEN: There were some words in there that --  
4 did it call it equity penalty? I mean, there were some vague  
5 words that talked about the effect on their debt/equity ratio,  
6 but it wasn't real clear what the magnitude of that penalty was  
7 going to be, or how important it was, or how unimportant it  
8 was. It was one sentence, I think, in the RFP.

9 CHAIRMAN JABER: Was it a statement that that would  
10 be a consideration that the IOU would have in exercising the  
11 self-build option?

12 MR. GREEN: I think in fairness it did say this is  
13 something that they may consider I think is the words they  
14 used. And I will let Martha correct me if I'm wrong.

15 CHAIRMAN JABER: Well, if that is the case, staff,  
16 then I think your language goes a little bit beyond that, so  
17 walk me through that.

18 MR. McGLOTHLIN: Madam Chairman, may I follow up on  
19 that, also?

20 CHAIRMAN JABER: Yes.

21 MR. McGLOTHLIN: In addition to the wording that  
22 appeared in the RFP, it is our position that the risks  
23 associated with buying or building capacity have a law of  
24 dynamics in them, that they have been run both ways, and there  
25 are a myriad of individual risk factors. It is our contention

1 that the equity penalty singles out one of them. It only works  
2 in one direction, and for that reason is prejudicial and not an  
3 even-handed way to look at the financial risk situation, and is  
4 therefore inappropriate in an RFP package.

5 CHAIRMAN JABER: But if they just simply make a  
6 statement that they may consider the appropriate penalty  
7 because of certain debt situations, then haven't you -- then  
8 don't you have the information you need to make an educated  
9 decision on whether to submit a bid?

10 MR. McGLOTHLIN: Well, that is part of the problem,  
11 because if the IPP receives an RFP package that has criteria  
12 which are tilted, then that is disincentive to bid because it  
13 is an indication that the scoring is going to be weighted in  
14 favor of the IOU's alternative in a way that is unfair.

15 CHAIRMAN JABER: Would you be able to go to the  
16 pre-bid meeting and say, well, what exactly would the penalty  
17 be, and at what point would you exercise the equity penalty?

18 MR. McGLOTHLIN: I suppose those questions could be  
19 asked. But as long as that is part of the equation it is a  
20 tilting of the scales from our perspective.

21 CHAIRMAN JABER: Ms. Brown, you were about to address  
22 the language included in your strawman?

23 MS. BROWN: Just a minute, Chairman Jaber. I can't  
24 find it.

25 COMMISSIONER PALECKI: While Ms. Brown is looking for

1 that, I am looking at the PACE proposal. The entire thing is  
2 three pages, and I see some very large chunks of what the  
3 staff's proposal is that could be replaced by one or two  
4 paragraphs. For example, with regard to the upfront criteria,  
5 you have Paragraph 2, and then you have Paragraph 7, which is  
6 PACE's laundry list of the various ingredients that need to be  
7 included. I somehow think it would be a lot more expedient to  
8 use this as kind of like -- maybe we could go through this and  
9 see what we agree and what we disagree with on the PACE  
10 proposal because it is quite more -- well, it is much shorter,  
11 and I see it as being more straightforward and much simpler.

12 CHAIRMAN JABER: Commissioners, let's talk about  
13 that. That was the last question I have, Ms. Brown, so answer  
14 the equity penalty question.

15 MS. BROWN: And the question is what, again?

16 CHAIRMAN JABER: How is it in your strawman proposal  
17 you address the equity penalty and was the purpose of including  
18 it the same purpose articulated by PACE here?

19 MS. BROWN: Yes, I think it was to actually codify  
20 something that we do in need determinations anyway when the  
21 equity penalty shows up. If it is going to make a difference,  
22 there is an evaluation made of it and the utility will justify  
23 why they have done it. This was to codify that and expressly  
24 include it. And I don't think it goes much further than --

25 MR. SASSO: Madam Chairman, may I address that very

1 briefly?

2 CHAIRMAN JABER: Yes.

3 MR. SASSO: We are concerned even getting past all  
4 the threshold issues. If the Commission is working off of this  
5 rule, we suggest this should not be placed in the rule for  
6 several reasons. First, it does substantively alter what the  
7 Commission is doing today in evaluating these cases on the  
8 merits. In our case, for example, on Hines 2 we had a  
9 discussion of imputed debt. It's not a penalty; it is simply a  
10 recognition of the impact on our cost of capital of entering  
11 into long-term power purchase agreements. It's not a penalty  
12 at all. And the Commission has recognized it is legitimate to  
13 take this into account because the world takes it into account,  
14 Wall street takes it into account, and so the Commission has  
15 taken it into account and staff recognizes that.

16 CHAIRMAN JABER: Is it to reconcile the perception of  
17 debt that is created when you enter into a purchased power  
18 agreement?

19 MR. SASSO: Yes, ma'am. What happens when you enter  
20 into a long-term purchased power agreement, you are taking on  
21 obligations that are debt like. You commit to make regular  
22 payments to the provider.

23 CHAIRMAN JABER: Can that be articulated just like  
24 that in an RFP so that any non -- and that is true for an IOU  
25 who submits a bid or for an IPP that is awarded the bid.

1           MR. SASSO: Well, the concern isn't whether it  
2 occurs. This is a fact that is well known and well established  
3 in the Commission's decisions, but it doesn't seem to belong in  
4 an RFP. It is really quite immaterial to the bid except that  
5 it is part of the background against which all bidders  
6 participate recognizing what Wall Street does. But what place  
7 does it have in an RFP? What the staff proposal does is it  
8 actually suggests a presumption against use of this absent a  
9 showing of good cause. That really goes to the way the  
10 Commission makes its decision on the merits in reviewing the  
11 evaluation made by the utility in a particular case. It has  
12 really got nothing to do with the RFP, as such. Further, the  
13 Commission's rule on the contents of a petition, 250-22.081,  
14 for a need case requires us to address this when we file a  
15 petition. It says, if the generation addition is the result of  
16 a purchased power agreement between an investor-owned utility  
17 and a nonutility generator, the petition shall include a  
18 discussion of the potential for increases or decreases in the  
19 utility's cost of capital. So the Commission has already  
20 addressed this in an existing rule that deals with the contents  
21 of the petition, which is really where it belongs because this  
22 goes to the merits of the decision, not what we ask other  
23 people to bid on.

24           MS. BROWN: And, Madam Chairman, I really hate to  
25 interrupt Mr. Sasso, but this is an issue in the FPL need

1 determination case that is coming up before you on Wednesday.  
2 I just wanted to let you know that that is out there.

3 CHAIRMAN JABER: Yes, but it's also an issue here.

4 COMMISSIONER DEASON: Let me ask Mr. Sasso a  
5 question. I understand the point that you are making. But, I  
6 guess, there is a fundamental question. How do participants in  
7 the bidding process when they are formulating their bid and  
8 putting it in front of you hoping to win the bid, how do they  
9 know how the costs of capital or how you are going to evaluate  
10 that requirement under a long-term basis to make payments? How  
11 do they know how that is going enter into your evaluation as to  
12 whether their proposal is least cost or not? Is it a stated  
13 formula that everybody agrees to or is there some subjectivity  
14 involved in that as to how you actually incorporate it, because  
15 it does enter into your evaluation, correct?

16 MR. SASSO: Well, it depends. For example, on our  
17 Hines 3 project it did not. It simply was not a factor in the  
18 outcome or in the evaluation. But it can. Theoretically, it  
19 can be a factor. But this is determined by rating agencies.  
20 They have formulas. For example, Standards and Poor has an  
21 approach that they use to figure out what the impact is on a  
22 utility's cost of capital if the utility enters into a  
23 long-term contract. But it's a fair point that perhaps  
24 requires some research into the rating agency methodology to  
25 determine that, and bidders --

1           COMMISSIONER DEASON: Well, no, no, how are you going  
2 to evaluate it? When you get all of these proposals in, if you  
3 are going to evaluate them, you have to make a determination  
4 first does this proposal affect my cost of capital? If it  
5 does, how much does it affect it and what cost attributes do I  
6 have to attribute to this particular proposal to make it, you  
7 know, evaluate it, apples-to-apples, to all the other proposals  
8 that you have?

9           MR. SASSO: We follow rating agency guidelines.

10          MS. CLARK: I can add a little to that. It depends  
11 on what the contract says. Is it a take or pay, is it a take  
12 and pay? How long is the contract offered for? So there are a  
13 whole host of contract terms that affect how much of a  
14 percentage of the contract will be imputed as debt or the  
15 ratings agencies will take into account when they are looking  
16 at your balance sheet. I think what you can say is, you know,  
17 and I think it was indicated, that as the rule requires when  
18 you file your petition you have to say whether or not it is  
19 going to have an impact.

20          COMMISSIONER DEASON: The concern I have is, is there  
21 a way -- and I don't know the answer to this, but this is a  
22 function of the market, and people out there that are  
23 participating in the market that are ingenious. Is there a way  
24 that they can structure a proposal, structure the terms of the  
25 contract, or whatever they put in front of you which has the

1 effect of minimizing adverse costs on your capital costs such  
2 that they may have an upper hand in winning the proposal, and  
3 do they know how to structure that in their RFP such that it  
4 will be evaluated? And if they can come up with an ingenious  
5 plan which minimizes cost of capital, they have a fair shot at  
6 winning the proposal. That is the concern that I have.

7 MR. SASSO: I would think the answer to that is they  
8 would study the rating agency literature and guidelines and  
9 identify the types of contracts or the attributes that have the  
10 least impact on cost of capital which is identified in the  
11 literature. Take or pay is one feature, but you would simply  
12 review the literature, identify those attributes that are of  
13 more concern to Wall Street and try to work around them.

14 CHAIRMAN JABER: Mr. McGlothlin had a response to  
15 you, Commissioner Deason.

16 MR. MCGLOTHLIN: Yes. And I just want to sort of  
17 even the balance here, because as Ms. Brown said, this is an  
18 issue you will hear more about this week. I want to make it  
19 very clear that although Mr. Sasso describes what rating  
20 agencies do and what he has characterized as what the utility  
21 must do as a consequence of that, the appropriateness of the  
22 equity penalty as a consideration in the RFP is very much in  
23 dispute. For instance, Commissioner Deason, one premise of  
24 your question was, well, you need to find out how much it  
25 decreases your cost of capital. That very premise is in



1 dispute because the equity penalty looks only at the issue of  
2 equity/debt ratio and does not consider possible offsets such  
3 as the shifting of construction risk away from the utility,  
4 risk of obsolescence away from the utility. Our point is that  
5 this is focussing narrowly on a single aspect of risk that  
6 works only in one direction, and it is inappropriate to factor  
7 that into the equation and disregard everything else. And so  
8 while counsel for the IOUs have said, rather matter-of-factly,  
9 here is what the rating agencies do, that entire premise is  
10 very much in dispute.

11           CHAIRMAN JABER: Well, from this perspective way up  
12 here, I am not talking about the rest of this week and the case  
13 we are about to hear. In the spirit of trying to make the  
14 process more transparent, my question is simple, how do you --  
15 and I don't care if you call it an equity penalty or an equity  
16 adjustment or whatever, my question is this: How can language  
17 be included into the current process so that the utility's  
18 treatment of the equity adjustment is transparent to the  
19 bidder, whether that bidder is another IOU or an IPP? That's  
20 all. That is my question. How do you include that into the  
21 process so that that criteria is transparent, Ms. Clark?

22           MS. CLARK: I think Mr. Sasso was going to answer.

23           MR. SASSO: I was going to simply suggest that that  
24 will be resolved by the utility and by bidders by looking to  
25 rating agency guidelines. That is as transparent as it gets.

1 But this language, the only point I wish to make, and it may  
2 not be directly responsive to your question, is that staff's  
3 proposal deals with a different issue. It says that we are not  
4 allowed to use an equity penalty.

5 CHAIRMAN JABER: Yes. Set aside staff's proposal.  
6 Again, I am --

7 MR. SASSO: Then I guess we would simply -- we would  
8 have to refer all interested parties to the rating agency  
9 guidelines.

10 CHAIRMAN JABER: But wouldn't you know what you are  
11 going to do in terms of your debt to equity adjustments when  
12 you put your RFP together? I guess I'm really struggling with  
13 why you just can't include that language in an RFP.

14 MS. BROWN: Madam Chairman, that is what Subsection F  
15 says.

16 CHAIRMAN JABER: Hang on, Ms. Brown. Hang on.

17 MS. BROWN: I'm sorry.

18 CHAIRMAN JABER: Ms. Clark.

19 MS. CLARK: You know, I think one of the things we  
20 offered in terms of the stipulation was to set out, you know,  
21 the evaluation criteria, and that is certainly something that  
22 could be looked at. But I think Mr. Sasso's point is correct,  
23 what this says is absent a showing of good cause you will  
24 ignore a cost. And it seems to me this cost should be on equal  
25 footing with other costs.

1 CHAIRMAN JABER: I'm trying to get you to move away  
2 from staff's language. But, Commissioner Baez, you had --

3 COMMISSIONER BAEZ: And I understand your point about  
4 creating a presumption against something that you have the  
5 discretion to do. Is there --

6 MS. CLARK: I don't know that it is the discretion to  
7 do. I think it is a legitimate cost that needs to be taken  
8 into account.

9 COMMISSIONER BAEZ: I'm sorry. Well, in the end you  
10 are either going to include it or not, right? I mean, God  
11 forbid you should decide to just eat it and not --

12 MS. CLARK: Well, it may be that even including it,  
13 it just makes the -- it illustrates that the self-build is even  
14 better than when you exclude that.

15 COMMISSIONER BAEZ: Okay.

16 MR. SASSO: This may be something in the event that  
17 we end up at a hearing that could be fleshed out at the hearing  
18 in terms of how to develop that criterion.

19 COMMISSIONER BAEZ: And I guess my question is one  
20 more of probably form. Do you agree that there are valid  
21 mitigating factors, that there can be valid mitigating factors  
22 to an equity penalty? I think Mr. McGlothlin stated some  
23 benefits.

24 MS. CLARK: I would say not in the way he has  
25 characterized it.

1 COMMISSIONER BAEZ: Not in the way he has  
2 characterized it?

3 MS. CLARK: Right.

4 COMMISSIONER BAEZ: Okay.

5 COMMISSIONER PALECKI: Commissioners, I am almost  
6 thinking that we need to determine what are the major  
7 ingredients we want to see in the rule. And the reason I think  
8 that we have to decide that first is that if we decide that the  
9 RFP needs to contain evaluation criteria and a dispute  
10 resolution procedure, I think all of these issues regarding  
11 equity penalties go away, because if there is an unfair equity  
12 penalty in these evaluation criterias (sic) up front, then you  
13 would have the bidders take this to dispute resolution. Staff  
14 would write a recommendation, and we would go ahead and decide  
15 whether that is fair or not. And that seems to be like one of  
16 those pieces that is of a level of detail that we might not  
17 even have to decide right here today.

18 COMMISSIONER BAEZ: I would agree with you. I do  
19 agree with you, actually, but I think that begs a question.  
20 You seem to be putting that issue in particular and there may  
21 be others. Just as an example off onto whatever obligations  
22 the company may have in listing criteria that is going to be  
23 involved, so to me that suggests that there has to be some  
24 prior knowledge on the part of the company, on the part of the  
25 IOU that there is an equity penalty involved. And it is really

1 not going to be enough to say it may be involved. I mean, you  
2 know, there is noticing problems to the extent that other  
3 mitigating factors exist that can become incorporated into a  
4 bid. You know, there has to be some fair warning to all of  
5 that. But at the end of the day, I think you have to address  
6 it from a point of view of do they have the capacity of knowing  
7 ahead of time? Is it a question of can you protest it? I  
8 think going into the protest period or the protest process, can  
9 you protest on something that might be, you know? So either  
10 the companies know ahead of time and can provide adequate  
11 notice that there are debt-to-equity ratio considerations and  
12 impacts and have that known ahead of time, or then you are left  
13 with arguing against a ghost. And I don't think that -- I  
14 don't think no matter how real it is later, because I think it  
15 really shows up on the need part, arguing against a ghost is an  
16 impossible -- I mean, you're trying to catch it, it's  
17 impossible.

18 COMMISSIONER PALECKI: A very good point.

19 COMMISSIONER BAEZ: I don't know what the answer is.  
20 I don't know if an IOU knows ahead of time that there are, in  
21 fact, these impacts and could somehow make them, you know, make  
22 knowledge of them or the possibility of them known to  
23 participants in a meaningful way. I don't know the answer to  
24 that, but --

25 CHAIRMAN JABER: I didn't know the answer to that

1 either, Commissioner Baez. But the language that gave me  
2 concern was requiring them to show good cause -- saying no  
3 adjustment is appropriate absent a showing of good cause. I  
4 would much rather see that language say something to the effect  
5 of if an adjustment is -- if there is going to be an  
6 adjustment, that it needs to be articulated up front.

7 MS. BROWN: We have a suggestion for language from  
8 that section if I might.

9 CHAIRMAN JABER: Okay.

10 MS. BROWN: The last sentence we would take out. The  
11 first parenthetical phrase, including all weighting and ranking  
12 factors we would take out. So that Subsection F on Page 45  
13 would read: That the utility must include all criteria that  
14 will be applied to select the finalists. Such criterion may  
15 include price and nonprice considerations, but no criterion  
16 shall be employed that is not expressly identified in the RFP  
17 absent a showing of good cause. That, we think, takes care of  
18 your concern that the bidders all be aware of all the factors  
19 and criterion that are going to be considered.

20 CHAIRMAN JABER: Well, as long as -- and maybe this  
21 is just industry practice. Maybe it is real clear that these  
22 equity adjustments go into the evaluation of who is awarded the  
23 build. If that is the case, I'm fine with that language. If  
24 it is not clear that criteria will include in a general sense  
25 whether an equity adjustment will be made, then I would ask

1 that we be more specific.

2 MS. BROWN: I think that would be clear to the  
3 utilities.

4 CHAIRMAN JABER: Mr. Sasso, is that real clear? I  
5 understand you don't agree with it, but are you clear on what  
6 we are trying to accomplish?

7 MR. SASSO: I am clear, and I think I agree with the  
8 statement that -- with the benefit of this discussion in  
9 particular that this would include imputed debt. I am not sure  
10 I understood exactly the language that staff was suggesting  
11 would be substituted. I think I missed something. If you  
12 wouldn't mind repeating that.

13 MS. BROWN: I wouldn't mind. We weren't substituting  
14 any, Mr. Sasso, we were just taking some out.

15 MR. SASSO: Okay. You were just taking off the last  
16 sentence.

17 MS. BROWN: Taking off the last sentence and taking  
18 off "including all weighting and ranking factors" on Line 8,  
19 striking those, as well, and leaving the rest.

20 CHAIRMAN JABER: Commissioners, that was my last  
21 question. So whatever your pleasure is. Do we need a break?  
22 We need a break. How about ten minutes? We'll come back at  
23 3:30.

24 (Brief recess.)

25 CHAIRMAN JABER: Okay. Let's go ahead and get back

1 on the record, Ms. Brown.

2 MR. McGLOTHLIN: Chairman Jaber, during the break we  
3 huddled among ourselves and have a suggestion that we think may  
4 have the potential for a little progress on this little bit of  
5 a log jam here. And with respect to the language of the staff  
6 proposed rule that treats the equity adjustment or equity  
7 penalty, PACE would be willing to accept for today's purposes a  
8 complete removal of any indication of the equity penalty, so  
9 that the rule itself is silent on the equity penalty or equity  
10 adjustment. However, as part of that we think it would be  
11 important to continue to include reference to the RFP  
12 containing all criteria and all weightings. And the upshot of  
13 that would be that if in its discretion the IOU proposes to  
14 have an equity penalty, then that would be part of the RFP and  
15 the bidders would be put on notice of it. And under the  
16 upfront mechanism that Martha described, that would be resolved  
17 in an early point in time.

18 CHAIRMAN JABER: I think that is a good solution. I  
19 was confused, Ms. Brown, why you took out including all  
20 weighting and ranking factors, that confused me.

21 MS. BROWN: I'm going to let Mr. Ballinger respond to  
22 that.

23 MR. BALLINGER: I will respond to that one. We are  
24 hearing some confusion about that. Staff's intent with those  
25 words were to have possibly qualitative weighting and ranking,



1 if you will. Say the utility would prefer longer term  
2 contracts, they would prefer units that burn a certain fuel,  
3 let's say, things of that nature. When read literally and what  
4 I have heard the discussion say -- and by the way, I have  
5 appreciated the discussion. It has been the first meaningful  
6 discussion we have had on the merits of the rule and the  
7 language both between the Commissioners and the parties and it  
8 has helped staff a lot. Up until now we have been in kind of a  
9 vacuum.

10 CHAIRMAN JABER: I don't know how to take that.

11 MR. BALLINGER: It's positive. Trust me, it's  
12 positive. The language there, the weighting and ranking in  
13 staff's view was more of the qualitative, not to go to a  
14 numerical scoring procedure as some would like for us to have.  
15 And I sense that that comes from the other side of the table.  
16 That's why we suggested taking it out. Utilities put in  
17 qualitative ranking in how they evaluate things, what they  
18 favor and not, so we just wanted to take it out for clarity.

19 CHAIRMAN JABER: I just didn't read it that way.  
20 That language is okay with me, Commissioners. I don't know how  
21 you feel about it. In any case, I have asked all of my  
22 questions, so any other questions? We have not talked about  
23 binding bids and we have not talked about third-party  
24 evaluators.

25 COMMISSIONER BAEZ: I think you can take care of one

1 and not the other. Well, I don't know. I'm with Commissioner  
2 Bradley on the evaluator. I just don't see us having the kind  
3 of time and expertise and man or woman or person power  
4 available to kind of engage in or take that responsibility onto  
5 ourselves. However, I think if we can have some meaningful  
6 terms in terms of how binding bids are, and that is probably a  
7 question of degree, I don't know that I would feel  
8 uncomfortable not having an independent evaluator.

9           CHAIRMAN JABER: Can I ask a question on that?  
10 Mr. Sasso, today when you evaluate bids, do you have, for lack  
11 of a better word, a split in your staff? The staff that  
12 developed the RFP, is that different from the staff that  
13 evaluates the bids?

14           MR. SASSO: We have to be -- I have to be careful in  
15 responding to this because I don't want to mislead the  
16 Commission. Because, for example, there may be some modelers  
17 who are involved in running numbers on the preparation of the  
18 utility's own project, but also in evaluation there may be some  
19 administrative staff and so on. But at least within Florida  
20 Power Corporation the team that evaluates the bids in this last  
21 project were not the same people who developed the Hines 3  
22 proposal. But as I say, if you look in some areas there may be  
23 some overlap or whatever, but the company gets cost data from a  
24 team that is responsible for providing information about the  
25 self-build alternative and then there is an evaluation team

1 that takes that into account and looks at the bids coming in  
2 and so on.

3 CHAIRMAN JABER: Commissioners, for purposes of the  
4 rule hearing, I don't find the need to include language about  
5 an independent evaluator if it could be clear. I can't  
6 remember who proposed something. It may have been in the PACE  
7 proposal, there was some language about the personnel of the  
8 IOUs not being the same.

9 COMMISSIONER BRADLEY: Madam Chair.

10 CHAIRMAN JABER: Commissioner Bradley.

11 COMMISSIONER BRADLEY: You know, my question would be  
12 who assumes the liability for an inaccurate or a bid that is  
13 not on the mark? I think it's a stretch to say that someone  
14 else should get involved in the evaluative process and that the  
15 IOU should be held to that. I would be in favor of not  
16 including this.

17 CHAIRMAN JABER: Commissioners, any other questions  
18 or comments?

19 COMMISSIONER PALECKI: Well, just my own personal  
20 opinion. I think I have already expressed it. I believe in an  
21 independent evaluation process. I am not saying that I would  
22 be unwilling to vote out a compromise that doesn't contain one,  
23 but I guess I would have to hear what was entailed in that  
24 compromise. I certainly believe that there should be a binding  
25 proposal made by all participants, and I might be willing to

1 forego the independent evaluation. As I said, I believe in  
2 that. I think it would result in identification of the most  
3 cost-effective proposal. I believe it would solve a lot of the  
4 criticism that we have heard from the parties and also in the  
5 press about the beauty contestant being a judge, but I might be  
6 willing to compromise if I felt that at least two of the three  
7 ingredients being requested by PACE were being complied with.  
8 I just want to say that, you know, as far as I am concerned we  
9 want a rule that will ensure that we, one, have adequate  
10 participation so that we know that the proposals that we are  
11 seeing and the one chosen we can identify as the most  
12 cost-effective. I have already stated that I think that there  
13 is a problem with the process where a lot of people or entities  
14 that used to participate are going home and are not  
15 participating. I think we need a rule that at least will allow  
16 those who would bid to have a feeling that they have some  
17 chance, some opportunity of actually prevailing and winning one  
18 of these. And I think that is the problem with what we have  
19 now. There is a viewpoint in the community, the people, the  
20 entities that have bid on these proposals that there is not any  
21 opportunity whatsoever to prevail on one of these things. And  
22 it is kind of like the opposite of the boy who cried wolf. The  
23 boy cried wolf so many times that nobody cared anymore when he  
24 cried wolf. And I just don't want it to be one of these things  
25 where -- you know, we have had this rule for eight or nine

1 years. I don't want it to go to 15 years and no independent  
2 power producer has ever even been considered for a project. I  
3 think we need something that provides the community with the  
4 view that there is a real opportunity and an opportunity that  
5 if they come in with a real low bid, they beat out the other  
6 contestants that they win, and I don't think that that feeling  
7 is in the community today.

8 CHAIRMAN JABER: Commissioner Palecki, you keep  
9 saying IPP has ever won the contest. The last time I checked I  
10 don't think another competing IOU has won the bids. I just  
11 don't see it as an IPP versus IOU issue. I don't think we  
12 should see it that way.

13 COMMISSIONER PALECKI: I agree with you.

14 CHAIRMAN JABER: Okay. We need to be real clear on  
15 what we are trying to accomplish, although I want -- you know,  
16 one of the things we have not yet talked about that we should,  
17 this is an economic development issue not just for the IOUs,  
18 not just for the IPPs, but for the ratepayers. And it is not  
19 about the IPPs getting the bid. I personally don't care who is  
20 awarded the bid at the end of the day. What I care about is  
21 the bottom line rate to the ratepayers. So, frankly, I want to  
22 set up a structure that allows other IOUs to win the bids.  
23 Commissioners, the language I was talking about comes from  
24 Alabama. It was one of the -- something we got in our  
25 comments, many, many comments ago. The language says, to

1 ensure that all proposals are evaluated fairly, personnel that  
2 develop proposals submitted by the company and/or its  
3 affiliates will not participate in the evaluation process. I  
4 don't know that today we need to include that language in the  
5 rule, but going forward for the hearing process, would you all  
6 consider it?

7 COMMISSIONER BRADLEY: Madam Chair, who pays the  
8 independent evaluator?

9 CHAIRMAN JABER: I don't know. The question is who  
10 pays the independent evaluator?

11 MR. GREEN: It is paid by the utility, the  
12 soliciting utility from the fees collected from the bidding  
13 participates.

14 CHAIRMAN JABER: So the application fee would be  
15 structured such that that would pay for the independent  
16 evaluator, is that correct?

17 COMMISSIONER BRADLEY: The IOU would pay the  
18 evaluator?

19 MR. SASSO: Well, we haven't proposed to use one, but  
20 in the event the IOU retains a consultant, the IOU would pay  
21 the consultant.

22 CHAIRMAN JABER: Mr. Sasso, I think -- generally  
23 speaking, in your experience in the industry, in those states  
24 where an independent evaluator has been used, do you know how  
25 they were compensated?

1 MR. SASSO: No, I don't.

2 CHAIRMAN JABER: Mr. Green, do you?

3 MR. GREEN: Yes. In states where they use an  
4 independent evaluator oftentimes it is the utility that has  
5 solicited the bids, takes the collected fees and pays the  
6 hired evaluator. In the cases where the PSC has hired the  
7 independent evaluator or has employed it, it also is paid by  
8 the PSC, but out of the fees that bidders have submitted. That  
9 is my familiarity with four or five different states.

10 COMMISSIONER BRADLEY: That is precisely my point.  
11 That is not an independent evaluator.

12 CHAIRMAN JABER: I guess I don't see your -- well,  
13 first of all, I don't have --

14 COMMISSIONER BRADLEY: He who pays controls. I mean,  
15 if an evaluator is paid by the IOU or the solicitor, the  
16 evaluator is working for the solicitor.

17 CHAIRMAN JABER: I think, Commissioner Bradley, the  
18 monies that go to the independent evaluator are set aside  
19 solely for that purpose, so I don't -- and you all need to  
20 correct me if I am wrong. I don't think the IOUs pay. I think  
21 that the application fees that come with the bids pay the  
22 independent evaluator. Am I missing your point?

23 COMMISSIONER BRADLEY: I thought I heard Mr. Green  
24 make the statement that the solicitor pays the independent  
25 evaluator.

1           MR. GREEN: I will try to restate what I said. In  
2 those states in which the process or the rule requires the  
3 soliciting utility, the investor-owned utility that is  
4 soliciting bids, when that process requires an independent  
5 evaluator, I have seen it where the investor-owned utility pays  
6 the evaluator that was hired out of the fees that were paid by  
7 the bidders that bid on the project, the \$10,000 or whatever  
8 that is. There are a few states where the Public Service  
9 Commission or the Public Utilities Commission might go find an  
10 independent evaluator. And in that case the Public Service  
11 Commission or the Public Utilities Commission would pay the  
12 evaluator, again out of the fees submitted by the bidders.

13           COMMISSIONER BRADLEY: Okay. A follow-up. Well, who  
14 is liable then for a faulty bid? I mean, if the independent  
15 evaluator accepts the bid that is not feasible, then who is  
16 held liable for that inconsistency?

17           MR. GREEN: I'm not sure I follow you. I mean, the  
18 independent evaluator, in almost all states that I am familiar  
19 with when they use them, is subject to Public Service  
20 Commission oversight. The PSC staff would look over this and  
21 make sure it is all appropriate and makes sense, because the  
22 advantage of that on the tail end, it makes the inclusion in  
23 the rate base very, very clean and smooth, because it is kind  
24 of with the presumption that if it has gone through this bid,  
25 and independence and objectivity is used in the evaluation



1 criteria, and if the evaluation criteria and the weighting is  
2 very clear up front and all the issues have been raised up  
3 front, and an evaluator is chosen that meets the criteria that  
4 is established in the up front criteria establishment, that --

5 COMMISSIONER BRADLEY: My question is this, though,  
6 an independent evaluator accepts a bid, the projects begins and  
7 we later on find out that it is not feasible at the rate that  
8 the bid was accepted, who then has the liability, the Public  
9 Service Commission, or the independent evaluator, or the IOU,  
10 or the bidder? I mean, who is responsible for --

11 MR. GREEN: Well, I don't know of any case where an  
12 evaluator, an independent evaluator has chosen a winner, if you  
13 will, of the process and then it turned ought to be, however  
14 you said, unfeasible. I don't know of any case like that. But  
15 the way I would envision that to play out would be that the  
16 evaluator chooses the winner, it would go to the utility or the  
17 Public Service Commission who had hired them, but in most cases  
18 it would go to the utility and say, I have evaluated the bids  
19 based on the criteria established, here is my recommendation.  
20 That is usually a short list. Here is a ranking of the three  
21 or four most cost-effective alternatives to provide this  
22 capacity. It is now up to that utility to go into detailed  
23 contract negotiations with number one on the list. If that  
24 falls apart, they go to number two on the list. I mean, it is  
25 a process, but that process is laid out up front in the

1 evaluation criteria and how the game will be played.

2 COMMISSIONER PALECKI: Let me ask a question. If  
3 after being awarded the bid under -- let's assume that we vote  
4 that there will be binding proposals. If the winner, be it the  
5 utility or the nonutility, is unable to come in at the price  
6 that they have bid, would it not be the company that is unable  
7 to build at that price to perform under the terms of the  
8 contract? So the liability would be with the person who won  
9 the bid. They would be subject to complying with all proposals  
10 --

11 COMMISSIONER BRADLEY: So we do have a performance  
12 bond involved here.

13 CHAIRMAN JABER: Commissioner Bradley, I didn't hear  
14 what Commissioner Palecki was saying.

15 COMMISSIONER BRADLEY: Oh. I'm kind getting ahead  
16 here. I'm sorry.

17 CHAIRMAN JABER: That's okay.

18 COMMISSIONER PALECKI: You know, if there was a  
19 failure to perform, you know -- let's say you bid half a  
20 billion dollars and it costs you six -- well, let's say it cost  
21 you a billion, you would have to eat it, correct?

22 MR. GREEN: Absolutely. I was trying to respond to  
23 Commissioner Bradley's case of some unreasonable bidding or  
24 something like that, who takes that responsibility? Once a  
25 contract is entered into -- for example, if Mr. Sasso solicits

1 a bid and the Joe McGlothlin or Mike Green Power Company win  
2 that bid, and we commit to give him capacity at \$6 a kW per  
3 month, we are held to that price of capacity with whatever  
4 energy prices down the road. You know, whatever the contract  
5 says, we are held to that. If it turns out it costs us more  
6 that \$6 per kW per month to build that plant, we have to eat  
7 it. We have to eat it. It's certainly -- it's on our back.

8 COMMISSIONER BRADLEY: So we have to factor in the  
9 cost of bonding then. I mean, you would have to have  
10 insurance, wouldn't you?

11 MR. GREEN: Well, you know, most RFPs have criteria  
12 in there that says -- called non-performance bonds or  
13 non-performance whatever.

14 COMMISSIONER BRADLEY: Non-performance bonds.

15 MR. GREEN: It is very important to get those  
16 conditions established up front and, you know, what the amount  
17 of that is and make sure that it is not onerous to the extent  
18 that people won't bid on it.

19 COMMISSIONER BRADLEY: But shouldn't that be included  
20 as a requirement of the -- if we are going to have a -- change  
21 the bid rule, I mean, we need to have in place a process that  
22 deals with non-performance.

23 COMMISSIONER BAEZ: I think at this point -- I was  
24 just going to say I think at this point it just becomes a part  
25 of the requirements that get listed as part of the RFP. I

1 mean, are there bonding qualifications or bonding requirements  
2 that are part of an RFP normally? Forget the rule or whether  
3 there is one or not. I mean, it's something that to the extent  
4 that you are going out soliciting bids, you are going to want  
5 to require from the participants, no?

6 MR. GREEN: If I could offer up the original RFP from  
7 Florida Power and Light, I think it had a \$50,000 per day --  
8 I'm sorry, \$50,000 per megawatt penalty if you are one day late  
9 bringing the plant on line or whatever the contract said. I  
10 personally felt that was onerous. A lot of times if you are a  
11 week late, you know, it's replacement capacity or energy costs  
12 or something like that. But when I had a real job and I was  
13 thinking about bidding on that RFP, you know, we had a  
14 620-megawatt plant, \$50,000 per megawatt. That is a \$31  
15 million call right they had if I am one hour late on when my  
16 plant was available.

17 COMMISSIONER BRADLEY: But that is a little bit  
18 different from what I am discussing. That only kicks in if you  
19 get behind schedule. That is just to keep you on schedule.  
20 But if, you know, in all the jobs I have ever bid on if you  
21 didn't perform, you either ate it or you had to have insurance  
22 to ensure that that person that you had the contract with would  
23 remain whole.

24 MR. GREEN: Well, the contracts that you sign on a  
25 PPA have guaranteed heat rates. Regardless of what you are

1 going to generate at, you have fixed the price. You have fixed  
2 the heat rate, you have fixed the efficiency, you have fixed  
3 the fuel cost, you have fixed whatever your contract --  
4 whatever you negotiate in your contract, that is fixed. And if  
5 you don't -- if the IPP, the independent does not adhere to  
6 that performance, you know, it eats the loss.

7 MR. MCGLOTHLIN: Commissioners, we anticipate that --

8 CHAIRMAN JABER: May I interrupt you for just a  
9 second, Mr. McGlothlin. Ms. Clark has been sort of raising her  
10 hand here for the last half hour. Let me let her go first and  
11 you have got the last word, and then, Commissioners, we are  
12 going to close it out.

13 MS. CLARK: I guess I am a bit confused. I thought  
14 the Commission had indicated they did not want to go to a  
15 third-party evaluator. And your question, Madam Chairman, was  
16 the separation within the company of who put together their  
17 proposal and who evaluates the RFP, and I'm just trying to find  
18 out exactly --

19 CHAIRMAN JABER: Yes. Thank you for saying that. It  
20 was not -- I'm not convinced that a third-party evaluator is  
21 necessary, and where I was is asking the stakeholders to think  
22 about that language clarifying which staff evaluates the bids  
23 within the company in lieu of a third-party evaluator. That's  
24 not to say that I foreclosed, at least in my own mind, the  
25 possibility or the feasibility of having a third-party

1 evaluator. What I'm saying is I'm just not there today for  
2 purposes of including it in a strawman proposal. Does that  
3 clarify? Okay.

4 MR. McGLOTHLIN: I was trying to summarize our answer  
5 to Commissioner Bradley's question. We anticipate that  
6 security arrangements would be among the terms, conditions,  
7 criteria, and weighting factors that would be specified in the  
8 RFP; and that by the same token, because they are specified,  
9 would be part of the review mechanism during the up front  
10 opportunity or window of opportunity for review of anything  
11 that the responding community might think is unfeasible or  
12 onerous. Whether it is the mechanism that we described in the  
13 PACE proposal or what I believe to be a similar mechanism that  
14 Martha described based upon the other statutory mechanism, it  
15 is important to include in the rule that the RFP will include  
16 all terms, conditions, criteria, and weighting factors so that  
17 that type of issue is captured.

18 COMMISSIONER BRADLEY: Right. And my original  
19 question dealt with who -- I mean, who assumes responsibility  
20 if a bid -- if a non-performance occurs. You know, we are  
21 going to be looking at all the parties who are involved and  
22 that was my original question. And if we have a third party  
23 assessing and evaluating bids rather than the IOUs --

24 MR. McGLOTHLIN: Well, I hope this answers the  
25 question, but as we envision it the use of the third-party

1 evaluator, it would be an independent and objective selection  
2 of the respondents based upon the criteria and weighting  
3 factors that the IOU has proposed subject to review. And if  
4 that results in -- if any bidder is unhappy, part of our  
5 proposal would be that any agreed participant could challenge  
6 that to the PSC. The selection would be subject to PSC review,  
7 and then the ultimate selection would enter the contract if the  
8 winner is someone other than the IOU.

9 MS. CLARK: Madam Chairman.

10 CHAIRMAN JABER: Ms. Clark.

11 MS. CLARK: If I could attempt to answer your  
12 question, and I think it does go to a concern about the policy  
13 on a third-party evaluator. In the final analysis, who is  
14 going to be held accountable for that contract or that  
15 self-build, who is responsible for keeping the lights on? And  
16 the person or the entity that is responsible for keeping the  
17 light on and who will be held accountable for those costs ought  
18 to be the one making the decision. That is the IOUs.

19 CHAIRMAN JABER: Commissioners, let's take this  
20 forward. What is your pleasure?

21 COMMISSIONER PALECKI: Well, I think Commissioner  
22 Clark made a very persuasive point, and based upon that  
23 position, I am willing to make a motion. And that motion is  
24 that we move forward with the requirement that the utilities  
25 submit a binding proposal at the same time and in the same

1 manner as all other RFP participants, and we do not make any  
2 changes with regard to evaluation proposals by a neutral and  
3 independent entity.

4 COMMISSIONER BRADLEY: I disagree with that.

5 CHAIRMAN JABER: Hang on. What did you say on the  
6 last part? I heard the first part.

7 COMMISSIONER BRADLEY: Can we deal with one issue at  
8 a time?

9 CHAIRMAN JABER: We are. Hang on one second.  
10 Commissioner Palecki, you said --

11 COMMISSIONER PALECKI: I was talking about the  
12 binding proposal.

13 CHAIRMAN JABER: Right. And that we do what?

14 COMMISSIONER PALECKI: And that we go forward with  
15 that and that we allow the utilities to continue to be the  
16 evaluation entity.

17 CHAIRMAN JABER: Commissioner Palecki, so tell me now  
18 you would make that motion in addition to the deletions we have  
19 made to the --

20 COMMISSIONER BRADLEY: Well --

21 CHAIRMAN JABER: Commissioner Bradley, I really am  
22 trying to understand so we can even entertain the motion,  
23 because I'm really not sure --

24 COMMISSIONER BRADLEY: And I don't understand either.

25 CHAIRMAN JABER: Right. So let's flesh it out.



1 Commissioner Palecki, you would make that motion in  
2 addition to recognizing the deletions that we have talked  
3 about, the repowering and the CTs.

4 COMMISSIONER PALECKI: That is correct.

5 CHAIRMAN JABER: Does that motion include the changes  
6 to Sub F, Page 45?

7 COMMISSIONER PALECKI: Yes, it would include that.

8 CHAIRMAN JABER: So really the effect of your motion  
9 would also take out language related to third-party evaluators?

10 COMMISSIONER PALECKI: That is correct. What my  
11 motion would entail is basically two main ingredients. One,  
12 that we have early identification of defined evaluation  
13 criteria; and, two, that all entities, including the utilities,  
14 submit a binding proposal all at the same time.

15 CHAIRMAN JABER: Okay.

16 COMMISSIONER PALECKI: And that is along with the  
17 other deletions that you have already identified.

18 CHAIRMAN JABER: Okay. Now, Commissioner Bradley,  
19 you have questions about that motion?

20 COMMISSIONER BRADLEY: I can agree with the omission  
21 of 2, and I would also like to amend that motion to include 3  
22 as an omission.

23 CHAIRMAN JABER: Three as an omission. You mean the  
24 binding bids?

25 COMMISSIONER BRADLEY: Yes.

1           CHAIRMAN JABER: Okay. Well, we need to take the  
2 underlying motion up first, I think.

3           COMMISSIONER BAEZ: Well, then I've got questions and  
4 concerns about the underlying motion. Fundamentally and  
5 philosophically, I think that holding the IOUs, in the case of  
6 a self-build option, holding them to the number that they  
7 awarded themselves the bid with is philosophically -- it makes  
8 logical sense. It makes sense to me. The concern that I have,  
9 however, is something that Commissioner Bradley quite  
10 appropriately pointed out. I guess it was at the one of the  
11 workshops anyway, that, you know, things happen and you have to  
12 have some -- I don't want to say flexibility, but you do have  
13 to have some manner of addressing events and --

14           CHAIRMAN JABER: Unforeseen circumstances.

15           COMMISSIONER BAEZ: -- unforeseen circumstances.  
16 Thank you. I was drawing a blank on that, among many others.  
17 And so I think that establishing a binding -- you know, the  
18 whole concept of binding -- you know, the whole concept of a  
19 binding bid or certainly the binding proposal doesn't quite  
20 give me the comfort I need in order to be able to -- at a need  
21 determination or a cost-recovery proceeding, or what have you,  
22 to be able to say I have comfort in being able to address  
23 unforeseen circumstances. So I think, at least in my opinion  
24 and in my mind, the only way that I could be comfortable with  
25 actually requiring or imposing some kind of binding nature to

1 the IOUs would be if there is an opportunity at the appropriate  
2 time to address any unforeseen circumstances, any cost overruns  
3 that have merit and so on. An additional concern, having said  
4 that, I'm not sure that a prudency standard necessarily gets us  
5 there because I also have a little bit of heartburn about  
6 holding a cost overrun to the same kind of standard that you  
7 held the original, the original proposal to. So I would throw  
8 that out for my fellow Commissioners if they want to discuss or  
9 comment how they feel about it. But I could support some kind  
10 of binding nature if it does have some flexibility on the back  
11 end. It provides the IOUs an opportunity to make their case,  
12 albeit as I have said, on a somewhat higher -- to a somewhat  
13 higher standard to address cost overruns or inevitabilities,  
14 reasonable as they may be.

15 COMMISSIONER PALECKI: I have no objection to  
16 language of that type. The last thing I want to see is  
17 something that completely ties our hands. If there are some  
18 extraordinary circumstances that would have an effect on the  
19 economic health of our utilities, I think the economic health  
20 of our utilities comes first. Of course, everything we do is a  
21 balancing between the interests of the utilities to earn a fair  
22 return, which they have that right, and the interests of the  
23 ratepayers to get quality service at a reasonable price. And I  
24 think that your concern is very well taken, and I would not  
25 want to do anything in any rule that would tie our hands to the

1 detriment of our investor-owned utilities in Florida.

2 COMMISSIONER BRADLEY: Well, my --

3 MS. CLARK: Madam Chairman --

4 COMMISSIONER BRADLEY: -- my heartburn is with the  
5 word binding. Bidding is a science as well as an art, and I  
6 think binding discourages bidders. I don't think there are too  
7 many people who want to have a binding bid with the  
8 understanding that there is no room for renegotiations. And to  
9 say that it is binding that means that once you submit an  
10 initial bid that is the end it.

11 COMMISSIONER BAEZ: Well, Commissioner Bradley, I  
12 would agree with you, and I think that there has been some  
13 discussion earlier today as to what the nature, certainly, of  
14 the initial bids -- and it wouldn't be -- I don't think that  
15 any rule should change the character of how those bids come in  
16 at least on an initial basis, because I think that the process  
17 should contemplate some negotiation. But I recall asking  
18 Mr. Sasso earlier today whether there is a point in the  
19 process, and I have to imagine that there is, and I think he  
20 confirmed it about whether there is a point in the process at  
21 which even the prices of the participants is fixed, if nothing  
22 else, then, so the IOU can make a determination that their  
23 costs are -- that their self-build option is a more cost  
24 efficient one. So there is a point in time, and I am in no way  
25 suggesting that it be in the initial phases of the process,

1 certainly, but that there is a point in time in which these  
2 numbers go hard. That they are able to be fixed certainly  
3 enough to make a determination to say, my two beats your three.  
4 And at that point is when all of this discussion however it  
5 turns out, I guess, should kick in. I don't think there needs  
6 to be any time -- you know, there is no time tied to it. But  
7 there is definitely a point in time in which something has to  
8 be certain. Whether it be for the IOU's sake in being able to  
9 determine whether it's own self-build option is the most  
10 cost-effective, as well as for this Commission at the end of  
11 the day to be able to say, all right, this number was the most  
12 cost-effective and it is not burdened and it is not -- at least  
13 it is not an open question to us. If 400 is the number, then  
14 400 it shall be absent extraordinary circumstances. And by  
15 extraordinary circumstances, I think that can encompass the  
16 whole gamut of things, whether they be labor strikes, or work  
17 stoppages, or acts of God. And I just think that there is  
18 plenty of flexibility to make that argument. My concern in  
19 that part is that we subject cost overruns for whatever reason  
20 to the same lower level of, you know, not inadequate, but  
21 certainly not adequate enough scrutiny. I don't think they are  
22 on the same level.

23           CHAIRMAN JABER: I know there are several people out  
24 here that want to address us, but, staff, if I could ask you to  
25 direct me in your strawman proposal where the attempt is made

1 to discuss the binding bids.

2 MR. BALLINGER: There isn't one.

3 CHAIRMAN JABER: Okay. So the word binding is not in  
4 here at all. This is really -- it would be asking you all to  
5 address the finality of the bids but yet keep some flexibility  
6 in the process --

7 MR. BALLINGER: Right.

8 CHAIRMAN JABER: -- to account for unforeseen  
9 circumstances.

10 MR. BALLINGER: I had an exchange with Commissioner  
11 Deason earlier that in staff's view the RFP out there is  
12 binding. It's kind of a benchmark that we look at come time  
13 for cost-recovery, and we look at the differences there. So, I  
14 think it is saying the same thing that you are, is that we want  
15 to leave the flexibility for things down the road that may  
16 happen and look at them and that is already there. That's why  
17 it is not --

18 COMMISSIONER BAEZ: I would agree with you that at  
19 the end of the day it is this Commission's responsibility,  
20 whether it is in a rate proceeding or a cost-recovery  
21 proceeding of some sort, that we ultimately bear the  
22 responsibility of saying, yes, these costs are acceptable for  
23 passing on to the ratepayer or not. And going back to one of  
24 the couple of concerns that I listed is the notion that cost  
25 overruns receive the same kind of treatment prudence-wise as a

1 number that was used for our determination that a capacity  
2 addition of a particular -- that a particular project was the  
3 most cost-effective. I don't agree with that. That I can't --  
4 I mean, I can't make the jump of saying, you know what, we  
5 approved it based on this money; and then all this other money  
6 is just tacked on, it's okay, too, because we already approved  
7 it.

8 MR. BALLINGER: No, no, no. I hope I didn't give  
9 that impression. I was going to follow up with saying that  
10 even if a utility came in with the exact same price as the RFP,  
11 we would still look at the prudence review of building the unit  
12 at all. We had a case just like that with the TECO Polk unit.  
13 They came in for a need determination, they were right around  
14 the costs that they said they would be at the need  
15 determination, but we questioned the need to go forward with  
16 the unit when other means were available that looked like they  
17 could be cheaper. So just because it goes through and gets the  
18 need ticket punched does not mean it's a blank check down the  
19 road.

20 COMMISSIONER BAEZ: Yes, I know.

21 MR. BALLINGER: And I hope I didn't give that  
22 impression that we are only looking --

23 COMMISSIONER BAEZ: I know that, and that is what I  
24 want to believe, okay. And I have no complaints and no  
25 concerns about any of the decisions this Commission has made,

1 whether I have been sitting on them or not in the past. So,  
2 that is not where my concern stems from. But I do have a  
3 fundamental -- and perhaps this is raising another issue or a  
4 finer point to be discussed, but I do have a problem with --  
5 you know, this is something for the lawyers -- with the same  
6 standard being applied in a case where you have a fixed, you  
7 have got a fixed number of some sort. I mean, whether it is  
8 codified in a rule or not, you are telling me that that  
9 information is available. Somewhere someday an IOU said, you  
10 know, my two beats your three, but when it comes time to  
11 approve cost-recovery for it, it is not two anymore, it's four.  
12 That differential can't be subject to the same prudence as to  
13 the same original number that was used to say, yes, this is  
14 prudent. The need is there and the price is good and this is  
15 the lowest cost alternative -- the most cost efficient  
16 alternative. I'm sorry, Madam Chairman. Do you see what I'm  
17 saying?

18 MR. BALLINGER: I think at that time you are in a  
19 box. You are at the point where the unit is built and you have  
20 costs and what are you going to do? You can't go back and  
21 rebid or tear the thing down and start again.

22 CHAIRMAN JABER: Exactly.

23 MR. BALLINGER: I am finally catching on.

24 COMMISSIONER BAEZ: My point exactly.

25 MR. BALLINGER: But I think you do have remedies for



1 that as far as the cost-recovery.

2 COMMISSIONER BAEZ: Remedies such as?

3 MR. BALLINGER: Disallowing certain costs. If you  
4 felt the utility acted --

5 COMMISSIONER BAEZ: Based on what standard?

6 MR. BALLINGER: If they acted imprudently of going  
7 forward with the project when they saw costs were escalating,  
8 they are under --

9 COMMISSIONER BAEZ: At that point you can't -- I  
10 mean, you are subject to the same realities of having to put  
11 the brakes on something and, you know, it's the same box that I  
12 feel this Commission is in oftentimes in a need determination  
13 when you don't have up front -- when you don't have up-front  
14 information or you don't have criteria analyzed up front, and  
15 you are dealing with all of this, you know, an RFP that took  
16 place months ago now at the point where they are breaking  
17 ground on a facility. You know, you are -- at least I am, I  
18 confess, feeling a little bit rushed and a little bit  
19 inadequately -- so then it is the same box. How can I say  
20 after I said, you know, X amount of dollars wrapped into the  
21 whole of the proposal merited approval and then later on I'm  
22 going to say, you know what, whatever cost overruns is just not  
23 bad because they were unforeseen.

24 MR. McGLOTHLIN: Commissioner, may I speak to your  
25 point?

1           COMMISSIONER BRADLEY: I would like to say something  
2 before you speak to his point, though. Binding, let's think  
3 about that word. That creates inflexibility. That means that,  
4 in my opinion, cost overruns cannot be considered. It really  
5 creates finality, okay. Well, now, do you know what that means  
6 in the real world? That means that then a contractor starts to  
7 do what? Take short cuts. Short cuts mean what? Shoddy work.  
8 What happens when you have a shoddy project that is built? You  
9 have major problems later on. And it most certainly is not  
10 going to be there for its entire economic life the same as one  
11 that is built and constructed at a high quality, at a higher  
12 quality.

13           CHAIRMAN JABER: No, what protects companies -- what  
14 protects the ratepayers from companies doing that is the  
15 possibility of litigation.

16           COMMISSIONER BAEZ: Who bears the responsibility for  
17 shoddy work?

18           CHAIRMAN JABER: Exactly. The way I look at this,  
19 the term binding, if we structure the rule correctly at the end  
20 of the day, binding means certainty. And the one thing all of  
21 this table has in common is that they want certainty. They  
22 want this Commission to take leadership and say, here is the  
23 way it is going be. This is going to be a better process. It  
24 is going to be open and transparent for the benefit of the  
25 ratepayer. And it means that if you outline the criteria at

1 the front end, if you apply the factors to those criteria and  
2 you award the bids in the most fair way, it all takes care of  
3 itself. And you know what, and it may be at the end of this  
4 tortured process the IOUs still get to self-build. And I am  
5 okay with that. I am completely okay with that, because I have  
6 forced the companies to put the most efficient process up front  
7 for the benefit of the ratepayers.

8           And I see that you want to talk, Ms. Clark. I have  
9 been waiting for the opportunity to remind you you started all  
10 of this.

11           I think that IPPs and IOUs will not hire construction  
12 companies that will do shoddy work because the other companies  
13 will turn around and sue them.

14           Ms. Clark, Mr. Garcia, and then Commissioners, I am  
15 ready to entertain Commissioner Palecki's motion.

16           MS. CLARK: I want to make one small point. You talk  
17 about cost overruns. In the September 6th letter to you we  
18 pointed out that there also is the potential for savings, and  
19 there have been significant savings as a result of some of  
20 these self-builds. And I guess my question is by saying  
21 binding, are you going to prevent it from going both ways?

22           COMMISSIONER BAEZ: I am perfectly willing to  
23 consider throwing some love your way. If you guys come under  
24 budget, you know, I think that is fair. You know, I think that  
25 it should be a two-way street.

1           CHAIRMAN JABER: To that point, though -- to that  
2 point, Ms. Clark, what is wrong with an economic incentive  
3 approach where -- because, again, not caring who gets the bid  
4 at the end of the day, we don't want cost overruns, right?  
5 Because we don't want you to be put in the position of applying  
6 for cost-recovery and showing that costs that were  
7 unanticipated are prudent. But by the same token, I want to  
8 send you a direct signal that you be the most efficient you can  
9 be in your construction costs and have that money go back to  
10 the ratepayers in some sort of sharing fashion. You know,  
11 maybe it's 80/20 or whatever. It should be both. I have no  
12 problem with you all pursuing through the hearing process some  
13 economic incentive approach.

14           COMMISSIONER BAEZ: And I will tell you why I don't  
15 have a problem with that kind of approach is because at the end  
16 of the day I felt comfortable with your original number, you  
17 know.

18           CHAIRMAN JABER: That's right.

19           COMMISSIONER BAEZ: And so I definitely think that if  
20 there are some benefits flowing back, they should flow back to  
21 everyone and in a considerable way. I mean, I am not ready to  
22 discuss numbers. I suspect Mr. Shreve may have something to  
23 say about that in the end, but I think that the mechanism is  
24 entirely appropriate. But, again, I would reiterate my concern  
25 over having the -- I call it -- it is the all-stuck-together

1 philosophy.

2 MS. CLARK: I just didn't want the other side of the  
3 equation not mentioned. The other thing --

4 COMMISSIONER BAEZ: Thank you for doing it.

5 MS. CLARK: -- that I would remind you of is at the  
6 end of the day you have regulatory authority and control over  
7 the utility. You can tell the utility, you know, we approved  
8 that, but we just don't think -- the way things are turning  
9 out, we don't think you should go forward with it. It's not  
10 the same thing when you go to a contract.

11 COMMISSIONER BAEZ: Well, I understand. I recognize  
12 the point.

13 MS. CLARK: I do recall the TECO case when it looked  
14 like maybe it didn't need to come on line when they were  
15 projecting it, and we were able to push it back. I'm not sure  
16 you could do that with a contract.

17 COMMISSIONER BAEZ: Okay.

18 CHAIRMAN JABER: Commissioner Bradley.

19 COMMISSIONER BRADLEY: Yes. Before we vote on  
20 Commissioner Palecki's motion, I would just like to remind you  
21 that I did offer an amendment to his motion, so I think we need  
22 to vote that up or down and then get to his original motion.

23 CHAIRMAN JABER: Okay. I have forgotten already what  
24 the amendment was. I will ask you to remind me in just a  
25 minute, Commissioner Bradley. Hang on.

1 Mr. Garcia, this is it.

2 MR. GARCIA: Yes. I think Commissioner Baez  
3 addressed it a little bit later on, but part of what we're  
4 doing, and I think you came all the way back around. I think  
5 you were expressing some of your thoughts all the way through,  
6 and just to close the loop because I think Susan did that also.  
7 I think what we're talking about is who bears the risk? And if  
8 we are putting this out there, if you are making the IPPs bear  
9 the risk -- and, again, to us, to FIPUG, we are neutral here.  
10 We don't necessarily want or need someone else to do it. But  
11 the whole point is if you are taking the risk away from the  
12 ratepayers, it has got to be to some degree. Maybe there is a  
13 better word than binding. And there has to be some standard  
14 that holds them, because if not, you play a regulatory game,  
15 which is you lowball it and then you use the regulatory process  
16 to get to where you need. That process has to be the same for  
17 all players, whether it is Duke Power, or Reliant, or  
18 Constellation, or whichever company you can think of that won  
19 the bid, or FPL. The parties have to be situated and treated  
20 exactly the same. And I believe that that also gives them the  
21 advantage that if there is some incentive way for the  
22 investor-owned utility to derive benefit from lowballing it, we  
23 are going to be -- Florida ratepayers and my customers are  
24 going to be, or my clients are going to be benefitted just like  
25 the system has benefitted. But if we don't treat them the

1 same, and if we are worried about a project going bad for an  
2 IOU, we have to be worried in the same way for an IPP. And I  
3 know there is a different regulatory standard, that's why we  
4 are putting it out there. Because we are all taking -- we are  
5 taking the risk away from the ratepayers to some degree and  
6 going for a number.

7           COMMISSIONER BRADLEY: Right, Commissioner Garcia,  
8 and that is precisely what -- I understand that. My argument  
9 is to protect the consumer, the same as yours is, and if all of  
10 this goes south instead of north, then that means that  
11 ultimately the consumer is the one who has to assume the  
12 responsibility for a project that went south.

13           MR. GARCIA: Well, I think that if it goes south, you  
14 are talking about a process within another process. In other  
15 words, you know, when you talk about shoddy labor or other  
16 things like that, we still have regulatory oversight. There  
17 still is a control over the system and the need in that system  
18 that the companies have to meet that, and our responsibility --  
19 I'm sorry, your responsibility remains the same.

20           COMMISSIONER BRADLEY: That's okay. Once one always  
21 one.

22           MR. GARCIA: Thank you.

23           CHAIRMAN JABER: Don't tell him that.

24           MR. GARCIA: I will take advantage of that,  
25 Commissioner. But I think -- you make a very good point, but I

1 think in the long-term process this participation in this  
2 process, the profit is in the long-term gain. It is not a  
3 necessary -- what I worry about, and I think Commissioner Baez  
4 in his sort of walking through it is both sides. I agree that  
5 if FPL can beat every bid out there, FPL should be building the  
6 generation. We have all, all Floridians have benefitted, the  
7 business community as well as individual consumers. And they,  
8 FPL's shareholders, should benefit from their efficiency.  
9 There is no question about that. On the other side, we are  
10 bearing a risk. When we give you a number, Commissioners, from  
11 the outside and that be either the competitive players, the  
12 IPPs or IOUs, we have got to have something to hold onto and  
13 there has to be a standard to overtake that. Because if not,  
14 you end up in a regulatory game and, you know what, you become  
15 the independent determiner of this issue that you don't want to  
16 be. Because then everybody will come in, you know, everybody  
17 will bid a dollar for generation and then we will work  
18 regulatorily up from there and see how well we can do. I thank  
19 you for the opportunity.

20 CHAIRMAN JABER: Thank you, Mr. Garcia. Okay.  
21 Commissioner Bradley, you had an amendment. Please remind me  
22 what it is.

23 COMMISSIONER BRADLEY: Correct me if I'm wrong,  
24 Commissioner Palecki. I think that Commission Palecki agreed  
25 to -- his motion was to eliminate 2 and keep 1 and 3, and my



1 amendment was to eliminate 3 as well as 2.

2 CHAIRMAN JABER: Are you talking about the  
3 principles? When you refer to 1, 2, and 3, you all are talking  
4 about --

5 COMMISSIONER BRADLEY: The principles.

6 COMMISSIONER PALECKI: And I think you are talking  
7 about the cover sheet on the September 25th, 2002, because they  
8 seem to me to be numbered. I would put 3 where 2 is and 2  
9 where 3 is.

10 COMMISSIONER BRADLEY: Okay. Well, I will read the  
11 language, then.

12 COMMISSIONER PALECKI: I understand what your  
13 amendment is.

14 COMMISSIONER BRADLEY: Okay. Help me then understand  
15 what you are proposing.

16 COMMISSIONER PALECKI: What my proposal is, is that  
17 we go with defined criteria with an opportunity for a dispute  
18 resolution procedure up front and that we have --

19 COMMISSIONER BRADLEY: Which would be Number 1,  
20 right?

21 COMMISSIONER PALECKI: That's Number 1. And that we  
22 have that everyone submits a bit at the same time, sealed bids.  
23 All applicants, whether they be a utility or a nonutility  
24 generator will bid in the same manner. And just to further  
25 clarify the motion, I was not going to include evaluation by a

1 neutral -- or I would not require evaluation by a neutral and  
2 independent entity. So three requests of PACE, I would grant  
3 two of the three. The independent and neutral evaluator would  
4 be not part of the proposed rule for purposes of our strawman.  
5 And I think we still have to clarify here that we are talking  
6 about setting this for hearing. And any of us might be  
7 persuaded that we want to go with the third requirement or we  
8 might decide something different altogether, but we would have  
9 a hearing scheduled and move forward with a hearing on these  
10 issues.

11 COMMISSIONER BRADLEY: And my substitute motion was  
12 to eliminate a requirement that the utilities submit a binding  
13 proposal at the same time and in the same manner as all RFP  
14 participants.

15 CHAIRMAN JABER: Okay. Let's vote the amendment by  
16 Commissioner Bradley.

17 COMMISSIONER BRADLEY: I need a second.

18 CHAIRMAN JABER: Is there a second?

19 The motion on the amendment, Commissioner Bradley,  
20 fails for lack of a second. Commissioner Bradley, may I ask  
21 you a question to engage in perhaps another motion?

22 COMMISSIONER BRADLEY: Uh-huh.

23 CHAIRMAN JABER: What would you suggest as an  
24 alternative, what is currently in the strawman proposal, or you  
25 just wouldn't --

1           COMMISSIONER BRADLEY: I just wouldn't have a binding  
2 proposal requirement.

3           CHAIRMAN JABER: Okay. I think what is troubling me  
4 -- I may not be that far from where you are. What is troubling  
5 me is we have sort of moved away from the word binding, which I  
6 could be okay with that.

7           And, Commissioner Baez, correct me if I'm wrong, it  
8 seems to me the discussion went to the award should go to the  
9 bid that falls in line with the criteria outlined at the front  
10 end reserving flexibility with the IOUs due to unforeseen  
11 circumstances.

12           COMMISSIONER BAEZ: As a concept, yes. I don't have  
13 any vested interest in the word binding, as long as the notion  
14 that the proposed costs that an IOU uses in order to award a  
15 bid, that its own proposed costs that it uses in order to award  
16 a bid, to the extent that it is determined to be the most  
17 cost-effective, that that number have meaning. That that  
18 number not be subject to the same standard of review when it  
19 counts -- that any deviation, rather -- I misspeak. That any  
20 deviation from that number not be subject to the same standard  
21 of review at the time that cost-recovery is considered. I  
22 don't -- you know, it has to mean something at the need  
23 determination stage going forward, otherwise we are signing a  
24 blank check. And I have trouble doing that and I'm not  
25 comfortable with the same -- I am not comfortable with the

1 current standard.

2 CHAIRMAN JABER: Right.

3 COMMISSIONER PALECKI: My main concern --

4 CHAIRMAN JABER: Commissioner Palecki, that is where  
5 I can support your motion with those clarifications on there.  
6 I think what I am struggling with is trying to say that they  
7 are on equal footing. I'm not there yet. I don't think they  
8 are on equal footing. I don't think I want them to be on equal  
9 footing.

10 COMMISSIONER PALECKI: I guess my main concern is  
11 that we don't have -- is that we move off of the old rule  
12 policy where we had, after all of the bids are over, the  
13 utility gets to look at all of the bids, and then play what I  
14 think one of the parties, it may have been Mr. Twomey, called  
15 the extra card, and say I can beat everybody else, and that  
16 they have that last opportunity. I kind of like what is set  
17 forth in Paragraph 4 of the PACE proposal, because there you  
18 have everyone bids together, and disregarding the fact that  
19 under this paragraph it would be a neutral evaluator, just  
20 let's ignore that part. I like the part of a two-phased bid  
21 where the public utility would provide to each participant on  
22 the short list its analysis of transmission integration cost,  
23 et cetera, and then each participant on the short list,  
24 including the public utility, if applicable, would thereafter  
25 submit a final sealed and binding bid for evaluation. And I

1 think the word binding is used in terms of we are talking about  
2 a bid and it is binding in that you can't come back and then  
3 bid again after you have already done that. That is your bid,  
4 and you can't change your bid. And so I have no problem  
5 whatsoever with Commissioner Baez's proposal as long as we are  
6 talking about, you know, a process where everyone is bidding  
7 together, and that once you make that bid you can't go and say,  
8 oh, I changed my mind. I want to make another bid, because I  
9 didn't make the right bid. Well, no, that's not the way bids  
10 work.

11 CHAIRMAN JABER: But I don't think that is what we  
12 are talking about. Where I continue -- where I still can't  
13 support you is on the notion that the extra card will be  
14 played. If on the front end the criteria are established and  
15 vetted through this pre-bid meeting, then there will not be an  
16 extra card. The flexibility comes in, at least -- and I don't  
17 want to put words in your mouth, Commissioner Baez, as it  
18 relates to my point, just unforeseen circumstances. Something  
19 that -- some technology that is developed. And that language,  
20 Sub 4 doesn't get me there.

21 COMMISSIONER PALECKI: Well, I think that this  
22 Commission, as well as the courts, always have a certain amount  
23 of flexibility inherent where you have acts of God, where you  
24 have -- you have mentioned new technologies, where you have  
25 world changing events. I'm not sure it needs to be expressed.

1 But as I stated earlier I don't want to tie our hands to the  
2 extent that if something horrible happens, let's say we are in  
3 a war and a bomb is dropped and it hits a power plant. Well, I  
4 mean, what are we going to do? I mean, there are extraordinary  
5 circumstances there, and I think we can always consider those  
6 kind of extraordinary circumstances.

7           COMMISSIONER BAEZ: Well, but here is -- and here is  
8 my approach to it, and I may be totally wrong, but the way I  
9 look at it is this: I have more -- I have more trouble  
10 accepting the notion that the IOUs and the IPPs in this are on  
11 equal -- are peers okay, and lumping them all together.  
12 Because I think the way the law is now you have to recognize  
13 that the IOU doesn't stand in the same -- you know, that they  
14 are not at the same level. However, my -- so you can either  
15 lump them all together and force them to bid contemporaneously  
16 and all of those things, or you can write it so that at the end  
17 of the day whatever number, whatever number an IOU awards  
18 itself a project with, is pretty much set. And that the only  
19 way to change that for unforeseen circumstances, you know, it  
20 better have a note from Doctor Spock and not Doctor Seuss. You  
21 see what I'm saying? I mean, you have got to have a really  
22 good -- really, really good, and that's why I'm trying to  
23 concentrate more on --

24           COMMISSIONER PALECKI: You mean a note from  
25 Mr. Spock, don't you?

1           COMMISSIONER BAEZ: Mr. Spock would do, yeah. But  
2 you see, I mean, there has to be some consequence attached to  
3 it. That it is not easy assuming -- and I'm not saying that it  
4 ever happened, but assuming it would be possible, you know, all  
5 the disadvantages to this Commission in trying make a decision  
6 on the cost-recovery side with saying, hey, you know, you are  
7 already in for 400, and you are faced with that decision as a  
8 Commissioner saying, well, they have already spent 400 million  
9 on it, you know, 100 million in cost overruns seems reasonable  
10 by comparison because look at how far in. Besides the fact  
11 that you are already at a point where you can't turn back,  
12 okay. So I don't think that all of those circumstances  
13 timing-wise bode well for our ability to say, you know what,  
14 company, you were wrong, you were imprudent, you were all of  
15 these negative things, and you are going to have to, you know,  
16 you are going have to bear some responsibility over it. So  
17 that in an effort to set out as much as we can up front and  
18 still be cognizant of the fact that there are unforeseen  
19 circumstances out there, which eventually may merit that kind  
20 of treatment, you know, that the standard be a little higher.  
21 That you say, you know what, you gave us a number, you put us  
22 on a 90-day time clock at X dollars. We took that 90-day time  
23 clock, did the best we could and approved it based on that  
24 number. That number has to have meaning come time to pay. It  
25 has to have meaning.

1           COMMISSIONER BRADLEY: Yes. But, you know, this is  
2 assuming that this whole discussion has been built around the  
3 premise that the low bid is the best bid.

4           COMMISSIONER BAEZ: No, I disagree.

5           CHAIRMAN JABER: No. That's why I have been  
6 clarifying that it is the most cost-effective alternative as  
7 opposed to the least cost. The IOUs in their argument kept  
8 saying least cost. That's precisely why I wanted to clarify  
9 it, at least from this Commissioner's standpoint.

10           COMMISSIONER BAEZ: And I remember reading as well,  
11 Commissioner Bradley, that at least the strawman proposal also  
12 has flexibility and discretion on the part of the IOUs  
13 considering the project or considering the bids, however and  
14 whoever is considering it, in order to take in nonprice  
15 attributes and also system considerations. So that if you need  
16 fuel diversity or that if you need, you know, certain aspects  
17 addressed, that you can address them throughout that process  
18 and that there is still some flexibility built in for them to  
19 address it. You know, I don't think that their hands are tied  
20 in that respect in any way.

21           CHAIRMAN JABER: Commissioner Baez, how would you  
22 accomplish what you're saying with respect to the  
23 flexibility -- can that be reconciled with Commissioner  
24 Palecki's motion? That's really where I'm stuck.

25           COMMISSIONER BAEZ: Well, I think we have been cut up



1 on the word binding, you know. And to me that is really -- I  
2 don't know how to get around that because I had jotted down  
3 something, you know, kind of culling together language that we  
4 found in the different comments and so on and certainly from  
5 PACE. But, you know, to have the public utilities propose  
6 costs be binding. And, again, we can discuss that word later  
7 on it in the future, in future surveillance and ratemaking  
8 proceedings. Absent a showing of extraordinary circumstances,  
9 now, I don't know -- I would like to hear from the lawyers if  
10 that is -- you know, if that is an appropriate standard. And  
11 keep in mind that my concern is having a higher standard than  
12 just prudence. You know, that's really where I'm coming from  
13 whatever the --

14 MS. BROWN: I think we are going to have to go play  
15 with the language, Commissioner. We are going to have to go  
16 back and read the transcripts and see what it is you all wanted  
17 to do so we are clear on that. But I would remind Commissioner  
18 Palecki that he worked on the negotiated cogeneration rules,  
19 and one of the matters that was of considerable significance to  
20 the utilities at that point was whether they would be assured  
21 of cost-recovery or not. And there was language, I think, in  
22 the order that talked about absent, mistake, fraud,  
23 extraordinary circumstances, that those contracts would be  
24 honored. It seems to me we might be able to flip that around  
25 the other way and say the costs will be presumed reasonable

1 absent some extraordinary, fraud, or act of God, or something.  
2 But I think I would like to look at it if that is all right and  
3 play with some wording.

4 COMMISSIONER PALECKI: If I recall correctly, the  
5 Commission argued about that for about four hours.

6 COMMISSIONER BAEZ: Well, we are well past that now.

7 CHAIRMAN JABER: Commissioner Palecki, for me it  
8 hinges on whether I'm going to support your motion. If we  
9 could have a general understanding that by your motion -- and  
10 maybe philosophically you're not there, you just need to tell  
11 me. If we could have a general agreement by your motion that  
12 you don't mean to preclude the flexibility on whether there are  
13 unforeseen circumstances that have created a deviation from the  
14 award, for lack of a better --

15 COMMISSIONER PALECKI: No, I don't have any problem  
16 with that. As I have stated earlier, my main concern is to  
17 have all of the bids submitted at the same time in the same  
18 manner. I understand that in some circumstances there may be  
19 extraordinary circumstances and, also, that there is an  
20 obligation to serve on the part of the utility, and we have to  
21 make sure that we recognize that. We need to make sure that we  
22 take action to maintain an adequate power supply, and there can  
23 be any number of, you know, contingencies or events that could  
24 require some change. And so I don't have any problem with that  
25 sort of language at all.

1           COMMISSIONER BRADLEY: I don't have a problem with  
2 that language, either, but I do have a problem with how it is  
3 being described and how we would establish the intent of what  
4 we are seeking to accomplish here. Because, I mean, we have  
5 said all afternoon that IOUs and bidders are not equal because  
6 of the fact that -- because of what Florida law is. And I  
7 think that to have that requirement that everybody bids at the  
8 same time, I mean, makes them equal. And correct me if I'm  
9 wrong, but I think the intent is to establish the fact that  
10 IOUs and bidders are not equal.

11           CHAIRMAN JABER: Again, from one Commissioner's  
12 standpoint, and I would invite everyone to chime in here,  
13 because I think Commissioner Bradley raises a very good point.  
14 Here is how I reconcile it, Commissioner Bradley. If on the  
15 front end all of the criteria and the weighting and the ranking  
16 factors are established through a pre-bid meeting by the IOU  
17 and with the collaboration and feedback of the potential  
18 participants and the Commission staff, there is that  
19 transparency, right? The openness, the fairness, and the  
20 transparency. Why not allow all of the companies to submit  
21 proposals at the same time? The advantage you want to give to  
22 the load serving entity is to respect their identification of  
23 need pursuant to what they have identified they need in the  
24 ten-year site plan. That means they are in the best posture of  
25 identifying the criteria up front, establishing the procedure

1 to be followed for the evaluations and the ranking, and then  
2 what is left? Why is it they would need to submit their bids  
3 later on in the process? What they really need, we have given  
4 them at the front end.

5 MR. SASSO: May I make a very brief comment?

6 CHAIRMAN JABER: Hang on, Mr. Sasso.

7 Commissioners, is that -- well, Commissioner Palecki,  
8 let me pose it to you. Is that why you think the company  
9 should submit the proposals at the same time?

10 COMMISSIONER PALECKI: Absolutely. I agree with you  
11 100 percent.

12 CHAIRMAN JABER: Mr. Sasso.

13 MR. SASSO: Yes, ma'am. This is exactly the issue  
14 that was fully debated on the Gulf bid rule waiver docket. And  
15 if you recall, the reason there is an issue is because the  
16 company is required in the RFP to publish its costs.

17 CHAIRMAN JABER: Right.

18 MR. SASSO: And that puts us in a different position  
19 right off the bat from the other participants. And if the IPPs  
20 are then able to submit their bids, and we are bound by the  
21 costs we put in, they are going to beat our published costs by  
22 a cent, which is why staff and the Commission strongly  
23 recommended that to discipline the bidders they recognize that  
24 the utility has the ability to sharpen its pencil at the end,  
25 so they don't just cluster around those published numbers. So

1 you can't assume that they are all in an equal situation  
2 submitting bids at the same time. That's not the way the  
3 rules --

4 CHAIRMAN JABER: But, Mr. Sasso, I don't disagree  
5 with you. I thought we have already discussed, and I think I  
6 directed staff and recognized that the IPPs moved away from  
7 that. I don't think you should publish your costs ahead of  
8 time. I thought we went through that. I do not mean to imply  
9 that you should publish your costs.

10 MR. McGLOTHLIN: PACE's proposal was --

11 CHAIRMAN JABER: Does that satisfy your concern,  
12 Mr. Sasso, or am I missing the point?

13 MR. SASSO: It is still in the rule. I don't believe  
14 there is a suggestion to delete that from the existing rule.

15 CHAIRMAN JABER: Okay. Show me exactly, because it  
16 was my intent to delete that from the rule.

17 MR. SASSO: It is in the existing bid rule.

18 MR. BALLINGER: Page 43.

19 CHAIRMAN JABER: Now, PACE, correct me if I'm wrong,  
20 you have -- that is where you made movement. You are  
21 completely leaving that issue outside the scope of the  
22 discussion. You don't think the IOUs should publish their  
23 costs.

24 MR. GREEN: Yes, ma'am. In our proposed rule they  
25 suggested that -- I think our original discussion we had that

1 in it, but in our subsequent discussion we have pulled back  
2 from that. We felt truly if there is going to be a fair and  
3 open bid process, they shouldn't show their prices early just  
4 like they shouldn't see our prices early.

5 CHAIRMAN JABER: Now, Mr. Sasso, on my copy I have  
6 written here delete, so I thought we talked about that.

7 MR. SASSO: Again, you may recall that when this  
8 issue was addressed in the Gulf docket, staff explained that  
9 without the published costs they were saying bids coming in  
10 were just too high. It was not an efficacious process. So  
11 they wanted the utility to publish some costs to start the  
12 bidding at a lower, more realistic level.

13 CHAIRMAN JABER: Okay. You're telling me what staff  
14 wants. I'm telling you that, at least as it relates to what  
15 this Commissioner wants, and what I thought we got Commissioner  
16 Palecki to agree to include in his motion, was the deletion of  
17 that, okay?

18 COMMISSIONER DEASON: What language specifically are  
19 you talking about deleting?

20 CHAIRMAN JABER: I'm talking about Sub 10, which  
21 would have required the company to include the cost of the  
22 common facilities, land improvements, transmission facilities,  
23 cooling water facilities.

24 COMMISSIONER BRADLEY: What page is that on?

25 CHAIRMAN JABER: Page 43.

1           COMMISSIONER DEASON: I think if you look at the top  
2 of the page, there are costs that are associated with the major  
3 capacity addition. In paragraph -- what is it, 5A? I think  
4 that is the concern if I am understanding correctly.

5           MR. SASSO: That is correct.

6           CHAIRMAN JABER: Okay. That's fine, but didn't we  
7 also say that anything associated with repowerings would be  
8 taken out? And I'm reading -- and this is good clarification,  
9 staff. I thought anything related to the words major capacity  
10 addition really went to the repowerings and the CTs.

11          MR. BALLINGER: Yes, they did, but still the cost of  
12 a power plant site act unit, the current rule and what we still  
13 have proposed, they would have to put out in their RFP the  
14 costs, the direct costs of that unit. You did tell us to take  
15 out the cost of common facilities.

16          CHAIRMAN JABER: Okay.

17          COMMISSIONER DEASON: I'm looking at Lines 5 and 6 of  
18 Page 43.

19          COMMISSIONER BRADLEY: And those are underlined, not  
20 deleted.

21          MR. BALLINGER: No, those are in the existing rule.

22          MR. SASSO: That is an important feature of the  
23 existing rule.

24          MR. McGLOTHLIN: Those are the costs that PACE  
25 suggested be deleted from the rule.

1           MR. SASSO: And a lot of that information is in the  
2 ten-year site plans, which was part of the rationale in  
3 requiring the utilities to provide it to begin with and denying  
4 Gulf's request for a waiver. But, again, we are concerned that  
5 we are revisiting, from a policy point of view, judgments that  
6 were made by the staff and the Commission, appropriately so, at  
7 the time the rule was initially fashioned weighing all of these  
8 considerations.

9           CHAIRMAN JABER: Commissioners. Commissioner  
10 Palecki, you were clarifying the motion. I think it would be  
11 helpful also to walk through what you were accepting and what  
12 you were rejecting in the changes we talked about earlier. I  
13 heard the IPPs give up on the identification of costs.

14           COMMISSIONER PALECKI: I thought I did, as well, and  
15 I didn't mean to include that as being included in my motion.  
16 My motion was a very general one. And with regard to the  
17 actual deletions from the existing staff strawman, you will  
18 have to help walk me through that because I didn't record all  
19 of these deletions. But I think we all agreed or at least I  
20 didn't have any objections to any of those that we discussed.

21           CHAIRMAN JABER: Staff, are you real clear on what we  
22 are proposing?

23           MR. BALLINGER: I will tell you what I have, and you  
24 tell me if I have missed something. The first thing, there are  
25 two types of plants; there is a Power Plant Site Act plant and



1 non-PPSA plants. We want to stick with PPSA plants only. That  
2 is what the rule is going to go to. Okay, that is the first  
3 choice. The second thing, then, you wanted to take out was the  
4 cost of common facilities, which was Section 5A, Sub 10. And  
5 that is coming out. You wanted to take out some language about  
6 forcing collocation. I think we can work on the wording of  
7 that. And we understand that concept. You don't want to force  
8 that, that has to be an option.

9 CHAIRMAN JABER: No, I don't want you work on the  
10 wording. I think there was consensus that it should just be  
11 deleted.

12 MR. BALLINGER: Right. And it is probably just  
13 deleting that section where we mention it, but that section may  
14 need other tweaking to make it clear what it is doing.  
15 Exploring alternatives, but don't force collocation to have to  
16 be one of them. And I think I understand that. You don't want  
17 to force the utility to have to do it if they don't want to, I  
18 think. Am I correct so far?

19 CHAIRMAN JABER: Uh-huh.

20 MR. BALLINGER: Okay. And then the third one was the  
21 removal of the equity penalty. I think Martha talked about  
22 that, or removing that sentence back on Page 45 in Sub F there  
23 at that last sentence. Those are the deletions, if you will.  
24 And then also the change we do up front about the major  
25 capacity additions, that would be changed also related to the

1 Power Plant Site Act. And now we are down to where we have  
2 defined criteria with dispute resolution. There would be no  
3 independent evaluator, which isn't in the proposed rule,  
4 anyway, so there is nothing that we have to do there. And then  
5 whether or not to have binding proposals or sealed bids, and  
6 that is where we are kind of stuck at right now. That's what I  
7 have.

8 CHAIRMAN JABER: Is there any unintended consequence  
9 of not seeking costs of some of those things? Even though the  
10 IPPs are willing to give up on that issue, if we accept that  
11 notion, are there unintended consequences that you need to tell  
12 us about now?

13 MR. BALLINGER: I think they are linked, that the  
14 giving up of the IOU of displaying its cost is linked with a  
15 binding bid. And I mean binding, that you are stuck with it.  
16 And what I have heard is you don't want to have binding stuck  
17 with it, you want to allow for some flexibility at the back  
18 end. So that is what you have to consider with not forcing the  
19 IOU to display it's costs. The other unintended consequence,  
20 as Mr. Sasso pointed out, is a lot of this information comes  
21 from the ten-year site plans, the costs of units. It's already  
22 public information, so putting it in the RFP doesn't do a whole  
23 lot. It's not a big burden for the utilities to display it out  
24 there.

25 MR. SASSO: Ma'am, there is one more consideration,

1 and that is the flexibility of all parties to negotiate after  
2 the bids are submitted and reduce their bids.

3 CHAIRMAN JABER: That there should be?

4 MR. SASSO: There should be. And I guess the  
5 proposal that the chair has suggested, while I understand the  
6 IPPs have talked about this issue in the past, and the context  
7 of their's is sort of taking me by surprise, but there are a  
8 number of issues that we would have to think through and be  
9 prepared to discuss at hearing. And one of them might be the  
10 whole set of unintended consequences that might arise from  
11 freezing all the bids at the inception, when our habit and  
12 practice has been to try to get everybody lower after that  
13 first round comes in.

14 COMMISSIONER BAEZ: And I don't want to put words in  
15 your mouth, but you seem to be suggesting that somehow a  
16 two-phased, something that actually contemplates further  
17 negotiation or at least a second round of bids, is that more or  
18 less what you are suggesting? And I don't want to nail you  
19 down on anything, but that seems to me -- that's what I'm  
20 hearing.

21 MR. SASSO: Yes, I -- see, the premise of this idea  
22 that we all submit sealed bids is wrong because it presumes  
23 that what we are trying to do is win the bid. And so it is our  
24 incentive to outbid everybody else and put in a more favorable  
25 bid, and so we want them to be high so we can win the bid.

1 That premise is wrong. We don't want to win the bid. We want  
2 the best project for the customer. So when they all submit  
3 bids, we tell them do better, we want to negotiate and so on.  
4 And we have published our costs and then there is an effort  
5 made to get the best project. So the premise is flawed that  
6 this is just an auction where we are on an equal playing with  
7 the other bidders. That is not our role, and that is not our  
8 responsibility.

9 COMMISSIONER BAEZ: And I'm not trying to suggest  
10 that you are. I think we have discussed that enough this  
11 afternoon anyway. But what I'm trying to ascertain is when you  
12 talk about preserving some ability to say, hey, do better, are  
13 you including yourself in that pool?

14 MR. SASSO: Well, traditionally we have tried to do  
15 better.

16 COMMISSIONER BAEZ: I know you do. I know you do,  
17 but --

18 MR. SASSO: The answer is yes.

19 COMMISSIONER BAEZ: So that whole second run would  
20 mean everybody -- everybody submit, for instance, a second  
21 sealed bid? I mean, is that --

22 MR. SASSO: Well, I'm not talking about that model  
23 where we have an auction, and we keep going back and forth.

24 COMMISSIONER BAEZ: What are you talking about?

25 MR. SASSO: I'm talking about the status quo where we

1 publish some numbers with the understanding that all bidders  
2 are at risk that we can lower those numbers. So they have to  
3 give us their best shot. Then once they submit those numbers,  
4 we still try to get them lower. And we retain the ability and  
5 the obligation to try to sharpen our pencils and get even lower  
6 still. But it's not an auction. It is not a competition.

7 COMMISSIONER BAEZ: I hear you.

8 MS. CLARK: It's a negotiation, and they are given  
9 that opportunity to give a better price. And I think what you  
10 are suggesting is at the end of the day when the utility says,  
11 this is it; we still think the self-build is right. And they  
12 come in to you and say -- for the determination of need they  
13 say, this is our number. This is the number we said we could  
14 do it and this is the reason we chose ourselves. And you want  
15 to say, when you come back in again, we are going to hold you  
16 to that number. So at that point you want to say that what  
17 they present in the determination of need is the firm number.  
18 I think to describe it as binding bid is probably confusing it.  
19 It seems to me what you are saying is I want to hold you to  
20 that number because if you had chosen the --

21 COMMISSIONER BAEZ: The number better be the same.

22 MS. CLARK: -- contract, they would be held to that.

23 COMMISSIONER BAEZ: But the number theoretically  
24 should be the same as the number you used.

25 MS. CLARK: I agree.

1           COMMISSIONER BAEZ: I'm not talking -- you know, I'm  
2 not expecting to see a whole different number when the need  
3 determination comes in than the one that was used --

4           MS. CLARK: To evaluate.

5           COMMISSIONER BAEZ: -- to evaluate. I guess that's  
6 really --

7           MR. SASSO: And those numbers do have reality,  
8 Commissioner Baez. The numbers that we use and provide to the  
9 Commission, we take very seriously. They do have reality now.

10          COMMISSIONER BAEZ: Why is that not in the nature of  
11 a binding -- I mean, just for argument sake.

12          MR. SASSO: It's binding in the sense that  
13 Mr. Ballinger has described. We understand the Commission uses  
14 that as a benchmark. We understand the Commission relies on  
15 that number and takes it as a serious number. Whether it is  
16 the one that we used to evaluate it, the one that we bring to  
17 the need case, ideally they are the same number, but we  
18 recognize that the Commission has relied on that number. And  
19 it is a real number, and we are expected to do at least that  
20 well when we do the project. And currently the Commission does  
21 review any overruns for prudence, but prudence gives you all  
22 the enforcement authority you need because it is reasonableness  
23 under the circumstances. And part of the circumstances when we  
24 come back to you and talk about an overrun is we gave you  
25 another number. And now we are higher and now we have some

1 explaining some to do. And we do have to show you that any  
2 overrun is justified. That's part of the circumstances that  
3 you take into account in deciding whether that overcharge is  
4 prudent. So you have a set of tools now in place, and we have  
5 a track record, I believe, that suggests that those tools have  
6 been effective, and we have honored the numbers we have given  
7 and we have taken them very, very seriously. I don't believe  
8 that there has been any demonstration of a situation where a  
9 utility gamed the system has been suggested. That is just not  
10 it.

11 COMMISSIONER BAEZ: Mr. McGlothlin, why isn't  
12 knowledge of that number at the award moment, I guess, for lack  
13 of a better term, at the moment the project is awarded, albeit  
14 to a self-build option, what is not binding about that exactly?

15 MR. MCGLOTHLIN: Commissioner Baez, I would approach  
16 it this way.

17 COMMISSIONER BAEZ: And, I'm sorry, you know,  
18 listening to what Mr. Sasso said and how he presented that.

19 MR. MCGLOTHLIN: Well, what he presented was this, as  
20 I understand it, he wants the requirement to present costs in  
21 the RFP to stay in the rule because that is justification in  
22 large measure for the utility's claim to have a need to look at  
23 the bids that come in and have the discretion and opportunity  
24 to lower its bid when the others don't have a similar  
25 opportunity. You know, the motion that is now pending is not

1 to include an independent evaluator. And, of course, we  
2 reserve our opportunity to try to persuade -- if the motion  
3 goes forward, we reserve our ability to try to persuade you to  
4 the merits of that. But, for the sake of argument, if the  
5 motion is to not include an independent evaluator, then the  
6 requirement of simultaneous bids, binding in nature, and we can  
7 define binding, becomes even more important. Because what we  
8 think the objective is here is a fair comparison and an  
9 opportunity for all participants in the bid process, IPPs,  
10 other IOUs, and the soliciting utility to be on somewhat even  
11 terms. When we discussed in our most recent proposal this  
12 concept of binding, and this goes to your search for a standard  
13 that is different than what is now in place, what we suggested  
14 was that if the IOU's proposal is selected as the most  
15 cost-effective, the public utility's proposed costs shall be  
16 binding on it in future earnings surveillance reports and  
17 ratemaking proceedings to the same extent the pricing proposals  
18 of participants would be binding on them in a purchased power  
19 contract.

20 COMMISSIONER BAEZ: I don't like the tail end of that  
21 language, and I will tell you why. Because that extent, that  
22 is subject to a whole other system. That is subject to  
23 litigation in a courtroom and may not be here, so I don't see  
24 that as the same thing. You know, what happens in a courtroom  
25 under a contract interpretation case is a little bit different



1 than what we are doing here at the time we are taking into  
2 account the numbers that the utility used. So I am  
3 uncomfortable with that comparison. I just don't think it  
4 exists.

5 MR. McGLOTHLIN: It was our effort to recognize that  
6 the term sheet, if you want to call it that, or the terms and  
7 conditions, puts some degree of risk on the participants, and  
8 that it is fair to require the IOU to be aware of the fact that  
9 it is going to be --

10 COMMISSIONER BAEZ: Is at risk, too. For its  
11 decisions.

12 MR. McGLOTHLIN: And it would take that into account  
13 in fashioning its proposal. But if the concern is or the  
14 sensitivity is that as presently structured the staff's  
15 strawman contemplates one binding bid, and there is no  
16 opportunity to sharpen pencils, then let me offer to you our  
17 suggestion that there be a short list and a second round of  
18 bids that would include everyone bidding simultaneously and  
19 would not include the IOU playing what Mr. Twomey called an  
20 extra card in that process.

21 COMMISSIONER BAEZ: Mr. Sasso, what is wrong with the  
22 utility being afraid to be undercut? What is wrong with that  
23 fear on your part?

24 MR. SASSO: We are not afraid of being undercut. We  
25 want to be undercut.

1           COMMISSIONER BAEZ: What is wrong with using -- what  
2 is wrong with using that desire and at the same time in the  
3 context of, for instance a second round of bidding, what is it  
4 that is not -- what is it that is keeping you from your best  
5 price?

6           MR. SASSO: Well, currently there aren't rounds of  
7 bidding because this isn't run as an auction.

8           COMMISSIONER BAEZ: I understand.

9           MR. SASSO: There are continuing discussions and in  
10 our last project we made an effort to encourage the  
11 participants to lower their costs. And, in fact, we gave them  
12 our -- we lowered our costs in the process. We got better  
13 information, and we told them what that was. I think each  
14 utility operates differently, but the point is they still  
15 didn't do it. They didn't even respond to the information  
16 about our lower cost. But this can't be treated like an  
17 auction. Again, in an auction we would be rooting for other  
18 people to be high. You know, if Mr. Green was working for one  
19 of these companies and he submitted a bid, and I am the  
20 self-build auctioneer, as opposed to a regulated utility, I  
21 want him to be high. I don't want to go to him and tell him  
22 take your bid low. That's not what it is about. I'm not  
23 rooting for him to be high; I'm rooting for him to be low, and  
24 so I am encouraging him to reduce his price. And he knows he  
25 has to do it because he is at risk that I can lower my price.

1 That disciplines him and the other bidders in the process, and  
2 I think that is a good system.

3 COMMISSIONER BAEZ: I wouldn't exactly --

4 MR. SASSO: And there is another unintended  
5 consequence that my client just told me about here. Another,  
6 maybe, embedded assumption in this idea that we have to submit  
7 bids simultaneously is that we are submitting the same kind of  
8 bids. But remember the bidders are submitting their price, not  
9 their costs. We are matching that up against our costs. If  
10 you really wanted to make it apples to apples, then we bid a  
11 price and nobody looks at our costs either. The Commission  
12 doesn't look at our costs, they don't look at our costs, nobody  
13 looks at our costs. And if it is a good deal, the shareholders  
14 get the benefit, and we are no longer a cost-based regulated  
15 utility. But we are. And it is not apples to apples. We are  
16 not bidding price to price. We are showing our costs to you  
17 and to them, and they are showing us price. They are two  
18 fundamentally different animals, and we can't be talking about  
19 submitting bids on the same plane. We need a different model,  
20 a different paradigm than we have in Florida today.

21 COMMISSIONER BAEZ: Why do your costs get lower later  
22 in the process?

23 MR. SASSO: Well, because this is a moving target.  
24 Once we identify a need, identify the best alternative to meet  
25 that need, we start developing cost information. We want to be

1 as close to the in-service date as possible to have the most  
2 current reliable efficacious information, and that is a moving  
3 target. As we are moving through the process, we are getting  
4 information as we did in this last project. And we had good  
5 information when we went out to bid, but as we are going  
6 through the process getting closer to the real date, the  
7 in-service date, we got better information. We got better cost  
8 information. And once that became available to us, we made it  
9 available to the people who were viable participants at that  
10 time. So this is a dynamic process. The timing is important,  
11 which is why we are concerned about further litigation or  
12 points of entry or so on that would extend that. That means we  
13 have to back up the commencement of this process maybe how many  
14 months earlier than we do now, which makes the data that much  
15 more distant from the in-service date which compromises the  
16 whole project. We want to wait and get as close to the  
17 in-service date as we can. We build in the regulatory process  
18 time. We build in the construction time. We have all these  
19 time lines, but you want it to be as close to the in-service  
20 date as possible and not back it up another six months for  
21 additional regulatory process or litigation and so on.

22 MR. McGLOTHLIN: Mr. Sasso said -- he made a  
23 comparison between our price and his costs. As I understand it  
24 the utility evaluates proposals on the basis of impact on  
25 revenue requirements, which as I understand it, includes a

1 return on investment. So I think there is something amiss  
2 there.

3 CHAIRMAN JABER: Commissioners, if we could just  
4 close this down now. I think, you know, Commissioner Baez,  
5 where I am on the costs, to the degree there are unintended  
6 consequences, that is yet another advantage of getting the  
7 evidence at the hearing. Because, frankly, I hear what you are  
8 saying, I agreed with some; I disagreed with some of the other  
9 points you made. But, I don't know enough today to know  
10 whether it is the right thing to do or not to include the  
11 requirement of the IOUs including their costs. Either way, I  
12 see it being discussed in the hearing, so I'm leaning toward  
13 just leaving it in and let it get discussed in the hearing.

14 But with respect to Commissioner Palecki's motion,  
15 the same -- you know, I have come full circle there, too,  
16 Commissioner Palecki. The definition of binding and the  
17 flexibility can be fleshed out at the hearing, too. So for the  
18 purposes of moving this forward, I can support your motion,  
19 recognizing that there is a long way to go through the hearing  
20 process. I have lost my optimism. Can you tell?

21 COMMISSIONER BAEZ: And just so that I can be clear,  
22 the language -- exactly what language are we inserting in  
23 terms -- or are you proposing to -- forgive me.

24 COMMISSIONER PALECKI: Well, you had talked about  
25 some extraordinary circumstances, and I think that Martha Brown

1 had said that there is some language that had been debated at a  
2 lengthy Commission proceeding back about eight or ten years ago  
3 that might be applicable. And if I recall, it talked about  
4 acts of God and extraordinary circumstances, war, just a  
5 laundry list of about six or seven different things. And, you  
6 know, I don't have any objection to that additional language,  
7 and I guess maybe I'm perfectly willing to flesh out and debate  
8 the exact language we need when we get to the hearing. But I  
9 know that for now we need a strawman, so whatever kind of  
10 extraordinary circumstances language --

11 COMMISSIONER BAEZ: You know, I think as well that  
12 for purposes of moving the rule forward, I'm okay voting it  
13 out. I just want to understand the form of it. The form of  
14 the motion doesn't include specific language, and I guess  
15 you're telling me that it doesn't at this point.

16 COMMISSIONER PALECKI: Well, I don't know how in a  
17 rulemaking -- and perhaps I could ask Ms. Brown this. Do we  
18 have to be so specific at this time that we give you that exact  
19 language or can we just refer to the -- I can't even remember  
20 the docket number that that language is in, to be honest with  
21 you.

22 MS. BROWN: Well, the point we are in the process  
23 right now is that when you all decide, this rule would be  
24 proposed. I think I mentioned that earlier. And that means  
25 that it is published in the FAW, that it is sent to the Joint

1 Administrative Procedures Committee, and it really needs to be  
2 fairly complete. So what Tom and I were talking about doing  
3 was going back over what you said and then trying -- where your  
4 idea was more a vision rather than specifics, we would try to  
5 fill in the details and then publish that. If that works for  
6 you. If not --

7 CHAIRMAN JABER: Let me ask you this, procedurally.  
8 We have got an agenda tomorrow. We know that we have heard  
9 from all of the stakeholders, we have given every opportunity  
10 for people to be heard. What is wrong with you all staying up  
11 all night to come up with some language, Martha, Tom, Mark, to  
12 bring to us tomorrow at the end of agenda? Can I announce from  
13 the bench that there will be an item tomorrow for the sole  
14 purpose of having just the Commissioners take a look at the  
15 language that staff has come up with consistent with our  
16 direction today?

17 MS. BROWN: It will be hard for me to do that because  
18 I was up all last night, and I have a hearing that starts on  
19 Wednesday.

20 CHAIRMAN JABER: I guess Harold has been on vacation  
21 for awhile.

22 COMMISSIONER BAEZ: Did Mr. McLean get a good night's  
23 sleep last night?

24 MS. BROWN: Excuse me?

25 COMMISSIONER BAEZ: Nothing. Never mind.

1 CHAIRMAN JABER: And maybe it doesn't have to be  
2 tomorrow, but is there a clock that has started already?

3 MS. BROWN: No. No clock has started yet.

4 CHAIRMAN JABER: And really I am responding to your  
5 concern that is has to be specific language.

6 MS. BROWN: I tell you what I would be most  
7 comfortable doing and that would be getting together and coming  
8 back at the next agenda to bring you what we have done.

9 CHAIRMAN JABER: What that does, though, Ms. Brown,  
10 is effect the availability of hearing dates.

11 MS. BROWN: Okay.

12 MR. GARCIA: Madam Chairman, if I might propose  
13 something. I mean, you know, maybe we are only going to build  
14 a two-lane highway, but it might benefit us to talk about -- as  
15 strong a rule as we want, you're all talking about scaling  
16 back. I understand Commissioner Baez's point about binding,  
17 but I think everyone will be on notice. You say we are going  
18 to hearing and you put out a strong rule and we can always work  
19 back from that. So I think --

20 CHAIRMAN JABER: Mr. Garcia, we are not scaling back.  
21 We are not scaling back. I also believe in not wasting  
22 peoples' time. I also believe in, you know, minimizing the  
23 expense to folks. And I know where I believe today my limits  
24 are, and I'm not going to waste anybody's time. I want a  
25 realistic rule and something that is going to generate a



1 targeted comment cycle. Is there any other language we can  
2 look at, Ms. Brown, in anyone else's proposal that we may want  
3 to just substitute to accommodate what Commissioners Palecki  
4 and Baez are talking about, and myself?

5 MR. BALLINGER: I think I have found the language  
6 that came about, Commissioner Palecki, that we used in the  
7 cogen thing. It's on Page 47, and it's down at the bottom  
8 where costs would be assumed recoverable absent evidence of  
9 fraud, mistake, or similar grounds sufficient to disturb the  
10 finality of the decision.

11 COMMISSIONER PALECKI: That's it.

12 MR. BALLINGER: Okay. My hesitancy with this is the  
13 direction to assume that the costs that come forward in a need  
14 determination assumed -- if approved, assumed prudent, and then  
15 anything over you would have to have unforeseen circumstances.  
16 Personally, I think that takes away some Commission power now  
17 where we have argued in the past that even though you have a  
18 need determination, prudence is a different animal. And all  
19 dollars are subject to that, and I want you to be aware of that  
20 before you give them that. And we haven't had that dialogue.

21 COMMISSIONER BAEZ: And maybe this is a fine point to  
22 make, but at no point have I suggested -- albeit knowingly,  
23 have I knowingly suggested that because I have asked to look at  
24 differences in numbers on the back end, look at the  
25 differential at a higher standard means that there is any

1 presumption of prudence as to the bid number or the -- do you  
2 see what I'm saying?

3 MR. BALLINGER: I think so. I think it's getting  
4 clear.

5 COMMISSIONER BAEZ: I don't mean to be looking at one  
6 with a closer eye, with a higher standard to the exclusion of  
7 looking at the other. I just don't think they deserve the same  
8 treatment.

9 MR. BALLINGER: I take a simplistic view, I guess, or  
10 one could approach it this way, is that they are two separate  
11 entities. A need is a need determination; a prudence review is  
12 a prudence review, and you look at all dollars. And granted,  
13 if it is shown that it is roughly the same as the need, that  
14 helps the case. That helps you get there. But I still think  
15 when you go to prudence review all dollars are subject to  
16 disallowance. Because it could be cost overruns, it could be a  
17 load went away, the wholesale load, and they have excess  
18 capacity now. And did they manage their other resources  
19 prudently? A variety of things when they come in for cost  
20 recovery, and that's why I see the two as independent.

21 COMMISSIONER BAEZ: And I think that's where we get  
22 off of what Mr. Sasso had represented. That, you know,  
23 prudence is under the circumstances at the time, and it would  
24 be very difficult to say the load went away on day, you know,  
25 whatever, day 360. But, you guys, you know, at the time that

1 we incurred it, it was prudent, it was needed.

2 MR. BALLINGER: I understand. And I think you have  
3 to have the opportunity to justify why the difference, justify  
4 why the dollars spent were prudently incurred for a variety of  
5 reasons. You know, whatever happened in that interim time  
6 period. But I don't want to send a signal that if a need  
7 determination ticket is punched, that management's on-going  
8 duty to prudently manage its resources is done. And that's why  
9 I want to be real careful in crafting this language. And I  
10 heard some of that that was giving me pause, that is was like  
11 the number you gave here is binding and you only get the  
12 increment if it is unforeseen circumstances.

13 CHAIRMAN JABER: No.

14 MR. BALLINGER: Okay.

15 COMMISSIONER BAEZ: No. What I meant to suggest is  
16 that there shouldn't be equal treatment for the two. I think  
17 something over and above the number upon which the award of a  
18 project was based has to have some meaning. And in order for  
19 that to have some meaning it has to be closely associated, if  
20 not identical, to the number that is proposed for cost recovery  
21 absent, you know --

22 MR. BALLINGER: I agree. And I think we are saying  
23 the same thing. And this is what staff would look at in a cost  
24 recovery --

25 COMMISSIONER BAEZ: But there isn't a presumption of

1 prudence --

2 MR. BALLINGER: How to put that in words, I'm having  
3 trouble with.

4 CHAIRMAN JABER: You know what, Commissioners, I am  
5 completely comfortable with all the direction that we have  
6 given to staff to let them have the flexibility to come up with  
7 some language and throw it out there for purposes of hearing.  
8 Just as one Commissioner, I don't feel like I need to see that  
9 language in some sort of formal fashion, recognizing we are  
10 going to hearing.

11 COMMISSIONER BAEZ: Well, is there proxy language  
12 that we have to serve up with the proposed rule, because that  
13 is what I hear legal suggesting?

14 CHAIRMAN JABER: I think Mr. Ballinger is pointing to  
15 the language on Page 47 as proxy language.

16 COMMISSIONER BAEZ: That still needs some work.

17 MR. BALLINGER: Yes, because what is your threshold?  
18 What are you approving absent evidence of fraud or mistake?  
19 Are you giving a --

20 COMMISSIONER BAEZ: And I don't think that the notion  
21 of approval should apply. I think it is the notion of shall  
22 not be recoverable. That is really --

23 MR. BALLINGER: Any overruns should not be  
24 recoverable absent that.

25 COMMISSIONER BAEZ: Any difference between a -- I

1 don't even know what to call it anymore. I don't want to call  
2 it a winning bid necessarily, but --

3 CHAIRMAN JABER: But, you know, Commissioner Baez,  
4 you don't want to inadvertently take out the possible  
5 incentives that we could create through this process. If the  
6 IOU self-builds and those costs come way below the original  
7 anticipated costs, from a policy standpoint, a public policy  
8 standpoint, you would want that.

9 COMMISSIONER BAEZ: No, and I agree, but I think that  
10 is a question of just added language, just clarifying.

11 CHAIRMAN JABER: Right. But my caution is not to  
12 tighten this so much to preclude what I was talking about.

13 COMMISSIONER PALECKI: I think we need the utility  
14 that wins the bid to have the same incentives that a nonutility  
15 to build that plant as efficiently as they possibly can. And  
16 if their costs -- and it's kind of like the price-to-price  
17 analogy that Mr. Sasso made earlier. I think the nonutility or  
18 the utility should both be able to -- since they both have the  
19 same risk, they should both be able to reap those rewards. And  
20 that is the entire incentive that is in place with this type of  
21 a procedure, because the utility should be rewarded for its  
22 efficiency and should be able to -- it's shareholders should be  
23 able to reap a profit from those efficiencies.

24 CHAIRMAN JABER: Staff and Commissioners, if we take  
25 a few minutes of a break, do you think language could be

1 developed to that subsection to accommodate what we are talking  
2 about?

3 MR. BALLINGER: We will give it our best shot.

4 CHAIRMAN JABER: We are going to take our final  
5 ten-minute break, and we are going to come back and vote out  
6 Commissioner Palecki's motion.

7 MS. BROWN: Chairman Jaber, could -- well, when we  
8 come back I have one other thing I would like to ask you.  
9 There is one section I wanted to bring to your attention that  
10 looks like it might need to come out.

11 (Off the record.)

12 CHAIRMAN JABER: Let's get back on the record. I  
13 asked staff to think about specific language for Sub 14.

14 MS. BROWN: We have done that. Here is our proposal:  
15 If the public utility selects the self-build option, any costs  
16 in addition to those identified in the RFP shall not be  
17 recovered unless the utility can demonstrate that such costs  
18 were unforeseen and beyond its control. Do you want me to read  
19 it again?

20 COMMISSIONER BAEZ: The cost identified in the RFP?  
21 Is that --

22 MS. BROWN: Yes.

23 MR. BALLINGER: Yes, because we still have the  
24 provision that the utility has to put its costs forward in the  
25 RFP, the costs of its unit. That is kind of its bid, if you

1 will, okay?

2 COMMISSIONER BAEZ: Okay.

3 MR. BALLINGER: And from what I was hearing, is that  
4 what you wanted was anything above and beyond that they would  
5 have to come in and demonstrate it was, you know, unforeseen at  
6 the time, things of that nature.

7 COMMISSIONER BAEZ: Martha, are you comfortable that  
8 that establishes a different legal standard?

9 MS. BROWN: Yes.

10 COMMISSIONER BAEZ: Yes, she shook her head.

11 MS. BROWN: Yes. You know, it is just the  
12 circumstances. It's hard to really focus, but this would be  
13 sufficient to propose the rule.

14 CHAIRMAN JABER: It gives you the specifics that you  
15 need to publish it in the Florida Administrative Weekly, which  
16 I think is all we can accomplish.

17 COMMISSIONER BAEZ: And I'm -- for one, I am  
18 comfortable with that for those purposes.

19 MS. CLARK: Madam Chairman.

20 COMMISSIONER PALECKI: I can live with that language.  
21 I might be able to be talked out of that language at a  
22 subsequent hearing, but I think for purposes of a strawman at  
23 this time to move forward. And who knows, it might be that  
24 that is the language we end up with. There is nothing apparent  
25 to me that is objectionable about it.

1 CHAIRMAN JABER: Commissioner Clark, I will let you  
2 comment in just one minute. Martha, before we broke you said  
3 there was one other thing you wanted to tell us?

4 MS. BROWN: Yes, Chairman Jaber. On Page 48 --  
5 actually Ms. Clark mentioned this to me. Subsection 15 at the  
6 top there, that whole subsection really applies to non-PPSA  
7 plants. We think that should come out.

8 CHAIRMAN JABER: Okay.

9 MS. BROWN: And that was all I had.

10 CHAIRMAN JABER: Martha and Tom and Mark, to the  
11 degree you find anything else like that, to stay consistent  
12 with the spirit of our direction today, I would ask that you go  
13 ahead and delete it.

14 MS. BROWN: All right.. Thank you.

15 CHAIRMAN JABER: Ms. Clark.

16 MS. CLARK: Martha used the language identified in  
17 the RFP, and I thought the objective was if they self-select it  
18 is that number.

19 COMMISSIONER BAEZ: Right.

20 MS. CLARK: And not what is in the RFP.

21 COMMISSIONER BAEZ: I mean, is that the same thing,  
22 Tom?

23 MR. BALLINGER: We could change -- I understand now,  
24 yes.

25 COMMISSIONER BAEZ: Do you see where --



1 MR. BALLINGER: How about identify it at the need  
2 determination proceeding, because now we have structured this  
3 whole rule to only PPSA plants. We no longer have the two  
4 types of plants, we just have -- okay. I understand now.

5 COMMISSIONER BAEZ: Hold on. Identified at a need  
6 determination proceeding?

7 MR. BALLINGER: Yes.

8 COMMISSIONER BAEZ: Okay.

9 MR. BALLINGER: Because that is the only time an RFP  
10 would be issued now is prior to a need determination  
11 proceeding.

12 CHAIRMAN JABER: Read it one more time with the  
13 revision.

14 MR. BALLINGER: Okay. If the public utility selects  
15 a self-build option, any costs in addition to those identified  
16 in the need determination proceeding shall not be recovered  
17 unless the utility can demonstrate that such costs were  
18 unforeseen and beyond its control.

19 CHAIRMAN JABER: That is enough to start with. Okay.  
20 Commissioner Palecki, you have got a motion. I think it is  
21 time to call for a second. Is there a second to Commissioner  
22 Palecki's motion?

23 COMMISSIONER BAEZ: Well, I can second it just  
24 clarifying that, you know, whatever needs to be out, if that is  
25 something that Commissioner Palecki is accepting, based on the

1 Chairman's last instructions that there may be something out  
2 there that hasn't been discussed, but that is consistent with  
3 our direction. I can second it, Madam Chairman.

4 CHAIRMAN JABER: And, Commissioner Palecki, you said  
5 earlier, so I am assuming this was part of your motion, that we  
6 vote a rule out and then also set it for hearing. That is  
7 still the case?

8 COMMISSIONER PALECKI: That is still the case.

9 CHAIRMAN JABER: Okay. So that was part of the  
10 motion, Commissioner Baez, that you've seconded.

11 COMMISSIONER BAEZ: Yes, absolutely.

12 CHAIRMAN JABER: All those in favor say aye. Aye.

13 COMMISSIONER DEASON: Aye.

14 COMMISSIONER BAEZ: Aye.

15 COMMISSIONER PALECKI: Aye.

16 CHAIRMAN JABER: Opposed, nay.

17 COMMISSIONER BRADLEY: Nay.

18 CHAIRMAN JABER: Okay. The motion passes 4-1.

19 Commissioner Baez, I would note that you are the prehearing  
20 officer in this case. I will --

21 COMMISSIONER BAEZ: Golly.

22 CHAIRMAN JABER: -- have our office look for a  
23 hearing date and work with legal on a hearing date and the  
24 procedure to be followed. With respect to the repowerings and  
25 the CT issue, Commissioners, with your permission I would like

1 to go ahead and ask our legislative team to bring to the  
2 attention of our oversight Senate and House committees to let  
3 them know that that is an issue that did come up in this  
4 proceeding, that to the degree the legislature is interested in  
5 taking a look at this, I think -- and Mary is not here right  
6 now, but we had been informed that at least on the Senate side  
7 there was going to be some review of rules. And I think  
8 consistent with that invitation and that review, we should  
9 bring to their attention the concern related to repowerings and  
10 CTs. And, staff, that would really be in conjunction with what  
11 you articulated the policy reasons for looking at repowerings  
12 and CTs. That to the degree there should be certainty as it  
13 relates to the costs, that is worthy of the Legislature's  
14 consideration.

15 COMMISSIONER BAEZ: Would the staff also be  
16 considering what the best way of communicating that is going to  
17 be?

18 CHAIRMAN JABER: I didn't hear you.

19 COMMISSIONER BAEZ: The method of communication, do  
20 you have a preference?

21 CHAIRMAN JABER: I think, you know, in terms of just  
22 asking Mr. Neal (phonetic) to give --

23 COMMISSIONER BAEZ: Just a recommendation.

24 CHAIRMAN JABER: -- Mr. Emhoff and Ms. Caldwell a  
25 call, and certainly whatever -- whatever they need.

1 COMMISSIONER BAEZ: Okay. All right.

2 CHAIRMAN JABER: You know, I think letting them know  
3 first and formally and then to the degree they want our staff  
4 to provide some analysis, that is certainly within their  
5 discretion. And then there is an Issue 3, isn't there? Do I  
6 take by silence that is okay with all the Commissioners?

7 COMMISSIONER PALECKI: Yes. And I think Issue 3 may  
8 have already been answered, because that is whether the docket  
9 should remain open, and I think we have already said it is  
10 going to be set down for hearing.

11 CHAIRMAN JABER: Right. Before we conclude,  
12 Ms. Clark, Mr. Green, Mr. McWhirter, Mr. Twomey, we have  
13 established a hearing date. We have tried our best to put a  
14 rule out there that people can clearly get the direction from  
15 the Commission what in our humble opinion the rule should do  
16 and what it shouldn't do. I would ask that all of you take a  
17 look at the rule, give yourselves distance, recognize what we  
18 did not include in the rule, recognize what we said that the  
19 rule does and what we think the rule does not do. And continue  
20 the dialogue. Ever the optimist. I'm not sure this is going  
21 to get to the hearing stage. I hope that this actually  
22 facilitates more discussion. With that the agenda is over.

23 (The special agenda concluded at 5:40 p.m.)

24

25


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

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

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

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

18 DATED THIS 3RD DAY OF OCTOBER, 2002.

19   
20 \_\_\_\_\_  
21 JANE FAUROT, RPR  
22 Chief, Office of Hearing Reporter Services  
23 FPSC Division of Commission Clerk and  
24 Administrative Services  
25 (850) 413-6732