

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 020262-EI - Petition to determine
need for an electrical power plant in Martin
County by Florida Power & Light Company.

DOCKET NO. 020263-EI - Petition to determine
need for an electrical power plant in Manatee
County by Florida Power & Light Company.

COPY

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

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 7

DATE: Tuesday, November 19, 2002

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
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PARTICIPANTS:

MARTHA BROWN, TIM DEVLIN, MIKE HAFF, LARRY HARRIS, CHRISTINE KENNY and PETE LESTER, Florida Public Service Commission.

STAFF RECOMMENDATION

ISSUE 1: Does Florida Power & Light Company have a need for Martin Unit 8, taking into account the need for electric system reliability and integrity?

RECOMMENDATION: In order to precisely meet a planning reserve margin criterion of 20.0%, FPL needs only 15 MW of capacity with the addition of Manatee Unit 3 in summer 2005. Therefore, FPL does not have a pressing reliability need for the entire 789 MW of capacity from Martin Unit 8 until summer 2006. However, as discussed in Issue 14, it is more cost-effective for FPL to place Martin Unit 8 into commercial service in 2005 rather than 2006. Placing Martin Unit 8 into service in 2005 will enhance FPL's electric system reliability and integrity.

ISSUE 2: Does Florida Power & Light Company have a need Manatee Unit 3, taking into account the need for electric service reliability and integrity?

RECOMMENDATION: Yes. FP&L has an estimated need for 1,122 MW of capacity for summer 2005. The 1,107 MW of summer capacity from Manatee Unit 3 is needed by FPL to ensure electric system reliability and integrity. With the addition of Manatee Unit 3 in summer 2005, FPL's projected reserve margin for summer 2005 is 19.92%.

ISSUE 3: Does Florida Power & Light have a need for Martin Unit 8, taking into account the need for adequate electricity at a reasonable cost?

RECOMMENDATION: Yes. FPL has chosen a proven technology and has experience with the construction and operation of combined cycle units. The estimated costs for Martin Unit 8 appear to be reasonable.

ISSUE 4: Does Florida Power & Light Company have a need for Manatee Unit 3, taking into account the need for adequate electricity at a reasonable cost?

RECOMMENDATION: Yes. FPL has chosen a proven technology and has experience with the construction and operation of combined cycle units. The estimated costs for Manatee Unit 3 appear to be reasonable.

ISSUE 5: Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Martin Unit 8?

RECOMMENDATION: No. FPL appears to have implemented all available cost-effective conservation and demand-side management measures.

ISSUE 6: Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need For Manatee Unit 3?

RECOMMENDATION: No. FPL appears to have implemented all available cost-effective conservation and demand-side management measures.

ISSUE 7: Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Martin Unit 8?

RECOMMENDATION: Yes. While FPL has yet to sign a contract to supply natural gas to the proposed unit, FPL will provide the Commission with a copy of the signed contract for commodity and transportation to serve Martin Unit 8 once signed.

ISSUE 8: Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Manatee Unit 3?

RECOMMENDATION: Yes. While FPL has yet to sign a contract to supply natural gas to the proposed unit, FPL will provide the Commission with a copy of the signed contract for commodity and transportation to serve Manatee Unit 3 once signed.

ISSUE 9: Did Florida Power & Light Company's Supplemental Request for Proposals issued April 26, 2002, satisfy the requirements of Rule 25-22.082, Florida Administrative Code?

RECOMMENDATION: Yes. FPL properly issued and evaluated the supplemental RFP in accordance with Rule 25-22.082, Florida Administrative Code, and has therefore satisfied the requirements of the rule.

ISSUE 10: Was the process used by Florida Power & Light Company to evaluate Martin Unit 8, Manatee Unit 3, and projects submitted in response to its Supplemental Request for Proposals issued April 26, 2002, fair, reasonable, and appropriate?

RECOMMENDATION: Yes. FPL's analysis of its self-build options, individual responses to the

supplemental RFP, and grouping of proposals for purposes of the economic evaluation was appropriate. FPL's evaluation process reasonably resulted in the choice of the most cost-effective alternative required by statute.

ISSUE 11: In its evaluation of Martin 8, Manatee 3, and projects filed in response to its Supplemental Request for Proposals issued on April 26, 2002, did Florida Power & Light employ fair and reasonable assumptions and methodologies?

RECOMMENDATION: Yes. Given the variation in the proposals with regard to term and megawatts proposed, the methodologies employed to evaluate supply-side options were fair and reasonable. As discussed in staff's recommendation for Issues 11(a) through 11(g), FPL used fair and reasonable assumptions in evaluating all supply-side options.

ISSUE 11(a): Were the assumptions regarding parameters that FPL assigned to its own proposed units reasonable and appropriate?

RECOMMENDATION: Yes. FPL's heat rate and availability assumptions for Martin Unit 8 and Manatee Unit 3 are reasonable and appropriate.

ISSUE 11(b): Did FPL appropriately model variable O&M costs in its analysis?

RECOMMENDATION: Yes. FP&L used the variable O&M costs contained in its supplemental RFP for the self-build projects. FPL modeled variable O&M costs for the bidders as they were bid.

ISSUE 11(c): When modeling and quantifying the costs of all options, did FP&L fairly and appropriately compare the costs of projects having different durations?

RECOMMENDATION: Yes. FPL's use of greenfield filler units in its expansion plan studies was appropriate.

ISSUE 11(d): When modeling and quantifying the costs of all options, did FPL employ assumptions regarding the gas transportation costs applicable to filler units that were fair, reasonable, and appropriate?

RECOMMENDATION: Yes. FPL used identical gas transportation cost assumptions for filler units for generation expansion plans containing both FPL's self-build units and the RFP projects.

ITEM 11(e): When modeling and quantifying the costs of all options, including its own, did FP&L appropriately and adequately take cycling and start-up costs into account?

RECOMMENDATION: Yes. Further, FPL modeled cycling and start-up costs identically for its self-build units and the RFP projects.

ISSUE 11(f): When modeling and quantifying the costs of all options, did FPL appropriately and adequately take into account the impact of seasonal variations on heat rate and unit output?

RECOMMENDATION: Yes. Using greater precision to model seasonal variations on heat rate and unit output was unnecessary and would have affected both the FP&L self-build units and the RFP projects virtually the same.

ISSUE 11(g): Did FP&L act in a fair, reasonable, and appropriate manner in not considering for the short list portfolios that included TECO and other bidders, in part, because TECO's reserve margin requirement might be impaired?

RECOMMENDATION: Yes. FPL considered, but appropriately did not include, TECO on its short list.

ISSUE 12: Was Florida Power & Light Company's decision to apply an equity penalty cost to projects filed in response to its Supplemental Request for Proposals appropriate? If so, was the amount properly calculated?

RECOMMENDATION: No. The application of the equity penalty in FPL's evaluation of outside supply options is not appropriate in this case. The Commission should determine the appropriateness of an equity penalty on a case-by-case basis. Even without the implementation of the equity penalty, FPL's self-build option still appears to be the most cost-effective method of adding capacity.

ISSUE 13: In its evaluation of Martin Unit 8, Manatee Unit 3, and projects filed in response to its Supplemental Request for Proposals issued on April 26, 2002, did Florida Power & Light Company properly and adequately evaluate transmission interconnection and integration costs?

RECOMMENDATION: Yes. FPL properly and accurately evaluated transmission-related costs for the RFP projects and FPL's self-build options.

ISSUE 14: Is Florida Power & Light Company's Martin Unit 8 the most cost-effective alternative available?
RECOMMENDATION: FPL's base-case self-build plan, in which both Martin Unit 8 and Manatee Unit 3 enter service in summer 2005, appears to be the most cost-effective alternative. Deferring Martin Unit 8 by one year is more costly than FPL's base-case self-build plan. The Commission's decision on Issue 12 (equity penalty) will affect the level of the cost-effectiveness of FP&L's base-case self-build plan.

ISSUE 15: Is Florida Power & Light Company's Manatee Unit 3 the most cost-effective alternative available?
RECOMMENDATION: See staff recommendation on Issue 14.

ISSUE 16: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Martin Unit 8?

RECOMMENDATION: Yes. FPL's petition for determination of need for Martin Unit 8 satisfies the statutory requirements of Section 403.519, Florida Statutes, and, therefore, should be approved.

ISSUE 17: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Manatee Unit 3?

RECOMMENDATION: Yes. FP&L's petition for determination of need for Manatee Unit 3 satisfies the statutory requirements of Section 403.519, Florida Statutes, and, therefore, should be approved.

ISSUE 18: Should Docket Nos. 020262-EI and 020263-EI be closed?

RECOMMENDATION: Yes. These dockets should be closed after the time for filing an appeal has run.

PROCEEDINGS

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CHAIRMAN JABER: We're on Item No. 7.

MR. HAFF: Commissioners, Item No. 7 is staff's post-hearing recommendation on the Florida Power & Light petition for determination of need of Martin Unit 8 and Manatee Unit 3. Staff has recommended that the Commission approve Florida Power & Light's petition.

On the front page under "Special Instructions," and on page 4 also of the recommendation, we've suggested an order of discussing and voting the items.

CHAIRMAN JABER: Thank you, Mr. Haff.

Commissioners, staff has recommended an order that probably works just fine. I have to just let you know, I've got questions from one of the briefs. I think that it may actually be easier for me, at least as one Commissioner, to start with the more general questions, but whatever you all prefer. Is that all right?

Okay. I'm looking -- are there any corrections to the recommendation, staff?

MR. HAFF: No.

CHAIRMAN JABER: I'm looking at the PACE brief, and -- let me try to find it here.

1 There's an assertion on page 8 of the PACE
2 brief, and I've got a couple of follow-up
3 questions to this, where it says it provides
4 that -- the allegation is that FP&L can turn
5 around and file a petition for a rate increase
6 if it earns below 10% ROE, according to their
7 revenue sharing agreement, and in fact, if the
8 PSC adds the two units proposed, that it could
9 actually result in an increase in rate base of a
10 billion dollars, and therefore, it could be
11 possible that that would trigger a petition for
12 a rate increase. Is that -- how likely is that,
13 and have you taken all of that into account?
14 That's probably a -- Tim Devlin?

15 MR. LESTER: I can --

16 CHAIRMAN JABER: Go ahead, Mr. Lester.

17 MR. LESTER: The current rate settlement
18 is a revenue sharing agreement, and so base rate
19 revenues need to reach a certain level for
20 sharing to take place. The addition of the
21 plant may affect earnings, but it won't affect
22 the sharing levels.

23 CHAIRMAN JABER: Okay. So said
24 differently, is there any concern with respect
25 to adding either of the units or both of the

1 units that customers' rates in any way go up
2 through 2006?

3 MR. LESTER: No, there's no concern.

4 CHAIRMAN JABER: Because of these two
5 units. Now, obviously, there are probably fuel
6 adjustments and considerations to take into
7 account between now and 2006. But as it relates
8 to the capital costs of these two units, do you
9 envision any sort of rate increase?

10 MR. LESTER: No, ma'am.

11 CHAIRMAN JABER: Okay. Now --

12 COMMISSIONER DEASON: Madam Chairman, may I
13 follow up on that question?

14 CHAIRMAN JABER: Yes. Go ahead.

15 COMMISSIONER DEASON: As I understand the
16 Chairman's question, I think she prefaced that
17 question by indicating that it was her
18 understanding, and I believe it's my
19 understanding as well, that the settlement
20 provides -- there's a provision in which if the
21 ROE falls below 10%, then FP&L has the
22 capability under the stipulation to come forward
23 and to request an increase. So I think the
24 Chairman's question is: will the addition of
25 both these units cause the ROE to drop below 10

1 percent?

2 CHAIRMAN JABER: Such that the company
3 comes in and seeks a rate increase.

4 MR. DEVLIN: We don't expect it to,
5 Commissioners, because of the level the earnings
6 are at right now. We don't expect that it would
7 trigger a situation where the ROE would drop
8 below 10%.

9 CHAIRMAN JABER: Because the ROE is
10 currently at -- but that's what you're saying,
11 that the ROE is high enough now that any sort of
12 drop should not --

13 MR. DEVLIN: I think the ROE is over 13%
14 right now. I could verify that. But there's
15 sufficient room there to handle these two units
16 during the settlement period.

17 CHAIRMAN JABER: Now I want to take the
18 reverse of that question. Is it possible that
19 these two units in the long term benefit the
20 customers such that you could actually see some
21 sort of sharing or efficiencies that inure back
22 to the customers because of the addition of
23 these two units in the year 2005?

24 MR. DEVLIN: Well, to the extent that
25 they're the least-cost option compared to

1 purchased power, I think that's where the
2 benefits come into play from 2005 forward.

3 COMMISSIONER DEASON: But isn't there the
4 possibility of off-system sales which can be
5 flowed through to customers through the fuel
6 adjustment clause?

7 MR. DEVLIN: That's true also, yes, sir.

8 CHAIRMAN JABER: And then with respect to
9 what you said, Mr. Devlin, are you referring to
10 the fact that with PPA purchases, there's an
11 automatic fixed payment that goes through the
12 capacity cost recovery clause?

13 MR. DEVLIN: That's correct.

14 CHAIRMAN JABER: That's not the case with
15 these two units.

16 MR. DEVLIN: That's true. Until base rates
17 are changed, the ratepayers wouldn't see any
18 increase in price.

19 CHAIRMAN JABER: Okay. Now, let's take it
20 just a step further. If Martin is deferred for
21 a year -- the rate settlement, if I'm not
22 mistaken, expires at the end of 2005; is that
23 right?

24 MR. DEVLIN: That's correct.

25 CHAIRMAN JABER: Deferring Martin for a

1 year brings the plant in after the expiration of
2 the revenue sharing agreement. What effect does
3 that have, if any?

4 MR. DEVLIN: Well, it would have an effect
5 on the rate of return, and our plan would be to
6 look closely at their earnings position
7 somewhere towards the end of 2005. So if there
8 is a deferral of a year or so, that would just
9 have an enhancement to the rate of return for
10 some short period of time. But we fully intend
11 to take a very thorough review of the financial
12 position of FPL, and this, of course, would be
13 one aspect of it, in --

14 CHAIRMAN JABER: Okay.

15 MR. DEVLIN: -- about three years.

16 CHAIRMAN JABER: So does that mean in 2006,
17 if the plant is deferred, through surveillance,
18 the plant would have to be considered in rate
19 base, wouldn't it?

20 MR. DEVLIN: I'm sorry, ma'am.

21 CHAIRMAN JABER: If we defer the unit from
22 2005 to 2006, in considering what the company's
23 revenues would be and to try to figure out if
24 the revenue sharing agreement should be
25 extended, you know, bringing the company in to

1 take a look at what efficiencies are in place
2 2006 forward, what effect would a unit coming in
3 rate base at 2006 have on any sort of revenue
4 sharing mechanism?

5 MR. DEVLIN: Well, I think we would
6 probably be getting into a negotiating position
7 at that juncture, and we would be looking at the
8 impact that that would have on earnings. And,
9 of course, that comes into play in any kind of
10 settlement. And to the extent the earnings are
11 adequate, the company would be more willing to
12 enter into an extension of the revenue sharing
13 plan. That's just one aspect of many we'll have
14 to consider at that time.

15 CHAIRMAN JABER: Okay. On page 5 of the
16 PACE brief, you know, I think they ask a very
17 good question. Why not simply purchase 15
18 megawatts of inexpensive peaking capacity for
19 one year?

20 MR. HAFF: And that's a fair question. FPL
21 was concerned about going through not one, but
22 two RFP processes in this case, and to go
23 outside the RFP to purchase 15 megawatts in
24 their mind would have raised even more, I guess,
25 questions about the credibility of the RFP

1 process. Certainly they could have gone out and
2 purchased 15 megawatts.

3 CHAIRMAN JABER: I don't understand what
4 you just said, Mike. They're concerned about
5 going through the RFP process twice. Why? is
6 the first question. The second question is, if
7 they only need 15 megawatts, they only need 15
8 megawatts, so why would anyone question the
9 credibility of an RFP that seeks 15 megawatts?

10 MR. HAFF: I'm talking about the original
11 supplemental RFP process for what ultimately
12 was, I think, 1,700 megawatts. FPL was
13 concerned about when they received bids and
14 reviewed their own projects that Martin or
15 Manatee Unit 3 would meet all but 15 megawatts.
16 And then to then say, "Well, we're going to go
17 outside the RFP to purchase the remaining 15
18 megawatts," in FPL's mind would have called into
19 question, why are they going outside the RFP to
20 find 15 megawatts.

21 As far as cost-effectiveness, it was more
22 cost-effective to build Martin in 2005 anyway.
23 I know there's questions about the need, and
24 we've raised them. But to defer Martin by a
25 year was \$18 million more costly than to build

1 it in 2005, so I guess one way of looking at is
2 if they got the 15 megawatts for free, it would
3 still be \$18 million more costly to defer Martin
4 by a year.

5 CHAIRMAN JABER: On the next page, but
6 along those lines, PACE makes the assertion that
7 FP&L purposefully designed the RFP so as to
8 prohibit bidders from offering proposals of
9 fewer than three years or less than 50
10 megawatts. So how do you reconcile that
11 statement from what you just said, Mike? I
12 think the allegation here is they never intended
13 to go out of their RFP and seek the 15
14 megawatts. In fact, the allegation is the RFP
15 was structured such that no one could have bid
16 on anything lower than 50 megawatts. So I can't
17 reconcile what you just said with this.

18 MR. HAFF: It's sort of just the way it
19 turns out with Manatee being picked or chosen in
20 2005 that there's 15 megawatts remaining. Of
21 the thousands of combinations of RFP projects
22 and self-build projects that FPL evaluated,
23 there were some combinations that met their
24 identified need in 2005 that did not include
25 Manatee. There were several -- the short list

1 included a couple of projects that when combined
2 together would have not resulted in this
3 15-megawatt deficiency in 2005.

4 I don't necessarily have a question with
5 how the RFP was designed. I don't know of any
6 of the -- any previous investor-owned utility
7 RFPs that had anything less stringent than this
8 for short-term, because there has to be a
9 certain, I guess, level, minimum level and
10 minimum term for evaluating needs. It just so
11 happened that in this case, with Manatee being
12 chosen in 2005, that there was a 15-megawatt
13 piece left out there.

14 CHAIRMAN JABER: Are you saying that when
15 they issued the RFP, they did not know that it
16 would be a 15-megawatt deficiency for the year
17 2005?

18 MR. HAFF: They couldn't have known
19 conclusively unless Manatee happened to be the
20 winner for the 2005 need.

21 COMMISSIONER BAEZ: But isn't the existence
22 of the 15-megawatt shortfall -- I mean, you can
23 run scenarios and say, "All right. If Manatee
24 comes in 2005, because we know it's out there,
25 this is what's left over." I mean, this isn't a

1 case that 15 megawatts kind of appeared out of
2 nowhere, is it?

3 MR. HAFF: No. They most certainly knew on
4 the front end that they needed 1,100 or 1,122
5 megawatts in 2005, and they also knew beforehand
6 that Manatee Unit 3 was 1,107 megawatts. They
7 knew if Manatee was to be chosen in 2005, there
8 would be 15 megawatts left. They just -- I
9 don't have evidence that shows that they knew
10 they were going to win their own RFP.

11 COMMISSIONER BAEZ: No, and that's not what
12 I'm suggesting. I'm saying there's -- I guess
13 the shortfall, considering one option possibly,
14 whether it was the best or not, but just within
15 the realm of possibility, it did leave a
16 shortfall that could have been known.

17 MR. HAFF: Yes.

18 COMMISSIONER BAEZ: Okay.

19 CHAIRMAN JABER: Not knowing what the
20 shortfall would be, but it -- so, see, in that
21 regard -- and I don't know that it necessarily
22 in my mind relates to a concern I have with this
23 case, but just going forward, for that reason
24 alone, I wonder if it's inappropriate to include
25 a minimum amount in the RFP, because you sort of

1 foreclose, unintentionally or intentionally --
2 you know, I don't -- because you're right, the
3 record doesn't support any of that, at least not
4 in my mind.

5 But it seems to foreclose opportunities of
6 selecting different combinations, which I think
7 is PACE's point. PACE is saying, if we would
8 have known, you know, that sort of combination
9 was possible, we could have provided a -- our
10 members could have provided bids to address that
11 15 megawatts.

12 MR. HAFF: Correct.

13 CHAIRMAN JABER: On page 10 --

14 MR. HAFF: Is this the brief, Madam
15 Chairman?

16 CHAIRMAN JABER: Yes, the PACE brief. PACE
17 gives examples of where they believe the RFP
18 process -- the bidding rule process was not met.
19 And I know you covered a couple of these in the
20 recommendation. For the purposes of fleshing
21 out the record, I would like for you to address
22 the rest of them.

23 The examples addressed in the brief, at the
24 middle of the page, they say FP&L didn't
25 disclose that bids less than FP&L's full need in

1 any year would be combined with other bids in
2 the evaluation process. That's what we just
3 discussed. FP&L did not disclose that the
4 allocation of the O&M costs between fixed and
5 variable categories would be an important
6 evaluation factor. Can you speak to that?

7 MR. HAFF: Well, the RFP itself, I guess
8 in order to be flexible, let bidders bid
9 proposals with, among other things, O&M costs
10 fixed and variable. And the RFP, as I see it,
11 it gave the bidder the flexibility to break
12 their O&M costs either into a lot of variable
13 and some fixed, or vice versa. It didn't
14 restrict how the bidders divvied up their O&M
15 pot of dollars, if you will.

16 CHAIRMAN JABER: Right. But if I
17 understand PACE's argument correctly, it's not
18 that there's an allegation that they were
19 restricted in how they submitted the bid. It's
20 that they didn't know that this would be such a
21 strong evaluation factor. I suppose it goes
22 back to the concern on weighting and ranking.
23 That's the allegation, that if we would have
24 known an importance would be given to the way we
25 separated fixed and variable costs, you know,

1 maybe they would have sought clarification.

2 MR. HAFF: This gets sort of to Issue 11(b)
3 on page 33. And the reason, in my mind, it
4 became an issue is that some of the bids had --
5 their breakdown of O&M costs, more costs were
6 put into the variable pot and less into the
7 fixed pot. And all else being equal, if a unit
8 has some higher variable costs, it may be
9 dispatched less often.

10 So in running their EGEAS model and
11 determining the dispatch and ultimately the cost
12 of running an expansion plan, projects with
13 higher variable O&M may have been dispatched
14 less, and I believe that's what this concern is
15 getting to. And the FPL witnesses, Dr. Sim and
16 Mr. Taylor, if I recall, stated only that in
17 running the evaluations, that they used exactly
18 what was bid, and it's up to the bidder to
19 determine how they want to divide the O&M pot of
20 dollars, if you will.

21 CHAIRMAN JABER: And with respect to how
22 FP&L reviewed the division between fixed and
23 variable categories and the weight they put on
24 that division in evaluating the bid, in your
25 professional opinion, meets the current bidding

1 rule?

2 MR. HAFF: Yes.

3 CHAIRMAN JABER: FP&L provided no
4 assurances that a bidder who took exceptions to
5 any provisions in the RFP, the bidder would not
6 be unfavorably evaluated, is the next
7 allegation.

8 MR. HAFF: I believe this gets to some
9 discussion where the RFP -- I don't recall
10 exactly what page, but the RFP told bidders if
11 they had specific objections to something in the
12 RFP to so state them.

13 I believe this -- I believe the statement
14 stated that FPL would, of course, prefer bids
15 with fewer exceptions, meaning I guess
16 ultimately if they got to the negotiation table
17 to negotiate a project, there would be less to
18 overcome if there were fewer objections or --

19 CHAIRMAN JABER: Were any bidders --

20 MR. HAFF: -- exceptions to the RFP.

21 CHAIRMAN JABER: Well, were any bidders,
22 though, immediately removed from consideration
23 because they stated exceptions?

24 MR. HAFF: Not that I'm aware of. In fact,
25 I'm not aware that there were many exceptions

1 taken in the responses to the bids.

2 CHAIRMAN JABER: Okay. FP&L did not
3 disclose that with respect to bids received from
4 other Florida utilities, a reserve margin
5 assessment would be made to determine if in
6 FPL's opinion the utility was able to meet its
7 own 20% reserve margin requirements.

8 This relates to the testimony we heard
9 regarding TECO's proposal. And I have to tell
10 you, as I heard the testimony, it gave me
11 considerable concern that FP&L didn't consider
12 the TECO proposal because in FP&L's mind, TECO
13 would not be able to meet the 20% voluntary --

14 MR. HAFF: Yes, and that's --

15 CHAIRMAN JABER: Voluntary standard on
16 reserve margin.

17 MR. HAFF: And that's discussed in Issue
18 11(g) on page 42. And we --

19 CHAIRMAN JABER: What's discussed in 11(g)
20 on that page is that staff believes there is a
21 legitimate concern with regard to if TECO can't
22 meet their reserve margin, TECO would be placed
23 in an awkward situation of choosing between TECO
24 customers and providing service under a
25 long-term contract with FP&L. What's not

1 discussed in the recommendation is the concern
2 related to disclosing that in the RFP.

3 MR. HAFF: Correct.

4 CHAIRMAN JABER: And I keep coming back to
5 that. I know at the end of the day, FP&L may be
6 correct with respect to the concern. The
7 allegation is, you've got to tell someone ahead
8 of time that you're going to have that concern
9 so they can govern themselves accordingly. And
10 I think that's what PACE's allegation is. Maybe
11 TECO would not have submitted the bid. Maybe
12 the next company would not submit the bid.

13 MR. HAFF: I guess my first impression is
14 that there's -- so that the RFP, I guess, is
15 flexible where there can be various types of
16 projects proposed, that there be a minimum of
17 restrictions, I guess, on the types of projects
18 that can be proposed. And I guess in my mind,
19 it would be difficult to envision every single
20 scenario such as this thing with TECO. I mean,
21 I guess FPL could lay out every single thing
22 that would cause a concern with a bid, and --

23 CHAIRMAN JABER: Well, how many customers
24 are subject to the 20% voluntary stipulation?

25 MR. HAFF: How many utilities?

1 CHAIRMAN JABER: Uh-huh.

2 MR. HAFF: Three. It's TECO, Florida Power
3 & Light, and Florida Power Corporation.

4 I guess if -- I don't know that this
5 particular concern that FPL had with TECO could
6 have been envisioned on the front end when
7 writing an RFP. There are a number of things, I
8 guess, that could have been -- concerns that
9 could have been envisioned, and the more you put
10 them in the RFP, I guess, you know, it could
11 grow.

12 CHAIRMAN JABER: Okay. So again, I'll ask
13 you the same question. In your professional
14 opinion, removing a company from consideration
15 because of the fear that the company's reserve
16 margin would not be met is consistent with the
17 current bidding rule?

18 MR. HAFF: I believe it's consistent. But
19 also what we haven't discussed, and it's not
20 necessarily addressed in this issue, but in the
21 cost-effectiveness issue, TECO was part of a
22 portfolio that was not -- I guess they were sort
23 in the ballpark for being included on a short
24 list. There were a couple of short lists, you
25 might recall from the hearing, one that was the

1 sort of cut, I guess first draft short list,
2 which included TECO, I believe, Calpine, Florida
3 Power Corporation, and El Paso. That wasn't the
4 official short list. One of the other discussion
5 or the reasons given for TECO not being included
6 on the ultimate short list for negotiation was
7 because they weren't in the grouping that was
8 cost-effective, competitively cost-effective.

9 CHAIRMAN JABER: Okay. And TECO did not
10 intervene in this case? They weren't a party in
11 this case?

12 MR. HAFF: Not at all, no.

13 CHAIRMAN JABER: Okay. With respect to
14 page 18 of PACE's brief, they say to compare
15 FP&L's availability with peak firing to the
16 proposal of a bidder without peak firing mode is
17 misleading. Could you address that concern,
18 please.

19 MR. HAFF: Are you in the second full
20 paragraph?

21 CHAIRMAN JABER: Yes, uh-huh.

22 MR. HAFF: I'm looking for it.

23 CHAIRMAN JABER: Basically, the assertion
24 is that FP&L's methodology on their peak firing
25 mode is aggressive and optimistic, and to

1 compare what they did to a proposal of a bidder
2 without the peak firing mode is -- I took it to
3 be like apples to oranges is the assertion that
4 they're making.

5 MR. HAFF: My understanding of the way
6 these projects were modeled -- and I can give
7 you a little background. The bidders, the bid
8 projects, if they gave a heat rate or an
9 availability number, they were modeled as given
10 for all modes, whether it be peak firing, normal
11 operation, et cetera. I guess you're talking
12 about the 99% unavailability.

13 CHAIRMAN JABER: Uh-huh.

14 MR. HAFF: That just assumes that peak
15 firing is available 1% of the time. And in
16 running the EGEAS model for the self-build
17 options, Martin and Manatee, my understanding is
18 that FPL ran the model assuming peak firing 1%
19 of the time, normal operation, 97% availability,
20 et cetera, and that they modeled their own
21 project -- actually, this is a disadvantage to
22 FPL, because if a bidder, say, bid a 98%
23 availability, they ran that percent available
24 for all modes, where as Florida Power & Light
25 for its own units modeled normal mode at 97%,

1 peak mode at 1%, and it actually was a detriment
2 to FPL's units.

3 CHAIRMAN JABER: Is that in the record,
4 Mike?

5 MR. HAFF: Yes.

6 CHAIRMAN JABER: Commissioners, from the
7 briefs, those are the only questions I have.
8 I've got questions on the recommendation, but
9 whatever your pleasure is.

10 COMMISSIONER DEASON: Madam Chairman, I
11 would suggest that we just go issue by issue in
12 the order as recommended by staff.

13 CHAIRMAN JABER: Sounds good. Staff
14 recommends that we take up Issue 2 first, page
15 9. Any questions?

16 COMMISSIONER DEASON: I have no questions,
17 and if there are no other questions, I can move
18 staff on Issue 2.

19 CHAIRMAN JABER: I need a second.

20 COMMISSIONER BRADLEY: Second.

21 CHAIRMAN JABER: There's a motion and a
22 second to approve staff on Issue 2. All those
23 in favor say aye.

24 (Simultaneous affirmative responses.)

25 CHAIRMAN JABER: Issue 2 is approved.

1 Issue 4, page 14.

2 COMMISSIONER DEASON: I have a question.

3 CHAIRMAN JABER: Commissioner Deason.

4 COMMISSIONER DEASON: I'm looking at page
5 15 of the recommendation, the first full
6 paragraph on that page. At the end of that
7 paragraph, there's a statement, and it says,
8 "Commission approval of Manatee Unit 3 does not
9 relieve FPL from its responsibility to prudently
10 manage costs associated with the unit. The
11 Commission will review actual costs in
12 subsequent recovery clause or rate case
13 proceedings."

14 And I guess my question to staff is, if
15 this unit is approved and we find ourselves
16 reviewing the costs of the unit in some future
17 rate base proceeding, will we require FP&L to
18 justify any costs over the amount that was bid
19 in this need determination proceeding?

20 MR. HAFF: I believe so, yes.

21 COMMISSIONER DEASON: And it would be your
22 position that FP&L would have the burden to
23 justify any cost differences?

24 MR. HAFF: Yes.

25 COMMISSIONER DEASON: What if the amount

1 that they actually -- the actual capital costs
2 to construct the unit is less than the \$551
3 million that was projected? We would use the
4 lower number in the rate base proceeding?

5 MR. HAFF: It's my understanding, yes.

6 COMMISSIONER DEASON: Mr. Devlin; is that
7 correct?

8 MR. DEVLIN: We would use actual costs.

9 COMMISSIONER DEASON: Actual costs?

10 MR. DEVLIN: I guess if they came in
11 significantly below their projected costs, they
12 may -- there may be argument for a reward of
13 some sort, but normally we'll go with the
14 original cost.

15 COMMISSIONER DEASON: Normally we use
16 actual costs; correct?

17 MR. DEVLIN: Yes.

18 COMMISSIONER DEASON: But I think in answer
19 to a previous question, if those actual costs
20 are in excess of what was bid in the need
21 determination, there's a burden upon the company
22 to justify that.

23 MR. DEVLIN: That's correct.

24 COMMISSIONER DEASON: There's also a
25 discussion on page 15 dealing with the heat rate

1 and the availability factors, which I think has
2 been alleged to be fairly on the optimistic
3 side, but I think staff has made the evaluation
4 that this is consistent with recent actual
5 operation; is that correct?

6 MR. HAFF: That's correct. At Manatee --
7 or, I'm sorry, Martin Units 3 and 4, they have
8 similar operating experience with those units.

9 COMMISSIONER DEASON: What will happen in
10 the future if we approve this unit, it gets
11 constructed and it is operating, and it is not
12 available 97% of the time and it does not
13 achieve the target heat rate of 6,850 Btu per
14 kilowatt-hour?

15 MR. HAFF: That is something that the
16 Commission would address in the fuel adjustment
17 and in the GPIF proceedings. If they aren't
18 meeting their targets, I guess short term, say,
19 over a one-year period, if they're not meeting
20 the target, then we would -- you know, I guess
21 the Commission could give them a penalty. And
22 if it was a consistent concern, I guess we would
23 have to address that in a separate proceeding.

24 I don't have any evidence that they won't
25 be able to meet these targets, given their

1 operating experience at other similar units.

2 COMMISSIONER DEASON: So it's your position
3 that these projections that the bid is based
4 upon, the heat rates and availability, is
5 consistent with achievable standards that FP&L
6 has met in the recent past, and that if these
7 amounts are not met, then it would be reviewed
8 in the context of GPIF, and if it's a consistent
9 pattern of nonattaining these amounts, then it
10 could be even reviewed in the context of a base
11 rate proceeding, if possible, if needed?

12 MR. HAFF: I believe so, yes.

13 COMMISSIONER DEASON: Mr. Devlin, you
14 agree with that too?

15 MR. DEVLIN: Uh-huh.

16 COMMISSIONER DEASON: That's all the
17 questions I have, Madam Chairman.

18 COMMISSIONER PALECKI: I have a question
19 with --

20 CHAIRMAN JABER: Commissioner Palecki.

21 COMMISSIONER PALECKI: -- regard to
22 cost-effectiveness and fuel diversity. I've
23 expressed my concerns in past dockets about the
24 lack of fuel diversity we're seeing and the fact
25 that not only in the State of Florida, but

1 across this country, we're seeing only natural
2 gas combined cycle plants approved, and I'm very
3 concerned for the ratepayers going out into the
4 future. When I see everyone acting in lock
5 step, I think there must be something wrong, and
6 perhaps somebody needs to think in a different
7 manner.

8 But my question is this: what analysis has
9 staff done with regard to impact on the
10 ratepayers and the cost-effectiveness issue here
11 if natural gas prices exceed the peak that they
12 achieved in January of 2001? And, you know,
13 what I'm reading from many of the projections
14 that I'm seeing is that natural gas prices over
15 the next four years are expected to either meet
16 or exceed that rate, and also that there may be
17 a coming crisis in natural gas in this country
18 exactly because everybody is building combined
19 cycle plants.

20 MR. HAFF: I guess your question gets to
21 the actual cost of operating units in the ground
22 that consume natural gas, if the prices were to
23 go up some substantial level, what would that do
24 to their costs?

25 COMMISSIONER PALECKI: Well, I guess

1 generally that's my question, but more
2 specifically my question is, with regard to
3 these two units that we're considering today,
4 have you considered the effect on the ratepayers
5 if we see natural gas prices that exceed the
6 January 2001 price peak?

7 MR. HAFF: We haven't performed that
8 analysis.

9 In this case, in comparing alternatives, of
10 course, most all of them were gas-fired combined
11 cycles, so as far as comparing one alternative
12 to another, any change in gas prices would
13 likely affect all of the projects equally. But
14 to get to your question of how it would impact
15 the customers' costs on the end, we haven't
16 performed any sort of evaluation.

17 COMMISSIONER PALECKI: Isn't it our
18 obligation as a Commission to do that analysis,
19 to ensure that we're choosing the most
20 cost-effective alternative?

21 MR. HAFF: Well, I mean, I guess certainly
22 we review fuel costs on a going-forward basis
23 through the fuel clause. But as far as the most
24 cost-effective alternative, comparing, say, a
25 gas-fired combined cycle to a coal unit, you

1 know, it's really hard to say.

2 MR. HARRIS: Commissioner, I think it would
3 be difficult for the Commission to go outside of
4 the record testimony and evidence that was
5 presented and compare those costs.

6 My understanding of the record is that we
7 did not develop any testimony or evidence as to
8 alternatives to the projects that were bid,
9 which were mainly natural gas combined cycle.
10 To do so, to consider other alternatives, I
11 think there would have had to have been some
12 type of testimony that reflected either the risk
13 of increased natural gas prices or alternatives
14 from other sources of fuel, either fuel oil or
15 coal. That was not a part of this record, and I
16 think it would be very difficult for the staff
17 at the beginning of a need determination to
18 identify that as a proposed issue.

19 Staff could do it, of course, but in this
20 case, I don't think any of the staff did
21 identify that the increase statewide and
22 nationwide of natural gas combined cycle was a
23 factor to be dealt with as an issue in this need
24 determination, where we were comparing the
25 least-cost alternatives for the 2002 and 2006

1 need of Power & Light.

2 COMMISSIONER PALECKI: Well, who has the
3 burden of making a record that demonstrates that
4 a unit is the most cost-effective alternative?

5 MR. HARRIS: Commissioners, off the top of
6 my head, and I don't speak for anyone else, I
7 think that perhaps some type of investigations
8 docket might be considered, a generic docket
9 where the Commission could investigate under its
10 own authority the impacts of an increase in
11 natural gas in the state as it affects all the
12 utilities, the investor-owned and the municipals
13 and the independent power-producing industry,
14 because it would be a generic issue that would
15 be applicable to all the power generation in the
16 state, not just one company's proposed need.

17 COMMISSIONER PALECKI: But I thought in a
18 need determination there was a specific
19 obligation on the moving party for the need to
20 demonstrate that the proposed option is the most
21 cost-effective alternative.

22 MR. HARRIS: That's correct. And on the
23 basis of this record, I believe Florida Power &
24 Light has presented record testimony that their
25 proposals are the most cost-effective

1 alternatives, given the constraints that we face
2 today, given the bids that they received, their
3 estimates of plants that they could build and
4 the cost for those plants.

5 I don't believe that the rule and the
6 statute require a company in a need
7 determination to present not only what they
8 believe the best technology is, the most
9 cost-effective technology, but then alternatives
10 to that technology also. I don't believe that
11 Power & Light is under a burden to present, or
12 any utility would have been under a burden to
13 present, "This is what we believe to be the most
14 cost-effective option, but in case there's a
15 concern about the overloading of this
16 technology, here are some other options we have
17 also, coal, fuel oil, nuclear."

18 MR. HAFF: To add to that point, sort of on
19 the front end before the RFP is even issued,
20 Florida Power & Light looks at all fuel
21 technologies to determine which self-build
22 technology is in their mind the best
23 alternative, and that's when they look at coal
24 and they look at combustion turbine and I guess
25 some other technology. So they do review that.

1 It's preliminary in the process. And there was
2 testimony in this case from Mr. Yeager, I
3 believe, that they looked -- FPL looked at
4 different technologies, and, of course, on a
5 base case basis, that the gas-fired combined
6 cycle was their best option.

7 COMMISSIONER PALECKI: You know, I think
8 that I probably have to accept responsibility
9 along with every Commissioner here that this was
10 not an issue, because it has come to my
11 attention very recently, mostly through the
12 media and articles that I've read, that we are
13 facing a natural gas crisis going into the
14 future. And I'm very concerned about this
15 Commission approving plants that are just in
16 lock step with everybody else that might just
17 contribute to the problem and, you know, a year
18 or two years out after these plants are already
19 built, we realize that we've made a horrible
20 mistake and that the ratepayers are having to
21 suffer because we've made a mistake.

22 But I agree with you on one point, that it
23 has not been made an issue in the record in this
24 docket, and I'm kind of -- I have to accept the
25 responsibility for that myself.

1 CHAIRMAN JABER: Commissioner Palecki,
2 there's a statement you made I can't let go for
3 purposes of making sure, again, that the record
4 is fleshed and our discussion is fleshed.

5 I don't think in regard to recent
6 facilities and prior facilities that have gone
7 through the need process where natural gas was
8 the primary fuel factor that that necessarily
9 will ever result in someone looking back and
10 thinking there has been a mistake.

11 I think it's real important to look at that
12 as a comprehensive -- in a comprehensive
13 analysis and understand and appreciate that
14 companies also do things like hedging and buying
15 at the right time and, you know, maximizing
16 efficiencies and economies of scale.

17 So I just didn't want to leave the
18 impression that we believe that any of these
19 decisions, you know, in hindsight have resulted
20 in a mistake. Certainly as one Commissioner, I
21 don't think so.

22 COMMISSIONER PALECKI: I'm sorry, Madam
23 Chairman. Perhaps I should only speak for
24 myself. I'm very concerned, especially based
25 upon what I've been reading over the past

1 several months about a crisis that we may see in
2 the future in the natural gas markets.

3 CHAIRMAN JABER: Okay. Commissioners, any
4 other questions?

5 COMMISSIONER DEASON: Madam Chairman, let
6 me address that for just a second.

7 You know, I share those concerns, but at
8 the same time, I think it is important for us to
9 realize what we're doing here. We're in a need
10 determination proceeding. We have utilized a
11 bid process, and what we are doing is, we are
12 depending upon the market, market participants,
13 and they are certainly the people that are
14 willing to invest millions of dollars and put it
15 at stake, are certainly -- and with the
16 expertise in the engineering, they're the ones
17 that can evaluate and come forward with
18 proposals. And if someone felt that, for
19 example, a pulverized coal plant was going to be
20 so cost-effective because the price of natural
21 gas was going to escalate, they could put that
22 project together and they could come forward,
23 and we could depend upon the market to provide
24 that information to us.

25 So either we have to depend upon the

1 market, or if we think there are deficiencies in
2 the market, well, then we have to make an
3 evaluation that that process is not going to
4 work and that we've got to have something
5 similar to set-asides or something of that
6 nature, a certain percentage of our capacity is
7 going to be from renewables or is going to be
8 from non-natural gas, pulverized coal, or
9 something else.

10 I don't think we're there yet. And that
11 may be something for a future debate, and I'm
12 open-minded about it. But I don't think it's
13 fair to criticize this process at this time
14 based upon what we have in front of us, and I
15 would just state that for the record.

16 CHAIRMAN JABER: Okay. Commissioners, any
17 other questions on Issue 4 or a motion?

18 COMMISSIONER BAEZ: Madam Chair, I had --

19 CHAIRMAN JABER: Commissioner Baez.

20 COMMISSIONER BAEZ: -- just one brief
21 question. Going back to the line of questions
22 that Commissioner Deason had, there's three
23 numbers on this page 15, 551 million, 6,850 Btu
24 per kilowatt-hour, and 97%. Is there magic in
25 these numbers? I just want to drive the point

1 home. These are -- and it's sort of a -- it's a
2 loaded question, really. But these are the
3 numbers supposedly that in the future will be
4 prior testimony, I guess.

5 MR. HAFF: Held up.

6 COMMISSIONER BAEZ: The numbers that got
7 thrown up.

8 MR. HAFF: Maybe held up for future
9 skepticism.

10 COMMISSIONER BAEZ: Exactly, held up for
11 future analysis --

12 MR. HAFF: Sure.

13 COMMISSIONER BAEZ: -- in comparison to
14 what the actuals are.

15 MR. HAFF: Yes.

16 COMMISSIONER BAEZ: All right. Thank you.

17 CHAIRMAN JABER: Commissioners, a motion?

18 COMMISSIONER DEASON: We're on Issue 4;
19 correct?

20 CHAIRMAN JABER: Yes.

21 COMMISSIONER DEASON: I move staff.

22 COMMISSIONER BRADLEY: Second.

23 CHAIRMAN JABER: There's a motion and a
24 second to approve staff on Issue 4. All those
25 in favor say aye.

1 (Simultaneous affirmative responses.)

2 CHAIRMAN JABER: Issue 4 is approved.

3 That takes us to Issue 6, page 19.

4 COMMISSIONER DEASON: I have no questions.

5 I can move staff on Issue 6.

6 COMMISSIONER PALECKI: Second.

7 CHAIRMAN JABER: Motion and a second to
8 approve staff on Issue 6. All those in favor
9 say aye.

10 (Simultaneous affirmative responses.)

11 CHAIRMAN JABER: Issue 6 is approved.

12 Issue 8.

13 COMMISSIONER DEASON: I can move staff on

14 Issue 8.

15 COMMISSIONER BRADLEY: Second.

16 COMMISSIONER PALECKI: Second.

17 CHAIRMAN JABER: There's a motion and a
18 second to approve staff on Issue 8. All those
19 in favor say aye.

20 (Simultaneous affirmative responses.)

21 CHAIRMAN JABER: Issue 8 is approved.

22 Issue 13? No, 1. I read my 1 and my 3

23 together. That takes us back to Issue 1.

24 COMMISSIONER BAEZ: Back to 1? Okay.

25 CHAIRMAN JABER: Okay. On Issue 1, I just

1 had a basic mathematical question. 19.92% is
2 20%, in my mind. Somebody needs to correct me.

3 MR. HAFF: I agree with you.

4 CHAIRMAN JABER: Okay. So if you sort of
5 remove yourself from this proceeding and think
6 about prospectively as you take a look at FP&L
7 and whether they are complying with their
8 voluntary stipulation, if you saw the number
9 19.92% as a reserve margin, would you penalize
10 them, or would you think it was 20%?

11 MR. HAFF: I would view it as 20%. And
12 additionally, I write the ten-year site plan
13 review for the Commission, and we have -- if I
14 saw it in a ten-year site plan, I would see that
15 as 20%.

16 CHAIRMAN JABER: And let me tell you why
17 that's important in my mind. Commissioners, if
18 we are going to approve the Martin unit, that
19 may be fine at the end of the day. But I have
20 to tell you, in my mind, it's not because 19.92%
21 of a reserve margin is not sufficient enough for
22 -- again, this is one Commissioner speaking, in
23 terms of the company complying with their
24 voluntary stipulation.

25 what I'm much more inclined to focus on is

1 whatever benefits the customers derive from the
2 plant coming on line a year earlier from the
3 economies of scale and the efficiencies that are
4 gained and the savings, the cost savings
5 associated with both of those plants being
6 constructed. But I have to tell you, the
7 distinction between 19.92% and 20% reserve
8 margin did nothing for me.

9 COMMISSIONER DEASON: Madam Chairman, may I
10 add to that?

11 CHAIRMAN JABER: Please.

12 COMMISSIONER DEASON: I agree with you.
13 There's not a significant difference between
14 19.92% and 20%. Particularly when you're
15 looking at a company the size of FP&L and the
16 diverse resources they have, that's really
17 negligible.

18 I think what we need to look at, and I
19 think you alluded to this also, is that we've
20 got to look at a broader picture here, and we
21 have to take into consideration other aspects
22 other than just a strict adherence to a target
23 reserve number, even though I think the 20%
24 target is a good target. I don't take issue
25 with the 20%. And I think that we need to be

1 mindful of the bigger picture.

2 And, staff, correct me if I'm wrong. Back
3 about four years ago, we were considering the
4 need for a power plant to be constructed by Duke
5 at New Smyrna. Now, we made a decision that was
6 overturned by the Court, and I don't take issue
7 with the Court's interpretation of the law.
8 There was not standing to come forward and even
9 petition for a need determination. However, our
10 decision that we made, I think we looked at a
11 broader picture there, and we looked at need not
12 in the strict sense of a certain reliability or
13 reserve margin target. We also looked in terms
14 of economic need. Am I correct on that?

15 MR. HAFF: Correct. That's correct.

16 COMMISSIONER DEASON: And I think that we
17 need to be careful that when we look at need
18 that we don't restrict it simply to a very
19 strict interpretation of a very precise target
20 number, that we also need the latitude to look
21 at economic need and value added, that perhaps
22 there are scenarios in the future that may come
23 forward that there's value added.

24 And as Commissioner Palecki alluded to,
25 there may be a situation where we get projects

1 in the future in future bid proceedings and need
2 determinations where we put some value on fuel
3 diversity. Maybe there is a project in the
4 future that has some fuel diversity and we put
5 some premium on that. I think that's some of
6 the discretion we need to keep.

7 It seems to me that it may be shortsighted
8 to be arguing that we need to look only at a
9 strict target, that we need to look at need in
10 terms of economic need as well. There may be a
11 time in the future, and who knows, where a
12 certain market participant has access to a
13 certain technology, and while we may be at a 20%
14 reserve margin, they can come forward and build
15 a plant that is so economic that we would
16 determine that it is needed simply based upon
17 the economics, that it provides so much cost
18 savings to customers that it is needed based
19 upon the economics of the proposal. And I think
20 we need to retain that discretion as well.

21 So those are my thoughts, Madam Chairman.

22 COMMISSIONER BAEZ: A question.

23 CHAIRMAN JABER: Commissioner Baez.

24 COMMISSIONER BAEZ: And I guess I would
25 agree with the comments that have been made. I

1 just want to understand then what the basis of
2 this decision on this issue would be, because I
3 wouldn't be -- I wouldn't be in favor of
4 endorsing what I also consider to maybe border
5 on pretext. I mean, I don't think -- you know,
6 I need a ride to the corner, so I'm going to buy
7 the car. You know, I mean, there are many
8 different ways of addressing it, and I wouldn't
9 want to accept the premise that a .8 -- .08, is
10 it?

11 CHAIRMAN JABER: .08.

12 COMMISSIONER BAEZ: You know, shortfall was
13 somehow justifiable for this magnitude of a
14 project.

15 So I guess my question would be, exactly
16 what does this issue address? Is it something
17 more than that or not?

18 MR. HAFF: This issue addresses the need
19 for the plant, the need for megawatts, if you
20 will, to meet a load forecast. It's just that,
21 do they need the plant.

22 CHAIRMAN JABER: No, but I think
23 Commissioner Baez's question goes to, which is
24 precisely why I brought up my concern, that
25 staff's recommendation that there is a need for

1 this plant because FPL has to meet a strict 20%
2 reserve margin. I hope that's not staff's
3 recommendation. I read --

4 MR. HAFF: No.

5 CHAIRMAN JABER: -- into staff's
6 recommendation that it's also because there are
7 cost savings that benefit the consumers in the
8 long run by putting this plant into service in
9 the year 2005, the latter part of the
10 recommendation statement, Commissioner Baez.

11 COMMISSIONER BAEZ: And I understand that.
12 But my way of taking the recommendation, Madam
13 Chairman, was that these were somehow in
14 addition to, and -- or, in essence, thinking of
15 all things being equal, it does add reliability.
16 So I'm also uncomfortable -- I'm uncomfortable
17 even with that thought process as well.

18 And moreover, I'm uncomfortable -- I want
19 to get clear the effect of the decision on this
20 issue, because I want to understand what the
21 fallouts are. And this issue -- and certainly
22 voting on this issue now may be putting the cart
23 before the horse on some level. Do you
24 designate something as more cost-effective if
25 your issue is saying do you need a 700-megawatt

1 plant?

2 MR. HAFF: This issue -- if you vote no on
3 this issue, it just means that you're deciding
4 that they don't need -- that FPL does not need
5 Martin Unit 8 in 2005. I apologize if it wasn't
6 clear. I'm recommending that they don't need
7 the full capacity of Martin 8 on a reliability
8 basis until 2006. Voting this issue has no
9 effect on, at least from this person, from this
10 point of view, on cost-effectiveness, which you
11 would vote in another issue.

12 COMMISSIONER BAEZ: Well, again, I just
13 want to understand what the statement of a
14 positive or negative decision is. I mean, it
15 says --

16 COMMISSIONER DEASON: I think part of the
17 problem is that in answering this question, our
18 staff has deviated from our own instruction.
19 It's a yes or no question, and they didn't
20 answer yes or no. They explained without -- and
21 I'm not faulting them. They really did not
22 answer, in my opinion -- at least looking at the
23 one-paragraph recommendation, they really didn't
24 answer yes or no. I think the message is that
25 it's not needed on a strict reliability

1 standard, but there are other considerations
2 which justify the construction of the plant.

3 CHAIRMAN JABER: For 2005. That's the
4 other distinction he's trying to make.

5 MR. HAFF: Correct.

6 CHAIRMAN JABER: It doesn't need it for the
7 reliability standard in terms of the year 2005,
8 but staff recommends that there is a need in
9 terms of integrity and reliability for 2006.

10 MR. HAFF: Correct. And the last sentence
11 in the recommendation statement is just meant to
12 say that adding Martin 8 in 2005 doesn't
13 adversely affect reliability, it enhances it.
14 Whether it's all needed in 2005 is the other
15 question.

16 CHAIRMAN JABER: We could, of course,
17 Commissioners --

18 COMMISSIONER DEASON: Well, now, let me ask
19 a question in that regard. We did have
20 testimony, did we not, though, that looked at
21 the transmission upgrade costs that may be
22 necessary if you staggered these units and built
23 one on one side of the state and then waited a
24 year and built another one on the other side of
25 the state? With units of this magnitude, there

1 would be transmission cost impacts. And I guess
2 that may go to the cost-effectiveness of the
3 timing of the construction of the plants.

4 MR. HAFF: Yes, that's correct.

5 COMMISSIONER DEASON: Does it have -- I
6 guess to maintain the reliability of building
7 one plant of this size on one side of the state,
8 that there would be needed transmission upgrades
9 to make sure there's no detrimental effect upon
10 reliability; is that correct?

11 MR. HAFF: And that's correct, when you
12 assume that the units are split by year. If
13 you're adding one one -- adding Manatee in 2005
14 and Martin in 2006, you're correct, that
15 transmission line is needed really only for that
16 one year.

17 COMMISSIONER BAEZ: Commissioners, here's
18 -- I guess as clearly as I can define it in my
19 mind, here's the concern that I have.

20 First of all, the issue has Martin Unit 8.
21 Okay. Martin Unit 8 is a plant of some -- of
22 considerable capacity, and the question is, do
23 you have a need for it. And I think we've as
24 much as -- we've discussed the comparable or the
25 exaggeration of the 15-megawatt shortfall and

1 how that creates a conflict in you to say,
2 "well, there's a shortfall on the 20% margin,
3 and so by addressing that, are we going to
4 answer an ultimate question of a plant of some
5 magnitude to address that need?" And I guess
6 I'm uncomfortable with this issue in particular
7 being so specific.

8 I mean, is there -- because to me, the
9 ultimate question that the issue is asking is,
10 do you need 700 megawatts to cover a 15-megawatt
11 shortfall? And if we ask it that way, the
12 answer to me is clear. Regardless of whether
13 it's more cost-effective for 2006, those
14 questions remain to be seen, and I see it as --
15 that's where the efficiencies of perhaps
16 avoiding some transmission costs and so on come
17 into play. But I'm a little uncomfortable with
18 this question that's being asked here, at least
19 in the way --

20 CHAIRMAN JABER: I understand your point,
21 Commissioner Baez. I understand, and I think
22 where also I'm not willing to agree with
23 something you just said -- and I think we're
24 saying the same thing. On the shortfall, the
25 reserve margin shortfall, I don't even think

1 there's a reserve margin shortfall.

2 COMMISSIONER BAEZ: Well, yes, I agree with
3 you.

4 CHAIRMAN JABER: For the reasons we all
5 articulated.

6 COMMISSIONER BAEZ: I don't think that the
7 differential is -- I think it's de minimis. I
8 don't think that in any -- if the company came
9 in and said, "Hey, guys, we're .08 short," that
10 anyone was going to take issue at the end of the
11 day.

12 MR. HAFF: No, we didn't.

13 COMMISSIONER BAEZ: So I'm convinced of
14 that. I sense that the rest of you are as well,
15 so I'm worried about giving it that kind of --

16 CHAIRMAN JABER: Well, here's an idea.
17 This same discussion -- in terms of the record
18 evidence, this is critical. But Commissioner
19 Baez's good point about this record evidence
20 really goes to the cost savings and the
21 cost-effectiveness of the Martin unit. And I
22 notice the next issue has us voting on need for
23 the unit at a reasonable cost. You guys need to
24 correct me if we're on thin legal grounds. It
25 seems to me making sure this discussion occurs

1 in some part of the order negates, may negate
2 the need to vote with respect to finding a need
3 for Martin Unit 8 as it relates to reliability
4 and integrity. Commissioner Baez, that's one
5 option, until Martha tells me we're wrong.

6 The second option may be that, obviously,
7 we modify staff's recommendation to encompass
8 what we just --

9 COMMISSIONER BAEZ: Well, and I guess I see
10 it as a timing -- I see it as a timing issue. I
11 mean, by saying yea or nay to an existing need
12 of -- and again, I can't stress enough, you
13 know, the unit says Martin Unit 8. Martin Unit
14 8 has a specific -- there is a specific concept.
15 It is a project of known size and capacity, you
16 know, so I guess to me it's a timing question.
17 Do you need that project for 2005? And I see it
18 as that -- I mean, maybe it's a matter of
19 breaking it down --

20 CHAIRMAN JABER: Ms. Brown?

21 COMMISSIONER BAEZ: -- along those lines.

22 MS. BROWN: Commissioner, it seems to me
23 that we can take care of this when we get to
24 writing the order. These issues are determined
25 in part by statute, and they are confining to

1 some extent.

2 COMMISSIONER BAEZ: I understand.

3 MS. BROWN: But when we get to writing the
4 order, it seems to me to be possible to say in
5 response to this question, is there a need, a
6 reliability need for this plant in 2005, you can
7 say, "No, but it will be more cost-effective if
8 it is constructed, and therefore we are
9 approving it for those reasons." And that way
10 -- I think that's what you want to get at, isn't
11 it, pretty much?

12 CHAIRMAN JABER: That's partially it, but I
13 think there's also agreement with respect to the
14 second part of staff's recommendation. And,
15 Commissioner, Baez, you need to correct me if
16 I'm wrong. There is -- you would agree that
17 there is a need in the year 2006?

18 MS. BROWN: (Nodding head affirmatively.)

19 COMMISSIONER BAEZ: A need for capacity?

20 CHAIRMAN JABER: A need for capacity in
21 2006.

22 COMMISSIONER BRADLEY: Madam Chair.

23 MS. BROWN: Right, right, and that could be
24 -- yes, you're exactly right. That would go
25 into the explanation as well. It would be there

1 is -- in the years 2005 and 2006, there is a
2 need for this amount of capacity that can be
3 filled by these plants. While the Martin plant
4 is not strictly needed in 2005, it makes
5 cost-effectiveness sense to build them all at
6 the same time, and therefore you approve it.

7 COMMISSIONER BRADLEY: Madam Chair.

8 COMMISSIONER BAEZ: If that's what -- and I
9 forgot what issue we're on now.

10 CHAIRMAN JABER: Now we're on Issue 1.

11 COMMISSIONER BAEZ: We are on Issue 1.

12 MS. BROWN: You know, when --

13 COMMISSIONER BAEZ: Okay. If that's what
14 Issue 1 is --

15 MS. BROWN: And when the order is drafted,
16 it won't be so exactly specific as to these
17 issues, and there will be the flexibility to
18 write it the way you want to. I think that we
19 all know and all agree what you want to say.
20 It's just that these issues, statutory issues
21 are hard to mesh all the facts into, but it can
22 be done.

23 COMMISSIONER BAEZ: And I appreciate the
24 difficulty. I just -- I mean, I've heard a
25 considerable amount of discomfort with what

1 could possibly -- with what it could possibly
2 mean as opposed to what it should. And as long
3 as at the end of the issue there's some
4 understanding of that, I --

5 MS. BROWN: Now, if you want more specific
6 language in the recommendation for that issue
7 that you want to vote on, you could modify the
8 statement to include that, and I haven't --

9 COMMISSIONER BRADLEY: I have a --

10 CHAIRMAN JABER: Hang on, Commissioner
11 Bradley. Hang on.

12 MS. BROWN: While you're talking about
13 other things, I can sit here and try to propose
14 something if you want.

15 CHAIRMAN JABER: I think we've covered it.
16 The only thing I want to add to what you just
17 said, Martha, before we leave this topic relates
18 to that reserve margin. I also heard consensus
19 -- and again, we haven't voted -- that the
20 reliance with respect to the reserve margin
21 being strictly 20% as it relates to need is not
22 -- it's not as critical.

23 MS. BROWN: Right. And it has been a while
24 since the hearing, but I think there were some
25 questions and discussion about that at the

1 hearing as well, whether the Commission was
2 going to be -- had to be bound by this voluntary
3 strict interpretation of the strict 20%. And I
4 think the feeling was that, no, depending on the
5 facts and circumstances in this case, it's a
6 pretty clear example that --

7 CHAIRMAN JABER: Yes. I mean in terms of
8 the order, you need to modify this section to
9 not make it sound like that's why we are finding
10 that there is a need --

11 MS. BROWN: Yes, I understand that.

12 CHAIRMAN JABER: -- as opposed to 2006.

13 MS. BROWN: Yes.

14 CHAIRMAN JABER: Commissioner Bradley.

15 COMMISSIONER BRADLEY: Yes. While I can
16 appreciate what staff just said, I think that
17 there's a constitutional consideration that we
18 haven't put into this discussion that was not a
19 part of the equation when we had the initial
20 hearing, and that is the class size amendment.

21 MS. BROWN: I'm sorry. The what?

22 COMMISSIONER BRADLEY: The class size
23 amendment that just recently passed for sure is
24 going to create an additional need for capacity,
25 which may really throw these figures off

1 completely. So I think that when you factor
2 that in, that's an intervening variable that we
3 did not give consideration to, as I said, when
4 we had the initial hearing. When you factor
5 that in, we may not have a 20% margin here. We
6 may be below that. So I think just that
7 constitutional amendment itself, because it did
8 pass, is going to throw these figures off. So I
9 see most definitely that if we -- I mean, is it
10 possible to factor that in and determine what
11 the reliability will be?

12 MS. BROWN: I wouldn't say perhaps at this
13 point --

14 COMMISSIONER BRADLEY: That that's included
15 in the discussion?

16 MS. BROWN: Well, certainly you can discuss
17 it. I would think that --

18 CHAIRMAN JABER: You can't rely on it.

19 MS. BROWN: Any proceeding before the
20 Commission when something occurs that is
21 unanticipated or there is an egregious problem
22 that develops, the utilities can come before us,
23 and we can address something. And if that comes
24 up, if this class size amendment affects this,
25 then I'm sure the utilities will come before us

1 to ask for some sort of dispensation or change
2 in how we deal with it.

3 CHAIRMAN JABER: Those kinds of things get
4 picked up in their ten-year site plan review
5 every year.

6 MS. BROWN: Sure.

7 MR. HAFF: Right.

8 CHAIRMAN JABER: But the answer to
9 Commissioner Bradley's question would be, it
10 can't be considered now because we don't have
11 testimony in the record.

12 MS. BROWN: You're right.

13 CHAIRMAN JABER: Commissioner Bradley,
14 because there are other things probably that
15 we're not even thinking of right now that
16 companies pick up every year in their ten-year
17 site plan that they have to file here, and
18 demand expectations change every year.

19 COMMISSIONER BRADLEY: And that's true.
20 But I think in anticipation of us having to
21 build more classrooms, I think that we could
22 probably prognosticate the fact that we are
23 going to have more of a demand need, and that
24 approving the Martin 8 plant is a prudent thing
25 to do in anticipation of us having new and

1 expanded need.

2 COMMISSIONER DEASON: Let me say, I think
3 that's a very good point, and I think it can
4 kind of be captured in the assessment, that
5 staff has said that while it might not meet the
6 strict reliability requirement in terms of a
7 stated reserve margin, it does add reliability
8 to the FPL system, and so we get an extra
9 cushion of reliability. That's one of the added
10 benefits of that, and I think that it probably
11 makes that added benefit even more valuable,
12 realizing that there are changes such as you
13 just described that are taking place.

14 MR. HAFF: Right.

15 CHAIRMAN JABER: Okay. Commissioners, any
16 other questions to Issue 1 or a motion? Or are
17 you in agreement that no vote is necessary on
18 Issue 1, we make sure the discussion we had gets
19 incorporated possibly in the cost-effectiveness
20 issue, or wherever else it may be appropriate in
21 the body of the order?

22 COMMISSIONER BRADLEY: Well, if it's more
23 cost-efficient, or effective, that is, in order
24 to build it in 2005 rather than 2006, I would
25 like to make a motion to move staff, staff's

1 recommendation on Issue 1.

2 CHAIRMAN JABER: Okay. This particular
3 issue, though, I -- yes. I think your motion
4 goes to the final issue about whether both
5 plants should come in at 2005. This particular
6 issue, staff is recommending that we find a need
7 exists because Martin Unit 8 brings FP&L to a
8 20% reserve margin and because Martin 8 will
9 help enhance reliability in 2006. So I think,
10 Commissioner Bradley, we may get to exactly
11 where you want to be at the conclusion of all
12 the votes. Obviously, we don't know how the
13 Commission will vote, but --

14 MR. HAFF: Madam Chairman.

15 COMMISSIONER BRADLEY: Mr. Haff.

16 MR. HAFF: I apologize if it's not clear,
17 but inherent in the discussion is that there is
18 a need in 2006, a reliability need in 2006.

19 CHAIRMAN JABER: Did I misstate that? I
20 didn't mean to. Okay.

21 COMMISSIONER BAEZ: Madam Chairman, I think
22 when you speak of enhancing reliability, the
23 incremental, I think it's referring to 2005. Is
24 that correct?

25 MR. HAFF: That's correct, and that it

1 absolutely is needed in 2006.

2 COMMISSIONER DEASON: well, let me ask this
3 question, Commissioners. We've had extensive
4 discussion on this, and I'm in agreement with
5 the general direction of the discussion.

6 I think counsel has indicated that she can
7 incorporate that into the order. I don't really
8 have a problem the wording of staff's
9 recommendation, as long as we're clear that the
10 order is consistent with the discussion we've
11 had here. I'm reading the exact language of the
12 recommendation. I don't find anything in there
13 that is inconsistent with our discussion. And
14 if there is, I would just ask someone to point
15 it out to me, and maybe we can make a
16 modification to that. But I don't have a
17 problem with the recommendation as stated in the
18 recommendation paragraph on page 5.

19 Now, if it's decided we don't need to vote
20 on this at all and we can still get -- you know,
21 we still can meet the statutory requirements,
22 the requirement we have for this need
23 determination, I'm not opposed to that either.
24 But I do not find the recommendation language
25 objectionable.

1 COMMISSIONER BAEZ: Well, I --

2 COMMISSIONER BRADLEY: Let me ask a
3 question.

4 CHAIRMAN JABER: The recommendation
5 statement, Commissioner Baez, is what
6 Commissioner Deason is looking at, page 5.

7 COMMISSIONER BAEZ: I don't have a problem
8 with the first half of it. I think that not
9 having voted on Issue 14 to accept a
10 recommendation that presupposes that -- and
11 again, I just want to keep things in order,
12 because I initially had a slight bit of
13 confusion as to what exactly we were deciding
14 with this Issue 1.

15 CHAIRMAN JABER: Oh, okay. So your point
16 would be you would stop the recommendation after
17 "summer 2006"?

18 COMMISSIONER BAEZ: In my mind, it's the
19 only accurate statement legally --

20 CHAIRMAN JABER: To respond to this issue.

21 COMMISSIONER BAEZ: -- that we can make,
22 because otherwise, we're deciding Issue 14.

23 COMMISSIONER DEASON: I tend to agree with
24 that. I think staff was just aiding the
25 Commissioners, as we read this recommendation,

1 kind of giving us an up-front position
2 concerning subsequent issues so we would kind of
3 follow the flow of the recommendation, and that
4 would make it easier.

5 CHAIRMAN JABER: Yes.

6 COMMISSIONER BAEZ: And don't
7 misunderstand. I'm glad they actually wrote the
8 recommendation this way, because it does give
9 you an easy reference point, and I appreciate
10 it. There were enough issues, and statutorily
11 there are enough confusing issues that need
12 getting answered. However, because of the order
13 of the issues, and because of the point in the
14 conversation that we're in --

15 COMMISSIONER BRADLEY: I want to ask a
16 question to get clarity.

17 CHAIRMAN JABER: Let me go back and explain
18 something, Commissioner Bradley, because you
19 made a reference to a motion, and I want to
20 explain to you what Commissioner Baez just
21 pointed out. It's not that the bottom part of
22 staff's recommendation in Issue 1 is completely
23 taken out. Commissioner Baez's point is that
24 it's premature to vote on that statement when we
25 haven't gotten to Issue 14 yet. So I wanted to

1 make real clear, Commissioners, that we're not
2 taking staff's recommendation out completely
3 here. We're just reserving the vote until we
4 get to Issue 14.

5 COMMISSIONER BAEZ: Not at all. That's
6 exactly right. I mean, if Issue 14 still needs
7 discussion -- and it may be that this ultimately
8 applies, and if that's the case, I don't have a
9 problem with it. But again, we are taking a
10 vote here, and I think that we at least have to
11 be as accurate as we can with what we are voting
12 on.

13 COMMISSIONER DEASON: Well, let me --

14 CHAIRMAN JABER: Commissioner Bradley, does
15 that satisfy your concern?

16 COMMISSIONER BRADLEY: Well, I need to just
17 get something clear in my mind. Is it that
18 you're concerned about the 19.92% reserve
19 margin, the fact that we in the past have
20 clearly established that 20% is the agreed-upon
21 number, and that if we vote for the 19.92%
22 reserve margin, then what we're doing is
23 re-establishing the precedent?

24 COMMISSIONER BAEZ: Well, here's my
25 problem. In a vacuum, I am not willing to say

1 that for a recognized 15-megawatt shortfall,
2 there is a need for 789 megawatts, strictly
3 speaking. When we get to Issue 14 and we
4 discuss the cost-effectiveness of possibly that
5 option, I may be willing to say that after we
6 discuss it.

7 But I'm not going -- I'm unwilling to say
8 that we have to meet -- that a 20%, which has
9 been voluntarily established, it is an
10 agreement, is not the same thing as 19.92. I'm
11 not willing to say that. And I'm also not
12 willing to say, as I stated before, that in
13 order to meet that .08 shortfall in year 2005,
14 we absolutely need a 789-megawatt plant.

15 Again, it may turn out that it's more
16 cost-effective. As we will discuss, I'm sure,
17 at length later on, it may turn out that it's
18 more cost-effective to do it in 2005 rather than
19 2006. But I think that that's an issue for
20 later on in the discussion under Issue 14 as
21 referenced in this recommendation. I'm not
22 willing to decide it before.

23 COMMISSIONER PALECKI: wouldn't it just be
24 easier to vote on this issue after we vote on
25 Issue 14?

1 COMMISSIONER BAEZ: It may be.

2 CHAIRMAN JABER: Commissioners, listen, we
3 get to the same place. This issue asks us to
4 take a vote on a very limited part of this
5 case. I think Commissioner Deason's suggestion,
6 or whoever, between he and Commissioner Baez,
7 you hit the nail on the head. If we delete from
8 "However" to "integrity," we're going to get to
9 the same place.

10 Commissioners, what we've all said is, from
11 a strict reserve margin perspective and to
12 address the 15-megawatt shortfall, no one is
13 willing to support the notion that the entire
14 789-megawatt unit is needed. However, perhaps
15 we're going to consider from a bigger, larger
16 comprehensive standpoint the need for that unit.
17 So this issue, I would remind everyone, does not
18 preclude that vote.

19 COMMISSIONER BAEZ: I'm just interested in
20 keeping them -- you know, let's have some linear
21 -- I know it's hard enough to do, but let's try
22 and maintain some linear pattern to our votes.

23 COMMISSIONER DEASON: Well, let me ask a
24 question on that. You know, you did identify --
25 subject to my question and my request, you

1 identified objectionable language within the
2 recommendation, and I agree with you that it's
3 presupposing something. And maybe this is not
4 the -- but the question that I have is, what is
5 objectionable about the very last sentence in
6 the recommendation? It's not saying that it's
7 needed. It's just finding -- it is finding that
8 the added capacity will enhance the reliability
9 and integrity.

10 COMMISSIONER BAEZ: In an objective sense,
11 without prejudging cost-effectiveness and
12 whether --

13 COMMISSIONER DEASON: I don't think the
14 last sentence really goes to cost-effectiveness
15 at all.

16 COMMISSIONER BAEZ: I think in theory,
17 absolutely, even if Martin -- if Martin 8 were a
18 4,000-megawatt plant -- and I don't know that
19 that exists, but if it -- you know, in an
20 absolute sense, yes, of course it enhances
21 reliability and integrity. You know, I would
22 have to say yes. My only concern is not
23 deciding one before the other, that's all.

24 COMMISSIONER DEASON: Well, I'm open to a
25 motion, and maybe if Commissioner Baez can make

1 a motion, I might could second it.

2 COMMISSIONER BAEZ: I would -- and again,
3 in an objective sense, we can keep that last
4 sentence, so I would --

5 COMMISSIONER BRADLEY: Okay. I made a
6 motion. Why don't I withdraw my motion.

7 COMMISSIONER DEASON: Oh, I'm sorry. I
8 didn't know that you had made a motion. I'm
9 willing -- if you want to restate your motion,
10 I'm willing maybe to second your motion.

11 COMMISSIONER BRADLEY: Well, I made a
12 motion to move staff's recommendation, and we
13 were waiting on a second, and then we got into a
14 discussion. So why don't I withdraw my motion,
15 and we'll see what Commissioner Baez wants to
16 propose. So I --

17 COMMISSIONER BAEZ: My motion --

18 CHAIRMAN JABER: Thank you, Commissioner
19 Bradley.

20 COMMISSIONER BAEZ: Thank you,
21 Commissioner.

22 My motion would simply be to remove the
23 second -- no, I'm sorry, the third sentence, the
24 one that says, "However, as discussed in Issue
25 14, it is more cost-effective for FPL to place

1 Martin 8 into commercial service in 2005 rather
2 than 2006." And I'm willing to maintain the
3 "enhancing" language. And I would move staff
4 with that modification.

5 CHAIRMAN JABER: Do we have a second?

6 COMMISSIONER BRADLEY: I'll second that.

7 CHAIRMAN JABER: Okay. There's a motion
8 and a second to modify staff's recommendation
9 such that the sentence that reads, "However, as
10 discussed in Issue 14, it is more cost-effective
11 for FPL to place Martin Unit 8 into commercial
12 service in 2005 rather than 2006," is deleted.
13 And there was a second. All those in favor say
14 aye.

15 (Simultaneous affirmative responses.)

16 CHAIRMAN JABER: Issue 1 as modified is
17 approved. That takes us to Issue 3. And that's
18 page 11, and this is need for the unit, taking
19 into the account the need for adequate
20 electricity at a reasonable cost. Questions?

21 COMMISSIONER PALECKI: I just would like to
22 reiterate my concerns about fuel diversity. And
23 I think it's especially more appropriate with
24 regard to Martin Unit 8 than it is to the
25 previous unit. I'm just hoping that for all

1 future need determinations we see a very, very
2 thorough look at what an increase in natural gas
3 prices can do to the ratepayers' obligation and
4 consider what other alternatives are available
5 outside of natural gas combined cycle plants.

6 CHAIRMAN JABER: Thank you, Commissioner.
7 Commissioners, any questions or a motion on
8 Issue 3?

9 COMMISSIONER DEASON: Well, I think it
10 would be -- I had questions on Issue 4
11 concerning heat rates and availability factors
12 and capital costs. I think the same would apply
13 for this particular unit as well. And with that
14 understanding, I can move staff on Issue 3.

15 COMMISSIONER BRADLEY: Second.

16 CHAIRMAN JABER: Commissioner Baez, did you
17 have questions?

18 COMMISSIONER BAEZ: I have the same --

19 CHAIRMAN JABER: Okay. There's been a --

20 COMMISSIONER BAEZ: I had the same
21 questions.

22 CHAIRMAN JABER: -- motion and a second.
23 All those in favor say aye.

24 (Simultaneous affirmative responses.)

25 CHAIRMAN JABER: Issue 3 is approved.

1 Issue 5.

2 COMMISSIONER DEASON: Move staff.

3 CHAIRMAN JABER: I'm sorry, Commissioner
4 Deason. I had one clarifying question. On page
5 18, staff, the sentence, "Stated another way, if
6 15 megawatts of additional DSM were available to
7 FP&L for free, it would cost FP&L ratepayers \$18
8 million more to defer Martin Unit 8," you're
9 going to have to explain that sentence to me.

10 MR. HAFF: That just means that deferring
11 it -- as we discussed, deferring Martin Unit 8
12 by a year would be \$18 million more costly
13 overall, and that is a scenario where you don't
14 even address the 15-megawatt shortfall. And
15 this statement is just meant to respond to some
16 of the intervenor positions that they should
17 have looked for 15 megawatts of conservation.
18 That conservation, if it were available, would
19 come at a cost, which would make that \$18
20 million even more than \$18 million.

21 CHAIRMAN JABER: If that could be either
22 deleted from the order or clarified for the
23 order, I would feel a lot more comfortable,
24 Ms. Brown, because you -- to turn it into what
25 you said with respect to costs associated with

1 DSM offsetting any sort of savings, you know,
2 associated with the \$18 million is something I
3 can --

4 MR. HAFF: Actually, more DSM would add to
5 the \$18 million. The cost of splitting them up,
6 adding -- if we were to address -- if we were
7 concerned about the 15-megawatt shortfall -- and
8 I've heard that we're not, but if we were, and
9 we asked the utility to go find 15 megawatts of
10 conservation, it would cost a certain amount of
11 money, which with \$18 million, it already costs
12 more to defer the unit, and it would cost even
13 more than 18 --

14 CHAIRMAN JABER: I understand what you're
15 saying. Even with the DSM conservation goal
16 being met, it's not going to completely defer
17 the necessity for the plant, and the longer you
18 put it off, the more it may cost.

19 MR. HAFF: Well, I'm just -- not exactly.

20 COMMISSIONER DEASON: Let see if I can help
21 you. The difficulty we have here is, normally
22 when you talk about deferring a unit, you're
23 talking about cost savings.

24 MR. HAFF: Correct.

25 COMMISSIONER DEASON: And that is the

1 normal analysis, and we start comparing DSM and
2 other things. This is a very strange situation,
3 in that we have a proposal for two plants.
4 There are certain synergies and efficiencies
5 that are in the record about building two
6 plants. And when you're talking about deferring
7 a plant, you're not talking about -- in this
8 situation, based upon the evidence, you're not
9 talking about cost savings. You're talking
10 about added costs of deferral.

11 MR. HAFF: That's correct.

12 COMMISSIONER DEASON: So that's why it's a
13 little -- the analysis is a little contrary to
14 what we normally are accustomed to reviewing it
15 in.

16 MR. HAFF: That's correct, yes.

17 CHAIRMAN JABER: Well, but is that sentence
18 necessary for the order, Commissioner Deason?
19 Do you see the confusion? Am I the only one --

20 COMMISSIONER DEASON: I don't think it's
21 necessary. I think the staff was just trying to
22 -- actually was trying to help us understand and
23 maybe have slightly confused the issue, but I
24 don't think that it's necessary to have that
25 sentence in the recommendation or in the order.

1 MS. BROWN: I won't put it in, Chairman
2 Jaber. There's plenty of discussion of the
3 rationale above it.

4 CHAIRMAN JABER: Exactly. That's exactly
5 right.

6 Okay. Commissioner Deason, you made a
7 motion to approve staff on Issue 5.

8 COMMISSIONER BRADLEY: Madam Chair, for the
9 record, why don't we specifically identify the
10 sentence? would you read it?

11 CHAIRMAN JABER: It's page 18. It's the
12 last sentence of the first paragraph, "Stated
13 another way, if 15 megawatts of additional DSM
14 were available to FP&L for free, it would cost
15 FP&L ratepayers \$18 million more to defer Martin
16 Unit 8." I think that's confusing. It doesn't
17 add to the previous discussion, which is real
18 clear, and it will be removed from the order.

19 Commissioner Deason, you made a motion.
20 Did I hear a second?

21 COMMISSIONER PALECKI: Second.

22 CHAIRMAN JABER: All those in favor of
23 approving staff on Issue 5 say aye.

24 (Simultaneous affirmative responses.)

25 CHAIRMAN JABER: Issue 5 is approved.

1 We're going to take a ten-minute break,
2 Commissioners.

3 (Short recess.)

4 CHAIRMAN JABER: Okay. Let's get back on
5 the record, and we are on Issue 7.

6 COMMISSIONER DEASON: Move staff.

7 CHAIRMAN JABER: There has been a motion.
8 We need a second.

9 COMMISSIONER BRADLEY: Second.

10 CHAIRMAN JABER: Motion and a second to
11 approve staff on Issue 7. All those in favor
12 say aye.

13 (Simultaneous affirmative responses.)

14 CHAIRMAN JABER: Issue 7 is approved.
15 Issue 9.

16 COMMISSIONER DEASON: I can move staff.

17 COMMISSIONER BAEZ: Second.

18 CHAIRMAN JABER: There has been a motion
19 and a second to approve staff on Issue 9. All
20 those in favor say aye.

21 (Simultaneous affirmative responses.)

22 CHAIRMAN JABER: Issue 9 is approved. Ten.

23 COMMISSIONER DEASON: Which one are we on?

24 CHAIRMAN JABER: Right now we're on 10.

25 COMMISSIONER DEASON: Move staff.

1 CHAIRMAN JABER: Page 26. Doesn't it feel
2 like a Monday? Am I the only one that thinks
3 this is a -- okay. I heard a motion on Issue
4 10.

5 COMMISSIONER BRADLEY: Second.

6 CHAIRMAN JABER: Okay. All those in favor
7 say aye.

8 (Simultaneous affirmative responses.)

9 CHAIRMAN JABER: Issue 10 is approved.
10 Issue 11.

11 COMMISSIONER DEASON: Move staff.

12 COMMISSIONER BAEZ: I have one question.

13 CHAIRMAN JABER: Commissioner Baez.

14 COMMISSIONER BAEZ: And then I'll second
15 it. The first line of the staff analysis on
16 page 29 -- we are on 11; right?

17 CHAIRMAN JABER: Yes, uh-huh, 29, page 29.

18 COMMISSIONER BAEZ: I was just curious as
19 to the implication of saying that the statute
20 does not expressly require FPL's -- I mean, is
21 there anything other than that that they should
22 be being? You know, should they be doing
23 anything other than that?

24 You can say no. That's all right.

25 MS. BROWN: I don't really know how to

1 answer this question.

2 COMMISSIONER BAEZ: It just -- I'm sorry.
3 It just struck me. That's the kind of --

4 MS. BROWN: We don't have to put this in
5 the order.

6 COMMISSIONER BAEZ: I just listen to my
7 child saying, "You didn't say I couldn't," you
8 know.

9 MS. BROWN: This is kind of an internal
10 staff discussion about how do you deal with this
11 when the statute doesn't say fair, just, and
12 reasonable, like so much of ours do. But we
13 don't have to put this in the order if you don't
14 want it. It really doesn't help anything.

15 COMMISSIONER BAEZ: It was more a
16 rhetorical question than anything else.

17 And then lastly, can you clarify for me the
18 1.3% spread?

19 MR. HAFF: Yes, Commissioner Baez. In the
20 evaluation of all of the projects and the
21 combinations of projects that FPL evaluated
22 using the EGEAS model and everything else, one
23 of the exhibits had each of the groupings of
24 projects in order from the FPL self-build, and
25 they went down 36, I believe, groups of projects

1 and the total system revenue requirements
2 associated with each of those combinations. From
3 the best group, which was FPL's self-build, down
4 to the most costly group was 1.3% difference.

5 COMMISSIONER BAEZ: And that was the next
6 question I was going to ask. When you say all
7 proposals, that includes the self-build option?

8 MR. HAFF: Yes.

9 COMMISSIONER BAEZ: In that spread.

10 MR. HAFF: In that spread, that includes
11 groupings of every single bid.

12 COMMISSIONER BAEZ: Thank you. I can
13 second it.

14 CHAIRMAN JABER: Okay. There has been a
15 motion and a second to approve staff on Issue
16 11. All those in favor say aye.

17 (Simultaneous affirmative responses.)

18 CHAIRMAN JABER: Issue 11 is approved.

19 Now we have 11(a) through 11(g).

20 Commissioners, I don't know if you want to take
21 those up separately or --

22 COMMISSIONER DEASON: Madam Chairman, I
23 have some questions, so --

24 CHAIRMAN JABER: Go ahead.

25 COMMISSIONER DEASON: -- maybe we can do it

1 separately.

2 On 11(a), this alludes to questions I've
3 asked earlier. And, staff, I would direct you
4 to PACE's position on page 31. It indicates
5 there that FP&L has not committed to stand by
6 these values for ratemaking purposes, and these
7 values I assume are heat rate, availability
8 factors, things of that nature.

9 MR. HAFF: Uh-huh.

10 COMMISSIONER DEASON: And that the
11 Commission must consider the risk of
12 nonperformance by FPL.

13 Just because FP&L has not committed to
14 stand by these, we have the ability to review
15 those in the context of GPIF in a rate base
16 proceeding?

17 MR. HAFF: Correct. That's correct.

18 COMMISSIONER DEASON: And FP&L would have
19 the burden to demonstrate variances from those?

20 MR. HAFF: Yes.

21 COMMISSIONER DEASON: Or not just to
22 demonstrate, but to justify.

23 MR. HAFF: Correct.

24 COMMISSIONER DEASON: I can move 11(a).

25 COMMISSIONER BRADLEY: Second.

1 CHAIRMAN JABER: All those in favor say
2 aye, of approving staff on 11(a).

3 (Simultaneous affirmative responses.)

4 CHAIRMAN JABER: 11(a) is approved. 11(b).

5 COMMISSIONER DEASON: Staff, I need some
6 help on 11(b). There's a wide discrepancy
7 between the variable O&M cost that was bid by
8 FPL in their proposals and the amount of most of
9 the other bidders. And I think that you may
10 have alluded this to in your recommendation, or
11 maybe I just recall some discussion at the
12 hearing itself, but I think it was represented
13 that the bidders obviously were free to bid what
14 they thought was appropriate.

15 MR. HAFF: Yes.

16 COMMISSIONER DEASON: There were no
17 requirements or restrictions within the bidding
18 process, that they could have bid lower numbers
19 if they felt that were appropriate, and there
20 was some concern that perhaps the non-FP&L
21 bidders were looking to allocate costs between
22 fixed and variable in some way that perhaps they
23 felt advantaged them when it came to revenue
24 streams.

25 MR. HAFF: I believe that's correct. We

1 discussed earlier that there was some variation
2 in the bids. Some of the bids had low variable
3 costs, and some of them had high. And I had
4 discussed before, it was strictly up to the
5 bidder to decide how that pot is divided.

6 COMMISSIONER DEASON: If a bidder
7 consciously decides to put more cost recovery in
8 fixed amounts as opposed to -- I'm sorry, wanted
9 to put more costs in the variable amount as
10 opposed to the fixed amount, would that be
11 reflected in the price that FP&L would have to
12 pay if that unit were constructed and was
13 actually dispatched, or how would the contracts
14 provide for cost recovery of fixed versus
15 variable costs?

16 MR. HAFF: My understanding is that if
17 there was more, as you premised, more of the
18 amount in the variable O&M costs, there would be
19 more -- more of the payment would be tied to the
20 energy payment and less to the fixed capacity
21 payment if this bid were indeed chosen and
22 carried forward.

23 COMMISSIONER DEASON: So to model their
24 system, if one of these other bidders had won,
25 then when it came to actually dispatching that

1 plant, FP&L would have to take into
2 consideration the variable costs that were
3 contained within the bid?

4 MR. HAFF: Correct.

5 COMMISSIONER DEASON: And if they placed
6 more of their costs on the variable side, well,
7 then you would think that then they would have
8 an advantage on the capital side, would you not?

9 MR. HAFF: I would believe so, yes.

10 COMMISSIONER DEASON: That's all my
11 questions.

12 COMMISSIONER PALECKI: I'm concerned about
13 the sheer difference between 3.7 cents per
14 megawatt-hour and \$2 per megawatt-hour. Are the
15 FPL variable O&M values artificially low, or are
16 they realistic?

17 MR. HAFF: I don't believe they're low.
18 They were on the low end of the range. Not all
19 bidders identified \$2 per megawatt-hour. Some
20 of the bids had lower variable O&M costs, and
21 some of them were higher. This \$2 per
22 megawatt-hour, if I recall, was probably the
23 highest of the variable O&M costs that one of
24 the bidders bid. Again, the wide difference, if
25 you will, between them just goes to how the

1 individual bidders and FPL decided to split up a
2 pot of O&M dollars, if you will.

3 COMMISSIONER PALECKI: What are the
4 repercussions if FPL is unable to achieve the
5 3.7 cents per megawatt-hour?

6 MR. HAFF: That goes into the variable
7 energy costs, and I believe that is something
8 that we would look at in the fuel adjustment
9 hearings when they determine the cost of fuel
10 for their units. This part of the pot of
11 dollars for fuel adjustment would be variable
12 O&M.

13 COMMISSIONER PALECKI: So variable O&M
14 would be a fuel clause issue rather than a rates
15 issue?

16 MR. HAFF: That's my understanding, yes.
17 Yes.

18 COMMISSIONER PALECKI: And going into the
19 future, does this Commission have the ability to
20 hold FPL or any other bidder that might in the
21 future request a need determination to a given
22 quantity such as this variable O&M cost?

23 MR. HAFF: I can't picture where we would
24 hold them to a specific subcomponent of overall
25 costs. In other words, this variable O&M is a

1 piece of the variable costs of operating a
2 unit. Fuel is far and away the big piece of it.
3 variable O&M is a small piece of it. As far as
4 holding them to a specific number, we in
5 subsequent fuel adjustment proceedings would
6 look to see if their energy payments, if you
7 will, are out of line. I can't envision a
8 situation where we would be homing in on just
9 the 3.7 cents, though.

10 COMMISSIONER PALECKI: What if there was a
11 non-utility bidder that had prevailed on the RFP
12 process and a bidder came in with a contract?
13 In that case, certainly we would hold the bidder
14 to the quantities in the RFP, would we not?

15 MR. HAFF: For this variable O&M piece or
16 for their total costs?

17 COMMISSIONER PALECKI: For total costs.

18 MR. HAFF: For total costs, my
19 understanding is they would be paid what was in
20 their bid or whatever contract was signed at the
21 time that the bid was approved or accepted by
22 FPL.

23 COMMISSIONER PALECKI: So if they exceeded
24 their variable O&M estimates, they would have to
25 make it up somewhere else in order to, quote,

1 make a profit on the project?

2 MR. HAFF: Yes.

3 COMMISSIONER PALECKI: Thank you.

4 CHAIRMAN JABER: Commissioner Baez and then
5 Commissioner Bradley.

6 COMMISSIONER BAEZ: Excuse me. Back on the
7 discrepancies. And I'm trying to understand how
8 the information is made known to potential
9 bidders. Is the 3.7 cents attributed to
10 variable O&M known beforehand?

11 MR. HAFF: I believe it's a line item on
12 one of the last pages of the RFP where the
13 utility will list out the criteria for its
14 self-build alternatives, and among them are cost
15 and performance data.

16 COMMISSIONER BAEZ: Okay. And can the
17 highness or lowness of a variable O&M number
18 suggest perhaps a weighting, perhaps the
19 possibility that it can skew an evaluation of a
20 proposed bid one way or another?

21 MR. HAFF: I believe -- in other words,
22 could the wide disparity in variable O&M cause a
23 bid to maybe cost-effectivenesswise result
24 differently?

25 COMMISSIONER BAEZ: Yes.

1 MR. HAFF: Yes.

2 COMMISSIONER BRADLEY: And --

3 MR. HAFF: I may -- I'm sorry.

4 COMMISSIONER BAEZ: I'm sorry, Mike. I
5 guess the point -- I guess my ultimate question
6 is, can you by seeing a number -- and, for
7 instance, let's take the 3.7, and if you're a
8 proposed bidder and you're saying, "well, you
9 know, it looks kind of low," can you tell from
10 that gut instinct or gut determination what kind
11 of adjustments or what kind of focus you need to
12 give your proposal perhaps in order to make sure
13 that you're skewed perhaps in a more positive
14 light than you would otherwise be?

15 MR. HAFF: Let me try to answer it this
16 way. And it sort of gets to one of your
17 previous questions. I may answer your last
18 question. You were asking about how the
19 cost-effectiveness would possibly vary according
20 to this piece of cost.

21 Higher variable O&M typically equates to a
22 unit that's not dispatched as frequently because
23 of its variable operating and maintenance costs
24 associated with operating a unit. And if it's
25 high, then that unit may not be dispatched as

1 long or as frequently. And typically, if you're
2 talking about the same type of power plant,
3 combined cycle, and the O&M -- I keep going back
4 to the pot of dollars -- is somewhat equivalent,
5 then you must be making up for that high
6 variable O&M by having lower fixed O&M, which
7 would go into lowering, I guess, the capacity
8 payment that the bid project would make.

9 As far as impacting cost-effectiveness, it
10 just more impacts how it's dispatched, projected
11 to be dispatched.

12 COMMISSIONER BAEZ: And is the allocation
13 decision affected, or does the allocation
14 decision affect financing in any way, if you
15 have more projected on the capacity payment side
16 or --

17 MR. HAFF: I'm not aware of where it would
18 have any impact on financing.

19 COMMISSIONER BAEZ: Okay. Well, it has
20 impacts on the revenue streams; right?

21 MR. HAFF: I'm sorry?

22 COMMISSIONER BAEZ: It does have impact on
23 the revenue streams?

24 MR. HARRIS: Commissioner, I think that's
25 correct. What the company would be looking --

1 we have to presume that the bidders knew what
2 the RFP said, what FPL said, and they had the
3 decision to model their rates. We have to
4 presume that being financial decision-makers,
5 they looked at what was best for their project.

6 I think that, as we discussed in the
7 recommendation in other sections, the streams of
8 payment, whether it's a variable payment or a
9 fixed payment of capacity or an energy charge,
10 would affect the revenue streams. If a company
11 has a high fixed O&M and that's part of their
12 guarantee, they're every year going to get --
13 hypothetically, they're going to get \$50 million
14 a year cash money just for having that capacity
15 and then a variable charge on top of that,
16 that's \$50 million the financiers know are
17 coming in. If, however, their capacity charge
18 is 10 million, with the rest being the variable,
19 the financiers don't know where that 40 million
20 is going to come from, so that would affect, I
21 would think, financing.

22 However, that's not part of the record
23 before us. The bidders were able to make that
24 decision based on their financing, what they
25 thought their costs would be, what they thought

1 the correct allocation would be, and they were
2 able to submit that. And the record indicated
3 that FPL picked up the costs as submitted by not
4 only their own self-build, but all of the
5 individual bidders, and modeled those as the
6 costs, and the record, I believe, reflects
7 that.

8 So to argue that there's a large difference
9 I think is relevant, but the Commission would
10 have the ultimate authority. Rates would be --
11 the total energy costs, the total energy costs,
12 the fixed and the variable, and the total
13 equipment costs and operation costs would be a
14 base rate charge, I believe.

15 And as long as -- as Commissioners Palecki
16 and Deason commented on, if that total amount is
17 right, then I don't think there would be a
18 disagreement that the costs weren't. So if
19 FPL's rate was wrong, but their total costs were
20 backed out, I don't think we could necessarily
21 allege that that's that big of a problem,
22 outside of the dispatching, and that could have
23 affected it. But the companies -- in this
24 record, the bidders knew what those rates were
25 going to be when they made those bids.

1 And so based on the record we have before
2 us, I don't think that we can say that the 3.7
3 cents put forward by FP&L compared to a \$2 per
4 megawatt-hour put forth by a bidder could have
5 been a significant enough decision, in the
6 absence of some testimony to the contrary that
7 it was the determining factor, and had a company
8 known that the 3.7 cents by FP&L was going to
9 disadvantage it and wasn't able to adjust that
10 themselves. And I don't recall that there was
11 any record testimony that any bidder said, "we
12 knew that they were bidding 3.7, and that's
13 unrealistic. We bid what we thought was
14 realistic, and their failure to bid what we
15 think was realistic disadvantaged us." I don't
16 recall that testimony being in the record.

17 CHAIRMAN JABER: Did you read the PACE
18 brief?

19 MR. HARRIS: I did, yes, Commissioner.

20 CHAIRMAN JABER: Okay. Commissioner Baez,
21 did --

22 COMMISSIONER BAEZ: I'm done.

23 CHAIRMAN JABER: Okay. Commissioner
24 Bradley.

25 COMMISSIONER BRADLEY: I have a question

1 of staff. How does a bidder predict
2 specifically what the O&M charges are going to
3 be? Is that possible? I used the word
4 "specific."

5 MR. HAFF: Could you repeat your question,
6 sir?

7 COMMISSIONER BRADLEY: How does a bidder
8 predict specifically what the O&M charges are
9 going to be? Is that possible?

10 MR. HAFF: The total O&M is based upon the
11 type of power plant. In this case, primarily we
12 saw gas-fired combined cycle power plants being
13 bid and some combustion turbines. And it's
14 pretty commonly known the predicted costs and
15 operating parameters associated with that
16 plant. So to know what the typical fixed and
17 variable O&M costs are associated with a unit,
18 yes, they can tell that in advance.

19 Really, I think what the issue here gets to
20 is the fact that there was such a variation
21 between the bids, and that's because the bidders
22 have the opportunity, if you will, to make those
23 changes in putting forth a bid.

24 COMMISSIONER BRADLEY: So it's staff's
25 belief then that everybody had the same

1 opportunity to deal with O&M charges --

2 MR. HAFF: Yes.

3 COMMISSIONER BRADLEY: -- as part of their
4 bid procedure?

5 MR. HAFF: Yes.

6 COMMISSIONER BRADLEY: Okay.

7 COMMISSIONER PALECKI: what if the 3.7
8 cents turns out ten years down the line to be
9 not even close to realistic, that it doesn't
10 turn out to be correct, that the actual amount
11 is, let's say, ten times more, 37 cents per
12 megawatt-hour? Is this Commission empowered in
13 the fuel docket to simply say, "well, Florida
14 Power & Light, back in the year 2002, you told
15 us it was going to be 3.7 cents per
16 megawatt-hour, and we're going to hold you to
17 that 3.7 cents"?

18 MR. HAFF: Yes, my understanding is the
19 Commission has the authority to limit cost
20 recovery through fuel adjustment because of
21 diverting, if you will, from some projection for
22 fuel or variable O&M.

23 COMMISSIONER PALECKI: Mr. Devlin?

24 MR. DEVLIN: Commissioner, I think we may
25 have an incorrect premise here that this O&M is

1 really a base rates item. And it's similar to
2 the discussion we had before on the capital. Of
3 course, the burden is always on the company to
4 show their costs are reasonable. And to the
5 extent they significantly exceed the 3.7 cents,
6 that could be an issue in some future base rate
7 proceeding.

8 COMMISSIONER PALECKI: I think Mr. Haff
9 told me that it was an issue for the fuel docket
10 and not a rates issue.

11 MR. DEVLIN: I believe it's a base rates
12 issue.

13 MR. HAFF: I stand corrected.

14 COMMISSIONER DEASON: I was going to ask
15 you about that, because I thought that O&M
16 costs, whether fixed or variable, were part of a
17 base rate proceeding.

18 MR. HAFF: I stand corrected.

19 COMMISSIONER PALECKI: Thank you.

20 COMMISSIONER BRADLEY: O&M charges are
21 non-fuel related expenses, though.

22 MR. DEVLIN: Correct.

23 COMMISSIONER BRADLEY: Correct?

24 MR. DEVLIN: That's correct.

25 CHAIRMAN JABER: Commissioner Palecki, were

1 you done?

2 COMMISSIONER PALECKI: Yes.

3 CHAIRMAN JABER: I have just one question,
4 staff, and Mr. Harris alluded to it a minute
5 ago, and I want to just follow up with Mr. Haff
6 and Mr. Devlin.

7 On page 20 of PACE's brief, they do make
8 the allegation that there was some gaming -- and
9 again, it's the allegation that there was gaming
10 with respect to how FP&L looked at fixed costs
11 versus variable. And in fact, they're
12 suggesting that there was -- you know, that FP&L
13 would not have minded if a bidder did the same
14 thing. And nothing I've heard in terms of your
15 responses to the Commissioners' questions
16 indicate to me that you believe there was any
17 opportunity for gaming the evaluation process,
18 depending on how fixed and variable costs are
19 divided. Look at page 20 at the very top.

20 MR. HAFF: Are you alluding to about
21 two-thirds of the way down where it says, "In
22 other words, FPL says it is all right to
23 manipulate the process"?

24 CHAIRMAN JABER: Yes.

25 MR. HAFF: I don't find any evidence of

1 gaming. All I heard at the hearing is simply
2 that the bidders bid a certain value for
3 variable O&M. FPL's amount for variable O&M was
4 in their RFP, so the bidder should have known
5 what it was. And FPL simply input that into its
6 EGEAS run, and the results came out. I heard no
7 evidence of any gaming.

8 CHAIRMAN JABER: So in your assessment of
9 the record that we have, there wasn't testimony
10 with respect to how the selected division of O&M
11 would somehow favor the results one way or the
12 other?

13 MR. HAFF: No.

14 CHAIRMAN JABER: Okay. They cite to
15 transcript 377.

16 MR. HAFF: I don't have the transcript, but
17 my understanding is -- in fact, I may have said
18 this in the recommendation, that there's no one
19 way to divide O&M dollars. In fact, yes,
20 Dr. Sim stated that there's no single correct
21 method of dividing O&M costs between fixed and
22 variable. In this transcript, at 377, if I
23 recall, it just mentions that the bidders can
24 break it up however they wish. And however that
25 number was given to FPL in an RFP response,

1 that's how it was modeled.

2 CHAIRMAN JABER: Thank you, Mr. Haff.

3 Commissioners, do you have any other
4 questions on 11(b), or a motion?

5 COMMISSIONER DEASON: I move staff.

6 COMMISSIONER BRADLEY: Second.

7 CHAIRMAN JABER: Motion and a second to
8 approve staff on 11(b). All those in favor say
9 aye.

10 (Simultaneous affirmative responses.)

11 CHAIRMAN JABER: 11(b) is approved. 11(c).

12 COMMISSIONER DEASON: I just have a
13 question. Within FP&L's position, it indicates
14 that Mr. Taylor did a sensitivity analysis using
15 brownfield filler units, and it didn't change
16 the bottom line conclusion. What is staff's
17 position on that?

18 MR. HAFF: That's correct. It didn't
19 change the end result.

20 COMMISSIONER DEASON: Okay. I move staff.

21 COMMISSIONER PALECKI: Second.

22 CHAIRMAN JABER: All those in favor say
23 aye.

24 (Simultaneous affirmative responses.)

25 CHAIRMAN JABER: 11(c) is approved. 11(d).

1 COMMISSIONER DEASON: And likewise, there
2 was a sensitivity analysis showing that
3 Gulfstream -- utilization of Gulfstream as the
4 gas supplier did not change the economic choice?

5 MR. HAFF: That's correct.

6 COMMISSIONER DEASON: Move staff.

7 COMMISSIONER BAEZ: I had questions.

8 CHAIRMAN JABER: Commissioner Baez.

9 COMMISSIONER BAEZ: There's a statement on
10 the bottom of 37, a clause saying, "Most RFP
11 bidders stated that they would be served by
12 FGT." And that's consistent with how FPL
13 modeled?

14 MR. HAFF: Yes, yes.

15 COMMISSIONER BAEZ: And forgive the
16 ignorance on how modeling works, and I'm sure it
17 would have been difficult, but did any of the
18 bidders specify other than FGT, or was it just a
19 question that they left the supply blank?

20 MR. HAFF: Some of them had Gulfstream, the
21 Gulfstream line, which has a -- my understanding
22 is there's a different tariffed priced
23 associated with Gulfstream transportation as
24 opposed to FGT.

25 COMMISSIONER BAEZ: Is that a burden or a

1 benefit?

2 MR. HAFF: A burden to use Gulfstream?

3 COMMISSIONER BAEZ: Uh-huh.

4 MR. HAFF: My understanding is the price
5 for Gulfstream is lower, so whoever would have
6 bid Gulfstream would have actually had a
7 benefit. Is it --

8 MR. HARRIS: FGT is higher.

9 MR. HAFF: FGT is higher.

10 COMMISSIONER BAEZ: FGT is higher.

11 MR. HAFF: Gulfstream is lower.

12 COMMISSIONER BAEZ: The bids -- I just want
13 to be sure, because it wasn't clear to me from
14 the recommendation. The proposals that
15 specifically identified Gulfstream, they were
16 modeled with those numbers? Is that --

17 MR. HAFF: With Gulfstream's numbers, yes.

18 COMMISSIONER BAEZ: With Gulfstream's
19 numbers.

20 MR. HARRIS: That's correct, yes.

21 COMMISSIONER BAEZ: Okay. And I had a
22 comment there, but I think you answered my
23 question. That's all right. Thank you.

24 MR. HAFF: Yes. Whoever put FGT, FPL
25 modeled using FGT, and whoever put Gulfstream,

1 FPL modeled using Gulfstream.

2 COMMISSIONER BAEZ: And whoever didn't, I
3 guess whoever didn't specify -- were there any
4 that didn't specify, to your knowledge?

5 MR. HAFF: I don't recall right now off the
6 top of my head, but that would have been
7 something that FPL would have had to follow up
8 to the bidder and say, you know, "I need to know
9 what your gas transportation options are so I
10 can model the gas transportation costs in
11 running your bid." So that would --

12 COMMISSIONER BAEZ: And maybe I'm asking a
13 question about something that just rarely
14 happens. I mean, the proposals usually
15 designate a supply --

16 MR. HAFF: Yes. There's a line item in the
17 RFP where they have to put their gas
18 transportation costs, and it's either a number,
19 or they write FGT or Gulfstream.

20 COMMISSIONER BAEZ: So to your knowledge,
21 there wasn't any modeling done that substituted
22 perhaps FPL's judgment for --

23 MR. HAFF: No.

24 COMMISSIONER BAEZ: For options that may
25 have been available.

1 MR. HAFF: I understand they were modeled
2 as bid.

3 COMMISSIONER BAEZ: All right. Thank you.
4 Those are all my questions.

5 CHAIRMAN JABER: Commissioners, questions
6 or a motion?

7 COMMISSIONER DEASON: We're still on 11(d);
8 correct? I can move staff.

9 COMMISSIONER BAEZ: I think there was a
10 motion.

11 COMMISSIONER PALECKI: Second.

12 COMMISSIONER BRADLEY: Second.

13 CHAIRMAN JABER: All those in favor of
14 approving staff on 11(d) indicate by saying aye.
15 (Simultaneous affirmative responses.)

16 CHAIRMAN JABER: 11(d) is approved. 11(e).

17 COMMISSIONER DEASON: Move staff.

18 COMMISSIONER PALECKI: Second.

19 CHAIRMAN JABER: All those in favor say
20 aye.

21 (Simultaneous affirmative responses.)

22 CHAIRMAN JABER: 11(e) is approved. 11(f).

23 COMMISSIONER DEASON: Move staff.

24 COMMISSIONER PALECKI: Second.

25 COMMISSIONER BRADLEY: Second.

1 CHAIRMAN JABER: All those in favor say
2 aye.

3 (Simultaneous affirmative responses.)

4 CHAIRMAN JABER: 11(f) is approved. 11(g).

5 COMMISSIONER DEASON: Move staff.

6 COMMISSIONER BRADLEY: Second.

7 COMMISSIONER BAEZ: I don't have a problem
8 with this issue, but can I just say something
9 that caused me concern? It's something that the
10 Chairman had raised earlier in her general
11 questions, the whole notion of exporting one's
12 business judgment.

13 You know, I don't know how we clarify that
14 or how the rest of the Commissioners feel about
15 that, or whether we even need to pay attention
16 to it for purposes of this docket or this
17 matter, but I think that kind of -- the whole
18 thought of we know better, and yet there are a
19 lot of issues here that were modeled as bid,
20 whether there could have been judgment exported
21 to say, well, this is more advantageous, or this
22 isn't, you know, the idea of giving a helping
23 hand, so to speak --

24 MR. HAFF: This gets --

25 COMMISSIONER BAEZ: Where is the

1 discretion, or how much, you know?

2 MR. HAFF: Right. And this gets back to
3 the discussion we had earlier about a draft
4 short list, if you will, and then the ultimate
5 short list, and why TECO didn't make the
6 ultimate short list.

7 COMMISSIONER BAEZ: Well, I'm not -- and
8 again, I'm not necessarily taking issue with the
9 end result.

10 MR. HAFF: Right.

11 COMMISSIONER BAEZ: But notwithstanding, I
12 guess the reasons or the basis given, you know,
13 if we're going to hold all proposals, whether
14 they happen to be an IOU or not, to -- let me
15 back up. Whether they have a reserve
16 requirement or not, let me state it that way. I
17 mean, isn't there at least some responsibility
18 to model them as bid and let's not say, "well,
19 it's a good idea that you be in this, because,
20 by the way, you're going to have a problem with
21 this one"?

22 MR. HAFF: And FPL did model TECO's bid as
23 was bid. And when FPL came up with groupings of
24 projects, in one of the exhibits in the hearing,
25 there were basically five groupings of projects.

1 I don't know if you recall, but TECO was not
2 among the group that was among the top two, I
3 guess, alternatives to the all-FPL plan, so it
4 was also not the most cost-effective alternative
5 to FPL anyway.

6 COMMISSIONER BAEZ: And again, I think
7 you've identified perhaps a proper basis for
8 their exclusion. We can take that at face
9 value.

10 But I guess I'm looking at the
11 recommendation, page 43, and we have, "witness
12 Silva testified that TECO was not included on
13 the short list due to FPL's concern that TECO
14 could not supply the 200 megawatts contained in
15 its bid and simultaneously meet its own 20%
16 reserve margin criterion." And I think that
17 speaks to a much more specific issue outside the
18 context of a need determination, but here it is.

19 MR. HAFF: Right.

20 COMMISSIONER BAEZ: You've got the idea or
21 the concept of a bid evaluator, in essence,
22 deciding what's good or not for a bidder. And I
23 wish we had a line more clearly drawn as to
24 whether that's appropriate or not.

25 MR. HAFF: This was -- as I'm sure you

1 know, this was strictly a decision of whether to
2 add TECO to the short list for possible
3 negotiations. It had nothing to do with
4 changing their bid or anything.

5 COMMISSIONER BAEZ: No, I understand that.
6 But that kind of -- I think when that kind of
7 discretion or that kind of attitude pervades, it
8 can bleed to other places. And I guess I'm
9 making more of a finer point on this than
10 perhaps I even have to, but I think that in
11 particular troubled me. I'm not concerned about
12 the result, practically speaking, necessarily,
13 but, you know, having that as a basis. I guess
14 going back to an earlier debate, I'm not
15 interested in taking a vote based on something
16 that I don't agree with.

17 CHAIRMAN JABER: Right. Commissioner Baez,
18 actually, I agree with everything you said, and
19 obviously I expressed my concern in this regard
20 early on in the process, so I certainly agree.

21 But I would go further. My fundamental
22 concern is that there are two companies other
23 than FP&L that are subject to the voluntary
24 stipulation. To the degree that reserve margin
25 was going to be considered, that's so obvious

1 that I think it should have been included in the
2 original RFP, and then certainly in the
3 supplemental RFP, which is what we're
4 discussing. But I also think, that being said,
5 it wasn't, and we have to deal with what we
6 have.

7 That being said, I would like to take an
8 opportunity in this order to say that is the
9 kind of example that should be included,
10 foreseen, you should have known to include in a
11 future RFP -- I mean, it's not like -- I mean,
12 there's a handful. And perhaps it doesn't even
13 apply to the handful of companies that are in
14 the voluntary stipulation, because if you think
15 about why we even have the reserve margin, it's
16 to make sure that all the electricity needs are
17 met for the citizens of the State of Florida. So
18 that overall concern needs to be taken into
19 account, I suppose, just generally speaking.

20 But with respect to the way the issue is, I
21 know, Commissioner Deason, you made a motion. I
22 wonder if you would consider amending it.
23 Here's my concern. I can accept at the end of
24 the day that the bottom line decision FP&L made
25 with respect to TECO was perhaps fair and

1 reasonable. I don't know that we've articulated
2 that it was appropriate in conjunction with the
3 fact that it wasn't prestated in the RFP. So I
4 think it's fair and reasonable in the general
5 assessment of how the evaluations occurred. I
6 think what would have been more appropriate is
7 for that kind of notation to be made in the RFP.

8 COMMISSIONER BAEZ: Madam Chairman, I think
9 it should be -- it should have been listed in
10 the RF -- I would agree with you that that's the
11 kind of thing that has to be noticed in the RFP,
12 to the extent that we're willing to accept that
13 in this case, TECO's ability to meet its reserve
14 margin is a proper grounds for evaluating, for
15 FPL evaluating TECO's proposal. And I'm not
16 sure that I'm comfortable with that.

17 CHAIRMAN JABER: I see your distinction.

18 COMMISSIONER BAEZ: I'm not sure that that
19 is the type of criteria that -- to me, that
20 opens a very wide door.

21 CHAIRMAN JABER: I see the distinction
22 you're making. It's a very good one. Here's
23 the difference. Well, analogize it to it's no
24 different from eliminating some companies off
25 the top because they might have some financial

1 viability concerns. I mean --

2 COMMISSIONER BAEZ: I thought you were
3 going to say that.

4 CHAIRMAN JABER: That's sort of -- that's
5 where I'm drawing the line in my mind, or
6 finding the similarities. If a company is not
7 financially viable such that it can't meet its
8 long-term commitment to FP&L to supply
9 electricity to the customers, well, then perhaps
10 a company that's not meeting its own reserve
11 margin can't meet the long-term obligation.

12 COMMISSIONER BAEZ: well, I see the
13 analogy, first of all. But I guess the way I'm
14 looking at it is this. Take this particular
15 criteria, and in the case of the two other
16 companies that are subject to the margin reserve
17 stipulation, I guess that's discriminatory. And
18 I'll tell you why: Because if you want to bid,
19 as you're free to do, then all of a sudden
20 you've got to say, "Oh, and by the way, now all
21 of a sudden the character of my bid as an IOU in
22 Florida changes, because now I'm not allowed to
23 bid on the same playing field as IPPs, for
24 instance, because now all of a sudden I've got
25 to bring a note from my mom" --

1 CHAIRMAN JABER: A note from the PSC.

2 COMMISSIONER BAEZ: From the PSC to say,
3 "Oh, and by the way, this is how I'm planning on
4 taking care of any potential margin reserve
5 issues." what, in essence, you're doing is
6 creating an additional hurdle that certainly the
7 IOUs in this state would have to create.

8 So that's why I have go back to the whole
9 philosophy of that being a legitimate criteria.
10 And I understand the broader aspect, and I
11 certainly understand FP&L's reason for looking
12 at that in a more general good sense, and that
13 may be valid.

14 But, you know, you've got to make a
15 decision here. Can the company that's bidding
16 take care of their own business and stand behind
17 their bid or not? And I think that the margin
18 reserve is an issue for TECO to consider when
19 they're making a proposal, because they're going
20 to sign -- you know, theoretically, they could
21 be signing a contract which they're going to
22 have to live up to, and it's going to have
23 financial consequences to people that would
24 rather not have financial consequences. So
25 who's got the burden in this? So I think to me

1 it's a broader issue of, you know, who are we
2 lending our business judgment to or not.

3 CHAIRMAN JABER: Okay. I know Commissioner
4 Bradley has a question, but do I hear you saying
5 that you would support denying staff's
6 recommendation on this issue? Is that what I
7 hear you saying?

8 COMMISSIONER BAEZ: I think -- I don't --

9 MS. BROWN: May I make a suggestion here?

10 CHAIRMAN JABER: No. Commissioner Bradley
11 has a question. Hang on.

12 MS. BROWN: All right.

13 COMMISSIONER BAEZ: I think that for me to
14 accept it -- although, again, I'll say I'm not
15 concerned about the result necessarily. I'm
16 concerned about the precedent that we set. And
17 if we could change it somehow to --

18 CHAIRMAN JABER: Okay. Martha, I am going
19 to let you address Commissioner Baez in just a
20 minute.

21 Commissioner Bradley.

22 COMMISSIONER BRADLEY: Right. And as I
23 listen to the discussion that's transpiring
24 between the two of you, I'm beginning to wonder
25 if we add that language if maybe we wouldn't be

1 -- well, if we add that language, would that
2 language discourage other IOUs from entering
3 into the bid process? And I think I heard
4 Commissioner Baez say that, you know, IOUs are
5 in the business of generating and transmitting
6 and distributing power. I think they're quite
7 capable of giving consideration to their reserve
8 margin and that as an intervening variable.
9 Again, I'm just wondering if that tightens the
10 process down to the extent that we might
11 discourage them from --

12 CHAIRMAN JABER: That's a very good
13 question. I would agree with both of the
14 concerns you have raised with respect to can
15 they -- they're big boys; they can make that
16 business decision on their own. My point is,
17 if they knew that they had to take that into
18 account. You know, that's really my only --

19 COMMISSIONER BRADLEY: And I agree with
20 that also.

21 CHAIRMAN JABER: Yes. That's my only
22 hangup.

23 COMMISSIONER BAEZ: I think we can live
24 peacefully with it.

25 CHAIRMAN JABER: I think as long as the

1 order cautions folks and puts people on notice
2 that this is one of those "should have known,"
3 you know, you would look at this at the end of
4 day, and it needs to be determined on a
5 case-by-case basis, I could be happy with it.
6 The language that troubles me is making a
7 finding that this was handled in the most
8 appropriate manner, and I don't think it was.

9 COMMISSIONER PALECKI: I --

10 MS. BROWN: My suggestion -- oh, I'm
11 sorry.

12 COMMISSIONER PALECKI: I think I agree with
13 Commissioner Baez, but I have a real problem
14 that TECO didn't intervene in this case. I
15 think the ruling I would like to see on this
16 issue is, well, maybe yes, maybe no. The
17 affected party did not intervene, and I don't
18 know if that makes the issue moot, but it
19 certainly doesn't appear that TECO came in and
20 made any kind of record that it was prejudiced
21 or that, you know, it was discriminated against.
22 So the fact that TECO didn't intervene in this
23 case to me, really, it seems to resolve the
24 issue. And I'm not sure we need to rule on the
25 issue, really.

1 CHAIRMAN JABER: Who did identify the
2 issue, staff? Remind me.

3 MR. HAFF: I believe it was CPV Gulf Coast.

4 CHAIRMAN JABER: Okay. Commissioner
5 Palecki, you raise a very good point.

6 Commissioner Deason, you do have an
7 outstanding motion.

8 COMMISSIONER DEASON: I have a motion to
9 approve staff. And let me say that the basis
10 for that motion is that while it may be
11 preferable if the RFP had included a reference
12 to an evaluation of an incumbent or an IOU's
13 reserve margin, it wasn't there. But I don't
14 think that that one item renders this entire --
15 renders it unfair or unreasonable or
16 inappropriate.

17 I just wonder, if we were in a situation
18 right now where FP&L did not make that review,
19 and somehow in the evidence in the record it
20 came out that TECO was the most cost-effective,
21 but they're bidding 200 megawatts that they're
22 including in their reserve margin, I think we
23 would be on FPL's case pretty hard saying, "why
24 didn't you look to determine if that full
25 capacity was available for your use or was it

1 committed to someone else's retail customers"?
2 So I think --

3 COMMISSIONER BAEZ: I'm don't think we
4 would be on FPL's case.

5 CHAIRMAN JABER: Yes. I think it would --

6 COMMISSIONER BAEZ: I would be on TECO's
7 case.

8 CHAIRMAN JABER: Or our bidding rule.

9 COMMISSIONER BAEZ: Or the bidding rule's
10 case.

11 COMMISSIONER DEASON: well, I think that we
12 would be on FPL's case, TECO's case, and staff's
13 case too. I mean, I don't think it is right for
14 us to indicate that somehow it was unfair or
15 unreasonable for FP&L to ask the simple
16 question, "This capacity that TECO is bidding,
17 is it committed to their own reserve margin, or
18 is it going to be fully committed to our own
19 reserve margin?"

20 COMMISSIONER BAEZ: well, that's a fair
21 question to follow up on. I may have missed the
22 follow-up portion of the recommendation. Was
23 there --

24 MR. HAFF: I apologize. would you repeat
25 the --

1 CHAIRMAN JABER: No follow-up with TECO.

2 MR. HAFF: No.

3 COMMISSIONER BAEZ: There wasn't any
4 follow-up with TECO.

5 MR. HAFF: No. FPL did not contact TECO to
6 discuss this concern, and TECO did not intervene
7 in this case, no.

8 COMMISSIONER BAEZ: I guess I don't have a
9 quarrel with whether it's a consideration or
10 not. Obviously, it does, because we're the only
11 ones that can benefit and be harmed, we,
12 Florida. But I'm not sure that it's the
13 evaluator that needs to be making that
14 judgment. I think that's the company's -- the
15 proposing company's issue to deal with. And for
16 reasons I've already stated before, to have that
17 be a requirement, in my mind, wouldn't put them
18 on a level --

19 COMMISSIONER DEASON: Well, you know, I can
20 respect that. We just have a difference of
21 opinion. I think that it's the appropriate
22 thing for -- because we're going to hold FP&L
23 responsible that the capacity they either build
24 or they contract for is there and is reliable
25 and is going to be providing cost-effective

1 energy to the end-use customer. So if they're
2 going to be held accountable, I think it's fair
3 for them to ask that question and make that
4 judgment, just like if someone else had come in,
5 an IPP, and had bid a project that had been
6 committed, half of it to Georgia Power. I don't
7 see a difference in that.

8 COMMISSIONER BAEZ: Then we get back to
9 where the Chairman is. Subject to it being a
10 discrete criterion, then maybe everybody is on
11 notice.

12 I still -- I think that as it is, though,
13 as it was handled, it creates a precedent for
14 too much discretion in areas that have to be off
15 hands. I mean, I think we have to take
16 proposers', yes, financial viability, fine.
17 There are discrete criteria for that. But now
18 all of a sudden, you've got too many jets, so
19 we're going to -- you know, I mean, a business
20 judgment is a business judgment. I mean, it
21 just happened to be a reserve margin here that
22 it became germane to our situation.

23 But, you know, I don't -- just like you
24 don't see a difference with having that be a
25 criteria as much as anything else, I think that

1 out in the open, I don't see a difference with
2 it being anything else either.

3 And I'm concerned about that. If we're
4 looking at this process as a way of, you know,
5 trying to provide certainty for the participants
6 to know where they stand as much as is
7 reasonable, then I think we have to give those
8 -- and maybe the solution is to have it -- you
9 know, just say it wasn't appropriate how they
10 handled it, it should have been followed up, for
11 starters. And in the future, perhaps this is
12 something that needs to be spelled out in an
13 RFP, like the Chairman suggests.

14 CHAIRMAN JABER: Commissioner Deason,
15 you've made a motion, and in the interest of
16 disclosure, I'm not going to support it, not
17 because I don't agree with you that at the end
18 of the day it was fair or reasonable, or
19 perhaps, you know, when it came time to assess
20 that hypothetical situation we would find that
21 FP&L acted in a responsible fashion. My real
22 distinction is just whether it should have been
23 included in the RFP, and therefore, everyone
24 would be on notice.

25 And for me, as I looked at the entire case,

1 I kept in the back of my mind, did FP&L evaluate
2 these proposals in the appropriate context with
3 the current bidding rule. And, you know, that's
4 where I make a distinction with this particular
5 issue.

6 So just in the interest of disclosure, I
7 won't support your motion. But for whatever
8 it's worth, Commissioner Palecki, I think, threw
9 out an idea that results in a compromise, but
10 we're going to vote on Commissioner Deason's
11 motion first. And I heard a second by
12 Commissioner Bradley?

13 COMMISSIONER BRADLEY: Uh-huh.

14 CHAIRMAN JABER: All those in favor say
15 aye.

16 COMMISSIONER DEASON: Aye.

17 COMMISSIONER BRADLEY: Aye.

18 CHAIRMAN JABER: Opposed, nay.

19 COMMISSIONER BAEZ: Nay.

20 CHAIRMAN JABER: Nay.

21 Commissioner Palecki, did you vote?

22 COMMISSIONER PALECKI: Yes, I voted nay.

23 And I would make --

24 CHAIRMAN JABER: The motion fails.

25 COMMISSIONER PALECKI: Before I make an

1 alternate motion, let me tell you what my -- how
2 I feel about this issue. I don't want to create
3 a precedent that says that this is a proper
4 criteria to consider to keep a bidder off the
5 short list. I don't want to set that precedent.
6 At the same time, I believe this is a non-issue,
7 because TECO did not intervene in this case.

8 So I guess what I'm saying is that no party
9 in this case has made a record that they were
10 treated in a fair or unreasonable manner. TECO
11 didn't intervene. This is an action that only
12 took place, to my knowledge, on TECO's bid.
13 They have not contested the bid.

14 COMMISSIONER BRADLEY: Excuse me. Did you
15 say that they were or were not treated in a fair
16 and reasonable manner?

17 COMMISSIONER PALECKI: I haven't made any
18 decision either way. I just don't believe the
19 criteria that was considered with regard to
20 TECO's reserve margin and how this unit would
21 have affected TECO's reserve margin should have
22 been considered in keeping TECO as a bidder off
23 of the short list. At the same time, TECO
24 didn't intervene in this case, and they didn't
25 preserve this issue for us to decide. That's, I

1 guess, the problem I have. I don't believe this
2 is really a proper issue for us to decide, in
3 light of the fact that there was no party in
4 this docket who was substantially affected that
5 intervened in the case.

6 COMMISSIONER DEASON: Are you suggesting no
7 vote is necessary?

8 COMMISSIONER BAEZ: I can support no
9 action.

10 COMMISSIONER PALECKI: I believe that's
11 what I'm suggesting. I don't think it's
12 necessary for us to take a vote.

13 CHAIRMAN JABER: Ms. Brown, from a legal
14 perspective, why does this -- not voting on this
15 issue, I suppose, has the effect of striking the
16 issue?

17 MS. BROWN: I want to enlist Mike's help in
18 this. The only thought I had where it might be
19 important for you all to vote on it, even though
20 TECO didn't raise it and hasn't brought it
21 forward, is that TECO was combined with other
22 bidders in combinations for consideration and
23 evaluation, and the fact that FPL didn't further
24 review TECO's bid could have affected other
25 bidders' bids. That's the only concern that I

1 would have.

2 CHAIRMAN JABER: That have intervened in
3 the proceeding?

4 MR. HAFF: That have not intervened; right.

5 COMMISSIONER BAEZ: That have or have not?

6 COMMISSIONER DEASON: Yes, but with TECO
7 in combination, TECO with the most favorable
8 cost-effective combination was still \$87 million
9 more costly.

10 MS. BROWN: That's correct. That's
11 correct. But in terms of whether you're going
12 to even address the issue or not, that was my
13 one concern, and I didn't know whether --

14 CHAIRMAN JABER: Okay. But to address your
15 concern -- let me make sure I heard you
16 correctly. The combination of companies that
17 were matched with TECO, they are or are not
18 intervenors in the case?

19 MR. HAFF: Calpine was the other one, and
20 they withdrew from the case and withdrew their
21 bid.

22 MS. BROWN: Well, then I don't have a
23 concern. From my point of view, I think I agree
24 with Commissioner Palecki. This issue was
25 raised by an intervenor who really wasn't

1 affected by FPL's decision on TECO's reserve
2 margin.

3 CHAIRMAN JABER: Okay. And I don't know if
4 this is the correct direction or not. You need
5 to talk to Mr. McLean and think about this going
6 forward. If legal staff believe that issues are
7 not appropriate for consideration, you really
8 shouldn't hesitate to bring that to the
9 Prehearing Officer's attention.

10 COMMISSIONER DEASON: Well, Madam Chairman,
11 this particular issue was brought to my
12 attention, and I erred on the side of including
13 it. In fact, there was a motion, I believe,
14 made by FP&L that all of the subparts of Issue
15 11 were not needed, and I ruled that they were.
16 And I probably should have paid more attention
17 to each individual subpart, and maybe (g) was
18 really not needed. But I did feel like the
19 subparts, earlier subparts of Issue 11 were
20 certainly relevant, so I included the subparts
21 of Issue 11.

22 CHAIRMAN JABER: Thank you, Commissioner
23 Deason. I wholeheartedly understand with erring
24 on the side of bringing it to the Commission.

25 COMMISSIONER DEASON: But I have no

1 objection to not taking a vote on this issue and
2 finding that it's not relevant to the
3 determination that it's in front of us.

4 CHAIRMAN JABER: Okay. I don't either.
5 That sounds like a way of --

6 COMMISSIONER PALECKI: I would second that
7 motion.

8 CHAIRMAN JABER: Commissioner Baez, do you
9 have any concerns?

10 COMMISSIONER BAEZ: No. As to the point
11 that it wasn't relevant, I think we had a good
12 discussion on it, and I think we've at least
13 been able to air out what could possibly be a
14 recurring theme, you know, at some point in the
15 future and perhaps nip it in the bud. So I do
16 appreciate the fact that it was included.

17 COMMISSIONER BRADLEY: So how do we
18 procedurally do --

19 CHAIRMAN JABER: So we're not voting on
20 Issue 11(g), and we're moving on to Issue 12.

21 COMMISSIONER BRADLEY: Does there have to
22 be a motion that we --

23 CHAIRMAN JABER: No. Traditionally, we
24 just find that no vote is necessary, although I
25 do recall hearing Commissioner Palecki interpret

1 what Commissioner Deason said as a motion, and
2 Commissioner Palecki did second it.

3 COMMISSIONER BAEZ: And I third.

4 COMMISSIONER PALECKI: I guess the only
5 motion is that we not take a vote.

6 COMMISSIONER BRADLEY: And I second that.

7 CHAIRMAN JABER: So no vote is taken, and
8 we're on Issue 12.

9 I do have questions on Issue 12,
10 Commissioners. This is the equity penalty
11 issue, staff, and --

12 COMMISSIONER DEASON: Let me ask one quick
13 question up front.

14 CHAIRMAN JABER: Go ahead.

15 COMMISSIONER DEASON: Consistent with our
16 decision in 11(g), I'll just lay this out. I'm
17 not making a motion. I just think as we discuss
18 this, I think we need to consider if a vote on
19 this issue is necessary either.

20 CHAIRMAN JABER: Yes, exactly.

21 COMMISSIONER DEASON: Given that the
22 economics work out like they do, that excluding
23 the penalty does not affect the bottom line
24 cost-effectiveness. And I just throw that out
25 for our consideration. I'm not trying to

1 short-circuit this, and I'm interested in
2 hearing viewpoints and things. But I think we
3 need to enter this with the understanding that
4 the bottom line cost-effectiveness is really not
5 -- does not hinge upon the question of whether
6 there is or is not an equity penalty in this
7 case.

8 CHAIRMAN JABER: Yes. Let me tell you --
9 first of all, I was going to ask staff that
10 question. But with respect to the distinction I
11 see, Commissioner, let's go ahead and hit that
12 up front.

13 The distinction I see with the equity
14 penalty and the TECO situation is that FP&L did
15 seek the penalty adjustment, and in an effort to
16 send a strong signal with respect to -- and
17 again, this is one Commissioner speaking -- this
18 issue needs to be looked at on a case-by-case
19 basis, and here's what we would be looking for,
20 I see a benefit to including it in the order.
21 Now, how that gets included in the order, I'm
22 not wed to.

23 But, you know, my whole philosophy as it
24 relates to these proceedings, regardless of
25 industry, is let people know what they've got to

1 deal with going forward. And to the degree the
2 economics fell out in this case that even with
3 the equity penalty, there wasn't another bid
4 that was close to the FP&L self-build option, so
5 be it, but reserve the right to disallow equity
6 adjustments in the future for the following
7 reasons, or to allow equity adjustments for the
8 following reasons. And I do want that
9 articulated in the order in some fashion.

10 Maybe that doesn't take a formal vote. But
11 I would note that there was extensive testimony
12 on this issue, and I think going forward, it may
13 have significant dollar impacts, and that is the
14 kind of direction that we're obligated to give
15 these companies.

16 COMMISSIONER BRADLEY: Madam Chair, I
17 would --

18 CHAIRMAN JABER: Commissioner Bradley.

19 COMMISSIONER BRADLEY: I don't disagree
20 with what you said, and my concern would be --
21 and this is a question of staff. And this may
22 entail another docket altogether, but I can see
23 the concern that a bidder would have, and I can
24 see the concern that a person who's going to
25 accept that bid would also have in terms of the

1 bidder having maybe concerns about certain
2 things being revealed about their financial
3 status. But on the other hand, I would think
4 that a company that's going to accept a bid
5 would also be entitled to adequate information
6 about the solvency of a company and their
7 ability to perform if in fact their bid is
8 accepted as being the most cost-effective bid.

9 And I know probably staff has had some
10 opportunity to think about this, but what is the
11 alternative that would make this fair and
12 equitable to everyone, that would allow a
13 company to prognosticate fiscal solvency and
14 indebtedness to determine if a company does in
15 fact have the ability to perform if they are
16 chosen?

17 MR. HARRIS: I'm sorry, Commissioner. If I
18 understand your question correctly, Issue 12
19 that's up for consideration is a portion of a
20 financial analysis. My understanding of your
21 question is what would allow a company
22 soliciting for proposals to evaluate the
23 financial viability of the bidders, and I think
24 that is an explicit part of the RFP process.

25 In this case, I believe Florida Power &

1 Light, the record reflects, did make some
2 specific statements in its RFP as to what they
3 would look for and what they would consider.
4 One piece of record evidence that comes to mind
5 is that they required a specific bond rating and
6 said we wouldn't consider bids -- or "wouldn't"
7 is too strong a word, but they would not be very
8 comfortable with bids below a certain bond
9 rating unless that company could produce some
10 type of security to bring them back up to a
11 comfort level FP&L would have.

12 And so if I understood your question
13 correctly, the RFP document itself would
14 specify what type of criterion we're looking
15 for, what we would be concerned about, and what
16 we would require a company to do in order to
17 make us comfortable with you as a bidder.

18 The equity penalty issue, Issue 12, doesn't
19 go to that criterion so much. It's not a
20 financial viability of the bidding company that
21 the equity penalty addresses. It's an effect
22 that the bidding -- that the award of that bid
23 would have on Power & Light's capital structure,
24 if that was your question, Commissioner.

25 COMMISSIONER BRADLEY: Well, no, not

1 exactly. And correct me if I'm interpreting
2 this incorrectly, but a company's indebtedness
3 for other obligations should or should not be
4 given consideration with respect to what the
5 company who -- in terms of what the company
6 that's going to accept the bid would consider as
7 it relates to their ability to perform if the
8 bid is given to them.

9 MR. HARRIS: That's absolutely correct,
10 Commissioner.

11 COMMISSIONER BRADLEY: Right. So my
12 question is this: what alternative method might
13 be used to get at that assessment and
14 determination in lieu of an equity penalty?

15 MR. HARRIS: Again, Commissioner --

16 CHAIRMAN JABER: I think here's where I'm
17 confused, Commissioner Bradley, with your
18 question. The equity penalty is an adjustment
19 that FP&L makes for its own financial
20 accounting. So I think the difficulty in
21 answering the question, and certainly the
22 difficulty I'm having is, this isn't about the
23 obligations that the bidder has. It's about how
24 rating agencies take a look at FP&L when FP&L
25 enters into a purchased power agreement with

1 another company.

2 So it's really about how rating agencies
3 look at Florida Power & Light when they select
4 their own -- when they choose another company to
5 enter into a long-term contract, rating
6 companies, according to the testimony, consider
7 that debt, and Power & Light makes an adjustment
8 for that in evaluating the bids.

9 And in that regard, my two questions are
10 this, Larry.

11 COMMISSIONER BRADLEY: well, let me
12 acknowledge this. I stand corrected then.

13 MR. HARRIS: Thank you, Commissioner.

14 CHAIRMAN JABER: My question is exactly,
15 though, where Commissioner Bradley was getting.
16 Are we confident with the record that FP&L would
17 not be downgraded?

18 MR. HARRIS: That's the testimony that
19 Mr. Maurey presented, and I believe the
20 recommendation makes that statement, yes.

21 CHAIRMAN JABER: Okay. And then remind me
22 again what the language regarding equity penalty
23 was in the supplemental RFP. There was some
24 reference to it. I don't think they used the
25 exact terminology.

1 MR. HARRIS: My recollection is,
2 Commissioner -- I don't have a copy of the RFP
3 in front of me. I do recall, I believe, based
4 on the record testimony, there was a line in
5 there --

6 MS. KENNY: I have it, Larry.

7 MR. HARRIS: Okay.

8 MS. KENNY: In the RFP, it states the
9 evaluation will examine each proposal's impact
10 on the entire FPL system, including the
11 estimated impact on FPL's cost of capital
12 associated with entering into a purchased power
13 agreement.

14 CHAIRMAN JABER: Okay. And you've taken
15 those words and that rationale, and on page 55
16 of the recommendation, you've identified why in
17 this case, under these circumstances, you
18 believe an imputation of equity penalty is not
19 appropriate.

20 MR. HARRIS: That's correct.

21 CHAIRMAN JABER: Okay. Commissioners, if I
22 could be real clear on my concern here, here my
23 concern is not one of notice or that the
24 language was not included in the RFP. It's
25 really providing an opportunity for the future

1 process to include direction or guidance -- I
2 think "guidance" is a better word -- that
3 companies could follow on the situations where
4 an equity penalty may be appropriate or where it
5 may not be appropriate.

6 And maybe staff has ideas on how that could
7 be included if it's the Commissioners' desire
8 not to vote on this issue. I have to tell you,
9 I would think that the company would want a vote
10 on this issue, because if anything, it
11 strengthens the fact that the bids -- even with
12 an equity penalty, the self-build option was the
13 most cost-effective approach. Am I missing
14 something?

15 MR. HARRIS: No, Commissioner. Speaking
16 for myself, I think that as a bidder or as a
17 company, I would want to know the types of
18 situations where the Commission was interested.
19 There was a significant amount of record
20 testimony and record evidence as to whether the
21 Commission has applied it in the past, and if
22 so, what it meant when they did apply it, and
23 what other states might or might not have done
24 with this.

25 I believe that some type of decision or

1 even guidance from the Commission, some type of
2 language in the order, whether it be a holding
3 or some dicta that explains what the Commission
4 would look at, would help in the future with
5 RFPs, with bids, with future need
6 determinations, for companies to understand what
7 the Commission was going to be looking at in
8 making these determinations, and that would help
9 to focus testimony and record evidence in future
10 proceedings and help bidders in the State of
11 Florida and solicitors of RFP proposals in the
12 State of Florida to understand what types of
13 things are going to matter.

14 we have some record evidence as to
15 Commission votes in the past, but it's staff's
16 position that there's no definitive statement as
17 to when it will be applied, when it won't, if it
18 should be applied at all. And some type of
19 guidance would be very helpful, I believe, for
20 not only staff, but the industry as a whole,
21 both suppliers and purchasers, or suppliers and
22 sellers -- purchasers.

23 CHAIRMAN JABER: Commissioners, I don't
24 have any other questions on this issue.
25 Commissioner Bradley.

1 COMMISSIONER PALECKI: Yes. And I'm still
2 struggling with this issue. I'm trying to
3 understand why, if all the stars align as it
4 relates to the bidder, why this would have a
5 negative impact upon -- based upon your
6 statement, upon Florida Power & Light's bond
7 rating.

8 MR. HARRIS: I can answer that, or I can
9 have one of our finance people, who might be
10 able to answer that question also more
11 accurately.

12 CHAIRMAN JABER: Mr. Lester.

13 MR. LESTER: If Florida Power & Light
14 enters into a purchased power agreement, they're
15 going to have to make capacity payments, and
16 those capacity payments are fixed, so they're
17 like debt. And the bond rating companies view
18 that in part as debt.

19 So if it was a take-or-pay contract with
20 capacity payments, that's going to be considered
21 a very debt-like purchased power agreement, and
22 so they impute debt to the balance sheet. They
23 put something on the balance sheet, an
24 off-balance-sheet obligation for calculating
25 financial ratios. They essentially treat the

1 purchased power agreement in part as something
2 that creates a debt-like obligation. That can
3 therefore impact FPL's bond rating, and if it
4 did, it could raise the cost of capital.

5 COMMISSIONER BRADLEY: So it seems to me
6 that what you've explained to me justifies
7 Florida Power & Light having a concern about
8 this issue and the equity penalty.

9 MR. LESTER: Yes, sir, they're justified in
10 having a concern. In all the testimony that
11 we've considered, there is testimony from their
12 witness and from the staff witness that this
13 will not cause a bond rating downgrade. And to
14 me, that's where it really gets to the idea of
15 is this going to be a real cost, or is this just
16 something that is not a real cost. I mean, it
17 can only be a real cost if it impacts the
18 company's financial flexibility or their bond
19 rating.

20 And this company has a cushion, so to
21 speak, with an equity ratio of 63% that will
22 allow them to take on the additional obligation,
23 we believe, and not face any type of bond rating
24 downgrade.

25 COMMISSIONER BRADLEY: But staff's

1 recommendation is no.

2 MR. LESTER: Actually, it's just a case by
3 case. We think in this case, it hasn't risen to
4 the level of showing a need to be included.

5 COMMISSIONER PALECKI: I think that one of
6 the unfortunate things is that we're deciding
7 this issue today rather than before the RFP was
8 issued. And right now we're moving forward on a
9 rulemaking, and it still remains to be seen
10 where that rulemaking will go. But one of the
11 directions that we're looking at is to have the
12 terms and the conditions defined up front and an
13 opportunity for the Commission then to decide
14 whether they're appropriate. And this is
15 something that at the time of the RFP, neither
16 FPL or any of the bidders would know how this
17 Commission was going to react to the equity
18 penalty, and I think it's a real good indication
19 of why changes to our RFP process are required.

20 I just have one concern with the
21 recommendation itself, and that's the sentence
22 that even without the implementation of the
23 equity penalty, FPL's self-build option still
24 appears to be the most cost-effective method.
25 I'm just not sure that that portion of the

1 recommendation doesn't have to wait until we
2 vote on Issues 14 and 15. I think that's the
3 whole basis of Issues 14 and 15, is what is the
4 most cost-effective option. But other than that
5 concern, I have no problem with the staff's
6 recommendation.

7 COMMISSIONER DEASON: well, let me say
8 this. You know, if we're going to get into all
9 the nuances of this issue -- and I don't object
10 to that -- I cannot support staff's
11 recommendation. I think it is faulty.

12 COMMISSIONER BAEZ: I had a question, but
13 if you're not going to get into why you think
14 it's faulty -- and I don't want you to.

15 COMMISSIONER DEASON: well, I can do that
16 now or -- I can do that now or later.

17 CHAIRMAN JABER: well, go ahead,
18 Commissioner, if it helps.

19 COMMISSIONER DEASON: well, I think that
20 staff has done a very good job of analyzing the
21 issue and has a very thorough discussion. I
22 think it's pretty well encapsulized on page 55
23 of the recommendation. There are four bullet
24 points there. I disagree with three of the
25 bullet points.

1 First of all, to take the first bullet
2 point, I don't think it is relevant whether
3 there will or will not be a bond downgrade.
4 That should not be the criteria for determining
5 if there is a cost which needs to be imputed so
6 that you have an accurate apples-to-apples
7 comparison of the cost of a self-build versus a
8 purchase.

9 The testimony is in the record that the
10 bond rating agencies view these long-term
11 fixed-cost contracts as the equivalent of debt,
12 so we know it's going to have that pressure on
13 the company's capital structure. And I don't
14 think it's relevant whether this particular one
15 is going to cause a downgrade, or the next one,
16 or the next one.

17 What's going to happen if you allow two
18 purchased power contracts to be signed, and
19 neither one of those cause the downgrade, but
20 the third one does, and all of a sudden the
21 bidders on the third one, they have the equity
22 penalty imposed on them, but the first two
23 didn't. Is that being -- it seems to me you're
24 being discriminatory in your bidding process.
25 You need to consider -- if you're going to

1 consider it, you need to consider it every time,
2 not just whether there will or will not be a
3 bond downgrade. I think that is the wrong
4 criteria to apply.

5 The fact that the PAAs which are currently
6 within FPL's portfolio will be declining over
7 time, I don't think that's relevant either.
8 First of all, there's testimony in the record
9 that there's a likelihood that some of those
10 agreements are going to be renewed or be
11 replaced. But the fact of the matter is that
12 there's going to be pressure upon the company's
13 capital structure, and either there will
14 eventually be a bond downgrade, or else there's
15 going to be a requirement to issue more equity
16 capital. And we know that equity capital is
17 more expensive than debt because of the higher
18 cost of capital and the income tax effects of
19 the equity being in the capital structure. So I
20 disagree with that.

21 I disagree with the fourth bullet point.
22 I don't care what is common regulatory practice.
23 Either it's right or it's wrong. We make
24 decisions based upon the evidence in this state,
25 and we make those decisions. That carries no

1 weight whatsoever with me, what has been done in
2 another state.

3 what does cause me some concern is the
4 third bullet point. We have some very sketchy
5 evidence that there are other cost saving
6 attributes of entering into purchased power
7 agreements. I think that record should have
8 been more fully developed, and there should have
9 been some attempt to try to quantify that. I
10 think where all that comes out is that it
11 probably is going to have a bearing as to the
12 factor that we apply as to the impact of the
13 imputation.

14 I know that we have made decisions in the
15 past where I think we used a 10% factor, and we
16 have evidence in this case from Florida Power &
17 Light that the bond rating agencies are looking
18 at a factor for these particular type contracts
19 of anywhere from 60 to 40%, and I think FP&L
20 suggested using 40%.

21 I don't think we have enough evidence in
22 this record to say that 40% is accurate or 10%
23 is accurate or 60% is accurate, because I don't
24 think we have enough evidence on these
25 offsetting amounts, and I would have liked to

1 have had more evidence on that. But absent
2 that, I have no alternative but to utilize the
3 40%. And if we're forced to vote on this in
4 this particular case, that's what I would
5 support, is a 40% factor for the imputation.

6 And I think it is a real cost. It has an
7 impact upon the company's capital structure, and
8 that in turn has an impact on capital costs for
9 the retail customer. And I think that we would
10 not be having an apples-to-apples comparison if
11 we adopt staff's recommendation in this case.

12 CHAIRMAN JABER: Commissioner Baez, you
13 you a question.

14 COMMISSIONER BAEZ: Of Commissioner
15 Deason.

16 Now, having said that, with respect to
17 bullet 3, do you agree that the equity penalty,
18 as it's being called, and perhaps we can find a
19 kinder, gentler name for that, but the equity
20 adjustment is part of a bigger consideration? I
21 mean, it is subject to mitigation?

22 COMMISSIONER DEASON: I think it is subject
23 to mitigation. And I, in all honesty, wish I
24 had had more evidence --

25 COMMISSIONER BAEZ: Me too.

1 COMMISSIONER DEASON: -- developed in the
2 record on the --

3 COMMISSIONER BAEZ: Absolutely.

4 COMMISSIONER DEASON: -- cost savings
5 attributes. I mean, they're listed here, and I
6 think there's merit to these arguments
7 concerning some of the mitigation things, about
8 reduces cost of obsolescence and things of that
9 nature because you have a contract as opposed to
10 having your own mortar-and-concrete facility.
11 But we had no quantification whatsoever.

12 COMMISSIONER BAEZ: I agree with you on
13 the concept. I think it does have to become
14 part of -- if we're going to consider it at all,
15 I think it does have to become part of a broader
16 picture, including any mitigating or aggravating
17 factors, frankly. I mean, there are more out
18 there. This is not the "end all, be all" of
19 it. It just happened to have some impact in
20 this determination.

21 Now, what I'm having trouble with, (a) is
22 how can we quantify these other things, and
23 whether we can quantify them. I hope that we
24 can, because that is the kind of thing that
25 certainly I would like to see, the kind of

1 information, the kind of case built in the
2 future.

3 I do have a little bit of concern or
4 heartburn over something that you said about --
5 that was stated about bullet 1. I think, you
6 know, while it is true that it is possible that
7 the third RFP down the line is going to be
8 prejudiced by an equity adjustment potentially,
9 where the predecessors wouldn't have, to me, I
10 think that's just a process of the future
11 unfolding. You know, you have to take -- it's
12 the same thing as the existence of the RFP
13 itself. I mean, it just so happens that the RFP
14 exists because there's a need for capacity, and
15 dimensions based on things -- you know, who's
16 going to control that. So I think the downline
17 effect perhaps isn't as much of a concern to me,
18 assuming that were --

19 COMMISSIONER DEASON: Let me say this. I
20 don't mean to interrupt, but I think it's
21 important to say right now. I would hope that
22 FP&L, and as far as that goes, any of the large
23 companies that we regulate, that they would
24 never be in a position where the signing of one
25 purchased power agreement would cause a bond

1 downgrade.

2 COMMISSIONER BAEZ: Absolutely.

3 COMMISSIONER DEASON: I hope that they
4 manage their capital structure and are aware of
5 their financial position such that that would
6 never happen, that the signing of one contract
7 is going to cause a bond downgrade. I think
8 that the companies that reasonably manage their
9 capital position would look at that, and they
10 would have an equity cushion in there such that
11 that would not happen, because you're talking
12 about increasing costs to customers.

13 And so I think this is the wrong criteria,
14 to say that you don't make this adjustment
15 unless there's a downgrade, because I hope our
16 companies would never find themselves in a
17 situation that a downgrade would result from
18 signing a purchased power agreement.

19 CHAIRMAN JABER: Can I add to that,
20 Commissioner Deason, which is, I hope that our
21 companies explain to the analysts and the
22 investors that they meet with on a regular basis
23 that purchased power agreements should never be
24 viewed as something similar to your off-sheet,
25 balance, normal debt obligations.

1 And that's sort of my problem with going
2 forward with the equity adjustment. You also
3 don't want to send through any decision-making
4 process the reverse signal of never go beyond
5 your self-build option, because regardless of
6 how many times we change the bidding rule, we
7 want it to be effective, and we don't want our
8 decisions to ever be counter-productive.

9 Now, obviously, I'm not suggesting that
10 this one will be -- I hope that it is not, but
11 that is that fine line I'm trying to keep in the
12 back of my mind. I don't want to send the wrong
13 signal to the investment industry via the
14 companies that purchased power agreements are
15 bad, because in fact, what you're saying is
16 absolutely true. We probably don't have enough
17 evidence in the record on a hypothetical
18 situation to know what the benefits and the --

19 COMMISSIONER DEASON: Let me clarify.
20 Purchased power agreements are not bad at all.
21 The only thing I'm saying is that you need to
22 evaluate the true cost of the purchased power
23 agreement in making your evaluation.

24 CHAIRMAN JABER: That's a very -- yes,
25 absolutely.

1 Now, in that regard, Commissioner Deason,
2 is that why in the beginning you were suggesting
3 we need to think about whether the issue needs
4 to be voted on, because you believe that the
5 benefit side of the equation is not completely
6 vetted in the record?

7 COMMISSIONER DEASON: Well, I don't think
8 voting on this is necessary. Now, I see the
9 merit in staff's argument that the participants
10 need some guidance as to how we're going to view
11 the equity penalty adjustment. And I agree that
12 that terminology may be lacking or prejudicial
13 to some degree. So I think that the best thing
14 that we can do is to indicate that there is a
15 legitimate real cost associated with the signing
16 of a purchased power agreement, that it puts
17 pressure on an incumbent utility's capital
18 structure.

19 I'm not so sure that we have to get into
20 all the nuances today of what factor we're going
21 to use, or whether we're going to try to have
22 any offsets or mitigating factors, because it's
23 not relevant to the bottom line determination.

24 CHAIRMAN JABER: But would you add to that,
25 which is where I could be comfortable -- I mean,

1 to staff's credit, I think they were just
2 feeding off of my concern. I want this
3 articulated someplace so that companies know
4 what we looked at in this case, what was looked
5 at in the Florida Power Corporation case, and
6 what may be looked at going forward. Would you
7 add onto what you said, though, that it is a
8 legitimate cost, and the application of that
9 cost would be determined on a case-by-case
10 basis?

11 COMMISSIONER DEASON: I agree with that.

12 CHAIRMAN JABER: In Commission proceedings.

13 COMMISSIONER DEASON: Until we get more
14 experience and we feel comfortable going to some
15 type of a rulemaking, that's the way we're going
16 to have to make these decisions.

17 CHAIRMAN JABER: Well, it may be included
18 in the rule.

19 Commissioner Bradley and Commissioner Baez.

20 COMMISSIONER BRADLEY: I agree with
21 everything that has been said, but I'm really
22 thinking about this, and I see the equity
23 penalty maybe as being a preemptive strike,
24 because after all, what we are here to do is to
25 ensure that consumers get the best deal. And if

1 not having the equity penalty is going to have
2 an adverse impact upon the IOUs' bond rating,
3 what I foresee is that at some point we as a
4 Commission will be dealing with a rate case to
5 make up the difference between what has been
6 lost as a result of having downgraded their bond
7 rating in terms of capital.

8 CHAIRMAN JABER: That's a very good point.
9 I think, though, Commissioners, we need to come
10 back and remember this case. In this case, the
11 FP&L witness testified and acknowledged that in
12 this case, there wouldn't be a bond downgrade.
13 But the reason I'm insisting on putting the
14 language about a case-by-case basis is
15 absolutely for the point you just stated. I
16 don't want to have a generic policy decision out
17 there that has this Commission committed to how
18 we're going to look at equity adjustments.

19 COMMISSIONER BAEZ: How much -- and this
20 is just a question that occurred to me now after
21 hearing most of the discussion. How much are we
22 willing to validate the whole concept of
23 treating PPAs as debt, or is that our
24 responsibility or obligation, I guess?

25 COMMISSIONER DEASON: You know, I'm

1 comfortable with that concept, but there may not
2 be a majority of Commissioners here who are
3 willing to do that, you know.

4 COMMISSIONER BAEZ: I mean, if there's --
5 and I heard some disagreement expressed with the
6 way wall Street treats them, and if that's a
7 position that we're adequate taking -- I'm not
8 comfortable saying that, mind you. I feel like
9 staying in the real world for a while.

10 COMMISSIONER DEASON: well, the fact
11 remains, it doesn't matter what we think about
12 wall Street's analysis. They're the ones that
13 make the analysis, and they make the
14 recommendations to the investors, and they
15 determine the cost. And that's what we have to
16 determine, if there is a cost impact on the
17 company's capital.

18 COMMISSIONER BAEZ: In reality.

19 COMMISSIONER DEASON: In reality.

20 CHAIRMAN JABER: But the only distinction I
21 would make, Commissioners, I think wall Street
22 would look at our decisions to see if we have
23 stated that purchased power agreements should be
24 considered debt or treated like debt.

25 COMMISSIONER DEASON: I don't think our

1 decision should be that. I think our decision
2 should be a recognition that the bond rating
3 agencies treat it that way, and no decision
4 whatsoever as to we agree that that is the
5 appropriate treatment.

6 CHAIRMAN JABER: Then I think we're at the
7 same place.

8 COMMISSIONER BAEZ: Then can we make that
9 statement as well?

10 CHAIRMAN JABER: I would like to, but that
11 is precisely the guidance and the direction I'm
12 talking about, and I don't know if we do that in
13 terms of a vote on the motion, but --

14 COMMISSIONER DEASON: And let me just say
15 one other thing while I'm thinking about it. I
16 think when it comes to these mitigating factors,
17 another things that needs to be factored in --
18 and I think that to some extent, the bond rating
19 agencies do that.

20 They may not have as great an appreciation
21 of our particular regulatory policies and
22 procedures and the commitment of this Commission
23 as we do, and we know that we have a very strong
24 record of passing through purchased power costs
25 through adjustment clauses, so we may be more

1 comfortable that it is less like debt than the
2 rating agencies, and maybe there should be some
3 education there.

4 But the fact remains that the rating
5 agencies provide their recommendations, they
6 provide their ratings, and that impacts what
7 investors are willing to pay for the bonds and
8 for the equity of the company, and that impacts
9 the company's cost of capital.

10 CHAIRMAN JABER: Right. And you might
11 recall the cross-examination with the FP&L
12 witness where the Commissioners, we were asking
13 if in his opinion the rating agencies might take
14 into account or, you know, assess the risk,
15 knowing that Florida has a very stable,
16 consistent clause recovery. And you recall he
17 said that did not come up, but, yes, absolutely,
18 he thought it would be a very good point with
19 respect to how rating agencies looked at
20 purchased power agreements.

21 COMMISSIONER BRADLEY: well, would it be
22 inappropriate or appropriate to make a motion
23 then that we take this issue off the table?

24 CHAIRMAN JABER: It's never inappropriate
25 to make whatever motion you want, Commissioner

1 Bradley.

2 COMMISSIONER BRADLEY: I'm trying to get a
3 feel for --

4 CHAIRMAN JABER: I would hope that you not
5 -- thank you for asking. Thank you.

6 COMMISSIONER BRADLEY: Get a feel for it.

7 CHAIRMAN JABER: I would hope that we not
8 take the issue off the table completely. My
9 hope would be that one of you makes a motion to
10 include a discussion in the order that goes like
11 this: The company and the stakeholders have put
12 sufficient testimony in the record to indicate
13 that rating agencies have considered purchased
14 power agreements debt-like. And obviously, we
15 can work on this language, Commissioners, but
16 that the Public Service Commission via this
17 decision believes that the testimony in the
18 record indicates that while there are costs,
19 legitimate costs associated with entering into a
20 purchased power agreement, that some of those
21 costs may be mitigated by other factors that are
22 part of the Florida statutory scheme. We would
23 add that this issue would be looked at on a
24 case-by-case basis.

25 what else did we talk about? I'm

1 forgetting something. There seemed to be
2 three.

3 COMMISSIONER DEASON: well, I cannot agree
4 with the concept as expressed by staff that you
5 don't make the adjustment unless there's going
6 to be a downgrade, and that we look at -- try to
7 look into the future whether there's going to be
8 a decline in the number of purchased power
9 agreements in the future. I don't think that's
10 particularly relevant.

11 CHAIRMAN JABER: Right. We weren't going
12 to include that. I'm talking about just a
13 general --

14 COMMISSIONER DEASON: Okay.

15 CHAIRMAN JABER: This is my wish list. I
16 would hope for a very general two-paragraph
17 discussion that says this issue was litigated
18 here, there was sufficient testimony to indicate
19 that there are costs that a company incurs, but
20 that in this case, we don't believe the record
21 supported an equity adjustment, and then making
22 clear that this would be handled on a
23 case-by-case basis in the future, and that
24 making -- we would make some sort of statement
25 that we do not believe that purchased power

1 agreements should be viewed as normal business
2 debt.

3 I don't think, staff and Commissioner
4 Deason, I'm using the right terminology, but it
5 would be -- that's the spirit of what I would
6 like to accomplish.

7 COMMISSIONER PALECKI: I would so move.

8 CHAIRMAN JABER: well, let's make sure I'm
9 saying all the right things.

10 COMMISSIONER BRADLEY: what type of signal
11 does that send to the bond -- the rating
12 companies?

13 CHAIRMAN JABER: Hopefully the right one.

14 COMMISSIONER BRADLEY: In spite of the fact
15 that we may not believe that, is that going to
16 change their cost --

17 CHAIRMAN JABER: I hope so. You know what
18 the industry has beat into me the last two and a
19 half years since I've been here? Be careful
20 what you do in your decisions, because the
21 market is looking at you. If you make a poor
22 decision, the market is going to react. You
23 send them the right signal, and stock prices and
24 our bond prices are going to reflect it.

25 So I want to send a very strong signal to

1 the analyst world that this agency has a stable,
2 consistent mechanism through the fuel clause,
3 capacity clause, recovery mechanisms to address
4 expenses associated with entering into purchased
5 power agreements. So when you look at FP&L and
6 take a look at their bonds, the risk associated
7 with entering into a purchased power agreement,
8 S&P, should also be considered in conjunction
9 with those fixed payments that are going to be
10 passing through the capacity clause.

11 There you have it. I don't know much more
12 than that.

13 MS. BROWN: Chairman Jaber, if I might just
14 add that a lot of that is already in the record,
15 so it should be possible to use that.

16 CHAIRMAN JABER: Well, that's where I got
17 it from, Martha.

18 COMMISSIONER DEASON: Well, Madam Chairman,
19 I cannot -- well, I guess the motion has been
20 made by Commissioner Palecki. I cannot second
21 the motion.

22 CHAIRMAN JABER: Okay.

23 COMMISSIONER DEASON: Because I believe --
24 fundamentally, I believe that the record does
25 support an adjustment, the concept that there

1 should be an adjustment, based upon the way wall
2 street or the rating agencies look at it now.
3 whether we agree with that or not, that's the
4 way they look at it. There is testimony in the
5 record that these particular contracts would be
6 given a weighting factor of somewhere between 60
7 to 40%. I think that's basically unrefuted, in
8 my opinion. So I think that the record does
9 support an adjustment.

10 Now, I'm not comfortable coming out with a
11 particular amount. And forced to do so, I
12 would. I believe that given the record that we
13 have that the best alternative is the 40%
14 factor.

15 COMMISSIONER BRADLEY: what's the number?

16 COMMISSIONER DEASON: But I wish the record
17 had been more complete on some of the mitigating
18 factors.

19 COMMISSIONER BAEZ: 40%.

20 COMMISSIONER BRADLEY: 40%?

21 COMMISSIONER DEASON: It's a weighting of
22 40%. In other words, as I understand it, that
23 the fixed payments under these contracts, that
24 40% of that amount would be considered a debt
25 obligation. It would be imputed into the

1 capital structure as such, and then there has to
2 be an equalization of the capital structure so
3 that it maintains its equity-to-debt ratio. And
4 there's a cost associated with that, and that
5 cost has to be imputed to the bid price of that
6 particular contract.

7 Now, I may be oversimplifying it, but I
8 think that in essence, that's basically what
9 happens.

10 I think that the record does support an
11 adjustment, so I cannot support a motion that
12 says that the record does not support an
13 adjustment.

14 CHAIRMAN JABER: Okay. Then that is a very
15 big difference.

16 And Commissioner Palecki, I know you were
17 making a motion consistent with what I said.
18 Since we have that big difference then, I have
19 to tell you, I was prepared to accept staff's
20 recommendation. So let's throw out a motion,
21 and let's just --

22 COMMISSIONER DEASON: There is a motion,
23 and it may be seconded, but I just felt
24 compelled at least --

25 CHAIRMAN JABER: Right.

1 COMMISSIONER DEASON: -- so nobody would be
2 surprised where I am.

3 COMMISSIONER BRADLEY: And before we second
4 the motion, if there is going to be a second, I
5 would agree with Commissioner Deason. Reality
6 is fact right now, and until the culture does
7 change, then I think that an equity penalty is
8 justified.

9 CHAIRMAN JABER: Okay. Commissioner
10 Palecki?

11 COMMISSIONER BRADLEY: I have to accept
12 reality.

13 COMMISSIONER PALECKI: I would maintain my
14 initial motion that was consistent with the
15 statement made by Chairman Jaber.

16 CHAIRMAN JABER: Which is really to accept
17 staff's recommendation.

18 Tell me -- Martha, you just said everything
19 I said was in the recommendation. I think the
20 difference is --

21 MS. BROWN: I think I said it was in the
22 record.

23 CHAIRMAN JABER: Oh, in the record. Thank
24 you.

25 MS. BROWN: Not in the recommendation.

1 There is a lot in the record. Well, there is
2 some indication in the record, discussion in the
3 record about the Commission's first case, the
4 Hines 1 case where --

5 CHAIRMAN JABER: And the clauses.

6 MS. BROWN: Yes. And there are some good
7 quotes in there from Mr. Maurey's testimony
8 about the use of purchased power contracts and
9 how rating agencies view them and that they are
10 legitimate to some extent. That could be used.
11 And then there is more in the record about how
12 the rating agencies view different regulatory
13 bodies and their performance over time and the
14 consistency and support of decisions. And
15 clauses are mentioned in there as well, and I
16 was going to look there for some of what you
17 were looking for.

18 CHAIRMAN JABER: Commissioner Baez, it's
19 going to be up to you to make a second to the
20 motion. Let me just tell you --

21 COMMISSIONER BAEZ: Can you restate it for
22 me, please?

23 CHAIRMAN JABER: Yes. And for your
24 benefit, let me tell you, Commissioner Deason
25 convinced me on relying on what other states

1 do. Absolutely, if what other states do is in
2 the record and completely explored, that would
3 be good guidance, but I think the Commissioner
4 made an excellent point about it not being right
5 to include it in something we're going to
6 automatically look at.

7 with respect to the downgrade, I think that
8 from my standpoint, that's illustrative, not
9 necessarily the tell-all. So I don't know how
10 -- if you all want to work that into your
11 motion, or the discussion at least.

12 But to restate it, it was that I would want
13 the order to articulate that there was a
14 significant amount of testimony in the record --
15 basically, it's staff's recommendation with the
16 exceptions I just indicated.

17 COMMISSIONER BAEZ: with the exceptions
18 being that one was appropriate or not in this
19 case?

20 CHAIRMAN JABER: Right, and --

21 COMMISSIONER BAEZ: See, because I'm not
22 convinced that we need to reach that decision.
23 I'm not averse to sending the messages to the --
24 you know, to expose our views and how we believe
25 that they should be treated and how we may be

1 treating it in the future, and indeed, how they
2 have to be part of a broader consideration.

3 The trouble I'm having, again, going back
4 to something that Commissioner Deason has said,
5 is, where do you draw a line? I mean, a lot of
6 the work that we do here is based on snapshots,
7 with some kind of, you know, eye towards the
8 future. But we have to deal with what the
9 reality is now. One of those realities is that
10 the market treats these contracts as it does,
11 and we need to address that. But a reality also
12 has to be present in the fact that there is
13 going to be an adjustment or there isn't.

14 So I'm not sure how my feelings on it fit
15 into the motion that you're suggesting, and if
16 you can show me where it does, I would be happy
17 to make it.

18 CHAIRMAN JABER: I don't know, and I
19 certainly don't mind seconding the motion. But
20 my understanding, Commissioner Palecki, of what
21 you agreed to, what I wanted to accomplish is a
22 finding that this record did not support
23 including an equity adjustment, but that there
24 was significant testimony indicating that rating
25 agencies consider it to be a real cost and an

1 off-balance-sheet debt. The PSC does not
2 believe that purchased power agreements should
3 be treated as such, and that the application of
4 the equity adjustment would be resolved on a
5 case-by-case basis.

6 Looking at three of the things that are
7 articulated on page 55, whether there will be a
8 downgrade -- and again, not any one in my mind
9 is more significant than the other, but just
10 illustrative of what we might be looking at,
11 actually, two of the things, and then whether
12 there are benefits or detriments to the
13 consumer. And that's it.

14 Commissioner Palecki, did I forget
15 anything?

16 COMMISSIONER PALECKI: Just to be on the
17 safe side, I would modify my motion to be
18 consistent with the Chairman's statement.

19 CHAIRMAN JABER: And honestly, if you all
20 keep making me repeat it, it's going to change
21 every time.

22 COMMISSIONER BAEZ: Maybe it will change to
23 one --

24 CHAIRMAN JABER: Maybe we need a break and
25 let me get some medicine.

1 COMMISSIONER BAEZ: No, you don't want the
2 NyQuil talking.

3 COMMISSIONER DEASON: So the gavel has
4 been passed. We do have a motion --

5 CHAIRMAN JABER: Second.

6 COMMISSIONER DEASON: A motion and a
7 second. All those in favor of the motion say
8 aye.

9 COMMISSIONER PALECKI: Aye.

10 CHAIRMAN JABER: Aye.

11 COMMISSIONER DEASON: All those opposed say
12 nay.

13 COMMISSIONER BRADLEY: Nay.

14 COMMISSIONER DEASON: Nay. I'm sorry,
15 Commissioner Baez.

16 CHAIRMAN JABER: Nay.

17 COMMISSIONER BAEZ: Nay.

18 COMMISSIONER DEASON: Okay. The motion
19 fails, and I will pass the gavel back.

20 CHAIRMAN JABER: And we're looking for a
21 new motion.

22 COMMISSIONER BAEZ: Okay. I'm back to not
23 -- see, I can't completely agree with the fact
24 that one is appropriate, based on the premise
25 that the record only supports an adjustment of

1 that magnitude, without having fully considered
2 it. I'm not willing -- where we're always
3 willing to say, "You know what? This is the
4 only thing that was in the record, and this is
5 what we have to go with, and it was unopposed,"
6 I'm not comfortable doing that in this sense,
7 because I do believe it did have some
8 considerable effect, not an ultimate effect.

9 I don't think it changes necessarily the
10 number, the absolute cost-efficiency, but there
11 is a particular -- you know, there's a big
12 percentage of discrepancy between the numbers
13 which I guess we'll discuss later. So I'm
14 uncomfortable saying that 40 was it, which is
15 why -- you know, the fact that -- maybe one
16 might have been necessary. We're just not ready
17 -- I'm not ready to accept 40 as the number. I
18 guess that's where I am, and I can't get off
19 that.

20 COMMISSIONER DEASON: well, why can't we
21 say something to the effect that we consider the
22 debt imputation to be a legitimate cost because
23 it is treated such by the rating agencies, we
24 find that making a specific adjustment in this
25 case is not necessary because of the

1 cost-effectiveness as it exists in this case,
2 and we do not make an adjustment for that
3 reason, and pretty much leave it at that? But I
4 think there needs to be a statement and put
5 everyone on notice that we consider it a
6 legitimate cost because the rating agencies
7 consider it a legitimate cost.

8 COMMISSIONER BAEZ: And I'm comfortable
9 with considering it a legitimate cost, you know,
10 subject to -- I mean, I've got to hear
11 something. There has to be some signal that it
12 is going to happen.

13 I think that these kinds of -- we have seen
14 in this example in particular that it can
15 account for a lot of the cost-efficiency of a
16 particular proposal, not all of it, but a good
17 portion of it. And I think that it has to be
18 something more than accepting it on faith that
19 one will occur, where we can pretty much -- and
20 I had a question for staff.

21 I mean, are these things like scalable?
22 There's no way to know in advance whether you're
23 brushing up against a situation -- and I'm
24 assuming that's what you tried to do here, but
25 there's no way to know in advance as to whether

1 a particular proposal a certain way is going to
2 cause the company to brush up against, you know,
3 some reaction by Wall Street? I can't -- I'm
4 not smart enough on those matters to tell you,
5 you know, that's something that anybody should
6 know walking into it, you know, that there's
7 enough --

8 MR. LESTER: I believe there would be a way
9 of evaluating, you know, a proposed purchase
10 power agreement to determine the balance sheet
11 impact, the financial impact.

12 COMMISSIONER BAEZ: According to a
13 methodology?

14 MR. LESTER: Yes.

15 COMMISSIONER BAEZ: And a combination of
16 such and so on, even perhaps how it's going to
17 leave them for the next -- even perhaps in
18 contrast or in conjunction with any future
19 additions on a ten-year site plan? I mean, even
20 those calculations can be done; correct?

21 MR. LESTER: They could probably be done.
22 That would be more uncertain, in my opinion.

23 COMMISSIONER BAEZ: Understood.

24 MR. LESTER: Just because of the estimate,
25 you know.

1 COMMISSIONER BAEZ: Of course. See, I --
2 you know, I can't go the length of saying one is
3 appropriate in all instances as a matter of
4 course without knowing that it's going to happen
5 or not.

6 CHAIRMAN JABER: Commissioner Deason, let
7 me ask you a question based on something you
8 said. Actually, I guess it's a question to
9 staff.

10 Commissioner Deason in articulating the
11 position said we're not making an adjustment.
12 We're not making the adjustment. The company
13 made the adjustment. We're finding -- we would
14 be finding that it wasn't appropriate in the
15 evaluation process; right? The fact is, the
16 adjustment doesn't really get made until when?

17 COMMISSIONER BAEZ: Until the evaluation.

18 MR. HARRIS: In this process, I believe it
19 was the third stage of the evaluation, if I
20 recall correctly. The first stage was the cost,
21 the second was transmission integration, and the
22 third was the equity penalty, so it would have
23 been a third tier, if I recall the record
24 correctly.

25 CHAIRMAN JABER: But it's an adjustment the

1 company makes in evaluating bids.

2 MR. HARRIS: They did make that in the bid
3 evaluation, yes.

4 CHAIRMAN JABER: Okay. So the result of
5 this recommendation is after the fact, we take a
6 look at the evaluation process, and we say it
7 was inappropriate for you to consider an equity
8 adjustment in this case for the following
9 reasons.

10 MR. HARRIS: That was staff's
11 recommendation, I believe.

12 CHAIRMAN JABER: Okay. I'm sorry. I just
13 needed that sanity check.

14 COMMISSIONER PALECKI: I'm not sure how
15 much we all disagree with each other. I
16 certainly believe that the additional risk that
17 wall street imputes when a company enters into a
18 purchased power agreement is something that we
19 should consider.

20 COMMISSIONER BAEZ: Agreed.

21 COMMISSIONER PALECKI: I also think that in
22 each case, we should consider any offsetting
23 benefits of buying power that wall street might
24 consider. I think this Commission should also
25 determine and consider whether or not our

1 exemplary history of allowing these costs to be
2 passed through through our clauses should also
3 be considered and whether that's something Wall
4 Street might take into consideration. And I
5 believe these should all be considered on a
6 case-by-case basis. And I'm not unwilling to
7 send out that signal today by our vote.

8 what I am unwilling to send out is to say
9 that the exercise of a certain percentile in the
10 RFP process and penalizing some of the
11 proposals, or all of the proposals, was
12 appropriate here. So I guess it's not the
13 consideration of the equity penalty that I have
14 a problem with. It's the exercise of the
15 penalty in this RFP process that I have a
16 problem with.

17 CHAIRMAN JABER: And, Commissioner Baez,
18 that's what you've been articulating; right?

19 COMMISSIONER BAEZ: In a manner of
20 speaking, yes. And I think that the way that --
21 the solution that Commissioner Deason proposed,
22 which is, you know, we don't make one here, we
23 recognize that it's appropriate for
24 consideration, and it's up to us to decide
25 whether the application is appropriate. You

1 know, it wasn't necessary, or I don't know what
2 word you use, but it wasn't -- it's not applied
3 here, or it shouldn't have been applied. I
4 don't know what the term is without being
5 pejorative to the company. But in essence, what
6 we're doing is, we're not accepting it for
7 purposes of evaluation.

8 CHAIRMAN JABER: Well, one of the three of
9 you needs to make a motion then.

10 COMMISSIONER BAEZ: And I would move that
11 we acknowledge the appropriateness of
12 considering impact on cost of capital by the
13 evaluating utility, and that we also recognize
14 that our evaluation does not acknowledge the
15 application of it in this case, the application
16 of a penalty in this case.

17 COMMISSIONER BRADLEY: Say that again, the
18 second statement.

19 COMMISSIONER BAEZ: That in this case, the
20 Commission doesn't acknowledge the -- for
21 purposes of our evaluation, we're not
22 recognizing the application of the equity
23 adjustment.

24 COMMISSIONER DEASON: I think that begs the
25 question, because why? If you indicate that

1 there is -- you recognize that there is an
2 impact on cost of capital, why are you not
3 applying it?

4 COMMISSIONER BAEZ: What I said was that
5 it's a proper consideration.

6 COMMISSIONER DEASON: Oh, it's a proper
7 consideration.

8 COMMISSIONER BAEZ: Again, I'm not -- as I
9 said before, I'm not ready to go so far as to
10 say it was definitely impacting or it would
11 definitely impact in this case. I'm not
12 convinced.

13 COMMISSIONER DEASON: I understand. So
14 you're not convinced that it would have an
15 adverse impact upon the company's cost of
16 capital.

17 COMMISSIONER BAEZ: And certainly not at
18 40 -- you know, not requiring 40%. As I said,
19 I'm not comfortable with that number. So if I
20 can't be comfortable with the only number in
21 record, where does that leave me? I'm
22 comfortable with not recognizing it.

23 COMMISSIONER PALECKI: I second the motion.

24 CHAIRMAN JABER: There has been a motion
25 and a second to modify staff's recommendation

1 with regard to Issue 12 made by Commissioner
2 Baez. Go back to the transcript and read it.
3 All those in favor say aye.

4 (Simultaneous affirmative responses.)

5 CHAIRMAN JABER: Opposed, nay.

6 COMMISSIONER DEASON: Nay.

7 COMMISSIONER BRADLEY: Nay.

8 CHAIRMAN JABER: Okay. The motion on Issue
9 12 passes, three-two vote.

10 I've got to take a ten-minute break.
11 Sorry.

12 (Short recess.)

13 CHAIRMAN JABER: Let's get back on the
14 record, and we are on Issue 13.

15 COMMISSIONER PALECKI: I can move staff.

16 CHAIRMAN JABER: Thank you. There has been
17 a motion to approve staff on Issue 13.

18 The only thing, staff, I would ask that you
19 discuss further, going back to the record in
20 regard to the benefits associated with the
21 off-system sales.

22 No, that's the next issue. I'm sorry. No,
23 it is. It is.

24 MR. HAFF: Yes. This issue is transmission
25 integration.

1 CHAIRMAN JABER: Okay. Where is the
2 discussion on --

3 MR. HAFF: Page 61, Madam Chairman.

4 CHAIRMAN JABER: Yes. Page 61, that's
5 Issue 14, isn't it?

6 MR. HAFF: Yes.

7 CHAIRMAN JABER: Okay. There has been a
8 motion and a second on Issue 13. All those in
9 favor say aye.

10 (Simultaneous affirmative responses.)

11 CHAIRMAN JABER: Issue 13 is approved.

12 On Issue 14, I don't have a question. My
13 request, though, is that that section, because I
14 know there was more testimony than this, staff,
15 that really needs to be fleshed out.

16 MR. HAFF: There was a discussion that the
17 potential cost-benefit to the customer of
18 off-system sales, that FPL did not model that in
19 its base case. The assumption or I guess the
20 impression that FPL gave was that if they had
21 somehow modeled revenues from off-system sales,
22 that it would only benefit the customer more,
23 but that FPL did not carry out that calculation.

24 My understanding is that Mr. Taylor, their
25 consultant, did a sensitivity off some limited

1 amount of off-system sales revenue. This was
2 simply just noting that there are other items
3 that may benefit the FPL proposal that weren't
4 part of the cost-effectiveness calculation in
5 this case.

6 CHAIRMAN JABER: Was it Avera? I don't
7 recall whose testimony it is, but there was
8 testimony with respect to the efficiencies and
9 the savings associated with bringing Martin 8
10 on, and significant discussion related to, you
11 know, anything over the 15 megawatts primarily
12 will inure to the benefit of the ratepayers
13 because that is subject to the off-system
14 sales. Who testified to that?

15 MR. HAFF: That might have been Dr. Sim,
16 or it may have been Mr. Silva, but there was no
17 quantification of potential benefits to FP&L's
18 customers, so I didn't -- you know, that's why
19 there's no number here, if you will.

20 CHAIRMAN JABER: I understand that, but
21 the fact that there are benefits, and that can
22 be tied to the application of Martin 8 coming on
23 line in preparation for the need that's required
24 for 2006, I think is significant to include in
25 the order. Even in you can't quantify the

1 benefits, they're certainly qualitative.

2 MR. HAFF: Oh, sure, sure.

3 CHAIRMAN JABER: For me, that was -- and it
4 goes back to what I said earlier. It's not so
5 much of a reserve margin issue for me. It was
6 really the bigger comprehensive analysis of the
7 benefits that the customers receive, and that
8 was one of them.

9 MR. HAFF: Okay.

10 CHAIRMAN JABER: Commissioners, I hope you
11 agree with that.

12 MR. HAFF: Yes.

13 COMMISSIONER BRADLEY: I'm going to put
14 staff on the spot. So is that a yes or a no?

15 MR. HAFF: That we will put it in the
16 order? Yes.

17 MS. BROWN: That was a yes.

18 MR. HAFF: That was a yes.

19 CHAIRMAN JABER: I'm sorry.

20 MR. HAFF: well, the attorneys will put it
21 in the order.

22 CHAIRMAN JABER: Okay. Is there a motion
23 for Issue 14?

24 COMMISSIONER DEASON: I move staff on
25 Issues 14 and 15.

1 COMMISSIONER BRADLEY: Second.

2 CHAIRMAN JABER: And 15. There has been a
3 motion to approve staff on Issues 14 and 15.
4 All those in favor say aye.

5 (Simultaneous affirmative responses.)

6 CHAIRMAN JABER: Issues 14 and 15 are
7 approved. Issue 16.

8 COMMISSIONER DEASON: I can move staff on
9 Issues 16 and 17.

10 COMMISSIONER BRADLEY: Second.

11 CHAIRMAN JABER: There has been a motion
12 and second to approve staff on Issue 16. All
13 those in favor say aye.

14 (Simultaneous affirmative responses.)

15 CHAIRMAN JABER: Issue 16 is approved. I'm
16 sorry.

17 COMMISSIONER DEASON: I moved 16 and 17,
18 but we can do it separately.

19 CHAIRMAN JABER: Thank you. All those in
20 favor of approving staff on Issue 17 say aye.

21 (Simultaneous affirmative responses.)

22 CHAIRMAN JABER: Issue 17 is approved. And
23 Issue 18, Commissioner Deason, you don't have
24 any problems with closing this docket?

25 COMMISSIONER DEASON: No. I move staff.

1 COMMISSIONER BRADLEY: Second.

2 CHAIRMAN JABER: And a second. All those
3 in favor say aye.

4 (Simultaneous affirmative responses.)

5 CHAIRMAN JABER: Issue 18 is approved.
6 Good work.

7 MR. HARRIS: Thank you, Commissioners.

8 COMMISSIONER DEASON: I want to compliment
9 the staff on the quality of the recommendation
10 and the conciseness, to the point, accurate,
11 relevant discussion. Maybe you can show the
12 telephone people how to write such a
13 recommendation.

14 CHAIRMAN JABER: Well, just Walter, don't
15 you think?


16 COMMISSIONER DEASON: Yes.

17 MR. HAFF: Thank you.

18 (Conclusion of consideration of Item 7.)
19
20
21
22
23
24
25

1
2 CERTIFICATE OF REPORTER
3

4 STATE OF FLORIDA)

5 COUNTY OF LEON)
67 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes
10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 178 are a
12 true and correct transcription of my stenographic
13 notes.14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.18 DATED THIS 23rd day of November, 2002.
19
2021 
22 _____
23 MARY ALLEN NEEL, RPR
24 100 Salem Court
25 Tallahassee, Florida 32301
(850) 878-2221