

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

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

Docket No. 030001-EI

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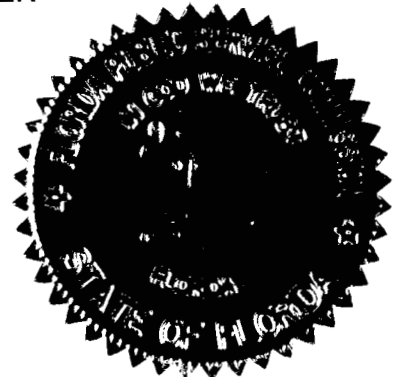
BEFORE: COMMISSIONER BRAULIO L. BAEZ
Prehearing Officer

DATE: Thursday, October 23, 2003

TIME: Commenced at 9:40 a.m.
Concluded at 12:42 p.m.

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

REPORTED BY: LINDA BOLES, RPR
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2 JOHN T. BUTLER, ESQUIRE, Steel, Hector & Davis,
3 Suite 4000, 200 South Biscayne Boulevard, Miami, Florida
4 33131-2398, appearing on behalf of Florida Power & Light
5 Company.

6 JAMES BEASLEY, ESQUIRE, LEE WILLIS, ESQUIRE, and
7 KENNETH R. HART, ESQUIRE, Ausley & McMullen, P.O. Box 391,
8 Tallahassee, Florida 32302, appearing on behalf of Tampa
9 Electric Company.

10 VICKI KAUFMAN, ESQUIRE, and JOHN McWHIRTER, JR.,
11 ESQUIRE, McWhirter Reeves Law Firm, 117 S. Gadsden,
12 Tallahassee, Florida 32301, appearing on behalf of the Florida
13 Industrial Power Users Group.

14 RUSSELL BADDERS, Beggs & Lane, P.O. Box 12950,
15 Pensacola, Florida 32520-0780, appearing on behalf of Gulf
16 Power Company.

17 ROB VANDIVER, ESQUIRE, Office of Public Counsel,
18 c/o The Florida Legislature, 111 W. Madison St., #812,
19 Tallahassee, Florida 32399-1400, appearing on behalf of the
20 Office of Public Counsel.

21 JAMES MCGEE, Progress Energy Florida, Inc.,
22 (St. Petersburg), P.O. Box 14042, St. Petersburg, Florida
23 33733-4042, appearing on behalf of Progress Energy Florida,
24 Inc.

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APPEARANCES CONTINUED:

RONALD C. LAFACE, ESQUIRE, Greenberg Traurig,
101 East College Avenue, Tallahassee, Florida 32301, and JOHN
ROGERS, GENERAL COUNSEL, Florida Retail Federation, 227 South
Adams Street, Tallahassee, Florida 32301, appearing on behalf
of the Florida Retail Federation.

MICHAEL B. TWOMEY, ESQUIRE, P.O. Box 5256,
Tallahassee, Florida 32301, appearing on behalf of Katherine
Claypool and others.

NORMAN H. HORTON, JR., ESQUIRE, Messer, Caparello &
Self, 215 South Monroe Street, Suite 701, Tallahassee, Florida
32302-1876, appearing on behalf of Florida Public Utilities and
Sebring Gas Company.

ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LaVIA,
III, ESQUIRE, Landers & Parsons, P.A., 310 West College Avenue,
Tallahassee, Florida 32302, appearing on behalf of CSX
Transportation.

COCHRAN KEATING, ESQUIRE, FPSC General Counsel's
Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
32399-0850, appearing on behalf of Commission Staff.

P R O C E E D I N G S

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2 COMMISSIONER BAEZ: All right. We'll call the
3 hearing to order. Counsel, can you read the notice.

4 MS. FLEMING: Pursuant to notice issued by the clerk
5 of the Commission on September 24th, 2003, this time and place
6 has been set for a prehearing in Docket Numbers 030001-EI,
7 030002-EG, 030003-GU, 030004-GU, 030007-EI.

8 COMMISSIONER BAEZ: All right. And we're going to
9 take appearances. And, as you can see, we've got, by my count,
10 five dockets. So if you would kindly enter your appearance and
11 declare the dockets that you're entering an appearance for.

12 Mr. Beasley, we can start with you.

13 MR. BEASLEY: Yes, sir, Commissioner. I'm James D.
14 Beasley appearing with Lee L. Willis and Kenneth R. Hart from
15 the law firm of Ausley & McMullen in Tallahassee, and we're
16 representing Tampa Electric Company in Docket Numbers 030001,
17 2 and 7.

18 MR. BADDERS: Good morning. I'm Russell Badders.
19 I'm appearing on behalf of Gulf Power Company in the 01, 02 and
20 07 dockets.

21 MR. PERKO: Good morning. I'm Gary Perko of the
22 Hopping, Green & Sams Law Firm. I'm appearing on behalf of
23 City Gas Company of Florida in the 03 and 04 dockets, and
24 Progress Energy Florida in the 07 docket.

25 MR. MCGEE: I'm James McGee, Post Office Box 14042,

1 St. Petersburg, 33733, appearing on behalf of Progress Energy
2 in the 01 and 02 dockets.

3 MR. HORTON: I'm Norman H. Horton, Jr., of Messer,
4 Caparello & Self. I'm appearing on behalf of Florida Public
5 Utilities Companies in the 01, 02, 03 and 04 docket, and
6 Sebring Gas System in the 03 docket.

7 MR. VANDIVER: Robert Vandiver appearing on behalf of
8 the citizens of the State of Florida in the 01, 02, 03 and 07
9 dockets.

10 MS. KAUFMAN: Good morning, Commissioner. Vicki
11 Gordon Kaufman with John McWhirter, Jr., of the McWhirter,
12 Reeves Law Firm. We're appearing on behalf of the Florida
13 Industrial Power Users Group in the 01, 02 and 07 dockets.

14 MR. WRIGHT: Thank you, Commissioner. Robert
15 Scheffel Wright and John T. LaVia, III, Landers & Parsons,
16 310 West College Avenue, Tallahassee, appearing on behalf of
17 CSX Transportation in the fuel and purchased power cost
18 recovery docket. We filed our petition to intervene in that
19 docket this morning.

20 MR. COSTA: Matt Costa, TECO Energy, here on behalf
21 of Peoples Gas in the 03 and 04 dockets.

22 COMMISSIONER BAEZ: I'm sorry. Mr.?

23 MR. COSTA: Costa.

24 COMMISSIONER BAEZ: Costa, C-O-S-T-A?

25 MR. COSTA: Yes, sir.

1 COMMISSIONER BAEZ: Thank you.

2 MR. SCHIEFELBEIN: Good morning. Wayne Schiefelbein,
3 Rose, Sundstrom & Bentley, appearing on behalf of the Florida
4 Division of Chesapeake Utilities Corporation in the 04 docket.

5 COMMISSIONER BAEZ: Is there anyone else that needs
6 to enter an appearance?

7 MR. TWOMEY: Ron, you need to use a mike so the court
8 reporter can hear you.

9 COMMISSIONER BAEZ: Can you step up -- I'm sorry, Mr.
10 Twomey. Can you step up to a microphone, Mr. Rogers.

11 MR. LAFACE: I'm sorry. Ron LaFace and John Rogers
12 appearing for the Florida Retail Federation in the 01, 02 and
13 07 (sic.) docket.

14 MR. GUYTON: Charles Guyton and John Butler with the
15 law firm of Steel, Hector & Davis, appearing on behalf of
16 Florida Power & Light Company. I'm appearing in the 02 docket.
17 Mr. Butler is appearing in the 01 and the 07 dockets.

18 MR. TWOMEY: Good morning, Commissioner. Mike
19 Twomey, Post Office Box 5256, Tallahassee 32314-5256, appearing
20 in the 01 docket on behalf of Katherine Claypool and
21 eight other residential ratepayers of TECO Electric.

22 COMMISSIONER BAEZ: Is that everybody? Mike, we
23 don't have anyone participating on the phone that you know of?
24 Okay. Great. All right.

25 MR. KEATING: We do need to enter appearances for the

1 staff counsel.

2 COMMISSIONER BAEZ: I'm sorry. After so many of them
3 today.

4 MR. KEATING: Cochran Keating on behalf of the
5 Commission in Docket 01.

6 MS. FLEMING: Katherine Echternacht-Fleming on behalf
7 of the Commission in Docket 03.

8 MS. HOLLEY: Lorena Holley on behalf of the
9 Commission for Dockets 02 and 04.

10 MS. STERN: Marlene Stern and Adrienne Vining on
11 behalf of the Commission in Docket 07.

12 COMMISSIONER BAEZ: All right. Just a quick, a quick
13 note here for all the parties. We're going to try and follow
14 some order and get certain dockets out of the way first.

15 We're going to be following the following order:
16 It's 03, 04, 02, 07 and 01. We'll see if we can get some of
17 you all out on time.

18 Counsel, we need to address some excusals, I believe.

19 MS. FLEMING: Yes. That is correct. St. Joe Natural
20 Gas Company has requested to be excused from the prehearing and
21 hearing in the 03 and 04 dockets.

22 COMMISSIONER BAEZ: All right. Let the record
23 reflect that St. Joe Natural Gas has been excused from the
24 prehearing conference and the hearing in the 03 and 04 dockets.

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2 COMMISSIONER BAEZ: All right. Moving right along.

3 We are on the 01 docket.

4 Mr. Keating, do we have any preliminary matters?

5 MR. KEATING: I don't have any to bring up. I know
6 that we just received this morning a petition to intervene, I
7 believe, on behalf of CSX Transportation, and I think Mr. Schef
8 Wright is here with that petition. I don't know if he intended
9 to bring anything up in relation to that petition as a
10 preliminary matter this morning.

11 COMMISSIONER BAEZ: Mr. Wright -- I'm sorry to
12 interrupt.

13 MS. KAUFMAN: I apologize, Commissioner.

14 COMMISSIONER BAEZ: No, that's all right.

15 Mr. Wright, do you have anything you need to add
16 besides your petition to intervene? We're not going to, we're
17 not going to rule on the petition today. Okay.

18 MR. WRIGHT: I understand, Commissioner. And I
19 apologize. I was conferring with Ms. Kaufman.

20 Are we on the, are we on the prehearing order at this
21 time? We will have positions on several issues that I would
22 like to submit in writing to the staff later today, subject to
23 our petition to intervene being granted. We did also file a
24 notice of joinder in various motions asking that the TECO coal
25 transportation issues be spun off to a separate docket.

1 COMMISSIONER BAEZ: Very well. And I think we're
2 probably going to get a chance to discuss that in, in a few
3 moments.

4 Are there any objections, understanding that the
5 petition to intervene is still pending, to the submission of
6 positions in writing? And I guess that's to you, Mr. Beasley.

7 MR. BEASLEY: Commissioner, we'll address that in our
8 response to the petition that has been filed. We just got it a
9 short time ago.

10 COMMISSIONER BAEZ: Very well. All right.

11 Mr. Keating, anything else?

12 MR. KEATING: I don't believe there are any other
13 preliminary matters or any matters that couldn't be taken up in
14 the course of walking through the prehearing order.

15 MR. LaFACE: Commissioner.

16 COMMISSIONER BAEZ: Mr. LaFace.

17 MR. LaFACE: One thing. We need to be added as an
18 additional party, the Florida Retail Federation, in this
19 docket. We have intervened and it was granted. And also as an
20 additional sponsor, the witness Sherry Brown, and that was set
21 out in the Florida Industrial Power Users Group preliminary
22 issue statement. We intervened right about the time these were
23 due and didn't get one in, so we'll just basically adopt
24 Florida Industrial Power Users'.

25 COMMISSIONER BAEZ: I'm going to give you a chance

1 once we get into the prehearing order to, to resubmit that.
2 I've made a notation, but just so that we can get it, have it
3 in order. All right. Thank you, Mr. LaFace.

4 MR. LaFACE: All right. All right.

5 COMMISSIONER BAEZ: Mr. Keating, you were saying you
6 have nothing else preliminary?

7 MR. KEATING: I don't believe so. And I was going to
8 point out that, that the Florida Retail Federation and
9 Mr. Twomey's clients are not, Mr. Twomey are not listed in our
10 appearance list, and that was simply because we did not receive
11 a prehearing statement from them. But we will add them to the
12 appearance list.

13 COMMISSIONER BAEZ: Please make those changes.

14 MR. KEATING: And where they take positions
15 throughout today, we can add those as well.

16 COMMISSIONER BAEZ: Very well. Let's jump on into
17 the prehearing order, and we're going to go straight to Section
18 VI again, the order of witnesses.

19 Mr. LaFace, I have noted your sponsorship of Witness
20 Brown.

21 MR. LaFACE: Thank you, Commissioner.

22 COMMISSIONER BAEZ: Okay.

23 MR. BUTLER: Commissioner Baez.

24 COMMISSIONER BAEZ: Sorry, Mr. Butler.

25 MR. BUTLER: Before you get to Section VI, I'd like

1 to make a comment on Section III, the procedure for handling
2 confidential information.

3 There is a small amount of confidential information
4 that we intend to seek confidential protection concerning the
5 testimony of Ms. Welch, who is testifying on an audit of FPL
6 hedging and security expenses. And there might be a need to
7 discuss the provisions or the discussion of the 2002 hedging
8 results that appears in a confidential section of Mr. Yupp's
9 testimony that was filed in April.

10 I spoke to Mr. Keating about this before the
11 prehearing conference, and I don't think staff is certain yet
12 whether they will need to refer to that confidential
13 information. But, if so, then staff and we are going to need
14 to give you notice and propose a procedure for having it
15 handled at the hearing.

16 COMMISSIONER BAEZ: Very well. Thank you.

17 MR. BUTLER: Thank you.

18 COMMISSIONER BAEZ: Now there's nothing --
19 Mr. Butler, your implication is that there's nothing to do,
20 nothing that we need to settle today?

21 MR. BUTLER: That's right.

22 COMMISSIONER BAEZ: Okay. Very well. Let's move on
23 to Section VI, Page 6. And, Mr. Butler, do you have any
24 changes to your order of witnesses?

25 MR. BUTLER: I guess you would call it a change to

1 the order of witnesses. You want me also to talk about the
2 issues that they are addressing?

3 COMMISSIONER BAEZ: Yes. I'm sorry. Yes.

4 MR. BUTLER: Okay. On Mr. Yupp, he should be also
5 addressing Issue 14C, as in Charlie. And for Ms. Dubin on the
6 next page, the references to 14A and 31 should be deleted.

7 And then in addition --

8 COMMISSIONER BAEZ: Hold on, Mr. Butler. I'm not --
9 it's just -- Ms. Dubin, what were the numbers?

10 MR. BUTLER: I'm sorry. If you -- the third line,
11 14A is the second number.

12 COMMISSIONER BAEZ: Yes.

13 MR. BUTLER: And then the last line, the next to the
14 last number 31, she does not, won't be testifying on those
15 issues.

16 COMMISSIONER BAEZ: So strike 14A and 31?

17 MR. BUTLER: And 31. That's right.

18 COMMISSIONER BAEZ: Very well.

19 MR. BUTLER: And then the other thing is that
20 Ms. Dubin has filed rebuttal testimony. It doesn't appear on
21 here. We would propose that it appear at the end after the
22 staff testimony that it is rebutting.

23 COMMISSIONER BAEZ: Are there issues that need
24 reflecting?

25 MR. BUTLER: No. Oh, I'm sorry. The issues -- it

1 would be with respect to Issue 32, I mean, I'm sorry, 30 and
2 32A.

3 COMMISSIONER BAEZ: Very well.

4 MR. BUTLER: And, I'm sorry. Ms. Dubin just reminded
5 me, you'll turn back, please, to Page 5. For Mr. Hartzog we
6 need to add Issue 32A to the issues that he would be
7 addressing.

8 COMMISSIONER BAEZ: Okay. Mr. Horton.

9 MR. HORTON: No changes.

10 COMMISSIONER BAEZ: No changes?

11 Mr. Badders.

12 MR. BADDERS: No changes.

13 COMMISSIONER BAEZ: Okay. Mr. McGee.

14 MR. MCGEE: No changes.

15 COMMISSIONER BAEZ: Where are we? Mr. Beasley.

16 MR. BEASLEY: Yes, Commissioner. On Page 6 of the
17 prehearing order draft, it'd probably be easier just to put a
18 little number by each Tampa Electric witness's name on our
19 preferred order.

20 COMMISSIONER BAEZ: Okay.

21 MR. BEASLEY: Ms. Jordan would be Number 6,
22 Mr. Smotherman would be Number 2, Mr. Smith would be Number 3,
23 Mr. Whale would be Number 1, Ms. Wehle would be Number 4,
24 Mr. Dibner would be Number 5.

25 COMMISSIONER BAEZ: No changes to the issues?

1 MR. BEASLEY: No changes to the issues. We do have
2 rebuttal testimony which we would put at the bottom of the list
3 after the staff, and that would be Witness Whale, followed by
4 Witness Jordan. Or, excuse me, Whale. I'm sorry.

5 COMMISSIONER BAEZ: I'm sorry. What was that,
6 Witness Whale?

7 MR. BEASLEY: Whale, W-H-A-L-E.

8 COMMISSIONER BAEZ: Okay. And the issues?

9 MR. BEASLEY: And there would be possible additional
10 rebuttal because there's still some testimony that has not been
11 filed.

12 COMMISSIONER BAEZ: Do you have issues tied to these
13 two witnesses at this point?

14 MR. BEASLEY: On the rebuttal?

15 COMMISSIONER BAEZ: Uh-huh.

16 MR. BEASLEY: No. But we will furnish that to staff
17 in writing.

18 COMMISSIONER BAEZ: Thank you, Mr. Beasley.

19 MR. BEASLEY: Thank you.

20 COMMISSIONER BAEZ: Mr. Vandiver, you -- just can I
21 get Ms. Kaufman out of the way, because that's the next one I
22 have in order. I'm sorry.

23 MS. KAUFMAN: I don't have any changes to my
24 witnesses.

25 COMMISSIONER BAEZ: No changes. All right.

1 MR. VANDIVER: Yes, sir. For my two witnesses we
2 would put Issue 17I, J, K and L.

3 I'm also informed that Mr. Majoros has scheduling
4 conflicts and would like to be taken on a date certain, either
5 Thursday or Friday. He would prefer Friday, but I know that
6 the Commission's schedule controls, and I'd note that he's near
7 the end.

8 COMMISSIONER BAEZ: Uh-huh.

9 MR. VANDIVER: He's just testifying in many
10 locations.

11 COMMISSIONER BAEZ: He would prefer Friday?

12 MR. VANDIVER: Yes, sir. But he --

13 COMMISSIONER BAEZ: Unless there's any objections, I
14 think we can try and make that happen.

15 MR. VANDIVER: Okay. Can I inform him to be here
16 Friday?

17 COMMISSIONER BAEZ: Let me just check one thing. Do
18 we have any expectation that this will not go through Friday?

19 MR. KEATING: Well, that's my only concern. I really
20 don't have a feel for that at this point. It may depend on --
21 we still have three weeks leading up to the hearing. It may
22 depend on what we can resolve between now and then. And there
23 always is that possibility that come Thursday at 2:00 p.m.,
24 for example, that we're ready for Public Counsel's witness.

25 COMMISSIONER BAEZ: Mr. Vandiver, at this point if

1 you can just allow us some time to try and figure out whether
2 Friday is even going to happen, and you can tell your witness
3 that we're feeling his pain and that we'll do whatever we can
4 to accommodate that.

5 MR. VANDIVER: Have him here Thursday?

6 COMMISSIONER BAEZ: I'm sorry? Have him here
7 Thursday?

8 MR. VANDIVER: Yes, sir.

9 COMMISSIONER BAEZ: Okay. Question: You, you listed
10 some issues. Now are those for both Witness Majoros and Zaetz?

11 MR. VANDIVER: Yes, sir.

12 COMMISSIONER BAEZ: Okay. Same issues?

13 MR. VANDIVER: Yes, sir.

14 COMMISSIONER BAEZ: Very well. Mr. Keating.

15 MR. KEATING: I do have some issues to provide for
16 some of the staff witnesses listed there.

17 For Kathy Welch we'd add Issue Numbers 12, 30 and
18 32A.

19 COMMISSIONER BAEZ: 12, 30, 32A.

20 MR. KEATING: Yes. For Michael Buckley and Jocelyn
21 Stephens, I am going to have to -- I do not have issue numbers
22 for them right now, but I would have that in the hearing order.

23 COMMISSIONER BAEZ: Well, since you're making the
24 changes, I'm sure you'll be able to get them to yourself.

25 MR. KEATING: Yes. I'll write myself a note. And --

1 COMMISSIONER BAEZ: Mr. Rohrbacher.

2 MR. KEATING: -- Mr. Rohrbacher, Issue Numbers 13D,
3 13E and 13H.

4 COMMISSIONER BAEZ: 13B, D?

5 MR. KEATING: I'm sorry. 13D, 13E and 13H.

6 COMMISSIONER BAEZ: And, Mr. McNulty, if you have
7 them.

8 MR. KEATING: Issues 13D and 13E for Mr. McNulty.
9 And currently we do intend to offer testimony from Mr. McNulty
10 that would be due today concerning some additional issues, and
11 those would be 17E, 17F, 17G and 17H. And this is probably
12 also a good time for me to point out that we will be modifying,
13 making a minor modification to Mr. McNulty's testimony,
14 testimony previously filed on 13D and 13E by resubmitting a
15 revised last page of the text of that, of the body of that
16 testimony that does not change the substance of the testimony
17 whatsoever. But --

18 COMMISSIONER BAEZ: Just letting the parties know.

19 MR. KEATING: Yes.

20 COMMISSIONER BAEZ: Very well. All right. I think
21 that does it for Section VI.

22 MR. BUTLER: Commissioner Baez, I'm sorry.

23 COMMISSIONER BAEZ: Sorry, Mr. Butler. I don't know
24 where they're coming from.

25 MR. BUTLER: The voice from the ceiling. Because

1 Mr. Keating identified Issue 12 for Ms. Welch and Ms. Dubin is
2 rebutting her testimony, we ought to add 12 for Ms. Dubin's
3 rebuttal testimony as well.

4 COMMISSIONER BAEZ: Very well.

5 MR. KEATING: Perhaps before we move on from this
6 section, I believe there are some of these witnesses that at
7 this point we could probably identify as witnesses that could
8 be excused.

9 COMMISSIONER BAEZ: Do you want to -- all right.
10 Again, that's, that's with, with the caveat --

11 MR. KEATING: With the caveat that none of the other
12 Commissioners require their presence.

13 COMMISSIONER BAEZ: Very well. I guess, any
14 objections to going through that at this point? All right,
15 Mr. Keating.

16 MR. KEATING: On my list -- and then the parties,
17 when I'm through with this, can feel free to offer any others.

18 COMMISSIONER BAEZ: Very well.

19 MR. KEATING: On my list I have Witness Irizarry for
20 FPL. And I apologize if I'm getting ahead of myself because I
21 know we'll get through some of the issues and positions and get
22 to a point where we determine if these are stipulated or not,
23 and maybe we ought to get back to these after that. But at
24 this point on my list I have Witness Irizarry, Witness Bachman
25 for FP&C, Witness Noack for Gulf, Witness Jacob for Progress

1 Energy, and I believe that's it. And I would ask the parties
2 to consider -- this, again, may be a little premature, but --

3 COMMISSIONER BAEZ: We'll double back after we've
4 discussed issues.

5 MR. KEATING: Okay.

6 COMMISSIONER BAEZ: Moving on to basic positions.
7 Mr. Butler, you don't have any changes?

8 MR. BUTLER: I'm sorry?

9 COMMISSIONER BAEZ: Basic position.

10 MR. BUTLER: No. That's right.

11 COMMISSIONER BAEZ: Mr. Horton.

12 MR. HORTON: No, sir.

13 COMMISSIONER BAEZ: Okay. Mr. Badders.

14 MR. BADDERS: No change.

15 COMMISSIONER BAEZ: Mr. McGee.

16 MR. MCGEE: No.

17 COMMISSIONER BAEZ: All right. Mr. Beasley.

18 MR. BEASLEY: No change.

19 COMMISSIONER BAEZ: Ms. Kaufman.

20 MS. KAUFMAN: No, sir.

21 COMMISSIONER BAEZ: Mr. Vandiver.

22 MR. VANDIVER: Yes, sir. Issue 17E and F should be
23 deferred to a later time.

24 COMMISSIONER BAEZ: Hold on. We're going to go issue
25 by issue. I apologize. So do you have any changes to your

1 basic position?

2 MR. VANDIVER: Yes.

3 COMMISSIONER BAEZ: Oh, I'm sorry. Where are you?

4 MR. VANDIVER: Those are the changes to my basic
5 position. It was inadvertently omitted. It's reflected in our
6 specific positions. It was simply omitted from the basic
7 position. I'm sorry, sir.

8 COMMISSIONER BAEZ: I'm sorry. Those were Issues 17
9 and?

10 MR. VANDIVER: E and F should be deferred to a later
11 time. And as I said, it's reflected in our specific positions.
12 It was just omitted from the general.

13 COMMISSIONER BAEZ: Thank you, Mr. Vandiver.
14 Staff.

15 MR. KEATING: No change.

16 COMMISSIONER BAEZ: Issue Number 1.

17 MR. TWOMEY: Commissioner Baez.

18 COMMISSIONER BAEZ: Yes, Mr. Twomey.

19 MR. TWOMEY: Pardon me. I'd like to, for my clients
20 to adopt the, as a basic position, the position of FIPUG,
21 please.

22 COMMISSIONER BAEZ: On, on -- oh, okay. We'll
23 reflect that.

24 MR. WRIGHT: Commissioner. Over here. Sorry.

25 In keeping with what I said earlier, I'd like to

1 furnish, again subject to our pending petition to intervene, a
2 statement of basic position later in the day to the staff.

3 COMMISSIONER BAEZ: And I think we've already noted
4 that, and all the parties have said that whatever response is
5 coming --

6 MR. WRIGHT: I just want to make it clear that we
7 will furnish a basic position in addition to issue-specific
8 positions. Thanks.

9 COMMISSIONER BAEZ: Thank you, Mr. Wright.

10 Mr. LaFace.

11 MR. LaFACE: Commissioner, I don't know if I said
12 this earlier, but we'd also like to adopt the basic positions
13 of Florida Industrial Power Users or lack of position.

14 COMMISSIONER BAEZ: Very well. We'll make that -- on
15 all issues we'll make that note.

16 Mr. Twomey, I'm sorry. Clarification.

17 MR. TWOMEY: Yes, sir.

18 COMMISSIONER BAEZ: You are only speaking as to the
19 basic position at this point?

20 MR. TWOMEY: Yes, sir.

21 COMMISSIONER BAEZ: Adopting?

22 MR. TWOMEY: If you want to shortcut things a little
23 bit, I can --

24 COMMISSIONER BAEZ: Well, it only raised up -- but we
25 can take them up issue by issue. I just -- you know,

1 Mr. LaFace's statement kind of --

2 MR. TWOMEY: Yes, sir. I was only speaking to the
3 basic position since you said you were going position by
4 position; right?

5 COMMISSIONER BAEZ: Very well. Yes. Thank you.
6 Staff, do you have any change to the basic?

7 MR. KEATING: We do not.

8 COMMISSIONER BAEZ: Okay. Issue 1. And I'll let --
9 if you just call out, and we'll get on. Go ahead, Mr. Keating.

10 MR. KEATING: On Issue 1, I believe that could be
11 shown as stipulated with respect to FPUC. And that would be
12 true for, I believe, all of the fuel cost recovery issues that
13 FPUC has taken a position on. That would be Issues 1 through
14 9. And then I believe when we get to 15A, we do have a revised
15 position that I think we can agree to with FPUC. I say that
16 now so I don't have to say that as we go to each issue.

17 COMMISSIONER BAEZ: Great. Thank you. So then
18 Issues 1 through 9 on the part of staff can be in agreement
19 with FPUC; is that fair?

20 MR. KEATING: Yes.

21 COMMISSIONER BAEZ: Okay. Thank you. No changes to
22 Issue 1. Issue 2. Issue 3. Issue 4.

23 MR. BUTLER: Commissioner Baez.

24 COMMISSIONER BAEZ: Mr. Butler.

25 MR. BUTLER: There is a dollar sign on FPL's position

1 there that should not be there.

2 MR. KEATING: With that modification, I think Issue
3 4 can be shown as stipulated.

4 MR. BUTLER: Okay.

5 COMMISSIONER BAEZ: Issue 5. Issue 6.

6 MS. KAUFMAN: Commissioner.

7 MR. HORTON: For FPUC --

8 COMMISSIONER BAEZ: Mr. Horton.

9 MR. HORTON: It's just a typo where it says for
10 Fernandina Beach, is it says "105." That should be "1.5."

11 COMMISSIONER BAEZ: Okay. Ms. Kaufman, I'm sorry.

12 MS. KAUFMAN: I have a change to our position. The
13 first sentence remains the same. The second sentence is
14 stricken. And then we would like to add that "Tampa Electric's
15 projected coal transportation costs should be trued up to
16 whatever the Commission, whatever the Commission determines is
17 reasonable as a result of Issue 17F." As to the other
18 companies, "FIPUG has no position pending resolution of the
19 company-specific issues."

20 COMMISSIONER BAEZ: Ms. Kaufman, can you repeat your
21 last --

22 MS. KAUFMAN: The last sentence?

23 COMMISSIONER BAEZ: Yes.

24 MS. KAUFMAN: "As to the other companies, FIPUG has
25 no position pending resolution of the company-specific issues."

1 COMMISSIONER BAEZ: Thank you.

2 MR. VANDIVER: Commissioner, I'd like to file a
3 revised position. I'll get that to staff later today.

4 COMMISSIONER BAEZ: Thank you, Mr. Vandiver.
5 Staff.

6 MR. KEATING: No changes on staff's position on Issue
7 6.

8 COMMISSIONER BAEZ: Thank you. Issue 7.

9 MR. BADDERS: Actually on Issue 6, and this is a
10 minor --

11 COMMISSIONER BAEZ: Oh, you've got to raise the hand.
12 Otherwise, I can't see you.

13 MR. BADDERS: Sorry about that. On our issue it
14 should be "cents per kilowatt hour." It's just a typo. It was
15 left off.

16 COMMISSIONER BAEZ: Okay.

17 MS. KAUFMAN: And, Commissioner Baez, on Issue 6,
18 FIPUG wants to make the same change with respect to that last
19 sentence. Rather than taking a position at this time, we would
20 say that "FIPUG has no position as to the other companies'
21 pending resolution of the company-specific issues."

22 COMMISSIONER BAEZ: Very well.

23 MR. VANDIVER: And I would also file a revised
24 position later today.

25 COMMISSIONER BAEZ: Issue 7.

1 MR. BUTLER: Commissioner Baez, I think that, if
2 you'd turn to Page 16, there is a position -- this is actually
3 on staff's statement of the position, but we've discussed and I
4 believe there's no disagreement on this -- they show for Group
5 C the fuel recovery loss multiplier for FPL as being 1.00083.
6 And that should be, we believe, 1.00093, which would agree with
7 FPL's position on that particular loss multiplier.

8 COMMISSIONER BAEZ: Mr. Keating.

9 MR. KEATING: That's correct.

10 COMMISSIONER BAEZ: Thank you, Mr. Butler.

11 MR. KEATING: And just for reference throughout the
12 rest of the prehearing, I think Mr. Butler's draft prehearing
13 order may have a slightly different pagination than the one
14 some of the others are looking at.

15 MR. BUTLER: Okay. Sorry.

16 COMMISSIONER BAEZ: We are still on Issue 7. Are
17 there any other changes? Okay.

18 MR. KEATING: If there are no other changes, I
19 believe that issue could be shown as stipulated with respect to
20 all the companies.

21 COMMISSIONER BAEZ: Issue 8. Issue 9.

22 MR. KEATING: I believe Issue 9 could be shown as
23 stipulated. It's simply the effective date of the new fuel
24 factors.

25 COMMISSIONER BAEZ: Okay. Issue 10.

1 MR. BADDERS: Commissioner, on -- I have to go back.
2 I'm sorry. I think it's Issue Number 8 in the table. It's a
3 minor typo.

4 COMMISSIONER BAEZ: Hold on, Mr. Badders. Let me get
5 there.

6 MR. BADDERS: Sorry about that.

7 COMMISSIONER BAEZ: Okay.

8 MR. BADDERS: In the heading where it says "Fuel Cost
9 Factors," it says, "Dollars per kWh."

10 COMMISSIONER BAEZ: Yes.

11 MR. BADDERS: That should be "cents."

12 COMMISSIONER BAEZ: Makes a big difference, doesn't
13 it?

14 MR. BADDERS: Yeah.

15 COMMISSIONER BAEZ: We are back on Issue 10.

16 MR. KEATING: Commissioner, it appears that staff is
17 in agreement with each of the companies' positions except for
18 Gulf, and that that could be shown as stipulated with respect
19 to FPL, Progress Energy and Tampa Electric Company.

20 COMMISSIONER BAEZ: Is that Issue 10?

21 MR. KEATING: Yes.

22 MS. KAUFMAN: FIPUG would like to take -- I'm sorry.
23 FIPUG would like to take no position on that issue,
24 Commissioner Baez.

25 COMMISSIONER BAEZ: Very well.

1 MR. VANDIVER: No position.

2 COMMISSIONER BAEZ: Thank you.

3 Mr. Twomey, a question: By your silence, are you
4 adopting or --

5 MR. TWOMEY: No, sir. I'm sorry. The -- we would
6 take, we would take no position in the majority of these, and
7 adopt the positions of FIPUG where they've taken
8 company-specific positions vis-a-vis TECO's issues.

9 COMMISSIONER BAEZ: Okay. Issue Number 11.

10 MR. BUTLER: Commissioner Baez, I have another
11 instance here where I think we and staff are in agreement that
12 the number staff has needs to be changed to reflect that. We
13 believe that staff's position here should have been written as
14 \$13,554,731 for FPL, the same position that FPL shows.

15 MR. KEATING: That is correct. Staff intended to
16 make that change.

17 COMMISSIONER BAEZ: Can you read that number again?
18 It just matches, matches FPL.

19 MR. BUTLER: Matches FPL's. That's right.

20 COMMISSIONER BAEZ: Thank you, Mr. Butler.

21 MR. KEATING: With that change, and pending any
22 positions that the intervenors may take on that issue, I think
23 that issue can be shown as stipulated.

24 MS. KAUFMAN: We would have no position on that
25 issue.

1 COMMISSIONER BAEZ: Mr. Vandiver.

2 MR. VANDIVER: No position.

3 COMMISSIONER BAEZ: Thank you. Issue 12.

4 MR. KEATING: Staff would change its position on
5 Issue 12 with respect to each company to "No position at this
6 time." I think we have, the change is from "No position
7 pending review of discovery." We have reviewed the discovery
8 and we are still formulating a position.

9 COMMISSIONER BAEZ: Thank you, Mr. Keating.

10 Now we're on to the company-specific issues.
11 Progress issues, the 13s. Mr. McGee.

12 MR. MCGEE: Yes. I think on Issues 13A, B and C that
13 they can be shown as a stipulated issue, if, if that's
14 agreeable to FIPUG and OPC.

15 COMMISSIONER BAEZ: Ms. Kaufman and Mr. Vandiver.

16 MS. KAUFMAN: Commissioner, on -- I think that's true
17 as to 13A and B. As to 13C, however, I think that is affected
18 by Issue 13H. So unless I'm misunderstanding, I can't
19 stipulate that issue at this point.

20 COMMISSIONER BAEZ: Very well. Mr. McGee, are you --
21 do you see where, where we are on that?

22 MS. KAUFMAN: I understand -- my understanding is
23 that there's a suggestion being made that, in 13H that would
24 affect 13C.

25 MR. MCGEE: I think Ms. Kaufman is right. So that

1 would be a stipulation then for Issues 13A and B.

2 COMMISSIONER BAEZ: Correct.

3 MR. MCGEE: 13C would be subject to the outcome of
4 13H.

5 COMMISSIONER BAEZ: Very well. Staff or FIPUG, OPC,
6 any changes, any other changes?

7 MS. KAUFMAN: I think to make it clear for 13C,
8 Commissioner, FIPUG would say, "No, see Issue 13H." That way I
9 think the relationship will be a little more clear.

10 MR. VANDIVER: I think I would agree with Ms. Kaufman
11 at this time.

12 COMMISSIONER BAEZ: Do you want to make the same
13 changes, Mr. Vandiver?

14 MR. VANDIVER: Sure.

15 COMMISSIONER BAEZ: Staff, any changes?

16 MR. KEATING: I'm sorry. No changes on 13C.

17 COMMISSIONER BAEZ: Okay. Now this is for the total
18 of the 13s. So if you want to lead me around to any other
19 changes on the 13, A through H, I guess.

20 MR. KEATING: A through H?

21 MR. MCGEE: I have some other comments on the
22 remaining --

23 COMMISSIONER BAEZ: Mr. McGee, we'll take you first
24 then.

25 MR. MCGEE: On Issue 13D, there has been a bit of

1 confusion on this issue. It was added by staff as a second
2 waterborne coal transportation issue after the company's
3 testimony was submitted.

4 Mr. Keating and I have discussed this, and I'll try
5 to speak for him, but we have discussed the possibility, and I
6 think he is agreeable, to considering and stipulating, if
7 that's necessary, that Issue 13D would be subsumed within Issue
8 13E, and that any positions that might have been made under or
9 taken under 13D could be taken under 13E.

10 COMMISSIONER BAEZ: Mr. Keating.

11 MR. KEATING: I agree that we could, that we could
12 address the substance of Issue 13D under 13E, and that would
13 simply require staff modifying its position that it's taken on
14 13D.

15 COMMISSIONER BAEZ: Do you have that modification
16 ready?

17 MR. KEATING: I do not have that available right now.

18 COMMISSIONER BAEZ: Okay. But you're willing
19 to subsume --

20 MR. KEATING: Yes. I can agree to combine those two
21 issues into what's currently listed as 13E.

22 MR. McGEE: And, Commissioner, in terms of modifying
23 positions, the position that is shown under, for Progress
24 Energy under 13D is actually our position for 13F, excuse me,
25 E.

1 COMMISSIONER BAEZ: Ms. Kaufman and Mr. Vandiver.

2 MS. KAUFMAN: We don't have an objection to combining
3 the two issues. And I think that our position on 13D would be
4 the position for 13E, except the "no" should be a "yes." I
5 think that's why there's two issues. They're sort of the
6 mirror images of each other.

7 MR. VANDIVER: Yeah. And I think the, the parties
8 have begun some discussions that may lead to some resolution of
9 some of these issues, but those, those, those discussions have
10 not led to anything yet. And so we're --

11 COMMISSIONER BAEZ: What's your point? Well, the
12 question, I guess, is simple, unless I'm missing it. Are you
13 objecting to subsuming the issues or not?

14 MR. VANDIVER: No. I could subsume the issues at
15 this time.

16 COMMISSIONER BAEZ: Okay. Very well.

17 MR. MCGEE: And I did want to make that same point,
18 that there may be a need to, to revise all of the positions if
19 our discussions prove to be successful.

20 COMMISSIONER BAEZ: Very well. Ms. Kaufman, you were
21 going to say something?

22 MS. KAUFMAN: I was just going to ask, and I don't
23 know that we care, but are we going to be using the wording
24 that's in 13E now for the issue?

25 COMMISSIONER BAEZ: That is the -- that's the idea.

1 MS. KAUFMAN: Okay.

2 MR. VANDIVER: Okay.

3 COMMISSIONER BAEZ: Okay.

4 MR. KEATING: And staff intends to, along those
5 lines, arrange a meeting for early next week to try to get the
6 parties together and see where we can go on Issues 13D and E.
7 And if we do come to some resolution of those issues, a
8 stipulation, I could bring that to you before we issue the
9 prehearing order. We could probably show that as a stipulated
10 issue, if we get there.

11 COMMISSIONER BAEZ: Great. Thank you.

12 MR. MCGEE: And along the lines that I just mentioned
13 on changing the location of our positions, our position to 13D
14 goes under 13E. Our position that's stated under 13E would be
15 deleted. That relates to an issue that staff is withdrawing.

16 COMMISSIONER BAEZ: Correct.

17 MR. MCGEE: Issue 13F, I think Mr. Keating and I have
18 discussed this and we, I think, are confident we can work
19 something out. We don't know what it is quite yet.

20 The difficulty is similar to 13, with the issue shown
21 as 13D. This issue was changed, the date in the issue, the
22 time frame was changed after the company's testimony was filed,
23 which complicates our development of a position under the newly
24 stated issue. Mr. Keating and I have pledged to try and work
25 this out, and we will come up with a compromise and add that to

1 the position.

2 COMMISSIONER BAEZ: And you'll be in contact with Ms.
3 Kaufman as well on that?

4 MR. MCGEE: Yes. I should have said that. With,
5 with all of the parties.

6 COMMISSIONER BAEZ: So at this point there are no
7 changes?

8 MR. MCGEE: Yes. Other than to note that the
9 position that's stated right now is not connected to the new
10 issue.

11 COMMISSIONER BAEZ: Okay. 13G.

12 MR. KEATING: Commissioner, staff, and this goes back
13 to 13F as well, would change its position just slightly on 13F
14 and G to say, "No position pending further review of
15 discovery."

16 COMMISSIONER BAEZ: Any changes on H?

17 MR. MCGEE: I have no changes, Commissioner. But I
18 would like to inquire of staff if they, which witness they
19 would intend to name as sponsoring this position.

20 MR. KEATING: We typically have not, I believe,
21 speaking on my experience, have not identified a witness with
22 staff positions on a regular basis. Typically we separate out
23 our advisory staff that's taking the position from the
24 testifying staff, and the positions of the two are not always,
25 are not always the same. So I don't necessarily believe we

1 have a witness associated with this, although I can, I can
2 check on that and provide some clarity to the parties.

3 MR. MCGEE: I was really asking the question because
4 I thought that might have been the case. He's correct; staff
5 often takes positions in that manner. But I thought I
6 understood that when we were going through the list of
7 witnesses and identifying the issues that they were responsible
8 for that staff Witness Rohrbacher would be responsible for 13H.
9 That was really the --

10 COMMISSIONER BAEZ: Yeah. That was going to be my
11 question, Mr. Keating, I guess.

12 MR. KEATING: I believe he's offered testimony that
13 supports our position on Issue 13H. And if it's your
14 preference, I can identify Mr. Rohrbacher after that position.
15 But I did want to point out that our position on 13H, as I
16 understand, there are some, some modifications that need to be
17 made in terms of the dollar amount and the tonnage listed there
18 that I do not have prepared today. I do not know if those are
19 consistent with Mr. Rohrbacher's testimony or not, and I would
20 need to check. And if they're consistent -- if the revised
21 position is consistent with it, if it's your preference, I can
22 list Mr. Rohrbacher as a witness after that position.

23 COMMISSIONER BAEZ: Okay.

24 MS. KAUFMAN: Commissioner.

25 COMMISSIONER BAEZ: Yes, Ms. Kaufman.

1 MS. KAUFMAN: I'm not quite sure now about what to
2 say about this issue.

3 COMMISSIONER BAEZ: There seems to be a lot up in the
4 air. No --

5 MS. KAUFMAN: But based on the draft prehearing I was
6 going to change my position to, "Yes, FIPUG agrees with staff."
7 So I --

8 COMMISSIONER BAEZ: You can't do that now, I guess.

9 MS. KAUFMAN: I'm just unclear. Is staff going to be
10 providing a revised position on this issue? I'm having a
11 little trouble hearing Mr. Keating.

12 COMMISSIONER BAEZ: Mr. Keating is going to help you
13 with that, I promise. I'm having a little trouble hearing him
14 myself.

15 The gist of it is that there are numbers in the staff
16 position as it's currently stated that I believe are going to
17 change, and, Mr. Keating, you can jump in any second now, but
18 they do have to be checked against Witness Rohrbacher's
19 testimony for agreement. Is that --

20 MR. KEATING: That's correct. And we will provide
21 the revised position to the parties so that they can --

22 COMMISSIONER BAEZ: And subject to that, I think, Ms.
23 Kaufman, you're going to probably have an opportunity to change
24 your position since we don't have anything to base it on now.

25 MS. KAUFMAN: Well, then I guess I'll just leave my

1 position as "No position at this time."

2 COMMISSIONER BAEZ: You can stand pat for now.

3 MS. KAUFMAN: Thank you, Commissioner.

4 COMMISSIONER BAEZ: And we are on H, I believe.

5 MR. KEATING: I think we're now on to 13I.

6 COMMISSIONER BAEZ: We are, aren't we?

7 MR. KEATING: I believe so.

8 COMMISSIONER BAEZ: 13I.

9 MR. KEATING: I believe 13I, and I've not discussed
10 this yet with, with Progress, but 13I appears to be a more
11 general, generally worded issue that would be covered in the
12 specific issues identified as 12 and 30 concerning establishing
13 a base for incremental hedging costs and establishing, let's
14 see, something similar for security costs.

15 MR. MCGEE: I think Mr. Keating is correct that, that
16 Issue 30 is related to our Issue 13I. This was one that the
17 company had raised. The specific concern for, that caused the
18 issue to be raised was that the answer to that question should
19 be generic and applicable to incremental cost recovery in a
20 general sense. Our concern is that we not take these up on a
21 case-by-case basis. So one may be subsumed within the other,
22 but I would respectfully suggest that his issue is subsumed
23 within ours.

24 COMMISSIONER BAEZ: Mr. Keating, it seems we have
25 some disagreement. And I guess I'm needing a little bit of --

1 I think I understand what Mr. McGee is saying, but I'm needing
2 a little bit of clarification here as to --

3 MR. KEATING: I think there's disagreement between
4 the staff and, and Progress Energy, at least at this point, as
5 to whether there should be a generic way to do this as opposed
6 to doing it on a case-by-case basis.

7 I would suggest that under the specific issues we
8 raised that Progress Energy could argue that -- could argue a
9 consistent methodology and argue that this should be consistent
10 and generic and not done on a case-by-case basis.

11 COMMISSIONER BAEZ: And are you -- and just so that
12 I'm clear, are you arguing for removing 13I?

13 MR. KEATING: Yes.

14 COMMISSIONER BAEZ: And you're saying, and you're
15 saying that the answer to a, the answer to the question whether
16 there should be a generic treatment is within the remaining
17 issues?

18 MR. KEATING: Yes. I'll just -- to read from Issue
19 12, it asks, what is the appropriate base level for O&M
20 expenses, I'll paraphrase from Issue 12, for each IOU's hedging
21 programs? Issue 30 asked, what is the appropriate methodology
22 for determining incremental costs of security measures? Sort
23 of subsumed in Issue 30 is the same question addressed in Issue
24 12 is what's, where do you set the base level?

25 Staff sees them as two distinct issues because in one

1 case we have, with the hedging costs we have a settlement
2 between the parties that sets forth a methodology. We don't
3 have something similar with respect to the security costs, and
4 that's why we think the question needs to be taken up in
5 separate issues.

6 COMMISSIONER BAEZ: And, Mr. McGee, your position is
7 that, that this question goes to something other than just
8 hedging and security costs? I mean, is that --

9 MR. MCGEE: Under -- the reason for raising the issue
10 --

11 COMMISSIONER BAEZ: 13I?

12 MR. MCGEE: -- for 13I is that we would think it
13 would be sound and efficient as well if there was a common
14 methodology going through this process of coming up with a
15 baseline for incremental costs in a general sense. And the
16 fact that we have two distinct issues, one, one relating to
17 incremental hedging costs, one relating to incremental security
18 costs, at least --

19 COMMISSIONER BAEZ: But those are the only --

20 MR. MCGEE: That's a further indication that there
21 would be some benefit in having a common understanding of how
22 we go about taking on this task. However, I don't want to
23 quibble over form or format. And as long --

24 COMMISSIONER BAEZ: If those are the only, if those
25 are the only two incremental costs that are, that are the

1 subject of this 13I, then I'm not seeing much of a reason to
2 keep it, if, if the result is, is equal. I mean, you're going
3 to approach them in a uniform way. And I think, if I'm hearing
4 Mr. Keating correctly, you can treat them in a uniform way,
5 even though they're in separate issues.

6 MR. MCGEE: Over the last ten to 15 years there have
7 been any number of instances where specific incremental cost
8 recovery issues come up, and our view was that it would be good
9 to have a sound understanding not only for the purposes of the
10 pending issues, but so that as these issues arise in the
11 future, everyone would know the rules of the game going on.

12 COMMISSIONER BAEZ: Is there any -- are you getting
13 any indication that at least as to these two costs which you
14 say are, are, are the sole subject of 13I, that that's not the
15 case?

16 MR. MCGEE: Yes. There have been discussions that
17 have, that have indicated there may be a school of thought
18 supporting several different ways of going about it. It came
19 up most recently after the settlement of our 2002 rate case and
20 the appropriateness of using the MFRs as a baseline for the
21 year 2002. And discussions have gone in several directions.
22 And that was the specific impetus that caused us to think as
23 long as the issue has to come up to the Commission at all, that
24 if there is an opportunity to determine a generally applicable
25 methodology for dealing with this, we would all be ahead.

1 COMMISSIONER BAEZ: Mr. Keating, it sounds like this
2 is more of a policy question. I mean, and it's not offensive
3 to me, frankly. I just don't know enough or understand enough
4 about how, how it plays out mechanically and the discussions
5 that we're going to have as the testimony works out.

6 MR. MCGEE: I would say, Commissioner, that if -- I
7 don't object to -- I don't want to quibble too much on the
8 exact wording. My concern with Issue 30 is it is just related
9 to the one issue. But if we have some assurance that we have
10 the opportunity for the broader question to be raised before
11 the Commission when they vote on Issue 30, that's our
12 ultimate --

13 COMMISSIONER BAEZ: Did I hear -- and I thought I
14 heard some kind of assurances from Mr. Keating along those
15 lines, but I may have heard wrong.

16 MR. KEATING: No. I believe you heard correctly.
17 And thinking about it here in the discussion, we could -- if
18 I were to be, to remain, we could take the position that, no,
19 it should not, that we should not have a generic application or
20 generic methodology for determining a baseline for O&M expenses
21 and it should be addressed on a case-by-case basis.

22 Now we haven't -- that's not something we have put
23 testimony for it on at this point, but it's something we could
24 take that position on going into hearing. And perhaps -- I
25 don't know how ready we'll be, ready we will be to discuss this

1 and how, and how much we have prepared to address this issue in
2 this hearing. But if it's a policy matter that, that would
3 apply going forward but doesn't need to necessarily be applied
4 in this hearing given the two specific issues that we have,
5 perhaps it's something we could address at a later time.

6 COMMISSIONER BAEZ: I think Mr. Keating raises a good
7 point. I mean, this is not -- is it your intention or is it
8 the intention of this issue on a going-forward basis? I mean,
9 the fact is we've got the incremental costs covered, both of
10 them, with separate issues. Moving -- you know, having -- even
11 taking this issue up is going to be on a day-two basis anyway.
12 I mean --

13 MR. MCGEE: I have understood that staff has had a
14 concern that a general methodology might involve some things
15 that simply haven't come to mind yet, and I'm sensitive to
16 that. And it may be that we can come up with an understanding
17 at least as to a starting point. I think we have some common
18 ground there. So since we plan to meet with staff to discuss
19 several issues and the possibility of settlement anyway, if
20 it's, if it's okay with the prehearing officer, I'd ask
21 Mr. Keating if we could have some discussion on this issue as
22 well.

23 MR. KEATING: That, that would be fine.

24 COMMISSIONER BAEZ: All right. Then --

25 MS. KAUFMAN: Commissioner, I'd like to be heard on

1 this issue whenever it's appropriate.

2 COMMISSIONER BAEZ: Yes, Ms. Kaufman, please. Soon,
3 because we're going to move on.

4 MS. KAUFMAN: I just wanted to state for FIPUG's
5 position that I didn't want the record to reflect that all the
6 parties are in agreement that there should be one methodology
7 that should be applied. It's the policy versus the specific.
8 We certainly are not at that point. And some good discussion
9 has gone on here about additional things that might need to be
10 considered that have not been considered, nor has testimony
11 been provided in the context of a broad policy decision. So
12 for purposes of what we're doing today, we support the
13 inclusion of the specific issues and not some sort of a broad
14 policy question at this time.

15 MR. MCGEE: We have provided testimony on both the
16 specific issue and why the resolution would make sense from a
17 policy standpoint.

18 COMMISSIONER BAEZ: And now let me get this straight.
19 I don't think I heard Mr. McGee suggest that Issues 12 and 30
20 necessarily needed to go away in favor of 13I. So I think as
21 to your concern right now you're covered. But as we're going
22 to leave this, this particular discussion, you're part of it,
23 too. So, I mean, I think --

24 MS. KAUFMAN: I understand. I just -- I didn't want
25 there to be the wrong impression by my silence.

1 COMMISSIONER BAEZ: None taken. Thank you, Ms.

2 Kaufman.

3 We're going to move on to Issue 14A. Mr. Butler.

4 MR. BUTLER: No. I don't need to say anything on it.

5 COMMISSIONER BAEZ: You don't need to say anything on
6 A, huh?

7 MR. BUTLER: No.

8 COMMISSIONER BAEZ: All right. We're just going to
9 go through the whole, the whole 14 series. So B and C.

10 MR. BUTLER: Nothing on, I'm sorry, on any of the
11 14s.

12 COMMISSIONER BAEZ: Any of the 14s, staff.

13 MR. KEATING: For 14A, B and C staff would change its
14 position to "No position pending further review of discovery."

15 COMMISSIONER BAEZ: Okay.

16 MR. KEATING: And just for the record, I think 14C is
17 something we may ultimately be able to work through with FPL
18 and potentially show as a stipulated issue at some point. I
19 don't know that we're far off on that issue.

20 COMMISSIONER BAEZ: Thank you.

21 Mr. Horton, Issue 15A, I guess, is what you --

22 MR. HORTON: Commissioner, I don't have any changes,
23 but I believe staff has a revision.

24 MR. KEATING: Staff would revise its position to
25 read, "The Commission, pursuant to separate petition, should

1 address consolidation of the fuel rates." From there on our
2 position would read as it's stated in the draft prehearing
3 order. The change is just intended to clarify that the
4 Commission would not be approving a consolidation of fuel
5 factors at this hearing, but would be doing so subsequent to a
6 separate petition, which is what I understand FPUC intends to
7 file at some point.

8 COMMISSIONER BAEZ: Very well. Is that your --

9 MR. HORTON: That's acceptable.

10 COMMISSIONER BAEZ: Okay. Thank you.

11 MR. KEATING: And that issue could be shown as
12 stipulated, I believe.

13 COMMISSIONER BAEZ: Okay.

14 MS. KAUFMAN: And FIPUG doesn't have any position on
15 this issue and we can be dropped off, if that makes it easier.

16 COMMISSIONER BAEZ: Thank you.

17 Gulf Power, Issue 16A.

18 MR. BADDERS: No changes.

19 COMMISSIONER BAEZ: And B.

20 MR. BADDERS: The same.

21 COMMISSIONER BAEZ: You're okay? All right.

22 Staff.

23 MR. KEATING: Staff would change its position on both
24 16A and B to "No position pending further review of discovery."

25 COMMISSIONER BAEZ: Tampa Electric, Issue 17A.

1 MR. BEASLEY: Commissioner, we would state as Tampa
2 Electric's position \$23.87 per ton, which is the same as the
3 staff has indicated in their position.

4 COMMISSIONER BAEZ: Okay.

5 MR. KEATING: I believe if the intervenors don't have
6 a position on that issue, that that could be shown as
7 stipulated.

8 COMMISSIONER BAEZ: Mr. Vandiver.

9 MR. VANDIVER: No position on last year's.

10 MS. KAUFMAN: Same. We have no position.

11 COMMISSIONER BAEZ: Okay. 17B.

12 MR. KEATING: I believe the same is true of Issue
13 17B, that that could be shown as stipulated.

14 MS. KAUFMAN: We have no position on that.

15 MR. VANDIVER: No position.

16 COMMISSIONER BAEZ: Okay. 17C.

17 MR. KEATING: For Issues 17C and D, staff would
18 modify its position to "No position pending further review of
19 discovery." And I would just, at this point would like to
20 point out that there's -- this pair of issues is, is under each
21 utility's company-specific issue list, and we've taken the same
22 position. To the extent that we can come to a position on that
23 issue that agrees with the utility's position, we will, between
24 now and the hearing, pursue with the other parties whether we
25 can get a stipulation on those issues or not.

1 COMMISSIONER BAEZ: Very well. 17E.

2 MS. KAUFMAN: You anticipated me. I don't, I don't
3 know if this is the appropriate place or if you're going to
4 wait until the end to deal with the propriety of the inclusion
5 of these issues at all.

6 COMMISSIONER BAEZ: Yeah, to the extent that any
7 change is needed to be made. But I know, I know that that's
8 coming. If you just -- so we can bypass 17E. 17F.

9 MR. KEATING: Staff would change its position to "No
10 position pending further review of discovery and evidence
11 adduced at hearing."

12 COMMISSIONER BAEZ: 17G.

13 MR. BEASLEY: Commissioner Baez, we believe that 17G
14 and H could be consolidated with, with G being subsumed into H,
15 similarly as was done with Progress Energy on their 13D and E.
16 And if that could be done, we'd be happy to provide a
17 consolidated response to, to that issue.

18 COMMISSIONER BAEZ: And that is, just for the record,
19 G and H?

20 MR. BEASLEY: Yes, sir. H would be the remaining
21 issue with G subsumed into H.

22 COMMISSIONER BAEZ: Ms. Kaufman, Mr. Vandiver.

23 MS. KAUFMAN: That would be fine, Commissioner.

24 MR. VANDIVER: That's fine.

25 COMMISSIONER BAEZ: You're all right, Mr. Keating?

1 MR. KEATING: To be consistent, staff can agree to
2 that, that modification.

3 COMMISSIONER BAEZ: Very well. Then let's show 17G
4 subsumed into 17H, consolidated positions. And that
5 opportunity exists for all the parties to be provided to staff.

6 MR. KEATING: And staff will modify its position,
7 adjust it accordingly, and provide that to the parties.

8 COMMISSIONER BAEZ: Very well. Just to be clear,
9 Mr. Beasley, we're going to keep the wording on H; correct?

10 MR. BEASLEY: Yes, sir.

11 COMMISSIONER BAEZ: Okay. 17I. 17J.

12 MS. KAUFMAN: FIPUG has a change on their position in
13 17J, and it is that we would agree with the Public Counsel.

14 MR. KEATING: And staff has a change on its position
15 for Issue 17I to say "No position pending review of evidence
16 adduced at hearing."

17 COMMISSIONER BAEZ: Very well. Any changes on J?
18 17K. 17L.

19 MR. KEATING: Staff would modify its position on
20 Issue 17L to be the same position taken for Issue 17I, which is
21 "No position pending review of evidence adduced at the
22 hearing."

23 COMMISSIONER BAEZ: Mr. Vandiver.

24 MR. VANDIVER: I have a position I can read. "Tampa
25 Electric's fuel cost increase should be reduced by the amount

1 of O&M savings as discussed in the testimony of Witness Majoros
2 and Zaetz."

3 COMMISSIONER BAEZ: Did everyone get that? Okay.

4 MR. KEATING: If Public Counsel could provide a copy
5 of that language to me, and I can --

6 COMMISSIONER BAEZ: Would you do that?

7 MR. VANDIVER: I'd be happy to.

8 MR. BEASLEY: Commissioner, Tampa Electric had stated
9 its opposition to this issue being an issue in the, in the
10 prehearing order. If you're inclined to allow it in, we would
11 supply a position on the issue. But we firmly believe that
12 it's, it's an effort, it's an issue that was raised by FIPUG
13 that was not included in the staff's preliminary list of
14 issues. In our view it mixes base rate with fuel cost
15 recovery, which is in our view inappropriate. It should not be
16 an issue. But if it is an issue, we'll, we'll provide a
17 position on it.

18 COMMISSIONER BAEZ: Sounds like -- well, Ms. Kaufman,
19 you go ahead and respond.

20 MS. KAUFMAN: Well, first of all, I don't think that
21 the standard for the inclusion or exclusion of an issue is
22 whether the staff has included it. I think any party is free
23 to raise any issue at any time.

24 We have filed extensive testimony of our witness.
25 She addresses what we believe is the appropriate remedy for the

1 early and inappropriate shutdown of the Gannon units.
2 Mr. Beasley has expressed to you, I believe, what the company's
3 position is, which he's free to include in his position. This
4 is certainly a matter that's at issue in this case. And I
5 believe Mr. Vandiver's witnesses address it as well.

6 COMMISSIONER BAEZ: Mr. Vandiver, do you have any
7 comment?

8 MR. VANDIVER: No.

9 COMMISSIONER BAEZ: Okay. Thank you.

10 Mr. Beasley, we're going to keep the issue.

11 MR. BEASLEY: Okay. We'll supply --

12 COMMISSIONER BAEZ: So you're free to supply the
13 position.

14 MR. BEASLEY: Thanks.

15 COMMISSIONER BAEZ: 17M.

16 MR. BEASLEY: Commissioner, on this issue Tampa
17 Electric agrees with staff that this should not be considered
18 in this docket. This is a transaction that was specifically
19 approved by the Commission in 1989 after the Commission found
20 that it would produce many millions of dollars of savings to
21 the customers of Seminole Electric Cooperative and Tampa
22 Electric Company.

23 Notwithstanding that, this Hardee Power Partner sale
24 of power to Tampa Electric has been a traditional FIPUG target.
25 They challenged it in the November 2001 hearing. This

1 Commission gave them full due process and, and rejected that,
2 that, that challenge. The Supreme Court affirmed your decision
3 in November 2002 unanimously.

4 Here we have a repackaged version of the same issue
5 for 2003. It's the same issue. It's the same claim. We think
6 it should not be an issue in the proceeding, and staff does as
7 well.

8 COMMISSIONER BAEZ: You know, part of me is inclined
9 to agree. However, since this is a yearly docket -- I've got
10 to tell you, Ms. Kaufman, it's starting to sound like an
11 academic exercise. And I don't, you know, I don't know what
12 kind of -- you can go ahead and be heard on it, but I'm --

13 MS. KAUFMAN: Thank you, Commissioner.

14 COMMISSIONER BAEZ: I'm not going to -- understand,
15 I'm not going to, I'm not going to take it out because the
16 bottom line, the bottom line is this. It is a yearly docket,
17 and I think that fact alone opens it up to get reviewed.

18 Now I'm not -- I don't think anybody needs to have
19 any -- those arguments that it was approved, yeah, you know,
20 those are valid arguments that, that should and probably will
21 get made in, in furtherance of your position on it.

22 Do you see where the two things are, where the
23 reality of it and the technicality of it aren't matching in my
24 head anyway? But, Ms. Kaufman, you were going to say
25 something.

1 MS. KAUFMAN: I'm not going to say anything,
2 Commissioner, if you are going to leave the issue in. Our
3 witness addresses it. It is not a rehash of prior issues.
4 It's not an issue that was considered by the Supreme Court.
5 But if you're inclined to leave it, I'll --

6 COMMISSIONER BAEZ: Well, we'll see, we'll see
7 whether it is or it isn't. We'll leave that to the hearing.

8 MS. KAUFMAN: Absolutely.

9 COMMISSIONER BAEZ: But I've got to tell you, I mean,
10 it's, it's -- I think, I think that the Supreme Court speaking
11 on it ultimately ought to have, ought to send some kind of
12 message as to what the, you know, how many times or how often
13 we're going to be raising this. That's just my opinion.

14 MS. KAUFMAN: I understand and respect that, and I
15 won't waste everyone's time if you're going to leave the issue
16 in.

17 COMMISSIONER BAEZ: I know that's not your intent. I
18 know that's not your intent. I just felt I had to say it, but.

19 MS. KAUFMAN: We think it's a valid issue addressed
20 by our witness, and we believe it should be in this proceeding.

21 COMMISSIONER BAEZ: And I'm not -- I said my reasons
22 for why this prehearing officer thinks it should remain
23 against, perhaps, my better judgment.

24 MS. KAUFMAN: I appreciate that, Commissioner. Thank
25 you.

1 COMMISSIONER BAEZ: But with that said, we'll move
2 on.

3 Mr. Beasley, I think, I think, as we did with the
4 other issue, I think you're at liberty to provide the position
5 you so stated earlier.

6 MR. BEASLEY: Yes, sir. We will do so. And thank
7 you.

8 MR. KEATING: And staff will rework its position on
9 that issue to more artfully state our position.

10 COMMISSIONER BAEZ: Now, and maybe I'm bringing this
11 up out of order but, you know, it sounds like there's a legal
12 issue here somewhere, at least in my mind. I don't know to
13 what -- I don't know how we treat that, if something arises in
14 a prehearing order. But I would, I would hope sometime down
15 the line at the time of the hearing it gets raised or someone
16 remembers that it should get raised. And perhaps that's
17 something that we can brief when appropriate.

18 17N.

19 MR. BEASLEY: Commissioner, again, we agree with the
20 staff that this should not be an issue. The power purchase
21 agreement that FIPUG refers to is totally unaffected by the
22 change in ownership of Hardee Power Partners, the owner of the
23 Hardee Power Plant that provides the electric service in
24 question.

25 The purchased power agreement was approved by the

1 Commission. There's no suggestion by anyone that any right or
2 obligation under that agreement has been changed in any way by
3 the change in ownership of the partnership.

4 Tampa Electric has indicated to the Commission that
5 the power purchase agreements will not be amended, changed or
6 in any way assigned or otherwise modified. Nothing has
7 changed. And so to review the Hardee Power purchase agreement
8 to assure that changes in ownership will not affect ratepayer
9 costs due to alleged revised costs of new owners, that's a
10 phrase that's not addressed in any testimony. It should not be
11 an issue any more than something relating to things unrelated
12 to the fuel adjustment docket.

13 COMMISSIONER BAEZ: Ms. Kaufman, go ahead and
14 respond, and then I have a question.

15 MS. KAUFMAN: Okay. Our response is that while it's
16 true that the payments under the contract have not changed,
17 that's the point. There was a substantial gain on sale made on
18 this transaction. The ratepayers are responsible for the
19 revenue stream from this contract that, in our witness's view,
20 was the reason for the sale. This is supposed to be a
21 cost-based contract. It's our understanding that the sale
22 price was greatly in excess of the value of the assets, and
23 that's supported by this contract for which the retail
24 ratepayers are responsible. So we think it is an issue because
25 it goes to our responsibility to make these contractual

1 payments and whether this contract remains cost-based.

2 MR. BEASLEY: Commissioner, Ms. Kaufman just
3 presented her argument in support of Issue 17M and we're on
4 17N.

5 The gain is not -- the gain on the sale is not
6 reflected in Issue 17N. It's not, it hasn't been raised by
7 FIPUG under 17N. That's the issue that they raised under 17N
8 or M.

9 COMMISSIONER BAEZ: Ms. Kaufman.

10 MS. KAUFMAN: Well, they're related, Commissioner,
11 because what the price was for the transaction is related to
12 the issue of whether it's a cost-based contract for which,
13 again, the retail ratepayers are responsible. There's been a
14 change in circumstances regarding this contract, and we think
15 it's incumbent upon the Commission to look at it.

16 COMMISSIONER BAEZ: Mr. Keating.

17 MR. BEASLEY: Commissioner, if I could, if I could
18 add, this is not a Tampa Electric asset. It's no different
19 than if a coal supplier that furnishes coal to Tampa Electric
20 is bought out by another coal supplier and we have a contract
21 with them. You wouldn't investigate that to see if the
22 ratepayers are going to be affected by that transaction.
23 There's just no, there's no linkage between any impact on
24 ratepayers and the transfer of the ownership of this asset
25 that's not a Tampa Electric asset.

1 COMMISSIONER BAEZ: Mr. Keating, go ahead and say
2 what you were going to say.

3 MR. KEATING: Well, first, I have to admit that I am
4 not as familiar with the details behind these issues as perhaps
5 some of the other issues in this case. They just haven't
6 received as much of staff's attention because it's been devoted
7 to other areas.

8 The only, the only point I would add to the
9 discussion is that all Issue 17M, N and O asks whether the
10 Commission should review something. It doesn't ask us to take
11 any particular action but to raise an issue. It would seem to
12 me that staff and the parties have the opportunity to review
13 these things within the fuel docket. And if a dispute comes up
14 concerning discovery on these matters, for example, that can be
15 resolved by the Commission. And ultimately if a party or staff
16 wishes to pursue it, if the Commission wants it to be pursued
17 through staff, we can do so and raise an issue in the fuel
18 docket. I'm not sure -- I guess I'm just not sure what we're
19 deciding under these issues except that we're going to look at
20 something in the future.

21 COMMISSIONER BAEZ: Ms. Kaufman, what, what is the --
22 taking all of these issues in conjunction, notwithstanding what
23 we, what the ruling on M is, but I guess taken in, taken in the
24 aggregate, why, why is, why are these issues not proper for,
25 for a petition of its own and -- I mean, if there is, if there

1 is a concern, I mean, isn't there, isn't there a process that,
2 that is set up to deal with those concerns other than the fuel
3 docket? Because I think I'm hearing Mr. Keating saying, well,
4 this is, this is a yes or no answer, but it bears no, it has no
5 impact or it has no bearing on, on what the results of 2002,
6 2003 are going to be. Is that accurate?

7 MR. KEATING: I guess what I'm saying is that
8 addressing the issues as they're stated would not, it wouldn't
9 impact the fuel factors that you established at the hearing in
10 November for 2004.

11 COMMISSIONER BAEZ: Correct. Yeah.

12 MS. KAUFMAN: Well, I'm not sure that that's the
13 case. I think that the contract, the contract payments that
14 flow through the clause could be affected if there's a problem
15 with these transactions, and I think that while we certainly
16 have the ability at any time to come to the Commission and file
17 a petition regarding a transaction or an activity that we
18 believe is inappropriate, in this case the utilities have the
19 burden of proving that their actions and transactions are
20 reasonable and prudent. And these are issues that are fuel
21 adjustment issues that go to those facts that the Commission is
22 supposed to be revealing -- revealing -- reviewing on a yearly
23 basis.

24 COMMISSIONER BAEZ: Well, when you, when you, when
25 you said that you're not sure that's exactly the case, I guess

1 maybe, maybe it's -- maybe I'm just getting caught up in the
2 semantics of the issue.

3 MS. KAUFMAN: And if we need to reword the issue, we
4 have no problem with that. As I said, we, our witness
5 addresses these transactions and discusses them in her
6 testimony.

7 COMMISSIONER BAEZ: But, but to, to the effect that
8 the fuel factors that we are presently considering need
9 adjustment?

10 MS. KAUFMAN: That could be one of the results
11 depending on your ultimate decision in this case, particularly
12 as to 17, let me make sure I get my numbers right, M and N.

13 In addition, these transactions go to some other
14 issues that have been raised in regard to the Gannon shutdown
15 as to why these affiliate transactions are going on and who is
16 actually benefiting or not from them.

17 MR. BEASLEY: Commissioner Baez.

18 COMMISSIONER BAEZ: Yes, Mr. Beasley.

19 MR. BEASLEY: We have an existing agreement between
20 Hardee Power Partners and Tampa Electric whereby Tampa Electric
21 purchases power from Hardee. That's been approved by the
22 Commission. As we discussed earlier, it's been challenged and
23 approved by the Supreme Court. If there is any payment made
24 pursuant to that agreement that's not in line with the
25 agreement that's been approved by the Commission, that will

1 bubble to the surface and can be addressed as a problem.

2 FIPUG has not identified a problem. They've said
3 maybe you should investigate to see if there might be a
4 problem. And that's, that's just innuendo. There's nothing
5 there. If, if anything is a problem, they have, certainly have
6 the right to raise it. They have raised no problem other than
7 just the suggestion or hint that there may sometime in the
8 future be a problem. That's hard to, to talk about. We can't
9 get our hands around it.

10 COMMISSIONER BAEZ: Ms. Kaufman, here's the problem
11 that I'm having. I, I -- these issues, all right, if, if --
12 and I guess I'm having trouble finding where if these issues
13 were as stated and the allegations necessarily made as part of
14 your statements, position were, were part of a discrete
15 petition, for instance, that they might survive a motion, a
16 motion to dismiss. I mean --

17 MS. KAUFMAN: And I don't --

18 COMMISSIONER BAEZ: I don't know the answer to that.
19 But I guess --

20 MS. KAUFMAN: I don't disagree with you. But I do
21 not think that the only way that consumers can be heard on
22 issues is to file a separate petition. This, this docket is to
23 deal with fuel costs and items that flow through the fuel
24 costs, which these contractual payments do.

25 In addition, as I stated on the, I've gotten my

1 letters confused, but whichever the gain on sale issue is, that
2 sale was and is supported by the revenue stream of retail
3 ratepayers' payments under the contract. So I think those are
4 appropriate issues for this Commission to review. Whether you
5 decide to take no action or whatever, obviously we can't
6 predict that. But they're appropriate in the fuel adjustment
7 case.

8 COMMISSIONER BAEZ: Well, Mr. Beasley, based on,
9 based on my ruling on 17M, I'm going to try and stay consistent
10 with, with that. And, again, I would expect, I would expect
11 the arguments be given so that the Commission can understand
12 your position about what the propriety of this, the propriety
13 of taking these up as part of the fuel docket are. I mean, I
14 think that's a discussion that, that ought to be had.

15 I can tell you personally, Ms. Kaufman, I think, you
16 know, we need to be a little bit more circumspect as to what we
17 open up or how we open up issues on these fuel dockets.
18 They're very unwieldy. I mean, we've been at this almost three
19 hours now and you can see what I'm talking about. Now I'm not
20 saying that we shouldn't have all day to discuss the issues.
21 That's not what I'm suggesting. But you can see where we go
22 down a rabbit trail, and it might, might be more appropriate
23 to, to handle it some other way.

24 I'm not inclined to reject the issues at this point.
25 I think the company is going to have ample opportunity to make

1 their position known, including the issue of, of what the
2 propriety of, of including these types of issues in the fuel
3 docket are. And I would suspect that staff has some, may have
4 some thoughts on that at some point as well.

5 MR. BEASLEY: I would like to point out,
6 Commissioner, that, that they haven't suggested that there are
7 any, there's anything that's broken. They just said it might
8 break in the future, which is -- you know, that can happen with
9 anybody in that contract.

10 COMMISSIONER BAEZ: And at the risk, and at the risk
11 of it winding up an academic exercise, which it always has the
12 potential to be, and I hear, and I hear what you're saying,
13 then perhaps, perhaps the issues are relatively easy to answer.
14 And to the extent that those answers don't have any impact,
15 then, you know, no blood, no foul. Okay. Thank you,
16 Mr. Beasley.

17 MR. BEASLEY: Thank you.

18 COMMISSIONER BAEZ: You know, as part of all of this,
19 I won't say we got sidetracked, but we got tracked anyway.
20 Were we on 17N here?

21 MR. BEASLEY: Commissioner, can I make one other
22 observation?

23 COMMISSIONER BAEZ: Yes, sir, Mr. Beasley.

24 MR. BEASLEY: 17N looks like it's encompassed in 17M,
25 and I think all of Ms. Kaufman's arguments concerning the two,

1 because she blended the arguments, could be resolved by just
2 eliminating 17N and leaving 17M in.

3 MS. KAUFMAN: Commissioner, in the interest of --
4 number one, I want to assure you that it's not FIPUG's intent
5 to waste your time, nor any other party's time.

6 COMMISSIONER BAEZ: Please don't take any of my
7 comments as implying anything, anything like that.

8 MS. KAUFMAN: I appreciate that. I just felt I
9 needed to say that. But I appreciate your --

10 COMMISSIONER BAEZ: Okay. That's fine. Apologize
11 away. It makes me feel great. But I want you to understand,
12 that's not my implication. These are questions that perhaps if
13 they're worded differently and perhaps if, if certain
14 information is provided and a case is made in a different way,
15 it becomes much clearer as to the relevance.

16 Now, again, I made a ruling earlier and I'm not
17 inclined to overrule myself. I don't want to sprain anything
18 doing it, you understand? But I think we are apt to hear these
19 same arguments over again, and they're completely valid. And I
20 appreciate the parties' cooperating on that.

21 Ms. Kaufman, there is a question on the table as to
22 the combination of the two issues, and I would be interested in
23 hearing what kind of --

24 MS. KAUFMAN: And that's what I was going to suggest.
25 We would be happy to combine the two. If we just want to leave

1 17M, we'll have no objection to that.

2 COMMISSIONER BAEZ: Mr. Beasley.

3 MR. BEASLEY: So that would eliminate 17N.

4 COMMISSIONER BAEZ: 17N will be stricken, yes.

5 MR. BEASLEY: Thank you, sir.

6 COMMISSIONER BAEZ: Staff, you're all right with
7 that; right?

8 MR. KEATING: Yes.

9 COMMISSIONER BAEZ: Thank you. 170.

10 MR. BEASLEY: Commissioner, this, too, is a FIPUG
11 issue. We're inclined to agree with the staff that this should
12 not be an issue in this proceeding. There's been nothing put
13 forward to support any finding that the fuel adjustment charge
14 or clause or any fuel expenses will be affected in any way.

15 MS. KAUFMAN: Commissioner, I can short-circuit this.
16 I will withdraw that issue.

17 COMMISSIONER BAEZ: Thank you, Ms. Kaufman.

18 MR. BEASLEY: Thank you.

19 COMMISSIONER BAEZ: Show 170 withdrawn. Staff, I'm
20 assuming you don't have --

21 MR. KEATING: We're fine with that, yes.

22 COMMISSIONER BAEZ: You're fine with that? Okay.

23 All right. We're on to the generic issues on GPIF.
24 Issue 18.

25 MR. KEATING: Commissioner, I believe these are

1 typically issues that are stipulated. If the parties have had
2 the opportunity to look through the, the separate file, it's
3 identified as an attachment to the prehearing, draft prehearing
4 order that includes staff's position on these issues and can
5 agree for an agreement, I think we can show that as stipulated.

6 COMMISSIONER BAEZ: All right. And I would just --
7 parties, you know what you have to do in order to confirm that
8 the numbers and the figures are correct. You can check for
9 accuracy and get back to staff on it. And to the extent that
10 the positions agree, we can list them under the stipulated
11 issues. Okay.

12 Now that just goes for the generic? I'm sorry, no.
13 Or it goes for the company-specific as well, Mr. Keating.

14 MR. KEATING: That goes for 18 and 19. And I believe
15 that on Issue 23A, staff had raised that issue. I think we can
16 withdraw the issue. It's not something that I think requires a
17 decision. It's really more of an informational issue on how
18 the impact of the shutdown of Gannon is going to affect what
19 TECO units are included in the GPIF.

20 COMMISSIONER BAEZ: Without objection, we're going to
21 show that issue withdrawn.

22 MS. KAUFMAN: Excuse me.

23 COMMISSIONER BAEZ: Yes, Ms. Kaufman.

24 MS. KAUFMAN: I just want to know, which issue was
25 that?

1 COMMISSIONER BAEZ: 23A.

2 MS. KAUFMAN: Thank you.

3 COMMISSIONER BAEZ: You're not showing any position.
4 Okay. We'll show 23A withdrawn.

5 On to 24. Issue 25.

6 MR. KEATING: Commissioner, I believe on Issue 24 --
7 actually for all the generic capacity cost recovery issues as
8 they relate to Gulf Power, I believe the issues could be shown
9 as stipulated.

10 COMMISSIONER BAEZ: Okay.

11 MR. KEATING: And I believe on Issue 24, with the
12 possible exception of staff's position on, for Tampa Electric
13 Company, I believe we could show 24 stipulated with respect to
14 Progress Energy and Tampa Electric. I do not know if Tampa
15 Electric agrees with the, can agree to the extent --

16 COMMISSIONER BAEZ: I'm sorry. You lost me there.
17 You started off saying with the exception of Tampa Electric
18 that you can show it's stipulated for all?

19 MR. KEATING: Let me start over on 24.

20 COMMISSIONER BAEZ: Okay.

21 MR. KEATING: 24 and for all of the generic capacity
22 cost recovery issues, with respect to Gulf they can be
23 stipulated.

24 COMMISSIONER BAEZ: Correct.

25 MR. KEATING: On 24 specifically I believe we could

1 also show that stipulated with respect to Progress Energy and
2 perhaps with respect to Tampa Electric, although staff's
3 position adds some additional language requirement that's not
4 in Tampa Electric's position.

5 COMMISSIONER BAEZ: Let's take them up first.

6 Mr. McGee, are you in agreement?

7 MR. MCGEE: Yes.

8 COMMISSIONER BAEZ: Okay. Now I didn't hear you
9 mention Power & Light.

10 MR. KEATING: Power & Light, staff's position would
11 remain the same.

12 COMMISSIONER BAEZ: Okay. I see. And TECO, there's
13 a question on the table. There's some additional --

14 MR. BEASLEY: We agree with the staff's capacity cost
15 recovery true-up amount, and we also agree to provide the
16 additional documentation referencing the two adjustments
17 identified by disclosures 2 and 3 in the staff's audit as the
18 staff has requested. So I would propose, if the staff is in
19 agreement, that that issue be stipulated for Tampa Electric.

20 MR. KEATING: Staff can agree to that, yes.

21 COMMISSIONER BAEZ: Very well. Show TECO
22 stipulating.

23 Okay. 25. Were you speaking from --

24 MR. KEATING: I'm sorry?

25 COMMISSIONER BAEZ: We're on 25. Now are you -- you

1 weren't talking about 25 and the rest of the generics?

2 MR. KEATING: No. The only -- my only reference to
3 these other issues beyond 24 was for Gulf Power just to
4 indicate that for each of the remaining generic issues on
5 capacity cost recovery we can stipulate with Gulf Power.

6 On Issue 25 I would want to clarify staff's position
7 as it relates to FPL, Progress Energy and Tampa Electric, and
8 that would be to follow up each of the numbers shown in staff's
9 position there with a statement that "Resolution of Issue 30
10 may result in adjustment in recoverable security costs. Any
11 adjustment would be addressed through the true-up mechanism."

12 COMMISSIONER BAEZ: And where does that leave you on,
13 on 25? There seems to be agreement and then again subject to
14 Issue 30, you said; correct?

15 MR. KEATING: That's correct. I believe -- my
16 understanding is that there's agreement as to the numbers as
17 presented right now, but that the impact of, of Issue 30 could,
18 could change those numbers. But that could be addressed
19 through the true-up mechanism.

20 COMMISSIONER BAEZ: So then we can show 25 -- we can
21 show -- it doesn't seem to me that whatever the fallout number
22 is of 30 is going to -- it'll be what it'll be.

23 MR. KEATING: That works for me. We can call that
24 stipulated.

25 MR. BEASLEY: That's in agreement.

1 COMMISSIONER BAEZ: Okay. The rest, Mr. Butler.

2 MR. BUTLER: That's fine.

3 COMMISSIONER BAEZ: All right. 26. You've got some
4 here. TECO and Progress.

5 MR. KEATING: Yeah. With respect to, as I mentioned
6 before, Gulf and also with Progress and Tampa Electric, again,
7 we're in agreement with the numbers and, again, we think if
8 there's any adjustment to those numbers as a result of the
9 fallout of Issue 30, that any adjustment can be addressed in
10 the true-up. With that understanding, I believe we could show
11 a stipulation with, with respect to Gulf, Progress and Tampa
12 Electric Company.

13 COMMISSIONER: Mr. McGee.

14 MR. KEATING: Issue 26 is simply a combination of
15 Issues 24 and 25.

16 COMMISSIONER BAEZ: All right.

17 MS. KAUFMAN: Commissioner Baez, I hope you'll
18 indulge me.

19 COMMISSIONER BAEZ: Yes. Don't I always?

20 MS. KAUFMAN: Yes, you do. I appreciate it.

21 COMMISSIONER BAEZ: Okay.

22 MS. KAUFMAN: I just have a question on these two
23 issues just so I can understand.

24 Mr. Keating has said Issue 30 may affect these
25 numbers, but he would suggest we just handle it next year in

1 the true-up. Is that what you're suggesting?

2 MR. KEATING: That's correct.

3 MS. KAUFMAN: And my question is, and it could go
4 either way because some companies are under and some are over,
5 why wouldn't we decide Issue 30 and then come back and correct
6 these numbers so that we're on more of a real-time basis?

7 COMMISSIONER BAEZ: I'm going to have to ask you to
8 hold for an answer.

9 MR. KEATING: Okay. Here's the answer.

10 It's my understanding that if there is, if there is
11 going to be a difference, that that difference would be
12 relatively small and that staff may not have the data that it
13 feels is necessary to, to ascertain that difference between,
14 between now and the time we get to hearing.

15 MR. BADDERS: And with regard to Gulf, we have not
16 sought these costs, so it will have no effect on our numbers
17 either way regardless of the outcome of Number 30.

18 COMMISSIONER BAEZ: Ms. Kaufman.

19 MS. KAUFMAN: Right. If I'm understanding, this only
20 affects Florida Power & Light and Progress.

21 MR. KEATING: I believe it would only affect Progress
22 and Tampa Electric.

23 COMMISSIONER BAEZ: And TECO.

24 MS. KAUFMAN: I'm sorry. And Tampa Electric. Well,
25 I would just like to think about that. It just seems like we

1 should go ahead and incorporate the decision, unless I'm
2 missing something.

3 COMMISSIONER BAEZ: Let me hear from the -- now
4 true-up or real-time to the extent that the numbers are -- I
5 guess to -- your agreement notwithstanding, Mr. McGee and
6 Mr. Beasley, is there a preference or any objection to leaving
7 the method of dealing with, with whatever those differences are
8 open for the time being? I mean, I, I don't know that we need
9 to fix that. And I think Ms. Kaufman probably doesn't have a
10 problem with it to the extent that staff finds it more
11 expeditious one way or the other. I mean, are there any
12 natural objections that jump out at you?

13 MR. BEASLEY: We're inclined to agree with the staff
14 that the materiality suggests that it be just treated as a
15 true-up item and that the cost of reprogramming and redoing
16 everything in a hurried fashion could, could exceed the -- I
17 don't know what the amount of any adjustment might be, but it
18 could exceed that adjustment.

19 COMMISSIONER BAEZ: That's fine.

20 MS. KAUFMAN: And I think that's my problem. Maybe I
21 can agree when I know what the amount is. And if it's not
22 material and it doesn't change the factors --

23 COMMISSIONER BAEZ: Well, Ms. Kaufman, I've actually
24 changed the proposal here. You know, we're going to leave it
25 to staff's, we're going to leave it to staff's wisdom as to, to

1 suggest the best way to deal, to deal with it, whether it be
2 true-up or not. But we're probably not going to have much to
3 say about it in point of fact.

4 Issue 27. Issue 28.

5 MR. KEATING: Commissioner, I believe that Issue 28
6 could be shown as stipulated.

7 COMMISSIONER BAEZ: Parties? Okay. Show Issue 28
8 stipulated.

9 29. Issue 30.

10 MR. BUTLER: Commissioner Baez.

11 COMMISSIONER BAEZ: Yes, sir.

12 MR. BUTLER: On Issue 30, I need to address it here
13 for just a moment. Staff has a fairly extended and detailed
14 position here. It's the first time that position showed up in
15 their prehearing statement filed last Wednesday. Their
16 position on this issue is "No position at this time."

17 The concern we have specifically is with the last
18 paragraph, which talks about basically sort of grossing up for
19 increases in sales on the base amount.

20 To the best of my knowledge, there is no testimony by
21 either a utility or a staff witness on that point in what has
22 been prefiled in the proceeding, and I frankly just don't see
23 how it can be appropriately at issue.

24 If you want to leave it at issue, we would ask to
25 have the opportunity, you know, sometime next week to file some

1 short testimony responding to that point because it is kind of
2 a significant, substantive policy point that just really, as I
3 say, has not been brought to our attention or put in a posture
4 where we would have been in a position to address it
5 previously.

6 COMMISSIONER BAEZ: Mr. Keating, what was your
7 intention on -- I guess, assuming that Mr. Butler's observation
8 at least as to the timing of, and to the existence of testimony
9 or lack of existence of testimony supporting that, what were
10 your intentions with, with that point?

11 MR. KEATING: I guess sort of each party goes into
12 the hearing, puts forth testimony on the issues that it puts
13 forth testimony on. And to the extent it doesn't, it relies on
14 making a case or proving its case through cross-examination and
15 takes that risk. And I suppose just because we have not filed
16 testimony to support a particular position, although it may
17 have been in our best interest ultimately to do that if we
18 wanted to support that, I think we'd go into the hearing with
19 that risk. I don't know that it requires any additional
20 testimony to be filed on behalf of FPL. It would not be
21 rebutting anything that's in the staff testimony filed in this
22 case, if it indeed is not addressed in the staff testimony in
23 this case.

24 MR. BEASLEY: Commissioner, Tampa Electric would
25 support the observations made by Mr. Butler, and we would like

1 the opportunity, if the issue stays in, to submit testimony
2 addressing it.

3 MR. BADDERS: The same would be true with Gulf.
4 Actually when we filed ours, we were not sure where this
5 question was going, so we basically took no position. But at
6 this time we may actually want to take a position. But we've
7 just now seen this, so it's been kind of hard to formulate
8 something as I sit here.

9 COMMISSIONER BAEZ: Mr. McGee.

10 MR. MCGEE: I would echo that concern, and also note
11 that certainly from Progress Energy's standpoint the underlying
12 issue with respect to power plant security costs has been this,
13 this baseline level that we had discussed earlier.

14 In the past once the baseline had been established,
15 this, this gross-up feature that Mr. Butler pointed out in the
16 last sentence of staff's position was not the way that was
17 handled. So in our testimony we went to some lengths to
18 describe what we understood the open issue was with respect to
19 recovery of incremental power plant security costs. And since
20 this, to our mind, was not an issue and the Commission had
21 already had a way at least through practice of dealing with it,
22 was not something that was at issue.

23 So this is a fairly extensive position that's listed
24 by staff, and that last sentence was the one that was the eye
25 opener from our standpoint as well. I think that's a very

1 significant issue.

2 COMMISSIONER BAEZ: Well, Mr. Butler, going back to
3 you, I guess I have a question. I'm trying, I'm trying to fix
4 exactly what your fix, your suggested fix is. I'm trying to
5 get it straight in my mind. And exactly what is it that the
6 company is proposing?

7 MR. BUTLER: Well, as I say, our proposal would be if
8 you want to leave this in and have staff having this position,
9 the part about grossing up for the increase in sales, then we
10 would like the opportunity to file testimony on that point.
11 And it could be done very quickly. I think we could do it
12 early next week, if that was the ruling.

13 COMMISSIONER BAEZ: Staff -- and, again, to the
14 extent, to the extent that we can eliminate -- let me rephrase
15 that.

16 To the extent that we can seek a complete record so
17 that the Commissioners can make an informed decision on this, I
18 guess it makes me a little uncomfortable, although, although
19 entirely valid, the position that you stated, Mr. Keating. But
20 to say, you know, we'll take it up on the fly, and I guess I'm
21 a little uncomfortable with that.

22 If this indeed does represent a shift away from or a
23 new procedure, a new way of doing things that the companies or
24 that all the parties, for that matter, not have a, not have an
25 adequate or as adequate a way to address it and speak to it as

1 possible, and I guess including, I guess I'm including the
2 staff witnesses as well. How would you propose to, to do that?
3 Is the, is the opportunity to provide testimony, for the
4 parties to provide testimony on the issue a doable -- I know
5 it's difficult because we're really getting down to it, but is
6 it, can it be accommodated or can it be addressed?

7 MR. KEATING: And I think what we're talking about,
8 to make sure we're on the same page, is something in the nature
9 of direct testimony offered on behalf of the utility, it's not
10 rebutting any testimony that's been offered by the staff, so
11 that intervenors and staff, if it felt necessary, would have
12 the opportunity to, to respond.

13 And it may be -- so we've got a couple of dates in
14 there we have to, we have to work with. I don't know how
15 quickly companies would intend to get testimony together.
16 We've got about three weeks before the hearing. This may be
17 something where what we could do is have the companies,
18 intervenors and staff all take a shot at it at the same time
19 and not have this direct responsive and then rebuttal
20 testimony.

21 COMMISSIONER BAEZ: Well, yes. And understand -- I
22 think I'm seeing nods certainly from the companies. I don't
23 know, I don't know if OPC at this point or FIPUG would have a
24 change in positions on that. But whatever we do, we have to do
25 it on an expedited basis.

1 I would tend to agree with you, Mr. Keating, that
2 back and forth on testimony is probably not what's required
3 here. We're going to do -- we're going to take one shot at it,
4 everyone, so that we can get the issue out there.

5 Mr. Butler, you started this. Are you amenable to
6 that kind of treatment?

7 MR. BUTLER: I think that's reasonable under the
8 circumstances. I mean, the ideal is for the party who would be
9 having the burden of putting the issue forward to go first and
10 then have a round of rebuttal. But we do recognize the time
11 limitations, and so I think that's, I think that's a fair
12 compromise.

13 COMMISSIONER BAEZ: I'm more concerned -- I think
14 we're covered on due process in handling it on a one-round
15 basis. I'm mostly concerned about if, in fact, the
16 Commissioners are to address this type of issue or this type of
17 policy going forward, that we have as best, that we have as
18 much information as possible. That's really my concern on, on
19 this particular issue.

20 You had suggested, forgive me, it slipped my mind,
21 but you had suggested a certain time line or at least you had
22 stated how fast your company could turn around testimony, and
23 I'm interested in hearing it again.

24 MR. BUTLER: Well, for our company we could do it,
25 you know, early next week. I don't know if that's too early

1 for other people or not.

2 COMMISSIONER BAEZ: We're going to find out. Suggest
3 a date, Mr. Keating, based on Mr. Butler's optimistic --

4 MR. KEATING: I'm looking behind me to see if the
5 folks who would have to put together the testimony have any,
6 any thoughts.

7 I, I would suggest that, that it not be early next
8 week, that it be at least a week from today.

9 COMMISSIONER BAEZ: Okay.

10 MR. BEASLEY: That would be a sufficient time for us.

11 MR. KEATING: If not Thursday or Friday of next week,
12 maybe even the following Monday to give people that weekend. I
13 just don't know.

14 COMMISSIONER BAEZ: Now, and you're comfortable that
15 that leaves -- you know, again, we're only, we're only going to
16 take one, one shot at testimony in this. We're not going back
17 and forth. So given that, if we, if we set a week from Monday
18 as the filing deadline, that would be -- it sounds like it's
19 sufficient for, for everyone involved.

20 MR. KEATING: That gets us ten days prior to the
21 hearing. I think that's November 2nd. And I guess there also
22 perhaps needs to be a concern for the time for any deposition
23 that we need, that the parties would feel the need to conduct.

24 COMMISSIONER BAEZ: Do you have sufficient time?

25 MR. KEATING: We may have to, for that particular

1 purpose, extend the discovery deadline that's set forth in the
2 procedural order for the case. I believe it's right now
3 November 5th, the week before the hearing.

4 MR. BEASLEY: It would be for that issue only; right?

5 MR. KEATING: For that issue only.

6 COMMISSIONER BAEZ: Limited to that issue. I think I
7 know somebody that can let you do that.

8 MR. KEATING: Yeah.

9 COMMISSIONER BAEZ: Whatever your suggestions are in
10 terms of, in terms of response to discovery requests,
11 they're -- you know, they're going to have to be super short.
12 And as to whatever depositions have to be, may have to be
13 taken, every technological advantage should be explored.

14 MR. KEATING: And I would imagine, and I may be
15 wrong, that given the policy nature of this question, this
16 issue, that it's something that would be done more through,
17 through a deposition.

18 COMMISSIONER BAEZ: Okay.

19 MR. KEATING: But, again --

20 COMMISSIONER BAEZ: Whatever changes need to be
21 made --

22 MR. KEATING: -- staff will correct me as we go
23 along.

24 COMMISSIONER BAEZ: Right. Whatever, whatever
25 changes need to be made to the procedural order. At this point

1 the ruling goes as this: There will be one round of testimony
2 from all parties due a week from this Monday. And I don't have
3 a calendar on me, but if someone can shout out a correct date
4 for the record. Is it November 3rd?

5 MR. KEATING: Yes.

6 COMMISSIONER BAEZ: November 3rd. And, Mr. Keating,
7 staff will let the prehearing officer know what other technical
8 changes need to be made along those lines?

9 MR. BUTLER: May we provide --

10 MR. KEATING: Yes. Yes, Commissioner.

11 MR. BUTLER: I'm sorry. May we provide that the
12 testimony be served electronically, given how close to the
13 hearing it's going to be?

14 COMMISSIONER BAEZ: Well, I think when I did say
15 let's take advantage of technology on this, I think it's
16 appropriate that, that with such short time lengths we can make
17 some kind of accommodations on that. So electronic submission
18 is appropriate. Thank you, Mr. Butler.

19 MR. KEATING: And we have done that in many other
20 cases, and it won't be hard for me to cut and paste language
21 from a prior order.

22 COMMISSIONER BAEZ: You will, you will specify the
23 format that, that staff needs in order to work with it; right?

24 MR. KEATING: Yes.

25 COMMISSIONER BAEZ: Okay. Great. Moving on, 31A.

1 And we need to step it up, and maybe that's my fault, but.

2 MR. KEATING: Commissioner, if we could go back
3 briefly to Issue 30. I just wanted to get a clarification from
4 Progress. It appears under their position on the issue that
5 there's a misnumbered issue. There's a reference to Issue 131,
6 and I didn't see one on my list and I hope we don't get to 131.

7 COMMISSIONER BAEZ: God, I'm hoping we don't have
8 131 on the list.

9 MR. MCGEE: At the time that was written, I was
10 referring to Issue 131. So I can understand the, the
11 deviation. And I'm not sure that the numbers are still the
12 same. I think they are.

13 COMMISSIONER BAEZ: To the extent that that reference
14 has to move, you'll take care of that off-line, Mr. McGee?

15 MR. MCGEE: Yes.

16 MR. BUTLER: And, Commissioner Baez, I'm sorry.

17 COMMISSIONER BAEZ: Yes, sir.

18 MR. BUTLER: We would note that we will be submitting
19 a revised position for FPL on Issue 30 that addresses this part
20 of the staff position that we hadn't previously addressed.

21 COMMISSIONER BAEZ: And that opportunity is available
22 to all the parties, and you can make them available to staff
23 accordingly.

24 31A. 32A. 34A. All right. Any changes to the
25 exhibit list?

1 MR. KEATING: I can probably hopefully expedite
2 things a bit with respect to some of the changes that I am
3 aware of. Florida Power & Light has provided me three pages,
4 I'm sorry, two pages from the exhibit list with changes to
5 descriptions of their exhibits and numbering of their exhibits.
6 And without having to read those into the record, I do have
7 those and can make those changes to records.

8 COMMISSIONER BAEZ: Very well. And you can circle
9 back with Mr. Butler if there's any, if there's any
10 additional -- I guess -- yes, Mr. Vandiver.

11 MR. VANDIVER: The Office of Public Counsel would
12 like to introduce the deposition of Buddy Maye.

13 MR. BUTLER: I'm sorry. What was that name again?

14 MR. VANDIVER: Buddy Maye, M-A-Y-E.

15 COMMISSIONER BAEZ: Can you ID that for us?

16 MR. VANDIVER: Yes. Mr. Maye's deposition was taken
17 at the instance of the Office of Public Counsel. Mr. Maye's
18 deposition conflicts with some of the sworn testimony that's
19 been introduced by Mr. Whale. And generally we use that for
20 purposes of cross-examination, and often times we get into the
21 introduction of certain pages and then the issue comes up,
22 can't we introduce the whole thing? And I thought it would
23 expedite the Commission's time just to go ahead and put it in
24 the record now.

25 COMMISSIONER BAEZ: Very well? Any objection.

1 MR. BEASLEY: We have no objection, and we would
2 commend it to your reading, sir.

3 COMMISSIONER BAEZ: The devil, you say.
4 Any other changes or additions?

5 MS. KAUFMAN: Commissioner Baez.

6 COMMISSIONER BAEZ: I'm sorry.

7 MS. KAUFMAN: Just to note that I think I've said
8 earlier, Ms. Brown's exhibits are jointly sponsored by the
9 Retail Federation.

10 COMMISSIONER BAEZ: By the Retail Federation. And
11 that notation has to be --

12 MR. BEASLEY: We have exhibits of our rebuttal
13 witnesses, the first of which is the rebuttal exhibit of
14 Mr. William Whale, and that is designated Exhibit WTW-2. The
15 second exhibit is the rebuttal exhibit of witness Denise
16 Jordan, and that is designated Exhibit JDJ-4. And there may be
17 a further rebuttal exhibit. We don't know yet because all of
18 the testimony is not in.

19 COMMISSIONER BAEZ: Okay.

20 MR. KEATING: And as I indicated before, staff is
21 preparing testimony to be filed today, and we will likely have
22 exhibits to identify once, once that is filed.

23 COMMISSIONER BAEZ: Right. Okay. Any other
24 additions or changes at this point? All right.

25 Mr. Keating, the proposed stipulations at this point

1 have been noted.

2 MR. KEATING: I'm not sure if it was discussed in the
3 prior dockets or not. We can -- in this section of the
4 prehearing order, if it's your preference, we can show, we can
5 pull out the issues to be shown as stipulated and place them
6 here, we can leave them where they are and simply indicate that
7 they're stipulated, whatever your preference is. We have done
8 it both ways in the past.

9 COMMISSIONER BAEZ: I'm not sure, I'm not sure how we
10 were dealing with it in the other dockets. But if you all can
11 get together with the staff, let's just be consistent. I mean,
12 I certainly don't have any preference.

13 MR. KEATING: Okay.

14 COMMISSIONER BAEZ: All right. Now, pending motions.

15 Mr. Twomey, is he here? Mr. Twomey, you have a
16 pending motion to establish a separate docket. And there is,
17 there is another motion; you're requesting deferral of a coal
18 transportation issue for TECO. Let's take them both up at a
19 time because I think one is going, one will bleed into another.
20 So, Mr. Twomey, you can start with your motion, then we'll take
21 the other movant, and then we'll take Mr. Beasley's comments.
22 Is that all right?

23 MR. TWOMEY: Yes, sir. Thank you, Mr. Chairman.

24 MR. KEATING: Commissioner, before we get started, I
25 was curious if you were interested in suggesting a time limit

1 on the argument at this point. It seems to be a fairly
2 straightforward issue.

3 COMMISSIONER BAEZ: Let's take no more than five
4 minutes per side.

5 MR. TWOMEY: Yes, sir.

6 COMMISSIONER BAEZ: And can you hold on a second.
7 (Discussion held off the record.)

8 COMMISSIONER BAEZ: Go ahead, Mr. Twomey.

9 MR. TWOMEY: Thank you, Commissioner. The issue,
10 short and sweet, is procedural due process, Commissioner Baez.
11 The, the companies filed testimony on September 25th, as I
12 recall, on an issue that they were, on a contract expiration
13 they knew was going to -- date of four or five years ago. Your
14 staff had inquiries about the RFP process, which I don't think
15 they would say were addressed properly by the company. The
16 company issued RFPs, I think it was in June or July of this
17 year, which was considered by many to be exceedingly late given
18 the contract termination at the end of this year. They filed
19 testimony beyond the normal date for filing testimony. And
20 with that testimony is the testimony and a rather expansive
21 detailed report. Pardon me. And when they filed that
22 testimony on the 25th, which was just, I think, 28 days ago,
23 they, they still hadn't a signed contract with their, with
24 their affiliate company, which came later.

25 So the point is that while this Commission is given

1 broad discretion, Commissioner Baez, as you know, by the
2 Florida Supreme Court on matters of factual and policy and
3 legal determinations when they're the statutes by, for the
4 Commission, they won't tolerate denials of procedural due
5 process. And the parties, the FIPUG, Public Counsel, Retail
6 Federation, now we have the, the CSX desiring to get in, are
7 saying that there is simply not adequate time to study these
8 documents, obtain expert witnesses and prepare testimony to
9 counter it, and it can't be done in a timely manner before
10 November 12th. So we would urge you to deny the issue for
11 consideration this go-around. And although it doesn't have to
12 be done now, consider a spinoff docket perhaps in the first
13 quarter or second quarter of next year, which would, which
14 would give the parties, first of all, an opportunity to study
15 this and prepare their testimony in defense of their
16 substantial interests.

17 Secondly, by having a spinoff docket, it would allow
18 the Commission to focus its attention on these issues alone.
19 As you may recall, I think both the proxies for the one company
20 and the benchmark were established in spinoff dockets years
21 ago.

22 Lastly, by not waiting until November of next year,
23 if, in fact, as we will maintain, the transportation costs are
24 excessive and are denied later and the customers get their
25 money back, we would not like to see residential customers have

1 to be deprived of that money at any point longer than
2 necessary, so.

3 And lastly, I should say, the company won't be
4 burdened by this because while it's understandable that the
5 company wants to have TECO transport with a signed and approved
6 five-year contract if it desires to sell it, which will
7 certainly affect the value of it, if, in fact, they maintain
8 the costs are reasonable, they're not subject to any risk of
9 denial later. And if we have this hearing in a spinoff docket
10 three, four, five months from now, that will be plenty of time
11 for them to go ahead and be assured that their, their contracts
12 are good and approved that waiting for next year. Thank you.

13 COMMISSIONER BAEZ: Thank you, Mr. Twomey. Ms.
14 Kaufman.

15 MS. KAUFMAN: Thank you, Commissioner. We're talking
16 about Issues 17E and F, I believe, and FIPUG supports the view
17 that these issues are critical, there's a lot of money at
18 stake, and they ought to either be considered in a separate
19 docket, which would probably be more efficient, or deferred to
20 next year.

21 I'm not going to be, repeat what Mr. Twomey said, but
22 I do want to say to you that there have been fundamental
23 questions raised, number one, about the request for proposals
24 itself, as well as the entire contracting process, the timing
25 of it and the awarding of the bid. And all of these matters,

1 as we've stated in numerous pleadings we've filed on this
2 issue, were totally within Tampa Electric's control. We, we
3 are a long-standing party to these dockets. We understand what
4 the procedure is.

5 The supplemental testimony that was filed out of time
6 was, as Mr. Twomey held up, extensive, particularly TECO's
7 outside consultant's report. Mr. Dibner's testimony itself was
8 25 pages long and his report was over 100 pages long. It was
9 first provided to me -- the report was entirely redacted, so
10 then I went through the process and I do have it now. However,
11 certainly to do any analysis of it would require the retention
12 of an expert, it would require discovery, it would require
13 production of the model that I understand TECO's witness used,
14 and it's also my understanding refuses to provide.

15 The bottom line is that I think that we all need to
16 take a hard look at the process and the result and be sure and
17 be comfortable that it is the most cost-effective arrangement
18 for the ratepayers, who, again, are being asked to pay the
19 contract that TECO entered into with an affiliate company, and
20 it's a five-year contract. And a lot of the information is
21 confidential, so I want to be careful, but I think it's fair to
22 represent we're talking about significant dollar amounts.

23 The last point that I want to make is that when TECO
24 filed the supplemental testimony, they graciously suggested
25 that since they filed it out of time, it would be all right and

1 it would make things right if intervenors were given that same
2 block of time to respond. And that just is insufficient. And
3 I would also point out to you that though you did grant the
4 extension of time, your order granting it wasn't issued until
5 October 13th, and then the due date for any testimony, which no
6 one has been able to file, was October 16th. So we think that
7 though we all scramble and try very hard to deal with
8 restricted deadlines in a lot of dockets we have here, that
9 this certainly steps over the line in terms of a critical
10 denial of due process to the parties that are going to be
11 substantially affected by this decision. And so we think it's
12 incumbent on the Commission to defer consideration.

13 And I would just make one more point, which is there
14 is no need to rush to judgment on this matter. Tampa Electric
15 has executed the contract. They've done so at their risk,
16 subject to this Commission's determination of the prudence and
17 reasonableness of those actions. Thank you.

18 COMMISSIONER BAEZ: Thank you, Ms. Kaufman. And I
19 need to get things straight. Which -- you joined in what
20 petition?

21 MS. KAUFMAN: Well, we, when this began, there was a
22 motion to file supplemental testimony because the testimony was
23 filed out of time, which you granted, and you reserved ruling
24 on whether these issues would be appropriate, it's my
25 understanding. I join in Mr. Twomey's motion to establish a

1 separate docket.

2 COMMISSIONER: Okay. Thank you. Mr. Wright, you're
3 raising your hand. Which petition are you on?

4 MR. WRIGHT: I'm on, I'm on all three of the related
5 documents.

6 COMMISSIONER BAEZ: All 3?

7 MR. WRIGHT: Just to be brief, and I won't say
8 anymore after this, we join in Ms. Claypool and her fellow
9 residential customers' motion to establish a separate docket,
10 and we join in the requests for similar relief articulated in
11 the pleadings filed by FIPUG and by the citizens to establish a
12 separate docket.

13 COMMISSIONER BAEZ: Thank you. Mr. Vandiver.

14 MR. VANDIVER: I don't want to repeat what's been
15 said, but in order to go to hearing, you've got to prepare.
16 With this level of documents, and these documents are very
17 extensive, they're very detailed, you've got to prepare, and
18 we've got, we've got to do that preparation. You can't do it
19 in this amount of time. And without that preparation, it
20 results in prejudice, it results in extreme prejudice to all
21 the intervenors here.

22 On the other hand, there is no prejudice to the other
23 side by a delay to take the time, to take a good, a reasoned
24 look at these issues. That's what, that's what we're asking
25 for. I think it's imminently reasonable to look at this in the

1 first quarter, the first half of next year. Ms. Kaufman
2 pointed out there's questions about the RFP. We need some time
3 to look at these issues, we want to hire some experts, we want
4 to do some discovery on these important issues. And I don't
5 want to repeat what's been said, but we need to do the
6 preparation, we need to take a hard look at these documents,
7 and these issues need to be delayed. It's fundamentally unfair
8 to go to hearing on these issues in this year's fuel docket.
9 Thank you.

10 COMMISSIONER BAEZ: Thank you, Mr. Vandiver.

11 Mr. Wright, you just joined and you're going to
12 reserve your comments?

13 MR. WRIGHT: I don't have anything to add. I agree
14 with all the arguments --

15 COMMISSIONER BAEZ: Thank you.

16 MR. WRIGHT: -- stated by Mr. Twomey, Ms. Kaufman and
17 Mr. Vandiver. And we filed a formal paper putting our notice
18 of joinder in the motion and in their responses asking for the
19 relief that they just asked for.

20 COMMISSIONER BAEZ: Thank you. Mr. Rogers, is it?

21 MR. ROGERS: Yes, sir. John Rogers, Florida Retail
22 Federation. We agree with the Public Counsel and FIPUG on this
23 one.

24 COMMISSIONER BAEZ: Thank you, Mr. Rogers.

25 Mr. Beasley.

1 MR. BEASLEY: Commissioner Baez, it's axiomatic that
2 intervenors take the case as they find it. We have, we have
3 heard from intervenors who have been granted leave to intervene
4 this week and others who haven't been, haven't filed their
5 motion until today.

6 As far as due process is concerned, the provisions of
7 Tampa Electric's RFP were furnished to the staff back in June.
8 They were discussed in detail with the staff and the parties on
9 the 1st of July, and they were described in great detail. They
10 were -- the discussion in our, in our September 12th direct
11 testimony filing went into great detail about the RFP, how it
12 was formulated, how it was disseminated and what the company
13 was doing in that regard.

14 As promised in that September 12th testimony, we
15 submitted two weeks later supplemental testimony that would
16 have been filed September 12th, but the process had not been
17 completed until a few days later. But we filed that testimony
18 on September 25th providing significant detail about the RFP
19 analysis, the results that were, that were received, and the
20 company's actions in response to that.

21 Of course, we got objections, as you heard, about the
22 two-week later filing, so we filed a motion on behalf of our
23 intervenors allowing them to have equal time, which was granted
24 by you. They were placed in the same position procedurally as
25 they had been since the CASR was issued in this docket back in

1 early January of this year. The time frame between the filing
2 of the company's testimony and the responsive testimony of the
3 intervenors was identical to that which was established since
4 January. If they had a difficulty with that time frame,
5 perhaps they should have raised it in February. They didn't.
6 They abided by the schedule and they were given the same amount
7 of time.

8 Tampa Electric participated in several meetings with
9 the staff and the parties to further explain the company's RFP
10 process, the input that the company received from our expert
11 consultant, Mr. Dibner, and his advice regarding waterborne
12 transportation, the markets and the situation that the company
13 faced. We answered, and this is due process again, we answered
14 numerous waves of discovery covering all aspects of our fuel
15 cost projections for 2004. The staff and intervenors have
16 deposed the company's witnesses extensively regarding the RFP
17 and the results, the resulting evaluation and, and the
18 company's final decisions after those bids were evaluated.

19 It's interesting, on RFP benchmark waterborne coal
20 transportation and related issues alone we have supplied some
21 108 discovery requests, including 75 interrogatory answers that
22 were quite extensive, 33 production of document requests from
23 staff and intervenors. The total response pages the company
24 has submitted were well over 3,000 pages. We had, we had our
25 people working overtime to do that.

1 Now against -- conversely, the intervenors have opted
2 not to file any testimony on the issue of the coal
3 transportation issues. Rather, they just say they need more
4 time. FIPUG, who was the first party who, who raised this
5 issue, has taken that approach on a number of occasions in the
6 past. They took it two years ago. They said, oh, we can't, we
7 can't have the Commission look at and decide these issues
8 relating to Tampa Electric's dealings with its affiliate. We
9 need to have a separate docket or a spinoff or some study. And
10 that's the situation we found ourselves in two years ago and,
11 of course, the Commission went ahead, considered the issues,
12 decided them and your decision was affirmed by the Supreme
13 Court. It's deja vu all over again with FIPUG.

14 Public Counsel initially agreed to the filing of our
15 supplemental testimony, but only changed their position after
16 FIPUG objected. But the point is they've been made whole.
17 They've been given the same amount of time the CASR provided
18 since day one and we should be entitled to proceed.

19 Against this backdrop, we want you to consider what
20 the company faces. Tampa Electric has borne the brunt of
21 really vicious and false comments to the news media, trade
22 journals, anonymous letters to the Governor's office and
23 legislative leaders and other similar attacks. We don't know
24 for sure who the real party or parties in interest are behind
25 all of this. We do know that CSX today has surfaced for the

1 first time as an intervenor in the case. There's a great deal
2 of frustration on the part of the company in having to deal
3 with this. When you're dealing with innuendo, outright false
4 statements, many of them anonymous, I mean, it's just hard to
5 fight that, that shadow. We know that Mr. Twomey has been seen
6 in front of Tampa Electric's office building with many of his
7 cohorts talking to the press with a camera in his face. This
8 was before he even filed to intervene in this case. Perhaps if
9 he had spent a little more time on the pleadings and not the
10 press interview on the sidewalk, he would have gotten in
11 earlier. This is all, we believe, an orchestrated late effort
12 on the part of parties who want to delay the consideration of
13 these issues to achieve that result. We don't think it's fair.
14 Tampa Electric is entitled to have its waterborne
15 transportation issues resolved in this proceeding as they've
16 been scheduled so that the company won't continue as a target
17 for vilification off into some distant future.

18 If that issue is left hanging, it could have serious
19 economic repercussions to Tampa Electric. Postponing the
20 resolution of this issue would leave a big black cloud over the
21 company. It could adversely impact or will adversely impact
22 our relationship with the customers that we're, that we're
23 serving.

24 FIPUG, OPC, individuals represented by Mr. Twomey and
25 now CSX on the other hand want you to delay the decision. This

1 doesn't serve as a legitimate basis. The late intervention of
2 parties does not, does not justify postponing something that's
3 been on the table and a subject of extensive discovery for as
4 long as these transportation issues have been. We urge you not
5 to be enticed into delaying the resolution of the issues
6 relating to the transportation issues.

7 Commissioner Baez, I would add that the current
8 Commission policy embodied in the order that the Commission
9 issued in 1993 setting up the current waterborne coal
10 transportation methodology does not even contemplate the
11 issuance of an RFP. It doesn't require it. Tampa Electric did
12 this in a good faith effort to demonstrate to the Commission
13 that we're, that we're not entering into sweetheart deals. We
14 want to be out there dealing at a market-based rate. We think
15 the evidence will establish that in this hearing.

16 We had the same issue arise five years ago. The
17 Commission considered it, went forward, and, and all of the
18 company's waterborne transportation costs under its soon to
19 expire contract have been below the benchmark that you set in
20 1993. The new contract, the evidence will show, will be lower
21 than the existing contract.

22 The real, the real truth is that -- and there's real
23 truth in the statement that justice delayed is justice denied.
24 That's, that's not a cliché. That's a real, true statement.
25 So we would urge that you proceed, that you not delay these

1 issues, that they be heard as they've been scheduled for so
2 long, and we thank you.

3 COMMISSIONER BAEZ: Thank you, Mr. Beasley.

4 Mr. Twomey, I have a question for you. I know that
5 you were arguing from the perspective that there should be an
6 entirely separate docket established to, to take up these
7 issues. Is there any fundamental disagreement with the concept
8 of a deferment to, to the proper fuel, proper fuel year, as
9 Mr. Vandiver and Ms. Kaufman seem to have mentioned?

10 MR. TWOMEY: Well, I think, I think they've both said
11 to you that they'd like to see it done in a separate docket.
12 The first --

13 COMMISSIONER BAEZ: I thought I heard them say that
14 it didn't need to, didn't need to be taken up as part of this
15 fuel docket. I think you can jump in and correct me, if I'm
16 wrong.

17 MS. KAUFMAN: Well, just let me clarify what my
18 position is. Mr. Vandiver can speak for himself.

19 We certainly support the establishment of a separate
20 docket, but we don't have any objection to considering it in
21 next year's fuel adjustment. The point being --

22 COMMISSIONER BAEZ: The key for you, and I don't want
23 to put words in your mouth either, Mr. Twomey, but the key
24 issue here is, is a lack of time to prepare; is that fair to
25 say?

1 MR. TWOMEY: Yes, sir, that's fundamentally it.

2 COMMISSIONER BAEZ: So that the, so that there is not
3 so much a concern as to the style of, the vehicle for that
4 additional time, if you will.

5 MR. TWOMEY: No, sir. Only to the extent that I said
6 that we think that if the costs were shown by a hearing later
7 to be excessive, that would deprive -- and refunds were ordered
8 with interest, of course, that would necessarily deprive some
9 residential ratepayers of their present use of the money.

10 COMMISSIONER BAEZ: I'm sorry. I, I fragged on that.
11 Can you, can you say that again?

12 MR. TWOMEY: Yes. To go back, the fundamental desire
13 is to have enough time to prepare --

14 COMMISSIONER BAEZ: Right.

15 MR. TWOMEY: -- and not have it now in November,
16 whether it's done in a separate proceeding or November of next
17 year.

18 The only, the only reticence in having it wait for an
19 entire year is, one, it is not fair to the company, we think,
20 to have it hanging out, that black cloud, they say, that long.
21 But more importantly from the consumers' perspective, if there
22 are, in fact, excessive charges in this contract with the
23 affiliate company and it's proven, whether it's five months
24 from now or 12 months from now, the customers will get their
25 money back with interest, but they'll be deprived of that money

1 in the interim. And that's the only reason we're saying give
2 us enough time to prepare and then have it March, April,
3 whenever.

4 COMMISSIONER BAEZ: Thank you, Mr. Twomey.

5 Mr. Beasley, the -- and, again, understanding,
6 understanding that you still have your concerns generally, but
7 speaking specifically to, to potentially a vehicle, I mean, is,
8 is there anymore risk to the company between these alternatives
9 that the motions seem to suggest, whether it be a deferment to
10 the fuel, to the fuel docket or a separate docket?

11 MR. BEASLEY: We, we certainly, we certainly want the
12 issue decided in this hearing, as I stated.

13 COMMISSIONER BAEZ: I understand that. That's a
14 given. I guess I'm trying to ascertain a lesser of evils, if
15 you will, just for information purposes at this point.

16 MR. BEASLEY: We don't -- a docket number doesn't
17 really matter. You know, a docket is a docket.

18 COMMISSIONER BAEZ: Okay. But you did, but you did,
19 you did hear Mr. Twomey suggest that, that obviously there are
20 impacts if there were, if there were refunds. There are, there
21 are also impacts in timing as well. I mean, a deferment to
22 another docket means a year of, of process.

23 MR. BEASLEY: We appreciate Mr. Twomey's concern
24 about the company having this hanging over us. And to that
25 extent, we wish he'd have intervened earlier if he was going to

1 intervene.

2 COMMISSIONER BAEZ: No, Mr. Beasley, I'm not trying
3 to attribute any -- you know, I don't want to go down that
4 road. I'm asking you a straight question. And the mere fact
5 that Mr. Twomey suggested it is, is a mere fact. Okay?

6 You've got -- there's two alternatives from the
7 moving parties that have been suggested, and I'm trying to
8 ascertain from the company's perspective where the issues
9 between those two alternatives lie. I understand what your
10 position is. I'm not trying to move you off it and I'm not
11 trying to move you on it. I'm trying to ascertain specifically
12 between two alternatives that the moving parties have thrown
13 out is there.

14 MR. BEASLEY: Between those two alternatives we
15 certainly would not want it postponed until this time next
16 year. We need to have it heard as soon as possible, and
17 preferably, I won't say it again, but just as soon as possible.

18 COMMISSIONER BAEZ: You are on record.

19 MR. BEASLEY: Yes, sir.

20 COMMISSIONER BAEZ: Understood. Well, I've heard,
21 I've heard your arguments. I need to think about this because
22 I think that there are, there are key, key concerns on, on both
23 sides. I mean, I'm going to be candid. There, there are
24 surrounding circumstances, I think, that, that bear some, some
25 balancing here. I'm going to -- including whether this type of

1 decision, given the circumstances, is probably appropriate for
2 a prehearing, one prehearing officer alone to decide. So I
3 want to put you all on notice that that's something that I'm
4 considering as well.

5 That decision is going to be made with all due haste.
6 It's not going to be made at the bench today. But I just want
7 you all to understand whether the issues -- I've heard both of
8 your issues, I think they're both very valid, and that makes it
9 all the more difficult. And, again, I have -- from this
10 prehearing's officer perspective, there is that additional
11 issue of whether it's appropriate for all the Commissioners to
12 be involved and have a hand in that decision. I'm going to
13 take all of your arguments under advisement, got some thinking
14 to do. I appreciate you all coming out and making your
15 arguments, and we'll come back with a decision, a ruling of
16 some sort in the next, I would say, couple of days or so.
17 Okay?

18 As to that, what else -- Mr. Keating, do we have
19 anything else left? I think we had confidentiality matters
20 pending, but I think Mr. Butler addressed those, at least the
21 ones that I've got listed here.

22 MR. KEATING: And just to be clear --

23 COMMISSIONER BAEZ: Oh, I'm sorry.

24 MR. KEATING: -- there are several other pending
25 confidentiality requests from the various utilities involved in

1 this docket. Staff in the next, in the next week, two weeks as
2 we get closer to the hearing, we will be able to determine what
3 we need, what we think we need for use at hearing. And for
4 those things that we can return, we'll return. For those
5 things that we feel like we need, we will, we will prepare an
6 order concerning the confidentiality of those documents.

7 COMMISSIONER BAEZ: Just to restate, staff is still
8 culling out what information it intends to use at the hearing.
9 They're going to -- you'll be providing me with an additional
10 confidentiality order reflecting what it is that you all intend
11 to use and be returning the rest to the parties, the remainder
12 to the parties?

13 MR. KEATING: That's correct. There may be some
14 items that, things that we don't return, items included in our
15 information.

16 COMMISSIONER BAEZ: I'm not committing you to
17 anything, but I think we've all got the gist of it.

18 MR. KEATING: Okay.

19 COMMISSIONER BAEZ: Is there anything else? Seeing
20 nothing, I want to thank you all for bearing with me and the
21 rest of us and my bearing with you. Thank y'all for coming.

22 MR. BUTLER: Thank you for your time, Commissioner.

23 COMMISSIONER BAEZ: We're adjourned.

24 (Prehearing conference adjourned at 12:42 p.m.)

25

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

3

4 I, LINDA BOLES, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

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

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

17 DATED THIS 28TH DAY OF OCTOBER, 2003.

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