

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030623-EI

In the Matter of:

COMPLAINTS BY OCEAN PROPERTIES, LTD.,
J.C. PENNEY CORP., TARGET STORES, INC.,
AND DILLARD'S DEPARTMENT STORES, INC.
AGAINST FLORIDA POWER & LIGHT COMPANY
CONCERNING THERMAL DEMAND METER ERROR.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: CHARLES M. DAVIDSON
 Prehearing Officer

DATE: Monday, August 30, 2004

TIME: Commenced at 1:40 p.m.
 Concluded at 2:36 p.m.

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

REPORTED BY: TRICIA DEMARTE, RPR
 Official FPSC Reporter
 (850) 413-6736

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 09665 SEP-3

FPSC-COMMISSION CLEAR

1 APPEARANCES:

2 KENNETH A. HOFFMAN, ESQUIRE, and J. STEPHEN MENTON,
3 ESQUIRE, Rutledge Law Firm, P. O. Box 551, Tallahassee, Florida
4 32302 and NATALIE F. SMITH, ESQUIRE, Florida Power & Light
5 Company, 700 Universe Boulevard, Juno Beach, Florida 33408,
6 appearing on behalf of Florida Power & Light Company.

7 JON C. MOYLE, JR., ESQUIRE, and WILLIAM H. HOLLIMON,
8 Moyle Law Firm, 118 North Gadsden Street, Tallahassee, Florida
9 32301, appearing on behalf of Ocean Properties, Ltd., J.C.
10 Penney Corp., Dillard's Department Stores, Inc., and Target
11 Stores, Inc.

12 WM. COCHRAN KEATING, IV, ESQUIRE, FPSC Office of
13 General Counsel, 2540 Shumard Oak Boulevard, Tallahassee,
14 Florida 32399-0850, appearing of behalf of the Florida Public
15 Service Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER DAVIDSON: Afternoon. Call this hearing
3 to order. Staff, if you'd read the notice, please.

4 MR. KEATING: Pursuant to notice this time and place
5 has been set for a prehearing conference in Docket Number
6 030623-EI, complaints by Ocean Properties, Ltd., J.C. Penney
7 Corp., Target Stores, Inc., and Dillard's Department Stores,
8 Inc. against Florida Power & Light Company concerning thermal
9 demand meter error.

10 COMMISSIONER DAVIDSON: Take appearances, please.

11 MR. MOYLE: On behalf of the Customers, which
12 includes Ocean Properties, Ltd., J.C. Penney, Dillard's, and
13 Target, Jon Moyle with the Moyle, Flanigan Law Firm.

14 MR. HOLLIMON: On behalf of Customers, Bill Hollimon
15 with the Moyle, Flanigan Law Firm.

16 MS. SMITH: On behalf of Florida Power & Light,
17 Natalie Smith.

18 MR. HOFFMAN: And also on behalf of Florida Power &
19 Light Company, Kenneth Hoffman, and I'd also like to enter an
20 appearance for J. Stephen Menton.

21 MR. KEATING: And on behalf of the Commission,
22 Cochran Keating.

23 COMMISSIONER DAVIDSON: Mr. Keating, any preliminary
24 matters?

25 MR. KEATING: There are no preliminary matters that

1 I'm aware of. I don't know if the parties have any in mind,
2 but --

3 COMMISSIONER DAVIDSON: We'll proceed through the
4 draft prehearing order section by section.

5 Any edits, revisions, comments to Sections I, II, or
6 III?

7 MR. MOYLE: I have a point of clarification with
8 respect to Section III. An entity that filed a petition in
9 this case, SUSI, Southeastern Utilities Services, Mr. Brown and
10 Mr. Gilmore, they originally represented the Customers in this
11 proceeding and are planning on being in attendance as the
12 designated representatives for the Customers. And I just
13 wanted to bring that to your attention and make sure that you
14 were okay with that.

15 COMMISSIONER DAVIDSON: What's the -- is there an
16 issue that I need to --

17 MR. MOYLE: No. It says that failure of a party, or
18 that party's representative, to appear shall constitute waiver
19 of that party's issues, and that party may be dismissed from
20 the proceeding, so I just wanted to make clear that Mr. Brown
21 and Mr. Gilmore were going to be here on behalf of the
22 Customers.

23 COMMISSIONER DAVIDSON: And I assume they'll be --
24 somehow that will be duly noted in the record.

25 MR. MOYLE: Yeah, they have filed testimony.

1 COMMISSIONER DAVIDSON: We're going to skip
2 Section IV for the moment.

3 Any proposed stipulations?

4 MR. KEATING: None that I'm aware of.

5 COMMISSIONER DAVIDSON: Sections VI and VII,
6 confidentiality, any issues? Section VIII, opening statements?
7 Parties fine with 20 minutes per party?

8 MR. MOYLE: It should be more than sufficient.

9 COMMISSIONER DAVIDSON: Can we note that in the
10 record, please.

11 MR. MOYLE: Per customer.

12 COMMISSIONER DAVIDSON: Yeah, no. Section IX,
13 witnesses: Prefiled testimony, exhibits, and cross-exam, any
14 issues?

15 Order of the witnesses and issues to which the
16 witnesses will be testifying, parties will just work that out
17 with staff for the final prehearing.

18 MR. HOFFMAN: Commissioner Davidson, I do have an
19 issue or two under this section.

20 COMMISSIONER DAVIDSON: Yes.

21 MR. HOFFMAN: First of all, in our prehearing
22 statement we did provide the issue numbers for our respective
23 witnesses, so I can get together with Mr. Keating later on and
24 just make sure he's got those.

25 More importantly, we noticed here for the first time

1 when the Customers filed their prehearing statement that they
2 were listing certain witnesses, primarily FPL employees, as
3 live adverse witnesses. And, you know, we weren't sure where
4 they were trying to go with that, but we take exception to
5 that. And we don't know if they're actually just planning on
6 using their deposition or whether they would actually intend to
7 call them live, which, of course, would create another whole
8 set of issues because at this point we've got one day set aside
9 for this hearing, and we've got, I don't know, maybe five or
10 six witnesses who have filed prefiled direct and prefiled
11 rebuttal testimony consistent with the order establishing
12 procedure. So I guess I wanted to just throw that out and see
13 if Customers' counsel is actually planning on attempting to
14 call these witnesses live or whether they were planning on just
15 using depositions.

16 COMMISSIONER DAVIDSON: Are these the individuals who
17 are identified as Customers' adverse witness in the second
18 column?

19 MR. HOFFMAN: Yes, sir, beginning with Mr. Cain and
20 going down the page through Ms. Williams.

21 COMMISSIONER DAVIDSON: Mr. Moyle, any response?

22 MR. MOYLE: Yeah. We were planning on calling some
23 of these folks as live witnesses. You know, if that presents
24 big issues from FPL, maybe we can talk about using a deposition
25 in lieu of it, but there are certain portions of the

1 depositions even if we use it in lieu we'd like to have
2 published.

3 COMMISSIONER DAVIDSON: Well, if that's the case, I
4 mean, couldn't the parties agree to simply have that portion of
5 the deposition actually incorporated into the record? I mean,
6 I'm not trying to deter a party from calling a witness that it
7 needs to call, but we do have one day scheduled for this
8 hearing, and if all of these witnesses are called, it will be
9 enough to get through that.

10 MR. MOYLE: I'm not sure that we would call all of
11 them, but some of them we think are important to our case in
12 chief. And, you know, we would like to have them here so that
13 we can ask them questions and the trier of fact can observe
14 them answering those questions.

15 COMMISSIONER DAVIDSON: What's the discovery cutoff?

16 MR. HOFFMAN: Commissioner, the discovery cutoff is
17 the 14th.

18 COMMISSIONER DAVIDSON: Of August?

19 MR. HOFFMAN: September.

20 COMMISSIONER DAVIDSON: I'm sorry, September.

21 MR. HOFFMAN: September.

22 COMMISSIONER DAVIDSON: Well, we've already passed
23 August, so --

24 MR. HOFFMAN: We would object to their calling these
25 folks as live witnesses for a number of reasons. And, you

1 know, we can try to work this out with Mr. Moyle afterwards.
2 And we certainly believe we can reach an agreement for the use
3 of depositions. But to the extent that they're now going to
4 try to supplement their case in chief in a manner which we
5 believe is inconsistent with the order establishing procedure's
6 requirements for prefiled testimony, and there is some
7 precedent on this which we can point to through a formal
8 motion, we'd rather not put you through that issue.

9 COMMISSIONER DAVIDSON: I appreciate it.

10 MR. HOFFMAN: And I think that, you know, what we can
11 try to do is see if we can reach some form of accommodation
12 with Mr. Moyle on the use of depositions, but if we can't, I
13 just want to give you a heads up, Commissioner Davidson, that
14 what we would probably do is tee the issue up formally by
15 filing a motion.

16 COMMISSIONER DAVIDSON: Why don't you all sort of
17 work together and try and get as much of this resolved as
18 possible? If you still have objections, just sort of go
19 through the process to file that, the basis for the objections,
20 and I will, on this issue, defer in large measure to
21 Mr. Keating as to how we should proceed. I mean, we don't want
22 to deter a party from putting on its case, but we also don't
23 want sort of a lot of last-minute surprises or changes to the
24 procedure. But see if you can work it out as to as many of the
25 witnesses as possible.

1 MR. HOFFMAN: We'll do that, yes, sir.

2 MR. MOYLE: And we will do that, I mean, but I just
3 don't want there to be any misunderstanding to the extent that
4 you think you have a star witness for your case in chief and,
5 you know, the deposition, the cold transcript is not going to
6 do justice compared to putting him up. You know, we may --

7 COMMISSIONER DAVIDSON: And I agree. I mean, I don't
8 want to, again, impair any party's right to present their case.
9 And I have no idea at this point as I sit here if adding
10 additional witnesses in somehow contravenes the order
11 establishing procedure. But work out whatever issues you can,
12 and then it's up to whatever party is objecting on whatever
13 issue to carry their burden, and we'll go from there.

14 Exhibit list, again, I'm assuming this is not final.
15 Just if the parties will work with staff to get the exhibit
16 list finalized as soon as it can. And I understand there's
17 still a couple of weeks left for discovery, so you won't have
18 this finalized probably until shortly thereafter.

19 MR. MOYLE: And, Commissioner, we have put together,
20 I don't know if it's final, but it is a document that I'll
21 distribute to staff and opposing counsel that sets forth, you
22 know, the exhibits that were attached and descriptions of them.
23 So I'll make that available.

24 MR. HOFFMAN: Attached to what?

25 MR. MOYLE: I'm sorry. Attached to the direct and

1 rebuttal testimony.

2 MR. HOFFMAN: Okay.

3 COMMISSIONER DAVIDSON: Basic positions, Section XII,
4 just parties work with staff to get those finalized. We don't
5 need to sort of run through any of those now.

6 Mr. Keating, on issues and positions, Section XIII,
7 have the parties agreed to the wording of the issues?

8 MR. KEATING: It appears that we don't have agreement
9 on the wording of the issues. We received a prehearing
10 statement from Florida Power & Light and staff's prehearing
11 statement that addressed a list of four issues that set forth
12 as a tentative list of issues and the order establishing
13 procedure. The Customers presented a list of ten issues that
14 there's probably a lot of overlap, I think, with the four that
15 have been identified as tentative issues previously.

16 I think we could probably go through the Customers'
17 list of issues, and I'm prepared to make recommendations, if
18 you'd like to hear them, on whether some of those issues could
19 stand alone or could be addressed under the four tentative
20 issues that have previously been identified. But as of today,
21 to answer your question, it doesn't appear that there's
22 agreement on the issues.

23 COMMISSIONER DAVIDSON: All right. So we will take
24 up -- after we get through the rest of this prehearing, we will
25 take up issues, and then we will move to pending motions.

1 Post-hearing procedures, any comments, questions,
2 revisions?

3 All right. Let's move to the statement of issues.
4 Mr. Keating, if you can just walk through what the issues to be
5 resolved are and what your recommendations are.

6 MR. KEATING: Well, beginning on Page 12 of the draft
7 prehearing order you'll see Issues 1, 2, 3, and 4 that were
8 laid out as the tentative list of issues and the order
9 establishing procedure. Following those, beginning on Page 14,
10 are the issues as presented in the Customers' prehearing
11 statement.

12 Starting with Issue 1, the Customers' Issue 1 on
13 Page 14, I believe staff would recommend that this is an issue
14 that could be argued under the previously listed Issues 1 and
15 2 that begin on Page 12 -- actually, under Issues 1, 2, 3, and
16 4 beginning on Page 12. Essentially, the Customers' Issue
17 1 asks whether the Customers in this docket should be treated
18 the same way that FPL treated similarly situated Customers who
19 did not bring a case to hearing. And I believe that the
20 customers in this docket could argue that the way they should
21 be treated under Issues 1 through 4, starting on Page 12,
22 should be the way that other customers were treated, if they
23 choose to argue that.

24 MR. MOYLE: If I could be heard briefly on this.

25 COMMISSIONER DAVIDSON: Briefly.

1 MR. MOYLE: I probably bear some responsibility for
2 having, you know, these issues not match up to the issues that
3 were identified as tentative issues. We had a meeting to work
4 through these issues, which, you know, is PSC practice, and
5 candidly, did not get very far in terms of framing the issues.
6 And part of the reason that we framed these issues is, you
7 know, the prehearing order states that each party is to provide
8 a statement of each question of fact that the party considers
9 at issue, the party's position on each issue. **You know, and**
10 the 120 is a disputed issue of fact. We're the petitioner.
11 We've had in effect a decision rendered by the PSC, as
12 recommended by staff, which was a PAA order. You know, we're
13 friends, but candidly, it's an adverse decision and in some
14 respects we're adverse parties. And the Customers are a little
15 troubled by traveling under a set of issues that are framed by,
16 you know, the agency action in this case and there are
17 distinctions.

18 I mean, we could have one issue that says, you know,
19 was the PSC right in the PAA order, and everything could come
20 under that. But we believe that there are distinct issues such
21 as this first one which need to be decided, need to be teed up
22 and clearly, you know, having you-all consider it. And that
23 one, just by way of illustration, I don't want to take up a lot
24 of your time and go through each particular issue, but we
25 believe this is a key issue in that FPL, for customers who did

1 not avail themselves of the PSC, they went through one
2 methodology to determine, you know, how much money should be
3 owed or the percentage of error. They would look at the before
4 and after of their bills or the meter error and use the higher
5 of the two. Now, here in this proceeding, they're not wanting
6 to do that. They're wanting to say, no, we can't do that. We
7 have to follow this PSC rule. Well, we would argue that we
8 ought to be treated the same way that all these other customers
9 were who aren't up here in front of the PSC. And there's a
10 statute that we think comes into play that says, you know,
11 you've got to treat everybody similarly situated the same. So
12 that's why we're trying to tee that up as a separate issue.

13 COMMISSIONER DAVIDSON: All right. Let's move on.

14 Mr. Hoffman.

15 MR. HOFFMAN: It's an important issue for them,
16 Commissioner. We think it's a frivolous issue. This offer
17 that we made was part and parcel of some other components.
18 That offer, as a package, was made to the Customers. They
19 rejected it and they're complaining about it now.

20 But in terms of the procedure before you, what we're
21 doing now basically is the same exercise that we did at the
22 issue ID. Tentative issues were established. The Customers
23 chose not to object or seek reconsideration or clarification of
24 those. We think that if the Customers really want to argue
25 this issue, they can argue it within the framework of Issue 2.

1 If staff feels they can argue it within the framework of the
2 other three issues, we don't have any objection to that either.

3 COMMISSIONER DAVIDSON: Here's how we're going to
4 proceed. Staff, we're going to go issue by issue on each of
5 the Customers' issues. We've covered Issue 1. We'll cover
6 Issue 2. Then, Mr. Moyle, you can agree or disagree and in a
7 nutshell state your reason for that; then, Mr. Hoffman, agree
8 or disagree and in a nutshell your reason for that. And I'm
9 not going to rule on these at this prehearing. I'll issue a
10 ruling shortly thereafter taking into account the parties'
11 comments. But really, I urge you, please keep the comments
12 brief.

13 Mr. Keating.

14 MR. KEATING: Moving on to Issue 2. The Customers'
15 Issue 2 asks, "What is the percentage of meter error for each
16 meter that is in dispute in this docket?" I don't think staff
17 has a problem in particular with this issue. It's a little
18 vague for staff in that the way we've framed the issues, the
19 tentative list of issues takes us step by step through what the
20 PSC's rules require in terms of calculating a refund. You
21 determine meter error at the first step to determine whether
22 the meter is accurate or inaccurate, and if it's inaccurate,
23 then a refund is available. You make another error
24 determination under our rules to determine what the refund
25 should be.

1 COMMISSIONER DAVIDSON: Well, is it your -- and
2 again, "please be brief" applies to staff as well. Is it your
3 recommendation that this issue can be subsumed with existing
4 issues?

5 MR. KEATING: I believe it could be subsumed in
6 Issues 1 and 2 as shown on Pages 12 and 13.

7 COMMISSIONER DAVIDSON: Mr. Moyle.

8 MR. MOYLE: Just so I'm clear, you were referring to
9 Customer Issue 2 --

10 MR. KEATING: Yes.

11 MR. MOYLE: -- in your description, or Staff Issue 2?

12 MR. KEATING: Customer Issue 2.

13 MR. MOYLE: Okay. Well, to be succinct, I mean,
14 again, I think through the 120 process we have the right to
15 frame the issue. It's a key issue in the case.

16 COMMISSIONER DAVIDSON: I understand that. But my
17 question is, do you think it can be subsumed? Yes or no. If
18 yes, great. If no, you need to tell me specifically why it's
19 not subsumed within the issue. I don't want to sort of get
20 into "we don't like the way it's worded" because everybody may
21 disagree as to how it's worded. I need to have your answer on
22 that specific question.

23 Does the existing issue cover this issue or not? And
24 if you're going to object to sort of each one of these, no, no,
25 no, then we don't even have to go through this exercise because

1 there are some to me that seem clearly -- some Customer issues
2 that seem clearly addressed by the proposed issues; it's just a
3 wording difference.

4 MR. MOYLE: And I would agree with respect to the
5 interest -- like, to the interest issue, things like that.

6 COMMISSIONER DAVIDSON: Okay. Then we'll keep going
7 issue by issue.

8 MR. MOYLE: We were just trying -- I mean, this issue
9 in dispute, what's the percentage of error, we tried to tee it
10 up very clearly so it would be decided very clearly.

11 COMMISSIONER DAVIDSON: So you think Issue 2, you
12 disagree with staff. Issue 2 is not covered by the current --
13 Customer Issue 2 is not subsumed within any existing --

14 MR. MOYLE: Like I said earlier, I think any issue
15 could be subsumed depending on how the master issue was
16 phrased, but --

17 COMMISSIONER DAVIDSON: All right. What I'm asking
18 for -- we're going to go through this one more time. Hold on.
19 Do you agree or disagree with staff? What I'm trying to do is
20 narrow the scope of the issues at issue here.

21 MR. MOYLE: Right. I would indicate that I think
22 this position could be set forth in a staff issue.

23 COMMISSIONER DAVIDSON: Mr. Hoffman.

24 MR. HOFFMAN: We think it can be handled under Staff
25 Issue 1, Commissioner.

1 COMMISSIONER DAVIDSON: Customer Issue Number 3,
2 Mr. Keating.

3 MR. KEATING: Again, I believe that Customer Issue
4 Number 3 could be addressed under the existing list of Issues
5 1 through 4.

6 COMMISSIONER DAVIDSON: Mr. Moyle.

7 MR. HOLLIMON: Commissioner, I'm going to address
8 this one. And we agree that it can be addressed that way.

9 COMMISSIONER DAVIDSON: Mr. Hoffman.

10 MR. HOFFMAN: And we agree with that as well. We had
11 it pegged under Staff Issue 2.

12 COMMISSIONER DAVIDSON: Mr. Keating, Customer Issue
13 4.

14 MR. KEATING: Staff believes Customer Issue 4 could
15 be addressed under existing Issue 3.

16 COMMISSIONER DAVIDSON: Counsel.

17 MR. HOFFMAN: FPL agrees with that, Commissioner.

18 MR. MOYLE: I think we can manage on that one.

19 COMMISSIONER DAVIDSON: Mr. Keating, Customer Issue
20 5.

21 MR. KEATING: On Customer Issue 5, staff doesn't have
22 any problem with this being a separate issue. I don't think
23 it's easily subsumed in any of the issues identified as
24 1 through 4 in the tentative issue list.

25 COMMISSIONER DAVIDSON: Mr. Hoffman, you have a

1 problem with this being a separate issue?

2 So far Customer Issue Number 1 is at issue. **We've**
3 reached agreement. We'll go with staff on Customers' Issues 2,
4 3, and 4. This, in staff's view, appears to be a stand-alone.

5 MR. HOFFMAN: Commissioner, we leave this one to you.
6 We think that it's part of the method of calculating a customer
7 refund because it's really asking which rate you use. So we
8 had it pegged under Staff Issue 2. If this Commissioner feels
9 that it needs to be separate, you know, we can work with it
10 that way as well.

11 COMMISSIONER DAVIDSON: Mr. Moyle.

12 MR. MOYLE: We think it needs to be a separate issue,
13 and would ask that it continue to remain as a separate issue.

14 COMMISSIONER DAVIDSON: Mr. Keating, Customers' Issue
15 Number 6.

16 MR. KEATING: Staff believes that Customers' Issue
17 Number 6 could be addressed under the existing Issues 1 through
18 4.

19 COMMISSIONER DAVIDSON: Mr. Moyle.

20 MR. MOYLE: This is one that we feel strongly about
21 because it's a key issue in the case given that these meters
22 historically were tested at different points. And you have
23 rules out there. You've been asked kind of in generic terms
24 with respect to, well, how does this rule apply? We think the
25 specific question, which is, if a meter tests once at, say,

1 25 percent and then it tests again at 80 percent, if it passes
2 one test and fails another test, what should you do? How
3 should you construe your rules to say is that meter okay? If
4 it passed one test, it's okay so long as it passes one test, or
5 if it fails one test, then it ought to be considered to be out
6 of tolerance and refunds ought be provided. We think that's a
7 pretty important issue of policy for you-all, and we'd like to
8 see it separately considered.

9 COMMISSIONER DAVIDSON: And I'll get to you in a
10 second, Mr. Hoffman.

11 Mr. Keating, on that, Mr. Moyle's concern, assuming
12 for the sake of argument here it's a valid concern to be
13 addressed, how does staff suggest that it could be addressed
14 under the existing issues? Which issue? And how sort of as a
15 procedural matter might Mr. Moyle address that?

16 MR. KEATING: Specifically, staff believes it could
17 be addressed under Issue 1 that's shown on Page 12 from the
18 tentative issue list that asks, "What is the appropriate method
19 of testing the accuracy of the thermal demand meters subject to
20 this docket?" It appears to staff that the Customers' Issue
21 6 really gets to that question, is what is the manner to
22 determine whether these meters are accurate or not. I think
23 they have stated it a bit differently.

24 COMMISSIONER DAVIDSON: And, Mr. Moyle, before I get
25 to Mr. Hoffman, how is it that Issue 1, in your view, does not

1 ncompass the specific testing issue?

2 MR. HOLLIMON: Commissioner, I'm going to address
3 that point for you.

4 COMMISSIONER DAVIDSON: Okay.

5 MR. HOLLIMON: The rule that's referenced in Issue
6 Number 1 provides a performance standard for meters. It does
7 not provide a testing standard. Therefore, if we try to
8 subsume our issue within Issue Number 1, we don't believe we
9 can get there because the rule that's cited does not directly
10 address how you test the meter.

11 COMMISSIONER DAVIDSON: What is the specific rule
12 that addresses testing?

13 MR. HOLLIMON: Well, there is not one.

14 COMMISSIONER DAVIDSON: Well, if we're looking at
15 performance, isn't whether a meter passes test or fails test
16 given the lack of a specific rule on testing the very measure
17 of performance at issue here?

18 MR. HOLLIMON: The rule addresses when the
19 performance of a meter is acceptable. The rule does not
20 address how you test a meter to determine when that acceptable
21 performance has or has not occurred. So we believe the issue
22 is, how do you test the meter? At what point of its full scale
23 do you test the meter, and how you interpret the results of
24 such a test.

25 COMMISSIONER DAVIDSON: Mr. Hoffman.

1 MR. HOFFMAN: We disagree with the fundamental
2 predicate for his argument. The rule does address performance
3 and test points, Commissioner, and so I want to make that point
4 first.

5 Secondly, we think that this issue is captured under
6 Issue 1, and would be fair game for testimony and briefing
7 under Issue 1. I do want to point out, Commissioner, that this
8 is really a nonissue for 12 of the 14 meters in this case. And
9 for those 12, they were either initially tested at 40 percent
10 or subsequently -- excuse me, initially tested at 80 percent of
11 full scale initially or tested at 80 percent a second time.
12 And FPL in its testimony has agreed to use the test point at
13 30 percent of full scale. So, you know, maybe it is of some
14 academic value down the road, but for these meters, it's really
15 not an issue for 12 of the 14 meters.

16 COMMISSIONER DAVIDSON: Mr. Keating, Customer Issue
17 Number 7.

18 MR. KEATING: Customer Issue Number 7 appears to be
19 almost identical to the existing Issue Number 4 from the
20 tentative issue list.

21 COMMISSIONER DAVIDSON: Mr. Moyle.

22 MR. MOYLE: We agree. We can handle it under 4.

23 COMMISSIONER DAVIDSON: Customer Issue Number 8,
24 Mr. Keating.

25 MR. KEATING: Customer Issue Number 8, I think

1 staff -- staff doesn't have any problem with identifying this
2 as a separate issue. This is really, I think, the ultimate
3 determination that gets made as sort of the fallout of all the
4 other issues in this case. It's what amount is due as a refund
5 to the customer. If we wanted to make the issue more neutral,
6 I would suggest we add the words "if any" after the word
7 "refund."

8 COMMISSIONER DAVIDSON: Mr. Moyle.

9 MR. MOYLE: This is the one I was hoping to be able
10 to get stipulation on from my friends at Light, but we haven't
11 been able to get there at this point. But seriously, it is
12 sort of the key issue in the case, which is how much should be
13 due to these customers, and we think it ought to be set forth
14 separately.

15 COMMISSIONER DAVIDSON: So you agree with staff.

16 MR. MOYLE: Yes, sir.

17 COMMISSIONER DAVIDSON: Okay. Mr. Hoffman.

18 MR. HOFFMAN: We can concur with that, Commissioner.

19 COMMISSIONER DAVIDSON: Mr. Keating, Customers' Issue
20 Number 9.

21 MR. KEATING: Issue Number 9 is probably the
22 trickiest one for me. I can see where the Customers may want
23 to argue that the effect -- that the sun or radiant heat may
24 have some affect on the accuracy of the meters at issues in
25 this case. I think they can do so within the existing issues.

1 COMMISSIONER DAVIDSON: Which one or which ones?

2 MR. KEATING: I think they could do so under Issue 2.
3 And really, I think this is offered, if I'm not mistaken in the
4 interest of pursuing a position under Issue 3, that perhaps
5 these meters were in error -- reading in error more than 12
6 months ago, and that the refund period should extend back
7 beyond the 12-month period. So it may be addressed in Issue
8 3 as well.

9 The concern I had with it is really and may be more
10 from the position that's offered by the Customers in response
11 to that issue which suggests that the Commission in this docket
12 should order FPL to remove the thermal demand meters that are
13 still in use and replace them. None of the customers who are
14 parties to this docket have those thermal demand meters that
15 are still in use. And this appears to, for that reason,
16 broaden the scope of this docket beyond the Customers'
17 complaints that we're dealing with here.

18 COMMISSIONER DAVIDSON: Mr. Moyle.

19 MR. MOYLE: Commissioner, I think this is a separate
20 and distinct issue. There is testimony that's offered that
21 indicates that the sun or heat does affect the accuracy of
22 thermal demand meters. And it's kind of --

23 COMMISSIONER DAVIDSON: Of the specific thermal
24 demand meters being used by the customers who are in this
25 docket?

1 MR. MOYLE: That and as well as other thermal demand
2 meters.

3 COMMISSIONER DAVIDSON: So, Mr. Keating, what was --
4 you had a concern that meters at issue in Customers' Issue
5 Number 9 are not actually meters at issue in this docket.

6 MR. KEATING: Yeah, let me clarify. I can understand
7 the confusion now. The Customers may wish to argue in this
8 proceeding that the meters at issue in this docket -- that the
9 accuracy of those meters was affected by the sun or radiant
10 heat in some manner, and that, therefore, any refund due to
11 those customers should be affected by that. My concern was
12 that the issue appears -- from the Customers' position on this
13 issue, they're asking for not some relief with respect to the
14 specific meters in this case, but with respect to requiring FPL
15 to remove all of their thermal demand meters on the system.
16 And I think that's where we go beyond the scope of the meters
17 at issue in this docket.

18 COMMISSIONER DAVIDSON: Is that an accurate
19 characterization of what the Customers are asking for? Yes,
20 no? And then explain.

21 MR. MOYLE: Now I know how the witnesses feel when
22 you make them do the yes/no. I think, yes, with respect to
23 what we filed because the sentence says, "The Commission should
24 order FPL to remove the thermal demand meters still in use and
25 replace them with more accurate electronic meters." So, yes,

1 there is an aspect of this that is broader than the actual
2 meters in dispute, but that's not to say that the meters in
3 dispute were similarly not affected by the sun or radiant heat.
4 So I'm not sure it can be nicely segregated out that way.

5 And from the Commission's perspective, the portion of
6 the order establishing procedure that this came under,
7 Commissioner Davidson, in your order you have a separate
8 sentence that says you're seeking a statement of each policy
9 question the party considers at issue, the party's position on
10 each such issue, and which of the party's witnesses will
11 address the issue. This probably is more of a policy issue,
12 though it does have impacts in this docket. If we can
13 establish that the sun affects these meters, you know, if it's
14 a close call in the testimony and the evidence shows that the
15 sun causes them to overregister, we would argue a close call
16 ought to go in our favor. But I think the larger policy issue
17 is, is that there is still a whole bunch of these meters out
18 there being used, and to the extent that you conclude that,
19 yes, the sun does have an adverse effect on these meters, maybe
20 it's time that they be replaced.

21 COMMISSIONER DAVIDSON: I'll tell you, in my view, as
22 I sit here, I'm not inclined to draft up an order that sort of
23 goes beyond the specific meters at issue by these customers.
24 It just would unduly expand the scope of the proceeding.
25 Mr. Hoffman.

1 MR. HOFFMAN: Well, I think you're right. I mean,
2 there is absolutely no, none, prefiled testimony that
3 establishes any connection between the potential effect of sun
4 or heat in these specific 14 meters at issue. In fact, the
5 testimony of the Customers candidly admits that they have no
6 way of knowing. So I think this issue should be stricken,
7 Commissioner. And to the extent that the Customers want to
8 talk about this, you know, certainly they're free to do so, but
9 to have it as a separate issue I think is totally
10 inappropriate.

11 COMMISSIONER DAVIDSON: Mr. Keating, if the Customers
12 sought to establish that the specific meters at issue in this
13 docket were somehow impacted by the sun or radiant heat, could
14 they do that within the framework of the existing issues?
15 Their specific meters, not all other meters.

16 MR. KEATING: I believe they could. Again, and I may
17 be mistaken, but I think this goes towards the existing Issue
18 3 as to how far back you go for purposes of determining a
19 refund.

20 Part of the discomfort I had in reading that issue
21 was even if we look at it in a more limited sense in the sense
22 of how it applies just to the meters at issue in this case, you
23 answer the question, does the sun or radiant heat affect the
24 accuracy of those meters. If you answer the question yes,
25 where do you go from there? I prefer, I guess, in framing

1 issues to have a set of issues that once you've answered the
2 issue, you know where you're going to the next step to get to
3 the end. The existing set of issues, 1 through 4, tries to do
4 that by following the framework of the Commission's rules on
5 testing meters and calculating refunds. So I believe that to
6 the extent that any refund to a customer is affected by whether
7 the sun or radiant heat affects the accuracy of meters, that
8 that could be argued under the existing set of issues.

9 COMMISSIONER DAVIDSON: Mr. Hoffman, would FPL object
10 to the Customers arguing, if they can, that the specific meters
11 at issue in this case were somehow impacted negatively by
12 radiant heat, the sun?

13 MR. HOFFMAN: At this point, Commissioner, I guess
14 the way I would answer your question is, we would object to them
15 attempting to develop new evidence on that because there's
16 nothing in their direct, prefiled direct case that even
17 remotely makes that connection. Now, if they want to talk
18 about this for whatever reasons they have -- I mean, I don't
19 want to sit here and give you my summary of the testimony. I
20 don't think you're interested in that. But there certainly is
21 testimony about this subject, so to speak, in the prefiled.
22 And if they want to talk about it, then I think they're free to
23 do so. We don't think that there's any evidence supporting
24 their position at all that these 14 meters have been affected
25 by the sun. But if they want to make that argument, I don't --

1 COMMISSIONER DAVIDSON: Well, that's something for
2 the parties to argue. But the general subject of these
3 specific meters being impacted --

4 MR. HOFFMAN: I think they can do that within the
5 framework of the existing issues, Commissioner. If they think
6 that, for example, meter ABC overregistered to the tune of --
7 it registered 4.9 percent, then they can argue that that was
8 caused by the sun or heat, I guess.

9 COMMISSIONER DAVIDSON: Well, somehow then let's
10 just -- well, actually, I'm in a minute going to issue a ruling
11 despite that I said I was going to wait, but I'm going to issue
12 a ruling on these ten issues. So let's move on to Issue 10.

13 MR. KEATING: Staff believes that the Customers'
14 Issue 10 does go clearly beyond the scope of this proceeding by
15 raising questions about classes of thermal demand meters other
16 than the class that's specifically at issue in these
17 complaints.

18 COMMISSIONER DAVIDSON: Mr. Moyle.

19 MR. MOYLE: Just by way of background, the --

20 COMMISSIONER DAVIDSON: Well, yes or no. Do you
21 agree with Mr. Keating?

22 MR. MOYLE: I think that this is beyond the scope of
23 the particular meters in the case. But I thought that we
24 wanted to bring it to your attention with respect to there's a
25 whole host of other meters that are lined up behind these,

1 including U meters, that SUSI has customers and clients, and we
2 thought it would make sense to try to get this issue teed up
3 sooner rather than later. I know in, I think, one of your
4 earlier orders you had recognized that there were some other
5 cases that are in the informal stage at this point and that
6 discovery related to U matters and things could be had. We
7 think this issue is an important issue with respect to the
8 other classes of thermal meters.

9 COMMISSIONER DAVIDSON: All right. Mr. Hoffman.

10 MR. HOFFMAN: Commissioner, we think it's clearly
11 outside the scope of the issues in this case of the 14 meters
12 that are at issue in this case. There's no prefiled testimony
13 addressing these issues, and we think this issue should be
14 stricken.

15 COMMISSIONER DAVIDSON: All right. Here is my ruling
16 on Customers' Issue 1. Staff, if you can, work with the
17 parties to try and perhaps flesh out some specific wording
18 within the context of the four issues that may address their
19 concerns. If the parties can't work that out, I will issue a
20 ruling.

21 Customer Issue 2, stricken, subsumed within existing
22 issues; same with Customer Issue 3, Customer Issue 4.

23 Customer Issue 5 can be included as a separate
24 stand-alone issue, and just work with the parties on the
25 specific language. They may be fine with the language as

1 drafted.

2 Customer Issue 6, stricken. Customer Issue 7,
3 stricken. Customer Issue 8 can stand as a separate issue with
4 staff's proposed modification, addition of the words "if any"
5 to the end. Customer Issue 10, stricken as beyond the scope of
6 this proceeding.

7 Customer Issue 9, staff, try and work with the
8 parties to identify some specific language that can be added to
9 one of the issues making clear that Customers have the right to
10 argue that their specific meters were somehow impacted by the
11 sun or radiant heat, but we're not going to, sort of, beyond to
12 the whole scope of meters that may be out there.

13 Anything else on the issues?

14 All right. Let's move to pending motions, Section
15 IV of the prehearing order. All but one of the pending motions
16 have been filed since August 18th. Most of these having been
17 filed last week. I have been provided draft orders for FPL's
18 stipulated motion to refile direct testimony and motion to
19 withdraw notice of intent, and for Customers' motion for an
20 extension of time to refile rebuttal testimony. Those two are
21 pretty noncontroversial, some minor edits, and those should be
22 filed today.

23 I will be drafting orders on FPL's two motions to
24 compel sometime this week. The response to one of the motions
25 is due August 30th. Customers filed a motion to compel on

1 August 27th, and I plan to draft an order after FPL has filed
2 its response.

3 I will also begin drafting an order addressing FPL's
4 motion to strike in the upcoming week. I will also begin
5 drafting an order addressing Customers' motion for leave to
6 inspect meters in the coming week. And when I say "I" will be
7 that you can just put in the words "Mr. Keating." And we'll
8 begin drafting an order addressing Customers' motion to compel
9 next week; the response is due on September 3rd.

10 FPL's motion for partial summary final order will
11 need to be addressed by the panel at the September 21st agenda.
12 It's another item that staff and I will be working on this
13 week. And I'd like to thank all the parties for dumping all of
14 this on us at once.

15 The only motion I think we may be able to address
16 here at the prehearing is Customers' motion for leave to file
17 late testimony. FPL's response was due August 27th, but I
18 don't -- have we received a response yet?

19 MR. KEATING: I don't believe FPL responded --

20 MR. HOFFMAN: Commissioner, we did not file a
21 response. We just noted our objection.

22 COMMISSIONER DAVIDSON: Well, in that motion
23 Customers' counsel claims to have inadvertently failed to
24 include in Customers' rebuttal testimony a section addressing
25 staff's testimony. Customers filed the motion seeking

1 permission to late-file this portion but have not filed a new
2 section. Do you have the new section drafted?

3 MR. HOLLIMON: It should have been attached to the
4 motion.

5 MR. KEATING: Yeah, I need to clarify. I did find
6 that that was attached to the motion.

7 COMMISSIONER DAVIDSON: Okay.

8 MR. KEATING: And, you know, my initial concern --
9 for some reason, I did not believe that was attached to the
10 motion. My initial concern was that we'd be in a situation
11 where some depositions have just taken place and nobody
12 would've had the benefit of that prefiled testimony going into
13 those depositions, but since that was attached to the motion,
14 I'm not as concerned that there was any prejudice to the
15 parties there.

16 COMMISSIONER DAVIDSON: What is the nature of that
17 rebuttal testimony? Does it clearly in staff's view address
18 issues in the case and positions of the parties?

19 MR. KEATING: I know it's intended to rebut testimony
20 provided by a staff witness in the case. I have not personally
21 read through the rebuttal that was provided. I'm getting an
22 indication from the staff that they believe that it does
23 address what was in the staff testimony.

24 COMMISSIONER DAVIDSON: Mr. Hoffman, strong
25 objections to this?

1 MR. HOFFMAN: No, sir. But let me explain to you why
2 we objected. When I had a chance to look at it, there were a
3 couple of issues that I had. One was that it very clearly to
4 us rebuts the rebuttal testimony of FPL witness Malemezian
5 which --

6 COMMISSIONER DAVIDSON: So it's really surrebuttal.

7 MR. HOFFMAN: -- we think that's not fair game. Now,
8 I think it does rebut staff witness Matlock, as it says it
9 does, but what it doesn't say is that it rebuts, for example,
10 the test point testimony, the appropriate test point testimony
11 of Mr. Malemezian. So we sort of ended up where I thought we
12 wouldn't be, which was that we had one party filing rebuttal
13 testimony. We both filed our rebuttal testimony on
14 August 18th, and then after that we had some more filed two
15 days later, and we thought we had a stipulation that that
16 wouldn't occur. And I understand that there's been
17 representation by counsel that it was an inadvertent error, and
18 I don't want to minimize that, but we landed in a spot where we
19 think, you know, we sustained some prejudice there.

20 COMMISSIONER DAVIDSON: How long is this submission?

21 MR. HOLLIMON: Commissioner, I have a copy if it
22 would --

23 MR. KEATING: It's six pages. I'm sorry, it's --
24 yes, six pages.

25 MR. HOFFMAN: The other thing, Commissioner, is

1 that --

2 COMMISSIONER DAVIDSON: Would you be able to address
3 that claimed prejudice with a three-page supplemental filing to
4 address specifically that?

5 MR. HOFFMAN: What I would ask, Commissioner, is that
6 one of the other concerns I had when I read this was that
7 there's some discussion in Mr. Gilmore's additional rebuttal
8 that talks about his use in their analysis of customer-specific
9 billing data, the so-called before and after billing data,
10 before and then after the meter was replaced. We have made a
11 very significant argument, we think, in our motion to strike
12 portions of Mr. Gilmore's timely filed rebuttal testimony and
13 Mr. Brown's timely filed rebuttal testimony that go to this
14 very issue because we think all of this billing data analysis
15 had to be presented as part of their case in chief and didn't
16 rebut anything that we filed.

17 So what I would ask, Commissioner, is that you
18 suspend ruling on this, and rule on this motion to late-file
19 this rebuttal in conjunction with our motion to strike because
20 I think --

21 COMMISSIONER DAVIDSON: I'll give you an opportunity
22 to respond here in a second.

23 On this, staff, is it staff's opinion that if the
24 motion to strike was granted, it would strike all of this
25 late-filed rebuttal testimony?

1 MR. KEATING: I mean, there's some portions of this,
2 just flipping through it right now, that appear to be clearly
3 rebutting the staff testimony. So I don't know that it
4 would -- I don't think it would strike all of this. I don't
5 think the motion to strike would necessarily relate to all of
6 this.

7 COMMISSIONER DAVIDSON: Well, let me ask -- and
8 perhaps we can get through this because I think we'll need an
9 opportunity to thoroughly review this, and there's no reason
10 just to unnecessarily delay things -- would you object if FPL
11 was given three pages to respond to the late-filed? Because I
12 can make that my ruling. We'll admit it subject to whatever
13 motion to strike is out there, but FPL has an opportunity to
14 respond to that.

15 MR. HOLLIMON: And what type of response are you
16 referring to?

17 COMMISSIONER DAVIDSON: Just a three-page response to
18 the late-filed rebuttal testimony.

19 MR. HOLLIMON: No, Commissioner, I don't have a
20 problem with that. But there is one point that I do want to
21 address. And first off, I want to apologize to the Commission
22 for having this issue raised at all because it was my error
23 that brought this whole issue to the attention of the
24 Commission.

25 COMMISSIONER DAVIDSON: That's no problem. We've

1 probably all been there more times than we have wanted to.

2 MR. HOLLIMON: There is one point that I do think
3 that needs to be made clear, and that is, Mr. Hoffman referred
4 to this testimony as being a rebuttal for the testimony filed
5 by one of FPL's rebuttal witnesses. And I want to be
6 absolutely clear and understood by you and the Commission that
7 that testimony that was late-filed was finished and prepared
8 prior to ever receiving Mr. Malemezian's testimony. So to the
9 extent that it addresses some of the issues that are included
10 in Mr. Malemezian's testimony, that's simply chance. There was
11 no changes, revisions to that testimony that was made after
12 receiving Mr. Malemezian's testimony.

13 COMMISSIONER DAVIDSON: And that's fine. I'm not
14 holding anyone in judgment. Everyone is sort of entitled to
15 sort of guess as to how it all played out. I think it's safe
16 to allow FPL to have an opportunity to respond to this since
17 they've raised a claim that it relates to testimony that you
18 otherwise wouldn't be able to do, and I completely understand
19 and accept that's pure chance. I don't think there's any sort
20 of -- any bad intent here.

21 And how we'll proceed -- and, staff, you can just
22 draft a ruling on this issue -- the late-filed testimony is
23 admitted subject to whatever motions to strike are out there.
24 FPL is entitled to submit a three-page response to that. And I
25 think if there are portions of that response that relate to any

1 testimony that may ultimately be stricken, we'll not consider
2 that as well, but there's no harm in getting into the record.
3 We're not a jury here, and staff will figure out what to do
4 with all of these motions.

5 Any other motions, Mr. Keating, that we can address
6 today?

7 MR. KEATING: As you mentioned before, I believe most
8 of the motions that are pending are very recent motions; many
9 of which the response time has not run for yet. So I believe
10 it would be premature to address most of the motions.

11 The only other one that's pending that has had a
12 response, I believe, is one FPL's motions to compel. I don't
13 think it would be probably the most efficient exercise to try
14 to address that here. And that's also an excuse for me to say
15 that we're not really prepared to address that one here today.
16 I was planning on drafting an order for you.

17 COMMISSIONER DAVIDSON: Perfect. Anything else from
18 the parties?

19 MR. HOFFMAN: Just to point out, Commissioner, on the
20 list of motions, the Customers' motion for leave to inspect
21 meters, I think you indicated that either a draft order, an
22 order will be coming out perhaps this week. I wasn't quite
23 sure what you said, but I just wanted to make you aware that
24 our time for filing a response to that is tomorrow, and we will
25 be filing a response.

1 COMMISSIONER DAVIDSON: Okay.

2 MR. MOYLE: There's probably one other thing that I
3 just want to bring to your attention that was in the
4 prehearing. You know, this is our first case involving these
5 meters. There are a whole host of meters behind them that are
6 in the informal stage, and we have 14 of these teed up for this
7 hearing. We thought that was a manageable number. There's a
8 lot of detail, you know, meters, test results, that kind of
9 thing.

10 In our petition for a Target store, we referenced a
11 Bonita Springs Target store when it should have been a Boca
12 Raton Target store. Subsequently, in prefiled testimony, I
13 think it's staff's testimony, we picked up the right one which
14 is the Boca Raton one, not the Bonita Springs one, but in the
15 petition itself it was misidentified as Bonita Springs.

16 FPL, we talked to them to see could we just, you
17 know, agree that the one in dispute rather than putting in the
18 ones to be determined later would be the Boca Raton. I'm not
19 sure they were comfortable doing that. We indicated we'd allow
20 them to file anything they needed to file to address that
21 specific issue. But that is a little gnat that's hanging out
22 there that I wanted to bring to your attention.

23 COMMISSIONER DAVIDSON: Have you filed anything to
24 just correct that, which is really a typo in the record; right?

25 MR. MOYLE: Well, it says it's the Bonita Springs

1 meter store number where it should have said it's the Boca
2 Raton store number --

3 COMMISSIONER DAVIDSON: Well, it should have said
4 because there was a typo, or should have said because somebody
5 has changed their mind and they now want to use another Target?

6 MR. MOYLE: No. The one that we put in there was not
7 registering to the degree that the other -- the one, the Boca
8 Raton was over 4 percent, which in accordance with your rule,
9 we're entitled to a refund on it. It should have been the Boca
10 Raton one, not the Bonita Springs one.

11 COMMISSIONER DAVIDSON: Well, what you just said it
12 seems like you changed your mind because you found a better
13 plaintiff. I mean, am I misreading that?

14 MR. MOYLE: Yeah, I think so.

15 COMMISSIONER DAVIDSON: Was this an accident when you
16 filed the papers?

17 MR. MOYLE: Here's the deal. Target has, like, five
18 or six meters in the case that have overregistered beyond
19 4 percent, so we were intending to put all five or six in. We
20 ended up by putting a Boca store in that didn't have a meter
21 that overregistered and we left out -- I'm sorry, we put in a
22 Bonita Springs store and we left out the Boca store. We should
23 have put the Boca store in and taken the Bonita Springs store
24 out.

25 COMMISSIONER DAVIDSON: Because you feel the Boca

1 store was proving your case more than the Bonita Springs. I
2 mean, am I misreading something here?

3 MR. MOYLE: Well, look, we don't have to put it in.
4 We can tee it up later and have it go the other way. I think
5 that the testimony has been filed to the one we intended to put
6 in originally, the Boca one. It was, you know, an oversight,
7 but I just wanted to bring it to your attention. We haven't
8 filed anything to amend the petition to put it in, but it's an
9 issue out there that I wanted to just bring up and have a
10 discussion about it.

11 COMMISSIONER DAVIDSON: Mr. Hoffman.

12 MR. HOFFMAN: Commissioner, I just want to say, you
13 know, if Mr. Moyle chooses to file a motion, then we will
14 respond. But I do want to point out that the Boca meter was
15 part of the original proceeding before the Commission. Part of
16 the PAA order was not protested. So I don't think there's any
17 bringing it back later if they choose to. That meter account
18 was not protested, and I think as a matter of law it has become
19 final.

20 COMMISSIONER DAVIDSON: Well, the issue, Mr. Moyle,
21 it's not -- well, what is the issue again?

22 MR. MOYLE: The issue is, is that we mixed up Bonita
23 Springs with Boca.

24 COMMISSIONER DAVIDSON: All right. Staff, do we have
25 a motion on this issue?

1 MR. KEATING: It hasn't really been teed up with a
2 motion. I wasn't aware until this discussion today as to
3 whether there was any dispute about whether the Boca Raton
4 Target store meter should be fairly addressed as part of this
5 proceeding or not. How that error was going to be corrected
6 I'm not sure, and I would ask whether in the -- this doesn't
7 get really to Mr. Hoffman's point as to whether as a matter of
8 law it's precluded because it was part of a PAA and that
9 customer did not --

10 COMMISSIONER DAVIDSON: Well, we'll have to -- I
11 mean, if there's a motion to be filed, then file that and we
12 will take a look at it. We'll take a look at it.

13 Anything else, staff?

14 MR. KEATING: Nothing that I'm aware of.

15 COMMISSIONER DAVIDSON: Parties?

16 MR. HOFFMAN: No, sir.

17 COMMISSIONER DAVIDSON: This hearing is adjourned.

18 (Prehearing conference concluded at 2:36 p.m.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, TRICIA DeMARTE, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 3rd DAY OF SEPTEMBER, 2004.

Tricia DeMarte

TRICIA DeMARTE, RPR
FPSC Official Commission Reporter
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