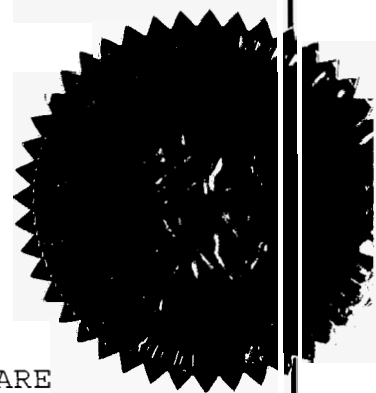


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040001-EI

In the Matter of

UEL AND PURCHASED POWER
OST RECOVERY CLAUSE WITH
ENERATING PERFORMANCE INCENTIVE
ACTOR.



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PROCEEDINGS: PREHEARING

BEFORE: RUDOLPH "RUDY" BRADLEY
Prehearing Officer

DATE: Monday, October 25, 2004

TIME: Commenced at 9:40 a.m.
Concluded at 11:40 a.m.

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

REPORTED BY: LINDA BOLES, RPR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER-DATE

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4 2302, appearing on behalf of Tampa Electric Company.

5 JEFFREY A. STONE, ESQUIRE, and RUSSELL A. BADDERS,
6 ESQUIRE, Beggs & Lane, Post Office Box 12950, Pensacola,
7 Florida 32591-2950, appearing on behalf of Gulf Power Company.

8 R. WADE LITCHFIELD, ESQUIRE, and NATALIE F. SMITH,
9 ESQUIRE, Florida Power & Light Company, 700 Universe
10 Boulevard., Juno Beach, Florida 33408-0420, appearing on behalf
11 of Florida Power & Light Company.

12 JOHN T. BUTLER, ESQUIRE, Steel, Hector & Davis, LLP,
13 100 South Biscayne Boulevard, Suite 4000, Miami, Florida
14 33131-2398, appearing on behalf of Florida Power & Light
15 Company.

16 VICKI GORDON KAUFMAN, ESQUIRE; JOSEPH A. MCGLOTHLIN,
17 ESQUIRE; and TIMOTHY J. PERRY, ESQUIRE, McWhirter, Reeves,
18 McGlothlin, Davidson, Decker, Kaufman & Arnold, P.A., 117 South
19 Gadsden Street, Tallahassee, Florida 32301, appearing on behalf
20 of Florida Industrial Power Users Group.

21 NORMAN H. HORTON, JR., ESQUIRE, Messer, Caparello &
22 Self, P.A., Post Office Box 1876, Tallahassee, Florida
23 32302-1876, appearing on behalf of Florida Public Utilities
24 Company.

25

1 APPEARANCES CONTINUED:

2 BONNIE E. DAVIS, ESQUIRE, Progress Energy Florida,
3 Inc., 106 East College Avenue, Suite 800, Tallahassee, Florida
4 32301-7740, appearing on behalf of Progress Energy Florida,
5 Inc.

6 JAMES A. MCGEE, ESQUIRE, Progress Energy Service Co.,
7 LLC, Post Office Box 14042, St. Petersburg, Florida 33733-4042,
8 appearing on behalf of Progress Energy Florida, Inc.

9 BILL HOLLIMON, ESQUIRE, Moyle, Flanigan, Katz,
10 Raymond & Sheehan, P.A., The Perkins House, 118 North Gadsden
11 Street, Tallahassee, Florida 32301, appearing on behalf of
12 Thomas K. Churbuck.

13 PATRICIA A. CHRISTENSEN, ESQUIRE, Office of Public
14 Counsel, c/o The Florida Legislature, 111 W. Madison St., #812,
15 Tallahassee, Florida 32399-1400, appearing on behalf of the
16 Citizens of the State of Florida.

17 COCHRAN KEATING, ESQUIRE, and ADRIENNE VINING,
18 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
19 Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf
20 of the Commission Staff.

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P R O C E E D I N G S

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COMMISSIONER BRADLEY: Let's proceed to Docket 01.

We now will, as I stated previously, proceed to Docket 01. Are there any -- I'm sorry. I need to wait, give people a chance to settle down.

Are we ready? Is everyone ready? We are now on Docket 01. Are there any preliminary matters to be addressed?

MS. VINING: There don't appear to be any at this time.

COMMISSIONER BRADLEY: Okay. Let's proceed through the draft prehearing order section by section as quickly as possible. If there are any questions, clarifications or changes to make, please let me know as we reach the appropriate section.

Let's start with Sections I through VI. Any comments concerning anything in these sections of the draft prehearing order?

MR. BUTLER: Commissioner, I have a comment that I suppose needs to be raised on Section VI, although it also applies over on Section VII.

The first sentence of Section VI says that "The testimony of all witnesses to be sponsored by the parties and staff has been prefiled." And, in fact, if you look over to Section VII, you'll see reference on Page 6 of the draft prehearing order to two witnesses, William N. McKenzie and

1 Terry Morrison, whom Mr. Churbuck's counsel intends to call as
2 adverse witnesses. They have not prefiled testimony and
3 apparently the intent is to have them testify live. FPL is
4 concerned about that. And Mr. Litchfield is prepared to
5 address it, and I'd ask that he do so at this time, if that's
6 appropriate.

7 MS. VINING: Staff has no objection to that.

8 COMMISSIONER BRADLEY: You may.

9 MR. LITCHFIELD: Commissioner Bradley, we're -- as
10 you well know, the Commission's practice and policy in the past
11 has been to require prefiled testimony. In the 2002 order in
12 FPL's need determination case, in fact, the Commission
13 indicated that, in fact, requiring prefiled testimony promotes
14 the ability of the parties and the Commission to focus their
15 efforts at the hearings.

16 We really think that it would be only under very
17 unusual circumstances that the Commission would deviate from
18 this consistent practice and policy, particularly in this
19 instance where one of these witnesses is a nonparty and would
20 be required to be subpoenaed from out of state, something that
21 we're, we haven't researched, we're not clear as to whether the
22 Commission would have that authority to do that. But in any
23 event, while we can't say, you know, under what circumstances
24 we think it would be appropriate to allow live testimony in
25 this case, we certainly don't think that those circumstances

are present here.

2 We have contracts that Florida Power & Light has
3 asked this Commission to approve. Florida Power & Light has
4 sponsored the testimony of Thomas Hartman; in fact, the
5 individual principally responsible for negotiating those
6 agreements' and recommending to Florida Power & Light Company's
7 management that they be executed. And he is available, he has
8 prefiled testimony, he will be deposed this week and he will
9 appear at the hearing. And so we're not really seeing the need
10 for the Commission to deviate from its long-standing practice
11 of not permitting live testimony in these proceedings.

12 MR. HOLLIMON: Commissioner, Bill Hollimon on behalf
13 of Mr. Churbuck.

14 Commissioner, with regard to the witness William N.
15 McKenzie, we are not going to offer him as a witness, so we
16 agree that removing him would not be an issue.

17 With regard to Terry Morrison, we would submit that
18 the circumstances, the unusual circumstances do exist here
19 because we intervened in the proceeding at a point in time
20 where in order to schedule the deposition and prefiled
21 testimony, that was not able to be accomplished under the
22 existing schedule. Therefore, we are working with FP&L now to
23 establish a deposition date for Mr. Morrison, and we believe
24 that under this circumstance that it's appropriate to allow
25 this testimony to go forward live.

1 MR. LITCHFIELD: Commissioner, we have agreed to make
2 Mr. Morrison available for deposition.

3 COMMISSIONER BRADLEY: Please identify yourself for
4 the record.

5 MR. LITCHFIELD: Wade Litchfield, Florida Power &
6 Light. We have agreed to make Mr. Morrison available for
7 deposition. It is always a possibility that we would agree to
8 allow his deposition to enter into the record in lieu of live
9 testimony. That's certainly something that we'd be willing to
10 talk to counsel for Mr. Churbuck about.

11 COMMISSIONER BRADLEY: Any other comments? Staff?

12 MR. KEATING: Commissioner, if you'd like at this
13 time, staff can make a recommendation on this matter.

14 COMMISSIONER BRADLEY: Yes.

15 MR. KEATING: The Commission has previously
16 disallowed testimony from witnesses where the testimony was not
17 prefiled in accordance with the requirements of the order
18 establishing procedure and where the party offering the
19 witnesses did not request any exception to that requirement.
20 The Commission has allowed parties to meet that requirement for
21 an adverse witness by filing a transcript of the deposition of
22 that witness.

23 Now in this case Mr. Churbuck has not sought an
24 exception to the prefiled testimony requirement for, I believe,
25 Mr. -- Mr. McKenzie is not at issue, but for Mr. Morrison at

1 his point, and Mr. Churbuck has not deposed either witness.
2 The deadline for Mr. Churbuck's prefiled testimony did pass
3 three weeks ago on October 4th.

4 Even if Mr. Churbuck could conduct depositions of
5 those witnesses and file the transcripts as prefiled testimony,
6 there would be probably very little time left in the schedule
7 for this proceeding to allow any opportunity for rebuttal
8 response to that testimony.

9 I'd also note that Mr. Hollimon suggested that
10 because of the timing of the intervention that the depositions
11 could not be conducted in a manner where a transcript could be
12 provided as prefiled testimony. But it's our standard
13 practice, as stated in the intervention order, that an
14 intervenor takes the case as they find it. For these reasons
15 staff would recommend that you exclude the witnesses from this
16 proceeding.

17 COMMISSIONER BRADLEY: Thank you. I'm going to agree
18 with staff's recommendation. And also I would like for the
19 record to reflect that I'm sensitive to the fact that these are
20 adverse witnesses, but it appears that Mr. Churbuck has not
21 taken any steps to comply with the prefiled testimony
22 requirement, nor has he requested an exception to that
23 requirement. Therefore, my ruling is that these witnesses
24 should be excluded.

25 MS. VINING: I'll reflect that in the prehearing

1 order.

2 COMMISSIONER BRADLEY: Thank you.

3 MS. VINING: I also just want to say that it's
4 possible as we get closer to hearing that some of the witnesses
5 may be excused if the positions that they're testifying on are
6 stipulated, and that'll be an ongoing process. **And as we get**
7 closer to the time that the prehearing order will be issued, I
8 will work with the offices of the different Commissioners to
9 see if they can be excused, and I will reflect that in the
10 prehearing order.

11 COMMISSIONER BRADLEY: Thank you. We now will move
12 on to Section VII, order of witnesses.

13 MR. BEASLEY: Commissioner Bradley, Jim Beasley for
14 Tampa Electric. I have a couple of changes to suggest on Page
15 6, the first of which would be to move Ms. Jordan's appearance
16 from where it's reflected as issue or witness number five, to
17 move her down just after Witness Wehle's direct testimony.

18 MS. VINING: Staff doesn't have any objection to
19 that. I can reflect that in the prehearing order.

20 COMMISSIONER BRADLEY: Granted.

21 MR. BEASLEY: And then with respect to Witness
22 Benjamin Smith's testimony, if we could ask that the same
23 footnote be reflected there as it appears on Page 55 with
24 respect to the exhibits, and that would be adopted by Witness
25 David R. Knapp, as Mr. Knapp will be adopting Mr. Smith's

1 testimony.

2 MS. VINING: Let me just clarify. So Mr. Smith will
3 not be appearing live at the hearing?

4 MR. BEASLEY: That's correct. That's correct.

5 MS. VINING: Okay.

6 COMMISSIONER BRADLEY: What are you officially doing,
7 requesting that a witness be excluded?

8 MR. BEASLEY: I'm sorry. Strike that last comment.
9 Mr. Smith will appear, and it's Mr. Smotherman's exhibit.

10 MS. VINING: Right. I didn't list Smotherman as a
11 witness because I realized that Knapp had adopted his
12 testimony.

13 MR. BEASLEY: Thank you. I stand corrected.

14 MS. VINING: Okay. So, so Benjamin Smith will still
15 appear live at the, at the hearing?

16 MR. BEASLEY: That's correct.

17 MS. VINING: Okay.

18 COMMISSIONER BRADLEY: Let the record, let the record
19 reflect the amended changes.

20 MR. HORTON: Commissioner Bradley, Doc Horton for
21 Florida Public Utilities. Mr. Bachman is shown as addressing a
22 number of issues, including 15A, which I think has been
23 dropped, and we are not addressing Issues 10, 11 and 12.

24 MS. VINING: I'll reflect those changes in the
25 prehearing order.

COMMISSIONER BRADLEY: Granted. Any other changes to
2 he order of witnesses?

3 MS. VINING: I think we can move on to Section VIII.

4 COMMISSIONER BRADLEY: Okay. Section VIII, basic
5 positions.

6 MS. VINING: There doesn't appear to be any changes
7 n that section either.

8 COMMISSIONER BRADLEY: Thank you. For Section IX,
9 ssues and positions, let's go issue by issue. If you need to
10 modify your position for a particular issue, please speak up
11 when we get to that particular issue. Excuse me.

12 Also, if you have a concern about the wording of an
13 issue or whether an issue is appropriate, you need to stop us
14 when we get to that issue.

15 Okay. Issue 1.

16 MR. BUTLER: No changes for FPL.

17 MR. BEASLEY: None.

18 MR. BADDERS: None.

19 MR. HORTON: No changes for FPUC.

20 MR. MCGEE: None for Progress.

21 MR. HOLLIMON: None for Churbuck.

22 MS. CHRISTENSEN: No change for Office of Public
23 Counsel

24 MS. KAUFMAN: No changes for FIPUG.

25 MS. VINING: None for staff as well

1 COMMISSIONER BRADLEY: Okay. Issue 2.

2 MR. BUTLER: No change for FPL.

3 MR. BEASLEY: No change for Tampa Electric.

4 MR. BADDERS: No change for Gulf.

5 MR. HORTON: No change for FPUC.

6 MR. MCGEE: Commissioner, the position for Progress

7 Energy should reflect an overrecovery rather than

8 underrecovery, \$9,703,020 overrecovery.

9 MS. VINING: I'll make the change.

10 MR. HOLLIMON: No change for Churbuck.

11 MS. CHRISTENSEN: No change for the citizens.

12 MS. KAUFMAN: No change for FIPUG, Commissioner.

13 COMMISSIONER BRADLEY: Issue 3.

14 MS. VINING: Correct.

15 MR. BUTLER: No change for FPL.

16 MR. BEASLEY: None for Tampa Electric.

17 MR. BADDERS: No change for Gulf.

18 MR. HORTON: None for FPUC.

19 MR. MCGEE: None for Progress Energy.

20 MR. HOLLIMON: No change for Churbuck.

21 MS. CHRISTENSEN: No change for OPC.

22 MS. KAUFMAN: No change for FIPUG.

23 MS. VINING: None for staff as well.

24 COMMISSIONER BRADLEY: Thank you. Issue 4.

25 MR. BUTLER: No change for FPL.

1 MR. BEASLEY: None for Tampa Electric.
2 MR. BADDERS: No change for Gulf.
3 MR. HORTON: None for FPUC.
4 MR. MCGEE: None for Progress.
5 MR. HOLLIMON: No change for Churbuck.
6 MS. CHRISTENSEN: No change for OPC.
7 MS. KAUFMAN: No change for FIPUG.
8 COMMISSIONER BRADLEY: Thank you.
9 MS. VINING: None for staff as well.
10 COMMISSIONER BRADLEY: Issue 5.
11 MR. BUTLER: No change for FPL.
12 MR. BEASLEY: No change for Tampa Electric
13 MR. BADDERS: No change for Gulf.
14 MR. HORTON: None for FPUC.
15 MR. MCGEE: None for Progress.
16 MR. HOLLIMON: No change for Churbuck.
17 MS. CHRISTENSEN: No change for OPC.
18 MS. KAUFMAN: None for FIPUG.
19 MS. VINING: And none for staff.
20 Issue 6.
21 COMMISSIONER BRADLEY: Issue 6.
22 MR. BUTLER: No change for FPL.
23 MR. BEASLEY: None for Tampa Electric.
24 MR. BADDERS: None for Gulf.
25 MR. HORTON: None for FPUC.

1 MR. MCGEE: None for Progress.

2 MR. HOLLIMON: None for Churbuck.

3 MS. CHRISTENSEN: None for OPC.

4 MS. KAUFMAN: None for FIPUG.

5 MS. VINING: None for staff.

6 COMMISSIONER BRADLEY: Okay. Which issue was that?

7 Was that Issue 6?

8 MR. BUTLER: That was 6 we were just doing.

9 COMMISSIONER BRADLEY: Yes. Okay. Yes. And I would
10 request that you all just slow down just a little bit for the
11 sake of the reporter. Just pause in between your, your
12 answers.

13 MS. VINING: On to Issue 7?

14 COMMISSIONER BRADLEY: Issue 7.

15 MR. BUTLER: No change for FPL.

16 MR. BEASLEY: No change for Tampa Electric.

17 MR. BADDERS: No change for Gulf.

18 MR. HORTON: No change for FPUC.

19 MR. MCGEE: No change for Progress.

20 MR. HOLLIMON: No change for Churbuck.

21 MS. CHRISTENSEN: No change for OPC.

22 MS. KAUFMAN: FIPUG's position should just be "No
23 position at this time."

24 MS. VINING: And staff's position remains the same.

25 COMMISSIONER BRADLEY: Okay. The prehearing officer

is losing his place. Was that Issue 6 or 7?

2 MS. VINING: That was 7.

3 COMMISSIONER BRADLEY: Okay.

4 MS. VINING: So now we're on 8.

5 COMMISSIONER BRADLEY: Okay. We're on 8. Issue 8.

6 MR. BUTLER: No change for FPL.

7 MR. BEASLEY: No change for Tampa Electric.

8 MR. BADDERS: No change for Gulf.

9 MR. HORTON: No change for FPUC.

10 MR. MCGEE: No change for Progress.

11 MR. HOLLIMON: No change for Churbuck.

12 MS. CHRISTENSEN: No change for OPC.

13 MS. KAUFMAN: No change for FIPUG.

14 MS. VINING: And no change for staff.

15 COMMISSIONER BRADLEY: Okay. Issue 9.

16 MR. BUTLER: No change for FPL.

17 MR. BEASLEY: This was one of the proposed stipulated

18 issues by staff. And Tampa Electric had agreed with the

19 staff's language, so we will agree with staff.

20 MS. VINING: That's already reflected in the draft.

21 MR. BEASLEY: Okay.

22 COMMISSIONER BRADLEY: Thank you.

23 MR. BADDERS: No change to Gulf.

24 MR. HORTON: No change for FPUC.

25 MR. MCGEE: None for Progress.

1 MR. HOLLIMON: No change for Churbuck.

2 MS. CHRISTENSEN: No change for OPC.

3 MS. KAUFMAN: No change for FIPUG.

4 MS. VINING: No change for staff.

5 COMMISSIONER BRADLEY: Thank you. Issue, Issue 10.

6 MR. BUTLER: No change for FPL.

7 MR. BEASLEY: No change for Tampa Electric.

8 MR. BADDERS: No change for Gulf.

9 MR. MCGEE: No change for Progress.

10 MR. HOLLIMON: No change for Churbuck.

11 MS. CHRISTENSEN: No change for OPC.

12 MS. KAUFMAN: FIPUG would just take no position on
13 this issue.

14 MS. VINING: I'll reflect that change. And for staff
15 there's no change.

16 COMMISSIONER BRADLEY: Thank you. Issue 11.

17 MR. BUTLER: No change for FPL.

18 MR. BEASLEY: No change for Tampa Electric.

19 MR. BADDERS: And no change for Gulf.

20 MR. MCGEE: No change for Progress.

21 MR. HOLLIMON: No change for Churbuck.

22 MS. CHRISTENSEN: No change for Office of Public
23 Counsel

24 MS. KAUFMAN: FIPUG would take no position on this
25 issue.

1 MS. VINING: That's on 11, no position?

2 MS. KAUFMAN: Yes, ma'am.

3 COMMISSIONER BRADLEY: Yes.

4 MS. VINING: Okay. I'll reflect that change. And
5 staff has no changes to its position.

6 MR. BUTLER: On to Issue 12?

7 COMMISSIONER BRADLEY: Yes. Are we ready for Issue
8 .2?

9 MR. BUTLER: FPL has no change. We agree with the
10 staff position stated in the prehearing order.

11 MR. BEASLEY: The same with Tampa Electric Company.

12 MR. BADDERS: No change to, to Gulf's position.

13 MR. MCGEE: Progress will change its position to
14 'Agrees with staff's position.'

15 MR. HOLLIMON: No change for Churbuck.

16 MS. CHRISTENSEN: No change for Office of Public
17 Counsel.

18 MS. KAUFMAN: No change for FIPUG.

19 MS. VINING: And no change for staff either.

20 COMMISSIONER BRADLEY: Okay. Issue 13A.

21 MS. VINING: Yes, we're ready to move on to Issue
22 13A.

23 COMMISSIONER BRADLEY: Yes. Issue 13A.

24 MR. MCGEE: No change for Progress Energy.

25 MR. BUTLER: No change for FPL. Oh, I'm sorry. I

1 I guess we don't need to do it for these.

2 COMMISSIONER BRADLEY: Beg your pardon?

3 MR. BUTLER: My apology. I guess I don't need to do
4 it for these on Progress. I'll keep quiet.

5 COMMISSIONER BRADLEY: Okay.

6 MS. VINING: Progress, are you going to take a
7 position or are you --

8 MR. MCGEE: No change for Progress.

9 MS. VINING: OPC?

10 COMMISSIONER BRADLEY: OPC?

11 MS. CHRISTENSEN: I'm sorry. No change for OPC.

12 COMMISSIONER BRADLEY: FIPUG?

13 MS. KAUFMAN: No change.

14 MS. VINING: And staff's position has not changed on
15 this issue.

16 COMMISSIONER BRADLEY: Okay. Issue 13B.

17 MR. MCGEE: No change for Progress.

18 MS. CHRISTENSEN: No change for Office of Public
19 Counsel

20 MS. KAUFMAN: No change for FIPUG.

21 MS. VINING: And staff's position remains the same.

22 COMMISSIONER BRADLEY: Issue 13C.

23 MR. MCGEE: No change for Progress Energy.

24 MS. CHRISTENSEN: No change for Office of Public
25 Counsel

1 MS. KAUFMAN: No change for FIPUG.

2 MS. VINING: And on this staff's position is not
3 going to change, but on this one staff would propose a
4 rewording of the issue. Because, Commissioner Bradley, you
5 ruled already on spinning off the agreement between Progress
6 Energy and Southern Company, so I think that the issue should
7 be reworded to reflect that order. And I have a proposed
8 rewording of the issue for everyone to consider.

9 COMMISSIONER BRADLEY: Would you read it, please.

10 MS. VINING: "Should the Commission defer all issues
11 related to the purchased power agreement between Progress
12 Energy Florida and Shady Hills Power Company, LLC, to a
13 separate docket?" Is that acceptable?

14 COMMISSIONER BRADLEY: Is that language acceptable?
15 Do you need time to look at it?

16 MS. VINING: Would you like me to read it again?

17 COMMISSIONER BRADLEY: Yes.

18 MS. VINING: Okay. "Should the Commission defer all
19 issues related to the purchased power agreement between
20 Progress Energy Florida and Shady Hills Power Company, LLC, to
21 a separate docket?" It's just reflecting that Commissioner
22 Bradley has already ruled on spinning off the agreement between
23 Progress and Southern Company.

24 MR. MCGEE: I see. Right.

25 MS. VINING: Make sense?

1 MR. MCGEE: Yes. Yes.

2 COMMISSIONER BRADLEY: Okay. 13D.

3 MS. KAUFMAN: Commissioner, I'm sorry, back on 13,
4 the one we just discussed.

5 COMMISSIONER BRADLEY: 13C?

6 MS. KAUFMAN: C. I understand Ms. Vining's comment.

7 And with all due respect, I would note that the time for
8 reconsideration has not passed, so I would suggest that we
9 leave the issue the way it is.

10 MR. KEATING: Commissioner, I would suggest that at
11 this point in time there hasn't been a motion for
12 reconsideration. And if we do have a motion for
13 reconsideration, presumably it would be a matter that would be
14 taken up at the start of the hearing. I don't know that we
15 need a separate issue identified at this point in time. If
16 there is a motion for reconsideration, that issue will be, will
17 be teed up at the hearing.

18 I mean, the question of whether this issue should be
19 addressed or at least part of the issue addressing Progress
20 Energy of Florida has been addressed by you already. And until
21 that decision is somehow overturned, I don't think or staff
22 doesn't feel it's necessary to include language addressing the
23 purchased power agreement between Progress and Southern in the
24 issue at this point in time.

25 COMMISSIONER BRADLEY: I agree with staff. Let the

1 record reflect that as being my ruling.

2 MS. VINING: I'll reflect the rewording in the
3 rehearing order.

4 MS. KAUFMAN: In that case then we would change our
5 position to no position on, on the new reworded 13C.

6 MS. VINING: So no position, period; right?

7 MS. KAUFMAN: Yes, ma'am.

8 MS. VINING: Okay. We can move on to 13D.

9 COMMISSIONER BRADLEY: Okay. Issue 13D.

10 MR. MCGEE: No change for Progress Energy.

11 MS. CHRISTENSEN: No change for Office of Public
12 Counsel.

13 MS. KAUFMAN: No change for FIPUG.

14 MS. VINING: On 13D staff's position has not changed.

15 COMMISSIONER BRADLEY: Okay. Issue 13E.

16 MR. MCGEE: No change for Progress Energy.

17 MS. CHRISTENSEN: No change for the Office of Public
18 Counsel.

19 MS. KAUFMAN: FIPUG takes no position on that issue.

20 MS. VINING: And staff's position has not changed.

21 COMMISSIONER BRADLEY: Issue 13F.

22 MR. MCGEE: No change for Progress Energy.

23 MS. CHRISTENSEN: No change for Office of Public
24 Counsel.

25 MS. KAUFMAN: No change for FIPUG.

1 MS. VINING: And staff's position has not changed on
2 this issue. And as a result of our position, we would ask at
3 this point in time that the issue be removed from this
4 proceeding because we don't believe that it's ripe for
5 determination at this point in time since Progress Energy does
6 not yet have a signed purchased power agreement with Southern
7 Company. Until there's an executed purchased power agreement
8 filed with the Commission, we don't believe that the Commission
9 should address that agreement.

10 MR. MCGEE: This is Jim McGee for Progress Energy.
11 Commissioner, we have a letter of intent that was included as
12 an exhibit to Mr. Waters' testimony, who will be testifying at
13 the, at the hearing. And he is prepared to explain the
14 distinctions between the letter of intent and any that might
15 occur in, in the actual contract itself, which is under, under
16 negotiation at this time, may well be before the Commission.

17 He will explain that the letter of intent provides
18 the substance of the contract that will be presented to the
19 Commission, and I think he ought to be allowed to have the
20 opportunity to, to deal with that matter and make his
21 presentation to the Commissioners so that they can decide
22 whether -- this is a fact issue and would allow them to decide
23 whether or not the circumstances do make it ripe for
24 consideration by the Commission. That's been our, our position
25 since the outset.

1 MS. KAUFMAN: Commissioner, FIPUG would certainly
2 support the staff's recommendation to you. Until there's a
3 final contract, we're a little bit shooting in the dark. So we
4 would support staff that this issue is not ripe.

5 MS. CHRISTENSEN: And at this time, Commissioner, the
6 Office of Public Counsel would still maintain its position of
7 having no position on this issue.

8 MS. VINING: I also want to say too that, you know,
9 Progress is free, once the contract is executed, to sign it.
10 We can address it in a separate docket. It's just that we're
11 so close to the hearing and we don't yet have an executed
12 contract with the, with the terms listed in it. So we don't
13 believe that there's enough time, even if they were to file an
14 executed contract today, for staff to do the in-depth analysis
15 of the terms that they would need to make a recommendation at
16 the hearing.

17 COMMISSIONER BRADLEY: Well, my ruling would be as
18 follows. I agree with staff's recommendation on this issue.
19 The Commission cannot address Progress's proposed agreement
20 with Southern until the signed agreement is filed with the
21 Commission. Because there are only, because there are only two
22 weeks remaining before the fuel hearing and we do not have a
23 signed agreement, it is really too late for the Commission to
24 address Progress Energy's proposed agreement with Southern
25 Company in this year's fuel hearing.

1 Even if the agreement were filed today, there is not
2 enough time for our staff or the intervenors to conduct an
3 in-depth analysis of the terms. Once Progress Energy has
4 finalized and executed the agreement, it can then file the
5 contract with the Commission for approval and we will address
6 it in a separate docket. As a result, I have decided that,
7 again, that this issue will be removed from consideration in
8 this docket.

9 MS. VINING: Okay. We can move on to 13G now.

10 COMMISSIONER BRADLEY: 13G?

11 MR. MCGEE: Progress Energy's position is unchanged.

12 MS. CHRISTENSEN: Office of Public Counsel's position
13 has not changed.

14 MS. KAUFMAN: FIPUG's position remains the same.

15 MS. VINING: And staff's position remains the same.

16 COMMISSIONER BRADLEY: 13H.

17 MR. MCGEE: Commissioner, I believe Progress Energy's
18 position will stay the same. I, I hesitate though because I
19 think that the positions of the parties would allow this issue
20 to be reflected as a stipulation. But the wording between our
21 position and staff's seems to me to be the same, but I wanted
22 to ask for some clarification on that.

23 MS. VINING: Right. I was, I was going to suggest
24 that perhaps this issue isn't appropriate for consideration in
25 this year's fuel proceeding because --

1 COMMISSIONER BRADLEY: You said inappropriate or
2 appropriate?

3 MS. VINING: Right. Because the amount of
4 depreciation in return that would be recovered by Progress for
5 Hines Unit 2 will be based on the unit's actual fuel savings
6 for the end of 2005 when the settlement expires. So the amount
7 of fuel savings can't be determined until 2006. So it really
8 wouldn't be ripe for consideration until, what, '06, 0001. So
9 staff, staff would recommend that this issue is not appropriate
10 for consideration in this year's fuel proceeding.

11 MR. MCGEE: And we would support that.

12 COMMISSIONER BRADLEY: Well, I think the staff's
13 recommendation makes sense. The Commission cannot determine
14 what the appropriate depreciation and return for Hines 2 will
15 be until 2006, and I don't think -- I think that this issue,
16 this issue is not ripe for determination until then, until
17 2006. Accordingly, the issue is removed from this year's fuel
18 docket.

19 MS. VINING: I'll also note that in the prehearing
20 order

21 MS. CHRISTENSEN: Commissioner, before we leave the
22 section regarding Progress-specific issues, the Office of
23 Public Counsel would like to have an issue placed back into the
24 docket that was inadvertently omitted. And it was previously
25 identified as Issue 13H in the preliminary issues list, and

1 that is "Pursuant to Order Number PSC 94-0390-FOF-EI in Docket
2 Number 940001-EI issued April 4th, 1994, should the Commission
3 make an adjustment to Progress Energy Florida's 2001 through
4 2003 waterborne coal transport cost to account for
5 trans-loading costs for coal commodity contracts which are
6 quoted FOB barge?" We would recommend that that issue be added
7 in at this time. We do not offer any changes to the language.

8 We have a deposition currently scheduled for Progress
9 Energy's witnesses which will be able to address the issue for
10 Office of Public Counsel, and we would like to take the
11 position that we do not have a position at this time pending
12 the completion of the discovery and the evidence adduced at
13 trial, at the hearing.

14 COMMISSIONER BRADLEY: Progress?

15 MR. MCGEE: Jim McGee on behalf of Progress Energy.
16 If it's the prehearing officer's desire to include that issue
17 back in the prehearing order, we would then take the
18 opportunity to state a position on it, but -- if, if that's
19 your pleasure.

20 COMMISSIONER BRADLEY: What, what is staff's
21 recommendation?

22 MS. VINING: Staff has no objection to that issue
23 being included in the list.

24 COMMISSIONER BRADLEY: What would Progress's position
25 be?

1 MR. MCGEE: The position for Progress Energy would be
2 no adjustment is appropriate or necessary.

3 COMMISSIONER BRADLEY: Okay. I tell you what I'm
4 going to do. I'm going to accept OPC's proposed -- well, I'm
5 going to accept their proposition and put the issue back into
6 this docket. It will be listed as Issue 13I.

7 MS. VINING: And will FIPUG take a position on the
8 new issue?

9 MS. KAUFMAN: Yes. Our position will be "No position
10 at this time pending further discovery." As Ms. Christensen
11 said, there's a deposition scheduled tomorrow or the next day
12 that's going to address this issue, I believe.

13 MS. VINING: Okay. I'll reflect that in the
14 prehearing order.

15 COMMISSIONER BRADLEY: Are there any other positions
16 on this new issue?

17 MS. VINING: I think, I think Progress stated what
18 their position would be on it. And did OPC state what their
19 position would be?

20 MS. CHRISTENSEN: I believe I did, but I will repeat
21 that just for clarification.

22 At this time we're taking "No position at this time
23 pending the completion of discovery and the evidence adduced at
24 hearing."

25 MS. VINING: Okay. I'll reflect that in the

1 prehearing order.

2 It looks like we can move on to Florida Power &
3 light's issues.

4 COMMISSIONER BRADLEY: Okay. That would be what,
5 [Issue 14A?

6 MS. VINING: Correct.

7 COMMISSIONER BRADLEY: Okay. Issue 14A.

8 MS. VINING: Before we get into the positions of the
9 different companies, this is one that I believe has already
10 been decided by your order denying the motions to remove
11 consideration of the purchased power agreements from the fuel
12 clause, so I believe that you have already ruled on this issue
13 and that it can be removed from further consideration in this
14 proceeding.

15 COMMISSIONER BRADLEY: And staff is accurate. Since
16 I have already ruled, ruled on this issue, it is now moot. As
17 a result, the issue is dropped. Issue --

18 MS. VINING: Also -- I'll reflect that in the
19 prehearing order.

20 COMMISSIONER BRADLEY: Issue 14B.

21 MR. BUTLER: FPL has no changes.

22 MR. HOLLIMON: Churbuck has no changes.

23 MS. CHRISTENSEN: Office of Public Counsel has no
24 changes

25 MS. KAUFMAN: FIPUG has no changes to this issue.

1 MS. VINING: Staff's position won't change on this
2 one. But, again, because of the procedural order that we have
3 previously talked about, staff would propose a rewording of the
4 issue. And the reworded issue would be: "Should the
5 Commission require FPL to explore alternatives in the wholesale
6 market prior to seeking approval of the purchased power
7 agreements?"

8 COMMISSIONER BRADLEY: Any comments relative to the
9 wording?

10 MR. BUTLER: I'm sorry. Would you repeat that,
11 please?

12 MS. VINING: You want me to repeat it again? Sure.
13 I just basically deleted the first clause. So we start with,
14 "Should the Commission require FPL to explore alternatives in
15 the wholesale market prior to seeking approval of the purchased
16 power agreements?"

17 MR. BUTLER: Okay. So just the conditional clause
18 comes out, but the wording of the question really doesn't
19 change?

20 MS. VINING: Correct.

21 MR. BUTLER: Okay. That's fine.

22 MR. HOLLIMON: That's acceptable to Churbuck.

23 MS. CHRISTENSEN: Office of Public Counsel has no
24 objection to the rewording.

25 MS. KAUFMAN: That's fine with FIPUG.

1 MS. VINING: I'll note it in the prehearing order as
2 such.

3 COMMISSIONER BRADLEY: Thank you.

4 MR. BUTLER: Excuse me. Prehearing Officer and Ms.
5 Vining, would you be willing to insert the word "other
6 alternatives" or "other" before alternatives, "to explore other
7 alternatives in the wholesale market," since this is obviously
8 one of the alternatives in the wholesale market?

9 MS. VINING: Staff has no objection.

10 MR. HOLLIMON: Churbuck has no objection to that.

11 MS. CHRISTENSEN: Office of Public Counsel has no
12 objection.

13 MS. KAUFMAN: FIPUG has no objection.

14 MR. BUTLER: Thank you.

15 COMMISSIONER BRADLEY: I agree with your recommended
16 changed wording.

17 MS. VINING: I'll reflect it in the prehearing order.

18 COMMISSIONER BRADLEY: Or amended wording.

19 MR. BUTLER: Thank you.

20 COMMISSIONER BRADLEY: Are we ready for 14C?

21 MS. VINING: Yes. That's the issue we're up to now.

22 COMMISSIONER BRADLEY: 14C.

23 MR. BUTLER: No changes. I'm sorry. No changes for
24 FPL.

25 MR. HOLLIMON: No changes for Churbuck.

1 MS. CHRISTENSEN: No changes for Office of Public
2 Counsel.

3 MS. KAUFMAN: No changes for FIPUG.

4 MS. VINING: No changes for staff.

5 MR. BUTLER: Commissioner Bradley?

6 COMMISSIONER BRADLEY: Yes.

7 MR. BUTLER: I'm not sure if this is the appropriate
8 time or when it would be, but one of the things that --

9 COMMISSIONER BRADLEY: Now is this relevant to 14C?

10 MR. BUTLER: I'm sorry. This is actually on 14A, on
11 the deletion of 14A, but before we leave the FPL-specific
12 issues, raises a point for consideration the fact that quite a
13 bit of the testimony of two of the witnesses in this docket,
14 Mr. Vogt and Mr. Knauth, go to the subject of why the
15 Commission should defer consideration of FPL's agreements with
16 Southern to a separate proceeding. And now that we don't have
17 an Issue 14A, FPL believes that it would be appropriate to
18 delete the portions of the testimony that go to those issues.
19 It really would be testimony on something that currently
20 doesn't have a home, doesn't have an issue that it would relate
21 to.

22 I'm sorry. I forgot to add Witness Dismukes',
23 portions of his testimony, not as much of it, but a substantial
24 portion of his as well goes to this subject of deferral.

25 COMMISSIONER BRADLEY: OPC.

1 MS. CHRISTENSEN: Commissioner, OPC has no position
2 on whether or not the testimony should be deleted or remain in
3 the docket pending any potential motion for reconsideration.

4 MS. KAUFMAN: Commissioner, those are -- well,
5 Mr. Vogt and Mr. Knauth are FIPUG witnesses, and at this point,
6 I didn't even bring their testimony with me, but we will review
7 their testimony to see if there's anything that needs to be
8 withdrawn.

9 COMMISSIONER BRADLEY: Staff?

10 MS. VINING: It's staff's opinion that it's not
11 necessary at this point in time to, to withdraw those portions
12 of the testimony. If FPL chooses, they can make that request
13 again at the hearing in front of the full Commission. But it
14 doesn't make any sense to us that it necessarily be withdrawn
15 at this point. It could be probative on perhaps some of the
16 other issues.

17 MR. BUTLER: That's fine with FPL. We will review it
18 and, as appropriate, make a motion to strike at or before the
19 hearing.

20 COMMISSIONER BRADLEY: Okay. Let the reflect -- let
21 the record reflect the conversation as, as we've had it. And
22 we will deal with that, if, if necessary, at the hearing.

23 17B?

24 MS. VINING: 17A actually.

25 COMMISSIONER BRADLEY: 17A.

1 MR. BEASLEY: I believe that's stipulated.

2 MS. VINING: Yes. On that one TECO and staff agree
3 I didn't know if FIPUG or OPC would change their positions.

4 MS. CHRISTENSEN: OPC at this time is going to
5 maintain the position of no position at this time.

6 MS. KAUFMAN: We're going to -- FIPUG will take no
7 position on that issue.

8 MS. VINING: So does OPC still want to at a certain
9 point come up with a position or do you not object to a
10 stipulation between TECO and staff on that one?

11 MS. CHRISTENSEN: If we could have some additional
12 time to discuss that with staff and TECO and we can let them
13 know whether or not we wish to maintain just a no position and
14 allow the parties to agree to some stipulation, or if we have
15 some pending further issue that would need to be addressed at
16 hearing, if we could do that.

17 MS. VINING: Okay.

18 MR. BEASLEY: I mean, this is the time and place, I
19 think. If there is any, any position adverse to the agreement
20 between staff and the company, this is the time for it.

21 MS. VINING: Well, I know in the past we have allowed
22 the parties to try and work out further stipulations after the,
23 after the prehearing conference. So if OPC is hopeful that
24 they will come around to that position, it makes sense to allow
25 them further time to either agree or disagree.

1 COMMISSIONER BRADLEY: Well, what would staff's
2 recommendation be, that we defer action or --

3 MS. VINING: Well, it's staff recommendation that,
4 that -- OPC has said that they anticipate making, having,
5 coming to a position in the very near future, so it's quite
6 possible that it will be stipulated before the prehearing order
7 is issued. So we would just allow --

8 MR. BEASLEY: If there, if there would be some
9 possibility to have that resolved at this prehearing either now
10 or later in the morning, that would certainly be helpful for
11 everybody to know who needs to be here and whether there's an
12 issue.

13 MS. VINING: Sure. Does OPC have any idea how long
14 it'll be before they can come to a position on that issue?

15 MS. CHRISTENSEN: If you can give us a few minutes,
16 we might be able to at least let you know whether or not we'll
17 be able to give you an answer today.

18 MR. BEASLEY: That sounds fine.

19 MS. VINING: I think we can move on then. And if we
20 come to an agreement, then we can address it a little bit
21 later.

22 COMMISSIONER BRADLEY: Okay. So we will, what, leave
23 17A pending?

24 MS. VINING: Yes. But as of now there's been no
25 change to TECO's position or staff's position on that one.

1 COMMISSIONER BRADLEY: Okay. Well, we'll just leave
2 it pending and come back to it before we adjourn.

3 MS. VINING: Correct.

4 COMMISSIONER BRADLEY: Okay. 17B.

5 MR. BEASLEY: Our position is correctly stated.
6 We're in agreement with staff.

7 COMMISSIONER BRADLEY: OPC, FIPUG.

8 MS. CHRISTENSEN: Commissioner, are we on 17B, just
9 for clarification?

10 COMMISSIONER BRADLEY: Yes.

11 MS. CHRISTENSEN: We have no position at this time.

12 MS. KAUFMAN: FIPUG takes no position on this issue.

13 MS. VINING: And staff's position remains the same.

14 MS. CHRISTENSEN: Commissioner, at your pleasure,
15 Office of Public Counsel is prepared to provide an answer on
16 17A.

17 COMMISSIONER BRADLEY: Okay. We'll go back to 17A.
18 You're recognized.

19 MS. CHRISTENSEN: At this time we would maintain the
20 position of no position at this time; however, we have no
21 disagreement with staff and TECO reaching a stipulated
22 agreement on that issue or stipulation on that issue.

23 MS. VINING: So we can show a proposed stipulation,
24 just without OPC entering into it.

25 MS. CHRISTENSEN: Correct.

1 MS. VINING: Okay.

2 MS. KAUFMAN: And without FIPUG as well.

3 MR. BEASLEY: Would that apply with respect to 17B as
4 well in light of your position on 17A?

5 MS. CHRISTENSEN: I would agree that that could be
6 reflected as well.

7 MR. BEASLEY: Thank you.

8 COMMISSIONER BRADLEY: Okay. Well, let's take them
9 one by one though, and we'll get to D next. Okay. We're on C;
10 right?

11 MS. VINING: Yes. I have one quick question on 17B.
12 OPC said that they could do something similar to what they did
13 on 17A. How about FIPUG; are you all right with staff and TECO
14 stipulating without you joining in?

15 MS. KAUFMAN: Yes. We would just take no position on
16 that issue.

17 MS. VINING: Okay. Okay. Now we can move on to 17C.

18 COMMISSIONER BRADLEY: Okay. Okay.

19 MR. BEASLEY: On 17C Tampa Electric will be
20 submitting an appropriate adjustment methodology on an
21 expedited basis in response to discovery we received from staff
22 on Friday. We will do that in time for that position to be
23 incorporated in the prehearing statement -- prehearing order.
24 I'm sorry.

25 COMMISSIONER BRADLEY: OPC, FIPUG.

1 MS. CHRISTENSEN: No change in Office of Public
2 Counsel's position.

3 MS. KAUFMAN: I don't think our position has changed.
4 I'm not exactly clear what Mr. Beasley meant by an adjustment
5 methodology. Is the company going to be flowing through those
6 dollars?

7 COMMISSIONER BRADLEY: Mr. Beasley.

8 MR. BEASLEY: That will be the methodology that we
9 propose, yes, sir. And the numbers will be as reflected in the
10 staff's position. Although I would point out that the order is
11 not final yet, but, but we will propose a methodology when
12 it -- to do that.

13 MS. KAUFMAN: We'll just maintain our position, I
14 guess, until we see the filing.

15 COMMISSIONER BRADLEY: What is your position?

16 MS. KAUFMAN: Our position is as reflected in the
17 draft.

18 COMMISSIONER BRADLEY: Okay. Staff?

19 MS. VINING: And staff's position won't change.

20 COMMISSIONER BRADLEY: Okay. 17D.

21 MS. KAUFMAN: Commissioners, this is an issue that
22 FIPUG has raised, and at the beginning of the conference I
23 distributed a rewording of that issue. It's 17D. You can just
24 ignore the first issue, 17H. Ms. Christensen already dealt
25 with that.

1 MR. BEASLEY: And Tampa Electric would respond to
2 that rewording of the issue to point out that FIPUG has
3 reflected -- has referred to the 2003 underrecovery. And the
4 underrecovery, we don't, first of all, we don't agree with the
5 preface, the first sentence in their reworded issue, that the
6 underrecovery was overstated. The underrecovery was what it
7 was. It was a projected underrecovery for the year. And then
8 there was an actual underrecovery that occurred. And those two
9 pretty much by definition are always going to be different
10 because the projection is looking off into the future and the
11 actual is what actually transpires.

12 We have a reworded position in response to the issue
13 as previously stated by FIPUG and as reflected in the draft
14 prehearing order, but we don't agree with the preface in the
15 first sentence of FIPUG's reworded statement of that issue.
16 It's a factual statement. It's not an issue. It's not the
17 statement of an issue, it's the statement of a fact which is
18 ambiguous at best and erroneous if it's referring to the actual
19 underrecovery.

20 MS. KAUFMAN: Commissioner, I didn't think that there
21 was any dispute that -

22 COMMISSIONER BRADLEY: Would you please identify
23 yourself.

24 MS. KAUFMAN: I'm sorry. Vicki Kaufman for FIPUG. I
25 did not think there was any dispute that \$39 million is going

1 to be returned because the projection of the underrecovery was
2 off by \$39 million. If Mr. Beasley wants to work with me on
3 the wording, I'm happy to do it.

4 The reason I reworded the issue was to try to make it
5 more clear as to what the issue is that is in contention. The
6 issue that appears in your draft is not how FIPUG had worded
7 that issue. That is staff's wording. All we're trying to do
8 is focus on what the real, real contention is between the
9 parties.

10 So we are -- we could go back to the issue as we had
11 it in our prehearing statement, we could use this issue or, as
12 I said, I'd be glad to work with Mr. Beasley on the proper
13 wording. I'm just trying to focus on what the issue is.

14 MR. BEASLEY: I don't really think there's a dispute
15 as to the facts. There was a projection, a projected
16 underrecovery, and the actual underrecovery was less than
17 originally projected. And so however you want to do it is fine
18 with us.

19 MS. VINING: Would perhaps a compromise be to allow
20 the issue as it's reworded but to remove the actual number from
21 it just to say, "Tampa Electric acknowledges that its 2003
22 underrecovery was overstated. Should Tampa Electric pay
23 ratepayers interest on that amount," or you could say "the
24 overstated amount when it is included in the true-up?"

25 MR. BEASLEY: It's not really the amount. It's the

1 reference to the 2003 underrecovery. We will acknowledge that
2 our 2003 actual underrecovery was, was not as large as we had
3 originally projected. And, in fact, if that suits FIPUG, we
4 will certainly agree to that. I mean, it's the nature of
5 projection, you're always going to be off, either over or
6 under.

7 MS. VINING: So would you prefer to just have the
8 question, "Should Tampa Electric pay ratepayers interest on
9 that amount when it is included in the true-up?"

10 MS. KAUFMAN: Commissioner, I think that --

11 COMMISSIONER BRADLEY: Please identify yourself.

12 MS. KAUFMAN: Vicki Kaufman for FIPUG. I think that
13 I wouldn't have any problem including the word "actual" in the
14 first sentence. But I think it's important to, to leave the
15 dollar amount in there because that -- again, it focuses the
16 issue on what we're talking about, which is does the company
17 have to pay the ratepayers interest on that money that they
18 had? And I think they've admitted that their projection was
19 not on the money, not to use a pun. I guess it would be their
20 projected underrecovery was overstated, not actual. If that
21 gives Tampa Electric more comfort, I have no problem with that.
22 We're not taking issue with the calculation, it's just the
23 interest.

24 COMMISSIONER BRADLEY: Well --

25 MS. VINING: At this point it sounds like there's

1 still some disagreement over the wording. And I was going to
2 say, and it sounds like they could work it out, so perhaps --

3 MR. BEASLEY: I think there's no real dispute. I
4 mean, there's nothing to be arguing about. We can work it out.

5 MS. VINING: They can work it out and let me know
6 what the rewording would be and I can reflect that in the
7 prehearing order.

8 COMMISSIONER BRADLEY: So we need to leave this issue
9 pending?

10 MS. VINING: Sure.

11 COMMISSIONER BRADLEY: Okay. Let the record reflect
12 that 17D is pending and will be addressed by the prehearing
13 hearing officer at a later date and time. Is that agreeable?

14 MS. KAUFMAN: Yes, sir.

15 COMMISSIONER BRADLEY: TECO?

16 MR. BEASLEY: Yes, sir.

17 COMMISSIONER BRADLEY: Thank you.

18 MS. KAUFMAN: Just to be clear, Commissioner Bradley,
19 we're glad to work on the wording. I don't think this issue is
20 going to be resolved. It may be because we are still talking
21 about it, but I think that it may not actually be resolved.
22 But we can probably resolve the wording of it at least.

23 COMMISSIONER BRADLEY: Okay. Well, if not, we will
24 tee it up at the hearing.

25 MS. VINING: Right. Just send it to me once you guys

1 gree on it, and then we can get positions for all the parties
2 n it.

3 Okay. I think we can move on to 17E now.

4 COMMISSIONER BRADLEY: 17E?

5 MS. VINING: Uh-huh. Has TECO's position changed on
6 hat one?

7 MR. BEASLEY: It has not.

8 MS. CHRISTENSEN: No change for Office of Public
9 ounsel

10 MS. KAUFMAN: No change for FIPUG.

11 MR. BEASLEY: Was that -- is that no position on that
12 ssue?

13 MS. KAUFMAN: No. That's no position at this time
14 or we can change it to staff's -- we are still looking at this
15 ssue and intending to discuss it with the witness at the
16 hearing.

17 MS. VINING: So what's your, what's your pleasure on
18 hat, Vicki? Do you want to say no position at this time or --

19 MS. KAUFMAN: Yes, ma'am. Just the way it is.

20 MS. VINING: Okay. And staff's position hasn't
21 hanged on that one either.

22 COMMISSIONER BRADLEY: Are we ready to move on?

23 MS. VINING: We can move on to 17F.

24 COMMISSIONER BRADLEY: 17F.

25 MR. BEASLEY: Tampa Electric's position is properly

1 stated.

2 MS. CHRISTENSEN: Office of Public Counsel has no
3 change in its position.

4 MS. KAUFMAN: FIPUG's position is correct.

5 MS. VINING: And staff's position is correctly
6 stated.

7 COMMISSIONER BRADLEY: Are you ready for 17, I mean,
8 for 18?

9 MS. VINING: We can move on to 18, the GPIF issues.

10 MR. BUTLER: No change for FPL.

11 MR. BEASLEY: No change for Tampa Electric.

12 MR. BADDERS: No change for Gulf.

13 MR. MCGEE: No change for Progress Energy.

14 MS. CHRISTENSEN: No change for Office of Public
15 Counsel.

16 MS. KAUFMAN: And FIPUG takes no position on this
17 issue.

18 MS. VINING: And staff's position remains the same.

19 COMMISSIONER BRADLEY: Okay. Issue 19.

20 MR. BUTLER: No change for FPL.

21 MR. BEASLEY: No change for Tampa Electric Company.

22 MR. BADDERS: No change for Gulf Power.

23 MR. MCGEE: None for Progress Energy.

24 MS. CHRISTENSEN: No change for Office of Public
25 Counsel.

1 MS. KAUFMAN: FIPUG would change its position to
2 'Agrees with the Office of Public Counsel."

3 MS. VINING: And staff's position remains the same.

4 COMMISSIONER BRADLEY: Okay. Moving on to Issue 22A,
5 a Gulf-specific issue, I believe.

6 MR. BADDERS: No change to Gulf Power.

7 MS. CHRISTENSEN: No change from the Office of Public
8 Counsel.

9 MS. KAUFMAN: FIPUG takes no position on this issue.

10 MS. VINING: And staff's position remains the same.

11 COMMISSIONER BRADLEY: Okay. Issue 22B.

12 MR. BADDERS: No change for Gulf Power.

13 MS. VINING: Let me go back to 22A for a second, if I
14 might. With OPC you're remaining with no position at this
15 time. Are you -- would you object to a stipulation between
16 Gulf and staff that you wouldn't be part of or do you plan on
17 taking an additional position?

18 MS. CHRISTENSEN: At this time the Office of Public
19 Counsel does not anticipate taking an additional position, so
20 there would be no objection for staff and Gulf to make a
21 stipulated agreement, if they so choose.

22 MS. VINING: Okay. I think then that on 22A we can
23 have a proposed stipulation between staff and Gulf.

24 MR. BADDERS: I believe we find ourselves in the same
25 position on 22B, Gulf has no changes.

1 MS. VINING: Right. Staff is not changing its
2 position on 22B either.

3 Will OPC -- will FIPUG reflect no position on that
4 one as well?

5 MS. KAUFMAN: Yes. We'd have no position.

6 MR. BADDERS: On 22C we also have no changes.

7 MS. KAUFMAN: And we would take no position, FIPUG.

8 MS. VINING: On 22B and C OPC is agreeing, so would
9 the proposed stipulation be between Gulf, OPC and staff on
10 B and C?

11 MS. CHRISTENSEN: That would be correct.

12 MS. VINING: Okay. Okay. I think then we've covered
13 22C. We could move on to 24.

14 COMMISSIONER BRADLEY: Issue 24.

15 MR. BUTLER: FPL has no change.

16 MR. BEASLEY: Nor does Tampa Electric.

17 MR. BADDERS: No change to Gulf.

18 MR. MCGEE: No change for Progress.

19 MS. CHRISTENSEN: No change for Office of Public
20 Counsel.

21 MS. KAUFMAN: Commissioner Bradley, on the next few
22 issues, 24, 25, 26 and 27, I have distributed FIPUG's revised
23 position on those issues.

24 COMMISSIONER BRADLEY: Okay. Let's take them one by
25 one again so that we can try to do it in a very orderly

1 :ashion.

2 Okay. 24, where are we on 24?

3 MS. VINING: I believe FIPUG was going to tell us
4 what their reworded position would be.

5 COMMISSIONER BRADLEY: Okay. 24, give, give us 24
6 first.

7 MS. KAUFMAN: Yes. Our new position is as to TECO,
8 TECO should not be permitted to recover the amount in
9 contention in Issue 33A. TECO has the burden to affirmatively
10 demonstrate that it has complied with Order Number
11 SC-03-1461-FOF-EI, which sets out the methodology for
12 calculating incremental security costs. The staff audit
13 concludes that TECO has not followed the Commission
14 methodology. TECO should not be permitted to recover amounts
15 in excess of the audit amount."

16 MS. VINING: I'll reflect that change in the
17 rehearing order. And on 24, staff's position will not change.

18 COMMISSIONER BRADLEY: Does TECO agree?

19 MS. VINING: What was that?

20 MR. BEASLEY: Sir, we don't, we don't accept FIPUG's
21 position and ours is properly stated.

22 MS. VINING: Okay. So can we move on to 25?

23 MR. BUTLER: 25, FPL has no change to what's stated.

24 MR. BEASLEY: Tampa Electric has no change.

25 MR. BADDERS: No changes for Gulf.

1 MR. MCGEE: No changes for Progress.

2 MS. CHRISTENSEN: No changes for the Office of Public
3 Counsel.

4 MS. KAUFMAN: And FIPUG's position for this is the
5 same as what I just read for Issue 24.

6 MS. VINING: And staff's position will remain the
7 same, and I will also reflect FIPUG's revised position in the
8 prehearing order.

9 COMMISSIONER BRADLEY: 26.

10 MR. BUTLER: No change for FPL.

11 MR. BEASLEY: No change for Tampa Electric Company.

12 MR. BADDERS: No change for Gulf.

13 MR. MCGEE: No change for Progress Energy.

14 MS. CHRISTENSEN: Office of Public Counsel has no
15 change.

16 MS. KAUFMAN: And FIPUG's position for 26 is the same
17 as I just read for 24 and 25.

18 MS. VINING: Again, I'll reflect that in the
19 prehearing order. And for 26 there's no change to staff's
20 position.

21 COMMISSIONER BRADLEY: 27, Issue 27.

22 MR. BUTLER: No -- I'm sorry. No change for FPL on
23 27.

24 MR. BEASLEY: No change for Tampa Electric.

25 MR. BADDERS: No change for Gulf.

1 MR. MCGEE: No change for Progress.

2 MS. CHRISTENSEN: No change for the Office of Public
3 Counsel.

4 MS. KAUFMAN: And on 27, again, our position is the
5 same as I previously read.

6 MS. VINING: I'll reflect that in the prehearing
7 order. And on staff's position there is no change.

8 COMMISSIONER BRADLEY: Issue 28.

9 MR. BUTLER: No change for FPL.

10 MR. BEASLEY: None for Tampa Electric.

11 MR. BADDERS: No change for Gulf.

12 MR. MCGEE: No change for Progress.

13 MS. CHRISTENSEN: No change for the Office of Public
14 Counsel.

15 MS. KAUFMAN: FIPUG takes no position on this issue.

16 MS. VINING: And staff's position, there's no change.
17 This is another one where it looks like the staff agrees with
18 each of the utility's positions. And I'm wondering if OPC
19 would have an objection to a stipulation between staff and each
20 of the utilities which OPC would not enter into, or do you plan
21 on taking a further position?

22 MS. CHRISTENSEN: I believe that we would just
23 maintain a no position. And if staff and the companies can
24 come to a stipulation, then that's fine.

25 MS. VINING: Okay. I'll reflect that in the

prehearing order.

2 MR. BUTLER: Commissioner Bradley.

3 COMMISSIONER BRADLEY: Yes.

4 MR. BUTLER: I'd like to ask staff a question, if I
5 may, on the comment just made about all of the utilities and
6 staff being in agreement and raising a question about the
7 stipulation. That sort of question applies to several of these
8 other issues for less than all of the utilities, and I'm
9 wondering, do you need to go through that process now with
10 respect to these others? Because obviously we'd like to
11 reflect a stipulation on -- for example, Issue 24, there is no
12 disagreement with respect to FPL even though there is a
13 disagreement with respect to one of the other utilities. And I
14 just want to be sure that gets covered at some point.

15 MS. VINING: Right. My intention today was just to
16 cover the ones where it's obvious that just about all the
17 utilities are agreeing. But it'll be an ongoing process to try
18 to get stipulations on more of the issues. And up until the
19 date that the prehearing order needs to be issued, which is the
20 4th, we're going to try to get stipulations on as many of the
21 issues as we possibly can. So it'll be an ongoing process.
22 It's not going to end today.

23 MR. BUTLER: Okay. Well, we certainly would
24 encourage whatever can be done to get as many of them
25 stipulated as possible even when it's not for all of the

1 utilities. Thank you

2 MS. VINING: Okay. I think we can move on to 29.

3 MR. BUTLER: No change for FPL.

4 MR. BEASLEY: No change for Tampa Electric Company.

5 MR. MCGEE: No change for Progress Energy.

6 MR. BADDERS: No change for Gulf.

7 MS. CHRISTENSEN: No change for the Office of Public
8 Counsel.

9 MS. KAUFMAN: No change for FIPUG.

10 MS. VINING: And no change for staff.

11 COMMISSIONER BRADLEY: Okay. Issue 30A.

12 MR. MCGEE: Progress Energy will agree to change its
13 position to "Agrees with staff's position." I would think if
14 FIPUG and OPC are agreeable to taking a no position, this issue
15 could be added to the stipulation list.

16 MS. CHRISTENSEN: If we could have a moment.

17 (Pause.)

18 MS. CHRISTENSEN: The Office of Public Counsel would
19 be willing to take no position at this time and allow the
20 parties to enter a stipulation, if they so choose.

21 MS. KAUFMAN: And FIPUG will take no position.

22 MS. VINING: Okay. Then I will reflect a proposed
23 stipulation between Progress and staff on that issue without
24 OPC or FIPUG joining in.

25 COMMISSIONER BRADLEY: Okay. Issue 31A.

1 MS. VINING: Yes.

2 MR. BUTLER: 31A, FPL has no change to its position.

3 I would note on OPC's statement of position that there's an "H"
4 missing in the word "Threat." It's near Halloween, but
5 nonetheless it should be "Threat," not "Treat."

6 MS. VINING: So noted.

7 COMMISSIONER BRADLEY: Do you want to eliminate
8 sic.) the word "Threat"?

9 MS. CHRISTENSEN: That's fine. Thank you.

10 MS. VINING: Staff does haven't any changes to its
11 position on this issue.

12 MS. CHRISTENSEN: And Office of Public Counsel would
13 have no changes, other than to note putting an "H" in the word
14 "Treat" to "Threat," I guess, would be appropriate.

15 MS. KAUFMAN: And FIPUG would change its position to
16 "Agree with the Office of Public Counsel."

17 MS. VINING: I'll note those changes in the
18 prehearing order.

19 Okay. We're on to the last issue.

20 COMMISSIONER BRADLEY: 33A.

21 MR. BEASLEY: Tampa Electric's position is correctly
22 stated.

23 MS. CHRISTENSEN: Office of Public Counsel has no
24 change to its position.

25 MS. KAUFMAN: And FIPUG has provided its revised

1 position, but I'll read it into the record.

2 "TECO has not followed the procedure set out in Order
3 number PSC-03-1461-FOF-EI and is apparently using a different
4 method to calculate its incremental security costs in the
5 methodology the Commission ordered. While FIPUG does not
6 object to a new audit and further analysis of this issue, TECO
7 should not be permitted to recover the amount in contention
8 because it has not supported its recovery request and this
9 amount is inconsistent with the staff audit amount."

10 MS. VINING: I'll reflect that revised position in
11 the prehearing order. And on this issue staff does not have
12 any changes to its position.

13 COMMISSIONER BRADLEY: Okay. Now we're on Section X,
14 exhibits.

15 MS. VINING: It doesn't appear that we have any
16 changes.

17 COMMISSIONER BRADLEY: Any changes?

18 MR. BUTLER: No changes.

19 MR. BEASLEY: No changes for Tampa Electric.

20 MR. BADDERS: No changes for Gulf.

21 MR. MCGEE: No changes for Progress Energy.

22 MR. HOLLIMON: No changes for Churbuck.

23 MS. CHRISTENSEN: No changes for the Office of Public
24 Counsel.

25 MS. KAUFMAN: And no changes for FIPUG.

1 MS. VINING: No changes for staff.

2 COMMISSIONER BRADLEY: Okay. Section XI, proposed
3 stipulations.

4 MS. VINING: We've reflected some during the course
5 of the prehearing conference and those will be noticed. **And as**
6 I said in response to Mr. Butler, the staff will engage in an
7 ongoing discussion with the parties to attempt to stipulate as
8 many of the issues as possible. And as, as we go through that
9 process, I'll reflect that in the prehearing order that I give
10 to you for your signature.

11 COMMISSIONER BRADLEY: Section XII, pending motions.

12 MR. MCGEE: Jim McGee for Progress Energy. The draft
13 prehearing order correctly notes that Progress Energy filed a
14 motion for leave to file supplemental testimony this morning.
15 That motion was served on the parties by e-mail on Friday, and
16 I have a number of extra copies here in case any of the parties
17 haven't gotten that copy yet. So I just wanted to make sure
18 that everyone who had an interest in it had access to it.
19 Thank you.

20 COMMISSIONER BRADLEY: Uh-huh.

21 MS. CHRISTENSEN: Commissioner, at this time the
22 Office of Public Counsel would object to allowing supplemental
23 testimony specifically related to projected and apparently some
24 actual fuel costs related to the hurricanes. At this time we
25 think that it's premature, particularly as to those costs which

1 are still being gathered. We believe that those costs can be
2 addressed sufficiently through next year's clause proceeding.
3 And in addition, we've had insufficient time and will have
4 insufficient time to scrutinize the numbers and to conduct
5 adequate discovery to ensure that those numbers are correct.

6 So for those reasons, the Office of Public Counsel
7 would object to allowing the supplemental testimony that's
8 proposed by Progress Energy at this time.

9 MS. KAUFMAN: Commissioner Bradley, Vicki Kaufman for
10 FIPUG. We agree with the Public Counsel. As Mr. McGee said,
11 we received this Friday afternoon, I believe. We're talking
12 about quite a significant sum. With all the additional hearing
13 preparation being just two weeks away, we don't have sufficient
14 time to do the analysis that the amount in question deserves
15 and we also think that you should deny this motion.

16 MR. MCGEE: Well, if I could add a comment. The, the
17 counsel for Public Counsel is certainly correct, it includes
18 some costs that have been incurred and some that will incur
19 throughout the remainder of the year. That's no different than
20 any other costs that are included in our estimated actual
21 true-up amount.

22 The Commission, as part of its standard procedure,
23 has had the companies update its projections that were made in
24 the prior year to allow actual estimated rejections during
25 the current year. And the Commission's also made a point to

1 remind the, each of the public utilities that they have an
2 obligation to make sure that if additional information comes to
3 light between the time that prefiled testimony is submitted and
4 the actual hearing, that, that it's incumbent upon the
5 utilities to make sure that information is brought to the
6 Commission's, to its attention and its consideration at the
7 hearing.

8 The, the -- in terms of the time for adequate
9 discovery, we've made the witness as, as absolutely open and
10 available to the parties as possible. He has a deposition
11 that's been scheduled on another matter for tomorrow morning,
12 and we have indicated that we are quite willing to, to allow
13 him to be questioned by all the parties on this new subject.
14 But even beyond that, these are projections. All of the
15 figures that we've offered for 2005 and for the remainder of
16 2004 are estimates and they are subject to true-up by the
17 Commission during next year's hearing. And no party is going
18 to be prejudiced by having an opportunity to examine these
19 costs, and they won't be approved in a final sense until we get
20 to next year. So I don't think anyone has shown a, a concern
21 that would justify the exclusion of this testimony. It's an
22 attempt to make sure that the Commission, in making its
23 decision, is as aware of as much information as we are. Thank
24 you.

25 MS. VINING: Staff's position on this issue is that,

1 that we pretty much agree with what Progress Energy just
2 stated. Any, any amount that they are asking for recovery for
3 is going to be -- is subject to a final true-up in 2005. And
4 at that point if it's not as much as they're asking for here,
5 then it'll be trued-up.

6 In addition to that, they've stated that they will
7 make Mr. Portuondo available to the parties to allow any
8 questioning that they might need of him, and also they've
9 offered expedited discovery on the issue. So we don't think at
10 this point in time that there is really any harm to anybody to
11 allowing his supplemental testimony in.

12 COMMISSIONER BRADLEY: Well, my ruling will be as
13 follows. I understand that any amounts that we set for 2005
14 will be subject to true-up at the end of 2005. I also
15 understand that Progress has agreed to make, as stated, their
16 witnesses available to effectuate discovery between now and the
17 November 8th hearing. It is my hope that the parties will make
18 use of this extraordinary discovery to attempt to reach a
19 comfortable, to reach a level, a comfort level with the new
20 information prior to the hearing. If that is unsuccessful, the
21 parties are free to renew their objections in front of the full
22 Commission at the hearing. Therefore, I am granting Progress's
23 motion. I agree with staff.

24 MS. VINING: I will so note it in the prehearing
25 order in the ruling section.

1 COMMISSIONER BRADLEY: Section XIII.

2 MS. VINING: I was going to say, excuse me, before

3 e --

4 COMMISSIONER BRADLEY: I'm sorry.

5 MS. VINING: Before we move on there are two other
6 pending motions that are both motions for temporary protective
7 order. Staff believes that those don't need to be ruled on
8 today. They can be handled in a written order for your
9 signature.

10 MR. BUTLER: Commissioner Bradley --

11 COMMISSIONER BRADLEY: I will do that.

12 MR. BUTLER: -- in a similar vein I just want to
13 bring to your attention that FPL will be filing a motion for
14 protective order very shortly concerning some of the discovery
15 that Mr. Churbuck has sought, and we've advised staff and
16 Mr. Churbuck's counsel of that. I simply want to make you
17 aware of that as well. But I don't think -- it's nothing
18 certainly that requires your action at this point.

19 MS. VINING: Once the motion comes in, a written
20 order can be prepared on it for your signature.

21 COMMISSIONER BRADLEY: Thank you. I think we're
22 ready for what, Section XIII now?

23 MS. VINING: Yes, pending confidentiality matters

24 COMMISSIONER BRADLEY: Pending confidentiality
25 matters.

1 MS. VINING: Right. There are several listed, and it
2 is staff's intent to have all of those ruled upon before the
3 hearing. In some cases we may be able to give the information
4 back to the utility, making the request moot. But as I said,
5 we can, we can address that in a written order.

6 MR. BUTLER: For completeness I would note that there
7 is one more notice of intent that FPL has filed that's not
8 listed here. It concerns staff's fourth set of interrogatories
9 and it was filed on October 21, 2004.

10 MS. VINING: So noted. I'll reflect that in the
11 rehearing order, if necessary.

12 MR. BUTLER: Thank you.

13 MR. MCGEE: And Progress Energy has filed a notice of
14 intent this morning.

15 MS. VINING: Okay. I'll so note that.

16 COMMISSIONER BRADLEY: Anyone else? Section XIV --
17 are we ready to move on?

18 MS. VINING: Yes, we can go on.

19 COMMISSIONER BRADLEY: Section XIV, objections to a
20 witness's qualifications as an expert.

21 MR. BUTLER: This is FPL's statement and we don't
22 have any changes to make to it.

23 MS. VINING: Okay. I think we can move on to the
24 ruling section.

25 On this one --

1 COMMISSIONER BRADLEY: Section XV, rulings?

2 MS. VINING: XIV. XIV, rulings.

3 COMMISSIONER BRADLEY: I'm sorry.

4 MR. KEATING: It's XV.

5 COMMISSIONER BRADLEY: Okay. I show Section XIV --

6 MS. VINING: Oh, XV. I'm sorry. I'm sorry. I'm
7 having, I having an issue with Roman numerals today. It's XV.
8 I'm sorry.

9 On this one we would suggest that you make a ruling
10 that opening statements, if any, shall not exceed ten minutes
11 per party.

12 COMMISSIONER BRADLEY: So be it.

13 MS. VINING: Okay. And this section will also note
14 your decision on Progress's motion for supplemental testimony.

15 COMMISSIONER BRADLEY: So be it.

16 MR. MCGEE: And Progress Energy, excuse me, would
17 like to reserve the right to make an opening statement.

18 MS. VINING: I assume it won't exceed ten minutes?

19 MS. KAUFMAN: I didn't know we need to put that on
20 the record, but FIPUG would also reserve that right to make an
21 opening statement.

22 COMMISSIONER BRADLEY: To make an opening statement?

23 MS. KAUFMAN: Yes, sir.

24 MR. HOLLIMON: And if it's necessary to make such a
25 motion, Churbuck will also reserve the right to make an opening

1 statement.

2 COMMISSIONER BRADLEY: I think what we've agreed to
3 is to limit opening statements to ten minutes?

4 MS. VINING: Right. They're just reserving the right
5 to make one. But I believe everybody has the right to make
6 one, we're just limiting it to ten minutes.

7 MR. MCGEE: That has not always been the case, but
8 thank you for saying that.

9 MS. VINING: Oh, okay.

10 MR. BADDERS: If I may make one request, in the event
11 that a party's witnesses are all stipulated, I would request
12 that their counsel also be excused from the hearing.

13 MS. VINING: I, I can make a note of that in the
14 ruling section, if that's acceptable to Commissioner Bradley.

15 MR. BADDERS: Thank you.

16 COMMISSIONER BRADLEY: It is. Any other --

17 MR. BEASLEY: Tampa Electric's witness Joann T. Wehle
18 has had her two issues stipulated to here today, and I would
19 ask that she be excused from the hearing.

20 MR. MCGEE: I would like to make the same request for
21 Progress Energy.

22 COMMISSIONER BRADLEY: Staff what is your position on
23 --

24 MS. VINING: Can you tell me which issues those were
25 again?

1 MR. BEASLEY: 17A and B.

2 MS. VINING: Okay. Then he's correct, staff doesn't
3 object to Joann Wehle being excused from the hearing.

4 Oh, that's true. The problem at this point in time
5 in excusing a witness is we haven't asked the other
6 Commissioners' offices if they're going to have any
7 cross-examination of the witness. So my recommendation would
8 be to hold off on excusing her at this point in time, and I can
9 contact each of the Commissioners' offices to find out if
10 they'll have any questions of Ms. Wehle.

11 COMMISSIONER BRADLEY: Might that also apply to
12 counsel?

13 MS. VINING: Well, yes. I mean, if -- that's
14 predicated on all of his witnesses being excused.

15 COMMISSIONER BRADLEY: Okay.

16 MS. VINING: So if that happens, then, then he'll
17 be -- you know, we can have him excused as well.

18 COMMISSIONER BRADLEY: Okay.

19 MR. MCGEE: If I may, I would just like to note that
20 Progress Energy Witnesses Murphy and Jacob appear to have their
21 issues to have been stipulated, so if they could be eligible
22 for being excused.

23 MR. BADDERS: Would you also like a list of Gulf's
24 issues that may be stipulated or excused?

25 MS. VINING: Sure.

MR. BADDERS: Our Witness Ball, Noack, Bell, I
2 believe each of their, each of those witnesses, I believe their
3 issues will more than likely be stipulated.

4 MS. VINING: Uh-huh. Okay.

5 MR. BUTLER: And finally for FPL, I believe that
6 Gerry Yupp, all of his issues have or will be stipulated. And
7 if that's the case, I'd ask that you raise the same request
8 with respect to him.

9 I'd like to, if I may, raise two other very minor
10 points. The first, the most minor, back on Section X, exhibit
11 list, the exhibits for Mr. Yupp that are just identified as
12 GY-1 and 2, there ought to be a J in there. It's GJY-1 and
13 2 on Page 45 of the draft.

14 MS. VINING: You said GJY?

15 MR. BUTLER: Yes. G as in George, J as in John.

16 MS. VINING: I'll note the correction.

17 MR. BUTLER: Thank you. The other, somewhat more
18 substantively, is on Issue 12 staff has proposed a deferral of
19 this question of adding on additional schedules to be reported
20 by the utilities to a workshop, and at the moment it does not
21 reflect here that FIPUG or OPC are agreeing to that. But I
22 would like to ask, if possible, whether they would be willing
23 to have it deferred to a workshop. We just don't want to be in
24 a position where there's an issue hanging out there that may
25 have to be addressed at hearing, but we're not sure that it

1 does or doesn't. It seems like that there was an agreement to
2 have a workshop. I'm just trying to confirm whether that's the
3 case or not.

4 MS. CHRISTENSEN: The Office of Public Counsel has no
5 objection to holding a workshop, and I believe it would
6 probably be an agreement with FIPUG, if we would note that that
7 should be held sooner rather than later so that maybe this
8 issue can be resolved for the next clause proceeding next year.

9 MS. KAUFMAN: Commissioner, I would agree with that.
10 It seems the impetus is to have a workshop. We don't object.
11 But as Ms. Christensen said, we would certainly like to have
12 that workshop and get this issue resolved so for the next
13 filing we will have this information without having to go
14 through discovery and what we've had to do this, this cycle.

15 MS. VINING: It's staff's recommendation then based
16 on what everybody has said is that we defer the Issue 12.

17 COMMISSIONER BRADLEY: Do we all agree?

18 MR. BADDERS: No objection from Gulf.

19 MS. KAUFMAN: Could I just clarify, when you, when
20 you say defer, assuming we have a workshop and we agree, then
21 the utilities will incorporate whatever that agreement is into
22 the next filing cycle as opposed to the Commission having to
23 wait until next year and take this up again.

24 MS. VINING: Well, we could just show it as removed
25 then, if that's your preference, with the understanding that

1 whatever is worked out at the workshop will be incorporated in
2 next year's filing.

3 MS. KAUFMAN: Well, I haven't really thought about
4 the best way to address it. I just want to be sure that the
5 agreement hopefully that we'll reach will be implemented for
6 the next filing cycle. I think the issue should remain in to
7 sort of preserve its status, however, until we do reach
8 agreement.

9 MS. CHRISTENSEN: If, if I could make a
10 recommendation. I would recommend that we allow it to just be
11 deferred. And then if the parties can all agree to a
12 resolution at the workshop, then we could remove that issue.
13 Or, I mean, then we wouldn't have to readdress the issue next
14 year and we could just bring that proposal to the
15 Commissioners.

16 MS. VINING: Okay. Is, is what OPC proposed amenable
17 to everyone?

18 MR. BUTLER: That's fine with FPL.

19 MR. BEASLEY: Yes.

20 MR. BADDERS: Yes.

21 MR. MCGEE: Fine.

22 MS. KAUFMAN: That's fine.

23 MS. VINING: Okay. Then it appears as though
24 everybody is in agreement that the issue should be deferred at
25 this point rather than removed.

1 COMMISSIONER BRADLEY: Do we all agree?

2 MR. BUTLER: We do.

3 MR. BADDERS: And given that, I believe you can add
4 ar Witness Davis to the, to the list of witnesses that may be
5 stipulated.

6 MS. VINING: I'll add it to the list.

7 COMMISSIONER BRADLEY: You tailed off at the end.
8 itness Davis is going to do what?

9 MR. BADDERS: I'm sorry. Witness Davis would have
10 testified on that issue. And with the resolution of that
11 issue, I believe she may be stipulated.

12 COMMISSIONER BRADLEY: Okay. Okay. Is it staff's
13 recommendation then that we defer the issue?

14 MS. VINING: Yes. I will reflect Issue 12 as
15 deferred.

16 COMMISSIONER BRADLEY: Okay. I agree.

17 MR. MCGEE: I have one more clarification, if I may
18 this is Jim McGee with Progress Energy.

19 Public Counsel asked to include Issue 13I, and
20 pending the outcome of a deposition that's scheduled for
21 tomorrow, if this issue can't be resolved, Progress Energy will
22 be filing a motion for leave to file supplemental testimony.
23 Currently there is no witness that has testimony pending that
24 deals with the issue that Public Counsel has asked to have
25 added.

1 MS. VINING: I thought you still had Donna Davis
2 listed as a witness.

3 MR. MCGEE: Ms. Davis's testimony deals exclusively
4 with what had been Issue 13, 13H. I -- well, we had two issues
5 ending. The first of them was the one that was dealt with,
6 as exclusively dealt with in Ms. Davis's testimony. That
7 issue has been withdrawn.

8 MS. VINING: Okay. So the domestic coal issue, I
9 believe.

10 MR. MCGEE: That's correct.

11 MS. VINING: So on foreign coal she does not speak to
12 that issue then.

13 MR. MCGEE: That's correct. She does not.

14 MS. VINING: Okay.

15 MR. MCGEE: Thank you.

16 COMMISSIONER BRADLEY: Any objections?

17 MS. VINING: No.

18 COMMISSIONER BRADLEY: Okay.

19 MS. VINING: I believe, I believe we've gone through
20 all the sections of the prehearing order, and I think the
21 parties have brought up any additional issues they had.

22 COMMISSIONER BRADLEY: Well, I need to officially ask
23 this question: Is there anything else to come before the
24 prehearing officer at this time?

25 MR. BUTLER: Nothing for FPL.

1 MR. BEASLEY: Nothing for Tampa Electric.

2 MR. BADDERS: Nothing for Gulf Power Company.

3 MR. HORTON: Nothing from FPUC.

4 MR. MCGEE: Nothing from Progress Energy.

5 MR. HOLLIMON: None from Churbuck.

6 MS. CHRISTENSEN: Nothing from the Office of Public

7 Counsel.

8 MS. KAUFMAN: Nothing from FIPUG.

9 COMMISSIONER BRADLEY: TECO?

10 MS. VINING: Jim, did you have anything further?

11 MR. BEASLEY: No, I do not.

12 MS. VINING: And nothing for staff as well.

13 COMMISSIONER BRADLEY: Okay. Thank you. Thank you
14 for your participation. This prehearing conference is
15 adjourned.

16 (Prehearing conference adjourned at 11:40 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

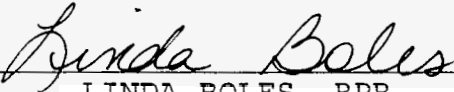
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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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 29th DAY OF OCTOBER, 2004.


LINDA BOLES, RPR
FPSC Official Commission Reporter
(850) 413-6734