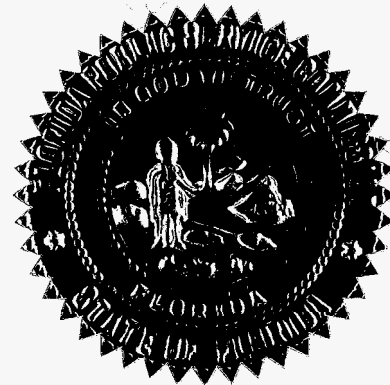


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041291-EI

In the Matter of:

PETITION FOR AUTHORITY TO RECOVER
PRUDENTLY INCURRED STORM RESTORATION
COSTS RELATED TO 2004 STORM SEASON
THAT EXCEED STORM RESERVE BALANCE,
BY FLORIDA POWER & LIGHT COMPANY.



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER CHARLES M. DAVIDSON
PREHEARING OFFICER

DATE: Friday, April 8, 2005

TIME: Commenced at 9:35 a.m.
Concluded at 10:25 a.m.

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

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

1 . PPEARANCES:

2 KENNETH HOFFMAN, ESQUIRE, Rutledge, Ecenia Law Firm,
3 ost Office Box 551, Tallahassee, Florida 32302, appearing on
4 ehalf of Florida Power & Light Company.

5 R. WADE LITCHFIELD, ESQUIRE, and NATALIE F. SMITH,
6 SQUIRE, Florida Power & Light Company, 700 Universe Boulevard,
7 uno Beach, Florida 33408-0420, appearing on behalf of Florida
8 ower & Light Company.

9 ROBERT SCHEFFEL WRIGHT, ESQUIRE, Landers & Parsons,
10 .A., Post Office Box 271, Tallahassee, Florida 32302,
11 ppearing on behalf of Florida Retail Federation.

12 TIMOTHY J. PERRY, ESQUIRE, McWhirter, Reeves,
13 avidson and Arnold, P.A., 117 South Gadsden Street,
14 allahassee, Florida 32301, appearing on behalf of Florida
15 Industrial Power Users Group.

16 JOSEPH A. MCGLOTHLIN, ESQUIRE, and PATRICIA
17 HRISTENSEN, ESQUIRE, Office of Public Counsel, c/o The Florida
18 egislature, 111 West Madison Street, Room 812, Tallahassee,
19 lorida 32399-1400, appearing on behalf of the Office of Public
20 ounsel.

21 MICHAEL B. TWOMEY, ESQUIRE, Post Office Box 5256,
22 allahassee, Florida 32314-5256, appearing on behalf of Thomas
23 P. & Genevieve E. Twomey and AARP.

24

25

1 APPEARANCES CONTINUED:

2 COCHRAN KEATING, ESQUIRE, and KATHERINE FLEMING,
3 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf
5 of the Florida Public 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: Let's call the prehearing to
3 order. Staff, please read the notice.

4 MR. KEATING: Pursuant to notice issued March 16th,
5 2005, this time and place have been set for a prehearing
6 conference in Docket Number 041291-EI, petition for authority
7 to recover prudently incurred storm restoration costs related
8 to 2004 storm season that exceed storm reserve balance, by
9 Florida Power & Light Company.

10 COMMISSIONER DAVIDSON: Let's take appearances
11 starting with Mr. Hoffman.

12 MR. HOFFMAN: Good morning, Commissioner. Kenneth
13 Hoffman, Rutledge, Ecenia, Purnell & Hoffman, on behalf of
14 Florida Power & Light Company.

15 MR. LITCHFIELD: Wade Litchfield and Natalie Smith,
16 Florida Power & Light Company.

17 MR. WRIGHT: Robert Scheffel Wright, Landers &
18 Parsons, 310 West College Avenue, appearing on behalf of the
19 Florida Retail Federation.

20 MR. PERRY: Timothy J. Perry of the McWhirter, Reeves
21 Law Firm on behalf of the Florida Industrial Power Users Group.

22 MR. MCGLOTHLIN: Joe McGlothlin, Office of Public
23 Counsel.

24 MS. CHRISTENSEN: Patty Christensen, Office of Public
25 Counsel.

1 MR. TWOMEY: Mike Twomey on behalf of Thomas and
2 Genevieve Twomey and AARP.

3 MR. KEATING: Cochran Keating on behalf of the
4 Commission.

5 MS. FLEMING: Katherine Fleming on behalf of the
6 Commission.

7 COMMISSIONER DAVIDSON: Staff, any preliminary
8 matters?

9 MR. KEATING: There are none that we're aware of.
10 There are two pending motions in the docket. We could discuss
11 those when we get to the motion section of the prehearing
12 order, if you wish.

13 COMMISSIONER DAVIDSON: Are those the motions for
14 consolidation and the motions to allow for supplemental
15 testimony?

16 MR. KEATING: That's correct.

17 COMMISSIONER DAVIDSON: I'm going to go ahead and
18 just rule on those now so that we can move along.

19 The motion for consolidation is being punted to the
20 full Commission. That'll be taken up at Agenda.

21 And I'm going to go ahead and allow the filing of
22 supplemental testimony, and if at some point a motion for
23 consolidation impacts -- the ruling on that impacts the
24 testimony, the parties can revisit that issue. But the
25 Commission can, can give that testimony whatever weight it's

1 worth.

2 MR. LITCHFIELD: Commissioner Davidson, may I ask for
3 a clarification then? Would your motion then include allowing
4 FPL's testimony, responding testimony into the record as well?

5 COMMISSIONER DAVIDSON: I believe that would.

6 MR. KEATING: I believe that would be appropriate,
7 yes.

8 MR. LITCHFIELD: Thank you.

9 COMMISSIONER DAVIDSON: Any other questions on those
10 motions, parties?

11 Staff -- and I want to make clear that sort of
12 allowing of the testimony is for procedural efficiency. I'm
13 not, you know, saying that, that it's necessarily relevant to
14 the issues. I mean, we've got that major consolidation issue
15 to decide, there are issues outstanding, but I think it's
16 better to go ahead and get the testimony in and it's there and
17 we don't have to worry about arguments later on down the road
18 that we don't have time or we need to somehow postpone the
19 hearing to prepare the testimony.

20 So let's proceed through the draft prehearing order.
21 I've got before me in addition to the prehearing order a
22 document titled "Staff Position" on four issues, 25, 26, 27 and
23 28. I have a document titled "Changes and Corrections to the
24 Florida Retail Federation's Positions" on Issues 12, 15, 23 and
25 30. And then I have a document titled "FIPUG's Edits to the

1 Prehearing Order," issues, it appears to be 4, 12, 21. 4, 12
2 and 21. Are there any other handouts that are floating about
3 that I don't have?

4 MR. KEATING: There aren't any that staff is aware
5 of. And that's not to say that other parties may not have
6 changes to positions to make as we go through the prehearing
7 order, the draft prehearing order, but those are the changes
8 that staff is aware of.

9 COMMISSIONER DAVIDSON: Any changes, edits,
10 corrections to Sections I through III, conduct of proceedings,
11 case background, attendance at hearing, parties and witnesses?
12 Section IV, pending motions. Any other pending
13 motions?

14 MR. TWOMEY: Commissioner Davidson, just briefly.
15 Administratively, on the appearance front page I'd ask that the
16 "American Association of Retired Persons" language be stricken.
17 I think AARP is just AARP now, just an acronym. Thank you.

18 COMMISSIONER DAVIDSON: Okay. Section V, are there
19 any proposed stipulations?

20 MR. LITCHFIELD: Commissioner Davidson, we don't have
21 any proposed stipulations at this time. However, we do
22 consider several issues as potentially ripe for stipulation,
23 and we would, at your pleasure, open that for discussion now or
24 plan to get with the parties over the next few days and come
25 back with potentially some definitive language.

1 COMMISSIONER DAVIDSON: Staff, what do you advise?
2 Have you been privy to sort of any preliminary discussions on
3 possible stipulations?

4 MR. KEATING: We haven't. I know that there are
5 probably, as Mr. Litchfield indicated, there are probably some
6 issues or hopefully some issues that we can stipulate. There
7 may just be a handful. But at this time what we could do is --
8 I don't know if there's any need for discussion here today. It
9 may be better to have the parties continue to discuss that
10 informally. And when we reach the point that there's a
11 stipulation on an issue, we can, we can bring that, I can bring
12 that to your attention. And to the extent that's done before
13 the prehearing order is issued, we can reflect that in the
14 prehearing order.

15 COMMISSIONER DAVIDSON: Perfect. That'll work.

16 Sections VI and VII, as I understand it, there are a
17 couple of pending requests for confidentiality, and those will
18 be addressed by a separate order.

19 MS. CHRISTENSEN: Commissioner, I would also like to
20 address -- I think there's a requirement under
21 Section VI(B)(2)(a) that we notify the prehearing officer of
22 our intention to use confidential material at the hearing. We
23 may be seeking to use some confidential material. We're still
24 in the process of preparing our cross-examination. But in an
25 effort to comply with that section, we would just like to make

1 that announcement at the prehearing conference and seek further
2 direction if we need to file anything in writing or if this
3 would be sufficient for that purpose.

4 COMMISSIONER DAVIDSON: No. I think, I think this is
5 sufficient. I think the purpose of that is to just sort of put
6 the parties and the Commission on notice that confidential
7 materials will be coming in, but there are pretty
8 well-established procedures for that. Thanks.

9 MR. LITCHFIELD: And, Commissioner, when will be
10 advised of the precise nature of the confidential information
11 that OPC may intend to use?

12 MS. CHRISTENSEN: I believe if we have any
13 cross-examination questions that pertain to confidential
14 information, we'll advise them as soon as we know what they
15 are; at least hopefully a day before the hearing or at the
16 hearing. But we'll have it in the red folders and it'll be
17 part of the confidential materials, if there is any, that we
18 use that FP&L has provided us through discovery.

19 COMMISSIONER DAVIDSON: Well, I think on this, this
20 dialogue raises a good issue. The prehearing order provides
21 that if you know it, provide that notice a week before the
22 hearing. And that, that typically is difficult to do as
23 parties sometime are preparing for the hearing the day before,
24 and we've got all the customer hearings and service hearings on
25 the road. I would -- there's a provision that, and this would

1 be a provision that the Chairman uses during the hearing, if,
2 if confidential information is brought up that was not
3 previously released, and that is such information wouldn't be
4 used unless approved for good cause. So you would need to
5 establish good cause.

6 I would just counsel the parties to, if you're going
7 to be using confidential information, I mean, try and make that
8 determination earlier rather than later and give the other
9 parties advanced notice so that whatever precautions need to be
10 made can be made.

11 Section VIII, opening statements. The draft
12 prehearing order provides that opening statements shall not
13 exceed ten minutes per party. I'm inclined to reduce that --
14 or 15 minutes per party. I'm inclined to reduce that to ten
15 minutes per party, unless all the parties object.

16 I'll tell you, with sort of all the parties here
17 lined up, 15 minutes per side will take a substantial amount of
18 time. And I've found opening statements are useful in terms of
19 outlining the case and they sort of set the parties' analytical
20 framework and the Commissioners take notes, and then they
21 always sort of try and pigeonhole testimony to those points.

22 But if there's -- if you all can come up with a
23 suggestion in terms of perhaps consolidating -- I mean, in
24 effect, and I don't want to deny any party the right to make an
25 opening, but we have in a sense two sides. We have the company

1 hat's seeking to recover, and then we have lots of folks on
2 the other side opposing and on different grounds. Not every
3 single issue is opposed by everybody on every ground. So I
4 would -- if the opponents could perhaps come up with a way to
5 allocate an amount of time for opening, that would be good.
6 Because if you look at it, you've got movants who would have,
7 if we reduce this, ten minutes, and then we would have
8 opponents who would have perhaps 50 minutes. And the opponents
9 may say that's fair. Maybe it is, maybe it isn't. I just, I
10 want to come up with an equitable way to try and get the issues
11 addressed.

12 And while we're on this, I mean, are there any
13 thoughts on this side of the room?

14 MR. TWOMEY: I'll say that mine will be extremely
15 short. And I'm not opposed to the company having, having some
16 additional time to compensate for the number of parties on the
17 other side.

18 MR. MCGLOTHLIN: The point is a valid one, and I
19 would think if you would give us maybe 25 minutes per side, we
20 could work among ourselves to, to fit within that. That's just
21 a suggestion from one party.

22 COMMISSIONER DAVIDSON: I like that idea. Company,
23 do you, do you like the idea of a same amount per side?

24 MR. LITCHFIELD: We are comfortable with that. We'd
25 actually even contemplated waiving opening statements, assuming

1 other parties were comfortable, given that the issues, I think,
2 are pretty much framed, I think, in the Commission's mind, and
3 we could move straight into witnesses. But, otherwise, you
4 know, splitting or giving each side an equal amount of time is
5 also acceptable to us.

6 MR. MCGLOTHLIN: OPC is not willing to waive opening
7 argument, we would like that opportunity, but we would work
8 within whatever you think is a reasonable framework for that
9 purpose.

10 COMMISSIONER DAVIDSON: AARP, FIPUG and Florida
11 Retail Federation, how do you feel about sort of splitting a
12 time?

13 MR. TWOMEY: That's perfectly fine.

14 MR. PERRY: Yeah. I don't think we're opposed to
15 that. I mean, in any event, I think we'd try and prevent any
16 duplication of argument.

17 MR. WRIGHT: Our argument, our opening statement will
18 be brief, as it was in the Progress case. And I think
19 Mr. McGlothlin's suggestion of 25 minutes to each side would
20 work real well.

21 COMMISSIONER DAVIDSON: Staff, any thoughts? Does
22 that work for you?

23 MR. KEATING: That works for staff. We typically
24 don't make an opening statement. We're listening, as the
25 Commissioners are. So whatever the parties are in agreement on

1 hat, staff has no problem with that.

2 COMMISSIONER DAVIDSON: We've got -- let's go ahead
3 and -- opening statements, if any, shall not exceed 25 minutes
4 per side. I was inclined to make that 20 minutes per side, but
5 we've already knocked the 15 minutes per party down to ten.
6 and --

7 MR. LITCHFIELD: We'd support 20.

8 COMMISSIONER DAVIDSON: Parties, do y'all support 20
9 per side? Will that be enough? I mean --

10 MR. TWOMEY: 25, Commissioner, I think would be fair.

11 COMMISSIONER DAVIDSON: Let's go to 25 to keep
12 everyone happy. And if your all's opening is shorter, great;
13 and if your all's opening is shorter, great.

14 Keep in mind, I mean, to the extent -- we have heard
15 sort of all the positions. I wouldn't want to start now, but I
16 think I could probably articulate the essence of each party's
17 position as articulated by them. So we've -- keep in mind that
18 we are at all of these hearings and we hear all the
19 presentations. It's good sort of at the beginning to be able
20 to take those notes again in our, in our notebook. But --

21 MR. LITCHFIELD: I doubt seriously we will take 25.

22 COMMISSIONER DAVIDSON: All right. Perfect. That
23 works. That will keep it, that will keep it certainly under an
24 hour.

25 Are there, Sections IX and X, any changes at this

1 point to the witness list or the order of the witnesses?

2 MR. MCGLOTHLIN: One very slight change. With
3 respect to Michael J. Majoros's testimony, it should be clear
4 that he would be sponsoring his direct, the additional direct
5 that was in response to the amendment to the company's
6 petition, and then more recently the additional supplemental
7 relating to the depreciation subject.

8 COMMISSIONER DAVIDSON: All right. As to the order
9 of the witnesses and the issue numbers, parties, if you can
10 just work with staff on that.

11 I would like to remind that direct, rebuttal,
12 supplemental, all of that will be taken up at, taken up at one
13 time so that we can hear a witness and that witness can be
14 excused and leave, if necessary, and we can proceed on.

15 MR. LITCHFIELD: Commissioner Davidson?

16 COMMISSIONER DAVIDSON: Yes.

17 MR. LITCHFIELD: We, we would note the same with
18 respect to Mr. Davis's supplemental direct testimony that was
19 filed this week in the docket that was accepted earlier this
20 morning through your order.

21 COMMISSIONER DAVIDSON: Okay. Okay.

22 MR. LITCHFIELD: And we would also offer that
23 potentially Linda Whalin could be stipulated, if the other
24 parties were amenable.

25 COMMISSIONER DAVIDSON: Have the parties had a chance

1 o think about that issue, stipulating Linda Whalin?

2 MR. MCGLOTHLIN: We have not at this point, but we'd
3 be glad to do so in the near term.

4 COMMISSIONER DAVIDSON: Okay. And just report back
5 to FP&L and staff as soon as possible.

6 MR. KEATING: And before we leave the witnesses,
7 staff would ask -- we may need to discuss this further after
8 the prehearing, from what I understand, but we would ask that
9 the parties would at least give some thought to whether staff's
10 witness Piedra can be excused or not, if her testimony can be
11 stipulated.

12 COMMISSIONER DAVIDSON: So the same issue there;
13 parties, if you can just work that out with staff.

14 I'll tell you, I'm inclined to just rule, just start
15 in with the questions on the witnesses when they're up on the
16 stand, but I don't want to sort of make that ruling if the
17 parties have strong opposition. I just, as one Commissioner,
18 don't get a whole lot of benefit from the reading of, reading
19 of testimony that is in the record. I mean, the summaries can
20 be -- the summaries are in the record, they're part of the
21 record, they can be relied upon in your briefs. They don't
22 need to be reread at the time the witness takes the stand to
23 become part of the record.

24 But that said, if the parties feel strongly that we
25 want to have our witnesses summarize their testimony, that will

1 be fine. We'll just come up with a time limit. So let's just
2 move down the line. FP&L?

3 MR. LITCHFIELD: We would, we would very much like to
4 have our witnesses present a short summary.

5 MR. WRIGHT: I like summaries, not to exceed five
6 minutes. You can make it shorter, if you want.

7 MR. PERRY: Yeah. I think five minutes is okay with
8 us.

9 MR. McGLOTHLIN: We have the same position.

10 COMMISSIONER DAVIDSON: All right. We're going to
11 have summaries then of three minutes. And on this, please,
12 please have the witnesses keep the summaries to the testimony,
13 absent some last-minute filing of additional testimony to
14 address some new issue that, that may come up. I don't
15 anticipate that happening, but it may -- it has before. But
16 recently we have had experiences in hearings where people start
17 going beyond, witnesses start going beyond their testimony and
18 talking about sort of other issues that have come up in the
19 case. So please keep the witnesses' summaries to their precise
20 testimony, whether it be direct, supplemental, rebuttal.

21 Section XI, exhibits. Just work with staff to make
22 sure we have a good comprehensive composite exhibit list. And
23 on that, staff, if you all can make sure that we follow in this
24 case the same proceeding that we followed in the FP&L or in the
25 Progress Energy Florida, the compilation of a, of a composite

1 exhibit that encompasses everything that's moved, moved into
2 the record at once rather than going document by document.

3 MR. KEATING: I think we had contemplated doing that.
4 We will.

5 COMMISSIONER DAVIDSON: And let's also, if you can,
6 work with Ms. Brubaker to, to sort of follow the same
7 procedures we followed to try and keep the flow of paper down,
8 which was, which was very helpful.

9 All right. We have a number of, of changes to
10 issues. And on that we're going to go, I'm just going to go
11 through this issue by issue and the parties can state whether
12 they have additional changes, proposals, corrections, et
13 cetera.

14 Basic positions, just work with staff again to make
15 sure that the prehearing order reflects whatever your basic
16 position is. We don't need to go through those at this time.

17 Issue 1 is the issue that we recently added,
18 correct, Mr. Keating, or was this in -- no, this was -- was
19 this addressed in Progress's case as well? It was. That's
20 where it came up; right? Okay.

21 MR. KEATING: I've been told yes. I haven't followed
22 the Progress case as closely.

23 COMMISSIONER DAVIDSON: All right. All right. Issue
24 1.

25 MR. KEATING: If it, if it helps, Commissioner, staff

1 .sn't aware of any -- other than the changes that the parties
2 have given us in writing prior to the prehearing --

3 COMMISSIONER DAVIDSON: Okay.

4 MR. KEATING: -- isn't aware of any changes in
5 positions or any disputes involving the issues numbered
6 1 through 16.

7 COMMISSIONER DAVIDSON: All right. Well, let's --

8 MR. McGLOTHLIN: I have a slight one on Issue 11. I
9 didn't circulate anything in writing because it's so minor.
10 But on Issue 11, we just have the numerical entry there of
11 "\$1,700,000," which may not be enough to explain the position.

12 It should say, "OPC: No. The amount of the negative
13 deficiency calculated by FPL should be reduced by \$1,700,000."

14 COMMISSIONER DAVIDSON: Okay. Just work to -- just
15 make sure staff gets that in writing. All right.

16 So let's go through -- I'm going to eliminate some of
17 these handouts.

18 Staff positions, this is just a statement of staff's
19 positions now on, for Issues 25 through 28.

20 MR. KEATING: Correct.

21 COMMISSIONER DAVIDSON: All right. That will be
22 incorporated in the prehearing order.

23 MR. KEATING: Right.

24 COMMISSIONER DAVIDSON: FIPUG, your handout is just,
25 that just reflects changes to your positions, but doesn't

1 reflect any changes to the issues.

2 MR. PERRY: Right. It's just the positions.

3 COMMISSIONER DAVIDSON: Perfect. Incorporate it into
4 the record.

5 All right. Staff, the first issue that is in
6 controversy.

7 MR. KEATING: To staff's, staff's understanding, the
8 first issue that's really in controversy here is Issue 17,
9 which asks, "Were the costs that FPL has booked to the storm
10 reserve reasonable and prudently incurred?"

11 COMMISSIONER DAVIDSON: And let's -- parties, if we
12 can go down the line. Do you have any, any changes, edits,
13 concerns with Issues 1 through 16? Florida Retail Federation?
14 FIPUG?

15 MR. PERRY: No.

16 COMMISSIONER DAVIDSON: OPC? AARP?

17 MR. TWOMEY: No, sir.

18 COMMISSIONER DAVIDSON: All right. 17, if you could
19 summarize the, what the concern is, staff.

20 MR. KEATING: The parties can, can probably provide a
21 little more detail on what their positions are on this issue,
22 but as staff understands the concern that by addressing this
23 issue, the Commission may be asked to prejudge the prudence of
24 costs, some of which are estimated at this point in time.

25 There's also a concern that the Commission may

1 determine some of the costs booked to the storm reserve as part
2 of this docket were not appropriately charged to the storm
3 reserve and may later show up in the Florida Power & Light rate
4 case. And at this point if there was a determination of
5 prudence, that that would prejudice an issue that might be more
6 appropriately dealt with in the rate case.

7 COMMISSIONER DAVIDSON: Well, maybe I'm missing
8 something, but I would -- well, let me, let me ask the parties
9 to go through and state their positions on that issue because
10 I'm sure I'm missing something.

11 MR. HOFFMAN: Commissioner, we think this is perhaps
12 one of the most fundamental issues in the case. Before we go
13 into our, our argument on this, because we do have quite a bit
14 to say, I'm hoping that perhaps we can short-circuit this.

15 I want to bring to your attention that the prudent,
16 reasonable cost issue was approved by you as an issue in the
17 Progress Energy storm docket in your prehearing order.

18 COMMISSIONER DAVIDSON: Well, and that's, I mean,
19 that's what I was focused on. I would hope that -- I'm
20 comfortable with including an issue that mirrors that issue.
21 And, and I know that was where my question on Issue 1 came up
22 because the, what is the legal effect, if any, of the study
23 came up as well, too. So are you familiar with the issue as
24 stated in the Progress docket?

25 MR. KEATING: I'm not familiar with it as the precise

1 tatement of it. But I think we can be okay with this issue.
2 nd I think, I think the other parties, to the extent there's
3 ny disagreement on how the Commission should handle it, that
4 an be stated in the party's position on the issue.

5 COMMISSIONER DAVIDSON: Well, let me just ask the
6 arties this question, and don't get into sort of your, the
7 rgument on the particular issue.

8 Is this Issue 17 the same issue in concept as the
9 ssue number -- do you know the issue number in the Progress
10 docket?

11 MR. WILLIS: Not offhand.

12 MR. LITCHFIELD: Issue 14, Commissioner.

13 COMMISSIONER DAVIDSON: That would be helpful to have
14 hat. I mean, on this, I mean, staff, just a caution, we want
15 o proceed consistently in terms of the issues. We don't -- it
16 oesn't make sense to have sort of different statements of the
17 ssues in two different dockets.

18 MR. KEATING: Okay.

19 COMMISSIONER DAVIDSON: So, FP&L, is it the same
20 issue in your opinion?

21 MR. HOFFMAN: Conceptually it's the same issue.

22 COMMISSIONER DAVIDSON: Florida Retail Federation?

23 MR. WRIGHT: As far as I know it is. I'm going to
24 defer to Public Counsel on this.

25 COMMISSIONER DAVIDSON: FIPUG?

1 MR. PERRY: I'm going to defer to OPC also.

2 COMMISSIONER DAVIDSON: OPC?

3 MR. MCGLOTHLIN: As I recall, when Progress Energy
4 proposed the rewording of an earlier form of the issue, its
5 explanation in support was along these lines. We don't want to
6 get to the true-up phase and be hit with the argument that
7 categories of costs have somehow not been covered in the
8 earlier phase and are, therefore, vulnerable to attack during
9 the true-up. And I think, I think this is accurate, Progress
10 also said at the time they were not trying to preclude parties
11 from challenging the reasonableness or the prudence of
12 individual expenditures. Now that was how it evolved in the
13 Progress case. And if you were to have an issue that mirrored
14 that approach, I don't think we would object because I
15 understand the need for consistency between the two cases.

16 COMMISSIONER DAVIDSON: And that's fine. That's
17 enough for me. I don't want to get into a lengthy discussion
18 here on this.

19 AARP?

20 MR. TWOMEY: Adopt what Public Counsel said.

21 COMMISSIONER DAVIDSON: All right. On this, I mean,
22 I really do, staff, I was assuming that sort of the issues
23 coming before me are going to, except for the factual
24 differences, mirror the issues in Progress. So to the extent
25 we can do that, let's get that done. And on this issue, if

1 this is conceptually the same issue, we're going to adopt the
2 wording that we used in Progress. Does that make sense?

3 MR. KEATING: Yes.

4 COMMISSIONER DAVIDSON: All right. The next issue
5 that we have controversy on.

6 MR. KEATING: The next issue, the next controversial
7 issue that's on my list is the very next issue on Page 34 of
8 the draft prehearing order, Issue 18.

9 Perhaps before I say anything about it I ought to ask
10 the parties if this was also an issue that was, that was
11 addressed in the Progress case.

12 MR. MCGLOTHLIN: It is not.

13 MR. LITCHFIELD: It is not, Commissioner Davidson.
14 But on the other hand, we're not a party to that docket, we
15 weren't privy to the conversations that took place in
16 developing those issues, and we do see some subtle differences
17 between our situation and Progress's situation. And we think
18 the issue as stated is reasonable. We think that as a matter
19 of policy, if not fact or law, that this Commission ought to be
20 asking the company and itself and the other parties whether the
21 objective of safe and rapid restoration of electric service is
22 an important state of Florida public policy objective, is that
23 what the company met in performing its storm restoration
24 efforts, and is the regulatory framework that this Commission
25 is going to adopt going to help or hurt that particular

1 objective? So we've got testimony in the record on this point,
2 and we think it's, it's an important issue as stated, as
3 framed

4 COMMISSIONER DAVIDSON: Well, and I will -- this is
5 hopefully one there's not a lot of controversy on. I mean, I
6 think that's almost an issue that can be stipulated. The
7 objective -- I think everyone probably would agree that the,
8 anybody's objective of safe and rapid restoration is, as an
9 objective, appropriate. The issue is, the issue relates to
10 cost recovery and what's reasonable and not.

11 But -- and my concern on the issues went more to
12 staff and not to the parties because the parties, this is a
13 separate proceeding, you're free to sort of argue the merits.
14 But from staff's standpoint in terms of phrasing, phrasing some
15 of the more generic issues such as whether costs are reasonable
16 or prudent or what's the legal effect of the study, we, we need
17 to have similarly worded issues just for consistency purposes.
18 But that's not meant to preclude the parties from trying to
19 raise additional issues. But to the extent we've got some of
20 those generic legal inquiries, we need some more wording.

21 MR. MCGLOTHLIN: Commissioner Davidson --

22 COMMISSIONER DAVIDSON: So let's go through on this.
23 Florida Retail Federation, Issue 18.

24 MR. WRIGHT: We don't think it's appropriate for
25 inclusion as an issue. We think --

1 COMMISSIONER DAVIDSON: Why?

2 MR. WRIGHT: Because we think it's required, safe and
3 rapid restoration of service is required by the obligation to
4 serve pursuant to Section 366.03. I just don't see it as being
5 an issue. And along with what FIPUG said, it's not really
6 relevant to cost recovery.

7 MR. PERRY: That's our point and our position is that
8 it's just not relevant to the cost recovery.

9 COMMISSIONER DAVIDSON: OPC?

10 MR. MCGLOTHLIN: As worded, the question is not
11 mutual. In addition, we believe that there is at least the
12 danger that either the company or the Commission will see some
13 sort of linkage between this issue in the storm case and the
14 company's request for a bonus in the rate case. We just don't
15 think its needed. And if it is needed, it ought to be
16 reworded.

17 COMMISSIONER DAVIDSON: And we'll come back to that
18 in a second. AARP.

19 MR. TWOMEY: Adopt Public Counsel's statement.

20 COMMISSIONER DAVIDSON: Mr. McGlothlin, what
21 suggestion would you offer? If the issue was to stay in, how
22 would you propose wording it? And I'll tell you, just sitting
23 here just as one Commissioner, as I read it, it strikes me as,
24 it strikes me as objective, but I don't want to preclude your
25 argument. But when I read that, I'm not -- is the objective of

1 safe -- is the objective of safe and rapid restoration
2 appropriate? Well, I mean, my answer to that, if I had a
3 position in here, would be, well, yes. The objective is it's
4 statutorily mandated. That's what we want companies to do. I
5 mean, that's, yes, the objective is, but that doesn't preclude
6 sort of all these other issues how -- was how they implemented
7 that reasonable and prudent; were the costs incurred reasonable
8 and prudent; are they, you know, double counting; are there
9 things in there that shouldn't be? None of that, to me, is
10 addressed by this issue. This asks about whether the objective
11 is. So that's how I read it. But, again, I want to understand
12 what your concern is about the actual sentence structure and
13 word choice.

14 MR. MCGLOTHLIN: Well, if the question is what is the
15 objective, then FPL has put the answer in the framing of the
16 questions. Neutrally worded it would be, "Following tropical
17 storms and hurricanes, what should be the objective?" But --
18 and that is the neutral phrasing. And as someone else has
19 already pointed out, I don't think there's any disagreement
20 that safe, rapid restoration is the appropriate objective.
21 But, you know, what does that have to do with, with anything
22 that's at issue in the case? It's, it's, I think Scheff
23 mentioned that it's probably a statutory requirement, but are
24 we at issue as to what the statutes require FPL to do in terms
25 of trying to restore electricity following a storm?

1 COMMISSIONER DAVIDSON: FP&L?

2 MR. LITCHFIELD: Well, Commissioner, I think that's
3 the position that, that Public Counsel and others are free to
4 take under this issue. I read the issue, and, I mean, I'm
5 amenable to making it more neutral, although I read it and I
6 think it's neutral.

7 COMMISSIONER DAVIDSON: All right. I will, will take
8 this under advisement, and it'll either remain as is, be
9 removed or be made more neutral.

10 MR. LITCHFIELD: I mean --

11 MR. TWOMEY: Commissioner Davidson --

12 MR. LITCHFIELD: -- just following along with
13 Mr. McGlothlin's suggested language, to me that is, I think
14 he's got it reflected here in, in his position. "Following
15 tropical storms and hurricanes, what should be the objective of
16 FPL?" I'm not sure whether that's more neutral or not, but
17 it's certainly more ambiguous and open-ended.

18 MR. MCGLOTHLIN: Well, it doesn't put the answer in
19 the framing of the question. That's the difference.

20 MR. TWOMEY: That's what I was going to say,
21 Commissioner Davidson, is that when you have the issue stated,
22 is FP&L's objective of safe, whatever, the question itself
23 assumes that's their, that is, in fact, their objective and
24 their policy. I'm not disputing --

25 MR. LITCHFIELD: I don't hear anybody arguing --

1 COMMISSIONER DAVIDSON: Hold on a second.

2 MR. TWOMEY: I'm not disputing that it isn't. I'm
3 just saying that if you're going to retain it, I would agree
4 with Mr. McGlothlin that it be phrased more, in a more neutral
5 fashion.

6 MR. LITCHFIELD: That's all. I apologize for cutting
7 counsel off. I just don't hear anybody arguing that that's --
8 it's almost capable of being stipulated, I think. Nobody is
9 arguing that it shouldn't be the, it isn't an appropriate
10 objective, but they have trouble with the wording of the issue.
11 That's what, I guess, baffles me a little bit.

12 MR. WRIGHT: Commissioner Davidson.

13 COMMISSIONER DAVIDSON: Sure.

14 MR. WRIGHT: Just our point is it's not an
15 appropriate issue.

16 COMMISSIONER DAVIDSON: I understand.

17 MR. WRIGHT: You know, and what you said when you
18 were commenting a few minutes ago, you know, did they fulfill
19 that? I'm not even sure that's an issue in this case. We all
20 believe, I think, they did at least a reasonably good job of
21 restoring service.

22 COMMISSIONER DAVIDSON: Well, I don't think the
23 company would go as far as to say it's not an issue. I mean, I
24 understand what you're saying. We're hearing from everyone
25 that this, that what they did was not an issue in terms of --

1 it's more of a cost recovery issue.

2 MR. WRIGHT: It's the factual issues that are the
3 real issues in the case. Thanks.

4 COMMISSIONER DAVIDSON: So, all right. I've, I've
5 heard enough on that issue. What's the next issue?

6 MR. KEATING: The next disputed issue on staff's list
7 is, is Issue 20. And it's staff understanding that FPL, as
8 stated in its position on that issue, believes that the issue
9 shouldn't be included in this docket. The intervenors in the
10 docket believe that it should be included.

11 MR. LITCHFIELD: Commissioner, in the interest of
12 compromise, FPL is withdrawing its objection to including this
13 issue.

14 COMMISSIONER DAVIDSON: Well, I'll tell you, as I
15 read this, just sort of taking on the -- in the same vein, if
16 Issue 18 suggests sort of the answer and could be reworded more
17 neutrally, as I was looking at 20, almost the same argument
18 applies. "Should the responsibility for the costs be
19 apportioned between FP&L and retail ratepayers?" That almost
20 presupposes the answer in the question. A more neutral wording
21 might say, how should -- how, if any, should the responsibility
22 for those costs be apportioned? And then that leads to the
23 party saying, well, no, probably no apportionment between
24 ratepayers and FP&L, between ratepayers and FP&L. So that's --
25 but you were withdrawing your objection, so we're fine. Issue

1 20 is good to go.

2 MR. KEATING: The next issue on staff's list is Issue
3 24. Again, this is one where FPL, I believe, objects to the
4 issue being included as an issue in this docket on the basis
5 that there's no allegation in the testimony that this is an
6 issue to be resolved in this docket.

7 MR. McGLOTHLIN: I believe I may be able to
8 contribute a compromise here. I believe OPC raised this issue,
9 and in that we are going to articulate an issue responsive to
10 Number 23 that we believe now serves as a better vehicle for
11 our concern, we are willing to withdraw Issue 24, if we have
12 that opportunity.

13 COMMISSIONER DAVIDSON: Are you fine, AARP?

14 MR. TWOMEY: Yes, sir.

15 MR. PERRY: We're fine with that.

16 MR. WRIGHT: Yes, sir.

17 COMMISSIONER DAVIDSON: Company, I'm assuming you're
18 fine?

19 MR. LITCHFIELD: We're fine.

20 COMMISSIONER DAVIDSON: 24, withdrawn.

21 MR. McGLOTHLIN: If this is the appropriate time to
22 do so, with respect to Issue 23, OPC would like to adopt the
23 wording that's now shown as FRF's position.

24 MR. LITCHFIELD: And the company would ask to amend
25 its position in response under 23.

1 COMMISSIONER DAVIDSON: Fine on both counts. Just
2 work with staff to get those modifications in.

3 MR. PERRY: We would also like to make an amendment,
4 but we'll also work with staff.

5 COMMISSIONER DAVIDSON: Certainly. And Florida
6 retail, same goes for you, and, AARP, same goes for you.

7 Next issue, staff.

8 MR. KEATING: The next issue on my list is Issue 30.
9 Again, this is an issue that I think has been opposed on the
10 basis that there's no testimony that's been offered to support
11 a resolution of the issue.

12 MR. LITCHFIELD: Commissioner, FPL is withdrawing
13 this as a proposed issue, and I think that would remove it from
14 the list and satisfy the other parties' concerns.

15 COMMISSIONER DAVIDSON: Perfect. Issue 30 withdrawn.

16 MR. KEATING: Those are the only issues that staff is
17 aware of that there was any dispute over. That's not to say
18 that the parties don't have other changes or other suggestions,
19 but it might be appropriate to, to have them speak up at this
20 time if there are any other changes or suggestions.

21 COMMISSIONER DAVIDSON: All right. Section XIV,
22 posthearing procedures. Any proposed changes?

23 Any other matters?

24 MR. HOFFMAN: Commissioner, just for purposes of the
25 staff's compilation of a composite exhibit list, I wanted to

1 put you and the parties on notice that we will be preparing
2 copies of, an original and copies of all of the notices of the
3 customer service hearings, together with the affidavits of
4 publication in each of the newspapers, and we'll have that at
5 the beginning of the hearing.

6 COMMISSIONER DAVIDSON: Just as a reminder, discovery
7 is to be completed today, staff?

8 MR. KEATING: Yeah. The discovery deadline is today.
9 I know there are some depositions scheduled for next week by
10 agreement of the parties, but this was the official cutoff
11 point.

12 COMMISSIONER DAVIDSON: And hopefully if any
13 last-minute issues come up, the parties can just reach, reach
14 agreement on that. And the hearing, we have three days:
15 April 20th, 21st and 22nd?

16 MR. KEATING: That's correct.

17 COMMISSIONER DAVIDSON: What days are those?

18 MR. KEATING: A Wednesday through a Friday.

19 COMMISSIONER DAVIDSON: And to the extent the -- I
20 know time is tight for all the parties, but this was an
21 effective procedure in the sort of very long rate rebalancing
22 case that Mr. Twomey participated in on the telephone side, but
23 the procedure worked well. I'm not, not going to just sort of
24 impose it from the bench, but to the extent that you all can
25 also perhaps coordinate your cross of some of the witnesses so

1 that -- I mean, just get together, if you can, and say, you
2 know what, this is my focus area for this witness. Okay.

3 Well, I was going to focus on that too, but you go ahead and
4 I'm going to focus on this area. If you can just coordinate
5 that so that we don't have necessarily the same ground covered,
6 you know, three times by three attorneys with the same witness.
7 It really does get old. You lose attention when you have to
8 hear the same points over and over and over. So it's just a --
9 you've got the right to do your own cross, but to the extent
10 you can perhaps coordinate on some key issues, you know each
11 other's focus areas, that would be, I think, both helpful and
12 very much appreciated by the, by the Commission.

13 Any other issues to be addressed?

14 MR. KEATING: None that staff is aware of.

15 COMMISSIONER DAVIDSON: FPL?

16 MR. LITCHFIELD: No.

17 COMMISSIONER DAVIDSON: Florida Retail?

18 MR. WRIGHT: No.

19 COMMISSIONER DAVIDSON: FIPUG?

20 MR. PERRY: No.

21 COMMISSIONER DAVIDSON: OPC?

22 MR. McGLOTHLIN: No, sir.

23 COMMISSIONER DAVIDSON: AARP?

24 MR. TWOMEY: No, sir.

25 COMMISSIONER DAVIDSON: **Perfect.** We're adjourned.

1 'hank you.

2 (Prehearing conference adjourned at 10:25 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 11th day of APRIL, 2005.


LINDA BOLES, RPR
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