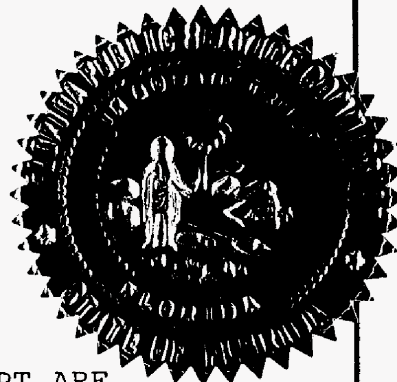


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050078-EI

In the Matter of

PETITION FOR RATE INCREASE BY  
PROGRESS ENERGY FLORIDA, INC.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: CHAIRMAN BRAULIO L. BAEZ  
Prehearing Officer

DATE: Thursday, August 11, 2005

TIME: Commenced at 9:30 a.m.  
Concluded at 12:30 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
2075 Esplanade Way  
Tallahassee, Florida

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

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 07987 AUG 17 '05

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 GARY SASSO, ESQUIRE; JAMES MICHAEL WALLS, ESQUIRE;  
3 and JOHN BURNETT, ESQUIRE, Carlton, Fields Law Firm, Post  
4 Office Box 3239, Tampa, Florida 33601-3239, appearing on behalf  
5 of Progress Energy Florida, Inc.

6 R. ALEXANDER GLENN, ESQUIRE, and JAMES MCGEE,  
7 ESQUIRE, Progress Energy Service Company, LLC, Post Office Box  
8 14042, St. Petersburg, Florida 33733, appearing on behalf of  
9 Progress Energy Florida, Inc.

10 SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA, III,  
11 ESQUIRE, Landers & Parsons Law Firm, Post Office Box 271,  
12 Tallahassee, Florida 32302, appearing on behalf of Florida  
13 Retail Federation.

14 JAMES BUSHEE, ESQUIRE; DANIEL FRANK, ESQUIRE; AND  
15 ANDREW K. SOTO, ESQUIRE, Sutherland, Asbill & Brennan, LLP,  
16 1275 Pennsylvania Ave. N.W., Washington, DC 20004-2415,  
17 appearing on behalf of White Springs Agricultural Chemicals,  
18 Inc.

19 DAVID K. BROWN, ESQUIRE, and ALAN R. JENKINS,  
20 ESQUIRE, McKenna, Long & Aldridge, LLP, 303 Peachtree Street,  
21 NE., Suite 5300, Atlanta, Georgia 30308, appearing on behalf of  
22 the Commercial Group.

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1 APPEARANCES CONTINUED:

2 HAROLD MCLEAN, PUBLIC COUNSEL; JOSEPH MCGLOTHLIN,  
3 ESQUIRE; and PATRICIA CHRISTENSEN, ESQUIRE, Office of Public  
4 Counsel, c/o The Florida Legislature, 111 West Madison Street,  
5 Room 812, Tallahassee, Florida 32399-1400, appearing on behalf  
6 of the Citizens of the State of Florida.

7 JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter, Reeves,  
8 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350,  
9 appearing on behalf of Florida Industrial Power Users Group.

10 TIMOTHY J. PERRY, ESQUIRE, McWhirter Law Firm, 117  
11 S. Gadsden Street, Tallahassee, Florida 32301, appearing on  
12 behalf of Florida Industrial Power Users Group.

13 MIKE B. TWOMEY, ESQUIRE, Post Office Box 5256,  
14 Tallahassee, Florida 32314-5256, appearing on behalf of AARP,  
15 Buddy L. Hansen and Sugarmill Woods Civic Association.

16 CHARLIE CRIST, ATTORNEY GENERAL; CHRISTOPHER KISE,  
17 SOLICITOR GENERAL; and JACK SHREVE, SPECIAL COUNSEL, Office of  
18 the Attorney General, PL-01, The Capitol, Tallahassee, Florida  
19 32399, appearing on behalf of the State of Florida.

20 JENNIFER BRUBAKER, ESQUIRE; FELICIA BANKS, ESQUIRE;  
21 JENNIFER RODAN, ESQUIRE; and MARLENE STERN, ESQUIRE, FPSC  
22 General Counsel's Office, 2540 Shumard Oak Boulevard,  
23 Tallahassee, Florida 32399-0850, appearing on behalf of the  
24 Florida Public Service Commission Staff.

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## P R O C E E D I N G S

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CHAIRMAN BAEZ: Call this prehearing conference to order. Counsel, will you read the notice.

MS. BRUBAKER: Certainly. Pursuant to notice, this time has been scheduled for the purpose of conducting a prehearing conference for Docket 050078-EI. The purpose of the prehearing is set forth more fully in the notice.

CHAIRMAN BAEZ: Take appearances.

MR. WALLS: Mike Walls and John Burnett with Carlton, Fields on behalf of Progress Energy.

MR. GLENN: Alex Glenn on behalf of Progress Energy.

MR. WRIGHT: Robert Scheffel Wright and John T. Lavia, III, Landers & Parsons, 310 West College Avenue, Tallahassee, appearing on behalf of Florida Retail Federation.

MR. BUSHEE: James Bushee of the law firm of Sutherland, Asbill & Brennan appearing on behalf of White Springs.

MR. MCGLOTHLIN: Joe McGlothlin and Patricia Christensen for the Office of Public Counsel.

MR. BROWN: David Brown and Alan Jenkins, McKenna, Long & Aldridge, on behalf of the consumer group, Commercial Group.

MR. PERRY: Timothy J. Perry and John W. McWhirter, Jr., of the McWhirter, Reeves Law Firm on behalf of the Florida Industrial Power Users Group.



1 MR. TWOMEY: Good morning, Mr. Chairman. Mike Twomey  
2 on behalf of AARP, Buddy L. Hansen and Sugarmill Woods Civic  
3 Association, Inc.

4 CHAIRMAN BAEZ: Is there anyone else?

5 MS. BRUBAKER: Jennifer Brubaker on behalf of the  
6 Florida Public Service Commission. I also need to enter an  
7 appearance for Marlene Stern.

8 MS. RODAN: Jennifer Rodan on behalf of the Florida  
9 Public Service Commission.

10 CHAIRMAN BAEZ: Thank you. And --

11 MS. BANKS: And Felicia Banks on behalf of the  
12 Commission.

13 CHAIRMAN BAEZ: Oh, Ms. Banks, I didn't see you jump  
14 in there.

15 Gentlemen, is there -- does anybody need to enter,  
16 pinch-hit for anybody else so we can get all the appearances in  
17 or -- because I'm showing more names on the, on the prehearing  
18 order than on the draft order. And I don't want, I don't want  
19 more lawyers than we absolutely, positively need.

20 MR. GLENN: Jim McGee also on behalf of Progress  
21 Energy.

22 MR. WALLS: And Gary Sasso with Carlton, Fields on  
23 behalf of Progress Energy.

24 CHAIRMAN BAEZ: Mr. Bushee, you have some associates  
25 as well that you need to --

1 MR. BUSHEE: Yes. I'd also like to enter the  
2 appearances of Daniel Frank and Andrew Soto of Sutherland,  
3 Asbill & Brennan.

4 CHAIRMAN BAEZ: Very well. And Mr. McGlothlin will  
5 go ahead and enter an appearance for Public Counsel McLean as  
6 well?

7 MR. MCGLOTHLIN: Yes. Harold McLean, Public Counsel.

8 CHAIRMAN BAEZ: Very well. All right. Preliminary  
9 matters. Ms. Brubaker, I'm showing a petition to intervene.

10 MS. BRUBAKER: Yes, that's correct. A petition to  
11 intervene has been filed by the Office of the Attorney General,  
12 and it's our understanding that Progress does not intend to  
13 object to the AG's intervention in this docket.

14 CHAIRMAN BAEZ: Are there any objections at this  
15 point? Very well. We'll let the order reflect that the motion  
16 to intervene on behalf of the Attorney General is granted.

17 Mr. Shreve, you want to go ahead and enter an  
18 appearance?

19 MR. SHREVE: Thank you, Mr. Chairman. Jack Shreve on  
20 behalf of the Florida Attorney General. I'd like to also enter  
21 an appearance for Chris Kise and Attorney General Charlie  
22 Crist. Thank you.

23 CHAIRMAN BAEZ: Okay. All right. Moving along to  
24 the hearing framework. This may be -- I don't know how many of  
25 you were here yesterday, I think I see a few familiar faces

1 anyway, and hopefully good or bad news travels fast around  
2 here. But as you all know, this is a two-week hearing where we  
3 have eight days to be exact. We've got, by my last count,  
4 somewhere north of 170, 180 issues, so we're immediately  
5 presented with the dilemma of how to squeeze -- and, I might  
6 add, about 49 sets of testimonies. So we're immediately  
7 presented with, with the challenge of squeezing all of that  
8 complexity into, into only eight days.

9           So one of the things that -- we're going to obviously  
10 try and preserve due process for all the parties. That is, of  
11 course, paramount. But we are going to try and make the most  
12 efficient use of our hearing time as well.

13           So there's three things off the top that I want to  
14 address. The first part is opening statements. There are how  
15 many Intervenors? About seven, seven Intervenors at this  
16 point. We're going to have opening statements; while they are  
17 valuable certainly to the Commission to get a broad overview of  
18 everyone's intent as the case rolls along, we're going to try  
19 and gain some time there though. So what I'm going to do is  
20 set aside 20 minutes for Progress to give its opening remarks,  
21 and then there are seven Intervenors, as I said. We're going  
22 to set 35 minutes in, in its entirety for the Intervenors to  
23 give their opening remarks. And I would leave it to you all to  
24 handle the allocation details amongst yourselves.

25           I'll remind you, although I hope it's unnecessary,

1 keep your remarks, given the limited time, keep your remarks to  
2 the point and concise and brilliant as usual.

3           The next point is witness summaries. Again, the  
4 witness's summary of his testimony is very useful to the  
5 Commissioners, so with that in mind we want to give as much  
6 time as we can, but we also don't want unnecessary exposition  
7 in the summaries. We're going to limit summaries to three  
8 minutes per witness.

9           And then the kicker, there are seven Intervenors, and  
10 because we're pressed for time, at least at this point, we're  
11 not going to allow friendly cross at this hearing. It tends to  
12 be repetitive and it tends to take up a whole lot of time that  
13 could be better used.

14           So to the overall structure of the hearing, and some  
15 of you may have heard this and had this discussion yesterday at  
16 the Power & Light prehearing, so we're going to lay it out  
17 today for discussion as well. Hopefully those of you that were  
18 here yesterday can help those of you that weren't, along with a  
19 discussion and the guidance of it.

20           In my discussions with staff, we've done some rough  
21 calculations trying to take, take in all the testimony that's  
22 available, all the estimated cost and so forth from different  
23 parties, and we're going to start off with a half day with  
24 opening statements and preliminary matters; three days for  
25 Progress's direct case, which includes 17 sets of direct

1 testimony, I would remind the Intervenors to try and coordinate  
2 so that we can avoid some repetitive cross there as well; then  
3 three days for the Intervenors in staff's direct case, which  
4 includes 18 total sets of testimony. And that would leave us a  
5 day and a half roughly for Progress's rebuttal case, which is  
6 14 sets of testimony by our count. Once again, we'll try and  
7 keep the repetition of the cross to a minimum. And I lay that  
8 out for you all.

9           Now I'll harken back to yesterday's prehearing where,  
10 Mr. McGlothlin, I know that Mr. Beck had raised a good point,  
11 that certainly Public Counsel's case may be more heavily  
12 weighted towards, towards the rebuttal, cross on rebuttal. Is  
13 that the case here as you see it? Because then we can  
14 entertain some realignment of the days. And I propose the  
15 question to the rest of the Intervenors as well, but,  
16 Mr. McGlothlin, if you would --

17           MR. MCGLOTHLIN: I think as a general proposition  
18 that would be true in this case also. What was going through  
19 my mind as you laid out the proposed schedule is in many cases  
20 the company's direct and rebuttal is taken at the same time.  
21 And that's certainly a time savings and, from my standpoint,  
22 might be feasible in this case.

23           CHAIRMAN BAEZ: And, Mr. Glenn or Mr. Walls, perhaps  
24 this a good segue into a question that, that perhaps we need to  
25 address, and I don't know the answer ahead of time or I don't

1 know what you're anticipating, but is there any opportunity to  
2 take up any of your witnesses' cross and rebuttal at the same  
3 time? Do you have any inkling of that at this point?

4 MR. WALLS: No. Our preference in this matter is to  
5 have a separate rebuttal. We do have separate rebuttal  
6 witnesses, and I think it makes more sense to put our rebuttal  
7 case in its entirety as part of the rebuttal.

8 CHAIRMAN BAEZ: Very well. Mr. McGlothlin, going on  
9 that, what -- is there anything that you can take from that  
10 fact to, to modify or at least make any suggestions that you  
11 might see fit in terms of the bracketing of the days?

12 MR. MCGLOTHLIN: I'm not able to do that off the top  
13 of my head, Chairman Baez.

14 CHAIRMAN BAEZ: Okay. And comments from any of the  
15 other Intervenors at this point?

16 I won't take silence as acquiescence at this point.  
17 At least I hope we've got some consensus of acceptability to  
18 the general framework. I know that perhaps you all need some  
19 time to go over what your expected crosses look like and where  
20 they're focused and so forth and maybe get back to me on, on  
21 where the, where we can draw the line. And, again, I'm faced  
22 with how we can move the hearing along with the short time that  
23 we have involved and still get all, everybody's points made on  
24 their cases. Mr. Perry, you needed to -- okay. Thank you.

25 MR. WALLS: Mr. Chairman, if I could intervene here.

1 CHAIRMAN BAEZ: Yes.

2 MR. WALLS: I think it might also be helpful if the  
3 Intervenors and staff would consider if there were any  
4 witnesses they might stipulate to, that would probably free up  
5 some time.

6 CHAIRMAN BAEZ: You kind of stole my thunder, and  
7 that was going to be my final plea as I exited the room.  
8 Naturally, any, any efforts at stipulating witnesses not only  
9 is welcomed but also encouraged, as you well know. And I know  
10 that that's an ongoing thing. So we're not -- I don't know  
11 that we're going to resolve those kinds of questions now.  
12 There's a fair bit of time between now and the hearing, and I  
13 would hope to, you know, see some progress on that front from,  
14 on everybody's perspective, not just the Intervenors,  
15 Mr. Walls, but your client as well.

16 Would it be useful to take a short break or do you  
17 think you all might need some, some more time in terms of this  
18 particular question?

19 MR. MCGLOTHLIN: A short break even now or later,  
20 later in the morning.

21 CHAIRMAN BAEZ: Very well.

22 MR. WRIGHT: Mr. Chairman.

23 CHAIRMAN BAEZ: Yes.

24 MR. WRIGHT: Just a question. If I understand your  
25 goal, I think what you called yesterday rough but hard

1 estimate, we, we, that is the consumer representatives in the  
2 case, would -- Progress would have four and a half days to put  
3 on its direct and rebuttal case, and in the course of that four  
4 and a half days we would be able to conduct our cross of them.  
5 Would I, would I be, would I be on firm ground to believe that  
6 you don't care if it's two direct and two and a half rebuttal,  
7 one and a half direct, three rebuttal?

8 CHAIRMAN BAEZ: Well -- and the whole --

9 MR. WRIGHT: You know, we can't, we can't tell you  
10 today how much is going to be either, that's the problem.

11 CHAIRMAN BAEZ: And I understand, and I don't expect  
12 you to come up with that number today. Really those are for  
13 planning purposes. The way, you know as well as I do, the way  
14 the hearing process goes, you know, putting on, putting on a  
15 direct case essentially means putting your witnesses on and  
16 letting, letting the Intervenors or the opposing party have at  
17 them, if you will. So I don't think the length of time is  
18 something that's in the control of the sponsoring, of the  
19 sponsoring side, if you will, to, to see how much time it is.

20 So, yeah, I think, I think the implication that in  
21 essence the Intervenors collectively have four and a half days  
22 of access to, to the witnesses for purposes of cross is pretty  
23 accurate.

24 Now, and, and thereby, and you were part of the  
25 conversation yesterday, I think, I think you're right, this is



1 sort of firming up even as a concept, you know, having that  
2 total of four and a half days where the line between, you  
3 know -- if, if you're more heavily weighted towards the  
4 rebuttal witnesses and so on, I don't think that's something we  
5 need to --

6 MR. WRIGHT: Yeah. That's all I was asking. You  
7 know, if we're able to do our cross in the direct case in a  
8 short period of time, we'd still like to have, I think we'd  
9 like to still have at least the balance of the four and a half  
10 days available to cross on rebuttal to the extent necessary.  
11 As I said yesterday, none of us want to stay here any longer  
12 than we want to.

13 CHAIRMAN BAEZ: You're committed to staying as quick,  
14 at getting this over as quickly as possible. And, again, I  
15 appreciated it then and I appreciate your commitment now on the  
16 record. This is something that we all have to be mindful of.

17 MR. WRIGHT: Thanks. You answered my question. I  
18 appreciate it.

19 CHAIRMAN BAEZ: Yeah. Any other questions at this  
20 point?

21 MR. BUSHEE: I have one question, and that is that  
22 there will be a number of out-of-town witnesses, certainly  
23 White Springs has some, and whether it would be acceptable to  
24 try to designate dates certain for some of the witnesses, not  
25 necessarily today, but as we get a little bit closer to the

1 hearing?

2           CHAIRMAN BAEZ: Well, and therein lies the magic of  
3 trying to bracket the days so that you have a better, from a  
4 planning perspective, a better idea of when you're going to  
5 need your, your witnesses available. I realize that there are  
6 a lot of, certainly from all, from all perspectives there are a  
7 lot of witnesses that have businesses to run, may have  
8 businesses to run, you know, and it doesn't do anybody any good  
9 to have any kind of witness sitting, you know, sitting idle  
10 for, for two weeks. I mean, this is about as long a hearing as  
11 we've entertained in a while. So there is an appreciation for  
12 that.

13           In the context of that comes the reason to try and  
14 say, you know what, the first three days are part of the direct  
15 case. Perhaps there isn't, there isn't a need to have  
16 witnesses at the ready. To the extent that between -- and  
17 speaking specifically for the Intervenors, obviously there are  
18 seven different, seven different cats to herd, if you will. I  
19 think you all need to discuss -- I don't think -- I don't  
20 believe there is that much of a premium on the order of  
21 witnesses amongst you all if, if one of the controlling factors  
22 is availability, and I hope Mr. Glenn and Mr. Walls and their  
23 client are amenable to that. There may be some flexibility in  
24 terms of availability. I don't know what your constraints are,  
25 I don't know what Mr. McGlothlin's witnesses are up to or

1 Mr. Wright's or anyone else's. So I think that's one of those  
2 things that you have to sort of discuss amongst yourselves.  
3 For the time being, the order of witnesses -- hopefully we'll  
4 be able to get some fixed order of witnesses some time in the  
5 near future, but certainly at this point in time even I would  
6 view the order of witnesses in the draft prehearing order as a,  
7 as a fairly malleable one, subject to, to your, your internal  
8 conversations amongst yourselves. Now that's not something  
9 that I can probably -- you've got too many other parties  
10 involved certainly on your side. You guys are going to have to  
11 talk amongst yourselves and figure something out. But I would  
12 expect after all that has happened to have some, some fixed  
13 idea of, of what your order of witnesses are, which obviously  
14 takes into consideration the availability of your individual  
15 witnesses.

16 Any other questions?

17 All right. We'll, we'll table this, this part of the  
18 issue until you all can get some, some conversations going a  
19 little later in the day.

20 MR. McGLOTHLIN: I would just offer one more  
21 observation on that.

22 CHAIRMAN BAEZ: Mr. McGlothlin.

23 MR. McGLOTHLIN: Just thinking out loud for a second  
24 with respect to allocating one and a half days for rebuttal  
25 testimony, I think I remember counting 14 rebuttal witnesses,

1 and just the physical mechanics of getting 14 people up and  
2 down off the stand is time-consuming in and of itself. And so  
3 I would just worry out loud at the outset about the adequacy of  
4 one and a half days to do that plus allow any meaningful amount  
5 of cross-examination.

6 CHAIRMAN BAEZ: Well, and that's where -- this is --  
7 the more of these we all do, the more certainly I learn that  
8 this is part science and part art, and that's where the art  
9 part comes in.

10 As to that, as to that matter, let me say here, and  
11 after discussing with staff, certainly we have eight days. My  
12 preference is to gain a little bit of time on the front end so  
13 that we're not running out of time on the back end. And I  
14 think that may, that may preserve those last days -- you know,  
15 we may have more time -- we may be picking up time as the, as  
16 the hearing goes along. There's really no telling. And I'm  
17 fully aware that these, these lines that we're drawing between  
18 rebuttal and direct cases and so forth are sort of going to  
19 melt away potentially as the hearing goes on because we're in a  
20 vacuum. You know, we're discussing this in the abstract. Once  
21 you get into the hearing, things are going to -- we're going to  
22 have to shift on the fly a little bit.

23 MR. MCGLOTHLIN: Okay.

24 CHAIRMAN BAEZ: So I, I urge you to employ every,  
25 every availability to be direct, be concise, save time so that

1 we're picking up time on the back end. That way we get to  
2 address the physical problems of having 14 witnesses in a day  
3 and a half. I have every confidence that it won't be a day and  
4 a half only that we have on rebuttal, but it really is entirely  
5 up to, up to you all because you control the length of your  
6 cross on the front end. Does that --

7 MR. MCGLOTHLIN: Well, as long as it's understood  
8 that this is not a rigid allocation and --

9 CHAIRMAN BAEZ: Well, no, it's not. I mean, I think  
10 I started off by saying that. You all may have, you all may  
11 have different weighting and different focus. And if the focus  
12 is all on the rebuttal, then, you know, perhaps the allocation,  
13 quote, unquote, for direct is not, it's perhaps a little  
14 excessive and we're going to try and work on that.

15 MR. MCGLOTHLIN: Okay.

16 CHAIRMAN BAEZ: Mr. Shreve.

17 MR. SHREVE: Mr. Chairman, I think that answers my  
18 question. But if you recall yesterday, Florida Power & Light  
19 raised the question if their portion was shorter, they -- would  
20 then the other side be able to take that? And I think you  
21 mentioned that it really belonged to you at that point.

22 So I guess what we're saying though, if the Florida  
23 Power & Light or the Florida Progress in this case were to be  
24 shorter, it really is because the cross probably was shorter on  
25 the first half, on the first portion of this. Are we really

1 looking at it as though there's four and a half hours allocated  
2 for the Florida Progress portion with the cross-examination? I  
3 think that's where Joe was going. If we were only using one  
4 hour on the front end, it really wouldn't be Progress losing  
5 the two hours, it would be more the Intervenors losing the two  
6 hours.

7           CHAIRMAN BAEZ: And I think, and I think that goes  
8 to, that goes to Mr., Mr. Wright's question as, as well. We've  
9 got, we've got an allocation, I think it's a fairly accurate  
10 allocation that there's four and a half days in which, four and  
11 a half days allocated at this point where the Intervenors are  
12 going to be accessing witnesses, whether it be on the direct  
13 case or on the rebuttal case. For that reason, you all need to  
14 figure out what a good allocation is for our planning purposes  
15 and for the benefit of your witnesses and the rest as much as  
16 anything else.

17           Now, if -- and I think to maybe clear up a little  
18 more, if Mr. Glenn and Mr. Walls and their client are, are  
19 particularly efficient in the part of the hearing that they  
20 control, those three days, if you will, that are controlled by  
21 or affected by their cross, any savings that they provide at  
22 that time is mine, just like any savings that you provide, that  
23 time is mine. It, it -- and, believe me, I'm not going to keep  
24 it for myself. There's nothing I can do with it, you know. I,  
25 I fully intend on being here eight days. I think I can speak

1 for everyone in this room, I would rather not be. But that  
2 should go without saying, shouldn't it? But you, you see what  
3 we're, you see what I'm trying to do is to get everybody  
4 focused on, on being as efficient with the eight days that we  
5 have. If it has to go eight days, it has to go eight days.  
6 But I'm not going to -- I don't want to incent anyone in  
7 filling the space that another side has, has worked so hard to,  
8 to create. Is that -- are we clear on that?

9 MR. SHREVE: Yes, sir.

10 CHAIRMAN BAEZ: Okay. Any other questions at this  
11 point? Mr. Twomey you're leaning forward.

12 MR. TWOMEY: Yes, sir. I wanted to say that I think  
13 the reason some of the folks in the room are concerned about  
14 this is that we did -- while there haven't been a lot of these  
15 cases recently, 20 years, I guess, for Florida Power & Light  
16 and some 13 or more for this company, we did a huge number of  
17 them in the 1980s, I think greater than a dozen.

18 CHAIRMAN BAEZ: The good old days, Mr. Twomey.

19 MR. TWOMEY: Afraid so. But back in those days, and,  
20 again, I guess why there's some concern by Mr. Shreve and  
21 Mr. McGlothlin and others that were back in those days, we  
22 typically took, as I recall, ten days for the cases, and quite  
23 often under the leadership of Chairmans Cresse and Gunter  
24 worked until 9:00, 10:00, 11:00 at night. I'm not suggesting  
25 that we should have to do that here. I'm just saying that we

1 often -- and we took, we took Saturdays at some point. So  
2 I'm -- by way of explanation for those that weren't around at  
3 that time, and some of these folks were, these, these cases can  
4 take a remarkable amount of time and may in this case because,  
5 because we've been so long between cases. And I'm confident,  
6 I'm confident that you're going to allow everybody to get the  
7 nonrepetitive cross in that they need. I just wanted to  
8 comment on what we've had in the past and why I think some of  
9 these people are concerned.

10 CHAIRMAN BAEZ: That, that would be, that would be my  
11 intent. But, but I also would point out that you do correctly  
12 point out, a lot of these people were involved in those cases  
13 and hopefully they've become more limber and have better  
14 experience and have a better focus on how to run these cases at  
15 all. No rate case is perfect, and I doubt any of the ones in  
16 the '80s and '90s, with all due respect to all the fine people  
17 that were involved in them, everybody's got room for  
18 improvement.

19 MR. TWOMEY: Yes, sir, they do.

20 CHAIRMAN BAEZ: And that's one of the, that's one of  
21 the goals that we have here as well.

22 MR. TWOMEY: I understand.

23 CHAIRMAN BAEZ: And I'm sure you would agree with me.

24 In terms of, in terms of the extra time, you did hear  
25 me mention I would much rather go later earlier into the week



1 because that is one of the ways that we can combat the  
2 possibility that we may not have -- that eight days may not  
3 have been enough.

4 MR. TWOMEY: Right. I appreciate that. I think we  
5 all do.

6 CHAIRMAN BAEZ: So, you know, there's days and then  
7 there's hours in the days, and I think both of those are  
8 available to us. I've already alerted the staff to be prepared  
9 to go a little later, you know, the first, first few days, and  
10 certainly in the hope that, that those hours will have been  
11 well spent and not have, not have to impact the end of the  
12 hearing.

13 MR. TWOMEY: Yes, sir.

14 CHAIRMAN BAEZ: Any other questions on this issue?

15 Okay. So I know that you all have some, some talking  
16 to do, but if we can move, move along with the rest of the, of  
17 the prehearing issues.

18 Moving to the draft order. Sections I through IV --  
19 well, let me, let me say this ahead of time, this is a draft  
20 order. To the extent that there are, that anyone has, has  
21 alertly picked up misstatements, alertly picked up errors that  
22 need to be pointed out and so forth, whether they be in the  
23 general text of the draft order or as part of your respective  
24 positions as parties that need to be modified, updated,  
25 restated or changed, because this is over 170 issues, 180

1 issues, we're not going to entertain those changes here. I  
2 think it's more useful to just forward them to staff counsel by  
3 a date certain, and, Ms. Brubaker, pick a day.

4 MS. BRUBAKER: I think my suggestion would be by next  
5 Wednesday.

6 CHAIRMAN BAEZ: By next Wednesday, ladies and  
7 gentlemen. You can make them, forward them along to staff  
8 counsel, and they will make sure that the changes are reflected  
9 in, in the final order.

10 So Sections I through IV, we shouldn't have to pay  
11 too much mind to them here at this point.

12 Section V, the posthearing procedures.

13 MR. MCGLOTHLIN: Chairman Baez, I asked for some  
14 relief on the 50-word limitation; I asked for 80 words, which  
15 has worked well in the past.

16 CHAIRMAN BAEZ: All right. Is there any objection to  
17 the 80-word limitation? And I will remind those of you that  
18 are here for the second time in two days, I think that's what  
19 we, Mr. Wright, if you recall, I think that's what we --

20 MR. WRIGHT: That's what we did yesterday on the word  
21 limit, Mr. Chairman.

22 CHAIRMAN BAEZ: All right. So assuming no, no  
23 objections as to the 80-word limit, we'll go ahead and let the  
24 order reflect an 80-word limit. In terms of the page limit,  
25 we've already set a -- not for you yet, and we can talk about

1 it, but by, by way of unofficial precedent, we have a  
2 250-word -- 250-page limit on the other, in the other rate case  
3 which we have going on, and, Mr. Walls, I would challenge you  
4 to do better. So you've got -- have you got something better  
5 here and you can go and claim victory? I mean --

6 MR. WALLS: I'll claim victory on 250 pages.

7 CHAIRMAN BAEZ: That's it?

8 MR. WALLS: Yeah.

9 CHAIRMAN BAEZ: That's not much of a victory. That's  
10 like kissing your sister.

11 UNIDENTIFIED SPEAKER: And we'll come in under that.

12 CHAIRMAN BAEZ: All right. Well, is there any  
13 objection to a 250-page limit?

14 MR. MCGLOTHLIN: We will also come in under that.

15 CHAIRMAN BAEZ: You will? I'm sure you will, Mr.  
16 McGlothlin.

17 MR. WRIGHT: We will, too.

18 CHAIRMAN BAEZ: Yeah. Set the expectations low and  
19 everybody -- well, sometimes that's what's necessary.

20 The -- as previously stated on the prefiled  
21 testimony, Section VI, the summaries, once again, will be  
22 limited to three, three minutes per witness.

23 Section VII, the witnesses, I, I believe Progress has  
24 already expressed an intent to have separate rebuttal.

25 Section VIII -- any other additional questions on

1 Section VII? Seeing none.

2 Section VIII, the basic positions. As I had stated  
3 before, if you do have changes or modifications to your basic  
4 positions, please let, let Ms. Brubaker or Ms. Rodan know of  
5 them by Wednesday next week.

6 Section IX, issues and positions. Once again, any  
7 revisions to those positions, please by next Wednesday.

8 And, Ms. Brubaker, at this point we can try and take  
9 care of some issues that may, might be ripe for stipulation,  
10 and also I think there's one issue that we need to add as well.  
11 Why don't we take care of the issue to add.

12 MS. BRUBAKER: Okay. Chairman, actually there's two  
13 issues I'd like to just clearly get into the prehearing order.  
14 The first is an Issue 1A that's been distributed both to you  
15 and to the parties. This is an issue that was discussed at the  
16 Tuesday Issue ID meeting, so I don't think it should take  
17 anybody by surprise. And it would read, "Should PEF's revised  
18 load forecasts and associated schedules be substituted for the  
19 originally filed forecast?" And obviously that's one we'll  
20 need the positions from the parties on by Wednesday.

21 If I might also direct your attention to the very  
22 last issue in the prehearing order, it's currently denoted as  
23 Issue XXX simply because it does belong in the rate base  
24 section. That issue reads, "Should an adjustment be made to  
25 interest accrued in working capital?" And my suggestion is to

1 note that issue as an Issue 61A so it's located in the proper  
2 place in the order.

3 CHAIRMAN BAEZ: Objections, questions, comments?

4 Seeing none, let the record reflect the addition of Issue 1A as  
5 stated. And also reflect that the issue noted as Issue XXX on  
6 the draft prehearing order will be renumbered as Issue 61 --

7 MS. BRUBAKER: 61A.

8 CHAIRMAN BAEZ: 61A.

9 MS. BRUBAKER: If I may, Chairman, there's been some  
10 discussion about possibly renumbering, reorganizing the order.  
11 I think it would probably be simpler at this point if we simply  
12 maintained the current numbering. Although if I anticipate  
13 correctly, there are going to be a number of issues that will  
14 also stipulate or drop, and that will leave us with certain  
15 gaps in the numbering. I think it will be easier for the  
16 parties and for staff to simply maintain the current numbering.  
17 So that way when we're referencing back drafts, we don't get  
18 confused about what the issues are, how they're numbered.

19 MR. WRIGHT: Here, here.

20 CHAIRMAN BAEZ: Okay. Well, if there's no  
21 objections, we will, we will maintain the current numbering as  
22 stated. To the extent that issues are withdrawn, they'll be  
23 reflected as withdrawn for any further reference. And that way  
24 we can somehow maintain our sanity through all of this or at  
25 least not lose it for reasons of numbering issues.

1           And, Ms. Brubaker, if there are issues that -- well,  
2 we've only added two, so we don't have to worry about that at  
3 this point. Okay.

4           MS. BRUBAKER: Right. There's also a number of  
5 issues that were tentatively identified as possibilities for  
6 dropping or for being stipulated to. I think we can address  
7 possibly some of those today, although certainly I expect that  
8 the parties and staff will continue to work forward on  
9 stipulating to issues and dropping issues to the extent we  
10 can't commit to doing so today.

11           There's also a number of issues where there are two  
12 alternate sets of wording for the issue. I think it would be  
13 appropriate to have that resolved here today. And there's  
14 also, if I may, a number of issues where there's a dispute  
15 among the parties and/or staff about whether the issue should  
16 be dropped. If parties are prepared to address those issues  
17 today, I think it also might be appropriate for us to try and  
18 get that resolved today.

19           CHAIRMAN BAEZ: Okay. And if I hadn't -- Mr. Wright?  
20 No?

21           MR. WRIGHT: I did not mean to interrupt you, but at  
22 the appropriate time -- in going over everything last night  
23 preparing for this morning, we had raised an additional issue  
24 related to working capital in our prehearing statement that has  
25 not made it in here. And, I apologize, I did not discuss it at

1 our Issue ID meeting on Tuesday. It was just on the fly and I  
2 didn't do it.

3 CHAIRMAN BAEZ: Because it -- go ahead, sir.

4 MR. WRIGHT: It's kind of a catch-all issue  
5 basically. It's are there any other adjustments to working  
6 capital not covered in other issues appropriate? We take the  
7 position that there are, and we identify them in our position  
8 statement as reflected in our prehearing statement.

9 CHAIRMAN BAEZ: And are you -- by, by suggesting  
10 that, are you saying that of the 170 odd issues there are no  
11 other catch-all issues in terms of working capital? I mean,  
12 and I'm just asking because I haven't committed them to memory,  
13 sir.

14 MR. WRIGHT: Well, I will tell you, Mr. Chairman, in  
15 good faith I looked for one and didn't see one like this with  
16 regard to working capital itself. If there is, I would be  
17 delighted to fit our position in there. I wound up at the  
18 Issue ID meeting trying to fit it into Issue 69 and it didn't  
19 really work. We had tagged it as 66A. I just wanted to let  
20 everybody know that we do consider that to be an issue.

21 And further, I'll tell you, it is possible, and I've  
22 had a sidebar with Progress, that a big chunk of that has  
23 already been addressed by their rebuttal, but I haven't been  
24 able to get together with them and my witness to satisfy  
25 ourselves that that, that that is the case. If it is, then at

1 least most of that will go away.

2 MS. BRUBAKER: Mr. Chairman, if I may.

3 CHAIRMAN BAEZ: Go ahead.

4 MS. BRUBAKER: I would respectfully suggest that  
5 Issue 69 is a catch-all issue on working capital. It reads,  
6 "Is Progress's requested level of working capital allowance in  
7 the amount," and it gives the number, "for the projected test  
8 year appropriate? This is a calculation based upon the  
9 decisions in preceding issues."

10 MR. WRIGHT: And, Mr. Chairman, I can deal with that.  
11 The problem is 69 is also kind of, almost a fallout based on  
12 the preceding issues. That's why I suggested 66A. I can deal  
13 with that in 69, put our positions as articulated under 66A in  
14 our prehearing statement under 69. That'll be okay with us.

15 CHAIRMAN BAEZ: Let me, let me be clear on what  
16 you're proposing is that with an understanding that Issue 69 is  
17 a catch-all and offers you an opportunity -- and I guess we're,  
18 we're going officially here, we're on the record, so you can  
19 harken back to it, but with the understanding that Issue 69, it  
20 is understood here by all involved that it does offer you an  
21 opportunity to address any additional adjustments to working  
22 capital that you intend to propose. You are okay with not  
23 proposing a new issue.

24 MR. WRIGHT: Yes, sir. The last statement in 69  
25 says, "This is a calculation based upon the decisions in



1 preceding issues." That made me fear that there was no real  
2 opportunity there. With the understanding that you just  
3 articulated, that it's a catch-all, that's fine.

4 CHAIRMAN BAEZ: That it is not a fallout issue. Are  
5 we, are we okay with the intent of that issue then? Is  
6 everybody in agreement with it?

7 MS. BRUBAKER: Yes.

8 CHAIRMAN BAEZ: Very well. Mr. Walls, I'm sorry.

9 MR. WALLS: I was just going to concur. Yes, we're  
10 in agreement.

11 CHAIRMAN BAEZ: Okay. Are we taken care of then, Mr.  
12 Wright?

13 MR. WRIGHT: Yes, sir. Thank you.

14 CHAIRMAN BAEZ: All right. Very well. Are there  
15 any -- I guess this would be a good time to ask, does anyone  
16 else have any issues that are off the list at this point that  
17 need to be discussed? Very well.

18 Then, Ms. Brubaker, what I would propose is to turn  
19 it over to you, which is probably something I should have done  
20 earlier. And why don't you walk us through the issues as you  
21 see them and see if we can get some resolved in the time that  
22 we have.

23 MS. BRUBAKER: And, again, I'll preface this by  
24 saying that to the extent there are changes to positions, we'll  
25 just take that as read and I'll accept the electronic copy of

1 those changes and we won't belabor them here.

2 I'm going to identify a series of issues that were  
3 tentatively identified as possibly being stipulated or dropped.  
4 Certainly if the parties can't commit to stipulating or  
5 dropping issues at this time, that's fine. I, again, would  
6 hope that we would work, continue to work in that process  
7 approaching the hearing.

8 If I pass over any issues that parties believe have  
9 been discussed for stipulation or dropped, please interrupt me  
10 and let me know. I don't certainly claim my notes to be  
11 perfect at any rate.

12 And with that, we'll start with Issue 1 that was  
13 identified as a possible stipulation. Any parties objecting to  
14 the stipulation of Issue 1?

15 MR. MCGLOTHLIN: OPC can stipulate to Issue 1.

16 MS. BRUBAKER: Okay. And for clarity's sake, we've  
17 begun to identify issues as a Category 1 stipulation; those are  
18 for which all parties are in agreement. There may be some  
19 issues which certain parties don't wish to object to the  
20 stipulation but also don't want to actively participate in the  
21 stipulation of those issues, and we'll need to designate those  
22 as a Category 2, Category 3, Category 4 and so forth depending  
23 on which parties are wishing not to take an active stand on  
24 that stipulation.

25 So it's my understanding that Issue 1 can be a

1 Category 1 stipulation?

2 CHAIRMAN BAEZ: Mr. Twomey, I show you as -- are you  
3 all right with that?

4 MR. TWOMEY: Yes, sir.

5 CHAIRMAN BAEZ: Okay. Very well. Well, I'm reading  
6 down the positions and it seemed like everybody might be all  
7 right with stipulating it and the only two that hadn't given a  
8 position --

9 MR. TWOMEY: We're good.

10 CHAIRMAN BAEZ: So you're good? Okay. Just  
11 checking.

12 MS. BRUBAKER: The next issue I have a note on is  
13 Issue 5. It was listed as a possible drop. Staff has no issue  
14 with Progress's customer complaint resolution process,  
15 although, as I understand it, FRF has --

16 MR. WRIGHT: Mr. Chairman.

17 CHAIRMAN BAEZ: Yes.

18 MR. WRIGHT: We were the holdout, the tentative  
19 holdout at the Issue ID meeting on Tuesday. We're willing to  
20 drop Issue 5 or to have it be dropped. It was not our issue  
21 originally. We had taken a position on it, but we're willing  
22 to have it dropped.

23 CHAIRMAN BAEZ: Very well. So with that, we can show  
24 Issue 5 dropped. Very well.

25 MS. BRUBAKER: Okay. The next issue I have listed is

1 10A, and I have a note that that could possibly be a Category 2  
2 stipulation and welcome comments from the parties.

3 MR. PERRY: We have --

4 MR. MCGLOTHLIN: OPC is not at issue with respect to  
5 10A. We would not stipulate to it, but we're not at issue.

6 CHAIRMAN BAEZ: Mr. Perry.

7 MR. PERRY: And FIPUG would also take no position,  
8 and so it would be a Category 2.

9 CHAIRMAN BAEZ: Okay.

10 MR. WRIGHT: Same for the FRF.

11 MR. BUSHEE: Same for White Springs as well.

12 CHAIRMAN BAEZ: Okay. Thank you.

13 MS. BRUBAKER: For those parties who are noting they  
14 take no position on the stipulation but don't actively object,  
15 we're just going to make a notation of who those parties are,  
16 and later we'll sort out what would qualify as a Category 1, 2,  
17 3 and so forth. There will be various permutations.

18 CHAIRMAN BAEZ: Are you keeping track of that because  
19 I --

20 MS. BRUBAKER: I certainly hope my esteemed  
21 colleagues are.

22 CHAIRMAN BAEZ: You've got enough hands over there.  
23 Somebody ought to catch something.

24 MS. BRUBAKER: I had noted 10B as possibly being able  
25 to stipulate to the production accounts, but I think that will

1 entail probably more discussion than is probably going to be  
2 useful at today's prehearing, so I would suggest skipping over  
3 that for now.

4 CHAIRMAN BAEZ: Very well.

5 MS. BRUBAKER: Issue 12 I also had noted as a  
6 possible stipulation.

7 MR. McGLOTHLIN: OPC is not at issue with respect to  
8 that.

9 MS. BRUBAKER: Okay.

10 CHAIRMAN BAEZ: Any others?

11 MS. BRUBAKER: And the next I have listed would be  
12 Issue 26, possible stipulation. I'm sorry. It was just  
13 suggested it might be useful for me to give page numbers. I  
14 will certainly be happy to do so. That's Page 35.

15 MR. McGLOTHLIN: OPC will stipulate on Issue 26.

16 MR. TWOMEY: Same.

17 MR. PERRY: FIPUG has no, we have a "no" position  
18 right now, and I'm not sure that we can stipulate to this right  
19 here at the prehearing conference, but it could be that we  
20 could do it before the hearing.

21 CHAIRMAN BAEZ: All right.

22 MS. BRUBAKER: So 26 will be tabled for now.

23 CHAIRMAN BAEZ: Will be tabled.

24 MS. BRUBAKER: The next would be Issue 27.

25 MR. WALLS: Jennifer.

1 MS. BRUBAKER: I'm sorry.

2 MR. WALLS: I'm sorry. Could we back up to Issue 14?  
3 I think Issue 14 might be one that's stipulated as well with  
4 FIPUG's new position they handed out today.

5 MR. PERRY: Our position would be changed to agree  
6 with OPC. And as long as Mr. McGlothlin is okay with  
7 stipulating it, I think that we are.

8 MR. MCGLOTHLIN: If counsel for PEF will confirm that  
9 there's no dispute over our position, I don't see any, but  
10 there's a very short position statement by PEF here. I, I  
11 believe we're in agreement.

12 MR. WALLS: I believe we'd just suggest a friendly  
13 amendment to OPC, if they're willing to accept: "Yes, based  
14 upon the Commission's decision."

15 CHAIRMAN BAEZ: Mr. McGlothlin, the bet is to you,  
16 sir.

17 MR. MCGLOTHLIN: I believe that's acceptable.

18 MS. BRUBAKER: And for the sake of clarity, that  
19 would be considered a Category 1 stipulation; is that correct?

20 MR. MCGLOTHLIN: Yes.

21 MR. WRIGHT: Before we go on, Mr. Chairman, on 26 --  
22 here I am. Sorry. On 26 we will also be in the "no position"  
23 camp, such that that will be a Category 2 stipulation with  
24 regard to, I think, us and FIPUG on 26.

25 MR. BUSHEE: White Springs will also take no position

1 on 26.

2 MS. BRUBAKER: Just for the sake of clarify, if I  
3 may, when you say you take no position, that's --

4 CHAIRMAN BAEZ: Are in the no position I guess.

5 MR. BUSHEE: Oh, I understand the question. We are  
6 not taking a position at this time, so we're not joining the  
7 Category 1 stipulation.

8 CHAIRMAN BAEZ: And, Mr. Wright, you're in the  
9 negative?

10 MR. WRIGHT: No. No. We -- simply we are not  
11 joining the stipulation as a Category 1 stipulation. We are  
12 not objecting to the stipulation.

13 CHAIRMAN BAEZ: Very well.

14 MR. WRIGHT: Leaving it as a Category 2, which I  
15 thought was the same position Mr. Perry articulated.

16 MR. PERRY: Are we speaking to 26?

17 MS. BRUBAKER: This is 26.

18 MR. PERRY: And I'd just like to clarify that our  
19 position is still "No."

20 CHAIRMAN BAEZ: Right.

21 MR. WRIGHT: Oh.

22 CHAIRMAN BAEZ: Is this the way it's, is this the way  
23 it's going to be?

24 (Laughter.)

25 MR. SHREVE: (Inaudible. Microphone off.)

1 CHAIRMAN BAEZ: Right. Yeah.

2 MS. BRUBAKER: Chairman, as I understand it, we do  
3 not have a stipulation on Issue 26.

4 CHAIRMAN BAEZ: You don't have a stipulation on Issue  
5 26.

6 And with so many words in the English language, you'd  
7 think we could find a word that doesn't sound the same to kind  
8 of -- well, but that's just me.

9 MS. BRUBAKER: For Issue 27, I believe that PEF has  
10 an objection to the inclusion of the issue.

11 MR. WALLS: Yes, we do have an objection to Issue 27  
12 that we can take up at this time, if you'd like.

13 CHAIRMAN BAEZ: Uh-huh. Go ahead, sir.

14 MR. WALLS: Okay. Our objection to Issue 27 relates  
15 to including this issue in the way it's phrased, and we believe  
16 that the issue is otherwise taken up in other issues. And I  
17 should, I guess, back up and give you some explanation.

18 The reference to the capitalization policy in the  
19 issue is to a change in estimate by the company for changes  
20 from or for outage and emergency work and indirect costs to  
21 reflect current experience of what should be charged to capital  
22 and what should be charged to expense. That change was picked  
23 up in a Best Practices Evaluation by the company. They hired  
24 an independent consultant to review that and make a  
25 recommendation, which was accomplished. And the independent



1 consultant concurred there should be a change in estimate, and  
2 that was also passed on by the company's outside auditor and  
3 approved that.

4           As I understand, we have, we have provided in  
5 discovery the consultant's report and the information regarding  
6 the change in estimate, and OPC's expert does not disagree that  
7 the change in estimate was appropriate. And as I understand,  
8 they dispute what the level of the capital and O&M expenses  
9 should be.

10           And our position is, is that that is the appropriate  
11 issue and it is taken up in other issues related to the  
12 appropriate level of rate base and the appropriate level of net  
13 operating income, which picks up the O&M expenses. So we  
14 believe this is unnecessary in the first place.

15           And, second, we believe that it also invites the  
16 Commission to get into issues that aren't appropriate for the  
17 rate proceeding, which is reviewing accounting policies of the  
18 company, which is the way this is phrased. The issue for the  
19 rate proceeding is whether our expenses were reasonable and  
20 prudent or our capital charges were reasonable and prudent, and  
21 OPC is free to make any arguments they would like with respect  
22 to the charges that have been made and whether any changes  
23 should be made. But we don't see this proceeding as a, an  
24 accounting review board of an accounting policy, which is the  
25 way this is currently phrased. And so we would object to

1 including it as worded here.

2 CHAIRMAN BAEZ: Well, help me understand, Mr. Walls,  
3 if, if the numbers as they're proposed are based on a, on a  
4 change in policy, I mean, is that under dispute whether there's  
5 been a change in your policy or --

6 MR. WALLS: No. There's no dispute there's been a  
7 change.

8 CHAIRMAN BAEZ: So there's no dispute on your part  
9 that you have changed your policy.

10 MR. WALLS: It's a change in estimate, yes.

11 CHAIRMAN BAEZ: Then at -- if the numbers that the  
12 Commission would need to ratify, if you will, are based on a  
13 change in policy, how, how can you expect the Commission to  
14 avoid the threshold issue as to whether the change in policy  
15 itself was acceptable?

16 MR. WALLS: Well, they're going to pick that up  
17 through the question of whether those charges were reasonable  
18 and prudent and the determination will be made there.

19 What we're concerned about is the way this is  
20 phrased. We do not dispute that you have all these arguments  
21 encompassed within whether it's reasonable and prudent to make  
22 the change in estimate in the charges as reflected, and they  
23 can raise those arguments.

24 CHAIRMAN BAEZ: And would the -- and, again, maybe,  
25 maybe backing into or getting to the end result and backing

1 away from it, if I understand you correctly, to the extent, to  
2 the extent that the, that the numbers as the company has  
3 proposed were to be approved, that would by default -- well,  
4 your suggestion is that they would have been based on, on an  
5 approval, albeit not explicit of the change in capitalization  
6 policy. Is that -- I guess, you know --

7 MR. WALLS: Well, from a ratemaking perspective what  
8 I see the Commission is determining is whether those charges  
9 were reasonable and prudent from a ratemaking perspective.

10 CHAIRMAN BAEZ: Without passing, without passing on  
11 the change in policy.

12 MR. WALLS: Right. Because we've already had the  
13 change in estimate submitted to an independent consultant and  
14 our outside auditor, and they passed on the accounting policy,  
15 which is the appropriate place to do it. And now if the  
16 Commission disagrees that those charges were reasonable and  
17 prudent in any way, whether they should have been capital or  
18 O&M or vice versa, that is a ratemaking issue as to whether it  
19 was reasonable and prudent for ratemaking purposes.

20 CHAIRMAN BAEZ: So then your, your -- is there any,  
21 is there any scenario or any instance in which the Commission  
22 would have the authority and responsibility to, to at least  
23 ratify the, the change in policy that has been suggested by  
24 your, by your outside auditor and others?

25 I guess at some point, and maybe I'm wrong about this

1 or maybe you think I'm wrong about this, but at some point the  
2 Commission has to say, you know what, the outside auditor --  
3 and to me that just goes to the weight, the weight of the  
4 evidence -- I'm sitting here, I say, all right, well, Progress  
5 has changed their, their policy and it's because an outside  
6 auditor, et cetera, et cetera, has endorsed it and seen it as  
7 correct. Is there any part of the Commission's process or the  
8 Commission's authority or jurisdiction over the company to say,  
9 yes, the policy is acceptable, that, yes, the policy is  
10 correct? Is there any other -- you know, you started off by  
11 saying this is not the place, and you say things like for  
12 ratemaking purposes. Well, where is the place?

13 MR. WALLS: It's our understanding it would be  
14 encompassed within the staff's review as part of the ratemaking  
15 process as to whether the expenses have met the existing  
16 capitalization policies, and that would be encompassed in your  
17 further decision of whether it was reasonable and prudent.  
18 That would all be encompassed within that final determination.  
19 But the determination would be is this a reasonable and prudent  
20 charge to capital or reasonable and prudent expense to --

21 CHAIRMAN BAEZ: But you're, you see, now you've, now  
22 you've got us, or you've got me chasing my tail. Because if I  
23 say, yeah, they're reasonable and prudent based upon a policy  
24 that I don't know whether it's reasonable -- you see what I'm  
25 saying? I don't get to say, yes, the policy is reasonable and

1 prudent and, therefore, the numbers have been, comply with that  
2 policy. If I just say the numbers are reasonable and prudent  
3 based on a, based on the policy, then what I've done is I've  
4 ratified the policy, never, never judged on it. I've just  
5 said, yes, the number -- there's a, there's a default there  
6 that I don't know if --

7 MR. WALLS: Well, I guess I should be clear, as  
8 Mr. Portuondo pointed out to me, is we're talking about --  
9 we've switched from talking initially about a change in  
10 estimate to now a change in policy. It is a change in estimate  
11 consistent with ongoing policy about capitalization and O&M.  
12 It is a change in estimate based on current experience about  
13 where those charges should be allocated on current policy,  
14 existing policy about what should be capital and what should be  
15 --

16 CHAIRMAN BAEZ: So it's not a change in policy?

17 MR. WALLS: It's not a change in policy. It's a  
18 change in estimate based on existing policy as to what is  
19 capital and what is O&M.

20 CHAIRMAN BAEZ: And is this, is this a staff issue?

21 MR. MCGLOTHLIN: No, Commissioner, it's mine.

22 CHAIRMAN BAEZ: Okay. Mr., Mr. McGlothlin.

23 MR. MCGLOTHLIN: Mr. Walls has only given you a  
24 partial picture. There was an accounting change, the intent of  
25 which was to more accurately allocate costs between those that

1 should be capitalized and those that should be expensed.

2 CHAIRMAN BAEZ: Expensed.

3 MR. McGLOTHLIN: But here's the missing part. The  
4 implementation of that change affects test year. And our  
5 consultant, through discovery, concluded that the company has  
6 not adequately documented and supported its proposed  
7 quantification of the impact of a specific change on test year  
8 rate base and O&M. And so it's for that reason that we have an  
9 issue in two parts.

10 Part one, should the change in capitalization be  
11 approved? Part two, even if it's approved, has PEF adequately  
12 supported and proven the impact of the change on the 2006 test  
13 year? And our position is that they have not made that case,  
14 they have failed to support the quantification adequately, even  
15 given our request for, through discovery for the information  
16 that would support that. And so we have submitted testimony  
17 proposing an adjustment from the company's filing. And it's  
18 for that reason that we contend this is an appropriate issue.

19 Progress Energy Florida suggests that this is somehow  
20 captured elsewhere because they say the appropriate issue is  
21 are their expenses prudent or reasonable? If we can just have  
22 a big, soft, amorphous target like that, we don't really need  
23 an issue list. We can just say, yes, you're reasonable or, no,  
24 you're not reasonable. But this is specific to the  
25 implementation of a change in the manner in which the company

1 goes about the quantification or allocation of those costs that  
2 are capitalized and those that are expensed. And because that  
3 has an impact on the test year and because we contend that  
4 impact has not been properly quantified, we think it belongs in  
5 the issue list here and we have testimony that addresses it.

6 CHAIRMAN BAEZ: But maybe -- and maybe,  
7 Mr. McGlothlin, I'm reading, I'm reading the intent of the  
8 issue a little, a little differently. Because if I'm, if I'm  
9 hearing you correctly, then it's -- I'm not sure that you have  
10 a problem with what Mr. Walls is, is suggesting. And maybe I'm  
11 hearing, maybe I'm hearing people wrong. I'm not saying, I'm  
12 not saying I agree with you, mind you, but you're sort of,  
13 you're sort of suggesting that the implementation is, or that  
14 they haven't carried their burden as to the change, but you  
15 don't have an issue with the change in policy. And I'm seeing,  
16 and I'm seeing the issue, at least as I'm reading it, as having  
17 at least in part to deal with the threshold matter of whether,  
18 whether the policy is appropriate, and then we can move on  
19 to -- I mean, I guess it is in two parts, as you say.

20 MR. MCGLOTHLIN: I agree it's in two parts.

21 CHAIRMAN BAEZ: But so you don't have a problem with  
22 the first part?

23 MR. MCGLOTHLIN: The way our witness characterized it  
24 is that based upon the information available, which we contend  
25 was less than forthcoming --

1 CHAIRMAN BAEZ: Right.

2 MR. McGLOTHLIN: -- the change itself probably has  
3 merit. And our difficulty is more to the implementation and  
4 the quantification.

5 CHAIRMAN BAEZ: And I don't -- and I'm not seeing  
6 that even Mr. Walls disagrees with your advancement of that  
7 position under, under the circumstances. I, I think what, what  
8 Mr. Walls has tried to focus the court on is whether we should  
9 be ruling on the policy aspect of it, whether the change itself  
10 was reasonable.

11 And, and I will tell you, I'm a little uncomfortable,  
12 I'm a little uncomfortable with saying, you know, the numbers  
13 look right based on a policy that I never had a chance to look  
14 at. And for that I'm -- well, go ahead. I won't interrupt.

15 MR. WALLS: Well, I believe that we could address  
16 Mr. McGlothlin's concern if we just simply reword the issue.  
17 If the -- or "Should an adjustment be made to Progress Energy's  
18 change in capitalization estimate," period. "If so, what  
19 should be the adjustment be?"

20 MS. BRUBAKER: Mr. Chairman, I could offer a staff  
21 perspective, which hopefully won't muddy the waters further.  
22 But, you know, honestly the capitalization policy to me seems  
23 to be kind of a FASB concern. If the concern is the adjustment  
24 itself, my suggestion was going to be to modify the language:  
25 "Is any adjustment necessary to rate base and O&M as a result



1 of the change in capitalization policy?" I don't know if that  
2 will satisfy the parties or not.

3 But I'd also like to point out that there is a rate  
4 base catch-all issue that will hopefully capture some of this  
5 concern, that's Issue 72, and the expense component would be  
6 dealt with in Issue 133 in the NOI section.

7 CHAIRMAN BAEZ: And just so, and just so that we can  
8 repair and I can get off of my discomfort, staff doesn't have,  
9 staff doesn't have an issue with a threshold examination of the  
10 policy.

11 MS. BRUBAKER: No. Yeah. It's not one we raised.  
12 We don't necessarily think it's relevant, but --

13 CHAIRMAN BAEZ: Okay. That helps, that helps me a  
14 little bit. And Mr. McGlothlin is going over perhaps a change  
15 in the wording, Mr. McGlothlin, or --

16 MR. WALLS: And, Mr. Chairman, if I could just speak  
17 to just staff's point just to make clear, we've already made an  
18 adjustment, and the question would be whether that adjustment  
19 is appropriate or not.

20 CHAIRMAN BAEZ: Uh-huh.

21 MR. MCGLOTHLIN: I'm willing to work on the language.  
22 Because we have a witness to addresses this, I'm uncomfortable  
23 agreeing to what's been tossed out on the spot, but I am  
24 willing to work on it.

25 CHAIRMAN BAEZ: All right. Then we'll --

1 MR. McGLOTHLIN: I am also willing to acknowledge  
2 that our, our issue relates to the quantification  
3 implementation and impact on test year as opposed to the  
4 approval, disapproval of the change itself.

5 We have a related issue in 28, we may as well take  
6 that up now, because our witness testifies that this change may  
7 have implication for past financial statements. And if that is  
8 the case, when one modifies the past financial statements, that  
9 may have a carry-over effect into the test year as well.

10 Again, our issue is not so much with the change  
11 itself, but with the failure of the company to prove one way or  
12 the other whether the quantification is appropriate.

13 CHAIRMAN BAEZ: Well, although -- well, go ahead,  
14 Mr. Walls.

15 MR. WALLS: We would insert the same objection to  
16 Issue 28. Again, it's with the wording of it. We understand  
17 Mr. McGlothlin's issue and we don't dispute that he can  
18 challenge the quantification and implementation of our change  
19 in estimate. It's just these two issues, the way they're  
20 phrased, they address essentially a policy that, as I  
21 understand, is not in dispute. I mean, we changed an estimate  
22 in accordance with current policy based on current experience.

23 CHAIRMAN BAEZ: Mr. McGlothlin, is that, is there a,  
24 is there a chance that some rewording might resolve this issue?

25 MR. McGLOTHLIN: I think so.

1 CHAIRMAN BAEZ: Okay.

2 MR. MCGLOTHLIN: I think it's -- well, I don't think,  
3 I know it is unacceptable for us to be left with the idea that  
4 we would have to live with an issue that asks "Are expenses  
5 reasonably prudent?" That's simply too vague and amorphous  
6 because our issue does stem from a very specific development  
7 within the company, and it has to begin with, with that and  
8 flow through. But I am willing to try to reword something that  
9 would be mutually acceptable.

10 MR. WALLS: And, Mr. Chairman, to that end with  
11 respect to Issue 28, Mr. McGlothlin, I mean, one of the things  
12 we might suggest is "Should a further adjustment be made to the  
13 company's adjustment to account for the change in estimate in  
14 its capitalization policy?"

15 MR. MCGLOTHLIN: Well, as you read it, I didn't hear  
16 any reference to past financial statements, and that's the  
17 essence of this issue.

18 MR. WALLS: Well, I think that would be picked up in  
19 whether there should be a further adjustment made.

20 MR. MCGLOTHLIN: No, it's not picked up. It's  
21 obscured by that.

22 CHAIRMAN BAEZ: Are you, are you -- well, are you  
23 willing, are you willing to put the past financial statements  
24 in play?

25 MR. WALLS: Well, no, we don't believe that's an

1 appropriate consideration for this proceeding. That's the  
2 point again about getting to the policy issue, which we  
3 understand that no one is really disputing. We made a change  
4 in estimate on an existing policy that no one disputes.

5 CHAIRMAN BAEZ: But the -- and you, and you dispute  
6 the, the fact that it may have impact beyond the test, beyond  
7 that one year in question?

8 MR. WALLS: Well, we believe a change in estimate  
9 means its prospective, so it goes forward, and that would be  
10 our position. If they want to argue something contrary to  
11 that, we believe "Should a further adjustment be made?" would  
12 cover that.

13 MR. MCGLOTHLIN: No. That does -- that's not  
14 satisfactory.

15 CHAIRMAN BAEZ: Well, all right. And we've, we've  
16 hit the ball I think three times each, and, and let's stop the  
17 volley right now. At last count I think we were going to work  
18 on rewording 27 and 28, and, and you referee that one and see  
19 if we can't come up with wording that kind of allows you your  
20 position and, and certainly captures the breadth of what, of  
21 what you're advancing as well.

22 MR. MCGLOTHLIN: All right.

23 CHAIRMAN BAEZ: And y'all can work that. We'll table  
24 27 and 28.

25 Ms. Brubaker.

1 MS. BRUBAKER: The next issue I would take note to is  
2 Issue 30. It appears on Page 38. The note I had on this is  
3 that might possibly be a Category 2 type stipulation.

4 MR. MCGLOTHLIN: That's true of OPC.

5 MS. BRUBAKER: And just for clarity's sake, are any  
6 of the parties objecting to the stipulation of the issue?

7 MR. PERRY: I think I have a contrary position. I  
8 don't see how it would be --

9 CHAIRMAN BAEZ: Yeah. There's, I mean, there's --

10 MS. BRUBAKER: My apologies. No stipulation on Issue  
11 30.

12 And the next was Issue 31. If I'm incorrect on  
13 whether it's a possible stipulation, just speak up and we'll  
14 just move on.

15 MR. PORTUONDO: On Issue 30, I think the -- there was  
16 a question at our informal meeting whether this issue was  
17 addressing the cost of capital or the electric plant-in-service  
18 of Hines Unit 3, which is what the company thought this issue  
19 was addressing is the actual gross investment. So with that  
20 clarification, does FIPUG really have an issue on this  
21 particular item?

22 MR. PERRY: We can just discuss this offline. I  
23 mean, if we can clear it up and stipulate to it before the  
24 hearing, then that would be great. But I can't stipulate to it  
25 today.

1 CHAIRMAN BAEZ: Okay. Issue 31.

2 MS. BRUBAKER: Issue 32.

3 CHAIRMAN BAEZ: We're on 31, no?

4 MR. MCGLOTHLIN: I don't think we're in a position to  
5 stipulate on 31 at this point.

6 CHAIRMAN BAEZ: Okay.

7 MS. BRUBAKER: Okay. Issue 32.

8 MR. MCGLOTHLIN: This is one for which I don't have a  
9 specific answer. I'll be, I'll be happy to consult and get  
10 back to staff on it.

11 CHAIRMAN BAEZ: Okay. Table 32.

12 MS. BRUBAKER: Issue 35.

13 MR. MCGLOTHLIN: OPC is not at issue and would not  
14 object to a stipulation on 35.

15 MR. WRIGHT: Same here. We would not object to the  
16 stipulation on 35.

17 MR. BUSHEE: White Springs would not object.

18 CHAIRMAN BAEZ: We can show 35 stipulated.

19 MS. BRUBAKER: Issue 39 which is on Page 43, I direct  
20 your attention, there are currently two sets of language, and  
21 my note was to have White Springs check if they could drop the  
22 second set of language.

23 MR. BUSHEE: And White Springs will agree to drop  
24 that second formulation.

25 MS. BRUBAKER: The next one which there's discussion

1 about a stipulation is Issue 42 appearing on Page 46, and staff  
2 is willing to entertain either stipulating or just dropping  
3 this issue.

4 CHAIRMAN BAEZ: That's Issue 42?

5 MS. BRUBAKER: That's Issue 42.

6 CHAIRMAN BAEZ: Okay.

7 MR. WRIGHT: We'd be agreeable to dropping the issue,  
8 Mr. Chairman.

9 CHAIRMAN BAEZ: Any objections?

10 MR. MCGLOTHLIN: OPC does not, does not object to  
11 eliminating the issue.

12 CHAIRMAN BAEZ: If there's no objections, we can show  
13 Issue 42 is dropped.

14 MS. BRUBAKER: Dropped.

15 Issue 47, possible stipulation. And, again, I'll  
16 just acknowledge up-front there are some issues that I'm  
17 identifying as possible stipulations which there are parties  
18 and positions. My understanding of calling it as a possible  
19 stipulation is it was discussed as a possible stipulation. I'm  
20 assuming the parties have since revisited their positions and  
21 discussed with their clients whether or not the issue might be  
22 stipulated. If they can't do so right now, that's fine, but  
23 just for clarity's sake.

24 MR. MCGLOTHLIN: OPC will not stipulate on 47.

25 MS. BRUBAKER: Okay. Issue 49 on Page 48.

1 MR. MCGLOTHLIN: OPC will not stipulate on 49.

2 MS. BRUBAKER: Issue 50A.

3 MR. MCGLOTHLIN: 58?

4 CHAIRMAN BAEZ: 50A.

5 MS. BRUBAKER: 50A, I beg your pardon, A as in apple,

6 Page 48.

7 MR. MCGLOTHLIN: OPC will not stipulate on 50A.

8 MS. BRUBAKER: And just for the sake of clarity, I  
9 just have a note that Issue 50B will be broken out as a  
10 separate issue. And a reminder to the parties, we will need  
11 issue, excuse me, position statements on 50B, if you have not  
12 already provided them.

13 MR. MCGLOTHLIN: You may want to poll the other  
14 parties. On 50B OPC will stipulate as to the method used by  
15 PEF.

16 CHAIRMAN BAEZ: Is there agreement on the, by the  
17 rest of the parties as to OPC's proposal?

18 MR. WRIGHT: Mr. Chairman, the Retail Federation  
19 would at least not object to a stipulation on 50B. We might  
20 join the stipulation. I'd have to consider it a little bit  
21 further. But it could -- as far as we're concerned, it could  
22 at least be a Category 2.

23 MS. BRUBAKER: 50B stipulated as a Category 2 type.

24 MR. WRIGHT: Possibly a Category 1, Mr. Chairman. I  
25 just --



1 MS. BRUBAKER: Okay. If you could just confer and  
2 let me know.

3 MR. WRIGHT: Yeah. Uh-huh.

4 MS. BRUBAKER: Issue 52, possible stipulation.

5 MR. MCGLOTHLIN: OPC will stipulate to 52.

6 MR. PERRY: Our position is "Agree with OPC," so I  
7 think that we can go along with that.

8 MR. WRIGHT: We'll join the stipulation, too, Mr.  
9 Chairman.

10 MR. BUSHEE: White Springs will also join.

11 MS. BRUBAKER: Okay. So Issue 52 is a Category 1  
12 stipulation.

13 CHAIRMAN BAEZ: Show it stipulated. Yes.

14 MS. BRUBAKER: I have a note, Issue 54, that this  
15 might be stipulated. I also have a note to refer to Issue 61,  
16 which indicates that that issue -- well, I suppose we could  
17 deal with it when we get to 61, but I have a note that Issue 61  
18 could be dropped if White Springs agrees to move its position  
19 for Issue 61 to Issue 54. I suppose we could take those two up  
20 together.

21 MR. BUSHEE: White Springs will agree.

22 CHAIRMAN BAEZ: And just for, just for clarification,  
23 you're agreeing to move your --

24 MS. BRUBAKER: I suppose it's really a two-part  
25 question.

1 CHAIRMAN BAEZ: Right.

2 MS. BRUBAKER: The first is do you agree to move your  
3 position from Issue 61 to Issue 54?

4 MR. BUSHEE: And White Springs does agree with that.

5 MS. BRUBAKER: You do agree. And with that change,  
6 do we have a stipulation on Issue 54?

7 MR. McGLOTHLIN: OPC will stipulate on 54.

8 MR. WRIGHT: The Retail Federation will join.

9 CHAIRMAN BAEZ: Mr. Bushee?

10 MR. BUSHEE: We do not oppose the stipulation, so I  
11 guess it's a Category 2.

12 CHAIRMAN BAEZ: Okay.

13 MS. BRUBAKER: Issue 55 is noted as a possible drop  
14 issue. I'll just reiterate staff's position that the issue  
15 should be dropped. But if parties wish to put forward evidence  
16 and testimony on this, you know, that's certainly an option.  
17 But I think our recommendation is that the issue simply be  
18 dropped.

19 CHAIRMAN BAEZ: Is there any objection to dropping  
20 the issue?

21 MR. McGLOTHLIN: OPC does not object to dropping the  
22 issue.

23 CHAIRMAN BAEZ: Any objections?

24 MR. BUSHEE: White Springs does not object.

25 MR. WRIGHT: We do not object.

1 CHAIRMAN BAEZ: Okay. Show Issue 55 dropped.

2 MS. BRUBAKER: Issue 57 on Page 53 is tentatively  
3 identified as a stipulation.

4 MR. PERRY: FIPUG would note that we have changed our  
5 position to "No position at this time." I think that that  
6 would allow for a Category 2 stipulation.

7 MS. BRUBAKER: If I could take a moment.

8 Just for clarity, staff can stipulate to a simple  
9 "No" as the appropriate response.

10 CHAIRMAN BAEZ: Show 57 stipulated.

11 MR. WALLS: Jennifer, if we could move back to Issue  
12 56.

13 MS. BRUBAKER: Certainly.

14 MR. WALLS: PEF is changing its position on that and  
15 that might bring about a stipulation. If I could read it.

16 MS. BRUBAKER: Please.

17 MR. WALLS: The new PEF position would be, "Yes. The  
18 amount of \$41,633 retail (\$45,295 system) should be removed  
19 from rate base."

20 MR. PERRY: I think that that would, at least from  
21 our perspective --

22 CHAIRMAN BAEZ: That takes care of FIPUG?

23 MR. PERRY: I think staff may --

24 MS. BRUBAKER: Staff -- I think actually if we could  
25 table this for now and --

1 CHAIRMAN BAEZ: I tell you what, I want to give the  
2 court reporter a break, give the prehearing officer a break,  
3 give everybody else a break. Why don't we, why don't we take  
4 ten minutes and you may all have things to discuss and progress  
5 to make. We're in recess.

6 (Recess taken.)

7 CHAIRMAN BAEZ: Go back on the record.

8 Ms. Brubaker, I think we were on, we were on Issue  
9 56.

10 MS. BRUBAKER: That's correct.

11 CHAIRMAN BAEZ: Did we resolve that?

12 MS. BRUBAKER: I await comments from the party on  
13 whether there's a resolution on 56. Certainly staff can  
14 stipulate to Mr. Portuondo's amendment.

15 CHAIRMAN BAEZ: Mr. McGlothlin.

16 MR. MCGLOTHLIN: We're not at issue and would not  
17 oppose a stipulation.

18 CHAIRMAN BAEZ: And, Mr. Perry, I think you had  
19 suggested that your position had changed?

20 MR. PERRY: That was on 57 that our position had  
21 changed. 56 --

22 CHAIRMAN BAEZ: Oh, 56. I'm sorry.

23 MR. PERRY: -- our position was "Yes." And then the  
24 company changed their position to "Yes."

25 CHAIRMAN BAEZ: Oh, okay.

1 MR. PERRY: And then quantified the adjustment. To  
2 be honest, you know, I'm not really sure whether or not that  
3 particular number is appropriate, but I would imagine that we  
4 could probably stipulate to that before the hearing. I think  
5 that --

6 CHAIRMAN BAEZ: Okay. Then we'll --

7 MR. PERRY: So I think that we should maybe just  
8 wait.

9 CHAIRMAN BAEZ: Okay. Excuse me. We'll table 56  
10 with great promise.

11 MS. BRUBAKER: Okay. And just for my own  
12 clarification, I believe Issue 57 was a Category 2 stipulation,  
13 is that correct, consistent with everyone's understanding?  
14 Okay.

15 Mr. Chairman, in the interest of time I would suggest  
16 that I kind of direct your attention to those issues in which  
17 there's a dispute among the parties about whether the issue  
18 should be dropped and those issues which need clarification as  
19 to the wording of the issue language.

20 CHAIRMAN BAEZ: Okay. That's good.

21 MS. BRUBAKER: And then, time permitting, go back to  
22 those that were tentatively identified as stipulations or  
23 drops. We can always, of course, meet with the parties in the  
24 time before the hearing to try and resolve those further.

25 CHAIRMAN BAEZ: Very well. Why don't, why don't you

1 take us to --

2 MS. BRUBAKER: And if you'll just bear with me as I  
3 check through my notes.

4 If I could direct your attention to Issue 83, and  
5 that appears at Page 68, top of Page 68. My note here is to  
6 have White Springs indicate whether the second wording under  
7 that issue could be dropped.

8 MR. BUSHEE: White Springs would be amenable to  
9 dropping the second wording.

10 MS. BRUBAKER: I believe the next issue to be  
11 addressed would be Issue 101. There's a dispute among the  
12 parties about the inclusion of that issue.

13 CHAIRMAN BAEZ: Mr. Walls, you had an objection?

14 MR. WALLS: This is a carryover to the ones we had  
15 discussed at Issues 27 and 28 regarding the language about  
16 referring to the capitalization policies. It's the same  
17 discussion we had. We would just propose some rewording there  
18 to reflect the fact that the issue is as, I believe it was  
19 stated, the implementation and quantification of the change in  
20 estimate.

21 CHAIRMAN BAEZ: Well, I have, I've got a question to  
22 the extent, to the extent that they -- Mr. McGlothlin, just  
23 throwing out there, to the extent that they, the two issues  
24 start looking the same, I mean is 101 even necessary?

25 MR. MCGLOTHLIN: This is the NOI aspect of the same

1 overall question.

2 CHAIRMAN BAEZ: Okay. So then we can --

3 MR. MCGLOTHLIN: We do have to have the same issue.  
4 I'm willing to work on the wording on this one as I --

5 CHAIRMAN BAEZ: Very well. We'll show 101 under  
6 construction then.

7 MS. BRUBAKER: Next is Issue 114, which appears on  
8 Page 87. And, again, it's an issue wording matter. And  
9 certainly just a note to the parties, to the extent I'm passing  
10 over issues that you think are important, there's some dispute  
11 or resolution that's needed, don't be afraid to speak up either  
12 now or once I've finished directing your attention to certain  
13 issues.

14 The note I have for Issue 114 is to find out whether  
15 the second set of language can be dropped.

16 CHAIRMAN BAEZ: Mr. Bushee.

17 MR. BUSHEE: Again, White Springs is okay with  
18 dropping the second set.

19 MS. BRUBAKER: Okay. For Issue 128, which is on Page  
20 94, again, it's a matter of wording of the issue.

21 CHAIRMAN BAEZ: I'm sorry. What number did you say?

22 MS. BRUBAKER: Issue 128, which appears on Page 94.

23 And actually I also have this noted as a possible dropped  
24 issue. If the parties are willing to just drop it, that would  
25 certainly resolve that.

1 MR. BUSHEE: White Springs is not willing to drop the  
2 issue at this time.

3 CHAIRMAN BAEZ: Mr. Bushee, then we have the question  
4 of the alternate wording. Is there anything that, that can be  
5 done there?

6 MR. BUSHEE: I would be amenable to dropping the  
7 second statement of the issue.

8 CHAIRMAN BAEZ: Okay.

9 MS. BRUBAKER: The next note I have that might need  
10 some attention is for Issue 132 appearing on Page 98. And I'll  
11 also refer your attention to Issue 191, which appears on Page  
12 130. And the note I have regarding those two issues is that we  
13 might use the wording of Issue 191 to replace the current  
14 wording of Issue 132. They're essentially targeting the same  
15 issue, and so one would be duplicative of the other. At the  
16 Issue ID we identified 191 as possibly being the better wording  
17 of that issue and would simply move it into position at 132.  
18 If there are no objections from the parties --

19 MR. WRIGHT: We're on board.

20 MS. BRUBAKER: Okay.

21 CHAIRMAN BAEZ: You seem to have some consensus, Ms.  
22 Brubaker, so let -- for the record, you are taking the wording  
23 of 191 --

24 MS. BRUBAKER: Uh-huh. And moving it to replace that  
25 at 132. And I'll work with the parties to make sure that their



1 positions are correct with that change.

2 CHAIRMAN BAEZ: Okay.

3 MS. BRUBAKER: If I could next direct you to Issue  
4 164, please.

5 CHAIRMAN BAEZ: Mr. Walls, you were going to say  
6 something?

7 MS. BRUBAKER: Oh, I'm sorry.

8 MR. WALLS: I'm sorry. I was just going to clarify  
9 what was being done.

10 CHAIRMAN BAEZ: Okay.

11 MS. BRUBAKER: If I could direct you to Issue 164 at  
12 Page 116. There's dispute among the parties about the  
13 inclusion of the issue.

14 CHAIRMAN BAEZ: Mr. Walls.

15 MR. WALLS: We have an objection to this issue which  
16 is addressing the appropriate level of the interruptible credit  
17 for PEF's industrial customers, and the reason we dispute that  
18 being added to this rate proceeding is because that issue has  
19 already been addressed and decided by the Commission in the  
20 energy conservation cost recovery docket. And so it's, it's  
21 been a decided issue and it's not properly an issue in this  
22 proceeding.

23 MR. BUSHEE: White Springs believes the issue should  
24 remain in. It goes to rate levels. This is a rate case.  
25 There's also an interrelationship between all the rates that

1 are in this proceeding. I think the parties should be allowed  
2 to present their evidence and make their arguments.

3 CHAIRMAN BAEZ: Ms. Brubaker?

4 MS. BRUBAKER: Staff has no objection to dropping the  
5 issue itself. I don't --

6 CHAIRMAN BAEZ: Well, for -- and I guess I'm, I'm  
7 trying to understand the, the notion or the suggestion is that  
8 the credit, the levels of credit are addressed through the,  
9 through the ECRC, is that --

10 MR. GLENN: The ECCR.

11 CHAIRMAN BAEZ: ECCR.

12 MR. GLENN: Yeah. All the acronyms.

13 CHAIRMAN BAEZ: And so -- I'm sorry. Let's start  
14 again. They are addressed through the ECCR. And are they  
15 reset on a yearly basis through or --

16 MR. GLENN: They're reviewed annually.

17 CHAIRMAN BAEZ: They're reviewed annually.

18 Mr. Wright?

19 MR. WRIGHT: Could I just ask for your indulgence to  
20 have a sidebar with my colleague, Mr. Bushee?

21 CHAIRMAN BAEZ: Okay. I think that might be  
22 productive.

23 (Pause.)

24 MR. WRIGHT: I regret to report no success there.

25 CHAIRMAN BAEZ: All right. Mr. Bushee, do you -- I

1 guess is it your contention that, that these credits or credit  
2 levels should not be addressed or reviewed annually through the  
3 clause process?

4 MR. BUSHEE: Mr. Chairman, my contention is this,  
5 that we have a rate case where all of the company's revenues  
6 and cost allocations are being reviewed, but this is an  
7 appropriate time, particularly given that the company is  
8 proposing to drop the IS1 rates and to move customers onto the,  
9 onto an alternate schedule which would have different credit  
10 levels, this would be an appropriate time to take a look at  
11 that particularly in the context of the overall rate structure  
12 that will come out of this proceeding.

13 CHAIRMAN BAEZ: But what -- Mr., Mr. Glenn, help me  
14 understand here. Now there's, there's, there's a fact that you  
15 are moving customers, as Mr. Bushee has represented. Now  
16 without, without getting into the merits of whether that's a  
17 good thing or a bad thing here, how does -- help me understand  
18 if those changes and those decisions are still being made in  
19 the context of the, of the clause, in the context of the  
20 environmental clause, or is there -- what's the relationship  
21 between the two?

22 MR. GLENN: I don't know that that's the issue or  
23 that the issue -- the only issue that we believe is at issue is  
24 the fact we're closing the IS1 tariff. The credits are what  
25 they are. And the issue that they have is with respect to

1 should the tariff be closed or not. And, and so what the  
2 credits are, that's an issue that's already been determined.

3 MS. KUMMER: Mr. Chairman, if I can jump in.

4 CHAIRMAN BAEZ: Please, somebody help me.

5 MS. KUMMER: I hate to raise bad memories, but  
6 remember the discussion we had about base rates and recovery  
7 clauses a while back in another docket? In the '91 -- in  
8 Progress's '91 docket the interruptible rate schedule,  
9 interruptible class was declared to be a DSM program. And it  
10 was decided that the credit that was applied to the rate, the  
11 base rate would be determined on avoided cost as other DSM  
12 programs are. That's why the credit is determined in the  
13 conservation clause based on conservation criteria. And the  
14 only thing we're setting here is the base rate piece of it.

15 CHAIRMAN BAEZ: Okay. And, Mr. Bushee, you have a  
16 problem with this why?

17 MR. BUSHEE: Well, the problem that we have is that  
18 with transferring customers from the IS1 to the IS2, you have a  
19 change in the credits that the interruptible customers will  
20 receive, and that creates a substantial increase in the rates  
21 that customers such as White Springs will pay. Given the fact  
22 that White Springs and other interruptible customers would  
23 receive a substantial, far greater than average increase, we  
24 believe we have the right to examine --

25 CHAIRMAN BAEZ: Do you, do you recognize, and someone

1 jump in if I'm incorrect in what I'm going to say, but do you  
2 recognize that you do have a point of entry in the fuel docket  
3 to discuss the impacts potentially of, of the closing down of  
4 the current tariff and what, what the relative credits are for  
5 your client? I guess is that your argument would still be  
6 preserved in the context of the fuel docket.

7           And I'll tell you why I'm asking this. Because  
8 I'm -- one of, one of the things that I'm having trouble with  
9 is muddying the waters between what is more appropriately in a  
10 fuel docket. Now it's not that I don't see the relationship  
11 and the effect that you're claiming, it's not that at all.  
12 It's that to deal with them, to deal with them in a, in a joint  
13 way probably causes more, at least in my mind it causes a  
14 little bit more confusion, it muddies the water a little bit  
15 one way rather than the other. And I guess my question to you  
16 is that -- are you aware or do you, or do you accept that the  
17 argument that you're proposing now on the effects of the  
18 closing down of the tariff in relation to the, with relation to  
19 the credits and what the appropriate level of the credits  
20 should be is available on the fuel side or the --

21           MS. KUMMER: Mr. Chairman, I hate to jump in. The  
22 closure of the rate will be decided here. The level of the  
23 credit will be decided in ECCR. You would have an opportunity  
24 to argue the level of the credit. But whether the IS1 is  
25 eliminated would be done here.

1 CHAIRMAN BAEZ: But those are, but those are two,  
2 those are two, those are two separate questions, I guess, is  
3 the question.

4 MS. KUMMER: Yes. Absolutely.

5 CHAIRMAN BAEZ: And I don't think, I don't think that  
6 the company -- I didn't -- I don't think I heard Mr. Walls  
7 object to discussing the closing of the tariff. Is that, is  
8 that correct?

9 MR. GLENN: That's correct, and that's Issue 165.

10 CHAIRMAN BAEZ: Does that, does that resolve anything  
11 in your mind or --

12 MR. BUSHEE: No, Mr. Chairman it does not. I think  
13 we've all understood that the issue of whether the tariff  
14 should be closed is an issue in this case. I guess the best  
15 way to explain our concern is at the end of this case there  
16 will be a new set of rates that will apply. And White Springs  
17 will be directly affected by those and we want the ability to  
18 raise the issue concerning the credit level. It may be that  
19 the Commission decides in our favor or not, but in order to  
20 have a set of rates that work at the end of this rate case, we  
21 think that's an issue that should at least be looked at.

22 MR. WHEELER: I would also add that it's not really  
23 the, the level of the credit that would change with the closure  
24 of the IS and CS1. It's really the way the credit is applied  
25 in the tariff. The actual level of the two credits is actually

1 fairly close, so it's a matter of the manner in which the  
2 credit is applied to the customers within the class that will  
3 be changing. I don't know if that helps any.

4 CHAIRMAN BAEZ: Well, is the application -- let me  
5 ask you this. Is the application of the credit more  
6 appropriately -- I guess is the, is the, is the -- are the  
7 terms of any of the tariffs in question appropriately within  
8 the rate case?

9 MR. WHEELER: Well, yeah. The terms and conditions  
10 under the tariff are obviously --

11 CHAIRMAN BAEZ: Under review as part of the rate  
12 case?

13 MR. WHEELER: Part of the rate case proceeding, yes.

14 CHAIRMAN BAEZ: Okay.

15 MR. WHEELER: The proposal to close the IS and  
16 CS1 tariffs will result in transfer to these other set of  
17 tariffs which prescribe a different manner, a different method  
18 of applying the credit, which --

19 CHAIRMAN BAEZ: So the terms --

20 MR. WHEELER: -- is where the rate impact really is  
21 happening.

22 CHAIRMAN BAEZ: So the terms, so the terms of the  
23 tariff, i.e., the closing of one and, and the terms of  
24 application of, of the remaining is at the IS2, those are  
25 properly within, within the base rate case?

1 MR. WHEELER: Yes.

2 CHAIRMAN BAEZ: And, Mr. Glenn, does your client  
3 agree with that, with that statement? I think I saw you  
4 nodding before. I don't think I've said anything different.

5 MR. GLENN: I'm sorry. I didn't hear that. I was  
6 talking to --

7 CHAIRMAN BAEZ: Well, the issue of the closure of the  
8 IS1 and the effect of the transfer and the terms of application  
9 of that tariff are properly within this case.

10 MR. GLENN: The terms of the IS2 tariff, those have  
11 already been set. I mean, conceivably somebody could challenge  
12 the terms and conditions of that tariff.

13 MS. KUMMER: There's not an issue addressing that  
14 currently in the rate case. There's no reason why we couldn't,  
15 but there is not currently an issue on that.

16 MR. WHEELER: But -- and, again, the problem is that  
17 the method you use to apply the credit impacts the amount of  
18 the credit you give, which is, again, intertwined with the  
19 conservation docket. So really it is kind of a strange  
20 situation where --

21 CHAIRMAN BAEZ: I'll say.

22 MR. WHEELER: -- there is an interaction between the  
23 two. I guess the staff's concern is that the level of the  
24 credit really is, is more a matter for the conservation docket  
25 where you're deciding, okay, what's, what's the value that this



1 credit, this ability to interrupt or curtail these customers,  
2 let's quantify that and come up with some billing determinants  
3 and a way to apply that to the customers, which is more, again,  
4 something that's done in the conservation docket and not in the  
5 base rate proceeding.

6 CHAIRMAN BAEZ: All right. Here's, here's what my  
7 decision is, Mr. Bushee. I think the, your opportunity to  
8 discuss and, and present your opposition to the closing of the  
9 first interruptible tariff is available to you under 165. Now  
10 the relationship of the, either the closing of the tariff or  
11 the, and the transfer of your client as a customer to one  
12 tariff or another and the application of whatever credit would  
13 be applicable as a fallout effect of that is proper for  
14 another, for another forum. We're not going to set credit  
15 levels as, as part of the base rate case. That is more  
16 appropriately set as part of the, of the clause docket.  
17 However, you are still, under 165, able to argue the effects  
18 and the operation of the remaining tariffs as well as their  
19 credit levels as part of the evidence in, in your position  
20 against the closing of the tariff, which is properly, which is  
21 properly proposed under this docket. Is that -- do we  
22 understand -- do you understand what I just said, because I'm  
23 not sure I did?

24 MR. BUSHEE: I believe I understand what you said.

25 CHAIRMAN BAEZ: Well, I'm drawing a line. I'm not,

1 I'm not going to -- the fact that the credit levels may be  
2 different and disadvantageous to your client as a result of the  
3 proposed closing of the IS1 tariff is all fair game for you to  
4 present as, as part of your case. However, the, the actual  
5 exercise of adjusting and -- the actual exercise of adjusting  
6 either the level of credit under either tariff, should one  
7 survive over another, is not properly before us and is not  
8 going to be entertained as part of the base rate case. That  
9 would be more appropriately entertained, A, once you know  
10 whether you're on one tariff or another, and, B, as part of  
11 the, part of the conservation clause considerations at another  
12 time.

13 MR. BUSHEE: I understand your ruling, Mr. Chairman.  
14 I'd just ask for the clarification that your ruling would  
15 permit us as well to address revenue impacts among classes from  
16 the application of these tariffs.

17 CHAIRMAN BAEZ: Is that -- wouldn't that be a  
18 natural -- I think it would be a logical offshoot of the points  
19 on your case to discuss the revenue impacts. I don't see them  
20 as different in one context rather than another.

21 MR. BUSHEE: I don't believe it is.

22 CHAIRMAN BAEZ: That's fair. Okay?

23 MR. BUSHEE: Thank you.

24 CHAIRMAN BAEZ: And with that we can drop 164.

25 MS. BRUBAKER: That's correct.

1 CHAIRMAN BAEZ: Okay.

2 MS. BRUBAKER: The next issue I'd like to draw your  
3 attention to is Issue 166, Page 117, and that is also a dispute  
4 over whether to drop the issue.

5 CHAIRMAN BAEZ: All right. Mr. Walls, take your  
6 shot.

7 MR. WALLS: Yes, Mr. Chairman. We objected to the  
8 inclusion of this issue really because this appears to be an  
9 inadequate forum to address it. It came up for the first time  
10 that we saw it in rebuttal, and, of course, it had not been  
11 identified as an issue earlier. And given the complexities and  
12 the nature of issues surrounding real-time pricing rate  
13 schedules, we believed it was more appropriate for this to be  
14 taken up either at a workshop or rulemaking proceeding to  
15 address, rather than to make it part of this rate case on what  
16 will be essentially inadequate evidence because the company  
17 hasn't had an opportunity to fully evaluate this and even  
18 consider what this would look like or how it would be applied.

19 CHAIRMAN BAEZ: Mr. Jenkins (sic.)?

20 MR. BROWN: Mr. Chairman, the Commercial Group  
21 believes this issue should remain. Seeing as this is a rate  
22 proceeding and the Commission is going to consider a number of  
23 rate options and designs, we believe that RTP should be up for  
24 consideration by the Commission.

25 CHAIRMAN BAEZ: Let me, let me ask -- well,

1 Mr. Wheeler, you seem to be stepping up to the plate -- a  
2 question which I'm having a little bit of trouble squaring in  
3 my mind.

4 In a, in a base rate proceeding are we, and this is  
5 going to -- I'm sure I know the answer to it and I don't know  
6 how to put it any other way, but are we -- is the -- are we  
7 bound by the corners of the, of the petition in the sense that  
8 the fact that there's a base rate proceeding which may or may  
9 not include proposed tariffs or proposed deletions of tariffs  
10 and so on, does that open the field in principle to everyone  
11 else saying, well, and by that I also include the Commission or  
12 the Commission staff suggesting, well, you ought to have this  
13 tariff, you ought to have that tariff? I mean is that your  
14 understanding? Maybe that's a legal question.

15 MS. BRUBAKER: Well, I think --

16 CHAIRMAN BAEZ: Is a base rate, is a base rate  
17 proceeding open season to entertain suggested tariffs and so  
18 forth? I guess I'm --

19 MS. BRUBAKER: In a real-life situation typically  
20 not. I suppose if they want to propose a tariff, certainly  
21 they would have to come forward with the evidence on it.  
22 Progress would not bear the evidence or bear the burden of  
23 proof rather on that issue. It's not one they've raised in  
24 their petition. So to the extent that makes a distinction.

25 MS. KUMMER: I think that's the position we find

1 ourselves in is they're proposing that we develop one at this  
2 point in the case and we have nothing to work from. They  
3 certainly could have come in and proposed a structure for an  
4 RTP tariff. That was certainly within their rights. But it's  
5 my understanding they have not done that. They simply said  
6 that we think they ought to have one, and it leaves us at this  
7 point to try to develop one. And as Progress pointed out, it's  
8 a little late in the game to be starting from scratch.

9           CHAIRMAN BAEZ: Mr. Jenkins, I'm going to go out an a  
10 limb here and ask you, I mean, after you've heard what seems to  
11 be staff's representation that there's inadequate testimony and  
12 that they would have trouble making a good faith recommendation  
13 on this issue, if, if you were to withdraw or change your  
14 position in terms of keeping this, this issue and, and perhaps  
15 have you and your client pursue a workshop effort or at least  
16 try and work, have staff, work with staff to, maybe it's time  
17 to tee up or entertain some discussion along those lines, would  
18 that be an amenable -- would that be, although not a  
19 100 percent solution for you and your client, but perhaps a  
20 more productive avenue to take at this point in time given the  
21 circumstances?

22           I mean, I think you've heard, you've heard a  
23 foretelling of the future on this issue, at least as we're  
24 equipped to deal with it right now.

25           MR. BROWN: I believe that's fine, Mr. Chairman.

1           CHAIRMAN BAEZ: I appreciate your cooperation,  
2 Mr. Jenkins. And if you -- staff, Ms. Kummer, if you can make  
3 sure and maintain contact with Mr. Jenkins and his client on  
4 that front and, you know, timing issues being what they are, as  
5 we all know, but if you can commit to some progress on that  
6 front.

7           MS. KUMMER: Certainly. Any customer or interested  
8 party can propose a new tariff at any time they like. They can  
9 file a petition asking that we look into that, so that  
10 certainly isn't a problem.

11           CHAIRMAN BAEZ: Well, but I think you mentioned,  
12 without getting, without creating a similar problem in terms of  
13 why don't, why don't we make a good faith effort as an agency  
14 in the public interest to try and --

15           MS. KUMMER: Certainly. We'll work with them.

16           CHAIRMAN BAEZ: -- to try and explore the  
17 appropriateness or how appropriate or how even feasible they  
18 are in Florida, and perhaps that's a discussion we've been  
19 putting off for a while.

20           MS. KUMMER: Certainly. We can get with them.

21           CHAIRMAN BAEZ: Okay. Thank you. Thank you,  
22 Mr. Jenkins.

23           And with that, we can -- I'm sorry. What issue was  
24 that?

25           MS. BRUBAKER: 166.

1 CHAIRMAN BAEZ: 166. We can show 166 dropped.

2 MS. BRUBAKER: The next issue I'd like to direct your  
3 attention to, please, is 171. That appears on Page 120. I  
4 noted this one, there was some discussion at the Issue ID on  
5 Tuesday that this issue is essentially covered under Issues  
6 151 and 152. Those appear on Page 109 and 110.

7 If the parties don't feel strongly about dropping it,  
8 we could move on, but I'm just, like I say, tracking the notes  
9 I had from the Issue ID.

10 CHAIRMAN BAEZ: I'm sorry. The --

11 MS. BRUBAKER: The question is can Issue 171 be  
12 dropped?

13 MR. McGLOTHLIN: OPC believes it can be dropped.

14 MR. BUSHEE: With the understanding that that issue  
15 is within the previous issues you mentioned, White Springs is  
16 okay with dropping the issue.

17 MS. BRUBAKER: Okay.

18 MR. PERRY: We are okay with combining it with  
19 151 and 152.

20 CHAIRMAN BAEZ: Well, it's not -- it's at least a  
21 clarification, nothing more than a clarification, Mr. Perry,  
22 that the issue is sort of involved or it's included as part of  
23 151 and 152.

24 MR. PERRY: Correct.

25 CHAIRMAN BAEZ: That's fair. If there are no

1 objections, then we can show 171 dropped.

2 MS. BRUBAKER: The next issue would be 172, which  
3 appears on Page 121. And this is, again, a dispute about  
4 whether to drop the issue. If it can be dropped, we can move  
5 on, or is there a continuing dispute?

6 CHAIRMAN BAEZ: Well, let -- Mr. Walls, you have the  
7 objection. I'm going to let Mr. Bushee respond so that I can  
8 get a little bit of background on this.

9 MR. WALLS: This objection is in line with the one we  
10 discussed in Issue 166. Again, it's an issue that came up in  
11 rebuttal. And, in fact, this one came up as just a mention of  
12 doing this with absolutely no evidence to suggest how it should  
13 be done or when it should be done or, and how it would be  
14 applied. So, again, it's not an issue that PEF raised, and the  
15 way we look at it now is there's insufficient evidence in the  
16 record for us to do anything with this. And so we would think  
17 again this would be an issue that should be taken up at some  
18 other point to address this issue if, if White Springs wants to  
19 pursue it.

20 CHAIRMAN BAEZ: Mr. Bushee.

21 MR. BUSHEE: If, in fact, there was a forum to take  
22 this up at another point, we'd be willing to drop the issue.

23 CHAIRMAN BAEZ: Well, and let me shift over to Ms.  
24 Brubaker. What -- can you at least suggest what a proper forum  
25 would, would that be or the proper way? And, again, Mr. Bushee



1 is within his or his client is within his right to seek redress  
2 from the Commission in some, in some way, shape or form. I  
3 just don't have an understanding of what that would be.

4 MS. KUMMER: I think it would be handled the same way  
5 as the RTP. We could get with them and discuss what they had  
6 in mind specifically and have a workshop with the company to  
7 discuss it. Because right now we don't really have a good idea  
8 of what they had in mind as being this tariff.

9 CHAIRMAN BAEZ: So then it bears some exploring  
10 still, Mr. Bushee.

11 MS. BRUBAKER: Chairman. I'm sorry.

12 CHAIRMAN BAEZ: Yes. Go ahead.

13 MS. BRUBAKER: Chairman Baez, I was going to say  
14 either we could explore it as a workshopping process, or if the  
15 company wanted to, if they wanted to file a petition that we  
16 look at this, certainly we could entertain it through that  
17 forum also.

18 CHAIRMAN BAEZ: Okay. And I think what the key point  
19 here is there are forums or processes available that, that you  
20 have the election of which to pursue, and I would urge you to  
21 talk to, talk to staff to see what the best avenue for that is.

22 MR. BUSHEE: With that understanding that we would  
23 have an avenue, I think it would be acceptable to drop the  
24 issue. Otherwise, what we would have asked for under the case  
25 ultimately was that the Commission order the company to make a

1 proposal. But if there's an informal means to go forward and  
2 to discuss the issues, I think that would be appropriate.

3 CHAIRMAN BAEZ: Okay. We're agreed on that? And I  
4 think the company has to participate on that too, I would  
5 imagine, on some level. So with that understanding at least we  
6 can show 172 dropped.

7 MR. BUSHEE: Could the record reflect a commitment by  
8 the company to participate?

9 CHAIRMAN BAEZ: Well, my suspicion is that if the  
10 staff -- if you're involved with the staff, I think they, they  
11 tend to return the staff's calls. It sort of works that way.

12 MS. KUMMER: We'll make sure that we're in touch with  
13 them.

14 CHAIRMAN BAEZ: Okay. Great.

15 MS. BRUBAKER: The next issue for discussion would be  
16 Issue 175 appearing on Page 122. And just for reference, I  
17 think it's safe to say that both staff and Progress at least  
18 are in agreement that this is a matter which would be handled  
19 more appropriately in the fuel clause.

20 MR. PERRY: I'd like to make the point for FIPUG that  
21 we would respectfully disagree. We think that it's an  
22 appropriate issue for inclusion in this docket. There was an  
23 agreement that the company and the parties entered into with  
24 regards to hedging costs, and some of those costs, like the  
25 gains and losses on the hedges themselves, are flowed through

1 the fuel clause, and then some of the other costs like the O&M  
2 costs were supposed to be rolled into base rates at the time of  
3 the company's next base rate proceeding or December 2006,  
4 whichever was sooner. And we think that the treatment of those  
5 costs both in base rates and the further treatment of those  
6 costs in the fuel clause are appropriate to be addressed here  
7 in this proceeding where the parties and the Commissioners have  
8 had the benefit of briefs and a written recommendation in the  
9 intervening time to contemplate the issues and vote on them.

10 CHAIRMAN BAEZ: Help me understand the, the -- well,  
11 I'll ask, I'll ask Mr. Walls this.

12 Can you help me understand, Mr. Walls, the, the, the  
13 operation of the agreement that Mr. Perry is referring to, or  
14 Mr. Portuondo, whoever can answer?

15 MR. PORTUONDO: Chairman, the agreement that Mr.  
16 Perry is referring to is exactly, I think, as he stated, that  
17 upon the company's next base rate proceeding we would transfer  
18 any of the incremental hedging costs that were being recovered  
19 through the fuel clause into base rates.

20 Interestingly enough for Progress Energy, we have not  
21 had incremental hedging costs sought through the fuel clause,  
22 so really this is a moot issue as it relates to costs of  
23 Progress Energy.

24 CHAIRMAN BAEZ: Mr. Perry, do you disagree with that?

25 MR. PERRY: Based on Mr. Portuondo's statement -- he

1 hasn't had his deposition yet and that's something that we were  
2 going to pursue with him. It could be that we could reach an  
3 agreement to drop this issue.

4 CHAIRMAN BAEZ: Let's table, let's table this issue.  
5 It sounds like there may be some, some resolution in the offing  
6 on this one.

7 Ms. Brubaker, can you --

8 MS. BRUBAKER: The next issue for discussion would be  
9 Issue 176.

10 CHAIRMAN BAEZ: Mr. Bushee, can you -- I don't -- can  
11 you explain to me what -- I don't know how -- I guess the  
12 argument is it's not proper in a base rate proceeding to be  
13 entertaining these policy type questions. Can you tell me why  
14 we should?

15 MR. BUSHEE: Yes, Mr. Chairman. I think there's two  
16 primary reasons. One is that the company is seeking what we  
17 believe is an excessive rate of return and, in fact, an equity  
18 kicker based on suggestions that their performance has been  
19 superior, and we would argue that part of the management  
20 efficiency goes to how they've selected their generation mix,  
21 among other things.

22 We would also suggest that the mix of generation, and  
23 our argument is that they have focused too much on natural  
24 gas-fired generation to the exclusion of coal, goes to,  
25 potentially to the prudence of some of these costs.

1           CHAIRMAN BAEZ: Well, and why, why -- I guess my next  
2 question is why does it have to be a specific issue? I mean,  
3 why, why wouldn't what you just said and the evidence to, to  
4 compel that, that kind of conclusion or that kind of inference  
5 not be appropriate when you're discussing the, the, I guess you  
6 called it the kicker? Why is it, why is it not subsumed to  
7 that? Why do we need to split out an issue that in my mind,  
8 although I -- and I don't mean this in any, in any way, that  
9 I'm not sure I necessarily disagree as a general matter, not  
10 specific to, to the company in particular, but anyway that's a  
11 whole other different rant, but why isn't it, why can't you  
12 just say that as part of opposing a kicker for management  
13 adequacy or excellence or what have you?

14           MR. BUSHEE: Well, with the understanding that we  
15 could raise that, you know, with respect to ROE generally and  
16 not just the kicker and with respect to prudence, should we  
17 pursue that issue, then with that understanding we could drop  
18 this specific issue.

19           CHAIRMAN BAEZ: And I'll tell you, and I'll tell you  
20 why. I agree with the company's objection that it is probably  
21 not proper to be handing down determinations on the part of  
22 this Commission that a company, one company or another has not  
23 done enough. And I mean that in the sense like you got to go  
24 off and build more coal or you got to build more nuclear or so  
25 on. As tempting as it sounds, this is probably not the proper

1 forum to be discussing that kind of, that kind of policy  
2 statement.

3 To the extent that you have or your client has an  
4 opinion or has evidence that would militate in favor of not  
5 awarding a concern level of return or a certain reward as has  
6 been proposed or requested, I think that's entirely fair game.

7 MR. BUSHEE: With that understanding --

8 CHAIRMAN BAEZ: What arguments you make are fair, are  
9 fair game to try and convince the Commission. Is that, is that  
10 fair?

11 MR. BUSHEE: With that understanding, we're willing  
12 to drop the issue.

13 CHAIRMAN BAEZ: Okay. If there's no objection, then  
14 we can strike 176.

15 MS. BRUBAKER: And that brings us to Issue 177, Page  
16 124.

17 CHAIRMAN BAEZ: Again, Mr. Bushee, I think -- and,  
18 and really one of the -- and I don't mean this as one way or  
19 another -- Mr. Shreve, you wanted a sidebar with Mr. Bushee?

20 MR. SHREVE: That's okay.

21 CHAIRMAN BAEZ: One of the issues I'm struggling with  
22 is how -- you know, let's keep things in their proper, in their  
23 proper forum, and the discussion of incentives and so forth is  
24 probably more appropriately for generation. I think we already  
25 have that, but, but whether, whether and what they should be

1 is, is more appropriately considered in, in the fuel docket,  
2 which, I would remind you, you have an opportunity to  
3 participate in if your client sees fit. But that's more the  
4 proper forum on it. And they're reviewed on an annual basis as  
5 well. So it's not, it's not one of those use it now or lose it  
6 propositions.

7           With that understanding, I mean, are you amenable to  
8 striking this issue?

9           MR. BUSHEE: This is an issue, if I could, I would  
10 like to ask that we table, and let me explain why.

11           From the perspective of a company, the company,  
12 Progress, when they participate in rate cases, their expenses  
13 are reimbursed through the process. From the perspective of an  
14 industrial intervenor such as White Springs, when we  
15 participate, those expenses aren't reimbursed. It's a  
16 commitment that the company has to make, and, thus, the company  
17 needs to try to address these issues as efficiently as  
18 possible. I'm not suggesting that that's not everybody's goal,  
19 but to the extent that we do things in multiple proceedings  
20 that could be done in a single proceeding, it does cause  
21 additional expenses. And there, frankly, is a limit to how  
22 much intervenors --

23           CHAIRMAN BAEZ: And I don't, and I don't disagree  
24 with you. The problem is that I don't -- I think the single  
25 proceeding that you've chosen is not -- you didn't -- how do I

1 say this? You haven't -- you made a choice, but you haven't  
2 chosen the right one. I guess that's -- and I don't mean to  
3 sound harsh or anything. I think you realize, you know, when  
4 you've got a question or an issue, you say, all right, where  
5 does this, where does this go? And, and unfortunately the mere  
6 fact that you're here now and, and not, and not there now can't  
7 rule the day for me.

8 MR. BUSHEE: Oh, and I'm not suggesting that the fact  
9 that we're here is what decides where the issue is. It really  
10 is, as you expressed, an issue of where the issue is best  
11 resolved. And I did simply want to make a statement concerning  
12 the limited resources that the Intervenors have.

13 CHAIRMAN BAEZ: I, I do appreciate that. I also, I  
14 also appreciate the fact that, that your client is interested  
15 enough to get involved in the process and that's not lost on  
16 me. But still it is a process after all, and part of, part of  
17 the process, as you know, is putting it in the right place, I  
18 guess, putting your efforts in the right place. And I don't  
19 think that they're as productive here -- in fact, I know that  
20 they're not as productive here as they would be properly in the  
21 fuel docket.

22 MR. BUSHEE: Perhaps then, and I think this is what  
23 you suggested, that the resolution of this issue should be the  
24 same as the previous issue, that we can raise the issue where  
25 appropriate.



1           CHAIRMAN BAEZ: Well, I think, I think that, honestly  
2 I think the issue in one form or another is already teed up on  
3 an annual basis. I could be wrong, and maybe we can argue as  
4 to the scope of it, but, you know, what the level -- Mr. Breman  
5 is fortunately out back nodding his head yes. The issue of the  
6 level of the incentives is an issue that's teed up on a yearly  
7 basis. So it's not even -- this is low hanging fruit for you.  
8 There isn't even work involved in convincing that it even needs  
9 to be addressed. It already is addressed. All you've got to  
10 do is be there essentially.

11           MR. BUSHEE: I think that I have been persuaded to  
12 drop the issue.

13           CHAIRMAN BAEZ: You know, I'm glad this is on the  
14 record because it would have been one of the first. I  
15 appreciate it. Thank you.

16           That was -- we can show Issue 177 dropped.

17           MS. BRUBAKER: That was 177.

18           CHAIRMAN BAEZ: Thank you, sir.

19           MS. BRUBAKER: Next will be Issue 178.

20           CHAIRMAN BAEZ: Mr. Walls.

21           MR. WALLS: Yes. The company objects to this issue  
22 because, again, the company believes this is a more appropriate  
23 issue to raise in the annual fuel docket or in the Ten-Year  
24 Site Plan process. And I would like to specifically note that  
25 at least White Springs in the last sentence of their position

1 says, "The Commission should explicitly examine proposed  
2 risk-sharing mechanisms in PEF's next fuel clause proceeding."  
3 So I just, again, believe this issue is another one that's more  
4 appropriately addressed elsewhere than in this base rate  
5 proceeding.

6 CHAIRMAN BAEZ: Mr. Bushee -- Mr. Wright, you had --  
7 now, Mr. Wright, you don't have an objection to dropping this  
8 issue apparently?

9 MR. WRIGHT: Correct, Mr. Chairman. We would not  
10 object to dropping the issue. It's White Spring's issue.

11 CHAIRMAN BAEZ: Mr. Bushee, again, I don't -- you  
12 know, make your comment. I'll rule on it or we can discuss it.

13 MR. BUSHEE: I think we've covered this general  
14 category of issues and I won't repeat my comments, other than I  
15 do agree with the sentence that the company just quoted that  
16 the Commission should explicitly examine it in the next fuel  
17 proceeding.

18 With the understanding that we're not precluded from  
19 making fuel risk arguments with respect to other issues in this  
20 case, then we would drop the issue.

21 CHAIRMAN BAEZ: Okay. And I, I believe that all goes  
22 to the weight of, of the evidence. So I don't think that  
23 you're precluded in any way of doing that. With, with your  
24 agreement then, Issue 178 can be stricken.

25 MS. BRUBAKER: Mr. Chairman, that brings us to Issue

1 181 appearing at Page 126.

2 CHAIRMAN BAEZ: Mr. Bushee, I have to tell you this  
3 one has a similar ending. And I say similar because it's not  
4 exactly the same one. But certainly the ruling on conservation  
5 programs doesn't happen every year. It happens every four  
6 years, is it?

7 MS. BRUBAKER: I --

8 CHAIRMAN BAEZ: Someone hold up some fingers. Five  
9 years. Thank you, Mr. Portuondo.

10 Nevertheless, the logic being the same, there is,  
11 there is a point of entry, but we're between, we're between  
12 cycles on this. It's not that it doesn't happen and that there  
13 isn't an appropriate forum for it, but, you know, this -- in  
14 essence your issue is suggesting that we approve or reapprove  
15 conservation programs and conservation goals essentially or how  
16 to meet those, and I'm, I'm not sure that we can do that here.  
17 So I don't think this issue is appropriate.

18 MR. BUSHEE: I think the issue is now dropped, Mr.  
19 Chairman.

20 CHAIRMAN BAEZ: Okay. Thank you, sir.

21 MS. BRUBAKER: The next issue for consideration is  
22 Issue 182. This one is a bit different in that in staff's  
23 opinion, and if you look at the position of OPC, for example,  
24 it would appear that this issue is actually subsumed into other  
25 issues. It's adequately covered in other issues in staff's

1 opinion.

2 CHAIRMAN BAEZ: Mr. Wright?

3 MR. WRIGHT: Mr. Chairman, conceptually I'm inclined  
4 to agree. I want to go -- I was just starting to look at the  
5 issues enumerated in the staff's position on 182. If I could  
6 have a second to do that, I think it probably works out.

7 CHAIRMAN BAEZ: Why don't we TP this one and we'll  
8 move along.

9 MS. BRUBAKER: Very good.

10 MR. WRIGHT: Well, that's okay with me. I really  
11 think I can do this in less than a minute.

12 CHAIRMAN BAEZ: Okay. We can come back to it. You  
13 just let me know when you're done and maybe we can resolve  
14 something else.

15 MS. BRUBAKER: The next issue for discussion would be  
16 183. In staff's opinion, that's actually duplicative of Issue  
17 150. If that's something we need to table to give the parties  
18 a chance to look at those issues, that's fine. Or if they're  
19 prepared to address it now, that's fine also.

20 CHAIRMAN BAEZ: Have, have any of the Intervenors --  
21 or, more importantly -- well, have the Intervenors been able to  
22 confirm that Issue 150 is adequate for these purposes?  
23 Mr. McGlothlin, any objection or any comment?

24 MR. MCGLOTHLIN: Was it 150?

25 CHAIRMAN BAEZ: I think that was it. Yes.

1 MR. MCGLOTHLIN: OPC does not object to eliminating  
2 the latter issue.

3 CHAIRMAN BAEZ: With that understanding, Mr. Bushee,  
4 any objection?

5 MR. BUSHEE: White Springs has no objection.

6 CHAIRMAN BAEZ: Okay. Any of the other  
7 intervenors -- Mr. Wright, I know that you are busy with  
8 perhaps a previous issue, but --

9 MR. WRIGHT: Yes, Mr. Chairman, I was. Were we  
10 talking about 150?

11 CHAIRMAN BAEZ: Uh-huh.

12 MR. WRIGHT: In relation to which?

13 MS. BRUBAKER: Issue 183.

14 CHAIRMAN BAEZ: 183.

15 MR. WRIGHT: Thank you. We don't have any objection  
16 to dropping 183, if that's the question.

17 CHAIRMAN BAEZ: Right. That is the question.

18 MR. WRIGHT: Okay. And --

19 CHAIRMAN BAEZ: Okay. Without objection -- go ahead.

20 MR. WRIGHT: Since I'm here, we don't have any  
21 objection to dropping 182 either. That was not our issue. It  
22 was somebody else's issue. We just took the position we did  
23 because it was there.

24 CHAIRMAN BAEZ: All right. So based on, based on  
25 your understanding of staff's position, you don't have any

1 objection. If there wasn't any objection prior to 182 as well,  
2 we can drop both 182 and 183.

3 MS. BRUBAKER: The next issue for discussion is Issue  
4 185 appearing on Page 128.

5 CHAIRMAN BAEZ: I don't see who's, who would oppose  
6 it necessarily, but --

7 MS. BRUBAKER: I'm sorry.

8 CHAIRMAN BAEZ: Go ahead, Ms. Brubaker.

9 MS. BRUBAKER: Well, in staff's opinion, this is  
10 something that's more appropriately handled through the fuel  
11 docket also.

12 CHAIRMAN BAEZ: Very well. Are there any objections  
13 to striking Issue 185 with that understanding? Thank you.  
14 Show 185 stricken.

15 MS. BRUBAKER: And that brings us to Issue 186,  
16 similar objection.

17 MR. PERRY: I would suggest that we just table this  
18 one for now. But I think that we could probably maybe get back  
19 to staff and --

20 CHAIRMAN BAEZ: We'll table 186.

21 MS. BRUBAKER: The only other issue that staff is  
22 aware they'd like to direct your attention to as being slightly  
23 more critical than potential stipulations or drops would be  
24 Issue 190. The reason I point it out to you, it's an issue  
25 that was added fairly late in the process, so it came in after

1 the close the docket issue.

2 At the parties' preference we can either leave the  
3 issue where it is as it's currently numbered or I can move it  
4 into the cost of service and rate design section and give it a  
5 sub A heading just so it's in the proper area. We can, we can  
6 do either. If parties are content to leave it as it is, we can  
7 certainly do so, with the understanding it will be taken up  
8 with the other issues in the cost of service and rate design.

9 CHAIRMAN BAEZ: It's a housekeeping matter, frankly.  
10 I mean, Mr. Walls --

11 MR. WALLS: I believe Progress has some proposed  
12 change in position, if a word is changed in the, a couple of  
13 words are changed in the issue.

14 Looking at Issue 190, if it reads, "Should an  
15 adjustment to account for the increase in unbilled revenue due  
16 to any recommended rate increase be made?" And then we would  
17 change our position to "Yes."

18 MS. BRUBAKER: I would assume that in conjunction  
19 with that language change you would add a second sentence --

20 CHAIRMAN BAEZ: There's a second question in there  
21 somewhere.

22 MS. BRUBAKER: If so, what amount, you know?

23 MR. PORTUONDO: I think this is a fallout issue.  
24 It'll depend on the Commission's decision. And then once  
25 they've made that decision, we will file new cost of service

1 schedules showing the result. I went back and looked at the  
2 '92 case, and I think that's the type of approach that was  
3 used.

4 MR. WRIGHT: Mr. Chairman.

5 CHAIRMAN BAEZ: Mr. Wright.

6 MR. WRIGHT: If we could just substitute "change" for  
7 "increase" where that appears. As you know, the consumer  
8 representatives in this case are advocating a decrease, and I  
9 think it doesn't, doesn't violate the issue if we just say,  
10 "Should an adjustment be made to account for the change due to  
11 any recommended rate change?"

12 CHAIRMAN BAEZ: You're --

13 MR. WALLS: We're fine with that change.

14 CHAIRMAN BAEZ: Okay. And you're, staff is all right  
15 with the proposed language as modified?

16 MS. BRUBAKER: Staff is fine with the language  
17 change. Uh-huh.

18 CHAIRMAN BAEZ: All right. Then let it, let that be  
19 reflected as a modification of Issue 190.

20 MS. BRUBAKER: As for the moving of the issue, is  
21 there any comment?

22 MR. GLENN: Did you have one on 180, Jennifer?

23 MS. BRUBAKER: We can certainly discuss it. I had it  
24 tabled as a slightly less urgent issue. But the issue on  
25 180 on Page 125, my note says this issue can be dropped if



1 White Springs could confirm that it deals only with the rate  
2 case legal expense. If so, that's covered by Issue 131, and  
3 Issue 180 could be dropped.

4 CHAIRMAN BAEZ: Mr. Bushee.

5 MR. BUSHEE: We will agree with that understanding to  
6 drop the issue.

7 MS. BRUBAKER: Okay.

8 CHAIRMAN BAEZ: All right. Show Issue 180 dropped  
9 then.

10 MS. BRUBAKER: Mr. Chairman, with respect to the  
11 issues that we have tabled in our last few minutes of  
12 discussion, I just want to be clear. My understanding is the  
13 parties will try to resolve that either through language  
14 modifications or other discussions. To the extent they're  
15 unable to reach an agreement, my suggestion would be that they,  
16 that could be dealt with either through a separate order or, if  
17 time permits, that could be handled in the ruling section of  
18 the prehearing order if it hasn't issued prior to the  
19 nonresolution of the dispute.

20 I suppose perhaps just simple filings by the parties,  
21 letters to inform me of the status of whether those issues got  
22 resolved or not would probably be sufficient.

23 CHAIRMAN BAEZ: Is everybody all right with that?  
24 And I know that there's some other -- well, the other category  
25 of tabled issues require just mere confirmation. I think Mr.

1 Perry may have had a couple that he needed to get back with his  
2 client on.

3 MR. PERRY: Yeah. There's a couple that I will  
4 discuss with my client and --

5 CHAIRMAN BAEZ: But you can make, you can make them  
6 known or confirm or deny as necessary.

7 MR. PERRY: Certainly.

8 CHAIRMAN BAEZ: All right. Then we'll work that way.  
9 On those issues that have some additional rewording available  
10 to them and some additional discussion, you can just make staff  
11 counsel aware of the resolution or lack of as necessary.

12 MS. BRUBAKER: If I may ask that in addition to  
13 having any changes to positions to me by, I think I said  
14 Wednesday, which would be August 17th, close of business, that  
15 to the extent that there are any tabled issues outstanding, if  
16 I could also have the status of those resolved or unresolved  
17 fairly quickly, not necessarily on the 17th, but in a prompt  
18 manner so I know whether that needs to be included or not in  
19 the prehearing order, please.

20 CHAIRMAN BAEZ: Are there any changes to the exhibits  
21 at this point? And we don't have any pending motions, do we,  
22 Ms. Brubaker? Have we got any pending motions?

23 MS. BRUBAKER: There are a number of pending motions.  
24 I suppose the most immediate would be the petition for the AG's  
25 office, which I believe was dealt with this morning already.

1           CHAIRMAN BAEZ: Yeah. I think we granted  
2 intervention.

3           MS. BRUBAKER: And that leaves a few others that  
4 staff can deal with by separate order.

5           CHAIRMAN BAEZ: Okay. We'll be dealing with any  
6 pending motions by separate order. And we also have pending --  
7 that includes pending confidentiality matters will be ruled on  
8 and addressed by separate order.

9           MR. MCGLOTHLIN: Chairman Baez, one of the pending  
10 motions is OPC's motion to compel. And based upon a statement  
11 in the company's response, I may be in a position to withdraw  
12 it, but I need a clarification or confirmation from counsel.  
13 We could take it up now or I could do it offline.

14           CHAIRMAN BAEZ: Well, let's see if we can't end it on  
15 a positive note. Ask your clarification, sir.

16           MR. MCGLOTHLIN: All right. By way of quick  
17 background, in one of our requests to produce documents we  
18 asked the company to provide all industry depreciation studies  
19 or comparisons that were in the possession either of the  
20 company or the company's depreciation consultant. And our  
21 objective was part of a larger discovery effort to obtain those  
22 materials that the consultant reviewed or consulted in the  
23 course of preparing Progress Energy Florida's depreciation  
24 study. The company in its response identified two documents  
25 that were in its possession and then said that they were the

1 subject of third party confidentiality agreements and,  
2 therefore, were confidential and they had no ability to provide  
3 them.

4 Subsequently, the company indicated that it was in  
5 the process of contacting those third parties to see if those  
6 third parties would release PEF to give us the documents. And  
7 after a considerable amount of time had passed, they reported  
8 that the third parties were unwilling to do so and that led to  
9 our motion to compel.

10 But in its response Progress Energy Florida said that  
11 those particular documents were not in the possession of the  
12 consultant and the consultant did not rely upon them. And if  
13 the company will confirm that the consultant did not refer  
14 either to those documents or any other industry-wide  
15 statistics, I will withdraw my motion because my attempt was to  
16 identify and obtain those materials that the consultant  
17 reviewed.

18 On the other hand, if the consultant reviewed  
19 different documents, then I would contend that the response to  
20 our discovery was incomplete and I would ask for those.

21 CHAIRMAN BAEZ: We'll deal with that, we'll deal with  
22 the second part of that later. Mr. Burnett, you want to  
23 clarify or respond?

24 MR. BURNETT: Absolutely, sir. Thank you. The  
25 request at issue, Mr. Chairman, was disjunctive. It called for

1 any data in the possession of the company or in the possession  
2 of the consultant. Anything in the possession of the  
3 consultant has been produced in discovery. The two documents  
4 at issue in the motion to compel were in the possession of the  
5 company but not in the possession of the consultant. Our  
6 consultant has not reviewed those documents and he has not been  
7 provided those by Progress Energy. So that may be a source of  
8 the confusion is the disjunctive nature of the request.

9 We have not provided the two documents at issue in  
10 the motion to compel to anyone at all, including our  
11 consultant. He's not been privy to them. But anything the  
12 consultant did rely on has been produced in discovery.

13 CHAIRMAN BAEZ: Is that clarification sufficient or

14 --

15 MR. MCGLOTHLIN: I believe so. Now just so we're  
16 clear, during the deposition of Mr. Robinson, the depreciation  
17 consultant, this question and answer appear. And my question  
18 to him, "Do you know what states are included in the industry  
19 averages that are used in this study?" My question assumed  
20 that there were some. His answer was, "Well, when you say the  
21 industry average that's used in the study, there might have  
22 been limited references to any industry data in the study, and  
23 that would entail any of those companies that would have  
24 reported data to the EEI," the acronym being one of the  
25 entities that provides the statistics to certain individuals.

1 So that suggests to me that at the time of the deposition the  
2 consultant was under the impression that there had been some  
3 limited use of data. Perhaps he was responding generally and  
4 was, was in error with respect to what he looked at for this  
5 case. But I would just ask the company to confirm that  
6 Mr. Robinson did not refer to any industry data or statistics  
7 in the course of preparing the PEF depreciation study.

8 CHAIRMAN BAEZ: Mr. Walls?

9 MR. WALLS: He certainly did not rely on any of the  
10 EI, the EEI data that was referred to in that question and  
11 answer. What he was referring to there is dated data that  
12 relates back to a report that was issued sometime, I think, the  
13 mid to late '90s based on reports that had been done in the  
14 '80s, which was the last source that he had ever seen. And so  
15 he was responding based on what he had last seen, not what he  
16 had relied on in this case. He believes that data was dated  
17 and didn't rely on it.

18 MR. MCGLOTHLIN: I'm confused by that answer. Either  
19 the consultant reviewed, consulted, relied upon industry data  
20 or he did not. If he did, then my original discovery question  
21 was, would have encompassed that and I would expect it to be  
22 produced. And if it's, if you look at documents other than  
23 those in the possession of the company, I asked also for those  
24 in the possession of the consultant.

25 MR. WALLS: If I could respond. I believe the point

1 there is "relied on this industry data." The expert didn't.  
2 He said he didn't in his -- he did not rely -- in his rebuttal  
3 he makes clear he didn't rely on this EI data that  
4 Mr. McGlothlin is referring to that came up in the deposition  
5 because what he had is dated data, it's old. So he didn't rely  
6 on it. And --

7 MR. MCGLOTHLIN: There might have been limited  
8 references to any industry data in the study. And it's  
9 possible to parse words to the point where we have a semantic  
10 exercise here. If he used the data for any purpose in the  
11 course of preparing this study, then I would like to have those  
12 materials.

13 CHAIRMAN BAEZ: Including, including to determine  
14 that it was dated? I mean --

15 MR. MCGLOTHLIN: If that was the only purpose, then  
16 that should be made clear so that it's clear that they have,  
17 that no industry data had any bearing, he did not use those as  
18 an input in any way in the course of preparing the study.

19 CHAIRMAN BAEZ: And I'm, I guess I'm not, I'm not  
20 sure that that absolute clarification can come from, can come  
21 from counsel. I mean, is it a matter of one more question of  
22 the consultant, you know?

23 MR. MCGLOTHLIN: I'm content to have the company put  
24 that question to the consultant. And my request in support of  
25 my original discovery request is to have the company provide

1 those materials that, that were --

2 CHAIRMAN BAEZ: He did rely on.

3 MR. MCGLOTHLIN: -- that were used by the consultant  
4 in any way.

5 MR. WALLS: We produced everything the consultant  
6 relied on to prepare his depreciation study. This issue, I  
7 believe, came up in rebuttal and was referred to in rebuttal  
8 because OPC's consultant referred to industry data. And our  
9 consultant is saying the only industry data he is aware of is  
10 this dated data. And that's what he says in rebuttal, it's  
11 dated. I don't know what else we can do.

12 I would assume that Mr. Pous has it available to him,  
13 OPC's consultant. I can ask our consultant for that dated  
14 data, but he didn't rely on it to prepare his study and he  
15 didn't rely on it to come to his opinions. He is simply  
16 referring to it in rebuttal as if this is the data that  
17 Mr. Pous is referring to, it is dated.

18 MR. MCGLOTHLIN: All right. I think that answers my  
19 question and I'll withdraw my motion. I'm going to assume,  
20 based on counsel's representation, that the consultant for PEF  
21 did not use industry data in the course of preparing the study.

22 CHAIRMAN BAEZ: Just confirm that for me.

23 MR. WALLS: He did not use that industry data in  
24 preparing the study. I mean, we produced everything he relied  
25 on.



1 CHAIRMAN BAEZ: See now -- okay. There's, there's an  
2 admission there that says there was industry data used. Is  
3 that, is that --

4 MR. WALLS: I need to go back and ask the consultant  
5 what he would consider to be industry data. If he relied on  
6 it -- he produced everything he relied on to prepare his  
7 report.

8 CHAIRMAN BAEZ: Including industry --

9 MR. WALLS: We're using "industry data" pretty  
10 loosely here. I don't know what that means to OPC. If it's  
11 the EEI data that was referred to in the rebuttal testimony,  
12 then we say that that was -- the response in our rebuttal was  
13 that that was dated and was not relied on. I don't know what  
14 else they mean by "industry data."

15 CHAIRMAN BAEZ: Have they, have they produced, have  
16 they produced data that was relied on in your opinion?

17 MR. MCGLOTHLIN: I'm not in a position to answer that  
18 question, Chairman Baez.

19 CHAIRMAN BAEZ: Whether incomplete or complete.

20 MR. MCGLOTHLIN: They have identified two documents  
21 that they say are responsive to my request for industry data in  
22 the possession of the company or its consultants. They're  
23 saying that --

24 CHAIRMAN BAEZ: And that way -- and those documents,  
25 and those documents do not lie down with the statements that

1 you're referring to in the deposition of the witness?

2 MR. MCGLOTHLIN: Now to be clear, they have not  
3 provided those documents claiming confidentiality because, as a  
4 basis for withholding them. And my point was that if I could  
5 get clarification that the, that there are no industry data  
6 documentation that the consultant reviewed or consulted in the  
7 course of preparing the study, then I don't have to pursue my  
8 motion.

9 CHAIRMAN BAEZ: And I think Mr. Walls has represented  
10 that that confirmation can't come right now because there's  
11 a -- that has to come from the consultant. So he has, he has  
12 some following up to do.

13 In terms of, in terms of the studies, the  
14 confidential studies, quote, unquote, that have not been  
15 provided, there has been the representation and clarification  
16 that those weren't even provided to the consultant, therefore  
17 --

18 MR. MCGLOTHLIN: I'll withdraw my motion as they  
19 pertain to those.

20 CHAIRMAN BAEZ: As they pertain to those, to those  
21 two. But there is still, there still remains the open question  
22 of any other industry data, as loosely as we're defining it,  
23 but any other data that was relied on by the consultant needs  
24 to be confirmed that there was no other data relied upon. So  
25 that answer is forthcoming and there is still a motion or the

1 motion survives for another day pending that --

2 MR. MCGLOTHLIN: Yes, sir.

3 CHAIRMAN BAEZ: -- pending that clarification as  
4 well.

5 Mr. Shreve, I struck you dumb, sir.

6 MR. SHREVE: I'm just listening to the same thing  
7 that's going on here. But Florida Power & Light, when they're  
8 referring to their witness, they use the word "rely." When  
9 they're referring to the Public Counsel witness, they're using  
10 the word "referred to." If he put in his testimony, in his  
11 testimony that Public Counsel's witness was using dated  
12 material, then he very clearly had to rely on the dated  
13 material or he couldn't have said that.

14 MR. BURNETT: Mr. Chairman, if I may, I think we may  
15 have a red herring. I made be able to add some clarification,  
16 if I may.

17 CHAIRMAN BAEZ: Clarify away.

18 MR. SHREVE: If they'd just produce everything he  
19 referred to or that he had in his possession, it would be okay.

20 MR. BURNETT: There are basically, I think, three  
21 categories of data at issue: The ones at issue in the motion  
22 to compel, which I think we've disposed of. Also the industry  
23 data that I believe OPC's expert mentions that our expert says,  
24 I'm aware that that data exists, I didn't use it because it is  
25 outdated, and he did not rely on it, think about it, do

1 anything with it, but he is aware that Mr. Pous has mentioned  
2 it. And he, in his deposition, stated, I didn't use that  
3 because I feel it's outdated. I believe Mr. Walls'  
4 apprehension in putting a term on industry data is that our  
5 expert has, in fact, produced information that could under  
6 industry data be qualified as industry data. But what I can  
7 represent is that anything that our expert relied on in making  
8 his report has been produced.

9 CHAIRMAN BAEZ: Well, and let's -- see, I'm getting,  
10 I'm getting stuck on the EI, on the dated data issue and  
11 whether that's been -- is this something that you would  
12 consider necessary to be provided?

13 MR. MCGLOTHLIN: If, if the only reference by their  
14 consultant is in rebuttal testimony to the extent he did not  
15 use it, I don't care about having it. I'm more interested in  
16 getting those materials, including industry statistics or  
17 industry data, non-PEF specific data, that he might have used  
18 in the course of preparing the depreciation study that he  
19 sponsors.

20 CHAIRMAN BAEZ: And the representation is that that  
21 already has been provided.

22 MR. BURNETT: Produced, sir.

23 MR. MCGLOTHLIN: I'll withdraw my motion.

24 CHAIRMAN BAEZ: The only, the only outstanding, the  
25 only outstanding issue is whether this old EI data was relied

1 on and, therefore, falls into the category of the discovery  
2 request. If the representation is that it wasn't used, then we  
3 don't have an issue.

4 MR. McGLOTHLIN: Right.

5 CHAIRMAN BAEZ: Okay. The representation is that it  
6 wasn't used?

7 MR. BURNETT: Yes, sir.

8 CHAIRMAN BAEZ: Okay. I think we're square.

9 MR. McGLOTHLIN: Yes, sir.

10 CHAIRMAN BAEZ: All right. Motion withdrawn. Is  
11 there any, is there anything else?

12 MS. BRUBAKER: Two quick procedural matters, if I  
13 may.

14 CHAIRMAN BAEZ: Okay.

15 MS. BRUBAKER: One is just to remind the parties that  
16 there will be a service hearing at the beginning of the  
17 September 7th hearing date at 9:30. And also, since I happen  
18 to have everyone here, if I could have you start looking at  
19 your calendars, possibly somewhere around the 25th, 26th -- the  
20 27th is a Saturday, let's not do that -- 29th, 30th, 31st,  
21 somewhere in that range for possibly another Issue ID where we  
22 can once more go through the issues and follow up with what can  
23 be stippled and what can be dropped one last go before the  
24 hearing. If we can't do it, that's fine, but it's always a  
25 good opportunity if we can get together, whether it's in person

1 or phone, and take one last go-round before the hearing. If I  
2 could just ask you to do that.

3 CHAIRMAN BAEZ: And I would endorse Ms. Brubaker's  
4 encouragement.

5 If there's nothing else to be brought at this point,  
6 I want to thank you all for your, what I think looks like,  
7 great progress today. It is appreciated, and keep up the good  
8 work. We're adjourned.

9 (Prehearing Conference adjourned at 12:30 p.m.)

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

3

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


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

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

12                    DATED THIS 17TH DAY OF AUGUST, 2005.

13

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

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