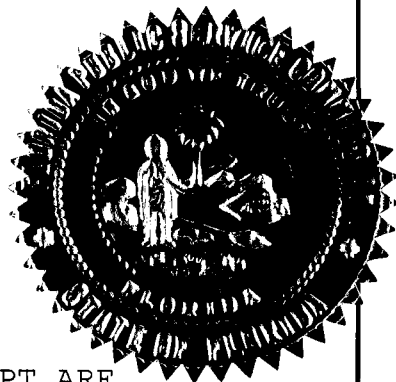


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050001-EI

In the Matter of

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



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: RUDOLPH "RUDY" BRADLEY  
Prehearing Officer

DATE: Monday, October 24, 2005

TIME: Commenced at 9:30 a.m.  
Concluded at 12:55 p.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6734

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10 LIEUTENANT COLONEL KAREN WHITE and MAJOR CRAIG  
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1 APPEARANCES CONTINUED:

2 GARY V. PERKO, ESQUIRE, Hopping, Green & Sams, P.A.,  
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4 appearing on behalf of Progress Energy Florida, Inc.

5 ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA,  
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9 NORMAN H. HORTON, JR., ESQUIRE, Messer, Caparello &  
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12 Company.

13 CHARLES J. BECK, ESQUIRE, JOSEPH A. MCGLOTHLIN,  
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17 the Citizens of the State of Florida.

18 MICHAEL B. TWOMEY, ESQUIRE, Post Office Box 5256,  
19 Tallahassee, Florida 32314-5256, appearing on behalf of AARP.

20 ADRIENNE VINING, ESQUIRE and JENNIFER RODAN, ESQUIRE,  
21 FPSC General Counsel's Office, 2540 Shumard Oak Boulevard,  
22 Tallahassee, Florida 32399-0850, appearing on behalf of the  
23 Commission Staff.

24

25

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

1  
2 COMMISSIONER BRADLEY: Sorry about that. We're now  
3 on Docket 01, fuel and purchased power cost recovery clause and  
4 generating performance incentive factor.

5 Could I have the notice read, please. We've already  
6 read --

7 MS. VINING: We've already, we've already read the  
8 notice for all of the dockets.

9 COMMISSIONER BRADLEY: Okay. We've taken appearances  
10 also?

11 MS. VINING: Yes, I believe everybody has taken an  
12 appearance.

13 COMMISSIONER BRADLEY: Okay. Preliminary matters.

14 MS. VINING: Yes, I believe there are three  
15 substantive motions that are pending, which would be OPC's  
16 motion to establish a separate spinoff docket to examine  
17 certain coal purchase transactions between Progress Energy  
18 Florida and its affiliate. And then there's also OPC's motion  
19 to address all issues relating to FPUC's proposed fuel  
20 surcharge included in this docket in a separate proceeding.  
21 And then finally there's FPUC's motion for protective order.

22 It would be staff's recommendation that the first two  
23 be heard at the prehearing conference and that the last be  
24 ruled on in a separate written order.

25 And at this point, too, I would also state that TECO,

1 FPL and Progress all have motions to file supplemental  
2 testimony and to revise their petitions that are pending. All  
3 three of those will be addressed in written orders.

4 COMMISSIONER BRADLEY: Okay. Why don't we take them  
5 one at a time.

6 MS. VINING: Okay. I would recommend first then  
7 OPC's motion to establish a spinoff docket to examine coal  
8 purchase transactions between Progress and its affiliate.

9 COMMISSIONER BRADLEY: What's your recommendation?

10 MS. VINING: The first motion to be taken up would be  
11 OPC's motion addressing coal transactions between Progress and  
12 its affiliate.

13 COMMISSIONER BRADLEY: Okay. Mr. McGlothlin.

14 MR. MCGLOTHLIN: Joe McGlothlin for Office of Public  
15 Counsel. The motion requires that I describe for you  
16 initially, Commissioner Bradley, what you might call the lay of  
17 the land to give you a bit of context for the arguments between  
18 OPC and Progress Energy on this matter.

19 Progress Energy Florida, the utility, has contracted  
20 with a sister company, an affiliated company, Progress Fuels  
21 Corporation, and under that contract Progress Fuels is  
22 responsible for procuring coal on behalf of Progress Energy  
23 Florida. Progress Fuels, the entity responsible for procuring  
24 coal, owns coal properties. Progress Fuels also purchases coal  
25 for resale. Progress Fuels Corporation deals with several

1 other companies who are among the universe of potential  
2 suppliers. One of those potential suppliers is Kentucky May.  
3 Progress Fuels Corporation owns or has an ownership interest in  
4 Kentucky May. Progress Fuels acts as agent for Kentucky May.

5 Another potential supplier is Diamond May. Progress  
6 Fuels Corporation owns or has an ownership interest in Diamond  
7 May. Progress Fuels acts as agent for Diamond May.

8 Another potential provider is Powell Mountain.  
9 Progress Fuels owns or has an ownership interest in Powell  
10 Mountain and acts as agent for Powell Mountain.

11 We have a situation in which, because of these  
12 relationships, literally some of the contracts for the supply  
13 of coal to Progress Energy Florida are between Progress Fuels  
14 Corporation as purchaser and Progress Fuels Corporation as  
15 seller. The situation is rife with occasions in which there  
16 will be transactions between affiliated companies and replete  
17 with the kinds of opportunities for bias or favoritism that  
18 accompanies those types of transactions. And I believe the  
19 situation cries out for two things. First of all, visible,  
20 verifiable efforts by Progress Fuels Corporation to scour the  
21 market for the lowest price of coal, to include providers other  
22 than Progress Fuels Corporation or companies in which Progress  
23 Fuels Corporation either has an ownership interest or acts as  
24 agent. And the second thing it cries out for is a  
25 demonstration to the Commission and through the Commission to

1 customers that this aggressive policy of looking for the lowest  
2 price of coal has been carried out.

3           Now that's the background. Through discovery, OPC  
4 learned that with respect to the coal supplied to Progress  
5 Energy in 2005, at least a portion of 2005, the highest prices  
6 paid to any provider of coal for the commodity of coal were  
7 paid to Progress Fuels Corporation. And so we began to look  
8 into it in more detail. But to this point we've had no  
9 adequate opportunity to flesh out all of the transactions, nor  
10 have we had an opportunity to show the results of our  
11 investigation to a consultant who would be in a position to  
12 assist us and assist the Commission in determining whether  
13 these transactions have led to Progress Energy paying too much  
14 for coal. And that is why we asked for a spinoff docket so  
15 that the situation can be given the careful scrutiny it  
16 deserves.

17           Now to that request, OPC, I'm sorry, Progress Energy  
18 has made essentially two arguments. The first was OPC has had  
19 a lot of time to do this. Why have we been so slow? Well,  
20 bear in mind that nothing in the presentations made by Progress  
21 Energy in the form of testimony or in the form of exhibits or  
22 in the form of A schedules deals with individual transactions.  
23 The 423 forms that they file with the FERC and which they file  
24 with the Commission do that, but they're filed on a  
25 confidential basis. And so it's up to a party like OPC to take

1 the additional step of requesting to see those.

2           And with respect to the claim that we've had all the  
3 time we need, consider that when we received the 423 forms in  
4 September, the most recent 423 forms showing individual  
5 transactions covered June of 2005. There is a lag of two  
6 months and several days between the closing out of a particular  
7 month of transactions and the filing of a report. If we or if  
8 you were to ask Progress Energy today, right now to give you  
9 the most recent 423, I think it would cover July of 2005. So  
10 there's no basis for the argument that we've had all this time,  
11 we should have been busier.

12           And the second contention is that the transactions  
13 were entered at different points in time and were the results  
14 of competitive bidding. The part that says these transactions  
15 were entered at different points in time is true enough, but  
16 whether there was competitive bidding going on lies in the eyes  
17 of the beholder. We've determined so far that with respect to  
18 a portion of coal requirements for 2005 and 2006 Progress  
19 Energy did issue a formal request for proposals, contacted  
20 everyone on its master bidders' list, provided notice in the  
21 coal publications that are read widely by people in the  
22 industry and, and carried through a formal RFP. But we've also  
23 determined, based upon a deposition held last week, that with  
24 respect to another portion of the requirements for 2005/2006  
25 there was no formal solicitation. Instead, an individual with



1 PFC made a handful of phone calls, one of which was to PFC.  
2 And with respect to yet another transaction, a spot purchase,  
3 there was no solicitation of any kind, and, instead, PFC simply  
4 reviewed proposals that came to it on an unsolicited basis for  
5 the given point in time.

6           So we think there's plenty of information that  
7 suggests the need for a spinoff proceeding in which these  
8 things can be fleshed out more fully, the services of a  
9 consultant who can provide the needed expertise as to the  
10 conditions of the coal market at those points in time can be,  
11 can be acquired, and the Commission can make an informed  
12 decision on the transactions that we have flagged in this case.

13           COMMISSIONER BRADLEY: Thank you.

14           MR. PERKO: Good morning, again, Commissioner  
15 Bradley. Gary Perko on behalf of Progress Energy Florida.

16           First of all, I'd like to say that a number,  
17 virtually all of Mr. McGlothlin's argument today relates to  
18 factual matters that he's presented no evidence for,  
19 interpretation of, of discovery that has not been presented to  
20 the Commission, and we refute much, if not all, of the factual  
21 assertions he's made. But that's not really the issue before  
22 you.

23           This is not a significant or complicated issue, as  
24 Mr. McGlothlin suggests, yet alone one that warrants a spinoff  
25 docket. Under established Commission practice, the prices that

1 Progress Fuels pays to its coal suppliers, including the  
2 unregulated arm of Progress Fuels, are reported monthly in the  
3 423 forms submitted to the Commission throughout the year; not  
4 only this year, but last year and the year before. OPC could  
5 have requested unredacted copies of those forms at any time  
6 during this year or any other year, but they chose not to, just  
7 as they could request copies, unredacted copies of confidential  
8 testimony submitted in this proceeding.

9 In addition, because this is an ongoing docket, PEF  
10 could have conducted discovery, any discovery it deemed  
11 necessary at any time during the year. The fact is, however,  
12 OPC chose not to avail itself of those opportunities until the  
13 11th hour. OPC's own delay is not a basis to create a costly  
14 spinoff docket or to otherwise cause delay. OPC's motion  
15 relies solely on assertions of counsel that more time is  
16 needed. OPC has provided no affidavits or other support for  
17 this assumption, and the facts that Mr. McGlothlin stated  
18 actually belie that assertion. OPC has conducted discovery,  
19 albeit late in the game. Progress Energy has responded to  
20 interrogatories and requests for productions, they've deposed  
21 the Progress Fuels official responsible for coal procurement,  
22 and they're continuing to do discovery.

23 The discovery has shown to date, contrary to what  
24 Mr. McGlothlin states, has shown that differences in coal  
25 prices referenced by Mr. McGlothlin were due to the fact that

1 the purchases were made at different times and under different  
2 market conditions. There's simply no legitimate basis for the  
3 relief OPC requests. Accordingly, we respectfully urge that  
4 the Prehearing Officer deny OPC's motion.

5 MR. WRIGHT: Commissioner, may I be heard very  
6 briefly?

7 COMMISSIONER BRADLEY: You're recognized.

8 MR. WRIGHT: Thank you, Commissioner. I just want to  
9 go on record that the Florida Retail Federation supports Public  
10 Counsel's motion. The important thing is to get to the bottom  
11 of this. It seems like a very complex issue, and I think a  
12 spinoff docket is appropriate. Thank you.

13 MR. TWOMEY: Commissioner Bradley.

14 COMMISSIONER BRADLEY: You're recognized.

15 MR. TWOMEY: Mike Twomey. Just briefly, AARP would  
16 like to support Public Counsel as well for the reasons given by  
17 Mr. Wright. Thank you.

18 MR. PERRY: And also I think, given the presentation  
19 by Mr. McGlothlin this morning, I think that FIPUG can support  
20 OPC's motion as well.

21 COMMISSIONER BRADLEY: Well, I've reviewed the  
22 motions and I also had the opportunity here recently as  
23 presented by interested parties to listen to the arguments, and  
24 at this moment I'm not inclined to grant OPC's motion. I don't  
25 think the issue in itself rises to the level that would require

1 a separate docket, especially as OPC has had the opportunity to  
2 review these costs in the existing dockets, and I'm going to  
3 deny the motion. Motion denied. OPC's motion is denied for a  
4 separate spinoff docket.

5 The second matter.

6 MS. VINING: Yes. Would be also an OPC motion, which  
7 is to address all issues relating to FPUC's proposed fuel  
8 surcharge included in this docket in a separate proceeding.

9 COMMISSIONER BRADLEY: OPC, you're recognized.

10 MS. CHRISTENSEN: Good morning. The Office of Public  
11 Counsel has filed its motion to address all the issues relating  
12 to FPUC's proposed fuel surcharge included in this docket in a  
13 separate proceeding. This is a petition that was originally  
14 filed in a separate docket, 050317, and only recently withdrawn  
15 by FPUC. That was done on October 14th.

16 Originally -- let me describe a little bit of the  
17 background of this scenario. There are several contracts, fuel  
18 contracts that FPUC anticipates -- well, will expire at the end  
19 of 2007, and in 2008 they anticipate that they will have new  
20 contracts. And because of the nature of the new contracts, the  
21 customers of the utility will experience a significant increase  
22 in their rates due to the flow through of the fuel cost. And  
23 because of this future scenario, FPUC has come up with a  
24 proposal to try to diminish some of that impact.

25 Originally when it brought this proposal to

1 Commission staff and to the Office of Public Counsel, it was  
2 addressed in a separate docket. And at that time OPC made it  
3 clear that it was our position that we believed this was best  
4 addressed in a docket that was separate from the fuel  
5 proceeding.

6 This is a case of first impression. The Commission  
7 has never granted in its history a fuel surcharge for something  
8 that has yet to happen. There are significant legal issues of  
9 whether or not that's even legal for the Commission to do.

10 In addition, we have significant issues of customer  
11 impact in this decision, and it is imperative that the  
12 Commission take and consider customer testimony in this  
13 scenario. The fuel docket has not been noticed to take  
14 customer service testimony such as you would have in customer  
15 service hearings. There were several customer meetings  
16 conducted, one in Fernandina Beach and one in Marianna;  
17 however, the testimony or actually, I should say, the customer  
18 comments that were taken at both of those meetings technically  
19 cannot be considered at the fuel docket. They're not evidence  
20 that can be introduced into the hearing, nor were they noticed  
21 as service hearings, and it wasn't anticipated on OPC's part  
22 that they would need to be used as a substitute for future  
23 service hearings. It was always our position that we needed to  
24 have some sort of service hearings or customer testimony at a  
25 hearing were this matter to go forward.

1           Now we also have heard customer comments at these  
2 customer meetings, and I would say that 99 percent of them were  
3 negative. And because this is a proposal that is supposedly to  
4 benefit the customers, customer input is significant in the  
5 Commission's decision of whether or not to go forward, as well  
6 as any consideration of legal arguments. And, therefore, it is  
7 imperative that the Commission hear the customer testimony.  
8 And it's our position that the fuel service -- or the fuel  
9 docket is not set up to take customer testimony. It's not set  
10 up to have service hearings. It's not been noticed for  
11 customer testimony of service hearings. Because of the nature  
12 of this request, that it's a case of first impression, OPC  
13 requests that this be spun off into a separate proceeding.  
14 Originally we would have asked that these issues be  
15 consolidated with the 050317 docket. However, as I noted  
16 before, FPUC has withdrawn its petition in that just recently.  
17 So we would ask to have a separate proceeding opened.

18           Now we understood at the time that we were filing the  
19 motion that FPUC wanted to have a decision made by this  
20 Commission before the end of the year. In the interest of  
21 accommodating that, OPC proposed and proposes that this matter  
22 be spun off and addressed in the PAA proceeding, procedure, and  
23 that the customer comments that were taken at the customer  
24 meetings and any subsequent written comments be addressed in  
25 that recommendation and then the Commission would have those

1 comments to consider. Otherwise, it's questionable whether or  
2 not the Commission could consider those comments in the fuel  
3 proceeding.

4 Now there was some confusion that was brought to my  
5 attention that there might be some confusion regarding FPUC's  
6 objection or nonobjection, I should say, to this motion when it  
7 was filed, and I had filed a subsequent letter clarifying that  
8 at least at the time the motion was filed, FPUC did not object  
9 to having a PAA decision on the fuel surcharge. And we did  
10 clarify that they did object to spinning off the Christensen  
11 Associates costs which related to the fuel surcharge. And at  
12 this point in time my main concern is having the issue of the  
13 surcharge be spun off and addressed by the Commission in a  
14 separate proceeding.

15 Commissioner, I believe that due to the nature of  
16 this, the customer -- that this is a significant customer  
17 impact, it's in a unique situation, that this meets the  
18 criteria that the Commission has set out for those types of  
19 issues which should be spun off, and I believe that in this  
20 case it is imperative that this be spun off and customer  
21 testimony be taken. Thank you.

22 COMMISSIONER BRADLEY: Florida Public Utilities.

23 MR. HORTON: Thank you, Commissioner. Doc Horton on  
24 behalf of Florida Public Utilities Company. We, we oppose the  
25 separation of this issue at this point. What we presented, and

1 Ms. Christensen gave you a quick summary of the proposal, but  
2 what we proposed is very simple. It, it does relate to the  
3 fuel factor, fuel adjustment clause because we're proposing an  
4 additive to that for a couple of years, and it's simply more  
5 efficient to continue to hear this issue in this, in this  
6 particular proceeding.

7           Public Counsel wants to separate the future fuel  
8 charge and, quote, all related issues in their motion, excuse  
9 me, but they don't say what all those related issues are and  
10 they want the service hearings. Ms. Christensen just spent  
11 quite a bit of time talking about the customers and the service  
12 hearings, and I, I do not agree with her in part. This is an  
13 appropriate forum where you can have customer testimony. As a  
14 matter of fact, during one of the customer meetings I believe  
15 Commissioner Deason advised the customers that this proceeding  
16 would be going on in November and they could attend and  
17 present, present comments at that point. If that's what they  
18 want to do, we certainly have no objection to that whatsoever.  
19 But I don't think it's, it's a sufficient basis to spin this  
20 off, when it would be a lot more efficient to go forward and  
21 hear the proposal and make a decision on the proposal.

22           It's really kind of difficult to see what OPC,  
23 understand what OPC really wants in this other than simply to  
24 delay the, to delay the matter. This isn't a complex issue,  
25 it's not difficult. It's been, it's been before both staff and



1 Public Counsel since last May. We even met prior to that time  
2 and explained it to them. And we made it clear throughout that  
3 not only would we file a separate petition, but we also were  
4 going to bring it up in the 01 docket, and that's exactly what  
5 we've done.

6 OPC has cited in their motion, they've cited an order  
7 where you did spin out a couple of proceedings in the 19 or,  
8 excuse me, the 2003 fuel adjustment year. But what's  
9 interesting about that, about that order is that not only did  
10 the Commission spin out a couple of issues with respect to  
11 Progress and TECO, I believe, but they also said in the order  
12 that many complex and difficult matters are addressed each year  
13 in our hearing in this docket under a demanding schedule. As a  
14 matter of fact, if you look at the transcript of the prehearing  
15 conference for that, that same, that resulted in this same  
16 order, you'll find that there were a number of issues that were  
17 left in that people had asked be spun out. So to continue to  
18 have the, this, this issue in this proceeding is not something  
19 that would be unique.

20 OPC says that they need to investigate and look at  
21 this and take the time, but the information is, is there.  
22 We've proposed an additive. Our -- my witnesses, our witnesses  
23 address that additive. It's identified there. We've been  
24 asked some discovery on the, on the factor that we used and  
25 we've responded to that. So the information is there. Our

1 witnesses will be here to testify at the proceeding. If OPC  
2 wants to present public witnesses at that proceeding, that's,  
3 that's fine. I just don't think there's any reason whatsoever  
4 to spin this issue out. It can be resolved in the docket and  
5 move forward. Thank you.

6 COMMISSIONER BRADLEY: You know, again, after  
7 listening to the, the arguments and after reviewing the  
8 motions, I'm not going to grant OPC's motion. I think the  
9 comments, concerns and sentiments of the customers can be made  
10 a part of this record and therefore available to us for our  
11 consideration. I just don't see the benefits of delaying this  
12 issue when mechanisms exist to get the customers' concerns  
13 before us. Therefore, again, I'm going to deny this motion.  
14 Motion denied.

15 And the third and final motion.

16 MS. VINING: Right, is the FPUC's motion for  
17 protective order, which staff would recommend be addressed in a  
18 separate written order.

19 COMMISSIONER BRADLEY: Okay. I'm going to accept  
20 staff's recommendation on this issue. I think a separate order  
21 is more appropriate. So I'm going to rule -- I'm not going to  
22 rule on this today, but a written ruling will be forthcoming.

23 Any other preliminary matters?

24 MS. VINING: None that I'm aware of.

25 COMMISSIONER BRADLEY: All right. I'd like to

1 proceed through the draft prehearing order section by section.  
2 This is quite a lengthy order, so let's try to move as quickly  
3 as possible. If there are any questions, clarifications or  
4 changes to make, please let me know as we reach the appropriate  
5 section.

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

9 MR. BUTLER: I would make the same -- excuse me,  
10 Commissioner Bradley. I would make the same comment about  
11 Section IV(2)(b) that I had made earlier in the environmental  
12 docket. I think the cross reference should be to (a) instead  
13 of (1).

14 MS. VINING: So noted.

15 COMMISSIONER BRADLEY: Any other comments as it  
16 relates to Sections I through IV?

17 Section VII, order of witnesses.

18 MS. VINING: Did we skip over V and VI or did you  
19 address them?

20 COMMISSIONER BRADLEY: Okay. We did skip over V and  
21 VI. I'm sorry. Well, I thought I asked about Sections I  
22 through VI.

23 MS. VINING: Oh, you had said I through IV. I just  
24 wanted to make sure.

25 COMMISSIONER BRADLEY: I'm sorry. My mistake. My

1 mistake. Okay. Let me back up then. Okay. Let's start  
2 again, back up and start over. Let's start with Sections I  
3 through VI. I'm sorry.

4 MS. VINING: Great.

5 COMMISSIONER BRADLEY: Good catch.

6 MR. HORTON: Commissioner, Doc Horton for Florida  
7 Public Utilities. On Section VI, Florida Public Utilities has  
8 filed two pieces of testimony, both of which are panel, panel  
9 testimony. Witnesses are allowed five minutes to present a  
10 summary. I don't intend to have all five of my witnesses  
11 present a five-minute summary, but I would like to ask that I  
12 be allowed to designate one witness to give a ten-minute  
13 summary of that, save you some time.

14 MS. VINING: Staff doesn't have an objection to that.

15 COMMISSIONER BRADLEY: Okay.

16 MR. HORTON: Thank you.

17 COMMISSIONER BRADLEY: Let it be so noted.

18 MS. CHRISTENSEN: Commissioner, I would also ask for  
19 clarification. Given the Commissioner's recent ruling on  
20 denying our motion, we may ask the customers coming -- that  
21 wish to come and talk and testify in the proceeding be allowed  
22 to. Obviously no prefiled testimony has been entered. Given  
23 that this is a recent decision, we would ask leeway that the  
24 customers be allowed to come and testify, if they wish.

25 COMMISSIONER BRADLEY: Granted. Any other comments?

1 Did the reporter get that? Okay.

2 Section VII, order of witnesses.

3 MS. VINING: I just want to note for the record here  
4 that after we go through the issues, if some of them appear to  
5 stipulate and we can potentially stipulate witnesses, you know,  
6 subject, of course, to the other Commissioners having questions  
7 of them, I'll notify the parties of that before the prehearing  
8 order is issued.

9 COMMISSIONER BRADLEY: Okay.

10 MS. VINING: But I'll say right now it doesn't appear  
11 that any witnesses are stipulated.

12 COMMISSIONER BRADLEY: Patty.

13 MS. CHRISTENSEN: Commissioner, just for  
14 clarification on customer testimony, since it was not  
15 previously planned for, if we can get a, a time and date to  
16 take customer testimony so that when we speak with customers,  
17 we can tell them when they should come so they won't have to  
18 wait through all of the other persons' testimonies to come and  
19 address the Commission on this issue. I don't know if you're  
20 ready to address that today or if you can let me know within  
21 the next day or so as far as what day and what time they should  
22 come to be, to provide testimony.

23 COMMISSIONER BRADLEY: Staff, what's a workable time  
24 frame?

25 MS. VINING: Well, do you have a proposal, Patty, for

1 what time you think might be appropriate? I mean, we'll start  
2 at 9:30 that day, but, you know, potentially we might have  
3 preliminary matters. I don't know if you have a time in mind  
4 at this point.

5 MS. CHRISTENSEN: I don't particularly have a time in  
6 mind. And I know there are other issues that need to go on  
7 with the docket, so I would like to give them a firm time and  
8 date so that they can come, and when they come they can be able  
9 to present the Commission with their testimony and then be able  
10 to leave or stay, if they choose.

11 I don't know if we need to decide that right at this  
12 moment or if we can get together and, and discuss a time and  
13 place, if it's day one at 1:00, and let them know that they  
14 should be here for that. They do have to travel from both  
15 sides, so my request would be that it be later in the morning  
16 or at the beginning of the afternoon, and that way we could  
17 accommodate those who need to travel from Marianna as well as  
18 Fernandina Beach.

19 COMMISSIONER BRADLEY: Would it work best if the two  
20 of you are allowed to get together and work out a convenient  
21 time?

22 MS. VINING: Yes. We can discuss it later, and I  
23 will reflect that discussion in the prehearing order.

24 COMMISSIONER BRADLEY: Okay. Is that okay?

25 MS. CHRISTENSEN: That's fine with OPC. And then we

1 can let the customers know when we're calling them what time  
2 they should come.

3 MS. VINING: Okay.

4 COMMISSIONER BRADLEY: Okay. So you all are going to  
5 work out a time that's acceptable and convenient for the  
6 customers to come and testify, that would be the understanding.  
7 Okay.

8 Section VIII.

9 MR. BEASLEY: I had one other request, Commissioner,  
10 on Section VII.

11 COMMISSIONER BRADLEY: Yes.

12 MR. BEASLEY: On Page 6 of the prehearing order  
13 draft, if we could request that Mr. Smotherman be moved down on  
14 the list right behind Ms. Wehle in the order of witnesses.

15 MS. VINING: I'll note that in the prehearing order.

16 MR. BEASLEY: Thank you.

17 COMMISSIONER BRADLEY: So noted. Granted.

18 Section VIII, basic positions.

19 Section IX, issues and positions. Let's go issue by  
20 issue. If you need to modify your position for a particular  
21 issue, please speak up, please speak up when we get to that  
22 particular issue. Also if you have a concern about the wording  
23 of an issue or whether an issue is appropriate, is appropriate,  
24 you need to stop us when we get to that issue.

25 Also, staff, when I reviewed the draft prehearing

1 order, I noticed that many of the parties' positions are  
2 reflected as "No position at this time." Please refresh my  
3 memory about the appropriateness of that position today at this  
4 conference.

5 MS. VINING: I would just say in the order  
6 establishing procedure for this docket it states, "When a party  
7 is unable to take a position on an issue, it shall bring that  
8 fact to the attention of the Prehearing Officer. If the  
9 Prehearing Officer finds that the party acted diligently and in  
10 good faith to take a position, and further finds that the  
11 party's failure to take a position will not prejudice other  
12 parties or confuse the proceeding, the party may maintain 'no  
13 position at this time' prior to hearing and thereafter identify  
14 its position in a post-hearing statement of issues. In the  
15 absence of such a finding by the Prehearing Officer, the party  
16 shall have waived the entire issue."

17 COMMISSIONER BRADLEY: Okay. It might be good if I  
18 just advise the parties -- well, if you have a good reason for  
19 not taking a position, I can understand that. But I think that  
20 it's probably best if you do take a position today, or if you  
21 can't, then by a date certain prior to the hearing so that we  
22 have some idea as to where you all, where you all are as it  
23 relates to these issues. But I'll tell you what, let's go,  
24 let's take it issue -- Mr. Twomey.

25 MR. TWOMEY: Mr. Chairman Bradley, given, given that,



1 that observation on your behalf and the staff, would it be  
2 acceptable for myself and the other parties, if they wish, to,  
3 to review what positions we've taken or failed to take and, and  
4 transmit those electronically to the staff attorney, instead  
5 of, instead of doing each one individually in front of you here  
6 today?

7           COMMISSIONER BRADLEY: I tell you what I'm going to  
8 do. I'm going to do each one individually, and also I'm going  
9 to grant your request, if at this point today you are not sure  
10 about what your position might be.

11           MR. TWOMEY: Yes, sir. I appreciate that. Thank  
12 you.

13           COMMISSIONER BRADLEY: And I understand -- what's the  
14 drop-dead date for him to transmit that to you?

15           MS. VINING: Well, I don't have one in mind right  
16 now. I mean, I'd like to have any positions that you're  
17 changing today by the end of the day electronically. And I'd  
18 also ask that even though we're going position -- or issue by  
19 issue rather, if I can still get them electronically just for  
20 my ease instead of waiting for the transcript to be prepared.

21           MR. TWOMEY: That's fine by me. And let me ask,  
22 Commissioner Bradley, if I may, what was the notion of -- what  
23 are the consequences of waiving the issue completely as the  
24 staff sees it or perhaps as the Prehearing Officer sees it?

25           COMMISSIONER BRADLEY: Well, I don't know, is there

1 a -- nothing other than the fact that you have not taken a  
2 position.

3 MR. TWOMEY: I'm curious if the staff,  
4 Mr. Commissioner, sees any consequence to that during the  
5 conduct of the hearing, as placing a limitation upon our  
6 participation during the hearing.

7 MS. VINING: I think you can, you can cross-examine  
8 however you'd like. But in terms of potentially stipulating an  
9 issue, if you've waived a position on that issue, we would  
10 potentially stipulate it without your participation. So it's  
11 not going to prevent you from asking the witnesses questions,  
12 but it might very well if we were able to excuse the witnesses  
13 as a result of stipulations.

14 COMMISSIONER BRADLEY: So excusing the witnesses and  
15 clarity of point would be --

16 MS. VINING: Uh-huh.

17 MR. PERRY: And one, one situation, if I may, Tim  
18 Perry for FIPUG, one situation I'd like to bring to your  
19 attention is often times staff doesn't take a position on the  
20 issues, but that doesn't result in the issue being stipulated  
21 at the prehearing conference. And often times they'll take a  
22 position at a later date and parties will either join in their  
23 position or continue to take no position. And where a  
24 situation like that arises, I think it's only fair to give the  
25 parties an opportunity to either join in staff's position or to

1 continue to take no position, which would, in effect, either  
2 allow the issue to go forward if staff disagrees with the other  
3 party or allow the issue to stipulate if staff is in agreement  
4 with the other party.

5 MS. VINING: And I would respond by saying that as we  
6 get to that, you know, issue by issue, you can express that  
7 position, if that's your preference.

8 MR. BUTLER: Commissioner Bradley, I'm not sure  
9 anybody is asking for my opinion on this, but I'm going to  
10 insert it, if you will permit me, anyway.

11 COMMISSIONER BRADLEY: Insert it.

12 MR. BUTLER: A couple of observations. One is that I  
13 understood staff to be in sort of a special position, that it's  
14 not truly a party in the sense that the others of us here are,  
15 and that its role is to hear what everyone has to say and then  
16 ultimately to have, you know, sort of a position that  
17 represents its consensus advice on what it has heard.

18 It seems like it's kind of bootstrapping for parties  
19 that are supposed to be taking a position on issues to not do  
20 so until they see how staff comes out, and then, you know, say,  
21 oh, that's our position as well. You know, the whole point of  
22 the process of identifying positions by the time of the  
23 prehearing conference is to let those of us who are parties in  
24 the proceeding be able to have a little bit of time to prepare  
25 for the hearing and know what it is that we are going to be

1 facing as, you know, other parties' positions on the issues.

2           And I would also observe that I think that among the  
3 consequences not mentioned about failing to take a position, an  
4 unexcused failure to take position would be the inability to  
5 appeal that issue if a party for some reason didn't like the  
6 outcome.

7           MR. PERRY: And the way I would respond to that is  
8 that if, if staff is taking a position at a later date and it's  
9 a position that no other party has taken a position on at that  
10 time, they're basically the one that is carrying the -- well,  
11 the utility always has to carry the burden on that issue, so  
12 they always have to prepare for that issue to be addressed at  
13 the hearing. But if staff is opposing them, they're basically  
14 putting themselves in the position as a party, in the same  
15 position as a party. And I just feel that given the special  
16 circumstance that staff is in, that they can take positions at  
17 a later date, that it's only fair to allow the other parties  
18 to, to align themselves with staff at that time.

19           MS. VINING: I would say that staff is in that  
20 special position because we're not technically a party to this  
21 proceeding. And as Mr. Butler stated, our position on many of  
22 the issues, we don't take one simply because we want to hear  
23 the evidence that's adduced at the hearing before we take a  
24 position. So that's why we, we have sort of this special  
25 status, if you will.

1           COMMISSIONER BRADLEY: I would agree. And this is a  
2 very interesting discussion, a different twist, but I've never,  
3 ever seen staff as being a party to any proceeding. I've  
4 always seen staff's position as being one of listening to the  
5 testimony among the parties and then making a recommendation,  
6 in my opinion, to the Commissioners that may or may not be  
7 accepted. So I don't think that it's fair to -- if you want to  
8 put yourself in that position, you know, you run the risk of  
9 maybe staff taking the position that may be adverse to what  
10 your position truly is. So, you know, do it at your own risk.  
11 But I think that the hearing would proceed much more smoothly  
12 and, and the points of discussion would, would be clearer and  
13 easier to debate if you do take a position as to what happens  
14 if you don't. I think you run the risk of, of excluding  
15 yourself from certain types of participation as it relates to  
16 this item.

17           MR. PERRY: And I think that that's what I had  
18 discussed. The only two options that you would be given is to  
19 continue to take no position or to agree with staff. And so  
20 you're not really detracting from the discussion or creating  
21 any element of unfair surprise for the utilities because, in  
22 essence, they're going to be litigating in staff in the same  
23 position in any case.

24           COMMISSIONER BRADLEY: And I, again, I understand the  
25 "No position" position, but it's kind of odd. I've never

1 heard -- I've never witnessed a party taking staff's position  
2 at this juncture.

3 MS. VINING: Just let us know when we go issue by  
4 issue, and, you know, the Prehearing Officer can make a  
5 judgment call on that particular issue as we come to it.

6 My purpose in pointing this out to him is just to  
7 facilitate trying to stipulate as many issues as possible  
8 today. And if we can't do it, we can't do it, if you guys, you  
9 know, want to agree with staff as your position.

10 COMMISSIONER BRADLEY: I tell you what, why don't we  
11 just take the position that we traditionally take, either you  
12 have a position or you have no position, and let's not involve  
13 staff in the mix as, as an option. Because staff at this  
14 position doesn't have an opinion as to, in my opinion, what,  
15 what their position is going to be. Staff is in the position,  
16 I think, of listening to the testimony and then coming to a  
17 conclusion. Does anybody disagree with that?

18 Okay. Let's go issue by issue.

19 Issue 1. And, oh, yes, we need to -- Mr. Twomey's  
20 request, is that acceptable to you?

21 MR. TWOMEY: Yes, sir.

22 COMMISSIONER BRADLEY: Either to have no position or  
23 to state your position --

24 MR. TWOMEY: Yes, sir.

25 COMMISSIONER BRADLEY: -- via electronic, via

1 electronic --

2 MS. VINING: Right. I would ask of everyone to go  
3 ahead and state what your position is now, but then to provide  
4 it to me electronically as well just for my ease in  
5 incorporating it into the prehearing order.

6 COMMISSIONER BRADLEY: Okay. So everyone is going to  
7 state their position and then send staff an electronic email to  
8 indicate, to reaffirm their position?

9 MS. VINING: Yes, please.

10 COMMISSIONER BRADLEY: Okay. Issue 1. Any  
11 positions? Issue 2. Issue 3. So we're going to get the  
12 stipulations via electronic email. Okay. Issue 5.

13 MR. PERRY: Issue 4.

14 COMMISSIONER BRADLEY: Issue 4. Back up to Issue 4.

15 MR. PERRY: Issue 4 is an issue that was raised by  
16 FIPUG via a petition that we filed in early October. And the  
17 petition is specific to only three utilities: FPL, Progress  
18 and TECO. And, however, the wording of the issue as it appears  
19 in the draft prehearing order is more broad, so what I've done  
20 today is distribute to the court reporter, all the parties and  
21 staff a copy of my amended position and also the amended issue.  
22 And so everyone has that, and I'll email that to staff also.

23 COMMISSIONER BRADLEY: Okay. Any discussion from the  
24 other parties as it relates to what FIPUG has just put forth?

25 MS. VINING: So the result of the adjusted issue is

1 that Gulf is not involved and doesn't need to take a position  
2 on this issue?

3 MR. PERRY: And FPUC. Correct.

4 MR. HORTON: And in that respect, FPUC would not take  
5 a position.

6 COMMISSIONER BRADLEY: Okay.

7 MR. WRIGHT: Mr. Chairman, the Retail Federation  
8 agrees with FIPUG on this issue. That is a change from our  
9 position statement here. I will email all of our changes to  
10 Ms. Vining later today.

11 MS. CHRISTENSEN: Office of Public Counsel needs some  
12 additional time to consider what position it will be taking, so  
13 we would like to continue with the "No position at this time,"  
14 particularly since this has recently been changed.

15 COMMISSIONER BRADLEY: Okay. Any other comments as  
16 it relates to Issue 4?

17 MR. BUTLER: Yes. On Issue 4, FPL -- having argued  
18 for a high standard for us parties, I feel the need to take a  
19 position on this now. The position for FPL would be, instead  
20 of "Takes no position at this time," it will be "FPL does not  
21 object to this proposal so long as it," I'm sorry, "so long as,  
22 one, it applies regardless of whether the 2005 actual  
23 underrecovery is above or below the 2005 estimated actual  
24 underrecovery, and, two, the fuel cost recovery factors would  
25 be revised only if the 2005 actual underrecovery was more than



1 10 percent above or below the 2005 estimated actual  
2 underrecovery." And I'll be happy to email that to Ms. Vining.

3 MS. VINING: Yes. Please email.

4 COMMISSIONER BRADLEY: What did you say?

5 MS. VINING: I just said please email that because it  
6 was fairly lengthy.

7 COMMISSIONER BRADLEY: Okay. Any other comments as  
8 it relates to Issue 4?

9 Moving on to Issue 5.

10 MS. VINING: Issue 5 is one that staff believes can  
11 be stipulated pending the changes in position of the  
12 Intervenors.

13 COMMISSIONER BRADLEY: Any comments from the parties?

14 MS. CHRISTENSEN: OPC has no position.

15 COMMISSIONER BRADLEY: Intervenors?

16 MR. WRIGHT: We agree -- Retail Federation agrees  
17 with staff on Issue 5. We're happy with the stipulation.

18 COMMISSIONER BRADLEY: Issue 6.

19 MS. VINING: Before we go on, is FIPUG --

20 COMMISSIONER BRADLEY: Issue 5?

21 MS. VINING: FIPUG or AARP -- will AARP agree with  
22 OPC on "No position"?

23 MR. TWOMEY: Yes.

24 MR. PERRY: Unless I, unless I, you know, chime in,  
25 then you can assume that I'll just take the same position as I

1 do in the draft prehearing order, and in this case that's "No  
2 position." So it would allow the issue to stipulate with us  
3 not joining the stipulation.

4 MS. VINING: Okay. So I will note Issue 5 as a  
5 stipulated issue then.

6 COMMISSIONER BRADLEY: And I have to acknowledge  
7 something. I've been using the term "statement of parties,"  
8 but I've been using parties and Intervenors interchangeably to  
9 encompass parties as well as the Intervenors. So just note  
10 that as a comment by the Prehearing Officer.

11 What are we on, Issue 5?

12 MS. VINING: I think we can move on to 6.

13 COMMISSIONER BRADLEY: Okay. Issue 6.

14 MR. STONE: I would note there is a, appears to be a  
15 typo in the wording of Issue 6, that it should be "January  
16 2006" rather than "January 2005."

17 MS. VINING: So noted.

18 COMMISSIONER BRADLEY: Any other comments as it  
19 relates to Issue 6?

20 Issue 7.

21 MR. WRIGHT: Mr. Chairman, I apologize. You went  
22 quickly.

23 COMMISSIONER BRADLEY: You want to go back to Issue  
24 6?

25 MR. WRIGHT: I do want to go back to Issue 6.

1           Our position on Issue 6 would, in fact, be the same  
2 as staff's position, which is "No position pending resolution  
3 of outstanding issues." There are many subsequent issues that  
4 are company specific that will affect the total dollars there.  
5 Accordingly, I'd ask to be permitted to maintain no position at  
6 this time pending resolution of that, of all the remaining  
7 issues. Ultimately I think Issue 6 is a fallout calculation  
8 based on what the company asked for and then taking off what  
9 y'all disallow.

10           MS. CHRISTENSEN: And I would concur with that. For  
11 those issues where it's a fallout issue and it's been  
12 identified as pending resolution of other issues, we would just  
13 ask to be allowed to maintain the "No position at this time"  
14 status.

15           COMMISSIONER BRADLEY: And for the sake of the  
16 reporter, I need for you all to identify yourselves so that she  
17 doesn't have to --

18           MS. CHRISTENSEN: Patty Christensen with the Office  
19 of Public Counsel -- be allowed to do that rather than on each  
20 of those individual issues, and I'll be happy to clarify to no  
21 position on the issues where that is not the case, where it's  
22 not a fallout issue.

23           COMMISSIONER BRADLEY: And, Mr. Wright, you need to  
24 identify yourself for the reporter.

25           MR. WRIGHT: Schef Wright on behalf of the Florida

1 Retail Federation.

2 MR. PERRY: And this is Tim Perry on behalf of FIPUG.  
3 And when there's fallout issues and staff has taken the "No  
4 position pending resolution," we would also do the same.

5 MR. TWOMEY: Commissioner Bradley, Mike Twomey for  
6 AARP. Same as the others. And I think that's probably --  
7 those positions are probably true for a few of the other  
8 numbers you've already gone past that were in reality fallout  
9 type numbers. Thank you.

10 COMMISSIONER BRADLEY: You're welcome. Staff.

11 MS. VINING: That's fine.

12 COMMISSIONER BRADLEY: Okay. We're moving to Issue 7  
13 now.

14 MR. WRIGHT: Commissioner, our position on Issue 7  
15 will --

16 COMMISSIONER BRADLEY: Identify yourself.

17 MR. WRIGHT: Schef Wright on behalf of the Retail  
18 Federation. Our position will be, again, be with regard to  
19 Issue 7, the same as Issue 6 for the same reason, that the  
20 calculation of the fuel factors is a fallout number based on  
21 what the total recoverable fuel cost is, which in turn depends  
22 on many other issues.

23 COMMISSIONER BRADLEY: Anyone else?

24 MR. PERRY: Same for FIPUG. This is Tim Perry.

25 MR. TWOMEY: Mike Twomey; same.

1 MS. CHRISTENSEN: It's the same for Office of Public  
2 Counsel. And I guess we can --

3 COMMISSIONER BRADLEY: Okay. Any other comments as  
4 it relates to staff?

5 MS. VINING: No.

6 COMMISSIONER BRADLEY: Okay. Any other comments as  
7 it relates to Issue 7?

8 Okay. Issue 8.

9 MS. VINING: Issue 8 is one that staff believes we  
10 can stipulate, pending the positions of the Intervenors.

11 MS. CHRISTENSEN: Office of Public Counsel takes no  
12 position.

13 MR. WRIGHT: The Retail Federation will take no  
14 position. We will not oppose the stipulation.

15 MR. PERRY: Same for FIPUG; no position.

16 MR. TWOMEY: Same for AARP.

17 MAJOR PAULSON: This is Major Paulson with the  
18 Federal Executive Agencies. We'll stipulate -- we'll take no  
19 position as well. We are one of the Intervenors in this case  
20 for everyone's information. Thank you.

21 MS. VINING: Well, I guess, Major Paulson, I should  
22 go back and ask you about Issue 5. Are you all right on that  
23 one too?

24 MAJOR PAULSON: Yes.

25 MS. VINING: Okay.

1           COMMISSIONER BRADLEY: Okay. Any other comments as  
2 it relates to Issue 8?

3           MR. BUTLER: Commissioner Bradley, John Butler for  
4 Florida Power & Light. Just a minor typo. On FPL's position  
5 on this, the cross-reference should be to Issue Number 9.  
6 Thank you.

7           MS. VINING: So noted.

8           COMMISSIONER BRADLEY: Okay. Issue 9.

9           MS. CHRISTENSEN: Office of Public Counsel takes no  
10 position. If this is a fallout issue, then we'd just take no  
11 position at this time. I'm sorry.

12          COMMISSIONER BRADLEY: That's Issue 9; correct?

13          MS. CHRISTENSEN: Correct.

14          MR. WRIGHT: Commissioner, Schef Wright again on  
15 behalf of the Florida Retail Federation. As with Issue 6 and  
16 7, this is also a fallout issue, and we would take no position  
17 pending resolution of Issue 7 as the staff has done.

18          MR. PERRY: This is Tim Perry for FIPUG, and we would  
19 do the same.

20          MR. TWOMEY: Same for AARP, Commissioner Bradley.

21          MAJOR PAULSON: Same for FEA.

22          MS. VINING: So noted.

23          COMMISSIONER BRADLEY: So noted. Okay. Issue 10.

24          MS. VINING: Issue 10 is another one that staff  
25 believes can be stipulated with the language that we have in

1 our position.

2 MR. WRIGHT: Commissioner, Schef Wright on behalf of  
3 the Retail Federation. We would support the stipulation on  
4 Issue 10.

5 MS. CHRISTENSEN: OPC has no position, no objection  
6 to the stipulation.

7 MAJOR PAULSON: No objection from FEA.

8 COMMISSIONER BRADLEY: Okay.

9 MS. VINING: FIPUG?

10 MR. PERRY: Well, our position is in agreement with  
11 staff, so.

12 MS. VINING: Okay.

13 MR. TWOMEY: And AARP will support the stipulation as  
14 well.

15 MS. VINING: I guess I just need to ask the  
16 utilities, are they fine with staff's language on that?

17 MR. STONE: Gulf is.

18 MR. BEASLEY: So is Tampa Electric.

19 MR. HORTON: FPUC is.

20 MR. PERKO: Progress Energy is.

21 MR. BUTLER: So is FPL.

22 MS. VINING: Great. So I'll note that Issue 10 is  
23 stipulated. Okay. We can move on.

24 COMMISSIONER BRADLEY: Issue 11. Issue 12.

25 MS. VINING: Before we move on, are the Intervenors

1 going to take staff's position on that one?

2 MS. CHRISTENSEN: Yes.

3 MR. WRIGHT: Yes.

4 MS. CHRISTENSEN: As far as no position pending  
5 resolution of other issues. We may be able to speed that along  
6 and just take that position on future issues that are similarly  
7 situated.

8 MR. STONE: I'm sorry. I'm not sure what other  
9 issues are outstanding with regard to Issue 11.

10 MS. CHRISTENSEN: It's discovery.

11 MS. VINING: Staff has just taken no position.

12 MR. STONE: Okay. I heard Ms. Christensen say she  
13 would take no position pending resolution of other issues.  
14 That's why I was asking for clarification.

15 MS. CHRISTENSEN: No. What I was saying was I would  
16 just take the similar position in any future issues where there  
17 are either outstanding issues that need to be resolved,  
18 outstanding discovery, similar to staff's position, and that  
19 might speed the process along.

20 MS. VINING: Are the other Intervenors of like mind  
21 on that?

22 COMMISSIONER BRADLEY: Just a minute. What, are we  
23 on Issue 12 or 13?

24 MS. VINING: Yes, 12.

25 COMMISSIONER BRADLEY: 12.



1 MS. VINING: And I presume this would be the same  
2 situation as 11.

3 MR. WRIGHT: Correct.

4 COMMISSIONER BRADLEY: Okay. Issue 13A. Issue 13B.  
5 13C.

6 MR. WRIGHT: I apologize, Commissioner.

7 COMMISSIONER BRADLEY: Going back to 13B?

8 MR. WRIGHT: 13C.

9 COMMISSIONER BRADLEY: Okay.

10 MR. WRIGHT: Our position is "No."

11 MS. VINING: Okay. Are any of the other Intervenors  
12 changing their position on that? Because that was one before  
13 that I had potentially stipulated after I've changed that  
14 position.

15 COMMISSIONER BRADLEY: Any other changes by the  
16 Intervenors?

17 Okay. 13D.

18 MS. VINING: 13D is one that staff would recommend be  
19 dropped at this point in time.

20 MR. WRIGHT: The Retail Federation would not object  
21 to dropping 13D.

22 MR. PERKO: Progress Energy does not object to  
23 dropping the issue.

24 COMMISSIONER BRADLEY: Other parties? It's  
25 Progress's issue. Any Intervenors?

1 MR. MCGLOTHLIN: We don't object to dropping the  
2 issue.

3 MR. TWOMEY: No, sir, we don't either.

4 MR. PERRY: No objection for FIPUG.

5 COMMISSIONER BRADLEY: Retail? Mr. Wright?

6 MR. WRIGHT: I already said that we don't object to  
7 dropping that issue, Mr. Chairman.

8 COMMISSIONER BRADLEY: Okay. And I'm assuming, OPC,  
9 have you commented?

10 MR. MCGLOTHLIN: Yes, sir. We don't object to  
11 dropping the issue.

12 MS. VINING: And FEA?

13 MAJOR PAULSON: No objection from FEA.

14 MS. VINING: Okay. So 13D can be dropped.

15 COMMISSIONER BRADLEY: 13E.

16 MS. VINING: This, again, is another one that the  
17 staff believes can be dropped at this point in time.

18 COMMISSIONER BRADLEY: Intervenors?

19 MR. WRIGHT: The Retail Federation would not object  
20 to dropping 13E.

21 COMMISSIONER BRADLEY: Mr. Twomey?

22 MR. TWOMEY: Same.

23 MAJOR PAULSON: No objection from FEA.

24 MR. PERRY: No objection from FIPUG.

25 COMMISSIONER BRADLEY: OPC?

1 MR. MCGLOTHLIN: OPC has no objection.

2 MR. PERKO: No objection from Progress.

3 COMMISSIONER BRADLEY: 13F.

4 MS. VINING: So 13E can be dropped since there were  
5 no objections? Yes? Okay.

6 COMMISSIONER BRADLEY: Okay. So we're on 13F; right?

7 MS. VINING: Yes. 13F. 13F is one that staff  
8 believes can be stipulated pending any changes in positions  
9 from the Intervenors.

10 MR. WRIGHT: The Retail Federation will take no  
11 position and not oppose the stipulation.

12 MR. MCGLOTHLIN: That is true of OPC as well.

13 MR. PERRY: Same for FIPUG.

14 MR. TWOMEY: Same for AARP.

15 MAJOR PAULSON: Same for FEA.

16 MS. VINING: Great. So I'll note that as a  
17 stipulated issue.

18 MR. TWOMEY: Commissioner Bradley, let me ask through  
19 you if Ms. Vining is going to keep the -- you're not going to  
20 renumber the issues, are you?

21 MS. VINING: No. I'll just note that they're dropped  
22 or stipulated.

23 MR. TWOMEY: Okay. Thank you.

24 COMMISSIONER BRADLEY: Okay. 13, let's see, F, G.

25 MS. VINING: Uh-huh. Are there any changes in

1 position from the Intervenors?

2 COMMISSIONER BRADLEY: Any changes? 13H. Any  
3 changes? 13I.

4 MS. VINING: 13I is an issue that staff believes can  
5 be dropped at this point in time pending any of the Intervenors  
6 taking a position.

7 MR. WRIGHT: The Retail Federation does not oppose  
8 dropping this issue, Mr. Chairman.

9 COMMISSIONER BRADLEY: So noted. AARP?

10 MR. TWOMEY: Same.

11 COMMISSIONER BRADLEY: FIPUG?

12 MR. PERRY: Same. We'll take no position.

13 COMMISSIONER BRADLEY: Who else? OPC and Federal  
14 Agencies.

15 MAJOR PAULSON: No objection.

16 MR. MCGLOTHLIN: OPC does not object to dropping.

17 MR. PERKO: Commissioner, on behalf of Progress  
18 Energy, I believe that we're okay with dropping this issue but  
19 I have not been able to confirm that with my client. So I will  
20 get with Ms. Vining on that.

21 COMMISSIONER BRADLEY: Okay. So how would you --  
22 Progress needs to confer with --

23 MS. VINING: Right. He can, he can talk to me later  
24 once he talks to his client, and I can reflect that in the  
25 prehearing order if they agree to drop it.

1 COMMISSIONER BRADLEY: Okay. Do I need to give you a  
2 ruling?

3 MS. VINING: For right now, no, I don't think that's  
4 necessary.

5 COMMISSIONER BRADLEY: Okay. Okay. 13J.

6 MS. VINING: 13J is an issue that I believe can be  
7 stipulated pending any changes in position by the Intervenors.

8 MR. WRIGHT: The Retail Federation will take no  
9 position on this issue and we do not oppose the stipulation.

10 MR. MCGLOTHLIN: That is true of OPC as well.

11 MR. PERRY: Same for FIPUG, no position.

12 MR. TWOMEY: Same for AARP.

13 MAJOR PAULSON: FEA, no objection.

14 MS. VINING: So I'll note that that's stipulated.  
15 And I believe with that stipulation that we could also  
16 stipulate Witness Waters for Progress Energy, but they can  
17 confirm that.

18 COMMISSIONER BRADLEY: Does Progress agree?

19 MR. PERKO: Yes.

20 MS. VINING: And that's, of course, subject to the  
21 condition that none of the Commissioners have questions of that  
22 witness.

23 COMMISSIONER BRADLEY: Certainly. 13L.

24 MS. VINING: Oh, wait. K, we haven't addressed K  
25 yet, 13K.

1 COMMISSIONER BRADLEY: K? I'm sorry. 13K.

2 MS. VINING: And this is another issue that staff  
3 believes can be dropped at this point in time.

4 MR. PERKO: No objection from Progress Energy.

5 MR. WRIGHT: Commissioner, may I inquire as to what  
6 staff's position is regarding the implications of dropping it?  
7 I was prepared today to agree with staff's position as it is  
8 stated in the prehearing order. If that is the implication of  
9 dropping it, then we're fine with dropping it. If, if it is --  
10 if their position is simply to let the costs go through as  
11 requested by Progress without deferring it to further  
12 proceedings in the 060001 docket, then I think we'd have a  
13 problem with that.

14 MS. VINING: Our intention is as stated in our  
15 position, that this would better be addressed in next year's  
16 fuel proceeding.

17 MR. WRIGHT: Just to be clear, Mr. Chairman, I  
18 apologize, but I need to be, that means that whatever -- does  
19 that mean that whatever Progress has asked for in this docket  
20 will not be recovered in next year's fuel cost factors but will  
21 be addressed next year?

22 MS. VINING: What they've asked for this year would  
23 be recovered in next year's factor, but it doesn't mean that  
24 staff is not going to continue looking at the issue.

25 MR. WRIGHT: Mr. Chairman, if I may. Does that mean

1 that we'd be allowed to litigate the amount for recovery in  
2 next year's docket? Is that the implication?

3 MS. VINING: Yes.

4 MR. WRIGHT: Thank you. In that case we're okay with  
5 dropping the issue.

6 MR. PERRY: Same for FIPUG.

7 MR. TWOMEY: Same.

8 MAJOR PAULSON: Agree.

9 COMMISSIONER BRADLEY: Federal Agencies. OPC.

10 MR. McGLOTHLIN: OPC is fine with that.

11 COMMISSIONER BRADLEY: Did we miss any?

12 MS. VINING: I don't think so.

13 COMMISSIONER BRADLEY: Did we get all the  
14 intervenors? Okay.

15 MS. VINING: So Issue 13K can be dropped.

16 COMMISSIONER BRADLEY: Okay. We're on 13L?

17 MS. VINING: Correct.

18 MR. WRIGHT: Mr. Chairman, the Retail Federation's  
19 position is no longer tentative. We will agree with Public  
20 Counsel.

21 MS. VINING: Are any of the other intervenors going  
22 to change their position on this one?

23 MR. PERRY: I think FIPUG can agree with OPC.

24 MS. VINING: FEA, are you going to take no position  
25 on this?

1 MAJOR PAULSON: No position on this issue.

2 MS. VINING: Okay.

3 COMMISSIONER BRADLEY: Did we get all the  
4 Intervenors' positions?

5 Okay. 13M.

6 MR. PERRY: I would just like to note, this is Tim  
7 Perry for FIPUG, that FIPUG has distributed an amended position  
8 for Issue 13M to all the Intervenors, the parties, staff and  
9 the court reporter. We'll also email that to, to staff as  
10 well.

11 MR. WRIGHT: Mr. Chairman, I'd like to --

12 COMMISSIONER BRADLEY: So is your position still yes  
13 or is it that you've changed your position?

14 MR. PERRY: It's still yes. We just added on.

15 COMMISSIONER BRADLEY: It's amended. Okay.

16 MR. PERRY: Yeah. We just amended to add on to the  
17 position, but it's still the same basic position. Yes.

18 COMMISSIONER BRADLEY: Okay. Who else? Schef  
19 Wright. Mr. Wright.

20 MR. WRIGHT: Thank you, Mr. Chairman. Schef Wright  
21 on behalf of the Retail Federation. I'd just like to ask for  
22 your leave to be allowed to maintain no position at this time  
23 for a day or so while I evaluate FIPUG's new position.

24 COMMISSIONER BRADLEY: So you're changing from  
25 tentatively?



1 MR. WRIGHT: Changing from "Tentatively agree with  
2 OPC" to "No position at this time pending further review of  
3 FIPUG's position."

4 COMMISSIONER BRADLEY: Okay.

5 MR. TWOMEY: Commissioner Bradley, AARP would change  
6 their position from "Agrees with OPC" to "Agrees with FIPUG."

7 COMMISSIONER BRADLEY: Okay. 14A.

8 MS. VINING: I guess I would ask on that one, is FEA  
9 going to take no position on that?

10 MAJOR PAULSON: If we have a different position, I'll  
11 speak up. How would that be?

12 MS. VINING: Okay.

13 MAJOR PAULSON: Thanks.

14 COMMISSIONER BRADLEY: Okay. 14, let's see, 14A.

15 MS. VINING: Right. And this is again another issue  
16 that staff thinks can be dropped at this point in time.

17 COMMISSIONER BRADLEY: Okay. Intervenors?

18 MR. WRIGHT: We would not object to dropping this  
19 one, Mr. Chairman.

20 COMMISSIONER BRADLEY: That's Retail Federation.

21 MR. PERKO: FIPUG takes no position and wouldn't  
22 object to dropping the issue.

23 MR. TWOMEY: No objection.

24 COMMISSIONER BRADLEY: AARP.

25 MAJOR PAULSON: No objection.

1 COMMISSIONER BRADLEY: Okay. And, OPC, did you state  
2 your position?

3 MR. BECK: We have no objection to dropping it.

4 COMMISSIONER BRADLEY: Okay.

5 MR. BUTLER: And Florida Power & Light has no  
6 objection.

7 MS. VINING: Okay. So I'll note that 14A can be  
8 dropped.

9 COMMISSIONER BRADLEY: Okay. 14B.

10 MS. VINING: And this again is an issue that we think  
11 can be dropped.

12 MR. WRIGHT: We would not oppose dropping this issue.

13 COMMISSIONER BRADLEY: Retail Federation.

14 MR. WRIGHT: Yes, sir.

15 MR. PERRY: No objection for FIPUG.

16 MR. TWOMEY: No objection.

17 COMMISSIONER BRADLEY: AARP.

18 MAJOR PAULSON: No objection, FEA.

19 MR. BECK: None from OPC.

20 MR. BUTLER: And none from FPL.

21 COMMISSIONER BRADLEY: Okay.

22 MS. VINING: So with that, I'll note that 14B can be  
23 dropped.

24 COMMISSIONER BRADLEY: Okay. 14C.

25 MR. WRIGHT: We would change to "No position at this

1 time pending receipt and review of outstanding discovery."

2 COMMISSIONER BRADLEY: Okay. That's Retail  
3 Federation.

4 MR. WRIGHT: Yes, sir.

5 MR. PERRY: No position for FIPUG.

6 COMMISSIONER BRADLEY: Mr. Twomey?

7 MR. TWOMEY: No position.

8 MAJOR PAULSON: No position.

9 MR. BECK: No position from OPC.

10 MS. VINING: So that's no position?

11 MR. BECK: Correct.

12 MR. PERRY: Let me, sorry, let me correct that. I'm  
13 going to take the same position as staff, FIPUG will.

14 MS. VINING: FEA?

15 MAJOR PAULSON: No position.

16 MS. VINING: We can move on.

17 COMMISSIONER BRADLEY: 14D.

18 MR. WRIGHT: Mr. Chairman, on that issue, 14D, the  
19 Retail Federation will take the same position as staff.

20 COMMISSIONER BRADLEY: OPC?

21 MR. BECK: No position by OPC.

22 COMMISSIONER BRADLEY: FIPUG?

23 MR. PERRY: No position for FIPUG.

24 COMMISSIONER BRADLEY: Mr. Twomey?

25 MR. TWOMEY: No position.

1 MAJOR PAULSON: No position.

2 COMMISSIONER BRADLEY: Okay. By the Federal  
3 Agencies. Okay. 14E.

4 MS. VINING: 14E is another issue that staff believes  
5 can be dropped.

6 MR. BECK: OPC does not oppose dropping the issue.

7 MR. WRIGHT: Mr. Chairman, Schef Wright for the  
8 Retail Federation. May I inquire, is, is the staff's position  
9 regarding dropping it the same as on the issue that we  
10 previously discussed, that is that the, the dollars would go  
11 into the 2006 factor but that they would also be subject to  
12 litigation in the 060001 docket?

13 MS. VINING: Yes.

14 MR. WRIGHT: In that case, we do not oppose dropping  
15 the issue with that understanding.

16 MR. PERRY: Same position for FIPUG as Florida Retail  
17 Federation; we don't oppose dropping the issue contingent on  
18 the fact that we could litigate the costs in the '06 docket.

19 MR. TWOMEY: Same for AARP.

20 MAJOR PAULSON: No objection.

21 COMMISSIONER BRADLEY: Did we get OPC's position?  
22 Did you state your position?

23 MR. BECK: I did. No position.

24 COMMISSIONER BRADLEY: Okay. I'm sorry.

25 MR. BUTLER: FPL has no objection to dropping Issue

1 14E.

2 COMMISSIONER BRADLEY: Okay.

3 MS. VINING: Okay. With that, I'll note that 14E is  
4 dropped.

5 COMMISSIONER BRADLEY: 14F.

6 MR. WRIGHT: Mr. Chairman, on 14F the Retail  
7 Federation takes the position, "No. Agree with staff."

8 MAJOR PAULSON: FEA also agrees with staff on this  
9 issue.

10 MR. PERRY: FIPUG may have an amendment to its  
11 position. It would be consistent with what our position is  
12 now, but we may just change the wording. If I do so, I'll just  
13 email that to Ms. Vining.

14 COMMISSIONER BRADLEY: Okay. Just a minute.

15 Okay. 14G.

16 MS. VINING: 14G is yet another issue we think can be  
17 dropped.

18 MR. WRIGHT: The Retail Federation does not oppose  
19 dropping 14G.

20 MR. PERRY: No objection for FIPUG.

21 MR. TWOMEY: Same.

22 MAJOR PAULSON: No objections.

23 MR. BECK: No objection from OPC.

24 MR. BUTLER: No objection for -- sorry.

25 COMMISSIONER BRADLEY: The AARP and Federal Agencies

1 also have no objection. I just need for you -- I'm trying to  
2 identify you for the court reporter.

3 MAJOR PAULSON: Yes, sir.

4 MR. BUTLER: No objection for FPL.

5 MS. VINING: So with that, I'll note that 14G can be  
6 dropped.

7 COMMISSIONER BRADLEY: Okay. 14H.

8 MS. VINING: On 14H, this appears to be an issue that  
9 can be stipulated pending changes in positions from the  
10 Intervenors.

11 MR. WRIGHT: I'm sorry, but our position on 14H is  
12 "No."

13 COMMISSIONER BRADLEY: That's Florida Retail  
14 Federation.

15 MR. WRIGHT: Yes, sir.

16 MS. VINING: Any of the other Intervenors have  
17 changes in position? So none of you -- so you're all "No  
18 position at this time"?

19 MR. PERRY: FIPUG would take no position.

20 MR. BECK: Same for OPC. It would be "No position."

21 MR. TWOMEY: Same for AARP.

22 MAJOR PAULSON: And the same for FEA.

23 COMMISSIONER BRADLEY: 14I.

24 MS. VINING: This issue is one that staff believes  
25 can be dropped, with the same understanding for FPL that we had

1 for Progress that Mr. Wright noted earlier.

2 COMMISSIONER BRADLEY: Retail Federation.

3 MR. WRIGHT: The Retail Federation is -- I apologize.  
4 I was having a brief sidebar with Mr. Beck. Did I understand  
5 you to say this is the same as regards to -- did I understand  
6 Ms. Vining to say that this is the same as the other issues in  
7 the fact that they are litigable next year?

8 MS. VINING: Correct.

9 MR. WRIGHT: Thank you. Mr. Chairman, we do not  
10 oppose dropping it on that basis.

11 MR. PERRY: FIPUG doesn't object.

12 MR. TWOMEY: No objection.

13 MAJOR PAULSON: No objection from FEA.

14 COMMISSIONER BRADLEY: Okay.

15 MR. BECK: None from OPC.

16 MR. BUTLER: And none from FPL.

17 MS. VINING: With that then, I'll note that 14I is  
18 dropped.

19 COMMISSIONER BRADLEY: 14J.

20 MS. VINING: This one I've already noted as  
21 stipulated in the draft prehearing order.

22 COMMISSIONER BRADLEY: Is it stipulated? Let it be  
23 noted that 14J is stipulated. 15A.

24 MR. PERKO: Commissioner, before we go on to FPUC,  
25 Gary Perko on behalf of Progress. I hate to backtrack, but I

1 can confirm now that my client is okay with dropping Issue 13I  
2 as suggested previously.

3 MS. VINING: I'll so note it in the prehearing order.

4 MR. PERKO: Thank you.

5 COMMISSIONER BRADLEY: Thank you. Let it be noted  
6 that 14I, 14I -- 13I is, what, dropped?

7 MS. VINING: Dropped.

8 COMMISSIONER BRADLEY: Just a minute. 15B.

9 MS. VINING: No, 15A.

10 COMMISSIONER BRADLEY: 15A. I'm sorry.

11 MS. VINING: 15A is one that staff believes can be  
12 dropped at this time.

13 MR. WRIGHT: Mr. Chairman, the Retail Federation does  
14 not oppose dropping 15A.

15 MR. PERRY: FIPUG takes no position for all of the  
16 FPUC-specific issues, so we don't -- to the extent that staff  
17 wants to drop any other ones besides 15A or in addition to 15A  
18 rather, then we're fine with that.

19 MR. TWOMEY: And AARP takes no position on any of  
20 the -- takes the position "No position" on each of the FPUC  
21 items.

22 MAJOR PAULSON: And FEA also takes no position on any  
23 of the FPUC issues.

24 MS. CHRISTENSEN: No position on Issue 1 or, I'm  
25 sorry, Issue 15A.



1 MS. VINING: How about for dropping it?

2 MS. CHRISTENSEN: I have -- since I have no position,  
3 I have no objection to dropping the issue, although I think  
4 Florida Retail Federation objects to dropping the issue.

5 MR. WRIGHT: Which one?

6 MS. CHRISTENSEN: 15A. Was that it?

7 MR. WRIGHT: No. We do not object to dropping 15A.

8 MS. CHRISTENSEN: Okay. No, I have no objection to  
9 dropping it.

10 MS. VINING: So with that, we can drop 15A, and I'll  
11 note that in the prehearing order.

12 COMMISSIONER BRADLEY: Let the record reflect -- that  
13 was OPC. Let the record so reflect. 15B.

14 MR. WRIGHT: Mr. Chairman, the Retail Federation's  
15 position will change to "Agree with OPC."

16 MS. VINING: And FIPUG said they had no position on  
17 all FPUC-specific issues?

18 MR. PERRY: That's correct.

19 MS. VINING: What about AARP, did you say that as  
20 well? I couldn't recall.

21 MR. TWOMEY: I did say that, yes.

22 MS. VINING: And the same for FEA?

23 MAJOR PAULSON: Yes, ma'am.

24 MS. VINING: Okay.

25 COMMISSIONER BRADLEY: 15C.

1 MR. WRIGHT: Mr. Chairman, on 15C the Retail  
2 Federation will simply change its position to "Agree with OPC."

3 MS. VINING: And commensurate with what they said  
4 before, I'll put "No position" for FIPUG, AARP and FEA.

5 COMMISSIONER BRADLEY: Is that correct?

6 MR. TWOMEY: Yes, sir.

7 COMMISSIONER BRADLEY: Okay. 15D.

8 MR. WRIGHT: Mr. Chairman, on 15D the Retail  
9 Federation will change its position to, "No. Agree with OPC  
10 and staff."

11 MS. VINING: And once again, on 15D, "No position"  
12 for FIPUG, FEA and AARP.

13 COMMISSIONER BRADLEY: 16A.

14 MS. VINING: 16A is an issue that staff believes can  
15 be dropped at this time.

16 MR. WRIGHT: Mr. Chairman, if I may inquire if  
17 dropping it is consistent with the drop it, include anything  
18 that's in there and, and pursue it further in the  
19 060001 docket, then we do not oppose dropping it.

20 MS. VINING: That's correct. That is the correct  
21 understanding.

22 MR. WRIGHT: Thank you. With that, we don't oppose  
23 dropping it.

24 MR. PERRY: Same for FIPUG.

25 MR. TWOMEY: Same, AARP.

1 MAJOR PAULSON: Same for FEA.

2 MS. CHRISTENSEN: Based on that understanding, that  
3 we can litigate this in the '06 docket, OPC has no objection to  
4 dropping it at this time.

5 MS. VINING: With that then, I'll note that 16A is  
6 dropped.

7 COMMISSIONER BRADLEY: Well, is that, is that Gulf's  
8 issue?

9 MS. VINING: Excuse me? What?

10 COMMISSIONER BRADLEY: 16A.

11 MS. VINING: 16A, dropped.

12 MR. STONE: Commissioner --

13 COMMISSIONER BRADLEY: Wait just a minute. Let him  
14 --

15 MR. STONE: -- I'm a little bit concerned that staff  
16 is taking the position that -- we raised the issue. As I  
17 understand staff's position prior to dropping the issue, they  
18 are talking about developing a new regulatory policy at a  
19 workshop to be held in 2006. And the implication of what I  
20 just heard the conversation take place by the other parties is  
21 that we're now talking about adopting a new regulatory policy  
22 and applying it retroactively. We believe the issue as to  
23 whether or not there are any replacement fuel costs for Plant  
24 Smith is ripe for discussion now, that there are no replacement  
25 fuel costs, and that nevertheless any prospective determination

1 of a new policy should not be applied retroactively. I'm not  
2 opposed to dropping the issue, but I am concerned with the,  
3 with the reservation that seems to be expressed starting with  
4 Mr. Wright on behalf of the Florida Retail Federation that  
5 we've got a bunch of me-toos to shortly thereafter.

6 COMMISSIONER BRADLEY: So what's your -- what's --

7 MR. STONE: I'm not sure anyone has identified any  
8 costs, and so I think we're in a bit of a quandary. No one has  
9 disputed Gulf's position. And I think what happened was people  
10 were -- we got into a log roller effect here thinking this was  
11 the same type of issue as had been identified with regard to  
12 hurricane storm costs and those things, and this is a different  
13 category. This is not a situation where we've identified  
14 costs, they've been put into factors and there's additional  
15 discovery. Gulf has taken the position there are no such costs  
16 and, therefore, there is nothing left to resolve.

17 MS. VINING: I would just note that we accept Mr.  
18 Stone's comments and say that at this point in time it's not  
19 that staff is contesting that there are costs, it's just we  
20 would note that there is a potential that we may conduct a  
21 workshop in the future to look at this further.

22 COMMISSIONER BRADLEY: I missed the last part of  
23 that.

24 MS. VINING: We may conduct a workshop in the future  
25 to look at this further. But we're not contesting his comments

1 today.

2 COMMISSIONER BRADLEY: Further comments?

3 MR. BUTLER: Commissioner Bradley, regarding FPL and  
4 the issue that was similarly structured that we agreed to drop,  
5 I just expressed my understanding as to what I thought was  
6 going on with that. And if that's incorrect, then perhaps we  
7 have to go back and change a position on that.

8 The cost was incurred during 2005. That is sort of  
9 described in the issue, the statement of the issue. My  
10 understanding is just traditionally there is an opportunity to  
11 raise issues about costs up through the point where there would  
12 be the final true-up for those costs, which, of course, is what  
13 would happen in the Docket 060001, and that, you know, that's  
14 at least theoretically a possibility with respect to any costs  
15 that are in the utility's filing, but that by dropping an issue  
16 here, it's sort of as if it had never been raised. The  
17 parties' positions, not ours, not staff's, not anybody else's,  
18 is something that carries forward with any particular  
19 implication, which I guess would be a difference from what you  
20 would have if you had a stipulation and whatever was being  
21 stipulated, the wording of that stipulation would have future  
22 implications. Ms. Vining, is that your understanding of where  
23 we are in dropping the issue for FPL about the Turkey Point  
24 transformer?

25 MS. VINING: Yes. It's as though it never --

1           COMMISSIONER BRADLEY: Okay. Which issue is that?  
2 Issue -- give me the number.

3           MR. BUTLER: Okay. Let's see here.

4           MS. VINING: I believe that would be 14E.

5           MR. WRIGHT: Let me see. Yes. That's right.

6           COMMISSIONER BRADLEY: Just a minute. Let me get to  
7 it. Which page is it on? 14 -- okay. We're going to back up  
8 and have some more discussion about 14E to clear up any --

9           MS. VINING: Well, that's the specific issue that  
10 relates to Mr. Butler's client, FPL. But it's a similar issue  
11 for Gulf as well in 16A.

12           COMMISSIONER BRADLEY: Exactly. So I think  
13 Mr. Butler wants some clarification as to what the  
14 ramifications are.

15           MS. VINING: Right, for dropping it. In my mind  
16 that's as though it was never brought up in this proceeding.  
17 Yes.

18           MR. BUTLER: That was my understanding. That was my  
19 basis for agreeing to drop it.

20           COMMISSIONER BRADLEY: So you still agree with  
21 dropping it?

22           MR. BUTLER: Unless some other party has a  
23 disagreement with that basis, then I would not change my  
24 position on it.

25           COMMISSIONER BRADLEY: Okay. Intervenors?

1           Okay. So are we clear as, as to what the intent is  
2 as it relates to Issue 14E?

3           MS. VINING: Yes. Still dropped.

4           COMMISSIONER BRADLEY: Okay. So we're going back to  
5 Issue, what, 16A?

6           MS. VINING: Yes. I guess does Gulf object to being  
7 dropped or are you all right with being dropped?

8           MR. STONE: I guess my concern was raised by Mr.  
9 Wright's comments. When he, when he conditioned his lack of  
10 objection to dropping the issue, he took the position, as I  
11 recall, that this issue would be -- he could raise -- that this  
12 issue would continue to be raised in the '06 docket. If we're  
13 taking the position that this issue has been dropped as if it  
14 had never been raised, then I guess it would be incumbent on  
15 another party to raise the issue and shoulder the burden of  
16 proof with regard to raising the issue.

17           In this particular instance, we're not talking about  
18 something that has to be dealt with in the final true-up. It  
19 is an event that's over and done with, there are no dollar  
20 impacts, and we've already represented that. And I understand  
21 staff has no objection to Gulf's representations.

22           And I guess what I'm asking now is in light of that,  
23 does Florida Retail Federation still take the position it took  
24 earlier or is that --

25           COMMISSIONER BRADLEY: Mr. Wright?

1 MR. WRIGHT: Mr. Chairman, the answer to Mr. Stone's  
2 question is no, and that we don't take the same position I  
3 articulated earlier. I was reading this as another issue.  
4 Based on Mr. Stone's representations and my new understanding  
5 that there is no fact issue and that there is no request for  
6 any dollar recovery, we don't have -- our position is not the  
7 same as regards to the other issues where there are dollar  
8 amounts in question, and we have no objection to dropping this  
9 issue as though it never existed.

10 MR. STONE: With that clarification, assuming no  
11 other party disagrees with the Florida Retail Federation's new  
12 position, then I do not object to dropping the issue.

13 MR. PERRY: I can just take no position for FIPUG.

14 COMMISSIONER BRADLEY: OPC?

15 MS. CHRISTENSEN: No objection to dropping the issue,  
16 with the understanding there's no dollar amount in dispute in  
17 this issue. So it's really a moot issue at this point.

18 COMMISSIONER BRADLEY: Mr. Twomey?

19 MR. TWOMEY: Same.

20 MAJOR PAULSON: FEA has no objection to dropping the  
21 issue.

22 COMMISSIONER BRADLEY: Okay. So that clears that up.  
23 16B.

24 MS. VINING: Right. Any changes to the Intervenor  
25 positions on that one?



1 MS. CHRISTENSEN: No. I think we would just change  
2 it to staff's position.

3 MR. WRIGHT: The Retail Federation will also change  
4 to staff's position.

5 MR. PERRY: FIPUG would take no position.

6 MR. TWOMEY: Same as staff.

7 MAJOR PAULSON: No position from FEA.

8 COMMISSIONER BRADLEY: FEA, Federal Executive Agency.

9 MS. VINING: AARP has taken the same position as  
10 staff, is that what you said, Mr. Twomey?

11 MR. TWOMEY: I'm sorry. Say again.

12 MS. VINING: You're agreeing with staff on this?

13 MR. TWOMEY: Yes, ma'am.

14 MS. VINING: Okay.

15 COMMISSIONER BRADLEY: Okay. 16C.

16 MS. VINING: This is one that staff believes can be  
17 dropped.

18 MR. WRIGHT: Mr. Chairman, with regard to 16C, it's  
19 not completely clear to me whether there are potential dollars  
20 at issue or not. I came to the prehearing conference prepared  
21 to agree with staff in its position as articulated in the  
22 prehearing, draft prehearing order. If it is Gulf's position  
23 that because they did not suffer any fuel supply interruptions  
24 and that accordingly they did not incur any incremental fuel  
25 costs due to the hurricanes that we experienced in 2005, if

1 there's no dollar issue, then we don't have any objection to  
2 dropping the issue altogether. If there's a potential future  
3 fact issue which is rather implicit in the staff's position,  
4 then all we'd want is to know that we would have the  
5 opportunity to litigate any such future factual issue as to  
6 real dollars in dispute in the 060001 docket.

7 MR. STONE: We have no objection to dropping it along  
8 the lines that have been discussed.

9 COMMISSIONER BRADLEY: Staff, what's your  
10 interpretation of -- your statement as it relates to what has  
11 been discussed?

12 MS. VINING: I think what Mr. Wright said is correct,  
13 that if there are any costs that are incurred through the end  
14 of 2005, that could be addressed in the 060001 docket. But for  
15 right now staff doesn't believe that this issue is appropriate  
16 for consideration because the hurricane season is not over yet.  
17 That's why we're proposing it be dropped.

18 MR. WRIGHT: And just to be clear, Schef Wright for  
19 the Retail Federation again, we specifically agree with that.

20 MS. CHRISTENSEN: OPC has no objection to dropping  
21 the issue.

22 MR. PERRY: FIPUG would agree with Retail Federation,  
23 Gulf and staff.

24 MR. TWOMEY: AARP has no objection to dropping the  
25 issue.

1 MAJOR PAULSON: FEA has no objection to dropping the  
2 issue.

3 COMMISSIONER BRADLEY: Okay. But I think it's  
4 important to note that staff did make the statement that  
5 hurricane season is not over yet, so I don't --

6 MS. VINING: Well, it's just that the issue right now  
7 we don't think is appropriate for adjudication at this year's  
8 hearing. But there's always the possibility that we will have  
9 a similar issue in next year's proceeding.

10 COMMISSIONER BRADLEY: Okay.

11 MS. VINING: So with that, I'll note that 16C can be  
12 dropped.

13 COMMISSIONER BRADLEY: So be it. 16D.

14 MS. VINING: 16D is another issue that staff believes  
15 can be dropped at this point in time.

16 MR. WRIGHT: On 16D, Mr. Chairman, the Retail  
17 Federation would take no position and we would not oppose  
18 dropping the issue.

19 MR. PERRY: FIPUG takes no objection.

20 MR. TWOMEY: No objection to dropping of the issue.

21 COMMISSIONER BRADLEY: AARP.

22 MAJOR PAULSON: FEA has no objection to dropping the  
23 issue.

24 MS. CHRISTENSEN: OPC has no objection to dropping  
25 the issue.

1 COMMISSIONER BRADLEY: Gulf, any comments?

2 MR. STONE: We have no objection to dropping the  
3 issue.

4 MS. VINING: With that, I'll note that 16D is  
5 dropped.

6 COMMISSIONER BRADLEY: Okay. 17A.

7 MS. VINING: 17A. Any of the Intervenors have  
8 changes to their position?

9 MS. CHRISTENSEN: I would just adopt staff's  
10 position.

11 MR. WRIGHT: The Retail Federation will also adopt  
12 staff's position.

13 COMMISSIONER BRADLEY: AARP?

14 MR. TWOMEY: Same, Commissioner.

15 MR. PERRY: We're on 17A; right?

16 MS. VINING: Yes.

17 MR. PERRY: We would just take no position.

18 MS. VINING: No position?

19 COMMISSIONER BRADLEY: FEA?

20 MAJOR PAULSON: FEA, no position at this time.

21 COMMISSIONER BRADLEY: Any comments from TECO?

22 MS. VINING: Jim, TECO doesn't change their position  
23 on that; right?

24 MR. BEASLEY: No.

25 COMMISSIONER BRADLEY: Okay. 17B.

1 MS. VINING: 17B is an issue that staff believes can  
2 be dropped at this time.

3 MS. CHRISTENSEN: OPC has no objection to dropping  
4 the issue.

5 MR. WRIGHT: The Retail Federation will take no  
6 position and not oppose dropping the issue.

7 MR. PERRY: FIPUG takes no position.

8 MR. TWOMEY: AARP does not object to dropping the  
9 issue.

10 MAJOR PAULSON: FEA has no objection to dropping the  
11 issue.

12 MR. BEASLEY: Tampa Electric does not object.

13 MS. VINING: With that, I'll note that 17B is  
14 dropped.

15 COMMISSIONER BRADLEY: 17C.

16 MS. VINING: 17C is another issue that staff believes  
17 can be dropped.

18 COMMISSIONER BRADLEY: OPC?

19 MS. CHRISTENSEN: OPC has no objection to dropping  
20 the issue with the caveat that, of course, the factual issues  
21 can be addressed in the '06 proceeding, if needed.

22 MS. VINING: Well, this one would be for the 2004  
23 hurricane season.

24 MS. CHRISTENSEN: Oh, I'm sorry. Pardon. No  
25 position.

1 MR. PERRY: FIPUG takes no position.

2 MR. TWOMEY: AARP, no position.

3 MR. WRIGHT: Mr. Chairman, I need another day or so  
4 to review this. My tentative position is no, but I'm working  
5 on getting to "No position."

6 MAJOR PAULSON: FEA, no position.

7 COMMISSIONER BRADLEY: So that means the issue stays  
8 on the table then.

9 MS. VINING: Well, on this one then we'll hold it in  
10 reserve for dropping until I hear from Mr. Wright.

11 MR. WRIGHT: Thank you, Mr. Chairman.

12 COMMISSIONER BRADLEY: TECO?

13 MR. BEASLEY: We don't object to dropping it, sir.

14 COMMISSIONER BRADLEY: Mr. Wright, how much time are  
15 you going to need in order to state your position?

16 MR. WRIGHT: I'll get it done by tomorrow, Mr.  
17 Chairman.

18 COMMISSIONER BRADLEY: Okay.

19 MR. WRIGHT: By the close of business tomorrow.

20 COMMISSIONER BRADLEY: Okay. 17E.

21 MS. VINING: 17D actually.

22 COMMISSIONER BRADLEY: D. I'm sorry.

23 MS. VINING: Is another issue staff believes can be  
24 dropped.

25 MR. WRIGHT: Again, with regard to this one, this

1 seems to be one of those where, where the dollars would be  
2 allowed into the fuel factor but would be subject to litigation  
3 in the 060001 docket. With that understanding, we would not  
4 oppose dropping the issue.

5 MS. VINING: Yes. Again, this is one where the 2005  
6 hurricane season is not over yet. So if this were to come up  
7 again, we think it would be appropriate for the 060001.

8 MR. WRIGHT: If I may, I would like it understood  
9 that, that we would consider all the hurricane season  
10 replacement costs to be fair game in the 060001 docket.

11 MS. VINING: So noted.

12 MR. WRIGHT: And that is consistent -- is that -- may  
13 I ask, Mr. Chairman, if that is consistent with the staff's  
14 intent and understanding here?

15 COMMISSIONER BRADLEY: I believe it is -- and this is  
16 the Retail Federation speaking. I believe it is. Is that  
17 correct, staff?

18 MS. VINING: Yes.

19 MR. WRIGHT: Thank you.

20 COMMISSIONER BRADLEY: TECO, any -- oh, I'm sorry.

21 MR. PERRY: FIPUG agrees with the Retail Federation.

22 MS. CHRISTENSEN: With that understanding for this  
23 one, which I -- we have no objection to dropping the issue.

24 COMMISSIONER BRADLEY: Mr. Twomey.

25 MR. TWOMEY: No objection to dropping it.

1 COMMISSIONER BRADLEY: FEA.

2 MAJOR PAULSON: No objection to dropping the issue by  
3 FEA.

4 COMMISSIONER BRADLEY: Okay. TECO?

5 MR. BEASLEY: We don't object, sir.

6 MS. VINING: With that, I'll note that 17D is  
7 dropped.

8 COMMISSIONER BRADLEY: Okay. 17F.

9 MS. VINING: Well, 17E. 17E is another one that  
10 staff believes can be dropped, subject to changes from the  
11 intervenors in their positions.

12 MR. PERRY: And this is Tim Perry for FIPUG. I'd  
13 like to ask what are the conditions on dropping this issue?  
14 Would you be the -- would the dollars go through in 2006 and  
15 then be subject to litigation in the '06 hearing?

16 MS. VINING: Yes.

17 COMMISSIONER BRADLEY: OPC? Well, I guess you need  
18 to -- he asked a question.

19 MR. PERRY: Yeah. Contingent on us being able to  
20 litigate the costs in the '06 proceeding, I think that we could  
21 agree to drop that issue with that contingency.

22 Well, I'd like a day to, to be able to make that  
23 deliberation, but I think that we can do that.

24 COMMISSIONER BRADLEY: OPC?

25 MS. CHRISTENSEN: I think OPC can tentatively agree



1 to the issue being dropped, so long as the dollars that would  
2 be subject to being flowed (phonetic) through could be  
3 addressed in the '06 docket. And we're talking all of the  
4 dollars that would be incurred would be subject to litigation  
5 in next year's proceeding considering that the staff's position  
6 is that this is premature at this time. I think I probably  
7 could agree that they could be dropped, so long as those costs  
8 and associated principals could be litigated next year.

9 COMMISSIONER BRADLEY: So have you eliminated it  
10 tentatively?

11 MS. CHRISTENSEN: Huh?

12 COMMISSIONER BRADLEY: Are you in the affirmative  
13 now? You said tentatively.

14 MS. CHRISTENSEN: I can agree to dropping the issue  
15 with that understanding that we can litigate this next year,  
16 that we are not precluded from litigating the principals we  
17 would have litigated this year, that this is not in any way  
18 affirmatively approving the types of costs that are addressed  
19 in the issue, that that's all subject for next year.

20 MS. VINING: Yes. So noted.

21 MR. WRIGHT: Mr. Chairman, Schef Wright on behalf of  
22 the Retail Federation. I too would like a day to, to work on  
23 this one. I had come to the prehearing conference intending to  
24 agree specifically with the positions articulated by FIPUG and  
25 the Public Counsel. They've now changed -- they've now

1 indicated they may change, and I'd like the same, same  
2 opportunity to consider what FIPUG has asked for.

3 COMMISSIONER BRADLEY: AARP.

4 MR. TWOMEY: AARP has no objection to dropping the  
5 issue on the same qualifications expressed by Public Counsel.

6 MAJOR PAULSON: FEA has no objection to dropping the  
7 issue.

8 MS. VINING: Okay. With that, I'll wait to hear from  
9 FIPUG and FRF on this one.

10 COMMISSIONER BRADLEY: TECO.

11 MR. BEASLEY: We have no objection to dropping the  
12 issue, sir.

13 MR. WRIGHT: 5:00 tomorrow, is that okay?

14 MS. VINING: 5:00 tomorrow? Okay.

15 COMMISSIONER BRADLEY: We'll keep it open then.

16 17F.

17 MR. WRIGHT: Mr. Chairman, the Retail Federation will  
18 take the same position as staff, "No position pending receipt  
19 and review of outstanding discovery."

20 MS. CHRISTENSEN: Same position as staff for the  
21 Office of Public Counsel.

22 MR. PERRY: FIPUG agrees with staff also.

23 MR. TWOMEY: AARP agrees with staff as well.

24 COMMISSIONER BRADLEY: FEA?

25 MAJOR PAULSON: FEA agrees with staff also.

1 MS. VINING: So noted.

2 COMMISSIONER BRADLEY: 17G.

3 MS. VINING: 17G is another issue which staff  
4 believes can be dropped at this time.

5 MS. CHRISTENSEN: Similar to 17E, Office of Public  
6 Counsel would have no objection to dropping the issue subject  
7 to future litigation and the dollar amounts and the principals  
8 involved.

9 MS. VINING: Okay. Other Intervenors?

10 MR. PERRY: FIPUG can agree with OPC.

11 MR. TWOMEY: AARP, same as Public Counsel.

12 MAJOR PAULSON: FEA has no objection to dropping the  
13 issue.

14 COMMISSIONER BRADLEY: Retail Federation?

15 MR. WRIGHT: Thank you, Mr. Chairman. The Retail  
16 Federation will, will not oppose dropping this issue, again,  
17 subject to being, being able to litigate the costs involved in  
18 the '06 docket.

19 COMMISSIONER BRADLEY: TECO?

20 MR. BEASLEY: No objection to dropping the issue.

21 MS. VINING: With that, I'll note that 17G is  
22 dropped.

23 COMMISSIONER BRADLEY: 17H.

24 MS. VINING: 17H also we think can be dropped.

25 MR. WRIGHT: We have no -- the Retail Federation, Mr.

1 Chairman, has no position and does not oppose dropping this  
2 issue.

3 MR. PERRY: FIPUG takes no position.

4 MR. TWOMEY: AARP doesn't object to dropping the  
5 issue.

6 MAJOR PAULSON: FEA does not object to dropping the  
7 issue.

8 MS. CHRISTENSEN: OPC takes no position; no objection  
9 to dropping the issue.

10 MR. BEASLEY: Tampa Electric does not object to  
11 dropping the issue.

12 MS. VINING: With that, I'll note that 17H is  
13 dropped.

14 COMMISSIONER BRADLEY: 17I.

15 MS. VINING: 17I also we believe can be dropped.

16 MR. WRIGHT: Mr. Chairman, the Retail Federation will  
17 take no position on this issue and will not oppose dropping the  
18 issue.

19 MR. PERRY: FIPUG takes no position.

20 MR. TWOMEY: AARP, no position.

21 MAJOR PAULSON: FEA has no objection to dropping the  
22 issue.

23 MS. CHRISTENSEN: Office of Public Counsel has no  
24 position; no objection to dropping the issue.

25 MR. BEASLEY: Tampa Electric has no objection to

1 dropping this issue.

2 MS. VINING: With that, I'll note that 17I is  
3 dropped.

4 COMMISSIONER BRADLEY: 17J.

5 MR. WRIGHT: Mr. Chairman, the Retail Federation will  
6 change its position to that of the staff, "No position pending  
7 receipt and review of outstanding discovery."

8 MR. PERRY: FIPUG will take the same position as  
9 staff. And if we could before we leave the 17-numbered issues,  
10 I would also take the same position as staff for Issue 17A. I  
11 apologize for not stating that correctly earlier.

12 COMMISSIONER BRADLEY: Okay. You didn't state your  
13 position clearly as it relates to which issue?

14 MR. PERRY: I'll take the same position as staff for  
15 17J, which is the issue we're on now. And then also I was  
16 referring back to 17A, I'll also take the same position as  
17 staff on that issue. I stated differently before and I  
18 apologize for my --

19 COMMISSIONER BRADLEY: Okay. I'll tell you what  
20 then, so that we don't have any confusion, let's back up to 17A  
21 and make sure that we're clear as to --

22 MR. PERRY: Okay. Thank you, Commissioner.

23 COMMISSIONER BRADLEY: -- what we're doing here on  
24 17. Okay. Back to 17A. What did we do? You took a  
25 tentative -- you said that you would need more time in order to

1 clarify your position?

2 MS. VINING: No. I can tell you what my records  
3 show, that AARP, FIPUG, now FRF and OPC all want to adopt  
4 staff's position on this issue.

5 MR. PERRY: That's correct. That's what I want.

6 MS. VINING: And for FEA, no position?

7 MAJOR PAULSON: That's correct. No position.

8 MS. VINING: Okay.

9 COMMISSIONER BRADLEY: So what's the practical effect  
10 of that?

11 MS. VINING: The practical effect is it's still a  
12 live issue and they're all adopting staff's position except for  
13 FEA. And, of course, TECO is maintaining its position.

14 COMMISSIONER BRADLEY: Okay. TECO, any comment?

15 MR. BEASLEY: No objection to dropping the issue,  
16 sir. I'm sorry.

17 COMMISSIONER BRADLEY: We're on 17A.

18 MR. BEASLEY: Okay. 17A is -- we maintain our  
19 position there, sir.

20 COMMISSIONER BRADLEY: So 17A effectively stays as a  
21 point of discussion in this docket.

22 MR. BEASLEY: Yes, sir.

23 MS. VINING: Correct.

24 COMMISSIONER BRADLEY: Okay.

25 MR. PERRY: Thank you for indulging me on that,

1 Commissioner.

2 COMMISSIONER BRADLEY: Now we're back on 17J.

3 MS. VINING: J. And I believe so far FIPUG and FRF  
4 have adopted staff's position on that.

5 MS. CHRISTENSEN: OPC would adopt staff's position.

6 MS. VINING: AARP? 17J, what's --

7 MR. TWOMEY: I'm sorry. Staff's position.

8 MS. VINING: FEA?

9 MAJOR PAULSON: No position.

10 MS. VINING: Thank you.

11 COMMISSIONER BRADLEY: Did we miss anyone?

12 MS. VINING: No.

13 COMMISSIONER BRADLEY: Okay. 17J, any comments,  
14 TECO?

15 MR. BEASLEY: Our position is the same.

16 COMMISSIONER BRADLEY: Okay. 18.

17 MR. WRIGHT: On 18, Mr. Chairman, the Retail  
18 Federation will take the same position stated by the staff.

19 MS. CHRISTENSEN: OPC would take staff's position.

20 MR. PERRY: FIPUG will take staff's position.

21 MR. TWOMEY: AARP would take staff's position.

22 MAJOR PAULSON: FEA has no position.

23 COMMISSIONER BRADLEY: Okay. And I assume Florida  
24 Power & Light, Gulf and Progress and TECO --

25 MR. STONE: Gulf does not change its position.

1 MR. BEASLEY: Nor does Tampa Electric.

2 MR. PERKO: Nor does Progress.

3 MS. VINING: FPL, your position remains the same?

4 MR. BUTLER: Yes. That's fine.

5 COMMISSIONER BRADLEY: Okay. Do we have everyone?

6 MS. VINING: That's everyone.

7 COMMISSIONER BRADLEY: Okay.

8 MS. CHRISTENSEN: As far as 19, we have a position  
9 stated for TECO specifically, and then we would adopt staff's  
10 for the other companies.

11 MR. WRIGHT: And, Mr. Chairman, the Retail Federation  
12 will agree with the Office of Public Counsel with regard to  
13 TECO and take the staff's position with regard to the other  
14 companies.

15 MS. VINING: So would you say then that you agree  
16 with OPC in total then since they've adopted --

17 MR. WRIGHT: Yes. That's fine. Thank you.

18 MR. PERRY: Same for FIPUG; agree with OPC.

19 MR. TWOMEY: AARP agrees with OPC.

20 MAJOR PAULSON: FEA agrees with OPC.

21 MS. VINING: Okay. And none of the utilities have  
22 changes to their position on 19?

23 MR. STONE: Not for Gulf.

24 MR. BEASLEY: Nor for Tampa Electric.

25 MR. PERKO: Nor for Progress.



1 MR. BUTLER: Nor for FPL.

2 MR. STONE: May I inquire as to staff whether or not  
3 it might still be possible to reach a stipulation on the GPIF  
4 issues with regard to the other companies?

5 MS. VINING: It is possible, but at this point in  
6 time we're not prepared to do that. But we may be able to do  
7 it before the prehearing order is issued with regard to Gulf,  
8 Progress and FPL. And if that's the case then, we'll stipulate  
9 the witnesses too.

10 MR. STONE: That's the reason for my inquiry. Thank  
11 you.

12 COMMISSIONER BRADLEY: Okay. We're on Issue --

13 MS. VINING: 24. And 24 is an issue that staff  
14 believes we can stipulate, dependent on the positions of the  
15 intervenors.

16 MR. PERRY: FIPUG takes no position.

17 MS. CHRISTENSEN: OPC would take no position.

18 MR. WRIGHT: Mr. Chairman, on 24 the Retail  
19 Federation will take no position and will not oppose  
20 stipulating this issue.

21 MR. TWOMEY: AARP takes no position and is not  
22 opposed to the stipulation either.

23 MAJOR PAULSON: FEA takes no position and does not  
24 oppose the stipulation.

25 MS. VINING: With that I can show Issue 24

1 stipulated.

2 COMMISSIONER BRADLEY: Issue 25 -- oh, parties.

3 MR. BEASLEY: We agree to stipulate that issue.

4 MR. STONE: As does Gulf.

5 MR. PERKO: As does Progress.

6 MR. BUTLER: As does FPL.

7 COMMISSIONER BRADLEY: That was TECO who spoke first.

8 TECO agrees.

9 MS. VINING: I believe we're on 25 now.

10 COMMISSIONER BRADLEY: 25.

11 MS. VINING: 25 is another issue that staff believes  
12 can be stipulated.

13 MR. STONE: Gulf would agree.

14 MR. BEASLEY: As would Tampa Electric.

15 MR. PERKO: Progress agrees.

16 MR. BUTLER: As does FPL.

17 MS. CHRISTENSEN: OPC takes no position.

18 MR. WRIGHT: The Retail Federation takes no position  
19 and does not oppose dropping the issue.

20 MR. PERRY: FIPUG takes no position.

21 MR. TWOMEY: And AARP takes no position and is not  
22 opposed to the stipulation.

23 MAJOR PAULSON: FEA takes no position.

24 MS. VINING: Then with that, I can show Issue 25  
25 stipulated.

1 COMMISSIONER BRADLEY: 26.

2 MS. VINING: 26 is another issue that I believe can  
3 be stipulated.

4 MR. STONE: Gulf agrees.

5 MR. BEASLEY: As does Tampa Electric.

6 MR. PERKO: Progress agrees.

7 MR. BUTLER: FPL agrees.

8 MS. CHRISTENSEN: Office of Public Counsel, no  
9 position.

10 MR. WRIGHT: The Florida Retail Federation takes no  
11 position and does not oppose the stipulation.

12 MR. PERRY: FIPUG takes no position.

13 MR. TWOMEY: No position for AARP and does not oppose  
14 the stipulation.

15 MAJOR PAULSON: FEA takes no position.

16 MS. VINING: Okay. With that, I'll note that 26 can  
17 be stipulated.

18 COMMISSIONER BRADLEY: 27.

19 MS. VINING: I believe 27 can be stipulated at this  
20 time too.

21 COMMISSIONER BRADLEY: Gulf?

22 MR. STONE: Gulf agrees.

23 MR. BEASLEY: Tampa Electric agrees.

24 MR. PERKO: Just one second, Your Honor.

25 COMMISSIONER BRADLEY: Okay.

1 MR. WRIGHT: Mr. Chairman, may I inquire what the  
2 number involved in this stipulation for Progress is? Progress  
3 and staff have different numbers. Staff's is higher, so I'm  
4 wondering what this proposed stipulation number is.

5 MR. PERKO: That's reflected in the supplemental  
6 testimony that is being submitted, a \$3 million reduction to  
7 the capacity costs. So the staff is recommending that we  
8 accept the lower number as opposed to the higher number, and  
9 I'm just checking to make sure that that's the right number.

10 COMMISSIONER BRADLEY: Does that answer your  
11 question?

12 MS. VINING: Okay. I would note too at this point  
13 that staff can now agree with the number that Progress has  
14 listed for this Issue, \$352,879,007. And with that, we, we  
15 hope that we can stipulate on this.

16 MR. PERKO: That's the correct number from Progress's  
17 perspective.

18 COMMISSIONER BRADLEY: So, Mr. Wright, do you --

19 MR. WRIGHT: I appreciate that answer. And we --  
20 with that, we would take no position and not oppose the  
21 stipulation.

22 MS. CHRISTENSEN: OPC has no position.

23 MR. PERRY: FIPUG takes no position.

24 MR. TWOMEY: AARP, no position and doesn't oppose the  
25 stipulation.

1 MAJOR PAULSON: FEA has no position.

2 COMMISSIONER BRADLEY: Okay. And Florida Power &  
3 Light?

4 MR. BUTLER: We don't oppose the stipulation.

5 MS. VINING: Well, I think we've heard from  
6 everybody. With that, I can note 27 as stipulated.

7 COMMISSIONER BRADLEY: Okay. 28.

8 MS. VINING: You said we're moving on to 28?

9 COMMISSIONER BRADLEY: Beg your pardon?

10 MS. VINING: Did you say we're moving on to 28?

11 COMMISSIONER BRADLEY: Yes.

12 MS. VINING: 28 is another one that I believe we can  
13 stipulate.

14 MR. WRIGHT: The Retail Federation takes no position  
15 and does not oppose the stipulation.

16 MR. PERRY: FIPUG takes no position.

17 MR. TWOMEY: Same for AARP.

18 MAJOR PAULSON: FEA takes no position.

19 MS. CHRISTENSEN: Office of Public Counsel takes no  
20 position.

21 MR. STONE: Gulf does not object to the stipulation.

22 MR. BEASLEY: Nor does Tampa Electric.

23 MR. PERKO: Nor does Progress.

24 MR. BUTLER: Nor does FPL.

25 MS. VINING: Well, with that, it sounds like we can

1 stipulate Issue 28.

2 COMMISSIONER BRADLEY: Okay. Issue 29.

3 MS. VINING: We believe that Issue 29 can also be  
4 stipulated.

5 MR. STONE: Gulf agrees.

6 MR. BEASLEY: Tampa Electric agrees.

7 MR. PERKO: Progress agrees.

8 MR. BUTLER: FPL agrees.

9 MS. CHRISTENSEN: Office of Public Counsel takes no  
10 position.

11 MR. WRIGHT: The Retail Federation takes no position.

12 MR. PERRY: FIPUG takes no position.

13 MR. TWOMEY: AARP, no position.

14 MAJOR PAULSON: FEA takes no position.

15 MS. VINING: I have one clarification on this one.

16 29 is the fallout for what the capacity factors are, and FEA  
17 has proposed the new Issue 31B which would affect Issue 29.

18 MAJOR PAULSON: Okay. In that case we'll adopt the  
19 same position for both issues. We thought they were separate  
20 issues, but I'll defer to your judgment on that.

21 MS. VINING: Well, they are separate, but the  
22 company-specific issue would go into the calculation of the  
23 factor which is Issue 29. So what we'd need from you is your  
24 position in terms of what the factor would be. If you --

25 MAJOR PAULSON: Okay. I'll need a couple of days for

1 that.

2 MS. VINING: Okay.

3 COMMISSIONER BRADLEY: Okay. Now that's Issue --

4 MS. VINING: That's Issue 29. It now appears to me  
5 that we can't stipulate with regard to FPL on that, but I  
6 believe we can stipulate with regard to the other companies,  
7 TECO, Gulf, and Progress. So with that, with that reservation  
8 is everyone all right with stipulating with regard to the  
9 three --

10 COMMISSIONER BRADLEY: 29 is stipulated with the  
11 exception of --

12 MS. VINING: Right. With regard to stipulating --

13 COMMISSIONER BRADLEY: -- with the exception of --

14 MS. VINING: With the exception of FPL.

15 COMMISSIONER BRADLEY: Okay. And how much time are  
16 you going to need in order to -- how much time are you going to  
17 need in order to --

18 MAJOR PAULSON: I'm sorry, sir?

19 COMMISSIONER BRADLEY: How much time are you going to  
20 need in order to analyze the situation?

21 MAJOR PAULSON: I believe I'll need a couple of days.  
22 My expert was in the hospital last weekend. That's one of the  
23 problems I'm having right now, so.

24 MS. VINING: Okay. That's fine. And I assume FEA is  
25 fine with stipulating for the other three utilities besides

1 FPL.

2 MAJOR PAULSON: Well, we'll take no position on the  
3 other three.

4 MS. VINING: Okay. And I should get a position from  
5 you on 29 for FPL in a couple of days, you said.

6 MAJOR PAULSON: Yes, ma'am.

7 COMMISSIONER BRADLEY: Okay. We're on 30A.

8 MR. PERRY: 30A is an issue that was raised by FIPUG,  
9 and we can drop this issue.

10 MR. WRIGHT: The Retail Federation will not oppose  
11 dropping the issue.

12 MS. CHRISTENSEN: Office of Public Counsel has no  
13 objection to dropping the issue.

14 MR. TWOMEY: AARP, no objection.

15 MAJOR PAULSON: FEA, no objection.

16 MR. PERKO: Progress, no objection.

17 MS. VINING: Staff has no objection to that issue  
18 being dropped.

19 COMMISSIONER BRADLEY: 30B.

20 MS. VINING: 30B is an issue that we believe can be  
21 stipulated.

22 COMMISSIONER BRADLEY: Parties.

23 MS. CHRISTENSEN: Office of Public Counsel will take  
24 no position.

25 MR. PERRY: FIPUG takes no position.



1 MR. WRIGHT: The Retail Federation takes no position.

2 MR. TWOMEY: AARP takes no position, is not opposed  
3 to this stipulation.

4 MAJOR PAULSON: FEA takes no position.

5 MR. PERKO: Progress agrees to the stipulation.

6 COMMISSIONER BRADLEY: 31A.

7 MS. CHRISTENSEN: Office of Public Counsel takes no  
8 position.

9 COMMISSIONER BRADLEY: FIPUG? Mr. Twomey?

10 MR. TWOMEY: No position, Commissioner.

11 COMMISSIONER BRADLEY: FEA?

12 MAJOR PAULSON: No position from FEA.

13 COMMISSIONER BRADLEY: Okay.

14 MR. WRIGHT: The Retail Federation will agree with  
15 staff.

16 COMMISSIONER BRADLEY: FIPUG?

17 MR. PERRY: FIPUG agrees with staff.

18 COMMISSIONER BRADLEY: And Florida Power & Light.

19 MR. BUTLER: Our position is correctly stated.

20 COMMISSIONER BRADLEY: Beg your pardon?

21 MR. BUTLER: I said our position is correctly stated.

22 MS. VINING: And staff has no changes to its  
23 position.

24 COMMISSIONER BRADLEY: Let's see. 31B.

25 MS. VINING: Uh-huh. Do any of the Intervenors have

1 changes to their position?

2 MR. WRIGHT: Mr. Chairman, I'd just like to clarify  
3 that our no position at this time is pending seeing what the,  
4 the FEA's position becomes after his expert makes his report.

5 MS. CHRISTENSEN: Office of Public Counsel has no  
6 position.

7 COMMISSIONER BRADLEY: FIPUG?

8 MR. PERRY: FIPUG would take the same position as  
9 Retail Federation.

10 COMMISSIONER BRADLEY: Mr. Twomey?

11 MR. TWOMEY: AARP, no position.

12 MS. VINING: And FEA's position is still no?

13 MAJOR PAULSON: Yes.

14 MS. VINING: Staff's position is still yes. And FPL?

15 COMMISSIONER BRADLEY: We have an agreement as to  
16 what FEA is, how FEA is going to help us resolve this one way  
17 or the other?

18 MS. VINING: Well, I don't think they need to adjust  
19 their position on this one. It's just that they're going to --  
20 commensurate with their position on this issue, they're going  
21 to provide a position for FPL on the fallout issue to this,  
22 which would be 29.

23 COMMISSIONER BRADLEY: Okay. I think that's the last  
24 issue, isn't it?

25 MS. VINING: Yeah, it is. And 31B, I'd just note

1 that I'll wait to hear from FIPUG and FRF once FEA provides a  
2 position for FPL on 29.

3 COMMISSIONER BRADLEY: Okay. We're now on Section X,  
4 exhibits. Any comments, changes?

5 MS. CHRISTENSEN: Commissioner, I would ask -- this  
6 is Patty Christensen, Office of Public Counsel. Based on  
7 earlier discussions today regarding the FPUC issue where  
8 customers may come and testify, there also have been customer  
9 comments, written comments that have been submitted to the  
10 docket side of the file which we may seek to introduce into  
11 evidence. I don't know if FPUC would have any objection to  
12 that. We certainly had not planned on it and had not listed it  
13 as an exhibit as of yet, but we did want to bring that to  
14 everyone's attention. And I don't know if, you know, if  
15 they're willing to agree to just submit them as a composite  
16 exhibit, it might alleviate some of the --

17 MR. HORTON: Excuse me. I can't agree to anything at  
18 this point. If Ms. Christensen has something that she'd like  
19 to submit, I'd be happy to look at it and respond. But I'd  
20 like to waive any, excuse me, reserve any objections that I  
21 might have.

22 MS. CHRISTENSEN: I would ask if FPUC has any  
23 objection to us being allowed to introduce the customer  
24 comments, certainly we can show them ahead of time. But I just  
25 would like to know, you're not going to object based on the

1 fact that we didn't have that information available to provide  
2 in time to put into the prehearing order.

3 MR. HORTON: I wouldn't object on that basis, but I'd  
4 reserve any other objections that I might have.

5 MS. VINING: Okay.

6 COMMISSIONER BRADLEY: Well, I think that in view of  
7 where we are today, I think the customer comments -- are  
8 these -- how have the comments been certified?

9 MS. CHRISTENSEN: These are written customer comments  
10 that have been filed in the docket side of the file.

11 COMMISSIONER BRADLEY: Okay.

12 MS. CHRISTENSEN: And the only way that I can get  
13 comments in front of the Commission is to seek to have them  
14 introduced, which is one of the points that I was trying to  
15 bring up before or give him the motion that this may create  
16 some problem in getting the customer comments to the Commission  
17 since the fuel docket really isn't set up for that, so.

18 COMMISSIONER BRADLEY: We've agreed to allow the  
19 customers to testify, so I'm also going to agree for the  
20 customer comments to be introduced. And Florida Public  
21 Utilities reserves its right to protest.

22 MR. HORTON: Commissioner, if Ms. Christensen wants  
23 to compile those comments and then offer them as an exhibit,  
24 I'm not going to object to the fact that she has not  
25 preidentified those, but I do want to reserve any objection

1 that I might have. I haven't seen them. I've seen some of  
2 them. I have not seen them, so I don't know what's in them.

3 COMMISSIONER BRADLEY: I think that's proper and in  
4 order for him to reserve his, his right to object. But my  
5 ruling would be that we need to include the customer comments  
6 to the extent that we can, and if there's an objection, we'll  
7 deal with the objection.

8 MS. VINING: Are there any other comments from the  
9 utilities about the exhibits that are listed, corrections?

10 COMMISSIONER BRADLEY: Proposed stipulations. I  
11 think we've discussed most of them, but any others?

12 MS. VINING: None that I'm aware of. And as I said  
13 in the draft prehearing order, I'll note them at the particular  
14 issue. I'm not going to list them in Section XI as such.  
15 They'll be listed throughout the order.

16 COMMISSIONER BRADLEY: Okay. Pending motions.

17 MR. PERKO: Commissioner, I would just add, Progress  
18 Energy will be filing a motion for temporary protective order  
19 within the next day or so.

20 MS. VINING: We'll add it to the list.

21 MR. STONE: And on behalf of Gulf, we filed two  
22 requests for confidential classification late last week, and I  
23 will get with Ms. Vining to make sure they're appropriately  
24 described in the pending confidentiality matters.

25 COMMISSIONER BRADLEY: Okay. I think that would come

1 under Section XIII, pending confidentiality matters. Any other  
2 pending confidentiality matters?

3 MR. BEASLEY: Tampa Electric will be filing requests  
4 for confidential treatment and motion for temporary protective  
5 order with respect to some outstanding discovery that's coming  
6 in.

7 MS. VINING: And I'll just note that all of those  
8 requests should be addressed in a written motion before the  
9 hearing.

10 COMMISSIONER BRADLEY: Progress, I mean, Florida  
11 Power & Light and Florida Public Utilities.

12 MS. CHRISTENSEN: Office of Public Counsel would just  
13 like to note at this time that we would like to reserve the  
14 right to use any confidential materials during  
15 cross-examination and to treat them in accordance with the  
16 requirements of confidential materials within the prehearing  
17 order to provide red envelopes and not disclose the information  
18 verbally at hearing, but we would like to note that we may use  
19 confidential materials. We have not identified as such what  
20 those confidential materials would be, but we intend to follow  
21 procedures required for use of confidential materials at  
22 hearing.

23 MS. VINING: And you'll be noting a week before the  
24 hearing what those will be?

25 MS. CHRISTENSEN: The thing is we may or may not be

1 able to identify the individual documents. They would be  
2 documents that would have been produced by the companies  
3 through the discovery process and may be subject to pending  
4 confidentiality matters which have yet to be ruled on, and we  
5 may or may not know those until the day of the hearing. What I  
6 can indicate is that we will follow all of the requirements for  
7 use of confidential materials at the hearing, and to the best  
8 of our ability we'll try and let you know as soon as we  
9 identify those or at least the day of the hearing.

10 MS. VINING: Okay.

11 MR. STONE: Commissioner Bradley, that puts the  
12 companies in a difficult position because, as you might  
13 imagine, the difficulty with trying to respond to questions  
14 about confidential materials is, is something that you have to  
15 plan for in advance. The determination in the order on  
16 prehearing procedure suggests that if a party wishes to use  
17 confidential material, they provide notice to the other parties  
18 seven days in advance of the hearing, and that is to allow the  
19 parties to be able to manage the procedure appropriately and  
20 ensure that confidential material is not inappropriately  
21 disclosed. Waiting until the morning of the hearing puts us  
22 all in a difficult position in order to prepare our witnesses  
23 to be sure that they do not inadvertently disclose confidential  
24 materials.

25 MS. CHRISTENSEN: Commissioner, may I just briefly

1 respond? I think, I think Mr. Stone is suggesting that we  
2 should let him know what our potential cross is a week ahead of  
3 time, and I think that's not what the rule is intended to do.  
4 The rule is intended that we would -- we will certainly provide  
5 the copies of any confidential materials that we intend to use  
6 to the witnesses, to the Commissioners so they will have that  
7 available. And I'm sure that Mr. Stone can advise his  
8 witnesses not to verbalize any confidential materials. We will  
9 do our best to not elicit questions that will require them to  
10 verbalize confidential materials. But to require us to go  
11 ahead and provide him with the information with sufficient  
12 detail as to what our cross-examination questions will be so  
13 that they can prepare for that, that's just beyond the bounds  
14 of what I think this was intended to do. And really at this  
15 point we're just trying to put you on notice we may use some  
16 confidential materials and we'll certainly adhere to the  
17 procedures that this Commission has set forth for use of  
18 confidential materials at the hearing.

19 MR. BEASLEY: Commissioner Bradley, Tampa Electric  
20 would like to express some concern and concur in Mr. Stone's  
21 comments. I think that's why -- we're not interested in what  
22 their cross-examination questions are. We're just interested  
23 in them complying with the requirements of the order on  
24 procedure that was issued back at the beginning of the year,  
25 which requires that we be given seven days advanced notice as



1 to which particular confidential documents any party intends to  
2 introduce at the hearing. And that is for the very purpose  
3 that Mr. Stone articulated, and we need that. And I think the  
4 Commission has recognized that by including that in the order.

5 MS. CHRISTENSEN: I believe, Commissioner, the  
6 purpose is to let them know that we will be using confidential  
7 materials so that they, so that we will be following the  
8 procedure of red folders, not to identify each individual piece  
9 of document that we may use that's confidential. That would be  
10 akin to them getting what our cross-examination would be ahead  
11 of time. And like I said, I have no objection to the extent  
12 that we can identify them ahead of time, maybe giving them a  
13 heads up, but I don't think that's the requirement of the  
14 Commission's rule is that we identify every single piece of  
15 paper which we intend to use that may be confidential just to  
16 let you know we may use it so that everybody can be forewarned.  
17 We will have the document available, we will make the necessary  
18 copies, we will provide them to the Commissioners. But I think  
19 the objections you're hearing from the companies is akin to  
20 wanting to know exactly what cross-examination questions we  
21 will be asking, and that is beyond the bounds of what the  
22 Commission has required in this case.

23 MR. PERKO: Commissioner Bradley, Gary Perko on  
24 behalf of Progress. I'd just echo some of the concerns raised  
25 by Mr. Stone and Mr. Willis (sic). I think it's one thing for

1 a rule to say that you have to identify confidential  
2 information. It's quite another just to say that we may use  
3 anything you gave us. That does not identify what they intend  
4 to use at hearing, it doesn't provide us any notice whatsoever.  
5 Again, this is not an issue about us divining what they're  
6 going to do in cross-examination. It's a matter of preparing  
7 ourselves for hearing.

8 MR. STONE: And if I may comment briefly, Ms.  
9 Christensen has talked about complying with only part of the  
10 Commission's procedures on confidential matters, and she has  
11 completely written out of her agreement to comply with the  
12 Commission's procedures that portion of the procedures that  
13 require her to put us on notice of the particular document she  
14 intends to use seven days in advance of the hearing. That has  
15 been in the Commission's orders on prehearing procedure for  
16 quite some time, it is a part of the Commission's procedures,  
17 and I'm somewhat amazed that the Office of Public Counsel would  
18 take the position that it only has to comply with part of the  
19 Commission's procedures and not all of them.

20 MS. CHRISTENSEN: Well, I guess we have a  
21 disagreement as to what the Commission order says. All it says  
22 is, "Any party wishing to use any proprietary confidential  
23 business information as it's defined in the statute shall  
24 provide notice to the Prehearing Officer and all parties of  
25 record by the time of the prehearing conference, or if not

1 known at that time, no later than seven days prior to the  
2 hearing, beginning of the hearing." And I believe I'm putting  
3 parties on notice that we may use confidential material at the  
4 hearing. It does not require that we specifically identify  
5 each and every document that we may use. And I think that if  
6 we had to comply with that as a requirement, that would be akin  
7 to requiring us to provide them with what our cross-examination  
8 questions would be and what that would involve. And I don't  
9 believe there's any requirement in the Commission order that  
10 requires we identify the specific documents. I think that it's  
11 a ruse that the companies are saying that they cannot  
12 adequately prepare. They know the documents that they provided  
13 in discovery, they know what they've requested confidential  
14 treatment for. As I've noted before, it may be impossible to  
15 identify certain documents because we have outstanding  
16 confidentiality requests as to -- it may not be confidential  
17 today, it may be confidential tomorrow, may not. That'll  
18 depend on what the rulings are, and we may or may not have  
19 those rulings seven days prior to hearing.

20 But I think that the companies are taking the  
21 requirement beyond what the Commission order requires, and we  
22 would strenuously object to putting on an additional  
23 requirement that's not in the order on this that we identify  
24 each and every specific document that we may use at hearing.

25 MR. BUTLER: Commissioner Bradley, just from FPL's

1 perspective, the problem with what Ms. Christensen is  
2 suggesting, it's sort of been alluded to before but I'd like to  
3 make it a little bit more specific, it would be possible to  
4 completely circumvent this notification requirement by simply  
5 saying each time we have one of these prehearings, you know, I  
6 as a party may end up using any of a large number of documents  
7 that have been designated as confidential, I might not but I  
8 may, and you say that every time, you cover your bases. And  
9 then in essence it's no notice because it doesn't specify  
10 anything, we don't know what's coming, we don't know what  
11 documents, what their sensitivity is that would need to be  
12 addressed with our witnesses. And it seems like, you know,  
13 taking that approach just reads right out of both the rule and  
14 the order the whole purpose of giving the notification.

15 COMMISSIONER BRADLEY: I'm going to take a two-minute  
16 break here and talk with Mr. Melson.

17 (Recess taken.)

18 COMMISSIONER BRADLEY: Okay. I'll tell you what I'm  
19 going to do after discussion with staff and with our attorney.  
20 I'm going to take this issue under advisement and have further  
21 discussion with staff and issue a, a ruling at a later date, a  
22 very early later date so that you all will be able to govern  
23 yourselves accordingly based upon the ruling. But that would  
24 be my decision. So we'll just defer action on this to a very  
25 early time.

1 MS. VINING: And I'll notify staff once, once you've  
2 made your decision -- notify, notify the parties.

3 COMMISSIONER BRADLEY: Right. Notify the parties.

4 MS. VINING: And it'll also be reflected in the  
5 prehearing order.

6 COMMISSIONER BRADLEY: Okay. Any other pending  
7 confidentiality matters for discussion?

8 Section XIV, rulings.

9 MS. VINING: Staff would suggest that opening  
10 statements, if any, be limited to ten minutes per party.

11 COMMISSIONER BRADLEY: So be it. Agreed upon, I  
12 agree -- that would be my ruling. Any other rulings?

13 MS. VINING: We'll note that the decisions on the  
14 earlier motions that were argued this morning as well, that  
15 both of those were denied.

16 COMMISSIONER BRADLEY: Okay. Is there anything else  
17 to come before the Prehearing Officer at this time? Well, if  
18 there's nothing else, I thank you for your participation and  
19 this prehearing conference is adjourned.

20 (Prehearing Conference adjourned at 12:55 p.m.)

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