

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

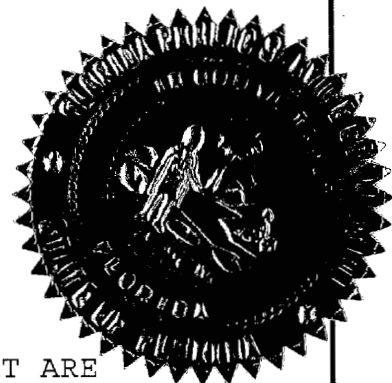
PETITION FOR APPROVAL OF NEW DOCKET NO. 050805-EQ
STANDARD OFFER FOR PURCHASE OF
FIRM CAPACITY AND ENERGY FROM
RENEWABLE ENERGY FACILITIES AND
APPROVAL OF TARIFF SCHEDULE REF-1,
BY GULF POWER COMPANY.

PETITION FOR APPROVAL OF RENEWABLE DOCKET NO. 050806-EQ
ENERGY TARIFF AND STANDARD OFFER
CONTRACT, BY FLORIDA POWER & LIGHT
COMPANY.

PETITION FOR APPROVAL OF AMENDED DOCKET NO. 050807-EQ
STANDARD OFFER CONTRACT TARIFF AND
RENEWABLE ENERGY TARIFF, BY PROGRESS
ENERGY FLORIDA, INC.

PETITION FOR APPROVAL OF RENEWABLE DOCKET NO. 050809-EQ
ENERGY TARIFF BY FLORIDA PUBLIC
UTILITIES COMPANY.

PETITION FOR APPROVAL OF STANDARD DOCKET NO. 050810-EQ
OFFER CONTRACT FOR SMALL QUALIFYING
FACILITIES AND PRODUCERS OF RENEWABLE
ENERGY, BY TAMPA ELECTRIC COMPANY.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 7

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BEFORE: CHAIRMAN RUDOLPH "RUDY" BRADLEY
COMMISSIONER J. TERRY DEASON
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ISILIO ARRIAGA

DATE: Tuesday, December 20, 2005

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

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1 PARTICIPATING:

2 RUSSELL BADDERS, ESQUIRE, representing Gulf
3 Power Company.

4 BRIAN S. ANDERSON, representing Florida Power &
5 Light Company.

6 GARY PERKO, ESQUIRE, representing Progress
7 Energy Florida, Inc.

8 NORMAN HORTON, JR., ESQUIRE, representing
9 Florida Public Utilities Company.

10 LEE L. WILLIS, ESQUIRE, representing Tampa
11 Electric Company.

12 COCHRAN KEATING, ESQUIRE, TOM BALLINGER, and
13 JUDY HARLOW, representing the Florida Public Service Commission
14 Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BRADLEY: We need to reconvene. We are now
3 on Item 7.

4 MR. BALLINGER: Good morning, Commissioners. Tom
5 Ballinger with Commission staff. I'll be introducing Item
6 Number 7.

7 During the 2005 legislative session, Section 366.91
8 was passed to encourage the development of renewable generation
9 resources within Florida. Basically, the statute requires
10 utilities to continually offer to purchase power from renewable
11 generation resources and required an implementation deadline of
12 January 1st, 2006. Therefore, staff held a workshop on
13 September 12th, 2005, to discuss possible implementation of
14 this new statute using our existing cogeneration rules. The
15 parties at the workshop agreed that the PSC's current
16 cogeneration rules provided the basic framework for the new
17 statute and we could implement the statute under the existing
18 rules.

19 The staff recommendation is to approve the standard
20 offer contract filed by FPUC, but deny the contracts filed by
21 FPL, Progress, TECO, and Gulf for various technical reasons.
22 If the Commission agrees with staff, we would ask the utilities
23 to refile their standard offer contracts based on your vote and
24 decisions today by December 28th and staff would
25 administratively approve them so we could still meet the

1 January 1st deadline.

2 A common theme throughout staff's recommendation is
3 that given a choice, we would rather see renewable generation
4 rather than any other type of fossil fuel generation, such as
5 CTs or coal-fired power plants. As discussed in Issue 1, the
6 Commission has the opportunity to make a policy decision with
7 regard to renewable supply and how best to encourage renewable
8 generation. Option 1 would continue the existing method of
9 pricing avoided costs on a sequential single-unit basis and
10 staff believes that this option meets the minimum requirements
11 of the new statute. Option 2 would allow you to go a step
12 further and require a portfolio approach to setting avoided
13 costs, which would provide the renewable generator with
14 multiple options that may be a better fit in terms of pricing
15 or timing.

16 Some utilities plans contain a broad spectrum of
17 units from CTs with low fixed and high variable costs to coal
18 units with high capital and low operating costs. Ms. Harlow
19 and I are here to answer any questions, and I see we have a
20 host of people here that probably want to address you today.

21 CHAIRMAN BRADLEY: And, staff, before we begin, I
22 would like, just for the sake of the listening public, for you
23 to define renewables so that they clearly understand what we
24 are discussing here today.

25 MS. HARLOW: Yes, sir. The statute contained a

1 definition of renewables to which the standard offer contract
2 would apply, and I will list those for you now. The first
3 is -- and these are not in any specific offer -- hydrogen
4 produced from sources other than fossil fuels; biomass
5 including agricultural and wood waste, municipal solid waste
6 and landfill gas facilities; solar energy; geothermal energy;
7 wind energy; hydroelectric power and ocean energy; and also
8 waste heat from sulfuric acid manufacturing processes.

9 CHAIRMAN BRADLEY: Also, and I would like for Legal
10 to just give us a brief summary of what the statute itself is.

11 MR. KEATING: Now, the statute is fairly brief. It
12 starts out indicating that the legislature has found that it is
13 in the public interest to promote the development of renewable
14 energy resources in Florida and it goes on to define renewable
15 energy resources as Ms. Harlow just stated. And what it
16 requires and why we are here today is that it states that on or
17 before January 1st of 2006 each public utility must
18 continuously offer a purchased contract that produces renewable
19 energy. It goes on to discuss some of the requirements. The
20 new contracts would require a minimum ten-year term and they
21 would be based on a utility's avoided cost as defined in
22 another section of the statutes.

23 The statute also requires municipal electric
24 utilities and rural cooperatives to make similar contracts
25 available. Those aren't before you today. Those aren't

1 required -- Commission approval is not required for those, but
2 the municipals and the cooperatives have indicated they will
3 provide whatever contracts are made available to the Commission
4 for informational purposes. I think that is the gist of the
5 legislation.

6 CHAIRMAN BRADLEY: Well, Commissioners, how would you
7 like to move along?

8 COMMISSIONER DEASON: Chairman, I think that we have
9 a number of individuals here who, I believe, would like to
10 address the Commission. And if it is the Commission's
11 pleasure, I would encourage giving them the opportunity to
12 address the recommendation.

13 CHAIRMAN BRADLEY: Okay. And who do we have? I
14 think we need to, just for the record, have you all introduce
15 yourselves.

16 MR. MOYLE: Sure. I am Jon Moyle, Jr. from the Moyle
17 Flanigan law firm, and I would like to make a few comments if I
18 could. I am appearing here today on behalf of Wheelabrator
19 Technologies, and also the Solid Waste Authority of Palm Beach
20 County, and the City of Tampa. The representation of the
21 latter two is shared in a co-counsel role with Rich Zambo.

22 MR. WILLIS: Mr. Chairman, I'm Lee L. Willis of the
23 Ausley McMullen law firm representing Tampa Electric Company.
24 I had planned to address Issue 1, and we have conferred among
25 the utilities and have divided up some comments to move this

1 along, and to offer some compromise which we believe will
2 resolve the issues that have been presented to you.

3 MR. BADDERS: Good morning, Commissioners. I'm
4 Russell Badders, I'm appearing on behalf of Gulf Power Company.
5 I will have comments on Issue Number 2, which is a Gulf Power
6 specific issue, and also Issue 4.

7 MR. ANDERSON: Good morning, Commissioners. My name
8 is Brian Anderson, I'm representing Florida Power and Light
9 Company. I'm a member of that company's in-house law
10 department. I will be addressing Issues 2 and 3, principally.

11 MR. PERKO: Good morning, Mr. Chairman,
12 Commissioners. My name is Gary Perko of the Hopping Green and
13 Sams law firm on behalf of Progress Energy Florida. I will be
14 addressing Issues 4 and I believe it is -- excuse me one
15 second -- 4 and 5. Thank you.

16 MR. WRIGHT: Good morning, Mr. Chairman,
17 Commissioners. Shef Wright with the law firm of Landers and
18 Parsons. I have the privilege to be here today on behalf of
19 Biomass Investment Group, a developer of relatively large scale
20 green power Florida biomass produced electricity. I have some
21 brief comments to make that in one way or another probably
22 touch on all of the issues.

23 CHAIRMAN BRADLEY: Well, Commissioners, how would you
24 like to proceed? Do you want to start with Mr. Moyle? Start
25 from the left and go to the right.

1 MR. MOYLE: Thank you, Mr. Chairman. Again, Jon
2 Moyle on behalf of Wheelabrator, the Solid Waste Authority of
3 Palm Beach County, and the City of Tampa. What I would like to
4 do is kind of share some general comments with you and then
5 focus in on a couple of specific items in the recommendation.

6 But I think in Florida that, you know, things are
7 changing. We had a piece of legislation that passed the
8 legislature last year, and in your last agenda item, you know,
9 you had a lot of discussion about the public interest and what
10 is in the public interest. And from my role in having worked
11 on this legislation and having been involved in the legislative
12 process for a number of years, the legislature puts the public
13 interest out there and vests you with the ability to decide
14 what is in the public interest, and to make some policy calls,
15 to make some judgment calls.

16 And they did that last legislative session with
17 respect to renewable energy, and, again, your staff said it,
18 but they specifically said, quote, the legislature finds it is
19 in the public interest to promote the development of renewable
20 energy resources in the state. They go on in that statute and
21 they say that they believe doing this can improve environmental
22 conditions, make Florida a leader in new and innovative
23 technologies. So I think clearly you have a legislative
24 direction to move the ball forward on renewable energy.

25 Last week the governor held an energy forum, and I

1 think a number of you all attended that. There were industry
2 leaders from a lot of different areas that came and spoke and
3 shared ideas. And this forum was called as a result of the
4 governor issuing an executive order telling his Department of
5 Environmental Protection, his Energy Office to chart a course
6 for energy in Florida.

7 The governor led off the forum by making some
8 remarks, and he challenged people, I don't know if I have this
9 exactly correct on a quote, but he said something about looking
10 beyond the horizon and trying to move Florida forward as a
11 leader in energy. And I think those comments were right on. I
12 think the forum had some good ideas. And I think as a
13 follow-up to both the legislation and the Governor's directive
14 to look beyond the horizon, that this Commission should roll up
15 its sleeves and really focus on how to promote renewable
16 energy.

17 And I think this legislation gives you the ability to
18 do that. Again, the legislation is only -- I think it is five
19 paragraphs, so it is not going to set out in all the details
20 the different ways to do it. But last week when they were
21 putting pie charts up on the screen at this forum, they had a
22 segment of renewable energy. And as you went out in years, the
23 renewable energy segment kept shrinking, if I recall that chart
24 correctly. And I don't think that is the trend that Florida
25 wants to be going in. I think that the trend ought to be

1 expanding. And I think it is incumbent on the PSC to help move
2 that forward, and I think this legislation gives you some tools
3 to do it.

4 Let me just refer you to a couple of things in the
5 legislation. In this recommendation, I'm going to speak to it
6 specifically, but I think that this ought to be the beginning
7 of the discussion on renewable energy, not the end, and I'm a
8 little concerned that it is kind of being presented as, okay,
9 well, we have done with this, we are done with the renewable
10 energy piece. But it specifically says that the Commission,
11 and I'm quoting, the Commission shall establish requirements
12 relating to the purchase of capacity and energy by public
13 utilities from renewable energy producers and may adopt rules
14 to administer this section.

15 I think that is a very broad grant of authority. And
16 you are not necessarily limited to avoided cost or other
17 things. Those are things that they directed you to look at and
18 to consider, but I think that sentence can be read to say you
19 have a charge to move forward and promote and advance the
20 policy of promoting renewable energy.

21 I would encourage you after consideration of the
22 matter today to move forward with rulemaking to adopt rules to
23 encourage renewable energy. You don't have to go far. I
24 mentioned the Governor's conference last week. I picked up the
25 Democrat yesterday, the Tallahassee Democrat, the lead

1 editorial says, "Sunshine State, Florida Skimps on Solar."
2 That was in yesterday's paper, and it referenced an Orlando
3 Sentinel report. Again, I think it is another signal, another
4 sign that we can do more in renewables, and that we ought to
5 try to do that.

6 A couple of points on the recommendation, the staff
7 recommendation that is before you. You have a policy decision
8 that staff set the table for the issue to make in Issue 1,
9 which is whether to kind of do things the way you have always
10 done them with respect to avoided costs and rely on that
11 existing rule, or to allow a renewable energy producer to have
12 some options to choose from to peg his unit to not just a
13 specific avoided unit that the utility set forth, but some
14 options that are contained within the ten-year site plan that
15 the utility filed.

16 We commend staff for coming up with option two. We
17 think it's creative. We think it moves the ball in the right
18 direction in terms of promoting renewable energy, and we think
19 that option ought to be considered. Some of the utilities have
20 proposed only allowing increments of renewable in 10 and 20
21 megawatts. I think staff has said, well, maybe we could go
22 ahead and allow the renewable to be the larger-sized megawatts
23 of the avoided unit rather than 10 and 20 increments.

24 You know, if the goal is to expand that pie chart, I
25 don't know that limiting it to 10 and 20 megawatts is the way

1 to get there. I think that it should be broader increments.
2 And Mr. Wright has a client, I don't know how many megawatts
3 they can propose with their things. But I think, again,
4 consistent with the policy of promoting renewables that you
5 ought to encourage it with larger amounts of renewable energy
6 that can be subscribed to.

7 I know you had an agenda item before that took up a
8 lot of time, and I don't want to belabor the point, but I
9 really think it is a good opportunity for this Commission to
10 set a new stage on renewable energy and to be an active
11 participant in promoting renewable energy in the state, and
12 would encourage you to adopt Option 2 in that staff Issue 1,
13 and to also move forward with rulemaking and to come up with
14 ways that can be creative to promote renewable energy in the
15 state.

16 I was talking to some of my utilities friends, and I
17 kind of said, you know, I'm not so sure that this is an issue
18 that we all ought to be knocking heads on because, you know, I
19 don't think anyone is really going to argue the point that
20 renewable energy is good for the state and ought to be pursued.
21 And like a lot of things, it comes down to a cost issue. But I
22 think that there is room in making public policy that some of
23 those costs can be borne by ratepayers and, you know, the
24 utilities ought to work closely to try to have more renewable
25 energy in the state's energy portfolio.

1 With that I will close, and I thank you for your
2 time.

3 MR. WILLIS: I'm Lee Willis, I represent Tampa
4 Electric Company. I'm going to present to you a solution to
5 the issue raised with respect to Issue Number 1, which we have
6 talked among the various utilities and have come up with a very
7 reasonable alternative.

8 First of all, this issue addresses the provision in
9 the statute that says the standard offer should be continuously
10 open. All of the utilities filed a standard offer which did
11 not have a closing date so that it would be continuously open,
12 and we believe that that complies with the statute. But the
13 staff raised a point with respect to a provision in the current
14 rules that says the date upon which a standard offer expires
15 should be a part of the standard offer.

16 So in order to accommodate both concerns there, we
17 have proposed that each of the utilities modify their standard
18 offer to provide a closure date of July 1st, 2006, but to also
19 provide that prior to April 1st of each year that the utilities
20 would file a pleading which would determine whether or not that
21 offer should remain open, or whether it should be changed in
22 any way. And if there is a change that is required, that such
23 a change would be proposed within 20 days thereafter.

24 If no change is proposed, we would also like your
25 provision that the staff could administratively approve that

1 within 15 days. And thereby if you were proposing to leave
2 that offer open, it would be seamless, it would continue on.
3 If you propose to change it, you would also have time to change
4 it prior to the July 1st ending date for the contract.

5 We would also provide that the utility could change
6 the standard offer at any time if that made sense. And the
7 things that would make sense is if the subscription limit is
8 reached or changes in capacity requirements occur which
9 necessitates a new filing. So we believe that that would
10 completely address the concerns that staff had raised with
11 respect to Issue Number 1.

12 Now, Mr. Moyle has argued in favor of Option 2
13 presented by the staff, which we feel is the least attractive
14 option, and probably for the same reasons that both staff and
15 Mr. Moyle indicated, that that is a significant change in
16 policy. I don't think that you should make such a change in
17 policy on the fly here. We have another requirement in this
18 rule, or in the statute that these contracts be placed into
19 effect by the first of the year. We are right at the end of
20 the year now, and I don't think that you should be engaging in
21 such significant policymaking at this juncture. Now, that
22 doesn't preclude you from continuing on and doing that later,
23 but I don't think that you should do that now.

24 Thank you.

25 MR. BADDERS: Good morning, Commissioners. If you

1 would like, I can proceed to Issue 2, Gulf's comments on Issue
2 2. I would like to reserve our comments on Issue 4 until we
3 get to Issue 4 a little bit later.

4 On Issue 2, staff has proposed that Gulf use a 2012
5 unit rather than the 2009 unit for our avoided unit for this
6 filing. A real concern with using the 2012 unit is that it is
7 six to seven years out in the future. There is a lot of
8 uncertainty that goes along with something that far out. We
9 have uncertainty with regard to the actual timing, whether or
10 not it would be a 2011, '12, '13 or even a '14 need. It could
11 move that much in that period of time.

12 We also have concern that the amount of megawatts
13 needed, the technology type, and even the cost information that
14 we use for that 2012 unit would have some level of uncertainty
15 that is greater than the uncertainty that is associated with
16 the 2009 unit. Staff does raise an issue. The 2009 is a
17 hypothetical unit. It will not be built. I guess to counter
18 that, we have better cost information. We know more about the
19 2009 hypothetical unit because it is closer in time to us. We
20 just have more information. It is less likely that you would
21 price a capacity payment out of market in the 2009 time frame
22 as opposed to something that is out in the 2012 time frame.

23 Basically, we just have more knowns associated with
24 the 2009 unit and we would feel that it is a more appropriate
25 unit to use for these purposes. Obviously if these are

1 approved and something comes up with our next ten-year site
2 plan filing, or something comes up in the meantime we will
3 refile. I mean, obviously if we follow what has been proposed
4 on Option 1 for Issue Number 1, we would have a trigger each
5 year which would basically be around the time period of the
6 ten-year site plan, and we would refile and update our avoided
7 unit.

8 We just feel that it is best to go with a unit that
9 has a little more uncertainty associated with it, and that does
10 comport with the Commission's prior practice and precedent with
11 regard to the QF standard offer contracts which is the rule
12 that we are trying to follow. Thank you.

13 COMMISSIONER DEASON: Mr. Chairman, I have a quick
14 question. If Option 2 were adopted, would a potential bidder
15 or a person seeking the contract, they would have the option of
16 trying to, in your case, use either the 2009 hypothetical unit
17 or the 2012 planned unit, is that correct?

18 MR. BADDERS: I believe my reading, if I read it
19 correctly, that is what staff is proposing.

20 COMMISSIONER DEASON: Thank you.

21 CHAIRMAN BRADLEY: Any other questions?

22 COMMISSIONER DEASON: No.

23 COMMISSIONER ARRIAGA: I think Mr. Ballinger wants to
24 address that.

25 MR. BALLINGER: Commissioner Deason, I think staff

1 would disagree with Gulf on that.

2 COMMISSIONER DEASON: Could you explain?

3 MR. BALLINGER: Yes. On Option 2, we are saying to
4 use the units that are identified in the Ten-Year Site Plan.
5 The hypothetical 2009 unit is not in their Ten-Year Site Plan.
6 So, in my reading, Option 2, the renewable generator, would
7 only have the 2012 unit. It would be identical for Gulf,
8 Option 1 or Option 2.

9 COMMISSIONER DEASON: Because that is the only unit
10 within the Ten-Year Site Plan parameters?

11 MR. BALLINGER: Correct.

12 COMMISSIONER DEASON: Okay.

13 MR. BADDERS: If I may add one final comment that I
14 forgot to raise. Capacity payments under these standard offer
15 contracts, can only -- I mean, they have the option of taking
16 early capacity payments, and it's usually two to three years
17 before. It's triggered by the construction date. If we moved
18 to the 2012 unit as opposed to the '09 hypothetical unit, we
19 would be, I guess, taking that off the table for a renewable
20 that is looking to get in early payments, it would be three
21 more years out in the future. So that's just a consideration.

22 CHAIRMAN BRADLEY: Let's talk about early payments,
23 the concept of early payments. Explain that.

24 MR. BADDERS: Under the Commission's rule, you put
25 out your standard offer contract with an in-service date, and

1 in our case it would be June 1 of 2012, if we used the 2012
2 unit. You step back from that, and I believe it is the
3 construction date, which is usually two to three years before.
4 And at the option of the subscriber to the contract, they can
5 seek early capacity payments. It is still present value. They
6 are only going to get the life of the contract payments, but
7 they would be able to get those earlier.

8 CHAIRMAN BRADLEY: So they would be able to get
9 payments prior to the actual provisioning of the green power?

10 MR. BADDERS: That's correct.

11 CHAIRMAN BRADLEY: In other words, you would pay them
12 up front before they actually provide the service.

13 MR. BADDERS: That is correct. And the same is true
14 if we use the 2009, it's just when, time wise, when they would
15 be able to get --

16 CHAIRMAN BRADLEY: Is there a provision to ensure
17 performance, or how would you deal with nonperformance?

18 MR. BADDERS: Actually, I think it is to, I guess,
19 help promote renewables to some degree. It does allow them
20 to -- I mean, if they need money while they are starting up for
21 financing or anything else, it would allow an earlier stream.
22 I think it is for their financing and for their financial
23 viability more than anything.

24 CHAIRMAN BRADLEY: Is this in the public interest? I
25 guess my concern would be if you -- I'm always leery of payment

1 being made prior to any type of service being provided. What
2 is there that's in the contract that allows you to, if
3 nonperformance occurs, to recoup what you have invested?

4 MR. BADDERS: I have not read all the contracts for
5 each of the utilities. We have a provision in ours, as far as
6 bonds, performance bonds, and there is a mechanism for us to
7 recover that money. Just so you know, that is a component of
8 our current rule in this. It's not simply special just to our
9 contract. We all have to allow that option under the current
10 rule. And we are allowed to put in our contract provisions
11 that would, I guess, protect or hold us harmless if they do not
12 come on-line when they say they're going to.

13 CHAIRMAN BRADLEY: And I think that is a question
14 that maybe all the utility companies, all of the IOUs need to
15 answer as they present, maybe. Mr. Willis is that, also --

16 MR. BADDERS: I'm sorry?

17 CHAIRMAN BRADLEY: I was asking Mr. Willis, TECO, if
18 that is also the case.

19 MR. WILLIS: Yes.

20 CHAIRMAN BRADLEY: Okay. Any other questions?

21 MR. ANDERSON: Good morning, Chairman Bradley and
22 Commissioners. I would like to speak briefly to Issue 3, which
23 is particular to FPL. The statute which we are working to
24 implement today requires that each contract must provide a
25 contract term of at least ten years. Those are precisely the

1 words stated in the statute. Accordingly, FPL's tariff which
2 it filed provided for a ten-year term. Staff's review
3 commented that in their view the minimum term should begin with
4 the projected in-service date of the unit which we have chosen
5 as our avoided unit for pricing, which is a 2008 combustion
6 turbine. Therefore, staff had recommended that the minimum
7 term would run ten years, 2008 to 2018.

8 The concern that we had with this is that this takes
9 away the potential for a renewable producer to pick a different
10 capacity delivery date from which to start the ten-year term.
11 Accordingly, we feel that a way to address staff's concern is
12 that if we simply put in our tariff that the ten-year term
13 begins with the capacity delivery date as proposed by the
14 renewable producer, that really gives them the opportunity of
15 choosing that 2008 date, or a 2007 date, or whenever it is that
16 their machine can come on and be available. And in that way we
17 would then meet our obligation under this law of having a
18 ten-year term. So that's our changes there.

19 Another very brief change on Point 4. I'm sorry,
20 this is Point 2. Staff had commented in relation to the
21 computations of full avoided costs in their memorandum that
22 FPL's numbers looked a little high, that our capacity number
23 might be paying a little too much. We went back and reviewed
24 our computations. It turned out that we had in error included
25 a cost in the capacity payment calculation for firm gas

1 transportation, the reservation rate.

2 In actuality, our analysis showed this should be
3 recovered through the fuel clause, not through the capacity
4 clause. Therefore, having picked up on staff's point, we have
5 picked out that number and would propose to be filing corrected
6 capacity figures. So those were our two technical points that
7 we wanted to provide input on.

8 Other than that, we do subscribe to Mr. Willis'
9 comments in relation to Point 1, also, and we believe that his
10 proposed solution is the correct one. And it would be
11 inappropriate in the absence of a record or rulemaking or the
12 like to have a substantial deviation in policy as represented
13 in Point 2.

14 Thank you for this opportunity.

15 COMMISSIONER DEASON: Mr. Chairman, I have a
16 question. The correction that you alluded to as a result of
17 staff's concern about the accuracy of the number, it was a
18 question of the inclusion of what type of transportation costs?

19 MR. ANDERSON: The reservation payments in the gas
20 transportation contract.

21 COMMISSIONER DEASON: The reservation payments in gas
22 transportation contracts?

23 MR. ANDERSON: Correct.

24 COMMISSIONER DEASON: And that's a cost that is
25 normally recovered through the clause?

1 MR. ANDERSON: Through the fuel clause, correct,
2 rather than the capacity clause.

3 COMMISSIONER DEASON: Well, my question is, if there
4 is a contract that is signed, would the act of signing that
5 contract avoid reservation payments in gas transportation
6 contracts? And if it does, should it not be included as part
7 of the payments?

8 MR. ANDERSON: There was considerable discussion
9 within our company of exactly that point. It was determined
10 and believed that that same amount comes out and gets paid on
11 the energy side of the equation here. And, again, I would
12 really need to have our technical people speak to this. But my
13 understanding is the pipelines that we are served on are pretty
14 much fully subscribed as it is. So that with or without the
15 unit, there is really not much question that we would have all
16 the reservation charges in any event. So it doesn't sound like
17 it would be avoided. I hope that answers your question,
18 Commissioner Deason.

19 COMMISSIONER DEASON: But it sounds to me like it can
20 be the facts on a case-by-case basis, or would these type of
21 reservation payments never be avoided?

22 MR. ANDERSON: I think the answer would be if you
23 needed to add additional reservation charges in order to serve
24 the new incremental unit, logically that that would follow
25 potentially as something that is certainly avoidable. If it is

1 avoidable, the question presented is does it fall under the
2 capacity or the fuel portion. My understanding is in this
3 particular circumstance, the capacity, because of the -- and,
4 again, our technical people explained it to me, and I
5 understood it imperfectly, but my understanding is we do not
6 avoid costs associated with the reservation charges by reason
7 of subscription of this type of unit.

8 COMMISSIONER DEASON: If the costs are not avoided, I
9 understand, and there shouldn't be credit given. But I have
10 the concern that if there are truly costs that are avoided, but
11 it is just that by regulatory convenience or practice we allow
12 the recovery of those costs through a different mechanism other
13 than base rates that we somehow take the benefit of that cost
14 avoidance away from the potential renewable generator, and I'm
15 not sure that that is a good policy. And I would just ask
16 staff to take a look at that. I may be off base. But if that
17 is, in fact, the case, I'm not sure that it is correct with the
18 mandate from the legislature to promote renewable energy, if we
19 are somehow not giving credit for an avoided cost simply
20 because of the way we allow recovery of those costs through the
21 regulatory ratemaking mechanism. I see Tom nodding his head,
22 so he gets the message.

23 CHAIRMAN BRADLEY: Did you want an answer to that?

24 COMMISSIONER DEASON: No, I just want staff to be
25 cognizant of that concern. And if the issue arises, that we

1 address it on a case-by-case basis. But if staff needs to
2 address it now, I'm open to that, Mr. Chairman.

3 CHAIRMAN BRADLEY: Why don't we let staff address
4 that issue.

5 MR. BALLINGER: I think what I heard is that FPL,
6 based on the size of it, that the transportation charges may
7 not be avoidable, and it may have inadvertently included them
8 in the capacity payment, which is what raised it up, which is
9 what caught staff's attention. We will look at it and discuss
10 with the utility more about how really the gas transportation
11 reservation charges play out in their system to see are they
12 avoidable or not. And I can assure you if they are avoidable,
13 it will be calculated somewhere, whether it be the capacity or
14 the energy side, I don't know yet. But we will first look to
15 see will they be avoidable. If they are, we will make sure
16 they get collected.

17 COMMISSIONER DEASON: And that is my concern. If it
18 is truly an avoided cost, there should be credit given, which
19 has the benefit of promoting renewable energy, which is our
20 charge from the legislature.

21 MR. BALLINGER: Yes.

22 MR. PERKO: Good morning again, Mr. Chairman,
23 Commissioners. Again, Gary Perko on behalf of Progress Energy.
24 I would start out by saying that Progress Energy also supports
25 the proposal that Mr. Willis proposed for Issue Number 1. My

1 point is to touch upon primarily Issue Number 4, which relates
2 to subscription limits in the standard offer contracts.

3 Under staff's recommendation, the utilities would be
4 required to include a subscription limit up to the entire
5 megawattage of the next avoided unit. We believe that that
6 approach is inappropriate for several reasons. First of all,
7 the existing rule governing standard offer contracts allows
8 utilities to offer all or part of avoided generation in
9 standard offer contracts. The legislation that was passed last
10 session does not speak one way or the other as to whether that
11 should be changed, so the Commission clearly has the ability to
12 stick with the existing policy which has worked us well.

13 We have significant concerns about the approach that
14 staff has suggested. And just by way of background, from our
15 perspective standard offer contracts are essentially backstops
16 to ensure that renewable sources have a foot in the door to
17 provide renewable energy sources to the utilities. That being
18 said, standard offer contracts are not the only means of
19 promoting renewable energy. In fact, most of the renewable
20 contracts that the utilities enter into are negotiated
21 contracts.

22 And we are concerned that imposing a high
23 subscription limit in a standard offer contract would actually
24 chill the effect of negotiated contracts. If a utility is
25 faced with the prospect that much of the avoided generation or

1 even all of the avoided generation could be met through a
2 standard offer contract, it may be reluctant to enter into a
3 negotiated contract which does not count against that
4 subscription limit. Otherwise, the utility could be very much
5 oversubscribed if someone were to come in and accept the
6 standard offer contract.

7 For that reason, we believe that it would be the
8 wrong approach to impose a mandatory requirement that all
9 standard offer contracts include subscription limits to the
10 total generation of the avoided unit. In the past, the
11 Commission has recognized in accordance with the existing rule
12 that it is appropriate to place limits on subscription limits.
13 I believe all the utilities have proposed different
14 subscription limits, and there may be some discussion as to the
15 appropriateness of those values. But perhaps that is something
16 that could be addressed through workshops on a later day.

17 At this point we think it would be appropriate to
18 approve the contracts as they are with the modification on unit
19 one that Mr. Willis proposed, and then we can work with staff
20 if there are remaining issues regarding subscription limits or
21 other issues. Thank you.

22 CHAIRMAN BRADLEY: Mr. Wright.

23 MR. WRIGHT: Mr. Chairman, members of the Commission,
24 thank you very much. Again, Shef Wright, and I'm here today
25 representing Biomass Investment Group. Against the backdrop of

1 the Commission's and your staff's clearly articulated and
2 well-founded interest in returning to a policy favoring a
3 balanced fuel supply as you all discussed, I think, last week
4 or the week before at your Internal Affairs discussion
5 regarding the review of ten-year site plans, and also against
6 the backdrop of the rather extensive comments made last week at
7 the Governor's 2005 Energy Forum favoring renewable energy and
8 particularly favoring Florida based renewable energy, I'm here
9 today briefly to subscribe Biomass Investment Group's projects
10 and to speak generally in support of the staff's
11 recommendation.

12 BIG is developing presently and actively a
13 120-megawatt class biomass-fired power plant in east central
14 Florida. We are additionally looking toward developing
15 additional projects perhaps as many as five or six similar
16 projects elsewhere in Florida. The fuel feed stock for these
17 projects typically will be a farmed giant grass like plant. I
18 believe it is in the arundo donax. It has been certified as
19 noninvasive. We just call it E-grass. But the technology that
20 we use has the capability of using a significant range of other
21 biomass feed stocks.

22 Just so you know, we do intend to seek the Public
23 Service Commission's approval and certification of our project
24 as a qualifying facility under the PSC's cogeneration rules
25 that allow for that.

1 Our technology gasifies the biomass using a pyrolysis
2 process, and then immediately condenses the gasified
3 hydrocarbons into a liquid fuel. It is a good thing for
4 storage. That liquid fuel is then burned in a conventional
5 combustion turbine combined cycle power plant. As you might
6 expect, with the land investment required for our biomass
7 E-grass crop, and with the fuel handling and processing
8 equipment that is necessary to our green power technology, we
9 have relatively higher capital costs and relatively lower
10 operating costs than those of a simple natural gas-fired
11 combined cycle power plant. Accordingly, we need some more
12 certainty in order to secure financing for our project.

13 Now, we are presently negotiating with a couple of
14 Florida utilities, and against their avoided costs as gas
15 plants, and we are not opposed to having gas-based capacity
16 payments, we just need some more certainty in there and we're
17 working on that. Truly, we are highly optimistic that we are
18 going to get there with one or more of these folks. But as has
19 been discussed for a really long time, since I have been
20 involved here in these kinds of issues, we would really like to
21 have sound, fair standard offer contracts available as a
22 backstop.

23 So, I'm here today to make several supporting
24 statements. First, we would support the staff's concept of a
25 portfolio approach to standard offer contracts. I'm not so

1 sure you have to do that today, but perhaps in rulemaking over
2 the next few months you could take a look at that.

3 COMMISSIONER DEASON: Mr. Wright, when you say
4 portfolio approach, are you referring to Option 2?

5 MR. WRIGHT: Yes, sir, exactly. Where a plant has a
6 higher capital cost like ours and lower operating costs like
7 ours, it would be helpful, possibly not essential. Like I
8 said, we are trying real hard to get there with the folks we
9 are negotiating with, and we are optimistic that we will, but
10 it will be very helpful to have the backstop of being able to
11 go get a high capacity payment standard offer contract.

12 We agree with the staff's generic policy statement
13 that the legislature actively favors renewables. We strongly
14 agree that renewables, especially Florida-based renewables are
15 in the public interest in Florida.

16 And, finally, I would like to support the staff's
17 recommendation with respect to the terms and conditions of the
18 contract and especially with regard to the subscription limits
19 that the staff have articulated in their recommendation.

20 If you have any questions, I would be happy to answer
21 them. Thank you very much.

22 COMMISSIONER DEASON: Mr. Chairman, I have a question
23 for Mr. Wright.

24 CHAIRMAN BRADLEY: Uh-huh.

25 COMMISSIONER DEASON: You heard Mr. Perko's concern

1 that staff's approach to the subscription limit could actually
2 be a detriment when it comes to promoting negotiated contracts.
3 Do you share that concern?

4 MR. WRIGHT: No, sir, honestly I don't. It sounded
5 to me like his concern is that there could hypothetically be a
6 crowding out of negotiated contracts if there were a plethora
7 of renewable based standard offer contracts that rushed in and
8 subscribed to the subscription limit. With whatever we got out
9 there, if -- assume for the sake of discussion that all four of
10 the utilities had 500 megawatt class combined style units as
11 their avoided units, you would be looking at an aggregate
12 subscription limit in the range of 2,000 megawatts.

13 Even a 500 megawatt subscription limit, based on what
14 I know sitting here today, in terms of the ready viability of
15 new biomass or new, I should say renewable, of new renewable
16 generation in Florida, I just don't see that there is going to
17 be anything like 500 megawatts subscribed until we get five of
18 our plants up and running. So the answer is no, I don't. I
19 don't think there is going to be that much of a rush to
20 subscribe 500 megawatts of renewable power. And, accordingly,
21 I think having the subscription limit higher is okay.

22 COMMISSIONER DEASON: Did you hear Mr. Willis'
23 presentation on Issue 1?

24 MR. WRIGHT: Yes, sir.

25 COMMISSIONER DEASON: First of all, did you follow

1 that. Because I had difficulty following it. And if you did
2 follow it, what is your position on that proposal?

3 MR. WRIGHT: Well, I would like to begin by making
4 the limited qualification by stating what I understood
5 Mr. Willis to say. And if I'm misstating it, then I'm sure he
6 will have an opportunity to correct it.

7 I understood Mr. Willis to say that you have got a
8 standing policy favoring basing standard offer contracts on the
9 basis of the next planned generating unit, and he asked you not
10 to deviate from that. That is what I understood his position
11 to be.

12 COMMISSIONER DEASON: I was referring to his concern
13 about how do you meet the continuously open requirement. And
14 maybe I just need to ask the question of Mr. Willis to further
15 explain that, and then I will give you an opportunity to --

16 MR. WRIGHT: I'm sorry, I thought we were talking
17 about the Option 1 next planned unit versus Option 2 portfolio
18 approach issue.

19 COMMISSIONER DEASON: It was Issue 1 concerning how
20 do you meet the statutory requirement about the offer being
21 continuously open, I believe, is the concern.

22 MR. WRIGHT: Conceptually -- here I what I understood
23 him to say. That each IOU would have a closure date of July 1,
24 2006, and I gather each succeeding year thereafter, but that
25 the utilities would also be affirmatively obligated to make a

1 filing by April 1st in which they would ask the Commission
2 either for authority to keep the then existing standard offer
3 contract in place after July 1st, or to file some new standard
4 offer that could be acted on within that three-month period.

5 COMMISSIONER DEASON: That's my general
6 understanding, as well, based upon the notes that I took. Do
7 you have a problem with that approach?

8 MR. WRIGHT: Subject to assuming that any potentially
9 affected QF green power developer like Biomass Investment Group
10 would have a point of entry in regard to that filing to be made
11 on April 1st, no, I have no problem with it.

12 COMMISSIONER DEASON: Mr. Willis, did we understand
13 your proposal correctly?

14 MR. WILLIS: Yes. It's very simple, Commissioner.
15 There you two parts of it. I think you could approve the
16 tariffs as they were filed, because I think they meet the being
17 continuously available. But if you wanted to have a closing
18 date as staff suggests, we proposed a seamless procedure where
19 we would file by April 1st, then if we were going to continue
20 to keep it open, that staff would have the authority to approve
21 that administratively within 15 days. Or if we were going to
22 propose a change in it, that that change would be proposed
23 within 20 days, and it would go through the process, hopefully
24 to be concluded in time to keep it seamlessly open, and that --

25 COMMISSIONER DEASON: And Mr. Wright's client would

1 have a point of entry at that point.

2 MR. WILLIS: Yes, sir. As we sit here today, in
3 balancing the retroactive trying to get something on the books
4 and available by the first of the year as required by the
5 statute, we would urge you to make that one change and then
6 approve the tariffs as they were filed. And, of course, at
7 your discretion proceed to consider any other policy issues.

8 MR. WRIGHT: Mr. Chairman, if I could, just one
9 possible suggestion. If there is a subsequent filing for a new
10 standard offer that is made on or about April 21st, I have been
11 doing this a long time, and I don't think that the ten weeks or
12 so from April 21st to July the 1st is probably going to be long
13 enough to have much of a proceeding.

14 I would just ask, might it be acceptable for the
15 closure date to be, maybe, August 1st, still with the April 1
16 filing date. And I understand the April 1 filing date, because
17 that would flange up perfectly with the Ten-Year Site Plan
18 filing date, which makes perfect sense, and just give an extra
19 month of the availability of the then existing standard offer
20 contract, but give the opportunity for necessary proceedings to
21 be had without being overly rushed. Realistically, three and a
22 half months is going to be pretty rushed if there is any kind
23 of contested proceeding. Hopefully there won't be. Thanks.

24 MR. WILLIS: Mr. Chairman, we would have no objection
25 to an August 1st date.

1 MR. BALLINGER: Commissioner Deason, if I may. I
2 hate to jump in here, because it sounds like both sides are
3 agreeing on something, and I'm not sure staff does, so that
4 puts me kind of in an awkward position.

5 Of this new filing in April 1st, if we stick with the
6 traditional sequential units, single unit approach, I'm not
7 sure why we have to change anything with an ending date.
8 Utilities are very free and flexible to change the standard
9 offer when they see fit, when their plans change. I'm a little
10 hesitant to tie ourselves down to an April 1st deadline all the
11 time. The second part of it is if they come in and say that
12 the standard offer contract is not changing, in other words,
13 their unit is staying the same, and staff to administratively
14 approve that new date from July of '06 to now July of '07, that
15 does not give a point of entry to the renewables to say, no, I
16 think your unit should change. So we are setting up a
17 procedure that may well box some people out unintentionally.

18 I would prefer personally, I think, if we stay with
19 the sequential unit approach, the traditional what we have been
20 doing, we stay with the same closing date approach which
21 matches the avoided unit. That's where staff comes from, and I
22 know that is not a real popular --

23 COMMISSIONER DEASON: When you say matches the
24 avoided unit as to closing date, what you do mean by that?

25 MR. BALLINGER: If you have a combustion turbine,

1 typically it takes two years construction lead time. And staff
2 is saying that when the utility gets to a point that they are
3 financially committed to that unit, they have got to make a
4 decision now to turn dirt, let's say, for that unit, you stop
5 that standard offer, you open up the new one. You no longer
6 take any signatories against that unit and you move on to the
7 next unit.

8 If it was a combined cycle unit or a coal unit that
9 required a need determination proceeding, then perhaps the date
10 of filing a need determination proceeding would be the cut-off
11 date for that contract, and you move on to the next one. That
12 is how we have handled it in the past for many years. And it
13 allows flexibility to the utilities with their planning cycles
14 that change all the time, and staff can address it. And when
15 that does happen, people have a point of entry to address the
16 new standard offer.

17 I'm just a little -- I guess I get a little cynical
18 when somebody is trying to put a new solution to a problem
19 that's not there, I guess.

20 COMMISSIONER DEASON: And this is if we stay with
21 Option 1, the sequential determination as opposed to Option 2,
22 which is the portfolio approach.

23 MR. BALLINGER: Yes.

24 COMMISSIONER DEASON: And if we go to Option 2, the
25 portfolio approach, how does that impact your recommendation on

1 Issue 1?

2 MR. BALLINGER: Then that April 1st deadline makes
3 some sense, because you are approving a series of contracts at
4 that juncture which we know all of the units as of April 1st.
5 That's why that was thrown out there is to make everybody on
6 the same page. Because you now have taken all the utilities
7 and put them in one bucket as April 1st when they come up with
8 their new plans, as opposed to the sequential where they are
9 free to move their plans as they see fit as things arise.

10 COMMISSIONER DEASON: And I have heard from various
11 speakers today that there is concern about the Option 2, the
12 portfolio approach, that that is a deviation from standard
13 practice, and that before we take that step we really should go
14 to rulemaking. What is your position on that?

15 MR. BALLINGER: I don't know that you need to go to
16 rulemaking. It may require further debate, because it is a
17 policy decision and it is one before you. You have new
18 legislation out there, as you said, that is saying that
19 renewable generation is in the public interest. And we are
20 giving you this option, if you will, to kind of get direction
21 from you all of where you want to go.

22 If you think that's something that even if you don't
23 vote for it today would require further discussion, we can go
24 that route, as well. We are just trying to get a feel for
25 where we need to go with this.

1 CHAIRMAN BRADLEY: Let me ask this question. In the
2 public interest. We have had a lot of discussion about that
3 statement today, and a lot of things have changed within the
4 last couple of months as it relates to the state of Florida and
5 its energy situation. But one thing that stands out in my mind
6 is always cost, and we have had a discussion here about in the
7 public interest as it relates to renewable. Who can tell me
8 what the legislative intent was or is as it relates to in the
9 public interest as it relates to renewables? How was that
10 defined? Was it defined from a cost perspective, or from an
11 environmental perspective, or was it just an open statement?

12 MS. HARLOW: Chairman Bradley, I believe it was an
13 open statement saying that there was a preference for
14 supporting renewables in our state at this time, given all the
15 concerns that you just addressed that are so recently on all of
16 our minds. One thing I could tell you to ease your mind on the
17 cost aspect of this, which of course is very important, we are
18 talking about lots of dollars here, is that the costs are
19 limited according to our own rule to avoided costs. And so
20 what that means, basically, is that if you put a biomass plant
21 in and they sign a contract based on a coal unit you are then
22 getting biomass capacity priced like a coal unit.

23 So, the renewable capacity would give you all the
24 benefits of renewables, it would reduce price pressure on other
25 scarce resources that we are all concerned about, but at the

1 same time it would be priced based on the utility's next
2 avoided unit.

3 CHAIRMAN BRADLEY: So there is no clear definition as
4 to -- there is no clear direction as to -- I mean, there are no
5 clear instructions to this body from the legislature as to what
6 the definition of benefit is.

7 MS. HARLOW: The direction in the statute, as
8 Mr. Keating read earlier, the legislature finds it is in the
9 public interest to promote the development of renewable energy
10 resources in this state. Renewable energy resources have the
11 potential to help diversify fuel types to meet Florida's
12 growing dependency on natural gas for electric production,
13 minimize the volatility of fuel costs, encourage investment
14 within the state, improve environmental conditions, and make
15 Florida a leader in new and innovative technologies. That is
16 the direction in the statute.

17 CHAIRMAN BRADLEY: And I don't disagree with any of
18 that, and this body is bound by the statute. But usually the
19 hornets nest that we run into as a body is related to cost.
20 The consumer advocates consistently talk about cost. Is there
21 anyone here who -- is there a consumer group here that can give
22 us some thoughts as it relates to that particular issue?

23 I know that Mr. Wright frequently represents consumer
24 groups, but no one has mentioned cost because, you know, if
25 cost goes up -- the consumers want high quality service at an

1 affordable cost. I don't know how we define affordable, but
2 with a decline in cost rather than an accelerating cost. And
3 I'm just trying to figure out what the legislative intent is as
4 it relates to renewables when we discuss the benefit to the
5 public, because I wouldn't want this body to make a mistake.
6 And if they have not given us instructions as to what the
7 legislative intent is, maybe that is the discussion that we
8 need to have. Because, as I said, the hornets nest occurs --
9 we tap the hornets nest when the cost goes up.

10 MR. MELSON: Chairman Bradley, let me see if I can
11 help. The legislative intent did talk about diversifying
12 sources of supply, environmental interests, and so forth. But
13 then you get into the specifics of the legislation. And in
14 Subsection 3 it says the contract shall contain payment
15 provisions for energy and capacity which are based upon the
16 utility's full avoided costs as defined in another section of
17 the statute.

18 It seems to me what that says is the renewable
19 supplier will get paid no more or no less than the utility
20 would have paid to build its alternative. So, if biomass, for
21 example, is a more expensive technology, they are still limited
22 in what they can get to what the ratepayers would have paid
23 anyway. Conversely, if it is a more efficient lower-cost
24 technology, the ratepayers don't see that cost benefit but they
25 do see the other environment fuel diversity type benefits.

1 CHAIRMAN BRADLEY: Thank you.

2 Commissioner Arriaga.

3 COMMISSIONER ARRIAGA: Thank you. Mr. Chairman, let
4 me work with staff for a little bit.

5 Mr. Ballinger, let's see if you and I can understand
6 the proposal of the utilities regarding the issue of policy
7 making. I think in your opening statement you said that we had
8 an opportunity to make policy by adopting either Option 1 or
9 Option 2. I hear from the utilities that this is not the time
10 to be making policy, that we should go into rulemaking. What
11 is your appreciation on that point of view? What comes first,
12 policy or rulemaking?

13 MR. BALLINGER: Well, I'm not a lawyer, but you asked
14 me a legal question. That's good.

15 COMMISSIONER ARRIAGA: No, it is a procedural
16 question. How do you feel about what they are saying?

17 MR. BALLINGER: I think you can establish policy
18 absent the rulemaking.

19 COMMISSIONER ARRIAGA: We can?

20 MR. BALLINGER: Yes, I think so. That is my personal
21 belief. I think you are still staying within the statute of
22 keeping it at utilities' avoided costs, you have the
23 opportunity to send a message of how much you want to encourage
24 renewable. We have a new statute out there that is directing
25 us, and we are implementing it. We had the workshop back in

1 September. And these issues specifically came up, and
2 everybody agreed, yes, we could use our existing rules to
3 implement this statute. And to me that gives us the
4 flexibility. Our rules are pretty flexible. We looked at
5 them, we looked at how can we meld the statute into our
6 existing rules. There is some flexibility there.

7 So, I think with that flexibility it gives you the
8 opportunity to set these policies. After they are out in place
9 awhile, they may be codified into rules. As we say, they may
10 be good, they may be bad. We may go forward and then back off
11 of them, that is the thing. But I think you have the
12 opportunity to do it. I don't think something precludes you,
13 although Mr. Keating or Mr. Melson say otherwise.

14 There are other options of policies, not just this
15 portfolio approach. The issue about subscription limit is
16 another way for policy. Staff was feeling that having a
17 subscription limit out there now is somewhat of an artificial
18 barrier to renewable generators. To us the legislation said we
19 would rather have renewable generation than fossil fuel
20 generation. We would rather have renewable than utility-owned
21 plant, but pay them the same price. So we are saying fine, we
22 will pay them the same price, but don't put an artificial
23 barrier on it. I don't think a subscription limit should be a
24 hinderance to a new biomass facility such as Mr. Wright's to be
25 able to be built just because of an artificial cap.

1 That was done in the past for standard offers. That
2 was a different regime, if you will. We are under more of a
3 competitive market approach type of thing, and we encourage
4 negotiations. And I think we still do. I think negotiated
5 contracts are still the preferable choice for both the
6 ratepayer, the utility, and the biomass facility.

7 There are certain terms and conditions that people
8 want to work out. You are not going to have a contract on the
9 books that people are just going to love. There is going to be
10 something in there they want to tweak so they can go negotiate
11 that. So I think you have those opportunities to make those
12 opinions and those wishes known of which direction you want to
13 go and how much do you want to further renewables.

14 COMMISSIONER ARRIAGA: And you also mentioned just
15 now that you have met with the companies, and that you had
16 discussed this thoroughly, and that you had come to an
17 agreement. What do you think motivated the change of pace?

18 MR. BALLINGER: I don't know that we discussed it
19 thoroughly. It was out there, staff expressed their opinions
20 about what we thought could be done, and everybody nodded their
21 heads and we went away quickly. I think the workshop lasted
22 all of about an hour. I mean, it was pretty cut and dry. We
23 got these things, we saw some inconsistencies, and that is
24 really why -- let me back up.

25 Normally when we have a PAA filing with utilities and

1 there is some disagreement, staff and the utilities will try to
2 work out their differences. We will try to see if we can come
3 to some accommodations of minor imperfections or whatever like
4 that before we come to agenda. We thought this one was so
5 important, though, and to get guidance from the Commission that
6 we came straight to you all to have this discussion and get the
7 dialogue with the utilities so you could hear from them. I
8 don't want to be negotiating something with a utility if it is
9 not the direction you all want to go, and since it was a new
10 statute we thought it best to get them before you to have this
11 dialogue.

12 COMMISSIONER ARRIAGA: So your motivation for Option
13 2 is grounded or based on the legislative intent. And not only
14 the legislative intent, I assume the executive branch last week
15 meeting and talking about renewable energy and all of those
16 issues, would that be correct to assume?

17 MR. BALLINGER: Could you repeat that again?

18 COMMISSIONER ARRIAGA: Your motivation for proposing
19 Option 2 is based on the statute, the intent of the statute,
20 and also the executive branches, not instructions but guidance
21 regarding the issue of renewable energy. Would it be safe to
22 say that is where Option 2 comes from?

23 MR. BALLINGER: Yes. And if you remember, too, a few
24 weeks ago we had the Ten-Year Site Plan, we discussed about how
25 renewables should play a part in a balanced fuel supply. This

1 is another way to maybe encourage them a little further.
2 Because we realize there is not a lot of them out there. As
3 Mr. Wright said, they are not going to solve every problem, but
4 we should probably do all we can to encourage as much as we
5 can.

6 COMMISSIONER ARRIAGA: You mentioned when you
7 proposed Option 2 that there is a risk involved. Going back to
8 Chairman Bradley's questions, is that risk a cost that would be
9 passed on to the consumer? Because I just heard Mr. Melson
10 saying that the consumer would not be affected. So what is the
11 risk?

12 MR. BALLINGER: If you go to the portfolio approach
13 there is a little more risk, and here is why. If you have
14 several units in the plan, let's say a 2012 unit, or even
15 later, or several units out there that a utility hasn't really
16 committed to yet. It's in the planning stages, it's very
17 fluid. You may sign a contract, and then that unit for other
18 reasons, let's say conservation picks up and that unit gets
19 deferred several years or the type of technology changes or
20 just load growth changes and it gets moved. But you have
21 already committed to pay for that unit. You have put the
22 ratepayers at risk at committing too early a little bit.

23 Staff views that risk as minimal. And, eventually,
24 in the long run it will be beneficial for Florida and the
25 legislative intent to encourage renewable generation for these

1 other benefits, such as fuel diversity, such as environmental
2 benefits. We are struggling with that and that is what we are
3 seeking guidance for is do we pay that little bit maybe or take
4 that cost risk, if you will, for these other benefits that the
5 legislature has laid out.

6 COMMISSIONER ARRIAGA: And I certainly appreciate
7 your concern. I'm really grateful because you are calling to
8 our attention an issue that has been on the table and the state
9 is screaming about it, so it is important decisions that need
10 to be made.

11 A question on -- I'm sorry, Commissioners, allow me
12 to have a battery of things here that are pending. Gulf has
13 proposed a hypothetical unit to which you disagree. First of
14 all, why would Gulf propose a hypothetical unit, and why are
15 you disagreeing to that?

16 MR. BALLINGER: My own personal belief, and I can't
17 remember if this is discussions with them or not, or just my
18 thinking. I think they were actually trying to do it to be
19 sympathetic to the renewable generators. By moving a unit
20 forward in time you increase the capacity payments, and there
21 is actually a benefit to the renewable generators. But, again,
22 it goes against our grain of the utility's avoided costs. I
23 think they are putting something out there, and we didn't want
24 to set that precedent.

25 COMMISSIONER ARRIAGA: But we are going to an

1 Internal Affairs meeting after this, or this afternoon, and
2 Gulf is coming up with another such hypothetical unit. They
3 are proposing an RFP. Is this the same unit?

4 MR. BALLINGER: When I got that letter, too, I kind
5 of questioned what was going on. That came out after this
6 recommendation that, yes, it appears they are going out for an
7 RFP for a 2009 peaking capacity.

8 COMMISSIONER ARRIAGA: So would you have an answer
9 for that?

10 MR. BADDERS: Actually, I do. Our intent, when we
11 looked at our next avoided unit being so far out, that we
12 wanted to have something closer in time to come up with
13 reasonable pricing for that hypothetical unit. For us our next
14 need cannot be avoided. It is a 2009 purchase. We will have
15 to do it. There is in way to avoid that. But that was the
16 next time period, that was our next need, so we wanted to bring
17 the unit to that time period and come up with pricing for that
18 time period. And it really was, in a way, to help promote
19 renewables. It was also to get away from some of the
20 uncertainty that was associated with the 2012 unit. But the
21 '09 hypothetical unit will never be built, and it's really not
22 what will be talked about this afternoon. It's the same time
23 period.

24 COMMISSIONER ARRIAGA: So the unit is not so
25 hypothetical.

1 MR. BADDERS: Well, the 2009 unit will never be
2 constructed. In fact, it will just be purchases in that time
3 period, but they are really separate as far as from the utility
4 point of view.

5 COMMISSIONER ARRIAGA: So wouldn't you say that -- if
6 this afternoon you are making a presentation, somebody from
7 Gulf is making a presentation about an RFP for a real unit,
8 wouldn't that then give staff the reason to say what they are
9 saying?

10 MR. BADDERS: Well, no, Commissioner, actually it is
11 not a real unit that will be built in 2009. It is a need, a
12 capacity need, but that will be met with purchases. And that
13 was put in our Ten-Year Site Plan this last April.

14 COMMISSIONER ARRIAGA: Thank you. May I continue,
15 sir?

16 CHAIRMAN BRADLEY: Uh-huh.

17 COMMISSIONER ARRIAGA: Mr. Ballinger, FPL has made a
18 differentiation between the use of in-service date and capacity
19 delivery date of which you seem to be feeling strongly about.
20 What is the difference, and why one over the other?

21 MR. BALLINGER: I'm going to let Ms. Harlow answer
22 that, because she reviewed their contract individually.

23 MS. HARLOW: Commissioner, I would like to perhaps
24 clarify staff's position on this issue. I think this will be
25 helpful. There is a specific term in the contract that forces

1 the contract to end on December 31st, 2015. So early capacity
2 payments are available beginning January 1st, 2006, and the
3 avoided unit would be built on June 1st, 2008. The only way
4 for the contract to actually meet the requirements of the
5 statute for it to be ten years, in our opinion, if a contract
6 would end on December 2015, is for a renewable provider to
7 enter the contract and receive capacity payments beginning
8 January 1st, 2006. That is the only ten-year span that would
9 end in 2015.

10 And we don't feel that this would be likely, given
11 the other characteristics of the contract that require that
12 renewable provider to prove up that they are reliable and that
13 they are financially viable prior to receiving capacity
14 payments. So I believe our concern goes beyond what we
15 expressed in the rec, which was that the early capacity payment
16 period is part of the ten years.

17 MR. BALLINGER: If I can add a little to that, too.
18 Let's take it a step further. FPL's reasoning for starting in
19 '06 and going ten years from there was to give the renewable an
20 opportunity to sell capacity early if they wanted to. If they
21 wanted to come on-line in '06, they could sell capacity and
22 have a market for their capacity.

23 If you take that logic further, let's say there was a
24 coal unit as the avoided unit. The construction lead time for
25 that is about seven years. So you would back up seven years

1 from the in-service date of when the contract would start, and
2 they would go three years beyond the in-service date to give
3 you the ten-year total as FPL has proposed. What they didn't
4 tell you is when you price out early capacity payments, you
5 take the payments from the in-service date of the unit to the
6 contract end date and in terms of the coal unit it would be
7 three years of payments, and you discount those back to cover
8 the ten years.

9 So, in our minds, it's not benefitting the
10 cogenerator at all. Even in their proposal before you today
11 for a CT, they are taking eight years of capacity payments and
12 discounting them back ten years and not giving the cogenerator
13 or the renewable the full benefit of ten years of deferral of
14 that unit. And that is what our rules were set up for is to
15 start basically from the in-service date for two reasons, one,
16 to keep the payments where they should be, because all you are
17 doing is discounting them back for early payments. And, two,
18 to kind of put a hook on the renewables or the generators to be
19 there to actually defer the unit and provide some capacity
20 benefits to the ratepayers. And that's why we wanted to start
21 the term, if you will, of commitment, the in-service date of
22 the unit.

23 COMMISSIONER ARRIAGA: One last question if I may.
24 Only one of the companies, FPL, seems to have the capacity to
25 match the contracts. The other ones are doing smaller amounts

1 of standard offer contracts. You are proposing that we make it
2 equal to the avoided unit, correct, and why?

3 MR. BALLINGER: Again, it goes back to I don't think
4 subscription limit with the new statute should be an artificial
5 barrier. We should just let renewables come in, and the
6 utilities, if they get too much, if they start getting swamped
7 with them, they can close it and offer another contract and
8 move on and let it work that way. I don't think anymore we
9 need an artificial barrier for renewables.

10 COMMISSIONER ARRIAGA: Does the FPL representative
11 agree with that point of view?

12 MR. ANDERSON: I'll just respond on two points,
13 Commissioner, if I might. Ms. Harlow made a point concerning
14 the December 31, 2015. She is exactly right, the way our
15 standard offer contract is filed with the Commission, that is
16 what it said. We needed to change that to accommodate and
17 permit a full ten-year. So that is why we are proposing to
18 change our language so that the contract shall become effective
19 immediately upon execution, shall terminate ten years after the
20 capacity delivery date, and we have stricken out the 2015
21 language because that would have potentially restricted us
22 below ten years.

23 Then, as to the Commissioner's question, could you
24 please rephrase it for me, I'll do my best for you.

25 COMMISSIONER ARRIAGA: Do you agree with staff's

1 position regarding your avoided unit capacity that matches your
2 standard offer contract, 157-megawatts?

3 MR. ANDERSON: I meant to catch the chair's attention
4 to bring this point forward. In our filing, we had proposed a
5 capacity limit of the full size of the unit, which would be a
6 157 megawatt combustion turbine. We saw the staff comments in
7 relation to all of those points. We talked to the other
8 utilities. The other utilities raised with us, and we took it
9 to heart, that there is a risk of chilling, and having a very,
10 very large subscription limit for the standard offer contracts.
11 The reason being negotiated contracts which tend to be the
12 larger units don't count against it.

13 We don't think that the subscription limit is a
14 one-size-fits-all matter. We have a greatly deal of installed
15 capacity. We are looking to add considerable capacity. Like
16 the other utilities, we wish to foster and encourage renewables
17 also. Given that, though, we were going to, you know, I meant
18 to catch the Chair's attention and ask this point because I
19 neglected to make it earlier. Our business people feel that it
20 would be more appropriate to reflect a subscription limit of
21 100 megawatts rather than the full 157, of course indicating
22 that if someone were to come to us with a very large project,
23 we would be probably negotiating a one-off special contract.
24 But that was, I hope, in response to your question,
25 Commissioner.

1 COMMISSIONER ARRIAGA: Thank you.

2 CHAIRMAN BRADLEY: And while we are on the issue --

3 COMMISSIONER ARRIAGA: I just wanted to end by making
4 one comment. May I, Mr. Chairman, and I end?

5 CHAIRMAN BRADLEY: Yeah, go ahead.

6 COMMISSIONER ARRIAGA: I think that this discussion
7 puts us in a very crucial point. I really appreciate the
8 debate. It is enlightening. What we have in our hands,
9 according to my perception, is the possibility of continuing to
10 do things the way we do them or to make some decisions that
11 will open the door to some potential growth and be consistent
12 with the statute, the intent, our own Ten-Year Site Plan, and
13 some guidance from the executive branch. I think that is what
14 we have in our hands, and I think this discussion will give us
15 that opportunity. Thank you.

16 CHAIRMAN BRADLEY: Thank you. My question goes to
17 the issue of the subscription limit. I want to switch gears,
18 though, as it relates to subscription limits and the nature of
19 the question. Renewable energy, the traditional life of an oil
20 or a coal-fired plant I think is 30 years, am I correct? What
21 is the life expectancy of a renewable plant, and is that life
22 expectancy based upon the type of fuel that is going to be
23 employed in order to generate the energy? And my other
24 question is, of the renewable plants that are being proposed,
25 what is the nature of the fuel source? Have you all

1 identified -- and I guess that is a question to Mr. Moyle or
2 Mr. Wright, and is that source infinite or is that a finite
3 source?

4 MR. MOYLE: In terms of your first question, which
5 was what is the average life of the renewable facility, I mean,
6 I think, FPL is the largest producer of wind in the country. I
7 don't know, those wind turbines spin out there, they probably
8 have a very long, you know, period of time, life on those.
9 Some sources that are being considered, you know, waste energy
10 is a renewable source. When you talk about municipal solid
11 waste, you are able to generate electricity through combusting
12 that waste.

13 And also municipal solid waste can provide some
14 methane gas. And I know that there is interest in trying to
15 look at projects where you mine the methane from landfills and
16 clean it up and burn it as a gas. Landfills generator methane
17 and you usually have to flare it off or burn it off, but
18 sometimes you can harvest that and then use it as a source to
19 generate power. I don't know -- the life, I think, of some of
20 the waste facilities are comparable with some of the combustion
21 generating units of the utilities. You know, the gas out of
22 the methane, I think it is also comparable. I don't have a
23 good feel for the wind or the solar.

24 CHAIRMAN BRADLEY: Is wind an option in the state of
25 Florida?

1 MR. MOYLE: I think you guys in your tariff allowed
2 for wind to be -- you did a tariff or something and you allowed
3 for wind credits to be used. I don't understand it, but they
4 buy and sell credits or something. I think there is a way for
5 wind credits to be part of that mix, if I understand what you
6 did a year or so ago.

7 MR. WRIGHT: Mr. Chairman.

8 CHAIRMAN BRADLEY: And I'm trying to get some idea as
9 to what the renewable source might be for --

10 MR. WRIGHT: Just to briefly answer your question
11 about wind, I think the best and most current statement I know
12 about wind is that one made by Doctor Fenton (phonetic) at last
13 week's energy forum, and he said the feasible opportunity for
14 wind in Florida is for the possibility of offshore wind farms.
15 On mainland Florida, and I worked in the Governor's Energy
16 Office before I came to work here, there may have been some
17 changes in technology, but generally speaking mainland wind
18 just isn't quite sufficient to make it work in Florida.

19 To answer your bigger question about the life of
20 renewable energy facilities, I think it just depends on the
21 technology and the fuel. Our project, our technology is
22 expected to have a life longer than 25 years. How much longer,
23 I don't know, but longer than 25 years. I am not here today on
24 their behalf, but I also have the privilege of representing
25 Miami-Dade County and their waste energy facility operator in

1 other contexts. That facility has been running for at least 24
2 years, it might be 26. I can't quite remember if it came
3 on-line in 1981 or 1979, but it has been going for a long time
4 and they expect it to continue to run for at least eight more
5 years and quite possibly beyond that.

6 It really is just going to depend. Different fuel
7 stocks put different demands on the processing and put
8 different demands on the combustion equipment. We don't have
9 much hydro in Florida, but if you keep dredging and take care
10 of your dam, it can last 80 or 100 years, so it really just
11 depends on the technology.

12 While I'm here, could I just make one clarifying
13 point about something I said earlier. I just want to make it
14 clear, and this picks up a comment by Mr. Ballinger that when I
15 refer to us having a point of entry, I certainly intended that
16 that would apply even to a utility's request to continue the
17 existing standard offer in effect on a going-forward basis. I
18 think we would under Florida administrative law and definitely
19 should have a point of entry to say, no, wait a minute, we
20 think there ought to be a different avoided unit there.

21 Thanks for letting me clarify that.

22 CHAIRMAN BRADLEY: And I think what I have heard from
23 the IOUs is that there is a strong willingness to buy into the
24 renewable generation concept, but there are just some issues
25 that need to be resolved. Gulf.

1 MR. BADDERS: Yes, Chairman. I just have two
2 comments in regard to Issue Number 4, the subscription limit.
3 One, I just want to point out an observation that I agree with
4 Florida Power and Light, one size doesn't fit all. If we go
5 with the total unit as the subscription limit, currently I
6 believe there is 157 megawatts. If we go to the 2012 unit for
7 Gulf, it is 314. Looking at the relative size of their system
8 to ours, when you look at the percentage -- now, I agree with
9 Mr. Wright, we are probably not going to see 314 megawatts of
10 renewables. But if you get 100 megawatts, you will not defer
11 or avoid that unit necessarily. So you will build the
12 314-megawatt unit plus you will have the 100 megawatts over
13 there for the renewable.

14 On our system that 100 megawatts represents a much
15 greater piece than it would for FPL, so I just want to point
16 that out that the one-size-fits-all, the 100 megawatts for
17 everybody, or the entire unit, it has a different impact on the
18 ratepayers for the individual utility. And I think that is the
19 basis -- my next comment, I think that is the basis for the
20 Commission's policy thus far with regard to QFs. If we are
21 following the QF rule, when the statute came out for qualifying
22 facilities and standard offer it has similar language as the
23 public interest to promote qualifying facilities and
24 cogeneration, the Commission needs to take these steps, we must
25 have standard offer contracts based on avoided cost. We have

1 very similar language and I think you had a very similar
2 mandate.

3 One of the very first issues that came out of it,
4 well, what happens if you don't avoid or defer the unit? And
5 in all likelihood a QF nor a renewable will add up enough to
6 defer or avoid the unit. So what do you do? You build the
7 unit and you have those extra megawatts that came from the
8 renewable or QF. Well, the balance -- the Commission found
9 that a balance needed to be struck as far as how much of those
10 additional megawatts we brought onto the system. Because the
11 bottom line, the ratepayers pay for that. They are paying for
12 the capacity that they need that comes from the other unit plus
13 the extra 100 megawatts, 10 megawatts, or 20 megawatts. So
14 that has been a very big consideration of the Commission
15 throughout time, throughout the past ten years or so. I just
16 wanted to bring that to our attention.

17 I mean, I think that is where the cost issue really
18 comes in. If you don't defer or avoid, whatever you have taken
19 on the system under these standard offer contracts, the
20 customers pay for. In addition, you are not really deferring.
21 You are not going to replace, I guess, the fossil fuel that I
22 keep hearing everybody is like we need renewables to replace.
23 I agree with that, and I think the utilities agree that there
24 is value with renewables or QFs. We just don't need to fall
25 into the idea that they will necessarily replace the other.

1 You need a lot of them to get to that point. We just need to
2 be cognizant of the additional cost to the customers of
3 bringing on a large amount of them without being very sure that
4 the capacity payments match up appropriately with the avoided
5 units.

6 CHAIRMAN BRADLEY: Commissioner Edgar, you seem to be
7 in deep thought.

8 COMMISSIONER EDGAR: Well, just a few. And first
9 off, I apologize, I'm working on a cold and so I am listening,
10 or at least making every effort to listen and not speak.

11 CHAIRMAN BRADLEY: C-O-A-L or C-O-L-D?

12 COMMISSIONER EDGAR: Cold. You know, I appreciate
13 the discussion, and I thank staff for bringing it forward in a
14 format that asks us for some feedback. But yet with that I
15 have a little frustration sitting up here in that this is
16 legislation that passed in the spring, and here we are facing
17 an end of year deadline and a debate of this magnitude and
18 complexity is before us the last meeting of the year, and I do
19 realize timing constraints.

20 You know, I think that there are some things in
21 Option 2 that hold a lot of attraction to me, but I am going to
22 go ahead and put out there that I don't understand all of the
23 ramifications to the degree that I would like to in order to be
24 able to move forward with the comfort that I generally like to
25 have before taking that type of step. So that is what I am

1 still thinking through and I am very interested in hearing the
2 comments from my colleagues on that point.

3 CHAIRMAN BRADLEY: Well, let me ask this question.
4 Is it possible for staff and the parties to get together and to
5 work out some of these differences that are before us so that
6 we can deal with this issue?

7 MR. WILLIS: Mr. Chairman, one way to do that would
8 be to go ahead and approve the tariffs that have been filed by
9 the utilities and the change, I think FPL had some changes that
10 they have suggested to you. That those tariffs be placed into
11 effect on January 1st and that we continue on to discuss these
12 issues. We have the same concern that Commissioner Edgar
13 raised with respect to Option 2, which as I understand it, we
14 learned about very recently. There are a number of things that
15 we need to consider that have been said here, but it is very
16 difficult to accomplish that before January the 1st. So that
17 is the best action for you to take today, and then for us to
18 continue on discussions rather than to throw the discussions
19 open to try to reach some resolution when you don't even have a
20 meeting scheduled before the end of the year.

21 MR. MOYLE: Mr. Chairman.

22 CHAIRMAN BRADLEY: My suggestion was today, to see if
23 you all could come to some agreements. But by no means was I
24 trying to imply that we should carry this discussion over past
25 the deadline that has been imposed upon us statutorily, which

1 is January 1st, 2006, and that was in the spirit of what
2 Commissioner Edgar just said.

3 MR. MOYLE: Mr. Chairman, just a comment, and staff
4 may have a better understanding on this than I do. What the
5 statute says is on or before January 1, 2006, each public
6 utility must continuously offer a purchase contract to
7 producers of renewable energy. It seems like the policy path
8 that you are heading in is essentially to continue with your
9 standard offer approach, which doesn't seem to me to be a
10 terribly significant change from how things have been done in
11 the past. I understand the sensitivity of trying to meet that
12 deadline, but if those contracts are already out there and are
13 made available and are offered, you know, arguably the statute
14 is complied with.

15 I think that the legislature, you know, would prefer
16 for you to get it right rather than to get it fast. And if it
17 takes a little more time, and these are big policy issues that
18 you need to weigh, I'm not sure that it's the end of the day if
19 you continue to ride on what is out there previously and spend
20 a little more time trying to get it right.

21 MR. WRIGHT: Mr. Chairman, very briefly. As I said
22 earlier, I don't think you have to act on the Option 1/Option 2
23 discussion under Issue 1 today. I think it is an important
24 issue. It is an important issue to my client. Like I said, we
25 are fairly far down the path negotiating. We are optimistic we

1 are going to get there using more or less gas combined cycle
2 pricing as a vehicle for our pricing.

3 I would take issue with Mr. Willis' comments,
4 however, as follows: I think the legislature has directed the
5 Commission to promote and encourage actively renewable energy
6 resources. I don't think continuing business as usual is going
7 to do that. And, so, I think FPL cured the concern regarding
8 Issue 3. So assuming that away, I think the best thing you can
9 do today is to adopt your staff's recommendations on Issues 2
10 and 4 and figure out a time in the not too distant future when
11 we can continue the debate on Issue 1. Thank you.

12 CHAIRMAN BRADLEY: Let's take a five-minute break.

13 (Recess.)

14 CHAIRMAN BRADLEY: I would like to reconvene.

15 MR. BALLINGER: Commissioners -- I'm sorry, Chairman
16 Bradley, I think we have talked with the parties and we may
17 have a proposal for your consideration.

18 COMMISSIONER ARRIAGA: I'm sorry, but when we cut off
19 for the break I had asked for intervention, so --

20 CHAIRMAN BRADLEY: Do you have questions?

21 COMMISSIONER ARRIAGA: No, I just wanted to make a
22 comment addressing Commissioner Edgar's desire to establish a
23 dialogue as she said. I don't know, we may want to hear staff
24 and then that will probably solve many of the issues.

25 CHAIRMAN BRADLEY: Okay, but I think Commissioner

1 Edgar has a question.

2 COMMISSIONER ARRIAGA: But I do have a very important
3 point that I would like to make eventually.

4 CHAIRMAN BRADLEY: Uh-huh.

5 COMMISSIONER EDGAR: I was just trying to -- and,
6 Commissioner Bradley, thank you for the few-minute break to get
7 my thoughts together. I certainly am interested in hearing
8 from staff, and I appreciate the opportunity to consult with
9 our legal counsel. I was getting a little confused about which
10 items and issues absolutely need to be acted upon today due to
11 some of the legislative timelines that are laid out for us and
12 which and how procedurally we may be able to move forward but
13 have some continuing discussion. So I'm ready to hear if there
14 is a proposal from staff and the parties and see where that
15 takes us.

16 COMMISSIONER ARRIAGA: Well, I guess I would follow
17 with Commissioner Edgar, because I also consulted with the
18 enlightened opinion of Mr. Melson, and I think we may have a
19 way out, depending on staff's point of view.

20 CHAIRMAN BRADLEY: Well, apparently staff and the
21 parties got together after -- well, during the break, and we
22 need to hear what you all have concluded.

23 MR. BALLINGER: I was the lucky one to put this out
24 and also talk with Mr. Melson. I think what we can do to get
25 out of this jam we are in is staff and the parties have agreed

1 that we could approve the standard offer contracts as filed on
2 the pricing parameters, noting that they would have a
3 termination date of June 1st of '06, so a very short time
4 frame. During the interim, staff and the other parties and
5 other interested persons will have workshops, meetings to
6 discuss these other issues, Option 1 versus Option 2, the
7 subscription limit, things of this nature, and try to work out
8 either a means to do it through tariff filing under our
9 existing rules, or if we realize we have to go to a rulemaking,
10 we will go to rulemaking. So by June 1st of '06 we will come
11 back to you with the decision of where do we go procedurally
12 wise. Do we go on to rulemaking or have we reached agreement
13 on the tariff filing options to satisfy all the concerns.

14 CHAIRMAN BRADLEY: Mr. Willis, are you getting ready
15 to punch the button?

16 MR. WILLIS: Mr. Chairman, that satisfies our
17 concern. I think that is a good procedure and compromise and
18 gives us an opportunity both to meet the statutory guidelines
19 and to proceed with dialogue.

20 MR. BADDERS: And with regard to Gulf Power, we agree
21 with that. And one part that was left out, Gulf will go ahead,
22 we will refile ours with the 2012 unit as opposed to the 2009
23 unit.

24 MR. ANDERSON: Florida Power and Light thanks staff
25 very much for raising these issues and for its conduct in the

1 workshops and here. These are difficult issues. We think what
2 staff has proposed and the utilities have all agreed to makes a
3 lot of sense in these circumstances. Therefore, FPL agrees and
4 we just wish to reflect that we would like our tariff filing to
5 reflect the changes that I indicated to the Commission
6 concerning the change in the capacity rate. Of course, we will
7 answer any questions off-line that staff may have. The
8 ten-year from capacity delivery date and the 100-megawatt
9 points that we described, we ask that our tariff be considered
10 to be amended on its face instanter for these purposes.

11 MR. PERKO: Progress Energy also agrees that staff's
12 proposal is entirely reasonable and we appreciate the
13 opportunity to try to work these important issues out in an
14 appropriate forum.

15 MR. WRIGHT: Mr. Chairman, I'm sorry, I was not aware
16 these discussion were being had and was not a party to them.
17 And I'm going to stand by my previous comments, which is I
18 think the best thing you can do today is approve your staff's
19 recommendations as written and filed on Issues 2 and 4.

20 MR. MOYLE: I wasn't a party to the discussions, and
21 really I'm not sure I understand what the agreement is in terms
22 of, you know, where it puts you. I mean, to the extent that
23 there is a process where this conversation moves forward and
24 continues, then I think that is something, as I said in my
25 opening comments, I'm supportive of. But to the extent it does

1 something and falls on the back burner and doesn't move forward
2 and is a box that is checked off, you know, I still would have
3 some concerns about that. So, I'm sorry, I'm not really able
4 to give you a position.

5 CHAIRMAN BRADLEY: Okay. I'll tell you what I'm
6 going to do. I'm going to take another five-minute break and
7 allow you all to be a party to the discussion and we will come
8 back.

9 COMMISSIONER DEASON: Mr. Chairman, can we go ahead
10 and conduct some other business while they are doing this?

11 CHAIRMAN BRADLEY: Yes.

12 COMMISSIONER DEASON: I mean, we have got people out
13 here that have been waiting patiently for some other matters,
14 and this is taking an inordinate amount of time, and I would
15 like to go ahead and conduct business if that's the pleasure of
16 the Commission.

17 CHAIRMAN BRADLEY: That's the pleasure of the
18 Commission.

19 * * * * *

20 CHAIRMAN BRADLEY: Now we need to go back to Item 7.
21 I think when we took the recess, we were at the point of
22 discussing the negotiated agreement, and Mr. Moyle and
23 Mr. Wright said that they had not been a party to the
24 discussion, so we took a brief recess in order to allow for
25 discussion to occur between all of the parties. And we need to

1 pick up at the point where we left off with the new information
2 included.

3 MR. BALLINGER: Yes. And I apologize to the
4 Commission for not including those two in the original
5 discussions. That was my oversight.

6 We have since met with everyone, with all the
7 parties, including Mr. Moyle and Mr. Wright, and I have gone
8 through the list and discussed with everyone, and I'm prepared
9 to give you the proposal as it is now and walk through. I'll
10 try to go kind of in bullet format.

11 First, let me start off beginning for Florida Public
12 Utilities Company, their standard offer contract would be
13 approved as filed with the no expiration date as staff
14 recommended, so they are done with the process. That would be
15 the recommendation to staff, FPUC is done just like with our
16 staff recommendation.

17 For Progress Energy and TECO, we would adopt their
18 filings, their standard offer contracts as filed.

19 For Florida Power and Light we would adopt their
20 contract as filed with a few changes. Really it is not a
21 change. Their subscription limit would remain 157 megawatts,
22 they would correct the gas transportation cost that they
23 admitted to today had inadvertently included a capacity
24 component, and they would remove the reference to the 2015 end
25 date which would satisfy that ten-year term question we had.

1 Gulf Power would refile their standard offer contract
2 based on a 2012 combustion turbine unit. All of these new
3 contracts would have an expiration date of June 1st of '06.
4 And during the interim we would hold workshops with the
5 utilities and parties, perhaps the Commissioners, to work out
6 these items such as Option 1, Option 2 subscription limit
7 issue, things of this nature to hopefully get resolution in a
8 tariff filing, or, if necessary, recommend going to rulemaking.
9 So by June 1st of '06 we should be able to come back to you
10 with a recommendation on how to proceed.

11 All of these refilings that would come in, the little
12 bit from Gulf and from FPL, we would ask for staff to
13 administratively approve them. I presume the utilities can get
14 all of these changes in to us by December 28th. We can turn
15 them around and get it back out the door to meet the January 1
16 deadline.

17 In addition to this, Issue 5 in staff recommendation
18 addressed Progress Energy's separate standard offer contract.
19 I will call it the traditional standard offer contract. They
20 were actually asking for two. They are going to withdraw that
21 request, so Issue 5 is moot in the staff recommendation, and
22 that contract is gone.

23 According to Mr. Wright, he still believes and he
24 stands by the staff recommendation and supports that, and Mr.
25 Moyle just wanted to make the point that the actions done today

1 are not precedential in nature, that he can still raise issues
2 about the subscription limit, the gas transportation charge,
3 things of this nature in the future. And I have been assured
4 by everyone here and has assured him that that is the case,
5 that he is free to raise those arguments.

6 CHAIRMAN BRADLEY: Okay. What is your pleasure,
7 Commissioners?

8 COMMISSIONER DEASON: Mr. Chairman, I was going to
9 move staff's modified recommendation that has just been
10 explained here today with the understanding that we move
11 forward expeditiously with the workshops, and it would also be
12 my request that if it appears that the workshops are not going
13 to be sufficient, that staff not wait until June 1, '06 to let
14 us know, that they let us know so that we can go ahead and
15 schedule a formal rulemaking as quickly as possible.

16 CHAIRMAN BRADLEY: And to me -- the recommendation
17 would appear to me to get us where we need to be with respect
18 to the statutory deadline, and I think it's a good beginning
19 point as it relates to the resolution of some of the issues
20 that we have had a major, major discussion about as it relates
21 to renewable energy. And I think it's a good compromise. Is
22 there anyone in disagreement?

23 COMMISSIONER ARRIAGA: I have a comment.

24 CHAIRMAN BRADLEY: You have a disagreement?

25 COMMISSIONER ARRIAGA: I have a comment. It may not

1 be a disagreement, I have a comment.

2 CHAIRMAN BRADLEY: Is that a motion?

3 COMMISSIONER ARRIAGA: It is a motion before -- I
4 would like to make a comment.

5 CHAIRMAN BRADLEY: You want to make a comment on the
6 motion?

7 COMMISSIONER ARRIAGA: Yes.

8 CHAIRMAN BRADLEY: Okay. You're recognized.

9 COMMISSIONER ARRIAGA: Thank you, sir.

10 While I appreciate the effort that you have made to
11 come to some kind of balanced conclusion, I want to
12 respectfully say that I personally do not appreciate decisions
13 made so quickly on such important subjects. That puts us, or
14 at least me as a Commissioner, to, again, vote on the 11th hour
15 on a decision of this importance. You had the opportunity,
16 staff and companies, to discuss this since your last workshop.
17 A very important opportunity, and you did not come to an
18 agreement. So it does surprise me that in 15 minutes you do
19 come to an agreement that you should have taken the time to
20 before. But I do appreciate the effort that you have tried to
21 settle.

22 Now, the issue here is I would suggest, Commissioner
23 Deason, that the workshop should lead us to rulemaking. They
24 shouldn't lead us to the possibility of filing as usual. And
25 basically because business as usual with the standard offer

1 contracts in a traditional manner is contrary to our ten-year
2 site plan, or at least not consistent -- not to use the word
3 contrary, but at least not consistent with what we are saying
4 in our ten-year site plan, which is promote renewable energy.

5 It is not consistent with the statute which is
6 screaming at us to make a policy decision regarding the use of
7 promoting renewables. It's not consistent with an executive
8 order, that even though it is not applicable to us, it is
9 saying this is the way we need to go. And it is also not
10 consistent with the spirit and intent of the legislation.

11 So I would respectfully modify your motion to say
12 that the workshops or whatever the staff is going to do from
13 here to June 1st, 2006, and I do hope you have time by June
14 1st, 2006, to finish all of this, needs to lead us into the
15 issue of rulemaking, because we have the responsibility to take
16 on the mandate of the law. And that concludes my modification
17 to your motion.

18 COMMISSIONER DEASON: Mr. Chairman, I'm not opposed
19 to that. I think that this is a subject matter that is
20 certainly worth the Commission's attention in the form of a
21 rulemaking. I know that staff had their preliminary round of
22 workshops and discussions with the idea that the Commission's
23 existing rules were sufficient to implement this new statute.
24 I think that it would be helpful for all if the Commission and
25 for the Commissioners ourselves to engage in a workshop, but we

1 go into the workshop with the benefits of further meetings and
2 workshops and then the Commission can take whatever course it
3 deems appropriate at that time. But I'm not opposed to
4 including within my motion the anticipation that we would go to
5 rulemaking at some point. I don't think we can set that time
6 now, but with the understanding that it is anticipated that
7 there would be rulemaking.

8 CHAIRMAN BRADLEY: Well, this issue is a very complex
9 issue from the standpoint of -- as someone pointed out earlier,
10 one size does not fit all, and that in itself makes it very
11 complicated. But I think what we are trying to deal with is
12 the statutory requirement that needs to be met in order for us
13 to be in compliance. And that in itself creates a variable
14 that is compelling in terms of us putting forth the necessary
15 action to meet that requirement.

16 I think that the companies basically have told us --
17 the parties, not the companies, but the parties have told us
18 basically that this is an agreement that is a beginning point
19 and that a part of that agreement is the agreement to continue
20 to discuss and to refine the process, and it seems like we have
21 everyone in agreement, which in itself is a strong indication
22 to me that at least we have a good beginning point. And if
23 rulemaking is -- I think rulemaking is feasible and okay,
24 because that would clear up some other issues that might be
25 unclear.

1 Commissioner Edgar.

2 COMMISSIONER EDGAR: Thank you, Mr. Chairman. I
3 appreciate the parties all coming together today to help us
4 figure out what we need to do in order to move this forward
5 from a procedural standpoint. I am very much looking forward
6 to the continued discussion that we will have over the next few
7 months. I think it will be important, and it will have depth
8 and breadth.

9 Commissioner Arriaga, I'm not quite sure what you
10 mean by not business as usual. I'm also not sure where we are
11 in the point of rulemaking. I would like to say this, that it
12 may be that the next step after some further discussion is
13 rulemaking. I'm not sure that that is the next necessary step,
14 it may be. I also think that a staff workshop is what I would
15 ask and what I hope would be one of the next steps. I do have
16 a legal concern about Commissioners participating in a workshop
17 where matters that could perhaps be in a future docketed matter
18 would be discussed, and so I would like just the opportunity
19 for us to think through with our legal counsel, staff, and each
20 of your offices what those next steps are.

21 CHAIRMAN BRADLEY: Well, why don't we deal with that
22 issue now so that we clear it up.

23 COMMISSIONER ARRIAGA: May I clarify,
24 Commissioner Edgar's question?

25 CHAIRMAN BRADLEY: Well, let's let Mr. Melson deal

1 with the issue of Commissioners participating in a workshop
2 that might involve some ex parte --

3 MR. MELSON: So long as you notice it as a
4 Commissioner workshop, or as a workshop that Commissioners may
5 attend and it is open to the public, you have satisfied your
6 public records law concern. And the ex parte restrictions do
7 not apply in noticed workshops. So I think Commissioners would
8 be free to participate in the workshop, but we would simply
9 need to make sure that it was noticed as one where
10 Commissioners either plan to be present or might be present so
11 that the public in general could attend.

12 CHAIRMAN BRADLEY: And I think I heard Commissioner
13 Edgar allude to the fact that participation might generate some
14 discussion that would give some indication as to -- might put a
15 Commissioner in the uncomfortable position of maybe
16 inadvertently giving the impression that this is what their
17 opinion is as it relates to a specific issue. Is that what --

18 COMMISSIONER EDGAR: That is a concern that I have.
19 And, again, I would just say that we have raised a number of
20 issues, we had two thoughtful options on Issue 1 presented to
21 us in the material from staff. I think Mr. Willis gave us,
22 perhaps, kind of a third option. There may be a fourth and a
23 fifth, I don't know. Mr. Moyle raised a number of comments
24 that I thought were very thought provoking that I would like
25 the opportunity for our staff and all of us to continue to

1 develop.

2 And, I do mean with all due haste. I agree with the
3 comments of my colleagues, there is no reason necessary to wait
4 until the June deadline. We know what the issues are and I
5 think we are all ready to dive into the discussion. I am just
6 a little uncomfortable with making a decision right now as to
7 what exactly those next steps are to further that discussion.
8 And I felt like we were getting into that a little bit, whereas
9 I would like the opportunity over the next few weeks for us to
10 work with our staff and figure out what the best way is to most
11 productively address the issues that have been raised.

12 CHAIRMAN BRADLEY: So you would like to modify the
13 motion to allow for a workshop, and then make the determination
14 after the workshop as to whether or not this Commission moves
15 into rulemaking? Because the workshop may indicate that that
16 is not necessary or it may indicate it is necessary. You would
17 like to remain open?

18 COMMISSIONER EDGAR: Yes, sir.

19 CHAIRMAN BRADLEY: Okay. Well --

20 COMMISSIONER ARRIAGA: May I?

21 Commissioner Edgar, this is what I was trying to say.
22 I always have the excuse that English is my second language.
23 Business as usual. What I meant is that I am worried at the
24 possibility that this workshop will lead us into standard offer
25 contracts filed under the traditional way, which is the way we

1 are doing it up till now without taking into consideration our
2 need to comply with the statute and promote renewable energy.
3 So if those workshops lead us into -- we leave that door open
4 and we avoid rulemaking, I don't think we are complying with
5 our obligation. So that is what I was trying to say.

6 I was saying let's hold the workshops, but gear
7 towards our ten-year site plan, the executives energy forum,
8 and more important of all, Florida Statutes, which is go ahead
9 and promote renewable energy. And it is evident that the way
10 we are doing it right now does not promote or has been done,
11 according to the present rule, does not promote renewable
12 energy. That is what I meant by business as usual. I hope
13 that clarifies your question.

14 COMMISSIONER EDGAR: Chairman Bradley, I think it
15 sounds like we are all interested in very early in the new year
16 having some thoughtful productive forward-looking discussions.

17 COMMISSIONER DEASON: Mr. Chairman, I don't want to
18 get hung up on the question of whether we do or do not go to
19 rulemaking. I'm inclined -- you know, before we had this
20 agreement, I was that close to just saying let's just set this
21 for a rulemaking and do whatever we have to do right now to
22 comply with the law effective January 1, and let's have a full
23 and open discussion on this. And at some point we still may
24 need to do that. But, I believe what we need to do is to allow
25 there to be more discussion in the form of a workshop. If that

1 has to be -- you know, I believe probably to be safe we can
2 notice it as a Commission workshop, that Commissioners would
3 attend or may attend so that we have got that covered and
4 Commissioners can choose, based upon their individual schedule,
5 as to whether they can or cannot participate.

6 And that we engage in those workshops with the
7 idea -- don't go in with the presumption that our present rules
8 are sufficient and let's just go forward with that. Let's go
9 forward with the idea of asking the broader question of what
10 rules would be the most -- or what rules would be best to
11 implement the new law. And if we get a resounding answer that
12 rulemaking is not necessary, that existing rules do that, I
13 think it is staff's obligation to come back and recommend to
14 us, and we will make the decision whether there is or is not to
15 be a workshop.

16 So, I know that is just kind of a roundabout way of
17 getting us there, but I think that is probably the best course
18 of action, Mr. Chairman.

19 CHAIRMAN BRADLEY: Well, I think that leaves this
20 Commission open to an openminded discussion and then to make a
21 determination.

22 COMMISSIONER DEASON: I think the
23 staff's recommendation, their modified recommendation addresses
24 the question of what do we do to make sure we are compliant
25 with the law effective January 1. I think their recommendation

1 does that. But it is not the end all, it is not the ideal
2 resolution of this. I think it is an ongoing matter, and I
3 think that another workshop would be helpful and that that
4 should be the next course of action. And based upon staff's
5 reflection, or maybe any reflection, if we attend that workshop
6 we will be better informed as to whether we need to go straight
7 to rulemaking or whether there needs to be another workshop
8 after that.

9 Just let me say for the record right now, I think
10 that it may be beneficial at some point to go to rulemaking.
11 We have got a new law. There are concerns being expressed by
12 the executive branch. We have the wording here in this law
13 that says that there is a desire to promote renewable energy.
14 I think it is something that we probably need to reassess, and
15 I think rulemaking is probably the best way to do that.

16 Now, I understand that there is probably a different
17 factual situation for each individual company, and I think that
18 that goes to the ability of this Commission to craft rules
19 which set out the rules but also allow flexibility to address
20 specific situations. I know that Gulf expressed some concern
21 about relative sizes of companies, and that there may need to
22 be flexibility in that. That seems reasonable to me. It seems
23 to me that we can still devise rules, but also allow a certain
24 amount of flexibility to address specific situations. And I'm
25 sure that during the -- if we end up in a rulemaking, that

1 there will be -- other companies would have situations that
2 they could bring to our attention that need to be -- a certain
3 amount of flexibility needs to be built into rules. I'm
4 certainly supportive of that. But I think that we need to take
5 a fresh look. We may end up right back where we are, I don't
6 know, but I think that we need to take a fresh look,
7 particularly since we have a new law.

8 CHAIRMAN BRADLEY: And I don't disagree with anything
9 you have said. I think the quandary that we are in right now
10 is we have a statute that has a definite date, and we need to
11 comply. And as with every issue that comes before this
12 Commission, there is always the probability of a filing being
13 put forth that dictates that additional discussion occur. And
14 I'm sure that's going to be the case with this particular
15 statute, that this Commission has the charge of enforcing or
16 regulating. But I think that we have an excellent beginning
17 point here with the negotiated agreement that we have before
18 us, and I think that we need to --

19 COMMISSIONER DEASON: Mr. Chairman, can I restate the
20 motion?

21 CHAIRMAN BRADLEY: Yes.

22 COMMISSIONER DEASON: I would move that consistent
23 with staff's modified recommendation that we either approve the
24 filed tariffs, or in the case of refiling of tariffs, that
25 those refilings be done consistent with our discussion here by

1 December the 28th, and that staff be given the ability to
2 administratively approve those modified tariffs. Therefore, we
3 would have a set of tariffs in effect come January 1, and we
4 will have complied with the law.

5 And that there be at least one further workshop that
6 would be noticed as a Commissioner workshop. And I noticed
7 that the prehearing officer is Commissioner Edgar. And at the
8 conclusion of that workshop that she, at that point, can
9 determine the next step, if there needs to be another workshop.
10 And if there is a question of rulemaking, I would like that to
11 be brought back to the Commission. Either a recommendation
12 that we go to rulemaking or a recommendation that we do not go
13 to rulemaking, and that be a Commission decision at that point.

14 COMMISSIONER ARRIAGA: I second the motion.

15 CHAIRMAN BRADLEY: Okay. We have a motion and a
16 second. All in favor say aye.

17 (Unanimous affirmative vote.)

18 MR. BALLINGER: I think one other thing we may want
19 to do administratively is close all the dockets. It might make
20 it easier going forward with noticing and things of that
21 nature, because what we come back to you may be a rulemaking
22 and may be a whole another docket number. These were
23 individual dockets for individual utilities. It's your
24 pleasure, I just wanted to mention that.

25 COMMISSIONER DEASON: Well, you are going to approve

1 the tariffs or the modified tariffs within these dockets and
2 once they are approved, you want to just close these dockets?

3 MR. BALLINGER: Yes, sir.

4 COMMISSIONER DEASON: Is there any problem with that?

5 MR. KEATING: Only to clarify that they would have
6 to -- they couldn't be closed until the time asking for a
7 hearing, or if there is any party out there who wants to
8 request a hearing on this decision could do so. If that 21-day
9 period expires without such a request, then we could close it.

10 COMMISSIONER DEASON: Then we can close the docket.

11 So moved.

12 COMMISSIONER EDGAR: Second.

13 CHAIRMAN BRADLEY: There is a motion and a second.

14 All in favor say aye.

15 (Unanimous affirmative vote.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

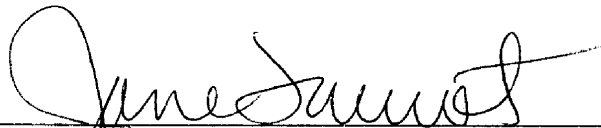
9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

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

19 DATED THIS 27th day of December, 2005.

20

21



22

23 JANE FAUROT, RPR
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