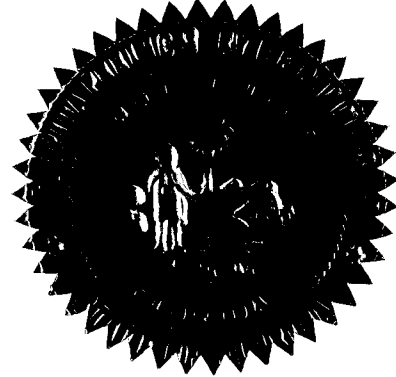


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060555-EI

In the Matter of:

PROPOSED AMENDMENTS TO RULE  
25-17.0832, F.A.C., FIRM CAPACITY  
AND ENERGY CONTRACTS.



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PROCEEDINGS:                   AGENDA CONFERENCE  
                                  ITEM NO. 4

BEFORE:                         CHAIRMAN LISA POLAK EDGAR  
                                  COMMISSIONER J. TERRY DEASON  
                                  COMMISSIONER ISILIO ARRIAGA  
                                  COMMISSIONER MATTHEW M. CARTER, II  
                                  COMMISSIONER KATRINA J. TEW

DATE:                            Tuesday, October 3, 2006

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

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

1 PARTICIPATING:

2 SUSAN CLARK, ESQUIRE, representing Florida Power &  
3 Light, Progress Energy, Tampa Electric Company and Gulf Power.

4 KATHRYN COWDERY, ESQUIRE, representing Covanta Energy  
5 Corporation.

6 ROBERT SCHEFFEL WRIGHT, ESQUIRE, representing  
7 Montenay-Dade Limited and Lee County.

8 RICHARD ZAMBO, ESQUIRE, representing Solid Waste  
9 Authority of Palm Beach County, City of Tampa and Florida  
10 Industrial Cogeneration Association.

11 VICKI GORDON KAUFMAN, ESQUIRE, representing  
12 Wheelabrator Technologies, Inc.

13 MICHAEL G. COOKE, GENERAL COUNSEL; LARRY HARRIS,  
14 ESQUIRE; and TOM BALLINGER, representing the Florida Public  
15 Service Commission Staff.

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

1  
2 MR. HARRIS: Good morning, Commissioners. Item 4 is  
3 staff's recommendation that the Commission propose amendments  
4 to Rule 25-17.0832, Firm Capacity and Energy Contracts. The  
5 intent of staff's recommended amendment to the rule are to  
6 implement Section 366.91, Florida Statutes, to promote  
7 renewable generation in Florida.

8 My name is Larry Harris. With me are Tom Ballinger  
9 and Judy Harlow of your staff. It's my -- we are available to  
10 answer any questions you have. It's my understanding there are  
11 a number of parties who are -- or interested persons who are  
12 here to speak on this item.

13 CHAIRMAN EDGAR: Commissioner.

14 MS. CLARK: Madam Chairman, my name is Susan Clark.  
15 I'm with the law firm of Radey, Thomas, Yon and Clark, and we  
16 are at 301 South Bronough Street, Suite 200, Tallahassee,  
17 Florida 32301. I'm here today on behalf of the IOUs: FP&L,  
18 Progress Energy, Tampa Electric Company and Gulf Power Company.

19 The staff's recommendation is a reasonable means of  
20 implementing the provisions of 366.91 and is consistent with  
21 your order that you issued in June approving the utility's  
22 tariffs and standard offer contracts for renewable resources  
23 and requiring FPL, Progress and Tampa Electric Company to file  
24 additional tariff and standard offers consistent with the  
25 fossil fuel portfolio approach.

1           The IOUs continue to support the development of  
2 renewable resources as an important resource in serving  
3 customers in the State of Florida. The proposed rules strike a  
4 balance of encouraging the development of renewable resources  
5 without overburdening current and future customers with the  
6 purchase of power -- with purchased power contracts at prices  
7 that result in customers paying more for power than is  
8 necessary. This balance has been a consistent part of the  
9 Legislature's intent with regard to renewable resources which  
10 was reiterated in 2006, and that intent is to promote the  
11 development of renewable energy and at the same time minimize  
12 cost to customers.

13           The IOUs accept the use of the portfolio approach to  
14 standard offer contracts for renewable generators and believe  
15 the staff's recommended rule language implements that approach  
16 in a reasonable manner.

17           Thank you, Madam Chairman.

18           CHAIRMAN EDGAR: Thank you.

19           MS. COWDERY: I'm Kathryn Cowdery with Ruden,  
20 McClosky, 215 South Monroe Street, Suite 815, Tallahassee,  
21 Florida, representing Covanta Energy Corporation.

22           Covanta is a renewable energy producer that owns or  
23 operates 31 waste energy facilities nationwide. We dispose of  
24 nearly 7 percent of the nation's waste, process about  
25 15 million tons of waste, produce about 1200 megawatts of

1 clean, renewable energy.

2 In Florida, Covanta operates four waste energy  
3 facilities: In Pasco, Hillsborough, Lee and Lake Counties.  
4 These facilities process over 1.25 million tons per year and  
5 generate about 114.5 megawatts of energy.

6 Covanta first became involved in these proceedings  
7 related to this rulemaking docket as a participant in the  
8 March 6th, 2006, workshop which was entitled "Implementation of  
9 Section 366.91, Florida Statutes, Standard Offer Contracts for  
10 Renewable Energy Resources." And I believe all the  
11 Commissioners attended that workshop. This workshop was  
12 requested by the Commission as part of the combined dockets of  
13 050805, 06, 07 and 10 regarding petitions of the IOUs for  
14 approval of new standard offer contracts for renewable energy  
15 producers. Covanta made a presentation at that workshop and  
16 also participated in formulating comments which were filed on  
17 March 24th, 2006. These were the Florida Renewable Energy  
18 Alliance comments, post-workshop comments.

19 The Florida Renewable Energy Alliance consisted of  
20 City of Tampa, Covanta Energy Corporation, Florida Industrial  
21 Cogeneration Association, Lee County, Montenay Power  
22 Corporation, National Public Energy, Solid Waste Authority of  
23 Palm Beach County, Wheelabrator Technologies, Inc. I raise  
24 this because these comments have been raised as being just as  
25 relevant in this particular rulemaking docket as it was back in

1 that workshop which was related to the standard offer contract  
2 docket.

3           Following the workshop -- well, the rulemaking  
4 workshop that was on August 26th also had post-workshop  
5 comments submitted. Covanta Energy is supporting the comments  
6 which were submitted by the renewable energy producers, which  
7 also includes attached a copy of those March 24th, 2006,  
8 comments.

9           In addition to the specific points, Covanta agrees  
10 with the renewable energy producers' basic position, which as  
11 soon as I get it in front of me -- let me see. Well, I wanted  
12 to read it into the record, but I guess I've shuffled the  
13 paper. But basically the position is that we've got a brand  
14 new statutory requirement in Florida. And what has happened  
15 with these rules from Covanta's point of view is we've done  
16 minimum changes in order to try to comply with 366.91, but a  
17 really much more global change needs to be affected here.  
18 We've got a lot of minimum requirements that we could look at  
19 in the standard offer contracts. These minimum requirements to  
20 encourage renewables in Florida could be listed in the rule  
21 itself, just as in the rule we put in the requirement that  
22 you've got to have a ten-year minimum.

23           Well, let's look at some of the other provisions that  
24 might be in those standard offer contracts that have been  
25 raised by the renewables and let's put that in the rule. Let's

1 have some consistency in the standard offer contracts so we  
2 have a good baseline for the renewables to start negotiating  
3 from. And I think that, you know, the comments of, of  
4 renewable energy producers which will likely follow me and some  
5 of the other producers will get into some of the more specifics  
6 and I don't need to be doing that.

7 I also feel that the letter that was sent by State  
8 Senator Michael Bennett who sponsored 366.91 which was sent to  
9 the Commission prior to the March 3rd workshop ought to be  
10 reviewed. I understand there's been maybe a newer letter that  
11 has been sent to the Commission, but I'm not privy to that. So  
12 I'd just like to re-put this in the record. This was put in  
13 the record on the March 3rd workshop. I think it's absolutely  
14 as relevant to this particular rulemaking proceeding.

15 And that letter read, "In anticipation of the  
16 upcoming March 6th workshop on the above matter, I urge the  
17 Commission to implement Section 366.91 according to the intent  
18 of the statute. The Legislature finds that it is in the public  
19 interest to promote the development of renewable energy  
20 resources in the state. This intent is vital to your  
21 appropriate implementation of the subsequent requirement that  
22 each public utility must continuously offer a purchase contract  
23 to producers of renewable energy. The contracts for these  
24 valuable resources must yield rates that encourage new  
25 development, as well as keeping existing facilities financially

1 sound. The current standard offer contracts available to these  
2 plants do not reflect their value to Florida's energy portfolio  
3 because the avoided cost formula currently in use does not  
4 translate into revenue that encourages renewable energy  
5 generation."

6           Commissioners, it would be a disservice to the State  
7 of Florida and our imminent energy needs if this statutory  
8 language is not translated appropriately into contracts for  
9 existing and future renewables. As you proceed with  
10 implementing the legislation I sponsored last year, I caution  
11 you not to maintain the status quo. The Legislature clearly  
12 intends in Section 366.91 that the purchase of renewable energy  
13 be encouraged, and that means at a price that reflects their  
14 value to the state. And this goes back to in our rulemaking  
15 proceeding, do we want to look at avoided cost more thoroughly  
16 than we have? Do we want to look at a statewide unit, you  
17 know, more thoroughly than we have? You know, Covanta feels  
18 like a lot of ideas have been put forward, but they haven't  
19 been really looked at closely in light of the 366.91 changes,  
20 but are more related to the status quo and how things have been  
21 done and, you know, keeping qualified facilities and all that  
22 language in place as opposed to focusing on the renewable  
23 energy producers and the statutory mandate. Thank you.

24           MR. ZAMBO: Good morning, Commissioners.

25           CHAIRMAN EDGAR: Just a moment. If you would give me



1 just a moment, then I absolutely will call on you.

2 Ms. Cowdery, just a follow-up on one of your  
3 comments, and then probably others as we move through our  
4 discussion on this item. But you mentioned perhaps a recent  
5 letter from Senator Bennett, and, yes, we have received a  
6 letter. It was dated October 2nd, and I received it and have  
7 looked at it for the first time about two minutes before I  
8 walked into the room. So I'm sure that our staff has copies,  
9 and probably others at the table with you. You said that you  
10 hadn't seen it, but we'll certainly be glad to share a copy of  
11 that with you and then we will all be looking at it about the  
12 same time.

13 MS. COWDERY: Thank you.

14 CHAIRMAN EDGAR: I'm sure there are some comments and  
15 questions, but we'll go ahead and move down the line and then  
16 we'll come back to it. And so if you would.

17 MR. ZAMBO: Thank you. Good morning, Commissioners.  
18 Rich Zambo appearing on behalf of Palm Beach County, City of  
19 Tampa and the Florida Industrial Cogeneration Association.

20 I've got some prepared comments here to help me, help  
21 guide me through this because there's a lot of issues I want to  
22 try to cover here. Unfortunately I've been involved in this  
23 since the early '80s and have a lot of history here that I'm  
24 afraid if I go through a lot of my comments, they're not going  
25 to make sense to you. So what I want to do is just start out,

1 if I can, and just address a couple of very fundamental issues  
2 upfront, and then I'd like to perhaps go through some of the  
3 details in the staff recommendation and proposal.

4           The first thing I want to point out to you is that  
5 the current rules that the staff is proposing to modify and  
6 what the renewable energy producers view as very, very minor  
7 aspects are the outfall of a law that was enacted in 1978  
8 called PURPA. So we've got something that's over -- these  
9 rules basically are based on a rule that's over 30 years old  
10 and on rules that were adopted by the Commission originally in  
11 1982. So it's 25 years ago by an entirely different Commission  
12 for an entirely different purpose, and it was at a time when  
13 non-utility generators were unheard of. So the Commission was  
14 dealing with a new type of, or new class of generators that had  
15 no history of performance reliability, financial stability.

16           And what the Commission did was it took, it took a  
17 methodology called the value of deferral, which is really the  
18 centerpiece of the cogeneration rules, both existing and what's  
19 being proposed by your staff today, they took the value of  
20 deferral which was developed by an engineer with Florida Power  
21 & Light, a fellow by the name of John Selke (phonetic) who some  
22 of you may, may know and remember, and it was designed at the  
23 time to allow the utilities to determine the benefits of  
24 delaying the construction of new power plants at a time when  
25 interest rates were approaching 20 percent and the price of

1 capital goods was spiralling out of control.

2           So there was a -- the purpose of value of deferral  
3 was originally to say if I've got a plant scheduled to go in  
4 service in five years, if I defer that plant one year, how  
5 much, how much money could I save and invest in other things  
6 like conservation? And eventually that methodology came to be  
7 applied to pricing for cogeneration for a couple of reasons:  
8 One, it was available and, two, it had the feature that its  
9 payment streams started out low and they increased over time.  
10 And that was important to the Commission at the time because,  
11 as I said, there was no history of reliability or performance  
12 for these nonutility generators. And by having payments  
13 increase over time, there was a perceived incentive for that  
14 generator to continue to operate. The problem with it was that  
15 it didn't provide a whole lot of financial incentive upfront,  
16 and so a lot of projects probably didn't get developed because  
17 the payments were -- they call -- you call them back-end  
18 loaded. The majority of the payments were out in the last, the  
19 last five or ten years of the contract.

20           However, when that value of deferral was adopted, it  
21 was adopted along with several other features. One of those  
22 was that it was a statewide avoided unit so that every utility  
23 would have the same standard offer that was available to any  
24 QF, qualifying facility, located in their service area, and it  
25 was also based on a baseload coal plant. And I believe that

1 under those terms and conditions is where most of the  
2 generation capacity that was signed up in Florida for  
3 nonutility generation, it was under those terms and conditions.  
4 The Commission later in the late '80s, early '90s moved away  
5 from the avoided, moved away from the statewide avoided unit,  
6 moved away from the baseload coal plant, and since that time,  
7 you know, frankly, very, very little capacity has been signed  
8 up for under these rules.

9           So even with the changes the Commission staff is  
10 proposing to do in this fossil fuel portfolio, in our opinion  
11 you're not going to get any, you're not going to get any  
12 incentive that's not already there. And if the incentives were  
13 already there, you'd have -- I don't think the Legislature  
14 would have needed to intervene.

15           The other, the other important point, I think, is  
16 that the rule or the law refers to avoided costs. And there's  
17 been some debate -- I raised this issue in one of the earlier  
18 workshops that in my opinion, my interpretation of the law is  
19 that the Legislature now intends you to use a different avoided  
20 cost than what you're using for qualifying facilities. And I  
21 reached that conclusion based on the fact that the statutes --  
22 366.91 refers to the definition of avoided cost as it appears  
23 in 366.051.

24           And 366.051 says the Commission shall authorize a  
25 rate equal to the purchasing utility's full avoided costs. And

1 those full avoidable, avoided costs are the incremental costs.  
2 So it defines avoided costs, but it also says that the rate  
3 shall be equal to the purchasing utility's avoided cost. Okay.  
4 That's the standard for QFs, for cogenerators and small power  
5 producers.

6           When you look at 366.91, it says that the contract  
7 shall contain payment provisions for energy and capacity which  
8 are based upon the utility's full avoided cost. It doesn't say  
9 they have to be equal to them. So in my view that's a totally  
10 different intent on the part of the Legislature.

11           And I think you got -- you may look at that and say,  
12 well, you're just playing with words. But if you look at the  
13 other, if you look at the overall picture, if you look at the  
14 major intent of this statute, it's to encourage renewable  
15 resources, to diversify fuel mix, reduce reliance on natural  
16 gas and reduce volatility in fuel prices or fuel costs among  
17 other things.

18           Now you compare the value of deferral in the  
19 cogeneration rules to what we have in this, in this statute and  
20 you say what's different? Let me -- what I think is different  
21 is this. In 366.051, the cogeneration rules, which are really  
22 in some ways referring to the federal law, the Public Utility  
23 Regulatory Policies Act, the avoided cost under that regime is  
24 the avoided cost that the utility would have incurred to build  
25 or buy additional generating capacity to serve load growth.

1 That's -- in other words, they need capacity to maintain the  
2 reserve margin.

3 I think what the Legislature is telling you in  
4 366.91 is we don't care about load growth. We care about fuel  
5 diversity, we care about how much natural gas you're using to  
6 generate electricity and we care about the volatility of energy  
7 prices because of the great volatility of natural gas. So I  
8 think the Legislature is telling you, we have declared there is  
9 a need for renewable energy facilities right now to diversify  
10 our fuel mix, to reduce the consumption of natural gas and to  
11 reduce volatility in fuel prices.

12 If you take that approach as valid, and I believe  
13 it's fully supportable in the language of the statutes, then  
14 you've got to ask yourself, okay, what would the -- if the  
15 utility were diversifying its fuel mix, what would it build,  
16 what would it cost, what technology would it be? And assume it  
17 could go online as soon as the renewable energy facility was  
18 ready to go in operation. I think that's what, I think that's  
19 what the avoided cost should be based on.

20 Now as far as value of deferral, I think value of  
21 deferral has outlived its useful life. We now have an industry  
22 that has a long track record of reliability. I dare say most  
23 of the nonrenewable -- or most of the renewable generators and  
24 nonutility generators are probably more, more reliable and  
25 efficient than utility generation.

1           Oh, and before I leave the, leave the point, based on  
2 the utility's Ten-Year Site Plans, their 2006 Ten-Year Site  
3 Plans that were filed in April of this year, I guess it's based  
4 on data ending Year 2005, December 2005, if you just look at  
5 the four investor-owned, Gulf, TECO, Progress and Florida  
6 Power & Light, it looks like in 2010 the projected fuel mix is  
7 about 50 percent natural gas and oil and the rest is a mixture  
8 of coal and nuclear, which I believe lends a lot of credence to  
9 the interpretation of the statute that we need to do things now  
10 to encourage, encourage renewables in order to diversify fuel  
11 mix.

12           Well, if you accept that assumption or that reading  
13 of it, then you say, okay, well, if we're going to diversify  
14 fuel mix and we're going to reduce the volatility of fuel, fuel  
15 prices, how much, how much capacity as a practical matter are  
16 we going to need from renewable energy resources? And I think  
17 that's a decision you have to make. But I think we currently  
18 have about 40,000 megawatts of capacity installed. I know  
19 those four investor-owned utility systems, in the next ten  
20 years that's expected to increase by another ten or  
21 15,000 megawatts. So we're talking about thousands of  
22 megawatts. We probably need five or 10,000 megawatts of  
23 renewable energy to really, to really diversify the fuel mix to  
24 the extent we need to. If we're 50 percent gas and oil now and  
25 we've got 40,000 megawatts, you know, just rough numbers,

1 that's 20,000 -- we'd need 10,000 megawatts just to get a  
2 25 percent renewable energy mix into the, into the fuel  
3 portfolio.

4           So with those -- with that basic, that basic  
5 background in mind, let me get into some of the, some of the  
6 details of the recommendation. And I'd like to make a comment  
7 first off because it's referred to in the staff recommendation  
8 and Ms. Clark referred to it, referred to your previous order  
9 as authority for what's being proposed here, and I would note  
10 to you that those previous orders have been -- are subject to  
11 protest. They have been protested and no hearing has been held  
12 on those orders yet because we were sort of awaiting this  
13 proceeding. So there's been no, there's been no evidentiary  
14 proceeding. So anything that's in those orders at this time I  
15 think -- I don't think can be used as authority to support the  
16 proposal that we have here.

17           Okay. In reviewing the recommendation, let me just  
18 make a few comments. It seems to me that the recommendation is  
19 just full of presumptions and assumptions that to my knowledge  
20 have not been aired anywhere, have not been subject to  
21 cross-examination or not, basically not evidence. And for  
22 example, the recommendation assumes that renewable energy is  
23 risky. It assumes that a statewide avoided unit would be  
24 difficult to administer. It assumes that avoided costs for  
25 renewable energy facilities must be exactly the same as the one



1 we're using for QFs. It assumes that a contract of more than  
2 ten years is risky. It assumes that utility generation is less  
3 risky than renewable. It assumes it's premature to consider  
4 goals for renewable energy. It assumes that a statewide  
5 avoided unit would impose unnecessary risk. And these are just  
6 a few of the, a few of the things that I picked out of the  
7 recommendation which led them to the conclusion in the proposal  
8 that staff has presented to you.

9           In contrast, the recommendation doesn't seem to pay  
10 much attention to what evidence we do have, and that is what  
11 does the statute tell us to do? And it says we should promote  
12 the development of renewable energy, it says we should protect  
13 the economic viability of renewable energy facilities, we  
14 should diversify the types of fuels we use to generate  
15 electricity, we should lessen our dependence on natural gas and  
16 fuel for the production of electricity, minimize volatility of  
17 fuel cost, encourage investment within the state and so on and  
18 so forth. And specifically the Legislature gives you guidance  
19 as to how this should be accomplished. It says the contract  
20 shall provide payment provisions that are based upon the  
21 utility's full avoided cost. So, again, you have, I believe  
22 you have the discretion to determine what that based upon full  
23 avoided cost is. You can define avoided cost however you would  
24 like, as long as it reflects the cost the utilities would  
25 otherwise incur to achieve the purpose that the Legislature has

1 set out, and that is to diversify fuel mix.

2           Clearly the Legislature intends that a different  
3 standard be applied in order to meet the state policy  
4 objectives. And as Ms. Cowdery read in Senator Bennett's  
5 letter, it appears to me that the Legislature would not have  
6 had to enact 366.91 and 92 if it intended to just maintain the  
7 status quo or to do minor modifications to the existing rules  
8 that have basically, again, have been in effect for about 25  
9 years.

10           Okay. There's a few other, a few other points I'd  
11 like to make. I will say that -- I want to refer to the fossil  
12 fuel portfolio approach, which is really the major, major  
13 change to the staff's proposal from existing rules. Two  
14 points: One is if the avoided unit is a natural gas-fired  
15 plant and the renewable generator provides energy and capacity  
16 using that as the avoided unit, although it's not using natural  
17 gas, it's using natural gas pricing, so I'm not sure that that  
18 fulfills the requirement to reduce fuel cost volatility because  
19 it would still be tied to the price of natural gas.

20           Now, granted, if we had enough renewable energy  
21 producers in the state, like ten or 20,000 megawatts, that  
22 reduce the demand for natural gas, then certainly maybe that  
23 would reduce volatility. But you'd have to be talking awfully  
24 large numbers. But the fossil fuel portfolio approach does  
25 provide more options, but I'm not sure how realistic those

1 options are because the unit that would pay the highest price,  
2 that would provide the most economic incentive is going to be  
3 the coal plant, but the coal plant is going to the furthest out  
4 in time anyway. So you're not, you're not talking about a  
5 current need for capacity the way the staff rule is proposed.  
6 You're talking about something far out in the future so you  
7 couldn't sign a contract and begin receiving, receiving  
8 payments immediately.

9           So we would encourage you to consider what -- I heard  
10 some talk about out-of-the-box thinking during the last agenda  
11 item and I think that's what's required here.

12           Here's a few other aspects of the proposal of  
13 concern. The value of deferral only pays full avoided cost  
14 over the, over the life of the avoided unit. So if you  
15 contract for less than the life of the avoided unit, you never  
16 receive full avoided cost. Now not suggesting that the value  
17 of deferral is the appropriate mechanism. However, if that's  
18 going to be proposed in the rule, you can't then arbitrarily  
19 say you're only going to be able to recover costs for ten years  
20 because that's basically like leasing a power plant that's  
21 going to have a 30-year life. Who's going to lease it to you  
22 for ten years and then say, okay, you can walk away without  
23 any, any repercussions? I mean, in the real world it just  
24 doesn't work that way.

25           So by definition, a contract for less than the life

1 of the avoided unit when using value of deferral capacity  
2 payments will not pay full avoided cost. So that in itself is,  
3 is a violation of both the federal and the state, state  
4 requirement that full avoided costs be paid.

5 We wonder, why should standard offers be different  
6 from utility to utility? Why doesn't the rule specify? It's  
7 called a standard offer. Why don't we specify the standards so  
8 that every contract is the same? There's some concern  
9 reflected in staff's recommendation about ease of  
10 administration. So it seems to me like if you had a single  
11 contract, a statewide contract, if you will, not, not  
12 necessarily a statewide avoided unit, I think the two can be  
13 separated, but I do support the statewide avoided unit, but  
14 certainly a statewide standard contract, same terms,  
15 conditions, everything would be exactly the same except if you  
16 didn't use a statewide avoided unit, the pricing would be  
17 different. And, of course, that gets me to the next point is  
18 the statewide avoided unit. If you have less than a statewide  
19 avoided unit, then it's just by the happenstance of where the  
20 renewable facility may be located whether or not he's going to  
21 have adequate encouragement. If it's located in a service area  
22 who doesn't have anything in its portfolio, its fossil  
23 portfolio because it's not planning anything, that generator  
24 can't sell to that utility, so it has to try to sell somewhere  
25 else and incur the cost of wheeling, the cost of line losses,

1 negotiating with the utility outside its service area and so  
2 on. And so we're -- you know, there's some pretty significant  
3 advantages to a statewide avoided unit.

4 Okay. I've skipped around a lot here, so let me just  
5 kind of close with -- I've got basically four, four little  
6 issues here that I wanted to try to emphasize.

7 The shortcomings of the proposed rule in my view, in  
8 my client's view is as follows: First and foremost, it links  
9 avoided cost to the utility's generating unit's plan to serve  
10 load growth. I think the Legislature is telling us that's not  
11 the standard they expect. They are now telling you to link it  
12 to the need to diversify fuel mix. You may end up with excess  
13 capacity just like we did when we built the coal by wire lines  
14 and other things, but we backed out of, we backed out of using  
15 oil and gas. And I think that's the key. We need to unlink,  
16 we need to unlink the rule from the utility need for capacity  
17 to serve load and link it to a utility capacity to diversify  
18 fuel mix.

19 Secondly, as I've already covered, the rule proposal  
20 and the value of deferral formula is terribly outdated. It's  
21 over 25 years old, was never intended for this purpose. It  
22 served as a stopgap measure. And we now have sufficient  
23 history to recognize that these facilities are reliable, they  
24 are here for the long-term and they're now an integrated part  
25 of the electric system, unlike in 1998 -- or 1978 when the law

1 was first passed.

2 Third, assuming the first two issues can be resolved,  
3 the rules are silent. And as I alluded to earlier, they're  
4 silent on aspects of the standard contract that could really  
5 make or break a deal. I think these rules need to focus in on  
6 what the utility can and cannot include in those contracts.  
7 And the Commission really should approve a standard contract  
8 and that would be the, that would be the limit. The importance  
9 of contract terms and conditions should not be underestimated,  
10 nor should they be minimized by staff routinely referring to  
11 the fact that, well, you can always negotiate a contract. I  
12 tell you, that doesn't work. If negotiating contracts was so  
13 easy, these renewable energy producers would be running all  
14 around the state generating power and we wouldn't have had the  
15 Legislature have to intervene in the first place.

16 And that kind of follows up to my fourth point was  
17 that we wouldn't be here except that the Legislature felt like  
18 it needed to take an unusual step in intervening in this  
19 process and expects us to implement some major changes in the  
20 status quo, and we would like to help you consider those major  
21 changes. And I thank you for your time.

22 CHAIRMAN EDGAR: Mr. Zambo, who did you say is your  
23 client on this issue?

24 MR. ZAMBO: Palm Beach County, it's actually the  
25 Solid Waste Authority of Palm Beach County, the City of Tampa

1 and the Florida Industrial Cogeneration Association.

2 CHAIRMAN EDGAR: Thank you.

3 Ms. Kaufman.

4 MS. KAUFMAN: Thank you, Madam Chairman. Vicki  
5 Gordon Kaufman; I'm with the Moyle, Flanigan Law Firm here in  
6 Tallahassee, and I'm appearing before you this morning on  
7 behalf of Wheelabrator Technologies, Inc. Wheelabrator is a  
8 waste energy provider here in the State of Florida.

9 Mr. Zambo did a pretty good job of highlighting a lot  
10 of the issues that the renewable generators, including  
11 Wheelabrator, have with the proposed rule that's in front of  
12 you. So I'll try not to repeat what he said, but I do think it  
13 bears repeating that I don't think the Legislature would have  
14 enacted Section 366.91 in 2005 and then followed it up with  
15 366.92 in 2006 if they didn't want to see a change in  
16 direction, if they didn't want to see a real push to encourage  
17 renewable energy. And so we would echo Mr. Zambo's comments.  
18 And I don't think that they're looking for business as usual.  
19 And I would urge you to look at Senator Bennett's two letters  
20 that he sent to you on this topic.

21 I just want to talk about the staff recommendation  
22 for a moment, and I wanted to direct your attention to Page 3,  
23 the first full paragraph where staff provides a little bit of a  
24 summary of the March 6th workshop. And they have three points  
25 there, and they say after they set out those points that there

1 appeared to be general agreement among the representatives of  
2 renewable generators on these issues. I'm only here to speak  
3 on behalf of Wheelabrator, but we do take issue with those  
4 comments. We certainly don't agree, from at least our  
5 perspective, that there was agreement on at least the first two  
6 points there. We don't agree that the ten-year minimum  
7 contract term should begin on the in-service date on the  
8 avoided unit. And as we've already said, one of the goals of  
9 the new statutes is to get as much renewable energy on the grid  
10 as quickly as possible for reasons of fuel diversity,  
11 environmental impacts and all the other issues that are set out  
12 in the statute.

13           This limitation that staff says we agree to but which  
14 we do not would cause existing renewable generators who may  
15 have renewable power to put on a grid right now to have to wait  
16 to put that energy on the grid -- assuming all the contractual  
17 terms that Mr. Zambo talked about could be worked out, and  
18 that's an entirely different issue -- but if they could, they  
19 would have to wait for the in-service date of the next avoided  
20 unit. There may be existing contracts expiring now and there  
21 may be energy available that this rule would get in the way of.  
22 And it also seems to me to be inconsistent with the requirement  
23 in 366.91 that these contracts be continuously available or  
24 that the utility be required to continuously offer these  
25 contracts. Payments ought to begin when the renewable energy



1 is available. And one thing we certainly think you should look  
2 at, as Section 366.92 states, is to set goals for the amount of  
3 renewable energy that is required, and that's in the 2006  
4 legislation.

5           Secondly, we don't agree with staff's representation  
6 that there should be a subscription limit for renewable  
7 generation. And, again, we think that's inconsistent with the  
8 requirement that these contracts be continuously offered. We  
9 agree with Mr. Zambo that there needs to be a look and a hard  
10 look at how avoided costs are calculated. We do not think that  
11 it should be based on the regime that's been in place for, I  
12 guess he said, 25 plus years.

13           Finally, on Page 9 your staff has a discussion of the  
14 renewable energy credits, and I know that that was discussed  
15 the last time this matter was before you. And we certainly  
16 don't have a problem with the IOUs having the, I think what's  
17 been called the right of first refusal to those credits. We  
18 agree that they belong to the renewable generator. We don't  
19 have a problem with the right of first refusal. But there is a  
20 practical problem there, and that is often when these credits  
21 are bid into the market, it occurs very quickly and the  
22 renewable generators have to have the ability to bid quickly.  
23 And so we see a problem if the renewable generator has to wait  
24 for an extended period of time for an answer from the utility  
25 as to whether or not they're interested in the credit. We

1 think that that's an issue that the rule ought to address, and  
2 that it should require the IOUs to commit to a rapid response  
3 as to whether or not they're going to exercise any right of  
4 first refusal.

5 We also agree with Mr. Zambo that the importance of  
6 contract terms cannot be overstated, and often times those  
7 terms are a barrier to these generators coming into the market.  
8 We think that's something that the rule needs to address.

9 And so in closing, I guess our point to you is that  
10 we think these rules have a very, very long way to go in  
11 complying with what we think is a very clear statutory  
12 direction, not in one session, but in two consecutive sessions,  
13 that we move forward to take extraordinary measures to  
14 encourage renewable generation. Thank you.

15 CHAIRMAN EDGAR: Thank you, Ms. Kaufman.

16 Mr. Wright.

17 MR. WRIGHT: Thank you, Madam Chair and  
18 Commissioners. I'm Schef Wright, and I have the privilege to  
19 be here today representing Montenay-Dade Limited, which  
20 operates the Dade County, Miami-Dade County Resources Recovery  
21 Facility, and also on behalf of Lee County, which owns the Lee  
22 County Resources Recovery Facility.

23 I'll begin by saying first that I agree with the  
24 comments of Mr. Zambo regarding, and Ms. Kaufman regarding the  
25 intent of Section 366.91. At a minimum, it is clear that it is

1 the intention of the Legislature to encourage renewable energy  
2 for all the reasons that we're all familiar with. I will have  
3 a side comment to make on the good old value of deferral  
4 methodology in my presentation.

5 I think we all agree that the goal of the legislation  
6 and the goal of this rulemaking is to try to move forward  
7 toward encouraging additional renewable energy. My clients'  
8 principal issue here and what I'm going to talk to you about  
9 today is the issue of the contract term. We strongly believe  
10 that the renewable energy producer should have the choice of  
11 the contract term between the minimum of ten years and the life  
12 of the avoided unit. Shorter terms discourage renewable energy  
13 projects. And as Mr. Zambo correctly pointed out, one  
14 function, one necessary result of using the value of deferral  
15 methodology is that if the QF enters into a contract of  
16 anything less than the life of the avoided unit, it will get a  
17 net present value of capacity-related costs less than the  
18 utilities. That's just how it works.

19 Now staff in their recommendation expresses concern  
20 about the risks driven in staff's view by fixed escalation  
21 rates that are embedded in the renewable energy standard  
22 offers, the risks that renewable energy power purchase  
23 agreements, standard offer contracts could become above market  
24 over time.

25 At the workshop and in our post-workshop comments I

1 articulated the following point which I do not see addressed in  
2 staff's recommendation, and it is this: The risk of an  
3 investment becoming above market cuts both ways. Just as a  
4 power purchase agreement with a life equal to the life of the  
5 utility's erstwhile avoided unit can become above market, so  
6 exactly are the same risks visited upon the customers if the  
7 utility builds its unit. This really ought to be fairly  
8 obvious. It's exogenous factors, technological changes, fuel  
9 cost changes that cause contracts to become above market. If  
10 the utility builds a unit, it will become above market if --  
11 and, remember, the standard offer of contract is based on the  
12 same economics and the same projected costs of the utility's  
13 avoided unit. If the utility builds the unit and economic  
14 conditions change, technology changes, fuel costs change, that  
15 unit is going to become above market.

16           And it's important to recognize that the fact that  
17 the escalation factors in the PPAs are fixed also cuts both  
18 ways. If the real-world escalation factors are less than those  
19 embedded in the contract, then, yes, it's possible that the  
20 standard offer of contract, the renewable energy contract could  
21 become above market. However, if the real-world escalation  
22 factors are greater than the fixed rates specified in the  
23 PPA -- then the opposite is true. In fact, the, the PPA, the  
24 standard offer of contract is below market and the QF is there  
25 getting paid less than the market value.

1           Additionally, counter to the staff's concern  
2 regarding the escalation factors and the risks attendant  
3 thereto, there are other risks on the side of the utility-built  
4 plant; what Commissioner Cresse occasionally referred to as  
5 creeping rate base where a utility, once it builds a plant, can  
6 add to the investment, to the rate base in the plant, thereby  
7 causing it to go up. And when there's a rate case, unless it's  
8 determined to be an imprudent investment, it can be ruled in.  
9 The utility has a chance to at least prove the prudence of  
10 that; whereas, the renewable energy producer or the QF has no  
11 such opportunity.

12           So the risks cut both ways. If the utility builds  
13 its unit, the ratepayers are exposed to essentially the same  
14 risks, plus the creeping rate base risk, as if the utility had  
15 signed a PPA with a renewable energy producer.

16           I had originally intended to close my comments by  
17 saying the following: Not only the facts but also the law and  
18 the policy and the public interest support the intent of the  
19 Legislature that renewable energy facilities, other things  
20 equal, ought to be the facilities out there that are producing  
21 electricity in Florida. However, I was fortunate -- and I  
22 didn't know anything about Senator Bennett's letter until  
23 Mr. Ballinger handed me a copy a little while ago, and the next  
24 to the last paragraph of his letter makes exactly the point  
25 using not quite the same words that I have used, and I'd like

1 to read it as my closing comment.

2 "The Commission is right to be concerned over the  
3 impact of its actions on the cost of electricity to the State's  
4 electric consumers. However, the high cost of not encouraging  
5 renewable energy is already being borne by the ratepayers  
6 through several extraordinarily large increases in the electric  
7 rates resulting from increases in the price of natural gas and  
8 lack of fuel diversity. It is not acceptable to ignore the  
9 clear intent of Section 366.91, Florida Statutes, on the basis  
10 that it might increase costs. To the contrary, the  
11 encouragement of renewable energy will protect Florida  
12 consumers from future uncontrollable increases in electric  
13 rates due to natural gas price volatility and lack of diversity  
14 in our generating fuel mix."

15 Thank you very much.

16 CHAIRMAN EDGAR: Thank you, Mr. Wright.

17 Commissioners, we've had a number of issues raised.  
18 I'm going to open it up for questions and discussion to --  
19 amongst us and to all of the presenters as you would like to  
20 ask questions, and of our staff. We can proceed a couple of  
21 different ways. If there are some specifics you'd like to ask  
22 about, we can do that, or we can ask our staff for a general  
23 response and then go from there. And I see that Commissioner  
24 Arriaga has a question. Commissioner Arriaga.

25 COMMISSIONER ARRIAGA: It's to you, Madam Chairman.

1 But I think I need a little break because this is going to be  
2 long.

3 CHAIRMAN EDGAR: I think it will be long and I look  
4 forward to it. So since I can't see the clock -- hold on.  
5 Okay. It is ten minutes to. Let's come back at five minutes  
6 after and we'll proceed with our discussion. We are on break.

7 (Recess taken.)

8 CHAIRMAN EDGAR: We're back on the record. And I, I  
9 think the way I'd like to proceed is we've heard a lot of  
10 issues raised; I'm appreciative of all of them. As I said  
11 right before the break, we'll have the opportunity to ask  
12 questions and have discussions. But I think what I'd like to  
13 do to start that is to look to our staff to explain to us where  
14 we are procedurally, realizing that this is a proposed rule  
15 that is before us, and I think there are a couple of different  
16 options that may present itself once we have that kind of  
17 procedural update. So with that, we'll start there and see  
18 where that takes us. Mr. Harris.

19 MR. HARRIS: Chairman, this is -- staff is  
20 recommending that you propose amendments to the rule, and that  
21 is that you would propose a rule today. The way staff would  
22 envision that is if you propose the amendment today, we could  
23 either set it directly for hearing, I believe there's a hold  
24 date for November 9th, or it could be the standard, which is if  
25 a hearing is requested, one will be held on November 9th. That

1 would give the parties who have raised a lot of concerns an  
2 opportunity to file written comments, request for hearing they  
3 could file testimony or comments. Most particularly, they  
4 could file their alternative rule language, and that would give  
5 the Commission something to consider. We've heard a lot of  
6 interesting concerns today, but we really don't have, staff  
7 doesn't really have any alternative language in front of us  
8 that we can really comment on to you right now.

9           The other alternative would be to not propose a rule  
10 today, to send it back for additional workshops. Staff would  
11 have, you know, a workshop or workshops, we'd consider that,  
12 and bring back another recommendation to you at some point in  
13 the future, which presumably would recommend that you propose  
14 some additional or alternative set of amendments to this rule.  
15 We don't have a time frame for that at this point. We are  
16 getting to the end of the year. The calendar for both staff  
17 and the Commission starts to tighten up, and it would be  
18 difficult, I think, for us to be able to get a recommendation  
19 back to you before November probably.

20           CHAIRMAN EDGAR: Commissioner Deason, did you have a  
21 question?

22           COMMISSIONER DEASON: Well, the question I had was  
23 concerning just what staff addressed, where we were  
24 procedurally and what alternatives that we have in front of us.

25           I have heard, Madam Chairman, I've heard a lot of



1 discussion here today, very thoughtful discussion. A lot of  
2 points have been made, a lot of it bears upon interpretation of  
3 a new statute, which is something that's critical. But at the  
4 same time, the discussion has been more philosophical than it  
5 is specific language. And normally when we get to a rule  
6 proposal, it is comforting to have some specific language, even  
7 people that are for or against a particular concept within a  
8 rule, I think it may be helpful if we, if we have the  
9 opportunity to have some specific language placed in front of  
10 us. And whether that means another workshop, maybe that's  
11 what's necessary. Or if -- I would just like to have a working  
12 piece in front of me with language either stricken or else  
13 another, a whole other alternative placed in front of us as  
14 opposed to -- while the discussion has been very thoughtful,  
15 it's difficult at this time to be making further amendments to  
16 what's in front of us. So if -- I agree with Mr. Harris; we  
17 either need to just go ahead and propose it and set it for  
18 hearing, or if we're going to try to come up with a more  
19 consensus approach to this, which may not be possible, but if  
20 we're going to attempt that, it may need another workshop. And  
21 I'm open to suggestions from other Commissioners as to how they  
22 feel we should proceed.

23 CHAIRMAN EDGAR: Thank you.

24 Commissioner Tew.

25 COMMISSIONER TEW: I have a question for staff that I

1 think will help me decide as far as the timing, so I think I'm  
2 on the same wavelength. I was reviewing the avoided units  
3 listed for each company in the PSC's June 2006 order, and I  
4 realize that order has been protested, but I was wondering if  
5 Ms. Harlow or Mr. Ballinger could tell me what happens if a  
6 utility files a need determination for some of these units that  
7 are listed before we get this rule in place? In other words,  
8 what are the consequences of delaying proposing a rule and  
9 going forward at this point with a hearing, if necessary?

10 MR. BALLINGER: Okay. I think you're asking about  
11 timing. Right now we have the 2006 Ten-Year Site Plans  
12 in-house which show a variety of units. If we wait and a rule  
13 doesn't go into effect until, let's say, December, the  
14 utilities have to file new contracts. The new Ten-Year Site  
15 Plans come in in April of '07 and you may see some of the units  
16 change. Specifically you might see some of the coal units go  
17 away if a need determination is filed in the interim because  
18 then they would not be on the table for a contract.

19 COMMISSIONER TEW: I guess my follow-up to that would  
20 be if the coal units go away, I'm assuming some of the parties  
21 at the table won't be happy that they won't have that in the  
22 portfolio. And I realize they don't support the portfolio  
23 approach, but they do want a statewide avoided unit based on  
24 coal as I understand it; right?

25 MR. BALLINGER: That's correct. That even if you, if

1 the Commission decided to go with a portfolio approach, the  
2 coal units may not be available because they have fallen out of  
3 the plan. That's a possibility.

4 CHAIRMAN EDGAR: Commissioner Arriaga.

5 COMMISSIONER ARRIAGA: Mr. Harris, let's go back to  
6 the procedure issue that concerns me. You gave us, I think,  
7 two options, and I think both options may indicate that we need  
8 to make a decision pro or against the proposed rule. Is it  
9 possible that we -- let me backtrack.

10 My understanding is that if we approve this rule as  
11 it is proposed, it's going to go, it's going to be protested by  
12 Mr. Zambo's client and many other people possibly. It's going  
13 to go to hearing. Why do we need to make a statement regarding  
14 the proposed rule, and just go to hearing right away and work  
15 it out at hearing? I don't know if I'm understanding the  
16 process.

17 MR. HARRIS: I'm not sure if I understand your  
18 question. In order to go to a hearing, we really have to have  
19 a proposed rule. That's where we get to the rule hearing. If  
20 you all wanted a workshop, it could either be a staff workshop  
21 or a Commission workshop, but that isn't a proposed rule. And  
22 we would still have to put it into rule proposal language,  
23 bring it before you for an affirmative vote. And so to move  
24 the process of actually getting a rule out there, it has to be  
25 proposed by you at some official meeting. And that can either

1 be today at this Agenda Conference with a rule hearing then  
2 that would be requested and set within 21 -- you know, the  
3 request would have to come in 21 days after publication of that  
4 proposed rule. Or if you go to workshop, we still have to get  
5 that into a final form that you all can vote on to propose or  
6 not. So I'm not sure if I'm answering your question.

7 COMMISSIONER ARRIAGA: Let me try to clarify. May I?  
8 I would like to go to hearing without making a statement on the  
9 merits of this rule. Is that possible?

10 MR. HARRIS: I think your motion could say you would  
11 like to get to hearing, and to do that you're proposing a rule  
12 as sort of a placeholder to get to hearing. I think your  
13 motion could say that, yes, Commissioner, without voting on the  
14 merits of this rule.

15 COMMISSIONER ARRIAGA: I'm not making a motion at  
16 this time. I think we need a lot more discussion. But that's  
17 what I'm trying to get at. I have certain concerns that are  
18 better discussed at a hearing, and I really wouldn't like to  
19 have to make statements today regarding the merits of this  
20 proposed rule.

21 MR. HARRIS: Yes, sir. And just thinking out loud, I  
22 would think that if you wanted to you could say, I'd like to  
23 propose a rule that says we want to encourage renewable  
24 generation in the State of Florida, and that would go to  
25 hearing. We don't know what that means, but that would be some

1 type of rule that would be actually proposed and published in  
2 the Florida Administrative Weekly, and we could receive  
3 comments on whatever else that needed to go with that rule  
4 proposal. That's just thinking off the top of my head. But I  
5 don't know that you need to have any -- staff has recommended  
6 language and we can defend the language we've recommended that  
7 you propose. If you're not comfortable with that, it's your  
8 proposal and it can be anything you want it to be.

9 COMMISSIONER ARRIAGA: I don't want to say if I'm  
10 either comfortable or not comfortable. I just want to say that  
11 I don't want to take any actions or merits on this rule. I  
12 would like to hear the evidence. That's basically it.

13 MR. HARRIS: Right.

14 COMMISSIONER ARRIAGA: Okay. Thank you,  
15 Commissioner.

16 CHAIRMAN EDGAR: Thank you.

17 Commissioner Carter.

18 COMMISSIONER CARTER: Madam Chairman, may I be  
19 recognized for a comment and a question, please?

20 CHAIRMAN EDGAR: You may.

21 COMMISSIONER CARTER: My comment is, ties in with  
22 what Commissioner Deason had said, and that was something that  
23 was in my mind is that somehow or another we need to have this  
24 proposed rule that's before us. But by the same token, we need  
25 to have something with a greater degree of specificity in terms

1 of what the real issues are.

2           And, I mean, however we get there, I would like to be  
3 able to see something in writing specific to -- if you've got a  
4 problem with Section 1, let's say it's Section 1 where it says,  
5 you know, brown cows eat green grass and give white milk, put  
6 it on there. You know, let's go specifically so we can go down  
7 there, so we can really know what we're talking about. And I  
8 don't know if it's a workshop or a rule or whatever the case  
9 may be. I'd like to get there so we can all be talking about  
10 oranges and oranges as opposed to oranges and watermelon.

11           Two, my question that I'd like to have on the record  
12 for staff is that you've heard a lot of comment today about  
13 this proposed rule contradicts the intent of the Legislature.  
14 And I just want you guys to explain, you know, how this rule as  
15 it's proposed does not contradict the intent of the  
16 Legislature.

17           MR. HARRIS: I'll take a stab at that, and then I'm  
18 sure Mr. Ballinger will correct me.

19           We believe that this rule that we are recommending  
20 you propose meets the intent of the Legislature to promote  
21 renewable generation in the State of Florida. We listened to  
22 the comments at the workshops and the written comments were  
23 received. We think that what we're doing is going to expand  
24 renewable generation. We're putting forth the portfolio  
25 approach, we're putting forth some payments and some contract

1 terms in terms of they can select the option from that  
2 portfolio that they believe best fits their needs. We think  
3 that's going to promote renewables. We think that's what the  
4 Legislature wanted us to do.

5 I heard a lot of the comments about the question of  
6 what full avoided cost means, and that may be a question for  
7 hearing. But we believe that this rule meets the needs of the  
8 Legislature in promoting renewables and meets your needs in  
9 promoting renewables in Florida. And so I don't necessarily  
10 agree with the comments that some of the generators made that  
11 this rule doesn't meet the intent of the Legislature. We think  
12 it does. If it didn't, we would not have recommended you  
13 propose it.

14 COMMISSIONER CARTER: Follow-up, Madam Chair.

15 CHAIRMAN EDGAR: Commissioner Carter.

16 COMMISSIONER CARTER: This is just a comment. And I  
17 think that all five of us on this Commission have been on  
18 record several times of saying that we are all in favor of  
19 renewables and alternative fuels and fuel diversity in Florida,  
20 I mean, on several occasions. The Governor said that, the  
21 Legislature said that, each one of us individually,  
22 collectively as a body we've said that, and staff knows that  
23 that's what we're talking about and everybody knows that. We  
24 want, we want to have this idyllic paradise we call Florida to  
25 be around in the next millennium.

1           So I don't think it's accurate to say that we're not  
2 in favor of renewables or fuel diversity neither by our staff  
3 nor this Commission. But I do think in the context of where we  
4 are now is that we want to have a transparent process, we want  
5 to have accountability, and it just gives -- it would give me  
6 great comfort, Madam Chair and my fellow Commissioners, if we  
7 could just have this rule as a working document. And whatever  
8 specifics that should go there, any party or an interested  
9 entity could make those and point it out with specificity so  
10 we'll have something in front of us that we can deal with. And  
11 I don't know how we get there, a workshop or maybe -- I don't  
12 know. Do we need to have people to have documents under a,  
13 under a case proceeding or do we need to have them in a  
14 workshop setting? But whatever we need, we need to have it  
15 specific to what we're addressing here in this issue. And the  
16 goal is fuel diversity. The goal is to say there's a welcome  
17 mat in Florida for renewable energy, you know. And that's what  
18 we're trying to do, we're trying to protect that. And I just  
19 wanted to, Madam Chairman, I just wanted to say for the record  
20 and have our staff, you know, say that our goal is to fully  
21 comply with the rule, the letter and the spirit of every law  
22 passed by the Florida Legislature. Thank you.

23           CHAIRMAN EDGAR: Thank you.

24           Commissioner Arriaga.

25           COMMISSIONER ARRIAGA: I just heard Mr. Harris do a



1 very eloquent support of the rule as proposed. And I had just  
2 said a few minutes ago that I was hoping that we did not have  
3 to discuss the merits of this rule, and I'm really holding back  
4 strongly not to go into that kind of discussion because I want  
5 to hear the evidence first. So I agree with Commissioner  
6 Deason and Commissioner Carter that we need a working document,  
7 and I would request respectfully to all the Commissioners to  
8 avoid a vote today because that would be an expression of  
9 intent on the part of the Commission.

10           What I would like to do is, yes, let's have a working  
11 document, let's discuss it without approving it or denying it  
12 so we don't have to take a vote today without listening to the  
13 evidence. That's basically what I'm trying to say. So if  
14 we're going to attack or defend positions today, I don't think  
15 this is the time we should do it. I think we need to listen to  
16 the evidence because it is evident that after ten months of  
17 negotiations we have no agreement and the staff has not been  
18 able to pursue or complete a rule that brings the parties to an  
19 agreement. That's basically what I'm trying to say.

20           MS. CLARK: Madam Chairman, may I make a comment or  
21 two?

22           CHAIRMAN EDGAR: Ms. Clark.

23           MS. CLARK: Just briefly I want to say to  
24 Commissioner Carter, we certainly disagree with the other  
25 intervenors in this docket that this rule as proposed doesn't

1 comply with the legislative intent. We certainly think it  
2 does. And I would draw your attention to the comments filed by  
3 FP&L which sets out the legislative history and some of the  
4 prior actions and prior items that were considered by the  
5 Legislature and not adopted, one of which was the statewide  
6 unit. That was in a 19, excuse me, a 2004 legislative  
7 proposal. It was not adopted by the Legislature. But I just  
8 want to be clear that we disagree with their characterization  
9 of what the rules do.

10           The other thing I would point out is you have already  
11 approved the filing of -- or you did a proposed agency action  
12 on the filing of standard offer contracts which contain the  
13 portfolio approach and some of the things suggested by your  
14 staff here. It is acceptable for you to say this is what we're  
15 proposing because it is consistent with what we had agreed on  
16 at this point; we're interested in more information on it and  
17 invite parties to submit specific language. You can make it  
18 clear that you continue to be open to further rule amendments  
19 that parties think are appropriate. And I would add to that  
20 that it's important for IOUs to know precisely the language  
21 they're proposing as well so we can file comments. It's  
22 difficult for us to respond to these sort of philosophical  
23 suggestions without knowing what the particulars are. So I  
24 would urge you to require them to file something.

25           COMMISSIONER DEASON: Madam Chairman.

1 CHAIRMAN EDGAR: Commissioner Deason.

2 COMMISSIONER DEASON: I have a question for  
3 Mr. Wright. Mr. Wright, first of all, is it possible to get in  
4 front of us a rule as -- I know you can just speak for your  
5 clients, but a rule that your clients would think would comply  
6 with the statute, precise language, whether it's type and  
7 strike of what staff has in front of us now or whether it's a  
8 whole new rule? Is that possible?

9 MR. WRIGHT: Of course, Commissioner Deason.

10 COMMISSIONER DEASON: And how would --

11 MR. WRIGHT: Yes, sir. Soon.

12 COMMISSIONER DEASON: And how would that -- would you  
13 prefer another round -- another workshop, would you prefer us  
14 to set it for hearing and allow you to file that within the  
15 confines of a hearing, and what type time frame are you looking  
16 at?

17 MR. WRIGHT: Madam Chair, Commissioner Deason, I  
18 think procedurally there is -- as Mr. Harris and y'all have  
19 been discussing, I think there are several ways you could get  
20 there. Respecting what Commissioner Arriaga has said, you  
21 know, personally my clients don't need a standard offer in  
22 effect next week or in January. Sooner, I think, is better in  
23 terms of the public interest to be served. But having said  
24 that, you know, we could, we could work within any framework  
25 you wanted.

1           One thing that just kind of rolled through my mind as  
2 y'all were discussing the various procedural options would be  
3 perhaps you could consider having a Commission workshop on  
4 November 9th without proposing rules in the meantime. We,  
5 we -- put us on the hook today to tell you exactly what we want  
6 by a date certain, sometime, you know, I would guess within the  
7 next 14 days, something like that, and we'll do what, we'll do  
8 what you ask us to do. We could have a Commission workshop on  
9 November 9th and then see where we are after that. Come back  
10 to an Agenda like this one with the proposed rule, having had  
11 the benefit of specific rule language in front of you and  
12 having had the benefit of a Commissioner workshop. That's an  
13 option that kind of seems to me to satisfy all the interests  
14 I've heard today, except for getting the rule in place as soon  
15 as possible. But as I said, you know, one, my clients don't  
16 need the standard offer in place next week or next month or in  
17 January. And, two, as we've all said many times, it's probably  
18 better to get it right the first time.

19           COMMISSIONER DEASON: Madam Chairman, would it be  
20 okay to have the others, other interested parties respond to  
21 that same question to which Mr. Wright just responded?

22           CHAIRMAN EDGAR: Absolutely. Who would like to  
23 begin?

24           MS. COWDERY: I'll start. Kathryn Cowdery for  
25 Covanta. It makes a lot of sense to me to go along the lines

1 of what Mr. Wright proposed. I mean, you've already got a date  
2 blocked out. And if parties are willing to put together a  
3 rule, that certainly gives you a lot more to work from. I  
4 can't speak for my client how it would want to pursue this at  
5 this time, but that certainly makes a lot of sense to me  
6 instead of jumping into a hearing with a rule that it doesn't  
7 sound like the Commission is completely comfortable with at  
8 this time.

9 CHAIRMAN EDGAR: Mr. Zambo, do you have a comment or  
10 response?

11 MR. ZAMBO: Yeah, Commissioners. I would -- a couple  
12 of points. One is I noticed in Senator Bennett's letter he  
13 says he's the Chair of the Joint Administrative Procedures  
14 Committee. So this is already in his, on his radar, so that  
15 committee is looking at these rules. So one of the things we  
16 need to -- I'm not sure how that Joint Administrative  
17 Procedures Committee works, but I believe that all proposed  
18 agency rules have to be approved by that committee. So  
19 whatever comes out of here needs to be something that's going  
20 to pass muster over there.

21 Another thing is I've got an outstanding protest on  
22 your previous order approving the standard offer contracts that  
23 raises many of these same issues, and we've asked for an  
24 evidentiary hearing in that, in that proceeding. So we also  
25 have that -- you know, that would be another way of addressing

1 some of these issues before you actually did a rulemaking, or  
2 you could do the rulemaking under 120.57, is it (2), the  
3 formal, the judicial proceeding. I just wanted to make sure  
4 you're aware that that's also pending out there.

5 But as far -- you know, I have no problem with the  
6 workshop. But, you know, we've been working on this for almost  
7 a year, and I don't think we're -- there hasn't been much  
8 movement. And I would, you know, I'd also point out that it's  
9 even stated in the staff recommendation that the direct -- the  
10 negotiations have been between staff and the utilities. We  
11 have not been involved in any negotiations up to this point.  
12 So if, if we're going to get anywhere, I think it needs to be  
13 all the parties involved with some willingness to, to move on  
14 some of these issues.

15 And let me make a brief response to something  
16 Ms. Clark said about the statewide avoided unit. That's  
17 already included in the statutes. 366.05(1) says the  
18 Commission may use a statewide avoided unit for purposes of  
19 establishing avoided costs. So it didn't need to be repeated  
20 in the, in the other statute.

21 But I would support a workshop. I think we need some  
22 time. I would hope that at least the industry, the renewable  
23 energy industry could coordinate those comments, so we're  
24 probably going to need three or four weeks to get that, get  
25 that done. And going to hearing on November 9th, I think,

1 would be totally unrealistic because I know my clients alone  
2 are probably going to want to present three or four witnesses,  
3 and I'm sure everyone else is going to have a pretty long slate  
4 of witnesses as well. So I would support the workshop with a  
5 proposed rule due to you, due to the Commission as the next,  
6 the next milestone in the process. Thank you.

7 CHAIRMAN EDGAR: Ms. Kaufman.

8 MS. KAUFMAN: Thank you, Madam Chairman. I think we  
9 would support the workshop concept as well. And I also would  
10 support you not proposing a rule today so as to not suggest in  
11 any way that, that you were either, you know, pro or con the  
12 rule.

13 I think that I agree with Mr. Zambo that having an  
14 evidentiary hearing on November 9th, I don't know that that's  
15 really doable. But perhaps using that date for a Commission  
16 workshop and having comments or proposed rule language in front  
17 of you, we might be able to make some progress that way.

18 CHAIRMAN EDGAR: Thank you.

19 Ms. Clark.

20 MS. CLARK: Madam Chairman, I just wanted something  
21 clarified. Is it -- are the renewable generators going to  
22 propose actual rule language so we're not in this constant sort  
23 of discussion, discussion of philosophy? This has been going  
24 on for more than a year. I mean, if you look at the transcript  
25 from the meeting you had towards the end of last year, you

1 expressed some frustration with things taking as long as they  
2 have. There has been ample opportunity for the renewable  
3 generators to put forth the language they feel implements the  
4 2005 legislation.

5 I guess we would ask that we'd like to look at that  
6 language, and I think it would be appropriate to have it before  
7 the workshop so that we can respond to it.

8 CHAIRMAN EDGAR: Thank you. Hold on a minute,  
9 gentlemen. Okay.

10 MS. CLARK: The other thing I would point out is, you  
11 know, the legislative language was by January 1, 2006, each  
12 utility must continuously offer a purchased capacity in energy  
13 from specific -- purchased contract from, for renewable  
14 resources. And those tariffs and contracts have been filed but  
15 they are not effective because of the protest.

16 CHAIRMAN EDGAR: Commissioner Tew.

17 COMMISSIONER TEW: Thank you, Chairman.

18 I was just going to go ahead and say that I normally  
19 prefer the workshop process to the hearing process. But I  
20 think in this case my tea leaves say, and probably based on  
21 some of the comments I've just heard, it seems like we're going  
22 to end up there anyway.

23 I have some concerns about the timing along the lines  
24 of the question I asked earlier, and perhaps it's best to ask  
25 the parties at the table about that. But if, if, and I stress



1 if, we ultimately approve some type of portfolio approach, it's  
2 my understanding that some of the renewable generators may lose  
3 the opportunity to use some proposed coal units in those  
4 portfolios that were listed in that order in June 2006. So I  
5 guess I'd like to direct a question toward you all about  
6 whether or not you're concerned that if we build delay into  
7 this where we have another workshop and then if we ultimately  
8 end up in hearing, are you concerned that you'll be missing out  
9 on an opportunity to use at least certain coal units that I see  
10 in the list as an avoided unit?

11 CHAIRMAN EDGAR: Mr. Zambo, would you like to  
12 respond?

13 MR. ZAMBO: I would respond, yeah. That's only an  
14 issue if you choose to adopt the rule as proposed by staff. If  
15 you choose to use the value of deferral and base capacity on  
16 the utility need for generation to serve load as opposed to our  
17 interpretation of that, you should defer or you should add  
18 capacity that diversifies the fuel mix irregardless of utility  
19 need for generating capacity.

20 As far as the timing, I don't think, you know, I  
21 don't have anybody out there who's chomping at the bit to sign  
22 one of those contracts. I don't think there's many people out  
23 there who would be affected by it immediately.

24 But I'd like to point out that the rulemaking was  
25 just initiated in August. I mean, this is not -- the

1 rulemaking part of this process is very new. Up until that  
2 point all the argument was over the standard contracts. And we  
3 had suggested early on in the process that a rulemaking was the  
4 appropriate way to proceed, and that was deferred until, I  
5 think, sometime in early August, maybe late July. But we're  
6 not that far into the rulemaking process is what I'm trying to  
7 say. So I agree with Mr. Wright; I'd rather take longer and  
8 get it right than try to be, be quicker about it and get  
9 something that we're not all happy with. Thank you.

10 CHAIRMAN EDGAR: Commissioners, I think that we're  
11 all basically saying the same thing and are struggling with the  
12 same question, which is how do we best get the information that  
13 we need in order to have the comfort level that we each need to  
14 have in order to move forward as a body? And I know I have, I  
15 have been frustrated some these past few months. It felt like  
16 to me when I would meet with staff and ask questions about  
17 where we were procedurally, that we were in a little bit of a  
18 do loop, that -- and I know Mr. Zambo said in his beginning  
19 comments earlier this morning that as a protester or  
20 representing the protesters, that they were waiting for this  
21 proceeding. And it seemed like we were kind of -- each piece  
22 of it was sort of waiting for the other. So I felt like it  
23 was -- would be useful to bring something to this body so that  
24 we would have the opportunity to discuss how indeed we need to  
25 move forward and not just be stuck on go, which in my opinion

1 is kind of where we've been these past few months.

2           You've heard me say on other issues that my desire as  
3 one Commissioner is to facilitate that as a body we move  
4 forward both thoughtfully and timely, and I think that applies  
5 on this issue as well.

6           Mr. Harris and the participants here in this  
7 discussion today have kind of pointed out a couple of ways that  
8 we can get there. And we all have stated that we would like to  
9 have something before us, and I think that that helps so that  
10 all of the participants know what it is they are commenting on.

11           So, Mr. Harris, you can jump in if I miss one, but I  
12 think with the bulk of this discussion what I'm hearing is that  
13 we can schedule for hearing. As you'll note from the item,  
14 it's not a surprise to us that, from this item that we might  
15 have been going to hearing, and we do have a date that we're  
16 holding on the schedule for November. If, indeed, as a body we  
17 feel like having that evidentiary proceeding and discussion,  
18 Commissioner Arriaga, as you have described, if we're ready to  
19 do that and then ready to hear that and move forward, we can do  
20 that I think from the schedule such that the recommendation  
21 would come for us, come before us prior to the end of this  
22 calendar year.

23           However, if we feel like we need to have more, more  
24 discussion and that it would be most useful to have workshops,  
25 we do have that one date. But that probably takes us into the

1 spring when you look at -- I know Commissioner Deason has the  
2 yellow sheet. We have a lot of hearings scheduled in November  
3 and December due primarily to the statutory time frames that we  
4 are required to meet on those petitions that are filed. So to  
5 just, to restate the obvious, if we feel that it is going to be  
6 helpful to have workshops, I am open to that; just recognize  
7 that that probably takes us into the spring. And if that's  
8 what we need to do in order to come up with that, that level of  
9 comfort that we need to have all the information before us, I  
10 am open to that as well.

11 COMMISSIONER CARTER: Madam Chair.

12 CHAIRMAN EDGAR: Commissioner Carter.

13 COMMISSIONER CARTER: I think that if we could, as  
14 Commissioner Deason so eloquently said, if we have something  
15 with a greater degree of specificity, we have a given here.  
16 Even going to the workshop concept, we have a given here. If  
17 we can have the parties to not, to play hide the ball or to, or  
18 to, you know, or try to wait for something, but just go ahead  
19 on and present your best case forward, we may be able to  
20 resolve this in the workshop process where everyone is putting  
21 out specific language about let's change this or let's change  
22 that and all like that. I would rather do that, and then when  
23 we get to hearing, it would be just a matter of approving an  
24 agreement of the parties. But I certainly wouldn't want the  
25 parties to feel that we're talking about having a workshop so

1 that they can, you know, sandbag the process, because that  
2 doesn't benefit anybody. But I do think that in view of the  
3 fact that we have this given with us -- and Commissioner  
4 Arriaga says, look, let's look at it, we don't want to say  
5 we're for or against it, that's okay too. We can take that to  
6 the workshop. But be advised to the parties that when you  
7 present the information, present it in such a manner that is  
8 specific, it addresses the concerns, it deals with the rule  
9 itself, and knowing that at the end of this workshop we're  
10 going to go ahead on and take it to the first available date on  
11 the calendar. That's, that's, you know, my take on it, Madam  
12 Chair.

13 CHAIRMAN EDGAR: Thank you, Commissioner Carter.  
14 Commissioner Arriaga.

15 COMMISSIONER ARRIAGA: I think we're all, like the  
16 Chairman said, we're all talking about the same thing in  
17 different ways. We need results and we have to get there  
18 somehow.

19 I don't have any problem with taking the document  
20 proposed by staff to a hearing. We have to grab the bull by  
21 the horns. It is our responsibility to draft the rules. It is  
22 staff's responsibility to draft them, present it, and discuss  
23 them, and we have to approve them or deny them. I don't think  
24 that we need to ask the renewables to draft a new rule because  
25 that would be unfair to the IOUs. I think, again, it's our

1 responsibility to do that, and we have done that.

2           To go back to a workshop, it's, again, the same  
3 repetition. We have been discussing standard offer contracts,  
4 and there was disagreement with standard offer contracts. When  
5 we started discussing the rules, there was disagreement. And I  
6 have heard over and over and over the same disagreements.  
7 We're going to go to a workshop and we're going to listen to  
8 the same disagreements. What I'm trying to say and what I'm  
9 trying to propose is let's go to hearing. Because we're going  
10 to hear the evidence, staff is going to hear the evidence and  
11 they're going to propose the rule, and it is our responsibility  
12 then to vote that rule and then let them go to court if they  
13 wish. But we have the responsibility to come up with something  
14 after we hear complete evidence. And right now after I hear  
15 all these arguments, I don't have the complete evidence. I  
16 would really like to hear formal evidence into the record.  
17 Then we come up with a rule and then, if they wish, they can go  
18 to court. But we have to assume our responsibility. That's --  
19 thank you.

20           COMMISSIONER DEASON: Madam Chairman.

21           CHAIRMAN EDGAR: Commissioner Deason.

22           COMMISSIONER DEASON: You know, I'm not opposed to  
23 going to hearing. But at the same time before we find  
24 ourselves in that mode, I think it's going to be beneficial for  
25 at least one Commissioner, I think for all Commissioners and

1 all involved if we have some specific language that the, that  
2 the renewable generator community believes properly implements  
3 the statutes that are in front of us. I've not seen that yet.  
4 I've heard some very eloquent arguments as to why what is in  
5 front of us now is not appropriate, but I don't have an  
6 alternative. And if it's going to be hearing or workshop or  
7 whatever, just at some point in the process I need to see some  
8 specific language that is represented to me that this  
9 implements the new, the new statute and why it implements it.  
10 And I don't have that in front of me. And I feel a vacuum  
11 there that needs to be filled at some point. And however is  
12 the best way to do that -- I was kind of hoping that this too  
13 would go to hearing in February, Madam Chairman. (Laughter.)  
14 But whatever is the appropriate way.

15 I know that there is the need to move along, but I  
16 think Mr. Zambo just said it's better to do it right than do it  
17 quickly. And that was the reason I asked Mr. Wright and had  
18 the others comment as well as to where -- if it would be  
19 appropriate to get some specific language. And I think that  
20 there was a willingness expressed by all of the renewable  
21 generators to work together and come, and come together with  
22 some type of a, of a proposal. At least I thought Mr. Zambo  
23 said he was willing to do that. I don't know if Mr. Wright is.  
24 But that's what I see lacking in this process right now. I  
25 don't have that specific language. I need further development

1 of the concept that full avoided cost as is in the statute  
2 means that we've got to deviate from our value of deferral  
3 methodology. I mean, that's one of Mr. Zambo's themes. Okay.  
4 If we're going to deviate from value of deferral, what then --  
5 there needs to be a mechanism that we utilize that defines full  
6 avoided cost. And at some point we're going to have to get  
7 into some, maybe some economic terms, accounting terms, maybe  
8 even some formulas, you know, at some point to fully understand  
9 what we're doing here.

10 And I also need more information on the concept that  
11 was put forth by Mr. Zambo that the, that renewables need to be  
12 promoted and the goal should be fuel diversification and no  
13 longer should it be -- the term "avoided cost" is no longer  
14 just linked to the concept of capacity deferral, that avoided  
15 cost is somehow expanded to include potential avoided cost of  
16 future increases in fuel or volatility of fuel. That's an  
17 entirely new concept to me. I'm not saying it's good or bad.  
18 I'm just saying it's a new concept. And, Mr. Zambo, I just  
19 don't see any flesh on the bones at this point, and I need that  
20 before we can go forward with the rule. Either agree or  
21 disagree with your concepts, we need some language, something  
22 that puts meat on the bones.

23 CHAIRMAN EDGAR: Thank you, Commissioner Deason.

24 Mr. Wright, I know you wanted to make a comment, so  
25 I'm going to call on you here in a second. And then,



1 Ms. Clark, I'll give you the opportunity. And then, Mr. Cooke,  
2 I'm going to look to you. So, Mr. Wright.

3 MR. WRIGHT: Thank you, Madam Chairman. Briefly, I  
4 just want to make it clear the thought I had. I'll commit to  
5 you -- I'm reaffirming the commitment I gave in response to  
6 Commissioner Deason's question. We, my clients will give you  
7 specific proposed rule language that will implement what we  
8 think addresses our concern, the choice of contract term issue,  
9 and that'll be easy. We will do it on whatever schedule you  
10 tell us to do it. It will be specific. I will make it in type  
11 and strike format.

12 I will also commit to you that we will work with the  
13 other renewable energy producers towards the goal of having a  
14 unified comprehensive proposal. However, I've got to tell you  
15 that I can't commit that we will come out of that with a  
16 unified comprehensive proposal. Frankly, we just honestly have  
17 some honest differences of opinion amongst ourselves on a  
18 couple of the issues. But that's where Montenay and Lee County  
19 are. And whatever schedule you say, Madam Chairman, we'll  
20 meet.

21 CHAIRMAN EDGAR: Thank you.

22 Ms. Clark.

23 MS. CLARK: Madam Chairman, I would just add that the  
24 IOUs need to see that language in advance of the hearing so  
25 that we can provide meaningful response to the language. And

1 by that, I mean more than a week ahead of time. We need a  
2 couple of weeks to be able to look at it and digest it.

3 CHAIRMAN EDGAR: Mr. Cooke.

4 MR. COOKE: Well, I think Mr. Harris did a very good  
5 job of summarizing the options, which is, number one, what's  
6 before you right now is a proposed rule and asking you to adopt  
7 that as a proposed rule. If that happens, that doesn't  
8 necessarily mean that you agree with the merits of that rule.  
9 It simply moves the ball forward. And the only reason I  
10 mention that is the only way for us -- and we use terms like  
11 "hearing" in a lot of different ways. The only way to have a  
12 rule hearing at this stage would be for the Commission to  
13 accept a proposed rule.

14 Now, alternatively, what Mr. Harris laid out was  
15 conduct a further workshop. And I think what I'm hearing the  
16 Commission say is you're really more comfortable having a  
17 workshop but you want specific comments. I don't know that we  
18 can compel parties to give us draft language. I think, as  
19 Commissioner Arriaga pointed out, it's up to us to draft  
20 language. But you do have a commitment verbally from one of  
21 the interested persons to do that. So I believe if the  
22 interested persons are willing to do that and bring that into  
23 the Commission so that everybody can take a look at it in  
24 advance of the November 9th date, I believe it is, that would  
25 probably address the approach you want to take, which is to

1 have a workshop, a further workshop, but also have some  
2 specific language to really review and discuss and be able to  
3 move this process forward.

4           Again, there are two options. One is to vote to  
5 propose this rule, and in which case we could conduct a hearing  
6 on November 9th on specific language in the proposal and take  
7 information from all of the interested persons. There would  
8 still likely be a further final decision-making in December on  
9 that if that's the process that's pursued.

10           Alternatively, schedule a workshop for, say,  
11 November 9th, but hopefully have a commitment from interested  
12 persons to give you specific language that they would like you  
13 to look at and review.

14           After that workshop, staff still would have to  
15 recommend a proposed rule to you all, just so that's clear. We  
16 still would have to come back to another agenda or another  
17 meeting at which a recommendation is considered on a different  
18 proposed rule.

19           CHAIRMAN EDGAR: Commissioner Arriaga.

20           COMMISSIONER ARRIAGA: Commissioners, I apologize for  
21 beating a dead horse to death, but I just, you know -- in  
22 opportunities where we've had contentious issues at the  
23 Commission I have asked staff several times to present  
24 alternatives. I'm very uncomfortable in asking the renewables  
25 to draft something for our consideration. I think our staff

1 can clearly understand the differences because they've been  
2 dealing with this difference many times. And they can come up  
3 with two alternatives: Their point of view and the  
4 discrepancies that are presented and the arguments that we have  
5 heard today.

6 To delegate staff authority on a participant to draft  
7 a rule for our consideration, again, I repeat, it's completely  
8 out of place, I think, and it's unfair to the IOUs. You've  
9 heard Ms. Clark already say, "I need to see that," and rightly  
10 so. So I really think that we need to confine whatever drafts  
11 are going to be made alternatives to our staff. Again, it's  
12 not a point of honor. I'm willing to go with the majority. I  
13 just wanted to make that point. I'm really uncomfortable with  
14 having the renewables as a participating party drafting  
15 something for us to rule on.

16 MR. HARRIS: Commissioner, may I ask a clarifying  
17 question about that comment? I'm sorry.

18 CHAIRMAN EDGAR: Mr. Harris.

19 MR. HARRIS: Staff would be bringing you a  
20 recommendation that you would ultimately vote on. I may have  
21 misunderstood you, but I'm a little uncomfortable if I heard  
22 you suggesting that you would like us at this point to take a  
23 stab at producing an alternative that might meet the  
24 renewables' needs. I don't know that staff is in a position to  
25 do that.

1           We would suggest, if that's your concern, that you do  
2 ask for the written comments with specificity from the  
3 renewables, take that to some type of workshop, and then give  
4 staff the alternative at that point based on the comments that  
5 they had filed, the written comments that they had filed in the  
6 workshop to have, to present you an alternative. But at this  
7 point I don't believe the technical staff and myself would be  
8 comfortable with taking what we think we know the renewables  
9 want and bringing back to you some type of recommendation with  
10 an alternative that contains what we think they might like to  
11 have in it. We just can't do that.

12           COMMISSIONER ARRIAGA: I'm trying to satisfy  
13 Commissioner Deason's quest here. He needs alternative  
14 language. And I think it is worse to ask a participating party  
15 to have its own interests draft the language for us. I think  
16 that's your responsibility.

17           MR. HARRIS: Yes, sir. We would be, have the  
18 responsibility of bringing a recommendation to you. I agree.  
19 But I'm not sure that we could draft language from the get-go  
20 before we saw something from them in writing. And that could  
21 be just workshop comments or comments following today or  
22 something, but we would like to see something from them.

23           COMMISSIONER ARRIAGA: So you're -- I'm sorry, Madam  
24 Chairman. You're saying that you cannot draft alternatives for  
25 us?

1 MR. HARRIS: No, Commissioner. I'm saying we can,  
2 but we would be uncomfortable doing that without seeing  
3 something from --

4 COMMISSIONER ARRIAGA: Well, okay. I'm uncomfortable  
5 taking so many decisions in this bench that I have to take, but  
6 that's what I do. So to ask you to draft an alternative I  
7 don't think is out of place. I don't know. I may be making a  
8 big mistake here. But I think it's not out of place.

9 MR. HARRIS: We'll do whatever you tell us.

10 CHAIRMAN EDGAR: Hold on. Okay. Once again, I think  
11 we're all trying to get to the same place, so let's have a  
12 little more discussion and then we're going to bring it in for  
13 a landing. And, Commissioner Tew, I know that you've been  
14 waiting, so I'd like to afford that opportunity. And,  
15 Commissioner Arriaga, we will come back and try to wrap it all  
16 up together.

17 Commissioner Tew.

18 COMMISSIONER TEW: Thank you, Chairman.

19 Along those lines, I wanted to ask our legal staff if  
20 we were to go to hearing with some proposed rule, if we decide  
21 today to vote some proposed rule out and went to a rule  
22 hearing, can't, doesn't that process allow for any party to  
23 that hearing to propose alternative rule language or to do type  
24 and strikes like we're talking about in the context of a  
25 hearing process?

1           MR. HARRIS: Yes, ma'am. And, in fact, what we would  
2 anticipate is that this rule hearing would be like the other  
3 rule hearings where the parties would file written comments and  
4 alternative rule language in advance that would be made a part  
5 of the evidentiary record at the hearing. And the comments at  
6 the hearing then would be based on either the proposed rule,  
7 whatever it was, or comments that the parties had filed in  
8 advance. And that's the standard procedure for rule hearings;  
9 parties file alternative rule language in advance -- at least  
10 the few orders I've done, the orders establishing procedure  
11 have required that well in advance of the hearing date.

12           CHAIRMAN EDGAR: Commissioner Tew.

13           COMMISSIONER TEW: So to clarify, staff's proposal or  
14 however the Commission modifies it would go forward into a rule  
15 hearing, if we chose that option. So you would have proposed  
16 that language and we would have adopted some form of that, and  
17 then the parties can propose any other alternatives. And when  
18 the time comes for a decision, we have your alternative as  
19 adopted by us and any other alternatives on the table before us  
20 to choose from.

21           MR. HARRIS: Yes. And you also have staff analysis  
22 of the alternatives in the recommendation.

23           COMMISSIONER TEW: Commissioners, I'll just tell you  
24 that I would prefer to move on to a hearing. But I will go  
25 along, of course, with whatever the other Commissioners want.

1 I believe we're going to end up in a hearing anyway. Maybe I'm  
2 not being optimistic enough, but I believe we're going to go  
3 through a workshop and we're still going to have to propose  
4 some form of rule even if it's different than this one. And I  
5 think that it's the fastest way to get the alternatives before  
6 us and make a decision to try to implement what the Legislature  
7 has asked us to do.

8 CHAIRMAN EDGAR: Commissioners, further discussion?  
9 Commissioner Carter.

10 COMMISSIONER CARTER: Madam Chair, I -- it seems like  
11 we've got a ping-pong match going on here. But, I mean, if  
12 this is the only way to get information with a greater  
13 degree -- I was talking about the workshop. I'll take a hit  
14 for that. But if the only way we can get a greater degree of  
15 specificity as well as the information and the written  
16 proposals, strike and delete, to go with the hearing, then, you  
17 know, I don't have a problem supporting this. But I just, like  
18 I said earlier in my earlier comments, I just don't want to be  
19 sandbagged. You know, we've gone on for a year. But in all  
20 fairness, you really can't expect us to unilaterally make a  
21 decision from the bench based upon, as you said, philosophical  
22 discussion and there's no context to put it in. I mean, it  
23 sounds good, it's good rhetoric, but there's no meat and bread,  
24 you know. So, I mean, I think that if, if the only way we can  
25 get the information we need is presented in a manner where



1 staff can evaluate it and say, this is the information that was  
2 presented, this is our position, Party A presented this  
3 alternative, Party B presented this alternative, Party C, and  
4 here are the copies based upon the proposed rule, if the only  
5 way we can get that is in a hearing, I'm saying let's go to a  
6 hearing.

7 MR. COOKE: Madam Chairman --

8 CHAIRMAN EDGAR: Mr. Cooke.

9 MR. COOKE: -- can I just make one point, which is we  
10 can't control the interested parties. If we go to a hearing,  
11 they may still not give us comments. It's likely that they  
12 will, but, you know, the Commission can only do so much. And  
13 if interested parties, either in a workshop or if a proposed  
14 rule goes forward and there's a hearing, we can't guarantee  
15 that we will receive information.

16 CHAIRMAN EDGAR: Commissioner Carter.

17 COMMISSIONER CARTER: Notwithstanding our inability  
18 or lack of control for the parties, but I would have no problem  
19 whatsoever voting on a rule if they don't show up. I say let's  
20 rock and roll.

21 CHAIRMAN EDGAR: Commissioner Deason.

22 COMMISSIONER DEASON: Mr. Cooke, I agree, we can't  
23 control the parties, and that's why I'm trying to say if you  
24 want my vote to support one of your philosophical comments,  
25 you're not going to get it until you show me specific language

1 that you represent accomplishes what you said philosophically.  
2 And if you're not going to do that, fine, you're not going to  
3 get my vote. Okay? It's that simple. You get the message?  
4 Okay.

5 CHAIRMAN EDGAR: Okay. As I said a few moments ago,  
6 we're going to bring it in for a landing. So very briefly,  
7 Ms. Cowdery.

8 MS. COWDERY: Yes. I think that if you want comments  
9 from the renewables in the form of a rule, that probably can be  
10 accomplished by November 9th. I personally have some grave  
11 reservations that you could actually have a hearing on the 9th  
12 if you are, in fact, wanting to have prefiled testimony, and we  
13 might be getting into formulas if we're talking about going  
14 away from the deferral value method. It just seems like that  
15 would be pushing it quite a bit.

16 And I think the idea -- I think in answer very  
17 belatedly to Commissioner Tew's question is I don't know of  
18 anything that Covanta has got, you know, in the works that they  
19 would have a concern with not going ahead with a thoughtful  
20 rulemaking process. I think they'd rather see that. I think  
21 the idea of submitting the comments is not, you know, here,  
22 renewables, this is what you should submit to the  
23 Commissioners. It's this is what we would like to see in the  
24 format of a rule, staff. This is what we would like you to  
25 consider specifically, as opposed to just the comments we've

1 given you saying we would like to see this drafted into the  
2 rule. That's my comment.

3 CHAIRMAN EDGAR: Mr. Zambo, briefly, please.

4 MR. ZAMBO: Yes, Madam Chairman. I just wanted to  
5 make two comments, and one is I hope you don't take this in the  
6 wrong way or out of context. But one of the concerns we have,  
7 it's stated right here on Page 3 of the staff recommendation,  
8 staff has continued to negotiate with the IOUs regarding the  
9 staff's concern. So I -- and I interpret that to say that the  
10 proposed rule you see before you is a product of staff and the  
11 IOUs, and that's why the IOUs are not objecting to it. If you  
12 go to hearing on that rule, it's going to be us, the  
13 renewables, who the rule is supposed to encourage, against your  
14 staff and the IOUs on the other side. And that just to me  
15 seems like it's a fundamentally unfair situation to put us in.  
16 So I would, I would suggest you not propose the rule at this  
17 point, do another rulemaking, make sure that the renewables are  
18 included in negotiations, and try to come up with a rule that  
19 acknowledges some of our, our concerns and issues. Thank you.

20 MR. BALLINGER: Chairman Edgar.

21 CHAIRMAN EDGAR: Mr. Ballinger.

22 MR. BALLINGER: If I may, that statement was done  
23 before we even went to rulemaking. It was done at a time where  
24 all parties at the beginning when the statute was passed agreed  
25 that we could implement the statute under existing rules. We

1 were working with all parties, we had workshops and meetings  
2 with everyone invited in attendance. That statement was about  
3 the issues that the IOUs raised about the portfolio approach.  
4 That's why the statement is we negotiated with the IOUs. That  
5 was their concerns we addressed. It's not that we ignored the  
6 renewables' concerns. That statement was telling you the  
7 process we had gone through. It's an explanation of the  
8 history of it. It was prior to the rulemaking that we're into  
9 now. So we have had negotiations with all the parties going on  
10 almost two years now through this process. I just wanted to  
11 make that clear.

12 CHAIRMAN EDGAR: Thank you.

13 Commissioner Arriaga.

14 COMMISSIONER ARRIAGA: Mr. Ballinger's comments are  
15 to the point, which brings again the issue, this is a dead  
16 horse that we're beating to death. We've got to go to hearing.  
17 I mean, there's no way out. Let's go to hearing. I mean,  
18 it's --

19 CHAIRMAN EDGAR: Commissioners, further discussion?

20 MS. KAUFMAN: Chairman Edgar, I'm sorry.

21 CHAIRMAN EDGAR: Ms. Kaufman.

22 MS. KAUFMAN: I've been relatively quiet. If I could  
23 just indulge you for one moment.

24 You seem to be going down the hearing route, and we  
25 don't have an issue with that. But I would like to reiterate

1 that I don't think that whatever format you require from the  
2 parties, alternative rule language, we've had a lot of issues  
3 raised that may be complex. I really don't think that it is  
4 going to be possible to have an evidentiary hearing on  
5 November 9th. And so I would ask that as you consider what  
6 path you're going to follow, that you keep that in mind.  
7 Because if you're talking about testimony and reply testimony,  
8 I don't think that that's going to be possible by -- and to  
9 actually conduct the hearing on November 9th. It's about 30  
10 days away.

11 MS. CLARK: Madam Chairman.

12 CHAIRMAN EDGAR: Ms. Clark.

13 MS. CLARK: I would point out this is a rulemaking  
14 hearing wherein you don't have prefiled testimony and rebuttal.  
15 This is on your -- it's under your legislative function as to  
16 what policy that you're going to follow. And I would point out  
17 that I think there have been proceedings where parties have  
18 been apprised of the fact that they need to file their comments  
19 or suggested language prior to a rulemaking hearing.

20 CHAIRMAN EDGAR: Thank you.

21 Mr. Harris, could you walk us briefly as well  
22 through -- this will not be set in stone yet, but thinking  
23 through the time frame. If we were to go to a, if we were to  
24 go to a hearing on November 9th, which is a date that we have  
25 put on hold, if indeed we need it for this issue, if we were to

1 do that, what are the steps procedurally between here and there  
2 to get us ready and in the correct posture for that and the  
3 information that would be available to the Commissioners, and  
4 then the steps after that to bring it to one step of closure?

5 MR. HARRIS: Yes, ma'am. As I anticipate, were the  
6 Commissioners to want to go to a hearing on November 9th, I  
7 would suggest that you propose a rule of some type today. You  
8 don't have to agree with it, but get something out there as a  
9 rule proposal. We would publish that in the Florida  
10 Administrative Weekly. It would be published a week from  
11 Friday, which would be October 13th. The statute requires  
12 21 days for written comments or requests for hearing to be  
13 received. That time period would expire on Friday the 3rd.

14 I would anticipate that either that notice or an  
15 order of the Commission would come out of the prehearing  
16 officer extremely quickly that would say these written comments  
17 should include written rule language, proposals for alternative  
18 rule language, parties are to provide that in writing in  
19 advance of the hearing, and would establish some dates. And I  
20 don't know what those are. We'd have to work with the  
21 prehearing officer. That would be -- the 21 days would run on  
22 November 3rd if the hearing were held on November 9th. The  
23 Commission then would take some further action.

24 What we would anticipate is staff would bring a  
25 recommendation -- you would presumably set post-workshop

1 comments. Those would be filed at some date, mid-November.  
2 Staff, depending on the rate you told us, the very quickest,  
3 mid-November for post-workshop comments. A staff  
4 recommendation to be filed December, it looks like 7th for a  
5 December 19th Agenda Conference. That would be the earliest we  
6 could do it. We could do it later than that were you all to  
7 tell us.

8           So the dates as I see it is an FAW notice goes out  
9 next Friday, the 13th. 21 days runs November 3rd. A hearing  
10 on November 11th would require post-workshop comments to be  
11 filed sometime within two weeks of that, so around the 22nd,  
12 23rd. The 23rd is Thanksgiving, so around the 22nd of  
13 November. Staff recommendation comes out on the 7th of  
14 December for the December 19th workshop -- Agenda Conference.  
15 At the earliest, at the Agenda Conference you all would vote on  
16 whether to adopt the second staff recommended proposals or not.  
17 And you could then, you know, make a decision not to and set it  
18 for additional hearing or -- we could be back in the same  
19 position we're here today. But that would be November. And we  
20 would commit to having staff analysis of any alternatives that  
21 were provided in writing and anything we heard at the Agenda  
22 Conference, we will do our very, very best to analyze that and  
23 provide alternatives to you for your consideration.

24           CHAIRMAN EDGAR: Thank you, Mr. Harris.

25           Commissioners, as you've heard, a number, number of

1 steps in that process. We would be -- it would be a bit of a  
2 push, but I think it's doable.

3 Are there any questions of our staff on that time  
4 line or anything else related to it?

5 COMMISSIONER DEASON: I have a question, Madam Chair.

6 CHAIRMAN EDGAR: Commissioner Deason.

7 COMMISSIONER DEASON: Is there any -- there's no  
8 statutory requirement that we have a rule in place by a certain  
9 date, is there?

10 MR. HARRIS: No, sir.

11 COMMISSIONER DEASON: Okay. But I get the impression  
12 we're having a big push to have this done by the end of  
13 December, and I hope it's not for my benefit because I  
14 certainly would --

15 (Laughter.)

16 MR. HARRIS: Staff feels the need to give you an  
17 appropriate going-away present, Commissioner.

18 COMMISSIONER DEASON: Well, the present would be you  
19 to take this to hearing in January, February or March.

20 (Laughter.)

21 I'm not trying to shirk my responsibility, but I feel  
22 a certain amount of desire to get this done and there seems to  
23 be, you know, by the end of December. I hope that's not for my  
24 benefit really.

25 And I've heard, and I heard comment from a number of



1 the interested persons that they feel that a, a hearing on the  
2 9th of November is extremely burdensome and difficult. You  
3 know, but if we set it, that would be up to them to meet it.  
4 I'm not saying that they couldn't do it.

5 CHAIRMAN EDGAR: Commissioner, if I may, and I did  
6 not mean to interrupt, but while I'm on that same train of  
7 thought. I think there is a little bit of a push. Now whether  
8 that is December or, or February or March or whatever date that  
9 is, I do not have a set date in my mind. And I don't know if  
10 others do; I do not.

11 But we have heard some, what I interpret as criticism  
12 from some of the participants in our discussion that we've been  
13 talking about this for a number of months, that it's been  
14 dragging on, that there has not been activity. At the same  
15 time I'm hearing some of the same people say, well, we're at  
16 the beginning of the process. So obviously it could be  
17 interpreted a number of ways.

18 I also have heard and have read that the Legislature  
19 gave us direction in '05 and that they acted again in '06, and  
20 implicit in that also seems to be some criticism of this  
21 Commission that we have not acted.

22 I come back to my comments earlier and from other  
23 meetings that I do want our deliberations to be both thoughtful  
24 and timely. So I don't feel that the end of the year is a date  
25 that has to be met either by statute or my own interpretation.

1 But yet, as I said earlier, we've kind of been in this do loop,  
2 and I have felt that it was necessary to get something before  
3 us so we could have the discussion as to how, how we want to  
4 proceed and how we can best proceed. And then there is the  
5 reality of the calendar and my desire as, as your Chairman to  
6 not begin a proceeding that due to scheduling constraints we  
7 have difficulty finishing. And I don't know if that answers  
8 your question. I hope it does.

9 COMMISSIONER DEASON: Yes. Thank you.

10 COMMISSIONER CARTER: Madam Chairman.

11 CHAIRMAN EDGAR: Commissioner Carter.

12 COMMISSIONER CARTER: At the appropriate time I'm  
13 prepared to move staff's recommendation on this issue and send  
14 it to hearing and we'll just go ahead on. Because, again, I  
15 mean, as I said earlier, I was in favor of the workshop, but  
16 I'm certainly not in favor of being sandbagged.

17 Secondly, I'm not in favor of people on one hand  
18 making representations in this room and then when the cameras  
19 are rolling making other kinds of representations.

20 So I'm prepared to move staff's recommendation on  
21 this, set it to hearing, people file their proceedings as they  
22 would in any other and we go on from there. I mean, you know,  
23 let's just see it, and then we'll see, you know, where the  
24 rubber meets the road.

25 CHAIRMAN EDGAR: Commissioner Tew.

1           COMMISSIONER TEW: I can second that motion. But I'd  
2 also like to say that I think everyone in this room has heard  
3 from the Commission that you can tell that our minds aren't  
4 made up about exactly what the end result should look like. I  
5 think that we're trying to put something out there to move this  
6 along and meet the requirements that have been set forth by the  
7 Legislature, as many people have pointed out, in 2005 and 2006.  
8 And so I second the motion with that understanding that I am  
9 open to hearing the arguments. I, like Commissioner Deason,  
10 want to see rule proposals from the other parties and have  
11 everything in front of me on each of the issues that you've  
12 raised rather than conceptual issues. So with that, I second  
13 the motion.

14           CHAIRMAN EDGAR: Thank you.

15           Commissioner Arriaga.

16           COMMISSIONER ARRIAGA: I'm going to go along with  
17 your motion and your second. I just want to make sure that it  
18 is clear to all of us that I am not voting on the merits of  
19 this proposal. Because if we are, I may have to vote no. So  
20 can this be accommodated? Can I vote yes on the motion but  
21 without pronouncement on the merits of the motion or the merits  
22 of the material? I don't want to vote yes or no on this rule.  
23 I'm not -- I don't know. I don't know.

24           COMMISSIONER CARTER: May I respond?

25           CHAIRMAN EDGAR: You may. Commissioner Arriaga, this

1 Chairman will always attempt to enable every member to make a  
2 comment about any vote.

3 Commissioner Carter.

4 COMMISSIONER CARTER: I just wanted to say for the  
5 record is that what we're doing is advancing the dialogue.  
6 We're not saying yea or nay, but at least -- in order to get  
7 specific responses to the proposed rule, everyone said they  
8 want to move it to a perspective where we don't get sandbagged,  
9 where we get specific information based upon the proposal  
10 that's before us. We're not necessarily voting on the merits  
11 of the rule because I think our initial discussion with staff  
12 was a procedural matter the Chairman raised, all the other  
13 Commissioners raised it. We started down this road on a  
14 procedural matter: How do we get to the end of the road?  
15 We're not talking about how to cut the Gordian Knot right now.  
16 We're talking about how do we get to the end of the road where  
17 we get to determine how to do this.

18 So I don't think this is a vote on the merits of this  
19 proposal or any other proposal. It's a vote to move the  
20 process so we can get clearly defined information based upon  
21 the specific proposal that we have before us. And so I hope  
22 that's an explanation as to where we're headed because I think  
23 Commissioner Tew in her second voiced these same concerns;  
24 Commissioner Deason has talked about the fact that we need to  
25 have something with greater specificity. If we don't get the

1 greater specificity, we can't vote on the concept. And the  
2 Chairman has indulged us to go -- you know, we beat a dead  
3 horse to sleep, and I think now, you know, we need to move on.

4 CHAIRMAN EDGAR: Thank you. Thank you all.

5 There is a motion. There has been a second.

6 MR. HARRIS: I'm sorry.

7 CHAIRMAN EDGAR: Are there questions about the  
8 motion?

9 Mr. Harris.

10 MR. HARRIS: Yes, ma'am. Are you voting to set it  
11 for hearing on November 9th?

12 CHAIRMAN EDGAR: That was my understanding.  
13 Commissioner Carter, is that your intent? And, Commissioner  
14 Tew, that was your understanding as well. And Commissioner  
15 Arriaga, you may.

16 COMMISSIONER ARRIAGA: I have a question, and this is  
17 to staff. Does this vote that we're taking today to take this  
18 to a hearing on the 9th based on the documents you have  
19 presented, are you interpreting this vote that we're giving you  
20 guidance to proceed with this rule, to defend it with honor?

21 MR. HARRIS: My understanding, Commissioner, of this  
22 motion is that you are intending to move this process forward  
23 by setting a hearing date. And in order to do that, there  
24 needs to be a proposed rule of some type out there. I'm taking  
25 it very clearly that there is no -- I think my understanding of

1 the motion is you are not specifically endorsing this  
2 particular rule language. You're simply proposing a rule to  
3 get this process moved forward.

4 COMMISSIONER ARRIAGA: Thank you, Mr. Harris.

5 MR. HARRIS: And I believe the order will include  
6 that understanding.

7 CHAIRMAN EDGAR: Mr. Cooke, did you have an  
8 additional comment?

9 MR. COOKE: I agree with that. I don't think you're  
10 expressing that you're agreeing with the merits of the rule.  
11 You're setting it -- or adopting the proposed rule so that  
12 there can be a hearing on it.

13 CHAIRMAN EDGAR: Thank you.

14 Commissioners, further discussion.

15 COMMISSIONER DEASON: One, one quick thing.

16 CHAIRMAN EDGAR: Commissioner Deason.

17 COMMISSIONER DEASON: I looked with some trepidation  
18 as to who the prehearing officer is in this case and I see that  
19 it is myself.

20 (Laughter.)

21 CHAIRMAN EDGAR: It may or may not surprise you to  
22 know that your Chairman was aware of that.

23 COMMISSIONER DEASON: Oh, another gift, huh? Okay.

24 (Laughter.)

25 If we go to hearing, are we going to issue a

1 procedural order, Mr. Harris?

2 MR. HARRIS: That will be staff's recommendation to  
3 you, yes, sir.

4 COMMISSIONER DEASON: And there's -- we will  
5 incorporate when interested persons need to file prehearing  
6 comments and proposed language, if they are so inclined, we  
7 want to set a filing date for that, is that --

8 MR. HARRIS: That would be my recommendation to you,  
9 yes, sir.

10 COMMISSIONER DEASON: Okay.

11 CHAIRMAN EDGAR: Okay?

12 COMMISSIONER DEASON: Okay.

13 CHAIRMAN EDGAR: Okay. And it did take a little  
14 longer than I predicted, but that's okay.

15 Okay. Commissioners, we have a motion, we have a  
16 second, we've had discussion, we've had the opportunity for  
17 clarification. All in favor of the motion, please say aye.

18 (Unanimous affirmative vote.)

19 Opposed? Show the motion carried. Thank you all,  
20 thank you all for your participation. We look forward to more  
21 discussion.

22 (Discussion on Item 4 concluded.)

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1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

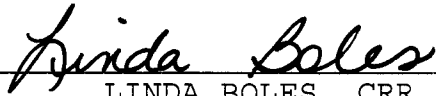
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I, LINDA BOLES, CRR, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 10TH DAY OF OCTOBER, 2006.

  
LINDA BOLES, CRR, RPR  
FPSC Official Commission Reporter  
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