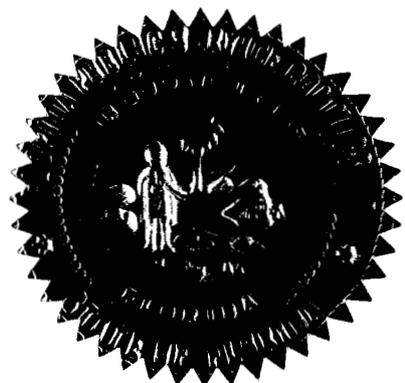


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070098-EI

In the Matter of:

PETITION FOR DETERMINATION OF NEED
FOR GLADES POWER PARK UNITS 1 AND
2 ELECTRICAL POWER PLANTS IN GLADES
COUNTY, BY FLORIDA POWER & LIGHT
COMPANY.



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER MATTHEW M. CARTER, II
Prehearing Officer

DATE: Thursday, April 5, 2007

TIME: Commenced at 9:35 a.m.
Concluded at 10:16 a.m.

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

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

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 R. WADE LITCHFIELD, ESQUIRE, BRYAN S. ANDERSON,
3 ESQUIRE, and NATALIE F. SMITH, ESQUIRE, 700 Universe Boulevard,
4 Juno Beach, Florida 33408-0420, appearing on behalf of Florida
5 Power & Light Company.

6 TAMELA IVEY PERDUE, ESQUIRE, Stiles, Taylor & Grace,
7 P.A., Post Office Box 1140, Tallahassee, Florida 32301,
8 appearing on behalf of Associated Industries of Florida (AIF).

9 CHARLES BECK, INTERIM PUBLIC COUNSEL, Office of
10 Public Counsel, c/o The Florida Legislature, 111 West Madison
11 Street, Room 812, Tallahassee, Florida 32399-1400, appearing on
12 behalf of the Citizens of the State of Florida.

13 MICHAEL GROSS, ESQUIRE, Earthjustice, Post Office Box
14 1329, Tallahassee, Florida 32302, appearing on behalf of Sierra
15 Club, Save Our Creeks, Florida Wildlife Federation, ECOSWF, and
16 Peterson.

17 BOB and JAN KRASOWSKI, 1086 Michigan Avenue, Naples,
18 Florida 34103-3857, appearing pro se.

19 JENNIFER S. BRUBAKER, ESQUIRE, KATHERINE E. FLEMING,
20 ESQUIRE, and LORENA A. HOLLEY, ESQUIRE, Florida Public Service
21 Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida
22 32399-0850, appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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COMMISSIONER CARTER: Call this prehearing to order.
Staff, would you please read the notice.

MS. BRUBAKER: Certainly, Commissioner. Pursuant to
notice, this time and place has been scheduled for the purpose
of conducting a prehearing conference in Docket 070098-EI. The
purpose of the prehearing is set forth more fully in the
notice.

COMMISSIONER CARTER: Okay. Let's take appearances.

MR. LITCHFIELD: Good morning, Commissioner Carter.
Thank you. My name is Wade Litchfield appearing on behalf of
Florida Power & Light, and with me is Bryan Anderson. And I
would also enter an appearance for Natalie Smith. Thank you.

MS. PERDUE: Good morning. Tamela Perdue on behalf
of Associated Industries of Florida.

MR. BECK: Good morning, Commissioner. Charlie Beck,
Office of the Public Counsel, appearing on behalf of Florida's
citizens.

MR. GROSS: Good morning, Commissioner Carter. My
name is Michael Gross. I'm an attorney with Earthjustice
representing Sierra Club and several other intervening
environmental organizations. Thank you.

MR. KRASOWSKI: Good morning, Commissioner Carter.
My name is Bob Krasowski and I'm here representing myself,
along with my wife Jan, as customers of FP&L, residents of

1 Florida and environmental and economic advocates and activists.

2 COMMISSIONER CARTER: Okay. Great.

3 Staff?

4 MS. BRUBAKER: On behalf of the Commission, Jennifer
5 Brubaker, Katherine Fleming, and also entering an appearance
6 for Lorena Holley.

7 COMMISSIONER CARTER: Okay, then. Preliminary
8 matters?

9 MS. BRUBAKER: Yes. There are actually a number of
10 preliminary matters. There are currently pending two petitions
11 for intervention, one by Associated Industries of Florida or
12 AIF, and one for Bob and Jan Krasowski. And I would recommend
13 that we go ahead and take those two up in whichever order you
14 prefer. Perhaps we start with AIF.

15 COMMISSIONER CARTER: Let's do that. Let's start
16 with AIF, Associated Industries.

17 MS. BRUBAKER: The petition has been filed. There
18 has been a limited opportunity for any kind of filed comments,
19 so I think it would be appropriate, to the extent any of the
20 parties wish to comment on the petition for intervention, that
21 they be allowed to give their comments at this time.

22 COMMISSIONER CARTER: Let me just see if there are
23 any objections. If there are no objections, then we won't need
24 any comments. Are there any objections? Okay. Hearing none,
25 next we have a petition to -- so let it be known that

1 intervention is granted for Associated Industries, for Bob and
2 Jan Krasowski. Did I get it right?

3 MR. KRASOWSKI: Yes, sir.

4 COMMISSIONER CARTER: Sorry.

5 MS. BRUBAKER: And -- I'm sorry, Commissioner. My
6 recommendation would be that a separate order issue on the
7 intervention just to keep the record clean and clear versus
8 having it as a ruling as part of the prehearing order.

9 COMMISSIONER CARTER: Make it so.

10 Okay. Bob and Jan Krasowski. Did I get it right or
11 am I close? Help me.

12 MR. KRASOWSKI: It's Krasowski.

13 COMMISSIONER CARTER: Krasowski.

14 MR. KRASOWSKI: Yes, sir.

15 COMMISSIONER CARTER: Krasowski.

16 MR. KRASOWSKI: It's pronounced Krasowski.

17 COMMISSIONER CARTER: Krasowski.

18 MR. KRASOWSKI: Yes, sir.

19 COMMISSIONER CARTER: That's close; right?

20 MR. KRASOWSKI: That's right on.

21 COMMISSIONER CARTER: Oh, okay. Got it. Krasowski.
22 It's melodic and it's kind of like a musical note there.
23 Krasowski.

24 Okay. I'm sorry. Does anyone object to the
25 intervention of Bob and Jan Krasowski?

1 MR. LITCHFIELD: Commissioner Carter, FPL does have
2 an objection, if we might be heard.

3 COMMISSIONER CARTER: Okay. You're recognized.

4 MR. LITCHFIELD: Thank you. We, we don't typically
5 like to oppose interventions, that's not really our practice,
6 Commissioner Carter, but we think the circumstances here are a
7 little different than ordinary.

8 Mr. Krasowski is a customer of FPL, but he is also
9 well-known in environmental circles, we interact with the same
10 constituents and member organizations of which he is a member
11 routinely. In fact, we are part of the environmental community
12 at FPL. And so we would not want in any way our opposition to
13 this particular intervention to be construed as, as an
14 opposition to any of these groups or their efforts or
15 activities. In fact, you know, we expect to continue dialogue
16 with them in the other venues and jurisdictions in which those
17 issues will be fully vetted. But we think that there are some
18 circumstances here that would warrant not granting this
19 intervention at this particular time.

20 To the extent that, that the Krasowskis are customers
21 of FPL, their interests are fully represented, more than
22 adequately represented by the Office of Public Counsel. I
23 might add that Ellen Peterson is an individual customer of FPL
24 who has been granted intervention status as a customer of FPL
25 and is being represented here by counsel, Mr. Gross. So to the

1 extent that their interests are of a customer nature, they are
2 more than adequately represented by either Mr. Beck or
3 Mr. Gross and could be heard in that fashion.

4 To the extent that their interests are essentially
5 environmental interests, of course, Mr. Gross represents four
6 such entities in the State of Florida including the Sierra
7 Club, of which we understand Mr. Krasowski is an active member,
8 and his interests can be heard through Mr. Gross's
9 representation with respect to those parties.

10 Of course, we would not object to the Krasowskis
11 being added as parties to that intervention and to be
12 represented by Mr. Gross. But we're not accustomed in electric
13 cases of general scope and applicability such as a rate case or
14 a need case in having a customer represent himself pro se. We
15 think that that can add undue delay and an inconvenience to an
16 otherwise efficient administrative process, and so we would ask
17 you to take that into consideration.

18 Ultimately, to the extent that they are here and
19 their interests are in alignment with, with the Sierra Club and
20 other environmental constituents represented by Mr. Gross, we
21 would respectfully request that they not be allowed to engage
22 in friendly cross. That ultimately, I think, is the heart of
23 our concern. And that would conclude my remarks on that topic.
24 Thank you.

25 MR. GROSS: Commissioner Carter, may I make a

1 comment?

2 COMMISSIONER CARTER: Just a second.

3 MR. GROSS: Okay.

4 COMMISSIONER CARTER: Hang on a second. I'm going in
5 order. I'm going in order. I'm going in order. Okay? Mr.
6 Beck -- excuse me. Associated Industries, do you have a
7 comment?

8 MS. PERDUE: No comment.

9 COMMISSIONER CARTER: Mr. Beck, you're recognized.

10 MR. BECK: Commissioner, let me address, I guess, the
11 issue about our office's participation and whether, you know,
12 our office represents the interests, the same interests as
13 Mr. Krasowski.

14 Our office represents the general body of ratepayers.
15 We're going to have limited positions in the case. I don't
16 expect at all that we're going to take positions on every
17 issue, but we have some positions. I think Mr. Krasowski
18 probably wants to take on his own behalf positions that go
19 further than our office's.

20 I agree with Florida Power & Light that, you know,
21 generally there aren't customers in some cases, but it's not at
22 all unusual for customers to appear pro se in many other cases
23 that we have at the Commission. You know, I can think of water
24 and wastewater in particular where it's not at all uncommon.
25 So that's -- I just wanted you to be aware of how I think our

1 office's position fits compared to Mr. Krasowski.

2 COMMISSIONER CARTER: Mr. Gross, welcome back.

3 MR. GROSS: Thank you. Commissioner Carter, I just
4 have one comment on one of the comments that FPL's attorney
5 made, and that is while Mr. and Mrs. Krasowski may be
6 incidental beneficiaries of many of the arguments and positions
7 that my clients will be making, I don't have authority to
8 represent them, as suggested by Mr. Litchfield, you know. And
9 I heard that suggestion and I just wanted to clarify that for
10 the record.

11 And there's no assurance that our positions are
12 completely aligned. There may be a lot of commonality of
13 interests, but our positions -- I can't say right now before
14 you that my clients' positions are 100 percent aligned with
15 Mr. Krasowski's.

16 COMMISSIONER CARTER: Okay. Bob, why don't you speak
17 on behalf of the Krasowskis. Okay?

18 MR. KRASOWSKI: Yes, sir.

19 COMMISSIONER CARTER: Just give me your position.
20 Now we're -- stick to what we're talking about now, and that's
21 the issue of intervention.

22 MR. KRASOWSKI: Yes, sir.

23 COMMISSIONER CARTER: The basis for your
24 intervention.

25 MR. KRASOWSKI: Well, sir, I would still like to

1 pursue our intervention. What the -- our motivation -- our
2 position and our interests are, are uniquely different from the
3 others. Although we are members of the national organization
4 Sierra Club, we're not represented by their positions
5 specifically to this case. As a matter of fact, we have some
6 contrary positions as far as advocating -- they're advocating
7 for the IGC technology as an alternative, potential alternative
8 to this. We don't agree with that at all.

9 And our basic premise is that at this point in time
10 there's not sufficient and adequate information that can allow
11 for a positive advancing of this, of FP&L's proposal because
12 there is not -- the information that's available for the
13 alternatives and what might happen in the immediate future
14 through the Legislature, through the Governor, through
15 commissions that have been set up by the Governor, that things
16 are going to change in the immediate future that would, would
17 change the whole economic profile. We're not specifically
18 interested in this location on the environmental aspects,
19 although it's very difficult, as has been pointed out by the
20 Taylor County situation, it's very difficult to totally
21 separate environmental impacts from economic impacts. So our
22 interest is primarily economic here, but there is some, some
23 bit of environmental.

24 Okay. And we believe we can act with decorum in
25 court. It was suggested that we might not be able to.

1 If I could have a moment, a second.

2 COMMISSIONER CARTER: It's wise to listen to your
3 co-counsel there.

4 MR. KRASOWSKI: Yes, sir. And just to, to reiterate
5 a point made by Mr. Gross, not all -- we have similar positions
6 likewise with the Office of Public Counsel, but we go beyond
7 their positions to advocate for our specific point and would
8 appreciate being given the opportunity to participate in the
9 this procedure.

10 COMMISSIONER CARTER: Okay. Thank you.

11 Staff?

12 MS. BRUBAKER: Thank you, Commissioner. Just a few
13 comments. Petitions for intervention, the question is do they
14 meet standing? And under Agrico, the basic premise of that is
15 sufficient injury in fact and is this the type of proceeding
16 meant to address that type of concern? And, yes, it is. The
17 Krasowskis are customers of FPL. We have allowed, not only in
18 this need determination but in a number of prior need
19 determinations, customers to intervene based on the fact that
20 they are potentially going to be impacted through rates by
21 whatever is granted in the need determination.

22 So do they have standing? Absolutely. Do they also
23 have concerns that may relate to other matters that may or may
24 not be part of this proceeding? Apparently so. But if they
25 are allowed intervention, they're going to be held, or should

1 be held to the same standards, rules, statutes, procedures as
2 any other party in this proceeding, which means you stay within
3 the scope of the proceeding as it's been established through
4 the issues, through the rules, through the statutes and what
5 have you.

6 COMMISSIONER CARTER: Okay.

7 MS. BRUBAKER: There's a difference between standing
8 to intervene and representation, and to me that is the
9 distinction FPL seems to be making. I know of no requirement
10 that a party be represented by counsel. 120, Chapter 120,
11 Florida Statutes, is set up to allow public access to
12 government, and that's what we're looking at here today.

13 So is it -- are we accustomed to seeing pro se
14 participation in these types of dockets? Not really. But are
15 they entitled to do it? Absolutely. So I would simply
16 recommend that intervention be granted on the basis of the
17 Krasowskis are customers of FPL and this is the type of
18 proceeding meant to address their concerns. It is with the
19 understanding, however, that, as with any other intervenor in
20 this docket, that they need to be mindful of the scope and
21 jurisdiction of this proceeding and, and of the Commission, and
22 to conduct themselves in a businessman-like manner accordingly.

23 COMMISSIONER CARTER: Okay. Before I rule on that,
24 Mr. Krasowski, you heard the advice of staff. Do you think
25 that you could appropriately conduct yourself within the rules

1 and standards and procedures of the other parties here in this
2 matter and stay strictly to the issues that are pertinent to
3 this case?

4 MR. KRASOWSKI: Yes, sir. I believe we understand
5 the full --

6 COMMISSIONER CARTER: Because we don't want to go, we
7 don't want to go on a fishing expedition. We want to stay and
8 deal with the issues here, because there's some things that --
9 we all care about certain things, but we can't legislate or we
10 can't litigate certain, everything at one time. So if you are
11 willing to hold yourself to the same standards and rules and
12 conditions of any other party in this, and I see -- I have a
13 basis to grant you standing based upon, you know, your
14 position, not so much in terms of whether you're represented by
15 counsel or not, but by the fact that you have standing as a
16 customer. So we'll make a separate --

17 MS. BRUBAKER: And, again, just to be clear, we'll
18 have it in a separate order to you rather than as part of the
19 rulings in the prehearing.

20 COMMISSIONER CARTER: Okay. Make it so.

21 Is there another motion?

22 MS. BRUBAKER: There is currently a pending motion
23 for reconsideration filed by Sierra Club. And when I use the
24 term "Sierra Club," just so we're clear, it's meant to
25 encompass all the Intervenors represented by Mr. Gross.

1 I actually -- if we could revisit that at the end of
2 reviewing the order, I'll have just a few comments, I'll need
3 to address Mr. Gross about it, but we can go ahead and move
4 forward at this time otherwise.

5 COMMISSIONER CARTER: Okay. Well, just remind me and
6 we'll come back to that.

7 MS. BRUBAKER: Thank you.

8 COMMISSIONER CARTER: Okay. Any questions on
9 Section I that deals with the -- I like to go through the, the
10 whole order, just in case for any of you that have not been
11 before me previously. That doesn't mean that because I go to a
12 section, you've got to just go, give me the Declaration of
13 Independence. If there are no questions or concerns, we just
14 go on, you know, and I take that by your silence. Okay? All
15 right?

16 You've been here before; right?

17 MR. LITCHFIELD: I have. I have.

18 COMMISSIONER CARTER: Yes, sir. Okay.

19 Here we go. No questions on the case background,
20 Section I.

21 No questions on the conduct of proceedings,
22 Section II.

23 No questions on Section III, jurisdiction.

24 No questions on Section IV, the procedure for
25 handling confidential information. We'll do that as we

1 normally do.

2 Now we're on Section V, prefiled testimony, exhibits
3 and witnesses. Are there any witnesses that are willing to
4 shorten their summaries to within -- I think, what is it, two
5 minutes or so that we do the summaries?

6 MS. BRUBAKER: The customary amount given to witness
7 summaries is five minutes. However, given the number of
8 witnesses we have in this proceeding, a relatively short time
9 in which to do it, including, of course, we've got to remember
10 there's going to be public testimony offered at the beginning
11 of the hearing. And to the extent the parties are willing to
12 either shorten or dispense with witness summaries, I think that
13 would certainly help move the process along. But I'll tender
14 that question to the parties.

15 MR. LITCHFIELD: Commissioner Carter, FPL does have a
16 number of witnesses. And with that in mind, we are willing to
17 shorten the summaries of probably most of our witnesses to two
18 or three minutes.

19 There are, I would say, a handful, maybe three or
20 four whose testimony is, is broad enough and I think
21 significant enough with respect to the issues in this case that
22 we would like five minutes for those witnesses. And I can
23 designate those now, if you'd like, but it's not going to be
24 more than probably three or four.

25 MS. BRUBAKER: At your pleasure, we can either leave

1 it basically as an aspirational goal or we can -- if you want
2 to specify, that's fine.

3 MR. LITCHFIELD: Okay. We can talk further. Thanks.

4 COMMISSIONER CARTER: Okay. Why don't we just allow
5 that for all -- we can just do that and I think that's
6 reasonable. Those that we can modify and shrink down, let's do
7 that. And those that are giving specific -- I know some of
8 the, some of the technical information and technical witnesses
9 may be given a little bit more time, so we'll go with the five
10 minutes on them. Okay.

11 Any other questions?

12 MR. LITCHFIELD: One other question, Commissioner.
13 And I apologize, I'm not sure which section this would appear,
14 but I don't see anything with respect to opening statements,
15 and maybe I've just missed it.

16 COMMISSIONER CARTER: I'm not there yet.

17 MR. LITCHFIELD: Okay. It's coming up?

18 MS. BRUBAKER: It's in the back.

19 MR. LITCHFIELD: Okay.

20 COMMISSIONER CARTER: Okay. Is everybody comfortable
21 with where we are so far, because the train has left the
22 station?

23 Okay. Have you got a question, Mr. Gross?

24 MR. GROSS: Yes, Commissioner Carter. And I think
25 you answered it, and I apologize for asking for clarification.

1 I just wanted to point out that Sierra Club, et al., has three
2 witnesses, and we more than likely would like to use the full
3 five minutes --

4 COMMISSIONER CARTER: Okay.

5 MR. GROSS: -- for those three.

6 COMMISSIONER CARTER: That will be fine. That's
7 fine.

8 MR. GROSS: Thank you.

9 MS. KRASOWSKI: We have no comments on this, on the
10 witnesses.

11 COMMISSIONER CARTER: Excellent. Brevity is
12 appreciated.

13 Section VI, order of witnesses. Have -- are you guys
14 willing to stipulate to any of the witnesses at this point or
15 --

16 MS. BRUBAKER: Commissioner Carter, I have emailed
17 the parties asking them to consider which witnesses they might
18 be willing to stipulate to. Of course, procedurally what would
19 happen is, provided, of course, no Commissioner has questions,
20 the witness would be excused from attending the hearing and
21 their prefiled testimony would be filed into the record and the
22 prefiled exhibits would also be entered into the record. So
23 with that, I would ask at this point are the parties willing to
24 address what witnesses they might be willing to stipulate to?
25 If they're not willing to do so at this time or able to do so

1 at this time, just to note this is a continuing process up to
2 the point of hearing. The great advantage to stipulating
3 testimony, of course, is keeping the proceeding focused. But
4 that's up to the parties.

5 COMMISSIONER CARTER: If you're not prepared at this
6 time, please just get with Ms. Brubaker and we'll just kind of,
7 you know, work with you as much as possible on that.

8 MR. GROSS: Commissioner.

9 COMMISSIONER CARTER: Mr. Gross.

10 MR. GROSS: Commissioner Carter, I'd like to address
11 Ms. Brubaker. Inexplicably we didn't get that, that email.
12 But, nevertheless, on our own we started several days ago to
13 work on this issue, and I will get with you shortly on it. I'm
14 not prepared this morning, but --

15 COMMISSIONER CARTER: Okay. That's fine.

16 MR. GROSS: We're looking at witnesses that we can
17 stipulate to.

18 MS. BRUBAKER: Just for clarification, did you get
19 yesterday's copy of the draft prehearing order?

20 MR. GROSS: I did not. I did not. I was looking for
21 it.

22 MS. BRUBAKER: It's been emailed to you, so we need
23 to, after the conference, discuss what's going on.

24 MR. GROSS: Okay. Thank you.

25 COMMISSIONER CARTER: Also make sure that the

1 Krasowskis -- am I close, Krasowski -- get all of the
2 information all the other parties get.

3 MS. BRUBAKER: Yes, sir.

4 COMMISSIONER CARTER: Okay? I want them to be in the
5 loop. And as much as possible, whatever, you know, just kind
6 of walk them through the process in terms of so they don't miss
7 deadlines and things of that nature and get the information to
8 us.

9 All right? Everybody comfortable? Okay. We'll move
10 to Section VII on basic positions.

11 MS. BRUBAKER: Actually if I -- I'm sorry,
12 Commissioner.

13 COMMISSIONER CARTER: I'm ready to go. Yes, ma'am.

14 MS. BRUBAKER: There's also the option of taking
15 together rebuttal and direct testimony. And if I could just
16 ask the parties whether they are willing or interested in doing
17 that?

18 MR. LITCHFIELD: I think that pertains particularly
19 or maybe uniquely to FPL. We have, we have identified at this
20 point at least one witness that we think could be combined. I
21 guess further thought on that topic may depend on what of the
22 witnesses might be stipulated as to how that may or may not
23 narrow some of the issues for us here. But at this point we've
24 identified Mr. Yeager, whose rebuttal testimony is very, very
25 brief, and we surely think he could be taken up together.

1 COMMISSIONER CARTER: Okay. If you decide later on,
2 just get with Ms. Brubaker and --

3 MS. BRUBAKER: If I could also ask for clarification
4 of the parties, would they have any objection to taking direct
5 and rebuttal together? No objection?

6 COMMISSIONER CARTER: Any objection of any of the
7 parties?

8 MR. GROSS: No objection.

9 MR. BECK: No objection from OPC.

10 MS. BRUBAKER: Thank you.

11 COMMISSIONER CARTER: Okay.

12 MR. GROSS: Commissioner Carter.

13 COMMISSIONER CARTER: Yes, sir.

14 MR. GROSS: Commissioner Carter, okay, I almost
15 forgot, and I have -- of our, of our three witnesses, two of
16 them have scheduling conflicts on the 16th. And this may work
17 out since FPL will be, there will be, as I understand it,
18 public testimony and FPL testimony on the 16th. But I just
19 wanted to point out that Mr. Schlissel has requested, if at all
20 possible, that he could testify early on the 17th, and
21 Mr. Plunkett late on the 17th because of long-standing
22 conflicts they've had on the 16th. And I just wanted to make
23 that special request, if that turns out to be out of the
24 natural progression of the witnesses.

25 COMMISSIONER CARTER: Well, we'll just have to see

1 how that shakes out. Okay? Okay?

2 Now Section -- where was I, Section --

3 MS. BRUBAKER: Section VII.

4 COMMISSIONER CARTER: Section VII, basic positions.

5 MS. BRUBAKER: I would just note to the extent there
6 are any typos, modifications to words, but not, nothing
7 substantial to basic positions or the positions on the issues,
8 if the parties would be sure to email those to me within, say,
9 24 hours so they can be timely incorporated in the final
10 prehearing order, it would be much appreciated. Unless you
11 feel the particular need to point out a particular
12 modification, just get those modifications to me by email would
13 be fine.

14 COMMISSIONER CARTER: Just -- I granted intervention
15 for Mr. Krasowski. Just kind of help him to kind of frame,
16 stay within the framework of where we're working.

17 MS. BRUBAKER: He's actually done so, sir. He did
18 provide me --

19 COMMISSIONER CARTER: Okay. Good. Good. All right.
20 Cool.

21 MS. BRUBAKER: Yeah.

22 COMMISSIONER CARTER: I love it when a plan comes
23 together.

24 Okay. Section VIII, issues and positions.

25 Ms. Brubaker.

1 MS. BRUBAKER: My recommendation is to go issue by
2 issue. To the extent there are any questions or concerns about
3 the issue for the parties, to raise them as we go through each
4 issue. The only issue I'm aware of that may have some
5 discussion is Issue 6 at this time.

6 COMMISSIONER CARTER: Well, then let's just deal with
7 that issue then since there's only one issue. Let's go to
8 Issue 6.

9 MS. BRUBAKER: With Issue 6, it is currently worded,
10 "Do to proposed FGPP generating units include the costs for the
11 environmental controls necessary to meet current state and
12 federal environmental requirements, including mercury, NOx, SO2
13 and particulate emissions?" And I believe it is Intervenor
14 Sierra Club, but if there's anybody else who's interested in
15 this modification, please speak up, but Sierra Club has
16 proposed adding the phrase "to meet current and future state
17 and federal environmental requirements." We can take comments
18 from the party about that addition. I'll be happy to address
19 staff's position on that in turn.

20 COMMISSIONER CARTER: Okay. Let's go in the order
21 that I like to -- let's move down this way and I'll end with
22 Mr. Gross this time, and then I'll come to staff. Okay?

23 MR. LITCHFIELD: Okay. Thank you, Commissioner.

24 COMMISSIONER CARTER: Yes, sir.

25 MR. LITCHFIELD: We would oppose including the words

1 "and future" in Issue Number 6. To do so really would cause us
2 and this Commission to enter into the realm of pure speculation
3 with respect to possible environmental regulations that might
4 at some future point in time be either imposed initially or
5 ratcheted up or ratcheted down in some form or fashion. We
6 just can't file a case on such pure speculation.

7 Now in the case of CO2, there is a very healthy
8 debate and dialogue that is ongoing with respect to the
9 prospect of future regulation of carbon dioxide. And there we
10 have filed testimony indicating how we have taken possible
11 scenarios or outcomes of such potential legislation into effect
12 in our modeling for illustrative purposes. And I think that is
13 the only environmental issue that actually has been in this
14 sense addressed in this case in the direct testimony filed by
15 either us or the Intervenors. So from that standpoint, it's
16 not clear to me either why we would be talking about NOx or SO2
17 or other things that might yet be changed in the future. That
18 really takes us into the realm of speculation. It's not a case
19 that we can, we can prosecute.

20 COMMISSIONER CARTER: Okay. Ms. Perdue.

21 MS. PERDUE: Thank you, Commissioner. Our position
22 is essentially the same on adding the "future" phrase to the
23 issue as what Mr. Litchfield just explained for FPL. It's just
24 too speculative to include that in the issues for the
25 Commission now. We think what the Commission should look at is

1 what the future requirement, I mean, what the present
2 requirements are, and that should be the level that the plant
3 is held to.

4 COMMISSIONER CARTER: Okay. Mr. Beck.

5 MR. BECK: Commissioner, I believe Issue 5 covers the
6 future costs of CO2 regulation, which I think is not only
7 appropriate but a necessary issue for the Commission to look at
8 in this case. I agree with Mr. Litchfield that as far as
9 teeing up evidence on the issue of forecasts of other
10 emissions, I don't think there is any evidence presented by the
11 parties. So I'm okay either way.

12 I think logically, since the, the plant is expected
13 to be in existence for 40 years, 40 years, you have to look at
14 any costs that may be incurred during that 40-year period, look
15 at cost-effectiveness. But since there isn't any dispute on
16 the future costs that I'm aware of or as I recall, I think it
17 would be okay either way as far as I'm concerned.

18 COMMISSIONER CARTER: Okay. Mr. Krasowski.

19 MR. KRASOWSKI: Commissioner Carter, we would have no
20 objection to the inclusion of the future considerations. We
21 believe that there is a distinction between the immediate
22 future and the long-term future. And in the immediate future
23 we believe that certainly these issues of mercury and NOx and
24 SO2 will probably be put under controls and guidelines. But
25 this all speaks to our essential issue that there's not enough

1 known at this time to build a project that extends 40 years
2 into the future when so much is unknown.

3 COMMISSIONER CARTER: Okay. Mr. Gross.

4 MR. GROSS: Thank you, Commissioner Carter. The
5 Sierra Club, et al., feels that the word "future" should be in
6 place for two reasons.

7 One, if one looks at FPL's statement of position on
8 Issue 6, one, two, three, four, five, six, seven, seven lines
9 down they say, "The environmental compliance costs evaluated by
10 FPL also reflect an appropriate range of possible future
11 costs." And I won't recite the whole statement there, but that
12 is with respect to Issue 6, which talks about -- and I'm
13 presuming that that's in the record, that's part of their
14 petition and their testimony and exhibits because they say that
15 is so in their prehearing statement.

16 Secondly, with respect to mercury, I mean, there's a
17 claim that they have complied or attempt to use certain
18 modeling to account for future environmental costs, the ones
19 that are listed in Issue 6. So that's an issue in the case as
20 to whether they have, in fact, done that accurately.

21 The second point I want to make is the United States
22 Environmental Protection Agency passed a rule regarding mercury
23 contamination in May of 2005 that is predicted to produce a
24 70 percent reduction by 2025 of 70 percent, and that is in a
25 two-phase process. And I just want to point out that there was

1 testimony in the Taylor County case about this December 26th --

2 COMMISSIONER CARTER: Just stick to the case at bar.

3 MR. GROSS: Okay. Well, the Clean Air Mercury Rule
4 as it's called has two phases to it, and in 2018 the second
5 phase begins, which requires a 90 percent reduction in mercury
6 emissions.

7 Now I guess it could be a semantic argument as to is
8 that a future regulation that requires compliance or is it a
9 current regulation that has a second phase to it that occurs in
10 the future? So if all we're arguing about --

11 COMMISSIONER CARTER: You're talking to me,
12 Mr. Gross. You're talking to me.

13 MR. GROSS: Okay. Sorry. But I think that what's
14 really key here is FPL's own approach to this, which is they've
15 presented evidence and they've stated their position on
16 Issue 6 that they have taken steps to account for future --
17 these, these particular environmental costs. Thank you.

18 COMMISSIONER CARTER: Okay. Thank you.
19 Staff.

20 MS. BRUBAKER: Actually my --

21 MR. LITCHFIELD: Commissioner Carter, may I respond
22 briefly to one point that was made with respect to how we've
23 articulated our position? To the extent that there's ambiguity
24 with respect to this sentence, we will certainly clarify that
25 with Ms. Brubaker before it becomes final. But this is clearly

1 intended to address, at least from our perspective was clearly
2 intended to address solely the CO2 costs, allowances, offsets,
3 et cetera. We, we did not include this to mean future SO2 or
4 NOx or anything else. We modeled what we felt we should model
5 in this particular case in terms of prospective future
6 environmental regulation.

7 COMMISSIONER CARTER: Ms. Brubaker.

8 MS. BRUBAKER: Thank you, sir. My apologies.

9 I think to the extent that we're looking at a robust
10 discussion about CO2 costs, that's certainly captured in
11 Issue 5. I have not read any testimony, I have not seen any
12 evidence presented that would address future state and federal
13 environmental requirements otherwise. And what we are talking
14 about in Issue 6 are the current state and federal
15 environmental requirements, which do include things like
16 mercury, NOx and SO2. And so in my mind it is not appropriate
17 and it's not necessary to have the addition of the words "and
18 future." I think future CO2 costs, which is what seems to be
19 at issue, is adequately addressed by Issue 5. I think if you
20 leave the -- if you add the language "and future" in Issue 6,
21 it makes the issue fuzzy in the sense that you do start to look
22 at speculative costs or, excuse me, speculative requirements,
23 and I don't think that the evidence that's been addressed in
24 the case so far is really geared towards addressing any of
25 that.

1 COMMISSIONER CARTER: Okay. We're going to, we're
2 just -- we'll deny the motion and we'll stick with Issue 6 as
3 presented. Any further on -- that was the only issue that we
4 had a concern about in the issues, in Section VIII that dealt
5 with issues and positions?

6 MS. BRUBAKER: If the parties would simply confirm if
7 they have any questions or concerns with the other issues one
8 way or the other.

9 MR. BECK: Commissioner, if I might, I would like to
10 ask permission to continue on the issues where we stated "no
11 position at this time," to continue that. We're in the midst
12 of discovery right now. You know, I've personally reviewed two
13 sets of document requests. We have a third one due on Monday
14 along with some interrogatories. Staff has scheduled two more
15 depositions. It's simply early.

16 I've taken a position to the extent I'm comfortable
17 with it. I'm not holding back any positions on account of it,
18 but I would like to retain the ability to take further
19 positions, if that should come up. I simply want to reserve
20 the right to.

21 MS. BRUBAKER: And, and the order establishing
22 procedure does allow some flexibility. If a party is unable to
23 take a position on an issue up to the point of the prehearing,
24 they need to be able to support why they're unable to do so.
25 And certainly unless another party has an objection, the

1 opportunity to review additional discovery to participate in
2 the depositions currently scheduled for tomorrow and Monday I
3 think would allow that flexibility. And, of course, I would
4 expect Mr. Beck to be prudent in his review and timely in
5 getting the positions to staff, so I have no concerns in that
6 regard.

7 MR. LITCHFIELD: And without setting precedent in any
8 future matter, we have no objection to Mr., Mr. Beck's request
9 in this case. Thanks.

10 COMMISSIONER CARTER: Mr. Beck has always been fair.
11 So we'll just, we'll make that so, Mr. Beck. I understand.
12 That's fine. We can do that. And he's going to work with
13 everybody. It won't be a problem.

14 Let's move now to Section IX, exhibit list.

15 Ms. Brubaker.

16 MS. BRUBAKER: Yes. Staff would like to note we're
17 in the process of preparing a comprehensive exhibit list. That
18 would consist of the prefiled exhibits. That list has been
19 used in a number of hearings at the Commission. It's used for
20 organizational purposes. It helps number and identify the
21 exhibits at hearing. The practice has been to identify the
22 exhibits on that list but to actually enter them into the
23 record as they come up in turn with the particular witness's
24 testimony.

25 Staff is also in the process of preparing an exhibit

1 that would, a proposed stipulated exhibit, if you will, that
2 would be composed of certain discovery responses and most
3 likely deposition transcripts which we'll be providing shortly
4 to the parties with the hopes that, provided there are no
5 objections to the entry of that proposed stipulated exhibit, it
6 can be done so at the beginning of the hearing.

7 COMMISSIONER CARTER: Okay. All right.

8 Section X, proposed stipulations.

9 Ms. Brubaker.

10 MS. BRUBAKER: Staff is not aware currently of any
11 stipulations.

12 COMMISSIONER CARTER: Okay. Section XI, pending
13 motions.

14 MS. BRUBAKER: Okay. We've addressed the two
15 petitions for intervention. As I've stated before, I think
16 those would be more appropriately issued as separate orders. I
17 suppose I'll confer with my supervisor to see if we at least
18 need to make a note in this section that they were ruled upon
19 at hearing.

20 There is also pending Sierra Club's motion for
21 reconsideration and clarification and request for oral argument
22 that has to do with the order that granted Sierra Club
23 intervention.

24 And, Mr. Gross, I would ask you, given the concerns
25 that were raised, the request for clarification that you

1 actually raised in that motion, it seems to me that it's
2 actually satisfied by the inclusion of the issues in this
3 docket. So I would ask you at this time whether you'd be
4 willing to withdraw that, that motion?

5 MR. GROSS: I appreciate the inclusion of the issue
6 because that was of concern to us. But the second component of
7 that concern is whether the Sierra Club and our other
8 Intervenors will be permitted to offer evidence and argument in
9 relation to that issue. And if that is the case, you know,
10 subject to normal -- you know, without any party waiving, of
11 course, any normal objections that would apply in the normal
12 course of events, on that condition we would be willing to
13 withdraw that motion.

14 MS. BRUBAKER: Okay. Comments from FPL?

15 MR. LITCHFIELD: Yes. It's -- I'm happy to hear that
16 the motion will be withdrawn. I guess it has been a little bit
17 confusing to us as to why it was necessary to file it in the
18 first instance, given that FPL has submitted testimony on this
19 issue, we have supported it as an issue throughout, and
20 Mr. Gross's clients have filed testimony on this issue.

21 And we're not intending to -- have not filed a motion
22 to strike that testimony. Our respective witnesses will be
23 able to be cross-examined on the subject of their testimony,
24 and so we really do feel like the motion has been moot really
25 almost from the outset.

1 COMMISSIONER CARTER: Any other party?

2 Okay. Thank you for withdrawing the motion.

3 MS. BRUBAKER: For clarity, we may deem the --

4 MR. GROSS: Yes. We would be willing to withdraw the
5 motion.

6 MS. BRUBAKER: Okay. Thank you for that
7 clarification.

8 COMMISSIONER CARTER: I translate that to mean
9 they've withdrawn the motion.

10 MS. BRUBAKER: The motion has been withdrawn.

11 MR. GROSS: Yes. We withdraw the motion.

12 COMMISSIONER CARTER: Okay. Good.

13 Section XII, pending confidentiality motions.

14 MS. BRUBAKER: We do note that there is currently a
15 pending request for confidentiality that will be addressed by
16 separate order.

17 COMMISSIONER CARTER: As normal. Good.

18 Section XIII, posthearing procedures. None?

19 MR. LITCHFIELD: Commissioner Carter, we would ask,
20 we would ask for an enlargement of the 50-word limitation,
21 given that we have condensed, and I think properly so, but
22 we've condensed, and I think properly so, but we've condensed a
23 very large case into a small number of issues. And to get
24 things down to 50 words on an issue that may comprehend a
25 number of complicated technical and factual issues I think is a

1 little bit constraining.

2 MS. BRUBAKER: I suppose I'd be looking for a
3 suggestion as far as the number of words. If not 50, then 80?

4 MR. LITCHFIELD: How about 100?

5 MS. BRUBAKER: No objections from staff.

6 COMMISSIONER CARTER: Okay. Mr. Beck?

7 MR. BECK: No, no objection.

8 COMMISSIONER CARTER: Mr. Gross?

9 MR. GROSS: No objection.

10 MR. KRASOWSKI: No objections.

11 MS. BRUBAKER: What I typically say in these
12 instances is brevity is the soul of wit, and I'm sure all
13 parties will be mindful of that.

14 COMMISSIONER CARTER: All righty. Okay. Then we'll
15 just say not more than 100.

16 MR. LITCHFIELD: Fair enough.

17 COMMISSIONER CARTER: If you can do 50, that will be
18 great. So we'll just say not more than.

19 MR. LITCHFIELD: We can use less than 50 on the last
20 issue for sure.

21 COMMISSIONER CARTER: Okay. Okay. So that takes us
22 to Section XIV on rulings. Here -- I think someone asked
23 earlier about opening statements; is that right?

24 MR. LITCHFIELD: Yes.

25 COMMISSIONER CARTER: Remember you asked about that?

1 I'm thinking about ten minutes, not to exceed ten minutes.
2 That's kind of where I come from generally, unless there's an
3 extraordinary -- and I don't see anything extraordinary in this
4 situation that would cause me to go beyond the ten-minute.

5 MR. LITCHFIELD: One alternative would be 15 per
6 side. I recognize now we've got a couple of parties that have
7 common interests. But we can go either way, Commissioner,
8 whatever your preference is.

9 COMMISSIONER CARTER: Well, ordinarily I say you're
10 right, but I really would like to give Mr. Krasowski his ten
11 minutes. You know, so to be fair with everybody, that's what I
12 really want to do. Okay? Is that all right?

13 MR. LITCHFIELD: That's fine.

14 COMMISSIONER CARTER: He's a party, he's into the
15 case, so I want to give him his, you know -- you may not be a
16 lawyer, but you're welcome in the case to the same rights and
17 privileges everyone else has.

18 MR. KRASOWSKI: Thank you, sir.

19 COMMISSIONER CARTER: Okay.

20 MS. BRUBAKER: So we will reflect in the ruling
21 section ten minutes for opening statements per party.

22 COMMISSIONER CARTER: Yeah. So that will be -- what
23 is that, 50 minutes? One, two, three, four, five.

24 MS. BRUBAKER: Staff is happy to waive its opening
25 statement, sir.

1 COMMISSIONER CARTER: You don't have to take ten, but
2 I'm just saying up to ten. I'm sure that you would need all
3 ten. Mr. Beck, you know, I'm sure you'll use yours. But
4 let's -- I think to be fair we'll just give everybody ten
5 minutes. And I wish that we could have five minutes a side,
6 but then it's not a perfect world in my view. Just kind of
7 musings from the bench.

8 Ms. Brubaker, do we have any other matters?

9 MS. BRUBAKER: The only thing I would ask is that to
10 the extent that our discussions here today result in a party
11 wishing to modify its position or any of its information that
12 appears in the draft prehearing order, if you would please have
13 those changes to me in Word format, send it to me by email in
14 Word format by close of business on Friday, April 6th, that's
15 tomorrow, it would be much appreciated. That will help me get
16 the prehearing order finalized and turned around in a timely
17 fashion. And with that, I have no other matters myself.

18 COMMISSIONER CARTER: Okay. Seeing no additional
19 matters, the hearing is adjourned, prehearing is adjourned.

20 (Prehearing Conference adjourned at 10:16 a.m.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, 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 9th day of April, 2007.

Linda Boles
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FPSC Official Commission Reporter
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