

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070650-EI

In the Matter of:

PETITION TO DETERMINE NEED FOR TURKEY
POINT NUCLEAR UNITS 6 AND 7 ELECTRICAL
POWER PLANT, BY FLORIDA POWER & LIGHT
COMPANY.



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PROCEEDINGS: ORAL ARGUMENT

BEFORE: COMMISSIONER NATHAN A. SKOP

DATE: Monday, January 7, 2008

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P R O C E E D I N G S

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2 COMMISSIONER SKOP: Good morning. I'd like to call
3 this proceeding to order.

4 Commissioner Nathan A. Skop presiding.

5 As we begin the new calendar year, we are scheduled
6 this morning to hear oral argument with respect to intervention
7 in the need determination for the Turkey Point 6 and 7 units,
8 and if staff could please read the notice.

9 MS. FLEMING: Pursuant to notice issued by the
10 Commission Clerk, this time and place has been set for the
11 purpose of an oral argument in Docket Number 070650-EI.

12 COMMISSIONER SKOP: Thank you.

13 At this time if we could take appearances, please.

14 MR. BUTLER: Thank you.

15 Commissioner Skop, I'm John Butler appearing on
16 behalf of Florida Power and Light Company. Also with me is
17 Wade Litchfield appearing on behalf of the same party.

18 MR. BRYANT: Frederick M. Bryant on behalf of the
19 Florida Municipal Power Agency and the Florida Municipal
20 Electric Association.

21 MR. O'HAGAN: Dan O'Hagan on behalf of the Florida
22 Municipal Power Agency and Florida Municipal Electric
23 Association.

24 MS. KAUFMAN: Good morning, Commissioner. I'm Vicki
25 Gordon Kaufman. I'm with the Anchor, Smith, Grimsley firm here

1 in Tallahassee, and I'm appearing this morning on behalf of
2 Seminole Electric Cooperative, Inc.

3 MR. YOUNG: Roy Young from Tallahassee representing
4 the Orlando Utilities Commission.

5 COMMISSIONER SKOP: Thank you.

6 At this time are there any preliminary matters?

7 MS. BRUBAKER: Staff is aware of no preliminary
8 matters. However, just to make sure we're all on the same
9 page, it's my understanding that the intervenors will first
10 provide their ten-minute summary of their arguments to be
11 followed by FPL. It's also my understanding that FPL has
12 requested some extension of the ten-minute length for their
13 discussion.

14 COMMISSIONER SKOP: Thank you.

15 I have read the briefs of the parties, and, again, I
16 would like the intervenors to go first followed by FPL. With
17 respect to the issues at hand, two of the briefs are
18 substantially similar. I know that it has come to my attention
19 FPL has requested some additional time to respond to the
20 petitioners' arguments. Also, this seems to be a case of first
21 impression that turns simply on the interpretation of the plain
22 meaning of a statutory provision.

23 So, again, I think in the interest of hearing a fully
24 vetted discussion, if the intervenors would please limit their
25 briefs or oral argument to ten minutes, and then with FPL, if

1 you can please conduct yours within 15, that would be
2 acceptable. I'm willing to go to 20, which would be half the
3 time afforded to the intervenors, but if you could limit it to
4 15, that would be greatly appreciated.

5 MR. BUTLER: I think we will be able to do that.
6 Thank you.

7 COMMISSIONER SKOP: Thank you.

8 And, also, just with respect to the order of the
9 proceedings, what I would like to do is hear oral argument from
10 the petitioners and then from FPL, and I think that what we
11 will do is I will reserve my questions for when we come back
12 from a break. Again, I would like to collect my thoughts after
13 hearing oral argument and take some time to reflect and ask
14 some pointed questions of both parties. I think that will be
15 more effective.

16 With respect to the intervenors asking the questions,
17 is there a lead petitioner that you guys would like to have
18 questions directed to or do we need to break them up
19 individually by petitioner?

20 MR. BRYANT: I think maybe by petitioner; but maybe
21 after the oral arguments, Commissioner, that may help you in
22 your direction of the questions to which party.

23 COMMISSIONER SKOP: Thank you. Very well.

24 With that, we will proceed with oral arguments.

25 Mr. Bryant, would you like to go first?

1 MR. BRYANT: May it please the Commission,
2 Ms. Kaufman was going to go first, followed by myself and then
3 Mr. Young, if that is all right with the Commission.

4 COMMISSIONER SKOP: Thank you. Very well.

5 MS. KAUFMAN: Thank you, Commissioner.

6 Just one more matter of procedure, if I might. And I
7 wonder, given the time limits, if I might save a couple of
8 minutes of my time for rebuttal after Florida Power and Light
9 completes its argument.

10 COMMISSIONER SKOP: Yes, that's fine. If FPL has no
11 objection, would it be acceptable, I would like to give the
12 intervenors a two-minute rebuttal on each.

13 MR. BUTLER: That's fine. If they want to save two
14 of their minutes, that's fine with us.

15 COMMISSIONER SKOP: All right. Thank you.

16 MS. KAUFMAN: Thank you, Commissioner.

17 As I said, I'm Vicki Gordon Kaufman with the Anchor,
18 Smith, Grimsley law firm here in Tallahassee, on behalf of
19 Seminole Electric Cooperative. And I have with me today in the
20 back Mr. Mike Upilinsky (phonetic), who is the Senior Vice
21 President of Strategic Services for Seminole Electric.

22 Commissioner, I just wanted to take a moment before I
23 turn to the legal part of my argument to tell you just a little
24 bit about Seminole Electric. It is a nonprofit electric
25 generation and transmission cooperative. Its purpose is to

1 supply electric power and energy reliably and at the lowest
2 feasible cost to its ten-member nonprofit rural distribution
3 cooperatives.

4 Seminole's member systems provide retail electric
5 service to over 900,000 consumers in 46 Florida counties. And
6 in 2006, member sales were in excess of 16 billion-kilowatt
7 hours, and these sales are expected to grow at an average
8 annual rate of about 4 percent. And Seminole anticipates the
9 need for baseload capacity in the same time as the Turkey Point
10 units that we're talking about in this docket.

11 So with just that little bit of factual information
12 about Seminole, I'm going to turn to my legal argument. And
13 basically our position is that Seminole meets the Agrico
14 requirements for standing in this case, and we have standing to
15 intervene, and we have that standing on two separate bases.

16 First of all, we believe that Seminole meets the
17 first prong of the Agrico test. As a generating and purchasing
18 utility, and a utility that is connected to the transmission
19 grid in this state, Seminole is substantially affected by any
20 action which the Commission is going to take in this docket.
21 These large nuclear units that FPL has proposed will affect
22 Seminole's planning for its future needs for generation and
23 transmission. Obviously, they will impact the reliability of
24 the Florida grid of which Seminole is an integral member, and
25 it will effect the supply of electricity in the state.

1 As the electricity needs in Florida continue to grow,
2 the ability of utilities to meet those needs is becoming more
3 difficult. I don't think that Florida Power and Light
4 disagrees with that position, and they actually say, I believe
5 in their brief, that Florida is moving towards positions that
6 will, quote, virtually compel, close quote, the development of
7 nuclear generation. I also don't think that there is anyone
8 here that will disagree that the number of nuclear plants that
9 we can build in Florida is finite due to siting, permitting,
10 and other regulatory considerations.

11 So this application is going to effect Seminole's
12 need to serve and, obviously, it is going to implicate the
13 Commission's responsibilities to consider the need for system
14 reliability and integrity, including fuel diversity, the need
15 for baseload generating capacity, and the need for adequate
16 electricity at a reasonable cost, and all of those criteria are
17 in 403.519(4).

18 I think that FPL told you in their brief that we
19 support their request for determination of need, and that's
20 correct, but that does not obviate our substantial interest in
21 this proceeding. If that were the case, you would only have
22 two parties in every proceeding.

23 We are just at the start of this docket. We all have
24 a lot to learn about the project, and we, Seminole, we would
25 not presume to predict the outcome of this project. Excuse me,

1 of this case. And I think there is at least one party that has
2 already been granted intervention here that is opposed to the
3 determination of need.

4 Now, as to the second prong of Agrico, the zone of
5 interest, Florida Power and Light says this proceeding isn't
6 designed to protect the interests of utilities that are not
7 participants in the project. And, you know, that's somewhat
8 ironic, given the co-ownership issues that I'm going to turn to
9 in a moment. However, as I said earlier, issues of reliability
10 and integrity of the grid, they affect all utilities. And if
11 you look at 403.519(4)(b)(2), and (b)(3), you will see that the
12 Legislature has made it clear that nuclear power plant siting
13 implications are statewide in concern, and those sections speak
14 to reliability within the state, and they speak to Florida's
15 dependence on -- reducing Florida's dependence on fuel oil and
16 natural gas. So we are clearly within the zone of interest
17 portion of the test.

18 Finally, the Commission has already considered the
19 issue of whether utilities are substantially affected by the
20 determinations of need filed by other utilities. And in Order
21 Number PSC-98-1305-PCO-EM, the Commission granted intervention
22 to FPL and to other utilities and to the FMEA over the
23 objection of petitioning parties. And in Order Number
24 PSC-99-2153-PCO-EU, again, the Commission granted intervention
25 in the determination of need to FPL and other utilities. In

1 both cases, FPL alleges the basis for its standing the impact
2 the project would have on its ability to plan and construct and
3 operate its facilities. These same considerations are
4 applicable to Seminole's interest in this case.

5 A separate basis, a separate and independent basis
6 for intervention in this docket is the issue of co-ownership,
7 which Seminole and others at the table have raised with FPL.
8 And as you know from Seminole's petition to intervene and their
9 documents that were attached, we have requested that FPL
10 discuss co-ownership with us, but FPL has refused to engage in
11 such discussions. And so we have a substantial interest in
12 ensuring that FPL engages in good faith discussions with us
13 regarding co-ownership of these units.

14 As you know, in 2006 the Legislature amended 403.519
15 to address nuclear plant site certification issues, and
16 403.519(4)(a)(5) requires Florida Power and Light to provide
17 information to you in its application regarding discussions
18 with utilities as to co-ownership, and you have a rule that
19 does that, as well. FPL has failed to comply with this
20 requirement.

21 Now, what FPL tells you in its brief, as I understand
22 it, would have the effect, in our view, of nullifying the new
23 statutory language by telling you that the requirement in the
24 statute for details on co-ownership discussions is simply what
25 I will put in quotes, informational. And somewhat

1 astonishingly to us, FPL has said in their pleadings in this
2 case that they could satisfy this legislative requirement by
3 telling you they haven't had any discussions at all. Now, in
4 our view, such an interpretation of the statute would nullify
5 it, and it would certainly be at odds with the black letter
6 rules of law that tell you that the Legislature does not enact
7 statutes that are meaningless or that are mere surplusage.

8 In their brief FPL said, and I quote, the Legislature
9 may simply want certain types of information to be made public
10 in administrative proceedings, close quote. To us it is
11 nonsensical to suggest that the Legislature would want this
12 information to be provided, they clearly think it's an
13 important and relevant or they wouldn't have amended the
14 statute to include it, but they only put that in there because
15 they want it to be made public and neither the Commission nor
16 affected parties can do anything with the information.

17 The very statute that's at issue here that I
18 mentioned earlier, 403.519(b), directs this Commission to take
19 into consideration matters within its jurisdiction that it
20 considers relevant, including enhancing reliability within the
21 state, and reducing Florida's dependence on fuel oil and
22 natural gas. Consideration of these issues necessitates and
23 raises co-ownership questions. And, in addition, putting aside
24 the new amendments to 403.519, the Commission under its grid
25 bill authority certainly has the opportunity, and I would

1 suggest to you the obligation, to address reliability and
2 adequacy of the grid and the transmission system as this
3 project is going to impact all utilities in the state.

4 And, of course, your grid bill jurisdiction in
5 366.04(2) and (5) and 366.05(8) gives you the jurisdiction and
6 authority to deal with co-ownership issues. If you take a look
7 at 366.04(5), that gives the Commission jurisdiction over the
8 planning, development, and maintenance of a coordinated
9 electric power grid throughout Florida to assure an adequate
10 and reliable source of energy for operational and emergency
11 purposes in Florida. And it also charges the Commission with
12 the duty to avoid the uneconomic duplication of generation and
13 transmission facilities.

14 Now, as we noted in our brief, lack of co-ownership
15 in this case may well lead to a proliferation of small gas or
16 oil-fired power plants with the necessary transmission
17 upgrades. And I think if you look at the amendments to
18 403.519 regarding nuclear generation that clearly is not what
19 the Legislature intended. And so --

20 COMMISSIONER SKOP: Thank you, Ms. Kaufman. I just
21 want to let you know that you have two minutes remaining.

22 MS. KAUFMAN: Okay. Well, I'm really about to wrap
23 up, because I just wanted to say that based on those two
24 independent grounds in the statute, as I mentioned, our
25 standing as an electric utility that generates and is

1 interconnected to the grid in Florida, and in regard to the
2 co-ownership provisions that have been recently added to
3 403.519, we clearly meet the Agrico standing test, and we would
4 request that you grant our petition to intervene and allow us
5 to participate in this case as a full party.

6 COMMISSIONER SKOP: Thank you.

7 MS. KAUFMAN: Thank you.

8 MR. BRYANT: Thank you, Commissioner Skop. Fred
9 Bryant on behalf of the Florida Municipal Power Agency and the
10 Florida Municipal Electric Association. I, too, would like to
11 reserve two minutes if I might to the end.

12 As you can probably ascertain from the reading of the
13 Florida Municipal Power Agency's brief, our position is a
14 little bit different than Ms. Kaufman's on behalf of Seminole
15 Electric Cooperative. Ms. Kaufman has done an excellent job, I
16 believe, of outlining the law, and the case law, the statutes,
17 and the rules of the Commission.

18 But FMPA, indeed, has had discussions with Florida
19 Power and Light, and I am somewhat shocked at the intensity of
20 FPL's -- I can only say state of denial in whether or not
21 discussions have taken place or should take place and whether
22 or not they should, in fact, file a summary of those
23 discussions. Now, I had Mr. O'Hagan pass out for you just a
24 sampling of those discussions. In October of '06, Mr. Olivera,
25 the president of Florida Power and Light, E-mailed Roger

1 Fontes, the Chairman and CO of the Florida Municipal Power
2 Agency, my client, "Roger, we," being FPL, "would like to have
3 some very preliminary discussion with your folks about our
4 thoughts on new nuclear and any possible ownership interest by
5 FMPA. If you are still interested, would you please let me
6 know who is the right contact in your organization."

7 Reply from Mr. Fontes: "Armando, very good to hear
8 from you. Yes, we would be very interested in beginning
9 discussions on such a joint project development opportunity.
10 Generation resource diversification is an important strategic
11 goal of our integrated resource plan. Moreover, the St. Lucie
12 plant has performed well, and FPL has done a good job of
13 managing that nuclear facility. Please contact Rick Casey," et
14 cetera.

15 Reply back that same day from Armando to Roger: "We
16 would like to initiate the discussions now so you know our
17 thinking at the options we are looking at. Also helpful to
18 understand your thinking and what you are looking for, because
19 ultimately that could also affect our decision (size, location,
20 et cetera). We have not made a final decision to build a
21 plant, but want to make sure that we preserve the option as the
22 next generation to be built after the Glades coal project," et
23 cetera.

24 So, certainly FMPA and FPL have held discussions as
25 evidenced by this exchange of e-mails and other discussions

1 that have yet to be summarized by the applicant pursuant to the
2 state statute and the Commission rule. Indeed, FPL's
3 prehearing statement just filed on January 4th lists the
4 witnesses and what that those witnesses are going to testify to
5 in this proceeding, and it lists Mr. Olivera as its first
6 witness. Look at what he is going to talk about described in
7 the subject matter and note no discussion about discussions
8 with Florida Municipal Power Agency about participation in this
9 unit.

10 Indeed, if you look on the second page of
11 Mr. Scroggs, of whom I'm not familiar with who that individual
12 is, he is going to describe FPL's contact with other utilities
13 regarding potential ownership participation in the project.
14 How can Mr. Scroggs testify as to discussions between
15 Mr. Fontes and Mr. Armando Olivera and it not be hearsay? Why
16 couldn't FPL simply to avoid much ado about nothing summary of
17 the discussions as required by the Commission rule? FPL makes
18 light of the Commission rule, and I think that's a mistake.

19 FPL has in their brief said, well, the legislative
20 history of the statute was not intended to give the Commission
21 broader purview of the permitting of a need application of a
22 nuclear unit. We don't think the legislative history is
23 germane or appropriate in this discussion. However, since they
24 have brought that up, we also have the legislative history. We
25 have read it, but we have also looked at what the sponsor of

1 the legislation said in an article in the St. Petersburg Times
2 where he was quoted, Atkinson, he was a sponsor in the House,
3 he said that he introduced the legislation because expanding
4 nuclear power in Florida will help diversify the fuel sources
5 of the state's utilities. That, in turn, would reduce the
6 state's vulnerability to increases in fossil fuel costs and
7 foreign energy sources, quote. This is a statewide issue, he
8 said, this is not a local issue. So we are trying to treat it
9 as a statewide issue.

10 Obviously, this is a different proceeding than the
11 normal permitting proceeding that the Commission has heard.
12 This is the first time the Commission has heard a permitting
13 proceeding under the new statute under the Commission rule of a
14 nuclear unit. And I think that the Commission needs to be
15 absolutely certain that FPL has met all the requirements of the
16 state statute and the Commission rule and that FPL be required
17 to file a summary of those discussions in detail. Who but FMPA
18 can then review those summaries and purport or report to the
19 Commission whether or not those summaries are adequate and
20 truthful? And for FMPA to review and report to the Commission,
21 FMPA has to be a party in this proceeding. They are a
22 necessary party that has had discussions with FPL.

23 Let me close this portion of my argument and
24 reiterate, FMPA is in total support of FPL's nuclear unit and
25 the permitting process. We just believe that FPL needs to

1 follow the statute and the Commission rules.

2 Thank you, Commissioner.

3 MR. YOUNG: Good morning. My name is Roy Young, and
4 I'm representing in this proceeding the Orlando Utilities
5 Commission. I am going to try not to be repetitive. I would
6 certainly adopt the arguments made by both Ms. Kaufman and
7 Mr. Bryant.

8 The one point that I would like to emphasize is the
9 fact that this is an issue of first impression. And I'm not
10 talking about the statutory change. I'm talking about the
11 issue of whether or not a generating utility in Florida being
12 part of the statewide grid system has a substantial interest in
13 participating in any proceeding that might substantially add to
14 or subtract from the generating capacity of utilities in this
15 state and thereby impacting the grid system either positively
16 or negatively.

17 I think all have acknowledged that we have got a
18 baseload requirement in this state, and I think that certainly
19 Florida Power and Light and OUC, based on recent history and
20 the regulatory and political climate that we find ourselves in,
21 have ascertained that coal is not really a valid option for us
22 for the near future. And you look at what the options are, and
23 you come down to the fact that they are very few. And Orlando
24 is not in a position to permit, build, finance a nuclear plant.
25 Only a few of the utilities in Florida are. That is why I

1 think the Legislature changed the need legislation to emphasize
2 the fact that these kind of plants are different and these
3 kinds of plants need to be looked at differently.

4 This is not even a procedure where the Commission is
5 being asked to approve a specific plant, a specific model. I
6 participated in need cases on numerous occasions, and we were
7 always talking about a specific plant and getting that specific
8 plant approved. This is a new procedure. It's a new ballgame.
9 They are talking about one or two different GE or Westinghouse
10 plants. They are talking about they are not committed to go
11 either way. They are still planning. They are still looking.
12 This whole process is going to be that for a while before it
13 really gets fixed one way or the other. They are not even
14 committed to build a plant at this point in time.

15 So, that planning, we all need to be part of that if
16 we want to participate, and Orlando does. You don't have to be
17 opposed to what they are doing in order to be substantially
18 affected. You can be in favor of what they are doing and be
19 substantially affected. And I submit that we are. And I would
20 hope -- I was really surprised myself that our petition was
21 opposed so adamantly by Florida Power and Light. It's very
22 important to Orlando that the Florida Power and Lights of the
23 world, and there are only a couple in Florida, go about
24 building these plants and providing the needed capacity not
25 only for their customers, but for the customers of the whole

1 state utilizing the grid system to do that.

2 I remember when the grid system was put in effect,
3 and that's an advantage or disadvantage of being old, I guess.
4 But I think the gentleman that this room is named after was the
5 first time I heard it mentioned that the utilities in the state
6 have got to quit acting like little fiefdoms by themselves. We
7 are all part of the state of Florida, and we need to integrate
8 our systems for the good of all. And I think that the grid
9 system has worked, and it has worked well, and I think that is
10 the way this needs to be looked at.

11 The fact that the Legislature acted the way they did
12 and the way that both of the previous attorneys have alluded
13 to, I think just points out that it is, in fact, a different
14 world that we are living in, and we need to recognize that.
15 And utilities that participate in the generating capacity in
16 the state and contribute to the grid system in the state need
17 to be involved in anybody that is going to substantially impact
18 that one way or the other, and certainly these additions do
19 just that.

20 Thank you very much.

21 COMMISSIONER SKOP: Thank you.

22 MR. BUTLER: I believe it is FPL's turn.

23 COMMISSIONER SKOP: Yes.

24 MR. BUTLER: Thank you. Before I embark on my
25 prepared remarks, I would like to respond briefly to a few

1 points that have been made by Mr. Bryant regarding FPL's
2 petition and our discussions of the discussions that have
3 occurred with respect to the co-ownership issue.

4 First of all, I would like to point out that the
5 e-mail exchange that Mr. Bryant distributed is not something
6 that he has previously provided or attached to his brief in
7 support of oral argument. I also don't think that the article
8 he referred to by Mr. Atkinson was either addressed in or
9 attached to his brief as it should have been.

10 But, importantly, FPL has done what the statute
11 expects. The statute directs that FPL, and I am referring here
12 to 403.519(4)(a)(5), that the petition include information on
13 whether there were any discussions with any electric utilities
14 regarding ownership of a portion of the nuclear or integrated
15 gasification combined cycle power plant by such electric
16 utilities. In FPL's petition, Paragraph 63 says FPL has held
17 preliminary discussions regarding the potential for ownership
18 participation with several Florida electric utilities who have
19 expressed interest.

20 As FPL proceeds through the licensing phase and
21 begins dedicated commercial negotiations with the selected
22 vendor, opportunities for partnership with Florida utilities
23 will continue to be explored. And then in support of that, the
24 testimony of Mr. Scroggs has the following question and answer.

25 "Question: Has FPL held discussions with other

1 Florida utilities regarding potential ownership participation
2 in the proposed project?

3 "Answer: Yes. FPL has discussed in general terms
4 the potential for ownership participation with utilities who
5 have expressed interest. As FPL proceeds through the process
6 in developing a project plan and the associated contracts
7 necessary to execute the project, FPL will engage interested
8 parties to determine the potential for mutually beneficial
9 ownership participation by other utilities."

10 I think that clearly satisfies the requirement of the
11 statute that I just alluded to.

12 As to Mr. Bryant's point that our prehearing
13 statement, the subject matter of the witnesses identifies
14 Mr. Scroggs and not Mr. Olivera as addressing the subject of
15 ownership participation, that's simply because the summary is a
16 brief guideline to what the prefiled direct testimony covers.
17 Certainly, Mr. Olivera will be available for examination and if
18 staff of the Commission is interested in exploring with him
19 directly the subject of ownership participation discussions,
20 that opportunity will be open, and no intent to limit the
21 discussion to Mr. Scroggs. We were simply summarizing the
22 extent of the prefiled direct testimony.

23 This proceeding is about determining the need for
24 FPL's proposed Turkey Point Units 6 and 7 project according to
25 criteria specified in Section 403.519 of the Florida Statutes.

1 None of those criteria directs or authorizes the Commission to
2 condition approval on co-ownership in the project, yet it is
3 clear from their pleadings and comments that the proposed
4 intervenors' purpose in seeking intervention is precisely to
5 force a debate on co-ownership.

6 Standing to intervene in a proceeding is available
7 only to those asserting interest that the proceeding is
8 designed to protect. Where persons seek to intervene in order
9 to pursue or protect interest that a proceeding is not designed
10 to protect, as is the case with the proposed intervenors, they
11 have no standing and their intervention must be denied.

12 The proposed intervenors refer to Section
13 403.519(4)(a)(5) that requires a new applicant to include in
14 its petition information on whether there were any discussions
15 with any electric utilities regarding co-ownership in a
16 proposed nuclear plant. While it is clear on the face of this
17 provision that it only requires an informational filing, they
18 argue that it must mean more because a mere informational
19 requirement would be meaningless. This argument fails for at
20 least four reasons:

21 First, its premise is incorrect. Statutory
22 informational requirements aren't meaningless merely because no
23 specific regulatory action hinges upon them. For example, FPL
24 and other IOUs annually disclose a trove of financial,
25 accounting, engineering, and statistical data in their FERC

1 Form 1 filings. That information is valuable to the Commission
2 and other users, but the great majority of it has no direct
3 regulatory consequences.

4 Second, the proposed intervenors are seeking to
5 invoke principles of statutory interpretation, but those
6 principles apply only where there is statutory ambiguity, and
7 here there is none. And if one were to resort to statutory
8 interpretation, one would certainly look to the legislative
9 history of Section 403.519 and find that the Legislature
10 considered and declined to adopt a provision that would have
11 taken co-ownership into consideration in siting a proposed
12 nuclear plant. And those provisions, the first one that would
13 have required a consideration of co-ownership as part of the
14 siting board's determination on a site certification
15 application and then the subsequent replacement of that with
16 the language we now have as Section 403.519(4)(a)(5) are
17 attached to FPL's brief in support of its position here. This
18 legislative history strongly reinforces the conclusion that the
19 Legislature intended nothing more than an informational
20 requirement in the language that was ultimately enacted.

21 Third, because the proposed intervenors seek to
22 enlarge the Commission's powers, they have an especially heavy
23 burden that they have not met. It is well-established that the
24 Commission has only those powers that the Legislature has
25 granted with any reasonable doubts about the existence of the

1 power resolved against it.

2 Finally, even if the proposed intervenors could
3 overcome all these obstacles, their attempt to enlarge the
4 Commission's authority by implication would fail as an invalid
5 delegation of legislative authority. There are no standards or
6 even guidance as to how the Commission would take co-ownership
7 into account in a need determination as it must be for a
8 legislative delegation of authority to be valid.

9 The proposed intervenors have also suggested that
10 they are entitled to intervene because they have an interest in
11 the adequate, reliable, and cost-effective supply of
12 electricity in Florida. This is a red herring. The proposed
13 intervenors aren't concerned about adverse impacts from
14 Florida's project on electric supply in Florida. They all
15 support the project, but just want leverage to ensure that they
16 get to share in the ownership of it.

17 Both this Commission and the Florida Supreme Court
18 have made it clear that need determinations are to be made from
19 the perspective of the entity ultimately consuming the power,
20 in this case FPL. And the proposed intervenors have given no
21 legitimate reason to change that focus.

22 In any event, the proposed intervenors have nothing
23 to suggest that who owns the project will determine its impact
24 on the adequacy, reliability, or cost-effectiveness of electric
25 supply. All of the environmental, fuel diversity, and other

1 advantages of the project will benefit Florida regardless of
2 ownership.

3 Finally, the proposed intervenors have asserted that
4 there is precedent for intervention in one electric utility's
5 need proceeding by other electric utilities. But these
6 precedents are easily and dispositively distinguishable. Two
7 of them, the ones that were described previously to you,
8 involved FPL as the intervening utility. And these occurred
9 where the need proceedings in question were from merchant
10 plants that have expressly refused to commit in advance as to
11 whose need they would serve. Now, understandably under those
12 circumstances, FPL, as one of the utilities whose need the
13 merchant plant might try to serve, had a substantial interest
14 in determining whether the state legitimately needed an
15 uncommitted source of electricity. That circumstance clearly
16 is inapplicable here.

17 FPL is intending to build the Turkey Point Unit 6 and
18 7 project to meet its own needs and intends to use the project
19 for that purpose and has asked the Commission to evaluate it on
20 that basis. There is none of the uncertainty as to what might
21 ultimately be the end use of the power in question that existed
22 with respect to the merchant plants that were the subject of
23 the two proceedings in which FPL intervened.

24 The third and final precedent was not discussed here
25 with you in oral argument, but was referenced in one of the

1 briefs, involved the City of Vero Beach, which intervened in
2 the FMPA need proceeding. Now, Vero Beach is an FMPA member,
3 and it intervened out of concern that the plant in question
4 might not be fully needed to meet FMPA load, but that Vero
5 Beach as a member of FMPA, nonetheless, would have to help pay
6 for that plant. Again, that situation is clearly
7 distinguishable from FPL's project in which the proposed
8 intervenors have no interest and no financial obligation to
9 support.

10 For these reasons, the proposed intervenors should
11 not be permitted to intervene as they lack standing to do so.

12 Thank you.

13 COMMISSIONER SKOP: Thank you, Mr. Butler.

14 At this point I think it would be appropriate to take
15 a break. Or, staff, are there any other issues that we need
16 to --

17 MS. BRUBAKER: We can do so. I wondered if you
18 prefer to have the intervenors an opportunity to rebut FPL's
19 comments now or after the break?

20 COMMISSIONER SKOP: We can do so now if you guys
21 would prefer to do so. The same order as we started with.

22 Ms. Kaufman.

23 MS. KAUFMAN: Thank you.

24 Thank you, Commissioner.

25 Of course, I have to take issue with some of the

1 comments that Mr. Butler made, and I will try to do it very
2 briefly. I think that the interpretation of the new amendments
3 to 403.519 that FPL suggests do make the statute meaningless.
4 I think his reference to the FERC Form 1 is totally inapposite
5 in this case. The Legislature has specifically included
6 language in the statute that requires a look at co-ownership
7 issues. And as I said previously, your grid bill jurisdiction
8 would have allowed you to do that regardless of whether the new
9 co-ownership language had been included.

10 Mr. Butler said that -- I took him to say that our
11 discussion of reliability issues, integrity of the grid issues
12 was essentially a red herring to let us, I guess, get the
13 camel's nose under the tent. That is not the case at all. I
14 won't try to speak for the other utilities at the table, but
15 certainly the heart and soul of Seminole's mission in the state
16 is to provide cost-effective, reliable power to its members.
17 And it is going to be impacted if this petition is granted, and
18 it's going to be impacted if this petition is denied.

19 Finally, I discussed -- I guess I was going to bring
20 up the prior Commission orders in which determination of need
21 cases that had granted intervention to utilities. It is true
22 that in those cases there were merchant plants involved.
23 However, that does not, in fact, and it does not change the
24 basis for FPL's own argument in regard to standing in those
25 cases, which was that it was going to be affected in its

1 generation planning, in its transmission planning and its
2 ability to serve its customers by issues that the Commission
3 was going to consider in those cases. In at least one of those
4 cases, as I recall, this intervention issue was hard fought and
5 FPL was on the other side of the issue in that case, but I
6 think the basis for the decisions in those cases is the same
7 basis that we have argued in this case in terms of substantial
8 interest.

9 Thank you.

10 COMMISSIONER SKOP: Thank you, Ms. Kaufman.

11 Mr. Bryant.

12 MR. BRYANT: Thank you, Commissioner.

13 Staff has to know, the Commission has to know whether
14 or not there have been discussions with other electric
15 utilities. That's what the rule says, and the rule says you
16 must provide a summary of those discussions. FPL in their
17 argument says, well, staff or the Commission could question Mr.
18 Olivera as to the extent of those discussions with Florida
19 Municipal Power Agency. The whole purpose of our intervention
20 as an interested party was to bring to the Commission's
21 attention and the staff's attention there have been discussions
22 and what the extent of those discussions have been so that if
23 Mr. Olivera forgot to mention those discussions to this
24 Commission in his sworn testimony, then we would be there
25 prepared to help him remember those discussions and have him

1 provide a summary of those discussions to the Commission in
2 this proceeding as the rule requires. It couldn't be any
3 clearer what the rule requires. Who but FMPA could bring those
4 discussions to the attention of this Commission if FPL forgot
5 to bring those discussions to the attention of this Commission
6 in this proceeding? That is the foundation for FMPA's petition
7 for leave to intervene, not hijack the proceedings as colored
8 by FPL in order to use the Commission to force negotiations
9 upon FPL.

10 We have not so stated, not have a word in this
11 petition or our brief about negotiations and the Commission
12 controlling those negotiations in this proceeding. Indeed,
13 FPL's argument presumes that the Commission cannot control
14 their own proceeding. And I would assume that if the
15 Commission chose not to hear anything further about those
16 discussions, the Commission would so indicate to counsel. But
17 until you know about them, how can you consider them, in any
18 form or fashion that the Commission wants to consider those
19 discussions, which it has under its preliminary jurisdiction in
20 this need proceeding, the statutes and what the Commission is
21 entitled to look at are very clear and it is very broad.

22 I think the Commission needs to allow intervention.
23 I think the Commission needs to inquire as to these
24 negotiations since FPL has failed to summarize those
25 negotiations. And, quite frankly, I think the Commission needs

1 to require after they award their need certificate to FPL,
2 which I hope they will, that FPL report periodically on the
3 status of those negotiations with the other electric utilities.
4 How is the Commission going to know otherwise?

5 In the words of FPL in their petition, words of FPL
6 in their petition, the Legislature amended 403.519 of the
7 statutes to establish new criteria for determining the need for
8 new nuclear capacity that are somewhat different from the need
9 standards applicable to conventional steam units. Their words,
10 not my words. Their words. The legislative actions, quote,
11 define a new paradigm for the development of nuclear
12 generation. Their words, not my words. Quote, the Commission
13 should have full knowledge of the potential benefits of joint
14 participation. All we want to do is make sure that they
15 summarize and discuss in the proceeding what we are talking
16 about.

17 COMMISSIONER SKOP: Thank you, Mr. Bryant.

18 Mr. Young.

19 MR. YOUNG: Yes, thank you.

20 Again, I will try not to be repetitive. I don't
21 believe that Florida Power and Light responded to my issue.
22 They may have. But if they did so by citing the merchant plant
23 cases, then I think the merchant plants that we were talking
24 about in that period of time, one of the objections was that
25 they had no commitment to provide their capacity to the grid

1 system. In fact, they had no commitment to make sure that the
2 energy stayed within the state of Florida, and I think that was
3 a real problem that they had in those cases. Those kind of
4 statements made in those cases shouldn't really be utilized for
5 precedent here.

6 The issue to me is very simple. Do we have a
7 statewide grid system in Florida or don't we? If we do, then
8 are all the generating utilities that participate and
9 contribute to that system part of the overall statewide system?
10 If the answer to that is yes, then why is it so hard to come to
11 the conclusion that if anyone makes a substantial increase or a
12 substantial decrease in the capacity that will be contributed
13 to that system, why isn't that significant?

14 It's very significant. It is substantial. And
15 absent -- if there was no legislation that took place in the
16 last couple of years in the need cases -- or in the need
17 legislation, OUC would still have a right to intervene in this
18 case. I think the fact that the Legislature did speak a couple
19 of years ago changed dramatically the process by which both
20 this kind of plant, and, as I believe, coal gasification would
21 go about the process of having its need determined. It did so
22 for a reason. Why did it change? I think it changed because
23 of the uniqueness of the regulatory and political climate for
24 the other types of fuel. And it's easy to understand that you
25 have got to be a very large utility in order to be able to plan

1 and finance and go through the permitting process to build one
2 of these plants. And I believe that that was why they must
3 have insisted that at least Florida Power and Light talk to the
4 OUCs of the world. But we're not saying that if they did or
5 they didn't that that should prevent us from participating in
6 this case. I think the reason that we ought to be able to
7 participate in this case is because their impact on the grid
8 system is going to impact OUC. Hopefully positively, but it is
9 going to impact them.

10 Thank you very much.

11 COMMISSIONER SKOP: Thank you, Mr. Young.

12 MR. BUTLER: Commissioner Skop.

13 COMMISSIONER SKOP: Yes.

14 MR. BUTLER: Excuse me. I didn't use all of my time
15 and, if you would allow me a very brief opportunity to respond,
16 I would appreciate it.

17 COMMISSIONER SKOP: If there's no objection, I think
18 a brief response would be in order.

19 MR. BUTLER: Thank you.

20 I would just like to point out that looking closely
21 at what Section 403.519 provides, it asks for information on
22 whether there were any discussions with any electric utilities
23 regarding ownership of a portion of the nuclear plant. FPL has
24 provided that information. Certainly, if the Commission or
25 staff wants to explore that further, it's free to do so with

1 Mr. Scroggs or Mr. Olivera, but we have complied with the
2 statutory requirement.

3 The additional criteria in the statute that applies
4 specifically with respect to nuclear plants we are referring to
5 are not in Subsection (4)(a) where the reference to
6 informational requirement on co-ownership discussions appears,
7 but rather in (4)(b) which sets out several matters that the
8 Commission shall take into account in making its determination
9 on the need for a nuclear plant. None of those additional
10 criteria involves the issue of co-ownership.

11 Finally, I'd just like to point out that it seems the
12 argument regarding reliability and the opportunity to
13 participate because of generalized concerns over reliability
14 proves too much. If that were the case, every utility in the
15 state would have an opportunity to intervene in every other
16 utility's need proceeding for a nuclear plant or otherwise,
17 because the arguments you have heard here today about
18 generalized interest and reliability have no specific
19 application to the Turkey Point Unit 6 and 7. And, clearly, it
20 has been this Commission's practice, and it has been the
21 Florida Supreme Court's confirming of that practice that need
22 proceedings are specific to the utility that is seeking to use
23 the power from the proposed facility.

24 Thank you.

25 COMMISSIONER SKOP: Thank you, Mr. Butler.

1 At this point I would like to take a break to confer
2 with staff to prepare questions for the parties. And I think
3 that will probably take about 20 or 30 minutes, so if we could
4 reconvene at 11:00 o'clock.

5 We stand adjourned until 11:00. Thank you.

6 (Recess.)

7 COMMISSIONER SKOP: I would like to reconvene the
8 proceeding at 11:27 a.m.

9 And, again, I apologize a little bit to the parties
10 that we are a little bit delayed. I wanted to prepare some
11 questions such that we could make this a well-vetted
12 discussion, as well as rounding out the record for rendering a
13 decision at the appropriate time.

14 With that, I think how I would like to proceed is
15 that I do have various questions, and because there are the
16 petitioners, perhaps I can ask a question and we can go down
17 the line unless, again, there -- it seems to me that instead of
18 having a lead petitioner, if you will via Seminole or whomever,
19 it seems there may be some divergence of interest, and I think
20 in answering some of the questions to complete the record it
21 may be appropriate to have individual responses. So, again, if
22 we need a more detailed response, we can get into that, as much
23 time as we need. But, again, my interest is making sure that
24 the parties receive adequate due process and that we do have a
25 well-vetted discussion and that we are able to round out the

1 record appropriately.

2 So with that, I think the first question that I would
3 like to briefly ask, and I'm sure this is covered in the
4 briefs, but I just want to go down a line of questioning, is --
5 I guess it's your assertion, and this is to the petitioners,
6 that the need determination is the appropriate forum to address
7 your concerns under Florida Statute 403.519, is that correct?

8 MR. BRYANT: Yes, Commissioner.

9 COMMISSIONER SKOP: And can you, just for the record,
10 and also for the sake of the court reporter, can you respond
11 which entity you are representing? That way we can make a good
12 logical record of this.

13 MR. BRYANT: Thank you, Commissioner.

14 Fred Bryant, Florida Municipal Power Agency and
15 Florida Municipal Electric Association; yes, sir.

16 COMMISSIONER SKOP: And, for the record, the response
17 to that question would be yes, correct?

18 MR. BRYANT: Yes, sir.

19 COMMISSIONER SKOP: Okay. And Ms. Kaufman?

20 MS. KAUFMAN: Thank you, Commissioner.

21 Yes, I agree that the answer is yes.

22 COMMISSIONER SKOP: Mr. Young?

23 MR. YOUNG: Yes.

24 COMMISSIONER SKOP: Okay. And with respect to
25 Agrico, what is the specific injury in fact that the

1 petitioners will experience if intervention is not granted?

2 MR. BRYANT: Clearly, if the Commission is not made
3 aware of discussions or if there have been no discussions, then
4 an electric utility has either missed the opportunity for the
5 discussions or missed the opportunity in the proceedings to
6 clarify or put additional facts into the record as to the
7 discussions that were had, no one else can. If they don't file
8 a summary, if they don't discuss in the proceeding what the
9 discussions were with an electric utility, no one else can.

10 COMMISSIONER SKOP: Thank you, Mr. Bryant.

11 Ms. Kaufman.

12 MS. KAUFMAN: Commissioner, our position on that is
13 that the injury in fact is two-fold, really. And as I said in
14 my opening remarks, based on our position in the state as a
15 generating utility interconnected to the grid, on that basis I
16 think that if we are not permitted to participate in the
17 proceeding we would be injured in fact, because we will not
18 have the ability to provide input to the Commission. We won't
19 have the ability to support FPL's application in regard to
20 opposition. We won't have the ability to make the Commission
21 aware of how this project is going to impact us.

22 And on the co-ownership question, which we view as a
23 separate basis for intervention, clearly, we are injured and
24 will continue to be injured so long as FPL persists in its
25 position that it has no obligation to even discuss prospects of

1 co-ownership with us.

2 COMMISSIONER SKOP: Thank you.

3 Mr. Young.

4 MR. YOUNG: Especially because of the new procedure
5 and just sort of going in increments, I think that it's more
6 important for OUC to be involved. I think it will affect OUC's
7 ability to adequately plan how to meet its future electrical
8 generation needs. It will impact their long-term transmission
9 planning, and it will impact the economics of the electric
10 power sales throughout the state of Florida, and will impact
11 the long-term stability and reliability of the electric grid.
12 And I think that is how OUC, in fact, suffers injury in this
13 case.

14 COMMISSIONER SKOP: On the second prong with
15 Agrico -- I mean, back on the first prong but the second
16 question with respect to Agrico, what is the sufficient
17 immediacy of the injury? And, Mr. Bryant, if you could address
18 that.

19 MR. BRYANT: What other forum can we bring the lack
20 of discussions or the lack of summary of the discussions to
21 except for the PSC, number one. What other proceeding can we
22 bring to the Commission for lack of the discussions or the lack
23 of the summary of the discussions, number two. This is the
24 proceeding; this is the forum. I think the -- I don't make
25 light of the statute, nor do I make light of the Commission

1 rule on the statute. I think the statute and the Commission
2 rule has meaning. I think it's up to the Commission to
3 interpret their rule further and decide with this information
4 how they want to proceed in the need petition proceeding and
5 any other proceedings that they might wish on their own
6 volition to bring. But without the start you never get
7 started. Without the start, you never get started.

8 COMMISSIONER SKOP: Thank you.

9 Ms. Kaufman.

10 MS. KAUFMAN: Thank you, Commissioner.

11 I agree with Mr. Bryant that this is the place. The
12 Commission has jurisdiction under 403.519 as the exclusive
13 forum for the determination of need. If we can't bring our
14 concerns here under that and under your grid bill authority and
15 under the co-ownership language, I'm not clear that we would
16 have a point of entry at any place. And so this is the
17 appropriate forum for those issues and discussions to be heard.

18 COMMISSIONER SKOP: Thank you.

19 Mr. Young.

20 MR. YOUNG: Yes, sir. I think that the Commission
21 must consider statewide objectives, and that the statute
22 requires the Commission to take into account whether these
23 power plants will enhance the reliability of electric power
24 production within the state, not just within Florida Power and
25 Light's territory, but within the state by improving the

1 balance of power plant fuel diversity and reducing Florida's
2 dependence on fuel oil and natural gas. Also, they need to --
3 you need to take into account the most cost-effective source of
4 power to improve the balance of fuel diversity and reducing
5 Florida's dependence on other -- well, on oil and natural gas
6 and to reduce air emission compliance and contribute to the
7 long-term stability and reliability of the electric grid.

8 We are no longer in a utility in and of ourselves.
9 We're in a broader community, and we have got to look at it in
10 a broader community. And I think that's what the grid system
11 initially started out to be, and I think that we need to expand
12 upon that. And my point all throughout this has been that any
13 substantial increase, and certainly what Florida Power and
14 Light is proposing here is a substantial increase, to the
15 overall generating system within Florida impacts all the
16 utilities in Florida. It certainly impacts OUC, and I think
17 that we meet both the first and the second prong of that test.

18 Thank you.

19 COMMISSIONER SKOP: Thank you, Mr. Young.

20 And I'm going to ask one additional question to the
21 petitioners, and then give FPL the opportunity to respond to
22 the Agrico arguments on both prongs with respect to the injury
23 in fact and the sufficiency. I know that has been briefed,
24 but, again, I do think in due process certainly we should allow
25 Mr. Butler and Mr. Litchfield to comment also.

1 With respect to the questions that I just asked the
2 petitioners regarding the injury in fact and the sufficiency or
3 sufficient immediacy under the first prong of Agrico, isn't the
4 injury and the immediacy speculative, to some extent, that FPL
5 could have discussions at some future point in time that they
6 deem appropriate?

7 And, Mr. Bryant, if you could elaborate on that.

8 MR. BRYANT: What if the discussions between
9 Mr. Armando Olivera and Mr. Fontes, the CO of my company, were:
10 Roger, don't worry, you will have an ownership interest in this
11 nuclear plant, just wait until we get through the need
12 proceeding. Now, if that hypothetical happened, and let's
13 assume, hypothetically, that was said in good faith, then after
14 the need proceeding there was a change of heart or a change of
15 mind or worse, skullduggery to keep us out of the need
16 proceeding, then it is too late. Too late for FMPA to bring to
17 the attention of the Commission discussions that were held that
18 may have been a specific promise of participation in the
19 proceeding.

20 How will this Commission know that without following
21 the rule and without allowing FMPA, who was the other side of
22 the discussions, to make sure that under oath those who the
23 discussions were initiated by, in our case, and held with, in
24 our case, are truthful, accurate, and full? And it is
25 impossible in the procedural point of a need petition to bring

1 into the petition alleging all of the facts and circumstances
2 and discussions that occurred. We simply have said there have
3 been discussions, and under the law we are an electric utility
4 and those discussions were with us, and FPL has failed to
5 comply with the law and the Commission's rule, and we are going
6 to be harmed, have been harmed without bringing that to the
7 attention of the Commission.

8 COMMISSIONER SKOP: Thank you.

9 Ms. Kaufman.

10 MS. KAUFMAN: Commissioner, our injury, Seminole's
11 injury is not speculative in the least. As I mentioned
12 earlier, despite the fact that we have requested to engage in
13 discussions with FPL, they have refused to discuss any
14 co-ownership issues with us up to this point in time. We think
15 that, obviously, we are substantially affected and injured by
16 that, and we think that that is an issue that appropriately and
17 properly belongs before the Commission for their consideration
18 in this determination of need.

19 Given some of the legislative changes and the
20 legislative issues that we discussed in the main portion of our
21 argument, the lack of the ability to site a number of these
22 plants, the fact that options to meet demand seem to be
23 diminishing in the state, it's critical that these issues come
24 before the Commission, and it's critical that Florida Power and
25 Light discuss with willing participants in these big, risky,

1 expensive nuclear power plant projects whether participation by
2 others is the thing that is right for the state of Florida. So
3 we think, you know, our injury is not speculative here in the
4 least.

5 COMMISSIONER SKOP: Thank you, Ms. Kaufman.
6 Mr. Young.

7 MR. YOUNG: I apologize. I heard the word
8 speculative in your comment, but I did not hear all of it.
9 Would you mind repeating the question?

10 COMMISSIONER SKOP: Yes, sir. I think the question
11 as I tried to frame it was under Agrico, the first prong of
12 Agrico, where it speaks to the injury in fact and the
13 sufficient immediacy, isn't it speculative on both of those
14 aspects to the extent that FPL at some future point in time
15 could decide that it wanted to engage in such conversations?

16 MR. YOUNG: Well, I think their whole petition is
17 speculative. They are not committing to do anything at this
18 point. That's the new procedure that the Legislature in their
19 wisdom got us to when they did the amendments. I think that
20 points out dramatically to me why OUC needs to be involved in
21 this process as you go forward to decide whether or not to
22 permit them to build whatever they ultimately decide it is that
23 they want to build.

24 This is not the normal need case where they are
25 proposing to build a specific megawatt plant with specific, you

1 know, fuel and whatever. It's an ongoing kind of procedure. I
2 don't know, in the final analysis, whether anybody is going to
3 want to participate in what Florida Power and Light ultimately
4 agrees it wants to build and this Commission approves. I think
5 that is speculative, and I think that is why OUC needs to be
6 involved in this, so that they can participate in the process
7 by which that ultimate plant is decided. And then if they are
8 given the opportunity to discuss participation with Florida
9 Power and Light at that point when more information is known,
10 OUC will be in a position, having participated in the
11 proceeding up to that point, to meaningfully participate in
12 those discussions. And I think that's why it is paramount that
13 we be involved in this and, hopefully, will be granted the
14 opportunity to do so.

15 COMMISSIONER SKOP: Thank you. Mr. Young.

16 At this point I would like to hear from FPL.

17 Mr. Butler, if you could briefly respond to,
18 basically, the petitioners' assertions with respect to the
19 injury in fact and the sufficient immediacy under Agrico, I
20 would greatly appreciate that.

21 MR. BUTLER: With all due respect, I don't think that
22 the petitioners have answered your questions. I have been
23 listening pretty carefully, and I have not heard anything about
24 how their interests will be adversely affected by FPL building
25 the plant. What they keep coming back to is dancing around the

1 question of the extent to which they are going to be allowed to
2 have an ownership share in that plant, which is, I think,
3 clearly a subject that is not contemplated by 403.519,
4 including the revisions that added the Subsection (4)(a)(5).
5 They are really talking about how they would be injured by not
6 being allowed to participate as intervenors, not the question
7 that really controls under Agrico, which is how the outcome of
8 the proceeding, presumably if we get what we want, a
9 determination of need for the Turkey Point Units 6 and 7, would
10 harm them.

11 As to reliability, they have said nothing that I
12 heard which significantly raised concerns over how their
13 reliability would be adversely affected. Keep in mind that if
14 they ultimately become, you know, part owners, almost certainly
15 it will be along the model of the St. Lucie 2 co-ownership
16 provisions and others around the country. They would be
17 minority owners of an undivided share in a plant that FPL will
18 continue to operate according to its own commitments to the NRC
19 and others. The NRC actually expects and requires that, that
20 there be a single entity that it can look to as to who is going
21 to operate this unit.

22 The benefits of the project, the reductions in
23 environmental emissions, the fuel diversity, et cetera, Florida
24 is going to see that regardless of who owns the portions of the
25 plant. And I simply fail to see anything in their arguments

1 suggesting an interest that would be harmed other than their
2 economic interest in benefitting from what they think may be a
3 low cost source of power, and that is not something
4 contemplated by the grid bill and it's not an interest that the
5 informational requirement in the statute or your rule
6 contemplates that the Commission would either decide or
7 control.

8 COMMISSIONER SKOP: Thank you, Mr. Butler.

9 Mr. Litchfield, do you have any additional comments?

10 MR. LITCHFIELD: I would note, Commissioner Skop,
11 that Mr. Olivera has, in fact, sent a letter to all of the
12 parties identifying FPL's position relative to the discussions
13 as to possible joint ownership or sharing of the output of the
14 plant, and that letter was sent on December 14th, 2007. We
15 would be happy to supply -- the parties all have copies of
16 that. We would be happy to supply that to Commissioner Skop as
17 well in connection with the record.

18 In fact, Mr. Bryant is going to distribute copies of
19 that for us right now. And I think this fairly represents
20 FPL's position in this matter and reflects its official
21 position. Now, we heard Mr. Bryant articulate earlier a
22 hypothetical fact scenario, a speculative fact scenario which
23 even if one were to assume were true just for the sake of
24 argument here today, again, does not confer standing on
25 Mr. Bryant's client or any other muni or co-op in this case.

1 The bases for standing are very well laid out in the
2 Agrico case. I think Mr. Butler has done a more than adequate
3 job of identifying those elements, and I agree with him
4 whole-heartedly that I have heard nothing here today that would
5 indicate that there is any immediacy of harm or that this is
6 within the zone of interest that the statute is designed to
7 protect. And we would urge that the Commissioner reject the
8 proposed interventions in this matter.

9 COMMISSIONER SKOP: Thank you.

10 And just on a side issue that Mr. Young raised to the
11 extent that the proposed Turkey Point 6 and 7 units are not
12 sufficiently definitized in terms of their size, I think,
13 obviously there are two units, correct me if I'm wrong, but in
14 terms of reactor technology, either boiling water or
15 pressurized water reactors, and then the various size between
16 those two technologies. But can you briefly elaborate on
17 Mr. Young's concern that because of that alleged uncertainty
18 that that leaves room open to further definitize that or their
19 participation is critical to participate in that discussion?

20 MR. BUTLER: Well, I think the most straightforward
21 response is that, yes, FPL is still deciding between the
22 alternatives, although I think it's fair to say that FPL is
23 leaning pretty strongly in the direction of one of them, the
24 pressurized water reactor design. But I fail to see how the
25 choice between those two is or should be governed by some other

1 utility's interest in ownership of the units. The decision is
2 being made for a host of technological, commercial, and
3 licensing reasons. We are not going to be picking the units
4 because we decide we want big or we want small. We are going
5 to be picking the units that are the ones that we feel most
6 comfortable can be productively licensed and brought into
7 service. And I really don't see how participation by any of
8 these parties is going to shed light on that issue.

9 COMMISSIONER SKOP: I understand. I just wanted to
10 flesh it out because, I guess, as Mr. Young has pointed out
11 that uncertainty seems, I guess, in his opinion, and I don't
12 want to put words in your mouth, but that uncertainty leads to
13 a foothold to leave things open to discussion, if you will.
14 But apparently that is a technical decision on your part.

15 MR. BUTLER: I think that is right. And, frankly, I
16 think that it does, to your last question, further the
17 speculation as Mr. Olivera's letter indicates. One of the
18 things -- one of the reasons we are not pursuing more
19 specifically and more detailed discussions at this time with
20 potential co-owners is the fact that we don't have a
21 crystalized, you know, technology choice in commercial terms
22 that we could go to people and discuss that. And it is really
23 very speculative, at this point, as to what the ownership
24 opportunities would be, whether they would be interesting to
25 the other parties or not, and what the terms of them would be.

1 So while it's true that the proceeding as envisioned
2 by the Legislature here allows for a determination of need for
3 a project that is not as fully crystalized as might be the case
4 with more conventional units, we fail to see how that helps the
5 arguments of the petitioners to intervene here. They are
6 suggesting that they want to use this proceeding to try to, you
7 know, their one best opportunity to force a discussion, if not
8 force a decision on co-ownership in units where the time is
9 clearly not right for that. And we think that would be not
10 what the statute contemplates, not what the Legislature
11 contemplates.

12 COMMISSIONER SKOP: Thank you.

13 Just one quick follow-up. With that in mind, and I
14 believe that FPL stated that the units would be intended to
15 serve its retail customer load, not wholesale, I mean, could
16 you envision the situation where there would be no minority
17 participation solely because the utility needed it for its own
18 purposes?

19 MR. BUTLER: Well, I think that the short answer is
20 yes. I mean, I think that the units are fully expected to be a
21 very low cost source of power in the sense that their output
22 will be favorably priced relative to output of other units.
23 They would be baseload units. I think that we would expect
24 that FPL's customers if we owned all of the units would be
25 first entitled to the output from those units so they get the

1 full benefit of the power from them.

2 If there is a decision for commercial reasons down
3 the road that co-ownership makes sense, I think one of the
4 things actually that we would probably end up at that time
5 bringing to you in one of the cost-recovery proceedings for the
6 annual cost-recovery proceedings for the unit would be the
7 proposed commercial terms to be sure that the Commission is
8 comfortable that our customers and FPL's customers are getting
9 a good enough deal, that sharing a percentage of ownership with
10 some other utility or a group of utilities will provide enough
11 compensation to FPL that it is a fair deal for FPL's customers.

12 COMMISSIONER SKOP: And just one additional
13 follow-up. Something you said opened the door there. But,
14 basically I guess in that sense, FPL would recognize that there
15 would be the need to diversify risk on a large corporate
16 undertaking. Is that a fair statement to make?

17 MR. BUTLER: I think that is a fair statement. But
18 it is also a fair balance against that to recognize that, you
19 know, we believe this plant will have considerable benefit.
20 And we feel that we have an obligation to our customers to try
21 to capture that benefit for them. So, yes, there is a risk to
22 it. The reason that we are willing to, you know, embark on
23 undertaking the risk is to capture the benefits. And I think
24 in the context I was raising it in is when you make it clear
25 that if we get down the road and there is some discussions of

1 co-ownership, that is actually going to be one of the questions
2 kind of the opposite concern to what is being raised by the
3 proposed intervenors here, but that we would probably want to
4 bring to your attention for seeking the Commission's input in
5 one of the cost-recovery proceedings is to be sure that we are
6 not selling our customers short by giving up some portion of
7 the benefits of the unit for the advantage of another utility.

8 COMMISSIONER SKOP: And that exactly was the second
9 part of my question. I mean, at the end of the day the
10 decision to diversify risk or not to diversify risk, at the end
11 of the day would you agree that is a business decision that
12 should be made on behalf of the needs of the customers and your
13 individual shareholders?

14 MR. BUTLER: Yes.

15 COMMISSIONER SKOP: Okay. Moving forward, I guess
16 that handles the concerns under Agrico. Just for the record, I
17 just wanted to round out the petitioners. I guess all of the
18 petitioners are in general support of the need determination
19 with the exception of the collateral issues that were raised.

20 Is that my understanding, Mr. Bryant?

21 MR. BRYANT: As far as FMPA, yes, sir.

22 COMMISSIONER SKOP: Thank you.

23 Ms. Kaufman?

24 MS. KAUFMAN: That's correct for Seminole Electric.

25 COMMISSIONER SKOP: And, Mr. Young?

1 MR. YOUNG: Yes, sir.

2 MS. BRUBAKER: Commissioner Skop, if I may?

3 COMMISSIONER SKOP: Yes.

4 MS. BRUBAKER: I would like to note for the record
5 that the Office of Public Counsel and Jan and Bob Krasowski are
6 also parties to the docket and that, just for clarity's sake,
7 we are not speaking as to whether they are in favor of the
8 petition.

9 COMMISSIONER SKOP: Correct. I'm just speaking to
10 the petitioners before us. Because, again, I think that they
11 have stated openly that they are in favor of the petition as a
12 whole, but, again, they do have concerns. So, again, I was
13 just trying to round out the record, but I recognize there are
14 other intervenors. OPC is monitoring, and through that granted
15 intervention to people in an individual capacity.

16 MS. BRUBAKER: I appreciate the clarification.

17 COMMISSIONER SKOP: Thank you.

18 Okay. Getting back on point, and then I guess we
19 will start with the petitioners and then we will go to FPL. Is
20 the need determination the exclusive remedy for addressing or
21 redressing your concerns?

22 MR. BRYANT: Well, Commissioner, I'm reminded of the
23 ten years I litigated against FPL to gain access on behalf of
24 FMPA to the St. Lucie 2 nuclear unit, which took me to the
25 Federal Energy Regulatory Commission, it took me to the Justice

1 Department, and it took me to the federal courts where
2 ultimately FPL was ordered to offer participation in their
3 nuclear unit to FMPA. So I guess the answer is, no, there are
4 other forums. But, quite frankly, the forum that I'm seeking
5 to participate in today on behalf of FMPA is to make sure that
6 they comply with what the law and your rule requires them to
7 do, and that's file a summary of the discussions of those
8 discussions they have had with us.

9 Why are we dancing around this so much? Why should
10 not the Commission want to be aware of all possible benefits,
11 not only for FPL, but to the rest of the electric utilities
12 that are here today of possibly joint participation? Not
13 saying to FPL and, certainly, we have not said in our petition,
14 Commission, we want you to force FPL to offer participation.
15 But, you know, the Commission ought to know if there are
16 discussions; and if there are discussions, are the potential
17 benefits to FPL ratepayers, as well as the ratepayers of the
18 other electric utilities. Let me give you one example, the St.
19 Lucie participation agreement between FMPA and FPL and OUC and
20 FPL, the same participation.

21 COMMISSIONER SKOP: Mr. Bryant, I would like to try
22 to cut you off there. I guess I was just kind of looking for a
23 brief answer. I am well-aware of the case law, the historical
24 case law and the litigation with respect to transmission and
25 St. Lucie.

1 MR. BRYANT: Ask them about the reliability exchange
2 agreement.

3 COMMISSIONER SKOP: Anyway, like I said, I didn't
4 mean to cut you off.

5 MR. BRYANT: Fair point. Fair point.

6 COMMISSIONER SKOP: But, again, I'm trying to limit
7 this so we can get through the line of questioning.

8 Ms. Kaufman.

9 MS. KAUFMAN: Commissioner, I will be candid with
10 you, I have not researched the other avenues that Seminole
11 Electric might have in regard to the issues that they have
12 raised here, so I can't answer you with specificity. What I
13 can tell about this issue is that when I look at your grid bill
14 jurisdiction and when I look at 403.519, including the
15 amendments to it, it seems to me that the first stop and
16 perhaps the most appropriate stop is here at the Public Service
17 Commission, and that the Commission is charged with the -- I
18 don't know if first look is the right way to put it or not, but
19 they are the first stop in this process, and they have been
20 given a great deal of responsibility over these issues that are
21 critical, not only to FPL, but to all of the utilities that you
22 see sitting here before you.

23 COMMISSIONER SKOP: Thank you.

24 And, Mr. Young.

25 MR. YOUNG: I do not know of any other forum that

1 would give us an opportunity to participate in looking at the
2 development of this project as it goes along. I guess from
3 what others have said, if we're denied the right to do that, we
4 would certainly look for other opportunities. But I would hope
5 that we would not be denied that.

6 COMMISSIONER SKOP: And one quick follow-up, again to
7 the petitioners, and then I will get to FPL. With respect to
8 the exclusive remedy aspect, I guess Mr. Bryant has pointed out
9 the historical litigation that has ensued over such issues.
10 But with respect to legislative revision, you know, is that a
11 potential remedy?

12 MR. BRYANT: I'm sorry, Commissioner, I'm not sure I
13 understand the question.

14 COMMISSIONER SKOP: Again, I'm trying to ascertain
15 whether in the eyes of the petitioners that the need
16 determination forum is the exclusive remedy. And from what I'm
17 hearing the answer is no, at least that is what I think I'm
18 hearing, to the extent that there is the litigation process and
19 potentially the legislative process in terms of addressing
20 concerns that may exist on behalf of the petitioners. Is that
21 correct?

22 MR. BRYANT: I'm not sure I can give you a yes or no
23 answer, because I'm still uncertain as to the impact of your
24 question. By statute for determination of the need of FPL and
25 the state as a whole for this nuclear plant, this is the

1 exclusive forum for determining the need. No other place, no
2 court, no Federal Energy Regulatory Commission, no other
3 governmental agency has that jurisdiction.

4 COMMISSIONER SKOP: Right. And let me further
5 clarify what I guess I am saying because, I mean, you hit the
6 nail on the head. The core proceeding is the need
7 determination, not the ownership interest. So, again, I'm
8 looking at the exclusive remedy with respect to the core
9 proceeding, not necessarily the ownership interest. So I'm
10 trying to see if beyond the need determination which, again,
11 deals solely with the core proceeding as the need, are there
12 other remedies available that would redress -- appropriately
13 redress your concerns?

14 MR. BRYANT: I know of no other forum that can
15 address 403 and 366 as to the issue as to whether or not, one,
16 discussions have been held, and whether or not a summary of
17 those discussions had been filed with this Commission, and that
18 that summary is adequate and full disclosure. This is the only
19 place that can occur.

20 COMMISSIONER SKOP: Thank you.

21 Ms. Kaufman.

22 MS. KAUFMAN: Yes, Commissioner, I agree. I think
23 that the statute is pretty clear that this jurisdiction or this
24 agency is the sole forum. I think that term is used several
25 times in the statute for the determination of need.

1 COMMISSIONER SKOP: Thank you.

2 Mr. Young.

3 MR. YOUNG: I think that you are the only help that
4 we have, and we would appreciate you availing yourself of it.

5 Thank you.

6 COMMISSIONER SKOP: Thank you.

7 And, Mr. Butler and Mr. Litchfield, if you would like
8 to briefly respond, if you feel it's appropriate to do so.

9 MR. BUTLER: We are not aware of what other forums
10 may be available, what other legal principles that the parties
11 might choose to pursue as ways of seeking ownership
12 participation. What we are pretty certain of is that this
13 proceeding is not designed for that purpose, and I don't think
14 that there is authority for assuming the existence of the
15 either duty or empowerment to make decisions on co-ownership
16 here, you know, whether or not there are remedies or the extent
17 of those remedies in other forums.

18 And on the point that Mr. Bryant just keeps coming
19 back to of wanting to be sure there is a full discussion, or a
20 full airing, or description of discussions with other
21 utilities, again, I find that just to be dancing around the
22 real issue. I mean, unless there is some implicit sense that
23 the Commission having heard this full airing of the discussions
24 is going to decide to grant or deny the need determination or
25 condition that somehow on co-ownership, it is very hard to see

1 how, you know, expanding the proceeding to have a, you know,
2 cross-examination, discovery, et cetera, et cetera, on that
3 particular subject is going to serve anyone's interests, and we
4 don't see anything in the statute that directs this Commission
5 to make that sort of determination. We think the Legislature
6 considered giving that sort of authority to the siting board
7 and ultimately decided not to and, instead, included simply the
8 informational requirement we have now.

9 COMMISSIONER SKOP: Thank you.

10 And our reporter, how are we doing over there? Doing
11 fine? Okay. Okay to continue?

12 Okay. I guess we are getting into some more pressing
13 questions that are probably going to get progressively more
14 difficult. But I would like to turn the petitioners' attention
15 to Florida Statute 403.519(4)(a)(5), which is the, I guess,
16 requirement of some sort. But, again, I guess it has been
17 framed by the petitioners as an informational requirement, or I
18 guess alternatively one could look at there is an express
19 disclosure requirement.

20 But I would like to ask -- obviously, there is a duty
21 to disclose. But what I would like to ask the petitioners to
22 address is the significance of the phrase on whether there
23 were, because, again, I would like to get some discussion as to
24 whether that is permissive or mandatory.

25 And, Mr. Bryant, if you could lead us off.

1 MR. BRYANT: Certainly it's within the discretion of
2 the Commission in the need proceeding in implementing that
3 statute and this rule to require that discussions have
4 occurred. Mr. Butler touched upon it in responding to an
5 earlier question, does not the Commission want to know for
6 determination of this proceeding whether or not the current
7 proposed facility that FPL is seeking to be permitted is the
8 most favorable for their customers? And the Commission could
9 say in that determination, well, have you had discussions with
10 other electric utilities about, instead of building two units,
11 building three units, or reliability exchange agreements, or
12 whatever the Commission wants to inquire about.

13 And, certainly, the exchange of e-mails between their
14 president and the CO of my company indicates that FPL sees some
15 benefit on having discussions and looking into the proposed
16 joint participation between their company and my company.

17 Why are they dancing around this? And so the answer
18 is if the Commission decides that they want to have those
19 discussions either before or during or after the need petition,
20 then the Commission can so order, because they are looking out
21 for the interests of the consumers. Not FMPA, the consumers.

22 COMMISSIONER SKOP: Just as a follow-up and
23 clarification on that point, and then I will get to Ms. Kaufman
24 and Mr. Young. But, basically, assuming there was the express
25 disclosure requirement to opine as to whether there were any

1 discussions, and if the answer was no, and it was properly
2 disclosed, then would you agree that FPL has met its statutory
3 obligation?

4 MR. BRYANT: Well, Commissioner, I don't think that
5 it is possible for any of us to make the determination that it
6 has been properly disclosed.

7 COMMISSIONER SKOP: Okay. Ms. Kaufman, we'll just
8 move along here.

9 MS. KAUFMAN: Commissioner, we look at the language
10 that you have referred to here and we think that it is
11 mandatory. We think you have to read that language so that it
12 makes some sense, and we think that the position that I guess
13 FPL has espoused that they could satisfy this requirement by
14 saying, nope, we haven't talked to anybody. We don't think
15 that that makes sense in terms of the statutory construction
16 tools which say when the Legislature enacts statutory language,
17 they intended something by it. And so we think that that
18 language is mandatory, and we further think that it is totally
19 within your jurisdiction under this statutory provision as well
20 as the grid bill to require FPL to engage in good faith
21 discussions with Seminole and others who are interested in
22 regard to co-ownership. And our position is that you should do
23 so in this docket.

24 I think that the letter that Mr., I guess, Bryant
25 passed out on FPL's behalf sort of makes our point and perhaps

1 goes to an earlier question that you asked. But, basically,
2 FPL seems to be saying, well, we might talk to you sometime
3 later. And, you know, that's well* and good from FPL's
4 position. It is very difficult from Seminole's perspective
5 when we are very eager to have discussions and are being told
6 we are not really interested in talking to you, and we might be
7 at some time in the future. Long answer, we think that it's a
8 mandatory provision, and you should so interpret it that way.

9 COMMISSIONER SKOP: And just as a follow-up,
10 basically, is the statutory authority that you would cite for
11 the Commission having the authority to mandate or compel those
12 discussions, that would be that provision, is that correct?

13 MS. KAUFMAN: As well as your grid bill authority,
14 Commissioner. I think that elsewhere it says that you can take
15 into consideration all relevant matters within your
16 jurisdiction. And your jurisdiction in a determination of need
17 case encompasses not only 403.519, but your other grid bill
18 responsibilities.

19 COMMISSIONER SKOP: Thank you.

20 Mr. Young.

21 MR. YOUNG: Yes. I would echo that you have got the
22 authority to do anything you think is relevant, and I think the
23 statute clearly provides that. You are not limited to the
24 specific section. But the language is quite curious to me. I
25 did not participate in the legislative arena when this was

1 adopted, and I'm not sure that it would make any difference if
2 I had or I would be any less informed if I had. But you don't
3 have to reach this decision if you would agree with my first
4 premise, which is that we are entitled to participate because
5 we are part of the statewide grid system, and we are impacted,
6 and we do meet the two-prong test because of that. And we
7 don't need to get to this curious statutory language and get
8 all mired up into what that does or doesn't do, and maybe get
9 involved in other, you know, litigation and whatever.

10 It is what it is. It needs to be clarified, probably
11 if not by you, certainly by the Legislature at some point in
12 time. But I don't know that we need to delay Florida Power and
13 Light in its endeavor to try to build these plants
14 participating in that endeavor, so I would urge you to give us
15 the right to intervene in this case based on my first premise
16 and not necessarily on the second one.

17 Thank you.

18 COMMISSIONER SKOP: Thank you. And as a follow-up,
19 Mr. Young, I guess you mentioned that you would be adversely or
20 impacted in terms of being a member on the grid representing
21 OUC. Certainly, if they build a power plant, is FPL equally
22 impacted as a member of the grid and, certainly, wouldn't there
23 be a slippery slope if everyone intervened --

24 MR. YOUNG: No, sir, I don't think it would be at
25 all. And, absolutely, I think Florida -- we are a little small

1 utility, and so it would be fairly insignificant what we are
2 building versus what they are building. But, certainly, I
3 would agree that Florida Power and Light has the right to
4 participate in our need case and would welcome them. And, you
5 know, they have got the same ability to participate in these
6 things as anybody else does. The fact that nobody has ever
7 done that except in these merchant cases doesn't mean that it
8 is not an appropriate thing to do. And we either have a grid
9 statewide system in Florida or we don't.

10 And when we talk about I'm going to just build a
11 plant in my district, in my service territory to serve my
12 retail customers, and, therefore, it has no impact on anybody
13 else, that defies what the grid system is and what it's all
14 about, at least the way I understand it. So I think we have
15 got a good system. We need to expand upon it, not restrict it.
16 And I think that any interpretation that would allow them to
17 not take into consideration -- in fact, I think the statute
18 requires the Commission to take into consideration the
19 statewide impact. I think it's clearly in there. And I think
20 to do otherwise would do violence to the grid system, and I
21 would urge you not to do that.

22 COMMISSIONER SKOP: Thank you, Mr. Young.

23 And I will try and address some of the points that
24 you raised in some additional questions that I have later down
25 the path here.

1 FPL, Mr. Butler, if you would like to briefly respond
2 if you feel the need to.

3 MR. BUTLER: Thank you, yes.

4 One of the things that was mentioned that I think was
5 interesting and revealing was the notion that perhaps the best
6 thing to do would be for FPL to decide instead of building two
7 units, it ought to build three units. And maybe it should be
8 building different units or different sized units, et cetera.
9 I think that would be a complete change and, you know, a
10 complete dismantlement of the need determination process. The
11 Commission has not, and I don't think you would have authority
12 to tell FPL when it proposes to build Plant A, no, you can't
13 build Plant A, but we want you to build Plants B and C instead.
14 That simply is not the way that the need determination process
15 works nor should it be.

16 As to the attempts by the proposed intervenors to
17 find some sort of authority for this idea that the Legislature
18 has empowered the Commission to require joint ownership of
19 nuclear projects, it is completely at odds with the way that
20 the Florida statutory system works for empowering this
21 Commission. I would like to read briefly from the *TECO v.*
22 *Garcia* case, which is at 767 So.2d 428, talking about the way
23 the Commission gets authority. "At the threshold we must
24 establish the grant of legislative authority to act since the
25 Commission derives its power solely from the Legislature. Of

1 course, the orders of the Florida Commission come to this court
2 with the presumption of regularity, but we cannot apply such
3 presumption to support the exercise of jurisdiction where none
4 has been granted by the Legislature. If there is a reasonable
5 doubt as to the lawful existence of a particular power that is
6 being exercised, the further exercise of the power should be
7 arrested."

8 . What the proposed intervenors here are saying is that
9 they wish there were authority within what the Legislature has
10 granted to the Commission to impose itself, insert itself into
11 questions of cooperative ownership. They have pointed to
12 nothing that says that. They have pointed to no proceedings
13 where the Commission has previously imposed, you know,
14 co-ownership or joint ownership as a condition of a need
15 determination. They have done nothing that shows that the
16 provision that you specifically inquired about, the
17 403.519(4)(a)(5) requires anything other than providing
18 information on whether there were any discussions. And FPL
19 has, in fact, done exactly that in both its petition and
20 supporting testimony.

21 Thank you.

22 COMMISSIONER SKOP: Thank you.

23 And moving forward, I think we probably have -- we
24 are getting down the path, but I still have quite a few
25 questions. But we'll continue the process. With respect to

1 the petitioners, am I correct to understand that you are
2 asserting a statutory right to ownership or merely that FPL has
3 a statutory obligation to conduct discussions?

4 And, Mr. Bryant, if you would lead us off with that.

5 MR. BRYANT: In our petition we are simply saying
6 that the statute requires FPL to conduct discussions
7 and provide a summary of those discussions. That's all we said
8 in our petition.

9 COMMISSIONER SKOP: Thank you.

10 Ms. Kaufman.

11 MS. KAUFMAN: Yes, Commissioner.

12 Our position is that FPL is required to engage in
13 good faith discussions or negotiation. And if I could just
14 respond to one point that Mr. Butler made, the idea that the
15 Commission in a need determination cannot direct FPL or to tell
16 FPL, well, you can't build this plant, you must go and build
17 another one. I agree with him on that. But what the
18 Commission can do and what they have done in other cases
19 specifically involving issues of cost-effectiveness, which goes
20 to, well, does it make more sense to build three units than
21 two, is they can say based on other evidence that we have
22 heard, FPL, this project that you are asking us to approve is
23 not the most cost-effective project. And so just the example
24 that was thrown out, are these two units the most
25 cost-effective, there are scenarios or issues that pertain to

1 cost-effectiveness that certainly are pertinent in this docket.

2 To my knowledge, to go to one other point made, I
3 don't believe that this co-ownership issue has ever come up
4 before at the Commission, so I guess that would be why we don't
5 have any other cases that we can look to in that regard.

6 COMMISSIONER SKOP: Thank you.

7 Mr. Young.

8 MR. YOUNG: Unless the law has changed, and it may
9 have, I believe that if the Florida Public Service Commission
10 made a finding that there was tremendous capacity needs in this
11 state, and no utility was coming forward to build any capacity,
12 I believe this Commission has the authority to order a plant to
13 be built. I believe that in the past the Commission has
14 ordered one particular utility to convert an existing operation
15 from oil to coal, or coal to oil, I forgot which it was. I
16 think the Commission has a lot more authority than we are
17 talking about, that some people assume here.

18 Now, your specific question on whether or not this
19 specific curious provision in the law gives anybody the
20 absolute right to get a percentage of the ownership of this
21 plant, I certainly can't read in there that it does that. It
22 doesn't seem to me that it does that at all. It just gives us
23 an opportunity, I guess, to confer, hopefully, with Florida
24 Power and Light once one ascertains what it is that they are
25 actually doing, and then participate as we have in the past.

1 We own a small portion of St. Lucie, and it has been
2 a very good thing for us and a very good thing for the
3 ratepayers at OUC. And if somewhere down the line we were
4 given an opportunity to participate in this one, I'm sure,
5 everything else being equal, my client would take advantage of
6 that. But, no, I can't -- I wish I could, but I can't tell you
7 that it gives us any statutory right to ownership.

8 COMMISSIONER SKOP: Okay. And this is a brief
9 follow-up, I guess, because you mentioned an ownership
10 interest. By just virtue of the existing ownership interest in
11 the unit, would you say or feel that you have a -- I won't say
12 entitlement, but the right to participate in any subsequent
13 unit similar to corporate opportunity or, you know, is that
14 stretching it a little bit further?

15 MR. YOUNG: Thank you very much.

16 I have not pursued that possibility, but I will. I
17 do not know that if anything in the past has given OUC or
18 anybody else the right to participate in anything in the
19 future. But it is a good question, and it is one I should of
20 thought of and I didn't, but we will look into that. But I'm
21 not aware of anything specifically at this time.

22 COMMISSIONER SKOP: Okay. In the hopes of not being
23 redundant in further rounding out the record, I think the
24 answer to the question would be no, but, again, I don't want to
25 put words in the petitioner's mouth. Do you think that the PSC

1 has the authority to require co-ownership of a power plant?

2 And, Mr. Bryant.

3 MR. BRYANT: 366.05(8). Yes, sir. I'm very familiar
4 with this statute. I was around when this was drafted and
5 passed and participated in that. "If the Commission determines
6 that there is probable cause to believe that inadequacies exist
7 with respect to the energy grids developed by the electric
8 utility industry, including inadequacies in fuel diversity or
9 fuel supply reliability, it -- that's the Commission -- it
10 shall have the power, after the proceedings as provided by law,
11 and after a finding that mutual benefits will accrue to the
12 electric utilities involved, to require installation or repair
13 of necessary facilities, including generating plants and
14 transmission facilities, with the cost to be distributed in
15 proportion to the benefits received, and to take all necessary
16 steps to ensure compliance."

17 Get this, "The electric utilities involved in any
18 action taken or orders issued pursuant to this subsection shall
19 have full power and authority, notwithstanding any general or
20 special laws to the contrary, to jointly plan, finance, build,
21 operate, or lease generating and transmission facilities."

22 Absolutely the Commission has jurisdiction. This was
23 written at a time when we were experiencing tremendous
24 inadequacies in the grid, and the Legislature wanted to make
25 sure the Commission had that jurisdiction, and, indeed, in an

1 appropriate proceeding. It didn't say what proceeding. It
2 said appropriate proceeding, which under the Commission's
3 jurisdiction laid out in 403.519, they clearly can raise these
4 issues. And could make a determination, well, we don't think
5 that is adequate, and here is what we are going to do about it
6 as the Commission. It's right there. It has been there for 27
7 years.

8 COMMISSIONER SKOP: But the core proceeding before us
9 is the need determination under a different statutory
10 provision. So how, under the need determination, do you feel
11 that the PSC has the authority to require co-ownership?

12 MR. BRYANT: Let's make sure we are clear. The
13 Commission is not limited in the need proceeding by 403.519.
14 It has the full plenary power of the Commission, which includes
15 the powers contained in 366, okay? And if there is a
16 disagreement on that, I want to hear it. I don't think the
17 applicants to this need proceeding have said they disagree with
18 that. We all should speak forward right now that there is a
19 disagreement on that.

20 COMMISSIONER SKOP: I don't think we are going to get
21 into that debate right now. I think we are going to try to
22 answer the questions before us.

23 Ms. Kaufman.

24 MS. KAUFMAN: I agree 100 percent with Mr. Bryant's
25 response.

1 COMMISSIONER SKOP: Mr. Young.

2 MR. YOUNG: I, as well. I think that I brought it
3 up, and I'm glad that Mr. Bryant found the specific statutory
4 authority that I remembered.

5 COMMISSIONER SKOP: I just have one follow-up on
6 that, assuming that the PSC is, I guess, in the minds of the
7 petitioners vested with the authority. Wouldn't that be
8 subject to constitutional challenges of taking if the
9 Commission were to take that action?

10 Mr. Bryant.

11 MR. BRYANT: Well, I'm reminded of what previous
12 Commissioners have said to me on several occasions when I
13 threatened to appeal them. They said, "Well, Mr. Bryant, my
14 job is to make a decision here based upon the facts and the law
15 before me, and if the higher court wants to overruled me, so be
16 it."

17 But your job is to make a decision here with the
18 facts and laws that are presented to you. Unless there is
19 someone who can bring forth a case from the Florida Supreme
20 Court where this appeal will go directly that says otherwise, I
21 think you are going to have to make a decision on this.

22 COMMISSIONER SKOP: Thank you.

23 Ms. Kaufman.

24 MS. KAUFMAN: I don't think that there is a taking
25 issue here. I mean, the plants that are going to be

1 constructed are going to be paid for by the ratepayers, as I
2 understand it. So if I'm understanding your question, I don't
3 see a taking implication. FPL, at the end of the day, I don't
4 believe is going to be out of pocket any money whatsoever, the
5 ratepayers. And to the extent that there is the joint
6 participation that some parties are seeking, you know, would be
7 the ones that will be funding the project.

8 COMMISSIONER SKOP: And, Mr. Young.

9 MR. YOUNG: Well, under that statute, I think OUC as
10 well as all of us could be ordered by the Commission to do
11 various things, including building the plant and participating
12 in somebody else building one. And if by answering your
13 question, I'm foreclosing my opportunity to argue that if it
14 ever happens in the future at the Supreme Court, I would not
15 want to do that. But I don't think we can make a decision
16 today based on what somebody might do something in the future.
17 You can always sue everybody. You can always -- we are trying
18 to avoid that. That is what this whole thing is about. We are
19 trying to avoid people going to the Legislature to try to
20 correct this right now and hold up Florida Power and Light. We
21 are trying to prevent that from occurring, not causing it. So,
22 you know, I hope I've answered your question.

23 COMMISSIONER SKOP: Thank you. As best you could.

24 Moving on to another question, I guess to the
25 petitioners. If FPL agreed today to have discussions, would

1 your intervention be moot?

2 Mr. Bryant.

3 MR. BRYANT: Commissioner, you know how I would like
4 to respond? I would like to respond, boy, that would be great
5 if they agreed to have discussions with all of us and this
6 issue would go away and everything would work out for the best,
7 okay. But, you know, my responsibility as a lawyer to my
8 client is to make sure my client's interests are protected.
9 And the only place I can make sure those interests are
10 protected under the law as I read it today is here at this
11 Commission.

12 So I think the question should be to the Commission,
13 look, if FPL agrees to have discussions with Mr. Bryant's
14 client, and Ms. Kaufman's client, and Mr. Young's client, would
15 that be enough? And, you know, I think only the Commission can
16 answer that question, and that should be part of their order in
17 their need petition. And how they want that to be enforced and
18 monitored is up to you, the Commission. And I know the
19 Commission looks out for all of us. And I'm confident that if
20 the Commission says, you know, absolutely, these discussions
21 need to go forth, and there needs to be discussions. And, FPL,
22 you need to file periodically a report of those discussions.

23 And, you know, you can't guarantee, nor am I seeking
24 a guarantee that those discussions will result in my client
25 owning a piece of their nuclear unit. After all, we may decide

1 at the end of the day that we don't want a piece of their
2 nuclear unit, okay? But at least I would like to make sure
3 that I have the guarantee that they comply with the statute and
4 those discussions in good faith occur.

5 And if we're told after they get their need
6 certificate, well, Fred, we sure pulled the wool over your
7 eyes. We are not going to talk to you again, even though we,
8 FPL, initiated discussions with you. Then I would like to
9 think that I have someplace to go and say, you know, I just
10 don't think we were treated right and fairly in what the law
11 requires. That is what you all do. I don't know how to answer
12 any better, Commissioner. I'm sorry.

13 COMMISSIONER SKOP: Well, it seems to me that
14 essentially discussions are perhaps being used as -- like
15 discussions would -- the petitioners have said that discussions
16 are required, but it stops short of saying that there is a
17 requirement for an ownership interest. But it's almost like
18 those two are inextricably intertwined to the extent that
19 discussions would not be sufficient to address the concerns of
20 the petitioners, that it needs more for that. I mean, if you
21 had discussions, and they still said no, it seems that the
22 underlying tone there is this is really about ownership
23 interest.

24 MR. BRYANT: An interesting dichotomy, isn't it,
25 Commissioner? What if you were to ask me, well,

1 Mr. Bryant, what if I ordered -- in the order ordered you, and
2 gave you the right to participate in the nuclear units, but I
3 ordered you when I gave you that right. You would probably see
4 me equivocate all over the place, wouldn't you?

5 I don't think that is what the statute says, but how
6 can you ever get to the possibility of ownership if discussions
7 don't occur? And I think that is what the Legislature meant.
8 I think that is what you, the Commission, meant when you
9 adopted the rule that you did, is to make sure that the
10 discussions did, in fact, occur.

11 And, you know, if one of the parties comes in and
12 says, hey, those discussions never occurred, don't you think
13 you ought to be able to say why not? And if there are valid
14 reasons -- or what if the discussions did occur and
15 the parties -- you asked, well, why didn't that result in an
16 ownership agreement? Well, you know, I am assuming -- let's
17 make sure we understand. I don't seek to import any bad intent
18 on Florida Power and Light, absolutely none. I don't want
19 anybody to be mistaken about that. There had been discussion,
20 I think those discussions will continue.

21 There could be a legitimate business reason why we
22 never reach an agreement, and there is nothing wrong with that,
23 okay? But how else as a lawyer am I going to protect my
24 client? And how else is the Commission going to protect the
25 ratepayers of Florida, not just their ratepayers, it's all

1 ratepayers, if, in fact, you don't enforce the statute and the
2 rules to make sure those discussions occurred. And, you know,
3 maybe I'm in bad faith during the discussions and I ask for
4 50 percent at two percent of the cost. Well, I would expect
5 that they will let the Commission know about that. That would
6 seem to be bad faith on my part. I don't think there is going
7 to be bad faith on anybody's part in these discussions.

8 COMMISSIONER SKOP: Thank you, Mr. Bryant.

9 Ms. Kaufman.

10 MS. KAUFMAN: Commissioner, I think your question was
11 if FPL agreed to talk to Seminole, which up to this point they
12 have not, would our intervention become moot. And my answer to
13 that is a very simple, no, it would not. We think that you
14 have the authority. We ask you to require them to engage in
15 good faith negotiations or discussions with us. We agree with
16 Mr. Bryant that the Commission should be aware of those
17 discussions and that you should receive, you know, reports or
18 however you think is appropriate to receive that information.

19 Up to this point, at least from Seminole's
20 perspective, we have not been able to engage FPL at all. We
21 think perhaps it might take some encouragement from the
22 Commission. And we also think that this -- and I, like Mr.
23 Bryant, ascribe, you know, no bad faith to Florida Power and
24 Light, but we think that there should be a requirement that
25 they engage in good faith discussions. And if either party

1 doesn't do that, then their remedy would be to come back to the
2 Commission. So, no, I think just -- if they came up to me
3 today and said, hey, you know, let's go talk about this, I
4 don't think that would moot our petition.

5 COMMISSIONER SKOP: Thank you.

6 Mr. Young.

7 MR. YOUNG: Well, I think -- I would hope that I have
8 been clear that I think that we have a right to intervene
9 absent any issue relative to discussions being had or not being
10 had. So the Commission asking, or ordering, or whatever,
11 Florida Power and Light to have discussions with us would
12 not -- would not change our position that we ought to be able
13 to participate in this proceeding.

14 COMMISSIONER SKOP: Thank you.

15 Moving on, I guess, to the petitioners again, a
16 question directed there. I guess you are seeking to avail
17 yourself under the new statutory provision, but that provision
18 also speaks to IGCC technology. And in that regard, I would
19 like to briefly open the discussion with respect to the actions
20 taken by each of you in your individual capacity to the extent
21 that, you know, there is more than one way to look at
22 something.

23 So with respect to IGCC, as opposed to nuclear, have
24 you raised the same arguments for that? I think I was
25 prehearing officer for the TECO IGCC, and I don't think I was

1 aware of any intervention or desire to capture an ownership
2 interest in IGCC technology, which is clearly also a part of
3 the statute.

4 So can you elaborate on that, please, Mr. Bryant?

5 MR. BRYANT: Good question, Commissioner.

6 And my recollection of the statute and the rule, and
7 correct me if I'm wrong, is that it applies to both nuclear and
8 IGCC. And we, in fact, have had discussions with other
9 utilities about participation, potential participation, of IGCC
10 facilities. Quite frankly, from my company's perspective, we
11 are very concerned about the status of the technology. We are
12 following it closely. We have even had discussions with our
13 electric utilities about us building an IGCC facility and they
14 participating in it. And, we just haven't -- there hasn't been
15 a proceeding yet where we haven't either had discussions or
16 where we simply felt like there ought to be discussions. It's
17 just not in our scope of interest right now.

18 We are very comfortable. FPL is an excellent
19 operator of nuclear units. We have been an owner in their
20 St. Lucie 2 nuclear unit since 1982. We have a huge amount of
21 respect and comfort in the technology and the person operating
22 the plant.

23 COMMISSIONER SKOP: Thank you.

24 Ms. Kaufman.

25 MS. KAUFMAN: Commissioner, I'm not aware that

1 Seminole has attempted to apply this provision to the IGCC
2 Tampa Electric project just due to their own planning and the
3 plans that they have. However, you know, I do agree with you
4 that the same considerations that are applicable to nuclear
5 seem to apply to the IGCC. And I think in -- I'm guessing that
6 in the appropriate situation, if the situation was such that
7 Seminole was interested, I believe that we would interpret the
8 statute in the same way.

9 COMMISSIONER SKOP: Thank you.

10 And, Mr. Young, I know that OUC was doing its own
11 IGCC, and I guess in answering the question I would be
12 interested to see if OUC had any discussions with respect to
13 ownership interests from the other petitioners with respect
14 to -- again, we don't regulate that under that statute. But,
15 again, I think it would be instructive to understand whether we
16 are looking at all options or whether we just solely have our
17 eye on nuclear.

18 MR. YOUNG: Well, I think at the time they added this
19 in the Legislature, that process had a better approval rate
20 than it seems to have now. At least that's the way it was
21 explained to us recently over in the Governor's Office. And
22 you are probably aware that we had a DOE grant, we worked with
23 Southern. Wow, we had another partner. We also -- there is no
24 plant that OUC has that we don't have participation with other
25 folks, Lakeland, Kissimmee, FMPA. I'm not sure about Seminole.

1 But there is an offer to participate involved in every plant
2 that we have done so far, including the so-called Stanton B,
3 which was the plant with Southern. I'm sure you are aware that
4 the coal gasification portion of that order or that deal has
5 been rescinded at the request of Southern and maybe urged on a
6 little bit by some of the politics involved in the situation.

7 COMMISSIONER SKOP: Right.

8 MR. YOUNG: So I think that is why it was added at
9 the time. There were those who thought that that was a great
10 alternative to pulverized coal and ought to be pursued. I
11 think that argument was even made when Florida Power and Light
12 was trying to do a coal plant down on the southeast in the land
13 use provision of the permitting system. They denied the
14 zoning, and Florida Power and Light had to back away from that.
15 So I think we all are having to react to where we are today.
16 Governor Bush was very, very much in favor of our deal with
17 Southern for this coal gasification unit and promoted it and
18 pushed it, and voted for it in the cabinet meeting as one of
19 the last items before he left office.

20 The present governor, for whatever reason, doesn't
21 think much of coal, as we all know, and now doesn't think much
22 of this coal gasification, as well, apparently. And because of
23 that we have backed up and are looking for other avenues. The
24 same thing has happened to TECO. The same thing has happened
25 to the Taylor Plant. The same thing has happened to Florida

1 Power and Light.

2 And that brings me back to the same old story that I
3 know you have enjoyed hearing over and over again. You know,
4 we are in a different situation. We are in a different
5 climate. We have all got to stick together. And we have got a
6 system in Florida now where we may not be able to meet our
7 capacity needs in the near future if we don't have nuclear
8 plants. And only Florida Power and Light and maybe Progress
9 and a couple of other ones, I'm not sure who else, they are the
10 only ones that really have the wherewithal to plan and finance
11 and build those things. And they are going to be the savior
12 for our grid system ultimately. That is why you see some favor
13 of them building.

14 We wish they would build more. We wish Progress
15 would build more, because we think down the road it is going to
16 be more and more difficult for any of the rest of us to build
17 anything that is going to meet our capacity needs because of
18 the regulatory and the political climate associated with the
19 fuels that we would normally use.

20 So this is a very important case; it's a very
21 important situation. And I know that our involvement might be
22 miniscule and it might be minor compared to the bigger picture,
23 but I'm talking about the survival of the small utilities in
24 the state, the OUCs in the world. We need to have the ability
25 to go into the grid system if emergencies occur, and we are

1 going to have to rely on the big buys to build these things and
2 make them available to the grid system. And so I applaud
3 Florida Power and Light for doing what they are doing, and I
4 wish they would allow us to participate and help them.

5 Thank you.

6 COMMISSIONER SKOP: Thank you for your response.
7 And, again, you know, I'd like to just say, you know, on behalf
8 of the consumers of the state of Florida I'm also very
9 sympathetic to the needs of meeting our growing energy demands
10 in the changing environment. I mean, that's something that we
11 definitely need to take a strong look at. But your points are
12 well-taken, and I'll get to some related questions to that
13 briefly.

14 Also with respect to uprates, again, I did not see
15 any intervention with respect to uprate petitions, and that was
16 on a nuclear issue for additional capacity, which I think that
17 one could construe as being new generation under the treatment
18 that has come forth. And I'm interested to wonder why the same
19 arguments weren't raised in the uprate context.

20 MR. BRYANT: We didn't have to argue. We were
21 8.8 percent owner of St. Lucie 2. They did a wonderful job.
22 We paid our 8.8 percent share of that cost. Didn't have to.

23 COMMISSIONER SKOP: Okay. What about with respect to
24 other -- there is one that was pending, but, again, in that
25 proceeding there was no intervention for CR-3.

1 MR. BRYANT: We were being protected by our unit and
2 their unit that we have an ownership interest in being uprated.
3 A very interesting question. I think it's a very good
4 question, because I'm assuming that if we're involved in
5 ownership of these two units, we won't have that problem in the
6 future uprates either, because we will be a joint owner. Isn't
7 that one of the answers?

8 COMMISSIONER SKOP: Thank you.

9 Ms. Kaufman.

10 MS. KAUFMAN: Commissioner, I did not look at that
11 docket. I'm sure that I'm comfortable that Seminole did not
12 participate in it, and I really don't have any other
13 information on that particular docket as it relates to Seminole
14 Electric.

15 COMMISSIONER SKOP: Thank you.

16 Mr. Young.

17 MR. YOUNG: I must plead ignorance. I'm unaware of
18 the matter that you have referred to, if I understood what your
19 question was.

20 COMMISSIONER SKOP: Thank you.

21 Getting back to additional actions taken. Again, I
22 think the common thread is that the petitioners have alleged
23 that they don't have the financial resources to engage in a
24 large capital undertaking to the extent that would comprise
25 building or constructing their own nuclear unit. But I'm

1 wondering has anything been done that would recognize proactive
2 actions to address the concern that the petitioners have stated
3 that applies equally to the state of Florida, and, again, if
4 that's the case, then everyone might pitch in and do their
5 part. But on a smaller undertaking level, has any action been
6 taken towards the siting and permitting of any potential sites
7 or greenfields for nuclear construction by any of your
8 respective organizations that you represent?

9 Mr. Butler. Yes. Mr. Bryant. Sorry.

10 MR. BRYANT: Commissioner, you are absolutely
11 correct, it would be virtually impossible probably for all the
12 municipals and all the cooperatives to get together and site,
13 permit, and build their own nuclear unit. We don't have the
14 expertise. We probably don't have the size that we would need
15 when you are talking about 1,200 megawatts per unit or more.
16 So it would be -- and I'm not sure we could demonstrate to the
17 regulatory agencies sufficient expertise, staffing, et cetera.
18 You just don't go out and immediately staff up for something
19 like that.

20 However, we have had and continue to have discussions
21 with others who are seeking to build nuclear units in this
22 state, and we expect that you will see a much different
23 procedural attitude from those others who are seeking to
24 ultimately get a unit permitted or units permitted in Florida.

25 But other than being able to have a little bit here

1 and there, as the guys who have the experience who can proceed,
2 it's going to be very difficult for us collectively as a
3 municipal and cooperative industry together to even do this. I
4 don't know how to say it any other way. I mean, we are
5 struggling with this.

6 COMMISSIONER SKOP: Yes, sir. Thank you.

7 Ms. Kaufman.

8 MS. KAUFMAN: Thank you, Commissioner.

9 I think that any utility, and I can only speak for
10 Seminole, would be remiss in not exploring all options that
11 might be available to it in this time that we are in of the
12 sort of diminishing options for power availability. And, you
13 know, due to confidentiality concerns, I can't really divulge
14 who Seminole may or may not have spoken to, but I can tell you
15 that they are being proactive in trying to look at other
16 available options.

17 But I think I should also say to you that that really
18 has no bearing nor should it have any bearing on our petitions
19 to intervene in this case. I think every utility has a
20 continual obligation to search out those opportunities to serve
21 reliably and cost-effectively. I'm confident that Seminole is
22 doing so and will continue to do so. That does not obviate
23 their substantial interests or their right to intervene in this
24 proceeding.

25 COMMISSIONER SKOP: Thank you.

1 And now Mr. Young.

2 MR. YOUNG: Yes, we have been approached by some
3 folks, more than one, but before they talk to you, they want
4 you to sign a confidentiality agreement. And I don't -- other
5 than saying that we have talked with folks and we will continue
6 to talk with folks, I don't have that agreement in front of me,
7 so I'm worried about violating it. But I can tell you that we
8 have had discussions with people and will continue to have and,
9 hopefully, we will have lots of discussions with Florida Power
10 and Light.

11 COMMISSIONER SKOP: Thank you, sir.

12 I guess just a few more questions. And, again, this
13 question is going to be pointed and direct, but I think it's
14 important to rounding out the record. And based on the line of
15 questions that we just got into, isn't this really about
16 cherry-picking? And what I mean by that is basically
17 petitioners wanting to self-identify the most cost-effective
18 form of power generation that another intends to build,
19 including that you have an inherent right to ownership
20 interest?

21 And I'd like some elaboration on that, because,
22 again, I'm worried about the slippery slope. If you build a
23 plant, you know, and we do certain things, you know, this could
24 be a free-for-all. But, again, there seems to be undertones
25 that discussions are not sufficient, and that the only thing

1 that's going to make everyone happy is the ownership interest.
2 But at the end of the day, you know, where does the
3 self-identification of a specific asset come into play in
4 concluding that the ownership right exists?

5 MR. BRYANT: Commissioner, I can tell you this, that
6 in no uncertain terms has FMPA or FMEA been there today because
7 you seek to cherry-pick. What you have categorized as the most
8 cost-effective technology available for building today wouldn't
9 be here if we thought that was the case and were not given
10 those instructions. But the underlying premise that this is
11 going to be the cost-effective, we won't know until 10, 15,
12 maybe 20 years down the road if, indeed, this turns out to be
13 most cost-effective.

14 But we forget fuel diversity. I sat in a board
15 meeting with my board during Hurricane Katrina where we were
16 trying to make a decision how we were going to rotate blackouts
17 amongst 15 cities that we have an obligation to serve, because
18 we are 60 percent now dependent on natural gas. That was not a
19 good feeling, Commissioner. And I was given instructions by my
20 board as the chief legal officer of my company to find ways to
21 participate in nuclear power for fuel diversity.

22 At the same time, we were also in the process of
23 trying to permit a coal plant, and that is no longer available
24 to us. So other than being totally dependent on natural gas
25 for fuel diversity, the only other choice we have is nuclear.

1 And we are not going into discussions and maybe potential
2 ownership on a nuclear unit with FPL or the other entities that
3 we are having discussions with based upon being the lowest cost
4 alternative. Because I probably won't be still practicing law
5 when we find out if that is, indeed, the case 15 years or
6 20 years from now.

7 But I'm fearful that I'll still be practicing law the
8 next time we have a hurricane and gas is shut down to our
9 predominately 60 percent gas-fired plants, and I'm coming
10 before this Commission explaining why 15 cities went black. So
11 I don't know how to be any more truthful in my answer.

12 COMMISSIONER SKOP: Thank you, Mr. Bryant.

13 Ms. Kaufman.

14 MS. KAUFMAN: Commissioner, no, we are not
15 cherry-picking here. This to my knowledge is the first
16 substantial nuclear project to come up on the drawing board in
17 a long time. And I don't want to be repetitive of all the
18 things that have already been said in terms of the permitting
19 and siting options, the sorts of things that are becoming less
20 and less likely to be available to serve our needs.

21 It looks like the Legislature is telling us and
22 telling the Commission and telling the siting agencies that the
23 future of Florida is at least banking in large part on having
24 some nuclear options. And we are trying to read the
25 handwriting on the wall. We tend to agree with that, and we

1 think that to give us the ability to serve our customers we
2 need to, again, at least be able to engage in discussions with
3 Florida Power and Light in regard to this unit. And so, no, I
4 don't view it as cherry-picking at all. I view it as almost
5 the only viable or rational way to go in the current
6 environment that we are in.

7 COMMISSIONER SKOP: Thank you, Ms. Kaufman.

8 Mr. Young.

9 MR. YOUNG: I'm not sure I understand your concept of
10 cherry-picking, although I have picked cherries in my life.

11 COMMISSIONER SKOP: As have I.

12 MR. YOUNG: And I have eaten a lot in my life.

13 But are we trying to take advantage of the situation
14 as it presents itself? If that is your definition of
15 cherry-picking, yes, the answer to that is yes from my
16 perspective. We would like to take advantage of that. And if
17 there are other utilities that come along with similar cherry
18 trees, we would do our best to take advantage of those, as
19 well. So I'm not the least bit ashamed of saying that.

20 I've said this privately and publicly. I applaud
21 Florida Power and Light for what they are doing. It needs to
22 be done. They've got the ability to get it done, and we all
23 need to applaud that. We all need to help them. And I hope
24 that nothing we are doing here is going to deter them from
25 going forward with getting this whole situation solidified so

1 that they can make a decision as to whether or not they need
2 some help with ownership or even capacity sales down the road.

3 And we want to participate in those discussions and
4 those decisions as they develop over time in this process. And
5 the only way we can do that, the only way we can do that is to
6 participate in this proceeding as a party. And I don't know
7 for the life of me why anybody thinks that we are going to hurt
8 the process or anybody in it by allowing to participate in that
9 regard. You know, this is -- there is no harm here. So I
10 don't understand any reluctance from Florida Power and Light's
11 standpoint or anybody else's as to why we shouldn't be allowed
12 to participate.

13 Thank you.

14 COMMISSIONER SKOP: Thank you, Mr. Young.

15 And I think I have probably about five more
16 questions. So hopefully we can get through this if the court
17 reporter is okay and everyone else is okay without taking a
18 break. Hopefully, we can trudge through and be done.

19 Again, this is another question to the petitioners.
20 Basically, earlier on I guess FPL stated that it needs the
21 units to serve its retail customers, not really wholesale. And
22 a question that I think stems from that is assuming that FPL
23 was obligated or compelled to sell ownership interest to the
24 petitioners, wouldn't that force FPL to seek alternative energy
25 sources at its own customers' expense?

1 MR. BRYANT: I'm presuming from the question that
2 that presumes a situation where the Commission has made a
3 determination that they are compelled to offer ownership
4 interest to my client and the other people sitting at this
5 table. Were that the case, I presume that the Commission would
6 be looking at 366.05(8). And in that decision they would look
7 to the statute as to how then the cost of that ownership was
8 going to be divided up. And that might be a cost that the
9 Commission looked at.

10 And if, indeed, there was additional cost to FPL or
11 anybody else from a ruling by the Commission that that
12 ownership be shared, then I would assume that the Commission
13 would then make a determination of how that additional cost
14 would be shared over and above what we call book cost, if you
15 will, okay?

16 I don't think that is what my clients are asking for
17 in this proceeding, but I just wanted to be straight with you
18 on the answer, Commissioner. I think I understand where you
19 are coming from, and I hope I have answered the question.

20 COMMISSIONER SKOP: You have. Thank you.

21 Ms. Kaufman.

22 MS. KAUFMAN: Commissioner, I think your question had
23 a lot of assumptions in it. And those are some of the
24 assumptions that I think that we might explore if we were
25 permitted to participate in the hearing. At the end of the

1 day, what is the most cost-effective for the consumers of
2 Florida is a decision that lies in your court. And some of the
3 other cost-effectiveness issues that we have raised in this
4 case will touch on that. So I think that if we are permitted
5 to participate, and once we hear all the evidence, those would
6 be issues of concern to you.

7 Of course, Florida Power and Light has to take into
8 account the needs of its retail customers and how they are
9 going to be served. But I know I'm sounding like a broken
10 record when I keep coming back to the fact that we simply want
11 to engage in good faith discussions with them. And, you know,
12 where we are in the process now, I think we are too early to
13 know if the assumptions in your question are going to turn out
14 to be the case or not.

15 COMMISSIONER SKOP: Thank you.

16 Mr. Young.

17 MR. YOUNG: Well, if the Commission ultimately makes
18 a determination that all the capacity for these nuclear plants
19 are going to be consumed by retail customers of Florida Power
20 and Light and that is not going to be enough, at least that's
21 the way I read their petition, then, you know, maybe the
22 Commission does need to be exercising the jurisdiction I
23 believe they have to say if you are getting ready to build
24 something -- if you are getting ready to build a school, and it
25 is not going to be sufficient to hold the number of kids that

1 need to go to class, maybe we need to order you to build a
2 bigger school. And I think, as I said earlier, the Commission
3 has that authority.

4 What most people have been doing in the long past,
5 and I have been involved in probably 15 or 20 power plant
6 buildings and permitting and whatever, is -- you know, it's
7 like we build the offices that we have. We build a four-story
8 building, and we only need one story, and we rent out the
9 three. As we grow into it, we may get rid of our tenants, but
10 we use the tenants to help us build it as we go along. At
11 least that's the way I have done it.

12 And the OUC has used other folks to assist them in
13 helping finance and build, because they did not need the total
14 capacity of the plant that they wanted to get permitted. But
15 the economies of scale and the efficiencies were that you ought
16 to build a plant that big. You ought not build a little plant,
17 you ought to build a big plant. And we were encouraged to
18 offer through an RFP process other folks an opportunity to
19 participate in the ownership and capacity of that. And we, in
20 fact, have done that in the past. So the very premise that
21 they need all of this and they need more needs to be addressed
22 by the Commission if that's really what they are saying and
23 that's what you would find in this proceeding.

24 But I don't think that the grid system necessarily
25 differentiates between retail and wholesale in terms of

1 supporting the grid system. I'm not talking about wholesale
2 sales to folks, but I'm talking about the statewide capacity to
3 generate energy that can be available to everyone in times of
4 situations where people need it. And that's the value of the
5 grid system. It's the value of maybe using the cheapest
6 generating cost and having that passed on to everyone.

7 It's the recognition that we are one state, and that
8 it doesn't make any difference, and it shouldn't make any
9 difference in what particular territory you live in in terms of
10 the whole statewide grid. So I would hope that that would be a
11 question if you find that they aren't going to meet the needs
12 of their customers by what they are building that you seriously
13 consider asking them to build a bigger building.

14 Thanks.

15 COMMISSIONER SKOP: Thank you, Mr. Young.

16 And, again, I think Mr. Bryant raised this issue, but
17 I guess my question was stemming from the fact that FPL is
18 heavily dependent upon natural gas. So, again, fuel diversity
19 is a good thing, and I think the legislative body has
20 recognized that in some of the legislation it has passed, so it
21 is one of the criteria that definitely is important.

22 Moving forward, I just wanted to speak briefly to the
23 Duke case. I guess various petitioners have raised one
24 interpretation; FPL has raised another. But I just wanted to
25 see whether that should be distinguished to the extent that it

1 was -- or at least my understanding -- it's long before I came
2 to the Commission, but doing some research it seems to be that
3 that case pertained to the encroachment of a merchant plant on
4 the regulatory compact and who qualifies for a need
5 determination. And so I would ask the petitioners to briefly
6 respond to that.

7 And, Mr. Bryant, if you could lead us off.

8 MR. BRYANT: Thank you, Commissioner.

9 If we think this argument has been protracted, you
10 should have been here when we had days of arguments on that
11 case. One of my clients, New Smyrna Beach, was a petitioner in
12 that case. And we felt very strongly that FPL didn't have the
13 right to intervene in that case. The Commission felt strongly
14 they did. I still don't think that that decision was correct
15 based upon the facts at that time, and that was FPL is alleging
16 that this plant would somehow affect them because that merchant
17 facility -- by the way, my client, New Smyrna Beach, was going
18 to be using power out of that facility, was going to be a
19 co-owner in that facility, okay? But the Commission ruled, the
20 Supreme Court ruled, and there it is, okay.

21 But this situation is very different in what was
22 involved there, and very different in what FPL was alleging.
23 And every case is when you take the fact situation, the law,
24 and you try to make it work out. There wasn't a statute back
25 then that we are dealing with today. There wasn't a Commission

1 rule back then that we are dealing with today. So it is
2 different.

3 But I can't help but being little amused when FPL
4 weighs that case and says, no, this case stands for, when, in
5 fact, they were coming in and saying, look, Commissioners, of
6 course it will affect us because it affects the grid, and we
7 are a big part of the grid, and, gee, we may end up looking at
8 buying some of this power.

9 And that's really the crux of what their argument was
10 and what this Commission's decision was. And, you know, so
11 it's different. But, at the same time, for them to say that we
12 can't intervene because of the New Smyrna Beach case, I find it
13 a little amusing to hear them argue that.

14 COMMISSIONER SKOP: Thank you.

15 Ms. Kaufman.

16 MS. KAUFMAN: In some ways the more things change,
17 the more they stay the same. I think some of us in this room
18 did, you know, live through a lot of days in those cases. But
19 the basis for Florida Power and Light's request to intervene in
20 those cases over somewhat vigorous opposition, and I have their
21 petition here on that case, was because they said it affected
22 their ability to plan for and meet the demands of their
23 customers for electric service. That formed the basis for
24 their petition to intervene.

25 Yes, it was a merchant plant. However, this idea

1 that all of the utilities sitting here are affected because
2 they have to plan for and serve their customers, they have to
3 look at the transmission grid, all the things that we have been
4 talking about for hours. These concerns were no different for
5 FPL when they sought to intervene in the New Smyrna case than
6 they are for Seminole in this case. And so on that basis,
7 putting aside whether it was or wasn't a merchant plant, I
8 think that the decision has already been made that, you know,
9 brethren utilities are affected by determinations of need
10 sought by others.

11 COMMISSIONER SKOP: Thank you.

12 Mr. Young.

13 MR. YOUNG: I feel uncomfortable talking about that
14 case. My two partners participated in it, Schef Wright and Jay
15 LaVia, quite extensively. I don't think the fact that it was a
16 merchant plant has anything to do with the basis upon which
17 Florida Power and Light alleged in their petition to intervene.
18 As I recall, in that case the Commission's order granting
19 intervention was very short. It just said you're granted
20 intervention. It didn't explain why or whatever. So I'm not
21 sure what kind of precedent that is for either side.

22 But in looking at their petition, it looks like to me
23 that they alleged a lot of what I have been talking about here
24 as to why we ought to be allowed to participate. I thought
25 they made a good point back then, and so much so I probably

1 inadvertently plagiarized it when I made the argument here. I
2 knew I had heard it somewhere, and it sounded like a good
3 argument to me, and I made it persuasive and should be
4 persuasive to you and to this Commission. And I would hope you
5 would so find.

6 COMMISSIONER SKOP: Thank you, Mr. Young.

7 I think I have two more questions, and we will be
8 done, hopefully. I'll give FPL a brief opportunity to address
9 anything they might want to. I know that my questions have
10 been directed at the petitioners. But, again, I'm simply
11 trying to vet the issues before us and, hopefully, we can
12 render an appropriate decision.

13 I guess, and certainly I think Mr. Bryant will be
14 familiar with this, but I guess I'm wondering whether the
15 petitioners are familiar with the court's holding regarding the
16 nuclear access claim in the case U.S. District Court for the
17 Southern District of Florida, Florida Cities versus FPL. And
18 I'm just wondering if there is generally familiarity with that
19 case. And if so, I have a follow-up question.

20 MR. BRYANT: About ten years of my life was involved
21 in that, ultimately successfully to where we are now a
22 participant in the St. Lucie 2 nuclear plant because of that
23 case and other proceedings. At that time there was in the
24 requirements for permitting by an applicant in the NRC, Nuclear
25 Regulatory Commission, an antitrust review be undertaken by the

1 Justice Department, who did that on behalf of NRC. And that
2 statute is still not available, that jurisdiction is no longer
3 within NRC.

4 And, needless to say, the Justice Department found
5 that there were antitrust problems and ordered FPL to offer
6 participation in that unit with FMPPA, and that took ten years
7 to get to that point, and it's a totally different situation.
8 That's why when you asked me the question is this the sole
9 forum to address this issue, I probably was a little hedging in
10 my answer, because the forums and their jurisdictions have
11 changed since the last time I had to live through many years of
12 that type of activity. Did I answer your question?

13 COMMISSIONER SKOP: Yes, sir. Again, I'll come back
14 to the follow-up, but essentially my follow-up -- and,
15 Ms. Kaufman and Mr. Young, I assume you are equally familiar.
16 But, basically, the follow-up is, basically, aren't we making
17 some of the same arguments about access, notwithstanding the
18 antitrust provisions, but aren't we making some of the same
19 arguments on a statutory basis now? Is this a repackaging of a
20 historical argument?

21 MR. BRYANT: I guess the answer, obviously, is yes.
22 And the question would be, well, why? Well, the reason to
23 begin with that the antitrust review was given to the Justice
24 Department in the NRC proceedings was because nuclear power was
25 developed with public money. Public money.

1 COMMISSIONER SKOP: But the court held that in that
2 proceeding, I mean, they rendered a summary judgment on the
3 issue of the nuclear access claim. And, I mean, I think they
4 detailed some of those issues that we are walking through. But
5 just the interest or the notion of the right to ownership in
6 general absent extraordinary circumstances that would require,
7 you know, a taking, or a divestiture, or breaking up, if you
8 will. Again, I know that the petition is based on the statute,
9 and I think that this will turn on the interpretation that is
10 given to the plain meaning of the statutory provision.

11 But, again, just from a historical perspective, I'm
12 looking at, you know, in the past there was a settlement
13 agreement that provided access, but then the court adamantly
14 denied numerous antitrust provisions or claims that were
15 brought. But it seems -- I'm just trying to see if there is a
16 repackaging here, because it seems like, you know, that that
17 provision, as you mentioned, is no longer available. And to
18 the extent that it seems to be a remolding of it within the
19 statutory provision, that we are making the same arguments. Is
20 that correct?

21 MR. BRYANT: No, sir, because this would not be the
22 forum if we were forced to bring those -- repackage those
23 arguments. That would not be this forum. It would be in the
24 federal courts and other forums. But let me say this just as
25 clear as I can. I am not trying to repackage those arguments

1 in this forum.

2 You read our petition. It was carefully, narrowly
3 drafted to indicate that what we are seeking is what the
4 statute and the rule require is discussions and a summary of
5 those discussions. And if I should be allowed to intervene in
6 this case, which I think I should be, the Commission is going
7 to control how far it's going to allow me to proceed under
8 those guidelines and those statutory rights that I have. And
9 it will be up to the Commission to determine how far they want
10 to go, pursuant to that statute; not for Fred Bryant to
11 determine that, the Commission will determine that. And I
12 think there are things that you will want to inquire into that
13 we have talked about here, and hopefully have raised some
14 interest amongst yourself and the staff, and that will be up
15 for you all to inquire as to -- or me to inquire as to, or
16 others. But you will control that process.

17 COMMISSIONER SKOP: Thank you.

18 Ms. Kaufman.

19 MS. KAUFMAN: Commissioner, my answer will be very
20 short. I don't have enough familiarity with that case to
21 discuss it with you at all. And, therefore, I can certainly
22 tell you that our petition and pleadings in this case are not a
23 repackaging of those arguments, because, you know, I haven't
24 looked at that case, and I certainly don't have Mr. Bryant's
25 familiarity with it.

1 COMMISSIONER SKOP: Thank you, ma'am.

2 Mr. Young.

3 MR. YOUNG: I was afraid she was going to say I
4 wasn't old enough to remember that case. I remember it some.
5 I was in Washington lobbying for Westinghouse to try to get
6 funding for their breeder reactor in Clinch River, which I did
7 for four or five years when this was all going on. But in
8 terms of repackaging something for this proceeding, it never
9 even dawned on me to do that. So the answer is no.

10 COMMISSIONER SKOP: Thank you.

11 I've been informed that there is a preconference at
12 1:30, and I guess we need to have a break. So I'm going to
13 wrap up briefly with one additional question, and then we will
14 adjourn.

15 Again, this is to the petitioners. A lot has been
16 made of the applicability of the grid bill as it pertains to
17 the ensuing discussion. And I guess I'm interested because,
18 again, it is my understanding that we may have some
19 jurisdiction in that area. It has been pointed out by the
20 petitioners. But, certainly, we have the FRCC in Florida, and
21 they coordinate the reliability of the grid, or at least they
22 are tasked with that, and we have oversight review of their
23 actions. I think they have come before us in the past since I
24 have been here, and we've reviewed what they are doing and all
25 the steps they are taking to ensure a reliable, you know,

1 adequate supply of electricity for Florida's consumers to avail
2 themselves of.

3 But in the context of some of the arguments that Mr.
4 Young raised, and also looking at the ten-year plan with
5 respect that we look at utilities' proposed units and the
6 reserve margins on an individual basis. And, you know, I would
7 like to briefly address -- our petitioners here, briefly
8 address the issue of the FRCC in relation to some of the grid
9 arguments that have been made and the FRCC's role in this.

10 And, also, with respect to the ten-year plan and the
11 significance of not having a statewide avoided unit, it seems
12 to be that a need determination is very centric to the
13 individual units being proposed for the need and the
14 reliability of the utility to serve its customers, not
15 necessarily the state. And I know that there seems to be a
16 little bit of a bifurcation in terms of the requirements under
17 (a) and (b) of the statute in question, 403.519, I think
18 (4)(a), (a) and (b) kind of bifurcates that. But if you can
19 briefly speak to those two issues, because I think there were
20 some underlying points raised with respect to the grid, and I
21 would like to understand what FRCC's role is.

22 MR. BRYANT: The FRCC is a self-regulatory body
23 comprised of all the electric utilities in the state. FRCC has
24 done more and doing a lot more in the last few years amongst
25 those who are regulated by themselves at the FRCC to try to

1 work out some of these very issues we are talking about,
2 particularly in light of transmission, transmission planning,
3 other things that have been historical differences in opinions.
4 But the FRCC cannot say to any of us you must build a power
5 plant and you must offer participation to others, or you must
6 even have discussions with others as to building a power plant.

7 What happens is when those differences, whether it be
8 transmission or generation at FRCC occur in the planning
9 process don't get worked out, they can come to this Commission.
10 We had a proceeding at this Commission not too long ago where
11 differences amongst the utilities in the FRCC as to who should
12 plan and build and pay for new transmission, called the central
13 Florida corridor, here before this Commission. And the
14 Commission told us very strongly, utilities, you get together
15 and work it out on improving these improvements that we, the
16 Commission, think are needed. And if you don't work it out, we
17 will.

18 My client happened to be on the end that has to pay
19 money for working that out, as well as OUC, as well as KUA. So
20 FRCC may decide they want to talk about this; they may not. I
21 suspect that will not because it is traditionally not something
22 that they would want to get involved in. But this Commission
23 constantly monitors what happens at FRCC, and this Commission
24 solves those kinds of problems under their grid bill
25 jurisdiction.

1 If you read the pleadings that said -- the Commission
2 said, okay, utilities, come before us and let's talk about
3 this. In other words, the big stick and the carrot. That is
4 the jurisdiction that you all utilized. And you had a big
5 stick, and I think you saw it got worked out.

6 COMMISSIONER SKOP: Thank you.

7 Ms. Kaufman.

8 MS. KAUFMAN: I agree with Mr. Bryant. The FRCC is a
9 self-regulatory body, I mean, everybody can work things out.
10 Typically, perhaps, the Commission doesn't have to get involved
11 and doesn't have to hear about it. In this case we are here
12 before you, I think, because that hasn't happened. And at the
13 end of the day the grid bill authority is not the authority of
14 FRCC, it is the authority of this Commission. And in our
15 pleadings we come to you seeking intervention based on that, as
16 well as on 403.519. And I don't think that the voluntary
17 discussions, proceedings, meetings that go on at the FRCC stand
18 in place of or can substitute for this Commission's
19 jurisdiction in our intervention rights in this case.

20 COMMISSIONER SKOP: Thank you.

21 Mr. Young.

22 MR. YOUNG: I think the Commission in the past has
23 been aggressive in getting some things accomplished that the
24 Commission thought that they needed to accomplish. And I think
25 to some extent the information that they had to rely upon in

1 order to make those decisions came from that organization as
2 well as the ten-year plans that the utilities filed.

3 I'm not sure I remember that the Commission basically
4 required one of the utilities to switch fuels in one of their
5 plants from coal to oil and maybe back again as the situation
6 dictated. But I think we have got to recognize that we're in a
7 different ballgame now. We've been in a different ballgame in
8 the last two years or last 12 months. It seems to me that
9 Florida Power and Light has attempted to build a couple of
10 plants and have backed off. Taylor Plant had gone down the
11 road quite a bit, and they have backed off. I believe TECO had
12 something going and they backed off. And it looks like OUC is
13 going to have to scale back.

14 Somebody needs to be looking at not a ten-year site
15 plan, but needs to be looking at whether or not we are in a
16 position that we ought to be in in terms of the utilities being
17 able to build the plants that they need to build in order to
18 meet the needs of their customers and their future customers.

19 I don't think we have ever had a situation where so
20 many proposed plants have come and gone without being built
21 before, certainly not in my memory. But that has happened, and
22 we have got to recognize that that has happened. So it's not
23 the FRCC or the ten-year site plan. I think we have got to
24 recognize the situation that exists today, and it has only
25 been -- it's only come to the front in the last, you know, six

1 months or a year. But I think we need to get about figuring
2 out a way to get moving on building some of these things. And,
3 again, I hope and pray that nothing we are doing will delay
4 Florida Power and Light from building the plants that they want
5 to build and get permitted.

6 Thanks.

7 COMMISSIONER SKOP: Thank you, Mr. Young.

8 And then briefly, I would just like to see if Mr.
9 Butler has any response, and also whether our attorneys have
10 any additional questions, which I think they are nodding their
11 head no in the affirmative.

12 So, Mr. Butler, if you would briefly respond to any
13 matters that you would like to briefly address.

14 MR. BUTLER: I will, thank you. And I will try to
15 keep it very brief. Am I on?

16 COMMISSIONER SKOP: Yes.

17 MR. BUTLER: Okay. Thanks. I think it is pretty
18 clear from this very illuminating discussion that the mask is
19 off. It's clear what the proposed intervenors want. It is
20 what we were concerned about when we filed our responses to
21 their petitions in the first place. They are not interested
22 just in discussions. They are interested in being sure that
23 those discussions come out the way that they want them to with
24 an opportunity to have an ownership share or in terms that are
25 favorable to them, or to refuse it if it turns out that that is

1 the better course of action.

2 Trying to accommodate that within this proceeding is
3 something that will be extremely time consuming. It will delay
4 the proceeding. Contrary to Mr. Young's hopes and prayers,
5 that will be the inevitable consequence of trying to graft that
6 set of issues onto a need determination, and it will end up,
7 therefore, frustrating the Legislature's interest in promoting
8 the pursuit of new nuclear units.

9 We have made a big point in our case of how we need
10 to move fairly quickly to reach a decision, know how we are
11 going to proceed so we can start making plans, start licensing
12 proceedings with the NRC, make long-range procurement
13 decisions, et cetera. And the delay that is going to come from
14 having this proceeding hijacked for the purpose of trying to
15 force co-ownership is going to be directly at odds with all of
16 those concerns.

17 The mask is also off, I think, about the proposed
18 intervenors' interest in the grid bill. Now, they are not
19 interested in assuring the adequate, reliable, cost-effective
20 delivery of power. The grid is working fine. The grid is --
21 you know, its workings aren't of interest to them. They have
22 said here that the mechanisms that the FRCC has in place won't
23 meet their needs in trying to secure an ownership interest in
24 the plants. And I will reiterate my earlier comments to you
25 that if we are talking about here a minority ownership of an

1 undifferentiated share, and undivided share of these plants, it
2 is not going to matter how the plants are operated or their
3 role in providing adequate, reliable, cost-effective power to
4 Florida or in the role of providing environmental benefits.

5 The Duke and New Smyrna case, it does have a
6 significant difference from the circumstances we are talking
7 about here. The fact that it was a merchant plant made all the
8 difference in the world. The concern that FPL had in that case
9 was that this plant was going to be built, there was no
10 commitment as to whether the power would go to any particular
11 utility in Florida, other than a very small 30-megawatt share
12 to the City of New Smyrna Beach. There was not even any
13 commitment that the power would be available in Florida. And
14 yet FPL would have been put in a situation where it was trying
15 to plan for its own system, not knowing if power was going to
16 be available or on what terms from this merchant plant or not,
17 and, therefore, having this big question mark over how its own
18 needs ought to be properly satisfied.

19 Mr. Bryant had pointed out an amusing irony about our
20 being the ones who intervened in that case. I think there is
21 another amusing irony here in one of the intervention cases
22 that was pointed out and not addressed today concerning FMPA
23 and the City of Vero Beach. FMPA opposed the City of Vero
24 Beach's intervention in FMPA's need proceeding. The City of
25 Vero Beach was ultimately granted intervention, but

1 subsequently withdrew it under threat of litigation from FMPA
2 over the fact of their intervention.

3 Finally, you had mentioned the NRC's jurisdiction
4 that it had previously. I would just like to point out how
5 different that was from what the Commission has here now. And
6 I think it is instructive to the issue of how the NRC was,
7 indeed, in the business of looking at potential antitrust
8 implications and crafting remedies, and that the legislation
9 here does not create either that duty or that power.

10 Prior to 2005, the NRC had antitrust authority in
11 connection to licensing of new nuclear plants. At the
12 construction permit stage, the NRC was required to consult with
13 the U.S. Attorney General as to whether there would be any
14 adverse antitrust aspects of granting the construction permit.
15 Following this consultation, if the NRC determined that there
16 were competitive advantages resulting from nuclear plant
17 ownership, the NRC had the authority to impose antitrust
18 conditions on the plant's licenses to ameliorate those
19 advantages. And as mentioned previously, that particular
20 authority was withdrawn by Congress in 2005.

21 Shortly thereafter was when Florida enacted the
22 provision we have been talking about today. It is a two-line
23 reference to providing information on whether there have been
24 any discussions with other utilities about co-ownership. The
25 difference is substantial, and it defines the reasons why the

1 remedies that the proposed intervenors here sought with respect
2 to St. Lucie 2 and the NRC proceedings are not available and
3 are not statutorily contemplated here.

4 Thank you.

5 COMMISSIONER SKOP: Thank you, Mr. Butler.

6 And, again, I know we are running behind, and I do
7 apologize to the others coming in. I just wanted to check with
8 staff to make sure that there is no additional matters that we
9 need to consider.

10 MS. BRUBAKER: Staff has none.

11 COMMISSIONER SKOP: Okay. I just want to appreciate
12 everyone taking the time to fully vet the issues before us.
13 This is a very important decision that I will be making as
14 prehearing officer. And based on that, I'm going to take the
15 pleadings and arguments under advisement and will issue an
16 order regarding the intervention petitions at or before the
17 prehearing conference. And that should give us adequate time
18 to review the pleadings and oral arguments and render a
19 decision.

20 So, again, thank everyone for their time and
21 willingness to fully vet this important issue. Thank you. And
22 we stand adjourned.

23 (The oral argument concluded at 1:27 p.m.)
24
25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

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

7

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

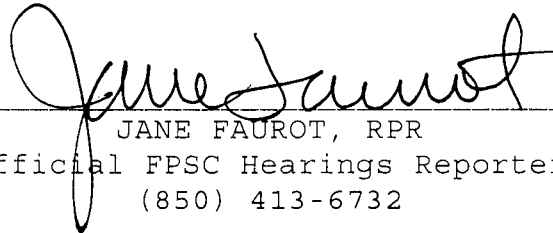
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I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a relative
12 or employee of any of the parties' attorney or counsel
connected with the action, nor am I financially interested in
the action.

13

DATED THIS 10th day of January, 2008.

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JANE FAUROT, RPR

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Official FPSC Hearings Reporter

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