

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF 2007 ELECTRIC INFRASTRUCTURE DOCKET NO. 070300-EI
STORM HARDENING PLAN FILED PURSUANT TO
RULE 25-6.0342, F.A.C., SUBMITTED BY
FLORIDA PUBLIC UTILITIES COMPANY.

PETITION FOR RATE INCREASE BY DOCKET NO. 070304-EI
FLORIDA PUBLIC UTILITIES COMPANY.

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER NANCY ARGENZIANO
PREHEARING OFFICER

DATE: Monday, February 11, 2008

TIME: Commenced at 1:35 p.m.
Concluded at 3:21 p.m.

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

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

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4 behalf of Florida Public Utilities Company.

5 PATRICIA CHRISTENSEN, ESQUIRE, Office of Public
6 Counsel, c/o The Florida Legislature, 111 West Madison Street,
7 Room 812, Tallahassee, Florida 32399-1400, appearing on behalf
8 of the Citizens of the State of Florida.

9 TRACY HATCH, ESQUIRE, AT&T Florida, 150 South Monroe
10 Street, Suite 700, Tallahassee, Florida 32301, appearing on
11 behalf of AT&T Florida.

12 SUSAN S. MASTERTON, ESQUIRE, Embarq Florida, Inc.,
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14 behalf of Embarq Florida, Inc.

15 BETH KEATING, ESQUIRE, Akerman Senterfitt Law Firm,
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18 100, Tallahassee, Florida 32303, appearing on behalf of Florida
19 Cable Telecommunications Association, Inc.

20 MARTHA CARTER BROWN, ESQUIRE, KEINO YOUNG, ESQUIRE,
21 H. F. RICK MANN, ESQUIRE, and KATHERINE FLEMING, ESQUIRE, FPSC
22 General Counsel's Office, 2540 Shumard Oak Boulevard,
23 Tallahassee, Florida 32399-0850, appearing on behalf of the
24 Florida Public Service Commission Staff.

25

P R O C E E D I N G S

1
2 COMMISSIONER ARGENZIANO: Okay. We'll call the
3 hearing to order. Welcome everyone. And if staff would please
4 read the notice.

5 MR. YOUNG: Good afternoon, Madam Commissioner. By
6 notice issued January 23rd, 2008, this time and place has been
7 set for a Prehearing Conference in Docket Number 070300-EI and
8 070304-EI. The purpose of the prehearing is set out in the
9 notice.

10 COMMISSIONER ARGENZIANO: Thank you. We'll take
11 appearances.

12 MR. HORTON: Yes, ma'am. Norman H. Horton, Jr., of
13 the Law Firm Messer, Caparello & Self, P.A., appearing on
14 behalf of Florida Public Utilities Company.

15 COMMISSIONER ARGENZIANO: Thank you.

16 MS. CHRISTENSEN: Patty Christensen with the Office
17 of Public Counsel appearing on behalf of the citizens of
18 Florida.

19 COMMISSIONER ARGENZIANO: Thank you. Welcome.

20 MR. HATCH: Tracy Hatch appearing on behalf of AT&T
21 Florida.

22 COMMISSIONER ARGENZIANO: Thank you.

23 MS. MASTERTON: Susan Masterton appearing on behalf
24 of Embarq Florida.

25 COMMISSIONER ARGENZIANO: Thank you.

1 MS. KEATING: Beth Keating, Akerman Senterfitt,
2 appearing on behalf of Florida Cable Telecommunications
3 Association. I'd also like to introduce you, Commissioner, to
4 Dave Konuch, who is the new in-house counsel for Florida Cable.

5 MR. KONUCH: It's a pleasure to meet you.

6 COMMISSIONER ARGENZIANO: It's a pleasure to meet you
7 also. Welcome.

8 Okay. Preliminary matters.

9 MR. YOUNG: Yes, Madam Commissioner. But before we
10 do that, staff would like to make appearances for Ms. Martha
11 Carter Brown, Katherine E. Fleming, H. F. Mann and Keino Young
12 appearing on, appearing on behalf of staff.

13 COMMISSIONER ARGENZIANO: That would be a good thing
14 to do. Thank you.

15 Okay. Now are there any preliminary matters we need
16 to address before we get to the Draft Prehearing Order?

17 MR. YOUNG: At this time there are no preliminary
18 matters and none are expected at this time.

19 COMMISSIONER ARGENZIANO: Any, any from the parties?

20 MR. HATCH: No, ma'am.

21 COMMISSIONER ARGENZIANO: Okay. All right. Let's go
22 through the Draft Prehearing Order now. And I'll identify the
23 sections -- hang on one second here -- and if you will let me
24 know if there are any corrections or changes to be made. And
25 we may go through them quickly, so just either chime right in

1 or just wave a hand and let me know. So let's begin with the
2 storm hardening and Rule 25-6.0342 on Page 9.

3 MS. BROWN: Madam Commissioner, could we go back to
4 Section I through VII before we do that to see if --

5 COMMISSIONER ARGENZIANO: Okay. We can do that. All
6 right. So we're going to go through Section I, case
7 background.

8 MS. BROWN: Staff has no changes.

9 COMMISSIONER ARGENZIANO: Any, any changes,
10 Mr. Horton?

11 MR. HORTON: Commissioner, in Section VI, the order
12 of witnesses, I think that I owe staff an update on the issues
13 that our witnesses will be addressing and we'll take care of
14 that. The issues that are shown in this draft, I believe, are
15 based upon an earlier draft and some of those numbers changed,
16 so I'll provide that.

17 COMMISSIONER ARGENZIANO: Great. You'll provide that
18 to staff.

19 MS. BROWN: And, Madam Commissioner, OPC has provided
20 me with an updated match of the witness to the issues as well
21 and we'll reflect that in the final Prehearing Order. But
22 maybe back to Section II now, conduct of proceedings.

23 COMMISSIONER ARGENZIANO: Conduct of proceedings.
24 Uh-huh.

25 MS. BROWN: No --

1 COMMISSIONER ARGENZIANO: Any corrections or changes?

2 MS. BROWN: No changes from staff.

3 COMMISSIONER ARGENZIANO: Any from any parties?

4 Okay. Section III, jurisdiction. I'm sorry.

5 MR. HATCH: Madam Chair. Oh, Madam Chair.

6 COMMISSIONER ARGENZIANO: Yes.

7 MR. HATCH: With respect to the order of witnesses, I
8 anticipate that the storm hardening issues will go quickly to
9 the extent that they're really subject to active consideration
10 during the hearing process, and I would request that Kirk
11 Smith, and perhaps the other storm hardening folks would like
12 to chip in as well, be taken up quickly first so that they
13 don't have to sit through what I anticipate is going to be the
14 longer rate case issues.

15 COMMISSIONER ARGENZIANO: I don't see any, foresee
16 any problems with doing that. Okay. Duly noted.

17 Okay. We are now on Section III, jurisdiction.

18 MS. BROWN: No changes.

19 COMMISSIONER ARGENZIANO: Okay. Any changes,
20 parties?

21 Okay. Section IV, procedure for handling
22 confidential information.

23 MS. BROWN: No changes.

24 COMMISSIONER ARGENZIANO: No changes. Any of the
25 parties?

1 Okay. V, prefiled testimony and exhibits, witnesses.

2 MS. BROWN: This is what we just, Mr. Hatch just
3 discussed.

4 COMMISSIONER ARGENZIANO: Okay. Just discussed.
5 Okay. We're fine there.

6 MS. BROWN: Staff has no other changes to that
7 section.

8 COMMISSIONER ARGENZIANO: Okay. Back to order of
9 witnesses. Anything other?

10 MS. MASTERTON: Commissioner.

11 COMMISSIONER ARGENZIANO: I'm sorry.

12 MS. MASTERTON: I just wanted to reiterate, and Sandy
13 Khazraee is Embarq's witness on the storm hardening issue, so I
14 think when Mr. Hatch was wanting to move Kirk Smith up, it
15 would be Sandy on behalf of Embarq as well.

16 COMMISSIONER ARGENZIANO: Okay.

17 MS. BROWN: Staff will sort that out with the parties
18 before we issue the final Prehearing Order.

19 COMMISSIONER ARGENZIANO: Very good. Okay. All
20 right. Now we're --

21 MR. HORTON: Commissioner.

22 COMMISSIONER ARGENZIANO: Yes, sir.

23 MR. HORTON: It's reflected in the Prehearing Order,
24 but just so the parties are sure, are aware, Ms., Ms. Martin
25 will be adopting the testimony and the exhibits prefiled by

1 Mr. Mehrdad Khojasteh. Mr. Khojasteh is not with the company
2 any longer, so Ms. Martin will be adopting all of that. It's
3 reflected in the order and we filed a notice of that.

4 COMMISSIONER ARGENZIANO: Very good. Thank you.

5 Okay. Where did we leave off here?

6 MS. BROWN: Section VII.

7 COMMISSIONER ARGENZIANO: We're on Section VII, our
8 basic positions.

9 MS. KEATING: Commissioner.

10 COMMISSIONER ARGENZIANO: Yes, Ms. Keating.

11 MS. KEATING: FCTA would like to make a modification
12 to its basic position. We've handed out copies to the parties
13 and to the Commission staff. And the purpose of this
14 modification is we would also like to change our position on
15 the actual numbered issues to reflect "No position."

16 COMMISSIONER ARGENZIANO: Okay.

17 MS. KEATING: But we would like to preserve our
18 ability should anything arise at hearing that would impact the
19 rights of the cable operators.

20 COMMISSIONER ARGENZIANO: Absolutely. Everyone has
21 received a copy?

22 MS. KEATING: Yes, ma'am.

23 COMMISSIONER ARGENZIANO: Staff?

24 MR. YOUNG: Yes, ma'am.

25 COMMISSIONER ARGENZIANO: Okay. Absolutely. Let me

1 make a note of that. We're fine.

2 Okay. Any other parties on Section VII?

3 Okay. Now does staff want me to move into the
4 issues? Are we ready for that or any other comments?

5 MS. BROWN: Yes. I think, I think we're ready for
6 that, Madam Chairman.

7 COMMISSIONER ARGENZIANO: Okay. As I said before,
8 I'll identify the sections. And if there's anything, any
9 changes, just grab my attention, please.

10 Storm hardening and Rule 25-6.0342 on Page 9.

11 MS. BROWN: Madam Chairman, it's my understanding
12 that we're very close to possible stipulations on Issues 1
13 through 15.

14 MS. CHRISTENSEN: Commissioner, I have -- this is
15 Patty Christensen with the Office of Public Counsel. I had a
16 change to Issue 10. We had taken a "No position at this time,"
17 and I think I would like to change that position just to a
18 "No."

19 COMMISSIONER ARGENZIANO: On Issue, on Issue 10?

20 MS. CHRISTENSEN: On Issue 10. And that reflects our
21 basic position on Issue 13. We have proposed adjustments
22 relating to Issue 16 through 29, and to the extent that those
23 cost issues have an impact on this, we want to be able to
24 preserve our position to the extent that they impact that
25 issue. If in further discussions with staff we get some

1 clarification and that's no longer needed, then we may be able
2 to come to some compromise. But at this point I think to
3 preserve those I will, I would ask to change Issue 10.

4 COMMISSIONER ARGENZIANO: Change Issue 10.

5 MS. BROWN: And, Madam Commissioner, if I might
6 inquire of OPC, I think maybe we need to go through this
7 section issue by issue.

8 COMMISSIONER ARGENZIANO: Absolutely. Let's go
9 ahead.

10 MS. BROWN: What everyone's position is on Issue 1,
11 if anyone intends to take a position, or shall we reflect no
12 position?

13 COMMISSIONER ARGENZIANO: Can OPC -- I think, I think
14 basically what you said, it was a "No" on Issue 10.

15 MS. CHRISTENSEN: Correct. As, as it relates to the
16 other issues, we're not taking necessarily a position on those
17 issues from reading those.

18 The reason Issue 10, in having read it more
19 carefully, is that it does talk about whether or not
20 cost-benefit analyses have been provided and whether those are
21 reasonable for the electric infrastructure improvements. And
22 we have a specific issue under Issue 16 that talks about the
23 storm hardening wood pole replacement program which we've taken
24 a very active position. So in the abundance of caution, I
25 think it's prudent to take a more affirmative decision or

1 position on that.

2 MS. BROWN: And staff understands that and will not
3 have a stipulation reflected for those issues. But I am
4 curious about whether we can reach a stipulation on all the
5 other storm hardening issues, and that would require the
6 parties to, who have not taken a position, to reflect that they
7 take no position and then we can probably stipulate these
8 issues.

9 Staff's position on all of these issues is that the
10 company's plan does comply with the appropriate requirements.
11 So what is OPC's position on this issue, Issue 1?

12 MS. CHRISTENSEN: At this point we're -- we may be in
13 a position to just take no position as regards to a stipulation
14 on Issues 1 through 9. I would like to -- we're having
15 discussions with the company tomorrow and those will be issues
16 that are also on the table with the company for discussion.
17 And if we can get back to staff with that after discussions
18 with the company, then I'd be happy to do that.

19 COMMISSIONER ARGENZIANO: So at the moment there's no
20 position on 1 through 9; is that correct?

21 MS. CHRISTENSEN: Well, my concern is if I take no
22 position and at some, without having those discussions, then I
23 cannot provide any sort of discussion in the posthearing brief
24 and it kind of locks me in.

25 COMMISSIONER ARGENZIANO: Got you. Okay.

1 MS. CHRISTENSEN: Right now I'm at the no position at
2 this time. I'm pretty sure that I can take a no position and
3 allow the parties to stipulate on those issues, but we're
4 having discussions tomorrow with the company. I want to --
5 would like to take the opportunity to have those discussions
6 with the company first before I commit to either taking a no
7 position on those issues affirmatively. But I, at this point I
8 think that that's where we will end up.

9 MS. BROWN: Madam Chairman, the Order Establishing
10 Procedure provides that at the Prehearing Conference parties
11 need to take a position, an affirmative position or take no
12 position on a particular issue, barring some good cause shown
13 for wanting to leave their positions open past the prehearing.

14 COMMISSIONER ARGENZIANO: Let me ask this. Is good
15 cause enough that they want to speak to the company tomorrow?

16 MS. BROWN: I would say so.

17 COMMISSIONER ARGENZIANO: Okay.

18 MS. BROWN: If -- with the promise that OPC will get
19 back to staff by a date certain, time certain, preferably
20 Thursday.

21 COMMISSIONER ARGENZIANO: Okay. Thursday?

22 MS. CHRISTENSEN: I think Thursday we should be able
23 to do that. We're expecting to begin talks tomorrow and then
24 we should have extra time on Wednesday if we need to to
25 conclude them. So we should have some --

1 COMMISSIONER ARGENZIANO: Okay. By Thursday to
2 staff. Okay.

3 MS. CHRISTENSEN: -- definitive answer by Thursday or
4 an actual position.

5 (Simultaneous conversation.)

6 COMMISSIONER ARGENZIANO: If not, if not, then we'll
7 look at it as a no position.

8 MS. CHRISTENSEN: Okay. That seems fair.

9 COMMISSIONER ARGENZIANO: Okay.

10 MS. BROWN: And I don't know what the other parties'
11 positions are on these issues.

12 COMMISSIONER ARGENZIANO: Okay. From the other
13 parties, any positions that you'd like to address?
14 Ms. Keating?

15 MS. KEATING: We can change ours to "No position."

16 MS. BROWN: Right.

17 COMMISSIONER ARGENZIANO: Okay. Hearing none other.
18 Okay. Anything else, staff, on that?

19 MS. BROWN: Yes. The Prehearing Order reflects "No
20 position at this time" for AT&T and a "No position at this
21 time" for Embarq.

22 COMMISSIONER ARGENZIANO: Okay. Mr. Hatch.

23 MR. HATCH: At this point with respect to the storm
24 hardening issues our positions are laid out correctly. We have
25 no position on the storm hardening issues themselves. I would

1 only add that whether it's semantics or whether there's a fine
2 hairline legal distinction, our position probably practically
3 is we don't object to the plan at this point, which is
4 essentially the position we took in the last round of storm
5 hardening hearings. There's no -- it's simply because neither
6 side -- nobody that's involved in this has enough information
7 to fully answer all of the issues embedded in it, so we just --

8 COMMISSIONER ARGENZIANO: Sure. Understood.

9 MR. HATCH: We don't object to the plan at this
10 point. And with the adoption of the third party attacher
11 process and the notification, that's how we generate the
12 ultimate answers to where the battle lines may be, but we have
13 to postpone that fight until another day.

14 COMMISSIONER ARGENZIANO: Staff? And do you want to
15 hear from Ms. Masterson? Masterton. I'm sorry. Excuse me.

16 MS. MASTERTON: That's okay. Thank you,
17 Commissioner.

18 Wherever we said "No position at this time," we're
19 okay with saying "No position." We did take positions on
20 several of the issues however. We didn't say "No position at
21 this time" on every issue, so.

22 MS. BROWN: So in this section we probably need to go
23 through each one to clarify that. So my -- from what I'm
24 hearing, we have a stipulation on Issue 1 in this section.
25 Staff agrees with the company, and the Prehearing Order will

1 reflect that.

2 MS. MASTERTON: Commissioner, excuse me. I just
3 wanted to ask for a clarification from staff.

4 COMMISSIONER ARGENZIANO: Yes.

5 MS. MASTERTON: When we say "No position," that means
6 we don't object to the stipulation. We're not affirmatively
7 agreeing to it. Is that --

8 MS. BROWN: Yes, that's correct. And we can have the
9 Prehearing Order point that out as well.

10 COMMISSIONER ARGENZIANO: But now to ask staff, not
11 to interject here, but if their position changes later on,
12 would that "No position" now in any way stifle any concern they
13 may have down the road?

14 MS. BROWN: Well --

15 COMMISSIONER ARGENZIANO: No? Okay.

16 MS. BROWN: I'm not certain of that. I don't think
17 so, not for the purposes of this hearing. I think what they're
18 saying is on down the road with respect to the storm hardening
19 plan, if something comes up, they will have to address that in
20 the future.

21 COMMISSIONER ARGENZIANO: Absolutely. Absolutely.

22 MS. BROWN: But for purposes of this hearing, I think
23 all of these issues except for the ones that OPC mentioned we
24 can show as, as stipulated between the company and the staff
25 and the other parties not objecting to the stipulation.

1 COMMISSIONER ARGENZIANO: Okay. Very good.

2 Staff, are we ready to move on?

3 Okay. The ten point storm preparedness initiatives
4 on Page 15.

5 MS. MASTERTON: Commissioner, excuse me. I hate to
6 go back.

7 COMMISSIONER ARGENZIANO: Yes. I'm sorry. That's
8 all right.

9 MS. MASTERTON: But I did -- it just sunk in what
10 Ms. Brown had said.

11 COMMISSIONER ARGENZIANO: Okay.

12 MS. MASTERTON: On Issue 12 we had proposed some
13 alternative language for stipulation we circulated via e-mail,
14 and FPUC had indicated that they didn't object to it, and as
15 opposed to reflecting FPUC's position, we're assuming --

16 COMMISSIONER ARGENZIANO: On Issue 12.

17 MS. MASTERTON: Yes.

18 MS. BROWN: Yes. The new language will be reflected
19 in the final Prehearing Order.

20 MS. MASTERTON: Okay. Thank you. Sorry.

21 COMMISSIONER ARGENZIANO: Okay. Okay. Let's
22 continue on Page 15.

23 MS. BROWN: Madam Chairman, starting with Issue 14,
24 it's my understanding that staff agrees that the Commission
25 should approve FPUC's request to implement a 3/6 tree trimming

1 cycle instead of a 3/3 cycle. I'm not sure what the other
2 parties' positions are.

3 COMMISSIONER ARGENZIANO: Now is the time to hear the
4 other parties' positions.

5 MS. CHRISTENSEN: I think we can agree with changing
6 the cycle from a 3/3 to a 3/6.

7 COMMISSIONER ARGENZIANO: Okay. We have OPC agreeing
8 on that. Any of the other parties?

9 MR. HATCH: Tracy Hatch for AT&T. Once you get into
10 the rate case issues, we legitimately have no position on the
11 actual rate case issues themselves.

12 COMMISSIONER ARGENZIANO: Okay.

13 MS. MASTERTON: And, Commissioner, I could say the
14 same for Embarq for all the issues from 14 down to the end. I
15 think you can --

16 MS. BROWN: 134.

17 COMMISSIONER ARGENZIANO: 14 through 134. Okay.

18 Ms. Keating.

19 MS. KEATING: And at this time I think the same thing
20 can be said for the FCTA.

21 MS. BROWN: Thank you. With respect to the Issue 14,
22 I think that's another issue we can show as stipulated.

23 COMMISSIONER ARGENZIANO: Okay.

24 MS. BROWN: And with respect to Issue 15, I guess I'm
25 waiting for OPC's position.

1 COMMISSIONER ARGENZIANO: Ms. Christensen.

2 MS. CHRISTENSEN: I think we're, I think that's going
3 to be reflective of tomorrow's discussion. We've just changed
4 our position on 10 regarding the cost-benefit analysis to "No."
5 So technically our position would have to be "No" regarding the
6 cost-benefit analysis. No, they have not complied with the
7 cost-benefit analysis requirement. Just change our position to
8 "No. FPUC has not complied with the cost benefit requirement."

9 COMMISSIONER ARGENZIANO: Okay.

10 MS. CHRISTENSEN: And as I said earlier, we'll be in
11 discussion with the company and we'll see if we can't resolve
12 those. But at this point we would change our position to that.

13 COMMISSIONER ARGENZIANO: Okay. Noted.

14 MS. BROWN: Yes. We have it. We'll show it in the
15 final Prehearing Order.

16 COMMISSIONER ARGENZIANO: Okay. Very good. Let's
17 move on to -- I guess we're on the costs for storm hardening
18 and the ten point initiatives.

19 MS. BROWN: Yes. Madam Chairman, at this point staff
20 doesn't identify or recognize any possible stipulations in
21 these issues, noting that the third party attachers are taking
22 no position. I'll leave it to FPUC and OPC to tell you if
23 there are any changes to their positions in this section.

24 COMMISSIONER ARGENZIANO: Okay. Mr. -- Great.
25 Mr. Horton.

1 MR. HORTON: No change to 16.

2 COMMISSIONER ARGENZIANO: Okay. And Ms. Christensen.

3 MS. CHRISTENSEN: Are we, are we proceeding issue by
4 issue through this section?

5 MS. BROWN: No. We're going to take this whole
6 section in a lump because I don't see any stipulations in it.
7 If there are changes to your positions, if you could reflect
8 that for the court reporter.

9 COMMISSIONER ARGENZIANO: On Issue 16.

10 MS. CHRISTENSEN: Yeah. If you can provide just a
11 moment to make sure I look through all of the issues.

12 COMMISSIONER ARGENZIANO: Sure.

13 MS. CHRISTENSEN: Under this section, the only thing
14 that I would note -- I have no changes to my positions, except
15 to note on Issues 23 and 24 we have, as our position noted, the
16 same as Issue 20 -- under Issue 23 our position is the same as
17 Issue 20, and we just had that language in there because I
18 think this is a duplicative issue of Issue 20 and 24. "Should
19 additional contractor expense to handle joint pole inspections
20 be approved?" Our position has been the same as Issue 19
21 because we believe the issue is duplicative of the earlier
22 issue. I'm not sure --

23 COMMISSIONER ARGENZIANO: Which is already noted, am
24 I correct, staff? Isn't that already in the hearing, the
25 pre -- on 19 -- I'm sorry, on 24, same as 19?

1 MS. BROWN: OPC says "Same as Issue 19." I think
2 what OPC is saying is we should review these issues to make
3 sure we're not asking the same question twice. And staff will
4 get with OPC and the parties and FPUC to come up with which one
5 we keep and the, and the final order will reflect that.

6 COMMISSIONER ARGENZIANO: Very good. Anything else
7 on that?

8 MS. CHRISTENSEN: I have no further suggestions or
9 changes to that.

10 COMMISSIONER ARGENZIANO: Okay. Did you have enough
11 time to look through?

12 MS. CHRISTENSEN: Yes, I did.

13 COMMISSIONER ARGENZIANO: Okay. Very good. Okay.
14 For the, let's see, test period, Page, well, Page 25.

15 MR. HORTON: Excuse me, Commissioner. I'm sorry.

16 COMMISSIONER ARGENZIANO: Mr. Horton.

17 MR. HORTON: On Number 19 and --

18 COMMISSIONER ARGENZIANO: 24?

19 MR. HORTON: -- 25.

20 COMMISSIONER ARGENZIANO: 25. Okay.

21 MR. HORTON: The witness should be shown as
22 Mr. Cutshaw for those two.

23 MS. BROWN: Okay.

24 COMMISSIONER ARGENZIANO: Did you get that, Martha?

25 MS. BROWN: Yes. Yes, I did.

1 COMMISSIONER ARGENZIANO: Okay. Anything else?

2 MR. HORTON: No, ma'am.

3 COMMISSIONER ARGENZIANO: Okay. All right. Staff,
4 for test period?

5 MS. BROWN: Yes, Madam Chairman. Issue 29 is
6 reflected as a possible stipulation. And if the parties, other
7 parties, AT&T, Embarq, FCTA are taking no position, if I can
8 hear from OPC, their position, we can show this as a stipulated
9 issue.

10 COMMISSIONER ARGENZIANO: Okay. Ms. Christensen,
11 with Issue 29.

12 MS. CHRISTENSEN: We're in a position to stipulate
13 Issue 29.

14 MS. BROWN: All right.

15 COMMISSIONER ARGENZIANO: You are in a position to
16 stipulate 29?

17 MS. CHRISTENSEN: Correct.

18 COMMISSIONER ARGENZIANO: Okay.

19 MR. HORTON: We can stipulate to 29.

20 COMMISSIONER ARGENZIANO: Mr. Horton?

21 MR. HORTON: Yes, ma'am.

22 MS. CHRISTENSEN: Let me clarify that.

23 COMMISSIONER ARGENZIANO: Okay. Wait a minute. Mr.
24 Horton may want to change his answer.

25 MS. CHRISTENSEN: Well, just I want to make sure that

1 we're clear. We're not stipulating to FPUC's position under
2 there. What we can agree to is that the appropriate historical
3 test year is the year ending December 31st, 2006, with the
4 projected test year ending December 31st, 2008, as the
5 appropriate test year to be utilized in this docket, and that's
6 the position we can agree with.

7 MS. BROWN: And staff's position is that, yes, that
8 is the appropriate test, those are the appropriate test years
9 with appropriate adjustments to be made.

10 MS. CHRISTENSEN: And that's fine. We could, we
11 could agree to that.

12 MS. BROWN: Does FPUC agree with that?

13 MR. HORTON: Yes.

14 COMMISSIONER ARGENZIANO: Okay. So we're all in
15 agreement.

16 MS. BROWN: Yes.

17 COMMISSIONER ARGENZIANO: Very good. See how it
18 works. Okay. Anything else on this issue, staff?

19 MS. BROWN: No, not on this issue.

20 COMMISSIONER ARGENZIANO: Okay. Then let's move to
21 quality of service.

22 MS. BROWN: Well, no.

23 COMMISSIONER ARGENZIANO: I'm sorry.

24 MS. BROWN: I'm sorry.

25 COMMISSIONER ARGENZIANO: Okay.

1 MS. BROWN: My problem. Issue 30 is also a possible
2 stipulation.

3 COMMISSIONER ARGENZIANO: Okay.

4 MS. BROWN: Staff's position on this is, yes, FPUC's
5 forecasts for the projected test year are appropriate. I'm
6 waiting for a position by OPC.

7 COMMISSIONER ARGENZIANO: Uh-huh. Ms. Christensen.

8 MS. CHRISTENSEN: We would take "No position" on
9 this.

10 COMMISSIONER ARGENZIANO: Issue 30, no position.
11 Mr. Horton?

12 MR. HORTON: We can agree with staff.

13 MS. BROWN: Okay. That will be a stipulated issue.

14 COMMISSIONER ARGENZIANO: Okay. So that's stipulated
15 now. Are we ready to move on to quality of service?

16 MS. BROWN: Yes.

17 COMMISSIONER ARGENZIANO: Okay. Issue 31.

18 MS. BROWN: That's a possible stipulation with a
19 position from OPC.

20 COMMISSIONER ARGENZIANO: Ms. Christensen.

21 MS. CHRISTENSEN: Hold on just a moment.

22 COMMISSIONER ARGENZIANO: Sure. Take your time.

23 We're okay.

24 MS. CHRISTENSEN: I would take a "No position" at
25 this time.

1 COMMISSIONER ARGENZIANO: No position by OPC.

2 MS. BROWN: No position or no position at this time?

3 MS. CHRISTENSEN: I'm sorry. "No position."

4 MS. BROWN: All right.

5 MR. HORTON: And we can agree with staff.

6 MS. BROWN: Staff's language is, to the question is,
7 "Yes. Expert and customer testimony, as well as FPUC's annual
8 distribution report and the Commission's service reliability
9 review show that the quality of electric service provided by
10 FPUC is adequate." All right.

11 MR. HORTON: Yes, we can agree to that.

12 MS. BROWN: That'll be the position reflected.

13 COMMISSIONER ARGENZIANO: Okay. Very good. And to
14 rate base.

15 MS. BROWN: Madam Chairman, I think the staff will
16 have to -- I don't, I don't see any possible stipulations until
17 Issue 45.

18 COMMISSIONER ARGENZIANO: From -- to 45?

19 MS. BROWN: Well, actually and the first one, "Has
20 the company removed all non-utility activities from rate base?"
21 That's Issue 32. Staff's position on this is, yes, they agree
22 with the company's language.

23 COMMISSIONER ARGENZIANO: On Issue 32?

24 MS. BROWN: Yes. So we'd be waiting to hear from OPC
25 on this.

1 COMMISSIONER ARGENZIANO: OPC, Ms. Christensen.

2 MS. CHRISTENSEN: I think generally speaking we can
3 take "No position," although we would note on some of these
4 staff's position was, indicated "No position at this time" and
5 they're changing, they're now providing us with a new position.
6 So we may have to have some time to consider what staff's
7 position is before we can decide whether or not we're going to
8 be able to agree with that or not because it appears only some
9 of them were provided in the Draft Prehearing Order and some
10 are being amended as of today. So, you know, I think on this
11 issue we can -- we would prefer to take a "No position," so.

12 MS. BROWN: You'd prefer to take no position or no
13 position at this time?

14 COMMISSIONER ARGENZIANO: I think what I heard you
15 say is you wanted more time to, to understand staff's position?

16 MS. CHRISTENSEN: No. I think at this point on this
17 issue I feel comfortable taking "No position." But on future
18 issues where staff has taken a position affirmatively now we
19 may take, need to take some more time to consider what staff's
20 new position is to determine whether or not we would like to
21 take either a no position or can agree to it because we haven't
22 had time -- some of them were provided in the most recent Draft
23 Prehearing Order, some are being provided as we speak at this
24 hearing, so it's a little bit --

25 COMMISSIONER ARGENZIANO: Okay. Just let me know.

1 MS. CHRISTENSEN: Okay. And the other request I
2 would ask -- I mean, if we could go issue by issue through the
3 rate base section because there are a lot of issues and we had
4 a lot of changes and it just, it would be easier, I think, for
5 me to be able to follow them. I don't think we have to take
6 very long with each issue, but it would help me to keep up with
7 any minor changes that I've noted.

8 MS. BROWN: You want to go through every issue to
9 134? Okay. I mean --

10 MS. CHRISTENSEN: I think as far as the rate base
11 section goes and the NOI section, because those are the two
12 sections that had the greatest changes. I think the other ones
13 are easier to do in bulk.

14 MS. BROWN: Okay. Rate base and NOI. Madam
15 Chairman, if I might respond to OPC.

16 COMMISSIONER ARGENZIANO: Please.

17 MS. BROWN: It's my view that the Prehearing
18 Conference is a good place to try to stipulate as many issues
19 as possible, especially in a rate case that has 134. So I
20 would suggest that FPUC and if OPC has some ideas of issues
21 that can be stipulated, that would be a help too. We're going
22 to go ahead with the ones that we think we can stipulate to.
23 And then if Ms. Christensen really feels uncomfortable with it,
24 she can just not agree to it. That doesn't mean that we can't
25 continue discussing it after. But I would like to get as much

1 of this stipulated today as we can is my view.

2 COMMISSIONER ARGENZIANO: Ms. Christensen.

3 MS. CHRISTENSEN: I'm, I'm happy to consider whatever
4 issues staff thinks that may be a possible resolution for a
5 stipulation. As far as any maybe additional issues where we
6 have an actual affirmative position, as I said, FPUC and OPC
7 will be meeting tomorrow to see if there are some further
8 issues we can stipulate to. Because, like everyone else, we'd
9 like to get down to just those issues that are, need to be
10 litigated. And as far as language today, it's just we're
11 having to consider language here, you know, that may be
12 presented for the first time here and that just -- it makes it
13 a little bit more difficult, but we'll do our best to push
14 through.

15 COMMISSIONER ARGENZIANO: Okay. Why don't we try to
16 go ahead with those that we think that we have some type of
17 agreement on. And, Martha, if you would --

18 MS. BROWN: All right. Certainly. That would be
19 fine. There actually aren't all that many that staff has
20 positions on at this point, but we do intend to continue to
21 work on this and try to get as many of these done as we can.

22 COMMISSIONER ARGENZIANO: Well, I would hope so. I
23 think that would be wise. Okay.

24 MS. BROWN: Now with the rate base section, I heard
25 Ms. Christensen say she wanted to go issue by issue. Is that

1 acceptable to you, Commissioner?

2 COMMISSIONER ARGENZIANO: Well, are there -- we have
3 how many?

4 MS. BROWN: We have 134 altogether in rate base.

5 COMMISSIONER ARGENZIANO: Well, Ms. Christensen, do
6 you think -- is it your desire to go through every one of them?

7 MS. CHRISTENSEN: Well, I think for the rate base
8 issues we're talking from Issue 32 to Issue 61. And I don't
9 have -- I would just like to, you know, if we could --

10 COMMISSIONER ARGENZIANO: You just want a basic kind
11 of like walk-through and see what --

12 MS. CHRISTENSEN: Yeah. Issue 32. And if we don't
13 have any issue on that, we can just move on to the next one.
14 But because we were back and forth with the Draft Prehearing
15 issue up until today --

16 COMMISSIONER ARGENZIANO: Sure.

17 MS. CHRISTENSEN: -- I just want to make sure I catch
18 all typos and corrections.

19 COMMISSIONER ARGENZIANO: Martha, let's start with
20 32.

21 MS. BROWN: Okay. Madam Chairman, I want to -- staff
22 has just pointed out to me that NOI issues come after that, so
23 we're talking 32 through 118 probably. It shouldn't take that
24 long.

25 COMMISSIONER ARGENZIANO: Let's just start going

1 through them and see what we can do.

2 MS. BROWN: Okay. I don't think there are any
3 changes to Issue 33, except the Prehearing Order will reflect
4 that the other parties take no position on these issues.

5 COMMISSIONER ARGENZIANO: Okay. And just speak up at
6 any time as we try to roll through these for questions or
7 comments, please. Okay. We're on, up to --

8 MS. BROWN: 34.

9 COMMISSIONER ARGENZIANO: -- 34. Okay.

10 MS. BROWN: No changes from staff.

11 MS. CHRISTENSEN: No changes.

12 COMMISSIONER ARGENZIANO: No changes. Okay.

13 MR. HORTON: Commissioner?

14 COMMISSIONER ARGENZIANO: Yes, Mr. Horton.

15 MR. HORTON: Our position is fine, but I'm confused
16 by Public Counsel's position on 34.

17 COMMISSIONER ARGENZIANO: On 34.

18 MR. HORTON: Because 34, we're talking about
19 additions to the 2008 test year, and I don't think that's what
20 Audit Finding 1 refers to. So we're just confused.

21 MS. CHRISTENSEN: Why don't we do this. Our issue --
22 the issue in 34, we can move that to OPC's position for
23 Issue 35.

24 MR. HORTON: Okay.

25 MS. CHRISTENSEN: Which discusses the missing

1 invoices. Okay. And we would take just then a "No position"
2 on the Issue 34.

3 COMMISSIONER ARGENZIANO: 34. Okay.

4 MR. HORTON: Thank you.

5 MS. BROWN: Staff has no further changes and we'll
6 reflect that in the Draft Prehearing.

7 COMMISSIONER ARGENZIANO: Okay. Great. Show that
8 reflected in the record, and we'll move on to --

9 MS. CHRISTENSEN: I'm sorry. Are we on Issue 36?

10 MS. BROWN: I think we're on 36 now.

11 COMMISSIONER ARGENZIANO: 36. Right.

12 MS. BROWN: Staff has no changes.

13 MS. CHRISTENSEN: No changes for OPC.

14 COMMISSIONER ARGENZIANO: Mr. Horton?

15 MR. HORTON: No changes.

16 MS. CHRISTENSEN: I'm sorry.

17 COMMISSIONER ARGENZIANO: Okay.

18 MS. CHRISTENSEN: I would just delete on OPC's
19 position, "Same as Issue 82." I think the issue number
20 changed, so I'd just delete that sentence and start with "FPUC
21 constructed a wall."

22 MS. BROWN: Okay.

23 COMMISSIONER ARGENZIANO: Have you got that?

24 MS. BROWN: Yes.

25 COMMISSIONER ARGENZIANO: Okay. 37.

1 MS. BROWN: No changes for staff.

2 MS. CHRISTENSEN: On Issue 37 in OPC's position I
3 would also delete the sentence same as position -- "Same
4 position as Issue 95" since the issue numbers have changed.

5 COMMISSIONER ARGENZIANO: Issue 95?

6 MS. CHRISTENSEN: And just start with "FPUC removed."

7 COMMISSIONER ARGENZIANO: Okay. You're okay with
8 that? Okay. Let's move to 38.

9 MS. BROWN: Staff has no changes.

10 COMMISSIONER ARGENZIANO: And Ms. Christensen.

11 MS. CHRISTENSEN: No changes for OPC.

12 MR. HORTON: No changes.

13 COMMISSIONER ARGENZIANO: Okay. Mr. Horton, did you

14 --

15 MR. HORTON: No changes.

16 COMMISSIONER ARGENZIANO: 39.

17 MS. BROWN: No changes for staff.

18 MS. CHRISTENSEN: No changes for OPC.

19 MR. HORTON: No changes.

20 COMMISSIONER ARGENZIANO: Okay.

21 MS. BROWN: Madam Chairman, OPC's position is "No
22 position at this time." Is this another one of these that
23 they're going to get back to us on on Thursday?

24 COMMISSIONER ARGENZIANO: Ms. Christensen?

25 MS. CHRISTENSEN: I guess our, our position at this

1 point is we're not sure what, why this is an issue in this
2 case. There's no testimony that we can find on the issue.

3 MS. BROWN: Well, I'm not sure of the significance of
4 that.

5 COMMISSIONER ARGENZIANO: Are you waiting, are you
6 waiting for something or is it "No position at this time"?

7 MS. CHRISTENSEN: No. I think this was an issue that
8 was raised by staff, and I don't think there's any, been any
9 testimony filed regarding this from at least our standpoint or
10 other than what was in the MFR. So I don't know, I don't know
11 that it's necessarily even in dispute, if it needs to remain an
12 issue. I don't know. Staff may need this as an issue if this
13 is one of those findings that you need for the rate case. I
14 don't know.

15 MS. BROWN: May we just have a minute?

16 COMMISSIONER ARGENZIANO: Okay. Sure. Let's take a
17 couple of minutes and we'll get back to it in a second.

18 (Pause.)

19 MS. BROWN: Madam Commissioner, staff agrees with OPC
20 and would be willing to drop this issue with FPUC's agreement.

21 COMMISSIONER ARGENZIANO: Mr. Horton.

22 MR. HORTON: We have no objection.

23 COMMISSIONER ARGENZIANO: No objection. Okay. Show
24 that issue dropped. And let's move on to Issue 40. Yes.

25 MS. CHRISTENSEN: OPC would have the, the same

1 position as the last one. We don't know that it's actually in
2 dispute. It was raised as a staff issue. I don't know whether
3 we need to even have the issue in the proceeding, unless staff
4 feels that they need to have the issue.

5 COMMISSIONER ARGENZIANO: Staff on Issue 40. Okay.
6 We'll give you a minute.

7 (Pause.)

8 MS. BROWN: Madam Chairman, staff needs that issue in
9 the case. They have no changes to -- we have no changes to our
10 position at this time.

11 COMMISSIONER ARGENZIANO: Okay. No changes.

12 Ms. Christensen.

13 MS. CHRISTENSEN: Our concern with changing our
14 position at this time is we don't, we're not sure where staff's
15 position is and if there's outstanding testimony or outstanding
16 discovery that may change our position in the future. We don't
17 have an issue with it at this time, but I would hate to
18 prematurely take a no position if we, if there's outstanding
19 discovery or such that might change our position in the future.

20 COMMISSIONER ARGENZIANO: Anything else to add,
21 Martha?

22 MS. BROWN: Well, I think the parties to the case
23 need to have positions on the issues and not have it be
24 speculative based on what staff's position might be down the
25 road. Staff's position might not be finalized until after the

1 hearing. We'll take no position all the way through the
2 hearing if we're not certain of what the evidence is going to
3 show. So I don't think that's sufficient good cause to avoid
4 taking a position at the Prehearing Conference.

5 MS. CHRISTENSEN: Well, and my response to that would
6 be is we may or may not agree ultimately with what is adduced
7 at hearing, and I think, I think it just places us at a
8 disadvantage if staff is allowed to take no position and then
9 ask questions on it at the hearing and then we're foreclosed
10 from taking a position on it at the hearing.

11 I think, you know, we try and take as many positions
12 as possible or no positions where reasonable. There are some
13 issues where they're raised by staff, they want to have it
14 continue as an open issue because they feel that some evidence
15 is going to come into the record. And I would -- as an issue
16 of fairness that the parties should be allowed to address those
17 issues in the posthearing brief or take a no position at the
18 posthearing brief and not be disadvantaged by the prehearing
19 process.

20 COMMISSIONER ARGENZIANO: Staff, does it kind of
21 close the door on OPC then if something does come up?

22 MS. BROWN: Excuse me?

23 COMMISSIONER ARGENZIANO: Does it close the door on
24 OPC to do that?

25 MS. BROWN: If they take no position?

1 COMMISSIONER ARGENZIANO: Uh-huh.

2 MS. BROWN: Yes, it does. And I'd like to read the
3 last sentence of the first main paragraph on Page 6 of the
4 Order Establishing Procedure.

5 COMMISSIONER ARGENZIANO: Okay.

6 MS. BROWN: Which says -- and this comes after the
7 part about what the parties have to do at the Prehearing
8 Conference. It says, "Commission staff may take no position at
9 this time or a similar position on any issue without having to
10 make the showing described above." I don't think OPC has made
11 the showing described in that paragraph.

12 And actually the OEP says that "If the party is
13 unable to take a position on a matter, it shall explicitly
14 state that in its prehearing statement." We haven't really
15 held OPC to that requirement, but at least at the Prehearing
16 Conference they ought to take a position on the issue. Then if
17 something comes up at the hearing that's untoward or
18 unforeseen, the Commission is not usually inclined to refuse to
19 listen to those good cause arguments. But I think just as a
20 matter of practice we ought to stick with what we've done for
21 many, many, many years.

22 COMMISSIONER ARGENZIANO: Okay. Ms. Christensen.

23 MS. CHRISTENSEN: I would ask maybe this compromise,
24 to take no position pending evidence adduced at hearing. And
25 if there is evidence adduced at hearing which would, which

1 would warrant a position, then we would take it.

2 COMMISSIONER ARGENZIANO: I think we would take your
3 concerns into consideration at that time if something arises.

4 MS. BROWN: So I think that means no position or take
5 a position.

6 COMMISSIONER ARGENZIANO: Yes. Would you like a
7 couple of minutes? Do you want to do that, think about it?

8 MS. CHRISTENSEN: If we could.

9 COMMISSIONER ARGENZIANO: Sure. Let's take a
10 five-minute break. Okay?

11 (Recess taken.)

12 Okay. I think we're ready to start back up.

13 Ms. Christensen.

14 MS. CHRISTENSEN: Commissioner, after discussion
15 amongst ourselves, at this point in time we'll take a position
16 and answer in the affirmative and say "Yes."

17 COMMISSIONER ARGENZIANO: Okay. And if you have
18 concerns down the road, I mean, just bring them up and, of
19 course, you know, it'll be up to all the Commissioners, but I
20 will make sure that that concern was here today.

21 MS. CHRISTENSEN: Yeah. I think at this point we'll
22 just either take an affirmative or a negative depending on the
23 question.

24 COMMISSIONER ARGENZIANO: Okay.

25 MS. CHRISTENSEN: And if it resolves itself through

1 the hearing process, then it resolves itself through the
2 hearing process.

3 MR. HATCH: Madam Chair, I hate, I hate to meddle, I
4 truly do, but just some of the stuff is sort of -- I want to
5 make sure that I understand what everybody is thinking.

6 COMMISSIONER ARGENZIANO: Sure. Please do.

7 MR. HATCH: Is that -- we've kind of got two things
8 going on here as I understand it, and that's taking no position
9 prior to the hearing. Now the Commission's rules and the
10 Prehearing Order clearly try to get everybody to lay out their
11 cards on the table as best they possibly can all the way up to
12 the hearing, and the Prehearing Conference is where you try and
13 do that. And so you can legitimately take, I believe, no
14 position on an issue all the way up to the hearing.

15 Now I think staff is doing something, which I think
16 is a very good idea, in terms of trying to get as many issues
17 cleared out and off the table to limit what you've got to worry
18 about during the hearing such that what it appears is going on
19 is wherever a party takes no position or all the parties take
20 no position on one issue, then you've got FPUC's position.
21 Then the question is does everybody agree with FPUC's position
22 versus are they still stuck at no position? And I don't think
23 you can say automatically that if there's no position, that you
24 automatically stipulate to FPUC. So it seems like we're kind
25 of drifting back and forth across the line and I'm just trying

1 to get clear in my own mind where we are.

2 COMMISSIONER ARGENZIANO: Okay. Okay.

3 MR. HATCH: I think that, you know, if everybody can
4 say I can agree to FPUC's position, then you have a legitimate
5 stipulation as to that issue and it goes away versus no
6 position, in which case you have to wait 'til the record closes
7 to be able to take that position.

8 COMMISSIONER ARGENZIANO: Okay. All right. We
9 probably need to make that very clear, so, staff.

10 MS. BROWN: Madam Commissioner, that isn't my
11 understanding of what the Order Establishing Procedure said or
12 what this process is about.

13 If a party takes no position, they are taking no
14 affirmative position, active position on an issue at hearing.
15 And if they take no position, they're precluded from addressing
16 it in the briefs after the hearing.

17 COMMISSIONER ARGENZIANO: After the hearing.

18 MS. BROWN: That's my understanding.

19 COMMISSIONER ARGENZIANO: But if it's taking no
20 position at this time --

21 MR. HATCH: Madam --

22 COMMISSIONER ARGENZIANO: I'm sorry. Let staff --
23 I'm sorry. Go ahead, staff, finish.

24 MS. BROWN: The no position at this time really is
25 pretty much at this point in the process reserved for staff

1 because staff is the one that's going to do the recommendation,
2 is going to need the evidence during the hearing often to fill
3 out the record and to fill out its understanding of the issues
4 and to be able to recommend it. It's not available to the
5 parties. If the parties take no position on an issue, they,
6 they are not necessarily affirmatively agreeing to the
7 stipulated position on the issue that staff and the, and the
8 company will reach, and the Prehearing Order usually reflects
9 that. But that doesn't mean they then later on get to reopen
10 it all and take a position after the hearing or even at the
11 hearing. That's my understanding of it.

12 COMMISSIONER ARGENZIANO: Mr. Hatch.

13 MR. HATCH: My only response is that nothing
14 precludes or forces a person to take a position up to the
15 hearing. Their position can change as a result of the hearing.
16 That the only time there's any waiver is posthearing. Under
17 the rules if you take no position posthearing, then you've
18 given it up. Because you've got a record, everything is there
19 on the table, you can make your best judgment as to what you
20 think. You can take a no position posthearing. If that's the
21 case, then you avoid that issue subsequently. But that's not
22 going into the hearing or even during the hearing.

23 MS. HELTON: Commissioner Argenziano, this is Mary
24 Anne Helton.

25 COMMISSIONER ARGENZIANO: Come on. Chime in. Give

1 me some help here.

2 MS. HELTON: I've been quiet up to now. I think it
3 would help add clarity to what we're discussing today to talk
4 about what the actual language is in the Order Establishing
5 Procedure. And let me just preface all that, I'm going to read
6 it, but let me preface it by saying I do disagree with
7 Mr. Hatch. It may have been that way at one time, but I think
8 that we've -- if it was, we've changed the process and it's
9 laid out in the Order Establishing Procedure.

10 I'm reading from not -- a different Order
11 Establishing Procedure. No. Strike that. I'm reading from
12 the correct Order Establishing Procedure, and it's on Page
13 6 under Waiver of Issues.

14 "Any issue not raised by a party either before or
15 during the Prehearing Conference shall be waived by that party
16 except for good cause shown. A party seeking to raise a new
17 issue after the Prehearing Conference shall demonstrate each of
18 the following." I don't think that's what we're talking about
19 here so I'm going to skip to the next paragraph.

20 COMMISSIONER ARGENZIANO: Okay.

21 MS. HELTON: "Unless a matter is not at issue for
22 that party, each party shall take a position on each issue by
23 the time of the Prehearing Conference or by such later time as
24 may be permitted by the Prehearing Officer." So I do believe
25 you have discretion to extend the time as we've already done

1 with Ms. Christensen.

2 "If a party is unable through diligence and
3 good-faith efforts to take a position on a matter at issue for
4 that party, it shall explicitly state in its Prehearing
5 Conference why it cannot take a position," excuse me,
6 "prehearing statement why it cannot take a position. If the
7 Prehearing Officer finds that the party has acted diligently
8 and in good faith to take the position and further finds that
9 the party's failure to take a position will not prejudice other
10 parties or confuse the proceeding, the party may maintain no
11 position at this time prior to hearing and thereafter identify
12 its position in a posthearing statement of issues. In the
13 absence of such a finding by the Prehearing Officer, the party
14 shall have waived the entire issue and the party's position
15 shall be shown as no position in the Prehearing Order. When an
16 issue and position have been properly identified, any party may
17 adopt that issue and position in its posthearing statement.
18 Commission staff, however, which is not really a true party,
19 may take no position at this time or a similar position on any
20 issue without having to make the showing described above."

21 So you do have the discretion to find that a party
22 has acted in good faith and that if it truly cannot for a good
23 reason come up with a position today, its position can be no
24 position at this time. However, I believe that that should be
25 a rarity.

1 COMMISSIONER ARGENZIANO: I tend to agree unless you
2 have a good reason as is stated. So, Mr. Hatch, does that help
3 you at all?

4 MR. HATCH: It clarifies what staff is talking about.
5 It seems as though perhaps the Commission, at least that
6 position in the Prehearing Order, which, you know, you have a
7 lot of latitude in governing a proceeding clearly, it seems as
8 though you are making the mountain way too high for normal
9 people to cross, frankly. I don't think that that's certainly
10 not an historic practice but it is perhaps a recent development
11 that, a wrinkle that I just didn't pay attention to. I'm not
12 sure that it is consistent with the Commission's rules per se,
13 although it certainly is in the prehearing procedure order.

14 MS. HELTON: I know -- I can't remember -- I know
15 it's been that way for quite a while. And I think that's in
16 fairness to all the parties to know what they have to prepare
17 for for hearing and what's going to be at issue and what's not
18 going to be at issue, what's going to be disputed, what's not
19 going to be disputed.

20 MR. HATCH: I don't disagree with that.

21 MS. CHRISTENSEN: And we don't disagree with that. I
22 think the only issue that we had were these are issues that
23 have been raised by staff, that staff is essentially raising
24 them as an issue, will have presumably some position on them or
25 will prepare some sort of testimony or cross-examination or

1 documentation that they're going to introduce at the hearing to
2 support these issues, and it's putting us in an unfair position
3 because we don't know today what staff's position is. We won't
4 know until the hearing what staff believes or what evidence
5 staff believes they're going to show, so we can't take a more
6 affirmative position. And that -- those issues are the ones
7 that we're having a difficulty with. Not the issues we've
8 raised, not the issues that FPUC has raised, but for those
9 issues that staff specifically has raised, has not put down a
10 position as of today, and I think that's, that's the contention
11 that we have here.

12 And, you know, if we're forced to take an affirmative
13 or a negative position, we certainly will. I mean, that will
14 preserve our space. But, but that's where you're getting the
15 position of having the no position is coming and being
16 problematic is because --

17 COMMISSIONER ARGENZIANO: You're just not certain.
18 Okay.

19 MS. CHRISTENSEN: -- there's no, there's no -- staff
20 hasn't filed testimony on these issues, there isn't anything in
21 the record. For which there were, you know, stuff that's
22 already been developed, we've been taking an affirmative
23 position. But for those issues that staff still wants to go
24 forward with where there's no position, we're kind of at a
25 disadvantage to go ahead and be precluded or have to take a no

1 position would put us at a disadvantage because if it's
2 something that's beneficial to the customers, we'd like to take
3 advantage of it.

4 COMMISSIONER ARGENZIANO: Ms. Keating.

5 MS. KEATING: I just want to add we share a very
6 similar concern, and ours is perhaps maybe even more profound
7 because we have now changed our position to "No position" on a
8 number of issues because we were endeavoring to preserve our
9 right to conduct cross-examination at hearing if, in fact,
10 staff or FPUC or a third party brings up testimony that we
11 believe in the context of the hearing that it could be
12 detrimental to our client's interest. And there are certain
13 issues where we have had concerns, testimony that has hinted at
14 things that might impact us. But at this point in time we
15 can't say we really have a position on the issue itself or on
16 anything that FPUC has said in its testimony, but the concern
17 lingers that there are certain issues and certain propositions
18 that have been suggested that we might at the hearing decide we
19 feel we need to respond to, be it through cross-examination or
20 a change of position posthearing. And I just -- I understand
21 where staff is coming from, but I don't know where that puts us
22 as far as taking a position.

23 COMMISSIONER ARGENZIANO: There are some legitimate
24 concerns I'm hearing and I probably have to have a better
25 understanding. I can see where everybody is going. But if

1 staff brings up something or something comes up later on that
2 they just are not aware of today, how do they address it if
3 they have legitimate concerns without having to jump through
4 hoops?

5 MS. HELTON: I think you've already said today that
6 if a party hears something at the hearing that they, that was
7 information that they did not know beforehand, that they can
8 raise that as an issue for which they want to take a position
9 on that they didn't take a position before if they can show
10 good cause.

11 COMMISSIONER ARGENZIANO: Okay. But let me ask you
12 this: Is that going to come up for a vote from all the
13 Commissioners? I as one Commissioner can say yes if something
14 comes up because I'm sitting here as the Prehearing Officer
15 knowing that that's a concern. But would it be something that
16 could be impossible when the hearing comes?

17 MS. HELTON: I think that's something that they would
18 brief after the hearing.

19 COMMISSIONER ARGENZIANO: Ms. Christensen.

20 MS. CHRISTENSEN: And, again, that puts an additional
21 burden -- excuse me. That would put an additional burden on us
22 because we not only have to show that it was new evidence that
23 we didn't have available maybe to us before hearing but maybe
24 we did in some discovery but we didn't understand how it was
25 going to be used. It puts an additional burden on those of us

1 for issues that have been raised by staff. I mean, we're
2 certainly going to take an affirmative position in today's
3 prehearing and I think that will resolve the issue from our
4 perspective. But that is one concern that I think would need
5 to be -- it maybe doesn't need to be addressed at today's
6 hearing if we take an affirmative position, but it certainly is
7 a due process issue.

8 MS. HELTON: I'm really surprised to hear all these
9 arguments, quite frankly, Commissioner Argenziano. This is a
10 process that we have been using for quite a few years. I'm not
11 --

12 COMMISSIONER ARGENZIANO: I'm having a hard time
13 figuring out that this has not happened before and it's waited
14 for me today. So I'm trying to get it all in its proper
15 perspective, and I can see that there may be some other things
16 going on here. But I need to know --

17 MS. CHRISTENSEN: And I will grant you, there was a
18 changeover from being allowed to take no position at this time
19 up until the hearing to a more affirmative direction by staff
20 trying to get people to take a certain position or no position.
21 I have not been in the position before where staff has raised
22 issues and been in a position where I had to take no position
23 or, or lose essentially our right to talk about the issue
24 before myself.

25 COMMISSIONER ARGENZIANO: Wait.

1 MS. BROWN: Madam Chairman --

2 MS. CHRISTENSEN: So it's coming up for me in this
3 context for myself. I can't speak of it coming up in other
4 contexts.

5 COMMISSIONER ARGENZIANO: Let me do it this way. I
6 need to ask our counsel, will they lose their right to speak up
7 if new evidence comes up? Walk me through the process since
8 I'm needing help getting there. I don't want that to happen to
9 anyone, but I want to make sure that they have a way of
10 addressing something that legitimately could come up.

11 MS. HELTON: I do not believe they would. Ms. Brown,
12 if she disagrees --

13 MS. BROWN: I do a little bit.

14 MS. HELTON: Okay.

15 MS. BROWN: I think for in circumstances where the
16 parties could show real surprise and some potential harm from
17 new evidence or some unsuspected occurrence during the hearing,
18 that they could make a motion and ask to be able to brief it
19 and the Chairman could make that decision. It's a procedural
20 question. And I don't think the Commission would foreclose
21 anything like that.

22 If I might add one more thing.

23 COMMISSIONER ARGENZIANO: Please.

24 MS. BROWN: There is another side to this, and the
25 reason that the, the Order Establishing Procedure is in place

1 is to bring some firmness and closure to a discussion of what
2 the issues are going to be in preparation for hearing, and it
3 is a hardship to the parties not to have that closure until way
4 past the hearing at the stage where everybody is filing briefs
5 about everything. That's the reason it's in there. There's an
6 affirmative positive value to that.

7 MS. HELTON: And I agree with what Ms. Brown just
8 said.

9 COMMISSIONER ARGENZIANO: And I could see that that,
10 where that is an important reason to do it that way.

11 I don't think it would preclude you from anything at
12 the time of the hearing. I'll make sure that your concerns are
13 brought forward in the hearing if you raise those concerns at
14 that time. If something comes up, I don't see where it will
15 preclude any action by you and I'll make sure that this was,
16 this discussion today moves forward with us to the hearing if
17 need be. So let's, let's just go with what staff recommends at
18 this time and we need to take a position. And we'll make sure
19 that when that time of hearing comes, that if you have concerns
20 and you express those concerns, I'll be there to make sure that
21 they're heard. Okay? Where were we? Where were we left, at
22 forty --

23 MS. BROWN: Madam Chairman, I want to confer with my
24 boss for just one second.

25 COMMISSIONER ARGENZIANO: Okay. Let's take another

1 few minutes, please, three or four minutes, and we'll come
2 back.

3 (Recess taken.)

4 Okay. Let's reconvene and get this thing moving
5 along. Staff, Martha.

6 MS. BROWN: Madam Chairman, I have a suggestion that
7 I hope will, that might help, and that would be in light of
8 what you just said about being open to any surprise that might
9 occur at the hearing or anything untoward that might happen, we
10 can put something in writing in the Prehearing Order that would
11 express that, and then the parties for good cause shown at the
12 hearing could ask for, could move to be able to cross-examine
13 or brief the particular issue that they took no position on.

14 COMMISSIONER ARGENZIANO: Okay. Ms. Christensen.

15 MS. CHRISTENSEN: That's fine. I think probably
16 throughout this process I'll just endeavor to take a position
17 and that will preserve all my rights.

18 COMMISSIONER ARGENZIANO: That's fine.

19 Ms. Keating.

20 MS. KEATING: I think that will be fine. That's
21 certainly helpful. I'm sort of hashing this out with
22 co-counsel, and we may elect before the close of this
23 prehearing to change and take a position on certain of the
24 issues, if that's all right with you, Commissioner.

25 COMMISSIONER ARGENZIANO: Okay. Very good. Okay.

1 Let's move forward.

2 MS. BROWN: Well, Madam Commissioner, I think we were
3 on Issue 40.

4 COMMISSIONER ARGENZIANO: 40. Yes.

5 MS. BROWN: And my understanding was OPC's position
6 was "No."

7 MS. CHRISTENSEN: I think we're changing our position
8 to "Yes." If you read the question, "Should an adjustment be
9 made for Plant Retirements for the projected test year," and
10 we'll just simply answer "Yes."

11 COMMISSIONER ARGENZIANO: Okay. Any of the other
12 parties? Let's move on to 41.

13 MS. BROWN: Madam, Commissioner, I think the purpose
14 of going issue by issue as OPC requested was to see if we could
15 reach stipulations.

16 COMMISSIONER ARGENZIANO: True.

17 MS. BROWN: If OPC is not interested in stipulating
18 any of these issues, we might as well just do it in a big
19 bunch. And where we think there's a stipulation or if there's
20 a change that needs to be made, we can move this along.

21 COMMISSIONER ARGENZIANO: Okay. Why don't we, why
22 don't we take that approach. Let's see where we can -- if
23 there are stipulations, things that we can, that can be
24 stipulated in. And, if not --

25 MS. CHRISTENSEN: If you can give me a minute, I

1 think that one of the issues now that I have concern with is
2 there are some issues which I've taken "No position at this
3 time" because they were staff raised issues that the Commission
4 has requested that we take an affirmative position on. We'll
5 need to change those positions. So if we're not going to go
6 issue by issue, if you can give us maybe just a few minutes, we
7 can go through and try and identify those issues.

8 COMMISSIONER ARGENZIANO: Okay. Let's take --

9 MS. CHRISTENSEN: And we had some minor typographical
10 corrections. If the Commissioner just wants us to provide
11 those to staff. Some of them were just to delete some of those
12 issue numbers that have changed periodically. We can do that.

13 COMMISSIONER ARGENZIANO: Yes. That's fine to do it
14 that way. I'm sorry. Martha?

15 MS. BROWN: Well, if it would help everyone, OPC
16 could put that together and send it to staff and we could have
17 it reflected in the final Prehearing Order and we don't have to
18 --

19 COMMISSIONER ARGENZIANO: That would be, that would
20 be -- if there's no objection.

21 MS. CHRISTENSEN: That would be fine. I mean, I'm
22 certainly happy to go through and do an e-mail.

23 MS. BROWN: That also would have to be, we would have
24 to have that by Thursday.

25 MS. CHRISTENSEN: I think we can do that as far as

1 for those issues that we need to take a position one way or the
2 other. They'll be simple one-word positions and we'll try to
3 do a type and strike on that to save some time.

4 COMMISSIONER ARGENZIANO: Okay. Great. So you need
5 five minutes?

6 MS. CHRISTENSEN: If -- for those ones where we can
7 take a position, we can just do that through an e-mail of the
8 order. If there's any of the issues that staff has some
9 proposed language that they would like us to stipulate, if we
10 can see that language, that would help us also to come to
11 more -- we might be able to either affirmatively agree to the
12 stipulation or just take a no objection stance, so.

13 COMMISSIONER ARGENZIANO: Martha?

14 MS. BROWN: We'll continue to work with OPC to try to
15 reach as many stipulations on these typical rate case issues as
16 we can.

17 COMMISSIONER ARGENZIANO: Okay. Ms. Keating, you're
18 okay?

19 MS. KEATING: I'm okay.

20 COMMISSIONER ARGENZIANO: Okay. Then let's just move
21 along. If we're not -- we're not going to go issue by issue
22 now; is that correct?

23 MS. BROWN: I think that's, that's correct.

24 COMMISSIONER ARGENZIANO: Are we going to -- okay.

25 MS. CHRISTENSEN: The only other change that I would

1 have to the section other than what we've just previously
2 discussed, Issue 59 under OPC's position, there's a second
3 paragraph starting, "No. The Company's projected methodology
4 results," I would ask to delete that paragraph. That was a
5 position from another issue, in Issue 45, so I would just
6 delete that.

7 COMMISSIONER ARGENZIANO: Did staff get that?

8 MS. BROWN: Yes.

9 COMMISSIONER ARGENZIANO: Okay. Okay. So --

10 MS. CHRISTENSEN: My understanding is also Issue 45,
11 we would be in a position to request that it be dropped.

12 COMMISSIONER ARGENZIANO: 45.

13 MS. BROWN: 45?

14 MS. CHRISTENSEN: Yes.

15 COMMISSIONER ARGENZIANO: That it be dropped.

16 MS. CHRISTENSEN: I think that was an issue that was
17 raised by OPC and we're --

18 MS. BROWN: Staff is willing to stipulate to this
19 issue but not willing to drop it.

20 MS. CHRISTENSEN: Well, if it's, if it's our raised
21 issue, are we in the -- do we have the ability to withdraw the
22 issue if it's an issue that we raised? I don't remember.

23 COMMISSIONER ARGENZIANO: Can it be withdrawn?

24 MS. CHRISTENSEN: It's no longer an issue.

25 MS. BROWN: Staff says it doesn't matter that much

1 and we'll agree to drop it.

2 COMMISSIONER ARGENZIANO: Okay. Show Issue 45
3 dropped.

4 MR. HORTON: Commissioner, might I inquire as to
5 Issue 42, whether that could be stipulated?

6 COMMISSIONER ARGENZIANO: Okay. Issue 42?

7 MR. HORTON: Yes, ma'am. It appears the positions
8 are the same.

9 COMMISSIONER ARGENZIANO: Martha?

10 MS. BROWN: Staff isn't prepared to do that yet
11 because we need the adjustments and we're not, we don't have
12 the actual adjustments. The issue says, "What adjustments, if
13 any, should be made?"

14 MR. HORTON: Okay. Okay.

15 MS. BROWN: Okay. So we'll just leave it.

16 COMMISSIONER ARGENZIANO: So we'll leave that.

17 Ms. Christensen.

18 MS. CHRISTENSEN: I don't believe we have any further
19 issues with that section.

20 COMMISSIONER ARGENZIANO: Okay. Any of the other
21 parties? Staff?

22 MS. BROWN: Nothing further on this section.

23 COMMISSIONER ARGENZIANO: Okay. So are we ready to
24 move to cost of capital?

25 MS. BROWN: Yes.

1 COMMISSIONER ARGENZIANO: Okay. Let's do so.

2 MS. CHRISTENSEN: I'm sorry. Issue 50.

3 COMMISSIONER ARGENZIANO: We're backtracking, going
4 back. Issue 50.

5 MS. CHRISTENSEN: Yeah. Issue 50 we've taken a
6 position on the pension liability. We provided that to staff
7 and all the parties.

8 MS. BROWN: I'm sorry. I didn't hear that very
9 clearly.

10 COMMISSIONER ARGENZIANO: Can you repeat that,
11 please, on Issue 50?

12 MS. CHRISTENSEN: Okay. On Issue 50 we can e-mail
13 our position to staff. I think I may have also provided a
14 printed copy of it, but we can e-mail that to staff.

15 MS. BROWN: Okay.

16 COMMISSIONER ARGENZIANO: By Thursday?

17 MS. CHRISTENSEN: Yes. We can do that by Thursday.

18 COMMISSIONER ARGENZIANO: Okay. Okay. All right.
19 Anything else? And that -- staff, okay, we're ready to move to
20 cost of capital.

21 MS. BROWN: Yes, Commissioner. My understanding is
22 that FPUC has one change to make to its position on Issue 65.

23 COMMISSIONER ARGENZIANO: I have Mr. Horton. Did you
24 say 65 or 55?

25 MS. BROWN: 65.

1 COMMISSIONER ARGENZIANO: Okay.

2 MS. BROWN: Which is on Page 49.

3 MR. HORTON: Yes. And we had provided that to staff.
4 Somehow the first sentence in that second paragraph there, we
5 struck that and it continued to get picked up. But it should
6 be stricken, the sentence that starts "The company proposes."

7 COMMISSIONER ARGENZIANO: "The company," just that
8 sentence?

9 MR. HORTON: Yes, ma'am.

10 MS. BROWN: We'll reflect that in the Prehearing
11 Order.

12 MR. HORTON: Second paragraph, it starts --

13 COMMISSIONER ARGENZIANO: "The company proposes"?

14 MR. HORTON: Oh, okay. I'm sorry. I may be looking
15 at a different version than what -- but it's on Page 49 of the
16 one I'm looking at, and it's the, the last paragraph of our
17 position and it starts, "The company proposes that." It's that
18 sentence.

19 COMMISSIONER ARGENZIANO: Okay. So strike that
20 sentence. Staff.

21 MS. BROWN: Staff has nothing, no other changes in
22 this section if all the other parties don't. Now I'm assuming
23 --

24 COMMISSIONER ARGENZIANO: Ms. Keating.

25 MS. BROWN: -- that staff will try to take as many

1 positions as possible and then we'll continue to try to
2 stipulate as many of these issues as we can.

3 COMMISSIONER ARGENZIANO: Ms. Christensen.

4 MS. CHRISTENSEN: As I said, we're going to have some
5 discussions with the company tomorrow. If there's possible
6 stipulations, we will certainly be in discussions. I'm not
7 sure that overall we're -- I mean, there may be some possible
8 stipulations. There are going to be some issues that I think
9 we're going to have some disagreements on, but we'll know by
10 tomorrow.

11 COMMISSIONER ARGENZIANO: Okay. I hope you'll
12 continue discussing the issues.

13 Okay. Are we ready to -- net operating income?

14 MS. BROWN: Yes.

15 COMMISSIONER ARGENZIANO: Okay. Let's move on to
16 that.

17 MS. BROWN: Staff has no changes to any positions on
18 those issues.

19 COMMISSIONER ARGENZIANO: Okay. Any of the parties?

20 MS. BROWN: Oh, I'm sorry. May we go back?

21 COMMISSIONER ARGENZIANO: To where?

22 MS. BROWN: To Issue 72, which is on Page 53.

23 COMMISSIONER ARGENZIANO: 72 on 53. Okay.

24 MS. BROWN: I don't know if we're in the same game
25 here with OPC's position.

1 COMMISSIONER ARGENZIANO: OPC. Okay.

2 MS. BROWN: Staff has a position in this draft and
3 OPC has been able to see it.

4 COMMISSIONER ARGENZIANO: Okay. Ms. Christensen.

5 MS. CHRISTENSEN: Well, we have a preliminary
6 question whether or not these are issues that need to have an
7 affirmative or a finding made on them.

8 MS. BROWN: They're standard rate case issues and,
9 yes, we think they do.

10 MS. CHRISTENSEN: Okay. Because we, we would then at
11 this point just take "No position" on 72 and 73.

12 COMMISSIONER ARGENZIANO: Okay. Let's -- anybody
13 else? Mr. Horton, did you have --

14 MR. HORTON: Excuse me. We could agree with the
15 staff's position on both 72 and 73.

16 COMMISSIONER ARGENZIANO: Okay.

17 MS. BROWN: Then we'll show those as stipulated
18 issues.

19 COMMISSIONER ARGENZIANO: Show those stipulated.
20 And, Ms. Keating, any, or Mr. Hatch? We're okay on that?
21 Okay. Let's move to net operating income on Page 51. Okay.
22 Issue 70.

23 MS. BROWN: Madam Chairman, staff has one possible
24 stipulation on Issue 108.

25 COMMISSIONER ARGENZIANO: Wait a minute. 108.

1 MS. BROWN: Which is on Page 77 at the top there.

2 COMMISSIONER ARGENZIANO: I'm sorry. Did you say

3 108?

4 MS. BROWN: 108 on Page 77.

5 COMMISSIONER ARGENZIANO: Page 77.

6 MS. BROWN: It appears that this is a stipulated
7 issue that FPUC agrees with staff's language. It's the same as
8 OPC's language.

9 COMMISSIONER ARGENZIANO: Okay. Any of the parties?
10 Ms. Christensen?

11 MS. CHRISTENSEN: That's fine.

12 COMMISSIONER ARGENZIANO: Fine? Okay.

13 MS. BROWN: All right. We'll show that as a
14 stipulated issue.

15 COMMISSIONER ARGENZIANO: Show that stipulated.
16 Okay. Okay. Revenue requirements.

17 MR. HORTON: Excuse me, Commissioner.

18 COMMISSIONER ARGENZIANO: Yes, Mr. Horton.

19 MR. HORTON: Issue 118.

20 COMMISSIONER ARGENZIANO: 118.

21 MR. HORTON: In our, in our position --

22 COMMISSIONER ARGENZIANO: Page 82?

23 MR. HORTON: Yes. Page 82. Yes, ma'am.

24 COMMISSIONER ARGENZIANO: Uh-huh.

25 MR. HORTON: In our position "Income Taxes Expense"

1 should be stricken and "Net Operating Income" should be
2 inserted.

3 COMMISSIONER ARGENZIANO: Income taxes -- income tax
4 expenses -- actually it's --

5 MR. HORTON: Should be stricken. And "Net Operating
6 Income" substituted there, inserted there.

7 COMMISSIONER ARGENZIANO: Okay. Inserted. Staff?

8 MS. BROWN: Yes. We'll show that in the final
9 Prehearing Order.

10 COMMISSIONER ARGENZIANO: Okay. Any other comments
11 on that?

12 Okay. Revenue requirements. Mr. Horton, were you
13 done?

14 MR. HORTON: Yes, ma'am.

15 COMMISSIONER ARGENZIANO: Okay.

16 MS. CHRISTENSEN: We have just a few changes. Issue
17 112, one, we believe the issue is duplicative of Issue 86. But
18 that being said, we would just change our position to "See
19 position on Issue 86" since they're the same.

20 COMMISSIONER ARGENZIANO: On 112, Issue 112, see
21 position --

22 MS. CHRISTENSEN: Yes. Issue 112, we believe that's
23 the same issue that's already been discussed under Issue 86.

24 COMMISSIONER ARGENZIANO: Okay. 86.

25 MS. CHRISTENSEN: And that being the case, we took no

1 position under here since we originally believed it to be a
2 duplicative, excuse me, issue. If it's going to be, remain in
3 the order, we would just say "See position on Issue 86," and
4 that will fully direct them back to the appropriate issue.

5 MS. BROWN: Madam Commissioner, staff will look to
6 see if those are duplicative and get with the company and
7 figure out which one we should use if they are. If not, we
8 will reflect the position that OPC presented.

9 COMMISSIONER ARGENZIANO: Good.

10 MR. HORTON: And, Commissioner, we will discuss that
11 with Public Counsel tomorrow and explain.

12 COMMISSIONER ARGENZIANO: Okay. Great. Okay. Any
13 other comments there? Okay. Hearing none, cost of service and
14 rate design on Page 83, I believe.

15 MS. BROWN: Madam Chairman, Madam Commissioner, FPUC
16 has not taken any position on these cost of service and rate
17 design issues -- I mean, OPC has not taken any. FPUC has, and
18 FPUC and staff are discussing language to potentially stipulate
19 all of these issues. They're not there yet. But the final
20 Prehearing Order will reflect that. We imagine we can
21 stipulate most of these rate design issues. And OPC has not
22 taken a position on them. I just wanted to let you know that,
23 that that's coming.

24 COMMISSIONER ARGENZIANO: All right. Thank you. Any
25 other comments? Okay. Let's go to cost of service -- I'm

1 sorry. Other issues, any other issues? Let me see where I am
2 now.

3 MS. BROWN: Madam Commissioner.

4 COMMISSIONER ARGENZIANO: Yes.

5 MS. BROWN: We have a possible stipulation on Issue
6 133 on Page 88.

7 COMMISSIONER ARGENZIANO: Okay. 88. I'm sorry.

8 MS. BROWN: Well, that's one that we have, we have
9 the same language for the position on this issue that FPUC
10 does, so we'll show that as a stipulated issue.

11 COMMISSIONER ARGENZIANO: Okay.

12 MS. BROWN: And in other issues, Issue 135 on Page
13 89.

14 COMMISSIONER ARGENZIANO: 135, Issue 135. Sorry.

15 MS. BROWN: We have different language in this, but
16 we all get to the same place. And if the parties would be
17 willing to accept staff's wording on this position, we could
18 stipulate this issue.

19 MR. HORTON: FPUC could agree with the staff
20 language.

21 COMMISSIONER ARGENZIANO: Okay. Ms. Christensen.

22 MS. CHRISTENSEN: Office of Public Counsel can agree
23 with the staff proposed language.

24 COMMISSIONER ARGENZIANO: Mr. Hatch, no objections?

25 MR. HATCH: No objection.

1 COMMISSIONER ARGENZIANO: Okay. Ms. Keating.

2 MS. KEATING: No objection.

3 COMMISSIONER ARGENZIANO: No objection. Okay. Show
4 that agreed upon.

5 MS. BROWN: We'll show this as a stipulated issue.

6 MS. CHRISTENSEN: Commissioner, can I address Issue
7 134? 134 is whether or not any of the interim rate increase
8 should be refunded to customers.

9 COMMISSIONER ARGENZIANO: Uh-huh.

10 MS. CHRISTENSEN: We've taken no position at this
11 time because it's essentially a fallout issue. If our
12 adjustments end up being lower than what the interim rates were
13 granted, then we would obviously take an affirmative position.
14 But if, you know, with all of the adjustments it ended up being
15 higher than that, we'd be -- so it's kind of difficult for us
16 to take a position one way or the other without knowing what
17 all the final adjustments will end up being. And I don't know
18 if this is an issue that we could be allowed to maintain a no
19 position at this time.

20 MS. BROWN: Well --

21 MS. CHRISTENSEN: I mean, it really is almost in my
22 perspective a fallout type of an issue.

23 MS. BROWN: Staff doesn't have a problem with that in
24 this circumstance.

25 COMMISSIONER ARGENZIANO: I think there's good reason

1 not to. Okay. We'll note that. Thank you very much.

2 Ms. Keating, did you have a comment?

3 MS. KEATING: Well, if this is the appropriate time,
4 I think we have revisited our decision to change our position
5 to no position on certain issues. And if it's appropriate, we
6 would like to take a, a position on certain issues.

7 COMMISSIONER ARGENZIANO: Absolutely.

8 MS. KEATING: Is this --

9 COMMISSIONER ARGENZIANO: I think it's time.

10 MS. KEATING: Okay. The issues we would like to take
11 a position on are Issues 17 through 21, 23 and 24. And our
12 position for each issue would read the same and it would be
13 this, "Nothing determined in the rate case should be deemed to
14 supersede or conflict with cable operators' rights obtained
15 through contract or stipulation or under federal law."

16 MS. BROWN: Can you repeat that one more time?

17 MS. KEATING: I can certainly e-mail this to staff as
18 well. But --

19 COMMISSIONER ARGENZIANO: That would probably be
20 good. And then let me give staff a few minutes to look that
21 over.

22 MS. KEATING: It's "Nothing determined in the rate
23 case may be deemed to supersede or conflict with cable
24 operators' rights obtained through contract or stipulation or
25 under federal law."

1 MS. BROWN: Madam Commissioner, if I could have a
2 minute.

3 COMMISSIONER ARGENZIANO: Absolutely.

4 MS. BROWN: I don't think staff is really going to
5 have a problem including that language in the position to the
6 issue.

7 COMMISSIONER ARGENZIANO: Okay. Let's take a couple
8 of minutes and just have everybody feel comfortable with --

9 MS. BROWN: Yeah. I just want to confer with them on
10 that. Thanks.

11 COMMISSIONER ARGENZIANO: Okay. Take a three-minute
12 break. Sorry, Mr. Hatch. Go ahead.

13 MR. HATCH: I was just going to say if staff is going
14 to take the position that taking no position is a waiver of
15 that issue when the hearing comes, then I would take the same
16 position and substitute AT&T Florida for the cable operators.

17 MS. BROWN: Could we just have a minute?

18 COMMISSIONER ARGENZIANO: Yes. A two-minute break.

19 (Recess taken.)

20 MS. BROWN: After conferring with staff, we think
21 it's probably at this time better to reflect the change in the
22 language for each of the other parties as their position
23 because we're not far enough along on the numbers and the
24 substantive resolution of those issues to be able to stipulate.
25 It could be that we'll get there but we're not there yet.

1 COMMISSIONER ARGENZIANO: Okay.

2 MS. BROWN: So this language will be reflected. I
3 would assume AT&T and Embarq would also like that language in
4 their positions.

5 MS. MASTERTON: Sure. Yes.

6 MS. BROWN: And if --

7 COMMISSIONER ARGENZIANO: I'm sorry. I should have
8 asked you and I -- I think so. I think that was a yes.

9 MS. BROWN: And I need a repeat of the issues that
10 this language will be included in.

11 COMMISSIONER ARGENZIANO: I'm sorry?

12 MS. BROWN: I need a repeat of the issues that this
13 language will be in.

14 COMMISSIONER ARGENZIANO: Okay. Are we going to
15 repeat the issues, Ms. Keating?

16 MS. KEATING: The issues that we would change our
17 position --

18 COMMISSIONER ARGENZIANO: Yes.

19 MS. KEATING: -- to the stated position --

20 COMMISSIONER ARGENZIANO: Yes. Please.

21 MS. KEATING: -- would be Issues 17 through 21 and
22 Issue 23 and 24.

23 COMMISSIONER ARGENZIANO: Okay.

24 MR. YOUNG: And, Madam Commissioner, just for a point
25 of inquiry for AT&T and Embarq, instead of cable operators, do

1 you want to change that language because as for right now it
2 stands for cable operators?

3 MR. HATCH: I thought I had made that change earlier.
4 It would be -- I'm assuming -- I won't speak for Embarq, but
5 for AT&T, substitute cable operators for -- or AT&T for cable
6 operators. Sorry.

7 MS. MASTERTON: And the same change for Embarq.
8 Thank you.

9 COMMISSIONER ARGENZIANO: Okay.

10 MR. YOUNG: Thank you.

11 MS. BROWN: And we'll reflect those changes in the
12 final Prehearing Order.

13 COMMISSIONER ARGENZIANO: Great. Okay. It will be
14 reflected in the final order. Okay. Are we -- staff, are we
15 done with issues and positions at this time?

16 MS. BROWN: Yes.

17 MR. YOUNG: Yes.

18 COMMISSIONER ARGENZIANO: Okay. Okay. Let's move on
19 to the exhibit list, please.

20 MR. YOUNG: Madam Commissioner, staff would note for
21 the record that --

22 MS. BROWN: I didn't mean to stop you. Oh, go ahead.
23 Go ahead.

24 MR. YOUNG: Staff would note for the record that we
25 will be preparing a Comprehensive Exhibit List consisting of

1 all prefiled exhibits for the purpose of numbering and
2 identifying the exhibits at the hearing. Staff will provide an
3 exhibit list to all the parties prior to the hearing. Staff
4 also will -- staff also intends to prepare a staff composite
5 exhibit list which will include certain discovery responses and
6 deposition transcripts. Staff will provide the Comprehensive
7 Exhibit List to the parties in advance of the hearing.

8 COMMISSIONER ARGENZIANO: Ms. Christensen.

9 MS. CHRISTENSEN: Can I make a request concerning the
10 Comprehensive Exhibit List?

11 COMMISSIONER ARGENZIANO: Certainly.

12 MS. CHRISTENSEN: That we be provided that a week
13 before the hearing. It takes some time to pull together that
14 information to make sure that we're in agreement with all of it
15 and it would help resolve it. To the best of everybody's
16 ability. I mean, I realize that we're going to be crunched,
17 but I think it would be helpful to have that. Maybe we could
18 at least have a first draft of the list by then. And we'll try
19 and endeavor to do the same if we would also request to have
20 some stipulated exhibits as well.

21 MR. YOUNG: Staff will do its best to try to provide
22 that before, a week before the hearing.

23 MS. BROWN: If I might add to that, we have a, a
24 draft of the Comprehensive Exhibit List already. It doesn't
25 include staff's composite exhibits of all the discovery. That

1 takes some getting together. I'm not sure we can get it all
2 together a whole week ahead, but we'll do our best.

3 COMMISSIONER ARGENZIANO: I'm sure staff will make
4 every effort to get it to you as quickly as they can. Sure.

5 MS. CHRISTENSEN: It just helps us with being able to
6 pull it and make sure that we don't have objections to it and
7 maybe resolve some of those issues ahead of time.

8 COMMISSIONER ARGENZIANO: As noted, it may not be a
9 week ahead, but I'm sure that they'll try their very best to
10 get it to you as soon as possible.

11 Was there anything else?

12 MS. BROWN: I don't know if the parties have any
13 changes to their, their exhibits.

14 COMMISSIONER ARGENZIANO: Are there any changes to
15 the exhibits?

16 MS. CHRISTENSEN: No changes.

17 MR. HORTON: No changes.

18 COMMISSIONER ARGENZIANO: Okay. Hearing none, there
19 are none.

20 MR. YOUNG: All right. If we can go back, Madam
21 Commissioner, just for clarification for the record as to order
22 of witnesses, Section VI.

23 COMMISSIONER ARGENZIANO: Section VI. Okay. Order
24 of witnesses. Yes.

25 MR. YOUNG: As everyone is aware, the storm hardening

1 docket and the rate case docket were consolidated for all
2 purposes as reflected, as shown in Section VIII, the issues and
3 positions in the case below.

4 Just for a point of clarification, the storm
5 hardening issues will be addressed first and the order of
6 witnesses will reflect that structure. And then just for the
7 record, FCTA has withdrawn the testimony, prefiled testimony of
8 Michael T. Harrelson.

9 COMMISSIONER ARGENZIANO: Okay. Any comments? Any
10 further discussion?

11 MS. CHRISTENSEN: If I could get some clarification.
12 Are we -- is it the intention that the company will put up
13 their witnesses and they will only testify to the storm
14 hardening issues and then come down, and then we would put up
15 the Intervenors, the other Intervenors' testimony, or are we
16 going to put up the company's witnesses in order and then FCTA
17 or AT&T and Embarq's witnesses and then OPC's witnesses? And
18 just so that I'm clear that we're addressing all direct
19 testimony issues when FPUC's witnesses are up there, I assume
20 they're going up as a panel.

21 COMMISSIONER ARGENZIANO: Staff, are we doing that?

22 MS. BROWN: Yes. Madam Chairman, I think our books
23 and all are set up that way, that FPUC's witnesses for storm
24 hardening and the rate case will all go up first. But then we
25 will deal with the particular storm hardening issues if there's

1 any, if there are any witnesses or testimony, and then OPC will
2 come next.

3 COMMISSIONER ARGENZIANO: Did that clarify?

4 MS. BROWN: So for purposes of cross-examination
5 we'll probably do storm hardening stuff to the extent that we
6 can and then rate case stuff.

7 COMMISSIONER ARGENZIANO: While the witness is still
8 seated.

9 MS. BROWN: But with the caveat that I think we're
10 going to have most of those storm hardening issues stipulated.

11 MR. HORTON: Commissioner, may I have just one
12 minute?

13 COMMISSIONER ARGENZIANO: Certainly, Mr. Horton.
14 Just take a minute.

15 (Pause.)

16 Mr. Horton.

17 MR. HORTON: Thank you, Commissioner. I just wanted
18 to -- I was just trying to get clarification. In, in the
19 300 docket, which is the storm hardening plan docket,
20 Mr. Cutshaw submitted direct testimony and exhibits in that, in
21 that docket. He was the only witness to submit testimony
22 there. And those are basically Issues 1 through 15 or 13,
23 whatever it is. It's my -- and we listed him first for those,
24 those issues. We do address in other witnesses' testimony the
25 expenses associated with the initiatives and the storm

1 hardening. And I think it would be easier, if you would, if
2 Mr. Cutshaw goes on the stand to support the storm hardening
3 plan as he filed in that docket and then the other witnesses go
4 in the order we show them here as far as the rate case. And we
5 are going to get into some cost issues in the rate case. Cost
6 issues were not raised in the 300 docket. So if that's, if
7 that's what the procedure is, then I just want to get
8 clarification.

9 COMMISSIONER ARGENZIANO: Sure. Staff? Martha or
10 Keino?

11 MR. YOUNG: Staff is fine, staff is fine with that
12 order in terms of taking Mr. Cutshaw up first and then
13 proceeding with all the storm hardening dockets.

14 COMMISSIONER ARGENZIANO: For the storm hardening.
15 Ms. Christensen.

16 MS. CHRISTENSEN: I think we're fine with that
17 procedural wise. If the issues related to the costs are going
18 to be addressed then mostly when he comes up with the panel, it
19 may help speed things along. I'm not, you know, I'm not sure
20 how many questions we actually have on the storm hardening
21 versus costs related to the storm hardening. They're kind of
22 intertwined but somewhat, somewhat separate, but they're enough
23 of an interaction. With that in mind, I think we can formulate
24 our cross-examination.

25 COMMISSIONER ARGENZIANO: Okay. Martha.

1 MS. BROWN: Two things. We'll work with the parties.
2 That sounds fine to us and we'll make sure it's all
3 straightened out.

4 The other thing is that this is a consolidated
5 record. So wherever the questions are asked, it'll all be part
6 of the, the evidence.

7 And now I've thought of a third thing, and that is
8 that we'll specifically identify where there's going to be a
9 panel, where witnesses are going to come up together just so
10 everyone knows.

11 COMMISSIONER ARGENZIANO: That would be, that would
12 be great. Anybody else on that? Ms. Christensen?

13 MS. CHRISTENSEN: Yes. That should be fine and that
14 should help in preparation.

15 COMMISSIONER ARGENZIANO: Absolutely. Thank you.
16 Okay.

17 Mr. Horton, did you have a comment?

18 MR. HORTON: Yes, ma'am. One -- I guess we can move
19 into -- well, now I'm all out of order -- posthearing
20 procedures.

21 MS. BROWN: Are we quite there yet?

22 MR. HORTON: Well, I don't know. That's what I was
23 asking you. Are we quite there yet?

24 MR. YOUNG: No. We're, we're on -- as it relates to
25 the agenda, we're on the proposed stipulations for the agenda

1 for the Prehearing Conference.

2 MR. HORTON: Okay.

3 COMMISSIONER ARGENZIANO: Right. Okay. So let's do
4 the proposed stipulations.

5 MR. YOUNG: Thank you, Madam Commissioner. As
6 mentioned today, the parties have entered into a proposed
7 stipulation of the process to engage third party attachers for
8 FPUC's storm hardening plan. Staff recommends that the
9 proposed stipulation be taken up at the hearing. Also, the
10 parties and staff are still in the process, as you've heard, in
11 working on other proposed stipulations for some of the issues
12 in this case. Any additional stipulation will be reflected in
13 the post -- Prehearing Order. Excuse me.

14 COMMISSIONER ARGENZIANO: Okay. Any comments?
15 Okay. Let's then move to pending motions.

16 MR. YOUNG: Madam Commissioner, there are three
17 pending motions that will be addressed by written order.

18 COMMISSIONER ARGENZIANO: Okay. Pending
19 confidentiality matters.

20 MR. YOUNG: Staff would note there are several
21 requests for confidentiality, and those motions will be
22 addressed by a written order also.

23 COMMISSIONER ARGENZIANO: Very good.

24 Okay. Posthearing procedures. Mr. Horton.

25 MR. HORTON: Yes, ma'am. There is provision there

1 for posthearing briefs of no more than 40 pages, and I'd like
2 to suggest that given the number of issues and the extent of
3 this proceeding that that be increased to 80 pages.

4 MS. BROWN: Staff doesn't have a position on that.

5 COMMISSIONER ARGENZIANO: Okay. Well, then let's --

6 MS. BROWN: We'll have to read them all.

7 MS. CHRISTENSEN: In addition to that as well we
8 would ask from Office of Public Counsel that our summary of
9 positions be increased to 80 words. We're going to endeavor to
10 keep them as short as possible, but there are some more complex
11 issues than others. So we would like just a little bit more
12 latitude on some of the summaries of positions, so we'd ask to
13 increase that to 80 words.

14 MS. BROWN: Staff doesn't have a problem with that.

15 MR. HORTON: Nor does the company.

16 COMMISSIONER ARGENZIANO: Any other comments? Okay.
17 Show it done.

18 Okay. Any other comments on posthearing procedures?
19 Okay. Let's move to rulings.

20 MR. YOUNG: Madam Commissioner, staff would recommend
21 that, that you make a ruling that opening statements, if any,
22 should not exceed five minutes per party.

23 COMMISSIONER ARGENZIANO: Yes. And the parties may
24 ask for more than five minutes I guess. Is there any comment,
25 any wishing more than five minutes? Ms. Christensen.

1 MS. CHRISTENSEN: Well, I had no objection when I
2 read it was ten minutes in the Draft Prehearing Order.

3 MR. YOUNG: I'm sorry. It's ten minutes.

4 COMMISSIONER ARGENZIANO: It is. I'm sorry. Okay.

5 MS. CHRISTENSEN: Otherwise I have no objection.

6 COMMISSIONER ARGENZIANO: Are you still with no
7 objections? Is ten minutes okay?

8 MS. CHRISTENSEN: Exactly.

9 COMMISSIONER ARGENZIANO: All right. Any other
10 comments on that?

11 MR. HORTON: Ten minutes is fine for the company.

12 COMMISSIONER ARGENZIANO: Okay. Staff, we're good?

13 MS. BROWN: That's fine.

14 COMMISSIONER ARGENZIANO: Okay. So then we'll make
15 the recommendation of ten minutes, not to exceed ten minutes.

16 Okay. Other matters? Are there any other matters to
17 address in this docket by any of the parties?

18 MS. BROWN: Staff is not aware of any.

19 COMMISSIONER ARGENZIANO: Okay.

20 MR. YOUNG: With that, staff requests that to the
21 extent parties' positions have changed due to discussions at
22 the Prehearing Conference that they be provided, that the
23 parties provide any such changes by the close of business on
24 Thursday, which would be February the 14th, 2008.

25 COMMISSIONER ARGENZIANO: On Valentine's Day. How

1 nice. Okay. Any other, any comments?

2 MS. CHRISTENSEN: Yes. We'll certainly endeavor to
3 have all of our positions provided to staff before the close of
4 business on Thursday. And if we're still in discussions, we'll
5 let them know that as well.

6 COMMISSIONER ARGENZIANO: Okay. Great. Staff?

7 MR. YOUNG: To that end, Madam Commissioner, as more
8 issues are stipulated, there will likely be witnesses who can
9 be excused from the hearing and their testimony and exhibits
10 stipulated into the record if no Commissioners have any
11 questions for those witnesses. Staff will inform the parties
12 by Friday, February 22nd, 2008, which witnesses may be excused.

13 COMMISSIONER ARGENZIANO: Okay. Thank you. Are
14 there any other matters to discuss? Okay. Going once, twice.
15 We're adjourned. Thank you very much.

16 (Prehearing Conference adjourned at 3:21 p.m.)

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1 STATE OF FLORIDA)
 :
 2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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

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

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

DATED THIS 13th day of February, 2008.

Linda Boles

 LINDA BOLES, RPR, CRR
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