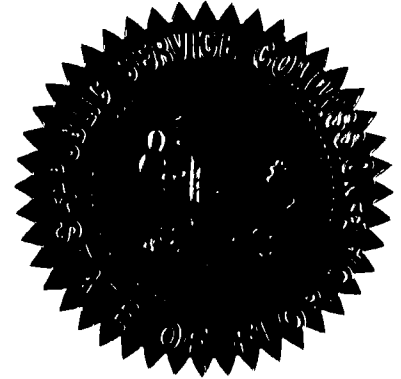


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080148-EI

In the Matter of:

PETITION FOR DETERMINATION OF NEED FOR
LEVY UNITS 1 AND 2 NUCLEAR POWER PLANTS,
BY PROGRESS ENERGY FLORIDA, INC.



PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER KATRINA J. McMURRIAN
PREHEARING OFFICER

DATE: Monday, May 12, 2008

TIME: Commenced at 9:30 a.m.
Concluded at 10:35 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

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4 ALEXANDER GLENN, ESQUIRE, Progress Energy Service Co., LLC,
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6 appearing on behalf of Progress Energy Service Company, LLC.

7 STEPHEN BURGESS, ESQUIRE, Office of Public Counsel,
8 c/o The Florida Legislature, 111 W. Madison St., Room 812,
9 Tallahassee, Florida 32399-1400, appearing on behalf of the
10 Citizens of the State of Florida.

11 JAMES W. BREW, ESQUIRE, Brickfield, Burchette, Ritts
12 and Stone, P.C., 1025 Thomas Jefferson Street, N.W. Eighth
13 Floor, West Tower, Washington, D.C. 20007, appearing on behalf
14 of White Springs Agricultural Chemicals, d/b/a PCS Phosphate -
15 White Springs.

16 KATHERINE FLEMING, ESQUIRE, CAROLINE KLANCKE,
17 ESQUIRE, and KEINO YOUNG, ESQUIRE, FPSC General Counsel's
18 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
19 32399-0850, appearing on behalf of the Florida Public Service
20 Commission Staff.

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P R O C E E D I N G S

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2 **COMMISSIONER McMURRIAN:** We'll call this prehearing
3 to order.

4 And, Staff, would you please read the notice.

5 **MS. FLEMING:** Pursuant to notice issued by the
6 Commission Clerk, this time and place has been set for a
7 prehearing conference in Docket 080148-EI.

8 **COMMISSIONER McMURRIAN:** Thank you, Ms. Fleming.

9 Now we'll take appearances.

10 Mr. Walls.

11 **MR. WALLS:** Mike Walls with Carlton Fields on behalf
12 of Progress Energy Florida.

13 **MR. GLENN:** Alex Glenn with Progress Energy Florida.

14 **MR. BURGESS:** Steve Burgess with the Office of Public
15 Counsel.

16 **MR. BREW:** James Brew with Brickfield, Burchette,
17 Ritts, and Stone for PCS Phosphate, White Springs.

18 **MR. JACOBS:** Leon Jacobs with Williams and Jacobs on
19 behalf of Southern Alliance for Clean Energy.

20 **MS. FLEMING:** Katherine Fleming, Keino Young, and
21 Caroline Klancke appearing on behalf of the Commission.

22 **COMMISSIONER McMURRIAN:** Thank you.

23 Are there any preliminary matters we need to address
24 before we go through the draft prehearing order?

25 **MS. FLEMING:** I'm not aware of any at this time.

1 **COMMISSIONER McMURRIAN:** Okay. We'll proceed through
2 the draft prehearing order. And I'll identify the sections,
3 and definitely stop me and let me know if there are any
4 corrections or changes to be made. I may lump a few together
5 for brevity.

6 Sections I through IV, are there any changes or
7 corrections on those? All right.

8 We will move along to Section V. I think that's on
9 Page 3. With respect to prefiled testimony and exhibits, I
10 wanted to note that parties are able to shorten or dispense
11 with witness summaries as they see fit. Five minutes is
12 provided, but it's definitely not mandatory if you would like
13 to take less time or even waive that. But that is an
14 opportunity, but not a requirement. I just wanted to mention
15 that.

16 Any other changes or corrections there?

17 **MR. GLENN:** Commissioner, on Section IV, the
18 procedure for handling confidential information.

19 **COMMISSIONER McMURRIAN:** Okay.

20 **MR. GLENN:** I do expect there to be some, at the
21 hearing, discussion of potentially confidential information,
22 whether it be vendor pricing or potential discussions with
23 joint owners, and we just need to be mindful of that. If there
24 is a way to facilitate that by any of the parties providing
25 written questions in advance we can have responses to in a

1 confidential folder, we could do it that way, as well. But, I
2 just wanted to give parties an opportunity comment on that.

3 **COMMISSIONER McMURRIAN:** Maybe I should ask
4 Mr. Glenn.

5 Is there information on that subject that is not
6 confidential, or is everything on that subject confidential?

7 **MR. GLENN:** As far as joint ownership is concerned,
8 most of it is confidential. Certainly the fact that we have
9 had significant discussions with a number of joint owners is
10 public record. The details of those discussions, however, are
11 confidential. We have a response to an interrogatory that
12 provides detail on that, but certain events have occurred since
13 then, so there may be additional information.

14 **COMMISSIONER McMURRIAN:** Do any other parties want to
15 comment on that?

16 **MR. BREW:** From a PCS perspective, I don't anticipate
17 asking questions about potential joint ownership. If we do,
18 then I will contact the company counsel and we can discuss it
19 beforehand.

20 **MR. JACOBS:** If I may, just a clarifying question.
21 The joint ownership has to do with interest by the
22 municipally-owned systems, as well?

23 **MR. GLENN:** Commissioner, yes, municipals, electric
24 co-ops, and other investor-owned utilities in the state.

25 **MR. JACOBS:** There's one area of interest that

1 probably it would be best if we just have an off-line
2 conversation with counsel and see if we can work that out. I
3 don't think it will be big -- there is one other interest that
4 we might have there.

5 **COMMISSIONER McMURRIAN:** Okay. I appreciate that.
6 And, Ms. Fleming, is there anything to add on that?

7 **MS. FLEMING:** Just to the extent that staff has any
8 questions, we'll try to limit our questions to the
9 nonconfidential information, but we would ask that the
10 confidential documents are available for the Commissioners to
11 look at during the hearing.

12 **COMMISSIONER McMURRIAN:** Yes, please. Thank you.

13 Okay. I think that takes us back to Section VI on
14 the order of witnesses. And this is probably the appropriate
15 time to ask if any of the parties are willing to stipulate to
16 any of the witnesses at this point.

17 **MR. BREW:** Commissioner, we received an e-mail from
18 Progress late last week inquiring as to that, and I have had
19 some preliminary discussions with Mr. Burnett, and I expect
20 that we will be trying to firm that up over the next day or so.
21 There may be three or four of the company's witnesses that PCS
22 will not cross, but we'll certainly report back to staff once
23 we have had a chance to discuss that further.

24 **COMMISSIONER McMURRIAN:** I'll look to Ms. Fleming and
25 just see -- what kind of time limit do we need to put on that?

1 What is the existing time limit?

2 **MS. FLEMING:** With respect to the stipulation of
3 witnesses, I know that the parties are currently consulting. I
4 think maybe Wednesday would be ideal, because that way the
5 staff can contact the Commissioners and see if those witnesses
6 can, in fact, be stipulated. If none of the Commissioners have
7 questions for those witnesses, then we can attempt to notify
8 the parties by Friday of this week, since the hearing starts
9 next Wednesday.

10 **COMMISSIONER McMURRIAN:** And I suppose that parties
11 can -- I said something about a time limit, but I suppose that
12 parties can continue to work on stipulations up until the last
13 minute, it just may not -- it will depend on whether the
14 Commissioners also have questions, too.

15 **MS. FLEMING:** That's correct, Commissioner.

16 **COMMISSIONER McMURRIAN:** Anyone else on the
17 stipulation of witnesses?

18 Mr. Jacobs.

19 **MR. JACOBS:** We received an e-mail, also -- this is
20 Leon Jacobs -- and we are in the same posture. I don't think
21 it will be a problem to have a final answer from us by
22 Wednesday.

23 **COMMISSIONER McMURRIAN:** Okay. And your suggestion
24 was Wednesday, Ms. Fleming?

25 **MS. FLEMING:** Wednesday, yes, that's correct.

1 And as for staff, just to note for the record, at
2 this point staff could stipulate the following witnesses:
3 Oliver, Masiello, Niekum, and potentially Kennedy. We have a
4 deposition scheduled for tomorrow of Witness Siphers. And so
5 once that deposition concludes, we can determine whether he
6 could be stipulated as a witness, as well.

7 **MR. BREW:** Commissioner, just to round that out,
8 those are the very same witnesses that PCS has considered
9 waiving, so we should be on track to get back to you by
10 Wednesday on that.

11 **COMMISSIONER McMURRIAN:** Okay. Thank you, Mr. Brew.

12 **MR. BURGESS:** Commissioner, for our part, we would
13 like to know the witnesses that are intended for stipulation,
14 but I don't think we're going to have any issue with
15 stipulating any of the witness that the other intervenors are
16 willing to stipulate.

17 **COMMISSIONER McMURRIAN:** Thank you, Mr. Burgess. I
18 think that helps us plan a little bit. And also I wanted to --
19 before we leave this section, I wanted to confirm with Progress
20 that you do want to take your direct and rebuttal witnesses
21 separately as I understand it, is that correct?

22 **MR. GLENN:** That's correct.

23 **COMMISSIONER McMURRIAN:** Okay. And we only have one
24 rebuttal witness, Daniel Roderick. Okay.

25 Anything else on that section? Thank you all.

1 Now moving on to Section VII and VIII on issues and
2 positions. And perhaps we should discuss Issues 1 through
3 8 separately from 9 and 10.

4 **MR. BREW:** Excuse me, Commissioner. If I could go
5 back to Item Number 6 on the order of witnesses. On the issues
6 listed, just to clarify, Mr. Bradford's testimony will be going
7 to Issues 1, 4, 6, 7, 9, and 10.

8 **COMMISSIONER McMURRIAN:** Thank you. And actually
9 Ms. Fleming got that information to us this morning, and thank
10 you for reminding me. I did want to mention that. We will
11 show that in the prehearing order.

12 Issues and positions. As I understand it, the
13 parties are in agreement on Issues 1 through 8, but I will turn
14 to you all to let me know if there are any changes or
15 corrections on Issues 1 through 8. Hearing none.

16 I also wanted to note that some of the parties have
17 taken no position on several issues within Issues 1 through 8,
18 and I just wanted to see if anyone wanted to change any of
19 their positions at this time, or wanted to give a date certain
20 of when they would take a position if they plan to?

21 Mr. Burgess.

22 **MR. BURGESS:** Thank you, Commissioner.

23 For our part, the position is probably better
24 described as staff's position; that is, if information comes
25 up, well, certainly then we think it is something that the

1 Commission should consider, and to the extent that we preserve
2 an opportunity to take a position if the issue is still in
3 play, then we would like to not forgo that opportunity.

4 So by taking no position I don't want it to indicate
5 that we have no interest nor think that it's not something
6 important for the Commission to consider, but it is just at
7 this point we don't intend to -- we don't go into the hearing
8 with a position on that issue.

9 **COMMISSIONER McMURRIAN:** Okay. Ms. Fleming, is it
10 perhaps better to show no position at this time for OPC for
11 that reason, or does it really make a difference one way or the
12 other, that under the order establishing procedure I believe
13 they are able to take a position after this point if they show
14 good cause, right?

15 **MS. FLEMING:** That is correct, Commissioner.

16 Pursuant to the order establishing procedure, each
17 party shall take a position by the prehearing conference or
18 such later time as permitted by the prehearing conference for
19 good cause. However, if a party fails to take a position, they
20 shall have waived the entire issue and their position will be
21 reflected as no position. So at this time a party either needs
22 to take a position or show good cause for not taking a position
23 at this time.

24 **MR. BURGESS:** So good cause cannot be shown later
25 after this date? I mean, we don't have a position at this

1 time. So whatever that bodes for us as a legal requirement,
2 that's what we will live with.

3 **MS. HELTON:** There may be circumstances when you can
4 show good cause after this time. If discovery comes in that
5 was an unexpected answer or something comes up at the hearing
6 that was unexpected, but it's unexpected. I mean, if there is
7 a position that he could take today, then the expectation is
8 that the position would be taken by today.

9 **MR. BURGESS:** I fully understand that, and am in
10 agreement with that. It is just I don't want to by this forgo
11 the opportunity if in the circumstances just described an issue
12 becomes one that we may want to take a position and we
13 legitimately can demonstrate that it is information that was
14 unexpected, then I would like to make certain that our taking
15 no position at this point is not forgoing forever after the
16 opportunity to take a position.

17 **COMMISSIONER McMURRIAN:** Anything further?

18 I think we are clear, but -- go ahead, Ms. Brubaker.

19 **MS. BRUBAKER:** Hopefully this will offer a little
20 additional clarity. The typical situation where a party would
21 show good cause at the prehearing conference would be there is
22 pending discovery, the party knows it's outstanding, they do
23 not know what the answer will be, and so they would note that
24 their good cause is until that discovery comes in I'm unable to
25 take a position on that issue.

1 If I understand Mr. Burgess correctly, he's saying
2 that to the extent something unexpected and untoward happens,
3 he wishes that he would not be foreclosed from the ability to
4 adopt a position at that point. But I would argue that to the
5 extent he is aware of circumstances that may shape his position
6 down the road, he should disclose this at this time.

7 **MR. BURGESS:** We have nothing to disclose along those
8 lines.

9 **COMMISSIONER McMURRIAN:** Thank you, Mr. Burgess.
10 Any other parties that have taken no position on
11 issues?

12 Mr. Brew, I know that there are some for your
13 company.

14 **MR. BREW:** Commissioner, the current draft of the
15 prehearing order accurately states our position, so those that
16 we currently have no position on other than closing the docket,
17 I don't expect to see a change in, absent something being
18 revealed at the hearing.

19 **COMMISSIONER McMURRIAN:** Okay. Thank you, Mr. Brew.
20 Mr. Jacobs, did you have anything to add?

21 **MR. JACOBS:** No, Commissioner McMurrian. There is
22 one point that probably would have been better to bring up as a
23 preliminary matter, and that is the synergy between this docket
24 and Docket 080149. It's my understanding that that -- well,
25 let me ask this. I'm not sure that there is a connection or

1 how it would play into this proceeding, but if there is a
2 connection, I would have some interest in that because I think
3 some of our positions, particularly in the additional issues,
4 but certainly in some of the main issues, might be pertinent.
5 But I wasn't clear on that, so if it would be possible to get
6 some kind of feedback on that, that would be a bit helpful.

7 **COMMISSIONER McMURRIAN:** Ms. Fleming, maybe you can
8 help me recall; 080149, is that the cost-recovery clause docket
9 that has been since renumbered?

10 **MS. FLEMING:** I will defer to Mr. Young on that.

11 **MR. YOUNG:** Yes, Commissioner.

12 **COMMISSIONER SKOP:** Okay. So with respect to your
13 question, you are trying to -- Mr. Jacobs, you are trying to
14 determine what the interplay is between these two proceedings?

15 **MR. JACOBS:** Yes. Is there at all?

16 **COMMISSIONER McMURRIAN:** Well, I think there is some,
17 but I guess it depends on exactly what the nature of your
18 question is. Perhaps I should let staff -- perhaps staff is
19 aware, or perhaps I can get you to sort of rephrase your
20 question so I know better what you're asking.

21 **MR. JACOBS:** Obviously one of the key issues that is
22 of interest to all the intervenors is the ultimate cost and how
23 that cost will be recovered. And I'm not implying anything,
24 I'm really just looking for clarification. How the docket came
25 open and was created just caused me to have some thoughts that

1 maybe there was some interplay with how some of the -- and also
2 some of the discussions that we had at our issues ID meeting,
3 that a lot of the issues regarding cost-recovery on this docket
4 were going to be bifurcated.

5 What I'm trying to understand is what is the trail
6 that we are going to follow in dealing with those ultimate
7 prudence and cost issues? And if this docket has some
8 connection with that, then I may want to come back and revisit
9 some of my positions in this docket. That is my only inquiry
10 here. If it doesn't and if it won't, then I am okay with the
11 positions as we have stated.

12 **COMMISSIONER McMURRIAN:** My personal opinion is those
13 two dockets stand alone, but there is some interplay, but it
14 depends on what happens in this proceeding. Because I think
15 the way the statute is set up, and staff can correct me if I'm
16 wrong, but I believe there has to be a determination of need
17 for there to be costs considered in the cost-recovery docket
18 with respect to the proposal for these units.

19 Let me let Mr. Burgess jump in, and then we will turn
20 back to staff, as well, and perhaps Mr. Walls wants to jump in,
21 I think.

22 **MR. BURGESS:** I didn't want to address the issue of
23 the interplay between the dockets, I just wanted to make sure
24 that I understand the dockets correctly. I thought the 149
25 docket was the discovery docket opened by Progress to allow

1 parties to gather information for what was originally the
2 119 docket that was then closed out and renumbered into the
3 0009 docket. That's what I understood the --

4 **COMMISSIONER McMURRIAN:** Thank you, Mr. Burgess. I
5 think you are right.

6 I couldn't remember the exact numbers we had. I know
7 that we changed the cost-recovery clause docket number to 0009.
8 So the 149 docket, and I'm looking toward Mr. Walls and Mr.
9 Glenn, the 080149 docket is the discovery docket that has been
10 opened.

11 **MR. GLENN:** That's correct.

12 **COMMISSIONER McMURRIAN:** Okay. And, Ms. Fleming, do
13 you want to clarify for Commissioner Jacobs?

14 **MS. FLEMING:** Well, I think I would agree with you,
15 Commissioner, the fact that this is a need determination
16 proceeding under 403.519. There is a separate statute for
17 cost-recovery, and that statute contemplates if a need
18 determination is granted, then we will deal with the
19 appropriate cost-recovery mechanisms in that docket.

20 **COMMISSIONER McMURRIAN:** So to the extent 080149 has
21 been opened as a sort of -- in a sense, a clearinghouse for
22 discovery with respect to the cost-recovery portion, if we get
23 to that portion of the proceeding -- or not of the proceeding,
24 but if we get to that next step, then I think that there could
25 be some overlap, but I don't think that the information in that

1 docket necessarily pertains to this. It depends on what the
2 issues are and how they are laid out.

3 **MR. JACOBS:** With that understanding, Commissioner
4 McMurrin, we are prepared to stand with the positions as
5 stated, as previously stated.

6 **COMMISSIONER McMURRIAN:** Okay. Thank you. I think
7 that brings us to Issues 9 and 10. And thanks to those of you
8 who filed the memorandum on the additional issues. Those were
9 very helpful. And I guess we should take up the two issues
10 separately.

11 I have reviewed the memos and, again, I appreciate
12 that. With respect to Issue 9, I agree that the parties -- let
13 me step back. Let's have staff clarify what the proposal for
14 Issue 9 was, and perhaps take up their recommendation on Issue
15 9.

16 **MS. FLEMING:** Issue 9 asked the Commission to
17 separately assess the need for each of the proposed generating
18 units using the criteria set forth under 403.519. Essentially,
19 what this issue is asking for is to take the eight core issues
20 and make one for each separate unit, so that would have the
21 Commission looking at 16 separate issues is my understanding.

22 Staff's recommendation is that we believe that the
23 parties can adequately address the need for either Levy Unit 1
24 or 2 within each of the eight core issues.

25 **COMMISSIONER McMURRIAN:** Thank you. And, again,

1 having reviewed the memos on those additional issues, I agree
2 with staff that I believe the parties can adequately address
3 the need for each unit within those existing issues. In fact,
4 it appears that some parties have already done that on certain
5 issues. So, therefore, proposed Issue 9 will be excluded as
6 unnecessary, but I think when we get to the discussion of the
7 brief page limit, we can discuss whether or not parties may be
8 interested in having an additional page limit. If you want to
9 address with respect to each of the issues that you are taking
10 a position on, if you want to address those need issues
11 separately for each unit. Okay.

12 We'll move on to Issue 10.

13 **MS. FLEMING:** Issue 10 states, "Should the Commission
14 require, as a condition of granting a determination of need for
15 the proposed units, that Progress Energy Florida, Inc.,
16 implement contractual and other strategies required to
17 effectively manage the units' construction costs and schedule
18 and the risk to consumers associated with cost overruns and
19 project delays."

20 **COMMISSIONER McMURRIAN:** Okay. And, Ms. Fleming, I
21 think on this one I would like to give the parties a chance to
22 at least respond to each other's memos. And, of course, I
23 realize there are parties who didn't file memos, and you are
24 also able to give some input on Issue 10 if you would like. So
25 I guess should we start with --

1 **MS. FLEMING:** Staff would recommend that we start
2 with PCS since this was their intended issues, and follow SACE,
3 OPC, and Progress.

4 **COMMISSIONER McMURRIAN:** And if we could keep
5 comments to about five minutes each, I think that that would be
6 enough.

7 Mr. Brew.

8 **MR. BREW:** Yes, thank you. I'm just --

9 **COMMISSIONER McMURRIAN:** Go ahead and take your time.

10 **MR. BREW:** -- quickly reference the company's memo.

11 (Pause.)

12 **COMMISSIONER McMURRIAN:** In fact, you can use that
13 five minutes however you would like, but I think it would be
14 most helpful -- I did review each of the memos in detail, and I
15 thought it would be the best use of time to perhaps respond to
16 the response to the issue that they gave.

17 **MR. BREW:** And I appreciate that. I'm trying to
18 avoid repeating what we've already said.

19 The key point on Issue 10 is that, first, the
20 additional criteria that are in the statute on Section 519
21 don't limit the Commission's jurisdiction, because it also says
22 the Commission needs to consider anything within its
23 jurisdiction that's relevant. The second is that there is no
24 issue that is more relevant in building new nuclear
25 construction than how to manage the costs and schedule, since

1 that's the reason why we haven't built a nuclear plant in 25
2 years in this country.

3 In the context of the need criteria to get to -- I
4 mean, certain of the questions from our perspective are easy.
5 If you are looking for base-load capacity with no greenhouse
6 gas emissions and relatively low fuel costs, the need criteria
7 for a nuclear plant or pretty straightforward. And I won't get
8 to the Issue 9 issues on the second unit, but the hard issues
9 are how is the project going to be managed to control those
10 costs and schedule issues. But you have got a timing problem
11 because the company wants to get in line to order both the
12 ultra-large forgings for the reactor vessels, and who knows
13 what.

14 So you are being asked to make a determination of
15 need before you really have what is really essential
16 information. And so this does not go to prudence, which in any
17 context is a post hoc review or close in term, which is what
18 did you spend last year, what do you project to spend next
19 year. This is how is the project set up to manage the costs
20 and schedules so that you have some basis that -- you have some
21 confidence in the projected costs and schedules so you can make
22 a determination as to whether or not it's in the best interest
23 of consumers.

24 Our perspective is that this is a very large gap that
25 has to be filled, and it's not addressed in the other criteria

1 listed in the issues. And so the question then is in the
2 context of making a determination of need is for a project
3 that's going to take this long, involve this cost, and for
4 which costs and schedule are so uncertain, what's being done to
5 manage that. And that's a distinct issue from is this
6 particular expenditure prudent.

7 **COMMISSIONER McMURRIAN:** Thank you, Mr. Brew.

8 Mr. Jacobs.

9 **MR. JACOBS:** Thank you, Commissioner McMurrrian.

10 The fundamental point raised by the company objecting
11 to this is that the Commission's authority here is limited. I
12 think that's absolutely not the case. The Commission has very
13 broad jurisdiction under these statutes, and the Commission has
14 exercised that jurisdiction in very innovative ways. One
15 particular way the Commission has exercised that jurisdiction
16 is to issue conditional need determinations. Here, I don't see
17 any distinguishing factor. In fact, quite the contrary, I see
18 incredible numbers of flags, red flags that the Commission
19 ought to have very clear -- give very clear attention to as it
20 makes its decisions.

21 But, if you, just to get to the core of the matter
22 here, you will make, this Commission will make a firm decision
23 with clear findings of facts. The question, the fundamental
24 public policy question becomes is the evidence in this docket
25 supportive of those firm findings of facts. I won't try and

1 prejudice that issue for you, but I highly encourage you that
2 you ought to have that discussion. To simply say don't have
3 that discussion, when I would argue to you that the facts in
4 this case overwhelmingly suggest you have got to have that
5 discussion is, in my mind, a dangerous position to take. We
6 must have the discussion as to whether or not you have adequate
7 support to make clear final findings of fact when you render
8 this decision. Have the discussion and see what comes out.

9 Thank you.

10 **COMMISSIONER McMURRIAN:** Thank you.

11 Mr. Burgess, would you like to --

12 **MR. BURGESS:** Well, obviously since we didn't file,
13 it's not an issue that we are affirmatively looking for the
14 Commission to incorporate into this docket. Where we are is
15 that if the Commission considers this to be an issue relevant
16 to its determination, then our position is as stated in the
17 prehearing order. If the Commission determines that this
18 determination is one of the on-going questions that it will
19 deal with in the 0009 docket, and its successor dockets, then
20 we will be taking our position on that throughout that process.

21 Thank you.

22 **COMMISSIONER McMURRIAN:** Thank you, Mr. Burgess.

23 Mr. Walls or Mr. Glenn. Mr. Walls.

24 **MR. WALLS:** Thank you.

25 I will try to address my responses first to the

1 responses from White Spring PCS and SACE, and then sort of
2 generally conclude where we were in our brief.

3 I guess the first thing I would say is to Mr. Brew
4 comments that there are additional criteria that need to be
5 considered, and he places that within the context of what the
6 Commission deems relevant. Well, the Commission through its
7 staff deemed relevant the eight issues that were identified and
8 which we have been proceeding forward on and no further issues
9 were deemed relevant that the time. Also, Mr. Brew seems to
10 contemplate that the legislature left some kind of gapping hole
11 in the legislation dealing with new nuclear power plants and
12 the need determinations for them, which we believe doesn't
13 exist.

14 If the legislature believed that there was something
15 seriously left out of the statute that it considered relevant,
16 I'm sure they would have contemplated including it. There is
17 also, I believe, an inconsistency here in White Springs
18 argument for this, quote, additional criteria and the statute
19 itself. The statute speaks of a need determination for nuclear
20 and IGCC plants proceeding forward based on a nonbinding cost
21 estimate. By inclusion of the reference to a nonbinding cost
22 estimate for both the parties and the Commission to proceed
23 forward with the issues to determine a need, by definition the
24 legislature understood that there was no ability at that time
25 to have a binding cost estimate, and that nevertheless the need

1 determination could proceed forward and be decided.

2 In fact, if there is a decision based on a nonbinding
3 cost estimate as the Florida Legislature contemplated, by
4 definition then the legislature understood that those costs
5 might change somewhat in the future. But, nevertheless, the
6 legislature decided that the need determination could be
7 decided on that basis. So, the additional criteria that they
8 are talking about with respect to cost certainty, we believe
9 the legislature certainly contemplated, understood that there
10 were issues about certainty of costs, and recognized that in
11 this situation there simply wasn't going to be absolute
12 certainty before you could proceed with a need determination
13 for a nuclear power plant. That's why they said the company
14 and the parties could rely on a nonbinding cost estimate.

15 The concern about how the costs are going to be
16 managed we believe is a concern that is one that exists for any
17 utility power project, and certainly any significant utility
18 power project, and it's one that the company is going to take
19 seriously as its responsibility to proceed forward managing the
20 costs. That is the company's job. It's not the Commission's
21 job or the parties job to come in and manage the costs for the
22 company, but the Commission and the parties will have an
23 opportunity to judge how effectively the Commission managed its
24 costs when it comes to the prudence review and cost-recovery.

25 At that time, as the Commission does in reviewing

1 other costs that the company seeks recovery for, they have the
2 opportunity to look and see if under the circumstances that
3 existed at the time the company undertook these costs, did the
4 company engage in what were prudent business practices under
5 the circumstances. And if they decide that the company did
6 not, they can deny cost-recovery to those elements at that
7 point in time.

8 SACE spoke to the Commission's broad authority under
9 the statutes, and I would say that generally under Chapter
10 366 there is broad authority, but here we are talking about
11 403.519, where the legislature specifically set out the
12 criteria to evaluate a determination of need. And you will not
13 find in that statute any specific authority to impose cost
14 conditions or any other type of conditions on a determination
15 of need.

16 What the legislature required was that the Commission
17 evaluate the company's petition for a determination of need
18 under the criteria set forth under that statute and grant the
19 need or deny it. There's no discussion in the statute, there's
20 no indication that the legislature contemplated that a need
21 could be granted based on certain future occurring conditions.
22 In fact, we would think that would be detrimental to both the
23 company and the regulators, because a conditional need is, in
24 effect, no need at all.

25 If we go forward with a determination of need with

1 conditions that have to be met at some point in the future, and
2 we go to DEP and NRC, what do we tell them we have? If we go
3 to the financial markets and tell them that we have a need
4 determination with certain conditions that have to be met in
5 the future, what do we tell them we have? We don't have
6 finality; we don't have certainty; and that pretty much will
7 kill this project. And I believe the legislature contemplated
8 that and they didn't include such conditions.

9 Finally, and I think it's important to note that
10 through all of this discussion about conditions, or ceilings,
11 or cost caps, or adequate safeguards, no one in this case has
12 specifically identified what those are, and what the company is
13 supposed to do to meet these, quote, safeguards or cost
14 ceilings or caps. Not even Mr. Brew's witness identified a
15 specific cost ceiling and, in fact, in his testimony he talks
16 about one that can be adjusted from time to time. Well, that's
17 not a cost ceiling at all.

18 So as it stands right now, telling the company that
19 they need to proceed forward based on conditions of contract
20 management strategies and cost ceilings that are not specific
21 gives the company no information at all as to how to proceed,
22 and that is a serious error. And it is one which we can't even
23 respond to, because we don't know what these specific
24 conditions or strategies are to even respond to them in this
25 proceeding.

1 For all of those reasons, we feel that this is an
2 unnecessary issue and one that can lead to more trouble than
3 it's worth, including in this need determination proceeding,
4 and we would recommend that it not be included. And that is
5 our position. Thank you.

6 **COMMISSIONER McMURRIAN:** Thank you all.

7 I have a couple of questions, and I guess the first
8 one is probably best directed to you, Mr. Walls. Can you speak
9 to whether if you remove the part of the issue that talks about
10 making it conditional on this requirement, can you speak to
11 whether the requirement, that requirement that's framed in that
12 issue exists already? If you need me to clarify, I can.

13 **MR. WALLS:** If you are asking me does the company
14 have an obligation to effectively manage construction projects
15 already, yes, the answer is yes. And that's what I was trying
16 to speak to before. I believe the company always has that
17 obligation and that the Commission and the parties will have an
18 opportunity to test that obligation at a later time in the
19 later docket in the cost-recovery review.

20 **COMMISSIONER McMURRIAN:** And Mr. Brew, Mr. Jacobs,
21 and Mr. Burgess, would you all like to speak to that, as well?

22 **MR. BREW:** The short answer is yes. Certainly, the
23 utility always has an obligation to address those issues. And
24 the fact that the statute allows for nonbinding estimates
25 doesn't really get to the issue we're talking about, because we

1 are talking about the risks. Everybody acknowledges those
2 costs will change. The question is how do you manage those
3 risks.

4 And this gets to my earlier point about the timing
5 the Commission find itself in. If you were sitting here with
6 an application that included an EPC contract and you knew how
7 they were going to deal with vendors, and you had better
8 information on who among the vendors was simply providing cost
9 and materials contracts, or you had other indications as to how
10 the project was going to be managed, who's in control of the
11 schedule, those would be -- that is a different set of issues
12 from what you are being asked to address now on this record.

13 And, so, from our perspective, the Commission has to
14 at least ask how are you going to manage the project, how are
15 you going to address these issues, and if the answer is we
16 don't know yet, then, there should be a requirement for a
17 subsequent filing once you have that information. What we are
18 saying is based on the record now, you don't have anything in
19 the record about managing the cost risks.

20 And just to be very brief on it, the reason you are
21 seeing a renaissance in nuclear now is all the parties to the
22 process have gotten smart from what they learned 30 years ago.
23 The NRC has changed its process, the vendor designers have
24 changed their reactor designs, they preapproved the reactor
25 designs. We have got federal loan guarantees. We have got the

1 Florida Statute now. But they don't change the basic risks
2 that we experienced 30 years ago, and costs and schedules,
3 schedule slipping and costs going out of control.

4 So the cost recovery process with prudence raises a
5 different set of issues from what we are talking about here.
6 And I have one quick example, if I may. Twenty-five years ago
7 when Long Island Lighting Company was doing startup testing for
8 its Shorum units (phonetic), it connected its emergency diesel
9 generators to the system and all three of them broke. Two of
10 the crankshafts cracked and one of them severed. Now, the
11 prudence case revealed that they were simply under-designed,
12 but the diesels had been ordered, examined and installed, you
13 know, years before the flaw became evident through the start-up
14 testing, which is the very point of start-up testing.

15 Under the cost-recovery rule, it is my understanding
16 you can't go back and look at that question if you have already
17 addressed the costs up to that point. And so in order for the
18 Commission to have addressed the exposure of consumers to that
19 type of issue, which, incidentally, added about \$800 million to
20 the cost of the unit, that's something that has to be addressed
21 up front in the need determination because you're not going to
22 get to it in the subsequent prudence cases.

23 **COMMISSIONER McMURRIAN:** Mr. Jacobs.

24 **MR. JACOBS:** Thank you, Commissioner.

25 I would raise two points briefly. Number one, a

1 fundamental dividing line in this discussion is whether or not
2 the need determination forevermore will anticipate a clear
3 understanding of the risk that consumers are undertaking in
4 approving this project.

5 If I understand the argument here, what we are doing
6 is we're pushing the line for need determination to say there
7 really is no understandable defining line of what the costs can
8 be for a nuke plant before consumers are asked to take that
9 risk. That's what the regulator does.

10 The second point. One of the fundamental ways this
11 project will work is when the municipalities, municipally-owned
12 systems become co-owners. Once the need determination is made,
13 they go to FERC and they get those determinations made. Their
14 customers have no further opportunity to challenge the
15 prudence. They will live with those costs. If that's how we
16 want this process to work, it can. I suggest to you it may not
17 be the best way.

18 Thank you.

19 **COMMISSIONER McMURRIAN:** Mr. Burgess, did you want to
20 speak to that?

21 I think I wanted to follow up on Mr. Brew's point
22 about the situation with Long Island Lighting. And not to try
23 to get too far afield on that, I guess, Mr. Brew, I'll just go
24 ahead and say that it seems to me that in the cost-recovery
25 proceeding when we are discussing prudence that parties can

1 raise that a company has used bad strategy, bad construction
2 practices, bad design, and that at that point you also can say
3 what they should have done and how the costs would have been
4 less if that were the case.

5 And I guess I want to make sure that my understanding
6 is consistent with the parties' understanding on that, because
7 to me I see that the issue you have raised, perhaps it doesn't
8 fit squarely in this proceeding or entirely in that proceeding,
9 because I think your issue was a fairly complex one and that it
10 has piece-parts that definitely belong in the discussion here
11 and piece-parts that probably belong in the cost-recovery
12 section. And I haven't forgotten about staff, either. I just
13 wanted to get some of these questions out.

14 But I wanted to allow everyone to speak to that,
15 particularly Progress, since Mr. Brew has raised that issue.
16 What is your understanding of the cost-recovery phase of the --
17 if we get to the cost-recovery phase, if in 0009 if there has
18 been a need determination granted for one or more units as
19 proposed, can a party such as PCS White Springs raise those
20 issues that they believe that the decisions made by the
21 company, those management decisions made by the company have
22 not been the proper ones and make a case for why that those
23 costs should not be determined prudent?

24 **MR. WALLS:** Yes, the short answer is we believe they
25 can. That is the whole purpose of the cost-recovery proceeding

1 is to address the prudence of the costs incurred. That is not
2 what this proceeding is designed to do. In fact, as I believe
3 staff and you have noted, we don't even get to the
4 cost-recovery proceeding until we have a need determination.
5 So this must come first, and then you have the cost-recovery
6 issues. Can those issues be raised there? Yes, the parties
7 can raise them, and nothing prevents any party from bringing in
8 another engineer or designer to say I want to look at your
9 design and see if they're adequate.

10 I don't know that I can address Mr. Brew's question
11 today, and I don't know how you would expect the Commission or
12 the parties to address the issue today about whether a
13 particular element such as a diesel generator is going to
14 operate when these plants are built. I don't think any party
15 sitting here is in a position to address that today other than
16 to ask the company to do what it already understands its
17 obligation is to do, which is to manage this project, to
18 supervise the construction, to supervise the design of it, and
19 to be responsible for that. And that's what the company plans
20 to do. And the company certainly has every interest in
21 controlling costs in this instance. This is a major project.

22 The company well understands the risks that are
23 involved, and those are risks to the company and its
24 shareholders, too. The company has every interest to manage
25 this project well, and they have every intent to do so. And I

1 believe that Mr. Lyash and Mr. Roderick have testified to that
2 in their direct testimony in this case. But to ask the
3 question of what if something bad happens in the future, will
4 we have a chance to ask about that, the answer is yes, in a
5 separate proceeding. In the cost-recovery proceeding you will
6 have that opportunity.

7 **COMMISSIONER McMURRIAN:** And let me follow-up with
8 sort of Part B of my question. Do you think that there are
9 issues in this case which would provide an opportunity for Mr.
10 Brew and the witness that he has provided to speak to some of
11 the concerns that are embedded in proposed Issue 10?

12 **MR. WALLS:** Well, I believe that both Mr. Brew and
13 Mr. Bradford are saying they are speaking to that in terms of
14 the cost-effectiveness of the project which, of course, is
15 where that issue lies at this point, which is based on the
16 nonbinding cost estimate that the company has and the risk that
17 exists, and the benefits and rewards if they proceed with this
18 project is -- under the evidence that we have today -- is this
19 project the most cost-effective source of future generation
20 capacity and energy for its customers. That is the issue, and
21 the costs are involved in that determination of that issue.

22 **COMMISSIONER McMURRIAN:** Mr. Brew, I will let you
23 respond to both of those points, sir.

24 **MR. BREW:** Actually, if I could be a little bit
25 informal in terms of just maybe a little dialogue on this. I'm

1 not trying to argue Issue 1 right now. What the company is
2 saying is that if something were revealed, for example, during
3 start-up testing relating to costs that had previously been
4 addressed in prior annual cost-recovery reviews, that I would
5 not be time barred from raising those as a prudence issue, then
6 that's altogether different from what I have understood before.
7 Is that their position?

8 **MR. WALLS:** I believe our position is, is whatever
9 the nuclear cost-recovery statute provides and the rule
10 provides we will follow it.

11 **COMMISSIONER McMURRIAN:** Let me try it this way,
12 Mr. Brew. The way I understand it, and, again, I expect
13 someone to correct me if I'm wrong, is that it will depend on
14 the time period at issue. Is that with respect to the
15 cost-recovery clause proceedings that we will be determining
16 prudence on the actual period, so with respect to the current
17 year or the projected year, I believe those costs would be
18 reviewed again in the next year's proceeding. And until those
19 costs have been determined on an actual basis to be prudent or
20 not, I don't think those have entirely been disposed of. But,
21 perhaps I should look to Ms. Fleming or Mr. Young to give
22 clarification of that.

23 **MS. FLEMING:** Thank you, Commissioner.

24 It is my understanding with respect to the
25 cost-recovery clause the Commission has an annual prudence

1 review process, and Ms. Brubaker may want to jump in, but it is
2 my understanding the prudence is determined year-to-year. So
3 when the Commission does make a prudence determination of its
4 own costs, I think there is the issue of administrative
5 finality.

6 **MS. BRUBAKER:** I agree with Ms. Fleming. If there
7 was an argument to be made that the prudence is on an annual
8 basis that is how it has been set up in the statute and more
9 specifically in the rule. However, there is always an
10 overarching issue of -- not cost-effectiveness, what is the
11 term I am looking for -- the feasibility of the project, and
12 that is an ongoing overarching principle when it comes to the
13 cost-recovery process itself.

14 The statute and rule specifically do spell out that
15 costs associated with the plant are recoverable. That is how
16 the legislature set it up for us. However, there is also a
17 test of prudence that must be looked at, and it was looked at
18 on an annual basis.

19 **COMMISSIONER McMURRIAN:** Mr. Brew, I don't know if
20 that helps, and I know we are getting -- I don't intend for
21 this to be a prehearing on the cost-recovery clause docket, but
22 I'm hoping that some of this discussion may be helpful.

23 **MR. BREW:** Actually it has been, because it really
24 does get to the point that Mr. Bradford was addressing in his
25 testimony, which was given the nature and limits of the

1 cost-recovery rule and the annual prudence process, it's
2 particularly critical that you address the cost management
3 strategies in the need case. So I'm sort of back to what Mr.
4 Bradford summarized in his testimony.

5 **COMMISSIONER McMURRIAN:** And that brings me back to
6 the second question, and I will ask Mr. Walls. It seems to me
7 that in reviewing the draft prehearing order that there are
8 certain sections within this docket that there is an
9 opportunity to make that case.

10 **MR. BREW:** I wouldn't disagree that given sufficient
11 allowance in the briefing pages that we could address those
12 risk issues in Issue 1 under cost-effectiveness, or Issue 4.
13 Our point is that the management of the risk was a sufficiently
14 distinct issue that that needed to be addressed on its own.

15 **MS. BRUBAKER:** Commissioner McMurrrian, may I? I hope
16 this will offer some aid.

17 We said it before, the Commission has said it before,
18 nuclear is different. It's different than the typical need
19 determination that comes before us, in part, because nuclear
20 has such a long lead construction period associated with it.

21 Details that might be more certain with other types
22 of plant are often simply not known or knowable at the time the
23 need comes before us. And, of course, the need determination
24 is only part of a multi-step process with nuclear. It has
25 reviews and it has time periods associated with it that are

1 simply not present with other types of fuels. So that's one
2 issue. Can you even look at those in the context of a nuclear
3 proceeding at the need determination itself.

4 There is some comfort to be had, I believe, with the
5 cost-recovery process that the legislature has established for
6 us to assure that those costs are going to be reviewed and that
7 the overall feasibility of the project is going to be looked at
8 as that plant becomes constructed and approaches being put
9 on-line.

10 There are actually two avenues for addressing, I
11 think, some of the concerns. The first is actually in this
12 proceeding itself when you look at the cost-effectiveness
13 issue. If there are arguments to be made that there is
14 something in the risk management issues associated with this
15 plant that renders the plant not cost-effective, it can
16 certainly be addressed in that issue. And, again, as we said
17 before, the nuclear cost-recovery proceeding also affords the
18 prudence associated with the plant.

19 **COMMISSIONER McMURRIAN:** Thank you.

20 And, Mr. Jacobs, I promised I was going to let you
21 have a chance to respond to the questions I asked the company
22 earlier, so if you would like to add anything.

23 **MR. JACOBS:** If I may, very briefly. It sounds like
24 a wonderful place we have set up in the cost-recovery docket.
25 Let me just suggest to you that we are putting a whole bunch of

1 eggs in that basket. In this case you will have to deal with
2 external regulatory proceedings, i.e., the NRC. Are those
3 things going to impact the cost here? The staffing issue; the
4 design issues; we are asking that basket to be pretty big, and
5 I know that it can't happen.

6 What I am suggesting to you is that this is a
7 process, and would it be better for us to get all of those
8 things lined up, get clarity on them, and then look at the
9 need. Or do we want to go off on the need and then we are
10 going to have this on-going prolific process where we are going
11 to be looking very extensively at very technical issues
12 supposedly in a prudence review. And I think it is a
13 fundamental question, a management question that you can make.
14 I mean, a management decision that you can make. We can do it
15 that way, but I suggest to you it's going to be a pretty
16 interesting process.

17 **COMMISSIONER McMURRIAN:** Mr. Burgess, did you want to
18 add anything to those?

19 **MR. BURGESS:** No, thank you, Commissioner.

20 **COMMISSIONER McMURRIAN:** Okay. I think with that I
21 will move back to Ms. Fleming, and I think Ms. Brubaker sort of
22 addressed a recommendation of sorts, but I will ask you what is
23 your recommendation on Issue 10.

24 **MS. FLEMING:** Well, Commissioner, while staff
25 recognizes that there is a lot of uncertainty with respect to

1 this need determination, the Commission does always deal with
2 uncertainties in any type of need determination. We don't have
3 a crystal ball at this juncture. We can't determine what the
4 price or the cost of items are going to be three, four, even
5 ten years down the road.

6 With respect to Issue 10, to the extent that this
7 issue goes towards cost-effectiveness, we feel that PCS and
8 SACE can address whatever issues they have with respect to
9 cost-effectiveness under Issue 6, under their position for
10 Issue 6. With respect that this goes to the costs and how we
11 deal with the recovery of the costs and the prudence of these
12 costs, we feel that it is more appropriate to address that in
13 the cost-recovery proceeding that the Commission has a separate
14 docket for.

15 **COMMISSIONER McMURRIAN:** Thank you, Ms. Fleming.

16 Consistent with that, I agree with that. Mr. Brew
17 and Mr. Jacobs, I think you can tell some of my thoughts on the
18 issue already, but I believe that the issue, as framed, in a
19 sense attempts to require the company to do something it's
20 already required to do. That's my belief, that it needs to
21 effectively manage these costs and the schedule and the risks
22 associated with those up front. Again, that is just my belief
23 as one Commissioner, and I believe that the company has
24 verified that.

25 I do agree with staff that I think there is a way to

1 address some of your concerns in both proceedings. And with
2 respect to -- specifically, it looks to me that Issue 6 on the
3 cost-effectiveness, and perhaps even Issue 4, I see that with
4 respect to your position on Issue 4 it looks like you have
5 noted some of those concerns related to this proposed issue
6 there, as well, and I know that your witness addresses some of
7 these concerns. So I think that it is a combination of both
8 avenues that you can pursue, and I believe that that preserves
9 the Commission's ability, the other Commissioners' ability to
10 consider your arguments in those places.

11 But I hope that our discussion today has lent some
12 clarity, at least, on what the staff sees the process in place
13 and to you and your client. But with that, I will propose that
14 Issue 10 not be included, and so that will -- Issues 1 through
15 8 will be our issues list in this proceeding.

16 Okay. Are there any other issues with respect to the
17 issues in this section of the prehearing order?

18 **MS. FLEMING:** Commissioner, I will just note that to
19 the extent any of the parties' positions need to be changed
20 based on the exclusion of Issues 9 and 10 that they notify
21 staff as soon as possible. And with respect to those parties
22 that have taken no position, if they want to change and add a
23 position at this time based on these issues, it would be
24 appropriate to do so.

25 **COMMISSIONER McMURRIAN:** Thank you, Ms. Fleming.

1 Okay. That takes us to Section IX, the exhibit list
2 on Page 15.

3 Ms. Fleming.

4 **MS. FLEMING:** We would just like to note that we will
5 prepare a comprehensive exhibit list which will include the
6 service hearing exhibits, prefiled testimony, and any staff
7 composite exhibits. Staff is in the process of compiling any
8 exhibits that they would like to have entered into the record,
9 and we will provide that to the parties by e-mail to see if the
10 parties can stipulate to staff's exhibit list.

11 **COMMISSIONER McMURRIAN:** And are there any other
12 changes to the exhibit list from the parties?

13 Hearing none, we will move on to Section X on Page
14 20, the proposed stipulations.

15 **MS. FLEMING:** At this time there are no proposed
16 stipulations.

17 **COMMISSIONER McMURRIAN:** I thought I would give it a
18 second.

19 Section XI, pending motions, Page 20.

20 **MS. FLEMING:** There are no pending motions.

21 **COMMISSIONER McMURRIAN:** Okay. Section XII, pending
22 confidentiality matters. Staff has reminded me there are four
23 pending confidentiality requests. I'm not sure if there might
24 have been others since we spoke last week, but they will be
25 addressed by separate order.

1 Section XIII, post-hearing procedures. This is
2 probably the best place to address the length, the page length
3 of the post-hearing briefs. So I'll be glad to take any input
4 on that.

5 Mr. Brew, were you interested in lengthening the
6 number of pages for the post-hearing briefs to perhaps further
7 address the concerns you raised?

8 **MR. BREW:** Yes, Commissioner. I suggest that it be
9 extended to 75 pages instead of 40.

10 **COMMISSIONER McMURRIAN:** Mr. Walls?

11 **MR. WALLS:** We have no opposition to that.

12 **COMMISSIONER McMURRIAN:** Mr. Jacobs?

13 **MR. JACOBS:** We concur.

14 **COMMISSIONER McMURRIAN:** All right. We will extend
15 that to 75 pages.

16 Ms. Fleming, did you have input on that?

17 **MS. FLEMING:** No, Commissioner, I do not. Thank you.

18 **COMMISSIONER McMURRIAN:** You're welcome, too. I
19 forgot to ask.

20 Section XIV with respect to rulings. I think here is
21 where we usually discuss the opening statements. And usually
22 we afford ten minutes, and that seems to be sufficient to me,
23 but is there any input from the parties on opening statement
24 length?

25 **MR. GLENN:** Just that the intervenors get 30 minutes

1 and we get 10, is that it?

2 **COMMISSIONER McMURRIAN:** I think that's what I'm
3 proposing, but are you suggesting that you need more time to
4 make your --

5 **MR. GLENN:** No.

6 **MR. BURGESS:** If it will make him feel any better,
7 Commissioner, I won't use all ten minutes of mine.

8 **COMMISSIONER McMURRIAN:** I guess this is the point
9 where I should note, again, as I noted earlier, that it's an
10 opportunity. You don't necessarily need to take ten minutes,
11 but if you feel that you need that to make your case, I believe
12 that's what we normally have.

13 Mr. Brew, did you have thoughts on that?

14 **MR. BREW:** Commissioner, I have resisted the urge to
15 ask for half an hour, and I will live with ten.

16 **COMMISSIONER McMURRIAN:** Thank you.

17 Okay. Are there any other matters that we need to
18 address before we adjourn?

19 **MS. FLEMING:** The only thing I would note for the
20 record is that to the extent any positions have changed with
21 respect to Issues 9 and 10, as far as the parties, if they
22 could let staff know by the close of business tomorrow.

23 And to the extent that the parties can continue to
24 speak about the stipulation of witnesses and they could let
25 staff know by Wednesday so that we can coordinate with the

1 Commissioners and let them know, and let the parties know by
2 Friday if those witnesses can be stipulated.

3 **COMMISSIONER McMURRIAN:** Any other matters from any
4 of the parties?

5 Thank you all. I think it was a good discussion
6 today, and I appreciate you being with us. Thank you. This
7 prehearing is adjourned.

8 **MR. BURGESS:** Thank you, Commissioner.

9 (The prehearing concluded at 10:35 a.m.)

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STATE OF FLORIDA)

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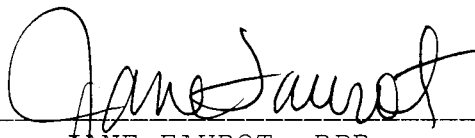
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 14th day of May, 2008.



JANE FAUROT, RPR
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