

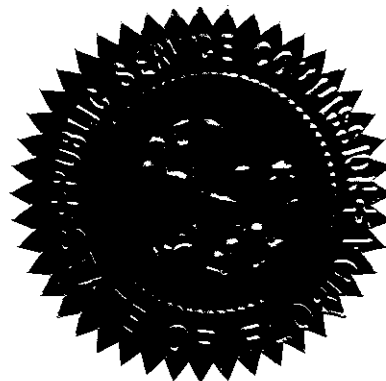
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070626-EI

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In the Matter of:

REVIEW OF FLORIDA POWER & LIGHT  
COMPANY'S SUNSHINE ENERGY PROGRAM.



PROCEEDINGS:                   AGENDA CONFERENCE  
ITEM 11

BEFORE:                           CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE:                               Tuesday, July 1, 2008

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

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

1 PARTICIPATING:

2 WADE LITCHFIELD, ESQUIRE, and DENNIS BRANT, ESQUIRE,  
3 representing Florida Power & Light Company.

4 JOHN HOLTZ, representing Green Mountain Energy.

5 MS. LARSON

6 CHARLIE BECK, ESQUIRE, Office of Public Counsel,  
7 representing the Citizens of the State of Florida.

8 MICHAEL COOKE, GENERAL COUNSEL, JENNIFER BRUBAKER,  
9 ESQUIRE, BOB TRAPP, TIM DEVLIN, and MARK FUTRELL, representing  
10 the staff of the Florida Public Service Commission.

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

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CHAIRMAN CARTER: We are back on the record. We are on Item 11. I also want to make sure that we have got Ms. Larson patched in by phone.

Ms. Larson, are you there?

MS. LARSON: Yes, dear.

CHAIRMAN CARTER: Great. Great. (Laughter.) Thank you so kindly.

Commissioners, what I would like to do is have staff introduce the issue, hear some comments from Ms. Larson, and then, I mean, give each one of you an opportunity to be heard, and then we will hear from the parties and we will proceed from that way, because I know that we all want to talk on this -- as any of the issues, but I prefer to do it that way, if that is okay. Does that give everybody an opportunity to kind of get the lay of the landscape?

Also, just kind of -- for those of you that are inside the building here, we have automatic locks on the door, so at 6:00 o'clock they lock automatically. So if you have a -- no, you can get out, you just can't get back in. So if you don't have a badge, the metallic badge that we have -- and I don't think Capitol Police would take too kindly to you putting something in the door, a wedge, or something. So don't leave the building.

Also, is that we have asked for an extension of time

1 on the air conditioning. It shuts off automatically at 6:00,  
2 so we have asked them not to shut it off automatically at 6:00  
3 today. We are asking them to give us a little more time on  
4 that, okay.

5 So with that, let's do this: Let's hear from  
6 Ms. Larson first -- wait a minute. We'll hear from staff to  
7 introduce it, then -- how did I say it? Then we will hear from  
8 Ms. Larson, and then we will have Commissioners, and then we  
9 will go with the parties. Okay.

10 MR. LITCHFIELD: I'm sorry, Mr. Chairman, just to  
11 clarify then, FPL would proceed at what point with its  
12 presentation?

13 CHAIRMAN CARTER: After the Commissioners. We are  
14 going to make some statements, and then we will come back to  
15 the parties. But first we'll have staff introduce the issue,  
16 then we'll hear from Ms. Larson, then we'll have some comments  
17 from the Commissioners, and then we will go from there and come  
18 back to the parties. All right.

19 Mr. Devlin, you're recognized, sir.

20 MR. DEVLIN: Thank you, Mr. Chairman.

21 Commissioners, Item 11 concerns FPL's Sunshine Energy  
22 Program. This program was initiated in 2003 for the purpose of  
23 promoting renewable energy through voluntary contributions.  
24 Last summer, the staff initiated a review to see whether this  
25 program was being administered in an effective manner. In

1 September staff filed a recommendation and identified several  
2 concerns with the program. Soon after, FPL requested a  
3 deferral of this recommendation in order to address the issues  
4 in the staff recommendation.

5 Over the past nine months, staff has had several  
6 meetings and conversations with FPL in an effort to address the  
7 problem areas with the program and seek solutions. At the same  
8 time, staff continued its formal investigation which included  
9 interrogatories and depositions. When it became evident a  
10 resolution wasn't imminent, staff initiated an audit for the  
11 purpose, and I quote, to ensure that the funds from the  
12 Sunshine Energy Program are properly accounted for and used in  
13 a manner that most effectively contributes to the purchase of  
14 energy produced by renewable resources. Soon after the audit  
15 report was released on May 30th, FPL filed a proposal to change  
16 the Sunshine Energy Program.

17 In this recommendation, staff concludes that the  
18 Sunshine Energy Program does not currently serve the interests  
19 of program participants. Most troubling, because of the lack  
20 of access to contractor records, staff was unable to account  
21 for the majority of voluntary contributions. Staff believes  
22 that this program needs to be changed where there is a complete  
23 accounting of the use of all funds and a limit should be placed  
24 on the portion of funds used for overhead and profit.  
25 Otherwise, the Commission should consider terminating this

1 program.

2 Mr. Chairman, the staff is here to answer questions.  
3 As you say, you might want to listen to Ms. Larson next and  
4 then Florida Power and Light.

5 Thank you.

6 CHAIRMAN CARTER: Outstanding.

7 Ms. Larson, you have been a loyal trooper, and we  
8 really thank you for participating with us today. And you are  
9 recognized.

10 MS. LARSON: Thank you. I can't tell you how hard  
11 this day was. You're a nervous wreck to go before you, let me  
12 tell you. Even by phone you are still a nervous wreck.

13 But the fact that Green Mountain has taken in  
14 11.4 million bucks and not put one dime into anything is just  
15 frightening to me, that it has been allowed to progress for so  
16 long. Thank God you guys are out there. Because I did, I  
17 called this program two years ago. I called, and it was two  
18 men up in Stuart, and he goes we can't use methane until our  
19 dump is completely filled to the top. Solar doesn't really  
20 work, and we bought a couple of little things out west, and we  
21 have invested in wind.

22 But for 11.4 million bucks -- because ten million  
23 bucks is overhead in your list there. I did get that when I  
24 was up there. I'm amazed. I'm amazed. I'm amazed that they  
25 got along with this for so long, and it is a couple of guys out

1 of Texas? It's frightening. This particular item, I said it  
2 last week and I will say it again, it's fraud. It is not  
3 right. God help the people who have sent in their \$9.75 a  
4 month.

5 One, FPL should be penalized. They should have to  
6 give 11 million bucks to something. I don't care what charity  
7 it is, it's their choice, I will give them that. They can give  
8 it to a charity. And they should have to invest 11 million  
9 bucks into a truly viable alternative. It should have to come  
10 out of their pockets. They should have to come clean. I don't  
11 care if they take out a full page ad in the press and say we  
12 made a mistake. We bought some Gucci shoes in Texas. But this  
13 isn't right. It's not right for the public.

14 The public is asking for alternatives. The public is  
15 doing conservation. That's why we are getting penalized with  
16 fuel bills. They are conserving. They are cutting back.  
17 Everybody is. Everybody is doing what they are supposed -- you  
18 know, they are trying to do their little part. They recycle.  
19 They do something. They don't take that drive to, you know,  
20 grandma's house. Everybody is conserving in every way, shape,  
21 and form in their own little way.

22 Here is a big huge corporation, and nobody was  
23 looking at the bottom line on this particular entity?  
24 Twenty-five percent of 25 percent, because that's what this  
25 looks like. There is only 500,000 that supposedly went to

1 anything. It's frightening. And, thank God, the Commission  
2 initiated an investigation. Thank you very much for that.  
3 Because the consumers, I think they would be outraged. I think  
4 they would be up in arms. Money is so tight and here they are  
5 paying that little extra ten bucks a month to FPL thinking they  
6 are doing their part, because they didn't do it anywhere else.  
7 And they think, I will give this ten dollars to charity,  
8 120 bucks a year, and I am doing my part to do something green  
9 to clear their consciences. And here FPL took it and bought,  
10 you know, whatever.

11 I don't know what they bought with ten million bucks.  
12 It must have been damn good salaries, because I don't see any  
13 -- I don't see accountability here. And I don't see any  
14 alternatives. They have no alternatives in the home office,  
15 and they have got no alternatives here. And it is not right.  
16 The public deserves better.

17 Somebody got really rich off of this project. A huge  
18 amount of money. Eleven million bucks is a lot of money in  
19 this day and age. And it's about even with their head guy  
20 there at FPL, Ray Newberry (phonetic), whatever his name is.  
21 He got 12 million bucks. Let him donate it to charity.

22 This is wrong, because there are alternatives in  
23 Florida. Solar. Make them retrofit -- supposedly they did  
24 some houses in Naples, a development of some sort. Make them  
25 retrofit \$11 million worth of solar hot water heaters. I know



1 I am stuck on that, but that seems to be -- doing a whole house  
2 seems to be just way too far advanced for everybody. So do the  
3 hot water heaters for everybody. Do it -- make it -- make it  
4 a -- you know, I don't know. You tell me what I have to do.  
5 Go to my legislator and say this is what makes it mandatory. I  
6 have to lobby the Governor, whoever. I'll do it. I'll go out  
7 there single-handedly and scream and yell and jump up and down.

8 But this particular thing, this should be stopped  
9 today. This thing should be shut down today. This is a vote  
10 you can do today as a board so this will no longer happen to  
11 the people, the ratepayers, anybody in the state of Florida.  
12 If you pay for something -- if this was a charitable  
13 contribution, they would be burying them. You know, if you  
14 found out the Red Cross wasn't spending their money where it  
15 was supposed to be spent, somebody would be held accountable.

16 So who do we indict? I want to know, because there  
17 is somebody -- this seems to be an indictable crime to me. It  
18 is 11 million bucks. It's a lot. And it went to somebody.  
19 Because when they show their bottom line, 500,000 bucks is all  
20 that they show. And I don't think -- I don't know, I wasn't  
21 privy to the backup on this from the staff, and I apologize for  
22 that. I don't have it. I didn't read it. But, hopefully,  
23 someone there will say this is not going to happen anymore in  
24 the state of Florida. When you say you are going to do  
25 something, you do it. And we have to be held accountable.

1           We are being held accountable. You're held  
2 accountable for what you do, your decisions. I'm held  
3 accountable for my decisions. FPL should have to be held  
4 accountable for their decisions. And this particular item is a  
5 fraud. It is plain and simple. Not one ten cents has gone to  
6 a renewable thing. And I don't even know where it was. I  
7 think it is in the Mojave Desert or something, and a couple of  
8 houses in Naples. And I think they should have to refund. I  
9 think they should be penalized just a little.

10           I'm not asking you to, you know, take the whole  
11 company down, but somebody should be penalized for this and  
12 have to pay. They should have to match that dollar-for-dollar.  
13 Eleven million bucks ought to come out of somewhere in FPL and  
14 really go into renewable energy. And to, you know, take care  
15 of the people like they think that they are doing. Because  
16 this is a conscience-clearing \$9.75 a month. I'll give you the  
17 120 bucks a year. I'm doing my green thing, and that is where  
18 those 37,000 people lie. Hopefully, the Commission will take  
19 that into consideration.

20           When I read in the Palm Beach Post, they kind of hit  
21 you with a velvet glove and said, oh, they need to change. It  
22 doesn't need to change, it needs to stop. And that is my  
23 opinion, and that is the opinion of a lot of people down here.  
24 I can only go in my realm, which is Palm Beach County. I can't  
25 speak for everyone in the state of Florida, but I can speak for

1 quite a few people in Palm Beach County. They are pretty angry  
2 about this, and they are not quite sure where to go. And I  
3 guess they want to go -- you know, maybe they will go to you.  
4 Maybe they will write you letters. I asked them to. And,  
5 hopefully, you'll stop them today.

6 They need to be shut down. No velvet gloves, no  
7 re-audit, oh, send us a semi-annual something. Stop it. Stop  
8 it today. We can stop this today and hold FPL's feet to the  
9 fire to true alternatives that can be done in the state of  
10 Florida, not in the Mojave Desert, not in a little condo in  
11 Naples.

12 And I appreciate your time. Thank you.

13 CHAIRMAN CARTER: Thank you, Ms. Larson.

14 Commissioners, here is the order I would like to go  
15 in. Commissioners Edgar, McMurrian, Argenziano, Skop, and  
16 after Commissioner Skop, I will make a few comments.

17 Commissioner Edgar, you're recognized.

18 COMMISSIONER EDGAR: Thank you, Mr. Chairman, and  
19 thank you to Ms. Larson for her patience in staying with us all  
20 day. I know that we are all tired. I, in particular, am very  
21 tired and very hungry. And we, I know, have to have an early  
22 morning tomorrow to get off to a customer hearing. So I am  
23 going to be brief, truly, and maybe, maybe try to help us just  
24 sort of cut to what I see as kind of the center of it all.

25 Lots of issues. We could talk about this all day. I

1 could talk about it all day. But there are a couple of points  
2 that jump out in my mind as I have reviewed the information and  
3 have met with staff on this.

4           The first is it's my understanding -- and I would  
5 welcome shortly after our comments, the utility and staff to  
6 speak to this if I am incorrect, but it is my understanding  
7 that FPL did comply with the tariff that was put in place.  
8 It's also my understanding that this program, when it was first  
9 put into place, was a pilot program. It was done at the same  
10 time that this state and our other utilities and local  
11 governments and many were looking for new, at the time,  
12 innovative ways to try to attract investment dollars to try to  
13 bring attention to the issue of alternative and renewable  
14 energy sources. And that all of us in our different roles  
15 were kind of, you know, casting about and looking for ways to  
16 bring this issue more and more to the forefront.

17           And with that, when I look at projects like the  
18 Rothenbach project, you know, I think some good has probably  
19 been done. I know that the term Sunshine Energy Program is  
20 certainly a catchy phrase. I like the sound of it, and I think  
21 it probably has helped to gin up, shall we say, some further  
22 inquiries and some enthusiasm, and I think that that is all to  
23 the good.

24           However, to get to my central point, I think maybe we  
25 have evolved beyond kind of what this program initially was

1 thought of or intended to do. We had a lot of discussion  
2 yesterday and we will have more on the work that we will be  
3 doing towards an RPS, how these sorts of voluntary  
4 contributions towards voluntary projects would fit in with our  
5 overall work towards a renewable portfolio standard, to me,  
6 raises a lot of questions. I'm sure we could work through it,  
7 but I'm not sure it is the best place to put our time, energy,  
8 and resources.

9           So I guess to briefly try to sum up, this project was  
10 put in place as a pilot. I think there are probably a lot of  
11 lessons earned. I would agree with the staff recommendation  
12 that there would need to be some changes, that there are some  
13 pieces of it that maybe have not been in what I would think of  
14 as the best public interest. However, I think there are  
15 lessons learned, and we have kind of moved beyond.

16           And so where I'm at right now, unless I hear  
17 something very differently, would be to thank staff for their  
18 work and for bringing this to our attention. But yet I, at  
19 this point, feel like, similarly to Ms. Larson, that it may be  
20 time to end the program, to take the lessons learned and apply  
21 it in other ways and to other efforts that this state is doing,  
22 rather than to go through the work of revising the program and  
23 going and, you know, reviewing that and have it come forward  
24 and then reviewing that and having it come forward.

25           So at this point, I think what I am looking at is

1 agreeing with staff on Issue 1, but disagreeing on Issues 2 and  
2 3, in that I would look more towards a termination of the  
3 project and an ending of the current tariff, taking lessons  
4 learned and applying it as we move forward on an RPS and other  
5 projects, but not suspending with the idea of then amending the  
6 tariff, is kind of where I am at right now.

7           And when we come to the question phase, I do have  
8 some questions specifically about some of the ongoing projects,  
9 like the Rothenbach project and how that would fit in if,  
10 indeed, we were to -- if, indeed, there is support to terminate  
11 the program at this time. So I would have a few very  
12 particular questions, but I am hoping that maybe, maybe we can  
13 come to kind of be on the same page to figure out the best way  
14 to move forward.

15           Thank you.

16           CHAIRMAN CARTER: Thank you.

17           Commissioner McMurrian.

18           COMMISSIONER McMURRIAN: Thank you. And I am  
19 optimistic. Maybe we can gain some consensus after hearing  
20 Commissioner Edgar's comments, and mine are similar. And I  
21 have gone through the trouble of sort of writing out my  
22 thoughts, and I wanted to share with everyone.

23           As with most of the controversial issues that we are  
24 faced with, I have wrestled with this one a little bit. When I  
25 first began my preparation for this issue, I was on the same

1 track as our staff, which I think it could be called trying to  
2 turn lemons into lemonade. But the deeper I got, the more  
3 questions I had. And when I finally stepped back from the  
4 details to take a look at that bigger picture that we are  
5 always talking about, I became convinced that the right thing  
6 to do is to terminate this program and save the goodwill of  
7 those customers, those very generous customers who spend the  
8 9.75 a month, save that goodwill for when we really need it.

9           And I'm not sure when that will be, but I think for  
10 all the reasons that Commissioner Edgar said, I don't think  
11 that that is now, because I think thanks to the strong  
12 leadership of Governor Crist and the Florida Legislature, a  
13 number of renewable projects are underway now. And I think we  
14 need to devote our resources to implementation of their  
15 initiatives to further advance renewables.

16           As the Commissioner said, a lot has changed since we  
17 first approved the pilot project, and even since we made the  
18 program permanent. Then companies were not investing in  
19 renewables, at least not in the significant way that we are  
20 seeing now, but now they are. And I don't think it is  
21 necessary today to continue this program in order to spur  
22 renewable development like it was when we started this. Pardon  
23 the pun, and this is a little bit corny, Chairman, but I think  
24 the program has had its day in the sun.

25           MS. LARSON: Sorry.

1           COMMISSIONER McMURRIAN: That's all right,  
2 Ms. Larson. Thank you. Thanks for that laugh.

3           MS. LARSON: It's so appropriate.

4           COMMISSIONER McMURRIAN: As I mentioned before,  
5 thanks to a lot of generous customers some good things came of  
6 it. Sure, I'm disappointed with Green Mountain Energy, and  
7 also a little bit with FPL, that the program didn't perform as  
8 well it could have, and I think it could have performed better.  
9 However, I don't think we need to be in the business of riding  
10 or tweaking their contracts for them. And that's where I came  
11 down.

12           I feel like we are a little bit in the business of  
13 trying to tell them exactly how to go carry out the broad  
14 initiatives that I think we do have support for here. And to  
15 me the staff recommendation let's the world know, and by world,  
16 I mean the IOUs, entities like Green Mountain Energy, et  
17 cetera, anyone who might be impacted and cares about this  
18 issue, I think it lets them know the kinds of expectations that  
19 we would have going forward with respect to these types of  
20 programs. And giving that guidance, I think utilities can make  
21 their proposals, and we can review them, and that is normally  
22 the course that we take with proposals like this.

23           And I think that it is time to terminate this  
24 program. I agree with that part of what Ms. Larson said, I  
25 agree with Commissioner Edgar. And so I would also support



1 staff's recommendation on Issue 1, at least with the first part  
2 of Issue 1. And then with respect to Issues 2 and 3, I  
3 believe -- and 4, I would agree with Commission Edgar that I  
4 would terminate the program and not continue evaluating their  
5 modified proposal and just terminate the current one before us,  
6 as well.

7 Thank you, Chairman.

8 CHAIRMAN CARTER: Thank you, Commissioner.

9 Commissioner Argenziano, you're recognized.

10 COMMISSIONER ARGENZIANO: Mr. Chair, it looks like we  
11 are having some kind of presentation, and I would rather  
12 reserve my comments, if I have any, until after that, please.

13 CHAIRMAN CARTER: Commissioner Skop, you're  
14 recognized, sir.

15 COMMISSIONER SKOP: Thank you, Mr. Chairman. And I  
16 was going to reserve my comments until FPL gave its  
17 presentation, also. And just as a request to the Chair, also  
18 there are some additional consumer comments that have been  
19 requested formally to be read into the record. And, also, I  
20 have a preliminary matter that I would like to take up with FPL  
21 regarding confidentiality issues.

22 CHAIRMAN CARTER: Thank you, Commissioners. As I  
23 said, I wanted to give us all an opportunity to be heard. We  
24 have dealt with this issue before, and I think that --  
25 Ms. Larson, I appreciate your comments and all like that. I am

1 kind of where you are, along with Commissioners Edgar and  
2 McMurrian. You know, my grandmama used to say, although she is  
3 not here, she said that the road to hell is paved with good  
4 intentions. And we've done -- it was a good pilot program.  
5 But if you lose credibility, if you lose credibility with the  
6 ratepayers, then it's -- I mean, a thousand attaboys can  
7 be wiped away with one aw shucks. And that is a voluntary  
8 program, almost 40,000 people volunteered thinking that they  
9 are buying something, and if we lose the credibility with the  
10 people that are volunteering to participate in this program, we  
11 can't get that back. We can't get that back.

12           And I want us to be able to send a message to the  
13 people and say, okay, this is a good thing to do. We want to  
14 invest in green in our state. I mean, the Governor has set the  
15 bar far higher than any others, probably. Maybe with the  
16 exception of California, we are probably the leading state in  
17 the nation in that.

18           And I think that, Commissioner McMurrian, you're  
19 right, we are not in the business of fixing contracts. That is  
20 not what we are in the business of doing. But where I come  
21 down on it is once you lose credibility with the people that  
22 are voluntarily paying this money on a monthly basis, you don't  
23 get that back. So at the appropriate time, Commissioners, when  
24 we get to that point, I'm going to be voting for termination.

25           With that, I think, Commissioner Skop, you had some

1 preliminary matters. You're recognized, sir.

2 COMMISSIONER SKOP: Thank you, Mr. Chair. To the  
3 Chair's discretion, how would the Chair prefer that I address  
4 those, the customer comments first?

5 CHAIRMAN CARTER: Yes, sir. You are recognized.

6 COMMISSIONER SKOP: Thank you, sir.

7 Attached is a consumer comment from a Mr. Ed  
8 Fielding, and I will read the comment verbatim as it was  
9 conveyed to the PSC.

10 "Dear PSC, as regards to the most recent escapades of  
11 FPL, in this case, soliciting monies from customers under the  
12 pretence of enhancing environmentally-friendly power  
13 generation. This was a project that FPL pushed for several  
14 years, frequently soliciting its customer base with mail fliers  
15 and bill stuffers for the customers to do the responsible thing  
16 by helping to save the environment, contribute so FPL can  
17 become much more environmentally friendly.

18 "One wonders if this was not a planned  
19 misrepresentation from the first day. Certainly, such  
20 deception from a local business would result in criminal  
21 enforcement or at least civil enforcement with a heavy fine.

22 "In my view, FPL should be punished for this scam by,  
23 one, a refund of all monies received from customers or others  
24 for this project and requiring the president personally to sign  
25 an enclosed letter of admission and apology. This may take the

1 president a couple of weeks, but will leave an impression.

2 "Two, refund all advertising and associated costs of  
3 developing, marketing, managing, accounting for, et cetera,  
4 that was spent on the project with the refund check or, if  
5 significantly noted, with the appropriate penitence on an  
6 insert in the billing, then a deduction from the customer's  
7 bill.

8 "Three, fine the company for fraud and  
9 misrepresentation. The fine should be multiples of the  
10 millions charged -- excuse me, millions collected. The fund  
11 should be paid into the state fund for enhancing  
12 environmentally-friendly projects from which FPL would not be  
13 eligible.

14 "As we often see in the news, people are going to  
15 jail for these kind of schemes in other states and that  
16 probably would help stifle the imperial corporate arrogance  
17 here. The people just need a white knight to lead the charge.  
18 Please make this statement part of the public comment or  
19 otherwise appropriately noted in this file. Sincere. Thank  
20 you, Ed Fielding."

21 The next comment is from a consumer, Mr. J. Whirley  
22 (phonetic), Melbourne, Florida.

23 "I participated in the Sunshine Energy Program -- in  
24 FPL's Sunshine Energy for several years. I recently learned  
25 that a PSC audit found only 24 percent of 11.4 million

1 collected from customers has been spent on developing renewable  
2 energy. I find this to be a very disappointing and misleading  
3 use of my money spent on the Sunshine Energy Program.

4 "Certainly, there will be some overhead cost to  
5 managing the program, but when 8.6 million of the 11.4 million  
6 is spent to cover salaries, office expense, business travel,  
7 research, marketing, and the public relations consultant, I am  
8 appalled.

9 "I have discontinued my participation in the Sunshine  
10 Energy Program because of this. I ask that you refund a  
11 portion of my funds, \$5.07 a month I participated, that were  
12 not used for developing renewable energy and were beyond the  
13 20 percent reasonable percentage required for overhead as  
14 recommended by the PSC. Sincerely, J. Whirley, Melbourne,  
15 Florida."

16 Another comment from Mr. Bob Wright. It is a  
17 combined comment, and let me read the relevant excerpts.

18 "Also, their green energy scam, your office just  
19 issued a report that the program is not working as it should.  
20 Thirty-nine thousand people have been giving FPL 9.75 extra  
21 each month for several years to R&D green energy. However, FPL  
22 has used 8.7 million for other things and only 2.7 million was  
23 actually used toward green energy. Now, to me, that is fraud.  
24 Pure and simple, please show them that to operate in this  
25 fashion will not be tolerated by the PSC or the residents of

1 Florida."

2           One final comment, and then I will move on to my  
3 preliminary matter. This is a comment from Mr. Jim Johnson,  
4 addressed to the Florida Public Service Commission with respect  
5 to Agenda Item 11.

6           "Commissioners, I am a customer of Florida Power and  
7 Light, and I have participated in FPL's Sunshine Energy Program  
8 for several years. As of June 25, 2008, I discontinued my  
9 participation in this program pending the resolution of the  
10 issues and concerns raised by PSC staff in their report and  
11 recommendation dated June 23rd, 2008, as filed in Docket Number  
12 070626-EI.

13           "After reading the staff report, I have several  
14 observations and suggestions which I offer for your  
15 consideration. Issue 1 in the staff report found that FPL's  
16 program as currently designed and administered was not in the  
17 best interest of the program's participants. Staff suggested  
18 six guidelines for FPL to use in redesigning the program. I  
19 agree with the staff recommendation and support adoption of the  
20 guideline by the Commission.

21           "Furthermore, I request the Commission consider the  
22 following: Program revenues through May 31st, 2008, were  
23 \$11,435,899. In the staff report it was stated that FPL has  
24 reported that 24 percent of the existing program costs were for  
25 TRECs and renewable projects. The balance of the cost was for

1 program management, marketing, and administration. Therefore,  
2 by my calculation \$2,744,615 was spent for direct benefits and  
3 \$8,691,284 was spent on indirect benefits and overhead.

4 As a Sunshine Energy participant, only \$28.08 of my  
5 \$117 annual contribution can be shown on being spent on  
6 renewable energy. Using staff's recommendation that  
7 administration and marketing costs of a prudent operation  
8 should be limited to 20 percent, FPL should have spent at least  
9 \$93.60 of my annual contribution on renewable energy.

10 In my opinion, FPL should be required to contribute  
11 sufficient FPL corporate funds to fund the program to fulfill  
12 the stated and implicit promises made. Using staff's finding  
13 that 20 percent is reasonable for administration and marketing  
14 renewable energy costs for this program through 31 May, 2008,  
15 that should have been \$9,148,719, and FPL should be required to  
16 provide corporate funding in the amount of \$6,404,104, that is  
17 the \$9,148,719 less \$2,744,615, for the purchase of renewable  
18 energy."

19 The next bullet point:

20 "The program's purchase of TRECs, Tradable Renewable  
21 Energy Credits, should be further documented to include a  
22 complete description of the individual TRECs purchased,  
23 including generators, plant address, description of renewable  
24 energy produced, names of third party seller/broker and price."

25 Third bullet:

1 "FPL contracts with third parties for program  
2 services should include accounting and reporting guidelines and  
3 a right to audit clause. The PSC should be given clear  
4 contractual authority to require accounting and reporting from  
5 program third parties and the right for PSC staff to perform or  
6 contract with independent certified public accountants to  
7 perform audits of program expenditures.

8 "In conclusion, it is quite disturbing to me that PSC  
9 staff had difficulty obtaining the answers to their questions  
10 concerning various aspects of the program. Hopefully, a full  
11 accounting of program expenses will be forthcoming. Program  
12 participants should be assured by the PSC that only program  
13 objectives are being met. I look forward to the program after  
14 assurance that my contribution will truly be helping the  
15 environment. Truly yours, James Johnson, CPA, CFE, Nokomis,  
16 Florida."

17 That deals with some, but not all of the consumer  
18 comments, but I think we have pretty much dealt with that.

19 With respect to my preliminary matter directed to  
20 FPL, again, a lot of this program has been shrouded in  
21 confidentiality, and pursuant to the staff request, I'm asking  
22 FPL directly if they are willing to waive any additional  
23 confidentiality provisions that have not yet been waived as of  
24 the time of this hearing?

25 MR. LITCHFIELD: May I?



1 CHAIRMAN CARTER: Mr. Litchfield, you're recognized.

2 MR. LITCHFIELD: First of all, Commissioner Skop,  
3 with respect to the assertion that this program has been  
4 shrouded in confidentiality, I reject that categorically. This  
5 program is fully open to the scrutiny of this Commission and  
6 its staff. It has been from the start. All information has  
7 been available to staff.

8 There have been certain requests for confidentiality  
9 that have been pending completion of the audit. And upon  
10 further review and in consultation and dialogue with staff, the  
11 lion's share, if not in excess of 99 percent of that  
12 information has been rendered publicly available at this point.

13 The company's position has been and continues to be  
14 that it has nothing to hide with respect to this program.  
15 There have been assertions here today bantered around. In the  
16 ten years of practice that I have been involved in before this  
17 body, I have never heard the terms fraud, and scam, and sham,  
18 and deception used so cavalierly. And I have been working --

19 COMMISSIONER SKOP: Excuse me, sir.

20 (Simultaneous conversation.)

21 COMMISSIONER SKOP: Excuse me, sir. I, as a  
22 Commissioner, did not use any of those terms. Those were terms  
23 used by the general public in relation to your program, sir,  
24 not mine. Okay? So let's get this straight.

25 MR. LITCHFIELD: Fair enough. I would suggest to

1 you, Commissioner, that your reading them into the record gives  
2 they have an air of authenticity that they don't deserve, and  
3 we categorically reject any assertions of fraud, deceptive  
4 practices, or anything like unto it.

5 Now, I apologize, Mr. Chairman, if I appear to be  
6 taking some of these things a little personally. I have worked  
7 for this company for ten years, and I'm proud to be an employee  
8 of Florida Power and Light Company, and we do things with the  
9 utmost integrity and honor. And so I think enough said on that  
10 score.

11 I do have a presentation to go through at this point,  
12 which, if it's my turn, I would be happy to do so.

13 CHAIRMAN CARTER: Commissioners, anything further  
14 preliminarily before we hear from the Company?

15 Commissioner Skop.

16 COMMISSIONER SKOP: Thank you, Mr. Chairman.

17 And to Mr. Litchfield, again, I respect your service  
18 to the company. I used to work for FPL's unregulated  
19 subsidiary, also. The reputation of FPL Group is impeccable.  
20 I have no doubt about that. But for you to assert that public  
21 comment is not worthy of being read or heard, just as we heard  
22 from Ms. Larson, I guess I don't know how to describe that  
23 other than, you know, maybe FPL is still in a state of denial  
24 about what the public thinks about what's happening here.

25 So I would allow you to continue your presentation,

1 yield back to the chair, and I have many things to say about  
2 this program.

3 CHAIRMAN CARTER: We will give all evidence their  
4 weight.

5 MR. LITCHFIELD: Mr. Chair.

6 CHAIRMAN CARTER: Mr. Litchfield, you're recognized.

7 MR. LITCHFIELD: Oh, thank you. Thank you,  
8 Mr. Chair.

9 Well, good evening, at long last --

10 CHAIRMAN CARTER: Good evening.

11 MR. LITCHFIELD: -- Mr. Chairman and Commissioners.

12 Let me just introduce, to my left here is Jessica  
13 Cano. I, of course, am Wade Litchfield, appearing, both of us,  
14 on behalf of Florida Power and light company. And to my right  
15 is Dennis Brandt, who is Director of Products and Services at  
16 Florida Power and Light Company. And he will be able to answer  
17 some of the more factual questions, should they arise during  
18 the course of the discussion.

19 There are a couple of things that I want to try to  
20 accomplish in a few minutes here this evening, Commissioners.  
21 And, you know, unfortunately there has been, I think, an  
22 inordinate amount of misinformation, misapprehension, and  
23 misunderstanding about this program. And it has gained an  
24 unfortunate level of momentum.

25 I want to start with drawing your attention to a

1 handout that I've asked Ms. Cano to distribute. I think this  
2 will help frame the discussion, and I think it will frame  
3 staff's recommendation, and then my points, which will follow  
4 with respect to staff's recommendation.

5 Let me focus you first on -- and we'll look back at  
6 this exhibit over the next few minutes two or three times. But  
7 let me focus you first on Line Number 2. This is the program  
8 to date TREC commitment.

9 Now, the commitment under the terms of the program is  
10 very simple. For every participant who agrees to pay \$9.75 a  
11 month, for each month that that contribution is made, the  
12 program, through Green Mountain, has an obligation to go out  
13 and purchase one renewable energy credit, representing 1,000  
14 kilowatt hours produced from renewable energy sources. That is  
15 clear. That's uncontested. That's part of the program.

16 And, therefore, as voluntary contributions come in,  
17 the commitment on the part of Green Mountain automatically  
18 increases commensurate with that participation rate. That is  
19 an important point that I will come back to in a moment.

20 The program to date, if you focus up to Line Number  
21 1, that represents the number of TRECs purchased to date. So  
22 you can see that the program to date, and this has been true  
23 throughout the program, the number of RECs that Green Mountain  
24 was supposed to purchase on behalf of each customer that signed  
25 up has been met, fully compliant in every respect. And that is

1 set out in the tariff. And I'll say that again, fully  
2 compliant in every respect with what is set out in the tariff.  
3 That's going to be a pretty important point.

4 Now, Line 3, if you look below, that actually shows  
5 the TREC kWh. So, as I said earlier, if you look to Line 1,  
6 there were about a million TRECs purchased. Well, if each TREC  
7 represents 1,000 kilowatt hours, the program has purchased one  
8 billion kilowatt hours from renewable sources over the  
9 program's life.

10 Now, I want to try to -- let me also make the point  
11 that there has been some debate as to whether these are Florida  
12 sources or out-of-state sources. And so we did break them down  
13 into in state and out of state. And so you can see 410 million  
14 kilowatt hours were purchased from in-state sources, and  
15 591 million, roughly, were purchased from out-of-state sources.

16 The program commitment on in-state TRECs, by the way,  
17 is 15 percent, so that would have translated to 150,000 TRECs.  
18 That is shown on Line 2. Clearly, the program has met even the  
19 in-state commitment, vis-a-vis, the purchase of TRECs.

20 Now, that, by the way, in terms of comparing that to  
21 CO2 avoided emissions in the atmosphere, that translates to  
22 about one billion pounds of carbon dioxide that has been  
23 avoided through this program, which is the equivalent,  
24 according to the USEPA, of removing about 83,000 automobiles  
25 from the road.

1           Now, I want to demonstrate the magnitude of the sales  
2 from renewable sources represented by the program and the  
3 success of the program. And to do that, we converted the kWh  
4 sold on Line 3 in the columns represented there into figures of  
5 kW and megawatts in Lines 4 and 5. And so you can see that,  
6 for example, in the total column that 602,000 kilowatts are  
7 represented by the total sales of renewable energy under the  
8 program, which amounts to 602 megawatts.

9           Now, again, taking you over to the left-hand column  
10 representing what is attributable to in-state, 247 megawatts of  
11 equivalent renewable energy have been procured through this  
12 program. That's in the state of Florida.

13           Now, we have this in front of us now. Let me just  
14 walk you through it, because we are going to come back to it.  
15 Line 6 shows the current program solar commitment. And as you  
16 see, it's only 150 kW per 10,000 customers, which would make a  
17 grand total of 450 kW, or less than one-half of one megawatt.  
18 That's the program commitment. And contrast that to the amount  
19 of megawatts, 602, that have been procured through the purchase  
20 of TRECs in this program. It is a pretty stark contrast, and I  
21 think it speaks volumes in terms of the original program, why  
22 it was approved -- it was approved as a TREC program -- and  
23 whether it has been successful. It has been very successful as  
24 a TREC program.

25           The handout number two that Ms. Cano is going to

1 distribute to you now would show the success of the program as  
2 determined not by FPL, not by Green Mountain, but by the  
3 Department of Energy and the National Renewable Energy  
4 Laboratory. And if you will turn into that document on the  
5 third and fourth pages, you will see the tables there that list  
6 the top ten programs in terms of renewable energy sales and the  
7 number of customers. And as you will note, Florida Power and  
8 Light Company with a relatively new program, compared to these  
9 other programs, already by 2007 ranked fourth nationally,  
10 according to the Department of Energy, in its sales per year of  
11 renewable kilowatt hours. It ranks sixth nationally among up  
12 to 800 programs. I should say there are probably up to 800  
13 programs around the country, and FPL ranks sixth in terms of  
14 customer participation, again, with a relatively new program.

15           Now, how was what accomplished? It was accomplished  
16 through a lot of marketing. And that has really been the rub  
17 and has caught a lot of media attention. Well, how much is FPL  
18 spending on marketing this program? Here's an interesting  
19 point that certainly has occurred to me as I have thought  
20 through this issue. You know, as people have complained about  
21 the percentage of dollars that are actually going to marketing,  
22 consider this: If Green Mountain had paid, let's say -- we  
23 know that they get \$9.10 for every REC, right, under the  
24 program. If they had paid \$9.10 for a REC, people would be  
25 able to say they spent 100 percent of the program costs on

1 renewable sources.

2           On the other hand, if Green Mountain is able to  
3 procure renewable energy credits at lower prices, that will  
4 leave them with additional funds to market. And that's what  
5 they did. And by marketing they increased the number of  
6 participants, and by increasing the number of participants, you  
7 increase the contract commitment of Green Mountain to go out  
8 and procure yet more RECs, more renewable energy credits, more  
9 kilowatt hours from renewable sources. And the numbers that we  
10 walked through earlier on handout number one only increase  
11 exponentially at that point.

12           That is the nature of a green pricing program. So to  
13 the extent that there are criticisms of using money that comes  
14 through the door through customer contributions pursuant to the  
15 tariff in order to market and increase participation in this  
16 program, essentially it is also criticism of any green pricing  
17 program around the country. That's what they do. Okay.

18           Sunshine Energy's marketing costs, we have an exhibit  
19 that we are going to hand out to you that would show -- even  
20 putting aside the benefits of a green pricing program, which  
21 are threefold, really, if you increase the penetration rates  
22 through increasing your marketing efforts, as I said, you  
23 increase Green Mountain's obligations under the contract, you  
24 increase the amount of kilowatt hours procured under the  
25 contract, and then you effectively increase the demand for



1 renewable resources, which can have the effect of driving up  
2 the price and making more renewables more cost-effective.  
3 Again, that is in the nature of a green pricing program.  
4 These, frankly, Commissioners, are positives and not negatives  
5 as has been suggested by some.

6 (Telephone noise through sound system.)

7 We have been putting aside those benefits -- Mr.  
8 Chairman, thank you. You know, it is also important, I think,  
9 to look at the efficiency of the marketing expenditures that  
10 Green Mountain and the Sunshine Energy Program have incurred.  
11 And as you see on the first handout that Ms. Cano distributed,  
12 a graph that shows -- it is titled Sunshine Energy Marketing  
13 Costs, and it shows in the early years of the program, as you  
14 might expect, a higher cost per kilowatt hour of marketing  
15 expenditures. It drops precipitously as the program expands  
16 and customers are procured and kilowatt hours sales are made to  
17 the point where you see that it has declined now down to about  
18 .3 cents per kilowatt hour.

19 And you will see that on the next table that Ms. Cano  
20 distributed, 0.306 cents per kilowatt hour. And that compares,  
21 as you see, very favorably to the marketing costs per kWh of  
22 the other top five programs for which data was available. You  
23 know, you would expect in a successful program to see those  
24 marketing costs decline per kWh. We would be concerned if we  
25 saw the trend moving in the other direction, but it is not. It

1 is declining. The mark, again, of an effective advertising and  
2 marketing campaign in order to promote renewables in the state  
3 of Florida.

4           The next handout that I want you to take a look at,  
5 if you could, is a table that -- there is a very brief  
6 calculation showing -- again, putting in perspective the  
7 capability of a program that would dedicate all of its  
8 resources to the construction of renewables, construction of  
9 renewables, as opposed to the purchase of TRECs. If you assume  
10 an 8,000 per kWh cost for photovoltaic, which is a fair and  
11 reasonable assumption for our purposes, and the proposed  
12 project funding through 2013 is \$12 million, what you get is  
13 one and a half megawatts. One and a half megawatts, not the  
14 600 megawatts equivalent that we discussed earlier through the  
15 TREC program, but one and a half megawatts.

16           This should further be contrasted, I think, in  
17 fairness, with the 110 megawatts of solar that the company has  
18 proposed for approval by the Commission as qualifying under the  
19 new legislation that the Governor just signed at his climate  
20 summit down in Miami, 110 megawatts of large scale,  
21 commercially scaled solar PV and solar thermal.

22           Now, the last handout is really just the tariff for  
23 your reference. I won't spend any time with it, but that is  
24 the existing tariff. And as you will note, there is not even a  
25 mention in the tariff of the 150 kW, or the, you know, 0.15, or

1 15/100ths of a megawatt commitment for solar facilities for  
2 every 10,000 customers. That aspect of the program really was  
3 secondary. In fact, secondary might be stating it too  
4 strongly. It was not the central focus of the program by any  
5 stretch of the imagination. And, in fact, the numbers in the  
6 program and the commitment level speak very clearly to that  
7 point.

8           Commissioners, we have met every material criteria of  
9 this program, and that is why I said at the outset that we have  
10 no embarrassment about this program whatsoever. It is  
11 unfortunate that the perception in the media has gained a  
12 degree of momentum that -- I agree with the Commission that  
13 expressed the concerns earlier about having damaged the  
14 credibility of the program. I think we have lost a little bit  
15 of credibility through some of those stories. And I think that  
16 is unfortunate. But as they say these days, it is what it is.

17           Where does that bring us with respect to the staff  
18 recommendation? Let me just address that briefly, because,  
19 frankly, I think we don't -- other than the substantive points  
20 of analysis with which we would disagree essentially, you know,  
21 I have covered those here in our presentation today, so I won't  
22 spend any time on that.

23           But looking at what staff has specifically  
24 recommended under Issue 1, limit the level of administrative  
25 and marketing costs to 20 percent. We will live within

1 whatever budget constraints the Commission would propose,  
2 assuming it were to propose to continue the program.

3           With respect to Item Number 2 in staff's  
4 recommendation on Issue 1, and I am on Page 4 of the staff rec,  
5 again, if the Commission were of a mind to modify this program  
6 and continue it, we certainly are willing to provide  
7 semi-annual reports to enable you to better track the program  
8 expenses and monitoring the achievement of milestones. But  
9 keep in mind that those milestones are going to be very small,  
10 indeed, if the total program contribution is only capable of  
11 producing one and a half megawatts.

12           Item Number 4 deals with excess program revenues.  
13 Our proposal already addresses that and, certainly, we would  
14 agree with staff's proposed treatment. But I would point out  
15 that, again, those amounts are going to be very, very small,  
16 almost to the point of being immaterial and are really not  
17 going to move the needle in terms of creating any new solar  
18 projects.

19           Item Number 5, I would just say this: To the extent  
20 that the contract is perceived as, you know, perhaps not  
21 reflecting sufficiently strong milestones, we are certainly  
22 amenable to working on those in any fashion that would produce  
23 a reasonable result.

24           Item Number 6, we are not really sure what that would  
25 entail, you know, beyond the reporting requirements in Item

1 Number 2. But, certainly, in principle we don't have an  
2 objection to oversight that the Commission may wish to have  
3 over the development of renewable resources under this program.  
4 But, again, keep in mind that the relatively small amount of  
5 capacity that this program would be producing on a non-REC  
6 basis and, therefore, very small projects, they would be very  
7 small projects.

8           With respect to Issue Number 2, I would only note  
9 that if further information is felt to be necessary, we  
10 certainly are amenable to providing that to the Commission and  
11 staff in furtherance of this program.

12           So let me sum up, Commissioners. We strongly  
13 disagree with the analysis upon which the staff recommendation  
14 is based, and I guess that should be evident as a result of my  
15 comments here today. But having said that, we don't really  
16 have any objection to the recommendations with respect to the  
17 program modifications that staff is making. We, as always, you  
18 know, would defer to the Commission on this, which is  
19 essentially a question of policy. And we certainly would work  
20 with staff and with the Commission in a way that would reflect  
21 current state renewable policy.

22           And that would conclude my remarks, Commissioners.

23           CHAIRMAN CARTER: Commissioners, before we go  
24 further, I would like to -- if you would like to make some  
25 comments, I would like to recognize Mr. Kelly from the Office

1 of Public Counsel.

2 Mr. Beck, you're recognized.

3 MR. BECK: Thank you, Mr. Chairman. Charlie Beck  
4 with the Office of Public Counsel.

5 Commissioners, we wanted to commend the staff for the  
6 audit they performed. It is very important to the public that  
7 there be transparency in a program and that people know what it  
8 is they are getting. And the staff's audit, by doing what they  
9 have done, has brought out a lot of matters to light that the  
10 public needed to see. So we're here to commend the staff for  
11 what they have done and to support what they have done on this  
12 program.

13 Thank you.

14 CHAIRMAN CARTER: Thank you.

15 Commissioner Skop, you're recognized, sir.

16 COMMISSIONER SKOP: Thank you, Mr. Chairman. And,  
17 again, I reserve my opening comments, and I have many  
18 questions. And I apologize to my colleagues, but simply in  
19 good faith, in light of the facts and the way the facts are  
20 being presented by FPL, again, I'm going to take all the time  
21 necessary that I need to ask the questions and make the  
22 comments that I want to make regarding this program.

23 Just with respect to my opening comments, I will  
24 begin as follows: Commissioners, the docketed matter before us  
25 today is a very simple one. It's about making sure that

1 consumers got what they paid for and that all of the monies  
2 collected were prudently spent.

3 In the instant case, nearly 39,000 FPL ratepayers  
4 reached into their pockets and voluntarily contributed \$9.75 of  
5 their hard-earned money each month to support the FPL Sunshine  
6 Energy Program. What did they get for their efforts? Not  
7 much, according to the audit report.

8 This program is all about PR and of little substance.  
9 As I see it, the program was misrepresented in the public light  
10 and the voluntary ratepayers were misled and harmed by FPL and  
11 Green Mountain Energy's actions. FPL has already pulled the  
12 wool over this Commission's eyes once regarding this program.  
13 They sit before us here again today with a straight face  
14 spitting the facts and trying to do the same thing once again.  
15 I am not fooled; and, frankly, you shouldn't be either.

16 The facts clearly show that neither the existing  
17 program nor FPL's proposed modification to the program are in  
18 the best interest of the program participants and that refunds  
19 are warranted. As a result of their actions, I firmly believe  
20 that FPL has significantly underestimated the resolve of this  
21 Commission to firmly and decisively address this matter before  
22 us today.

23 After a year of waiting, I finally have the  
24 opportunity to discuss this problem in a public forum.  
25 Accordingly, it shouldn't be a surprise that I have many

1 unanswerd questions and quite a bit to say regarding this  
2 matter. My discussion will be presented in the following  
3 order: A review of the existing program, a review of the  
4 proposed modification to the existing program, the audit  
5 findings, the remedial action. I am hopeful that the  
6 discussion will prove to be insightful and informative as we  
7 begin to address the substance of the matter before us today.

8 Thank you, Mr. Chair.

9 CHAIRMAN CARTER: Commissioners.

10 COMMISSIONER ARGENZIANO: (Inaudible. Microphone  
11 off.)

12 CHAIRMAN CARTER: Do you want to go ahead,  
13 Commissioner, with your presentation?

14 COMMISSIONER SKOP: Yes, sir.

15 CHAIRMAN CARTER: Let's move forward.

16 COMMISSIONER SKOP: Okay. Thank you, Mr. Chairman.  
17 Good afternoon, Mr. Litchfield, Mr. Brandt.

18 I would like to begin our discussion with some of the  
19 many questions and concerns I have regarding the existing  
20 Sunshine Energy Program.

21 And, Mr. Litchfield, if I could please draw your  
22 attention to the existing contract. And in the interest of  
23 time, again, on behalf of my colleagues, because I have many  
24 questions, I would also greatly appreciate a simple yes or no  
25 response to each of my questions, unless you do not know the



1 answer to the question asked.

2 MR. LITCHFIELD: Mr. Chairman, may I, with all due  
3 respect, set some ground rules here? We are happy to answer  
4 questions, but it is not my impression that this is a hearing,  
5 and that this is going to be a cross-examination. I am here as  
6 an attorney representing Florida Power and Light Company. We  
7 will answer Mr. Skop's questions to the best of our ability.

8 CHAIRMAN CARTER: If you can answer them yes or no,  
9 that will be fine. If you can't, just, you know -- I mean, we  
10 understand. But if you can say yes, and you need to explain  
11 it, we will give you an opportunity to explain your answers.

12 MR. LITCHFIELD: Thank you.

13 CHAIRMAN CARTER: Is it you or Mr. --

14 MR. LITCHFIELD: I think it will depend on the nature  
15 of the question.

16 CHAIRMAN CARTER: Okay. Commissioner Skop.

17 COMMISSIONER SKOP: Thank you, Mr. Chair.

18 Mr. Litchfield, I will begin with you. Florida Power  
19 and Light Company entered into a trademark and license service  
20 agreement with Green Mountain Energy on July 30th, 2003,  
21 correct?

22 MR. LITCHFIELD: That is the date of the contract.

23 COMMISSIONER SKOP: And do you now have the redacted  
24 copy of that contract before you now?

25 MR. LITCHFIELD: If you will give me a minute, I can

1 get that. I'll have it in less than minute.

2 I'm sorry. I have it.

3 COMMISSIONER SKOP: Thank you. Some specific  
4 provisions within this contract still remain confidential,  
5 correct?

6 MR. LITCHFIELD: I believe that a few minor sections  
7 remain confidential, but in excess of probably 99 percent is  
8 publicly available.

9 COMMISSIONER SKOP: Okay. And FPL and Green Mountain  
10 Energy have not waived the confidentiality of these specific  
11 provisions within the contract, correct?

12 MR. LITCHFIELD: Well, I think it is more accurate to  
13 say that Green Mountain has continued to request that a couple  
14 of sections in this agreement remain confidential in order to  
15 preserve their competitive business interests, which are  
16 protected under Florida law as a matter of right.

17 COMMISSIONER SKOP: Mr. Litchfield, isn't it true, in  
18 fact, that Green Mountain Energy had a direct business  
19 relationship with FPL Energy, an unregulated subsidiary of FPL  
20 Group, prior to entering into this agreement? And if I could  
21 put up the slide that I have in my presentation.

22 MR. LITCHFIELD: I'm sorry. You were going to put up  
23 a slide?

24 COMMISSIONER SKOP: Well, I was. It will take a  
25 second. But, I guess, isn't it true that -- I will repeat my

1 question. Isn't it true, in fact, that Green Mountain Energy  
2 had a direct business relationship with FPL Energy, an  
3 unregulated subsidiary of FPL Group, prior to entering into  
4 this agreement?

5 MR. LITCHFIELD: I personally don't know what  
6 relationship, if any, Green Mountain has ever had with FPL  
7 Energy. I am aware as a result of this program that there have  
8 been a couple of purchases made through brokers at market  
9 prices by Green Mountain Energy in order to fill the  
10 commitments under the program. And I would add simply that,  
11 you know, as I know this Commission is well aware, FPL Energy  
12 has perhaps the largest footprint of environmental resources --

13 COMMISSIONER SKOP: Mr. Litchfield.

14 MR. LITCHFIELD: -- resources in the country.

15 COMMISSIONER SKOP: Mr. Litchfield, excuse me. That  
16 was not the answer to my question. You stated that you did not  
17 know and that is fine. I will move to my next question.

18 Are you aware of the FPL Energy wind project named  
19 Green Mountain Energy?

20 MR. LITCHFIELD: I'm sorry. Would you ask that  
21 question again, Commissioner?

22 COMMISSIONER SKOP: Are you aware of the FPL Energy  
23 wind project named Green Mountain Energy?

24 MR. LITCHFIELD: Green Mountain Energy?

25 COMMISSIONER SKOP: Are you aware of the FPL Energy

1 wind project named Green Mountain Energy?

2 MR. LITCHFIELD: I have no knowledge of any such  
3 program. I can't agree with you that such a program exists.

4 COMMISSIONER SKOP: Subject to fact, would you agree  
5 that it is on the FPL Energy website, or subject to check?

6 MR. LITCHFIELD: Commissioner, I don't have any  
7 information one way or the other to that.

8 COMMISSIONER SKOP: That's fine. I'll move on. Let  
9 me just get through my questions. We will get through this and  
10 be done with it and move on as a Commission.

11 Now, by virtue of the Sunshine Energy Program, isn't  
12 it also true that Florida Power and Light has a direct business  
13 relationship with Green Mountain Energy as illustrated in the  
14 slide projected before you?

15 MR. LITCHFIELD: I'm sorry. Is this purported to  
16 represent the relationship between Green Mountain Energy and  
17 Florida Power and Light Company in connection with this  
18 program?

19 COMMISSIONER SKOP: It is.

20 MR. LITCHFIELD: That would not be accurate then,  
21 because FPL Energy --

22 (Simultaneous conversation.)

23 COMMISSIONER SKOP: On the right side -- on the left  
24 side of the slide as you're viewing it, it accurately portrays  
25 a relationship between Green Mountain Energy and FPL.

1           MR. LITCHFIELD: Well, let me -- because I'm not sure  
2 what the graphic is supposed to represent, let me characterize  
3 the relationship. Green Mountain has a contract with FPL  
4 pursuant to which it procures TRECs at a rate of one per 10,000  
5 kwh.

6           COMMISSIONER SKOP: I understand the terms of the  
7 contract. I'm just -- I'm just -- I will move to my next  
8 question.

9           Based on -- would it also be fair to say that Green  
10 Mountain has a direct business relationship with both the  
11 unregulated subsidiary, FPL Energy, and the regulated utility,  
12 Florida Power and Light, as illustrated on the slide projected  
13 before you?

14          MR. LITCHFIELD: No, I don't think that would be  
15 accurate. As I said earlier, where Green Mountain has  
16 purchased -- it is my understanding that where Green Mountain  
17 has purchased TRECs from FPL Energy it has been not from FPL  
18 Energy, but through a broker in a TREC market.

19          COMMISSIONER SKOP: Mr. Litchfield, subject to check,  
20 if you would look at FPL Energy's website, pursuant to the  
21 block accurately identified on my chart, Green Mountain Energy  
22 wind project, the customer is Green Mountain Energy, the owner  
23 is FPL Energy, the location is Somerset County, Pennsylvania,  
24 and FPL Energy acquired the project in 8-2002, which is before  
25 the Trade Market Services agreement was signed.

1           So, again, I will take your word that you have no  
2 knowledge, but subject to check, that is my understanding of  
3 the nature of the business relationship.

4           MR. LITCHFIELD: I have no knowledge of that. That  
5 is on the FPL lease side of the house.

6           COMMISSIONER SKOP: Okay.

7           MR. LITCHFIELD: But I will tell you that even if  
8 that were so it would have no bearing on the relationship with  
9 FPL.

10          COMMISSIONER SKOP: Let me move on. Would you  
11 agree that FPL Energy --

12           (Simultaneous conversation.)

13          COMMISSIONER EDGAR: Mr. Chairman, excuse me. I'm  
14 sorry.

15          Commissioner Skop, do you have copies of this that we  
16 can have? Candidly, this is killing my neck.

17          COMMISSIONER SKOP: Well, you have it on your screen.  
18 You can --

19          COMMISSIONER EDGAR: Well, no, actually, I don't.

20          COMMISSIONER SKOP: Well, actually, I think that --  
21 okay. Is Chris around where he can do the video and put it on  
22 the screen?

23          COMMISSIONER EDGAR: You don't have hard copies?

24          COMMISSIONER SKOP: I do not have hard copies. I'm  
25 sorry.

1 COMMISSIONER EDGAR: All right. Thank you.

2 COMMISSIONER SKOP: Mr. Litchfield, will you agree  
3 that FPL Energy is the largest producer of renewable energy in  
4 the United States?

5 MR. LITCHFIELD: I'm sorry. You need to repeat that  
6 a little more slowly.

7 COMMISSIONER SKOP: Mr. Litchfield, would you agree  
8 that FPL Energy is the largest producer of renewable energy in  
9 the United States?

10 MR. LITCHFIELD: I believe that to be accurate.

11 COMMISSIONER SKOP: Would you agree that FPL Energy  
12 is the largest producer of wind power generation in the United  
13 States?

14 MR. LITCHFIELD: I also believe that that is  
15 accurate.

16 COMMISSIONER SKOP: Are you aware of the FPL Energy  
17 wind project named Horse Hollow?

18 MR. LITCHFIELD: I am aware such a project exists. I  
19 have not visited it.

20 COMMISSIONER SKOP: The project is located in the  
21 state of Texas?

22 MR. LITCHFIELD: I believe that is true.

23 COMMISSIONER SKOP: FPL Energy also owns many other  
24 wind projects in Texas?

25 MR. LITCHFIELD: I believe that is true. FPL Energy

1 owns a number of wind projects around the country. As I said,  
2 they are a very, very big player in the renewable market around  
3 the country.

4 COMMISSIONER SKOP: Again, I think it would expedite,  
5 and in the interest of being fair to my colleagues, if we could  
6 try, and where possible, give yes/no and be able to move this  
7 through a little quickly.

8 Green Mountain Energy is also based in Texas,  
9 correct?

10 MR. LITCHFIELD: That's my understanding, but I am  
11 not aware of their specific state of incorporation.

12 COMMISSIONER SKOP: Texas has a deregulated market  
13 for electricity, correct?

14 MR. LITCHFIELD: Pardon me?

15 COMMISSIONER SKOP: Texas has a deregulated market  
16 for electricity, correct?

17 MR. LITCHFIELD: It has a re-regulated market, which  
18 can mean different things in different states.

19 COMMISSIONER SKOP: Okay. Does Horse Hollow --  
20 excuse me. Does the Horse Hollow project operate as a merchant  
21 plant in the state of Texas?

22 MR. LITCHFIELD: I'm sorry. Does Horse Hollow  
23 operate a merchant plant?

24 COMMISSIONER SKOP: No. I'll slow down. Does Horse  
25 Hollow -- excuse me. Does the Horse Hollow project operate as



1 a merchant plant in the state of Texas?

2 MR. LITCHFIELD: In general, very loosely, as you use  
3 that term, I think I would agree with that, sure.

4 COMMISSIONER SKOP: So absent long-term power  
5 purchase agreements, or PPAs, the financial performance and  
6 profitability of a merchant wind plant depends on the sale of  
7 electricity to the market?

8 MR. LITCHFIELD: I'm sorry, absent long-term power  
9 purchase agreements --

10 COMMISSIONER SKOP: I will slow down and go real  
11 slow, because --

12 MR. LITCHFIELD: Commissioner Skop, let me help you  
13 out here because --

14 COMMISSIONER SKOP: Let me move through my questions.

15 MR. LITCHFIELD: Well --

16 COMMISSIONER SKOP: No. Mr. Litchfield --

17 CHAIRMAN CARTER: Give him a minute to explain his  
18 answer. You know, you have a right to ask the question and he  
19 has got a right to answer. So --

20 COMMISSIONER SKOP: I understand, Mr. Chairman, but  
21 he had his opportunity to speak and now it's my opportunity to  
22 try and ask some questions. And I have repeatedly asked to try  
23 and get a quick yes or no answer to expedite this. But every  
24 answer --

25 CHAIRMAN CARTER: Commissioner, I am not cutting you

1 off. If he can't answer yes or no, he is still entitled to  
2 answer the question.

3 COMMISSIONER SKOP: I understand.

4 CHAIRMAN CARTER: He is representing a party here  
5 before us, so he is entitled to answer the best he can. If  
6 not, then he has got other staffers here that can do that.

7 Mr. Litchfield.

8 MR. LITCHFIELD: Thank you, Mr. Chairman.

9 What I was going to say is that you are perhaps  
10 assuming that any of us here, who are all employees of Florida  
11 Power and light Company, would necessarily be plugged into all  
12 of the details on the FPL Energy side, or the Texas market, or  
13 the New Jersey market, or the California market, for that  
14 matter.

15 COMMISSIONER SKOP: I understand, sir. If you don't  
16 know the answer, you are fully free to say yes or no. I mean,  
17 or I have no knowledge.

18 MR. LITCHFIELD: Fair enough.

19 COMMISSIONER SKOP: Would you agree that the  
20 financial performance and profitability of such projects can be  
21 enhanced through the sale of attributes known as tradable  
22 renewable energy credits, or TRECs?

23 MR. LITCHFIELD: In effect, that is the purpose of  
24 selling TRECs is to make assets potentially more  
25 cost-effective, which is particularly important in the context

1 of renewable resources.

2 COMMISSIONER SKOP: Thank you. Would you also agree  
3 that the Horse Hollow project, owned by FPL Energy, generates  
4 and sells TRECs?

5 MR. LITCHFIELD: Absolutely.

6 COMMISSIONER SKOP: Pursuant to Audit Finding Number  
7 6 of the Sunshine Energy Audit Report, Green Mountain Energy  
8 through a third party purchased 74,658 TRECs from the FPL  
9 Energy Horse Hollow Texas project in 2007, correct?

10 MR. LITCHFIELD: I believe that is correct.

11 COMMISSIONER SKOP: Would you agree that Green  
12 Mountain -- would you agree that -- I'm sorry. Would you agree  
13 that the Green Mountain TREC purchase from Horse Hollow is  
14 properly illustrated on the slide projected before you?

15 That is up at the very top. It shows the relation of  
16 Horse Hollow providing TRECs to the third party that are  
17 provided to Green Mountain Energy, which ultimately went to the  
18 Sunshine Energy Program.

19 MR. LITCHFIELD: Is the third party box on your  
20 diagram intended to represent a TREC market broker?

21 COMMISSIONER SKOP: Again, due to the -- I mean, the  
22 data that I have seen, which, again, remains confidential due  
23 to business reasons, I can't identify who the third party is,  
24 but it is an arm's-length transaction.

25 MR. LITCHFIELD: Arm's-length. I think in terms -- I

1 don't know whether the identity was disclosed, but I am pretty  
2 certain that the fact that the intermediate party was a broker  
3 and that the purchase was made at arm's-length, as you  
4 indicate, was clearly made public and discussed with staff in  
5 the course of the audit.

6 COMMISSIONER SKOP: Okay. Isn't it true that the  
7 Sunshine Energy Program substantially decreased its purchase of  
8 Florida-generated TRECs on a year-to-year basis from 2006 to  
9 2007?

10 MR. LITCHFIELD: We would have to look at the data to  
11 see that. I can check with Mr. Brandt, if you will give me a  
12 minute.

13 COMMISSIONER SKOP: Okay.

14 MR. LITCHFIELD: Yes, Mr. Brandt indicates that there  
15 was a one-year decrease.

16 COMMISSIONER SKOP: Okay. But, in fact, didn't Green  
17 Mountain Energy favor an unregulated subsidiary of FPL Group  
18 when it purchased the out-of-state Horse Hollow TRECs from a  
19 third party in 2007?

20 MR. LITCHFIELD: I'm sorry. You are going to have to  
21 repeat that, please.

22 COMMISSIONER SKOP: But, in fact, didn't Green  
23 Mountain Energy favor an unregulated subsidiary of FPL Group  
24 when it purchased the out-of-state Horse Hollow TRECs from a  
25 third party in 2007?

1           MR. LITCHFIELD: No, I don't think that there is any  
2 indication that that is so at all. I think that's pure  
3 speculation. As I indicated earlier, it would be inconceivable  
4 that a program as large as FPL's Sunshine Energy Program, which  
5 as I indicated earlier is ranked fourth in sales in the  
6 country, would not, through a broker or other process, procure  
7 some TRECs from some sources that were owned by FPLE at  
8 someplace around the country. It happened to be FPL Energy  
9 Horse Hollow. So that it not surprising at all. And it was  
10 purchased at market through a broker.

11           COMMISSIONER SKOP: Okay. That's fine. But at that  
12 time Green Mountain Energy could have chosen to purchase the  
13 same number of TRECs from a non-FPL source, but did not do so,  
14 correct?

15           MR. LITCHFIELD: I'm sorry, I was consulting with my  
16 colleague.

17           COMMISSIONER SKOP: At that time Green Mountain  
18 Energy could have chosen to purchase the same number of TRECs  
19 from a non-FPL source, but did not do so, correct?

20           MR. LITCHFIELD: I don't think that there is any  
21 basis to reach that conclusion whatsoever. Green Mountain has  
22 an incentive to purchase TRECs at the lowest market price  
23 possible. That will enable them to use as many of those  
24 dollars not used on the purchase of RECs themselves to continue  
25 to market and increase the subscription rates of the program.

1 So I don't think that conclusion follows in the least.

2 COMMISSIONER SKOP: To the best of your knowledge,  
3 does Green Mountain Energy purchase TRECs from any other FPL  
4 Energy wind project in Texas?

5 MR. LITCHFIELD: I don't know, but I'm happy to check  
6 with Mr. Brandt.

7 We are not aware of any.

8 COMMISSIONER SKOP: To the best of your knowledge,  
9 does Green Mountain Energy purchase TRECs from any FPL Energy  
10 projects in the United States?

11 MR. LITCHFIELD: I don't know whether we can answer  
12 that question.

13 COMMISSIONER SKOP: Okay. Based upon the previous  
14 questions, would it be fair to say that FPL Group directly  
15 benefits financially from the existing business relationship  
16 between its unregulated subsidiary, FPL Energy, and its  
17 regulated utility, Florida Power and Light and Green Mountain  
18 Energy?

19 MR. LITCHFIELD: No, I would disagree with that. I  
20 think that's an unfair characterization. FPL Energy benefits  
21 in the REC market nationally around the country, irrespective  
22 of to whom those RECs are sold. That's part of their business  
23 model. That's part of the REC program.

24 COMMISSIONER SKOP: Fair enough. But as a regulator,  
25 I mean, I'm faced with audit results. You know, I make no

1 apologies for doing my job and asking the difficult questions.  
2 And, again, they are not disrespectful. They are just trying  
3 to ascertain the facts.

4 Has FPL Group or any of its subsidiaries or  
5 affiliates ever held a direct or indirect equity interest in  
6 Green Mountain Energy or any of its subsidiaries or affiliates?

7 MR. LITCHFIELD: I don't believe so.

8 COMMISSIONER SKOP: Has Green Mountain Energy or any  
9 of its subsidiaries or affiliates ever held a direct or  
10 indirect equity interest in any projects, partnerships, or LLCs  
11 owned by FPL Group or any of its subsidiaries or affiliates?

12 MR. LITCHFIELD: I don't know the answer to that. I  
13 don't believe so. But if that is an important fact for the  
14 disposition of this docket with this Commission, we would be  
15 happy to follow up on that.

16 COMMISSIONER SKOP: The next series of questions will  
17 be directed to Mr. Brandt. If I could please draw your  
18 attention back to the redacted version of the existing  
19 contract.

20 MR. BRANDT: Okay. Thank you, sir.

21 MR. LITCHFIELD: Commissioner Skop -- sorry,  
22 Mr. Chairman, but I think this is quite relevant.

23 Ms. Cano has just reminded that the Commission's  
24 order approving the program, in fact, stated that any TRECs  
25 purchased from FPL's affiliates in the green pricing program

1 must be purchased at market rates. And that is, in fact, what  
2 happened. And that's consistent, I think, with the audit  
3 findings.

4           COMMISSIONER SKOP: And understand, Mr. Litchfield,  
5 just so you know what my point of view is. I could care less  
6 as a regulator that FPL -- the Sunshine Energy Program as  
7 operated by FPL purchased all of its RECs directly from FPL  
8 Energy subsidiaries as long as it was at fair market and an  
9 arm's-length transaction. My problem is, is based on an audit  
10 finding, Green Mountain is an intermediary, and I can't account  
11 for \$8.6 million. So, again, my problem isn't with the  
12 arm's-length transactions or the transactions there, it's  
13 trying to put my finger on where this money went. And so if I  
14 could just, for the interest of time, please --

15           MR. LITCHFIELD: But I would disagree with the  
16 assertion that we are unable to account for \$8.6 million. I  
17 think that's a very, very gross -- it's an unfair  
18 characterization.

19           COMMISSIONER SKOP: When we get to that, when I talk  
20 to our auditor, we can address that issue.

21           Again, my next series of questions will be directed  
22 to Mr. Brandt.

23           Did FPL perform extensive due diligence of Green  
24 Mountain Energy prior to entering into the existing contract?

25           MR. BRANDT: Yes, we did.



1           COMMISSIONER SKOP: And did you actively participate  
2 in that due diligence process?

3           MR. BRANDT: No, I did not.

4           COMMISSIONER SKOP: Okay. So FPL would not be  
5 surprised to learn that Green Mountain had previously entered  
6 into a settlement agreement with the Pennsylvania Attorney  
7 General's office and paid a fine of \$100,000 in resolution of  
8 deceptive marketing practices -- in resolution of a deceptive  
9 marketing practice -- marketing practices investigation  
10 alleging that it advertised -- that its advertising materials  
11 misled consumers?

12           MR. BRANDT: I'm not aware of that, no.

13           COMMISSIONER SKOP: Okay. Is FPL aware that Green  
14 Mountain Energy appears to be offering a Texas residence, a  
15 multi-level marketing opportunity from its own website?

16           MR. LITCHFIELD: Commissioner Skop, I have an answer  
17 to your last question from Green Mountain's representative  
18 today here. The substance of that dispute in Pennsylvania was  
19 a failure to include the gross receipts tax in a --

20           COMMISSIONER SKOP: I understand.

21           MR. LITCHFIELD: -- brochure. I just want to make  
22 sure that it is not assumed that it was --

23           COMMISSIONER SKOP: And, again, I --

24           MR. LITCHFIELD: -- any more insidious than that.

25           COMMISSIONER SKOP: I'm just making sure, again, as a

1 regulator, did we do our due diligence. I didn't insinuate  
2 that it was insidious. It is just common facts that are  
3 available.

4 Is FPL aware that Green Mountain Energy appears to be  
5 offering Texas residents a multi-level marketing opportunity  
6 from its own website?

7 MR. LITCHFIELD: I don't think we agree with that.

8 COMMISSIONER SKOP: Okay.

9 MR. LITCHFIELD: I don't think we agree with that in  
10 the least.

11 COMMISSIONER SKOP: Thank you.

12 Commissioners, I have taken the time to look at the  
13 materials on the Green Mountain Energy website, and it raises  
14 several fundamental questions in my mind as to where the  
15 millions of dollars of the voluntary ratepayers may actually be  
16 going. At this point I think I would like to share a brief  
17 video segment from the Green Mountain website illustrating how  
18 people are compensated in the state of Texas for participating  
19 in the Green Mountain Energy Network.

20 (Video played.)

21 COMMISSIONER SKOP: Mr. Chairman, I need to -- hold  
22 on for one second -- correct an audio problem.

23 (Video continued.)

24 COMMISSIONER SKOP: Okay. With that in mind, I would  
25 like to go back now to Mr. Litchfield, and draw your attention

1 back to one point in passing. And you may have knowledge of  
2 this, but since you are on the regulated side, I would assume  
3 you would.

4 According to your corporate website, am I correct to  
5 understand that the entity known as FPL Energy Service, Inc.,  
6 is a subsidiary of FPL Group and an affiliate of Florida Power  
7 and Light?

8 MR. LITCHFIELD: Before I address that question, and  
9 the answer is there is such an affiliate. But let me, if you  
10 would allow me, to introduce Mr. John Holtz of Green Mountain,  
11 who I think in fairness should have an opportunity to respond  
12 and draw some distinctions between this program and the program  
13 that --

14 COMMISSIONER SKOP: We may get to him later, but I  
15 would like to continue my line of questioning. He can  
16 certainly speak later. Again, he could have spoke from the  
17 initial onset, but he chose to hide in the back. So, again, I  
18 would like to move forward with my questions.

19 CHAIRMAN CARTER: Let's don't -- Commissioner, let's  
20 just take a moment. Let's take a moment. I don't think anyone  
21 in the building is hiding. Let's just take a moment.

22 Commissioners, let's take five minutes. Let's take  
23 five minutes.

24 (Recess.)

25 CHAIRMAN CARTER: We are back on the record.

1           COMMISSIONER SKOP: Thank you, Mr. Chairman. I would  
2 like to continue my line of questions. Again, directed to  
3 Mr. Litchfield, according to your corporate website, am I  
4 correct to understand that an entity known as FPL Energy  
5 Services, Incorporated is a subsidiary of FPL Group and an  
6 affiliate of Florida Power and Light?

7           MR. LITCHFIELD: Mr. Chairman, I believe I answered  
8 that question, but pending the return after the break, I had  
9 requested the opportunity to have Mr. John Holtz of Green  
10 Mountain address or explain the context of the video segment  
11 that we just watched. He's here. He has been available. He  
12 has been in the room all day, and he would be appreciative of  
13 that opportunity, given that his company name, frankly, has  
14 been dragged through the mud a little bit.

15           CHAIRMAN CARTER: Let's do this, Commissioners, so we  
16 can move beyond Green Mountain. Let's hear from the people of  
17 Green Mountain so we can move forward from this issue and go  
18 further.

19           You're recognized, sir. Please state your name for  
20 the record.

21           MR. HOLTZ: Mr. Chairman, my name is John Holtz. I  
22 am Director of Operations for Green Mountain Energy Company.

23           CHAIRMAN CARTER: Okay. And I suppose,  
24 Mr. Litchfield, you wanted an opportunity to speak to the  
25 video, is that correct?

1 MR. LITCHFIELD: That's correct.

2 CHAIRMAN CARTER: Okay. You're recognized, sir.

3 MR. HOLTZ: Sure. I guess, first of all, just to  
4 introduce who I am, as I said, I am Director of Operations.  
5 I've been with Green Mountain since its first year in  
6 existence. I'm the second longest tenured employee at the  
7 company. And I guess in terms of having the expertise and the  
8 experience, I think that will helpful here in terms of  
9 answering your questions.

10 I have been around long enough to know about the  
11 Garrett Wind Farm, and all of the different issues that have  
12 come up here so far this evening. So if you would like me to  
13 answer what that video is, that's the Green Mountain Energy  
14 Network, which is a sales channel we use in Texas, which is a  
15 competitive market, a deregulated market where we are an  
16 electric service provider.

17 It is just one of many channels. It is an outgrowth  
18 of what we have call affinity channels, where, in the past,  
19 which is not unique to Green Mountain, a lot of utilities as  
20 well as other green power providers use it. They allow  
21 organizations to sell green power to their members, like the  
22 Sierra Club, for example, and/or some of the church groups that  
23 support renewable energy, and the organization gets to keep  
24 part of the money.

25 Renewable energy is a societal movement. A lot of

1 people want to be involved in promoting green power. And we  
2 often get volunteers who want to promote Green Mountain or  
3 renewable energy in different ways. The Green Mountain Energy  
4 Network is a sales channel that allows people to sell renewable  
5 energy for Green Mountain and make some money from it. In  
6 essence, be independent contractors or sales agents for Green  
7 Mountain without being full Green Mountain employees.

8           It is strictly limited to our competitive business in  
9 Texas, as I said. It is in no way related to any of our  
10 utility partnering programs anywhere else in the nation. So  
11 that's what that -- if I may talk about the Green Mountain wind  
12 farm in Garrett, Pennsylvania very briefly?

13           In 1999, Green Mountain Energy entered into a  
14 ten-year power purchase agreement with a company named National  
15 Wind. National Wind, in order to be able to economically  
16 develop the Garrett Wind Farm, the Green Mountain Wind Farm,  
17 and we got the naming rights, needed that long-term power  
18 purchase agreement to make it economically feasible.

19           So, long story short, we signed a ten-year power  
20 purchase agreement known by its initials as a PPA, with  
21 National Wind. We did not own the property. We didn't have  
22 any say in what they did with their wind farm, other than that  
23 we were buying the attributes for ten years, until 2009. So,  
24 in 2002, without needing any input from us, National Wind sold  
25 the Garrett Wind Farm to FPL Energy, and our power purchase

1 agreement was assigned with that sale, plain and simple.

2 In terms of the Horse Hollow situation, we saw it  
3 come up in the audit. We attempted to provide as much detail  
4 as the auditor needed. She seemed to be in a hurry to close  
5 things that week, and it didn't get fully developed.

6 Long story short, as Commissioner Skop said, it was  
7 an arm's-length relationship where we made a market price to  
8 purchase from a broker, which happened to be selling the RECs  
9 out of that particular property.

10 CHAIRMAN CARTER: One minute, Commissioner. Let me  
11 see if any other Commissioners have any questions related to  
12 Green Mountain. Commissioners, anything?

13 Commissioner Skop, you're recognized, sir.

14 COMMISSIONER SKOP: Thank you, Mr. Chairman.

15 And directed to Green Mountain, I guess, I pose the  
16 question to Mr. Litchfield. But as represented, the previously  
17 existing business transaction resulting from the FPL  
18 acquisition of the wind project located in Pennsylvania that's  
19 known as the Green Mountain Wind Project, is that accurately  
20 represented on the right side of that slide?

21 MR. LITCHFIELD: I don't think that's the way we  
22 would depict it at FPL or FPLE.

23 COMMISSIONER SKOP: Okay.

24 MR. LITCHFIELD: So it's hard for me to agree with  
25 that, Commissioner. I apologize.

1           COMMISSIONER SKOP: But we can agree if that project  
2 was acquired in August 2002 that that was prior to FPL, Florida  
3 Power and Light, entering into the trademark and services  
4 agreement in June 2003, is that correct?

5           MR. LITCHFIELD: The sale of the wind farm to FPL  
6 occurred prior to, sure. Absolutely.

7           COMMISSIONER SKOP: Thank you. Okay. Let me -- and  
8 just one part again directed to Green Mountain. And, again, I  
9 respect anyone's right to run a business, and, you know, I have  
10 reviewed your website extensively. There is the Green Mountain  
11 Energy Network and then there is the affiliate. I have seen  
12 all of that.

13           One thing I did see, though, and I thought was of  
14 interest with respect to the Green Mountain Wind Project, I  
15 guess you admitted that you guys are just the off-taker of the  
16 power under the purchased power agreement from that project  
17 that FPL Energy owns, is that correct?

18           MR. HOLTZ: The attributes, not the actual energy.

19           COMMISSIONER SKOP: Okay. Well, again, if one were  
20 to look at your website -- and, again, this is just a comment  
21 in passing, I know that you articulate all the projects  
22 throughout the nation that you have, and they are all named  
23 Green Mountain this, Green Mountain that, but is it fair to say  
24 that unless you look at that very small asterisk, which clearly  
25 details that Green Mountain doesn't own any of those projects,



1 you might wrongfully assume that Green Mountain owns them?

2 MR. HOLTZ: Green Mountain purchases the naming  
3 rights to projects because part of our business is marketing  
4 renewable energy.

5 COMMISSIONER SKOP: Thank you.

6 MR. HOLTZ: And if I could, very briefly,  
7 Mr. Chairman.

8 CHAIRMAN CARTER: Mr. Holtz.

9 MR. HOLTZ: Just to establish the credentials,  
10 because it is important since we have been asked so many  
11 questions here, just a handful of points that it is important  
12 for you to know. Green Mountain has been in business for  
13 11 years. We are the longest serving green power provider in  
14 the nation. We have been doing it longer than anybody else.

15 In fact, we actually pioneered the retail green power  
16 market. We are involved in the marketing for the three top ten  
17 utility green power programs in the nation. We have been  
18 licensed by the public service commissions as energy service  
19 providers in eight different states. We are a load-serving  
20 entity in the ERCOT PJM and New York ISOs.

21 Green Mountain is a very respected company, and we  
22 are proud to be affiliated with FPL. So, you know, we are  
23 happy to answer questions. We weren't hiding. And just to  
24 your point about hiding in the back of the room, out of respect  
25 for FPL, they were taking the lead on today's presentation.

1 And I would have been happy to come up here and read a  
2 statement, but I didn't want to step in their way.

3 COMMISSIONER SKOP: And that's fine, and I would  
4 appreciate that. To your point about Green Mountain's rich  
5 history, is it also true that Green Mountain has been through  
6 three name changes in its history?

7 MR. HOLTZ: A lot of companies have been through name  
8 changes, and let me just explain.

9 (Simultaneous conversation.)

10 COMMISSIONER SKOP: Is it true?

11 MR. HOLTZ: We have had three names, Mr. Chairman.

12 We started as the affiliate of Green Mountain Power,  
13 which is the investor-owned utility in Vermont. We chose the  
14 name Green Mountain Energy Resources to distinguish ourselves  
15 from Green Mountain Power. It was a mouthful. Then as we were  
16 building our brand, it happened to be at the height of all the  
17 dot-com activity. So we chose a pithy name, Green

18 Mountain.com, thinking it would catch on. Then we wanted to  
19 get back to people recognizing what we are all about, energy  
20 and power, so we went back to Green Mountain Energy Company.

21 COMMISSIONER SKOP: Thank you. And I would like to  
22 just in the interest of time, out of respect to my colleagues,  
23 and I do apologize, but as a Commissioner, I want to ask my  
24 questions.

25 Going back to Mr. Litchfield, I believe you answered

1 my question refreshing the Commission's response -- I mean,  
2 your response to the Commission was that the entity known as  
3 FPL Energy Services, Incorporated, is a subsidiary of FPL Group  
4 and an affiliate of Florida Power and Light, is that correct?

5 MR. LITCHFIELD: That's correct.

6 COMMISSIONER SKOP: Okay. So that would mean that  
7 FPL Energy Services, Incorporated, is considered an unregulated  
8 subsidiary of FPL Group and not directly controlled by Florida  
9 Power and Light?

10 MR. LITCHFIELD: I'm not sure that I can answer that  
11 question. Can you explain --

12 COMMISSIONER SKOP: I'm just going by what I read on  
13 your own website. If you call up FPL Energy Services,  
14 Incorporated, it states that it is a subsidiary of FPL Group  
15 and an affiliate of Florida Power and Light. And the question  
16 I have is whether FPL Energy Services, Incorporated is, in  
17 fact, considered an unregulated subsidiary of FPL Group and not  
18 directly controlled by Florida Power and Light?

19 MR. LITCHFIELD: They are not regulated in the  
20 conventional sense of the term; but, as I think you pointed out  
21 earlier, I believe that is the entity that went through the  
22 staff audit a couple of years ago and, frankly, came back with  
23 a clean audit.

24 COMMISSIONER SKOP: Great. That's good. Like I  
25 said, I never would be accusatory that anyone would be doing

1 anything wrong. It is just that as regulators we have a  
2 fiduciary duty and obligation to investigate things. That is  
3 what we get paid to do and what the Commission and our talented  
4 staff brings to the equation as part of the regulatory compact.

5 But if I could please draw your attention back to the  
6 redacted version of the existing contract.

7 MR. LITCHFIELD: What section or page would you like  
8 me to look at?

9 COMMISSIONER SKOP: The term in the definitions of  
10 1.25. So I guess let me get a copy of my --

11 MR. LITCHFIELD: Is this GM licensed marks  
12 (phonetic)?

13 COMMISSIONER SKOP: Yes, the definition section,  
14 please?

15 MR. LITCHFIELD: Yeah, I see that.

16 COMMISSIONER SKOP: Okay. Pursuant to the term  
17 defined in Paragraph 1.25 of the contract, the GM license marks  
18 means the Green Mountain -- Green Mountain Energy intellectual  
19 property set forth on Schedule 1 of the contract, correct?

20 MR. LITCHFIELD: That's what the provision states.

21 COMMISSIONER SKOP: Okay. But, in fact, as described  
22 on Schedule 1 of the Green Mountain -- on Schedule 1 of the  
23 revised redacted contract, Green Mountain contributed no  
24 intellectual property to the contract, correct?

25 MR. LITCHFIELD: I don't know the answer to that

1 question, Commissioner.

2 COMMISSIONER SKOP: That's fine. Absent the supply  
3 of TRECs, did Green Mountain Energy actually contribute a  
4 single core competency to the contract that Florida Power and  
5 Light Company did not already possess itself?

6 MR. LITCHFIELD: Well, I think that question is  
7 probably more fairly addressed to Mr. Brandt, so I'll let him  
8 respond. But, just generally, I think the thrust of FPL going  
9 into the market and issuing an RFP for a marketing entity would  
10 certainly suggest that the company was looking for somebody  
11 who was bringing third-party expertise at that point in time.  
12 I will let Mr. Brandt elaborate.

13 MR. BRANDT: Yes. I think if you think about when we  
14 launched this program this was a fairly new concept in Florida  
15 and a new concept for Florida Power and Light Company. And  
16 part of the -- one of the reasons we did the RFP was to try to  
17 find a partner to work with us that not only could help us with  
18 the supply side, but also had expertise in other markets  
19 selling renewable energy.

20 COMMISSIONER SKOP: Thank you. And, again, I'm  
21 trying to ascertain from a regulatory perspective here what  
22 Green Mountain really brought to the table, because absent the  
23 supply of TRECs, and just for the benefit of my colleagues, I'm  
24 not seeing much. Because you have a marketing group and you  
25 have capabilities and other such things and intellectual

1 property, and all that. But I just -- but in looking at  
2 Schedule 1, of the revised contract --

3 MR. BRANDT: The analogy is -- yes, FPL does have a  
4 marketing group. We use outside marketing services for all of  
5 our programs.

6 COMMISSIONER SKOP: Okay. In the sake of time, let  
7 me please move forward. And, again, all due respect, my  
8 questions, although very pointed, are necessary in light of the  
9 audit results. So, again, they are pointed questions, and I'm  
10 not being accusatory in any means. But they are questions that  
11 need to be asked, and I don't apologize for doing my job. So I  
12 don't mean them with any disrespect, but they are fair  
13 questions to ask for the public, for the Commission, in light  
14 of the audit findings.

15 MR. LITCHFIELD: With all due respect, Commissioner,  
16 and certainly you're the Commissioner, and you have the right  
17 to ask questions, but I would certainly suggest that your  
18 questions do imply and convey an accusatory tone. They are in  
19 the nature of cross-examination, not in the nature of  
20 open-ended expository type questions.

21 COMMISSIONER SKOP: Your concern and points are duly  
22 noted.

23 Is Green Mountain Energy really just a clearinghouse  
24 or mechanism that provides FPL Energy with the ability to  
25 (inaudible) 4:53:27 the TREC's generated by their projects?

1 MR. LITCHFIELD: Absolutely not.

2 COMMISSIONER SKOP: Okay. Pursuant to the term  
3 defined in Paragraph 1.21 of the contract, that FPL license  
4 mark means the FPL intellectual property set forth in Schedule  
5 2 of the contract, correct?

6 MR. LITCHFIELD: Refer me to the section again,  
7 please.

8 COMMISSIONER SKOP: It's the term defined FPL license  
9 mark in the definition section of Paragraph 1.21 of the  
10 redacted version of the contract.

11 MR. LITCHFIELD: Yes, that's what that section  
12 states.

13 COMMISSIONER SKOP: And as detailed on Schedule 2 of  
14 the contract, Florida Power and Light identified the federally  
15 registered trademark, Sunshine Energy, as its FPL license mark,  
16 is that correct?

17 MR. LITCHFIELD: I don't have Schedule 2, but my  
18 assumption is that would be accurate.

19 COMMISSIONER SKOP: But, in fact, as of the date of  
20 the contract, Florida Power and Light did not actually own the  
21 federally registered Sunshine Energy trademark, correct?

22 MR. LITCHFIELD: Well, I don't know that that is  
23 correct. I don't have any of FPL's intellectual property  
24 lawyers tonight to answer that. But, no, I don't know that  
25 that's correct.

1           COMMISSIONER SKOP: I'm a little rusty on my  
2 intellectual property law, I did that in law school, but  
3 subject to check, you wouldn't dispute the fact that according  
4 to the United States Patent and Trademark Office, the Sunshine  
5 Energy mark was actually filed by FPL Energy Services, Inc. on  
6 July 27th, 1998, and was registered to that same entity on May  
7 15th, 2001?

8           MR. LITCHFIELD: What I would prefer to do if, again,  
9 if this is a piece of information that the Commission feels is  
10 dispositive of this particular issue or would move the  
11 Commission toward a decision, I'm happy to provide any type of  
12 information as a follow-up, if necessary. I just don't have  
13 any way of verifying that here tonight, Commissioner.

14           COMMISSIONER SKOP: Okay. Subject to check, you  
15 wouldn't also dispute the fact that according to the United  
16 States Trademark and Patent Office, nearly a year later after  
17 the date of the contract the Sunshine Energy mark was legally  
18 conveyed to Florida Power and Light Company from FPL Energy  
19 Services, Inc. on April 5th, 2004, and was recorded by the  
20 United States Patent and Trademark Office on May 10th, 2004?

21           MR. LITCHFIELD: Again, my answer would be the same.  
22 I just am not in a position to confirm those details without  
23 having our intellectual property lawyer pull the file and  
24 review those.

25           COMMISSIONER SKOP: Okay. If I could please refer



1 you to Section 11.3 of the redacted contract, and referring to  
2 Section 11.3 of the contract, and assuming that the Sunshine  
3 Energy trademark had been properly conveyed to Florida Power  
4 and Light Company prior to entering the contract --

5 MR. LITCHFIELD: I'm sorry, assuming what,  
6 Commissioner?

7 COMMISSIONER SKOP: Okay. I'll slow down. Referring  
8 to Section 11.3 of the contract.

9 MR. LITCHFIELD: I see that.

10 COMMISSIONER SKOP: And assuming that the Sunshine  
11 Energy trademark had properly -- had been properly conveyed to  
12 Florida Power and Light Company prior to entering the contract,  
13 why would Florida Power and Light Company agree to pay Green  
14 Mountain Energy millions of dollars to market a brand which FPL  
15 already owned?

16 MR. LITCHFIELD: Well, I think -- you know, I was not  
17 involved in the negotiation of the agreement, so I'm speaking  
18 here, obviously, at a general level. But in negotiating any  
19 agreement of a commercial nature there are puts and takes, and  
20 my impression is that this was part of the quid pro quo in  
21 Green Mountain agreeing to become, you know, essentially the  
22 marketing agent for the TREC program at issue here,  
23 Commissioner.

24 COMMISSIONER ARGENZIANO: Okay.

25 MR. LITCHFIELD: And that was a term of the contract

1 in the event that the program is terminated not before the  
2 Commission had approved it, but after the Commission had  
3 approved it. I think the expectation on the part of Green  
4 Mountain would be if the program would continue to go forward,  
5 they are going to invest a great deal of money in the marketing  
6 and in making commitments on the solar projects, and I think  
7 they have a fair expectation to have those dollars returned at  
8 some point if the commission is terminated.

9 COMMISSIONER SKOP: Okay. And with respect to that  
10 same provision, why would Florida Power and Light Company  
11 relinquish the right to use its own intellectual property on a  
12 forward-going basis if it failed to pay the full amount of the  
13 termination fee pursuant to Section 20.4 of the contract?

14 MR. LITCHFIELD: I think I just answered that  
15 question, Commissioner.

16 COMMISSIONER SKOP: That was my next question I  
17 heard. I heard an answer, but, again, you must be reading my  
18 mind, I think.

19 Is FPL willing to pay the termination fee to Green  
20 Mountain Energy?

21 MR. LITCHFIELD: Well, that's a question I don't  
22 think that I'm prepared to answer without reference to actual  
23 facts and, obviously, consultation with management.

24 COMMISSIONER SKOP: Okay. At this point I think I  
25 would like to move my discussion to the program management

1 aspects of the contract.

2 FPL has paid an administrative fee to manage the  
3 Sunshine Energy Program, correct?

4 MR. LITCHFIELD: Let me let Mr. Brandt answer that,  
5 because I think it probably needs to be put in the right  
6 context.

7 MR. BRANDT: I am not sure when you say were paid.

8 COMMISSIONER SKOP: FPL is paid an administrative fee  
9 to manage the Sunshine Energy Program, correct?

10 MR. BRANDT: Sixty-five cents of every 9.35 that is  
11 collected from customers FPL uses.

12 COMMISSIONER SKOP: Okay. So, again, my next  
13 question would have been, as stated in the FPL response to  
14 Staff Interrogatory 11, FPL retains 65 cents of the  
15 9.75 contribution from each customer per month for program  
16 management and administrative costs, is that correct?

17 MR. BRANDT: That's correct.

18 COMMISSIONER SKOP: Okay. Now, pursuant to  
19 Section 18 of the redacted contract, Green Mountain Energy,  
20 under its contractual commitment to FPL, has the sole  
21 obligation to construct the solar resource projects, correct?

22 MR. BRANDT: I don't believe that is correct. I  
23 believe they have a commitment to build solar projects, but not  
24 the sole commitment.

25 COMMISSIONER SKOP: Mr. Brandt, are you an attorney?

1 MR. BRANDT: No, I'm not.

2 COMMISSIONER SKOP: Okay. I will move on with my  
3 question just for the sake of time, because it is enough for me  
4 to get the questions out there.

5 Would you be surprised -- or let me ask that question  
6 of Mr. Litchfield. Pursuant to Section 18 of the redacted  
7 contract, Green Mountain Energy under its contractual  
8 commitment to FPL has the sole obligation to construct the  
9 solar resource projects?

10 MR. LITCHFIELD: Give me a chance to read Section 18.  
11 I will see if I can answer your question. Section 18 in its  
12 entirety, or were you focusing on 18.1 or 18.2?

13 COMMISSIONER SKOP: I believe on 18 -- well, both  
14 under Section 18, because it articulates two different  
15 commitments, the initial commitment and the general commitment,  
16 which encompasses the initial commitment. But, I guess -- you  
17 know, I understand this may be catching you a little bit cold,  
18 but for a company that's, you know, actively marketing this  
19 program, it is disappointing that we don't have a commanding  
20 knowledge of the contractual provisions that govern this.  
21 We're talking about millions and millions of dollars here.

22 MR. LITCHFIELD: Well, Commissioner Skop, we have, as  
23 you know, many lawyers at FPL, and the same lawyer does not  
24 work on all aspects of every project. I'm reading it, and I'm  
25 happy to give you an answer, and I believe I will have an

1 answer for you.

2 COMMISSIONER SKOP: Okay.

3 MR. LITCHFIELD: No, I would disagree with the  
4 assertion that under the contract Green Mountain would be the  
5 sole constructor of solar assets. In fact, I believe there may  
6 be at least one project under the program that FPL has  
7 constructed.

8 COMMISSIONER SKOP: Okay. Well, I don't want to  
9 debate or belittle the issues, but I'm going to read from 18.1,  
10 general commitment, "Subject to 18.2, Green Mountain commits to  
11 supply FPL with 150 kilowatts of solar resource capacity in  
12 licensed territory for every 10,000 customers enrolled in the  
13 FPL green pricing program, the solar resource construction  
14 standard." And it goes on from that and it articulates it.

15 The provision that you are referring to is a  
16 permissive provision, and I believe that provision is detailed  
17 appropriately in section -- bear with me for one second --  
18 Section 15.3 of the contract, which is permissive, if FPL, or  
19 an FPL affiliate of FPL Group Company, or any other entity  
20 related to FPL builds one or more solar generation facilities.

21 Obviously, we are paying them as by your own  
22 admission, and I think that you -- there is a redacted number  
23 that you mentioned, but I'm not going to get into that. But  
24 out of the lion's share of the money that's being collected it  
25 is all going to Green Mountain. And it seems to me that they

1 have a direct contractual obligation under that contract. But  
2 I will move forward.

3 MR. LITCHFIELD: I'm not sure that we have connected  
4 on the question and answer here, Commissioner.

5 COMMISSIONER SKOP: Okay. Well, I would rather just  
6 move forward with my questions and we will see where we go.

7 FPL, under the existing contract, trade market  
8 services agreement, FPL has no obligation under the contract to  
9 assist Green Mountain Energy with performing its contractual  
10 obligations pursuant to Section 18 of the redacted contract,  
11 correct?

12 MR. LITCHFIELD: Pursuant to Section 18?

13 COMMISSIONER SKOP: Yes.

14 MR. LITCHFIELD: I don't know the answer to that  
15 without reviewing the contract at this point.

16 COMMISSIONER SKOP: Okay. Well, you know, as noted  
17 this is a docketed item before the Commission. I mean,  
18 frankly, I would expect legal staff -- I seem to be more  
19 prepared than FPL here. You know, I have had a year to  
20 prepare, but, unfortunately, this problem has remained.

21 But let me move forward in my question. FPL paid for  
22 the solar array, the two -- FPL paid for the two kilowatt solar  
23 array installed at the Miami Science Center in 2006, correct?

24 MR. LITCHFIELD: I believe that's right.

25 MR. BRANDT: That's correct.

1           COMMISSIONER SKOP: Okay. But FPL is counting that  
2 array towards Green Mountain Energy's solar resource project  
3 commitment in Section 18.1 of the redacted contract, correct?

4           MR. BRANDT: I don't believe that is correct.

5           COMMISSIONER SKOP: Yes or no?

6           MR. BRANDT: No.

7           COMMISSIONER SKOP: Can I refer -- if staff could  
8 speak to that. Is the number that FPL is providing in the  
9 staff recommendation, I think -- I'm going to skip the time of  
10 going to a specific page, but it is my understanding that that  
11 array at the Miami Science Center is clearly claimed by FPL as  
12 meeting its requirements. Would staff agree with that?

13           MS. HARLOW: Commissioner, it's our understanding  
14 that this a list, as you know, on Page 6 of the recommendation  
15 for the other Commissioners that FPL provided to us of the  
16 programs that have been -- projects that have been developed as  
17 a result of the program.

18           COMMISSIONER SKOP: Okay, thank you. And I'll move  
19 on.

20           MS. HARLOW: And these same projects, that project in  
21 particular, was also identified in the audit.

22           COMMISSIONER SKOP: And I'm aware of that. Thank  
23 you.

24           Does FPL own the Miami array?

25           MR. BRANDT: No. No, they don't.

1 COMMISSIONER SKOP: Does Green Mountain own the Miami  
2 array?

3 MR. BRANDT: Just to be clear, the Miami Museum  
4 array?

5 COMMISSIONER SKOP: Yes.

6 MR. BRANDT: No, they do not.

7 COMMISSIONER SKOP: Okay. Does FPL own the green  
8 tags or TRECs from the Miami array?

9 MR. BRANDT: Yes.

10 COMMISSIONER SKOP: Okay. Does FPL sell the green  
11 tags from Miami array to Green Mountain Energy pursuant to  
12 Section 15.3 of the redacted contract?

13 MR. BRANDT: We have not.

14 COMMISSIONER SKOP: Is FPL the alter ego of Green  
15 Mountain Energy?

16 MR. LITCHFIELD: I don't even understand that  
17 question.

18 COMMISSIONER SKOP: Well, let me develop my line of  
19 questioning and maybe it will become more apparent.

20 Why is FPL performing Green Mountain Energy's  
21 obligation under Section 18 of the contract?

22 MR. LITCHFIELD: They are not, Commissioner.

23 COMMISSIONER SKOP: Okay.

24 MR. LITCHFIELD: Again, putting it in perspective,  
25 this is -- we can agree --



1 COMMISSIONER SKOP: Let me just move forward.

2 MR. LITCHFIELD: This commitment is ancillary for the  
3 program --

4 (Simultaneous conversation).

5 COMMISSIONER SKOP: Mr. Litchfield, with all due  
6 respect --

7 (Simultaneous conversation).

8 COMMISSIONER SKOP: Mr. Litchfield. Mr. Litchfield,  
9 please. That is not the way it was represented to this  
10 Commission. It is not the way it was represented in the public  
11 light. I would be happy to pull out all of the orders and show  
12 you where it was expressly, not impliedly stated, that this  
13 commitment would be met when it was presented to the Commission  
14 for approval. I have seen it in the press. The obligation is  
15 not being met. I mean, you guys claim it is. Green Mountain  
16 claims it is. We can agree to disagree on the issue, but I am  
17 just going to forward on my questions.

18 MR. LITCHFIELD: Commissioner, let me clarify,  
19 because I want to make sure that we are clear on this. We have  
20 never resisted this contention. Clearly, Green Mountain  
21 struggled early to meet the first two or three milestones of  
22 150 kilowatts of power.

23 COMMISSIONER SKOP: Mr. Litchfield, I will develop  
24 that in my line of questions. I would prefer that you let me  
25 ask my questions.

1 MR. LITCHFIELD: Mr. Chairman, I feel that we are  
2 being cross-examined here in an evidentiary hearing, which is  
3 certainly not what we had envisioned would occur here today.  
4 Now --

5 CHAIRMAN CARTER: Commissioner, I'm inclined to agree  
6 with Mr. Litchfield on this. I think that -- you know, if we  
7 have got questions, we probably can ask questions. But,  
8 really -- I mean, we have got the docket in front of us. We  
9 have got staff's recommendation, and we probably need to deal  
10 with the facts as presented to us in the case before us.

11 COMMISSIONER SKOP: All right. Mr. Chairman, these  
12 are part of the facts in the case before us. The contract was  
13 clearly referenced in the Commission orders. Again, I am  
14 entitled as an equal Commissioner to ask the questions that  
15 need to be asked, and I can't -- you know, if FPL doesn't like  
16 it, I'm sorry, but I need to ask my questions.

17 CHAIRMAN CARTER: One second, Commissioner.  
18 Commissioner Argenziano, you're recognized.

19 COMMISSIONER ARGENZIANO: Perhaps -- and Commissioner  
20 Skop, obviously, has been very involved in the issue. Perhaps  
21 if you ask the question, just plainly ask the question and let  
22 FPL respond to the question, and then continue with your  
23 questioning, and I think maybe then we can get to the end of  
24 the questioning. Instead of it being adversarial at this  
25 point, just ask your -- because there's legitimate questions

1 that you have, we need to hear them, but ask them and let him  
2 respond. And maybe we can move forward.

3 COMMISSIONER SKOP: Works for me.

4 COMMISSIONER ARGENZIANO: Thank you, Mr. Chairman.

5 CHAIRMAN CARTER: Thank you, Commissioner. I  
6 appreciate that.

7 COMMISSIONER SKOP: And thank you, Commissioner, for  
8 offering that.

9 At the time FPL sought final approval of the Sunshine  
10 Energy Program from the PSC in August 2006, the FPL petition  
11 did not disclose the fact that Green Mountain Energy was not  
12 meeting its solar build-out obligations in 2005 and 2006,  
13 correct?

14 MR. LITCHFIELD: I believe that is accurate. But,  
15 again, I would point out that that was not the principal thrust  
16 of the program. Again, the handout, the one that we went  
17 through before, 602 equivalent megawatts compared to less than  
18 one-half of a megawatt. If you were in New Orleans, it would  
19 be -- the term that would be used to describe this aspect of  
20 the program would be lanyap. It was not the principal thrust  
21 of the program ever.

22 COMMISSIONER SKOP: And I appreciate that response,  
23 Mr. Litchfield, but I think if any objective person would take  
24 a look at the Commission documents and the pleadings that FPL  
25 made, I would adamantly disagree with that. And I could even

1 go to our staff, because I think that the impression, as it was  
2 portrayed in the public light as well as to this Commission, is  
3 that was a requirement.

4 But moving forward. At the time FPL sought final  
5 approval of the Sunshine Energy Program during the  
6 October 24th, 2006, Agenda Conference, did FPL disclose the  
7 fact that Green Mountain Energy was not meeting its solar  
8 build-out obligations in 2005 and 2006?

9 MR. LITCHFIELD: Again, I would have to defer to Mr.  
10 Brandt as to whether that information was provided to staff in  
11 connection with any discourse, dialogue, or discovery. I don't  
12 know the answer to that sitting here now.

13 But, again, I would point out that when you say that  
14 the 150 kW commitment per 10,000 -- which 150 kW, just to put  
15 it in perspective, is enough to power on a peak basis about  
16 30 customer homes, 30. It really was an incidental aspect of  
17 the program, and we felt confident at the time that Green  
18 Mountain could catch up to that commitment under the contract.  
19 They did wind up completing construction of, at the time,  
20 today, to date, the largest solar array in the state of Florida  
21 in --

22 (Simultaneous conversation.)

23 COMMISSIONER SKOP: And with all due respect,  
24 Mr. Litchfield, for something that you claim is an incidental  
25 requirement, you certainly don't have any reservations about

1 bragging about that program. I mean, you know, I am seeing an  
2 inconsistency there. With all due respect, I have it on a hard  
3 bill to follow. I can look at the Commission pleadings, the  
4 Commission documents, the Commission audits, and I don't think  
5 any of my staff here would disagree that that was an expressed  
6 provision. So it can't be a sliding scale, one minute it's  
7 important and the next minute it is not, because it is  
8 represented to your voluntary ratepayers who are paying all  
9 this money with the expectation that you are going to give them  
10 what they delivered -- I mean, what you promised. I mean,  
11 that's an expressed provision.

12 MR. HOLTZ: To expand on Mr. Litchfield's response,  
13 as you know from reading the contract, it states that Green  
14 Mountain will use its commercial reasonable efforts to make  
15 that happen. And you know --

16 (Simultaneous conversation.)

17 CHAIRMAN CARTER: One second. One second.

18 MR. HOLTZ: And you are right. You are right. We  
19 were late. But the important thing is --

20 COMMISSIONER SKOP: Thank you.

21 MR. HOLTZ: -- we caught up, and we are now way  
22 ahead. As of this morning, 492 kilowatts have been built, far  
23 exceeding the requirement.

24 COMMISSIONER SKOP: I disagree with your assessment,  
25 and I will get to that in the course of my ongoing discussion.

1           CHAIRMAN CARTER: Commissioner, just for the sake of  
2 planning purposes for the Commissioners, can you give us some  
3 idea as to how many more questions you have here?

4           COMMISSIONER SKOP: I approximately have -- it  
5 looks -- it appears to be probably about 30 -- not 30, about  
6 20 quick questions. Again, they will go a lot quicker if I  
7 could just get a yes/no answer, and I would move on to my other  
8 issue, and then we can be done with this.

9           But out of respect, you know, I have been waiting a  
10 long time to be able to speak openly in the public light about  
11 these concerns that I have about this program. And, frankly,  
12 with all due respect, Mr. Chairman, if the company is going to  
13 come in here with a straight face and try and spin the story,  
14 frankly, I should be able to articulate why that -- that what  
15 they are positing is not accurate.

16           And, frankly, again, I just would really appreciate  
17 the consideration of my colleagues in just letting me do what I  
18 have been, you know -- obviously, I have put some time into  
19 this, and I think it is very important on behalf of the nearly  
20 39,000 voluntary ratepayers to bring this to light. And I  
21 don't mean any disrespect to FPL. And I know that they  
22 probably feel to the contrary, but the bottom line is we are  
23 talking about a lot of money and lot of people that, frankly,  
24 need to be looked after, and that's part of our job as  
25 Commissioners is upholding the public trust and interest. And

1 so, again, if I could just move forward real quick.

2 CHAIRMAN CARTER: Let me just say this, Commissioner.  
3 All of us take our jobs seriously.

4 COMMISSIONER SKOP: I understand that.

5 CHAIRMAN CARTER: And we know what our jobs are. If  
6 you want to make a statement about the case, you feel free to  
7 make the statement. You really don't have to go through that.  
8 The facts are what they are. We have all read the case. We  
9 have had staff present that. And, I mean, if there are some  
10 things that are on your heart, you can go ahead and say that.

11 COMMISSIONER SKOP: It's necessary. And I might be  
12 able to cut through some of this, because I finally just got an  
13 admission for the first time from -- what I feel from Green  
14 Mountain is that they are not there. But I disagree with the  
15 number, and I think it's very important to articulate --

16 MR. HOLTZ: We are there and beyond.

17 COMMISSIONER SKOP: Okay. I'm a regulator. We're  
18 the Commission. You're a vendor to FPL. And I think that you  
19 can say affirmatively you are there. And I think it is my  
20 prerogative, sir, to be able to say I don't think you are. So  
21 let me say what I need to say. And the quicker I can say what  
22 I need to say, we can get through this and be done.

23 MR. LITCHFIELD: Mr. Chairman, may I make one  
24 suggestion, and this maybe follows on what I thought you might  
25 be suggesting, and that is if Mr. Skop could simply go through

1 the points that he would like to make, and then we can respond,  
2 and that would get to it all at once.

3 COMMISSIONER SKOP: That's what I would like to do.

4 COMMISSIONER EDGAR: Mr. Chairman, if I may.

5 CHAIRMAN CARTER: Commissioner.

6 COMMISSIONER EDGAR: Thank you. And I really  
7 appreciate the passion that you have exhibited about this  
8 project and this issue, and I appreciate all the time that you  
9 have put into it. I know that all of us need to pick and  
10 choose, and that is part of the value of having five, because  
11 we can't all pour full-time into every single issue. And so I  
12 appreciate the time that you have spent. And maybe it's just  
13 because I am tired, but I'm not completely catching with where  
14 you're going.

15 And so I guess what I would ask, when we started the  
16 discussion on this item -- and it has been a long day, so I  
17 apologize for being a little tired. But when we opened up the  
18 discussion on this item, I know I expressed some interest in  
19 lessons learned, but moving beyond this program and maybe  
20 terminating it. I do think that that may be the right way to  
21 go without being accusatory or punitive, but just lessons have  
22 been learned, and we have a lot going on in this state on  
23 renewable, and so I'm interested in discussing that as a  
24 potential resolution to the item that is before us, and I'm  
25 just not sure where you are trying to take us.



1           COMMISSIONER SKOP: And I will try and, you know, go  
2 down that path and give a quick outline. Where I am is I'm  
3 nearing the end of my discussion regarding the existing  
4 contract. I briefly would like to, after the conclusion of  
5 that, address the FPL proposed modification and why the  
6 proposed modification should be rejected by the Commission.

7           I would like to briefly speak to the audit results,  
8 and I would like to briefly speak to the remedy. It seems that  
9 the consensus of this Commission is just merely to let FPL off  
10 the hook. And, frankly, I think we are past that point of no  
11 return. I mean, the bottom line is that I don't see in good  
12 faith -- I mean, it's been echoed by the consumers that --  
13 that -- you know, I just -- Commissioner Edgar, I mean, with  
14 all due respect, I can't support just terminating the program.  
15 I mean, I can't get to that.

16           But I need to go through what I need to do to  
17 preserve it for the record to -- for whatever, and I will try  
18 to do it as quickly as possible. But doing this and just  
19 terminating it and letting FPL off the hook and Green Mountain  
20 walk away with millions of dollars just isn't going to reflect  
21 well upon the Commission. And --

22           COMMISSIONER EDGAR: I don't believe that I have  
23 suggested that anybody walk away with millions of dollars.

24           COMMISSIONER SKOP: Well, I --

25           CHAIRMAN CARTER: Wait a minute, Commissioner. Let

1 her finish.

2           COMMISSIONER EDGAR: What I have suggested is trying  
3 to bring us back a little bit to the item that is before us so  
4 that we can, as a group, come to some resolution with the  
5 issues that are before us. And that is where I would like to  
6 see us spend the rest of our time while we are gathered  
7 together this evening.

8           But millions of dollars being left hanging, I mean, I  
9 have said nothing along those lines. And, quite frankly, I  
10 have not implied it, either.

11           COMMISSIONER SKOP: Thank you. And I appreciate  
12 that. Because, again, that was not clear to me, and I do  
13 respect the views of my colleagues.

14           I will try and work through this real quick. I mean,  
15 I have some questions, and I want to get us back on track. It  
16 has been a long day. We have additional items. But I am -- I  
17 think the status is, is Green Mountain has finally admitted  
18 that they are not behind, but they claim they are where they  
19 need to be. And I just need to flesh that out a little bit,  
20 and I promise I will move on.

21           But what concerns me the most, and I think it  
22 concerns our staff, is the duty of candor that an entity would  
23 have to this Commission when they appear before us. And,  
24 frankly, just to summarize -- and, again, I won't go through  
25 the line of questioning, but, you know, they didn't, in my

1 mind -- and I have read the transcripts, and although I was not  
2 at the Commission, they didn't disclose the fact that Green  
3 Mountain was behind in its obligation when they sought final  
4 approval. And that's a problem. They didn't do it in the  
5 pleading, and they didn't do it at the hearing.

6           Likewise, it is also a problem that when they sought  
7 final approval they didn't disclose the existence of two side  
8 letter agreements to the trademark and license service  
9 agreement. I found out about that the first time in reading  
10 the first paragraph of the revised contracts. So it's a  
11 problem when you come in here before this Commission and you  
12 are less than candid. Because, frankly, this Commission  
13 detrimentally relied upon what was being represented to us and,  
14 you know, clearly there are problems here, as staff has  
15 properly point it out.

16           MR. LITCHFIELD: Mr. Chairman, again, I take strong  
17 exception to any insinuation that FPL has been less than  
18 straightforward, or candid, or honest, or ethical with respect  
19 to this program. Absolute exception to that on behalf of the  
20 company.

21           COMMISSIONER SKOP: Let me go real quick in rebuttal  
22 to that and we will move on. Mr. --

23           CHAIRMAN CARTER: Hang on a second. Commissioners,  
24 let's do this. Commissioner, let's have our discussion here,  
25 and -- because here is where we need to go. We've had -- I

1 mean, we've got the case in front us. Staff has already given  
2 us recommendations. You know, I told you up front where I am  
3 coming from based upon the fact that if we lose credibility  
4 with the ratepayers who voluntarily participated in this  
5 program, we will never get that again.

6 And as I say, I feel strongly about termination of  
7 the project. Commissioner McMurrian has spoken about  
8 termination. Commissioner Edgar has spoken of termination.  
9 And, Commissioner, we all got -- we all feel about this issue,  
10 and, I mean, I have given you great leeway, but we have all got  
11 an opinion on this. So let's get into debate so we can move  
12 forward.

13 COMMISSIONER SKOP: Mr. Chairman, with all due  
14 respect, and I hope that there will be some support for this.  
15 Frankly, there's a lot that is not discussed in the staff  
16 recommendation that is clearly part of this program and I am  
17 trying to articulate clearly some of these points. You know, I  
18 think that if we were -- and I want to at some point -- just  
19 give me a little bit of latitude as deference as a colleague.  
20 I will get us back on point. But it is important and it's  
21 relevant to the remedy that this Commission adopts.

22 Because when you see some of these things, it puts it  
23 in perspective of, you know, Mr. Litchfield defends his  
24 company. I think that if we were to ask our general counsel in  
25 a brief response whether he thought FPL could have been more

1 open when they came before the Commission, what would you say  
2 to that, Mr. Cooke?

3 CHAIRMAN CARTER: I think that would be an unfair  
4 question for our General Counsel, Commissioner.

5 COMMISSIONER SKOP: He certainly has an opinion,  
6 Mr. Chair. Why can't we let our staff speak?

7 CHAIRMAN CARTER: I don't think that would be  
8 appropriate --

9 COMMISSIONER SKOP: Why not?

10 CHAIRMAN CARTER: -- for our General Counsel to give  
11 an opinion about what a party to an action --

12 COMMISSIONER SKOP: I just feel, Mr. Chair, with all  
13 due respect, I'm making relevant points and just because --  
14 merely because of the fact that they are inconvenient and  
15 embarrassing to FPL, or FPL disagrees them, that shouldn't mean  
16 I should not be allowed to make valid points. And if anyone on  
17 staff disagrees with me, that I am off the rocker on that  
18 one --

19 CHAIRMAN CARTER: One moment, Commissioner.  
20 Commissioner Argenziano.

21 COMMISSIONER ARGENZIANO: How about -- okay, I think  
22 the Commission tries always to adhere to another Commissioner's  
23 valid concerns, or concerns, and I think we are trying to do  
24 that. How about if we -- if we can pull it together really  
25 quick -- you have done a lot of work on this, as Commissioner

1 Edgar had mentioned, and you have questions that you really  
2 want answered.

3 COMMISSIONER SKOP: Right.

4 COMMISSIONER ARGENZIANO: Can you do it -- I just  
5 don't know any other way to say this. Can you do it just  
6 asking questions? Not being accusatory, or one way or the  
7 other, trying to derive information that you do need from the  
8 company, and do it in a way where we can actually move through  
9 the questions, instead of having to debate for 20 minutes about  
10 one question, and maybe move on. And let's give you the  
11 opportunity to get those out as quickly as you can now. Maybe  
12 we can really make it real concise and nonaccusatory, and I  
13 think that will go a long way.

14 COMMISSIONER SKOP: Okay. And I, again, thank you.  
15 And I've not tried to be accusatory. I'm trying to extract  
16 information. Got it. Got it.

17 Quick question to the -- to FPL. Section 18.1(i) of  
18 the redacted contract -- and, again, I'll skip the discussion  
19 about whether performance was managed to contract, whether  
20 Green Mountain performed in the contract, because I think that  
21 they have stipulated in some parts to that. But under Section  
22 18.1(i) of the redacted contract, FPL has to enter into a power  
23 purchase agreement to purchase all energy generated from the  
24 solar resource project at FPL's avoided available cost,  
25 correct? That's 18.1(i).

1 MR. LITCHFIELD: Yes. You are simply reading from  
2 18.1, right.

3 COMMISSIONER SKOP: Therefore -- and, again, I don't  
4 know if you have it before you, but would you agree that the  
5 language of Section 2 of the Bee Ridge Solar Facility -- I  
6 mean, Bee Ridge Solar PV facility PPA is consistent with the  
7 terms of Section 18.1(i) of the redacted contract?

8 MR. LITCHFIELD: I'm sorry. You're going to have to  
9 focus me. What are you referring to, Commissioner?

10 COMMISSIONER SKOP: There is a document that FPL  
11 provided to the Commission that is not confidential, and it is  
12 Section 2 of the Bee Ridge Solar PV facility PPA.

13 MR. LITCHFIELD: I don't believe I have that here  
14 with me.

15 COMMISSIONER SKOP: Okay. All right. I will move  
16 forward. Section --

17 CHAIRMAN CARTER: Commissioner Argenziano.

18 COMMISSIONER ARGENZIANO: Is there a reason -- is  
19 there a reason to rush through this? Is there a way to bring  
20 this back another time? I don't know if that is what the  
21 company wants or what the Commissioner wants, but is it better  
22 to --

23 COMMISSIONER SKOP: I rush through it. I'm trying to  
24 make a point. The point was made by Green Mountain --

25 COMMISSIONER ARGENZIANO: I just wanted to see if

1 that was amenable, if that's something you would rather do than  
2 rushing through it.

3 COMMISSIONER SKOP: I would rather rush through it  
4 and just get the decision and be done with it. Because, again,  
5 this Commission's resources are very valuable to me and to our  
6 staff. And I apologize to my colleagues, but, again, there is  
7 a lot here that is technical in nature.

8 But just to Mr. Litchfield real quick, and then to  
9 Mr. Trapp. Section 18.1 of the redacted contract doesn't say  
10 net energy delivered, does it?

11 MR. LITCHFIELD: Are you asking whether those words  
12 appear in 18.1?

13 COMMISSIONER SKOP: Yes, sir.

14 MR. LITCHFIELD: They don't appear in 18.1.

15 COMMISSIONER SKOP: And a question to the technical  
16 staff, Mr. Trapp, just real quick, and we will be done with  
17 this.

18 Mr. Trapp, good afternoon. Based upon my two  
19 previous questions, would you agree that the net metered  
20 residential PV solar installations that Green Mountain Energy  
21 and FPL are claiming to meet -- or claiming credit for do not  
22 meet the requirements of Section 18.1 of the redacted contract?

23 MR. TRAPP: Yes, I would agree with that.

24 COMMISSIONER SKOP: Okay, thank you. Now, neither  
25 Green Mountain Energy or FPL actually own any of the net



1 metered PV residential solar installations that they are  
2 claiming credit for under 18.1, correct?

3 MR. BRANDT: That's correct.

4 COMMISSIONER SKOP: Did the Commission ever approve  
5 the Sun Fund's rebates?

6 MR. BRANDT: No, they didn't.

7 MR. LITCHFIELD: Are you asking whether they approved  
8 the leveraging of those funds in connection with the program?

9 COMMISSIONER SKOP: I'm just asking whether the  
10 Commission ever expressly approved the Sun Fund rebates,  
11 because, I guess, the word rebate was never used in the  
12 agreement or any of the Commission orders.

13 And I'll make my point. If we could call up the next  
14 slide, please. I think the point that I'm trying to get to is  
15 that, for me -- and I apologize, Commissioners, but I think  
16 that this is where, again, I'm having to answer some difficult  
17 questions as to where the money is going. I am hearing two  
18 stories, one from our auditors and one from FPL.

19 But, basically, I have done a quick analysis of  
20 maximizing profit, the self-build versus  
21 contribution-in-aid-of-construction. A self-build option would  
22 be building the array and owning it yourself. Basically, PV  
23 cost is 8 or 10,000 per kilowatt. I think that is a fair  
24 assessment. Contractual requirements, 150 kilowatts per 10,000  
25 customers. You would own it outright. The total cost would be

1 \$1.5 million.

2 Contribution-in-aid-of-construction, which is, I  
3 think, what is being done here, because they don't own it, and  
4 they are only given a fraction, and I don't think staff would  
5 disagree with that. PV cost of 1,500 per kilowatt, small  
6 array. That is the value of the Sun Funds that were given.  
7 Contract requirement, 150 kilowatts per 10,000 customers. Zero  
8 ownership. Total cost \$225,000. So, you know, it's  
9 substantially cheaper, and you can maximize profit, to do it by  
10 the fractional basis versus actually building something and  
11 owning it.

12 Next slide, please. Next slide, please.

13 MR. LITCHFIELD: May I respond, Mr. Chairman? The  
14 program is not about maximizing profit. The program is about  
15 maximizing kWh sales. And to the extent that we can leverage  
16 the funds of this program in connection with other rebates that  
17 are available and provide, if you will, to borrow a phrase  
18 that's very popular these days, the tipping point, for a  
19 program -- excuse me, for a resource option to be constructed,  
20 and that is a good thing, that results in better use, more  
21 efficient use of the program funds.

22 COMMISSIONER SKOP: Okay. Just two quick questions  
23 and we will get on --

24 MR. HOLTZ: And if I may, as Commissioner Skop from  
25 the -- Commissioner Skop would know better than anyone else on

1 this Commission from his previous career that there are often  
2 multiple parties to any renewable project. And, also, as you  
3 have been reading 18.1, you see two phrases that should stand  
4 out, commercially reasonable efforts and build or cause to be  
5 built. Again, as you well know, multiple parties often cause  
6 or build a renewable project.

7 COMMISSIONER SKOP: I understand. And with respect  
8 to the commercially -- and I was going to skip this, but since  
9 you opened the door and we have to go back there, with respect  
10 to --

11 MR. HOLTZ: Sorry.

12 CHAIRMAN CARTER: Don't open any more doors.

13 (Laughter.)

14 COMMISSIONER SKOP: With respect to commercially  
15 reasonable efforts, has Green Mountain Energy ever given FPL  
16 written notice of force majeure pursuant to Section 29 of the  
17 redacted contract?

18 MR. HOLTZ: No.

19 COMMISSIONER SKOP: Okay. Thank you.

20 Moving on just real quick, the quarry arrays are  
21 located on private residences in an upscale gated golf  
22 community, correct?

23 MR. BRANDT: I would not call it an upscale  
24 community.

25 COMMISSIONER SKOP: On Centrex -- okay. And the

1 staff recommendation, I think, might do that. But, anyway --  
2 but those owners of the private residences may not even be  
3 participants in the Sunshine Energy Program, correct?

4 MR. BRANDT: That was not a requirement.

5 COMMISSIONER SKOP: Okay. With respect to the -- and  
6 these are my last questions, and we will move on, and then  
7 we'll get there. We will bring it in. As Commissioner Edgar  
8 often says, we'll bring it in for landing. I like that.

9 And, again, I apologize, but it is important what we  
10 are doing here. With respect to the Rothenbach project that --  
11 or Rothenbach that gets so much publicity, at least articles  
12 that I have read indicate that that was, basically, a rooftop  
13 installation that was placed on the ground, correct?

14 MR. HOLTZ: That Rothenbach was a rooftop  
15 installation?

16 COMMISSIONER SKOP: A rooftop type solar array  
17 installation that was placed on the ground.

18 MR. HOLTZ: A PV module is a PV module whether it is  
19 on the ground or on the roof.

20 COMMISSIONER SKOP: Okay. How does FPL plan to keep  
21 the -- since it's on the ground, how does FPL plan to keep the  
22 PV solar array free from rain splatter, grass clippings, dirt  
23 or other debris? Because when I went to the dedication -- I  
24 mean, that's going to happen. I mean, that's important. I  
25 mean, most arrays, even if you see an array out there, is built

1 off the ground, most of your other arrays are built off the  
2 ground. I understand there are some technical engineering  
3 things that indicate why you couldn't elevate this or put in  
4 certain things, but it seems to me that's a reasonable concern.  
5 I think it is reasonable answer. I mean --

6 MR. HOLTZ: The array has a maintenance arrangement  
7 with Sun Power to keep it clean, to make sure it's functioning,  
8 and to take care of anything as you have just suggested.

9 COMMISSIONER SKOP: Okay.

10 MR. HOLTZ: And, as you know, because it is built on  
11 a landfill, which is giving a beneficial use to an otherwise  
12 unusable piece of ground, it had to be anchored in a certain  
13 way.

14 COMMISSIONER SKOP: Okay. Just real quick -- we made  
15 progress. We got out of the existing contract. We are moving  
16 into the revised proposal. And I say this with all due  
17 respect. But, frankly, to me, the FPL petition for proposed  
18 modification was simply just like a shell game. It was  
19 repackaging the same terms and provisions, and I will get into  
20 that briefly. But, you know, no substantive big change. I  
21 mean, for me, frankly, the revised modifications to the program  
22 is like putting lipstick on a pig.

23 MR. LITCHFIELD: Well, Commissioner Skop, let me tell  
24 you about two substantive changes. First, it's no longer a  
25 TREC program. And we looked at the numbers produced under the

1 original program based on TREC, and all it does is construct  
2 renewables, and --

3 COMMISSIONER SKOP: I understand that.

4 MR. LITCHFIELD: -- that is a pretty fundamental  
5 change.

6 COMMISSIONER SKOP: I understand that, but let me --  
7 let me make my points, and then we can move on and be done with  
8 this, and, you know, let the chips lie where they fall.

9 The attachment to the revised program articulates the  
10 allocation of expenses and renewables. And if you look at the  
11 2008 number, that is the numbers that FPL presented, the top  
12 numbers. The bottom numbers are the ones that I added when you  
13 factor in what's occurring based on the staff audit.

14 MR. LITCHFIELD: I'm sorry. Which numbers did you  
15 provide, Commissioner?

16 COMMISSIONER SKOP: The first column, 2008, that are  
17 asterisked, which assumes the effective date of the revised  
18 program of October 1, 2008. So I would assume that that was  
19 2001 -- October 1, 2008, through the year-end of 2008. It  
20 basically shows that for those three months the renewables  
21 would be 65, I think, 65.13 percent, and the expenses would be  
22 would be 30-something. I think that --

23 MR. LITCHFIELD: I'm sorry, I want to make sure I  
24 know what you have done. So, factually, what you have done is  
25 you've taken the first eight months of the program and the last

1 four months and averaged them out.

2 COMMISSIONER SKOP: Yes.

3 MR. LITCHFIELD: Okay.

4 COMMISSIONER SKOP: Okay. So, again, the way it was  
5 presented, although it was done with an asterisk, is  
6 definitely, you know, accomplished to the extent that, you  
7 know, it shows like more money is going to renewables, but, in  
8 fact, you know, it really isn't. It is the same old.

9 Now, the problem I have --

10 MR. LITCHFIELD: Well, to be fair -- okay. You have  
11 produced an average. But going forward the program is going to  
12 provide a significantly greater proportion of dollars to the  
13 actual development of renewables away from marketing. I mean,  
14 recognizing that if we spend less on marketing, we are going to  
15 potentially negatively affect participation rates. But that is  
16 a policy decision.

17 COMMISSIONER SKOP: I understand, and I will get to  
18 one other reasonable interpretation. But just my point why  
19 this is unacceptable. Briefly with the contract, and we'll be  
20 done with this provision.

21 If you look at 2009 through 2012, it's about almost a  
22 50/50 split between expenses and renewables. And as staff has  
23 probably pointed out in the recommendation, that's just way too  
24 high. So that's not working for me.

25 Bridget, next slide, please.

1           Again, another, in my mind -- and, again, I think  
2 that this is not fair, but -- I mean, not unfair, but a  
3 reasonable interpretation of the pleading and maybe the  
4 language because it was done in such a short period of time is  
5 what I presented here, where if you look at the algebraic  
6 equation of the petition language, it basically says, you know,  
7 represented algebraically, X equals total revenue collected, Y  
8 equals marketing costs. And under the revised petition there  
9 is a contractual requirement to build 25 kilowatts of renewable  
10 energy in Florida within a year for each increment of X minus Y  
11 equals \$250,000. So, therefore, X minus Y equals 250, equals  
12 the requirement to build 25 kilowatts in Florida.

13           But under Green Mountain's way of doing things, the  
14 contribution-in-aid-of-construction approach that has been  
15 utilized through the Sun Funds and some other things, the cost  
16 to build that 25 kilowatts -- and if you read that language  
17 carefully, or caused to be build, I mean, you know, hey, you  
18 can give a rebate and you can meet that requirement for  
19 \$25,000. So, therefore, 250,000 minus 25,000 equals a minimum  
20 profit of \$225,000, and that's before you get the benefit of  
21 the TRECs. And they account -- the TRECs in five years under  
22 the Sun Fund agreement to be the cost of the incentives. So, I  
23 mean, to me, it is just not working for me.

24           But one quick question getting into the egregiousness  
25 of the proposed recommendation, and I do have to comment on



1 that and then --

2 MR. HOLTZ: By the way, one problem with your chart  
3 up there, Green Mountain is not building any projects under the  
4 new proposed agreement.

5 COMMISSIONER SKOP: Okay. But --

6 MR. HOLTZ: So your last bullet is irrelevant.

7 COMMISSIONER SKOP: Well, thank you, but there is  
8 nothing to say that FPL couldn't do that under -- because if  
9 you read the contractual language -- and, again, we have to  
10 keep debating the issue here, which I would rather not do,  
11 but --

12 CHAIRMAN CARTER: You may continue, Commissioner.  
13 Just continue. We are not in favor of opening any more doors.

14 COMMISSIONER SKOP: I'm not. But just bear with me  
15 for one second.

16 MR. LITCHFIELD: We hope we are not locked in  
17 tonight, though.

18 COMMISSIONER SKOP: We are not going to be. But,  
19 again --

20 CHAIRMAN CARTER: We will get somebody to let you  
21 out. (Laughter.)

22 COMMISSIONER SKOP: Okay. Bear with me for one  
23 second.

24 Okay. Anyway, we can agree to disagree on that  
25 point. But the other points that I wanted to raise with

1 respect to the revised contract, and I need to find that real  
2 quick. Just bear with me for one second.

3           Okay. Under the revised contract that portions still  
4 remain confidential, and I had hoped that there would be even a  
5 little bit more transparency than there was, but the provisions  
6 that give me significant heartburn are the provisions in  
7 6.3 and 6.4. And just, frankly, again, if those were  
8 unredacted, knowing what I know, which I can't talk about, I  
9 just find it -- I don't understand why we would do that or why  
10 FPL would even agree to do that when, you know, Green Mountain  
11 admits by its own admission that it has not met its obligation,  
12 but then it says it has, but we have staff saying, no, that  
13 doesn't count. So, again --

14           MR. HOLTZ: Green Mountain says we met our  
15 obligation.

16           COMMISSIONER SKOP: Sir, I would respectfully  
17 disagree. But, again, we'd be here until the cows come home,  
18 and I'm not going to do that out of respect to my colleagues.

19           Just real quick, in relation to the termination  
20 provisions -- and this is just icing on the cake, the kicker  
21 for me. I mean, this is just crazy, because whoever wrote this  
22 must think the Commission is stupid, frankly. Because if you  
23 look at Section 10.1.4 of the contract, on Page 15 of the  
24 revised contract, and it states a couple -- after the first, I  
25 think, second -- probably the third sentence. It states should

1 Green Mountain elect to terminate this agreement under Section  
2 10.1.4, FPL shall pay Green Mountain in accordance with the  
3 payment due date set forth in Section 6, any and all, one,  
4 unpaid monthly service fees owed to Green Mountain for all FPL  
5 cycles or portions thereof during the term in accordance with  
6 Section 6.0.

7 To me, if the Commission were to just unilaterally  
8 adopt FPL's petition and approve this agreement, Green Mountain  
9 says we terminate on January 1st, 2009, and walks away with the  
10 termination fee. That's crazy.

11 MR. HOLTZ: No, that is not what it says.

12 COMMISSIONER SKOP: Well, that's my --

13 MR. LITCHFIELD: That is not that it says.

14 (Simultaneous conversation.)

15 COMMISSIONER SKOP: Excuse me, sir. Sir, are you an  
16 attorney?

17 CHAIRMAN CARTER: One moment. Wait, wait, wait,  
18 wait. Hold on, hold on, hold on.

19 Yes, Commissioner Argenziano.

20 COMMISSIONER ARGENZIANO: I'm not going to interfere  
21 anymore. I'm trying. The only way to get to the bottom of  
22 what you said was to let him respond, because -- okay, and I  
23 think now we have to hear the response, because if there is a  
24 disagreement, we need to hear it. And perhaps the Commissioner  
25 will agree, perhaps he won't. But now we have to let him

1 respond.

2 CHAIRMAN CARTER: And we'll give you an opportunity  
3 to let him complete his answer, Commissioner.

4 COMMISSIONER SKOP: Sure.

5 MR. HOLTZ: I will give it in layman's terms, since I  
6 am a layman. There is no termination fee in the new agreement.  
7 The termination fee is in the old agreement. What that section  
8 is referring to that Commissioner Skop just brought up is that  
9 any out -- the example is any outstanding invoices, direct  
10 marketing costs that were to be paid by FPL under the agreement  
11 during that termination period they would still be obligated to  
12 pay.

13 So for an example, for an example, no termination fee  
14 like the old contract, Commissioner. For an example, if on the  
15 date or in that period in which this termination occurs, we had  
16 executed a direct mail campaign and spent \$125,000 on mailing  
17 lists and printing and the paper, and we had those invoices,  
18 and that had gone out before the termination, FPL would be  
19 obligated to pay us for those invoices.

20 MR. LITCHFIELD: And I would add this. As a lawyer  
21 who has negotiated commercial agreements, that is an absolute  
22 standard term in almost any commercial agreement you will find.

23 COMMISSIONER SKOP: And in rebuttal, and then we are  
24 going to move forward. In rebuttal, Green Mountain talked  
25 about direct marketing costs, that's in Provision 2, not in

1 Provision 1. And don't take my word for it. I'm going to go  
2 right to our General Counsel, who have reviewed that provision,  
3 and staff has a position, and want to hear it from staff, and I  
4 think the Commission should hear it from staff.

5 Who -- who -- what is staff's position? Is it  
6 adopting the Commissioner Skop interpretation that there is a  
7 huge penalty -- I mean, a huge payment from FPL if we were to  
8 approve this contract, or is Green Mountain right?

9 MR. COOKE: I'm sorry, Commissioner. I was talking  
10 to Mr. Devlin when you asked the question. I apologize. I  
11 think you are referring to perhaps one of the termination  
12 provisions in the proposed modified agreement.

13 COMMISSIONER SKOP: Yes. It's 10.1.4, where should  
14 Green Mountain elect to terminate this agreement under Section  
15 10.1.4, FPL shall pay to Green Mountain in accordance with  
16 Section 6. And if you notice Section 6, some of that is  
17 blocked out, and that is where you do the math. So what is  
18 staff's interpretation of --

19 MR. COOKE: I don't think we have an interpretation,  
20 per se. I think that there was a -- this proposed revised  
21 contract was filed with us relatively shortly before we got  
22 ready to bring this recommendation, to file this  
23 recommendation. And we --

24 COMMISSIONER SKOP: Mr. Cooke --

25 MR. COOKE: You asked me a question, and I would like

1 to answer it, also. We have not had a heck of a lot of time to  
2 look at this contract. There are provisions in it that I think  
3 are questionable. And I thought you were referring to a  
4 different one than the one you just referred to. But I'm not  
5 going to sit here and say staff is in a position one way or the  
6 other to analyze this information and know for sure exactly  
7 what it means. Part of our recommendation was we wanted to ask  
8 more questions of them.

9 I'm not happy that we are where we are with this  
10 thing. We have put a lot of work into this. But I, frankly,  
11 think that spending time on this proposed modified agreement --  
12 I'm questioning why we are even doing that, given what I hear  
13 this Commission saying, and I don't mean to count votes --

14 (Simultaneous conversation.)

15 CHAIRMAN CARTER: Let him finish, Commissioner. Let  
16 him finish. You've always got an opportunity to be heard as a  
17 Commissioner. Let Mr. Cooke finish his answer. We'll come  
18 back to you.

19 MR. COOKE: I'm sorry. I'm tired, too, and I  
20 shouldn't be speaking this way. But, quite frankly, I don't  
21 know what that provision says. I don't have it in front of me.  
22 I'm not going to try to speak to it off the cuff. I don't  
23 think that many of the provisions in the agreement that I have  
24 looked at, to the limited extent I had time to look at it, were  
25 very clear, and some of them gave me pause. And that's where

1 I'm going to leave it.

2 CHAIRMAN CARTER: Commissioner.

3 COMMISSIONER SKOP: In rebuttal -- and I apologize  
4 because, again, Mr. Cooke, I think you and I discussed this  
5 provision in detail. And, frankly, you know, had we had that  
6 discussion, which I assure you I think that my recollection  
7 clearly indicates that we did. Again, I'm just going to throw  
8 in the towel and concede. But, again, I can't believe that I  
9 can't get a straight answer out of our legal department, from  
10 our General Counsel. It's not that difficult. I didn't need  
11 to go to law school to figure that one out.

12 MR. COOKE: I have to take exception to that. I do  
13 not have a --

14 COMMISSIONER ARGENZIANO: Mr. Chair, I move to defer  
15 at this point.

16 CHAIRMAN CARTER: Commissioner --

17 COMMISSIONER SKOP: Okay. That's fine.

18 COMMISSIONER ARGENZIANO: I move to defer. I'm done.

19 COMMISSIONER McMURRIAN: I have to second, Chairman.  
20 I think that we are going to -- I mean, I think we have got a  
21 lot more questions to go, and every question we are debating.  
22 So I have to agree and second.

23 CHAIRMAN CARTER: Commissioners.

24 COMMISSIONER McMURRIAN: I mean, I can be here. I  
25 mean, as far as my schedule, I can be here, but I think we are

1 going to be here for a few more hours, given -- maybe not, but  
2 I have to --

3 CHAIRMAN CARTER: We are going to be on the road  
4 tomorrow, Commissioners.

5 COMMISSIONER SKOP: Mr. Chair, in due respect, and  
6 hopefully we can bring closure to this, I'm asking if the  
7 Commission -- again, I'm done with my questioning. We can get  
8 to a decision within probably five minutes from now. I would  
9 like to respectfully request to my colleagues if I can bring  
10 this in for a landing, and then we vote up or down, and we  
11 don't have to deal with it on a forward-going basis. But to  
12 bring it back is just going to -- I would respectfully request  
13 if I could have five minutes we will be done.

14 COMMISSIONER ARGENZIANO: Mr. Chair, I don't have a  
15 problem with that, but I think when we start losing our tempers  
16 and we get to a point where everybody is tired, nobody has  
17 eaten dinner, and you, obviously, feel very passionate about  
18 things that you have done a lot of work on, and I understand  
19 that, but when you get to that point where it's not getting  
20 anywhere, and it's not -- it's not coming to any kind of  
21 fruition, or we're not getting a benefit out of it, I think  
22 it's time to either defer or close it up.

23 COMMISSIONER SKOP: I think -- with all due respect,  
24 I think we can close it in five minutes.

25 COMMISSIONER ARGENZIANO: I'll take back my motion.



1 COMMISSIONER McMURRIAN: And the second.

2 CHAIRMAN CARTER: She will take back her motion and  
3 second, and we'll -- I will be the clock-watcher.

4 COMMISSIONER SKOP: Thank you. That provides added  
5 incentive.

6 Bridget, just real quickly, the next few slides.

7 This is what I think could have happened with this  
8 program had the money been used differently. Just a quick  
9 point in passing. A hypothetical ten-megawatt wind project  
10 underutilized annual recurring cash flow of \$4.5 million,  
11 turbines at 2.3, DEP grant, project debt -- project debt, \$20.5  
12 million. Principal, interest rate of 14 percent, term 15  
13 years, debt payment rounded up. You would be able to service  
14 the project debt from the free cash flow before you even sold  
15 the first kilowatt of electricity, before you generated the  
16 first PTCs, before you sold RECs.

17 Next slide, please. I'm on a mission.

18 What could have been accomplished. PV solar project.  
19 As Mr. Litchfield correctly indicated, yes, if the money went  
20 to the right places, you could build almost half a megawatt of  
21 solar in Florida per year, actually build physical assets  
22 before you sold the first kilowatt of electricity before  
23 selling the RECs.

24 I would assume, for the sake of discussion, our audit  
25 person -- and it's late, and I apologize. I have been up about

1 30 hours. But Ms. Vandiver would stand by her audit results.  
2 So I will skip that line of questioning.

3 In resolution, where I think this Commission should  
4 go is the Commission should terminate the existing tariff,  
5 basically rescind our final order from 2006 under doctrine of  
6 administrative finality based on some of the lack of  
7 transparency or the legal standard, I guess, I discussed that  
8 also with our legal counsel. But at this point, I just don't  
9 think, irrespective of what happens, and we suspend the tariff  
10 and our problem goes away, where the staff recommendation falls  
11 short in my eyes, if we were to allow this to continue for 60  
12 additional days, money -- more money goes to Green Mountain.  
13 And I'm not willing to let that happen to figure this all out.

14 So where I am at is terminate the program, suspend  
15 the tariff. And my innovative approach would be to try to be  
16 fair, and I think some consumers mentioned this, I don't know  
17 whether the Commission has already thought about this, and it  
18 probably would be something that would cross each of my  
19 talented colleagues' minds, but there needs to be some refunds  
20 here. I think that we are past that point of return.

21 I know Commissioner Edgar spoke about lessons  
22 learned, and what have you, but I think to do the right thing,  
23 you know, certainly, FPL has announced three solar projects.  
24 Certainly, there has been some negative press. Certainly, some  
25 customers have indicated that perhaps FPL should issue, you

1 know, some sort of letter, you know, kind of saying, hey, we  
2 might have been able to do something better, stopping short of  
3 an admission of apology.

4 But in a nutshell, I think this program needs to go  
5 away. The proposed modification is not working for me. I  
6 think the provisions are egregious. And, like I say, I just  
7 question the good faith effort in bringing that to the  
8 Commission.

9 But, nevertheless, what I would propose,  
10 Commissioners, is make this program go away and just require  
11 FPL to contribute. And, certainly, I think that some arguments  
12 could be made -- they have gotten almost a million dollars in  
13 their admin fee off the top. But, certainly, I think some  
14 arguments can be made that perhaps in the best interest of  
15 Florida, consistent with the legislative policy, the Governor's  
16 policy, and some other things, that perhaps maybe FPL be  
17 required to contribute a \$6 million  
18 contribution-in-aid-of-construction to their proposed solar  
19 facilities to resolve this matter, restore public confidence,  
20 and restore the Commission's confidence.

21 And I will just throw that out on the table. But I  
22 think that there are some issues here where things did not go  
23 the right way. And, you know, like I say, I don't like to hold  
24 people accountable, but it's part of our jobs, and I think  
25 that, certainly, there is some outcry. And I know that we can

1 agree to -- I can agree to disagree with both Green Mountain  
2 and FPL. But, again, I'm pretty adamant that this is messed  
3 up. I'm not supporting it.

4 I wouldn't support the proposed modification. But,  
5 certainly, I think that this needs to go away. It has outlived  
6 its useful life. A lot of money similar to the Universal  
7 Service Fund has flown out of our state, and there is no  
8 transparency on where that money actually went to. And we  
9 could require FPL to have an independent auditor certify that,  
10 you know, there is nothing going on or to, you know, something  
11 like that. But, nevertheless, to make this short and simple,  
12 terminate the -- terminate the tariff and require -- order FPL  
13 to, perhaps, contribute \$6 million contribution-in-aid-of-  
14 construction to their proposed solar facilities, which will be  
15 physically built and owned in Florida, hopefully, by FPL.

16 CHAIRMAN CARTER: Commissioner Edgar, you're  
17 recognized.

18 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

19 Interestingly enough, I think we are actually close  
20 to the same page. At 6:00 o'clock this evening I suggested  
21 terminating the program, not proceeding with proposed  
22 revisions, or requesting additional information on potential  
23 proposed revisions, therefore, denying the request to suspend a  
24 tariff and terminating the current tariff that we have. And I  
25 think that is what you just suggested. So I'm pleased to say I

1 think that maybe through different routes we have come close to  
2 the same place.

3 My questions, and these are the same that I had two  
4 hours ago, which are more of if we were to terminate the  
5 project, and in my mind not as a punitive or an accusatory, but  
6 just as I said earlier, lessons learned as we move forward, you  
7 know, are there negative ramifications to ratepayers, to  
8 current projects, to obligations that may or may not exist?

9 And, Commissioner Skop, maybe in your questions you  
10 asked that and that came out and I missed it, and if so, I  
11 apologize. But if we are going to spend just a few more  
12 minutes -- and, Mr. Chairman, I would, obviously, leave that to  
13 your discretion. But if we are going to discuss terminating  
14 the project now, then my question would be if FPL could -- and  
15 if staff needs to jump in, I appreciate that, as well -- but  
16 what would the ramifications of that be, if any?

17 CHAIRMAN CARTER: Mr. Litchfield, you're recognized,  
18 and then I will come to you, Mr. Devlin.

19 MR. LITCHFIELD: Thank you, Mr. Chairman. In answer  
20 to your question, Commissioner Edgar, certainly the monies that  
21 have been collected to date and any monies that would be  
22 collected through the final bill, as it were, with respect to a  
23 participating customer under the terms of the program and under  
24 the terms of the contract would be remitted to Green Mountain  
25 for the purchase of a REC attributable to that customer's

1 participation for that particular month. That process could be  
2 wound down, let's say, within two weeks from the date of a  
3 final order to allow the billing adjustments to be made.

4           There are some ongoing financial commitments with  
5 respect to the Rothenbach Park project. But, again, that  
6 project has some value. It is a good project. My  
7 recollection -- I'll have to turn to Mr. Brandt for the precise  
8 monthly totals.

9           MR. BRANDT: It's about \$22,000.

10           MR. LITCHFIELD: About \$22,000 a month through 2015.  
11 Of course, you know, there would be value associated with  
12 renewable energy credits attributable to the output of that  
13 facility. But those are the costs that I can think of at the  
14 moment that, you know, effectively would -- I expect that the  
15 way we have handled all of the sort of pluses and minuses of  
16 the program costs would run through the ECCR.

17           CHAIRMAN CARTER: Mr. Devlin, should I ask you or  
18 should I ask --

19           MR. DEVLIN: Mr. Chairman, other than the contractual  
20 obligations that Mr. Litchfield is talking about, he is in a  
21 better position to speak to those than staff is. There is one  
22 area of uncertainty we have, and that is with respect to -- if  
23 you could turn to the recommendation, Page 5. I don't believe  
24 we are 100 percent sure whether there is a regulatory liability  
25 of maybe to the tune of \$544,000 that would have to be disposed

1 of. We aren't sure whether that money is there. That needs to  
2 be dealt with if the program is terminated. So we need to  
3 resolve that.

4 COMMISSIONER EDGAR: Mr. Litchfield, can you help  
5 with that?

6 MR. LITCHFIELD: Yes, I would like to. If Mr. Devlin  
7 can refer us to the provision in the staff rec, we'll give it a  
8 quick look and see if we can clear that up.

9 MR. DEVLIN: It is on Page 5, in the middle of that  
10 table on Page 5, the cumulative net revenue figure.

11 MR. BRANDT: Yes. I actually had a meeting  
12 yesterday, I think, with Mark Futrell from the staff to outline  
13 the details of these net revenues. And we owe him a schedule  
14 to reconcile that, which we will be providing in the next day  
15 or two.

16 CHAIRMAN CARTER: Mr. Futrell.

17 MR. FUTRELL: Thank you, Mr. Chairman. As I  
18 discussed with Mr. Brandt and his staff, what they have been  
19 using, they have used ECCR. The Energy Conservation Cost  
20 Recovery Clause is, in effect, a checking account to post  
21 revenues and expenses related to the program. And annually the  
22 schedules that they have filed with the Commission back up  
23 these numbers that are in the staff recommendation. And as Mr.  
24 Brandt detailed to me in that conversation is that what they  
25 have been doing is when their excess revenues -- they have been

1 crediting to the ECCR, effectively reducing the recoverable  
2 conservation expenses for all ratepayers. That is what was  
3 conveyed to me in that conversation.

4 MR. BRANDT: During the pilot, excess revenues -- so  
5 for 2004, 2005, and 2006 -- just flowed back through the  
6 clause. Okay? So there really wasn't -- you know, we don't  
7 have in our bank book the excess revenues for those three  
8 years. We reduced the ERGR clause for all customers for those  
9 three years. And starting in 2007, when the program was  
10 approved as a permanent program, we started a deferred account  
11 to collect excess revenues with the intent of any excess  
12 revenues would be used to do one of three things: One would be  
13 to increase marketing of the program, the other one would be to  
14 build renewable facilities, or the third would be to  
15 potentially come back to the Commission and lower the premium,  
16 the 9.75.

17 CHAIRMAN CARTER: Commissioner Edgar.

18 COMMISSIONER EDGAR: And I think I got that. So if I  
19 may, then, back to Mr. Futrell or Mr. Devlin. Then, with that  
20 further discussion and with the information or the schedule  
21 that FPL has said that they would be further supplying, does  
22 that address the question that Mr. Devlin raised regarding the  
23 544,000?

24 MR. DEVLIN: Yes, Commissioner. We will follow up on  
25 that. If there is some issue with it, we will bring it back to



1 your attention.

2 MS. BRUBAKER: Commissioner Edgar, if I may.

3 COMMISSIONER EDGAR: Yes, ma'am.

4 MS. BRUBAKER: Just in the interest of making sure  
5 your question is fully answered. Sorry, I'm hiding behind the  
6 demo. If I understand your question correctly, you were asking  
7 kind of what is the global effect if the program is terminated.

8 COMMISSIONER EDGAR: Yes, ma'am.

9 MS. BRUBAKER: The Commission approved the program.  
10 The contract does have some provisions for termination. How  
11 that termination fee would be calculated, the methodology for  
12 it is currently confidential, and so I am unable to discuss or  
13 offer an opinion about how much that might be.

14 It appears from our reading of the contract that that  
15 would be a matter between FPL and Green Mountain. And,  
16 certainly, if Mr. Litchfield can address the matter, of course,  
17 respecting the terms of the confidentiality, perhaps he might  
18 be able to offer some information in that regard.

19 CHAIRMAN CARTER: One moment. Commissioner  
20 Argenziano.

21 COMMISSIONER ARGENZIANO: I'm going to renew my  
22 motion to defer, because this is just not right to cram all of  
23 this in when we're brain dead. It's just wrong. There is too  
24 much here. And now to figure out how to terminate and  
25 everything else, I'm going to renew my notion to defer. I hope

1 I get a second.

2 COMMISSIONER SKOP: I'll second.

3 COMMISSIONER ARGENZIANO: Thank you.

4 CHAIRMAN CARTER: Any further questions? Any further  
5 debate? A motion to defer. All in favor, let it be known by  
6 the sign of aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN CARTER: All those opposed?

9 Thank you, Commissioners. Thank you staff. I know  
10 you gave up a lot of valuable family time to be here tonight,  
11 and we appreciate that. Thank you.

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

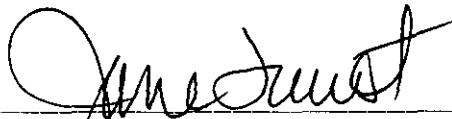
4

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

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

14 I FURTHER CERTIFY that I am not a relative,  
15 employee,  
16 attorney or counsel of any of the parties, nor am I a relative  
17 or employee of any of the parties' attorney or counsel  
18 connected with the action, nor am I financially interested in  
19 the action.

20 DATED THIS 21st DAY OF JULY, 2008.

21 

22 \_\_\_\_\_  
23 JANE FAUROT, RPR  
24 Official FPSC Hearings Reporter  
25 FPSC Division of Commission Clerk  
(850) 413-6732

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*Party Handout 1  
 July 1, 2008  
 Commission Conference Agenda  
 Item 11  
 070626-E1*

**Existing Sunshine Energy Program  
 TREC / Build Renewables**

	<u>In State</u>	<u>Out of State</u>	<u>Total</u>
1 Program to Date (number of TRECs Purchased)	410,690 TRECs	591,771 TRECs	1,002,461 TRECs
2 Program to Date TREC Commitment *	150,369 TRECs	N/A TRECs	1,002,461 TRECs
3 Program to Date TREC kWh	410,690,000 kWh	591,771,000 kWh	1,002,461,000 kWh
4 Equivalent kW of Solar	246,809 kW	355,632 kW	602,441 kW
5 Equivalent MW of Solar	247 MW	356 MW	602 MW
6 Current Program Solar Commitment	0.450 MW	0.000 MW	0.450 MW
7 Current Program Solar Status **	0.486 MW	0.000 MW	0.486 MW

\* 15% in state TRECs commitment

\*\* Includes 2 sites @ 25 kW each installed but pending final inspection



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# NEWS

Media may contact  
Gary Schmitz, 303-275-4050  
gary\_schmitz@nrel.gov

*Party Handout 2  
July 1, 2008  
Commission  
Conference Agenda  
Item 11  
070626-E1*

## **NREL Highlights Leading Utility Green Power Programs**

*Pricing programs give consumers clean power choices*

**Golden, Colo., April 22, 2008** – The U.S. Department of Energy's (DOE) National Renewable Energy Laboratory (NREL) today released its annual ranking of leading utility green power programs. Under these voluntary programs, consumers can choose to help support additional electricity production from renewable resources such as solar and wind. More than 800 utilities across the United States offer these programs.

Using information provided by utilities, NREL develops "Top 10" rankings of utility programs in the following categories: total sales of renewable energy to program participants, total number of customer participants, customer participation rate, green power sales as a percentage of total utility retail electricity sales, and the lowest price premium charged for a green power program using new renewable resources.

Ranked by renewable energy sales, the green power program of Austin (Texas) Energy is first in the nation, followed by Portland General Electric, PacifiCorp, Florida Power & Light, and Xcel Energy.

Ranked by customer participation rates, the top utilities are City of Palo Alto (Calif.) Utilities, Lenox (Iowa) Municipal Utilities, Silicon Valley Power (Calif.), Portland General Electric, and Sacramento Municipal Utility District. (See attached tables for additional rankings).

"Utility green power programs continue to expand across the country," said Lori Bird, senior energy analyst at NREL. "These utilities are the national leaders."

Customer choice programs are proving to be a powerful stimulus for growth in renewable energy supply. In 2007, total utility green power sales exceeded 4.5 billion kilowatt-hours (kWh), about a 20% increase over 2006. Approximately 600,000 customers are participating in utility programs nationwide.

- more -



Utility green pricing programs are one segment of a larger green power marketing industry that counts Fortune 500 companies, government agencies and colleges and universities among its customers, and helps support more than 3,000 MW of new renewable electricity generation capacity.

NREL analysts attribute the success of many programs to persistence in marketing and creative marketing strategies, including in some cases, utility partnerships with independent green power marketers. In addition, the rate premium that customers pay for green power continues to drop.

NREL performs analyses of green power market trends and is funded by DOE's Office of Energy Efficiency and Renewable Energy.

NREL is the U.S. Department of Energy's primary national laboratory for renewable energy and energy efficiency research and development. NREL is operated for DOE by Midwest Research Institute and Battelle.

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NR-1108



**Green Pricing Program Renewable Energy Sales**  
(as of December 2007)

Rank	Utility	Resources Used	Sales (kWh/year)	Sales (aMW) <sup>a</sup>
1	Austin Energy	Wind, landfill gas	577,636,840	65.9
2	Portland General Electric <sup>b</sup>	Geothermal, biomass, wind	653,677,903	63.2
3	PacifiCorp <sup>cde</sup>	Wind, biomass, landfill gas, solar	383,618,885	43.8
4	Florida Power & Light <sup>b</sup>	Biomass, wind, landfill gas, solar	373,598,000	42.6
5	Xcel Energy <sup>ef</sup>	Wind	326,553,868	37.3
6	Sacramento Municipal Utility District <sup>g</sup>	Wind, landfill gas, small hydro, solar	275,481,584	31.4
7	Puget Sound Energy <sup>h</sup>	Wind, solar, biomass, landfill gas	246,406,200	28.1
8	Basin Electric Power Cooperative	Wind	226,474,000	25.9
9	National Grid <sup>gh</sup>	Biomass, wind, small hydro, solar	180,209,571	20.6
10	PECO <sup>i</sup>	Wind	160,000,000	18.3

<sup>a</sup> An "average megawatt" (aMW) is a measure of continuous capacity equivalent (i.e., operating at a 100% capacity factor).

<sup>b</sup> Marketed in partnership with Green Mountain Energy Company. For Portland General Electric, some products marketed in partnership with Green Mountain Energy Company.

<sup>c</sup> Includes Pacific Power and Rocky Mountain Power.

<sup>d</sup> Some Oregon products marketed in partnership with 3Degrees Group, Inc.

<sup>e</sup> Product is Green-e certified ([www.green-e.org](http://www.green-e.org)). For Xcel Energy, the Colorado and Minnesota Windsource products are Green-e certified.

<sup>f</sup> Includes Northern States Power, Public Service Company of Colorado, and Southwestern Public Service.

<sup>g</sup> Includes Niagara Mohawk, Massachusetts Electric, Narragansett Electric, and Nantucket Electric.

<sup>h</sup> Marketed in partnership with Community Energy, Inc., EnviroGen, Green Mountain Energy Company, Mass Energy, People's Power & Light, and Sterling Planet.

<sup>i</sup> Marketed in partnership with Community Energy, Inc.



**Total Number of Customer Participants**  
(as of December 2007)

Rank	Utility	Program(s)	Participants
1	Xcel Energy <sup>a</sup>	Windsource <sup>b</sup> Renewable Energy Trust	75,534
2	Portland General Electric <sup>c,g</sup>	Clean Wind Green Source	61,543
3	PacifiCorp <sup>d,e</sup>	Blue Sky Block <sup>b</sup> Blue Sky Usage <sup>b</sup> Blue Sky Habitat	60,539
4	Sacramento Municipal Utility District	Greenergy <sup>b</sup>	43,543
5	PECO <sup>f</sup>	PECO WIND	38,548
6	Florida Power & Light <sup>g</sup>	Sunshine Energy	37,184
7	National Grid <sup>h,i</sup>	GreenUp	24,429
8	Los Angeles Department of Water and Power	Green Power for a Green LA	22,788
9	Puget Sound Energy	Green Power Program <sup>b</sup>	20,457
10	Energy East (NYSEG/RGE) <sup>f</sup>	Catch the Wind	19,520

<sup>a</sup> Includes Northern States Power, Public Service Company of Colorado, and Southwestern Public Service.

<sup>b</sup> Product is Green-e certified ([www.green-e.org](http://www.green-e.org)). For Xcel Energy, the Colorado and Minnesota Windsource products are Green-e certified.

<sup>c</sup> Some products marketed in partnership with Green Mountain Energy Company.

<sup>d</sup> Includes Pacific Power and Rocky Mountain Power.

<sup>e</sup> Some Oregon products marketed in partnership with 3Degrees Group, Inc.

<sup>f</sup> Marketed in partnership with Community Energy, Inc.

<sup>g</sup> Marketed in partnership with Green Mountain Energy Company.

<sup>h</sup> Includes Niagara Mohawk, Massachusetts Electric, Narragansett Electric, and Nantucket Electric.

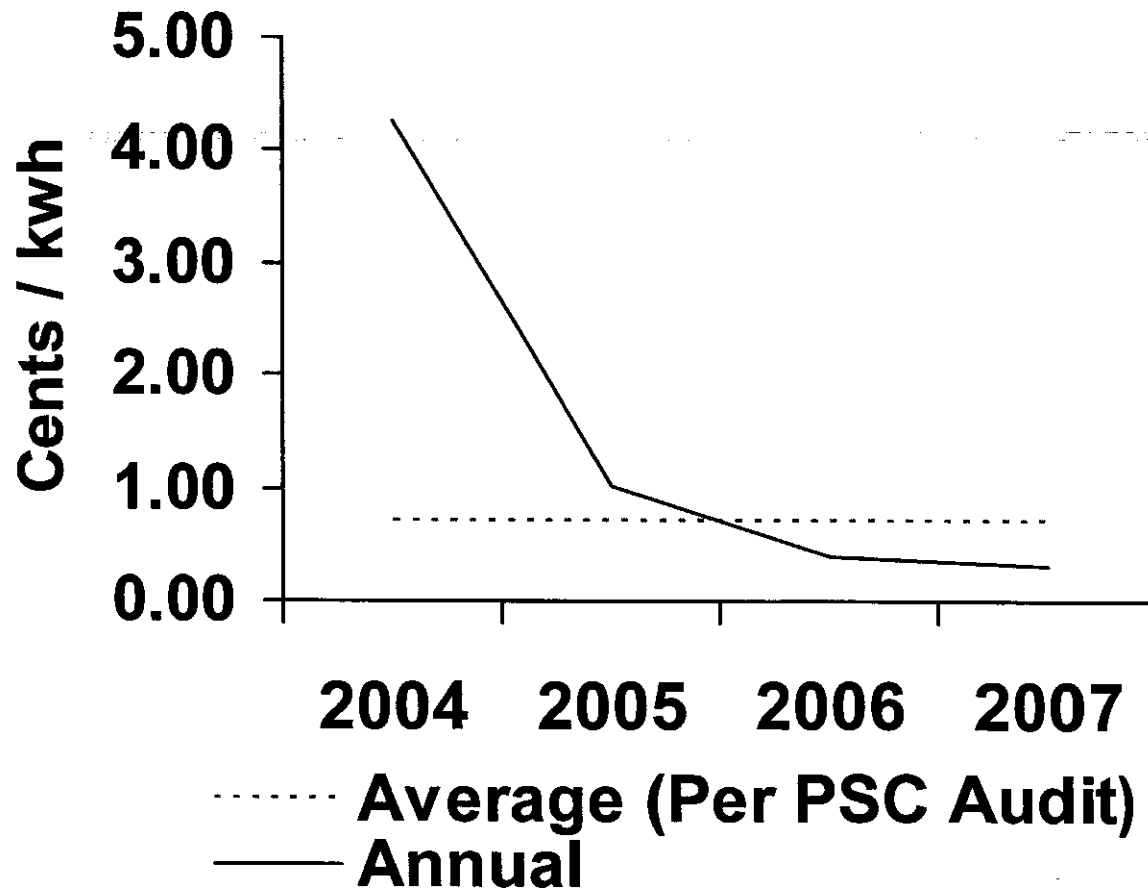
<sup>i</sup> Marketed in partnership with Community Energy, EnviroGen, Green Mountain Energy Company, Mass Energy, People's Power & Light, and Sterling Planet.





Party Handout 3  
July 1, 2008 Commission  
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Item 11, 090626-51

# Sunshine Energy Marketing Costs



## Sunshine Energy Marketing Cost Benchmarking

DOE "Top Ten" Ranking <sup>(1)</sup>	Utility	Marketing Cost (cents/kWh) <sup>(2)</sup>
#1	Austin Energy	Not Available
#2	Portland General Electric	0.408 <sup>(3)</sup>
#3	PacifiCorp Blue Sky Program	1.17 <sup>(4)</sup>
#4	FPL	0.306 <sup>(5)</sup>
#5	Northern States Power Company (Xcel)	0.400 <sup>(6)</sup>

- 1) 2007 US Department of Energy National Renewable Energy Laboratory ranking of Green Pricing programs based on renewable energy sales
- 2) Marketing costs are based on a review of publicly available data and represent the latest information found for each utility.
- 3) 2004 through 2006 average for Portland General Electric
- 4) 2003 actual data for PacifiCorp. 2003 was the 3<sup>rd</sup> year of their program. FPL's 3<sup>rd</sup> year cost was 0.399 cents/kwh
- 5) 2007 actual for FPL
- 6) Budget for Xcel

Party Handout 4  
July 1, 2008  
Commission  
Conference Agenda  
Item 11  
070626-E1

<b>MW of Renewable Projects – Based on \$8,000 / kw (PV)</b>		
	<b>Project Funding thru 2013</b>	<b>MWs @ 100% Funding</b>
<b>FPL's Proposed Revision – 51k participants</b>	<b>\$12,000,000</b>	<b>1.5</b>

If project funds can be leveraged to only fund 25% of the total project cost, 6.0 MW of renewables can be built.

**FLORIDA POWER & LIGHT COMPANY**

**GREEN POWER PRICING - ECCR RIDER**

**AVAILABLE:**

In all territory served by the Company. This Green Power Pricing – ECCR Rider (“Green Power Rider”) is limited to customers receiving service under an Applicable Rate Schedule.

**APPLICATION:**

Applicable, upon request, to Residential Service (RS-1) customers and in conjunction with the Residential Service (RS-1) rate schedule (“Applicable Rate Schedule”). Effective April 1, 2007 the Applicable Rate Schedules under this program will include Customers receiving service under and in conjunction with any of the following rate schedules: RS-1, RST-1, GS-1, GST-1, GSCU-1, WIES-1, GSD-1, GSDD-1, GSLD-1, GSLDT-1, CS-1, CST-1, GSLD-2, GSLDT-2, HLFT, CS-2, CST-2, CS-3, CST-3, GSLD-3, GSLDT-3, CILC-1, SST-1 and ISST-1.

**CHARACTER OF SERVICE:**

Customers shall purchase renewable energy credits associated with a 1,000 kWh block of power produced from: photovoltaic facilities, facilities utilizing biomass fuel, facilities using land-fill gas, facilities using wind, ocean currents, tides and other hydrological applications, and other renewable energy sources (“Green Power Credits”) as approved by the Company. Effective April 1, 2007 Customers can purchase multiple increments of 1,000 kWh blocks.

**LIMITATION OF SERVICE:**

Customers requesting service under this rider will be accepted on a first-come, first-served basis subject to availability of Green Power Credits. If additional Green Power Credits are not available, Customers requesting service under the optional rider may request their name be put on a waiting list until additional Green Power Credits can be secured to serve their request. Any Customer under an Applicable Rate Schedule who has no delinquent balances with the Company is eligible to elect the Green Power Rider. A Customer may terminate participation of the Green Power Rider at any time and may be terminated from the Green Power Rider by the Company if the Customer becomes subject to collection action on this service account. Once a Customer’s participation in the Green Power Rider has been terminated by the Company he/she may not rejoin the Green Power Rider for twelve (12) months following the date of termination. Resale of service is not permitted hereunder.

**MONTHLY RATE:**

Customers taking service under this rider shall pay a \$9.75 monthly charge for each 1,000 kWh block in addition to charges applied under the Applicable Rate Schedule. The charge under this rider may be changed in future conservation cost recovery proceedings. All other applicable charges, including, but not limited to the customer charge, base energy charge, base demand charge, fuel cost recovery, capacity cost recovery, conservation cost recovery and environmental cost recovery will be based on the Customer’s otherwise Applicable Rate Schedule. Upon election of the Green Power Rider, the Green Power charge will not be prorated if the billing period is for less than a full month. Upon termination of the Green Power Rider, no Green Power charge will be assessed in the month in which service is terminated if the billing period is for less than a full month.

**TERM OF SERVICE:**

Not less than one (1) billing period.

**SPECIAL PROVISIONS:**

A Customer moving from one service address to another may have the Green Power Rider election transferred from the former to the new address.

**RULES AND REGULATIONS:**

Service under this rider is subject to orders of governmental bodies having jurisdiction and to the currently effective “General Rules and Regulations for Electric Service” on file with the Florida Public Service Commission. In case of conflict between any provisions of this schedule and said “General Rules and Regulations for Electric Service” the provisions of this rider shall apply.