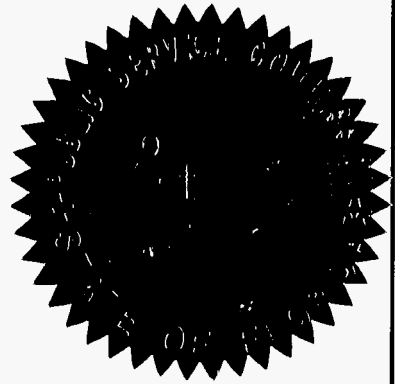


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070626-EI

In the Matter of:

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



PROCEEDINGS: AGENDA CONFERENCE
ITEM 10

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

DATE: Monday, September 29, 2008

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

REPORTED BY: LINDA BOLES, RPR, CRR
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1 PARTICIPATING:

2 WADE LITCHFIELD, ESQUIRE; JESSICA CANO, ESQUIRE; and
3 DENNIS BRANDT, appearing on behalf of Florida Power & Light
4 Company.

5 ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN HOLTZ,
6 appearing on behalf of Green Mountain Energy Company.

7 CHARLES J. BECK, ESQUIRE, appearing on behalf of the
8 Citizens of the State of Florida.

9 KATHERINE FLEMING, ESQUIRE, BETH SALAK and TIM
10 DEVLIN, appearing on behalf of Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN CARTER: We are back on the record. And
3 with that, Commissioners, we will move now to Item 10. And
4 what we'll do, just so you'll know, we'll listen to staff,
5 we'll hear from the parties, and then I want to hear from OPC
6 and then I'll come back to the bench. With that, staff, you're
7 recognized.

8 MR. DEVLIN: Thank you, Mr. Chairman. Tim Devlin,
9 Commission staff. Item 10 involves Florida Power & Light's
10 Sunshine Energy Program. The recommendation addresses the
11 audit results of the staff audit of Green Mountain Energy. At
12 the July 31st Agenda Conference the Commission directed the
13 staff to complete its audit and report back, and we did so in
14 this recommendation and provided the highlights of the audit.
15 Also involved, also included in the recommendation is other
16 information the Commissioners can use to further evaluate the
17 Sunshine Energy Program. This involves marketing evaluation, a
18 brief overview of other green energy programs and some
19 information provided by the National Renewable Energy
20 Laboratories.

21 We have one oral modification to make, Mr. Chairman.

22 CHAIRMAN CARTER: An oral modification?

23 MR. DEVLIN: And it can be, it can be found on Page
24 10, the last paragraph.

25 CHAIRMAN CARTER: Page 10, the last paragraph. Okay.

1 MR. DEVLIN: We would like to recommend modifying the
2 recommendation by basically replacing the first sentence, and
3 I'll just read it into the record.

4 CHAIRMAN CARTER: Okay.

5 MR. DEVLIN: "Although the program was improving in
6 the last year or so in terms of the contributions to renewable
7 energy, the program was terminated because it no longer served
8 the interests of its participants and no longer is aligned with
9 current state renewable energy policies."

10 CHAIRMAN CARTER: Where are you? Did I miss --

11 MR. DEVLIN: It's the --

12 CHAIRMAN CARTER: Oh, oh, that's the revised
13 language?

14 MR. DEVLIN: That's the revised language.

15 CHAIRMAN CARTER: So we're striking the first --

16 MR. DEVLIN: Strike the first sentence and replace it
17 with what I just said orally, please.

18 CHAIRMAN CARTER: Okay. All right. Now would you
19 restate the oral modification, please?

20 MR. DEVLIN: Sure. Replacing the first sentence with
21 the following language: "Although the program was improving in
22 the last year or so in terms of the contributions to renewable
23 energy, the program was terminated because it no longer served
24 the interest of its participants and no longer is aligned with
25 current state renewable energy policies."

1 CHAIRMAN CARTER: Okay.

2 MR. DEVLIN: Mr. Chairman, as you acknowledged, I
3 think we have two or three parties, three parties, I believe,
4 who would like to make a presentation.

5 CHAIRMAN CARTER: Okay. Let's start with
6 Mr. Litchfield. You're recognized. Good morning or good
7 afternoon.

8 MR. LITCHFIELD: Thank you. Thank you, Mr. Chairman
9 and Commissioners. I'm pleased to be back here today before
10 you on this matter, and Jessica Cano is here appearing on
11 behalf of Florida Power & Light as well. We also have
12 Mr. Dennis Brandt, whom you will recognize from the prior two
13 Agenda Conferences at which this issue came up.

14 We, we are frankly very pleased in the results of the
15 staff's audit in which it was able to confirm that the monies
16 that had been remitted to Green Mountain in fact were spent on
17 the Sunshine Energy Program. That had been a question that
18 this Commission had wanted some clarity on before finalizing
19 its disposition of this matter. And we feel that with those
20 conclusions of your staff in connection with that audit that,
21 and with some additional things that I'm going to bring to your
22 attention momentarily, that we're in a position now to, to
23 close this matter out.

24 You recall that your staff had in a July 15th memo
25 articulated or identified a few issues that would need to be

1 addressed in connection with the termination of the program,
2 and I'm going to ask Ms. Cano to distribute to you right now,
3 if I have your leave to do that, Mr. Chairman --

4 CHAIRMAN CARTER: You may approach.

5 MR. LITCHFIELD: -- a list of things that I think we
6 believe will address those and other issues and would allow the
7 Commission to dispose of this matter finally.

8 First of all, you'll notice that we at FPL are
9 proposing not to, to make adjustments to the ECCR clause such
10 that the total 2008 net ECCR expense recovery for Sunshine
11 Energy will equal zero. We will also be taking the Sunshine
12 Energy obligations and attributes of the Rothenbach Park solar
13 facility below the line, which as you well know, but for those
14 who may not, will mean that FPL will not seek current or future
15 clause or base cost recovery for those obligations and
16 attributes. This obligation amounts to about \$1.75 million in
17 nominal terms.

18 I won't go through the, in the interest of brevity, I
19 won't go through, you have them for your reference, the
20 particulars of the, of the other items that FPL would be
21 adjusting in the ECCR clause in order to net to zero the
22 Sunshine Energy expenses for 2008. But the total, right there
23 near the bottom, the total ECCR adjustment would be in the
24 amount of \$353,458. And adding to that, the \$1.75 million in
25 foregone cost recovery associated with the obligations of

1 Rothenbach Park would push that value to something north of
2 \$2.1 million.

3 We, we think, Commissioners, continue to believe that
4 the program did serve a good and valid purpose. We, again, are
5 appreciative of Green Mountain, I should make note of that,
6 appreciative of Green Mountain being willing to open its books
7 to the Commission and to allow that audit to, to go through,
8 and we're very, very satisfied with the results of that audit.
9 And that's, those are my comments this morning, Mr. Chairman.

10 CHAIRMAN CARTER: Thank you.

11 Mr. Wright.

12 MR. WRIGHT: Thank you, Mr. Chairman, Commissioners.
13 I'm Schef Wright. I'm here representing Green Mountain Energy
14 company. Mr. John Holtz is going to make some brief comments
15 for Green Mountain.

16 CHAIRMAN CARTER: You're recognized.

17 MR. HOLTZ: Thank you, Mr. Chairman, Commissioners.
18 Just to reintroduce myself, I'm John Holtz. I work for Green
19 Mountain Energy Company.

20 Not a whole lot to say other than, as you know, a
21 month ago this calendar date our chief legal officer appeared
22 here before you and pledged our commitment to the Commission
23 and the staff that we would help with your further review of
24 the Sunshine Energy Program. We fully delivered on our
25 commitment to you. We think the staff recommendation before

1 you today bears that out.

2 We -- you called for greater transparency with the
3 program. We heard your call. For two days in August we hosted
4 staff for, for the audit down at our headquarters in Austin.
5 We made our, everyone in our accounting department fully
6 available to them to answer their questions, provide them with
7 the documents they needed. We made our members of our senior
8 management available to them to answer their questions. We
9 have thoroughly answered every staff data request that we've
10 seen in the last couple of weeks; provided you with a pretty
11 thick book, I think, of, of paperwork to look at. So we're
12 happy to do that. And, I mean, keep in mind that's all done by
13 a company who isn't doing business in Florida anymore. So we,
14 we were happy to do that because we wanted to do the right
15 thing by this Commission. So thanks for that opportunity.

16 CHAIRMAN CARTER: Thank you.

17 Mr. Beck.

18 MR. BECK: Thank you, Mr. Chairman and Commissioners.
19 Charlie Beck with the Office of Public Counsel.

20 Commissioners, the very generous and concerned
21 customers who volunteered to pay an additional \$9.75 per month
22 made these payments with a desire to see additional usage of
23 renewable power in the state and the construction of
24 photovoltaic energy capacity. The Rothenbach Park Project in
25 Sarasota is a centerpiece of that effort that provides an

1 additional 250 kilowatts of photovoltaic power. We want to
2 commend Florida Power & Light for taking the step they have
3 here today. We think it's a positive step and it brings
4 additional value to customers over what they had without it.
5 Thank you.

6 CHAIRMAN CARTER: Thank you, Mr. Beck.

7 Commissioner Skop, you're recognized.

8 COMMISSIONER SKOP: Thank you, Mr. Chairman. I guess
9 having heard the parties, first and foremost I'd like to
10 commend OPC for their involvement in the proceeding today, and
11 I do think that there are some positive steps towards resolving
12 this matter.

13 Just briefly, I guess today I had been prepared to
14 talk about the audit findings, and I do appreciate Green
15 Mountain's cooperation in the audit. I know that there may be
16 differences of opinion in certain areas, but, again, we don't
17 need to really get into that.

18 Just briefly, two, two points in passing to
19 Mr. Devlin, first and foremost. That confidential document, I
20 believe, Commissioners, you've had that in terms of how the
21 monies were spent, the real thin one that just came out -- and
22 I can't talk about it because it's confidential. But on the
23 first page, Mr. Devlin, if this were a regulated entity, would
24 that highlighted expense be allowed as an allowable expense in
25 your professional opinion?

1 MR. DEVLIN: Based on the limited information I have
2 before me, in a traditional cost recovery type of scenario
3 these, this type of cost would not be authorized for recovery.

4 COMMISSIONER SKOP: All right.

5 MR. DEVLIN: I'd like to qualify that a little bit,
6 that this is not a traditional cost recovery scenario and that
7 we're dealing with a performance-based contract.

8 COMMISSIONER SKOP: I understand. I understand. And
9 then also too with the, with respect to the oral modification
10 that was done to Page 10 where staff indicated the program was
11 improving in the last year, would it be true to say that a
12 substantially larger number of RECs were, were purchased in
13 2008? And, again, there's a document that breaks that down
14 that's also confidential, but they were pretty heavily loaded
15 up in 2008; is that correct?

16 MR. DEVLIN: My understanding, it's either that or
17 the price of the RECs was higher in 2008 or a combination of
18 the two.

19 COMMISSIONER SKOP: And that was after, and that was
20 after the staff had initiated an audit of the program; is that
21 correct?

22 MR. DEVLIN: I'm not sure if it was after the
23 initiation of the audit. The audit was initiated, I think,
24 around April.

25 COMMISSIONER SKOP: Okay. Yeah. Well, anyway, we'll

1 just move on from there. But, again, I think that, you know,
2 there are some positive steps moving forward.

3 I just have a couple of questions. I need to find my
4 one sheet of paper and then I guess we can move forward with
5 this as a Commission. At the moment I'm having trouble finding
6 that piece of paper. Here it is.

7 In terms of where I was at today in terms of the
8 fallout issues remaining to be resolved, and I know the REC,
9 again, it's kind of moot that we're discussing this to some
10 degree, but I do think there are some issues that weren't
11 addressed in the REC. And I think the first issue would be did
12 FPL make full disclosure of material facts regarding the
13 utilization of funds associated with the Sunshine Energy
14 Program, and specifically did FPL disclose to consumers and to
15 this Commission that the vast majority of funds contributed to
16 the Sunshine Energy Program would be spent on marketing and
17 administrative expenses instead of renewable energy?

18 And, secondly, was FPL prudent in the management of
19 the Sunshine Energy Program? Specifically did FPL prudently
20 manage the performance of Green Mountain Energy in accordance
21 with the provisions of the contract?

22 Third, disposition of the funds held in escrow and,
23 fourth, disposition of any FPL cost recovery claims through the
24 ECCR. In light of the, the statements made by the parties
25 today, would it be staff's opinion that those remaining issues

1 would be mooted in terms of the proposed settlement?

2 MS. FLEMING: I believe FPL's adjustments in the ECCR
3 clause reflect, relate specifically to the 2008 dollars. There
4 are still some 2007 true-up dollars, which I think is a loss;
5 is that correct?

6 MR. LITCHFIELD: I think our numbers actually include
7 a very modest amount of 2007 dollars. So it should really be
8 netted to zero irrespective of what year those dollars came
9 from.

10 MS. FLEMING: Thank you.

11 COMMISSIONER SKOP: And, again, I appreciate that. I
12 was just looking towards Mr. Devlin's response in terms to
13 Issues 1 and 2 that I just mentioned. Those would be separate
14 and independent as to whether FPL actually met the tariff or
15 not; correct?

16 MR. DEVLIN: I'm trying to, excuse me, I'm trying to
17 understand your question, Commissioner Skop. You're asking
18 whether there's an issue with respect to full disclosure?

19 COMMISSIONER SKOP: The disclosure issue and also
20 whether FPL was prudent in the management. Both of those are
21 separate and independent from any issue as to whether FPL met
22 the tariff; is that correct?

23 MR. DEVLIN: I believe so.

24 COMMISSIONER SKOP: All right. Thank you. Just,
25 again, moving on -- thanks for the, the discussion because,

1 again, I think that this, this issue has gone on. And, you
2 know, I fully appreciate the, the judicial economy of reaching
3 a compromised settlement with no admission of wrongdoing and I
4 think that there are some benefits to that. I think that going
5 through a prolonged hearing process is, is an issue.

6 I just have some questions for OPC with respect to
7 their review of the proposed settlement, and I think that we
8 can move on from there. Has OPC, in terms of the proposed
9 settlement, has OPC had the opportunity to read the Solar Tag
10 Agreement?

11 MR. BECK: I've been briefed on it. I haven't read
12 it, Commissioner. Let me clarify that we're not entering into
13 a settlement agreement.

14 COMMISSIONER SKOP: Okay.

15 MR. BECK: We simply came here to express that FPL
16 has taken a positive step, has brought more value to customers,
17 but there's not a settlement agreement per se that
18 we've entered into.

19 COMMISSIONER SKOP: Okay. I appreciate the
20 clarification on that.

21 I guess, you know, in terms of the obligations that
22 have been recently assigned, apparently Green Mountain, it's my
23 understanding, had an agreement that had been once assigned
24 before to purchase attributes, which is the liability in the
25 REC, and that obligation, again, the contract has been

1 terminated by Green Mountain and they've assigned that
2 obligation to FPL. And I think that's what FPL is offering
3 here, that they will not seek current or future clause recovery
4 for the obligations of the attributes, which are essentially
5 the RECs. And, you know, I'm a little bit -- I guess I think
6 this is a big positive step. I'm at a little bit of a
7 disadvantage to the extent that I have not been able to
8 actually review the agreement. I asked our legal staff to
9 provide it over the past eight months but I haven't got a copy.
10 I did see part of it this morning. Again, I'm struggling to
11 work through that information to better understand what's
12 involved in that agreement to substantiate the amount that's
13 listed as the, as the consideration.

14 I guess with respect to -- my concern would be, all
15 right, and I'll just cut to the point, with respect to that
16 proposed provision, that agreement has been signed at least
17 twice to date. And to me, if we move forward with this, which
18 I think we can, I would think that there would need to be some
19 safeguards there to prevent that agreement from futurely being
20 assigned further, and also that the sale of RECs or the
21 attributes, that those RECs could not be sold and they must be
22 retired to the extent that, you know, what's being claimed now
23 is an obligation or a consideration of not seeking cost
24 recovery would be, could not be turned into a gain or a profit
25 later by saying we're not going to seek recovery but at the

1 same time you're selling off these attributes somewhere else.

2 So to me I think there needs to be a safeguard there
3 to -- you know, if we retire them, then I think there's a
4 benefit there for the ratepayer to the extent that not only is
5 Florida benefiting from the purchase of renewable energy from
6 the project, they're also getting the attributes also for which
7 FPL is not going to claim cost recovery. But I just want to
8 make sure that there's some safeguard there, that they can't
9 assign that agreement that we just, you know, bought into as a
10 result of a settlement or in the future sold the attributes.
11 And I think that that works out well too for the general body
12 of ratepayers who never entered into any sort of agreement and
13 really shouldn't have to pay for the cost of the TRECs through
14 the ECCR clause.

15 But in fairness to FPL, I think that there is some
16 substantial body to the general body of ratepayers in terms of
17 meeting any future RPS requirement to the extent that this
18 project will produce RECs that won't have to be purchased by
19 the general body of ratepayers. So I do think there's some
20 benefits there. And I think I'll yield to Commissioner
21 McMurrian.

22 CHAIRMAN CARTER: Commissioner McMurrian.

23 COMMISSIONER McMURRIAN: I just wanted to ask
24 Commissioner Skop, somehow I got lost, I guess. What agreement
25 are you talking about, because I'm not sure I'm following?

1 COMMISSIONER SKOP: It's the -- what is referred to
2 in the contract is a Solar Tag Agreement, and actually I don't
3 have a copy of the document. Again, I think that that governs
4 the -- there was a Power Purchase Agreement between FPL and MMA
5 to purchase the power at the COG-1 rate, and that's, you know,
6 a good thing because that's what the, the original contract
7 called for is to enter into a Power Purchase Agreement.

8 There's a separate agreement which I've never really
9 kind of seen until this morning that is a Solar Tag Agreement.
10 Originally that agreement was from one party and Green
11 Mountain, and then it was assigned to another party and Green
12 Mountain, and then Green Mountain just alleged that FPL
13 defaulted, so then they, they assigned the obligation to FPL.
14 So FPL now has that obligation, which is about a \$2 million
15 future obligation through the next eight years, and that
16 basically provides attributes which are analogous to, I guess,
17 the notion of a TREC.

18 But the, the issue with that is just -- you know, I
19 can get comfortable with, with what is being offered by FPL.
20 It's just I would like to see a safeguard put there that that
21 agreement could not be assigned or that those RECs could not be
22 sold by FPL, that they would just retire them for the benefit
23 of the State of Florida. And I think that that would work out
24 well because, again, they're claiming it as a liability, but
25 that's only looking at one side because the RECs obviously have

1 some, some value.

2 Also, too, you know, I did a brief calculation on the
3 cost, on the cost of the RECs based on the cost of the
4 attributes. And that gives me some concern because -- I can't
5 get into numbers, but it would be the most expensive REC in the
6 nation based -- unless my math is wrong. So, again, I only got
7 to see the agreement for five minutes this morning. But,
8 again, I think I can get comfortable. I think FPL has taken a
9 positive step in the right direction. I just would merely like
10 to see some safeguards on the Rothenbach attributes to the
11 extent that those, that the agreement would not be assigned by
12 FPL and that they would not sell the RECs. Because if they do,
13 there's no value in terms of what they're offering. And if, if
14 I'm not making myself clear --

15 CHAIRMAN CARTER: Hang on a second. Mr. Litchfield,
16 maybe you can bring some clarity to what --

17 MR. LITCHFIELD: Yeah. Thank you, Mr. Chairman.

18 The RECs have to follow the expenses, and the
19 obligation that we would be assuming, in fact, would be to
20 purchase RECs. Now that obligation is at about the rate of
21 \$23,000 a month. That's an obligation that FPL and its
22 shareholders are bearing. But the, the RECs or the right to
23 the attributes has to follow the expenses. That's, that's sort
24 of elementary. If we were asking for cost recovery or leaving
25 those expenditures or those obligations in the ECCR, naturally,

1 again, the RECs would follow the expenses. So I don't see any
2 basis and certainly we're not in any position to agree to
3 separate the RECs from, from the expenditures at this point.

4 Now I do have two other observations which I'll
5 reserve with respect to Commissioner Skop's questioning of
6 staff relative to the recommendation.

7 CHAIRMAN CARTER: One second. Why don't -- go ahead,
8 Mr. Litchfield.

9 MR. LITCHFIELD: The two points that I thought I
10 understood Commissioner Skop to, to raise with the staff were
11 relative to the disclosures that were made under the program
12 and then the overall prudence of the program. And, and my
13 impression of reading the staff rec, and obviously we would
14 like clarification from staff in this respect if it's not their
15 view, but that the, the marketing messages are generally
16 consistent with the parameters originally set by this
17 Commission. They looked at all of the marketing materials,
18 they received copies of them both from us and from Green
19 Mountain and reviewed them to my understanding in great detail
20 and this was their conclusion. So I'm not sure that, that
21 there's any conclusion other than the one that's set forth here
22 by, by, by the staff in their recommendation.

23 They do -- and I'll just cut this off because I
24 suspect that this is where we'll head, there is one reference
25 to, to one phrase that appeared on one sheet of a, of a web

1 page where staff said that the statement in their view might be
2 misinterpreted by a potential contributor. Well, I checked
3 with Mr. Brandt this morning and asked him about the number of
4 customers that actually subscribed to the program in connection
5 with the web offering, and his answer was about 100. So about
6 100 customers out of 38,000 actually signed up to the program
7 under, under the web offering.

8 But be that as it may, I think we would refer back to
9 all of the materials, the collective totality of all of the
10 marketing materials that were published and again back to the
11 Commission's, staff's own reference here that the marketing
12 messages are generally consistent with the parameters
13 originally set by this Commission.

14 With respect to the question of prudence, you know,
15 again, I'm reading the staff rec in its totality, and obviously
16 if staff feels differently, we would certainly want to hear
17 that from them. But, but when we read their conclusions and
18 when we have gone through three separate Agenda Conferences and
19 traversed the issues, I think, in some detail, we feel like we
20 have acquitted ourselves, that Green Mountain has acquitted
21 itself and that the program expenditures were prudently spent.
22 And the success of the program is really, I think, well
23 documented. The Department of Energy itself ranks it as one of
24 the top programs. And one may quibble with whether the
25 penetration rates could have been or should have been somewhat

1 higher. I think if you go that route, you've got to look at
2 demographics in the region in which we're marketing. This,
3 this -- although I think to the program's credit we've made
4 great inroads in promoting green energy in this state, we're
5 not starting out marketing this program in the Pacific
6 Northwest, and, and it was challenging in order to provide
7 customers with an adequate degree of education in order to get
8 the penetrations where they were.

9 So on balance we certainly think that the program was
10 prudently administered. And certainly if staff felt
11 differently, we would have expected to see that in the rec, but
12 I obviously would defer to them.

13 CHAIRMAN CARTER: Mr., I'm going to go to Mr. Devlin,
14 and then I'll come back to you, Commissioner McMurrian, to make
15 sure that you got an answer to your question.

16 Mr. Devlin, you heard what Mr. Litchfield said. Is
17 there any, any disagreement?

18 MR. DEVLIN: Thank you, Mr. Chairman. Yes, I do have
19 disagreement.

20 CHAIRMAN CARTER: You're recognized.

21 MR. DEVLIN: First, on the first point that
22 Commissioner Skop spoke to wasn't just the marketing plans, it
23 was transparency, I believe, with respect to the cost for
24 administration and marketing, whether that was fully disclosed,
25 and I don't believe it was until we conducted our audit.

1 And then the second issue with regard to prudence, I
2 don't believe our staff recommendation really dealt with the
3 issue of prudence. We just provided a lot of information in
4 there for the Commissioners' consideration of whether that
5 needs to be considered as a future issue, but I would like to
6 speak to it for a moment or two.

7 CHAIRMAN CARTER: You're recognized.

8 MR. DEVLIN: Because there's a couple of
9 considerations that goes through my brain when you look at
10 prudence. First of all, in my mind FPL did comply with the
11 tariff, they did comply with the order, they did comply with
12 the marketing materials after they were reviewed by staff. I
13 think that has to be weighed in when you look at prudence. But
14 at the same time, the traditional role of the utility is to
15 oversee a program and make sure that costs are expended in a
16 reasonable and prudent manner and I didn't really see that
17 happening here with respect to this program. So I have sort of
18 countervailing considerations when you're dealing with the
19 issue of prudence.

20 First, they're in compliance with the tariff and
21 order and marketing materials. But, second, I didn't really
22 see the oversight of the program expenditures. And then, then
23 the third observation in just looking at what's happened since
24 the last Agenda Conference, we looked at other programs. And
25 this is not unusual for these types of voluntary green energy

1 programs to be heavily laden with marketing and
2 administrative costs. So I think that needs to come into play
3 as well, especially in the early years. This particular
4 program I think was higher than average based on what I've
5 reviewed, but it's not unusual for all these programs to have a
6 high level of administrative and marketing costs. And I think
7 that also comes into play when we question the prudence of
8 management.

9 CHAIRMAN CARTER: Commissioner McMurrin, you had a
10 question initially and I --

11 COMMISSIONER McMURRIAN: He answered it.

12 CHAIRMAN CARTER: He answered.

13 Commissioner Skop.

14 COMMISSIONER SKOP: Thank you, Mr. Chairman. And,
15 again, I appreciate Mr. Litchfield's comments.

16 Just going back to Mr. Devlin, again, I really don't
17 have a desire to want to get us into this. I think that
18 there's somewhat of a good faith effort being made by FPL to,
19 to address the fact that there are some outstanding issues. I
20 just want to clarify one point that Mr. Devlin made and some
21 quick questions.

22 Mr. Devlin, first, FPL wrote the tariff that was
23 filed for approval; correct?

24 MR. DEVLIN: I'm not 100 percent sure of that. I'd
25 have to confirm that with staff who was involved in that

1 tariff.

2 COMMISSIONER SKOP: Okay.

3 MS. FLEMING: Commissioner Skop, I was involved in
4 that docket. As generally, as we generally deal with other
5 utilities and other tariffs, generally the utilities provide
6 the tariffs to staff. If there are some issues that need to be
7 modified based on the Commission's vote, then the staff gives
8 that information to the utility. The utility goes back and
9 modifies the tariff and then staff usually has administrative
10 authority to approve that tariff.

11 COMMISSIONER SKOP: Okay. As a follow-up question to
12 that, the tariff as it was written did not incorporate that
13 solar capacity requirement that was in the Commission order; is
14 that correct?

15 MR. DEVLIN: I believe that's correct.

16 COMMISSIONER SKOP: Okay. And, again, coming to my
17 central point, and, again, I hate to have to go through this,
18 but technically meeting the requirements of a tariff that
19 obviously had some issues with it would not be dispositive to
20 the controlling question as to whether FPL made full disclosure
21 of material facts regarding the Sunshine Energy Program and
22 whether FPL was prudent in the management of the Sunshine
23 Energy Program; correct?

24 MR. DEVLIN: I believe it's just one major
25 consideration is whether they're in compliance with the tariff.

1 COMMISSIONER SKOP: Okay. Okay. So there would be
2 some, some general, genuine questions of material fact that
3 would also not be relevant to the tariff; is that true?

4 MR. DEVLIN: That's correct in my mind.

5 COMMISSIONER SKOP: Okay. And just one quick
6 follow-up question. With respect to the tariff I think staff
7 in the staff recommendation indicated the average cost of the
8 REC over the life of the program is approximately \$2.10 per
9 REC; is that correct?

10 MR. DEVLIN: Commissioner Skop, could you refer us to
11 the -- that sounds correct. I'd like to see it in writing.

12 COMMISSIONER SKOP: Okay. Subject to check. I mean,
13 we can --

14 MR. DEVLIN: That sounds about right.

15 COMMISSIONER SKOP: Okay. So as the tariff was
16 written, for each \$9.75 that was contributed to the, by the
17 voluntary ratepayers under the tariff, basically the cost to
18 comply with the tariff as written was only about \$2.10; is that
19 correct?

20 MR. DEVLIN: That sounds correct.

21 COMMISSIONER SKOP: All right. Thank you.

22 Just one more final question. I'm just trying to --
23 again, I'm not here to, you know, to fight. I just, I think
24 that you guys have made a good faith effort.

25 Mr. Devlin, just one further question. And, again,

1 on the website, again, I think there's a highlighted document
2 that you, that was provided to you that showed that website
3 that Mr. Litchfield referred to, the website question, the
4 question and answer. Can you please read that: "What does"
5 starting with, "What does the additional cost pay for?"

6 CHAIRMAN CARTER: Where -- Commissioner, are you in
7 the --

8 COMMISSIONER SKOP: I'm sorry. I can pass this down.
9 This is -- yeah. Actually I think --

10 CHAIRMAN CARTER: If it's confidential, I really
11 don't want it.

12 COMMISSIONER SKOP: No, it's not. It's public. But
13 it's -- I think Mr. McNulty provided it.

14 MR. DEVLIN: I found it, Mr. Chairman.

15 CHAIRMAN CARTER: Okay.

16 COMMISSIONER SKOP: Okay.

17 CHAIRMAN CARTER: All right then.

18 COMMISSIONER SKOP: Could you just, the highlighted
19 portion, can you read starting there and to the bottom of that
20 paragraph?

21 MR. DEVLIN: The question is, "What does the
22 additional cost pay for?" The answer, "The charge goes toward
23 the purchase of renewable resources for program and nominal
24 administrative costs to operate the program. In addition,
25 customer demand for these resources and a portion of the

1 monthly cost used to procure renewable resources helps spur the
2 development of new renewable resources nationwide -- and new
3 solar generation in Florida."

4 COMMISSIONER SKOP: Okay. And in relation to the
5 statements made, does it mention marketing expenses in, in any
6 manner in that statement?

7 MR. DEVLIN: No, sir.

8 COMMISSIONER SKOP: Okay. And then also, too, with
9 respect to the NREL survey, the voluntary data that FPL had
10 provided to NREL over the various years, did ever once FPL
11 disclose the marketing costs in that voluntary data provided to
12 NREL? And I have a copy of that in front of me if you would
13 like to see it. It's a utility green power program
14 questionnaire.

15 MS. SALAK: The marketing costs would have been
16 included in there.

17 COMMISSIONER SKOP: They were not.

18 MS. SALAK: They were.

19 COMMISSIONER SKOP: No.

20 MS. SALAK: In NREL? Just a second while I pull the
21 data.

22 COMMISSIONER SKOP: I've got the data right here.
23 And it's in the staff data request dated 12 December.

24 CHAIRMAN CARTER: Commissioner, maybe you could just
25 kind of refashion your question and get, and staff could

1 probably answer the point. Staff?

2 COMMISSIONER SKOP: Well, I think, I think I got the
3 wrong, the erroneous answer to the question that was asked
4 based on what I'm looking at. So I --

5 CHAIRMAN CARTER: Well, I understand what you're
6 looking at.

7 COMMISSIONER SKOP: Okay.

8 CHAIRMAN CARTER: But I'm saying staff, you've got
9 them at --

10 MS. SALAK: You're correct, Commissioner.

11 COMMISSIONER SKOP: Okay. So, so to rephrase, to
12 restate the question, in its voluntary responses to NREL
13 surveys, FPL never disclosed the marketing costs in any of the
14 responses provided to NREL.

15 MS. SALAK: Not the one I'm looking at. It included
16 administrative costs but not marketing.

17 COMMISSIONER SKOP: Okay. And the point I'm just
18 trying to make, Commissioners, not to belabor the point,
19 because, again, I think that we've, we've been through this a
20 long time, but to me the fundamental duty of disclosure -- you
21 know, FPL was paid almost a million dollars to manage this
22 program over the course of four and a half years. You know,
23 part of that is as program manager they were best positioned, I
24 mean, just kind of right out of my concurring opinion, they
25 were best positioned to know what was going on and they, in my

1 view, just didn't make that disclosure. And to me,
2 irrespective of any action that this agency took, duty to, the
3 duty to disclose trumps that.

4 But, again, I think FPL, in fairness to FPL, they've
5 made a good faith effort to acknowledge and address some of the
6 issues here in terms of what they're agreeing not to seek cost
7 recovery on. Again, I didn't really get a clear answer from
8 Mr. Litchfield. I'd appreciate it if he could elaborate with
9 respect to he indicated that the attribute follows the, the
10 expense. But, again, my concern is if FPL is not going to seek
11 cost recovery, fine, and they want to retire the RECs and the
12 attributes for the Rothenbach Project, which I think is a good
13 thing, you have a good PPA, you buy the power and then just
14 retire the attributes, everything is here, kept in Florida. I
15 just want to make sure that that agreement, after we agree to
16 your offer of not seeking cost recovery, wouldn't be
17 subsequently assigned to someone else or that those RECs, in
18 fact, would not be sold. And, I mean, it's a very simple
19 question, a fair question.

20 CHAIRMAN CARTER: Mr. Litchfield, you're recognized.
21 And also I'll come back to you and give you an opportunity to
22 answer the other comments that have been made. You're
23 recognized, sir.

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

25 Commissioner Skop, to answer your question -- and I

1 can be clearer. When I say that the RECs follow the expenses,
2 the obligation that we would be agreeing to assume is for the
3 purchase of RECs. So if we are taking the expense below the
4 line, then, then the purchase of those RECs also would be below
5 the line and the company would be entitled to sell those RECs
6 in the market in order to offset to some extent the expense
7 that it's taking on.

8 Just to give you a frame of reference, if, using your
9 numbers, if the cost of the RECs was \$2.10, was that the figure
10 you used?

11 COMMISSIONER SKOP: That's the average cost. But my
12 calculation of these would be substantially higher. I mean, I
13 can't give the number because it's confidential, but it would
14 be the highest in the nation.

15 MR. LITCHFIELD: Well, well, even, even if -- it
16 would have to be ten times that in order to not even equal the
17 expense that we would be assuming. So there's some risk
18 obviously associated with taking it below the line on the part
19 of FPL. If the Commission preferred to have it remain above
20 the line and take that risk for the upside of the RECs, that
21 would be fine too.

22 COMMISSIONER SKOP: Mr. Litchfield, just one point in
23 consideration is that the, you know, with respect to what's
24 being offered, I appreciate that and that's a good way to
25 harmonize and unite. I mean, in the Manatee decision the

1 Commission said that FPL would not be allowed to purchase RECs
2 pre-RPS with that renewable project. So I think that this
3 nicely comports with that without violating it to the extent
4 that you guys, by virtue of Green Mountain alleging that FPL
5 has defaulted, assigned, canceled the contract and assigned
6 this obligation to you guys.

7 But the underlying point I'm trying to make is that
8 there's nothing to say -- and that obligation now would be if
9 FPL sought recovery under the ECCR beared by the general body
10 of ratepayers -- and there's nothing to say that that
11 underlying transaction to begin with would be deemed prudent by
12 this Commission. So merely I can get comfortable with what
13 you're saying, but I'm not comfortable by the fact saying that
14 you're offering something up, only to go, to state it as a
15 liability, only to go sell it later and potentially profit or
16 offset something. So I'm not -- it doesn't comport with, with
17 the value of the settlement because, again, and I'm trying to
18 be very reasonable here, in the grand scheme of things you guys
19 were paid almost a million dollars to manage a program. I know
20 there may be some disagreement. I think, you know, in my
21 concurring opinion I think it laid it out pretty nice where I
22 think things went wrong.

23 But, you know, to me if we net the management fee
24 against what's offered in here, there's not much net value in
25 terms of what's being offered. And that value goes to de

1 minimis if they're going to turn around and sell something that
2 they're offering up as opposed to just retiring it. So, again,
3 to me it's a very simple straightforward commitment that, you
4 know, what's being offered really isn't a lot if they're going
5 to go gain from that. I mean, I'm trying to be as fair as I
6 can and I appreciate what's been offered, but, you know, I
7 wasn't, I wasn't born yesterday.

8 CHAIRMAN CARTER: Commissioner, just ask your
9 question and that way the other Commissioners can ask their
10 questions.

11 Mr. Litchfield, you got the question. Would you
12 respond, because I need to go to other Commissioners?

13 MR. LITCHFIELD: Thank you. Let me just respond very
14 generally.

15 CHAIRMAN CARTER: Yes, sir.

16 MR. LITCHFIELD: It's clear that Commissioner Skop
17 still has issues with this program. We recognize that. We
18 read the concurring opinion and we participated in two previous
19 Agenda Conferences.

20 To some extent, however, the criticisms do appear to
21 be somewhat of a moving target. I mean, initially we were told
22 the concern was that Green Mountain had not fulfilled its solar
23 commitment. And then the concern became the transparency
24 associated with the, with the expenditures that Green Mountain
25 was making of the funds that we remitted to Green Mountain.

1 And now what I'm hearing is that it goes all, it goes to the
2 oversight or the prudence of FPL over the program. And I can
3 tell you categorically that FPL's proposal to resolve the
4 issues in this docket was predicated upon an understanding, and
5 maybe misdirected, but an understanding that there were no
6 other prudence issues out there with respect to this program,
7 that staff had done an audit and felt comfortable that the
8 monies were spent as had been indicated by Green Mountain, that
9 the disclosures were consistent with, with commitment standards
10 and the orders that had issued in connection with this program,
11 and that there really wasn't much left to do other than to take
12 a look at the dollars that were otherwise to be addressed in
13 the ECCR proceeding this fall.

14 And what we've tried to do is to take those dollars
15 off the table. In our minds that, that cleans up everything
16 and there's nothing left to discuss. Now if we're wrong about
17 that, then -- I would say that our offer really was predicated
18 upon those types of understandings. If we're wrong about that
19 and we, we need to go through a full proceeding in order to
20 look at all of these costs, then we would want to look, and I
21 agree with Commissioner Skop, we would want to look at the
22 Rothenbach Park obligation and convince you that, yes, it was
23 prudent, it was justified, there are benefits to Florida
24 customers, and leave it above the line and, and we move
25 forward.

1 But our understanding was that there was an
2 opportunity here to, to dispose of the issues in, in a good
3 fashion, in a reasonable fashion, and to move forward with
4 other business. So I really am looking for some clarification,
5 I suppose, with respect to that.

6 CHAIRMAN CARTER: Thank you.

7 COMMISSIONER SKOP: Mr. Chair.

8 CHAIRMAN CARTER: One second.

9 Commissioner Argenziano, you're recognized.

10 COMMISSIONER ARGENZIANO: I'll come back.

11 CHAIRMAN CARTER: You'll come back in a minute?

12 Okay.

13 Commissioner Skop.

14 COMMISSIONER SKOP: Thank you, Mr. Chairman.

15 And, again, Mr. Litchfield, I think that we can avoid
16 the need for going to a full-blown hearing. I mean, I think
17 that based upon -- again, I do not agree with -- you know, the
18 staff recommendation came today to talk about the Green
19 Mountain audit. It did not encompass all of the, what I deem
20 to be the remaining fallout issues would entail disclosure,
21 prudence of management, the disposition of escrow funds and the
22 additional costs that may be recovered through the ECCR which
23 affects the general body of ratepayers. I think we can dispose
24 of all those outstanding issues behind us in terms of what
25 you're offering today. I just need assurances that, you know,

1 you're putting an approximate value of \$1.75 million on, on a
2 concession that apparently is being offered up. But if you go
3 sell the attributes for that, it's not really \$1.75 million.
4 So I'm just asking, retire the RECs. It's a very simple thing,
5 this whole thing goes away today. That's compromise. I've
6 come way off where --

7 MR. LITCHFIELD: I'm sorry. Mr. Chairman, I think I
8 stated our position, that the RECs have to follow the expenses.

9 CHAIRMAN CARTER: I think you have several times. We
10 appreciate that.

11 Commissioners? Commissioner Edgar, you're
12 recognized.

13 COMMISSIONER EDGAR: Thank you. Just, just a
14 comment. There was some discussion, as I recall, at the
15 previous agenda items about, specifically about the Rothenbach
16 Project, and I know I asked some of those questions and
17 probably others did as well. And I thank you for a piece of
18 paper because it's helpful to have something and the same thing
19 in front of all of us, this paper that you handed out.

20 I am more comfortable with my understanding of what
21 is on this paper than perhaps what is maybe being suggested as
22 an alternative for this reason. The commitment to the
23 Rothenbach Project, which is something that has been heralded
24 and recognized as moving in the direction that we're trying to
25 go with more renewable solar alternative programs, but that is,

1 in my mind is a commitment that FPL made that had not come
2 before this Commission and I'm fine with that. But partly
3 because of that the commitment that FPL is showing with what's
4 been given to us today to take future financial commitments
5 that are wrapped up in that arrangement below the line to me is
6 a significant step and I think is a very positive one. So I'm
7 appreciative of that. And that is something that to me is
8 clear and I understand how it will work or should work and
9 where it puts that project on a forward-going basis and also
10 how our accounting treatments would work as we go through, you
11 know, the next years of cost recovery clause proceedings. So I
12 find this useful and I just wanted to put that out there.

13 COMMISSIONER SKOP: Mr. Chair.

14 CHAIRMAN CARTER: Commissioner Skop.

15 COMMISSIONER SKOP: And I agree with Commissioner
16 Edgar. I think that the Rothenbach Park is a good step in
17 terms of what Florida needs to go to. I mean, in the instant
18 case you had the original agreement -- and there's something
19 missing here and what's missing is unfortunately confidential,
20 so I can't enunciate it. But it's a document that we've looked
21 at before that FPL still remains to claim confidentially, I
22 mean, confidentiality of. And that document was, the redacted
23 copy of that document was filed with the clerk under Docket,
24 under Document Number 04020, and unfortunately I can't explain
25 what that is.

1 But how we got in this situation, I think that this
2 is instructive on understanding the Rothenbach Project. The
3 Rothenbach Project was built by a developer. And pursuant to
4 the original contract between FPL and Green Mountain, they
5 entered into a Power Purchase Agreement to purchase all the
6 power from the array pursuant to Section, I believe, 18.1(I) of
7 the contract. And that's what, exactly what it requires and
8 that's why Rothenbach meets the requirements of the contract.

9 The attributes pursuant to the contract were a
10 separate agreement and there was never an obligation that they
11 had to go anywhere. They were between the developer and Green
12 Mountain, and originally they were before, with the developer
13 and Green Mountain, then they were assigned to another
14 developer and now Green Mountain.

15 As a result of what's happened with Green Mountain
16 alleging that FPL has defaulted by virtue of what they've
17 alleged in their documents, they have now terminated the
18 agreement between Green Mountain and FPL and they assigned this
19 future obligation to purchase the attributes over the next
20 eight years. Now the issues with that is that's fine. If FPL,
21 as a result of what's happening here, is willing to put in
22 front of us the fact that they will take that below the line
23 and not seek current or future costs for that obligation, being
24 the purchase of the RECs, that's fine. To me, that makes, you
25 know, that's a compromised settlement. It works, it benefits

1 Florida.

2 But FPL is telling us, as Mr. Litchfield has said,
3 that if they take it below the line, although they're saying
4 that its approximate value to the Commission in terms of
5 putting this issue behind us, the value is \$1.75 million, they
6 don't intend to retire the REC. They intend to sell them or
7 they could sell them.

8 And so what I'm saying, that value there at
9 \$1.75 million isn't true value and that's all I'm saying. If
10 they would simply give me the commitment that they won't sell
11 the RECs, they'll take it below the line, it's a compromised
12 settlement, it works for everyone, I'll be the first one to be
13 on board and commend them for doing the right thing.

14 But, you know, to sell the RECs, be able to sell the
15 RECs or reserve the right to sell the RECs provides no value to
16 the voluntary ratepayers. Or the, you know, the, the assertion
17 that they'll seek recovery from the general body of ratepayers
18 is facially absurd because I just don't see that as being, that
19 prudence would come to mind. But it's a simple concession.
20 They're offering something, but what they're offering, what's
21 not being told, and, again, that's where I fleshed out that
22 question, is they make it seem like they're not going to seek
23 cost recovery on the RECs and they're offering that as an
24 approximate dollar value amount of \$1.75 million. But if they
25 can turn around and sell those RECs, then that value of that

1 \$1.75 million isn't real true value. And they've been paid a
2 million dollars to manage this project, so it becomes even more
3 de minimis.

4 So all I'm saying is just merely put some procedural
5 safeguards, and I think that, you know, those safeguards are
6 important. I think based on lessons learned, if they're
7 willing not to sell the RECs and they'll retire them to that
8 array for the benefit of the State of Florida and help meet
9 their future RPS, that's a great win. But to be able to
10 reserve the right to sell them, that's like offering something
11 only to do something else as soon as we bless it. And I
12 just -- it's real simple. I mean, it's complicated but, you
13 know, to me it's pretty simple.

14 CHAIRMAN CARTER: Commissioner Argenziano, do you
15 want me to go to the company for a response before I come to
16 you?

17 COMMISSIONER ARGENZIANO: Sure.

18 CHAIRMAN CARTER: Mr. Litchfield and then
19 Commissioner Argenziano.

20 MR. LITCHFIELD: First of all, I guess just as a
21 point of clarification, although I don't expect this to
22 engender any serious debate here, the company and Green
23 Mountain have been discussing the assignment of Rothenbach
24 Park. I think there may be a difference of views as to who
25 must assume the Rothenbach Park obligations, but I think it's

1 fair to say that we are very, very close, if not in agreement
2 in principle, that the company would end up taking that
3 obligation. So as I said, I don't think that's an issue. I
4 just wanted as a point of clarification to make that point.

5 But I think the bottom line here is, is whether the
6 Commission wants the -- again, the obligation to, to, under the
7 Rothenbach Park agreement is to purchase RECs. So either
8 Florida Power & Light Company purchases those RECs on behalf of
9 customers, meaning the whole equation remains above the line,
10 or Florida Power & Light purchases those RECs below the line
11 with shareholder dollars, in which case the RECs ought to
12 follow the expenses.

13 So it's -- we really -- we, we're fine either way.
14 We're happy to have the expenditures booked above the line and
15 the RECs follow the expenditures. But, but really it boils
16 down to that simple option: Whether they go above or below the
17 line, the RECs have to follow the expenditures.

18 CHAIRMAN CARTER: Commissioner Argenziano and then,
19 then Commissioner Edgar.

20 COMMISSIONER ARGENZIANO: Thank you. And forgive me
21 but -- and I appreciate FP&L coming up with the settlement
22 today. I think that's a step in the right direction, as OPC
23 has indicated also, and it's a good step. And I also
24 appreciate Commissioner Skop's, I guess, diligent research.

25 I'm having a hard time understanding, Commissioner,

1 what you want to do as to why they should retire those RECs if
2 the audit came out that everything was done the way it's
3 supposed to be, that based on the audit results all the program
4 revenues were used for purposes related to the Sunshine Energy
5 Program and that everything came out -- well, maybe not what
6 we'd want to, want to see, you know, but we understand that
7 marketing expenses up-front are that way pretty much, as had
8 been indicated, for most of the companies when they start up
9 and that there are certain things there. But it seems to me
10 that FPL has done everything that under our jurisdiction would
11 require, and I'm having a hard time finding with those results
12 how you would want to move forward in that direction.

13 COMMISSIONER SKOP: And I'll try and briefly respond.
14 I think that it comes down to a couple of things. I mean, this
15 has been a long, lengthy process and we've gone through three
16 Agenda Conferences and I don't think anyone wants to go through
17 a fourth one.

18 You know, first and foremost there was, there was a
19 problem identified. The Commission took the appropriate action
20 of shutting down the program. It was unfortunate but it needed
21 to be done.

22 Secondly, an audit of Green Mountain was performed
23 and we actually put our finger on where the monies and expenses
24 had gone to. For me it tends to -- you know, I know you
25 mentioned statute or Commission or whatever, but, you know, in

1 a legal sense, you know, when you collect money on behalf of
2 voluntary ratepayers, you're becoming a fiduciary. And when
3 you get paid a million dollars for a management fee, you're
4 there to manage the program. And they were best positioned to
5 know or should have known that the vast majority of the monies
6 that were collected for this program were not being spent on
7 renewables, and it's almost like 70 percent from inception to
8 termination.

9 And the issue is, is it's kind of like a, a Hobson's
10 choice because to disclose that fact on their own would be
11 fatal to the program going forward without the Commission
12 saying that it was okay. And in fairness to FPL, if they would
13 have simply have made that disclosure from the get-go, then I
14 have no problem because they fully disclosed it. But I'm going
15 to get, I'm going to get to the point real quick.

16 The second thing comes down to the prudence of the
17 management because, again, there's agreement to disagree. But
18 the issue in terms of what they're, what they're doing, again,
19 what's being offered here is the obligation from a contract
20 that was just assigned. It's like me buying a house and saying
21 I don't want the house and I'm going to just give it to you so
22 you're stuck with it. It's like a hot potato. And they're
23 saying that the obligation on a forward-going basis -- and,
24 again, I haven't had time, ample time to review the contract
25 and I have asked for it repeatedly, is 1.57, \$1.75 million.

1 Well, they got paid \$1 million to manage this program and I
2 think there are some issues associated with that.

3 Again, I don't want to get into a big debate. But if
4 you net those two in terms of what they gain versus what they
5 say is an expense, it's \$.75 million. But just looking at the
6 \$1.75 million to begin with, they're saying that's the value of
7 what they're giving up here to make the whole issue go away.
8 And what I'm saying is that they won't give a commitment -- in
9 terms of offering and putting a dollar value out there, that
10 dollar value is not a true dollar value to the extent that they
11 can come back and sell those RECs instead of retiring them in
12 Florida for the benefit of the array and the benefit of the
13 voluntary ratepayers.

14 That's what -- and these RECs, based on the
15 calculation of the schedule I saw, would be the most expensive
16 in the nation. I mean, Mike Twomey would blow a gasket. But,
17 you know, it's just that, it's an issue, it's a simple, it's a
18 simple concession of just saying retire the RECs and they're
19 giving up approximately, you know, total customer, by their own
20 words, total customer benefit ECCR adjustments plus Rothenbach
21 Park, more than \$2.1 million. Well, it's not more than
22 \$2.1 million if they turn around and sell the RECs.

23 COMMISSIONER ARGENZIANO: Mr. Chair.

24 CHAIRMAN CARTER: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: I understand what you're

1 saying. I've heard it enough times to understand it. Trust
2 me.

3 COMMISSIONER SKOP: Okay. Okay.

4 COMMISSIONER ARGENZIANO: What I'm telling you is
5 that you're, you're assuming that the company did wrong. Okay.
6 And what I'm telling you is since the audit came up -- and I'm
7 not going to say that I agree that that much money should go to
8 administration, but what I'm seeing is that it does in most
9 cases. In most of the other companies that I've seen out
10 there, they have very high administrative costs, marketing to
11 get people onto the program. So what you're arguing is the
12 nuts and bolts. You don't agree with that approach. And I'm
13 telling you that whether you agree with it or not, you may not,
14 I'm sitting here and I was looking at the audit results and
15 according to the -- if the audit results said, well, we found
16 that the money was, was not -- let me read it. Let's see.
17 "Based on the audit results, all the program revenues were used
18 for purposes related to the Sunshine Energy Program." You're
19 arguing with the, with the contract originally; something
20 should have been done then in the contract to begin would have
21 been that we want this much money to go into renewables per se.
22 But if you have no customers that you market to get, then you
23 have no program.

24 So what your argument -- I understand what you're
25 saying. But what I'm telling you is looking at it from this

1 end, not arguing that because I'm not into that, I'm not at the
2 point of a contract being made, I'm looking at what is
3 typically found in programs like this. And perhaps in the
4 future we should all be thinking that these programs are not
5 beneficial, but that may not be the case. And that's why I'm
6 telling you because it could be that you have to market like
7 that to, to get the customer base that you need to make it a
8 successful program.

9 COMMISSIONER SKOP: Right. And to your point, I
10 think that, you know, that staff and, again, our Commission I
11 think reflects well, is that I think that they've, I don't want
12 to say exposed, but I think we've kind of through review
13 determined that the host of the programs across the United
14 States tend to be this. And that's, and that's fine as long as
15 disclosure is given. But I think the question that I would
16 pose is would a person, a reasonable person have contributed to
17 this program? And I know that, I know that there would have
18 been startup costs, but would they have contributed if they'd
19 known that to begin with?

20 COMMISSIONER ARGENZIANO: Hang on a second. Let me,
21 let me give you -- because I'm very much understanding what
22 you're saying. But let's say also would a person -- let's turn
23 the question around because this is what I'm going back and
24 forth with.

25 Would a person say, okay, if they are going to be

1 taking this amount of money from you every month with the
2 purpose of getting to that percentage, and I can't remember
3 what it was that they met on the renewables to --

4 COMMISSIONER SKOP: It's not much. It's like
5 23 percent over four and a half years or 25 percent or
6 30 percent max.

7 COMMISSIONER ARGENZIANO: Okay. I'm not talking
8 about -- what I mean is that if you want this program to be
9 successful and you need to get the customer base to do that --
10 and I'm losing my train of thought what I wanted to say. You
11 see, that's what happens going too long.

12 COMMISSIONER SKOP: Right.

13 COMMISSIONER ARGENZIANO: What I'm trying to say is
14 that from the beginning of a program, you're saying if they
15 disclose -- I don't know if the other companies disclose it or
16 not. I know that if I'm being asked as a consumer, I want, I
17 want to know that the money is going there. But if meets the
18 contract -- and that's where I think you're saying is that the
19 consumer did not know that in the contract maybe it was too low
20 with your expectations of what the program should have been.

21 And what I'm saying is as a regulator sitting here
22 looking at this what I'm seeing is they followed their
23 agreements, and I don't know how now that you can turn around
24 and say, well, you can retire the RECs on top of -- I know what
25 you're saying, they're making money on that and it changes the

1 amount that they're presenting here today.

2 COMMISSIONER SKOP: And I -- right.

3 COMMISSIONER ARGENZIANO: But if the audit came up
4 different and said, well, they didn't meet, you know, use the
5 money for the purposes related to the Sunshine Energy Program,
6 then I would probably have a different outcome, as you do.

7 COMMISSIONER SKOP: And I agree with you. I think
8 that Green Mountain in their post-audit news release, they
9 mentioned that they weren't obligated under the contract to
10 spend any percentages by whatever. And out of fairness to
11 Green Mountain, does it mean it's a good contract? No. You
12 know, as marketing costs decline over time under constant
13 dollars or increasing dollars, assuming that no more money goes
14 to renewables, there's not a lot of good value there for
15 consumers. And I think that that would be -- you know, the
16 issue of disclosure and whether the projects were built on
17 time, you know, it just factors into the analysis.

18 But merely what FPL is offering here is they're
19 saying that, look, you know, I don't know what they're saying,
20 but I would assume to say that, you know, in consideration of
21 making this issue go away, this never-ending saga today, that
22 they're willing to, you know, kind of offer this and, and put
23 that out there. And that does have some attractiveness. It's
24 definitely a step in the right direction.

25 I'm merely saying though that it's elusory to the

1 extent that if they would merely agree not to, not to -- well,
2 I mean, that's the thing. I mean, that's --

3 CHAIRMAN CARTER: Okay. Commissioner, we heard your
4 point, so let's move on.

5 COMMISSIONER SKOP: All right. That's fine.

6 CHAIRMAN CARTER: We got your point. And you've said
7 it several times, so we do get it. We may not agree with it.
8 But just because you say it over and over again doesn't mean
9 that we're going to agree with it. Wait. Hold on a second
10 here.

11 Commissioner McMurrian. Commissioner Argenziano, I'm
12 sorry, you were --

13 COMMISSIONER ARGENZIANO: Go right ahead.

14 CHAIRMAN CARTER: Commissioner Edgar -- in all
15 fairness, I do want to make sure that we have a full
16 deliberation, so, you know, we don't want to dominate it. But
17 in all fairness to the company, we can't keep changing -- I
18 mean, we say one thing at one agenda, we say another thing at
19 another agenda. They're trying to respond to us. And then so
20 we're going to go back again to another agenda. So let's,
21 let's -- Commissioner Edgar.

22 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

23 I have one or two questions and then a brief, and I
24 promise brief, comment and --

25 CHAIRMAN CARTER: You're recognized.

1 COMMISSIONER EDGAR: Thank you.

2 Again, coming back to the piece of paper that was
3 passed out by FPL, they are proposing -- and I'm going to say
4 proposing because the term "settlement" has been used. I don't
5 view the situation or the status of where we are as settlement.
6 I just don't see that that's the posture that we're in. That's
7 my perspective. But they have proposed with this information
8 two points that in my mind answer questions that had come up at
9 the last time I think that we discussed some of these issues.

10 So looking at the second bullet point where the
11 proposal is that FPL will follow through with the Rothenbach
12 Park Project with the below the line recovery, I'd like to put
13 it to OPC, if I could -- sorry, Charlie -- but at the beginning
14 of our discussion about an hour ago you had said, I thought I
15 heard you to say that the perspective from your office with
16 this proposal or these suggestions was that it would be a good
17 proposal for the body of ratepayers.

18 MR. BECK: We saw it as a, we simply see it as a
19 positive step. You know, they've offered up this and we wanted
20 to recognize it. It's just that simple.

21 COMMISSIONER EDGAR: Thank you. And so I guess my
22 question would be since Mr. Litchfield has said that, you know,
23 this is what they're proposing now as the below the line cost
24 treatment but that they would also maybe as an alternative go
25 back to what I would see as an above the line cost recovery

1 clause type of treatment and the review that that would -- do
2 you or does your office have a viewpoint as far as from the
3 customer perspective which treatment would be favorable
4 because --

5 MR. BECK: I see it positive as below the line
6 because it takes the uncertainty out of it.

7 COMMISSIONER EDGAR: Okay. And that's kind of where
8 I was coming from for both the uncertainty part, the, again,
9 up-front knowledge in my mind of how it would be treated, and
10 then also just kind of a gut level because I like the phrase
11 "below the line" better than I like "above the line." But
12 thank you, thank you for those comments and for helping me to
13 clarify that. So that was my question.

14 A brief comment is to come back to -- I think we've
15 gone a little far afield, and I recognize that there are lots
16 and lots of issues contained with all of this and many issues
17 that have been raised the last few discussions. But my
18 understanding of where we are, were and are today is to
19 basically kind of accept the audit, the additional audit review
20 and findings. We had at a previous Agenda Conference asked our
21 staff to go forward and do some additional review primarily
22 with Green Mountain, and I appreciate the cooperation. We
23 requested it, you offered it, and my understanding is that that
24 has taken place and I'm thankful and grateful for that.

25 But so as to kind of accept this additional audit

1 information that the staff has given us, which is very helpful
2 and followed through on some of the things that we asked, and
3 then to deal, deal with perhaps some of the fallout issues from
4 the program ending, we've already issued the order to end the
5 program. There were a few issues that seemed, again, my words
6 "fallout issues." One was the additional audit information
7 with Green Mountain's cooperation. One in my mind was the ECCR
8 potential treatment and ramification, and that for me is being
9 answered in what FPL has suggested.

10 So I guess I come back once again to the issues that
11 are before us in this item. Did the staff audit account for
12 the monies? My understanding of that is yes, and I view that
13 issue then as kind of an acceptance of that information.

14 And then the close the docket issue, which I would be
15 prepared, Mr. Chairman, at whatever point is the right time to
16 move forward with that, with the understanding that we would
17 then close the docket as kind of a fallout issue from the
18 discussions that we've had and the ending of the program, and
19 that whatever technical treatment may need to move forward,
20 that our staff would work with FPL to, to do that, again, as
21 that just close out of the ending of the program.

22 CHAIRMAN CARTER: Thank you.

23 Commissioner McMurrin.

24 COMMISSIONER McMURRIAN: Thank you, Chairman.

25 I just, I wanted to speak to the, to the suggestion

1 that we've talked about at this agenda and other agendas, the
2 premise that the percentages spent on marketing are not money
3 spent on renewables or renewable energy, and I disagree with
4 that premise. And I just wanted to be clear about that because
5 we talked about it a lot last time, and I think I suggested
6 then I had discomfort with making conclusions about that sort
7 of thing. And I just wanted to say today, I think that there
8 might very well be a lot of customers, a lot of those voluntary
9 customers in Florida that want a considerable amount spent on
10 marketing and administrative, particularly the marketing
11 because their \$9.75 is perhaps going to go a lot farther if you
12 have a lot of other \$9.75 contributions. So I wanted to say
13 that I guess I just wanted to be clear that I disagree with
14 that premise that a reasonable person wouldn't contribute to
15 this program knowing that.

16 And I think also with a lot of the clarification that
17 staff put in this recommendation before us now, we see that
18 it's not as simple as looking at this one large number that
19 we've all thrown out about this 70 something percent. I think
20 that you see that the percentage has gone down over the years
21 and that perhaps it's still too big, it's not -- I think we
22 could all argue about that for a long time. But I agree with
23 the, what, how Commissioner Argenziano put it. She put it a
24 lot better than me about where we are in that, that the audit
25 findings are what we have before us.

1 And as Commissioner Edgar said, that that's what
2 we're actually looking at today and trying to close out that
3 information that we've requested from staff before. So I do
4 agree with the staff recommendation. I appreciate what's been
5 put before us by FPL. And I agree with Commissioner Edgar, I
6 don't really see it as a settlement. I see it as their
7 proposal for how they're going to conduct their ECCR clause
8 filings and that they're letting us know that they're going to
9 take those dollars below the line.

10 I do appreciate Commissioner Skop's points about the,
11 retiring the RECs, I just don't happen to agree. And I think
12 that that's just sort of the nature of this that sometimes we
13 can agree to disagree. I don't think that if they're going to
14 take the, if they're going to take these expenses below the
15 line, that we have any ability to tell them that they need to
16 retire them. And I realize that's not exactly what you're
17 proposing. I think you're proposing that maybe we shouldn't
18 accept this sort of offer if they're not going to agree to
19 retire those RECs. But, again, I think that given, and, again,
20 Commissioner Argenziano put it a lot better, but given the fact
21 that we haven't found any wrongdoing associated with this, that
22 I don't think it's appropriate to tell them that they need to
23 retire the RECs.

24 CHAIRMAN CARTER: Thank you.

25 Commissioner Edgar, you're recognized for a motion.

1 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

2 I would make the motion that we accept the staff
3 recommendation on Issue 1; that on Issue 2 we accept the staff
4 recommendation with the additional language that we direct the
5 staff to work with the parties on any fallout technical issues
6 that may remain to follow through on the ending of the program,
7 with the additional understanding of the two bullet points at
8 the top of the FPL Adjustments labeled document will be our
9 understanding of the treatment that these items will receive.

10 CHAIRMAN CARTER: We have a motion.

11 MS. FLEMING: And, Commissioners, if I may. Sorry to
12 interject. And will staff -- may we also have administrative
13 authority to close the docket once we deal with any fallout
14 issues as well?

15 COMMISSIONER EDGAR: That was my intent.

16 MS. FLEMING: Okay. Thank you.

17 CHAIRMAN CARTER: We've got a motion. Do we have a
18 second?

19 COMMISSIONER McMURRIAN: Second.

20 CHAIRMAN CARTER: We've got a second. We're in
21 discussion.

22 Commissioner Skop, you're recognized in debate.

23 COMMISSIONER SKOP: Thank you, Mr. Chairman. And I
24 appreciate the discussion that we've had amongst my colleagues.
25 I respectfully will be concurring in part and dissenting in

1 part as to Issue 1, and dissenting as to Issue 2.

2 CHAIRMAN CARTER: Commissioners, we're in debate.

3 Commissioner Edgar, I appreciate you just kind of
4 bringing us back down to reality in terms of why we are here
5 and the issues that were before us. And I think that I would
6 like to commend FPL for, as always, trying to, you know,
7 respond to the Commission's actions. I would also like to
8 thank J.R. Kelly and the Office of Public Counsel where -- it's
9 unfortunate that we try to put them on the spot, but they were
10 looking at this, and in the true interest as the Public
11 Counsel, they said, look, it is better that we don't charge the
12 body of ratepayers that if FPL is willing to eat that, and
13 that's my term is "eat that." And I think that what we have
14 here is the best of all worlds.

15 And with that, Commissioners, all those in favor of
16 the motion, let it be known by the sign of aye.

17 (Simultaneous vote.)

18 CHAIRMAN CARTER: All those opposed, like sign.

19 COMMISSIONER SKOP: Aye.

20 CHAIRMAN CARTER: Show it done.

21 (Agenda Item 10 concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

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WE, LINDA BOLES, RPR, CRR, and JANE FAUROT, RPR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 10th day of October, 2008.

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