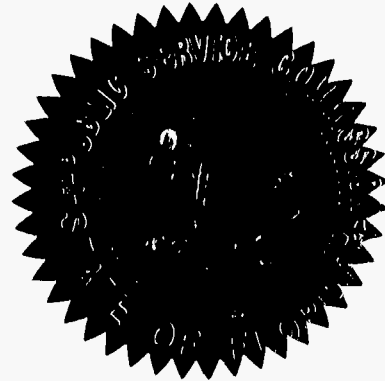


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080001-EI

In the Matter of

FUEL AND PURCHASED POWER  
COST RECOVERY CLAUSE WITH  
GENERATING PERFORMANCE INCENTIVE  
FACTOR.



PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER KATRINA J. McMURRIAN  
PREHEARING OFFICER

DATE: Monday, October 20, 2008

TIME: Commenced at 9:30 a.m.

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

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

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4 appearing on behalf of Tampa Electric Company.

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6 STEVEN GRIFFIN, ESQUIRE, Beggs & Lane Law Firm, Post Office Box  
7 12950, Pensacola, Florida 32591-2950, appearing on behalf of  
8 Gulf Power Company.

9                   JAMES W. BREW, ESQUIRE, Brickfield Law Firm, 1025  
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11 Washington D.C., appearing on behalf of PCS Phosphate - White  
12 Springs.

13                   JOHN W. MCWHIRTER, JR., ESQUIRE, c/o McWhirter Law  
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15 appearing on behalf of Florida Industrial Power Users Group.

16                   JOHN BUTLER, ESQUIRE, and WADE LITCHFIELD, ESQUIRE,  
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24

25

1 APPEARANCES (continued):

2           CECILIA BRADLEY, ESQUIRE, Senior Assistant Attorney  
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4 appearing on behalf of the Office of the Attorney General.

5           STEPHEN BURGESS, ESQUIRE, PATRICIA CHRISTENSEN,  
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7 c/o The Florida Legislature, 111 W. Madison St., #812,  
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9 Citizens of Florida.

10           JOHN T. BURNETT, Progress Energy Service Co., LLC,  
11 Post Office Box 14042, St. Petersburg, Florida 33733-4042, and  
12 GARY PERKO, ESQUIRE, appearing on behalf of Progress Energy  
13 Service Co., LLC.

14           R. SCHEFFEL WRIGHT, ESQUIRE, Young Law Firm, 225  
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18 ESQUIRES, AFCESA/ULT, 139 Barnes Drive, Suite 1, Tyndall Air  
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20 Executive Agencies.

21           LISA BENNETT, ESQUIRE, JEAN HARTMAN, ESQUIRE and  
22 KEINO YOUNG, ESQUIRE, FPSC General Counsel's Office, 2540  
23 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
24 appearing on behalf of the Commission Staff.

25

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

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2           **COMMISSIONER McMURRIAN:** Okay. We will adjourn the  
3 07 docket and move on to 080001. So, Ms. Bennett.

4           **MS. BENNETT:** Staff is aware of several preliminary  
5 matters. I first want to note that TECO has filed a motion to  
6 amend its petition and testimony to reflect new projections.  
7 Progress has also filed supplemental testimony and amended  
8 petition. FPUC has revised its August 4th filing and replaced  
9 it with a September 11th filing for actual estimated. FPUC has  
10 also filed testimony on September 11th and supplemented it on  
11 September 15th. Finally, FPL recently revised its testimony.

12           **COMMISSIONER McMURRIAN:** Okay. Do we need to get a  
13 synopsis of the new or revised testimony, Ms. Bennett, to see  
14 if anyone has any concerns?

15           **MS. BENNETT:** I would suggest that you check and see  
16 if anyone has concerns. If not, then you could enter it into  
17 the record. If there are, then perhaps the utilities could  
18 explain their supplemental testimony.

19           **COMMISSIONER McMURRIAN:** Okay. Are there any  
20 concerns by the parties about the revised testimony?

21           **MR. HORTON:** Commissioner, no concerns except -- and  
22 I may be jumping ahead. Mr. Cutshaw and Mr. Young filed  
23 revised testimony, but Mr. Cutshaw is not shown as a witness in  
24 the witness list. And that was my oversight.

25           **COMMISSIONER McMURRIAN:** What page is that, Mr.

1 Horton?

2 **MR. HORTON:** That would be Page 5. Mr. Mark Cutshaw,  
3 and he would be on Issue 14A.

4 **COMMISSIONER McMURRIAN:** Okay. Did you get that, Ms.  
5 Bennett?

6 **MS. BENNETT:** Yes. The next item I would note is  
7 that Federal Executive Agencies has filed a notice of intent to  
8 retain party status and should now be included as part of the  
9 service list of parties. Staff did not include positions for  
10 FEA as it did not file a prehearing statement.

11 **COMMISSIONER McMURRIAN:** Okay. Ms. White, did you  
12 want to take a position on the issues, or how do you want your  
13 positions to be shown in the prehearing order?

14 **MS. WHITE:** I think the best way at this point is  
15 that we have no position at this time.

16 **COMMISSIONER McMURRIAN:** Ms. Bennett, is that --

17 **MS. BENNETT:** The prehearing order will reflect no  
18 position at this time for all of FEA's positions on the issues.

19 **COMMISSIONER McMURRIAN:** Now, correct me if I'm  
20 wrong, when we say no position at this time, there is really  
21 not a later time to take a position unless someone tells us at  
22 this point that they will need to take a position later.

23 **MS. WHITE:** Right.

24 **COMMISSIONER McMURRIAN:** Do you understand?

25 **MS. WHITE:** Yes, ma'am, I understand.

1           **MS. BENNETT:** That is correct. It will reflect as no  
2 position.

3           **COMMISSIONER McMURRIAN:** Okay. Thank you, Ms. White.

4           And for anyone else that, I assume, took no position  
5 at this time, if anyone wants to change their positions now or  
6 let us know that they will need some more time to do that?

7           **MR. BURGESS:** Commissioner, Public Counsel for where  
8 we have no position at this time in the draft prehearing, we  
9 would change our position to no position.

10          **COMMISSIONER McMURRIAN:** Thank you.

11          Ms. Bennett, anything else on preliminary matters?

12          **MS. BENNETT:** Yes. There are several generic issues  
13 for fuel and capacity that look like they might be stipulated  
14 at the prehearing conference, and staff has taken positions on  
15 some of those. We are also ready to take some positions on  
16 several more issues. And when we get to those issues in the  
17 prehearing order, we will be able to discuss them more fully.  
18 And if the parties have taken no positions, then they could be  
19 shown as a stipulated issue in the prehearing order. But,  
20 again, I would suggest that we do these probably by section of  
21 the prehearing order as we get to them.

22                 I would note that staff has stipulated Issue 16D with  
23 Tampa Electric Company. All of the remaining parties to that  
24 have taken no position. It might be helpful when we get to  
25 Issue 16D to confirm that we have correctly reflected the

1 parties' positions in that issue.

2 **COMMISSIONER McMURRIAN:** Okay. I'm sure Mr. Beasley  
3 will take a look at that. Okay.

4 Any other preliminary matters from any of the  
5 parties? Let's proceed through the draft prehearing order.

6 I will start with Sections I through IV. Any changes  
7 to those? Section V, prefiled testimony, exhibits, witnesses.  
8 And Section VI, order of witness. And we have the one  
9 correction already including Mr. Cutshaw with FPUC.

10 **MR. BURGESS:** Commissioner.

11 **COMMISSIONER McMURRIAN:** Yes.

12 **MR. BURGESS:** Mr. Larkin will testify to Issue 13C,  
13 and so I would ask that the prehearing order reflect that.

14 **COMMISSIONER McMURRIAN:** What number was that again,  
15 Mr. Burgess?

16 **MR. BURGESS:** 13C.

17 **COMMISSIONER McMURRIAN:** 13C. Thank you.

18 **MR. BUTLER:** Commissioner, for FPL, Mr. Gerrish, Tim  
19 Gerrish appears at the top of Page 5. I think we will probably  
20 talk about this when we get to Issue 13J, but I think we will  
21 end up agreeing with staff to withdraw that issue, in which  
22 case Mr. Gerrish would not need to appear on the list of  
23 witnesses.

24 **COMMISSIONER McMURRIAN:** Okay. Ms. Bennett.

25 **MS. BENNETT:** I would also note that Gulf witness

1 R.W. Dodd will be adopting the testimony and exhibits of Gulf  
2 Witness Rhonda J. Martin. I'm not aware of any other witnesses  
3 adopting testimony or exhibits, but we might want to confirm  
4 that with the parties.

5 **COMMISSIONER McMURRIAN:** Do we need to discuss the  
6 order of witnesses? Are we going to keep with the order that  
7 is shown here? Of course, including Mr. Cutshaw. I guess Mr.  
8 Cutshaw would go between Mr. Young and Mr. Ball. Am I correct,  
9 Mr. Horton?

10 **MR. HORTON:** Yes, ma'am, that would be fine. It's  
11 actually a panel of Mr. Young and Mr. Cutshaw.

12 **COMMISSIONER McMURRIAN:** Okay, thank you.

13 Any other proposed changes to the order of witnesses?  
14 Ms. Bennett.

15 **MS. BENNETT:** At this time you might check and see if  
16 there are any witnesses that the parties believe might be  
17 excused. We do have some issues that are close to being  
18 stipulated, and I don't know if any party is familiar yet with  
19 whether they can excuse any witnesses or not.

20 **MR. BUTLER:** For FPL, I believe that Mr. Irizarry,  
21 who is our GPIF witness, is a potential candidate for being  
22 excused. Would staff agree?

23 **MS. BENNETT:** Yes.

24 **COMMISSIONER McMURRIAN:** Ms. Bennett, do I need to  
25 see if anyone has objections to that, or just see who is being



1 proposed as a stipulated witness?

2 **MS. BENNETT:** You would need to see if any party has  
3 a witness. I will state that staff has looked at -- I know  
4 this is premature, but staff has looked at the GPIF penalties  
5 and rewards and also the targets, and we are in agreement with  
6 the utilities' positions, so those witnesses potentially could  
7 be excused.

8 **MR. PERKO:** Commissioner, on behalf of Progress  
9 Energy, that would be Mr. Oliver.

10 **MR. BEASLEY:** For Tampa Electric that would be Mr.  
11 Buckley.

12 **COMMISSIONER McMURRIAN:** Thank you.

13 **MR. BADDERS:** And for Gulf Power it would be Ms.  
14 Noack.

15 **COMMISSIONER McMURRIAN:** Okay. Any other witnesses  
16 proposed to be excused at this time? Hearing none.

17 **MR. BUTLER:** Would it be possible to check whether  
18 parties have any objections to their excusal and --

19 **COMMISSIONER McMURRIAN:** Absolutely. And I guess all  
20 of those were GPIF witnesses. Are there any objections?  
21 Hearing none. Thank you.

22 I guess that takes us to basic issues, basic  
23 positions, and then issues and positions in Section VII and  
24 Section VIII.

25 **MR. BURGESS:** Commissioner, there is a typographical

1 error in the stated position for Public Counsel. The word  
2 contracted should be changed to contractor. I can either  
3 supply that or -- I don't know.

4 **COMMISSIONER McMURRIAN:** Okay. Which page is that  
5 on, Mr. Burgess?

6 **MR. BURGESS:** That is on Page 7 of the draft, and it  
7 is almost perfectly situated in the middle of our statement,  
8 the word contracted.

9 **COMMISSIONER McMURRIAN:** Got it. Ms. Bennett, do you  
10 have that?

11 **MS. BENNETT:** I did not. I'm sorry.

12 **COMMISSIONER McMURRIAN:** Page 7 of the prehearing  
13 order, OPC's position, the fourth line down, the word  
14 contracted should be contractor.

15 **MS. BENNETT:** Now I have it. Thank you.

16 **MR. BUTLER:** Commissioner, for FPL, I would like to  
17 submit a brief statement of basic position to Ms. Bennett for  
18 inclusion in the prehearing order at the end of the prehearing  
19 conference. I would kind of like to focus it on only what it  
20 turns out is actually in controversy at the end of the  
21 conference, but we can get that to her today.

22 **COMMISSIONER McMURRIAN:** Okay.

23 **MS. BENNETT:** That's fine.

24 **COMMISSIONER McMURRIAN:** Anyone else on basic  
25 positions, and then we will go through issues and positions by

1 section. Hearing none. Section VIII, issues and positions.  
2 Ms. Bennett, I think you have proposed to go through by  
3 sections.

4 **MS. BENNETT:** Yes, Commissioner. I would suggest  
5 that we start with generic fuel adjustment issues, which are  
6 Issues 1 through 11. And at this point staff is in agreement  
7 with the parties, or has taken a position on Issue 4, which I  
8 believe agree with the party, each of the utilities, and Issue  
9 7 with each of the parties except FPL, but -- staff's position  
10 matches each of the parties except FPL's.

11 Staff was incorrect in its position statement on FPL.  
12 We do agree with FPL's line loss multipliers, and so could be  
13 reflected that staff is in agreement with FPL. Did I confuse  
14 that one?

15 **COMMISSIONER McMURRIAN:** I think I understood. Staff  
16 is in agreement with FPL on Issue 7 with respect line loss  
17 multipliers.

18 **MS. BENNETT:** Correct.

19 And each of the other positions we have taken for  
20 each of the utilities agrees with the utilities. So both  
21 Issues 4 and 7 can be shown as stipulated if all parties take  
22 no position to those two issues.

23 **COMMISSIONER McMURRIAN:** Are there any other changes  
24 on Issues, I guess, 1 through 11?

25 **MS. BENNETT:** We do have one other -- actually two

1 other. I have Issue 9, the effective date that staff agrees  
2 with the parties; and Issue 10, the wholesale benchmark levels.  
3 Staff does agree with the parties.

4 **COMMISSIONER McMURRIAN:** Perhaps I jumped the gun  
5 there. Do any parties want to change their position or reflect  
6 disagreement with staff's position on the issues that Ms.  
7 Bennett just noted, 4, 7, 9, and 10?

8 I'm hearing none. I think we can proceed to the  
9 company-specific fuel adjustment issues.

10 **MR. BUTLER:** I'm sorry, before we leave the generic  
11 issues, Ms. Bennett, is there a problem on Issue 11? Is there  
12 a disagreement on Issue 11?

13 **MS. BENNETT:** I believe that on Issue 11 staff is  
14 just not finished reviewing the numbers and is not ready to  
15 take a position yet.

16 **MR. BUTLER:** Okay.

17 **MS. BENNETT:** And so for 4, 7, 9, and 10 on the  
18 generic issues, the parties' positions remain, and as OPC said,  
19 no position, and FEA has taken the no position. And so those,  
20 I believe, can be shown as stipulated.

21 **COMMISSIONER McMURRIAN:** 4, 7, 9 and 10, right, Ms.  
22 Bennett?

23 **MS. BENNETT:** That's correct.

24 **COMMISSIONER McMURRIAN:** Okay. So moving on to the  
25 company-specific fuel adjustment issues.

1           **MS. BENNETT:** At this point we note that Florida  
2 Industrial Power Users Group has proposed issues for TECO,  
3 which is 16G, Florida Power and Light, which is 13L, and  
4 Progress Energy Florida, which is 12C. Each of those utilities  
5 objects to the specific issue being included in this year's  
6 proceedings.

7           The Commissioner has permitted the parties to file  
8 memoranda, which they did. It would be appropriate at this  
9 point, if the prehearing officer finds it beneficial, to hear  
10 from the parties.

11           **COMMISSIONER McMURRIAN:** Thank you, Ms. Bennett. And  
12 we should begin with FIPUG as the originator of the issue?

13           **MS. BENNETT:** Yes, ma'am.

14           **COMMISSIONER McMURRIAN:** Okay. What do you suggest  
15 for time, maybe five minutes per?

16           **MS. BENNETT:** I would suggest no more than five  
17 minutes.

18           **COMMISSIONER McMURRIAN:** Mr. McWhirter.

19           **MR. McWHIRTER:** Ms. McMurrian, I think I fully stated  
20 our position in the memoranda and I waive oral argument on the  
21 subject.

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

23           **MR. McWHIRTER:** He can have my remaining four  
24 minutes. (Laughter.)

25           **COMMISSIONER McMURRIAN:** Any other parties that join

1 with Mr. McWhirter on his position with respect to those  
2 issues, the proposed issue?

3 **MR. WRIGHT:** We join his position. We did not file a  
4 memo and don't plan to offer oral argument.

5 Thank you, Commissioner.

6 **COMMISSIONER McMURRIAN:** Thank you, Mr. Wright.

7 I guess that takes us to the IOUs. Mr. Butler.

8 **MR. BUTLER:** Let me just speak very briefly. Mindful  
9 of Mr. McWhirter's economy of words, I will try to stay brief,  
10 as well. We don't object to FIPUG raising the issue they want  
11 to raise about what sorts of costs should be recovered through  
12 the fuel clause, but really don't think that this year's  
13 proceeding is in a position where that can be addressed  
14 effectively.

15 There isn't any testimony on it. Really, the only  
16 discovery there will be on it is some questions at depositions  
17 that are happening now. It is a very broad issue, and as noted  
18 in Mr. McWhirter's memorandum, it seems to be changing around  
19 as we speak. The wording that he had submitted most recently  
20 would involve, you know, quite a different issue than the one  
21 that he had initially proposed. And we think that this is  
22 something that would be, if FIPUG does want to pursue it, much  
23 better to set up a timetable, have the parties address it with  
24 discovery, and then as they feel appropriate testimony  
25 proposing that something different be done, if that's what

1 somebody thinks is proper, and have it brought to the  
2 Commission fully formed rather than as something that is just  
3 kind of a tag-along to a proceeding that has already been  
4 pretty well shaped without that issue being raised. Thank you.

5 **MR. PERKO:** Commissioner, Progress Energy would just  
6 join in the comments of Mr. Butler.

7 **MR. BEASLEY:** As would Tampa Electric Company.

8 **COMMISSIONER McMURRIAN:** Okay. Anyone else? Okay.  
9 Ms. Bennett.

10 **MS. BENNETT:** Were you wanting staff's position on --

11 **COMMISSIONER McMURRIAN:** Yes, I'm sorry. I was  
12 expecting you to read my mind, I'm sorry. Yes, if you could  
13 share with me staff's recommendation with respect to the  
14 proposed issues.

15 **MS. BENNETT:** Staff believes that the factual issue  
16 raised by Mr. McWhirter actually are questions that can and are  
17 looked at by the Commission in each of the issues. We  
18 certainly have asked discovery questions ourselves, as has Mr.  
19 McWhirter, on the types of costs that go through the fuel  
20 clause. I think Mr. McWhirter in the issue identification  
21 meeting, which occurred a few weeks before the prehearing  
22 conference, stated a much broader issue which was, in my  
23 understanding, kind of a review of the old 1985 order, 14546.

24 And to the extent that is the point of his discovery,  
25 that issue would be more appropriate to be fully vetted,

1 because it does cover about 25 years of Commission order  
2 history. It would be something that witnesses should be able  
3 to testify and provide the Commission insight into as to what  
4 costs should and should not be included.

5 But, as to the specific factual issues, it's my  
6 understanding that they could be included with or without an  
7 issue, and so the issue is not necessary in this proceeding as  
8 Mr. McWhirter proposed it at the Issue ID meeting.

9 **COMMISSIONER McMURRIAN:** Mr. McWhirter, I reviewed  
10 the memos I got on the issues, and I noted that you said that  
11 your only purpose in raising the issue at this time was to  
12 enable parties to explore the facts to work toward a rational  
13 solution. It seems to me that you can explore those facts with  
14 respect, you know, in the course of discovery. So can you  
15 further explain to me, you know, what it is you are trying to  
16 get in this issue? And I do note, I think, that Mr. Butler  
17 mentioned that the wording, that you proposed a slight change  
18 to the wording, although I wasn't clear whether you were  
19 proposing that as the wording now, or if you were leaving the  
20 wording you had before. But it seems like there has been some  
21 changes in the proposed issue.

22 **MR. MCWHIRTER:** I am relying on the original  
23 language, and I disagree with Mr. Butler's characterization. I  
24 think the proposed alternative language says the same thing in  
25 different words, but I thought perhaps a little more clearly.



1           The position that has been taken by the utilities in  
2 this case is not unusual, it's a theory of delay and maybe it  
3 will go away. The reason I raised the issue at this time is  
4 because Tampa Electric has a base rate case proceeding, and  
5 both FPL and Progress Energy have announced intentions to file  
6 base rate cases. It is fairly apparent to me that there are  
7 very large amounts of fixed cost included in the fuel clause,  
8 which is supposed to be devoted to volatile matters that change  
9 with the price of fuel.

10           And since that's the case, what happens in the real  
11 world is that if customers conserve energy, really all it does  
12 is raise the cost for other people, and it doesn't really  
13 result in a savings. And I think in the near term in the  
14 United States, conservation is going to be a very important  
15 thing and we need to encourage energy efficiency. But it is a  
16 hollow result if people become energy efficient and it only  
17 results in higher bills. And the reason it would result in  
18 higher bills is because of the fixed cost included in a  
19 cost-recovery clause that should be dedicated to volatile  
20 costs.

21           So what I have suggested in this proceeding is that  
22 the Commission enter an order directing the utilities forthwith  
23 to identify the fixed costs. The last time it was looked at  
24 was 23 years ago in 1985. The concept was a concept that was  
25 developed by the Commission, not the Legislature, for fuel

1 cost-recovery, and that happened in 1973 or '74. So it has  
2 been with us a long time.

3           The basic underlying philosophy is that the clause is  
4 to take care of something that the utilities can't take care of  
5 because of regulatory lag and changing base rates. It was for  
6 their protection, but it had the effect of shifting the entire  
7 risk away from utilities onto customers. And what has happened  
8 over the years is these clauses have incorporated more and more  
9 fixed costs, and it's very detrimental to energy efficiency.

10           It may be good from the idea of decoupling because  
11 the utility doesn't lose any money, but we think that the  
12 utilities ought to be working with the customers and sharing in  
13 the risks of the things that happen. And we don't object to  
14 covering volatile fuel costs that are proven, and we think  
15 that's an admirable thing. But when you start loading fixed  
16 costs into the mix it turns into a discouragement of energy  
17 efficiency.

18           So what we have already is nuclear decommissioning  
19 costs are segregated on the Schedule E-1, rail car, certain  
20 rail car costs are independently stated, but there are many  
21 other costs that are not variable costs that should be  
22 excluded. And we don't have any problem with the utility  
23 collecting its prudent costs, and we think we would support  
24 that wholeheartedly. But the way you collect it is through a  
25 base rate proceeding when you have costs that don't change.

1           A classic example is TECO this year is renegotiating  
2 a five-year transportation agreement. In that transportation  
3 agreement, the costs don't change very much with fuel costs.  
4 The fuel component of the transportation charge may change, and  
5 I would have no objection to that being included in the fuel  
6 cost, but if you have a fixed cost per ton for the number of  
7 tons of coal you are going to use, there is no reason to change  
8 that every year. Let the utilities contract that and bear the  
9 risk. That's just one small example. I don't mean to pinpoint  
10 Tampa Electric, but it is the one with a rate case pending and  
11 one that we could look at.

12           I think the picture of an ostrich comes to mind if  
13 you don't even disclose what the costs are. And I can see this  
14 ostrich with his head in the ground. I guess that's the one  
15 you see in the cartoon all the time, and I don't think the  
16 Commission should put its head in the ground when it comes to  
17 identifying a risk that has been transferred to the customers  
18 and risks that can and should be assumed by the utilities.

19           If they enter into a bad transportation contract,  
20 that's their problem, that's not the customers' problem. If  
21 they buy capacity on the gas pipeline, that's the utility's  
22 problem, not the customers' problem. If they build a new gas  
23 pipeline and put it in the fuel clause and start earning a  
24 return on it, that's the kind of thing that should be put in  
25 the base rate case.

1           The one that came up most recently is storage  
2 facilitates in Mobile Bay. They all have gas storage  
3 facilities in Mobile Bay, and they pay a fixed amount of rent  
4 on it. Well, that's not something that varies in a volatile  
5 manner with the price of fuel. If it does, it's just in a very  
6 modest way. So I would suggest to you that the very least that  
7 the Commission could do is take its head out of the sand and  
8 look and see what these fixed costs are. And it is a very  
9 simple thing to do, and it is timely to do it. And if we delay  
10 it until after the current round of base rate cases that are  
11 pending, then it goes away, for all practical purposes. And  
12 the argument then, if we try to bring it up after the rate  
13 cases next year, they will say, well, it's too late. You  
14 should have brought it up before the rate cases were filed.  
15 And that is why you take a delay and then disregard it in the  
16 long-run.

17           So I would respectfully suggest -- and I have  
18 probably used more than my five minutes responding to your  
19 question, and I apologize for that, but it is, I think, a very  
20 important issue to this Commission.

21           **MR. BUTLER:** Commissioner, may I respond briefly?

22           **COMMISSIONER McMURRIAN:** Briefly.

23           **MR. BUTLER:** Thank you.

24           We are not trying to take an issue off the table, but  
25 think that Mr. McWhirter's comments illustrate very effectively

1 what a broad policy-freighted issue he is referring to. And I  
2 think that you could have either in the fuel adjustment  
3 proceeding scheduled toward next year or in a spin-off  
4 proceeding, if that was more appropriate, some sort of  
5 opportunity for parties to join this issue if it is something  
6 the Commission is concerned to see addressed.

7 But we are two weeks before hearing. He is raising  
8 something that, you know, apparently has been evolving over 25  
9 years, so it is certainly not something that needed to be  
10 brought up at this late hour. And we are just -- this  
11 proceeding is not in a position where that sort of broad policy  
12 debate is properly framed. Thank you.

13 **MR. McWHIRTER:** Ms. McMurrrian.

14 **COMMISSIONER McMURRIAN:** Briefly.

15 **MR. McWHIRTER:** If that is an offer to consider this  
16 issue, and I think that's a very honorable way to look at it,  
17 and do it in a separate proceeding and that proceeding would  
18 move along with dispatch, I would have no objection to taking  
19 it away from the November 1st hearings that are coming up and  
20 putting it into a separate proceeding.

21 **COMMISSIONER McMURRIAN:** Mr. Butler.

22 **MR. BUTLER:** I think that, you know, Mr. McWhirter  
23 and his client could file a petition for that purpose, and  
24 obviously the Commission would do with it as it saw  
25 appropriate.

1                   **COMMISSIONER McMURRIAN:** Mr. McWhirter, my thinking  
2 on it is -- well, I have two or three thoughts, I guess, that I  
3 will share. The issue is framed as a factual issue. It  
4 doesn't seem like something that the Commission needs to vote  
5 on in order to determine the factors for the fuel clause before  
6 us. And I realize that you had raised the issue as more of a  
7 policy issue up front, and then you were met with some of the  
8 concerns that we have just heard, and I sympathize with that.  
9 I do think, though, that raising that kind of a policy issue  
10 this close to the hearing is going to be tough to deal with.

11                   I do think that you should be able to raise it in  
12 whatever forum you want to raise it in, whether it's a separate  
13 petition, whether you want to raise it in the hearing next year  
14 and then everyone has a chance to give testimony on it. I  
15 think that that kind of a policy issue with that much history  
16 is something that I believe that we would want more information  
17 on. This close to the hearing, I just don't think we are going  
18 to be able to get that.

19                   As far as the factual issue, though, that you are  
20 asking, I think that you can get at that through discovery and  
21 through cross. And as far as the Commission's head in the  
22 sand, I think that they will be paying attention to your cross  
23 during the hearing. And if you would like to highlight how  
24 much those dollars are, I believe, and I know that this isn't  
25 really the question before us, but I believe that the questions

1 with respect to how much are volatile or nonvolatile are  
2 subsumed in the present issues and are relevant to the case.

3           So I don't believe -- again, I wouldn't be the one  
4 ruling on motions at that point, but I do believe that those  
5 kinds of questions would be relevant and you would be free to  
6 ask them. But I think factual issues like that are best  
7 subsumed in the issues that we already have. We could break  
8 down the fuel clause into thousands of factual issues and we  
9 could vote on them, but we are really not voting on the policy  
10 issue, which is what I think you really want to get to, if I  
11 understand correctly.

12           **MR. McWHIRTER:** That's absolutely correct. And my  
13 concern in raising the issue, quite frankly, was the fact that  
14 if I started asking questions along those lines they would say,  
15 well, you haven't raised the issue. And so I would be hoist on  
16 my own petard as they would say.

17           So, as a consequence, if you have concluded that it  
18 is appropriate to ask questions about the magnitude of the  
19 fixed costs, and if there are fixed costs in the fuel clause, I  
20 don't have any problem with that, and we can take the issue out  
21 because it is subsumed in other issues.

22           **COMMISSIONER McMURRIAN:** And I don't mean to act as  
23 the presiding officer in a fuel hearing, either, but I do think  
24 that -- well, it would be subject to the objections at the time  
25 and the presiding officer's decisions. But I do think that

1 with respect to the issues that we have in this case, the  
2 amounts that are included in those factors are fair game to ask  
3 questions on.

4 Now, I don't want to get too far afield, but I think  
5 that -- and as I understand it, there has been some discovery  
6 going on on this issue already.

7 **MR. McWHIRTER:** Yes, ma'am.

8 **COMMISSIONER McMURRIAN:** Ms. Bennett, is there  
9 anything else that --

10 **MS. BENNETT:** No, I think that you have covered it.  
11 You, as prehearing officer, would make any prehearing decisions  
12 on what is discoverable and what is not. But at the hearing,  
13 whether a specific line of questioning is admissible would be  
14 the Chairman's decision, which you have noted.

15 **COMMISSIONER McMURRIAN:** Thank you.

16 So I will not allow this issue for the reasons I  
17 think I have explained, and I will collect my thoughts and try  
18 to include in the final prehearing order a more organized  
19 thought pattern for that so that you will have something to go  
20 forward from, however you choose, Mr. McWhirter.

21 But at this time I think that those issues, and I  
22 don't remember the exact issue numbers, I think it is 16G, is  
23 that right? Ms. Bennett, what were the three issue numbers?

24 **MS. BENNETT:** It's 16G, 13L, and 12C.

25 **COMMISSIONER McMURRIAN:** Okay. So we will not be



1 including those issues at this time. And, Mr. McWhirter, you  
2 may raise those issues again in the future or some form of  
3 that. But, again, Mr. McWhirter, I think with respect to the  
4 policy issue, I think if you raise it in some future proceeding  
5 or some manner that the parties have a chance to give the  
6 Commission input, I promise you we will not have our heads in  
7 the sand. I don't think the Commission does have its head in  
8 the sand, by the way. And we look forward to however you raise  
9 that issue, Mr. McWhirter.

10 So with that, we will move on to the other issues.

11 **MS. BENNETT:** Yes, Commissioner. I believe at this  
12 point Florida Power and Light wishes to speak both to Issues  
13 13E, I think they have a change in the specific wording of the  
14 issue, and then also 13J. I believe FPL now agrees with  
15 staff's position on 13J, but wanted to speak to the prehearing  
16 officer about that.

17 **COMMISSIONER McMURRIAN:** Mr. Butler.

18 **MR. BUTLER:** Thank you.

19 One thing, extremely minor. I will just note on 13D,  
20 as in dog, that probably for consistency sake I think you have  
21 used the word percent instead of the percent sign, and after  
22 the 3.129 probably ought to be the word percent.

23 On Issue 13E, as in Edward, the true-up credit  
24 associated with adjusting for Turkey Point Unit 5 actual costs  
25 instead of the original projected level of costs is slightly

1 higher than what appears in the issue. And Ms. Bennett and I  
2 had discussed this, whether it would be better to leave the  
3 issue as is and then have people disagree with the wording to  
4 substitute the appropriate dollar amount. And my view, at  
5 least, is that I would prefer to see the issue state the  
6 appropriate amount, the revised amount, and then we can agree  
7 with that if people don't have an objection to it.

8 If that's right, if the prehearing officer were so  
9 disposed, the dollar amount would change from the \$9,296,089 to  
10 \$9,307,126. A slightly larger credit going back to customers.  
11 And in that way, you know, we could say yes, and other people  
12 who agreed with it could say yes instead of having to, you  
13 know, state a different number in their positions.

14 **COMMISSIONER McMURRIAN:** Do any of the parties have  
15 concerns with changing the issue statement to include the  
16 revised number? And if I need to reread the number -- seeing  
17 none.

18 Ms. Bennett, are there concerns with changing the  
19 issue to include the updated number?

20 **MS. BENNETT:** Staff has no concern. Let me read back  
21 the number so that I make sure that I have it correctly.  
22 \$9,307,126.

23 **MR. BUTLER:** That's right.

24 **MS. BENNETT:** And so if there were no objections, the  
25 prehearing officer could change that issue wording to reflect

1 the correct dollar amount.

2 **COMMISSIONER McMURRIAN:** Hearing no objection, show  
3 it done.

4 **MR. BUTLER:** Thank you. Moving to Issue 13 --

5 **MS. BENNETT:** Let me stop you.

6 **MR. BUTLER:** Sorry.

7 **MS. BENNETT:** I guess we also need to check and see  
8 if there is anybody who wants to change a position on 13E.

9 **COMMISSIONER McMURRIAN:** Any change of position?  
10 Thank you, Ms. Bennett. Hearing none. Mr. Butler.

11 **MR. BUTLER:** Moving to 13J, this is the issue about  
12 Commission review and approval of FPL's long-term agreement for  
13 full requirement electric service with Lee County Electric  
14 Co-op. And we had proposed it for discussion in this year's  
15 fuel docket because one of the places that this contract has  
16 significant impact is ultimately, and when the power starts  
17 being provided, on retail fuel costs, so it seemed like an  
18 appropriate forum.

19 And we have a timing issue that we have until  
20 basically the day before the contract goes into effect in its  
21 initial phase at the beginning of 2010, we have conditions  
22 precedent to withdraw from the contract if we don't receive  
23 satisfactory approval or concurrence from two agencies, from  
24 this Commission, and then also from the Federal Energy  
25 Regulatory Commission. And getting a decision this year would

1 be helpful because we want to do that first before we go to the  
2 Federal Energy Regulatory Commission seeking its approval. And  
3 all of this has to happen by 12/31/09.

4           However, we are sympathetic to staff's concerns that  
5 they really don't feel they have had enough time to review this  
6 adequately. I think they also have some thoughts that part of  
7 the impact of the contract is on base rate related costs, not  
8 just on the fuel side, and so that a broader proceeding would  
9 be appropriate.

10           And we don't have an objection to withdrawing the  
11 issue here and to initiating a separate proceeding. We would  
12 like to have some understanding, if possible, that at least the  
13 Commission will do what it can to move that along as promptly  
14 as possible. We understand that there is a January 6th agenda  
15 conference. And our thought would be that we would file  
16 promptly a petition basically asking for the same thing that we  
17 had requested in this docket with probably very similar  
18 supporting testimony that the Commission review it, and if it  
19 agrees with our proposal, that it issue a proposed agency  
20 action on it, make a decision at that January 6th, 2009, agenda  
21 conference on the proposed agency action. And then if there  
22 were a protest of that proposed action, then we move toward  
23 hearing dates in March with an objective of a final decision  
24 in -- I think it is an April 7, 2009, agenda conference.

25           I recognize that this is probably not something that

1 we can nail down entirely here in the prehearing for the fuel  
2 docket, but I just wanted to kind of express to the prehearing  
3 officer and to the other parties what our timing concerns are  
4 and how we envision that it could be feasibly handled if we end  
5 up withdrawing the issue from the fuel docket.

6 **COMMISSIONER McMURRIAN:** Thank you, Mr. Butler.

7 And you are right, we can't nail all of that down  
8 today, but I guess it would be appropriate to ask staff. I see  
9 that your position here is that FPL should file their request  
10 for approval of this as a separate docket. It seems that there  
11 are some circumstances which necessitate getting this done  
12 sooner rather than later. What is staff's proposed time frame?

13 **MS. BENNETT:** Mr. Butler correctly stated staff's  
14 concerns about having this in the fuel proceeding. The  
15 technical staff that is dealing with this has been working and,  
16 I believe they are attempting to place it on the January 6th  
17 agenda. I don't see somebody from that group here, but they  
18 have been in discussions with FPL about making it to that  
19 agenda conference, and then hopefully getting hearing dates  
20 shortly thereafter if the proposed agency action is protested.

21 **COMMISSIONER McMURRIAN:** As we discussed earlier, I  
22 can't speak for the presiding officer, and I can't speak for  
23 the Chairman with respect to the calendar and hearings dates.  
24 They are always tough to come by. But I'm sure staff will be  
25 working with you to try to meet those concerns so that if it is

1 protested that you can get the answer you need in order to meet  
2 the commitments.

3 **MR. BUTLER:** Thank you, Commissioner.

4 With that assurance, we would withdraw Issue 13J, and  
5 that would have the effect of eliminating the need for Mr.  
6 Gerrish to testify, and so we could remove him from the list of  
7 witnesses back at the beginning of the prehearing order.

8 **COMMISSIONER McMURRIAN:** And I guess I should ask,  
9 too. I'm showing no position with all the other parties. Are  
10 there any other parties that intend to take a position on this  
11 issue? Okay.

12 What does that bring us to, Ms. Bennett?

13 **MS. BENNETT:** We are still in the company-specific  
14 items. Staff does have a stipulation with Tampa Electric  
15 Company on Issue 16D, and it is my understanding that all of  
16 the other parties have taken no position on that. But I would  
17 like to confirm that I have correctly reflected everyone's  
18 positions in the prehearing order, which appears on Page 40.

19 **MR. BEASLEY:** Tampa Electric's position is correctly  
20 reflected.

21 **COMMISSIONER McMURRIAN:** And is that consistent with  
22 the -- is the statement the exact same, Ms. Bennett, with TECO  
23 and staff's position as shown there?

24 **MS. BENNETT:** Yes, it is.

25 **COMMISSIONER McMURRIAN:** Okay. So that will be a

1 proposed stipulated issue, stipulated between staff and the  
2 company.

3 **MS. BENNETT:** Correct. And my understanding is all  
4 other parties do not object to the stipulation. They don't  
5 intend to enter into it specifically.

6 **COMMISSIONER McMURRIAN:** Okay.

7 **MR. WRIGHT:** Correct.

8 **COMMISSIONER McMURRIAN:** Thank you all. Okay. Are  
9 there any other changes or corrections to the issues or  
10 parties' positions for the company-specific issues?

11 **MS. BENNETT:** Staff does not have any, but the  
12 parties might.

13 **COMMISSIONER McMURRIAN:** Mr. Perko.

14 **MR. PERKO:** Yes, Commissioner.

15 On behalf of Progress Energy, we have a couple of  
16 minor changes to the proposed capacity factors in Issue Number  
17 28 on Page 52.

18 **COMMISSIONER McMURRIAN:** Oh, I think we are not quite  
19 to that point yet, Mr. Perko.

20 **MR. PERKO:** I'm sorry, I didn't mean to get ahead of  
21 things.

22 **COMMISSIONER McMURRIAN:** No, it's okay. I think we  
23 will get to that in a couple of steps. We are going to go  
24 through the generic GPIF first. But are there any other  
25 changes to the company-specific fuel adjustment issues?

1           Hearing none, we will go ahead to the GPIF.

2           **MS. BENNETT:** Commissioner, staff has reviewed the  
3 penalties and rewards in Issue 17 for the GPIF, and also the  
4 targets that are set in Issue 18. Staff agrees with each of  
5 the utilities' positions, and if the other parties take no  
6 positions, these could be shown as stipulated in the prehearing  
7 order.

8           **COMMISSIONER McMURRIAN:** Any other changes or  
9 corrections? Hearing none. Company-specific GPIF Issues 19  
10 through 22.

11          **MS. BENNETT:** There are none.

12          **COMMISSIONER McMURRIAN:** Okay. That's easy. Okay.  
13 Generic capacity cost-recovery issues, Mr. Perko. Sorry about  
14 that.

15          **MR. PERKO:** Thank you, Commissioner.

16                 Issue 28, just a couple of minor changes. For the  
17 factor listed under interruptible which currently states 1.347  
18 cents per kilowatt hour, we have discussed this with staff. It  
19 should be 1.344. And for the next one, at primary voltage,  
20 1.344 should be 1.331.

21          **COMMISSIONER McMURRIAN:** Okay. So if I heard you  
22 correctly, on Page 52 for interruptible it should be -- instead  
23 of 1.347 it should be 1.344?

24          **MR. PERKO:** Correct.

25          **COMMISSIONER McMURRIAN:** And for the primary voltage,



1 instead of 1.344, it should be 1.331?

2 **MR. PERKO:** Correct.

3 **COMMISSIONER McMURRIAN:** Okay.

4 **MR. PERKO:** Thank you.

5 **COMMISSIONER McMURRIAN:** Thank you.

6 Are there any other changes to the generic capacity  
7 cost-recovery issues?

8 Ms. Bennett, do you have anything?

9 **MS. BENNETT:** Yes.

10 We have taken a position on Issue 27 that appears to  
11 be the same as all of the utilities except for Florida Power  
12 and Light. Staff did want to change its position on Florida  
13 Power and Light to 98.76729 percent. Staff's position agrees  
14 with the utilities' position on Issue 27 and, therefore, if all  
15 the other parties take no position, this could be shown, Issue  
16 27 could be shown as stipulated.

17 **COMMISSIONER McMURRIAN:** Any corrections?

18 Hearing none, I guess we'll show it as stipulated.

19 **MS. BENNETT:** Actually, FIPUG has taken a position  
20 that I'm not certain, but it appears may be different. We  
21 might want to confirm with FIPUG whether or not they agree with  
22 these positions or whether this needs to be an issue in the  
23 hearing.

24 **COMMISSIONER McMURRIAN:** Mr. McWhirter, on Issue 27.

25 Ms. Bennett, are we asking if he is changing his

1 position, or if --

2 **MS. BENNETT:** I need a little clarification on  
3 FIPUG's position. It appears that perhaps we cannot stipulate,  
4 but I'm not certain about whether this applies for this year or  
5 whether it will apply for future years.

6 **MR. McWHIRTER:** I'm getting static on my hearing aid  
7 here. Give me just a minute.

8 Perhaps if I explain what my position is that would  
9 be helpful. Florida Power and Light and Progress Energy in  
10 this year's capacity recovery clause have included for current  
11 customers to pay the contract costs in their entirety with  
12 respect to expenditures that are made prior to a site being  
13 cleared. Those expenditures are based upon the retail  
14 customers being obligated to pay for the nuclear plant as  
15 though the entirety of the nuclear plant is in the retail rate  
16 base.

17 And as we have seen from earlier proceedings, when  
18 the Progress Energy nuclear plant comes on-line in 2017, I  
19 think the capacity factor will be well over 20 percent. And  
20 what this issue is dealing with is what is the appropriate  
21 wholesale separation for the utility's power plants and power  
22 system. I would perceive that when you have the nuclear plants  
23 and when the nuclear plants are going to be well in excess of  
24 the perceived needs of the retail customers when they come  
25 on-line, what the Commission did when it established a need for

1 these plants was it was looking at the statewide need as  
2 opposed to the need of the retail service area.

3 And as a consequence, in this year when the magnitude  
4 of these capacity costs is so significant, it is over  
5 \$400 million for Progress Energy, and it is around \$250 million  
6 for Florida Power and Light, I think it would be prudent for  
7 the Commission to say, well, only 15 percent of that, that's  
8 what you are required to have statewide to secure reliability  
9 of service, should be allocated to the retail customers and the  
10 balance of that should be allocated to the wholesale load.

11 That's my thinking on that issue. And obviously it  
12 obfuscates the issue, because Ms. Bennett didn't understand  
13 what I was trying to get at. But that is what I was trying to  
14 get at.

15 **COMMISSIONER McMURRIAN:** So, Mr. McWhirter, you want  
16 your position to remain as reflected in the draft prehearing  
17 order.

18 **MR. McWHIRTER:** Yes, ma'am.

19 **COMMISSIONER McMURRIAN:** And so with respect to FPL  
20 and Progress, we wouldn't have a stipulation; but with respect  
21 to the other utilities, we would.

22 **MS. BENNETT:** That's correct.

23 **COMMISSIONER McMURRIAN:** Is that correct? Okay.

24 **MR. McWHIRTER:** No problem.

25 **COMMISSIONER McMURRIAN:** Okay.

1           **MR. BURGESS:** Commissioner, if I might, I would like  
2 to agree with FIPUG on the issue. If you would allow, I would  
3 like the opportunity -- I agree in concept, if you would allow  
4 I would like the opportunity to perhaps look at maybe refining  
5 the language a little bit unless you feel that I need to take a  
6 concrete position right now, but it is with FIPUG conceptually.

7           **COMMISSIONER McMURRIAN:** When could you get the  
8 revised position to staff?

9           **MR. BURGESS:** I would do that today.

10          **COMMISSIONER McMURRIAN:** Okay.

11          **MR. BREW:** Commissioner, PCS would like to do the  
12 same. You will recall that in the need docket with respect to  
13 Progress Energy's Levy County units that we were looking at an  
14 expected capacity margin of 25 percent for the first unit and  
15 then 33 percent when Unit 2 comes on-line, and there was an  
16 open issue as to the extent to which Progress was pursuing  
17 partners for some of that capacity. And we are being asked to  
18 pay for 100 percent of it now, so I think FIPUG is right, that  
19 we would need to give some thought on these jurisdictional  
20 factors. And PCS will modify its statement today, as well.

21          **COMMISSIONER McMURRIAN:** And yours will be just with  
22 respect to Progress, right?

23          **MR. BREW:** Absolutely.

24          **COMMISSIONER McMURRIAN:** But yours, Mr. Burgess, will  
25 be with respect to FPL and Progress?

1           **MR. BURGESS:** Yes, Commissioner.

2           **COMMISSIONER McMURRIAN:** Okay. Anything else?

3           Mr. Butler.

4           **MR. BUTLER:** Yes, I would like to react to this  
5 position with a concern that is somewhat similar to the one we  
6 addressed earlier. First of all, with respect to FPL, I mean,  
7 I'm not in a position to testify any more than Mr. McWhirter  
8 is, but I can tell you there was -- you know, the justification  
9 of the need for FPL's Turkey Point 6 and 7 and its uprates to  
10 its existing nuclear units was not based on serving a statewide  
11 need, although it's true that we are in negotiations with other  
12 entities that may or may not result in some sort of arrangement  
13 for sharing output from the Turkey Point 6 and 7 units at some  
14 point in time.

15                   But this seems like that it is, one, again,  
16 policy-freighted, and, two, going to involve developing a  
17 record on information that doesn't exist in the current  
18 testimony of anybody. And I'm not sure how Mr. McWhirter  
19 intends to proceed with that, but it seems like it's a real  
20 complication to be basing decisions on issues about what  
21 nuclear units may be used, what load they may be used to serve  
22 in the future decisions and other proceedings, et cetera, on a  
23 record that doesn't address any of those subjects.

24           **MR. McWHIRTER:** If I could clarify, I'm not looking  
25 at the uprate issues, only the Levy 1 and 2. And refresh my

1 recollection, John, on the new units for Progress. It would be  
2 St. Lucie 2 or 3, I guess.

3 **MR. BUTLER:** No, no, no, Turkey Point 6 and 7 for  
4 FPL.

5 **MR. McWHIRTER:** Okay. Turkey Point 6 and 7.

6 **MR. BUTLER:** But I will again represent to you that  
7 the need proceeding for that plant or those units was held  
8 relatively recently. And our evidence that supported the need  
9 for them did not involve an assumption that the units would be  
10 used to, you know, provide power outside of FPL's system.

11 You know, there is a commitment to negotiate with  
12 other parties that may or may not lead to something in the  
13 future, but that was not the basis for justifying the need for  
14 those units. And it just seems like this can't be any more  
15 than speculation at this point.

16 We justified the units for FPL's system. That's  
17 present intent. If it changes, obviously there would end up  
18 needing to be some adjustment at that point in how much retail  
19 customers paid, because part of the unit would be paid for by  
20 another entity. But on what basis, how much that reached back  
21 in time to compensate for costs already incurred, how that  
22 would flow through, it's just entirely speculation at this  
23 point. I don't see how you could possibly come to a decision  
24 in this proceeding that would result in an adjustment to these  
25 precise separation factors based on that type of information.

1           **COMMISSIONER McMURRIAN:** And I just want to clarify.  
2 With respect to Issue 27, we are only talking about the period  
3 January 2009 through December 2009, correct?

4           **MS. BENNETT:** That's correct, Commissioner.

5           **COMMISSIONER McMURRIAN:** Mr. Perko, did you have  
6 anything you wanted to add?

7           **MR. PERKO:** Just very briefly. I guess I would share  
8 the concerns that Mr. Butler expressed about the lack of any  
9 record information regarding the issue that Mr. McWhirter and  
10 the others are trying to inject here. I guess I would just  
11 reiterate those points.

12           **MR. BURGESS:** Commissioner.

13           **COMMISSIONER McMURRIAN:** Yes, Mr. Burgess.

14           **MR. BURGESS:** On behalf of OPC, we understand that  
15 where the case is procedurally it is, and the testimony that  
16 has been prefiled, that's what's there, and that is what we  
17 have to work with. My concern is that it's an issue, and it  
18 may be dealt with nothing more than conceptually, but it is an  
19 issue, what is the separation factor. And as parties, we are  
20 entitled to take the positions that we think are most  
21 appropriate and most effectively represent our clients. And I  
22 think that we would like to address it.

23           We may not be able to get specific numbers that  
24 properly -- that could fully address the concerns that we have  
25 here. But I think it is something that if it is conceptually

1 something the Commission should be considering, then it is  
2 something that -- as I am looking at it and listening to Mr.  
3 McWhirter, and listening to the arguments being made, that is  
4 what I would like to keep alive, keep viable, is our  
5 opportunity to take a look at that and address that.

6 **COMMISSIONER McMURRIAN:** Ms. Bennett.

7 **MS. BENNETT:** I think that we are jumping the gun  
8 here. I think what they are arguing to you is something that  
9 more appropriately belongs with the Chairman at the proceeding.  
10 And also, if there's any post-hearing briefs needed, the  
11 parties at this point will use the record that the Commission  
12 has before, the testimony and exhibits that are prefiled, and  
13 if there is nothing in it to address this issue, then that is  
14 what will be remaining. And it may have to be something that  
15 they will raise again next year if they need to. But, again, I  
16 think that the parties do have a right to take a position on  
17 the statements, and then to prove their positions in the  
18 hearing.

19 **COMMISSIONER McMURRIAN:** Thank you, Ms. Bennett.

20 So, Mr. Brew and Mr. Burgess, you will be able to get  
21 your revised positions at the end of the day. Thank you.

22 And, Mr. McWhirter, you're comfortable with yours as  
23 stated?

24 **MR. MCWHIRTER:** Say again?

25 **COMMISSIONER McMURRIAN:** You are comfortable with



1 your position as stated on Issue 27?

2 **MR. McWHIRTER:** Yes, ma'am.

3 **COMMISSIONER McMURRIAN:** Okay.

4 **MS. BENNETT:** And so with that the staff will be able  
5 to show that Gulf and TECO are stipulated for Issue 27, and  
6 Florida Power and Light and Progress Energy will have specific  
7 positions from the intervenors, and staff has a revised  
8 position as we stated on the percentage for FPL on Issue 27.

9 **COMMISSIONER McMURRIAN:** Thank you.

10 Anything else on 23 through 28?

11 **MR. BUTLER:** On Issue 28, for FPL, the position that  
12 was stated here is the position that applied before we filed  
13 our testimony on October 15 that reflected the results of the  
14 October 14 vote on the nuclear cost-recovery amounts.

15 What I would propose is that we would provide staff  
16 new text that refers to the positions that -- and the factors  
17 that reflect the approved nuclear cost-recovery amounts, and  
18 then that the factors in the table would be those figures. We  
19 have provided those figures to staff, and I believe that staff  
20 has reviewed and agrees with the figures that we have provided,  
21 and I can provide the textual introduction for that later  
22 today.

23 **COMMISSIONER McMURRIAN:** Ms. Bennett.

24 **MS. BENNETT:** It is probably appropriate at this time  
25 to receive a new position from FPL that reflects the testimony

1 and the decision of the Commission. I don't believe that staff  
2 has finished reviewing all of the numbers, and so we are not  
3 quite ready to take a position on Issue 28. But if no party  
4 objects to FPL filing the new position, then we could reflect  
5 that in the prehearing order provided I get the new  
6 information.

7 **COMMISSIONER McMURRIAN:** Are there any objections to  
8 updating those numbers consistent with the Commission's vote?

9 **MR. McWHIRTER:** No objection from FIPUG.

10 **COMMISSIONER McMURRIAN:** Hearing none. So, Mr.  
11 Butler, when can you -- you have already given that to staff?

12 **MR. BUTLER:** We have given the numbers. I will just  
13 put the package of the introductory language and the table to  
14 them today.

15 **COMMISSIONER McMURRIAN:** Thank you.

16 And, Mr. Perko, do Progress' change in the same  
17 manner in any way? I know we have already talked about your  
18 numbers in this issue. Does that reflect the most recent  
19 Commission decision?

20 **MR. PERKO:** Yes, Commissioner, with those changes  
21 that I have noted previously.

22 **COMMISSIONER McMURRIAN:** Okay. Thank you.

23 Anything else on Issue 28?

24 I guess with that we will move on to the  
25 company-specific capacity cost-recovery issues.

1           **MS. BENNETT:** Staff is ready to take a position on  
2 both 29A and 30A, which are the nuclear cost-recovery clause  
3 issues. I would like to state that for 29A, Progress Energy  
4 Florida, staff's position is that the recoverable amount is  
5 \$418,311,136. Progress Energy does not have a dollar figure in  
6 there, but if they agreed and the other parties took no  
7 position, then this could be included as a stipulated issue.

8           **COMMISSIONER McMURRIAN:** Mr. Perko, have you had a  
9 chance to --

10          **MR. PERKO:** I have not. Let me check with my client  
11 very briefly, if I could.

12          **COMMISSIONER McMURRIAN:** Okay.

13                   With respect to any of the other parties, has anyone  
14 changed their position or want to take a position at this time?

15                   Mr. McWhirter.

16          **MR. McWHIRTER:** The issue says have they included the  
17 costs, and FIPUG agrees that they have included the costs. By  
18 agreeing to that, I don't want to agree that customers should  
19 be charged that amount, if that's clearly understood.

20          **COMMISSIONER McMURRIAN:** Ms. Bennett, does this issue  
21 need to have the number reflected in it? I guess the way the  
22 issue is worded it doesn't include that number, but do we need  
23 to have that agreement on what -- I assume we do need to have  
24 an agreement on what the number is somehow.

25          **MS. BENNETT:** I think for just tracking purposes as

1 the staff comes back with the factors, that, yes, we would like  
2 to have that number specifically in the order.

3 **MR. BREW:** Commissioner.

4 **COMMISSIONER McMURRIAN:** Yes, Mr. Brew.

5 **MR. BREW:** I believe in the nuclear cost-recovery  
6 docket we had agreed to a stipulation with respect to the  
7 numbers, but subject to the subsequent prudence review since  
8 those numbers were going to be vetted for the next year. So to  
9 the extent that that language is captured here, then I am  
10 comfortable taking no position.

11 **COMMISSIONER McMURRIAN:** That makes sense to me, but  
12 I'm looking around to everyone else. I recall that lengthy  
13 discussion we had to get there before, and everyone agreed on  
14 that wording that essentially was a placeholder for next time,  
15 that we will be looking at the prudence of those dollars in the  
16 future case.

17 Mr. McWhirter.

18 **MR. McWHIRTER:** I'm sorry, ma'am, would you repeat  
19 the statement.

20 **COMMISSIONER McMURRIAN:** Well, I think that Mr. Brew  
21 was pointing out that in the NCRC case, that the stipulation  
22 among the parties was that there was a general agreement on the  
23 numbers with the understanding that we would be looking at the  
24 prudence in next year's proceeding. And he was saying with  
25 respect to this issue, there could be agreement on the numbers

1 as long as that caveat was still somehow reflected.

2           **MR. McWHIRTER:** I have no problem with identifying  
3 the specific number that has been included, and I think that's  
4 what the issue is. I have a problem with customers being  
5 charged that number. And that's where I wanted to make our  
6 position clear that we agree that the number that they have  
7 given, we also agree that prudence hasn't been determined and  
8 won't be determined until next year. But there is a subset,  
9 and that subset is if part of that plant is for the wholesale  
10 jurisdiction, then customers shouldn't be charged that. And I  
11 didn't want to undercut our position in the other issue by  
12 saying yes to this issue.

13           **COMMISSIONER McMURRIAN:** I think we can somehow fix  
14 that.

15           Ms. Bennett, is there a way for staff to perhaps  
16 propose the language that sort of reflects that agreement from  
17 the other docket somehow, that it preserves that so that we,  
18 perhaps, can get the stipulation as long as those agreements --

19           **MS. BENNETT:** I believe so. I think the language  
20 could be something simple as Progress Energy has included  
21 418,311,136 pursuant to the order, and subject to the  
22 stipulations and agreements in that order.

23           **COMMISSIONER McMURRIAN:** Can you perhaps work on  
24 something and just get that to the parties and see if we can  
25 agree on some language there.

1           **MS. BENNETT:** We will do the same with 30A.

2           **COMMISSIONER McMURRIAN:** Okay. With FPL.

3           **MR. PERKO:** Commissioner McMurrian.

4           **COMMISSIONER McMURRIAN:** Yes.

5           **MR. PERKO:** We did check, and the number that  
6 Ms. Bennett threw out was correct.

7           **COMMISSIONER McMURRIAN:** Okay. Thank you.

8           **MS. BENNETT:** The number that staff would like to  
9 change its position to for FPL is \$220,529,243, and that does  
10 agree with FPL's position as stated in 30A on Page 55 of the  
11 prehearing order.

12           **COMMISSIONER McMURRIAN:** And I assume we'll carry  
13 forward that discussion we just had with respect to 29A to 30A,  
14 and we will work on some language that will clarify the  
15 agreement we had in the NCRC docket. Okay. Moving along.

16           **MS. BENNETT:** In Issue 30B, FPL has agreed to make  
17 the changes that our auditor found in its audit report. And so  
18 I do not believe that 30B needs to continue to be an issue,  
19 unless any other party taking a position disagrees. I do note  
20 that AARP and FIPUG made a generic statement that this is not  
21 to be included because it is a nonvolatile cost.

22           **COMMISSIONER McMURRIAN:** Mr. McWhirter, do you have  
23 an objection with removing this as an issue?

24           **MR. MCWHIRTER:** If they remove it, I'm perfectly  
25 happy with that we can stipulate to that issue.

1                   **COMMISSIONER McMURRIAN:** And, Ms. Bennett, I guess  
2 you can check with Mr. Twomey. I'm assuming that the same will  
3 be true, since it looks like they had the same position before.  
4 So given that, that issue would be removed from the final  
5 prehearing order?

6                   **MS. BENNETT:** Yes, subject to checking with Mr.  
7 Twomey.

8                   **MR. McWHIRTER:** Okay. I should have said attaboy.

9                   **COMMISSIONER McMURRIAN:** Thank you, Mr. McWhirter.  
10 So no company-specific issues for Gulf in this  
11 section?

12                   **MS. BENNETT:** That's correct.

13                   **COMMISSIONER McMURRIAN:** Anything with respect to  
14 TECO?

15                   **MS. BENNETT:** I just wanted to note that we have had  
16 some discussions with TECO, and this may show up as more of a  
17 stipulated issue. It's very similar to what we have dealt with  
18 in the environmental cost-recovery clause and the conservation  
19 clause, where the utility is asking for a change in rate  
20 structure if it is approved in the base rate proceeding which  
21 will be heard in February and be put into effect in May. So we  
22 are working with the utility to change the language so that  
23 there is not a disagreement.

24                   **MR. BEASLEY:** Commissioner, for Tampa Electric we  
25 would be willing to just delete Issues 32A and B and have those

1 addressed in connection with the base rate proceeding now  
2 pending which would obviate that concern.

3 **MS. BENNETT:** Very good. We will show those as  
4 withdrawn.

5 **MR. BEASLEY:** And that would have a slight effect on  
6 Issue 28 on Page 53. We would just change the January 2009  
7 through April 2009, where it should read January 2009 through  
8 December 2009.

9 **COMMISSIONER McMURRIAN:** But the factors remain the  
10 same, Mr. Beasley?

11 **MR. BEASLEY:** Yes, ma'am.

12 **COMMISSIONER McMURRIAN:** Are there any objections by  
13 any of the other parties to removing Issues 32A and 32B?

14 **MR. McWHIRTER:** When Florida Power and Light did it a  
15 number of years ago, they did it in the capacity clause  
16 proceeding. And I presume that TECO has reached the same  
17 conclusion, because they suggested that it be done in the  
18 capacity clause proceeding, and they also suggested that it be  
19 done in the rate case. I don't see any reason to postpone the  
20 decision on this issue until the rate case comes up, and I  
21 think it would be appropriate to go ahead and do it.

22 **COMMISSIONER McMURRIAN:** Mr. Beasley.

23 **MR. BEASLEY:** We just didn't want to presuppose any  
24 particular outcome of the rate proceeding, and I think that  
25 would be the appropriate time to address the issue.



1           **MS. BENNETT:** And that was staff's concern is that by  
2 making a ruling as these issues were addressed, the Commission  
3 would in essence be making a predecision to the base rate  
4 proceedings, and there is testimony in the base rate  
5 proceedings that address this issue, whereas there is not  
6 really in the fuel clause.

7           As I understand, the testimony was basically a --  
8 Schedule 1 was if the Commission did not approve the base rate  
9 proposed restructuring of the capacity clause then Schedule  
10 1 would be in effect. If they did then, Schedule 2 would be in  
11 effect effective May. So it's really contingent upon the  
12 decision that the Commission makes in its base rate proceeding.  
13 And I think in the capacity clause factors we could note that  
14 the change would occur effective May, if the Commission  
15 approves the base rate proceeding.

16           If you'll indulge me, I think we can come up with an  
17 agreement that all of the parties will be satisfied with,  
18 rather than try and explain and go through the asterisks and  
19 the but ifs that need to go into the language in 28.

20           **COMMISSIONER McMURRIAN:** Mr. McWhirter, is that okay  
21 with you? Continue to work on it, I guess, after the  
22 prehearing.

23           **MR. McWHIRTER:** I would be happy to continue working  
24 on it.

25           **MS. BENNETT:** Very good.

1           **COMMISSIONER McMURRIAN:** Mr. Beasley, anything else  
2 on that?

3           **MR. BEASLEY:** I don't believe so. Thank you, though.

4           **COMMISSIONER McMURRIAN:** Okay. All right. I guess  
5 one last time, are there any other changes or corrections to  
6 any of the issues and positions, now that everyone has had a  
7 chance to go through them section-by-section?

8           **MR. BEASLEY:** Commissioner, if I could, I'm trying to  
9 determine which issues are still pending for Tampa Electric,  
10 and I don't if know the other companies -- because a number of  
11 the parties have just stated no position at this time on some  
12 of the company-specific issues. And if we could just turn to  
13 the issues starting with 16A, just to determine whether that is  
14 indeed an issue.

15           I think I would suggest that 16A through C, if no one  
16 takes a position, that those would be stipulated. D has  
17 already been stipulated, and Issue G is no longer an issue.

18           **MS. BENNETT:** Staff is not prepared yet to take a  
19 position on 16A, which is the hedging, and 16B, also the risk  
20 management plan, and then 16C is the new waterborne  
21 transportation agreement that TECO has entered into. We are  
22 not prepared at this point to take a position, and so I don't  
23 believe that they are ripe to be stipulated.

24           **COMMISSIONER McMURRIAN:** Okay. And when will staff  
25 be letting the parties know whether --

1           **MS. BENNETT:** It's staff's intention to -- the  
2 discovery deadline is today. And it is staff's intention to go  
3 through all of the discovery and finalize its positions  
4 sometime later this week and to let parties know probably  
5 Thursday or Friday of any other additional stipulations that  
6 staff is ready to enter into, or is in agreement with the  
7 parties.

8           **COMMISSIONER McMURRIAN:** And that was 16A through  
9 16C. 16D is stipulated. Mr. Beasley --

10                   Well, Staff, 16E and F, is the same true for those?

11           **MS. BENNETT:** Again, staff is not prepared to take a  
12 position at this time. I believe we will be stipulating 16E  
13 and F, but we are not yet prepared.

14           **COMMISSIONER McMURRIAN:** It looks like with respect  
15 to 16E that all parties haven't taken no position. I see that  
16 there is a position there for FIPUG.

17           **MS. BENNETT:** Oh, I'm sorry, we did take a position  
18 on 16E, so it could be shown as stipulated.

19           **COMMISSIONER McMURRIAN:** But FIPUG has a separate  
20 issue on 16E.

21           **MS. BENNETT:** That's correct.

22           **COMMISSIONER McMURRIAN:** Unless they have changed it.  
23 Mr. McWhirter, on 16E, your position is reflected on  
24 Page 41. Do you want that to remain as stated?

25           **MR. BEASLEY:** On both E and F, I don't know if

1 FIPUG's position is yes or no.

2 **MR. McWHIRTER:** Are you saying 16V as in Volvo?

3 **COMMISSIONER McMURRIAN:** 16E as in Edgar, and F as in  
4 FIPUG.

5 I think Mr. Beasley is questioning whether your  
6 position is yes or no, or if you want to make any changes to  
7 those positions.

8 **MR. McWHIRTER:** Ms. McMurrian, I'm going to take no  
9 position. That matter has already been undertaken by the other  
10 utilities, and I don't think the Commission has established  
11 precedent for the subject, so I think it's okay.

12 **COMMISSIONER McMURRIAN:** Okay. And that is 16E and  
13 16F?

14 **MR. McWHIRTER:** That is a base rate issue.

15 **COMMISSIONER McMURRIAN:** So on 16F, Mr. McWhirter,  
16 are you taking no position on that one, as well?

17 **MR. McWHIRTER:** No position.

18 **MS. BENNETT:** And so 16E and 16F can be shown as  
19 stipulated.

20 **COMMISSIONER McMURRIAN:** Is staff taking a position  
21 on 16F at this time?

22 **MS. BENNETT:** I'm sorry.

23 **COMMISSIONER McMURRIAN:** 16E can be shown as  
24 stipulated, I think.

25 **MS. BENNETT:** Just 16E. We still have outstanding

1 discovery on 16F.

2 **COMMISSIONER McMURRIAN:** Okay. I think we're on the  
3 same page now.

4 Any other questions about those, Mr. Beasley?

5 **MR. BEASLEY:** I guess my only other question, if the  
6 nonstaff parties are taking no position on 16A, B, C, E, and F,  
7 some of them currently state no position at this time, and I  
8 just wondered if that is being converted into a no position.

9 **COMMISSIONER McMURRIAN:** I think so. I see nodding  
10 of heads. I know that with respect OPC, we have clarified that  
11 earlier that where it says no position at this time we will  
12 change it to no position. I think that is true throughout for  
13 all parties. I see a lot of nodding of heads.

14 **MR. BEASLEY:** Thank you.

15 **MR. McWHIRTER:** For FIPUG, we were relying on staff.  
16 We take the same position as staff, and staff hasn't taken a  
17 position yet. It's on 15A and B.

18 **MS. BENNETT:** Actually, I'm not sure that a party can  
19 take no position at this time, but staff is not a party, so --

20 **COMMISSIONER McMURRIAN:** I think what she is saying,  
21 Mr. McWhirter, is you need to take a position at this time  
22 whether it is no position or --

23 **MR. McWHIRTER:** Are we talking about 15A and B?

24 **COMMISSIONER McMURRIAN:** We are actually talking  
25 about any of the issues with respect -- other than the ones

1 that we have talked about getting position statements to her by  
2 the end of the day, otherwise with respect to any position of  
3 the parties that states no position at this time, today it  
4 either needs to be changed to no position, or whatever position  
5 you would like to take, or make arrangements to get language to  
6 staff.

7 **MR. McWHIRTER:** On the hedging issues, staff has said  
8 that it is going to take a position at a later time, and  
9 FIPUG's position is that it defers to the staff on that matter  
10 because it has the information. So, my position is not no  
11 position, the position is agree with staff. But I don't know  
12 what that position is going to be.

13 **COMMISSIONER McMURRIAN:** Neither do I.

14 **MR. McWHIRTER:** And it may be one I don't like, but  
15 that is okay. That's what we do.

16 **COMMISSIONER McMURRIAN:** Okay. So you want to agree  
17 with staff on all hedging-related issues for all companies?

18 **MR. McWHIRTER:** Yes, ma'am.

19 **COMMISSIONER McMURRIAN:** Okay. Do we know exactly  
20 which ones -- that's enough for what we need, Ms. Bennett?

21 **MS. BENNETT:** I can plug them in. I think it is A  
22 and B of each of the utilities issues on the plan. I think  
23 that's B, and on the reports that's A. So FIPUG agrees with  
24 staff on all issues, is that right?

25 **MR. McWHIRTER:** All hedging issues.

1           **COMMISSIONER McMURRIAN:** Good try. Okay. Does  
2 anyone else want to change their positions on any of those  
3 issues? Okay.

4           **MR. BUTLER:** Commissioner.

5           **COMMISSIONER McMURRIAN:** Yes.

6           **MR. BUTLER:** Let me ask, if I may, sort of a similar  
7 question to see if we can put ourselves in a position of  
8 possibly stipulating if staff doesn't disagree with FPL. There  
9 is a series of issues from 13D, as in dog, through 13G -- I'm  
10 sorry, through 13I that all have to do with approval of our  
11 GBRA recoveries for the existing and two new power plants. And  
12 it doesn't look like there are any positions being taken by  
13 parties other than staff on those that would be specifically  
14 disputing anything in it. And I would like to set it up, if  
15 it's possible, to confirm that we are in the same position that  
16 to the extent staff agrees with FPL's positions on those they  
17 could be stipulated.

18           **COMMISSIONER McMURRIAN:** Perhaps we should take them  
19 one at a time. 13D?

20           Mr. McWhirter, I think your position boils down to no  
21 position, if I'm reading it correctly.

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

23           **COMMISSIONER McMURRIAN:** Okay. And, staff, you are  
24 not ready to take a position at this time.

25           **MS. BENNETT:** We are not ready to take a position on

1 any of those issues.

2 **COMMISSIONER McMURRIAN:** Okay. With respect to the  
3 other parties, Mr. Butler, I think that answers that on 13D.  
4 13E, and I think we have covered this one.

5 **MS. BENNETT:** It appears that 13E is everyone takes  
6 no position at this time, which will change to no position with  
7 the exception of staff, and staff is not ready to take a  
8 position.

9 **COMMISSIONER McMURRIAN:** Okay. 13F. And if any  
10 parties have changes to positions just please jump in. 13F.

11 **MS. BENNETT:** 13F. Again, all the parties take no  
12 position at this time, which will be changed today to no position  
13 And staff, again, is not ready to take a position.

14 **COMMISSIONER McMURRIAN:** And 13G, I think, is the  
15 same.

16 **MR. BUTLER:** Yes.

17 **MS. BENNETT:** Yes, it is.

18 **COMMISSIONER McMURRIAN:** 13H. The same?

19 **MS. BENNETT:** It's the same.

20 **COMMISSIONER McMURRIAN:** And 13I. The same, right?  
21 Actually, 13I --

22 **MR. McWHIRTER:** Could we get a little bit further  
23 explanation of what 13I is all about?

24 **MR. BUTLER:** 13I is the counterpart, John, of what  
25 FPL did with respect to Turkey Point 5 GBRA when it first went



1 into effect in 2007. Basically, there is a significant  
2 reduction in the fuel cost once the unit goes into service, and  
3 rather than have a fuel adjustment that is set recognizing  
4 those savings at a lower level and then a mid-year upward  
5 adjustment in the total charge on customers' bills, we proposed  
6 and the Commission approved that we would levelize the entire  
7 bill, in effect, by having the fuel adjustment changes or the  
8 fuel adjustment charge change as kind of a counterpart to the  
9 level of the GBRA as they came in as increases to the base  
10 revenues so that customers throughout the year would see at  
11 least very approximately the same total charge for the same  
12 usage level for each month of the year.

13 Sort of the math of it works out where you can't do  
14 that precisely for each rate class. It is done where it works  
15 out exactly that way for the residential, the RS-1 class, but  
16 it is very close to that result for the other classes. And  
17 that is what this deals with is that sort of having counterpart  
18 step changes in the fuel charge so that they offset the  
19 increases in the GBRA and you get a levelization effect over  
20 the course of the year.

21 **MR. McWHIRTER:** Ms. McMurrin, when we settled the  
22 2005 FPL rate case, part of the settlement was -- there were  
23 power plants that were under construction. And when those  
24 power plants came into service, we would adjust base rates to  
25 reflect the cost attributable to O&M and return on those power

1 plants. I called it the GBRA clauses, but it is a generation  
2 rate base adjustment clause.

3           It is a little bit unusual that since it is a base  
4 rate item as other base rate items are now being considered in  
5 the fuel clause, so what you are doing is mixing apples and  
6 oranges. Having said that, it's fairly clear that it is  
7 probably easier to do it this way where you have an ongoing  
8 proceeding rather than filing a new petition each year and  
9 dealing with that petition, so I think that's okay.

10           Having said that, the next thing is what we developed  
11 in the not too distant past is the inverted rate structure for  
12 residential consumers. And I think there was a popular belief  
13 that that rate structure helped poor people that were  
14 economically distressed. I believe, if the facts were really  
15 known, somebody that consumes 1,000 kilowatt hours or less is  
16 being subsidized by other residential customers. Not other  
17 class -- and I'm not here representing residential customers,  
18 but residential customers are really the crux of what this  
19 Commission does, and it is what every other customer class  
20 does, because we are dependent on residential customers to buy  
21 our goods and so forth.

22           And so proper rate structures only would provide  
23 subsidization for one class if it's appropriate to do so. So,  
24 I don't think it has ever been properly indicated that people  
25 who have vacation condominiums, where they are gone eight or

1 nine months of the year, are entitled to that kind of subsidy.

2           Having said that, the appropriate place to talk about  
3 that is in a base rate case, not in this proceeding. So I'm in  
4 a bit of a quandary when it comes to these issues. And I guess  
5 saying that we take no position because we don't know what the  
6 real facts and circumstances are is better than trying to take  
7 a position when there is no evidence in the record other than  
8 what it costs to operate and maintain these power plants is the  
9 best way to go. But I didn't want to go down quietly on the  
10 subject, because I think there is a big disconnect.

11           And the reason there is a big disconnect is that  
12 whenever there is a rate increase everybody looks at what  
13 happens to the 1,000-kilowatt-hour customer, and that is  
14 irrelevant because that is a subsidized class. So it's a big  
15 public relations issue in my mind, but I haven't been able to  
16 resolve it in a fashion that is rational. But I do like to  
17 complain every time it rears its ugly head, so I have now done  
18 that. Thank you very much.

19           **COMMISSIONER McMURRIAN:** So I guess that brings me  
20 back to, Mr. McWhirter, what you want your position to be  
21 reflected as.

22           **MR. MCWHIRTER:** Put it "No position grudgingly," I  
23 think.

24           **COMMISSIONER McMURRIAN:** Okay.

25           Thank you, Mr. McWhirter.

1           **MS. BENNETT:** And that was on 13I.

2           **COMMISSIONER McMURRIAN:** That was 13I. And I think  
3 we have taken care of J. Was that it?

4           **MR. BUTLER:** Yes.

5           **MR. PERKO:** Commissioner, I believe that for Progress  
6 Energy, Issues 12A and 12B are similar to the TECO Issue 16 in  
7 that all parties have taken no position. Staff, I believe is  
8 still working their position. And Mr. McWhirter has indicated  
9 he is relying on staff, so it appears, assuming that Mr.  
10 McWhirter changes his position to agrees with staff, if  
11 Progress and staff can come to an agreement, those issues could  
12 be stipulated, as well.

13           **MR. McWHIRTER:** Accurately stated.

14           **MR. BADDERS:** Commissioner.

15           **COMMISSIONER McMURRIAN:** Mr. Badders.

16           **MR. BADDERS:** The same would be true for 15A and 15B.

17           **COMMISSIONER McMURRIAN:** Okay. And these are all the  
18 hedging issues, right?

19           **MR. BADDERS:** They are, correct.

20           **MR. BUTLER:** And the same would be true for 13A and  
21 B. I had thought we had moved past that, but I just wanted to  
22 make it clear. Thank you.

23           **COMMISSIONER McMURRIAN:** We want to make sure  
24 everyone is clear.

25           So any others on any of the issues that we have

1 missed? Okay.

2 I think we can go on to Section IX, the exhibit list.

3 **MS. BENNETT:** Yes. Before we start on the exhibit  
4 is, I neglected to state, when we talked about excusing the  
5 parties on the GPIF, the parties will not be excused until we  
6 have checked with each of the Commissioners and determined that  
7 they, also, do not have questions. So we will let the parties  
8 know prior to the hearing, probably Monday prior to the  
9 hearing, but sooner if we can, whether or not those witnesses  
10 can be excused.

11 **MS. BRADLEY:** (Inaudible. Microphone off.)

12 **COMMISSIONER McMURRIAN:** Absolutely, Ms. Bradley.

13 **MS. BRADLEY:** On Issue 27, we had deferred to Public  
14 Counsel. And now that they are changing their position on  
15 that, I would like to see the final draft of that before we  
16 take the final position on that, if we could.

17 **COMMISSIONER McMURRIAN:** Okay. And we intend to work  
18 all that out by the end of the day today, right? I think that  
19 is right. I'm trying to remember on 27.

20 Ms. Bennett, does that give you what you need on 27  
21 with respect to the Attorney General's position?

22 **MS. BENNETT:** Yes, it does. Thank you.

23 **COMMISSIONER McMURRIAN:** Okay.

24 Thank you, Ms. Bradley.

25 **MS. BENNETT:** Commissioner McMurrian, at the outset,

1 staff noted that in the exhibit list it was difficult to  
2 determine -- there are three particularly important documents  
3 that need to be part of the record when it comes to hedging.  
4 And it is kind of difficult from the exhibit list to determine  
5 whether those were indeed included, or intended to be included  
6 by the parties.

7 I have had an opportunity to speak with Florida Power  
8 and Light, Progress Energy, and TECO. Those three items are  
9 specifically the April 2008 hedging report, which covered all  
10 of 2007, the August 15th hedging report, which covered  
11 January 2008 through July 2008, and then the hedging plan for  
12 2009. I believe if we will go party-by-party we can make  
13 certain that if any additions need to be included in the  
14 exhibit list to make certain that those documents are included,  
15 they can do so at this point and we can include those as part  
16 of the exhibit list.

17 **COMMISSIONER McMURRIAN:** Mr. Butler.

18 **MR. BUTLER:** Yes, thank you.

19 The GJY-1, the first exhibit that shows up here, is  
20 the 2007 hedging activity report as indicated. GJY-2 is this  
21 January through July 2008 hedging results report, and it might  
22 be worthwhile to just add those words, January to July 2008  
23 hedging information report to make that clear. And then there  
24 is an exhibit that is not on the list and should be, GJY-4, and  
25 that is the 2009 risk management plan.

1                   **COMMISSIONER McMURRIAN:** Repeat that again for me.  
2 I'm sorry.

3                   **MR. BUTLER:** Where do you want me to pick up, the  
4 last one?

5                   **COMMISSIONER McMURRIAN:** The description.

6                   **MR. BUTLER:** GJY-4, and that is the 2009 risk  
7 management plan.

8                   **COMMISSIONER McMURRIAN:** Okay.

9                   Did you get what you needed, Ms. Bennett?

10                  **MS. BENNETT:** That's what we needed for Florida Power  
11 and Light, I think.

12                  **MR. BUTLER:** Before I leave FPL, let me just note two  
13 other things that aren't related to that issue, but are exhibit  
14 issues.

15                         First, on Page 59, about the middle of the page, we  
16 would be withdrawing the two exhibits from Mr. Gerrish because  
17 we are withdrawing his testimony. And then last, but not  
18 least, there is an exhibit for Mr. Jones listed on Page 62. It  
19 is the last exhibit. Mr. Jones is not a rebuttal witness, and  
20 I would just ask that the reference to that exhibit be moved up  
21 into order in the direct exhibit list. Thank you.

22                   **COMMISSIONER McMURRIAN:** Thank you.

23                   Mr. Badders.

24                   **MR. BADDERS:** Thank you.

25                   I believe for Gulf the reports would be contained in

1 HRB-1, HRB-3, and the actual plan is in HRB-4.

2 **COMMISSIONER McMURRIAN:** Okay. Mr. Perko.

3 **MR. PERKO:** Yes, ma'am.

4 For Progress Energy, I believe the April '08 filing  
5 is JM-1T, and the 2009 risk management plan is JM-1P. But I do  
6 believe we will need to add JM-2, which would be the January to  
7 July 2008 hedging information report.

8 **COMMISSIONER McMURRIAN:** Okay. Thank you.

9 Ms. Bennett, did you get that?

10 **MS. BENNETT:** Yes, I did. Thank you.

11 **COMMISSIONER McMURRIAN:** And, Mr. Beasley.

12 **MR. BEASLEY:** Yes, Commissioner.

13 Tampa Electric would stipulate to including into the  
14 record, subject to appropriate confidential safeguards, the  
15 April 2008 hedging report, the August 15th hedging report, and  
16 the hedging plan for 2009. And I don't know if you wish to  
17 assign an exhibit number, but we could designate them as JTW-2,  
18 if that is appropriate.

19 **MS. BENNETT:** So JTW-2 would be the April 2008  
20 report?

21 **MR. BEASLEY:** Right.

22 **MS. BENNETT:** The August 15th report, and then the  
23 September 2nd plan, and that would be sponsored by Witness  
24 JoAnn Wehle?

25 **MR. BEASLEY:** That's correct.



1                   **COMMISSIONER McMURRIAN:** And do we have any changes  
2 for FPUC, Mr. Horton?

3                   **MR. HORTON:** No, we're not in that.

4                   **COMMISSIONER McMURRIAN:** Okay. Any other changes to  
5 the exhibit list?

6                   **MS. BENNETT:** I'm not familiar that there will be any  
7 changes to the exhibit list. Staff is going to prepare a  
8 Comprehensive Exhibit List, and a composite exhibit, and we  
9 will check with the parties prior to the hearing to determine  
10 if there are any objections to either being entered into the  
11 record.

12                   Staff also notes that we included as part of FPL's  
13 exhibit the affidavits of Sim and Deaton that were filed in the  
14 docket. They are not listed in the prehearing statements, but  
15 we did have a discussion with FPL, and they have agreed to  
16 include those as part of the record. And they do show up in  
17 the prehearing order already.

18                   **COMMISSIONER McMURRIAN:** Okay. I believe that brings  
19 us to proposed stipulations. I guess we don't need to go  
20 through those again, or do we?

21                   **MS. BENNETT:** I don't believe we need to go through  
22 those at this time. The stipulations we have entered into here  
23 will show up in Section X.

24                   **COMMISSIONER McMURRIAN:** Okay. Pending motions and  
25 pending confidentiality matters.

1           **MS. BENNETT:** The remaining pending motions are  
2 motions for temporary protective order. They will be addressed  
3 by separate order. The pending confidentiality motions will  
4 also be addressed by a separate order.

5           **COMMISSIONER McMURRIAN:** Anything else there from the  
6 parties?

7           Mr. Badders.

8           **MR. BADDERS:** Yes, Commissioner.

9           On Friday, October 17th, we filed one additional  
10 request for confidentiality, and I will just make sure that  
11 staff has that information to add to the list on the pending  
12 confidentiality matters.

13           **COMMISSIONER McMURRIAN:** Okay. Thank you.

14           That takes us to Section XIII, post-hearing  
15 procedures.

16           **MS. BENNETT:** Generally, in this docket there is a  
17 bench decision, because the factors need to be prepared and  
18 ready for the January bills. And we often don't have  
19 post-hearing briefs, but sometimes we do if there is one or two  
20 issues that the Commission would like to have briefed.

21           Staff would suggest that if there are any to be  
22 briefed that the post-hearing position statements be no more  
23 than 50 words, and the post-hearing briefs and statements  
24 together be no longer than 40 pages.

25           **COMMISSIONER McMURRIAN:** Is everyone in agreement?

1           **MR. BUTLER:** Commissioner.

2           **COMMISSIONER McMURRIAN:** Mr. Butler.

3           **MR. BUTLER:** Probably a minor procedural point, but  
4 if it would be possible to have slightly more words for that  
5 statement of issue, or of position in it would be helpful.  
6 Sometimes that becomes an exercise in trying to craft Haiku to  
7 get a statement short enough to be within 50 words. If we  
8 could do something like 75. No longer on the total number of  
9 pages, but a little bit longer on the issue it would be great.

10           **COMMISSIONER McMURRIAN:** Any concerns? It seems like  
11 everyone else has that same concern at times.

12           So, Ms. Bennett, we will show it as 75 words?

13           **MS. BENNETT:** Yes, ma'am.

14           **COMMISSIONER McMURRIAN:** No objection from you all?

15           **MS. BENNETT:** No objection.

16           **COMMISSIONER McMURRIAN:** Okay. And the ruling  
17 section. I guess we need to talk about opening statements.

18           **MS. BENNETT:** Staff would suggest five minutes.

19           **MR. BURGESS:** Commissioner, I would ask that you  
20 allow ten minutes. I don't anticipate taking that much time.  
21 I certainly don't intend to take time just because it's there,  
22 but I really would like to be able to make a presentation and  
23 not feel like I'm under the gun for trying to get my points  
24 across before the seconds tick out.

25           And so since this is the only case, and all the

1 others had five minutes and probably will not have opening  
2 statements, I would ask if the Commission would indulge us and  
3 at least allow for ten, with the recognition that we are not  
4 looking to take that much time if it ends up not being  
5 necessary.

6 **COMMISSIONER McMURRIAN:** That is certainly fine with  
7 me.

8 Any objections or other comments from the parties?  
9 Mr. McWhirter.

10 **MR. McWHIRTER:** You are suggesting five minutes to a  
11 party and not five minutes to a side, is that correct?

12 **COMMISSIONER McMURRIAN:** I think we are talking about  
13 per party, but Mr. Burgess has just recommended ten minutes,  
14 and I would afford that to every party.

15 **MR. McWHIRTER:** I think that's fine. I would go  
16 along with that and suggest the same.

17 **COMMISSIONER McMURRIAN:** Okay. Ms. Bennett, any --

18 **MS. BENNETT:** No. Ten minutes will be reflected in  
19 the ruling section, and I believe you had stated that you would  
20 include the other ruling on the inclusion of the issues, or the  
21 exclusion of the issues as we discussed in the ruling section.

22 **COMMISSIONER McMURRIAN:** Okay. Thank you.

23 Any other matters that we should address before we  
24 adjourn this prehearing conference?

25 **MS. BENNETT:** Staff has none.

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**COMMISSIONER McMURRIAN:** Everyone is looking hungry,

I might add.

Okay. Seeing no additional matters, this prehearing is adjourned. Thank you.

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STATE OF FLORIDA )

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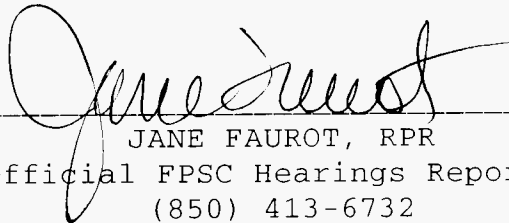
COUNTY OF LEON )

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

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

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

DATED THIS 24th day of October, 2008.



JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
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