

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.



VOLUME 8

Pages 958 through 1120

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PROCEEDINGS: HEARING

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

DATE: Thursday, November 6, 2008

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

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APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

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I N D E X

WITNESSES

	NAME:	PAGE NO.
1		
2		
3		
4		
5	KOREL M. DUBIN	
6	Continued Cross Examination by Mr. Young	961
7	Redirect Examination by Mr. Butler	963
8	F. IRIZARRY	
9	Prefiled Testimony Inserted	965
10	HUGH LARKIN, JR.	
11	Direct Examination by Mr. Burgess	977
12	Prefiled Testimony Inserted	979
13	Cross Examination by Ms. Bradley	990
14	Cross Examination by Mr. Twomey	993
15	Cross Examination by Mr. Butler	995
16	CERTIFICATE OF REPORTERS	1120
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITS

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

NUMBER:

ID.

ADMTD.

10 through 16

964

17 through 18

964

51

999

P R O C E E D I N G S

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(Transcript follows in sequence from Volume 7.)

CHAIRMAN CARTER: Okay. We'll ask everyone to take their seats. We're back on the record and we appreciate having the opportunity to switch out our, not switch out, exchange court reporters.

Staff, you're recognized.

MR. YOUNG: Thank you.

CONTINUED CROSS EXAMINATION

BY MR. YOUNG:

Q Are you there?

A Yes.

Q Okay. So on Page 2, looking at Line 10 on the far left-hand corner --

A Yes.

Q -- jurisdictional percentage.

A Yes.

Q All right. And it shows the jurisdictional, jurisdictional separation factors of 98.76729 percent; correct?

A That's correct.

Q What is the purpose of that number? What is the purpose of the separational factor?

A To jurisdictionalize or to apportion the amount that goes to the retail customer.

1 Q Okay. And how did FPL calculate that percentage?

2 A It's based on, on the cost allocations and the
3 separation study.

4 Q Looking further down Line 14, to Number 14.

5 A Yes. Mr. Young, I'm sorry, the calculation is
6 actually on the page itself.

7 Q Uh-huh.

8 A It's the percentage of sales part that goes to FPSC
9 there is the jurisdictional amount and FERC is the, if you
10 will, the nonjurisdictional amount.

11 Q Okay. Line 14, FPL included an amount of
12 \$220,529,243 for the nuclear cost recovery; correct?

13 A Yes, that is correct.

14 Q Is that, is that the number, is that amount the
15 number the Commission determined appropriate for recovery
16 through the capacity cost recovery clause in Docket Number
17 080009-EI?

18 A Yes, that is correct. And that is the jurisdictional
19 amount.

20 MR. YOUNG: Okay. Thank you. No further questions.

21 CHAIRMAN CARTER: Thank you.

22 Commissioners, anything further from the bench?

23 Mr. Butler.

24 MR. BUTLER: Thank you. Just a very brief redirect
25 of Ms. Dubin.

REDIRECT EXAMINATION

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BY MR. BUTLER:

Q Ms. Dubin, you were asked by Commissioner Skop and perhaps others about FPL's commitment to, excuse me, seek recovery from other sources regarding the replacement power costs from the Turkey Point 3 drilled hole incident.

A Yes.

Q Would you please explain to the Commission FPL's commitment to seeking recovery of those costs?

A Yes. We are committed to looking to see if there's any basis for, for any kind of recourse. We've recently received this report and we'll certainly look at that to see if there's any other recourse that we could do. And then, of course, those monies would be flowed back through the clause to customers.

MR. BUTLER: Thank you. That's all the redirect that I have.

CHAIRMAN CARTER: Okay. Commissioners, anything further? Exhibits?

MR. BUTLER: Gosh, so much pressure.

CHAIRMAN CARTER: Just for the record before we hear from Mr. Butler, Commissioners, just for your keeping track, Exhibit 56, which is a late-filed, we've entered that without objection. And so we're now on the actual exhibits for this witness.

1 Mr. Butler, you're recognized.

2 MR. BUTLER: Thank you. I would move Exhibits 10,
3 11, 12, 13, 14, 15 and 16.

4 CHAIRMAN CARTER: Are there any objections? Without
5 objection, show it done.

6 (Exhibits 10 through 16 admitted into the record.)

7 MR. BUTLER: And, Mr. Chairman, one other thing I
8 think is a housekeeping matter, it probably makes sense to move
9 the Exhibits 17 and 18 that were accompanying the stipulated
10 testimony of Mr. Irizarry on the GPIF issue, if that hasn't
11 already been done.

12 CHAIRMAN CARTER: No objection? Without objection
13 show it done.

14 (Exhibits 17 and 18 admitted into the record.)

15 MS. BENNETT: And also the testimony of Mr. Irizarry.

16 CHAIRMAN CARTER: The testimony of the witness will
17 be entered into the record as though read.

18 MR. BUTLER: Thank you for reminding me of that.

19 CHAIRMAN CARTER: As it relates to -- let me give you
20 my South Georgia pronunciation, Irizarry. Am I close?

21 MR. BUTLER: That's very good actually. Yes.

22 CHAIRMAN CARTER: All right. Thank you.

23

24

25

1 **BEFORE THE PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF FRANK IRIZARRY**

4 **DOCKET NO. 080001-EI**

5 **APRIL 3, 2008**

6

7 **Q. Please state your name and business address.**

8 **A. My name is Frank Irizarry, and my business address is 700**
9 Universe Boulevard, Juno Beach, Florida 33408.

10 **Q. Would you please state your present position with Florida**
11 **Power and Light Company (FPL).**

12 **A. I am the Director of Production Assurance and Business**
13 Services in the Power Generation Division of FPL.

14 **Q. Have you previously testified in the predecessor to this**
15 **Docket?**

16 **A. Yes, I have.**

17 **Q. What is the purpose of your testimony?**

18 **A. The purpose of my testimony is to report the actual**
19 performance relative to the Equivalent Availability Factor (EAF)
20 and Average Net Operating Heat Rate (ANOHR) for the
21 thirteen (13) generating units used to determine the Generating
22 Performance Incentive Factor (GPIF). I have compared the

1 actual performance of each unit to the targets that were
2 approved in Commission Order No. PSC-06-1057-FOF-EI
3 issued December 22, 2006, for the period January through
4 December 2007, and I have performed the reward/penalty
5 calculations prescribed by the GPIF Manual based on this
6 comparison. My testimony presents the result of my
7 calculations, which is an incentive reward for the period.

8 **Q. Have you prepared, or caused to have prepared under your**
9 **direction, supervision, or control an exhibit in this**
10 **proceeding?**

11 A. Yes, I have. It is identified as Exhibit FI -1 and shows the
12 reward/penalty calculations prescribed by the GPIF Manual.
13 Page 1 of Exhibit FI-1 is an index to the contents of the exhibit.

14 **Q. What is the incentive amount you have calculated for the**
15 **period January through December, 2007?**

16 A. I have calculated a GPIF incentive reward of \$5,383,572.

17 **Q. Please explain how the GPIF reward amount is calculated.**

18 A. The steps involved in making this calculation are provided in
19 Exhibit FI-1. Page 2 provides the GPIF Reward/Penalty Table
20 (Actual), which shows an overall GPIF performance point value
21 of +1.85 corresponding to a GPIF reward of \$5,383,572. Page
22 3 provides the calculation of the maximum allowed incentive

1 dollars. The calculation of the system actual GPIF performance
2 points is shown on page 4. This page lists each GPIF unit, the
3 unit's performance indicators (ANOHR and EAF), the weighting
4 factors, and the associated GPIF points.

5
6 Page 5 is the actual EAF and adjustments summary. This page
7 lists each of the thirteen (13) units, the actual outage factors
8 and the actual EAF, in columns 1 through 5. Column 6 is the
9 adjustment for planned outage variation. Column 7 is the
10 adjusted actual EAF, which is calculated on page 6. Column 8
11 is the target EAF. Column 9 contains the Generating
12 Performance Incentive Points for availability as determined by
13 interpolating from the tables shown on pages 8 through 20.
14 These tables are based on the targets and target ranges
15 submitted to, and approved by, the Commission prior to the
16 start of the period.

17
18 Page 7 shows the adjustments to ANOHR. For each of the
19 thirteen (13) units, it shows, in columns 2 through 4, the target
20 heat rate formula, the actual Net Output Factor (NOF) and the
21 actual ANOHR. Since heat rate varies with NOF, it is
22 necessary to determine both the target and actual heat rates at

1 the same NOF. This adjustment is to provide a common basis
2 for comparison purposes and is shown numerically for each
3 GPIF unit in columns 5 through 8. Column 9 contains the
4 Generating Performance Incentive Points as determined by
5 interpolating from the tables shown on pages 8 through 20.
6 These tables are based on the targets and target ranges
7 submitted to, and approved by, the Commission prior to the
8 start of the period.

9 **Q. Are there any changes to the targets approved through**
10 **Commission Order No. PSC-06-1057-FOF-EI?**

11 A. No, the approved targets have not changed.

12 **Q. Please explain the primary reason or reasons why FPL will**
13 **be rewarded under the GPIF for the January through**
14 **December, 2007 period.**

15 A. The primary reason that FPL will receive a reward for the
16 period was that St. Lucie Unit 1, Turkey Point Unit 4, and Ft.
17 Myers 2 adjusted availabilities were each better than target,
18 and Manatee Unit 1 actual heat rate was better than target.

19 **Q. Please summarize the effect of FPL's nuclear unit**
20 **availability on the GPIF reward.**

1 A. St. Lucie Unit 1 operated at an adjusted actual EAF of 89.8%,
2 compared to its target of 84.0%. This results in a +10.0 point
3 reward, which corresponds to a GPIF reward of \$2,864,128.

4 St. Lucie Unit 2 operated at an adjusted actual EAF of 70.3%,
5 compared to its target of 70.3%. Therefore, there is no GPIF
6 reward or penalty. Turkey Point Unit 3 operated at an
7 adjusted actual EAF of 84.4% compared to its target of 84.2%.
8 This results in a +0.67 point reward, which corresponds to a
9 GPIF reward of \$161,040. Turkey Point Unit 4 operated at an
10 adjusted actual EAF of 99.9% compared to its target of 90.7%.
11 This results in a +10.0 point reward, which corresponds to a
12 GPIF reward of \$3,025,716.

13 **Q. Please summarize each nuclear unit's performance as it**
14 **relates to the ANOHR of the units.**

15 A. St. Lucie Unit 1 operated with an adjusted actual ANOHR of
16 10,931 Btu/kWh compared to its target of 10,961 Btu/kWh.
17 This ANOHR is within the ± 75 Btu/kWh deadband around the
18 projected target; therefore, there is no GPIF reward or penalty.

19
20 St. Lucie Unit 2 operated with an adjusted actual ANOHR of
21 11,103 Btu/kWh compared to its target of 11,002 Btu/kWh. This
22 ANOHR results in a GPIF penalty of \$371,048.

1

2

Turkey Point Unit 3 operated with an adjusted actual ANOHR of

3

11,098 Btu/kWh compared to its target of 11,112 Btu/kWh.

4

This ANOHR is within the ± 75 Btu/kWh deadband around the

5

projected target; therefore, there is no GPIF reward or penalty.

6

7

Turkey Point Unit 4 operated with an adjusted actual ANOHR of

8

11,129 Btu/kWh compared to its target of 11,120 Btu/kWh.

9

This ANOHR is within the ± 75 Btu/kWh deadband around the

10

projected target; therefore, there is no GPIF reward or penalty.

11

12

In total, the nuclear units' heat rate performance results in a

13

GPIF penalty of \$371,048.

14

Q. What is the total GPIF incentive reward for FPL's nuclear units?

15

16

A. \$5,679,837

17

Q. Mr. Irizarry, would you summarize the performance of FPL's fossil units?

18

19

A. Regarding EAF performance, six (6) of the nine (9) fossil

20

generating units performed better than their availability targets,

21

while the remaining three (3) units performed worse than their

1 targets. The combined fossil units' availability performance
2 results in a GPIF reward of \$1,585,879.

3
4 Regarding ANOHR, six (6) out of the nine (9) fossil units
5 operated with an ANOHR that was above the \pm 75 Btu/kWh
6 deadband resulting in a penalty, while one (1) out of the nine
7 (9) fossil units operated with an ANOHR that was below the \pm
8 75 Btu/kWh deadband resulting in a reward. The remaining two
9 (2) units operated with ANOHRs that were within the \pm 75
10 Btu/kWh deadband, and receive no incentive reward or penalty.
11 The combined fossil units' heat rate performance results in a
12 GPIF penalty of \$1,882,144.

13 **Q. What is the total GPIF penalty for FPL's fossil units?**

14 A. \$296,265

15 **Q. Does this conclude your testimony?**

16 A. Yes, it does.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF FRANK IRIZARRY**

4 **DOCKET NO. 080001-EI**

5 **SEPTEMBER 2, 2008**

6

7 **Q. Please state your name and business address.**

8 A. My name is Frank Irizarry and my business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

10 **Q. Would you please state your present position with Florida Power
11 and Light Company (FPL).**

12 A. I am the Director of Generation Repair and Service and Business
13 Services in the Power Generation Division of FPL.

14 **Q. What is the purpose of your testimony?**

15 A. The purpose of my testimony is to present the target unit equivalent
16 availability factors (EAF) and the target unit average net operating
17 heat rates (ANOHR) for the period of January through December,
18 2009, for use in determining the Generating Performance Incentive
19 Factor (GPIF).

20 **Q. Have you prepared, or caused to have prepared under your
21 direction, supervision, or control, an exhibit in this proceeding?**

22 A. Yes, I have. It is identified as Exhibit FI-2. The first page of this
23 exhibit is an index to the contents of the exhibit. All other pages are

1 numbered according to the GPIF Manual as approved by the
2 Commission.

3 **Q. Please summarize the 2009 system targets for EAF and ANOHR**
4 **for the units to be considered in establishing the GPIF for FPL.**

5 A. For the period of January through December, 2009, FPL projects a
6 weighted system equivalent planned outage factor of 5.3% and a
7 weighted system equivalent unplanned outage factor of 7.1%, which
8 yield a weighted system equivalent availability target of 87.6%. The
9 targets for this period reflect planned refueling outages for three
10 nuclear units. FPL also projects a weighted system average net
11 operating heat rate target of 8,346 Btu/kWh for the period January
12 through December, 2009. As discussed later in this testimony, these
13 targets represent fair and reasonable values when compared to
14 historical data. Therefore, FPL requests that the targets for these
15 performance indicators be approved by the Commission.

16 **Q. Have you established target levels of performance for the units**
17 **to be considered in establishing the GPIF for FPL?**

18 A. Yes, I have. Exhibit FI-2, pages 6 and 7, contains the information
19 summarizing the targets and ranges for EAF and ANOHR for the 12
20 generating units which FPL proposes to be considered as GPIF units
21 for the period of January through December, 2009. All of these
22 targets have been derived utilizing the methodologies adopted in the
23 GPIF Manual.

1 **Q. Please summarize FPL's methodology for determining**
2 **equivalent availability targets.**

3 A. The GPIF Manual requires that the EAF target for each unit be
4 determined as the difference between 100% and the sum of the
5 equivalent planned outage factor (EPOF) and the equivalent
6 unplanned outage factor (EUOF). The EPOF for each unit is
7 determined by the length of the planned outage, if any, scheduled for
8 the projected period. The EUOF is determined by the sum of the
9 historical average equivalent forced outage factor (EFOF) and the
10 equivalent maintenance outage factor (EMOF). The EUOF is then
11 adjusted to reflect recent unit performance and known unit
12 modifications or equipment changes.

13 **Q. Please summarize FPL's methodology for determining ANOHR**
14 **targets.**

15 A. To develop the ANOHR targets, historic ANOHR vs. unit net output
16 factor curves are developed for each GPIF unit. The historic data is
17 analyzed for any unusual operating conditions and changes in
18 equipment that will materially affect the predicted heat rate. A
19 regression equation that best fits the data is calculated and a
20 statistical analysis of the historic ANOHR variance with respect to the
21 best fit curve is also performed to identify unusual observations. The
22 resulting equation is used to project ANOHR for the unit using the net
23 output factor from the POWERSYM model. This projected ANOHR

1 value is then used in the GPIF tables and in the calculations to
2 determine the possible fuel savings or losses due to improvements or
3 degradations in heat rate performance. This process is consistent
4 with the GPIF Manual.

5 **Q. How did you select the units to be considered when establishing**
6 **the GPIF for FPL?**

7 A. The GPIF units were selected in accordance with the GPIF Manual
8 using the estimated net generation for each unit taken from the
9 production costing simulation program, POWRSYM, which forms the
10 basis for the projected levelized fuel cost recovery factor for the
11 period. The 12 units which FPL proposes to use for the period of
12 January through December 2009 represent the top 80.8% of the total
13 forecasted system net generation for this period excluding three
14 units: Turkey Point Unit 5 and West County Units 1&2. These three
15 units are new units for 2007 and 2009 respectively and were
16 excluded from the GPIF calculation because there is insufficient
17 historical data to include them. Therefore, consistent with the GPIF
18 Manual, the above mentioned units will be excluded from the GPIF
19 calculations until we have enough operating history to use in
20 projecting future performance.

21 **Q. Do FPL's EAF and ANOHR performance targets represent a**
22 **reasonable level of generation efficiency?**

23 A. Yes, they do.

1 **Q. Does this conclude your testimony?**

2 **A. Yes, it does.**

1 CHAIRMAN CARTER: Okay. Mr. Butler, anything
2 further?

3 MR. BUTLER: There is nothing further on our direct
4 case, Mr. Chairman.

5 CHAIRMAN CARTER: Mr. Burgess.

6 MR. BURGESS: Yes, Mr. Chairman. We would ask that
7 Mr. Larkin be called to the witness stand.

8 CHAIRMAN CARTER: Mr. Larkin.

9 MR. BURGESS: Mr. Chairman, Mr. Larkin has been
10 sworn, so if I may begin.

11 CHAIRMAN CARTER: You're recognized.

12 MR. BURGESS: Thank you, Mr. Chairman.

13 HUGH LARKIN, JR.

14 was called as a witness on behalf of the Office of Public
15 Counsel and, having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BURGESS:

18 Q Mr. Larkin, would you state your business, your name
19 and your business address for the record, please.

20 A Yes. My name is Hugh Larkin, Jr. My business
21 address is 15728 Farmington Road, Livonia, Michigan 48154.

22 Q And by whom have you been retained for the purposes
23 of this docket?

24 A I have been retained by the Office of Public Counsel.

25 Q Have you compiled written testimony that has been,

1 was submitted in this docket on May 5th?

2 A Yes.

3 Q Do you have any changes or corrections that need to
4 be made to that testimony?

5 A One word on Page 6, Line 22. There should be a "the"
6 between "that" and "Commission" so that it reads, "That finding
7 would not send a signal that the Commission now intends to
8 embark on a blanket disallowance of replacement fuel costs in
9 every unscheduled shutdown."

10 Q Thank you, Mr. Larkin. With that change, if the
11 questions that are posed in the written testimony were asked of
12 you today, would your answers be the same?

13 A Yes.

14 MR. BURGESS: Mr. Chairman, we would ask that
15 Mr. Larkin's prefiled testimony be entered into the record as
16 though read.

17 CHAIRMAN CARTER: The prefiled testimony of the
18 witness will be entered into the record as though read.

19 MR. BURGESS: Thank you, Mr. Chairman.

20 BY MR. BURGESS:

21 Q Mr. Larkin, did you also prepare an exhibit that is a
22 statement of your qualifications that has been subsequently
23 identified for hearing purposes as Exhibit 51?

24 A Yes.

25

1 DIRECT TESTIMONY OF HUGH LARKIN, JR.
2 ON BEHALF OF THE CITIZENS OF FLORIDA
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 FLORIDA POWER & LIGHT COMPANY
5 DOCKET NO. 080001-EI

6
7 I. INTRODUCTION

8 Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?

9 A. My name is Hugh Larkin, Jr. I am a Certified Public Accountant licensed in the
10 States of Michigan and Florida and the senior partner of the firm of Larkin &
11 Associates, PLLC, Certified Public Accountants, with offices at 15728
12 Farmington Road, Livonia, Michigan 48154.

13
14 Q. PLEASE DESCRIBE THE FIRM LARKIN & ASSOCIATES, PLLC.

15 A. Larkin & Associates, PLLC, is a Certified Public Accounting and Regulatory
16 Consulting Firm. The firm performs independent regulatory consulting primarily
17 for public service/utility commission staffs and consumer interest groups (public
18 counsels, public advocates, consumer counsels, attorneys general, etc.). Larkin &
19 Associates, PLLC, has extensive experience in the utility regulatory field as
20 expert witnesses in over 800 regulatory proceedings including numerous electric,
21 water and sewer, gas and telephone utilities.
22

1 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC
2 SERVICE COMMISSION?

3 A. Yes. Over the last 32 years, I have testified before the Florida Public Service
4 Commission in numerous rate cases involving public utilities, including electric
5 utilities.

6
7 Q. HAVE YOU PREPARED AN EXHIBIT DESCRIBING YOUR
8 QUALIFICATIONS AND EXPERIENCE?

9 A. Yes. I have attached Appendix I, which is a summary of my regulatory
10 experience and qualifications.

11
12 Q. BY WHOM WERE YOU RETAINED?

13 A. Larkin & Associates, PLLC, was retained by the Florida Office of Public Counsel
14 ("OPC"). Accordingly, I am appearing on behalf of the Citizens of Florida
15 ("Citizens").

16
17 II. PURPOSE OF TESTIMONY

18 Q. WHAT IS THE PURPOSE OF THE TESTIMONY YOU ARE SUBMITTING
19 IN THIS CASE?

20 A. I have been asked by the Public Counsel to set forth the underlying ratemaking
21 principles, which the Public Counsel and I submit are the basis on which the
22 Commission should not allow the recovery of approximately \$6.2 million of
23 replacement power costs associated with an act of vandalism at Turkey Point Unit

1 3. It is the position of the Public Counsel and myself that the purchase power
2 costs resulting from the vandalism is not a normal fuel and purchase power cost
3 which should be recovered through the Fuel Adjustment Clause.
4

5 III. COSTS SHOULD BE PROPERLY CHARACTERIZED

6 Q. IN YOUR OPINION, HAS THE COST ASSOCIATED WITH THE ACT OF
7 VANDALISM AT TURKEY POINT UNIT 3 BEEN PROPERLY
8 CHARACTERIZED?

9 A. No. The Company has attempted to characterize this as a "fair, just and
10 reasonable" (Sec 366.06 (1), F.5.) cost incurred as an ordinary and necessary cost
11 of serving customers, and such costs would be incurred in the normal course of
12 business. Thus, the Company would label these costs as ordinary and necessary
13 fuel costs which should be recovered through the Fuel Adjustment Clause. I
14 disagree with that characterization. The \$6.2 million of replacement power costs
15 is clearly associated with an act of vandalism.

16
17 The additional purchase power cost was caused by the vandalism, not the
18 ratepayers' demand for power. FPL is the party who had control of, and was
19 responsible for, the refueling of Turkey Point Unit 3. FPL owned and controlled
20 the property on which the vandalism occurred. FPL hired the contractor and was
21 responsible for security of the property. FPL is paid a return on equity (ROE) by
22 its customers to absorb a certain amount of risk.
23

1 Q. DOES THIS MEAN THAT FPL WAS AT FAULT, OR WAS IMPRUDENT IN
2 THE OPERATION OF THE PLANT?

3 A. It is difficult to assess specific responsibility or fault since no one has been
4 charged to date for this act of vandalism. FPL, to my knowledge, has chosen not
5 to sue either the responsible person or the contractor who engaged the person
6 responsible for the vandalism. In my mind, this raises serious questions as to why
7 not? FPL has not explained why ratepayers should be held more responsible than
8 the person who has been identified as the perpetrator of the vandalism or the
9 contractor who engaged that person. Instead, FPL seeks to shift the financial
10 responsibility to the ratepayers, who had no ability for oversight at the time of the
11 vandalism, and who already pay FPL an ROE to absorb risk.

12
13 FPL and its contractor are the only parties (beside the actual perpetrator) who had
14 an opportunity to impact the situation. The fact is that an FPL system, designed
15 and controlled by FPL, failed. That system was the system which was designed to
16 identify individuals who posed a risk to the Company's facilities. FPL had control
17 of that system, its design and operation. Ratepayers had no opportunity to avoid,
18 or to even understand that such a risk existed. How could they now be held
19 responsible for the fact that an individual under the direct or indirect control of
20 FPL employees intentionally caused a cost? Under FPL's approach, a party who
21 had at least some opportunity to influence the outcome (that is, prevent the
22 vandalism) and who has been paid an ROE to absorb risk would be indemnified

1 for this risk by the very party who is paying FPL an ROE to absorb the risk and
2 who had absolutely no opportunity to influence the outcome.

3 IV. INCENTIVE TO INVEST IN LOW FUEL COST RESOURCE

4 Q. SOME OF THE COMPANY'S WITNESSES ARGUE THAT IF THE
5 COMMISSION WERE TO DISALLOW THE RECOVERY OF THIS
6 VANDALISM COST, IT WOULD BE A DISINCENTIVE FOR UTILITIES TO
7 INVEST IN LOW COST FUEL GENERATING RESOURCES. DO YOU
8 AGREE WITH THAT VIEW?

9 A. No, I do not. First, FPL has the legal obligation to provide cost-effective power in
10 exchange for receiving a State sanctioned monopoly that protects it from any
11 direct competition within its service territory. FPL's argument seems to be a
12 threat that it will not meet its legal obligation unless the Commission forces
13 customers to pay these costs even if the Commission finds them to be unfair,
14 unjust and unreasonable. But even setting FPL's legal obligation aside, I still do
15 not agree with FPL's premise that the disallowance of the replacement fuel costs
16 would create a disincentive for utilities to invest in low cost fuel generating
17 resources. In my opinion, if utilities fail to invest in low cost fuel generating
18 resources, the risk is that they will lose load. Fuel prices would increase to the
19 point that they would trigger extreme conservation on the part of consumers and
20 customers switching to other energy sources. Fuel costs represent approximately
21 40% to 60% of energy costs in most utilities. If the utilities were to decide that
22 they would not invest in resources with low fuel cost because the Florida Public
23 Service Commission disallowed \$6.2 million in vandalism cost, in my opinion, it

1 would be self defeating. Higher fuel costs would obviously increase customers'
2 bills significantly. This increase in fuel cost would have the effect of decreasing
3 consumption and reducing revenues to utilities. I do not think that utilities, given
4 the choice, would choose a business plan which ultimately would reduce total
5 revenues and profits.

6
7 Q. FPL WITNESSES IMPLY THAT IF THE COMMISSION FOUND THAT THIS
8 ACT OF VANDALISM WAS NOT RECOVERABLE FROM RATEPAYERS,
9 STOCKHOLDERS WOULD ASSUME THAT ANY PURCHASE POWER
10 COST ASSOCIATED WITH AN UNSCHEDULED SHUT DOWN WOULD
11 RESULT IN A DISALLOWANCE AND DEMAND A HIGHER RATE OF
12 RETURN. WOULD YOU RESPOND TO THAT IMPLICATION?

13 A. It is my position, and I believe the Commission's position, that each purchase
14 power cost associated with an unscheduled outage has to be examined in light of
15 the specific facts surrounding that particular case. The cause of this outage was an
16 act of vandalism which is a risk that more reasonable to be borne by the
17 shareholders than by the ratepayers. The Commission's history has been to
18 examine each case individually for reasonableness. That history would not
19 suddenly vanish simply because the Commission decides to disallow
20 unreasonable costs under one specific set of facts. If the Commission requires
21 stockholders to bear the risk under this specific set of circumstances, that finding
22 would not send a signal that ~~the~~ Commission now intends to embark on a blanket
23 disallowance of replacement fuel costs in every unscheduled shutdown.

1 V. NOT A CHANGE IN COMMISSION POLICY

2 Q. ARE YOU, OR THE PUBLIC COUNSEL, RECOMMENDING A CHANGE IN
3 COMMISSION POLICY?

4 A. No. Florida Statutes require that the Commission allow charges that are fair, just
5 and reasonable. It has always been Commission policy to apply this statutory
6 standard. The facts in this case are such that it is fairer, more just and more
7 reasonable for this risk to be borne by the stockholders than by the ratepayers. We
8 are recommending that cost associated with damage to the Company's property
9 which resulted from an act of vandalism is a risk to be borne by stockholders.
10 Therefore, these costs should be disallowed.

11

12 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

13 A. Yes, it does.

1 MR. BURGESS: Mr. Chairman, I would ask if Mr. Larkin
2 would be now allowed to give a summary of his testimony and
3 include in that pursuant to the agreement at the beginning of
4 the hearing some time ago that he be entitled to address and
5 bring into the context of his testimony the exhibit that has
6 been, Exhibit 54, which has been identified for the record.

7 CHAIRMAN CARTER: Absolutely. You're recognized.

8 MR. BURGESS: Thank you.

9 BY MR. BURGESS:

10 Q Mr. Larkin, would you give us a summary of your
11 testimony along with your comments on Exhibit 54 and its
12 relevance to these proceedings?

13 A Yes.

14 Q My initial testimony was designed to set out the
15 Office of the Public Counsel and my position regarding what the
16 proper ratemaking policy is that this Commission should follow
17 in dealing with this cost.

18 The company has attempted to characterize it as costs
19 that were incurred in the normal course of business and,
20 therefore, it fits under the statute requirement that the
21 Commission recognize costs which are fair, just and reasonable.

22 But the costs aren't normal, ordinary purchased power
23 costs. The customer didn't cause these costs. These costs
24 were caused by an act of vandalism by an individual who
25 purposely vandalized part of the company's property.

1 There are four parties involved in this: The
2 individual that committed the vandalism, a contractor, FP&L who
3 hired the contractor and the ratepayer. Of these four parties,
4 the only one who could not have stopped this vandalism was the
5 ratepayer, yet he's the one that's being asked to pay this
6 cost.

7 The company's system, which it has touted, Mr. Jones
8 has touted, that is designed to identify individuals who pose a
9 risk to the company's property effectively failed. That system
10 was designed and operated by the company. It is the company's
11 management who is responsible for its operation and its failure
12 to identify this individual.

13 Now up until we got the, what has been called the FBI
14 report, which is really portions of, of individual reports, the
15 company had represented to the Public Counsel, to everybody in
16 this room that we had this super-duper system that we applied
17 and it would have identified everything that was out of, out of
18 character or, or we should have paid attention to and this
19 individual passed it. Not only did he pass it, he passed it
20 with flying colors.

21 So on last Friday, due to the vigilance of your
22 staff, we got some more information. And what that information
23 indicated is that not only did this individual that perpetrated
24 this vandalism should have been flagged, it indicated that,
25 that this was almost a siren, that this guy had several prior

1 run-ins with the law, that he responded yes to the use and
2 selling of drugs, that he failed to answer the question about
3 substance abuse and he failed the company's initial
4 psychological test. That would indicate to me that somebody in
5 management at the company made a decision on this individual
6 and not only allowed him onto the property, but gave him
7 unescorted access to the property. And of all -- let me start
8 somewhere else.

9 There are exactly 103 operating nuclear plants in the
10 United States. To my knowledge, only one of them has had an
11 act of violence, an act of vandalism occur on the property as a
12 result of somebody that the company let on the property. So
13 that's an indication that the responsibility lies with the
14 company, it doesn't lie with the ratepayer.

15 And the Commission doesn't need to find imprudence.
16 All it needs to find is that it's just not fair, not just, not
17 reasonable to ask ratepayers to pay a cost that they did not
18 themselves cause. And this is not a new policy that, that
19 we're asking the Commission to follow. This is something that
20 Commissioners in the past here have followed.

21 And the example I'll give you is, is Order Number
22 23232 in Docket Number 900001. It's a 1990 fuel adjustment
23 clause case. And what happened in that case is that some
24 operators at the Turkey Point plant failed their
25 recertification test and the Nuclear Regulatory Commission

1 asked them to shut down the plant and have these operators
2 qualify, have them pass the test, and that occurred. Now this
3 Commission didn't say, well, let's look at the training program
4 of FP&L and see if there's some fault there. Let's look at the
5 training program to see if it was adequate, and if it's
6 adequate, we'll find that they're entitled to the cost. What
7 the Commission found was this is a management responsibility
8 and, therefore, we're going to charge them for this outage.

9 And we think that that is your responsibility to fit
10 these costs into the statute of fair, just and reasonable, the
11 statute requirement. And if you can't fit them in there by
12 just looking at them and if the company has not convinced you
13 that they fit in there as fair, just and reasonable, you, you
14 have to do nothing else. You only have to say we're going to
15 disallow these costs. That concludes my summary.

16 MR. BURGESS: Thank you, Mr. Larkin.

17 Mr. Chairman, we'd tender the witness.

18 CHAIRMAN CARTER: Thank you. Mr. Butler, before I
19 come to you, here's what my plan was.

20 MR. BUTLER: Okay.

21 CHAIRMAN CARTER: I was going to go through, see if
22 any of the other parties had any questions and then come to you
23 last, if that's -- now if you have a heartburn with that, I'll
24 go to you now, but I wanted to --

25 MR. BUTLER: I don't. It's an excellent idea. I

1 wish I had thought of it.

2 CHAIRMAN CARTER: See.

3 MR. BUTLER: Thank you.

4 CHAIRMAN CARTER: And always just kind of a general
5 admonition on friendly cross. And I know that most of the
6 attorneys here that have been here before us before already
7 know that's the way we operate.

8 Mr. Wright, you're recognized.

9 MR. WRIGHT: Thank you, Mr. Chairman. I have no
10 questions for Mr. Larkin.

11 CHAIRMAN CARTER: Mr. McWhirter.

12 MR. McWHIRTER: No questions.

13 CHAIRMAN CARTER: Ms. Bradley, you're recognized.

14 MS. BRADLEY: Thank you.

15 CROSS EXAMINATION

16 BY MS. BRADLEY:

17 Q Mr. Larkin, when you look at the security screening
18 steps that the company was supposed to go to, do you feel like
19 they followed their own security policy?

20 A I'm not -- I didn't hear all of the question.

21 Q I'm sorry. Let me see if I can talk louder or
22 rearrange this or something.

23 In looking at the security policy that Florida Power
24 & Light had, do you feel like they complied with their own
25 security policy?

1 A I can't say that I looked at it or examined it or, or
2 came to a conclusion about it. I don't think we have to go
3 there. I think this is a management responsibility, it's
4 vandalism, it's a risk that the company is paid to take. Their
5 system failed; therefore, they pay.

6 Q When you say it was their risk, their responsibility,
7 could you explain that a little bit more for me?

8 A I didn't catch the last part.

9 Q You said something about it was their responsibility,
10 their risk that they had paid for. Can you explain what you
11 mean by that?

12 A Well, there are certain unknowns that happen in the
13 world. One of them is weather, it's too hot, it's too cold.
14 Another is things we don't expect to happen, vandalism. Those
15 unknowns are compensated for to the company in its rate of
16 return. If it is a risk free rate of return, then that rate of
17 return would be somewhere around the Treasury bill rate. But
18 since the company gets, and the Commission has authorized the
19 company a larger rate of return, the difference between the
20 Treasury bill rate, which is maybe 4 or 5 percent, and what
21 they actually earned, 12.7 percent in 2006, is a risk premium.
22 It's a premium that they get for absorbing some of the risks
23 associated with operating a business. And one of those risks
24 is an unknown cost caused by vandalism in my opinion.

25 MS. BRADLEY: No further questions.

1 COMMISSIONER SKOP: Mr. Chair.

2 CHAIRMAN CARTER: Thank you.

3 Commissioner Skop.

4 COMMISSIONER SKOP: Thank you, Mr. Chairman.

5 Good afternoon, Mr. Larkin. Can you hear me okay?

6 MR. TWOMEY: He said, "Good afternoon."

7 THE WITNESS: I'm sorry. I was looking --

8 CHAIRMAN CARTER: You want to borrow Mr. McWhirter's

9 -- hang on. Hang on. Chris has one.

10 (Listening device offered to witness.)

11 THE WITNESS: Okay. I think I --

12 COMMISSIONER SKOP: Just on Page 4 of your prefiled
13 testimony and in response to a question just asked you
14 indicated that FPL receives a return on equity and they should
15 basically absorb some of the risks that would otherwise be
16 identified to the ratepayers; is that correct?

17 THE WITNESS: Yes.

18 COMMISSIONER SKOP: And I missed the last part of
19 what you stated, but it was something to, I think, to the
20 effect that the risk free rate -- can you repeat what you had
21 previously stated, please?

22 THE WITNESS: Well, most cost of capital witnesses
23 say a risk free rate would represent a return you're getting
24 from the federal government because the federal government is
25 substantial and there's little risk that you would not get your

1 money back and a return on your money. So a risk free rate is
2 normally referred to as the 3 or 4 percent you would get if you
3 decided to invest in Treasury bills or Treasury bonds or
4 something guaranteed by the federal government.

5 So if you say 4 percent is the risk free rate and the
6 Commission authorizes 11 percent, then the difference between
7 11 and, or 4 and 11 percent is a risk premium. It's the
8 additional premium you're going to give this company because
9 there are risks associated with running a business.

10 COMMISSIONER SKOP: Okay. Thank you.

11 CHAIRMAN CARTER: Thank you.

12 Mr. Twomey.

13 MR. TWOMEY: Thank you, Mr. Chairman. Just briefly.

14 CROSS EXAMINATION

15 BY MR. TWOMEY:

16 Q Good afternoon, Mr. Larkin.

17 A Yes. I think I know you. You're the guy they call
18 the goat farmer; right?

19 Q Yes, sir.

20 COMMISSIONER SKOP: Gopher?

21 COMMISSIONER EDGAR: Goat farmer.

22 CHAIRMAN CARTER: Oh, we can't hear on this end. Oh,
23 goat farmer.

24 (Laughter.)

25 BY MR. TWOMEY:

1 Q Now I want to be, I want to be clear in understanding
2 what you're saying here, and that is, if I heard you correctly,
3 you said that your initial testimony, your review of your
4 initial testimony you said that you believe that FP&L should be
5 responsible for the replacement power costs and not the
6 customers; correct?

7 A That's correct.

8 Q And that as a result of having been shown and
9 reviewed the Exhibit 54, the FBI notes, that merely cemented
10 your conclusion that the company should be liable and not the
11 customer; is that correct?

12 A Well, I think it cemented or at least draws into
13 question Mr. Jones's representation of the company's vetting
14 system, that the vetting system is not the pristine, no-fault,
15 nothing ever happens system that he represented it to be, and,
16 and that the company is responsible for that system and not the
17 ratepayer.

18 MR. TWOMEY: Thank you.

19 CHAIRMAN CARTER: Thank you. Did I -- did he call
20 you a goat farmer?

21 MR. TWOMEY: Yes, sir, and with good cause. I'm the
22 proud owner of four goats.

23 CHAIRMAN CARTER: Wow. I guess that's what they call
24 a gentleman goat farmer.

25 MR. TWOMEY: That may go too far.

1 CHAIRMAN CARTER: Oh, okay. Let's just go with the
2 goat farmer. Oh, yeah. Yeah.

3 COMMISSIONER SKOP: Mr. Chair, from my perspective
4 that's certainly -- I thought I heard gopher, but I apologize.

5 CHAIRMAN CARTER: Let's go to Mr., Mr. Butler before
6 we go too far on the goat jokes or the goat farmer.

7 MR. BUTLER: Any questions, any questions from--

8 CHAIRMAN CARTER: Wait a minute. I'm sorry. Captain
9 McNeill? Ms. White?

10 MS. WHITE: No questions.

11 CHAIRMAN CARTER: Mr. Butler.

12 MR. BUTLER: Thank you, Mr. Chairman.

13 CROSS EXAMINATION

14 BY MR. BUTLER:

15 Q I approach this with trepidation not knowing what
16 aspect of my outside the legal world vocation will be brought
17 to bear here, Mr. Larkin, but good afternoon.

18 A Good afternoon.

19 Q Mr. Larkin, you mentioned that you are not aware of
20 any other acts of vandalism at operating nuclear plants; is
21 that correct?

22 A Yeah, that's correct.

23 Q What evaluation did you perform in order to determine
24 whether there have been acts of vandalism at other operating
25 nuclear plants?

1 A I, I didn't say that I performed anything. I said to
2 my knowledge I, I don't know of any.

3 Q Okay. I just want to ask you a few brief questions
4 that I had asked you at your deposition last summer.

5 Am I correct that you do not have any education in
6 the field of engineering?

7 A That's correct.

8 Q And you've not worked as an engineer; correct?

9 A That's correct.

10 Q Do you have any experience in operating a power
11 plant?

12 A No.

13 Q Do you have any experience in the field of criminal
14 investigation?

15 A No, I do not.

16 Q Have you read the NRC's rules on access authorization
17 to nuclear power plants?

18 A No, I have not.

19 MR. BUTLER: Okay. Thank you. That's all the
20 questions that I have.

21 COMMISSIONER EDGAR: That's much faster than I was
22 expecting.

23 MR. BUTLER: Shocked you; right?

24 COMMISSIONER EDGAR: I have a couple of brief
25 questions. Mr. Larkin, do you believe that FPL followed the

1 protocol and procedures that had been approved by the NRC?

2 THE WITNESS: I don't know. I'm not sure that the
3 NRC does anything but set out broad guidelines. So I haven't
4 made a comparison between what those broad guidelines are and
5 what FPL does.

6 Just from hearing the testimony, I would assume since
7 every nuclear plant operator does not have the exact same
8 protocols, then they're pretty much on their own to set their
9 own protocols. And, and there isn't any direct one step, two
10 step, three step, but just that the NRC requires that they have
11 some vetting procedure.

12 COMMISSIONER EDGAR: Okay. Is it --

13 MR. BUTLER: Excuse me.

14 COMMISSIONER EDGAR: Mr. Butler.

15 MR. BUTLER: I'm sorry, Commissioner Edgar.

16 COMMISSIONER EDGAR: That's okay.

17 MR. BUTLER: I want to move to strike that last
18 answer. I think in view of his answer to my question about
19 whether he had even read the NRC's access authorization rules
20 that he's not in a position to be testifying authoritatively on
21 an opinion on what complying with those rules would require.

22 MR. BURGESS: Commissioner, may I respond?

23 COMMISSIONER EDGAR: Mr. Burgess.

24 MR. BURGESS: There are certain -- thank you. There
25 are certain ways -- if there is some issue of impeachment, I

1 mean, that's something that Mr. Butler can deal with through
2 brief. But the fact of the matter is Mr. Larkin began this
3 answer with the clause that, based on what I have heard with
4 regard to the testimony. I'm not sure what exactly is in
5 there, but based on what I've heard from the testimony it seems
6 thus. And so it's certainly not contrary to the answer that he
7 gave Mr. Butler, which is "I have not seen the NRC guidelines."
8 It is, in fact, 100 percent consistent with it.

9 COMMISSIONER EDGAR: I'm going to allow. And I
10 understand your point, but I'm going to allow it.

11 So now I have to get my train of thought back. Hang
12 on a second. Okay. Mr. Larkin, is it your opinion that --
13 well, let me ask you this. Are you in a position to be able to
14 speak to whether FPL followed its own procedures in this
15 instance?

16 THE WITNESS: Followed its own procedure?

17 COMMISSIONER EDGAR: Its only procedure -- its own
18 procedures in order to make a determination about unescorted
19 access.

20 THE WITNESS: No, I am not.

21 COMMISSIONER EDGAR: Okay. Okay. Thank you. Any
22 other questions from the bench? No? Do we have any exhibits?

23 MR. BURGESS: I have no redirect, Madam Chair. I
24 would ask that Exhibit 51, which is a statement of
25 qualifications, be entered into the record.

1 COMMISSIONER EDGAR: No objection? We will enter
2 Exhibit 51 into the record.

3 (Exhibit 51 admitted into the record.)

4 Anything further for this witness? Commissioner
5 Argenziano.

6 COMMISSIONER ARGENZIANO: I can't help it. Allow me
7 because sometimes levity is great, but, Mr. Twomey, your four
8 goats, are they hooked up to a, are they hooked up to a
9 turnstile? Do they generate electric for you?

10 MR. TWOMEY: No.

11 COMMISSIONER ARGENZIANO: Okay. I just wondered if
12 it had something to do with the electric capacity.

13 MR. TWOMEY: Not yet.

14 COMMISSIONER ARGENZIANO: Okay.

15 MR. WRIGHT: I do think he has a goat-powered biomass
16 generator.

17 COMMISSIONER ARGENZIANO: Oh, geez.

18 COMMISSIONER EDGAR: I'm going to leave that one be.

19 (Laughter.)

20 All right. Mr. Larkin, you are excused.

21 THE WITNESS: Thank you, ma'am.

22 COMMISSIONER EDGAR: Thank you.

23 Mr. Butler, we're back to you.

24 MR. BUTLER: Shall we proceed with the rebuttal
25 witnesses?

1 COMMISSIONER EDGAR: Commissioners, are you okay to
2 keep pushing on? Yes, please.

3 MR. BUTLER: Thank you. I would call Mr. Avera to
4 the stand.

5 COMMISSIONER EDGAR: And Mr. Avera has not yet joined
6 us in this proceeding. Has he been sworn?

7 MR. BUTLER: I believe he was here yesterday and was
8 sworn, but we can confirm that.

9 COMMISSIONER EDGAR: Okay.

10 MR. BUTLER: I'm sorry. Commissioner?

11 COMMISSIONER EDGAR: Yes.

12 MR. BUTLER: If you could indulge me for a couple of
13 minutes, I need to shift papers a little bit to get the papers
14 --

15 COMMISSIONER EDGAR: Do you want to take five?

16 MR. BUTLER: That would be great, if you don't mind.
17 I would appreciate it very much.

18 COMMISSIONER EDGAR: Okay. Let's, we will be on an
19 informal five-minute recess to allow paper shuffling.

20 MR. BUTLER: Thank you.

21 (Recess taken.)

22 CHAIRMAN CARTER: Okay. We're back on the record.
23 Commissioners and staff and for the parties, my proclivity to
24 ignore sustenance causes a certain part of my anatomy to growl
25 like a lion. So in all fairness to all of the parties as well

1 as to our staff and fellow Commissioners, let's do this, let's
2 take a lunch break because I was just going on. And what we'll
3 do, Commissioners, I'm looking at coming back at -- let me
4 count my fingers and toes -- come back at 3:00.

5 MR. BUTLER: Thank you.

6 CHAIRMAN CARTER: Okay? That'll give people an
7 opportunity to get -- because you guys have got to get your
8 notes together and all like that. Let's do that. 3:00. Okay?

9 (Recess taken.)

10 We are back on the record. And we've got --
11 Commissioner Argenziano.

12 COMMISSIONER ARGENZIANO: I'm here.

13 CHAIRMAN CARTER: We're going to, we're going to ask
14 you to hang up for one second and call, and Larry is going to
15 call you and then we'll start again.

16 COMMISSIONER ARGENZIANO: Okay. Very good. Thank
17 you.

18 CHAIRMAN CARTER: We're on recess.

19 (Recess taken.)

20 We are back on the record. Commissioner Argenziano,
21 are you with us?

22 COMMISSIONER ARGENZIANO: I'm here.

23 CHAIRMAN CARTER: Sorry about the little snafu there.
24 We're going to be listening to staff in a moment for some
25 briefings. But before then, Commissioner Skop, you're

1 recognized.

2 COMMISSIONER SKOP: Thank you, Mr. Chairman. And I
3 had hoped to have gotten to this yesterday, but if I could take
4 just a brief moment, I'd like to regress back to Issue 29A for
5 again a brief moment.

6 Staff yesterday has briefed the relevant statute, the
7 rule and the case law regarding the questions that arose during
8 the discussion of this issue on the first day of the hearing.
9 And with respect to the discussion of incurred costs, I just
10 have two brief questions.

11 First, would it be correct to understand that the
12 projected nuclear costs for 2009 will actually be recovered
13 during the period in which they are being spent beginning in
14 January 2009? And if Ms. Bennett --

15 MS. BENNETT: Yes, Commissioner, that would be
16 correct.

17 COMMISSIONER SKOP: Okay. And would it also be
18 correct to understand that such cost recovery methodology
19 avoids regulatory lag by facilitating concurrent recovery of
20 costs as they are incurred or spent instead of recovering them
21 after they have been incurred?

22 MS. BENNETT: Yes, Commissioner. That's the purpose
23 of the capacity cost recovery clause.

24 COMMISSIONER SKOP: Okay. Thank you.

25 CHAIRMAN CARTER: Thank you.

1 COMMISSIONER ARGENZIANO: Mr. Chair.

2 CHAIRMAN CARTER: You're recognized.

3 COMMISSIONER ARGENZIANO: Just so I have this
4 straight, because we were talking about this the other day and
5 the point was brought up that if you are looking for recovery,
6 that there was some question about the language of it being
7 incurred and that there was a question as to whether this was
8 not incurred. So what I think I just heard, and if you'd help
9 me out with this, what I heard was that the recovery of the
10 costs are going to be at the time that it is incurred. Is that
11 correct? Is that what I just heard?

12 CHAIRMAN CARTER: Staff, you're recognized.

13 MS. BENNETT: They are designed to recover the costs
14 at the time the costs are expended. Incurred means to become
15 obligated for, so.

16 COMMISSIONER ARGENZIANO: I know what it means. What
17 I'm asking is that the other day nobody mentioned that when it
18 was brought up, and I didn't realize in looking at the schedule
19 or hearing it now that it would be incurred at the, at the
20 time -- I guess it would be recovered at the time it was
21 incurred. And, and that's what I just thought I heard from
22 Commissioner Skop. So that makes a big difference in what I
23 was saying the other day, and would like to hear from all
24 parties on that issue.

25 MS. BENNETT: I agree. Was that a question to me?

1 This is Lisa Bennett.

2 COMMISSIONER ARGENZIANO: Okay.

3 CHAIRMAN CARTER: Yeah. We'll come back to you,
4 Lisa.

5 Mr. Butler.

6 MR. BUTLER: FPL would concur with staff's analysis.

7 CHAIRMAN CARTER: Mr. Burnett.

8 MR. BURNETT: Absolutely, yes.

9 CHAIRMAN CARTER: Mr. Burgess.

10 MR. BURGESS: I concur with staff's analysis with
11 one, perhaps one refinement in that the cost, it's intended to
12 incur so that the costs are collected contemporaneous with when
13 they're incurred. But you have one that is an expected or
14 estimated cost that is being collected at the time an actual
15 cost is being incurred. So with that minor change I concur
16 with what Ms. Bennett said.

17 CHAIRMAN CARTER: Mr. Wright.

18 MR. WRIGHT: I don't have anything to add, Mr.
19 Chairman. Thank you.

20 CHAIRMAN CARTER: Mr. McWhirter.

21 MR. MCWHIRTER: Mr. Chairman, what I was trying to
22 get to but wasn't able to before is there's going to be a great
23 big impact on all these costs on customers, and I think the
24 Commission's duty to consumers as well as utilities is to do
25 everything it can to ameliorate the impact of these major rate

1 increases. And one of the ways you can do it is wait until the
2 money is spent before you allow the utility to collect it. And
3 when you start collecting it on January 1 of 2009, clearly it
4 hasn't been spent.

5 If I understand what Ms. Bennett said is in her
6 opinion as an expert accountant, incurred means obligated to be
7 spent, and I guess maybe that's the way accrual accounting
8 goes. Utility ratemaking is an accounting game.

9 But I think in the real world the English language
10 when you're interpreting statutes means what it says. And both
11 366.06 and 366.93 deal with investments in assets for which
12 there is a list. We don't know precisely what the investments
13 are going to be until these hearings next year, and I don't
14 have any objection whatsoever to next year after the
15 investments have been chosen to be prudent, even though we, the
16 forecast shows that FP&L is going to spend \$419 million on full
17 construction costs and the customers are being asked to make a
18 CIAC, you know what that means, contribution in aid of
19 construction, in this instance it's contribution in advance of
20 construction, but FP&L is going to incur \$220 million and
21 that's a lot of money to ask customers to pay in these trying
22 times. And it's based not on invoices that have been given to
23 your staff to examine to ensure that the money has been
24 obligated and they must pay it irrespective of what happens,
25 it's based on estimates.

1 I, I imagine invoices are confidential. We haven't
2 gone through them. But I think really the burden lies on your
3 staff and yourselves to really determine that the money is out
4 of pocket by the utility before the customers have to come up
5 with it.

6 COMMISSIONER ARGENZIANO: Mr. Chairman.

7 CHAIRMAN CARTER: Yes, ma'am, you're recognized.

8 COMMISSIONER ARGENZIANO: I need a better
9 understanding. The question again that I have is are you
10 telling me is the money just obligated or is it obligated and
11 within days or, or within that month is it actually going to be
12 incurred? What I'm trying to figure out is it makes a big
13 difference to me if the money is being recovered around the
14 time that it is being incurred, well, then I do believe that's
15 what the Legislature intended. Now if it is not being incurred
16 and I'm hearing that it's obligated in January but not
17 incurred, then somebody needs to tell me when it is actually
18 incurred.

19 CHAIRMAN CARTER: Okay. Let me do this,
20 Commissioner. Let me continue to hear from the parties and
21 I'll come back to staff.

22 COMMISSIONER ARGENZIANO: Okay.

23 CHAIRMAN CARTER: I'll come back to staff for a
24 response directly.

25 COMMISSIONER ARGENZIANO: And perhaps, Mr. Chair,

1 Commissioner Skop, since he did bring that up, I'd like to get
2 a better understanding of where he sees the money being
3 incurred.

4 CHAIRMAN CARTER: Okay. Well, let me do this then,
5 Commissioner. Let me go on to the parties and I'll come back
6 to --

7 COMMISSIONER ARGENZIANO: Sure.

8 CHAIRMAN CARTER: -- and I'll come back to
9 Commissioner Skop and then staff in that order. Would that be
10 okay for you?

11 COMMISSIONER ARGENZIANO: Absolutely. Thank you.

12 CHAIRMAN CARTER: Okay. All right. Ms. Bradley.

13 MS. BRADLEY: Nothing to add, sir.

14 CHAIRMAN CARTER: Mr. Twomey.

15 MR. TWOMEY: Mr. Chairman, Commissioners, I think you
16 should listen to what Mr. McWhirter said in terms of the trying
17 circumstances a lot of the people in this state are facing as a
18 motivation for trying to reduce their monthly bills. We've
19 talked about a number of ways thus far that you might be able
20 to do that were you so inclined.

21 I disagree with Ms. Bennett. I agree with
22 Mr. McWhirter. I think the statute, the statute that we're
23 looking at, the new statute in terms of the preconstruction
24 costs, probably because out of a force of habit over a couple
25 of decades now people have associated these hearings and these

1 clauses as always involving projections because invariably they
2 have on the subject matters that we've entertained or you've
3 entertained for recovery in the past, whether it's the fuel
4 conservation dollars and capacity costs, that's been the
5 practice. We're looking at a new statute now, and
6 Mr. McWhirter observed the other day and in an effort, as I
7 understood his proposal, not to take all the money away from
8 Progress, who I think he was speaking of at the time, but maybe
9 half of it in relation to the reserve margin, lower reserve
10 margin. But the statute says incurred.

11 And I agree with Mr. McWhirter and I think I heard
12 the view that Commissioner Argenziano said the other day. So I
13 think, I think if you just went along, you could, you could, on
14 a stretch you could read that statute to entertain the notion
15 that you could have projected costs included for recovery
16 starting January 1st. I think the better reading, the clearer
17 reading of the statute that says incurred costs means incurred
18 having been expended. And it doesn't mean in my reading of
19 that on January 1st it's something that's obligated to be spent
20 in December of 2009 would be read as, quote, unquote, incurred.
21 For that reason, I'm in agreement with Mr. McWhirter.

22 CHAIRMAN CARTER: Thank you. Ms. White.

23 MS. WHITE: Thank you, Mr. Chairman. I haven't done
24 a lot of looking into the difference between incurred and
25 obligated and it seems that that's very crucial to this matter.

1 But just on a logical basis I tend to agree with Mr. McWhirter
2 and Mr. Twomey on the fact that until we know that the dollars
3 have actually been either expended or obligated through some
4 way that the utility company must spend them, then it does not
5 seem fair to recover those from customers. Thank you.

6 CHAIRMAN CARTER: Thank you.

7 Commissioner, do you want to come to you or go to
8 staff or how do you want to -- Commissioner Skop.

9 COMMISSIONER SKOP: Thank you, Mr. Chair. And I'd be
10 happy to yield to staff if it would be appropriate. But, I
11 mean, I have some rebuttal points that I would make. But I'll
12 yield. I'll put Ms. Bennett on the spot.

13 MS. BENNETT: I do want to say I am not an expert
14 accountant but I married one, and I didn't stay in a Holiday
15 Inn Express last night. But I did look up Merriam Webster's
16 definition and Black's Law Dictionary definition and, oh, the
17 American Heritage Dictionary, and they all agree that the term
18 incur means to become liable or subject to as a result of one's
19 own action; bring upon one's self. So incur does not mean
20 spent.

21 So then you go into the -- I don't want to spend too
22 much time on this, but statutory, rules of statutory
23 interpretation, you use the plain meaning of the language and
24 you look to see what the intent of the Legislature was.

25 So let's go into the statute and look a little bit at

1 what the statute talks about. 366.93, first of all, says
2 capacity cost recovery clause. Capacity cost recovery clause
3 always deals with, as long, as long as I've been here,
4 projected expenses. And then furthermore, the statute actually
5 talks about in 366.93(2)(b) it says, "Recovery through an
6 incremental increase in the utility's capacity cost recovery
7 clause rates of the carrying costs on the utility's projected
8 construction cost balance." So the Legislature knew what they
9 were doing. They meant to include projected expenses and then
10 they told us to adopt a rule that includes those, which is what
11 we did.

12 COMMISSIONER ARGENZIANO: Excuse me. Mr. Chair, may
13 I ask a question?

14 CHAIRMAN CARTER: You're recognized.

15 COMMISSIONER ARGENZIANO: To that point, and I've
16 read that statute over and over again. And, yes, the
17 Legislature puts it into that clause which indicates
18 projection, but it doesn't say in that projection that it has
19 to be given all at once and that's where incurred is very
20 important.

21 Now to the other point of the word you just used,
22 incremental, does that mean then incremental according to the
23 dictionary means in increments or -- do you follow what I'm
24 saying? It actually makes me more confused because it comes
25 down to me to the word incurred. Now you read a, you read a

1 definition. I don't know if that's the statutory definition.
2 I don't even know if there is one in the statute, incur, but I
3 would take it to mean the definition I guess that you read.
4 But then you mentioned the incremental. And does that mean
5 that within a projection it can be incremental increases rather
6 than all at once?

7 MS. BENNETT: It's an incremental increase in the
8 utility's capacity cost recovery clause. So I think what
9 you're talking about, what the statute is talking about is an
10 additional increase to the capacity clause, not an incremental
11 increase in customers' rates.

12 COMMISSIONER ARGENZIANO: So then you are reading it
13 at the Webster's Dictionary or whichever dictionary you used
14 incurred to mean not necessarily spent but incurred an
15 obligation or some, whichever you just read, and I apologize
16 for not reading it back word for word. Because I think it's
17 critical in that word. And I think everybody is trying to
18 figure out a way to lessen the burden on the consumer, if
19 possible, but I'm trying to look at what the statute mandates
20 also.

21 So, Mr. Chair, I hate to belabor the point, but I
22 guess I'd like to, to, since we had a reading of a definition
23 of the word incur, I'd like to ask the other parties,
24 Mr. McWhirter, Mr. Twomey, how -- as much as we may want to do
25 it the other way as far as lessening the hit to the consumer at

1 once, how do you get by the statute if it indicates that that
2 does mean what she just read? And that's where I'm having a
3 hard time.

4 CHAIRMAN CARTER: Mr. Twomey, Mr. McWhirter.
5 Mr. McWhirter first.

6 MR. McWHIRTER: Well, an interesting thought that
7 occurs to me is we ought to look at the statutory section that
8 provides for the capacity recovery clause. And I think when
9 you look for that, you won't find it except where it's been,
10 where it's been, the phrase is used in 366.93.

11 I think you have tremendous leeway. You exercised
12 that leeway to the customers' great benefit in the midcourse
13 correction proceedings this July when you suggested that
14 Florida Power & Light shouldn't collect \$746 million in five
15 months but they ought to spread it out. You have the same
16 leeway --

17 COMMISSIONER ARGENZIANO: Mr. McWhirter, and I'm
18 sorry, Mr. Chair, because I can't look at you and indicate that
19 I want to ask a question. If you don't mind. It's great that
20 you say we have tremendous leeway and I'm looking for it. Can
21 you point to it?

22 MR. McWHIRTER: No.

23 COMMISSIONER ARGENZIANO: Because the word -- if
24 we're relying and I'm relying right now narrows down to the
25 word incur, and that's what I said the other day, I felt that

1 that maybe gave the Commission the ability to say, okay, we're
2 going to spread this out. Now if they're incurring the costs,
3 number one, at the same time or around the same time, that's a
4 different story. Or if the, the actual definition of incur
5 does not mean already spent, then, then we may have, there may
6 be no, nothing to point to. So what I'm asking you is because
7 I have to make a decision, you've got to make your case and
8 it's got to be on point, and I need something more than just
9 you think I have tremendous leeway. Give me, give me where I
10 have that leeway, if you would.

11 MR. McWHIRTER: Well, Ms. Bennett has used Webster's
12 Dictionary. I haven't had a chance to go to my Poor Richard's
13 Almanac. But I would suggest to you that this is the kind of
14 thing that you don't have to make a bench decision on today.
15 It's the kind of thing that you might want to give us a little
16 bit of time to give you considered thought on it and look at
17 the legislation. I don't know what your deadline is. I guess
18 December 1 is the deadline that the utilities have to give
19 notice to their customers about what's going to happen on
20 January 1. But between now and then I think you've already
21 suggested you're going to brief on one point, and this is
22 another issue that could deserve some briefing.

23 MR. BURNETT: Chairman Carter.

24 CHAIRMAN CARTER: Mr. Burnett.

25 MR. BURNETT: Sir, to meet with the spirit that

1 Commissioner Argenziano asked about cutting to the bottom line
2 earlier, if I may, this is an interesting statutory
3 construction conversation we're having, and to that point
4 Ms. Bennett is absolutely dead right. Mr. McWhirter, dead
5 wrong.

6 But the elephant, the elephant in the living room is
7 the fact that Mr. McWhirter and Mr. Twomey are asking this
8 Commission to do nothing more -- they're inviting you to engage
9 in arbitrary and capricious behavior and ignore an existing
10 rule that you have on the books. That's the elephant in the
11 living room that they are not bringing to your attention and
12 letting you see.

13 You have passed a rule already. You had every
14 ability to do it. And in a brief -- I would love to brief this
15 issue because I would destroy these arguments, but we don't
16 have to. Because you have already evaluated the statute, you
17 have passed a rule. And with all respect, you have absolutely
18 no discretion to depart from that rule until it's changed or
19 you would be acting arbitrarily and capricious, and that is
20 exactly what they're inviting you to do. So that's the key
21 point. There's nothing that needs to be briefed. Thank you,
22 sir.

23 MR. MCWHIRTER: What does, what does the rule say on
24 this subject? Does it say you can collect the money in advance
25 of spending it?

1 MR. BURNETT: Mr. McWhirter, I'm in a quasi-judicial
2 court. I didn't come here to engage in a conversation with
3 you. I will address my comments to the Chairman and happy to
4 respond to any Commissioners' questions. But I'm not here to
5 have a conversation with you. You know what the rule says,
6 sir.

7 CHAIRMAN CARTER: Commissioner Argenziano.

8 COMMISSIONER ARGENZIANO: Can you hear me, Mr.
9 Chairman?

10 CHAIRMAN CARTER: Commissioner Argenziano.

11 COMMISSIONER ARGENZIANO: Yes. Can you hear me?

12 CHAIRMAN CARTER: Yes, ma'am.

13 COMMISSIONER ARGENZIANO: Well, then I'll ask the
14 question, what does the rule say?

15 MR. BURNETT: Yes, Commissioner. The rule is
16 absolutely consistent with the methodology that you're engaging
17 in. It interprets the statute just as it should be, that these
18 costs are incurred when they are obligated. Just like
19 Ms. Bennett said, it's perfectly consistent with the statute
20 and says that the projections and the exact process that you've
21 put into place is how these costs should be collected.
22 Absolutely nothing to think, think about if you read this
23 Commission's rule.

24 COMMISSIONER ARGENZIANO: Well, Mr. Chair.

25 CHAIRMAN CARTER: You're recognized.

1 COMMISSIONER ARGENZIANO: With all due respect, rules
2 are not always right either. And what I'm looking for is if
3 we're -- if we're going to be pushed to a vote today, which I'm
4 not sure I'm ready to take, but if we're going to be pushed for
5 a vote today, then we need to get to the nut of this. And the
6 nut of this seems to be the word incurred and the statute to me
7 trumps rule always. That's just what I believe. And I wasn't
8 here when the rule was created, so I didn't have the benefit of
9 the arguments and the information that went along with the rule
10 and deciding the rule. So, and now having the rule and yet
11 looking at the statutes, it comes down to me -- and I guess the
12 question again to probably staff because I guess Mr. McWhirter
13 and the company are going to have, and everybody involved are
14 going to have different opinions, I guess it's coming down to
15 staff again. And perhaps we do need to look at another
16 dictionary and find out if we find the same definition
17 someplace else and that pretty much says that incurred does not
18 mean spent. And if it says that it's spent, then that means
19 something else. And that's the critical component for me in
20 trying to think of this and do this fairly.

21 If the Legislature said to me as a Public Service
22 Commissioner that you shall take into consideration incurred
23 costs and the word does not, is not defined as already spent,
24 well, then, sorry. As much as I do not want to, to rate shock
25 the consumers and I'm looking for something that tells me I

1 don't have to do that, then I can't just not look at the
2 statute. I can, I can turn my head on the rule if the statute
3 gives me a different, a different feeling or a different
4 definition or if I don't think the rule is adhering to the
5 statute, but I haven't come to that conclusion yet. And I
6 guess I'm just hearing back and forth, well, I think it's this
7 and I think it's this. And, Mr. Chairman, I'm not so sure what
8 the heck you do. I guess maybe -- do we have a dictionary in
9 the house?

10 CHAIRMAN CARTER: We're going to go to, Commissioner,
11 what we're going to do is we're going to go to staff that has
12 the rule and the, and the statute. And this --

13 COMMISSIONER ARGENZIANO: Okay.

14 MR. TWOMEY: Mr. Chairman, may I?

15 CHAIRMAN CARTER: Mr. Twomey.

16 MR. TWOMEY: Mr. McWhirter got to respond. May I
17 respond briefly?

18 CHAIRMAN CARTER: You're recognized for a response.

19 MR. TWOMEY: Thank you, sir. Maybe it's our shared
20 artillery (phonetic) background with Brother Burnett down
21 there, but he's awful cocksure about where he thinks he's going
22 to go in the outcome of this thing, and I'm rather amazed that
23 he's essentially telling you that you don't need to do this
24 because you're not going to learn anything and that it's a
25 waste of time to do it because he's going to win hands down

1 anyways.

2 CHAIRMAN CARTER: That's not the way we interpreted
3 that. What I interpreted him as saying is that the rule is
4 there and we should follow the rule. I don't think he tells us
5 what we can and cannot do. I didn't read it that way, but go
6 ahead.

7 MR. TWOMEY: I did, sir. But anyway, but my point is
8 going to be is, is, as Mr. McWhirter suggested, Mr. Chair, I
9 would suggest to you and all the Commissioners, let's have, if
10 we're going to brief some of this other stuff perhaps, let's
11 have a short briefing period and let's let Mr. Burnett and
12 Progress Energy give it their best shot, and let us older
13 fellows make a feeble attempt in explaining what we're trying
14 to, trying to say to y'all and have an opportunity to consult a
15 dictionary in the process.

16 COMMISSIONER ARGENZIANO: And, Mr. Chair, can I, to
17 that point?

18 CHAIRMAN CARTER: You're recognized.

19 COMMISSIONER ARGENZIANO: And I think I heard the
20 company just say he wouldn't mind doing that, didn't feel he
21 had to but wouldn't mind because he felt he could defend it.
22 And what I'm asking them is to understand the position I am in
23 at least as one Commissioner that that may be a good idea to do
24 that.

25 CHAIRMAN CARTER: Hang on, Commissioner. Hang on a

1 second because Mr. Burnett is shaking his head. I don't think
2 that's what he said. But we'll hear, listen to him.

3 Mr. Burnett.

4 MR. BURNETT: Thank you, sir. Commissioner, if
5 that's what you took away, not at all. I apologize for my
6 misunderstanding. My point was that when the Commission has
7 spent the time to go through a rulemaking and carefully
8 evaluate drafting a rule and heard from all the stakeholders
9 and all the parties and has carefully come to a rule, there's
10 nothing to brief. That the only thing that can be done is the
11 Commission can follow its rule, it can act in an improper
12 manner and disregard its rule, which I would suggest no one
13 should do and would want to do, or the Commission can attempt
14 to revise the rule, and there's a process to do that if the
15 Commission so desired, or someone can go to the Supreme Court
16 like Mr. Twomey or Mr. McWhirter and file some sort of pleading
17 saying that the Commission exceeded its authority. But the
18 Commission has no discretion to ignore an existing rule and
19 there's nothing at all to brief.

20 COMMISSIONER ARGENZIANO: Okay. Well, then,
21 Mr. Chair, thank you for that.

22 CHAIRMAN CARTER: Yes.

23 COMMISSIONER ARGENZIANO: Well, then, then this, as
24 one Commissioner then I am not prepared to possibly ignore a
25 rule as has been told because I'm not sure -- so maybe more

1 information is better at this time. I don't want to ignore a
2 rule but I want to understand it and I don't want to rush it
3 and I probably would want more information.

4 On point again to staff about recovery of those
5 costs, if those recoveries, the recoveries they're talking
6 about are recoveries in 2009, would that mean you start getting
7 your recovery in January '09 for a, something that was incurred
8 or going to be incurred, I don't know how to say it anymore, in
9 December of '09 like almost a year later? Would that, does
10 that still fall within the rule that you, as you see it?

11 CHAIRMAN CARTER: Ms. Bennett.

12 MS. BENNETT: The costs -- I think this will answer
13 your question. The costs that are going to be recovered are
14 also going to be spent next year. Can I say that on
15 January 1st, those dollars that are being collected on
16 January 1st are going to be spent on January 1st? No, I don't
17 know that I can match that. Perhaps the utilities would be --

18 COMMISSIONER ARGENZIANO: Well, maybe not just the
19 1st. I mean, within a reasonable amount of time.

20 MS. BENNETT: Right. All of the, all of the money
21 that's collected in 2009 is supposed to be spent in 2009,
22 subject to that true-up that we're going to do next year when
23 we look and see if they really spent those monies and if they
24 were prudent in spending those monies.

25 MR. BUTLER: Mr. Chairman.

1 CHAIRMAN CARTER: Mr. Butler.

2 MR. BUTLER: If I may, I'd like to add one more
3 elephant to the already crowded room here.

4 CHAIRMAN CARTER: Get up a little closer to your mike
5 there, Mr. Butler.

6 MR. BUTLER: I'm sorry. It seems like it's on.
7 Okay. I'll speak louder.

8 In addition to the rule that I agree with Mr. Burnett
9 the Commission is obliged to follow until it chooses to amend
10 the rule prospectively, because rulemaking is prospective, the
11 Commission recently voted in Docket 080009 on exactly the issue
12 we're talking about here, not just the dollar amount that would
13 be expended, et cetera, et cetera. Issue 12 for FPL, and I
14 know there's one counterpart to it for Progress Energy, was
15 what total amount should the Commission approve for the nuclear
16 cost recovery clause to be included in establishing FPL's 2009
17 capacity cost recovery clause factor? And then that's that
18 \$220 million amount that we have included. So there is a
19 decision by the Commission after a contested proceeding on the
20 record that has determined exactly the issue that leads to the
21 inclusion of the amount that we are here for approval today.
22 And I just, I fail to see where the ambiguity about where or
23 how or when that amount is supposed to be recovered still
24 exists.

25 COMMISSIONER ARGENZIANO: Mr. Chair?

1 CHAIRMAN CARTER: You're recognized.

2 COMMISSIONER ARGENZIANO: Well, just because, and I
3 can't, I don't have the benefit of looking at if it's
4 identical, maybe that the issue was not brought up at that time
5 on the last ruling of incurring and when it was to happen.

6 What I'd like to ask the company is this, if there
7 is, if there is right now some cloud over, over the issue of
8 what incurred means or anything else pertaining to when the
9 costs should be recovered, does the company feel it cannot
10 still defend its position if we waited and got more
11 information?

12 CHAIRMAN CARTER: First I'll go to Mr. Burnett, then
13 Mr. Butler, if you want to be heard.

14 Mr. Burnett.

15 MR. BURNETT: Ma'am, I would just reiterate the point
16 that, that if I were being completely honest my brief would say
17 one thing and it would say follow your rule, period.

18 One thing I would also say is that in this time, this
19 is the first year that the Commission has applied this rule.
20 This is the first year in which our companies, well, I'll speak
21 for my company, is engaging in probably the most significant
22 capital project it has ever seen. It is the beginning of a
23 nuclear renaissance, and I would say what sort of message does
24 this send to every one of the stakeholders involved in these
25 projects if the Commission is questioning its own rule after a

1 valid rulemaking has taken place. I think this shakes the very
2 confidence of, of the entire regulatory environment with
3 respect to this rule. And that's something that even if I
4 could brief something that doesn't with all respect need to be
5 briefed, this is just sending the absolute wrong message to
6 this entire process. I mean, the Commission well thought this
7 process, passed a valid rule, and it should be applied. That's
8 the simple answer with all respect.

9 COMMISSIONER ARGENZIANO: Mr. Chair?

10 CHAIRMAN CARTER: One second. Mr. Butler, do you
11 want to be heard?

12 MR. BUTLER: That's fine. I concur with
13 Mr. Burnett's comments.

14 CHAIRMAN CARTER: Okay. Commissioner Argenziano.

15 COMMISSIONER ARGENZIANO: Well, number one, you
16 didn't answer the question. And number two is I, for those
17 reasons that you just spoke of, that this is, the Commission
18 has decided along with the Legislature and the Governor that
19 moving in the area of nuclear is extremely important, we've
20 made that an issue, we've said it is, we know we have the need
21 for the nuclear power plants, and that all the more tells me
22 that an extended conversation could not hurt. And while
23 there's a cloud here and the question was do you think that
24 because we were to say, hey, let's give it a little time, let
25 the older guys, as Mr. Twomey said, make their points -- I'm

1 not sure that they're making any point to me at this time. I'm
2 not sure that, that I don't see the statute just the way it is.

3 And, again, I'm going to say I was not here for that
4 rulemaking, so I'm not going to blindly look at, go in and say,
5 well, okay, here's a rule. That doesn't mean it's not, it
6 wasn't done with the best information at the time. I'd maybe
7 like time to look at it because of the great importance of, as
8 you mentioned, about where we're moving in the nuclear area.

9 But I would like you to answer, you both can answer
10 the question, do you think that spending more time -- and I
11 understand that you want to get it over with, I really do. But
12 if there's a cloud over the issue, I'm not sure that it helps
13 you or hurts you. Would it -- could you still defend your
14 position if we maybe got a couple of different definitions in
15 there? I'm trying to make this as easy as possible for
16 everybody.

17 And, again, Mr. McWhirter, the other day I thought
18 that, you know, that word incurred meant something in order to
19 spread out maybe and spread out those payments. Today I'm not
20 so sure. So on both sides I need -- I need information from
21 both sides. I'm not sure that, Mr. McWhirter, I can stick with
22 that anymore because I'm not sure that incurred means what I
23 thought it did. So if you come up with something that gives me
24 a basis to change my mind, then on the other side, you know, I
25 pretty much hear what you're saying and I just think that to

1 rush for a bench vote may be wrong or, unless we can get it
2 cleared out today would be wonderful.

3 And Commissioner Skop, I guess, hasn't weighed in on,
4 on -- because he had talked about, he brought this up, the
5 point of the, the recovery taking place at the same time that
6 it's incurred, and I'd like to see his opinion now that we've
7 discussed this a little further. Does, does he follow along
8 with staff on the definition of incurred meaning it could be
9 December of 2009 or incurred means when you've actually spent
10 it? I'd love to hear your position.

11 CHAIRMAN CARTER: Commissioner Skop.

12 COMMISSIONER SKOP: Thank you, Mr. Chairman.

13 And to Commissioner Argenziano's points, I do
14 wholeheartedly agree, having spent significant time researching
15 this when the question was originally raised because the word
16 in the statute -- again, I think, you know, I want to make sure
17 that I'm upholding the law as a good lawyer would and not
18 engaging in some of the practices that Mr. Burnett mentioned.

19 The, some of the concerns I have, I've looked, I've
20 got the schedule of the filings outlining the costs and the
21 construction, preconstruction, site clearing, and I'm following
22 those along. And, again, you know, the timing of the recovery
23 is throughout the year in which the expenditures are made. It
24 may not be lock step in sync, but it's kind of like earning a
25 paycheck.

1 You know, when I start in January I get paid. I
2 don't get my Commissioner's salary upfront. I wish we all
3 would, but it doesn't work that way. So I have to earn it as I
4 go along. That doesn't mean that I don't have to make my car
5 payments, my mortgage and my other things along those same
6 lines. Now if I overspend one month, I may not have the salary
7 to cover it. But at the end of the day it all works out where
8 my expenditures should equal my salary subject to true-up at a
9 later date.

10 And so there is some administrative convenience that
11 is applied to this because matching of cost is not perfect in
12 an accrual basis world. In a cash basis it would, but in an
13 accrual basis that's widely adopted in the accounting setting,
14 you know, there's not exact matching. There's matchings of
15 expenses with payments but timing varies. So to that point I
16 wholeheartedly agree.

17 I know Mr. Burnett had made a motion in limine and
18 that was, I believe, properly denied by the Chair. But I do
19 believe what is happening here, with all due respect to two
20 very talented attorneys, Mr. McWhirter and Mr. Twomey, that
21 this continues to be a source of frustration or, you know, it's
22 obviously a legitimate consumer concern. I'm not denying that.
23 But, again, the statute says what it says. The Legislature
24 mandated what they mandated. And as a Commission we need to,
25 at least, you know, I'm an attorney, two of my other colleagues

1 are, you know, I'm tasked with following the law as I interpret
2 it through the statutory construction. And I see nothing
3 ambiguous or vague about the direction nor the rule that was
4 adopted. We have a valid Commission rule. Actually the rule
5 and the Commission's discretion was cited, and Ms. Bennett did
6 not mention this, but in the brief that she prepared in SFWMD
7 versus Save the Manatee Club, Florida 1st DCA -- I'll skip the
8 citation. I won't be lawyerly. But the bottom line, it says,
9 "Accordingly, the Legislature intended that the Commission
10 include costs that were projected," and there's a little
11 annotation there per the capacity clause. So I think we're
12 fully within our discretion in adopting a valid rule pursuant
13 to the legislative mandate. I think that the timing of the
14 recovery is lock step, you know, as best it can be with the
15 period in which the expenses are made or monies are spent or
16 committed.

17 So what I do see again is somewhat of a spilled milk
18 argument or a collateral attack on a couple of things. A need
19 determination order where the capacity excess was granted
20 because, again, that's premature because co-ownership is still
21 on the table as well as retirements of assets pursuant to the
22 statute 366.93. It's also a collateral attack on the nuclear
23 cost recovery order that this Commission just recently issued.
24 It's a collateral attack on a valid rule of the Commission.
25 And again I think as Mr. Burnett properly pointed out and duly

1 pointed out, if it got down to it, there's still recourse if,
2 if the parties and the intervening parties do not like the
3 decision of the Commission as we try to properly apply and
4 follow the law to appeal directly to the Florida Supreme Court.
5 And, you know, I don't think the likelihood of appeal would
6 be -- I don't think it would accomplish much, but that's
7 certainly an option.

8 But I think the Commission needs to move forward and
9 do what it's tasked to do in a timely manner so that rates can
10 go into effect on December 1st so the consumers have notice,
11 school boards have notice, all, you know, affected parties have
12 notice and so they can start planning on what the rates will be
13 for 2009 for budgeting purposes. And, you know, it's a battle
14 that could be fought later should various parties choose to
15 appeal a decision of the Commission. But right now what I see
16 is a collateral attack on final orders of the Commission, which
17 you mentioned why didn't they bring this up previously? Well,
18 they didn't and that precludes them from bringing it up now.

19 CHAIRMAN CARTER: Thank you.

20 Commissioner McMurrian.

21 COMMISSIONER McMURRIAN: Thank you, Chairman. And,
22 Commissioner Argenziano, I wanted to say a few things about
23 this debate too. I guess I wanted to, I wanted to talk about
24 the rule a little bit but I really wanted to go back to the
25 statute. Because I think, I think the rule is important and

1 the statute calls for us to implement the rule, but I agree
2 that the statute trumps a rule or at least that's the way I
3 was, have been taught. And I'm not an attorney either, so, but
4 it is the way I've been taught here at the Commission that the
5 statute trumps the rule and that we always go to it for
6 ultimate guidance.

7 And, of course, at the bottom of every rule that we
8 pass here there is statutory references about what our
9 authority was to implement that rule. And, of course, a lot of
10 our rules aren't perfect and we have come across imperfections
11 in a lot of different proceedings, in telecom and others, that,
12 you know, there are times that perhaps things change in an
13 industry and that perhaps our rules become a little outdated.
14 And sometimes even with a newer rule like this rule I think
15 that perhaps as we've implemented the rule and worked on it
16 through the nuclear cost recovery clause, I think I would
17 safely say that there were a couple of areas in the rule,
18 perhaps not hugely important areas in the rule, but a couple of
19 places in the rule that could have been and that we might going
20 forward want to look at and change.

21 But all that said, the statute called for us to
22 establish a rule. And so I'm not saying that makes it a
23 statute or that it makes it have the same weight as a statute,
24 but it did to me mean that the Legislature wanted this body to
25 exercise its discretion to establish a rule and that that was

1 done with the input of a lot of parties. I'm not sure I can
2 remember who all gave us input at the time that we were working
3 on the rule, but there were a lot of parties that did and I
4 know this was hashed out in a lot of detail. And, again, there
5 are probably some shortcomings with respect to that because we
6 all didn't really know exactly how it would be done since it
7 would be the first time we would be doing it this year. But,
8 again, we did that. And I think that Mr. Butler's point about
9 the Issue 12 in the docket that we just finished this year with
10 respect to the NCRC is also important to note.

11 But one, one other thing I wanted to mention about
12 the statute, and I hate to mention what I believe is
13 legislative intent to a former legislator, but I guess in my
14 mind at the time the Legislature wrote this statute, that I
15 have to believe that they were aware of our long-standing
16 practice of including reasonable projected costs in cost
17 recovery clauses.

18 And I agree with the things that Commissioner Skop
19 said, but I understand where the, where the consumer side is on
20 this and I realize that they're trying to lessen the impact to
21 the ratepayer. But I'm afraid that in my mind the Legislature
22 has been pretty clear and that given that how we normally have
23 done things through the capacity cost recovery clauses and
24 other cost recovery clauses, that I have to accept that they
25 probably knew that when they wrote the statute and that I can't

1 see anything in the statute that suggests that was not the
2 intent with respect to this new nuclear cost recovery clause
3 that we, we implemented through rule. So, again, that's just
4 my thoughts. I hope that's helpful. But that's, that's my
5 thinking on it.

6 COMMISSIONER ARGENZIANO: Mr. Chairman?

7 CHAIRMAN CARTER: You're recognized.

8 COMMISSIONER ARGENZIANO: And, Commissioner
9 McMurrian, I understand that totally. That is not the problem
10 I have. I understand that the Legislature said you will go and
11 make a rule. Within the statute what confuses me, and as I've
12 said kind of all along, is the word incurred. So to me it just
13 comes down to that word. And what I think I voiced a little
14 while ago to Mr. McWhirter and even Mr. Twomey is that it seems
15 to me that when we have a definition read of incurred, it kind
16 of chips away at that one word that was stopping me. Because
17 I'm going to do what the Legislature, Legislature mandated me
18 to do, even though I may be of a personal opinion that I would
19 like to see less of an impact on the, on the consumers out
20 there. Because, you know, they're going to raise their head
21 and they are and they just can't take much more, but I
22 nonetheless still have to do what I'm mandated to do.

23 Within that mandate, within that statute what I have
24 is a conflict in the word incurred, not with them saying go and
25 make a rule and treat it as a projection as you do in the

1 clause. I understand all that. It's an easy one. The problem
2 I have is in the word incurred. And I've gotten one
3 definition. I wish I had my big old dictionary right in front
4 of me now so that I could read through several. If the word
5 continues in that definition that I heard before, then I am
6 inclined to believe that it is not what is spent unless
7 somebody else reads me a different definition. And it really
8 probably doesn't come out to having to take days or months, and
9 what I'd love to do is if -- Mr. Chairman, I'll go find a
10 computer right now and get on there unless we can come up with
11 a couple of different definitions. And that's all it is for me
12 at this point. And I understand Mr. McWhirter and Mr. Twomey,
13 they're doing their job, but I have a job that I'm mandated to
14 do.

15 And the only thing, Commissioner McMurrian, and all
16 what you said I agree with 100 percent, the only problem I have
17 is that one word. Because within the statute when it says
18 incurred, that could be taken up different ways, as
19 Mr. McWhirter had mentioned, if it's spent and if it's not
20 spent. And even though you have used projections before, it
21 still comes down to that sticky word for me.

22 So, you know, with all due respect to the rule and
23 the process, I understand it. I think what it comes down to me
24 is that one word. And, Chairman, I think you had indicated
25 that we were looking at several other definitions and I think

1 that's really what I need to hear is a better definition of the
2 word incurred. Because in my whole life I always thought
3 incurred meant that you had to, you had to have already
4 incurred that, it was, it was spent.

5 Now to argue whether it's really, you know, if
6 they're getting their recovery in January because they're going
7 to spend something in February and in March, that's kind of, I
8 think that's silly because I don't think it's going to help the
9 consumer any way to say, well, let's wait three months or four
10 months. I'm not sure I'm arguing that at all. And I think,
11 Mr. Chair, if staff has a couple of different definitions
12 around, I think that's all maybe I would need. And
13 Mr. McWhirter and Mr. Twomey, you must understand what I'm
14 saying about a basis for the statutory language. And if you
15 have something else that says it's not, then I would love that
16 right now because I'm struggling to figure out, you know, what
17 I'm mandated to do and what I want, less of an impact on the
18 consumer.

19 CHAIRMAN CARTER: One second, Commissioner. If
20 you'll yield for a moment, I'm going to go to Commissioner Skop
21 and then I'll go to, go to staff.

22 Commissioner Skop.

23 COMMISSIONER SKOP: Thank you, Mr. Chairman.

24 And to Commissioner Argenziano's point, I've asked
25 staff to try and track down two authorities, one, Black's Law

1 Dictionary, which is a little more difficult to find, but we do
2 have a Webster's Dictionary in front of us also. And I guess
3 they can look up the definition. I'll try on the fly, but I'll
4 yield to staff.

5 But one other point I just wanted to raise in passing
6 that I thought was something that was deftly designed to try
7 and get us to think off the path with respect to, I think it
8 was Mr. McWhirter mentioned that the, what we, what the
9 Commission did in the midcourse correction. With the midcourse
10 correction I think we have a lot more discretion and we used it
11 appropriately in the statutory direction pursuant to the
12 nuclear cost recovery statute. I don't think we have the same
13 level of discretion. I think that the rule properly tracks the
14 statute and I think it's been properly applied and this is just
15 the first time that it's been going through the process. And
16 I'm looking to staff, but I'll yield and let them address the
17 definitions.

18 CHAIRMAN CARTER: And as staff is getting the
19 definition, just, Commissioner, the, the process in those
20 clauses that we've been using before, they recognized the use
21 of projections. And I probably am saying it maybe inartful,
22 but that's, that's been recognized before in terms of how they
23 look at what incurred meant and those were within the confines
24 of how the Legislature came up with that. And Commissioner,
25 Commissioner Skop has a dictionary now. We'll go with that.

1 MR. McWHIRTER: Mr. Chairman, while, while they're
2 looking up the words in the multitudinous dictionaries that
3 have shown up, can I ask a question? When this rule was being
4 adopted you had a docket on it and the rule had to be adopted
5 within six months, and Commissioner Edgar was giving us a lot
6 of trouble because it hadn't been done, and it went through
7 several iterations. And I have, I don't have the final copy of
8 the rule with me, but I do have one of the last iterations.
9 And I was wondering if somebody could tell me in the final rule
10 whether this language is still in it. And it's contained in
11 Section 5A and it talks about preconstruction costs, the
12 utility is entitled to recover through the capacity recovery
13 clause its actual and projected, the rule says, preconstruction
14 costs. The utility may also recover the related carrying
15 charge for those costs not recovered in a projected basis.
16 Such costs will reserve on an annual basis. And then here's
17 language that was, we discussed at that time, and I don't
18 remember how it came out, but it said, "Any party may, however,
19 propose a longer period of recovery not to exceed two years."
20 Now I don't know if that language made it into the final rule
21 or not. But if it did, it may give you an avenue, a way to
22 deal with this, especially since the forecasted costs have not
23 been determined to be prudent yet.

24 CHAIRMAN CARTER: Staff, do you have the final
25 version of that rule?

1 COMMISSIONER ARGENZIANO: Mr. Chair?

2 CHAIRMAN CARTER: Commissioner Argenziano.

3 COMMISSIONER ARGENZIANO: Yes. If Larry is
4 listening, would you go over to my desk and get that rule, and
5 I've got a highlighted area, and then would you either call me
6 on my other phone, which I'll try to pick up, and indicate the
7 area that I highlighted? Because it may be what Mr. McWhirter
8 was talking about.

9 CHAIRMAN CARTER: Commissioner Skop actually has the
10 rule.

11 COMMISSIONER SKOP: I have the definitions.

12 CHAIRMAN CARTER: Well, okay, he's got the
13 definitions.

14 MS. HELTON: I have the rule, Mr. Chairman.

15 CHAIRMAN CARTER: Ms. Helton, you're recognized.

16 MS. HELTON: Unfortunately I didn't find the section
17 that Mr. McWhirter was quoting until he was midway through, but
18 it does include the language, the last sentence that he
19 mentioned. "Any party may, however, propose a longer period of
20 recovery not to exceed two years."

21 But it strikes me that we're not in the right
22 proceeding to do that. We are -- we've been there, done that
23 with respect to 2008. Perhaps next year that's something that
24 we can put on the table, but I think we're past that point.

25 CHAIRMAN CARTER: That was the point that I made it

1 seems like forever ago when we went down -- what was it,
2 Tuesday? And I do think, I mean, with all due respect to both
3 Mr. Twomey and Mr. McWhirter, you guys have been practicing
4 long enough and you know these rules and all, and I think that
5 it kind of puts us all in a posture where we're not following,
6 first of all, not following our own rules but also not
7 following the process. And, I mean, we're, all of us are
8 concerned, every Commissioner on this Commission is deeply
9 concerned about the plight of consumers. We're consumers
10 ourselves. You can notice that by the way that we dealt with
11 the midcourse correction. We stretched that out because we
12 understand that.

13 But here I think what you're doing is in the wrong
14 forum at the wrong time with the wrong issue on this because
15 what you're putting, what you may very well be doing is putting
16 the ratepayers at further risk. So I just, I just, I'm
17 really -- we -- I think that's, I think that's not within the
18 confines of practicing properly here. I think that's a real
19 problem there.

20 Commissioner Skop.

21 COMMISSIONER SKOP: Thank you, Mr. Chairman. And to
22 Commissioner Argenziano's request, we do have two additional
23 definitions of the word incur.

24 COMMISSIONER ARGENZIANO: Okay.

25 COMMISSIONER SKOP: First from Webster's Dictionary,

1 which, again, is probably a little less legal than Black's Law
2 Dictionary. But the word incur is defined "To become liable or
3 subject to." Black Law's Dictionary, however, has a more --

4 COMMISSIONER ARGENZIANO: Are you reading the whole
5 definition?

6 COMMISSIONER SKOP: Yes.

7 COMMISSIONER ARGENZIANO: Okay.

8 COMMISSIONER SKOP: It's actually shorter than I
9 thought it would be for Webster's.

10 For Black's, which is longer, which is a little bit
11 longer and more to the point, "Incur, to have liabilities cast
12 upon one by act or operation of law as distinguished from
13 contract where the parties act affirmatively, to become liable
14 or subject to, to bring down upon, to bring down upon one's
15 self as to incur debt, danger, displeasure and penalty, and to
16 become through one's own action liable or subject to."

17 COMMISSIONER ARGENZIANO: Okay. Well, then that
18 doesn't indicate to me that it means it has to be spent. It
19 means it has to be encumbered somehow.

20 CHAIRMAN CARTER: Commissioner, any further question,
21 Commissioner McMurrian, excuse me, Argenziano?

22 COMMISSIONER ARGENZIANO: No, not unless
23 Mr. McWhirter or Mr. Twomey can make additional points that
24 wouldn't, you know, wouldn't have me, I guess, not abiding by
25 the statute.

1 MR. McWHIRTER: I'd like to say something more, if I
2 could.

3 CHAIRMAN CARTER: You're recognized.

4 MR. McWHIRTER: All right, sir. As I understand what
5 she said, it said that any party may, however, propose a longer
6 period of recovery not to exceed two years, and that's in the
7 rule that, that has the projected as opposed to incurred costs
8 in it.

9 Your position, Mr. Chairman, was that there's a
10 proper time to raise that and I should have raised it, as I
11 believe that I did, in the 09 docket where you had the hearing
12 on October 14th and the order has not yet been issued.

13 But having said that, if that ruling that you voted
14 on on October 14th was totally dispositive of the issue,
15 there's no reason to have that issue in this case at all
16 because it's already taken care of and you've already directed
17 the customers to pay that money. But this is the proceeding
18 that it rolled over into because this is the proceeding where
19 you exercise your discretion when you have the knowledge of all
20 the facts. And we know that there's a great big rate increase,
21 we know that demand is falling, we know that the economy is in
22 serious condition, and the question is does the money stay in
23 the ratepayer's pocket a little bit longer or does it get into
24 the utility's pocket once they have obligated themselves? And
25 we don't know what that obligation is because it wasn't

1 presented in the 09 docket and it won't be determined to be
2 prudent until next year.

3 You have discretion in this proceeding to deal with
4 it and you have a rule that authorizes you to postpone it over
5 two years, up to two years if you find it in the public
6 interest to do so. And I would suggest to you that this is the
7 proceeding, not the need case and not the hearing that was held
8 in early October. It's this proceeding where you're setting
9 the rates. And that's why I tried to bring out the, all the
10 things that are facing consumers. And Florida Power & Light,
11 there is a \$1.4 billion rate increase this year when you take
12 into consideration all the cost recovery items. And that --
13 you have the opportunity to bring this nuclear thing up to this
14 proceeding so you can look at that.

15 My recollection is a little bit poor with respect to
16 the cost recovery of Progress Energy, but it's also a very big
17 number and an unusually high number, and it's based on
18 projections of fuel costs and other costs that may or may not
19 transpire because of what's going on with the economy.

20 Wisdom tells me that if you're concerned about
21 consumers, you'll take the same action that you did in the
22 midcourse correction case in July and say, consumers, you're
23 going to be obligated for it because the statute says that if
24 the utilities spend it, but we're going to give you the leeway
25 our rule permits so that you can pay it over a two-year period.

1 What we found with, when Florida Power & Light came
2 in with its \$746 million increase, said that it needed to
3 collect that before December, what happened between July and
4 December is the prices went down dramatically and now customers
5 aren't going to pay \$300 million that they would have paid had
6 you done what FP&L wanted you to.

7 It seems to me, give us a little time. That's all we
8 ask. Budgets are strapped, businesses are in trouble in
9 Florida. And I think the Legislature would applaud you if you
10 construed their statute and your rule in a fashion that was
11 sympathetic to consumers as opposed to putting more money in
12 the utility's pocket before they have to spend it.

13 COMMISSIONER ARGENZIANO: Mr. Chair?

14 CHAIRMAN CARTER: Yes, ma'am.

15 COMMISSIONER ARGENZIANO: I actually have revised my
16 opinion of what it really comes down to in this issue for me
17 and I think it's this one. Now what I need to know is
18 legally -- I mean, the company is going to recover, the statute
19 says they're entitled to recover and they're going to recover,
20 whether it's now all in January '09 or it's two years, as
21 Mr. McWhirter says, to spread it out.

22 I'm looking at if the company is going to recover
23 this anyway and there is something in a rule that allows me to
24 not give the consumer that much rate shock, I need to know if
25 that legally can, can be brought up now. Because I don't know

1 how tomorrow I would face the consumers -- and I mean this with
2 all respect to the company because I know they're going to
3 recover and they can recover, but if I have a tool to spread
4 out the pain, I want to know from our staff if I can use that
5 tool or are you precluding me today from being able to use that
6 tool?

7 CHAIRMAN CARTER: Staff, did you hear the question?
8 Ms. Helton, did you hear Commissioner Argenziano's question.

9 MS. HELTON: I did. I think the Commission always
10 has the discretion to expand the time period for recovery when
11 we're looking at the projected or estimated or actual costs for
12 a given year. I mean, I think they've done it in previous
13 proceedings. And I have once again maybe read too little of
14 what the rule actually says, so let me read the whole, whole
15 part for you.

16 And this is talking about preconstruction costs in
17 Subsection 5 of the rule. "A utility is entitled to recover
18 through the capacity cost recovery clause its actual and
19 projected preconstruction costs. The utility may also recover
20 the related carrying charge for those costs not recovered on a
21 projected basis. Such costs will be recovered within one year
22 unless the Commission approves a longer recovery period. Any
23 party may, however, propose a longer period of recovery not to
24 exceed two years."

25 COMMISSIONER ARGENZIANO: Yes. And, Mr. Chair, I

1 read that yesterday and had it highlighted because I thought at
2 a time when consumers are, are just about ready to take all our
3 heads off and while we really have an economic crisis, that if
4 the company was to recover, we're not saying they can't
5 recover, we're just saying lessen the impact. So if I still
6 have that available to me as a Commissioner, then I want to
7 know that I can use that. So to me that is the argument.
8 Incurred is not even in the picture anymore.

9 MR. BURNETT: Mr. Chairman?

10 CHAIRMAN CARTER: Mr. Burnett.

11 MR. BURNETT: Thank you, sir.

12 I find it interesting that Mr. McWhirter just said to
13 the Commission that in the 09 docket he, thinking it was the
14 proper forum and acknowledging it was the proper forum to make
15 this argument, made this deferral argument and just told this
16 entire proceeding that that argument was rejected there. And I
17 couldn't agree more. I mean, that would have been the time.
18 If he made it then, that was the time to do it.

19 This, this Commission on Issue 13 for Progress Energy
20 on your vote sheet in the 09 docket asked the very direct
21 question: What is the amount to be included in this proceeding
22 for the NCRC? The Commission jurisdictionalized it. And the
23 only issue left here is was that number that the Commission
24 voted on properly turned into a factor? That's it.

25 All these arguments could have and should have been

1 made in the 09 docket. That's the appropriate place to do it
2 and it was not -- if it was done, as Mr. McWhirter says, it was
3 rejected. The Commission has already taken action on this. So
4 I don't believe that you do have the discretion to now go back
5 and revisit an order that you've already properly issued.

6 One thing too that I wanted to mention again is that
7 everyone involved in this nuclear project is watching,
8 potential joint owners, potential contractual counter-parties,
9 rating agencies, people that my company will have to borrow
10 money from, everyone is watching this first time, not only in
11 Florida but I would say in the nation. And to send a message
12 out as a policy matter that in my opinion is directly contrary
13 to the purpose of the statute to encourage and promote new
14 nuclear projects, to send the message out that the Commission
15 will delay costs and will delay timely recovery is exactly, I
16 believe, the opposite of the statutory intent of this. It's to
17 promote nuclear projects. It again raises doubt and
18 uncertainty into the entire process. And there is no way with
19 a straight face that anyone can say that meets the legislative
20 intent of the statute to promote these new nuclear projects.

21 COMMISSIONER ARGENZIANO: Mr. Chairman?

22 CHAIRMAN CARTER: Yes, ma'am.

23 COMMISSIONER ARGENZIANO: You know what, and I'm
24 going to, I'm going to revert back to my old legislative self,
25 I think I've tried very hard to show fairness. What it comes

1 down to is the whole world is watching, the whole state is
2 watching, every legislator, the Governor, everyone, everyone.
3 And what I'm trying to ask the company is that in a time when
4 things are so tough out there, when legislators are getting
5 letters back and forth from their constituents, when we're
6 hearing from them, is there a way not to stop the company from
7 receiving the money that they deserve rightfully because there
8 are expenditures but to put it off a little bit? Can I ask
9 this question of the company? With all due respect, because I
10 need to understand why it is so important, and there could be
11 something that's so important that I do not recognize, so I ask
12 this with due respect, why is it that you can't -- I mean,
13 you're not bankrupt. Why is it you can't look at maybe
14 postponing it for another year and not giving these consumers
15 rate shock? And if you have a good answer, maybe, maybe it
16 will help me in this very rough and tough decision.

17 But as far as saying we don't have the right to
18 utilize the two years, I think I just heard staff say I do. So
19 I'm not sure I agree with you there. And again with due
20 respect, I need to find out why it is. And I understand the
21 company wants to recover the money when they can, it's
22 insurance, but I think the insurance is in the statute that
23 says you can recover these costs. Is it, is it, is it an
24 unfriendly thing towards the company to say we're going to
25 spread it out for two years? It's still a guarantee you're

1 going to get your recovery. Maybe you can help me there.

2 CHAIRMAN CARTER: Let's, let's hear from the company.
3 Mr. Burnett and then, Mr. Butler, I'll come to you.
4 Mr. Burnett.

5 MR. BURNETT: Yes, ma'am. One of the, one of the key
6 reasons that it does hurt the company and it also hurts the
7 customer is the fact that, especially given the magnitude of
8 the dollars that are involved here, every time a cost is
9 deferred, those are costs that the utility still has to incur.
10 The utility has to go into the financial market to secure that
11 debt service, we have to pay interest on that, the customers
12 get a carrying charge on that. And when you add that up and
13 send the utility back into the market again deferring timely
14 cost recovery, unbalancing the regulatory compact and saying
15 that on -- and not allowing us timely recovery of costs at or
16 near the time in which they're incurred, we have to go to the
17 capital market, this capital market, one of the toughest we've
18 seen ever, on a huge capital project and secure debt.

19 And every time costs are deferred in this docket or
20 in another docket, we're going back into the market and rating
21 agencies are watching us, our financiers are watching us,
22 everyone who would lend us money is watching and saying that
23 this is going to weaken the company's position. In the
24 financial markets it's going to cost us money. There are
25 carrying charges that are going to be compounded and added to

1 the customers' bills and those are going to just, those costs
2 are just put off to another time where they're more expensive
3 and they're going to hit the customer potentially in years
4 where other cost pressures are going to manifest themselves as
5 well. So it absolutely hurts the company directly. It also
6 hurts, again, as I stated, it sends the wrong message to
7 everyone and shakes the confidence of potentially everyone
8 involved in the process at a time to where uncertainty is the
9 absolute worst thing. When you're trying to send the message
10 that we're behind projects like this, this type of message to
11 say we're behind it but we're not going to give you certainty
12 in the regulatory process, that hurts everyone.

13 COMMISSIONER ARGENZIANO: That's not correct. You do
14 have certainty. The statute gives you certainty. And
15 that's -- I understand and appreciate your answer, but I don't
16 agree with that last part. You have certainty. I mean, you
17 have the -- the statute explicitly says that you will recover
18 this. And I don't see, I'm not sure that, that you're correct
19 that your financing will be affected because you do have
20 certainty.

21 And I, and I guess the frustrating part is that with
22 that certainty and with a little risk -- the consumer out there
23 is at a point where, you know, what if they can't pay their
24 bills anymore and like they're dropping off with foreclosures
25 everywhere, you start losing customers who can't pay the bills?

1 And that's another concern I have in moving forward with what
2 you're trying to move forward with on the new plants is having
3 customers who pay bills. Once you start losing customers who
4 pay those bills you may not be able to move forward, and you
5 want to talk about uncertainty. And I guess it's just, at this
6 point it's very frustrating because there's no give on the
7 other side and, and the customers are in dire straits, many of
8 them, and I have to think about those consumers. And if I have
9 a tool available to me to spread out the cost and also allow
10 the company to recover those costs, I need to know from staff
11 again and maybe repeating it again if I have that tool
12 available to me. That doesn't mean my colleagues are going to
13 go there or anybody else, but at this point you leave me no
14 choice. I mean, there's no choice I think. And if there's a
15 tool available that says we can spread out these costs a little
16 longer -- unless staff can, unless there's something else we
17 can do to lessen the burden on the consumer and not impact the
18 company, then I'd like to know it now.

19 CHAIRMAN CARTER: Let me do this, Commissioner. You
20 heard from Mr. Burnett but you didn't get a chance to hear from
21 Mr. Butler.

22 COMMISSIONER ARGENZIANO: Great.

23 CHAIRMAN CARTER: Mr. Butler, you're recognized, and
24 then we'll go to staff.

25 COMMISSIONER ARGENZIANO: Thank you.

1 CHAIRMAN CARTER: Staff, you were listening to
2 Commissioner Argenziano's question; right? We'll come to you
3 afterwards.

4 Mr. Butler, you're recognized.

5 MR. BUTLER: Thank you, Mr. Chairman. I'll be brief.
6 I echo Mr. Burnett's concerns. A couple of additional things I
7 would note. One is that this is not a one-time cost. You
8 know, the plant costs are going to be continuing into the
9 future. They probably will be increasing in future years.
10 Deferring costs from now to be added to what would need to be
11 recovered in subsequent years isn't going to get better for the
12 consumers, and I think it really would be a mistake from their
13 perspective as well as from the company's.

14 In addition, one of the uncertainties that really
15 concerns me, probably one of the greatest ones here, is just
16 the procedural uncertainty. I mean, there was a docket for the
17 purpose of determining the nuclear cost recovery, you know,
18 amount to be recovered through the 2009 capacity cost recovery
19 clause. You determined it. And here a very short time later
20 there's discussion of kind of undoing that explicit express
21 determination. I think that's the sort of thing that does send
22 the wrong signals. Because the statute that we're working
23 under, you know, sort of the whole legislative initiative to
24 encourage the renaissance of nuclear power, one of the thing it
25 was overcoming was the reluctance of utilities to get into a

1 situation that existed in the '80s and '90s where there was a
2 great deal of uncertainty over the timing, the extent of cost
3 recovery for nuclear plants. So there is a significant
4 sensitivity in this area. Thank you.

5 CHAIRMAN CARTER: Thank you. Staff -- Mr. Twomey,
6 every so briefly. Ever so briefly, Mr. Twomey, because I'm
7 going to staff.

8 MR. TWOMEY: Yes, sir. It will be brief. I just
9 wanted to chime in and say once again on behalf of AARP I adopt
10 the last comments made by Mr. McWhirter, and I do it with no
11 apologies whatsoever as to adoption of it or the timing. And I
12 say that because I thought I heard your staff say that you have
13 the discretion to do this. If I, if I heard them wrong and if
14 the staff comes out and says that you do not absolutely legally
15 have the discretion to do what Mr. McWhirter has asked you to
16 do and that Commissioner Argenziano appears to have in mind at
17 least as a possibility, then I'll fold my tent on the issue.

18 CHAIRMAN CARTER: Thank you. Let me go to staff.
19 And also too, Mr. Twomey, I'm sure you're aware, as the
20 3.1 million I believe it is members of AARP, is we obviously
21 don't want to compound the costs on the, on the ratepayers
22 because, you know, these plants are going to cost more later on
23 as we go. Right?

24 MR. TWOMEY: Yes, sir. I wouldn't, I wouldn't have,
25 I wouldn't have joined Mr. McWhirter's effort had I thought

1 that it would not benefit the customers to do so.

2 CHAIRMAN CARTER: Okay. Let's, let's go to staff as
3 a response for Commissioner Argenziano's question. And then,
4 Commissioners, we're going to probably move toward disposition.
5 Staff, you're recognized.

6 MS. BENNETT: We're going to revert back to the rule
7 again. It's 5A and it says, "A utility is entitled to recover
8 through the capacity cost recovery clause its actual and
9 projected preconstruction costs. The utility may also recover
10 the related carrying charges for those costs not recovered on a
11 projected basis. Such costs will be recovered within one year
12 unless the Commission approves a longer recovery period. Any
13 party may, however, propose a longer recovery period not to
14 exceed two years," but it is limited to those preconstruction
15 costs that I spoke to above, the actual and projected
16 preconstruction costs and the carrying charges for those costs.
17 We're getting a --

18 CHAIRMAN CARTER: Ms. Bennett, are you --

19 MS. BENNETT: Excuse me just a minute.

20 CHAIRMAN CARTER: Okay. One second.

21 MS. BENNETT: With your permission, we have some
22 technical assistance that we would like to call on to answer
23 the rest of this question.

24 CHAIRMAN CARTER: Okay. Mr. Devlin.

25 MR. DEVLIN: Tim Devlin, staff.

1 CHAIRMAN CARTER: State for the record --

2 MR. DEVLIN: I think we're getting into some
3 accounting minutia, but I will try the best I can to clarify,
4 and then Cayce Hinton can also chime in if I misspeak.

5 But the way I read 5A, the second sentence, "The
6 utility may also recover the related carrying charge for those
7 costs not recovered on a projected basis." And then it goes on
8 to say, "Such costs would be covered within one year unless the
9 Commission approves a longer period of time or longer recovery
10 period." That sentence doesn't relate to total preconstruction
11 costs. It only relates to the carrying charges on
12 preconstruction costs, which is, that's just like a percent.
13 It might be 10 percent or 12 percent or whatever the carrying
14 charge on preconstruction costs that weren't previously
15 recovered. So we're not talking about total preconstruction
16 costs that perhaps could be recovered over a two-year period,
17 it's just the carrying charges on preconstruction costs.

18 And as I understand it, that sentence really only
19 relates to the first year where you would have carrying
20 charges. Because we've had some preconstruction costs incurred
21 in 2008 that haven't been recovered yet but there's some
22 carrying charges associated with them. In the future we won't
23 really have any carrying charges because preconstruction costs
24 will be recovered on an annual basis. I don't know if that
25 helps or not, but we're really not talking about total

1 preconstruction costs. We're just talking about carrying
2 charges that perhaps could be written off over two years or
3 recovered over two years.

4 CHAIRMAN CARTER: Okay. Mr. Hinton.

5 MR. HINTON: Yeah. I -- let me revise what my boss
6 just said or add to rather.

7 The such costs that it refers to when it says, "Such
8 costs will be recovered within one year," you could either read
9 that to, to refer to the carrying charges on the
10 preconstruction costs that were not recovered on a projected
11 basis or the preconstruction costs not recovered on a, on a
12 projected basis. I think it leans more towards on -- on a
13 second reading I think what we're talking about is the
14 preconstruction costs not recovered on a projected basis shall
15 be recovered within one year, although the Commission has
16 discretion to spread those out over a longer period, and just
17 as long as it doesn't exceed two years. But we're talking
18 about preconstruction costs that were incurred in the past
19 basically and are sitting there waiting to be included for
20 recovery and have not been recovered on a projected basis.

21 So we're talking -- it's, conceivably this is a
22 startup anomaly where we're looking at preconstruction costs
23 for 2007 and 2008. They're collecting carrying charges on
24 those costs. This rule states that the Commission, you have to
25 allow recovery of those preconstruction costs within one year

1 or, if somebody requests, you can spread it out over two.

2 I just wanted to make sure we're clear that this
3 provision about spreading costs over two years is not, is not
4 talking about the entire balance of recovery that's being
5 considered right now. It's speaking very specifically either
6 to just the carrying charges on these preconstruction costs
7 that are sitting there waiting to be recovered or the
8 preconstruction costs themselves, but not the entire balance of
9 construction costs, AFUDC on construction costs, site selection
10 costs, preconstruction costs, everything that's gone into the
11 total this year, that's not what we're talking about. We're
12 talking about a very small subset of that total can be spread
13 over two years based on the rule or my reading of the rule.

14 MR. McWHIRTER: It seems like an item worthy of
15 briefing to me.

16 CHAIRMAN CARTER: Commissioners?

17 MR. BUTLER: It seems like we just did.

18 COMMISSIONER ARGENZIANO: Well, Mr. Chairman, what
19 would the carrying costs be? What would, what would that mean?
20 Is it a great deal? Is it anything that would have impact? Is
21 it even worth looking at?

22 CHAIRMAN CARTER: Mr. Burnett, any idea on what the
23 carrying costs would be?

24 MR. BURNETT: I do, sir. I would say that I do
25 concur with Mr. Devlin's reading of the rule. And if you don't

1 hold me to this number as being exact, I would say
2 approximately \$24 million.

3 CHAIRMAN CARTER: \$24 million for the carrying costs?

4 MR. BURNETT: Yes, sir.

5 CHAIRMAN CARTER: And --

6 MR. BURNETT: But, again, I just wanted to make
7 clear, sir, that I'm not in any way departing from my initial
8 point though that I believe the Commission has already issued
9 an order on this. So this conversation in my opinion is
10 esoteric, but I wanted to be responsive, sir.

11 CHAIRMAN CARTER: Yes, sir. Thank you.

12 COMMISSIONER ARGENZIANO: Well, Mr. Chair, to that
13 point I'd like to ask staff because there was an issue, an
14 order issued, does that then take away the ability to use that
15 part of the rule that allows to extend for another year? And I
16 guess anybody, could it be anybody who, any party who asks to
17 extend the rule?

18 CHAIRMAN CARTER: Staff, you're recognized.

19 MR. COOKE: Commissioner, yes, I think it could be
20 any party. My recollection when we drafted this rule, it was
21 also not meant to take away the Commission's discretion either.
22 But I think that the rule language is what we need to be
23 adhering to. I think what, I think what we're saying is
24 that it -- I believe that this is the appropriate proceeding in
25 which to look at the time period involved. But I think that we

1 need to have the reflection as we did of the technical staff as
2 to just how extensive or what kind of costs are subject to this
3 time period, the extension of the time period.

4 COMMISSIONER ARGENZIANO: Well, no, to the other
5 point of the comment that it's not appropriate to be looking at
6 that rule now because there was an order already issued. Is
7 that correct?

8 MR. COOKE: It's my understanding -- yes, there was,
9 there was a, a nuclear cost recovery proceeding that was
10 conducted and that has been voted upon. It's my understanding
11 in that proceeding that what was voted upon, however, as
12 pertains to this issue is a dollar amount that would be run
13 through the clause but not the time period. I think staff is
14 of the view that this is the appropriate proceeding to
15 determine the time period pursuant to this portion of the rule.

16 MR. BUTLER: Mr. Chairman.

17 CHAIRMAN CARTER: Mr. Butler.

18 MR. BUTLER: I'm sorry. I really have to
19 respectfully disagree with that comment. I mean, if that were
20 the case, I think Issue 12 for FPL would have been what total
21 amount should the Commission approve for the nuclear cost
22 recovery clause to be included in establishing FPL's capacity
23 cost recovery clause factors, but it doesn't. It says, "FPL's
24 2009 capacity cost recovery clause factor." I mean, I don't
25 see how it could be any more clear than that. You know, the

1 Commission was determining the amount that was going to go in
2 to be recovered in a particular year's capacity cost recovery
3 clause factor and it determined that amount. That's what we're
4 seeking to have recovered here. I think it would be
5 inconsistent with and would express the sort of uncertainty
6 that many people will be concerned to see if the decision
7 recently made on that point isn't, you know, sort of
8 implemented in this docket.

9 CHAIRMAN CARTER: One second.

10 Sorry. I was just talking to our technology folks on
11 some internal matters.

12 Where was I? Commissioners, we have, we have --
13 let's, let's do this, Commissioners. Let's see where we are on
14 this issue here. And I believe in our list of issues that
15 we're talking about Issues 29A and 30A; is that correct, staff?
16 Is that where we are now? Is that what we're discussing? I
17 believe that's what it is.

18 MS. BENNETT: In -- yes, it would be 29A and 30A that
19 you would be establishing a longer period of recovery.

20 CHAIRMAN CARTER: Commissioners?

21 COMMISSIONER ARGENZIANO: Mr. Chairman?

22 CHAIRMAN CARTER: You're recognized.

23 COMMISSIONER ARGENZIANO: Well, there is a lot going
24 on here. I mean, I'm not sure I'd be prepared for a bench
25 vote. And I'm sorry, you know, I hate to have to apologize for

1 that, but I'm just stuck in a position right now that I would
2 like to know if, if holding or spreading that money out a
3 longer period of time, and not just from the company, but I'd
4 like to know if that hurts the company as they say it does.
5 And, and I'd like to know some information on the other side,
6 Mr. McWhirter's points and Mr. Twomey's points. And the only
7 way for me to do that is not to go to a bench vote today. And
8 it may be beneficial to do that rather than to rush into a
9 bench vote that could turn out to be negative for one party or
10 the other or the consumer. So that's where I'm at.

11 CHAIRMAN CARTER: Okay. Let me hear from my other
12 colleagues.

13 Commissioner Skop, you're recognized.

14 COMMISSIONER SKOP: I guess to me this comes down to
15 the nuts and bolts of a major policy decision facing the state
16 interpreting the statute. Again, last year we had an issue
17 that arose with the hedging program that caused great
18 consternation, caused the Commission to go through quite a
19 couple of iterations, only to converge back at the exact same
20 result that we started in.

21 You know, it's a difficult decision. I can certainly
22 appreciate Commissioner Argenziano's desire to seek
23 information, additional information and stay a bench vote. I'm
24 equally cognizant of the fact that by at least two prior orders
25 we approved a determination of need and nuclear cost recovery

1 amounts, and it's expected that the rates that we previously
2 approved would be put into the capacity factors that would be
3 implemented starting January 1st, 2009.

4 So while I'm of the opinion and I was certainly in
5 support of deferring the cost to the consumers via the
6 midcourse corrections where I thought that the Commission had
7 wide reaching discretion to do so, I'm of the opinion that with
8 respect to nuclear, and actually I think this is something that
9 Mr. Butler and myself might actually agree upon as well as
10 Mr. Burnett, I do think that it would have a substantial
11 chilling effect on new nuclear construction in the State of
12 Florida, it would send the wrong policy message. And I'm not
13 sure, and I can be blamed later, but sometimes you've got to
14 stick your neck out, but I feel that to do, to not move forward
15 on this would be inconsistent with our direction from the
16 Legislature. And I know I'm saying that to a former legislator
17 who I have the utmost respect for in my heart, but, again, I
18 think it's important from a policy perspective based on all my
19 knowledge and industry experience and how things work in life,
20 I just, my gut tells me that we need to move forward on this.

21 CHAIRMAN CARTER: Thank you.

22 Commissioner McMurrian.

23 COMMISSIONER McMURRIAN: Commissioner Skop, that was
24 said exceptionally well I thought. I absolutely agree with
25 what Commissioner Skop just said. I understand the times we

1 find ourselves in and it's hard for the customer. I do believe
2 though, it was my understanding back when we voted on the
3 nuclear cost recovery clause docket that we were deciding the
4 factors that would be placed into this docket, and essentially
5 it was that was the time for everyone to explain how, how we
6 were to go about recovery in that docket and that those numbers
7 simply flowed into here. And so I've been a little bit
8 surprised by where we find ourselves today because of that.
9 And I thought that was, frankly, everyone's understanding of
10 what we were doing when we, when we took up that docket.

11 But, again, I understand where people are coming
12 from. I understand the quandary we all are in with respect to
13 the amount of the recovery that's coming up in January 2009
14 when it includes the nuclear and the, and the other increases
15 that we'll be talking about later. But, again, that's what I
16 thought we had already decided in that docket. I would prefer
17 to go ahead with a bench vote. I'm not sure where that leaves
18 us. But, again, I agree with how Commissioner Skop laid it out
19 and that's how I see it as well.

20 CHAIRMAN CARTER: Thank you.

21 Commissioner McMurrian -- Commission Edgar. Sorry.

22 COMMISSIONER EDGAR: Thank you. Thank you, Mr.
23 Chairman. There's, I think, very little left to be said. I
24 agree with the comments of Commissioner Skop and Commissioner
25 McMurrian and would just add a few brief comments.

1 I remember very well, and as Mr. McWhirter has
2 harkened back to, when we were working on this rule and I was
3 one that was pushing to try to meet a deadline that we were
4 given in the statute, but I was also at the time and I remain
5 very proud of the work that this Commission did on that rule,
6 putting in place a rule to implement statute, a legislative
7 mandate that I felt at the time and I still do goes a long way
8 to trying to balance the interests and put protection in both
9 for the utility that is proceeding with a large capital project
10 and for the ratepayers that will be absorbing costs on a, my
11 words, kind of a pay-as-you-go basis.

12 I do not think that necessarily any rule is, is
13 perfect and we knew at the time that as we implemented it over
14 the course of a few years that we may find some ways to improve
15 it, and I'm certainly open to looking at that in the, at the
16 proper time, which is not today in my mind, to see if there are
17 some, some ways that it could maybe be improved once we all
18 learn together as we go through the process a few years. I
19 also think that if indeed, and I don't believe this, but if
20 indeed to move forward today were to not be in keeping with
21 what the Legislature intended, I feel quite confident that they
22 would have the opportunity this next session to make some
23 changes and clarify what it is the statute intended. I do
24 think that the rule is in keeping with that direction, but I
25 recognize that they will have the opportunity to share

1 additional thoughts, if indeed they deem that appropriate.

2 So with all of that, it is -- I also sympathize and
3 empathize with the desire for more information. I always want
4 more information, but sometimes it's time to move forward. And
5 in my mind it's time to go ahead and, and vote on this today
6 and I will be ready to do so.

7 And I guess I would just say I really, really enjoy,
8 I really do, these -- somebody used the word esoteric, but
9 whatever descriptor you want to add to us all sort of
10 deciphering and bouncing ideas around about what does something
11 really mean, I enjoy that part of this job very much. But I do
12 think that the rule and the statute direct us to move forward
13 today. And I'm always very pleased when we are able to come to
14 a 5-0 consensus, but, you know, if this is not one of those
15 times, it may not be, but I'm ready to go forward.

16 COMMISSIONER ARGENZIANO: Mr. Chair.

17 CHAIRMAN CARTER: You're recognized.

18 COMMISSIONER ARGENZIANO: First I want to make it
19 very, very clear that my reluctance is not about the recovery.
20 I agree with that 100 percent and I believe that that's a
21 mandate. I believe the rule allows for an extension or
22 somewhat of an incremental recovery so that it doesn't have to
23 hit the consumer all at once. I do not believe that I have
24 been or had enough information provided to me in a, I think a
25 pretty harried and rushed meeting today, even though we did go

1 through a lot of information, but when you're talking about the
2 kind of dollars you're talking about, to make a decision
3 whether there is a chilling effect or not. So I feel like that
4 is part of the reason why I wanted to wait and get more
5 information so that I could find those things out and vote with
6 confidence that either I would grant the recovery all at once
7 because it had a chilling effect. I haven't been convinced
8 today that it would not, that it would or would not have a
9 chilling effect. So with lack of information, I learned a long
10 time ago don't, don't move forward unless you can get that
11 information. And I don't feel that was, that was given today
12 except he said/she said.

13 So in my 52 years of living, and even though I am, I
14 am in favor of the statute, I understand the need for the
15 nuclear power plants and have voted so, I just think that I
16 could not in good conscience tomorrow when the consumer says
17 you had the ability to defer the payment and lessen the load on
18 me, that I could vote and say that with confidence I voted to
19 either not have a chilling effect or to have a chilling effect.
20 I couldn't vote in confidence on any of that today because I
21 felt such a big issue of such an enormous value to the state
22 and an enormous hit to the consumers as well as the company,
23 without that information, in all due respect to my, to my
24 colleagues, I cannot vote for a bench vote today. And I'm
25 sorry I can't because I am very much in favor of the, building

1 the nuclear power plants. I just feel that without that
2 information I couldn't with good conscience do that.

3 So I want to make it clear that I'm not voting
4 against the recovery. I'm voting against not having enough
5 time to discover or to make a decision whether there would be a
6 chilling effect or not, and to find out if, that we did have
7 the ability in front of us, a tool right in front of us that
8 says we could defer the payment and lessen the load on those
9 people out there right now and we didn't.

10 So with that said, Mr. Chairman, I respect my
11 colleagues' opinion, but I cannot vote yes today.

12 CHAIRMAN CARTER: Thank you, Commissioners.
13 Commissioner Skop.

14 COMMISSIONER SKOP: Thank you, Mr. Chairman. And
15 thank you, Commissioner Argenziano. Your concerns and points
16 are extremely well taken. You know, this is, this is an
17 issue -- I'm struggling with my concern that I think was
18 pointed out by one of the Intervenors was that, you know,
19 unlike a fuel midcourse correction where fuel, you know, goes
20 down on a forward-going basis, for nuclear the construction
21 costs are going to increase substantially. I mean, that's just
22 the reality as you invest those billions of dollars into a
23 capital project, it doesn't get any cheaper in the later years.
24 And my concern would be I know that we're in very difficult
25 economic times, but to defer those costs would just compound

1 them later. And I do feel though that we have far more
2 discretion and we've used that discretion to provide consumers
3 relief. And hopefully it relatively balances out in terms of
4 the midcourse correction by passing through, you know, only
5 50 percent of the cost and then 50 percent later. Certainly
6 the utilities, at least two of which have reforecast their 2009
7 fuel, and I give my commendation to those because that provides
8 the kind of relief and, you know, I would hope that the other
9 utilities might perhaps as we move forward in the remaining
10 issues might want to consider that.

11 But, again, we're trying to balance these, these, the
12 cost increases that are passed to the consumers, but equally
13 trying to make sure as Commissioner, I'm sorry, Chairman
14 Carter, and I apologize for that slip, but Chairman Carter, as
15 he always points out, you know, we do have the obligation to
16 try and keep the lights on. And we need to, while we're
17 cognizant of the current economic hardships, we also have to be
18 equally cognizant of what's right for long-term policy
19 decisions. And that's probably the primary reason behind this
20 is that I think it's consistent with the Legislature's
21 direction to us. And certainly I'm not a policymaker, I'm just
22 a mere Commissioner that's trying to follow the law. And as
23 Commissioner Edgar duly pointed out, I think that the
24 Legislature, you know, certainly can come back and provide us
25 some more pointed direction, as they've done with the, at least

1 with some of the RPS in terms of what the policy should be if
2 it, if we depart from their ideal direction that we're
3 following pursuant to statute.

4 CHAIRMAN CARTER: Thank you. Commissioners, just
5 briefly --

6 COMMISSIONER ARGENZIANO: Mr. Chair, I'm sorry.

7 CHAIRMAN CARTER: You're recognized.

8 COMMISSIONER ARGENZIANO: Commissioner Skop, with all
9 due respect, you know I think the world of all of you, all of
10 my colleagues, but I hope you just didn't infer that I was not
11 following the law.

12 COMMISSIONER SKOP: No, ma'am.

13 COMMISSIONER ARGENZIANO: Because what I'm doing is
14 trying to get more information to follow the law.

15 COMMISSIONER SKOP: Yes, ma'am. No, I was not.

16 COMMISSIONER ARGENZIANO: Okay. I just want to make
17 sure that you understand.

18 COMMISSIONER SKOP: Not at all. Actually for --
19 you're probably smarter than most of the lawyers I know. So I
20 do --

21 COMMISSIONER ARGENZIANO: Well, I don't know about
22 that. I'm just not a lawyer. But I just wanted to make that
23 clear. All I want is more information on such an -- you know,
24 and if I have a tool to help the consumer out there, I don't --
25 I want to be able to look them in the face and tell them that

1 with good reason I had a good understanding why I couldn't use
2 that tool. And I can't vote today and look them straight in
3 the face tomorrow and tell them I had a really good
4 understanding of why I couldn't use that tool today.

5 COMMISSIONER SKOP: Right. In no means did I mean to
6 imply that.

7 COMMISSIONER ARGENZIANO: Okay. I appreciate that.
8 Thank you. I didn't think you did.

9 COMMISSIONER SKOP: I have the utmost respect for
10 you, and I know that each of us is trying to, to do what we
11 feel is best.

12 COMMISSIONER ARGENZIANO: Absolutely. Thank you, Mr.
13 Chairman.

14 MR. McWHIRTER: Mr. Chairman, it looks like you're
15 about to vote, and I'd like to raise a legal point of order.
16 And you may recall that earlier today Ms. Helton read to you a
17 section from Chapter 120.57 relating to disputed issues of
18 material fact in administrative proceedings, and she indicated
19 that if the hearing officers, if there are issues in dispute,
20 any party can request the opportunity to present proposed
21 findings of fact. Ms. Helton, you probably have that statute
22 handy to read again. But I'm fearful that if you go to a bench
23 vote over the objection of intervening parties, you might be in
24 violation of that statutory mandate.

25 CHAIRMAN CARTER: Ms. Helton.

1 **MS. HELTON:** 120.57(1)(b), all parties shall have an
2 opportunity to do several things, including to submit proposed
3 findings of fact and orders which in our proceedings are
4 briefs.

5 **CHAIRMAN CARTER:** So what does that mean?

6 **MS. HELTON:** I think that means that if Mr. McWhirter
7 is going to pursue his right that is given to him by the
8 Legislature to file a brief, that we need to give him an
9 opportunity to do so. However, I would suggest that it doesn't
10 set out the schedule for that, and that I think we have a lot
11 of flexibility with respect to how much time we can give him.
12 I mean, I think we are all mindful that the parties, the
13 utilities need to get their factors in place for 2009.

14 **MR. BURNETT:** Mr. Chairman, may I please.

15 **CHAIRMAN CARTER:** Mr. Burnett.

16 **MR. BURNETT:** Sir, I would just add that if there
17 were a disputed issue of material fact this would be a relevant
18 conversation. There is no fact in dispute. The factors have
19 been stipulated to. Mr. McWhirter is simply making a policy
20 argument asking you to ignore the law. So there is no proposed
21 findings of fact.

22 Whether Burnett has a bald head or not is a disputed
23 issue of material fact. Whether you should follow your
24 existing rule is not one.

25 **MR. MCWHIRTER:** That's not disputable.

1 **MR. BURNETT:** But all levity aside, there is simply
2 no issue of disputed fact. That is for facts that have been in
3 dispute. This entire case, including the fact of whether the
4 numbers that you ordered in 09 have been properly
5 jurisdictionalized -- well, not even jurisdictionalized -- put
6 into a proper factor has been stipulated. So Mr. McWhirter is
7 simply trying to use something, a mechanism that says I'm
8 allowed to make a proposed finding of fact to make his policy
9 argument to this Commission. Improperly, once again.

10 **CHAIRMAN CARTER:** Ms. Helton.

11 **MS. HELTON:** It says to submit proposed findings of
12 fact and orders, which it's my understanding from my limited
13 practice before the Division of Administrative Hearings that
14 when you file a proposed recommended order there that you file
15 proposed facts as well as proposed legal conclusions. It seems
16 to me that some of the arguments that Mr. McWhirter is raising
17 today are legal arguments. I don't know that we need to get
18 into a discourse today about whether there is disputed facts or
19 not, but it seems to me that there is some dispute over the
20 application of our statute and the rule here.

21 **CHAIRMAN CARTER:** Let me take a moment here.

22 **MS. HELTON:** Mr. Chairman, too, I'm sure that you
23 haven't forgotten this, but we do have a witness that has been
24 sitting there on the witness stand for a couple of hours, and I
25 am wondering whether -- of course, I feel a little bit

1 uncomfortable saying this, but I'm wondering whether the better
2 course would be to finish up the testimony today, or this
3 afternoon, let us do a little caucusing and figure out if there
4 is a way we can get through this today and come to you with a
5 suggestion on how to proceed afterwards.

6 **MR. BURNETT:** Mr. Chair, at the risk of your wrath,
7 sir, if I could be heard I would say that this witness, with
8 all respect, is to an FPL issue from what I understand. I
9 think my utility, and certainly the others have been patiently
10 waiting hoping to go home at some point. I believe our cases
11 are closed and over, so I would respectfully request as well,
12 too, that if it were at all possible, if there was any way that
13 at least PEF could get out of here. Perhaps then the FPL
14 issues could carry on.

15 **MS. HELTON:** And I agree with what Mr. Burnett said.
16 I think we can close the record with respect to everyone but
17 Florida Power and Light's case, and where that leads us as far
18 as the vote goes, we can go from there.

19 **MR. BUTLER:** Mr. Chairman, if you are considering not
20 making a bench decision on these other issues, would it be
21 possible for us to have a brief break to confer among the
22 counsel and see if any sort of appropriate agreement can be
23 reached?

24 **CHAIRMAN CARTER:** Where's Mr. Burgess? Oh, he's back
25 there.

1 **MR. BURGESS:** I am conferring with Mr. Kelly.

2 **CHAIRMAN CARTER:** Okay. Do you need a minute to
3 confer with Mr. Kelly before -- I mean, if you guys think it's
4 productive, we can give you a couple of minutes. If you don't
5 think it's productive, then, you know, it would be more like
6 what we've been doing.

7 **MR. BURGESS:** From our standpoint, I mean, the bench
8 ruling or briefing on the additional issues is not something
9 that concerns us. You have ruled on the one issue that we
10 asked to brief, and beyond that we're neutral as to any
11 decisions and any conferences among the counsel.

12 **CHAIRMAN CARTER:** Let me do this, Commissioners,
13 before -- I see you guys are getting ready to make a dash.

14 Ms. Helton, in relation to the other issues here that
15 are not necessarily pertaining to FPL, as Mr. Burnett has said,
16 kind of -- and I think what we have, Commissioners, if you are
17 looking on the one-pager --

18 **MR. BUTLER:** I'm sorry, Mr. Chairman, I want to be
19 sure I understand. When you say issues other than for FPL, we
20 have Issue 13C that is distinct to FPL about the drilled hole.

21 **CHAIRMAN CARTER:** Hang on. I'll come back to you.
22 Okay? May I come back to you?

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

24 **CHAIRMAN CARTER:** I haven't forgotten you.

25 **MR. BUTLER:** Okay.

1 **CHAIRMAN CARTER:** Staff, on the checklist that each
2 one of us have, as it relates to on our list, Commissioners, 1,
3 2, 3, 5, 6, and 8 -- Ms. Helton.

4 **MS. BENNETT:** As they relate to 1, 2, 3, 5, 6, and 8,
5 you have heard the testimony of every witness except for the
6 rebuttal testimony of FPL on Issue 13C. So you could close the
7 record for Progress, Gulf, TECO, and FPUC on those issues.

8 **CHAIRMAN CARTER:** On Issues 1 through 8?

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

10 **MR. BUTLER:** And for FPL. That was going to be my
11 point.

12 **CHAIRMAN CARTER:** And for FPL on that, too. And for
13 FPL.

14 **MS. BENNETT:** And for FPL, that's correct.

15 **CHAIRMAN CARTER:** Commissioners, what we are talking
16 about, these issues have pretty much been stipulated to as well
17 as we have heard the testimony, the witnesses' exhibits, and
18 all like that, so those are not necessarily areas that are in
19 dispute, per se. I hate to use the "D" word.

20 Commissioner McMurrian, you're recognized.

21 **COMMISSIONER McMURRIAN:** I don't think those issues
22 were stipulated. I think you just perhaps drew the wrong word
23 out of your --

24 **CHAIRMAN CARTER:** I just grouped them, yes. I was
25 hoping for staff to give me the right terminology for these in

1 terms of issues from our sheet, 1, 2, 3, 5, 6, and 8 as it
2 relates to the utilities.

3 **MS. BENNETT:** There have been no decisions on those.
4 They are ready for a vote and all of the witnesses have
5 presented their prefiled testimony and exhibits and been
6 crossed on Issues 1, 2, 3, 5, 6, and 8.

7 **COMMISSIONER EDGAR:** Mr. Chairman.

8 **CHAIRMAN CARTER:** Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you.

10 If this is the appropriate time, and also just to
11 make sure that I do understand procedurally where we are at, it
12 is my understanding that, of course, before we went into the
13 witness testimony that we did vote on the issues that had been
14 stipulated at that time, leaving the remaining unstipulated
15 issues.

16 And so I would make a motion that we close the record
17 at this time for purposes of the groupings 1, 2, 3, 5, and
18 6 for all of the -- and 8, excuse me, for all of the companies
19 that are before us, and move towards hearing a staff
20 recommendation.

21 **COMMISSIONER SKOP:** Second.

22 **CHAIRMAN CARTER:** Commissioners, are we all on one
23 accord here of what we have just done?

24 **MR. McWHIRTER:** A point of order, Mr. Chairman.

25 On Issue 5, it is the request of FPL and Progress

1 Energy and Tampa Electric to collect their total amount they
2 request for their fuel clause. That's a disputed issue upon --
3 factual issue. The record can be closed with respect to the
4 facts that are in the record, but FIPUG's position is utility
5 costs were substantially overstated in their petitions as a
6 result of the change in fuel costs between August and September
7 filings and the present date. The utilities should be directed
8 to forthwith update their fuel cost projection for 2009.

9 The Retail Federation agrees with that proposition
10 as -- well, PCS Phosphate did not. But that is a disputed
11 issue of fact, it is not an issue of law, and I would like to
12 exercise the opportunity to address it with a proposed findings
13 of fact.

14 **MR. COOKE:** Commissioners, based on our view of
15 120.57, I think we would be at risk if we go to a bench vote on
16 issues for which one of the parties is asking to file briefs.
17 I think what we should be trying to do, however, is as you are,
18 close the record where it is appropriate, try to narrow which
19 of these issues a party wants to have briefs on, and then we
20 can figure out where to go from there.

21 **CHAIRMAN CARTER:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

23 And with respect to Issue 5 that Mr. McWhirter is
24 taking issue to, that would only apply, your objection, to the
25 two utilities that did not reforecast their fuel?

1 **MR. McWHIRTER:** Would you mind saying that again?

2 **COMMISSIONER SKOP:** I'm sorry. With respect to your
3 objection as to Issue 5, that there is disputed issues of fact
4 that you wish to address, does that only pertain to the two
5 investor-owned utilities that did not reforecast their fuel
6 forecasts such that we can close the others out?

7 **MR. McWHIRTER:** Yes, sir. It would be -- I'm not
8 sure with respect to TECO. I have no objection with Gulf, but
9 clearly with FPL and Progress we would want to address that
10 factual issue. And I don't mind the short turn-around time on
11 this issue. I'm not trying to delay what you are trying to do.
12 I'm not trying to postpone things beyond the January 1 date,
13 but I do think that in light of the current circumstances in
14 our economy, these things should be addressed.

15 **MR. BEASLEY:** Mr. Chairman, if I may. Tampa Electric
16 did, in fact, reforecast its fuel price and we submitted that
17 on October --

18 **CHAIRMAN CARTER:** So it would just be Progress and
19 FPL.

20 **MR. BURNETT:** Sir, actually we did, as well.

21 **CHAIRMAN CARTER:** Hang on a second then.

22 **MR. McWHIRTER:** TECO had -- it reduced its fuel cost
23 for its generation, but it also had purchased power contracts,
24 and you may recall the testimony on that.

25 **CHAIRMAN CARTER:** It seems like we are beating a dead

1 horse to sleep, so we will just take Issue 5 out. Let's take
2 Issue 5 out.

3 **MR. STONE:** Mr. Chairman, at the risk of further
4 complicating these matters, as I understood Mr. McWhirter's
5 statement requesting a brief, it did not apply to two of the
6 companies that are before the Commission at this time on Issue
7 5, and that would be Gulf and my neighbor to the right, Florida
8 Public Utilities.

9 **MR. McWHIRTER:** If I said that I misquoted myself.
10 There are three. I'm not going to pick on Gulf at this time
11 and you may vote on Gulf if you wish.

12 **CHAIRMAN CARTER:** Now, let me ask you this before we
13 go further. Other than Mr. McWhirter's objection on Issue 5,
14 and I will come back to you for the companies in a minute, Mr.
15 McWhirter, are there any other objections other than what
16 Mr. McWhirter -- as it relates to Issues 1 through 8 that I
17 have delineated?

18 Okay. Hearing none, let's go back to Mr. McWhirter.

19 Now, the companies that you want to be excluded from
20 your brief would be -- Mr. McWhirter, you're recognized.

21 **COMMISSIONER EDGAR:** Mr. Chairman, do I need to
22 withdraw my motion at this point?

23 **CHAIRMAN CARTER:** Okay.

24 **COMMISSIONER EDGAR:** I mean, we have got a motion on
25 the table, and I'm not sure where we went with it.

1 **COMMISSIONER SKOP:** I seconded it, but then we got --

2 **CHAIRMAN CARTER:** You did? Oh. I got in the trees
3 here. I think what happened is that once you motioned and
4 seconded, our legal counsel told us because of Mr.
5 McWhirter's -- raised an issue on Issue 5, that we had to kind
6 of stop.

7 But, let's do this, Commissioners, before we go
8 further. Would you mind, Commissioner Edgar, if you would
9 modify your motion to be Issues 1, 2, 3, 6, and 8?

10 **MR. COOKE:** Mr. Chairman, not to belabor things,
11 but --

12 **CHAIRMAN CARTER:** Not again. Yes, sir, go ahead.

13 **MR. COOKE:** I don't think we had a vote to close the
14 record. We need that to be -- I'm not sure if I recall if that
15 was part of Commissioner Edgar's motion or not.

16 **COMMISSIONER EDGAR:** It was.

17 **MR. COOKE:** Okay. So we need that, and that can be
18 on all of these, 1 through 8, and then only with 5 is there any
19 impediment, in my view, to doing an actual bench vote, unless
20 you all don't want to do a bench vote.

21 **COMMISSIONER EDGAR:** Actually, I think that is in
22 keeping with my motion, which I will try again. And I will
23 work with you, of course, Mr. Chairman, and Commissioner Skop,
24 if you can work with me.

25 **COMMISSIONER SKOP:** Better you make the motion than

1 me.

2 **COMMISSIONER EDGAR:** Okay. Then I would come back to
3 my motion and restate it this way. That at this time we close
4 the dockets for Issues 1, 2, 3, 5, 6, and 8, and then move
5 toward a staff recommendation that I would request that we hear
6 individually on each of those.

7 **COMMISSIONER SKOP:** Second.

8 **CHAIRMAN CARTER:** It has been moved and properly
9 seconded.

10 Commissioners, anything further?

11 Staff, anything further from our Legal Department
12 before we move forward?

13 **MS. BENNETT:** No.

14 **CHAIRMAN CARTER:** Hearing none. All in favor of the
15 motion let it be known by the sign of aye.

16 (Simultaneous aye.)

17 **CHAIRMAN CARTER:** All those opposed, like sign?

18 **COMMISSIONER ARGENZIANO:** Yes.

19 **CHAIRMAN CARTER:** Are you voting --

20 **COMMISSIONER ARGENZIANO:** No. I want to make sure we
21 are not on --

22 **CHAIRMAN CARTER:** No, we are not on that one,
23 Commissioner.

24 **COMMISSIONER ARGENZIANO:** Okay. We are not on the
25 disputed items that Mr. McWhirter was talking about.

1 **CHAIRMAN CARTER:** No.

2 **COMMISSIONER ARGENZIANO:** Okay. Then I'm fine.

3 **CHAIRMAN CARTER:** So you are voting aye on what we

4 just --

5 **COMMISSIONER ARGENZIANO:** Yes.

6 **CHAIRMAN CARTER:** Okay. That is Number 29A and 30A,

7 Commissioner.

8 **COMMISSIONER ARGENZIANO:** Right. Okay, thank you.

9 **CHAIRMAN CARTER:** Now, let's do this, Commissioners.

10 How about Items 26, 27, and 28?

11 **COMMISSIONER EDGAR:** Mr. Chairman, if I may, I would

12 ask to staff, I believe that we are in a position where we can

13 close the record on those issues as well at this time. Am I

14 correct in that?

15 **CHAIRMAN CARTER:** Staff.

16 **MS. BENNETT:** On the capacity cost issues? I'm

17 sorry, I was --

18 **COMMISSIONER EDGAR:** That's okay, Ms. Bennett.

19 Issues 26, 27, and 28.

20 **COMMISSIONER ARGENZIANO:** Mr. Chair?

21 **CHAIRMAN CARTER:** Yes, ma'am.

22 **COMMISSIONER ARGENZIANO:** I am yes on 26 and 28.

23 **MS. BENNETT:** I believe you can close the record on

24 26, 27, 28, and actually 29A and 30A, because the only

25 witnesses you have outstanding are 13C, so you could close the

1 record on those. I know that Mr. McWhirter has asked to brief
2 some of those issues, probably -- well, I'm not sure which
3 ones.

4 **COMMISSIONER EDGAR:** In my mind -- and, again, of
5 course, just trying to get all of our thoughts together,
6 hopefully, to close the record is not dispositive of whether
7 there are briefs after the fact or if we vote today. I mean, I
8 see that as a next issue to address, and really the only reason
9 I didn't put 29A and 30A in is I was thinking that Commissioner
10 Argenziano may want to make a comment about those separately.
11 But, even with that, I would be glad to add those, because I
12 think that where we are procedurally is to close the record,
13 and then, Mr. Chairman, that would bring us to the next issues
14 for you to tee up for us.

15 **MR. MCWHIRTER:** I concur in that, Commissioner Edgar.

16 **CHAIRMAN CARTER:** You concur, Mr. McWhirter?

17 **MR. MCWHIRTER:** All the evidence is in. By closing
18 the record you are not going to put any more evidence in, and
19 any comments that we make have got to be related to the
20 evidence that's in the record that is closed. And I wouldn't
21 go beyond that.

22 **COMMISSIONER SKOP:** Based on that, I would second
23 Commissioner Edgar's motion.

24 **CHAIRMAN CARTER:** So your motion is -- Commissioner?

25 **COMMISSIONER EDGAR:** Mr. Chairman, it was 26, 27, and

1 28, but with the clarification and discussion we have just had,
2 if Commissioner Argenziano is comfortable with that, I would
3 like to add 29A and 30A, realizing that then there are other
4 issues that will be teed up.

5 **CHAIRMAN CARTER:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Mr. Chair, can you hear me?

7 **CHAIRMAN CARTER:** Yes, ma'am, I can.

8 **COMMISSIONER ARGENZIANO:** Okay. On 26, 27, 28, 29
9 and 30.

10 **CHAIRMAN CARTER:** Yes, ma'am.

11 **COMMISSIONER ARGENZIANO:** Okay. Then I'm okay.

12 **CHAIRMAN CARTER:** All right. Then we have a motion
13 and a second. All in favor let it be known by the sign of aye.

14 (Simultaneous aye.)

15 **CHAIRMAN CARTER:** All those opposed, like sign. Show
16 it done.

17 Let's do this, Commissioners. Before we go further,
18 Chris was just informing me about they are going to shut down
19 our computers at 5:00, and I'm looking at 5:07 right now.

20 **COMMISSIONER EDGAR:** Six o'clock.

21 **CHAIRMAN CARTER:** Six o'clock. Here is what I'm
22 prepared to do, Commissioners, with your indulgence, and no
23 disrespect to our witness who has been sitting over there. I
24 hope you have been having a good time. Is that I don't think
25 we are going to get anywhere if we start at 5:00 o'clock. I

1 really don't. I mean, we have got two witnesses, plus we have
2 got cross examination on those two witnesses. And, I mean, if
3 history is any teacher, and it is, because I thought we would
4 be done Tuesday by noon or 1:00 o'clock, and we have got two
5 witnesses left. I think I talked to staff about trying to find
6 another day next week.

7 **MS. BENNETT:** We have reserved November 12th, next
8 Wednesday.

9 **CHAIRMAN CARTER:** Because I don't think it's fair to
10 the parties, first of all, to jump off into this. And as I
11 said, the witness has been sitting there for, what, how many
12 hours, two hours.

13 The other thing, too, Commissioners, I think that
14 will give us an opportunity to digest some of this and proceed
15 further and deal with the remaining witnesses, cross
16 examination, and Commissioner questions and concerns.

17 Commissioner Skop, you're recognized.

18 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

19 If, in fact -- and, again, I want to speak to all of
20 my colleagues. It looks like me may not, for reasons I think
21 staff mentioned, get to a bench vote on some issues. I don't
22 know if I am correct or not, but I thought I heard you say
23 that. But, please stop me and correct me before I put my foot
24 in my mouth, if that is not the case.

25 **CHAIRMAN CARTER:** I have doing that all day, so go

1 right ahead. Misery loves company.

2 **COMMISSIONER SKOP:** If that were the case and that we
3 were going to reconvene in this proceeding next Wednesday to
4 finish testimony from our two witnesses and rebuttal testimony,
5 not to open Pandora's Box, nor to change my thinking as I
6 articulated, but trying to find compromise to make everyone
7 happy, if we could have all of the issues briefed by Wednesday,
8 if that's not overly optimistic, such that we could go to a
9 decision vote on Wednesday. And if that would make everyone
10 happy, and none of the utilities would object to that, because,
11 again, I don't know if we are going to move forward with that
12 bench vote today, is that a solution that would be acceptable
13 to all the parties and ease some of the tension that we have
14 had here today? Because I know it would probably make
15 Commissioner Argenziano happy.

16 **CHAIRMAN CARTER:** Commissioner McMurrian.

17 **COMMISSIONER McMURRIAN:** I just want to make sure.
18 If we had them briefed by Wednesday and had the
19 hearing Wednesday -- are you saying Monday, perhaps?

20 **COMMISSIONER SKOP:** Perhaps, yes. I'm sorry, I put
21 my foot in my mouth.

22 **CHAIRMAN CARTER:** Commission Edgar, any comments on
23 that?

24 **COMMISSIONER EDGAR:** I'm looking forward to seeing
25 you all again on Wednesday.

1 **CHAIRMAN CARTER:** Commissioner Argenziano, are you
2 clear on what I was just saying there?

3 **COMMISSIONER ARGENZIANO:** Yes, I think so. I guess
4 we're waiting until Monday, Wednesday --

5 **CHAIRMAN CARTER:** Well, the parties will have -- and
6 would that be an unnecessary burden on you, any of the parties,
7 to have it briefed by Monday so we can proceed on Wednesday?

8 **MR. McWHIRTER:** Briefed by Monday? I could have a
9 brief by Wednesday. My wife has got all the church newcomers
10 coming over Sunday and she wants me to mow the yard on
11 Saturday.

12 **CHAIRMAN CARTER:** Hang on a second.
13 Commissioner Argenziano.

14 **COMMISSIONER ARGENZIANO:** I'm trying to figure out
15 where we are at. Would there be time to read the briefs? And
16 so have we moved away from a bench vote? Forgive me, but we
17 are doing ten things at once here, and I'm trying to figure out
18 where we are at. We are not moving to a bench vote today, we
19 are moving to go ahead -- and I don't know if it was Monday or
20 Wednesday, and I think you just asked the question that on my
21 mind, will they have time to read the briefs.

22 **CHAIRMAN CARTER:** I kind of got myself confused here,
23 because I was --

24 **COMMISSIONER ARGENZIANO:** Me, too.

25 **CHAIRMAN CARTER:** -- under the impression what we

1 were going to do was look at the matters as it related to -- in
2 terms of Wednesday. I'm drawing a brain cramp here.

3 **COMMISSIONER EDGAR:** Mr. Chairman, because it has
4 been a long few days, and I support what I perceive as your
5 effort to try to help us to not make decisions when everybody
6 is tired, and I know I am, so I appreciate that. But yet I am
7 wondering, we have closed the record on every issue except 13C,
8 and realizing that many of the issues -- my thinking is that
9 related to Gulf, TECO, and FPUC do not seem to be in
10 contention, if it would be possible to hear from our staff on
11 those issues and consider a vote on that tonight. And, again,
12 I realize that it's late. It just seems like that we may be in
13 a place to do that, and that may cause less cost and
14 bureaucracy and all of that for others and their families.

15 **CHAIRMAN CARTER:** Thank you. That would be very
16 helpful. Staff, can you help us out?

17 **COMMISSIONER ARGENZIANO:** Commissioner Edgar?

18 **CHAIRMAN CARTER:** Commissioner Argenziano.

19 **COMMISSIONER ARGENZIANO:** I think we're on the same
20 page on this. Did you just say we should move to vote today
21 like on Gulf --

22 **COMMISSIONER EDGAR:** I was suggesting possibly for
23 Gulf, TECO, and FPUC.

24 **COMMISSIONER ARGENZIANO:** Yes, I agree.

25 **COMMISSIONER SKOP:** All of us are, I think.

1 **MR. McWHIRTER:** Mr. Chairman, with respect to TECO on
2 Issue 5, Mr. Beasley wants to talk to me, and we may have it
3 resolved. But I couldn't understand what he was saying when he
4 was whispering.

5 **CHAIRMAN CARTER:** Issue 5.

6 **MR. BUTLER:** Mr. Chairman.

7 **CHAIRMAN CARTER:** Mr. Butler.

8 **MR. BUTLER:** I'm sorry. I want to raise one other
9 thing concerning the decision whether to have a bench decision
10 at this point in time. I really think that Mr. McWhirter is
11 untimely in making the request that he is making here to sort
12 of force a nonbench briefed subsequent decision. If the
13 Commission doesn't choose to have a bench decision, I think it
14 is always your prerogative not to do that. But the order
15 establishing procedure in this docket that was issued back in
16 March said that there could be a bench decision. The
17 prehearing order, including the draft of it that was circulated
18 to all the parties, likewise says that there could be a bench
19 decision.

20 Mr. McWhirter was on full notice for months that a
21 bench decision was a distinct possibility in the proceeding.
22 And if he thought that it was inappropriate, he should have
23 raised it at least by the prehearing conference as a procedural
24 matter that could have been addressed by the parties and
25 properly incorporated into the prehearing order. And the

1 prehearing order, as written, clearly contemplates that the
2 Commission may in its discretion make a bench decision.

3 Of course, you obviously may decide you don't want to
4 make one, but I think it is inappropriate and really a
5 dangerous precedent to set to have a party insist on the
6 Commission not making a bench decision if it is otherwise
7 inclined to do so, given the opportunities that exist for any
8 party to express opposition to that procedure well in advance
9 during the prehearing process.

10 **CHAIRMAN CARTER:** Thank you, Mr. Burnett.

11 Mr. Butler. I'm looking at Mr. Burnett. Ever so
12 briefly, sir.

13 **MR. BURNETT:** Yes, sir, very briefly. And one thing
14 to keep in mind is that I only heard your legal staff tell you
15 one thing today, is that on Issue 5 alone for Progress Energy
16 and for Florida Power and Light that Mr. McWhirter was entitled
17 to give you a proposed finding of fact, not an appellate brief,
18 not a brief at all, a simple finding of fact. That, in my
19 mind, leads me to believe that the Commission can vote on every
20 single issue for all the companies with the exception of 13C
21 and 5 for my company and FP&L, and all that Mr. McWhirter gets
22 to do is simply give you a proposed finding of fact, which is a
23 sentence that you would propose to put in your order, not a
24 brief at all. So that's one point of clarity I wanted to make
25 sure, and that is the only thing I heard your legal staff say.

1 **CHAIRMAN CARTER:** Thank you. Commissioners?
2 Commissioner Edgar, you're recognized.

3 **COMMISSIONER EDGAR:** I think we're getting there, and
4 so, Mr. Chairman, if this is amenable to you and the other
5 Commissioners, I would ask that we move towards hearing staff
6 recommendations and begin with Issue 1.

7 **CHAIRMAN CARTER:** Staff, you're recognized.

8 **COMMISSIONER EDGAR:** And I apologize, if our staff is
9 prepared for each company, then I am prepared to hear that, but
10 you tell us what you are able to do at this time and we will go
11 that way. Mr. Chairman, if that's okay with you.

12 **CHAIRMAN CARTER:** That's fine.

13 **MR. LESTER:** I'm Pete Lester with staff. And I think
14 we can move as a group. For Issues 1, 2, 3, 5, 6, and 8 --
15 excuse me, for 1, 2, 3, 6, and 8 for all companies, staff
16 recommends that the Commission approve the companies positions
17 as stated in the prehearing order.

18 For Florida Power and Light Company, staff recommends
19 that the Commission require FPL to file reports at the end of
20 February and at the end of May. These reports should state
21 what the projected fuel costs for 2009 would be using the
22 forward curve at the end of May and at the end of February for
23 the forward curve prices for natural gas, plus any effect on
24 the 2009 true-up amounts. And, again, that was for Issues 1,
25 2, 3, 6, and 8 for all companies.

1 **CHAIRMAN CARTER:** Commissioners?

2 Commissioner McMurrian.

3 **COMMISSIONER McMURRIAN:** Thank you, Mr. Lester.

4 I'm just going to need some help on the February and
5 May reports. Is that with respect to some general information
6 you want, or is that with respect to a certain issue?

7 **MR. LESTER:** It is with respect to whether or not
8 they should be required to reproject their fuel costs, and
9 staff is --

10 **MR. HINTON:** Really that is related to Issue 5.

11 At this point we are not recommending a vote on Issue
12 5. That has been taken off the table. But that is part of our
13 recommendation is that because Florida Power and Light is so
14 reliant on natural gas and because of the uncertainty of
15 pricing trends, we are recommending that they report back --
16 take a look at the forward curve at the end of February and end
17 of May and report back how their projections are turning out.

18 But at this point, since that is related to Issue 5,
19 we should probably just remove that from staff's
20 recommendation. And as Mr. Lester said for Issues 1, 2, 3, 6,
21 and 8, staff recommends that the Commission approve the utility
22 positions as reflected in the prehearing order.

23 **COMMISSIONER McMURRIAN:** Commissioners, just to add,
24 that would probably help me. Because if we are going to talk
25 about reports, and it is related to Issue 5, I'm going to need

1 to ask more questions. I just don't feel --

2 **CHAIRMAN CARTER:** All right, then. Commissioner
3 Edgar.

4 **COMMISSIONER EDGAR:** Then, Mr. Chairman, I think
5 where we are is that we have heard the staff recommendation on
6 Issues 1, 2, 3, 6, and 8 for each of the five utilities that
7 are participants in this hearing, and that that staff
8 recommendation is to adopt the stated positions in the
9 prehearing order. And if that is correct as I have described
10 it, I would make that motion at this time.

11 **COMMISSIONER ARGENZIANO:** Second.

12 **CHAIRMAN CARTER:** It has been moved and properly
13 seconded. Any questions? Any debate? Hearing none. All
14 those in favor let it be known by the sign of aye.

15 (Simultaneous aye.)

16 **CHAIRMAN CARTER:** All those opposed, like sign. Show
17 it done.

18 Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Then, Mr. Chairman, I think that
20 brings us -- well, I guess I would ask your pleasure, should we
21 take up Issue 5 now and ask to hear from staff or move to 26?

22 **CHAIRMAN CARTER:** Let's go to 26.

23 **COMMISSIONER EDGAR:** Okay. Then if it is all right
24 with you, Mr. Chairman, I would ask staff if they are able to
25 give us an oral recommendation on Issue 26, which applies to

1 FPL and Progress.

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

3 For Issue 26, staff recommends that the Commission
4 approve the positions for FPL and Progress Energy Florida as
5 stated by those companies in the prehearing order.

6 **COMMISSIONER EDGAR:** Commissioners, and, again, just
7 for my clarification, our staff has made an oral recommendation
8 to us on Issue 26 that we adopt as our action the prehearing
9 order described statements of the parties, and that applies
10 only to FPL and Progress. And I probably completely bungled
11 that.

12 Commissioners, do you have any questions, or
13 comments, or hesitations?

14 Commissioner McMurrin.

15 **COMMISSIONER McMURRIAN:** I just wanted to make sure.
16 The outcome of 29A and 30A, which issues will those effect? I
17 just want to be clear on that because I'm confused right now.

18 **MR. BUTLER:** Commissioner McMurrin, or Commissioner
19 Edgar, in this very brief pause, a housekeeping matter. Is it
20 okay for Mr. Avera to leave now? He is the witness who was
21 going to go on, but I believe has been postponed until
22 Wednesday, and he has a 6:45 flight, I think it is, to make if
23 he is not needed here any further?

24 **COMMISSIONER EDGAR:** Mr. Chairman, have we made an
25 affirmative decision that we will not be hearing witness

1 testimony tonight and will be bringing them back on Wednesday,
2 because they are asking if the witnesses could leave the
3 building?

4 **CHAIRMAN CARTER:** As it relates to the witnesses,
5 yes.

6 **MR. BUTLER:** Thank you.

7 **CHAIRMAN CARTER:** I'm sorry I was not clear on that
8 one.

9 **COMMISSIONER EDGAR:** That's okay.

10 Then, Mr. Chairman, we had just heard the staff
11 recommendation on Issue 26, and Commissioner McMurrian had a
12 question, and staff is about to answer that.

13 **MR. HINTON:** The resolution of Issues 29A and 30A
14 dealing with the nuclear costs from Docket Number 09 will
15 effect 26, 27, and 28.

16 **CHAIRMAN CARTER:** Commissioner McMurrian, anything
17 further?

18 **COMMISSIONER McMURRIAN:** I'm not sure I really know
19 what to ask or how to ask it, and I'm starting to lose track,
20 but on 29A and 30A, are those issues -- those are issues with
21 respect to future briefing, I thought. But maybe not. No?

22 **COMMISSIONER EDGAR:** Mr. Chairman, may I give it a
23 stab?

24 **CHAIRMAN CARTER:** Commissioner Edgar.

25 **COMMISSIONER EDGAR:** And I could be wrong on this,

1 too, but my understanding of where we is that on Issues 29A and
2 30A, Commissioner Argenziano had raised the possibility that
3 she would maybe want some additional information, and a few of
4 the rest of us were trying to accommodate that information, but
5 yet be able to move forward to get those factors in place. And
6 I think that is where we are.

7 **COMMISSIONER McMURRIAN:** I'm sorry, thank you for
8 that clarification.

9 **CHAIRMAN CARTER:** Okay.

10 **MR. McWHIRTER:** I might be able to help you.
11 Twenty-six is the amount of money they want to collect for the
12 nuclear activity. I'm talking only about FPL and Progress
13 Energy. I am not talking about Gulf or TECO. And so that is a
14 factual issue and we don't dispute the fact that that is the
15 amount of money that they say they are entitled to collect.
16 The dispute revolves around how much of that money should be
17 collected from wholesale customers rather than retail
18 customers. And that is what Issue 27, 29A, and 30A are all
19 about.

20 So you can go forward with 26. We are not fussing
21 about that, but with respect to 27, 29A, and 30A, the staff
22 said at one time that that was a legal issue and not a factual
23 issue. And I didn't quite understand whether they said you
24 should overrule my request to present findings on disputed
25 facts, which would foreclose me from giving you any

1 information. But I believe it is a factual issue how much
2 should be allocated to retail and how much should be allocated
3 to wholesale based upon the projections of need and the fact
4 that you determined in the certificate of need that it was a
5 statewide need and not a need to satisfy the needs of either
6 FPL or Progress Energy's customers. I would suggest that it is
7 a factual issue, but if staff says it is a legal issue and I'm
8 not entitled to address that, then I am humbled by that
9 decision.

10 **MS. BENNETT:** Mr. Chair.

11 **CHAIRMAN CARTER:** You're recognized.

12 **MS. BENNETT:** Really, I'm not sure that the point of
13 the discussion at that time was the jurisdictional factor, and
14 I believe that Ms. Helton stated that whether it is a factual
15 issue or whether it's a legal issue, it still could be briefed
16 if a party requests it. So, as I understand, Mr. McWhirter is
17 asking to brief only Issues 27, 29A, and 30A, but 26 and 28
18 could be voted upon.

19 **MR. MCWHIRTER:** That is a correct statement of my
20 position. I hope that I helped to speed it along a little bit.

21 **CHAIRMAN CARTER:** Commissioner Skop, sir.

22 **COMMISSIONER SKOP:** I'm sorry, and it's late. One
23 dumb question, and it is probably because I am not thinking
24 late in the day. But on 28 where it says capacity
25 cost-recovery factors, wouldn't that also be affected by or

1 subject to being impacted by briefing on 27, 29A, and 30A?

2 **CHAIRMAN CARTER:** Staff.

3 **MS. BENNETT:** Yes, it would be affected.

4 **COMMISSIONER SKOP:** So that's probably not a good one
5 to move forward with if the other ones are impacted, right?

6 **MR. BURNETT:** Commissioner Carter, if I could just
7 recount -- and I thought I heard Commissioner Skop at least
8 acknowledge, too, that another option for the Commission would
9 be to acknowledge the fact that the request for the brief is
10 nothing more than a collateral attack on your prior orders and
11 a request for you to disobey your current rules and law. And I
12 understood that the Commission also had the discretion to
13 reject that with that finding. And that, in my legal opinion,
14 would take you outside of any requirement you would have from
15 120, because naturally you cannot be required to hear a brief
16 asking you to violate your own rules and collaterally attack
17 your own orders.

18 **CHAIRMAN CARTER:** Ms. Helton or Ms. Bennett, who want
19 it?

20 **MS. HELTON:** Can I just confer with my boss for one
21 minute?

22 **CHAIRMAN CARTER:** All righty. What do they say about
23 the road to someplace is paved with good intentions. But we
24 don't want to go there. I guess where we are is we probably --
25 Commissioner Skop, I mean, I have probably got a dumb question,

1 too, on that. But, of course, we will be piling on after what
2 we have been through the last several days about dumb
3 questions. But I presume that what you're saying is that 27
4 and 28 is also related to 29A and 30A. That was your
5 statement, right?

6 **COMMISSIONER SKOP:** I believe I was trying to state
7 that I think that -- I thought I heard staff say that 28 could
8 be voted upon, but I asked whether it was also impacted
9 appropriately by 29A and 30A, and they indicated yes, it would
10 be.

11 **CHAIRMAN CARTER:** So, staff, where does that leave
12 us?

13 **MS. BENNETT:** I believe that for 26, 27, 28, 29A, and
14 30A they would be briefed unless Mr. McWhirter does not wish to
15 brief 26 and 28, which is what he said. I guess that if you
16 were to subsequently make a decision that is different, you
17 would you have to reconsider if you voted today on 26 and 28,
18 which you could still do. You would be within the time to
19 reconsider your vote, since we will be meeting next Wednesday.

20 **COMMISSIONER EDGAR:** Mr. Chairman.

21 **CHAIRMAN CARTER:** Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Thank you very much. And it is
23 late, but I want to make sure we give everybody ample time and
24 opportunity to participate. I hope Mr. McWhirter recognizes
25 that I have always tried to do that, Mr. Chairman, as you

1 always have. But yet a comment was raised a little earlier in
2 the day, and I'm not even sure by whom, about some concerns
3 maybe about precedent about, you know, changing the process, or
4 moving to briefs at this point. And I am not as clear as I
5 would maybe want to be as to exactly why we would be hearing
6 briefs, or receiving briefs and deferring a vote.

7 And so I guess -- and I was trying to move us through
8 and see if we could maybe get on a role that everybody felt
9 comfortable with, and we were close, but, you know, we had had
10 some discussion just a little bit ago about 29A and 30A, and I
11 understand you want to be clear that if we are not going to act
12 on those what the impact be on the other issues. I think that
13 is good clarification, but yet we did have -- some of us, me
14 included, who had expressed a desire to go ahead and vote on
15 29A and 30A, and so we may be at the point where we may need to
16 make a decision on that. And I'm just putting that out there
17 to see if I'm reading it correctly.

18 **COMMISSIONER ARGENZIANO:** And, Mr. Chair.

19 **CHAIRMAN CARTER:** Commissioner Argenziano.

20 **COMMISSIONER ARGENZIANO:** This just compounds what I
21 said earlier about the confusion and not enough information,
22 and I guess for some Commissioners, not all. And I think it's
23 just at this point we don't know whether we are going to have a
24 bench vote or we are going to go to briefs, and it has gone
25 back and forth for quite sometime now. So just to reiterate

1 what I said before, it seems that there is either just not
2 enough information or there is quite bit of confusion about
3 what to do and why. So I'm not sure at this point what we're
4 actually doing.

5 **COMMISSIONER EDGAR:** Okay. Well, then I guess I
6 would put this out, Mr. Chairman, for your consideration. I am
7 at a point where I would be comfortable asking the staff for
8 their recommendation on 29A and 30A and then seeing if we want
9 to move to a vote. You know, we have had discussion, as you
10 have pointed out, Commissioner Argenziano, about what, if
11 anything, other than 13C to receive briefs on. I'm not sure
12 that that is necessary, but that is not my call.

13 **MR. McWHIRTER:** Mr. Chairman.

14 **COMMISSIONER EDGAR:** I am not finished, Mr.
15 McWhirter.

16 **MR. McWHIRTER:** I'm so sorry.

17 **COMMISSIONER EDGAR:** So I'm wondering if it might be
18 helpful to all of us, and, again, just to sort of cut through,
19 as Commissioner Argenziano has said, that we have gone back and
20 forth a little bit, to ask the staff for a recommendation on
21 29A and 30A if they are prepared to do so, which is my
22 understanding, and then see where that leaves us.

23 **CHAIRMAN CARTER:** Commissioner Skop.

24 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

25 And I tend to agree with Commissioner Edgar. I guess

1 where we were going is towards the direction of a bench vote,
2 and I know that Commissioner Argenziano had some concerns with
3 that. And I thought we were well positioned to move in that
4 direction.

5 What gave me pause is that I keep hearing concerns
6 from legal staff which keep -- you know, it's not clear cut.
7 In one instance they are saying you have to respect the brief,
8 and in the other instance they are saying that you can do
9 something else. And I'm trying to really make sure that
10 whatever we do -- and I'm comfortable moving to a bench vote if
11 we have the ability to do so without being subject to due
12 process concerns, which is my biggest concern, but I think that
13 if we can get a straightforward answer from legal staff along
14 with a recommendation on 29A and 30A, as Commissioner Edgar has
15 mentioned, I think that we are in a position to be able to move
16 forward and bring certainty to this. And noting that, again,
17 we will reconvene on Wednesday, and I guess I would look
18 forward, as Commissioner Edgar stated, to hearing from staff
19 very concisely what they recommend we do.

20 **MS. HELTON:** I apologize if I have created any
21 confusion. I believe, and the General Counsel believes that
22 under Chapter 120.57(1)(b) that if a party asks to file a brief
23 that we must give them -- afford them that opportunity. And it
24 is my understanding that Mr. McWhirter has asked to file a
25 brief on Issues 29A and 30. I believe that notwithstanding any

1 language in our order establishing procedure, or our prehearing
2 order, and those were actually crafted with that requirement in
3 mind in Chapter 120, that if a party asks to file a brief that
4 we have to afford them that opportunity.

5 The statute does not go to the time period, so I
6 think you could require Mr. McWhirter and any other parties who
7 wanted to file a brief to do so Monday afternoon, first thing
8 Wednesday morning, so that you could have those in hand before
9 making a bench decision. Or I guess it wouldn't be a bench
10 decision, a decision based on the testimony in the record, the
11 evidence in the record, and the briefs of the parties on
12 Wednesday at some point in time.

13 **COMMISSIONER ARGENZIANO:** Mr. Chair, if that scenario
14 occurred, because I'm hearing what you are saying is we need to
15 afford him that time, so that is another reason for me not to
16 want to move today with a bench vote. But would that give him
17 time -- would that give all parties time to read the briefs,
18 being that Tuesday is a holiday?

19 **MR. MCWHIRTER:** Mr. Chairman, I can do it on Tuesday,
20 and I would like to clarify having read this more carefully at
21 this moment, it looks like 26 and 28 are fallout issues of 27,
22 29, and 30. So the issues that I would like to brief are 5,
23 26, 27, 28, 29A, and 30A, and two of them are essentially
24 fallout issues from 29 and 30, so there won't be much briefing
25 there.

1 She says Tuesday is a holiday. If you're going to be
2 closed, I can file it first thing Wednesday morning.

3 **CHAIRMAN CARTER:** We have got to work tomorrow, Mr.
4 McWhirter, so --

5 **COMMISSIONER SKOP:** Mr. Chair.

6 **MR. McWHIRTER:** Well, I can get home and get to work
7 on it.

8 **CHAIRMAN CARTER:** Commissioner Skop.

9 **COMMISSIONER SKOP:** And excuse my ignorance of this,
10 because I have not had to file as a petitioner or a utility,
11 but is electronic filing available on a holiday to
12 Mr. McWhirter if would send an e-mail to the Clerk so we would
13 have it on Tuesday?

14 **MS. HELTON:** There would not be anybody in the
15 Clerk's office to accept it on Tuesday, so it would not be
16 timely filed. But maybe we could ask Mr. McWhirter to e-mail
17 it to all of the parties and our staff counsel could e-mail it
18 on to the Commissioners.

19 **COMMISSIONER SKOP:** And my second question would be
20 in the interest of being able to digest whatever was briefed,
21 if we proceed in that direction, which, again, I'm uncertain.
22 I'm hearing concerns from legal staff that to not brief might
23 be a due process issue or violate statute. Again, I'm just
24 trying to do what is best. I recognize that, you know, all the
25 stakeholders want certainty one way or another, but I'm trying

1 to be equally accommodating. With respect to any briefs that
2 would be filed, and I'm not saying that that is the direction
3 my colleagues and I are going to move in, because, again, we
4 are the decision-makers and we have to each evaluate the
5 recommendation we just received from our General Counsel.

6 But with respect to any briefs that would be filed,
7 should they be limited in scope to a certain number of pages,
8 so we could readily digress them? I mean, I don't want to be
9 overly restrictive, but like I say, I want to be able to absorb
10 anything that would be provided in short order so we don't
11 holdup the proceedings past Wednesday.

12 **MR. McWHIRTER:** My brief will be short and sweet.

13 **CHAIRMAN CARTER:** Commissioner McMurrian.

14 **COMMISSIONER SKOP:** Would it say read the rule,
15 period?

16 **CHAIRMAN CARTER:** Commissioner McMurrian.

17 **COMMISSIONER McMURRIAN:** Thank you. I had two
18 things.

19 I wanted to respond to Commission Edgar's comments.
20 I have to say I am a little bit concerned about the precedent,
21 too. At the same time, I think that with the legal advice that
22 we have today, I don't see how we really have -- I don't feel
23 comfortable doing anything but affording that ability for
24 briefs. I mean, it has been many years that I have been here
25 and we have always done bench decisions of fuel issues. Other

1 than a few issues, for instance, like 13C where there might
2 have been some particular late information that came in, like
3 the field notes that we talked about in 13C, and I won't go
4 down that road again.

5 So I think that we do need to afford that ability.
6 Again, though, I have to say I'm not very excited about it, so
7 I just wanted to share your views there, because I think that
8 we have the record that we have with respect to those issues.
9 I think we all prepared to be able to make that vote today and
10 that would be my preference.

11 I guess the second thing I wanted to say is if we
12 can't make a decision with respect to Florida Power and Light
13 and Progress Energy Florida, that that perhaps leaves us with
14 moving on to the recommendation with respect to Gulf and TECO.
15 So are we able to -- with respect 26, 27, and 28, don't we
16 still have the ability to rule with respect -- we don't?

17 **UNIDENTIFIED SPEAKER:** I think they are out.

18 **MR. BURNETT:** They are all stipulated.

19 **COMMISSIONER McMURRIAN:** Oh, they are all stipulated
20 out. Thank you. I'm sorry. I still see everyone sitting
21 here, and I guess that was confusing.

22 **MR. STONE:** Commissioner, perhaps I could shed some
23 light on that. The reason that Mr. Beasley, Mr. Horton, and I
24 are still sitting here is that our position on Issue 5 has not
25 been resolved.

1 **COMMISSIONER EDGAR:** That's what I was going to say.

2 And, Mr. Chairman, if I may. Commissioner McMurrin,
3 I agree with all of your comments, and I think we are on the
4 same page. I do try to think clearly and thoroughly when I
5 feel like we may be moving in a direction on anything that may
6 be setting precedent, fully recognizing that every instance is
7 a case-by-case, and so that does give me pause. However, it
8 seems to me that the issues that the request to brief on keep
9 multiplying, so I had thought that there may be a few others
10 that we may be in a position to be dispositive on. But if that
11 is not the case, I agree with you, I want to follow the advice
12 of our excellent legal counsel. And I'm not sure where that
13 leaves us with 5, which I guess would be my procedural
14 question.

15 **CHAIRMAN CARTER:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

17 And I also would agree with Commissioner Edgar and
18 Commissioner McMurrin in terms of procedure. Again, we had an
19 issue last year again with the hedging and the proceeding. We
20 always want to do things the right way, but procedurally, you
21 know, it's problematic in a host of reasons when we come to the
22 proceedings and we have issues that arise. Because, again, I
23 think that does lend to some regulatory uncertainty. So, I
24 appreciate the views of my colleagues that we equally have to
25 respect the legal advice from our counsel that has been given.

1 And I do agree the briefings keep multiplying. I was
2 going to use the example of Tribbles in Star Trek, but I'm not
3 sure if anyone remembers that.

4 **CHAIRMAN CARTER:** The trouble with Tribbles.

5 **COMMISSIONER SKOP:** I do think that there may be some
6 room to chip away at 5 if Mr. McWhirter is not intent on
7 briefing all of the utilities as to Issue 5. I think, as
8 Commissioner Edgar properly raised, that there may be some room
9 to chip away at some remaining items on the plate.

10 **MR. McWHIRTER:** Are you addressing me? Issue 5 with
11 respect to Gulf, okay, no need to brief. With respect to TECO,
12 there is a very modest component that I think we can talk to
13 them about and work out, and we can probably reach a
14 stipulation on the amount of money involved and submit that to
15 you probably Monday, because we'll talk about it today because
16 they won't let me out of here until we do it. So that resolves
17 5.

18 **CHAIRMAN CARTER:** What about FPUC?

19 **MR. McWHIRTER:** FPUC on all issues is home free as
20 far as I'm concerned.

21 **CHAIRMAN CARTER:** Okay.

22 **COMMISSIONER SKOP:** Mr. Chair.

23 **CHAIRMAN CARTER:** Commissioner Skop.

24 **COMMISSIONER SKOP:** If I heard that correctly that
25 Mr. McWhirter has no desire to brief as to Issue 5 as to Gulf

1 and as to FPUC, so I think that would leave us free. If
2 Commissioner Edgar would make a motion on those two, I would be
3 happy to second it.

4 **COMMISSIONER EDGAR:** And I'll be happy to try to get
5 there, Mr. Chairman, if that is all right with you.

6 **CHAIRMAN CARTER:** You're recognized.

7 **COMMISSIONER EDGAR:** So I guess what I would ask then
8 to get us in that posture is if our staff could -- and we have
9 covered it some, I realize, but if you could give us an oral
10 recommendation at this time for Issue 5 for Gulf and FPUC only.

11 **MR. LESTER:** Yes, ma'am. I'm Pete Lester with staff.
12 For Issue 5 for Gulf Power Company and Florida Public
13 Utilities Company, staff recommends that the Commission approve
14 the company positions as stated in the prehearing order.

15 **CHAIRMAN CARTER:** Commissioner McMurrin.

16 **COMMISSIONER McMURRIAN:** And the position in the
17 prehearing order as filed, I believe was changed by Mr. Horton
18 earlier, because I have listed for Marianna, 20,468,423 and
19 Fernandina Beach, 21,531,537.

20 **MR. HORTON:** That's correct.

21 **COMMISSIONER McMURRIAN:** Is that your recommendation?

22 **MR. LESTER:** Yes, ma'am.

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

24 **CHAIRMAN CARTER:** Any further questions?

25 **COMMISSIONER EDGAR:** Then, Mr. Chairman, I would make

1 a motion that we adopt the staff recommendation on Issue 5 for
2 Gulf and for FPUC noting the change in the numbers that Mr.
3 Horton had given us earlier and that our staff concurs with.

4 **COMMISSIONER SKOP:** Second.

5 **CHAIRMAN CARTER:** It has been moved and properly
6 seconded. Any further questions? Any debate?

7 All those in favor, let it known by the sign of aye.

8 (Simultaneous aye.)

9 **CHAIRMAN CARTER:** All those opposed, like sign. Show
10 it done.

11 Is there anything else that we can do on --

12 **MR. STONE:** Mr. Chairman, with respect to Gulf Power
13 Company, all issues have now been resolved and I would
14 respectfully request permission to be excused.

15 **CHAIRMAN CARTER:** Have a nice day.

16 **MR. STONE:** Thank you, Commissioner.

17 **MR. HORTON:** And, Mr. Chairman, the same here.

18 **CHAIRMAN CARTER:** Have a nice day.

19 **MR. HORTON:** Thank you.

20 **MR. BURGESS:** Mr. Chairman.

21 **CHAIRMAN CARTER:** Hold on. Misery loves company.

22 **MR. BURGESS:** Not at all. Listening to the
23 conversation over the last ten minutes, I just want to make
24 sure that all of the comments about the briefing schedule is
25 not applicable to the 13C on which the record has not been

1 closed.

2 **CHAIRMAN CARTER:** That is correct. You are
3 absolutely fantastically correct, Mr. Burgess.

4 Commissioners.

5 Commissioner Skop, you asked staff a question as it
6 relates to 26, 27, and 28. I guess, as Commissioner Edgar
7 said, the list has started growing on us and we ended up with
8 "The Trouble with Tribbles" on that. So is there anything that
9 we can do on that, Commissioners? Probably not.

10 **COMMISSIONER SKOP:** Mr. Chair, I'm not sure. I'm
11 open to suggestion. I am very impressed that you remember the
12 actual episode title, "The Trouble with Tribbles." You get
13 Trivial Pursuit points for that one.

14 **CHAIRMAN CARTER:** I see staff shaking their head,
15 Commissioners, so let's don't beat a dead horse to sleep.

16 Mr. Butler, you look like you are reaching for your
17 microphone. You're recognized.

18 **MR. BUTLER:** Mr. Chairman, I am wondering on Issue
19 26, because I think, if I understand the structure of the
20 prehearing order correctly, this is the amount of the capacity
21 cost-recovery less they are not including the nuclear
22 cost-recovery amount. And if that's right, if I am
23 understanding that correctly, I didn't think there was any
24 debate about the recovery of the --

25 **CHAIRMAN CARTER:** On Issue 26.

1 **MR. BUTLER:** Issue 26, that's right.

2 **CHAIRMAN CARTER:** Is that correct?

3 **MR. McWHIRTER:** I thought it did include nuclear. If
4 it does not include nuclear, I'm happy, but it is the amount to
5 be included in the cost-recovery clause.

6 **CHAIRMAN CARTER:** Staff, can you help us with that,
7 please. Commissioner Argenziano, I appreciate your patience.
8 Staff is looking over this and we are trying to --

9 **COMMISSIONER ARGENZIANO:** I'm fine, Mr. Chairman.

10 **MR. BUTLER:** Mr. Chairman, while staff is conferring
11 with Progress, the other thing I would point out, Issue 27, the
12 jurisdictional separation factor that is applied there, I'm not
13 sure what Mr. McWhirter's position would be on this, but FPL --
14 there is actually two separate jurisdictional separation
15 factors. There is one that applies to the nuclear
16 cost-recovery amount, that's what is part of that determination
17 that was made in the Issue 12 I kept referring to from the
18 080009 docket. But then there is a separate jurisdictional
19 separation factor that applies to the non-nuclear cost-recovery
20 amounts. And Issue 27 is about that separate non-nuclear
21 jurisdictional separation factor. Again, I wonder whether
22 there is anything that needs to be held open about it, given
23 Mr. McWhirter's interest in questioning the timing of the
24 recovery for the nuclear cost-recovery amounts.

25 **CHAIRMAN CARTER:** Mr. McWhirter, did you hear that?

1 He said it is a non-nuclear jurisdictional separation factor on
2 that on 27. Did you hear that?

3 **MR. McWHIRTER:** If that is correct, then I don't have
4 a problem with 27.

5 **CHAIRMAN CARTER:** We will get staff to verify it. So
6 we are actually dealing, Commissioners, with Issue 26 and 27.
7 Or is it -- I lost my train. Is it 26 and 27, is that where we
8 are?

9 Commissioner Argenziano, staff is looking up
10 something right now. We are going to give them about two
11 minutes and then they will give us a recommendation.

12 **COMMISSIONER ARGENZIANO:** Great. Thank you, Mr.
13 Chair.

14 (Off the record.)

15 **CHAIRMAN CARTER:** We're back on the record.

16 Mr. Beasley, you're recognized.

17 **MR. BEASLEY:** Mr. Chairman, I just wanted to get a
18 little clarification on what it is about Issue 5, if we have to
19 submit briefs, that Tampa Electric will be expected to submit a
20 brief on. It's my understanding that Mr. McWhirter,
21 acknowledging the fact that the company reforecasted its
22 natural gas fuel costs on October 13th, based on NYMEX forward
23 prices on October 3, believes the company should have gone
24 further with the reforecasting than we did. And the issue that
25 he wants to address in Issue 5, recognizing that Issue 5 is the

1 whole case, but if it's restricted to that particular issue
2 then we are certainly better off knowing that now so that we
3 can scope our efforts in that regard in the short period of
4 time we have to work. And I just ask for Mr. McWhirter to
5 confirm if that is, in fact, the only aspect of Issue 5 he
6 wishes for us to address.

7 **CHAIRMAN CARTER:** Mr. McWhirter.

8 **MR. BURNETT:** As for us, sir.

9 **CHAIRMAN CARTER:** Mr. McWhirter.

10 **MR. McWHIRTER:** Well, I'm not sure I follow that, but
11 I will tell you what the situation is. We are dealing with
12 fuel costs, and we are dealing with the fact that in September
13 they filed a fuel cost based on forecasts that were made in
14 August. Between August and September, the prices went down in
15 October. They reduced the fuel cost as it related to the power
16 that they were producing out of their own generation, but they
17 didn't reduce the fuel costs on the power they were going to
18 purchase. And I would presume that with respect to purchased
19 power, you have got two components, a capacity component and a
20 fuel component, and that should go down as well as the
21 generated power.

22 And so what we have is a situation where there
23 appears to be a discord. My recollection and review of Florida
24 Progress when it made its adjustment it adjusted both purchased
25 power and its own fuel. So we have had some discussions here,

1 and they say that -- I just don't understand it, and that is
2 conceivable, because as brilliant as you might think I am, I do
3 make mistakes.

4 So what we have got is he wants clarification. That
5 was what my concern is. That is what I was going to address in
6 the brief that why isn't it that all fuel costs go down, and
7 that the evidence when we asked the questions, and I would have
8 to go back in the transcript and deal with that on the briefing
9 was that they just hadn't gotten around to it. That was what
10 Mr. Aldazabal said. That is my recollection of what he said
11 when he testified. So based on that hypothesis, that's the
12 clarification I can give.

13 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

14 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

15 And I just need to clarify something that Mr.
16 McWhirter stated. Did I hear you correctly -- and, again, it
17 is very late in the day, and I fully understand and appreciate
18 your concern that, you know, if you are reforecasting your fuel
19 pricing for your own generating units, perhaps you should or
20 should not do the same for your purchased power requirements.
21 And I think that is the heart of the point that you are trying
22 to articulate. But I thought I just heard you say that
23 Progress did both of those. And so, therefore, why would we
24 need to brief Progress if they have --

25 **MR. McWHIRTER:** I'm not briefing Progress.

1 **COMMISSIONER SKOP:** That's not what was said
2 previously. So maybe we can get them out of the --

3 **MR. McWHIRTER:** On 5.

4 **COMMISSIONER SKOP:** Yes. So maybe we can clean them
5 out, too.

6 **MR. McWHIRTER:** What we had with Progress, they are
7 uniform in their reductions. But the problem is that between
8 the time they made their projection in early September for -- I
9 think it was September 28th for their revised filing, a lot of
10 different things happened in the fuel clause. Mr. Twomey asked
11 Mr. McCallister about what had happened in fuel prices, and we
12 saw that it had gone down from 9.95 to 7, and so the question
13 with that utility is maybe since we might not get a new
14 projection until later in the year, wouldn't it be prudent to
15 ask them to look at it again quicker.

16 **COMMISSIONER SKOP:** Okay. Well, just to cut to the
17 chase. I mean, certainly pursuant to what our legal staff
18 stated that you have indicated the ability to brief, I was just
19 merely trying -- because I thought I heard you say something
20 that wasn't an issue, but apparently there is an issue with
21 Progress. But, you know, part of my getting good advice --
22 and, again, I'm going to commend my aide who was the resident
23 fuel czar for the Commission, Mr. McNulty. But, you know,
24 equally cognizant of the fact that there is that plus or minus
25 10 percent there. So, again, if somebody has reforecasted and,

1 you know, kind of met that criteria that you have the concern
2 about the purchased generation not being reforecasted, but if a
3 utility like Mr. Burnett has taken both of those steps, then
4 that little incremental, how substantial is that within the
5 plus or minus 10 percent band? I mean, are we splitting hairs,
6 I guess, on that. And that's just posing the question to you.

7 **MR. MCWHIRTER:** Well, 5 is not restricted just to
8 TECO and Progress. All of the utilities had the same thing.
9 They made projections in September and between September and
10 the hearing date.

11 **COMMISSIONER SKOP:** Okay. Well, I guess what I'm
12 saying, I'm not going to go there. Again, you can choose what
13 to brief. We have already closed Gulf and FPUC, so the only
14 ones on the table are Progress, FPL, and TECO. I have been
15 requested by our legal staff if it was at all possible to try
16 and get your additional agreement. I know that we talked about
17 Tuesday, but if you could anyway possible commit to filing your
18 briefs by close of business, 5:00 o'clock on Monday, that would
19 immensely help all of us, our staff.

20 Again, because we are going to be forced to take your
21 brief, which I think you have a good mind, better than anyone
22 in this room, of what you want to say, and I know I have no
23 doubt you can articulately reduce it to paper. But, again, we
24 are the ones that have to digest that so we can give it due
25 consideration in terms of rendering our ultimate decision on

1 these remaining outstanding issues.

2 **MR. McWHIRTER:** Can we get that transcribed so I can
3 I put it on my wall?

4 **COMMISSIONER SKOP:** You don't want to quote me. You
5 know, I wish I had Commission Edgar's communication skills.

6 **MR. McWHIRTER:** Yes, sir. I will make a Herculean
7 effort to have it before the filing deadline on Monday.

8 **COMMISSIONER SKOP:** All right, thank you.

9 And one additional point that has been brought up,
10 and I hate to raise this, because, like you say, Tribbles.
11 But, if by virtue -- and this is a hypothetical, so hopefully
12 it won't happen. But if by chance the briefing on Progress and
13 FPL changes our decision in 5, I'm told by staff and also my
14 chief advisor who advised me appropriately, that 6 and 8 might
15 also be subject to change as fallout issues as a result of any
16 changes to Progress and FPL, and we would have to appropriately
17 reopen or reconsider. It's not a big deal, but I just wanted
18 to raise that point.

19 **MR. McWHIRTER:** Well, that's not unusual. A lot of
20 times when you have a rate case and you make a decision the
21 utility is requested to come back and file new factors. I
22 think that is just a fallout proposition that we don't have to
23 make a dispute and file briefs on those, because whatever
24 happens in 5 --

25 **COMMISSIONER SKOP:** We don't want any more briefs.

1 **MR. McWHIRTER:** Whatever happens in 5 guides what
2 they will file.

3 **CHAIRMAN CARTER:** Thank you. Commissioners, show it
4 done. Staff, govern yourselves accordingly.

5 Commissioners, I don't think we can do anything on
6 26, 27, 28, 29, and 30 from where I'm sitting, based upon what
7 staff said.

8 Is that right, staff?

9 **MS. BENNETT:** Actually, my understanding is that for
10 26 and 27 for Florida Power and Light they do not include the
11 nuclear cost-recovery number. And so, as Mr. McWhirter said,
12 if they don't include the nuclear costs then he is not
13 objecting and does not need to brief 26 and 27. I think you
14 can vote on those.

15 **MR. McWHIRTER:** I discussed that with Mr. Butler
16 during the interim just a minute ago. He gave me a document
17 that said the 621 does not include nuclear. So I have already
18 told you that I am not going to do anything on Gulf and TECO
19 and -- well, I guess, FPUC is not in there. But Mr. Burnett
20 tells me that the 748 number for Progress does include nuclear,
21 so I can exclude FPL and will address only Progress.

22 **CHAIRMAN CARTER:** This is 26 and 27?

23 **MS. BENNETT:** Issue 26 and 27 as they apply only to
24 FPL.

25 **MR. McWHIRTER:** Issue 27, I'm told there are two

1 different jurisdictional factors. Twenty-seven deals with the
2 jurisdictional factor for the capacity charges for the system
3 as it stands today, and so 27 is not a problem. And I
4 understand there's another jurisdictional separation factor for
5 the nuclear plant, and I just learned that.

6 **CHAIRMAN CARTER:** All right. Commissioners, from
7 what we have heard and from staff -- staff, can you kind of set
8 this up for us on 26 and 27. I believe that's where we are,
9 right? We need a recommendation on 26 and 27.

10 **MR. LESTER:** Yes, sir. For Issues 26 and 27 for
11 Florida Power and Light Company, staff recommends that the
12 Commission approve the positions that FPL stated in the
13 prehearing order.

14 **CHAIRMAN CARTER:** Commissioner Edgar, you're
15 recognized.

16 **COMMISSIONER EDGAR:** Mr. Chairman, I would make a
17 motion at this time on Issues 26 and 27 for FPL only to adopt
18 the staff recommendation.

19 **COMMISSIONER SKOP:** Second.

20 **CHAIRMAN CARTER:** It has been moved and properly
21 seconded. Any question? Any debate? Any concern? Any
22 discussion?

23 Hearing none. All of those in favor, let it be know
24 by the sign of aye.

25 (Simultaneous aye.)

1 **CHAIRMAN CARTER:** Those opposed, like sign. Show it
2 done.

3 And, staff, anything further?

4 **MS. BENNETT:** I think we are finished with all that
5 we can do.

6 **CHAIRMAN CARTER:** Oh, I forgot to tell you guys about
7 the doors locked at 6:00. I had one of my over-50 moments.
8 They do, and I think that they finally should the air
9 conditioning off on us, too. I think that back in the day they
10 used to flash the lights on and off when it was time to go.

11 So let's do this, Commissioners. I think we have had
12 a great week. We have done all that we can do. Are there any
13 preliminary matters, staff, that we need to take care of before
14 we recess until Wednesday at 9:30 a.m.?

15 **COMMISSIONER EDGAR:** Mr. Chairman, just so I am
16 clear, if staff could maybe tell us what it is that is going to
17 be coming to us and when. We have talked about Tuesday, we
18 have talked about close of business Monday. Just so I am
19 clear, and I know what to look for. And then also, Mr.
20 Chairman, is it that we will be back in this room Wednesday at
21 9:30 to hear from witnesses?

22 **CHAIRMAN CARTER:** That is correct.

23 **MS. BENNETT:** My understanding is that we will be
24 getting a brief from Progress, FPL, TECO, and FIPUG on Issues
25 5, 28, 29A, and 30A. We will also be getting a brief from

1 Progress and FIPUG on 26 and 27. And I don't know that we have
2 set a specific order on when those briefs are due.

3 **CHAIRMAN CARTER:** Commissioner McMurrian.

4 **COMMISSIONER McMURRIAN:** I agree with Commissioner
5 Skop's earlier statement about Monday at 5:00.

6 **CHAIRMAN CARTER:** Monday at 5:00, that's what I
7 thought.

8 **MR. BEASLEY:** Excuse me, Mr. Chairman. I believe
9 Tampa Electric is only with respect to Issue 5 on the limited
10 scope that Mr. McWhirter addressed.

11 **MS. BENNETT:** You are correct.

12 **CHAIRMAN CARTER:** Now, I know everybody is ready to
13 go, and me, too. Did we cover 28? Did we say anything about
14 28?

15 **MR. TWOMEY:** Mr. Chair, just very briefly. AARP
16 would like to reserve the right to join FIPUG.

17 **CHAIRMAN CARTER:** Of course.

18 **MR. TWOMEY:** We may or may not.

19 **CHAIRMAN CARTER:** You said that during the
20 presentation, for the record.

21 Commissioners, until Wednesday at 9:30 we are
22 recessed.

23 (The hearing adjourned at 6:15 p.m.)

24 (Transcript continues in sequence with Volume 9.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

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

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

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

DATED THIS 10th day of November, 2008.

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