BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of	:	**DOCKET NO. 991462-EG**
PETITION FOR DETERMINATION OF NEED FOR AN ELECTRICAL POWER PLANT IN OKEECHOBEE COUNTY BY OKEECHOBEE GENERATING COMPANY, L.L.C.	:	

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PROCEEDINGS:	ORAL ARGUMENT
BEFORE:	COMMISSIONER E. LEON JACOBS, JR. Prehearing Officer
DATE:	Wednesday, March 15, 2000
TIME:	Commenced at 9:30 a.m. Concluded at 10:20 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR FPSC Division of Records & Reporting Chief, Bureau of Reporting

APPEARANCES:

GARY SASSO, Carlton and Fields, One Progress Plaza, St. Petersburg, Florida 33701, and JAMES A. McGEE, Post Office Box 14042, St. Petersburg, Florida 33733-4042, appearing on behalf of Florida Power Corporation.

MATTHEW M. CHILDS and CHARLES A. GUYTON, Steel, Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301, appearing on behalf of Florida Power & Light Company.

ROBERT SCHEFFEL WRIGHT, Landers & Parsons, 310 West College Avenue, Tallahassee, Florida 32301, and JON MOYLE, Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan, P.A., 210 South Monroe Street, Tallahassee, Florida 32301, appearing on behalf of Okeechobee Generating Company, L.L.C.

WILLIAM COCHRAN KEATING, FPSC Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

P R O C E E D I N G S

COMMISSIONER JACOBS: Okay. Let's go on the record.

Counsel, read the notice.

MR. KEATING: Pursuant to notice issued March 14th, 2000, this time and place have been set for an oral argument in Docket Number 991462-EU, petition for determination of need for an electrical power plant in Okeechobee County by Okeechobee Generating Company, L.L.C.

COMMISSIONER JACOBS: Take appearances.

MR. WRIGHT: Robert Scheffel Wright, law firm of Landers and Parsons, 310 West College Avenue, Tallahassee, Florida, 32301, appearing on behalf of the Petitioner, Okeechobee Generating Company.

MR. MOYLE: John Moyle, Jr., Moyle, Flanigan law firm, also on behalf of the Petitioner, OGC.

MR. SASSO: Gary Sasso and James McGee, St. Petersburg, Florida, appearing for Florida Power Corporation.

MR. LONG: Harry W. Long, appearing on behalf of Tampa Electric Company, P.O. Box 111, Tampa, Florida, 33601.

MR. GUYTON: Charles A. Guyton and Matthew M. Childs, the law firm of Steel, Hector and Davis, Suite 601, 215 South Monroe Street, Tallahassee, Florida, 32301,

appearing on behalf of Florida Power & Light Company.

MR. KEATING: Cochran Keating appearing on behalf of Commission staff.

COMMISSIONER JACOBS: Okay. This is what I would like to do. I would like to keep it fairly brief. I don't want to go all day. Actually all morning, even. I will ask the parties, is 15 minutes per side sufficient?

MR. WRIGHT: I believe it is sufficient for me, Commissioner Jacobs.

COMMISSIONER JACOBS: Okay. We will go with that. However you guys want to parcel it out will be fine.

Mr. Wright.

MR. WRIGHT: Commissioner Jacobs, with your permission and approval, I would propose that we would proceed with our direct argument on our motion for continuance. And I don't think that is going to take anything like 15 minutes. Then let the other side have their say. And then if I might have some time for rebuttal, assuming it is within my 15 minutes.

COMMISSIONER JACOBS: Okay.

MR. WRIGHT: Commissioner Jacobs, we are here on Okeechobee Generating Company's motion for continuance of the hearing in this case. In summary, our modeling experts discovered and FPL's experts discovered some

errors and discrepancies in the inputs to the model runs that underlie the cost-effectiveness evaluations presented by Doctor Nesbitt. At least one of these errors, the inadvertent omission of the Okeechobee Project from the analyses, is serious. And in their totality these errors have caused us to move for the requested continuance so that we may prepare a better factual case for the Commission to consider in rendering its decision on the requested determination for need.

The standard for granting a continuance is that it is within the sound discretion of the presiding officer. We have alleged prejudice resulting if we are not granted the continuance at Page 6 of our petition, and we have explained why we believe that the requested continuance is in the Commission's best interest. And, frankly, we believe in the best interest of the parties in endeavoring to try this case on the merits of the proposed power plant. The Commission should make its decision on whether to grant the requested determination of need on the basis of the best data available.

We have acknowledged flaws in the input data to the cost-effectiveness analyses of our case as filed, and these errors would at least cause changes in the actual output values of the modeling analyses that were done. Accordingly, we have proposed a solution that will enable

the case to go forward without recreating and relitigating everything that has already been litigated.

We have indicated that we would seek -- that we would amend our petition as required and indicated by changes in the input numbers, but no more than that. We have put forth an extensive case on the project. We have provided engineering descriptions of the project, an overview of the project management and structure, transmission impacts of the project, fuel supply for the project, and evidence in addition to the cost-effectiveness analysis showing how the project, we believe, is needed, taking into account the need for system reliability and integrity and how we believe the project is needed taking into account the need for adequate electricity at a reasonable cost.

It is our prima facie case on cost-effectiveness that is flawed, and those flaws extend only to inadvertent errors in the input data, not to errors in the models themselves. And accordingly it is only that part of our case that we are seeking to revise. Otherwise, the rest of the case would go forward.

The requested continuance, if granted, will provide the Commission with a better basis upon which to determine whether the Okeechobee Generating Project is needed, while keeping the rest of the case upon which the

parties have expended substantial effort intact. The requested continuance will provide the intervenors with further and better opportunities to evaluate the models and the cost-effectiveness analyses.

Indeed, FPC's own witness, Doctor Sosa, says in his testimony that they have not had sufficient time to study the models. We think this will benefit all parties. It would give the Commission the best opportunity possible to evaluate and make a determination on the merits of the project itself. And we respectfully believe you should grant our motion. Thank you.

COMMISSIONER JACOBS: Aren't we anticipating more than just a continuance? Aren't there going to be some further amendments to the schedule in terms of refiling of testimonies and so forth?

MR. WRIGHT: Yes, sir. I suggested -- well, I tried to lay out without going into detail as to proposed dates because I thought that would be somewhat presumptuous without having a chance to consult the calendar.

We would propose, as indicated in our motion, to withdraw and file -- Doctor Nesbitt's testimony and file revised testimony and analyses. To expedite the process of discovery, following on that we would propose that within one week following the submission of the revised

testimony we would submit all supporting data and analyses to that testimony. And also that we would treat all interrogatories and production requests propounded by the intervenors and the staff with respect to the subject matter of the revised testimony as having been duly already asked so that we wouldn't have to go through another round of them propounding discovery, interrogatories and production requests and going through responding to those.

We will take as given that they have -- or we are offering to take as given that they have been asked with respect to the revised testimony in the same way that they were asked with respect to the initial testimony, and to submit those within one week following the submission of the testimony. There would have to be new dates -- I certainly think there would have to be new dates for responsive testimony by the intervenors to the revised testimony. And we think we should have some reasonable opportunity, like a couple of weeks thereafter, to file rebuttal testimony to that responsive testimony.

Just for talking purposes, we think we can be refiled within approximately a month. Giving the intervenors three weeks for their responsive testimony and us two weeks for rebuttal testimony thereafter, we think we should be ready to tee this up for hearing sometime

around the middle of June. But, again, that is subject to being worked out.

And I will mention now that since FPL raised it in their response we certainly have no objection to including the intervenors in the negotiations of the rescheduling for this case.

COMMISSIONER JACOBS: Very well.

Mr. Moyle.

MR. MOYLE: I will save on rebuttal.

COMMISSIONER JACOBS: Who should go first? Mr. Sasso.

MR. GUYTON: I believe I will, Commissioner.

COMMISSIONER JACOBS: Okay.

MR. GUYTON: Commissioner, before we get into the particulars of the motion, I want to take a minute to thank you. I want to thank you for the opportunity to be heard this morning. It is a critically important issue to us. And we know it was not a matter of convenience for you to schedule this hearing. We appreciate the opportunity to be heard and we appreciate the opportunity to be heard so promptly.

Before I address the specifics of the request for the continuance and the other significant relief that is being characterized within the umbrella of a continuance, I would like to push back for a minute and

talk about why we are here today. And I won't take you through the full development of the facts, but I do want to take you through what I think are the crucial developments of the facts.

We are here today because OGC failed to analyze its own unit in its submission to the Commission. The heart, the core of the petition and the testimony are Doctor Nesbitt's modeling runs of OGC. They are used by the Petitioner to show not just that the unit is cost-effective, but also that the unit -- supposedly that there is an economic need for the unit. It goes to the heart and core of their case. The only quantification of benefits proffered by OGC is that associated with Doctor Nesbitt's purported analysis of the OGC units. And I want to briefly review what they have proffered.

Ostensibly, Doctor Nesbitt performed two runs. One with the OGC unit and one without the OGC unit. And he quantified the difference of cost/price and he calculated a wholesale price suppression effect associated with the OGC unit based on those two runs. And he said that that was $111 million a year and $745 million over ten years. That is the core of their case. It is the core of the petition, it is the core of Doctor Nesbitt's testimony.

Now, what we have here today is that FPL's

witnesses in their prefiled testimony have exposed the fact that that analysis wasn't right. That those numbers simply are a sham. We have a deposition that was concluded last weekend in which Mr. Blaha, Doctor Nesbitt's partner, has admitted that the OGC unit was not included in any of the modeling runs that were performed that underlie this case and Doctor Nesbitt's testimony. And now you have before you an admission in OGC's motion that they have failed to analyze their own unit.

What you have is you have a fundamental failure of proof. They have failed to present to the Commission a prima facie case as counsel for OGC has acknowledged this morning. But it is more extensive than just cost-effectiveness. They also fail to make a prima facie case as to economic need, as well.

Consequently, what we think we ought to be discussing here is really not whether you ought to continue this case and give them the myriad other relief that they have asked. What really ought to be the subject of the focus here is whether you, on your own initiative on behalf of the Commission, should summarily deny this petition for failure to establish a prima facie case. That is what the focus ought to be as a result of the admission that has been made by OGC. They have failed to prove a critical element of their case as they now admit

before you here this morning.

Now, they have asked for, as I pointed out earlier, far more than a continuance. And I would like to take you through the individual requests for relief that they have made and address each of those, or at least the significant ones. First they ask, they would like to withdraw their testimony, or Doctor Nesbitt's testimony. And by doing that what happens? They deny the intervenors an opportunity to cross-examine that testimony and point out the myriad faults both with the underlying analysis and the testimony itself.

They want to have the benefit of all the criticisms that all the intervenor testimonies have made, and they are considerable, of Doctor Nesbitt's testimony. And then they want to go back and they want to revise Doctor Nesbitt's testimony having had the benefit of all of those criticisms and errors that have been pointed out. They want to correct all the numerous errors and have the benefit of that by withdrawing the testimony and resubstituting new testimony.

Now they have had six months to put their case together. Well, they had countless months. We have had six months to take a look at their case. Quite frankly, we have had about two weeks given that we had access to the models beginning on the 28th of February. Why should

they have the benefit of all the errors that have been pointed out? Why should they have the benefit of learning from their deposition? Why should they have the benefit of correcting and changing the fundamental basis of the case and create a moving target that the intervenors are going to have to hit? Why? Because they weren't diligent? Because they didn't address a fundamental due diligence in filing their case? They didn't discover facts that they should have discovered if they had been reasonably diligent in reviewing the model runs in the first place? We don't think so. We think the idea of withdrawing the testimony and substituting new testimony is fundamentally unfair.

But it is worse than that. They want to use entirely new models. Now, we have labored mightily for the better part of six months to get access to the models that Doctor Nesbitt used. We finally got access on the 28th of February. We had to sign onerous agreements with them that were, quite frankly, not consistent with the order of access that you ordered earlier, but we simply had to do it to get access to the model.

They want to change that model. They are not going to use any of the models that they used in this case, they are going to use entirely new models. So all of that effort is going to be wasted.

COMMISSIONER JACOBS: Is it that they are going to use a totally new model or a different underlying platform, I wasn't clear on that.

MR. GUYTON: I want to make sure that I don't misstate this. They are going to use totally new versions of the same models. They are going to use version -- not 3.0 of Market Point, they are going to use Version 7.0. Something that didn't exist apparently three weeks ago, but exists now today. They are going to use a new version of the Altos North American Reliability Model.

We haven't been trained on those. We haven't had access to them. But we spent tens of hundreds of thousands of dollars trying to get to the point where we could understand and critique them, and they are going to change the basis of the analysis overnight.

Finally, they asked for the unilateral opportunity to work with you and staff. And I am pleased to here today that they are not looking for the unilateral opportunity to reschedule, that they will actually include us in that exercise.

These requests should be denied, Commissioner. We are on the eve of trial. We have spent tens of thousands of dollars, if not hundreds of thousands of dollars to get to where we are to expose the case for the sham that it is. The problems are extensive. The

problems are fundamental. And the problems were discoverable by OGC if they had exercised reasonable diligence.

Now we have pointed out the problems, and they want to do it over. They just want to redo and correct all of their mistakes. They want this exercise to be one big trial balloon. We shot the first one down, so they want to launch another one now.

They want to change the facts. They want to change the means of analysis. And they want to make all of our effort or most of our effort up-to-date wasted because they want to change not only the facts in the analysis, but also the means by which they are doing it. So we are going to have to reinvest, understand a new model, understand a new analysis, and they want to put us back on a time schedule that allows us a whole three weeks from the time they file their testimony to actually understand, supposedly train on the model, and come to some new understanding of whatever new analysis it is that they are proposing.

Commissioner, I can state it simply. It is simply not fair. They propose a moving target. They shouldn't be allowed to do so. This motion should be denied. The Commission should be considering whether they should summarily deny the existing petition for failure of

a prima facie case that they have acknowledged this morning. And at a minimum the continuance request should be denied. And if you are not going to summarily deny the petition, we ought to go to trial next week on the case that all of us have been working at least six months to prepare.

Thank you.

MR. SASSO: Good morning, Commissioner Jacobs. We would join in Mr. Guyton's remarks and add only this. Mr. Wright has indicated that you have the discretion to grant a continuance. This is committed to your sound discretion. It is equally committed to your sound discretion to deny a request for a continuance. In fact, the case they rely on, the Edwards case, is a case where the court did just that.

On the eve of the hearing, the trial judge, whose name ironically enough was Judge Nesbitt, denied a request for a continuance. And as a result the parties went to trial and the moving party lost.

This is not a case where the petitioner has submitted a well-supported petition, where the petitioner has established a prima facie case on all the elements of the case, and where the parties simply need more time to complete discovery to deal with depositions or document review or the like. This is a case where discovery has

disclosed that the petitioner's case is fatally defective.

Mr. Wright expresses an interest in trying this case on the merits. This case will be tried on its merits. And what will be seen by the Commission, if the case is tried as scheduled next week, is that the petitioner's case has no merit.

We respectfully submit that the petitioner has not made a case for a continuance. To the contrary, the discovery record to date demonstrates that a case has been made for summary disposition, denial of the petition on the merits.

Thank you.

COMMISSIONER JACOBS: Mr. Wright.

MR. WRIGHT: Mr. Long, didn't want to say anything?

COMMISSIONER JACOBS: I'm sorry. Mr. Long, forgive me.

MR. LONG: We filed a short objection to the motion yesterday, and generally agree with the comments made by Light and Corp.

COMMISSIONER JACOBS: Okay.

Mr. Wright.

MR. WRIGHT: Thank you, Commissioner Jacobs.

Just briefly. To be clear, and I think Mr. Guyton got it about right after you asked him about the

platform, we are not talking about entirely new models, although FPL's response in opposition to our motion says that in four or five places, if not more than that. We are talking about an updated version of the Altos North American Regional Electric Model that will now run in a much faster platform, MarketPoint, which is now up to Version 7.0 where it was running in Version 3.0 last summer.

As pointed out in our motion, the new software platform will run the model in ten to twenty minutes per run where the old version took 8 to 16 hours and sometimes more depending on the degree of convergence wanted by the analysis to get there.

The analogy would be something like upgrading Word Perfect 6.0 to Word Perfect 7.0 as being the improvement in the North American Regional Electric Model running in Windows 3.1 or something that came before that as a platform and then upgrading to Windows '98 or Windows 2000 as an operating platform.

FPL and FPC have received training with respect to these models. They did receive at least some training with respect to MarketPoint 6.0 in the training session. And, frankly, we are not talking about doing this overnight. We are talking about doing this over a reasonable period of time which we suggest to you is

something like three months plus or minus from today depending on availability and what we can all work out.

We don't agree with the opponents' contentions that we have not put on a prima facie case. There are flaws in the cost-effectiveness demonstration of our case. We believe we have put on substantial evidence, competent substantial evidence that would support the Commission's determination of need taking into account the need for system reliability and integrity. We have shown what the improvements in reserve margins would be. And we have put on competent substantial testimonial evidence as to how and why the project is needed and will be cost-effective to the ratepayers of Florida through the testimony of other witnesses in addition to the testimony of Doctor Nesbitt.

One brief point. The Edwards case, and I thank Mr. Sasso for pointing out the irony of the judge's name in that case. We cited the Edwards case. And he is absolutely right, in the Edwards case a motion for continuance was denied. We cited it for the proposition that it is in your sound discretion to grant a motion for continuance. We could have cited a raft of district court of appeals cases for the proposition that it was within the judge's or the presiding officer's sound discretion to grant a motion for continuance. But we thought that since

we had a Supreme Court case that stands for the basic proposition of law that it is within your sound discretion, that we should cite that.

Mr. Sasso, before -- I want to say one thing about the diligence with which OGC and the experts and perhaps myself pursued this case. We made some mistakes here, and there is no question about it. The misclassification of some of these units and the omission of the Okeechobee project from the runs was a serious error, and we are not attempting to paint it as anything else.

We relied on our experts. I spoke with them. I confirmed with them that they had verified it to the federal data base sources that they were using. I furnished them a copy of the FRCC's Regional Supply Plan, and I thought that they had got it right.

Frankly, I probably bear some responsibility for not going in and fly-specking the data bases myself. But I relied on my experts. And I don't think that my omission and even the experts' omission should be visited as penance for sin on my client.

Mr. Sasso said this case is ready to be tried on its merits. That is partly true and significantly not true. The case could be tried on its merits based on all the paper that has been generated to date in this docket.

The case, unfortunately, because of our errors is not ready to be tried on the merits of the Okeechobee generating project itself.

We have asked for a continuance to enable us to give you the record with full opportunity for discovery, responsive testimony, and so on by the other side upon which to make that decision on the merits of the Okeechobee Generating Project.

Thank you.

COMMISSIONER JACOBS: Very well. At first blush it is pretty clear that the relief requested is a bit broader than just a deferral of the present dates. They are a more substantial modifications to the schedule than that would anticipate. In light of that, and in light of some of the issues that were brought up -- first of all, let me go to the issue that you raised, Mr. Guyton, as to whether or not I would, on my own motion, consider summarily denying. I think that would be probably unwise. And I'm not sure if we are at the proper stage of this proceeding. Normally that would amount to sort of a summary judgment. And normally at least the parties would have an opportunity to put on their case in that event. So I'm not going to grant that. I don't think that was a formal motion. If it was, I will just say that on the record. And I say that, that does not preclude -- and I

think if the procedures allow that, I'm not saying that you are prohibited from at the proper time. If you want to raise that, then that is up to you.

On the other hand, my belief is that today is of particularly short notice to the hearing. What I would like to do is to defer ruling -- is to defer a final ruling on this and have this be argued, i.e., the continuance, and the withdrawal of the testimony, and refiling and whatever remedies that the intervenors might need to respond to this revised schedule. I think that ought to be heard before the full panel before the hearing and a decision made there.

So I'm going to defer that final ruling until the first day of the hearing and then take that up as a preliminary matter. Is that proper, Counsel?

MR. KEATING: I would just point out that that puts -- I guess puts us all in a position where we -- particularly the parties in preparation for hearing, where they are going to have all of their witnesses here and do a lot in preparation for hearing in the next few days and may not -- it would seem to be all for nought.

COMMISSIONER JACOBS: I'm prepared to then -- I can do -- we can do this. Do we have any other dates in mind?

MR. KEATING: We are still looking at the

calendar. We don't have any lined up at this time.

COMMISSIONER JACOBS: Let's go off the record for a moment.

(Off the record.)

COMMISSIONER JACOBS: Here is what we will do. We will grant a continuance for one day, and have oral argument on this before the Commission on Monday. And then if the decision is made to grant the continuance, then we will continue with trial on Tuesday. Okay.

MR. GUYTON: Commissioner, I'm sorry, I didn't understand that. If the decision is made to grant the continuance we will continue the trial?

COMMISSIONER JACOBS: We would hear -- the panel or is it the full Commission? The Commission would hear the arguments as to continuance on Monday morning and then whatever -- if the decision is made then to grant -- I'm sorry, you're right, I was wrong.

If the decision is made to deny the continuance then we will proceed on Tuesday. Is that clear?

MR. MOYLE: So I'm clear, we would not be bringing our witnesses in for testimony on Monday?

COMMISSIONER JACOBS: That is the intent is they should be prepared -- we would hope to get you a decision as early as possible on Monday morning so that you can -- and let me say this. If that presents a particular

problem then we could -- I'm sure there will be some flexibility in terms of time for your witnesses to fly in on Tuesday morning. And we can agree with staff on that right now.

But what I would like to do is grant you the flexibility of not having to have your witnesses here on Monday, and that is what we are attempting to do. And then if the decision is made to deny the motion for continuance, then you would have the flexibility on Monday to make arrangements to have your witnesses here.

If that is not workable, then let's be clear on that now and we will figure out where we go from there.

MR. MOYLE: I think it would be probably hard to get -- if you decide to force us to trial on that, it would be hard to do it in two days. I think it is probably a three-day case.

COMMISSIONER JACOBS: We can work with the third day as we get there. That's not a real concern. My concern is is it workable for you to give your parties notice enough on Monday in order to get them here on Tuesday?

MR. GUYTON: Commissioner, I don't know -- from Florida Power & Light Company's perspective, I have to check with my consultants. What this does create is kind of a dual track. We have to prepare for argument and we

have to prepare for trial at the same time. We are kind of running out of time. And with all due respect, we really need a ruling.

COMMISSIONER JACOBS: I understand.

MR. SASSO: We have a witness coming in from California. He would probably have to be on the plane Monday.

COMMISSIONER JACOBS: Can we put him in the schedule for Tuesday?

MR. SASSO: It would take all day to travel out here.

COMMISSIONER JACOBS: I'm sorry for --

MR. SASSO: We are going to have a hardship in terms of having witnesses present and we will also have to prepare as though we are going to trial. So we won't be relieved of that obligation.

COMMISSIONER JACOBS: Okay.

MR. MOYLE: We also have witnesses from California.

COMMISSIONER JACOBS: Okay. Off the record for a moment.

(Off the record.)

COMMISSIONER JACOBS: Well, I don't want to belabor this too long. First of all, as I thought through this it occurs to me that there are some obvious remedies

that are self-evident. First of all, any party can get on the stand and revise their testimony. Not beyond the scope of the existing testimony, but they can revise that. So either party has the opportunity to do that.

What I'm hearing here, however, is that the issues that need to be revised are so fundamental that it may necessitate a fundamental realignment of the whole testimony.

That being the case, it would appear to me that we would not -- it is such an important issue as to whether or not we continue that I don't want to dilly over that one way or the other. I want to have parties clear about exactly what we are proceeding on and exactly what the status of their testimony is. So that is why I view it to be an important issue that the full Commission should address.

That being the case, I'm prepared to at this point, since what I'm hearing the parties say is that a one-day notice is not sufficient, I'm prepared to -- I want to have the oral argument on Monday morning. If it is not adequate notice to have parties here on Tuesday, then we need to begin to look at alternative dates for the hearing in the event that the motion for continuance is denied.

Of course, if it is granted -- I'm sorry, if it

is granted. But if it is denied, in my opinion we ought to go ahead and begin trial on the afternoon of Tuesday, the 21st. For the witnesses coming from California, it would be my recommendation that we seek to modify the testimony schedule to have them testify on Wednesday, the 22nd. So that would give them adequate travel time.

We would have to look for probably another day, day and a half somewhere later in the schedule. That is probably a better prospect than trying to find three whole days at the moment. And as prehearing officer, I would like to proceed under that scenario for the moment.

MR. MOYLE: And I guess just so we are all on the same page with respect to that, I mean, if this were as simple as correcting our project manager's testimony, if he had said the project is located on State Road 24, and he transposed those numbers and it is really State Road 42, he could take the stand and do that in a matter of seconds. I think you made that point.

I guess based on your comments where witnesses are free to correct testimony, we will direct Mr. Nesbitt to go back and do his runs over the weekend in anticipation of him possibly going on the stand Wednesday afternoon.

COMMISSIONER JACOBS: You could. But I think we have to be practical. Obviously that is going to raise

concerns by the intervenors, that we are going to have to entertain those concerns and probably their objections. What -- my goal here is to proceed in as orderly a fashion as possible. That is exactly what I'm looking to avoid. I don't want to get here and we have testimony that is going to be objected to, and we have to have a wholesale deliberation on what parts of testimony need to be and can't be responded to. What I want to do is come away after Monday with some clear idea of what schedule we are proceeding on and how we are going to do that.

You know, there is all the remedies that the parties have outside of what we do. But that is my objective here is that we proceed in as clear and as orderly a fashion as possible, given the circumstances.

Mr. Wright.

MR. WRIGHT: Commissioner, it is exactly the point that you just made, that if we were to have Doctor Nesbitt run new runs, assuming that that can be accomplished in the time from -- we discovered these errors between last Thursday and last Saturday, over that period. If we had thought it was possible to revise everything and make sure that it was correct and the best basis for you all to make your decision, we would have forged ahead with that plan.

Even if that were possible, what you said is

exactly right, that would create significant problems for the other side. And that is, frankly, why we moved for this continuance.

COMMISSIONER JACOBS: Okay. So that is about as clear as it gets.

Mr. Guyton, you had a question?

MR. GUYTON: Well, I --

COMMISSIONER JACOBS: I understand it doesn't get to where you want to go.

MR. GUYTON: I guess I wanted to ask if we could explore another option, and that is whether we may be able to convene the Commission before Monday morning to address this issue.

COMMISSIONER JACOBS: I'm not aware of the Commission's schedule, and that is probably going to be too -- I know for sure that Friday is out of the question for me. Well, we could modify it, but not having any idea what the other Commissioners --

MR. ELIAS: Commissioner, I think that is ill-advised. We have got a collegial body subject to meeting in the sunshine being asked to make a decision that could be -- the outcome, you know, could effectively conclude the case in a proceeding that would not be properly noticed.

I realize that waiting until Monday does create

some problems, but proceeding with a public meeting that hasn't been noticed on an issue that addresses, you know, the outcome of the case is treading on extremely tenuous ground.

We have noticed the hearing for Monday, and it is appropriate to take up this issue at that time. But doing so by the full Commission before then could jeopardize the finality of that decision.

COMMISSIONER JACOBS: I'm persuaded that is probably a more reasonable request, to go along with that procedure. So that is my ruling. We will grant a continuance for one day, and that would be for March 20th. But the parties, we will hold -- the continuance of the hearing, we will hold arguments as to the motion for continuance on the 20th, and with the pending dates of the Tuesday -- I'm thinking 1:00 o'clock, the trial can begin at 1:00 o'clock.

MR. ELIAS: There may be some witnesses who will be available Tuesday morning.

COMMISSIONER JACOBS: I don't want to do that. I think we might as well just go ahead. We are going to probably need that time anyway just for folks to figure out where they want to go. So at 1:00 o'clock Tuesday. And then we will begin the search for dates now so that we will have those dates in mind Monday or Tuesday so parties

can be on notice of that.

Just looking down this calendar, I see a couple of dates. The 27th and 28th of April and the 8th and 9th of May appear to be two dates that we may be able to look at. Okay.

No other matters to come before us today? This hearing is adjourned.

(The oral argument concluded at 10:20 a.m.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting Official Commission Reporter, do hereby certify that the Oral Argument in Docket No. 991462-EU was heard by the Prehearing Officer at the time and place herein stated.

It is further certified that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 31 pages, constitutes a true transcription of my notes of said proceedings.

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

DATED this 16th DAY OF MARCH, 2000.

JANE FAUROT, RPR
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Chief, Bureau of Reporting
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