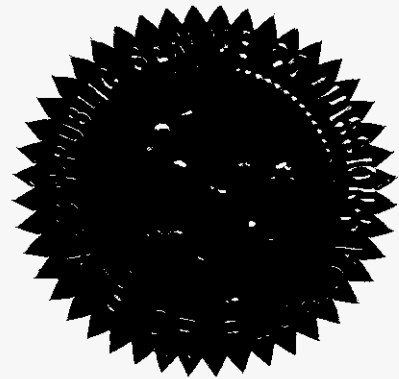


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090451-EM

JOINT PETITION TO DETERMINE
NEED FOR GAINESVILLE RENEWABLE
ENERGY CENTER IN ALACHUA COUNTY,
BY GAINESVILLE REGIONAL UTILITIES
AND GAINESVILLE RENEWABLE ENERGY
CENTER, LLC.



PROCEEDINGS: STATUS CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER NATHAN A. SKOP
PREHEARING OFFICER

DATE: Wednesday, March 3, 2010

TIME: Commenced at 1:30 p.m.
Concluded at 4:21 p.m.

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

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

SECURITY NUMBER DATE

01535 MAR 5 2

FPSC-COMMISSION CLERK

1 APPEARANCES:

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5 appearing on behalf of Gainesville Regional Utilities
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7 ROY C. YOUNG, ESQUIRE and SCHEF WRIGHT,
8 ESQUIRE, Young Law Firm, 225 South Adams Street, Suite
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10 Gainesville Regional Utilities and Gainesville Renewable
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12 ERIK L. SAYLER, ESQUIRE and MARTHA CARTER
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14 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
15 appearing on behalf of the Florida Public Service
16 Commission Staff.

17 PAULA HUESSY STAHRMER and DIAN R. DEEVEY,
18 Pro Se

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P R O C E E D I N G S

1
2 **COMMISSIONER SKOP:** Good afternoon. I'd like
3 to call this status conference to order; Commissioner
4 Nathan Skop presiding. If staff could please read the
5 notice.

6 **MR. SAYLER:** By notice issued February 23rd,
7 2010, this time and place was set for this status
8 conference in Docket Number 090451-EI, in re, joint
9 petition to determine need for GRU and GREC in Alachua
10 County. The purpose of the status conference is set
11 forth in the notice.

12 **COMMISSIONER SKOP:** Thank you. And if we
13 could take appearances, please.

14 **MR. WRIGHT:** Good afternoon, Commissioner.
15 Schef Wright and Raymond O. Manasco appearing on behalf
16 of GRU, and Schef Wright appearing on behalf of GRU and
17 the Gainesville Renewable Energy Center, LLC.

18 Mr. Manasco is the General Counsel for GRU.

19 **COMMISSIONER SKOP:** Thank you. And, ma'am.

20 **MS. DEEVEY:** My name is Dian Deevey. I've
21 filed a petition to be identified as an intervenor in
22 this case.

23 **COMMISSIONER SKOP:** All right. Thank you.

24 Ma'am.

25 **MS. STAHER:** My name is Paula Stahmer. I

1 have also filed a petition to be granted status as an
2 intervenor.

3 **COMMISSIONER SKOP:** All right. Thank you.
4 Staff.

5 **MR. SAYLER:** On behalf of Commission Staff,
6 Erik Sayler and Martha Brown.

7 **MS. HELTON:** Mary Anne Helton, advisor to the
8 Commission.

9 **COMMISSIONER SKOP:** Thank you.

10 I just want to begin with some opening
11 comments on how today's status conference is going to
12 proceed. Recognizing that the Commission just received
13 the two motions to intervene, and I think that we'll
14 have to take a look at those briefly, but certainly they
15 will get the due consideration they deserve. And I
16 appreciate you, Ms. Deevey and Ms. Stahmer, taking the
17 time to participate in the status conference this
18 afternoon.

19 Just to the parties, we find ourself in a very
20 unusual procedural posture here to the extent that we
21 are reopening the record for the purposes of taking
22 additional testimony. Given the disagreement between
23 the parties and staff as to the scope of additional
24 testimony that will be presented during the subsequent
25 hearing, I thought it appropriate to have a status

1 conference such that we could address those issues.

2 In the interest of due process, I wanted to
3 hear from all the parties before making any rulings
4 regarding reopening of the record and any additional
5 testimony that would be heard by the Commission. So
6 what I would like to do is briefly take five or ten
7 minutes on recess to consider the motions to intervene
8 and to talk to staff. But beforehand -- I see you, Mr.
9 Wright. Again, there are a second and third page,
10 actually the third page is what I'd like to talk to
11 staff about.

12 And, Ms. Deevey, you're recognized.

13 **MS. DEEVEY:** Yes. You mentioned a letter that
14 identified staff's recommendation as to the issues to be
15 considered. Can we see a copy of that letter? We have
16 never received any.

17 **COMMISSIONER SKOP:** No, what I stated is that
18 there appears to be some disagreement. The issues have
19 already been framed, testimony was taken, the hearing
20 was conducted, and we were in a decisional posture for
21 making a decision for final agency action in terms of
22 granting a need determination for the proposed biomass
23 plant. What had happened subsequent to that is that
24 leave was granted to reopen the record for the purpose
25 of taking additional testimony, and that would be

1 incorporated into the record, the record would be
2 closed, that would result in a staff recommendation, and
3 then the Commission would ultimately render its final
4 decision, and a final order would be issued by the
5 Commission subject to appellate review.

6 As you may or may not know, pursuant to
7 statute the Public Service Commission has exclusive
8 jurisdiction --

9 **MS. DEEVEY:** I understand that.

10 **COMMISSIONER SKOP:** -- for the determination
11 of need for plants, generating plants over 75 megawatts.
12 So that's why the Commission is actually involved in
13 this proceeding. It is unusual for the Commission to
14 reopen a record. Like I say, I have been here about
15 3-1/2 years, and I can't remember an instance in which
16 this has been done. But, again, we are trying to afford
17 everyone due process, as we will give the parties that
18 seek to intervene due process, also.

19 So I'm going to go to Mr. Wright, and then we
20 will probably take a brief break so I can confer with
21 staff, and then we will get back on track.

22 Mr. Wright, you're recognized.

23 **MR. WRIGHT:** Thank you, Commissioner Skop.

24 I just wanted to state that we have reviewed
25 both Ms. Deevey's and Ms. Stahmer's petitions to

1 intervene. We do not have any objection to the
2 Commission granting their petitions to intervene. I
3 know you want to talk with staff about the issues that
4 they have identified in their attachments, and we'll
5 just reserve conversation about that until later.

6 I have also got some comments about where we
7 are with respect to staff. I don't think there is the
8 level of disagreement that you might suspect, but we can
9 talk about that after the recess. Thank you.

10 **COMMISSIONER SKOP:** All right. Thank you.

11 All right. With that, if there is no further
12 comment, we'll take a ten-minute recess and reconvene at
13 that time. So, for the court reporter, we're
14 temporarily on recess.

15 (Brief recess.)

16 **COMMISSIONER SKOP:** Okay. At this point, we
17 are going to go back on the record and resume the status
18 conference. And where we left off is the Commission had
19 received two petitions to intervene from Ms. Stahmer and
20 Ms. Deevey, and I would ask Advisory Counsel, Ms.
21 Helton, to speak to the appropriateness of granting both
22 of those motions.

23 **MS. HELTON:** Thank you, Commissioner Skop.

24 As you stated previously, we are in a highly
25 irregular procedural posture at this moment in time. It

1 is very unusual for an agency, or the Commission to
2 reopen the record like the Commission decided to do when
3 it was deliberating on the record that currently exists
4 concerning the need determination filed by GRU and GREC.

5 As I understand the Commission's desire at
6 that agenda conference, it was to reopen the record for
7 the limited purpose of allowing the company, or GRU and
8 GREC, an opportunity to address those specific questions
9 that the Commissioners raised during the deliberation
10 process.

11 We have already had a proceeding, and
12 typically at this time we would not allow intervenors.
13 Under our Rule 25-22.039 it very clearly says that you
14 have to intervene five days before the proceeding and
15 you take the case as you find it. Well, we're not in --
16 as I said previously, and as Commissioner Skop has said,
17 we are not in a typical situation. I think because the
18 Commission has decided to reopen the record for a
19 limited purpose that intervention at this stage is
20 appropriate. So my recommendation to you, Commissioner
21 Skop, is to allow the intervention, but to allow it only
22 for the limited purpose of addressing the supplemental
23 testimony that will be filed by the applicant.

24 And I think that any responsive testimony that
25 is provided by the intervenors should respond only to

1 that supplemental testimony. Any cross-examination that
2 is allowed should apply only to that supplemental
3 testimony, and any briefings that are allowed under this
4 process should apply only to that supplemental
5 testimony.

6 **COMMISSIONER SKOP:** Thank you.

7 And just to Ms. Stahmer and Ms. Deevey, I also
8 agree with that. You know, certainly we are in an
9 unusual procedural posture. My ruling is going to be to
10 grant both motions to intervene, but the intervention
11 will be limited. As intervenors in this case, the case
12 in chief has already been put on, the testimony is
13 already in the record.

14 What that means is the intervenors have to
15 take the case as they find it. We can't go back and
16 relitigate all the issues. So you are essentially
17 coming into the case at a point where we're picking up
18 supplemental information, supplemental testimony, and
19 that's going to be the scope of the intervention.

20 So as Ms. Helton alluded to, your
21 intervention, or the granting of the intervention will
22 be limited to the purpose of rebutting supplemental
23 testimony, cross-examining the supplemental testimony,
24 and briefing the supplemental testimony that comes in.
25 So that's basically consistent with taking the case as

1 you find it at this point in the proceeding and being
2 able to intervene on anything that comes into evidence
3 from here until the record is closed.

4 So it's limited intervention. I think it's
5 consistent with the recommendation of staff, and that's
6 what will be forthcoming in the order that will be
7 issued. So at this point, you have been granted
8 limiting intervention, and that will be, again, duly
9 noted by an order, you know, reflecting that.

10 Because you are at this point intervenors and
11 it's convenient to have you, you will be able to
12 participate in the status conference today as
13 intervenors. And when we get into the issues,
14 certainly, that are listed on the last page of your
15 respective motions, you'll have the opportunity to speak
16 to why they're appropriate as well as speak to any other
17 comments made by any of the other parties.

18 Ms. Helton, does that pretty much address
19 everything that we need to get covered on that issue?

20 **MS. HELTON:** Yes, sir, I think it does.

21 **COMMISSIONER SKOP:** All right. So --

22 **MS. STAHER:** Thank you.

23 **COMMISSIONER SKOP:** Are there any questions.
24 Since you are both pro se litigants, so, again, we'll
25 try to accommodate any concerns and make the process

1 easy for you.

2 **MS. STAHER:** Thank you.

3 I take from your comments then, that any
4 comments we have with regard to how we view our
5 statement of issues and why it would be appropriate to
6 include them should be reserved until later in these
7 proceedings when you actually focus on the issues as
8 articulated.

9 **COMMISSIONER SKOP:** Yes, ma'am. The existing
10 issues have already been included within the Prehearing
11 Order that I issued.

12 **MS. STAHER:** Excuse me? Would you restate
13 that?

14 **COMMISSIONER SKOP:** Yes. The list of issues
15 as they were originally framed was included within the
16 Prehearing Order that I issued as the Prehearing
17 Officer. That's what --

18 **MS. STAHER:** Are you referring to the January
19 document, or October?

20 **COMMISSIONER SKOP:** Staff?

21 **MS. STAHER:** Or perhaps the January document
22 repeats the October items?

23 **MR. SAYLER:** Commissioner, yes, the original
24 Prehearing Order was issued approximately, I think,
25 December 2nd. And then the staff's recommendation, each

1 issue that it discusses were the issues that were
2 adjudicated and litigated in that proceeding.

3 **MS. STAHMER:** Okay. Thank you.

4 **COMMISSIONER SKOP:** All right. So what this
5 means is that when we get -- we have issues that are
6 already in play and we have taken testimony on those
7 issues. The purpose of the status conference today is
8 to discuss what additional issues, what additional
9 testimony will be taken, and as far as it pertains to
10 the intervention that is being granted, anything new
11 that comes in will -- the intervenors will be allowed to
12 rebut, to cross-examine, and to file briefs on the new
13 additional testimony or supplemental testimony that
14 comes into evidence.

15 **MS. STAHMER:** Just as a general comment,
16 without saying anything at length until these issues are
17 specifically addressed, it is the belief of both
18 Ms. Deevey and myself that while, perhaps, inartfully
19 expressed in our attachment, we believe all the issues
20 we have enumerated do, in fact, fall within the
21 parameters of the established issues, and we were trying
22 very hard not to add new ones or depart from the
23 direction the record was going in, but more to clarify
24 issues as they had been addressed or articulated in the
25 various documents and addressed by both the party and

1 the Commission itself.

2 **COMMISSIONER SKOP:** Yes, ma'am. And both of
3 you are doing a great job. So, again, just don't feel
4 intimidated. The Commission gives great latitude to
5 pro se litigants, and we're here to try and assist you
6 through the process, because you are equally a
7 stakeholder, as mentioned in the intervention.

8 **MS. STAHMER:** Thank you.

9 **COMMISSIONER SKOP:** At this point we are going
10 to move forward. I'd like to hear from the parties,
11 being GRU and GREC, regarding any comments they have
12 about the taking of supplemental testimony and their
13 expectations in terms of numbers of witnesses and the
14 length of testimony and the scope of the testimony. And
15 then, Ms. Deevey and Ms. Stahmer, I will come to you to
16 speak on your issues.

17 Mr. Wright, you're recognized.

18 **MR. WRIGHT:** Thank you, Commissioner Skop.

19 First off, I do want to make it clear that we
20 have never been in disagreement with the staff that the
21 issues to be addressed are essentially Issues 2 through
22 7 as identified in the Prehearing Order and previously
23 discussed. Issue 1, as you know, was stipulated; Issue
24 8 is the close-the-docket issue. We discussed that at
25 our informal Issue ID Status Conference with the staff

1 about 12 days ago, I think it was, maybe 13 days ago.
2 And we're in complete agreement, and our testimony will
3 be framed as discussed to address the specific concerns
4 and questions raised by the Commissioners and to some
5 degree by the staff during the discussion held on
6 February 9th.

7 I don't think there is any disagreement as to
8 that. I think that there may have been a perceived
9 disagreement relating to the conceivable scope of our
10 testimony when at the Issue ID Conference I told the
11 staff that we were thinking about filing supplemental
12 testimony of 10 to 12 witnesses. Honestly, that was our
13 initial assessment of what we thought would be
14 appropriate. For example, we definitely, per extensive
15 discussion had by the Commissioners on February 9th, we
16 feel we definitely have to address the sustainability of
17 the fuel supply for the project in light of other uses
18 in the North Florida area.

19 And our original thought was that we would
20 have three or possibly four witnesses address that. I'm
21 happy to tell you, and I did relate this to Mr. Sayler
22 earlier today, I'm happy to tell you that we got the
23 message when we talked with staff, both at the Issue ID
24 Conference and subsequently, and we have pared our
25 initial reactive list of witnesses down from 10 to 12 to

1 five.

2 Instead of having, for example, three or four
3 separate witnesses testifying about fuel supply and
4 availability, we will have one. We actually do expect,
5 just as a preliminary proffer, we do expect to have
6 LOIs, letters of intent, or memoranda of understanding
7 with a couple of large fuel suppliers to introduce into
8 evidence. We originally thought we would have witnesses
9 from the two entities with whom we will have those LOIs
10 or MOUs testify. Instead of that, we will furnish that
11 as exhibitory evidence to Doctor Richard Shroder's
12 (phonetic) testimony.

13 So we are down to five witnesses. I can't
14 tell you -- as I sit here this afternoon, you did
15 mention length of testimony -- I can't tell you how many
16 pages of testimony we are going to have. I will give
17 you my word of honor that we are not going to unduly
18 burden the record, and we are going to stick to
19 questions and concerns discussed by the Commissioners
20 and staff on February 9th.

21 I can tell you that the documentary evidence
22 that you will get, almost all of which staff already has
23 relating to the fuel supply issue consists of a number
24 of relatively thick studies that were referred to in the
25 discussion on February 9th in which staff have asked for

1 in discovery and which we furnished to them on Monday of
2 this week. I can't help it; the studies are what they
3 are. They are directly on point to the discussion and
4 questions raised specifically by Chairman Argenziano and
5 Commissioner Klement as to the sustainability of the
6 fuel supply.

7 So the exhibits will be what they will be.
8 The testimony will be no longer than it needs to be.
9 And as to the time of the hearing, as I'm sure you know,
10 we play by the rules, and with five witnesses, absent
11 cross-examination, my folks will be up and down in less
12 than 50 minutes. They will do five-minute summaries or
13 less, and it won't take me more than five minutes to
14 move their testimony into the record and move their
15 exhibits into the record. So anything else is going to
16 be -- anything else will be cross-examination.

17 **COMMISSIONER SKOP:** Okay. Any additional
18 comments?

19 **MR. WRIGHT:** That was really all I had to say
20 about the issues that we have discussed. If you want to
21 have further discussion, we're happy to respond to
22 questions. I think later in the status conference we
23 probably ought to talk about schedule some, but I don't
24 think we're there yet.

25 There is one other issue, and that is the

1 question of whether there is to be a public testimony
2 session, but I understand that is the Chairman's
3 decision. I would go on the record formally here as
4 saying we support having a public testimony. We have a
5 good open process, and we are happy for folks to come
6 tell us what they think.

7 **COMMISSIONER SKOP:** Thank you.

8 Just to the points you made, it just would
9 seem to me, as an observation, that prudent prosecution
10 of the case would require a limited number of witnesses
11 and the filing of supplemental testimony. I just wanted
12 to get staff's perspective, briefly, as it pertains to
13 the scope of reopening the record, and then I'll come to
14 Ms. Deevey and Ms. Stahmer when we get to the additional
15 issues.

16 So, Staff, you're recognized.

17 **MR. SAYLER:** Commissioner Skop, staff agrees
18 that any reopening of this record should be very
19 limited. And Staff has reviewed the Agenda Conference,
20 and while it seemed there was a lot of discussion on a
21 number of areas, I think the discussion or the scope of
22 this additional testimony can be boiled down to
23 essentially three areas, which is fuel sustainability
24 and the associated reports supporting that, the status
25 of current carbon regulation in addition to risk

1 mitigation by GRU with regard to this project, and how
2 GRU would best protect its ratepayers.

3 **COMMISSIONER SKOP:** Okay. So based on that,
4 staff's position is that we are not going to relitigate
5 the entire state?

6 **MR. SAYLER:** No, absolutely not. Staff does
7 not feel that there is a need to relitigate the case.
8 That would be akin to allowing a second bite at the
9 apple. However, there were certain areas of concern
10 that the Commissioners raised, and these three areas,
11 fuel sustainability, carbon regulation, and risk
12 mitigation were areas that we were expecting to see
13 additional testimony and exhibits.

14 And as far as the number of witnesses, I don't
15 know how many witnesses it would take to actually put on
16 that testimony. But in my personal opinion, I was
17 thinking two or three witnesses, but that is not -- I'm
18 not prosecuting this case, the utility is.

19 **COMMISSIONER SKOP:** Okay.

20 Mr. Wright, I guess from my perspective,
21 again, the purposes of reopening the record, as I
22 understood them, was to allow for the taking of
23 additional relevant testimony by GRU and GREC and now
24 the intervenors that may have not been previously
25 considered by the Commission. And just touching upon

1 the concerns expressed by Staff, it would seem that the
2 scope of the supplemental testimony would focus on the
3 areas of concern that were raised by the Commission,
4 particularly the sustainability of fuel supply, risk
5 mitigation, the status of pending carbon legislation and
6 updated studies. I mean, I think it might include that,
7 but not be limited to, so I don't want to, you know,
8 lock anyone in there. But, you know, Staff has
9 expressed the concern that we not relitigate the entire
10 case, and I'm inclined, wholeheartedly, to agree. So I
11 just wanted to seek a little bit more clarification from
12 you as to whether that's consistent with your
13 expectations or do you have anything to add?

14 **MR. WRIGHT:** Thank you, Commissioner.

15 It certainly is consistent with our
16 expectations that we are not going to relitigate the
17 case. I would mention that there were several other
18 areas of concern that involved specific questions by the
19 Commissioners, some of which staff have already asked
20 about in discovery post-February 9, and those include
21 cost-effectiveness particularly relating to the size and
22 the timing of the project. There was a specific
23 question about delay. There was another specific
24 question -- there was extensive discussion by the
25 Commissioners, in fact, about delaying the project, and

1 staff already asked about that in discovery. There was
2 also a specific question posed by Commissioner Klement
3 as to why not build 50 megawatts now and 50 megawatts
4 later that we would expect to address.

5 In addition to that, there was some question
6 that I believe is susceptible and appropriate for
7 testimony repeated several times by Commissioner Edgar
8 as to the Public Service Commission's role in this
9 particular need determination for this particular
10 project as proposed by a municipal utility. So I would
11 say those are within the scope, as well; but I
12 wholeheartedly agree that we are not attempting to
13 relitigate the case.

14 **COMMISSIONER SKOP:** Again, I think it is, you
15 know, prudent to, in reopening the record again, to
16 focus on those areas that were of concern with respect
17 to the additional things that you mentioned. Certainly
18 that's within the parties' discretion to present the
19 additional testimony as they feel necessary to support
20 their position.

21 Regarding updated studies, I do think that one
22 thing that was not mentioned, perhaps, was the fact that
23 the GRU studies themselves, there were questions that
24 arose from that in terms of the appropriateness of the
25 assumptions versus more realistic assumptions. Again, I

1 don't want to get into the substance of the matter, but
2 I know that the issue of updated studies came into play,
3 and, you know, I'll leave that to the parties.

4 **MR. WRIGHT:** Yes, sir, and those types of
5 things are on our list, as well. Thank you.

6 **COMMISSIONER SKOP:** Okay. All right. At this
7 point -- so if I understand it correctly, GRU and GREC
8 are comfortable with the existing issues and would not
9 be seeking to introduce any new issues into the
10 proceeding, is that correct?

11 **MR. WRIGHT:** Yes, sir.

12 **COMMISSIONER SKOP:** All right. At this point
13 we'll go to both Ms. Deevey and Ms. Stahmer. And if you
14 could just speak to the issues or factors that you feel
15 need to be considered as we move forward with reopening
16 of the record. And, again, in the interest of due
17 process, I'm trying to afford everyone great latitude
18 before I have to come down and make a decision.

19 And just prefacing that, when we get to that
20 point, whether the parties like it or not, there's
21 always the ability for reconsideration. Since we're on
22 an expedited time line here, however, when I make my
23 ruling, if there is disagreement, I would expect a
24 motion for reconsideration to be forthcoming at the next
25 agenda conference such that we could resolve that and

1 stay on track for the hearing dates.

2 But at this point I will turn it over to both
3 of you, and feel free to have one person speak or both
4 people, but whatever you'd like to explain, I'm happy to
5 listen to at this point.

6 **MS. STAHMER:** Thank you, Commissioner.

7 First, it's a little difficult to be certain
8 whether we need to be concerned or not, because as long
9 as we are speaking generally about the topics and the
10 scope of the issues, without seeing it in writing, but
11 sort of having to follow the bouncing ball, it's not
12 entirely clear whether this procedure is going to
13 exclude or include some of our issues. So understanding
14 that the Commission has the discretion to make these
15 decisions, I simply want to say that we may be reserving
16 the right to raise some questions at a later point.

17 It was our feeling, given the transcription of
18 the February 9th proceeding, particularly on Page 69,
19 where Mr. Kiser enters into the discussion and indicates
20 that the party or parties -- it's not clear exactly
21 whether they are regarded as one or two -- requested
22 that there be a continuance and a reopening of the
23 record. And it seemed from the discussion, both by
24 comments by Mr. Kiser and the discussion that followed
25 in light of comments made preceding this point in time

1 in the record, that the questions Commissioners had
2 seemed to cover the whole spectrum of all six issues
3 that had been identified and recognized by the PSC as
4 being important issues to address.

5 And so, again, without seeing it actually in
6 writing, and I assume you will be issuing an order or
7 someone will be issuing some statement as to what you
8 regard the issues to be, we do think the field is --
9 that the Commission voted to reopen the record on a
10 broad spectrum of issues as were addressed already in
11 the transcript, the proceedings of February 9th and
12 referring back, of course, to other issues. And so it
13 was our hope to be able to present more evidence and
14 some testimony, but mostly documents, I think, touching
15 upon those issues, because the Commissioners,
16 themselves, expressed a wish for more clarity and more
17 substance, particularly with regard to a lot of reports
18 that the party referred to but were not included in the
19 record.

20 **COMMISSIONER SKOP:** Yes, ma'am.

21 And, Ms. Deevey, did you have something to
22 add?

23 **MS. DEEVEY:** Yes. I just wanted to say that
24 when I read the sentence on Page 69 that said that the
25 parties have come to me and requested that you not vote

1 today, that you defer and allow there to be a subsequent
2 hearing whereby they can provide some additional
3 information on the record that they feel will address
4 many of the Commission's questions that have been raised
5 so far. And we felt, all right, as intervenors I think
6 we should be allowed to raise questions on issues that
7 have been addressed, and there are a wide number of
8 them.

9 Now, the Staff has said that they feel that
10 this can be greatly limited, but I think that the staff
11 is unaware of exactly why we want some of these things
12 to be reconsidered and the kind of evidence and
13 information that we feel should be brought to the
14 attention of Commissioners. I think, in particular, we
15 felt that in some cases the staff's analysis and the
16 answering of questions during the conference was
17 possibly -- they should have elaborated on some issues,
18 on some answers. That their answers were not exactly
19 misleading, but not fully explained the factors. And so
20 we felt that that was a major thing, because we felt the
21 guidance given to the Commissioners was not -- a little
22 limited, okay.

23 So those were the kinds of considerations.
24 And, indeed, we do have numbers and facts and records
25 and documents and so on to back up some of the things

1 that we are maintaining. Now, if we go over all of
2 these issues that we have listed, I can, you know, tell
3 you some of that. We cannot today give you a detailed
4 written careful discussion of all of the reasons we want
5 each of those issues, you know, reintroduced, the
6 arguments in favor of them. We could do that in a short
7 time and submit that, but we can speak in -- I can tell
8 you what kind of bothered me about Issue 1, what
9 bothered we about -- well, not Issue 1, Issue 2, Issue
10 4, Issue 5.

11 And, of course, these things that we call
12 de facto issues, they don't have to be listed as issues,
13 but we feel that a lot of the reasoning by the
14 Commissioners turned on some of these, or they were
15 important in the testimony and in the record now by the
16 parties. They have presented material, they have relied
17 on arguments, some of which were summarized by staff in
18 their analysis. And so we feel that they have raised
19 these -- they have made these claims, and there is
20 evidence bearing on them which no one has looked at,
21 they haven't brought forward, and soon on. So those are
22 the kind of motivations that I, myself, felt if that
23 helps you in understanding where we are coming from.

24 **COMMISSIONER SKOP:** Let me just stop both of
25 you there, and just try and -- and then I'm going to ask

1 staff a question, and then I will come back to you. I
2 think part of the difficulty here is typically, as Ms.
3 Helton has explained, intervention is granted prior to a
4 formal hearing. And at this --

5 **MS. DEEVEY:** I can explain why we didn't
6 intervene then. That's easily explained.

7 **COMMISSIONER SKOP:** You can add that. It
8 probably would be helpful. I'm not so sure that it will
9 change the outcome, but --

10 **MS. DEEVEY:** They filed originally in
11 September.

12 **COMMISSIONER SKOP:** Yes, ma'am.

13 **MS. DEEVEY:** I had followed the presentations
14 made by GRU in 2008, which were very important, and in
15 2009. And it didn't occur to me that they would put in
16 evidence some material that they had said they would not
17 put in evidence, that they would not use in 2008. For
18 example, they said that they would not consider the
19 wholesale sales demands and energy needs as something
20 that would be covered or required to be covered by the
21 new generator. That was explicitly ruled out. And then
22 they did it. And as I said, I think I said in
23 December 16th, they don't have firm demand for those,
24 and that makes a completely different picture from what
25 they have shown about the needs and the options that

1 they have, totally different. And I think that is a
2 very critical point, and staff did not follow it up.

3 **COMMISSIONER SKOP:** Okay. And any other
4 concerns on that part, and then I will go to Ms.
5 Stahmer, and then to Commission advisory staff.

6 Would you like to add to that?

7 **MS. STAHMER:** Yes. Perhaps it's just a matter
8 of clarification. When Mr. Wright was speaking he was
9 referring to discussions with staff, and the manner in
10 which he was making these remarks suggested that he had
11 discussions with staff regarding framing the issues
12 subsequent to the telephone conversation that set up
13 this hearing. And we think if such discussions took
14 place, that it should -- the public should have been
15 noticed and we should have been allowed to participate,
16 because it would seem that there was some narrowing of
17 the scope and meeting of the minds between staff and
18 Mr. Wright and his clients, but these are matters that
19 we were not privy to.

20 **COMMISSIONER SKOP:** Yes, ma'am.

21 **MS. STAHMER:** And we think, perhaps, it was
22 inappropriate to have reached certain conclusions at
23 that point in time, that it all should be on the table
24 now.

25 **COMMISSIONER SKOP:** Okay. We're going to get

1 to your issues in a second. What I'm trying to do is
2 get some housekeeping things in order to better
3 understand that, you know, the intervention here is, for
4 lack of a better word, late in the game. So, again, in
5 some regards you're going to have to take the case as
6 you find it.

7 The reason why the parties were able to talk
8 to staff at that point and you had not is that the
9 intervention petition just came to us today. Had you
10 intervened prior to that, and staff correct me if I'm
11 wrong, that I'm almost certain that you would have been
12 permitted to participate in that discussion because all
13 the parties have to be --

14 **MS. DEEVEY:** Of course.

15 **COMMISSIONER SKOP:** Is that correct, Staff?

16 **MR. SAYLER:** That is correct. I mean, we had
17 no intervenors in this petition. So when it came to
18 discussing certain procedural matters -- now as far as
19 the actual scope or substance of their testimony, we did
20 not really discuss that, and it became apparent that we
21 were far apart when we had our informal meeting, and
22 that informal meeting was noticed and put into the
23 docket file.

24 And I know that I spoke to both of you
25 regarding that prior to, and you both were there and

1 participated. But we had not agreed ahead of time or
2 tried to even influence the scope of the testimony.
3 Because I thought -- from my reading of the transcript
4 in the record, it was pretty abundantly clear that there
5 were about three limited areas that needed the record to
6 be filled, not an opportunity to relitigate the entire
7 case either by the utility or should intervenors
8 intervene after that to allow them the opportunity to
9 relitigate the entire case.

10 I mean, my last statement in the transcript
11 was to essentially work with the parties to find a date
12 on the calendar as close as possible to the date of that
13 agenda, to have a limited kind of hearing proceeding to
14 open the record, have limited cross -- testimony, a
15 little bit of cross, and then just close it. Personally
16 I envisioned that that would have taken only maybe half
17 a day procedurally.

18 **COMMISSIONER SKOP:** But getting back onto the
19 point that I think that Ms. -- or the concern that was
20 raised by Ms. Deevey and Ms. Stahmer was that they
21 weren't able to participate in those framing
22 discussions. And I think what I'm trying to do is go
23 real slow and allow both of you to glean an
24 understanding as to why. And what it boils down to is
25 at that point, although the meeting was noticed, you

1 were not formally intervenors, which was granted today.
2 Had you been, you would have been able to openly and
3 actively participate as you are participating now.

4 But, we are going to discuss the issues now,
5 so you have a role in the process. It's just when staff
6 was having that discussion at that point legally you had
7 not been granted intervention, which would have given
8 you the ability to actively participate as you are doing
9 now. So nothing really happened because we haven't made
10 a decision yet. That's why we are all here and
11 discussing these things openly for due process. So I
12 just I wanted to take the time and better understand
13 your concerns so that we can get you an explanation to
14 help you through the pro se intervention process.

15 To Ms. Helton, Ms. Deevey's request,
16 notwithstanding where we are going to get to on the
17 issues, but on the existing issues, Issues 2 through 7,
18 they have mentioned that they would like to -- I think
19 this is the right word -- have a position statement that
20 ultimately would be incorporated into, you know, I guess
21 what goes to a staff recommendation ultimately. You'll
22 be able to comment on what the position was based on the
23 testimony. Obviously, they would have to take the case
24 as they find it. They would be able to cross-examine,
25 you know, the new testimony for post-hearing briefs,

1 should they wish to submit a brief. But would anything
2 preclude them, at this point, from -- assuming we are
3 not introducing new issues, but to comment and provide
4 position statements as intervenors on the existing
5 issues before the Commission votes on those in a
6 post-hearing brief?

7 **MS. HELTON:** I guess I'm not really sure that
8 I understand exactly what it is that they want to do.
9 Maybe one thing -- and I'm thinking out loud here, and I
10 would love to hear what everyone else has to say about
11 it. Maybe one thing is we could issue a revised
12 Prehearing Order that would list the issues and include
13 their statements, you know, with respect to -- their
14 positions with respect to those issues.

15 **COMMISSIONER SKOP:** And, Mr. Wright, would you
16 or your clients have any objection to doing that?

17 **MR. WRIGHT:** No, Commissioner. I was just
18 writing myself a note that it was an interesting
19 question whether we were going to have new prehearing
20 statements and a new Prehearing Order.

21 **COMMISSIONER SKOP:** I was hoping not to, but,
22 again, I'm trying to accommodate what I feel to be a
23 reasonable request by the intervenors while respecting
24 and affording due process to all parties. Again, you
25 have due process rights where we're at in the procedure,

1 we have intervenors coming in late in the proceeding,
2 but they have due process rights. So I'm trying to seek
3 to harmonize and balance those so we can get, I guess,
4 consensus from everyone to find a happy agreeable
5 medium. But it would seem to me that if we reissued, as
6 Ms. Helton suggested, unless you have another
7 suggestion?

8 **MS. HELTON:** You know, this is kind of a
9 sticky wicket here.

10 **COMMISSIONER SKOP:** It is.

11 **MS. HELTON:** And I don't know how to say it
12 any more bluntly than reopening the record is a big
13 deal, in my mind, and a very big deal. And so we have
14 to be careful here about not relitigating the case. But
15 on the other hand, I acknowledge that we have persons in
16 the room who you have allowed to intervene, and I think
17 appropriately so, and so where do we get to that balance
18 where everybody has a fair process in which to work?

19 **COMMISSIONER SKOP:** Can I make a suggestion at
20 this point?

21 **MS. HELTON:** Yes.

22 **COMMISSIONER SKOP:** And, again, I don't know
23 whether this will stand in stark opposition to your
24 thoughts. Assuming for the sake of argument, if we
25 amended the Prehearing Order to incorporate the

1 intervenors' position as to the existing issues, would
2 that cause any harm legally?

3 **MS. HELTON:** I see Mr. Wright shaking his
4 head. I would love to hear what he has to say about
5 that, and Ms. Brubaker just whispered in my ear that she
6 has some concerns, too.

7 **COMMISSIONER SKOP:** All right. Let's hear
8 from the concerns. I'm trying to find a happy balance.

9 So, Mr. Wright, you're recognized and then I
10 will hear from Ms. Brubaker.

11 **MR. WRIGHT:** Thank you, Commissioner.

12 What just dawned on me is that whether we have
13 to have a revised Prehearing Order, I don't know. I
14 will say we don't have any objection to there being a
15 revised Prehearing Order. The reason I was kind of
16 wobbling my head, I think, is that I realized that at
17 least a couple of our witnesses will be different from
18 witnesses who previously testified, and some of the
19 content of a Prehearing Order is order of witnesses, and
20 I don't know whether, for example, Ms. Stahmer and
21 Ms. Deevey intend to either testify directly or to
22 sponsor witnesses.

23 But that kind of led me to the tentative
24 conclusion, contrary to what we might desire, that we
25 probably are going to have to have a revised Prehearing

1 Order, and that was my thought at the time. I do have
2 something else I want to add before we get too far away,
3 but I'm going to hold off for now.

4 Thank you, Mr. Commissioner.

5 **COMMISSIONER SKOP:** Thank you.

6 Ms. Helton.

7 **MS. HELTON:** As I understand Ms. Brubaker's
8 concerns -- and, I don't know, she might want to give
9 them herself.

10 **COMMISSIONER SKOP:** Ms. Brubaker.

11 **MS. BRUBAKER:** Thank you. Jennifer Brubaker
12 for legal staff.

13 I guess in the back of my mind, how in framing
14 this additional proceeding is -- at the agenda the
15 applicant said we would like for you to not vote today,
16 we would like to provide the supplemental information
17 that would hopefully address some of these questions
18 that are being asked. And the intervenors are actually
19 right, there was a broad spectrum of questions asked. I
20 have to disagree respectfully. I don't think that means
21 everything is reopened. I think there were certain
22 questions that the applicants are seeking to address,
23 not the whole case in chief. So in my mind that's where
24 we are starting from is this supplemental information.

25 And I guess my concern about permitting

1 positions to be taken on all issues is the risk we have
2 of broadening the scope of where we are at. If there is
3 a way to take positions only on that supplemental
4 information, I would have much greater comfort there
5 than allowing blanket positions without knowing whether
6 that is actually going to be going beyond the scope of
7 where we are at.

8 **COMMISSIONER SKOP:** And I appreciate that.
9 That was my thinking, also. But I guess ultimately it
10 boils down to what issues remain, and that's getting a
11 little ahead of ourselves now, because we haven't really
12 talked about what issues are going to come in, if any,
13 or whether the issues are going to be the same.

14 But assuming for the sake of the discussion,
15 if the issues remain the same, and some of the
16 supplemental testimony is subsumed within those existing
17 issues, then what I'm trying to struggle with is how do
18 you respect the due process rights of everyone, and what
19 harm, if any, would be incurred by allowing them just to
20 take a position on the existing issue, taking the case
21 as they find it. Although it would be later than usual,
22 certainly we would have the ability to -- instead of a
23 no position, you know, if we thought it appropriate to
24 do so, we could grant leave to incorporate what a
25 position would be subject to the other requirements on

1 the other parties.

2 But the tension here, because, again, this is
3 probably the most unusual procedural posture I think I
4 have ever been in as a Commissioner. And, you know, by
5 reopening the record, you know, effectively you are
6 giving one party, or the party that existed at the time
7 a second bite at the apple, as Ms. Helton has alluded
8 to. Although it's not fully relitigating the case, I
9 mean, you are giving them an opportunity that really
10 doesn't exist for all practical purposes in normal
11 proceedings. So if you are willing to open that door,
12 or they have opened it for them, I think that invites
13 limited intervention to speak to that issue if they are
14 separate and distinct issues.

15 But if the issues are the same, and that
16 additional testimony supplements the existing issues,
17 then I'm trying to gain an understanding as to why it
18 would not be appropriate for them to take position
19 statements, because, you know, certainly they want --
20 certainly they would be able to cross-examine the
21 witnesses on the new testimony. I'm not so sure they
22 could enter new testimony on the existing issues, but
23 I'm reasonably certain they could take a position within
24 the limits of, you know, so many words or so many pages.

25 So that's where I'm kind of headed, and I'm

1 trying to figure out whether I'm on solid legal ground
2 in doing so and making sure that the interests of all
3 the parties from a due process perspective are being
4 upheld. So does that sound reasonable? We're in a
5 thorny issue here.

6 **MS. BRUBAKER:** I may be having a cart before
7 the horse fear, until I will actually see what the
8 positions are. You know, what I'm envisioning is a
9 proceeding that is defined by this additional
10 information. But you're absolutely right, in order to
11 address that limited information do the parties need --

12 **COMMISSIONER SKOP:** Can we do this? Ms.
13 Stahmer or Ms. Deevey, do you have a copy of the
14 Prehearing Order, or can I get a copy of the list of
15 existing issues?

16 **MS. STAHMER:** I assume it is on the website?

17 **COMMISSIONER SKOP:** No, I want to do it now so
18 you have it in front of you, and that way we can speak
19 intelligently about it.

20 Mr. Wright, you're recognized.

21 **MR. WRIGHT:** Just briefly, Commissioner.

22 I think the issues that remain in the case are
23 Issues 2, 3, 4, 5, 6, and 7 as shown on Ms. Stahmer's
24 and Ms. Deevey's issues lists less their additions to
25 Issues 4 and 5, so the issues are there.

1 **COMMISSIONER SKOP:** Let me cut you off. I
2 want to work from -- not their list, I want to work from
3 what we have is the issue list in our document. We will
4 get to their concern. Do you have anything to add to
5 that?

6 **MR. WRIGHT:** Not at this time. If it might be
7 possible, might we have a recess?

8 **COMMISSIONER SKOP:** Let's take an additional
9 five-minute recess. We'll stand on recess for five
10 minutes.

11 **MR. WRIGHT:** Thank you.

12 (Recess.)

13 **COMMISSIONER SKOP:** Okay. We're going to go
14 back on the record. And where we left off is -- I had
15 asked staff to make a copy of the Prehearing Order that
16 was issued on December 10th. And in that order, Ms.
17 Deevey and Ms. Stahmer, you will find the list of issues
18 and positions. And I think that's a good starting
19 point, if you have copies of those in front of you. And
20 it begins on Page 5 and continues through the eight
21 issues ending on Page 9.

22 So typically what's done is you have a
23 prehearing, you identify the issues at the prehearing
24 conference, those issues are incorporated into this
25 order. The parties take initial positions. You have a

1 hearing; then the parties file post-hearing positions
2 and briefs. Is that correct, Staff?

3 **MR. SAYLER:** Yes, sir.

4 **COMMISSIONER SKOP:** I see nods. I've
5 obviously learned something in three and a half years
6 here. So where we are at now is that we're going back
7 into a hearing posture. In conferring with staff, and,
8 again, we still need to sort out the issues, and I
9 apologize for the interlude, but I'm trying to get both
10 of you up to speed and explain very slowly so you have
11 full understanding. Because what we're trying to do
12 here is analogous to putting a square plug in a round
13 hole and trying to accommodate everyone, because this
14 is, again, a very unusual procedural posture we are in.

15 So what we intend to do, I think, is that we
16 are going to issue an amended Prehearing Order, and that
17 Prehearing Order as shown on Page 5 in Section VIII,
18 Issues and Positions, will reflect the existing issues
19 as well as any new issues that may or may not come in.
20 The intervenors will be allowed to adopt a preliminary
21 position on each issue, we'll go to hearing as detailed
22 in the amended Prehearing Order, and then the parties
23 will be allowed to provide post-hearing statements,
24 positions, and briefs.

25 Does that sound right, Staff? Okay. I see

1 nods. So that's a good thing. That's my general
2 thought process for how we can navigate the position
3 which we find ourselves in. Again, the intervenors have
4 to take the case as they find it at this part. And what
5 that's likely to mean -- and, again, I'm going to
6 explain it before we end -- is that you'll be able to
7 take a position on all the issues.

8 What you will not be able to do is to bring in
9 new testimony relating to the testimony that's already
10 in evidence. You will be able to rebut new testimony,
11 to file your own new testimony on those limited areas,
12 and to provide post-hearing briefs. And that should
13 pretty much, I think, encompass all the concerns that I
14 have heard.

15 Ms. Deevey, did you have something, or Ms.
16 Stahmer?

17 **MS. STAHMER:** Thank you.

18 With regard to leading up to the hearing, do
19 we have discovery rights?

20 **COMMISSIONER SKOP:** I'll look to our legal
21 staff to answer that. My gut feeling is yes, but they
22 will be limited to the new testimony which GRU and GREC
23 seeks to enter in.

24 **MS. STAHMER:** In response to any new
25 submissions from the parties.

1 **COMMISSIONER SKOP:** Yes, ma'am.

2 Ms. Helton, if you could further elaborate on
3 that.

4 **MS. HELTON:** I think that's right,
5 Commissioner Skop. And I think that under the Rules of
6 Civil Procedure under which the Commission operates by
7 way of Chapter 120 that you would have to show that it
8 is relevant in some way to the scope of the proceeding
9 here.

10 **MS. DEEVEY:** I'm sorry, I have a question
11 about that. I'm thinking of the timing. They present
12 testimony, and then I can get discovery, but I won't
13 have very long to do it.

14 **COMMISSIONER SKOP:** This is what will be
15 discussed. Again, we're getting a little ahead of
16 ourselves, but in the controlling dates and other time
17 lines we'll discuss that. There will be the filing of
18 additional testimony and exhibits which you will have
19 access to, you will have a period of time to review that
20 and respond and file your testimony and exhibits, if
21 any. Then the parties will have the opportunity to
22 rebut what you filed, then we will go to hearing.

23 **MS. DEEVEY:** So we can file testimony?

24 **COMMISSIONER SKOP:** Yes, ma'am.

25 **MS. DEEVEY:** And can we call witnesses?

1 **COMMISSIONER SKOP:** You can call witnesses,
2 but only to rebut the testimony, the new testimony that
3 will be coming in.

4 **MS. DEEVEY:** That means that we really have a
5 few days for discovery, call witnesses, rebut, and so
6 on. I mean, we're talking about a very short time.

7 **COMMISSIONER SKOP:** I understand that.

8 **MS. DEEVEY:** And that's an intolerable burden
9 in terms of -- I mean, it's a burden. I don't think
10 it's intolerable, but it's a burden, a major burden.

11 **MS. STAHER:** If I may interrupt.

12 **COMMISSIONER SKOP:** Let me rebut that, or
13 speak to that, and then I will allow you, Ms. Stahmer.

14 **MS. DEEVEY:** I have a question. You said
15 that --

16 **COMMISSIONER SKOP:** Let me -- before I forget,
17 I'm getting old, so, I mean, let me get to your previous
18 point. I understand the concern and I'm sympathetic to
19 it. The legal issue with that, though, is that at this
20 point of where we are at in the procedure, given the
21 late intervention, you have to take the case as you find
22 it and we are on a hearing track. So typically what is
23 done is the process -- and we'll talk about the dates,
24 and there is going to be a burden, but its difficult to
25 change that in light of the situation we're in.

1 Again, the decision has been -- or the motion
2 has been requested to intervene, that motion has been
3 granted in limited scope. Those are kind of like the
4 rules that we have to play by because -- and before we
5 leave, I'm going to try and explain what the ground
6 rules are, but there have to be ground rules.

7 And I apologize, but, you know, this is a
8 legal proceeding, and we have to follow not only
9 Commission rules, but applicable Rules of Civil
10 Procedure to afford all the parties due process rights.
11 But, you know, what I have to emphasize is, again,
12 because of the late intervention, the intervenors are
13 required to take the case as they find it, and we can't
14 go back and change some of these things that I hear
15 concerns with.

16 So, Ms. Deevey, you said you had another
17 question?

18 **MS. STAHMER:** Did you have another question?

19 **MS. DEEVEY:** Yes, I have two other questions.
20 Commissioner --

21 **COMMISSIONER SKOP:** Yes, ma'am.

22 **MS. DEEVEY:** -- you have said that we will be
23 given a right, an opportunity to add a position in this
24 amended -- an amendment of this.

25 **COMMISSIONER SKOP:** Yes, ma'am. And that will

1 allow you, in essence, to speak your mind on some of
2 those issues that -- you're taking the case as you find
3 it. You weren't able to nor will you be able to go back
4 and reopen the record and conduct cross-examination on
5 those issues that are not new issues or not new
6 supplemental evidence. So by being able to take a
7 position statement, it allows you to provide both of
8 your respective opinions as to your position as it
9 pertains to each of those respective issues. So I think
10 that addresses one of the concerns I heard.

11 **MS. DEEVEY:** Yes. What impact will that have
12 on a future agenda conference by -- will they pay
13 attention to it?

14 **COMMISSIONER SKOP:** It will be your initial
15 position of the parties when the intervenors and the
16 parties will have their position, we will go to hearing,
17 you will file a post-hearing brief, should you wish to
18 do so, and that will be a basic position statement as
19 well as a brief, which will be subject to a page
20 limitation.

21 Staff will take that information as well as
22 the record evidence, and more likely than not I think
23 that we will probably end up with a revised staff
24 recommendation on this one, because there is new
25 evidence coming in, if that changes their opinion, and

1 it's up to staff. At that point, the Commission will
2 take that staff recommendation, we'll come back to bench
3 at the targeted agenda conference date, which appears to
4 be June 1st, and based on the complete record, we will
5 render our final decision on all the respective issues.

6 **MS. DEEVEY:** Okay. But there is something
7 else. In Googling what it means to take the case as you
8 find it --

9 **COMMISSIONER SKOP:** Yes, ma'am.

10 **MS. DEEVEY:** -- I found another case, and this
11 is probably quite irrelevant, but I thought it might be
12 important, is that after the decision, the vote and so
13 on, and a decision is made in agenda conference, then
14 individuals who feel they would be adversely affected by
15 that decision have a right to intervene. And from the
16 case stuff that I read, which is fairly limited, and the
17 rules, that at that time they would have a right to
18 identify the things that they thought were made
19 mistaken. And so that has nothing to do with what we
20 are doing now. I was in error in thinking there was an
21 analogy.

22 **COMMISSIONER SKOP:** Actually you raised a good
23 point, and I will try and explain that again. My goal
24 here is to move through this as slowly and methodically
25 as possible so that both of you have a clear

1 understanding as to why we can do something and why we
2 can't do something, and answer all the questions. And I
3 try and take great lengths and pains to do that,
4 probably a little bit more than the average person, but
5 I think it's important for both of you to walk away
6 thinking that you've got a fair voice in the process and
7 to have all your questions answered.

8 What will happen is as we move through this
9 process with the revised Prehearing Order, the filing of
10 additional testimony, the intervenors' testimony, the
11 rebuttal, going to hearing, the briefs, post-hearing
12 briefs, the staff recommendation, we'll come to agenda
13 conference.

14 At that agenda conference, the Commission will
15 render a final decision. At that point if this were a
16 Proposed Agency Action instead of a final order, if it
17 was a Proposed Agency Action, then there is an
18 opportunity for -- people with substantial interests are
19 able to talk on PAAs, where at hearing, post-hearing
20 we're not because, again, it becomes a decisional point
21 there. Proposed agency actions and final orders have
22 different types of posture --

23 **MS. DEEVEY:** Thank you. You have clarified
24 that for me. I won't waste your time any more by --

25 **COMMISSIONER SKOP:** So where this would be,

1 this would be a final agency action, if I'm correct, and
2 I see nods. I'm a lawyer, but I want to always
3 double-check myself. So where that would be -- would
4 leave the intervenors if they did not like the decision
5 that the Commission rendered, again, it would not be
6 intervenor status at that point, it would be a motion
7 from the intervenors to reconsider, is that correct --
8 Okay. I see nods -- followed by the right of appeal.
9 But ultimately the Commission has exclusive jurisdiction
10 in a determination of need, and what the Commission
11 renders typically is upheld.

12 **MS. DEEVEY:** I appreciate that. Thank you.
13 I'm sorry I wasted your time.

14 **COMMISSIONER SKOP:** You're not wasting my
15 time. I'm here to help you through the process.

16 Ms. Stahmer, did you have something to add to
17 that?

18 **MS. STAHMER:** Yes. Two points. First, I
19 wanted to reassure the Commission and the staff. Ms.
20 Deevey and I do not anticipate, and, indeed, don't want
21 the burden of submitting voluminous amounts of material
22 into the record. We have some very, you know, focused
23 concerns. And, of course, the parties are always able
24 to object to any submission and say it's irrelevant, and
25 the Commission has the discretion to give any submission

1 whatever weight it wishes to. So I think in formulating
2 the rules, it would be fairer to us to err on the side
3 of allowing us to submit things. And, you know, if it
4 is junk, or irrelevant, or the wrong time you just say
5 so. But, again, we doesn't anticipate inundating you or
6 the opposing party with cumbersome materials.

7 I do have a question about expedited
8 discovery, but that's something that we can get to
9 later. And I did have another question, but it has left
10 my mind right now, so I apologize.

11 **COMMISSIONER SKOP:** Okay. And I'll ask staff
12 to -- I want to go back to the filing of testimony.
13 Certainly the goal here is to limit the additional
14 testimony, and that the testimony that would be
15 presented from your perspective I hope would focus on
16 the issues that are reraised within this proceeding in
17 terms of the additional testimony.

18 It is a thorny situation we find ourselves in,
19 because I'm trying to be fair to the intervenors, but
20 the parties also have rights. I think that, you know,
21 should you want to provide testimony, or file testimony,
22 or -- let me think of the right word here -- prefile
23 testimony, I think that, you know, certainly it would be
24 subject to objection by the parties as to relevance and
25 appropriateness. Am I getting this right, staff? Okay.

1 All right. Let me make sure I'm not stepping out of
2 bounds.

3 So I think -- and certainly legal staff can
4 better advise you after this hearing is over as to what
5 is appropriate and what is not. But, again, you know,
6 certainly there are safeguards there. If you wish to
7 file something that is subject to objection, then
8 rulings will be made as necessary either as preliminary
9 matters before we go to hearing, or contemporaneously if
10 you seek to introduce testimony or evidence at hearing.
11 If the parties have an objection then the
12 contemporaneous ruling would be raised at that point.

13 **MS. DEEVEY:** So if we want to have a witness,
14 for example, who is an expert in something, we could
15 prefile that witness' testimony.

16 **COMMISSIONER SKOP:** Yes, ma'am, as to -- and
17 I'll let Ms. Helton --

18 **MS. HELTON:** You would actually be required to
19 prefile the witness' testimony. Under our processes, we
20 prefile the testimony. You identify the witnesses who
21 will be appearing, and you would prefile that testimony
22 by the date that's established by the prehearing
23 officer.

24 **MS. STAHMER:** But we don't have, we could
25 just --

1 **MS. HELTON:** You may choose to not present or
2 file any testimony and sponsor any witnesses and just
3 cross-examine the witnesses that are brought forward by
4 GRU and GREC.

5 But let me just caution you so you understand
6 that if you have particular documents that you want
7 presented to the Commission, you would need to either
8 have a witness who was the appropriate person to sponsor
9 those, or they need to be relevant to the subject of the
10 direct testimony presented by GRU and be appropriate to
11 bring forward by way of -- through cross-examination.

12 **MS. DEEVEY:** Yes. But if we do want to have a
13 witness, you know, you are saying that we do not -- are
14 not acquired to prefile that witness' testimony.

15 **MS. HELTON:** If you want to have a witness,
16 yes, you are required to prefile the testimony.

17 **MS. DEEVEY:** Thank you.

18 **COMMISSIONER SKOP:** And, Ms. Stahmer.

19 **MS. STAHMER:** I remembered my second point,
20 which was that while our list of stated issues may seem
21 long, as I said before, we tried to keep it within the
22 framework of what we thought the already established
23 issues were, and we also were having difficulty
24 ascertaining really where our concerns would properly
25 fit, because as the issues are framed they are kind of

1 elastic. And so we just put everything down we thought
2 we should put down to make sure at least a question was
3 raised.

4 **COMMISSIONER SKOP:** And we'll get to
5 discussion of those issues in a second. But I think to
6 Ms. Helton, in terms of the -- you know, looking at this
7 holistically, you can take an active role or a passive
8 role. The active role would be to sponsor a witness,
9 file their prefiled testimony, enter exhibits, kind of
10 make your own case in chief related to the scope as well
11 as cross-examine, or the more passive role is just to
12 participate in the hearing and to cross-examine. You
13 know, either of those are up to you as intervenors
14 subject to following the rules.

15 **MS. DEEVEY:** Yes. Well, these are in
16 connection with the issues he has listed.

17 **COMMISSIONER SKOP:** Yes. Well, not --

18 **MS. DEEVEY:** Issues that he thinks should be
19 looked into.

20 **COMMISSIONER SKOP:** We need to draw a
21 distinction there because, again, we can't let
22 intervenors relitigate the entire case. The scope of
23 the intervention needs to be limited to taking position
24 statements to existing issues and either sponsoring
25 testimony or cross-examining and rebutting the new

1 testimony that is coming in as we reopen the record.

2 And it's difficult to explain, and I'm getting
3 tongue-tied doing it, but we are in a very unusual
4 posture which is why this is so difficult for, I think,
5 all of us.

6 So with that, Mr. Wright, do you have anything
7 to add, or staff, before we move on to discussing the
8 third page of the motions to intervene?

9 **MR. WRIGHT:** I do, Commissioner Skop. Thank
10 you.

11 Just very briefly, I want to say we agree with
12 the staff's analysis and with your ruling that the
13 intervenors' participation would be limited to rebutting
14 and cross-examining and filing their own testimony with
15 respect to our supplemental testimony. If they are
16 allowed to go beyond that, that's effectively letting
17 them relitigate the case, as you just said, and that we
18 would object to most strenuously.

19 The other thing I wanted to say, and I have
20 parked this for awhile, but I want to make this clear on
21 the record. I believe that the only conversation that I
22 have had with the staff regarding the scope of the
23 issues in this case was, in fact, a conversation that I
24 had with Mr. Sayler and a dozen other members of the
25 staff with Ms. Deevey and Ms. Stahmer on the phone about

1 12 days ago in which Mr. Sayler said, "We think the
2 issues are the issues as previously identified." And I
3 said, "I agree."

4 **COMMISSIONER SKOP:** Okay. I want to move
5 forward and stay on point, and not rehash the past. I
6 think we have addressed that as to why they weren't
7 active participants because they had not been granted
8 intervention at that point.

9 I do want to go back to your point about the
10 scope of their intervention as it pertains to the
11 additional testimony, the supplemental testimony that
12 will be presented on behalf of your clients. And also
13 to that point you made, which I agree with, but I also
14 want to remind you that should the scope of your
15 testimony open the door, then they are free to -- you
16 know, we need to be fair here. So, again, we are in an
17 usual procedural posture, and that's where it makes it
18 difficult.

19 **MR. WRIGHT:** Well, we wholeheartedly agree
20 that the process needs to be fair, and certainly we are
21 well aware of the opening the door doctrine. Thank you.

22 **COMMISSIONER SKOP:** All right. Thank you.

23 All right. Mr. Sayler.

24 **MR. SAYLER:** Yes, Commissioner Skop. There
25 was a question about discovery, and right now what is

1 contemplated is an expedited discovery procedure of ten
2 day turnaround time from the date electronically served
3 on the party. And as far as for the intervenors, now
4 that you have been granted intervenor status, there is
5 nothing to prevent you from serving discovery today.

6 Now, with regard to the scope of your
7 discovery, if the utility feels that it is outside the
8 scope of their supplemental testimony, they can raise an
9 objection to that within a certain period of time. And
10 I also envision in addition to the amended Prehearing
11 Order which will be issued following the conclusion of
12 all the testimony, I would recommend just a limited
13 revised OEP hopefully to be issued by the close of
14 business this week just to provide all the dates, the
15 times, some of the discovery procedures. And it will
16 also look back to the original order establishing
17 procedure and it will provide the filing of testimony
18 the dates and things of that nature.

19 **MS. DEEVEY:** Well, I guess I was confused.
20 Ms. Brown, I understood what she said, is that we could
21 only have discovery on issues that were incorporated in
22 their testimony, which meant we had to wait until their
23 testimony was available. That is what my interpretation
24 was.

25 **COMMISSIONER SKOP:** And, unfortunately, I

1 think that is going to have to be the case. You know,
2 it's somewhat awkward because you don't get to see the
3 hand dealt to you until they file their testimony.

4 **MS. DEEVEY:** That's right. So when he is
5 saying we can ask for discovery today, that is not
6 actually -- that's in conflict with what she said.

7 **COMMISSIONER SKOP:** The discovery that you are
8 going to have to ask for is probably going to have to be
9 relevant and germane to the testimony that they are
10 going to provide, the supplemental testimony.

11 **MS. DEEVEY:** That's right. And we won't know
12 what that is for some time.

13 **COMMISSIONER SKOP:** Until it looks, like,
14 probably March -- probably March 12th, 15th, or 18th,
15 dependent upon how we decide this, and that will be
16 something we will get to in a few minutes. So basically
17 you will get to see what they are going to provide, then
18 you can provide your -- you know, sponsor witness
19 testimony, exhibits pursuant to, you know, the rules
20 that we have to play by. And staff is here to help
21 pro se litigants, so that shouldn't be a problem getting
22 questions. We just have to make sure we meet the date
23 deadlines.

24 **MS. DEEVEY:** There have been a number of
25 interrogatories issued by the Public Service Commission,

1 and it would be nice to know what they were and what the
2 responses were, and they are not right now available on
3 your website, so that would help us.

4 **COMMISSIONER SKOP:** All right. Ms. Brubaker,
5 can you speak to that, and would it be possible to
6 formally enter those into the record, the staff
7 interrogatories and responses such that they would be
8 available on the website?

9 **MS. BRUBAKER:** Well, discovery typically is
10 not put on the case management system prior to admission
11 into the record, but we would be more than happy to
12 provide copies of the discovery and the responses to the
13 intervenors. No problem.

14 **COMMISSIONER SKOP:** Okay. What about the
15 existing previously issued --

16 **MS. BRUBAKER:** Or the company could, sorry.

17 **COMMISSIONER SKOP:** Not the new ones, but the
18 ones that existed prior to hearing last time, which
19 probably wouldn't be relevant, but it might be a good
20 thing for them to --

21 **MS. DEEVEY:** There have been a number since
22 the 9th of February. There have been two sets of
23 interrogatories and I think there have been responses to
24 them.

25 **COMMISSIONER SKOP:** I think what they stated

1 is that typically they do not enter those into the
2 record on a procedural basis until we go to hearing. So
3 I think that's why --

4 **MS. DEEVEY:** So I can't have them?

5 **COMMISSIONER SKOP:** Well, I don't want to say
6 never, but I need to get --

7 **MS. BRUBAKER:** I will attempt to clarify.

8 **COMMISSIONER SKOP:** Thank you.

9 **MS. BRUBAKER:** Any document that is made or
10 received in the course of our business is a public
11 record. You absolutely have a right of access to it.
12 What we are saying is we don't put them in the case
13 management system file, that is just per our normal
14 procedures, because we are in a hearing posture and that
15 information has not been made part of the record yet.

16 If you would like copies of the discovery, we
17 can provide you with our questions, the company when it
18 provides its responses to us, we can make sure the
19 company also provides you a copy.

20 **MS. DEEVEY:** I'm sorry, I'm getting confused
21 as to the difference between discovery and
22 interrogatories.

23 **MS. BRUBAKER:** They are the same thing.

24 **MS. DEEVEY:** Oh, the same thing.

25 **MS. BRUBAKER:** Yes.

1 **MS. DEEVEY:** So you can tell me what questions
2 you asked and what answers you got.

3 **MS. BRUBAKER:** Yes. We haven't received the
4 answer yet, I think.

5 **MS. DEEVEY:** How do I get that? Can I get
6 that today, tomorrow?

7 **COMMISSIONER SKOP:** Let me just --

8 **MS. BRUBAKER:** I'm sorry, the previous
9 discovery.

10 **COMMISSIONER SKOP:** Let's talk about the
11 current. I think Ms. Deevey's concern is the discovery
12 interrogatories issued after February 9th. Is that
13 correct?

14 **MS. DEEVEY:** Yes, that you have already
15 gotten, that have already been replied to.

16 **COMMISSIONER SKOP:** Let me try and -- this is
17 getting a little bit out of hand, so let me try and
18 bring some clarity to this. As intervenors are they
19 now, you know, intervenor/interested parties such that
20 they would be provided copies of what's provided to
21 staff?

22 **MS. BRUBAKER:** That is my understanding, yes.

23 **COMMISSIONER SKOP:** Okay. So they would get
24 that in the normal course. So if staff -- well, I guess
25 if staff issues discoveries, then that is not provided

1 to all parties, right?

2 **MS. BRUBAKER:** Yes. When we issue discovery
3 requests it's copies to all parties.

4 **MR. SAYLER:** Yes. On a going-forward basis
5 now, as of today they are intervenors, so any discovery
6 served and any discovery received would be served upon
7 all parties. I believe the discovery that Ms. Deevey
8 has a question was served approximately 12 days ago on
9 the utility following our informal meeting, which the
10 utility filed with this Commission on Monday afternoon.
11 And in that discovery -- it was two parts. There was a
12 production of documents request and also interrogatory
13 requests. And we received both of those Monday
14 afternoon. Had you been an intervenor prior to that,
15 you would have been served a copy of both the production
16 of documents request and discovery.

17 Now, the question is whether if it is possible
18 for the utility to provide an additional copy quickly or
19 if we need to go through the process here to make copies
20 of the additional discovery to provide to you in a very,
21 very timely basis.

22 **MS. DEEVEY:** Well, those were not electronic
23 submissions, I gather?

24 **MR. SAYLER:** No, they weren't. As a matter of
25 fact, I received a ream box full of discovery, which was

1 two sets. And most of that discovery was really the
2 reports, the sustainability reports that we asked to be
3 served on us, and the actual responses to the
4 interrogatory response, I believe, were condensed to two
5 CDs. And before the close of business today, we can
6 make copies of those two CDs. And I would have to check
7 to make sure that's --

8 **MS. DEEVEY:** Okay. Those would be your
9 questions, and I could see which of those I wanted to
10 know what the answers were?

11 **MR. SAYLER:** Right. It would be the questions
12 and also, I believe, the responses that the utility
13 served on Monday. I would just have to confirm what
14 exactly is or isn't on the responsive -- on those
15 responsive disks.

16 Now, there is some confidential material that
17 the utility filed in their discovery response, but
18 they're separate procedures which we can actually
19 discuss with you off the record and not take up valuable
20 time here today.

21 **COMMISSIONER SKOP:** Would that entail a
22 protective order if they wanted access to that?

23 **MR. SAYLER:** My understanding talking with the
24 Clerk's Office there are two procedures. One they can
25 go directly to the utility and sign a confidentiality

1 agreement with them, or they can go through the
2 Commission Clerk's Office, and then there is a process
3 by which that is approved through various agency heads,
4 or that's my understanding.

5 **COMMISSIONER SKOP:** Okay. Well, let's just
6 try and bring this back into this issue. Obviously, the
7 intervenors would like to get a copy of data requests
8 and interrogatories that have been propounded since
9 February 9th, and that is probably in relation to where
10 we're going with the new testimony. I think it is
11 appropriate to get them that information in the most
12 expeditious manner possible. If there are
13 confidentiality issues, I would look to staff to work
14 those out with the parties and with the intervenors.

15 **MS. BROWN:** I was just going to suggest,
16 Commissioner, that we ask the company if they could
17 provide that information to the Intervenors quickly.

18 **MR. WRIGHT:** We can furnish copies of what we
19 filed on Monday.

20 **COMMISSIONER SKOP:** Okay. Is this the two
21 reams of data that we're talking about?

22 **MR. WRIGHT:** Well, it was, it was more than
23 two reams, where a ream is defined as 500 pages, but it
24 was two sets. We can furnish one set of the
25 interrogatory answers and one set of the reports.

1 **COMMISSIONER SKOP:** Okay. And I think that
2 would be helpful based upon the concern I'm hearing.
3 Okay. Any other --

4 **MS. DEEVEY:** In Gainesville, I hope.

5 **COMMISSIONER SKOP:** I would, I would hope we'd
6 find a way to get it to you in Gainesville.

7 All right. Any, any concerns, additional
8 comments, Mr. Wright?

9 Staff?

10 **MR. SAYLER:** Actually, if -- to facilitate
11 things, we received two copies. We will provide our
12 second copy to the Intervenors, if Mr. Wright would
13 provide us a replacement copy of the set of discovery
14 that we're serving in order to move things along.

15 **COMMISSIONER SKOP:** Does that work for you,
16 Mr. Wright?

17 **MR. WRIGHT:** Yes, sir.

18 **COMMISSIONER SKOP:** Okay. Great. Thank you.
19 So that revolves that issue.

20 Any other issues before we try and get a
21 handle on the third page of the motions to intervene?
22 Okay. Seeing none, let's talk about the third page of
23 the respective motions to intervene that outlines --
24 there's three blocks. There's Category A, Category B
25 and Category C. And let's, let's talk about Category A

1 just to try and move this along a little bit.

2 In Category A it has Issue 2, Issue 3 and
3 Issue 6. Those are issues that already exist. You'll
4 find them in the Prehearing Order verbatim. So
5 basically those issues are being considered or have been
6 considered, there has been testimony already filed.

7 Your intervention as it pertains to those
8 issues will be limited to any new supplemental testimony
9 provided. You'll be able to cross-examine or provide
10 rebuttal or witness testimony as to the incremental
11 supplemental testimony that comes in. So that should
12 address the concern in, outlined in Item A there on that
13 page. So those issues, Issues 2, 3 and 6 are already
14 in, so not a whole lot of discussion that needs to be
15 had about that.

16 With respect to Subsection (b), two issues
17 that should be clarified. On Issue 4, you seek to add
18 the words "and sustainability." And then on Issue 5,
19 you seek to add the clause "or other options."

20 My concern with Issue 4 is adding that
21 basically departs from the statutory requirement. So
22 based on that, I'm going to rule that it's not
23 appropriate to add that "and sustainability."

24 On Issue 5, you seek to add the clause "or
25 other options." Again, I think that the issue is

1 properly framed as it exists. The other options would
2 significantly expand the scope of the existing
3 proceeding, and I think the other options really would
4 be counterproductive and more akin to relitigating that
5 issue in the case. So that's where my, my reluctance to
6 grant the request stems from. And if you'd like to
7 respond to that briefly, but --

8 **MS. DEEVEY:** Yes. Yes, we will.

9 **COMMISSIONER SKOP:** Okay. Yes, ma'am.

10 **MS. DEEVEY:** I -- there is a rule in the
11 Public Service Commission rule having to do with the
12 considerations under FEECA when you examine the
13 responses to the new FEECA regulations, and they say
14 that -- this is -- let me see. This is 25-22.081. And
15 under (1)(e) it says, "A discussion of the viable
16 nongenerating alternatives, including an evaluation of
17 the nature and extent of reductions in the growth rates
18 of peak demand, total watt hour consumption and oil
19 consumption resulting from the goals and programs
20 adopted pursuant to the Florida Energy Conservation Act
21 both historically and prospectively."

22 Okay. What they're saying is that they
23 should -- you should consider in connection with FEECA
24 how, what they did to reduce the demand, either the
25 growth rate or the peak rate or so on, and you should

1 consider viable nongenerating alternatives to do that,
2 including things that we normally think of as
3 demand-side management. And that's where I got the idea
4 that in fact that was legitimate to consider. If you're
5 going to consider demand-side management and
6 conservation, it's reasonable to also consider other
7 nongenerational alternatives. And that's what I wanted
8 to put in.

9 **COMMISSIONER SKOP:** Okay. Thank you for that.

10 **MS. DEEVEY:** Now I acknowledge that this
11 doesn't -- this is FEECA. It doesn't apply here.

12 **COMMISSIONER SKOP:** Okay.

13 **MS. DEEVEY:** But it is, I thought, sort of a
14 parallel, and that's, that's where I got the idea.

15 **COMMISSIONER SKOP:** Okay. I'll ask staff to
16 speak to that briefly.

17 **MS. HELTON:** Could we have her cite the rule
18 again and the subsection that she's looking at, please?

19 **MS. DEEVEY:** Yes. 25-22.081, contents of
20 petition. This is -- there are two of them with that
21 name. This is the second. And it is (1), petition for
22 fossil, integrated gasification combined cycle and so
23 on. And under that, (a), (b), (c), (d), we're talking
24 about (e) under that.

25 (Pause.)

1 **MS. HELTON:** Mr. Chairman, did you want us to
2 go ahead and address that?

3 **COMMISSIONER SKOP:** Yes. If staff could
4 briefly respond to that concern.

5 **MS. HELTON:** This, this addresses what the
6 company is required to file when it files its petition
7 for a need determination. It's my understanding and
8 belief that the bold language that they have, the
9 Intervenors have included under Issue 5 is already
10 subsumed under our Issue 5, number one.

11 And, number two, GRU is not subject to FEECA,
12 so I'm not sure if that really makes a difference there
13 or not too.

14 **COMMISSIONER SKOP:** Okay. All right. Thank
15 you.

16 **MS. DEEVEY:** Now if it is subsumed under your
17 Issue 5, then it's appropriate for us to discover
18 other -- to discuss or consider other nongenerational
19 options. Or you're saying, no, you can't look at 5 at
20 all regardless of how you interpret it; is that it?

21 **MS. HELTON:** As I understand the posture that
22 we're in here is you are looking to change the issues
23 that the Commission established to process the case
24 originally.

25 **MS. DEEVEY:** I don't think it's a change. I

1 think it is an interpretation. It's stretching a
2 little, but not, you know, it's not a change at all.

3 **MS. HELTON:** We've got, I think, two different
4 things going here. One, what is the list of issues that
5 we're operating under? And, two, what information is,
6 supplemental information is GRU going to file to which
7 it's appropriate for you to respond to?

8 What I am saying is that your bolded language
9 here for Issue 5 is subsumed, as I understand it, under
10 the already existing Issue Number 5. Whether it's
11 appropriate for you to address it or not depends on
12 whether GRU addresses it.

13 **MS. DEEVEY:** Yes. Well, it did not seem to be
14 so subsumed during the discussions of -- and the
15 evidence and testimony offered by the parties. They did
16 not talk about any nongeneration, other viable
17 nongeneration alternatives. They talked about their
18 really very impressive DSM program. And that's what I'm
19 saying is they didn't talk about it. If it was
20 subsumed, then it was not dealt with.

21 **MS. HELTON:** That option was there for them to
22 deal with it if they saw fit.

23 **MS. DEEVEY:** And you're saying that they
24 didn't deal with it, but I have no right to point this
25 out or consider it because it's not part of the amended

1 issues. Okay.

2 **COMMISSIONER SKOP:** Okay. Let, let me, let me
3 rule on that request. Issue 5 is going to, I'm going to
4 deny your request to put in that clause. I think it is
5 subsumed in Issue 5 as it already exists. Your ability
6 at this point of the proceeding to raise the issue will
7 be limited to GRU or GREC providing additional testimony
8 to what other options they may have considered. If they
9 choose to do that, you're able to rebut it, you're able
10 to provide testimony to that. But --

11 **MS. DEEVEY:** If they choose not to consider
12 it, then we're out, out of luck. Okay. Fine. Right.

13 **COMMISSIONER SKOP:** It's difficult because of
14 where we're at. You know, normally -- let me, let me
15 take an aside here.

16 Normally if this were a perfect world and we
17 weren't having to reopen the record, we would have had
18 intervention in a timely manner, we would have had a
19 prehearing conference, and we'd be framing these issues
20 and talking about them. And I would be inclined way
21 before we had ever gone to hearing in the first place to
22 say, you know what, that's a good idea, I agree with
23 that. I'm somewhat hamstrung now by the fact that we
24 already have an evidentiary record, we already have
25 these issues, and now I'm being asked to change the

1 wording of some issues that already exist.

2 **MS. DEEVEY:** Yeah. Well, it's a bite of the
3 apple. They, I think that they're having big bites of
4 the apple and we don't have any. But that's the way,
5 that's the way the cookie crumbles. Okay.

6 **COMMISSIONER SKOP:** I commend you. You've
7 come in here very well prepared. I'm very, very
8 impressed. Are you guys sure you're not lawyers? So,
9 okay.

10 **MS. DEEVEY:** No way. I'm a scientist.

11 **COMMISSIONER SKOP:** Well, okay. Anyway, so
12 let's, let's move on to subcategory (c) real quick and
13 hopefully we can -- you know, we've been going at this
14 for, for, you know, a couple of hours now, and I'm happy
15 to give all the time, but I want it to be a constructive
16 use of time and making sure that the Intervenors
17 understand the process.

18 Let's move on to Subsection (c), which is the
19 last page of the respective motions to intervene. You
20 mentioned four de facto issues that were not expressly,
21 explicitly stated. I'm sorry.

22 The problem I have with, with the way it's
23 presented is it's Issue 7, Issue 8, Issue 9 and Issue
24 10, which don't align with the existing issues, so it
25 makes it difficult to talk about. So let's talk about

1 what you wrote in Subsection (c), and we'll start with
2 what you call Issue 7, even though that's not Issue 7 in
3 the --

4 **MS. DEEVEY:** Okay. That's right. There's no
5 Issue 7. Right. But we're calling it that.

6 **COMMISSIONER SKOP:** Well, actually there is an
7 Issue 7.

8 **MS. DEEVEY:** Yeah. Yeah. Okay.

9 **COMMISSIONER SKOP:** Okay. All right. But
10 with respect to what you deem Issue 7 should be that was
11 not explicitly stated or your four de facto issues,
12 let's, let's refer to it that way.

13 On the first of your four de facto issues you
14 seek to introduce the new issue: "Did the Gainesville
15 City Commission fully consider all aspects of the impact
16 the GREC project would have on GRU's system and on the
17 city's citizens which are customers of the utility?"
18 Okay.

19 **MS. DEEVEY:** We just wanted to be sure that --
20 you know, we thought we would have broader rights in
21 here, but we wanted to be sure that if we, when we had
22 the broader rights that we could consider these.

23 Now they don't have to be separate issues.
24 Indeed, it's a bad idea because it's not something I
25 would expect the Commission to want to have to vote on.

1 But basically we put them in here because we had hoped
2 that -- to ensure by drawing attention to them that they
3 would be allowed to consider them, and the reason was
4 that the, the record is full of testimony by the
5 parties, and indeed the analysis by staff keep pointing
6 out the parties' position is that this is a very
7 critical issue, that they all did agree and so on.
8 So -- and that there is support and there were a lot of
9 claims like that. So if they're not going to bring that
10 up again, of course that's irrelevant. But now, now you
11 understand the reason that we felt it was not
12 inappropriate is because they did rely heavily in many
13 cases citing this as the reason they did things and the
14 justification for doing things and so on, so.

15 **COMMISSIONER SKOP:** I understand.

16 Let me speak briefly to the concern you
17 expressed about not having broad rights or that you
18 expect to have broader rights.

19 **MS. DEEVEY:** Yeah, well.

20 **COMMISSIONER SKOP:** You do have broad rights.
21 Unfortunately because of the posture we're in now and
22 the late intervention, those rights are more limited
23 than they would be to, you know, if we're --

24 **MS. DEEVEY:** What I hear you saying is those
25 two are out of bounds right now unless they're brought

1 up by the other party.

2 **COMMISSIONER SKOP:** Right.

3 **MS. DEEVEY:** Right. Okay.

4 **COMMISSIONER SKOP:** So let's, let's speak to
5 the first of your four de facto issues. My ruling is
6 going to be to deny introducing that as a new issue. I
7 believe it's already subsumed in record evidence. It
8 has been discussed. So, again, it would be duplicative.
9 You know, certainly it's for the Commission to consider
10 those things. But in terms of framing it as a separate
11 issue, I think that that would be getting far afield
12 from the purpose of reopening the record.

13 **MS. DEEVEY:** Yes. I understand.

14 **COMMISSIONER SKOP:** So respectfully I'm going
15 to deny including that as an additional issue.

16 The second of your four de facto issues, you
17 seek to introduce the issue: "Did GRU's customers
18 support the GREC project or fully understand the impact
19 of the GREC project in their bills?" I'll let you speak
20 briefly on that and then I'll make my ruling.

21 **MS. DEEVEY:** Well, GRU offered something that
22 looked like an analysis of the impact on the rules in
23 the presentation they made to the City Commission in May
24 of 2009, and I couldn't make head or tails of that
25 table. It just was so confusing. I couldn't figure out

1 what it meant in terms of impact, so I don't think
2 anybody else did.

3 And then since then, of course, GRU has
4 amended some of the material for this hearing, and I've
5 never seen a straight statement of that. And we could
6 not find in, at any time prior to the decision to
7 approve the contract any mention of any impact of GREC
8 on anybody's bills. The only time it came up was the
9 night of the 7th of May when the City Commission
10 approved the contract. So no citizens were told
11 anything about it until that night. And, of course, no
12 one has ever asked them what did they know and did they
13 approve. So there was never any feedback from the
14 citizens having to do with, you know, whether we support
15 this or whether we know. And I don't think anybody in
16 the city now can tell you what the impact on their bill
17 is supposed to be even based on the evidence that was
18 apparently published as a sidebar in the *Gainesville*
19 *Sun* -- something I could not find in the *Gainesville Sun*
20 archives.

21 But I don't think that -- the GREC, you know,
22 the other party now says that that was accurate, that
23 they have submitted to you some modifications. So, you
24 know, I don't see how anybody ever knew anything. And
25 had they known, they didn't have an opportunity to

1 express agreement or disagreement.

2 **COMMISSIONER SKOP:** Okay. Let me stop you
3 there because I don't want to get into the substantive
4 issues.

5 The first part of the request, "Did GRU
6 customers support the GREC project," I think that that's
7 subjective and it would be hard for the Commission to
8 ascertain. And that's not really the scope --

9 **MS. DEEVEY:** Well, it's claimed --

10 **COMMISSIONER SKOP:** That's not really the
11 scope --

12 **MS. DEEVEY:** But it's claimed by the other
13 party repeatedly.

14 **COMMISSIONER SKOP:** It's not really the --
15 that may be true, not true, but that gets outside the
16 scope of our jurisdiction, which is is there a need for
17 the project pursuant to statute?

18 **MS. DEEVEY:** Okay. I appreciate that. Yes.

19 **COMMISSIONER SKOP:** The second part of the
20 request as to fully understand the impact of the GREC
21 project on their bills, the Commission does not have
22 ratemaking jurisdiction over GRU as well as the other
23 municipalities or, or co-ops, so that gets to be an
24 issue outside of our jurisdiction.

25 To Mr. Wright on that point, without getting

1 into substantive issues, the concern of the impact, can
2 you speak briefly to that, particularly in light of the
3 provision where if the plant does not come on by a
4 certain date, that there may be additional rate impact?
5 I mean, as to the appropriateness or including this
6 issue -- I don't want to get into a substantive
7 discussion, but I'm trying to assess the validity of the
8 issue in terms of, you know, what's been disclosed and
9 what hasn't been disclosed.

10 **MR. WRIGHT:** It -- I'm not sure I understand
11 your question. I'm not sure I understand how to answer
12 it without getting into substantive issues, but let me
13 try this.

14 **COMMISSIONER SKOP:** Okay.

15 **MR. WRIGHT:** We have disclosed that there
16 would be an adverse effect on the cost to GRU under the
17 power purchase agreement if the unit does not come
18 online by December 31st, 2013.

19 **COMMISSIONER SKOP:** All right.

20 **MR. WRIGHT:** And that's the loss of either --
21 that's the loss of tax benefits available under the
22 stimulus act.

23 **COMMISSIONER SKOP:** Okay. Staff, any
24 comments?

25 **MR. WRIGHT:** But that, that information is

1 already in the record to the extent it is.

2 **COMMISSIONER SKOP:** I understand. I don't
3 want to get into substantive issues, but I'm trying to
4 be fair here and --

5 **MR. SAYLER:** With regard to Issue 8 and,
6 actually Issues 7, 8, 9 and 10, they really fall outside
7 the need determination statute and aren't really ripe
8 for being determined here. A lot of them seem to be
9 political decisions that the City of Gainesville
10 Commission should have considered, and it's really not
11 necessarily the Commission's place to try to determine
12 what they did or did not know.

13 But we just -- but our recommendation would be
14 that 7, 8, 9 and 10 fall outside the scope of the need
15 determination statute.

16 **COMMISSIONER SKOP:** And succinctly stating,
17 stated, I would concur. Eight, at least to me, was a
18 closer call. Just so I'm going to deny the inclusion of
19 what you framed as Issue 8 in Subsection (c).

20 Issue 9, briefly touch upon that, "Will all
21 GREC's wood fuel resource be carbon neutral or escape
22 carbon fees?" You know, it's impossible to answer that
23 question. It's speculative, so I don't see that as
24 being a well-framed question for inclusion into the need
25 determination. Again, as staff has mentioned, it's more

1 of a, you know, a legislative or political question
2 that's outside the jurisdiction of the Commission. So
3 I'm going to properly deny the inclusion of what you
4 have framed as Issue 9 for the inclusion. So that'll be
5 denied.

6 And Issue 10, as you suggested be included,
7 "Is, is the plan of the city to meet the Kyoto Protocol
8 goals of the U.S. Mayors' Climate Change Agreement a
9 realistic one and is it a driver for support of the GREC
10 project by the City Commission and Gainesville
11 residents?" Again, that's speculative, political, you
12 know, things that are far afield of the statutory
13 jurisdiction the Commission has in rendering a
14 determination of need as an exclusive forum for such
15 determinations. So I'm going to deny what you included
16 as issue, proposed Issue 10. Those are going to be
17 denied.

18 So I think that addresses the issues as they
19 pertain to the third page of your respective motions to
20 intervene.

21 **MS. DEEVEY:** Yes. Yes.

22 **COMMISSIONER SKOP:** So where does that leave
23 us now, and then I'll come to you for a question?
24 Basically what that, where that leaves us now is that
25 the issues remain as they were within the Prehearing

1 Order that was issued on December 10th, 2009. So those
2 issues beginning on Page 5, Issues 1 through Issues 9,
3 excuse me, Issues 1 through 8 that conclude on Page 9
4 are the issues that the Intervenors will be allowed to
5 provide position statements on. In the revised
6 Prehearing Order you'll be able to take an initial
7 position on each of those respective issues.

8 Your testimony, should you wish to sponsor a
9 witness and file their prefiled testimony and exhibits,
10 will need to be based on the supplemental testimony that
11 will be provided by, by either GREC or GRU. So you're
12 going to be limited there. You're able, fully able to
13 appear at the hearing and cross-examine any witness that
14 they choose to sponsor and put on the stand, as well as
15 they'll be able to cross-examine any witness you choose
16 to sponsor and put on the stand. That's just simple
17 civil procedure or trial practice. Excuse me.

18 And then finally, in the posthearing briefs
19 you'll be able to make your, your fully developed
20 arguments as to your position on each of the respective
21 eight issues. So that, does that --

22 **MS. DEEVEY:** Wait a minute. You say we can
23 make them on the, on the six issues that are listed
24 here, not just confined to --

25 **COMMISSIONER SKOP:** There are -- okay. Well,

1 Issue 1 has already been stipulated. So the issues in
2 live play for all practical purposes are Issues 2, 3, 4,
3 5, 6 and 7.

4 Issue 8 is "Should the docket be closed?"
5 Obviously not a whole lot to say about that. So --

6 **MS. DEEVEY:** All right. Now I am confused.

7 **COMMISSIONER SKOP:** Okay. Sorry. I am too,
8 so we'll try to get through this together.

9 **MS. DEEVEY:** Okay. So we, we go into this
10 reopening of the hearing.

11 **COMMISSIONER SKOP:** Yes, ma'am.

12 **MS. DEEVEY:** And we are allowed in that to
13 address only the items, I won't call them issues, but,
14 you know, the testimony and so on that GREC chooses to
15 bring forward.

16 **COMMISSIONER SKOP:** Yes. Only, only, only the
17 limited --

18 **MS. DEEVEY:** The very limited materials.
19 Okay.

20 **COMMISSIONER SKOP:** It's going to be the
21 supplemental testimony that GREC chooses to provide.

22 **MS. DEEVEY:** Yeah. Okay. Okay.

23 **COMMISSIONER SKOP:** You can provide testimony
24 on those issues, on those, I don't want to say issues,
25 but sub -- help me out here.

1 **MR. SAYLER:** Supplemental testimony and
2 exhibits.

3 **COMMISSIONER SKOP:** Yes. So you provide
4 testimony regarding the supplemental testimony.

5 **MS. DEEVEY:** Okay. We can focus on
6 supplemental. Okay.

7 **COMMISSIONER SKOP:** You can rebut that, you
8 can cross-examine it, but we can't relitigate all the
9 existing issues. Okay.

10 **MS. DEEVEY:** No. Okay. So then we finish
11 that. And now there's a posthearing --

12 **COMMISSIONER SKOP:** Brief.

13 **MS. DEEVEY:** Postconference.

14 **COMMISSIONER SKOP:** No. There --

15 **MS. DEEVEY:** Posthearing. Okay.

16 **COMMISSIONER SKOP:** Let me, let me take a
17 step.

18 **MS. DEEVEY:** Sorry. Okay.

19 **COMMISSIONER SKOP:** We're at a status
20 conference. What's going to happen --

21 **MS. DEEVEY:** Yeah.

22 **COMMISSIONER SKOP:** -- is you've been granted
23 intervention. It's going to be followed up by an order
24 that I'll sign outlining the limited scope of the
25 intervention as well as what you can do and what you

1 can't do.

2 **MS. DEEVEY:** Uh-huh. Uh-huh. Yeah.

3 **COMMISSIONER SKOP:** And I expect that staff
4 will get that issued sometime as quickly as possible,
5 maybe by --

6 **MR. SAYLER:** ASAP.

7 **COMMISSIONER SKOP:** ASAP. That's what I like
8 to hear. That's a good thing.

9 So after that order is issued, then we'll talk
10 about the controlling dates and other timelines in a
11 second.

12 But essentially how this will play out is that
13 GRU and GREC will file additional testimony in their
14 exhibits. That'll be done by a specified date. You'll
15 get a copy of that. You'll be able to take a look at
16 that, file Intervenors' testimony and exhibits, which
17 would be, you know, what witnesses' prefiled testimony,
18 yada, yada, yada. You file that by a certain date.
19 Then GRU and GREC gets to rebut that through submittals,
20 filing of rebuttal testimony. Then we go to hearing.
21 We have the hearing, at which opportunity we'll take the
22 additional testimony, prefiled testimony, the witnesses
23 will be on the stand, it'll be subject to
24 cross-examination by the parties. The hearing will
25 close. That'll be the end of the evidentiary record.

1 Then after that, the parties will file their posthearing
2 briefs, which will include a final statement of position
3 as well as the briefs themselves.

4 **MS. DEEVEY:** Okay. And at that point we can
5 go back to the big, the whole apple?

6 **COMMISSIONER SKOP:** Yes.

7 **MS. DEEVEY:** Okay. Thank you.

8 **COMMISSIONER SKOP:** Is that right, staff?
9 That's my understanding.

10 **MR. SAYLER:** Yes. The posthearing briefs
11 would be based upon the entirety of the record, the
12 original record and the supplemental record, as I
13 understand it.

14 **MS. DEEVEY:** Okay.

15 **COMMISSIONER SKOP:** And just, Ms. Deevey, so
16 you understand, as I first heard your concern about, you
17 know, two hours ago that, that you were concerned that
18 you had not been able to take a position as an
19 Intervenor on the existing issues, and what I tried to
20 do in the discussion with staff is find a way --

21 **MS. DEEVEY:** Yes. Yes. I understand.

22 **COMMISSIONER SKOP:** -- a legal means for you
23 to say, okay, they didn't get to take a position
24 initially, so how do we allow them to do so without
25 compromising the due process rights of any, any of the

1 parties, which I think allows you to speak globally to
2 the facts in evidence.

3 **MS. DEEVEY:** Okay. Okay. But we cannot in
4 that, in the posthearing brief say anything about the
5 information we know but was never put in as exhibits or
6 testimony or support it.

7 **COMMISSIONER SKOP:** Staff, can you speak to
8 that, please?

9 **MS. HELTON:** Can I have a moment to confer,
10 please?

11 **COMMISSIONER SKOP:** Yes.

12 (Pause.)

13 **MS. HELTON:** I'm sorry, Commissioner Skop.
14 I'm not sure that I heard that last exchange. If I
15 could understand what it is that she wants to do, what
16 the Intervenors want to do in their posthearing brief.

17 **MS. DEEVEY:** I don't understand what -- he's
18 saying he wants to protect our rights to do this. I
19 don't understand to what extent we are limited, let's
20 say. Use the awful apple metaphor. Okay? At that
21 point there will have been a lot of information in the
22 two, basically the original record and the reopened
23 record, and a lot of evidence and a lot of stuff. Okay.
24 Now, that's, that's the apple.

25 **COMMISSIONER SKOP:** Let me, let me try and

1 explain.

2 **MS. DEEVEY:** Yeah. Okay. I just want to say
3 that apple, as far as I'm concerned, is full of worms.
4 Am I stuck with the apple with the worms in it or can I
5 --

6 **COMMISSIONER SKOP:** Well, let me go back, let
7 me try and go back and explain. Staff, correct me if
8 I'm wrong.

9 Again, we're going to issue a revised
10 Prehearing Order. In that Prehearing Order, you can
11 take a preliminary position on each of the respective
12 issues, issues that remain that are 2 through 7. The
13 revised Prehearing Order will be issued. The additional
14 testimony will be filed by the GRU and GREC, their
15 testimony and exhibits. You'll get a copy of that and
16 you'll be able to look at it. You'll file your
17 respective testimony and exhibits, witnesses' prefiled
18 testimony and such, should you choose to do so. GRU and
19 GREC will be able to rebut that. Any testimony you
20 file, they get to look at; same courtesy, they get to
21 rebut.

22 We go to hearing. At hearing they'll put on
23 their witness testimony subject to cross-examination by
24 the parties as well as the bench. You'll be able to
25 sponsor any witness you choose subject to

1 cross-examination, assuming that the testimony has been
2 prefiled and the witnesses have been identified. You
3 can't just show up and say I want to put so and so on
4 the stand. It has -- we have a procedure that we have
5 to follow.

6 At the conclusion of the hearing, the
7 evidentiary record will be complete. That'll be Part A
8 that happened before you intervened, plus Part B, which
9 is the new stuff. During the hearing and -- you can
10 only focus on the new stuff.

11 In the position statement, in the prehearing,
12 revised Prehearing Order you can take a position in
13 totality. At the hearing you can only talk about the
14 new stuff. In the posthearing brief you can talk about
15 the evidentiary record, Part A and Part B. You can't
16 just introduce new foreign concepts. It needs to be
17 germane to the facts in evidence. Is that a good way to
18 explain it, staff? If I'm missing -- correct me if I'm
19 wrong, but this is -- I'm trying to be --

20 **MS. HELTON:** That's the way I think it should
21 work, Commissioner, but I think I might have some
22 disagreement down here.

23 **COMMISSIONER SKOP:** Okay. So let's hear the
24 disagreement and make sure everyone is on the same page.
25 Ms. Brown.

1 **MS. BROWN:** Commissioner, I'm really not
2 certain of my position on this. I think that if the
3 Intervenors were going to take a position on the first
4 part of the record, they should have intervened at the
5 appropriate time. And since their intervention is late
6 and would not have happened but for the supplemental
7 testimony that the Commission has allowed, they should
8 be limited to analysis and argument on that additional
9 testimony.

10 **COMMISSIONER SKOP:** On the, on the
11 posthearing?

12 **MS. BROWN:** On the posthearing.

13 **COMMISSIONER SKOP:** In its entirety of the
14 evidentiary record, not just limited to the new --

15 **MS. BROWN:** Well, I think they should be
16 limited to the new evidence. But that being said, it
17 certainly -- as you say, this is an unusual process and
18 I think you have discretion to do it the way you think
19 it ought to be done.

20 **COMMISSIONER SKOP:** Okay. Ms. Helton.

21 **MS. HELTON:** Maybe we could hear from
22 Mr. Wright too about what it is that GRU had intended,
23 because they are the ones that had asked for this
24 additional proceeding, what they had intended happening
25 with the posthearing briefs and what would be argued.

1 Because I guess maybe that's part of where my confusion
2 stems

3 **COMMISSIONER SKOP:** Mine too, so Mr. Wright.

4 **MR. WRIGHT:** Well, frankly, we were hoping for
5 a bench vote and not have to, not to have to write
6 briefs. But, but having said that, I think, I think
7 Ms. Brown has it exactly right, and that, and that is
8 that the supplemental hearing will be on whatever we
9 file in our supplemental testimony, whatever they file
10 that addresses that and whatever rebuttal, if any, we
11 file addressing that.

12 And then the, the posthearing briefs are
13 based, may be based on the evidence of record as to the,
14 basically the six remaining issues, Issues 2 through 7
15 as numbered in the Prehearing Order.

16 **COMMISSIONER SKOP:** Okay. So if I understood
17 your position correctly, is that you would agree with
18 Ms. Brown to the extent that they should, the
19 Intervenors that have been granted limited intervention
20 should not be able to take a position in the revised
21 Prehearing Order. There would just simply be no
22 position would be entered for them, we'd go to hearing,
23 you seek to introduce supplemental testimony, they seek
24 to introduce supplemental testimony that's directly
25 relevant to testimony that you're introducing. The

1 record is closed, which is Part A and Part B, and then
2 they get a full bite at the apple on taking a full
3 position, posthearing position statement as well as
4 brief on the entire, entirety of the evidentiary record.

5 **MR. WRIGHT:** Yes, sir.

6 **COMMISSIONER SKOP:** Staff, does that work for
7 you?

8 **MS. BROWN:** Sure, Commissioner.

9 **COMMISSIONER SKOP:** Okay. Ms. Deevey.

10 **MS. DEEVEY:** Can I make a point, is that I've
11 been talking to you and, you know, I'm an Intervenor.
12 I'm not speaking for Ms. Stahmer.

13 **COMMISSIONER SKOP:** Okay. Well, she can,
14 she's free to speak too. You know, it's open, open mike
15 here, so.

16 **MS. STAHMER:** You need to clarify, it wasn't
17 clear to me what the essence of your last exchange was.

18 **COMMISSIONER SKOP:** Okay. And --

19 **MS. STAHMER:** What, what we can address in the
20 posthearing briefs, whether -- because it would seem to
21 me that Commissioners, while they may not have to wade
22 through everything as comprehensively as they did
23 before, they're going to presumably make decisions
24 ultimately, taking into consideration the entire record.
25 So where is the harm in permitting Intervenors to

1 comment on the entire record as distinguished from
2 entering new material on matters that are not considered
3 at issue during the reopening?

4 **COMMISSIONER SKOP:** Okay. Let me try and
5 explain this very succinctly and I'll explain the
6 exchange that happened.

7 Originally my thought would be, trying to
8 afford, to address Ms. Deevey's concern and afford due
9 process to all the parties, there is a late
10 intervention. Typically you would have already taken an
11 initial position prior to going to hearing.

12 I think Mr. Wright's concern and Ms. Brown's
13 concern is that by allowing you to take an initial
14 position prior to going back into hearing --

15 **MS. DEEVEY:** In the Prehearing Order.

16 **COMMISSIONER SKOP:** Yes, ma'am. Yes, ma'am.
17 Prehearing Order only, revised Prehearing Order, that
18 that might cause some due process concerns. Okay? And,
19 frankly, I see merits of doing it either way, but in an
20 abundance of caution it's probably better not to take a
21 position there. It makes it cleaner, avoids any
22 problems. So I tend to agree with our legal staff, even
23 though that wasn't my initial thought.

24 So what this means, the revised Prehearing
25 Order will come out. You'll be listed as a party in

1 that, but it'll be no position, no position due to late
2 intervention or some, some appropriate choice of words.

3 We'll go to hearing after the testimony is
4 filed. You'll be able to, you know, sponsor your
5 testimony that's relevant to the limited scope of the
6 proceeding, as will GRU. We'll close the evidentiary
7 record. We'll have a complete record.

8 At that point there will be posthearing briefs
9 in which you can speak about Issues 2 through 6 based on
10 the entire evidentiary record subject to the, the page
11 limitation and speak to your view of the record evidence
12 and why your position should be supported over that of
13 the other parties.

14 **MS. STAHMER:** Okay. Thank you. That
15 clarifies it for me.

16 **COMMISSIONER SKOP:** Does that clarify
17 everything?

18 **MS. STAHMER:** Yes. Yes.

19 **COMMISSIONER SKOP:** Ms. Brown, is that --

20 **MS. BROWN:** Yes. I think we're in agreement
21 on that.

22 I would like to point out to the Intervenors
23 that they will have to base their posthearing briefs on
24 the evidentiary record. They can't add anything.

25 **MS. STAHMER:** Yes.

1 **COMMISSIONER SKOP:** Yes. And that's the point
2 I want to clarify, just so you know the scope, is that,
3 you know, if we, if we talk about apples and oranges, in
4 the posthearing brief we've got to talk about apples and
5 oranges. We can't introduce a grapefruit. So just --
6 that's a real simple way to look at it. You have to
7 speak about the facts in evidence and not go beyond
8 that. Okay. Does that, does that make it clear?

9 **MS. STAHER:** Yes, it does. Thank you.

10 **COMMISSIONER SKOP:** Okay. Staff, we're on the
11 same page on that? Mr. Wright, do you concur?

12 **MR. WRIGHT:** Yes, sir.

13 **COMMISSIONER SKOP:** Okay. So that'll be my
14 ruling, that the, the revised Prehearing Order will come
15 out. The intervening parties will not take an initial
16 position. Staff will come up with the appropriate
17 choice of words to justify no position because of late
18 intervention, not that they were not diligent, they just
19 didn't have the opportunity. We'll go to hearing.
20 Posthearing brief, the Intervenors will be able to file
21 posthearing briefs, take a position on the issues in
22 play limited to the facts in the evidentiary record.
23 Okay? Everyone's -- yes, ma'am.

24 **MS. STAHER:** Are we correct in assuming that
25 all submissions made after the February 9th hearing are

1 considered part of the reopened record?

2 **COMMISSIONER SKOP:** I would probably agree
3 with that, but I'll look to our legal counsel.

4 **MR. SAYLER:** With regard to the discovery that
5 staff served upon the utility, generally what we do is
6 we ask lots of discovery and then we look at the
7 discovery that we want to potentially proffer as a
8 stipulated exhibit or staff stipulated exhibit. So the
9 likelihood of all the discovery that was served or
10 responsive discovery that was served, whether that, all
11 of it will go into the record or not, the staff will
12 make a determination, and then we will proffer a
13 potential stipulated exhibit which will need to be
14 agreed to by all parties. However, all discovery that
15 was served post the February 9th agenda may or may not
16 become part of the hearing record. Did I explain that
17 well?

18 **MS. DEEVEY:** (Inaudible. Microphone off.)

19 **THE COURT REPORTER:** I'm sorry. You're not on
20 mike.

21 **COMMISSIONER SKOP:** I'm sorry. Could you push
22 the button?

23 **MS. DEEVEY:** I'm sorry. I nodded a few times
24 because I thought I was understanding what you said, but
25 I don't think I did.

1 **MR. SAYLER:** Okay. The short answer is, no,
2 it is not in the record yet. In order for it to become
3 part of the record it has to be introduced at the
4 hearing through some means or mechanism at the hearing
5 on April 15th.

6 **COMMISSIONER SKOP:** Okay. So to add to that,
7 Ms. Deevey, and correct me if I'm wrong, Mr. Sayler, I
8 think what staff is saying is that they've issued
9 interrogatories, general sets of questions designed to
10 produce a response. Just because they ask a question
11 doesn't necessarily mean that question will come into
12 the evidentiary record.

13 **MR. SAYLER:** That is correct.

14 **COMMISSIONER SKOP:** Okay. So we're limited to
15 discussion of what comes into the evidentiary record.
16 You can see, you can see the discovery, you can see the
17 responses.

18 **MS. STAHER:** Okay. We can see them. All
19 right.

20 **COMMISSIONER SKOP:** That doesn't necessarily
21 mean that they'll open the door to discuss those issues.
22 So what you need to do -- and staff help me out here.

23 **MS. STAHER:** Be prepared.

24 **COMMISSIONER SKOP:** Be prepared for is that by
25 the agreed upon date when they file their additional

1 testimony and exhibits, that'll provide the scope of, of
2 what they seek to introduce and what you can introduce
3 as far as the scope of your testimony and your
4 cross-examination.

5 **MS. DEEVEY:** But it still will not include the
6 information which the Public Service Commission is now
7 collecting from them or has done since --

8 **COMMISSIONER SKOP:** At that point, no, it
9 would not be formally entered into the record. Is that
10 correct, Mr. Sayler?

11 **MS. DEEVEY:** Okay. So if we look at it, it
12 will be much later. I mean, pretty far down the road.

13 **COMMISSIONER SKOP:** You'll get the information
14 upfront. Just the questions being asked and the
15 responses being provided may not be in the evidentiary
16 record. It only becomes part of the evidence or
17 evidentiary record when it's entered into evidence.

18 **MS. STAHER:** So we need to be prepared to
19 deal with it should GREC decide to introduce it at the
20 hearing.

21 **COMMISSIONER SKOP:** That's correct. But --

22 **MS. STAHER:** But in the event they don't
23 introduce it, then we cannot attempt to rebut it or
24 address it.

25 **COMMISSIONER SKOP:** Well, what you need, what

1 you need to be prepared for, and staff help me out, it's
2 not so much what GREC will introduce. It's what staff
3 may introduce into the record.

4 **MS. STAHER:** Or staff. Yes.

5 **COMMISSIONER SKOP:** What you need to be
6 prepared, prepared for is that the GRU and GREC will
7 file additional testimony and exhibits, including their
8 witnesses' prefiled testimony on or about the agreed
9 upon date, which will probably happen here sometime in
10 the next two weeks, and we'll fix that date here in a
11 second. But that's, that's the scope --

12 **MS. STAHER:** The focus.

13 **COMMISSIONER SKOP:** -- of what they're going
14 to present for additional testimony. That's, that's the
15 scope that you're limited to in terms of providing your
16 supplemental testimony or testimony of your witnesses or
17 rebutting their testimony.

18 **MS. STAHER:** Thank you.

19 **COMMISSIONER SKOP:** Okay. Does that make
20 sense? Staff, is that on point?

21 **MR. SAYLER:** Yes, sir.

22 **COMMISSIONER SKOP:** Okay. Great. All right.

23 So now that we have that understood and the
24 issues are locked and I think everyone is on the same
25 page of what the expectations are, and I apologize that

1 it's taken so much time and if we're going slow, but
2 it's important, given the unusual nature of the
3 procedural posture that we find ourselves in, that
4 everyone has a clear understanding of where we're at no
5 matter how confusing it's gotten. But I think, I think
6 we're making progress.

7 So that brings us to -- Mr. Wright, do you
8 have any further comments before I go to staff? And
9 then we're going to talk about some dates.

10 **MR. WRIGHT:** Not on what has been discussed so
11 far, Commissioner. Thank you for the opportunity.

12 **COMMISSIONER SKOP:** Thank you.

13 Staff, any additional comments?

14 **MR. SAYLER:** Not at this time.

15 **COMMISSIONER SKOP:** Okay. So let's, let's get
16 to controlling dates and other pertinent timelines.
17 Does staff have some recommended dates for the timeline
18 that we need to get to to go to hearing and through the
19 briefs and the targeted Agenda Conference? If staff
20 could briefly speak to those issues.

21 **MR. SAYLER:** Yes. The, the proposed
22 controlling date for the filing of GRU/GREC LLC's
23 additional testimony and exhibits, as you had mentioned
24 before, either March 12th or March 15th, with a possible
25 March 18th date, for Intervenors' testimony and

1 exhibits, if any, March 26th. For rebuttal testimony,
2 if any, April 2nd. For the hearing date, April 15th.
3 For the brief filing date, April 26th. And with the
4 target Agenda Conference being June 1st, with a hopeful
5 decision one way or the other by the Commission at that
6 Agenda Conference.

7 **COMMISSIONER SKOP:** Okay. I guess my
8 preference would be that, as to the hearing date, the
9 brief filing date and the target Agenda Conference date,
10 I would look at those dates as being acceptable and
11 pretty much locked in stone. We need to move forward
12 with this.

13 **MR. SAYLER:** Yes, Commissioner.

14 **COMMISSIONER SKOP:** Again, there's -- time is
15 of the essence for getting a final agency action
16 regarding the pending need determination before the
17 Commission.

18 As far as GRU and GREC additional testimony
19 and exhibits, Mr. Wright, are you comfortable with a,
20 with a due date of March 12th?

21 **MR. WRIGHT:** Commissioner, we would be more
22 comfortable with March 15th. If I may take a brief page
23 from my colleague Mr. McWhirter, there's an old story
24 about Winston Churchill, who, having given a two-hour
25 speech, was vastly complimented, and whereupon they

1 said, "That was a marvelous two-hour speech, Mr. Prime
2 Minister." He responded, "Thank you very much. I
3 apologize. I didn't have time to prepare a shorter
4 one."

5 The point is we're going to strive to make our
6 testimony concise and tight. March 15th would help us
7 in that regard. We could even agree to do it earlier in
8 the day on the 15th, say at 10:00 in the morning.

9 **COMMISSIONER SKOP:** Okay. Give me one second
10 to take a look at the calendar I have in front of me.

11 **MR. WRIGHT:** The 15th is a Monday. The 12th
12 is a Friday. So thank you.

13 **COMMISSIONER SKOP:** Okay. Like I say,
14 there's, there's tradeoffs in any decision, so I'm going
15 to throw some dates at you, and I'm going to look to the
16 Intervenors and try and do a little bit of a horse trade
17 here.

18 Seeing that you want three additional days
19 over the weekend to be able to file your testimony and
20 exhibits with a proposed submittal deadline of
21 10:00 a.m. on March 15th, I would propose that if we
22 accept that, that the Intervenors be allowed to respond
23 by 10:00 a.m. on the 29th. Again, you're getting three
24 days on the front side. They should get the same
25 courtesy. And then your rebuttal would be due by the

1 close of business that Friday.

2 **MS. DEEVEY:** What's the date?

3 **COMMISSIONER SKOP:** That would be April 2nd.

4 So basically based on the concern I heard from
5 Mr. Wright is that they're looking for a three-day
6 extension over the weekend to file by 10:00 a.m. on
7 March 15th for GRU and GREC's additional testimony and
8 exhibits. If that were, if I were inclined to accept
9 that, the Intervenors' testimony and exhibits would be
10 due by 10:00 a.m. on March 29th, and that the GRU/GREC
11 rebuttal would be due by the close of business on April
12 2nd. Is that doable?

13 **MR. WRIGHT:** Commissioner, as I frequently
14 say, you're the Commissioner and we will do what you
15 say. It would really help us a lot to have the full
16 seven days from their filing to, to prepare any rebuttal
17 that we might reply -- might do.

18 **COMMISSIONER SKOP:** All right. Let me ask
19 staff one question. If, if -- again, since we're
20 getting into this whole let's work over the weekend type
21 posture, if we were to change the rebuttal date from
22 close of business on the 2nd to 10:00 a.m. on the 5th,
23 would that cause staff any hardship?

24 **MR. SAYLER:** Let me take a moment to confer
25 with staff, if that's all right.

1 **COMMISSIONER SKOP:** Thank you.

2 Mr. Wright, you've got to quit giving up your
3 weekends.

4 **MR. WRIGHT:** I appreciate the advice,
5 Commissioner. I haven't solved that problem yet. Thank
6 you.

7 **MR. SAYLER:** Staff has indicated that
8 April 5th, that Monday would be acceptable to staff.

9 **COMMISSIONER SKOP:** Okay. All right. So
10 these are going to be the dates. My ruling is as
11 follow, the controlling dates for the revised hearing
12 schedule will be as follows. GRU and GREC additional
13 testimony and exhibits will be due by 10:00 a.m. on
14 March 15th. The Intervenors' testimony and exhibits
15 will be due by 10:00 a.m. on March 29th. The GRU/GREC
16 rebuttal will be due by 10:00 a.m. on April 5th.
17 Hearing date will be scheduled for April 15th, brief
18 filing date will be April 26th, and the target Agenda
19 Conference will be June 1st.

20 And with respect to the hearing date, the
21 brief date and the target Agenda Conference, I would
22 prefer that those dates do not slip at this point.

23 **MR. SAYLER:** That is acceptable to staff, with
24 one question we didn't discuss, which was a discovery
25 cutoff. It would be good that all discovery be complete

1 by the start of the hearing, which is April 15th,
2 meaning the last day discovery could be served would be,
3 I believe, April 5th.

4 **COMMISSIONER SKOP:** Can you please repeat that
5 again?

6 **MR. SAYLER:** Okay. The discovery cutoff date
7 being April 15th, the start of the hearing.

8 **COMMISSIONER SKOP:** Okay. Which means
9 discovery would have to be served by what date?

10 **MR. SAYLER:** There's ten days prior to that
11 cutoff.

12 **COMMISSIONER SKOP:** So by April 5th?

13 **MR. SAYLER:** Otherwise, if someone served
14 discovery on April 11th, then it would come in after the
15 hearing date, so that's why.

16 **COMMISSIONER SKOP:** Okay. Would it make sense
17 to have the discovery cutoff on April 14th, the day
18 before the hearing?

19 **MR. SAYLER:** Excuse me, Commissioner. Let me
20 take a moment to confer with staff. I spoke without
21 consultation.

22 (Pause.)

23 **COMMISSIONER SKOP:** Mr. Sayler, you're
24 recognized.

25 **MR. SAYLER:** Thank you for the brief respite

1 to confer.

2 Staff would prefer that the discovery cutoff
3 deadline be Monday, April 12th at the very latest.

4 **MR. WRIGHT:** Clarifying question,
5 Commissioner?

6 **COMMISSIONER SKOP:** Yes. Mr. Wright, you're
7 recognized.

8 **MR. WRIGHT:** Just so I understand, the
9 discovery cutoff being on the 12th, does that mean
10 discovery responses?

11 **COMMISSIONER SKOP:** Staff.

12 **MR. WRIGHT:** Or service?

13 **MR. SAYLER:** It is my understanding that with
14 the discovery cutoff, responses must be served by that
15 date.

16 **MR. WRIGHT:** Okay. Commissioner, I --

17 **COMMISSIONER SKOP:** Mr. Wright.

18 **MR. WRIGHT:** We want as fair a process as
19 possible, and we all know we're dealing with some tight
20 time frames. We would be agreeable to shorter than ten
21 days turnaround in particular because of the kind
22 consideration you're inclined to give us to file our
23 rebuttal on April 5. Obviously it is ten days from
24 April 5 to April 15.

25 I was thinking that if we could get discovery

1 served on us by maybe on the close of business of the
2 16th, we would turn our responses around in a week, say
3 close of business on the 13th. I'm really just trying
4 to make this a process that works.

5 **COMMISSIONER SKOP:** Question to staff. What
6 would, what harm, if any, or prejudice to the parties
7 would occur by having the discovery cutoff date of close
8 of business on April 5th? That would be the day that
9 rebuttal testimony is filed. Would staff need to
10 perform additional discovery after that?

11 **MR. WRIGHT:** Yes. And that was my thought
12 process, Commissioner, is that, is that staff could have
13 almost two full working days by the end of the 6th to
14 prepare any supplemental discovery on the rebuttal, if
15 any, and then we could turn our responses around in a
16 week. But that's a suggestion, just trying to make the
17 process work.

18 **COMMISSIONER SKOP:** Staff.

19 **MR. SAYLER:** Commissioner, we're agreeable to
20 that, with the discovery cutoff being the 13th. And
21 with the understanding that if any discovery is served
22 on the 5th or the 6th with regard to rebuttal testimony,
23 the utility will have that response served by close of
24 business on the 13th.

25 **COMMISSIONER SKOP:** Okay. I'm a little

1 confused between the cutoff and the ten-day requirement,
2 so help work me through this. I'm looking forward
3 towards staff would need to perform additional
4 discovery, potentially, potentially perform additional
5 discovery after the GREC/GRU rebuttal testimony is
6 filed, and basically that testimony will be filed, I
7 mean that rebuttal testimony will be filed by 10:00 a.m.
8 on April 5th. So how many days does staff need to
9 evaluate that and send out any final discovery? And
10 what's the ramification on the, on the date for the
11 discovery cutoff date? Obviously it has to be
12 sufficiently before the hearing for staff to get the
13 information; is that correct?

14 **MS. BROWN:** Commissioner, I think what we
15 would probably do in that event would be to conduct
16 depositions as opposed to written discovery,
17 interrogatories or PODs. And that we could do right up
18 to the discovery cutoff date, with the understanding
19 that we would need expedited transcripts of those
20 depositions, and that if there were any exhibits that we
21 asked to be filed, they would have to be filed instantly
22 by the company.

23 **COMMISSIONER SKOP:** So how does this ten days
24 beforehand work? Obviously the hearing date is going to
25 be on the 15th, so --

1 **MS. BROWN:** Well, the ten, the ten-day cutoff
2 point provides whoever is receiving the discovery the
3 time to prepare written responses.

4 **COMMISSIONER SKOP:** Okay.

5 **MS. BROWN:** That's what it's for.

6 **COMMISSIONER SKOP:** Okay. And, but Mr. Wright
7 has represented that should there be additional
8 discovery, that those would be produced within seven
9 days instead of the normal ten. Mr. Wright, did I hear
10 you --

11 **MR. WRIGHT:** Yes, sir.

12 **MS. BROWN:** Right. So we would have both
13 opportunities to conduct discovery of the rebuttal.

14 **COMMISSIONER SKOP:** All right. So what is,
15 what is the proposed cutoff date that staff would like
16 to see, the 14th or -- and when we're talking about
17 discovery cutoff date, that's the final responses coming
18 in. That's not the outgoing.

19 **MS. BROWN:** That's right. That's right. I
20 think that the 13th is what I'm seeing written down
21 here.

22 **COMMISSIONER SKOP:** Is that acceptable,
23 Mr. Wright?

24 **MR. WRIGHT:** Commissioner, I apologize. I was
25 trying to have a clarifying conversation about the

1 meaning of the dates and the timing with my co-counsel.
2 Could I have the question again?

3 **COMMISSIONER SKOP:** Yes. Let's take a
4 two-minute hold in place and give you time to confer,
5 I'll confer with staff, and then we'll get to the
6 Intervenors.

7 (Brief recess taken.)

8 We're going to go back on the record. Where
9 we last left off, we were talking about the appropriate
10 discovery cutoff date. And after conferring with staff,
11 my ruling will be that the discovery cutoff date will be
12 close of business on April 13th. I think that works for
13 all, all the parties. So we have the dates locked. Any
14 questions regarding the dates, because those are the
15 dates that will come out in the revised Prehearing
16 Order?

17 **MS. DEEVEY:** When will that be?

18 **COMMISSIONER SKOP:** As soon as possible.

19 **MS. DEEVEY:** We're really having a prehearing
20 conference right now and that's --

21 **COMMISSIONER SKOP:** Yes and no. But, staff,
22 can you speak to when we can expect to get the revised
23 Prehearing Order out?

24 **MR. SAYLER:** I will effort to have it done by
25 close of business on Friday. And it'll, it'll be a

1 hybrid order in the sense that it's going to include the
2 controlling dates and a few other things. And -- or if
3 it's your pleasure, I could do a revised Order
4 Establishing Procedure and then do a revised Prehearing
5 Order at a later time.

6 **COMMISSIONER SKOP:** Probably revised Order
7 Establishing Procedure would probably be preferable.

8 **MR. SAYLER:** Right. And I could have that by
9 close of business tomorrow to you for your review.

10 **COMMISSIONER SKOP:** As well as the orders
11 granting intervention, I'd like to get both of those out
12 as quickly as possible.

13 **MR. SAYLER:** Absolutely.

14 **COMMISSIONER SKOP:** Given the timeliness of
15 the dates before us.

16 With respect to the scope of the additional
17 testimony or supplemental testimony, do we need to leave
18 that to the parties or is that something that we need to
19 further definitize in terms of general subject areas?

20 **MR. SAYLER:** I believe that the parties are
21 aware of the scope that staff is expecting, the
22 Commission is expecting. And also for the record I know
23 that we have asked that the transcript of this
24 proceeding be expedited, so it'll be ready on Friday.

25 **COMMISSIONER SKOP:** Okay. I'm sure it'll be a

1 lengthy. I don't know if they'll be able to get it done
2 by then. Anyway, that was on a lighter note.

3 But, okay. So I think we've got the dates.
4 Basically what I expect is that the revised Order
5 Establishing Procedure will come out, the orders
6 granting intervention will come out. They'll be
7 followed by a revised Prehearing Order.

8 And if there are any concerns, again, my
9 understanding of the Commission's desire to take the
10 extraordinary step of reopening this record was to again
11 take additional relevant testimony that the Commission
12 had not been provided or may fail to consider not to
13 relitigate this entire case. I see from the nods that's
14 the understanding of the parties, so I would hope there
15 would be no disagreement on that. But if anyone has any
16 problems with my ruling, given the critical nature of
17 the dates before us, any motions for reconsideration
18 regarding my rulings here need to be brought to the
19 March 16th Agenda Conference so that the full Commission
20 can take, take those up. And I don't think that should
21 be a hardship for any, any of the parties. But, again,
22 should somebody disagree with the course of direction
23 that I've put us on, then certainly, you know, I would
24 not preclude the parties being able to raise issues
25 before the full Commission and we can further definitize

1 it. But the risk in that is that dates may slip, which
2 is why if such action would need to be taken, that it
3 would need to be done as quickly as possible.

4 Okay. Intervenors, are you comfortable with
5 that?

6 **MS. DEEVEY:** Do we have an option?

7 **COMMISSIONER SKOP:** Not really at this point.
8 But I just wanted to make sure that you understand the
9 ground rules and the framework and the procedural
10 posture that we're in and where we're headed.

11 Mr. Wright, any additional questions?

12 **MR. WRIGHT:** No, sir, Commissioner. Thank
13 you.

14 **COMMISSIONER SKOP:** Staff, any additional
15 questions, concerns? Did I miss anything? It's been a
16 long process.

17 **MR. SAYLER:** No, Commissioner.

18 **COMMISSIONER SKOP:** Okay. All right. Absent
19 any other questions, we stand adjourned. Thank you.

20 (Status Conference adjourned at 4:21 p.m.)
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2 STATE OF FLORIDA)

3 : CERTIFICATE OF REPORTER

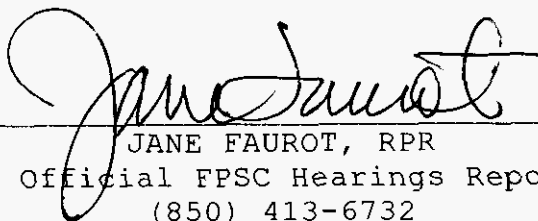
4 COUNTY OF LEON)

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

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

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

20 DATED THIS 5th day of March, 2010.

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JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 5th day of March, 2010.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734