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BARRY RICHARD

TALLAHASSEE (Resident Office)

NEW YORK

WASHINGTON, D.C.

September 2, 2010

Via Hand Delivery

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850


Re: Docket Nos. 100001-EI, 100002-EG, 100007-EI, 100009-EI, 080677-EI, 090130-EI, 100077-EI, 100155-EG, 080203-EI, 080245-EI, 080246-EI, 090494-EI, **060038-EI**

Dear Ms. Cole:

Enclosed for filing in the above-referenced dockets is an original and seven (7) copies of Florida Power & Light Company's ("FPL's") Verified Motion to Disqualify Commissioner Skop and accompanying Request for Oral Argument.

Also enclosed is a CD containing FPL's Motion and Request in Word. Please contact me should you or your staff have any questions regarding this filing.

Sincerely,



Barry Richard

Enclosures

cc: parties of record w/ enclosures

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DOCUMENT NUMBER-DATE
07417 SEP-2 0
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) Cost Recovery Clause with) Generating Performance) <u>Incentive Factor</u>)	Docket No. 100001-EI
In Re: Energy Conservation Cost) <u>Recovery Clause</u>)	Docket No. 100002-EG
In Re: Environmental Cost) <u>Recovery Clause</u>)	Docket No. 100007-EI
In Re: Nuclear Cost) <u>Recovery Clause</u>)	Docket No. 100009-EI
In Re: Petition for Rate Increase by) <u>Florida Power & Light Company</u>)	Docket No. 080677-EI
In Re: 2009 Depreciation and) Dismantlement Study by) <u>Florida Power & Light Company</u>)	Docket No. 090130-EI
In Re: Investigation of the) Appropriateness of the Affiliate) Product Offerings to Florida Power) & Light customers)	Docket No. 100077-EI
In Re: Petition for Approval of) Demand Side Management Plan) <u>of Florida Power & Light Company</u>)	Docket No. 100155-EG
In Re: Petition to Determine Need for) West County Energy Center Unit 3) Electrical Power Plant, by) <u>Florida Power & Light Company</u>)	Docket No. 080203-EI
In Re: Petition for Determination) of need for conversion of Riviera) Plant in Palm Beach County, by) <u>Florida Power & Light Company</u>)	Docket No. 080245-EI
In Re: Petition for Determination of) Need for Conversion of Cape) Canaveral Plant in Brevard County,) <u>By Florida Power & Light Company</u>)	Docket No. 080246-EI

DOCUMENT NUMBER DATA
07417 SEP-20
FPSC-COMMISSION CLERK

In re: Application for Authority to)
Issue and Sell Securities During)
Calendar Year 2010 Pursuant to)
Section 366.04, F.S., and Chapter)
25-8, F.A.C., by Florida Power &)
Light Company)

Docket No. 090494-EI

In re: Petition for Issuance of a)
Storm Recovery Financing Order,)
By Florida Power & Light Company)

Docket No. 060038-EI

Filed: September 2, 2010

REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 25-22.0022, Florida Administrative Code, Florida Power & Light Company (“FPL” or the “Company”) hereby requests oral argument on its Verified Motion to Disqualify Commissioner Skop (the “Motion”). Oral argument will aid in the understanding and evaluation of the issues to be decided as follows:

1. Oral argument would allow counsel for FPL to further discuss the factual grounds, applicable law and legal standard for granting a motion to disqualify a Commissioner.¹
2. Oral argument would also allow counsel for FPL to respond to questions concerning the factual basis and legal grounds supporting FPL’s position that Commissioner Skop should be disqualified.

WHEREFORE, FPL requests that oral argument be heard on its Motion to Disqualify Commissioner Skop, and that FPL be granted 15 minutes for such oral argument.

¹ See *In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners*, Docket No. 070368-TP; Order No. PSC-08-0415-FOF-TP; 2008 Fla. PUC Lexis 248 at *8, 08 FPSC 6:115 (June 23, 2008) (granting request for oral argument that would aid in “understanding and evaluating the legal bases” of the relief sought).



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CERTIFICATE OF SERVICE

Docket Nos. 100001-EI, 100002-EG, 100007-EI, 100009-EI, 080677-EI, 090130-EI, 100077-EI, 100155-EG, 080203-EI, 080245-EI, 080246-EI, 090494-EI, 060038-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail (* Hand Delivery) on September 2, 2010, to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) Cost Recovery Clause with) Generating Performance) <u>Incentive Factor</u>)	Docket No. 100001-EI
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DOCUMENT NUMBER 0A 1

07417 SEP-20

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In re: Application for Authority to)
Issue and Sell Securities During)
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Light Company)

Docket No. 090494-EI

In re: Petition for Issuance of a)
Storm Recovery Financing Order,)
By Florida Power & Light Company)

Docket No. 060038-EI

Filed: September 2, 2010

VERIFIED MOTION TO DISQUALIFY COMMISSIONER SKOP

Florida Power & Light Company (FPL) moves to disqualify Commissioner Nathan Skop from participating as a member of the Public Service Commission (PSC or Commission) in PSC hearings, deliberations, decision-making, or acting in any other capacity, on all active dockets and matters involving FPL that have not yet been decided by the Commission including, but not limited to, the above-referenced dockets, as well as any future dockets involving FPL that are opened in calendar year 2010. FPL is filing this motion and requests the same relief in each of the above-referenced dockets. The grounds for this motion are set forth below.

Statement of the Facts

Nathan Skop was employed by a subsidiary of FPL's parent company from 2000 until 2002, at which time he was involuntarily terminated as part of a company-wide staff reduction. In 2006, Mr. Skop was appointed to the PSC for a term ending in January 2011. Pursuant to Section 350.031, Florida Statutes, nomination by the Public Service Commission Nominating Council was a prerequisite to his reappointment to the Commission. Commissioner Skop applied for reappointment on June 16, 2010, but on June 30, 2010, the Nominating Council informed

him that it did not intend to interview him. The Nominating Council's decision means that Commissioner Skop's term on the PSC will end as of January 1, 2011.

Within hours after the Nominating Council decision not to interview him for reappointment to the PSC, Commissioner Skop issued a public statement attacking the Nominating Council for allegedly acting on the basis of "money, influence, special interest, and politics" rather than the "most qualified" applicants. Statement by Commissioner Skop posted online, *Herald/Times* political blogs (June 30, 2010). Speaking with various newspapers and TV stations in the wake of the Nominating Council decision, Commissioner Skop proceeded to specifically blame FPL for his lack of success in securing an interview for reappointment:

"It's a sad day for the people of the state of Florida," Skop said in a telephone interview with the News Service of Florida. "It shows the extent to which the Legislature is influenced by the companies that we regulate. **Four members of the commission who voted against the (FPL) rate case have lost their job, which clearly smells of retaliation.**"... "How can that many people have it wrong?," he said. "What was done last time was very brazen. What was done this time was just an abuse of the public trust."

News Service of Florida, June 30, 2010 (parentheses as in original article; emphasis supplied)

Skop said the nominating panel's decision "absolutely" was payback for the five-member commission's unanimous votes earlier this year to reject most of the rate increases sought by Florida Power & Light Co. and Progress Energy Florida. "The people of the state of Florida need to demand accountability from the Legislature or they will continue to be raped by the special interests," Skop said in an interview. **"It says, basically, FPL owns state government."**... "If this were a list to be most qualified, clearly I would be on the list," Skop said.

Associated Press, July 1, 2010 (emphasis supplied)

In the midst of a subsequent hearing on FPL's request for recovery of costs incurred in pursuing new nuclear generation projects,¹ Commissioner Skop again referred on the record to his belief that FPL was responsible for the decision by the Nominating Council not to interview him for reappointment:

I'm a regulator, I do my job, and I've lost my job because I've chosen to do my job. So again, I'm not backing down from FPL in any way. I can back up what I state.

PSC Nuclear Cost Recovery Clause hearing, Aug. 26, 2010, (the transcript of part 1 of day 3 of the hearing is included as Exhibit 1), Tr. 39.²

Commissioner Skop's outbursts followed a year in which his conduct toward FPL in fact-finding hearings has become increasingly more hostile and adversarial. The following example is illustrative of many that occurred over the past year.

Soon after the Commission's January 2010 decision rejecting FPL's rate request almost in its entirety, Commissioner Skop added an item identified only as a "procedural matter" to a regularly scheduled Commission meeting, did not disclose to Commission staff counsel or to FPL the nature of the "procedural matter" to be addressed, and then accused FPL on the record of continuing to collect carrying costs from customers on projects that had been suspended. Without having made any inquiry of FPL prior to his accusation, Commissioner Skop rebuked FPL:

[C]onstructive regulation requires a framework of mutual respect. Unfortunately, as FPL's conduct clearly demonstrates we're not there yet.³

¹ PSC Docket: In re: Nuclear cost recovery clause, Docket No. 100009-EI.

² The context of this comment was that Commissioner Skop made an allegation that FPL did not disclose certain facts to some parties to a stipulation that was proposed in the Nuclear Cost Recovery Clause docket. This allegation was unfounded. Ex. 2, Tr. 5 [Office of Public Counsel Statements]

³ March 2, 2010 PSC Agenda Conference, Item No. 17 (Ex. 3).

FPL, when permitted to speak, advised Commissioner Skop that no such collections were occurring.

Commissioner Skop's level of animosity and bitterness toward FPL reached a zenith during the recent nuclear cost recovery hearing. At the outset of the FPL portion of that hearing, Commissioner Skop engaged in the equivalent of an "opening statement" of issues that he intended to pursue during the hearing.⁴ In that statement, Commissioner Skop accused an FPL witness of "perjury" in a past proceeding *before* the first witness in the current hearing was sworn and *before* any evidence on the matter was heard and admitted into the record.⁵ He also accused FPL of "spin," and "selective disclosure"⁶ and accused FPL's counsel of "misrepresentations."⁷

During that same proceeding, Commissioner Skop engaged in openly adversarial examination of FPL witnesses that in length and hostile tone was well beyond any questioning by other commissioners or intervenors, including the Office of Public Counsel. This was typified by his questioning of FPL vice-president Terry Jones. Commissioner Skop conducted an overtly hostile examination (as opposed to impartial fact-finding) of Mr. Jones for hours. Commissioner Skop's examination of Mr. Jones took the entire afternoon and early evening of a hearing day, during which Commissioner Skop asked approximately 70 questions, many of which were preceded by lengthy statements. A transcript of Commissioner Skop's examination of FPL's vice-president Jones is included as Exhibit 2.

⁴ See Ex. 1, Tr. 9-18 (statement by Commissioner Skop regarding matters that he intended to cover in the hearing).

⁵ Ex. 1, Tr. 11.

⁶ Ex. 1, Tr. 13, 25, 39, 43.

⁷ Ex. 1, Tr. 35.

Commissioner Skop's adversarial conduct toward FPL was also illustrated by his comments in response to objections raised by FPL's counsel (Mr. Anderson) to a request made by Commissioner Skop that FPL's President and Chief Executive Officer, Mr. Olivera, appear to testify in the recent nuclear cost recovery proceeding. Mr. Olivera was not on the witness list for the proceeding. Following a full day in hearing where Progress Energy had presented its witnesses, Commissioner Skop, without notice, requested Mr. Olivera's appearance later that week to testify.⁸ In response to FPL's objections, Commissioner Skop accused FPL's attorney of failure to show him adequate respect and insisted that he would not be "intimidated by FPL":

Mr. Anderson's earlier comments were not well taken. Never in the history of the Commission has a Commissioner been treated with such blatant disrespect by a regulated utility. That being said, I am not intimidated by FPL, and I have absolutely no intention of backing down from my prior reasonable request to have Mr. Olivera appear before this Commission.⁹

A review of the transcript reveals that there was nothing in the responses of Mr. Anderson to justify Commissioner Skop's characterization or the clearly adversarial statement that the commissioner was not "intimidated" by FPL.

Additional examples of Commissioner Skop's adversarial conduct are documented in the transcript.¹⁰ A review of the full transcripts of recent hearings illustrates that Commissioner Skop has reserved his antagonistic behavior for FPL and displayed no similar behavior with respect to the other utility that was before the Commission on its nuclear cost recovery request in the same hearings.

⁸ Commissioner Skop made this request despite serving as the Prehearing Officer assigned to the Nuclear Cost Recovery Clause docket and in that capacity, in addition to handling all prehearing matters, had reviewed and approved all issues to be addressed and witnesses to be presented at the hearing.

⁹ Ex. 1, Tr. 1-2.

¹⁰ Ex. 1.

Argument

The Commissioner's Obligation to Maintain the Reality and Appearance of Impartiality

Members of the PSC perform a judicial function and are bound by the fundamental requirement of all judges to maintain both the reality and the appearance of absolute impartiality in the conduct of their fact-finding duties. In the context of an administrative proceeding, as in any adjudicative proceeding, the right to an impartial decision-maker is a basic component of minimum due process. *Cherry Communications v. Deason*, 652 So. 2d 803 (Fla. 1995) (In the administrative context, “an impartial decision-maker is a basic constituent of due process.”) *Ridgewood Properties, Inc. v. Dept. of Community Affairs*, 562 So. 2d 322 (Fla. 1990) (“An impartial decisionmaker is a basic constituent of minimum due process.”); *Jones v. Florida Keys Community College*, 984 So. 2d 556 (3d DCA 2008) (“A litigant is entitled to have confidence that the hearing officer before whom he or she appears is acting impartially as a fact-finder.”); *Charlotte County v. TMC-Phosphates Company*, 824 So. 2d 298 (Fla. 1st DCA 2002) (“[A]n impartial decision-maker is a basic component of minimum due process in an administrative proceeding.”); *World Transportation, Inc. v. Central Florida Regional Transportation*, 641 So. 2d 913 (Fla. 5th DCA 1994).

There are two independent grounds for concluding that the impartiality requirement has not been met: (1) the fact-finding officer must not make public comments that suggest animosity toward a party to proceedings, *See World Transportation, Inc. v. Central Florida Regional Transportation, supra*; *Williams v. Balch*, 897 So. 2d 498 (Fla. 5th DCA 2005); *Coleman v. State*, 866 So. 2d 209 (Fla. 4th DCA 2004); *Novartis Pharmaceuticals Co. v. Carnoto*, 840 So. 2d 410 (Fla. 4th DCA 2003), and (2) the fact-finding officer must not cross the line from neutral arbiter to advocate for or against a party in the conduct of the proceedings. *Barrett v. Barrett*, 851 So. 2d

799 (Fla. 4th DCA 2003); *Cammarata v. Jones*, 763 So. 2d 582 (4th DCA 2000); *Sparks v State*, 740 So. 2d 33 (Fla. 1st DCA 1999).¹¹ Violation of either of these standards is sufficient for disqualification. In this case, Commissioner Skop has violated both components of the impartiality requirement.

The Commissioner's Failure to Meet His Obligation to Maintain the Reality and Appearance of Impartiality

The Commissioner's Public Comments — It is egregiously inappropriate for a quasi-judicial officer sitting in an adjudicative hearing involving the substantial rights of a party to make public statements that he has unjustly been denied reappointment because of the actions of the very party whose rights are being decided. It is difficult to imagine scenarios that more clearly convey a mindset that would make it difficult at best for Commissioner Skop to maintain impartiality.

The Commissioner's Adversarial Conduct During Hearings — The PSC performs both investigatory and quasi-judicial functions. Nevertheless, the dual roles of the Commission do not relieve individual commissioners from their obligation to maintain impartiality in the performance of their adjudicative duties. *Charlotte County v. IMC-Phosphates Co.*, *supra*. Commissioners have the authority to question witnesses during the course of a proceeding and to comment on the evidence during deliberations. However, when a commissioner crosses the line from neutral arbiter to zealous advocate for or against a party, he becomes subject to disqualification. Commissioner Skop's delivery of a speech equivalent to an opposing counsel's "opening statement", his adversarial cross-examination of FPL witnesses, his antagonistic remarks regarding FPL's counsel during hearings, and his statement in the midst of hearing that

¹¹ The standard of objectivity and impartiality for PSC Commissioners has been adopted by the Legislature through statutory standards of conduct and the oath of office. Sections 350.04(2)(g), (h) and 350.05, Florida Statutes.

he is not “intimidated” by FPL and that he has “no intention of backing down” illustrates that the Commissioner has crossed the line from impartial arbiter to zealous adversary and that his personal animosity toward FPL has risen to such a level that he utterly fails to maintain even an appearance of impartiality.

The Legal Standard for Determination of Motion

In determining a motion to disqualify a quasi-judicial officer, the facts stated in the motion must be accepted as true. *Charlotte County v. IMC-Phosphates Company*, 824 So. 2d 298 (Fla. 1st DCA 2002). The standard for determining a motion to disqualify is an objective one, having nothing to do with the commissioner’s own belief as to impartiality:

The question presented is whether the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing. *Department of Agriculture v. Broward County*, 810 So. 2d 1056, 1058 (Fla. 1st DCA 2002). It is not a question of how the judge actually feels, but what feeling resides in the movant’s mind and the basis for such feeling. *Id.*

Charlotte County v. IMC-Phosphates Company at 824 So. 2d 300; *Jones v. Florida Keys Community College*, *supra*.

Commissioner Skop’s hostile accusations, both during hearings and in public statements to news media, that FPL was responsible for his failure to be reappointed to the PSC, and his aggressive adversarial behavior toward FPL during hearings, certainly meet that standard.

Conclusion

The evidence presented in this Motion clearly demonstrates that a reasonably prudent person in FPL’s position would fear that he or she would not receive a fair and impartial hearing from Commissioner Skop. Disqualification therefore is both proper and necessary under State law.

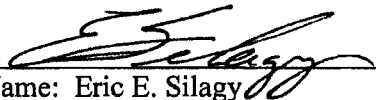
Wherefore, FPL respectfully requests: (a) that Commissioner Skop rule on this Motion prior to participating in PSC hearings, deliberations, decision-making, or acting in any other capacity, on all active dockets and matters involving FPL that have not yet been decided by the Commission including, but not limited to, the above-referenced dockets; and (b) that this Motion to Disqualify Commissioner Skop be granted.

VERIFICATION

STATE OF FLORIDA

COUNTY OF PALM BEACH

Eric Silagy, as a representative of Florida Power & Light Company, being first duly sworn, deposes and says that the information provided within this document is true and correct to the best of his/her knowledge, information and belief.

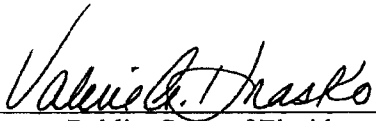

Name: Eric E. Silagy
Position: Senior Vice President

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me this second day of September, 2010, personally appeared Eric Silagy, who is personally known to me.




Notary Public, State of Florida
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(SEAL)



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TAL 451,562,369v2 9-1-10

CERTIFICATE OF SERVICE

**Docket Nos. 100001-EI, 100002-EG, 100007-EI, 100009-EI, 080677-EI, 090130-EI,
100077-EI, 100155-EG, 080203-EI, 080245-EI, 080246-EI, 090494-EI, 060038-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail (* Hand Delivery) on September 2, 2010, to the following:

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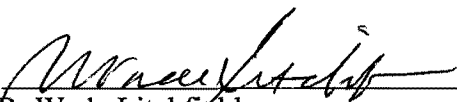
By: 
R. Wade Litchfield
Vice President and General Counsel
Florida Power & Light Company

EXHIBIT 1

FILE NUMBER - DATE

7417 SEP-29

PI-SC-COMMISSION CLERK

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.

_____ /

PROCEEDINGS: Hearing

BEFORE: COMMISSIONER NANCY ARGENZIANO
 COMMISSIONER RONALD A. BRISÉ
 COMMISSIONER LISA POLAK EDGAR
 COMMISSIONER ART GRAHAM
 COMMISSIONER NATHAN A. SKOP

DATE: Thursday, August 26, 2010

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

TRANSCRIBED BY: LORI DEZELL
 Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS, INC.
2894-A REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308 (850)878-2221

APPEARANCES:

BRYAN S. ANDERSON, ESQUIRE, and MITCHELL ROSS, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420, appearing on behalf of Florida Power & Light Company.

JOSEPH MCGLOTHLIN, ESQUIRE, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400, appearing on behalf of the Citizens of the State of Florida.

JON C. MOYLE, JR., ESQUIRE, KEEFE LAW FIRM, 118 North Gadsden Street, Tallahassee, FL 32301, appearance on behalf of FIPUG.

KEINO YOUNG, ESQUIRE, LISA BENNETT, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Florida Public Service Commission Staff.

MARY ANNE HELTON, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Advisor to the Florida Public Service Commission.

ITEM

NAME:

PAGE NO.

PROCEEDINGS COMMENCED

4

CERTIFICATE OF REPORTER

1 PROCEEDINGS

2 CHAIRMAN ARGENZIANO: Okay. We'll call our
3 meeting to order. And I believe, Commissioner Skop
4 you asked me to recognized you.

5 COMMISSIONER SKOP: Yes, Madam Chair.

6 CHAIRMAN ARGENZIANO: You're recognized.

7 COMMISSIONER SKOP: Thank you, Madam Chair.
8 Before we take up the motion that we have before
9 us -- give me one moment to collect my pieces of
10 paper that I seem to have perhaps misplaced at the
11 moment.

12 I just want to touch upon two things. First,
13 some comments for the benefit of my colleagues that
14 were not here, that had to leave early last night,
15 related to some concerns that were raised
16 yesterday.

17 And secondly, before we take up the motion,
18 I'd like to articulate my reasons why taking up
19 that motion is premature and should be deferred
20 until the conclusion of the evidentiary portion of
21 the FPL docket.

22 To begin with, Mr. Anderson's earlier comments
23 that were made yesterday were not well taken.
24 Never in the history of this Commission has a
25 Commissioner sitting on the bench been treated with

1 such blatant disrespect by a regulated utility.
2 That being said, I'm not intimidated by FPL and I
3 have no intention of backing down from my prior
4 reasonable request to have Mr. Olivera appear
5 before this Commission. I have sufficient legal
6 basis to justify this request and I will get into
7 that in due course.

8 Now, with respect to Mr. Anderson,
9 Commissioner Argenziano, you raised a very good
10 point yesterday because Mr. Anderson raised some
11 representations which I had the court reporter take
12 the time to read back and we ascertained the fact
13 that those statements were not accurate. The
14 question arises whether Mr. Anderson knew or should
15 have known those statements he made before the
16 Commission, including the two new Commissioners,
17 were not accurate.

18 Mr. Anderson is authorized in-house counsel
19 for FPL. Accordingly, he's subject not only to the
20 rules of practice before the Commission which he
21 should be diligent and aware of, but also the rules
22 regulating the practice of law by the Florida Bar.

23 Now, everyone knows that has knowledge of the
24 ex parte restrictions of this Commission, which I
25 believe Mr. Anderson would have constructive

1 knowledge of at the very least, that Commissioners
2 cannot see documents provided from the utility
3 until those time -- those dockets are formally
4 entered into the record. And that record is the
5 public record that's available on the Commission's
6 website.

7 So case in point, again, those documents that
8 were provided to the Commission audit staff,
9 Commission audit staff is separate and independent,
10 I don't get to go get their documents and get
11 involved in that. But the document was entered
12 into the record, the redacted version, on
13 August 23rd, I believe was Monday, and that
14 resulted from the evidentiary hearing that was held
15 on the 20th at which time FPL was going to file the
16 revised redacted request. And ironically, you
17 know -- or not ironically, it's typical of them,
18 they filed it at 3:30 in the afternoon on Monday
19 which required myself, Commission staff and the
20 clerk's office to stay here until 7:00 p.m. issuing
21 the three orders granting confidentiality so that
22 they would be ready to go for the start of the
23 hearing on Tuesday morning. Okay.

24 So Mr. Anderson, again, I think that, you
25 know, there's advocacy and there's points where

1 advocacy crosses the line. And again, my
2 concern -- you're entitled to say whatever you want
3 to say -- but I think that, you know, I deal in
4 facts and I don't spin the truth. And while my
5 credibility and integrity may have been challenged
6 yesterday, the one thing I can assure this
7 Commission is win or lose this morning, I will walk
8 out of here with my credibility. Okay?

9 So that, Madam Chair, I would like to go in
10 briefly into the reasons for why discussing and
11 ruling on the proposed stipulation is premature at
12 this point. And if the chair would allow me to, I
13 would move forward at this point.

14 MR. ANDERSON: Pardon me, Chairman.

15 CHAIRMAN ARGENZIANO: Would you like to
16 respond?

17 MR. ANDERSON: If I may. I just think it
18 would be good in due order to respond to those
19 points and then proceed on to the other business.

20 CHAIRMAN ARGENZIANO: Absolutely.

21 MR. ANDERSON: Would that be acceptable?

22 CHAIRMAN ARGENZIANO: Absolutely.

23 MR. ANDERSON: Thank you very much.

24 Commissioner Skop said last night, and I mean
25 to address the entire Commissioner -- Commission,

1 not any individual Commissioner -- that never in
2 the history of the PSC has a Commissioner been
3 treated with such blatant disrespect. I'd like to
4 emphasize disagreement is not disrespect.

5 Due process is not a two-way street. Due
6 process means that all parties have fundamental,
7 constitutional and statutory rights of notice and
8 opportunity to be heard. FPL, like any other
9 party, has a right to professionally and
10 responsibly advance its legal rights on these
11 arguments, and that is not disrespect toward any
12 Commissioner or this tribunal.

13 I'd like to take up in relation to the points
14 that we made yesterday, in stating our position in
15 relation to the request for Mr. Olivera to appear.
16 Our company stands by the statement we made
17 yesterday morning. It is well-founded in fact and
18 in law. Specifically FPL did provide access to the
19 Concentric report in its response to OPC document
20 request on June 23. It served notice availability
21 of those documents for review by staff and the
22 parties. In addition and separately on that same
23 day, FPL made a separate production of the same
24 report to the audit staff, same day. About two
25 months prior to the start of the hearings.

1 We based our statement on FPL's understanding
2 also that Commissioners have access to any document
3 or information provided to the Commission by audit
4 or otherwise at their request and discretion. We
5 know of no law, no rule that precludes such access
6 to information.

7 We confirmed that with the former Commissioner
8 who did not recall any information requested not
9 being provided to a Commissioner. So that's the
10 factual basis in which we made those statements,
11 Chairman. I want to be very direct because you
12 asked what did we know and what's our position on
13 that. And that very clearly is our position.

14 We have no ability to know what documents any
15 individual Commissioner read, Commissioner Skop,
16 and when you read them. But based on all of these
17 facts, we believe that the Commissioner and the
18 Commission had access to the documents in question
19 since the time they were filed.

20 And that's the end of my points. Thank you.

21 CHAIRMAN ARGENZIANO: Commissioner Skop?

22 COMMISSIONER SKOP: Thank you, Madam Chair.

23 And I think that takes care of that. I would
24 respectfully disagree with the company's position.
25 Again I thought the statements made yesterday were

1 very brazen, cavalier and directed at what
2 constructive or actual knowledge I had. Instead of
3 ascertaining that knowledge to be true, it was
4 intended to say that -- and I'm not going to waste
5 my time getting into it. Let's get down to the
6 facts before us which are the docket annual review
7 process and why taking up their proposed
8 stipulations at this point is premature. So if I
9 may begin. Thank you.

10 Madam Chair, Commissioners, I am adamantly
11 opposed to and vigorously object to considering the
12 proposed stipulations prior to hearing all of the
13 FPL witness testimony in this docket. As the basis
14 for that, I would cite the Commission rule which is
15 25-6.0423(5)(c), and that deals with the capacity
16 cost recovery clause for nuclear integrated
17 gasification combined cycle power plant costs.

18 Specifically provision 2, in subsection (c),
19 the Commission shall, prior to October 1 of each
20 year, conduct a hearing and determine the
21 reasonableness of projected preconstruction
22 expenditures and the prudence of all -- of actual
23 preconstruction expenditures expended by the
24 utility, or, once construction begins, to determine
25 the reasonableness of the projected construction

1 expenditures and the prudence of actual
2 construction expenditures expended by the utility
3 and the associated carrying costs. I can read the
4 remainder of that paragraph but I feel it's
5 unnecessary to do so at this point.

6 So with that framework in mind, there are
7 numerous red flags that warrant a constructive
8 discussion as to the adequacy of project controls
9 consistent with this Commission's regulatory
10 oversight function. I'm going to give a host of
11 illustrative examples, and these examples are
12 evidenced to state why this review should go
13 forward, not to prejudge anything in the docket.
14 So I want to make that crystal clear. And I'm
15 going to try and frame these issues as crystal
16 clear. But they should not be construed in any way
17 that it's prejudged. It's a matter of here's
18 issues that need to be discussed.

19 First, there is evidence in this docket to
20 suggest that an FPL witness allegedly may have
21 failed to disclose material information to this
22 Commission and may have perjured himself during his
23 sworn testimony given to the Commission during the
24 2009 NCRC proceeding.

25 Second, there is within the staff audit

1 report, there is a technical issue related to
2 pressure discrepancies. Somebody made a technical
3 mistake. Apparently it's uncertain as to who that
4 mistake will be charged to. But there is a
5 disconnect between the steam inlet pressure and
6 the -- or the steam header pressure and the turbine
7 inlet pressure on the turbine. And that's
8 articulated on page 34 of the staff audit report.

9 That's a question that warrants discussion in
10 itself because I believe the financial impact is
11 \$50 million. And as a result of that impact,
12 they've having to change the main steam valves and
13 other things that are discussed in that to reduce
14 the pressure drop across those valves so they can
15 better match it with the turbine inlet pressure
16 that was apparently mis-specified or whatever is in
17 there. That's worthy of having a discussion in
18 itself.

19 Second -- or third, Nuclear Regulatory
20 Commission, NRC, letter dated August 13, 2010 --
21 excuse me, the Nuclear Regulatory NRC response
22 letter dated August 13, 2010, let's talk about that
23 for a second.

24 FPL allegedly withheld disclosure of the
25 material information contained in the letter for

1 ten days and disclosed such information to the
2 Florida PSC on August 23rd only after Commission
3 staff placed the NRC letter in the docket on the
4 afternoon of August 23rd. That's less than 24
5 hours before the start of the NCRC hearing. That
6 was never disclosed.

7 Moreover, the same letter suggests that FPL
8 allegedly knew that it would request withdrawal of
9 that St. Lucie 1 LAR on or before August 13th and
10 allegedly failed to disclose this material
11 information to the Commission as it pertains to
12 this docket. That's another instance of selective
13 disclosure.

14 This begs the question as to whether this
15 material fact was properly disclosed to Public
16 Counsel and the intervening parties prior to
17 agreeing to the proposed stipulations on or about
18 August 17th, 2010. If that disclosure was not
19 made, that's another Jedi mind trick that was
20 perpetrated upon the intervening parties.

21 Now, let's talk about the Public Counsel
22 prehearing statement. Specifically with respect to
23 Issue 16 and Issue 17 which pertain to whether
24 FPL's project controls were reasonable and prudent,
25 Public Counsel in its prehearing statements which

1 are issued in the prehearing order, for Issue 16,
2 Public Counsel for the uprates OPC believes there
3 are indications of inadequate cost oversight
4 controls.

5 Issue 17, with respect to OPC, or Issue 17,
6 OPC, with respect to the uprate projects, OPC
7 believes there are indications of inadequate
8 management and contracting oversight controls.

9 Accordingly, Public Counsel's willingness to
10 support the proposed stipulation seems to be
11 inconsistent with Public Counsel's own prehearing
12 statements. Now, let's compare this to the two-day
13 hearing we just had for Progress Energy Florida
14 which had related issues which were Issues 4 and 5.
15 Public Counsel essentially took the same position
16 with respect to same PEF issues. Public Counsel
17 spent over four hours conducting the
18 cross-examination of PEF witness Franke on various
19 issues, including project controls.

20 It's hard to understand why the Commission
21 doesn't have the same obligation to conduct the
22 same thorough review for FPL given what is known to
23 the Commission at this time. I'm not sure why --
24 why Public Counsel, you know, entered into the
25 stipulations. Maybe it's fear out of, you know,

1 retaliation from the Legislature. I don't know.

2 So my final points on this matter, the
3 proposed stipulations. Let's talk about those.
4 The proposed stipulations represent a blanket
5 deferral of all FPL issues. This Commission has
6 not only the duty and responsibility but also the
7 obligation to conduct a thorough annual review of
8 the NCRC project controls and costs. In fact, the
9 utility's demanded this for regulatory certainty
10 purposes when the Commission rule was adopted.

11 Approval of the proposed stipulations prior to
12 discussing these issues in this case shirks the
13 Commission's duty, in my opinion. Approval of the
14 stipulations also prevents questions from being
15 asked. Given the numerous red flags in this -- in
16 this -- based on the audit report and some of the
17 information before us, an open discussion is not
18 only warranted but required.

19 So to put this into perspective, I'm going to
20 use an auto pilot analogy. What's happening here
21 is we're ignoring all the warning lights and
22 indicator messages in the cockpit. We press auto
23 pilot and we go back to the bar and start drinking
24 Kool-Aid for the next 12 months, doubling the
25 workload at the next NCRC proceeding.

1 Because that's what's happening here. No one
2 wants to discuss the numerous red flags we have
3 before us. They just want to wave a wand and make
4 it all go away where people can't ask questions and
5 ignore all the bad things. They don't want to have
6 an open, frank discussion about what happened good
7 and what happened bad and what corrective action is
8 being taken. It's nothing more than a blanket
9 deferral.

10 In summation, I respect that the parties have
11 entered proposed stipulations for the FPL portion
12 of this docket. The parties have their own
13 respective interests in reaching the proposed
14 stipulation for the FPL portion of this docket.

15 The Commission, however, has a separate and
16 distinct interest in performing its regulatory
17 oversight function independent from the interests
18 of the parties. There are numerous red flags that
19 warrant having a discussion regarding the FPL
20 related issues in this docket.

21 Approval of the proposed stipulations
22 presents -- or prevents questions from being asked.
23 You know, that's a form of censorship. I have
24 questions I want to ask. Knowing what I know, I
25 cannot in good faith approval of the proposed

1 stipulations prior to hearing all of the FPL
2 witness testimony in this docket. I respectfully
3 suggest that the Commission defer considering the
4 proposed stipulations for the FPL portion of this
5 docket until after all -- until -- excuse me, until
6 after hearing all of the FPL witness testimony in
7 this docket. Again there are red flags, there are
8 instances here where there has been arguably
9 selective disclosure and withholding of material
10 facts.

11 The NCRC letter, Mr. Anderson yesterday said,
12 my concerns were all about the Concentric report.
13 That is absolutely incorrect. The failure to
14 disclose the NCRC letter until after it was put in
15 the docket by Commission staff ten days after the
16 NRC approved it is just wrong.

17 It's another -- another instance where -- and
18 Commission staff can speak to this -- they wait
19 till the last minute, they don't disclose things.
20 It is a selective self-serving disclosure method.
21 And that's due process, Mr. Anderson, right there.
22 So if we want to talk due process, I can talk it
23 till the cows come home.

24 So Madam Chair, at this point I would
25 respectfully move to defer consideration of the

1 motion for the proposed stipulations until the
2 conclusion of the FPL portion of this docket.

3 CHAIRMAN ARGENZIANO: Any discussion?

4 MR. McGLOTHLIN: Chairman Argenziano, may I be
5 heard on this?

6 CHAIRMAN ARGENZIANO: Yes. Let me go to
7 Commissioner Graham first.

8 MR. KISER: Excuse me, Madam Chairman. I
9 think Commissioner made a motion and I didn't hear
10 a second.

11 COMMISSIONER SKOP: Can you ask for a second,
12 second and discussion? I did make a motion.

13 CHAIRMAN ARGENZIANO: Yes, that's true. There
14 was a motion made. I wanted to see if
15 Commissioners wanted to discuss it. How about can
16 we -- can we temporarily withdraw the motion and
17 have discussion?

18 COMMISSIONER SKOP: Yes. I will defer to the
19 Chair and I will withdraw the motion.

20 CHAIRMAN ARGENZIANO: Okay. The motion is
21 withdrawn. It's open for discussion. Commission
22 Graham. Calhoun County.

23 COMMISSIONER GRAHAM: Thank you, Madam Chair.
24 I know that staff specifically has got a couple of
25 questions, I think, a witness or two they want to

1 talk to before they're even ready to write off on
2 the stipulations that are before us. So I would
3 like to recommend, or maybe I don't need to make a
4 motion yet, but that we hear from staff and hear
5 their questioning from the witnesses and then maybe
6 at that time Mr. Skop would want to bring forth his
7 motion and we can -- we can move forward from that
8 point.

9 CHAIRMAN ARGENZIANO: I have some discussion
10 and then we'll go to OPC. Did you want to make
11 comment first? I'm sorry.

12 MR. MCGLOTHLIN: If I may, I'd like to respond
13 to some of Commissioner Skop's comments.

14 CHAIRMAN ARGENZIANO: Certainly.

15 MR. MCGLOTHLIN: And what I'd like to do is
16 inform the Commissioners as to how Public Counsel
17 became involved in what is now a stipulation.

18 In this case, our consultant, Dr. Jacobs,
19 focuses on some uprate related issues. He'll focus
20 on what is described as a nonbinding but growing
21 estimate of completed costs. He'll focus on what
22 he says is inadequate feasibility study.

23 And so when we saw the staff testimony and saw
24 that the staff witnesses also have some comments
25 about uprate issues, it appeared to us that OPC's

1 testimony and staff's testimony were in a sense
2 complementary.

3 Now, at the conclusion of their testimony,
4 alluding to some of the matters contained in the
5 staff's audit report, the staff witnesses say,
6 because of the activities of management, we believe
7 some of the uprate related costs prior to and after
8 those activities may have been unnecessarily high,
9 and for that reason we recommend, the staff
10 recommends that the Commission consider -- examine
11 those costs in a separate docket or in the next
12 hearing cycle. And we thought that was a good
13 idea.

14 So that is why -- and let me refer you to the
15 Prehearing Order also in 21. Issue 21 asks what
16 system and jurisdictional amounts should the
17 Commission approve as FPL's final 2009 prudently
18 incurred costs and final true-up analysis for the
19 extended power uprate. Well, that is the issue
20 which we think captures the staff's contention that
21 certain costs incurred prior to those activities
22 may have been too high. And that is why in our
23 position statement we say OPC agrees with staff's
24 proposal to conduct a more detailed examination of
25 the costs in a separate docket.

1 The next issue, 22, asks what system and
2 jurisdictional amounts should the Commission
3 approve as the reasonable estimated 2010 cost for
4 the extended power uprate. We think this issue is
5 what captures the staff's concern that
6 post-activity costs may have been too high. And
7 that is why we said in our position we agree with
8 staff's proposal to conduct a more detailed
9 examination of the costs in a separate docket.

10 So we saw -- we saw these position statements
11 as being consistent with and supportive of the
12 staff's positions in this case, as were those
13 position statements that Commissioner Skop referred
14 to, indications that controls may have been
15 inadequate.

16 And so, for us, the possibility of a deferral
17 of these uprate related costs was a natural
18 progression of our position which was supportive of
19 the staff. And that grew into a broader agreement.

20 But we've always understood that any
21 stipulation is subject to approval or disapproval
22 by the Commission. And when during the prehearing
23 conference Commissioner Skop said I asked the
24 questions I intended to ask, my working assumption
25 since that time is that people will have that

1 opportunity to ask the questions.

2 So I didn't -- as I see it, this -- this could
3 unfold in several ways, all within the discretion
4 of the Commission.

5 One possibility would be to defer these issues
6 in entirety. Another possibility would be to deny
7 the stipulation and go forward and have -- try to
8 complete things today.

9 The other possibility is that in its
10 discretion, the Commission may have individual
11 Commissioners ask their questions, staff ask their
12 questions, and then defer the balance.

13 So I want to make the point that from the
14 outset with respect to the uprate related costs, we
15 have been -- our position has been consistent with
16 the idea that some of these issues arose too late
17 in the game to examine thoroughly and make any
18 decision as to whether the activities described in
19 the staff audit report did or did not lead to
20 imprudent costs.

21 Now, I want to mention one more thing that I
22 think bears on this. And I think Mr. Anderson may
23 have misspoken a while ago when he was describing
24 who received the Concentric report and when they
25 received it.

1 We received the staff's audit report in its
2 redacted fashion when the staff filed its testimony
3 on July 20th and we asked for, you know, a
4 confidential version. And that's the first time we
5 saw that the -- and within the staff summary report
6 references to the replacement of uprate management
7 and the references to the employee complaint letter
8 that had been shielded. And our review suggested
9 that the company's confidentiality request was
10 overbroad. So on August 2nd we disputed that
11 contention and asked the Prehearing Officer, or
12 Commissioner Skop, to conduct an in-camera
13 examination of that and resolve the dispute.

14 Almost simultaneously Commissioner Skop, maybe
15 the same day or a day later, we received an order
16 setting that and other similar issues for hearing
17 on August 20th. And we went to that hearing
18 prepared to litigate our contention that the
19 utility's attempt to shield that information was
20 overbroad, had they not withdrawn their -- their
21 request for confidentiality that day.

22 So I believe that hearing was the first time I
23 had personally seen any version of the Concentric
24 report, August 20th. And we didn't get the -- the
25 revised redacted copy until the 23rd when it was

1 filed.

2 So that's, I hope, some clarification as to
3 our -- how our belief that our position was
4 consistent with staff's led to us support staff's
5 proposal to have a more detailed examination of
6 certain costs in either a spinoff proceeding or in
7 the next hearing cycle, and how that seemed logical
8 to us to have a deferral on all of those questions.

9 And that is the background of OPC's
10 involvement in this.

11 CHAIRMAN ARGENZIANO: Commissioner Skop?

12 COMMISSIONER SKOP: Thank you, Madam Chair.
13 And thank you, Mr. McGlothlin. I do appreciate
14 that clarification.

15 I think what concerns me, again, I'm not
16 opposed to the stipulations per se. However,
17 taking up those stipulations as a whole in the
18 beginning of the proceeding would be a blanket
19 deferral and would not allow questions to be asked.

20 So I'm more than willing to look at the merit
21 of the stipulations at the end of the conclusion of
22 the testimony which would provide testimony, but
23 also if you spun it off of a docket, provide for
24 additional testimony.

25 The question that I have for you, and I need

1 to clarify one additional point also, Madam Chair,
2 is with respect to this NRC response letter
3 regarding the withdrawal of the application for --
4 the LAR application for the St. Lucie 2 EPU, or
5 extended power uprate, when was Public Counsel made
6 aware of that document?

7 MR. MCGLOTHLIN: I think I personally became
8 aware of it when I saw it on the website when FPL
9 filed it.

10 COMMISSIONER SKOP: So would Public Counsel
11 have a concern with respect to the selective
12 disclosure of material information in that regard?

13 MR. MCGLOTHLIN: I am not sufficiently
14 informed about the background on that, but we
15 certainly intend either in this hearing or in
16 subsequent hearings to explore the ramifications or
17 the significance of that withdrawal.

18 COMMISSIONER SKOP: Okay. But you -- you were
19 induced, were you not, into a stipulation,
20 agreement to a stipulation after that letter,
21 before -- you were induced into a stipulation after
22 that response letter had been issued but it was not
23 yet disclosed to you?

24 MR. MCGLOTHLIN: Well, you use the word
25 induce.

1 COMMISSIONER SKOP: I'm saying you entered
2 into a stipulation but FPL in good faith did not
3 disclose the existence of that letter to Public
4 Counsel.

5 MR. MCGLOTHLIN: The chronology is such that
6 the stipulation happened and then we learned of the
7 letter. I think that's your point.

8 COMMISSIONER SKOP: That's what I'm getting
9 at. Okay. So again, we want to talk about due
10 process. How due process is that for your company,
11 Mr. Anderson? Is that due process? Is that the
12 way your company does business, by selectively
13 disclosing documentation? Madam Chair, I'll leave
14 with that.

15 But I have one other point to mention too with
16 respect to a point that requires the Commission to
17 ask questions. There is also evidence in this
18 docket to suggest that the chief executive officer
19 of FPL Group conducted a line-by-line budget review
20 of the EPU on or about July 25th, 2009. So what
21 one might include from that, again not prejudging
22 but warranting the questions need to be asked to
23 deduce what the truth may or may not be, one might
24 conclude that not only did the EPU management team
25 have knowledge that the cost estimate had

1 changed -- and we're not talking about the dollar
2 number. We're talking about indicators that the
3 magnitude of that cost had shifted substantially.
4 Not going to debate the fine points of what the
5 actual number is going to be. It is going to be
6 what it is going to be. But the magnitude had
7 shifted.

8 And at that time, one might look at the fact
9 that the evidence in the docket, subject to going
10 through an evidentiary process but just proffering
11 this for why such a discussion is necessary and
12 proper, there is evidence to suggest that not only
13 FPL knew, its management may have knew, but
14 certainly the chief operating officer of FPL Group
15 who requested this review knew.

16 And before you get to the confidentiality
17 issue, again on that issue, if you look at the
18 footnote in the order, there is no -- been no
19 protective order of that. There has been no
20 challenge to the confidentiality on my order I
21 issued.

22 So before you even try to make a
23 confidentiality argument on that, look at the
24 footnote in the order and the order that was issued
25 on the 23rd.

1 So again, I think that's fair. It's fair to
2 conduct a hearing where the Commission is required
3 and obligated to conduct a hearing.

4 And Mr. McGlothlin, with all due respect, I'm
5 likely more than happy to take up these
6 stipulations at the appropriate time. I think
7 there's substantial merit to some of these
8 stipulations as you stated. But by doing so now
9 denies me the opportunity to review project
10 controls and redress and get some of that
11 information that might be germane to moving forward
12 and making a decision to spin off this docket.

13 Thank you.

14 MR. MCGLOTHLIN: We've always understood
15 that's within the discretion of the Commission and
16 we've also understood that asking questions is an
17 individual Commissioner's prerogative. And I said
18 this to Mr. Anderson, and I'll say it to you. Our
19 participation in the stipulation was never designed
20 to get in the way of anything the Commission wants
21 to do.

22 COMMISSIONER SKOP: Yes, sir. And I
23 understand that. I think my concern would be that
24 if there's a majority vote of this Commission and
25 they went that way, this could be yanked right from

1 out from under me and I'd never be having the
2 opportunity to call witnesses and ask questions, or
3 ask questions of the witnesses who are put on the
4 stand.

5 And so that's a ramification of the proposed
6 motion for stipulation. So that's where I have my
7 concerns, because I don't want to be denied the
8 opportunity to have my questions answered and
9 explore the various areas that we've discussed, nor
10 do I want to abrogate the Commission's
11 responsibility to conduct a thorough annual review,
12 which we did for many hours on the Progress case.

13 So it can't be Progress gets a thorough review
14 and FPL gets a free pass. I think we need to be
15 fair to both utilities.

16 Thank you.

17 MR. ANDERSON: Chairman Argenziano, may I be
18 heard at your convenience, please?

19 CHAIRMAN ARGENZIANO: Yes, please. You're
20 recognized.

21 MR. ANDERSON: Thank you very much. I'd
22 suggest if I may address just two points very
23 briefly.

24 One, I want to just make a clarification, and
25 second, I'd like to suggest a way that might permit

1 the type of discussion to see about, for example,
2 Commissioner Graham's idea about whether staff has
3 questions and the like. Okay?

4 My -- the first thing I'd like to do, and this
5 will just take a moment. And this is -- this is
6 with all respect and just for clarification of the
7 record with Mr. McGlothlin and OPC, who, you know,
8 we have great regard for. Just to be clear, we
9 reviewed our records and determined that, on June
10 23rd, we did provide the Concentric report in
11 response to OPC POD No. 35. This was placed into
12 our office as a confidential document, as is the
13 ordinary practice.

14 Then on June 29 our records indicate that OPC
15 reviewed the document and requested a copy. The
16 document was Bates numbered and provided via CD as
17 POD 35 Supplemental with Bates numbers FPL 148839,
18 148886. That's not to take away from anything
19 Mr. McGlothlin said. These cases involve enormous
20 volumes of documentation. I just wanted to make
21 that clear.

22 The second thing I'd like -- I'd like to ask
23 and suggest in the way of proceeding is if I might
24 be -- I'd like to move our stipulation. That would
25 then permit discussion by the Commission as how to

1 take up the stipulation in reference to the
2 questions. So I am prepared to offer that. And
3 we -- may I proceed? Thank you.

4 We've made our request for deferral and we
5 support it for several reasons. Our motion was
6 filed, as the Commission is aware, on August 17th
7 stating our various legal reasons and attaching the
8 stipulation which was approved by the parties. The
9 parties that have taken positions in this
10 proceeding are the Office of Public Counsel,
11 Florida Industrial Power Users Group, and the
12 Southern Alliance for Clean Energy.

13 With respect to those parties, OPC and FIPUG
14 support deferral. SACE does not object. The
15 stipulation is set forth in the Prehearing Order.

16 Just so we're all clear about what we're
17 talking about when we talk about the stipulation,
18 it provides deferral of issues until the 2011
19 nuclear cost recovery cycle and for recovery of
20 FPL's requested 2011 nuclear cost recovery amount,
21 with the express stipulation that approval of the
22 collection amounts presented by FPL is preliminary
23 in nature and those amounts are subject to
24 refunding in the form of a true-up based on the
25 outcome of the deferred consideration.

1 This means the customers remain fully
2 protected in relation to nuclear cost recovery
3 amounts and the parties retain all of their rights
4 to take such positions and make such arguments as
5 they may choose in the deferred proceeding.

6 To put the amounts at issue in perspective,
7 FPL's 2010 nuclear cost recovery amount presently
8 being collected amounts to about 67 cents per month
9 per thousand kilowatt hours of a typical
10 residential customer. Our requested 2011 amount
11 that is subject to the stipulation amounts to a
12 reduction by a little more than 50 percent, to 33
13 cents per month for a thousand kilowatt hour
14 residential customer.

15 I'd like to point out this stipulation is very
16 similar to the stipulation for deferral that was
17 approved by the Commission with respect to FPL in
18 the Commission's 2008 nuclear cost recovery order.
19 That's Order No. PSC-08-0749-FOF-EI in Docket No.
20 080009-EI, and that approval appears and deferral
21 appears at page 22 therein, in which collection of
22 certain nuclear cost recovery was permitted on a
23 preliminary basis with a determination of whether
24 certain costs should be disallowed was deferred
25 until the following 2000 nuclear cost recovery

1 cycle. So this is consistent with that practice.

2 In addition, FPL has moved and no party has
3 objected to our request for deferral of
4 consideration of Issue 3B. This was a late-raised
5 issue at the prehearing conference, raised at the
6 time.

7 We -- in support of our motion to defer that
8 as well, so we would be taking all of the issues
9 and not just hit or miss, I'd point out that this
10 issue was not addressed in the prefiled testimony
11 or exhibits of any witness. It was not raised in
12 any testimony of a party. It was not addressed in
13 FPL's rebuttal testimony because it really had not
14 been raised. There's been no testimony prepared by
15 any party to address Issue 3B.

16 And, you know, it was raised August 11, which
17 is less than two weeks before this hearing, and
18 honestly, we really even don't know how or what
19 we're at issue on with respect to that particular
20 matter. And that's again why we think that we
21 fully support full exploration of all issues,
22 including Issue 3B. We stand ready to cooperate
23 with staff and all the parties in providing
24 immediate beginning of a discovery through
25 deposition documents, whatever.

1 But we believe that the most appropriate step
2 at this juncture would be a deferral, for many of
3 the reasons Mr. McGlothlin stated in relation to
4 permitting time for consideration of issues raised
5 by staff, things addressed by OPC's witness,
6 Dr. Jacobs, and others.

7 You know, staff in its report and testimony
8 did note its interest in conducting additional
9 reviews to consider whether any
10 imprudently-incurred costs arose during 2009. We
11 respect those parties' interest and right to
12 conduct those reviews.

13 Our position -- and when those issues are
14 fully developed we'd present testimony responding
15 to those. But again, it's a matter where we're not
16 at issue.

17 The NCRC is an annually recurring docket. The
18 proceeding will provide a clear and
19 well-established method for staff and parties to
20 obtain information, to raise any considerations
21 they wish to raise through preparation and filing
22 of prefiled testimony, for our company to respond
23 in prefiled testimony, and for the Commission to
24 consider and decide based upon issues identified
25 through the Commission's prehearing process.

1 And so for all of those reasons, we would
2 request that the Public Service Commission approve
3 the stipulation which has been submitted to you and
4 put forward before you by the parties and without
5 objection.

6 CHAIRMAN ARGENZIANO: Commissioner Skop?

7 COMMISSIONER SKOP: Thank you, Madam Chair.
8 In regards to Mr. Anderson's comments and the
9 manner in which he, you know, advocates zealously
10 on behalf of his client but fails to disclose or
11 provide complete disclosure, I feel compelled to
12 correct some of the misrepresentations once again
13 that Mr. Anderson just made because it paints a
14 false picture.

15 Let's talk about the August 17th stipulation.
16 What Mr. Anderson did not just tell the Commission
17 was that that stipulation was entered into without
18 disclosing a material document, namely the NRC
19 response letter, namely prior to August 13th that
20 FPL had decided to withdraw its LAR application for
21 St. Lucie 1, and that disclosure of that document
22 may have changed the parties' willingness to enter
23 into such stipulation.

24 There you have an instance where the company
25 not only selectively disclosed something but

1 withholds material information from this
2 Commission, from Commission staff, from
3 Commissioners, from Public Counsel, and the
4 intervening parties. I don't think that fact is in
5 dispute, Mr. Anderson.

6 Secondly, with respect to due process, the
7 questions I have that I want to propound upon
8 Mr. Olivera, we want to talk due process. Let's
9 talk due process. You may have provided documents
10 on June 28th, but those documents just basically
11 got put in the record here recently, okay, some of
12 which could have been put in more recently had FPL
13 not claimed broad confidentiality and other things
14 and filed things at the last minute on the -- on
15 the 23rd that required our Commission staff to stay
16 here until 7:00 at night filing these orders that I
17 talked about.

18 So due process, you need adequate time to
19 review things. So if data is filed late or data is
20 held up in internal audit, which the other parties
21 don't really have access, I don't have access to,
22 it stands to reason that I may have some additional
23 questions. Okay?

24 The fact remains, we had an evidentiary
25 hearing on the 20th and it took an evidentiary

1 hearing to get FPL to disclose the stuff that they
2 seek to protect under the cloak of confidentiality.
3 They may have a legal right but, you know, when,
4 when you get down to issues of veracity of
5 statements made under oath to the Florida Public
6 Service Commission, I truly feel, as I stated in my
7 footnote of the order, that the confidentiality
8 statute really wasn't designed to protect that.
9 That's just basically hiding perjury, if you want
10 to call it perjury, if that's in fact what actually
11 happened. Okay?

12 Now, third, Mr. Anderson referred to this
13 stipulation as consistent with prior stipulations
14 that the Commission agreed to in this docket. I'm
15 happy to put any member of our staff sitting over
16 there on the bench -- I mean on the witness stand,
17 and have them state for the record that that is not
18 true. What happened in that proceeding, as I was
19 here, was the first year, if my recollection is
20 correct, that the NCRC proceeding went forth.
21 There wasn't a lot of cost, the process was still
22 new, there weren't red flag issues.

23 So to make the analogy that we should just do
24 it now because we did it before is complete bunk.
25 It's nonsense. There are many red flags staring

1 before this Commission and it would be absolutely
2 shameful for this Commission not to conduct a
3 thorough review of some of these very same issues,
4 the selective disclosure, the withholding of
5 material information, the project management
6 controls, the NRC letters, the prior testimony
7 given to the Commission.

8 And we're not talking about small numbers
9 here. We're talking about \$300 million. Okay?
10 Whether the number is -- it is what it is. You
11 know, the final number won't be determined. But
12 the bottom line is there were -- there seems to be
13 based on the evidence reason to suggest, and I'm
14 not saying this to prejudge, I'm saying this as the
15 basis for why we need to put people on the witness
16 stand and ask questions, that there's a
17 disagreement between FPL and the Concentric report.
18 And I respect that agreement.

19 But there's also within their management
20 discussion that we'd get into if we put the people
21 on the stand the fact that their chief operating
22 officer of FPL Group was aware that the magnitude
23 of the cost estimate had shifted.

24 So at the very least, one might argue that,
25 you know, for purposes of putting someone on the

1 stand, that we should have a discussion as to
2 whether they knew whether the magnitude of costs
3 should shift and that should have been disclosed.

4 So, you know, it seems to me that we get a lot
5 of spin around here, we get a lot of selective
6 disclosure, and basically I'm fed up with it. I'm
7 very concerned about the accuracy and the
8 timeliness of the information provided to the
9 Florida Public Service Commission. I don't view
10 this as a game. I'm a regulator. I do my job, and
11 I've lost my job because I've chosen to do my job.

12 So again, I'm not backing down from FPL in any
13 way. I can back up what I state. But accepting
14 this motion prior to hearing witness statements is
15 completely improper for this Commission. We would
16 abdicate our responsibility.

17 CHAIRMAN ARGENZIANO: Commissioner Graham?

18 COMMISSIONER GRAHAM: Madam Chair, as a -- I
19 guess as a way of just moving forward, because it
20 seems like we can go back and forth on this issue
21 for a while, I'm not ready -- I'm not ready to --
22 to -- to make a decision on the stipulations yet.

23 I guess through the Chair if I could speak to
24 General Counsel. What I'd like to see happen is,
25 before we rule on the stipulation, if we can get

1 staff to ask their questions of the two witnesses,
2 and then I think at that point, and I'm speaking
3 for myself, I can't speak for the board as a whole,
4 maybe at that point we can make a decision on where
5 we're going to move with the stipulations one way
6 or the other. And I don't know a good way of
7 putting us into that position.

8 CHAIRMAN ARGENZIANO: Well, I don't think
9 legal counsel is going to make that decision for
10 you. I think I can. I don't have any problem with
11 staff asking the questions. I just am going to put
12 the brakes on moving forward beyond that, because a
13 Commissioner has some very legitimate concerns that
14 I do also.

15 So if that's the desire of the Commissioner to
16 hear the staff's questions now, I don't see any
17 reason why we can't do that. Commissioner Skop,
18 and then we'll move on.

19 COMMISSIONER SKOP: Madam Chair, and thank
20 you, Commissioner Graham. I respect your position.
21 I also want to hear staff's witnesses. But again,
22 staff's questions are not my questions. And again,
23 I think the benefit of deferring consideration of
24 the stipulation until hearing the testimony of all
25 witnesses is that everyone's questions get

1 answered, and then if the stipulations are then
2 found to be taken up and have sufficient merit, I
3 have no problem with going with the will of the
4 Commission.

5 But what I'm opposed to is being denied the
6 opportunity to ask relevant questions over and
7 above those being asked by staff. And I think that
8 there's a laundry list here of red flags, and I'm
9 sorry if the company finds it inconvenient that I
10 would merely want to ask questions, which I am
11 entitled to do by virtue of my position on this
12 Commission. But the selective disclosure or the
13 withholding of material information, I don't know
14 how the company can explain it. It's absolutely
15 shameful.

16 MR. ANDERSON: May I be heard very briefly on
17 that point?

18 Our company takes the very strongest exception
19 to these assertions that are being made that the
20 company -- and the term I heard was hiding perjury.
21 This is a serious allegation. It's not based on
22 evidence. It's not based on testimony. It's not,
23 you know -- the -- the statements made with respect
24 from the bench are not evidence and that is not
25 evidence. And we take the sternest and most

1 serious exception to that.

2 Second, very briefly --

3 CHAIRMAN ARGENZIANO: Right, continue.

4 MR. ANDERSON: The second point, just very
5 briefly, pointing to the NRC withdrawal of the LAR,
6 to be clear, there was a public document released
7 with and through the normal Nuclear Regulatory
8 Commission process that is not a terrifically --
9 it's a -- you know, the nuclear licensing is
10 complicated, but that is not a terrifically great
11 or dismaying point in the course of this project.

12 You know, Mr. Jones, our vice president for
13 EPU, can explain all those considerations. We take
14 exception to the idea about selective or untimely
15 disclosure of that information as well.

16 So I just wanted to be very clear that we do
17 take exception to an array of these comments and
18 they give us -- they give us grave concern with
19 respect to the fairness with which we may be
20 treated.

21 CHAIRMAN ARGENZIANO: Briefly, Commissioner
22 Skop.

23 COMMISSIONER SKOP: Briefly. Mr. Anderson,
24 from what I heard your comments, you would
25 unreasonably suggest that by virtue of the fact

1 that the NRC has its website, that the Commission
2 is tasked with constructive knowledge of a document
3 that you should have otherwise provided. The facts
4 are what they are. They're not allegations. It is
5 withholding of material information. It is
6 selective disclosure.

7 The NRC letter, which is in the Commission
8 docket file, was dated August 13th. That was the
9 NRC response letter to the FPL request. Obviously
10 it seems as if in the letter they referenced the
11 FPL letter. So FPL knew or should have known that
12 it was withdrawing its application prior to August
13 13th, yet it failed to disclose such information to
14 the intervening parties, to Public Counsel prior to
15 entering into the stipulation. It failed to
16 disclose that information to the Commission until
17 not only after Commission staff put that document
18 in the record did we get your letter late in the
19 day on August 23rd acknowledging what everyone in
20 the world already knew. So it's just nonsensical
21 to hear you spin this like this. It's a poor
22 excuse.

23 CHAIRMAN ARGENZIANO: Can I do this?
24 Commissioner Skop, excuse me. I think what we
25 have, both sides, you've expressed your concerns,

1 and Commissioner Skop has certainly expressed his
2 concerns.

3 I think at this point I don't -- I think it
4 may be wise, let's have staff ask their questions.
5 I'm not prepared to say let's move on. I want
6 every Commissioner to be able to ask questions, and
7 I certainly would like to hear some of the answers
8 from both sides. I'd like to -- I think that's the
9 way to go.

10 I'm not prepared to give, you know, a blanket
11 let's move on and not be able to ask questions. If
12 there's any point that we are indicating something,
13 this Commission is indicating that we just want to
14 move on without hearing any questions or getting
15 the answers to those questions, which might help
16 some of the angst that brought on the questions to
17 begin with, then I would not be in favor of
18 bypassing that ability to do so. That's my
19 opinion.

20 But at this point, why don't we shift to staff
21 to ask questions. That does not then prohibit us
22 from continuing to ask questions.

23 Commissioner Skop, to the procedure.

24 COMMISSIONER SKOP: To that procedure. The
25 concern I have with that, Madam Chair, that seems

1 in totality to be good, but staff would have to
2 call at least, I believe, three FPL witnesses, or
3 whichever witnesses.

4 CHAIRMAN ARGENZIANO: Two.

5 COMMISSIONER SKOP: Two, or however many they
6 choose to call. My problem is, is are we just
7 going to focus on selective portions of the
8 testimony or are we going to focus on their
9 complete testimony?

10 CHAIRMAN ARGENZIANO: Well, Commissioner Skop,
11 that's staff.

12 COMMISSIONER SKOP: And briefly. But what I'm
13 saying is I don't want to reinvent the wheel. If
14 it's more administratively efficient to just go
15 through the case and defer consideration of the
16 stipulation until the end of the testimony, then
17 everyone gets their questions answered. It seems
18 to be more expedient.

19 CHAIRMAN ARGENZIANO: Okay.

20 COMMISSIONER BRISÉ: Thank you, Madam
21 Chairman. I think I agree with you that at this
22 point it would be very prudent for us to go to
23 staff and listen to the witnesses that they are
24 interested in hearing from. And I think that as
25 Commissioners, then we can ask the questions and

1 hopefully some of the issues that are outstanding
2 can be brought forth or brought to light as a
3 result of the questions that we as Commissioners
4 may want to pose. And I think at that point we may
5 want to determine if we need to bring any other
6 witnesses or -- or whatever direction we might be
7 willing to take at that point. So I think that
8 that may be a good direction to go.

9 CHAIRMAN ARGENZIANO: Well -- Commissioner
10 Edgar, question?

11 COMMISSIONER EDGAR: Thank you, Madam
12 Chairman. And I think maybe we're saying the same
13 thing. I just want to make sure that I understand
14 to the best of my ability where we are right now.
15 And so if I may.

16 Staff had shared with me in our briefing a
17 couple of days ago that there were two witnesses
18 that they had questions of. I don't remember which
19 two those are, and so I'd like to pose that
20 question while I'm looking at the witness list.

21 And so if it's okay, Madam Chair, I'm going to
22 ask staff to remind me which two witnesses they
23 have prepared questions for today.

24 MR. YOUNG: Madam Commissioner, we have
25 questions for witness Jones, witness Reed -- and

1 witness Reed. We had questions for witness Powers,
2 but FPL has agreed to enter her deposition in its
3 entirety into the record in lieu of our questions,
4 and that satisfies staff's concerns as it relates
5 to Ms. Powers.

6 COMMISSIONER EDGAR: Thank you. And just to
7 continue with that for a moment.

8 Then recognizing that witness Cooper and
9 witness Gundersen, I believe, have been stipulated
10 prior to this, if I may, again, just for my
11 understanding to Commissioner Skop, am I hearing
12 you say that you have questions that you would like
13 to ask today to -- to other witnesses perhaps other
14 than those that have been stipulated and the two
15 that our staff have shared with us that they have
16 questions prepared?

17 CHAIRMAN ARGENZIANO: Commissioner Skop?

18 COMMISSIONER SKOP: Thank you, Madam Chair.
19 Commissioner Edgar, I have not released any of the
20 FPL witnesses and I've also indicated my express
21 desire to ask questions of Mr. Olivera. So that's
22 my position on the matter.

23 MR. MOYLE: Madam Chairman?

24 CHAIRMAN ARGENZIANO: Mr. Moyle?

25 MR. MOYLE: Yeah. And for the record,

1 Jon Moyle on behalf of the Florida Industrial Power
2 Users Group.

3 It's a little unusual procedurally, and FIPUG
4 is perfectly willing to accommodate the
5 Commission's desire, it seems, to sort of ask some
6 questions and refrain from asking questions. But
7 I'm assuming that our not asking questions, to
8 defer to the Commission and staff asking questions,
9 is not going to be any kind of waiver of the right
10 at some point to possibly ask questions.

11 I mean, I don't know that you're envisioning
12 the witnesses getting on and giving their summaries
13 and doing the whole thing. I think you're talking
14 about sort of a rifle shot. We've got a few
15 questions for this witness and we're fine with
16 that, but I just want to make sure we're not
17 waiving any ability to ask questions.

18 CHAIRMAN ARGENZIANO: I can't answer for the
19 rest of the Commissioners, but I don't want to
20 waiver anybody's right to ask anything. Okay? At
21 this point I'd like to hear some answers too,
22 because it would help very much on some questions
23 that have been raised on all sides. I think that's
24 the way to go.

25 So if we are at any time, staff and legal

1 staff, precluding someone's right to ask a
2 question, answer a question, or, you know, if we
3 are somehow waiving somebody's right to do so, I
4 want to be advised before we make that -- that
5 leap, because I'm not prepared to agree with that
6 as an individual Commissioner, so --

7 MR. DAVIS: Madam Chair, may I be heard?
8 Gary Davis on behalf of Southern Alliance for Clean
9 Energy.

10 It seems like we're moving into a suggestion
11 of kind of a bifurcated procedure here. Is it that
12 the first part would be to ask the questions that
13 the Commission has and the staff has for the
14 purposes of determining whether to grant the
15 stipulation. It seems like that would be --

16 CHAIRMAN ARGENZIANO: Well, that's not my
17 take.

18 MR. DAVIS: Well, I'm trying to understand.

19 CHAIRMAN ARGENZIANO: I got a suggestion from
20 a Commissioner and it was a worthy suggestion to
21 do. I think -- I'm not sure at this point. I
22 think the best thing to do is hear from the parties
23 as far as how we're moving forward and what
24 implications it has, and then I may want to take a
25 break to discuss with legal where we really are and

1 how is the best way to go about this. And then as
2 the presiding officer and according to what the
3 will is of the Commission, I'm going to have to
4 make a determination on which way we go.

5 MR. DAVIS: And may I just state for the
6 record and for the Commission that SACE is not
7 really taking a position and doesn't intend to
8 present evidence or questions on the uprate issues.

9 CHAIRMAN ARGENZIANO: Okay.

10 MR. DAVIS: And I understand that's the focus
11 of what this discussion is about. And so we would
12 be happy to have our part of the program be as a
13 separate part if that's the desire of the
14 Commission, because I understand the focus is on
15 the uprate at the moment.

16 CHAIRMAN ARGENZIANO: Well, I think -- should
17 we bifurcate anything and what does that do,
18 Mr. Kiser?

19 MR. KISER: Madam Chairman, I would just
20 caution the Chair that everybody agreeing that
21 their notion is that you're not going to be waiving
22 anybody's rights, I would suggest you might want to
23 also ask FPL if they agree that we're not waiving
24 anybody's rights.

25 CHAIRMAN ARGENZIANO: Well, I've had it open

1 to everybody. I didn't -- I did not disqualify
2 them from participating. I meant for everyone, and
3 that's what I said.

4 MR. KISER: Well, what I'm suggesting to you,
5 they haven't commented on whether or not they agree
6 with that. And you just might want to ask if
7 they're in agreement that we're not waiving
8 anybody's rights by going in and talking to some of
9 these witnesses.

10 CHAIRMAN ARGENZIANO: Well, weren't we talking
11 about waiving the rights of people to ask and
12 answer questions? I'm not sure what you just said.
13 Repeat it one more time.

14 MR. KISER: What I'm saying is that you just
15 want to be sure that all parties agree that by
16 going the steps you're now taking, that you're not
17 waiving anybody's right to ask questions, that
18 everybody is still going to be available for
19 everybody to ask questions. And I wouldn't want us
20 to go down that road and then suddenly find -- have
21 an objection saying those rights have been waived.
22 So I was just suggesting you might want to get
23 their concurrence.

24 CHAIRMAN ARGENZIANO: Commissioner Skop, do
25 you have a comment?

1 COMMISSIONER SKOP: Yes, Madam Chair, to our
2 General Counsel.

3 Mr. Kiser, with respect to the Commission's
4 obligation pursuant to Commission rule to conduct
5 an annual hearing and determine the reasonableness
6 of projected costs and controls and such, how is
7 the Commission capable of doing that without having
8 a full evidentiary hearing similar to what just was
9 done for Progress over the last two days?

10 MR. KISER: What I'm suggesting, Commissioner,
11 is that I think it sounded like, from the
12 discussion I heard, that everybody was not nodding
13 and agreeing that by going ahead and doing this you
14 weren't waiving anybody's rights. And I'm just
15 saying that you want to make sure that all the
16 parties sitting here also agree with that. Because
17 if you start down that road and then they raise an
18 objection to that and say, no, they don't agree to
19 that, they think we are waiving some rights, we
20 need to -- we need to know that now if they have an
21 objection to that.. That's all I'm asking.

22 CHAIRMAN ARGENZIANO: Well --

23 COMMISSIONER SKOP: A brief response. And
24 that's exactly my point, is we don't undertake that
25 risk if we do the evidentiary hearing and then get

1 to the stipulations at the very end. If we decide
2 to spin off or defer, then we do it at that time.

3 CHAIRMAN ARGENZIANO: Okay. Let me get -- let
4 me go -- let me do this. If we move forward as
5 Commissioner Skop indicates, that requires the
6 Commission to vote on which way we're going to go
7 or not? So then --

8 MR. KISER: I'm not suggesting that you have
9 to vote on that. I think -- I think you have every
10 right to go ahead and go down that road. We just
11 want to be sure that when we go down that road,
12 that everybody agrees that we're doing that and
13 that there's no objection to that. Otherwise we
14 end up -- we could have a dispute on our hands
15 which we then have to sort out. I'm trying to
16 avoid that.

17 CHAIRMAN ARGENZIANO: Wait a minute. Let me
18 see if I'm -- I'm not getting confused here. But
19 wouldn't it be if you stipulated and wanted to take
20 a particular route, that you would not think that
21 this is the route to take?

22 MR. KISER: Mary Anne would like to address
23 the Commission.

24 CHAIRMAN ARGENZIANO: Okay.

25 MS. HELTON: It was my suggestion, so maybe

1 let me, let me give a shot at it.

2 My concern was that if we -- staff calls the
3 two witnesses that it wants to question and the
4 Commissioners have questions but the parties don't
5 have questions, at the conclusion of that, a
6 decision is made not to approve the stipulation and
7 then we go forward with the remainder of the
8 hearing, my concern was I wanted to make sure that
9 we have the agreement from everyone sitting on this
10 side of the room --

11 CHAIRMAN ARGENZIANO: Got it.

12 MS. HELTON: -- that we can't call back
13 witnesses that staff has asked -- directed
14 questions to or that the Commissioners have
15 directed questions to.

16 CHAIRMAN ARGENZIANO: Can, I think, right?

17 MS. HELTON: I'm sorry. Right.

18 CHAIRMAN ARGENZIANO: Mr. Anderson?

19 MR. ANDERSON: Madam Chairman, FPL is fine
20 with the suggestion, I believe, Mr. Jones and
21 Mr. Reed, right? And it sounds like the process
22 would be we'd bring them in, they can be sworn,
23 they can answer questions. We do urge
24 consideration and acceptance of our motion to
25 defer.

1 We're okay proceeding in this way. And we
2 expressly acknowledge that if we need to have a
3 full evidentiary hearing, you know, then and there,
4 then we'd put our witnesses on and with the
5 summaries and cross-exam and all that.

6 But, you know, in order to facilitate things,
7 we'll just bring in Mr. Jones, I guess, to start.
8 Is that acceptable?

9 CHAIRMAN ARGENZIANO: Okay. I do have -- I do
10 want to make this suggestion, because what I see
11 coming down here is that those -- just because
12 staff is going to ask questions, that is not going
13 to alleviate some of the questions, other questions
14 that I believe Commissioner Skop has or I may have
15 or any one of you may have coming down. We don't
16 know what staff is going to ask. We don't know if
17 it's going to fully address everything that we have
18 concerns on.

19 So if we're going to go down that road and
20 staff -- then we're just saying that, staff, you're
21 just going to ask questions now but we're still
22 going to go down to an evidentiary hearing it seems
23 like in order to accommodate Commissioner Skop and
24 maybe any one of us, so maybe this is not the --
25 the best way to approach it.

1 Commissioner Graham?

2 COMMISSIONER GRAHAM: Thank you, Madam Chair.

3 I guess I'm trying to -- and I'm not even sure that
4 we have any sort of a -- if we're in the proper
5 order, if we've got any sort of motion on the floor
6 or not. But my understanding was the questions
7 before us is the stipulations.

8 And there's a lot of back and forth about
9 what's going on with the stipulations, and it seems
10 to me that the key to most of this is the August
11 13th letter, the NRC letter that started all this
12 and that's what got the staff started with their
13 questions. And I can't speak for Mr. Skop, if he
14 had more questions before or after that point or
15 not.

16 And I don't know if -- I don't know if the
17 motion on the floor is the stipulations, and if
18 that's what the case is, I'd like to hear, I'd like
19 to hear the staff question those two witnesses, for
20 the board itself to -- if we have any questions to
21 those two witnesses. And then at that point we
22 make the determination if we want to open up to a
23 full hearing or if we're -- if we're happy with the
24 questions there and we can move forward with the
25 stipulations.

1 CHAIRMAN ARGENZIANO: It does come down to
2 then if we still have a Commissioner who wants to
3 have more questions, and outside of those two
4 witnesses, where do we go from there? Hang on.

5 MR. KISER: Well, Madam Chairman, it's always
6 best to have a motion and passed so that it's clear
7 what people want to do.

8 CHAIRMAN ARGENZIANO: That's why I asked if we
9 had to vote on it. That's what I meant.

10 MR. KISER: And so I would say that, you know,
11 again, to kind of build building blocks up to the
12 top, you start with the motion, that frames the
13 question, that sets the course of action, it's
14 seconded. If it passes, then that's the course you
15 go. If that doesn't pass, then someone else
16 suggests a motion. And if that one passed and is
17 seconded, then that's the direction you go.

18 But it's just usually easiest and proper
19 business to get your motions in order first.

20 CHAIRMAN ARGENZIANO: Okay. Here's what it's
21 going to come down to. We're going to take a vote
22 on whether you want to hear other questions that
23 Commissioners may have. And I think that's what
24 we're faced with right now, because I don't have a
25 motion on the table. We had a withdrawn motion.

1 COMMISSIONER SKOP: I'll make a motion but it
2 may, you know -- Madam Chair, if I may be
3 recognized.

4 CHAIRMAN ARGENZIANO: You're recognized.

5 COMMISSIONER SKOP: Again, if staff calls
6 witnesses for the purpose of asking staff's
7 question, I am not waiving my right under
8 evidentiary hearing to ask questions and hear other
9 Intervenor testimony questions or cross-examination
10 that may spur additional questions I have.

11 So, again, what I proposed the first time,
12 which would, you know, to me streamline this whole
13 discussion, is defer taking up the motion on the
14 stipulations until the conclusion of the
15 evidentiary portion of the hearing.

16 Now, if the stipulations are approved at that
17 time, the dockets would be spun off and additional
18 testimony and discovery could be conducted over and
19 above what's already created in this record. The
20 record will not be limited to what we discuss here
21 today. That's my understanding. I think that's
22 the appropriate legal way to proceed, to call the
23 first witness and let's get on with this instead of
24 trying to bifurcate it.

25 Because when staff asks its questions, I'm not

1 asking mine then. I'm sorry. That's staff's
2 desire to do that, but I want to hear from the
3 intervening parties. I want to hear what they have
4 to say. I've got my questions. I think an
5 evidentiary hearing is required by our own rule.

6 CHAIRMAN ARGENZIANO: Okay. It doesn't seem
7 efficient to bifurcate, I believe. You're going to
8 hear staff's questions anyway if we just move on
9 and let Commissioner Skop and any other
10 Commissioner proceed.

11 So if you have a motion, let's go with it.

12 COMMISSIONER SKOP: Thank you, Madam Chair.
13 I'd like to be recognized for the motion to --

14 CHAIRMAN ARGENZIANO: You're recognized.

15 COMMISSIONER SKOP: Thank you. To defer
16 consideration of the motion to accept the proposed
17 stipulations until the end of the FPL witness
18 testimony.

19 CHAIRMAN ARGENZIANO: Do I have a second?
20 Pass the gavel to Commissioner Brisé, please.

21 MR. KISER: You don't need to pass the gavel
22 for a second. That's my feeling.

23 CHAIRMAN ARGENZIANO: Okay. Well, I'm not
24 sure what rules we're operating under here, so --

25 MR. KISER: That's a problem that we have.

1 But generally speaking a second does not indicate
2 to you support. It's just for discussion, so
3 it's --

4 CHAIRMAN ARGENZIANO: Well, it's been up in
5 the air and I'm not going to take any chances, so I
6 will just second the motion.

7 COMMISSIONER SKOP: And discussion.

8 CHAIRMAN ARGENZIANO: And discussion.

9 Question?

10 COMMISSIONER BRISÉ: I have a question on the
11 motion.

12 CHAIRMAN ARGENZIANO: Sure.

13 COMMISSIONER BRISÉ: If I understand the
14 motion properly, that staff will bring forth its,
15 who it seeks to ask questions to and that the
16 intervenors and the Commission can then ask
17 questions of --

18 CHAIRMAN ARGENZIANO: Commissioner Skop?

19 COMMISSIONER BRISÉ: -- of those individuals
20 as well.

21 COMMISSIONER SKOP: No, Commissioner Brisé.
22 The way the motion was styled is that the FPL case
23 in chief would proceed just as the way it did with
24 Progress. FPL would call its first witness. The
25 witness would be tendered for cross-examination by

1 the Intervenors, by staff, by, you know, the
2 Commissioners, redirect, call your next witness,
3 the full evidentiary hearing.

4 So what I'm suggesting in the motion is to
5 defer consideration of the proposed stipulations
6 until after we hear from all the witnesses and then
7 take that up.

8 CHAIRMAN ARGENZIANO: It would just be doing
9 it all at once rather than bifurcating and saying
10 staff, you ask your questions and then later we get
11 to ask questions. It's doing it at all at one
12 time. I don't see any difference, to be honest
13 with you. I really don't. It's either you do it
14 now or you have staff do it separately and then we
15 come back and do it. I don't see the difference.

16 Commissioner?

17 COMMISSIONER BRISÉ: May I ask a question --

18 CHAIRMAN ARGENZIANO: Absolutely.

19 COMMISSIONER BRISÉ: -- to those who entered
20 into the agreement?

21 CHAIRMAN ARGENZIANO: Ask. Absolutely.

22 COMMISSIONER BRISÉ: Okay. And this would be
23 a broad question to -- to all of those who have
24 entered into the agreement. I'd like to hear from
25 each one of you individually. What would be your

1 interest relative to how we proceed and how would
2 that impact your commitment or your position with
3 respect to the stipulation?

4 And I don't know if that question is within
5 the bounds of what I'm allowed to ask.

6 CHAIRMAN ARGENZIANO: Mr. Moyle?

7 MR. MOYLE: Well, it's happening quickly, so I
8 need to consider further a little bit, but it seems
9 like you might be heading down a path where you're
10 going to have a full-blown hearing and then take up
11 a deferral, which would say we're not going to
12 decide these issues, we're going to defer them
13 later, which sort of seems to me that you're doing
14 it twice. And so I'm not sure. You know, I'd have
15 to think about it. It -- you'd -- it could go on
16 for some time. I don't know if that's
17 administratively the most efficient.

18 CHAIRMAN ARGENZIANO: Mr. Moyle, that's what
19 I'm trying to find, is what is the most efficient.

20 MR. MOYLE: Yeah. I thought that you guys
21 were heading in a direction of essentially saying
22 let's have a limited evidentiary proceeding that
23 will help us, inform us with respect to whether we
24 want -- how we want to take action on this
25 stipulation and the motion. Have very limited

1 evidence which I'm fine with. I'll defer my
2 questions if you guys --

3 CHAIRMAN ARGENZIANO: But that could -- but
4 that could change, because it could be limited and
5 then Commissioners could have additional questions,
6 and I'm trying to figure out which is the most
7 efficient way.

8 MR. MOYLE: But I would suggest that they
9 could ask all the questions, the Commissioners and
10 staff could ask all the questions they want, have
11 a -- have a limited evidentiary record that would
12 inform you as to do we want to go forward or not go
13 forward. And if you, after hearing some evidence,
14 say, okay, let's take up the stipulation, not go
15 forward, you know, we can all, you know, do other
16 things and get ready at a later point in time. If
17 after hearing some limited evidence you say, you
18 know what, there's enough here, we want to go
19 forward and you vote to go forward, then we have an
20 opening and we go forward with the proceeding.

21 I think, you know, with all due respect, that
22 that's probably a way to proceed that makes sense.
23 And, again, my only point in raising the waiver
24 issue is I don't want to have, you know, limited,
25 which I think makes sense administratively.

1 CHAIRMAN ARGENZIANO: Absolutely. Absolutely.

2 MR. MOYLE: -- because you'll hear just a
3 focus point --

4 CHAIRMAN ARGENZIANO: Sure.

5 MR. MOYLE: -- without waiving the right to
6 ask other questions.

7 So, thank you for, thank you for the question,
8 Commissioner. Appreciate it.

9 CHAIRMAN ARGENZIANO: You did ask for all, so
10 let's have him --

11 MR. DAVIS: I guess we're going this
12 direction.

13 Commissioner Brisé, I just wanted to first of
14 all state that SACE was asked to stipulate to this
15 stipulation at -- on Monday the 16th is when we
16 first heard about it. And the way it was
17 represented to us is that staff had requested a
18 deferral and that OPC had already agreed. And it
19 was also focused on the uprate, which SACE has not
20 focused on in this hearing.

21 And that's why we did not object, because we
22 wanted to -- we didn't want to -- to support
23 something that we really hadn't followed and that
24 we didn't really necessarily agree to. But the
25 purposes of our do not object was to allow for the

1 will of the Commission on how to proceed,
2 basically.

3 And I do agree with Mr. Moyle's suggestion
4 that the most efficient way to do this is to do
5 whatever the Commission needs to do to decide on
6 whether to accept the stipulation, and then if the
7 Commission decides to reject the stipulation, then
8 we proceed with the full hearing. That would be my
9 suggestion as well. Thank you.

10 MR. YOUNG: Madam Chairman? Just to clarify
11 one point. When Mr. Davis represented that staff
12 had requested a deferral, audit staff in their
13 testimony requested that the Commission either
14 defer or open a separate docket as relates to what
15 he's talking about. So I just wanted to make sure
16 we're clear that staff did not -- I think if, I
17 think he said FPL stated that staff requested a
18 deferral. That was not the case.

19 MR. DAVIS: That's exactly what I stated.
20 That was the way Mr. Anderson represented it to us.

21 CHAIRMAN ARGENZIANO: Wow. Okay.

22 MR. ANDERSON: If I could correct that. No, I
23 indicated that in staff's testimony, just as staff
24 had stated.

25 CHAIRMAN ARGENZIANO: Does anybody know what

1 they've said?

2 MR. ANDERSON: I very much do, and you can
3 tell by my chapter and verse we're very particular.

4 CHAIRMAN ARGENZIANO: Thank you.

5 MR. MCGLOTHLIN: Commissioners, our office is
6 ready to proceed in the way you think is most
7 helpful to you in getting to your decision.

8 CHAIRMAN ARGENZIANO: Thank you. Mr.
9 Anderson, Commissioner Brisé asked that everyone --

10 MR. ANDERSON: We're on a little bit of untrod
11 ground here. We think it makes sense to follow the
12 will of the Commission in terms of presenting the
13 witnesses that have been asked for, so you can test
14 and consider whether to approve the stipulation.
15 We do believe that's in the best interest, for all
16 the reasons we've explained. And, you know, we're
17 prepared to bring Mr. Jones, Mr. Reed, sit them
18 down, have them sworn, and proceed in just the way
19 that's been indicated.

20 CHAIRMAN ARGENZIANO: Commissioner Edgar?

21 COMMISSIONER EDGAR: Thank you. Thank you,
22 Madam Chair. And I -- I recognize that a motion
23 has been made and that, Madam Chair, you gave the
24 second, and I appreciate that, to open us up into
25 more of a discussion posture, which is my

1 understanding of where we are.

2 CHAIRMAN ARGENZIANO: Yes.

3 COMMISSIONER EDGAR: I think we may have gone,
4 you know, all the way around the barn and are kind
5 of back at the beginning perhaps, well-intentioned.
6 But I don't completely crystal clearly understand
7 the intent or effect of the motion that is before
8 us.

9 And so with that as -- as -- as preamble, let
10 me say this. I think what I'm hearing and what may
11 be effective and efficient would be what may have
12 been suggested here a couple of times, is to ask
13 our staff or FPL to call at the appropriate time
14 here shortly witness Jones, and for our staff and
15 any other party and Commissioner who has questions
16 of Mr. Jones to -- to -- to do that in the normal
17 course of the way we handle witnesses.

18 And then after that, to -- and I realize this
19 would be taking witnesses out of the order that was
20 written before, but we do that frequently as well.
21 And then ask for witness Reed to come before us and
22 go through the same, I was going to say exercise,
23 but I mean the same process, and then see where we
24 are.

25 And I, and I say that without asking anybody

1 to waive any rights or not ask any question. And
2 it just seems like I'm hearing a desire to hear
3 from those two witnesses from -- from others and
4 the opportunity to have those questions, and I
5 think that might get us to where would be a helpful
6 posture to be in.

7 CHAIRMAN ARGENZIANO: Okay. Commissioner
8 Graham and then Commissioner Skop.

9 COMMISSIONER GRAHAM: Thank you, Madam Chair.
10 It seems to me the motion that's before us is
11 basically to have a full-blown hearing like we just
12 had earlier this week with Progress. I can say
13 right now that I do not plan on voting for that
14 motion. I have a second motion after that where I
15 think we should go. As I mentioned before, move
16 forward with the staff's questions. If we want to
17 ask questions of those same two witnesses, then we
18 can ask those questions, and at that point we can
19 decide if we move forward with the stipulations or
20 if we go to a full-blown hearing.

21 So for the questions that's at hand, and I
22 guess now after I've talked I can't call the
23 question, but the question at hand is the
24 full-blown hearing, and I do not plan on voting for
25 that.

1 CHAIRMAN ARGENZIANO: Let me ask you a
2 question. If we did it that way, what's the
3 difference if after the staff asks questions that
4 we, a Commissioner or I or you or any one of us,
5 wanted to ask questions of everyone, and it became
6 a full-blown hearing? What's the difference?
7 Couldn't it also then become a full-blown hearing
8 afterwards?

9 COMMISSIONER GRAHAM: Are you asking that
10 question?

11 CHAIRMAN ARGENZIANO: Yeah.

12 COMMISSIONER GRAHAM: At that question --
13 because it seemed like, like I said, a lot of the
14 problems was this letter from August 13th. I think
15 when those questions get asked, at that point I
16 would know if I want to go with the stipulations or
17 if I want to go into a full hearing.

18 CHAIRMAN ARGENZIANO: I got you. So you're
19 thinking that maybe the staff can answer your
20 questions. Okay. But I'm telling you ahead of
21 time, I believe that there are going to be other
22 questions from other Commissioners, and I believe
23 then at that point are you indicating that you
24 would not want -- I don't know if you want to say
25 that or not -- indicating that you would not be

1 willing to have other Commissioners ask questions?

2 COMMISSIONER GRAHAM: Well, I think we take
3 this first step.

4 CHAIRMAN ARGENZIANO: Okay.

5 COMMISSIONER GRAHAM: Then I can make the
6 determination, I think the board as a whole can
7 make a determination. If -- you know, they may
8 decide -- and there are several different steps
9 where you can decide that, you know, that Mr. Skop
10 may have a list of --

11 COMMISSIONER SKOP: It's Commissioner Skop.

12 COMMISSIONER GRAHAM: Commissioner. I'm
13 sorry, sir. No disrespect.

14 That Commissioner Skop may have five witnesses
15 that he wants to bring forward. Those five
16 witnesses may address some questions that the Chair
17 has and some other people. And so at that point it
18 can be an alternative motion.

19 CHAIRMAN ARGENZIANO: Okay. Okay.

20 Commissioner Skop to respond and then we have a
21 motion.

22 COMMISSIONER SKOP: Briefly to respond.
23 Again, my concern is this. Staff wants to call two
24 witnesses. That's for staff's purposes. Knowing
25 what I know, giving all the red flags that I've

1 articulated, knowing what the Intervenors know, I
2 can't in good faith support approval of the
3 proposed stipulations prior to hearing all the FPL
4 witness testimony in this docket, and that's having
5 a full evidentiary hearing. That seems to be
6 consistent with our obligations pursuant to our own
7 Commission adopted rule.

8 And I'm not so sure why we would not want
9 to -- you know, the Commission's interests are
10 separate and distinct from what the parties want.
11 The parties have their own interests in entering
12 into agreements, and sometimes the Commission
13 agrees with that and sometimes they don't.

14 So while I respect Commissioner Graham's
15 position, I'm not so sure why the Commissioner
16 would not want to have a full evidentiary hearing,
17 given some of the red flags that have been raised
18 here.

19 CHAIRMAN ARGENZIANO: Okay. We have a motion
20 and a second. All those in favor of the motion
21 signify aye. Aye.

22 COMMISSIONER SKOP: Aye.

23 CHAIRMAN ARGENZIANO: All those opposed?

24 COMMISSIONER EDGAR: Aye.

25 COMMISSIONER BRISÉ: Aye.

1 COMMISSIONER GRAHAM: Aye.

2 CHAIRMAN ARGENZIANO: Okay. The motion fails.
3 Now, what we'll do is move on to having staff call
4 their witnesses, and that in no way precludes --

5 COMMISSIONER SKOP: Is that funny,
6 Commissioner Edgar? Because I see a big smile on
7 your face.

8 CHAIRMAN ARGENZIANO: Okay. Let's not get --
9 let's not -- let's not -- let's just -- where we
10 are. Let's -- we are at a point where -- I'm
11 sorry, Commissioner Graham, did you want to --

12 COMMISSIONER GRAHAM: Well, we need a motion
13 on the floor now because the one failed.

14 CHAIRMAN ARGENZIANO: Well, do we need the
15 motion actually to go ahead with staff now? The
16 motion --

17 MR. KISER: Well, you don't know what his
18 motion is going to be. He may state a slightly
19 different motion. It may be bigger than just
20 two -- you don't know. You need to hear the
21 motion.

22 CHAIRMAN ARGENZIANO: I didn't know -- I
23 thought that the motion that was made -- okay. To
24 put us in the proper position, I didn't think we
25 needed a motion to have staff ask the questions and

1 then proceed from there. But if you'd like to
2 restate the motion.

3 COMMISSIONER GRAHAM: My motion is -- my
4 motion is to move forward with the stipulation
5 based on the -- the -- the -- the questioning of
6 the two witnesses by staff and by this Commission
7 as a whole.

8 So basically what I'm saying is the staff is
9 going to ask their questions of the two witnesses,
10 this Commission will ask those questions of those
11 two witnesses, and at the end of those interviews
12 of those witnesses, we can decide if we move
13 forward with the stipulation or if we go back to a
14 full-blown hearing.

15 CHAIRMAN ARGENZIANO: Well, then, so your
16 motion is to -- you're saying to move forward with
17 the stipulation, not just to have staff -- that's
18 what I thought we were talking about before was not
19 talking about the stipulations and having staff ask
20 questions and then from that point on we would
21 determine.

22 COMMISSIONER GRAHAM: Well, based on -- based
23 on the questionings of staff and of this board of
24 those two witnesses.

25 CHAIRMAN ARGENZIANO: Well, I wouldn't be

1 willing -- I'll just tell you where I am. I
2 wouldn't be willing to move forward on the
3 stipulations. I wouldn't mind moving forward with
4 staff asking the questions, but I'm not prepared to
5 move forward on the stipulations at all. There are
6 serious concerns that need to be addressed in my
7 view, and I'm not prepared to do so.

8 So, that, you know, votes will be where they
9 are, win or lose. I've been a winner and a loser,
10 and you lose more times than you win, but that's
11 not why you vote.

12 COMMISSIONER GRAHAM: Well, I guess my motion,
13 and maybe General Counsel can help me clearly, more
14 clearly state my motion, but my motion was based on
15 the stipulation question will not come up until
16 after we hear back from, until after we hear from
17 the two witnesses, until after this board and staff
18 asks questions of the two witnesses.

19 MR. KISER: That was the way I would have
20 interpreted it, that you would go forward with the
21 questioning and answering of both the staff
22 questions and Commissioners' questioning, and at
23 the conclusion of that you would then be back on,
24 unless someone makes a new motion, you'd be back on
25 the issue of whether to approve the request for

1 deferral.

2 And if, again at that time it's subject to
3 another motion, if -- if, because of some of the
4 testimony that comes up or other considerations,
5 there's another two or three or however many other
6 witnesses, a motion can be made to now bring those
7 witnesses forward. You don't have to automatic --
8 if you don't -- someone is free to make any motion
9 they want as to how they want to proceed after they
10 complete what your motion envisions. So it's wide
11 open once that's over just to go on with other
12 things.

13 COMMISSIONER EDGAR: Madam Chair?

14 CHAIRMAN ARGENZIANO: Commissioner Edgar?

15 COMMISSIONER EDGAR: Thank you. And what I'd
16 like to do is restate what my understanding of the
17 motion is, and if I am correct with my restatement,
18 that I'm understanding what it is you're
19 suggesting.

20 MR. KISER: Excuse me, but, Madam Chairman, I
21 don't believe that motion has been seconded yet,
22 has it?

23 CHAIRMAN ARGENZIANO: I don't think the motion
24 was completed. So -- so we don't have a second,
25 because it wasn't completed. He was asking about

1 how to better pose the motion, so he never
2 completed the motion, and that's what we're trying
3 to get to, I think.

4 Commissioner Edgar.

5 COMMISSIONER EDGAR: Thank you. What I want
6 to do is restate it, and if I'm understanding it
7 correctly, then I was going to second it, but I
8 didn't want to second it if I didn't understand it
9 correctly.

10 My understanding of the motion that
11 Commissioner Graham has made is that we would
12 ask -- that the Commission would ask FPL to call
13 witness Jones and there would be the opportunity
14 for his testimony and for questions from all the
15 parties and Commissioners, which would of course
16 include staff. And at the conclusion of all of
17 that, then we would ask FPL to call witness Reed,
18 go through that same evidentiary process, and then
19 at that point there would be the opportunity for a
20 motion as to how to proceed further.

21 Is -- is -- am I correct that that was the
22 intended effect of the motion?

23 COMMISSIONER GRAHAM: That was the effect if
24 that's a legal motion.

25 COMMISSIONER EDGAR: I believe that it is, and

1 in that case I second.

2 CHAIRMAN ARGENZIANO: That -- discussion.
3 Commissioner Skop?

4 COMMISSIONER SKOP: Thank you, Madam Chair.
5 With respect to the proposed motion, again, I'm
6 going to be voting in, opposed to the motion. I am
7 not going to be limited to asking my questions to
8 witnesses that staff calls in line with staff's
9 questions. Again, a lot of times my questions
10 arise following from questions that are asked by
11 the intervening parties. That's part of the
12 process to have full breadth of cross-examination.

13 The Commission has its duty and obligation to
14 perform an annual review. Everyone was aware of
15 that review. We did it for Progress. We should be
16 doing it for FPL, given the information known to
17 the Commission, and to do otherwise is a
18 dereliction of duty.

19 CHAIRMAN ARGENZIANO: If I may, for discussion
20 for myself. I cannot support the motion. I think
21 that -- I don't understand why -- I think a lot of
22 serious issues were raised, and I also believe that
23 having the opportunity to have some of those
24 serious concerns addressed is due process to the
25 parties also. And I'd like to hear their answers,

1 because they could very much clear them up very
2 easily, and by not allowing me to do that or
3 somehow stopping the evidentiary hearing from
4 coming to fruition I think is a very, very big
5 mistake. I am not prepared to not ask questions
6 and -- and -- and I think feel limited to that.

7 It changed from what I originally thought we
8 were asking or that some of the Commissioners were
9 asking, just to have staff go ahead and ask
10 questions, and then if we wanted to we could move
11 forward. But it seems to me that we're trying to
12 put the brakes on asking questions that, on -- on
13 very serious issues, and I'm not here to do that,
14 so I couldn't support that.

15 If it passes, it passes. If it doesn't, it
16 doesn't. I just can't support that, for those
17 reasons.

18 Commissioner Brisé?

19 COMMISSIONER BRISÉ: Thank you, Madam Chair.

20 I'm not certain, and I guess I'm going to make
21 a statement and then hopefully it clarifies it for
22 me.

23 If I understand properly, the motion is that
24 we will hear from the witnesses, we will be able to
25 ask questions of the witnesses, staff will be able

1 to ask questions of the witnesses, I think the
2 Intervenors will be able to ask questions of the
3 witnesses, and at that point we would be able to
4 then see if we want to move forward with the
5 stipulation or move into either taking up other
6 witnesses through a motion by someone else, by any
7 one of the Commissioners, or move into a full-blown
8 hearing.

9 So I understand the Chairwoman's point was,
10 well, why do we need the motion in the first place
11 if we're going to get to that point anyway? But I
12 think the -- the idea behind the motion is to get
13 us to a point that we can arrive at a decision so
14 that all the Commissioners can be aware as to the
15 direction that we're going to move from that point.

16 And hopefully I'm clear for myself and
17 clarified it maybe for some others.

18 CHAIRMAN ARGENZIANO: And if I may respond to
19 that, while we're discussing, is that that sounds
20 good, but when you really think about it, if you
21 have to go through all of this, there must be,
22 there has to be some feeling here that says that,
23 you know, as long as the questions I have are
24 answered, I may -- it doesn't -- let's say that
25 there are four Commissioners who don't agree with

1 one or three that don't agree, whatever way it is.

2 If we come back with we're unbalanced after
3 the staff asks their questions and there are still
4 questions, I think the bigger issue for me is then
5 are we even for one Commissioner going to say that
6 the other questions that you might have subject to
7 really us saying no. And that's our prerogative.
8 That's your prerogative. But I don't feel like
9 saying that to any Commissioner, and I don't think
10 it's justified, and I may have questions that I
11 really think need to be answered.

12 After all, the statute does say that the
13 evidentiary hearing is something that is what we're
14 supposed to do. And if you want to agree with the
15 stipulations and that, that's fine. I don't want
16 to stop any Commissioner, including myself, from
17 being able to go full blown into an evidentiary
18 hearing that is of great importance to the people
19 of the State of Florida as well as all the parties
20 involved.

21 So that's my decision on that. And it just
22 seems like in -- the way we're doing it is
23 ultimately just to say, okay, my, my question has
24 been answered and, you know, the vote is probably
25 not going to be with you later, and I'm not willing

1 to do that. So that's up to the Commission. If
2 the Commissioners want to do it that way that's
3 fine with me. I just can't do it that way.

4 So we have motion and we have a -- I'm sorry.
5 I'm sorry. Commissioner Edgar.

6 COMMISSIONER EDGAR: That's okay. Thank you.
7 I would like to take the opportunity to be clear in
8 that my restatement and support by seconding the
9 motion that Commissioner Graham made was not in any
10 way to make a decision on the stipulations now, I
11 meaning now at this moment, or to preclude the
12 asking of questions of any witness. It was simply
13 intended on my part to request that we take two
14 witnesses out of order first --

15 CHAIRMAN ARGENZIANO: I have no problem.

16 COMMISSIONER EDGAR: -- that there has been an
17 expressed desire to hear from, and then see where
18 we, see where we were, and that was the intent.
19 Not to make a decision at this time. And that was
20 my point.

21 CHAIRMAN ARGENZIANO: And I have no problem
22 with taking witnesses out of order. I just think
23 what I see happening is that what's going to happen
24 is then, and as you say, see where we are then, and
25 that may be that, you know, where you are is that

1 if Commissioner Brisé has more questions and you
2 think yours are satisfied, then it just comes to a
3 vote and he may, and that's the way it is, you
4 vote, and he may not get to ask his questions.

5 And I think in the bigger picture of what
6 we're doing here, I'm not willing to stamp that
7 right now and say that's probably what's going to
8 happen down the line. I think that, if the motion
9 is just take, take witnesses out of order, point
10 blank, then I don't see anything else further and
11 it doesn't somehow then work on somebody's vote
12 later to say, well, I don't think your concerns
13 matter. I do.

14 And that's where I'm coming. I'm not saying
15 that you don't think they matter, but I see that
16 that's what can happen, and I'm not willing to do
17 that.

18 So we're here -- Commissioner Graham, we do
19 have a motion and a second, but I don't want to
20 stifle discussion here.

21 COMMISSIONER GRAHAM: I was just going to call
22 the question.

23 CHAIRMAN ARGENZIANO: Well, we like to discuss
24 it fully, and there will be a time you will too.
25 Trust me.

1 We have a motion and a second. All those in
2 favor of the motion say aye.

3 COMMISSIONER BRISÉ: Aye.

4 COMMISSIONER EDGAR: Aye.

5 COMMISSIONER GRAHAM: Aye.

6 CHAIRMAN ARGENZIANO: All those opposed?

7 COMMISSIONER SKOP: Nay.

8 CHAIRMAN ARGENZIANO: Nay. Or aye, however
9 you want to say it. The motion prevails. So now
10 we are at staff to call their -- and make no
11 mistake, Commissioners, you still can ask your
12 questions and we'll move forward.

13 So if we want to -- I'm sorry. Commissioner
14 Skop?

15 COMMISSIONER SKOP: Thank you, Madam Chair.
16 As I previously stated in discussion of the motion
17 that passed, I will be preserving my questions for
18 all witnesses until the evidentiary hearing. This
19 was supposed to be about staff asking a question,
20 not the Commission, not the cross-examination. And
21 again, questions, additional questions that I may
22 have spawned from listening to how witnesses are
23 being cross-examined, and to do otherwise and
24 conduct an evidentiary hearing denies me that
25 opportunity.

1 CHAIRMAN ARGENZIANO: Mr. Anderson?

2 MR. ANDERSON: Can I suggest just taking a
3 moment so we can --

4 CHAIRMAN ARGENZIANO: Yeah, let's do that.
5 Let's take a ten-minute.

6 MR. ANDERSON: Thanks.

7 (Recess taken.)

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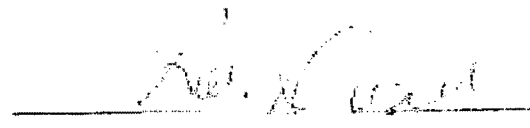
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STATE OF FLORIDA)
COUNTY OF LEON)

I, LORI DEZELI, RPR, CCR, certify that I transcribed the video and audio of the aforementioned proceedings, and that the transcript is a true and complete transcription of the proceedings to the best of my ability to hear and understand.

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

WITNESS my hand and official seal this 1st day of September, 2010.



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850-878-2221

EXHIBIT 2

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:

NUCLEAR COST RECOVERY CLAUSE.

PROCEEDINGS: Hearing

BEFORE: COMMISSIONER NANCY ARGENZIANO
 COMMISSIONER RONALD A. BRISÉ
 COMMISSIONER LISA POLAK EDGAR
 COMMISSIONER ART GRAHAM
 COMMISSIONER NATHAN A. SKOP

DATE: Thursday, August 26, 2010

TIME: Commenced at : a.m.
 Concluded at : .m.

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

TRANSCRIBED BY: LORI DEZELL
 Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS, INC.
2894-A REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308 (850)878-2221

APPEARANCES:

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JOSEPH MCGLOTHLIN, ESQUIRE, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400, appearing on behalf of the Citizens of the State of Florida.

JON C. MOYLE, JR., ESQUIRE, KEEFE LAW FIRM, 118 North Gadsden Street, Tallahassee, FL 32301, appearance on behalf of FIPUG.

KEINO YOUNG, ESQUIRE, LISA BENNETT, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Florida Public Service Commission Staff.

MARY ANNE HELTON, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Advisor to the Florida Public Service Commission.

WITNESS

NAME:

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NUMBER:

ID.

242 FPL's responses to fourth

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1 PROCEEDINGS

2 MR. MCGLOTHLIN: (no audio) -- LAR for the
3 energy project. And that would have been about the
4 time of the withdrawal which would have been prior
5 to the finalization of the stipulation.

6 So the chronology I mentioned earlier was
7 inaccurate in that respect.

8 CHAIRMAN ARGENZIANO: Okay. Thank you.
9 Mr. Anderson? Hang on. Commissioner --
10 Commissioner Skop?

11 COMMISSIONER SKOP: Thank you, Madam Chair.

12 Mr. McGlothlin, would Public Counsel, if that
13 were the case, not have had any discussions with
14 Commission staff on that issue?

15 MR. MCGLOTHLIN: I don't recall that we had
16 any conversations. I would have expected that they
17 would have their own source of information to that
18 extent.

19 COMMISSIONER SKOP: Or lack thereof. Thank
20 you.

21 CHAIRMAN ARGENZIANO: Ms. Helton, did you
22 have a --

23 MS. BENNETT: That was me.

24 CHAIRMAN ARGENZIANO: Or Ms. Bennett.

25 MS. BENNETT: If you were ready to proceed, I

1 wanted to let you know that Mr. Jones is the first
2 witness that staff has questions of. And I spoke
3 with Mr. Anderson prior to having Mr. Jones up.

4 It seems to me the indication of the
5 Commission is that you don't want to hear the case
6 in chief. So if you don't mind, we'll just ask the
7 questions, instead of giving him the summary of his
8 entire testimony. But if it's your pleasure to
9 hear the summary of the testimony then -- I'm not
10 making myself clear, but -- I can just go into the
11 questions without his summary if you would prefer.

12 CHAIRMAN ARGENZIANO: Commissioners have a
13 preference? Summary. The summary, please.

14 Mr. Anderson? Okay.

15 MR. ANDERSON: Chairman Argenziano, just to be
16 clear. If I followed the motions earlier, the
17 intention is to put on two witnesses to answer the
18 various questions. Do I understand correctly that
19 we are not in our case in chief, we're still
20 preliminary to ruling on a motion for deferral?

21 And I want to make clear to all the parties
22 that, you know, if -- if we do end up needing to do
23 the whole hearing, which I'm hopeful we do not, we
24 will -- you know, we understand people are not
25 waiving in any respect their rights to ask all of

1 their questions then. If it's helpful to the
2 Commission to hear the witness's summary, we'll do
3 that -- we'll do that now. But it wouldn't be our
4 intention to offer the testimony into the record at
5 this time. Does that make sense?

6 CHAIRMAN ARGENZIANO: Yes, it does.

7 MR. ANDERSON: Okay. So we'll do the summary
8 and then elicit your questions.

9 CHAIRMAN ARGENZIANO: Hold on one second.
10 Commissioner Skop?

11 COMMISSIONER SKOP: Thank you, Madam Chair.
12 Just one follow-up question, Mr. McGlothlin. If
13 Mr. Kelly had been made aware of that, would he not
14 have told, I guess, you, since you're the attorney
15 on this issue?

16 MR. MCGLOTHLIN: Yes. It was my omission,
17 Commissioner Skop.

18 COMMISSIONER SKOP: Thank you.

19 CHAIRMAN ARGENZIANO: We're ready to proceed.

20 MR. ANDERSON: Great. Mr. Jones, could you
21 move your chair a little bit to the left? I can't
22 see you at all.

23 CHAIRMAN ARGENZIANO: To the next microphone
24 probably would be easier for you. Does that help?

25 MR. ANDERSON: Thanks so much. And what I'm

1 going to do is just introduce the witness and ask
2 him just to present his -- his direct testimony
3 summary so you get the background of things.

4 COMMISSIONER EDGAR: I believe he needs to be
5 sworn in too.

6 MR. ANDERSON: Sure. And Mr. Reed is here
7 too.

8 CHAIRMAN ARGENZIANO: Okay. So why don't we
9 have both of you stand up. Mr. Reed. Raise your
10 right hand.

11 TERRY O. JONES
12 was called as a witness on behalf of the FPL, and having
13 been duly sworn, testifies as follows:

14 CHAIRMAN ARGENZIANO: Very good. Thank you.

15 DIRECT EXAMINATION

16 BY MR. ANDERSON:

17 Q Mr. Jones, will you please tell us your full
18 name for the record.

19 A My full name is Terry O. Jones.

20 Q Could you move a little closer to the
21 microphone? I'm having trouble hearing you.

22 A My full name is Terry, middle initial O, last
23 name Jones.

24 Q Great. We're still having trouble hearing
25 you. These microphones really require you to be up

1 close.

2 By whom are you employed and in what position?

3 A I'm employed by Florida Power & Light, vice
4 president of the extended power uprate project.

5 Q How long have you been employed by FPL?

6 A Approximately 23 years.

7 Q Okay. And do you have a summary that you had
8 prepared for your direct testimony that you could
9 present to the Commission just so they understand a
10 little background about your work and something about
11 the project?

12 A Yes, I do.

13 Q Would you please provide that to the
14 Commission.

15 A Yes.

16 Good afternoon, Madam Chairman and
17 Commissioners. As vice president, I'm responsible for
18 the management and execution of extended power uprate
19 projects. Our project team is safely and
20 cost-effectively implementing extended power uprates at
21 St. Lucie and Turkey Point nuclear plants.

22 An extended power uprate is the largest and
23 most complex uprate that can be approved by the Nuclear
24 Regulatory Commission. It requires a replacement or
25 modification of a significant number of plant components

1 in order to accommodate a higher unit output.

2 When completed, the FPL uprates will provide
3 FPL customers with an additional 450 megawatts of clean
4 zero-emission electrical generation without expanding
5 the footprints of these plants. This project will add
6 approximately one-half the electrical output of a new
7 nuclear unit.

8 The EPU project is unique in that the
9 engineering and implementation override each other and
10 the major construction is integrated with a normal unit
11 refueling cycles. We choose this methodology to
12 maximize fuel savings for our customers.

13 When complete, the project will provide FPL
14 customers with an estimated fuel savings of \$146 million
15 in the first full year of operation and savings of
16 approximately \$6 billion nominal over the life of the
17 plants. Additionally, the EPU project will reduce FPL's
18 annual fossil fuel usage by the equivalent of
19 5 million barrels of oil or 31 million BTUs of natural
20 gas and reduce carbon dioxide emissions by approximately
21 33 million tons.

22 Good progress was made in 2009 in a number of
23 project areas. We completed mobilization of the
24 engineering procurement and construction vendor, Bechtel
25 Corporation. We began the detailed design engineering

1 for the required modifications to support the near-term
2 upcoming refueling cycles. We completed an outage
3 optimization plant which adjusted the sequence of work
4 and duration of the refuelings to minimize the overlap
5 between the outages. The EPU project activities
6 completed to date or planned for 2010 include the
7 successful completion of the first St. Lucie Unit 1
8 outage, the successful completion of the engineering
9 design modifications for the upcoming Turkey Point Unit
10 3 fall outage, and completion of the engineering design
11 modifications are being prepared for the St. Lucie Unit
12 2 outage that starts in January of 2011.

13 The EPU project activities planned for 2011
14 include completion of the engineering and planning
15 phases for two of the three 2011 unit outages,
16 successful implementation of three EPU outages, and
17 performing the engineering and planning in support of
18 three EPU outages in the year 2012.

19 In short, FPL has implemented the right
20 project scope in the appropriate sequence to achieve the
21 project goal of providing an additional 450 megawatts of
22 clean, reliable electricity for our customers.

23 And when compared to other generating options,
24 the EPU project is solidly cost-effective. FPL requests
25 that the Commission determine that FPL's actual 2009

1 uprate project costs were prudently incurred and that
2 its 2010 actual estimated and 2011 projected costs are
3 reasonable. These expenditures are necessary to bring
4 this highly beneficial, cost-effective resource addition
5 to FPL customers. This concludes my summary.

6 MR. ANDERSON: And I would just note for the
7 record we're not at issue on prudence or
8 reasonableness. Those are portions of the ordinary
9 summary, summaries provided so we all have an idea
10 where we're at so we can -- you can have your
11 information.

12 Mr. Jones is certainly available for further
13 questions.

14 CROSS-EXAMINATION

15 BY MS. BENNETT:

16 Q Mr. Jones, my name is Lisa Bennett and I
17 will -- I'm an attorney for the Public Service
18 Commission staff. I'm going to have Mr. Locks pass
19 quite -- pass an exhibit out. I would like that marked
20 for identification purposes. I'm not sure what number
21 we are --

22 SPEAKER: No. 240.

23 MS. BENNETT: 240? And while he's passing
24 this out to the Commissioners and the witness, I
25 just want to make sure, and want the Commissioners

1 to know and the witness know that there's a couple
2 of points that staff wants to learn from --
3 information that staff wants to learn from this
4 witness. And first is that there was a license
5 withdrawal for St. Lucie Unit 1. And we want to
6 understand if that license withdrawal was tied to
7 the prior 2009 management team. Mr. Jones is the
8 new management team. That's my terminology. And
9 if it is tied to the prior 2009 management team, we
10 want to understand -- staff wants to understand
11 what additional costs and time for this project,
12 the St. Lucie Unit 1 project. And then there's
13 also an additional document that we've learned I
14 think was filed -- or provided by the NRC yesterday
15 on Turkey Point 3 and 4 that has some license
16 amendment that we want to ask some questions about.

17 So with that long explanation, I'm ready to
18 ask my questions.

19 BY MS. BENNETT:

20 Q I'd like to have you review staff
21 Exhibit marked 240, and it's titled the August 13th,
22 2010 withdrawal of St. Lucie Unit 1 NRC application.
23 Are you familiar with this document?

24 A Yes, I am.

25 Q And the document is NRC's application that FPL

1 withdrew its LAR, and LAR stands for license amendment.

2 A Yes, that is correct. License amendment
3 request.

4 Q And this is an affirmation from NRC, from the
5 Nuclear Regulatory Commission, that the LAR was
6 withdrawn by FPL, is that correct, for St. Lucie 1?

7 A Yes, that is correct.

8 Q FPL completed the background work supporting
9 the withdrawal of the LAR during 2009 and 2010, correct?

10 A I'm sorry, could you repeat the question?

11 Q The background work that goes into the license
12 application, the LAR, when did FPL begin work on that
13 and when did they complete work on that LAR?

14 A I'm not certain of the exact start date for
15 the engineering analysis for the license amendment
16 request. But it would have been in 2008 continuing
17 through 2009. The license amendment request is -- it's
18 a -- just to give you an idea, it's about 2,500 pages
19 for St. Lucie Unit 1. And it involves hundreds of
20 calculations. And what it's required to do for the
21 extended power uprate is compare the extended power
22 uprate conditioned to your current licensing basis, the
23 plan as currently licensed and operating. And per the
24 instructions, you must prepare engineering analysis and
25 do the calculations to determine what changes or impact

1 operating at the higher output would have. And so there
2 are hundreds and even thousands of engineering analyses
3 and technical issues that arise as the process of doing
4 that license amendment request.

5 Q Would it be fair to say that the majority of
6 that work was done by the prior management team, the
7 management team that's in charge of the EPU's prior to
8 you?

9 A No, that wouldn't be fair to say. In fact,
10 the license amendment request manager has been in her
11 job for quite some time. She's been with the project
12 longer than I have, and the license amendment request
13 engineers that are working on the project for St. Lucie
14 have been on the project since the beginning. And
15 the -- and given that there are thousands of analyses
16 and sensitivity analyses that are run, we contract the
17 very best nuclear experts in the world, Westinghouse,
18 Areva, Shaw, Stone & Webster, engineering to perform
19 those analyses.

20 There is a core group at the St. Lucie plant
21 that validates that the vendor follows the process and
22 that they're following the process for the -- for the
23 formatting of the license amendment request. And so
24 from the very beginning, Westinghouse, Areva, Shaw have
25 been doing the engineering analysis for their license

1 amendment request.

2 Q Okay. I guess what I'm really focusing on are
3 the change in management, the senior management for the
4 EPU for FPL in 2009 and what responsibility that
5 management team had over this license that was recently
6 withdrawn as compared to the current senior management
7 in 2010.

8 A Okay. The vice president that had
9 responsibility for extended power uprates also had
10 responsibility for all other major projects for FPL as
11 well as nuclear fuels. And as a part of that
12 responsibility for extended power uprate, the license
13 amendment request process certainly fell under his
14 charge. His -- but again, the license amendment request
15 manager in place in July of -- I'll just back it up a
16 month -- June of 2009, for example, is the same person
17 who's in charge today.

18 Q Who -- who is that, can you --

19 A That's Ms. Liz Abbot.

20 Q Okay. Do you know why FPL decided to withdraw
21 its application?

22 A Yes. As a part of the license amendment
23 request, the NRC has a process -- I apologize for the
24 acronym, I'm not even sure I know what the acronym
25 stands for. But it's called -- we refer to it as LIC

1 109 process. In that process, you submit your license
2 amendment request and the staff can take up to about two
3 months to do a technical review of that license
4 amendment request. And this is called the acceptance
5 period.

6 If during the acceptance period they have --
7 they may have questions in regard to some of the
8 technical attributes of the license amendment. And so
9 let me just pause right there for a second. The license
10 amendment, even though it involves hundreds and -- of
11 calculations that spawn off into subsets of calculations
12 which could be thousands of engineering issues and
13 analyses, that is not what you submit. That would not
14 fit on 2500 pages.

15 You provide a summary of those analyses. And
16 so during that acceptance review, the staff may ask for
17 technical clarifications. There's two branches within
18 the Nuclear Regulatory Commission. There's the reactor
19 operating licensing branch which has -- which has
20 accountability for the licensing process, and they have
21 project managers. And then there's the technical staff
22 branch and they have accountability for doing the
23 technical review and ultimately will do the detailed
24 review and write the safety evaluation that says it's
25 okay to raise the power level of the reactors. So they

1 have ultimate responsibility for the technical review
2 and approval.

3 We interface with a project management branch.
4 To interface with a technical branch would require --
5 and in some cases, depending on how much stuff you got
6 into, would require a public meeting. So during the
7 acceptance process, the technical branch will feed to
8 the project management branch, "I have some additional
9 questions or I need some additional information." That
10 is a normal part of the process. That occurred with the
11 St. Lucie license amendment. It's occurring right now
12 with a Turkey Point license amendment that's in with the
13 NRC staff for review.

14 The questions that the staff had as we receive
15 them from the project manager -- and again it's not a
16 detailed technical paper we get, it's a phone call and
17 then it's followed up, you know, with a written paper
18 that's briefed. And it was in the area of spent fuel
19 pool criticality analysis. One -- one other technical
20 issue was involving a reactor control rod withdrawal of
21 that and then some clarification around an event called
22 a station blackout event.

23 In our numerous exchanges with the project
24 management licensing staff, what we were being asked to
25 provide -- and again I go back to the extended power

1 uprate as a comparison of the EPU conditions, extended
2 power uprate conditions, to your current licensing
3 basis, is we felt that on two of the technical issues,
4 it really was outside our current licensing basis and
5 that -- and that we were trying to find a path forward
6 to be able to address the technical staff's concerns and
7 stay in process.

8 And it's kind of hard to have this discussion
9 without getting too technical so I apologize for the bug
10 dust here. But at the end of the day, the tech reviewer
11 wanted really a detailed analysis around the spent fuel
12 pool criticality that was beyond our current licensing
13 basis. And we're not able to do that in the short
14 period of time which is the acceptance review.

15 And during that acceptance review window, if
16 you're not able to satisfy the staff -- and there's
17 really only -- there's really only two options. One,
18 the NRC can decide not to accept the license amendment
19 request and provide you some information and some basis
20 for why they're not going to accept that request. You
21 can withdraw that request and then the NRC will accept
22 your request for withdrawal and then give you the
23 technical information and then once it's formally
24 withdrawn from the docket, then we can have a public
25 meeting engineer to engineer to understand what the

1 delta is so that we can fill in those technical gaps and
2 resubmit. That's a long answer to a short question.

3 Q Can you let me know, first of all, is FPL
4 going to continue to pursue an uprate in St. Lucie Unit
5 1?

6 A Oh, absolutely. When we -- we -- on -- on
7 August the 11th, we had a phone call with the NRC staff
8 and they stated their position in regards to our license
9 amendment request for St. Lucie and they felt like we
10 needed much more technical detail and analysis included
11 within the license amendment report. We stated our
12 position that we thought it was outside the current
13 licensing basis but clearly understood it's their
14 process, their rules. And we asked that we vet this
15 with senior management. And totally already scheduled,
16 our -- CEO and our executive vice president and chief
17 nuclear officer were scheduled to be in Washington to
18 meet with NRC commissioners and NRC senior staff. And
19 this was one of the issues that was to be discussed, the
20 spent fuel pool criticality, which is an industry issue.

21 There is interim NRC staff guidance that's
22 going to come out that's going to require much more
23 conservative assumptions and analysis going forward to
24 license spent fuel pools.

25 So on August the 13th, or actually on August

1 the 12th, those meetings with senior NRC management
2 occurred. We had some assurances in regards to the path
3 forward. And so therefore -- also what occurred on
4 August the 12th in addition to that senior management
5 interaction, we had -- I had actually talked to staff
6 about when they would finalize their decision and either
7 issue their letter. And I had asked them to -- to not
8 make it final until the following week to give time for
9 our senior management and their senior management to vet
10 the issue. Because it is a very complicated technical
11 issue both from a nuclear physics perspective as well as
12 from a licensing perspective.

13 The staff did agree. The staff did agree to
14 wait till the following week or hear back from us
15 following those senior management meetings on August the
16 12th. On August the 13th we had a follow-up phone call
17 with the staff. And again the staff is not permitted to
18 make the technical staff immediately available to us so
19 that we can talk in great detail to understand what --
20 what the additional information is that they needed.
21 They give us kind of a high level summary and it's
22 included in the letter. But to get that letter, we
23 needed to withdraw our application. And -- and we did
24 not want to delay getting that information. We wanted
25 to have the benefit of getting that information and set

1 up a public meeting with the NRC as soon as practical,
2 which we got agreement to set that meeting on August the
3 18th. So we submitted our letter on August the 13th and
4 asked the staff to -- the NRC staff to issue their
5 letter accepting our withdrawal on that same day so that
6 we could get the technical information, or at least the
7 summary of the technical information, so that we could
8 work between August the 13th and right up to August the
9 18th to make the meeting on the 18th as beneficial as --
10 beneficial as practical.

11 On the 18th we went to Washington. We had our
12 engineering-to-engineering meeting with the technical
13 staff. It took the better part of the day for the spent
14 fuel pool criticality and this rod withdrawal sequence.

15 Following -- following that meeting, we had a
16 series of other meetings with our specialty vendors. In
17 fact, we had our specialty vendors participate in that
18 meeting as they are the industry experts. And we had a
19 series of -- of meetings on what our different scenarios
20 would be going forward to resubmit the license amendment
21 request. And most of that involves additional technical
22 analysis above and beyond where we went.

23 So it's not bad engineering, it's more
24 engineering to be done to take it to another level and
25 then what that would look like and how much time that

1 would take.

2 And -- and so we worked on that really
3 through -- and we're still working on it. We produced a
4 preliminary schedule that I just went through Tuesday
5 morning, as a matter of fact. And so that's how fluid
6 this is.

7 Q And you're getting right into my next set of
8 questions. And that is, is this going to add time for
9 the project? Is this going to -- first -- and I think
10 there's probably two answers that I'm looking for.
11 First is would the withdrawal of the application cause
12 an extension of time? And secondly, I think I heard you
13 say the NRC technical staff is requiring a lot more
14 analysis. Will that analysis be the cause of additional
15 time?

16 A Yes. In regard to the -- and there's many
17 different schedules on a major complex project like
18 this. But in regards to the license amendment request
19 schedule, this most definitely impacts that schedule.
20 And again, where we are is there's several different
21 options involved with this technical issue as we have
22 certainly several scenarios in front of us. And so
23 my -- our preliminary look is that this could impact the
24 license amendment schedule by up to two months to
25 resubmit.

1 Q Up to two months and that includes the
2 additional technical information plus the information to
3 the --

4 A Yes. There's the detail -- again, engineering
5 that would have to be done, then formatted into the
6 license amendment request, and then what I refer to the
7 owner reviews that have to be done and the validation.
8 And again, this -- I want to be very clear here -- is
9 that there are multiple scenarios and what we looked at
10 was -- was that we could be ready to submit in one of
11 the scenarios by November the 30th. Again that's very
12 preliminary. And by that I mean is we're still
13 providing some technical inputs into -- into the
14 specialty vendor that performs all that analysis. We're
15 scheduled to have those inputs to them by this Friday,
16 they'll work on that through the weekend, and I expect
17 to get a proposal back from them on -- sometime in the
18 middle to late next week preliminarily. They've told us
19 what their capability is. But until I see that and what
20 I call a detail level 3, right now that's just -- that's
21 just preliminary.

22 But to give you a rough feel, you know, it
23 looks like approximately, you know, the end of November.
24 But again, until, you know, I vet through that and my
25 management vets through that, that's very preliminary.

1 Q And that -- let me make sure I'm clear on
2 this. It will extend the time of the completion of the
3 uprate also, is that correct, by at least two months?

4 A I haven't determined -- we haven't determined
5 that yet. The NRC, having gone through the acceptance
6 review, they could take up to two months to do the
7 acceptance review. They could do what would be a delta
8 review, look at just what was different from what we
9 submitted. And the Nuclear Regulatory Commission states
10 that their normal review is two months acceptance, 12
11 months review and -- and approval.

12 Now, we -- and when I say that we haven't
13 determined, the outage that I need to uprate and that's
14 currently planned, it could impact that first outage or
15 I could change the fuel loading for that reactor and
16 move that outage, which could be a delay, or one of the
17 other options is that -- that we're considering is that
18 the modifications that we need to make preliminarily
19 don't look like we need the license amendment request to
20 make those. We would only need the license amendment
21 request to go up in power. And so therefore the outage
22 and actual modification schedule itself may not be
23 impacted.

24 But again, that is all work that -- that the
25 current project team is -- is working through to assess.

1 Q What about costs? Are there going to be
2 changes in the costs associated with the license
3 amendment withdrawal?

4 A Yes. As I said, the engineering that was done
5 is good engineering but we have to take it to another
6 level to be able to satisfy the staff. And so
7 there's -- there's a cost. You've got to pay the vendor
8 for their work.

9 Q I'm going to ask that you look at a second
10 letter from the NRC. I don't know if you've seen this
11 one yet. It's from -- it's dated August 25th.

12 MS. BENNETT: And I'd like that marked as
13 Exhibit No. 241 for identification purposes.
14 Description, August 25th, 2010 NRC letter with
15 REIs.

16 COMMISSIONER SKOP: Thank you, Madam Chair.
17 Just to staff. Does staff have a copy of the
18 meeting request or notice on the August 18th
19 meeting that you referenced?

20 MS. BENNETT: No. Let me rephrase that. Not
21 with us.

22 COMMISSIONER SKOP: Okay.

23 CHAIRMAN ARGENZIANO: Thank you.

24 THE WITNESS: (Examining document.)

25 BY MS. BENNETT:

1 Q Mr. Jones, are you familiar with this letter?

2 A No, I am not.

3 Q Okay. Just a couple of questions about the
4 Turkey Point Unit 3 and 4 uprate then since you're not
5 familiar with the withdrawal letter.

6 A Well, this is not a withdrawal letter
7 associated with extended power uprate.

8 Q I'm sorry. Can you go ahead and explain what
9 it is to the best of your ability?

10 A This was -- this is in regards to a previous
11 request for a licensed amendment in regards to changing
12 the technical specifications that restrict the movement
13 of heavy loads over spent fuel pools. And that -- this
14 is not a license amendment request submitted for or
15 related to the extended power uprate.

16 Q Okay.

17 A And beyond that, I don't know the background
18 or the history around this license amendment request.

19 Q Okay. I don't have any further questions on
20 that document then.

21 You're -- you're part of what I refer to as
22 the new EPU management team; is that correct? In other
23 words, you took over in 2009 on senior management for
24 the extended power uprate for Florida Power & Light?

25 A That is correct.

1 Q And your --

2 A But I wouldn't characterize it that way.
3 There was a reorganization. The prior organization
4 involved the extended power uprate as well as all major
5 projects for the FPL nuclear fleet as well as nuclear
6 fuels. Those were the major groups.

7 What was done in July of 2009 was to
8 reorganize at a corporate level and we split out the
9 extended power uprate group from the major projects
10 group and the fuels team. And so the EPU organization
11 became a standalone organization that directly reported
12 to our senior vice president and chief nuclear officer.
13 And yes, I became the vice president of extended power
14 uprate at that time.

15 Q And that group that became the senior
16 management for the extended power uprate, that
17 reorganization, that's a new group of management, is
18 that correct, over the uprates? In other words --

19 A There were -- there were -- yes. There were a
20 number of changes but also there were a number of people
21 that remained with the project as well.

22 Q Senior management people?

23 A Yes.

24 Q Okay.

25 A And by senior management I mean director. Or

1 senior manager or direct level. Such as I mentioned
2 previously, the license amendment request manager.

3 Q I'm going to ask the question. I'm not sure
4 that your attorneys may not want you to give me the
5 names of the senior management. I'm not sure at what
6 level employee confidentiality attaches. But the names
7 and positions of the management team in 2009 that are
8 still the EPU management team, can you give me that
9 information?

10 A Well, following our reorganization in July of
11 2009, the site director for Turkey Point remained. He
12 has -- he has since left the company. The site director
13 for St. Lucie remained. The senior manager in charge of
14 the license amendment request for all our nuclear
15 uprates remained. I'm trying to think in terms of the
16 final -- final organization.

17 And there was a position that was a corporate
18 centric position that was called director for --
19 director of EPU remained in a different capacity.
20 Really I would call it a -- as a senior technical
21 adviser which is kind of like a chief engineering type
22 position for the project. I'm -- I'm new to the project
23 or was new in July of 2009 as well as a position that we
24 called implementation owner south that had
25 responsibility for both Turkey Point and St. Lucie. He

1 was certainly new to the team.

2 The reorganization in the beginning phase of
3 the project, it was heavy into evaluating engineering
4 procurement and construction type vendors. And I don't
5 want to mention the various companies involved. It
6 involved with procuring long lead material and really a
7 conceptual engineering type approach to the project.
8 And so it was quite a large corporate organization and
9 everything was -- was centrally controlled.

10 To be able to do this project successfully, if
11 you think about it, and I don't want to -- you know,
12 it's like deciding to remodel both your bathrooms and
13 all three of your bedrooms and your garage all at the
14 same time. And that's not something that you do from
15 downtown. It's a normal progression on a major project
16 like this that once you've done scoping analysis and
17 engineering conceptual, what does this look like, what
18 an overall time line looks like, get major contracts in
19 place, is you've got to establish a site centric
20 organization that has to be fully integrated with the
21 site because you're going to be doing work while the
22 nuclear reactors are operating as well as you're going
23 to be doing major work, construction type work, during
24 the refueling cycles.

25 And so it -- it's only natural to decentralize

1 the project and push the management and the resources to
2 the site and retain a small core group at corporate for
3 the governance and oversight of the project and to
4 maintain synergy and to leverage -- leverage our
5 resources accordingly.

6 Q Okay. Do you believe that any of the
7 reorganization was designed to address concerns by
8 senior management of poor performance of the prior
9 management team?

10 A I wouldn't characterize it as poor
11 performance. I would -- the folks running the projects
12 had vast experience, huge success in major projects,
13 everything from steam generator replacements,
14 pressurizer replacement, reactor vessel head
15 replacements. And it was -- it was for the reasons I --
16 the reasons I stated as well as to enhance and improve
17 performance, not that there was poor performance or
18 inadequate performance.

19 It's not unusual, you know, for -- for an
20 organization of our size, is we do succession planning
21 twice a year and we evaluate people's skill sets and
22 their functions and -- and we make movements and make
23 changes -- I don't want to say frequently, but on a
24 regular basis that's planned to better align skill sets
25 and functions. And it's not unusual to reorganize our

1 departments to further improve performance.

2 Q You were talking about enhance performance.
3 Can you give me some ideas of areas that needed
4 enhancement perhaps?

5 A As I mentioned earlier, when you go from the
6 conceptual phase of what it is you want to accomplish
7 and the time line and you get the major contracts in
8 place, you've got to turn your attention to the
9 integration with the site operations. It's an operating
10 nuclear facility. And -- and to give you kind of a
11 rough idea as you mobilize Bechtel, which is our
12 engineering procurement vendor, you have about 135
13 people that are Bechtel employees, of which about 80 are
14 design engineers that are going to be on site working on
15 the specific designs for the changes in the components.
16 And they need access to our system engineers which are
17 the most knowledgeable about the plant. They need
18 access to our operators.

19 And so one of the enhancements that you want
20 to do, you want to make the -- extend the power uprate
21 part of the core business for the site. And so you want
22 to integrate with the site through their outage planning
23 meetings. On any given week at a nuclear power plant,
24 and Commissioner Skop I know you know this, is you have
25 hundreds of activities that are occurring, from

1 preventative maintenance to corrective maintenance to
2 critical testing that occurs. At the same time,
3 extended power uprate, we're trying to determine the
4 designs that we need to do to achieve the higher output.
5 We need access to plant staff but not so much that it's
6 a distraction.

7 And so you really need people with a strong
8 operations background that know how to integrate with an
9 operating facility. And that's one of the things that
10 we wanted to achieve by decentralizing and pushing
11 the -- what I call the command and control of the
12 project to the site level and have them integrate with
13 the station activities. That would be one example.

14 Q Were you given any specific instructions on
15 how to improve the performance from your -- the prior,
16 the predecessors to the EPU, senior management?

17 A Well, in July of 2009, we conducted a detailed
18 review of the project. And out of that detailed review,
19 there were a number of scope growths as well as we had
20 with I'll call Bechtel's view of what they thought they
21 would need from a staffing perspective to accomplish the
22 project. This dealt largely with forecasts for 2011 and
23 2012 when you get into the large outages. And Bechtel
24 tends to forecast things on what they call a crew level,
25 is I think I'm going to need this people to do this

1 activity.

2 And so it's a very rough order of -- of
3 magnitude. And so part of reorganizing and pushing the
4 command and control to the site level is to make sure
5 that -- that the folks that are responsible for
6 overseeing the engineering of Bechtel have the
7 authority, have the ability to challenge Bechtel on
8 their estimates for the engineering, do scope reviews
9 and make sure that the scope is appropriate for what
10 we're trying to achieve.

11 And so coming out of that July project review
12 meeting, we had a number of concerns. Some of our
13 concerns were did we have the right scope from just a
14 total modification perspective. Only about -- little to
15 none of the design engineering was actually complete at
16 that phase, so everything was highly conceptual.

17 And so part of our charge was -- was to go
18 validate a number of the large scope activities. For
19 example, the engineering had not yet been completed to
20 determine whether or not we were going to have to
21 replace the condenser, which is a massive component that
22 condenses the steam after it goes through the turbine as
23 well as what's called a steam generator moisture
24 carryover modification. Those two modifications alone
25 were worth about \$180 million.

1 And so we were looking -- so one of the things
2 we were looking at is do we have the right scope, should
3 we accelerate some of the engineering to get the right
4 scope, and then from a Bechtel perspective and a Bechtel
5 philosophy on how they crew up a job and what they were
6 projecting in 2011 and 2012, we were also directed to
7 evaluate whether or not we should consider another
8 engineering procurement constructor for either all or
9 part of the project. In other words, have one EPU for
10 St. Lucie, one EPU for Turkey Point, whether we should
11 self-perform all or part of the project, in addition to
12 completing our scope review.

13 Those -- one other charge was to look to see
14 ways in which we could validate and challenge the EPC on
15 their -- what we call their ramp or their staffing and
16 what they were saying they needed for resources in the
17 out years. And those activities carried over into 2010.

18 Q You mentioned the July 2009 meeting, correct?

19 A Yes.

20 Q And prior to the July 2009 meeting, what
21 involvement did you have with the EPU management or the
22 steering team?

23 A The involvement that I had with extended power
24 uprate prior to 2009 was in relation to an affiliate
25 company that's part of NextEra Energy.

1 Q Were you -- quite often --

2 A So I may explain that, is my prior position
3 before I became the vice president of extended power
4 uprate was vice president of operations for Midwest
5 region. So I had responsibility for the operation of
6 Duane Arnold Nuclear Power York Plant and Point Beach
7 Nuclear Power Plant, which is, you know, the affiliate
8 company, NextEra. And so there's an extended power
9 uprate project in progress with Point Beach.

10 Q Is it fair to say then that you were not
11 involved in the presentation to -- for the July meeting?
12 I'm trying to not disclose some confidential
13 information.

14 A I was in that meeting but I was not involved
15 in the -- in preparing the presentation for that
16 meeting.

17 Q And were you involved in giving direction to
18 the new team for that meeting?

19 A The folks that were responsible and
20 accountable for running extended power uprate for
21 Florida Power & Light prepared all the presentations and
22 presented in the July 2009 meeting.

23 Q But you -- so you were there at the July 2009
24 meeting and you saw the presentation. Can you describe
25 what it contained, what the presentation contained?

1 A The presentation contained commercial
2 information around the various attributes of the project
3 such as progress on license amendment request, cost
4 associated with license amendment request, progress on
5 staffing up the engineering procurement contractor,
6 Bechtel. It had project estimates for license amendment
7 request engineering, design engineering, and head counts
8 associated with future staffing.

9 Q Did it include new numbers or new budget
10 estimates at that July 2009 meeting?

11 A In July 2009, the forecast, based on what was
12 known at the time, was higher than the original
13 conceptual estimate that was done. And those estimates
14 were -- were prepared by the project controls part of
15 the organization. Project controls consist of cost
16 engineers, schedulers -- I'm going to be redundant,
17 project control folks. And what they'll do is based on
18 your contracts or information that they receive from the
19 project manager such as here is -- here is how many
20 people I'm going to bring in, here's where I'm going to
21 bring them in at, here is -- is the wage rate per the
22 contract, project controls will take that and roll that
23 up into an overall estimate.

24 So what was presented on July the 2009 was
25 that based on the conceptual scope that was a part of

1 the project but still under review, based on a
2 proposed -- what I'm going to call a ramp, ramp-up by
3 Bechtel, that the forecast was going to be higher
4 than -- than the original feasibility study that was
5 done.

6 That's why the -- that's why senior management
7 in that meeting directed that there was an ongoing scope
8 review, that the priority was to complete the scope
9 review and, if necessary, accelerate the engineering
10 associated with some of the larger scope items because
11 very little engineering, I think less than, I'm going to
12 say -- I'm not going to guess. It was -- I know it was
13 less than 2 percent of the engineering at that point had
14 been completed, was to look at the scope, if necessary,
15 accelerate the scope, look at options to -- to an EPC
16 vendor, including even self-performing and complete that
17 work to validate the forecast.

18 Q So let me make sure I understand that you were
19 telling us that in July of 2009, you had -- FPL had a
20 good idea that it was going to have an increase in the
21 cost of the uprate; is that correct?

22 A What I said is that the forecast that was
23 provided in 2009, okay, was based on a proposed Bechtel
24 ramp, a proposed Bechtel staffing plan, a proposed
25 Bechtel resource plan, if you will, and it was based on

1 a scope or a list of modifications for which little to
2 no engineering had been completed to date, and that
3 coming out of that meeting were several actions to
4 address that.

5 Q And when did FPL address those changes?

6 A Well, that was ongoing work and actually that
7 work that continues today. We're constantly evaluating
8 options and different levers to pull on the project.
9 But one of the specific modifications that was
10 challenged as being necessary or not, or actually two,
11 was the main condenser modification, which was on the
12 order of -- I'm just making sure I can say this and it's
13 not confidential -- was on the order of about 130 to
14 150 million dollars, somewhere in there, and a steam
15 generator moisture carryover modification that was on
16 the order of 30 to 40 million dollars. There were other
17 modifications, but my recollection from the meeting,
18 there were two that stood out.

19 We completed the engineering analysis and
20 review for the condenser modification late October and
21 ultimately determined that the condenser modification
22 was necessary and that, in fact, if we did not perform
23 it, that there would likely be a megawatt penalty with
24 not performing the condenser modification. And that it,
25 in fact, was separate and apart and needed to -- for the

1 additional megawatts.

2 The steam generator moisture carryover
3 modification took us until early 2010 to complete the
4 engineering analysis and study associated with this.
5 And the steam generators take the heat from the reactor
6 and generate the steam to drive the turbines, and the
7 modification was -- is internal to the steam generator.
8 So it's inside the containment building. It's high dose
9 work. It's very expensive and clearly has some
10 maintenance risk associated with it.

11 And it took us until after the first of the
12 year to bring that to conclusion. And that modification
13 was deemed as not necessary to support the additional
14 megawatts and was eliminated.

15 We -- the other actions is, you know, we
16 contacted -- we looked at a couple of EPCs. We
17 contacted one specifically. Had a number of meetings
18 with another EPC to assess their capability. And we
19 evaluated whether or not we wanted to take all or a
20 portion of the work away from Bechtel including what
21 portion of the work that we would self perform as
22 Florida Power & Light FPL.

23 We ultimately, after the first of the year,
24 decided to stay with Bechtel Power Corporation and turn
25 most of our focus and energy on making them just as

1 efficient and cost-effective as possible.

2 It should be noted that, you know, during 2009
3 the money that was being invested or expended on the
4 project was -- was on plan and is for -- for 2010 as
5 well.

6 The large sums of money and the large scopes
7 we're talking about in future outages, 2011 and 2012, if
8 you can envision like a major construction project like
9 a -- like a bridge, we're doing the engineering and the
10 planning now. The big spend, you know, occurs when you
11 actually go to do that work.

12 So we felt like we had plenty of opportunity
13 to explore ways to mitigate or accomplish things more
14 efficiently. And, in fact, one of the other things that
15 we did was -- well, there's several things. Is in our
16 discussions with another EPC -- and again, from that
17 July 2009 meeting, senior management just was not going
18 to accept that Bechtel number. And one of the catalysts
19 for that was that we have certainly self-performed a
20 number of projects ourselves very successfully, and we
21 have done an evaluation for one of our sites on what the
22 self perform -- what the project would cost if we
23 self-performed it. And in comparison to Bechtel,
24 Bechtel was almost a magnitude of double of what we
25 thought a self-perform would cost.

1 And so coming out of that meeting then is --
2 was the direction on how do we leverage our knowledge
3 and expertise to drive Bechtel to reduce their forecast.
4 And as I mentioned, we interviewed another EPC. And we
5 had thought about bringing that competitor in to provide
6 us an independent project estimate.

7 We ultimately decided against that because we
8 thought it was a conflict of interest and we were
9 concerned that if that competitor undercut significantly
10 Bechtel and then we brought them on and they failed to
11 perform, that that would not be a good thing.

12 So we hired an independent third party
13 estimator. There were three that we evaluated. We
14 brought in one that does bottoms-up estimating and -- so
15 that we would have a very detailed estimate for Turkey
16 Point Unit 3 that we could use to challenge and leverage
17 Bechtel.

18 Q Mr. Jones, I almost forgot my original
19 question. Let me go back to that. Which is the
20 July 2009 meeting in which you indicated that there were
21 some costs that probably I think would increase; is that
22 correct? Just yes or no.

23 A It's -- this is a complex project and I can't
24 answer that yes or no. The forecast for -- for the
25 scope and for Bechtel's proposed plan, that forecast was

1 higher than the original estimate.

2 Q Okay.

3 A That part is correct. That did not deal with
4 realtime dollars in 2009.

5 Q And that's going to lead me -- I'm going to
6 skip a couple of other questions and lead into a next
7 series of questions. And this is with the Commission's
8 indulgence something that the staff is looking at
9 proposing or looking at a rule, something like the fuel
10 clause, the mid course correction noticing requirement
11 just to -- to inform us of the types of changes that
12 Mr. Jones is talking about. So with your indulgence, I
13 have about three or four questions on that and I may be
14 done.

15 CHAIRMAN ARGENZIANO: One second.

16 Commissioner Skop?

17 COMMISSIONER SKOP: Yes, Madam Chair. To
18 Ms. Bennett with respect to the line of
19 questioning, is staff suggesting that if there is
20 material change, that the company does not already
21 have a duty to inform the Commission?

22 MS. BENNETT: I'm not suggesting anything at
23 this point. We're just gathering information that
24 we find useful.

25 BY MS. BENNETT:

1 Q Mr. Jones, the -- the EPU project increased in
2 approximately -- and I'm not going to say the dollar --
3 but during 2009; is that correct? The dollar amount is
4 confidential.

5 A There was, as with all projects such as
6 this -- let me clarify. Okay? When it comes to a major
7 nuclear project such as this, a -- an approach that
8 could be taken would be to do all of the engineering
9 analysis similar to building your house. Get an
10 architect, draw up the plans, do all of the engineering,
11 have it reviewed and stamped, and then you would know
12 exactly the design associated with your home and from
13 that you could do pickoffs for material and estimate
14 labor and things like that.

15 When it comes to an extended power uprate,
16 which again is the most complex, the biggest thing you
17 could do to operating a nuclear facility, the only thing
18 that would compare it go build a new nuclear plant,
19 is -- is you do the engineering and the implementation
20 overlapping, otherwise we would spend the next -- if we
21 did the LAR first and then the engineering analysis,
22 you'd lose the realtime, realtime value of energy and it
23 would take years to complete the engineering. And then
24 would you probably spend a year doing an estimate -- an
25 estimate once you completed all the engineering. Okay.

1 So based on when this started, just rough order of
2 magnitude, you finish the engineering in about 2011 and
3 take you about a year to do a detailed estimate that you
4 would -- and then you would have maybe some certainty
5 around maybe plus or minus 25 percent around that
6 because that would be equivalent to about a level 3
7 estimate. And then you would be looking at
8 implementation the out years which would take you to
9 2016 and you would eat up all of the value that there
10 is, you know, for the customers.

11 And so I'm just trying to explain the concept
12 about why the Legislature and this Commission, you know,
13 had the wisdom to choose a nonbinding estimate,
14 recognizing that if you're going to get maximum value
15 for the customers, that you're going to do the
16 engineering and implementation, okay, and overlapping
17 and you're going to integrate it with the refueling
18 outages. And so that's the reason you have a
19 conceptual, you know, estimate to start with.

20 And as we complete the detailed engineering,
21 now I have something that I can have the construction
22 experts review, do detail lockdowns on, know
23 commodities, how many linear feet of conduit, wire cable
24 terminations and come up with a detailed estimate.
25 We're dealing with about 196 complicated modifications.

1 And to date, only 20 percent of the engineering is
2 complete, is final for the -- those modifications.

3 Q And really --

4 CHAIRMAN ARGENZIANO: Ms. Bennett, can I go
5 back because something got my attention when
6 Commissioner Skop had asked you a question before.
7 You did say something about a possible rule or rule
8 change. What were you referring to?

9 MS. BENNETT: We were -- staff is beginning to
10 gather information about possibly doing a rule
11 modification to this rule, proposing one, not doing
12 one, that would be your job, requiring maybe a
13 mid-course correction type of -- of procedure,
14 noticing requirement like we do in the fuel clause.
15 If it was 10 percent over or under the budget that
16 you approve the prior year. Something -- you know,
17 we're still in the discovery phase of that.

18 And that's why I asked for your indulgence. I
19 know that this particular set of questions is not
20 really directed at your -- the motion that you're
21 going to be voting on soon. So if you would prefer
22 me to stop on this and --

23 CHAIRMAN ARGENZIANO: No, no, no. I wanted to
24 go back because I wanted clarification. Excuse me.
25 Commissioner Skop, did you want to be recognized?

1 COMMISSIONER SKOP: Well, I think Ms. Bennett
2 answered my question or the question I would have
3 had, that the line of questioning seems to be in
4 relation to something that I would normally expect
5 would be thoroughly discussed or recommended in the
6 staff recommendation upon the conclusion of the
7 hearing. Not articulating every thought of what
8 staff may or may not be thinking. I mean, staff
9 can continue.

10 It seems to me though again for nonbinding
11 estimates, I don't think anyone is really concerned
12 with, you know, the fact that the estimate changed.
13 Okay? The number at the end of the day is going to
14 be what the number is going to be subject to
15 prudence review.

16 I think what -- what's of concern to me which
17 I will get into is that there were or should have
18 been sufficient indicators to management to
19 indicate not only as your testimony has indicated,
20 that the scope had grown, but indications that
21 there were scheduling cost impacts that were not
22 reported to this Commission even if they were not
23 definitized or subject to be challenged. The fact
24 is there were indicators that, hey, we've got an
25 issue here, we're working it, we're scrubbing the

1 numbers, we're beating on the vendors. Again, the
2 final number is not important to me. But it's a
3 matter of candid disclosure to the Commission. And
4 I think that's what's at issue with the concerns I
5 have. Thank you.

6 THE WITNESS: Commissioner Skop, at the same
7 time that, you know, we're looking at that scope
8 and again without discussing the specific number,
9 about half of that number was associated with two
10 modifications. And as I mentioned before, it took
11 several months to address that. I do understand
12 your point and I can see your point.

13 At the same time, we had -- we were evaluating
14 the fact that we could get more megawatts. But
15 clearly -- clearly in my mind, that was just as
16 preliminary, just as preliminary and not -- and not
17 ready for any kind of discussion or debate until we
18 completed fielding -- field testing and validation.
19 And as a matter of fact, as a part of that field
20 testing that we did at Turkey Point, you know, we
21 discovered a significant challenge around megawatts
22 that people were ready to sign up for in the summer
23 of 2009.

24 And so, you know, until the engineering is
25 done, the engineering is not done and --

1 COMMISSIONER SKOP: And I respect that. I've
2 read your management response to the Concentric
3 Report and I'll get into that if I chose to do have
4 some questions. But Madam Chair, if I may be
5 permitted, I do have one.

6 Mr. Jones, you testified that progress -- or I
7 forget, let me see if I can find it real quick.
8 Significant progress was made in 2009 regarding
9 nuclear efforts, including the EPU, if I'm correct.
10 I believe that's on page -- page -- page 4 of your
11 prefiled testimony at line 15; is that correct?

12 THE WITNESS: I'm sorry, Commissioner, could
13 you give me the reference?

14 COMMISSIONER SKOP: Page 4 of your prefiled
15 testimony at line 15. In relation to the EPU
16 project team, you indicated on line 15 significant
17 progress was made in 2009 including a laundry list
18 of activities; is that correct?

19 THE WITNESS: You're referring to the March
20 prefiled?

21 COMMISSIONER SKOP: March 1 prefiled
22 testimony, yes.

23 THE WITNESS: Sorry. I was looking at the
24 May. Yes.

25 COMMISSIONER SKOP: Okay. So if progress

1 was -- significant progress was being made in 2009
2 and everything was going well, then I guess the
3 question I would ask, why was it necessary to
4 replace the EPU management team?

5 THE WITNESS: As I stated earlier, the EPU
6 management team, the way it was organized was a
7 large corporate group. It was corporate centric.
8 Their mission of evaluating EPC contractors,
9 getting contracts in place for long-lead materials
10 such as turbine rotors, the conceptual engineering
11 analysis phase and -- and getting the groundwork
12 laid for all of that was appropriate.

13 That organization had extended power uprate,
14 all FPL capital projects across the nuclear fleet
15 as well as nuclear fuels. And so it was a very
16 large organization, and it was -- it was time to --
17 to make it more site centric and move in -- move
18 more into a focus of implementation and an
19 operating nuclear facility and get, you know,
20 Bechtel up to speed and running, get the metrics in
21 place to be able to measure and improve
22 performance. And -- and that progress was -- was
23 certainly made.

24 COMMISSIONER SKOP: All right. Fair enough.
25 And just one follow-up question and I'll move back

1 to staff, on the same issue.

2 The replacement of the EPU management team
3 that you just spoke to, was that not -- did that
4 not occur as a direct result of the executive
5 steering committee meeting that was held on
6 July 25th, 2009?

7 THE WITNESS: Well, first, I wouldn't
8 characterize it as a replacement of the EPU
9 management team. As I stated earlier, there --
10 there were several reassignments, but a number of
11 the key players for EPU remained with EPU, a number
12 of key players went to the projects organization.
13 There are hundreds of millions of dollars of
14 capital project that aren't EPU that have to be
15 managed, and you certainly need the right skill set
16 and expertise to be able to continue to do that
17 business along with -- with EPU.

18 I was -- I was approached by my boss before
19 the meeting in July about his ideas around
20 reorganizing the project and making them site --
21 site centric and using my operational expertise and
22 my background as having been a plant general manger
23 at a nuclear plant, a site vice president, been
24 involved and being responsible for running a site
25 while major projects are involved.

1 I was the site vice president during a reactor
2 head replacement at Turkey Point. And to use my
3 skill sets to take over the project. And again the
4 emphasis was on improving performance and bringing
5 some fresh ideas to the project.

6 COMMISSIONER SKOP: Thank you. And I
7 recognize again you came into the project late so,
8 I mean, I'm not being critical of your actions.

9 CHAIRMAN ARGENZIANO: Ms. Bennett?

10 MS. BENNETT: May I have just a minute more?

11 CHAIRMAN ARGENZIANO: Oh, yes. Go right
12 ahead.

13 MS. BENNETT: That was ten seconds. I have no
14 more questions.

15 CHAIRMAN ARGENZIANO: Commissioner Skop?

16 COMMISSIONER SKOP: Thank you, Mr. Jones. And
17 with respect to the replacement of the EPU
18 management team, again probably I should have
19 tightened up my language but I didn't have the page
20 in front of me, but reading from the staff audit
21 report that has been declassified, I guess the
22 title seems to be removal of the EPU senior
23 management team and that was in July of 2009. So
24 that's what my question was directed to. Thank
25 you.

1 CHAIRMAN ARGENZIANO: Commissioners? I have a
2 couple that I would just like to ask.

3 How significant of a decrease in long-term
4 need for new generation has resulted from the
5 recession? And do you believe, I guess, the
6 effects -- or that this affects the prudence of
7 FPL's decision to continue with the current nuclear
8 projects? If you can answer that.

9 THE WITNESS: Madam Chairman, witness Dr. Sim
10 can best address that from a feasibility
11 standpoint.

12 CHAIRMAN ARGENZIANO: Okay.

13 THE WITNESS: As far as the feasibility for
14 the extended power uprates -- and again you
15 evaluate environmental factors, future load demand,
16 all other sources of generation, many factors that
17 go into that -- is the 2010 feasibility analysis
18 for extended power uprate, you know, has a -- a
19 present cost benefit for our customers for the
20 medium fuel cost environmental II case of about
21 \$1.1 billion.

22 CHAIRMAN ARGENZIANO: Okay. And can you
23 address the issue of site banking and how it
24 relates to the NRC's permitting process?

25 THE WITNESS: I'm sorry, I didn't hear the

1 question.

2 CHAIRMAN ARGENZIANO: Can you address the
3 issue of site banking and how it relates to NRC's
4 permitting process, or should I ask a different
5 individual?

6 THE WITNESS: I'm sorry, Madam Chairman, I
7 don't know what site banking is.

8 CHAIRMAN ARGENZIANO: Okay. Fair enough.
9 Thank you. Staff has --

10 MR. YOUNG: I think Ms. Bennett said she was
11 through with her line of questioning. I don't know
12 if the parties have questions. It seems like
13 Mr. Moyle might have some questions.

14 CHAIRMAN ARGENZIANO: Okay. Hang on.
15 Commissioner Skop and then we'll go to the parties.

16 COMMISSIONER SKOP: Thank you, Madam Chair.
17 I guess, Mr. Jones, since I kind of got into
18 this, I might as well just ask some questions after
19 all here. But again I reserve my right to ask a
20 full series of questions if we get to an
21 evidentiary hearing posture.

22 Let's see where I'd like to begin. Have you
23 discussed the testimony you've given here today
24 with FPL employees or any FPL employees?

25 THE WITNESS: The question is have I discussed

1 my testimony here today with any other FPL
2 employees?

3 COMMISSIONER SKOP: Yes.

4 THE WITNESS: Yes. There have been a number
5 of FPL employees that have been involved in
6 providing the information that is the basis for my
7 testimony.

8 COMMISSIONER SKOP: Okay. And have you
9 further discussed the scope of your testimony this
10 morning with regulatory affairs or legal members of
11 FPL?

12 THE WITNESS: Yes, I have.

13 COMMISSIONER SKOP: Okay. All right. I guess
14 your prefiled testimony, you became the vice
15 president of nuclear power uprate on -- or about
16 August 1st, 2009. And I believe that you testified
17 that you were invited to or attended the executive
18 steering committee meeting that was held on or
19 about July 25th, 2009; is that correct?

20 THE WITNESS: That is correct. I was in
21 attendance at that meeting.

22 COMMISSIONER SKOP: Okay. And did you receive
23 a meeting request for that meeting?

24 THE WITNESS: Yes, I did.

25 COMMISSIONER SKOP: Do you know who requested

1 that meeting?

2 THE WITNESS: I don't recall who requested
3 that meeting.

4 COMMISSIONER SKOP: Okay. Was the purpose of
5 that executive steering committee meeting that day
6 to -- part of the purpose of the meeting to discuss
7 a line by line item or line item by line item of
8 the various project controls and cost estimates
9 associated with the extended power uprate?

10 THE WITNESS: Yes. One of the purposes of the
11 meeting was to look at the project and I said from
12 a number of different views from the license
13 amendment request, engineering analysis, the design
14 engineering analysis, Bechtel's resource plan,
15 FPL's resource plan, and look at that in comparison
16 to the original FPL conceptual feasibility study.

17 COMMISSIONER SKOP: And with respect to that,
18 I believe you testified that as a result of that
19 meeting, it was determined that there would be a
20 scope growth to which I also believe you testified
21 that there would be some potential cost and
22 schedule impacts.

23 I guess in the Concentric Report, it suggests
24 that the -- let me try to turn to the page so I can
25 state this properly. The Concentric Report

1 concludes, and I know that I've read your
2 management response to the Concentric Report, but
3 one of the findings, concerning findings of the
4 Concentric Report notwithstanding the potential of
5 the drafts of the information provided to the
6 Commission, but the finding was that Concentric
7 believes that a \$300 million or 27 percent increase
8 in the projected cost of the EPU project should
9 have been discussed in live testimony on
10 September 8, 2009. Is that your understanding of
11 concentric's finding in relation to the scope
12 growth?

13 THE WITNESS: Yes. That's the -- my
14 understanding of the conclusion. But I wouldn't
15 say as a result of scope growth, as I -- and maybe
16 I didn't explain it clearly. As my project
17 controls director reminds me constantly, he says my
18 job is to tell you where you're going to land based
19 on how you're -- on what your current plan or
20 activities or concept is. And -- and my job is to
21 tell you in the forecast that if you make changes
22 to that, what the downstream impact will be.

23 So again, July, and it's in my letter, there
24 was a lot of scope review that was ongoing, there
25 was a lot of review about how we were going to

1 execute this project, and those all would have
2 significant, significant impact. When you
3 mentioned \$300 million, about half of that was
4 associated with two mods that were under evaluation
5 that took months to complete.

6 Also, I think that saying a 27 percent
7 increase is not correct in regards to because
8 you're not taking into account the megawatt gain.
9 And probably a more -- more -- it would be better
10 to look at it on a dollar per kilowatt as opposed
11 to just looking at the overnight construction cost.
12 I think that's an oversimplification.

13 COMMISSIONER SKOP: Perhaps it would. But
14 again when the Florida Power & Light petitioned
15 force need determination for the extended power
16 uprates, again there was a projected cost. Again
17 my concern is not necessarily what the final cost
18 will end up being. But there was a projected cost
19 and there was projected gain in terms of net
20 increase in either rated power or electricity in
21 terms of generation capability.

22 I think that, you know, the question as a
23 result of this meeting was in a line-by-line
24 comparison of the cost, that there had to be some
25 indication, was there not, that the magnitude -- or

1 there were indicators that the magnitude of the
2 cost of the project was increasing. Would you
3 agree that there were indicators that --

4 THE WITNESS: Yes, Commissioner, there were --
5 the forecast was as you said, for the scope and
6 resource plan that was presented but not executed,
7 and certainly the engineering, not complete. As
8 well as there were a number of opportunities that
9 were flagged to mitigate that as well.

10 COMMISSIONER SKOP: And again, the -- I think
11 in your management response to the Concentric
12 Report, you mentioned that, and I also think you
13 mentioned there was a lot of turmoil or transition
14 going on with the replacement of the management
15 team. But what -- you know, I'm trying to drive to
16 the crux of is who knew what when. And were there
17 sufficient indicators to show that, yes, indeed the
18 magnitude of the cost estimate was growing and
19 growing in a manner that was material and why were
20 those changes not communicated to the testimony
21 that was given on September 8th as well as any
22 expected benefits.

23 I mean, if FPL had a good idea that would, you
24 know, have some positive impact and certainly, hey,
25 we want to do this additional mod that we didn't

1 consider before, here's the cost ramifications,
2 here's the impact, that's a good thing.

3 Again, the purpose of this proceeding is not
4 to beat up on the Florida Power & Light. That's
5 not what I'm here to do. Do I disdain what I feel
6 to be a demonstrated lack of disclosure on some
7 issues that are important to the Commission? Yes.

8 But all I ask as a regulator is you tell me
9 the good and you tell me the bad. Progress did
10 that yesterday. That's all I want to know. I'm
11 not going to beat you up on things that your
12 company is doing well. And I think it was
13 constructive in light of some of the things that
14 were going on perhaps to have made some of the
15 management changes.

16 So let's get back to the meeting that was held
17 on July 25th for a second. You were invited, you
18 testified that you attended. Are you aware of who
19 else attended that meeting?

20 THE WITNESS: Yes. There was a -- there were
21 a large number of people that were there. There
22 were of course the --

23 COMMISSIONER SKOP: Let's limit -- let's limit
24 it to management. Was Florida Power & Light
25 executive management at that meeting?

1 THE WITNESS: Yes.

2 COMMISSIONER SKOP: Was Mr. Silagy at that
3 meeting?

4 THE WITNESS: I don't recall.

5 COMMISSIONER SKOP: Was Mr. Olivera at that
6 meeting?

7 THE WITNESS: Yes.

8 COMMISSIONER SKOP: Okay. Now let's take that
9 up. I previously asked you who had requested the
10 meeting and the line by line analysis and you
11 indicated that you did not know, so I will respect
12 your personal knowledge of who may have requested
13 the meeting. But in terms of FPL Group executives
14 that may have attended that meeting, do you have
15 any recollection who may have attended?

16 THE WITNESS: Our president and COO of what is
17 now, you know, NextEra Energy Corporation was in
18 attendance.

19 COMMISSIONER SKOP: Okay.

20 THE WITNESS: My -- my boss, the executive
21 vice president and chief nuclear officer,
22 Mano Nazar was present at the meeting.

23 COMMISSIONER SKOP: Okay. So in this meeting
24 that I guess based on information I'm looking at,
25 it was an all-day meeting that discussed things

1 beyond uprates, but with respect to the uprates did
2 so on a very detail specific basis line-by-line
3 project review of the costs and such, I believe you
4 testified in response to my question there were
5 indications that the magnitude of the cost at that
6 point in time had shifted upward. They weren't
7 fully definitized but there were indicators, were
8 there not, that the magnitude of the costs were
9 increasing?

10 THE WITNESS: Yes, Commissioner. I want to be
11 clear that -- and we refer to that as the project
12 forecast for the -- for the in-state.

13 COMMISSIONER SKOP: Yes, sir. Now, subsequent
14 to the live testimony that was given on
15 September 8th, did FPL not revise its cost
16 estimates on September 9th, the next -- the last --
17 the day after the testimony was given?

18 THE WITNESS: No, Commissioner. The executive
19 presentations from July 2009 and continuing today
20 have the forecast that -- with changes, puts and
21 takes, that was a product of not only the work that
22 was done leading up to July 2009, but the scope
23 reviews that we continued to perform and
24 challenges, including changes that Bechtel made,
25 changes that we made to optimize the project.

1 So in every executive meeting going forward,
2 and the -- the forecast has been -- will -- again,
3 with some puts and takes relatively about the same.
4 In fact, as -- as I tried to explain earlier, we're
5 now at about 20 percent final on -- on engineering.
6 And when we brought in High Bridge, we were using
7 High Bridge to -- to try and validate as well as
8 identify additional opportunities to optimize the
9 project. We -- our plan when we brought in High
10 Bridge in December, I hope you don't mind me
11 mentioning their company's name --

12 COMMISSIONER SKOP: It's too late now. I
13 think it's been declassified. I could be
14 incorrect, but --

15 THE WITNESS: What we really wanted -- we
16 really wanted to get that work done if we could
17 by -- by March in time to support the May filing.
18 You just don't put this together, you know, May 1
19 and it goes in on May 3rd as I'm sure you can
20 appreciate. And the scope of the work and the
21 amount of work for both High Bridge, Bechtel and
22 FPL turned out to be quite extensive. So it took
23 us until April -- April to finalize our new
24 nonbinding cost range.

25 COMMISSIONER SKOP: Okay.

1 THE WITNESS: And I know that sounds like a
2 long time and -- but there's just something this
3 big and this complex with changing scope, it -- it
4 took us those many months. And, in fact, I -- we
5 didn't want to finalize a new nonbinding cost
6 estimate because you've got to have a basis for it.
7 You've got to be able to stand behind it. It has
8 to be solid. Without High Bridge -- and High
9 Bridge, we didn't complete the work and finalize
10 that until June 16th but we felt comfortable enough
11 with the preliminary information from High Bridge
12 to finalize our own range mid April.

13 As a matter of fact, the feasibility analysis
14 that -- that's before the Commission, when it comes
15 to capital expenditures, that's when the last
16 inputs -- they literally spend -- Dr. Sim and his
17 team spends months on load forecast and all of
18 these other alternatives. But the capital input,
19 you can -- you can wait almost till the end. And
20 we took -- we took every minute of time we had to
21 give him that capital input.

22 So we -- my project team, my management was --
23 did not have certainty around our new nonbinding
24 cost estimate and approve it until April of 2010.

25 COMMISSIONER SKOP: Okay. And again, I think

1 this is part of the construction -- I mean,
2 constructive discussion I'm trying to have. I'm
3 trying to look at the good, what the company has
4 done well, and what we, you know, we focus on as
5 positives and also look at some things that maybe
6 we need to do better.

7 But, you know, without being able to have open
8 and transparency in the discussion and deferring
9 issues, it's not able to do that. So I think this
10 is bringing some, you know, things to light that,
11 frankly, need to be discussed.

12 You mentioned the -- that the budget
13 information had not been changed as of the day
14 after or shortly thereafter of the live testimony
15 that was given. I guess in my -- my briefing that
16 I had with staff, either I've got it wrong or -- or
17 I think staff would perhaps disagree. But that's
18 maybe an issue that we can flesh out a little bit
19 further.

20 THE WITNESS: Well, I want to be clear that
21 when we -- in our presentations, we put the
22 original need filing, that's our benchmark, and
23 then we put the -- we'll put a current month and
24 then we'll put the previous month and the current
25 month. And there's some variation on that in

1 there. But the higher number was -- was in the
2 forecast.

3 Now, maybe this is -- this is probably the
4 issue is that we did not have a meeting in August
5 as -- as I recall. Now, we were very focused on --
6 on the orderly transition of separating EPU project
7 from major I'm going to say nonEPU projects.
8 Doesn't make it any less or more important. And
9 so -- but that meeting on September 9th had been
10 scheduled for -- for quite some time.

11 COMMISSIONER SKOP: With respect to the
12 acceptance, I know that you in your management,
13 management discussion of the Concentric Report and
14 your testimony given today, you testified that, you
15 know, there perhaps was some uncertainty as to what
16 the final costs might be based on the potential
17 changes in scope that originated. But you have
18 also testified that there were indicators that that
19 scope was growing. And that's my concern about the
20 disclosure of that.

21 When you have those indicators, you know, I
22 don't like surprises. I'd rather just, hey, this
23 is what we're doing and, you know, I can get
24 comfortable with it real quick once I understand
25 it.

1 With respect to the prior EPU management team,
2 do you feel that there was an unwillingness or
3 denial on their part to accept some of the
4 indicators that they were seeing from project
5 controls?

6 THE WITNESS: In regards to the senior EPU
7 management team, in my view they were appropriately
8 challenging Bechtel as well as the other vendors.
9 And again, largely we're talking about future
10 out-year costs. And, you know, those numbers, it's
11 not like getting an estimate for a brake job. It's
12 just -- you know, it's -- it's not that exact.

13 COMMISSIONER SKOP: But those estimated costs
14 flow through. We do a 2009 true-up and a 2010-2011
15 estimated actual on projected cost. So to some
16 degree those costs are relevant in having, you
17 know, access to material information to evaluate
18 the prudence of such cost is not important, is it
19 not, for the Commission to have that type of
20 information and discussion?

21 THE WITNESS: I would agree that any
22 information you have is -- you know, as long as
23 it's relevant to the project, is good information
24 to have.

25 COMMISSIONER SKOP: Okay. Let's move quickly

1 to -- I think I have a few other points. Let's
2 talk about the NRC response letters, okay, that was
3 dated August 13th where Florida Power & Light
4 withdrew its St. Lucie 1 LAR application. Did you
5 in your capacity as vice president of nuclear power
6 uprate discuss the withdrawal of the St. Lucy 1 LAR
7 with the legal department prior to August 12th,
8 2009?

9 THE WITNESS: I don't recall having any
10 conversations with the legal department about the
11 withdrawal of the licensed amendment request.
12 Wait. I had -- I had discussions with general
13 counsel in regards to this license amendment
14 request and the position that the NRC staff was
15 taking in regards to our current licensing basis
16 and, you know, what remedies we had through senior
17 management or legal staff, you know, at the NRC
18 to --

19 COMMISSIONER SKOP: Is that general counsel of
20 Florida Power & Light or Group at that point?

21 THE WITNESS: That's Florida Power & Light.

22 COMMISSIONER SKOP: All right. Did you
23 discuss the withdrawal of the St. Lucie 1 LAR with
24 anyone in FPL's executive management team?

25 THE WITNESS: Yes. And if we -- you know,

1 earlier I talked about we had a phone call with NRC
2 on August the 11th, members of my project team,
3 members of the NRC project team, where the NRC at a
4 high level had told us about additional information
5 they would need to allow the law to go through and
6 that basically their process, acceptance process
7 does not allow for us to submit or follow up.

8 And so, you know, following that -- that call
9 with the NRC, I alerted -- I alerted my management
10 that we had a problem and that, frankly, we were
11 quite surprised that the NRC was -- was taking --
12 taking that path because two of the issues were
13 outside our current licensing basis.

14 COMMISSIONER SKOP: And who was that
15 management? Was that Mr. Olivera or was that your
16 direct supervisor, I believe you mentioned --

17 THE WITNESS: I notified -- I notified my
18 direct supervisor.

19 COMMISSIONER SKOP: AND did anyone discuss
20 this proposed action with regulatory affairs prior
21 to action being taken?

22 THE WITNESS: I didn't have any discussions
23 with regulatory affairs. And again, just to be
24 clear on the time line, there was already a
25 previously-planned meeting for the -- my boss and

1 the CEO of our company to meet with NRC
2 commissioners and other members of senior
3 management staff. And one of the issues was around
4 spent fuel pool criticalities. That's related and
5 not related to EPU. It's an emerging -- an
6 emerging industry issue.

7 And certainly that topic was discussed. And
8 then --

9 COMMISSIONER SKOP: I'm just --

10 THE WITNESS: Well, I'm just trying to explain
11 to you that -- that this was -- was a fluid -- a
12 fluid situation and we're, you know, discussing,
13 you know, what our options are, what the NRC
14 process is, are they in process, or are we in
15 process, and how can we bring this to successful
16 remedy without withdrawing the LAR, or even if that
17 opportunity exists. Which is why on August the
18 13th I called, you know, the NRC management and
19 asked them -- asked them about their time line and
20 asked them if their time line could go into next
21 week because our senior executives were meeting
22 with their senior executives and we needed time for
23 both sides to vet this out, you know, to determine
24 the best course of action to comply with their
25 processes and to have the least amount of impact

1 on -- on the project.

2 And so again, given the technical complexity
3 of the issue, this was not something that was
4 easily accomplished and took a couple of days.

5 COMMISSIONER SKOP: Okay.

6 THE WITNESS: In fact, I wasn't -- I really
7 wasn't planning on submitting -- you know, my
8 thought was that if we had to withdraw the LAR,
9 that we would do so on the following Monday.

10 COMMISSIONER SKOP: That would have been --
11 okay.

12 THE WITNESS: And I don't want to kind of
13 guess at that date. And then the NRC told me that
14 they would -- that then the letter from them would
15 come out probably -- would come out on that
16 Tuesday.

17 COMMISSIONER SKOP: Right.

18 THE WITNESS: But there was a benefit after
19 further discussion with the staff, is that if we
20 really -- to get to the technical detail and get
21 started on -- on resolving the issues so that we
22 could resubmit, is if we withdrew a few days
23 earlier, then we could get that and get the public
24 meeting set up so that we could let the engineers
25 work together to come up with a success path.

1 COMMISSIONER SKOP: Okay. Let me -- let me
2 get back to my point. I think the fact was that
3 the LAR for the St. Lucie plant 1 was withdrawn.
4 And notwithstanding the fact of why that needed to
5 occur, the Commission was not notified of that
6 until 10 days after it happened. Can you offer
7 explanation of -- of why that was and why that's
8 acceptable?

9 THE WITNESS: Well, as I -- as I stated on --

10 COMMISSIONER SKOP: I'm talking about -- let
11 me clarify my question. I'm aware obviously this
12 was a negotiated withdrawal so that it could
13 facilitate the meeting that happened on the 18th
14 and the other things, and I'm familiar with all the
15 details in the letter.

16 My question is, FPL made a management decision
17 to request withdrawal of the St. Lucie 1 LAR. The
18 Nuclear Regulatory Commission in its response dated
19 the same day as the transmittal letter approved
20 that request and listed the three things that you
21 spoke of.

22 Why was the Florida Public Service Commission
23 not informed and not provided with that document on
24 behalf of your company?

25 THE WITNESS: Commissioner Skop, it was

1 neither a conscious decision to notify or not
2 notify at -- at this particular time. And up until
3 August the 18th, I'm not even sure of what the
4 scope, depth and breadth of the NRC issue is and
5 what it will take to resubmit. Are we talking a
6 two-week resubmittal, are we talking a two-month,
7 are we talking a six-month?

8 So I don't know how big it is after that --
9 you know, that all-day meeting.

10 And then -- and then of course given spent
11 fuel pool criticality of course which is
12 complicated and not my area of expertise, there was
13 a series of meetings with our vendor to how big is
14 this and how long will it take you to do what it is
15 the technical staff, you know, wants done?

16 COMMISSIONER SKOP: And that goes to the crux
17 of my very question. I know that you're pursuing
18 what's necessary to achieve approval of the LAR.
19 I've got that.

20 What I'm taking exception to is there was a
21 very significant event that FPL took for probably
22 reasons that you've explained. I don't doubt the
23 reasons. What I'm questioning is the fact the
24 action was done, the NRC responded on the 13th,
25 days before Public Counsel and the intervenors

1 entered into the stipulation that we have before us
2 and days before the start of this proceeding.

3 Now you've testified -- and so my concern is
4 that that document which failed to be material or
5 contain material information was not provided to
6 this Commission as soon as the either FPL made the
7 request or on the same day the NRC approved the
8 request. It was actually disclosed only after
9 staff put it in the docket ten days later, less
10 than 24 hours before the start of this proceeding.

11 Now, why is that important? Because as you've
12 testified to Ms. Bennett's question, that the
13 withdrawal of the LAR will result -- and I believe
14 I wrote down -- I believe you testified that
15 withdrawal of the St. Lucie 1 LAR will result in
16 material cost and schedule impact and at that point
17 that impact cannot be quantified because you said
18 it might be two months or two-and-a-half months
19 because of the date it was withdrawn or the end of
20 November. That's actually like two-and-a-half
21 months. But then you further receded from that in
22 response to her questions to indicate it may be
23 longer than that. I understand we don't control
24 the NRC schedule. But you did also indicate there
25 would be some additional costs associated with

1 that. And so to me when you have something that is
2 material, material information, I'm just merely
3 asking the company, disclose it openly. It can do
4 you no harm.

5 We wouldn't be having this discussion if you
6 had provided it on the day it was requested and
7 released. But I do feel that it's important and
8 germane to the cost recovery that the Commission is
9 being asked to approve now because we are dealing
10 with estimated and projected costs for 2010 to
11 2011.

12 So -- you know, where am I off base on that or
13 is that a reasonable request on behalf of the
14 Commission?

15 THE WITNESS: Commissioner Skop, I can fully
16 appreciate where you are at the -- you now, at the
17 time. You know, my first thought was not of the
18 Commission, it was -- it was, you know, how big is
19 this and what is the impact relative to the total
20 spend on license amendment request which is like
21 100 probably 25 million dollars. The additional
22 engineering cost for this is -- is -- is going to
23 be not significant relative to that amount.

24 What I would -- but obviously the potential,
25 the potential that it could impact the refueling

1 outage schedule, that could -- that could be
2 material. But I haven't made that determination as
3 of this time. And I'm trying to be as open and
4 candid as I possibly can here. That's work that
5 I've got to do.

6 COMMISSIONER SKOP: Well, in response to my
7 perspective, suffice it to say the lesson learned
8 from this is that open disclosure and disclosing
9 such events to the PSC I think would be a positive
10 thing whereas not disclosing and withholding it and
11 only doing it after it's put in the docket by our
12 own staff, again, I think I don't need to belabor
13 that point. I do have --

14 THE WITNESS: Well, Commissioner Skop, I would
15 tell you that whatever day that we provided it, and
16 I don't remember the day, we were preparing that
17 write-up in the morning. And so we -- we did not
18 provide that in response to going on the website,
19 and I want to be very clear about that. That I had
20 gotten with counsel and we prepared our notice to
21 put -- to notify staff that morning.

22 COMMISSIONER SKOP: Okay. Very well.

23 THE WITNESS: So the posting by the staff
24 was -- did not prompt us.

25 COMMISSIONER SKOP: Okay. Well, had staff not

1 put it in the docket, I do have to question whether
2 it would have even been disclosed or discussed in
3 the scope of the testimony. But again --

4 THE WITNESS: I have to respectfully disagree
5 with you on that. I met with -- I met with counsel
6 and reviewed a draft for posting, and I hadn't --
7 obviously I have no knowledge what staff was doing
8 or planned to do. And -- and -- and, you know, I
9 really care about my integrity here.

10 COMMISSIONER SKOP: And I'm not questioning
11 your integrity. I'm not questioning your integrity
12 at all. We're having a very constructive
13 discussion. What I am questioning though is the
14 fact remains is FPL requested or contemplated
15 requesting withdrawal of its LAR for the St. Lucie
16 1 on or before August 13th. And I think I also
17 heard a meeting on August 12th. NRC approved it
18 the same day. The Commission was agnostic to that
19 fact and FPL never disclosed that fact.

20 Now, I'm not blaming you. I'm just saying
21 that information needs to be transmitted to the
22 Commission so we stay abreast of issues that deal
23 with this.

24 I have a few more questions and then I'm
25 sure --

1 THE WITNESS: But for the record, on the
2 morning of August 13th, my plan at that time, if
3 after talking to the staff that morning was that
4 it -- if we had not made any headway to find a way
5 to get the LAR accepted, that I would withdraw on
6 that Monday. Only after talking to staff and then
7 they come to the realization that the LAR, they
8 were standing by their current position on the
9 current licensing basis, there was benefit to do it
10 early.

11 And so I made the decision on the 13th to go
12 ahead and execute that withdrawal. But that was
13 not my plan when I woke up that morning on the
14 13th.

15 COMMISSIONER SKOP: And I'm not questioning
16 that. I'm merely stating that when such action is
17 taken by FPL and approved by the NRC, it would be
18 very constructive for the Commission to have been
19 provided notice of that by your company and not ten
20 days after the fact, the day before a hearing and
21 is -- is not a reflection on you.

22 THE WITNESS: Yeah, I understand your point.
23 I appreciate your point. I was just trying --
24 August the 18th I needed the August 18th meeting to
25 understand the scope and the breadth of what the

1 NRC's concerns were.

2 COMMISSIONER SKOP: I understand. I'm not
3 faulting management action.

4 THE WITNESS: You keep referring to the ten
5 days, Commissioner, and, you know, I --

6 COMMISSIONER SKOP: I'm sorry.

7 THE WITNESS: -- I can't make a material
8 determination until after I have a meeting.

9 COMMISSIONER BRISÉ: Commissioner
10 Argenziano --

11 CHAIRMAN ARGENZIANO: Thank you, Mr. Chair.
12 Could we -- I think that's been addressed and I
13 don't want to just go into -- I think we -- what I
14 wanted to mention to the chair is that we are going
15 to switch out reporters and we figured we'd go
16 to -- our court reporters and we figured we'd go to
17 lunch around 2:00. But I think Commissioner Skop
18 has a couple more questions or something. So if I
19 just let you know that we plan to go to lunch about
20 2:00 or at the end of his questioning.

21 THE WITNESS: Commissioner Skop, again, I
22 pride myself in being self-critical. My company is
23 very self-critical and we say a self-improved
24 learning organization. So if I sounded defensive,
25 I didn't mean to sound defensive. I was just

1 trying to clarify. I appreciate your position
2 about knowing sooner rather than later.

3 COMMISSIONER SKOP: Right. And I'm not
4 being -- again, I'm not being critical of you. The
5 ten days that I speak of is the ten days in which
6 the letter was approved by the NRC, actually
7 requested by -- I don't want to repeat the thing
8 but it's important on this distinction.

9 The ten days is when FPL's counsel actually
10 informed the Commission that the letter existed in
11 response to what staff had put in the docket
12 earlier that day. So I think we're done with that
13 point. I understand why FPL did what it did. I'm
14 just merely saying that I view the event as
15 material and the Commission should have been
16 provided notice no later than the 14th or the day
17 of that event happening. I mean, that to me is my
18 concern.

19 MR. ANDERSON: For the record, please, I
20 believe that it was just mischaracterized, the
21 witness's testimony. The witness was very clear
22 that the company was preparing that information for
23 filing irregardless of what staff did. So the
24 characterization a moment ago that the evidence
25 showed to the contrary, I just wanted -- counsel,

1 that the way you frame the question would be
2 objectionable.

3 COMMISSIONER SKOP: Thank you. Mr. Anderson,
4 I don't believe I characterized anything. The
5 factual basis is that on or before the 13th of
6 August, Florida Power & Light made a management
7 decision to do something. I don't fault that
8 decision. The same day the NRC responded and
9 approved the FPL request.

10 There was a filing made on the -- in the
11 docket on the 23rd of August, late afternoon, hours
12 after staff had placed the document in question
13 into our record. The fact remains that FPL never
14 notified the Commission of the existence of that
15 document until your filing was made. That's my
16 point. Moving on, and if we want to break at
17 2:00 I'll ask my questions when we come back from
18 lunch.

19 COMMISSIONER BRISÉ: I think that's a good way
20 to go. An hour and 15 minutes. We will reconvene
21 at 3:15. We are now in recess.

22 (Lunch break taken.)

23 CHAIRMAN ARGENZIANO: Okay. We're going to
24 begin. Let everybody find their way to their
25 seats. And if anybody is missing, hopefully

1 they'll know we're beginning. We're good to go, I
2 guess. Okay. Did you want to --
3 Commissioner Skop, you're recognized.

4 COMMISSIONER SKOP: Thank you, Madam Chair.
5 And I just wanted to pick up where we left off
6 before lunch. Just one point of passing, and I
7 hate to belabor the point but I think it will
8 become important because I'm sure it will come up
9 on redirect.

10 Mr. Jones, the letter that Mr. Anderson signed
11 dated August 23rd that informed the Commission
12 after the NRC response letter had been posted in
13 the Commission's docket, the FPL letter that was
14 provided to the Commission subsequent to that on
15 the 23rd, did you review that letter before it was
16 sent to the Commission or did Mr. Anderson ask you
17 to review that letter?

18 THE WITNESS: Yes, I did.

19 COMMISSIONER SKOP: Okay. And do you have a
20 copy of that letter in front of you?

21 THE WITNESS: No, I do not.

22 COMMISSIONER SKOP: Okay. Subject to check,
23 would you concur that that's basically a
24 one-paragraph letter?

25 THE WITNESS: Yes. As I recall, it's about

1 one paragraph.

2 COMMISSIONER SKOP: Is there any reason why it
3 would take ten days to prepare a one-paragraph
4 letter to notify the Commission of this
5 information?

6 THE WITNESS: No, it doesn't take ten days to
7 write a one-paragraph letter.

8 COMMISSIONER SKOP: Thank you. I won't
9 belabor that point. But I just anticipated that
10 something might arise so I thought I would address
11 it before it came up.

12 I want to turn your attention real quick to
13 the staff audit report and cover a technical issue
14 with you. And if you could please turn your
15 attention to page 34 of the staff audit report.

16 THE WITNESS: Do I have that report?

17 CHAIRMAN ARGENZIANO: Make sure he has a copy.
18 Is that --

19 COMMISSIONER SKOP: Thank you. Okay. Are you
20 with me?

21 THE WITNESS: I have the report.

22 COMMISSIONER SKOP: If I could ask you to turn
23 to page 34 of the report where it discusses
24 pressure discrepancies.

25 MS. HELTON: Excuse me, Madam Chairman and

1 Commissioner Skop. If I could just say for
2 purposes of a clear record, that that's already
3 been marked as Exhibit 77.

4 CHAIRMAN ARGENZIANO: Okay. Thank you. Did
5 you ask a question?

6 MR. YOUNG: I'm sorry, Ms. Helton. I gave Ms.
7 Helton the wrong information. That -- if you flip
8 the page, it's --

9 CHAIRMAN ARGENZIANO: It's not 77.

10 MR. YOUNG: No, ma'am. It's No. 178.

11 CHAIRMAN ARGENZIANO: Quite a bit of
12 difference. Okay. 178. Thank you.

13 Commissioner Skop?

14 COMMISSIONER SKOP: Thank you, Madam Chair.

15 Mr. Jones, do you see the passage entitled
16 pressure discrepancies on page 34 of the staff
17 audit report?

18 THE WITNESS: Yes, I do.

19 COMMISSIONER SKOP: And can I ask you to read
20 the first sentence with the exception of the
21 confidential number at the end of that sentence,
22 please?

23 THE WITNESS: Do you want me to read that out
24 loud or --

25 COMMISSIONER SKOP: Yes, please, with the

1 exception of the confidential --

2 THE WITNESS: Okay. FPL has found
3 discrepancies between the design pressure used for
4 the Siemens turbine upgrade contract and actual
5 plant parameters and estimates a cost to resolve
6 this issue will reach -- and that part is redacted.

7 COMMISSIONER SKOP: Okay. All right. Would
8 it be correct to understand that what this pertains
9 to is that the steam header pressure, the existing
10 steam header pressure and the turbine inlet
11 pressure, there's a mismatch between the design
12 specification that was specified for the inlet
13 pressure to the turbine?

14 THE WITNESS: Yes, Commissioner Skop, if I
15 could explain that. As you're, you know, very much
16 aware, whatever heat is produced from the reactor
17 is transferred through the steam generator and you
18 expect a certain steam generator pressure. And
19 then from the steam generator you have a number of
20 components between the steam generator and the
21 turbine and so there is some pressure loss through
22 those -- those components.

23 And what this is -- and so this is to that
24 issue in that as a part of the early specification
25 for the turbine, there are heat rates that are run

1 by Shaw Engineering, basic modeled heat rates that
2 look at the desired reactor output, and then it
3 looks at -- it takes the design basis documents,
4 the original vendor information for the several
5 components to which the -- those vendors have
6 performance specs which would through engineering
7 analysis tell you what the pressure loss in that
8 line would be.

9 So if you picture, you know, a garden hose
10 running real far out into the yard or the street,
11 by the time you get to the end of that there's very
12 little water pressure, so to speak. And so this
13 is -- and so early on in the project, through
14 engineering analysis, and through the vendor
15 information for each of those components, there was
16 a pressure drop calculated. And then the -- and so
17 based on that, you communicate that early
18 information to Siemens. The overall project plan
19 is do the engineering analysis on what the
20 performance should be, then go do field testing to
21 verify actual performance.

22 Following that actual field testing to
23 validate performance, then you go back and finalize
24 your design specification with your turbine
25 supplier, in this case which is Siemens.

1 In this case, the existing instrumentation and
2 test points at Turkey Point, Turkey Point is a
3 real -- it's a -- I'm not going to say old, it's
4 a -- it's an old plant, and the test points that
5 were needed weren't there. And so there was a
6 modification to add the test points during a
7 refueling outage and then there was testing that
8 was performed throughout the years to -- throughout
9 the year to verify the actual plant conditions,
10 compared that to the heat rate which is part of the
11 project plan, and we had about 40 pounds per square
12 inch less than what we had desired, which then
13 would -- would cause us to take one of several
14 paths.

15 We could revise the turbine spec because the
16 turbine isn't designed yet. Siemens is waiting for
17 that input. So this is a perfect example in a
18 project where there are logic ties. You must do
19 this before you do that and you must do this before
20 you do that. And so Siemens is not allowed to
21 proceed until we've done the infield verifications,
22 fed that back to Shawn who did the original heat
23 rate to get that final specification for that
24 turbine.

25 So with the pressure drop greater which is an

1 existing plant condition for the original design,
2 we either needed to change the turbine design to
3 accommodate that lower pressure which would have
4 meant fewer megawatts than what we wanted, or
5 evaluate other alternatives such as removing those
6 1960 vintage components and upgrading those
7 components so there would be less line loss and so
8 more of the energy from the reactor could get to
9 the turbine, or increase the average temperature of
10 the reactor coolant system which would have the
11 same effect as replacing the obsolete components.

12 So we went through a decision making process
13 and ultimately -- and we did an economic analyses
14 by our resource planning people, and it was very
15 cost-effective to just replace the obsolete
16 components rather than sacrifice the megawatts.

17 COMMISSIONER SKOP: Okay. With respect to
18 that in terms of the design point or design
19 specification discrepancy, has there been any root
20 cause analysis done to determine who was
21 responsible for specifying the steam line pressure
22 versus what the actual header pressure would have
23 been?

24 THE WITNESS: No, there was no root cause. As
25 I said, Commissioner Skop, the project plan starts

1 with the unit heat rate and that analysis is
2 performed by Shaw. Shaw doesn't have any in-plant
3 data because the test points don't exist so they
4 have to use the vendor specifications for the
5 components. The vendor specifications for the
6 components that were installed back in the late
7 '60s and, you know, the plant went on line in '72,
8 those -- those numbers from those original
9 manufacturers would have indicated less of a
10 pressure drop than real conditions.

11 COMMISSIONER SKOP: Okay. And that's my
12 question. To the extent that the plant is
13 relatively old and design specifications would have
14 been what they were with the existing equipment and
15 that the equipment may foul or degrade over time
16 causing, you know, additional pressure drop over
17 design specification at the time, was there no
18 cross check done to actual plant parameters of the
19 steam header pressure?

20 THE WITNESS: Oh, yeah, I understand your
21 question. The -- the components actually hadn't
22 degraded. It's that -- like for main steam
23 isolation valve, the engineering factors, without
24 getting a lot of detail, would assume say for sake
25 of argument a 5-pound pressure drop. Actual

1 measured condition when we installed a pressure tap
2 during the outage between that valve and another
3 valve, the measured differential pressure was
4 higher. So Shaw used the correct design input
5 parameters but we didn't have a way to field verify
6 that particular point without installing the test
7 taps.

8 COMMISSIONER SKOP: Okay. Well, the -- I
9 think the test taps would have determined the
10 differential pressure or at least the pressure drop
11 across any piece of either valve or fitting, if you
12 would, and you might have to do that in sequence
13 across the steam header for the main steam valve or
14 main shutoff valves or whatever that's in there,
15 and I don't want to get into too much technical
16 mumbo jumbo detail.

17 But it seems to me that you know what your
18 steam inlet pressure would be, your steam chest
19 pressure would be and you know what actual plant
20 parameters currently deliver to the existing
21 turbine. And seems to me that that would be the
22 basis for notwithstanding the design specification
23 what FPL would seek to achieve. But you would
24 think somebody would cross-reference the design
25 specification data against the actual data which

1 isn't looking at the pressure drop, it's a
2 summation of all those pressure drops at the
3 steam -- to the turbine, existing turbine. Does
4 that kind of make sense?

5 THE WITNESS: It definitely makes sense to me.
6 Those are the same questions that I asked, is was
7 there any way that we could have gotten a rough
8 order of magnitude by looking at other
9 plant-installed instrumentation. The critical
10 pressure as you say is the inlet pressure to the
11 turbine.

12 Unfortunately, the -- and so I do know what
13 the steam chest pressure is, it's before the steam
14 hits the first moving set of blades and the
15 turbine. If you picture a turbine is just a big
16 fancy fan and you're going to blow steam through
17 the blades and make it spin.

18 So we're interested in what the pressure of
19 that steam is right before the blades on this --
20 this turbine. And we -- that is certainly a
21 parameter that you can block in the control room
22 and see what that is.

23 The turbine upgrade and design however is
24 changing the turbine control valves. The turbine
25 control valves at Turkey Point are sequentialled

1 and throttled and so therefore there is pressure
2 drop across those. So that current steam chest
3 pressure to me is meaningless at this point. I
4 can't make, I can't make a comparison.

5 However, to your point though, you know,
6 upstream of that is a steam header pressure to the
7 turbine that -- that it's not a calibrated gauge
8 but -- and so it could be off, you know, 20, maybe
9 30 pounds. And so it would give you some -- some
10 information, however it's not a calibrated gauge.

11 But to that point -- but to that point, the
12 team was on the project time line to do -- to
13 install the test points and get actual field
14 conditions. Could they have known earlier? They
15 could have had indication earlier that, that the
16 pressure could have been off by some amount. They
17 still would have had to install the test ports and
18 they still would have had to collect all the
19 infield data to validate, which -- which was done
20 toward the end of the year.

21 COMMISSIONER SKOP: Okay. And again what I
22 was interested in, and maybe I got a little bit
23 more detailed of the steam chest pressure and the
24 throttle valve. What I was more concerned with is
25 the header pressure right before you go into the

1 turbine controls that would give you some -- at
2 least a critical check and balance on does the
3 specification, design specification match up with
4 actual plant parameters within a range of
5 uncertainty that one could, you know, estimate to
6 check and see.

7 Because again looking at the confidential
8 numbers, the summation of the two numbers that are
9 remaining to be confidential, and without
10 disclosing those numbers, those numbers are not
11 insignificant. There may be some, you know,
12 benefit to replacing aged equipment. But there's
13 still a cost impact as a result of the pressure
14 discrepancies and somebody, the ratepayer, is going
15 to have to ultimately pay for that unless it's
16 found to be imprudent. So that's where I think
17 trying to get to the bottom of this new development
18 is an issue. Sometimes things happen, but it's
19 important I think to get a better understanding
20 because the two dollar amounts there are almost as
21 much as -- that's been requested for the EPU for
22 the 2011 projected cost. I mean, that's not giving
23 anything away. It's just order of magnitude.

24 So I think that addresses the technical
25 question I had and I want to go back now to some

1 remaining questions.

2 THE WITNESS: Commissioner Skop, could I
3 clarify?

4 COMMISSIONER SKOP: You may.

5 THE WITNESS: Yeah. It was always a part of
6 the project plan to do the heat rate so that
7 Siemens could start work preliminary engineering
8 design type work. It was always part of the
9 project plan to go modify the plant, to install
10 test points so that we could get the detailed
11 accurate information because that critical
12 parameter needs to be within 12 PSI. It can
13 accommodate about a 12 PSI margin. And that plan
14 was followed.

15 I think that everyone was expecting it to just
16 be okay. Even if they would have discovered it six
17 months early, it doesn't change the output. The
18 output is still either don't replace the components
19 with components that have less pressure drop and we
20 certainly could do that. And -- and the turbine
21 would be designed to that spec but you'd have lower
22 megawatts. But the cost associated with those
23 modifications, which the last time I looked was --
24 was for the modifications around \$34 million, is --
25 is very cost-effective. It's a positive NPV of

1 about \$116 million benefit to our customers to make
2 that modification. If it would have been a
3 negative NPV, we would have said, no, we're not
4 going to replace those components, those megawatts
5 are too expensive. Does that make --

6 COMMISSIONER SKOP: I think it makes sense. I
7 think what I'm trying to drive out without, you
8 know, questioning, you know, management action, is
9 that there has been a discrepancy that was
10 identified and there's costs associated with
11 resolving that issue and also some cost to resolve
12 the differences and change the steam header lineup
13 in terms of the steam isolation valves, main steam
14 pressure valves, whatever is in there, going from
15 memory.

16 But I think my concern would be -- and
17 certainly that may have been part of the plan, but
18 obviously the -- putting the pressure taps in and
19 determining the actual pressure drop between the
20 respective valves and the fittings, at some point
21 could that work have -- and I'm not trying to -- to
22 armchair quarterback the decision that was made.
23 But I'm just trying to look in totality should that
24 work have been perhaps done prior to specifying the
25 design pressure used for the Siemens turbine or

1 could that have been reserved or did the turbine
2 contract need to be, you know, executed and moved
3 forward to preserve schedule. But again there is a
4 cost impact associated with whatever happened and
5 I'll leave it to the intervenors after I'm gone to
6 hash that one out. But I'm just trying to get some
7 visibility into how did this arise and, you know,
8 what are the costs to remedy the pressure
9 discrepancies that have been found.

10 THE WITNESS: Yes, I'd like to explain.

11 COMMISSIONER SKOP: Please do.

12 THE WITNESS: Okay. To preserve the megawatt
13 guarantee that we have contractually with Siemens,
14 there are a lot of specific data points that they
15 want collected. So that's part of the driver.

16 So that's one reason to go install a lot of
17 test ports. In fact, on unit 3, this fall-outage
18 will be installing some test pressure taps inside
19 the unit 3 condenser. These particular test
20 points, the plant needed to be shut down,
21 depressurized and cooled down to install these
22 because they're in the main steam system which at
23 power is normally 800 PSI as I know you're aware.

24 The question, could the testing have been done
25 like immediately following the outage? It could

1 have. It wasn't scheduled that way because we
2 didn't need that final input until much further
3 downstream. Siemens was not -- Siemens was not
4 scheduled to go to manufacturing until a certain
5 points so the project plan was laid out to this
6 outage do the test points and then you had this
7 number of months to do the actual infield
8 measurements, feed it back to Shaw who did the heat
9 balance.

10 So I did want to be clear that Shaw didn't
11 make any error. Their inputs were -- were off of
12 paper, and components that were installed in 1970
13 or whatever may perform exactly as designed, may
14 perform a little different.

15 And so therefore, I just want to be clear that
16 it's not added costs. I could have chose to spend
17 zero dollars. And -- and the components that are
18 currently installed are perfectly fine and will be
19 there for the next 20 years. But there was an
20 opportunity for those megawatts with a net present
21 value benefit to our customers and so it was -- it
22 was -- it was a business decision.

23 Now, we could have made that business decision
24 earlier but at the end of the day, it doesn't
25 matter.

1 COMMISSIONER SKOP: Okay. And the reason I
2 ask, Mr. Jones, is again the pressure discrepancies
3 were identified in this iteration of the staff
4 audit report which is -- let me make sure I'm
5 looking at it. The one that was issued in July,
6 2010. This was not, I don't believe, and I have it
7 in front of me, in last year's report. So again
8 this seems to be an emerging issue. And I'm not
9 suggesting that Shaw did anything wrong other than
10 rely on the existing, you know, as-built
11 specification given the hardware that was specced
12 out for the steam header.

13 But that would not be intuitively obvious to
14 me from reading the summary contained in the staff
15 audit report. That part is kind of left out so I
16 think that's where my line of questioning
17 originates from is, okay, here's an issue, is there
18 root cause of the issue and then here's a cost to
19 remedy the issue.

20 But certainly there does seem to be a cost,
21 and I know you said there wasn't because you did
22 the, you know, financial analysis on the net
23 present value requirement. But the last sentence
24 in page 34 seems to suggest there is an increase in
25 project cost to resolve the differences. So again

1 I'm not sure and I'm not sure whether the
2 Commission has been provided with that additional
3 analysis, financial analysis that's been performed
4 to -- to ascertain whether -- you know, the various
5 options there.

6 So that's the question that's -- you know, I
7 don't want to get too much into that. I think you
8 addressed my concerns a little bit to the
9 intervenors. But we need to try and get some
10 transparency of what's going on there. It seems
11 like FPL and the vendors did what they were
12 supposed to do.

13 But relating that back to loss or gain of
14 uprate and generation capability, that's something
15 that the full picture is not there for me. So
16 that's why I asked those specific questions. And I
17 think we can move on from here on that one, unless
18 you have anything to add on that.

19 THE WITNESS: Yes, Commissioner. We did
20 provide to the audit staff our detailed white paper
21 that -- that did go back and look at that overall
22 time line, did look at several options, and it's
23 including a decision-making white paper that we
24 wrote and provided to senior management on or
25 about -- the date of the report was March 11th,

1 2010 when we brought the -- brought it to
2 conclusion as to whether to modify or not modify.

3 COMMISSIONER SKOP: Okay. And just to follow
4 up on a couple of different lines of questions and
5 then hopefully we can wrap this up. You mentioned
6 that FPL, after it removed the EPU senior
7 management team, started looking at options of
8 self-performing work remaining on the EPU, looking
9 at other EPC contractors. I think you mentioned
10 Highpoint as one of them. And again I've confirmed
11 that's not confidential, at least from the redacted
12 information I'm looking at because I saw the word
13 unredacted, so I don't believe that's a problem.
14 But ultimately FPL decided not to shift the work to
15 a different EPC contractor; is that correct?

16 THE WITNESS: That is correct. We ultimately
17 decided to retain Bechtel as the EPC, we decided to
18 take some portions of the work such as start-up
19 testing and do that in-house, and we looked at some
20 specific engineering and gave that to other
21 companies that we thought could do it more
22 officially.

23 But as the overall engineering procurement
24 contractor, we did decide to stay with Bechtel
25 because we at the end of the day, we thought that

1 the energy and effort to switch horses, if you
2 will, at this point demobilize Bechtel, mobilize a
3 new EPC, was -- any cost benefit we would get there
4 would negate the cost benefit we were looking for.

5 COMMISSIONER SKOP: And that was my point.
6 Again I can try and look it up but I don't belabor
7 that. But I guess the conclusion in relation to
8 not going towards a new EPC contractor then would
9 be cost probative in doing such when you look at
10 those additional ramp-up costs and termination
11 costs and all of the things that go into that. So
12 it was more financially driven rather than benefit
13 driven; is that correct?

14 THE WITNESS: I'm not sure I understand your
15 question.

16 COMMISSIONER SKOP: Okay. Somewhere in the
17 voluminous record, again one of the reasons -- it
18 may be in the Concentric Report -- but I believe
19 one of the reasons why they did not go with an
20 alternate EPC contractor was because it would have
21 been cost probative in terms of gaining any benefit
22 and -- as opposed to staying with the existing
23 contractor at this point; is that correct? I mean,
24 I can try and look for it real quick but --

25 THE WITNESS: Yes, Commissioner. In effect,

1 to demobilize Bechtel, there have been costs
2 associated with that. Mobilize a second EPC, there
3 would have been cost associated with and disruption
4 to the project we felt was too great a risk to
5 take.

6 COMMISSIONER SKOP: Okay. All right. That
7 resolves that question.

8 Let's talk real quick about you mentioned that
9 you assumed the position of vice president of
10 nuclear power uprate on or about August 1st of 2009
11 and prior to that you worked for NextEra
12 specifically on the Point Beach project; is that
13 correct? Or one of the Point -- you were Midwest
14 manager type of position?

15 THE WITNESS: To clarify, if I may, I'm an
16 employee of Florida Power & Light Company. I
17 worked for the nuclear fleet. My assignment was to
18 the affiliate company to which the customers do not
19 pay for that. I was the vice president of
20 operations for Midwest.

21 As far as EPU for that particular plant, that
22 was a project being done for my plant. I did not
23 have responsibility for the actual project, just
24 the results.

25 COMMISSIONER SKOP: All right. And so to be

1 clear, Point Beach is a nuclear unit operated by
2 the unregulated entity which is now, I believe,
3 Next Energy -- NextEra Energy Resources; is that
4 correct?

5 THE WITNESS: Yes.

6 COMMISSIONER SKOP: Okay. And with respect to
7 Point Beach, do you know what -- you mentioned in
8 your testimony your reference to LAR. Do you know
9 what the status of the LAR is for Point Beach at
10 this time?

11 MR. ANDERSON: Chairman Argenziano, I'd like
12 to be heard very briefly.

13 CHAIRMAN ARGENZIANO: Yes.

14 MR. ANDERSON: This proceeding involves FPL
15 Florida plants. It does not involve in any respect
16 our sister companies, plants and other --

17 COMMISSIONER SKOP: Madam Chairman, to the
18 objection?

19 CHAIRMAN ARGENZIANO: Commissioner Skop.

20 COMMISSIONER SKOP: It's relevant. I'm laying
21 a foundation for my next question. The status
22 of -- merely it's inquiring of the status of the
23 LAR and just merely asked the witness if he knew of
24 the status of the LAR. And its a simple yes or no.
25 I don't --

1 CHAIRMAN ARGENZIANO: That's fine. That's
2 fine. Is that all right?

3 THE WITNESS: Yes, I know the status of the
4 extended power uprate license amendment request for
5 Point Beach.

6 COMMISSIONER SKOP: Okay. Can you -- and feel
7 free to object. Can you tell me what that status
8 is?

9 THE WITNESS: Yes. That status is -- it is in
10 the review and approval part of it. As I mentioned
11 earlier, the NRC's process has an acceptance review
12 which they can take up to two months. And once --
13 once they've agreed to accept it, then they get
14 into a much more detailed review for that license
15 amendment request, and that is the process that we
16 are in with Point Beach.

17 COMMISSIONER SKOP: Okay. And just very few
18 remaining questions. The nuclear division is
19 organized at FPL but it -- it -- it's intertwined
20 to some degree to the extent that it has the entire
21 fleet, both unregulated reactors and existing
22 reactors under the nuclear division; is that
23 correct?

24 THE WITNESS: That is correct. We operate as
25 a nuclear fleet.

1 COMMISSIONER SKOP: Okay. I guess the
2 question that I would ask is, is the fact that --
3 you know, you have limited resources to accomplish
4 projects and I think you've mentioned the
5 organizational structure. It was detailed with
6 great specificity in last year's audit report with
7 the org chart and we've talked about the management
8 changes. Is that combined organization, are there
9 sufficient resources available that allow or don't
10 impact the ability to execute the EPU completion on
11 a costing schedule as it pertains to the regulated
12 units?

13 Let me reframe my question. You have the
14 nuclear division which has unregulated and
15 regulated plants as a fleet. Okay. But we have
16 specific issues related to EPU and new construction
17 in Florida as well as the unregulated entity has
18 their own business segment.

19 My question is, is that organizational
20 structure as a whole impacting the ability of FPL
21 to execute the EPU completion on costing schedule?

22 THE WITNESS: No, Commissioner. As far as the
23 other company is concerned, they have their
24 extended power uprate team, St. Lucie and Turkey
25 Point each -- each have theirs. There are always

1 resource challenges in -- in any business or any
2 major activity. So we do -- we will supply people,
3 you know, within the fleet to -- to wherever there
4 is a need and will properly allocate those costs
5 and then we'll either backfill that position or
6 we'll -- we may have some -- a regular employee
7 backfill or we may use a contractor to substitute.
8 And we don't just do that within the -- within the
9 nuclear fleet. I've gotten people from all other
10 business units within the company to come on the
11 project either on a project-bound basis, temporary
12 basis. And so we do move resources -- resources
13 around. But as with any -- any -- EPU aside, EPU
14 aside, just running the day-to-day business within
15 the nuclear fleet or within our nonnuclear fleet,
16 there's always pressure on resources and challenges
17 with that. But not to the extent that I'm worried
18 about resources being a major risk for the project.

19 COMMISSIONER SKOP: Okay. Thank you. And I'm
20 just -- no need to have you reference a
21 confidential document at this point. And staff,
22 the Bates page I'm looking at, this is what's been
23 marked as POD 29, and the Bates page specifically
24 is 153493 of NCRC-10. And if we could pass out
25 copies to the witness and the Commissioners

1 perhaps.

2 MR. ANDERSON: Which number was that again,
3 please?

4 COMMISSIONER SKOP: It's what's been marked
5 for identification -- or actually not marked, but
6 it's POD 29, and the Bates page is FPL 153493,
7 NCR-10.

8 THE WITNESS: I'm sorry, Commissioner, can you
9 repeat that number?

10 COMMISSIONER SKOP: Yes. The number -- and
11 like I say, it's probably going to have to get
12 looked at so everyone can follow along. But it's
13 FPL 153493 is the number I have.

14 THE WITNESS: 153493, just --

15 COMMISSIONER SKOP: And that's at the top
16 right-hand corner. And staff, if I can get a copy
17 of that confidential document after all because
18 again there may be a mismatch between the pages I
19 have and what you passed out. So I just want to
20 double-check that I'm on the right page.

21 MS. HELTON: Madam Chairman?

22 CHAIRMAN ARGENZIANO: Yes.

23 MS. HELTON: Just so we can have a clear
24 record, staff is telling me that this has not been
25 given any kind of an exhibit number. And I'm just

1 wondering whether it should be in case it is
2 admitted into the record so that we will have a
3 clear record.

4 CHAIRMAN ARGENZIANO: Commissioner Skop?

5 COMMISSIONER SKOP: We can mark it for
6 identification. I don't usually move exhibits.
7 But we need to do what we need to do.

8 MS. HELTON: I think that might be -- I just
9 think that might be better.

10 CHAIRMAN ARGENZIANO: To give it a number.

11 MS. HELTON: Yeah. I think Ms. Bennett would
12 like to do that.

13 MS. BENNETT: It's a set of documents in its
14 entirety that we were going to ask to be moved into
15 the record. So -- and they're almost all
16 confidential. It's Document No. 06790-10 in our
17 case management system. And that's all of FPL's
18 responses to staff's fourth production of
19 documents. And I believe Commissioner Skop is
20 asking questions on the POD No. 29 which consists
21 of several hundred pages.

22 COMMISSIONER SKOP: Okay. And staff, like I
23 say, because this is being thrown on the
24 Commissioners, can we have someone from staff help
25 everyone on the bench get to the page? Or is

1 everyone there? Okay.

2 CHAIRMAN ARGENZIANO: I think so.

3 MR. YOUNG: And Madam Chairman, for
4 identification purposes, that will be Exhibit No.
5 242.

6 CHAIRMAN ARGENZIANO: And what did we -- what
7 did we title it, Commissioner Skop? What do we
8 call it? Want to just call it --

9 COMMISSIONER SKOP: Ms. Bennett? I would call
10 it Concentric Report.

11 MS. BENNETT: Oh, the name of the document?

12 CHAIRMAN ARGENZIANO: Yes, please.

13 MS. BENNETT: Let's short title staff's --
14 FPL's responses to fourth PODs, staff's fourth
15 PODs.

16 (Exhibit No. 242 was marked for
17 identification.)

18 CHAIRMAN ARGENZIANO: Thank you. You're
19 recognized.

20 COMMISSIONER SKOP: Thank you, Madam Chair.
21 At the beginning of that document if we go seven
22 pages in, that should be that Bates number because
23 the bottom of the page is numbered page 7 of 23.

24 Okay. Mr. Jones, are you at that page which
25 is Bates marked stamped as FPL 153493?

1 THE WITNESS: Yes, I am.

2 COMMISSIONER SKOP: Okay. And do you see the
3 deleted comment at the top right of that page?

4 THE WITNESS: Yes, I do.

5 COMMISSIONER SKOP: Okay. With respect to
6 that comment and my prior line of questioning
7 regarding whether there was sufficient level of
8 effort dedicated to ensuring that FPL's ability to
9 execute the FPL EPU effort on cost and schedule,
10 should that comment factor in that analysis given
11 the extent of -- of, for lack of a better word,
12 time that was dedicated within the scope of that
13 comment without getting into too much detail? If
14 you read the comment, I think it should be somewhat
15 evident where I'm going with that.

16 THE WITNESS: Yes, I've read the comment. I
17 don't know, I can't speak to what portion of the
18 team was involved in -- in the activity that's
19 referenced here and what the impact was. In other
20 words, it's -- it's not clear if we're talking an
21 entire group of people, some portion of the team.
22 And so I can't draw any conclusion from that --
23 that comment.

24 COMMISSIONER SKOP: All right. Well let me
25 try and help home in on the point that concerns me.

1 The first sentence obviously, that's going to
2 address the location. The second sentence
3 addresses the team, the time, and the -- I guess
4 perhaps the location, and then the remaining
5 portion of that addresses what occurred subsequent
6 to that. And I guess my -- my -- where I'm going
7 with this in line in my previous question is this
8 occurred shortly before the July 25th type meeting
9 and probably at the same time that all of this, you
10 know, cost data for the Florida base proceedings
11 would have been prepared and testimony would have
12 been filed. So that's kind of where I'm getting to
13 on that.

14 THE WITNESS: Yes, I understand. And I
15 understand the location in regard to the second
16 sentence. I don't know if that's the entire team,
17 a portion of the team. The team in general at that
18 time was quite large. So -- and so I -- I cannot
19 offer what, if any, impact that had on the Florida
20 project. There's just not enough information to
21 know.

22 I would -- I would tell you that, that it's
23 not unusual, in fact, it's more the norm, in our
24 nuclear fleet that when we have a refueling outage,
25 say, at St. Lucie, that a good portion of our staff

1 will go and provide additional oversight and
2 monitoring at St. Lucie. That doesn't mean they
3 stop everything they're doing. But it means they
4 do spend a portion of their day evaluating
5 performance and assisting during the refueling
6 outage.

7 And so this statement is -- it doesn't go to
8 what type of effort this -- this was.

9 COMMISSIONER SKOP: Okay. Thank you. Two
10 follow-up questions and then one small line of
11 questioning and I think we'll be done.

12 This is a draft copy of the Concentric Report
13 or what ultimately became the Concentric Report.
14 And enclosed as part of the Concentric Report was
15 the employee letter.

16 The question that I have is were you provided
17 with a copy of the employee letter that was sent to
18 Mr. Hay?

19 THE WITNESS: I read a copy of the employee
20 concern letter. I don't recall exactly when that
21 was. If that -- I was interviewed as a part of the
22 Concentric investigation and I just don't
23 specifically recall if it was at that particular
24 date or after that that I saw the letter. But
25 it -- as you mentioned, it is an attachment to the

1 report.

2 COMMISSIONER SKOP: Okay. And with respect to
3 the report which was prepared at FPL's direction by
4 Concentric in an independent report, were you asked
5 to review any drafts of this report?

6 THE WITNESS: Yes, I did review drafts of the
7 Concentric Report and I provided my verbal
8 comments, feedback to the Concentric Report in
9 regards to things such as time line or -- or facts
10 in the report.

11 COMMISSIONER SKOP: Okay. And if I could ask
12 you to turn to the first page -- actually let me
13 get the right Bates number page will probably be
14 the best way to go about this.

15 I may -- I may have to shift documents on us.
16 Ms. Bennett, if you can help me out. I'm looking
17 at the same confidential document POD 29 and the
18 page is Bates page FPL 153197.

19 Let me see if that's in the same grouping. I
20 think that may be actually in a different document.
21 So if you can help everyone get to that. This
22 is -- right. That's the page we're all looking
23 for. So if we can get the witness a copy and the
24 Commissioners because -- yes, 153197. And I
25 believe it's the first page of a separate document

1 in that stack they gave you with the big green
2 comment box. Okay. Is everyone there?

3 All right. Mr. Jones, if I could ask you to
4 review what's been marked for identification as
5 Exhibit No. 242, Bates page FPL 153197, and the
6 comment at the top right corner of this document.

7 MR. ANDERSON: We're still catching up with
8 you here -- over here for a moment.

9 CHAIRMAN ARGENZIANO: Let's make sure
10 everybody is caught up before we move on. If you
11 would just indicate when you're ready.

12 MR. ANDERSON: We're there now. Thank you.

13 COMMISSIONER SKOP: And Mr. Johns, have you
14 had an opportunity to review Bates page FPL 153197
15 which is page 1 of 20 of that document?

16 THE WITNESS: Yes, I have.

17 COMMISSIONER SKOP: Okay. In a prior line of
18 questioning, we discussed the executive steering
19 committee meeting that was held on or about
20 July 25th, 2009, and I asked you a question as to
21 who may have requested that meeting.

22 THE WITNESS: Yes.

23 COMMISSIONER SKOP: Does that comment give
24 some clarity to who may have requested that meeting
25 and the line by line review that we discussed.

1 THE WITNESS: That comment makes a statement
2 as to who requested the line by line.

3 COMMISSIONER SKOP: Okay. And you stated that
4 that person, which I believe you previously
5 testified was the president and chief operating
6 officer of FPL Group, attended the meeting on
7 July 25th, 2009; is that correct?

8 THE WITNESS: That's correct.

9 COMMISSIONER SKOP: Okay. And I don't believe
10 that name is confidential based on my ruling and
11 the fact that there is no protective order or
12 challenge to the ruling on that. This document is
13 confidential, but however the name of a corporate
14 officer of FPL Group I don't believe is
15 confidential. So I would ask if you could name
16 that individual.

17 THE WITNESS: The president and chief
18 operating officer of NextEra.

19 COMMISSIONER SKOP: Back at the time it would
20 have been FPL Group.

21 THE WITNESS: It would have been FPL Group at
22 the time.

23 COMMISSIONER SKOP: So can you please identify
24 that individual, please?

25 THE WITNESS: That individual is James Robo.

1 COMMISSIONER SKOP: All right. Thank you.
2 Just one final question that I have. Just in
3 summary -- I could ask the court reporter to read
4 back the transcript and I'd rather avoid doing that
5 but I'm trying to also anticipate what might be an
6 objection from Mr. Anderson.

7 But just to be clear, on the July 25th, 2009
8 executive steering committee meeting at which point
9 a line by line financial review of the FPL EPUs was
10 conducted, I believe it was your testimony that
11 Mr. Olivera attended that meeting and Mr. Robo
12 attended that meeting from FPL Group -- actually
13 let me reframe that. That Mr. Olivera as president
14 and chief operating officer of FPL Group at Power &
15 time Light attended that meeting and that Mr. Robo
16 as president and chief operating officer of FPL
17 Group at that time attended the meeting on the 25th
18 to have that line by line budget discussion; is
19 that correct.

20 THE WITNESS: Yes, among others.

21 COMMISSIONER SKOP: Okay. And you also
22 attended that meeting?

23 THE WITNESS: Yes, I did.

24 COMMISSIONER SKOP: Very well.

25 Madam Chairman, at this time I don't believe I have

1 any additional questions. Let me just double and
2 triple check here. I don't believe I have any
3 additional questions at this point for Mr. Jones.
4 However, I would reserve my right to ask additional
5 questions if we get into an evidentiary hearing
6 posture. Thank you.

7 CHAIRMAN ARGENZIANO: Thank you.
8 Commissioners?

9 I think I have a question, and stop me if it's
10 something that shouldn't be asked. I'm sure you
11 will.

12 The Concentric Report, I guess it goes through
13 periods of change and edits that occur. And
14 anywhere else there's edits to either mistakes or
15 grammar or technical terms or whatever. Has -- has
16 it changed substantially from its initial --

17 THE WITNESS: Madam Chairman, prior to this
18 hearing I was shown the stacks of drafts for the
19 Concentric Report prior to being shown that, just
20 prior to the hearing. I had no knowledge of how
21 many drafts there were. I didn't know that I
22 reviewed at least two and provided my verbal
23 comments and feedback on that report. But I can't
24 speak to the number of changes and whether they
25 were -- but all editorial or context or such.

1 CHAIRMAN ARGENZIANO: Okay. Did staff --

2 THE WITNESS: But I would defer that to the
3 author of the report, John Reed.

4 CHAIRMAN ARGENZIANO: Okay.

5 COMMISSIONER SKOP: May I have some brief
6 follow-up on that?

7 CHAIRMAN ARGENZIANO: Commissioner Skop.

8 COMMISSIONER SKOP: Thank you.

9 Mr. Jones, if this was an independent effort,
10 then how can independence be maintained if FPL
11 management is offering its comments and suggestions
12 to the independent investigation report? I don't
13 get to -- as an example, I don't get to do that
14 with our staff audit report.

15 THE WITNESS: Well, we have a number of
16 independent or internal reports that we Commission.
17 It could be, you know, human resources and those
18 people that have a need to know or are close to the
19 issues are asked to verify the facts or time line
20 is correct. They're asked for the feedback. At
21 the end of the day it is up to the investigating
22 entity to make the final decision on -- on their
23 report. I do not provide any written comments. I
24 do not provide any electronic editing. I just
25 provide my perspective on -- tone and perspective

1 part of the design engineering.

2 And then one other source is similar to when
3 you are doing a little remodeling of your house, and you
4 were going to do a simple thing like move the stove and
5 you discovered that the conduit is in a different spot
6 than what you expected and you're in the middle of a
7 modification, you may have to make another modification
8 to be able to complete the original intended
9 modification.

10 Q Now, your direct testimony also states that
11 the nonbinding estimate, the term that you used, has
12 increased to something like \$2.3 billion for all the
13 uprate projects; is that correct?

14 A For the feasibility analysis, we used 2. -- I
15 should -- 2.050 to 2.3 billion. The feasibility
16 analysis used the upper end of that range. My forecast
17 range for everything that I had identified as
18 modifications, the Bechtel resource ramp, FPL ramp, as
19 well as the new modifications at the time were at the
20 low end of that range.

21 Q You've also used a term "level of certainty."
22 What level of certainty do you attach to this latest
23 nonbinding estimate?

24 A P-50.

25 Q Say again.

1 A P-50.

2 Q What is that?

3 A P-50 means that there's an equal probability
4 of it going up as there is of it going down.

5 Q And are there any parameters in terms of how
6 far up or how far down that attach to P-50?

7 A I think it's important to look at the trend
8 and the rate at which you're identifying issues and the
9 magnitude of which you're identifying issues. That
10 doesn't mean that you wouldn't have a discovery through
11 testing as we did for the steam pressure that -- where
12 you would need to do a business case on whether to
13 proceed or no.

14 But the -- but it's more important to look at
15 the trend of discovery than, you know, just a
16 subjective, gee, it could go there or could go there.

17 Dr. Sims will report in detail on the
18 feasibility. I do know that the needs filing, that the
19 present value for the customer was around 347 million,
20 and I do know that for 2010, using the upper end of the
21 2.3 billion and the 450-megawatt, that the present value
22 is now over a billion for the customers. But of course
23 there are many different factors that go into that
24 feasibility and Dr. Sims is best suited to explain that.

25 Q Well, my question is limited to capital costs,

1 the price tag of completing the unit. And you used the
2 term P-50 which means the equal probability of
3 increasing or decreasing but you also said look at the
4 trend.

5 Now, compared to the nonbinding estimate that
6 was presented a year ago and using the upper end of
7 \$2.3 billion, that is an increase of about \$500 million,
8 is it not?

9 A Could you restate the question?

10 Q Comparing the nonbinding estimate that has
11 been presented in your testimony in this case, comparing
12 that, comparing the high end of that range to the
13 nonbinding estimate that was presented a year ago, that
14 represents an increase of approximately \$500 millions,
15 does it not?

16 A That represents a change in forecast of
17 \$500 million if you take the 2.3 and compare it to the
18 needs find, that's correct.

19 Q Now, you also said the important thing is to
20 look at the trend. Is that the trend we should be
21 concerned with if we are trying to get a handle on what
22 the ultimate price tag of the uprate is going to be?

23 A The trend you should be concerned with is the
24 month over month and the types of engineering discovery
25 that we're having through engineering analysis and

1 whether those are -- are significant, medium or low.

2 And by that I mean as a part of this project,
3 we have a risk management tool. And so anyone on the
4 project or anyone external to the project, if they
5 identify anything that could impact costs, schedule,
6 quality, can raise that -- raise that issue and we'll
7 assign some probability of that occurring. We'll
8 conceptually assign some dollar amount with that or some
9 schedule impact with that and we'll capture that as a
10 part of the project cost.

11 So when you are looking at that \$2.3 billion
12 figure as the high end, about 158 million of that is
13 what we've identified as risk. It's things that haven't
14 come to pass and there's opportunities to mitigate.

15 Now, you're not going to mitigate the entire
16 \$158 million clearly and you're not going to mitigate it
17 tomorrow. Some of those things that are on that risk
18 metrics is I've got to complete the engineering to know
19 what the answer is or I've got to devise a strategy what
20 to do with it.

21 So here's a very simple example. Is -- is the
22 secondary side of the nuclear power plant which is all
23 steam and water, we refer to as the clean side of the
24 power plant. It's not part of the primary site.

25 Well, back in the '80s, the original steam

1 generators for Turkey Point had some very, very tiny
2 leakage but that resulted in some contamination of the
3 secondary side. And so what was in the project was a
4 nominal amount of dollars in the event that some of that
5 secondary side component once we removed it, that we
6 would not be able to free release it or salvage it, that
7 we'd have to treat it as radioactive waste.

8 And so it was identified as a risk in a very
9 conceptual estimate of an additional 11 -- could be 11
10 or 13 million dollars. I have a lot of numbers in my
11 head for a \$2 billion project. But nonetheless, that's
12 when they got my attention is, is we're putting
13 \$11 million in the project, \$11 million hit because
14 someone raised the potential that the secondary may have
15 internal contamination and it's going to be very
16 expensive to dispose of.

17 Now, I can't mitigate that risk overnight but
18 I have a project plan and I have someone working on that
19 and I don't expect all of that to come to fruition. In
20 fact, I suspect it will be a fraction of that cost. But
21 until we get to the end answer, however months it takes,
22 that \$11 million will be there.

23 So not that entire amount is -- is definitely
24 hardware. A certain portion of that is allocated for
25 scope not defined as well as risk, things that -- that

1 people have thought this could occur, I don't have an
2 answer yet, I may -- that engineering for that is going
3 to occur next year and then I can give a definitive
4 number for that.

5 Q And at the end of that process, your estimate
6 is at the probability of the 2.3 billion being more or
7 less is P-50, correct? Is that what you said earlier?

8 A That's what I said earlier. The key is cost
9 certainty, cost certainty comes with completing the
10 design engineering. And as I stated earlier, okay,
11 we -- if we would have done the law engineering first,
12 then all the design engineering, then you would spend a
13 year estimating and then you could provide a project
14 estimate which is what most people are used to when they
15 get an estimate to get their house reroofed or, you
16 know, a brake job done on their car, so to speak.

17 If we were to take that approach and that's
18 what the Legislature and this Commission had the wisdom
19 to do is -- is you wouldn't have any benefit, you know,
20 for the customers. And so you do that in overlapping
21 phases and you sequence it with the refueling outage so
22 that you bring the megawatts sooner. But with that,
23 because the engineering isn't done, you trade off a huge
24 customer benefit for cost uncertainty for the first few
25 years of the project until the engineering is done.

1 That's the trade-off.

2 MR. MCGLOTHLIN: That's all I have at this
3 time.

4 CHAIRMAN ARGENZIANO: Commissioner Skop? I'm
5 sorry, Mr. Moyle?

6 MR. MOYLE: Thank you, Madam Chairman. I have
7 just a couple of lines of questions, one related to
8 this issue of timing and the other related to some
9 of these confidential documents.

10 CROSS-EXAMINATION

11 BY MR. MOYLE:

12 Q But good afternoon, sir. Jon Moyle on behalf
13 of FIPUG. I just wanted to make sure I have some timing
14 down properly with respect to the withdrawal of the
15 licensing action that you guys withdrew.

16 I'm correct that that withdrawal letter, you
17 sent a letter on August 13th and you got a letter back
18 from the Nuclear Regulatory Commission on August 13th as
19 well; is that right?

20 A Yes, that's correct.

21 Q Okay. I think you testified earlier that on
22 August 11th you had a phone call where I assume they
23 kind of delivered the bad news to you; is that right?

24 A On August -- that is correct. On August the
25 11th we had a phone call and the NRC informed us that

1 there was significantly more detail they were looking
2 for in a couple of areas and that at that point they
3 didn't think they could accept the license amendment
4 request. We provided push back on that for the basis
5 for that and started discussions with senior management.

6 Q And -- and essentially the -- what the NRC
7 staff told you was you really had two options. One, you
8 could withdraw your request or, two, you could not
9 withdraw it and get a denial notice, correct?

10 A The process is that if you do not withdraw
11 your license amendment request, you'll get a denial
12 request, that is correct.

13 Q So then, I guess, sequencing again, your
14 senior management already had a meeting set up on the
15 12th of August with senior NRC staff, correct?

16 A That is correct. And we began the escalation
17 of the issue with our management and they began the
18 escalation with their management.

19 Q And your objective was to try to turn them
20 around, was it not, with respect to their decision
21 either to deny or to require you to withdraw?

22 A That is correct.

23 Q And I tried to take notes when you were going
24 through this because all of this is happening pretty
25 close to the hearing. Do you know -- wasn't the

1 discovery cutoff date in this hearing on August 12th?

2 Do you know that?

3 A No, I do not know what the cutoff is for the
4 hearing.

5 Q But this decision of the NRC that basically
6 resulted in you withdrawing this application, I think
7 you testified it will add additional cost to the
8 project, correct?

9 A That is correct. And I further explained
10 that -- that the engineering that was done is good
11 engineering. They're asking to go to another whole
12 level so that's additional engineering to be done and so
13 there is a cost associated with that.

14 Q And the cost, I think you used the phrase, you
15 said 125 million or 150 million that you expected there
16 to be increased costs not of that magnitude, but do you
17 know the order of magnitude of cost that -- that will
18 flow from this decision as we sit here today, or is that
19 something that's to be decided as time goes forward?

20 A No, I was referring to -- to the amount that
21 we've spent on the license amendment request process for
22 our Florida plants is on the order of around
23 \$100 million. And we forecast, you know, approximately
24 another 20 or 25 million. The additional engineering to
25 be done here to satisfy the technical reviewers could be

1 on the order of a million or a million-and-a-half. I'd
2 rather not speculate and say this is definitely the
3 number. But it will probably be on that order of
4 magnitude for the engineering analysis. If there are
5 additional modifications required by the NRC to the
6 spent fuel pool to allow extended power uprate, then
7 that would be, that would be additional cost.

8 Q Right. And with respect to -- I think the two
9 variables were the additional cost and the additional
10 time, correct, that resulted from this withdrawal?

11 A Well, yes, there's the additional engineering
12 analysis --

13 Q Right.

14 A -- that has not yet been performed. The time
15 aspect of it is it takes time to do the engineering and
16 that's what you're paying for. The time variable that I
17 was referring to is the time it will take the NRC to
18 review the resubmittal and whether or not it will have
19 an impact on the scheduled refueling outage, and that's
20 yet to be determined. However, one of our contingencies
21 is to perform all the modifications and -- and do the
22 power ascension online which we call that an online
23 implementation which we've done before.

24 The other impact -- again, since the rules are
25 changing, the staff guidance on spent fuel pool

1 criticality just came out last night, or we just got a
2 copy of it last night or today I was informed, and it's
3 just going to be going on the public register for
4 comment. That's going to be the standard that we're
5 going to have to live to. And that could require
6 physical modifications to the existing spent fuel pools
7 at Turkey Point and Saint Lucie. Until we complete that
8 unless, I cannot tell you the extent of that physical
9 modification.

10 Q All right. Your testimony in this case,
11 there's an issue No. 22 that says, and I quote, what
12 system and jurisdictional amount should the Commission
13 approve as FPL's reasonable actual estimated 2010 cost
14 and estimated true-up amounts for the extended power
15 uprate project? Your testimony speaks to that issue,
16 correct? Yes, no?

17 A Yes.

18 Q Okay. And are you aware that Public Counsel's
19 position which FIPUG agreed with was that OPC agrees
20 with staff proposal to conduct a more detailed
21 examination of the cost in a separate docket. You're
22 aware that that's the position of FIPUG and OPC with
23 respect to that issue?

24 A No, I'm not aware of what your position is.

25 Q The -- the fact that there could be additional

1 cost associated with this withdrawal, wouldn't you agree
2 that -- that allowing the parties the opportunity to dig
3 into this issue further as it develops, to understand
4 the magnitude of those costs would be beneficial in
5 determining whether these -- these costs were prudently
6 incurred or imprudently incurred?

7 A First let me speak to the characterization.

8 Q Well, if you could --

9 A You tie it to --

10 MR. MANAUSA: Madam Chairman.

11 A -- you tie it to the withdrawal.

12 CHAIRMAN ARGENZIANO: Hang on one second.

13 Mr. Moyle?

14 MR. MOYLE: Yeah. I mean, obviously the
15 Commission rule is the yes, no, and then the
16 explanation.

17 BY MR. MOYLE:

18 Q I'm just simply trying to ask a yes/no
19 question which is should additional time -- would
20 additional time help ascertain the costs associated with
21 the withdrawal that a future Commission may decide could
22 be prudent or could be imprudent? Would additional time
23 help ascertain those costs?

24 A Yes, additional time would help ascertain
25 those costs.

1 Q And you were asked a few questions about
2 the -- your -- the Point Beach uprate project, correct?

3 A That's correct.

4 Q Okay. Did the Point Beach uprate project also
5 have a withdrawal of a requested licensing action for
6 its extended power uprate efforts?

7 A The license amendment request for the extended
8 power uprate for Point Beach as not been withdrawn.

9 Q Okay. Throughout the country, some of these
10 extended uprate projects have gone forward, correct, and
11 have been completed?

12 A Yes. There are a number of extended power
13 uprate projects that have been accomplished in the
14 United States. The boiler water reactors, there are a
15 large number of those. As far as pressurized water
16 reactors in the context of a true extended power uprate,
17 although if you check the NRC website you'll see a
18 couple other listed, but the true extended power uprate
19 has been Ginaa.

20 Q The -- the other line of questions I had just
21 briefly, you have all of these confidential documents in
22 front of you, do you not, that staff identified as an
23 exhibit? I want to direct your attention to FPL Bates
24 stamped document 152887 which is a letter dated
25 February 19, 2010.

1 A Did you say 152887?

2 Q Yeah, 152887.

3 A I'm not there yet.

4 Q And 152888. It's a February 19, 2007 letter.

5 And there's actually a cover page associated with it,

6 152886. Just tell me when you're there.

7 COMMISSIONER SKOP: Mr. Moyle, if I could ask,

8 what Bates number is that? Because some of the

9 documents we have you have to scroll through them.

10 Do you have a front cover Bates page and then a

11 subsequent Bates page?

12 MR. MOYLE: Yeah. The Bates page on the very

13 first is 152886, and then it's 152887 and then

14 152888 according to the information I have.

15 COMMISSIONER SKOP: That's what I thought it

16 was.

17 MR. YOUNG: It's at the bottom of the page,

18 Commissioner. And Madam Chairman, it's my

19 understanding that this letter is no longer

20 confidential except for the name of the employee

21 and the position, I think.

22 MR. ANDERSON: Yeah. All the names and titles

23 I believe here are -- just to be clear, there's a

24 public version of this, there's a nonpublic. We

25 just want to be careful how we proceed.

1 CHAIRMAN ARGENZIANO: All names are
2 confidential and positions.

3 MR. YOUNG: Except for the Commissioner's
4 ruling on the --

5 MR. ANDERSON: ON the one individual.

6 COMMISSIONER SKOP: The one individual, Mr.
7 Jim Robo who is president and chief operating
8 officer of FPL Group at the time -- actually FPL
9 Group at the time of this letter was withheld from
10 being confidential.

11 CHAIRMAN ARGENZIANO: Okay.

12 BY MR. MOYLE:

13 Q Just a couple of questions on this letter.
14 The person who signed this letter, are they still with
15 FPL, do you know?

16 A No, they are not.

17 Q And you were asked questions previously about
18 the change in management related to the EPU project.
19 You talked about succession planning. But the change in
20 management related to the EPU project didn't have
21 anything to do with succession planning, did it?

22 A Yes. Succession planning does factor into
23 that. It's part of my development to run a major
24 construction project. I've been in line operations most
25 of my career.

1 Q The -- so the point -- counsel for FPL has
2 indicated this letter is declassified or not
3 confidential. The letter suggests that on the second
4 page that there was trouble with the EPU project and it
5 says, quote, the trouble was enough to replace the
6 entire senior project team. Do you disagree with that
7 statement?

8 A Yes, I do.

9 Q So you were involved and had knowledge of the
10 senior project team and how they were -- they were
11 performing?

12 A I disagree with that statement in the context
13 that the entire senior project team was replaced as I
14 testified to earlier.

15 Q Okay. With respect to any members of that
16 project team that were replaced, was the reason that
17 they were replaced was because of poor performance or
18 trouble with the EPU project?

19 A As I mentioned before, the very most senior
20 people associated with that project, solid performers,
21 had been solid performers for decades. The -- I already
22 testified to the fact that there was a reorganization to
23 take the EPU and separate the EPU from the projects and
24 fuels organization. That required a division of
25 responsibility. There were some reassignments. And so

1 that's part of the reason, was to decentralize it. Part
2 of the reason was to align skill sets and functions.
3 Part of the reason was to get different performance and
4 put a different area of focus on the project.

5 Q Okay. The bottom of the first page, 152887,
6 there's a statement, "Finally in July of 2009, senior
7 management decided it was time to inform executive
8 managers of the poor condition of EPU which precipitated
9 the replacement of the entire EPU project senior
10 management team. I take it from your previous answers
11 that you would -- you would take exception with that
12 sentence in this letter; is that right?

13 A I'm sorry, I lost the sentence.

14 Q It's the second from the last sentence, the
15 bottom of page 1. Finally in July of 2009.

16 A I'm with you. Yes. I do not agree with the
17 characterization that that statement makes.

18 Q Do you know the individual who wrote this
19 letter?

20 A Yes, I do.

21 Q As we sit here today, I take it you question
22 his veracity?

23 A No, I don't question his veracity. I have a
24 difference of opinion in regard to how he characterizes
25 that.

1 MR. MOYLE: Okay. Thank you. That's all I
2 have.

3 CHAIRMAN ARGENZIANO: Commissioner Skop?

4 COMMISSIONER SKOP: Thank you, Madam Chairman.
5 A couple follow-up questions and I'll try to make
6 this as brief as possible.

7 Mr. Jones, if I could direct you back to the
8 same letter that Mr. Moyle asked you to refer to,
9 and I don't have the Bates page in front of me but
10 we, for the sake of discussion, we know what letter
11 we're talking about. This is the employee letter
12 dated February 19th, 2010 that was directed to
13 Mr. Hay who is FPL Group chairman and chief
14 executive officer. Do you see the first page of
15 the letter?

16 THE WITNESS: Yes, I do.

17 COMMISSIONER SKOP: The last sentence at the
18 first page, can you please read that last sentence
19 for me?

20 THE WITNESS: The last sentence on the first
21 page?

22 COMMISSIONER SKOP: Yes, sir. Beginning with
23 "my."

24 THE WITNESS: "My project control group
25 prepared detailed reviews that were presented

1 to" -- it's redacted -- "late in July 2009 on the
2 poor condition of EPU."

3 COMMISSIONER SKOP: And that redaction, there
4 is Mr. Jim Robo who's no long confidential so could
5 I ask you to reread the sentence noting that that
6 Information is no longer redacted based on my
7 ruling?

8 THE WITNESS: "My project control groups
9 prepared detail reviews that were presented to
10 Mr. Jim Robo late in July 2009 on the poor
11 condition of EPU."

12 COMMISSIONER SKOP: And on the second page of
13 the letter, second paragraph, can you read that
14 paragraph in its entirety, please.

15 THE WITNESS: "I'm concerned about how FPL
16 will report these findings at the upcoming PSC
17 hearings. Any information from EPU other than --
18 other than which was presented to management last
19 summer will be a manipulation of the truth.
20 Current reporting for PTN and PSL, meaning Turkey
21 Point and St. Lucie, does not contain information
22 showing there is serious trouble with these
23 projects. The trouble was enough to replace the
24 entire senior project team."

25 COMMISSIONER SKOP: Okay. And then can you

1 read the first sentence of the next paragraph,
2 please.

3 THE WITNESS: "Enclosed with this letter are
4 the presentations given to Mr. Robo last July. If
5 you investigate" -- do you want me to read the
6 whole paragraph?

7 COMMISSIONER SKOP: No, that's fine. I think
8 we've covered enough on that. Do you --
9 notwithstanding the Concentric Report, do you have
10 any reason to doubt the validity of these
11 allegations?

12 THE WITNESS: Yes, I do. Going to the second
13 paragraph on page 2, as I stated earlier, the
14 project forecast that we had and the direction that
15 we had coming out of July 2009 remained within our
16 monthly reports. Those numbers are generated by
17 the project controls organization and continue
18 to -- that forecast along with the progress we were
19 making on the actions in regards -- and I won't go
20 back through those.

21 But in regards to ongoing activities
22 continuing to be reported to the senior execs,
23 those same presentations with those forecast
24 numbers were provided to PSC audit, audit staff as
25 a normal course of discovery. In fact, when I

1 learned that --

2 COMMISSIONER SKOP: How do we -- can we move
3 to strike that or what do we want to do.

4 MR. ANDERSON: We move to strike that, please,
5 as clearly an inadvertent error.

6 CHAIRMAN ARGENZIANO: So moved.

7 THE WITNESS: Sorry. When I learned that this
8 employee was -- he was the -- that's a title.
9 "When I learned this employee was leaving the
10 company, I had a meeting with this employee and I
11 showed him the executive steering committee
12 presentations that had the forecast numbers in it
13 as well as the actions that were being taken by the
14 project team. And then I also showed him the
15 documents that we were providing in discovery that
16 had those same forecast numbers in it and he
17 commented to me that, one, he was pleased that I
18 took the time to meet with him, that he was not
19 aware of that information and that he was glad that
20 that information was being shared with the senior
21 executives and being provided to the PSC staff.

22 COMMISSIONER SKOP: All right. And
23 notwithstanding your difference of opinion with the
24 Concentric Report as identified in your management
25 discussion, Concentric took a different position

1 and indicated that they found the employee --
2 allegations in the employee letter and the employee
3 to be credible and that most of the allegations
4 were indeed fact accurate, is that correct, based
5 on the Concentric appeal of their own independent
6 analysis?

7 THE WITNESS: Mr. Skop, it isn't that I
8 disagree with the Concentric Report. This employee
9 is a good employee. He's credible. He knows what
10 he's doing. And I -- I disagreed with concentric's
11 conclusion in regard to that number being, being
12 final, that number been solid, that number being
13 well vetted and ready -- and ready for reporting.
14 No different than the megawatts. In that regard --

15 COMMISSIONER SKOP: We'll get to that in a
16 second. Just to follow up on one page of question
17 that Mr. Moyle asked with respect to removal of the
18 EPU senior management team, if you could turn to
19 page 24 of the staff audit report. And staff has a
20 number that's been marked for identification yet on
21 that document.

22 MR. YOUNG: 178.

23 COMMISSIONER SKOP: Okay. So the document is
24 mark for identification as document 178 which is
25 the staff audit report for Florida Power & Light's

1 project management internal controls for nuclear
2 plant operating construction projects.

3 MR. ANDERSON: Could I pause for a second? I
4 noted an inadvertent reference by the witness to a
5 title. Could we have the same treatment in
6 relation to that?

7 CHAIRMAN ARGENZIANO: Absolutely?

8 MR. ANDERSON: Thank you.

9 CHAIRMAN ARGENZIANO: Absolutely.

10 COMMISSIONER SKOP: Absolutely.

11 MR. ANDERSON: Thank you. And I'll just ask
12 that everyone, including our witness, slow down,
13 pay careful, careful attention in relation to
14 the --

15 COMMISSIONER SKOP: I certainly did not want
16 that to come out, again that the action of that
17 employee was, you know -- again, you want to
18 encourage that type of concerns to come forward
19 when it's appropriate to do so.

20 Mr. Jones, if I could turn your attention to
21 page 24 of the staff audit report, Commission staff
22 audit report.

23 THE WITNESS: I'm there.

24 COMMISSIONER SKOP: Okay. And on that page
25 under section 3.1.2, it discusses EPU management

1 replacement and restructure. And in response to a
2 line of questioning from Mr. Moyle, I guess you
3 reached different conclusions as to why the EPU or
4 the EPU senior management team was removed. Can I
5 ask you to read the first paragraph regarding the
6 removal of the EPU senior management team on that
7 page, please.

8 THE WITNESS: Excuse me, which paragraph?

9 COMMISSIONER SKOP: Okay. Where it begins,
10 "Removal of EPU senior management team." Can I ask
11 you to read that first paragraph, please.

12 THE WITNESS: "In July 2009, FPL senior
13 management changed EPU project management teams.
14 The significance of this event is that FPL senior
15 management believed the original team was not
16 performing as expected. Senior management believed
17 that a change in EPU management was necessary to
18 ensure the project quality and forecasted costs
19 were not compromised. FPL senior management
20 noted" -- and there's a footnote 3.

21 COMMISSIONER SKOP: We can skip the footnote.

22 THE WITNESS: Okay.

23 COMMISSIONER SKOP: And if you could just keep
24 reading that indented paragraph and then the next
25 sentence after that indented paragraph, please.

1 THE WITNESS: "Both previously assigned FPL
2 level managers were no longer involved in the EPU
3 project because FPL Group senior management decided
4 that changes to these leadership positions would
5 enhance FPL's ability to bring the EPU projects to
6 successful completion, promote effective successive
7 planning and talent utilization and improve the
8 quality and timeliness of forecasted project
9 costs."

10 COMMISSIONER SKOP: Okay. And then the next
11 sentence right after that, please.

12 THE WITNESS: The next sentence is, "According
13 to FPL, the original management team had not been
14 aggressive in keeping cost estimates from the EPU
15 contractor under control. FPL senior management
16 stated that the original EPU project team was not
17 able to accomplish this. FPL senior management
18 further noted" --

19 COMMISSIONER SKOP: That's fine. With respect
20 to the indentation part that you previously read,
21 that references FPL Group senior management
22 decided; is that correct?

23 THE WITNESS: Yes.

24 COMMISSIONER SKOP: Okay. So putting this
25 into perspective, the executive steering committee

1 held a line-by-line project review -- or
2 line-by-line review of the EPU project on or about
3 July 25th, 2009. Subsequent to that, according to
4 this staff audit report, FPL Group senior
5 management decided to replace the EPU senior
6 management team. And I guess as we stated,
7 Mr. Robo, who was chief operating officer who as
8 you testified requested that line by line and would
9 have attended that meeting, I guess it's
10 interesting that the decision to replace the EPU
11 senior management team seems to have been made at
12 the FPL Group level, not the Florida Power & Light
13 level according to that information. I just picked
14 up on that myself so I thought I'd ask you what
15 your person knowledge may be regarding who made
16 that decision.

17 And that goes to my previous question about
18 the EPU senior management team seems to be removed
19 immediately after that July 25th, 2009 meeting, or
20 somewhere shortly thereafter.

21 MR. ANDERSON: Commissioner Skop, I'd ask that
22 the questions more carefully characterize the
23 testimony earlier today. There was no testimony
24 that the entire team, for example, was removed,
25 et cetera.

1 COMMISSIONER SKOP: Okay. And that's fine.
2 Just the -- it states that, you know -- again, I'm
3 reading what I have before me. I wasn't there, I
4 didn't do the staff internal audit. And again I'm
5 not trying to be inflammatory. I'm trying to have
6 a very constructive discussion.

7 So Mr. Anderson I do appreciate your comment
8 so we can couch it in the fact that maybe not every
9 person was removed, but certainly there was an
10 event and that event was a line-by-line management
11 review at a meeting that was attended by Jim Robo.
12 who is chief operating officer and president of FPL
13 Group at the time, according to your testimony,
14 Mr. Olivera from Florida Power & Light was there,
15 you attended the meeting, and then shortly
16 thereafter, according to this paragraph, FPL Group
17 senior management decided to change the leadership
18 positions that were changed because I think that
19 should tighten that up a bit.

20 So do you have any personal knowledge of why
21 FPL Group senior management would make that
22 decision in lieu of FPL Power and Light management?
23 Seems to be a lot of people involved in this
24 meeting here on July 25th.

25 THE WITNESS: Commissioner Skop, as I recall,

1 the reorganization was announced prior to that
2 July 25th meeting. I know I was certainly
3 approached before that July 25th meeting in regards
4 to FPL Group's senior management. I'm not privy to
5 which of the senior executives were -- were
6 involved in any decision making.

7 I would like to point out that these two
8 paragraphs are taken from the response that we
9 provided, which is -- is -- we provided several
10 paragraphs and so to just focus in on two could
11 characterize this improperly.

12 COMMISSIONER SKOP: Okay. Very well. And let
13 me move on on that line. I think that obviously
14 what's important there is the fact that the meeting
15 was held, it was attended by high level executives
16 from Florida Power & Light and also high level
17 executives from FPL Group, and then there was
18 action taken after that.

19 But let me get back to my point as to your
20 disagreement with the findings of the Concentric
21 Report. And as you previously testified, based
22 upon the line-by-line formal review of the EPU
23 projects that was conducted on July 25th, 2009,
24 there was clear indication that the magnitude of
25 the projected cost estimate had increased

1 substantially; is that correct?

2 THE WITNESS: That's correct. The forecast
3 was significantly higher than the original needs
4 filing.

5 COMMISSIONER SKOP: Okay. And that was known
6 based on -- that was known by both FPL and FPL
7 Group executive management who attended the
8 July 25th, 2009 executive steering committee
9 meeting; is that correct?

10 THE WITNESS: Yes, Commissioner, that is
11 correct. And as I stated, there was clear
12 direction given and clearly opportunities
13 identified to mitigate that.

14 COMMISSIONER SKOP: I understand. But I'm
15 talking about the magnitude. Again, end number is
16 going to be what the end number is going to be.
17 But what I'm trying to get at is that there seem to
18 be warning flags or key indicators that, you know,
19 caused management to be replaced and that the cost
20 magnitude of the projected cost estimate had
21 increased substantially, and that gets back to the
22 point of who knew what when and why was that not
23 disclosed in the testimony.

24 And so my next question is, since we're on a
25 roll here, if the FPL witness who gave testimony on

1 September 8th, 2009 who attended that meeting on
2 July 25th knew or should have known that there was
3 a clear indication that the magnitude of the
4 projected cost estimate had increased substantially
5 and that witness did not amend his prefiled
6 testimony that was given under oath to the Florida
7 Public Service Commission to reflect this material
8 information, then would it stand to reason that the
9 FPL witness testimony was inaccurate and
10 incomplete?

11 MR. ANDERSON: I object to the question. It
12 contains numerous, numerous facts and assumptions
13 not in evidence. This is about the third time
14 we've been through all of the details in relation
15 to this July meeting. Mr. Jones has carefully
16 explained the context of all of those numbers and
17 figures. I believe we've been very patient in
18 relation to the provision of Mr. Jones, but we're
19 also crossing over into -- we're -- you know,
20 the -- I believe the questions are not even
21 questions. We're getting paragraph-long statements
22 and characterizations or what could be described as
23 testimony. And that is not proper questioning
24 either, so we object.

25 CHAIRMAN ARGENZIANO: Commissioner Skop to the

1 objection and can you phrase questions to be
2 questions?

3 COMMISSIONER SKOP: Okay. To the objection,
4 the question goes to the heart of the veracity and
5 accuracy of the information provided to the Florida
6 Public Service Commission by FPL witness that gave
7 testimony to this Commission under oath. It
8 requires laying a predicate to determine who knew
9 what when, and based on that predicate that was the
10 result of the Concentric Report which I think I've
11 clearly established the foundation that not only
12 Jim Robo who was president and chief executive
13 officer of FPL Group, but Armando Olivera, based on
14 witness testimony, attended that meeting, the
15 witness before us attended that meeting, and the
16 witness that gave testimony previously to the
17 Commission whose name has been redacted, why, again
18 I accepted the argument but I disagree with it.
19 But the bottom line is we've laid the foundation of
20 who knew what when.

21 So the person that gave the testimony to the
22 Commission knew or should have known based on this
23 witness's testimony that there was clear indication
24 that the magnitude of the projected cost estimate
25 had increased substantially.

1 So my question, Mr. Anderson, goes to the very
2 heart in the opinion of this witness is that if the
3 FPL witness gave previous testimony, sworn
4 testimony, and knew what he knew or should have
5 known based on that July meeting, then -- and that
6 witness did not amend his prefiled testimony while
7 under oath to reflect this material information,
8 then I ask the witness merely to opine whether it
9 would stand to reason that the FPL witness
10 testimony that was previously given on September
11 8th, 2009, was inaccurate and incomplete. I mean,
12 it's lengthy but you to be lengthy to kind of get
13 there. I mean, I'm doing this on the fly.

14 CHAIRMAN ARGENZIANO: Mr. Anderson?

15 MR. ANDERSON: The final question itself is
16 absolutely inappropriate. It asks for a legal
17 conclusion of an engineering witness. In addition,
18 the lengthy, lengthy, lengthy prelude and predicate
19 are -- are argumentative and characterizing of
20 one's position. The arguments one associates with
21 an advocate, honestly, and not with a decision
22 maker. I'm being very careful.

23 COMMISSIONER SKOP: Let me withdraw the
24 question and proffer what the --

25 CHAIRMAN ARGENZIANO: The question is

1 withdrawn. And are you going to ask a question?

2 COMMISSIONER SKOP: The problem here is I
3 don't have the witness that gave his testimony so I
4 can't examine that witness. That witness my
5 understanding is no longer employee of FPL Company.

6 The problem is also with, you know, some of
7 the deferral thing as time goes on and we defer
8 these items, witnesses leave, time fades, memories
9 fade. So I'm at a little bit of a strategic
10 disadvantage here.

11 But I would respectfully proffer that the
12 question I'm trying to ask the witness of which he
13 may not have personal knowledge were to establish
14 whether the testimony given under oath was accurate
15 and complete based upon what should have been known
16 from that July 25th meeting. And I'll just move on
17 from that point.

18 I think that's -- that's the core of the
19 issue, given the fact that the witness -- the
20 witness before the Commission has indicated and
21 responded that, yes, it was true that there was
22 clear indication of the magnitude of the projected
23 cost estimate had increased substantially and that
24 was known by the people that attended the meeting,
25 including the prior FPL witness on July 25th. I

1 won't belabor the point. I'll move on to my next
2 question.

3 MR. ANDERSON: We'll note the record speaks
4 for itself as to what the witness said for more
5 than four hours.

6 COMMISSIONER SKOP: And for the record, I'd
7 also note that you asked the question to the
8 witness as to whether he had any changes to his
9 prefiled testimony.

10 CHAIRMAN ARGENZIANO: Let's do this. Let's
11 take a break and let's do ten minutes. Thank you.

12 (Break taken.)

13 CHAIRMAN ARGENZIANO: I think we're back on.
14 And I want to say something first, and I know
15 Commissioner Graham had indicated -- if you would
16 just allow me to make a couple of comments first
17 I'd appreciate it and then I'll recognize you and
18 then Commissioner Skop.

19 To the witness, if I could ask you to please,
20 if you're answered -- if you're asked a question,
21 to answer yes or no. And if you feel that you must
22 elaborate, I can understand that and then we'll
23 allow that. But I think that we'll be here till
24 after Christmas if we just continue. But I
25 understand the necessity sometimes that a yes or no

1 answer is not always the end all. So please let me
2 know. But if you can kind of -- if it's -- if it's
3 possible, please do that.

4 And the other thing I wanted to say, and it
5 may set us on track to where we need to be, I just
6 wanted to make a comment that I think
7 Commissioner Skop's subject matter that he was
8 asking is something that I am very interested in
9 also and I think it's very pertinent.

10 And I'm going to read part of this, and that's
11 why I think it's pertinent. I'm not going to go to
12 as whether he's being advocate or not. I think
13 it's very difficult. I didn't hear that, I think
14 it's very difficult to get to where you want to go
15 sometimes. But I want to read part of the report.
16 And I want to make sure before I read part of that
17 report that it is not confidential except for the
18 names, is that correct, and any number amount?
19 Okay. I want to read a part of that very quickly
20 and then make a suggestion, if I may.

21 And it is on -- let's see if I can find the
22 page -- page 47 of 56 -- I'm sorry, 41. Forty-one.
23 Page 41 where it begins on the bottom next to the
24 last paragraph, "The Concentric investigation also
25 examined the 2009 nuclear cost recovery clause

1 proceedings to evaluate whether information
2 provided to the FPSC during the proceedings was
3 accurate and consistent with the standards expected
4 for testimony before and submissions made to a
5 regulatory agency. Concentric identified that
6 budget estimate information provided by the vice
7 president of uprates in his May 2009 testimony had
8 changed and the change was not discussed in the
9 hearing. Concentric stated in -- I'm sorry,
10 Concentric stated in its report that, while
11 Concentric agrees that the new analysis confirmed
12 the conclusions of mister blank's testimony, we
13 believe that a -- pick out a number, and I'm not
14 going to go into that -- or percentage increase in
15 the percentage cost of the EPU project, okay,
16 should have been discussed in the live testimony on
17 September 8, 2009.

18 In an interview with Concentric, FPSC audit
19 staff determined that FPL witnesses are prepared by
20 their attorneys for potential questions that might
21 be asked during the hearing as most witnesses are.
22 During the interview, Concentric agreed that mister
23 blank had participated in a line by line budget
24 discussion with FPL's executive steering committee
25 in July of 2009 and therefore understood that the

1 budget information provided in May 2009 was indeed
2 incorrect by the time of the hearing on
3 September 8, 2009. Yet, when asked by FPL attorney
4 Anderson if I ask you the same questions contained
5 in your prefiled direct testimony would your
6 answers be the same? Mister blank answered, yes,
7 they would be.

8 FPSC audit staff and Concentric agree mister
9 blank knew the budget estimate was being reviewed
10 and likely would change. In fact, Concentric
11 states in the investigation report on
12 September 9th, 2009, the PSC was presented with a
13 newly revised forecast that further increased the
14 cost -- did you say the numbers were not -- by
15 104 million total for both sites. This
16 presentation stated that approximately 30 percent
17 of the total project costs have high certainty.

18 And the reason I read that, because it is
19 pertinent and it is important to find out what
20 happened there. But can I make the suggestion that
21 possibly this is not the right witness and perhaps
22 the next witness is the person to ask that
23 question?

24 COMMISSIONER SKOP: I think that the
25 information you read, had I been able to find that,

1 would have been able to lay a foundation to ask the
2 witness the question without the objection by
3 Mr. Anderson, but I'll yield --

4 CHAIRMAN ARGENZIANO: The question is, can we
5 ask that question, would you be satisfied with
6 asking that of the next -- the next gentleman is
7 the man who wrote the report. Okay. Explain,
8 please give me an explanation.

9 COMMISSIONER SKOP: I would not. What I need
10 to do is instead of a lengthy predicate, I need to
11 tighten it up. It's been a long day. But the
12 witness has already testified that there was clear
13 indication that the magnitude of the projected cost
14 estimate had increased substantially. He answered
15 yes to that question.

16 The Concentric Report indicated, as you
17 stated, that the -- while Concentric agrees that
18 the new -- Concentric agrees that they believe that
19 a \$300 million or 27 percent increase in the
20 projected cost of the EPU project should have been
21 discussed during the live testimony of September
22 8th, 2009.

23 So my question to the witness is I know why
24 you disagree with the Concentric Report. Okay.
25 And that's on what the final number is going to be.

1 My question to you, which you've answered yes, is
2 that at that meeting on July 25th, there was clear
3 indication that the magnitude of the projected cost
4 estimate had increased substantially.

5 So based on that foundation, the question I
6 have to you is, and let me ask one other thing.
7 The passage that Commissioner Argenziano read, is
8 it your understanding from attending that July 25th
9 meeting that that person was in attendance at that
10 meeting, the prior FPL witness?

11 THE WITNESS: Yes, that person was in
12 attendance at the meeting.

13 COMMISSIONER SKOP: Okay. So based upon
14 attendance at that meeting and based upon your
15 prior testimony that you just gave, he also would
16 have had a clear indication that the magnitude of
17 the projected cost estimate had increased
18 substantially based upon attending that meeting; is
19 that correct?

20 THE WITNESS: Yes, Commissioner. Based on
21 being -- not only being in attendance for that
22 meeting but his team had prepared those numbers
23 and that -- that forecast. And also I want to make
24 sure it's clear that reorganizing the project was
25 announced prior to this meeting. And the prior

1 witness -- we go through a change of management
2 process for an orderly transition. As I described
3 before, we needed to split the EPU project and the
4 other major capital projects apart and you have to
5 have people to run both organizations.

6 Having said that, the prior witness retained
7 the responsibilities for the preparation for the
8 hearing and had access to that information.

9 I do need to be -- I do need to say again that
10 that number was not considered a valid number and
11 there was work to be done to -- to validate that
12 number and that's where I disagree with Concentric.

13 And if I can say one other thing. You asked
14 me a question much earlier in the day about the
15 September 9th presentation and had the forecast
16 changed, and I said, no, the numbers are basically
17 the numbers. And as I look at this passage here,
18 specifically on page 42, and the reference to the
19 \$104 million, I want to correct my prior testimony
20 and say the number from July to that time could
21 have -- could have changed. They move month over
22 month.

23 The point I was trying to make earlier is that
24 the numbers that go in those presentations come
25 right out of the project controls. If you could

1 visualize a notebook this thick of spreadsheets
2 that roll up to that number, that number from July
3 never goes away, is what I was trying to attest to
4 in regards to the September 9th meeting. You build
5 on that or you subtract from that.

6 COMMISSIONER SKOP: Let me get back to the
7 question before the Commission. The person whose
8 names are redacted that attended the July 25th,
9 2009 meeting with you, you just testified that by
10 virtue of the fact that the person attended the
11 line-by-line review, that that person would have
12 had a clear understanding that the magnitude of the
13 projected cost estimate had increased
14 substantially. Again, I'm framing my question not
15 into what the ultimate dollar amount will be but
16 the magnitude and the indicators that the magnitude
17 had increased substantially.

18 The question I have to you --

19 MR. ANDERSON: We object even to that -- the
20 predicate. Because what he just said, as I do need
21 to say again, that the number was not a valid
22 number. At every turn, every one of these
23 hypothetical questions which you're asking of this
24 witness is mischaracterizing that vital point.

25 COMMISSIONER SKOP: Okay. Well, again, the

1 witness has testified, and we can have the court
2 reporter read it back, Madam Chair, that by virtue
3 of attending the meeting of July 25th, 2009, and by
4 virtue of the line-by-line discussion, there was a
5 clear indication that the magnitude of the
6 projected cost estimate had increased
7 substantially. The witness answered that question
8 yes. I'll be happy to have the court reporter read
9 that back.

10 The witness also testified that this was known
11 by both FPL and FPL Group executive management who
12 attended the July 25th, 2009 executive steering
13 committee meeting. So I hate to beat this into the
14 thing, but the subtlety here is they're talking
15 about the actual number. I'm talking about
16 indicators to say we've got a problem and the --
17 the magnitude has changed.

18 So the question I have -- and Mr. Anderson,
19 you can object to your heart's content -- but the
20 question is this. Based upon the fact that the
21 witness has testified that the magnitude of the
22 projected cost estimate had increased, this is my
23 question. If the FPL witness whose name is
24 redacted knew that the magnitude of the projected
25 cost estimate had increased substantially by virtue

1 of his attendance at the July 25th, 2009 meeting,
2 and did not amend his prefiled testimony under oath
3 to reflect this material information, then would it
4 stand to reason that his testimony was inaccurate
5 and incomplete?

6 MR. ANDERSON: We object again to the
7 formulation of the question. You state "and did
8 not amend testimony," et cetera. What you're doing
9 in there is you're wrapping an entire legal opinion
10 which you're asking for this particular person to
11 respond to.

12 COMMISSIONER SKOP: I don't have the --
13 Mr. Anderson, to your objection, I don't have the
14 luxury of having the former FPL employee to
15 question them -- question him on that thing. So
16 that's part of the problem here. And again, I can
17 withdraw the question. I think we know the heart
18 of what I'm trying to get at. I'll leave it to
19 staff if they want to go after this or one of the
20 intervenors and try to frame it.

21 CHAIRMAN ARGENZIANO: Do you want me to --

22 COMMISSIONER SKOP: Yeah, we can ask staff if
23 they want because I've got a few more questions
24 after that and I'm done.

25 MR. YOUNG: Commissioner Skop, that's one of

1 my questions for Witness Reed as relates to the
2 testimony that he -- his Concentric Report that he
3 produced when he talked about it, frankly, in that
4 report as relates to whether the witness from last
5 year was truthful towards -- in his statements
6 towards the Commission.

7 COMMISSIONER SKOP: And to Mr. Young, I think
8 the point I'm trying to induce from the witness is
9 that the witness testified there was clear
10 indication that the magnitude of the projected cost
11 estimate had increased substantially. And by
12 virtue of the former FPL employee who gave
13 testimony that was at that meeting, then they would
14 have had that same knowledge that the current
15 witness has.

16 So what I'm trying to get at, if they had the
17 same knowledge and didn't amend their testimony to
18 reflect that material information, then I'm trying
19 to get an answer as to whether their testimony was
20 accurate and complete. And that's -- that's the
21 problem I'm facing here.

22 And Mr. Reed, I don't know whether he -- the
23 disconnect here is Mr. Reed is not an FPL employee
24 and didn't attend the July 25th meeting.

25 CHAIRMAN ARGENZIANO: I want to ask counsel a

1 question. Does a Commissioner as I guess I've
2 seen -- excuse me, Commissioner Skop. I've seen
3 judges ask questions of witnesses all the time and
4 I'd like to know, I guess I'd like to know your
5 opinion on the objection. Commissioner Skop and
6 then --

7 COMMISSIONER SKOP: Thank you. The point I
8 wanted to make too, Madam Chair, and I apologize
9 for interrupting but it's directly on point --
10 again Mr. Anderson's objection, I understand his
11 basis. However when it gets down to the veracity
12 of testimony given under oath before the Florida
13 Public Service Commission, you know, I was accused
14 of being an advocate or whatever, I think it's well
15 within my prerogative as a Commissioner for this
16 Commission to determine and make a substantial
17 inquiry as to the accuracy and the veracity of the
18 testimony that was given under oath. So I think we
19 ought to have broad latitude in that regard.

20 CHAIRMAN ARGENZIANO: Well that's the reason
21 for my question.

22 MS. HELTON: If I'm understanding
23 Mr. Anderson's objection correctly, I think it's
24 that he thinks in his opinion that perhaps
25 Commissioner Skop is trying to draw some kind of a

1 legal conclusion out of the witness and the witness
2 is not an attorney.

3 MR. ANDERSON: Right.

4 MS. HELTON: Perhaps Commissioner Skop could
5 phrase his question --

6 CHAIRMAN ARGENZIANO: That's what I was going
7 to ask you. Could it be phrased different or do
8 you have to be an attorney to answer that question?

9 MS. HELTON: Well I was going to give a
10 suggestion just for Commissioner Skop perhaps to
11 phrase his question, all legalities aside, in his
12 opinion, was the testimony given in the 2009
13 proceeding accurate based on the information that
14 was learned in that meeting.

15 CHAIRMAN ARGENZIANO: That would get to the
16 same point. Commissioner Skop?

17 COMMISSIONER SKOP: Thank you, Madam Chair.

18 And again, Mr. Jones, I'm not asking for your
19 legal conclusion and I'm not asking for you to
20 articulate the reason why you disagree with the
21 Concentric Report. What I'm asking is in relation
22 to actual knowledge that there was clear indication
23 that the magnitude of the projected cost estimate
24 had increased substantially as you testified to,
25 whether the prior witness who knew that same

1 information should have amended his testimony
2 and -- should have amended his testimony to include
3 that material information.

4 MS. HELTON: Madam Chairman and
5 Commissioner Skop, I think the problem is whether
6 he should have amended his testimony. I don't
7 think -- and I have to say, I agree with
8 Mr. Anderson there that I'm not sure that this
9 witness would have any basis upon which to know
10 whether his testimony should be amended or not. I
11 think it is a fair question, however, to ask in his
12 opinion, was --

13 CHAIRMAN ARGENZIANO: I'd ask in his opinion.

14 COMMISSIONER SKOP: Mr. Jones, let me ask two
15 questions as a follow-up to that. First, if you
16 were similarly situated based on attending that
17 meeting in July 25th, 2009, and you knew based on
18 your testimony there was clear indication that the
19 magnitude of the projected cost estimate for the
20 EPU had increased substantially as you testified
21 to, then if you were appearing to testify before
22 this Commission, would you have found it
23 appropriate to amend your testimony to include the
24 fact that the magnitude of the projected cost
25 estimate had increased?

1 THE WITNESS: I don't know, because you're
2 asking me really --

3 CHAIRMAN ARGENZIANO: Answer yes or no.

4 THE WITNESS: I do not know.

5 CHAIRMAN ARGENZIANO: Okay.

6 COMMISSIONER SKOP: All right. On that same
7 thought, if the FPL witness that provided live
8 testimony on September 8th, 2009, who attended that
9 meeting with you and also based on your testimony
10 should have had a clear indication that the
11 magnitude of the projected cost estimate had
12 increased substantially by virtue of attending that
13 meeting, in your opinion should that witness have
14 amended his testimony to reflect that material
15 information?

16 MR. ANDERSON: Same objection. Same
17 objection. In fact, just to be -- you know,
18 Ms. Helton I think formulated an unobjectionable
19 question. The fundamental problem with these
20 questions is they have these front-end predicates
21 which are, are not right.

22 COMMISSIONER SKOP: Why don't I defer to our
23 legal staff to ask an unobjectionable question in
24 that same line and then I'll continue my questions
25 if I have more thought out.

1 MS. HELTON: Since I'm here in an advisory
2 capacity, I don't feel comfortable asking the
3 question. Perhaps Mr. Young or Ms. Bennett could
4 remember the question that I suggested to
5 Commissioner Skop and they can ask it.

6 MR. YOUNG: Madam Chairman, if
7 Commissioner Skop can repeat the question and I can
8 go from there.

9 CHAIRMAN ARGENZIANO: Well, wasn't it a little
10 something like in your opinion --

11 MR. YOUNG: Okay. I got it.

12 CHAIRMAN ARGENZIANO: I think you have it.

13 MR. YOUNG: In your opinion, should the FPL
14 witness should have amended his testimony?

15 CHAIRMAN ARGENZIANO: Well, you just asked the
16 question. Mr. Jones, he just asked the question.

17 COMMISSIONER SKOP: Mr. Jones, should the FPL
18 witness --

19 CHAIRMAN ARGENZIANO: In your opinion.

20 COMMISSIONER SKOP: -- in your opinion have
21 amended his testimony, period? Yes or no?

22 THE WITNESS: No.

23 COMMISSIONER SKOP: Why? Based on the fact
24 that he had a clear understanding of the magnitude
25 that the projected cost estimate had increased

1 substantially as you testified by attendance at the
2 meeting.

3 THE WITNESS: He clearly had, as I stated
4 earlier, knowledge of the change in the forecast as
5 well as he clearly had knowledge of all the
6 opportunities in regards to mitigating that
7 forecast and he clearly had knowledge of all
8 project activities that were going and he clearly
9 had knowledge of all the directions from senior
10 management to -- to mitigate such to reduce that.

11 And so, therefore, I don't want to speak to
12 the state of his -- his mind. But one could
13 conclude that he knew that that was not a valid,
14 acceptable number. No different than the increase
15 in megawatts.

16 The position that you put me in is when I
17 think about prudence, is I have the benefit of
18 hindsight for where the project is now. And so
19 therefore it is hard for me to -- to transport
20 myself exactly back in time other than going back
21 and looking at the facts at the time which I just
22 stated.

23 CHAIRMAN ARGENZIANO: I have a question
24 because now that brings up a question that I have.

25 In your opinion, knowing that -- that

1 individual whose name is confidential understood
2 that the budget information -- and I'm going to
3 read it right from the line here -- understood that
4 the budget information provided in May 2009 was
5 indeed incorrect by the time of the hearing, do you
6 still think -- is your opinion still no, that he
7 shouldn't have amended even though he knew it was
8 incorrect?

9 THE WITNESS: And I think the chairman is
10 reading from the Concentric conclusion as opposed
11 to anything the witness talked about.

12 CHAIRMAN ARGENZIANO: Yes, I did read from the
13 Concentric.

14 MR. ANDERSON: Yeah. And Mr. Jones, you know,
15 you can -- I just ask that you specify what you're
16 reading from so that the source --

17 CHAIRMAN ARGENZIANO: Oh, I'm sorry, if I
18 didn't say that -- I thought I said it was from the
19 report. If I didn't, it was from the Concentric
20 Report that I just read in the entirety, that
21 paragraph.

22 MR. ANDERSON: Could you indicate the page and
23 line if you want him to look at it?

24 CHAIRMAN ARGENZIANO: Certainly.

25 MR. ANDERSON: Because remember he --

1 CHAIRMAN ARGENZIANO: Page 42, and I couldn't
2 count the line. You'll have to look. It's the
3 first paragraph.

4 MR. YOUNG: Excuse me, Madam Chairman. I
5 think it's staff audit that you're looking at.

6 CHAIRMAN ARGENZIANO: Yes, I'm sorry. I'm
7 talking about the Concentric Report, and yes, it is
8 the staff audit. I'm sorry. And I hope that's the
9 way I identified the first time when I read it. If
10 not, I will make that correction now.

11 MR. ANDERSON: May I just check that the
12 witness have the -- does have the page and the
13 report in front of him because that helps a lot.

14 CHAIRMAN ARGENZIANO: The page is 42 and it is
15 the top paragraph beginning with "in an interview."

16 MR. ANDERSON: Thank you. I appreciate that.

17 CHAIRMAN ARGENZIANO: Thank you. I didn't
18 realize I had made that mistake. Thank you.

19 THE WITNESS: (Examining document.)

20 CHAIRMAN ARGENZIANO: Where it indicates
21 that --

22 THE WITNESS: Yes, I'm with you.

23 CHAIRMAN ARGENZIANO: Okay. I think the fifth
24 line down. And I'm just simply asking if knowing
25 that, that line where it does read "understood that

1 the budget information provided in May 2009 was
2 indeed incorrect," dot, dot, dot, that your opinion
3 would still remain the same that no, he should not
4 have amended his comments in his report?

5 THE WITNESS: Yes, my opinion remains the
6 same.

7 CHAIRMAN ARGENZIANO: Okay.

8 THE WITNESS: I read this and this is
9 someone's opinion in regards to correct or
10 incorrect.

11 CHAIRMAN ARGENZIANO: Thank you.
12 Commissioner Skop, did you have any another
13 questions?

14 COMMISSIONER SKOP: Yeah, a few more
15 questions. Mr. Jones, to the Chairman's prior
16 question that you disagree with, those are the
17 findings of Concentric which was independently -- I
18 mean which was retained to provide independent
19 analysis of the facts associated with the accuracy
20 of information provided to the Florida Public
21 Service Commission; is that correct?

22 THE WITNESS: Yes, Commissioner, that's
23 correct.

24 COMMISSIONER SKOP: Okay. And they take a
25 different conclusion based upon their own

1 independent analysis than -- than -- that you
2 disagree with, correct?

3 THE WITNESS: Yes, that's correct.

4 COMMISSIONER SKOP: All right. Just a few
5 more questions.

6 Mr. Jones, as part of a April 2nd filing with
7 the Securities & Exchange Commission, that AKFD
8 disclosure contained a letter dated April 2nd that
9 was directed to Team. And as an employee of
10 Florida Power & Light Company, did you receive a
11 copy of that letter that appears to be sent to
12 employees regarding the anonymous employee letters?

13 MR. ANDERSON: What document is this again,
14 please?

15 CHAIRMAN ARGENZIANO: Can you repeat that,
16 Commissioner Skop?

17 COMMISSIONER SKOP: Okay. I'm asking if
18 Mr. Jones received a copy of an April 2nd letter
19 from Mr. Hay to Team related to the anonymous
20 employee letters? And that was filed as attachment
21 to a Securities Exchange filing, AK under
22 regulation FD on April 2nd, 2010.

23 CHAIRMAN ARGENZIANO: Mr. Anderson, do you
24 need a minute to get it?

25 MR. ANDERSON: I do. But I -- but I'm puzzled

1 because this involves in no respect the nuclear
2 cost recovery clause or anything we've talked
3 about.

4 COMMISSIONER SKOP: I believe,
5 Madam Chairman --

6 MR. ANDERSON: If there's no foundation for
7 it, there's no relation of this to any issue, you
8 know --

9 COMMISSIONER SKOP: Let me attempt to lay a
10 foundation. As an FPL employee, did you receive a
11 letter from Mr. Hay directed to Team on April 2nd,
12 2010 that addressed the subject of anonymous
13 employee letters?

14 THE WITNESS: Commissioner Skop, if I can see
15 the letter, I would feel more comfortable answering
16 the question.

17 COMMISSIONER SKOP: We need to make a copy
18 real quick, so if we can hold in place.

19 CHAIRMAN ARGENZIANO: Okay. Let's get a copy.
20 He needs to be able to see that letter. Do we have
21 an extra copy that -- okay. Do you have a
22 different question you may get to while we're doing
23 that?

24 COMMISSIONER SKOP: Again, my different -- my
25 next question --

1 CHAIRMAN ARGENZIANO: Pertains to that? Okay.

2 COMMISSIONER SKOP: Yeah, I'm laying the
3 foundation for my final question.

4 CHAIRMAN ARGENZIANO: Okay. Then we're on
5 kind of an informal recess until the copy gets
6 made. Anybody needs to -- remember, in --

7 COMMISSIONER SKOP: Highlights, I don't know
8 how that got done.

9 COMMISSIONER EDGAR: Madam Chairman, I'm not
10 sure we're back on the record or our court reporter
11 was ready, so --

12 CHAIRMAN ARGENZIANO: Okay. Thank you. Are
13 we all ready? That's the question I had asked
14 if -- okay. We're ready. We're back on.

15 COMMISSIONER SKOP: Madam Chair, I'm not so
16 sure that the copies we passed out -- again, the
17 intent was to make copies without the highlights so
18 again I'm not sure how that got highlighted.
19 But --

20 CHAIRMAN ARGENZIANO: Does it matter?

21 COMMISSIONER SKOP: I don't believe it matters
22 but it may warrant the objection that can otherwise
23 be cured by having an un-highlighted copy of the
24 document put before for purposes -- Mr. Jones, I
25 want to give you a minute to review this letter

1 that was dated April 2nd, 2010 address to Team that
2 was attached as part of an AK filing under
3 regulation FD that was filed with the Securities &
4 Exchange Commission on April 2nd, 2010. Do you see
5 that letter?

6 THE WITNESS: I have the letter, yes.

7 COMMISSIONER SKOP: As an FPL employee, did
8 you receive a copy of that letter that was directed
9 to Team?

10 THE WITNESS: Yes.

11 COMMISSIONER SKOP: Okay. Thank you.

12 The first highlighted section at the bottom of
13 the page --

14 MR. ANDERSON: We do not have highlights,
15 Commissioner Skop.

16 COMMISSIONER SKOP: Okay. I don't know what's
17 been passed out and what hasn't been passed out --

18 CHAIRMAN ARGENZIANO: I do, so --

19 MS. HELTON: While we're kind of interrupted,
20 maybe it might be good if we can just go ahead for
21 purposes of a clear record, give this an exhibit
22 number for identification.

23 COMMISSIONER SKOP: Well, my preference would
24 be to enter into the record an un-highlighted copy
25 of the letter. That was my intent but I couldn't

1 seem to get the copies --

2 CHAIRMAN ARGENZIANO: Can we do that
3 afterwards?

4 COMMISSIONER SKOP: I think we can do that
5 afterwards. So, I mean, the highlight is not
6 intended to be on the document. Okay. That was my
7 own personal highlight to attract my attention to a
8 position on the page.

9 All right. Mr. Johns, you testified that you
10 received a copy of this letter dated April 2nd,
11 2010, from Mr. Hay who is the chairman and CEO of
12 FPL Group. And the last paragraph on the first
13 page, can you read the first sentence of that
14 paragraph, please, beginning with the words "we are
15 proud"?

16 THE WITNESS: Yes. We are proud of the
17 quality of major company processes for validating
18 the accuracy of information we furnish to our
19 external stakeholders --

20 COMMISSIONER SKOP: Keep going.

21 THE WITNESS: I think I was going a little
22 fast.

23 COMMISSIONER SKOP: Okay. Can you --

24 MR. ANDERSON: Yeah. At this time I'd like to
25 go ahead and interpose an objection. This letter

1 does not come within 100 yards of the testimony of
2 this witness. This witness did not write the
3 document, did not participate in the preparation of
4 the document. It relates in no way to any issue of
5 the NCNR proceeding. And yes, looking at this
6 letter, we are proud that the quality of our
7 company processes for validating the accuracy of
8 the information we furnish to external
9 shareholders. Yes, that's absolutely true. But has
10 absolutely nothing to do with this proceeding or
11 this case and we go farther and farther afield as
12 the hours proceed.

13 COMMISSIONER SKOP: Madam Chairman, to the
14 objection I respectfully disagree. I'm laying a
15 foundation to ask the witness a question -- a
16 question that the witness would have direct
17 personal knowledge of in relation to an employee
18 letter.

19 So again I'm laying the foundation between the
20 letter that Mr. Hay sent to employees on April 2nd,
21 2010 that was part of the Securities & Exchange
22 Filing which the witness has testified as FPL
23 employee he received a copy of. That is critical
24 to the question that I'm going to ask on my
25 subsequent questions. So I'm merely laying a

1 foundation to avoid an objection. I think I should
2 be given broad latitude because it pertains to the
3 witness's opinions and some of the veracity of
4 statements that have been made to the Florida
5 Public Service Commission.

6 MR. ANDERSON: I'd like a ruling.

7 CHAIRMAN ARGENZIANO: Legal counsel --

8 MR. ANDERSON: I'm sorry. Two things.
9 Constructively, I suggest just asking that question
10 then. We do object to this document and we'd ask
11 for a ruling.

12 CHAIRMAN ARGENZIANO: Legal counsel to the
13 objection and to Commissioner Skop's purpose for
14 laying the foundation and could the question be
15 asked without the document? No, I didn't think so.
16 Okay.

17 MS. HELTON: Madam Chairman, my recommendation
18 is to go a little bit further down this line and
19 see where we're going and allow Commissioner Skop
20 to ask the next question or two. And if we haven't
21 reached the point where it all comes together, then
22 maybe we can revisit it.

23 CHAIRMAN ARGENZIANO: Well, we have an
24 objection.

25 MS. HELTON: To do that, you'd have to

1 overrule the objection at this time.

2 CHAIRMAN ARGENZIANO: Well, at this time I'll
3 overrule the objection and, Commissioner Skop, if
4 you can move us down the line.

5 COMMISSIONER SKOP: Thank you. Mr. Jones, the
6 first paragraph on that letter that you testified
7 that you received on or about April 2nd, 2010, can
8 you read the full sentence beginning with the word
9 "we" of that last paragraph, please.

10 THE WITNESS: We're proud that the quality of
11 major company processes for validating the accuracy
12 of information we furnish to our external
13 stakeholders continues to satisfy scrutiny.

14 COMMISSIONER SKOP: Okay. Thank you. With
15 respect to the employee complaint letter that you
16 indicated that you were interviewed regarding and
17 that you had seen a copy of which the name of the
18 person remains confidential, the April 2nd letter
19 deals with the anonymous employee complaints. The
20 employee letter of February 19th, 2010, deals with
21 the actual redacted name of an employee who made
22 the complaint.

23 And the question that I would like to ask on
24 the employee letter in the Concentric Report that
25 you talked about there previously and I'll want to

1 ask you, that employee letter which was in parallel
2 with -- you know, which was sent to FPL Group
3 management prior to the April 2nd being sent to the
4 team, there was an investigation conducted. But
5 the concerns expressed in the employee letter
6 indicated concern about how FPL would report
7 findings of upcoming PSC hearings and that any
8 information from the EPU other than which was
9 presented to management last summer will be a
10 manipulation of the truth. Okay?

11 So my question based upon your knowledge of
12 the employee letter and its concerns and the
13 existence of that letter and the existence of the
14 findings of the Concentric Report which you may or
15 may not agree with, but --

16 CHAIRMAN ARGENZIANO: Is there a question?

17 COMMISSIONER SKOP: The question. I'm trying
18 to look at my small notes.

19 CHAIRMAN ARGENZIANO: Okay.

20 COMMISSIONER SKOP: My question is, as it
21 pertains to the accuracy of the information
22 provided to the Florida Public Service
23 Commission -- let me see. Hold on. I want a
24 minute.

25 The common element between the anonymous

1 letters and the employee letter of February 19th,
2 2010, one common element again seems to be
3 pertaining to the accuracy of information provided
4 to the Florida Public Service Commission.

5 My question is, based upon the existence of
6 the employee letter dated February 19th, 2010 and
7 the subsequent findings of the Concentric Report
8 which brought into question the veracity of
9 statements made under oath to the Florida Public
10 Service Commission, did it occur to you that the
11 employee complaint letter dated February 19th, 2010
12 should be made public?

13 MR. ANDERSON: We object to that question.
14 That is a multi, multi, multi-part question. I
15 couldn't even begin to follow it. I think if the
16 information which is desired to be elicited of the
17 witness asks a direct question of the witness,
18 there is -- look at the basic predicate of that.
19 It began with "the common element between anonymous
20 letters and this letter were X." There was no even
21 discussion or foundation that the witness even read
22 the common letter. So I just would suggest asking
23 plain, simple questions.

24 COMMISSIONER SKOP: Okay. I'll reframe the
25 question.

1 CHAIRMAN ARGENZIANO: Commissioner Skop, if
2 you can reframe the question and then I think --
3 then I think I'm going to make a decision for the
4 rest of the day.

5 COMMISSIONER SKOP: All right. Thank you.

6 Mr. Jones, you've read the employee complaint
7 letter dated February 19th, 2010 that was addressed
8 to Mr. Hay; is that correct?

9 THE WITNESS: Yes, I have.

10 COMMISSIONER SKOP: Okay. And a concern
11 expressed in that letter is the accuracy of
12 information and how information would be reported
13 to the Florida Public Service Commission, is that
14 not correct? That one of the allegations in that
15 letter has that very concern in it?

16 THE WITNESS: Yes. It states that it's a
17 concern about how FPL would report these findings
18 at the upcoming PSC hearings.

19 COMMISSIONER SKOP: Okay. And the finding of
20 the Concentric Report which you disagree with, but
21 the finding of the Concentric Report which was
22 prepared independently concludes that the witness
23 should have amended his testimony to address a
24 \$300 million or 27 percent cost escalation at the
25 September 8th, 2009 hearing, correct?

1 MR. ANDERSON: I suggest that the -- I ask
2 that the witness be pointed to the specific portion
3 of the report rather than have it paraphrased.

4 COMMISSIONER SKOP: Okay. Very well. On
5 the -- let's go to the staff audit report because
6 it's quicker that way. And what's the -- 178,
7 Mr. Young? Hey, guys.

8 CHAIRMAN ARGENZIANO: I think it was 178; is
9 that correct, the staff audit report?

10 MS. HELTON: Yes, ma'am, that's my
11 recollection, 178.

12 COMMISSIONER SKOP: If we go to what's been
13 marked for identification as Exhibit 178, and I
14 believe it's on page 41 of the staff audit
15 report --

16 CHAIRMAN ARGENZIANO: Everybody there? Okay.

17 COMMISSIONER SKOP: Okay. Can you read the
18 last paragraph on page 41 of the staff audit
19 report?

20 THE WITNESS: The inset?

21 COMMISSIONER SKOP: Yes.

22 THE WITNESS: While Concentric agrees the new
23 analysis confirmed the conclusions in mister
24 blank's testimony, we believe that a
25 \$300 million or 27 percent increase in the

1 projected cost of the EPU project should have been
2 discussed in the live testimony on September 8,
3 2009.

4 COMMISSIONER SKOP: All right. Would you
5 agree that the Concentric finding deals with the
6 veracity of the testimony given to the Florida
7 Public Service Commission for that witness?

8 MR. ANDERSON: Object. The document speaks
9 for itself and he's asking the wrong witness.

10 CHAIRMAN ARGENZIANO: Perhaps it should be the
11 other witness?

12 COMMISSIONER SKOP: I'll try to reframe.

13 Mr. Jones, based upon reading the Concentric
14 finding at the bottom of page 41 of the staff audit
15 report which has been marked for identification as
16 Exhibit 178, does that not relate to how
17 information is provided to the Florida Public
18 Service Commission?

19 THE WITNESS: Yes. This paragraph is in that
20 context.

21 COMMISSIONER SKOP: Okay. And that was a
22 concern in the employee letter dated February 19th,
23 2010, correct, the letter that you read?

24 THE WITNESS: No, Commissioner. I believe
25 the employee stated in the upcoming Florida Public

1 Service Commission hearings.

2 COMMISSIONER SKOP: But the general concern
3 was the accuracy of information provided in the
4 Florida Public Service Commission; is that correct?

5 MR. ANDERSON: I would object. That letter
6 speaks for itself, and I believe the witness has
7 accurately characterized exactly what it does say.

8 CHAIRMAN ARGENZIANO: Commissioner Skop?

9 COMMISSIONER SKOP: I was looking to get an
10 answer from the witness but I will take
11 Mr. Anderson's comments as an objection. Is that
12 correct, Mr. Anderson?

13 CHAIRMAN ARGENZIANO: He objected.

14 COMMISSIONER SKOP: Okay.

15 CHAIRMAN ARGENZIANO: Can you ask a different
16 question or rephrase?

17 COMMISSIONER SKOP: I will try to rephrase to
18 avoid an objection.

19 Mr. Jones, based on the February 19th employee
20 letter, did the employee express concerns regarding
21 how information would be provided to the Florida
22 Public Service Commission?

23 THE WITNESS: Yes, Commissioner. He states
24 that he is concerned about how FPL will report
25 these findings at the upcoming PSC hearings.

1 COMMISSIONER SKOP: And you've read the
2 finding of the Concentric Report as it pertains to
3 the testimony given by the name of the redacted FPL
4 witness; is that correct?

5 THE WITNESS: Yes, I have.

6 COMMISSIONER SKOP: Okay. And that concerns
7 the accuracy of the information provided to this
8 Commission; is that correct?

9 THE WITNESS: Yes, it does.

10 COMMISSIONER SKOP: Okay. So does not the
11 finding of the Concentric Report and the employee
12 letter dated February 19th, 2010 not stand in sharp
13 contrast to the statements made in the letter sent
14 to employees on April 2nd, 2010 with respect to the
15 accuracy of information furnished to external
16 stakeholders that continues to satisfy scrutiny?

17 MR. ANDERSON: That's an -- objection. That's
18 an inappropriate question for this witness.

19 COMMISSIONER SKOP: All right. It's getting
20 late in the day. I think I've made my point so I'm
21 going to --

22 CHAIRMAN ARGENZIANO: Commissioner Skop,
23 here's what I'm going to do because it is late in
24 the day. I really hoped that we could get through
25 this today. But unfortunately people are tired and

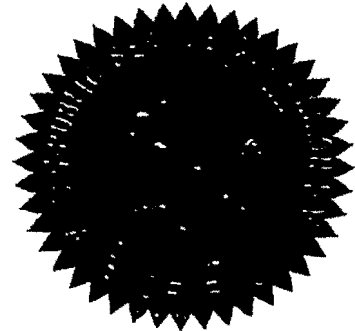
EXHIBIT 3

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

UNDOCKETED

FPL SUSPENSION OF CAPE CANAVERAL
AND RIVIERA BEACH CONVERSION
PROJECTS.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 17

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, March 2, 2010

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

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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSIONER

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1 Cape Canaveral and Riviera Beach need determinations
2 specifically required the reporting of annual costs,
3 and in that order, annual reporting of costs, FPL has
4 agreed that it will report on an annual basis budgeted
5 and actual costs compared to the estimated total in
6 service cost of the proposed WEC 3, Cape Canaveral and
7 Riviera units, the report shall be submitted to the
8 Director of the Division of Economic Regulation. In
9 addition, FPL has also agreed that a different
10 combustion turbine design from one presented in the
11 proceedings is chosen, FPL will report to us regarding
12 the comparative cost advantage of the alternative
13 design chosen. Such a selection would only be made if
14 the projected cost to FPL customers would be lower as
15 a result of using an alternate design.

16 **COMMISSIONER EDGAR:** Commissioner Skop, you
17 are going way too fast for me, and I'm thinking maybe a
18 little fast for the court reporter. Could you read
19 that last paragraph or two again for both of our
20 benefits.

21 **COMMISSIONER SKOP:** I'll start over with this
22 section. Furthermore, the Commission order for the
23 Cape Canaveral and Riviera Beach need determinations
24 specifically required the annual reporting of costs.
25 And in that order, FPL has agreed that it will report

1 on an annual basis budgeted and actual costs compared
2 to the estimated total in-service cost of the proposed
3 WEC 3, Cape Canaveral, and Riviera units. The report
4 shall be submitted to the Director of the Division of
5 Economic Regulation.

6 In addition, FPL also agreed that if a
7 different combustion turbine design from the one
8 presented in these proceedings is chosen, FPL will
9 report to us regarding the comparative cost advantage
10 of that alternate design chosen. Such a selection
11 would only be made if the projected cost to FPL
12 customers would be lower as a result of the use of the
13 alternate design.

14 FPL was late in filing that annual report.
15 In fact, it was filed upon staff request on
16 February 25th. The report as filed was incomplete.
17 It had no actual cost data for the Riviera Beach or
18 Cape Canaveral conversion projects. FPL subsequently
19 resubmitted this information, which was filed
20 yesterday, and the resubmitted report lacked
21 sufficient detail to ascertain what the specific AFUDC
22 costs would be as they have been incurred to date. So
23 I would ask staff to get with FPL to resolve those
24 discrepancies, to give a little better insight as to
25 what charges are being accrued in support of the

1 recommendation I've requested.

2 In closing, constructive regulation requires
3 a framework of mutual respect. Unfortunately, as
4 FPL's conduct clearly demonstrates, we're not there
5 yet. While FPL is certainly free to diminish its
6 future earnings potential by failing to make
7 additional investments to plant, property, and
8 equipment, the question of whether FPL ratepayers
9 should continue incurring carrying costs for projects
10 that -- excuse me -- the question of whether FPL
11 ratepayers should continue incurring carrying costs
12 for projects that FPL unilaterally suspended remains
13 to be answered.

14 Thank you, Madam Chairman, and I'd like to
15 thank my colleagues for your time.

16 **CHAIRMAN ARGENZIANO:** Commissioner Stevens.

17 **COMMISSIONER STEVENS:** Madam Chair, did we --
18 did staff notice FPL that this was going to be on the
19 agenda today?

20 **CHAIRMAN ARGENZIANO:** Mary Anne.

21 **MS. HELTON:** Sorry. I'm having a hard time
22 getting to the button.

23 When I learned from Commissioner Skop that
24 he wanted to have this item added to the agenda, I
25 went to the Chairman's Office and filled out the

1 but in the interim, again, I'm questioning whether
2 it's appropriate for ratepayers to continue to incur
3 interest on the approximate \$9 million that has
4 already been spent to date, assuming the FPL report is
5 accurate. And, again, I would look to staff to
6 provide that recommendation.

7 **CHAIRMAN ARGENZIANO:** Mr. Butler.

8 **MR. BUTLER:** Thank you, Madam Chairman.

9 I just wanted to advise the Commission -- I
10 just confirmed that FPL, it has suspended the accrual
11 of AFUDC. The last AFUDC was recorded in
12 December 2009, so we are not recording it for January,
13 they are not recording it for February, and it will
14 not recommence.

15 You know, I really can't speak to when it
16 would recommence. It obviously depends on what
17 happens with the suspension, and there's lots of
18 factors there, but I can confirm to you that there has
19 been no AFUDC recorded in 2010, and that's the status
20 of it today.

21 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Madam Chair.

23 And thank you, Mr. Butler, for clarifying
24 that. Again, pursuant to Commission rule, FPL has six
25 months to advise the Commission and submit proposed

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

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

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

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

DATED THIS 19th day of March, 2010.



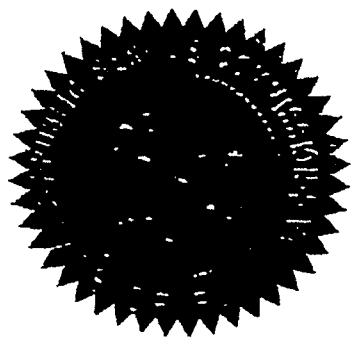
JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

EXHIBIT 4

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090109-EI
PETITION FOR APPROVAL OF SOLAR
ENERGY POWER PURCHASE AGREEMENT
BETWEEN TAMPA ELECTRIC COMPANY
AND ENERGY 5.0, LLC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 13

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, February 9, 2010

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

REPORTED BY: LINDA BOLES, RPR, CRR
JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER: 090109-EI

01148 FEB 22 2010

FPSC-COMMISSIONER OFFICE

1 **MR. BALLINGER:** The answer is yes. And I
2 would say, also, that is above and beyond avoided cost
3 already. So even at a lower -- at the cost at the
4 levelized cost of this contract that we calculated at
5 22.4 cents, that would still be, in my mind, TECO's
6 ratepayers paying more for this energy than --

7 **COMMISSIONER SKOP:** I understand that, and I
8 supported the staff recommendation that was not to limit
9 it to avoided cost. I was comfortable with that. The
10 Commission chose to go beyond that, and I was
11 comfortable with that, too. What I'm not comfortable
12 with, if I'm getting out there on a limb, in light of
13 going beyond the expressed mandate of the Florida
14 Legislature for 110-megawatts statewide, because that
15 was supposed to be used to evaluate whether this was
16 feasible, it was a feasibility analysis, it wasn't a
17 broad open the floodgate, do whatever you want, Florida
18 Public Service Commission.

19 You know, 110 megawatts, rightfully or
20 wrongfully was fully subscribed by FPL. They gobbled it
21 all up, okay. So it didn't leave anything for TECO and
22 Progress, and I'm sympathetic to that. But what I'm
23 saying is there is a difference between a purchased
24 power agreement or a power purchase agreement that this
25 contract is and building it yourself, and that is what

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STATE OF FLORIDA)
 :
 CERTIFICATE OF REPORTERS
COUNTY OF LEON)

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


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

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

DATED THIS 22nd DAY OF FEBRUARY, 2010.



JANE FAUROT, RPR
Commission Reporter
(850) 413-6732



LINDA BOLES, RPR, CRR
Commission Reporter
(850) 413-6734

1 I can see that maybe some people maybe just need to
2 take a break away from here. And I do have several
3 questions for Mr. Reed coming up. So I don't think
4 that any of us need to stay here till nine, ten
5 o'clock tonight. Unfortunately, I was hoping we
6 could get it done today, but I don't think that's
7 going to happen.

8 So I suggest that we recess until tomorrow
9 morning at 9:30. I'm sorry, did I forget to do
10 anything?

11 MR. KISER: I'm just not clear. What's the
12 status of this witness?

13 CHAIRMAN ARGENZIANO: Well, we didn't excuse
14 him so he has to sit here all night. I'm only
15 kidding. No. I think, I think --
16 Commissioner Skop, were you done with questions for
17 this witness?

18 COMMISSIONER SKOP: I'm done unless staff or
19 redirect or anything.

20 CHAIRMAN ARGENZIANO: Any other questions for
21 the -- so we will excuse Mr. Jones. Thank you.

22 COMMISSIONER SKOP: Thank you, Mr. Jones.

23 MS. HELTON: Unless do you all have redirect?

24 COMMISSIONER SKOP: And then staff will move
25 in the other exhibits that we marked at a later

1 point in time; is that correct?

2 CHAIRMAN ARGENZIANO: And might I -- might I
3 do this. Just a little change because I forgot
4 something. Can we start at 9:45 tomorrow rather
5 than 9:30? Is there any problem with doing that?
6 9:45 tomorrow morning. Thank you.

7 (Hearing adjourned.)

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1 CERTIFICATE OF REPORTER

2
3
4 STATE OF FLORIDA)5 COUNTY OF LEON)
67 I, LORI DEZELI, RER, OCR, certify that I
8 transcribed the video and audio of the abovesaid
9 proceedings, and that the transcript is a true and
10 complete transcription of the proceedings to the best of
11 my ability to hear and understand.12 I further certify that I am not a relative,
13 employee, attorney or counsel of any of the parties, nor
14 am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action.17 WITNESS my hand and official seal this 1st day
18 of September, 2010.19
20 
21 LORI DEZELI, RER, OCR
22 2894-A Remington Green Lane
23 Tallahassee, Florida 32308
24 350-979-2221
25