

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.

VOLUME 5

Pages 1228 through 1383

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

DATE: Thursday, August 26, 2010

TIME: Commenced at 9:46 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

APPEARANCES: (As heretofore noted.)

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I N D E X

WITNESSES

NAME:

PAGE NO.

TERRY O. JONES

Direct Examination by Mr. Anderson
Cross Examination by Ms. Bennett

1310
1314

EXHIBITS

| | NUMBER: | ID. | ADMTD. |
|----|---------|---------|---------------------------|
| 1 | | | |
| 2 | 240 | 8-13-10 | Withdrawal of St. Lucie 1 |
| 3 | | | NRC Application |
| 4 | 241 | 8-25-10 | NRC Letter with RAIs |
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P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 4.)

4 **CHAIRMAN ARGENZIANO:** We'll call our meeting
5 to order.

6 And, Commissioner Skop, I believe you asked me
7 to recognize you. You're recognized.

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

12 Okay. I just want to touch upon two things.
13 First, some comments for the benefit of my colleagues
14 that were not here that had to leave early last night
15 related to some concerns that were raised yesterday.
16 And secondly, before we take up the motion, I'd like to
17 articulate my reasons why taking up that motion is
18 premature and should be deferred until the conclusion of
19 the evidentiary portion of the FPL docket.

20 To begin with, Mr. Anderson's earlier comments
21 that were made yesterday were not well-taken. Never in
22 the history of this Commission has a Commissioner
23 sitting on the bench been treated with such blatant
24 disrespect by a regulated utility.

25 That being said, I am not intimidated by FPL

1 and I have no intention of backing down from my prior
2 reasonable request to have Mr. Olivera appear before
3 this Commission. I have sufficient legal basis to
4 justify this request and I will get into that in due
5 course.

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

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

20 Now everyone knows that has knowledge of the
21 ex parte restrictions of this Commission, which I
22 believe Mr. Anderson would have constructive knowledge
23 of at the very least, that Commissioners cannot see
24 documents provided from the utility until the time as
25 those dockets are formally entered in the record. And

1 that record is the public record that is available on
2 the Commission's website.

3 So, case in point, again, those documents were
4 provided to the Commission audit staff. Commission
5 audit staff is separate and independent. I don't get to
6 go get their documents. I don't, you know, get involved
7 in that.

8 But the docket -- document was entered into
9 the record, the redacted version, on August 23rd, I
10 believe was Monday, and that resulted from the
11 evidentiary hearing that was held on the 20th, at which
12 time FPL was going to file the revised redacted request.
13 And ironically, or not ironically, as typical of them,
14 they filed it at 3:30 in the afternoon on Monday, which
15 required myself, Commission staff and the Clerk's Office
16 to stay here until 7:00 p.m. issuing the three orders
17 granting confidentiality so that they would be ready to
18 go for the start of the hearing on Tuesday morning.

19 Okay? So, Mr. Anderson, again, I think that,
20 you know, there's advocacy and there's points where
21 advocacy crosses the line. And, again, my concern,
22 you're entitled to say whatever you want to say, but I
23 think that -- you know, I deal in facts and I don't spin
24 the truth. And while my credibility and integrity may
25 have been challenged yesterday, the one thing I can

1 assure this Commission is win or lose this morning, I
2 will walk out of here with my credibility. Okay?

3 So that, Madam Chair, I would like to go in
4 briefly into the reasons for why discussing and ruling
5 on the proposed stipulation is premature at this point.
6 And if the Chair would allow me to, I would move forward
7 at this point.

8 **CHAIRMAN ARGENZIANO:** You're recognized.

9 **MR. ANDERSON:** Pardon me. Pardon me,
10 Chairman.

11 **CHAIRMAN ARGENZIANO:** Would you like to
12 respond?

13 **MR. ANDERSON:** Yeah. If I may. I just think
14 it would be good in due order to respond to those points
15 and then proceed on to other business. Is that
16 acceptable?

17 **CHAIRMAN ARGENZIANO:** Absolutely. You're
18 recognized. Absolutely.

19 **MR. ANDERSON:** Thank you very much.

20 Commissioner Skop said last night, and I mean
21 to address the entire Commissioner, Commission, not any
22 individual Commissioner, that never in the history of
23 the PSC has a Commissioner been treated with such
24 blatant disrespect. I'd like to emphasize disagreement
25 is not disrespect.

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

8 I'd like to take up, in relation to the points
9 that we made yesterday, in stating our position in
10 relation to the request for Mr. Olivera to appear, our
11 company stands by the statement we made yesterday
12 morning. It is well-founded in fact and in law.
13 Specifically, FPL did provide access to the Concentric
14 report in its response to OPC document requests on
15 June 23. It served notice of availability of those
16 documents for review by staff and the parties.

17 In addition and separately on that same date,
18 FPL made a separate production of the same report to the
19 audit staff. The same day, two months prior to the
20 start of the hearings.

21 We based our statement on FPL's understanding
22 also that Commissioners have access to any document or
23 information provided to the Commission by audit or
24 otherwise at their request and discretion. We know of
25 no law, no rule that precludes such access to

1 information. We confirmed that with a former
2 Commissioner who did not recall any information
3 requested not being provided to a Commissioner.

4 So that's the factual basis in which we made
5 those statements, Chairman. I want to be very direct
6 because you asked what did we know and what's our
7 position on that, and that very clearly is our position.

8 We have no ability to know what documents any
9 individual Commissioner read, Commissioner Skop, and
10 when you read them. But based on all these facts, we
11 believe that the Commissioner and the Commission had
12 access to the documents in question since the time they
13 were filed.

14 That's the end of my points. Thank you.

15 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you, Madam Chair.

17 And I think that takes care of that. I would
18 respectfully disagree with the company's position.
19 Again, I thought the statements made yesterday were very
20 brazen, cavalier, and directed at what constructive or
21 actual knowledge I had. Instead of ascertaining that
22 knowledge to be true, it was intended to say that -- and
23 I'm not going to waste my time getting into it. Let's
24 get down to the facts before us, which are the docket
25 annual review process and why taking up the proposed

1 stipulations at this point is premature. So, if I may
2 begin.

3 Thank you. Madam Chair, Commissioners, I am
4 adamantly opposed to and vigorously object to
5 considering the proposed stipulations prior to hearing
6 all of the FPL witness testimony in this docket. As a
7 basis for that, I would cite the Commission rule, which
8 is 25-6.0423(5)(c), and that deals with the capacity
9 cost recovery clause for nuclear integrated gasification
10 combined cycle power plant costs.

11 Specifically provision 2, in subsection (c),
12 "The Commission shall, prior to October 1 of each year,
13 conduct a hearing and determine the reasonableness of
14 projected preconstruction expenditures and the prudence
15 of actual preconstruction expenditures expended by the
16 utility, or, once construction begins, to determine the
17 reasonableness of the projected construction
18 expenditures and the prudence of actual construction
19 expenditures expended by the utility and the associated
20 carrying costs." I can read the remainder of that
21 paragraph, but I feel it's unnecessary to do so at this
22 point.

23 So with that framework in mind, there are
24 numerous red flags that warrant a constructive
25 discussion as to the adequacy of project controls

1 consistent with this Commission's regulatory oversight
2 function. I'm going to give a host of illustrative
3 examples, and these examples are evidence to state why
4 this review should go forward, not to prejudge anything
5 in the docket. So I want to make that crystal clear,
6 and I'm going to try and frame these issues as crystal
7 clear. But they should not be construed in any way that
8 it's prejudged. It's a matter of here's issues that
9 need to be discussed.

10 First, there is evidence in this docket to
11 suggest that an FPL witness allegedly may have failed to
12 disclose material information to this Commission and may
13 have perjured himself during his sworn testimony given
14 to the Commission during the 2009 NCRC proceeding.

15 Second, there is -- within the staff audit
16 report there's a technical issue related to pressure
17 discrepancies. Somebody made a technical mistake
18 apparently. It's uncertain as to who that mistake will
19 be charged to, but there is a disconnect between the
20 steam inlet pressure and the, or the steam header
21 pressure and the turbine inlet pressure on the turbine,
22 and that's articulated on page 34 of the staff audit
23 report. That's a question that warrants discussion in
24 itself, because I believe the financial impact is
25 \$50 million. And, as a result of that impact, they're

1 having to change the main steam valves and other things
2 that are discussed in that to reduce the pressure drop
3 across those valves so they can better match it with the
4 turbine inlet pressure that was apparently misspecified
5 or whatever is in there. That's worthy of having a
6 discussion in itself.

7 Second -- or third, the Nuclear Regulatory
8 Commission NRC letter dated August 13th, 2010 -- excuse
9 me. The Nuclear Regulatory NRC response letter dated
10 August 13th, 2010, let's talk about that for a second.
11 FPL allegedly withheld disclosure of the material
12 information contained in the letter for ten days, and
13 disclosed such information to the Florida PSC on
14 August 23rd only after Commission staff placed the NRC
15 letter in the docket on the afternoon of August 23rd.
16 That's less than 24 hours before the start of the NCRC
17 hearing. That was never disclosed.

18 Moreover, the same letter suggests that FPL
19 allegedly knew that it would request withdrawal of the
20 St. Lucie 1 LAR on or before August 13th, and allegedly
21 failed to disclose this material information to the
22 Commission as it pertains to this docket. That's
23 another instance of selective disclosure.

24 This begs the question as to whether this
25 material fact was properly disclosed to Public Counsel

1 and the intervening parties prior to agreeing to the
2 proposed stipulations on or about August 17th, 2010. If
3 that disclosure was not made, that's another Jedi mind
4 trick that was perpetrated upon the intervening parties.

5 Now let's talk about the Public Counsel
6 prehearing statement. Specifically with respect to
7 Issue 16 and Issue 17, which pertain to whether FPL's
8 project controls were reasonable and prudent, Public
9 Counsel in its prehearing statements, which are issued
10 in the Prehearing Order for Issue 16, Public Counsel,
11 for the uprates OPC believes there are indications of
12 inadequate cost oversight controls. Issue 17, with
13 respect to OPC, Issue 17, OPC, with respect to the
14 uprate projects, OPC believes there are indications of
15 inadequate management and contracting oversight
16 controls. Accordingly, Public Counsel's willingness to
17 support the proposed stipulation seems to be
18 inconsistent with Public Counsel's own prehearing
19 statements.

20 Now let's compare this to the two-day hearing
21 we just had for Progress Energy Florida, which had
22 related issues which were Issues 4 and 5. Public
23 Counsel essentially took the same position with respect
24 to the same PEF issues. Public Counsel spent over four
25 hours conducting the cross-examination of PEF Witness

1 Franke on various issues, including project controls.

2 It's hard to understand why the Commission
3 doesn't have the same obligation to conduct the same
4 thorough review for FPL, given what is known to the
5 Commission at this time. I'm not sure why, why Public
6 Counsel, you know, entered into the stipulations. Maybe
7 it's fear out of, you know, retaliation from the
8 Legislature. I don't know.

9 So my final points on this matter -- the
10 proposed stipulations, let's talk about those. The
11 proposed stipulations represent a blanket deferral of
12 all FPL issues. This Commission has not only the duty
13 and responsibility but also the obligation to conduct a
14 thorough annual review of the NCRC project controls and
15 costs. In fact, the utilities demanded this for
16 regulatory certainty purposes when the Commission rule
17 was adopted.

18 Approval of the proposed stipulations prior to
19 discussing these issues in this case shirks the
20 Commission's duty, in my opinion. Approval of the
21 stipulations also prevents questions from being asked.
22 Given the numerous red flags in this, in this -- based
23 on the audit report and some of the information before
24 us, an open discussion is not only warranted, but
25 required.

1 So to put this into perspective, I'm going to
2 use an autopilot analogy. What's happening here is
3 we're ignoring all the warning lights and indicator
4 messages in the cockpit. We press autopilot and we go
5 back to the bar and start drinking Kool-Aid for the next
6 12 months, doubling the workload at the next NCRC
7 proceeding, because that's what's happening here. No
8 one wants to discuss the numerous red flags we have
9 before us. They just want to wave a wand and make it
10 all go away where people can't ask questions and ignore
11 all the bad things and don't want to have an open, frank
12 discussion about what happened good and what happened
13 bad and what corrective action is being taken. It's
14 nothing more than a blanket deferral.

15 In summation, I respect that the parties have
16 entered proposed stipulations for the FPL portion of
17 this docket. The parties have their own respective
18 interests in reaching the proposed stipulation for the
19 FPL portion of this docket. The Commission, however,
20 has a separate and distinct interest in performing its
21 regulatory oversight function independent from the
22 interests of the parties. There are numerous red flags
23 that warrant having a discussion regarding the FPL
24 related issues in this docket.

25 Approval of the proposed stipulations

1 presents, or prevents questions from being asked. You
2 know, that's a form of censorship. I have questions I
3 want to ask. Knowing what I know, I cannot in good
4 faith support approval of the proposed stipulations
5 prior to hearing all of the FPL witness testimony in
6 this docket. I would respectfully suggest that the
7 Commission defer considering the proposed stipulations
8 for the FPL portion of this docket until after all --
9 until, excuse me, until after hearing all of the FPL
10 witness testimony in this docket. Again, there are red
11 flags, there are instances here where there has been
12 arguably selective disclosure and withholding of
13 material facts.

14 The NCRC letter -- Mr. Anderson yesterday said
15 my concerns were all about the Concentric report. That
16 is absolutely incorrect. The failure to disclose the
17 NCRC letter until after it was put in the docket by
18 Commission staff ten days after the NRC approved it is
19 just wrong. It's another, another instance where, and
20 Commission staff can speak to this, they wait to the
21 last minute, they don't disclose things. It is a
22 selective, self-serving disclosure method, and that's
23 due process, Mr. Anderson, right there. So if we want
24 to talk due process, I can talk it until the cows come
25 home.

1 So, Madam Chair, at this point I would
2 respectfully move to defer consideration of the motion
3 for the proposed stipulations until the conclusion of
4 the FPL portion of this docket.

5 **CHAIRMAN ARGENZIANO:** Let's -- any discussion?

6 **MR. McGLOTHLIN:** Chairman Argenziano, may I be
7 heard on this?

8 **CHAIRMAN ARGENZIANO:** Yes. Let me go to
9 Commissioner Graham first.

10 **MR. KISER:** Excuse me. Madam Chairman, I
11 think the Commissioner made a motion and I didn't hear a
12 second.

13 **COMMISSIONER SKOP:** Can you ask for a second
14 and discussion? I did make a motion.

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

19 **COMMISSIONER SKOP:** Yes. I will defer to the
20 Chair. I will withdraw the motion.

21 **CHAIRMAN ARGENZIANO:** Okay. The motion is
22 withdrawn. It's open for discussion.

23 Commissioner Graham.

24 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.
25 I know that staff specifically has got a

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

9 **CHAIRMAN ARGENZIANO:** Any discussion? I have
10 some discussion and then we'll go to OPC.

11 Did you want to make comment first? I'm
12 sorry.

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

15 **CHAIRMAN ARGENZIANO:** Certainly.

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

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

24 And so when we saw the staff testimony and saw
25 that the staff witnesses also have some comments about

1 uprate issues, it appeared to us that OPC's testimony
2 and staff's testimony were in a sense complimentary.

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

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

24 The next issue, 22, asks what system and
25 jurisdictional amount should the Commission approve as

1 the reasonable and actual and estimated 2010 costs for
2 the extended power uprate? We think this issue is what
3 captures the staff's concern that post activity costs
4 may have been too high. And that is why we said in our
5 position we agree with staff's proposal to conduct a
6 more detailed examination of the costs in a separate
7 docket.

8 So we saw these position statements as being
9 consistent with and supportive of the staff's positions
10 in this case, as were those position statements that
11 Commissioner Skop referred to, indications that controls
12 may have been inadequate. And so for us the possibility
13 of a deferral of these uprate related costs was a
14 natural progression of our position, which was
15 supportive of the staff, and that grew into a broader
16 agreement.

17 But we've always understood that any
18 stipulation is subject to approval or disapproval by the
19 Commission. And when during the prehearing conference
20 Commissioner Skop said, "I have some questions I intend
21 to ask," my working assumption since that time is that
22 he will have that opportunity to ask the questions. So
23 as I see it, this, this could unfold in several ways,
24 all within the discretion of the Commission.

25 One possibility would be to defer these issues

1 in entirety. Another possibility would be to deny the
2 stipulation and go forward and have, try to complete
3 things today. The other possibility is that in
4 discretion the Commission may have individual
5 Commissioners ask their questions, staff ask their
6 questions and then defer the balance.

7 So I want to make the point that, from the
8 outset, with respect to the uprate related costs, we
9 have been, our position has been consistent with the
10 idea that some of these issues arose too late in the
11 game to examine thoroughly and make any decision as to
12 whether the activities described in the staff audit
13 report did or did not lead to imprudent costs.

14 Now I wanted to mention one more thing that I
15 think bears on this. And I think Mr. Anderson may have
16 misspoken a while ago when he was describing who
17 received the Concentric report and when they received
18 it. We received the staff's audit report in its
19 redacted fashion when the staff filed its testimony on
20 July 20th, and we asked for, you know, a confidential
21 version.

22 And that's the first time we saw that the,
23 within in the staff summary report references to the
24 replacement of uprate management and the references to
25 the employee complaint letter that had been shielded.

1 And our review suggested that the company's
2 confidentiality request was overbroad. So on
3 August 2nd, we disputed that contention and asked the
4 Prehearing Officer, Commissioner Skop, to conduct an in
5 camera examination of that and resolve the dispute.

6 Almost simultaneously Commissioner Skop, maybe
7 the same day or a day later, we received the orders
8 setting that and other similar issues for hearing on
9 August 20th, and we went to that hearing prepared to
10 litigate our contention that the utility's attempt to
11 shield that information was overbroad had they not
12 withdrawn their, their request for confidentiality that
13 day.

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

18 So that's, I hope, some clarification as to
19 our, how our belief that our position was consistent
20 with staff's led us to support staff's proposal to have
21 a more detailed examination of certain costs in either a
22 spinoff proceeding or in the next hearing cycle, and how
23 that seemed logical to us to have a deferral of all
24 those questions. And that is the background of OPC's
25 involvement in this.

1 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Madam Chair.

3 Thank you, Mr. McGlothlin. I do appreciate
4 that clarification.

5 I think what concerns me, again, I'm not
6 opposed to the stipulations per se. However, taking up
7 those stipulations as a whole in the beginning of the
8 proceeding would be a blanket deferral and would not
9 allow questions to be asked. So I'm more than willing
10 to look at the merit of the stipulations at the end of
11 the conclusion of the testimony, which would provide
12 testimony, but also, if you spun it off in a docket,
13 provide for additional testimony.

14 The question that I have for you, and I need
15 to clarify one additional point also, Madam Chair, is
16 with respect to this NRC response letter regarding the
17 withdrawal of the application for the LAR application
18 for the St. Lucie 2 EPU or extended power uprate, when
19 was Public Counsel made aware of that document?

20 **MR. MCGLOTHLIN:** I think I personally became
21 aware of it when I saw it on the website when FPL filed
22 it.

23 **COMMISSIONER SKOP:** Okay. So, so would Public
24 Counsel have a concern with respect to the selective
25 disclosure of material information in that regard?

1 **MR. McGLOTHLIN:** I am not sufficiently
2 informed about the background on that. But we certainly
3 intend either in this hearing or in subsequent hearings
4 to explore the ramifications or the significance of that
5 withdrawal.

6 **COMMISSIONER SKOP:** Okay. But you, you were
7 induced, were you not, into a stipulation, agreement to
8 a stipulation after that letter -- you were induced into
9 a stipulation after that response letter had been issued
10 but it was not yet disclosed to you.

11 **MR. McGLOTHLIN:** Well, you use the word
12 "induce."

13 **COMMISSIONER SKOP:** Well, I'm saying you
14 entered into a stipulation, but FPL in good faith did
15 not disclose the existence of that letter to Public
16 Counsel.

17 **MR. McGLOTHLIN:** The chronology is such that
18 the stipulation happened and then we learned of the
19 letter. I think that's what you're -- that's your
20 point.

21 **COMMISSIONER SKOP:** That's what I'm getting
22 at.

23 Okay. So, again, we want to talk about due
24 process. How due process is that for your company,
25 Mr. Anderson? Is that due process? Is that the way

1 your company does business, by selectively disclosing
2 documentation?

3 Madam Chair, just, I'll leave with that. But
4 I have one other point to mention too with respect to a
5 point that requires the Commission to ask questions.

6 There is also evidence in this docket to
7 suggest that the Chief Executive Officer of FPL Group
8 conducted a line-by-line budget review of the EPU on or
9 about July 25th, 2009. So what one might conclude from
10 that -- again, not prejudging, but warranting that
11 questions need to be asked to adduce what the truth may
12 or may not be -- one might conclude that not only did
13 the EPU management team have knowledge that the cost
14 estimate had changed, and we're not talking about the
15 dollar number, we're talking about indicators that the
16 magnitude of that cost had shifted substantially. I'm
17 not going to debate the fine points of what the actual
18 number is going to be. It is going to be what it's
19 going to be. But the magnitude had shifted.

20 And at that time, one might look at the fact
21 that the evidence in the docket, subject to going
22 through an evidentiary process but just proffering this
23 for why such a discussion is necessary and proper, there
24 is evidence to suggest that not only FPL knew, its
25 management may have known, but certainly the chief

1 operating officer of FPL Group who requested this review
2 knew. Okay?

3 And before you get to the confidentiality
4 issue, again, on that issue, if you look at the footnote
5 in the order, there is no, been no protective order of
6 that, there's been no challenge to the confidentiality
7 on my order I issued. So before you even try and make a
8 confidentiality argument on that, look at the footnote
9 in the order, in the order that was issued on the 23rd.

10 So, again, I think that's fair. It's fair to
11 conduct a hearing -- the Commission is required and
12 obligated to conduct a hearing. And, Mr. McGlothlin,
13 with all due respect, I'm likely more than happy to take
14 up these stipulations at the appropriate time. I think
15 there's substantial merit to some of the stipulations,
16 as you stated. But by doing so now denies me the
17 opportunity to review project controls and redress and
18 get some information that may be germane to moving
19 forward and making a decision to spin off this docket.

20 Thank you.

21 **MR. MCGLOTHLIN:** We've always understood
22 that's within the discretion of the Commission, and
23 we've always understood that asking questions is an
24 individual Commissioner's prerogative. And I said this
25 to Mr. Anderson and I'll say it to you, our

1 participation in the stipulation was never designed to
2 get in the way of anything the Commission wants to do.

3 **COMMISSIONER SKOP:** Yes, sir. And I
4 understand that. I think my concern would be that if
5 there's a majority vote of this Commission and they went
6 that way, this could be yanked right from out from under
7 me and I'd never be having the opportunity to call
8 witnesses and ask questions, or ask questions of the
9 witnesses that are put on the stand.

10 And so that's a ramification of the proposed
11 motion for stipulation. So that's where I have my
12 concerns, because I don't want to be denied the
13 opportunity to have my questions answered and explore
14 the various areas that we've discussed, nor do I want to
15 abrogate the Commission's responsibility to conduct a
16 thorough annual review, which we did for many hours on
17 the Progress case. So it can't be Progress gets a
18 thorough review and FPL gets a free pass. I think we
19 need to be fair to both utilities.

20 Thank you.

21 **MR. ANDERSON:** Commissioner Argenziano, may I
22 be heard at your convenience, please?

23 **CHAIRMAN ARGENZIANO:** Yes, please. You're
24 recognized.

25 **MR. ANDERSON:** Thank you very much. I'd

1 suggest if I may address just two points very briefly.

2 One, I want to just make a clarification.

3 And, second, I'd like to suggest a way that might permit
4 the type of discussion to see about, for example,
5 Commissioner Graham's idea about whether staff has
6 questions and the like. Okay?

7 My -- the first thing I'd like to do, and this
8 will just take a moment, and this is, this is with all
9 respect and just for clarification of the record with
10 Mr. McGlothlin and OPC, who, you know, we have great
11 regard for.

12 Just to be clear, we reviewed our records and
13 determined that on June 23rd we did provide the
14 Concentric report in response to OPC POD Number 35.
15 This was placed into our office as a confidential
16 document, as is the ordinary practice.

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

25 The second thing I'd like, I'd like to ask and

1 suggest in the way of proceeding is if I might be -- I'd
2 like to move our stipulation. That would then permit
3 discussion by the Commission as how to take up the
4 stipulation in reference to the questions. So I am
5 prepared to offer that. And we -- may I proceed? Thank
6 you.

7 We've made our request for deferral and we
8 support it for several reasons. Our motion was filed,
9 as the Commission is aware, on August 17th stating our
10 various legal reasons in attaching the stipulation which
11 was approved by the parties. The parties that have
12 taken positions in this proceeding are the Office of
13 Public Counsel, Florida Industrial Power Users Group and
14 the Southern Alliance for Clean Energy. With respect to
15 those parties, OPC and FIPUG support deferral. SACE
16 does not object. The stipulation is set forth in the
17 Prehearing Order.

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

1 true-up based on the outcome of the deferred
2 consideration.

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

8 To put the amounts at issue in perspective,
9 FPL's 2010 nuclear cost recovery amount presently being
10 collected amounts to about 67 cents per month per 1,000
11 kilowatt hours, kind of a typical residential customer.
12 Our requested 2011 amount that is subject to the
13 stipulation amounts to a reduction by a little more than
14 50 percent, to 33 cents per month for 1,000 kilowatt
15 hour residential customer.

16 I'd like to point out this stipulation is very
17 similar to the stipulation for deferral that was
18 approved by the Commission with respect to FPL in the
19 Commission's 2008 nuclear cost recovery order. That's
20 Order Number PSC-08-0749-FOF-EI in Docket Number
21 080009-EI, and that approval appears and deferral
22 appears at page 22 therein, in which collection of
23 certain nuclear cost recovery was permitted on a
24 preliminary basis with a determination of whether
25 certain costs should be disallowed was deferred until

1 the following 2000 nuclear cost recovery cycle. So this
2 is consistent with that practice.

3 In addition, FPL has moved and no party has
4 objected to our request for deferral of consideration of
5 Issue 3B. This was a late-raised issue at the
6 prehearing conference, raised at the time. We -- in
7 support of our motion to defer that as well. So we
8 would be taking all of the issues and not just hit or
9 miss.

10 I'd point out that this issue was not
11 addressed in the prefiled testimony or exhibits of any
12 witness, it was not raised in any testimony of a party,
13 it was not addressed in FPL's rebuttal testimony because
14 it really had not been raised. There's been no
15 testimony prepared by 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 we're at
19 issue on with respect to that particular matter, and
20 that's again why we think that we fully support full
21 exploration of all issues, including Issue 3B. We stand
22 ready to cooperate with staff and all the parties in
23 providing immediate beginning of a discovery through
24 deposition, documents, whatever.

25 But we believe that the most appropriate step

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

6 You know, staff in its report and testimony
7 did note its interest in conducting additional reviews
8 to consider whether any imprudently incurred costs arose
9 during 2009. We respect the parties' interest and right
10 to conduct those reviews. Our position -- and when
11 those issues are fully developed, we'd present testimony
12 responding to those. But, again, it's a matter where
13 we're not at issue.

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

22 And so, for all of those reasons, we would
23 request that the Public Service Commission approve the
24 stipulation which has been submitted to you and put
25 forward before you by the parties and without objection.

1 **COMMISSIONER SKOP:** Madam Chair.

2 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, Madam Chair.

4 In regards to Mr. Anderson's comments and the
5 manner in which he, you know, advocates zealously on
6 behalf of his client but fails to disclose or provide
7 complete disclosure, I feel compelled to correct some of
8 the representations once again that Mr. Anderson just
9 made because it paints a false picture.

10 Let's talk about the August 17th stipulation.
11 What Mr. Anderson did not just tell the Commission was
12 that that stipulation was entered into without
13 disclosing a material document, namely the NRC response
14 letter. Namely, prior to August 13th that FPL had
15 decided to withdraw its LAR application for St. Lucie 1,
16 and disclosure of that document may have changed the
17 parties' willingness to enter into such stipulation.
18 There you have an instance where the company not only
19 selectively disclosed something, but withholds material
20 information from this Commission, from Commission staff,
21 from Commissioners, from Public Counsel and the
22 intervening parties. I don't think that fact is in
23 dispute, Mr. Anderson.

24 Secondly, with respect to due process, the
25 questions I have that I want to propound upon

1 Mr. Olivera -- we want to talk due process, let's talk
2 due process. You may have provided documents on
3 June 28th, but those documents just basically got put in
4 the record here recently. Okay? Some of which could
5 have been put in more recently had FPL not claimed broad
6 confidentiality and, and other things and filed things
7 at the last minute on the, on the 23rd that required our
8 Commission staff to stay here until 7:00 at night filing
9 these orders that I talk about.

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

15 The fact remains, we had an evidentiary
16 hearing on the 20th, and it took an evidentiary hearing
17 to get FPL to disclose the stuff that they seek to
18 protect under the cloak of confidentiality. They may
19 have a legal right. But, you know, when, when you get
20 down to issues of veracity of statements made under oath
21 to the Florida Public Service Commission, I truly feel,
22 as I stated in my footnote to the order, that the
23 confidentiality statute really wasn't designed to
24 protect that. That's just basically hiding perjury, if
25 you want to call it perjury, if that's in fact what

1 actually happened. Okay?

2 Now, third, Mr. Anderson referred to this
3 stipulation as consistent with prior stipulations that
4 the Commission agreed to in this docket. I'm happy to
5 put any member of our staff sitting over there on the
6 bench, I mean, on the witness stand, and have them state
7 for the record that that is not true. What happened in
8 that proceeding, as I was here, was the first year, if
9 my recollection is correct, that the NCRC proceeding
10 went forth there wasn't a lot of cost, the process was
11 still new, there weren't red flag issues.

12 So to make the analogy that we should just do
13 it now because we did it before is complete bunk. It's
14 nonsense. There are many red flags staring before this
15 Commission, and it would be absolutely shameful for this
16 Commission not to conduct a thorough review of some of
17 these very same issues: The selective disclosure, the
18 withholding of material information, the project
19 management controls, the NRC letters, the prior
20 testimony given to the Commission.

21 And we're not talking about small numbers
22 here. We're talking about \$300 million. Okay? Whether
23 the number is -- it is what it is. You know, the final
24 number won't be determined. But the bottom line is
25 there seems to be, based on the evidence, reason to

1 suggest -- and I'm not saying this to prejudge, I'm
2 saying this as the basis for why we need to put people
3 on the witness stand and ask questions -- that there's a
4 disagreement between FPL and the Concentric report. And
5 I respect that agreement. But there's also within their
6 management discussion that we'd get into if we put the
7 people on the stand the fact that their chief operating
8 officer of FPL Group was aware that the magnitude of the
9 cost estimate had shifted.

10 So at the very least one might argue that, you
11 know, for purposes of putting someone on the stand, that
12 we should have a discussion as to whether they knew
13 whether the magnitude of costs should shift and that
14 should have been disclosed.

15 So, you know, it seems to me that we get a lot
16 of spin around here, we get a lot of selective
17 disclosure, and basically I'm fed up with it. I'm very
18 concerned about the accuracy and the timeliness of the
19 information provided to the Florida Public Service
20 Commission. I don't view this as a game. I'm a
21 regulator, I do my job, and I've lost my job because
22 I've chosen to do my job.

23 So, again, I'm not backing down from FPL in
24 any way. I can back up what I state. But accepting
25 this motion prior to hearing witness statements is

1 completely improper for this Commission. We would
2 abdicate our responsibility.

3 **CHAIRMAN ARGENZIANO:** Commissioner Graham.

4 **COMMISSIONER GRAHAM:** Madam Chair, as a, I
5 guess as a way of just moving forward, because it seems
6 like we can go back and forth on this issue for a while,
7 I'm not ready, I'm not ready to, to, to make a decision
8 on the stipulations yet.

9 I guess to the Chair, if I could speak to
10 General Counsel. What I'd like to see happen is, before
11 we rule on the stipulation, if we can get staff to ask
12 their questions of the two witnesses, and then I think
13 at that point, and I'm speaking for myself, I can't
14 speak for the board as a whole, maybe at that point we
15 can make a decision on where we're going to move with
16 the stipulations one way or the other. Now I don't know
17 a good way of putting us into that position.

18 **CHAIRMAN ARGENZIANO:** Well, I don't think
19 legal counsel is going to make that decision for you. I
20 think I can. I don't have any problem with staff asking
21 the questions. I just am going to put the brakes on
22 moving forward beyond that because a Commissioner has
23 some very legitimate concerns that I do also.

24 So if that's the desire of a Commissioner to
25 hear the staff's questions now, I don't see any reason

1 why we can't do that. Commissioner Skop, and then we'll
2 move on.

3 **COMMISSIONER SKOP:** Madam Chair. And thank
4 you, Commissioner Graham. I respect your position. I
5 also want to hear staff's witnesses. But, again,
6 staff's questions are not my questions. And, again, I
7 think the benefit of deferring consideration of the
8 stipulation until hearing the testimony of all witnesses
9 is that everyone's questions get answered. And then if
10 the stipulations are then found to be taken up and have
11 sufficient merit, I have no problem with going with the
12 will of the Commission.

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

23 **MR. ANDERSON:** May I be heard very briefly on
24 that point?

25 Our company takes the very strongest exception

1 to these assertions that are being made that the
2 company -- and the term I heard was hiding perjury.
3 This is a serious allegation. It's not based on
4 evidence. It's not based on testimony. It's not -- you
5 know, the, the statements made, with respect, from the
6 bench are not evidence and that is not evidence. And we
7 take the sternest and most serious exception to that.

8 Second, very briefly.

9 **CHAIRMAN ARGENZIANO:** Okay. Continue.

10 **MR. ANDERSON:** The second point, just very
11 briefly, pointing to the NRC withdrawal of the LAR, to
12 be clear, there was a public document released with and
13 through the normal Nuclear Regulatory Commission
14 process. That is not a terrifically -- it's a -- you
15 know, nuclear licensing is complicated, but that is not
16 a terrifically great or dismaying point in the course of
17 this project. You know, Mr. Jones, our Vice President
18 for EPU, can explain all those considerations. We take
19 exception to the idea about selective or untimely
20 disclosure of that information as well.

21 So I just wanted to be very clear that we do
22 take exception to an array of these comments and they
23 give us, they give us grave concern with respect to the
24 fairness with which we may be treated.

25 **CHAIRMAN ARGENZIANO:** Okay. Briefly,

1 Commissioner Skop.

2 **COMMISSIONER SKOP:** Briefly.

3 Mr. Anderson, from what I heard your comments,
4 you would unreasonably suggest that by virtue of the
5 fact that the NRC has its website, that the Commission
6 is tasked with constructive knowledge of a document that
7 you should have otherwise provided. The facts are what
8 they are. They're not allegations. It is withholding
9 of material information. It is selective disclosure.

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

23 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
24 Skop --

25 **COMMISSIONER SKOP:** So it's just nonsensical

1 to hear you spin this like this. It's a poor excuse.

2 **CHAIRMAN ARGENZIANO:** Can I, can I do this?
3 Commissioner Skop, excuse me. I think what we have,
4 both sides, you've expressed your concerns and
5 Commissioner Skop has certainly expressed his concerns.
6 I think at this point -- I don't -- I think it may be
7 wise, let's have staff ask their questions. I'm not
8 prepared to say let's move on. I want every
9 Commissioner to be able to ask questions, and I
10 certainly would like to hear some of the answers from
11 both sides. I'd like to -- I think that's the way to
12 go.

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

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

25 Commissioner Skop, to the, to the procedure.

1 **COMMISSIONER SKOP:** To that procedure. The
2 concern I have with that, Madam Chair, that seems in
3 totality to be good, but staff would have to call at
4 least, I believe, three FPL witnesses or whichever
5 witnesses.

6 **CHAIRMAN ARGENZIANO:** Two.

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

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

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

20 **CHAIRMAN ARGENZIANO:** Okay.

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

1 can ask the questions, and hopefully some of the issues
2 that are outstanding can be brought forth or brought to
3 light as a result of the questions that we as
4 Commissioners may want to pose. And I think at that
5 point we may want to determine if we need to bring any
6 other witnesses or, or what other direction we might be
7 willing to take at that point. So I think that that may
8 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 to
14 the best of my ability where we are right now, and so if
15 I may.

16 Staff had shared with me in our briefing a
17 couple of days ago that there were two witnesses that
18 they had questions of. I don't remember which two those
19 are, and so I'd like to pose that question while I'm
20 looking at the witness list. And so if it's okay, Madam
21 Chair, I'm going to ask staff to remind me which two
22 witnesses they have prepared questions for today.

23 **MR. YOUNG:** Madam Commissioner, we have
24 questions for Witness Jones, Witness Reed -- and Witness
25 Reed. We had questions for Witness Powers, but FPL has

1 agreed to enter her deposition in its entirety into the
2 record in lieu of our questions, and that satisfies
3 staff's concerns as it relates to Ms. Powers.

4 **COMMISSIONER EDGAR:** All right. Thank you.
5 And just to follow, to continue with that for a moment.

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

14 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

15 **COMMISSIONER SKOP:** Thank you, Madam Chair.

16 Commissioner Edgar, I have not released any of
17 the FPL witnesses, and I've also indicated my express
18 desire to ask questions of Mr. Olivera. So that's my
19 position on the matter.

20 **MR. MOYLE:** Madam Chairman.

21 **CHAIRMAN ARGENZIANO:** Mr. Moyle.

22 **MR. MOYLE:** Yeah. And for the record, Jon
23 Moyle on behalf of the Florida Industrial Power Users
24 Group.

25 It's a little unusual procedurally, and FIPUG

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

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

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

21 So if we are at any time, staff and legal
22 staff, precluding someone's right to ask a question,
23 answer a question, or, you know, if we are somehow
24 waiving somebody's right to do so, I want to be advised
25 before we make that, that leap, because I'm not prepared

1 to agree with that as an individual Commissioner. So --

2 **MR. DAVIS:** Madam Chair, may I be heard? Gary
3 Davis on behalf of the Southern Alliance for Clean
4 Energy.

5 It seems like we're moving into a suggestion
6 of kind of a bifurcated procedure here. Is that the
7 first part would be to ask the questions that the
8 Commission has and the staff has for the purposes of
9 determining whether to grant the stipulation. It seems
10 like that would be --

11 **CHAIRMAN ARGENZIANO:** Well, that's not my
12 take.

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

14 **CHAIRMAN ARGENZIANO:** I got a suggestion from
15 a Commissioner, and it was a worthy suggestion to do. I
16 think -- I'm not sure at this point. I think the best
17 thing to do is hear from the parties as far as how we're
18 moving forward and what implications it has, and then I
19 may want to take a break to discuss with legal where we
20 really are and how is the best way to go about this.
21 And then as the presiding officer and according to what
22 the will is of the Commission, I'm going to have to make
23 a determination on which way we go, so.

24 **MR. DAVIS:** And may I just state for the
25 record and for the Commission that SACE is not really

1 taking a position and doesn't intend to present evidence
2 or questions on the uprate issues.

3 **CHAIRMAN ARGENZIANO:** Okay.

4 **MR. DAVIS:** And I understand that's the focus
5 of what this discussion is about. And so we would be
6 happy to have our part of the program be as a separate
7 part if that's the desire of the Commission because I
8 understand the focus is on the uprate at the moment.

9 **CHAIRMAN ARGENZIANO:** Well, I think -- should
10 we bifurcate anything and what does that do, Mr. Kiser?

11 **MR. KISER:** Madam Chairman, I would just
12 caution the Chair that everybody agreeing that their
13 notion is that you're not going to be waiving anybody's
14 rights, I would suggest you might want to also ask FPL
15 if they agree that we're not waiving anybody's rights.

16 **CHAIRMAN ARGENZIANO:** Well, I've had it open
17 to everybody. I didn't just -- I did not disqualify
18 them from, from participating. I meant for everyone,
19 and that's what I said.

20 **MR. KISER:** Well, what I'm suggesting to you,
21 they haven't commented on whether or not they agree with
22 that. And you just might want to ask if they're in
23 agreement that we're not waiving anybody's rights by
24 going in and talking to some of these witnesses.

25 **CHAIRMAN ARGENZIANO:** Well, weren't we talking

1 about waiving the rights of people to ask and answer
2 questions? I'm not sure what you just said. Repeat it
3 one more time.

4 **MR. KISER:** What I'm saying is that you just
5 want to be sure that all parties agree that by going the
6 steps you're now taking that you're not waiving
7 anybody's right to ask questions, that everybody is
8 still going to be available for everybody to ask
9 questions, and I wouldn't want us to go down that road
10 and then suddenly find --

11 **CHAIRMAN ARGENZIANO:** Absolutely.

12 **MR. KISER:** -- have an objection saying those
13 rights have been waived. So I was just suggesting you
14 might want to get their concurrence.

15 **CHAIRMAN ARGENZIANO:** Commissioner Skop, do
16 you have a comment?

17 **COMMISSIONER SKOP:** Yes, Madam Chair.

18 To our General Counsel, Mr. Kiser, with
19 respect to the Commission's obligation pursuant to
20 Commission rule to conduct an annual hearing and
21 determine the reasonableness of projected costs and
22 controls and such, how is the Commission capable of
23 doing that without having a full evidentiary hearing
24 similar to what just was done for Progress over the last
25 two days?

1 **MR. KISER:** What I'm suggesting, Commissioner,
2 is that I think it sounded like, from the discussion I
3 heard, that everybody was nodding and agreeing that by
4 going ahead and doing this you weren't waiving anybody's
5 rights. And I'm just saying that you want to make sure
6 that all the parties sitting here also agree with that.
7 Because if you start down that road and then they raise
8 an objection to that and say, no, they don't agree to
9 that, they think we are waiving some rights, we need to,
10 we need to know that now if they have an objection to
11 that. That's all I'm asking.

12 **CHAIRMAN ARGENZIANO:** Well --

13 **COMMISSIONER SKOP:** Madam Chair, a brief
14 response.

15 And that's exactly my point, is we don't
16 undertake that risk if we do the evidentiary hearing and
17 then get to the stipulations at the very end. If we
18 decide to spin off or defer, then we do it at that time.

19 **CHAIRMAN ARGENZIANO:** Okay. Let me get, let
20 me go, let me do this. If we move forward, as
21 Commissioner Skop indicates, that requires the
22 Commission to vote on which way we're going to go or
23 not?

24 **MR. KISER:** No, I don't think so.

25 **CHAIRMAN ARGENZIANO:** So then --

1 **MR. KISER:** I'm not suggesting that you have
2 to vote on that. I think, I think you have every right
3 to go ahead and go down that road. We just want to be
4 sure that when we go down that road that everybody
5 agrees that we're doing that and that there's no
6 objection to that. Otherwise, we end up, we could have
7 a dispute on our hands which we then have to sort out.
8 I'm trying to avoid that.

9 **CHAIRMAN ARGENZIANO:** But wait a minute. Let
10 me see if I'm, I'm not getting confused here. But
11 wouldn't it be if you, if you stipulated and want to
12 take a particular route, that you would not think that
13 this is the route to take?

14 **MR. KISER:** Mary Anne would like to address
15 the Commission.

16 **CHAIRMAN ARGENZIANO:** Okay.

17 **MS. HELTON:** It was my suggestion, so maybe
18 let me, let me give a shot at it. My concern was that
19 if we, staff calls the two witnesses that it wants to
20 question and the Commissioners have questions but the
21 parties don't have questions, at the conclusion of that
22 a decision is made not to approve the stipulation and
23 then we go forward with the remainder of the hearing, my
24 concern was I wanted to make sure that we have the
25 agreement from everyone sitting on this side of the

1 room --

2 **CHAIRMAN ARGENZIANO:** Got it.

3 **MS. HELTON:** -- that we can't call back
4 witnesses that staff has asked, directed questions to or
5 that the Commissioners have directed questions to.

6 **CHAIRMAN ARGENZIANO:** Can, I think. Right.

7 **MS. HELTON:** I'm sorry. Yes.

8 **CHAIRMAN ARGENZIANO:** Mr. Anderson.

9 **MR. ANDERSON:** Madam Chairman, FPL is fine
10 with the suggestion, I believe, Mr. Jones and Mr. Reed;
11 right? And it sounds like the process would be we'd
12 bring them in, they can be sworn, they can answer
13 questions. We do urge consideration and acceptance of
14 our motion to defer. We're okay proceeding in this way.
15 And we expressly acknowledge that if we need to have a
16 full evidentiary hearing, you know, then and there, then
17 we'd put our witnesses on and with the summaries and
18 cross-exam and all that. But, you know, in order to
19 facilitate things, we'll just bring in Mr. Jones, I
20 guess, to start. Is that acceptable?

21 **CHAIRMAN ARGENZIANO:** Okay. I do have, I do
22 want to make this suggestion, because what I see coming
23 down here is that those -- just because staff is going
24 to ask questions, that is not going to alleviate some of
25 the questions, other questions that I believe

1 Commissioner Skop has or I may have or any one of you
2 may have coming down. We don't know what staff is going
3 to ask. We don't know if it's going to fully address
4 everything that we have concerns on.

5 So if we're going to go down that road and
6 staff, then we're just saying that, staff, you're just
7 going to ask questions now, but we're still going to go
8 down to an evidentiary hearing it seems like in order to
9 accommodate Commissioner Skop and maybe any one of us.
10 So maybe this is not the, the best way to approach it.

11 Commissioner Graham.

12 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.
13 I guess I'm trying to -- and I'm not even sure that we
14 have any sort of a, if we're in the proper order, if
15 we've got any sort of motion on the floor or not, but my
16 understanding was the question before us is the
17 stipulations.

18 And there's a lot of back and forth about
19 what's going on with the stipulations. And it seems to
20 me that the key to most of this is the August 13th
21 letter, the NRC letter that started all this and that's
22 what got the staff started with their questions. And I
23 can't speak for Mr. Skop, if he had more questions
24 before or after that point or not.

25 And I don't know if, I don't know if the

1 motion on the floor is the stipulations. And if that's
2 what the case is, I'd like to hear, I'd like to hear the
3 staff question those two witnesses, for the board itself
4 to, if we have any questions to those two witnesses, and
5 then at that point we make the determination if we want
6 to open up to a full hearing or if we're, if we're happy
7 with the questions and we can move forward with the
8 stipulations.

9 **CHAIRMAN ARGENZIANO:** It does come down to
10 then if we still have a Commissioner who wants to have
11 more questions outside of those two witnesses, where do
12 we go from there? Hang on.

13 **MR. KISER:** Well, Madam Chairman, it's always
14 best to have a motion passed so that it's clear what
15 people want to do.

16 **CHAIRMAN ARGENZIANO:** That's why I asked if we
17 had to vote on it.

18 **MR. KISER:** That's right.

19 **CHAIRMAN ARGENZIANO:** That's what I meant.

20 **MR. KISER:** And so I would say that, you know,
21 again, to kind of build building blocks up to the top,
22 you start with the motion, that frames the question,
23 that sets the course of action, it's seconded. If it
24 passes, then that's the course you go. If that doesn't
25 pass, then someone else suggests a motion. And if that

1 one passed and is seconded, then that's the direction
2 you go. But it's just usually easiest and proper
3 business to get your motions in order first.

4 **CHAIRMAN ARGENZIANO:** Okay. Here's what it's
5 going to come down to. We're going to take a vote on
6 whether you want to hear other questions that
7 Commissioners may have. And I think that's what we're
8 faced with right now because I don't have a motion on
9 the table. We had a withdrawn motion.

10 **COMMISSIONER SKOP:** (Not on microphone.)
11 Madam Chair, if I may be recognized.

12 **CHAIRMAN ARGENZIANO:** You're recognized.

13 **COMMISSIONER SKOP:** Again, if staff calls
14 witnesses for the purpose of asking staff's question, I
15 am not waiving my right under evidentiary hearing to ask
16 questions and hear other Intervenor testimony questions
17 or cross-examination that may spur additional questions
18 I have.

19 So, again, what I proposed the first time,
20 which would, you know, to me streamline this whole
21 discussion, is defer taking up the motion on the
22 stipulations until the conclusion of the evidentiary
23 portion of the hearing.

24 Now if the stipulations are approved at that
25 time, the dockets would be spun off and additional

1 testimony and discovery could be conducted over and
2 above what's already created in this record. The record
3 will not be limited to what we discuss here today.
4 That's my understanding. I think that's the appropriate
5 legal way to proceed, to call the first witness and
6 let's get on with this instead of trying to bifurcate
7 it.

8 Because when staff asks its questions, I'm not
9 asking mine then. I'm sorry. That's staff's desire to
10 do that, but I want to hear from the intervening
11 parties. I want to hear what they have to say. I've
12 got my questions. I think an evidentiary hearing is
13 required by the, by our own rule.

14 **CHAIRMAN ARGENZIANO:** Okay. It doesn't seem
15 efficient to bifurcate, I believe. You're going to hear
16 staff's questions anyway if we just move on and let
17 Commissioner Skop and any other Commissioner proceed.

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

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

21 **CHAIRMAN ARGENZIANO:** You're recognized.

22 **COMMISSIONER SKOP:** Thank you. To defer
23 consideration of the motion to accept the proposed
24 stipulations until the end of the FPL witness testimony.

25 **CHAIRMAN ARGENZIANO:** Do I have a second?

1 Pass the gavel to Commissioner Brisé, please.

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

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

6 **MR. KISER:** Well, we -- that's, that's a
7 problem that we have.

8 **CHAIRMAN ARGENZIANO:** Okay. Second.

9 **MR. KISER:** But generally speaking, a second
10 does not indicate to you support. It's just for
11 discussion, so it's --

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

15 And discussion. Question?

16 **COMMISSIONER BRISÉ:** I have a question on the
17 motion.

18 **CHAIRMAN ARGENZIANO:** Sure.

19 **COMMISSIONER BRISÉ:** If I understand the
20 motion properly, that staff will bring forth its, who it
21 seeks to ask questions to and that the Intervenors and
22 the Commission can then ask questions of --

23 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

24 **COMMISSIONER BRISÉ:** -- of those individuals
25 as well.

1 **COMMISSIONER SKOP:** No. Commissioner Brisé,
2 the way the motion was styled is that the FPL case in
3 chief would proceed just as the way it did with
4 Progress. FPL would call its first witness. The
5 witness would be tendered for cross-examination by the
6 Intervenors, by staff, by, you know, the Commissioners,
7 redirect, call your next witness, the full evidentiary
8 hearing.

9 So what, what I'm suggesting in the motion is
10 to defer consideration of the proposed stipulations
11 until after we hear from all the witnesses and then take
12 that up.

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

21 Commissioner.

22 **COMMISSIONER BRISÉ:** May I ask a question --

23 **CHAIRMAN ARGENZIANO:** Absolutely.

24 **COMMISSIONER BRISÉ:** -- to, to those who
25 entered into the agreement?

1 **CHAIRMAN ARGENZIANO:** Ask. Absolutely.

2 **COMMISSIONER BRISÉ:** Okay. And this would be
3 a broad question to, to all of those who have entered
4 into the agreement. I'd like to hear from each one of
5 you individually. What would be your interest relative
6 to how we proceed and how would that impact your
7 commitment or your position with respect to the
8 stipulation?

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

11 **CHAIRMAN ARGENZIANO:** Mr. Moyle.

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

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

24 **MR. MOYLE:** Yeah. Yeah. I thought that you
25 guys were heading in a direction of essentially saying

1 let's have a limited evidentiary proceeding that will
2 help us, inform us with respect to whether we want, how
3 we want to take action on this stipulation and the
4 motion, have very limited evidence, which I'm fine with.
5 I'll defer my questions if you guys --

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

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

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

1 makes sense administratively.

2 **CHAIRMAN ARGENZIANO:** Absolutely. Absolutely
3 Uh-huh.

4 **MR. MOYLE:** Because you'll hear just a focus
5 point --

6 **CHAIRMAN ARGENZIANO:** Sure.

7 **MR. MOYLE:** -- without waiving the right to
8 ask other questions.

9 So thank you for, thank you for the question,
10 Commissioner. Appreciate it.

11 **CHAIRMAN ARGENZIANO:** Okay. And Commissioner
12 Brisé did ask for all, so let's have him --

13 **MR. DAVIS:** I guess we're going this
14 direction.

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

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

1 object was to allow for the will of the Commission on
2 how to proceed basically.

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

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

19 **MR. DAVIS:** And 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.
23 I indicated that in staff's testimony, just as staff had
24 stated.

25 **CHAIRMAN ARGENZIANO:** Does anybody know what

1 they've said?

2 **MR. ANDERSON:** I very much do.

3 **CHAIRMAN ARGENZIANO:** Okay.

4 **MR. ANDERSON:** And you can tell by my chapter
5 and verse we're very particular.

6 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

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

10 **CHAIRMAN ARGENZIANO:** Thank you.

11 Mr. Anderson, Commissioner Brisé asked that
12 everyone --

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

22 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

23 **COMMISSIONER EDGAR:** Thank you. Thank you,
24 Madam Chair. And I, I recognize that a motion has been
25 made and that, Madam Chair, you gave the second, and I

1 appreciate that, to open us up into more of a discussion
2 posture, which is my understanding of where, where we
3 are.

4 **CHAIRMAN ARGENZIANO:** Yes.

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

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

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

25 And I, and I say that without asking anybody

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

6 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
7 Graham, then Commissioner Skop.

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

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

23 **CHAIRMAN ARGENZIANO:** Let me, let me ask you a
24 question. If we did it that way, what's the difference
25 if after the staff asks questions, that we, a

1 Commissioner or I or you or any one of us, wanted to ask
2 questions of everyone and it became a full-blown
3 hearing? What's the difference? Couldn't it also then
4 become a full-blown hearing afterwards?

5 **COMMISSIONER GRAHAM:** Are you asking that
6 question?

7 **CHAIRMAN ARGENZIANO:** Yeah.

8 **COMMISSIONER GRAHAM:** At that question,
9 because it seemed like, like I said, a lot of the
10 problem was this letter from August 13th. I think when
11 those questions get asked, at that point I would know if
12 I want to go with the stipulations or if I want to go
13 into a full hearing.

14 **CHAIRMAN ARGENZIANO:** I got you. So you're
15 thinking that maybe the staff can answer your questions.
16 Okay. But I'm telling you ahead of time, I believe that
17 there are going to be other questions from other
18 Commissioners. And I believe then at that point are you
19 indicating that you would not want -- I don't know if
20 you want to say that or not -- indicating that you would
21 not be willing to have other Commissioners ask
22 questions?

23 **COMMISSIONER GRAHAM:** Well, I think we take
24 this first step.

25 **CHAIRMAN ARGENZIANO:** Okay.

1 **COMMISSIONER GRAHAM:** Then I can make the
2 determination, I think the board as a whole can make a
3 determination. If, you know, they may decide -- and
4 there are several different steps where you can decide
5 that, you know, that Mr. Skop may have a list of --

6 **COMMISSIONER SKOP:** It's Commissioner Skop.

7 **COMMISSIONER GRAHAM:** Commissioner. I'm
8 sorry, sir. No disrespect.

9 That, that Commissioner Skop may have five
10 witnesses that he wants to bring forward. Those five
11 witnesses may address some questions that the Chair has
12 and some other people. And so at that point it can be
13 an alternative motion.

14 **CHAIRMAN ARGENZIANO:** Okay. Okay.

15 Commissioner Skop to respond and then we have
16 a motion.

17 **COMMISSIONER SKOP:** Briefly to respond.

18 Again, my concern is this. Staff wants to
19 call two witnesses. That's for staff's purposes.
20 Knowing what I know, given all the red flags that I've
21 articulated, knowing what the Intervenors know, I can't
22 in good faith support approval of the proposed
23 stipulations prior to hearing all the FPL witness
24 testimony in this docket, and that's having a full
25 evidentiary hearing. That seems to be consistent with

1 our obligations pursuant to our own Commission adopted
2 rule.

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

9 So while I respect Commissioner Graham's
10 position, I'm not so sure why the Commissioner would not
11 want to have a full evidentiary hearing, given some of
12 the red flags that have been raised here.

13 **CHAIRMAN ARGENZIANO:** Okay. We have a motion
14 and a second. All those in favor of the motion signify
15 aye. Aye.

16 **COMMISSIONER SKOP:** Aye.

17 **CHAIRMAN ARGENZIANO:** All those opposed.

18 **COMMISSIONER EDGAR:** Aye.

19 **COMMISSIONER BRISÉ:** Aye.

20 **COMMISSIONER GRAHAM:** Aye.

21 **CHAIRMAN ARGENZIANO:** Okay. The motion fails.

22 Now what we'll do is move on to having staff
23 call their witnesses, and that in no way precludes --

24 **COMMISSIONER SKOP:** Is that funny,
25 Commissioner Edgar? Because I see a big smile on your

1 face.

2 **CHAIRMAN ARGENZIANO:** Okay. Okay. Let's not
3 get, let's not, let's not, let's just -- where we are,
4 let's, we are, we are at a point where -- I'm sorry.
5 Commissioner Graham, did you want to --

6 **COMMISSIONER GRAHAM:** We just, we need a
7 motion on the floor now because the one failed.

8 **CHAIRMAN ARGENZIANO:** Well, do we need the
9 motion actually to go ahead with staff now? The
10 motion --

11 **MR. KISER:** Well, you don't know what his
12 motion is going to be. He may, he may state a slightly
13 different motion. It may be bigger than just two -- you
14 don't know. You need to hear the motion.

15 **CHAIRMAN ARGENZIANO:** I didn't know -- I
16 didn't -- I thought that the motion that was made --
17 okay. To put us in the proper position, I didn't think
18 we needed a motion to have staff ask the questions and
19 then proceed from there. But if you'd like to restate
20 the motion.

21 **COMMISSIONER GRAHAM:** My motion is, my motion
22 is to move forward with the stipulation based on the,
23 the, the, the questioning of the two witnesses by staff
24 and by this Commission as a whole.

25 So basically what I'm saying is the staff is

1 going to ask their questions of the two witnesses. This
2 Commission will ask those questions of those two
3 witnesses. And at the end of those interviews of those
4 witnesses, we can decide if we move forward with the
5 stipulation or if we go back to a full-blown hearing.

6 **CHAIRMAN ARGENZIANO:** Well, then, so then your
7 motion is to, you're saying to move forward with the
8 stipulation, not just to have staff -- that's what I
9 thought we were talking about before was not talking
10 about the stipulations and having staff ask questions,
11 and then from that point on we would determine.

12 **COMMISSIONER GRAHAM:** Well, based on, based on
13 the questionings of staff and of this board of those two
14 witnesses.

15 **CHAIRMAN ARGENZIANO:** Well, I wouldn't be
16 willing -- I'll just tell you where I am. I wouldn't be
17 willing to move forward on the stipulations. I wouldn't
18 mind moving forward with staff asking the questions, but
19 I'm not prepared to move forward on the stipulations at
20 all. There are serious concerns that need to be
21 addressed in my view, and I'm not prepared to do so.

22 So, that, you know, votes will be where they
23 are, win or lose. I've been a winner and a loser, and
24 you lose more times than you win, but that's not why you
25 vote.

1 **COMMISSIONER GRAHAM:** Well, I guess my motion,
2 and maybe General Counsel can help me clearly, more
3 clearly state my motion, but my motion was based on the
4 stipulation question will not come up until after we
5 hear back from, until after we hear from the two
6 witnesses, until after this board and staff asks
7 questions of the two witnesses.

8 **MR. KISER:** That was the way I would have
9 interpreted it, that you would go forward with the
10 questioning and answering of both the staff questions
11 and Commissioners' questioning. And at the conclusion
12 of that you would then be back on, unless someone makes
13 a new motion, you'd be back on the issue of whether to
14 approve the request for deferral.

15 And if, again at that time it's subject to
16 another motion, if, if, because of some of the testimony
17 that comes up or other considerations, there's another
18 two or three or however many other witnesses, a motion
19 can be made to now bring those witnesses forward. You
20 don't have to automatic -- I mean, you don't -- someone
21 is free to make any motion they want as to how they want
22 to proceed after they complete what your motion
23 envisions. So it's wide open once that's over just to
24 go on with other things.

25 **COMMISSIONER EDGAR:** Madam Chair.

1 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you. And what I'd
3 like to do is restate what my understanding of the
4 motion is, and if I am correct with my restatement, that
5 I'm understanding what it is you're suggesting.

6 **MR. KISER:** Excuse me. Madam Chairman, I
7 don't believe that motion has been seconded yet, has it?

8 **CHAIRMAN ARGENZIANO:** I don't think the motion
9 was completed. So, so we don't have a second because it
10 wasn't completed. He was asking about how to better
11 pose the motion, so he never completed the motion. And
12 that's what we're trying to get to, I think.

13 Commissioner Edgar.

14 **COMMISSIONER EDGAR:** Thank you. What I want
15 to do is restate it. And if that's, if I'm
16 understanding it correctly, then I was going to second
17 it. But I didn't want to second it if I didn't
18 understand it correctly.

19 My understanding of the motion that
20 Commissioner Graham has made is that we would ask, that
21 the Commission would ask FPL to call Witness Jones and
22 there would be the opportunity for his testimony and for
23 questions from all the parties and Commissioners, which
24 would of course include staff. And at the conclusion of
25 all of that, then we would ask FPL to call Witness Reed,

1 go through that same evidentiary process, and then at
2 that point there would be the opportunity for a motion
3 as to how to proceed further.

4 Is, is -- am I correct that that was the
5 intended effect of the motion?

6 **COMMISSIONER GRAHAM:** That was the effect, if
7 that's a legal motion.

8 **COMMISSIONER EDGAR:** I believe that it is, and
9 in that case I second.

10 **CHAIRMAN ARGENZIANO:** That .

11 **COMMISSIONER SKOP:** Madam Chair.

12 **CHAIRMAN ARGENZIANO:** Discussion.

13 Commissioner Skop.

14 **COMMISSIONER SKOP:** Thank you, Madam Chair.

15 With respect to the proposed motion, again, I'm going to
16 be voting in, opposed to the motion. I am not going to
17 be limited to asking my questions to witnesses that
18 staff calls in line with staff's questions. Again, a
19 lot of times my questions arise following from questions
20 that are asked by the intervening parties. That's part
21 of the process to have full breadth of
22 cross-examination.

23 The Commission has its duty and obligation to
24 perform an annual review. Everyone was aware of that
25 review. We did it for Progress. We should be doing it

1 for FPL, given the information known to the Commission,
2 and to do otherwise is a dereliction of duty.

3 **CHAIRMAN ARGENZIANO:** If I may, for discussion
4 for myself. I cannot support the motion. I think
5 that -- I don't understand why -- I think a lot of
6 serious issues were raised, and I also believe that
7 having the opportunity to have some of those serious
8 concerns addressed is due process to the parties also.
9 And I'd like to hear their answers, because they could
10 very much clear them up very easily. And by not
11 allowing me to do that or somehow stopping the
12 evidentiary hearing from coming to fruition I think is a
13 very, very big mistake. I am not prepared to not ask
14 questions and, and I think feel limited to that.

15 It changed from what I originally thought we
16 were asking or that some of the Commissioners were
17 asking, just to have staff go ahead and ask questions.
18 And then if we wanted to, we could move forward. But it
19 seems to me that we're trying to put the brakes on
20 asking questions that, on, on very serious issues, and
21 I'm not here to do that, so I couldn't support that.

22 If it passes, it passes. If it doesn't, it
23 doesn't. I just can't support that for those reasons.

24 Commissioner Brisé.

25 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.

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

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

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

20 And hopefully I'm clear for myself and
21 clarified it maybe for some others.

22 **CHAIRMAN ARGENZIANO:** And if I may respond to
23 that while we're discussing, is that that sounds good.
24 But when you really think about it, if you have to go
25 through all of this, there must be, there has to be some

1 feeling here that says that, you know, as long as the
2 questions I have are answered, I may -- it doesn't --
3 let's say that there are four Commissioners who don't
4 agree with one or three that don't agree, whatever way
5 it is.

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

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

24 So that's my decision on that. And it just
25 seems like in -- the way we're doing it is ultimately

1 just to say, okay, my, my question has been answered
2 and, you know, the vote is going to probably not be with
3 you later, and I'm not willing to do that. So that's up
4 to the Commission. If the Commissioners want to do it
5 that way, that's fine with me. I just can't do it that
6 way.

7 So we have motion and we have a -- I'm sorry.
8 I'm sorry. Commissioner Edgar.

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

10 I would like to take the opportunity to be
11 clear in that my restatement and support by seconding
12 the motion that Commissioner Graham made was not in any
13 way to make a decision on the stipulations now, meaning
14 now at this moment, or to preclude the asking of
15 questions of any witness. It was simply intended on my
16 part to request that we take two witnesses out of order
17 first --

18 **CHAIRMAN ARGENZIANO:** I have no problem.

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

23 **CHAIRMAN ARGENZIANO:** And I have no problem
24 with taking witnesses out of order. I just think what I
25 see happening is that what's going to happen is then,

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

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

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

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

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. Trust
25 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.

10 The motion prevails.

11 So now we are at staff to call their -- and
12 make no mistake, Commissioners, you still can ask your
13 questions and we'll move forward.

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

16 **COMMISSIONER SKOP:** Thank you, Madam Chair.

17 As I previously stated in discussion of the motion that
18 passed, I will be reserving my questions for all
19 witnesses until the evidentiary hearing. This was
20 supposed to be about staff asking a question, not the
21 Commission, not the cross-examination. And, again,
22 questions, additional questions that I may have spawned
23 from listening to how witnesses are being
24 cross-examined, and to do otherwise and conduct an
25 evidentiary hearing denies me that 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, let's take a ten-minute.

6 **MR. ANDERSON:** Thanks.

7 (Recess taken.)

8 **CHAIRMAN ARGENZIANO:** Okay. We're ready to
9 resume.

10 **MR. McGLOTHLIN:** Chairman Argenziano, may I
11 have a moment to correct something that was said
12 earlier?

13 **CHAIRMAN ARGENZIANO:** Yes, please.

14 **MR. McGLOTHLIN:** For the sake of accuracy,
15 during the break J.R. reminded me that FPL did by
16 telephone inform our office of FPL's decision to
17 withdraw its LAR for the project, and that would have
18 been about the time of the withdrawal, which would have
19 been prior to the finalization of the stipulation. So
20 the chronology I mentioned earlier was inaccurate in
21 that respect.

22 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

23 Mr. Anderson.

24 **MS. BENNETT:** Madam --

25 **CHAIRMAN ARGENZIANO:** Hang on.

1 Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Madam Chair.

3 Mr. McGlothlin, would Public Counsel, if that
4 were the case, not have had any discussions with
5 Commission staff on that issue?

6 **MR. MCGLOTHLIN:** I don't recall that we had
7 any conversations. I would have expected that they
8 would have their own source of information to that
9 extent.

10 **COMMISSIONER SKOP:** Or lack thereof. Thank
11 you.

12 **CHAIRMAN ARGENZIANO:** Ms. Helton, did you have
13 a comment?

14 **MS. BENNETT:** It was me.

15 **MS. HELTON:** That was Ms. Bennett.

16 **MS. BENNETT:** If were you ready to proceed, I
17 wanted to let you know that Mr. Jones is the first
18 witness that staff has questions of, and I spoke with
19 Mr. Anderson prior to having Mr. Jones up. It seems to
20 me the indication of the Commission is that you don't
21 want to hear the case in chief. So if you don't mind,
22 we'll just ask the questions instead of giving him the
23 summary of his entire testimony. But if it's your
24 pleasure to hear the summary of the testimony, then
25 you -- I'm not making myself clear. But I can just go

1 into the questions without his summary, if you would
2 prefer.

3 **CHAIRMAN ARGENZIANO:** Do the Commissioners
4 have a preference?

5 Summary. A summary, please.

6 Mr. Anderson.

7 **MR. ANDERSON:** Okay. Chairman Argenziano,
8 just to be clear, if I followed the motions earlier, the
9 intention is to put on two witnesses to answer the
10 various questions. Do I understand correctly that we
11 are not in our case in chief, we're still preliminary to
12 ruling on a motion for deferral? And I want to make
13 clear to all the parties that, you know -- you know, if
14 we do end up needing to do the whole hearing, which I'm
15 hopeful we do not, we will, you know, we understand
16 people are not waiving in any respect their rights to
17 ask all their questions then. If it's helpful to the
18 Commission to hear the witness's summary, we'll do that,
19 we'll do that now, but it wouldn't be our intention to
20 offer the testimony into the record at this time. Does
21 that make sense?

22 **CHAIRMAN ARGENZIANO:** Yes, it does.

23 **MR. ANDERSON:** Okay. So he'll do the summary
24 and then listen to your questions.

25 **CHAIRMAN ARGENZIANO:** Okay. Hold on one

1 second.

2 Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, Madam Chair.

4 Just one follow-up question, Mr. McGlothlin.

5 If Mr. Kelly had been made aware of that, would he not

6 have told I guess you, since you're the attorney on

7 this, on this particular issue?

8 **MR. MCGLOTHLIN:** Yes. It was my omission,

9 Commissioner Skop.

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

11 **CHAIRMAN ARGENZIANO:** We're ready to proceed.

12 **MR. ANDERSON:** Great.

13 Mr. Jones, could you move your chair a little

14 bit to the left? I can't see you at all.

15 **CHAIRMAN ARGENZIANO:** The next microphone

16 probably would be easier for you. Does that help?

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

18 going to do is just introduce the witness and ask him

19 just to present his, his direct testimony summary so you

20 get the background and things.

21 **MS. BENNETT:** I believe he needs to be sworn

22 in.

23 **MR. ANDERSON:** Of course. And Mr. Reed is

24 here, too.

25 **CHAIRMAN ARGENZIANO:** Okay. So why don't we

1 have both of you stand up.

2 (Witnesses collectively sworn.)

3 Very good. Thank you.

4 **TERRY O. JONES**

5 was called as a witness on behalf of Florida Power &
6 Light Company and, having been duly sworn, testified as
7 follows:

8 **DIRECT EXAMINATION**

9 **BY MR. ANDERSON:**

10 Q. Mr. Jones, would you please tell us your full
11 name for the record?

12 A. My full name is Terry O. Jones.

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

15 A. My full name is Terry, middle initial O, last
16 name Jones.

17 Q. Great. We're still having trouble hearing
18 you. These microphones really require you to be up
19 close.

20 By whom are you employed and in what position?

21 A. I'm employed by Florida Power & Light, Vice
22 President of the extended power uprate project.

23 Q. How long have you been employed by FPL?

24 A. Approximately 23 years.

25 Q. Okay. And do you have a summary that you had

1 prepared for your direct testimony that you could
2 present to the Commission just so they understand a
3 little background about your work and something about
4 the project?

5 **A.** Yes, I do.

6 **Q.** Would you please provide that to the
7 Commission?

8 **A.** Yes. Good afternoon, Madam Chairman and
9 Commissioners. As Vice President, I'm responsible for
10 the management and execution of the extended power
11 uprate projects. Our project team is safely and
12 cost-effectively implementing the extended power uprates
13 at St. Lucie and Turkey Point nuclear plants.

14 An extended power uprate is the largest and
15 most complex uprate that can be approved by the Nuclear
16 Regulatory Commission. It requires a replacement or
17 modification of a significant number of plant components
18 in order to accommodate a higher unit output.

19 When completed, the FPL uprates will provide
20 FPL customers with an additional 450 megawatts of clean
21 zero emission electrical generation without expanding
22 the footprints of these plants. This project will add
23 approximately one-half the electrical output of a new
24 nuclear unit.

25 The EPU project is unique in that the

1 engineering and implementation overlap each other and
2 the major construction is integrated with the normal
3 unit refueling cycles. We choose this methodology to
4 maximize fuel savings for our customers.

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

14 Good progress was made in 2009 in a number of
15 project areas. We completed mobilization of the
16 engineering, procurement and construction vendor,
17 Bechtel Corporation. We began the detailed design
18 engineering for the required modifications to support
19 the near-term upcoming refueling cycles. We completed
20 an outage optimization plan, which adjusted the sequence
21 of work and duration of the refuelings to minimize the
22 overlap between the outages.

23 The EPU project activities completed to date
24 or planned for 2010 include the successful completion of
25 the first St. Lucie Unit 1 outage, the successful

1 completion of the engineering design modifications for
2 the upcoming Turkey Point Unit 3 fall outage, and
3 completion of the engineering design modifications are
4 being prepared for the St. Lucie Unit 2 outage that
5 starts in January of 2011.

6 The EPU project activities planned for 2011
7 include completion of the engineering and planning
8 phases for two of the three 2011 EPU unit outages,
9 successful implementation of three EPU outages, and
10 performing the engineering and planning in support of
11 three EPU outages in the year 2012.

12 In short, FPL is implementing the right
13 project scope in the appropriate sequence to achieve the
14 project goal of providing an additional 450 megawatts of
15 clean, reliable electricity for our customers. And when
16 compared to other generating options, the EPU project is
17 solidly cost-effective.

18 FPL requests that the Commission determine
19 that FPL's actual 2009 uprate project costs were
20 prudently incurred and that its 2010 actual estimated
21 and 2011 projected costs are reasonable. These
22 expenditures are necessary to bring this highly
23 beneficial cost-effective resource addition to FPL
24 customers. This concludes my summary.

25 **MR. ANDERSON:** And I would just note for the

1 record we're not at issue on prudence or reasonableness.
2 Those are portions of the ordinary summary, the
3 summaries provided so we all have an idea where we're at
4 so we can, you can have your information.

5 Mr. Jones is certainly available for further
6 questions.

7 **CROSS EXAMINATION**

8 **BY MS. BENNETT:**

9 Q. Mr. Jones, my name is Lisa Bennett, and I
10 will -- I'm an attorney for the Public Service
11 Commission staff.

12 **MS. BENNETT:** I'm going to have Mr. Laux pass
13 quite, pass an exhibit out. I would like that marked
14 for identification purposes. I'm not sure what number
15 we are.

16 **CHAIRMAN ARGENZIANO:** Thank you.

17 **MS. HELTON:** We're at Number 240.

18 (Exhibit 240 marked for identification.)

19 **MS. BENNETT:** 240? And while he's passing
20 this out to the Commissioners and the witness, I just
21 want to make sure and let the Commissioners know and the
22 witness know that there's a couple of points that staff
23 wants to learn from, information that staff wants to
24 learn from this witness.

25 And first is that there was a license

1 withdrawal for St. Lucie Unit 1, and we want to
2 understand if that license withdrawal was tied to the
3 prior 2009 management team. Mr. Jones is the new
4 management team. That's my terminology. And if it is
5 tied to the prior 2009 management team, we want to
6 understand, staff wants to understand what additional
7 costs and time for this project, the St. Lucie Unit
8 1 project.

9 And then there's also an additional document
10 that we've learned, I think it was filed or provided by
11 the NRC yesterday on Turkey Point 3 and 4 that has a
12 license amendment that we want to ask some questions
13 about.

14 **BY MS. BENNETT:**

15 Q. So with that long explanation I'm ready to ask
16 my questions. I'd like to have you review staff exhibit
17 marked 240, and it's titled the August 13th, 2010,
18 Withdrawal of St. Lucie Unit 1 NRC Application. Are you
19 familiar with this document?

20 A. Yes, I am.

21 Q. And the document is NRC's affirmation that FPL
22 withdrew its LAR. LAR stands for license amendment?

23 A. Yes, that is correct. License amendment
24 request.

25 Q. And this is an affirmation from NRC, from the

1 Nuclear Regulatory Commission, that the LAR was
2 withdrawn by FPL, is that correct, for St. Lucie 1?

3 A. Yes, that is correct.

4 Q. FPL completed the background work supporting
5 the withdrawn LAR during 2009 and 2010; correct?

6 A. I'm sorry. Could you repeat the question?

7 Q. The background work that goes into the license
8 application, the LAR, when did FPL begin work on that
9 and when did they complete work on that LAR?

10 A. I'm not certain of the exact start date for
11 the engineering analysis for the license amendment
12 request, but it would have been in 2008 continuing
13 through 2009. The license amendment request is, it's a,
14 just to give you an idea, it's about 2,500 pages for
15 St. Lucie Unit 1, and it involves hundreds of
16 calculations. And what it's required to do for the
17 extended power uprate is compare the extended power
18 uprate condition to your current licensing basis. The
19 plant is currently licensed and operating.

20 And per the instructions, you must prepare an
21 engineering analysis and do the calculations to
22 determine what changes or impact operating at the higher
23 output would have. And so there are hundreds and even
24 thousands of engineering analysis and technical issues
25 that arise as a process of doing that license amendment

1 request.

2 Q. Would it be fair to say that a majority of
3 that work was done by the prior management team, the
4 management team in charge of the EPU's prior to you?

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

16 There is a core group at the St. Lucie plant
17 that validates that the vendor follows the process and
18 that they're following the process for the, for the
19 formatting of the license amendment request. And so
20 from the very beginning, Westinghouse, AREVA and Shaw
21 have been doing the engineering analysis for the license
22 amendment request.

23 Q. Okay. I guess what I'm really focusing on are
24 the, the change in management, the senior management for
25 the EPU for FPL in 2009, and what responsibility that

1 management team had over this license that was recently
2 withdrawn as compared to the current senior management
3 in 2010.

4 **A.** Okay. The vice president that had
5 responsibility for extended power uprates also had
6 responsibility for all other major projects for FPL, as
7 well as nuclear fuels. And as part of that
8 responsibility for extended power uprate, the license
9 amendment request process certainly fell under his, his
10 charge.

11 But, again, the license amendment request
12 manager in place in July of, I'll just back it up a
13 month, June of 2009, for example, is the same person
14 who's in charge today.

15 **Q.** Who, who is that? Can you --

16 **A.** That's Ms. Liz Abbott.

17 **Q.** Okay. Do you know why FPL decided to withdraw
18 its application?

19 **A.** Yes. As a part of the license amendment
20 request, the NRC has a process. I apologize for the
21 acronym. I'm not even sure I know what the, what the
22 acronym stands for, but it's called the -- we refer to
23 it as the LIC 109 process. And in that process you
24 submit your license amendment request. And the staff
25 can take up to about two months to do a technical review

1 of that license amendment request, and this is called
2 the acceptance period.

3 If during the acceptance period they have --
4 they may have questions in regard to some of the
5 technical attributes of the license amendment. And so
6 let me just pause right there for a second.

7 The license amendment, even though it involves
8 hundreds of calculations that spawn off into subsets of
9 calculations, which, which could be thousands of
10 engineering issues and analyses, that is not what you
11 submit. That would not fit on 2,500 pages. You provide
12 a summary of those analyses. And so during that
13 acceptance review, the staff may ask for technical
14 clarifications.

15 There's two branches within the Nuclear
16 Regulatory Commission. There's the reactor operating
17 licensing branch, which has, which has accountability
18 for the licensing process, and they have project
19 managers. And then there's the technical staff branch,
20 and they have accountability for doing the technical
21 review and ultimately will do the detailed review and
22 write the safety evaluation that says it's okay to raise
23 the power level of the reactor. So they have ultimate
24 responsibility for, for the technical review and
25 approval.

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

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

21 In our numerous exchanges with the project
22 management licensing staff, what we were being asked to
23 provide -- and, again, I go back to the extended power
24 uprate in comparison to the EPU conditions, extended
25 power uprate conditions to your current licensing

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

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

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

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

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

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

23 So on August the 13th, or actually on August
24 the 12th, those meetings with senior NRC management
25 occurred. We had some assurances in regards to the path

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

11 Q. I -- go ahead.

12 A. The staff did agree, the staff did agree to
13 wait 'til the, wait 'til the following week or hear back
14 from us following those senior management meetings on
15 August the 12th.

16 On August the 13th we had a follow-up phone
17 call with the staff. And, again, the staff is not
18 permitted to make the technical staff immediately
19 available to us so that we can talk in great detail to
20 understand what, what the additional information is that
21 they needed. They give us kind of a high level summary
22 and it's included in the letter.

23 But to get that letter, we needed to withdraw
24 our application, and we did not want to delay getting
25 that information. We wanted to have the benefit of

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

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

16 Following, following that meeting, we had a
17 series of other meetings with our specialty vendors. In
18 fact, we had our specialty vendors participate in that
19 meeting as they are the industry experts. And we had a
20 series of, of meetings on what our different scenarios
21 would be going forward to resubmit the license amendment
22 request. And most of that involves additional technical
23 analysis of above and beyond where we went. So it's not
24 bad engineering. It's more engineering to be done to
25 take it to another level, and then what that would look

1 like and how much time that 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 will the withdrawal of the application cause an
12 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, there's
17 many 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, this technical issue as we
22 have 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 amendment to
3 the --

4 A. Yes. There's, there's the detailed, again,
5 engineering that would have to be done, then formatted
6 into the license amendment request, and then what I
7 refer to the owner reviews that have to be done and the
8 validation.

9 And, again, this, I want to be very clear
10 here, is that, that there are multiple scenarios. And
11 what we looked at was, was that we could be ready to
12 submit, in one of the scenarios, by November the 30th.
13 But, again, that's very preliminary. And by that I mean
14 is we're still providing some technical inputs into,
15 into the specialty vendor that performs all that
16 analysis. We're scheduled to have those inputs to them
17 by this Friday. They'll work on that through the
18 weekend, and I expect to get a proposal back from them
19 on, sometime in the middle to late next week
20 preliminarily.

21 They've told us what their capability is. But
22 until I see that in what I call a detail level three,
23 right now that's just, that's just preliminary.

24 But to give you a rough feel, you know, it
25 looks like approximately, you know, the end of November.

1 But, again, until I, you know, I vet through that and my
2 management vets through that, that's, that's very
3 preliminary.

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

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

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

1 itself may not be impacted.

2 But, again, that is all work that, that the
3 current project team is, is working through to assess.

4 Q. Okay. What about costs? Are there going to
5 be changes in the costs associated with the license
6 amendment withdrawal?

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

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

15 MS. BENNETT: And I'd like that marked as
16 Exhibit Number 241 for identification purposes.
17 Description, August 25th, 2010, NRC Letter with RAIs.

18 CHAIRMAN ARGENZIANO: Commissioner Skop.

19 COMMISSIONER SKOP: Thank you, Madam Chair.
20 Just to staff. Does staff have a copy of the, I guess
21 the meeting request or notice on the August 18th meeting
22 referenced?

23 MS. BENNETT: No. Let me rephrase that. Not
24 with us.

25 (Exhibit 241 marked for identification.)

1 BY MS. BENNETT:

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

3 A. No, I am not.

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

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

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

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

17 Q. Okay.

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

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

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

1 A. That is correct.

2 Q. And your --

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

8 What was done in July of 2009 was to
9 reorganize at a corporate level, and we split out the
10 extended power uprate group from the major projects
11 group and the, and the fuels team. And so the EPU
12 organization became a standalone organization that
13 directly reported to our Senior Vice President/Chief
14 Nuclear Officer. And, yes, I became the Vice President
15 of Extended Power Uprate at that time.

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

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

23 Q. Senior management people?

24 A. Yes.

25 Q. Okay.

1 A. And by senior management, I mean director
2 or -- senior manager or director level such as the, as I
3 had mentioned previously, the license amendment request
4 manager.

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

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

19 And there was a position that was a corporate
20 centric position that was called director for, Director
21 of EPU remained in a different capacity. Really I would
22 call it a Senior Technical Advisor, which is kind of
23 like a chief engineering type position for the project.

24 I'm, I'm new to the project, or was new in
25 July of 2009. As well as a position that we called

1 Implementation Owner South that had responsibility for
2 both Turkey Point and St. Lucie. He was certainly new
3 to the team.

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

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

1 the refueling cycles.

2 And so it's only natural to decentralize the
3 project and push the management and the resources to the
4 site and retain a small core group at corporate for the
5 governance and oversight of the project, and to maintain
6 synergy and to leverage, leverage our resources
7 accordingly.

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

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

21 It's not unusual, you know, for, for a
22 organization of our size is we do succession planning
23 twice a year and we evaluate people's skill sets and
24 their functions, and, and we, we make movements and make
25 changes, I don't want to say frequently, but on a

1 regular basis that's planned to better align skill sets
2 and functions. And it's not unusual to reorganize our
3 departments to, to further improve performance.

4 Q. You were talking about enhanced performance.
5 Can you give me some ideas of areas that needed
6 enhancement perhaps?

7 A. As I mentioned earlier, when you go from the
8 conceptual phase of what it is you want to accomplish
9 and the time line and you get the major contracts in
10 place, you've got to turn your, your attention to the
11 integration with the site operations. It's an operating
12 nuclear facility.

13 And, and to give you kind of a rough idea, as
14 you mobilize Bechtel, which is our engineering
15 procurement vendor, you have about, about 135 people
16 that are, that are Bechtel employees, of which about 80
17 are design engineers that are going to be on site
18 working on the specific designs for the changes in the
19 components. And they need access to our system
20 engineers, which are the most knowledgeable about the
21 plant, they need access to our operators.

22 And so one of the enhancements that you want
23 to do is you want to make the extended power uprate part
24 of the core business for the site, and so you want to
25 integrate with the site through their outage planning

1 meetings.

2 On any given week at a nuclear power plant,
3 and, Commissioner Skop, I know you know this, is you
4 have hundreds of activities that are occurring, from
5 preventative maintenance to corrective maintenance to
6 critical testing that occurs. At the same time,
7 extended power uprate, we're trying to determine the
8 designs that we need to do to achieve the higher output.
9 We need access to plant staff but not so much that it's
10 a distraction. And so you really need people with a
11 strong operations background that know how to integrate
12 with an operating facility.

13 And that's one of the things that we wanted to
14 achieve by decentralizing and pushing the, what I'll
15 call the command and control of the project to the site
16 level and have them integrate with the, with the station
17 activities. That would be one example.

18 Q. Were you given any specific instructions on
19 how to improve the performance from your, the prior, the
20 predecessors to the EPU senior management?

21 A. Well, in July of 2009 we, we conducted a
22 detailed review of the project. And out of that
23 detailed review, there were a number of scope growths,
24 as well as we had what I'll call Bechtel's view of what
25 they thought they would need from a staffing perspective

1 to accomplish the project.

2 This dealt largely with forecasts for 2011 and
3 2012 when you get into the, into the large outages. And
4 Bechtel tends to forecast things on what I call a crew
5 level, is I think I'm going to need this many people to
6 do this activity. And so it's a very rough order of, of
7 magnitude.

8 And so part of reorganizing and pushing the
9 command and control to the site level is to make sure
10 that, that the folks that are responsible for overseeing
11 the engineering of Bechtel have the authority, have the
12 ability to challenge Bechtel on their estimates for the
13 engineering, do scope reviews and make sure that the
14 scope is appropriate for what we're trying to achieve.

15 And so coming out of that July project review
16 meeting we had a number of concerns. Some of our
17 concerns were did we have the right scope from just a
18 total modification perspective? Only about -- little to
19 no of the design engineering was actually complete at
20 that phase, so everything was highly conceptual. And so
21 part of our charge was, was to go validate a number of
22 the large scope activities.

23 For example, the engineering had not yet been
24 completed to determine whether or not we were going to
25 have to replace the condenser, which is a massive

1 component that condenses the steam after it goes through
2 the turbine, as well as what's called a steam generator
3 moisture carryover modification. Those two
4 modifications alone were worth about \$180 million.

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

17 Those -- and one other charge was to look to
18 see ways in which we could validate and challenge the
19 EPC on their, what we call their ramp or their staffing
20 and what they were saying they needed for resources in
21 the out years. And those activities carried over into
22 2010.

23 Q. You mentioned the July 2009 meeting; correct?

24 A. Yes.

25 Q. And prior to the July 2009 meeting, what

1 involvement did you have with the EPU management or the
2 steering team?

3 A. The involvement that I had with the extended
4 power uprate prior to 2009 was in relation to an
5 affiliate company that's part of NextEra Energy.

6 Q. Were you involved in --

7 A. My --

8 Q. -- developing --

9 A. So to, so let me explain that. Is my prior
10 position before I became the Vice President of Extended
11 Power Uprate was as the Vice President of Operations for
12 our midwest region. So I had responsibility for the
13 operation of Duane Arnold Nuclear Power Plant and Point
14 Beach Nuclear Power Plant, which is, you know, the
15 affiliate company, NextEra. And so there's an extended
16 power uprate project in progress with Point Beach.

17 Q. Is it fair to say then that you were not
18 involved in the presentation to, for the July meeting?
19 I'm trying to not disclose some confidential
20 information.

21 A. I was in that meeting, but I was not involved
22 in the, in preparing the presentation for that meeting.

23 Q. And were you involved in giving direction to
24 the new team for that meeting?

25 A. The folks that were responsible and

1 accountable for running an extended power uprate for
2 Florida Power & Light prepared all the presentations and
3 presented in the July 2009 meeting.

4 **Q.** But -- so you were there at the July 2009
5 meeting and you saw the presentation. Can you describe
6 what it contained, what the presentation contained?

7 **A.** The presentation contained commercial
8 information around the various, various attributes of
9 the project, such as progress on license amendment
10 requests, costs associated with license amendment
11 requests, progress on staffing up the engineering
12 procurement contractor, Bechtel. It had project
13 estimates for license amendment request engineering,
14 design engineering and head counts associated with
15 future staffing.

16 **Q.** Did it include new numbers or new budget
17 estimates at that July 2009 meeting?

18 **A.** In July 2009, the, the forecast, based on what
19 was known at the time, was, was higher than the original
20 conceptual estimate that was done. And those estimates
21 were, were prepared by the project controls part of the
22 organization. Project controls consists of cost
23 engineers, schedulers, I'm going to be redundant,
24 project controls folks.

25 And what they'll do is, is based on your, your

1 contracts or information that they receive from the
2 project manager, such as here is, here is how many
3 people I'm going to bring in, here's where I'm going to
4 bring them in at, here is the wage rate per the
5 contract, project controls will take that and roll that
6 up into an overall estimate.

7 So what was presented on July of 2009 was that
8 based on the conceptual scope that was a part of the
9 project but still under review, based on a proposed,
10 well, I'm going to call it ramp, ramp up by Bechtel,
11 that the forecast was going to be higher than, than the
12 original feasibility study that was done.

13 Q. Okay.

14 A. That's why the, that's why senior management
15 in that meeting directed that -- there was an ongoing
16 scope review that the priority was to complete the scope
17 review and, if necessary, accelerate the engineering
18 associated with some of the larger scope items because
19 very little engineering, I think less than, I'm going to
20 say -- I'm not going to guess. It was, I know it was
21 less than 2 percent of the engineering to that point of
22 being completed, was to look at the scope, if necessary,
23 accelerate the scope, look at options to, to an EPC
24 vendor, including even self-performing, and, and
25 complete that work to validate the forecast.

1 Q. So let me make sure I understand that you were
2 telling us that in July 2009 you had, FPL had a good
3 idea that it was going to have an increase in the cost
4 of the uprate; is that correct?

5 A. What I said is that the forecast that was
6 provided in 2009, okay, was based on a proposed Bechtel
7 ramp, a proposed Bechtel staffing plan, a proposed
8 Bechtel resource plan, if you will, and it was based on
9 a scope or a list of modifications for which little to
10 no engineering had been completed to date, and that,
11 coming out of that, that meeting were several actions to
12 address that.

13 Q. And when did FPL address those changes?

14 A. Well, that was ongoing work, and actually work
15 that continues today. We're constantly evaluating
16 options and different levers to pull on the project.
17 But one of the specific modifications that was
18 challenged as being necessary or not, or actually two,
19 was the main condenser modification, which was on the
20 order of, I'm just making sure I can say this and it's
21 not confidential, was on the order of about 130 to
22 \$150 million, somewhere in there, and a steam generator
23 and moisture carryover modification that was on the
24 order of 30 to \$40 million. There were other
25 modifications, but my recollection from the meeting,

1 there were, there were two that stood out.

2 We completed the engineering analysis and
3 review for the condenser modification late October and
4 ultimately determined that the condenser modification
5 was necessary, and that in fact if we, if we did not
6 perform it, that there would likely be a megawatt
7 penalty with not performing the condenser modification,
8 and that it in fact was separate and apart and needed
9 to, for the additional megawatts.

10 The steam generator moisture carryover
11 modification took us until early 2010 to complete the
12 engineering analysis and study associated with this.
13 And the steam generators take the heat from the reactor
14 and generate the steam to drive the turbines. And the
15 modification was inside, is internal to the steam
16 generator, so it's inside the containment building.
17 It's high dose work. It's very expensive and clearly
18 has some maintenance risk associated with it. And it
19 took us until after the first of the year to bring that
20 to conclusion. And that modification was deemed as not
21 necessary to support the additional megawatts and was
22 eliminated.

23 We -- the other actions is we contacted -- we
24 looked at a couple of EPCs. We contacted one
25 specifically, had a number of meetings with another EPC

1 to assess their capability, and we evaluated whether or
2 not we wanted to take all or a portion of the work away
3 from Bechtel, including what portion of the work that we
4 would self-perform as Florida Power & Light.

5 We ultimately, after the first of the year,
6 decided to stay with Bechtel Power Corporation and turn
7 most of our focus and energy on making them just as
8 efficient and cost-effective as possible.

9 It should be noted that, you know, during 2009
10 the money that was being invested or expended on the
11 project was, was on plan and, and is for 2010 as well.
12 The large sums of money and the large scopes we're
13 talking about in future outages, 2011, 2012, if you can
14 envision like a major construction project like a, like
15 a bridge, we're doing the engineering and the planning
16 now. The big spend, you know, occurs when you actually
17 go to do that work. So, so we felt like we had plenty
18 of opportunity to explore ways to, to mitigate or
19 accomplish things more efficiently.

20 And in fact one of the other things that we
21 did was -- there's several things, is in our discussions
22 with another EPC, and, again, from that July 2009
23 meeting, senior management just was not going to accept
24 that Bechtel number. And one of the catalysts for that
25 was that we have certainly self-performed a number of

1 projects ourselves very successfully, and we've done an
2 evaluation for one of our sites on what the
3 self-perform, what the project would cost if we
4 self-performed it. And in comparison to Bechtel,
5 Bechtel was almost a magnitude of double of what, what
6 we thought a self-perform would cost.

7 And so coming out of that meeting then is, was
8 the direction on how do we leverage our knowledge and
9 expertise to drive Bechtel to reduce their forecast?
10 And, as I mentioned, we interviewed another EPC and we
11 had thought about bringing that competitor in to provide
12 us an independent project estimate. We ultimately
13 decided against that because we thought it was a
14 conflict of interest, and we were concerned that if that
15 competitor undercut significantly Bechtel and then we
16 brought them on and they failed to perform, that that
17 would not be a good thing.

18 So we hired an independent third-party
19 estimator. There were, there were three that we
20 evaluated. We brought in one that does bottoms up
21 estimating, and so that we would have a very detailed
22 estimate for Turkey Point Unit 3 that we could use to
23 challenge and leverage Bechtel.

24 Q. Mr. Jones, I almost forgot my original
25 question. Let me, let me go back to that, which is the

1 July 2009 meeting in which you indicated that there were
2 some costs that probably I think would increase. Is
3 that correct? Just yes or no.

4 A. This is a complex project and I can't answer
5 that yes or no. The forecast for, for the scope and for
6 Bechtel's proposed plan, that forecast was higher than
7 the original estimate.

8 Q. Okay.

9 A. That part is, is correct. That did not deal
10 with realtime dollars in 2009.

11 MS. BENNETT: And that's going to lead me --
12 I'm going to skip a couple of other questions and lead
13 into a next series of questions. This is, with the
14 Commission's indulgence, something that the staff is
15 looking at proposing or looking at a rule, something
16 like the fuel clause, the midcourse correction noticing
17 requirement, just to inform us of the types of changes
18 that Mr. Jones is talking about. So with your
19 indulgence, I have about three or four questions on that
20 and I may be done.

21 CHAIRMAN ARGENZIANO: One second.

22 Commissioner Skop.

23 COMMISSIONER SKOP: Yes, Madam Chair. To
24 Ms. Bennett with respect to the line of questioning, is
25 staff suggesting that if there is material change, that

1 the company does not already have a duty to inform the
2 Commission?

3 **MS. BENNETT:** I'm not suggesting anything at
4 this point. We're just gathering information that we
5 find useful.

6 **BY MS. BENNETT:**

7 **Q.** Mr. Jones, the, the EPU project increased
8 approximately, and I'm not going to say the dollar, but
9 during 2009; is that correct? The dollar amount is, is
10 confidential.

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

21 When it comes to an extended power uprate,
22 which, again, is the most complex, the biggest thing you
23 could do to an operating nuclear facility, the only
24 thing that would compare is, is go build a new nuclear
25 plant, is, is you do the engineering and the

1 implementation overlapping. Otherwise, we would spend
2 the next, if we did the LAR first and then the
3 engineering analysis, you'd lose the real time, real
4 time value of energy. And it would take years to
5 complete the engineering and then you'd probably spend a
6 year doing an estimate, an estimate once you completed
7 all the engineering.

8 Okay. So based on when this, this started,
9 just rough order of magnitude, you finish the
10 engineering in about 2011, it would take you about a
11 year to do a detailed estimate that you would -- and
12 then you would have maybe some certainty around maybe
13 plus or minus 25 percent around that, because that would
14 be equivalent to about a level three estimate. And then
15 you would be looking at implementation of the out years,
16 which would take you to 2016, and you would eat up all
17 the value that there is, you know, for the customers.

18 And so I'm just trying to explain the concept
19 about why the Legislature and this Commission, you know,
20 had the wisdom to choose a nonbinding estimate,
21 recognizing that if you're going to get maximum value
22 for the customers, that you're going to do the
23 engineering and implementation, okay, in overlapping,
24 and you're going to integrate it with the refueling
25 outages. And so that's the reason you have a

1 conceptual, you know, estimate to, to start with.

2 And as we complete the detailed engineering,
3 now I have something that, that I can have the
4 construction experts review, do detailed walk downs on,
5 know commodities, how many linear feet of conduit, wire,
6 cable, terminations, and come up with a detailed
7 estimate. We're dealing with about 196 complicated
8 modifications, and to date only 20 percent of the
9 engineering is complete, is final for those, those
10 modifications.

11 Q. And really --

12 CHAIRMAN ARGENZIANO: Ms. Bennett, can I, can
13 I go back, just because something --

14 MS. BENNETT: Okay.

15 CHAIRMAN ARGENZIANO: -- got my attention when
16 Commissioner Skop had asked you a question before. You
17 did say something about a possible rule or rule change.
18 What were you referring to?

19 MS. BENNETT: We were -- staff is beginning to
20 gather information about possibly doing a rule
21 modification to this rule, proposing one, not doing one,
22 that would be your job, requiring maybe a midcourse
23 correction type of, of procedure, noticing requirement
24 like we do in the fuel clause, if it was 10 percent over
25 or under the budget that you approved the prior year.

1 Something -- you know, we're still in the discovery
2 phase of that, and that's why I asked for your
3 indulgence. I know that this particular set of
4 questions is not really directed at you, the motion
5 that you're going to be voting on soon. So if you would
6 prefer me to stop on this --

7 **CHAIRMAN ARGENZIANO:** No, no, no. I just, I
8 wanted to go back because I wanted clarification.
9 Excuse me.

10 Commissioner Skop, did you want to be
11 recognized?

12 **COMMISSIONER SKOP:** Well, I think Ms. Bennett
13 answered my question or the question I would have had,
14 that the line of questioning seems to be in relation to
15 something that I would normally expect would be
16 thoroughly discussed or recommended in a staff
17 recommendation upon the conclusion of the hearing, not
18 articulating every thought of, that what staff may or
19 may not be thinking. But, I mean, staff can continue.

20 It seems to me though, again, for nonbinding
21 estimates, I don't think anyone is really concerned with
22 the, you know, the fact that the estimate changed.
23 Okay? The number at the end of the day is going to be
24 what the number is going to be, subject to prudence
25 review.

1 I think what, what's of concern to me, which I
2 will get into, is that there were or should have been
3 sufficient indicators to management to indicate, not
4 only as your testimony has indicated, that the scope had
5 grown, but indications that there were schedule and cost
6 impacts that were not reported to this Commission, even
7 if they were not definitized or subject to be
8 challenged.

9 The fact is there were indicators that, hey,
10 we've got an issue here, we're working it, we're
11 scrubbing the numbers, we're going to beat on our
12 vendors. Again, the final number is not important to
13 me, but it's a matter of candid disclosure to the
14 Commission. And I think that's what's at issue with the
15 concerns I have. Thank you.

16 **THE WITNESS:** Commissioner Skop, at the same
17 time that, you know, we're looking at that scope, and,
18 again, without discussing the specific number, about
19 half of that number was associated with two
20 modifications. And as, as I mentioned before, it took
21 several months to address that. I do understand your,
22 your point and I can see your point. At the same time,
23 we had, we were evaluating the fact that we could get
24 more megawatts. But clearly, clearly in my mind that
25 was just as preliminary, just as preliminary and, and

1 not, and not ready for any kind of discussion or debate
2 until we completed field, field testing and validation.

3 And as a matter of fact, as a part of that
4 field testing that we did at Turkey Point, you know, we
5 discovered a significant challenge around megawatts that
6 people were ready to sign up for in the summer of 2009.
7 And so, you know, until the engineering is done, the
8 engineering is not done. And --

9 **COMMISSIONER SKOP:** And I respect that. I've
10 read your management response to the Concentric report
11 and I'll get into that if I choose to. I do have some
12 questions.

13 But, Madam Chair, if I may be permitted, I do
14 have one.

15 Mr. Jones, you testified that progress, or I
16 forget, let me see if I can find it real quick,
17 significant progress was made in 2009 regarding nuclear
18 efforts, including the EPU, if I'm correct. I believe
19 that's on page 4 of your prefiled testimony at line 15;
20 is that correct?

21 **THE WITNESS:** I'm sorry, Commissioner. Could
22 you give me the reference?

23 **COMMISSIONER SKOP:** Page 4 of your prefiled
24 testimony at line 15. In relation to the EPU project
25 team, you indicated on line 15 significant progress was

1 made in 2009, including a laundry list of activities; is
2 that correct?

3 **THE WITNESS:** You're referring to the March
4 prefiled?

5 **COMMISSIONER SKOP:** March 1 prefiled
6 testimony, yes.

7 **THE WITNESS:** Sorry. I was looking at the
8 May. Yes.

9 **COMMISSIONER SKOP:** Okay. So if progress was,
10 significant progress was being made in 2009 and
11 everything was going well, then I guess the question I
12 would ask, why was it necessary to replace the EPU
13 management team?

14 **THE WITNESS:** As I stated earlier, the EPU
15 management team, the way it was organized was a large
16 corporate group. It was corporate centric. Their
17 mission of evaluating EPC contractors, getting contracts
18 in place for long-lead materials such as turbine rotors,
19 the conceptual engineering analysis phase and getting
20 the groundwork laid for all that was appropriate.

21 That organization had extended power uprate,
22 all FPL capital projects across the nuclear fleet as
23 well as nuclear fuels. And so it was a, it was a very
24 large organization and it was, it was time to, to make
25 it more site-centric and move, move more into a focus of

1 implementation at an operating nuclear facility and get,
2 you know, Bechtel up to speed and running, get the
3 metrics in place to be able to measure and improve
4 performance, and, and that progress was, was certainly
5 made.

6 **COMMISSIONER SKOP:** Fair enough. And just one
7 follow-up question and I'll yield back to staff, Madam
8 Chair, if I may, on this same issue.

9 The replacement of the EPU management team
10 that you just spoke to, was that not -- did that not
11 occur as, as a direct result of the Executive Steering
12 Committee meeting that was held on July 25th, 2009?

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

23 I was, I was approached by my boss before the
24 meeting in July about his ideas around reorganizing the
25 project and making them site, site-centric and using my

1 operational expertise and my background as having been a
2 plant general manager at a nuclear plant, a site vice
3 president, been involved and being responsible for
4 running a site while major projects are involved. I was
5 the site vice president during a reactor head
6 replacement at Turkey Point. And to use my skill sets
7 to take over the project.

8 And, again, the emphasis was on improving
9 performance and bringing some, some fresh ideas to the
10 project.

11 **COMMISSIONER SKOP:** Thank you. And I
12 recognize again you came into the project late, so, I
13 mean, I'm not being critical of your actions.

14 **CHAIRMAN ARGENZIANO:** Ms. Bennett.

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

16 **CHAIRMAN ARGENZIANO:** Oh, yes. Go right
17 ahead.

18 **MS. BENNETT:** That was ten seconds. I have no
19 more questions.

20 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you, Mr. Jones. And
22 with respect to the replacement of the EPU management
23 team, again, probably I should have tightened up my
24 language but I didn't have the page in front of me. But
25 reading from the staff audit report that has been

1 declassified, I guess the title seems to be removal of
2 the EPU senior management team, and that was in
3 July 2009. So that's, that's what my question was
4 directed to. Thank you.

5 **CHAIRMAN ARGENZIANO:** Commissioners? I have a
6 couple that I'd just like to ask.

7 How, how significant of a decrease in
8 long-term need for new generation has resulted from the
9 recession? And do you believe, I guess, the effects are
10 that this affects the prudence of FPL's decision to
11 continue with the current nuclear projects? Or can you
12 answer that?

13 **THE WITNESS:** Madam Chairman, Witness Dr. Sim
14 can best address that from a feasibility standpoint.

15 **CHAIRMAN ARGENZIANO:** Okay.

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

24 **CHAIRMAN ARGENZIANO:** Okay. And can you
25 address the issue of site banking and how it relates to

1 the NRC's permitting process?

2 **THE WITNESS:** I'm sorry. I didn't hear the
3 question.

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

8 **THE WITNESS:** I'm sorry. Madam Chairman, I
9 don't know what site banking is.

10 **CHAIRMAN ARGENZIANO:** Okay. Okay. All right.
11 Fair enough. Thank you.

12 Okay. Staff has --

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

17 **CHAIRMAN ARGENZIANO:** Okay. Hang on.
18 Commissioner Skop, and then we'll go to the parties.

19 **COMMISSIONER SKOP:** Thank you, Madam Chair.

20 Mr. Jones, I guess I, since I kind of got into
21 this, I might as well just ask some questions after all
22 here. But, again, I reserve my right to ask the full
23 series of questions if we get to an evidentiary hearing
24 posture.

25 Let me see where I'd like to begin. Have you

1 discussed the testimony you've given here today with FPL
2 employees or any FPL employees?

3 **THE WITNESS:** The question is have I discussed
4 my testimony here today with any other FPL employees?

5 **COMMISSIONER SKOP:** Yes.

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

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

12 **THE WITNESS:** Yes, I have.

13 **COMMISSIONER SKOP:** Okay. All right. I guess
14 your prefiled testimony, you became the Vice President
15 of Nuclear Power Uprate on or about August 1st, 2009.
16 And I believe that you testified that you were invited
17 to or attended the Executive Steering Committee meeting
18 that was held on or about July 25th, 2009; is that
19 correct?

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

22 **COMMISSIONER SKOP:** Okay. Did you receive a
23 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 to,
6 part of the purpose of the meeting to discuss a
7 line-by-line item, or line item by line item of the
8 various project controls and cost estimates associated
9 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 a
12 number of different views from the license amendment
13 request, engineering analysis, the design engineering
14 analysis, Bechtel's resource plan, FPL's resource plan,
15 and, and look at that in comparison to the original FPL
16 conceptual feasibility study.

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

22 I guess in the Concentric report it suggests
23 that the -- I want to try and turn to the page so I
24 state this properly.

25 The Concentric report concludes -- and I know

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

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

21 So, again, July, and it's in my letter, there
22 was a lot of scope review that was ongoing, there was a
23 lot of review about how we were going to execute this
24 project, and those all would have significant,
25 significant impact. When you mentioned \$300 million,

1 about half of that was associated with two mods that
2 were under evaluation that took months to complete.

3 **COMMISSIONER SKOP:** I understand.

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

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

20 I think that, you know, the question as a
21 result of this meeting was in a line-by-line comparison
22 of the costs, that there had to be some indication, was
23 there not, that the magnitude, or there were indicators
24 that the magnitude of the cost of the project was
25 increasing. Would you, would you agree that there were

1 indicators that --

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

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

19 I mean, if FPL had a good idea that would, you
20 know, have some positive impact and, you know,
21 certainly, hey, we want to do this additional mod that
22 we didn't consider before, here's the cost
23 ramifications, here's the impact. That's a good thing.

24 Again, the purpose of this proceeding is not
25 to beat up on Florida Power & Light. That's not what

1 I'm here to do. Do I disdain what I feel to be a
2 demonstrated lack of disclosure on some issues that are
3 important to the Commission? Yes. But all I ask as a
4 regulator is you tell me the good and you tell me the
5 bad. Progress did that yesterday. That's all I want to
6 know. I'm not, I'm not going to beat you up on things
7 that your company is doing well. And I think it was
8 constructive in light of some of the things that were
9 going on perhaps to have made some of the management
10 changes.

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

15 **THE WITNESS:** Yes. There was a -- there were
16 a large number of people that were there. There were,
17 of course, the --

18 **COMMISSIONER SKOP:** Let's limit, let's limit
19 it to management. Was Florida Power & Light executive
20 management at that meeting?

21 **THE WITNESS:** Yes.

22 **COMMISSIONER SKOP:** Okay. Was Mr. Silagy at
23 that meeting?

24 **THE WITNESS:** I don't recall.

25 **COMMISSIONER SKOP:** Was Mr. Olivera at that

1 meeting?

2 **THE WITNESS:** Yes.

3 **COMMISSIONER SKOP:** Okay. Now let's take that
4 up. I previously asked you who had requested the
5 meeting in the line-by-line analysis, and you indicated
6 that you did not know. So I will respect your personal
7 knowledge of who may have requested the meeting. But in
8 terms of FPL Group executives that may have attended
9 that meeting, do you have any recollection who may have
10 attended?

11 **THE WITNESS:** Our, our President and CEO of
12 what is now, you know, NextEra Energy Corporation was in
13 attendance.

14 **COMMISSIONER SKOP:** Okay.

15 **THE WITNESS:** My, my boss, the Executive Vice
16 President/Chief Nuclear Officer, Mano Nazar, was present
17 at the meeting.

18 **COMMISSIONER SKOP:** Okay. So in this meeting
19 that, I guess based on the information I'm looking at,
20 which it was an all-day meeting that discussed things
21 beyond the uprates, but with respect to the uprates did
22 so on a very detail-specific basis, line-by-line project
23 review of the costs and such. I believe you testified
24 in response to my question there were indications that
25 the magnitude of the costs at that point in time had

1 shifted upward. They weren't fully definitized but
2 there were indicators, were there not, that the
3 magnitude of the costs were increasing?

4 **THE WITNESS:** Yes, Commissioner. I want to be
5 clear that -- and we refer to that as the project
6 forecast for the, for the in state.

7 **COMMISSIONER SKOP:** Yes, sir. Now subsequent
8 to the live testimony that was given on September 8th,
9 did FPL not revise its cost estimates on September 9th,
10 the next, the last, the day after the testimony was
11 given?

12 **THE WITNESS:** No, Commissioner. The, the
13 executive presentations from July 2009 and, and
14 continuing today have the forecast that, with changes,
15 puts and takes, that was a product of not only the work
16 that was done leading up to July 2009, but the scope
17 reviews that we continued to perform and challenges,
18 including changes that Bechtel made, changes that we
19 made to optimize the, the project. So in, in every
20 executive meeting going forward -- and the, the forecast
21 has been, with, again, some puts and takes, relatively
22 about the same.

23 In fact, as, as I tried to explain earlier,
24 we're now at about 20 percent final on, on engineering.
25 And when we brought in Highbridge, we were using

1 Highbridge to, to try and validate as well as identify
2 additional opportunities to optimize the project. We,
3 our plan, when we brought in Highbridge in December -- I
4 hope they don't mind me mentioning their company's name.
5 It's too late now.

6 **COMMISSIONER SKOP:** I think it's been
7 declassified. I could be incorrect, but --

8 **THE WITNESS:** Okay. Was we really wanted, we
9 really wanted to get that work done, if we could, by, by
10 March, in time to support the May filing. You just
11 don't put this together, you know, May 1 and it goes in
12 on May 3rd, as I'm sure you can appreciate. And the
13 scope of the work and the amount of work for both
14 Highbridge, Bechtel and FPL turned out to be quite
15 extensive. So it took us until April, April to finalize
16 our new nonbinding cost range.

17 **COMMISSIONER SKOP:** Okay.

18 **THE WITNESS:** And I know that sounds like a
19 long time and -- but there's just -- something this big
20 and this complex with changing scope, it, it took us
21 those many months. And in fact I, we didn't want to
22 finalize a new nonbinding cost estimate because you've
23 got to have a basis for it. You've got to be able to
24 stand behind it. It's got to be solid without, without
25 Highbridge.

1 And Highbridge, we didn't complete the work
2 and finalize that until June 16th, but we felt
3 comfortable enough with the preliminary information from
4 Highbridge to finalize our own range, mid April. As a
5 matter of fact, the feasibility analysis that, that's
6 before the Commission, when it comes to capital
7 expenditures, that's when the last inputs -- they
8 literally spend, Dr. Sim and his team spends months on
9 load forecast and all these other alternatives. But the
10 capital input, you can, you can wait almost to the end.
11 And we took, we took every minute of time we had to give
12 him that capital input. So we, my, my project team, my
13 management, did not have certainty around our new
14 nonbinding cost estimate and approve it until April of
15 2010.

16 **COMMISSIONER SKOP:** Okay. And, again, I think
17 this is part of the construction, I mean, constructive
18 discussion I'm trying to have. I'm trying to look at
19 the good, what the company has done well, and what they,
20 you know, you know, we can focus on as positives and
21 also look at some things that we maybe need to do
22 better. But, you know, without being able to have open
23 and transparency in the discussion and deferring issues,
24 it's not able to do that. So I think this is bringing
25 some, some, you know, things to light that frankly need

1 to be discussed.

2 You mentioned the, that the budget information
3 had not been changed as of the day after or shortly
4 thereafter of the live testimony that was given. I
5 guess in my, my briefing that I had with staff, either
6 I've got it wrong or, or I think staff would perhaps
7 disagree, but that's maybe an issue that we can flesh
8 out a little bit further.

9 **THE WITNESS:** Well, I want to be clear that
10 when we -- and in our presentations, we put the original
11 needs filing, that's our, that's our benchmark, and then
12 we put the, we'll put a current month and then -- we'll
13 put the previous month and the current month, and
14 there's some variation on that in there, but the higher
15 number was in, was in the, in the forecast.

16 Now maybe -- this is, this is probably the
17 issue is that we did not have a meeting in August, as,
18 as I recall. Now we were very focused on, on the
19 orderly transition of separating EPU project from major,
20 I'm going to say non EPU projects. It doesn't make it
21 any less or more, more important.

22 **COMMISSIONER SKOP:** All right.

23 **THE WITNESS:** And so, but that meeting on
24 September 9th had been scheduled for, for quite some
25 time.

1 **COMMISSIONER SKOP:** Okay. With respect to the
2 acceptance, I know that you, you in your management,
3 management discussion of the Concentric report and your
4 testimony given today, you testified that, you know,
5 there perhaps was some uncertainty as to what the, you
6 know, the final costs might be based on the potential
7 changes in scope that originated. But you have also
8 testified that there were indicators that that scope was
9 growing, and that's my concern about the disclosure of
10 that. When you have those indicators -- you know, I
11 don't like surprises. I'd rather just, hey, we've got,
12 this is what we're doing and, you know, I can get
13 comfortable with it real quick once I understand it.

14 With respect to the prior EPU management team,
15 do you feel that there was an unwillingness or denial on
16 their part to accept some of the indicators that they
17 were seeing from project controls?

18 **THE WITNESS:** In regards to the senior EPU
19 management team, in my view they were appropriately
20 challenging Bechtel as well as the other vendors. And,
21 again, largely we're talking about, you know, future out
22 year costs. And, you know, those numbers, it's not like
23 getting an estimate for a brake job. It's just, you
24 know, it's, it's, it's not that exact.

25 **COMMISSIONER SKOP:** But those, those estimated

1 costs flow through. I mean, we do a 2009 true-up and a
2 2010, 2011 estimated actual on projected costs. So to
3 some degree those costs are relevant in having, you
4 know, access to material information to evaluate the
5 prudence of such costs is, is not important, is it not,
6 for the Commission to have that type of information and
7 discussion?

8 **THE WITNESS:** I would agree that any
9 information you have is, you know, as long as it's
10 relevant to the project, is, is good information to
11 have.

12 **COMMISSIONER SKOP:** Okay. Let's move quickly
13 to -- and I think I have a few other points. Let's talk
14 about the NRC response letters. Okay. And that was
15 dated August 13th where Florida Power & Light withdrew
16 its St. Lucie 1 LAR application.

17 Did you in your capacity as Vice President of
18 Nuclear Power Uprate discuss the withdrawal of the
19 St. Lucie 1 LAR with the legal department prior to
20 August 12th, 2009?

21 **THE WITNESS:** I don't recall having any
22 conversations with the legal department about the
23 withdrawal of the license amendment request.

24 **COMMISSIONER SKOP:** Okay.

25 **THE WITNESS:** Wait. I had, I had discussions

1 with general counsel in regards to this license
2 amendment request and the position that the NRC staff
3 was taking in regards to our current licensing basis
4 and, you know, what remedies we had through senior
5 management or legal staff, you know, at the NRC to --

6 **COMMISSIONER SKOP:** Is that general counsel of
7 Florida Power & Light or Group at that point?

8 **THE WITNESS:** That's Florida Power & Light.

9 **COMMISSIONER SKOP:** Okay. All right. Did you
10 discuss the withdrawal of that St. Lucie 1 LAR with
11 anyone in FPL's executive management team?

12 **THE WITNESS:** Yes. And if we, you know,
13 earlier, you know, I talked about we had a phone call
14 with NRC on, on August the 11th, members of my project
15 team, members of the NRC project team, where the NRC at
16 a high level had told us about additional information
17 they would need to allow the LAR to go through, and that
18 basically their process, acceptance process does not
19 allow for us to submit or, or follow up.

20 And so, you know, following that, that call
21 with the NRC, I alerted, I alerted my management that we
22 had a problem and that frankly we were quite surprised
23 that the NRC was, was taking, taking that path, because
24 two of the issues were, were outside our current
25 licensing basis.

1 **COMMISSIONER SKOP:** And who was that
2 management? Was that Mr. Olivera or was that your
3 direct supervisor I believe you mentioned?

4 **THE WITNESS:** I notified my, I notified my
5 direct supervisor.

6 **COMMISSIONER SKOP:** Okay. And did anyone
7 discuss this proposed action with regulatory affairs
8 prior to the action being taken?

9 **THE WITNESS:** I didn't have any discussions
10 with regulatory affairs. And, again, just to be clear
11 on the time line, there was already a previously planned
12 meeting for the, my boss and the CEO of our company to
13 meet with NRC commissioners and other members of senior
14 management staff. And, and one of the issues was around
15 spent fuel pool criticalities. That's related and not
16 related to EPU. It's an emerging, emerging industry
17 issue, and certainly that topic was discussed. And
18 then --

19 **COMMISSIONER SKOP:** I'm --

20 **THE WITNESS:** Well, I'm just trying to --

21 **COMMISSIONER SKOP:** Okay. I understand.

22 **THE WITNESS:** -- trying to explain to you
23 that, that this was, was a, a fluid, a fluid situation
24 and we're, you know, discussing, you know, what our
25 options are, what the NRC process is, are they, are they

1 in process, are we in process, and how can we bring this
2 to a successful remedy without withdrawing the LAR, or
3 even if that opportunity exists.

4 Which, which is why, on August the 13th, I
5 called, you know, the NRC management and asked them,
6 asked them about their time line and asked them if their
7 time line could, could go into next week. Because, you
8 know, our senior executives were meeting with their
9 senior executives and we needed time for both sides to
10 vet this out, you know, to determine the best course of
11 action to comply with their processes, and, and to have
12 the least amount of impact on, on the project.

13 And so, again, given the technical complexity
14 of the issue, this was not something that was easily
15 accomplished and took a couple of days.

16 **COMMISSIONER SKOP:** Okay.

17 **THE WITNESS:** In fact, I wasn't, I really
18 wasn't planning on submitting -- you know, my thought
19 was that if we had to withdraw the LAR, that we would do
20 so on the following Monday. And --

21 **COMMISSIONER SKOP:** That would have been --
22 okay.

23 **THE WITNESS:** And I don't want to --

24 **COMMISSIONER SKOP:** But --

25 **THE WITNESS:** -- I don't want to kind of guess

1 at that date. And then the NRC told me that they would,
2 that then the letter from them would come out probably
3 on, would come out on that, on that Tuesday.

4 **COMMISSIONER SKOP:** All right.

5 **THE WITNESS:** But there was a benefit, after
6 further discussion with the staff, is that if we really,
7 to get to the technical detail and get started on, on
8 resolving the issue so that we could resubmit, is if we
9 withdrew a few days earlier, then we could get that and
10 get the public meeting set up so that we could let the
11 engineers work together to come up with a success path.

12 **COMMISSIONER SKOP:** Okay. Let me, let me get
13 back to my point. I think the fact was that the LAR for
14 the St. Lucie Plant 1 was withdrawn. And
15 notwithstanding the fact of why that needed to occur,
16 the Commission was not notified of that until ten days
17 after it happened. Can you offer explanation of why
18 that was and why that's acceptable?

19 **THE WITNESS:** Well, as I, as I stated, on --

20 **COMMISSIONER SKOP:** I'm talking -- let me
21 clarify my question. I'm aware obviously this was a
22 negotiated withdrawal so that it could facilitate the
23 meeting that happened on the 18th and the other things,
24 and I'm familiar with all the details in the letter.

25 My question is FPL made a management decision

1 to request withdrawal of the St. Lucie 1 LAR. The
2 Nuclear Regulatory Commission in its response dated the
3 same day as the transmittal letter approved that request
4 and listed the three things that you spoke of. Why was
5 the Florida Public Service Commission not informed and
6 not provided with that document on behalf of your
7 company?

8 **THE WITNESS:** Commissioner Skop, it was
9 neither a conscious or a decision to notify or not to
10 notify at this particular time. And up until August the
11 18th, I'm not even sure of what the scope, depth and
12 breadth of the NRC issue is and what it'll take to
13 resubmit. Are we talking a two-week resubmittal, are we
14 talking a two-month, are we talking a six-month? So I
15 don't know how big it is --

16 **COMMISSIONER SKOP:** That's my --

17 **THE WITNESS:** -- until after, after that, you
18 know, that all-day meeting. And then, and then, of
19 course, given spent fuel pool criticality, of course,
20 which is complicated and not my area of expertise, there
21 was a series of meetings with our vendor to how big is
22 this and how long will it take you to do what it is the
23 technical staff, you know, wants done.

24 **COMMISSIONER SKOP:** And that goes to the crux
25 of my very question. I know that you're pursuing what's

1 necessary to achieve approval of the LAR. I've got
2 that. What I'm taking exception to is there was a very
3 significant event that FPL took for probably reasons
4 that you've explained. I don't doubt the reasons. What
5 I'm questioning is the fact the action was done, the NRC
6 responded on the 13th, days before Public Counsel and
7 the Intervenors entered into the stipulation that we
8 have before us and days before the start of this
9 proceeding.

10 Now you've testified -- and so my concern is
11 that that document, which I feel to be material or
12 contained material information, was not provided to this
13 Commission as soon as the, either FPL made the request
14 or on the same day the NRC approved the request. It was
15 actually disclosed only after staff put it in the docket
16 ten days later, less than 24 hours before the start of
17 this proceeding.

18 Now why is that important? Because as you've
19 testified to Ms. Bennett's question, that the withdrawal
20 of the LAR will result, and I believe, let me write down
21 what you -- I believe you testified that withdrawal of
22 the St. Lucie 1 LAR will result in material costs and
23 schedule impact, and at that point that impact cannot be
24 quantified because you said it may be two months or two
25 and a half months because of, you know, the day that it

1 was withdrawn at the end of November. That's actually
2 more like two and a half months. But then you further
3 receded from that in response to her questions to
4 indicate it may be longer.

5 I understand we don't control the NRC
6 schedule, but you did also indicate there would be some
7 additional costs associated with that. And so, to me,
8 when you have something that is material, material
9 information, I'm just merely asking the company to
10 disclose it openly. It can do you no harm. We wouldn't
11 be having this discussion if you would have provided it
12 on the day that it was requested and released. But I do
13 feel that it's important and germane to the cost
14 recovery that the Commission is being asked to, to
15 approve now, because we are dealing with estimated and
16 projected costs for 2010 to 2011.

17 So, you know, where am I off base on that, or
18 is that a reasonable request on behalf of the
19 Commission, just to have --

20 **THE WITNESS:** Commissioner Skop, you know, I
21 can fully appreciate where you are at. You know, at the
22 time, you know, my first thought was, was not of the
23 Commission. It was, it was, you know, how big is this
24 and what is, is the impact relative to the total spend
25 on license amendment requests, which was like a hundred

1 and probably 25 million dollars. The additional
2 engineering cost for this is, is, is, is going to be not
3 significant relative to that number.

4 What I would -- but obviously the potential,
5 the potential that it could impact the refueling outage
6 schedule, that could, that could be material. But I
7 haven't made that determination as of this time, and I'm
8 trying to be as open and candid as I possibly can here.
9 That's work that I've got to do.

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

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

1 **COMMISSIONER SKOP:** Okay. Very well.

2 **THE WITNESS:** So the, the posting by the, by
3 the staff was, did not prompt us.

4 **COMMISSIONER SKOP:** Okay. Well, had staff not
5 have put it in the docket, I do have to question whether
6 it would have even been disclosed or discussed in the
7 scope of the testimony. But, again --

8 **THE WITNESS:** I'll have to, I'll have to
9 respectfully disagree with you on that. Is I met with,
10 I met with, with counsel and, and reviewed a draft for
11 posting, and I had, obviously I could have no knowledge
12 what staff was doing or planned to do. And, and, you
13 know, I really care about my integrity here.

14 **COMMISSIONER SKOP:** And I'm not questioning
15 your integrity. I'm not questioning your integrity at
16 all. We're having a very constructive discussion.

17 What I am questioning though is the fact
18 remains is FPL requested or contemplated requesting
19 withdrawal of its LAR for the St. Lucie 1 on or before
20 August 13th, and I think I also heard a meeting on
21 August 12th. NRC approved it the same day. The
22 Commission was agnostic to that fact, and FPL never
23 disclosed that fact. Now I'm not blaming you. I'm just
24 saying that information needs to be transmitted to the
25 Commission so we stay abreast of issues that deal with

1 this.

2 I have a few more questions and then -- Madam
3 Chair.

4 **THE WITNESS:** Okay. But for the record, on
5 the morning of August 13th, my plan at that time, if,
6 after talking to the staff that morning, was that if we
7 had not made any, any headway to, to find a way to get
8 the LAR accepted, that I would withdraw on that Monday.
9 Only after talking to staff, and then they came to the
10 realization that the, the LAR, they were standing by
11 their current position on the current licensing basis,
12 there was benefit to do it early. And so I made the
13 decision on the 13th to go ahead and execute that
14 withdrawal. But that was not my plan when I woke up
15 that morning on the 13th.

16 **COMMISSIONER SKOP:** Okay. And I'm not
17 questioning that.

18 **THE WITNESS:** Okay.

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

25 **THE WITNESS:** Yeah. I understand your point.

1 I appreciate your point. I was just trying -- the,
2 August the 18th, I needed that August the 18th meeting
3 to understand the scope and the breadth of what the
4 NRC's concerns were.

5 **COMMISSIONER SKOP:** And I understand that.
6 I'm not faulting management actions.

7 **THE WITNESS:** I know. But you keep referring
8 to the ten days, Commissioner --

9 **CHAIRMAN ARGENZIANO:** Can I just jump in?

10 **THE WITNESS:** And, and, you know --

11 **COMMISSIONER SKOP:** It's -- I'm sorry.

12 **THE WITNESS:** I can't make a material
13 determination until after I have a meeting.

14 **COMMISSIONER BRISÉ:** Commissioner Argenziano.

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

25 **THE WITNESS:** Commissioner Skop, again, I, I

1 pride myself in being self-critical. My company is very
2 self-critical and we say a, a self-improving, learning
3 organization. So if I sounded defensive, I didn't mean
4 to sound defensive. I was just trying to clarify. I
5 appreciate your position about knowing sooner rather
6 than later.

7 **COMMISSIONER SKOP:** Right. And I'm not being,
8 again, I'm not being critical of you. The ten days that
9 I speak of is the ten days in which the letter was
10 approved by the NRC, actually requested by -- I don't
11 want to repeat the thing, but it's important on this
12 distinction. The ten days is when FPL's counsel
13 actually informed the Commission that the letter existed
14 in response to what staff had put in the docket earlier
15 that day. So I think we're done with that point. I
16 understand why FPL did what it did. I'm just merely
17 saying that I viewed the event as material and the
18 Commission should have been provided notice no later
19 than the 14th, or the day of that event happened. I
20 mean, that to me is my concern.

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

1 that the evidence showed to the contrary, I just want to
2 counsel that if it were framed as a question, it would
3 be objectionable. Thank you.

4 **COMMISSIONER SKOP:** Mr. Anderson, I don't
5 believe I characterized anything. I'm just -- the
6 factual basis is that on or before the 13th of August,
7 Florida Power & Light made a management decision to do
8 something. I don't fault that decision. The same day
9 the NRC responded and approved the FPL request. There
10 was a filing made on the, in the docket on the 23rd of
11 August, late afternoon, hours after staff had placed the
12 document in question into our record.

13 The fact remains that FPL never notified the
14 Commission of the existence of that document until your
15 filing was made. That's my point.

16 Moving on, and if we want to break at 2:00,
17 I'll ask my questions when we come back from lunch.

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

21 (Recess taken.)

22 (Transcript continues in sequence in Volume
23 6.)

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

3

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

6

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

9

10 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'
 11 attorneys or counsel connected with the action, nor am I
 financially interested in the action.

12

13 DATED THIS 3rd day of September,
 2010.

14

15

Linda Boles

 LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
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