

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.
_____ /



VOLUME 9

Pages 1761 through 1831

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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: Tuesday, September 7, 2010

TIME: Commenced at 9:48 a.m.
Concluded at 11:42 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.)

DOCUMENT NUMBER - DATE

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I N D E X

WITNESSES

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EXHIBITS

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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 8.)

CHAIRMAN ARGENZIANO: All right. We're back on, and we'll make sure everybody has come back in and is in the room. And I believe we have two people via telephone. I think it's Alex Larson and Sharon. Are you with us?

MS. WAITE: Yes, ma'am.

MS. LARSON: Yes.

CHAIRMAN ARGENZIANO: Okay. Is that one -- are two people there? Was that Alex or Sharon?

MS. WAITE: It was both of us.

MS. LARSON: Both.

CHAIRMAN ARGENZIANO: Both of you. Okay. All right. And I guess -- can we just go ahead? Hold on one second. Can we go ahead with the telephone -- are these ratepayers? Who are they?

MS. BENNETT: They -- I don't know who they are.

MS. HELTON: Madam Chairman, I'm not -- I just learned that a request, I guess, has been made to the Commission this morning that there are two people on the phone who would like to address the Commission.

CHAIRMAN ARGENZIANO: Okay.

1 **MS. HELTON:** This is irregular. The notice of
2 the proceeding did not contemplate public testimony. So
3 if there were other folks in the, in the, listening that
4 wanted to participate that didn't because the notice did
5 not contemplate it, that may create an issue, number
6 one.

7 Number two, to my knowledge, none of the
8 parties had notice that this would be happening. And
9 number three, if they speak, they would -- I'm not sure
10 where their testimony would fall as far as what to do
11 with it. Is it part of the record? Is it, is it -- for
12 what, for what purpose? So this is, this is a little
13 bit irregular, and I'm really not sure what it is that
14 they want to speak to.

15 **CHAIRMAN ARGENZIANO:** Well, I'm not going to
16 deny the public speaking. Anybody else want to deny
17 them for speaking?

18 And, Commissioner Skop, did you have a
19 comment? If they want to call in and speak, I'm not
20 denying them.

21 **COMMISSIONER SKOP:** Not at this time, Madam
22 Chair.

23 **CHAIRMAN ARGENZIANO:** Anybody else?

24 Okay. I don't know your last name. I know
25 Ms. Alex Larson. And then, Sharon, I don't know your

1 last name. I apologize. So whoever wants to go first.
2 If we can, if we can give it a few minutes, please, and
3 then we, we need to move on. Okay?

4 **MS. WAITE:** Yes, ma'am.

5 **CHAIRMAN ARGENZIANO:** Who is speaking?

6 **MS. WAITE:** This is Sharon Waite.

7 **CHAIRMAN ARGENZIANO:** Waite, is it?

8 **MS. WAITE:** Yes.

9 **CHAIRMAN ARGENZIANO:** Okay. Good morning.

10 **MS. WAITE:** Good morning. Good morning,
11 Commissioners.

12 We are -- I am a ratepayer. I have followed
13 FP&L ever since the early 2000s when they were getting
14 ready to put in the West County Energy Center. I also
15 follow the fact that now they want to ask for money for
16 nuclear plants. And since ratepayers are supposed to
17 pay all of that upfront before they start building a
18 nuclear power plant, I think it's imperative that the
19 ratepayers know exactly what the figures are and that
20 they should be accurate.

21 And I think Mr. Olivera, from what I've
22 noticed about him here locally, he's a very slippery
23 character and he's hard to pin down. And I'm glad that
24 there's a subpoena there for him to make him appear and
25 make him speak the truth. It doesn't seem like anyone

1 else has been able to do that.

2 And as far as not knowing what to do with my
3 testimony, I feel that every effort has been made to
4 keep the public unaware. None of this became -- I
5 didn't become aware of any of this until Saturday,
6 August 28th, when it was in the *Palm Beach Post*.

7 I feel that Florida Power & Light has done
8 everything to sub, submit nothing for the public to see
9 or know about anything. And so the fact that
10 Commissioner Argenziano has issued a subpoena, and I
11 pray that that's been done, I hope he's there -- I was
12 packed and ready to drive up there last night. And so
13 not being able to see him face to face, I want him to
14 realize that as a ratepayer there are a great many
15 people that feel as I do, that their handling of the
16 West County Energy Center was deplorable, they built it
17 on a cert (phonetic) project, and now they're using the
18 water that's our drinking water for that cert project,
19 taxpayer funded, to cool their turbines, and I find that
20 deplorable. And the Sunshine Energy fraud. They don't
21 have a very good record, and I have a great many
22 concerns and that's why I called in today. Thank you
23 very much.

24 **CHAIRMAN ARGENZIANO:** Thank you.

25 Ms. Larson.

1 **MS. LARSON:** Good morning, Commissioners.

2 I, I hear, I hear the doubt in our minds, but
3 we were, I mean, we are prepared. I mean, if, if
4 there's any doubt in the Chair's mind or the --

5 **CHAIRMAN ARGENZIANO:** Ms. Larson, hang on one
6 second.

7 **MS. LARSON:** Okay.

8 **CHAIRMAN ARGENZIANO:** Chris, can you bump up
9 the volume a little bit? We're just having a hard time
10 hearing you. Hang on one moment.

11 **MS. LARSON:** I apologize.

12 **CHAIRMAN ARGENZIANO:** Are we there? Okay.
13 Try that.

14 **MS. LARSON:** Is that better?

15 **CHAIRMAN ARGENZIANO:** Yes. Yes, I think so.

16 **MS. LARSON:** Okay. If they have any doubts
17 about our testimony and if they needed 24 hours notice,
18 I can do that. I can drive up to Tallahassee and be
19 there tomorrow morning at 9:00, if they so desire, if
20 this is a problem to include our testimony or include
21 our thoughts. So I do want to offer that to the board
22 as an option because I did hear the serious doubts of
23 one of the members there saying that they didn't know
24 anything about this and there was no notice and
25 whatever. I mean, I'm willing to do that. Is that, is

1 that the option of the board that they'd rather we do
2 that?

3 **CHAIRMAN ARGENZIANO:** No. I think your
4 opportunity is now. So if you want --

5 **MS. LARSON:** Okay. Well, no. I just wanted
6 to be --

7 **CHAIRMAN ARGENZIANO:** No. I appreciate that.
8 Thank you.

9 **MS. LARSON:** Well, I was, I was ready to get
10 into my truck at noon yesterday, so.

11 We have, we are, we are the ratepayers and we
12 are really concerned. And I haven't slept in 24 hours
13 because I went back and read your transcripts of --
14 because it's true what Sharon had said, we weren't made
15 aware of some of the things, that you are not aware
16 until it comes out in the newspaper. And one particular
17 article did not come out until September 3rd, on Friday,
18 that gave me great pause. Because when I read that even
19 members of the board are being questioned with their
20 integrity, and then I go back and read your transcripts
21 and see that you guys have bent over backwards to
22 accommodate FPL when, when it comes to nuclear power,
23 because I think it's Statute 25-6.042 is the one that
24 covers costs, that they are allowed to recover costs
25 prior to building or even thinking about building a

1 plant.

2 When I read a transcript that says that they
3 have to spend \$16 million with Japanese Steel Works,
4 it's a prerequisite just to get in line, not even, it's
5 not even for the price of the product, it's just to get
6 them in line so that they'll be online in 2018 or
7 whatever, we have some serious problems. Because I
8 think between now, 2010, and 2018 we should be looking
9 at some very serious alternatives in electrical power
10 besides nuclear and gas. And I don't think FPL has put
11 that effort a foot forward in, in, in the scheme of
12 life.

13 I do -- I -- to see the attitude that's
14 written about -- I did send -- when I sent my e-mail
15 request to, to speak in case I didn't drive there, I
16 sent the article that was produced in the *Palm Beach*
17 *Post*. And to read the, the outright haughtiness, I
18 don't even know what other word to use, of just the
19 assumption that they're not getting a fair and partial
20 trial from the, you know, the Public Service Commission
21 is amazing to me. To, to, to play this out in the media
22 as the Public Service Commission not doing their job,
23 I'm ashamed of FPL. I am ashamed of their -- you're not
24 their PR people. You are the Public Service Commission.
25 You are not supposed to be their PR campaign. You are

1 supposed to be, you know, you're supposed to do your
2 job, and I think you have done your job.

3 I have been to several meetings physically and
4 I've, you know, talked in on the phone. And when I,
5 when I, when a headline reads "FPL demands utility
6 official back off," that doesn't give a very good
7 feeling to the consumers out there. Because the Public
8 Service Commission, you also, you're a quasi-judicial
9 board, but you also have a lawyer there that's supposed
10 to be looking out for the public. But generally the
11 public is never at your meetings. That's the saddest
12 part of all. We are not there. There's not a busload
13 today. There's a couple of women who want to speak.

14 And I know that this is, you know, an unusual
15 situation. But, I mean, I, what I'm seeing in the press
16 is smear campaigns, intimidation. I don't even know
17 what words to use to defend you or us, because we
18 deserve better and so do you. The Commission deserves
19 better. FPL needs to be looking at alternatives. I
20 think when, you know, when I started on all this, we
21 were looking at alternatives at one time.

22 And the costs that are being passed on to the
23 consumer without really knowing what the costs are, to
24 have a document presented to the Public Service
25 Commission that has a lot of, the words used were red

1 flags in it. They're a very big corporation, they have
2 a lot of money, and I think they have a lot of actuaries
3 that know exactly how much everything will cost down to
4 the, down to the last peso. So for them to say, oh, no,
5 we made a mistake, it's not very good for the public to
6 be exposed to this.

7 I think that you, you, as a Commission,
8 deserve accurate information. They're a very big
9 corporation. They have a lot of people working for
10 them, including a very good spin campaign PR company,
11 and you deserve correct and accurate information at all
12 times. And that's what the public deserves, the
13 ratepayers deserve. It shouldn't be an assumption ever.
14 There should be no -- I don't even want to say what
15 assume means to anyone here, but we've got some really
16 serious issues with all kinds of issues, global warming,
17 all kinds of things. And FPL's feet really need to be
18 held to the fire to look at alternatives and to also
19 give you accurate information.

20 What I have read in the newspaper in the last
21 several days gives me great pause. I'm ashamed of the
22 whole situation, and I hope the Commission can come to a
23 clear, a clear understanding that the ratepayers are
24 really upset about this. We're not happy. We're not
25 happy with what we're reading in the press. I don't

1 like the spin. And I don't think, I don't think your
2 integrity should be questioned by a company that you are
3 dealing with, because that's what I'm reading in the
4 paper. Your, the Commission's integrity is being
5 questioned. Individual members are being -- I don't
6 even know what words to use, Chairwoman Nancy -- I
7 don't want to screw up your last name. I'm ashamed of
8 it. I'm ashamed of the situation. I think you deserve
9 better and you're not getting that. The Public Service
10 Commission's whole, whole reason for being has been put
11 in question by a very large, very large corporation that
12 throws their weight around.

13 I, I used the word yesterday "putting their
14 foot on your neck." And I don't think you deserve that,
15 I don't think the ratepayers deserve that, and I think
16 that there should be some serious investigations into
17 how everything has come into play that got you to where
18 you are today. Thank you. I'm done.

19 **CHAIRMAN ARGENZIANO:** Thank you, Ms. Larson.
20 We appreciate that. Any questions for Ms. Larson from
21 the members, or Ms. Waite?

22 We thank you both for calling in this morning
23 and, and your interest in your Public Service Commission
24 and hope that you -- Keino? I'm sorry.

25 **MR. YOUNG:** Madam Chairman, good morning.

1 Mr. Moyle has asked that the, the witnesses provide
2 their address.

3 **MS. LARSON:** Okay.

4 **CHAIRMAN ARGENZIANO:** Can they do that offline
5 just to -- you know, if someone could, if staff could
6 get that instead of broadcasting it to the world.

7 **MS. LARSON:** Thank you.

8 **CHAIRMAN ARGENZIANO:** That's -- we can do that
9 offline. Can someone get on the phone and maybe get
10 with them? I think we're very careful about keeping
11 everybody's, you know, information, personal information
12 confidential. I think we can do that for the public
13 also.

14 **MS. LARSON:** Thank you.

15 **MS. WAITE:** Thank you very much.

16 **CHAIRMAN ARGENZIANO:** So what we can do is
17 either -- do we have a number or can someone -- and then
18 you can provide the information.

19 **MS. BENNETT:** May I give my telephone number
20 and e-mail address for work, not home, and they can
21 provide it to me?

22 **CHAIRMAN ARGENZIANO:** Yes, please. Let's make
23 sure they have a pen ready so that they can --

24 **MS. LARSON:** I do.

25 **MS. WAITE:** Yes.

1 **CHAIRMAN ARGENZIANO:** Okay. Go ahead.

2 **MS. BENNETT:** My name is Lisa Bennett. I'm --

3 **MS. LARSON:** Lisa?

4 **MS. BENNETT:** Lisa Bennett. I'm the, one of
5 the attorneys on this docket.

6 **MS. LARSON:** Okay.

7 **MS. BENNETT:** My telephone number is
8 (850) 413-6230.

9 **MS. LARSON:** Uh-huh. 6 -- say that again,
10 dear.

11 **MS. BENNETT:** 6230.

12 **MS. LARSON:** 30. Thank you so much. Should
13 we call you right now or call you a little later?

14 **MS. BENNETT:** Later.

15 **CHAIRMAN ARGENZIANO:** A little later. A
16 little later. She's here in the hearing room right now.

17 **MS. LARSON:** Sorry. No. I apologize.

18 **CHAIRMAN ARGENZIANO:** But Commissioner Edgar
19 --

20 **MS. LARSON:** We want to call you right this
21 second.

22 (Laughter.)

23 **CHAIRMAN ARGENZIANO:** Commissioner Edgar, you
24 had a comment?

25 **COMMISSIONER EDGAR:** I did. I did. Thank

1 you, Madam Chairman.

2 Ms. Larson and Ms. Waite have frequently
3 appeared before the Commission before. And, Ms. Larson,
4 I know in particular you and I have spoken, this is Lisa
5 Edgar, and you had requested copies of PSC agenda
6 notices and other documents of the like. I understand
7 that you did receive those for a while, but maybe
8 there --

9 **MS. LARSON:** And then I fell through the
10 cracks.

11 **COMMISSIONER EDGAR:** And that that should be
12 coming to you again. Has that happened?

13 **MS. LARSON:** Yes, dear. I did get one for
14 September 14th. I did. Thank you very much.

15 **COMMISSIONER EDGAR:** All right. You're
16 welcome. And thank you for your comments and for your
17 support.

18 **MS. LARSON:** Thank you. We'll call in with
19 our addresses. And thank you for your patience with us
20 today.

21 **CHAIRMAN ARGENZIANO:** Okay. Thank you very
22 much, and I'm sure you can follow along. Are we on the
23 Internet, on the web? Okay. Thank you.

24 Okay. Now let's move along to the -- well,
25 are there any preliminary matters that we need to take

1 care of?

2 **MS. BENNETT:** Well, there's an announcement
3 that staff needs to make. There are scripts that are,
4 agendas that are available. I didn't expect to have, to
5 need as many copies, so we're making some more. I have
6 two left. I know the Commissioners have received them
7 and I think some of the parties have received them. And
8 we'll make sure that everybody else gets them also. And
9 --

10 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
11 Skop, you're recognized.

12 **COMMISSIONER SKOP:** Thank you, Madam Chair.
13 And with respect to the revised script, when we get to
14 the discussion of the script in paragraph D, I do have
15 some comments to read into the record. Some of my
16 request for clarification was accommodated; however, I'm
17 not sure that some of the background information was
18 included. So I do have some concerns, and --

19 **CHAIRMAN ARGENZIANO:** Do you want to do that
20 now or do you want to --

21 **COMMISSIONER SKOP:** I'll do that now if it's
22 appropriate. Thank you, Madam Chair.

23 On Friday afternoon, the Commission was
24 provided with a script for the continuation of hearing,
25 and in paragraph D of the script staff provided some

1 analysis regarding FPL's motion to approve the
2 stipulation and defer. And the original script had a
3 conclusion, and it was what I referred to in an email
4 that I sent to Mr. Kiser on Sunday regarding a request
5 for clarification.

6 And the gist of it was in the, in the prior
7 draft, legal staff conclusion one suggested that in sum
8 the Commission can, one, approve the stipulation and
9 defer all issues. The concern I had with that was
10 expressed in the e-mail that was sent to our General
11 Counsel, and I will read the e-mail.

12 "The request for clarification provided herein
13 requests that legal staff conclusions contained within
14 paragraph D, page 7, of the continuation of hearing
15 script that was distributed by staff on 9/3/2010. Rule
16 25-6.0423(5)(c)2 requires, 'The Commission shall, prior
17 to October 1 of each year, conduct a hearing and
18 determine the reasonableness of projected
19 preconstruction expenditures and determine the prudence
20 of actual preconstruction expenditures expended by the
21 utility; or, once construction begins, to determine the
22 reasonableness of projected construction expenditures
23 and the prudence of actual construction expenditures
24 expended by the utility, and the associated carrying
25 costs. Within 15 days of the Commission's vote, the

1 Commission shall enter its order. Annually, the
2 Commission shall make a prudence determination of the
3 prior year's actual construction costs and associated
4 carrying costs. To facilitate this determination, the
5 Commission shall conduct an ongoing auditing and
6 monitoring program of the construction costs and related
7 contracts pursuant to Section 366.08, *Florida Statutes*.
8 In making its determination of reasonableness and
9 prudence, the Commission shall apply the standard
10 provided pursuant to Section 403.519(4)(e), *Florida*
11 *Statute.*" Emphasis added in the e-mail.

12 The concern I had with respect to the
13 clarification of staff's point, and I'll let staff speak
14 to that at the appropriate time, and it seems that they
15 incorporated my request for clarification into the
16 revised motion and provided some commentary. The issue
17 I had with this is that I just got to see this, you
18 know, basically a few moments before the hearing began,
19 and so I've not read it.

20 I guess what concerns me and what was
21 previously stated on the record is that in relation to
22 the rule, construction has started on the EPU projects.
23 And under the proposed stipulation and pursuant to
24 Issue 23 in the Prehearing Order, the Commission has
25 been requested to allow cost recovery of the projected

1 2011 EPU related costs in the amount of \$81,317,333.

2 The proposed stipulation for Issue 23 defers
3 determination of the reasonableness of the projected
4 2011 related costs in the amount of \$81,317,333 until
5 the 2011 NCRC proceeding, but provides for immediate
6 cost recovery from ratepayers according to the
7 stipulation. There was no rule waiver that had been
8 requested in the stipulation. The 2009, there was a
9 rule waiver request in that proceeding.

10 And as previously stated on the record, all
11 prior Commission orders related to the NCRC proceeding
12 have made a specific finding with respect to the
13 reasonableness of projected expenditures prior to cost
14 recovery. You know, I can get into the rest of that,
15 but I need to understand from staff's perspective when
16 we get to that point, you know, whether those concerns
17 are actually addressed in, in the response. I've not
18 had the full time to read that.

19 But it seems as if the prior version, and this
20 is to what I requested clarification of, and I think
21 that staff pretty much cut and pastes the questions into
22 the script, which I guess I was somewhat surprised by
23 because I thought I would just receive an e-mail
24 response on a, on a, you know, a reasonable inquiry
25 internally to our General Counsel.

1 But what concerns me is that the conclusion
2 that was tendered in the document that was provided on
3 Friday seems to support that the Commission can adopt
4 the stipulation and defer everything, and, you know,
5 that seems to be inconsistent with the plain reading of
6 the rule. So hopefully when we get to that, staff can
7 explain and, you know, maybe I can better understand
8 staff's position.

9 But, you know, the other two recommendations
10 on certain issues, and then to move forward with
11 hearing, you know, I'd like to hear from staff's
12 perspective at the appropriate time on that.

13 **MR. ANDERSON:** Chairman Argenziano, may FPL be
14 briefly heard?

15 **CHAIRMAN ARGENZIANO:** Yes.

16 **MR. ANDERSON:** Our company has filed a
17 verified motion to disqualify Commissioner Skop. We
18 believe that we're entitled, and ask for a ruling on
19 that. We believe it's also inappropriate for the
20 Commissioner to proceed on the merits as, in the manner
21 as indicated until there is such a ruling.

22 In addition, we note that this morning -- you
23 know, we have filed a, about a 300-page motion to
24 disqualify with exhibits and things. Commissioner Skop
25 entered an order denying our motion for oral argument.

1 Our company would like to be heard, and we would ask for
2 reconsideration by the full Commission and allowed to
3 hear that. But fundamentally we'd like a ruling on our
4 motion to disqualify before proceeding.

5 **COMMISSIONER SKOP:** Madam Chair?

6 **CHAIRMAN ARGENZIANO:** Commissioner Graham was

7 --

8 **COMMISSIONER SKOP:** To --

9 **CHAIRMAN ARGENZIANO:** To his -- Commissioner
10 Skop to his, to Mr. Anderson's comments, and then
11 Commissioner Graham.

12 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

13 With respect to the company's request for oral
14 argument, oral argument has been denied. The verified
15 motion to disqualify me sufficiently set out the
16 position of the movant and provided an adequate basis
17 on, on which to decide the matter. Accordingly, oral
18 argument was not necessary and denied.

19 At the end of the day, the, I am the
20 respondent to the verified motion to disqualify. That
21 decision rests solely on my shoulders; therefore, the
22 only one that could benefit from oral argument would be
23 me because I'm the ultimate decision-maker. So to me it
24 would be improper for the company to request
25 reconsideration for the full Commission because the full

1 Commission does not make that determination.

2 And with respect to the order, with respect to
3 the verified motion to disqualify, I can speak to that
4 in due term, but at this time it's not appropriate to do
5 so.

6 **CHAIRMAN ARGENZIANO:** Commissioner Graham.

7 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

8 Madam Chair, I'd like to make a motion that we
9 reconsider having the full hearing.

10 **COMMISSIONER EDGAR:** Could you give us a
11 little explanation, please? Not discussion,
12 explanation.

13 **COMMISSIONER GRAHAM:** Well, from the
14 information that I received last week, talking to staff
15 and hearing the staff's position on what we need to do
16 moving forward with this, I think we'd be better suited
17 going with the stipulation and letting staff dig deeper
18 into some of this stuff. They can still depose the
19 people that we have subpoenaed and they can do that on
20 their own. If there's questions that we have, we can
21 give that to staff and let staff handle that. I think
22 that's better now to do it that way and let them, give
23 them the year to do it, rather than trying to squeeze
24 all this in the next two weeks and then try to make a
25 quick decision. So I'd like to make, like I said, the

1 motion to reconsider even having a full hearing now.

2 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, Madam Chair.
4 Again, without any discussion, and, again, there is a
5 pending motion for me. Again, I tried to address the
6 motion for oral argument. There is a verified motion to
7 disqualify as it pertains to me.

8 With respect to the proposed motion suggested
9 by Commissioner Graham, again, if I understand
10 Commissioner Graham's position specifically, he would
11 to -- approve the entire stipulation and defer all
12 issues until next year, therefore, denying Commissioners
13 the ability to ask questions, but more importantly allow
14 cost recovery of \$81,317,333 in projected 2011 EPU
15 related costs, notwithstanding the concerns that staff
16 has mentioned. It seems to me if you're going to go
17 with the full deferral of all issues, why would you not
18 in turn defer cost recovery also? So that's --

19 **CHAIRMAN ARGENZIANO:** Can I interject here for
20 a minute? Let me ask staff or legal what, where that
21 really puts us. Because I was going to make a motion
22 myself.

23 **MR. ANDERSON:** Chairman Argenziano.

24 **CHAIRMAN ARGENZIANO:** Yes. I'm sorry.
25 Mr. Anderson.

1 **MR. ANDERSON:** Yeah. We wish to be very
2 clear, this was another example of participating in
3 decision of our case. We request that there be a ruling
4 on our motion for disqualification.

5 **CHAIRMAN ARGENZIANO:** And there will be. And
6 there will be. Staff, I've asked a question. If you
7 can answer that for me, and then we'll -- we have a
8 motion on the table.

9 **MR. KISER:** I didn't hear a second, Madam
10 Chairman. Was there a second?

11 **CHAIRMAN ARGENZIANO:** I did not hear a second,
12 but I think we went -- I thought -- I recognized -- I
13 didn't know if a second was coming or what was coming,
14 so I recognized a Commissioner when he raised his hand.

15 **COMMISSIONER EDGAR:** And I would like to ask
16 our legal counsel, because I have some questions about
17 the stipulation and I recognize that we've received a
18 slightly new draft, I think. So let me pose this
19 question to our legal counsel.

20 Realizing that we have a variety of motions as
21 preliminary matters before us, is Commissioner Graham's
22 motion, not speaking to the merits of it one way or the
23 other, but is it procedurally timely and/or available
24 for a second and further discussion?

25 **MR. KISER:** Give us just about a minute or

1 two, Madam Chairman.

2 **COMMISSIONER GRAHAM:** Actually if I can, if I
3 can clarify, my motion was just to reconsider having a
4 full hearing. We can talk about the stipulation after
5 we take up the reconsideration.

6 **MR. KISER:** That's correct.

7 **COMMISSIONER EDGAR:** Then I would like to ask
8 a question, which is my memory, and it is going by
9 memory and a lot has happened over the last few days,
10 including, of course, a slight holiday break for most of
11 us, the motion that passed when we were last all
12 together during the, towards the end of the technical
13 hearing before we took the recess of a number of days,
14 the motion that passed, I believe, was to defer
15 consideration of the stipulation until testimony by all
16 witnesses in the case is my memory. I do not have it in
17 front of me.

18 So my question is in order for the stipulation
19 to be available to us for discussion, potential action,
20 but more importantly for discussion, would that motion
21 first need to be reconsidered? And that is a question
22 that I would like to ask our legal counsel.

23 **MR. KISER:** I don't think so. I think that, I
24 think that you can, you can take up Commissioner
25 Graham's motion, if it gets a second, in the, in the

1 course of the business.

2 I think the other issue is the pending motion
3 for disqualification, which is kind of a central issue
4 to who's going to participate and, if they do, what,
5 what status they're in and whether or not their
6 participation is appropriate.

7 But I, but I do think that the, he's, what
8 he's asking is simply to go back and reconsider, which
9 is a motion that's available at any time by a member of
10 the prevailing side, to rescind or reconsider, I mean,
11 the motion to conduct the full hearing. And that's,
12 that's the simple -- that's the only thing he's asked
13 for is that.

14 **CHAIRMAN ARGENZIANO:** And, Mr. Kiser, I could
15 amend the motion since there's no second; is that
16 correct?

17 **MR. KISER:** Yes.

18 **CHAIRMAN ARGENZIANO:** So I'm --

19 **COMMISSIONER EDGAR:** I haven't had the
20 opportunity to second.

21 **CHAIRMAN ARGENZIANO:** I'm amending --

22 **COMMISSIONER EDGAR:** I'm still trying --

23 **CHAIRMAN ARGENZIANO:** I'm sorry. I have the
24 floor. I'd like to amend the motion to include that we
25 reconsider, and I'm going to get it straight, I'd like

1 to reconsider Commissioner -- I'm sorry. Commissioner
2 Graham, could you once again give your, your motion?
3 And then I have an amendment to the motion.

4 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.
5 My motion was to reconsider having the full hearing.

6 **CHAIRMAN ARGENZIANO:** I'm going to take a
7 five-minute recess.

8 (Recess taken.)

9 Commissioner Skop.

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

11 With respect to the pending motion for
12 disqualification with respect to me, I do need to speak
13 to that. Commissioner Graham made his motion before we
14 got to that issue. I addressed the issue denying oral
15 argument for all of the dockets to which the motion was
16 filed regarding my disqualification.

17 I do want to speak briefly on due process
18 rights. As we know, due process is, is very important.
19 This petition was filed Thursday afternoon on the cusp
20 of a holiday weekend. I think due process affords me
21 the ability to not only consider the motion, but to
22 retain independent legal counsel to evaluate my position
23 and my legal options.

24 As it pertains to this specific docket and
25 this specific docket only, that would be Docket 01,

1 excuse me, Docket 100009-EI, which is the nuclear cost
2 recovery proceeding. The basis for disqualification of
3 agency personnel is governed by Section 120.665, *Florida*
4 *Statutes*. And under subparagraph (1) or subsection
5 (1) of that section, "Notwithstanding the provisions of
6 Section 112.3143, any individual serving alone or with
7 others as an agency head may be disqualified from
8 serving in an agency proceeding for bias, prejudice, or
9 interest when any party to the agency proceeding shows
10 just cause by a suggestion filed within a reasonable
11 period of time prior to the agency proceeding."

12 The statute governing disqualification was
13 never mentioned in the motion, and, accordingly, the
14 statutory requirement is fatal to the motion as the
15 motion was untimely. Therefore, as it pertains to this
16 docket and this docket only, the motion is rendered moot
17 and there is no need to address the legal sufficiency of
18 the motion.

19 With respect to the petitioner's rights, the
20 petitioner has adequate remedy of preserving the record
21 with respect to any alleged instances which would
22 constitute reversible error on appeal. And at this
23 point as it pertains to this docket and this docket on a
24 standalone basis, disqualification would be improper,
25 and there will be a forthcoming order to address that.

1 However, there is a statutory requirement that
2 the petitioner did not meet and they did not state this
3 statute in their motion. So, again, I think that
4 addresses that, and I'm content to move forward at this
5 point on this docket. Thank you, Madam Chair.

6 **CHAIRMAN ARGENZIANO:** Okay. Are we back to
7 which motion?

8 **MR. KISER:** I think we're back on Commissioner
9 Graham's motion to reconsider the vote by which a full
10 hearing was voted on by this Commission.

11 **CHAIRMAN ARGENZIANO:** Yes. Okay. And I
12 appreciate that, that --

13 **MR. ANDERSON:** Chairman Argenziano, may we
14 request a five-minute recess to consult --

15 **CHAIRMAN ARGENZIANO:** Let's go five minutes.
16 Let's do a ten-minute recess.

17 **MR. ANDERSON:** Thank you.

18 **CHAIRMAN ARGENZIANO:** Okay.

19 (Recess taken.)

20 Okay. We're back. And I am going to move to
21 the motion that's on the floor.

22 **MR. ANDERSON:** May we be heard, please?

23 **CHAIRMAN ARGENZIANO:** I'm -- you'll be heard
24 in due time. I'm going to move to --

25 **MR. ANDERSON:** Pardon me.

1 **CHAIRMAN ARGENZIANO:** I'm the presiding
2 officer and I will determine, and I am going to move to
3 the motion on the floor, and I'm going to hand the gavel
4 over to Commissioner Skop or Commissioner Brisé, if you,
5 if you don't mind.

6 **MR. ANDERSON:** We have a motion for stay that
7 we'd like to present. It's the right time to do that.

8 **CHAIRMAN ARGENZIANO:** And there's a motion on
9 the floor and I am going to address the motion on the
10 floor first. And I'm going to amend the motion on the
11 floor. Whether it's accepted or it's not, that's the
12 way it is.

13 I move to reconsider the full hearing, as
14 Commissioner Graham had indicated, but also to defer
15 consideration of the stipulation and the recovery until
16 January 2011, and that's my motion.

17 **COMMISSIONER SKOP:** Madam Chair.

18 **CHAIRMAN ARGENZIANO:** He's the chair.

19 **MR. ANDERSON:** FPL would like to state its
20 objection because we are proceeding with Mr.,
21 Commissioner Skop that is in violation of our rights is
22 our position. We wish to seek a stay of this proceeding
23 now --

24 **CHAIRMAN ARGENZIANO:** I hear you.

25 **MR. ANDERSON:** -- and we'd like Mr. Richard,

1 our counsel, to be heard on that, please.

2 **CHAIRMAN ARGENZIANO:** And I'm dealing with the
3 motion on the floor.

4 **COMMISSIONER SKOP:** Madam Chair.

5 **CHAIRMAN ARGENZIANO:** There's a motion -- I'm
6 sorry. That's the chair.

7 **COMMISSIONER SKOP:** No, he, he passed it to
8 me.

9 **CHAIRMAN ARGENZIANO:** Okay.

10 **COMMISSIONER SKOP:** Mr. Anderson, your point
11 is well-taken. As Chairman Argenziano previously
12 stated, there was a pending motion. Again, Chairman
13 Argenziano has the floor at this point. The company
14 will be recognized in, in due order.

15 **CHAIRMAN ARGENZIANO:** And I'll repeat it. I
16 move to reconsider the full hearing, as Commissioner
17 Graham had indicated, but adding the part of the
18 amendment to defer consideration of the stipulations and
19 the recovery until January 2011. Go ahead.

20 **COMMISSIONER SKOP:** Madam Chair, point of
21 clarification on the motion. The stipulation -- I guess
22 the NCRC proceeding is in, typically in September of
23 2011, not in January, and so I was questioning whether
24 that would be taken back up by the, by the new
25 Commission in January.

1 **CHAIRMAN ARGENZIANO:** Well, since it's the
2 Legislature's desire to have a new Commission and it
3 seems to be that there's a majority of the Commission in
4 the hearings that we've had that want to move a certain
5 way, then I say let the Legislature have their desire;
6 push it to 2011 and, and let the new Commission decide.
7 That's my thinking. And if not, that's great. If it's
8 voted down, that's the way it is. And if we move
9 forward with the stipulations, I will not vote for them,
10 but I will have to put some things into the record. So
11 I don't know if it makes a difference, if you're asking
12 me if it makes a difference to me whether it's January
13 or whenever. I think the new Commissioners can make
14 that decision for themselves.

15 **COMMISSIONER SKOP:** Okay. We have a motion.
16 Is there a second to the motion? And Chairman
17 Argenziano's motion, I believe, was to -- can you
18 restate it again for me, please? Thank you.

19 **CHAIRMAN ARGENZIANO:** It was to reconsider the
20 full hearing as Commissioner Graham had indicated, and
21 the amended portion would be to defer consideration of
22 the stipulation and the recovery until January 2011.

23 **COMMISSIONER SKOP:** Okay. And we have a
24 motion. Is there a second? I second the motion. So we
25 have a motion properly seconded. Is there any

1 discussion to the motion?

2 Hearing none, call for a vote. All in favor
3 of the motion, say aye.

4 **CHAIRMAN ARGENZIANO:** Aye.

5 **COMMISSIONER SKOP:** Aye.

6 All opposed.

7 **COMMISSIONER BRISÉ:** Aye.

8 **COMMISSIONER EDGAR:** Aye.

9 **COMMISSIONER GRAHAM:** Aye.

10 **COMMISSIONER SKOP:** Okay. Motion fails.

11 Mr. Kiser, you're recognized.

12 **MR. KISER:** I think we're now back on his
13 motion before the amendment was tried.

14 **CHAIRMAN ARGENZIANO:** Absolutely.

15 **MR. KISER:** So it's -- and now the motion is
16 simply to reconsider the vote that called for an
17 investigation, and that's the question before the body.

18 **CHAIRMAN ARGENZIANO:** Discussion.

19 **COMMISSIONER SKOP:** Okay. Discussion to
20 the -- was there a second to the motion?

21 **COMMISSIONER EDGAR:** I'd like to ask
22 Commissioner Graham to restate it in his own words --

23 **CHAIRMAN ARGENZIANO:** That's what I was going
24 to ask.

25 **COMMISSIONER EDGAR:** -- for me to hear one

1 more time, please.

2 **CHAIRMAN ARGENZIANO:** That's what I was going
3 to ask.

4 **COMMISSIONER GRAHAM:** My motion is pretty
5 simple. It was just to reconsider the hearing. I guess
6 in actuality what you have to do is reconsider the
7 original motion which put us in this position that we're
8 in. So my motion is to reconsider that motion, which
9 was to have a full, a full hearing and then take up,
10 take up the stipulations afterwards if we felt need be.

11 **COMMISSIONER EDGAR:** And I -- I'm sorry.

12 **COMMISSIONER GRAHAM:** So I'm, I'm moving to
13 reconsider that motion.

14 **COMMISSIONER SKOP:** Okay.

15 **COMMISSIONER EDGAR:** I apologize. I didn't
16 mean to cut you off.

17 **COMMISSIONER SKOP:** Is there, is there, is
18 there a second?

19 **COMMISSIONER EDGAR:** Thank you. I was on the
20 prevailing side and I second.

21 **COMMISSIONER SKOP:** Okay. Point of
22 information, Commissioner Graham, just to be clear so
23 that I understand the motion that has been made and has
24 been properly seconded and we will move into discussion
25 at that point. It's my understanding that your motion

1 seeks to reconsider a unanimous vote of this Commission
2 that was conducted the Friday of the last proceeding to
3 conduct a full hearing and to rescind that vote on
4 behalf of the Commission; is that correct?

5 **COMMISSIONER GRAHAM:** That's correct.

6 **COMMISSIONER SKOP:** Okay. So there would be
7 no full hearing and that you would consider the
8 stipulations?

9 **COMMISSIONER GRAHAM:** We would go back to the
10 point we were before we made that motion.

11 **COMMISSIONER SKOP:** Okay. All right. So
12 there's been a motion, it was properly seconded. Is
13 there discussion?

14 **CHAIRMAN ARGENZIANO:** Yes.

15 **COMMISSIONER SKOP:** Chairman Argenziano,
16 you're recognized.

17 **CHAIRMAN ARGENZIANO:** I want to be very clear.
18 So we're, where it is -- if it is the will of the
19 majority to rescind the full hearing and then take up
20 whether or not to -- or is it your intention to take up
21 whether or not to approve the stipulations after that?

22 **COMMISSIONER GRAHAM:** Well, this body is going
23 to have to make some determinations on what we need to
24 do before October 1st, so yes.

25 **CHAIRMAN ARGENZIANO:** So where, if I may ask

1 legal counsel, where does that leave us today? If we
2 just move to reconsider the full hearing to, to --

3 **MR. KISER:** Well, Madam Chairman, I think what
4 it does is it will put you back in the position you were
5 Friday. You then have a number of options before you.
6 For example, you could call another one or two or
7 however many more specific witnesses like you did before
8 if you wanted additional information, you could take
9 additional testimony from the parties. There's a number
10 of things you could do, including at the end of the, at
11 the end of the day taking up the stipulation if you feel
12 that's the best option that's left available. That puts
13 you in a position to be able to discuss other
14 alternatives.

15 If I might suggest, I think the problem with
16 the motion you made was it cut off any consideration of
17 any of those other intermediary discussions. You --
18 that motion, if it passed, it would have, it would have
19 required that you reject the full hearing, and without
20 any other discussion you would have been right back on
21 the stipulation. Now with this approach, they'll be
22 able to discuss whether the stipulation is the best way
23 to go or perhaps there's another one.

24 **COMMISSIONER SKOP:** Madam Chair.

25 **CHAIRMAN ARGENZIANO:** I'm not --

1 **COMMISSIONER SKOP:** I have a question for
2 General Counsel, and I recognize Commissioner Edgar
3 afterwards.

4 Mr. Kiser, with respect to the pending motion
5 to reconsider the Commission's unanimous decision to
6 conduct a full hearing, if that passes and that puts us
7 in a procedural posture of addressing the stipulations
8 at a point in time after the vote on the motion, how
9 does legal staff address the requirement of the rule
10 that the reasonableness of \$81,317,333 in projected 2011
11 EPU related costs, how do we get to a reasonableness
12 determination that's required by our own rule? Are we
13 going to ignore the plain language of the rule and allow
14 cost recovery without hearing testimony as to the
15 reasonableness of that \$81 million that is going to be
16 charged to FPL ratepayers?

17 **MR. KISER:** Commissioner Skop, the motion to
18 reconsider is a nondebatable motion. And what you're
19 suggesting is debate that's not appropriate right now
20 because they've not taken any step to do anything else
21 yet. You're presupposing that that's what the next step
22 is going to be. It may or may not be. But at this time
23 that's really not the, not the order of business. It's
24 a nondebatable motion by, by most parliamentary
25 standards.

1 **COMMISSIONER SKOP:** And, Mr. Kiser, with all
2 due respect, we're in the discussion phase. I am not
3 debating the motion. I asked for legal judgment in
4 terms of what may happen as a result of the Commission
5 taking action so I can make an informed decision on the
6 merits in a fair and impartial manner. So, Commissioner
7 Edgar, you're recognized.

8 **COMMISSIONER EDGAR:** Thank you, Commissioner
9 Skop.

10 My understanding of the motion that I did
11 second did not include what would be the next step. In
12 other words, it was not a part of the motion that we
13 would take up the stipulation next. My understanding is
14 that we have other motions that are before us. I would
15 like to have the motion that is before us, before us and
16 has been properly seconded disposed of, and then I would
17 like to have the discussion as to what options are
18 available to the full Commission.

19 **COMMISSIONER SKOP:** Thank you. Any additional
20 discussion?

21 **CHAIRMAN ARGENZIANO:** Yes. I'd like five
22 minutes.

23 **COMMISSIONER SKOP:** Chairman Argenziano, we'll
24 recess for a five-minute recess. Thank you.

25 (Recess taken.)

1 Okay. At this point we're going to go back on
2 the record. And, Chairman Argenziano, you're
3 recognized.

4 **CHAIRMAN ARGENZIANO:** Thank you. I believe
5 now we have the motion and it's -- we haven't voted on
6 the motion.

7 **COMMISSIONER SKOP:** We have not. We have a
8 motion that's been properly seconded and we are in
9 discussion as to the motion.

10 **CHAIRMAN ARGENZIANO:** Okay. Well, I'd like a
11 moment for, to discuss and to add into the record my
12 concern, and then we can move forward.

13 Rule 25-6.0423(5)(c)2 requires the Commission
14 prior to a decision allowing cost recovery or, in my
15 view, in this, in the instant case prior to acquiescence
16 to, excuse me, and acceptance of stipulation regarding
17 cost recovery and upon hearing, to, quote, determine the
18 reasonableness of projected preconstruction
19 expenditures, end quote.

20 In considering this, the Commission has
21 available to it, one, the February 19, 2010, letter of
22 -- (REPORTER NOTE: Redacted confidential words
23 removed) -- a credible source, alleging that relevant
24 and material information provided to the Commission was
25 in error or incomplete.

1 **COMMISSIONER SKOP:** We're going to move, Madam
2 Chair, we're going to move to strike the name from the
3 record.

4 **CHAIRMAN ARGENZIANO:** I'm sorry. That should
5 have been done. I'm sorry.

6 Information provided to the Commission was in
7 error or incomplete. Two, the June 2010 determination
8 by Concentric Energy Advisors, the petitioner's own
9 investigatory agent, that such incorrect or incomplete
10 submission had occurred. Three, the testimony of
11 Witness Reed in hearing before the Commission in
12 August 2010 corroborating the Commission's reliance upon
13 the May 2009 testimony -- can that name -- that was part
14 of the record.

15 **COMMISSIONER SKOP:** Yes.

16 **CHAIRMAN ARGENZIANO:** Of Mr. Kundalkar, if
17 I've pronounced it wrong, I apologize, verified and
18 reaffirmed by Mr. Kundalkar's September 9th, 2009, as to
19 all matters except his positive, excuse me, his
20 position -- I'm sorry, the petitioner, I lost my line
21 there -- should have reflected the more current
22 information revealed pursuant to the ESC meeting of
23 July 25th, 2009. It should have reflected the more
24 current information revealed pursuant to the ESC meeting
25 of July 25th, 2009.

1 Four, the July 20th, 2010, audit report of
2 Misters Rich and Fisher of the Florida Public Service
3 Commission, and, number five, the release by FPL
4 May 3rd, 2010, of a new EPU project cost estimate range
5 between -- (REPORTER NOTE: Redacted confidential words
6 removed) -- are those numbers confidential?

7 **COMMISSIONER SKOP:** Madam Chair, we'd have to
8 check.

9 **CHAIRMAN ARGENZIANO:** Okay. Estimated
10 range -- let's check on that. I don't want to --

11 **MR. KISER:** Say blank.

12 **CHAIRMAN ARGENZIANO:** Okay. Estimated range
13 between blank and blank greater than the estimate upon
14 which the determination of need was based. So these
15 record components provide a compelling and obvious case
16 that there exists not only a complete absence of
17 credible evidence upon which the Commission could
18 determine what would constitute reasonable costs liable
19 for recovery, but also that any reliance on the
20 information adduced by way of Mr. Kundalkar's May
21 testimony and September affirmation is in error.

22 So that is what I wanted to say pertaining to
23 the issue of the requirement of the statute to make a
24 determination of reasonableness. And with that,
25 Mr. Chair, you can take your vote.

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

2 Any additional discussion as to the motion
3 that's been properly seconded? Okay. The motion on the
4 table is to reconsider the Commission's unanimous vote
5 to conduct a full hearing, and we have a motion properly
6 seconded. All in favor of the motion, signify by saying
7 aye.

8 **COMMISSIONER GRAHAM:** Aye.

9 **COMMISSIONER EDGAR:** Aye.

10 **COMMISSIONER BRISÉ:** Aye.

11 **COMMISSIONER SKOP:** All opposed?

12 **CHAIRMAN ARGENZIANO:** Aye.

13 **COMMISSIONER SKOP:** Aye.

14 All right. The motion carries three to two,
15 and the floor is open for additional motions or
16 additional procedural matters.

17 **CHAIRMAN ARGENZIANO:** I'm sorry. I've got the
18 chair back and I move that we move the stipulations.

19 **COMMISSIONER EDGAR:** Madam Chair, I'm just
20 wondering, I was trying to make a motion when you hit
21 the gavel, and I'm wondering if prior to consideration
22 of the stipulations it might make sense to take up some
23 of the other motions that are before us.

24 The one I'm thinking of most particularly is
25 there is a motion to request to enter in some additional

1 prefiled testimony by an additional witness. And I
2 would like to ask our legal, or --

3 **CHAIRMAN ARGENZIANO:** A motion.

4 **COMMISSIONER EDGAR:** Okay. Then I would, in
5 order to get the record in order, I think that that may
6 be preferable as we move forward. I would move that the
7 testimony of Witness Stall be made a portion, be made a
8 part of the proceedings that are before us.

9 **COMMISSIONER SKOP:** Madam Chair.

10 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

11 **COMMISSIONER SKOP:** To the motion, I think
12 that we need to address whether that testimony would be
13 subject to objection by any of the parties. The
14 testimony appears to be late-filed and bolsters the
15 testimony. So, again, I don't know if that's subject to
16 objection, but, again, I would have questions for
17 Witness Stall.

18 **CHAIRMAN ARGENZIANO:** Mr. Moyle.

19 **MR. MOYLE:** I think, I think FIPUG, depending
20 on how things turn out, will possibly have some
21 questions, and we would reserve our right to object to
22 that testimony should he take the stand. But -- so I
23 just wanted to make that clear.

24 **MR. DAVIS:** SACE has the same position that
25 FIPUG has.

1 **MR. McGLATHLIN:** In response to FPL's motion,
2 we said we did not take a position on the motion itself.
3 But if the motion is granted, we would like for the
4 Commission to schedule the appearance of this witness
5 such that we have some time to prepare for
6 cross-examination.

7 **COMMISSIONER EDGAR:** I would consider that in
8 keeping with my motion.

9 **MR. KISER:** Madam Chairman, this motion hasn't
10 had a second yet.

11 **CHAIRMAN ARGENZIANO:** Well, I have -- I still
12 have a motion on the floor, so my motion goes first, I
13 would imagine.

14 **MR. KISER:** Well, I'm just saying that none of
15 them have had a second that I heard.

16 **CHAIRMAN ARGENZIANO:** I know.

17 **MR. KISER:** Okay.

18 **CHAIRMAN ARGENZIANO:** We didn't have a chance.
19 So I move the stipulations.

20 **COMMISSIONER SKOP:** Madam Chair.

21 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Point of information as to
23 when you indicate you move the stipulations, is that to
24 accept the stipulations as they're written, which would
25 allow for immediate cost recovery, or is that to getting

1 back to what you had previously stated about, you know,
2 deferring the stipulations? I don't know. I'm trying
3 to better understand the motion.

4 **CHAIRMAN ARGENZIANO:** No. There was a vote
5 not to defer the stipulations, so I'm putting it on the
6 table now. I'm not wasting any time. Let's go. That's
7 where we're headed, so let's go. Move the stipulations.
8 I move the stipulations.

9 **COMMISSIONER SKOP:** Okay. All right.

10 **CHAIRMAN ARGENZIANO:** Commissioner Graham, I'm
11 sorry.

12 **COMMISSIONER GRAHAM:** I'm sorry, Madam Chair.
13 I guess I'm trying to understand. So your motion was to
14 not take up the stipulations until after the first of
15 the year.

16 **CHAIRMAN ARGENZIANO:** No, Commissioner Graham.
17 You voted down that.

18 **COMMISSIONER GRAHAM:** Okay.

19 **CHAIRMAN ARGENZIANO:** What I'm moving now is
20 to go ahead and take up the motion that we're inevitably
21 getting to. Let's go ahead and move the --

22 **COMMISSIONER GRAHAM:** Move to approve, move to
23 approve the stipulations as they were on the table
24 August 27th?

25 **CHAIRMAN ARGENZIANO:** Absolutely. Yes. Yes.

1 **COMMISSIONER GRAHAM:** Okay. I second.

2 **CHAIRMAN ARGENZIANO:** We have a second.

3 **COMMISSIONER SKOP:** Madam Chair?

4 **CHAIRMAN ARGENZIANO:** There's a discussion.

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Madam Chair, it's just
7 been brought to my attention there was a filing, another
8 filing that was, I guess, put in the record this morning
9 at 9:23 a.m. that seeks to amend.

10 **CHAIRMAN ARGENZIANO:** The revised
11 stipulations, which I just got handed to me five minutes
12 ago too, so.

13 **COMMISSIONER SKOP:** The revised stipulations.

14 **MR. ANDERSON:** May I clarify, please? The
15 proposed stipulations of issues would provide the same
16 things as last week. The change is that we filed new
17 motion papers that contained some of the additional
18 legal points we talked about last week, but there's no
19 alteration to the --

20 **CHAIRMAN ARGENZIANO:** Stipulation.

21 **MR. ANDERSON:** -- to what the effect of the
22 stipulations would be.

23 **CHAIRMAN ARGENZIANO:** We have a second.

24 **COMMISSIONER GRAHAM:** I second to the
25 stipulations that we had last Friday.

1 **CHAIRMAN ARGENZIANO:** Okay.

2 **COMMISSIONER GRAHAM:** And then after that,
3 after we get it on the table, then they can tell us the
4 changes that we made and we can amend that motion at
5 that time.

6 **CHAIRMAN ARGENZIANO:** Discussion.
7 Commissioner Skop.

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

9 With respect to the proposed stipulations,
10 this goes back to the e-mail that I sent our General
11 Counsel seeking legal clarification of what is contained
12 in a continuation of hearing script that was distributed
13 Friday afternoon, and I sent the e-mail and I never
14 really got a response. The response seems to be in this
15 new script. Okay?

16 But let me get down to the central issues
17 here related to why I believe it is not in accordance
18 with the rule to take up the stipulations. Okay?

19 We know what the rule says. The rule, you
20 know, it's been recited a couple of times. Rule
21 25-6.0423(5)(c)2 requires the Commission shall determine
22 the reasonableness of projected construction
23 expenditures, emphasis added on that one specific part.
24 We are not determining the reasonableness of
25 \$81 million, over \$81 million of expenses. What is

1 happening here as a result of the stipulations is that
2 the proposed stipulation for Issue 23 defers
3 determination of the reasonableness of the projected
4 2011 EPU related costs in the amount of
5 \$81,317,333 until the 2011 NCRC proceeding, but provides
6 for immediate cost recovery from ratepayers. Okay? So
7 they're saying pay us now, we'll litigate later. That's
8 what the stipulation says.

9 Accordingly, the legal staff's conclusion that
10 you can accept the stipulations, you know, seems to be
11 in direct conflict with the express requirement of the
12 rule that the Commission shall make this determination
13 of reasonableness. Under the rule, the projected 2011
14 EPU related costs in the amount of \$81,317,333 cannot be
15 recovered without a determination regarding the
16 reasonableness of projected construction expenditures.

17 Furthermore, all prior Commission orders
18 related to the NCRC proceedings made a specific finding
19 with respect to the reasonableness of projected
20 expenditures prior to cost recovery. See Commission
21 Order PSC-08-0749 at 3. And during the NCRC proceeding
22 in 2008 there was a specific staff finding of the
23 reasonableness of cost.

24 We are dealing with 81, over \$81 million of
25 projected cost related to the EPU project that we have

1 not heard testimony for as to the reasonableness, yet
2 we're being asked, this Commission is being asked by the
3 stipulation, I mean, by the parties to just approve
4 that. You know, it would be better taken if -- since
5 everything is being deferred, the entire FPL portion of
6 the case under the stipulations, why is cost recovery
7 not being deferred specifically for the EPU part that
8 seems to be such a part of consternation of staff's
9 concerns? Notwithstanding the fact that, you know, in
10 the revised motion FPL states on page 4, it talks
11 about -- hold on real quick. Actually on page 3, let me
12 get to this here. Okay. Page 2, I'm sorry, the
13 August 13, 2010, withdrawal of the St. Lucie 1 EPU
14 license amendment request is another example of a recent
15 event that supports the need for more time to conduct
16 discovery and support approval of the stipulation.
17 Well, that may be all well and true, but, you know,
18 there's been many concerns raised regarding the EPU.
19 You had the removal of the EPU senior management team
20 that was not disclosed to this Commission by staff's own
21 admission in the revised hearing script, and that seems
22 to be the crux of staff's concerns. Well, Mr. Kundalkar
23 was on the stand and he didn't disclose that back last
24 year. So, again, there seems to be a lot of issues.

25 But what gets to me is that the stipulations

1 and acceptance thereof denies me as a Commissioner the
2 ability to ask questions related to the accuracy, the
3 veracity and the timeliness of information provided to
4 the Florida Public Service Commission in relation to
5 this docket and the prior year proceeding. But what
6 really strikes my goat is that we're poised to approve
7 \$81 million of projected costs, noting that we have red
8 flags, and, and no one wants to have a discussion about
9 deferral of those costs. They want to just put it to
10 the ratepayers.

11 **CHAIRMAN ARGENZIANO:** Commissioner Skop, we're
12 in discussion.

13 **COMMISSIONER SKOP:** Madam Chair, yes. So
14 that's, that's my discussion. I'm just trying to
15 understand why we would -- you know, I am -- let me
16 think of the right word.

17 In, in my view, I, I don't understand why
18 Public Counsel would be in support of that. I mean, it,
19 to me, and our legal staff, it's in, it seems to be in,
20 in sharp contrast to the express language of the
21 Commission's rule. And so it seems like we're just
22 doing this on the fly because we want to defer it.
23 Let's charge the ratepayers now \$81 million and we'll
24 talk about it next year, and denying me the opportunity
25 to ask questions. That just doesn't seem to be, comport

1 with the interest of justice and, and what we should be
2 doing as a Commission, Madam Chair.

3 **CHAIRMAN ARGENZIANO:** Commissioner Graham.

4 **COMMISSIONER GRAHAM:** Madam Chair, I call the
5 question.

6 **CHAIRMAN ARGENZIANO:** We have a motion and a
7 second.

8 **COMMISSIONER SKOP:** Madam Chair, we have a
9 motion, we have a question. I respect that. If the
10 motion passes, I have some things at that point that I'd
11 like to proffer into the record.

12 **CHAIRMAN ARGENZIANO:** That's fine. I think
13 every -- if we're done with the discussion, that was the
14 point of discussion. Get your discussion in. I've made
15 my comments, you've made yours. Any other discussion on
16 the motion? We have a vote. We have a second. All
17 those in favor.

18 **COMMISSIONER EDGAR:** Wait.

19 **CHAIRMAN ARGENZIANO:** Sorry.

20 **COMMISSIONER EDGAR:** I thought we were
21 going to -- I have a question. That is I would like to
22 hear from the parties, from FPL and then from OPC as to
23 the differences between the draft stipulations that were
24 put before us.

25 **COMMISSIONER SKOP:** Madam Chair, it's been

1 called a point of order.

2 **CHAIRMAN ARGENZIANO:** There's been --

3 **COMMISSIONER EDGAR:** And that was something
4 that I believe I was told we would have the opportunity
5 to do.

6 **CHAIRMAN ARGENZIANO:** I think --

7 **COMMISSIONER SKOP:** Point of order, Madam
8 Chair.

9 **CHAIRMAN ARGENZIANO:** To the point.

10 **COMMISSIONER SKOP:** Commissioner Graham has
11 called the question to order. It's now in the posture
12 for a vote.

13 **CHAIRMAN ARGENZIANO:** It is. All those in
14 favor, aye.

15 **COMMISSIONER BRISÉ:** Aye.

16 **COMMISSIONER EDGAR:** Aye.

17 **COMMISSIONER GRAHAM:** Aye.

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

19 **COMMISSIONER SKOP:** Aye.

20 **CHAIRMAN ARGENZIANO:** Aye.

21 The motion passes.

22 **COMMISSIONER SKOP:** Madam Chair, I have items
23 to proffer into the record.

24 **CHAIRMAN ARGENZIANO:** Okay. And we have to --
25 okay. Commissioner Skop, you're recognized.

1 **COMMISSIONER SKOP:** Thank you, Madam Chair.
2 By virtue of the acceptance of the stipulation, the
3 effect of which is to require FPL ratepayers to incur
4 \$81,317,333 of projected 2011 EPU related costs, without
5 having questions as to the reasonableness of those costs
6 answered, noting the red flags, noting the testimony
7 we've heard, noting the Concentric report, noting
8 staff's concerns and the audit report, you know, I'm
9 just at a loss for speech. Okay?

10 I've been very favorable of approving nuclear
11 costs. I have never denied, to my knowledge, a penny in
12 requested recovery. But in every instance where I have
13 approved recovery of costs that are passed to consumers,
14 I have had a, at least a conscience about myself that I
15 was making the right decision. Okay?

16 Here there's been no discussion. What I see
17 is a complete railroading of the process. And what does
18 that do? It affects the ratepayers. We're going to
19 make them pay now and we'll litigate this later when I'm
20 not here to ask questions, my colleague, Chairman
21 Argenziano, is not here to ask questions.

22 So what I would like to proffer in the record
23 is some of the questions that did not get asked, and I
24 think I have the right to do so because I will not be
25 here next year as a result of this matter.

1 Specifically with respect to Mr. Olivera, I
2 believe, and correct me, legal counsel, before I go to
3 this, by virtue of the vote that just occurred, I will
4 not get to ask questions of Mr. Olivera; is that
5 correct?

6 **MR. KISER:** Yes.

7 **COMMISSIONER SKOP:** Okay. And I will not get
8 to ask questions of Mr. Kundalkar.

9 **MR. KISER:** Yes.

10 **COMMISSIONER SKOP:** And I will not get to ask
11 questions of Mr. Anderson.

12 **CHAIRMAN ARGENZIANO:** Commissioner Skop, can I
13 just -- I don't mean to interrupt you. We did want to
14 mention that Mr. Kundalkar was not here today because
15 there was an error in the subpoena that the PSC sent
16 out. And then I think in trying to correct the error,
17 maybe Mr. Kundalkar couldn't be found afterwards. So he
18 is not here today to speak to. So that's why I --

19 **COMMISSIONER SKOP:** All right. Thank you,
20 Madam Chair.

21 And, again, I think it's a complete affront of
22 the Commission to deny a Commissioner the ability to ask
23 questions. I think it goes without saying I have a
24 commanding understanding of this docket. I was
25 Prehearing Officer, I'm well versed in the record, and I

1 have specific questions that won't get answered. And I
2 find that to be -- I respect the view of my colleagues
3 and I respect differences of opinion, but this is not a
4 difference of opinion. This is denying me the
5 opportunity to ask questions that otherwise I would have
6 been afforded the opportunity to ask.

7 With respect to Mr. Olivera, I would proffer
8 the following questions into the record: Generally
9 whether Mr. Olivera attended the July 25th, 2009,
10 Executive Steering Committee meeting. If Mr. Olivera
11 had personal knowledge as to who requested the meeting.
12 Was that meeting in fact requested by FPL Group Chief
13 Executive Officer Jim Robo? At that meeting whether a
14 line-by-line review of EPU costs was conducted at that
15 meeting. Whether the meeting was conducted on a
16 Saturday. Whether at that meeting Mr. Olivera had
17 personal knowledge that the indicators related to the
18 magnitude of EPU cost estimate had substantially
19 increased. Whether in Mr. Olivera's personal knowledge
20 other members of the EPU management team had knowledge
21 of that same information.

22 I would ask Mr. Olivera with respect to the
23 FPL Group decision to remove the EPU senior management
24 team, what his personal knowledge would have been in
25 relation to that decision, why that decision was made by

1 FPL Group executives and not Mr. Olivera. I'd like to
2 ask questions along that line of questioning.

3 Beyond that, I would like to ask questions
4 regarding the meeting on Saturday, if it was held on
5 Saturday, and the decision to remove the EPU senior
6 management team and the indicators that resulted from
7 the line-by-line cost estimate of the EPU related to the
8 magnitude of the cost estimate had substantially
9 increased.

10 If all this was important enough to, you know,
11 to cause management to take action to remove the senior
12 management team and have a meeting on Saturday, and FPL
13 Group executives knew and FPL executives knew and, you
14 know, ascertained who knew, then why was this not
15 important enough to inform the Commission of?

16 I would also ask Mr. Olivera if he had
17 personal knowledge as to why the Commission was not
18 informed about the EPU senior management removal until
19 July 2010, one year later. I would also ask Mr. Olivera
20 when he was aware of the company's position to
21 withdraw the St. Lucie 1 LAR. I would also like to ask
22 Mr. Olivera if he reviewed the employee complaint
23 letter, and, if so, when? I would also like to know
24 whether Mr. Olivera had personal knowledge regarding, or
25 provided any comments to FPL employees regarding the

1 draft Concentric report or discussed the draft
2 Concentric report.

3 I'd like to ask Mr. Olivera whether in his
4 personal view as President and Chief Executive Officer
5 of Florida Power & Light whether it would be acceptable
6 for FPL to withhold material information from this
7 Commission. Again, there are instances in the record
8 that have been discussed in this proceeding regarding
9 the magnitude of the EPU cost estimate, the replacement
10 of the EPU senior management team and the NRC letter.

11 I would further like to ask Mr. Olivera
12 whether it was acceptable for an FPL witness to give
13 false testimony to this Commission. To that I would
14 have anticipated a vigorous objection. To that
15 objection I would have stated that Mr. Reed testified in
16 his professional opinion that Mr. Kundalkar's testimony
17 was both inaccurate and incomplete.

18 Now in some instances a reasonable person
19 might conclude that an inaccurate and incomplete
20 testimony given under oath to this Commission would be
21 false testimony. Now the question remains whether
22 Mr. Kundalkar had personal knowledge by virtue of his
23 attendance at the July 25th, 2009, meeting. If he had
24 knowledge and that knowledge is charged to him or
25 constructively charged to him from the company's

1 perspective, then a knowingly false statement under oath
2 implicates perjury. And I'm not accusing anyone of
3 anything. I'm just merely stating this is a relevant
4 line of inquiry to ascertain the veracity of statements
5 made under oath to the Florida Public Service Commission
6 and the accuracy and timeliness of information provided
7 to this Commission.

8 The Commission has separate and distinct
9 duties from that of the intervening parties to make its
10 own determinations. And as a quasi-judicial officer,
11 there is case law that supports me being able to call
12 witnesses on my own, and I have that case law upstairs
13 and I can cite it. There are many hats that a
14 quasi-judicial officer wears, and that's documented in
15 case law. Okay?

16 But the bottom line is when it gets down to
17 the veracity of statements made to this Commission, it's
18 not Public Counsel's job to balance the veracity of
19 those statements.

20 **CHAIRMAN ARGENZIANO:** Commissioner Skop, do
21 you have questions?

22 **COMMISSIONER SKOP:** Madam Chair, just briefly.
23 Briefly. Yes. Yes. I have more questions.

24 **CHAIRMAN ARGENZIANO:** In the record?

25 **COMMISSIONER SKOP:** Yes. Okay. But it's

1 not -- it's my job as a Commissioner, this Commission's
2 job to ascertain the veracity of statements. So
3 additional questions that I would like to ask with --
4 and I would, I would proffer that Mr. Olivera would say
5 that it is not acceptable for FPL to withhold material
6 information from this Commission, and I would fully
7 expect that Mr. Olivera would testify that it's not
8 acceptable for an FPL witness to give false testimony to
9 this Commission.

10 So my final question that I would proffer to
11 Mr. Olivera would be since the legal and regulatory
12 affairs departments of your company are responsible for
13 providing accurate and timely information to the PSC,
14 and this obviously did not occur on multiple instances
15 in this specific docket, then what management changes,
16 Mr. Olivera, are you going to make to prevent this from
17 happening again?

18 With respect to Mr. Kundalkar, if
19 Mr. Kundalkar took the stand, I would expect that he
20 would take the Fifth Amendment. But, again, he's not
21 here. But if he were to be presented, I would proffer
22 the following questions that would address why he failed
23 to correct and amend the sworn testimony given to this
24 Commission on September 8th, 2009, to address the fact
25 that the magnitude of the EPU cost estimate had

1 substantially increased.

2 If you look at the time chronology that I
3 would have provided, there was an initial estimate that
4 was provided at the need determination, and that scope
5 grew and it's still growing. So, again, there are a lot
6 of things that I would have asked Mr. Kundalkar.

7 The final two questions with respect to his
8 testimony is the testimony he gave, sworn testimony on
9 September 8th, 2009, Mr. Kundalkar amended his job
10 title, but he failed to disclose his removal from his
11 prior position and, more specifically, that the EPU
12 senior management team had been removed. And staff has
13 raised concerns that removal of the EPU management team
14 has given them great consternation. We learned about
15 that in July 2010. And the problem with that seems to
16 imply, in staff's opinion, cost and schedule impacts,
17 and we've had testimony to state that that's material
18 information. So I would also ask Mr. Kundalkar whether
19 in his view silence is an omission and take it from
20 there.

21 But, Madam Chair, I just wanted to get my
22 concerns on the record. I think it's very disappointing
23 on behalf of this Commission in the interest of justice,
24 on behalf of the people of the State of Florida that I'm
25 not afforded to get to the truth in this proceeding.

1 Thank you.

2 **CHAIRMAN ARGENZIANO:** Well, Commissioner Skop,
3 thank you.

4 I have some questions that I would have asked
5 Mr. Kundalkar that I do want in the record since I will
6 not be here, and you'll just have to bear with me and
7 I'll make them as quick as possible.

8 I would have asked Mr. Kundalkar the following
9 questions: Were you present at the July 25th, 2009, ESC
10 Executive Steering Committee? Was information disclosed
11 at that meeting which related to your testimony in
12 May 2009? Did that discussion at the ESC meeting differ
13 from your testimony in May 2009? Did you prepare for
14 your testimony before the PSC in September 2009 and with
15 whom did you make those preparations with? Did you
16 advise the person you prepared, you prepared your
17 testimony with that there were differences in costs
18 stemming from the ESC meeting? At the September hearing
19 did you make any changes to your prefiled testimony
20 besides the job title change? And didn't you think it
21 was important to your testimony to reflect the
22 information the ESC brought forth? And those are my
23 questions. With that, is there any other discussion?

24 **COMMISSIONER EDGAR:** Yes.

25 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Thank you, Commissioner
2 Argenziano.

3 I have a few comments. The first is that it
4 is somewhat of concern to me to hear a criticism of this
5 Commission for not allowing certain actions, especially
6 when I believe that a vote on the stipulations was
7 forced upon me and perhaps other members. I tried to
8 make a motion on two different times. I stated at least
9 once and I think twice that one of the reasons to
10 support the motion that passed was so that we would be
11 in a position to discuss other options. That was not
12 allowed to me, was not afforded to me. One of those
13 options would have been to hear from some of the
14 witnesses that are here today, and I would have liked to
15 have had the opportunity to propose that.

16 I also would like to say that comments that I
17 made when we were in this hearing a week or two ago I
18 continue to agree with, which is that it is my
19 understanding of the stipulations that were supported by
20 OPC and by FIPUG as representatives of all consumers and
21 of particular consumer groups that the stipulation has
22 built into it protection for the ratepayers, and I
23 believe that to be the case.

24 I also believe that part of the basis for the
25 stipulations as recommended to us by our staff

1 previously is that it will allow our staff and all
2 parties to delve into questions that have arisen to
3 date, which include: Should more current information
4 have been given to the Commission at a certain point in
5 time? Whether any difference in estimates would have or
6 could have impacted decisions on amount of cost recovery
7 both in 2009, in 2010 and in potential proceedings
8 before us. Whether the withdrawal of the application by
9 FPL to the NRC impacts issues of past, current or
10 potential future cost recovery.

11 And I would request and direct as just one
12 Commissioner that over the next months that our staff,
13 through their normal process of depositions and
14 investigation, look into those questions, and I know
15 that all parties will participate in that. Thank you.

16 **CHAIRMAN ARGENZIANO:** And, Commissioner Edgar,
17 I'm going to remind you that you didn't have the floor.
18 When you brought up those motions, there were motions
19 already pending. Someone else had the floor and you
20 were out of order, so it couldn't happen. You voted
21 no -- you could have voted no if you felt forced upon
22 the stipulations, and that's procedure. It seems to be
23 that's what happens here all the time, and this time it
24 was my call. That's the way it is.

25 Staff, anything further?

1 Commissioner Graham.

2 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.
3 The, the stipulations that we approved were the original
4 stipulations that we had on the table that were last
5 Friday, August 27th. Now my understanding is that there
6 are some new stipulations that came forward today. I
7 would like to hear what those, what the differences were
8 between the two. And if we choose to make amendments to
9 the stipulations, I think this would be now the time to
10 do that.

11 **MR. KISER:** Madam Chair, Commissioner Graham,
12 I think what's been represented is that the actual
13 informational part has not changed. What, what they did
14 was they supplied some additional legal authority for
15 some of those positions. So it wouldn't change what the
16 actual positions were that were in the stipulation. It
17 just, the legal basis for that was they embellished on
18 that a little bit with some additional legal authority.
19 I've not reviewed that, so I don't know that to be the
20 case myself, but that's what was represented. If you
21 would still like to go further, obviously the Chairman
22 can recognize the parties involved and, and get to the
23 bottom of exactly what our differences between the
24 revised one and the one that was the subject of your
25 motion.

1 **COMMISSIONER GRAHAM:** I just want to make sure
2 that you, the legal staff are comfortable with the
3 stipulations. The ones that we approved were the
4 original ones on August 27th.

5 **MR. ANDERSON:** May I provide that
6 clarification? Because the file stamp and dates of the
7 stipulation refiled today show it's, it is just the same
8 document. That's our intention was to put the same
9 stipulation document before you.

10 **COMMISSIONER GRAHAM:** Like I said, once again,
11 I just want to make sure our legal staff puts us in a
12 position that we need to be in before we adjourn this
13 meeting.

14 **MR. DAVIS:** Madam Chair, may I be recognized?

15 **CHAIRMAN ARGENZIANO:** First I think the
16 Commissioner needs an answer from legal staff.

17 **MR. KISER:** We're comfortable that what was
18 represented is that -- the substance of that stipulation
19 is fully embodied in your motion, and the revised
20 doesn't change that. It just provided additional legal
21 authority in those areas that were up for some question.

22 **COMMISSIONER GRAHAM:** So then you're fine
23 where we are?

24 **MR. KISER:** Yes.

25 **COMMISSIONER GRAHAM:** Okay. Thank you.

1 **MR. DAVIS:** Madam Chair, I just wanted to make
2 it clear though that one thing that did change between
3 the time that the original stipulation was done and the
4 vote that was taken today is that SACE objects to the
5 stipulation. And we made that clear previously, but I
6 wanted to make that clear on the record today as well.
7 Thanks.

8 **COMMISSIONER SKOP:** Madam Chair.

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

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

11 With respect to the proposed stipulation or
12 revised stipulation, I think what's important is, if I
13 understand the procedural posture that the Commission's
14 in, is that the Commission approved, although I did not
15 vote in favor of, the stipulations dated August 18th, on
16 or about August 18th. And those were the stipulations
17 that FPL had spoke on the record to withdraw, but only
18 to resubmit and not withdraw.

19 My question to General Counsel is that General
20 Counsel stated that he has not reviewed the
21 September 7th, 2010, stipulations. So does that mean
22 based on the Commission action that's moot because we're
23 reverting back to the prior stipulations? Because it is
24 important.

25 **MR. KISER:** I do think that what this motion

1 covers is the original stipulation that was before this
2 body that's dated August 17th. And staff just --
3 because the other -- the revision again I got this
4 morning like everybody else did, and I leafed through it
5 as far as I could before intervening issues came up and
6 I wasn't able to complete that review. But staff has
7 assured me and showed me where the, the guts of that
8 stipulation have remained the same.

9 **CHAIRMAN ARGENZIANO:** Commissioner Brisé.

10 **COMMISSIONER BRISÉ:** Thank you, Madam
11 Chairman.

12 My comments are sort of to look at where we
13 are and where we're going to be with respect to, to
14 these issues moving forward. If I understand properly,
15 this stipulation also contains protection for customers
16 in the possibility of a refund.

17 **CHAIRMAN ARGENZIANO:** That depends on who you
18 ask.

19 **COMMISSIONER BRISÉ:** And maybe that's a
20 question that, when I addressed with staff, that's what
21 I was assured, providing that the information that comes
22 in merits a refund at that time. It also provides the
23 opportunity for the other information that staff would
24 like to get through discovery that probably we would not
25 have gotten to by the 1st of October. It provides an

1 opportunity for all of that discovery to occur, to look
2 at some of the issues I think that all of us have and
3 with, with respect to, to this docket. And it also will
4 provide for the Intervenors the opportunity to pursue
5 discovery as well or interrogate some of the, some of
6 the individuals who will come forth as witnesses.

7 So I just wanted to state on the record that I
8 am very comfortable with the stipulations as they are
9 voted because it will provide us with greater
10 opportunity to address that issue. I do understand the
11 angst of, of certain Commissioners who may not be here.
12 And if, if I were in that position, I think my position
13 might be a little bit different as well. So I certainly
14 appreciate the interest and, and the, the hard work by
15 my colleagues on this issue.

16 **CHAIRMAN ARGENZIANO:** Anything else from
17 staff?

18 **MR. ANDERSON:** May we have -- I'm sorry.

19 **CHAIRMAN ARGENZIANO:** Adjourned.

20 **MR. YOUNG:** No.

21 **MR. ANDERSON:** I did speak.

22 **CHAIRMAN ARGENZIANO:** I asked you.

23 **MR. ANDERSON:** I did speak.

24 **CHAIRMAN ARGENZIANO:** I asked you -- I said,
25 "Anything else from staff?" Looked over, nobody said

1 anything.

2 Are you going to take it back?

3 Okay. I didn't say we're adjourned. I have
4 candy in my mouth. It sounded like we were adjourned.

5 **MR. YOUNG:** If I could just give the schedule
6 for remaining --

7 **CHAIRMAN ARGENZIANO:** Okay. Let's do that.

8 **MR. YOUNG:** On Issue 3A, which is still an
9 issue, briefs will be due on September 10th. The staff
10 recommendation will be, will be filed on 9/30,
11 September 30th, for the agenda on October 12th, 2010.

12 **MR. ANDERSON:** We'd like to also clarify on
13 the record that the subpoenas are effectively withdrawn
14 in light of the approval of the stipulation and that
15 there's no need to argue the motions to quash with
16 respect to the witnesses; is that, is that right?

17 **CHAIRMAN ARGENZIANO:** Well, since one of them,
18 one of them -- yes, of course they are.

19 **MR. YOUNG:** Yes, ma'am.

20 **CHAIRMAN ARGENZIANO:** Are we ready?

21 **MR. YOUNG:** Yes, ma'am. I apologize.

22 **CHAIRMAN ARGENZIANO:** We're adjourned.

23 (Hearing adjourned at 11:42 a.m.)
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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

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

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

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

DATED THIS 8th day of September, 2010.

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