

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

DATE: Monday, August 1, 2011

TIME: Commenced at 9:33 a.m.
Concluded at 2:50 p.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

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1 APPEARANCES:

2 BRYAN S. ANDERSON, ESQUIRE; JESSICA CANO,
3 ESQUIRE; and MITCHELL S. ROSS, ESQUIRE, Florida
4 Power & Light Company, 700 Universe Boulevard, Juno
5 Beach, Florida 33408-0420, appearing on behalf of
6 Florida Power & Light Company.

7 JOHN T. BURNETT, ESQUIRE, Progress Energy
8 Florida, 229 First Avenue, North, PEF-15, St. Petersburg,
9 Florida 33701; and BLAISE N. HUHTA, ESQUIRE, Carlton
10 Fields, P.A., Post Office Box 3239, Tampa, Florida
11 33601-3239, appearing on behalf of Progress Energy
12 Florida, Inc.

13 CHARLES J. REHWINKEL, ESQUIRE; and JOSEPH
14 A. MCGLOTHLIN, ESQUIRE, and ERIK L. SAYLER, ESQUIRE,
15 Office of Public Counsel, c/o The Florida
16 Legislature, 111 W. Madison Street, Room 812,
17 Tallahassee, FL 32399-1400, appearing on behalf of
18 the Citizens of the State of Florida.

19 JAMES W. BREW, ESQUIRE, Brickfield, Burchette,
20 Ritts & Stone, P.C., 1025 Thomas Jefferson Street, N.W.,
21 Eighth Floor, West Tower, Washington, D.C. 20007;
22 appearing on behalf of White Springs Agricultural
23 Chemicals, Inc., d/b/a PCS Phosphate-White Springs.

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1 APPEARANCES (Continued):

2 VICKI GORDON KAUFMAN, ESQUIRE, Keefe, Anchors,
3 Gordon & Moyle Law Firm, 118 North Gadsden Street,
4 Tallahassee, Florida 32301, appearing on behalf of the
5 Florida Industrial Power Users Group.

6 KAREN S. WHITE, ESQUIRE, Federal Executive
7 Agencies, c/o AFCESA-ULFSC, 139 Barnes Drive, Suite
8 1, Tyndall AFB, Florida 32403-5319, appearing on
9 behalf of Federal Executive Agencies.

10 LEON JACOBS, JR., ESQUIRE, Williams & Jacobs,
11 LLC, 1720 South Gadsden Street, MS 14, Suite 201,
12 Tallahassee, Florida 32301, appearing on behalf of the
13 Southern Alliance for Clean Energy.

14 KEINO YOUNG, ESQUIRE, and ANNA R. NORRIS,
15 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
16 Boulevard, Tallahassee, Florida 32399-0850, appearing on
17 behalf of the Florida Public Service Commission Staff.

18 MARY ANNE HELTON, Deputy General Counsel,
19 Florida Public Service Commission, 2540 Shumard Oak
20 Boulevard, Tallahassee, Florida 32399-0850, appearing as
21 Advisor to the Florida Public Service Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER BRISÉ:** Good morning. We're
3 going to go ahead and call this Prehearing Conference to
4 order. We're going to consider Docket Number 110009-EI,
5 nuclear cost recovery. Today is August 1, 2011, and it
6 is currently 9:33. So at this time we're going to ask
7 Staff to read the notice.

8 **MR. YOUNG:** Good morning, Commissioner. By
9 notice issued July 5th, 2011, this time and place was
10 set for a Prehearing Conference in Docket Number
11 110009-EI, the Nuclear Cost Recovery Clause. The
12 purpose of this prehearing is set out in the notice.

13 **COMMISSIONER BRISÉ:** Thank you. At this time
14 we will take appearances, and we will start from right
15 to left. My right, your left.

16 **MR. ANDERSON:** Good morning, Commissioner
17 Brisé.

18 **COMMISSIONER BRISÉ:** Good morning.

19 **MR. ANDERSON:** My name is Bryan Anderson. I'm
20 here with my colleague Jessica Cano and also Mitchell
21 Ross. We represent Florida Power & Light Company in
22 this proceeding. Thank you.

23 **COMMISSIONER BRISÉ:** Thank you.

24 **MS. HUHTA:** Good morning. Blaise Huhta with
25 Carlton Fields on behalf of Progress Energy Florida.

1 **COMMISSIONER BRISÉ:** Thank you.

2 **MR. BURNETT:** Good morning, Commissioner.

3 John Burnett, Progress Energy Florida.

4 **COMMISSIONER BRISÉ:** Good morning.

5 **MR. REHWINKEL:** Good morning, Commissioner.

6 Charles Rehwinkel with the Office of Public Counsel.

7 **COMMISSIONER BRISÉ:** Good morning.

8 **MR. SAYLER:** Erik Sayler with the Office of

9 Public Counsel.

10 **COMMISSIONER BRISÉ:** Good morning.

11 **MR. MCGLOTHLIN:** Good morning. Joe

12 McGlothlin, Office of Public Counsel.

13 **COMMISSIONER BRISÉ:** Good morning.

14 **MR. BREW:** Good morning, Commissioner. I'm

15 James Brew with the firm of Brickfield, Burchette, Ritts

16 & Stone for White Springs Agricultural Chemicals-PCS

17 Phosphate.

18 **COMMISSIONER BRISÉ:** Good morning.

19 **MS. KAUFMAN:** Good morning, Commissioner

20 Brisé. Vicki Gordon Kaufman with the Law Firm of Keefe,

21 Anchors, Gordon & Moyle, and I'm here on behalf of the

22 Florida Industrial Power Users Group.

23 **COMMISSIONER BRISÉ:** Good morning.

24 **MS. WHITE:** Good morning, Commissioner. I'm

25 Karen White here on behalf of the Federal Executive

1 Agencies.

2 COMMISSIONER BRISÉ: Good morning.

3 MR. YOUNG: Commissioner, Keino Young, Anna
4 Norris on behalf of Staff.

5 COMMISSIONER BRISÉ: Good morning.

6 MS. HELTON: And Mary Anne Helton, Advisor to
7 the Commission.

8 COMMISSIONER BRISÉ: Thank you. At this time,
9 Staff, are there any preliminary matters that we need to
10 address before we get to the Draft Prehearing Order?

11 MR. YOUNG: Yes, sir. Mr. Commissioner, there
12 are several preliminary matters. The first, Staff would
13 note that the Florida Executive Agency filed its
14 prehearing statement after the deadline required by the
15 Order Establishing Procedure, which states that failure
16 to timely file the prehearing statement shall be a
17 waiver of any issues not raised by the other parties or
18 by the Commissioner -- Commission. Excuse me.
19 Nonetheless, nevertheless, Staff has incorporated FEA's
20 prehearing statement into the Draft Prehearing Order and
21 recommends that the Prehearing Order accept FEA's
22 prehearing statement, so long as no party objects.

23 COMMISSIONER BRISÉ: Are there any objections
24 from any parties?

25 MR. ANDERSON: FPL notes that FEA is not

1 raising any new issues, not taking any new positions,
2 has not filed testimony. We don't have any objection.

3 **COMMISSIONER BRISÉ:** All right. Thank you.
4 Anyone else?

5 **MR. BURNETT:** No objection, sir.

6 **MR. REHWINKEL:** No objection from Public
7 Counsel.

8 **MR. BREW:** No objection.

9 **MS. KAUFMAN:** FIPUG has no objection.

10 **COMMISSIONER BRISÉ:** All right. Thank you
11 very much.

12 **MR. JACOBS:** If I may, I want to announce Leon
13 Jacobs appearing on behalf of the Southern Alliance for
14 Clean Energy. I apologize for being late.

15 **COMMISSIONER BRISÉ:** Thank you.

16 Staff.

17 **MR. YOUNG:** The second preliminary matter,
18 Mr. Commissioner, is that Staff would note that the
19 parties have agreed upon a order of witnesses which Staff
20 recommends that the Prehearing Officer approve. The order
21 is that FPL's case will be presented in its entirety,
22 followed by PEF's case. And Staff would note that this is
23 also related to the motion to defer that will be discussed
24 next.

25 **COMMISSIONER BRISÉ:** Okay. You may continue.

1 **MR. YOUNG:** The third, Staff -- the third
2 preliminary matter Staff would note, there are several
3 pending motions.

4 The first motion is FIPUG has filed an agreed
5 upon motion for the Progress Energy Florida portion of
6 this docket to begin on a date certain, August 22nd,
7 2011. Staff does not oppose the motion; however, the
8 August 22nd, 2011, hearing date has been canceled and
9 August 16th, 2011, has been added. Accordingly, Staff
10 requests that FIPUG modify its motion.

11 **MS. KAUFMAN:** This motion was filed before the
12 change in the schedule, and I'm happy to modify the
13 motion. I'm not exactly sure what Staff is
14 suggesting -- that their case begin on the, what would
15 be the 23rd, 24th? I don't have my calendar.

16 **MR. YOUNG:** Mr. Chairman, this is a, this is a
17 motion that I talked to Mr. Moyle about earlier, I think
18 last week or the week before, when we were contemplating
19 moving the date up. The reason being we have three --
20 since we have the, the 16th date, we now have five
21 straight days of hearings for that week. Also, the
22 previous week from August 10th, 11th, and 12th gives us
23 about eight straight days of hearing. And Staff and I
24 think the majority of the Commissioners probably would
25 not like to take a break in the action and move, and

1 proceed with the hearing if we can get it done.

2 **MS. KAUFMAN:** Commissioner, we'd be happy to
3 modify our motion to have the Progress part of the
4 hearing start, say, on the 19th to make up for the 22nd
5 that's been canceled. That would give us three days,
6 10th, 11th, and 12th, for the beginning of the like case
7 and then, if I'm understanding, 15, 17, 18, 19 -- or 18.

8 **COMMISSIONER BRISÉ:** Staff.

9 **MR. YOUNG:** The, the problem with that,
10 Mr. Chairman, is that everyone anticipates probably six
11 days for FP&L. That gives -- that means that's an
12 eight-day block. And as I stated before, I am hesitant to
13 agree to that because the Commissioners might not want to
14 take a break in the action, and just try to move forward
15 with the case. So what we're probably looking at is,
16 maybe if Ms. Kaufman would agree and Progress would agree
17 because they have to have their witnesses here, is that
18 possibly on the 17th that their witnesses can be here.
19 Because as I stated, we have about six days, six days for
20 FPL. And I think Mr. McGlothlin is giving me a stare, a
21 look. He might want to be heard.

22 **MS. KAUFMAN:** Commissioner, if I could just
23 have a minute to explain the genesis of the motion.

24 **COMMISSIONER BRISÉ:** Sure.

25 **MS. KAUFMAN:** We discussed with all the

1 parties based on our experience last year that we
2 thought there was a great deal of time and dollars
3 wasted when everybody appeared for the beginning of the
4 hearing at the same time. I mean, essentially you have
5 two separate cases involving two separate companies.
6 And I know on the telephone side, for example, we
7 typically would split those into A and B.

8 And so our suggestion was that since FPL was
9 going to go first, that that had already been decided,
10 we have a set number of days for FPL and a set day to
11 begin the Progress case so that Progress and its
12 witnesses, Mr. Brew, other Intervenors didn't have to be
13 here and sit around, if you will -- not that I'm, not
14 that they don't enjoy it, I'm sure -- but sit and wait
15 for the Light case to conclude and the Progress case to
16 begin.

17 If I -- I'm not sure that I'm understanding
18 Mr. Young's six days in looking at my calendar, and
19 maybe it's my confusion. We have 10, 11, and 12 as I
20 understand it. And then 17, 18 and 19 -- 15?

21 **MR. YOUNG:** We have 10th, 11th, and 12th,
22 15th, 16th, 17th, 18th, and 19th.

23 **MS. KAUFMAN:** Okay. I see. The whole week.

24 **MR. YOUNG:** Yes.

25 **MS. KAUFMAN:** Well, I don't have any problem

1 with beginning on the 18th. I see my colleagues are --

2 **MR. YOUNG:** I said 17th. Excuse me for the
3 correction.

4 **MS. KAUFMAN:** I think what we had originally
5 anticipated was three days for the Progress case. And
6 looking at folks that have a calendar, it would seem it
7 would be 24, 25, and 26 for those, for that. And I
8 don't know if the witnesses have some issues with that.
9 FIPUG does not have its own witness, but I know that
10 Public Counsel has a witness.

11 **COMMISSIONER BRISÉ:** Okay. If Public Counsel,
12 if you have something you'd like to interject at this
13 time.

14 **MR. REHWINKEL:** Yes. Commissioner, I -- while
15 Ms. Kaufman was, was explaining the basis for the
16 motion, I conferred with Progress. We believe that the
17 hearing could be done in the three days that you have
18 reserved in the, in the week of the 22nd, with the
19 caveat about the issues related to CR3 not being heard
20 at all in the hearing. As well as our witness,
21 Dr. Jacobs, has absolute unavailability on the 25th, and
22 Progress has agreed to work to have him taken out of
23 order on the 24th, if it is necessary.

24 So from the Public Counsel's standpoint, we
25 could accommodate a start date of the 24th, if that

1 would help the Commissioner and FIPUG with the
2 scheduling.

3 **MS. KAUFMAN:** And that would certainly be
4 acceptable to us. And I just wanted to mention that
5 when we did the motion back in May, all the parties were
6 in agreement that we would have this sort of a set time
7 for the two cases.

8 **COMMISSIONER BRISÉ:** Okay. Staff.

9 **MR. YOUNG:** Mr. Chairman, it is my
10 understanding, and dealing with the scheduling matters,
11 that it may be possible -- the Commission, the
12 Commission is looking at those last days as possible
13 dates for several activities. And we again, I know,
14 speaking to the Commissioners, they would not like to
15 take a break in the action.

16 So if we move -- if everyone is saying that
17 Progress, the FPL portion can take roughly six days and
18 maybe seven days for a layover, if it runs over, then
19 that will require that we take a, a several -- take
20 several days, a break for several days in the action as
21 relates to this case. And I don't think -- I seriously
22 doubt if the Commission would be, would like that route
23 to be taken.

24 **COMMISSIONER BRISÉ:** Yeah. It's my
25 understanding that as a Commission we would like to have

1 this, have this hearing just run one case and then the
2 other begin right after. So I don't know if -- how we
3 can work this out in terms of the dates.

4 **MR. YOUNG:** And also, Mr. Chairman, I would
5 add too that this essentially gets to where we're going
6 regardless in terms of the purpose for the motion to
7 defer, I mean, excuse me, the motion for a date certain;
8 that Progress Energy would not be required to have their
9 witnesses here on that first date and sit through the
10 FPL portion of the case. So I think there's a date in
11 here that can accommodate everyone involved, not that
12 third week but the second week, because it gets, it
13 achieves all the objectives for all the parties.

14 **MR. BREW:** Commissioner?

15 **COMMISSIONER BRISÉ:** Yes.

16 **MR. BREW:** Can I ask clarification of Staff?
17 Is what Mr. Young suggesting now is that the Progress
18 portion start at a definite date that would be when, the
19 16th or 17th? Or that we would simply start Progress
20 when we're done with FPL?

21 **MR. YOUNG:** No. Be ready, be ready to start
22 Progress when we're done with FPL around the -- and we
23 anticipate, because the parties are indicating, that
24 it's six days for FPL. So the 10th, 11th, 12th, 15th,
25 16th, and 17th. So be ready around the 17th time frame.

1 **MS. KAUFMAN:** Commissioner?

2 **MR. BREW:** Commissioner?

3 **MS. KAUFMAN:** Oh, sorry. Go ahead.

4 **MR. BREW:** This is exactly the conversation we
5 had some time ago as to the reason for setting a date
6 certain for Progress so that parties could plan. I
7 think what I'm hearing is that notwithstanding all of
8 that debate and what I thought was an agreement on it,
9 we're now being told to simply be available whenever
10 Progress is ready to start, which, given our experience
11 in the past with this proceeding, strikes me as
12 particularly inefficient, particularly for parties that
13 have to come from out of town.

14 So I can see moving the date certain up so
15 that parties can plan for their witnesses, but I am
16 concerned about sort of parties having to basically be
17 on hold and essentially come two or three days early in
18 the event that the hearings are finished with FPL so
19 that we can start with Progress.

20 **COMMISSIONER BRISÉ:** Ms. Kaufman.

21 **MS. KAUFMAN:** Yes. Thank you, Commissioner
22 Brisé. I was just going to make the point that Mr. Brew
23 made, which is that moving the dates up is not an issue,
24 but having a date certain to begin -- and it seems,
25 based on what Mr. Young has said, the 18th, you know.

1 And unfortunately I guess there could be some time, dead
2 time, if you will, but I don't think it would be very
3 much. And that would mean that we would know, assuming
4 FPL finishes on the 17th, that we would begin the
5 Progress case on the, on the date certain of the 18th.

6 **COMMISSIONER BRISE:** Mr. McGlothlin.

7 **MR. MCGLOTHLIN:** Commissioner, Joe McGlothlin
8 with OPC. When we had this conversation some time back,
9 the parties were making their best educated guesses as
10 to the length of time that the FPL portion of the
11 hearing would require. At the time we didn't know that,
12 among other things, FPL was going to call seven rebuttal
13 witnesses. That suggests a block of time that we didn't
14 take into account.

15 I am all for as much precision as we can
16 engineer into the schedule. I don't like the idea of
17 lawyers and witnesses having to spend idle time in
18 witness -- in hearings either. I am uncomfortable with
19 the idea that FPL is going to come to a hard stop after
20 six days no matter what the status of the hearing at
21 that time. So we have to have some flexibility in the
22 schedule.

23 **MR. YOUNG:** Mr. Chairman, I totally agree to
24 that, that we should have some flexibility. All we're
25 saying is that Progress, for the Progress Energy portion

1 of the docket, to be ready to go on the 17th. We're not
2 saying that if FPL, if the FPL portion goes longer,
3 we're going to cut off FPL. That's one.

4 Two, I might be misinterpreting what the
5 parties are saying, but in my mind, and I'm getting a
6 little older, I know that we discussed this at our last
7 issue identification meeting where we, where we
8 discussed the dates were being changed. Also, as I
9 stated before, I talked to the drafter of the motion,
10 which is Mr. Moyle, about possibly changing the dates
11 and the dates having to be moved up.

12 **COMMISSIONER BRISÉ:** Mary Anne.

13 **MS. HELTON:** I'm going to make a confession
14 straight up that I have not read the motions. But based
15 on the conversation that I'm hearing this morning, it
16 seems to me that what Staff is suggesting is that
17 Progress will start no earlier than August 17th so
18 that -- Power & Light, it sounds like the estimate is
19 that it will last six days. So that being said, people
20 here for the Progress hearing only, may only have to sit
21 around for a day or so versus being here from the start
22 of the hearing August the 10th. And that seems to me to
23 be a very reasonable accommodation, especially given the
24 fact that we aren't really in control of the calendar;
25 it's the Chairman that is. And it sounds like -- I'm

1 sure that Keino has talked to the Chairman and that's an
2 accommodation that he's willing to make. And that's
3 something I think that the Commission has always strived
4 to do is to accommodate timing issues of the parties.

5 That being said, we still have a hearing to
6 get done. And that hearing, everybody has known about
7 it for a year. I think the hearing dates have been out
8 there for a while. And so it seems to me that that is a
9 reasonable accommodation for the people for, that will
10 be here just for Progress, that they come to
11 Tallahassee, if they're not already here, by the 17th,
12 knowing that they may have to sit around a day or two.

13 **MR. REHWINKEL:** Commissioner Brisé, may I be
14 heard briefly?

15 **COMMISSIONER BRISÉ:** Yes.

16 **MR. REHWINKEL:** I think everyone seems to be
17 focused on having some continuity in the FPL into the
18 Progress case. But the problem that you could run into
19 that would be counter to the principles that seem to be
20 underlying continuing into the Progress case in that
21 second week is that if you start on the 18th or 19th
22 with Progress, you could have the situation where we're
23 going to be bringing our expert from out of town, he
24 will be sitting here from the 17th and 18th waiting for
25 Progress to start. Progress gets part of their case on

1 direct done and then we all break for one, two, three,
2 four, five days, and then everybody has to come back
3 down again.

4 So I understand there are other scheduling
5 kind of balls up in the air with this, but it seems like
6 on the Progress side we could do a discrete, everybody
7 is in town one period of time from the 24th to the 26th,
8 we don't have to fly people back and forth, and it's
9 just a consideration that I, that I offer you there.
10 But I think that the Progress case could be incredibly
11 broken up if, if it doesn't start until, say, the 18th
12 or 19th.

13 **COMMISSIONER BRISÉ:** The 17th is what day?

14 **MS. NORRIS:** Wednesday.

15 **MR. YOUNG:** That's a Wednesday.

16 **COMMISSIONER BRISÉ:** Wednesday? So you're
17 suggesting because of the weekend that that would be the
18 issue?

19 **MR. REHWINKEL:** Well, it's the weekend, and
20 then the Monday date which was originally set out has
21 been canceled, and then you have Agenda on the 23rd, and
22 then we'd pick back up on the next Wednesday.

23 **COMMISSIONER BRISÉ:** Okay. Staff?

24 **MR. YOUNG:** Mr. Chairman, I think what is,
25 what is happening here is Staff, Staff and the

1 Commission -- well, in talking, conversing with the
2 Chairman's office, is trying to be very accommodating to
3 the parties. And we understand, we do not want
4 ratepayers to be paying for witnesses to be sitting idle
5 from the beginning of August 10th. However, given that
6 we, we can't guarantee that the Progress portion of the
7 docket will end within two to four days, that's one,
8 what happens when, if we start on the 18th and then
9 something happens and we no longer have days when we run
10 out on the 26th? That's, that's an argument to be
11 considered.

12 Two, as stated before, the only person, the
13 only, the only two parties in this docket that have
14 witnesses is Progress Energy Florida and the Office of
15 Public Counsel. So to me if we start possibly on the
16 17th, and based on the Office of Public Counsel's
17 representation that it takes, it'll probably take,
18 depending on what happens on the motion to defer, it
19 will take possibly two to four days, two, three, four
20 days, that means we can accommodate that and not have to
21 worry about some, scheduling some additional dates if we
22 run longer than necessary. So we have that, that, that
23 last week reserved as the three days in case we run
24 late.

25 **COMMISSIONER BRISÉ:** Okay. All right. Thank

1 you. If I'm understanding right, Vicki, you don't have
2 a problem with moving the date to a date certain so long
3 as you know what that date is.

4 **MS. KAUFMAN:** I agree. But I do support
5 Mr. Rehwinkel's idea of doing the Progress case on those
6 three days so we can have it -- so we don't have the
7 weekend and the Agenda and the day off in between. But
8 in my view, yeah, it's, it's having a date certain to
9 begin, but unfortunately we have weekends and other
10 things in between.

11 **COMMISSIONER BRISÉ:** Right. So, so what's
12 most important to you is having a date certain so that,
13 you know, so that you all can prepare for a date
14 certain. So with that in mind, I am going to say that
15 we are going to begin, be prepared for the 17th date
16 certain. I guess the 17th or the 18th. Which one is
17 most appropriate, Staff?

18 **MR. YOUNG:** The 17th, sir.

19 **COMMISSIONER BRISÉ:** Okay. So we are going to
20 begin with a date certain of the 17th with the Progress
21 portion.

22 **MR. YOUNG:** Mr. Chairman, just to clarify, to
23 be prepared.

24 **COMMISSIONER BRISÉ:** Be prepared to begin on
25 the 17th, providing that we're done with the Power &

1 Light portion.

2 MS. HUHTA: So just to confirm -- Blaise for
3 Progress -- our witnesses will not need to be here on
4 August 10th, just attorneys.

5 COMMISSIONER BRISÉ: That is correct.

6 MS. HUHTA: And our witnesses will not need to
7 be here any earlier than the 17th of August.

8 COMMISSIONER BRISÉ: That is correct.

9 MS. HUHTA: Thank you.

10 MR. YOUNG: Mr. Chairman, if I could
11 interject. As relates to all the issues outside of
12 Issue A that we will discuss on the motion to defer.

13 MS. HUHTA: Understood. Thank you.

14 COMMISSIONER BRISÉ: Okay. So we're clear on
15 that? Everyone clear on that?

16 MR. McGLOTHLIN: I think I'm clear, but I want
17 to make sure I'm clear.

18 COMMISSIONER BRISÉ: Sure.

19 MR. McGLOTHLIN: Because if there's -- talking
20 about the 17th, that gives 10th, 11th, 12th, 15th, 16th
21 for the FPL case, and there's probably going to be a lot
22 of preliminary matters on the 10th and opening
23 statements. But as I understand your ruling is that the
24 FPL portion of it will take as long as it takes and that
25 if that means part or all of the 17th or 18th, we will

1 not come to a stop with the FPL portion to start the
2 other.

3 **COMMISSIONER BRISÉ:** That is correct.

4 **MR. McGLOTHLIN:** Thank you for your
5 indulgence. I wanted to make sure I understood that.

6 **COMMISSIONER BRISÉ:** All right. Thank you.

7 All right. Staff, you may continue.

8 **MR. YOUNG:** The second pending motion is the
9 motion -- PEF filed a motion to defer approval of the
10 long-term feasibility and the reasonableness of the
11 projected construction expenditures and associated
12 carrying costs for the CR3 uprate project.

13 Staff first notes that we asked Progress
14 Energy Florida to identify all testimony and exhibits,
15 including type and strike testimony relating to the
16 CR3 uprate project, that would be excluded from this
17 year's NCRC proceedings should the Commission grant the
18 company's motion; and, two, file such information with
19 the Commission. Staff requests that the company comply
20 with this request as soon as possible before the
21 hearing. It is my understanding that we spoke with
22 Progress Energy Florida about this.

23 **MS. HUHTA:** Yes. We spoke on Friday regarding
24 this, and I can give you a verbal indication of what we
25 would suggest if the motion for deferral is granted.

1 And we could certainly have that wrapped up this week if
2 the motion for deferral is granted.

3 **COMMISSIONER BRISÉ:** Okay. Thank you.

4 **MR. YOUNG:** Second, Mr. Chairman, Staff
5 recommends that the Prehearing Officer defer the ruling
6 on the motion to the full Commission on August 10th,
7 2011. PEF should be required -- Staff requests that PEF
8 should be required to present a witness to address Issue
9 A, which reads thusly. "Should the Commission defer the
10 approval of the feasibility and the reasonableness of
11 the projected construction expenditures and associated
12 carrying costs for the CR3 uprate?" And the
13 Commissioner, Intervenors and Staff would be given the
14 opportunity to ask some questions. At this time Staff
15 would recommend that the full Commission -- at that time
16 Staff would recommend that the full Commission, based on
17 what we hear, make a best decision so the parties can
18 proceed with the hearing accordingly.

19 It's my understanding, it's my understanding
20 that Progress Energy Florida, OPC and the rest of the
21 parties would like to be heard on this.

22 **COMMISSIONER BRISÉ:** Sure. Progress.

23 **MR. BURNETT:** Thank you, Commissioner. John
24 Burnett, Progress Energy Florida.

25 Commissioner, just by way of background

1 briefly, we find ourselves in, this year with our
2 extended power uprate for CR3 in the position to where
3 our feasibility analysis needs to be updated. So the
4 information we have before the Commission is no longer
5 the best and accurate information we have. We're in the
6 process of updating that. And the problem we run into
7 is it's not done yet. Even if it were done today, that
8 would be too late to present it to the Commission and
9 the parties for them to have a fair opportunity to take
10 a look at it. Because of that we filed the instant
11 motion to defer.

12 And just to be clear what we're asking the
13 Commission to do, we're asking the Commission to allow
14 us -- to not allow us to collect 2011 actual and
15 projected costs. We're asking the Commission to not
16 allow us to collect 2012 costs and to not rule, make a
17 feasibility determination on information that we know
18 needs to be updated. I understand that that motion is
19 unopposed by all the parties, and we certainly take the
20 position that's a procedural motion within your full
21 discretion to grant or deny as you see fit.

22 We are a bit perplexed with the request that
23 we present a witness on an unopposed motion that's
24 stipulated, also that's asking us not to collect money
25 and not to have a determination made until we can get

1 better evidence before the Commission. So with that
2 we're a bit confused. And, you know, I just want to
3 level said expectations that if we bring a witness, a
4 witness will say exactly what I just said. The only
5 other thing a witness could say is to get into questions
6 about the underlying delamination at Crystal River 3
7 which has led to the need to update this information.
8 We feel that would be wholly inappropriate to do in this
9 docket. There's another open docket for that.

10 All the parties, the Intervenors would be
11 hearing that for the first time, and, quite frankly,
12 we'd be hearing it for the first time if a witness was
13 giving testimony on that. We think that would, that
14 would be wholly unfair to the Intervenors.

15 So that's where we're at today. So we would,
16 we would ask that you rule on this as a procedural
17 motion within your discretion, especially given what's
18 being asked.

19 **COMMISSIONER BRISÉ:** All right. OPC.

20 **MR. REHWINKEL:** Yes, Commissioner. I have
21 voiced my objection to a witness for Progress testifying
22 on the issue related to the basis for the reasons that
23 they, they want to defer on this issue.

24 Public Counsel took a deposition of, of the
25 witness Jon Franke, a lengthy one on June 13th, and

1 through the course of that deposition it became very
2 clear to us that the testimony that was filed by
3 Mr. Franke had been overtaken by events and was no
4 longer valid to support cost recovery. And we were not
5 surprised on the week before our testimony was due on,
6 on July 8th, our responsive testimony, the day before
7 the motion was filed I received a message from Progress
8 that they were going to move to defer 2011 and 2012
9 costs. And in reliance on that phone call and the
10 motion that followed, the Public Counsel's Office did
11 not seek to rebut the testimony of Mr. Franke. And so
12 we do not have a witness on that, although we, we had
13 drafted testimony that we did not finish and are not
14 prepared to go forward with at this time. So we would
15 not have a witness to respond to unknown testimony that
16 may be taken on an issue that we believe is wholly
17 outside of this docket, not noticed for this proceeding,
18 and is the subject of another matter.

19 And just for the record, although we
20 understand that there may have been decisions made about
21 going forward with this process anyway, we believe it
22 will be a denial of our due process for there to be live
23 testimony with no notice to the parties about the
24 subject matter of the testimony. Having the ability to
25 cross-examine testimony that we would have heard live

1 for the first time minutes earlier does not comport with
2 due process in our opinion and we would object. And I'm
3 making this objection for the record, but I wanted to
4 voice our objection to, to the process. We, we would
5 support what Progress has stated that it is within your
6 discretion to rule on this procedural matter and we
7 would ask you to do so. Thank you.

8 **COMMISSIONER BRISÉ:** Okay.

9 **MR. BREW:** Mr. Commissioner, I've been waiting
10 some time to say this, but PCS Phosphate agrees with
11 Progress Energy Florida. The -- I think Mr. Burnett has
12 stated it accurately. The basic issues that we're
13 talking about in the motion to defer are things that
14 have been factually affected by the change in the unit
15 due to the most recent delamination, and all of the
16 issues associated with the delamination are indeed taken
17 up in a separate docket.

18 The issue that was put forward in the motion
19 to defer is procedurally straightforward, which is the
20 utility was taking dollars out of consideration for this
21 year's recovery, including the associated feasibility
22 and prudence issues, which was the only rational way to
23 address it. There is no factual dispute. Because
24 there's no factual dispute, there's no, there's no real
25 need for testimony evidence on the record on

1 August 10th.

2 In fact, to the extent that the Commission
3 entertains that, it simply raises the peril issues that
4 Mr. Burnett and Mr. Rehwinkel have mentioned, which is
5 parties hearing something for the first time for which
6 they're totally unprepared to respond.

7 Our view is that the proper way to address
8 this is procedurally on the merits based on the papers
9 because there are no facts in dispute and because the
10 motion dealt, deals with the circumstance really the
11 only rational way possible given the timing and
12 circumstances involved. So we support the,
13 Mr. Burnett's suggestion for dealing with it now, as
14 well as Mr. Rehwinkel's. Thank you.

15 **MS. KAUFMAN:** Commissioner, I do have to
16 correct one thing that my colleague Mr. Burnett said,
17 and that is all the parties are not in agreement with
18 the motion.

19 As far as the procedure, the deferral and the
20 other comments that have been made by the parties, FIPUG
21 does agree with that. However, in our view Progress has
22 failed to comply with your rule by providing an
23 up-to-date and accurate feasibility report. And so
24 rather than just deferring the dollars to another time,
25 we don't believe they are entitled to collect for this

1 time period that you're looking.

2 Now you can -- we agree that you should
3 consider what happened regarding the delamination in
4 Crystal River 3 and the uprate in the other docket that
5 you have open, but they still have to comply with the
6 requirements of the nuclear cost recovery rule. We
7 don't think that they have done so in this case, and so
8 they are not entitled to recover those dollars.

9 **MR. JACOBS:** Commissioner, I'm inclined --
10 well, first of all, what I'm understanding to be the
11 request is that the Commission would take a very narrow,
12 almost voir dire kind of approach because it wants to
13 get full information before it makes a decision on
14 deferral. In that context, I think that I would support
15 the Commission getting full information and full, and
16 detailed information before it makes an important
17 decision. I do agree with the procedural difficulties
18 here and I think it's an area we would want to tread
19 lightly.

20 As you well know, we've not been active in the
21 uprate issue, and so I don't want to speak much far
22 afield of that except to say I do think it does require
23 important and clear information as you make that
24 decision. Thank you.

25 **COMMISSIONER BRISE:** Thank you.

1 Staff.

2 MR. YOUNG: Similar to what Mr. Jacobs just
3 said, this is, this is just a procedure.

4 One, a couple of things, Mr. Chairman, this is
5 Issue A in this docket. So the Commission is going to
6 be looking to make a decision, is going to be looking to
7 make a decision on Issue A.

8 Staff is recommending a procedure that is
9 quite simple. As Mr. Burnett said, that the witness
10 will take the stand and state what's in the pleadings.
11 That is fine with Staff. If that's what is stated in
12 the pleadings, if nothing else comes out, Staff would
13 probably most likely recommend that the Commission
14 defer -- vote yes on Issue A and defer the, Progress's
15 motion on the feasibility and the reasonableness of the
16 projected construction expenditures.

17 What Staff is looking for is a simple process,
18 not, not a, not an in-depth process in terms of having a
19 witness on the stand and stating the reasons why the
20 deferral.

21 As relates to Mr. McGlothlin -- Mr.
22 Rehwinkel's due process concerns, it is Issue A in the
23 docket. Mr. Rehwinkel was a part, along with all the
24 other parties, a part of the issue identification where
25 this issue has been raised.

1 Also, if they move into any other docket,
2 Mr. Rehwinkel, along with any other party, can object
3 saying the testimony is outside the scope, which the
4 Commission will make a ruling on that, outside the scope
5 of the motion, outside the scope of the issue. We're
6 not talking about delamination, we're not talking about
7 any other docket. The question is should the Commission
8 approve -- should the Commission defer approval of the
9 feasibility and the reasonableness of the projected
10 construction expenditures?

11 **COMMISSIONER BRISÉ:** All right. In terms of
12 my ruling on this, I don't necessarily have to rule on
13 this at this very moment.

14 **MR. YOUNG:** No, sir, you don't.

15 **COMMISSIONER BRISÉ:** Okay. So when we do all
16 the rest of the rulings, I think we'll come to a
17 conclusion on that. So Staff may continue.

18 **MR. YOUNG:** Mr. Chairman, I think we're on the
19 third motion as to motion -- FPL filed a motion to
20 strike the Public, Office of Public Counsel's testimony
21 collaterally challenging the Commission need
22 determination, requesting implementation of the risk
23 sharing mechanism. And proposed -- and those are
24 proposed Issues 10A, 10B, 16, 17, and 18. Staff would
25 note that in FPL's motion during our preliminary stages

1 of issue identification those were Issue 3, 4, 5A, and
2 5B as identified in FPL's motion. Since this motion
3 addresses some of the disputed issues in this docket,
4 your ruling on those issues will directly affect, in
5 Staff's opinion will directly affect your ruling on the
6 motion. Therefore, Staff recommends that you defer
7 ruling on this motion until after we have -- after you
8 have ruled on disputed issues.

9 **COMMISSIONER BRISÉ:** You may continue.

10 **MR. YOUNG:** The fourth motion is FPL's motion
11 to exclude the testimony of SACE witnesses Dr. Mark
12 Cooper and Mr. Arnold Gundersen. The motion was filed
13 on Friday, July 29th, 2011.

14 The parties would like to -- I'm sure the
15 parties would like to be heard on this motion.
16 Staff recommends that the Prehearing Officer take
17 the parties' arguments -- I mean -- excuse me.
18 Staff recommends that the Prehearing Officer allow
19 five minutes for arguments per side, per each party.
20 Excuse me.

21 **COMMISSIONER BRISÉ:** Sure. I think we'll
22 start with FPL.

23 **MR. ANDERSON:** Good morning, Commissioner
24 Brisé.

25 **COMMISSIONER BRISÉ:** Good morning.

1 **MR. ANDERSON:** This, this is FPL's motion with
2 respect to a testimony that really has not even been
3 filed in the docket. It was merely mentioned in the
4 prehearing statement filed by SACE on July 25, which is
5 far too late. All the parties in this proceeding have
6 followed the Order Establishing Procedure which was set
7 forth by the Prehearing Officer on March 29th and
8 revised on June 3rd. And it was very, very clear to all
9 that any testimony parties were to file, Intervenors,
10 was to be done by July 8, and your Prehearing Order very
11 specifically states how that's to be done and all those
12 other things.

13 In summary, we've addressed this in a written
14 motion to you, but, you know, it's very plain that we
15 did not receive this testimony, we had no opportunity to
16 rebut it. Here we are a week before hearing and you see
17 for the first time mentioned the idea of bringing in two
18 witnesses, 28 exhibits, a long now time passed of the
19 rebuttal.

20 The Commission has dealt with this in other
21 circumstances. We've cited at page 2 of our order in
22 Docket 93-0485-TL, the Prehearing Officer denied a
23 party's request to file direct testimony in that case
24 after the deadline, noting that other parties to that
25 proceeding would be prejudiced by such late-filed

1 testimony because they would not be given adequate
2 opportunity to respond prior to the hearing. And that
3 same rule attaches here.

4 To be clear, we're not seeking to exclude
5 SACE's participation in the proceeding. They have
6 intervened in a timely way. They're able to offer legal
7 arguments and to examine witnesses and the like. What
8 we are asking, however, is that the Prehearing Officer
9 uphold the Order Establishing Procedure and preclude the
10 testimony of the witnesses. That's all we have. Thank
11 you.

12 **COMMISSIONER BRISÉ:** Thank you.

13 SACE.

14 **MR. JACOBS:** Good morning, Commissioner.

15 **COMMISSIONER BRISÉ:** Good morning.

16 **MR. JACOBS:** If I may, I'd like to cite to the
17 Commission, its order establishing this docket. This is
18 PSC Order 11-0009-PCO-EI. And in the second paragraph
19 of that order it say, "Establishment of a new docket
20 number is for administrative convenience only, and the
21 Commission retains its continuing jurisdiction over
22 matters considered in previous nuclear cost recovery
23 dockets."

24 So I would argue that, you know, by its own
25 terms the Commission has looked at these proceedings as

1 a very fluid, evolving process. More than that, the
2 parties, and particularly utilities, have viewed this
3 process as a very fluid and very open-ended process. We
4 just had substantial discussions about deferrals. And
5 indeed the very testimony that we're discussing now has
6 to do with issues which were deferred from one year to
7 the next.

8 In regard to the matter of whether or not
9 there's undue surprise or such, the very issues that
10 are, that are being addressed in this testimony were,
11 were exactly, are exactly issues that were addressed
12 last time. These witnesses were subject to extensive,
13 and I want to emphasize extensive, discovery. There was
14 testimony which was filed, specifically rebuttal to
15 this, to these issues. There can be no argument of
16 surprise as to the, what the testimony is and exhibits
17 are in these, in these exhibits.

18 SACE would absolutely be open to the, to the
19 entry of the rebuttal testimony that was filed in
20 response to this testimony. We have no problem with
21 that being put into the record for these proceedings.
22 In fact, arguably it's very appropriate because, for the
23 very reasons that we talked about today, the need for
24 the Commission to be fully informed by these issues as
25 they evolve. We believe absent this testimony there's

1 very little to give you much, to give you full view and
2 an independent, objective view of what the issues are
3 that are being raised by Mr. Gundersen and by
4 Mr. Cooper. So we, we do not see how the, the entry of
5 this testimony into the record, these exhibits into the
6 record poses any undue or unwarranted surprise to the
7 parties. Thank you, Mr. Commissioner.

8 **COMMISSIONER BRISÉ:** Thank you.

9 **MR. YOUNG:** Mr. Chairman, if I may be inclined
10 to ask for like a five- to ten-minute break.

11 **COMMISSIONER BRISÉ:** Thank you. So we'll
12 recess for five minutes.

13 (Recess taken.)

14 Okay. We're going to call this prehearing back
15 to order. And --

16 **MS. KAUFMAN:** Commissioner Brisé, I don't mean
17 to interrupt. I know you've already passed the motion
18 to defer for Progress. Whenever you come back to that,
19 I would just like to clarify my position.

20 **COMMISSIONER BRISÉ:** Okay.

21 **MS. KAUFMAN:** Thank you.

22 **COMMISSIONER BRISÉ:** Thank you.

23 We're going to go back to the motion to
24 exclude testimony of SACE's witnesses.

25 **MR. ANDERSON:** I spoke very briefly and used

1 only about probably three minutes of my time.

2 COMMISSIONER BRISÉ: Three minutes.

3 MR. ANDERSON: So I'd like to raise just three
4 very brief points.

5 COMMISSIONER BRISÉ: Okay.

6 MR. ANDERSON: First, there were probably no
7 fewer than five prehearing discussions among all the
8 parties. It was very plain, I think, to everyone in
9 this case that all testimony for this year was to be
10 filed this year. I recognize SACE did not participate
11 in those, but Intervenors take the case as they find it.

12 Second, this is not a fluid process of the
13 type that was described by counsel. In fact, the 2010
14 docket was closed as of June 15, 2011, and very, very
15 plainly it was a done and complete docket.

16 The third thing is we actually called and
17 asked SACE's counsel on the day Intervenor testimony was
18 due, July 8th, are you filing testimony? And the answer
19 we got was, no, we are not, and we relied on that also.
20 So that's what we had to say in addition. Request the
21 relief that we sought of precluding these witnesses.

22 COMMISSIONER BRISÉ: Thank you.

23 Staff.

24 MR. YOUNG: Mr. Chairman, I'm real taken aback
25 by Mr. Jacobs' arguments as relates to the filing of

1 testimony based on what is presented in FPL's motion,
2 also by the Order Establishing Procedure that sets out
3 the deadline for filing Intervenor testimony on July the
4 8th.

5 The fact that FPL called SACE, represented
6 that they called SACE, the representatives for SACE, and
7 spoke to the representatives and they stated they were
8 not filing testimony, then to wait approximately three
9 weeks before including a witness to be called in this
10 year's proceeding is a little bit problematic for me
11 because, one, I'd say the party that's being surprised
12 here was FPL being surprised instead of SACE being
13 surprised. And to call a witness, to schedule a witness
14 where -- basically seven to eight days before the
15 closing of discovery in this year's proceeding, to
16 conduct discovery on that witness, to conduct questions,
17 although SACE represents that it was the same testimony
18 from last year, things might have changed, and the
19 parties would not be able to conduct the discovery, not
20 be able to depose the witness, not be able to file
21 prefiled direct, I mean rebuttal testimony, and given
22 sufficient time, excuse me, to, to gather the
23 information and rebut the witness's testimony. So I'm a
24 little bit -- it's a little bit problematic for me, to
25 say the least.

1 **COMMISSIONER BRISÉ:** Thank you. As the
2 other -- is there any other party that's interested in
3 this issue? Okay. Very good.

4 As the other matters that have come in terms
5 of these types of issues, I will address all of them
6 together near the end. So I will rule on this a little
7 bit later.

8 So I think Staff had some other things they
9 would like to bring before us.

10 **MR. YOUNG:** Yes, sir. Finally, Staff would,
11 Staff would note that there are several issues that are
12 in dispute for the inclusion of this year's NCRC
13 proceeding. The parties have filed briefs on these
14 disputed issues per your direction. Staff recommends
15 that disputed issues be addressed under Section VIII,
16 issues and positions, and that each party be given five
17 minutes to argue for or against inclusion of each
18 disputed issue.

19 **MR. REHWINKEL:** Commissioner Brisé, Charles
20 Rehwinkel. On that note, I just would like to note for
21 your information, you may already be aware of it, but
22 that Public Counsel has asked -- we have withdrawn our
23 request that Issue 30 be ruled on by you, so.

24 **COMMISSIONER BRISÉ:** Thank you.

25 **MR. REHWINKEL:** And we've also, I believe,

1 worked out an agreement with Progress that we'd like to
2 submit at the appropriate time on Issue 26. So we
3 believe that Issues 26 and 30 are, will not be something
4 you have to rule on today, but we'll wait to get to that
5 point.

6 **COMMISSIONER BRISÉ:** All right. Thank you.

7 **MS. KAUFMAN:** Commissioner, just to throw a
8 monkey wrench into the proceedings here, while I realize
9 that Issue 30 was raised by Public Counsel, FIPUG does
10 not agree that that issue should be dropped from the
11 proceeding.

12 **COMMISSIONER BRISÉ:** Thank you.

13 **MR. YOUNG:** Mr. Chair, if I could jump in.
14 Before we get to those issues, we can -- Staff
15 recommends that we finish the preliminary issues first.

16 **COMMISSIONER BRISÉ:** Absolutely. Absolutely.

17 **MR. YOUNG:** The next preliminary matter is the
18 Office of Public Counsel on July 29th, 2011, filed a
19 revision to OPC's testimony, issues and prehearing
20 statements.

21 The, as relates to the issues and positions, I
22 believe, correct me if I'm wrong, those issues and
23 positions have been reflected in the draft -- the change
24 of those issues and positions have been reflected in the
25 Draft Prehearing Order.

1 **MR. REHWINKEL:** Except for Issue 30.

2 **MR. YOUNG:** Except for Issue 30, yeah.

3 **MR. REHWINKEL:** And I -- yes. And I also
4 noted a minor change that we'll get to.

5 **MR. YOUNG:** Okay.

6 **MR. REHWINKEL:** With respect to what Mr. Young
7 has, has brought to your attention, Commissioner, in our
8 letter items 1, 3, and 4 relate to the CR3 issue. And
9 the Public Counsel, our purpose in this is to take all
10 of our advocacy, including our prehearing statement
11 positions and the testimony of our expert witness, off
12 the table and withdraw it from this proceeding in this
13 case. And so that's the intent there and I believe it's
14 explained in the document.

15 Item 2 is an informational errata, and it
16 relates to some changes that we described to the company
17 in a deposition. They're just shown for, for
18 information to the parties. It is not intended to
19 substitute for testimony of the witness, but it explains
20 changes in his testimony. And it's related to the Levy
21 project and this is testimony that would stay in the
22 docket. So that's the reason for our, for our letter
23 and as explained in there.

24 **COMMISSIONER BRISÉ:** Thank you.

25 **MR. YOUNG:** Mr. Chairman, if we can have OPC

1 state that one more time. I think I heard him say he's
2 withdrawing all the testimony relating to the CR3. Am I
3 correct?

4 **MR. REHWINKEL:** That is correct. Yes. From
5 Dr. Jacobs' testimony we've stricken, as far as we can
6 tell, every reference to CR3 in every part of the
7 testimony that relates to CR3, and those were shown on
8 item 1 of our letter there.

9 We have a position in the docket that's
10 related to the amounts at issue that are raised by Staff
11 audit related to the AREVA preparation of the license
12 amendment request. We do not offer testimony on that
13 and we may cross-examine on that, but that's an issue
14 that, that was held over from the last time and it's
15 unrelated to any, any issue regarding the motion to
16 defer or any of the delay about the project.

17 **COMMISSIONER BRISÉ:** Thank you.
18 Staff.

19 **MR. YOUNG:** Those are all the preliminary
20 matters Staff is aware of.

21 **COMMISSIONER BRISÉ:** Are there any other
22 preliminary matters that we need to address before we go
23 on to the Draft Prehearing Order? Okay. Seeing the
24 nodding of the heads, I guess we can move on. Or is
25 there -- FPL?

1 **MR. ANDERSON:** Just to help in understanding
2 how we're proceeding today. One thing is at some point,
3 and perhaps Keino could indicate, we wanted to talk
4 about the prospect of sharing information about proposed
5 nonbinding cross-estimate time -- cross-exam estimate
6 times. So I don't know if that's a preliminary matter
7 or to be discussed later.

8 **MR. YOUNG:** It's a preliminary matter.

9 **MR. ANDERSON:** Okay. And the other just
10 question is in relation to our motion to strike and our
11 motion on the issues raised by Public Counsel, we had
12 asked that those be deferred for full Commission
13 resolution and we just wish to know how to prepare for
14 today.

15 **MR. YOUNG:** I think Staff recommended and the
16 Prehearing Officer stated that those issues -- the
17 motion to strike will be taken up after we discuss the
18 disputed issues.

19 **MR. ANDERSON:** Okay. And those disputed
20 issues, in our view they're fallout issues in relation
21 to the motion to strike. So we thought it made sense
22 for all that to travel with, to next week to be clear.
23 It didn't make sense to argue the legal objections on
24 the issues because they're the exact same as those on
25 the testimony, which, for which we've asked for full

1 Commission consideration. And so just we're looking for
2 direction. We, we felt the most advisable approach
3 is -- because the testimony that we're seeking to strike
4 really goes to the heart of OPC's case. It is, it is
5 not a -- more a, you know, failing to meet the time
6 frame and things like that. And I think whichever party
7 were to prevail would be seeking to reargue it next week
8 in any event. So we thought just for administrative
9 convenience today it might be worth the Prehearing
10 Hearing Officer and Staff's time just to figure out what
11 you want to do on that.

12 But I am prepared to briefly address this
13 little piece of paper we passed out in the interim.

14 **COMMISSIONER BRISE:** Let's address the
15 cross-examination estimates and then we can have a
16 conversation about the other portion in a, in a few
17 minutes.

18 **MR. ANDERSON:** Great. Thank you. In this
19 year's proceedings, as part of the workshop type
20 approach that Staff took where we were working through
21 the issues and things, it was very collaborative, very
22 positive, and one of the things suggested by one of the
23 Intervenor attorneys actually was isn't there a way to
24 kind of help make the cases a little more predictable?
25 And one of the ideas there was the date certain.

1 Another one we talked about was based on
2 something we -- I'm sorry -- we suggested we just try
3 maybe on a pilot basis this year here in Florida. This
4 is something that in Illinois where I used to practice
5 we did, which is basically in advance of the hearing
6 we'd distribute a list like this to typically be passed
7 out by the utilities, we'd do the administrative work,
8 and parties would just kind of enter a nonbinding
9 estimate of about how much time. Some of my friends who
10 just tried the Commonwealth Edison rate case in
11 Illinois, there were 71 witnesses. I think the case was
12 done in about eight hearing days. I kid you not. And
13 largely it's because people went through and figured no
14 cross, no cross, no cross, no cross, five minutes here,
15 ten minutes there, an hour on this ROE witness. Now I'm
16 not saying that, you know, our procedures would do that,
17 but there's just great advantage in being better able to
18 plan the days of the parties, prepare for the next day.
19 And responding to the ideas that people had had of isn't
20 there a way to even better and more efficiently conduct
21 hearings, might that not be something to do?

22 So we offer that. We're not, we're not trying
23 to drive it like a bus down the highway, but it, it, I
24 do feel it is a best practice. And the practice in
25 Illinois where we did this is basically the Prehearing

1 Officer would direct the utility's counsel to send
2 something out like this, parties filled in their
3 nonbinding estimate, we'd provide it back, and then
4 every day at the end of hearing basically we'd kind of
5 tot up where are we at, and it just made for a very good
6 and efficient hearing practice. So we offered that in
7 that spirit, and we'd be happy to do the administrative
8 work of penciling things in and circulating that around.

9 **COMMISSIONER BRISÉ:** Did everyone receive a
10 copy, excuse me, of what was provided? And I just want
11 to hear if there are any thoughts on that.

12 **MR. McGLOTHLIN:** I'll be glad to start, if
13 that's okay.

14 **COMMISSIONER BRISÉ:** Sure.

15 **MR. McGLOTHLIN:** Joe McGlothlin with OPC. We
16 received the, the list of witnesses. I have not tried
17 to fill out a time estimate for each block. One
18 difficulty in doing that is that, and I'm not being
19 facetious, the amount of time required for
20 cross-examination is a function of the question; it's
21 also a function of the answer. And for some time I've
22 tried to bring the Commission's attention to that
23 provision of the standard prehearing order in which the
24 Commission says the Commission wants the witness to
25 answer yes or no and then explain. And too many times

1 witnesses see in that provision some license to use a
2 question as a launching pad. And so for that reason
3 it's difficult to estimate the cross-examination time in
4 the event the Commission doesn't place some constraints
5 on the witnesses' use of that provision.

6 Personally I think I can say that I don't
7 think my individual time requirements will be very
8 extensive for any witness, and for some witnesses it
9 will probably be zero, but I'm not in a position to say
10 it's going to be X minutes or X half hours per witness
11 as we sit here today.

12 **COMMISSIONER BRISÉ:** Vicki.

13 **MS. KAUFMAN:** I agree with Mr. McGlothlin.
14 I'm still in the process of preparing for the case and
15 reviewing my cross and the witnesses' testimony, and I
16 also, I am in no position to provide specific estimates
17 as to time and how long it will, it will take. As
18 Mr. McGlothlin said, sometimes witnesses' answers are
19 lengthy or sometimes they, they say something you don't
20 expect which prompts questions that you had not
21 considered. So I'm certainly not in a position to, to
22 fill out that grid.

23 I think it's always been the parties' practice
24 to work as cooperatively as possible, and if no parties
25 have questions, you know, to let you know so that the

1 witness may be excused. We're probably getting, trying
2 to get to a level of precision that may not, may not be
3 possible given the issues and the number of witnesses in
4 this case.

5 **COMMISSIONER BRISE:** All right.

6 **MR. REHWINKEL:** Commissioner Brisé, you've
7 heard Mr. McGlothlin, who is the counsel in our office
8 primarily in charge with Florida Power & Light, but I
9 would like to address just from the Office of Public
10 Counsel's standpoint about this process that
11 Mr. Anderson represents as a best practice.

12 I don't know that, that from the standpoint of
13 practice before the Commission and observing it for the
14 last 25 years that I can say that there is something
15 that is broken that needs to be fixed on the fly. You
16 just heard argument with respect to the prehearing
17 practices with respect to the order on procedure that
18 came out that governs the filing of testimony. There's
19 nothing that's been put out in an OEP that says that
20 this is the process that parties should follow in
21 designing the cases, and we're really approaching the
22 11th hour of this one case. I think this is something
23 the Commission can certainly consider. But if it's
24 going to be piloted, I would urge that it be done in a
25 case that is not of the magnitude of this case for the

1 people of Florida and that this is something that be
2 trialed on a much lower level case. Not that all the
3 cases aren't important, but one that may have, may be
4 more suitable for a pilot practice.

5 But we certainly believe that, that a document
6 like this with numbers put down might place
7 inappropriate pressure on parties who get caught in the
8 time crunch where they've given an estimate but the
9 answers or questions from others go beyond that range
10 and squeeze their time down, which would then approach a
11 denial of due process. So we would urge you not to
12 consider this at this time. Thank you.

13 **COMMISSIONER BRISÉ:** All right. Staff. Oh,
14 SACE. I'm sorry.

15 **MR. JACOBS:** Thank you, Commissioner Brisé.

16 First of all, I think this happens informally
17 in my experience a lot of the time but much closer to
18 hearing. So I would agree that probably today is a bit,
19 is a bit early. But I also think it also is subject to
20 a lot of the comments you've heard from the other
21 intervenors that this could only be considered as a
22 good-faith estimate. It could not be binding. But I
23 think to undertake an exercise close to the hearing I
24 don't think would be harmful.

25 **COMMISSIONER BRISÉ:** Thank you.

1 Staff, if there's any comments from Staff.

2 **MR. KISER:** I was just going to echo that I
3 had heard several times it was nonbinding and so I'm not
4 sure why that kept coming up, I guess other than maybe
5 just human nature. Even though you put it down, it's
6 not binding. You may -- you might feel, you know, some
7 subtle pressure to stay within the half hour you said or
8 hour or whatever it was. But I think there's always,
9 always a chance to improve process. It's something that
10 you, I think you ought to consider, and that if you
11 decide to do it, we can always scrap it if it appears
12 it's not working well. But we don't have any objection
13 to going that way if, if the parties want to try and
14 work with it and see how it works as an experiment.

15 **COMMISSIONER BRISÉ:** All right. Thank you. I
16 didn't hear binding either and I thought that maybe we
17 can look at it and see if that's something that we can
18 work. But with that said, I don't think I have to
19 decide that at this moment. So I will take that into
20 advisement and I'll let you know what my thoughts are
21 with respect to these cross-examination estimates.

22 **MR. ANDERSON:** And very briefly just to thank
23 you for the opportunity to think about this thing
24 because we can always do things better. If one were
25 inclined, you know, I'd suggest pick a time towards the

1 end part of this, this week. And we stress very much
2 it's nonbinding and the idea is just to try to provide
3 each other a little more guidance so we know how to
4 better plan our days. That's all there is to it. Thank
5 you.

6 **COMMISSIONER BRISE:** Thank you.

7 I think we have other preliminary matters.
8 Are there any other preliminary matters that we need to
9 address?

10 **MR. YOUNG:** None that Staff is aware of.

11 **COMMISSIONER BRISE:** All right. If not, we're
12 going to proceed to the Draft Prehearing Order. Let's
13 go to the Draft Prehearing Order now. I'll identify the
14 sections, and I want the parties to let me know if there
15 are any corrections or changes to be made. We may go
16 quickly through this since it's a lot, so speak up and
17 let me know if there's changes or corrections that we
18 need to make.

19 Section I, case background. All right. Very
20 good.

21 Section II, conduct of proceedings.

22 Section III, jurisdiction.

23 Section IV, procedure for handling confidential
24 information.

25 Section V, prefiled testimony and exhibits,

1 witnesses.

2 **MR. YOUNG:** Mr. Chairman, I think Office of
3 Public Counsel may want to be heard on this section.

4 **MR. SAYLER:** Commissioner Brisé, Erik Sayler
5 for Office of Public Counsel for -- if you turn to page
6 6, page 6 of the Prehearing Order, the Draft Prehearing
7 Order for Dr. Jacobs' Progress testimony, he is not
8 offering testimony for Issues 30 or 33, so those can be
9 struck.

10 **COMMISSIONER BRISÉ:** Okay.

11 **MR. SAYLER:** And I don't know if my colleague
12 Mr. McGlothlin has anything else related to this.

13 **MR. YOUNG:** Mr. Chairman, if we can have
14 Mr. Sayler repeat that again, please.

15 **MR. SAYLER:** If you, if you will look, turn to
16 page 6 of the prehearing hearing order, Dr. Jacobs'
17 testimony, there are currently listed Issues 23, 26, 27,
18 30, 33, 36, 37. We are asking that 30 and 33 be struck
19 from the Prehearing Order.

20 **MR. YOUNG:** Okay. And 26? I think we can
21 table 26 for now until after we go through the
22 prehearing.

23 **MR. SAYLER:** Well, yes, we'll be able to
24 address 26 a little bit later.

25 **MR. REHWINKEL:** And if we could, I've spoken

1 to counsel for Progress and I mentioned it earlier in
2 the day that Dr. Jacobs is not available on the 25th.
3 And I don't know if it would be proper to reflect that
4 in the order that he's not available there, but Progress
5 has, has committed to work with us on taking him out of
6 order, if necessary.

7 **COMMISSIONER BRISÉ:** All right. Thank you.

8 **MS. HUHTA:** If I may, for Progress Energy
9 witnesses, to the extent that an issue is disputed, we
10 did not include it in our issue number list. So we will
11 make that amendment to the extent an issue is included
12 or excluded and we need to make that change.

13 **COMMISSIONER BRISÉ:** Okay.

14 **MR. YOUNG:** Mr. Chairman, at the appropriate
15 time Staff will recommend that, to the extent any
16 positions, any issues, any issue numbering changes, any
17 change to the Prehearing Order, that the parties send
18 those corrections to Staff by the close of business
19 tomorrow.

20 **COMMISSIONER BRISÉ:** Thank you.

21 All right. Staff, any other issues on
22 prefiled testimony and exhibits and witnesses?

23 **MR. YOUNG:** Yes, sir. Due to the number of
24 witnesses in this docket, Mr. Chairman, Staff recommends
25 that each witness be given five minutes to summarize his

1 or her testimony, and that's five minutes for direct,
2 five minutes for if the witness is coming back on
3 rebuttal, five minutes for rebuttal.

4 **MR. McGLOTHLIN:** Commissioner.

5 **COMMISSIONER BRISÉ:** Yes.

6 **MR. McGLOTHLIN:** Joe McGlothlin with OPC.

7 **COMMISSIONER BRISÉ:** Yes.

8 **MR. McGLOTHLIN:** We advised parties and Staff
9 that we request -- first of all, we have on the FPL
10 portion two witnesses, and I request that they be given
11 a total of 20 minutes to be divided among them with
12 respect to the usual five minutes. I think it's common
13 sense that sometimes one size doesn't fit every
14 circumstance. You have to take into account the scope
15 of the testimony, the ground to be covered.

16 In this instance, take into consideration that
17 while under the standard procedure each witness will be
18 given five minutes to summarize, in this case FPL's
19 filing the testimony of seven rebuttal witnesses, all of
20 whom aim at my witnesses. So unless some accommodation
21 is made, they have a total of ten minutes on the stand
22 and be faced with 35 minutes of potential rebuttal. So
23 in view of both the ground to be covered and with
24 respect to some kind of a fair balance, I ask that
25 Dr. Jacobs and Mr. Smith be given a total of 20 minutes

1 to be divided among them for purposes of their summary
2 on the FPL portion.

3 **COMMISSIONER BRISÉ:** So let me make sure I
4 understand that properly. So you would like for 20
5 minutes of summary in addition to the questions that
6 you're going to pose.

7 **MR. McGLOTHLIN:** 20 minutes of --

8 **COMMISSIONER BRISÉ:** Summary.

9 **MR. McGLOTHLIN:** -- summary to be divided
10 between the two witnesses.

11 **COMMISSIONER BRISÉ:** Okay.

12 **MR. ANDERSON:** May we be heard?

13 **COMMISSIONER BRISÉ:** Yes.

14 **MR. ANDERSON:** Thank you. We think the
15 appropriate solution here is the five minutes per
16 witness. We point out, for example, in opening
17 statements we only get ten minutes, and we deal with
18 parties, Southern Alliance for Clean Energy, Public
19 Counsel, FEA, FIPUG. We typically all get equal
20 amounts, so we typically open ten minutes against 40
21 minutes. So unless we're going to get into a balancing
22 of those types of things also, I think the five minutes
23 per witness is most efficient.

24 **MR. McGLOTHLIN:** I am not opposed to some
25 accommodation on opening statements to give that

1 balance.

2 **COMMISSIONER BRISÉ:** All right. Thank you.

3 Any other comments from anyone else on that
4 issue? Staff.

5 **MR. YOUNG:** Mr. Chairman, I think Staff is,
6 due to the number of witnesses in this docket, Staff is
7 going to affirm its recommendation of five minutes for
8 witness summaries for each witness. That's five minutes
9 on direct. If the witness comes back, filed testimony
10 on rebuttal, five minutes for rebuttal.

11 **COMMISSIONER BRISÉ:** Thank you. I too am
12 inclined to keep it at the five minutes, and so we
13 certainly hope that everyone understands that five
14 minutes is five minutes.

15 So I would like to remind parties that
16 duplicative, repetitious and friendly cross are not
17 allowed. Okay?

18 So Section VI, order of witnesses. The
19 Prehearing Order shall reflect my ruling that FPL's
20 petition will be taken up first, followed by Progress
21 Energy's petition. Are there any witnesses that can be
22 stipulated?

23 **MR. YOUNG:** Mr. Chairman, I would note that
24 your ruling on the motion to defer may affect your
25 ruling on this.

1 **COMMISSIONER BRISÉ:** Understood.

2 **MR. YOUNG:** Your statement that the Prehearing
3 Officer --

4 **MR. ANDERSON:** As to order of witnesses,
5 we'd -- first, Mr. Olivera, our Chief Executive Officer,
6 he's available the 10th or 11th. I think this order of
7 witnesses accommodates that. But if things end up
8 running very long for reasons beyond people's control,
9 we request the accommodation that he testify on the 10th
10 or 11th there.

11 The second thing is that at page 5 of the
12 Prehearing Order, to note, please, our continuing
13 objection with respect to the listing of the SACE
14 witnesses Cooper, Gundersen and their exhibits for the
15 reasons previously stated.

16 **MR. YOUNG:** Mr. Chairman, at this time there
17 are no witnesses that can be stipulated. Staff would
18 like to remind the parties that if they agree to
19 stipulate a particular witness, please let Staff know so
20 we can begin the process of confirming with each
21 Commissioner whether they will have questions for the
22 stipulated witness.

23 **MR. JACOBS:** Commissioner Brisé.

24 **COMMISSIONER BRISÉ:** Yes.

25 **MR. JACOBS:** I apologize. I'm a bit late to

1 the discussions. Has there been any thought about
2 whether a witness will take the stand both for rebuttal
3 and for direct?

4 **MR. YOUNG:** Mr. Jacobs can, can request that
5 the company do that. But you generally, this is
6 something the utilities request since they file direct
7 and rebuttal.

8 **MR. JACOBS:** Thanks.

9 **COMMISSIONER BRISÉ:** All right. Thank you.

10 All right. Section VII, basic positions.

11 Section VIII, issues and positions. I've
12 noticed that several parties have taken no position or
13 no position at this time on some issues.

14 As stated in the Order Establishing Procedure,
15 each party must take a position on each issue by the end
16 of this Prehearing Conference if they intend to have a
17 position. Otherwise, the party's position becomes no
18 position.

19 That being said, I would like to go through
20 the issues and position section to see if this is your
21 position or whether you intend to change that position.
22 Also, each party should indicate whether they have any
23 changes or corrections to the issues or their positions.

24 At this time, we will proceed issue by issue,
25 1 through 37, and we will address some numbers in

1 between there. And we will not in that number 1 through
2 37 address those issues that are in dispute, so we will
3 separate those issues and deal with those issues
4 independently after we've gone through all the issues
5 that we think are easy to handle.

6 Before we go into the issues, I don't know if
7 everyone is okay to go or if we need a five-minute
8 recess because I'd like to go through as many of them as
9 possible before we take a break. I personally need like
10 a five-minute break, so if you will indulge me with a
11 five-minute break. So with that, we'll take a short
12 recess for five minutes.

13 (Recess taken.)

14 All right. I think everyone is back, and
15 so with that we are going to start again. And we
16 are now with the issues and we're going to go to
17 Issue --

18 **MR. YOUNG:** Issue A.

19 **COMMISSIONER BRISÉ:** -- Issue A.

20 **MR. YOUNG:** And I think that's page 20.

21 **MS. KAUFMAN:** Commissioner Brisé, I don't have
22 a correction to my position as it's written here, but if
23 I could just -- this might be the right time for me to
24 clarify what our position is on the motion to defer.

25 **COMMISSIONER BRISÉ:** Sure.

1 **MS. KAUFMAN:** And that is that we don't have
2 any objection to the procedural deferral. Our point is
3 that when we come to, to whenever that is going to be
4 taken up, our position is that those costs would have to
5 be disallowed because in this proceeding that we're
6 about to begin Progress Energy has not followed the rule
7 and filed with you an appropriate feasibility plan. But
8 as to the process you were discussing before, we don't
9 have an objection to that, and we think we can make
10 those arguments at the correct time.

11 **COMMISSIONER BRISÉ:** All right. Thank you.
12 Progress.

13 **MR. BURNETT:** Yes, sir. Thank you. And we
14 appreciate the ability for Ms. Kaufman to clarify that.
15 If you're on Issue A now, we again would oppose that
16 issue being included because we think again now,
17 especially with this clarification, that, you know,
18 we're seeking to reduce costs by about \$16 million by
19 this what I now perceive to be at least substantively
20 unopposed motion. So we'd just restate the same
21 argument we made earlier, sir. Thank you.

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

23 **MR. JACOBS:** Commissioner Brisé, SACE would,
24 would amend its position on this and we would adopt the
25 position taken by OPC.

1 **COMMISSIONER BRISÉ:** Okay.

2 **MR. BREW:** Commissioner Brisé, I'm not sure if
3 I'm out of order here, but with respect to this issue
4 I'm still a little muddled as to what would happen on,
5 at the August 10th hearing on this, given the fact that
6 the motion is unopposed.

7 As I understand it, Progress would put someone
8 up to go through their May 1st testimony and basically
9 withdraw or correct a good part of it, including
10 subtracting \$16 million from its requested revenue
11 requirement for the clause. To the extent that there
12 was any confusion, parties would do cross-examination to
13 say, well, is this number a good number, and the company
14 would say, no, it's no longer valid. The question would
15 be what's the right number? And they would say we don't
16 know yet, we're still doing that analysis, that's why we
17 filed the motion to defer. All of which leads me to the
18 extent that parties are concerned about time in the
19 process here, it seems to me we waste roughly a day
20 simply to confirm on the record what's already stated in
21 the pleadings. So I'm still not, not clear as to what
22 we're trying to accomplish by simply not ruling on the
23 pleadings as filed. Thanks.

24 **COMMISSIONER BRISÉ:** Thank you.

25 **MR. BURNETT:** And thank you, Commissioner. I

1 completely agree with what Mr. Brew said. At some
2 point, if it is your pleasure to, to go with the process
3 of bringing a witness, we would certainly need to know
4 who the Commission wanted to talk to as well. So we're
5 not necessarily sure if that would be a lawyer, if you
6 want an officer of the court or a fact witness or whom.

7 **COMMISSIONER BRISÉ:** Thank you.

8 **MR. YOUNG:** Mr. Chairman, to answer
9 Mr. Burnett's question, that would be a fact witness,
10 not, not an attorney. Nothing against attorneys.

11 **MR. BURNETT:** No problem. I agree. Attorneys
12 are great as well. We just have several fact witnesses.
13 So, again, just whichever one the Commission wanted, but
14 again restating our objection.

15 **MR. YOUNG:** All right.

16 **COMMISSIONER BRISÉ:** Okay. Thank you. Any
17 other comments on Issue A in terms of positions?

18 Okay. So with that, we'll go to Issue 1.

19 **MR. YOUNG:** Yes.

20 **COMMISSIONER BRISÉ:** Issue 1.

21 **MR. YOUNG:** Mr. Chairman, it's my
22 understanding that SACE has taken no position at this
23 time, and per your Order Establishing Procedure no
24 position is not a position.

25 **MR. JACOBS:** Commissioner Brisé, I think we

1 will be amending, we'll be amending that. I just want
2 to check one thing very quickly.

3 Commissioner Brisé, SACE would amend its
4 position here, and we would also adopt the position of
5 OPC, which is essentially the same as their -- we'll
6 come to that later deposition in Issue 15. So but for
7 the moment we'll adopt the OPC's position as to Issue 1.

8 **COMMISSIONER BRISÉ:** Okay. Thank you.

9 **MR. YOUNG:** Also, Mr. Chairman, I see PCS
10 Phosphate is taking a position in FPL's case. I think
11 that might be an error and that needs to be corrected.

12 **MR. BREW:** Which was that? Where was that?

13 **MR. YOUNG:** Issue 1, page 22.

14 **MR. BREW:** That is an error. It should be no
15 position. And that's what it says.

16 **MR. YOUNG:** Pardon me?

17 **MR. BREW:** The PCS issue -- position on
18 Issue 1 is no position.

19 **MR. YOUNG:** Sorry. I stand corrected.

20 **COMMISSIONER BRISÉ:** All right. So we can
21 move on to Issue 2? All right. Issue 2, are there
22 any --

23 **MR. YOUNG:** There are several -- there is
24 one -- FEA has taken no position at this time. It needs
25 to be corrected.

1 **MS. WHITE:** Yes. That's correct. We agree
2 with FIPUG.

3 **COMMISSIONER BRISÉ:** Thank you. Any other
4 position changes?

5 All right. Moving on to Issue 3. No position
6 changes there?

7 **MS. WHITE:** Commissioner, FEA should be -- no
8 should be our position.

9 **COMMISSIONER BRISÉ:** FEA, no position?

10 **MS. WHITE:** No. Our position is no, agree
11 with FIPUG.

12 **COMMISSIONER BRISÉ:** All right. Thank you.

13 **MS. KAUFMAN:** FIPUG needs to change -- FIPUG's
14 position is no, and then it would make more sense.

15 **COMMISSIONER BRISÉ:** Okay. Thank you. Any
16 other changes to Issue 3 in terms of positions? 3A?

17 **MS. KAUFMAN:** Excuse me. FIPUG needs to
18 change its position to no rather than no position.

19 **COMMISSIONER BRISÉ:** Okay. Thank you.

20 **MS. WHITE:** And FEA does the same.

21 **COMMISSIONER BRISÉ:** Thank you. Any other
22 position changes?

23 Issue 4. This is just for positions. We will
24 address the matter a little bit later. FEA, are you
25 going to keep the no position?

1 MS. WHITE: I'm sorry. No. We agree with
2 FIPUG.

3 MR. YOUNG: Okay. Agree with FIPUG. Is
4 that -- was that -- I'm sorry. Agree with FIPUG;
5 correct?

6 MS. WHITE: That's correct.

7 COMMISSIONER BRISÉ: Issue 5.

8 MS. WHITE: We take the same position as FIPUG
9 in this one as well.

10 COMMISSIONER BRISÉ: Issue 6.

11 MS. KAUFMAN: FIPUG's position is no on this
12 issue.

13 MS. WHITE: And FEA's is as well.

14 MR. JACOBS: SACE would change its position to
15 no.

16 COMMISSIONER BRISÉ: Okay. Issue 7.

17 MS. WHITE: FEA changes its position to agree
18 with FIPUG.

19 COMMISSIONER BRISÉ: Moving on to Issue 8.

20 MS. WHITE: We agree with FIPUG on this matter
21 as well.

22 COMMISSIONER BRISÉ: Moving on to Issue 9.

23 MS. WHITE: Again, FEA agrees with FIPUG.

24 COMMISSIONER BRISÉ: On Issue 9, SACE, do you
25 have a position or is that none as no position?

1 **MR. JACOBS:** I believe our position was that
2 there should be none with that as -- based on our
3 position as to the matter itself, we indicated there
4 should be no, no recovery.

5 **COMMISSIONER BRISÉ:** Okay. Issue 10.

6 **MR. JACOBS:** SACE would adopt the position of
7 OPC.

8 **COMMISSIONER BRISÉ:** Okay. All right. 10A.
9 And that's one in dispute, so we will deal with the
10 issue later, but just looking at the positions.

11 **MR. JACOBS:** SACE would again adopt the
12 position of OPC in Issue 10A.

13 **COMMISSIONER BRISÉ:** Moving on to 10B. SACE,
14 a position?

15 **MR. JACOBS:** I'm sorry. Just one moment. We
16 would adopt the position of OPC in 10B. Thank you.

17 **COMMISSIONER BRISÉ:** Okay. Thank you.

18 Issue 11.

19 **MS. WHITE:** FEA adopts the position of -- or
20 agrees with FIPUG on Issue 11.

21 **COMMISSIONER BRISÉ:** Okay. Thank you.

22 **MR. JACOBS:** SACE would adopt the position of
23 OPC in Issue 11.

24 **COMMISSIONER BRISÉ:** Thank you.

25 Issue 12.

1 **MR. YOUNG:** I'm sorry, Mr. Chairman.

2 With FEA, was it adopt OPC and FIPUG or --

3 **COMMISSIONER BRISÉ:** No.

4 **MS. WHITE:** No. Issue 11 is agree with FIPUG.

5 **MR. YOUNG:** Okay.

6 **COMMISSIONER BRISÉ:** And SACE was OPC, they

7 would adopt their position.

8 Issue 12.

9 **MR. JACOBS:** SACE would adopt the position of
10 OPC.

11 **COMMISSIONER BRISÉ:** Okay. Thank you.

12 Issue 13.

13 **MR. YOUNG:** Mr. Chairman, if we can go back to
14 Issue 12. I think FPL has a correction.

15 **COMMISSIONER BRISÉ:** Okay. Is that Issue 12?

16 **MR. YOUNG:** Yes, sir.

17 **COMMISSIONER BRISÉ:** Okay. FPL.

18 **MR. ANDERSON:** There's a numerical correction
19 I think. Let me get that. In Issue 12, third line from
20 the bottom, if you see the number 1,604,242, if that
21 could be stricken, please, and replaced with the number
22 1,610,665. So that would read 1,610,665 in base rate
23 revenue requirements. Thank you.

24 **COMMISSIONER BRISÉ:** All right. Thank you.

25 Moving on to Issue 13. SACE.

1 **MR. JACOBS:** We would change -- SACE would
2 change its position to, to say none -- no, no amount.

3 **MR. YOUNG:** None?

4 **MR. JACOBS:** Strike that. Strike that. On
5 this one I think we're going to leave it as no position.

6 **COMMISSIONER BRISÉ:** Okay. Thank you.

7 Issue 14.

8 **MR. YOUNG:** It's my, it's my understanding
9 that OPC takes no position except -- so I don't know if
10 they want to be, if they want to be heard on that so
11 that position is clear.

12 **MR. MCGLOTHLIN:** The position is as stated
13 there. I don't think we -- it's no position.

14 **COMMISSIONER BRISÉ:** Issue 14. SACE.

15 **MR. JACOBS:** For SACE, we're going to say
16 none, change our position to none.

17 **COMMISSIONER BRISÉ:** 15A.

18 **MR. JACOBS:** SACE would adopt the position of
19 OPC.

20 **COMMISSIONER BRISÉ:** 15B.

21 **MR. JACOBS:** SACE would adopt the position of
22 OPC.

23 **COMMISSIONER BRISÉ:** 15C.

24 **MR. JACOBS:** SACE would again adopt the
25 position of OPC.

1 MS. WHITE: FEA agrees with FIPUG.

2 COMMISSIONER BRISÉ: Thank you.

3 16, recognizing that this too will be dealt
4 with a little bit later, is disputed.

5 MR. JACOBS: SACE would again adopt the
6 position of OPC.

7 MS. WHITE: And FEA agrees with FIPUG.

8 COMMISSIONER BRISÉ: Okay. 17.

9 MR. JACOBS: SACE would adopt the position of
10 OPC.

11 COMMISSIONER BRISÉ: Issue 18.

12 MR. JACOBS: SACE would adopt the position of
13 OPC.

14 COMMISSIONER BRISÉ: Issue 19.

15 MR. JACOBS: SACE would change its position to
16 none.

17 COMMISSIONER BRISÉ: Okay. Thank you.

18 Issue 20. Issue 21. Issue 22. Issue 23.

19 Issue 24.

20 MR. JACOBS: SACE would change its position to
21 no.

22 MS. WHITE: And FEA changes its position to
23 no.

24 COMMISSIONER BRISÉ: Moving on to Issue 25.

25 MS. WHITE: FEA agrees with FIPUG.

1 **MR. JACOBS:** SACE would, we would take the
2 position of FIPUG on this.

3 **COMMISSIONER BRISÉ:** Issue 26. Issue 27.

4 **MS. KAUFMAN:** Excuse me, Commissioner. I
5 thought that there was a rewording or something on
6 Issue 26.

7 **MR. REHWINKEL:** I thought we would do that --

8 **COMMISSIONER BRISÉ:** We'll come back to --

9 **MR. YOUNG:** That's when we get to disputed
10 issues.

11 **MS. KAUFMAN:** Okay. Excuse me.

12 **COMMISSIONER BRISÉ:** Issue 27. Issue 28.

13 **MR. YOUNG:** I'm sorry, Mr. Chairman. If we
14 can get back to, if we can go back to 27, OPC's
15 position.

16 **MR. REHWINKEL:** Yes, Commissioner. We have
17 scheduled a deposition that we negotiated a time certain
18 with, with Progress for Wednesday of this week in
19 St. Petersburg. And we have taken a position here of no
20 position at this time pending additional discovery, with
21 the understanding that we might have to amend our position
22 based on what we learn in that deposition. But we would
23 ask for good cause to be allowed to provide a position no
24 later than Friday of this week or another time that the
25 Staff would, would recommend to you based on the

1 information that we may, may learn in that deposition.

2 **MR. YOUNG:** Mr. Chairman, Friday is a little
3 problematic because the hearing starts next week and
4 we've got to get the Prehearing Order issued and the
5 Chairman has to sign it, the Prehearing Officer has to
6 sign it. So Friday is problematic. So we're
7 recommending the close of business tomorrow; however, I
8 understand that you have not taken the deposition. So
9 maybe Wednesday you can get us a position on this one
10 issue.

11 **MR. REHWINKEL:** The problem is I don't know
12 what time the deposition will be over with. I mean, I
13 --

14 **MR. YOUNG:** Okay. First thing Thursday
15 morning?

16 **MR. REHWINKEL:** We can do that.

17 **MR. YOUNG:** And -- all right.

18 **COMMISSIONER BRISÉ:** Does Progress have any
19 issues with that?

20 **MR. BURNETT:** No, sir.

21 **COMMISSIONER BRISÉ:** So we're looking to
22 Thursday morning to have a position filed with respect
23 to Issue 27.

24 **MR. REHWINKEL:** If, if -- yes. Yes.

25 **COMMISSIONER BRISÉ:** Okay.

1 **MR. BREW:** Excuse me, Commissioner.

2 **COMMISSIONER BRISÉ:** Yes.

3 **MR. BREW:** PCS Phosphate had adopted the
4 position of OPC, so I'd like the opportunity to clarify
5 our position on that at the same time as OPC files.

6 **COMMISSIONER BRISÉ:** Okay. So that was Issue
7 27. Are we clear with Issue 27?

8 **MR. YOUNG:** Yes, sir. With the note that
9 Office of Public Counsel and PCS will file --

10 **COMMISSIONER BRISÉ:** By Thursday morning.

11 **MR. YOUNG:** -- a position by Thursday morning.

12 **COMMISSIONER BRISÉ:** Yes. Issue 28.

13 All right. Issue --

14 **MR. REHWINKEL:** Commissioner, the same would
15 go for this. 27 and 28 deal with 2011, 2012 non-COLA
16 costs, and you're going to hear something about that on
17 Issue 26 when we get to that. Thank you.

18 **COMMISSIONER BRISÉ:** Okay. Issue 29.

19 **MR. YOUNG:** Mr. Chairman, I hate to go back,
20 but FIPUG's position, I just wanted to clarify that this
21 is going to, this is their position statement.

22 **MS. KAUFMAN:** Which issue, Mr. Young?

23 **MR. YOUNG:** 28.

24 **MS. KAUFMAN:** Yes. That's our position.

25 **COMMISSIONER BRISÉ:** Issue 29.

1 **MR. JACOBS:** Commissioner Brisé, SACE adopts
2 the position of OPC.

3 **COMMISSIONER BRISÉ:** Thank you.

4 Issue 30.

5 **MR. JACOBS:** SACE would again adopt the
6 position of OPC.

7 **MR. REHWINKEL:** This is one that, that we have
8 withdrawn our issue, and to the extent the issue --

9 **MR. JACOBS:** Oh, that's right.

10 **MR. REHWINKEL:** Well, to the extent that
11 somehow this issue remains in the docket, we would at
12 least, as we've indicated at the beginning, that, that
13 Dr. Jacobs not be listed on this whether it stays in or
14 not.

15 **COMMISSIONER BRISÉ:** Okay.

16 Issue 31.

17 **MR. JACOBS:** Commissioner Brisé, to the extent
18 that OPC may withdraw from this issue, SACE would just
19 go ahead and change this to no.

20 **COMMISSIONER BRISÉ:** Okay. Is that withdraw
21 contingent on OPC's withdrawal or the position no?

22 **MR. JACOBS:** Yes. Yes, sir.

23 **COMMISSIONER BRISÉ:** I just want some clarity
24 on that.

25 **MR. JACOBS:** Well, no, we'll just make our

1 position no.

2 COMMISSIONER BRISÉ: Okay.

3 MR. YOUNG: Because we understand that there's
4 some thought that they may withdraw.

5 COMMISSIONER BRISÉ: Okay. Thank you.

6 MS. KAUFMAN: And, Commissioner, this is the
7 issue that FIPUG would like to remain in. So depending
8 on your ruling, we'll have to revise our position.

9 COMMISSIONER BRISÉ: Understand. Thank you.

10 Issue 31.

11 MR. JACOBS: FIPUG [sic] would adopt the
12 position of OPC.

13 COMMISSIONER BRISÉ: You mean, you mean SACE?
14 You mean SACE would like to adopt the position of OPC?

15 MR. JACOBS: That was, that was, that was,
16 that was, that was a senior moment. Yes. I meant SACE.

17 MS. WHITE: FEA agrees with OPC as well.

18 COMMISSIONER BRISÉ: All right.

19 MR. REHWINKEL: Commissioner Brisé, I should
20 state that we had some discussions with, with Progress.
21 And you see the clause or the phrase in parentheses
22 in our position on this, it says "inexplicably
23 confidential," and we've noted elsewhere that we would
24 seek a determination. I believe we have reached an
25 accommodation with Progress that either that number will

1 no longer be confidential or that we will be able to use
2 a surrogate number that would meet our needs to
3 communicate the number to the public. In any event,
4 because of that I think it would be appropriate to
5 strike that phrase in the parenthetical in our position.

6 **COMMISSIONER BRISÉ:** Okay. Progress, you
7 would like to be heard?

8 **MR. BURNETT:** Yes, sir. And just to, to
9 elaborate on that. We've held the number confidential
10 just because it's our requirement to do so in our
11 contract with the vendor. We've asked the vendor to
12 release the number. And if the vendor does so, great.
13 If not, then, as Mr. Rehwinkel said, we'll try to get a
14 range that doesn't disclose the number but gets it tight
15 enough to where the public and the Commission has an
16 idea of the magnitude.

17 **COMMISSIONER BRISÉ:** All right. Thank you.

18 **MR. BURNETT:** Yes, sir.

19 **COMMISSIONER BRISÉ:** Issue 32.

20 **MR. JACOBS:** SACE would take the position of
21 no.

22 **COMMISSIONER BRISÉ:** All right. Thank you.
23 Issue 33.

24 **MS. HUHTA:** Progress has one change on Issue
25 33. And on page 60 in the last paragraph where it

1 states, "The over recovery of \$244,745 should be," that
2 should change to 244,765.

3 COMMISSIONER BRISÉ: 244,765?

4 MS. HUHTA: Yes, sir.

5 COMMISSIONER BRISÉ: Okay. All right.

6 MR. REHWINKEL: Commissioner, I apologize.
7 On, back on Issue 32 in our position, the word "not"
8 should not be in that sentence.

9 COMMISSIONER BRISÉ: So "Inasmuch as these
10 decisions will be"?

11 MR. REHWINKEL: Yes. Yes, Commissioner.

12 COMMISSIONER BRISÉ: Thank you. Ready to move
13 on to Issue 34.

14 MR. YOUNG: I think SACE needs to take a
15 position on 33.

16 MR. JACOBS: We'll change our position to
17 none.

18 COMMISSIONER BRISÉ: Okay. Thank you.

19 MS. KAUFMAN: And I have a change on Issue 33.

20 COMMISSIONER BRISÉ: Sure.

21 MS. KAUFMAN: And my position is no longer
22 "Agree with OPC." But it should be, "Zero. The
23 prudence of these costs is the subject of Docket Number
24 100437-EI."

25 COMMISSIONER BRISÉ: Okay. If you could

1 repeat that one more time.

2 **MS. KAUFMAN:** Yes. Our position is, "Zero.
3 The prudence of these costs is the subject of Docket
4 Number 100437-EI."

5 **COMMISSIONER BRISÉ:** Thank you.

6 Issue Number 34.

7 **MR. JACOBS:** SACE would change its position to
8 none.

9 **COMMISSIONER BRISÉ:** Issue 35.

10 **MR. JACOBS:** SACE would change its position to
11 none.

12 Strike that. We'll adopt the position of OPC.

13 **COMMISSIONER BRISÉ:** Okay. Thank you.

14 **MR. YOUNG:** And just to clarify, Mr. Chairman,
15 FIPUG's position?

16 **MS. KAUFMAN:** On 35?

17 **MR. YOUNG:** Yes.

18 **MS. KAUFMAN:** That's correct, Mr. Young.

19 **COMMISSIONER BRISÉ:** Issue Number 36.

20 **MR. JACOBS:** OPC -- I'm sorry. I'll get it
21 right in a moment.

22 SACE would adopt the position of OPC.

23 **MS. WHITE:** FEA agrees with FIPUG.

24 **COMMISSIONER BRISÉ:** And Issue 37.

25 **MS. KAUFMAN:** Commissioner, on Issue 37, FIPUG

1 would change its position to agree with OPC.

2 **MR. JACOBS:** SACE would change its position to
3 agree with OPC.

4 **COMMISSIONER BRISÉ:** And FEA will keep its
5 position?

6 **MS. WHITE:** Yes. Which basically is agreeing
7 with OPC.

8 **COMMISSIONER BRISÉ:** Got you. All right. I
9 think we've dealt with all of those issues. Now we can
10 move to address the issues that are in dispute. So,
11 Staff.

12 **MR. YOUNG:** Yes, Mr. Chairman. Staff
13 recommends that we address the issues in groups and in
14 the following order.

15 OPC disputed Issue 30. Staff would note that
16 OPC disputed Issue 30 may possibly be dropped. I think
17 we had some discussion here today on that. I think
18 Ms. Kaufman is still the party that's disputing that
19 issue.

20 So the layout is OPC disputed Issue 30;
21 FIPUG's disputed Issues 4, 5, 21, and 22; OPC's disputed
22 Issues 10A, 10B, and 16 through 18; OPC disputed Issues
23 26, disputed Issue Number 26.

24 And, Mr. Chairman, just to note that number --
25 OPC disputed Issues 10A, 10B, and 16 through 18

1 correlates to the motion to strike by Florida Power &
2 Light.

3 **COMMISSIONER BRISE:** We're clear on that.
4 We're ready to move to the disputed issues.

5 **MR. YOUNG:** Yes, sir. As stated earlier,
6 Staff recommends that the parties be given five minutes
7 each to present arguments as to inclusion for or against
8 a particular issue.

9 **COMMISSIONER BRISE:** Okay. So at this time
10 we're going to --

11 **MR. YOUNG:** At this time we can move to Issue
12 30. I guess since OPC has, has an agreement with --
13 it's their issue, they should be able, they should argue
14 first, followed by the other Intervenors, followed by
15 the utility.

16 **MR. REHWINKEL:** Commissioner, I'm in an
17 unusual position of having advocated this position be
18 included, this issue be included in the hearing for the
19 2011 cycle. In our testimony that we filed by
20 Dr. Jacobs on, on page 9 and 10 starting with line 15 on
21 page 9 through line 4 on page 10, Public Counsel offered
22 this testimony, and the issue was, was raised to provide
23 a place, a decision-making point for the Commission to
24 hear evidence on this issue.

25 On the 26th, pursuant to your instructions

1 that were given to the parties through the Staff, we
2 filed argument about why the issue should be included
3 for hearing, and we took the position that this is
4 essentially a legal issue that has to do with the legal
5 status of a prudence determination in this docket that
6 might run afoul of a prudence determination -- an
7 imprudence determination in another docket as a
8 theoretical matter.

9 We still adhere to the position that we took
10 and the basis for it, but we came to the determination
11 that we could argue -- we have whatever rights we have
12 for disallowance on imprudence made in another docket
13 separate and apart and wholly independent of a
14 determination in this docket, or at least that's our
15 legal theory that we're willing to go forth on.

16 On the 29th in the letter that we discussed
17 earlier in the, in the Prehearing Conference the Public
18 Counsel withdrew the testimony that I mentioned on pages
19 9 and 10 of Dr. Jacobs' prefiled testimony, and thus the
20 basis or the reason, the sole reason for us having
21 raised the issue has, has gone. And so we, we are now
22 arguing that we should be allowed to withdraw the issue,
23 and so we no longer advocate that the issue be raised
24 because we do have the right to withdraw the testimony
25 before it is accepted by the Commission. And so in that

1 regard that concludes our argument. Thank you.

2 **COMMISSIONER BRISÉ:** Thank you.

3 Vicki.

4 **MS. KAUFMAN:** Thank you, Commissioner Brisé.

5 And first of all, I want to apologize if I have put the
6 Public Counsel in an awkward position, that that
7 certainly was not my intent. And I also agree with his
8 position that we have the right to argue about these
9 costs later. My problem is I'm not sure that the
10 company would agree with that position.

11 And so what this issue relates to is a
12 prudence determination basically from the time of the
13 first delamination event through the end of 2010. And
14 our sole purpose in wanting to keep this issue in is
15 that we think that not that you should rule on that
16 determination but that you shouldn't rule on it because
17 it is the subject of another docket. What we don't want
18 to happen is that you rule that those costs are prudent
19 in this nuclear docket here and then somehow down the
20 road we get into the other docket and there's an
21 argument raised that, well, the Commission has already
22 made that determination and thus you can't take issue
23 with it. If the company is willing to agree that those
24 dollars will still be at issue in the other docket, then
25 we are happy to let this go; otherwise, we do see some

1 potential for problems in the future.

2 And I also want to reiterate that it is not
3 our intention to argue, discuss or bring up in any way
4 that other docket in the context of the nuclear cost
5 recovery proceeding. We're concerned about issue
6 preclusion when we get to the other docket, so that's
7 our reason for wanting to keep this issue in.

8 **COMMISSIONER BRISÉ:** Thank you.

9 Progress.

10 **MR. BURNETT:** Thank you, sir. I should
11 probably note to start with that I think I've agreed
12 with Mr. Brew and White Springs twice today and now I'm
13 about to agree with OPC. This is clearly a sign of the
14 apocalypse I think.

15 I think I can be helpful here. With respect
16 to Issue 30, we agree with Mr. Rehwinkel that your
17 determination of the prudence of 2009 and '10 costs in
18 this docket, that does nothing to the Commission's
19 ability or Mr. Rehwinkel's ability or anyone else for
20 that matter to argue that there was an imprudence in the
21 delamination docket. And if he can show actual and
22 approximate causation leading to a proper measure of
23 damage, he gets to argue that those, those are, in fact,
24 different costs altogether. So I would agree that
25 that's not a bar.

1 Also, I should note that if you'll flip over
2 and look at Issue 31, that's really what is at issue
3 this year. Last year the company received a feasibility
4 determination for the EPU project, they received a
5 reasonableness determination for '09 costs, a
6 reasonableness determination for '10 costs. But for
7 there being one narrow issue related to a 2009 cost
8 incurred with a change order 23 to the license amendment
9 request, we would not be having this conversation. We'd
10 already have the prudence determination in hand and be
11 done. That small carryover issue is ripe for
12 determination this year, and Mr. Rehwinkel has properly
13 withdrawn his testimony and limited it to that.

14 So I think we're all saying the same thing
15 bottom line, Commissioner. There's no intent to say
16 that if, again, if a proper measure of damage and
17 causation is shown in the delam case, that that's any
18 bar based on your determination here.

19 **COMMISSIONER BRISÉ:** Okay. Thank you.

20 Vicki.

21 **MS. KAUFMAN:** And if that's the company's
22 position and it is reflected under Issue 30, then -- or
23 somewhere in the Prehearing Order, then we would be fine
24 to drop the issue.

25 **COMMISSIONER BRISÉ:** Okay. Staff.

1 **MR. YOUNG:** If I could have a minute.

2 (Pause.)

3 Mr. Chairman, can I get a clarification? I
4 hear what Ms. Kaufman is saying. And let me clarify,
5 and correct me if I'm wrong, Ms. Kaufman, are you saying
6 that if Progress Energy Florida states on the record and
7 maybe add a language to the issue that these costs --
8 the determination on this issue has, does not preclude
9 you from arguing the delam docket, then you're fine with
10 dropping the issue?

11 **MS. KAUFMAN:** Yes. I agree with Mr. Rehwinkel
12 that the only costs that are ripe, if you will, for
13 determination are the LAR costs, and I don't take issue
14 with that. I just want to be sure that when we go to
15 the other docket there's no argument that there's any
16 kind of issue preclusion. So if everyone is agreed with
17 that and it's reflected wherever in the Prehearing
18 Order, then I'm fine to drop the issue.

19 **COMMISSIONER BRISÉ:** Progress.

20 **MR. BURNETT:** Yes, sir. And I should, I
21 should be abundantly clear just so we don't have any
22 confusion.

23 Here's what I think Ms. Kaufman does not get
24 to do. I don't think she ever gets to come back and say
25 it was imprudent for Progress Energy to go forward last

1 year with spending money on the EPU project because,
2 given the delamination, we should have stopped, we
3 should have shut the project down. That's what she will
4 be barred, I believe, from doing. She will not be able
5 to make those arguments and will not be able to make
6 that challenge. The proper time to have done that was
7 last year. Nor has she tried to inappropriately take
8 that position this year. That is fine.

9 What I think she is not barred from being able
10 to do is to say that if there was an imprudence in
11 another docket, delam or otherwise, that led, for
12 instance, to the project cost of the EPU to be
13 increased, again, showing the clear chain of causation,
14 that event caused costs to be increased, she could argue
15 to get that money back, or if there was any sort of
16 other damage caused by that imprudence. But we should
17 be clear, I think we're talking about two very distinct
18 set of dollars and events.

19 **MS. KAUFMAN:** Well, I'm glad that Mr. Burnett
20 made that clarification then because I don't agree with
21 how he characterized it. I think that we need to have
22 the ability to argue whether or not the decisions that
23 the company made were imprudent or not imprudent, and I
24 don't want to be precluded from making those arguments
25 in the other docket. And now I heard something

1 different, that his view would be that the finding in
2 this docket of prudence would put an end to this issue.

3 **COMMISSIONER BRISÉ:** Okay. Staff.

4 **MR. YOUNG:** I think we're -- I hate to do
5 this, but I think we're real close to an agreement. And
6 maybe if we can table this discussion and the parties
7 work, Ms. Kaufman and Mr. Burnett work offline to reach,
8 to reach, to iron out their, their slight differences, I
9 think we might be able to drop this issue.

10 **COMMISSIONER BRISÉ:** Are the parties willing
11 to do that?

12 **MS. KAUFMAN:** Absolutely.

13 **MR. BURNETT:** Yes, sir.

14 **COMMISSIONER BRISÉ:** All right. So we will
15 come back to that issue a little bit later.

16 Moving on to, moving on to, I suppose, Issues
17 4, 5, 21, and 22.

18 **MR. YOUNG:** Yes, sir. And in this issue, this
19 is a FIPUG sponsored issue. FIPUG should be required to
20 go first, followed -- and Staff recommends that it be
21 taken up as a group because it affects both parties,
22 both, both utilities. FIPUG followed by the other
23 Intervenors, followed by FPL, then Progress.

24 **MS. KAUFMAN:** Thank you, Commissioner. These
25 are FIPUG issues and essentially they're two issues and

1 they are the same for each of the utilities.

2 Issue Number 4 and I guess corresponding Issue
3 21 asks the question, "What is" -- we'll just use FPL's
4 -- "What is the current total estimated all-inclusive
5 cost, including AFUDC and sunk costs, of the proposed
6 Turkey Point Units 6 and 7 nuclear project and is that
7 cost reasonable?" We think that how much is going to be
8 spent on this project over its life is probably the core
9 basic issue that the Commission considers. It's one
10 that's of great concern to my clients and it's one of
11 great concern to the public. And I think it's important
12 for transparency that everyone understand that the
13 amount of money we're looking at, while it may be
14 \$3,482 per kilowatt, I'm not sure what that means, we
15 think it's important that everyone knows we're talking
16 about X billion dollars over the life of this project so
17 that we all know where we are.

18 Similarly, the second issue is somewhat
19 similar except it asks when is the project going to
20 serve the ratepayers? When is it going to come online?
21 I'm not going to argue the evidence in the case, but I
22 think it's fair to say that both these projects have
23 been delayed from the original in-service date that was
24 proffered during the determination of need question. I
25 think, again, we're going to pay X billion dollars, we

1 being the ratepayers. The project is going to come
2 online, we hope, sometime in the future. I think those
3 two questions go to the heart of what you need to
4 decide.

5 I think it's interesting for you to look at
6 the two responses of the two utilities to the same
7 issues. Florida Power & Light basically says, you know,
8 we're willing to tell you the costs and they do it in a
9 sort of obscure way which I would object to, though it
10 is their position. And that's, and that's all that you
11 need to look at. You don't have to worry about if it's
12 reasonable. We just want to tell you it's \$3,482 per
13 kilowatt.

14 On the other hand, Progress says we object to
15 this issue or these issues because they're subsumed in
16 other issues. They don't say that the issue is not
17 appropriate. They say we're kind of back to a
18 discussion that I'm thinking we're going to have later,
19 which is how many issues should we have? Should we have
20 a bunch of general issues or should we have the issues
21 that really tell us what the Commission has to decide?

22 And I know you're not involved in the issue
23 identification meetings and lucky for you, but we spend
24 a lot of time always arguing on what is the appropriate
25 level of detail to get to in regard to the issues. And

1 so I suggest to you again that costs, timing, what are
2 the ratepayers looking at, and is this a good idea is
3 certainly an issue that I would think that you would
4 want to have broken out. Sure it's part of the
5 feasibility determination. But I think you can almost
6 have one, two issues in this case which would be, you
7 know, should these costs be approved, and that would be
8 the end of your deliberations.

9 We think you need to, you, the ratepayers, the
10 public need to look total dollars, time frame and what
11 are we doing? Is this, is this a reasonable course for
12 Florida to be pursuing at this time, particularly with
13 all the economic issues that I'm not going to go into?
14 We think that we're entitled to look at the big picture,
15 and we think that the issues that we have raised are
16 appropriate and that they should be included in the
17 docket. And I'm anticipating some of the arguments that
18 are going to be made, and I would suggest to you that if
19 you were to decide to parse the issue in some way, that
20 the companies be required to provide in these issues or
21 their responses the total dollars that are at issue over
22 the life of the project. Thank you.

23 **COMMISSIONER BRISÉ:** Thank you. Any other
24 intervenors before we get to the utilities?

25 **MR. JACOBS:** Very briefly, Commissioner Brisé.

1 **COMMISSIONER BRISÉ:** James.

2 **MR. BREW:** Yes. Thank you, Mr. Commissioner.

3 PCS did not brief this issue. But just very quickly,
4 since we have addressed both costs and schedule in prior
5 NCRC dockets, I think it's eminently healthy for the
6 Commission to focus on both cost and schedule for the
7 units in the course of these dockets and not simply bury
8 it in the feasibility analysis. And so the suggested
9 FIPUG issues, even if they arguably could be taken into
10 account of feasibility -- remember, the feasibility
11 question has largely focused on technical and regulatory
12 feasibility -- it's probably a very healthy thing in
13 terms of transparency for the process. So I would
14 encourage the Commission to accept FIPUG's framing of
15 the issue. Thank you.

16 **COMMISSIONER BRISÉ:** SACE.

17 **MR. JACOBS:** Thank you, Commissioner Brisé. A
18 fundamental element that SACE has focused on throughout
19 these proceedings has been feasibility. We believe that
20 it means the full context, and we applaud that you -- we
21 highly recommend and applaud that you would take the
22 opportunity to take that in focus. And there could be
23 no better example of, of a project where your decisions
24 should be so informed from the very inception, from the
25 beginning of when these projects were decided to the

1 cost recovery process. Uncertainty has been the, the
2 buzz word that has surrounded them, and at some point in
3 time we have to begin to drill down through that
4 uncertainty and begin to get to, to reality, and I think
5 this would be a good step to take.

6 **COMMISSIONER BRISÉ:** Okay. OPC.

7 **MR. REHWINKEL:** Commissioner, the Public
8 Counsel agrees with and supports the remarks made by
9 FIPUG and, and PCS Phosphate, and that covers these
10 issues as they relate to both companies.

11 **COMMISSIONER BRISÉ:** Okay. FPL.

12 **MS. WHITE:** Commissioner.

13 **COMMISSIONER BRISÉ:** I'm sorry.

14 **MS. WHITE:** FEA supports the comments that
15 have been made by my colleagues. What I note is that
16 the long lead time that is involved in these kind of
17 projects means that things can change over time. And so
18 from our position it makes perfect sense to be able to
19 look at and continue to look at are there things that
20 have changed that would make a previous decision now not
21 seem like a reasonable course of action?

22 **COMMISSIONER BRISÉ:** Okay. Thank you.

23 FPL.

24 **MR. ANDERSON:** Thank you, Commissioner Brisé.

25 At the outset I'd like to remind us all and take a

1 couple of big steps back about Florida and what we're
2 doing here with the nuclear projects. We're at the end
3 of a long, sandy peninsula. We have very, very few
4 alternatives to natural gas. Our Legislature in 2006
5 provided very specific legislation which was directed at
6 encouraging utilities to be willing to invest in new
7 nuclear generation. And the Legislature directed this
8 Commission, which direction was carried out, to provide
9 very specifically for rules which would govern the
10 evaluation of nuclear projects and the cost recovery for
11 projects. And the purpose of this is to provide the
12 kind of predictability and confidence so that we can go
13 ahead and make large investments to serve our customers
14 and not be in the circumstance we were honestly in the
15 1980s where, you know, you finish building a plant and
16 then we hear the type arguments we hear down the table
17 about the cost of plants.

18 So what I'm going to encourage the Commission
19 to do first and foremost here is to stand up for the
20 statute, stand up for the legislation, stand up for the
21 rules which define these.

22 One thing we did not hear from one Intervenor
23 was a part of the rule or law that requires this
24 Commission to try to make a factual determination about
25 the reasonableness of costs of things for which

1 contracts are not signed, no design is done, the project
2 won't be done at the earliest for another ten years; no
3 one is in a position to, to foretell the future in
4 exactly that way. And that's, that's the ill of this.
5 That could have been brought up in the rule making, it
6 could have been prescribed, but it was not. And the
7 reason is because we have provided for annual
8 feasibility analyses where we can look at future gas
9 prices as we know them now, future load as we know them
10 now, all those things, and just kind of on a
11 step-by-step, year-by-year basis see if proceeding makes
12 sense.

13 Nobody talks about the prospective, potential
14 \$75 billion in fuel cost savings of something like our
15 Turkey Point 6 and 7. You don't hear us harping on that
16 too much either. Why? We're early in the process. And
17 the only way for this process to proceed is for there to
18 really be the type of attention to detail that your
19 Staff has shown. Your Staff has carefully tailored the
20 issues in this case and it is continuing to do that each
21 year. And we oppose efforts to add new things for
22 litigation which are not provided for in the rule which
23 will only be used down the road to, to wave in people's
24 face and say, you know, the Commission decided to act in
25 2011 that XYZ cost was reasonable, and we recognize that

1 the costs, that your project will save vast amounts, but
2 you shouldn't pay any more than they cited back in 2011.
3 That's the type argument we saw the last time with
4 nuclear projects in this country. You're seeing that
5 again in the uprate docket here.

6 So we encourage the Commission to pick up --
7 you can read our brief -- but look at the rule, please.
8 I've had it distributed. Subsection (f), I've just,
9 I've put an (f) so that it just, we all are on the same
10 page.

11 And what is anticipated as to approval of
12 projected expenses is we look under the rule at the
13 2011 projected construction expenditures and the 2012,
14 the subsequent year. That's what our filings include
15 every year. Detailed discovery is done on that.
16 Subsection (1)(c)(2) here, "The Commission shall, prior
17 to October 1 each year, conduct a hearing and determine
18 the reasonableness of projected preconstruction
19 expenditures and prudence of actual -- determine the
20 reasonableness of project construction expenditures," et
21 cetera, all focusing on the scope of costs in the rule.

22 So year by year we look at last year's costs
23 for prudence; we look ahead, is the next year or so
24 looking reasonable; and we make those findings of
25 reasonableness. Separately and independently we look

1 down the road. Feasibility, are we generally on the
2 right track? But we strongly discourage the addition of
3 an extreme use issue of this type. One may as well
4 litigate what do you think the fuel costs are going to
5 be in 2011, what do you think load growth is going to
6 be, all those other elements. So we request that the
7 Commission not accept the invitation to broaden the
8 issues.

9 And finally I will note we fully acknowledge
10 customers' interest, FIPUG's interest and others in
11 knowing what's our best estimate at this time. We've
12 provided that information. Our witness will be here to
13 talk about that, talk about all the uncertainties that
14 surround it. There's no dispute about that. We have
15 stated our best expected date for capacity operating at
16 this time. Our witnesses will be here to explain that
17 and answer those questions.

18 What we're submitting is that the law does not
19 require a legal determination and litigation of
20 reasonableness of that. And there's darn good reason;
21 so we don't get set in this kind of hindsight set of
22 traps which was highly detrimental to the industry in
23 the past and could potentially preclude additional
24 nuclear generation in Florida. Those are our points.
25 Thank you.

1 **COMMISSIONER BRISÉ:** Thank you.

2 Progress.

3 **MS. HUHTA:** Thank you. Progress would
4 certainly like to point out that Progress as well has
5 included these two factual issues in its testimony, in
6 its depositions of Mr. Elnitsky as well as its
7 schedules. The total estimated cost and the estimated
8 planned commercial operation date are transparent and
9 are available to the public, and Progress has no issue
10 with its witnesses stating that and answering questions
11 on that, as they already have done to date in this
12 docket.

13 The issue becomes, as FPL has stated, that
14 total project cost is one factor in a feasibility
15 determination. It's one factor among many. Are we
16 going to divide out 50 different issues on the fuel
17 cost, on the, you know, carbon projections, on the
18 estimated dates, on the estimated costs? No. What the
19 Commission has determined is that we're going to look at
20 feasibility as a holistic analysis as the best way to
21 determine whether to go forward with the project.

22 And we would submit that estimated cost and
23 that the in-service dates of the plants are included in
24 that quantitative analysis as a factor in that analysis
25 and that there's also a strenuous qualitative analysis

1 that is looked at. And to single out one factor and
2 another for a singular reasonableness determination
3 would not be appropriate and, moreover, no determination
4 would be dependent upon that. There would be no
5 relevance to the answer to either this proposed Issue
6 21 or 22 other than how it impacted the Commission's
7 decision on the feasibility determination. And so that
8 is where these issues as a factual matter are more
9 appropriate. They're certainly subsumed in the
10 feasibility issue as well.

11 And as far as the reasonableness determination
12 that FIPUG has also included, we would agree with FPL
13 on, on the legal issue there that it's not appropriate
14 and it is duplicative and also looked at under Issue
15 20 on feasibility as one of the many factors there.
16 Thank you.

17 **COMMISSIONER BRISÉ:** Thank you.

18 Staff.

19 **MS. KAUFMAN:** Commissioner, might I just have
20 a brief minute for rebuttal? I don't think I used my
21 whole time.

22 **COMMISSIONER BRISÉ:** You didn't.

23 **MS. KAUFMAN:** I just want to make two points.
24 Point number one is there are a lot of factors in the
25 feasibility study, but I would suggest to you that there

1 is no reason to bury within a very lengthy docket how
2 much a project is going to cost. I don't know how many
3 ratepayers are going to get those filings and go through
4 and try to figure that out.

5 Number two, this proceeding is governed by
6 Chapter 120. We have raised these issues as disputed
7 issues of fact and we are entitled to have them heard
8 under Chapter 120 in this proceeding. Thank you for
9 indulging me.

10 **COMMISSIONER BRISÉ:** Yes, James.

11 **MR. BREW:** If I could have just one minute.
12 The nuclear cost recovery statute, 366.93(5), says, "The
13 utility shall report to the Commission annually the
14 budgeted and actual costs as compared to the estimated
15 in-service cost of the nuclear gasification facility
16 until the commercial operation of the unit." And then
17 it further provides, "The utility shall provide such
18 information on an annual basis following the final order
19 of the Commission determining need."

20 The bottom line is the statute requires this
21 information to be provided. The only question is as a
22 practical matter how should it be presented to the
23 Commission? And so our suggestion of that from a
24 transparency standpoint -- the statute doesn't link it
25 specifically with feasibility; it states it as an actual

1 requirement. And it's very much in the public interest
2 to have that laid out each year on an ongoing basis.
3 Thanks.

4 **MR. ANDERSON:** And just to help to focus
5 exactly on what's in dispute, we have no problem with
6 the issue as stated up to the words "and is that
7 reasonable?" In the prehearing discussions, FPL had
8 agreed that we have no problem stating our current
9 nonbinding cost estimate. We've done so. We have no
10 problems providing our current nonbinding COD date,
11 capacity operating date. What we object to, and
12 we've -- what we object to is the litigation as to the
13 so-called reasonableness. So we, to be very clear, we
14 do support transparency in public information. What
15 we're trying to preclude is litigation not valuable for
16 the reasons I've, I've indicated.

17 **COMMISSIONER BRISÉ:** Progress.

18 **MS. HUHTA:** Progress held the same position
19 and expressed as much in the Issues ID meetings. And I
20 can point to the schedule where the amounts are listed
21 in our testimony and such. And that is not the issue,
22 it's not the factual issue.

23 **COMMISSIONER BRISÉ:** Staff.

24 **MR. YOUNG:** Mr. Commissioner, as relates to
25 FIPUG's Issues 4 and 21, Staff is of the opinion that

1 the issues should be dropped if the added, the phrase
2 "and is that reasonable" language stays in for the, for
3 the reasons stated by Progress Energy Florida and
4 Florida Power & Light, also for the reasons stated by
5 Mr. Brew in reading the statute, because nothing in the
6 statute calls for that determination to be made.

7 Second, the, the 120.57 issue that Ms. Kaufman
8 makes, I don't think her, her rights are being violated
9 or anything of that nature because we have an issue as
10 to the long-term feasibility of the projects. Thus, she
11 can argue that the costs or the all-in costs, as she
12 puts it, in terms of the issues, she can argue that
13 issue there that they are unreasonable as stated today.
14 And the Commission should -- excuse me -- and the
15 Commission should make a determination that the plants
16 are no longer feasible if she so deems to argue at that
17 time.

18 So given that, Staff feels very comfortable in
19 terms of dropping the issue, dropping the issues as
20 stated on 4 and 21 if the language "and is that
21 reasonable" stays in.

22 **COMMISSIONER BRISÉ:** Okay. Let me ask the
23 parties a question here.

24 With respect to Issues 4 and 21 which --
25 fallout Issues 4 and 5 and 21 and 22, is the primary

1 issue for FIPUG the latter part "is that reasonable," is
2 that the center of, of the issue for you?

3 **MS. KAUFMAN:** Commissioner, I think both parts
4 of the issue are important. However, certainly we would
5 rather have the cost issue broken out separately if
6 you're inclined to drop the reasonableness portion. We
7 think that the Commission ought to want to take a look
8 at the total cost and the total reasonableness of moving
9 forward. And I'm, I'm amazed by some of these arguments
10 that that's something that you shouldn't be looking at.
11 But putting that aside, we would certainly prefer to
12 keep the issue, the first part of the issue and without
13 the second rather than dropping the entire issue. But
14 our current position is we think the whole issue should
15 remain in.

16 **COMMISSIONER BRISÉ:** Okay. With respect to
17 the -- any other Intervenors on that issue?

18 **MR. JACOBS:** Commissioner Brisé.

19 **COMMISSIONER BRISÉ:** Yes, sir.

20 **MR. JACOBS:** I think the Legislature is
21 exactly asking you as this project moves forward to
22 measure its reasonableness. And we, we fail to see how
23 you can do that given, particularly given the historical
24 uncertainty that's been attached to it, we fail to see
25 how you can do that if you don't at some point figure

1 out how to get a handle on what it really costs. So we
2 would, we would urge you to keep the reasonableness
3 portion in this.

4 **COMMISSIONER BRISE:** With either, either
5 utility or both utilities, with respect to Issues 4 and
6 21, if the language "is that reasonable" would be struck
7 or if we wouldn't (phonetic) address that issue, does
8 that change your position with respect to, to these
9 items?

10 **MR. ANDERSON:** Yes, sir, it does. We were
11 previously willing to agree to the issue, so long as it
12 did not state those words "and is that reasonable?" So
13 what you've, what you've just indicated is, was the
14 initial FIPUG position which we were in agreement with.
15 It's the addition of those words which we believe is
16 unlawful. So, sir, yes, we would accept that.

17 **COMMISSIONER BRISE:** Progress.

18 **MS. HUHTA:** Progress would accept that as
19 well, yes.

20 **COMMISSIONER BRISE:** Okay. OPC. No position.
21 Okay. So I will take that into advisement as I move
22 forward towards, towards decisions.

23 **MR. YOUNG:** I guess since we dealt with 4 and
24 21, do we need to discuss 20 -- 5 and 22?

25 **COMMISSIONER BRISE:** 5 and 22. Yeah.

1 **MR. YOUNG:** So goes --

2 **MR. ANDERSON:** FPL would readopt the same
3 arguments, if other parties would.

4 **MS. KAUFMAN:** Yes. I think my arguments were
5 intended to go to both of the issues.

6 **COMMISSIONER BRISÉ:** Okay. Okay. That's what
7 I thought. All right.

8 **MR. YOUNG:** Now we're on OPC's disputed issues
9 10A, 10B, and 16 through 18.

10 **MR. McGLOTHLIN:** Commissioner, I'm Joe
11 McGlothlin with OPC. I'll be handling this part of the
12 Prehearing Conference.

13 I'm happy to argue these matters this morning.
14 I'm happy to argue them next week. I'm happy to argue
15 them both times, if that's what you and the other
16 Commissioners want. But because of the relationship
17 between the issues and the motion to strike, I do
18 request some clarification as to where we are.

19 Obviously we believe that we have identified
20 some issues that stem from, organically from the rule
21 and the submission of FP&L. And to the extent that
22 we've identified legitimate issues, we've submitted some
23 testimony addressing those.

24 So in terms of arguing these issues, I don't
25 know if I can segregate entirely the issue from the

1 testimony that has been submitted and that precipitates
2 the issue. So with respect to whether -- the other
3 thing I want to point out is that last Thursday we
4 responded in writing to the motion to strike, and our
5 memorandum of law goes into greater detail with respect
6 to the statutory and case law that was cited in the
7 motion to strike than we were able to do by the earlier
8 Tuesday filing that's limited to the issues. And I
9 don't know if your Office of General Counsel has had the
10 opportunity to look, look at that and with any degree of
11 care by now, but I wanted to bring that to your
12 attention as well.

13 **COMMISSIONER BRISÉ:** Thank you. FPL?

14 **MR. ANDERSON:** We would just ask the same
15 clarification. We did ask that our motion on the
16 testimony be brought with respect to the full
17 Commission. We think that's probably most
18 administratively efficient. And that the issues really
19 do fall out of the Commission's determination.

20 **COMMISSIONER BRISÉ:** Well, I'll give you a
21 sense of what I intend to do. It's probably not
22 necessary to argue these with the exception of Issue
23 10A, which I am inclined to actually deal with this
24 morning. So if we can have conversation on 10A, you can
25 make arguments on 10A, and the balance from there I

1 will, I will likely defer that to, to the full
2 Commission.

3 **MR. McGLOTHLIN:** As a quick background matter,
4 Commissioner, we are headed into a hearing next week
5 that is governed by the Administrative Procedures Act,
6 Chapter 120, *Florida Statutes*. OPC has intervened in
7 this docket and its status is that of a party. And as a
8 party, OPC is entitled to the rights afforded by Chapter
9 120.

10 And with respect to a 120.57 hearing of the,
11 of the type the Commission will conduct next week, under
12 that section of the statute all parties are entitled to
13 present evidence and argument on all issues involved.
14 So the question is whether Chapter -- Issue 10A is one
15 of the issues that falls within the category of all
16 issues involved.

17 And as a starting point, I would refer you to
18 Issue Number 10 on page 30. Issue number 10 asks this
19 question. "Should the Commission approve what FPL has
20 submitted as its 2010 and 2011 annual detailed analyses
21 of the long-term feasibility of completing the EPU
22 project as provided for by Rule 25-6.0423? If not, what
23 action, if any, should the Commission take?"

24 And notice two things about this. First of
25 all, the issue of the analysis of the long-term

1 feasibility arises directly from the Commission's rule.
2 And the second thing to note is that FPL does not object
3 to Issue Number 10. Now in, in 10A we've posed this
4 question. "Should the Commission accept the
5 quantitative methodology that FPL employed to assess
6 long-term feasibility of the EPU project?"

7 Now by design this is listed as a subpart to
8 10, Issue 10, and it was broken out to enable us to
9 apprise you and the other Commissioners of the precise
10 nature of our disagreement with FPL's long-term
11 feasibility analysis. And our witness addresses this;
12 he, he disputes the choice of quantitative approach and
13 offers an alternative. And so the question arises, has
14 this, as FPL contends, been precluded by, by the, the
15 order that issued, that the Commission issued when it
16 granted a determination of need? Because FPL describes
17 our issue as a collateral attack on that order and cites
18 the doctrine of administrative finality, both of which
19 we have briefed in the matters that we submitted in
20 writing.

21 But let me just -- with respect to whether the
22 Commission or FPL has regarded this as somehow precluded
23 in the past, let me draw your attention to two things.

24 First of all, in the '09 docket of this
25 continuing matter SACE raised as an issue the

1 quantitative approach that FPL applied to the long-term
2 feasibility study associated with its proposed new
3 units. And FPL did not object to that issue, and in the
4 final order in that case the Commission said, "We
5 approved this methodology at the outset and it remains
6 reasonable today." So the Commission is already on
7 record as recognizing that the appropriateness of a
8 long-term feasibility study, including the quantitative
9 approach, is subject to whether it remains reasonable
10 over time.

11 Now what has FPL said on the record? In this
12 case FPL has offered the testimony of Dr. Sim, who
13 addresses the breakeven analysis that is used, that FPL
14 chose as the quantitative approach to the feasibility of
15 its proposed new units. And in his prefiled testimony
16 their witness says, "In later years, as more information
17 becomes available regarding the cost and other aspects
18 of the new nuclear units, another analytical approach
19 may emerge as more appropriate."

20 So the Commission is on record as saying this
21 is a legitimate issue. FPL in this docket is on record
22 as saying this is a legitimate issue. So with respect
23 to the changed circumstances that justify a
24 consideration of a different approach, our witness,
25 Dr. Jacobs, points out that beginning in 2010 the

1 predicted or estimated capital costs associated with the
2 EPU project have dramatically and abruptly increased.
3 Now couple that with the fact that in its current
4 methodology FPL excludes past spent amounts from the
5 calculation of feasibility, you have a situation in
6 which if the utility spends money fast enough, it will
7 continue to show positive feasibility no matter how
8 rapidly the estimate of cost increases. And that is the
9 occasion, that is the changed circumstance that
10 justifies the consideration of a different analytical
11 approach, the quantitative approach which the Commission
12 in 2009 and FPL in this case have both maintained is a
13 legitimate subject for consideration.

14 **COMMISSIONER BRISÉ:** Thank you.

15 Any of the other Intervenors before we get to
16 FPL? FIPUG?

17 **MS. KAUFMAN:** I would like to support
18 Mr. McGlothlin's arguments. We briefed our own issues
19 more ostensibly, but I did have some comment on his
20 well. And we certainly think that the Commission needs
21 to take a close look at the analysis that is done and
22 which methodologies are chosen because, as Mr.
23 McGlothlin aptly pointed out, that affects the whole
24 cost-effective analysis. I went back and I looked at
25 the need determination order and, as I mentioned in my

1 comments, I could find no reference in there. And I
2 would be very surprised to find such a reference where
3 the Commission said this is the analysis that we are
4 using for all time even when we get to the actual cost
5 recovery docket. So I think not only is this an
6 appropriate issue, but it's a very important issue to
7 include in the docket.

8 **MR. JACOBS:** Thank you, Commissioner Brisé.
9 We, we think the Commission took, took a view in the
10 determination on this issue with regard to, when we
11 raised it in prior proceedings, that it was going to be
12 focused on the methodology and it understood that there
13 were variables in place that warranted that scrutiny.
14 And so we believe that that scrutiny continues to be
15 appropriate and we support OPC in that regard.

16 **MS. WHITE:** Thank you, Commissioner. I'll
17 just echo what my colleagues have said. We support OPC
18 in this matter.

19 **COMMISSIONER BRISÉ:** All right. Thank you.

20 FPL.

21 **MR. ANDERSON:** Thank you, Commissioner Brisé.
22 Taking a couple of steps back, it's helpful to put this
23 particular issue in context. Again, put ourselves back
24 in 2007 when the Commission determined not to approve
25 the Glades Power Park, which was a large coal plant.

1 This Commission -- the company came before the
2 Commission and asked for approval to construct our EPU
3 project on an expedited basis, and we explained the
4 economics of that with cumulative present value revenue
5 requirement, CPVRR analysis we call that, looking at a
6 whole array of potential scenarios and the like, and
7 we've repeated that each year. We submit -- that type
8 of analysis was part of the basis upon which the project
9 was approved, and it's a good, solid thing to use on an
10 ongoing basis.

11 To put OPC's position in context, it's
12 important to remember what this claim for a breakeven
13 analysis is. It's not a standalone thing. Public
14 Counsel's witness says that this Commission should
15 disallow all costs greater than the breakeven cost from
16 the amount that FPL seeks to collect through the clause.
17 So this claim for use of a breakeven analysis at this
18 juncture is really part of their relief where they're
19 trying to set up a format wherein if the project comes
20 in at a certain cost and if the energy from the project
21 were at a particular moment in time to cost more than
22 natural gas production, that there should be
23 disallowances. This is exactly part of, of that claim.

24 And the heart of our claim and position is
25 that our company is entitled to recover all prudently

1 incurred costs as reviewed and approved each year in
2 this proceeding. That's why, you know, this year we're
3 reviewing 2009 and 2010 for prudence. We'll look at
4 '11 and '12 for reasonableness. But, you know, we don't
5 know what the future will hold in terms of the, the
6 ultimate amounts and things. But this, this is really
7 part of the overall effort, part of the overall attack
8 to say, and it is, it is Public Counsel's position, they
9 said it, FPL, they say, was imprudent back in 2007 in
10 not doing this so-called analysis. This is one of the
11 bases of their imprudence claim, part of the attack on,
12 on the, the Commission's need determination order.

13 So, again, to -- without restating them all,
14 what our company is looking for, and I think the people
15 of the State of Florida is looking for is predictability
16 and confidence in what the rules of the game are. When
17 the Commission approves something, can we rely in
18 raising money? We've invested about \$900 million
19 already in the EPU project. All indications are it
20 remains a really good thing for customers. But when we
21 see these challenges saying, you know what, Commission,
22 order FPL to do a new type of analysis as part of our
23 imprudence claim to disallow a potentially prudent cost,
24 that's where we've really drawn the line and are
25 encouraging the, the Commission to stand by the

1 directions of the Legislature in 366.93 and 403.519(4).
2 You know, particularly provisions like 403.519(4)(e),
3 which say once a need determination is approved, it's
4 not evidence and it is not imprudence to, to follow that
5 direction. We're looking to preclude this type of, of
6 changing of the rules midstream, and that's really the
7 heart of our position.

8 We've provided a lot of detailed analysis of
9 the rules and statutes and Commission prior orders.
10 Without restating those here, that's the heart of our
11 reasoning why this should not be part of this
12 proceeding, should not be an issue.

13 **MR. McGLOTHLIN:** May I be heard briefly?

14 **COMMISSIONER BRISÉ:** I will allow two minutes
15 rebuttal, so.

16 **MR. McGLOTHLIN:** You asked for oral argument
17 on Issue 10A.

18 **COMMISSIONER BRISÉ:** 10A.

19 **MR. McGLOTHLIN:** Counsel for FPL has somewhat
20 blurred 10A with a subsequent issue, Number 16, which is
21 the issue in which we present our contention that FPL
22 was imprudent in the, in the fast tracking.

23 10A is limited to the appropriateness of the
24 methodology for gauging the current status of the
25 long-term feasibility project. And our witness, in his

1 testimony, says if there was ever a basis for using the,
2 the revenue requirements present value methodology, that
3 has been eroded by the rapid increases in the estimate
4 of costs.

5 So 10A is related to the choice of the
6 methodologies, quantitative methodologies for gauging
7 whether the project continues to be cost-effective. And
8 our witness points to the distortion created by the fact
9 that the utility is excluding costs and calling them
10 spent and sunk and therefore not relevant at about the
11 same rate it increases dramatically the cost of
12 completion such that if it was, if it was an appropriate
13 choice at the time of the need determination, changed
14 circumstances have, have caused it to be no longer an
15 appropriate choice. And that's why to go beyond that
16 and look at the Issue 16 is to combine two things that I
17 don't think you intended to combine.

18 **COMMISSIONER BRISÉ:** FIPUG.

19 **MS. KAUFMAN:** I agree with Mr. McGlothlin. I
20 think that you, as I heard your direction, you've
21 limited him and other Intervenors to specifically
22 looking at the question of 10A. And I guess if we want
23 to go over to the next issue, perhaps we should have
24 additional opportunity.

25 **COMMISSIONER BRISÉ:** Thank you.

1 All right. A question with respect to the
2 methodology, and I'm not sure if this is to Staff. Is
3 the quantitative methodology issue addressed in other
4 issues?

5 **MR. YOUNG:** Yes, sir. Staff believes that the
6 issue as relates to the quantitative methodology is an
7 argument of position statement under the long-term
8 feasibility issue which is identified for FPL as Issue
9 3, and thus it is appropriately subsumed under that
10 issue. And if Staff can be heard also on, on the, on
11 the issue.

12 **COMMISSIONER BRISÉ:** Yeah. I just had a
13 question and I'll give you the opportunity.

14 **MR. YOUNG:** So, yes. It is, Staff believes it
15 is subsumed under Issue 3 at FPL in terms of the
16 long-term feasibility where O-P -- the arguments that
17 you hear here today, the witnesses can be presented to
18 put forth the argument that the quantitative methodology
19 is out -- OPC can argue that is outdated and it needs to
20 be revised and you need to look at, you need to accept a
21 new quantitative methodology. Because that's the issue:
22 Should the Commission accept the quantitative
23 methodologies as proposed by Florida Power & Light?

24 **COMMISSIONER BRISÉ:** Okay. At this time I'll
25 give you your opportunity to be heard, and then I'll

1 follow up with some questions.

2 **MR. YOUNG:** All right. Along with, along with
3 what I just stated, I think we also run into a problem
4 too as to the except (phonetic) language. Staff
5 believes it's problematic because the Commission reviews
6 and approves under the statute and the rule. There's no
7 applicable acceptance standard.

8 As relates to the 120.57, Staff believes that
9 the parties are entitled under 120 to present evidence,
10 as Mr. McGlothlin has stated, on the issues, and as
11 Ms. Kaufman has argued. However, Chapter 120 does not
12 entitle a party to have this issue be set out by itself
13 for the Commission's decision. Staff believes OPC as
14 stated can make the arguments and the parties can make
15 the arguments under Issue 3 for FP&L -- Issue 10. I'm
16 sorry.

17 **COMMISSIONER BRISÉ:** Any further comments from
18 Staff? Any further comments from Staff?

19 **MR. YOUNG:** No, sir.

20 **COMMISSIONER BRISÉ:** Okay. And I guess I'll
21 ask OPC this question. So the, the issue of the
22 methodology, do you disagree with Staff that that is not
23 resolved in Issue 10?

24 **MR. MCGLOTHLIN:** I don't disagree that it is
25 part of Issue 10. What I would say is that when you

1 hear the word "subsumed," I hope your antenna start to
2 go up a little bit because sometimes subsumed has also
3 the effect of making obscure or hiding. What we've
4 tried to do with A and B, as is commonly the practice in
5 Commission proceedings, is to break out subparts and
6 give enough of a more specific wording in an effort to
7 do two things.

8 First of all, educate the reader because if
9 you were limited to Issue 10, you would have no
10 disclosure that it is the quantitative methodology that
11 is at issue, nor would you have the information in 10B
12 that it's the, whether St. Lucie and Turkey Point should
13 be measured on a standalone basis. None of that would
14 be conveyed by Issue 10. My view is that by bringing
15 these out to this level of detail is, is of assistance
16 to the reader.

17 The second thing it does is to assure the
18 party that its specific concerns are going to be teed up
19 for an explicit vote at the end of the case. So those,
20 those are the two reasons why I submit that 10A and 10B
21 are helpful and not burdensome additions to Issue 10.

22 But directly to your question, yes, 10A
23 broadly worded would encompass the quantitative
24 methodology issue that we have presented in Dr. Jacobs'
25 and Mr. Smith's testimony.

1 **COMMISSIONER BRISÉ:** Okay. Vicki, do you have
2 --

3 **MS. KAUFMAN:** I would just make one brief
4 comment, and that's that we often hear that the
5 Prehearing Order is sort of a road map to the case for,
6 for the parties, for the Commissioners, for the
7 publishing. And as Mr. McGlothlin said, a whole lot of
8 things are encompassed in Issue 10. And I do agree that
9 it's helpful to focus everyone on what exactly it is
10 that, that a party may take issue with. And so while
11 there's lots of issues that could be subsumed in 10, I
12 think that to break out the ones that perhaps rise to
13 the surface, if you will, is very helpful to everyone.

14 **COMMISSIONER BRISÉ:** So with respect to the
15 methodology, is it OPC's intent and FIPUG's intent and
16 SACE's intent to sort of look at other type of
17 methodology through, through what we're, through what
18 you're seeking or -- I mean, maybe some clarification
19 for me.

20 **MR. McGLOTHLIN:** OPC's expert Dr. Jacobs and
21 his colleague from the same firm, Mr. Smith, in their
22 testimony point out what they perceive to be the flaws
23 in FPL's methodology and offer an alternative.

24 **COMMISSIONER BRISÉ:** Okay.

25 **MR. JACOBS:** Commissioner Brisé, one brief

1 point of clarification. Did I understand -- OPC
2 addressed his comments that 10A was subsumed in 10, but
3 the Staff mentioned Issue 3. Was that correct?

4 **MR. YOUNG:** Yes. Staff corrected that, that
5 oversight. It's Issue 10.

6 **COMMISSIONER BRISÉ:** They meant Issue 10.

7 **MR. JACOBS:** Okay.

8 **MR. ANDERSON:** If I may be heard for just,
9 just a moment. Following on Staff's discussion of the
10 word "subsumed," I really think some of this argument
11 really does go to whether the feasibility analysis
12 should be accepted, and that's dead on. That is
13 subsumed.

14 The portion I'd just like to call out too,
15 because this was just stated in Mr. McGlothlin's
16 rebuttal, is please look at page 32 of the Prehearing
17 Order. Page 32 of the Prehearing Order at the top, the
18 carryover paragraph, as you can see, is part of OPC's
19 position on the issue we're talking about, Issue 10A.
20 And looking at the middle of the paragraph, you see the
21 words where again my points about prudence come in.

22 "In the context of a highly complex project,"
23 Public Counsel states, "and especially in view of FPL's
24 decision to abandon normal construction procedures that
25 would have identified and disciplined costs in favor of

1 a fast track approach adopted to meet a targeted
2 in-service date, FPL's omission of a breakeven analysis
3 is imprudent." See, that's, that's the mixing together
4 that we're objecting to to put a fine point. Thank you.

5 **COMMISSIONER BRISÉ:** Thank you.

6 Vicki, I think you were going to say
7 something.

8 **MS. KAUFMAN:** Thank you, Commissioner. I'm
9 fine.

10 **COMMISSIONER BRISÉ:** Okay. Any other comments
11 on, on these items from Staff?

12 **MR. YOUNG:** No, sir.

13 **COMMISSIONER BRISÉ:** Okay. We can move on to
14 the next issue.

15 **MR. YOUNG:** The next issue is OPC disputed
16 Issue Number 26.

17 **MR. SAYLER:** This is Erik --

18 **MR. YOUNG:** Commissioner, this is what we
19 talked about earlier during the course of this
20 prehearing. OPC has new language that they seek to
21 introduce as Issue 27A and Issue 28A. Correct? And
22 they would seek to drop Issue 26.

23 **COMMISSIONER BRISÉ:** Okay.

24 **MR. SAYLER:** Yes, Commissioner. Erik Sayler
25 on behalf of OPC.

1 As Mr. Young stated, OPC and Progress have
2 discussed dropping 26A or, excuse me, Issue 26 in favor
3 of a new 27A and a new 28A. And I believe -- does
4 everyone have a copy of the new language? Okay. It's
5 in the process of being passed out. Thank you. And I
6 will give my fellow attorneys a moment to take a look at
7 it since this is the first time many of them are seeing
8 it.

9 (Pause.)

10 All right. Commissioner Brisé, what this is
11 an attempt to do is to resolve the dispute between the
12 Intervenors and Progress Energy regarding the Issue 26.
13 And by proposing this new language for 27A and 27 --
14 28A, then Issue 26 can be dropped. And the same
15 arguments the parties would make under Issue 26 they
16 could just make under 27A and 28A.

17 **COMMISSIONER BRISÉ:** Okay. Does Progress want
18 to be heard on this?

19 **MS. HUHTA:** Progress is in agreement with the
20 new proposed Issues 27A and 28A as written on the
21 handout.

22 **COMMISSIONER BRISÉ:** Okay. Any other
23 Intervenors?

24 **MR. BREW:** Commissioner Brisé, would it be
25 possible to take a couple of minutes off the record just

1 to go through this with OPC and Progress? It might be a
2 bit more efficient.

3 **COMMISSIONER BRISÉ:** I think we can do that.
4 We can take a ten-minute recess.

5 **MR. BREW:** Thank you.

6 (Recess taken.)

7 **COMMISSIONER BRISÉ:** All right. I think we're
8 all here, so I think we're going to go back to where we
9 were. All right.

10 **MR. SAYLER:** Thank you, Commissioner. It was
11 good to have a few moments. We've come to a meeting of
12 the minds as it relates to these issues.

13 Still the Issue 27A identified on the sheet of
14 paper will remain Issue 27A, but the current Issue 27
15 will be renumbered as Issue 27B to follow after the new
16 27A.

17 **COMMISSIONER BRISÉ:** Okay.

18 **MR. SAYLER:** And then similarly 28A will
19 still, as signified on the sheet, will still remain with
20 Issue 28 -- the current Issue 28 being renumbered as
21 28B.

22 And then as far as the position the parties
23 can take, Office of Public Counsel for Issue 27A and 28A
24 will retain its position from Issue 26. And then Issue
25 26 can be dropped in its entirety.

1 **COMMISSIONER BRISÉ:** All right. Any other
2 comments on that?

3 **MR. BREW:** PCS Phosphate's position on 27A and
4 28A will be to support OPC.

5 **COMMISSIONER BRISÉ:** Okay. FIPUG.

6 **MS. KAUFMAN:** It would be the same for FIPUG.

7 **COMMISSIONER BRISÉ:** Okay.

8 **MS. WHITE:** And also for FEA.

9 **COMMISSIONER BRISÉ:** SACE.

10 **MR. JACOBS:** And also SACE.

11 **COMMISSIONER BRISÉ:** Okay. Progress.

12 **MS. HUHTA:** Progress is fine with it as stated
13 by OPC.

14 **COMMISSIONER BRISÉ:** All right. Thank you.

15 Any other issues that are in dispute rather?

16 **MR. YOUNG:** No, sir. We do have to return
17 back to Issue 30 that was in dispute, and this is the
18 issue that was proposed by OPC. OPC withdrew the issue;
19 however, FIPUG still wants to keep the issue.

20 **MS. KAUFMAN:** Commissioner, Mr. Burnett and I
21 talked over the break and I don't think that we've been
22 able to come to an agreement on that issue. So we would
23 propose that it remain as it is, and I'm sure
24 Mr. Burnett would propose that it be stricken.

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

1 Any comments, Progress?

2 **MR. BURNETT:** No, sir. That's correct. If
3 you wished additional argument, I'm happy to give it,
4 but.

5 **COMMISSIONER BRISÉ:** Thank you.

6 At this time, after hearing from the parties,
7 Staff, I am going to propose that I take an hour recess.
8 And we'll come back with some decisions, hopefully you
9 can have some lunch during that time, and I guess we'll
10 make it an hour and five minutes so that we'll be here
11 at -- is that time right?

12 **MS. KAUFMAN:** 2:00.

13 **COMMISSIONER BRISÉ:** 2:00. Wow. I didn't
14 realize it was that late. Be here at 2:00, and at that
15 point we'll address certain issues.

16 **MS. KAUFMAN:** Could -- I'm sorry. I don't
17 know if this is the right place to raise this or not,
18 but if you're going to be thinking over the lunch, I
19 just, I just raise the issue of opening statements and
20 whether we're going to have them all at the beginning or
21 whether we're going to have the FPL opening statement
22 and then the, excuse me, the Progress opening statement
23 before the Progress case begins. I'm sure you don't
24 want to hear -- but that's just something that I wanted
25 to raise because we have not discussed it yet.

1 **COMMISSIONER BRISÉ:** Okay. Staff?

2 **MR. YOUNG:** Staff, Staff, when we get to that,
3 that section, Staff will recommend that the opening
4 statements Progress gives the -- I mean, FPL give their
5 opening statements. After the close of FPL's case, then
6 Progress will give their opening statements. So it's
7 the latter, Vicki, that you suggested.

8 **MS. KAUFMAN:** To split them, in other words.

9 **MR. YOUNG:** Yes.

10 **MS. KAUFMAN:** Thank you.

11 **COMMISSIONER BRISÉ:** All right. You guys good
12 over there?

13 **MR. YOUNG:** We're fine.

14 **COMMISSIONER BRISÉ:** All right. With that,
15 we're going to be in recess for about an hour and five
16 minutes -- or three minutes for lunch. See you all
17 soon.

18 (Recess taken.)

19 Okay. We're going to call this Prehearing
20 Conference back to order. I thank you for your
21 indulgence with the extra ten minutes that you gave me
22 for lunch. So now we're going to get back in, and I
23 guess we're going to sort of walk through some of my
24 decisions at this point.

25 Let me see where we start here. Okay. The

1 first one is a, dealing with the Progress-filed motion
2 to defer approval for long-term feasibility and
3 reasonableness of the projected construction expenditure
4 and associated carrying costs for the CR3 uprate.

5 Staff has recommended that I defer this item
6 to the full Commission in essence because of the
7 magnitude of the issues that are involved there. I have
8 an inclination of what I would do as an individual
9 Commissioner, which is probably to defer the item in the
10 end, but I think considering the issues that are at
11 hand, I think I may allow the other Commissioners to
12 weigh in on, on this particular issue. But for the
13 record, when we get there I will probably be on the side
14 of deferring the, the item.

15 Then moving to -- I'm going to skip one of the
16 items and then we're going to move to FPL's motion to
17 exclude the testimony of SACE's witnesses Dr. Mark
18 Cooper and Mr. Arnold Gundersen. Is that correct?

19 **MR. JACOBS:** I believe it's Gundersen,
20 Commissioner Brisé.

21 **COMMISSIONER BRISÉ:** Oh, I'm sorry.
22 Gundersen. Thank you. I must have missed that day in
23 phonics.

24 And hearing all of the parties' arguments, I
25 think that we can go ahead and strike those two for --

1 to have -- to exclude their testimony. In essence,
2 we're going to exclude their testimony.

3 And part of that is I think, you know, we have
4 a process in place for a reason and we hope that people
5 would, would use the process as, as it's laid out.

6 Now going back to -- I'll deal with the easy
7 ones first, the easier ones first. FPL's motion to
8 strike Office of Public Counsel's testimony collaterally
9 challenging the Commission's need determination,
10 requesting implementation of a risk sharing mechanism,
11 and proposed Issues 10A, 10B, 16, 17, and 18, on that I
12 am going to say that I believe that Issue 10A is
13 resolved in Issue 10. And I think that, you know, we
14 don't necessarily need to include it because it's, you
15 know, sort of duplicative from my perspective, and, and
16 inclusion of Issue 10 allows for a thorough discussion
17 on the methodology used when completing a long-term
18 feasibility analysis. And that's my perspective on
19 that.

20 In terms of the issue regarding the testimony
21 with respect to that, I am going to allow the Commission
22 to entertain that discussion as the Commission will
23 entertain Issues 10B, 16, 17, and 18. For the simple
24 fact that I think that those issues are larger than the
25 issue in the instant case before me right now, so

1 therefore I feel more comfortable allowing the full
2 Commission to weigh in on, on that decision. And I
3 believe it may have implications on further projects of
4 a similar nature that may come before the Commission, so
5 I will defer the determination on the inclusion of those
6 issues to the full Commission. Is that clear?

7 **MR. YOUNG:** Yes, sir.

8 **COMMISSIONER BRISÉ:** Okay. Now moving on.
9 to -- because we have Issues 4, 5, 21, and 22?

10 **MR. YOUNG:** Yes, sir.

11 **COMMISSIONER BRISÉ:** For those -- for Issue 4,
12 if we, if the issue is to remain, we -- I will ask that
13 we remove the reasonable language in it. That is,
14 remove the "and is that reasonable" part of it, and then
15 the issue can remain. The same would be true for Issue
16 5, as would be true for Issue 21, as would be true for
17 Issue 22.

18 We have come to an agreement on what we're
19 doing with 26, and now we're moving to Issue 30. Issue
20 30, from my perspective, is one that can be dealt with
21 in 33, and so therefore I don't feel that that issue
22 needs to be addressed independently because it, from my
23 perspective, can be handled in 33.

24 So I think that those are all the issues, or
25 am I missing any issues that are in dispute?

1 **MR. YOUNG:** No. I think you have them all,
2 Mr. Commissioner.

3 **COMMISSIONER BRISÉ:** Okay. And I think that
4 that deals with that, and I guess we go back to the
5 script.

6 **MR. BURNETT:** Commissioner? That was me, sir.
7 I'm sorry. I was asking -- I wanted to just ask if this
8 was the appropriate time to get one clarification on
9 your ruling?

10 **COMMISSIONER BRISÉ:** Sure.

11 **MR. BURNETT:** With respect to the motion to
12 defer on CR3, I understood that you've deferred the
13 consideration of that motion to the full Commission.

14 **COMMISSIONER BRISÉ:** To the full Commission.

15 **MR. BURNETT:** To be taken up, I think, as a
16 preliminary matter on the first day of hearing. My only
17 question is will we still need to produce a witness for
18 you or will that be done with the Commission just on
19 paper?

20 **COMMISSIONER BRISÉ:** I think that that will be
21 done with the Commission on that particular day.

22 **MR. BURNETT:** Thank you, sir. So, so we will
23 not bring a witness then for that?

24 **COMMISSIONER BRISÉ:** Staff?

25 **MR. YOUNG:** It's my understanding,

1 Mr. Commissioner, that you have not made that
2 determination in terms of relieving Progress of bringing
3 a witness.

4 **COMMISSIONER BRISÉ:** Right.

5 **MR. YOUNG:** Progress would still be required
6 to bring a witness. However, as a preliminary matter --
7 when an issue comes up, we'll note it as a preliminary
8 matter. And if anyone -- if a Commissioner wants to
9 move forward without having a witness, they can so move
10 and get a second and the Commission can vote on that at
11 that time. However, the process still remains in place,
12 as stated earlier.

13 **MR. BURNETT:** Mr. Commissioner, if I may?

14 **COMMISSIONER BRISÉ:** Sure.

15 **MR. BURNETT:** So that -- fine. I understand
16 the ruling then, if that's your ruling. But I would
17 just like to know if you can tell me which ones I should
18 bring? I'm happy to bring them all, if you'd like. I
19 just don't want to presume to, to, to impose upon you
20 who I think you want to talk to.

21 **COMMISSIONER BRISÉ:** Okay. I think that that
22 information we could work with, with you as time
23 progresses.

24 **MR. YOUNG:** Yes. But I would just state,
25 Mr. Commissioner, that whomever can support the reason

1 for the deferral. A witness that can support a reason
2 for the deferral.

3 **MR. BURNETT:** Thank you, sir.

4 **COMMISSIONER BRISÉ:** Because the reality is
5 that the reason I'm not making the decision today is
6 that I want my colleagues to, to weigh in on that with
7 as little information or as much information as they
8 deem is necessary for them to arrive at that conclusion.

9 **MR. BURNETT:** Understood. Thank you, sir.

10 **MR. REHWINKEL:** If I, if I could inquire. You
11 indicated that the, that you would work with Progress.
12 Will there be notice given to the parties about who you
13 want Progress to bring?

14 **MR. YOUNG:** Yes. Sufficient notice will be
15 given to the parties. Like I said before, whomever
16 Progress -- if Progress can identify a witness that they
17 believe can answer the questions to the reasons why the,
18 the Issue A should be, should, the Commission should
19 vote yes on Issue A, then it's on Progress to identify
20 that witness and they can send that out to the parties.
21 It would be greatly helpful.

22 **MR. REHWINKEL:** And am I to understand that
23 there will be no further notice about the scope of what
24 the reasons why means in the minds of the Commissioners?
25 Are we just going to find out on that day? I'm --

1 seriously, I'm trying to understand the reasons why --
2 does the Commission want to know the reasons why
3 Progress wrote the motion the way they did or the
4 underlying facts? I'm just, I'm trying to understand
5 because, you know, I, I'm trying to prepare to get ready
6 for a hearing that starts no sooner than the 17th. But
7 if there's something that's going to go on on the 10th,
8 I really feel like it's incumbent for the parties to
9 know what it is they need to be prepared for on the
10 10th. That's the only reason I ask.

11 **MR. YOUNG:** Okay.

12 **COMMISSIONER BRISÉ:** And I'll speak from my,
13 from my perspective as a Commissioner. I'm sure the
14 other Commissioners, some may agree, some may not agree.

15 If, if there's a request to defer, there's
16 varying factors that arrive to, to that request. And
17 there may be some, some items that may not be -- how can
18 I say this -- on the surface with respect to that, and
19 that, those arguments that are on the surface can be
20 made by the counsel representing the company.

21 But there may be some other issues that, as
22 you're indicating, may be underlining that some
23 Commissioners may have a question or two before they
24 make that determination. So I suppose that is the
25 practice of the Commission. If there are individuals

1 who are going to testify, that all parties will be
2 noticed as necessary so that that information -- so that
3 there will be adequate time to prepare for that.

4 **MR. BURNETT:** And, Commissioner Brisé, if I
5 could support Mr. Rehwinkel, just to let you know that
6 we're certainly not trying to be difficult, but just
7 some of the complexities -- Jon Franke is my principal
8 witness for the EPU and that's the guy who intuitively
9 comes to mind. However, Mr. Elnitsky is our vice
10 president in charge of the repair, and then Mr. Foster
11 is our witness for the impacts of that deferral to the
12 schedule. So feasibly I have three witnesses that I
13 need to present, and I just wanted to make sure I have
14 the right ones here. So I guess that's who I would
15 designate based on what you said, and I would bring all
16 three of those. But that, I think that's the best I
17 could do now with what I understand the Commission would
18 want.

19 **COMMISSIONER BRISÉ:** Okay. James, I think
20 you --

21 **MR. BREW:** I have a concern as well in terms
22 of the process, I guess to Mr. Rehwinkel's point. I
23 mean, under the established process we have prefiled
24 testimony and we have short summaries from the witnesses
25 as to what's in their testimony.

1 To the extent that it's unclear as to where
2 the scope is going, we could be very well looking at
3 testimony we've never, as an Intervenor, heard or seen
4 of before or have no notice as to where it's going, and
5 that's part of my concern.

6 So to the extent that the -- it's understood
7 that the scope of the questions are within the scope of
8 what's already in prefiled testimony, then that's fine.
9 But to the extent that it was, it was going to seek
10 information or testimony that goes beyond it, then I
11 have a concern that Intervenors are being severely
12 disadvantaged because they have absolutely no
13 opportunity to respond or inquire as to it.

14 So that's -- so in terms of Mr. Rehwinkel's
15 testimony -- question about the scope I think is
16 critical so that parties that attend aren't subject to
17 surprise.

18 **COMMISSIONER BRISÉ:** Okay. If -- Mary Anne,
19 if you can help me out here.

20 **MS. HELTON:** It seems to me that we're, some
21 of us might be trying to make this a little bit more
22 complicated than what was originally intended and the
23 reason why a suggestion was made in the first place to
24 have a discussion on the record.

25 Let me start off by saying I probably know the

1 least about this subject matter than anybody in the
2 room, so I say that as I go forward.

3 Crystal River 3 has some issues; I think
4 everybody agrees with that. There is a requirement to
5 prepare a feasibility study in this docket with respect
6 to going forward with the uprate. There's been a
7 request to defer that to a later date. That request,
8 even though all the parties agree, impacts the
9 customers, impacts the State of Florida. And it's my
10 understanding there's a desire for that request to be
11 fleshed out on the record so it's clear to the public,
12 so it's clear to the Legislature, so it's clear to you
13 and the other Commissioners sitting as the Commission
14 that there is a legitimate reason to defer making a
15 ruling and hearing testimony on the deferral. That's
16 all we're trying to do. That's all we're trying to do.
17 And that seems to me that that is the prerogative of the
18 Commission, it's something that the Commission should be
19 doing.

20 And I really, I'm struggling with trying to
21 understand what all the angst is. We just want to have
22 a discussion on the record that there is a legitimate
23 reason that the public can understand as to deferring
24 any finding by the Commission on the feasibility study
25 for this, this time period.

1 **MR. REHWINKEL:** Commissioner, I'm not -- and I
2 would not argue to try to ask reconsideration in any way
3 of your decision. I just want to state for the record,
4 in addition to what I've stated to you today and what
5 I've said to the parties in prehearing meetings twice,
6 is one of the concerns that I have is that I may hear
7 questions that call for answers that, that I believe
8 that taking evidence at this time without affording me
9 my opportunity to provide responsive testimony or to
10 adequately cross-examine would be impacted, I will have
11 to object.

12 And one of the fears I have is starting off a
13 hearing that could last ten days where I'm asking the
14 Commission to listen to the expert testimony of two
15 witnesses that we've paid a lot of money for, very
16 professional people, down here is I'm now interposed in
17 a position of object, object, object because I have
18 reasons for -- this may never happen. But my fear is if
19 it gets into that area, that I start off the hearing on
20 a very ugly note that I shouldn't have to because this
21 is a matter that there's a, there's a docket and a whole
22 'nother scenario set up for that.

23 And I was told that we're going to go forward
24 with this process but you can object. And so if I do
25 object, I just want you to know I'm not trying to

1 interfere with the Commission's process. The customers
2 have rights that we, we intend to discharge because of
3 the seriousness of the matter in the other docket.

4 **MR. BURNETT:** And, Commissioner Brisé, if I
5 could just add to that too, I similarly don't want to be
6 viewed as obstructionist. And based on what I've heard
7 today, I would say Mr. Franke is the guy to talk to.

8 But another concern we should be sensitive of
9 is that there are also Securities & Exchange Commission
10 implications to asking questions that I need to get
11 advice from counsel on before they come to the
12 Commission, as well as we're in the middle of a proposed
13 merger as well. So there's just -- they're public
14 disclosure issues that we have to be just cognizant of
15 if we're asking questions beyond the four corners of the
16 motion. So I would just -- my request for scope and
17 just nailing down the witness and the topic is if I need
18 to get advice of security counsel, if we need to do an
19 8K before we come in here or a shareholder call or
20 anything like that, I just need to -- I've got a lot of
21 I's and T's to dot as well.

22 **COMMISSIONER BRISÉ:** My question to Staff is
23 how do we address the issue of the scope? And maybe if
24 we have prefiled testimony by some of these folk
25 already, if we can deal with, with what we currently

1 have.

2 **MR. YOUNG:** My technical expert is telling me
3 Witness Franke is the, basically the only witness with
4 the prefiled direct testimony. And the other witnesses
5 may have some, but really don't come close to it.

6 Also, too, the issue is should the Commission
7 defer? I think the issue is limited, it's already
8 limited in scope. Should the Commission defer the
9 long-term, the decision on the long-term feasibility and
10 the reasonableness of the costs? I think if a witness
11 goes outside of that, as Mr. Rehwinkel indicated, he, he
12 is well within his bounds to object. I would also like
13 to note if Mr. Rehwinkel feels, or any other party feels
14 comfortable, that they note before the witness, before
15 the, when the witness is called, before the witness
16 takes the stand to note, to let the Commissioners know
17 how they feel about the issue in terms of trying to
18 proceed very, very gingerly on not going into other
19 dockets.

20 **MR. REHWINKEL:** Well, in light of your, your
21 ruling, which we respect, and I, I -- and Mr. Young's
22 remarks, we will certainly work within those bounds.
23 And I just would beg the Commission's indulgence that,
24 that objections, again, are not interposed to be
25 difficult. Thank you.

1 **COMMISSIONER BRISÉ:** All right. Any other
2 comments on that motion? So we can move on?

3 **MR. YOUNG:** Yes, sir, we can move on.
4 However, I would like to go back to the, FIPUG's motion
5 for a date certain.

6 **COMMISSIONER BRISÉ:** Oh, sure. Just as you go
7 there, I believe in conversation with the Chairman's
8 office we are going to run to about 7:00 p.m. daily that
9 week for those days. So we certainly hope that that
10 will expand the days in terms of the amount of time that
11 we're working.

12 So with that, we certainly hope that that can
13 sort of move us closer in terms of the schedule, 16th,
14 17th. And the intent isn't to -- we want to give you a
15 certain amount of certainty in terms of the dates, but
16 we want to give you a range so that you can be prepared.
17 But we, we really would like for, for the, for the flow
18 to be continuous. So with that, Staff, I think you may
19 have some suggestions.

20 **MR. YOUNG:** Yes, Mr. Commissioner. The first
21 suggestion would be that the -- although Progress, FPL's
22 portion is scheduled for, to run six days, as you
23 stated, we are going late, we are going to 7:00. We
24 can, I think we can all basically guesstimate that the
25 FPL portion will last at least four days, maybe five,

1 depending on how much, how much the witnesses go up and
2 down for sure.

3 So instead of giving a date certain, I would
4 advise the parties to be ready to go for the Progress
5 portion by the 16th or before. But play it by ear,
6 also. I would say that.

7 **COMMISSIONER BRISÉ:** So you're suggesting that
8 the Progress portion probably will not begin before the
9 15th.

10 **MR. YOUNG:** Yes.

11 **COMMISSIONER BRISÉ:** And the very latest
12 everyone who's involved in the Progress portion should
13 be prepared for the 16th?

14 **MR. YOUNG:** Yes. Yes, sir.

15 **COMMISSIONER BRISÉ:** Okay.

16 **MR. BREW:** Excuse me, Commissioner. Can I ask
17 a question on that?

18 **COMMISSIONER BRISÉ:** Yes. Sure.

19 **MR. BREW:** Previously we talked about a date
20 certain for starting Progress. Then I thought earlier I
21 had heard, we talked about a date where the Progress
22 hearings would start no earlier than the 17th.

23 **COMMISSIONER BRISÉ:** Right.

24 **MR. BREW:** Am I hearing now that we need to be
25 prepared to show up whenever FPL is done?

1 **COMMISSIONER BRISÉ:** No. I think this is the
2 same -- I stated the 17th last time; right? So I think
3 right now we may be moving it back one day.

4 **MR. BREW:** Okay.

5 **COMMISSIONER BRISÉ:** That's what I'm
6 suggesting.

7 **MR. BREW:** Thank you.

8 **COMMISSIONER BRISÉ:** I mean moving it up one
9 day to the 16th rather than the, the 17th. But
10 understanding that we certainly hope that all parties
11 are paying attention to what's going on so that, you
12 know, if we recognize that on the -- things are going a
13 lot quicker on the 14th, then that we may be in a
14 posture for, to be able to move on, on the 15th, that
15 all parties are cognizant of that and will work with us
16 with respect to that.

17 Any other issues, Staff, before we continue?

18 **MR. YOUNG:** No, sir. I think we can return
19 back to the, the prehearing, the Draft Prehearing Order.

20 **COMMISSIONER BRISÉ:** All right. Section IX,
21 exhibit list. Are there any changes or corrections to
22 the issues or party positions?

23 **MS. HUHTA:** If I may, Commissioner, just
24 briefly going back to Issue 37. I was notified by my
25 regulatory people that Appendix A and Appendix B of

1 Progress's prehearing was not included for Issue 37. So
2 if we could have those included, that'd be great. Thank
3 you.

4 **COMMISSIONER BRISÉ:** We don't have any
5 objections to that, do we? Okay.

6 **MR. YOUNG:** Mr. Commissioner, Staff would note
7 that Staff will prepare a Comprehensive Exhibit List
8 consisting of all prefiled exhibits for the purpose of
9 numbering and identifying the exhibits at the hearing.
10 Included in the comprehensive exhibits are, are going to
11 be Staff's exhibit, the exhibits Staff wants to enter
12 into the record. Staff will e-mail the Comprehensive
13 Exhibit List to all the parties prior to the hearing,
14 and any additional stipulated exhibits containing
15 discovery responses may also be introduced at the
16 hearing, if the parties agree.

17 **MR. ANDERSON:** Mr. Young, is it correct that
18 the Cooper and Gundersen exhibits will be noted as
19 stricken?

20 **MR. YOUNG:** Yes.

21 **MR. ANDERSON:** Thank you.

22 **COMMISSIONER BRISÉ:** Any other comments on
23 Section IX?

24 All right. Section X, proposed stipulations.

25 **MR. YOUNG:** Mr. Commissioner, there are no

1 proposed stipulations at this time. However, it is my
2 understanding that FPL has e-mailed a document of
3 proposed stipulated issues -- or proposed language
4 stipulating the issues to the parties.

5 **COMMISSIONER BRISÉ:** Okay. Thank you.

6 Section XI, pending motions.

7 **MR. YOUNG:** Besides the pending motions that
8 were dealt with today as we discussed in the preliminary
9 matters and throughout the issues and positions there
10 are no other pending motions that Staff is aware of. I
11 think OPC wants to be heard.

12 **MR. SAYLER:** Yes. Thank you, Commissioner.

13 For OPC's pending motion on page 85, we're
14 going to be withdrawing that, so.

15 **COMMISSIONER BRISÉ:** Okay. Thank you.

16 **MR. SAYLER:** To make it none at this time.

17 **COMMISSIONER BRISÉ:** Section XII, pending
18 confidentiality motions.

19 **MR. YOUNG:** Staff would note that there are
20 several confidentiality requests that will be addressed
21 by separate written order.

22 **COMMISSIONER BRISÉ:** Okay. Any of the parties
23 have comments on that or issues with that? Okay.

24 Section XIII, post-hearing procedures.

25 **MR. YOUNG:** This is a -- in the post-hearing

1 procedures I think Office of Public Counsel had noted
2 that they wanted to be heard on the post-hearing
3 procedures as relates to positions, the wording, the
4 number of wording, words a company can use per position
5 or a party can use per position. Excuse me.

6 **MR. McGLOTHLIN:** Joe McGlothlin, Commissioner.

7 In my experience, the limitation of 50 words
8 is insufficient to communicate much of anything of
9 value, and especially in regard to some of the complex
10 issues here. I've asked that you enlarge that; I've
11 suggested 120. I think it will still be manageable in
12 terms of the matters you will read, and it will be -- or
13 as a magnitude more useful to, to the readers.

14 **COMMISSIONER BRISÉ:** Okay. Any comments by
15 any of the other parties?

16 **MR. ANDERSON:** No objection to that.

17 **COMMISSIONER BRISÉ:** Okay. Staff?

18 **MR. YOUNG:** Staff suggests that post-hearing
19 positions be limited to 50 words and that the
20 post-hearing briefs be limited to 50 pages.

21 **COMMISSIONER BRISÉ:** Okay. I'm going to go
22 ahead and grant the 120 words. I think we can manage
23 that.

24 Anything else for post-hearing procedures?

25 **MR. YOUNG:** It is my understanding you're

1 going to -- the page limit is 50 pages per case.

2 **COMMISSIONER BRISÉ:** 50 pages per case.

3 That's correct.

4 And Section XIV.

5 **MR. YOUNG:** In this section Staff suggests
6 that the Prehearing Officer make a ruling that opening
7 statements, if any, should not exceed five minutes per
8 party per side. Staff notes that there are several
9 parties, several parties have requested more time to
10 present their opening statement.

11 **MR. BREW:** Yes. Commissioner, given the, the
12 dynamics of this case from a Progress, on the Progress
13 side between Levy and CR3, I would suggest that parties
14 be allowed ten minutes for their opening statements.
15 That's consistent with what the Commission has
16 entertained in the past. I think it's helped to allow
17 parties to lay out the issues for the Commissioners
18 early on as to where they're going, and, if anything, it
19 helps us ultimately speed up the process. So I'd
20 encourage ten minutes per party this year as well.

21 **COMMISSIONER BRISÉ:** Okay. Joe.

22 **MR. MCGLOTHLIN:** I also suggest ten minutes
23 per party, per utility. Yes.

24 **COMMISSIONER BRISÉ:** Okay.

25 **MR. REHWINKEL:** Commissioner, I would also

1 like to add and maybe get a little bit of a
2 clarification, I would -- well, we will have the
3 preliminary matter in Issue A taken up prior to opening
4 statements, and so I believe that I may need a full ten
5 minutes depending on what happens on the first day. But
6 I certainly would support for the Progress side in the
7 having ten minutes as well.

8 **MS. KAUFMAN:** Commissioner, just to get my ten
9 cents in.

10 **COMMISSIONER BRISÉ:** Sure.

11 **MS. KAUFMAN:** We also support having a
12 ten-minute opening. With the complexity and the number
13 of issues I think it would be helpful.

14 **MS. HUHTA:** Progress believes that five
15 minutes is sufficient, but it will not object to the
16 request for ten minutes.

17 **COMMISSIONER BRISÉ:** Okay.

18 **MR. ANDERSON:** Ten minutes is fine.

19 **COMMISSIONER BRISÉ:** So let me see, one, two,
20 three, four, five, six, seven. It's 70 minutes of --
21 80 minutes of potential opening statements. No, but I'm
22 counting two extra minutes per, per party.

23 Yes, Mary Anne.

24 **MS. HELTON:** But, you know, they don't have to
25 take the full ten minutes, and I think everyone

1 understands that also.

2 **COMMISSIONER BRISÉ:** Right. Right. I think
3 that that's reasonable considering what, what we're
4 looking at. So we will allow for the ten minutes of
5 opening statements, and we will hold you to ten minutes
6 as the maximum. We certainly hope that you will not use
7 all of the ten minutes for that.

8 Other matters?

9 **MR. YOUNG:** Yes, Mr. Chairman. There are
10 several other matters. But before we get there, back to
11 the ruling section, Staff would note that your rulings
12 today will be reflected in the Prehearing Order in the
13 ruling section.

14 As it relates to other matters, earlier in the
15 discussion Progress Energy Florida indicated that
16 their -- the issue identification for the witnesses,
17 they did not include those issues that were disputed.
18 Staff would suggest that Progress identify those
19 witnesses by the close of business, or any other party
20 at the close of business tomorrow.

21 And with that also, Mr. Chairman, Staff
22 requests that to the extent the parties' positions
23 change or added due to discussion here today at the
24 Prehearing Conference, that they should be given -- that
25 they should provide any such changes to Staff by the

1 close of business on August the 2nd, 2011. And, Mr.
2 Chairman, this is necessary that the Prehearing Order
3 can be completed before the hearing.

4 **COMMISSIONER BRISÉ:** Okay. So we want to make
5 sure that everyone is clear on that. All right.

6 **MR. REHWINKEL:** In that regard, Commissioner,
7 I had spoken to you earlier about Issues 27 and 28 and
8 OPC's position. I have had conversation with Staff
9 counsel subsequently, and I think the better approach,
10 which I believe counsel concurs in, is that I strike the
11 first sentence in Public Counsel's position on 27 and
12 28, which would leave the remainder as our issue by, as
13 our position by default. And if we do learn information
14 that we want to include in here, we would do that by the
15 beginning of the day on Thursday; otherwise, we need to
16 make no changes. And I think that's a better process.

17 **MR. YOUNG:** Yeah. And Staff stands corrected.
18 For those -- and Staff would note for those, those
19 issues that were discussed earlier as relates to Mr.,
20 Dr. Elnitsky's deposition, you did grant leave for those
21 issues alone. But what Staff is talking about in terms
22 of the change of positions on other issues that do not
23 relate to Dr. Elnitsky's testimony or the party -- or
24 the exhibits or any other changes in the pre, in the
25 Draft Prehearing Order.

1 **COMMISSIONER BRISÉ:** Okay. Okay. Continuing
2 on, we're trying to find ways to make our lives easier
3 during this hearing. I have a few things that I want to
4 mention for your consideration.

5 One, cross exhibits. I've asked Staff to
6 distribute an example of a cover sheet that can be used
7 for exhibits at the hearing. I think everyone could try
8 to use a format like this. It would help in the
9 progress of making exhibits, marking exhibits more
10 quickly. The Chairman is going to ask you for a short
11 title, so my suggestion is that you put that on the
12 cover page for efficiency. Please make a good number of
13 copies of your exhibits, at least enough for the
14 witness, the court reporter, five Commissioners,
15 Commission Staff, and at least one for each party. I
16 think at least 20 is a good number. So we ask that all
17 parties do that.

18 Availability of witnesses. Excuse me. The
19 hearing is scheduled for several days. I'm sure that
20 your witnesses have to do other things as well. Please
21 do your best to make them available in order -- in the
22 order we determine here today. If there is an
23 unavoidable conflict, please let our Staff know, the
24 other parties know as soon as possible so they can try
25 to work something out in advance of the day of their

1 appearance. It would be great if we don't have to
2 devote time to juggling schedules. We do understand
3 that emergencies do arise, and we are also in storm
4 season. So I -- I'm just asking everyone to do their
5 best to remain on schedule and so that we can cover the
6 ground that we need to cover.

7 And third and finally, confidentiality.
8 Please, please review the requirements for dealing
9 with confidential data if you plan to use it for
10 your cross. And if you have any questions about
11 that or any other procedural issue, please call our
12 legal staff. So I'm sure that we're all clear on
13 that. And all of you are veterans, so you're,
14 you're aware of all of those procedures and how we
15 operate here at the Commission.

16 Staff, are there any other things that we
17 need to discuss before we adjourn?

18 **MR. YOUNG:** It's just that similar to the
19 discussion on the stipulated witnesses, if they can, if
20 the parties can let Staff know as soon as possible on
21 the witness stipulation so we can poll the Commissioners
22 and see if they have any questions. And Staff will be
23 sending a list of witnesses, their witnesses that we
24 hope to be stipulated, can be stipulated.

25 **COMMISSIONER BRISÉ:** Joe.

1 **MR. MCGLOTHLIN:** Well, one final thought,
2 Commissioner, and I apologize for backing you up on
3 this, but I failed to bring it up at the time.

4 At page 4, the second paragraph, in that
5 sentence it says, "Responses calling for a simple yes or
6 no answer shall be so answered first, after which the
7 witness may explain his or her testimony." I suggest
8 that you insert the word "briefly" before "explains" so
9 it says, "witness may briefly explain," so that it's
10 clear it's not invitation to get so long-winded that it
11 impinges on one's right to cross-examine.

12 **COMMISSIONER BRISÉ:** Okay. Staff.

13 **MR. YOUNG:** I'm sorry. I couldn't hear him.
14 I couldn't hear Mr. McGlothlin.

15 **COMMISSIONER BRISÉ:** He would like to insert
16 the word "briefly" before "explain."

17 **MS. HELTON:** Which paragraph is that?

18 **MR. MCGLOTHLIN:** Page 4, the paragraph that
19 begins "Witnesses are reminded that."

20 **MS. HELTON:** As a veteran of quite a few
21 hearings with Mr. McGlothlin over the last several
22 years, I completely agree with his recommendation.

23 **COMMISSIONER BRISÉ:** All right. I hear that.
24 But I think we're going to leave it as is, considering
25 what is going to happen is going to happen. So I think

1 that's a fight we'll continue another day.

2 Just before we adjourn, we have this other
3 issue that was brought up by FPL with respect to
4 cross-exam estimates. I'm not sure that we're going to
5 take that up this go-around. However, it's something
6 that we should probably consider at least working with
7 each other as parties so that we can have a sense of, of
8 time with respect to how long we expect to have
9 individuals on, on the stand.

10 With that, I thank you for your participation
11 this morning, this morning and now this afternoon, and
12 we stand adjourned.

13 (Proceeding adjourned at 2:50 p.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 3rd day of August, 2011.

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

MIKE
HARIDOPOLOS
President of the Senate



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DEAN CANNON
Speaker of the
House of Representatives



July 29, 2011

Ann Cole, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket 110009-EI, In re: Nuclear Cost Recovery Clause – Revisions to OPC Testimony,
Issues and Prehearing Statement

Ms. Cole:

The OPC submits the following changes related to the testimony and positions filed in this case:

1. The OPC withdraws and strikes the portions of the prefiled testimony of Dr. William R. Jacobs, Ph.D, related to the Crystal River Nuclear Plant as follows:

Page i – Item III

Page 4 – The entire sentence on lines 7-8, ending with "...2012."

Page 5 – All of lines 8-12

Page 6 – All of Lines 11-25

Pages 7 – 9 All of these pages

Page 10 – All of Lines 1-4

Page 21 – All of Lines 10 -15

2. An errata for pages 6, 19, 20, 22 of Dr. Jacob's PEF testimony and an excerpt from the July 15, 2011 deposition transcript explaining those changes is attached hereto.

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3. Regarding the Memorandum of Law submitted on July 26, the OPC withdraws its request for a determination by the prehearing officer on proposed Issue 30 related to CR3 and all argument in support thereof. The OPC drops and dismisses Issue 30.
4. In the OPC's prehearing statement, the OPC makes the following changes:

Page 7, the last paragraph relating to CR3 that starts with "As to the CR3 uprate..." should be deleted entirely

Page 22, the OPC drops and dismisses its request to have Issue 30 and withdraws its position thereto

Page 22, in the OPC position on Issue 31, the last sentence should be revised to read:

The revenue requirement associated with this amount should be refunded to the customers who over-paid for PEF's mismanagement of the CR3 Uprate LAR.

Pages 22-23, in the OPC position on Issue 32, the last sentence beginning "Otherwise..." should be deleted.

Page 23, the OPC position on Issue 33 should be changed to "No Position."

Page 24, Issue 37, the OPC position on Issue 37 should be revised to delete the words "...and CR3 Uprate..." After "(Jacobs)" the following sentence should be added:

No recovery should be allowed for the revenue requirement associated with any disallowance associated with PEF's CR3 LAR uprate management.

Thank you for your consideration. Please feel free to call if you have any questions.

Respectfully submitted,



Charles J. Rehwinkel
Deputy Public Counsel

cc: All parties of record

Attachment

- 1 4. PEF's request for accelerated recovery of from the remaining deferred balance
2 should be denied.
- 3 5. To further minimize ratepayer impact in 2012, the costs associated with
4 negotiating the Final Notice to Proceed ("FNTP") or further amendments to the
5 EPC contract should be deferred for consideration for recovery until after the
6 receipt of the LNP COL.
- 7 6. PEF should have the burden of affirmatively demonstrating that it is not
8 considering further delays in the scheduled LNP Commercial Operation Date
9 ("COD").

10

11 **IV. THE CRYSTAL RIVER 3 EPU PROJECT**

12 **Q. PLEASE BRIEFLY DESCRIBE THE CRYSTAL RIVER UNIT 3 EXTENDED**
13 **POWER UPRATE PROJECT.**

14 A. As I described in my testimony last year, the CR3 Extended Power Uprate project is
15 supposed to add a total of 180 MWe to the existing plant. This would be
16 accomplished by increasing reactor power output and thus steam output, increasing
17 the size and efficiency of the steam turbine and generator and increasing the accuracy
18 of instrumentation in the plant's steam system. The project was planned to be carried
19 out in three phases. Phase 1 improved the steam plant measurement accuracy of
20 process parameters and allowed the power output to be increased by about 12 MWe.
21 These improvements were made in 2007 and were placed in service on January 31,
22 2008.

23 According to the initial plans, Phase 1 was to be followed by a Phase 2 that
24 would increase the capacity and efficiency of the turbine-generator and other non-
25 nuclear parts of the plant in a 2009 outage. This would make the plant more efficient

1 determination as long as the Company can affirmatively demonstrate by a totality of
2 the facts and circumstances that it intends to build the LNP by 2021 and 2022. This
3 affirmative demonstration is necessary for the Commission to exercise some real-time
4 and forward looking monitoring of a project that has reached the \$1 billion mark and
5 is on its way to an ultimately customer borne overall cost of between \$22-25 billion
6 or more. As it stands today, the customers are on the hook for all of the \$1 billion
7 whether the plant ever enters commercial service. If the Commission only makes
8 reactive, after-the fact determinations of prudence, customers will be obligated to pay
9 even more as doubts persist or increase. The Commission should be flexible to the
10 evolving circumstances of large nuclear construction projects and exercise all of its
11 regulatory authority to protect customers from increased costs in times of increased
12 uncertainty.

13
14 **Q. WHAT IS OPC'S POSITION CONCERNING ACCELERATED RECOVERY**
15 **OF THE DEFERRED BALANCE AS RECOMMENDED BY MR. FOSTER?**

16 A. OPC objects to accelerated recovery of the remaining deferred balance. PEF is
17 requesting accelerated recovery of ~~\$115~~ 55 million plus ~~the \$15.1 million in~~ carrying
18 charges associated with that \$55 million ~~the remaining deferred balance which was~~
19 ~~authorized by Order No. PSC-09-0783-FOF-EI, p. 38.~~ Order No. PSC-09-0783-FOF-
20 EI permits PEF "greater flexibility to manage rates" and allows PEF "to annually
21 reconsider changes to the deferred amount and recovery schedule...." However, the
22 Commission retains jurisdiction on whether to allow PEF to accelerate recovery of
23 the deferred amount. By Order No. PSC-09-0783-FOF-EI, the Commission approved
24 a deferral amount of \$273,889,606. Recovery, of that deferred amount started in
25 2010 and is scheduled to end in 2014. PEF is two years into a five year rate

1 mitigation plan, and is now seeking to accelerate recovery of the deferred amount.
2 ~~and collect the remaining deferred balance in one year.~~ This accelerated recovery in
3 one year would adversely affect PEF's customers. In these trying economic times for
4 PEF's customers, PEF should not be allowed to accelerate the recovery of this
5 deferred amount. In addition, PEF's intent to accelerate recovery of the remaining
6 deferred balance in 2012 may indicate that Progress Energy is not committed to the
7 LNP as discussed above. It may indicate that Progress Energy may consider
8 cancelling the LNP project once all the outstanding monies approved for recovery for
9 the LNP have been recovered from the customer. In other words, PEF may not wish
10 to cancel the LNP at this time while there are millions of dollars remaining to be
11 recovered.

12
13 **Q. PLEASE SUMMARIZE YOUR REASONS FOR OBJECTING TO**
14 **ACCELERATED RECOVERY OF THE DEFERRED BALANCE.**

15 A. In light of the lack of a demonstrable improved likelihood of the LNP being built in a
16 reasonable timeframe – if at all – I fundamentally do not believe it is reasonable for
17 customers' bills to be any higher than absolutely necessary. Therefore I recommend
18 against allowing PEF to accelerate the recovery of the deferred recovery amount.
19 Further reasons for not allowing the accelerated recovery are due to customers
20 already paying in rates for the following:

- 21 • The CR3 replacement steam generators' related revenue requirement. The
22 revenue requirement associated with these assets was included in base rates,
23 beginning January 1, 2010, even though the steam generators have not gone
24 into service due to the extended outage at CR3 caused by engineering and
25 construction activities overseen by PEF;

- 1 3. All preconstruction and construction costs not directly associated with
2 pursuing the COL should be deferred or determined to be unreasonable at
3 this time.
- 4 4. PEF's request for accelerated recovery of from the remaining deferred
5 balance should be denied.
- 6 5. To further minimize ratepayer impact in 2012, the costs associated with
7 negotiating the FNTP or further amendments to the EPC contract should be
8 deferred for consideration for recovery until after the receipt of the LNP
9 COL.
- 10 6. PEF should have the burden of affirmatively demonstrating that it is not
11 considering further delays in the scheduled LNP COD.

12

13 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

14 **A. Yes, it does.**

1 A. That's correct.

2 Q. Is there anything in your testimony
3 that is not accurate or that needs to be
4 corrected today?

5 A. Yes. We've identified some changes
6 related to the accelerated recovery of the
7 deferred amount. We can go through those if
8 you wish.

9 Q. Certainly.

10 Can we go through those changes.

11 A. Sure. On page 6, line 1, the "of"
12 should be changed to from so that the sentence
13 reads PEF's request for accelerated recovery
14 from the remaining deferred balance should be
15 denied.

16 Q. And what is the reason for that
17 change?

18 A. My testimony as filed based on my
19 interpretation of Mr. Foster's testimony -- it
20 was my belief that PEF was requesting
21 accelerated of the entire remaining deferred
22 balance, and subsequently I've learned that
23 that's not correct. It's only a portion of
24 the deferred balances they're requesting to be
25 accelerated.

1 Q. Okay. Any additional corrections?

2 A. Yes. On page 19, line 17, the 115
3 million should be changed to 55 million. And
4 then that sentence should read -- and then the
5 15 million -- 15.1 million in should be
6 changed to the word "the."

7 So that line should read, requesting
8 accelerated recovery of \$55 million plus the
9 carrying charges associated with -- and then
10 the remainder of that sentence should read,
11 with that \$55 million, period.

12 And then beginning "with the
13 remaining deferred balance" on line 18, that
14 entire remainder of that sentence should be
15 deleted.

16 And then on page 20, line 1, after
17 recovery of the deferred amount, there should
18 be a period, and the remainder of that
19 sentence should be deleted.

20 And then line 5 -- let's see. Well,
21 the way I had it written the word "recover"
22 should be deleted and changed to accelerate
23 recovery of.

24 So it should read, In addition,
25 PEF's intent to accelerate recovery of the

1 remaining deferred balance may indicate, and
2 so forth.

3 And then one more on page 22,
4 line 4. As we did before, the "of" should be
5 changed to from.

6 And, again, all these are to
7 indicate that PEF is not requesting to
8 accelerate the remaining deferred balance,
9 only a portion of it.

10 Q. Thank you.

11 Is there anything else in your
12 testimony that is not accurate or that needs
13 to be corrected?

14 A. No.

15 Q. Did you understand when you prepared
16 your direct testimony that you were to prepare
17 and file testimony that included all of your
18 opinions regarding Progress's Levy Nuclear
19 Project and the CR3 Uprate Project?

20 A. Yes.

21 Q. Did you understand when you prepared
22 your testimony that you were to provide all
23 the factual bases or reasons for your opinions
24 regarding Progress's Levy Nuclear Project and
25 the CR3 Uprate Project?

1. IROR 26

2. 27 A (New)

IS IT REASONABLE FOR TEF TO
INCUR ANY ESTIMATED 2011
COSTS NOT NECESSARY FOR RECEIPT
OF THE COMBINED LICENSE (CL), AND
IF NOT, WHAT ACTION, IF ANY,
SHOULD THE COMMISSION TAKE?

3. 28 A (New)

SAME BUT "PROJECTED 2012"

✓ OPC
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PROPOSAL FOR 26

① DREG 26

② 27 A (NEW)

IS IT REASONABLE FOR REF TO
INCUR ANY ESTIMATED 2011
COSTS NOT NECESSARY FOR RECEIPT
OF THE COMBINED LICENSE (CL), AND
IF NOT, WHAT ACTION, IF ANY,
SHOULD THE COMMISSION TAKE?

③ 28 A (NEW)

SAME BUT "PROJECTED 2012"

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Witness	SACE	OPC	FIPUG	Staff	FPL
FPL Direct					
Steve Scroggs					N/A
Nils Diaz					N/A
Winnie Powers					N/A
Armando Olivera					N/A
John Reed					N/A
Terry Jones					N/A
Bill Derrickson					N/A
Art Stall					N/A
Steve Sim					N/A
OPC Direct					
Bill Jacobs					
Brian Smith					
FPSC Staff					
David Rich/ Lynn Fisher					
Kathy Welch					
FPL Rebuttal					
Armando Olivera					N/A
Terry Deason					N/A
John Reed					N/A
Winnie Powers					N/A
Bill Derrickson					N/A
Terry Jones					N/A
Art Stall					N/A
Steve Sim (FPL)					N/A
TOTAL					

FPL
 Parties/Staff Handout
 event date 08/01/11
 Docket No. 110009

Rule 25-6.0423, Florida Administrative Code - Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery

(5) (c) Capacity Cost Recovery Clause for Nuclear or Integrated Gasification Combined Cycle Power Plant Costs.

1(c) Projected Costs for Subsequent Years. *By May 1, a utility shall submit, for Commission review and approval*, its projected pre-construction expenditures for the subsequent year ... and once construction begins, *its projected construction expenditures for the subsequent year* and a description of the construction work projected to be performed during such year.

2. The Commission shall, prior to October 1 of each year, conduct a hearing and determine the *reasonableness* of projected pre-construction expenditures and the prudence of actual pre-construction expenditures expended by the utility; or, once construction begins, to determine the *reasonableness of projected construction expenditures* and the prudence of actual construction expenditures expended by the utility, and the associated carrying costs... Annually, the Commission shall make a prudence determination of the prior year's actual construction costs and associated carrying costs.

3. The Commission shall include those costs it determines...to be *reasonable* or prudent in setting the Capacity Cost Recovery Clause factor ... Such prior year actual costs associated with power plant construction subject to the annual proceeding shall not be subject to disallowance or further prudence review. (Emphasis added)

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Parties/Staff Handout
event date 08/01/11
Docket No. 110009