

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE
INCENTIVE FACTOR.

DOCKET NO. 110001-EI

PROCEEDINGS: PREHEARING

COMMISSIONER
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

DATE: Thursday, October 20, 2011

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

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

1 APPEARANCES:

2 JAMES D. BEASLEY and ESQUIRE, and J. JEFFRY
3 WAHLEN, ESQUIRE, Ausley Law Firm, Post Office Box 391,
4 Tallahassee, Florida 32302, appearing on behalf of Tampa
5 Electric Company.

6 JEFFREY A. STONE, ESQUIRE, RUSSELL A. BADDERS,
7 ESQUIRE and STEVEN R. GRIFFIN, ESQUIRE, Beggs & Lane Law
8 Firm, Post Office Box 12950, Pensacola, Florida
9 32591-2950, appearing on behalf Gulf Power Company.

10 JAMES W. BREW, ESQUIRE and F. ALVIN TAYLOR,
11 ESQUIRE, c/o Brickfield Law Firm, 1025 Thomas Jefferson
12 Street, NW, Eighth Floor, West Tower, Washington D.C.,
13 20007, appearing on behalf of White Springs Agricultural
14 Chemicals, Inc.

15 KAREN S. WHITE, STAFF ATTORNEY, and CAPTAIN
16 SAMUEL MILLER, ESQUIRE, Federal Executive Agencies, c/o
17 AFCEA-ULFSC139 Barnes Drive, Suite 1, Tyndall AFB, Florida
18 32403-5319, appearing on behalf of Federal Executive
19 Agencies.

20 JON C. MOYLE, JR., ESQUIRE, Keefe, Anchors,
21 Gordon & Moyle Law Firm, 118 North Gadsden Street,
22 Tallahassee, Florida 32301, appearing on behalf of Florida
23 Industrial Power Users Group.

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1 APPEARANCES (continued):

2 JOHN T. BUTLER, ESQUIRE, Florida Power & Light
3 Company, 700 Universe Boulevard, Juno Beach, Florida
4 33408-0420, Florida Power & Light Company and appearing
5 on behalf of Florida Power & Light Company.

6 ROBERT SCHEFFEL WRIGHT, ESQUIRE and JOHN T.
7 LAVIA, III, ESQUIRE, c/o Young Law Firm, 225 South Adams
8 Street, Suite 200, Tallahassee, Florida 32301, appearing on
9 behalf of Florida Retail Federation and the City of
10 Marianna.

11 BETH KEATING, ESQUIRE, Gunster Law Firm, 215
12 South Monroe Street, Suite 618, Tallahassee, Florida 32301,
13 appearing on behalf of Florida Public Utilities Company.

14 PATRICIA A. CHRISTENSEN, ESQUIRE, CHARLES
15 REHWINKEL, ESQUIRE and JOSEPH MCGLOTHLIN, ESQUIRE, Office
16 of Public Counsel, c/o The Florida Legislature, 111 W.
17 Madison St., Room 812, Tallahassee, Florida 32399-1400,
18 appearing on behalf of the Citizens of Florida.

19 ALEXANDER GLENN, ESQUIRE, and JOHN T. BURNETT,
20 ESQUIRE, Progress Energy Service Company, LLC, Post Office
21 Box 14042, Saint Petersburg, Florida 33733-4042, appearing
22 on behalf of Progress Energy Florida, Inc.

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1 APPEARANCES (continued):

2 LISA BENNETT, ESQUIRE, and MARTHA BARRERA,
3 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida 32399-0850, appearing on
5 behalf of the Florida Public Service Commission Staff.

6 MARY ANNE HELTON, Deputy General Counsel, Florida
7 Public Service Commission, 2540 Shumard Oak Boulevard,
8 Tallahassee, Florida 32399-0850, Advisor to the Florida
9 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, once again.

3 Today we are going to deal with the prehearing
4 for the clause dockets. Today is October 20th, 2011, and
5 we are going to deal with Docket Numbers 110003-GU,
6 110004-GU, 110001-EI, 110007-EI, 110002-EG. And, I guess,
7 officially I must say that we called this prehearing to
8 order, so I will do that. And I will ask staff to read
9 the notice.

10 **MS. CRAWFORD:** Thank you, Commissioner.

11 Pursuant to notice, this time and place has been
12 set aside for the purpose of conducting a prehearing
13 conference in the following dockets: 110001-EI, 110002-EG,
14 110003-GU, 110004-GU, and 110007-EI. The purpose of the
15 prehearing is set forth more fully in the notice.

16 **COMMISSIONER BRISÉ:** Thank you.

17 At this time I will take appearances, and since
18 there are five dockets that we must address today, we're
19 going to take all of the appearances at this time. We are
20 going to from my left to right.

21 **MR. GLENN:** Alex Glenn on behalf of Progress
22 Energy Florida. Also, I will enter an appearance for John
23 Burnett, Dianne Triplett, and Gary Perko in the ECRC
24 docket, as well.

25 **MR. BADDERS:** Good morning, Commissioner.

1 Russell Badders on behalf of Gulf Power Company.
2 With me I have Jeffrey A. Stone and Steven Griffin. We
3 are all appearing on behalf of Gulf Power in the 01, 02,
4 and 07 dockets.

5 **MR. BEASLEY:** Good morning.

6 James D. Beasley and J. Jeffry Wahlen of the law
7 firm of Ausley and McMullen. We are representing Tampa
8 Electric Company in the 01, 02, and 07 dockets.

9 **MR. BUTLER:** Good morning, Commissioner.

10 John Butler, Florida Power and Light Company,
11 appearing in the 01, 02, and 07 dockets. Also appearing
12 for FPL in the 02 docket is Ken Rubin. Thank you.

13 **MS. KEATING:** Good morning, Commissioner.

14 Beth Keating with the Gunster law firm appearing
15 today on behalf of FPUC in the 01 docket, FPUC in the 02
16 docket, FPUC and Florida City Gas in the 03 docket, and
17 FPUC, FPUC Indiantown, Chesapeake, and Florida City Gas in
18 the 04 docket.

19 **MR. McGLOTHLIN:** Do you have a scorecard we can
20 use for that?

21 (Laughter.)

22 Good morning. Joe McGlothlin of the Office of
23 Public Counsel. Also appearing will be Patty Christensen
24 and Charles Rehwinkel.

25 **MS. BROWNLESS:** Good morning. Suzanne

1 Brownless. I am appearing on behalf of the Florida Solar
2 Industries Association in the 02 docket.

3 **MR. CAVROS:** Good morning. George Cavros on
4 behalf of the Southern Alliance for Clean Energy appearing
5 in the 02 docket.

6 **MR. MOYLE:** John Moyle, Keefe Anchors Gordan &
7 Moyle law firm, appearing on behalf of the Florida
8 Industrial Power Users Group, FIPUG. I'd like to also
9 enter an appearance for my colleague, Vicki Kaufman.

10 **CAPTAIN MILLER:** Good morning, Commissioner.

11 I'm Captain Sam Miller. I'm making an
12 appearance on behalf of the Federal Executive Agencies. I
13 am also making an appearance on behalf Karen White for the
14 01, 02, and 07 dockets.

15 **MR. TAYLOR:** Al Taylor on behalf of PCS
16 Phosphate, I'm also entering an appearance for Jay Brew in
17 the 01 and 02 dockets.

18 **MR. WRIGHT:** Good morning, Commissioner.

19 Schef Wright appearing on behalf of the Florida
20 Retail Federation in the 0001 docket. I would also like
21 to enter an appearance for my partner, John T. Lavia, III,
22 in the fuel docket on behalf of the Federation. Thank
23 you.

24 **MR. HORTON:** Commissioner, Norman H. Horton, Jr.
25 appearing in the 04 docket on behalf of Sebring Gas

1 System, Inc.

2 MS. BENNETT: Commissioner Brisé -- oh, I'm
3 sorry.

4 COMMISSIONER BRISÉ: I believe we have one other
5 appearance.

6 MS. CHRISTENSEN: I believe Mr. McGlothlin also
7 announced me, but Patty Christensen on behalf of Office of
8 Public Counsel.

9 COMMISSIONER BRISÉ: Thank you.
10 Staff.

11 MS. BENNETT: Lisa Bennett and Martha Barrera on
12 behalf of the Public Service Commission in the 01 docket.

13 MS. BROWN: Martha Carter Brown and Charles
14 Murphy on behalf of the Commission in the 07 docket.

15 MS. TAN: Lee Eng Tan on behalf of the
16 Commission in the 02 docket.

17 MS. CRAWFORD: Jennifer Crawford on behalf of
18 the 03 and 04 docket. And, perhaps, Commissioner -- oh,
19 go ahead.

20 MS. HELTON: Mary Anne Helton, Advisor to the
21 Commission, in all the dockets.

22 MS. CRAWFORD: Sorry about that.

23 It would, perhaps, be appropriate to note for
24 the record that St. Joe Natural Gas Company and Peoples
25 Gas System have requested and received permission to be

1 excused from the prehearing conference.

2 **COMMISSIONER BRISÉ:** Thank you.

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4 **COMMISSIONER BRISÉ:** And now we are going to
5 move to Docket 01.

6 **MS. BENNETT:** I don't think we'll go through
7 this one as quickly as 3 and 4, but hopefully we will move
8 pretty quickly. We have already read the notice in this
9 docket, so would you like to go to preliminary matters?

10 **COMMISSIONER BRISÉ:** Yes. We can proceed to
11 preliminary matters on Docket 110001-EI.

12 **MS. BENNETT:** Okay. I would like to note that
13 TECO filed on Monday a motion to approve its stipulation
14 on Issue 26A, and to revise its testimony and exhibits to
15 reflect the stipulation. It's not within the
16 prehearing -- it is within the purview of the Commission
17 to approve the stipulation, but within the prehearing
18 officer's authority to approve the revisions to the
19 testimony and exhibits. I believe all of the parties have
20 agreed that the testimony and exhibits can be revised, so
21 I would ask that you approve that portion of the motion.

22 **COMMISSIONER BRISÉ:** Okay.

23 **MS. BENNETT:** And then the other thing I wanted
24 to note as a preliminary matter is that there are several
25 issues for the fuel, GPIF, and capacity that look like

1 they might be stipulated at the prehearing conference, and
2 we will be able to reflect those issues that we stipulate
3 today as either a Type B, meaning that staff and the
4 utilities have reached an agreement and the other parties
5 take no position, or a Type A agreement where everybody
6 agrees to it. But to do that we probably need to go
7 issue-by-issue. Those are the two preliminary matters
8 that staff has.

9 **COMMISSIONER BRISÉ:** Okay. Are there any other
10 preliminary matters that anyone else might have? All
11 right. Now, we are going to proceed through the
12 prehearing draft order. I'll identify the sections, and I
13 want the parties to let me know if there are any
14 corrections, changes, additions, or deletions that need to
15 be made. We'll move through this rather quickly, so
16 please speak up as we go through them.

17 Section I, case background. Section II, conduct
18 of proceedings. Section III, jurisdiction. Section IV,
19 procedure for handling confidential information. Section
20 V, prefiled testimony, and exhibits, and witnesses.

21 **MR. BUTLER:** Commissioner Brisé?

22 **COMMISSIONER BRISÉ:** Yes.

23 **MR. BUTLER:** John Butler for FPL. I would just
24 note that it is kind of premature to address it at this
25 point, but we will likely want to come back to this to

1 section to see whether it's possible to have any of FPL's
2 witnesses excused based on what we are able to achieve in
3 the way of stipulation on issues later.

4 **COMMISSIONER BRISE:** Sounds reasonable.

5 **MS. BENNETT:** And actually he is just one step
6 ahead you, because the next section is the order of
7 witnesses where we can excuse those.

8 **MR. BUTLER:** I'm sorry, I missed a section. I
9 was looking at VI and I mistook it for V. My apology.

10 **COMMISSIONER BRISE:** No problem.

11 Section VI, order of witnesses.

12 **MS. BENNETT:** I don't believe that any of the --
13 I believe this is the order of the witnesses as they will
14 appear at the hearing, unless any party needed to change
15 any of the witness order. And then we might also look at
16 excusing witnesses. I might take a stab at this. It
17 appears to me that all witnesses except FPUC's Martin and
18 Progress Energy's Olivier might be subject to excusal. I
19 don't believe any parties have questions, so we could ask
20 the Commissioners if all of the other witnesses could be
21 excused. But you might want to check with the parties and
22 see if there's any additional witnesses.

23 **COMMISSIONER BRISE:** Okay. Considering the two
24 witnesses that were mentioned by staff, Martin and
25 Olivier, are there any other witnesses that parties feel

1 that they are going to examine?

2 **MR. MOYLE:** FIPUG may very well able to get
3 there with respect to some of Progress Energy's witnesses,
4 but not able to get there this morning. We'll work with
5 them, but we plan on bringing up an issue in the Progress
6 case that we are not comfortable with excusing any of them
7 at this point in time.

8 **COMMISSIONER BRISÉ:** Okay. So you are not
9 comfortable excusing any of Progress' witnesses?

10 **MR. MOYLE:** Not this morning.

11 **COMMISSIONER BRISÉ:** Not this morning. Okay.
12 Any other parties?

13 **MS. CHRISTENSEN:** Just for clarification, I
14 would agree with FIPUG regarding the Progress Energy
15 witnesses, that at this point OPC would not be comfortable
16 excusing those witnesses. However, regarding FPL
17 witnesses, TECO, Gulf, and FPUC's witnesses, except for
18 Witness Martin, we have no questions and no objection to
19 excusing those witnesses.

20 **COMMISSIONER BRISÉ:** Okay. Would that be the
21 same position for FIPUG that you are specific to Progress?

22 **MR. MOYLE:** That's right. So we are okay with
23 excusing Power and Light, Gulf, and TECO witnesses, but
24 not Progress.

25 **COMMISSIONER BRISÉ:** Okay.

1 **MR. GLENN:** Commissioner Brisé?

2 **COMMISSIONER BRISÉ:** Yes.

3 **MR. GLENN:** If I may ask a clarifying question.
4 On the witness excusals, there are a couple of Progress
5 witnesses that have probably nothing to do with the issues
6 that FIPUG or anybody else is addressing, particularly Mr.
7 McCallister who is solely talking about hedging where no
8 one has taken a position at this time, Mr. Garrett, who is
9 simply a true-up witness, on which no one has any position
10 at this time, and I think Mr. Oliver. So I just don't
11 understand why those can't be stipulated to today.

12 **COMMISSIONER BRISÉ:** OPC.

13 **MS. CHRISTENSEN:** Thank you.

14 For OPC's part Mr, Rehwinkel is the attorney
15 that would be addressing the Progress Energy portion of
16 this docket, and this morning I'm not comfortable with
17 agreeing to excuse any of the witnesses. I'm sure that
18 with further discussion with Progress and the other
19 intervenors, there can be some agreement as to who the
20 witnesses are that are necessary to discuss the issue that
21 Mr. Moyle and Mr. Rehwinkel would like to address, but at
22 this time I don't feel comfortable agreeing. And we will
23 take under advisement the scope of what they have
24 testified to, and I will bring that to Mr. Rehwinkel's
25 attention and see if we can't hopefully resolve this issue

1 with sufficient time before the hearing so that they don't
2 have to travel, which I assume is what Mr. Glenn's concern
3 is. And we will endeavor to work with them so that they
4 don't incur the travel prior to the hearing.

5 **MR. MOYLE:** We will do the same. We will work
6 with Progress, and if we don't need them we will let them
7 go. But we don't want to do it this morning.

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

9 So, staff, how do we proceed in terms of
10 excusing the balance of the witnesses?

11 **MS. BENNETT:** We will identify in the prehearing
12 order all of the witnesses except for the four Progress
13 witnesses and FPUC's Martin as the parties not having any
14 questions. We'll ask the Commissioners if they have
15 questions and notify the parties as quickly as we can.

16 **COMMISSIONER BRISÉ:** All right, thank you.

17 Section XII -- I'm sorry, Section VII, basic
18 positions. Section VIII, issues and positions. Staff?

19 **MS. BENNETT:** Staff would note that the order
20 establishing procedure requires that a party take a
21 position at the prehearing conference, unless good cause
22 is shown why they can't take a position at this time,
23 accordingly. And there is a lot of situations in this
24 prehearing order in which the parties have taken no
25 position at this time. They either at this point need to

1 take a position or no position or explain why they can't.

2 COMMISSIONER BRISÉ: Okay.

3 MS. BENNETT: And then I believe we are ready to
4 go issue-by-issue through the prehearing order.

5 COMMISSIONER BRISÉ: Right. We will go through
6 the positions. We have, in an effort to make it more
7 efficient, sort of grouped some of these issues by
8 company. So Issue 1A.

9 MS. BENNETT: It appears that we can reflect
10 that as no position on all the parties.

11 MS. CHRISTENSEN: That's correct.

12 COMMISSIONER BRISÉ: Okay. Issue 1B.

13 MS. BENNETT: It appears we can reflect that as
14 no position, also, in the prehearing order.

15 COMMISSIONER BRISÉ: Okay. 1C.

16 MS. CHRISTENSEN: For 1C for Office of Public
17 Counsel, we would also like to agree with FIPUG and
18 include the remainder of the FIPUG language. Right now
19 our position is no, and we would include the remainder of
20 the FIPUG language, PEF should not be permitted to recover
21 any cost of replacement power due to the CR-3 outage
22 pending resolution of the issues in Docket Number
23 100437-EI.

24 COMMISSIONER BRISÉ: Okay.

25 MS. BENNETT: Staff will reflect that in the

1 prehearing order.

2 **CAPTAIN MILLER:** FEA would also agree with FIPUG
3 on that issue.

4 **COMMISSIONER BRISÉ:** Okay.

5 **MR. MOYLE:** And FIPUG would like to have another
6 issue that is tied to 1C that is not really a factual
7 issue, but a legal issue. And if I could just read it for
8 the record. 1C says, "Should PEF be permitted to recover
9 the cost of replacement power due to the extended outage
10 at Crystal River 3 in this docket?" And we can
11 characterize it as 1C little 1. "If yes, does this
12 recovery constitute an unconstitutional taking of customer
13 property or violate constitutional due process
14 provisions?"

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

16 **MS. BENNETT:** Progress might want to speak to
17 that issue, and then we will provide a recommendation.

18 **COMMISSIONER BRISÉ:** Okay. Progress?

19 **MR. GLENN:** And we would object to the inclusion
20 of that issue. It's purely a legal issue. And if they
21 want to brief the constitutionality of it, they are free
22 to brief that in the post-hearing briefs, but that is not
23 an appropriate issue for the docket.

24 **COMMISSIONER BRISÉ:** Staff.

25 **MS. BENNETT:** We would recommend that that be a

1 position of FIPUG on Issue 1C rather than an issue itself.
2 And we can reflect that, whatever change. If he would
3 like to send that out by the end of today, we can include
4 that in the prehearing order.

5 **COMMISSIONER BRISE:** Okay. I think I tend to
6 agree with staff.

7 **MR. MOYLE:** So I'm assuming, based on Progress'
8 answer, that there is no issue as to whether they are
9 unclear about the fact that there are constitutional
10 issues here, and at least FIPUG is attempting to raise
11 those constitutional issues, and that they are part and
12 parcel of this proceeding. I just don't want there to be
13 an argument at some point down the line to say, well, you
14 know, you guys never brought up these constitutional
15 issues, therefore, you waive them. So my effort today is
16 to try to bring up the taking and the due process issues.
17 The order establishing procedures, I think, gives parties
18 the right to bring up issues at the prehearing. I want to
19 bring them up, so -- anyway, I just want to make sure we
20 are clear on that point.

21 **COMMISSIONER BRISE:** Let me ask you a question.
22 Do you think that including it in your position and adding
23 it to your position sufficiently brings that up?

24 **MR. MOYLE:** It's hard for me to answer that
25 question, because it requires me to presuppose how a staff

1 recommendation is going to look and how a final order of
2 the PSC is going to look. I know by putting it forward
3 separately as an issue that it's going to be addressed,
4 and that is what I would hope to be able to do. Because
5 to the extent that, you know, there is an issue that
6 somebody says, well, I don't think this is right. It's an
7 issue of law, I want to do something with it, it needs to
8 be raised and specifically addressed. If it's not
9 addressed, I don't know how it would be reviewed.

10 **COMMISSIONER BRISÉ:** Okay.

11 **MS. BENNETT:** May I speak?

12 **COMMISSIONER BRISÉ:** Sure; please.

13 **MS. BENNETT:** As Mr. Moyle was speaking, I had
14 an abundance of legal opinions provided to me, all of
15 which concluded administrative agencies don't have the
16 jurisdiction to decide a constitutional issue. So you
17 will know what staff's recommendation is ahead of time.

18 I don't think it hurts to raise it as position
19 that if you want to on appeal from the Commission's
20 decision, you know, raise it on appeal to a court which
21 would have jurisdiction. And if the prehearing officer
22 would like to take this issue under advisement, we could
23 do that, rather than make a bench decision today.

24 **COMMISSIONER BRISÉ:** Okay. Progress, are there
25 any further comments you would like to make on that?

1 **MR. GLENN:** No.

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

3 Yes, I will go ahead and take this issue under
4 advisement.

5 All right. Moving forward with Issue 2A.

6 **MS. BENNETT:** It appears that this item may be
7 stipulated. I believe that all parties will take no
8 position on 2A.

9 **COMMISSIONER BRISÉ:** Okay. 2B.

10 **MS. BENNETT:** And, again, this item looks like
11 it will be no position by all the parties, so we can
12 reflect that as a stipulation.

13 **COMMISSIONER BRISÉ:** 2C.

14 **MS. BENNETT:** It appears that the parties have
15 taken no position. Staff is ready to take a position at
16 this time, and can state it on the record so that it can
17 be reflected in the prehearing order. Staff's position is
18 186,895,413. Pursuant to the stipulation and settlement
19 agreement approved by this Commission in Docket Number
20 080677-EI on December 14th, 2010, FPL has provided the
21 projected 2012 jurisdictional fuel savings to compare with
22 the projected 2012 WCEC-3 jurisdictional nonfuel revenue
23 requirements. That would be staff's position on Issue 2C.

24 **COMMISSIONER BRISÉ:** Okay. 2D.

25 **MR. BUTLER:** I'm sorry, Commissioner Brisé.

1 **COMMISSIONER BRISÉ:** Yes.

2 **MR. BUTLER:** I'd like to ask whether any of the
3 parties have a disagreement with the staff position on 2C
4 that was just identified?

5 **MS. CHRISTENSEN:** The Office of Public Counsel
6 will take no position on this issue.

7 **MR. WRIGHT:** No position from the Retail
8 Federation, Commissioner. Thank you.

9 **COMMISSIONER BRISÉ:** FIPUG?

10 **MR. MOYLE:** No position.

11 **CAPTAIN MILLER:** No position from FEA.

12 **COMMISSIONER BRISÉ:** Okay.

13 **MR. BUTLER:** With that, Commissioner, I would
14 ask that -- it seems like this may qualify for a
15 stipulation on the same basis as the 2A and 2B that have
16 just been discussed, and we'd propose that.

17 **MS. BENNETT:** This will be reflected as a Type B
18 Stipulation in the prehearing order.

19 **COMMISSIONER BRISÉ:** Thank you.

20 **MR. BUTLER:** Thank you.

21 **COMMISSIONER BRISÉ:** 2D.

22 **MS. BENNETT:** Issue 2D, it appears that no party
23 is taking a position, and if that is the case, if no party
24 is taking a position, staff is willing to take a position
25 at this time. For the record, staff's position is yes,

1 FPL's time-of-use fuel factors based on seasonally
2 differentiated marginal fuel costs should be approved for
3 2012.

4 COMMISSIONER BRISÉ: Any parties taking a
5 position?

6 MS. CHRISTENSEN: No position for OPC.

7 COMMISSIONER BRISÉ: Okay.

8 MR. WRIGHT: No position. Thank you.

9 COMMISSIONER BRISÉ: All right. Seeing no one
10 is coming up with a position, I guess we can take this as
11 a Type B --

12 MS. BENNETT: Type B Stipulation, yes.

13 COMMISSIONER BRISÉ: Type B Stipulation. All
14 right.

15 Issue 3A.

16 MS. BENNETT: It appears that the parties have
17 not taken a position at this time. Staff has taken a
18 position. It's reflected already in the draft prehearing.
19 If FPUC agrees with staff's position, then this can be
20 reflected as a Type B Stipulation.

21 MS. KEATING: FPUC does agree with staff's
22 position.

23 COMMISSIONER BRISÉ: Okay. All right. So we
24 will mark this as a Type B Stipulation.

25 Issue 3B.

1 **MS. BENNETT:** For Issue 3B, staff has
2 outstanding discovery, and so we are not ready to
3 stipulate. You might check with the parties to see if
4 they have a position.

5 **MS. CHRISTENSEN:** Office of Public Counsel takes
6 no position on this issue.

7 **COMMISSIONER BRISÉ:** Okay. FIPUG?

8 **MR. MOYLE:** No position.

9 **COMMISSIONER BRISÉ:** FEA?

10 **CAPTAIN MILLER:** No position.

11 **MR. WRIGHT:** No position, Commissioner.

12 Thank you.

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

14 So now we're moving on to 4A.

15 **MS. BENNETT:** And 4A appears to be a Type B
16 Stipulation, unless any party wants to change its position
17 at this time.

18 **MS. CHRISTENSEN:** No position.

19 **COMMISSIONER BRISÉ:** Okay. 4B.

20 **MS. BENNETT:** 4B also appears to be a Type B
21 Stipulation, unless the parties wish -- intervenors wish
22 to change their position at this time.

23 **MS. CHRISTENSEN:** No position.

24 **COMMISSIONER BRISÉ:** 4C.

25 **MS. BENNETT:** It appears that 4C -- staff has

1 taken a position on Issue 4C, and if the utility agrees
2 with staff's position, and if the intervenors do not take
3 a position, then this will be a Type B Stipulation.

4 **MR. BADDERS:** Gulf agrees with staff's position.

5 **COMMISSIONER BRISÉ:** Okay.

6 **MS. CHRISTENSEN:** Office of Public Counsel takes
7 no position.

8 **COMMISSIONER BRISÉ:** No position.

9 **CAPTAIN MILLER:** FEA agrees with staff's
10 position.

11 **COMMISSIONER BRISÉ:** Okay. FIPUG?

12 **MR. MOYLE:** No position.

13 **MR. WRIGHT:** No position, Commissioner.

14 **COMMISSIONER BRISÉ:** Thank you.

15 So this will be a Type B Stipulation. Okay.

16 This moves us on to 5A.

17 **MS. BENNETT:** It appears that 5A can be
18 stipulated if the utility agrees with staff's position and
19 if all parties, including the intervenors, take no
20 position.

21 **MR. BEASLEY:** Tampa Electric agrees.

22 **MS. CHRISTENSEN:** No position for the Office of
23 Public Counsel.

24 **COMMISSIONER BRISÉ:** No position across the
25 board?

1 **MR. MOYLE:** Yes, I think we will take no
2 position. Unless we raise our hand and say something,
3 we'll take no position.

4 **COMMISSIONER BRISÉ:** All right. Okay. Will
5 that be the practice this morning?

6 **MR. WRIGHT:** We take no position on this issue,
7 and I'm perfectly comfortable with the default
8 interpretation of silence being no position. Thank you.

9 **COMMISSIONER BRISÉ:** Okay. Perfect.
10 Issue 5B.

11 **MS. BENNETT:** 5B, again, can be a Type B
12 Stipulation if the utility agrees with staff position.

13 **MR. BEASLEY:** We agree with staff.

14 **COMMISSIONER BRISÉ:** Okay. Moving on to
15 Issue 6.

16 **MS. BENNETT:** On Issue 6, staff has taken a
17 position, and the numbers agree with the utilities'
18 positions. All other parties have taken no position.
19 This can be a Type B Stipulation.

20 **COMMISSIONER BRISÉ:** Okay. This will be a Type
21 B Stipulation. Issue 7.

22 **MS. BENNETT:** On Issue 7, staff has taken a
23 position. For all of the utilities the numbers match, the
24 numbers agree with the utility. All other parties have
25 taken no position. This can be a Type B Stipulation.

1 **COMMISSIONER BRISÉ:** Okay. At quick glance it
2 seems that this is a Type B Stipulation. Issue 8.

3 **MS. BENNETT:** On Issue 8, I would like to make
4 sure that the parties take no position at this time,
5 because staff is ready to take some positions on all of
6 the positions except Progress.

7 **MS. CHRISTENSEN:** Office of Public Counsel would
8 take no position as to FPL, FPUC, Gulf, and TECO. And
9 then would -- at this time we can't take a -- or would
10 take a position that it is less the recovery for CR-3.
11 Would that be sufficient for staff? I think what we are
12 trying to do is not reflect fuel recovery for CR-3 in
13 2012.

14 **MS. BENNETT:** Perhaps the parties would like to
15 provide me with changed language reflecting their
16 positions on the next several issues. I understand that
17 these are fallout issues, and 1C effects each and every
18 one of these. So it might be best if they provided me
19 with their positions by the close of business today.

20 **MS. CHRISTENSEN:** I mean, I can do my best to do
21 that. Really what we are reflecting is whatever the cost
22 is less the inclusion of the CR-3 fuel, but I can try and
23 encapsulate that into some language.

24 As far as the other companies go, we would take
25 no position, and that would be for those issues where CR-3

1 has an impact as the fallout on those issues. So we would
2 take no position as to the remainder of the companies.
3 And then as to Progress regarding the CR-3 impact, we
4 would just note that it would be whatever the number is
5 less the CR-3 impact. And I'll send that language to Ms.
6 Bennett by the end of the day, hopefully.

7 **MS. BENNETT:** And actually I can wait until
8 Friday, if we need to.

9 **MS. CHRISTENSEN:** I would appreciate that.
10 Thank you.

11 **COMMISSIONER BRISÉ:** Okay.

12 **MR. MOYLE:** I can just, for FIPUG, make it
13 easier. I mean, I think what we are dealing with are a
14 lot of fallout issues here that may hinge on the Crystal
15 River 3 issue, and we would just take the position that
16 costs -- replacement fuel costs associated with the
17 Crystal River 3 outage should not be included in any
18 adjustments that impose additional costs on consumers.

19 **COMMISSIONER BRISÉ:** Okay. FEA?

20 **CAPTAIN MILLER:** FEA agrees with FIPUG.

21 **COMMISSIONER BRISÉ:** Okay. Retail Federation?

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

23 For ease of administration, we agree with Public
24 Counsel and FIPUG. But if you will just show our position
25 as agree with OPC, that will make it easier all around, I

1 think, on all these issues. And, again, we take no
2 position with respect to these fallout issues as to
3 utilities other than Progress Energy Florida.

4 **COMMISSIONER BRISÉ:** Okay. PCS?

5 **MR. TAYLOR:** Again, we maintain our position of
6 agreement with OPC.

7 **COMMISSIONER BRISÉ:** Okay. So have we got what
8 we need, staff?

9 **MS. BENNETT:** I would just ask that both FIPUG
10 and OPC provide me with their language. I didn't write
11 fast enough.

12 **COMMISSIONER BRISÉ:** Okay. Understood.

13 **MS. BENNETT:** So with that, staff is ready to
14 take a position for FPL, FPUC, Gulf, and TECO. For FPL,
15 staff's position is 45,498,409 underrecovery. Staff's
16 position for FPUC Northwest is 885,786 overrecovery.
17 Staff's position for FPUC Northeast is \$856,166
18 overrecovery. Staff's position for Gulf is 3,609,728
19 underrecovery. That's dollars. And for TECO it's
20 \$5,086,991 overrecovery. It appears that this could be
21 reflected as a Type B Stipulation for FPL, FPUC, Gulf, and
22 TECO.

23 **COMMISSIONER BRISÉ:** Are the parties in
24 agreement?

25 **MR. BEASLEY:** Yes, sir.

1 **MR. BUTLER:** Yes.

2 **MS. KEATING:** (Indicating affirmatively.)

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

4 Issue 9.

5 **MS. BENNETT:** I think Issue 9 is in the same
6 posture for the intervenors. I guess I shouldn't presume
7 to speak for you all, but I think they will take the same
8 position for Progress. Staff is ready to take a position
9 for FPL, FPUC, Gulf, and TECO, if parties have no position
10 on those.

11 **MS. CHRISTENSEN:** That's correct.

12 **COMMISSIONER BRISÉ:** Okay.

13 **MR. MOYLE:** Staff is correct.

14 **COMMISSIONER BRISÉ:** All right. Very good.

15 **MS. BENNETT:** So this will be a Type B
16 Stipulation for FPL at \$109,641,629 underrecovery. For
17 FPUC Northwest Division, \$682,002 overrecovery. For
18 Northeast Division of FPUC, \$2,292,856 overrecovery. For
19 Gulf, \$8,441,457 underrecovery. And for TECO, 42,726,419
20 overrecovery. Those will be reflected as a Type B
21 Stipulation.

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

23 **MS. BENNETT:** Again, Issue 10 appears to be a
24 Type B Stipulation for all utilities except Progress,
25 unless any party wishes to take -- excuse me for just a

1 minute. (Pause.)

2 I apologize. It can be a Type B Stipulation for
3 FPL, FPUC, and TECO. Staff is awaiting some outstanding
4 discovery from Gulf, and then we'll be ready to take a
5 position and can stipulate if all of the other parties
6 take no position on Gulf's. So let me check with the
7 parties, or ask that you check with the parties and see if
8 they take a position on Gulf or any of the others.

9 COMMISSIONER BRISÉ: Is there any specific
10 position on Gulf at this time?

11 MS. CHRISTENSEN: Office of Public Counsel takes
12 no position at this time.

13 COMMISSIONER BRISÉ: Okay. Thank you. And I
14 saw heads nod.

15 MR. MOYLE: Our silence is consent, right.

16 MS. CHRISTENSEN: No position.

17 COMMISSIONER BRISÉ: No position. So the
18 parties have taken no position.

19 MS. BENNETT: I lost my place.

20 COMMISSIONER BRISÉ: Gulf.

21 MS. BENNETT: Issue 10 for FPL is a Type B
22 Stipulation then, or can be reflected as a Type B
23 Stipulation in the prehearing order for \$155,140,123
24 underrecovery. For FPUC Marianna, \$1,567,788
25 overrecovery. For Marianna's Northeast Division,

1 \$3,149,022 overrecovery. For TECO, \$47,813,410
2 overrecovery.

3 **MR. MOYLE:** And the same position with respect
4 to Progress on the Crystal River 3.

5 **COMMISSIONER BRISÉ:** Okay. Staff, do we have
6 what we need on 10?

7 **MS. BENNETT:** We do. And may I have just a
8 minute to talk with staff on Issue 11?

9 **COMMISSIONER BRISÉ:** Sure. We will take an
10 informal five-minute recess. (Pause.)

11 **MR. BADDERS:** Commissioner Brisé, I have a
12 question. There may be some confusion on this. On Number
13 10, Number 10 is really just the addition of the positions
14 on 8 and 9 which have already been stipulated. I believe
15 the issue that may still be pending some discovery might
16 be Issue Number 11.

17 **MS. BENNETT:** The little voice in the back of my
18 head says he is correct. Staff is able to take a position
19 on Issue 10, but not on Issue 11 for Gulf. So it can be
20 reflected as a Type B Stipulation for Gulf for Issue 11.

21 **COMMISSIONER BRISÉ:** All right. Perfect.

22 **MS. BENNETT:** I mean, I'm sorry, for Issue 10.

23 **COMMISSIONER BRISÉ:** Ten, correct. Parties, are
24 we comfortable with that? Okay. Very good.

25 **MS. BENNETT:** And staff's position for the

1 record, for Issue 10 is 12 million dollars, 51 -- 12
2 million, 50 thousand, 185 thousand -- let me try that one
3 more time. \$12,051,185 underrecovery.

4 **COMMISSIONER BRISÉ:** Okay. Issue 11.

5 **MS. BENNETT:** For Issue 11, staff is not quite
6 ready to take a final position. There have been some
7 confusion on what numbers go into making up -- this is a
8 fallout issue adding several numbers together. We will be
9 sending out a staff position later this week, and if all
10 of the parties -- all of the intervenors take no position
11 at this time, then staff and the utilities can reach an
12 agreement that can be reflected in the prehearing order as
13 stipulated. A Type B Stipulation.

14 **COMMISSIONER BRISÉ:** Intervenors, do you take a
15 position at this time on this particular --

16 **MS. BENNETT:** Except for Progress.

17 **MR. MOYLE:** Except for Progress, no position.

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

19 Moving on to --

20 **MS. BENNETT:** There are no Issues 12, 13, and
21 14. The next one will be 15A.

22 **COMMISSIONER BRISÉ:** Moving on to Issue 15A.

23 **MS. BENNETT:** Staff has taken a position on
24 Issue 15A. If TECO agrees with staff's position, and all
25 other parties take no position, this can be a Type B

1 Stipulation.

2 **MR. BEASLEY:** Tampa Electric agrees with staff's
3 position.

4 **COMMISSIONER BRISÉ:** Okay. There's silence, so
5 we will take that as a Type B Stipulation.

6 Issue 16.

7 **MS. BENNETT:** Issue 16 is the first of the
8 generic generating performance incentive factor issues,
9 and the staff has taken a position. All of the parties
10 appear to be taking no position, and so this can be
11 reflected in the prehearing order as a Type B Stipulation.

12 **COMMISSIONER BRISÉ:** Okay. There is silence, so
13 we will take this as a Type B Stipulation.

14 Issue 17.

15 **MS. BENNETT:** Issue 17. Staff has taken a
16 position. If the utilities agree with staff's position,
17 this can be reflected as a Type B Stipulation, assuming
18 that the parties continue to take no position.

19 **COMMISSIONER BRISÉ:** Okay. There is continued
20 silence, so we will take that as a Type B Stipulation.

21 Issue 18.

22 **MS. BENNETT:** On Issue 18, this is the fuel
23 factor calculation issues. And for Issue 18, staff is
24 ready to take a position for FPL, FPUC, and TECO. We are
25 awaiting discovery from Gulf, and may be able to reach an

1 agreement with Gulf later this week. And then Progress --
2 I believe the parties would take positions on Progress'
3 final number. So unless parties take a position on FPL,
4 FPUC, TECO, or Gulf, we are ready -- I'm sorry, FPL, FPUC,
5 and TECO, we are ready to present our positions.

6 **COMMISSIONER BRISÉ:** Okay. Silence is golden.
7 All right.

8 **MS. BENNETT:** I'm not sure I can read this
9 number. It's \$4,232,816,559 for FPL. For FPUC it's
10 \$34,443,981, that's the Northwest Division. For FPUC
11 Northeast Division it's 40,276,293. For TECO it is
12 \$796,618,188. Those will be reflected as a Type B
13 Stipulation. I want to confirm that the parties have not
14 taken a position or are not going to take a position on
15 Gulf.

16 **MS. CHRISTENSEN:** No position on Gulf.

17 **MR. WRIGHT:** No position on Gulf. Thank you.

18 **COMMISSIONER BRISÉ:** FIPUG?

19 **MR. MOYLE:** No position on Gulf. We maintain
20 our position on Progress.

21 **COMMISSIONER BRISÉ:** FEA.

22 **CAPTAIN MILLER:** Agree with FIPUG.

23 **COMMISSIONER BRISÉ:** Thank you.

24 Moving on to Issue 19.

25 **MS. BENNETT:** Issue 19 can be a Type B

1 Stipulation unless any party, intervenor, wishes to take a
2 position.

3 **COMMISSIONER BRISÉ:** Okay. It doesn't seem like
4 any intervenor wants to take a position, so moving on to
5 Issue 20.

6 **MS. BENNETT:** For Issue 20, staff is ready to
7 take a position on FPL, FPUC, and TECO. Staff's position
8 for FPL is 4.131 cents per kilowatt hour. For FPUC it's
9 6.544 cents per kilowatt hour for the Northwest Division.
10 For the Northeast Division it is 5.961 cents per kilowatt.
11 And for TECO it is 4.183 cents per kilowatt hour, and that
12 is before the application of time-of-use multipliers. And
13 I want to confirm that all parties take no position for
14 Gulf.

15 **MS. CHRISTENSEN:** No position on Gulf.

16 **COMMISSIONER BRISÉ:** Okay.

17 **MS. BENNETT:** This will be reflected as a Type B
18 Stipulation for FPL, FPUC, and TECO.

19 **COMMISSIONER BRISÉ:** Okay. Issue 21.

20 **MS. BENNETT:** It appears that Issue 21 may be
21 stipulated. Staff did pass out a corrected table, set of
22 tables to the parties, and if the parties are willing to
23 agree to staff's tables that we handed out this morning,
24 then this would be reflected as a Type B Stipulation,
25 assuming intervenors take no position.

1 MS. CHRISTENSEN: No position.

2 COMMISSIONER BRISÉ: Okay.

3 MR. GLENN: Progress -- we're just reviewing
4 that right now with our folks, and we will get back to you
5 today.

6 MR. BUTLER: FPL is in the same position. We
7 are checking over the table.

8 COMMISSIONER BRISÉ: Okay.

9 MS. BENNETT: Okay.

10 COMMISSIONER BRISÉ: So on this one I guess we
11 will wait for everybody to review this information and we
12 will expect a response later on today.

13 MS. BENNETT: Thank you.

14 MR. BEASLEY: Tampa Electric agrees with staff's
15 revised table.

16 MR. BADDERS: As does Gulf.

17 COMMISSIONER BRISÉ: Okay.

18 MR. MOYLE: And we would on this issue and all
19 other issues that relate to the Crystal River 3 issue
20 continue to maintain a position as articulated earlier.

21 COMMISSIONER BRISÉ: Okay.

22 MR. BUTLER: Commissioner Brisé, I expect that
23 we will be able to confirm very shortly. So if you want
24 to just defer briefly and come back to it, we would be
25 happy to do that.

1 **COMMISSIONER BRISÉ:** Sure. Would that be the
2 same for Progress?

3 **MR. GLENN:** Yes, Commissioner.

4 **COMMISSIONER BRISÉ:** Okay. Can we come back to
5 this issue?

6 **MS. BENNETT:** Yes. And when we come back to it,
7 I do want to let -- I know FIPUG said their position would
8 be the same for Progress, but this is just the line loss
9 multiplier issue, so you might want to review that and see
10 what effect, if any, the CR-3 outage would have on this
11 issue. I don't believe it does.

12 **COMMISSIONER BRISÉ:** Okay. So we will come back
13 to this issue at a later time today.

14 Issue 22.

15 **MS. BENNETT:** For Issue 22, if all parties take
16 no position for FPL and TECO, staff is ready to take a
17 position on these issues.

18 **COMMISSIONER BRISÉ:** It doesn't seem like anyone
19 is taking any position.

20 **MS. BENNETT:** For Issue 22, staff would agree
21 with FPL's position and staff would agree with TECO's
22 position. We are awaiting discovery for Gulf, and would
23 like to confirm that parties will continue to take no
24 position on Gulf.

25 **MS. CHRISTENSEN:** No position.

1 **CHAIRMAN GRAHAM:** Okay. That seems to be
2 confirmed. So for 22 you said that staff is taking a
3 position on FPL and TECO?

4 **MS. BENNETT:** That is correct, FPL and TECO. We
5 have an issue still with FPUC outstanding. We have
6 discovery outstanding for Gulf, so we can't take a
7 position yet for that. And then the intervenors have a
8 position on Progress, so we will not be able to reflect
9 that as a stipulation.

10 **COMMISSIONER BRISÉ:** Sure. Okay. So then this
11 will be a Type B Stipulation for FPL and TECO at this
12 point?

13 **MS. BENNETT:** That's correct.

14 **COMMISSIONER BRISÉ:** Okay. 23A.

15 **MS. BENNETT:** 23A depends upon the Commission's
16 decision on the Monday Nuclear Cost Recovery Agenda
17 Conference, so there cannot be a position from any party
18 including staff yet.

19 **COMMISSIONER BRISÉ:** And the same would be true
20 from 24A?

21 **MS. BENNETT:** That's correct.

22 **COMMISSIONER BRISÉ:** 24B.

23 **MS. BENNETT:** Staff has taken a position, and if
24 FPL agrees with staff's position and all other parties
25 take no position, this can be a Type B Stipulation.

1 **MS. CHRISTENSEN:** No position.

2 **COMMISSIONER BRISÉ:** Okay. It seems that there
3 is silence, so then this would be a Type B Stipulation.

4 24C.

5 **MS. BENNETT:** Okay. For 24C, staff is prepared
6 to take a position that agrees with FPL's position. I
7 would like to read our position into the record.

8 **COMMISSIONER BRISÉ:** Sure.

9 **MS. BENNETT:** It is \$166,860,714. This amount
10 is the lesser of the projected 2012 WCEC-3 jurisdictional
11 nonfuel revenue requirements and the projected 2012 WCEC-3
12 jurisdictional fuel savings pursuant to the stipulation
13 and settlement agreement approved by this Commission in
14 Docket Number 080677 on December 14th, 2010. FPL's
15 recovery of the WCEC-3 nonfuel revenue requirements in
16 this manner is allowed until the next base rate
17 proceeding. And if FPL is in agreement with that
18 position, this could be reflected as a Type B Stipulation.

19 **COMMISSIONER BRISÉ:** FPL?

20 **MR. BUTLER:** Yes. We agree with that language.

21 **COMMISSIONER BRISÉ:** Okay. And parties maintain
22 no position?

23 **MS. CHRISTENSEN:** No position.

24 **COMMISSIONER BRISÉ:** Okay. So this will be
25 reflected as a Type B Stipulation.

1 **MS. BENNETT:** There is no 25. Our next one is
2 26, and that is a proposed Type A Stipulation. It's
3 reflected in Section X.

4 **COMMISSIONER BRISÉ:** Okay.

5 **MR. GLENN:** Commissioner Brisé?

6 **COMMISSIONER BRISÉ:** Yes.

7 **MR. GLENN:** Just to get back to Issue 21, we are
8 good with that, and I believe Mr. Butler had indicated
9 that FPL was, as well.

10 **MR. BUTLER:** That's correct.

11 **COMMISSIONER BRISÉ:** Okay. Let's finish with
12 26A and then we will go back to 21.

13 **MS. BENNETT:** Okay. So 26A will be reflected as
14 a Type A Stipulation, I believe, unless the parties
15 instead of no position want -- I guess I wasn't sure
16 whether they were taking no position on 26A or whether
17 they were taking -- they were agreeing with TECO.

18 **COMMISSIONER BRISÉ:** Okay.

19 **MS. CHRISTENSEN:** For clarification, Patty
20 Christensen with the Office of Public Counsel, we were
21 agreeing with the withdrawal of the issue from this
22 docket. So to the extent that that is a Type A, then we
23 are in agreement.

24 **MS. BENNETT:** It sounds like a Type A.

25 **MR. WRIGHT:** The same for the Federation. Thank

1 you.

2 COMMISSIONER BRISÉ: Is that across the board?

3 MR. WRIGHT: Yes, sir.

4 COMMISSIONER BRISÉ: All right. So then we have
5 a Type A Stipulation on 26A.

6 MS. BENNETT: Thank you.

7 CHAIRMAN GRAHAM: All right. Now going back to
8 Issue 21. And we were listening to Progress.

9 MR. GLENN: Yes. We are good with the revised
10 Issue 21.

11 COMMISSIONER BRISÉ: Okay.

12 MR. BUTLER: And the same is true for FPL.

13 COMMISSIONER BRISÉ: And we already had
14 agreement from Gulf and TECO.

15 MR. BADDERS: That's correct.

16 COMMISSIONER BRISÉ: All right.

17 MS. BENNETT: Commissioner Brisé, I'm not sure
18 that we had an agreement on Progress from the intervenors.

19 COMMISSIONER BRISÉ: Right.

20 MR. MOYLE: I can say that to the extent
21 Progress makes a representation that there are no dollars
22 associated with Crystal River 3 in this issue, we agree.

23 COMMISSIONER BRISÉ: Progress?

24 MR. GLENN: I believe that's correct.

25 COMMISSIONER BRISÉ: Okay.

1 **MR. WRIGHT:** Just officially we will take no
2 position. I believe that is correct, that the line loss
3 multiplier does not affect the CR-3 dollars.

4 **COMMISSIONER BRISÉ:** Thank you. OPC.

5 **MS. CHRISTENSEN:** And OPC has taken no position.

6 **COMMISSIONER BRISÉ:** Okay.

7 **MS. BENNETT:** So Issue 21 will be reflected as
8 as a Type B Stipulation.

9 **COMMISSIONER BRISÉ:** Thank you.
10 Issue 27.

11 **MS. BENNETT:** Issue 27 is the beginning of the
12 generic capacity cost-recovery factors, and it appears
13 that this can be reflected as a Type B Stipulation unless
14 parties take a position on this.

15 **MS. CHRISTENSEN:** No position.

16 **COMMISSIONER BRISÉ:** Okay. There seems to be
17 silence.

18 **MS. BENNETT:** We will reflect it as a Type B
19 Stipulation.

20 **COMMISSIONER BRISÉ:** Issue 28.

21 **MS. BENNETT:** Issue 28 also can be reflected as
22 a Type B Stipulation unless the parties take a position on
23 this.

24 **MS. CHRISTENSEN:** No position.

25 **COMMISSIONER BRISÉ:** Okay. Silence again, so a

1 Type B Stipulation.

2 Issue 29.

3 **MS. BENNETT:** Issue 29 appears to be a Type B
4 Stipulation, also.

5 **COMMISSIONER BRISÉ:** Very good.

6 Issue 30.

7 **MS. BENNETT:** For Issue 30, for FPL and
8 Progress, staff is not yet ready to take a position
9 because these are dependent upon the Commission's vote on
10 Monday in the Nuclear Cost-Recovery Clause docket. But
11 for Gulf and TECO, it appears that we can take a position,
12 and it will be reflected as a Type B Stipulation if no
13 party has a position. The staff's position for Gulf is
14 \$46,396,792. Staff's position for TECO is \$44,720,668.

15 **MS. CHRISTENSEN:** Could I ask for a
16 clarification from staff? We are taking no position as to
17 Gulf or TECO, and as to FPL and Progress, since it's
18 dependent on Monday's agenda, we can remain with no
19 position at this time until that time, is that correct?

20 **MS. BENNETT:** Yes.

21 **MS. CHRISTENSEN:** I think that is what you did
22 for the early one, so we will take no position as to Gulf
23 and TECO.

24 **MR. BUTLER:** Commissioner Brisé.

25 **COMMISSIONER BRISÉ:** Yes.

1 **MR. BUTLER:** We're on 30, right; Issue 30?

2 **COMMISSIONER BRISÉ:** We are on 30.

3 **MR. BUTLER:** It seems like 30, both our position
4 and staff's position exclude the effects of Issue 24A and
5 24C, which are the nuclear cost-recovery amounts in the
6 West County 3 recovery. So I guess I'm a little bit
7 unsure why this one needs to be held open. I think maybe
8 there is one that does, but at least as we were
9 interpreting it, this one doesn't seem to be subject to
10 that contingency.

11 **MS. BENNETT:** You are correct.

12 Staff did take a position. I didn't flip the
13 page to see staff's position. And if the parties agree,
14 if the utilities agree to staff's position for FPL, Gulf,
15 and TECO -- I mean, FPL, Gulf, and Progress, and we have
16 already taken a position on TECO, then these could be
17 reflected as a Type B Stipulation.

18 **COMMISSIONER BRISÉ:** Okay.

19 **MR. WRIGHT:** Commissioner, I apologize, I did
20 not hear everything that Ms. Bennett just said. I was
21 conferring with Public Counsel. We would take no
22 position -- the Retail Federation would take no position
23 with respect to utilities other than Progress. I am
24 uncertain as to whether there are any capacity cost
25 dollars, any dollars that Progress proposes to recover

1 through the capacity cost-recovery clause that are
2 associated with purchasing replacement power as a result
3 of the CR-3 outage. If Progress represents that there are
4 no such dollars to be recovered through the capacity
5 cost-recovery clause, then, we would be fine with it.

6 Otherwise, I understand there is a deposition on
7 Monday at which we expect to learn what Progress'
8 replacement power purchase and fuel costs are associated
9 with the CR-3 outage, and we wouldn't be able to take a
10 position until after that deposition.

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

12 **MR. GLENN:** I believe there are capacity costs
13 included in that related to CR-3.

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

15 **MR. MOYLE:** But I think we have gone through a
16 whole bunch of issues with respect to capacity, so, you
17 know, this discussion we are having on this issue, I
18 assume, also ties to other capacity issues.

19 **MS. CHRISTENSEN:** Could I get some clarification
20 on this issue? With regards to FPL, if I am understanding
21 correctly, there is no impact from the nuclear, and we are
22 prepared to take no position with regards to FPL.

23 With regards to Progress, since there does
24 appear to be impact regarding the CR-3 fuel replacement
25 costs being flowed through, we would have a position on

1 that, and we may need to provide that to you. Or if we
2 are allowed to remain with no position at this time, we
3 would just do that pending the outcome of the deposition
4 and the discovery so that we can actually, maybe, state an
5 amount or a cost associated with that.

6 **MR. WRIGHT:** Commissioner?

7 **COMMISSIONER BRISÉ:** Yes.

8 **MR. WRIGHT:** Thank you.

9 Following Mr. Moyle's comment, again, I am
10 uncertain as to what is or is not included in dollars, but
11 to the extent that there are capacity costs reflected in
12 the true-up amounts that are addressed in Issue 27
13 relative to purchases that Progress may have made to
14 replace power that would otherwise have been provided by
15 CR-3, I think we would go back to taking -- we would like,
16 with your permission, to take no position at this time,
17 again, pending the outcome of Monday's deposition. Thank
18 you.

19 **COMMISSIONER BRISÉ:** You're talking on Issue 30
20 or going back to 27?

21 **MR. WRIGHT:** Going back to 27, which is the
22 true-up amount for 10, and, I guess, also 29 as well,
23 which is the true-up amount for 2012.

24 **COMMISSIONER BRISÉ:** Well, let's see if we can
25 get some clarification from staff first, and then we'll

1 move forward.

2 MR. WRIGHT: Thank you.

3 MS. BENNETT: We will change the prehearing
4 order to reflect that for Issue 27 it is a Type B
5 Stipulation for every party except Progress, and then ask
6 the intervenors to provide us with a new position on
7 Issues 27, 29, 30 -- and we haven't gotten to 31 yet, have
8 we?

9 COMMISSIONER BRISÉ: No, we haven't.

10 MS. CHRISTENSEN: Is 29 also an issue that may
11 be impacted by the CR-3 fuel replacement costs, because it
12 is the estimated/actual for 2011?

13 MS. BENNETT: 29 would also be impacted.

14 MS. CHRISTENSEN: 28.

15 MS. BENNETT: 28? There is no -- oh, there is a
16 28. Sorry. Yes.

17 MS. CHRISTENSEN: Okay. And we can provide a
18 response for Progress on all those issues as it relates to
19 the CR-3 fuel replacement.

20 MS. BENNETT: And to staff -- and a position for
21 staff by close of business on Friday to put into the
22 prehearing order?

23 MS. CHRISTENSEN: Yes, we can put in a
24 placeholder position, and if we get something better after
25 the depositions, we can address that then.

1 **COMMISSIONER BRISÉ:** Does that work or do you
2 prefer the firm position buy tomorrow?

3 **MS. BENNETT:** Well, that works. I think what
4 they are telling me is that they will take a position, but
5 it could change, and they may be able to agree with
6 Progress after their depositions, and we might be able to
7 eventually reflect this as a Type B Stipulation.

8 **COMMISSIONER BRISÉ:** Okay.

9 **MR. MOYLE:** Just so the record is clear on it, I
10 think we previously did not indicate a position with
11 respect to -- FIPUG did not with respect to 27, 28, 29 --

12 **COMMISSIONER BRISÉ:** And we are on 30 right now.

13 **MR. MOYLE:** -- and 30. And this all relates to
14 capacity payments. So our position would be that any
15 capacity payments associated with the Crystal River 3
16 outage should not be included in any adjustments that
17 impose additional costs on customers. And I'd like to
18 amend our previous position to state that, if that is
19 okay.

20 **MS. BENNETT:** And because I didn't write it --

21 **COMMISSIONER BRISÉ:** We will need it in writing.

22 **MS. BENNETT:** -- if you will provide it.

23 **MR. MOYLE:** I will.

24 **MS. BENNETT:** Thank you.

25 **COMMISSIONER BRISÉ:** All right.

1 **CAPTAIN MILLER:** That would also be FEA's
2 position.

3 **MS. CHRISTENSEN:** And the Office of Public
4 Counsel would concur, and we can provide a written
5 position for staff to include in the order.

6 **COMMISSIONER BRISÉ:** Okay.

7 **MR. WRIGHT:** We also will provide a written
8 position to the staff for the prehearing order.

9 Thank you, Commissioner.

10 **COMMISSIONER BRISÉ:** Thank you.

11 All right. Are we all clear on Issues 27, 28,
12 29, and 30?

13 **MS. BENNETT:** I am indeed.

14 **COMMISSIONER BRISÉ:** Okay.

15 Issue 31.

16 **MS. BENNETT:** Staff will be presenting an
17 alternative set of positions. We passed it out earlier
18 today. I think in fairness to the parties, we'll give
19 them some time to review it, so it won't be reflected
20 quite yet as a Type B Stipulation. And, of course, it
21 would not be Progress until the parties have had an
22 opportunity to depose the Progress witnesses. So for
23 right now, we will leave the positions open -- I'm sorry,
24 let me try this again. Staff will provide an amended
25 position, and if the parties take no position for FPL,

1 Gulf, and TECO, then we can reflect those as a Type B
2 Stipulation, if they agree with staff's position.

3 **COMMISSIONER BRISÉ:** Okay. Is that something
4 that -- and this to the parties, is that something that we
5 think we can accomplish before we are done today? I'm
6 assuming they will be done maybe in an hour, an hour and a
7 half, or so.

8 **MR. BUTLER:** In the case of FPL, we have
9 actually reviewed what staff handed out, and we don't have
10 any objection to it, so that would be fine with us.

11 **COMMISSIONER BRISÉ:** Okay.

12 **MR. BADDERS:** For Gulf, we can agree with
13 staff's number, because it appears to be in complete
14 agreement with our number.

15 **COMMISSIONER BRISÉ:** Okay.

16 **MR. BEASLEY:** And Tampa Electric, as well, sir.

17 **COMMISSIONER BRISÉ:** Thank you.

18 **MS. CHRISTENSEN:** Office of Public Counsel would
19 take no position as to FPL, TECO, and Gulf; and, of
20 course, PEF is subject to the CR-3 objections.

21 **COMMISSIONER BRISÉ:** Right now we are just
22 looking at FPL, TECO, and Gulf. We have sort of excluded
23 Progress. Okay. And I see silence -- I hear silence.

24 **MS. BENNETT:** Very good. We will reflect Issue
25 31 as a Type B Stipulation with staff's alternative

1 position that we passed out today. That will be reflected
2 in the prehearing order. And for Progress, we will expect
3 to see positions from the intervenors by close of business
4 Friday.

5 **COMMISSIONER BRISÉ:** All right. Issue 32.

6 **MS. BENNETT:** I believe Issue 32 can be a Type B
7 Stipulation.

8 **COMMISSIONER BRISÉ:** Any comments on that? So
9 32 will be a Type B Stipulation.

10 Issue 33.

11 **MS. BENNETT:** Staff is ready to take a position
12 for both Gulf and TECO. We agree with the utilities'
13 positions in Gulf and TECO. We are not ready yet to take
14 a position for FPL and Progress because it does depend
15 upon the Commission's decision on Monday.

16 **COMMISSIONER BRISÉ:** Okay.

17 **MS. CHRISTENSEN:** With respect to TECO and Gulf,
18 we would take no position.

19 **MR. MOYLE:** We would just maintain our position
20 with respect to Progress on the Crystal River 3 that no
21 monies associated with capacity cost-recovery factors
22 associated with Crystal River 3 outage should be included.

23 **COMMISSIONER BRISÉ:** Okay.

24 **MR. MOYLE:** We are okay with everybody else.

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

1 So with Issue 33, we'll have a Type B on Gulf
2 and TECO?

3 **MS. BENNETT:** That is correct.

4 **COMMISSIONER BRISÉ:** Okay. At this point we are
5 done with the issues.

6 **MS. BENNETT:** I apologize, there is one more
7 issue. It's Issue 34, the effective date.

8 **COMMISSIONER BRISÉ:** Okay. Yes, I'm sorry, 34.

9 **MS. BENNETT:** And staff has taken -- staff is
10 going to revise its position. I would like to read it
11 into the record, and if the utilities agree with staff's
12 position we can reflect this as a Type B.

13 Staff's new position is that the new factors
14 should be effective beginning with the first billing cycle
15 for January 2012. And the first billing cycle may start
16 before January 1, 2012, thereafter the fuel adjustment
17 factors and the capacity cost-recovery factors should
18 remain in effect until modified by the Commission.

19 **MR. BUTLER:** That's fine with FPL.

20 **COMMISSIONER BRISÉ:** Okay.

21 **MR. BADDERS:** That's fine with Gulf.

22 **MS. KEATING:** That's fine with FPU.

23 **MR. BEASLEY:** Tampa Electric is fine.

24 **MR. WRIGHT:** Commissioner, show the Retail
25 Federation as agreeing with staff.

1 **COMMISSIONER BRISÉ:** Okay.

2 **MR. WRIGHT:** Thank you.

3 **COMMISSIONER BRISÉ:** Progress?

4 **MR. GLENN:** That's fine.

5 **MS. CHRISTENSEN:** And Office of Public Counsel
6 will take no position.

7 **COMMISSIONER BRISÉ:** Okay. FIPUG?

8 **MR. MOYLE:** No position.

9 **COMMISSIONER BRISÉ:** FEA?

10 **CAPTAIN MILLER:** FEA agrees with staff.

11 **COMMISSIONER BRISÉ:** Okay. PCS?

12 **MR. TAYLOR:** No position.

13 **COMMISSIONER BRISÉ:** Okay. Thank you. So this
14 will be a Type B Stipulation.

15 **MS. BENNETT:** Yes.

16 **COMMISSIONER BRISÉ:** And I think that takes care
17 of all the issues.

18 **MS. BENNETT:** Yes, it does.

19 **COMMISSIONER BRISÉ:** Section Number IX, exhibit
20 list. Staff.

21 **MS. BENNETT:** Staff would note that there is one
22 additional exhibit that did not appear on the exhibit
23 list. It is W. Garrett, WG-4T. We will reflect that in
24 the prehearing order as being added. And, additionally,
25 we are in the process of preparing a comprehensive exhibit

1 list, which includes all prefiled exhibits and also
2 includes exhibits staff wishes to include in the record.

3 Staff will check with the parties prior to the
4 hearing to determine if there are any objections to the
5 comprehensive exhibit list or any of staff's exhibits
6 being entered into the record. I don't believe there's
7 any action required of you at this time. It's something I
8 need to finish.

9 COMMISSIONER BRISÉ: Right. Okay. Everyone is
10 comfortable with that? Okay.

11 Section X, proposed stipulations.

12 MS. BENNETT: The stipulations entered into at
13 the prehearing conference will be listed here in this
14 section and they will be listed as either A or B type of
15 agreements.

16 COMMISSIONER BRISÉ: All right.

17 Section XI, pending motions.

18 MS. BENNETT: You have previously addressed
19 TECO's motion to revise the testimony as a preliminary
20 matter, and the only remaining motions as far as staff is
21 aware are motions for temporary protective order which
22 will be taken care of by separate orders.

23 COMMISSIONER BRISÉ: Thank you.

24 Section XII, pending confidentiality motions.

25 MS. BENNETT: There are several confidentiality

1 requests. We will take care of those by separate order.

2 **COMMISSIONER BRISÉ:** Section XIII, post-hearing
3 procedures.

4 **MS. BENNETT:** Usually in this docket there is a
5 bench decision and post-hearing briefs are not usually
6 necessary. Sometimes there is one or two issues, and I
7 believe there will be in this case that the Commission
8 would like to have briefed or that the parties request to
9 have briefed. If they are to be briefed, the staff
10 recommends position statements of no more than 50 words
11 and post-hearing statements and briefs no longer than 40
12 pages.

13 **COMMISSIONER BRISÉ:** Are all parties in
14 agreement with the 50 words and no longer than 40 pages?

15 **MR. MOYLE:** Yes, and we would like to have the
16 ability to submit proposed findings of fact and
17 conclusions of law affirmatively, so I want to make that
18 clear.

19 **COMMISSIONER BRISÉ:** Okay. Progress.

20 **MR. GLENN:** Yes, we are good with the page
21 limits.

22 **COMMISSIONER BRISÉ:** Okay. All right. Very
23 good.

24 **MS. BENNETT:** Before we leave that section, I
25 would like to make sure that the parties are aware that

1 because this is the fuel clause and we need to get the
2 factors into effect in January, the briefing schedule is
3 shortened. We will have briefs due -- the CASR reflects
4 briefs due on November 8th for the November 22nd agenda
5 conference.

6 **COMMISSIONER BRISÉ:** Okay. I just want to make
7 sure that everyone is clear on that. November 8th all
8 briefs are due, and we will have that Agenda Conference on
9 the 22nd of November.

10 **MS. CHRISTENSEN:** Could I ask for clarification?
11 Are daily transcripts going to be available for the
12 parties?

13 **MS. BENNETT:** Yes.

14 **COMMISSIONER BRISÉ:** All right. At this point,
15 Section XIV, rulings.

16 **MS. BENNETT:** Staff suggests five minutes per
17 side for opening statements.

18 **MS. CHRISTENSEN:** Per side?

19 **MS. BENNETT:** I did say per side. Per party.

20 **MS. CHRISTENSEN:** Okay. Per party I can live
21 with; per side makes it a little bit short.

22 **COMMISSIONER BRISÉ:** Five minutes per party for
23 opening statements. Okay. And that's what it will be.

24 Progress.

25 **MR. GLENN:** One thing on that. If there are

1 going to be legal issues raised, for example, by FIPUG and
2 others, would it be appropriate to have maybe ten minutes
3 for the Progress case?

4 **COMMISSIONER BRISÉ:** Staff.

5 **MS. BENNETT:** Ten minutes for Progress and then
6 the parties each have five minutes on it, is that what you
7 are suggesting?

8 **MR. GLENN:** Yes.

9 **MS. BENNETT:** The parties might want to -- OPC
10 and FIPUG might want to take a position and then maybe you
11 can take it under advisement.

12 **MR. MOYLE:** If I can just jump in. You know,
13 five minutes might be a little tight, particularly to the
14 extent that we raise legal issues. You know, ten would
15 probably provide a little more flexibility, but it
16 wouldn't necessarily mean we are going to use ten. So, I
17 don't have any objection to Mr. Glenn's suggestion of ten,
18 but I would recommend that whatever it be, if it is ten
19 for the goose, it be ten for the gander.

20 **COMMISSIONER BRISÉ:** All right. Any other
21 thoughts, OPC, on that?

22 **MS. CHRISTENSEN:** I would tend to agree, that
23 if -- you know, that what's good for the goose is good for
24 the gander and that we should all have ten. But we would
25 endeavor, of course, to keep it as short as possible,

1 because we know that -- we don't want to necessarily
2 repeat ourselves.

3 **MR. GLENN:** I would just note that it is really
4 ten for the goose and like -- one, two, three, four,
5 five -- 60 or 70 for the gander.

6 **MS. CHRISTENSEN:** That might be a slight
7 exaggeration, 60 or 70.

8 **MS. BENNETT:** In other situations where we have
9 had -- and you guys can correct me if I'm wrong, but it
10 seems like we have allowed the utility maybe an extended
11 amount of time, ten minutes, and then the parties together
12 maybe 15 minutes to share the time among themselves as an
13 alternative to 60 minutes of -- 70 minutes of legal
14 argument.

15 **MR. MOYLE:** The other thing, I think this
16 hearing is scheduled for three days, and given all the
17 stipulations and everything, I think it's probably going
18 to get done. We have got witnesses that are still live,
19 so I think that the distinction between five and ten
20 minutes is not that big a deal. We'd ask for ten.

21 **COMMISSIONER BRISÉ:** I will think about it and I
22 will provide a ruling on that.

23 **MS. BENNETT:** Okay. And that ruling will be
24 reflected in the prehearing order. And I did want to
25 remind everyone that we are not the only docket that's

1 going to be heard in those three days. There are two
2 other dockets that have outstanding issues to be
3 considered.

4 **COMMISSIONER BRISÉ:** Right.

5 **MS. BENNETT:** So your ruling on the opening
6 statements, and your ruling on the revisions to the
7 testimony will be reflected in this section.

8 **COMMISSIONER BRISÉ:** Yes. Section XI, other
9 matters. Are there any other matters that we need to
10 address in this prehearing conference?

11 **MS. BENNETT:** Staff is not aware of any others.

12 **MR. BEASLEY:** I had a brief point of
13 clarification, Commissioner.

14 **COMMISSIONER BRISÉ:** Sure.

15 **MR. BEASLEY:** Our stipulation on Issue 26A
16 indicated that discovery relating to that issue would be
17 rendered moot, and I just wanted to confirm that we don't
18 have to submit responses to the outstanding discovery.

19 **MS. BENNETT:** Yes, that is correct. We will not
20 require TECO to respond to our outstanding discovery on
21 cyber security.

22 **MR. BEASLEY:** Thank you, sir.

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

24 **MR. MOYLE:** And just a point of clarification.

25 **COMMISSIONER BRISÉ:** Sure.

1 **MR. MOYLE:** FIPUG's attempt to assert that
2 issue, the legal issue that we read into the record, I
3 think would also be appropriately considered under
4 rulings, as well.

5 **MS. BENNETT:** We will reflect that under the
6 rulings section of the prehearing order.

7 **COMMISSIONER BRISÉ:** Thank you.

8 **MR. BEASLEY:** Under other matters, are we going
9 to address potential excusal of witnesses?

10 **MS. BENNETT:** I think we addressed that at the
11 beginning when we had -- all of the witnesses are
12 potentially excused except for FPUC's Martin and all four
13 Progress witnesses.

14 **MR. BEASLEY:** Great. Thank you.

15 **MR. BUTLER:** Commissioner Brisé.

16 **COMMISSIONER BRISÉ:** Yes, sir.

17 **MR. BUTLER:** Sorry to interrupt, but one point
18 for FPL. Mr. Beasley had just confirmed that discovery
19 with respect to cyber security responses weren't needed
20 for TECO. I just checked with staff, and at least my
21 understanding is that that applies also to FPL. We had
22 received discovery on cyber security issues, and I think
23 that I am correct in the understanding that FPL would not
24 need to respond to those as well. Confirm that with
25 staff.

1 **MS. BENNETT:** I will clarify that. That is for
2 all four utilities. We do not need the discovery on cyber
3 security for any of the utilities at this point.

4 **COMMISSIONER BRISÉ:** Thank you very much.

5 **MR. BUTLER:** Thank you.

6 **COMMISSIONER BRISÉ:** Are there any other matters
7 that we need to take care of at this point? Okay. Seeing
8 none, we are going to adjourn 110007. I mean, sorry,
9 110001. And we are moving forward to 110007.

10 I think it might be appropriate at this time to
11 take a five-minute break and give everyone a chance to
12 stretch their legs and walk around a little bit.

13 (Recess.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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

DATED THIS 24th day of October, 2011.



JANE FAUROT, RPR
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