

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 110002-EG

ENERGY CONSERVATION COST
RECOVERY CLAUSE.

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PROCEEDINGS: PREHEARING

COMMISSIONER
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

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

DATE: Thursday, October 20, 2011

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

1 APPEARANCES:

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

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

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

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

21 VICKI GORDON KAUFMAN, ESQUIRE and JON C.
22 MOYLE, JR., ESQUIRE, Keefe, Anchors, Gordon & Moyle Law
23 Firm, 118 North Gadsden Street, Tallahassee, Florida
24 32301, appearing on behalf of Florida Industrial Power
25 Users Group.

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APPEARANCES (continued):

JOHN BUTLER, ESQUIRE, and KENNETH M. RUBIN, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-9429, appearing on behalf of Florida Power & Light Company.

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

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

ALEXANDER GLENN, ESQUIRE, Progress Energy Service Company, LLC, Post Office Box 14042, Saint Petersburg, Florida 33733-4042, appearing on behalf of Progress Energy Florida, Inc.

LEE ENG TAN, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Florida Public Service Commission Staff.

1 APPEARANCES (continued):

2 MARY ANNE HELTON, Deputy General Counsel,
3 Florida Public Service Commission, 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
5 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, once again.

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

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

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

17 **COMMISSIONER BRISÉ:** Thank you.

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

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

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

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

10 **MR. BUTLER:** Good morning, Commissioner.
11 John Butler, Florida Power and Light Company,
12 appearing in the 01, 02, and 07 dockets. Also appearing
13 for FPL in the 02 docket is Ken Rubin. Thank you.

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

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

22 (Laughter.)

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

1 **MS. BROWNLESS:** Good morning. Suzanne
2 Brownless. I am appearing on behalf of the Florida
3 Solar Industries Association in the 02 docket.

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

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

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

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

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

25 **MR. HORTON:** Commissioner, Norman H. Horton,

1 Jr. appearing in the 04 docket on behalf of Sebring Gas
2 System, Inc.

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

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

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

10 **COMMISSIONER BRISÉ:** Thank you.
11 Staff.

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

15 **MS. BROWN:** Martha Carter Brown and Charles
16 Murphy on behalf of the Commission in the 07 docket.

17 **MS. TAN:** Lee Eng Tan on behalf of the
18 Commission in the 02 docket.

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

22 **MS. HELTON:** Mary Anne Helton, Advisor to the
23 Commission, in all the dockets.

24 **MS. CRAWFORD:** Sorry about that.

25 It would, perhaps, be appropriate to note for

1 the record that St. Joe Natural Gas Company and Peoples
2 Gas System have requested and received permission to be
3 excused from the prehearing conference.

4 **COMMISSIONER BRISÉ:** Thank you.

5 * * * * *

6 **COMMISSIONER BRISÉ:** All right. This is
7 Docket Number 110002-EG, energy conservation clause
8 docket.

9 Ms. Tan, are there any preliminary matters?

10 **MS. TAN:** At this point there are none from
11 staff, and I believe that is also the same for the
12 parties.

13 **COMMISSIONER BRISÉ:** Okay. We are going to
14 make sure that there are no preliminary matters by the
15 parties. Okay. So we are going to proceed quickly.
16 I'll identify sections. I want the parties to let me
17 know if there are any corrections or changes that need
18 to be made.

19 Section I, case background. Section II,
20 conduct of proceedings. Section III, jurisdiction.
21 Section IV, procedure for handling confidential
22 information. Section V, prefiled testimony, exhibits
23 and witnesses. Section VI, order of witness.

24 Staff.

25 **MS. TAN:** At this time we have no stipulations

1 to witnesses, but we believe that we are close. Staff
2 will continue to work with the parties. If the
3 witnesses are able to be excused, staff will confirm
4 this with each Commissioner and contact the parties as
5 soon as possible.

6 The testimony of the excused witnesses will be
7 inserted into the record as though read. All the
8 exhibits submitted with the excused witnesses will be
9 identified as shown in Section IX of the prehearing
10 order and admitted into the record.

11 **COMMISSIONER BRISÉ:** Thank you.

12 Section VII, basic positions.

13 **MS. TAN:** Staff will note that pursuant to the
14 prehearing order, parties must take a position at this
15 time, and I believe that we still need one from Office
16 of Public Counsel, please.

17 **MS. CHRISTENSEN:** Just change that to none.

18 **COMMISSIONER BRISÉ:** Okay. Does that take
19 care of --

20 **MS. TAN:** Yes.

21 **COMMISSIONER BRISÉ:** Section VIII, issues and
22 positions. We'll go through these one-by-one, but,
23 staff.

24 **MS. TAN:** Okay. Similar to the 07 docket, we
25 handle the generic issues first, and then company issues

1 for TECO and Gulf. I just want to let you know there is
2 some controversy whether some issues should be allowed.
3 These issues are Issues 9 through 13 as proposed by the
4 Southern Alliance for Clean Energy, and Issue 14 as
5 proposed by the Florida Solar Energy Industries
6 Association.

7 And on Issue 1 we require positions from OPC,
8 FIPUG, PCS, and FEA.

9 MS. CHRISTENSEN: No position.

10 MR. MOYLE: No position.

11 CAPTAIN MILLER: No position.

12 MR. TAYLOR: No position.

13 MR. CAVROS: Southern Alliance for Clean
14 Energy takes no position.

15 COMMISSIONER BRISÉ: Okay. And FLASEIA?

16 MS. TAN: They have taken no position.

17 COMMISSIONER BRISÉ: No position.

18 MS. TAN: And, in fact, Commissioner, it looks
19 like this issue may be stipulated.

20 COMMISSIONER BRISÉ: All right. It looks so.
21 So that will be what we have been using today, a Type B
22 Stipulation.

23 MS. TAN: That would be a Class B, that is
24 correct, sir.

25 COMMISSIONER BRISÉ: Okay. Issue 2.

1 **MS. TAN:** On Issue 2, we require a position
2 from OPC, FIPUG, PCS, FLASEIA, and FEA.

3 **MS. CHRISTENSEN:** OPC takes no position.

4 **MS. BROWNLESS:** With regard to FLASEIA, if we
5 get to the other positions in the back we may be able to
6 resolve this. It's kind of contingent upon what happens
7 with regard to our proposed Issue Number 14.

8 **MS. TAN:** And we can come back to that at that
9 time.

10 **COMMISSIONER BRISÉ:** Sure. FIPUG?

11 **MR. MOYLE:** No position.

12 **COMMISSIONER BRISÉ:** PCS?

13 **MR. TAYLOR:** Pending resolution of Issue 13,
14 no position.

15 **COMMISSIONER BRISÉ:** Okay. FEA?

16 **CAPTAIN MILLER:** No position.

17 **COMMISSIONER BRISÉ:** No position. All right.
18 Staff.

19 **MS. TAN:** Okay. I believe that we can hold
20 off. This may be stipulated. I think it depends on the
21 resolution in 13 and in 14.

22 **COMMISSIONER BRISÉ:** Okay. So we'll come back
23 to Issue 2.

24 Issue 3.

25 **MS. TAN:** On Issue 3 staff needs to make one

1 modification to the proposed amounts. For Gulf, in the
2 OSI, OSII, and OSIII, the factor amount should be ¢/kWh.
3 And then having made those changes, we require positions
4 from OPC, FIPUG, PCS, FEA, and I believe that FLASEIA
5 will be the same as in Issue 2.

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

8 **MS. BROWNLESS:** And our position will be
9 exactly the same, pending resolution.

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

11 **MR. TAYLOR:** No position.

12 **COMMISSIONER BRISÉ:** FEA?

13 **CAPTAIN MILLER:** No position.

14 **MR. RUBIN:** I'm not sure if SACE voiced to the
15 Commission a position. If they did, I didn't hear it.

16 **MR. CAVROS:** Sure. SACE would -- this is sort
17 of contingent on Issues 9 through 13, which SACE has
18 offered as new generic issues. So we would like to wait
19 until that is resolved before taking a position and
20 these issues.

21 **COMMISSIONER BRISÉ:** Okay. All right. So
22 this is one of the ones that we want to come to?

23 **MS. TAN:** That is correct.

24 **COMMISSIONER BRISÉ:** Okay. So moving on to
25 Issue 4.

1 **MS. TAN:** On Issue 4 we require a position
2 from OPC and PCS, and also from SACE, which may be the
3 same as before.

4 **MS. CHRISTENSEN:** OPC has no position.

5 **COMMISSIONER BRISÉ:** FIPUG?

6 **MR. MOYLE:** We agree with staff.

7 **COMMISSIONER BRISÉ:** PCS?

8 **MR. TAYLOR:** No position.

9 **MR. CAVROS:** For SACE it is contingent on the
10 other issues.

11 **COMMISSIONER BRISÉ:** FLASEIA?

12 **MS. BROWNLESS:** Oh, we agree with staff.

13 **COMMISSIONER BRISÉ:** Okay. FEA?

14 **CAPTAIN MILLER:** Agree with staff.

15 **MR. RUBIN:** Commissioner, for consistency's
16 sake, I just wanted to raise on this issue there was
17 different language that was used in Dockets 01 and 07,
18 and I might just suggest for consistency's sake and for
19 the reasons that Mr. Butler elaborated on in the 07
20 docket that perhaps that language could be inserted. I
21 could read it into the record if the Commissioner --

22 **COMMISSIONER BRISÉ:** Please.

23 **MR. RUBIN:** The new factors should be
24 effective beginning with the first billing cycle for
25 January 2012, period. The first billing cycle may start

1 before January 1, 2012, and thereafter the energy
2 conservation cost-recovery factors should remain in
3 effect until modified by the Commission.

4 **COMMISSIONER BRISÉ:** Okay. FIPUG, does that
5 change your position?

6 **MR. MOYLE:** Well, I'm not real sure who is
7 proposing that. I mean, is this being proposed by staff
8 or the utility, because we agreed with staff?

9 **COMMISSIONER BRISÉ:** You agree with staff.
10 So, staff, are we for consistency changing the language
11 as was changed in 01 and 07?

12 **MS. TAN:** It is proposed by FPL, but staff
13 would agree with the language.

14 **COMMISSIONER BRISÉ:** Okay.

15 **MS. BROWNLESS:** I'm sorry, I'm confused. When
16 I took the position for FLASEIA, I was agreeing with the
17 language, the position that the staff stated here in the
18 prehearing order. So how does the staff's position in
19 the other docket, which I take it is what FPL wants to
20 be used here, different than this, or is it the same as
21 this?

22 **COMMISSIONER BRISÉ:** Staff.

23 **MS. BROWN:** Commissioner, may I? Since we
24 have dealt with this in the other docket, and FPL -- Mr.
25 Butler responded to that. The reason this is changed is

1 the previous language and the language that is reflected
2 here ends the factors at the end of 2012 whether or not
3 there are new factors in place. And last year we had
4 this issue with FPL because we didn't get to do their
5 clause dockets until January. And although we worked it
6 out, it is possible that a situation like that could
7 arise again, or there could be a hurricane, or an act of
8 God, or something that would raise this spectre again.

9 And I think FPL's position is, and I think we
10 agree, that this will take care of that. It doesn't
11 really change anything else. It doesn't mean -- it
12 doesn't have any hidden meaning to it, it's just if
13 there is a problem, the factors that the Commission has
14 already approved will remain in effect until the
15 Commission approves new ones.

16 **MS. BROWNLESS:** And I'm sorry to be slow.
17 Does that mean that the factors that were approved in
18 the last conservation cost-recovery docket would remain
19 in effect until the factors in this docket went into
20 effect?

21 **MS. BROWN:** Probably not, because the language
22 hadn't changed. But I think if there were a problem,
23 some accommodation would be made so that factors -- the
24 costs would be recovered.

25 **MS. BROWNLESS:** So that the proposed costs for

1 2012 would be recovered?

2 MS. BROWN: No --

3 COMMISSIONER BRISÉ: Mr. Butler.

4 MR. BUTLER: Commissioner Brisé, may I speak
5 to this briefly?

6 COMMISSIONER BRISÉ: Please.

7 MR. BUTLER: Ms. Brownless, the concern is
8 just that if you have factors that apparently, according
9 to the wording, actually just terminate regardless of
10 what happens on the end of December, then what would
11 apply, if anything, if you ended up having a delay, say,
12 of a month in approving new factors? Remember that all
13 of these dockets are subject to true-up, so all we are
14 really trying to do is have something that wouldn't be
15 greatly disruptive. I mean, it would be, I think, bad
16 for not only the companies but customers who have
17 something where for one month you charge no factors and
18 then ended up having to go back and true-up for whatever
19 you didn't collect in that month once factors ended up
20 getting approved.

21 So this would just continue. It wouldn't
22 really have any effect at the end of this year. It
23 would really have an effect if there was any impact at
24 all at the end of 2012. And if you just had the
25 situation that for whatever reason the Commission was

1 unable to get to approval of new ECCR factors in the
2 other dockets by the end of 2012 --

3 **MS. BROWNLESS:** Got it.

4 **MR. BUTLER:** -- we just keep these in effect
5 until they did change them with, you know, whatever
6 delay there was. And then if it turned out that the old
7 factors had overcollected a little bit, you would give
8 it back through the true-up. If it turned out you
9 undercollected a little bit, then that would become part
10 of the additional recovery through the subsequent
11 true-up.

12 **MS. BROWNLESS:** So you want the 2012 factors
13 to be open-ended so you can make adjustments? That's
14 the bottom line, right?

15 **MR. BUTLER:** Right. Until they are modified,
16 yes. The modification would be whenever the Commission
17 approves the new factors.

18 **MR. MOYLE:** So I think FIPUG's position would
19 be to adopt the staff position as it was originally set
20 forth. And I guess the only thing that is causing a
21 little issue in my head is there is no contemplation
22 that we are deviating from these cases being annual.
23 Because if I understand what Mr. Butler is saying, is
24 whatever the factors are the factors will remain until
25 it is addressed again at some future point in time,

1 which may be a year or it may be longer than a year.

2 And, I guess, you know, we're kind of dealing with this
3 a little quickly. And if there has never been a problem
4 before, I don't know that we need to address it.

5 And, John, you're saying there was a problem
6 at one point in time?

7 **MR. BUTLER:** It arose last year for FPL
8 because of the delays that existed on making decisions
9 with respect to FPL. I don't know that there have been
10 other instances. I don't expect it would arise
11 regularly. And certainly our intent is that -- and I'm
12 sure it is the Commission's intent is that there would
13 continue to be the same cycle of annual proceedings. It
14 doesn't have anything to do with changing that. It is
15 simply trying to provide a safety net, I guess, if you
16 will. Some sort of backstop in the event that for some
17 reason there were a delay in making the decision, so
18 that something remains in place until you change them
19 subsequently.

20 **MR. MOYLE:** And was FPL able to get all of its
21 money that it thought was due and owing, notwithstanding
22 the fact that it was delayed last year?

23 **MR. BUTLER:** There was a separate agreement.
24 You may recall that FPL had a separate hearing, and
25 there was agreement in the prehearing order specifically

1 for FPL. It was actually very similar to this wording,
2 but it only applied specifically to FPL because the
3 other utilities had had the decisions made for them in
4 the normal cycle before the end of the year, and it
5 didn't apply. But, I guess, we are particularly
6 sensitive to it, because it had been, you know, a minor
7 problem for us with the factors last year that we had to
8 kind of scramble to cover. And it seems like that it is
9 a pretty innocuous way to address the issue.

10 **MS. BROWNLESS:** Well, is that the only time
11 that that has happened, John?

12 **MR. BUTLER:** I can't confirm for certain that
13 it is or isn't. It's the only time that we are
14 specifically aware of. I don't know if there have been
15 other times prior to that where, for whatever reason,
16 the delay -- you know, some sort of event came along
17 that resulted in being unable to make a decision by the
18 beginning of the year.

19 I mean, when you have contested proceedings,
20 it certainly can get close to the wire. Because with
21 the briefing schedules and the decisions being made, it
22 can really bring it down to the wire. I don't know
23 whether it has gone over and extended into the
24 subsequent year before the new factors have been
25 approved.

1 **MR. MOYLE:** But, I guess, John, what you're
2 saying, if your language comes then there is no need to
3 have this rush and have five days to file briefs,
4 because it just continues to roll along until you do a
5 true-up. I mean, I'm just trying to understand if what
6 we are dealing with is, you know, a policy change to
7 say, well, you know, we don't need to have five days to
8 do this rush, rush, rush, because it continues to be in
9 effect and you can true it up kind of at your leisure.

10 **MR. BUTLER:** No, that is certainly not the
11 intent. I mean, FPL's expectation would be, and I
12 believe the Commission staff shares this, that the
13 process would remain where the full expectation, full
14 intent is to have new factors approved that would go
15 into effect beginning of January for the following year.
16 Now, this is really intended just as a safety net or a
17 backstop in the event that for some reason beyond the
18 control of the Commission that can't happen.

19 **COMMISSIONER BRISÉ:** Staff, with respect to
20 this issue in terms of staff's position -- let's go back
21 to the staff's position. What is staff's position going
22 to be? Are you going to maintain the original position
23 or are you going to adopt the position that was
24 proffered by FPL? And then I think that will help
25 alleviate the process.

1 **MS. BROWN:** Commissioner, if I might. The
2 position of FPL -- the new position of FPL has been
3 stipulated to now in 01 and 07. So for consistency
4 purposes, staff would adopt the new position of FPL.

5 **COMMISSIONER BRISÉ:** Okay. So with that, the
6 parties and intervenors have the option of agreeing with
7 staff, not agreeing with staff, or no position. So we
8 will go through and --

9 **MR. MOYLE:** Yes. And it was stipulated to
10 not, because we affirmatively agreed, we just took no
11 position on it in those other dockets. And, you know,
12 I'm little conflicted. I think for the purposes of
13 today's proceeding we would take staff's position as
14 framed in this, you know, in this draft, which has the
15 end date of December. We will talk about it off-line, I
16 think.

17 **COMMISSIONER BRISÉ:** Okay. So then just for
18 clarity for the record, it will be that you will take
19 staff's position as printed, which is different from
20 staff's position.

21 **MR. MOYLE:** Right. Because they have now
22 agreed with FPL's language, and I just want to
23 understand this issue better.

24 **COMMISSIONER BRISÉ:** Sure.

25 **MR. BUTLER:** Can I just clarify one thing

1 here, please. We're referring to it as FPL's language.
2 The language was proposed by staff in the 01 docket. We
3 agreed with it, and we agree with it now. You know, we
4 have raised it here for the sake of being consistent
5 with what had been initially proposed by staff in the 01
6 docket. We suggested doing the same thing in the 07
7 docket, which was stipulated, and raised that language a
8 third time here for consideration in this docket.

9 Thank you.

10 **COMMISSIONER BRISÉ:** Thank you.

11 Staff.

12 **MS. TAN:** At this time we can leave it as a
13 contested issue and we will continue to work with the
14 parties.

15 **COMMISSIONER BRISÉ:** Okay.

16 **MS. BROWNLESS:** And, Commissioner, I agree
17 with Mr. Moyle, and I would like to adopt the position
18 as staff has written it here.

19 **COMMISSIONER BRISÉ:** Sure.

20 **MS. BROWNLESS:** But, of course, I'm willing to
21 work on that.

22 **COMMISSIONER BRISÉ:** Okay. So that will be a
23 contested issue.

24 **MS. TAN:** That is correct.

25 **MR. CAVROS:** And the Southern Alliance would

1 take no position on this issue.

2 COMMISSIONER BRISÉ: Thank you.

3 I'm assuming FEA --

4 CAPTAIN MILLER: We would agree with staff as
5 it's written.

6 COMMISSIONER BRISÉ: Okay.

7 MR. TAYLOR: And given the nature that these
8 factors are trued up, we do not object to staff's
9 language and will maintain no position.

10 MR. GRIFFIN: Commissioner, Gulf Power agrees
11 with staff's position articulated today.

12 COMMISSIONER BRISÉ: Okay.

13 MR. BEASLEY: As does Tampa Electric Company.

14 MR. McGLOTHLIN: OPC would take no position at
15 this point. I think I understand that the intent, and I
16 would predict there will be some kind of work-out
17 between now and the filing of the prehearing order, but
18 for the today's purposes we will take no position.

19 MS. KEATING: FPUC is fine with the revised
20 language.

21 COMMISSIONER BRISÉ: Thank you.

22 MR. GLENN: Progress Energy Florida is also
23 fine with staff's new position.

24 COMMISSIONER BRISÉ: Thank you.

25 MS. BROWNLESS: Forgive me, I couldn't hear

1 you, sir. I couldn't hear your answer.

2 MR. GLENN: Progress Energy is fine with
3 staff's new position.

4 MS. BROWNLESS: Thank you.

5 COMMISSIONER BRISÉ: Okay. Issue 5.

6 MS. TAN: Issue 5 is a company-specific issue
7 for Tampa Electric. We require positions from the
8 intervenors.

9 MS. CHRISTENSEN: Office of Public Counsel
10 takes no position.

11 MS. BROWNLESS: We took no position, sir.

12 MR. MOYLE: No position.

13 CAPTAIN MILLER: FEA takes no position.

14 MR. TAYLOR: It's a TECO issue; we're taking
15 no position.

16 MR. CAVROS: SACE's position is contingent on
17 the outcome of Issues 9 through 13.

18 COMMISSIONER BRISÉ: Okay. Thank you.
19 Issue 6.

20 MS. TAN: Issue 6 is also a company-specific
21 issue for TECO, and we would require positions from OPC,
22 SACE, and PCS.

23 MS. CHRISTENSEN: OPC takes no position.

24 MS. BROWNLESS: FLASEIA takes no position.

25 COMMISSIONER BRISÉ: SACE?

1 **MR. CAVROS:** SACE's position is contingent on
2 the outcome of Issues 9 through 13.

3 **COMMISSIONER BRISÉ:** Okay. FEA?

4 **CAPTAIN MILLER:** No position.

5 **MR. MOYLE:** No position.

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

7 Moving on to Issue 7. I believe this is a
8 Gulf Power Company specific issue.

9 **MS. TAN:** That is correct. We would require
10 positions from OPC and SACE.

11 **MS. CHRISTENSEN:** OPC takes no position.

12 **MR. CAVROS:** SACE understands that this issue
13 has been deferred to a separate docket and is not
14 opposed to the allocation method, and would probably
15 like to propose a different allocation method other than
16 the one proposed by Gulf. But since it's being deferred
17 to a company-specific proceeding, we would take no
18 position.

19 **COMMISSIONER BRISÉ:** Okay. FLASEIA?

20 **MS. BROWNLESS:** Oh, we took no position, sir.

21 **COMMISSIONER BRISÉ:** Okay. FEA?

22 **CAPTAIN MILLER:** No position.

23 **COMMISSIONER BRISÉ:** FIPUG?

24 **MR. MOYLE:** We would maintain our position as
25 stated in the statement filed. To the extent that it is

1 being broken out, we don't object to that.

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

3 Issue 8.

4 **MS. TAN:** Issue 8 is also a company-specific
5 issue for Gulf. We require positions for FEA and OPC
6 and SACE.

7 **MS. CHRISTENSEN:** OPC takes no position.

8 **MR. CAVROS:** SACE's position is contingent on
9 the outcome of Issue 9 through 13.

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

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

12 **COMMISSIONER BRISÉ:** Okay.

13 All right. Moving on to Issue 9.

14 **MS. TAN:** Commissioner, staff believes that
15 the SACE Issues 9 through 13 are beyond the scope of
16 this docket and that are better suited for the
17 individual demand-side management dockets.

18 **COMMISSIONER BRISÉ:** All right. We will hear
19 from the parties here. SACE.

20 **MR. CAVROS:** Yes. Good afternoon,
21 Commissioner. The issues offered by SACE go to the
22 prudence of the DSM program design features and the
23 related expenses. So they go to DSM program design, and
24 I kind of want to make that very clear at the very
25 beginning. And actually Issue 13 is the ultimate issue,

1 while Issues 9 to 12 would tend to fallout as subissues
2 of that. So if you would indulge me, I would like to
3 discuss the reasoning behind Issue 13 first, and I think
4 that will make things move a lot faster.

5 You know, SACE -- just by way of background,
6 SACE took part in the FECA goal-setting proceedings in
7 2009, and in that proceeding the Commission set goals by
8 approving goals based on measures, not programs that
9 passed the TRC test. Meaning that the measures can meet
10 demand at a lower cost than new generation, okay. And
11 that is a first tier review. That is not the issue that
12 we are discussing here today.

13 Now, the next step was for the utility parties
14 to submit or file DSM programs to meet the plans or to
15 submit plans that meet the goals that were set
16 previously. And those programs are essentially the
17 packaging of measures and have cost components that
18 include things like administration, marketing, incentive
19 levels. And the way that those programs are designed
20 dictates how much energy those programs will save and
21 how much it will cost consumers. And that's the focus
22 of SACE's issues here.

23 Now, in the DSM approval docket, which Rule
24 25-17.0021 establishes the filing requirements in that
25 docket, both for the conservation goal-setting docket

1 and also for the DSM plan filing docket, you know, does
2 not contemplate providing evidence to the Commission on
3 DSM program design. And, you know, we're talking about
4 the issue of prudence here, and it can be defined in a
5 lot of different ways, but really one definition is that
6 the utility costs that are passed on to ratepayers
7 should not be wasteful. And in this instance, that
8 requires that the utility design programs in such a way
9 to eliminate unnecessary costs, you know, in
10 implementing their goals.

11 Now, SACE raised some cost concerns issues
12 related to how the programs were designed in another
13 docket, in the DSM plan approval docket. And to a large
14 intent the Commission did not consider those comments in
15 large part because the Commission was assured by staff
16 that the prudence of such expenditures would be
17 addressed in this docket. And, you know, specifically
18 staff stated in its recommendation, for instance, in the
19 PEF DSM plan docket that, quote, staff notes the
20 Commission will have the opportunity to review planned
21 and actual expenditures associated with these programs
22 during the ECCR clause proceeding where PEF must still
23 demonstrate that expenditures in implementing this DSM
24 program are reasonable and prudent, close quote.

25 So we have basically come here to ask the

1 Commission to look at the way the programs were
2 designed. And if they are designed properly then, you
3 know, the expenditures would be prudent. Staff's
4 position or response to our issues are a little
5 perplexing, because staff has stated that this issue is
6 beyond the scope of this proceeding. Where the
7 Commission previously was assured by staff in the DSM
8 dockets that the prudence of those costs could be
9 considered in this proceeding. And, you know, the
10 utility parties as well have responded that it is also
11 outside the scope of this proceeding.

12 So if it can't be considered in the
13 conservation goals docket which deals with measures, and
14 it can't be or is not contemplated to be considered and
15 certainly not in the rule that covers the DSM plan
16 approval docket, and if it for some reason is outside
17 the scope of this docket, then, you know, it is clear
18 that there is no process at the Commission to ensure
19 that customers are getting -- residential, industrial,
20 and commercial customers are getting the most bang for
21 their buck, if you will, for each DSM dollar spent by
22 their incumbent utility. And my client, SACE, believes
23 that customers deserve to know if their DSM dollars are
24 being spent prudently.

25 And that's the reasoning behind the proffering

1 of Issue 13. And if you look at Issues 9, 10 -- I'm
2 sorry, 10, 11, and 12, these are basically simply
3 questions that a prudent utility manager would ask
4 before spending customer's money. Issue 10, would a
5 different mix of compliant DSM programs result in a
6 lower conservation cost-recovery factor. Issue 11,
7 would modifying the design of existing compliant
8 programs result in a lower cost-recovery factor. And
9 then Issue 12, would an increased reliance on lower cost
10 type programs result in a lower cost-recovery factor.
11 And, lastly, Issue 9 goes to the fact that, you know, in
12 order to determine whether something is prudent or not,
13 you need a metric, whether it is the kilowatt, the cost
14 of each kilowatt hour of energy saved, you need some way
15 to compare apples to apples.

16 The way the information is filed now, it is
17 hard to determine what the costs are and it's certainly
18 impossible to compare the per unit costs, be it, you
19 know, a kilowatt hour of energy, the cost of each
20 kilowatt hour of energy saved or some other metric to
21 compare the prudence and the cost-effectiveness of
22 program design from utility-to-utility within the
23 regulated utilities here at this table or utilities in
24 Florida to utilities in other states. So Issue 9
25 actually goes to establishing a metric, and that is

1 really sort of the basis and necessary component of
2 determining prudence.

3 **COMMISSIONER BRISÉ:** Thank you.

4 Staff, any comments on the issue with respect
5 to if this docket isn't the appropriate docket to deal
6 with this, what potentially could be the appropriate
7 docket to deal with the questions that are being brought
8 up?

9 **MS. TAN:** Staff does believe that these
10 questions that are raised are actually best suited in
11 the DSM program dockets. This docket is about
12 cost-recovery. It does not look at the programs nor
13 does it look at the efficiency of the programs. What
14 SACE is asking staff to do in this particular docket is
15 to actually look at the prudence of the actual programs
16 as opposed to the prudence of the costs. And truly this
17 docket is about recovering money, recovering the costs.

18 **COMMISSIONER BRISÉ:** Okay.

19 **MR. BEASLEY:** Commissioner Brisé, we filed a
20 paper in opposition to these issues for the very same
21 reason articulated by the staff. We had a docket where
22 goals were set followed by programs that were submitted
23 to implement those goals. They were all looked at by
24 everyone with input from all parties. Those programs
25 were approved; the plans were approved that contained

1 the programs. We are here trying to use our best
2 judgment as to, you know, what is our best estimate of
3 the cost of implementing these plans and programs, and
4 that is what this docket is about.

5 If there is any desire to address different
6 programs, or different program mixes, or different
7 goals, that might be something for a different docket,
8 but this is a cost-recovery docket and not a
9 goal-setting or program-approval docket.

10 **COMMISSIONER BRISÉ:** OPC.

11 **MS. CHRISTENSEN:** OPC is taking no position on
12 these issues. I know we did participate in the
13 conservation docket, but I'm not familiar enough with
14 the situation to know whether or not it should have been
15 addressed in that docket, this docket, or there should
16 be a spin-off docket to address SACE's specific
17 concerns.

18 **COMMISSIONER BRISÉ:** Progress.

19 **MR. GLENN:** Progress agrees with staff. How
20 many times did we hear Mr. Cavros say programs? The
21 goal-setting docket identifies what programs that the
22 companies are going to implement. The ECCR is the
23 implementation docket to determine whether we have spent
24 those costs. This is a clear attempt of SACE to
25 relitigate all the same issues that they litigated

1 before and that they are currently trying to litigate in
2 the DSM goals docket. So it's completely inappropriate
3 to be hearing that in this docket.

4 **COMMISSIONER BRISÉ:** FPL.

5 **MR. RUBIN:** Commissioner, FPL agrees with the
6 staff position and the position that has been already
7 stated by the other utilities. I don't think there is a
8 need to repeat it, but I just want the record to reflect
9 that we filed something in opposition, as well.

10 **MR. GRIFFIN:** As does Gulf Power Company.

11 **MS. KEATING:** As does FPUC.

12 **COMMISSIONER BRISÉ:** FIPUG, do you have any
13 position on Issues 9 through 13?

14 **MR. MOYLE:** We would stick by what we
15 previously provided as our positions and don't feel the
16 need to argue or change anything at this point.

17 **COMMISSIONER BRISÉ:** Okay.

18 **MS. TAN:** Commissioner, I would just to point
19 out that FIPUG said their position was no position at
20 this time, so they do need to -- are you still no
21 position?

22 **MR. MOYLE:** Yes. We didn't do that
23 throughout. I think some of them we said we are not
24 taking a position on the substantive issue, but we
25 believe it's right for inclusion. The ones we took no

1 position on we will just take no position.

2 MS. TAN: Okay. Thank you.

3 MS. BROWNLESS: And we took no position, sir.

4 COMMISSIONER BRISÉ: Okay. PCS?

5 MR. TAYLOR: Issue 13 is really referencing
6 the cost of the programs and are they prudent. We
7 believe that these hearings are -- to the extent they
8 are focused on the cost and the prudence of those costs,
9 those are relevant issues and they should be addressed.

10 However, Issues 10, 11, and 12 seem to be
11 focused solely on the lower cost-recovery factor. And
12 to the extent we are just focused on lowest costs there,
13 we are not really sure those are particularly relevant
14 for this proceeding. If we were focused more on
15 cost-effectiveness, which at one point Mr. Cavros raised
16 in his comments, then perhaps they are relevant. But,
17 in general, I think we are going to maintain or change
18 our no position at this time to no position.

19 COMMISSIONER BRISÉ: Okay. FEA?

20 CAPTAIN MILLER: For Issues 10, 12, and 13 we
21 agree with FIPUG. For the remaining issues we take no
22 position.

23 COMMISSIONER BRISÉ: Okay. So Issues 9
24 through 13, staff, you're asserting that this is not the
25 appropriate --

1 **MS. TAN:** That is correct. And staff would
2 also note that you may take these issues under
3 advisement and render a decision within the prehearing
4 order.

5 **COMMISSIONER BRISÉ:** Okay. Yes, I think I
6 will do that. I won't show my cards. I think I will do
7 that at this point on Issues 9 through 13.

8 Issue 14.

9 **MS. BROWNLESS:** Thank you, Commissioner.

10 This is our issue, and if I may just kind of
11 explain what it is, because it appears to have been on
12 my part inarticulately written.

13 For us, the solar industry, there's two pieces
14 to this issue. As has been previously stated in the
15 order in the DSM goals docket, and the order was 090855,
16 which was issued in December 30th of 2009, the
17 investor-owned utilities were required to allocate
18 certain funds totaling, as a group, \$24.5 million for
19 the development of solar pilot programs. So our first
20 issue that we think is relevant to this docket is did
21 each investor-owned utility, in fact, allocate the full
22 amount that was granted to them, and has that amount
23 been included in the funds that they are seeking
24 cost-recovery for.

25 I have spoken to the investor-owned utilities,

1 and looked at their testimony, and it does appear that
2 for each investor-owned utility they did fully allocate
3 the funds that were ordered in the 090855 order. Now,
4 in conjunction with that, I have asked interrogatories
5 to Florida Power and Light, Progress, Tampa Electric,
6 and Gulf Power that talks about what did you allocate,
7 how much participation did you have. The details of
8 what happened when they attempted to implement their
9 program this year. And that is relevant to the second
10 part of the issue that is the part that apparently I
11 wasn't communicating real well.

12 That's when we went to the second step and
13 there were for each electric utility an implementation
14 docket for their DSM goals, in that implementation
15 docket each investor-owned utility identified the solar
16 programs that they were going to implement and set the
17 parameters for those programs and also set an allocation
18 of their total dollar amount between those programs.

19 So I will use FPL as an example. They got
20 \$15.5 million, and they said, okay, of that
21 \$15.5 million we're going to put X amount for PV for
22 schools; we're going to put X amount for residential PV;
23 X amount for commercial PV, et cetera, right? What we
24 think is relevant here is not only the issue of was the
25 full amount appropriated and included in the factor, and

1 please correct me if I'm wrong, I think all the
2 utilities agree that that is appropriately included in
3 this docket. I think everybody agrees that that is
4 okay. Okay.

5 I think the issue comes in what we would like
6 also to see discussed, which is based upon their
7 experience this year in 2011, the first year that these
8 programs got rolled out, they reallocated funds. For
9 example, Florida Power and Light reallocated funds and
10 Progress Energy reallocated funds between the individual
11 program. And that's because on the PV programs for
12 residential and commercial, in both of those instances
13 the funds were gone within hours. I mean, in one
14 program I think it was gone within less than 20 minutes.
15 I mean, it was really quick.

16 So we believe that the second part that should
17 be an issue here and should be consistently considered
18 in this docket, not only this year, but in additional
19 years, is the allocation of money between the programs.
20 And that that allocation ought to be based upon the
21 experience that the utilities are gaining with regard to
22 the participation in those programs.

23 And my understanding, based on talking to the
24 utilities, is that is the portion of my issue that they
25 do not believe is appropriate here. And I want to be

1 real clear. We are not attempting to change the
2 programs, modify the programs, modify the incentives; we
3 are not attempting to do any of that. We are just
4 attempting to make sure that the funds that have already
5 been approved and already allocated by the utilities to
6 be recovered from ratepayers are allocated to programs
7 that are giving the most bang for the buck that are
8 already there.

9 So that if you have a program that nobody has
10 signed up for, you shouldn't leave funds in that
11 program. Because the ratepayers are going to pay for
12 this either way. When it's included in the dollar
13 amount that goes into Issue 1 and the conservation
14 cost-recovery factor, the ratepayers are already paying
15 for those bucks. We're just interested in assuring
16 ourselves and bringing forward to the Commission the
17 proper allocation of the funds to the programs that have
18 already been approved.

19 So we are not seeking to reinvent the wheel in
20 the DSM docket, and all our issue has to do with is the
21 actual money allocation. So that's where we are. Now,
22 I have spoken to other investor-owned utilities. It
23 looks to me, based upon their representations -- I do
24 have discovery that will be provided Monday, in most
25 cases. I already have Progress Energy's answers to my

1 interrogatories, and Progress clearly has reallocated
2 their funds based upon the participation experience they
3 had this year.

4 So if that part of my subissue can be included
5 in Staff's Issue 2, and I can talk about it there,
6 great. I just want to make sure that I have a ruling
7 that says both pieces are an appropriate issue to be
8 talked about here. Because like Mr. Cavros, I was also
9 told that this would be the place that FLASEIA could
10 talk about prudence of the programs. In other words,
11 how the allocations were being done.

12 Obviously, the DSM goals docket is over. The
13 implementation dockets for everybody except FPUC and
14 Florida Power and Light are over, and the implementation
15 issues that are still open don't have anything to do
16 with this. So that's what we are trying to do, and we
17 think those items are appropriately addressed in this
18 docket.

19 **COMMISSIONER BRISÉ:** Thank you.

20 Staff.

21 **MS. TAN:** Commissioner, staff believes that
22 the issue raised by FLASEIA can actually be rolled into
23 Issue 2 and addressed in terms of the cost. In terms of
24 the second part of her concern, at this time we don't
25 see anything that is actionable. Perhaps it is

1 something that needs to be determined in the future.
2 But, again, we would recommend that you do not have to
3 make a decision at this time, and you can take it under
4 advisement.

5 **COMMISSIONER BRISÉ:** Okay. I'm trying to look
6 through who has taken a position on this.

7 **MS. TAN:** And I would recommend perhaps that
8 the parties may have something to say to this issue.

9 **COMMISSIONER BRISÉ:** Right. And we'll begin
10 with -- I guess we'll start from my left. Progress.

11 **MR. GLENN:** We would object to the issue as
12 written, and we would agree with staff.

13 **MR. GRIFFIN:** The same for Gulf Power.

14 **MR. BEASLEY:** Commissioner, we agree with
15 staff, and we have seen nothing that would call for this
16 to be set out as a separate issue. I know that FLASEIA
17 has engaged in little, if any, discovery. The companies
18 made a commitment back in the program approval process
19 that they would reallocate these monies to get the best
20 bang for the buck as going forward throughout the year.
21 Any costs that we don't spend becomes an overrecovery,
22 so I think this is a cost-recovery docket. It's not a
23 docket to revisit all of the programs and how they
24 operate, and so we concur with the staff.

25 **MR. RUBIN:** FPL supports staff's position. I

1 might add also, Commissioner, that we have engaged in
2 discussions with FLASEIA. We have agreed, subject to
3 agreement by staff and all the other parties, that the
4 answers to interrogatories that provide the actual
5 numbers which can be found in our filing, otherwise in
6 our exhibits, could be admitted into the record so that
7 there is some record of what was actually spent and what
8 is projected for 2012.

9 But the remainder of the issue, you know, what
10 are we going to base future projections on, it just
11 doesn't appear to be an appropriate issue for this
12 docket.

13 **COMMISSIONER BRISÉ:** Okay.

14 **MS. KEATING:** FPUC would likewise agree with
15 staff, and just further include the position that FPUC
16 believes it has appropriately allocated amounts approved
17 for solar programs.

18 **MS. CHRISTENSEN:** OPC has no position.

19 **MR. CAVROS:** SACE would agree with FLASEIA's
20 position. It seems reasonable that the decision of
21 where the reallocation of resources is going would fall
22 under a prudence paradigm.

23 **MR. MOYLE:** FIPUG takes no position.

24 **CAPTAIN MILLER:** FEA takes no position.

25 **MR. TAYLOR:** PCS takes no position.

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

2 I will take that under advisement, as well, as
3 to what we do with this. We do have to go back to
4 Issues 2 and 3, I believe, but I don't know if this
5 resolves the issue for FLASEIA with respect to Issues 2
6 and 3. And I think we had some other parties who were
7 not in a position to respond with respect to Issues 2
8 and 3.

9 If we are comfortable with taking a, say,
10 ten-minute recess, and I will come back with a decision
11 specifically on Issue 14, so that we can cover Issues 2
12 and 3. So we will take a ten-minute -- actually, let's
13 do it 15, so we will come back at roughly 1:00 o'clock.
14 Whatever the difference is in that clock over there; I'm
15 trying to read it. So I guess maybe a 12-minute break,
16 a twelve-minute recess.

17 **MR. CAVROS:** Excuse me, Commissioner. I'm
18 also a little precluded from stating a position on some
19 of those issues, as well, until Issues 9 through 13 are
20 decided on. So I don't know if you were going to --

21 **COMMISSIONER BRISÉ:** Nine through 13 I will
22 take under advisement, and I will render that as part of
23 my prehearing order. But 14 I'm going to look at right
24 now. So we will take like a 12-minute recess, and I
25 will come back with a decision on Issue 14.

1 (Recess.)

2 **COMMISSIONER BRISÉ:** At this point we are
3 going to reconvene. And I said I was going to render a
4 decision on Issue 14. I understand the issue. I
5 understand, I think, the importance of the issue. I do
6 believe at this juncture, though, that it is covered or
7 can be subsumed in Issue 2. And I understand why the
8 issue is brought up, and I think any ruling that I make
9 at this point could sort of tie the hand of future
10 prehearing officers, because I don't think the issue is
11 necessarily ready yet to be fully explored because the
12 information may not fully be there at this juncture.

13 So with that, we will address whatever needs
14 to be addressed in Issue 2. I think it is covered in
15 Issue 2, rather, subsumed in Issue 2, and I think you
16 have discovery that you have to make anyway, and things
17 of that nature.

18 **MS. BROWNLESS:** We do have discovery that will
19 be provided on Monday, so let me make sure I understand
20 what the ruling is, Commissioner. That both aspects
21 that I have raised could be covered in Issue Number 2?

22 **COMMISSIONER BRISÉ:** What I am saying, the
23 information that you are seeking is found in Issue 2.
24 So the issue is subsumed in Issue 2. And that's the
25 ruling.

1 **MS. BROWNLESS:** And I guess, again, so that --
2 just so I understand, with that ruling, assuming that I
3 can talk about both the amount that's included in Issue
4 Number 2 and the allocations between the programs as a
5 prudence issue in Issue 2, then that's terrific, and I
6 can then take a position on Issue 2.

7 **COMMISSIONER BRISÉ:** Let me make sure that
8 that is exactly what I'm saying. (Pause.)

9 Let me make sure I understand what you're
10 saying first. You are saying that the -- you're saying
11 that your understanding of me saying that the issue is
12 subsumed in Issue 2, that the breakouts that you are
13 looking for in terms of the programs and so forth, and
14 the various allocations that you are looking for can be
15 gathered through Issue 2, that's your understanding.

16 **MS. BROWNLESS:** Well, I would phrase it a
17 little bit differently. I would phrase -- I think we
18 all agree that the amount of funds to be recovered for
19 the solar programs are appropriately considered in
20 Issue 2. I think everybody agrees with that.

21 As I understand your ruling, you also agree
22 that the allocations of funds would be appropriately
23 considered in Issue Number 2 because it's a prudence
24 issue with regard to the allocation. And that would
25 allow -- the IOUs have agreed to stipulate the results

1 of my -- or the responses to my interrogatories into the
2 record. That would be consistent with their agreement
3 to stipulate the results of my interrogatories into the
4 record.

5 So I can deal with both aspects of my issue in
6 Issue Number 2. I don't have to have a separate issue.
7 I'm fine with that, Commissioner. I just want to be
8 able to talk about the allocation.

9 **COMMISSIONER BRISÉ:** Okay. Let me ask my
10 attorney.

11 **MS. HELTON:** Commissioner Brisé, as I
12 understand the issue, and I hope that staff will correct
13 me if I don't have it according to what they believe.
14 As I understand the issue, the costs as Ms. Brownless
15 has stated are relevant and ripe for this proceeding and
16 are ready to be addressed by all parties and ruled on by
17 the Commission. However, with respect to any
18 allocation, as I understand it, that is not a ripe issue
19 at this time for this docket this year, and that you are
20 not foreclosing that issue being raised in the future.
21 And if it is raised in the future, then that would be up
22 to the prehearing officer at that time as to whether it
23 was an appropriate relevant issue for the 02 docket.

24 **MS. TAN:** That is correct.

25 **COMMISSIONER BRISÉ:** Okay.

1 **MS. BROWNLESS:** So now I'm more confused than
2 I was before. What we are saying is that based upon the
3 discovery that we have gotten so far and the actions of
4 the IOUs, it appears that they have done reallocations
5 and that their allocations for the next year reflect
6 their experience. That appears to be true. That's
7 fine.

8 I just want -- I just want some assurance that
9 I can put -- I can stipulate these exhibits into the
10 record and address this in the docket next year again.
11 Do you hear what I'm saying?

12 **COMMISSIONER BRISÉ:** And that's what I don't
13 want to do. Because I want to say that the information
14 is available, and that you can pull the information and
15 do what you need to do this year without having to tie
16 the hands of the future prehearing officer by my ruling
17 now.

18 **MS. BROWNLESS:** Okay.

19 **COMMISSIONER BRISÉ:** Because I think that
20 that's what you are seeking.

21 **MS. BROWNLESS:** So you don't have a problem
22 with stipulating the responses to the interrogatories
23 into the record. That's fine.

24 **COMMISSIONER BRISÉ:** I don't have a problem
25 with that.

1 **MS. TAN:** That would be the Chairman at the
2 actual hearing.

3 **COMMISSIONER BRISÉ:** Yes. The Chairman would
4 have to do that at that time. That wouldn't necessarily
5 be my decision to make.

6 **MS. BROWNLESS:** Okay. The IOUs, as I
7 understand it, have no problem with doing that. Is that
8 correct?

9 **MS. TAN:** And staff does not have any problem
10 with that, if that would be the agreement of the
11 parties. What would happen is when we circulate the
12 comprehensive exhibit list, we'll add that into the
13 comprehensive exhibit list, and then you can give me
14 feedback at that time.

15 **MS. BROWNLESS:** Okay. And so your ruling is
16 really that the second part of my issue is not ripe for
17 consideration.

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

19 **MS. BROWNLESS:** Thank you.

20 **COMMISSIONER BRISÉ:** Let me hear from the
21 parties.

22 **MR. GLENN:** Yes, that was our understanding.
23 As to stipulations, I don't know that we formally have a
24 stip, but I think we are working on language. Is that
25 my understanding?

1 **MS. BROWNLESS:** If you will let me put my
2 responses into the record, then I'm willing to stipulate
3 that on my part your witnesses don't have to appear.

4 **MR. GLENN:** Okay. We can talk about that
5 off-line.

6 **MR. GRIFFIN:** Gulf could agree with that.

7 **MR. BEASLEY:** I would need to discuss that
8 with my client.

9 **MR. RUBIN:** FPL has discussed it with counsel,
10 and we agree with that as well.

11 **COMMISSIONER BRISÉ:** Okay. All right. So I
12 think that takes care of Issue 14. With that, we have
13 to go back to Issues 2 and 3, I believe.

14 Staff, Issue 2.

15 **MS. TAN:** One of the things we could recommend
16 is that we can get with the parties, now that you have
17 made some decisions on these issues, and we can talk
18 with them about Issue 2 and 3 about whether or not we
19 could reach a stipulation.

20 **COMMISSIONER BRISÉ:** Okay. Is that something
21 that the parties are amenable to? Okay.

22 **MR. BEASLEY:** Commissioner, I have conferred
23 with my client, and we are willing to put our responses
24 to the discovery into the record.

25 **COMMISSIONER BRISÉ:** Thank you.

1 Okay. So we have taken care of Issues 2
2 and 3. So now we are moving on to Section IX, which is
3 our exhibit list.

4 **MS. TAN:** That is correct.

5 Staff is in the process of preparing a
6 comprehensive exhibit list consisting of all the
7 prefiled exhibits, and if there is a stipulation, the
8 discovery responses to FLASEIA that the parties have
9 agreed to enter into the record for the purposes of
10 numbering and identifying those exhibits at hearing.
11 Staff will provide the exhibit list to the parties as
12 soon as possible.

13 **COMMISSIONER BRISÉ:** Okay. Any concerns about
14 that from the parties? Okay.

15 Moving on to Section X, proposed stipulations.

16 **MS. TAN:** For Section X, at this time we
17 believe that there is a stipulation for Issue 1, and we
18 have stipulated with Gulf for Issue 7. We will continue
19 to work with the parties on the other issues. Any
20 stipulations achieved in this docket will be reflected
21 in this section in the prehearing order.

22 **COMMISSIONER BRISÉ:** Section XI, pending
23 motions.

24 **MS. TAN:** There are no pending motions.

25 **COMMISSIONER BRISÉ:** Section XII, pending

1 confidentiality motions.

2 **MS. TAN:** There is one pending confidentiality
3 request which we will address in a separate issue, or
4 order.

5 **COMMISSIONER BRISÉ:** Section XIII,
6 post-hearing procedures.

7 **MS. TAN:** Usually in this docket there is
8 normally a bench decision. At this point in time, staff
9 believes that a bench decision can still be reached or
10 done. However, in the event that briefs are required,
11 staff would recommend that the position statements be no
12 more than 50 words and the briefs be no more than 40
13 pages in length, and that's if a bench decision cannot
14 be reached.

15 **COMMISSIONER BRISÉ:** And what date would the
16 briefs have to be in? Would that be November the 8th?

17 **MS. TAN:** More than likely by the 8th, yes,
18 sir.

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

20 **MS. TAN:** Staff would suggest that if there
21 are any opening statements in this docket, it should be
22 limited to five minutes per party, and then any other --
23 the ruling that you have made on Issue 14, and then any
24 of the other issues, Issues 9 through 13 will also be
25 reflected here. Oh, I'm sorry, and five minutes per

1 side. No, five minutes per party.

2 COMMISSIONER BRISÉ: Five minutes per party.

3 All right. And that would be for opening
4 statements.

5 MS. TAN: That's correct.

6 COMMISSIONER BRISÉ: All right. Any other
7 matters?

8 MS. TAN: I am happy to say there are no other
9 matters at this time.

10 COMMISSIONER BRISÉ: Okay. Any other matters?
11 Seeing none, we are adjourned.

12 Thank you very much for your indulgence today,
13 and have a wonderful rest of the day in this nice,
14 chilly weather.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Hearing Reporter
6 Services Section, FPSC Division of Commission Clerk, do
7 hereby certify that the foregoing proceeding was heard
8 at the time and place herein stated.

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

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

19 DATED THIS 24th day of October, 2011.

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