

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

PETITION FOR INCREASE IN RATES
BY FLORIDA POWER & LIGHT COMPANY.

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER ART GRAHAM
PREHEARING OFFICER

DATE: Tuesday, August 14, 2012

TIME: Commenced at 2:00 p.m.
Concluded at 6:10 p.m.

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

REPORTED BY: LINDA BOLES, CRR, RPR
JANE FAUROT, RPR
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1 APPEARANCES:

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

6 JOSEPH A. MCGLOTHLIN, CHARLES J. REHWINKEL,
7 and PATRICIA CHRISTENSEN, ESQUIRES, Office of Public
8 Counsel, c/o The Florida Legislature, 111 West Madison
9 Street, Room 812, Tallahassee, Florida 32399-1400,
10 appearing on behalf of the Citizens of the State of
11 Florida.

12 JOHN T. LAVIA, III, ESQUIRE, Gardner, Bist,
13 Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright,
14 P.A., 1300 Thomaswood Drive, Tallahassee, Florida 32308,
15 appearing on behalf of the Florida Retail Federation.

16 KENNETH L. WISEMAN, MARK F. SUNDBACK, LISA M.
17 PURDY, WILLIAM M. RAPPOLT, and J. PETER RIPLEY,
18 ESQUIRES, Andrews Kurth LLP, 1350 I Street, NW, Suite
19 110, Washington, DC 20005, appearing on behalf of South
20 Florida Hospital and Healthcare Association.

21 VICKIE GORDON KAUFMAN and JON C. MOYLE, JR.,
22 ESQUIRES, Moyle Law Firm, The Perkins House, 118 North
23 Gadsden Street, Tallahassee, Florida 32301, appearing on
24 behalf of the Florida Power Users Group.

25

1 APPEARANCES (Continued):

2 LIEUTENANT COLONEL GREGORY FIKE, CHIEF,
3 CAPTAIN SAMUEL MILLER, and KAREN WHITE, ESQUIRES, USAF
4 Utility Law Field Support Center, Air Force Legal
5 Operations Agency, 139 Barnes Drive, Suite 1, Tyndall
6 Air Force Base, Florida 32403, appearing on behalf of
7 Federal Executive Agencies.

8 QUANG HA, Algenol Biofuels, Inc., 28100 Bonita
9 Grande Drive, Suite 200, Bonita Springs, Florida 24135,
10 appearing on behalf of Algenol Biofuels, Inc.

11 WILLIAM C. GARNER, ESQUIRE, Nabors, Giblin &
12 Nickerson, P.A., 1500 Mahan Drive, Suite 200,
13 Tallahassee, Florida 32308, appearing on behalf of the
14 Village of Pinecrest, Florida.

15 JOHN W. HENDRICKS, 367 South Shore Drive,
16 Sarasota, Florida 34234, appearing pro se.

17 THOMAS SAPORITO, 6701 Mallards Cove Road,
18 Apartment 2H, Jupiter, Florida 33458, appearing pro se.

19 LARRY NELSON, 312 Roberts Road, Nokomis,
20 Florida 34276, appearing pro se.

21 KEINO YOUNG, MARTHA C. BROWN, LARRY D. HARRIS,
22 and CAROLINE M. KLANCKE, ESQUIRES, Florida Public
23 Service Commission, 2540 Shumard Oak Boulevard,
24 Tallahassee, Florida 32399-0850, appearing on behalf of
25 the Florida Public Service Commission.

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APPEARANCES (Continued):

CURT KISER, GENERAL COUNSEL, MARY ANNE HELTON,
DEPUTY GENERAL COUNSEL, ROSEANNE GERVASI, and SAMANTHA
CIBULA, ESQUIRES, Florida Public Service Commission,
2540 Shumard Oak Boulevard, Tallahassee, Florida
32399-0850, Advisors to the Florida Public Service
Commission.

P R O C E E D I N G S

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2 **COMMISSIONER GRAHAM:** We need to call the
3 hearing to order. This is Document [sic] Number
4 120015-EI. And, staff, if I can get you to read the
5 notice.

6 **MR. YOUNG:** Good afternoon. By notice issued
7 July 17th, 2012, by the Commission Clerk, this time and
8 place has been set for a Prehearing Conference in Docket
9 Number 120015-EI, Petition for Rate Increase by Florida
10 Power & Light Company.

11 **COMMISSIONER GRAHAM:** All right. We need to
12 take appearances.

13 **MR. BUTLER:** John Butler and Wade Litchfield
14 appearing on behalf of Florida Power & Light Company.

15 **MR. HENDRICKS:** John Hendricks, pro se.

16 **MR. WISEMAN:** Ken Wiseman from Andrews Kurth
17 for the South Florida Hospital and Healthcare
18 Association.

19 **MS. WHITE:** Good afternoon. I'm Karen White
20 on behalf of Federal Executive Agencies. I'm also
21 entering appearances for Lieutenant Colonel Gregory Fike
22 and Captain Samuel Miller also on behalf of Federal
23 Executive Agencies.

24 **MR. McGLOTHLIN:** Joe McGlothlin, Charles
25 Rehwinkel, and Patty Christensen with the Office of

1 Public Counsel.

2 **MR. LAVIA:** J. Lavia on behalf of the Florida
3 Retail Federation.

4 **MR. NELSON:** Larry Nelson, private citizen.

5 **MR. SAPORITO:** Thomas Saporito, pro se.

6 **MR. MOYLE:** Jon Moyle with the Moyle Law Firm
7 on behalf of the Florida Industrial Power Users Group,
8 FIPUG. Also would like to make an appearance for Vicki
9 Kaufman for FIPUG.

10 **MR. GARNER:** Bill Garner of the Law Firm of
11 Nabors, Giblin & Nickerson on behalf of the Village of
12 Pinecrest.

13 **CHAIRMAN GRAHAM:** Is that --

14 **MR. YOUNG:** Keino Young, Caroline Klancke,
15 Martha Carter Brown, and Larry Harris on behalf of
16 Commission staff.

17 **MS. HELTON:** And Mary Anne Helton, advisor to
18 the Commission. I'd like to make an appearance for our
19 General Counsel, Curt Kiser, and also Roseanne Gervasi
20 and Samantha Cibula, who may also be advising you during
21 the hearing.

22 **COMMISSIONER GRAHAM:** Is that all the
23 appearances?

24 **MR. WISEMAN:** Your Honor, let me take the
25 opportunity to also make appearances for Mark Sundback,

1 Lisa Purdy, Bill Rappolt, Blake Urban on behalf of the
2 South Florida Hospital and Healthcare Association.
3 They're all with Andrews Kurth.

4 **COMMISSIONER GRAHAM:** Okay.

5 **MR. WISEMAN:** And Peter Ripley, if I didn't
6 mention him.

7 **COMMISSIONER GRAHAM:** There is a Glenn
8 Gibellina, G-I-B somebody? Not here?

9 **MR. YOUNG:** He's not here, sir, not that I can
10 see.

11 **COMMISSIONER GRAHAM:** They are struck. Who
12 else? The Biofuels, Inc.

13 **MR. YOUNG:** Algenol Biofuels.

14 **MR. HA:** Yes, I'm here.

15 **COMMISSIONER GRAHAM:** You just barely got
16 here.

17 **MR. HA:** (Inaudible. Not on microphone.)

18 **MS. HELTON:** Mr. Chairman, maybe he could go
19 sit over between Mr. Moyle and Mr. Garner where our
20 witnesses normally sit.

21 **COMMISSIONER GRAHAM:** Okay. And -- all right.
22 Everybody is here except for the one I mentioned
23 earlier, and the Larsons. And I believe staff is going
24 to speak to that.

25 **MR. YOUNG:** Yes, sir. But before we do that,

1 if Mr., Mr. Ha can take his, make his appearance known
2 for the record.

3 **MR. HA:** Good afternoon. My name is Quang Ha.
4 I represent Algenol Biofuels, Inc., on (phonetic) the
5 General Counsel. And under the Florida professional
6 responsibility rules I have to disclose I'm not admitted
7 to the Florida Bar yet, but hopefully I will be in a
8 couple of months.

9 **COMMISSIONER GRAHAM:** Sounds good. Welcome.
10 Staff.

11 **MR. YOUNG:** Staff would note that Daniel R.
12 Larson and Alexandria Larson are absent from the
13 prehearing due to a family emergency, and they cleared
14 it with the Prehearing Officer before their absence.

15 **COMMISSIONER GRAHAM:** Okay. So everybody else
16 is going to be a part of this trial except for the one
17 that we struck. And how is that name pronounced again?

18 **MR. YOUNG:** Gibellina. Glen Gibellina.

19 **COMMISSIONER GRAHAM:** Got you. All right.
20 Let's continue.

21 **MR. YOUNG:** Staff notes that Intervenor
22 Federal Executive Agencies has filed a motion for leave
23 to consider its late-filed prehearing statement due to
24 poor weather and driving conditions. The motion is
25 unopposed. Staff recommends that the motion be granted.

1 Staff would note that FEA's position -- if the
2 Commissioner -- if the Prehearing Officer grants the
3 motion, the FEA's position is already stated as
4 reflected in the Draft Prehearing Order.

5 **COMMISSIONER GRAHAM:** We'll grant that motion.

6 **MR. YOUNG:** The next preliminary matter staff
7 would note is that South Florida, South Florida Hospital
8 Association -- Hospital and Healthcare Association has
9 moved, has filed a motion to compel discovery from FPL.
10 FPL filed a response to the motion.

11 On Friday, August 10th, 2012, SFHHA filed an
12 unopposed motion to suspend its motion to compel due to
13 the fact that the parties are trying to resolve their
14 dispute between, amongst themselves.

15 **COMMISSIONER GRAHAM:** So basically that's just
16 on hold?

17 **MR. YOUNG:** Yes.

18 **COMMISSIONER GRAHAM:** Got you.

19 **MR. YOUNG:** The other preliminary matter is
20 staff notes that Intervenor Larry Nelson has filed a
21 motion for declaratory relief regarding the informal
22 issue identification process in this docket and requests
23 that his participation or lack of participation in such
24 proceedings is of no effect whatsoever in terms of the
25 word limits on positions on issues or in terms of

1 limiting the issues set forth in the prehearing
2 statement. Staff recommends that the Prehearing Officer
3 find this motion moot.

4 Agreements made by parties during the informal
5 process are not binding upon the parties until
6 officially, until official action is taken by the
7 presiding officer. Moreover, issues are not formally
8 adopted until the Prehearing Conference by the presiding
9 officer.

10 **CHAIRMAN GRAHAM:** Okay. I declare that issue
11 moot. Next.

12 **MR. YOUNG:** Staff has prepared a cover sheet
13 that, that can be used for exhibits, which Ms. Klancke
14 is going to pass out right now, at the hearing if a
15 party has not already prepared its cover sheet for an
16 exhibit that they plan to use during the course of the
17 hearing.

18 **COMMISSIONER GRAHAM:** Okay. I will note under
19 Rule 28-106.211, as Prehearing Officer in this
20 proceeding I am charged with the duty of issuing orders
21 necessary to effectuate, to effectuate discovery,
22 prevent delays, and promote a just, speedy, and
23 inexpensive determination of all aspects of this case.

24 That being said, the issues pertaining to
25 Docket, Docket [sic] Number PSC-08-0591-PCD-EI, which is

1 a petition for determination of need for a Cape
2 Canaveral plant, would not be appropriate issues to
3 raise in this docket, and therefore cross-examination
4 questions will not be appropriate for this docket.

5 Similarly, Order Number PSC-09-0855-FOF-EG,
6 which is the Commission established the annual numeric
7 goals for summer peak demand, winter peak demand, annual
8 conservation consumption for Florida Power & Light, and
9 approval of their, Florida Power & Light's DS -- DSM
10 plan pursuant to Rule 25-17.0021 is also not going to be
11 cross-examined in this docket and is not appropriate for
12 this docket.

13 If you want to speak to the conservation
14 issues, we have an annual conservation clause. Staff,
15 is that annually or is that upon demand?

16 **COMMISSION STAFF:** Annually.

17 **COMMISSIONER GRAHAM:** Annually. And those
18 conservation issues will be addressed in that, in that
19 hearing. Are there any questions before we move on?

20 **MR. NELSON:** I'm sorry. I didn't catch all
21 the part about the conservation issues. What issues are
22 not subject in this proceeding?

23 **COMMISSIONER GRAHAM:** Keino.

24 **MR. YOUNG:** I would say, sir, that review,
25 review and approval of recovery, prudently incurred

1 conservation expenses in the annual conservation cost
2 recovery clause proceedings. That's where the issues --
3 issues regarding FPL's performance in achieving its
4 goals may be raised in that proceeding or in future
5 conservation goals proceedings and are not appropriate
6 for consideration in the base rate proceedings. So the
7 issues regarding FPL's performance in achieving its
8 conservation goals may be raised in that proceeding, in
9 the conservation proceeding.

10 **MR. NELSON:** I, I understand, I understand
11 about the conservation goals being a separate
12 proceeding. But in, in Section 366.82(10) it says, The
13 Commission shall also consider the performance of each
14 utility pursuant to the Energy Conservation Act when
15 establishing rates for those utilities over which the
16 Commission has rate setting authority. And that's a
17 separate subparagraph from any of the subparagraphs
18 talking about achievement of the goals or setting of the
19 goals.

20 **COMMISSIONER GRAHAM:** Staff?

21 **MS. HELTON:** Mr. Chairman, Mr. Nelson, it's my
22 belief that that provision that you just read to us from
23 the FEECA statute, which is the -- I knew I shouldn't
24 have said that -- the Florida Energy Efficiency and
25 Conservation Act, relates to the annual clause

1 proceeding that the Commission holds every year in
2 November for cost recovery, for conservation costs.
3 That's also known as the ECCR clause, innovation --
4 energy conservation cost recovery. There's two
5 different -- there's different types of ratemaking
6 processes here at the Commission, and that docket, the
7 ECCR docket is designed to address the cost recovery for
8 conservation costs.

9 **MR. NELSON:** Well, I don't know. The plain
10 language says, The Commission shall also consider the
11 performance when establishing rates for those utilities
12 over which the Commission has rate setting authority.
13 So it would seem to me that it's supposed to be
14 considered in this proceeding. That's my position.

15 **MS. HELTON:** Not that I would like to engage
16 in argument, but the Commission has consistently
17 interpreted that language to mean that it is addressed
18 in the ECCR docket.

19 **CHAIRMAN GRAHAM:** I agree. Okay. Staff.

20 **MR. MOYLE:** Can I, can I just ask a point of
21 clarification on the two rulings?

22 **COMMISSIONER GRAHAM:** Sure. Sure.

23 **MR. MOYLE:** I mean, my understanding of them,
24 one relates to Canaveral and the other is the
25 conservation. But the intent is to not relitigate like

1 on Cape Canaveral the need for Cape Canaveral. That's
2 already been decided, over and done with. There is an
3 issue related to Canaveral with respect to a step
4 increase, so we're free to ask questions about the step
5 increase in matters that have been identified. And, and
6 so it's not impacting any issues in here, but we're just
7 not relitigating things that have already been decided.
8 Is that sort of the intent of the --

9 **COMMISSIONER GRAHAM:** The intent is we're not
10 going to rehear either something that has a different
11 forum for itself or something that's already been
12 determined. And in the Canaveral case we're not going
13 to re, we're not going to rehear or relitigate the need
14 determination for Canaveral.

15 **MR. MOYLE:** Okay. Thank you.

16 **COMMISSIONER GRAHAM:** Are there any other
17 clarifying questions before I move on? I don't mean to
18 go too quickly. Actually that's not true. I do mean to
19 go too quickly. (Laughter.) But I just want to make
20 sure that we're clear before we move on.

21 Okay. Staff.

22 **MR. YOUNG:** All right. Staff recommends,
23 staff recommends that if the Prehearing Officer wishes
24 to hear oral arguments including, oral arguments on,
25 including any particular issue, said arguments be taken

1 up during the issue and position section of this
2 Prehearing Conference.

3 **COMMISSIONER GRAHAM:** Let's go through this
4 Prehearing Order now and we'll go through section by
5 section. I want parties to let me know if there's any
6 corrections or changes to be made. We may go quickly
7 through a lot of this, so speak up if you have any
8 changes or corrections to be made.

9 Case background. Staff, you're going to have
10 to help me with some of this. Any changes made for case
11 background?

12 Conduct of proceedings. And if you want to
13 know where we are, we are on page 2 of the Prehearing
14 Order -- page 3, rather.

15 Jurisdiction? Procedure for handling
16 confidential information.

17 Section V, prefiled testimony and exhibits,
18 witnesses.

19 **MR. YOUNG:** Mr. Chairman, staff recommends
20 that witnesses' summaries be limited to no more than
21 five minutes per witness. If a witness has filed both
22 direct and rebuttal, staff recommends that he or she
23 receives five minutes for direct and five minutes for
24 rebuttal. If both direct and rebuttal testimony,
25 testimonies are taken together, staff recommends that

1 the witness be given ten minutes total.

2 **COMMISSIONER GRAHAM:** Now we've done this
3 different ways. We've done it where there was a request
4 for a summary at the beginning and we've done it when
5 there was no summary. I guess I'm asking the question
6 if there is a, a demand one way or the other.

7 **MR. LITCHFIELD:** FPL would request the
8 opportunity to have their witnesses present a summary
9 consistent within the time frame staff is recommending.

10 **COMMISSIONER GRAHAM:** Anybody have an opposing
11 view of that?

12 **MR. MOYLE:** No. FIPUG finds it helpful to
13 have the summaries and would support having a
14 five-minute summary.

15 **MR. McGLOTHLIN:** OPC intends to offer
16 summaries, yes.

17 **MR. WISEMAN:** SFHHA supports having a summary
18 as well.

19 **COMMISSIONER GRAHAM:** You guys realize we only
20 have two weeks; right? Okay.

21 All right, staff.

22 **MR. YOUNG:** That ruling will be noted in the
23 ruling section of the Prehearing Order.

24 Staff would note that FIPUG objects, in their
25 prehearing statement they noted that they object, they

1 object to any witness offering expert opinion who is not
2 properly qualified as an expert in a particular subject
3 matter area. Staff requests clarification on FIPUG's
4 objection.

5 **COMMISSIONER GRAHAM:** Mr. Moyle.

6 **MR. MOYLE:** Sure. And, and the purpose of
7 that is there's two types of witnesses as, as we
8 typically experience, a fact witness and an expert
9 witness. And an expert witness is offered to help a
10 trier of fact who may not have a good understanding of
11 the facts. And typically experts are designated as
12 expert: I'm an expert. What are the areas that you're
13 an expert in? Transmission line management. And they
14 go through their background and then they provide an
15 opinion about transmission line management and it's
16 clearly articulated.

17 In this case and in other cases before the
18 Commission there's not a clear delineation as to whether
19 someone is testifying as a fact witness or as an expert
20 witness. And sometimes FIPUG asks the questions are you
21 an expert, are you a fact witness, and it becomes less
22 than clear. And so we think it's a better practice, to
23 the extent someone is offering an expert opinion, that
24 that be clear and that the witness be qualified as, as
25 an expert and it not be kind of mushy.

1 And so to the extent that there are witnesses
2 who are testifying -- Mr. Reed, for example, you know,
3 he's testifying as an expert in certain areas, it's
4 clear. But I think the way I understand it is a lot of
5 witnesses are, are being offered as, as experts but they
6 haven't identified their areas of expertise or there
7 hasn't been a determination that that expert testimony
8 is, is even needed with respect to a particular issue of
9 fact that is particularly complex for which expert
10 opinion is, is being sought. So it's an objection that,
11 you know, that we've registered for the record and
12 that's sort of the thinking and the rationale behind it.

13 **COMMISSIONER GRAHAM:** Now you're not looking
14 to limit testimony that is not from an expert. You just
15 want to make sure that there's a distinction that this
16 person -- because in the past we've always let all, most
17 testimony come in and we can decide to give it the
18 weight that it's due at the time that we're reviewing
19 the testimony.

20 **MR. MOYLE:** Right. And I, I think -- let me
21 give you a for example. ROE, return on equity, that'll
22 be a big issue in the case, and there's clearly some
23 experts. There are folks that most of them have spent a
24 lot of time in universities, have Ph.Ds after their,
25 their names, give a lot of testimony around the country

1 on ROE. And then there are some others, for example,
2 maybe the President of Florida Power & Light, that has a
3 business sense of, of an ROE and why ROE may be
4 important but is not an expert. And so we just want a
5 clarity so to the extent that the Commission is relying
6 on expert opinion, that it's clear that somebody is
7 being offered as an expert as compared to somebody being
8 offered as a fact witness.

9 **MR. LITCHFIELD:** Commissioner Graham, may FPL
10 be heard on this subject?

11 **COMMISSIONER GRAHAM:** Yes.

12 **MR. LITCHFIELD:** First of all, and this is
13 frankly my secondary point, the Commission here
14 historically has exercised fairly broad latitude in
15 terms of hearing from witnesses, both mixed fact and
16 policy witnesses. But, moreover, and this is my primary
17 point, the Order Establishing Procedure is pretty clear.

18 On page -- well, it's paragraph, subsection
19 VI, prehearing procedures, and letter B, any objection
20 to a witness's qualifications, a witness's
21 qualifications as an expert must be made by this point
22 in time.

23 One of the advantages of the process that this
24 Commission employs in requiring prefiled testimony and
25 extensive discovery is that it affords all parties the

1 opportunity to test the relative expertise of every
2 witness and indeed every statement that is intended to
3 be submitted as record evidence in this proceeding on
4 the basis of, of their qualifications.

5 And Mr. Moyle and others have had that
6 opportunity for some months now and depositions have
7 been had and written discovery has been asked and
8 answered. And we would respectfully submit that in
9 order to promote the just, speedy, and inexpensive
10 determination of all aspects of this case this is an
11 important provision in the OEP and ought to be adhered
12 to.

13 Mr. Moyle's objection really sounds to me like
14 more of a generic placeholder so that he can raise
15 specific objections to a specific witness's expertise as
16 he deems appropriate as the proceeding rolls out, and we
17 submit that that's not consistent with the Order
18 Establishing Procedure or with the resolution of the
19 issues in a just, speedy, and inexpensive way.

20 **COMMISSIONER GRAHAM:** What a great way of
21 re quoting the Prehearing Officer. (Laughter.)

22 Staff.

23 **MR. YOUNG:** Staff, staff has to agree with
24 Florida Power & Light. The OEP specifically establishes
25 in terms of the motion to strike prefiled testimony and

1 exhibits. Now if Mr. Moyle, as Mr. Litchfield
2 indicated, if he wants to place and put a, possibly a
3 placeholder I think as a standing objection but wants to
4 make specific objections during the course of the
5 hearing, then he is well within his grounds to do so.

6 I just don't think we, at this point we don't
7 have any evidence, any testimony, and I think his
8 objection as to the witness's, outside the scope of the
9 witness's testimony or anything of that nature needs to
10 be made at that time during the questioning and
11 answering cross-examination period.

12 **MR. LITCHFIELD:** Commissioner Graham, I would,
13 I would agree with Mr. Young that to the extent that any
14 witness, FPL or otherwise, at the hearing in response to
15 cross-examination produces some statement that is
16 purported to be an expert opinion and is not consistent
17 with the scope of expertise that is already the basis
18 for their prefiled testimony, that that might be fair
19 game to raise an objection at that time.

20 But we would object to Mr. Moyle being given
21 a, quote, unquote, placeholder for objections generally
22 with respect to the expertise of the --

23 (Interruption. Technical difficulties with
24 sound system.)

25 And maybe, maybe, maybe Mr. Young and I are

1 indeed on the same page, but I just wanted to make sure
2 that that clarification was offered.

3 **MR. MOYLE:** And I guess, I mean, we, we can
4 deal with it at --

5 **COMMISSIONER GRAHAM:** It looks like for
6 technical difficulties we need to take about a
7 five-minute break. So take a five-minute break.

8 (Recess taken.)

9 I have to apologize for doing that to you and
10 not giving you your five minutes, but I figure let's
11 keep mushing on while we can. We'll probably take a
12 break in about an hour, hour and a half because every
13 two hours or so I need to let my court reporter rest her
14 little fingers.

15 Mr. Moyle.

16 **MR. MOYLE:** Thank you. So the order that was
17 referenced on page 6, paragraph 8, states, any
18 objections to a witness's qualifications as an expert,
19 failure to identify such, such objection will result in
20 restriction of a party's ability to conduct voir dire,
21 absent a showing of good cause at the time the witness
22 is offered for cross-examination at hearing.

23 We made the objection so that to the extent
24 somebody is offering an expert opinion and don't have --
25 and they do not have expertise in the area for which

1 they're offering the opinion, we want to be able to
2 point that out.

3 And I'll give you an example. Mr. Litchfield
4 said, well, you know, we've had depositions and you
5 should have been able to sort it out then. We have had
6 depositions, but that's all part of pretrial and getting
7 ready for trial. When we actually have the trial,
8 witnesses are taking the stand, as Mr. Young points out,
9 that's the time to register the objection that this
10 witness is offering an opinion in an area for which he
11 has no qualification, no expertise, and we object to
12 that opinion.

13 And I'll give you just an example because I
14 think it'll help clarify the point. FPL has a witness,
15 Rene Silva, who has expertise in transmission planning
16 and planning the system. He doesn't have expertise in
17 real estate, in land values, yet he offers an opinion
18 about FPL's purchase of certain land and said, no, we
19 bought it now because it was, it was a good price and we
20 think the price in the future is going to go up. Well,
21 you know, I mean, that's, that's an opinion that, that a
22 lot of people could provide. But not having any kind of
23 training in real estate, in MAI appraisal methodology,
24 just kind of a here's what I think, and to offer that as
25 an opinion should not be allowed. And we want to be

1 able to preserve the right to bring something like that
2 up and challenge his qualifications at hearing.

3 So I hope that helps clarify a little bit the
4 reason for the objection. And, you know, to the extent
5 that we can raise it at hearing, as Mr. Young suggests,
6 that's fine. But we, you know, we don't, we don't want
7 there just to be kind of a blanket, you know, everybody
8 is an expert for everything because they have not gone
9 through and said, you know, witness so and so, are you
10 testifying as an expert, you know? Yes. What are your
11 areas of expertise? I'm an expert in accounting, or
12 whatever it is. If that were done, that would be very
13 simple and we would have that. But like Mr. Silva, you
14 have somebody offering an opinion about land who, you
15 know, who's not qualified to offer such an opinion.

16 **COMMISSIONER GRAHAM:** I think we've dealt with
17 this issue before in the past and I don't have a problem
18 with the way we've handled it in the past where if the
19 subject came up for, say, FIPUG to make the objection
20 saying that we do not think this witness is an expert on
21 this issue and state your objection, and we can go
22 through the back and forth on that, as, as we will, and
23 the Chairman will make that determination at the time.
24 And more than likely, and I can't speak for the
25 Chairman, will allow the testimony because we still want

1 to hear what they have to say, but we'll give it the
2 weight that it's due at the time.

3 So that being said, I'm going to have to
4 overrule your objection here in the prehearing. But you
5 understand how we're going to handle this stuff in the
6 hearing itself.

7 **MR. MOYLE:** Thank you.

8 **MR. SAPORITO:** Commissioner, Commissioner
9 Graham, I would like to be heard on this for
10 clarification as a pro se litigant in this proceeding.

11 It's my understanding in reading this
12 subsection 8 under Section VI of the prehearing
13 procedures, that Intervenors in this proceeding, when a,
14 when a witness has testified, that in an area where they
15 weren't priorly -- previously identified by the party
16 bringing that witness as an expert witness in the
17 specific area that they're testifying, that we shall
18 have a right to voir dire the witness's qualifications
19 on that subject area.

20 And to the extent FPL's representatives spoke
21 about prehearing matters such as depositions when these
22 issues could have been challenged, you know, I attended
23 the service hearings, so there were depositions that
24 were taken and I was in -- I couldn't be in two places
25 at one time. So it's my understanding that this

1 preserves my right as, as an Intervenor to challenge the
2 qualifications of any witness who's speaking about a
3 subject where they weren't prequalified or admitted to
4 being an expert in.

5 **COMMISSIONER GRAHAM:** Well, as was stated
6 earlier, most of that work should have been done prior
7 to where we are here now. You, you do have the right in
8 the, in the hearing to challenge somebody's expertise.
9 Is that correct?

10 **MS. HELTON:** You do have the right during the
11 course of a hearing to challenge whether someone is an
12 expert or not. And the reason why I think everyone is
13 worried about that is because if you're an expert, then
14 they can give you opinion testimony which you can accept
15 and give it the weight that it's due.

16 The purpose of this provision in the Order
17 Establishing Procedure is to know now who will be
18 challenged as an expert so that the time for voir dire,
19 which can be lengthy, can be taken into account when
20 setting the, the schedule for the hearing and having an
21 idea how long the testimony of a particular witness will
22 take.

23 **COMMISSIONER GRAHAM:** Did that answer your
24 question?

25 **MR. SAPORITO:** Well, it's -- well, that

1 answers it to the extent that I understand I'm allowed
2 to challenge a witness's qualifications upon the
3 testimony that they're giving on a particular subject
4 matter. Is that not correct?

5 **COMMISSIONER GRAHAM:** Well, your, your ability
6 to challenge will be why do you consider yourself an
7 expert on such and such issue? And they'll either say I
8 am not an expert on that issue, or they will say I
9 graduated from such and such school, I've worked in such
10 and such this and this is what my background has been
11 for the last 30 years. You challenging past that, that
12 time is already said and gone.

13 **MS. HELTON:** Mr. Chairman, if Mr. Saporito
14 could speak up into the microphone a little bit. I'm
15 having a hard time listening.

16 **COMMISSIONER GRAHAM:** He's done.

17 Okay. Section VI, order of witnesses.

18 **MS. WHITE:** Commissioner Graham, FEA has some
19 additions highlighting the issue number of our witness,
20 that our witnesses are speaking to.

21 Michael Gorman's testimony covers Issues
22 Number 27, 51 --

23 **COMMISSIONER GRAHAM:** Hold -- you're going to
24 have to hold on just a second.

25 **MS. WHITE:** Okay.

1 **COMMISSIONER GRAHAM:** Can you give me --

2 **MR. YOUNG:** Page 6.

3 **COMMISSIONER GRAHAM:** What's the name again?

4 **MS. WHITE:** Michael Gorman.

5 **COMMISSIONER GRAHAM:** Okay.

6 **MS. WHITE:** 27, 51, 54, and 58. And Robert
7 Stephens, Issues 139 and 142. Thank you.

8 **MR. BUTLER:** Commissioner Graham.

9 **COMMISSIONER GRAHAM:** Yes.

10 **MR. BUTLER:** On FPL witness Kim Ousdahl on
11 page 5, I wanted to note there's nothing to change about
12 the issues she's speaking to. But she will be
13 unavailable on August 24, Friday, August 24, and Monday,
14 August 27. She'll be available any of the other days of
15 the scheduled hearing time, but I just wanted to make
16 all of the parties aware of that.

17 **COMMISSIONER GRAHAM:** She's unavailable on the
18 24th and the 27th?

19 **MR. BUTLER:** That's right.

20 **COMMISSIONER GRAHAM:** Okay.

21 **MR. BUTLER:** And the other thing, I'm sorry,
22 one other witness. For Mr. Reed that appears at the
23 very top of the list, he may end up needing to do his
24 rebuttal testimony at the same time as he does his
25 direct testimony.

1 **COMMISSIONER GRAHAM:** Well, this is probably a
2 good enough time to bring that question up. Is there
3 anybody that's opposed to giving the rebuttal testimony
4 and the direct testimony at the same time in this
5 process?

6 **MR. BUTLER:** We do not want to do that for the
7 great majority of our witnesses. There may be some
8 flexibility on particular witnesses, but in general we
9 feel that we have and, you know, want to exercise our
10 right to conclude the case as the party with the burden
11 of proof on the issues in the proceeding. So for the
12 most part, we prefer the order as it's set out where we
13 would have the witnesses appearing separately on
14 rebuttal after the Intervenor witnesses.

15 **COMMISSIONER GRAHAM:** Anybody else?

16 **MR. MOYLE:** We, on behalf of FIPUG, we were
17 hoping to see a couple of plus signs next to some of
18 these witnesses. So I guess Mr. Reed may have a
19 tentative plus sign. Because if I understand it, a plus
20 sign means they'll present direct and rebuttal testimony
21 together. We found that it does expedite things, it
22 saves time, and we surely have no objection to it. But,
23 you know, it's, it's FPL's case. But it doesn't appear
24 that there's any witnesses at this point that are going
25 to present both rebuttal and direct at the same time.

1 I would assume that they would have the
2 latitude to change their mind at some point, and the
3 failure to put an X next to them today doesn't mean they
4 can't make that decision down the road.

5 **COMMISSIONER GRAHAM:** Well, actually I like to
6 see that decision made, and I guess if this doesn't do
7 anything wrong to staff, by 5:00 tomorrow.

8 **MR. YOUNG:** That's fine.

9 **COMMISSIONER GRAHAM:** I mean, because I think
10 that everybody else would like to know that if they're
11 dealing with both the direct and rebuttal or just the
12 direct followed by the rebuttal. So if there are some
13 that you are willing to bring both up together, if you
14 would submit that to staff by 5:00 tomorrow.

15 **MR. BUTLER:** We will do so. Commissioner, one
16 thing I would observe though, just to be sure we don't
17 limit flexibility to everybody's benefit, it is possible
18 that things will develop further into the proceeding
19 where it makes sense for everybody's benefit to combine
20 testimonies. And if that circumstance arose, we would
21 certainly bring it to everyone's attention, the
22 Commissioners' attention, and see if it made sense to do
23 so then. But we will endeavor to identify any that we
24 can at this point and add the pluses.

25 **CHAIRMAN GRAHAM:** I am always open and willing

1 for you guys to come and sing *Kumbaya* and see if we can
2 cut a lot of these people out of here.

3 **MR. BUTLER:** Okay.

4 **MR. MOYLE:** Mr. Chairman, similar with, with
5 Ms. Ousdahl and maybe Mr. Reed, FIPUG has, has an expert
6 witness, Jeff Pollock, and he is obligated during the
7 second week of the hearing to other commitments in other
8 jurisdictions. So we were going to raise that with you
9 and the parties and ask that, that he be allowed to
10 testify at some point as appropriate during the, the
11 first week. And I'm sure we can get with the other
12 parties, and I don't want to interrupt their flow beyond
13 their first or second day, but at some point during the
14 first week if we could get him on and off, that would be
15 appreciated.

16 **COMMISSIONER GRAHAM:** Well, I don't have a
17 problem with that, and I'm sure a lot of the other
18 parties will not have a problem with that. But just so
19 you know, so everybody knows that the order that we have
20 established here, we're not giving anybody any set
21 times. I mean, I've played that game before where we're
22 done at noon on Wednesday because we've got to wait for
23 somebody for noon on Thursday. But if you guys are
24 willing to move things around, if it moves with the
25 flow, I don't have a problem with that at all, and I'm

1 sure the Chairman will not have a problem with that at
2 all, just as long as FIPUG is not arguing about
3 something that Florida Power & Light is trying to do or
4 vice versa.

5 **MR. MOYLE:** Sure. No. And I just think for
6 planning purposes, to the extent no one has an
7 objection, I think Vicki Kaufman, my co-counsel in this,
8 is going to be putting on the witness, I think. We'll
9 work with the parties to find an appropriate time during
10 the first week. So thank you.

11 **COMMISSIONER GRAHAM:** Yes, sir.

12 **MR. McGLOTHLIN:** Joe McGlothlin. OPC
13 certainly will work with Mr. Moyle to accommodate his
14 witness's needs. And I just wanted to add this comment.
15 Our plan and our hope is to call our witnesses in the
16 order that's reflected here. I am aware that there are
17 some limitations on availabilities. It's too early to
18 determine now whether that will mesh with how far we get
19 at that time. So we will alert you and the other
20 parties as to any similar needs for flexibility when the
21 need arises.

22 **COMMISSIONER GRAHAM:** And I don't see
23 flexibility -- I don't want to go off too much on a limb
24 here. I don't, I don't see flexibility being a problem.
25 What I don't want to do, as I stated earlier, is for us

1 to be stagnant for four hours waiting for some witness
2 to get here.

3 Yes, sir.

4 **MR. REHWINKEL:** Commissioner Graham, Charles
5 Rehwinkel with Public Counsel. And to follow on
6 Mr. McGlothlin's point, one of the things we're trying
7 to do to assess our witnesses' availability within the
8 time slots that they have given us is to, the best we
9 can, handicap the pace of the hearing.

10 Do you have any -- are you prepared at this
11 time to give us an idea of what kind of day you're
12 planning to work with as far as -- I say you -- I know
13 the Commission as far as how late in the day you intend
14 to go? Do you have that --

15 **COMMISSIONER GRAHAM:** It's my understanding
16 that the Chairman plans on going until about 7:00 every
17 night for at least the first four nights. And then,
18 therefore, you can kind of gauge from there how things
19 look like they're, they're falling out. If it looks
20 like we may be running short of time, we may be going to
21 7:00 the entire two weeks. If it looks like we're doing
22 all right, then, you know, he may be cutting it short at
23 5:00. But I would anticipate us all starting at 9:30,
24 is it normal? Starting at 9:30 and ending at 7:00.

25 **MR. REHWINKEL:** That's helpful. Thank you.

1 **COMMISSIONER GRAHAM:** Yes, sir.

2 **MR. WISEMAN:** Mr. Chair, Commissioner, Ken
3 Wiseman for SFHHA. I also want to put the parties on
4 notice that two of SFHHA's witnesses, Mr. Kollen and Mr.
5 Baron, also have dates that they need to be in
6 regulatory proceedings in other states. And I don't
7 have those dates with me right now, but I'll get them
8 and circulate them to the parties hopefully by tomorrow,
9 and hopefully we can work around those dates as well.

10 **COMMISSIONER GRAHAM:** I just, once again, I, I
11 don't foresee it being an issue, but I don't want to
12 hear anybody crying that their witness didn't get to get
13 in there because we had to hold things up and that
14 witness basically got skipped.

15 Anybody else on order of witnesses?

16 **MR. YOUNG:** Yes, sir. Staff believes its
17 witnesses, Rhonda Hicks and Kathy Welch, may be
18 stipulated.

19 **COMMISSIONER GRAHAM:** Oh, you do, do you?

20 (Laughter.)

21 Any parties object to that?

22 **MR. BUTLER:** FPL would not object, if
23 Ms. Welch's deposition is included in the record as an
24 exhibit. There's been some e-mail traffic to that
25 effect among several of the parties, all of whom seem to

1 be taking the same position. So perhaps that would be a
2 basis to resolve staff's, or address staff's concern.

3 **MR. YOUNG:** That's not a problem.

4 **COMMISSIONER GRAHAM:** Any other comments on
5 stipulation of staff witnesses?

6 **MR. REHWINKEL:** No. I think the Public
7 Counsel started that with our, our offer to stipulate to
8 both with Ms. Welch's deposition going in along with the
9 exhibits and the testimony. So we, we concur.

10 **MR. MOYLE:** We're good.

11 **COMMISSIONER GRAHAM:** All right. It sounds
12 like we're good. So those two, those two witnesses,
13 Kathy Welch and Rhonda Hicks, will be stipulated with
14 the provision that was stated by Florida Power & Light.

15 **MR. YOUNG:** Thank you.

16 **COMMISSIONER GRAHAM:** Anything else in order
17 of witnesses?

18 Okay. Basic positions.

19 **MR. YOUNG:** I'm sorry, sir. If we can go
20 back. It came to my attention on the order of witnesses
21 that, that Algenol needs to identify the issue that its
22 witness is going to be testifying on. Also, I think
23 FRF, FRF and the rest of FPL's rebuttal witnesses.

24 **MR. LITCHFIELD:** We can commit to getting
25 those in by tomorrow close of business as well.

1 **MR. LAVIA:** Mr. Chairman, for FRF, J. Lavia.
2 We have sent the issues and it's on the current draft,
3 Mr. Young.

4 **MR. YOUNG:** Okay.

5 **MR. LAVIA:** It's been included in the most
6 recent draft. I can read them again, if you want. But
7 --

8 **COMMISSIONER GRAHAM:** Is that Steve Chriss?

9 **MR. LAVIA:** Yes.

10 **MR. YOUNG:** Yes.

11 **COMMISSIONER GRAHAM:** Yeah. I got it on this
12 draft.

13 **MR. HA:** Mr. Young, Quang Ha, Quang Ha for
14 Algenol Biofuels. We'll get you those issues by, by
15 tomorrow 5:00 as well.

16 Also, while I have the microphone, I will also
17 need to check with Mr. Woods' availability during the
18 hearing time, but I do know for a fact that he will not
19 be available on the 20th and the 22nd of August. But we
20 will work with everyone's schedules to get him in front
21 of all those who want to examine him. Thank you.

22 **COMMISSIONER GRAHAM:** Okay. All right.
23 Nothing under basic positions. Keino, do you have
24 something to add there? Are you good?

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

1 **COMMISSIONER GRAHAM:** Okay. Issues and
2 positions.

3 **MR. YOUNG:** Mr. Chairman, staff would note
4 that Section VI of the Order Establishing Procedure
5 issued in this case on March 26th, 2012, states that
6 unless a matter is not an issue for the party, each
7 party shall take a position on each issue by the time of
8 the Prehearing Conference, which we are now here, or by
9 such later time as may be permitted by the presiding
10 officer. If a party is unable through diligence and
11 good faith efforts to take a position on a matter at
12 issue for that party, it shall explicitly state in its
13 prehearing statement why it cannot take a position. If
14 the, if the presiding officer finds that the party has
15 acted diligently and in good faith to take a position,
16 and further finds that a party's failure to take a
17 position will not prejudice the other parties or confuse
18 the proceedings, the party may maintain a no position at
19 this time. Prior to the hearing and thereafter,
20 identify its position in its post-hearing statement on
21 the issues. In the absence of such findings by the
22 presiding officer, the party shall have waived the
23 entire issue and the party's position shall, shall be
24 shown as no position in the Prehearing Order.

25 When an issue or position have been properly

1 identified and any party may adopt that issue or
2 position in the post-hearing statement. The Commission
3 shall, shall take no position at this time or similar
4 position on any issue without having to make such -- not
5 having to make the showing described above.

6 So, Mr. Chairman, Mr. Chairman, as stated, the
7 parties must take a position by the end of the
8 Prehearing Conference. Otherwise, that position becomes
9 no position.

10 **COMMISSIONER GRAHAM:** All right. We're going
11 to go through the issues by section. If there's any
12 section, if there's any issues within a section that you
13 wish to -- if there's any issues within a section that I
14 wish to hear oral arguments about, I will ask for the
15 arguments. Otherwise, I just want to know if there's
16 any change in your position. Also, as stated in Section
17 VI of Order Establishing Procedure issued in this case
18 on March 26th, 2012.

19 All right, staff.

20 **MR. YOUNG:** That the parties must take a
21 position. To the extent that the positions change
22 during the course of this Prehearing Conference, staff
23 would ask that additional time be no later than
24 1:00 p.m. tomorrow, Wednesday, August 15th, 2012, with
25 no exceptions for the parties to provide the position.

1 Staff would ask that if the positions are not received
2 by that time, that the position, the party's position
3 will be no position.

4 Mr. Chairman? Mr. Chairman?

5 **COMMISSIONER GRAHAM:** Yes, sir.

6 **MR. YOUNG:** Staff would note that we, we
7 distributed some documents. First, on the proposed new
8 language to Issues 19 and 39, this is a one-sheet
9 document. All the parties should have received that
10 document. And we will, we will be addressing it during
11 these, during the time, the appropriate time as they're
12 called in the sections.

13 And, also, the objection -- staff has handed
14 out a, a packet of what I call, several sheets of paper
15 stapled together, the title "Objected Issues," for your
16 ease of reference.

17 Also, staff would note that during the
18 appropriate time on Issue 72 staff has a, I think it's a
19 correction that needs to be made. It's listed that the,
20 it's listed as the ECRC and it should be ECCR. And I
21 believe that the parties, as we go along the parties
22 have some changes in positions that they would like to
23 bring forth to the presiding officer's attention.

24 **COMMISSIONER GRAHAM:** All right. Well, let's
25 start off with the legal issues. Issues 1 through 8.

1 We have an objection on Issue Number 5. Let's hear the
2 objection.

3 **MR. BUTLER:** Mr. Chairman, I'm sorry.

4 **MR. YOUNG:** I believe, I believe that's
5 Mr. Nelson's issue, by the way.

6 **COMMISSIONER GRAHAM:** Actually I want to hear
7 the objection.

8 **MR. YOUNG:** Okay.

9 **MR. BUTLER:** Commissioner Graham, on Issue 5,
10 I'm looking at the sheet that staff had handed out where
11 they have a rewording to the issue. And with a slight
12 revision to that, I think we could withdraw our
13 objection. So perhaps before stating the objection, let
14 me see if that would work to resolve it.

15 Staff's sheet has the issue read: Does the
16 Commission possess the power to grant a 25 basis point
17 performance incentive to FPL without specific statutory
18 authority? We would be willing to have that issue
19 included, would withdraw our objection if we just ended
20 it after "performance incentive to FPL," question mark.
21 Delete the phrase "without specific statutory
22 authority." If that's acceptable to the parties, then
23 we would withdraw our objection.

24 **COMMISSIONER GRAHAM:** The question came from
25 Mr. --

1 **MR. YOUNG:** Mr. Nelson.

2 **COMMISSIONER GRAHAM:** Mr. Nelson.

3 **MR. NELSON:** Yes. Thank you, Your Honor.

4 Larry Nelson.

5 First, I wanted to address the, the document
6 that staff handed out this morning that says Objected
7 Issues. For the, for the last five days and three
8 revisions we've been working off of the, the proposed
9 hearing order, and the, the document that was handed out
10 this morning, it's not, it's not accurate. This --
11 these Issues 5, 6, and 7, they were not the original
12 Issues 5, 6, and 7. They were alternative language that
13 I had offered. They are still the original Issues 5, 6,
14 and 7 which some parties have taken positions on.
15 Mr. Saporito took a position on the original Issue 5.
16 So I can't in any way adopt or endorse the new document
17 that I was handed this morning that has a lot of changes
18 in it.

19 But beyond that, let me, let me address the
20 substance on this. And the substance on this is that,
21 my position is that Issues 5, 6, and 7 all go hand in
22 hand and so they should be addressed at, at the same
23 time.

24 The, the proposal from, from FPL is that these
25 issues concerning the performance incentive, the adder,

1 are subsumed under an existing issue that had already
2 been proposed, Number 54, which said, should the adder
3 be approved? And my position is that that doesn't
4 identify legal or factual issues. It's really no
5 different than saying should the rate increase be
6 approved? It doesn't really say anything.

7 So my position in my three proposed issues,
8 either the original ones or the alternative language
9 which was meant to be more neutral, are that because
10 this is a future contingent reward that is meant to be
11 an addition to the ROE that's, that's set, it would be
12 different if they simply were asking, you know, can we
13 have 11.5% because we've done a good job? I wouldn't
14 have any objection with that. But when they say, you
15 know, can we have an additional quarter percentage,
16 quarter point, 25 basis points, in the future if we
17 continue to do a good job, if we continue to have the
18 lowest bill?

19 And my position is that that, that raises
20 three issues. One is can they get a future contingent
21 reward of that nature without specific statutory
22 authority? So, so I'm unwilling to skip the statutory
23 authority part because of its future contingent nature.

24 And then the second issue in my, by my mind is
25 if the Commission has the power to grant that type of

1 future contingent performance incentive without specific
2 legislative authority, then does the Commission have the
3 power to grant it based on a comparison to another
4 company and everything that goes with that as opposed to
5 specific metrics as have been dealt with in previous
6 cases?

7 And then finally the third issue is if the
8 Commission has the power to grant it without specific
9 statutory authority and if they have the power to grant
10 it as against another company, a relative metric instead
11 of an absolute metric, then there are policy questions,
12 and should they grant it based on those policy
13 questions?

14 So I'm, I'm submitting those three issues,
15 specific issues. And the, the rewording of them here on
16 the, the objected issues, the alternate language 5, 6,
17 and 7 adequately addresses how, how I would like them
18 included.

19 **COMMISSIONER GRAHAM:** And I guess the question
20 I have is you don't feel like you can ask those
21 questions of the witness that's speaking to Issue 54?

22 **MR. NELSON:** I certainly could. But, you
23 know, I thought the purpose of identifying legal and
24 factual issues was not to have, you know, umbrellas
25 where all possible issues of fact and law and irrelevant

1 matter could be addressed as to whether, you know, it's
2 appropriate.

3 One could, if the issue is should, is should
4 the adder be approved, then you could be arguing that it
5 should be approved because FPL loves kittens. I thought
6 the purpose was to identify the legal and factual
7 issues. And that's pretty much my argument with regard
8 to most of the issues that, that FPL has objected to and
9 that I have brought.

10 **COMMISSIONER GRAHAM:** FPL.

11 **MR. LITCHFIELD:** Commissioner Graham, the, as
12 we know, the purpose of the issue is simply to identify
13 an issue that then parties can take positions under.
14 And I didn't hear anything from Mr. Nelson in terms of
15 describing the reasons that he would like these three
16 issues added that could not be advanced as a position,
17 as his position under Issue 5.

18 Now Issue 54 already exists; it's very closely
19 worded. We think it would suffice on its own. But in
20 the interest of compromise, as Mr. Butler indicated, we
21 are certainly willing to leave Issue 5 as a legal issue,
22 provided that, that the question mark is placed after
23 "FPL" without the last clause or phrase which implies a
24 position that could be taken in addressing that issue.

25 **COMMISSIONER GRAHAM:** Mr. Nelson does not want

1 to take the, the change of wording in Issue 5.

2 **MR. LITCHFIELD:** In that case we would submit
3 that the issue is subsumed under Issue 54.

4 **COMMISSIONER GRAHAM:** All right.

5 **MR. SAPORITO:** Commissioner Graham, I've
6 taken -- this is Thomas Saporito. I've taken that issue
7 Number 5 of Mr. Nelson's as an issue that I want to
8 speak to as a witness in this proceeding. And I took
9 that issue specifically on the language that Mr. Nelson
10 had on the staff's July 30th, 2012, revised issue list
11 and that it was put under legal issues. And it's my
12 understanding, although I'm pro se, it was put under
13 legal issues because it has those attributes of
14 legislative authority under Section 366.82.

15 FPL's suggestion that that particular issue
16 can be subsumed under Issue 54, which is addressed under
17 the category of cost of capital, is separate and apart
18 from a legal issue. So in my layman's opinion, you
19 cannot take a legal issue because it's referencing a
20 specific statute and subsume it under a cost of capital
21 issue as a generic matter. And I think there are two
22 separate issues and it would be my suggestion -- and the
23 reason I took that issue is because it's a legal issue
24 and not a cost of capital issue because of the citation
25 to the Section 366.82.

1 **COMMISSIONER GRAHAM:** Staff, on the legal
2 question.

3 **MR. McGLOTHLIN:** Could I very quickly comment?
4 I won't take long.

5 **CHAIRMAN GRAHAM:** Sure.

6 **MR. McGLOTHLIN:** This is not something that we
7 raised, we've taken no position on it. But with respect
8 to the segregation of legal issues from those issues
9 dealing with fact and policy, we think that should be
10 done. In other words, I think the argument is over the
11 wording of the legal issue. And, and FPL's suggestion
12 that if they don't like the wording of the legal issue,
13 then the alternative is to subsume it in 54 should not
14 be accepted. There should be that division of labor
15 within the order.

16 **MR. YOUNG:** I'm sorry. Did Mr. McGlothlin say
17 that it should be separate, separate?

18 Okay. After conferring with other, other
19 staff members, we think that the issue should be
20 included; however, as Mr. Litchfield said, the wording
21 needs to change. Because the way the wording is, it
22 lends to a position that Mr. Nelson is, is, is putting
23 forth in terms of that the 25 basis points adder is
24 unstatutory.

25 The question is does the Commission possess

1 the power to grant the 25 basis point performance
2 incentive to FPL? The, the other clause, "without
3 statutory," "without specific statutory authority," to
4 me is a position that he can argue.

5 **COMMISSIONER GRAHAM:** Well, question to you,
6 Mr. Young. What would your wording be for Issue Number
7 5?

8 **MR. YOUNG:** I think Mr. Litchfield -- if I can
9 have a second to refer -- to confer with staff.

10 **COMMISSIONER GRAHAM:** Sure.

11 **MR. YOUNG:** One second.

12 (Pause.)

13 **MR. NELSON:** Your Honor, may I say something?

14 **COMMISSIONER GRAHAM:** Sure.

15 **MR. NELSON:** Larry Nelson. I think, I think
16 it's for the tribunal to define the issues of law and
17 fact. I don't disagree that when you define the issues
18 as is, is the rate increase appropriate, that all
19 possible issues of law and fact can be argued by me as
20 well as the other 11 parties can raise whatever issues
21 they want. But it seems to me that, that the tribunal
22 should define the issues clearly as issues of law and
23 fact to define the proceedings.

24 **COMMISSIONER GRAHAM:** Mr. Young.

25 **MR. YOUNG:** I think the tribunal will do that.

1 But I don't think you need to have a --

2 **COMMISSIONER GRAHAM:** Mr. Young, I just need
3 you to tell me the sentence.

4 **MR. YOUNG:** Okay. The, the issue that staff
5 believes it should be is: Does the Commission possess
6 the power to grant a 25 basis point performance
7 incentive to FPL?

8 **COMMISSIONER GRAHAM:** Did the court reporter
9 get that?

10 **THE COURT REPORTER:** Yes, sir.

11 **COMMISSIONER GRAHAM:** All right. We will
12 change Issue 5 to -- have you guys agreed yet?

13 (Laughter.)

14 No. We will change Issue 5 to read as stated
15 by Commission Attorney Keino Young.

16 We will drop Issue Number 6 and Issue Number
17 7. Issue Number 8 is already dropped.

18 **MS. WHITE:** Chairman Graham, FEA would like to
19 change our position on Issue 1 to agree with OPC.

20 **COMMISSIONER GRAHAM:** On Issue 1?

21 **MS. WHITE:** Yes, sir.

22 **COMMISSIONER GRAHAM:** I didn't think we had a
23 problem with Issue 1.

24 **MS. WHITE:** No, sir. We were just changing
25 it. We had a no position at this time. So it went

1 along with Mr. Young's request.

2 **COMMISSIONER GRAHAM:** Got you. Got you. Got
3 you. So noted. Thank you.

4 Okay. Rate base, which are Issues 9 through
5 14.

6 **MS. WHITE:** FEA will change our position on
7 9 from no position at this time to agree with FIPUG.

8 **COMMISSIONER GRAHAM:** Okay.

9 **MR. WISEMAN:** Your Honor, SFHHA also would
10 change its position on Issue 9 to agree with FIPUG.

11 **COMMISSIONER GRAHAM:** So noted.

12 Quality of service, Issue 15. Mr. Rehwinkel.

13 **MR. REHWINKEL:** Commissioner, for Issues 10,
14 11, and 12 the Public Counsel would reflect our issue,
15 our position as no position.

16 **CHAIRMAN GRAHAM:** That was 10, 11, and 12?

17 **MR. REHWINKEL:** Yes, sir.

18 **COMMISSIONER GRAHAM:** I apologize if I'm going
19 too fast. Anybody else on Issues 9 through 14?

20 Quality of service, Issue 15.

21 Rate base, Issues 16 through 45.

22 **MR. MOYLE:** Can I ask a question --

23 **COMMISSIONER GRAHAM:** Yes, sir.

24 **MR. MOYLE:** -- that may spark some discussion?
25 But, and this has come up in other contexts, but under

1 the quality of service issue, if I understand where we
2 are is that by the end of the day today or the end of
3 the day tomorrow if nobody takes a position, then no
4 position at this time becomes no position. I mean, it
5 doesn't look like there's a disputed issue of fact on
6 15. Does that become moot if nobody takes a position?

7 **COMMISSIONER GRAHAM:** Mr. Young?

8 **MR. YOUNG:** If, if he can repeat it one more
9 time. I'm sorry.

10 **COMMISSIONER GRAHAM:** Mr. Moyle, if you can
11 repeat your question.

12 **MR. MOYLE:** Sure. So the issue of quality of
13 service, is the quality and reliability of electric
14 service provided by FPL adequate? So it's a question of
15 fact that could be disputed if somebody says, yes, I
16 don't think, I don't think they're giving good service,
17 I don't think they're giving adequate service. Nobody
18 has taken any position on this. So I'm just curious
19 when nobody takes any position, come tomorrow 5:00, it
20 seems that there's no disputed issue of fact. Does this
21 then become, you know, a Type 2 stipulation? Or how are
22 we going to handle those I guess is the question?

23 **MR. YOUNG:** It goes before the Commission as a
24 possible stipulation. I think generally in the past
25 what we have done in terms of Category 1 versus Category

1 2 stipulations, where a Category 1 stipulation is where
2 all the parties agree, a Category 2 stipulation is where
3 the, the petitioner and staff agrees but the parties,
4 the remaining parties take no position.

5 In this case I think that, that Ms. Larson
6 took a position as yes, of yes, and I think FPL took a
7 position of yes, and the party, and the other parties
8 took no position or their position will become no
9 position. And I think staff will look at it and at that
10 point in time determine whether it can be stipulated, a
11 possible stipulation and send an e-mail out to the
12 parties with their position.

13 **MR. LITCHFIELD:** And I can assure you,
14 Commissioner, that FPL would not be taking no position
15 with respect to its quality of service.

16 **MR. MOYLE:** I guess, I guess maybe that was a
17 long-winded way of saying we'll continue to do the Type
18 1 stipulations and the Type 2 stipulations and this sort
19 of sets it up for that.

20 **MR. YOUNG:** I, I have no problem with that. I
21 think that can work.

22 **MR. MOYLE:** Okay. Thank you.

23 **CHAIRMAN GRAHAM:** Mr. Rehwinkel.

24 **MR. REHWINKEL:** Yes. Commissioner, the only
25 thing that I would add, even though the Public Counsel

1 is at a position right now of saying no position, the
2 way the customer service hearings went, you heard
3 testimony and that was transcribed and it will be
4 considered by the Commission, but you also provided
5 customers the opportunity to provide written input
6 through the forms that you passed out. So I think maybe
7 this issue is a little bit different. The fact that the
8 staff has no position pending evidence adduced at the
9 hearing, I think there's still an obligation and we'll
10 change our position, if we need to, to preserve this
11 from being some sort of a stipulated issue. Because
12 you're still effectively taking evidence from customers
13 since you've invited them to send in information. So I
14 think this is one that should be treated a little
15 differently.

16 **COMMISSIONER GRAHAM:** Yeah. I agree with you.

17 **MR. YOUNG:** Not a problem.

18 **COMMISSIONER GRAHAM:** Okay.

19 **MR. WISEMAN:** Your Honor, I'm plowing through
20 this. If you'll just give me a couple of minutes, we'll
21 have a number of items where we're going to agree with
22 OPC's position. I'm just not quite there yet.

23 **COMMISSIONER GRAHAM:** Okay. You're on Issue
24 15?

25 **MS. WHITE:** We have several.

1 **COMMISSIONER GRAHAM:** You're on Issue 15 or
2 you're on 16?

3 **MS. WHITE:** No. I went on with your list
4 here.

5 **COMMISSIONER GRAHAM:** Okay. Anybody else on
6 15 before we move on to rate base?

7 Okay, please.

8 **MS. WHITE:** For Issues 30, 31, and 34 we would
9 like to change our position to agree with OPC. For
10 Issues 32 and 45 we would like to change our position to
11 agree with FIPUG.

12 **COMMISSIONER GRAHAM:** All right. In this
13 group there are two objections. Let's deal with those
14 objections and we'll give other people opportunity to
15 change their positions on other things. Yes.

16 **MR. YOUNG:** Mr. Chairman, this is, on Issue 19
17 staff, again staff has circulated a wording
18 modification. And if that modification is accepted by
19 Mr. Saporito, staff has no objections to this issue.

20 **COMMISSIONER GRAHAM:** Mr. Saporito.

21 **MR. SAPORITO:** I just would like to have three
22 words added to staff's suggested wording. That would be
23 "Whether FPL's request for a rate base increase." So
24 those three words, "request for a," should be added
25 between "FPL's," that word, "FPL's," and the "base"

1 word.

2 So it would state: Whether FPL's request for
3 a base rate increase is needed to construct the poles,
4 wires, and transformers needed to serve an anticipated
5 100,000 new customer accounts from the end of 2010
6 through the end of 2013 is accurate and true.

7 **COMMISSIONER GRAHAM:** Mr. Young.

8 **MR. YOUNG:** No objections to that.

9 **COMMISSIONER GRAHAM:** Florida Power & Light.

10 **MR. BUTLER:** Yes, Commissioner Graham, two
11 things. One, our preference, although it's largely
12 stylistic there, is that it's a whether FPL's requested
13 base rate increase, et cetera, rather than request for a
14 base rate increase. The other thing is that at the end
15 of the sentence the phrase "is accurate and true"
16 doesn't seem to be needed. In fact, seems to make the
17 sentence ungrammatical. We would propose just to strike
18 that so it would end with a question mark after "2013."

19 **COMMISSIONER GRAHAM:** Mr. Saporito.

20 **MR. SAPORITO:** Well, in addressing FPL's
21 grammatical corrections, I think, first of all, whether
22 FPL's request for a base rate increase is needed, I
23 think that's stated correctly. I don't think you would
24 put the word "requested" in there. I think it's
25 accurate as I just stated it.

1 With respect to putting a question mark after
2 2013 and eliminating the words "is accurate and true," I
3 have no objection to that.

4 **COMMISSIONER GRAHAM:** Okay. Let's put that in
5 there as stated by Mr. Saporito just now. Whether
6 Florida Power & Light's request for a base rate
7 increase, blah, blah, blah, blah, blah, and then strike
8 after 2013 and put a question mark. So strike "is
9 accurate and true."

10 **MR. McGLOTHLIN:** Commissioner, I have an item
11 on Issue 16 when you're ready to take up something else.

12 **COMMISSIONER GRAHAM:** I'm sorry?

13 **MR. McGLOTHLIN:** I have a remark on Issue 16.

14 **COMMISSIONER GRAHAM:** Okay. Well, let me get
15 back to that. I just want to deal with these two that
16 were objected to and then we'll go back to that.

17 **MR. McGLOTHLIN:** Sure.

18 **COMMISSIONER GRAHAM:** I apologize.

19 **MR. YOUNG:** And I think the other one is
20 Mr. McGlothlin's Issue 39.

21 **COMMISSIONER GRAHAM:** Okay.

22 **MR. YOUNG:** Which he, he objects to the
23 wording and did a modification, requested a rewording
24 and staff modified his, his language. And I just need
25 Mr. McGlothlin to consent and see if all the parties

1 agree to it.

2 **MR. McGLOTHLIN:** Yes. We favor the bold.

3 **COMMISSIONER GRAHAM:** We favor the bold.

4 Florida Power & Light.

5 **MR. BUTLER:** FPL has no objection to the
6 bold-faced wording.

7 **COMMISSIONER GRAHAM:** All right. Let the
8 record show that we are switching to the bold as
9 illustrated in this handout by, by staff.

10 Okay. Mr. McGlothlin, Number 16.

11 **MR. McGLOTHLIN:** For OPC's position on Issue
12 16 please make the following edit. Strike the words "no
13 position at this time." Strike also the word "however"
14 with a comma, and begin the position statement with the
15 word "as" so that it begins "As a general matter," and
16 keep the rest.

17 **COMMISSIONER GRAHAM:** Okay.

18 **MR. REHWINKEL:** Commissioner, is it your
19 intent to go issue by issue or do you want to know like
20 FEA did in this section --

21 **COMMISSIONER GRAHAM:** In this section, just
22 any things you have issue with in this section. We'll
23 take a little time because there's quite a few issues in
24 this section.

25 **MR. REHWINKEL:** Okay. Well, the Public

1 Counsel has changes beginning on Item 26, Issue 26. For
2 Issues 26, 28, 29, and 30 -- no. 26, 28, and 29, the
3 Public Counsel would like its issue, its position
4 reflected as no position.

5 **COMMISSIONER GRAHAM:** I tell you what, let's
6 take a five-minute break and so everybody can list all
7 these issues that they want to change their position on,
8 especially in this rate base section. So we're talking
9 about Issues 16 through 45.

10 **MR. REHWINKEL:** Okay.

11 (Recess taken.)

12 **COMMISSIONER GRAHAM:** Okay. Let's start down
13 here on my right, all the way down. Any changes on your
14 positioning on Issues 16 through 45?

15 **MR. GARNER:** On Issues Number 20 and 21,
16 Village of Pinecrest would like to strike the second
17 sentence in each one of those positions.

18 **COMMISSIONER GRAHAM:** You said Issues 20 and
19 21?

20 **MR. GARNER:** Correct.

21 **MR. YOUNG:** So you want to strike "pending
22 completion of discovery and introduction"?

23 **MR. GARNER:** Where it says, the Village takes
24 no position at this time, the second sentence concludes
25 with that. We don't want to abandon the issue

1 altogether, so.

2 **MR. YOUNG:** Okay.

3 **COMMISSIONER GRAHAM:** Is that it in that
4 section?

5 **MR. GARNER:** That's it.

6 **COMMISSIONER GRAHAM:** Anyone else?

7 Next. Ms. Kaufman.

8 **MS. KAUFMAN:** Thank you. Good afternoon, Mr.
9 Chairman. FIPUG on Issues 19, 23, and 33 take no
10 position. And on Issue 28 we agree with SFHHA, and on
11 Issue 29 we agree with SFHHA.

12 **COMMISSIONER GRAHAM:** Mr. Saporito.

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

14 **COMMISSIONER GRAHAM:** Do you -- any of your
15 positions change on 16 through 45?

16 **MR. SAPORITO:** No, sir.

17 **COMMISSIONER GRAHAM:** Mr. Nelson.

18 **MR. NELSON:** No, sir.

19 **COMMISSIONER GRAHAM:** Sir?

20 **MR. LAVIA:** J. Lavia for the Retail
21 Federation. I understand that some of our positions
22 will change because our positions are agree with OPC.
23 And we understand that and we're fine with that. When
24 OPC changes, ours changes.

25 **MR. SAPORITO:** Mr. Commissioner, my

1 position -- I have taken -- as counsel just stated, I
2 also have taken positions deferring to OPC's positions.
3 So as their positions change, mine will change
4 identically.

5 **COMMISSIONER GRAHAM:** Okay. Mr. Rehwinkel, it
6 looks like you are bringing a lot of people with you.

7 **MR. REHWINKEL:** Thank you, Commissioner. And
8 I actually found a couple of more, so that was a useful
9 time.

10 **MR. YOUNG:** Excuse me, sir. I'm sorry. If I
11 can just go back one second. When you went to Algenol,
12 I just want to go, just for clarity of the record, that
13 he has no changes to his positions.

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

15 **MR. YOUNG:** If he can --

16 **MR. HA:** That's correct, Mr. Young.

17 **COMMISSIONER GRAHAM:** All right.

18 **MR. REHWINKEL:** For Issues 23, 25, 26, 28, 29,
19 and 33, the Public Counsel's position should be
20 reflected as no position.

21 For Issue 30, and I, I showed this to FPL and
22 I also gave a handwritten note to the staff to give them
23 a heads up, and I will submit it electronically, if
24 appropriate, but our position on Issue 30 would be,
25 should be amended to insert the phrase "the cost of the

1 sites are appropriate or that," after the first "that"
2 in line one. And in line two, after the word "is" to
3 insert the word "primarily." And we had committed, as
4 part of the prehearing process, to make our positions
5 conform to a 75-word limit, and we will, to the extent
6 needed to do that, conform this position to that. But I
7 think this amendment gives the essence of the change in
8 our positions so parties are aware of where we're coming
9 from.

10 **COMMISSIONER GRAHAM:** Okay.

11 **MS. KAUFMAN:** Mr. Chairman, could I ask
12 Mr. Rehwinkel to read that change again?

13 **COMMISSIONER GRAHAM:** Please, sir.

14 **MR. REHWINKEL:** Yes. On the first line after
15 the word "that," you would insert the phrase "the cost
16 of the sites are appropriate, or that." And then in the
17 second sentence in the second line after the word "is"
18 insert the word "primarily."

19 **MS. KAUFMAN:** Thank you.

20 **MR. REHWINKEL:** You're welcome.

21 **COMMISSIONER GRAHAM:** Mr. Rehwinkel, is that
22 all you had for 16 through 45?

23 **MR. REHWINKEL:** In that section, yes,
24 Commissioner. Thank you.

25 **COMMISSIONER GRAHAM:** Okay. Ma'am.

1 **MS. WHITE:** We've already told you ours. We
2 don't have any additional.

3 **COMMISSIONER GRAHAM:** Sir.

4 **MR. WISEMAN:** Commissioner, on the following
5 issues, we, SFHHA previously said no position. At this
6 time it'll switch in all these instances to supports the
7 OPC position.

8 **COMMISSIONER GRAHAM:** Okay.

9 **MR. WISEMAN:** This would be numbers 16, 18,
10 20, 21, 22, 24, 30, 31, 32, 35, 36, 37, and 42.

11 **COMMISSIONER GRAHAM:** Okay. Is that
12 everybody? Mr. Young, are you happy so far?

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

14 **COMMISSIONER GRAHAM:** Okay. Let's go to cost
15 of capital, Issues 46 through 61. We will deal with the
16 objections first and come back to any changes in
17 position.

18 Issue 52 and 53 has been dropped. Issue
19 54 we've talked about.

20 **MR. NELSON:** Your Honor, Larry Nelson. I, I
21 withdraw my objection. That, that issue is no longer
22 duplicative of the three issues I had proposed, so I no
23 longer have an objection to it.

24 **COMMISSIONER GRAHAM:** Okay. So there's no
25 other objections to Issue 54, then it is in as, as

1 written. 55, 56, 57 have all been dropped.

2 **MR. NELSON:** Yes, that's correct. I don't
3 know if anyone else has taken a position on them though.
4 That would make them their issue if they've taken a
5 position.

6 **COMMISSIONER GRAHAM:** Okay. Change of
7 positions on cost of capital Issues 46 through 61. All
8 the way to the right.

9 **MR. GARNER:** None from the Village of
10 Pinecrest.

11 **COMMISSIONER GRAHAM:** Algenol.

12 **MR. HA:** No changes from Algenol.

13 **MS. KAUFMAN:** I haven't had time to read
14 through all of them yet, so if you could circle back to
15 me.

16 **COMMISSIONER GRAHAM:** We'll circle back to
17 you.

18 **MS. KAUFMAN:** Thank you, Mr. Chair.

19 **MR. SAPORITO:** Thomas Saporito, Mr.
20 Commissioner. To the extent that I defer to OPC's
21 position and they subsequently change their position, I
22 would agree with whatever changes they make.

23 **COMMISSIONER GRAHAM:** Mr. Nelson.

24 **MR. NELSON:** I have no, no changes of
25 position.

1 **MR. LAVIA:** Once again we'll defer to OPC.

2 **MR. McGLOTHLIN:** I believe OPC's are correctly
3 stated.

4 **COMMISSIONER GRAHAM:** Correctly stated?
5 Sounds good.

6 **MS. WHITE:** We have two. Issue 59, our
7 position should state the appropriate capital structure
8 should reflect the FEA position in Issue 51.

9 **COMMISSIONER GRAHAM:** Okay.

10 **MS. WHITE:** The other change is to Number 60,
11 and our position changes to, no, see FEA position on
12 Issues 51, 54, and 58. That's the only changes we have.
13 Thank you.

14 **MR. NELSON:** Your Honor, this is Larry Nelson.
15 I just wanted to, to clarify something. And, again, in
16 this objected issues paper that was handed out this
17 morning, it indicated that I had dropped Issue 57.
18 Actually that, that wasn't, that wasn't actually
19 correct, although the correct reflection is in the
20 proposed hearing, the Prehearing Order. My actual
21 position is that I will now drop the issue, but it
22 wasn't dropped at the time that this was made. And the
23 reason I, I will drop the issue is because I will
24 concede that FPL made a prima facia showing entitling it
25 to put on proof for its burden of proof showing that the

1 present rates are unjust and unreasonable. It has --
2 I'm dropping it because I believe they made a prima
3 facia showing.

4 **COMMISSIONER GRAHAM:** Thank you.

5 **MR. WISEMAN:** Commissioner Graham, we would --
6 SFHHA would change its positions from no position to
7 supports OPC on Issues 47, 48, and 49.

8 **COMMISSIONER GRAHAM:** Okay.

9 **MR. HENDRICKS:** This is Hendricks. I'm not
10 making any changes.

11 **COMMISSIONER GRAHAM:** Okay. All right. So
12 we've gone through 46 through 61. So now we're up to
13 net operating income, Issues 62 through 124.

14 **MS. KAUFMAN:** Mr. Chairman, I can give you my
15 positions on that prior group that have changed now, if
16 that's all right.

17 **COMMISSIONER GRAHAM:** Okay.

18 **MS. KAUFMAN:** For FIPUG on Issues 48, 49, and
19 50 we'll take no position.

20 **COMMISSIONER GRAHAM:** Okay.

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

22 **COMMISSIONER GRAHAM:** Now net operating
23 income. Well, let's deal with the, the objections and
24 then we'll go back to the changes.

25 Issue 77.

1 **MR. NELSON:** Yes. This is Larry Nelson. It's
2 my objection. My objection was that the corporate costs
3 and expenses are not required to be fair, just, and
4 reasonable, that that standard is set forth in the
5 various statutes for rates, not for expenses, and that
6 expenses have to be reasonable, prudent, and of service
7 to the ratepayers.

8 **COMMISSIONER GRAHAM:** Florida Power & Light.

9 **MR. BUTLER:** We wouldn't object to changing
10 the, sort of the reference to the standard that
11 Mr. Nelson proposes. We're also not objecting to the
12 issue as it is. We can live with either version of it.
13 We think that the sort of fair interpretation
14 application of the fair, just, and reasonable as, you
15 know, referenced in the existing wording contemplates
16 the notion of prudently incurred costs that are, you
17 know, useful for serving the needs of customers. But we
18 wouldn't object to the, to the alternate wording either.

19 **COMMISSIONER GRAHAM:** Mr. Nelson, you're not
20 objecting to the alternate wording; is that correct?

21 **MR. NELSON:** No. I was suggesting the
22 alternate wording.

23 **COMMISSIONER GRAHAM:** Okay. So then it reads
24 as stated. Mr. Young, does staff have an objection?

25 **MR. YOUNG:** If I could have one second, sir.

1 (Pause.)

2 Mr. Presiding Officer, staff would like to
3 keep the word "appropriate." If you look through all
4 the issues, the wording, the wording of appropriate is
5 whether the rates are appropriate is used. It's a term
6 of art. By the Commission finding it appropriate it is
7 finding it fair, just, and reasonable. I think this
8 conversation came up in our second issue identification
9 meeting when Mr. Moyle approached the subject, and
10 everyone had agreed then also that by the Commission
11 finding it appropriate, it's saying its rates are fair,
12 just, and reasonable. So we would like to keep the
13 wording as "appropriate."

14 **COMMISSIONER GRAHAM:** Mr. Nelson.

15 **MR. NELSON:** I'm not, I'm not seeing the word
16 "appropriate" in, in actually the issue. I, I, I
17 understand what they're, what they're saying. The
18 fundamental disagreement here is between, you know,
19 defining an issue as appropriate and defining it as a
20 legal or factual issue that can then be briefed and
21 argued. But I think that they -- I don't know why they
22 think the word "appropriate" is in Issue 57. I think
23 they may be mistaken on that.

24 **MR. YOUNG:** I'm sorry. We, we are fine with
25 the wording as is, is fair, just, and reasonable.

1 **MR. LITCHFIELD:** As are we, Mr. Commissioner.

2 **COMMISSIONER GRAHAM:** Okay. So it goes in as
3 stated or as in, as in the documentation passed out this
4 morning?

5 **MR. YOUNG:** Yes, sir. I think, and to note,
6 all the parties had agreed to this issue subsequent in
7 the issue identification meeting, which will be, which
8 is now -- with the exception of Mr. Nelson, who did not
9 participate at that time.

10 **COMMISSIONER GRAHAM:** Okay.

11 **MR. NELSON:** I, I maintain my objection. It's
12 for the, Your Honor to rule.

13 **COMMISSIONER GRAHAM:** Okay. 78 has been
14 dropped. 92, there's an objection. All right. Whose
15 issue was 92?

16 **MR. YOUNG:** Mr., I think it's Mr. Nelson's
17 issue.

18 **COMMISSIONER GRAHAM:** Let's hear the
19 objection.

20 **MR. BUTLER:** Commissioner Graham, FPL has --
21 oh, there we go. FPL has objected to this issue. It
22 is, one, it's worded in a way that is basically the
23 statement of a position with a question mark at the end
24 of it. And it is, we believe, fairly subsumed within
25 Issue 94.

1 **COMMISSIONER GRAHAM:** Mr. Nelson.

2 **MR. BUTLER:** I'm sorry, Commissioner. Before,
3 before we go on, just to be sure, I am reading Issue
4 92 as it is worded in the Prehearing Order. Is that
5 what we are referring to, or are you referring to the
6 Issue 92 as it is restated in staff's handout?

7 **COMMISSIONER GRAHAM:** I'm referring to it as
8 it's restated on staff's handout.

9 **MR. YOUNG:** And let me -- if I can take a
10 second to explain. In Mr. Nelson's prehearing
11 statements he dropped certain issues with the
12 alternative, giving alternative wording, and that's what
13 staff's handout reflects.

14 **COMMISSIONER GRAHAM:** Yes. And that's what I
15 was questioning.

16 **MR. NELSON:** That's, that's not completely
17 true. The -- I did not drop the original issues even
18 though there may have been an alternative suggested in
19 an attempt to please staff.

20 But in that particular instance with 92, I'm
21 happy to drop the original issue. And the alternative
22 wording is the one in the staff handout, but that is,
23 that is definitely not true with other issues including
24 136.

25 **MR. BUTLER:** Commissioner Graham, the reworted

1 issue, I would say, as staff has listed it, kind of less
2 freighted (phonetic) in its language, but it seems by
3 virtue of its rewording to have become ever closer to
4 Issue 94. Just we don't see a need for 92 in view of
5 94. You've got 92 is, is the proposed FPL advertising
6 expense for the test year a reasonable and profitable
7 expense serving the ratepayers? And then 49 is, what is
8 the appropriate amount of advertising expenses for the
9 2013 projected test year? They really seem to be asking
10 the same question. And 94 is, you know, certainly more
11 conventionally the format that other issues here and
12 issues in previous cases have been worded.

13 **COMMISSIONER GRAHAM:** Mr. Nelson.

14 **MR. NELSON:** I'm, I'm not going to argue this
15 issue further.

16 **COMMISSIONER GRAHAM:** Okay.

17 **MR. SAPORITO:** Commissioner Graham, I took a
18 position on Issue Number -- this is Thomas Saporito. I
19 took an issue, I took Issue Number 94 with the intent on
20 testifying in this proceeding with it. And, you know,
21 I'm tending to agree with FP&L that Issue 94 as stated
22 in the staff's preliminary issues revised on July 30th,
23 2012, which states, what is the appropriate amount of
24 advertising expenses for 2013 projected test year? And
25 that's the issue I intend to speak on. So I would, I

1 would suggest that that's the proper issue to this
2 tribunal.

3 **COMMISSIONER GRAHAM:** So it comes down to if
4 Issue 92 is duplicative when compared to Issue 94.
5 Staff.

6 **MR. YOUNG:** Staff believes it is duplicative.
7 Mr. Nelson's arguments can be addressed -- their
8 issue -- Mr. Nelson's issues are subsumed in Issue 94.

9 **COMMISSIONER GRAHAM:** We will drop Issue 92.
10 Okay. 93 is dropped. 94 there is an objection.

11 **MR. NELSON:** The objection is the same as the
12 issue that was just decided.

13 **COMMISSIONER GRAHAM:** Okay. So the objection
14 is overruled. 97.

15 **MR. YOUNG:** This is an objection from
16 Mr. Nelson. I mean, excuse me, this issue is proposed
17 by Mr. Nelson. FPL objects.

18 **COMMISSIONER GRAHAM:** Let's hear the
19 objection.

20 **MR. BUTLER:** Commissioner Graham, on Issue 97,
21 looking to the wording in staff's handout, are all
22 NextEra Energy, Inc., expenses charged to FPL ratepayers
23 in the test year reasonable and prudent expenses serving
24 the ratepayers, we think that you could end that after
25 "reasonable and prudent expenses," question mark. With

1 that revision we wouldn't object to the -- you know, we
2 with withdraw our objection to Issue 97.

3 **COMMISSIONER GRAHAM:** Mr. Nelson.

4 **MR. NELSON:** As I said, the staff's handout is
5 not, is not accurate. I was looking at the original
6 Issue 97 here, which was also objected to by FPL. As I
7 said, we've done, for five days we've done three
8 revisions of this 300-page order. And, and this morning
9 we have a new representation of our, of my positions
10 with this handout. And I can really only work off of
11 the, the Prehearing Order that I've worked on for the
12 last five days.

13 So the Issue 97 was a different issue. That
14 was alternative language that was suggested at one
15 point. I would, I would rather that the Chair rule on
16 the original language of Issue 97 in the Prehearing
17 Order.

18 **MR. YOUNG:** I'm sorry, Mr. Chairman. If I can
19 speak to this this one time.

20 In Mr. Nelson's prehearing statements on Issue
21 97, if you look at his position, a significant portion
22 he said Issue H. Alternative language to Issue 97.
23 Staff used that language because Mr. Nelson, it was
24 Mr. Nelson's issue that he proposed during the informal
25 issue identification process. And he subsequently

1 changed that language with the statement "alternative
2 language to Issue 97" that staff used. Now it's
3 Mr. Nelson's issue. If Mr. Nelson wants to drop the
4 alternative language and go back to the original
5 language, he -- if he can clarify that for staff.

6 **MR. NELSON:** Yes. But I think it's important
7 to understand here that when we submitted our prehearing
8 statements, then it had the issue, the original Issue
9 97. Staff at that time did not substitute the
10 alternative language in that first version of the
11 Prehearing Order, nor in the second version, nor in the
12 third version. Staff had three chances to, to take the
13 position that I had substituted language, but yet they
14 put in the original language. And then only this
15 morning do they come out and say, okay, well, now we're
16 dealing with this a different way.

17 **MR. YOUNG:** Mr. Chairman, if Mr. -- if we can
18 proceed with the Prehearing Conference. And if
19 Mr. Nelson wants to use the original 97, that's fine
20 with staff in terms -- but there is a pending objection.
21 And I think the parties have spoken. If FPL is prepared
22 to speak to the objection, then we can move forward.

23 **COMMISSIONER GRAHAM:** FPL.

24 **MR. BUTLER:** Yes. With the original wording
25 of Issue 97 we believe it is subsumed within Issue 99,

1 which is, should an adjustment be made to FPL's level of
2 executive compensation for the 2013 projected test year?
3 I think that adequately covers the point Mr. Nelson
4 wants to address without the, you know, wording of an
5 issue in the guise of a position. I'm sorry, a position
6 in the guise of an issue.

7 **COMMISSIONER GRAHAM:** All right. So we are
8 dropping Issue 97 and 98. So let's go through Issue
9 62 through 124. Starting over here with the Village of
10 Pinecrest and going around the room.

11 **MR. McGLOTHLIN:** Sir --

12 **COMMISSIONER GRAHAM:** I'm sorry.

13 **MR. McGLOTHLIN:** Could we suggest another
14 five- or six-minute break? We've seen several of our
15 position statements where we say no position at this
16 time, and we'd be able to identify all of those and
17 report back as to whether we want to change that or not
18 at this point. That earlier break of a few minutes was,
19 turned out to be very valuable, and I think this would
20 be equally so.

21 **COMMISSIONER GRAHAM:** Well, let's go ahead and
22 take a ten-minute break so the parties can go through
23 all 191 issues -- or how many issues do we have? All
24 issues. And then we'll come back and we'll go through
25 any changes that everybody has got. So we'll be back

1 here at 4:00.

2 (Recess taken.)

3 I apologize. I said ten minutes and I gave
4 everybody 15, but there were quite a few issues to go
5 through. And this should put us through all the issues.
6 Actually what we need to do, let's deal with all the
7 objections and then we can go with all the change of
8 statements that people have.

9 So we are -- Issue, Issue 136 has been
10 dropped.

11 **MR. NELSON:** Your Honor, that's not correct.
12 That's what it says here, but that's, that's not at all
13 the case. That issue is the biggest issue in the case
14 as far as I'm concerned. I address it in my position
15 section. It's not dropped.

16 **COMMISSIONER GRAHAM:** Okay. What's the
17 objection? FPL.

18 **MR. BUTLER:** Commissioner Graham, this issue
19 is in our mind subsumed within Issues 126, 142, 144. It
20 is really just a reiteration of a point that's made in
21 various flavors elsewhere. It's for that reason that we
22 don't think that it's needed here.

23 **COMMISSIONER GRAHAM:** Mr. Nelson.

24 **MR. NELSON:** Your Honor, in the, in the
25 proposed hearing order FPL indicates only that they

1 believe it's subsumed under Issue 126, and that's not
2 going to address the issue. The new issues that they
3 claim it's subsumed under, I'm not going to, to address
4 that. May I, may I speak to the issue, or do you want
5 to hear their objections further?

6 **COMMISSIONER GRAHAM:** Well, he listed three or
7 four other ones.

8 **MR. NELSON:** All right. Very good. Okay. My
9 position is this is the ultimate issue in this case.
10 There's four separate statutes that say that the
11 decision that this Commission has to make, that this
12 full Commission has to vote on is whether the rates are,
13 both the proposed rates and the existing rates are fair,
14 reasonable, just, and compensatory.

15 And how you define this issues defines how,
16 how the Commissioners will vote, it defines how the
17 issues will be argued, it defines how the issues will be
18 briefed. FPL's position as set down here is that it's
19 subsumed to Issue Number 126. And Issue Number 126 is
20 is the operating revenue increase of FPL appropriate?

21 And if, if this Commission accepts that
22 argument, then in my mind that is saying that the public
23 interest in fair, reasonable, and just and compensatory
24 rates is subsumed to the interest of the revenue of FPL.
25 And, and to me it's as simple as that. That's the

1 statutory standard. To be able to argue that something
2 is fair, reasonable, just, and compensatory allows you
3 to argue the entire universe of, of the fairness of the
4 issue, which is the ultimate issue the Commissioners
5 will be, will be deciding. And to exclude that issue is
6 to simply say, you know, the interest here that we are
7 concerned with is, is the revenue required of FPL and,
8 and fairness is subsumed to that.

9 **COMMISSIONER GRAHAM:** Florida Power & Light,
10 what are the other issues that you mentioned?

11 **MR. BUTLER:** Commissioner, it's Issues 126,
12 142, and 144 we had identified specifically. But this
13 is essentially just the ultimate question. I mean, to
14 some extent every issue in the case is about, you know,
15 reaching a conclusion on whether our proposed rates are
16 fair, just, and reasonable, compensatory. So it just,
17 it seems like it's restating something that doesn't need
18 to be restated. But the specific issues that I had
19 mentioned were 126, 142, and 144.

20 **MR. LAVIA:** Mr. Commissioner, this is J. Lavia
21 for Retail Federation. We took a position on this issue
22 and we should -- think it should be included. It is the
23 ultimate issue. And as the ultimate issue, it's hard to
24 argue that it's been subsumed under non-ultimate issues.
25 I think it is fair to include this. We think it should

1 be included. We think it's appropriate for the
2 Commission to actually vote on this issue. This is the
3 statutory standard. Thank you.

4 **MR. SAPORITO:** Commissioner Graham, this is
5 Thomas Saporito. I took a position on this issue too,
6 and I agree with the prior counsels' statements.

7 **COMMISSIONER GRAHAM:** Staff?

8 **MR. YOUNG:** I think staff agrees with Florida
9 Power & Light that inherently by Commission findings
10 the, the remaining issues are proving, proving any part
11 of FPL's request, it is ultimately finding it fair,
12 reasonable, and just and we believe it's subsumed.

13 **COMMISSIONER GRAHAM:** I was just getting ready
14 to say to me this question is basically what the rate
15 case is all about. And all the 100 and 200 issues for
16 the most part all roll into answering that question. So
17 why is it needed?

18 **MR. NELSON:** In my opinion it's needed so that
19 it can be directly argued, it can be directly briefed
20 and not subsumed into subsidiary issues of what's the
21 correct ROE or what's the correct revenue requirement.
22 To me that is making things completely backwards, that
23 you determine the, the ROE and then you determine the
24 revenue requirement and then you determine where you're
25 going to put the revenue requirement. And, you know,

1 you have to put it here or put it somewhere else. And
2 that is not in my mind how you determine what's fair,
3 just, and reasonable in this case. And I don't think
4 the members of the public or the members of the public
5 that testified at the public hearings would think that
6 that's a reasonable way to determine what is fair, just,
7 and reasonable in this case.

8 **COMMISSIONER GRAHAM:** Does OPC have a position
9 on this?

10 **MR. McGLOTHLIN:** We have taken a position
11 because we read this as reaching the, the level of
12 magnitude of revenues generated by the proposed rates.
13 And we say to that, no, they are not fair and
14 reasonable. So if the issue stays in, we will take a
15 position.

16 **COMMISSIONER GRAHAM:** Do you have a position
17 on the objection?

18 **MR. McGLOTHLIN:** No, sir.

19 **MR. LITCHFIELD:** Commissioner Graham, I would
20 just note that, that this really is the composite of
21 every issue in the case. And so to the extent that a
22 party took a position adverse to FPL's on even one of
23 the 100 or -- 167 or 200 issues in the case, by
24 definition they would be taking a position of no on this
25 issue. It just seems to me to be superfluous here.

1 **COMMISSIONER GRAHAM:** Let's go to Issue 137.

2 **MR. BUTLER:** FPL objected to 137. 137 is just
3 a, more sort of less neutrally stated mirror image of
4 136. I mean, it's just, you know, whereas, 136 is
5 whether the rates are fair, just, and reasonable, this
6 is whether they're unjust, unreasonable, excessive. It
7 is sort of unneeded for the same reason as 136 and, in
8 addition, is stated in a sort of negative argumentative
9 way that is inappropriate.

10 **MR. NELSON:** Your Honor?

11 **COMMISSIONER GRAHAM:** Yes, sir.

12 **MR. NELSON:** Larry Nelson. I would actually
13 agree with FPL in this particular case that these issues
14 were those -- that issue just addressed was inartfully
15 stated. And my position now, after having reviewed the
16 case law, in particular the *South Florida Natural Gas*
17 *Company versus Public Service Commission*, is that there
18 are two issues here. And the Issue 136 is an issue and
19 the other issue is the issue that's identified as new
20 Issue A under 138. In other words, 137 and 138 are not
21 artfully stated. But that the two issues are -- the one
22 issue is the new Issue A, and that would be under the
23 *South Florida Natural Gas Company versus Public Service*
24 *Commission*, which is that FPL has the burden of showing
25 that the existing rates are unjust, unfair,

1 unreasonable, or insufficient, and that that is a
2 threshold issue, a threshold issue of law that FPL has
3 to meet the burden of by a preponderance of the
4 evidence. And if it meets the, the, the burden that the
5 existing rates are unfair, that then one can move on to
6 the existing, to the issue of the proposed rates and
7 whether they are just, fair, and reasonable.

8 So my position is there are two issues, 136,
9 and the other issue, the threshold issue defined as new
10 Issue A underneath the 138, Issue 138.

11 **COMMISSIONER GRAHAM:** So we can drop Issue
12 137?

13 **MR. NELSON:** Yes.

14 **COMMISSIONER GRAHAM:** We will drop Issue 137.
15 136 and 138 I'll make a determination and get back to
16 the parties.

17 **MR. NELSON:** Just -- I'm sorry. I'm sorry.
18 Just to clarify, yes. 138 in either of its wordings,
19 although I think the alternate wording of new Issue A is
20 a better wording of Issue 138. But, yes, Issue 136 and
21 138 would be the issues.

22 **COMMISSIONER GRAHAM:** Florida Power & Light,
23 do you have an objection to 138?

24 **MR. BUTLER:** We do, Commissioner Graham,
25 perhaps in particular. Issue 138 is about our existing

1 rates. I mean, we filed a petition to revise our rates.
2 We have, you know, undertaken and understand that we
3 have a burden of proof with respect to demonstrating our
4 proposed new rates are appropriate and fair, just, and
5 reasonable.

6 But we're not putting our existing rates at
7 issue here. There is very little, if any, testimony
8 offered on the existing rates. And this is an issue
9 that really just does not seem to flange up with the
10 case that we filed, the procedural posture of this
11 proceeding.

12 **COMMISSIONER GRAHAM:** I'll make a ruling on
13 136 and 138 and get back to the parties by noon
14 tomorrow.

15 148.

16 **MR. SAPORITO:** Commissioner Graham, Thomas
17 Saporito. Just before we went on break it was, it was
18 my understanding that we were going to do a polling on
19 the prior section. And then when we came back, we
20 started on to this new section. So I just wanted to
21 bring to your attention, sir, that the staff's two-page
22 list of objections inadvertently omitted an objection
23 that I had on Issue 62, and this is under the net
24 operating income section. I was wondering if this would
25 be the appropriate time to address that.

1 **COMMISSIONER GRAHAM:** You know, I don't have
2 an objection from you on Issue 62.

3 **MR. SAPORITO:** It's in my prehearing
4 statement.

5 **COMMISSIONER GRAHAM:** Okay. Let's hear your
6 objection. Now would be the appropriate time.

7 **MR. SAPORITO:** Okay. To the ex -- the
8 objection is to the extent that any action on the part
9 of FP&L to capture CO2 emissions from any of their power
10 plants results in any costs or charges to FPL customers
11 for procurement, installation, maintenance, operation,
12 consultation, or research of any equipment required to
13 capture CO2 for the purpose of resale in realized
14 revenue generation, Intervenor strongly objects and
15 urges this Commission to disallow any rate adjustment to
16 FPL for such purpose.

17 **COMMISSIONER GRAHAM:** One more time.

18 **MR. SAPORITO:** To the, to the extent that any
19 action on the part of FP&L to capture CO2 emissions from
20 any of their power plants results in any costs or
21 charges to FPL customers for procurement, installation,
22 maintenance, operations, consultation, or research of
23 any equipment required to capture CO2 for the purpose of
24 resale in realized revenue generation, Intervenor
25 strongly objects and urges this, the Commission to

1 disallow any rate adjustment to FPL for such purpose.

2 **COMMISSIONER GRAHAM:** Florida Power & Light.

3 **MR. YOUNG:** Sorry, sir. It's, I think this is
4 Algenol's issue.

5 **MR. HA:** I'm not entirely sure what
6 Mr. Saporito was requesting.

7 **COMMISSIONER GRAHAM:** Me either.

8 **MR. SAPORITO:** Mr. Saporito. Mr. Chairman,
9 Mr. Commissioner, let me clarify it. My position -- the
10 objection is that if Algenol's issue, Issue Number 62,
11 requires an expenditure of consumer funds that are
12 related in any way to capturing CO2 for the purpose of
13 generate, of revenue generation, then that's the
14 objection. The consumers should not be put in a
15 position through this rate case of bearing any cost
16 related to equipment which can theoretically capture CO2
17 so that the CO2 can be sold by FPL to make some kind of
18 revenue. It seems to me that that would be a separate
19 rate case where there would have to be a need, a
20 justification for need submitted by the utility, FP&L.
21 To my understanding they have no interest in pursuing
22 that.

23 And so there's -- I guess the objection is
24 twofold. One is it doesn't belong in this rate case,
25 that particular issue. And number two, the objection is

1 if that issue is -- should not be permitted in here
2 because it could result in an expenditure of consumer
3 funds for some theoretical equipment and project which
4 FP&L has not made known any intention to pursue at this
5 point.

6 **COMMISSIONER GRAHAM:** Staff, we had a
7 conversation about this issue, and I thought that we
8 were just, basically we were just going to keep it
9 generic, talk about if there was an ability to --
10 generically talk about what things FP&L can be doing,
11 can be looking at as far as generating funds during
12 their process. Is that not correct the way we --

13 **MR. YOUNG:** I think you are correct, sir.

14 **MR. HA:** Commissioner Graham, this is Quang Ha
15 from Algenol. I just want to just point out that we
16 really shouldn't be arguing issues at that point. I
17 thought this is just to make people, to go through the
18 prehearing order, provide people's positions, and to
19 really move on. Really to, to open up this issue for
20 discussion, I'm not sure, I'm not entirely sure why, why
21 that's appropriate for this proceeding.

22 **COMMISSIONER GRAHAM:** Well, Mr. Saporito said
23 that he had an objection that for some reason that was
24 overlooked, and so we're just hearing his objection.
25 And I'm just going back over with staff because I

1 remember looking at this question, and my conversation
2 with staff was to make sure that we were as generic as
3 possible with this issue, dealing specifically with this
4 issue and any other issues that may come up as far as
5 ability for them generate funds in their, in their
6 process. And that's -- we were trying to be as broad
7 and generic as possible and not talk specifically about
8 collecting of CO2 and what you can do as far as what
9 market, what marketplaces are out there available for
10 that. I mean, because we could talk about CO2, we can
11 talk about gypsum, we can talk about a lot of things out
12 there.

13 **MR. HA:** Precisely. And this issue could take
14 hours to discuss, and that's precisely my point is that
15 --

16 **COMMISSIONER GRAHAM:** Trust me, it's going to
17 take about another minute.

18 **MR. HA:** But, you know, Mr. Saporito -- I
19 remember Mr. Saporito's objections and it was duly
20 noted. And I believe that was the second or third to
21 the last discussion on the issues list. So, again, I'm
22 not entirely sure why this is appropriate right now.

23 **COMMISSIONER GRAHAM:** Duly noted.

24 **MR. YOUNG:** And, sir, I think the issue as
25 worded does take in more than just CO2. Also, I would

1 note that Mr. Saporito's argument in the issue in this
2 position statement, in his pre, prehearing statement is
3 not an objection to the issue which he just voiced
4 today. It's an objection -- it's a position he took on
5 the issue. Because if you read it, it says that
6 Intervenor strongly objects and urges the Commission to
7 disallow any rate adjustment. It is not I object to the
8 issue as Mr. Nelson stated, as Mr. Nelson did in his
9 prehearing statement and during, during the course of
10 the informal issue identification process.

11 **COMMISSIONER GRAHAM:** All right. We're going,
12 we're going to overrule the objection and leave the, the
13 issue as stated, 62.

14 **MR. HA:** Commissioner Graham, can I ask one
15 question. We were just talking about Issues 136 and
16 138. Were we going to take changes on the parties'
17 positions for Issues 1 -- 62 to 124?

18 **COMMISSIONER GRAHAM:** We're going to go
19 through the objections that are noted on this sheet that
20 was handed out.

21 **MR. HA:** Okay.

22 **COMMISSIONER GRAHAM:** And then we're going to
23 go back and take changes in positions on all the
24 remaining issues.

25 **MR. HA:** Okay. Great. Thank you.

1 **MR. McGLOTHLIN:** Commissioner Graham, I need
2 to take you back for just a second to Issue 138 and
3 138A.

4 **COMMISSIONER GRAHAM:** Okay.

5 **MR. McGLOTHLIN:** That is not our issue, but I
6 need to respond to a comment that counsel for FPL made
7 when making his objection to the issue. He said, in so
8 many words, no party has argued about or submitted
9 testimony about our existing rates. That is not wholly
10 accurate. Our witness Donna Ramos sponsors revenue
11 calculations that lead her and OPC to conclude that
12 existing rates generate revenues that are greater than
13 necessary to provide a reasonable return. And that's
14 why in response to the original 138 you'll see our
15 position state there. OPC believes that existing rates
16 are higher than necessary to provide a reasonable return
17 to FP&L. And, again, we have abstained from the
18 argument as to the issue or the objection to the issue.
19 But if the ruling is that one or the other stays in, we
20 will retain that position statement.

21 **COMMISSIONER GRAHAM:** Is that clear with
22 staff?

23 **MR. YOUNG:** I think so. I think I have
24 sufficient people that were taking notes during that
25 time.

1 **MR. LITCHFIELD:** And FPL understands that that
2 would be OPC's position with respect to other issues in
3 this case in any event, whether this issue remains or
4 not.

5 **MR. NELSON:** Your Honor, can I address that
6 issue just briefly?

7 **COMMISSIONER GRAHAM:** Sure.

8 **MR. NELSON:** My understanding of the Florida
9 Supreme Court case in *South Florida Natural Gas Company*
10 *versus Public Service Commission*, quoting from them, we
11 find that under the Commission's rate setting authority
12 a utility seeking a change must demonstrate that the
13 present rates are unreasonable and show by a
14 preponderance of the evidence that the rates failed to
15 compensate the utility for its prudently incurred
16 expenses and failed to produce a reasonable return on
17 its investment.

18 I will take counsel for FPL's statement that
19 there is no evidence or not much evidence of the
20 existing rates in this case to be an admission that they
21 have not met their burden of putting forward evidence
22 and therefore request that this rate case be dismissed.

23 **COMMISSIONER GRAHAM:** All right. Let me make
24 this simple for everybody. We're going to drop Issue
25 138, and I'll get back to you on Issue 136.

1 **MR. HA:** Commissioner Graham, if I may. I
2 don't have a dog in this fight, so -- but I would make a
3 suggestion. If 136 is the ultimate issue of this
4 proceeding, let's make it the ultimate issue and make it
5 the last issue instead of embedding it in the, somewhere
6 in the middle of the issue. That seems to --

7 **COMMISSIONER GRAHAM:** Well, I will be making
8 this determination sometime tonight or tomorrow morning.

9 **MR. HA:** Okay. That was just a suggestion.
10 Thank you.

11 **COMMISSIONER GRAHAM:** That's fine.

12 All right. Issue 148.

13 **MR. YOUNG:** This was an agreed upon issue by
14 all the parties. Subsequently Mr. Nelson objected to
15 this issue.

16 **COMMISSIONER GRAHAM:** Mr. Nelson, let's hear
17 your objection.

18 **MR. NELSON:** My objection to this issue, and
19 it, and it really is, goes to all of the rest of my
20 issues which regard late payment charges, return payment
21 charges, and the monthly customer charge, is that these
22 are rates and charges that are described as a rate in
23 two of the code sections, 366.03 and 366.041, which
24 refer to all rates and charges. And as a rate or charge
25 the burden of showing that the current rate is

1 insufficient is on FPL. The burden of showing that the
2 rate needs to be increased is on FPL. And the statutory
3 considerations concerning rates and charges as far as
4 showing their cost and public acceptance and all this
5 sort of thing apply to all of these charges. And the
6 basis of my objection is, is that, is that the issue is
7 not should it be approved, but the issues as described,
8 is the existing rate insufficient, is the proposed rate
9 fair, and the other statutory considerations.

10 **COMMISSIONER GRAHAM:** FPL.

11 **MR. BUTLER:** Commissioner Graham, we feel that
12 the issue as worded is, in the Draft Prehearing Order is
13 sufficient and open-ended enough and provides adequate
14 opportunity for Mr. Nelson to argue the points that he
15 just made. I mean, it's routine before this Commission
16 for, you know, the applicant to, such as FPL to present
17 evidence on why it thinks a particular charge should be
18 increased. If the Commission agrees, it may increase it
19 to the amount the applicant requests or some lower
20 figure. If it's unconvinced, it will not make the
21 adjustment.

22 But we don't think that you need to have a
23 proliferation of issues sort of posing each of these
24 questions in alternative forms of whether the, you know,
25 there should be an increase and then also should there

1 not be an increase.

2 I'd note that we already have, without some of
3 the issues that Mr. Nelson has proposed, far more issues
4 in this case than in FPL's last rate case, which was
5 arguably a greater scope, and certain far more than in
6 the recent Gulf case. So I just think that we're
7 getting into an area of proliferating unnecessary
8 issues.

9 **COMMISSIONER GRAHAM:** Staff.

10 **MR. YOUNG:** Staff believes that the issue as
11 worded is perfectly correct in terms of its wording.
12 Also that Mr. Nelson's, all the arguments that
13 Mr. Nelson made today he can take as a position on the
14 issue.

15 **COMMISSIONER GRAHAM:** Any comments from OPC?

16 **MR. McGLOTHLIN:** No, sir.

17 **COMMISSIONER GRAHAM:** All right. We'll leave
18 Issue 140 in -- 148 in. We'll be dropping Issues 149
19 through 156, which brings us to Issue 158.

20 **MR. YOUNG:** I'm sorry, Mr. Chairman. Did we
21 skip 150 or are we on 150?

22 **COMMISSIONER GRAHAM:** We, we dropped 150.
23 Does staff have a comment about 150?

24 **MR. YOUNG:** No, sir. It was just Mr. Nelson's
25 issue that was objected to by FPL.

1 **COMMISSIONER GRAHAM:** 158. Mr. Nelson.

2 **MR. NELSON:** 158 is the same issue that you
3 just addressed.

4 **COMMISSIONER GRAHAM:** Okay.

5 **MR. SAPORITO:** Commissioner Graham, Thomas
6 Saporito. Am I to understand that Issue 158 is being
7 dropped then?

8 **MR. YOUNG:** I'm sorry. It was 150 was
9 dropped. 158 was, was kept.

10 **COMMISSIONER GRAHAM:** Well, we're talking
11 about 158 right now.

12 **MR. BUTLER:** And FPL would support including
13 158 with the wording as it, as it appears in the
14 Prehearing Order and also on the staff handout.

15 **MR. NELSON:** Your Honor, Larry Nelson. Issue
16 158 just raises all the same issues regarding the
17 returned payment charges instead of the late payment
18 charge.

19 **COMMISSIONER GRAHAM:** Okay. So 158 is in.
20 148 is in. Everything in between is out. I'm sorry.
21 We did not address 157. 157 is not part of this. So
22 149 through 156 are all out. Okay. 159 is out. 160,
23 Florida Power & Light objects.

24 **MR. YOUNG:** This is Mr. Nelson's issue that
25 Florida Power & Light objected to.

1 **MR. BUTLER:** The Issue 160 -- I'm sorry. I'm
2 pausing a bit because I'm looking at two different
3 wordings here. The wording though in the staff handout,
4 is the existing return payment charge unjust, unfair,
5 unreasonable, or non-compensatory such that an
6 adjustment -- or an increase is warranted? This really
7 falls into the category of what we were talking about
8 before.

9 You know, we feel that the Issue 158, should
10 FPL's proposed change to the return, returned payment
11 charge be approved, adequately addresses this and you
12 don't have to have a sort of mirror image issue of
13 whether the existing charge is sort of the opposite of
14 each of those terms.

15 **COMMISSIONER GRAHAM:** Who's question was this?

16 **MR. YOUNG:** Mr. Nelson.

17 **COMMISSIONER GRAHAM:** Mr. Nelson.

18 **MR. NELSON:** I think you're going off of the
19 staff handout this morning that is not accurate, so I'm
20 not, I'm not really sure what issue we're addressing. I
21 need to look at it on the Prehearing Order.

22 **MR. YOUNG:** I think it's on page 191 of the
23 Prehearing Order.

24 **COMMISSIONER GRAHAM:** Got it?

25 **MR. NELSON:** Are we on Issue 160 on the

1 Prehearing Order?

2 **COMMISSIONER GRAHAM:** Yes, sir.

3 **MR. NELSON:** It's the same issue as applied to
4 the late payment fee, and now we're talking about the
5 returned payment fee. It's, it's all the same issue.

6 **MR. BUTLER:** And, again, Commissioner Graham,
7 as, you know, in whichever formulation here, it just
8 seems it's duplicative. If we have an issue where, you
9 know, we request a, an increase in the returned payment
10 charge and the Commission either agrees or disagrees
11 with our evidence, that's covered in Issue 158. We
12 don't need a 160 that just kind of turns the wording
13 around with respect to a focus on the existing charge.

14 **MR. NELSON:** If I can just address that just
15 briefly. The --

16 **COMMISSIONER GRAHAM:** Sure.

17 **MR. NELSON:** The intent is not to turn it
18 around. The intent is to focus the legal issue on, on
19 that it is a rate that's addressed in the statute. That
20 certain statutes and burden of proofs and evidence are
21 directed by the Legislature to be considered on it as
22 opposed to a vague statement about should it be granted.
23 But I understand the, I understand the court's position
24 on this.

25 **COMMISSIONER GRAHAM:** All right. Staff, do

1 you have an opposing issue on 160?

2 **MR. YOUNG:** Staff believes, agrees with FPL
3 and believes it's subsumed.

4 **COMMISSIONER GRAHAM:** All right. It seems to
5 me that 160, 164 -- how did we jump out of issue like
6 that, out of order? 160, 161, 162, 163 are all dealing
7 with the same thing, the same issue. So we will drop
8 160 through 164.

9 174.

10 **MR. YOUNG:** This was an agreed upon issue that
11 was subsequently objected to by Mr. Nelson. Mr. Nelson
12 objects to the form of the question.

13 **COMMISSIONER GRAHAM:** Mr. Nelson.

14 **MR. NELSON:** This is much along the same lines
15 as the late charge and the returned payment charge.
16 I'll just read my objection here as it is in the, my
17 prehearing statement, that the use of the word
18 appropriate does not state a legal or factual issue with
19 regard to a rate or charge, that the legal standard is
20 whether it's fair, just, reasonable, and compensatory,
21 and the burden is on Florida Power & Light under *South*
22 *Florida Natural Gas Company versus Public Service*
23 *Commission*, 534 So.2d 695, to show that the existing
24 charge is unreasonable and insufficient before they
25 raise it.

1 **COMMISSIONER GRAHAM:** All right. So we will
2 drop Issue 174 and 175. 176.

3 **MR. YOUNG:** You mean you're going to keep 174?

4 **MR. BUTLER:** FPL would agree with that. We
5 think that 174 is sort of the appropriate general
6 wording for the issue about customer charges and should
7 be retained.

8 **COMMISSIONER GRAHAM:** I'm sorry. 174 is in.
9 175 is out. 176 is now a question mark.

10 **MR. BUTLER:** Right. And the reason for our
11 objection to 176 is that we think with 174 retained that
12 176 is subsumed within it. Don't need to have a
13 separate issue on whether the existing charge is fair,
14 reasonable, just, and compensatory.

15 **COMMISSIONER GRAHAM:** Now are you looking at
16 the new language? Or no matter which way it's read,
17 reads, you're objection to it -- you're objecting to it.

18 **MR. BUTLER:** I'm sorry. On 176 -- okay.
19 Yeah. I see the change in the language.

20 Just, I think this is going to the same point
21 that Mr. Nelson has raised previously, which by his
22 reading of the *South Florida Natural Gas Company* case
23 he's trying to put in separate issues for a distinct
24 determination about the existing rates before making a
25 determination of whether the proposed rates or charges

1 that FPL has submitted in this proceeding should be
2 approved. You know, we just don't see a need for a
3 separate issue on that. You know, when we have an issue
4 on what the appropriate customer charges are, he's free
5 to argue that he doesn't think that the, there's
6 evidence to warrant changing from the existing charge.
7 We can present our evidence that we think that the new
8 charge we've proposed is appropriate. And it's
9 adequately covered within that issue, doesn't need a,
10 sort of a companion issue, excuse me, expressly
11 addressing what the existing charge is or whether the
12 existing charge is reasonable.

13 **COMMISSIONER GRAHAM:** Mr. Young.

14 **MR. YOUNG:** We agree with Florida Power &
15 Light in terms of its rationale and we believe that this
16 issue needs to be dropped.

17 **COMMISSIONER GRAHAM:** Mr. Nelson.

18 **MR. NELSON:** I don't want to waste your time
19 by restating my position, but my position is that it's
20 important to identify the legal issues so they can be
21 isolated and briefed and argued and, and that's the
22 purpose of identifying issues legal and factual.

23 **COMMISSIONER GRAHAM:** Okay. So we are
24 dropping Issue 176, 177, 178, 179, 180, 181, 182.

25 Which brings us to Issue 188. Florida Power &

1 Light, you have the objection.

2 **MR. BUTLER:** Yes, Commissioner Graham. We
3 object to Issue 188, it really goes to a point that was
4 made at the very outset of this Prehearing Conference
5 that this docket isn't about demand-side management
6 programs and the sort of, the appropriate goals, plans
7 for achieving the goals, et cetera. We just don't think
8 this issue is appropriate to the base rate proceeding.

9 **COMMISSIONER GRAHAM:** Mr. Saporito.

10 **MR. SAPORITO:** Commissioner Graham, Thomas
11 Saporito. This issue is relevant to my case in chief
12 showing that FPL's allegation that it needs an increase
13 in base rates to support investment in ongoing business
14 activities associated with energy conservation,
15 advertisement, energy efficient appliances, and consumer
16 electric generating systems is erroneous and not in the
17 best interest of consumers.

18 To the extent that FPL's request to increase
19 its base rates in this docket in connection with the
20 expenditure of consumer funds to support investment in
21 these areas, Issue 188 is relevant and this Commission
22 should allow this issue to go forward in this docket as
23 a matter of law. In deciding, in deciding the relevance
24 of issues brought in this docket it is appropriate for
25 this Commission to consider relevance in the same manner

1 as in the general standard for discovery, which is
2 extremely broad and holds that the question is not
3 whether the discovery is necessarily relevant, but
4 rather it is calculated to lead to the discovery of
5 admissible evidence.

6 Intervenor's position is that this issue is
7 brought in this docket and meets the broad standard of
8 relevance and is calculated to lead to admissible
9 evidence and calculated to obtain information that could
10 be relevant and admissible for which this Commission
11 must give probative weight in deciding this issue
12 brought in this matter.

13 **COMMISSIONER GRAHAM:** Mr. Young.

14 **MR. BUTLER:** Commissioner Graham, Mr. Saporito
15 has just expressed his position on whether he ought to
16 be able to take discovery on this, not whether it ought
17 to be an issue for decision in this proceeding.

18 Frankly, we would argue that it wouldn't be
19 appropriate discovery because of the matters I mentioned
20 earlier. But certainly whether it is or isn't isn't
21 determinative of whether it should be an issue here.

22 The simple fact of the matter is, as was
23 stated at the outset of the proceeding, you know, there
24 are separate dockets, separate proceedings for both the
25 determination of the appropriate levels of demand-side

1 management activities and the recovery of costs for
2 demand-side management activities. It's not this
3 proceeding and I think that it's really just a red
4 herring. It's going to take the hearing in a direction
5 that isn't useful and will expend time without
6 contributing information the Commission needs to decide
7 on FPL's base rate request to have this issue included.

8 **COMMISSIONER GRAHAM:** Mr. Young.

9 **MR. YOUNG:** We agree. And also as pointed out
10 that the Prehearing Officer has already made a ruling
11 that issues dealing with conservation and goals in terms
12 of questioning the plans are not appropriate for this
13 docket.

14 **COMMISSIONER GRAHAM:** All right. Issue 188 is
15 out.

16 **MR. SAPORITO:** Commissioner, Commissioner
17 Graham, Thomas Saporito. Pursuant to Rule 25-22.0,
18 .0376 of the *Florida Administrative Code*, and in citing
19 *Diamond Cab Company versus King*, 146 So.2d 889, 891,
20 Florida 1962 case, I orally move for an opportunity to
21 address the relevance of this issue and maintaining this
22 issue before the entire panel.

23 **COMMISSIONER GRAHAM:** Okay. But right now
24 Issue 188 is out.

25 189. Florida Power & Light, I believe you

1 objected.

2 **MR. BUTLER:** Yes, Commissioner Graham. I
3 won't take long with this. It's really essentially the
4 same point that we just addressed with respect to 188.
5 When you get to the meat of this issue, it's about what
6 we've done to promote cogeneration and demand-side
7 renewable energy. These are matters addressed in the
8 DSM goals, DSM plan, and ECCR dockets, not properly in
9 this proceeding.

10 **COMMISSIONER GRAHAM:** Speak to 189, 190, if
11 you will.

12 **MR. BUTLER:** I'm sorry?

13 **COMMISSIONER GRAHAM:** 180, 180 -- 189 and 190.

14 **MR. BUTLER:** I was speaking to 189. I'm
15 sorry.

16 On what I had just described, for 190 I think
17 that the point here is largely the same as for 188, 189,
18 and 190. These are matters that are appropriately
19 addressed in the other dockets that I had just
20 described.

21 **COMMISSIONER GRAHAM:** Mr. Nelson.

22 **MR. NELSON:** I would agree that this is a
23 matter that this, that Your Honor has already ruled on.
24 My position is as stated, that it is required to be
25 considered under Section 366.82(10), but that has been,

1 already been ruled on.

2 **COMMISSIONER GRAHAM:** All right. So 189 and
3 190 are out. 191 is out. Is there an issue that there
4 is an objection to that we have not addressed yet except
5 for 136 that I said we'll get back to later?

6 Paper shuffling is coming to a halt, so let's
7 go back to individual positions. And I think where we
8 left off was --

9 **MR. YOUNG:** 62 through 124.

10 **COMMISSIONER GRAHAM:** 62 through the end of
11 all the issues. Village of Pinecrest.

12 **MR. GARNER:** The Village of Pinecrest would
13 change its position on numbers 81 through 86 to strike
14 the second sentence in each one of those issues -- or,
15 I'm sorry, positions.

16 **COMMISSIONER GRAHAM:** One more time. 81
17 through --

18 **MR. GARNER:** 81 through 86.

19 **COMMISSIONER GRAHAM:** Simply the strike the
20 second sentence starting with pending?

21 **MR. GARNER:** Correct.

22 **COMMISSIONER GRAHAM:** Through the end? Okay.
23 Any other changes?

24 **MR. GARNER:** No more changes.

25 **COMMISSIONER GRAHAM:** Next.

1 **MR. HA:** Algenol requests to change its
2 position to Issues 124 and 126 to mirror the language in
3 its position to Issue 65 with changing total operating
4 revenues to the categories related to 124 and 126, and
5 also the dollar figures. I can read them out for each
6 one, if you would like, but I think that's --

7 **COMMISSIONER GRAHAM:** All right. One more
8 time. You want to change to the language in issue --
9 which one?

10 **MR. HA:** 65. Algenol's position in 65 should
11 also be repeated for 124 and 126 with the exception that
12 total operating revenues be changed for 124 to net
13 operating income, and the dollar amounts reflect the
14 dollars amounts in Issue 124, and the same thing for
15 126.

16 **COMMISSIONER GRAHAM:** Mr. Young, is that
17 appropriate for your needs?

18 **MR. YOUNG:** Yes.

19 **COMMISSIONER GRAHAM:** Any other changes?

20 **MR. HA:** Yes. In the last issue, Issue 193,
21 we would just leave our position as no, so you can
22 delete the last sentence.

23 **COMMISSIONER GRAHAM:** Okay.

24 **MR. HA:** And I don't know if this is
25 appropriate, but for Mr. Saporito's position in Issue

1 62, it looks to me like that -- when he references CO2,
2 it looks like it is C-zero-2, so if anyone does a search
3 for CO2, it won't pick that up, but I just point that
4 out.

5 **COMMISSIONER GRAHAM:** Okay.

6 **MR. HA:** And that concludes Algenol's
7 position.

8 **COMMISSIONER GRAHAM:** Ms. Kaufman.

9 **MS. KAUFMAN:** Mr. Chairman, on Issue 64, we
10 would agree with the Office of Public Counsel. And on
11 the following issues we are going to take no position,
12 66, 69, 70, 72, 115, 133, 157, 165, 171, 172, 173, and
13 174. And with your indulgence, I am going to take the
14 opportunity this evening to go back through the
15 prehearing order, and if I have any changes or
16 corrections I will e-mail them by the deadline.

17 **COMMISSIONER GRAHAM:** Thank you, ma'am.

18 Mr. Saporito.

19 **MR. SAPORITO:** Thomas Saporito, Mr.
20 Chairman -- Commissioner. Issue 188, my position will
21 be changed from that which is stated on my prehearing
22 statement of August 4th, 2012, to that which has already
23 been documented by the court reporter, my earlier
24 comments made with respect to that issue.

25 With respect to the other issues, I would

1 defer. They would remain unchanged to the extent that
2 those issues have responses which defer to the OPC's
3 positions. And they will remain unchanged as stated,
4 except and if OPC would change their position, then I
5 would follow along with OPC's new position.

6 **COMMISSIONER GRAHAM:** Okay. Your position on
7 Issue 188 was on the issue that we have already struck?

8 **MR. SAPORITO:** Yes, sir.

9 **COMMISSIONER GRAHAM:** Okay. Mr. Nelson.

10 **MR. NELSON:** Mr. Chairman, I have no changes
11 in position.

12 **COMMISSIONER GRAHAM:** Thank you.

13 Mr. Young.

14 **MR. YOUNG:** If we can backtrack one second. I
15 think Ms. Kaufman said to the extent that positions
16 change she would e-mail by 1:00 o'clock.

17 **MS. KAUFMAN:** That's right.

18 **MR. YOUNG:** In terms of the new issues or --
19 I'm just trying to get clarification. Because as stated
20 in the prehearing conference, that the parties must take
21 a position unless good cause is shown why they cannot
22 take a position. And those positions become no position
23 if they do not take a position, but in the prehearing
24 conference.

25 **MS. KAUFMAN:** I understand, Mr. Young. I just

1 want the opportunity to go back through, because we have
2 had a lot of changes and corrections and just check my
3 notes. It's my intention that what I have said today
4 will stand, but I just want to have the opportunity to
5 do that review and let you know if I have been in error
6 anyplace.

7 **COMMISSIONER GRAHAM:** What was it that we were
8 doing by 1:00 o'clock tomorrow?

9 **MR. YOUNG:** By 1:00 o'clock tomorrow,
10 parties -- if the prehearing officer gives leeway, on
11 new positions the party must -- on new issues, the
12 parties provide their new positions by 1:00 o'clock.

13 **COMMISSIONER GRAHAM:** So any issue that was
14 changed --

15 **MR. YOUNG:** Modified.

16 **COMMISSIONER GRAHAM:** -- will be a new issue.

17 **MR. YOUNG:** Yes.

18 **COMMISSIONER GRAHAM:** And I believe that was
19 what she was speaking of.

20 **MR. YOUNG:** Okay. I just wanted to get
21 clarification on that.

22 **COMMISSIONER GRAHAM:** Yes, sir.

23 **MR. LaVIA:** The Florida Retail Federation has
24 no changes. We will defer to OPC's changes of position
25 where appropriate.

1 **COMMISSIONER GRAHAM:** Okay.

2 Mr. Rehwinkel.

3 **MR. REHWINKEL:** Yes. Commissioner Graham, the
4 Public Counsel's position on Issue 63 should now read,
5 "See position on Issues 64 and 79."

6 **COMMISSIONER GRAHAM:** Okay.

7 **MR. REHWINKEL:** And then for Issues 66, 69,
8 70, 71, and 72, our position should be stated as no
9 position.

10 **COMMISSIONER GRAHAM:** Okay.

11 **MR. REHWINKEL:** Commissioner, on Issue 99, I
12 believe that our issue is appropriate as stated, but I
13 will state this for the record, that we are exploring
14 resolution of this issue with FPL per a conversation
15 earlier in the day, and we will work towards that. But
16 at this time we will leave our position as stated.

17 **COMMISSIONER GRAHAM:** Okay.

18 **MR. REHWINKEL:** Issue 115, we believe that we
19 can provide a number, but we would ask the Prehearing
20 Officer's indulgence to provide that number no later
21 than noon tomorrow, and we will provide it earlier if
22 possible. We think it's mostly a fallout issue, but we
23 would like to provide an actual number, if that would be
24 acceptable.

25 **COMMISSIONER GRAHAM:** I don't have a problem

1 with that.

2 **MR. REHWINKEL:** Okay. And Issue 127, our
3 position should be stated as no position. And finally,
4 Commissioner, I can read into the record our position on
5 Issue 15, which is the service quality issue. I
6 apologize for going back that far, but with your
7 indulgence I would like to read a position into the
8 record and provide it.

9 **COMMISSIONER GRAHAM:** Please.

10 **MR. REHWINKEL:** The Commission should evaluate
11 all evidence submitted by customers during the hearing
12 in evaluating FPL's claims as to the quality and
13 reliability of the service it provides.

14 **COMMISSIONER GRAHAM:** Just to make sure, can I
15 get you to read that one more time?

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

17 The Commission should evaluate all evidence
18 submitted by customers during the hearing in evaluating
19 FPL's claims as to the quality and reliability of the
20 service it provides.

21 **COMMISSIONER GRAHAM:** Okay.

22 **MR. REHWINKEL:** Thank you.

23 **COMMISSIONER GRAHAM:** Are those all the --

24 **MR. REHWINKEL:** Yes, sir.

25 **COMMISSIONER GRAHAM:** Mr. Young, if you would

1 note that OPC will be getting back to you on a specific
2 value for Issue 115.

3 **MR. YOUNG:** Yes. I think he said 12:00. If
4 you can make it 1:00 p.m. to keep it consistent.

5 **COMMISSIONER GRAHAM:** Hey, if you can get it
6 by 12:00 --

7 **MR. REHWINKEL:** We will do it much sooner than
8 that.

9 **COMMISSIONER GRAHAM:** Okay.

10 **MS. WHITE:** Thank you. We have several
11 changes. Issue 67, change to agree with OPC. Issue 80,
12 agree with FIPUG. Issue 96, agree with FIPUG. Issue
13 102, agree with OPC. Issue 104, agree with FIPUG.
14 Issue 106, agree with OPC. Issues 112 and 113, agree
15 with FIPUG. Issue 114, no. Issues 123 and 124, agree
16 with FIPUG. Issues 126 and 127, agree with FIPUG. And
17 Issues 166, 167, 168, and 169, agree with FIPUG. And
18 all other positions that are currently stated no
19 position at this time, we take no position.

20 **MR. WISEMAN:** Thank you, Your Honor.

21 SFHHA had a number of changes. On Numbers 62
22 and 64 we would change from no position to support OPC.
23 On 65, we would change to support Florida Retail
24 Federation. The following numbers all change from no
25 position to support OPC; 67, 68, 73, 81 through 86, 103,

1 105, 108, 109, 118 through 125, 130, and 132. On 170,
2 we support -- change from no position to support FIPUG.
3 And we have two substantive changes that I would read
4 going backward; Number 126 we would change from no
5 position to, "No. FPL's requested annual operating
6 revenue increase should be reduced by at least
7 \$515.1 million."

8 **COMMISSIONER GRAHAM:** Could I get you to read
9 that one more time. This is for 126 you said?

10 **MR. WISEMAN:** 126. And, again, the answer
11 would change to, "No. FPL's requested annual operating
12 revenue increase should be reduced by at least
13 \$515.1 million."

14 **COMMISSIONER GRAHAM:** Okay.

15 **MR. WISEMAN:** The second substantive change is
16 on Number 143, and on that one the answer should change
17 to, "no. FPL's proposed allocation of the Cape
18 Canaveral modernization step increase should be based
19 upon a summer CP methodology." Would you like me to
20 repeat that?

21 **COMMISSIONER GRAHAM:** Please, sir.

22 **MR. WISEMAN:** Again, "No. FPL's proposed
23 allocation of the Cape Canaveral modernization step
24 increase should be based upon a summer CP methodology."

25 **COMMISSIONER GRAHAM:** Okay.

1 **MR. WISEMAN:** Those are all our changes.

2 **COMMISSIONER GRAHAM:** I'm not sure I got the
3 ones that you're taking a position of OPC was 67, 68,
4 73, 81 through 86, 103, 105, 108, 109, 118 through 125,
5 and then 130 and 132?

6 **MR. WISEMAN:** And also 62 and 64.

7 **COMMISSIONER GRAHAM:** I knew I missed
8 something. Okay.

9 **MR. WISEMAN:** Thank you, Your Honor.

10 **MR. HENDRICKS:** Yes. I don't want to make any
11 changes. I guess I am asking for a clarification about
12 the issues that were changed today. I'm a little
13 confused about exactly which ones were changed and the
14 final outcome. Will there be a list of the ones that
15 were changed today, and, therefore, we would be able to
16 take a new position on?

17 **MR. YOUNG:** Not a problem. Staff will be able
18 to update that list and send it out to the parties and
19 they will be able to take a new position on it. With
20 that being said, I think possibly we can get it out
21 today. But if we can't get it out today, we can get it
22 out, like, first thing in the morning. But we will
23 shoot for today, depending on what time we leave. That
24 might have to change the due date.

25 **COMMISSIONER GRAHAM:** I was going to say, we

1 had said that they were going to have a -- they were
2 going to get back to you by 1:00 on new positions. It
3 sounds to me if you can get something out to them by
4 9:00 in the morning, then they will have until 5:00 to
5 get back to you.

6 **MR. YOUNG:** That's fine.

7 **COMMISSIONER GRAHAM:** Did everybody hear that?

8 **MR. BUTLER:** FPL would strongly support that,
9 and I think it would be very helpful to just be sure
10 everybody is on the same page for what issues remain and
11 the exact wording of them so we can be sure that we have
12 got positions on them.

13 **COMMISSIONER GRAHAM:** Well, now, let's make
14 sure that the new positions that people are taking on
15 are the issues that have changed.

16 **MR. YOUNG:** Yes.

17 **COMMISSIONER GRAHAM:** So we will make sure --
18 you can go ahead and give them a list of all the issues
19 as you currently know them, but make sure we segregate
20 the ones that have changed.

21 **MR. YOUNG:** Not a problem. And the issues
22 numbers will not change.

23 **COMMISSIONER GRAHAM:** Okay. All right. So we
24 have gone through all the issues, and we have taken a
25 position -- we have gotten everybody's position on all

1 the issues other than the ones that have changed during
2 this prehearing.

3 I think we need a five-minute break. We will
4 be back at 5:30. I'm sorry, I can't read. We will be
5 back at ten after 5:00.

6 (Recess.)

7 **COMMISSIONER GRAHAM:** All right. It looks
8 like we're at Section IX, which is the exhibit list.

9 **MR. YOUNG:** Staff would note for the record
10 that it has prepared -- it will prepare a Comprehensive
11 Exhibit List consisting of all prefiled exhibits for the
12 purpose of numbering and identification for the exhibits
13 at the hearing. Staff would note that it has provided
14 parties a list of staff's composite exhibit, and staff
15 will note that additional stipulated exhibits containing
16 discovery responses may be added during the course of
17 the hearing and before we get to hearing, if the parties
18 agree.

19 **COMMISSIONER GRAHAM:** Florida Power and Light.

20 **MR. BUTLER:** We don't have any changes to the
21 exhibit list at this point.

22 **MR. HENDRICKS:** No changes.

23 **MR. WISEMAN:** No changes.

24 **MS. WHITE:** No changes.

25 **MR. MCGLOTHLIN:** No changes.

1 **MR. LaVIA:** No changes.

2 **MR. NELSON:** No changes.

3 **MR. SAPORITO:** No changes.

4 **COMMISSIONER GRAHAM:** Okay.

5 **MS. KAUFMAN:** FIPUG has no changes.

6 **MR. HA:** Algenol has no changes.

7 **MR. GARNER:** Pinecrest has no changes.

8 **COMMISSIONER GRAHAM:** Sounds good to me.

9 **MR. YOUNG:** Staff has no changes.

10 Staff will note that we will provide the
11 Comprehensive Exhibit List to the parties as soon as
12 possible.

13 **COMMISSIONER GRAHAM:** All right. Section X,
14 proposed stipulations.

15 **MR. YOUNG:** Staff is not aware of any proposed
16 stipulations at this time.

17 **MR. BUTLER:** Neither is FPL, although I note
18 that from the results of the issue, or the position
19 identification may provide some opportunities that we
20 will certainly explore as we get, you know, the final
21 positions stated in the prehearing order.

22 **COMMISSIONER GRAHAM:** All right.

23 **MR. WISEMAN:** None.

24 **COMMISSIONER GRAHAM:** We don't have to go down
25 the line. If there is any, raise your hand. Okay.

1 We are at Section XI.

2 **MR. YOUNG:** In terms of pending motions, none
3 other than the issues discussed in the preliminary
4 matters. Staff isn't aware of any.

5 **COMMISSIONER GRAHAM:** If there's any pending
6 motions that anybody knows of other than Mr. Saporito
7 that is going to object to 188 going out, is there
8 anything else?

9 **MR. SAPORITO:** Commissioner Graham, Thomas
10 Saporito. I would just like to orally move that based
11 on the record to date there is overwhelming evidence
12 that shows that FPL's request to increase rates is not
13 warranted at this time. And, in fact, the evidence
14 warrants that this Commission order that FPL decrease
15 their rates. And I would just move the Commission to
16 issue a directed verdict to that effect. Thank you.

17 **COMMISSIONER GRAHAM:** You can hear a pin drop.

18 **MR. BUTLER:** Commissioner Graham?

19 **COMMISSIONER GRAHAM:** Yes, sir.

20 **MR. BUTLER:** FPL would just briefly respond
21 that certainly our view is that the record supports the
22 exact opposite of what Mr. Saporito indicated. It
23 abundantly supports FPL's requested rate increase. It's
24 clear that there is a dispute among the parties, and I
25 think there is evidence, you know, ranging over a wide

1 spectrum of topics. Clearly not the sort of thing that
2 summary disposition would be remotely appropriate for.
3 It's also not an appropriate motion to be brought before
4 the Prehearing Officer.

5 **COMMISSIONER GRAHAM:** Well, I can assure that
6 you the Prehearing Officer does not plan on granting
7 that motion.

8 Okay. If no other pending motions, we are to
9 Section XII, which is confidentiality motions.

10 **MR. YOUNG:** To staff's knowledge there are 22
11 pending temporary protective orders. There might be
12 more, I'm not too sure. And based on the Commissioner
13 possibly citing the four motions for confidentiality,
14 there only remain one motion for attempt to seek
15 confidentiality treatment. That will be addressed by
16 separate orders.

17 **COMMISSIONER GRAHAM:** Is that the way you see
18 it?

19 **MR. BUTLER:** Yes, that's fine.

20 **COMMISSIONER GRAHAM:** Is there any other
21 discussion about confidentiality motions?

22 Mr. Saporito.

23 **MR. SAPORITO:** Commissioner Graham, Thomas
24 Saporito. In reading this, you know, I'm not taking
25 issue with confidentiality, I'm just saying there is

1 wording in here that at the end of the proceeding that
2 these confidentiality documents will be returned to the
3 originating party. I would suggest that we just --
4 can't we just certify that we destroyed those documents
5 instead of giving all of those documents, returning them
6 by mail somehow, or however the process works?

7 **COMMISSIONER GRAHAM:** That's usually behind
8 the scenes stuff, so let me refer to staff to answer
9 that question.

10 **MS. HELTON:** I think that that would depend on
11 who is the owner of the confidential information. If
12 they were comfortable with the statement to that effect,
13 that would be something that could be worked out with
14 you and the owner of the confidential information. But
15 our typical process, I believe, is to return the
16 documents to the source.

17 **MR. BUTLER:** That is our typical practice, as
18 well, and that is what we would certainly expect. And I
19 can't rule out the possibility of some exception, but it
20 is certainly what we would expect as a norm for the
21 treatment of the confidential information that we have
22 provided. It just provides us with a lot greater
23 certainty and assurance on getting the confidential
24 information back into our hands.

25 **COMMISSIONER GRAHAM:** If there is an

1 exception, how does that happen? How does it come
2 about?

3 **MR. BUTLER:** It would just be something that
4 we would work out on a bilateral basis with individual
5 parties if the appropriate circumstances warranted, but
6 it's not something, I think, that needs to be addressed
7 or should be addressed in the prehearing order.

8 **COMMISSIONER GRAHAM:** Mr. Saporito, the way it
9 stands now you need to return those confidential
10 documents if they are issued to you. If you would like
11 to do something different, that's something you would
12 have to work out individually with Florida Power and
13 Light.

14 Did I hear somebody say no? Okay. I just
15 wanted to make sure I had that clear.

16 Okay. Post-hearing procedures, Number XIII.

17 **MR. YOUNG:** Staff suggests post-hearing
18 positions be limited to 75 words for general issues and
19 180 words for seven selected issues by each party's
20 choosing. Also, if staff can get acquiescence from the
21 parties, if that's okay, if that's the terms of the
22 agreement that everyone agreed to?

23 **MR. BUTLER:** It is certainly the arrangement
24 that FPL proposed and agrees to.

25 **COMMISSIONER GRAHAM:** Mr. Young, one more

1 time. They agree to 75 words -- read that again. I
2 want to make sure I've got it clear.

3 **MR. YOUNG:** Post-hearing positions are limited
4 to 75 words for general issues and 180 words for seven
5 selected issues of each party's choosing.

6 **COMMISSIONER GRAHAM:** Wasn't there a page
7 limitation?

8 **MR. YOUNG:** Yes. Staff also suggests or
9 recommends that the post-hearing briefs be limited to 50
10 pages.

11 **MR. BUTLER:** That is not something that we
12 would agree to. I think that 50 pages is not going to
13 be workable here. We have looked at the prehearing
14 orders in the recent Gulf rate case and our last rate,
15 they both had a 150-page limit. I think that with the,
16 you know, reduction of issues that we have been able to
17 achieve here today that that page limit would be
18 sufficient. We were, frankly, coming in expecting to
19 ask to increase it, but I think the 150 pages would be
20 sufficient. But, you know, 50 pages when you think
21 about it with somewhere probably still north of 150
22 issues, that would be like a third of a page per issue.
23 It's just not workable.

24 **COMMISSIONER GRAHAM:** It sounds like a good
25 idea to me.

1 **MR. BUTLER:** We try to be succinct, but we do
2 need to summarize all of our evidence.

3 **COMMISSIONER GRAHAM:** Any other comments on
4 the 50-page limitation?

5 **MR. SAPORITO:** Commissioner Graham, Tom
6 Saporito.

7 **COMMISSIONER GRAHAM:** Hold on. Sorry, I'm
8 just trying to go down the path this time.

9 **MR. WISEMAN:** SFHHA would support FPL's
10 proposal. A 50-page limit, given the size and
11 complexity of this case, I just don't think is realistic
12 for the reasons that Mr. Butler pointed out. And so --
13 I don't need to be lengthy about it, we support FPL's
14 proposal.

15 **COMMISSIONER GRAHAM:** OPC.

16 **MR. MCGLOTHLIN:** Well, I agree that 50 is
17 probably insufficient. We would not require or need
18 150, but then we don't address every issue, so I would
19 not oppose FPL in that request.

20 **COMMISSIONER GRAHAM:** Staff, with the time
21 frame that we have ironed out, can staff handle 150
22 pages?

23 **MR. YOUNG:** Yes, sir. I'm getting a go ahead
24 from Mr. Willis; yes, sir, 150 pages is okay.

25 **COMMISSIONER GRAHAM:** I'm not sure I can

1 handle 150 pages from each party. Well, I would prefer
2 most of this stuff coming in written form, so my
3 generosity in the written form -- and you will probably
4 see the other side coming in the oral argument form, so
5 I don't have a problem with 150 pages.

6 Mr. Saporito.

7 **MR. SAPORITO:** Commissioner Graham, I agree
8 with the Commissioner's page limitation there for 150
9 pages. But my concern is during the week of
10 September 10th, which is the time frame which I
11 anticipate being engaged in writing the post-hearing
12 brief, I'm going to be in Washington, D.C. that week of
13 September 10th. And I was wondering if the Commission
14 could set a time period of like 30 days after the
15 conclusion of the technical hearing upon which the
16 post-hearing brief will be due?

17 **COMMISSIONER GRAHAM:** I don't know if the time
18 frame is now, but that's why I already questioned if the
19 staff would have time. What is the current time frame
20 for the post-hearing brief?

21 **MR. YOUNG:** Post-hearing briefs are due
22 September 14th, 2012.

23 **COMMISSIONER GRAHAM:** And you want to go 30
24 days past that?

25 **MR. SAPORITO:** No, 30 days past the end of the

1 technical hearing, which I understand to be August 31st.
2 So it would be the end of --

3 **MR. YOUNG:** I'm sorry, sir, it's
4 September 21st, I'm sorry, not September 14th.

5 **COMMISSIONER GRAHAM:** September 21st.

6 **MR. YOUNG:** Yes.

7 **COMMISSIONER GRAHAM:** So they have 21 days.

8 **MR. SAPORITO:** I would just ask for the
9 additional time to the end of September, if I could get
10 that.

11 **MR. YOUNG:** I'm sorry, sir, the schedule is
12 compact as it is. Staff has to read the briefs, write
13 recommendations in order to present and file a
14 recommendation in order to present it to the Commission
15 for a vote.

16 **COMMISSIONER GRAHAM:** Now if you had left it
17 at 50 pages you would have time.

18 (Audience laughter.)

19 **MR. YOUNG:** I blame Mr. Willis. He shook his
20 head yes.

21 **COMMISSIONER GRAHAM:** I don't think staff can
22 accommodate that request. I think you're stuck with the
23 21 pages -- I'm sorry, 21 days.

24 **MR. SAPORITO:** Okay. So this document will be
25 due on September 21st, and according to this Page 254 of

1 this proposed prehearing order, it's to include the
2 findings of fact, conclusion of law, statement of issues
3 and position, and brief. All these documents contained
4 together will be a page limitation of 150 pages, is that
5 correct, sir?

6 **MR. YOUNG:** Yes.

7 **COMMISSIONER GRAHAM:** Yes. Anything else on
8 post-hearing procedures? Okay. Number XV.

9 **MR. SAPORITO:** Commissioner Graham.

10 **COMMISSIONER GRAHAM:** Yes.

11 **MR. SAPORITO:** I would like clarification on
12 these post-hearing briefs. Can we file those
13 electronically?

14 **MS. HELTON:** They may be filed in paper or
15 electronically.

16 **COMMISSIONER GRAHAM:** Yes. What do we do as
17 far as confirmation on those post-hearing briefs in
18 electronic form?

19 **MS. HELTON:** Well, if your question is do we
20 send something back that we received them, I believe
21 that that is Ms. Cole's practice. But the people
22 sitting there at that table could tell you much better,
23 since we don't file things electronically, the staff.

24 **MR. BUTLER:** When we file something
25 electronically, we do get an e-mail message back

1 confirming receipt of whatever it is that we just filed.

2 **COMMISSIONER GRAHAM:** You get receipt and
3 pages? I mean, if you thought you sent 150 pages, and
4 they said that they received 150 pages?

5 **MR. BUTLER:** It's not that precise. It's
6 really just a confirmation of receipt of a document
7 having been filed electronically. So in terms of
8 something that would confirm that the sort of full
9 number of pages were received -- I'm sorry.

10 **MS. HELTON:** I think it's a word -- usually
11 people attach a word processing file. So if they
12 received the word processing file, I think it's a fair
13 assumption to make that all the pages were received.

14 I will note, though, that I know in the past
15 when servers are slow, if I send something at 4:55, it's
16 not necessarily going to get to the Commission by 5:00
17 o'clock, depending on where you are and how slow our
18 server is and how slow your server is.

19 **MR. REHWINKEL:** One other thing, Commissioner
20 Graham. We believe that the Commission's practice for
21 e-filing is that they won't accept anything greater than
22 50 pages. So that's something I think the parties need
23 to -- if they intend to file that way, they need to know
24 that is the limitation.

25 **MR. SAPORITO:** Commissioner Graham, Thomas

1 Saporito. The parties can send the brief in two
2 sections of 75 pages each, and that will suffice the
3 current regulations.

4 **MR. YOUNG:** It would have to be three pages.
5 I think Mr. Rehwinkel said it doesn't accept anything
6 more than 50 pages. I'm not too sure in terms of the
7 filing process.

8 **MR. BUTLER:** I thought it was higher than
9 that.

10 **MR. GARNER:** I think it is 100 pages, not 50.

11 **MS. HELTON:** We will be happy to work with Mr.
12 Saporito and bring him -- and have a conversation with
13 Ms. Cole, our agency clerk, and that is something that
14 can get worked out, I think.

15 **COMMISSIONER GRAHAM:** I just want to make sure
16 that when we hit the timeline that we are all dancing to
17 the same tune.

18 **MR. BUTLER:** Actually, you know, Mr.
19 Saporito's point is a good one. I would on behalf of
20 FPL just to be sure that we are all understanding what
21 we can and won't be able to do electronically after the
22 hearing. It would be good to get confirmation that, you
23 know, a 150-page document could, in fact, be split into
24 two pieces so each would be within the 100 page limit.
25 If it's not going to be acceptable to the Clerk's

1 Office, then I certainly would like to have enough
2 knowledge in advance so that we can all plan to make
3 deliveries in paper form.

4 But I certainly think I can speak in this
5 particular regard for the group, that we would like for
6 the procedures to be such that they accommodate
7 electronic filing, if possible.

8 **MS. HELTON:** If it meets your pleasure, Mr.
9 Chairman, I will have a conversation with Ms. Cole first
10 thing tomorrow morning to see what we can accommodate as
11 far as the equipment goes. And if she will -- if we
12 have the equipment to accommodate up to 150 pages, even
13 if that's not our normal practice, is it okay with you
14 if we, in this instance, accept that?

15 **COMMISSIONER GRAHAM:** Whatever gives the
16 reassurance to both sides that the documents were
17 received and how many documents were received. Once
18 again, just because what we went through leading up to
19 the prehearing, you know, if it needs to be electronic
20 or not, and the amount of flux that we had at the time,
21 it just seems that we need to make sure that we have got
22 this all ironed out before everybody walks away from
23 here today.

24 I mean, not the individual details, but that,
25 you know, what we're going to be looking to and how we

1 are going to get back to them, because that's a good
2 point that you made. If somebody is trying to make a
3 5:00 o'clock deadline and it's two minutes before and
4 they're trying to send it and it doesn't get here.

5 **MS. HELTON:** Then it's not filed by 5:00.

6 **MR. HENDRICKS:** Yes, but I would point out
7 that if they were driving here to bring it in, and it
8 didn't get here by 5:00 -- if you got stuck in traffic,
9 it would have the same affect. I would think the
10 electronic filing really has a lot of advantages,
11 because you get an electronic document and people can
12 easily search and manage much better, if we can just get
13 clearance to have the appropriate length receipt. And
14 if you received the word file and it will be corrupt or
15 you will receive it complete. You're not going to just
16 have missing pages in it.

17 **COMMISSIONER GRAHAM:** I think the point to be
18 made is let's not wait until 4:59 to send a 150-page
19 document, because then nobody is disappointed.

20 Okay. I think we have massaged that quite a
21 bit. Opening statements. Now, as I talked to staff
22 about this earlier, my suggestion was no opening
23 statements. Of course, staff giggled at me. But I can
24 tell you after going to ten different service hearings,
25 you have heard the position for pretty much everybody

1 that wants to come forward, and we have the 150 pages
2 that we have talked about. There is a lot of
3 documentation as far as the different positions and
4 where people stand for.

5 I don't see any reason why -- let me back up.
6 In the service hearings, I heard OPC make an opening
7 statement, and I heard pretty much everybody that
8 followed him parrot that opening statement in their five
9 minutes, and it was the same information over and over
10 and over. And I don't think that that's necessary.

11 I'm trying to make sure that, you know, we are
12 trying be as efficient as possible in this hearing. And
13 I can't see why a simple statement can't be made that I
14 think this is the reason why this case is wrong, and I'm
15 going to come out with this bullet point, this bullet
16 point, this bullet point, and that's going to be my
17 case. I don't need to hear you argue the case. You
18 need to state the skeleton, and then we can go from
19 there.

20 So that being said, what I'm proposing is that
21 we give Florida Power and Light, because you have the
22 burden to put on your case, a ten-minute opening
23 statement; that we give OPC and the intervenors
24 20 minutes, and you can decide how that gets split up.
25 If OPC gets ten minutes, like Florida Power and Light,

1 and then the other ten minutes gets divided up, or how
2 do we handle that? And I throw that out for
3 conversation.

4 **MR. REHWINKEL:** Commissioner Graham, from the
5 Public Counsel's standpoint we would prefer a
6 stand-alone allocation of time. Our case is not offered
7 contingent upon or in coordination with other parties.
8 I'm not certain that our interests align that way. So
9 with all due respect, we would request that we have a
10 separate allocation of time.

11 **MR. WISEMAN:** Mr. Commissioner, SFHHA also
12 would request a separate allocation of time. There are
13 certain issues in the case where no doubt intervenors
14 are aligned and state similar if not identical
15 positions. But there are some other issues, and
16 particularly I'm thinking about the rate -- the class
17 cost-of-service allocation issues, parity issues, where
18 there are differences. And I don't think that, as an
19 example, that if OPC's -- I would doubt that OPC's
20 opening statement is going to go to those issues, and
21 those are ones which are critical to our clients.

22 So we believe that we need the opportunity to
23 make an opening statement to point out those critical
24 issues that are separate and distinct from the issues
25 that others raise.

1 **MR. BUTLER:** Commissioner Graham, for FPL, I
2 appreciate your concerns, I appreciate the need to move
3 this proceeding along quickly, but we're talking about a
4 major case, a huge number of components and
5 considerations involved in it. FPL needs to have a
6 20-minute allocation of time. We will use as little of
7 that as we can. You know, we're going to make it as
8 efficient and as concise as possible, but you're really
9 talking about, for each us, laying out what we want you,
10 as Commissioners, to be thinking about and understanding
11 as we present the evidence through our witnesses.

12 And the presentation of the evidence is
13 necessarily somewhat disjointed, because you have
14 individual witnesses covering particular topics, and you
15 do that and then move on to somebody else. I think
16 there is a very important role to be served by opening
17 statements at the beginning of a trial or a technical
18 hearing like this. It's really somewhat different than
19 the opening statements that may be made before a service
20 hearing that is serving a different purpose. This is
21 where we each get to give you a clearer understanding of
22 where we are going with our case. And so look back at
23 what has been done in the prior cases, FPL and AIF
24 shared, but it was very predominately FPL's use of a
25 30-minute allocation of time in our last rate case.

1 And we think we can be more efficient than
2 that, but 20 minutes is really about as small an
3 allocation as we think we could make do with. And if
4 you are going to be having separate allocations for the
5 intervenor parties, which is just not the practice that
6 we have been seeing recently in cases, but if you do
7 have that approach, then it's particularly important for
8 us to get a significant allocation of time. Because
9 otherwise what's going to happen is that we're going to
10 have something very short, and then cumulatively you
11 will be hearing a great deal about what we consider to
12 be the other side of the case. And we don't think that
13 would be fair.

14 **MR. SAPORITO:** Commissioner Graham, this is
15 Thomas Saporito. I strenuously object to that
16 allocation of time. First of all, as you have just
17 pointed out, there were a number of service hearings
18 where people stated their positions. But more to the
19 point, everybody filed prehearing statements and
20 everybody had an opportunity to write a lengthy
21 statement of their position.

22 I would suggest that the Commission allow
23 Florida Power and Light Company and the Office of Public
24 Counsel separate allocations of ten minutes each and
25 then a significantly smaller amount of time for the

1 other intervenors. Because, like I just said,
2 everybody's position is in writing, and it's in that
3 prehearing brief. Thank you.

4 **COMMISSIONER GRAHAM:** I couldn't have said it
5 any clearer myself.

6 Mr. Moyle.

7 **MR. MOYLE:** No, FIPUG attended one of the
8 multiple hearings and made some comments. I think the
9 comments we would make in an opening statement would be
10 somewhat different, because we have all had the
11 opportunity to take depositions and participate in
12 depositions and some additional evidence has been
13 adduced.

14 And so I think, given the fact that it is a
15 two-week proceeding, you know, roughly \$700 million,
16 that if an hour and a half is allocated for opening
17 statements, you know, I did the math quickly, I think I
18 counted ten intervenors. You know, and FPL, I think you
19 probably could do it all, you know, within an hour and a
20 half or so. I will embarrass myself and show my math
21 isn't very good, but ten times five, fifty minutes, and
22 a little extra for OPC, a little extra for Power and
23 Light, I think you could get it done in an hour and a
24 half.

25 And I think it also helps, you know, usually

1 the trier of fact, even though y'all have been in
2 service hearings, some of the things that come out in
3 litigation and in trial strategy are different, and I
4 think it may be helpful to y'all to hear some of the
5 theories. Because, you know, when you have witnesses up
6 there, you can't really have the opportunity to talk and
7 say let me tell you why I'm going to ask Mr. So-and-So
8 this question, because I think -- and you can really
9 have a direct communication and conversation that I
10 think helps the trier of fact, you know, put everything
11 together.

12 So we would respectfully ask that sufficient
13 opening statement time be provided.

14 **COMMISSIONER GRAHAM:** But as Mr. Saporito said
15 earlier, how was some of that stuff not covered with the
16 positions that we have already documented? I mean,
17 where you stand with the different issues, and --

18 **MR. MOYLE:** I think some of it may be. You
19 know, I think also -- you know, I think that is a fair
20 point. But I think also, you know, the opening
21 statement does give everybody a chance to articulate
22 pretty briefly at a high level their key points and
23 their key themes. And, you know, the other thing, there
24 is a lot of other interested parties that may be
25 checking in on the Internet or otherwise.

1 I think, you know, to the extent that there is
2 that interest that informing it in a way with some
3 verbal comments helps, because I'm not sure, you know,
4 that people are reading the prehearing statements that
5 may be watching it on the Internet and some things like
6 that.

7 **COMMISSIONER GRAHAM:** Yes, but is it necessary
8 to hear that you were born in Jackson Hospital, and
9 you're 62 years old, and you're a Floridian?

10 **MR. MOYLE:** I'm getting there, but I'm
11 certainly not at that point yet in terms of age. I was
12 been at TMH. But a fair point. I think the lawyers
13 representing the clients and the intervenors who are
14 pro se, I mean, you know, we have a professional
15 obligation to make good use of the time to make key
16 points. And I know that, you know, I suspect it's not
17 going to be abused. I know we will try to point out the
18 key points, and, you know, five minutes, I think, would
19 be sufficient for FIPUG.

20 **MR. WISEMAN:** Your Honor, I agree with that.
21 I think five minutes per intervenor, other than OPC --
22 and I would put FPL in a separate category, as well --
23 is sufficient. But I think it really goes provide a
24 great benefit to you, the Commissioners, as triers of
25 fact to understand what we intend to prove when we are

1 cross-examining witnesses. I think it actually goes
2 directly to the statement you made at the beginning of
3 this discussion. Five minutes is a short time period to
4 say, "Your Honor, this is what we intend to prove." So
5 that when we are asking cross-examination questions,
6 which sometimes can be somewhat opaque, you already have
7 in mind what we have told you our strategy is.

8 And so I think it gives all of the
9 Commissioners a better insight into why we are asking
10 the questions, and a better insight into understanding
11 the evidence that is developed. So, again, I agree with
12 Mr. Moyle, five minutes per party is -- it's not a lot
13 of time, given the amount of money on the table. I
14 think it's very significant to allow us to do it, and I
15 think it will be helpful to you.

16 **MR. LaVIA:** Florida Retail Federal, Jay LaVia.
17 I think it's a two-week-long hearing, and a road map in
18 five minutes is not that unreasonable. I would echo
19 what FIPUG has stated, what the hospitals have stated.
20 I will prevail upon my side, at least, that if we don't
21 have to use all the five minutes, we won't.

22 But I'd like to have the flexibility to be
23 able to use the five minutes to explain the different
24 points of views. And the intervenors have different
25 points of views here. They are not all lockstep. And I

1 think it's important to lay that out early on. There
2 are different focuses. While the Retail Federation may
3 not be dealing with rate fairness issues and how
4 allocations are made, there are things that we do focus
5 on, and that's what we will focus our opening statement
6 on. So I would support five minutes, and twenty minutes
7 seems reasonable for FPL. I think a little bit more
8 time, ten minutes for OPC, because they are covering
9 most of the issues, if not all the issues on behalf of
10 the intervenors. Thank you.

11 **COMMISSIONER GRAHAM:** Mr. McGlothlin.

12 **MR. McGLOTHLIN:** Well, put me in the camp of
13 the parties who believe the opening statements would
14 serve a useful purpose. And I won't reiterate
15 everything that Jay said, but, I think as the
16 Commissioners walk into the hearing room and launch into
17 a two-week process, an overview, a road map, perhaps,
18 with some emphasis on the points that the party thinks
19 is going to be important to that party would be a useful
20 use of the time. And I would point out that this
21 particular hearing is going to be more technical in
22 nature with an emphasis on the evidence you are about to
23 hear than would be the case, for instance, in the
24 opening statement at a customer service meeting and can
25 be tailored accordingly.

1 But I understand the Commissioner's time
2 limitations. I would request ten minutes, and my
3 ambition would be to make that valuable to the
4 Commissioners.

5 **COMMISSIONER GRAHAM:** Any other comments?

6 Comments from staff? Actually hold that.
7 You'll just confuse me.

8 All right. I want to have this conversation.
9 I know I wasn't going to get away with my original
10 thought of no opening statements, but I guess I want to
11 be clear. Because sitting through several of these
12 things, a lot of times it tends to be very duplicative;
13 a lot of times it just tends to ramble. And I think
14 everybody can make a concerted effort, as Mr. Saporito
15 has said, to make sure that it is clear and concise.

16 You know, you can lay out your game plan, what
17 you plan on doing, and your bullet points, and hit the
18 peaks. I mean, you don't have to put on your case. All
19 you have got to do is say this is what I'm coming at you
20 with, and this is the angle I'm coming from, and this is
21 the people that I represent and this is why it is
22 important to them.

23 See, look, I said that in 15 seconds. No, I'm
24 kidding. I think it sounds fair. You are all supposed
25 to balance one side and the other, Florida Power and

1 Light and the other, but the reality of it all is you
2 can't give Florida Power and Light an hour. So I don't
3 have a problem with the 20 minutes. And, Mr.
4 McGlothlin, you can get done it in ten minutes?

5 **MR. McGLOTHLIN:** I will commit to do that,
6 yes.

7 **COMMISSIONER GRAHAM:** The rest of you guys,
8 don't make me regret the five minutes. You don't have
9 to use the five minutes if you can get your point
10 across. I don't want to limit you, but if you can get
11 your point across, you don't have to be repetitive. You
12 know, please be concise. You would do so much better, I
13 can tell you from the Commissioners sitting back here,
14 we can sit back and see your high points. You've got
15 your game plan laid out there, and you can always pull
16 it out there and you're making your point. I like
17 simplicity. So that's what we will do. Twenty minutes;
18 10 minutes; and all the other intervenors get five.

19 Any other comments on that? Are we good?

20 **MR. McGLOTHLIN:** Not a comment, but I'm told
21 that if I decide to use a PowerPoint slide for the
22 opening, I need to ask permission to do that, and I
23 would just reserve that option.

24 **COMMISSIONER GRAHAM:** I don't have a problem
25 with PowerPoint. I just -- I don't have a problem with

1 PowerPoint. Both OPC and Florida Power and Light have a
2 big job, a great load to carry, and I'm not
3 diminishing -- I don't mean to diminish anybody else's
4 job out here, but you guys are representing the
5 ratepayers, all of them. Not specifics, but all of
6 them. And you guys are representing the ratepayers from
7 the other side.

8 All right. We have massaged that one enough.
9 Are we all clear on openings?

10 Mr. Rehwinkel.

11 **MR. REHWINKEL:** I'm done. I'm off the opening
12 statement. I have one question to ask. And for
13 purposes of planning and logistics with exhibits, I just
14 wanted to ask in front of everyone if the staff had an
15 idea of how many copies they would like to see? And if
16 they don't know now, if they could send an e-mail out
17 informing the parties of exhibits that we might want to
18 pass out or use for cross?

19 **MR. YOUNG:** I think we can talk to each other
20 and send an e-mail out to the parties in terms of
21 numbers of exhibits, copies.

22 **MR. REHWINKEL:** Okay. Thank you. Thank you
23 for your consideration on the opening statements.

24 **COMMISSIONER GRAHAM:** Yes, sir.

25 **MR. WISEMAN:** Just a housekeeping item. I had

1 mentioned at the beginning of the day that Mr. Baron and
2 Mr. Kollen had a couple of days where they have
3 obligations before other state commissions, and I found
4 out the dates at one of the breaks, so I just wanted to
5 let people know. August 22nd, 23rd, and 28th they would
6 be unavailable. So hopefully we can work around those
7 dates with them.

8 **COMMISSIONER GRAHAM:** Well, I think we will
9 address that again at the end, and we're pretty close to
10 that, but let me follow this list so I don't miss
11 something.

12 Mr. Young, we have talked about opening
13 statements. The words, we have talked about that also.

14 **MR. YOUNG:** Yes, sir, we did. I just want to
15 summarize that a summary of each position -- and this is
16 laid out in the draft prehearing order and it will be
17 included in the prehearing order, the final prehearing
18 order. A summary of each position on each issue shall
19 be generally limited to no more than 25 words -- 75
20 words, excuse me -- set off by asterisks, and shall be
21 included in the statement. However, each party will be
22 allowed to select up to seven issues for which the
23 summary of each position shall be expanded to no more
24 than 180 words, set off with asterisks, and shall be
25 included in the statement.

1 And this is important. If a party's position
2 has not changed since the issuance of the prehearing
3 order, the post-hearing statements may simply restate
4 the prehearing position. However, if the prehearing
5 position is longer than 75 words for the general issues
6 and 180 words for the seven selective issues, it must be
7 reduced to no more than 75 and 180 words respectively.
8 If a party fails to file a post-hearing statement, that
9 party shall have waived all issues and may be dismissed
10 from the proceeding.

11 **COMMISSIONER GRAHAM:** I just want to be clear.
12 This question came up when I met with staff earlier, and
13 I hate to be this tedious, but if you write 90 words and
14 you're supposed to write 75, only the first 75 count.
15 So if you can't figure it out, then just pay attention
16 to that, and if you write 180 words for more than seven
17 issues it's only the first seven that they are going to
18 look at. Because somebody asked if they do it for nine
19 which ones get applied and which ones don't. It's like,
20 well, the simplest thing is the first seven, so I just
21 wanted to be clear about that.

22 **MR. SAPORITO:** Commissioner Graham, Thomas
23 Saporito. I just take issue with staff's comments with
24 respect to the filing of the post-hearing brief. What
25 if an intervenor or a party decides just to accept and

1 rely on OPC's post-hearing brief? I mean, why should we
2 lose the validity of our issues that we brought because
3 we want to rely on OPC's brief?

4 **MR. YOUNG:** That has happened before, but the
5 party, that party must say that they are relying on
6 OPC's briefs. I think that happened in the -- and I see
7 Ms. Kaufman here -- in terms of the -- and I hate to use
8 this example, in terms of the TECO rate case where the
9 parties adopted OPC's legal positions in their briefs.
10 Correct me if I'm wrong.

11 **MS. KAUFMAN:** No, I think you're correct, and
12 I think as long as I have practiced here the practice
13 has been if you adopt another person's position that you
14 would submit a fairly short post-hearing brief and it
15 would say on issue thus and so I adopt Public Counsel's
16 position.

17 **COMMISSIONER GRAHAM:** Is that okay, Mr.
18 Saporito?

19 **MR. SAPORITO:** Yes, Commissioner. Okay. Yes,
20 that's fine. Thank you.

21 **COMMISSIONER GRAHAM:** So either way, you
22 should file a brief. It just should say, you know, we
23 agree with OPC on all issues, or whatever specific
24 issues you want to speak to.

25 Okay. Mr. Young.

1 **MR. YOUNG:** All right. And you mentioned that
2 failure of the parties to adhere to word limitations
3 will result in reduction of the words in their position
4 statement. Staff would note, moreover, that if a party
5 uses the 180-word limitation on more than seven selected
6 issues, more than seven selected issues will result in
7 the Commission accepting the first seven position
8 statements and the reduction, on the first 7 position
9 statements, excuse me.

10 **MR. SAPORITO:** Commissioner Graham, I'm just a
11 pro se litigant in this proceeding. I would like
12 clarification from staff on what exactly is a word. Is
13 the letter A a word, is the letter T-H-E a word, is the
14 letter to a word? Like, does it have to have so many
15 consonants or verbs in it to become a word?

16 **COMMISSIONER GRAHAM:** Whenever you hit the
17 space bar, that's one word.

18 **MS. CHRISTENSEN:** Highlight it and check the
19 work count.

20 **COMMISSIONER GRAHAM:** Okay, Mr. Young.

21 **MR. YOUNG:** In this ruling section staff would
22 note that Mr. Nelson's motion for declaratory relief
23 will be moot as stated here today. Also, FPA's (sic)
24 unopposed motion for, is granted for the filing of the,
25 for them to file the prehearing statements. Also your

1 ruling as relates to the issues already resolved in the
2 order decided, in the order for the petition for
3 determination of need for the conservation of Cape, the
4 conversion of Cape Canaveral plant in Brevard County by
5 Florida Power and Light are not to be, are not
6 appropriate issues to be raised in this docket.

7 Likewise, any issues pertaining, any issues pertaining
8 to those, these questions -- any questions, excuse me,
9 pertaining to these issues are also inappropriate.

10 Similarly, your statement regarding the ruling
11 on issues regarding the, FPL's performance performing
12 and achieving, performance and achieving its goals may
13 be raised, may be raised in this proceeding or, may be
14 raised in that proceeding or in future conservation
15 goals and are not, and is not appropriate for
16 consideration in this base rate proceeding.

17 **COMMISSIONER GRAHAM:** Thank you, Mr. Young.

18 Other matters? I just want to be clear about
19 what we talked about with witnesses and the order. The
20 order that comes out from this prehearing order is the
21 gospel. You guys can do what you think you can achieve,
22 but just let me be real clear. If we are on witness
23 number five, and you have -- I will pick on you, Mr.
24 Moyle. You have witness number six. If witness number
25 six is not here and we can't go forward, that witness

1 goes out, that testimony goes out. So you need to make
2 sure that your witnesses are here when they are supposed
3 to be here, or you have worked it out with the other
4 parties as far as your witnesses not being here. I just
5 want to make sure that we are clear on that.

6 **MR. MOYLE:** I understand, and I think the more
7 likely scenario in your example is that my witness is
8 here and needs to go in at number three because he can't
9 go at number six the next week, and that's what we were
10 intending to try to work out. I understand, you know,
11 you don't want dead time. And it's like, oh, he will be
12 here later. I got that loud and clear.

13 **COMMISSIONER GRAHAM:** I thought I was clear,
14 but, staff, you know, in an abundance of caution said
15 you need to make sure that everybody is very clear on
16 that. I don't want to limit your guys flexibility,
17 because, you know, Florida Power and Light, you have got
18 a case to put on, and everybody else, I understand
19 people travel, travel schedules are this way, people
20 miss flights, what have you. I know that issues come up
21 and you need to have some flexibility. But the burden
22 is upon you if your witness is listed as number six to
23 make sure that he is here or somebody else's witness is
24 here for that.

25 **MR. BUTLER:** Commissioner Graham, in that

1 regard, one thing that I would note on behalf of FPL is
2 that particularly since we have so many parties in this
3 case, FPL really urges that the parties and the
4 Commission staff work together to identify some
5 reasonable estimate of cross-examination time for
6 witnesses. You know, particularly looking out a day or
7 two ahead so that we all can be in a good position to
8 have some sense of when people are going to be, you
9 know, needed to go on. Because one of the things that,
10 of course, adds a lot of uncertainty to the process is
11 that it could be the case that there isn't much
12 examination for a particular witness and they are done
13 in an hour, and then with other witnesses they are on
14 for a day and a half because everybody has a great deal
15 of cross-examination.

16 So just throwing it out here. It's late. I
17 know we're not going to resolve it now, but it's one of
18 those things that I would like to have staff, all of the
19 parties, and the Commission keep in mind as we go into
20 the two weeks of the hearing is trying to take fairly
21 regular measures of what is coming up in the way of
22 cross-examination to help make that scheduling of the
23 witnesses more useful and more productive.

24 **COMMISSIONER GRAHAM:** I think that comes down
25 to the willingness of the parties that are all here at

1 this bench with you. You know as well as I do issues
2 come up. There is aha moments that all of sudden
3 everybody has got 20 questions that they didn't think
4 about asking because of something they said to somebody
5 just prior to them. I mean, so sometimes it's kind of
6 difficult to limit that or control that, but short of
7 that, I think, you know, you know if you have got
8 20 questions for somebody or if you have got one
9 question.

10 And I think that you guys do in your dialogue,
11 and I don't know if you guys have an e-mail chain or
12 what you're doing to communicate with staff or back and
13 forth, but, you know, there is nothing stopping you from
14 sending that out to the parties saying, you know, okay,
15 which one of my ten witnesses or 20 witnesses are going
16 to be your big focus. And maybe that's about as much as
17 you are going to get out of them.

18 **MR. BUTLER:** Yes.

19 **COMMISSIONER GRAHAM:** Yes, sir.

20 **MR. MOYLE:** If now is the time, I have an
21 issue that I will put in the category of the e-mail
22 filing of the 150-page brief. But I think just looking
23 around the room and acknowledging the fact that I'm in
24 an unusual position of sitting next to Mr. Butler, which
25 I have never done before in any of the proceedings, that

1 we are tight on space and we are tight on mikes and we
2 have got, I think, 11 parties, and maybe 12 with the
3 Larsons, and I think we've got ten microphones. So I
4 don't know how we are going to sort through that.

5 Anyway, I just thought that as we are kind of working
6 through a whole bunch of issues and making sure Monday
7 goes smoothly, I thought I would raise that.

8 **COMMISSIONER GRAHAM:** Actually that's a good
9 point, and I will address that before I hand it off to
10 the Chairman. I will make sure we have that all lined
11 out however it's going to be. So I think staff and I
12 will -- that's a good thing to do tomorrow, because you
13 have nothing else to do. (Laughter.)

14 **MS. HELTON:** If I could just say -- I mean, in
15 the past what has happened is some people have just had
16 to share. I don't know if -- the parties can also use
17 that back table there to set up their spot, but I'm not
18 sure that we have the physical capabilities, given the
19 sound system that we have and the issues we have had
20 with the sound system in the past -- and I see
21 Mr. Staden over there shaking his head -- to add more
22 spots with more mikes. I just don't -- for those of you
23 who have been here in the past and worked through our
24 sound system troubles, I'm just not sure that we can do
25 more.

1 **COMMISSIONER GRAHAM:** Well, I think we should
2 sit down tomorrow for -- we will give it a half hour
3 just kind of sitting back and picturing where people are
4 going to sit. And, you know, we understand. Because I
5 know during these hearings I'm fighting my Commissioners
6 for space. And so I know you guys are doing the same
7 thing, and you have your auxilliary people back behind
8 you trying to feed you documentation back and forth. I
9 mean, so we will have to figure out how to juggle that
10 around.

11 And I guess the question is would it help the
12 intervenors if we predetermined an order in which
13 questions would be asked, so then kind of the first
14 three can back up and the next seven come up. Or if you
15 just, you know --

16 **MR. MOYLE:** A lot of times during the hearing
17 we kind of work it out amongst ourselves and different
18 people are focusing on different issues. I mean, I
19 don't know, those positions over there work okay, but I
20 guess the question is where do you put the witnesses.
21 There is not another place to put a witness, if those
22 were lawyer spots. I don't know. We will sort through
23 it.

24 **COMMISSIONER GRAHAM:** That's kind of an open
25 question. I don't know if you guys -- because if you do

1 it on the fly, there may be a lot of pointing. I mean,
2 I don't have a problem with laying out an order. And,
3 you know, we can go from OPC and then cascade up or
4 down, either way you want to go.

5 **MR. WISEMAN:** Commissioner Graham, I agree
6 with Mr. Moyle. We have always worked that out among
7 ourselves in the past. And, you know, flipping seats
8 can take a minute or two, but it's not the end of the
9 world. And, you know, sometimes for whatever reasons,
10 OPC might want to go first or second or last. The same
11 with the rest of us. And we have always worked that out
12 among ourselves. It really is not -- at least in my
13 experience it has never been a problem.

14 **COMMISSIONER GRAHAM:** Yes, but I'm just
15 looking at flipping seats at two minutes each time for
16 150-some-odd issues. Anyway, I just throw that out
17 there.

18 **MR. WISEMAN:** It won't go by issue.

19 **COMMISSIONER GRAHAM:** My job is not to
20 micromanage.

21 Any other issues?

22 **MR. YOUNG:** Yes, sir. Again, just to
23 reiterate that positions in the prehearing -- in the
24 prehearing will now at the conclusion of this, if the
25 parties have not taken a position will become no

1 position. Also, to note that Mr. Nelson did mention in
2 his prehearing statement -- I'm sorry, Ms. Larson. Ms.
3 Larson is absent today, and in terms of -- we asked for
4 leave to contact Ms. Larson to see if her positions have
5 changed.

6 **COMMISSIONER GRAHAM:** Okay.

7 **MR. YOUNG:** But given the fact that it is a
8 very, the family emergency, we don't know if she would
9 be able to provide us the position by the end of
10 tomorrow.

11 **COMMISSIONER GRAHAM:** Part of us granting her
12 ability to miss this was for her to take the case as she
13 got it. Now, you can give her the opportunity for those
14 things that have changed to put a position on there, but
15 the rest of the case she agreed to take -- my
16 understanding, she agreed to take it as she got it.

17 **MR. YOUNG:** Okay.

18 **COMMISSIONER GRAHAM:** So when you send that
19 e-mail out at 9:00 o'clock tomorrow morning letting the
20 people know all the issues that have changed, make sure
21 she also knows that she has until 5:00 o'clock to, you
22 know, state her position on those issues that have
23 changed. But other than that, I think her issues are as
24 she left them. And I think that she probably -- if I'm
25 not mistaken, I think she responded to all the issues

1 anyway.

2 **MR. YOUNG:** Almost; that's correct.

3 **COMMISSIONER GRAHAM:** So if it hasn't changed
4 then there is no real reason for it to have changed.

5 **MR. YOUNG:** Okay. And speaking of the issues
6 that have changed, staff would request that to the
7 extent the parties' positions have changed or added due
8 to the discussion here at the prehearing conference that
9 they be provided, and any such changes to staff --
10 provided to staff by the close of business tomorrow.

11 **COMMISSIONER GRAHAM:** You have to state that
12 again, because you lost me.

13 **MR. YOUNG:** I'm sorry. Staff requests that to
14 the extent the parties' positions change or are added
15 due to the discussion at the prehearing conference here
16 today that they be provided, that they provide any such
17 changes to staff by the close of business tomorrow. And
18 the reason for this is, the reason for this is we have
19 to get the prehearing order completed.

20 **COMMISSIONER GRAHAM:** So you want the parties
21 to send to you in written form the things that they said
22 here orally?

23 **MR. YOUNG:** I have talked, I have polled some
24 of the parties and they have agreed -- most of them, the
25 ones I have polled have agreed to do that, to the extent

1 they have changed. But that's something I can talk to
2 the parties off-line by myself. But I'm talking about
3 the change of positions on the modified issues.

4 **COMMISSIONER GRAHAM:** Yes, the modified
5 issues. That's clear it has got to be at 5:00 o'clock.

6 **MR. YOUNG:** Yes.

7 **COMMISSIONER GRAHAM:** Okay.

8 **MR. WISEMAN:** I'm sorry, I want clarification,
9 please. Where we changed our position today, do you
10 want us to send you an e-mail with those just confirming
11 what we have said?

12 **MR. YOUNG:** That would be very, very helpful.

13 **MR. WISEMAN:** All right. We'll do that.

14 **COMMISSIONER GRAHAM:** Any other issues? Any
15 other matters?

16 And that e-mail that goes out at 9:00 o'clock
17 in the morning, you will get my position on Issue 136.
18 And I think that's it. If there is nothing else from
19 anybody else? Hopefully you all travel safe, and I'll
20 see you all next Monday. We stand adjourned.

21 (The prehearing conference concluded at 6:10
22 p.m.)

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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 15th day of August, 2012.



JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732


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

3
4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

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

18 DATED THIS 15th day of August
19 2012.

20
21 
22 LINDA BOLES, RPR, CRR
23 FPSC Official Commission Reporter
24 (850) 413-6734
25