

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

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

VOLUME 1

Pages 1 through 168

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COMMISSION  
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PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING:

CHAIRMAN RONALD A. BRISÉ  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ART GRAHAM  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Monday, August 20, 2012

TIME: Commenced at 9:34 a.m.  
Concluded at 2:44 p.m.

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

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

2 JOHN T. BUTLER, R. WADE LITCHFIELD, and  
3 KENNETH RUBIN, ESQUIRES, Florida Power & Light Company,  
4 700 Universe Boulevard, Juno Beach, Florida 33408-0420;  
5 and KEVIN DONALDSON, ESQUIRE, Florida Power & Light  
6 Company, 4200 West Flagler Street, Miami, Florida 33134;  
7 and CHARLES GUYTON, ESQUIRE, Gunster Law Firm, 215 South  
8 Monroe Street, Suite 601, Tallahassee, Florida 32301;  
9 and SUSAN CLARK, ESQUIRE, Radey Law Firm, 301 South  
10 Bronough Street, Suite 200, Tallahassee, Florida 32301;  
11 appearing on behalf of Florida Power & Light Company.

12 LIEUTENANT COLONEL GREGORY FIKE, CHIEF;  
13 CAPTAIN SAMUEL MILLER; and KAREN WHITE, ESQUIRE, Federal  
14 Executive Agencies, AFLOA/JACL-ULFSC, 139 Barnes Drive,  
15 Suite 1, Tyndall AFB, Florida 32403-5319, appearing on  
16 behalf of the Federal Executive Agencies.

17 JON C. MOYLE, JR., and VICKI GORDON KAUFMAN,  
18 ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden  
19 Street, Tallahassee, Florida 32301, appearing on behalf  
20 of Florida Power Users Group?

21 KENNETH L. WISEMAN, MARK F. SUNDBACK, LISA M.  
22 PURDY, WILLIAM M. RAPPOLT, J. PETER RIPLEY, and BLAKE R.  
23 URBAN, ESQUIRES, Andrews Kurth, LLP, 1350 I Street NW,  
24 Suite 1100, Washington, DC 20005, appearing on behalf of  
25 South Florida Hospital and Healthcare Association

## 1 APPEARANCES (Continued):

2 JOHN W. HENDRICKS, 367 S. Shore Drive,  
3 Sarasota, Florida 34234, appearing pro se.

4 J. MARTIN HAYES and JASON S. LICHSTEIN,  
5 ESQUIRES, Akerman Law Firm, 106 East College Avenue,  
6 Suite 1200, Tallahassee, Florida 32301, and QUANG HA,  
7 ESQUIRE, Algenol Biofuels, Inc., 28100 Bonita Grande  
8 Drive, Suite 200, Bonita Springs, Florida 24135,  
9 appearing on behalf of Algenol Biofuels, Inc.

10 THOMAS SAPORITO, 177 US Hwy 1N, Unit 212,  
11 Tequesta, Florida 33469, appearing pro se.

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

17 J.R. KELLY, PUBLIC COUNSEL, and JOSEPH A.  
18 MCGLOTHLIN, CHARLES J. REHWINKEL, and PATRICIA A.  
19 CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The  
20 Florida Legislature, 111 West Madison Street, Room 812,  
21 Tallahassee, Florida 32399-1400, appearing on behalf of  
22 the Citizens of Florida.

23

24

25

1 APPEARANCES (Continued):

2 WILLIAM C. GARNER, ESQUIRE, Nabors, Giblin &  
3 Nickerson, P.A., 1500 Mahan Drive, Suite 200,  
4 Tallahassee, Florida 32038, appearing on behalf of the  
5 Village of Pinecrest, Florida.

6 KEINO YOUNG, LARRY HARRIS, CAROLINE KLANCKE,  
7 and MARTHA CARTER BROWN, ESQUIRES, FPSC General  
8 Counsel's Office, 2540 Shumard Oak Boulevard,  
9 Tallahassee, Florida 32399-0850, appearing on behalf of  
10 the Florida Public Service Commission Staff.

11 CURT KISER, GENERAL COUNSEL; MARY ANNE HELTON,  
12 DEPUTY GENERAL COUNSEL; ROSANNE GERVASI and SAMANTHA  
13 CIBULA, ESQUIRES, Florida Public Service Commission,  
14 2540 Shumard Oak Boulevard, Tallahassee, Florida  
15 32399-0850, Advisor to the Florida Public Service  
16 Commission.

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## P R O C E E D I N G S

1  
2           **CHAIRMAN BRISÉ:** Good morning, everyone.

3 Today is August 20th. And how do I know that? Today is  
4 my son's first day in first grade.

5           So it is 9:30, and we are convening for a  
6 hearing on Docket Number 120015-EI.

7           Mr. Young, if you could read the notice.

8           **MR. YOUNG:** Good morning. By notice issued on  
9 July 17th, 2012, by this, by the Commission Clerk, this  
10 time and place has been set for a hearing in Docket  
11 Number 120015-EI, petition for rate increase, petition  
12 for increase in rates by Florida Power & Light Company.

13           **CHAIRMAN BRISÉ:** Thank you very much. At this  
14 time we will take appearances.

15           **MR. LITCHFIELD:** Thank you, Mr. Chairman.  
16 Wade Litchfield and John Butler appearing on behalf of  
17 Florida Power & Light. And I would also like to enter  
18 appearances for four other attorneys with us who will be  
19 presenting witnesses throughout this proceeding. They  
20 are Ken Rubin and Kevin Donaldson of Florida Power &  
21 Light. In addition, Ms. Susan Clark of the Radey, Yon &  
22 Clark firm, and Mr. Charlie Guyton of the Gunster law  
23 firm.

24           **CHAIRMAN BRISÉ:** All right. Thank you very  
25 much.

1                   **LIEUTENANT COLONEL FIKE:** Good morning.

2                   Lieutenant Colonel Greg Fike appearing on behalf of the  
3                   Federal Executive Agencies. Also like to enter  
4                   appearances for Ms. Karen White.

5                   **CHAIRMAN BRISÉ:** Thank you.

6                   **MR. MOYLE:** Jon Moyle on behalf of the Florida  
7                   Industrial Power Users Group, FIPUG. I'd also like to  
8                   enter an appearance for Vicki Kaufman on behalf of  
9                   FIPUG.

10                  **CHAIRMAN BRISÉ:** Thank you.

11                  **MR. WISEMAN:** Good morning. Kenneth Wiseman  
12                  of the law firm Andrews Kurth on behalf of the South  
13                  Florida Hospital and Healthcare Association. And I  
14                  would also like to enter the appearances of Mark  
15                  Sundback, Lisa Purdy, Bill Rappolt, Peter Ripley, and  
16                  Blake Urban, all of the Andrews Kurth law firm.

17                  **CHAIRMAN BRISÉ:** Thank you.

18                  **MR. HENDRICKS:** Good morning. John Hendricks  
19                  appearing pro se.

20                  **CHAIRMAN BRISÉ:** Okay. Thank you.

21                  **MR. GARNER:** Bill Garner of the law firm  
22                  Nabors, Giblin & Nickerson, appearing on behalf of the  
23                  Village of Pinecrest.

24                  **CHAIRMAN BRISÉ:** Thank you.

25                  **MR. SAPORITO:** Thomas Saporito, appearing pro



1 se.

2 **CHAIRMAN BRISÉ:** Thank you.

3 **MR. WRIGHT:** Good morning, Commissioners.

4 Robert Scheffel Wright and John T. Lavia, III, of the  
5 Gardner, Bist, Wiener law firm, appearing on behalf of  
6 the Florida Retail Federation.

7 **CHAIRMAN BRISÉ:** Thank you.

8 **MR. REHWINKEL:** Good morning, Commissioners.

9 Charles J. Rehwinkel, J. R. Kelly, Joseph McGlothlin,  
10 and Patricia Christensen, on behalf of the Citizens of  
11 the State of Florida.

12 **CHAIRMAN BRISÉ:** Thank you. Any other  
13 intervenors?

14 **MR. HAYES:** (Inaudible. Not on microphone.)

15 **CHAIRMAN BRISÉ:** You may have to come to the  
16 microphone, please, sir. There's a seat available right  
17 there. Turn on the microphone, please, sir.

18 **MR. HAYES:** This is my first time here.

19 **CHAIRMAN BRISÉ:** Understood. Understood.

20 **MR. HAYES:** Martin Hayes, Jason Lichstein from  
21 Akerman Senterfitt on behalf of Algenol Biofuels, Inc.

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

23 Staff.

24 **MR. YOUNG:** Keino Young, Caroline Klancke,  
25 Martha Carter Brown, and Larry Harris on behalf of

1 Commission staff.

2 **CHAIRMAN BRISÉ:** Okay.

3 **MS. HELTON:** Mary Anne Helton, advisor to the  
4 Commission. I'd also like to make an appearance for our  
5 General Counsel, Curt Kiser, and Rosanne Gervasi and  
6 Samantha Cibula, who will also be advising you during  
7 the course of the proceeding.

8 **CHAIRMAN BRISÉ:** Thank you very much. There  
9 are some.

10 **MR. HAYES:** Excuse me, Mr. Chair. I did not  
11 enter an appearance for Quang Ha, General Counsel for  
12 Algenol. I apologize.

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

14 Mr. Young, there are some individuals who are  
15 not present this morning. How do we handle that?

16 **MR. YOUNG:** Yes, sir. The individuals, the  
17 parties who are not present this morning are Daniel R.  
18 Larson and Alexandria Larson and Mr. Larry Nelson.

19 Pursuant to Section 7 of the Order  
20 Establishing Procedure, Hearing and Procedures, under  
21 (a), attendance at hearing, it states, unless excused by  
22 the presiding officer for good cause shown, each party  
23 or designated representative shall personally appear at  
24 the hearing. Failure of a party or a party's  
25 representative to appear shall constitute a waiver of

1 all the party -- of that party's issues, and that party  
2 may be dismissed from the proceeding.

3 Given the fact that Ms. Larson is not here,  
4 staff would recommend -- Ms. Larson and Mr. Nelson are  
5 not here and didn't state an appearance, staff would  
6 recommend that they be dismissed from the proceeding.

7 **CHAIRMAN BRISÉ:** Okay. I think everyone had  
8 ample notice with respect to the fact that we would  
9 proceed today.

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

11 **CHAIRMAN BRISÉ:** I have not heard anything or  
12 gotten a notice from anyone saying that they would not  
13 be present here today, so I think that the  
14 recommendation that they would be dismissed from the  
15 hearing is appropriate and I think we'll move forward in  
16 that direction.

17 **MR. YOUNG:** Duly noted, sir.

18 **CHAIRMAN BRISÉ:** Thank you. Are there  
19 preliminary matters that we need to deal with?

20 **MR. YOUNG:** Yes, sir. Staff would note that  
21 an amendatory order to the Prehearing Order that was  
22 issued was issued this morning. The amendatory order  
23 corrects three scrivener's errors. This -- the  
24 amendatory order was passed out to the parties and  
25 Commissioners this morning.

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

2           **MR. YOUNG:** Staff would note that an order  
3 denying the joint motion to suspend the procedure  
4 scheduled was issued on Friday, August 17th, 2012.

5           **CHAIRMAN BRISÉ:** All right.

6           **MR. YOUNG:** Staff would note that FPL, FIPUG,  
7 FEA, South Florida Hospital filed a joint motion for  
8 approval of settlement agreement. Staff recommends that  
9 the Commission proceed with the hearing as scheduled and  
10 the joint motion for approval of settlement be taken up  
11 at a later time.

12           **CHAIRMAN BRISÉ:** Okay.

13           **MR. YOUNG:** Moreover, staff recommends that  
14 all, that all other motions relating to any stipulation  
15 that has been ruled -- that has not been ruled on prior  
16 to the hearing, prior to the start of the hearing be  
17 taken up at a later time.

18           **MR. REHWINKEL:** Mr. Chairman?

19           **CHAIRMAN BRISÉ:** Yes, Mr. Rehwinkel?

20           **MR. REHWINKEL:** I don't know if, where the  
21 posture is, but if, if we are still on the, the initial  
22 matter relating to this order, the Public Counsel and  
23 the Florida Retail Federation would like to be heard on  
24 this matter. And we would like to ask that the  
25 Commission reconsider the order of the Chairman, and we

1 would ask that we be granted leave to present argument  
2 at this time, prior to the commencement of the  
3 evidentiary hearing.

4 **CHAIRMAN BRISÉ:** Okay. What are my options?

5 **MS. HELTON:** Mr. Chairman, our procedural  
6 rules provide for the opportunity to seek  
7 reconsideration of nonfinal orders, which is what your  
8 order was that was issued on Friday. So my  
9 recommendation to you is to hear argument from  
10 Mr. Rehwinkel and Mr. Wright and then to allow a  
11 response by FPL and any of the other parties who joined  
12 in on the motion to suspend the schedule.

13 **CHAIRMAN BRISÉ:** All right. We will do that  
14 in terms of providing ample opportunity for, for us to  
15 hear what has to be said.

16 **MS. HELTON:** Mr. Young was reminding me that  
17 maybe I should state the standard, and the standard for  
18 a motion for reconsideration is a mistake of fact or  
19 law. They must show that there was a mistake of fact or  
20 law for your order to be reconsidered.

21 **CHAIRMAN BRISÉ:** Thank you.

22 Mr. Rehwinkel.

23 **MR. REHWINKEL:** Thank you, Mr. Chairman. And  
24 I, I have argument that, that may, you may consider  
25 lengthy, but I believe that, that it will be aimed at

1 efficient use of the Commission's resources. And I also  
2 can represent to you that these are, these remarks were  
3 jointly prepared by the Retail Federation and the Public  
4 Counsel, and I will make the arguments for two parties  
5 at once.

6 **CHAIRMAN BRISÉ:** Okay.

7 **MR. REHWINKEL:** And I do appreciate at the  
8 outset the, the reminder by Ms. Helton about the mistake  
9 of law and fact. And before I get into my prepared  
10 remarks, we believe that the mistake, if you can call it  
11 that, was a matter of timing of our full and complete  
12 remarks prior to the, the Chairman's issuance of the  
13 order, and it is not a matter of timing that we take  
14 issue with. It was what it was.

15 The Citizens of the State of Florida through  
16 the Office of Public Counsel and the Florida Retail  
17 Federation respectfully request this Commission to  
18 reconsider the decision reflected in Order Number  
19 PSC-12-0430-PCO. I have extra copies of the order, if  
20 any of the Commissioners or parties do not have the  
21 order with them, and I will be referring to this, to  
22 this order, if it would be appropriate to pass them out.

23 **CHAIRMAN BRISÉ:** Okay. If you can make that  
24 available to, to one of our staff persons so that it can  
25 be passed out. Or actually I think we have our own

1 copies, so.

2 **MR. REHWINKEL:** Okay.

3 **MR. YOUNG:** It's tab 5 in your books.

4 **CHAIRMAN BRISÉ:** You may proceed.

5 **MR. REHWINKEL:** Thank you, Mr. Chairman.

6 We ask you to reconsider this decision to not  
7 suspend the hearing in light of the August 15th filing  
8 by FPL and the parties with whom they cut this deal. To  
9 be absolutely clear, Commissioners, the Public Counsel  
10 and FRF do not advocate for suspension for the same  
11 reason that FPL does.

12 We believe that you are required to suspend  
13 this hearing in order to rid the process of the undue  
14 influence of the pendency of the FPL document, as I will  
15 refer to the August 15th filing, has on the scheduled  
16 hearing. We strongly contend that FPL document must be  
17 removed from consideration completely. The only way  
18 that can happen is by the denial that it richly  
19 deserves.

20 Any hearing on the merits of that new filing  
21 we believe must be in the form of a full revenue  
22 requirement rate case that has effectively been filed.  
23 That cannot occur without a duly noticed full and  
24 evidentiary hearing accompanied by new MFRs and  
25 supporting testimony.

1           To the extent you believe it to be appropriate  
2 to consider that FPL document on a standalone basis, a  
3 posture that we contend would be unlawful in a number of  
4 significant ways, starting with the fact that it would  
5 convert a ten-day hearing, this hearing, on a  
6 full-blown, eight-month file and suspend rate case into  
7 a one-day hearing on a 17-page summary document and the  
8 accompanying tariffs, and continuing with the fact that  
9 it would violate both Chapter 120, *Florida Statutes*, the  
10 Florida Rules of Administrative Procedure, and almost  
11 certainly Chapter 366, as well as the parties'  
12 fundamental due process rights.

13           We have advanced arguments on the legal  
14 deficiency in that approach, and I will not address them  
15 here but I can answer questions on them, and they are  
16 still our positions and perhaps they will be  
17 supplemented as allowed by law and our response to the  
18 substantive provisions of the motion to approve.

19           The Public Counsel and FRF understand the  
20 rationale of the Chairman's order under the rushed  
21 circumstances that FPL forced onto this process. Our  
22 request for reconsideration and the comments supporting  
23 them are not intended as a criticism of that order.

24           While we believe the preliminary view that the  
25 Commission should go forward is understandable on its



1 face, given the 11th hour nature of the filing, we  
2 submit that there are nevertheless serious  
3 countervailing public policy and due process reasons  
4 that should be considered which dictate suspension of  
5 this hearing.

6 The analysis, the analysis and ruling section  
7 of the order is found on pages 2 and 3 of the order.  
8 The OPC and FRF submit that the Commission should  
9 reconsider that order, and I will address these  
10 provisions by highlighting them and briefly addressing  
11 them, and then presenting our argument supporting the  
12 request to suspend this hearing.

13 I would also note that the reference in the  
14 order on page 1 is limited to the very brief preliminary  
15 response filed by OPC and the Retail Federation just  
16 hours after the company's filing. Therein we told the  
17 Commission that we would be filing a complete response,  
18 and we did do that the next day.

19 We submit that reconsideration consider all  
20 the arguments that were advanced in the version we filed  
21 less than 48 hours after the FPL filing, but only  
22 minutes before the order was issued. This is where the  
23 mistake of fact or law occurred, is that the order in  
24 the rushed circumstances did not consider all of the  
25 arguments that we advanced for, for the suspension of

1 the hearing.

2 In the analysis and ruling section there is a  
3 statement that says the joint motion was filed less than  
4 three working days before the start of a ten-day  
5 hearing. As we noted in our joint response, the FPL  
6 document was filed at 5:15 on Wednesday, 5:15 p.m. This  
7 is really less than two full working days before the  
8 hearing and less than two days before the order was  
9 issued. This late disruption and the impact on OPC and  
10 FRF preparation of the case was instead a factor  
11 supporting suspension.

12 The order further states, at this point over  
13 36 witnesses are scheduled to appear and travel and  
14 accommodations arrangements made. This is a situation  
15 caused by FPL. The remaining parties should not be  
16 penalized because of FPL's brinksmanship. This is not a  
17 consideration that should support continuation of the  
18 hearing at this point.

19 The provisions also state that it appears that  
20 the dates proffered in the joint motion are untenable,  
21 and alternate dates may raise due process concerns.  
22 Furthermore, this Commission has carefully crafted a  
23 procedural schedule that will allow post-hearing  
24 activities and a final decision within the statutory  
25 time frame required by Section 366, *Florida Statutes*.

1           The OPC has demonstrated, and we will discuss  
2 in more detail shortly, that FPL has constructively  
3 waived its right to assert any due process claims. They  
4 have created their own problems by the new rate relief  
5 request they have filed in the FPL document. FPL cannot  
6 have it both ways in this last-minute filing.

7           There is no statutory time frame applicable to  
8 the March filing or this new filing. They have either  
9 waived such rights or abandoned them by a new and so far  
10 MFR and testimony deficient request for a completely new  
11 and different revenue increase.

12           The order also states, there is no requirement  
13 that a ruling on the motion to approve settlement be  
14 made prior to the taking of witness testimony and the  
15 development of the record.

16           This is the crux of our concern. This  
17 statement alone is a tacit, if not explicit,  
18 acknowledgment that an unsupported -- purported  
19 settlement along with tariffs may, will, or can be given  
20 some substantive status along with the extensive record  
21 that has been developed and will be developed regarding  
22 the March filing.

23           As discussed later, this dual track or dual  
24 pendency is a serious and fundamental due process  
25 violation. This statement in the order succinctly

1 describes the core of the prejudice and due process  
2 concern of the Public Counsel and FRF, which I will get  
3 to.

4           The order finally states that, given  
5 significant time, effort, and expense that has been  
6 expended to date, as well as the monumental task of  
7 rescheduling such a, such a complex hearing, if the  
8 Commission does not approve a settlement and a later  
9 evidentiary hearing is required, I find the joint motion  
10 to suspend shall be denied.

11           Aside from this express statement in the order  
12 that the settlement is still actively pending during  
13 this hearing, the elevation of administrative ease over  
14 protecting due process of parties, other than the Public  
15 Counsel and FRF, is a great concern. FPL is the one  
16 that has created this morass, and they're the ones who  
17 should bear any inconvenience occasioned by their own  
18 purposeful action in filing the FPL document. You  
19 should not visit on the customers the resulting  
20 disruptive and prejudicial disadvantage of proceeding at  
21 this juncture of the hearing.

22           So, in summary, we're asking for  
23 reconsideration because the arguments made in our  
24 pleading were not considered in the, the order that was  
25 issued 48 hours later.

1           I also need to note that we, and I'll get to  
2 this in more detail, we believe that the 2010 settlement  
3 that FPL is currently operating under constitutes a --  
4 it supersedes the eight-month clock that would otherwise  
5 be on this hearing. There is no eight-month clock on  
6 this hearing. You do not need to be concerned about an  
7 eight-month clock. They cannot put rates into effect  
8 until any earlier than January of 2012.

9           And additionally, the Office of Public  
10 Counsel, which the State of Florida has designated to  
11 represent all ratepayers in proceedings conducted by  
12 this Commission, is among eight Intervenors, maybe now  
13 six, who have not executed the purported settlement.

14           Given our plenary statutory representative  
15 role, the Public Counsel asserts that it is a necessary  
16 party to any settlement that would legally, fully, and  
17 effectively resolve all revenue requirements in a  
18 typical case.

19           Typically you would not proceed to hear a case  
20 and possibly waste extensive resources when a legitimate  
21 comprehensive settlement among all the major parties was  
22 pending before you, especially when it could potentially  
23 obviate the need for a hearing. That situation is  
24 different than the one pending before you now in that  
25 there is no such valid settlement.

1           With the FPL document lacking any legitimacy,  
2 the instant situation does not lend itself to the dual  
3 track contemplated in the Commission's order. This in  
4 and of itself would be prejudicial to the parties who  
5 did not sign the settlement. As we noted in our Friday  
6 response, the purported settlement, the FPL document, is  
7 the elephant in the room, and we are asking you to  
8 remove that elephant before beginning any evidentiary  
9 consideration on the March filing.

10           Your preliminary determination to proceed to  
11 hearing on the March filing, while leaving this document  
12 pending, the FPL document pending, very much creates a  
13 severe difficulty for the OPC and FRF. The very  
14 pendency of that proposal creates an untenable situation  
15 where the parties who have not capitulated in that  
16 self-serving proposal cannot be assured that they have  
17 not suffered prejudice just by the mere filing of what  
18 cannot be deemed a valid settlement.

19           Let me be specific. We believe the FPL  
20 document and the order creating this situation by  
21 denying suspension creates genuine issues of due process  
22 denial as to, one, whether the Commission has been  
23 tainted unwittingly by a suggestion within the filing  
24 and in statewide media that the Public Counsel and FRF  
25 are uncooperative, recalcitrant, and cannot reach a

1 settlement.

2 Absent definitive resolution by the Commission  
3 on the motion for approval and the FPL document, the  
4 specter of this taint cannot be effectively removed.  
5 Its mere perception undermines the orderly  
6 administration of justice and erodes public confidence  
7 in this process.

8 Two, whether the testimony, evidence, and  
9 positions reflected in the Prehearing Order that you  
10 have issued and the March filing have been modified in  
11 any way by agreements that may or may not be reflected  
12 in publicly filed documents is not known. On Friday, a  
13 fifth party filed a notice of agreement with a  
14 stipulation. The basis for this agreement and its  
15 impact on customer rates or company earnings over the  
16 next two years is not yet a matter of public record.

17 Three, whether the unilateral filing of the  
18 FPL document has on the eve of this hearing interjected  
19 issues and signaled FPL's true wish list of issues they  
20 would like to be resolved in their favor over the next  
21 four years must be resolved with a full evidentiary  
22 hearing on the March request.

23 The Public Counsel and FRF are not suggesting  
24 that the Commission cannot at least facially describe a  
25 process for legally quarantining such issues related to

1 the FPL document. However, we believe that the true  
2 effectiveness of such a process is a matter of some  
3 doubt.

4 We suggest that the better course of action in  
5 terms of providing due process and avoiding even the  
6 perception that the hearing and record, which are the  
7 subject of protections of Sections 120.57 -- 120.57(1),  
8 *Florida Statutes*, have been contaminated would be -- the  
9 better course would be to take a timeout and first  
10 dispose of the FPL document by either denial or  
11 dismissal.

12 Only then can the Commission decide when the  
13 hearing should be resumed or, in the unlikely event of  
14 approval of that document, the Commission can issue an  
15 order that we will swiftly take to court, appeal.

16 Whether -- four, whether the process is harmed  
17 by the mere specter of the mechanism used here where the  
18 utility petitioner can choose, one, two, or three  
19 special interest customer intervenors who don't  
20 represent all the customers to reach a self-serving  
21 so-called settlement, and file it at a crucial time when  
22 the non-submitting Intervenor are preparing for hearing  
23 and create mass confusion and uncertainty, is offensive  
24 to the legislative scheme that considers the Public  
25 Counsel to be a necessary party.



1 FPL's tactic under the misplaced authority of  
2 the South Florida Hospital case must be strongly  
3 discouraged by this Commission. Why misplaced? The  
4 Public Counsel was a party to that case, in the South  
5 Florida Hospital case, and that proceeding was a  
6 proceeding, a limited proceeding that you, the  
7 Commission, started and you, the Commission, controlled  
8 the out -- the schedule of.

9 We ask you to put an end to this and to do it  
10 emphatically. Do not let it linger and cast its  
11 unsavory shadow over this hearing process. Allowed to  
12 flourish, this scheme embodied in the FPL document will  
13 be destructive to the process and, if encouraged, it  
14 will let its proponents try again and again to exclude  
15 their legal representative of all the customers from  
16 major rate cases.

17 The only way to do that is to suspend this  
18 hearing, deal with the FPL document swiftly and  
19 decisively, and then and only then reconvene the hearing  
20 at a time that is convenient to the Commission and the  
21 parties, without regard to the time frame that FPL  
22 mistakenly wants to impose.

23 Remember, FPL created this situation. Avoid  
24 the temptation to let them play Baron Munchausen.  
25 Again, they created this situation. Don't empower them

1 to resolve it.

2 It is clear the company has constructively  
3 waived any time clock that, that might exist by filing  
4 the FPL document and the accompanying proposed tariffs,  
5 and that, more significantly, FPL has in fact submitted  
6 a new and materially different request for rate relief  
7 when compared to the one it filed in March of 2012.

8 On the point of the clock, let me turn to  
9 that. You should feel no pressure, Commissioners, in  
10 deciding this matter that you must agree to the  
11 unrealistic time frames that FPL proposes in their, in  
12 their motion.

13 FPL is prohibited by the terms of the 2010  
14 settlement from placing new base rates into effect prior  
15 to January 1, 2012. Therefore, the otherwise applicable  
16 statutory eight-month clock effectively has been  
17 superseded by that agreement. The same settlement  
18 agreement also provides that existing rates shall  
19 continue into effect until you approve new rates.

20 What's more, by introducing relief based on  
21 new issues -- by introducing a request for relief based  
22 on new issues and theories, FPL has effectively amended  
23 its case and constructively waived the additional time  
24 clocks, the 12-month time clock that would otherwise be  
25 applicable.

1           In short, your ability to provide a time frame  
2 for the hearing suspension that affords the Public  
3 Counsel, FRF, and other non-signing parties their full  
4 procedural rights is not impinged in this instance by  
5 the statutory time clocks in Chapter 366.

6           We submit, and this is important, that the FPL  
7 document also constitutes a new filing for timing  
8 purposes. FPL filed its MFRs and supporting direct  
9 testimony on March 19th, 2012. As you have noted in  
10 your order, you established ten days, beginning  
11 August 20, 2012, for the evidentiary hearing on FPL's  
12 filing.

13           FPL has filed testimony of many witnesses  
14 supporting the MFR schedules that are the foundational  
15 evidentiary element of its request for rate relief. The  
16 Public Counsel and FRF have prepared the presentation of  
17 our respective cases and evidence based on the case FPL  
18 filed, and based it upon the resulting understanding of  
19 which parties are aligned with respect to evidence and  
20 positions they are advancing. FPL is the one who  
21 dropped the bomb in the form of a whole new rate case on  
22 its own case.

23           Why do I contend that FPL has filed a new  
24 case? The purported settlement materially amends the  
25 terms of the original filing. It proposes revenue

1 shifts inconsistent with the March filing. It proposes  
2 a novel and complex asset sharing mechanism that was not  
3 a part of the new -- the March filing. It proposes two  
4 generation base rate adjustments, or GBRAs, for two  
5 future test years, 2014 and 2016, for which no evidence  
6 exists. It proposes an increase in the late payment  
7 charge filed in the March case, and it adds rate  
8 increases and mechanisms affecting recovery in fuel and  
9 capacity cost recovery clauses, all of which were not  
10 part of the March filing.

11 Effectively, simply, the FPL document  
12 constitutes a new rate case filing. This new filing is  
13 unaccompanied by supporting MFRs, supporting testimony,  
14 or notice to customers. It is tellingly unaccompanied  
15 by a tariff that has its own legal status. The file and  
16 suspend statute applies to those proposed tariff sheets  
17 as well.

18 Yet FPL basically wants the Commission and the  
19 parties who did not execute the FPL document to process  
20 this very different filing by August 31. The order on  
21 suspension unwittingly leaves a possibility of  
22 consideration of this type of determination, a possible  
23 outcome, by leaving the FPL document pending during the  
24 hearing.

25 We submit to you it is not appropriate for

1       them to have two alternative forms of relief pending at  
2       the same time. The prejudice to the Public Counsel and  
3       FRF is as obvious as the necessity for suspension of the  
4       scheduled hearing. At a minimum, the FPL document  
5       constitutes a constructive waiver of the time frames  
6       that would attend a new rate case filing, as I have  
7       pointed out.

8               Let me also point out that with respect to the  
9       alignment of the parties as -- that goes to the heart of  
10      prejudice that we believe this hearing will suffer,  
11      there are two provisions of the FPL document that are  
12      worth noting. Paragraph 15, and this is, this is in the  
13      purported settlement that was filed on August 15,  
14      provides in relevant parts, in relevant part, and this  
15      is the second sentence of paragraph 15.

16              The parties further agree that they will  
17      support this agreement and will not request or support  
18      any order, relief, outcome, or result in conflict with  
19      the terms of this agreement in any administrative or  
20      judicial proceeding relating to, reviewing, or  
21      challenging the establishment, approval, adoption, or  
22      implementation of this agreement or the subject matter  
23      thereof.

24              Paragraph 16 also provides that the parties  
25      that have reached agreement with FPL receive the

1 benefits that they negotiated, and will not be deprived  
2 of them if new parties sign on.

3 Together these provisions indicate that the  
4 FPL document represents that the four signatories, FPL,  
5 FIPUG, the Hospital Association, and the FEA, have a  
6 contract that is, has separate force and effect from  
7 what would result from Commission approval. And that is  
8 an agreed to modification of the March filing, and that  
9 FPL and the enlisted signatories have contractually  
10 obligated themselves to advocate it before the  
11 Commission, and they cannot advocate anything different  
12 than what is in the FPL document proposal, the March  
13 filing notwithstanding.

14 Until you dispose of the motion for approval  
15 and get rid of the FPL document, the Commission and  
16 non-signatories such as FRF and OPC are at a minimum  
17 prejudiced because they will not, in the preparation and  
18 presentation of our case, be able to gauge the tension  
19 in the alignment and/or participation of the signatories  
20 during the hearing on the March 12th base rate request.

21 Furthermore, it is not clear exactly what  
22 FPL's proposal is under these facts. What rate does FPL  
23 actually want to implement in January 2013? The rates  
24 in the March 2012 testimony and MFRs, or those attached  
25 to the August 2012 settlement document, or something

1 that's a combination of both?

2 And if FPL asserts that it is the former, what  
3 are the Commission and the parties to make of FPL's  
4 facial breach of its contractual obligation with the  
5 other three parties? This creates an impossible  
6 situation for the parties, including OPC and FRF, in  
7 conducting our case.

8 As a result, in the circumstances this  
9 Commission finds itself in, it should find that it is no  
10 longer obligated to provide a schedule that facilitates  
11 what is now just a desire rather than a statutorily  
12 guaranteed right by FPL to implement rates by January 1,  
13 2013.

14 You now have before you two different cases,  
15 and the latter filed case has irretrievably tainted the  
16 first one. Commissioners, you do have the ability to  
17 suspend the hearing. We believe that the order that was  
18 issued is understandable, but it contains a mistake in  
19 that it did not consider our arguments that we advanced.  
20 That mistake is an opportunity for you to reconsider the  
21 Chairman's order under those circumstances and consider  
22 the arguments that we have just advanced. If you do  
23 that, it will enable you to exercise the appropriate  
24 deliberations while observing, observing the parties'  
25 due process rights.

1           For these reasons, we urge you to reconsider  
2 the initial decision to deny and to affirmatively  
3 suspend this hearing scheduled for the next two weeks,  
4 establish procedures and time frames for the disposition  
5 of the purported settlement in a way that respects the  
6 due process rights of Public Counsel, FRF, and other  
7 parties.

8           I appreciate your patience in listening to my  
9 lengthy remarks, but we felt this is very important for  
10 both of us. Thank you.

11           **CHAIRMAN BRISÉ:** Thank you, Mr. Rehwinkel.  
12 And you said you were speaking on behalf of yourself and  
13 FRF; right?

14           **MR. REHWINKEL:** Yes.

15           **CHAIRMAN BRISÉ:** Thank you.

16           **MR. WRIGHT:** Mr. Chairman, might I have  
17 60 seconds?

18           **CHAIRMAN BRISÉ:** I think there was a statement  
19 that was made that you were represented already; right?

20           **MR. WRIGHT:** Yes, sir. Thank you.

21           **CHAIRMAN BRISÉ:** Okay. FPL.

22           **MR. LITCHFIELD:** Thank you, Chairman Brisé.  
23 We can certainly understand why Public Counsel  
24 and the Retail Federation would like to convince you  
25 that this is something unusual, out of the ordinary,



1 extraordinary in fact, a new rate case. I think I heard  
2 that at least 15 to 20 times. Nothing could be further  
3 from the truth.

4 The public policy of this Commission and the  
5 State of Florida is to encourage settlement discussions,  
6 and that's exactly what we did. We sat down with  
7 parties that were willing to sit down with us and we  
8 negotiated in good faith an outcome that we and the  
9 other signatories feel represents a reasonable balancing  
10 of interests. And we did what has been done in many  
11 cases before, we filed a proposed stipulation and  
12 settlement agreement.

13 No, it's not unanimous, but contested  
14 settlements have been approved in the past. We felt  
15 like we wanted to get it in front of the Commission and  
16 that's why we filed it.

17 Nothing could be further from the truth in  
18 terms of it being a separate or new proceeding. The  
19 discovery has been going on for eight months, these  
20 issues have been out there. We did not sit down with  
21 the parties to my immediate left and map out a new  
22 filing or a new set of issues. We were negotiating from  
23 the case as filed and the issues as filed.

24 We, we worked together collaboratively,  
25 reached a good settlement agreement, and we brought it

1 to the Commission. It's certainly within the  
2 Commission's latitude to take the settlement up at some  
3 point during this process. It's filed in the context of  
4 this hearing.

5 The Commission determined that it would not  
6 take it up immediately, and I presume the Commission  
7 will yet determine when it will take it up. In the  
8 meantime, the schedule goes forward. We're here, this  
9 is a properly noticed hearing, not a separate rate case.

10 Again, if the OPC and Retail Federation's  
11 arguments are accepted, that would have an unbelievably  
12 chilling effect on settlement discussions and parties  
13 agreeing to file a settlement agreement for fear that  
14 their rate case would be called a new rate case, put on  
15 a separate track, and a new clock started. That just  
16 can't be the public policy of the State of Florida.

17 I don't think anything that I heard has  
18 changed my mind in terms of whether they have, whether  
19 there has been a mistake of law or fact here with  
20 respect to the Commission's order.

21 Granted, we did ask that the Commission take  
22 up the settlement agreement at the close of the hearing.  
23 That's not what the Commission determined to do. We're  
24 willing to support the Commission in a process that  
25 provides reasonable due process to all parties to have

1 the settlement agreement heard.

2 We think a part of the record of this case  
3 would normally be a part of that consideration, and then  
4 whatever additional proceeding the Commission sees fit  
5 to institute, we are willing participants in that  
6 process.

7 I would, I would say that, in closing, that  
8 again, if, if the public policy of the state to  
9 encourage settlements is to be encouraged, Public  
10 Counsel and Retail Federation's efforts to obstruct and  
11 literally hold this proceeding hostage until, until we  
12 agree to where they want us to be in terms of a  
13 settlement simply should not be countenanced.

14 Thank you.

15 **CHAIRMAN BRISÉ:** Thank you, Mr. -- were you  
16 speaking on behalf of anyone else, or just --

17 **MR. LITCHFIELD:** Just Florida Power & Light,  
18 sir.

19 **CHAIRMAN BRISÉ:** Okay. Mr. Moyle.

20 **MR. MOYLE:** Thank you. Thank you, Mr.  
21 Chairman.

22 Let me, let me start by saying I've practiced  
23 before this Commission for a long time, and I'm not sure  
24 I can recall many orders on a procedural matter entered  
25 by a Chairman that have been in effect reconsidered and

1 reversed, and that's what you're being asked to do. And  
2 the standard, has there been a mistake of law or fact,  
3 is a very high standard.

4 And I think, I think the arguments set forth  
5 by Public Counsel do not meet that, that standard. They  
6 said that, well, there was a timing issue. We filed one  
7 set of papers opposing the motion and then we filed  
8 another set of papers, and then I think what they said  
9 was a short period of time went by and then an order  
10 came out.

11 You know, whether you who, who signed the  
12 order read that, had the ability to read it, you know, I  
13 don't know, but, but they surely had an opportunity here  
14 today to rearticulate those points.

15 They are arguing it's a mistake of law, that,  
16 that they're a necessary party to a settlement. I mean,  
17 the Legislature, I think, can clearly articulate when  
18 someone is a necessary party. And in our review of the  
19 statute, we don't see that they're a necessary party to  
20 a settlement, and that the way it works is they, by  
21 statute, can participate in cases when they so desire.  
22 They have discretion, I'm in this case, I'm not in this  
23 case, and they file a notice.

24 But Public Counsel is saying, well, we have  
25 veto authority over, over any settlement. And if that

1 were to be the result, it, you know, it would be  
2 detrimental to parties like FIPUG in terms of trying to  
3 have discussions related to settlement.

4 I mean, why would, why would, why would we  
5 have discussions if, you know, if OPC, you know, had  
6 veto authority, and it could, it could, I think, not be  
7 the proper result. I don't think there's anything in  
8 the statute that gives them veto authority, and I don't  
9 think that with respect to a settlement that they have  
10 to necessarily sign.

11 There's a Supreme Court case that South  
12 Florida Hospital Association took up on a previous  
13 settlement when they did not sign an agreement, and the  
14 Supreme Court looked at it and said, you know what,  
15 South Florida, they didn't have to sign it. The  
16 settlement with less than all parties is approved. So  
17 there's, there's precedent for that.

18 I think, I think an issue that has been raised  
19 by their remarks is sort of the status, you know, of, of  
20 the settlement agreement. In terms of characterizing  
21 this as a brand-new rate case, you know, rate cases have  
22 MFRs that fill up huge boxes and you've got to get rooms  
23 to stack them in. You know, this settlement agreement,  
24 you know, is not more than 50 pages.

25 So it's, you know, it does contain terms that

1 have been discussed in part of this rate case and part  
2 of the process for a long, long time. And this notion  
3 about, oh, well, it has other, other matters in it going  
4 forward, the generation base rate adjustment, well, it  
5 has a four-year term, a stay-out term, where we're not  
6 coming back in front of you in 2004 and 2006 having the  
7 rate cases.

8 We think that the settlement is a fair deal,  
9 and we're prepared to present testimony that it is a  
10 fair deal. And with respect to, you know, the notion  
11 about due process, I would argue that by Public Counsel  
12 opening the door and talking in great detail about the  
13 settlement agreement, what its terms are, characterizing  
14 it as, quote, unquote, a self-serving agreement, you  
15 know, I think that provides us the opportunity to put  
16 some evidence on because, you know, they've opened the  
17 door with respect to the settlement agreement.

18 So we, you know, while we initially filed and  
19 said we'd like additional time, we understand the  
20 Chairman's ruling. We understand that, that everyone is  
21 dressed up, you have all the witnesses here, they've  
22 come, they're ready, they're ready to go.

23 The concern about due process, they're going  
24 to have a chance to ask all these witnesses questions  
25 about the settlement agreement. Well, the settlement

1 agreement this, the settlement agreement that, they can  
2 do that. I think evidentiary, from an evidentiary  
3 standpoint it's a, it's a filing, a pleading. It can be  
4 used as part of this case.

5 So, you know, the notion about the settlement  
6 agreement being tantamount to a rate case, I'm not sure  
7 that we, you know, agree with that. Surely if you just  
8 look at the weight of paper involved in the MFRs of a  
9 rate case and you look at the settlement, there's a big  
10 material difference there.

11 And the timing of it, you know, I don't know  
12 that, that, you know, there needs to be an apology for  
13 that. I mean, it has put some time pressures on it.  
14 But, you know, you pick up the papers about every day  
15 and you read about cases settling on the courthouse  
16 steps before they go in. So, you know, it, it, you  
17 know, it is what it is, but we're prepared to move  
18 forward.

19 We're prepared to talk about the settlement  
20 agreement with respect to the terms of it, and we think  
21 that would help build a full record for you all, so that  
22 you would have a lot of testimony, a lot of back and  
23 forth about the settlement agreement, in addition to the  
24 case as filed.

25 So, you know, we would -- while we had

1 initially filed in support of postponing it, at this  
2 point, with all the witnesses here, we would encourage  
3 that you move forward. We think that due process is  
4 afforded, because all these witnesses will be here and  
5 there will be an opportunity to ask questions about it.

6 If you all decide to say, well, not only will  
7 we give you two weeks of hearing and due process now,  
8 we'll give you additional time at a later point in time  
9 when you, if you decide to consider the settlement  
10 separately, which, you know, we would encourage that it  
11 be considered at the appropriate time.

12 So I guess we sort of changed our, our  
13 position. We're ready to, we're ready to put on, put on  
14 the case and cross-examine witnesses. And, and  
15 Mr. Rehwinkel said that the contract won't allow me to  
16 take adverse positions. You know, I respectfully  
17 disagree, because the settlement agreement, I think the  
18 provision he was referring to -- first of all, it's  
19 contemplated that in future administrative proceedings  
20 you're not going to take positions that are contrary to  
21 a settlement.

22 I mean, I think from the standpoint of  
23 perspective it was forward-looking, not necessarily  
24 considering this case. But there's also the first  
25 sentence of paragraph 15 says, the provisions of this



1 agreement are contingent on approval of this agreement  
2 in its entirety by the Commission without modification.

3 So that's a contingency that has not yet taken  
4 place, approval. So our position is, is while it is  
5 procedurally awkward, you know, we're going to put on  
6 our litigation position. We have a litigation position  
7 and a settlement position, and we're going to talk about  
8 our litigation position and we'll also talk about our  
9 settlement position.

10 But I think to the extent you allow the  
11 hearing to, to move forward, you're giving everybody  
12 ample due process, because you've got everybody here,  
13 you've got all the witnesses here, and you've got the  
14 opportunity to, to ask the questions.

15 Thank you for the chance to respond.

16 **CHAIRMAN BRISÉ:** Thank you, Mr. Moyle.

17 Mr. Wiseman.

18 **MR. WISEMAN:** Thank you, Mr. Chairman.

19 SFHHA supports the statements that have been  
20 made by FPL and FIPUG. As Mr. Moyle points out, yes, we  
21 moved to suspend the procedural schedule. But,  
22 Mr. Chair, you ruled against that on Friday and we're  
23 prepared to go forward at this point.

24 I was really surprised frankly by some of the  
25 statements I heard from Public Counsel about this being

1 a last-minute deal put on the, put before the Commission  
2 just two business days before the commencement of this  
3 hearing.

4 If you'll recall, back in 2000 there was a  
5 settlement proposed to this Commission. South Florida  
6 Hospital and Healthcare Association represents most of  
7 the major hospitals in South Florida, which is probably  
8 the most important business segment in that community.  
9 And, in that settlement, no one consulted us prior to  
10 entering into a settlement. We were handed a document  
11 just a few days before the hearing was to commence and  
12 told, take it or leave it. And we came before this  
13 Commission and we opposed it. Everyone else was in  
14 favor of it. And we asked for a hearing on the merits  
15 to discuss the terms of that settlement, and what we  
16 were given was half an hour of oral argument.

17 What we're proposing here is something far  
18 different than what happened in 2000. This hearing is  
19 ready to go forward. There is going to be a lot of  
20 evidence presented in the context of a litigated  
21 proceeding.

22 And to the point Mr. Moyle just raised, we're  
23 going to take, we're going to put on evidence in support  
24 of our litigation position. We don't know whether  
25 you're going to approve the settlement or disapprove the

1 settlement, so we have to support the litigation  
2 position that we've expressed in the prepared testimony  
3 of our witnesses and which we will pursue through  
4 cross-examination. I can assure you that FPL is not  
5 going to like some of that cross-examination, but that's  
6 our litigation position.

7           Where we are in terms of litigation versus a  
8 settlement are two different things. Settlement is give  
9 and take. You win some issues, you lose some issues.  
10 That's inevitable. But that doesn't mean that the  
11 settlement is a bad settlement. That's the nature of  
12 every settlement that I'm aware of.

13           So we're prepared to go forward with this  
14 hearing. We have witnesses who will be here. We're  
15 prepared to cross-examine witnesses. And we, we think  
16 OPC and the Retail Federation and the other Intervenors  
17 should be given their due process rights. Absolutely.  
18 Frankly, more than we were given back in 2000.

19           We think they should be able to explore in  
20 this hearing all issues, and explore whether they  
21 believe they can show that the proposed settlement  
22 should be approved or disapproved. That's fair. And we  
23 don't see any reason why you should limit those due  
24 process rights. But that can take place commencing  
25 today. There's no reason at this point to delay that,

1 and we think the hearing should go forward.

2 Thank you.

3 **CHAIRMAN BRISÉ:** Thank you.

4 Mr. Wright, do you have any comments?

5 **MR. WRIGHT:** Thank you, Mr. Chairman. And I  
6 will abide by my previous commitment to hold this to  
7 60 seconds.

8 **CHAIRMAN BRISÉ:** Okay.

9 **MR. WRIGHT:** Mr. Rehwinkel presented lengthy  
10 eloquent argument as to why we, we do believe that our  
11 due process rights have been, will be abridged by  
12 continuing with this hearing today. I just wanted to  
13 bring that in for a quick landing.

14 FPL's motions have in very practical terms  
15 caused obvious prejudice. I lost three-plus person days  
16 that I would have otherwise spend, spent getting ready  
17 for the hearing. Public Counsel probably lost two or  
18 three times that amount in what would have been spent  
19 getting ready for the hearing instead of dealing with  
20 these motions in the last five critical days before the  
21 hearing starts. That's obvious prejudice.

22 Additionally, we are, we are prejudiced -- and  
23 I just heard Mr. Wiseman and Mr. Moyle say they're going  
24 to put on their litigation cases. I'm very interested  
25 to see how this plays out, because what we've got is a

1 contract to support one litigation position and, and  
2 litigation positions.

3 The old saying goes, you can't tell the  
4 players without a program. We got a program. It's the  
5 Prehearing Order. But frankly, under the circumstances,  
6 we can't really tell what uniforms exactly a bunch of  
7 the other players are wearing. We've got two sets of  
8 proposed tariffs, which really are two different rate  
9 cases pending at the same time.

10 I, we truly believe that it's prejudicial for  
11 us to have to go forward to hearing on this at this  
12 time.

13 And by the way, just to be clear, we will  
14 resist any effort at all vigorously to take up anything  
15 relating to the settlement agreement. There's -- it's  
16 functionally a petition, we've had no opportunity for  
17 discovery, as vouchsafed to us by the Florida  
18 administrative procedure rules, we've had no opportunity  
19 to prepare for a hearing on it, there's been no notice  
20 of a hearing on it, and it clearly violates Chapter 120.

21 Thanks for your indulgence.

22 **CHAIRMAN BRISÉ:** Thank you. I think there's a  
23 question from -- okay.

24 Mr. Saporito.

25 **MR. SAPORITO:** Thank you, Mr. Chairman. I

1 agree with OPC, there is certainly an elephant in the  
2 room, but that elephant is called due process rights.  
3 It matters not that OPC's decision may have come after  
4 the Commission's decision in their order to deny the  
5 continuance and rescheduling of this matter, because the  
6 ultimate decision by this Commission would not have  
7 changed because of the due process rights, my due  
8 process rights that are being violated with any  
9 continuance.

10 I, I suffered extensive and significant  
11 financial hardship to come to the August 14th Prehearing  
12 Conference, to the extent that I had to make financial  
13 arrangements to, for my lodging stay and travel, and I  
14 cannot get refunded for those lodging arrangements.  
15 They're prepaid and they don't issue refunds.

16 So I made that decision because, you know, I  
17 intended to follow the Commission's rules. I'm a  
18 consumer, I'm a private citizen, I'm a United States  
19 citizen, and I wanted to engage the Commission to share  
20 my viewpoints and my opinions in this, in this  
21 proceeding.

22 Therefore, any continuance or rescheduling of  
23 this proceeding to another time, another day would just  
24 deprive me and undercut my due process rights 100%, and  
25 that's not fair to me.

1 I understand OPC's position, FRF's position  
2 with respect to due process, but the due process rights  
3 that are being violated here are caused by FP&L. FP&L  
4 and these other attorneys, these other signatories to  
5 this alleged settlement agreement were done in secret,  
6 and without the participation or even the invite of the  
7 other parties in this proceeding. No one else was  
8 invited to participate in that document.

9 So we were denied due process because we  
10 weren't even allowed to engage in those settlement  
11 negotiations. And I'm sure the Commission can reflect  
12 back on *Jaber* (phonetic), which OPC argued, and the  
13 Supreme Court found where, I think it was SFHHA was  
14 arguing about their due process rights, but they were a  
15 party to a proceeding, a settlement. I'm not a party to  
16 that settlement, nor are many of the other parties here.  
17 So it's, it's a violation of our due process rights not  
18 to even be in that, in that document.

19 To the extent that FPL and these other  
20 signatories would even suggest that this Commission  
21 allow this proceeding to go forward and allow them to  
22 bring in evidence and testimony to support their alleged  
23 settlement agreement is another violation of my due  
24 process rights and the due process rights to the people  
25 who weren't signatories to that alleged document,

1 because we didn't, we didn't have an opportunity to  
2 engage in discovery. I didn't have an opportunity to  
3 depose anybody. I didn't have an opportunity to ask for  
4 documents. I didn't have an opportunity to ask them to  
5 answer interrogatories under affirmation. So my due  
6 process rights and those of the non-signatories are  
7 being violated in that way also.

8 To the extent that they, FPL's alleged  
9 settlement agreement was even submitted to this  
10 Commission, it's outrageous. The terms, conditions,  
11 and -- proposed in there would shift a significant  
12 amount of costs and expenses from the signatories and  
13 put them back on people like me, who, who are the  
14 residential consumers of FP&L. And that in and of  
15 itself is unfair, and the Commission cannot possibly  
16 approve that, in my view.

17 Therefore, my suggestion to the Commission is  
18 such that you ought to go back and take another look at  
19 my emergency order for relief, where I posited that the  
20 solution to this is to, one, deny any continuance or  
21 rescheduling in this matter, deny FPL's proposed  
22 settlement agreement, and continue this hearing as  
23 ordered by Commission Graham on August 14th.

24 Thank you very much.

25 **CHAIRMAN BRISÉ:** Thank you very much.



1 Mr. Rehwinkel.

2 **MR. REHWINKEL:** Very briefly, Mr. Chairman.

3 The remarks of Mr. Litchfield and Mr. Moyle  
4 taken together illustrate the precise problem that we  
5 see with these two pending requests for relief.

6 Mr. Moyle said, contends to you that they can introduce  
7 evidence relating to the petition, that it can be  
8 considered by you, that it is a pleading, and that  
9 evidence and testimony can be taken on this.

10 Rebuttal testimony was due on March -- on  
11 July 31st. Discovery cutoff was on August 13th. They  
12 cannot introduce new evidence, new testimony at this  
13 time.

14 What you heard was an explicit admission by  
15 them that they do intend for you to consider all of the  
16 evidence that's filed plus what was filed on August  
17 15th. That is a patent, express admission that they  
18 will violate our due process rights if the Commission  
19 accepts that as a way to proceed in this hearing.

20 The Public Counsel would even consider seeking  
21 appellate relief in the form of a writ if the proceeding  
22 were to proceed under these circumstances. I, I was a  
23 little bit shocked to even hear an expression that  
24 frankly about how they would expect us to, this to be  
25 considered in the case.

1 Thank you.

2 **CHAIRMAN BRISÉ:** Thank you very much. I think  
3 we've heard from all the parties on this issue.

4 **MR. KISER:** Mr. Chairman.

5 **CHAIRMAN BRISÉ:** Commissioner Graham, I saw  
6 your light first.

7 **MR. KISER:** Mr. Chairman, I'll wait until the  
8 Commissioners are finished.

9 **CHAIRMAN BRISÉ:** Thank you.

10 Commissioner Graham.

11 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

12 I am speaking from a truly layman's point of  
13 view, not being the registered attorney like some of my  
14 colleagues are, I can just tell you from the way I  
15 understand this, we, we get stipulations when we go  
16 through rate hearings all the time. We've gotten them,  
17 we've had them at the beginning of the hearings, we've  
18 had them halfway through, and we've had them on the last  
19 day of the hearings where stipulations get floated  
20 through. So this is nothing that's new or special in my  
21 short bit of time that's been on the council. So I  
22 can't see why this is such a, a different thing from,  
23 from the norm.

24 I, I agree with the, with the Chairman's  
25 position. I think we should move forward with the case

1 as we have it.

2 With the stipulation that came forward, the  
3 first thing I noticed, that we didn't have General  
4 Counsel -- I'm sorry -- Public Counsel signed on to it.  
5 And, in my opinion, Public Counsel is here to speak for  
6 all of the ratepayers, and their job is to put on a case  
7 for all the ratepayers. And that being the case, it's  
8 difficult to even entertain a stipulation that Public  
9 Counsel is not part of.

10 So I think we should wait, put the stipulation  
11 at the end of the hearing, let the Public Counsel put on  
12 their case, listen to what they have to say, and  
13 determine if we want to settle that case or if we want  
14 to listen to the settlement.

15 That, in my layman's term, is where I think we  
16 are. I look at it almost like someone being at a trial,  
17 and there's continuing plea bargaining during the middle  
18 of the trial as the trial is moving forward. I can't  
19 see that being any different than this.

20 Thank you.

21 **CHAIRMAN BRISÉ:** Thank you, Commissioner  
22 Graham.

23 Commissioner Balbis.

24 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

25 And I agree a lot of -- with what Commissioner

1 Graham said on this. I do have some questions or  
2 concerns that were brought up by this, and I want to  
3 direct a question or two to Mr. Moyle on it. And it's  
4 really the issue of a legal position and a settlement  
5 position.

6 And just to be specific, I think one of the,  
7 one of the things that I'm struggling with is, you know,  
8 for example, on the issue of return on equity, and  
9 you're going to be cross-examining or proffering  
10 witnesses on return on equity, and FIPUG's position as  
11 listed in the Prehearing Order is that, and I quote,  
12 given market conditions today, FPL's ROE should be no  
13 higher than 9%.

14 So I'm struggling with if you're going to be  
15 cross-examining or proffering witnesses that support  
16 that, in essence you are supporting a denial of the  
17 settlement agreement because the settlement agreement  
18 has an ROE that's higher than that. So how are you  
19 going to deal with that specifically and, and still  
20 provide an adequate argument to your position?

21 **MR. MOYLE:** Sure. And our -- FIPUG, just so  
22 we're clear, has one witness, Jeff Pollock, who is going  
23 to talk about rate design and interruptible credit,  
24 which is important to FIPUG, it's a part of the  
25 settlement agreement, and we're going to focus a lot on

1 that, and we have adopted positions of others with  
2 respect to the ROE.

3 So, you know, we have an agreement, we support  
4 the agreement. The agreement is contingent upon  
5 approval of the Commission, as I indicated, which has  
6 not yet been done.

7 So we are going to cross FPL's ROE witnesses,  
8 Mr. Avera, because they are at a position of 11.5 in  
9 their testimony, 11.25 with a .25 adder for good  
10 performance, and we're going to challenge the good  
11 performance adder and we're going to challenge the, you  
12 know, 11.25. It's higher than the settlement number,  
13 which is 10.7. Okay? And so we'll argue it needs to be  
14 lower, it needs to be lower.

15 You'll have conflicting evidence on that  
16 point. I don't know that I'll be able to get Mr. Avera  
17 to concede that, oh, yes, it should be lower. He's been  
18 an expert a long time, and I'll maybe make a few points,  
19 but I'm not sure he will concede to that point. So  
20 you're going to have conflicting evidence.

21 Now, you know, the settlement agreement is at  
22 10.7. Ultimately you may have to say, well, you know,  
23 is that, is that the right number? There'll probably be  
24 some discussion about that. What does, what does Gulf  
25 have, what does Progress Energy have with its nuclear

1 operations? I think that will be part of the  
2 discussion.

3 But I think that it is an unusual position,  
4 and in my opening remarks I was going to comment on  
5 that, and I don't want there to be confusion that we do  
6 not support the settlement agreement because of some of  
7 the, some of the cross that we're going to be  
8 conducting. It will be adverse. But I think at the end  
9 of the day it'll provide you with a full record that you  
10 can consider and, and make a decision as to, as to the  
11 settlement agreement.

12 So that's, that's kind of how I see it with  
13 respect -- I don't, I don't see it as you've got to be  
14 this or you've got to be that. I mean, I think, to  
15 Commissioner Graham's point, you know, in a criminal  
16 context plea bargaining is going on, sometimes in a  
17 civil context settlement discussions ensue during the  
18 course of the proceeding. So, so that's, that's kind  
19 of, I hope, responsive to your question.

20 **COMMISSIONER BALBIS:** Okay. Thank you. And I  
21 appreciate the analogy of plea bargains, and  
22 Commissioner Graham did bring it up, and settlements  
23 being agreed to at a courthouse steps.

24 I think what we may be facing with here is  
25 instead of a prosecution and a defense agreeing to a

1 settlement, we in essence have a prosecution and the  
2 prosecution perhaps. So we don't have all parties, and  
3 the organization who's legislatively designated to  
4 represent all the ratepayers is not a signatory.

5 So that's kind of the unusual situation that I  
6 know I'm personally dealing with here, and whether to  
7 proceed or not to proceed is what we're facing, and  
8 actually was there a mistake in fact or law made by the  
9 Chairman in his decision. So I, I appreciate that  
10 explanation.

11 And I have a question for OPC on -- you  
12 indicated a lot of, in the beginning of your statement,  
13 legal, I'll use the word issues, but legal challenges  
14 associated if we start the hearing and then take up the  
15 settlement. But those challenges only exist if the  
16 settlement is agreed to. If it's dismissed or denied,  
17 would there still be those legal challenges?

18 **MR. REHWINKEL:** No.

19 **COMMISSIONER BALBIS:** Okay.

20 **MR. REHWINKEL:** If -- yes. If the elephant is  
21 removed, we're good. But we don't think you're in a  
22 posture today because, as much as I have enmity toward  
23 that document, there are parties that have substantial  
24 interests that are embodied in that document, and  
25 they're entitled to a hearing on whether you should

1 entertain that or not.

2 We, we think that it's facially invalid, but  
3 we're willing to put on a case about the substantive  
4 invalidity of it, and we'll be filing something tomorrow  
5 on that.

6 So I don't think you're in a position right  
7 now to dispose of it the way it needs to be disposed of  
8 in order to take it out of this process.

9 **COMMISSIONER BALBIS:** Okay. And then the  
10 other legal point that you brought up, and it's actually  
11 a question for staff on this, and is that, the Chairman,  
12 I assume it would be the Chairman did not consider OPC's  
13 response to the motion. Is there a, a time frame? Is  
14 there any limitations or deadlines in order to consider  
15 it, or is that, is that a valid legal argument at all?

16 **MR. REHWINKEL:** Before the staff addresses  
17 that, may I make a point about that? Ordinarily a  
18 motion under the rules entitles any person who has an  
19 interest and wants to respond to it to do so within  
20 seven days in writing.

21 We weren't stupid. We knew that there was an  
22 exigent circumstance. We filed a document early in the  
23 next, next day to say, hey, we have a problem with this,  
24 we're going to file something the next day.

25 So we accelerated our response, we did the



1 best we could. We filed it, I believe, at 4:20, and we  
2 knew that the Commission needed to get something out.

3 The reporters were calling us saying, what are  
4 they going to do? And they were calling the Commission,  
5 I'm sure; what are they going to do? We knew there was  
6 a big rush. We were trying as hard as we could.

7 He did nothing wrong in the sense of waiting  
8 as late as he could. But we did the best we could. I  
9 call it a mistake of law or -- but it wasn't something  
10 that, that he could be faulted for. It just was the  
11 circumstance that they were in. But we, we rushed, and  
12 we should not be dinged, if you will, because we did  
13 something in less than 48 hours that we normally have  
14 seven full days to do.

15 **COMMISSIONER BALBIS:** Staff?

16 **MS. HELTON:** I think I agree with what  
17 Mr. Rehwinkel has said. I believe there has not been a  
18 mistake here. Rule 28-106.204, which is set out in the  
19 uniform rules of procedure, which addresses motions and  
20 the filing of motions and the filing of responses,  
21 states that when time allows, the other parties may,  
22 within seven days of service of a written motion, file a  
23 response in opposition.

24 So the rules themselves contemplate situations  
25 that are such as this that -- there was a definite need,

1 I think, on the part of all the parties here today, the  
2 staff, you, all the people here in the audience, to know  
3 whether the hearing was going to happen on Monday or  
4 not.

5 As far -- I almost hesitate to say this, but  
6 let me just throw it out there. The rules don't  
7 contemplate filing two responses, which is in effect  
8 what OPC has, has done here with this situation. I  
9 understand what they did, and if I were sitting in Mr.  
10 Rehwinkel and Mr. Wright's shoes, I probably would have  
11 done the same thing, but the rules do not contemplate  
12 filing two responses.

13 And I will also note that we have spent quite  
14 a bit of time here this morning already, and I think  
15 that Mr. Rehwinkel and Mr., Mr. Wright have had an  
16 opportunity to make the Chairman and the rest of you  
17 fully aware of the issues that they see where we are in  
18 the process.

19 **COMMISSIONER BALBIS:** Okay. Thank you. I  
20 have nothing further.

21 **CHAIRMAN BRISÉ:** Thank you, Commissioner  
22 Balbis.

23 Commissioner Brown.

24 **COMMISSIONER BROWN:** Thank you.

25 And I think that OPC did raise some good

1 points in its response and during here. But I'm of like  
2 mind with my non-lawyer colleague, Commissioner Graham.  
3 I'm trying -- I'm having a hard time finding the mistake  
4 of law or fact here.

5 That being said, I have some questions for  
6 staff that were raised here. Can we consider the  
7 settlement along with the rate case during this  
8 technical hearing?

9 **MR. KISER:** I would be very hesitant to do  
10 that, just because there are issues in the settlement  
11 that haven't been raised and the parties haven't had due  
12 process to look at those. And when it gets appropriate  
13 time for me to address the, the Commission, I have one  
14 solution in mind that might put some fears aside about  
15 these issues coming up during the regular rate case. A  
16 motion in limine is one of the things I'm thinking  
17 about.

18 **COMMISSIONER BROWN:** Okay. And a question for  
19 Ms. Helton regarding the eight-month clock that was, OPC  
20 said that is inappropriate and inapplicable. Can you  
21 please address that?

22 **MS. HELTON:** I think I understand OPC's point  
23 with respect to the eight-month clock. However, I don't  
24 think you can ignore the eight-month clock. I think you  
25 have to read that in conjunction with the settlement

1 that was signed by many of the parties sitting here at  
2 the table now. And it's my understanding, it's my understanding  
3 and my belief that the schedule that we're operating  
4 under today was meant to allow the company to implement  
5 rates under the settlement agreement so that they can  
6 implement new rates effective January 1, 2013. So  
7 that's what, where we are.

8 **CHAIRMAN BRISÉ:** Thank you.

9 Any other comments from Commissioners?

10 Well, since I was the one that issued the  
11 order, I guess I have a couple of words to say myself.  
12 And then we'll hear from Curt, because after that point  
13 we'll, you know, you all have to decide whether I made a  
14 mistake of law or fact.

15 There are a couple of issues that I thought  
16 were important in dealing with this whole issue of  
17 whether to proceed or not to proceed and so forth. And  
18 I view the, the settlement issue and the rate case as  
19 two completely separate issues. That, one, we go  
20 through this process and we get all the information that  
21 needs to come to us this way. And we needed to provide  
22 an opportunity for us to work on a schedule that makes  
23 sense so that rates can be implemented when they need to  
24 be implemented.

25 The second aspect of this that I thought was

1 important, and we will probably address this later on  
2 this week, is that if it is not found that, you know, I  
3 made a mistake of law or fact, then we would lay out a  
4 schedule that is separate from this process to deal with  
5 the settlement. And then that would provide an  
6 opportunity for interrogatories and all of that to occur  
7 within that space, with deadlines, and, and put us at a  
8 position that is forward-looking and with an  
9 understanding that, you know, at this point on those  
10 things can be addressed, the settlement and so forth can  
11 be addressed.

12 So I think that this provides us an  
13 opportunity to move forward with the cases looked as,  
14 thought about since it was scheduled months and months  
15 ago. It provides a certain amount of certainty for  
16 everyone who is involved in this process, and, moving  
17 forward, it takes away some of the uncertainty that we  
18 would have had to deal with with all of the scheduling  
19 things that we would have to handle if we had sort of  
20 suspended the hearing. That is sort of my layman's  
21 basic rationale.

22 And with respect to the, the two responses by  
23 OPC, I know what time they came in. And we sat down and  
24 contemplated all the issues that were there, and they  
25 were all taken into account. And at the end of that, we

1 came up with the decision that the process that we are  
2 outlining is the most appropriate process for this  
3 instance. Does it become precedential? Hopefully not.  
4 But, as every instance is an individual instant, we  
5 thought that at this time this is the proper course of  
6 action for the circumstances that we have before us.

7 Mr. Kiser.

8 Oh, I'm sorry. Commissioner Balbis.

9 **COMMISSIONER BALBIS:** Whenever we're in a  
10 position for a motion, I'd be willing to make one.

11 **CHAIRMAN BRISÉ:** Okay. I think we may have  
12 some counsel from, from our General Counsel.

13 **MR. KISER:** Thank you, Mr. Chairman and  
14 members of the Commission.

15 First of all, I think that in setting out the  
16 argument it's very obvious that Mr. Rehwinkel cited  
17 absolutely zero case law for what he's advocating, not  
18 one item did he give us of a misinterpretation of the  
19 law and any case filings on that.

20 Most of the things that he talked about are  
21 speculative, things that could happen in the future, not  
22 things that are certain to happen. As you said in your  
23 comments, no date has been set for dealing with the  
24 issues of that settlement. That is something to be  
25 decided by the Commission and the Chairman as they move

1 along and as we see the case develop and as you see the  
2 speed with which we move or we don't move, and giving  
3 all the limitations on the calendar.

4 That's one of the, one of the serious  
5 considerations that you, that you mentioned, over the  
6 last Thursday and Friday trying to deal with this issue  
7 of just the logistical problem of trying to move these  
8 things back with other things that do have some definite  
9 deadlines to them that we also have to respect.

10 In civil practice, whenever there's some issue  
11 in the case that is a significant issue and parties are  
12 concerned that it will be inappropriately brought up and  
13 discussed and therefore have a tainting effect on the  
14 potential outcome, they use a motion in limine, where  
15 the judge rules that that issue cannot be brought up,  
16 that issue cannot be addressed, can't be spoken to, no  
17 information, no evidence, no witnesses, no statements by  
18 counsel, all of that are barred.

19 And if the Commission is concerned that there  
20 might be some chance that these issues might bleed over  
21 into one another, something like taking that approach to  
22 where comments, et cetera, evidence, witnesses, et  
23 cetera are off limits on that issue until the  
24 appropriate time for that settlement or any other  
25 settlement to be taken up, let's keep the case limited

1 to the way it was filed and set aside that, the two  
2 settlements are there and potentially others that might  
3 still come forward.

4 So I think there are ways to guard against  
5 that and keep that from happening. But by and large,  
6 most of the issues that Mr. Rehwinkel raised are  
7 speculative, and therefore I would suggest that the  
8 Chair would be, it would be appropriate to deny the  
9 motion for reconsideration for failure to meet the  
10 standard that was enunciated earlier of, of a mistake in  
11 law or fact.

12 **CHAIRMAN BRISÉ:** Thank you, Mr. Kiser.

13 If there are no further comments from  
14 Commissioners, I think we're in a position to entertain  
15 a motion.

16 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
17 I move that we deny the motion for reconsideration in  
18 this matter.

19 **CHAIRMAN BRISÉ:** Okay. Is there a second?

20 **COMMISSIONER GRAHAM:** Second.

21 **CHAIRMAN BRISÉ:** It's been moved and seconded.  
22 Any further discussion? Okay. Seeing none, all in  
23 favor, say aye.

24 (Vote taken.)

25 All right. Thank you very much.



1           **MR. REHWINKEL:** Mr. Chairman?

2           **CHAIRMAN BRISÉ:** Yes, sir, Mr. Rehwinkel.

3           **MR. REHWINKEL:** In view of the Commission's  
4 decision, the Public Counsel has a further motion to  
5 make. I will let Mr. Kelly address that.

6           **MR. KELLY:** Good morning, Mr. Chairman,  
7 Commissioners.

8           **CHAIRMAN BRISÉ:** Good morning.

9           **MR. KELLY:** I'll be very brief. We're making  
10 a motion. It's a motion in the alternative of three  
11 parts.

12                   We're making a motion to dismiss the  
13 settlement altogether or set for expedited oral argument  
14 on the motion to approve or deny the settlement that's  
15 submitted by Florida Power & Light, the Hospital  
16 Association, FIPUG, and FEA, or, in the alternative,  
17 dismiss FPL's petition for rate increase that was  
18 submitted on March 12th.

19                   I won't go into the -- we spent a lot of time  
20 here, Mr. Chair. In the interest of time, I won't go  
21 into argument about this. It's set forth in the motion,  
22 and you folks are, can read it very quickly. But we  
23 need to do this in order to have a proper record,  
24 please.

25           **CHAIRMAN BRISÉ:** Okay. I suppose everyone is

1 going to need a few minutes to, to digest this, take a  
2 look at it. It is five minutes to 11:00. Thirty  
3 minutes or an hour or so to take a look at it? Let's  
4 set reconvening at 11:30, and then we'll sort of gauge  
5 where we are at that point. Okay? So we are at recess  
6 until 11:30.

7 (Recess taken.)

8 **CHAIRMAN BRISÉ:** All right. We will reconvene  
9 at this time.

10 Lieutenant Colonel Pike, I think you  
11 have someone --

12 **LT. COL. PIKE:** Yes. Thank you, Mr. Chairman.  
13 The Federal Executive Agencies wanted to enter an  
14 appearance also for Captain Samuel Miller. I failed to  
15 mention his name at the initial beginning of the  
16 proceeding. Thank you.

17 **CHAIRMAN BRISÉ:** Thank you very much. All  
18 right. We have a motion on the table that has been  
19 offered by the Office of Public Counsel. Commissioners,  
20 we took some time to take a look at it. As I read it, I  
21 think we heard all the arguments for the issues  
22 contained within this motion. So I think we are  
23 probably in the posture to have discussion among  
24 Commissioners and then vote.

25 So whoever feels that they are comfortable

1 leading the discussion, we're welcome to that at this  
2 point, or we are also ready to entertain a motion.

3 Commissioner Brown.

4 **COMMISSIONER BROWN:** Thank you. And I do take  
5 issue with being forced to make a decision on the  
6 settlement agreement one way or the other today. With  
7 regard to there are three issues in this motion to  
8 dismiss, I have some questions for staff with regard to  
9 the motion to dismiss.

10 Do we have to vote the settlement up or down  
11 now in order to proceed with the hearing?

12 **MS. HELTON:** It is my belief that you do not  
13 have to do that. It is my belief that it's -- that  
14 everyone in the room is capable of distinguishing  
15 between what would be the litigation phase of the docket  
16 and what would be potentially the settlement phase of  
17 the docket and that they can easily be separated and  
18 that you can easily not allow any discussion, any  
19 argument, any cross-examination about the settlement  
20 during the course of the litigation phase of the  
21 proceeding.

22 **COMMISSIONER BROWN:** So a motion in limine,  
23 would not -- we don't have to do that?

24 **MS. HELTON:** That is one vehicle that is  
25 available in the law to do that.

1                   **COMMISSIONER BROWN:** Okay. If I may, with  
2 regard to the third alternative, the alternative motion  
3 to dismiss the petition for the rate increase, having a  
4 rate case pending -- we already heard this over the past  
5 hour and a half, so it's kind of rearguing the merits  
6 again of what we just discussed. But having a rate case  
7 pending along with a settlement agreement that has not  
8 yet been voted on today, that does not translate into  
9 two separate rate cases, and I just wanted that clear.  
10 Is that correct?

11                   **MS. HELTON:** That's my understanding. I mean,  
12 the settlement agreement has not really -- does not have  
13 the force and effect of law at this point in time  
14 because to do that you would have to approve it. I  
15 believe that you can proceed forward with the litigation  
16 phase of the proceeding.

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

18                   **CHAIRMAN BRISÉ:** Thank you, Commissioner  
19 Brown.

20                   Commissioner Balbis.

21                   **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

22                   And I agree with Commissioner Brown and  
23 staff's analysis of the issues brought forth in this  
24 motion. So if the Commission desires, I would be in a  
25 position to make a motion on this issue.

1           **CHAIRMAN BRISÉ:** Okay.

2           **MR. WRIGHT:** Mr. Chairman.

3           **CHAIRMAN BRISÉ:** Mr. Wright.

4           **MR. WRIGHT:** May I be heard very briefly?

5           **CHAIRMAN BRISÉ:** Sure.

6           **MR. WRIGHT:** Thank you, sir.

7           I just want to make clear two things. First,  
8 this is the Public Counsel's motion; we are not joint  
9 movants with respect to this. And we would oppose any  
10 expedited ruling on the motion for approval, the second  
11 request for relief articulated in the motion.

12           Thanks for letting me speak.

13           **CHAIRMAN BRISÉ:** Thank you very much.

14           Commissioner Balbis.

15           **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

16           And in light of staff's comments and the fact  
17 that settlement agreements are being negotiated I assume  
18 all of the time during numerous proceedings, so the fact  
19 of having addressing Item C of OPC's motion that we have  
20 two dual tracks, I think you have multiple tracks going  
21 on all the time behind the scenes as parties try to come  
22 to an agreement.

23           So with that, I disagree with the three  
24 sections of the motion, and I move that we deny OPC's  
25 motion to dismiss.

1           **CHAIRMAN BRISÉ:** All right. It has been  
2 moved. Is there a second?

3           **COMMISSIONER GRAHAM:** Second.

4           **CHAIRMAN BRISÉ:** It has been moved and  
5 seconded. Any further discussion? Okay.

6           Seeing none, all in favor say aye.

7           (Vote taken.)

8           **CHAIRMAN BRISÉ:** All right. Let the record  
9 reflect that the motion by OPC has been denied. Okay.

10           With respect to how we move forward, the idea  
11 is that on Wednesday, and I know that is the last day  
12 for people to respond to the settlement agreement, and  
13 once that is done, then we will set out sort of a  
14 schedule specifically for that part of this docket.

15           The other aspect is that we suppose that there  
16 will be interrogatories and so forth that will go on  
17 throughout this process. So I know that our staff has  
18 some that they want to proceed with, so parties are able  
19 to do so as necessary, and we will set dates for that.  
20 All of that will be laid out by Thursday afternoon.  
21 That is our plan at this juncture, and any further  
22 discussion on this will take place on Thursday  
23 afternoon.

24           **MR. WRIGHT:** Mr. Chairman.

25           **CHAIRMAN BRISÉ:** Yes, Mr. Wright.

1           **MR. WRIGHT:** You may have already articulated  
2 this point, and if you have, then please consider this  
3 request for clarification. But you, Ms. Helton,  
4 Mr. Kiser, and Commissioner Brown have all mentioned  
5 some concept of a ruling in limine or a motion in  
6 limine. And just so I am clear, I would offer an  
7 ore tenus motion in limine that no testimony or evidence  
8 with respect to the settlement agreement be received in  
9 this hearing.

10           **MR. REHWINKEL:** Mr. Chairman, if the Public  
11 Counsel could just add to that --

12           **CHAIRMAN BRISÉ:** Sure.

13           **MR. REHWINKEL:** -- the Evidence Code, Section  
14 90.408 states, "Compromises and offers to compromise:  
15 Evidence of an offer to compromise a claim, which was  
16 disputed as to validity or amount, as well as any  
17 relevant conduct or statements made in negotiations  
18 concerning a compromise is inadmissible to prove  
19 liability or absence of liability for the claim or its  
20 value." We would cite that as well in support of the  
21 motion that the Retail Federation just made.

22           Thank you.

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

24           Ms. Helton.

25           **MR. MOYLE:** May I be heard?

1                   **CHAIRMAN BRISÉ:** Mr. Moyle before we go to  
2 Ms. Helton.

3                   **MR. MOYLE:** The provision that Public Counsel  
4 just cited, you know, has just made as an ore tenus  
5 motion, I haven't researched it, but I would suggest  
6 that that relates to digging behind what was in the  
7 settlement. What did you trade this for for that, and  
8 it gets into the settlement discussions themselves.

9                   And I think everyone presumably understands  
10 that is not something that can be done. But to the  
11 extent that the settlement agreement, which is a public  
12 document and has been filed with the SEC, to the extent  
13 that it can be used in a limited fashion to point out,  
14 say, an evidentiary provision of statement against  
15 interest.

16                   If FPL's ROE witnesses is on the stand and,  
17 again, as I responded to Commissioner Balbis, you know,  
18 we are going to take a position that the ROE should be  
19 lower. I think I should at least be able to say are you  
20 aware that in the SEC filing that you on behalf your  
21 client agreed to a 10.7 ROE? I think that's fair game  
22 with respect to, you know, a statement against interest  
23 or an admission that from an evidentiary standpoint,  
24 then I should be able to ask those questions.

25                   I also think that Public Counsel has opened



1 the door with respect to the substance of the settlement  
2 by, you know, all of their opening remarks that they  
3 talked about the terms of the settlement and made a  
4 whole bunch of comments about it. I think from an  
5 evidentiary standpoint that they have opened the door  
6 and now they want to close it, and I don't think they  
7 can do that.

8 So from a standpoint of the motion in limine,  
9 and it also presents a practical issue which is, you  
10 know, if your plan is to have this hearing and then a  
11 subsequent hearing, you know, there will probably be  
12 relevant evidence that comes out in this hearing and how  
13 you deal with that. I guess you could take this whole  
14 record and incorporate it and put it into the settlement  
15 hearing.

16 But, I don't want there to be some kind of an  
17 argument, you know, if somebody is saying, well, Mr.  
18 Reed was here, but he's not at the next one, and my due  
19 process rights have been waived because I couldn't ask  
20 Mr. Reed questions about the settlement per your ruling.  
21 I mean, I think that is sort of inviting error, and I  
22 don't I think that could be done. But, you know, from  
23 FIPUG's position, you've got all the folks here, we  
24 don't have any objection to the extent that questions  
25 want to be asked about the fairness of the settlement.

1 And then if it is followed up by a subsequent fairness  
2 hearing, I think everybody's due process is more than  
3 afforded.

4 But if the ruling is we are only going to talk  
5 about the litigated case, I would like to have the  
6 latitude to, at least from an evidentiary standpoint,  
7 make some points about statements against interest. And  
8 also don't want there to be subsequent arguments that  
9 people would make to somehow say, well, the motion in  
10 limine ruling, you know, prejudices due process rights.

11 So I guess if all of the parties who are not  
12 signed onto the agreement to support the motion in  
13 limine, I think they would have a hard time later saying  
14 the due process rights have been denied. But I just  
15 wanted to bring those points up for consideration.

16 **CHAIRMAN BRISÉ:** Mr. Litchfield.

17 **MR. LITCHFIELD:** Thank you, Chairman Brisé.

18 Mr. Moyle beat me to the mike. I endorse what  
19 he just said, so my comment is brief. And that is, at  
20 the end of the day this is the same proceeding. This is  
21 about Florida Power and Light Company's base rates that  
22 will be established 1/1/13.

23 There is record evidence that all the parties  
24 have filed and certainly we are not backing away from  
25 our prefiled position. At the same time, we have

1 entered into a compromise with some of the major parties  
2 here that we fully support and intend to support  
3 throughout the process. So in this regard, you really  
4 can't de-link the two proceedings.

5 This record that we develop here will be some  
6 frame of preference for the Commission's decision at the  
7 end of the day whether to approve the settlement or not.  
8 And Public Counsel will take a position contrary to the  
9 settlement agreement. They will do that through this  
10 proceeding, and they will do that through any subsequent  
11 proceeding, but I really don't think that we can de-link  
12 them in the way that Mr. Kiser was suggesting.

13 **MR. REHWINKEL:** Mr. Chairman, I apologize, but  
14 these arguments that you have just heard from these two,  
15 they make our case for us. And they are putting a  
16 record down here that an appellant court is going to  
17 review.

18 We have not opened the door to anything. This  
19 is preliminary matters. The evidence is not being taken  
20 yet. You have not started -- you haven't even heard  
21 opening statements. So we have not opened the door on  
22 anything. And we reject in every possible way that this  
23 settlement, which was filed two days even after the  
24 close of discovery, can have any bearing in this case.

25 And I apologize, I will keep my mouth shut,

1 but they have reopened this can of worms, and they are  
2 illustrating for you how intertwined this filing is that  
3 has no place in this case. And I appreciated your  
4 remarks as you were explaining your order that your  
5 effort was going to be to keep the settlement out of the  
6 rate case. And it is no -- there is not one shred of  
7 testimony offered by any of the witnesses, the 36 that  
8 you have noted, that addresses a settlement offer that  
9 was filed after they filed their testimony.

10 So we strongly support their motion in limine,  
11 and we believe Mr. Kiser had it right that that is at  
12 least a good start to curing what ails this hearing.

13 Thank you.

14 **CHAIRMAN BRISÉ:** Thank you.

15 Mr. Wiseman.

16 **MR. WISEMAN:** Thank you, Mr. Chair.

17 I just want to add to the comments that were  
18 made by FPL and FIPUG. The subject matter of the  
19 proposed settlement obviously is the subject matter of  
20 this litigated proceeding. And as a result, many of the  
21 issues that are in the settlement proposal obviously are  
22 issues that are in the litigated proceeding, as well.

23 Purely as a matter of administrative  
24 efficiency, there is going to be evidence taken on those  
25 issues in the litigated proceeding. And so to the

1 extent that you were to grant the motion for limine and  
2 simply cut off additional questions concerning those  
3 same issues because they arguably are relevant to the  
4 settlement proposal, as well, I think it's going to end  
5 up in a nightmare, where what you are going to end up  
6 with is one record here and then you are going to have  
7 to in major part duplicate that record in a subsequent  
8 proceeding on the settlement proposal.

9 I think from the perspective of administrative  
10 efficiency, the much more logical way to go is to have  
11 the technical hearing, take the evidence, whether it is  
12 about the litigated proceeding or about the settlement  
13 proposal, then subsequently give the parties their due  
14 process rights to bring in any -- in a subsequent  
15 procedure, however you decide to establish that, and  
16 allow the parties opposing the settlement their  
17 opportunity in that subsequent proceeding to develop  
18 additional evidence as they wish concerning the  
19 reasonableness of the settlement. But there is no  
20 reason to make that second proceeding simply a duplicate  
21 in major ways of the proceeding that is about to take  
22 place.

23 Thank you.

24 **CHAIRMAN BRISÉ:** Thank you.

25 Commissioner Graham, you have a question or

1 comment.

2 **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

3 This is, once again, from my layman point of  
4 view. This is to staff. Staff, to cut through all this  
5 stuff that we are going through right now, is it  
6 possible just to -- the original settlement agreement  
7 that is put up there, is it possible to deny the  
8 settlement without prejudice, or maybe even give Florida  
9 Power and Light to withdraw it, so then all this stuff  
10 goes away?

11 **MR. KISER:** Let me take a shot at it.

12 Certainly, Commissioner Graham, going at the last  
13 comment you made, that would always be in order that if  
14 one of the parties, in this case Florida Power and  
15 Light, if they were to withdraw it, yes, that would end  
16 it. But they haven't chosen to do so so far. I don't  
17 know if a break would cause that to happen or not, but  
18 that would clear the air on that.

19 And I think that some of the issues that are  
20 raised, the problem is if you do the motion in limine,  
21 you are going to have to stick with it. And if that  
22 means that you come back in a subsequent hearing and you  
23 have to go back to some of those issues because somebody  
24 said I wasn't able to raise that on the first go-round,  
25 yes, you will have to go back through that. It will be

1 a little bit time consuming.

2 But I think in order to try to stick with what  
3 the intent of what the Commission has done so far, and  
4 to try to totally separate the process on the rate  
5 hearing as filed, you're going to have limit. Otherwise  
6 you're going to be constantly, in my opinion, going back  
7 and forth between, you know, arguments and documents and  
8 witnesses trying to use the stuff that they want for the  
9 settlement in this hearing.

10 And so to try to keep it separate, you're just  
11 going to have to draw a line and say that is out of  
12 bounds. We will come back to it later, if necessary.  
13 Recognizing, yes, there may be a little bit of having to  
14 go back, but, you know, this isn't the most expedited  
15 process.

16 Go ahead, Mary Anne.

17 **CHAIRMAN BRISÉ:** Mary Anne.

18 **MS. HELTON:** I just conferred with Ms. Cibula  
19 who, as you all know, heads up our appellate department.  
20 And I asked her, well, what do you think about  
21 Commissioner Graham's suggestion if you were to go ahead  
22 and deny it, and she has not taken issue with that. If  
23 you wanted to deny it without prejudice, then I think  
24 that would help clear the air. Or Florida Power and  
25 Light could help clear the air and let us get forward

1 with their case in chief and withdraw the petition. Or  
2 the motion, excuse me. I didn't mean to say petition.

3 **CHAIRMAN BRISÉ:** Mr. Litchfield.

4 **MR. LITCHFIELD:** Our answer in either case  
5 would be no. We stand by our petition for a base rate  
6 increase filed in March. But, again, in an interest in  
7 reaching a compromise with a lot of the major  
8 constituents here in the State of Florida and working  
9 out a deal that we believe is in the best long-term  
10 interests of the State of Florida, our customers, and  
11 our investors who back the infrastructural investments  
12 that we make in the billions of dollars a year in this  
13 state, we fully support the settlement. And, frankly,  
14 for it to be denied even with prejudice -- without  
15 prejudice, excuse me, at this time, we think could  
16 potentially impair our due process rights.

17 We've heard a lot about the due process rights  
18 of Public Counsel, and we are respectful of those, but  
19 you have parties here who have worked very, very hard  
20 over months. We have heard the term surprise. We have  
21 heard the term bomb. We have heard the term last minute  
22 from the far end of the table here several times today.  
23 And I want to be clear that if there is any suggestion  
24 in those assertions that folks other than Mr. Saporito,  
25 for good reason, which I don't need to go into here,



1 unless you need me to, but that other folks were fully  
2 invited to engage in the settlement discussions. If  
3 there is any indication or suggestion by the use of  
4 those terms to the contrary, that simply would not be  
5 accurate.

6 So the settlement that you have before you is  
7 not a last minute effort. It is the result of a -- and  
8 the culmination of a lot of very lengthy and vigorous  
9 and rigorous discussions among the parties that were  
10 willing to meet. We think it represents very, very good  
11 value for the State of Florida as a whole. And so, no,  
12 we are not willing to withdraw it.

13 We do think there is a very easy path forward  
14 here. This record in terms of -- just like any  
15 stipulation that comes before the Commission, the record  
16 of this case is going to provide the appropriate context  
17 for the Commission to consider ultimately whether to  
18 approve that or not.

19 If there are additional procedures or  
20 additional evidence or days that the Commission thinks  
21 that we should institute in order to establish and  
22 provide due process for all parties, as I said before,  
23 we are very willing participants in all of that, and we  
24 support the concept of discovery and responding to  
25 staff's requests. We just don't see a reason not to

1 proceed here this morning.

2 It's clear that Public Counsel does not like  
3 the settlement. We understand that. And Retail  
4 Federation has joined with them. But what is also clear  
5 is not only do they oppose the settlement, they want to  
6 oppose any procedural path forward that would allow us a  
7 meaningful opportunity in the form of our due process  
8 rights to have that settlement agreement taken up at an  
9 appropriate time.

10 They have filed two responses to the initial  
11 motion that we filed. They have intended that they want  
12 to file yet a third, even though the seven-day waiting  
13 period is not an automatic right of the parties, as Ms.  
14 Helton pointed out. But they have filed two, they plan  
15 to file a third.

16 This morning they asked for the Commission,  
17 again, to reconsider Chairman Brisé's order. That was  
18 denied, so then they promptly filed a motion to dismiss  
19 the settlement agreement, largely on the basis of the  
20 same arguments which the Commission properly denied.  
21 Even in the body of that motion they said, and if the  
22 Commission will not grant our motion to dismiss the  
23 settlement agreement, we'd like you to dismiss the  
24 entire base rate petition that Florida Power and Light  
25 Company has filed.

1 Well, this at the end of the day is just a  
2 collection or a series of efforts and tactics to prevent  
3 due process from going forward. So we have heard a lot  
4 about their due process. There is due process that must  
5 be adhered to down here at this end of the table, as  
6 well, Mr. Chairman.

7 **CHAIRMAN BRISÉ:** Commissioner Graham.

8 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

9 See, that's why I'm an engineer and Mr.  
10 Litchfield is an attorney. I just throw that out there  
11 for conversation. Thanks.

12 **MR. MOYLE:** Mr. Chairman, if I could just be  
13 heard briefly, because we all are, you know, joint  
14 movements on that. And I really think given your  
15 previous ruling that is postured to move forward with  
16 taking evidence shortly.

17 And, you know, this isn't completely new  
18 ground that's being tread upon in that you may recall in  
19 the Gulf case there was a settlement that sort of  
20 traveled along with the hearing, and you all had  
21 separate proceedings to take that up and consider that.  
22 And so to the extent that that is the desire to have  
23 evidence, I heard Public Counsel say -- initially in  
24 their argument they said, well, you know, our due  
25 process is violated because we can't, you know, take

1 evidence. But then they filed a motion to say, well,  
2 rule.

3 I mean, I don't think you can have it both  
4 ways. And I think the better course is to take the  
5 evidence, listen to it, make a fair judgment about the  
6 settlement, and whether you say nothing about the  
7 settlement comes in, we can deal with that as long as we  
8 have a separate opportunity to present evidence about  
9 why we think the settlement is fair.

10 But I just don't want someone who's not  
11 supportive of the settlement to say, well, because you  
12 didn't allow me to cross-examine a witness who may not  
13 come in later, I don't want that to be the basis for any  
14 kind of appellate thing. And, I don't know that we have  
15 that, because I think both Retail and OPC have said they  
16 are filing, you know, to support the motion in limine.

17 But, you know, I think from our perspective,  
18 you know, denial should not be pursued. But, you know,  
19 you haven't seen the arguments in opposition, which I  
20 think are coming Wednesday. We wouldn't be opposed to  
21 pushing that off, if they need more time to do that. We  
22 are in a middle of a trial, you know, and then have a  
23 separate procedure for the consideration of the  
24 settlement where if we have to we can just basically  
25 adopt the record here and try to put that in.

1           So, you know, I think, I guess, in sum, that  
2           the motion to, you know, deny we would not support. And  
3           we think, as Mr. Litchfield said, we've put a lot of  
4           time into it. We think it's a fair settlement, and at  
5           some point want to talk about it. And today may not be  
6           the day, but we think, as was done in the Gulf case,  
7           keeping it out there makes sense and would encourage you  
8           to keep it out there.

9           **CHAIRMAN BRISÉ:** Thank you.

10          Commissioner Balbis.

11          **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

12          And I just want to follow up on Commissioner  
13          Graham's comments because, apparently, I mean, OPC keeps  
14          talking about what I would consider this cloud of the  
15          settlement agreement that may taint the record. So I  
16          want to talk about that, but first I want to ask Mr.  
17          Litchfield, how would your due process rights be  
18          violated if the Commission voted on the motion that FPL  
19          filed last week?

20          **MR. LITCHFIELD:** I'm sorry, I was just handed  
21          a note when you asked your question. I apologize.  
22          Would you repeat that?

23          **COMMISSIONER BALBIS:** How would your due  
24          process rights be violated if we voted on the motion  
25          that FPL filed last week today?

1           **MR. LITCHFIELD:** On the motion to approve the  
2 settlement agreement?

3           **COMMISSIONER BALBIS:** Yes.

4           **MR. LITCHFIELD:** Our due process rights would  
5 be violated if you voted on the motion to -- if you  
6 voted to deny the settlement agreement and simply held  
7 it out for later -- for us to refile, because the clock  
8 is ticking, Mr. Commissioner.

9           We have an eight-month statutory clock, and  
10 what we have asked is that this settlement agreement be  
11 taken up at the end of the evidentiary record. We're  
12 not interested in creating any procedural infirmity  
13 here, either. We'd like the record evidence to come  
14 through, and then we would like the Commission to give  
15 reasoned consideration to the settlement that we have  
16 worked out.

17           **COMMISSIONER BALBIS:** I just want to follow up  
18 on something you just said. Correct me if I'm wrong.  
19 So you're saying that if this Commission denies the  
20 motion to approve the settlement, that will be a  
21 violation of your due process rights.

22           **MR. LITCHFIELD:** If you vote today to deny it?

23           **COMMISSIONER BALBIS:** Yes.

24           **MR. LITCHFIELD:** We would not have had a  
25 chance to be heard on it, yes.

1                   **COMMISSIONER BALBIS:** Okay. And if staff  
2 could respond to that. (Pause.) Because it contradicts  
3 what staff has just said, Commissioner Graham.

4                   **MS. HELTON:** No, I'm trying to formulate an  
5 answer for you, Commissioner. Oral argument is not a  
6 right. They have filed a motion to approve the  
7 settlement. If you, for whatever reason you decide, do  
8 not think that that settlement is appropriate, I don't  
9 know that you have to hear testimony, you do not have to  
10 hear evidence, or you do not have to hear oral argument.  
11 I don't know that that is a right provided in Chapter  
12 120, or in our procedural rules, or in Chapter 366 that  
13 you must hear that.

14                   If you decide as a matter of efficiency that  
15 we have already spent this morning talking about the  
16 settlement, or the proposed settlement, and you decide  
17 that you do not need to hear anymore argument about it  
18 and you are ready to deny it either with or without  
19 prejudice, I think that -- I don't see -- I cannot  
20 conceptually understand how Florida Power and Light's  
21 due process rights have been hurt in any way.

22                   **COMMISSIONER BALBIS:** Okay.

23                   **MR. MOYLE:** Could I be heard on that?

24                   **COMMISSIONER BALBIS:** No. Hold on one second.  
25 Well, yes, because I was going to change gears, so it

1 probably is the appropriate time.

2 **MR. MOYLE:** We take a slightly different view.  
3 And I think that in the settlement the question is is it  
4 fair. And some parties are saying, yes, it is fair and  
5 other parties are saying no, it's not fair. So that  
6 presents, in effect, an issue for which it's probably  
7 appropriate to take some evidence. So to the extent  
8 that it was summarily, you know, denied without the  
9 opportunity to present some evidence, then maybe to the  
10 point about due process you may have an issue.

11 **MR. SAPORITO:** Commissioner Balbis, may I be  
12 heard on that?

13 **COMMISSIONER BALBIS:** Yes, sure.

14 **MR. SAPORITO:** First of all, I want to talk  
15 very quickly about FPL's contention that their due  
16 process rights have been harmed in any way in this issue  
17 related to this proposed settlement agreement are  
18 specious at best.

19 They lost and waived all their due process  
20 rights with respect to this proposed settlement when  
21 they intentionally, as they just admitted on the record  
22 a while ago, omitted me from any of these discussions.  
23 For whatever reason they did that, they waived their due  
24 process rights in this matter. So they have no due  
25 process rights. The only thing they did here is put



1 this Commission between a rock and a hard place.

2 And I respect Commissioner Brown's legal  
3 opinion and her position in not wanting to make an up or  
4 down decision today, but the only way that can happen is  
5 if this Commission does one of two things, it either  
6 grants the opportunity for someone to file a motion in  
7 limine and this Commission holds them to the letter of  
8 that motion, or as you have suggested, Commissioner, you  
9 do an up or down vote and deny this petition or deny  
10 their proposed settlement with prejudice. And that way  
11 it can be readdressed later as the Chairman has  
12 previously spoken.

13 Thank you.

14 **CHAIRMAN BRISÉ:** Commissioner Balbis, go  
15 ahead.

16 **COMMISSIONER BALBIS:** Yes. And I just wanted  
17 to really discuss the issues before us now and whether  
18 or not that procedure should be followed or not. And  
19 one thing that I don't want to have happen is go through  
20 this hearing and have questions not asked by parties or  
21 by ourselves that that may be an important question.  
22 Especially if we are going to be considering the  
23 settlement, or if we proceed down that line, consider  
24 the settlement, deny the settlement, and we can't now go  
25 back.

1           So I want to make sure that all the  
2 information is entered into the record. But I'm kind of  
3 concerned with something that Mr. Moyle said on a line  
4 of questioning that he is going to be asking. And it  
5 would be, well, are you aware that in the settlement you  
6 agreed to X, Y, and Z? And I'm not sure how appropriate  
7 that is, and I do have some concern about that. But I  
8 just wanted to put out there that the last thing I want  
9 to do is have parties not ask questions because we have  
10 limited their ability to do so.

11           And back to the previous discussion, I agree  
12 with staff in that if this Commission would like to,  
13 that can move -- we can rule on a motion that was filed  
14 by FPL without having due process rights violated.

15           **CHAIRMAN BRISÉ:** All right. Any further  
16 comments?

17           **MR. WRIGHT:** Mr. Chairman.

18           **CHAIRMAN BRISÉ:** Mr. Wright.

19           **MR. WRIGHT:** Thank you, sir. I appreciate the  
20 opportunity. I'll be brief. I just want to say  
21 basically two things. First, I cannot for the life of  
22 me see how a denial of a motion without prejudice can  
23 possibly abridge due process rights. That's what  
24 without prejudice means, you have the opportunity to  
25 refile.

1           In this context, you know, I have articulated  
2 the view that what FPL has filed is a complete new set  
3 of tariffs. I think those tariffs as proposed are  
4 subject to the requirements of Chapter 366, the  
5 Commission's rules, Chapter 120, and the Florida Rules  
6 of Administrative Procedure.

7           I think we're entitled, as you suggested, I  
8 believe, to conduct full discovery on them and to have a  
9 hearing with notice, and so on. And that is really the  
10 gist of my motion in limine, as the Retail Federation's  
11 motion in limine, and that is don't take evidence now  
12 because we haven't had notice. We haven't had any of  
13 the requirements of our due process rights to hearing.

14           And that leads to my second point. I am  
15 sorry, but my friend, Mr. Litchfield, simply misstated  
16 our position. We are not in any way attempting to deny  
17 or deprive FPL or the signatories to the settlement,  
18 even though we disagree with it, of their due process  
19 rights. It's a new filing. I believe it's functionally  
20 the equivalent of a petition. It's asking you, the  
21 Commission, to approve a new set of tariffs.

22           Their due process rights are fully satisfied  
23 by the Commission having a hearing on that proposal,  
24 that set of proposed tariffs at an appropriate time  
25 after all parties have had the opportunity to conduct

1 discovery, present evidence, present testimony, conduct  
2 cross-examination, and all the other things that we are  
3 expressly authorized to do pursuant to the  
4 Administrative Rules and the Administrative Procedure  
5 Act.

6 They have full rights to pursue this. You  
7 know, we could conclude this case, and they could file a  
8 new petition. For example, we could have a hearing on  
9 this case, having hopefully granted our motion in limine  
10 to preclude evidence being taken on the settlement  
11 agreement, per se, at this point. We could go through  
12 this hearing, and then you could continue the record of  
13 this hearing to some future date after we have had the  
14 opportunity to conduct discovery, after we have all had  
15 the opportunity to present evidence and testimony with  
16 respect to settlement in some future hearing.

17 You have continued the record before. You  
18 continued the record in the St. Lucie 2 case thirty  
19 years ago.

20 Thank you.

21 **CHAIRMAN BRISÉ:** Thank you very much.

22 Commissioner Brown.

23 **COMMISSIONER BROWN:** Thank you. And I like  
24 what Mr. Wright is suggesting.

25 Staff, after hearing all of the different

1 arguments by the parties here, can you give us your best  
2 recommendation?

3 (Laughter.)

4 **MS. HELTON:** I like my job. I'm not sure if I  
5 want to give you my best.

6 **CHAIRMAN BRISÉ:** I like that.

7 **MS. HELTON:** I have not heard anything this  
8 morning, nor have I read anything in the filings that  
9 have been made by the parties to date that makes me  
10 think that we need to suspend this hearing, that makes  
11 me think that you cannot start this hearing, you cannot  
12 hear opening statements, and you cannot take evidence  
13 from the parties.

14 I think that whether you have a motion in  
15 limine granted or whether the presiding officer as he is  
16 sitting as the presiding officer decides to keep the  
17 scope of the hearing narrow and tailored to the prefiled  
18 testimony that is filed and tailored to the petition  
19 that was filed back in March. I think that you can keep  
20 the hearing on track, and we can build a record for you  
21 to make a decision on the petition. And I think that  
22 you can take up the settlement motion at a later date  
23 after we have had a chance to hear from all of the  
24 parties, after we have had a chance in particular to  
25 hear from OPC and FRF, who are not signatories, about

1 how they would like to proceed with the process.

2 I haven't heard the Chairman or any of you say  
3 how you think that should go, and I don't think any  
4 decision has been made on that because we do not know  
5 yet all of the arguments that are going to be raised  
6 with that respect. But having not heard that I do not  
7 believe creates a situation where you can't go forward  
8 today and do your job.

9 **MR. KISER:** I agree.

10 **CHAIRMAN BRISÉ:** Thank you.

11 Just my thoughts on this. I understand the  
12 idea of sort of limiting the questions and so forth, but  
13 I think we have the discretion -- particularly, I have  
14 the discretion to pull back on questions which I think  
15 are beyond the scope of the prefiled testimony, and I  
16 think we are going to manage it accordingly,  
17 understanding everything that is working here together.

18 So we dealt with the motion, the original  
19 motion. There was a comment, and I don't know if that  
20 was a sort of formal motion by Mr. Wright, and so that  
21 is where we are procedurally. In essence, are we going  
22 to move forward with the motion in limine, in essence.

23 I will tell you candidly that I think that the  
24 Chair is quite capable of limiting the questions, if  
25 they go out of the scope that we are seeking. But that

1 is a decision that the board has to make. So, you know,  
2 I'm ready to entertain a motion at this point -- or  
3 further comment, I mean.

4 Commissioner Balbis.

5 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

6 And I'm not sure it requires a motion or not,  
7 but I will be more than happy to do so. And I move we  
8 proceed with the hearing as scheduled and have the  
9 Chairman retain all the authority in dealing with  
10 questions asked during the hearing.

11 **CHAIRMAN BRISÉ:** Commissioner Edgar.

12 **COMMISSIONER EDGAR:** Mr. Chairman, I concur,  
13 and I do believe that that is the most appropriate way  
14 to move forward, and that the discretion as to any  
15 individual objections or questions should remain with  
16 the Chair.

17 **CHAIRMAN BRISÉ:** Thank you.

18 Commissioner Graham.

19 **COMMISSIONER GRAHAM:** I just want to make sure  
20 that Commissioner Balbis' motion is speaking to  
21 Commissioner Wright (sic). Do we have to deny his  
22 motion? I don't know if it just goes away, or is it all  
23 one motion.

24 **CHAIRMAN BRISÉ:** Yes, there was a motion  
25 dealing with limine, and that is all this motion is

1 dealing with.

2 **COMMISSIONER BALBIS:** So to be clear, the  
3 motion denies Mr. Wright's motion.

4 **CHAIRMAN BRISÉ:** Right. It has been moved and  
5 seconded. All right.

6 Mr. Counsel.

7 **MR. KISER:** Thank you, Mr. Chairman.

8 I just wanted to say that however the vote  
9 goes, at any time if at the development of the hearing  
10 it looks like you need a little more control, you can --  
11 he can, or any parties or a Commissioner can make  
12 another motion for it at that point, if it looks like  
13 you need to go that route. But at this point it sounds  
14 like you are going to with the Chair's discretion and  
15 that will certainly work.

16 **CHAIRMAN BRISÉ:** Thank you.

17 Okay. It has been moved and seconded. All in  
18 favor say aye.

19 (Vote taken.)

20 **CHAIRMAN BRISÉ:** All right. Thank you very  
21 much.

22 It is 12:10. So we have spent all this time  
23 getting to where we need to be in terms of being in a  
24 position to move forward. We are going to take our  
25 lunch break at this time. We look to come back at 1:00



1 o'clock. You can expect that we are going to run until  
2 6:00 p.m. this afternoon. Tomorrow we are going to  
3 begin at the same time, 9:30, and we expect to run until  
4 6:00 p.m. tomorrow evening.

5 Wednesday we may begin start -- we may begin  
6 having different ending times, but we will let you know  
7 on Wednesday as to how that will proceed. But for today  
8 and tomorrow it's 6:00 p.m.

9 **MR. SAPORITO:** Mr. Chairman.

10 **CHAIRMAN BRISÉ:** Mr. Saporito.

11 **MR. SAPORITO:** Yes. I would just like to have  
12 an opportunity before we start the proceedings in this  
13 case to address the full panel on Issue 188, which the  
14 presiding officer dropped, and I made an oral motion to  
15 do that.

16 **MR. YOUNG:** That's the next item.

17 **CHAIRMAN BRISÉ:** That's the next preliminary  
18 matters item.

19 Okay. Thank you very much. At this time we  
20 stand in recess.

21 (Lunch recess.)

22 **CHAIRMAN BRISÉ:** Good afternoon. We are going  
23 to reconvene at this time. I think we are going through  
24 some of the issues. I think we are now on -- per my  
25 script, we are on D. So if you would move forward at

1 this time, Mr. Young.

2 **MR. YOUNG:** All right. Mr. Saporito made an  
3 ore tenus motion for reconsideration at the prehearing  
4 of the prehearing officer's ruling at the prehearing  
5 conference striking the inclusion of Issue 188 into this  
6 proceeding.

7 The proposed Issue 188 states that, "Is FPL's  
8 investment in energy conservation, advertisement,  
9 consumer energy efficient appliances, and consumer  
10 electric generating system prudent, appropriate, and are  
11 reasonable?" I stated 188 was proposed by Mr. Saporito  
12 and objected to by Florida Power and Light. The  
13 Prehearing Officer struck the issue.

14 As stated earlier today, the standard for  
15 review on a motion for reconsideration is whether the  
16 motion identifies a point -- the motion identifies a  
17 point of fact or law which was overlooked or which the  
18 Commission -- in this case, the prehearing officer  
19 failed to consider when rendering its decision.

20 Staff believes that Mr. Saporito has failed to  
21 meet his burden, and his ore tenus motion for  
22 reconsideration of the Prehearing Officer's ruling  
23 should be denied. As stated during the prehearing  
24 conference, staff believes that issue -- Mr. Saporito's  
25 Issue 188 is subsumed in Issue 94.

1           **CHAIRMAN BRISÉ:** Okay. Thank you very much.

2           Mr. Saporito, you requested to be heard on  
3 this issue, so we're going to go ahead and grant that  
4 request.

5           **MR. SAPORITO:** Thank you, Mr. Chairman.

6           Issue 188 states whether FPL's investment in  
7 energy conservation, advertisement, consumer energy  
8 efficient appliances, and consumer electric generating  
9 system is prudent, appropriate, and/or reasonable. At  
10 the August 14th, 2012, prehearing, the presiding officer  
11 dropped this issue from this docket following objections  
12 raised by FPL and on the basis of ill-conceived opinions  
13 proffered by Staff in support of FPL's allegations.

14           Notably, staff and FPL improperly and  
15 incorrectly interpreted Issue 188 to the disadvantage of  
16 me by alleging that Issue 188 somehow relates to FPL's  
17 demand-side management programs. FPL stated that we  
18 object to Issue 188. It really goes to a point that was  
19 made at the very outset of this prehearing conference  
20 that this docket isn't about demand-side management  
21 programs and sort of the appropriate goals -- plans for  
22 achieving the goals, et cetera. We just don't think  
23 this issue is appropriate to the base rate proceeding,  
24 ID at Page 98 of the transcript.

25           Staff stated that we agree, and also as

1 pointed out that the prehearing officer has already made  
2 a ruling that issues dealing with conservation and goals  
3 in terms of questioning the plans are not appropriate  
4 for this docket, ID at Page 1000 (sic) of the  
5 transcript.

6 The argument to be made here is that Chapter  
7 366.06, rates, procedure for fixing and changing,  
8 provides in relevant part that in fixing fair, just, and  
9 reasonable rates for each consumer class, the Commission  
10 shall, to the extent practical, consider the cost of  
11 providing service to the class as well as the rate  
12 history, value of service, and experience of the public  
13 utility, the consumption and load characteristics of the  
14 various classes of customers, and public acceptance of  
15 the rate structures consistent with Chapter 366.06.

16 The presiding officer, over my objection,  
17 allowed Intervenor Algenol to maintain Issue 62 in this  
18 docket. Issue 62 states, "Has FPL maximized the sources  
19 of net jurisdictional revenue that are projected to be  
20 reasonably available and technically viable for the 2013  
21 test year? If not, what action, if any, should the  
22 Commission take in setting FPL's rates in this case?"

23 And then in parentheses, "(for purposes of  
24 this issue, 'net jurisdictional revenue,' may include  
25 net revenue related to the supply of CO2 captured from

1 an FPL facility.)" Here the Commission found that Issue  
2 62 was relevant in this docket despite the fact that the  
3 record is devoid of any evidence that FPL has net  
4 jurisdictional revenue even remotely related to the  
5 supply of CO2 captured at any FPL facility.

6 The Commission's ruling on Issue 62 was  
7 reiterated here not to challenge the Commission's ruling  
8 on Issue 62, but rather to show the relevance of Issue  
9 62 in comparison to Issue 188, and that Issue 188 is  
10 just as relevant in this docket on the very basis that  
11 the Commission allowed Issue 62 in this docket.

12 Notably on July 2nd, 2012, Algenol Biofuels,  
13 Inc. filed direct testimony of R. Paul Woods, the CEO of  
14 the company. Mr. Woods testified in relevant part as  
15 follows:

16 "Question: What is the purpose of your  
17 testimony in this proceeding?

18 "Answer: My testimony is to expand upon the  
19 facts and questions raised by Algenol's petition to  
20 intervene. The harm that an increase will do to  
21 Algenol's current and future business, as well as  
22 providing a revenue generating alternative to a rate  
23 increase that Algenol can provide to FPL." At the ID at  
24 Page 3 of the prehearing statement.

25 With respect to Issue 188, the heart of the

1 issue goes to whether FPL maximizes the sources of net  
2 jurisdictional revenue that are projected to be  
3 reasonably available and technically viable for the 2013  
4 test year in connection with investment in revenue  
5 generation through consumer electric generating systems,  
6 consumer energy efficient appliances, et cetera.

7 Notably, when consumers install electric  
8 generating systems, such as PV solar systems, wind  
9 generators in connection with energy efficiency  
10 appliances, such as hot water systems, surplus electric  
11 power is put back into FPL's electric grid through  
12 Florida's net metering law. Although FPL credits the  
13 consumer provider for the electric power returned to  
14 FPL's grid, FPL then resells that very same electric  
15 power back to other consumers but at a much higher  
16 monetary rate, and thereby generates revenue which FPL  
17 would otherwise not have received.

18 Notably, these additional revenue streams  
19 benefit consumers first by allowing FPL to maintain  
20 lower electric rates; second, by negating FPL's need to  
21 build more and more power plants; and, third, by  
22 negating FPL's need for additional infrastructure  
23 through a rate request and ROE adjustment.

24 Unlike Algenol's proposed theoretical and  
25 unproven utilization of CO2 capturing devices for use by

1 FPL described in Issue 62 for the purposes of revenue  
2 generation, Issue 188 deals with proven technology which  
3 is already installed at consumer locations and connected  
4 to FPL's grid. Therefore, Issue 188 is extremely  
5 relevant to this docket consistent with the Commission's  
6 rationale relied upon in deciding to allow Issue 162  
7 (sic) in this docket.

8 To the extent that Issue 188 is just as  
9 relevant in this docket, if not more relevant than Issue  
10 62, where both issues are related to FPL's net  
11 jurisdictional revenue streams available and technically  
12 viable for the 2013 test year, this Commission should  
13 allow Issue 188 in this docket as a matter of law.

14 In the alternative, I respectfully request  
15 that the question of relevance and whether to allow  
16 Issue 188 in this docket be certified on the record to  
17 preserve my appeal rights and my due process rights in  
18 this matter accordingly. Thank you.

19 **CHAIRMAN BRISÉ:** Thank you, Mr. Saporito.

20 On the issue of Issue 188 being subsumed in  
21 194 -- I mean, 94, I think we are ready for a discussion  
22 here at the Commission level. I don't know if staff  
23 wanted to add anything at this point before we entertain  
24 that.

25 FPL.

1           **MR. BUTLER:** Just very briefly. I think that  
2 Commissioner Graham properly rules on Page 205 of the  
3 Prehearing Order that what Mr. Saporito is talking about  
4 is really a subject that is covered by the goals-setting  
5 process, the process of developing DSM plans with  
6 respect to the goals, and in the annual energy  
7 conservation cost-recovery proceeding. It's not so much  
8 a matter of relevance as it is just that you have other  
9 proceedings where those subjects are properly and fully  
10 addressed, and it just doesn't need to be addressed here  
11 in this rate case docket.

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

13           Commissioners? Commissioner Graham.

14           **COMMISSIONER GRAHAM:** I move we deny the  
15 request.

16           **COMMISSIONER EDGAR:** Second.

17           **CHAIRMAN BRISÉ:** Okay. It has been moved and  
18 seconded. All in favor say aye.

19           (Vote taken.)

20           **CHAIRMAN BRISÉ:** All right. The request is  
21 denied. So the issues are subsumed in 94.

22           **MR. YOUNG:** Staff will also note that there  
23 are some outstanding motions regarding confidentiality  
24 that will be addressed by separate order.

25           **CHAIRMAN BRISÉ:** Okay. Are there any



1 witnesses that have been excused from the hearing?

2           **MR. YOUNG:** Yes, sir. But before we go to the  
3 witnesses, staff would recommend that the presiding  
4 officer make some notes about -- comments about  
5 confidentiality.

6           **CHAIRMAN BRISÉ:** Okay. Staff has already  
7 addressed the issue that we will address some of those  
8 confidentiality issues by separate order. I will also  
9 take this opportunity to remind everyone that the record  
10 does include confidential information. When discussing  
11 issues that are supported by evidence that is  
12 confidential, all must take every precaution to avoid  
13 stating the confidential information out loud. I think  
14 that that is standard procedure here, and we trust that  
15 everyone will respect that process.

16           Okay. Witnesses that have been excused from  
17 the hearing. The parties have indicated that they have  
18 no objection to the excusal of a few people, so at this  
19 time if we can have Mr. Young go through that with us.

20           **MR. YOUNG:** Not a problem. As you stated, Mr.  
21 Chairman, the parties have indicated that they have no  
22 objection to excusal of Staff's Witnesses, Rhonda Hicks  
23 and Kathy Welch, provided that Kathy Welch's deposition  
24 is entered into the record.

25           The Commissioners have also indicated that

1 they do not have any questions for staff witnesses.  
2 Staff requests that Rhonda Hicks and Kathy Welch be  
3 excused from the proceeding and at the appropriate time  
4 their testimony and exhibits be entered into the record  
5 as though read. Staff further requests that the  
6 deposition transcript of Kathy Welch be marked and  
7 entered into the record at the appropriate time.

8 **CHAIRMAN BRISÉ:** Okay. Thank you very much.

9 **MR. YOUNG:** Staff notes that there are no  
10 other stipulated witnesses at this time.

11 **CHAIRMAN BRISÉ:** Okay.

12 **MR. YOUNG:** Dealing with the Comprehensive  
13 Exhibit List. The Comprehensive Exhibit List, prefiled  
14 testimony and exhibits, and the composite exhibits to  
15 staff and the parties, staff notes that the  
16 Comprehensive Exhibit List was distributed to the  
17 parties and marked as Exhibit Number 1. Staff further  
18 notes that the service hearing exhibits are marked on  
19 the Comprehensive Exhibit List as Exhibit Numbers 2  
20 through 37.

21 At this time, staff requests that the  
22 Comprehensive Exhibit Number 1 and the Service Hearing  
23 Exhibits marked as Exhibits 2 through 37 be moved into  
24 the record.

25 **CHAIRMAN BRISÉ:** Okay. Do I have --

1           **MR. BUTLER:** Mr. Chairman.

2           **CHAIRMAN BRISÉ:** Yes.

3           **MR. BUTLER:** We have a minor correction to  
4 make on the Comprehensive Exhibit List that we would  
5 like to make before it is moved into the record.

6           **CHAIRMAN BRISÉ:** Sure. If you can do that at  
7 this time.

8           **MR. BUTLER:** Okay. It's on Page 16 of the  
9 Comprehensive Exhibit List, Exhibit Number 125. It is  
10 Mr. Reed's Exhibit JJR-3, and there was a problem on the  
11 header of the exhibit, but the proper title for this  
12 exhibit is Situational Assessment Rankings, not  
13 Productive Efficiency Rankings. As you can see, the  
14 Productive Efficiency Rankings is actually JJR-4, the  
15 next one down.

16           **CHAIRMAN BRISÉ:** Okay.

17           **MR. BUTLER:** I would just note for the record,  
18 Mr. Chairman, that that same error occurred in the  
19 prehearing order on Page 182. The same thing,  
20 Situational Assessment Rankings instead of Productive  
21 Efficiency Rankings.

22           Thank you.

23           **CHAIRMAN BRISÉ:** Thank you very much.

24           Are there any other corrections that need to  
25 be made with respect to these exhibits? Okay. Seeing

1 none, we seek to move these exhibits into the record at  
2 this time. Okay. Does that require a vote? Okay. So  
3 those records will be moved into the record at this  
4 time.

5 **MR. MOYLE:** Just so I'm clear, are all -- are  
6 we moving all those exhibits in? Because I was thinking  
7 that we were moving the exhibit list in and not all the  
8 exhibits. That we would do that with individual  
9 witnesses.

10 **MR. YOUNG:** You're moving Exhibit Number 1 and  
11 2 through 37, which are the service hearing exhibits.

12 **MR. MOYLE:** Okay. No objection.

13 **CHAIRMAN BRISÉ:** All right. Thank you. So  
14 those exhibits will be moved into the record.

15 **MR. YOUNG:** Yes.

16 (Exhibit Number 1 through 37 marked for  
17 identification and moved into the record.)

18 **CHAIRMAN BRISÉ:** Okay. Staff.

19 **MR. YOUNG:** Staff notes that the parties in  
20 this proceeding have agreed to stipulate the  
21 introduction of the following exhibits into the record,  
22 and they are Exhibit Numbers -- and I'll go slow -- 38  
23 through 52, 56, 61, with the exception of response  
24 Numbers 58 through 60; 62, 66, 67, 70 through 73.

25 **CHAIRMAN BRISÉ:** Okay.

1           **MR. YOUNG:** That's it for the exceptions. And  
2 also staff would move 62 through 85, 87 through 90, 92  
3 through 95, 97, 100, 101, and 103 through 105. Staff  
4 would request that these exhibits be moved into the  
5 record at this time.

6           **CHAIRMAN BRISÉ:** Okay. Are there any  
7 objections?

8           **MR. WRIGHT:** Mr. Chairman, I have no  
9 objection, but as slow as Mr. Young was going --

10          **CHAIRMAN BRISÉ:** Sure. Go ahead and go over  
11 it again.

12          **MR. WRIGHT:** -- it's too fast for this lawyer.  
13 Thank you.

14          **MR. REHWINKEL:** Could he do both sets of  
15 numbers that he went through? I'm trying to catch up,  
16 too.

17          **CHAIRMAN BRISÉ:** Sure. We will ask Mr. Young  
18 to go over the staff exhibit numbers again.

19          **MR. YOUNG:** All right. So at this time the  
20 staff would move the agreed-to stipulation of the  
21 introduction of the following exhibits into the record:  
22 Exhibit Numbers 38 through 52, 56, 61, with the  
23 exception of Response Numbers 58 through 60; 62, 66, 67,  
24 and 70 through 73.

25                 Staff now would move also into the record -- I

1 think Mr. Wright has a question.

2 **CHAIRMAN BRISÉ:** Mr. Wright.

3 **MR. WRIGHT:** I apologize, but because of the  
4 close proximity of the numbering of the exhibit numbers  
5 and the interrogatory numbers within Exhibit 61, I  
6 frankly just wasn't sure whether they are moving 61 with  
7 the exception of 58 through 60, 62, 71, and all those as  
8 part of 61, or whether Mr. Young had moved on to the  
9 rest of the exhibit numbers. I apologize. I'm trying.

10 **CHAIRMAN BRISÉ:** Okay. Let's see if we can  
11 separate those two and go that route.

12 **MR. YOUNG:** So if you look at Page 8 on the  
13 Comprehensive Exhibit List, Exhibit Number 61, staff  
14 will move that -- staff requests that it be moved into  
15 the record and there are some exceptions within Exhibit  
16 Number 61. And those exceptions that we have -- that  
17 everyone has not agreed upon informally was numbers --  
18 in 61, Numbers 58 through 60, 62, 66, 67, and 70 through  
19 73. That's within 61, okay? All right.

20 Staff moves Numbers 62 through 85.

21 **CHAIRMAN BRISÉ:** Okay.

22 **MR. MOYLE:** 62 to 85 of the other exhibits,  
23 right?

24 **CHAIRMAN BRISÉ:** Yes.

25 **MR. YOUNG:** Was identified Exhibit Numbers --

1 Hearing Identification Numbers 62 through 85.

2 All right. Also, staff moves 87 through 90.

3 **CHAIRMAN BRISÉ:** You may proceed.

4 **MR. YOUNG:** 92 through 95, 97, 100, 101, 103  
5 through 105.

6 **CHAIRMAN BRISÉ:** Okay. Everyone got that?  
7 Okay.

8 Are there any objections?

9 Okay. Seeing no objections, we will move  
10 those exhibits into the record.

11 (Exhibit Numbers 38 through 52; 56; 61, with  
12 the exception of Response Numbers 58 through 60, 62, 66,  
13 67, 70 through 73; 62 through 85; 87 through 90; 92  
14 through 95; 97; 100; 101; and 103 through 105.)

15 **MR. BUTLER:** Mr. Chairman, may I inquire with  
16 staff as to what their plans are for the ones that  
17 weren't on the list just read, the sort of ones in  
18 between?

19 **MR. YOUNG:** We're about to get to that. Just  
20 one second.

21 **CHAIRMAN BRISÉ:** All right.

22 **MR. YOUNG:** In addition, Mr. Chairman, staff  
23 has circulated hearing exhibits which contain documents  
24 produced by Florida Power and Light in Response to  
25 Staff's 12th Request for Production of Documents Numbers

1 86, 87, and 88. These pages were inadvertently omitted  
2 from the Hearing Exhibit Number 64. Okay.

3 **CHAIRMAN BRISÉ:** Okay.

4 **MR. YOUNG:** And you should have this right  
5 now -- you should have this up in front of you for your  
6 disposal.

7 As stated, these pages were inadvertently  
8 omitted from Hearing Exhibit 64, which we just moved  
9 into the record. No parties objected to the  
10 introduction of this exhibit. As such, I would ask that  
11 this item be marked with a hearing exhibit number and  
12 moved into the record, and that will be Hearing Exhibit  
13 Number 741. I mean, 471.

14 **CHAIRMAN BRISÉ:** 471. All right. Let's move  
15 that into the record at this time. Are there any  
16 objections? Okay. Seeing none --

17 **MR. SAPORITO:** Mr. Chairman, why can't we just  
18 put those -- include those pages in Exhibit 64 if that  
19 is where they belong?

20 **CHAIRMAN BRISÉ:** No, I think the process  
21 requires that we set a separate exhibit number to them.

22 **MR. WRIGHT:** And, Mr. Chairman, just so I'm  
23 clear, this is the files regarding Production Responses  
24 84, 86, and 87 that is now coming in as 471?

25 **CHAIRMAN BRISÉ:** Right. That is correct.



1           **MR. WRIGHT:** Thank you, sir.

2           **CHAIRMAN BRISÉ:** Okay. All right. So we will  
3 move Exhibit Number 471 into the record at this time.

4           (Exhibit Number 471 moved into the record.)

5           **MR. YOUNG:** Staff would note for the clarity  
6 of the record that Exhibit Numbers 86 and 91 have been  
7 withdrawn.

8           (Exhibit Number 86 and 91 withdrawn.)

9           **CHAIRMAN BRISÉ:** Okay.

10          **MR. YOUNG:** Now, with regard to the remaining  
11 of staff's exhibits, the following exhibits have not  
12 been stipulated to, and those are Exhibit Numbers 53  
13 through 55, 57, the remaining portion of Exhibit Number  
14 61, 96, 98, and 99.

15           All of these exhibits consist of documents  
16 produced by Florida Power and Light in response to  
17 interrogatories and requests for production of  
18 documents. Florida Power and Light has stipulated that  
19 the documents and responses that it has produced are  
20 authentic and are either documents maintained by the  
21 company in the ordinary course of business or were  
22 prepared under FPL's supervision or control.

23           At this time, Mr. Chairman, staff recommends  
24 that these exhibits be moved into the record.

25          **CHAIRMAN BRISÉ:** Okay. Let me make sure I get

1 this right. So Exhibit Numbers 53 through 55, 57, the  
2 remaining portion of 61, 96, and 99.

3 **MR. YOUNG:** 98 and 99.

4 **CHAIRMAN BRISÉ:** 98 and 99. Thank you. Are  
5 there any objections? Okay. Seeing none, at this time  
6 53 through 55, 57, the remainder portion of 61, 98, and  
7 99 are entered into the record.

8 (Exhibit Numbers 53 through 55, 57, remainder  
9 of 61, 98, and 99 admitted into the record.)

10 **MR. YOUNG:** And 96. I don't think you  
11 mentioned 96.

12 **CHAIRMAN BRISÉ:** And 96.

13 (Exhibit Number 96 admitted into the record.)

14 **MR. YOUNG:** 96, 98, and 99.

15 **CHAIRMAN BRISÉ:** 96, 98, and 99.

16 **MR. YOUNG:** Thank you.

17 **CHAIRMAN BRISÉ:** Okay.

18 **MR. YOUNG:** With respect to all other  
19 exhibits, staff intends to authenticate and move those  
20 exhibits into the record at the appropriate time.

21 **CHAIRMAN BRISÉ:** All right. Thank you.

22 **MR. YOUNG:** Staff also recommends that the  
23 parties' prefiled exhibits be marked as designated on  
24 the Comprehensive Exhibit List. Moreover, Mr. Chairman,  
25 staff recommends that any exhibits proffered during the

1 technical hearing that are not identified on the exhibit  
2 list be numbered sequentially following those in the  
3 exhibit list. And I think the next item, if an exhibit  
4 is proffered, will be Number 472.

5 (Parties' Prefiled Exhibits marked as  
6 designated on the Comprehensive Exhibit List.)

7 **CHAIRMAN BRISÉ:** Okay. All right.

8 **MR. YOUNG:** I think the Chairman has already  
9 set a preliminary schedule that he stated before  
10 breaking for lunch.

11 **CHAIRMAN BRISÉ:** Right.

12 **MR. YOUNG:** At this time, Mr. Chairman, there  
13 are no stipulated issues for the Commission to consider  
14 at this time.

15 **CHAIRMAN BRISÉ:** All right. We are soon going  
16 to be moving into opening statements. We will begin  
17 with FPL, and then we will hear from the intervenors.

18 For the purpose of the hearing, we would like  
19 to -- let me rephrase that. For the purpose of the  
20 hearing, we would like the intervenors to provide  
21 opening statements and cross-examination in the  
22 following order -- let me make sure this order is  
23 correct.

24 **MR. YOUNG:** Mr. Chairman, staff recommends  
25 that the intervenors provide opening statements and

1 conduct cross-examination in the following order: After  
2 Florida Power and Light, FIPUG -- after Florida Power  
3 and Light, the intervenors will provide opening  
4 statements with OPC providing the first opening  
5 statement, and then followed by FIPUG, South Florida  
6 Hospitals, Federal Retail Federation, Village of  
7 Pinecrest, FEA, Algenol, Mr. Saporito, Mr. Hendricks.  
8 Hopefully, I did not forget anyone.

9 **CHAIRMAN BRISÉ:** Okay.

10 **MR. YOUNG:** All right. However, during  
11 cross-examination staff recommends this order. That for  
12 FPL witnesses, staff recommends that FIPUG, South  
13 Florida Hospital, FEA, Algenol, then OPC, then Florida  
14 Retail Federation, then the Village of Pinecrest, Mr.  
15 Saporito, and Mr. Hendricks.

16 **CHAIRMAN BRISÉ:** Okay. So let me make sure I  
17 got that right. So then we have FPL, then OPC, then  
18 FIPUG, South Florida Hospital Association, Federal  
19 Executive Association -- Agencies, rather, Algenol,  
20 Florida Retail Federation, Village of Pinecrest, Mr.  
21 Saporito, and then Mr. Hendricks.

22 **MR. YOUNG:** Yes.

23 **CHAIRMAN BRISÉ:** Okay. That is the order for  
24 opening statements.

25 **MR. REHWINKEL:** Mr. Chairman.

1                   **CHAIRMAN BRISÉ:** Yes, Mr. Rehwinkel.

2                   **MR. REHWINKEL:** Charles Rehwinkel. Public  
3 Counsel would prefer to -- we would ask that we be  
4 allowed to give our opening after the signatories;  
5 meaning after FIPUG, South Florida Hospital and Health  
6 Care Association, and FEA. If you could -- we think  
7 that would be appropriate under this posture that we  
8 find ourselves in right now.

9                   **CHAIRMAN BRISÉ:** Sure. I think that could be  
10 granted.

11                   **MR. REHWINKEL:** Thank you.

12                   **MR. YOUNG:** Mr. Chairman, just to inquire, Mr.  
13 Rehwinkel, so you wouldn't want Algenol to go after you?

14                   **MR. REHWINKEL:** I apologize. I forgot about  
15 Algenol. We would want Algenol together. I didn't know  
16 whether they were -- I'm not 100 percent certain of  
17 their alignment, but, yes, we would like to go after  
18 Algenol. Thank you.

19                   **CHAIRMAN BRISÉ:** Okay. Perfect. So then with  
20 that in mind, so we will hear from FPL, then FIPUG, then  
21 South Florida Hospital Association, FEA, Algenol, and  
22 then OPC.

23                   Okay. I want to thank our prehearing officer  
24 for keeping a tight ship in terms of allotting times and  
25 so forth.

1           **MR. REHWINKEL:** Mr. Chairman, one other thing.  
2 If you are leaving preliminary matters, I just need to  
3 make a statement before you do that. But if you are  
4 still there, I will wait until you are concluded. Thank  
5 you.

6           **CHAIRMAN BRISÉ:** Okay. And so we are looking  
7 to limiting the amount of time for opening statements to  
8 20 minutes for FPL, if I'm reading this right, ten  
9 minutes for OPC, and then five minutes for all the other  
10 intervenors. And there will not be any sharing of time  
11 moving forward. Okay. So I think that provides a  
12 guideline in terms of the amount of time that is  
13 allotted to anyone.

14           A couple of comments on friendly cross. I  
15 want to give every party and every witness the time they  
16 need to do the job that you are here to do, but we would  
17 ask for your cooperation. To that end, I would like to  
18 ask the parties to make an effort to limit friendly  
19 cross, as I would like the parties not to conduct  
20 discovery during this proceeding as you go through the  
21 process of asking questions to those who are on the  
22 stand.

23           Mr. Rehwinkel.

24           **MR. REHWINKEL:** Thank you, Mr. Chairman.

25           I would need to make a statement for the

1 record. I do not intend to provide argument, but I need  
2 to renew three objections for the record. The Office of  
3 Public Counsel renews its objection to this proceeding  
4 continuing with the August 15th settlement pending.

5 Number two, the Office of Public Counsel  
6 renews its objection to the settlement agreement being  
7 considered in any way in this hearing that you are about  
8 to conduct.

9 And, number three, the Office of Public  
10 Counsel objects to the lack of a preemptive measure such  
11 as would be contained in FRF's motion in limine which  
12 was denied that would prevent the settlement signatories  
13 from interjecting the August 15th settlement filing into  
14 the case.

15 Thank you for allowing me to make that  
16 statement. And I would like to give the Commission  
17 notice that based on what has happened so far in  
18 preliminary matters, the Public Counsel for planning  
19 purposes is considering asking that the order of  
20 witnesses be modified based on alignment of party  
21 interests based on the discussion earlier today. I have  
22 nothing to suggest to you now, but we will endeavor to  
23 provide a proposal, and we will do it off the record  
24 with the other parties first.

25 Thank you.

1           **CHAIRMAN BRISÉ:** Thank you very much. And  
2 duly noted.

3           **MR. WRIGHT:** Mr. Chairman.

4           **CHAIRMAN BRISÉ:** Mr. Wright.

5           **MR. WRIGHT:** Thank you, sir. Just very  
6 briefly.

7           I respect your ruling on our motion in limine.  
8 I wish it had been granted, it wasn't. That puts the  
9 burden on us to object on a continuing basis to anything  
10 that we think strays to where it shouldn't in this  
11 context to anything relating to the settlement  
12 agreement.

13           I would just like to state at this time that  
14 we have a continuing objection to any such questions and  
15 I and Mr. LaVia will do our very best to lodge a  
16 specific objection every time it happens, if it happens  
17 at all. Thank you, sir.

18           **CHAIRMAN BRISÉ:** Thank you very much.

19           Mr. Saporito.

20           **MR. SAPORITO:** Thank you, Mr. Chairman.

21           Yes, I would just request clarification from  
22 the Chairman relevant to this issue that we have all  
23 been talking about all morning, the settlement issue.

24           My concern is that the Commission made a  
25 judgment today that, you know, you are well knowledgeable



1 that you can reign in any improper testimony at will  
2 during the proceeding, and that is all fine and good. I  
3 would just -- since we are going through an order of  
4 procedure on the record as a preliminary matter to take  
5 in evidence in here, can you issue a directive or order  
6 from the bench there that, so that the record is clear  
7 that no evidence or testimony is to come into this  
8 record with respect to that FPL proposed settlement.

9 **MR. LITCHFIELD:** Objection.

10 **CHAIRMAN BRISÉ:** We addressed all of that  
11 earlier today, okay. Thank you.

12 **MR. MOYLE:** Mr. Chairman.

13 **CHAIRMAN BRISÉ:** Yes.

14 **MR. MOYLE:** I have a preliminary matter. We  
15 brought it up with the Prehearing Officer last week  
16 related to FIPUG's sole witness, Mr. Jeff Pollock. And  
17 we brought it up last week. He is obligated to be in  
18 another proceeding during the second week and needed to  
19 work with the parties to have him go out of order as  
20 compared to what is found on the list. All the parties  
21 have been contacted, and I think Ms. Kaufman has worked  
22 with them, and there is an agreement that Mr. Pollock  
23 could go this week. And I think he is scheduled to go  
24 after FPL Witness Santos.

25 So thank you to the Prehearing Officer for

1 making that accommodation, and the parties for allowing  
2 us to accommodate our expert witness' schedule. Thank  
3 you.

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

5 Are there any other preliminary matters that  
6 we need to address?

7 **MR. WISEMAN:** Mr. Chairman.

8 **CHAIRMAN BRISÉ:** Yes, Mr. Wiseman.

9 **MR. WISEMAN:** Sorry. I just wanted to raise a  
10 preliminary issue, as well, concerning --

11 **CHAIRMAN BRISÉ:** Sure.

12 **MR. WISEMAN:** -- our witnesses' availability.  
13 We have informed the other parties that two of our three  
14 witnesses also have commitments before other state  
15 agencies, and that they are unavailable on certain  
16 dates. But we are certainly happy to work with OPC and  
17 try to work out a schedule to accommodate everybody's  
18 witnesses.

19 **CHAIRMAN BRISÉ:** Thank you very much. All  
20 right. Are there any other preliminary matters that we  
21 need to address at this time?

22 **MS. KLANCKE:** Staff is unaware of any other  
23 preliminary matters at this time.

24 **CHAIRMAN BRISÉ:** All right. Thank you very  
25 much. At this time we are going to move into swearing

1 in our witnesses. If you know that you are a witness,  
2 if you would rise with me so I can swear you in.

3 (Witnesses sworn collectively.)

4 **CHAIRMAN BRISÉ:** Okay. We'll go into our  
5 opening statements. We laid out the order and we will  
6 go with FPL.

7 **MR. LITCHFIELD:** Thank you. Good afternoon,  
8 Mr. Chairman and Commissioners. It's good to finally  
9 begin here this afternoon. And I have asked your staff  
10 to distribute to you a compilation of exhibits in this  
11 docket that I will work through briefly, mind you, in  
12 the course of my opening remarks.

13 We filed our petition, as you know, along with  
14 supporting materials back in March of 2012, earlier this  
15 year. We have had months and months of discovery. And,  
16 in fact -- and I put this number out there because it is  
17 pretty eye-popping -- 349,000 pages of data and  
18 information have been produced and reviewed in  
19 connection with this docket. This means one thing; it's  
20 a complex case.

21 Any rate case is a complex proceeding. And I  
22 suppose at this point, in light of Public Counsel's  
23 statements on the record subsequent to the  
24 pre-prehearing matters that we all participated in this  
25 morning, it's appropriate for FPL, again, on the record

1 to simply state our support for a settlement that we did  
2 negotiate and reach with the other parties. And I won't  
3 go into any further detail in that regard, but I want to  
4 note that we certainly support that settlement moving  
5 forward.

6 The package that I have compiled for you here,  
7 these are exhibits that appear in the docket, and we  
8 have numbered the bottom center page sequentially and  
9 that will be probably an easier frame of reference for  
10 you as I work through the exhibits. But I want to start  
11 with describing FPL's performance, because we think  
12 fundamentally that that is very important for this  
13 Commission to take into context as you decide the merits  
14 and the issues in this case.

15 The standard for the recovery of costs in a  
16 base rate proceeding is prudence and a fair rate of  
17 return on the capital that's invested in fulfilling  
18 FPL's statutory obligation under Section 366.03 of the  
19 Florida Statutes, which is that we provide, quote,  
20 reasonably sufficient, adequate, and efficient service,  
21 close quote.

22 We believe that the evidence will show that  
23 FPL is doing far more than meeting this baseline  
24 standard, and that is, in large measure, why we are  
25 proposing and requesting indeed a 25-basis point or a

1 quarter of a percent adder to the return on equity that  
2 we are asking for in this case. Our bills are low, our  
3 reliability is high, and our customer service is very  
4 strong.

5 But beyond that, in assessing the merits of  
6 our request, our budget proposals, our capital needs,  
7 return on equity, or conversely whether to accept  
8 positions of the intervenors to cut FPL's operating  
9 budgets, to weaken its financial integrity, to cut or  
10 slash its return on equity, or even to disallow portions  
11 of employee compensation that we believe have produced  
12 these benefits.

13 I would suggest two things in this regard as  
14 we move forward in the case, Commissioners. One, what  
15 we're doing at Florida Power and Light is working very  
16 well. And, secondly, with the exception of the last  
17 base rate decision that we were involved in,  
18 constructive regulation here in Florida has really  
19 worked well for us and for our customers, and has  
20 facilitated the achievements that we are going to  
21 present to you today.

22 So with that, I'd like you to turn Page 1.  
23 And this is an exhibit from Renae Deaton's testimony.  
24 It's a comparison of the Florida utility typical 1,000  
25 kWh residential bill. And you will see there at the top

1 of the page in blue is Florida Power and Light Company's  
2 average of \$96.29, and then you will see the Florida  
3 average of \$126.01, and the national average of \$128.11.

4 Now, a fair question is this: What kind of  
5 savings would it mean for a residential customer to take  
6 service from Florida Power and Light Company compared to  
7 taking service from somebody that provides at the  
8 national average? And we did the math, and it would  
9 mean that a Florida Power and Light residential customer  
10 in this category would save about \$381.84 annually.  
11 That's the equivalent of almost four months of free  
12 electric service.

13 The aggregate numbers are equally impressive.  
14 If our customers were paying average U.S prices  
15 conservatively, they would be paying and their bills  
16 would be collectively \$2.3 billion higher.

17 Now, you will hear from others in this  
18 proceeding that FPL's low-cost position is due to scale  
19 effects or to the current low natural gas prices. Mr.  
20 Reed, who is going to be before you momentarily, and Mr.  
21 Dewhurst, who appears in this proceeding, among others,  
22 will explain that these factors are not the primary  
23 driver or reason for FPL's low-cost position. Rather,  
24 they will testify that productivity improvements and  
25 strategic investments in better and more efficient

1 technology, decisions supported by this Commission in  
2 the past, have made the difference. In fact, of that  
3 \$2.3 billion figure I refer to, well over half of it  
4 comes from O&M, operation and maintenance, efficiencies.

5 Now turn to Page 2, if you would. This is an  
6 exhibit that David DeRamus, a witness in this case, is  
7 going to be filing, and he discusses the overall  
8 affordability of Power and Light's electric service.  
9 And you will see that this exhibit reflects prices in  
10 the Miami-Fort Lauderdale area, which is a major portion  
11 of our service territory.

12 Prices for a few of the goods and services  
13 most of us would consider to be essentials in the daily  
14 lives of our customers, and he compares that to the  
15 consumer price index, or the rate of general inflation  
16 over the past 27 years. And as you see by the green  
17 line there representing FPL's electric prices, we have  
18 performed very, very well over an extended period of  
19 time, and not just during periods of low natural gas  
20 prices.

21 Now, I'd like for you to turn Page 3, then.  
22 And this is an exhibit that Mr. Reed will discuss,  
23 productivity efficiencies discussing nonfuel operation  
24 and maintenance costs per customer. And it shows our  
25 relative position compared to a group of Florida-IOUs, a

1 national group of IOUs that he refers to as the straight  
2 electric group, and then a subset of that group with  
3 customers of more than 2 million; meaning the larger  
4 utilities. And it shows that we are 47 percent lower in  
5 non-fuel O&M than the large utilities group shown there  
6 with the purple line.

7 And so if one believes that FPL's cost  
8 position is simply due to economies of scale, this one  
9 exhibit demonstrates that that is just not the case  
10 because there is virtually no difference if you look  
11 between the purple-dotted line and the red-dashed line.  
12 Or, in another words, no difference between the large  
13 group and the straight electric group, which is  
14 comprised of smaller utilities.

15 Page 4 demonstrates the same impact except on  
16 a per megawatt hour basis. So whether you look at it on  
17 a per customer or a per megawatt hour, the results are  
18 the same.

19 And so a fair question is what are some of the  
20 costs in FPL's O&M figures? Well, for one, salaries,  
21 including the employee incentive compensation that  
22 Public Counsel says should be disallowed because they  
23 claim that the incentives are driven towards shareholder  
24 benefits and not consumer benefits or customer benefits.

25 It seems pretty clear from this graph that



1 customers are benefiting greatly from our employees'  
2 productivity, and we believe that if we are taking care  
3 of the customer that our shareholders should be treated  
4 fairly. We just don't want to be penalized for the way  
5 we decide to structure our compensation as part base and  
6 part incentive.

7 Page 7 is also -- excuse me, Page 6 of -- I  
8 need you to skip forward to Page 6. I apologize. I  
9 have got the order slipped a little bit here. But if  
10 you will skip to Page 6, again, an exhibit of Mr.  
11 Reed's, shows the direct benefits to customers.

12 Now, each bar graph there shows the amount of  
13 savings relative to the averages that he computes. And  
14 if you look at the one on the far right compared to the  
15 national average standards that if FPL customers were  
16 paying those costs it would mean a loss of savings to  
17 our customers that would exceed \$1.6 billion alone in  
18 2010.

19 Now, if you could turn back to Page 5 for me.  
20 This is where Mr. Reed benchmarks us on an important  
21 reliability measure that you are very familiar with,  
22 SAIDI, or the System Average Interruption Duration  
23 Index. And this shows that we are performing 27 percent  
24 better relative to the industry average. These are just  
25 a few of the benchmarks that Mr. Reed has compiled and

1 we will be prepared to discuss when he takes the stand.

2 Now, there are individual witnesses, and I'd  
3 invite you to turn to Page 7, that will appear on behalf  
4 of FPL. And the first one that I will focus you on is  
5 Ms. Kennedy's exhibit that shows some significant  
6 improvements in four categories. I'll just focus you on  
7 the first one there, a lower heat rate by 24 percent.

8 This means that FPL's system is now able to  
9 generate 24 percent more electricity using the same  
10 amount of fuel. So whether fuel prices go up or down,  
11 FPL's customers are better off, and she shows that she  
12 has reduced her O&M costs by 41 percent. Measurable and  
13 meaningful benefits for our customers.

14 Flipping to Page 8, she shows that relative to  
15 the industry whose costs have risen generally at the  
16 rate of inflation, you see that the yellow and the  
17 dashed line fairly on top of one another. And then you  
18 look at the blue line at the bottom showing FPL's  
19 improvements, and it shows a 67 percent difference lower  
20 than the industry average.

21 Page 9, also from Ms. Kennedy, again, shows  
22 that our heat rate is 22 percent better than the  
23 industry average. This means that FPL has saved  
24 customers billions in fuel costs and will continue to  
25 save customers billions in fuel costs going forward.

1           And yet you are going to hear that fuel costs  
2 are not an issue in this proceeding. I've got a couple  
3 of observations in that regard. The first is that fuel  
4 prices and fuel costs are not the same, and we cannot  
5 conflate the two. We are not taking credit at FPL for  
6 lower fuel prices, but we are taking credit for the  
7 investments that we have made and the productivity  
8 improvements that we have implemented that have reduced  
9 the amount of fuel that we need to generate the same  
10 amount of electricity. As I said, this lowers fuel  
11 costs independent of prices. And so while the recovery  
12 of the fuel costs is certainly not an issue in this  
13 proceeding, a lot of the factors and the costs and the  
14 initiatives, including employee performance, that leads  
15 to those fuel costs certainly is at issue in this  
16 proceeding.

17           Page 10 is shifting gears to customer  
18 complaint rates. You will see that, generally speaking,  
19 Florida and Florida utilities do pretty well in this  
20 category, and FPL shows on a per 1,000 customer basis  
21 only .06 customers per 1,000.

22           Page 11, if you will turn there. This was  
23 filed in the docket yesterday. As we typically do at  
24 the end of the quality of service hearings, we  
25 essentially take inventory and we submit that report to

1 the Commission, and this is a graphic representation of  
2 the attendance and the participation at those hearings.

3 And the one thing that, of course, we know,  
4 and if we took a poll in this room, I'm sure it would  
5 come out like this. Nobody really wants to pay more for  
6 milk; they don't want to pay more for gasoline; they  
7 don't want to pay more for really anything. So we  
8 understand that, and we obviously are not surprised when  
9 people express their preference that they would rather  
10 not see their electric bills go up.

11 But the one thing that was very significant to  
12 us as a result of those hearings is that how few people  
13 actually had service complaints from Florida Power and  
14 Light. Less than 6 percent who appeared of the 281  
15 actually voiced negative service complaints about FPL.  
16 That is gratifying to us. We work very hard at that,  
17 and we have a good record in that regard.

18 And maybe even more significant is that of  
19 those who spoke against a rate increase, 50 percent of  
20 them spoke favorably about the service that we do  
21 provide. Again, we take that to heart. It's in part a  
22 reward to us for what we do. We don't provide perfect  
23 service. With 4.5 million customers, we are going to  
24 have some misses, and we try to responsibly address  
25 those as quickly as possible.

1           You will hear from Witness Hardy and Witness  
2 Santos as to the level of effort that we spend in, A,  
3 minimizing the number of complaints, and, B, when they  
4 do occur, getting after them quickly and addressing them  
5 responsibly. You will hear from Witness Santos, and  
6 she's somewhat modest, too modest, eight years in a row  
7 winner of the Service One Customer Award.

8           Now, turning to Page 12. Mr. Flaherty  
9 provides another example, and I won't spend any time  
10 here but, again, in every category compared to his peer  
11 group on A&G expenses better in every group in every  
12 case for every single year from 2007 to 2010.

13           Now, against this backdrop, I would like to  
14 focus a little bit on the actual request itself, because  
15 I think this frames it properly. And I would like you  
16 to focus on some of the key drivers here, but really  
17 just one. Look at the one on the far left, \$367  
18 million. That is really a composite of the effect of  
19 the reserve surplus issue that obviously was at the  
20 center of debate and discussion not only in the last  
21 case, but even was a central part of the settlement  
22 agreement. And Mr. Barrett will talk to you about the  
23 details, but I want focus you on that as a significant  
24 impact in why we are back here today.

25           The bill impacts of FPL's revenue request

1 appear on the next two charts. These are Ms. Deaton's  
2 exhibits. At FPL we are very, very bill conscious, and  
3 these show the specific breakdowns of the bills. And as  
4 Mr. DeRamus will testify, the bill at FPL remains one of  
5 the most affordable bills that our customers pay today.

6 This clearly shows the breakdown, or the  
7 distinction between base and fuel, so I don't want there  
8 to be any confusion that we are trying to confuse the  
9 two. This clearly shows the separation, but the bottom  
10 line remains that even with the request granted, we will  
11 remain the lowest residential bill in the State of  
12 Florida.

13 Now I want to talk a little bit about the fair  
14 rate of return at FPL, something that obviously is a  
15 very important topic for us and will be litigated  
16 extensively here. But the picture is quite clear. The  
17 company is investing billions annually. We are the  
18 largest investor in the State of Florida and we have to  
19 go to the capital markets to get financing for those  
20 investments.

21 The capital markets are competitive. We  
22 compete against other utilities. We compete against the  
23 clients of a lot of the folks here to my left for the  
24 financial capital that is out there. Some of the folks  
25 to my left have clients that are earning in the 20 to

1 25 percent rate on their return on equity. It takes a  
2 fair rate to maintain our financial strength.

3 If you will look at Page 16, this shows what  
4 FPL has been earning within its authorized ranges. And  
5 the current settlement agreement has enabled the company  
6 to earn 11, 11, and 11 in each of the last three years.  
7 That agreement which enabled us to do that is expiring,  
8 and we are asking the Commission to establish an ROE of  
9 11.25 along with a 25-basis-point adder.

10 **CHAIRMAN BRISÉ:** You have about five minutes  
11 left.

12 **MR. LITCHFIELD:** Thank you, sir. If you'll  
13 turn to Page 17 in the booklet. This shows three  
14 things. It shows that at 10 percent we currently have  
15 the lowest authorized return on equity in the entire  
16 southeast region of coastal states there. Yet we have  
17 got the highest residential customer satisfaction scores  
18 and the second lowest typical residential bill.

19 The next three pages, and I won't spend much  
20 time on them, Mr. Chairman, show a breakdown of each of  
21 these points on a map of the southeast, and you can see  
22 the utilities plotted there with their authorized rates  
23 of return. And if you flip the page, you will see we  
24 have plotted the customer satisfaction scores. And if  
25 you flip to the third page you will see that we have

1 plotted the residential bills. So, again, currently  
2 lowest authorized ROE in the southeast in this area,  
3 highest customer satisfaction score among residential,  
4 and second lowest bill.

5 If we contrast this to OPC's recommended ROE,  
6 which if granted, would be the lowest return on equity  
7 awarded any utility in the United States in the last two  
8 years. And it's even lower than an award that was  
9 granted recently to a Massachusetts utility that is a  
10 distribution only; no generation, no nuclear, no  
11 hurricane exposure of the nature that we have here, and  
12 the utility that received that ROE being penalized for  
13 poor performance. Poor performance, and their ROE was  
14 higher than the one that Public Counsel is recommending  
15 to you in this case.

16 You'll hear that FPL's ROE should be low  
17 because its capital ratio is higher than average. Yes,  
18 it is, and we don't dispute that. But what we do  
19 disagree with is that capital structure or equity ratio  
20 should be the sole measure of risk to the exclusion of  
21 all other risk factors.

22 The truth is it is just one of many, and we  
23 have a unique risk profile that our witnesses will  
24 testify to that justify a capital structure in that  
25 order, and it has been in place for close to 20 years



1 and served customers in the State of Florida well.

2 Well, OPC is taking a lot of extreme positions  
3 in this case. And I want to focus on them specifically,  
4 because they are taking positions that are more extreme  
5 than a lot of the customers they that purport to  
6 represent here. I talked about the lowest ROE. The  
7 capital structure -- they are recommending a shift in  
8 our capital structure that would be an effectual swing  
9 of \$3 billion relative to, or in term of debt and equity  
10 in that relative ratio.

11 They are proposing a \$40 million swag to  
12 punish the company for not using a corporate structure  
13 that would be more familiar to one of its witnesses.  
14 They are requesting that the Commission intrude on how  
15 the company designs and administers its compensation  
16 programs, and it would propose to eliminate from base  
17 rates properties that the company has purchased and  
18 acquired in order to provide service in the future.

19 I won't spend time showing you the graph that  
20 is in your packet relating to Mr. Silva's testimony, but  
21 he will be prepared to talk about that. They say that  
22 there are no negative consequences if you accept the  
23 recommendations. That is worse than conjecture. It's  
24 just flat out false. The last two exhibits that we  
25 include in this packet are exhibits that Mr. Dewhurst

1 sponsors in which he will show that categorically that  
2 is not an accurate picture.

3 But even beyond that, Commissioners, without  
4 reference to the miscalculations or miscitations with  
5 regard to what other jurisdictions are doing, I would  
6 ask you to consider two things as we move forward. A  
7 strong capital structure and rate of return for Florida  
8 Power and Light has served its customers in the State of  
9 Florida extremely well for decades, and that is borne  
10 out by the materials that I have just walked you  
11 through.

12 Our cost structure is among the very lowest,  
13 our performance among the very best, and we would ask  
14 that any decision in this case that you make be made  
15 with reference to these points. And in that regard, I  
16 hope that this booklet will serve you well as we move  
17 forward in this proceeding.

18 Thank you.

19 **CHAIRMAN BRISÉ:** Thank you very much, Mr.  
20 Litchfield. Thank you for managing your time  
21 appropriately.

22 At this time, we will hear from FIPUG. You  
23 have five minutes.

24 **MR. MOYLE:** Thank you, Mr. Chairman.

25 And let me start just by thanking the

1 Commission and staff for the time this morning to work  
2 through some procedural issues. We are in a somewhat  
3 unique procedural posture. We have talked a lot about  
4 it. In my prepared opening, I was going to clearly make  
5 the point that we are going to be taking a litigation  
6 position that is different from a settlement position,  
7 and we will. We will be crossing FPL's witnesses, but I  
8 don't want that to be confused in any way that at the  
9 end of the day we support the settlement agreement, and  
10 at the end of the hearing we will support the  
11 settlement agreement. We support it now, and we think  
12 it is a fair deal. So, thank you. Thank you for the  
13 time. I think those were important legal issues, and I  
14 know it took up a lot of time.

15 You're going to hear from one witness for  
16 FIPUG, a direct witness, Jeff Pollock, and he focuses on  
17 rate design, and rate design is complex. You kind of --  
18 you get into the weeds pretty quickly with rate design.

19 But I want to just spend a minute and talk  
20 about an issue that we think is very important to the  
21 industrial clients that I represent, and also is  
22 important -- and they will speak for themselves, but the  
23 military, and the Federal Executive Agencies, and a  
24 number of hospitals -- and that relates to an  
25 interruptible credit. That is Issue Number 169 in the

1 case; it's squarely in front of you. And the  
2 interruptible, you know from your previous proceedings  
3 that the interruptible credit is something that people  
4 who say, look, you can turn my power off on a hot summer  
5 day rather than going out and building a peaking power  
6 plant. You can cut the switch on my power. I will  
7 agree to allow you to do that, but in exchange I should  
8 receive some credit. And there is an interruptible  
9 credit that is in place. It hasn't been raised in  
10 something like twelve years.

11 So you hear all this testimony, Mr. Reed is  
12 going to talk about the CPI going up, and it costs more  
13 to build power plants, and, you know, we need an  
14 increase. Well, likewise and similarly, the  
15 interruptible credit should go up as well, because it's  
16 pegged to the cost of building a peaking power plant.  
17 And we are going to spend a lot of time on that  
18 interruptible credit issue, so I wanted to preview that  
19 for you.

20 The details on it, the current interruptible  
21 credit rate is \$4.68. Mr. Pollock is going to suggest  
22 that it be north of \$12, and the settlement agreement  
23 has it at \$7.30, so it's in between.

24 And why is this credit, you know, so  
25 important? Well, the case as filed by Florida Power and

1 Light, the base rates as filed would have resulted --  
2 will result that my clients, a lot of them would see an  
3 increase in their base rates of 24 percent. All right.  
4 That is a tough number to try to deal with when you are,  
5 you know, mired in a recession and trying to come out to  
6 say, well, we're emerging from the recession, welcome to  
7 a 24 percent base rate increase. It's among the highest  
8 increases proposed in the case as filed in terms of  
9 customer classes.

10 So the credit that we negotiated and that you  
11 will hear Mr. Pollock talk about mitigates that impact  
12 of the rate increase. And this administration, Governor  
13 Scott has talked about jobs, jobs, jobs, jobs, jobs,  
14 jobs.

15 **MR. McGLOTHLIN:** Commissioner, I object. He  
16 is talking about the negotiated purported settlement and  
17 not his prefiled testimony. I object to any  
18 consideration of those remarks.

19 **MR. WRIGHT:** Join the objection.

20 **CHAIRMAN BRISÉ:** Thank you.

21 Mr. Moyle.

22 **MR. MOYLE:** Well, okay. I don't think it's a  
23 secret that this Governor has focused on jobs, and I  
24 just want to tell you a little bit about the jobs and  
25 the economic impacts. Witness Reed spends a lot of time

1 looking at statistics from the Bureau of Labor.

2 I'm going to use an exhibit with him, the most  
3 recent labor statistics that come out. It came out last  
4 week. Florida's percentage went up 2/10ths of a  
5 percent. But there is also segments in there that talk  
6 about manufacturing jobs and health jobs combined with  
7 education. And from month-to-month, from June until  
8 July, Florida lost more than 10,000 jobs, more than  
9 10,000 jobs in those two sectors.

10 So, you know, again, with the focus on jobs,  
11 if your decision is can we do something to mitigate the  
12 impact of FPL's case as filed by adjusting the credit  
13 upward, I think the strong answer ought to be yes, and  
14 this is the time to do it. You know, it's not the time  
15 to kick this credit issue down the road. It's front and  
16 center here. Witness Pollack has testimony. There is  
17 no other witness, no other party that has taken a  
18 position opposing it other than FPL, and FPL's  
19 opposition is, well, it may not be the right place to  
20 have this conversation. But we are having the  
21 conversation, we have witnesses that will be here, it's  
22 part of the settlement agreement, a chief part of the  
23 settlement agreement.

24 **MR. WRIGHT:** Mr. Chairman, renew the  
25 objection. If he keeps to his witness' testimony and

1 what the evidence will show, that's fine; but mentioning  
2 the settlement agreement is improper. Continue the  
3 objection. Thank you.

4 **MR. MCGLOTHLIN:** Mr. Moyle seems to be intent  
5 on injecting this settlement agreement along with  
6 several of them into even opening statements, and I  
7 think that is reason enough to renew our motion in  
8 limine.

9 **MR. MOYLE:** So can I just --

10 **MR. SAPORITO:** This is Mr. Saporito, and I  
11 agree with that.

12 **CHAIRMAN BRISÉ:** Thank you, sir.

13 Mr. Moyle, if you could address the objection.

14 **MR. MOYLE:** Thank you. Maybe you can give me  
15 a little more time, because I have been interrupted --

16 **CHAIRMAN BRISÉ:** Yes, understood.

17 **MR. MOYLE:** Typically, opening statements are  
18 not interrupted. Mr. Rehwinkel talked about the  
19 settlement at length this morning, and I didn't  
20 interrupt him. They have made their objection known.  
21 They filed a motion in limine. You have ruled on it;  
22 you said I will allow some discussion about it.

23 I think it's appropriate for putting in  
24 context the settlement on this credit that is so  
25 important to us to give you some perspective about,

1 okay, it's at, you know, four bucks and change now.  
2 We're taking it to twelve in the testimony. You know,  
3 the settlement is seven.

4 I think that's appropriate and consistent with  
5 your ruling. We'll have to put on evidence on it, but  
6 it gives you a better frame of reference. So I'll move  
7 on and just make the --

8 **MR. MCGLOTHLIN:** Not before I move to strike  
9 that reference to specific terms of the settlement  
10 agreement. That is bordering on the outrageous, and I  
11 move to strike.

12 **MR. WRIGHT:** We would join that motion to  
13 strike.

14 **MR. SAPORITO:** I join that motion, Mr.  
15 Chairman. I would point out, I believe my recollection  
16 is that this attorney misstated the Chairman's decision.

17 It is my understanding that the Chairman does  
18 not allow any testimony with respect to the settlement,  
19 and I think he just stated that you are going to accept  
20 some in this record.

21 **CHAIRMAN BRISÉ:** Thank you for your comments,  
22 Mr. Saporito, but these are opening statements, so there  
23 is no testimony being offered at this time.

24 Secondly, part of Mr. Moyle's comments are  
25 dealing with how he's going to frame his case with the



1 issues that he is going to address with his witness that  
2 he's going to bring forth.

3 I understand your objection with the issue of  
4 mentioning certain specific terms within the settlement,  
5 and we are going to ask Mr. Moyle at this point as he  
6 continues his comments to remove -- I mean, not to  
7 continue down that path. But to strike whatever has  
8 been stated at this point, we're just going to sort of  
9 move on from here. Thank you.

10 Mr. Moyle, you have about a minute left.

11 **MR. MOYLE:** Okay. So I was trying to make the  
12 point that jobs are important. That my clients, you  
13 know, they hire a lot of people, they pay a lot of  
14 taxes. You know, the military is facing budget cuts  
15 coming up with Congress. You know, the hospitals have  
16 Medicaid.

17 There are a lot of fiscal pressures. So given  
18 a choice between taking some action on this  
19 interruptible credit, which will provide additional  
20 revenue in the form of a credit, that we're not running  
21 from that, we think it's due and owing because it hasn't  
22 been adjusted, you know, in twelve years. And all the  
23 other things are going up, why shouldn't the credit go  
24 up, as well. That we think you should make the  
25 adjustment. Mr. Pollock says \$12. That would be great

1 if you did that, because nobody -- these other parties  
2 are not saying, no, that's not; they have taken no  
3 position on that issue.

4 So I was saying please don't kick the credit  
5 can down the road. Please make a decision on that, and  
6 make a decision that recognizes the important role that  
7 industrial customers and others play in our Florida  
8 economy. So, thank you, Mr. Chairman.

9 And I guess the only other thing, I mean, this  
10 is unusual because we're typically aligned with OPC, and  
11 we're really not. But OPC is statutorily charged with  
12 representing all the customers and, you know, the  
13 military, the hospitals, and large industrials are part  
14 of their client class, and they have taken no position,  
15 you know, on this issue. So it's a little unusual, but,  
16 you know, we're kind of -- we're not, you know, the old  
17 term about potted plants. I mean, we are important  
18 members of the fabric of Florida, and I just wanted to  
19 make that point.

20 Thank you.

21 **CHAIRMAN BRISÉ:** Thank you very much, Mr.  
22 Moyle.

23 Okay. At this time we will hear from the  
24 South Florida Hospital Association. Mr. Wiseman.

25 I think Mr. Moyle got a little excited over

1 there.

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

3 Mr. Chair, I expected OPC to throw water all  
4 over me, but I didn't think it was coming from Mr.  
5 Moyle. Hopefully, I can still make sense of this.

6 Commissioners, first of all, thank you for the  
7 opportunity to make this opening statement. And at the  
8 outset I want to make clear that SFHHA strongly supports  
9 the proposed settlement. We believe that the settlement  
10 provides substantial benefits to all FPL ratepayers and  
11 that its approval will substantially benefit --

12 **MR. WRIGHT:** I renew my objection, Mr.  
13 Chairman.

14 **CHAIRMAN BRISÉ:** Duly noted.

15 **MR. WRIGHT:** Thank you, sir.

16 **MR. WISEMAN:** In my opening statement, I want  
17 to focus on two technical aspects of our filed case that  
18 also show that the discussions in the press about cost  
19 shifts seriously mischaracterize the effect of the  
20 settlement, and by implication mischaracterize the  
21 recommendations that we are making to you in our  
22 litigated case, as well.

23 One of the most basic tenets of utility law is  
24 the cost responsibility should follow cost causation.  
25 In other words, responsibility for payment costs the

1 utility incurs to provide service should be allocated to  
2 customer classes commensurate with the degree to which  
3 each customer class causes the utility to incur those  
4 costs.

5 FPL's cost of service model and its rate  
6 design violate that basic ratemaking principle. Over  
7 the course of the last several years, FPL has incurred  
8 billions of dollars to install new generating capacity  
9 and is going to spend hundreds of millions of dollars  
10 more in the next few years, again, to add more  
11 generating capacity.

12 The evidence will show that FPL is adding that  
13 capacity only for one reason, to serve its summer peak  
14 demand. It has no need to add that capacity to serve  
15 demand in any other months. In fact, the forecasted  
16 winter reserve margin for FPL from now through 2021  
17 ranges from 26 percent to over 42 percent. That is  
18 obviously far in excess of a 20 percent or 15 percent  
19 reserve margin.

20 Now that begs the question, which rate classes  
21 are causing FPL to add capacity to serve the summer  
22 peak? The definitive answer is that it is not large  
23 commercial class customers whose load is basically flat  
24 throughout the year, but FPL's continued use of the 12  
25 CP and a 13th methodology for allocating production

1 costs and the way FPL develops its demand allocation  
2 factors completely distort this picture. FPL's studies  
3 significantly understate the contribution that large  
4 commercial class customers make to collection of FPL's  
5 revenue requirement.

6 Now, in the last rate case the Commission  
7 acknowledged that SFHHA's Witness Mr. Baron made a  
8 persuasive argument in favor of the summer CP  
9 methodology which allocates production costs based upon  
10 each customer classes' contribution to the summer peak,  
11 but nonetheless the Commission opted to stay with the 12  
12 CP and a 13th methodology.

13 Commissioners, it is now time to adopt the CP  
14 methodology -- summer CP methodology, because the  
15 evidence in this case will support that methodology on  
16 an overwhelming basis. And I want to be very clear  
17 about this. This is about the process of accurately  
18 assigning cost responsibility to the rate classes  
19 responsible for incurrence of those costs. This is not  
20 about shifting costs from one rate class to another.

21 Now, the other technical issue that I want to  
22 discuss, and it is related, is to discuss SFHHA's  
23 recommendation for the Commission to adopt the minimum  
24 distribution system for classification of distribution  
25 facilities. There is a misperception at this Commission

1 about the underlying rationale for the MDS system. In  
2 the last rate case, FPL's witness opposed the MDS system  
3 based upon an argument, and the Commission paraphrased  
4 it as follows in its order, quote, zero or minimum load  
5 requirements of customers is purely fictitious because  
6 no utility builds to serve zero load, end quote.

7           Commissioners, the MDS system does not  
8 contemplate that a utility would built facilities to  
9 serve zero load. The MDS system is based upon the  
10 indisputable fact that a minimum set of facilities must  
11 be installed to serve each customer regardless of its  
12 load. The evidence will show that FPL has established  
13 procedures to install minimum facilities on a  
14 customer-specific basis as it hooks up new customers in  
15 exactly the way that is contemplated by the MDS system.

16           Now, the MDS system you may or may not be  
17 aware of is not some strange methodology that is being  
18 proposed here and is just adopted in maybe a handful of  
19 states. It has been adopted in 21 states in this  
20 country, and its opponents here in Florida have  
21 mischaracterized it. Without recognition of the MDS  
22 system, costs are being imposed on customer classes that  
23 are not accurately tracked by cost causation and that  
24 results in a subsidy.

25           Commissioners, you adopted the MDS system in

1 the Gulf Power case in the context of a partial  
2 settlement. We submit it is time for the Commission to  
3 take a fresh look at the MDS system in the context of  
4 this case, and that the evidence will support its use on  
5 FPL's system and result in the proper assignment of  
6 costs among the customer classes.

7 Thank you very much.

8 **CHAIRMAN BRISÉ:** Thank you very much, Mr.  
9 Wiseman.

10 **MR. MCGLOTHLIN:** Before we take the next one,  
11 I respectfully move to strike the references to the  
12 settlement agreement and the media that were in the  
13 early part of Mr. Wiseman's remarks.

14 **CHAIRMAN BRISÉ:** Thank you very much. Duly  
15 noted.

16 FEA.

17 **LT. COL. PIKE:** Thank you, Mr. Chairman and  
18 Commissioners. I am appearing today on behalf of the  
19 Federal Executive Agencies. Those agencies represent  
20 essentially four different major groups; cape Canaveral,  
21 NASA, Patrick Air Force Base, and Homestead Air Force  
22 Base. Those FEA customers at these locations fall into  
23 primarily four rate classes with roughly 80 percent of  
24 all payments being made under the commercial/industrial  
25 CILC 1T rate class.

1 Under FPL's proposal, according to Schedule  
2 E-13A, the CILC 1T rate class would see a 34 percent  
3 increase in its base revenue rate. This is by far the  
4 largest percentage increase of any of the rate classes  
5 and three times higher than the proposed 11 percent  
6 average for all rate classes. Such an increase would  
7 result in an approximately \$3.5 million increase in  
8 utility bills for FEA facilities excluding fuel costs.

9 Such a large increase is entirely  
10 unreasonable. And as a background, every base or FEA  
11 facility has a wing commander or a facility manager that  
12 is ultimately responsible for achieving the base's  
13 mission. Every year the base or facility is allocated a  
14 portion of money appropriated by Congress to carry out  
15 that mission. The appropriated money pays for things  
16 like, in the case of NASA, space launch operations, or  
17 in the case of the Air Force, fuel for aircraft,  
18 deployment equipment, and training for deploying  
19 personal, or gate guards, et cetera.

20 However, that money also needs to cover  
21 utility bills. So every dollar of increase utility cost  
22 is a dollar less that the wing, or in this case, NASA,  
23 or a wing commander can spend on the flying mission, the  
24 national security mission, the deployment mission, et  
25 cetera.



1           As primarily a commercial/industrial customer,  
2 it is less costly for FPL to deliver power to FEA  
3 customers. FEA customers primarily receive power from  
4 FPL at more efficient higher voltages, the distribution  
5 networks are less complex, and the commercial/industrial  
6 load control program benefits all customers by helping  
7 FPL avoid the necessity of building costly additional  
8 peaking facilities.

9           However, the petition for a rate increase by  
10 FPL does not adequately take into consideration these  
11 factors, and if approved by this Commission would result  
12 in disparate treatment of FEA customers. To aid in the  
13 Commission's efforts to determine a fair and reasonable  
14 rate for all rate classes, we ask the Commission to  
15 consider the testimony of our two expert witnesses,  
16 Mr. Michael Gorman and Mr. Robert Stephens with special  
17 emphasis on three main areas I would like to highlight  
18 at this point right now.

19           The first, consider the testimony of Robert  
20 Stephens with regard to the minimum distribution cost of  
21 service methodology to more appropriately identify the  
22 portion of primary and secondary costs that are customer  
23 related for future cost of service work. And I echo the  
24 comments of the Hospital Association in that regard.

25           Second, consider the testimony of Mr. Gorman

1 whose adjusted ROE of 9.25 percent, which would  
2 recognize the significant decline in the capital market  
3 costs since 2010, FPL's last rate case.

4 And, third, consider the testimony of  
5 Mr. Gorman with regard to the common equity ratio  
6 currently in place at FPL of 59 percent, which is far in  
7 excess of common equity ratios necessary to support  
8 FPL's current bond rating and is unreasonable in  
9 relation to its proxy group, and it is materially out of  
10 line generally with the electric utility industry  
11 capital structures used to set rates.

12 At the end of the day, you know, every  
13 additional tax dollar spent by the FEA or DOD on  
14 utilities is a dollar less spent on flying the jets, the  
15 NASA mission, taking care of the troops and defending  
16 our nation. If the increase request by FPL is adopted  
17 as proposed that could equate to an additional  
18 \$3.5 million that are no longer available for  
19 operational mission requirements.

20 FEA respectfully requests that the Commission  
21 establish rates that are fair and reasonable for all FEA  
22 customers. Thank you very much.

23 **CHAIRMAN BRISÉ:** Thank you very much. At this  
24 time we are going hear from Algenol.

25 **MR. HAYES:** Thank you, Mr. Chairman. Algenol

1 is going to waive its right to an opening statement and  
2 we'll rely on our prefiled statements and testimony.

3 Thank you.

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

5 OPC.

6 **MR. McGLOTHLIN:** Mr. Chairman, we have a  
7 PowerPoint slide presentation to make. We just need  
8 enough time to put that in motion, and we also have it  
9 in handout form.

10 **CHAIRMAN BRISÉ:** Sure.

11 **MR. McGLOTHLIN:** If you could give us a couple  
12 of minutes to hand those out.

13 **CHAIRMAN BRISÉ:** All right. No problem.

14 (Pause.)

15 **CHAIRMAN BRISÉ:** You may proceed. You have  
16 ten minutes.

17 **MR. McGLOTHLIN:** Mr. Chairman, Commissioners,  
18 this proceeding is largely a cost of capital case. The  
19 major dollars at issue are in this area. At issue in  
20 the case are FPL's cost of equity capital and also the  
21 proportions of debt and equity capital and the capital  
22 structure that you should employ for ratemaking  
23 purposes. The subject of capital structure on the one  
24 hand and return on equity on the other hand separately  
25 place hundreds of millions of dollars at issue in this

1 case.

2 I want to point you to the first slide, which  
3 is a line graph of interest rates that Dr. Woolridge,  
4 one of our witnesses prepared. It shows that, first of  
5 all, interest rates are at historically low levels. It  
6 also shows that interest rates in the economy are lower  
7 now than they were in 2010, the last time this  
8 Commission visited FPL's required return on equity.

9 That leaves me to make an observation as to an  
10 interesting consensus in this case, and the consensus is  
11 that FPL's cost of equity capital has come down since  
12 the Commission authorized 10 percent ROE in March of  
13 2010, nearly two and a half years ago. In the last  
14 case, FPL's witness advocated a midpoint of 12.5  
15 percent. After reviewing current data in this case, the  
16 same FPL witness recommends 11.25 percent midpoint,  
17 lower than before.

18 In the last case, OPC recommended a 9.5  
19 percent midpoint. Our same witness in this case  
20 recommends a range of 8.5 to 9, depending on the capital  
21 structure that you employ. So it stands to reason that  
22 anyone who believes the Commission got things about  
23 right when it set the return on equity at 10 percent in  
24 the last case, after reviewing this more current data  
25 would also conclude that the appropriate return on

1 equity for FPL is below 10 at the current time.

2 Now, you and we have heard FPL complain that a  
3 return on equity of 10 percent is unfair because it is  
4 the lowest in the state. When it makes that unfairness  
5 claim, FPL tends to leave out the fact that its equity  
6 ratio of 59.62 percent is by far the highest in the  
7 state and, in fact, is higher than most any other  
8 utility in the country. FPL's extreme high equity ratio  
9 lowers FPL's overall risk profile, and the return on  
10 equity that the Commission sets must be commensurate  
11 with that lower risk.

12 You will see in the second slide, which is a  
13 very brief quotation from the March 2010 order  
14 establishing ROE of 10 percent, that the Commission  
15 observed the connection between equity ratio and the  
16 required return on equity at that time. But while FPL  
17 often prefers to describe its earnings on a  
18 weather-adjusted basis, in this case it doesn't want to  
19 view its authorized return on equity on a risk-adjusted  
20 basis. FPL would prefer to present return on equity and  
21 equity ratio as separate items. You will hear them say  
22 we need a higher return on equity, and we need this 59  
23 percent equity ratio.

24 It's important to focus on the significance of  
25 the disconnect in that presentation, and in my several

1 minutes remaining, I want to tell you how OPC's  
2 witnesses will establish and quantify that critical  
3 relationship explicitly. Our witnesses will describe  
4 that a utility raises capital in two forms, debt, by  
5 which I mean bonds and short-term notes, and equity in  
6 the form of common shares and preferred shares. Equity  
7 capital is more expensive than debt. Debt must be paid  
8 before shareholders make a profit, so equity investors  
9 require a premium on top of the cost of debt. The  
10 utility, therefore, gets more bang for the capital buck  
11 with debt, and that's why the use of debt is referred to  
12 as leverage, but use of more debt also increases  
13 financial risk.

14 On the other hand, because equity costs more  
15 than debt, the higher the equity ratio the higher the  
16 revenue requirements that customers have to pay. So the  
17 question is where do you draw the line? And with  
18 respect to that, it is instructive to look at what the  
19 utility industry has done on broad basis.

20 The next slide shows the proxy group that FPL  
21 Witness Avera uses, and you will see on that slide that  
22 the average equity ratio of the utilities in his group  
23 is 47 percent.

24 Another slide shows the utility industry  
25 sector followed by Value Line, and that shows that Value

1 Line calculates a 47 percent average equity ratio.

2 Now, our Witness O'Donnell will testify that  
3 if a company has high business risk, logically it should  
4 offset that high business risk with low financial risk,  
5 which would mean low debt and high equity. Similarly,  
6 if the company has low business risk, it has the  
7 opportunity to use more debt, which argues for a lower  
8 equity rate.

9 Now the rating agencies agree that NextEra's  
10 unregulated-affiliates have a higher business risk than  
11 the regulated utility FPL. So let's see what NextEra  
12 does with respect to how it places equity capital in its  
13 companies.

14 That is the next slide, which is a three-bar  
15 chart. And you will see that the higher risk affiliates  
16 have only 21 percent equity ratio compared to the low  
17 risk FPL, which has a 59.62 percent equity ratio. In  
18 terms of relative risk, it doesn't make sense. It's  
19 actually topsy turvy. But while it's irrational from  
20 the standpoint of relative risk, it does make sense if  
21 the strategy is to maximize equity returns where they  
22 are the safest in the regulated entity, and to use those  
23 returns to finance expansion of more risky unregulated  
24 businesses.

25 Our Witness Mr. O'Donnell concludes that 59.62

1 percent equity ratio is unnecessarily expensive to  
2 customers. The Commission's choice in that event is  
3 either to use a lower equity ratio by imputing one for  
4 ratemaking purposes, or if it chooses to permit FPL to  
5 employ the 59 percent equity ratio for ratemaking  
6 purposes, it needs to reflect that lower financial risk  
7 in the ROE returns.

8 He recommends a 50 percent equity ratio, and  
9 he arrives at that conclusion by reference to two  
10 things. First of all, the 47 percent average in the  
11 industry, and the fact that NextEra itself on a  
12 composite basis, which includes FPL, has only a 39  
13 percent equity ratio. And that 39 percent is the equity  
14 ratio that equity investors see, perceive, and evaluate  
15 when they buy stock in the parent company.

16 On the other hand, if the Commission employs a  
17 59.6 percent equity ratio, then our Witness Dr.  
18 Woolridge recommends that the corresponding ROE must be  
19 lower by 50 basis points. You will see his  
20 recommendation in the next slide. He recommends that if  
21 the 50 percent rate ratio is used, the corresponding ROE  
22 is 9 percent. On the other hand, at a 59.6 percent  
23 equity ratio, the appropriate return on equity is 8.5  
24 percent.

25 **CHAIRMAN BRISÉ:** Mr. McGlothlin, you have got



1 about two minutes left. Just thought I'd let you know.

2 **MR. McGLOTHLIN:** All right. I'll wrap up very  
3 quickly.

4 I'll move to my next slide, which shows three  
5 different scenarios. This slide was prepared by our  
6 Witness Kevin O'Donnell, and it shows the significance  
7 of the matters I've been describing.

8 First of all, the choice of capital structure  
9 by itself, without reference to the ROE aspect, the  
10 difference between the 59 and 50 percent by itself, the  
11 choice of 50 percent would reduce FPL's revenue  
12 requirements by \$214 million. That's in his testimony.

13 Now, the three scenarios that you see there  
14 correspond to a combination of a 59 percent equity ratio  
15 and 8.5 percent ROE, the 50 ratio and 9 percent ROE, and  
16 a third scenario that falls midway between those, 55  
17 percent common equity ratio and 8.75 percent ROE.

18 And the right-hand column shows the impact on  
19 FPL's revenue request of each of those scenarios. And I  
20 will simply conclude by making the point that regardless  
21 of whether you choose the 50 percent equity ratio that  
22 we recommend, the 59 percent equity ratio that FPL  
23 desires, or someplace in the middle, and if you employ  
24 the appropriate return on equity in combination with  
25 that, the impact is almost enough by itself to

1 completely offset the amount of the increase that FPL  
2 proposes to place into effect on January 1st, 2013.

3 Thank you for listening. Thank you.

4 **CHAIRMAN BRISÉ:** Thank you, Mr. McGlothlin.

5 At this time we will hear from Mr. Wright from  
6 FRF.

7 **MR. WRIGHT:** Thank you very much, Mr.  
8 Chairman. Good afternoon, Commissioners, and thank you  
9 for the opportunity to address you in this important  
10 case on behalf of the Florida Retail Federation and its  
11 membership of more than 9,000 Florida businesses.

12 In this case, FPL seeks your authorization to  
13 increase its base rates so as to recover from its  
14 customers an additional \$516 million a year starting in  
15 January of 2013, plus an additional \$173.9 million a  
16 year starting in June of 2013.

17 We are not saying at all that FPL does not  
18 provide safe, adequate, reliable service. What we are  
19 saying is this, as agreed by FPL's former President Mr.  
20 Olivera and by the presidents of at least two other  
21 Florida investor-owned utilities, it is FPL's duty -- it  
22 is a Florida Public Utilities' duty to provide safe,  
23 adequate, reliable service at the lowest possible cost.

24 Thus, this case is about how much, if any,  
25 additional base revenues FPL needs in order to fulfill

1 this duty. Does it need more money to do its job of  
2 providing safe, adequate, reliable service? This is the  
3 ultimate issue you are called upon to decide, and, by  
4 the way, it is ultimately Issue 126.

5 The evidence will show that FPL does not need  
6 any additional base rate revenues in order to do its  
7 job. In fact, competent substantial evidence of record,  
8 the testimony of the Citizens' witnesses, and the  
9 testimony of several other consumer parties' witnesses  
10 will show that FPL can continue to provide safe,  
11 adequate, reliable service with a rate decrease of up to  
12 \$253 million a year.

13 And by the way, when we talk about the impact  
14 on jobs, we, you, everyone, should talk about the  
15 beneficial impact of keeping an additional \$516, \$690  
16 million in the pockets of Florida customers instead of  
17 sending a good chunk of it off to investors in other  
18 states.

19 FPL's request is excessive and unreasonable.  
20 Granting the request would result in unfair, unjust, and  
21 unreasonable rates, because FPL doesn't need any  
22 increase at all in order to do its job, to provide safe,  
23 adequate, and reliable service.

24 Historical evidence will show that this is  
25 just the latest example in a longstanding unbroken

1 pattern of excessive FPL rate-hike requests over the  
2 past 40 to 50 years. In the 1960s, the Commission  
3 ordered a handful of rate reductions to FPL, no  
4 increases at all. In the '70s and '80s, in six or seven  
5 rate cases the Commission, the Florida Public Service  
6 Commission granted rate increases that ranged between 38  
7 percent and 63 percent of what FPL requested in those  
8 cases. By the way, the 63 percent was 30-years ago in  
9 1982.

10 Since the 1983 case; that is, over the last  
11 28-years, FPL's rate case history has been dominated by  
12 four major dockets: Docket Number 990067, an earnings  
13 review initiated by the Public Counsel in 1999, in which  
14 FPL settled with all consumer parties for a \$350 million  
15 permanent base rate reduction that also produced  
16 additional revenue sharing refunds of more than  
17 \$200 million in succeeding years.

18 In 2002, a settlement agreed to by all parties  
19 in Docket 001148 was a Commission initiated earnings  
20 review for FPL. FPL took the position that its base  
21 rates should not be changed in MFRs and in testimony.  
22 However, at the conclusion of that case, FPL agreed to a  
23 settlement that reduced its base rates permanently by  
24 \$250 million a year with additional revenue-sharing  
25 refunds following.

1           In 2005, FPL sought a base rate increase of  
2 \$430 million a year, which the parties, including  
3 myself, litigated literally up to the eve of the  
4 hearing, but then agreed to a settlement that included  
5 zero increases in base rates, but with provisions for  
6 FPL to increase its base rates in subsequent years as  
7 new power plants came on-line.

8           In 2009, in Docket 080677, FPL asked for  
9 \$1.29 billion, the Commission awarded seventy-five and a  
10 half million dollars. FPL didn't like that decision,  
11 but the evidence will show clearly that since that  
12 decision, over the last three years, FPL has increased  
13 its dividend three times, including a month after the  
14 Commission's vote. Their stock price has increased  
15 roughly 50 percent from the day of the Commission's vote  
16 to yesterday, or Friday. And that FPL has consistently  
17 attained ROEs at the top of its authorized range. That  
18 is already shown by Mr. Dewhurst's exhibit that was  
19 presented by FPL.

20           So over the last 30 years, last 28 years,  
21 other than the base rate increases that all parties  
22 agreed to for new power plants as they came into  
23 service, we have had four dockets. FPL agreed to reduce  
24 rates twice, it agreed to freeze its rates once, and in  
25 the fourth case the Commission granted about a 7 percent

1 of what it requested.

2 Now as Mr. McGlothlin mentioned in his  
3 opening, the witnesses testimony will show that just two  
4 issues ROE and capital structure would result in wiping  
5 out \$547 million of FPL's total base revenue request.  
6 That's more than the request they have asked for  
7 effective January 1st, 2013. Other adjustments offered  
8 by the Citizens' witnesses and by witnesses for the  
9 other parties would further reduce that to the point  
10 that on a net-basis FPL, in our view, does not need any  
11 base rate increase at all to do its job of providing  
12 safe and reliable service next year in 2013.

13 Commissioners, under Chapter Section 366.01,  
14 your polestar is the public interest. In this case, the  
15 public interest, the interest of the State of Florida as  
16 a collective whole, the Florida economy, and Florida's  
17 individual and corporate citizens would be harmed by the  
18 massive increases requested by FPL in this case.

19 History shows, amply demonstrates that FPL has  
20 never needed what it claimed it needed in order to do  
21 its job of providing safe, adequate, reliable service  
22 while covering all of its costs and earning healthy  
23 returns. Competent substantial evidence of record  
24 demonstrates -- or will demonstrate, it's not in yet --  
25 that FPL does not need a base rate increase to do its

1 job, to provide safe and reliable service at the lowest  
2 possible cost in the 2013 test year. And, accordingly,  
3 you should deny its requests.

4 Thank you very much.

5 (Transcript continues in sequence with Volume  
6 2.)

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STATE OF FLORIDA )

: CERTIFICATE OF REPORTERS

COUNTY OF LEON )

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 23rd day of August, 2012.

  
\_\_\_\_\_  
JANE FAUROT, RPR

  
\_\_\_\_\_  
LINDA BOLES, CRR, RPR

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