

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150001-EI

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

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JULIE I. BROWN
COMMISSIONER JIMMY PATRONIS

DATE: Thursday, June 18, 2015

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

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Okay. Now it's time to
3 start getting into the meat of it all.

4 Let's go back up top to Item No. 3.

5 **MR. MAUREY:** Good morning, Chairman,
6 Commissioners. Andrew Maurey, Commission
7 staff.

8 On June 25th, 2014, FPL petitioned the
9 Commission for a determination that it was
10 prudent for FPL to acquire an interest in a
11 natural gas reserve project, the Woodford
12 project, and that the revenue requirement
13 associated with investing in and operating the
14 gas reserve project is eligible for recovery
15 through the fuel clause.

16 FPL further requested that the Commission
17 establish guidelines under which FPL could
18 participate in future gas reserve projects
19 without prior Commission approval and recover
20 the costs through the fuel clause subject to
21 the Commission's established process for
22 reviewing fuel-related transactions in the fuel
23 clause proceedings.

24 The hearing was held on December 1st and
25 2nd of last year, at which FPL, the Office of

1 Public Counsel, the Florida Industrial Power
2 Users Group, and the Florida Retail Federation
3 all participated. FPL requested, due to the
4 time-sensitive nature of the proposed
5 investment in the Woodford project, that the
6 Commission render a decision on this specific
7 project before the end of the year. At the
8 December 18th, 2014, Commission Conference the
9 Commission voted on Issues 1, 2, 3, 6, and
10 8 related to the proposed Woodford project.

11 Consideration of Issues 4, 5, 7, and
12 9 related to FPL's requested approval of gas
13 reserve guidelines was deferred to a future
14 Commission Conference.

15 By Order No. PSC-15-0038-FOF-EI issued
16 January 15th of this year, the Commission found
17 the Woodford project in the public interest and
18 the costs recoverable through the fuel clause.
19 This and other orders related to the Woodford
20 project are the subject of a consolidated
21 appeal before the Florida Supreme Court.

22 Staff is before you today to facilitate a
23 discussion of Issues 4, 5, 7, and 9 regarding
24 FPL's request for approval of gas reserve
25 guidelines. This is a post-hearing matter, and

1 discussion is limited to Commissioners and
2 staff.

3 Staff is available for questions.

4 **CHAIRMAN GRAHAM:** Commissioners? I
5 guess -- Commissioner Brown.

6 **COMMISSIONER BROWN:** Did it work?

7 **CHAIRMAN GRAHAM:** Yes. I have a new panel
8 up here to go with our technical difficulties.

9 **COMMISSIONER BROWN:** The lights aren't
10 showing.

11 **CHAIRMAN GRAHAM:** So Commissioner Brown.

12 **COMMISSIONER BROWN:** Mr. Chairman, if I
13 may suggest an order of taking up the issues.
14 I think it would be appropriate to take up
15 Issue 4 and 7 together and then go to Issue 5,
16 followed by the close the docket.

17 **CHAIRMAN GRAHAM:** You said 4 and 7?

18 **COMMISSIONER BROWN:** Yes.

19 **CHAIRMAN GRAHAM:** And then 5?

20 **COMMISSIONER BROWN:** Yes.

21 **CHAIRMAN GRAHAM:** Unless anybody has a
22 problem with that, I don't have a concern.
23 Actually I guess we can go 4, then 7, then 5
24 because we have to answer the question of 4.

25 All right. So let's start with Issue No.

1 4. And I think, as Mr. Maurey just said,
2 because of decisions that the Commission made
3 back in December, I think we've pretty much
4 already answered that question unless there's
5 any other further dialogue.

6 Commissioner Brown.

7 **COMMISSIONER BROWN:** Thank you. As you
8 just said, we have decided that by the
9 Commission majority. So with that, I would
10 move the staff recommendation on Issue 4.

11 **CHAIRMAN GRAHAM:** It's been moved and
12 seconded, staff recommendation on Issue No. 4.
13 Is there any further discussion? Seeing none,
14 all in favor, say aye.

15 (Vote taken.)

16 Any opposed? By your actions, you've
17 approved the staff recommendation on Issue No.
18 4.

19 Let's skip over to page 16, Issue No. 7.

20 Commissioner Brown.

21 **COMMISSIONER BROWN:** Similarly, I read
22 Office of Public Counsel and FIPUG's arguments
23 in their post-hearing briefs; however, I think
24 this decision matter is clearly specific just
25 to FPL and not the other IOUs, despite the fact

1 that many of us here have acknowledged that
2 this is a novel initiative that's worthy of our
3 consideration. So regardless of any of the
4 points that were raised by OPC and FIPUG in
5 their arguments, the FPL reserve guidelines is
6 exempt from rulemaking by 120.80(13)(a). And
7 with that, I would move the staff
8 recommendation on the issue.

9 **CHAIRMAN GRAHAM:** It's been moved and
10 seconded, staff recommendation, staff
11 recommendation on Issue No. 7.

12 Commissioner Edgar.

13 **COMMISSIONER EDGAR:** Thank you, Mr.
14 Chairman. I was just going to say that I agree
15 with that legal analysis and offer a second.

16 **CHAIRMAN GRAHAM:** Okay. Any other
17 discussion on Issue No. 7? Seeing none, all in
18 favor, say aye.

19 (Vote taken.)

20 Any opposed? By your actions, you've
21 approved the staff recommendation on Issue No.
22 7.

23 So let's flip back to page 6, Issue No. 5.

24 Oh, what? You guys jump up there for the
25 easy two. Now I hear crickets.

1 (Laughter.)

2 Okay. Commissioner Brown.

3 **COMMISSIONER BROWN:** Okay. I'll go for
4 it. I do have a few comments to make and then
5 some specific questions to our staff,
6 acknowledging this is a post-hearing
7 recommendation.

8 I have questions specifically on the
9 proposed Attachment A. But first, you know, I
10 know this is a discussion that many in the
11 state are interested in and in the country as
12 well.

13 Florida Power & Light has been the leader
14 in the industry for many, many years, and it
15 often sets the trend rather than follows it. I
16 know over the years it's made investments in a
17 lot of areas that skeptics originally
18 disregarded as unnecessary, but have ultimately
19 delivered substantial and tangible benefits to
20 its customers as well as savings. And I know
21 it strives to continue to have cutting-edge
22 technology that is cleaner, more efficient,
23 while also keeping customer rates low, and I've
24 seen that over the years here on the
25 Commission.

1 Leaders are often visionary, and this type
2 of investment, as with the Woodford project, is
3 an innovative way to secure a low-cost, stable
4 fuel as we become even more and more dependent
5 on natural gas in the future. Currently we are
6 about 65 percent dependent on natural gas.
7 With the EPA's final Clean Power Plan rule, we
8 know that number is only going to go up. And
9 we, as regulators, have a duty to consider
10 carefully these type of proposals that can
11 reduce fuel volatility and maximize -- and
12 minimize the price difference.

13 So given the near state of affairs, I'd
14 like to talk a little bit more about that, and
15 am interested and supportive of the concept of
16 these type of programs, as I was with Woodford
17 and the innovation, but I want to make sure
18 that there are various customer protections in
19 place, and that's paramount.

20 So, Mr. Maurey, with that, my
21 understanding is the most important thing here
22 is for customers to know that the fuel savings
23 for these projects will more than offset the
24 production costs so that there's a net benefit
25 to the customers. That's correct? That's the

1 philosophy?

2 **MR. MAUREY:** That's the company's
3 position, yes.

4 **COMMISSIONER BROWN:** Okay. Can we, can we
5 go to the proposed Exhibit A here and go
6 through some questions specifically that you've
7 made some suggestions for us? Starting with --
8 let's start with the daily burn, the average
9 daily burn rate. I'm trying to get an
10 understanding about how you derived those
11 numbers and whether those numbers are
12 substantiated in the record and whether those
13 numbers make sense. So could you go -- walk us
14 through how you got to that?

15 **MR. MAUREY:** Yes, ma'am. In FPL's
16 proposed guidelines, they suggested maximum
17 volume as an average -- as a percentage of
18 average daily burn of 15, 20, and 25 percent
19 for 2015, 2016, and 2017 respectively.

20 The testimony in the record indicated that
21 those, those were their desired levels, but
22 there is nothing precise about those levels.
23 They weren't required levels. And in the
24 testimony and in the company's brief, it
25 suggested that if the Commission, in its

1 discretion, wanted to test the waters, so to
2 speak, by initially adopting guidelines that
3 scale down the size of the allowed transactions
4 or narrowed the scope of the eligible
5 investments, that it was within the
6 Commission's discretion.

7 We looked at -- staff -- in developing the
8 modifications that you see on Attachment A, we
9 looked at 10 percent as a -- to limit the risk
10 exposure in the year 2017 and then just backed
11 up incrementally from there. There's nothing
12 significant to 7.5 or 5 either. There is --

13 **COMMISSIONER BROWN:** It just was a number
14 that you decided. I kind of want to understand
15 if legally -- I know there's an appeal here, so
16 I don't want to step into an area that we
17 can't. So, so my understanding is -- can I,
18 can I say what the Woodford daily burn rate
19 would be and that wouldn't be crossing into the
20 appellate arena?

21 **MS. BARRERA:** Yes.

22 **COMMISSIONER BROWN:** Okay. So the
23 Woodford rate is about 2 -- maximum daily rate
24 is 2.7 percent.

25 **MR. MAUREY:** That's correct.

1 **COMMISSIONER BROWN:** Okay. And so you've
2 got that. You've got 5 percent though for
3 2015, which I think is acceptable. But 2016
4 you've got 7.5 percent, thinking that they'll
5 obviously be developing more wells and
6 producing more at that time. I'm just trying
7 to understand. I mean, you slashed it by more
8 than half. And if we're going to encourage
9 these type of investments in production, if
10 this is what the Commission wants to do, I
11 just -- that seems kind of a random number, and
12 I think a more reasonable number would be half
13 of what the proposal was to encourage the type
14 of investments.

15 **MR. MAUREY:** That, that is within your
16 discretion, yes.

17 **COMMISSIONER BROWN:** Okay. And, again,
18 you capped it at 10 percent for the year 2017
19 and in the future. Was there a specific reason
20 why you capped it at that amount?

21 **MR. MAUREY:** Not specific to 10 percent.
22 It was meant to limit the exposure until more
23 experience was gained from this form of
24 investment. But it's, it could also -- if you
25 were saying 10 percent in 2016 and 15 percent

1 in 2017 or something higher, that is within
2 your discretion.

3 **COMMISSIONER BROWN:** Thank you.

4 Mr. Chairman, Commissioners, I'm just
5 trying to walk through my thinking about the
6 project, and I'm supportive of this type of
7 initiative. I'm supportive of the program, as
8 I was supportive of Woodford. But I do want to
9 make sure we have some customer protections in
10 place, so I'm going to keep walking us through
11 some questions. And please feel free to chime
12 in.

13 Getting to the 250 million cap that you
14 have on the aggregate on the gas reserve
15 projects over the course of any one year, can
16 you explain that, too?

17 **MR. MAUREY:** Yes. During discussion about
18 the 750 million amount that was proposed, it
19 was suggested that it could be less, and a
20 number of 200 to 250 million was suggested by
21 one of the company's witnesses, and we, we went
22 with the 250 million.

23 **COMMISSIONER BROWN:** Was that for a
24 specific year? Was that just for the year
25 2015?

1 **MR. MAUREY:** That's the aggregate amount
2 in any calendar year.

3 **COMMISSIONER BROWN:** So that would be even
4 if they're producing more in year 2017 and
5 beyond, it's still capped regardless.

6 **MR. MAUREY:** That's correct. It would be
7 a 250 -- well, as is worded here, a 250 million
8 cap per year.

9 **COMMISSIONER BROWN:** So can I ask you how,
10 how much the Woodford project is expected to
11 cost in this year's fuel proceeding?

12 **MR. MAUREY:** Yes. The investment in the
13 record was 191 million.

14 **COMMISSIONER BROWN:** So with this cap of
15 250 million, they could only pretty much
16 participate in one project like the Woodford?

17 **MR. MAUREY:** One project like Woodford or,
18 or a project a little bigger, a little less --
19 up to 250 million per year, yes.

20 **COMMISSIONER BROWN:** Okay. You definitely
21 added some additional protections, I think.
22 Some key points to point out is that there must
23 be a showing that the project is estimated,
24 estimated to generate savings to customers, and
25 that the info that is being relied on to make

1 these protections also include info Florida
2 Power & Light should have known at the time of
3 the contracts. I think those are some key
4 provisions.

5 Also, you included some more transparency
6 in the evaluation with a third-party auditor
7 that we agreed to in the Woodford project. I
8 think those are nice precautions, too.

9 And then you talk -- let's talk about the
10 approved reserves and the probable reserves. I
11 know in the testimony during the hearing there
12 was discussion about additional, additional
13 reserves, and you've limited it to just those
14 two categories. Can you talk about that?

15 **MR. MAUREY:** Yes, ma'am. The SEC, or
16 Securities and Exchange Commission,
17 characterizes gas reserves into three principal
18 categories: Approved, which are 90 percent
19 probable of producing the expected quantity of
20 gas under current terms; probable, which is a
21 50 percent probability of producing the
22 expected gas under current terms; and possible,
23 which only has a 10 percent probability of
24 producing gas under current conditions.

25 The desire of this program -- FPL's stated

1 purpose of this program of investment was to
2 secure a physical supply of gas. And in
3 staff's opinion, if that is, in fact, the
4 scope, that they would focus on proved and
5 probable reserves which have a higher
6 probability of success versus possible reserves
7 within the SEC language is a high uncertainty
8 of producing gas.

9 We've recommended that, with these
10 Attachment A modifications, that at least
11 50 percent of the wells in the investment come
12 from the proved category and the remainder come
13 from the probable category, and that no wells
14 be in the possible category.

15 **COMMISSIONER BROWN:** Thank you. And I
16 know it also states in there, it was originally
17 in there that the areas must be more than
18 likely and have a well-established history of
19 gas production. So the intent is that no
20 wildcatting is going to occur, that these are
21 proven areas.

22 **MR. MAUREY:** That's correct. The
23 company's testimony said they were not going to
24 engage in wildcatting, but upon questioning,
25 the guidelines as proposed did not specifically

1 prohibit wildcatting.

2 **COMMISSIONER BROWN:** Okay. I have two
3 more questions and then --

4 **CHAIRMAN GRAHAM:** Sure.

5 **COMMISSIONER BROWN:** Thank you. Let's
6 talk about the annual review during the fuel
7 clause.

8 If the Commission approves the proposed
9 guidelines in Attachment A as is or with some
10 modification, what will the Commission
11 thereafter review as part of the annual fuel
12 proceedings?

13 **MR. MAUREY:** Well, in the Woodford
14 decision, the Commission added language that
15 the company would engage an independent
16 third-party auditor, that staff would
17 participate in developing the scope of the
18 audit, and that the company would use
19 subaccounts so that the ability to chart or map
20 from the gas accounts to the electric accounts
21 would be easier to, to follow. And the
22 language that is -- that you see in the middle
23 of page 23 is almost the same as the language
24 that was included in the Woodford order.

25 The first audit would take place next

1 year. It's our understanding from the
2 company's testimony that they were going to
3 invest in the Woodford project if the
4 Commission found the investment prudent and
5 recoverable through the fuel clause. There
6 will be a year -- there will be years of
7 experience. There's no Woodford cost in the
8 fuel factor presently, there's nothing to audit
9 presently, but next year there will be an audit
10 of the Woodford project.

11 **COMMISSIONER BROWN:** Okay. And, finally,
12 on page 24 of the guidelines, at the very, very
13 bottom of that page it talks about flexibility
14 to respond to market opportunities, and then
15 (2) of that same paragraph says, "to seek fuel
16 clause recovery for a project that deviates
17 from one or more of the guidelines upon a
18 showing that the project nonetheless is
19 expected to benefit FPL customers." That, that
20 language isn't identical to the language that
21 we have in Guideline II.A, which is a little
22 bit more elaborate that provides that there
23 must be a showing that the project is estimated
24 to generate savings on a net present value
25 basis. Was that the intent, do you know, of,

1 of that?

2 **MR. MAUREY:** Yes. That's -- it's -- the
3 criteria of Guideline II.A would equally apply
4 to any project that they presented under this
5 case-by-case methodology at the end.

6 **COMMISSIONER BROWN:** This to me seems a
7 little bit more vague than the guidelines
8 that's delineated in 2A, so I would think that
9 we would maybe need to have clarification in
10 the guidelines that --

11 **MR. MAUREY:** We can do that, and in the
12 order.

13 **COMMISSIONER BROWN:** Finally, I have
14 another -- it's not really a question. It's
15 more of a, just a general statement for the
16 Commissioners to consider.

17 One of the major concerns that staff had
18 with this particular recommendation was that
19 they didn't have enough information or
20 meaningful experience to understand the range
21 and magnitudes of costs that will be proposed
22 for recovery under the fuel clause with this
23 type of investment. So that being said, I've
24 thought about this a lot. I've tried to think
25 of creative ways to provide some customer

1 protection while encouraging innovation here,
2 which I think this is what the utility is
3 intending to do, and to provide some
4 stabilization of fuel costs.

5 I think this type of program is worthy of
6 our consideration. I think with that being
7 said, if there were a time limit of the
8 duration of this program, and I'm throwing a
9 number out there, just three to five years,
10 somewhere along that time, it would allow us an
11 opportunity to gather enough meaningful data to
12 assess whether the customers are benefiting
13 from the program, whether it should be
14 reevaluated, revisited, tinkered with, what
15 not, and I'd like to kind of throw that idea
16 out in the open.

17 **CHAIRMAN GRAHAM:** Commissioner Brisé.

18 **COMMISSIONER BRISÉ:** Thank you,
19 Mr. Chairman.

20 Thank you, staff, for, for the work that
21 you've done in the analysis that you've put
22 forward and the recommendation that you have
23 put forward.

24 I think by the vote that the Commission
25 took with respect to the project, it's evident

1 that the, the thought to support the innovative
2 approach is here. The other component I think
3 that all of us are concerned about is ensuring
4 that the appropriate balance is struck between
5 providing enough space for that innovation to
6 occur and the appropriate level of protections
7 that need to be in place so that the consumers
8 are protected while benefiting through this
9 process.

10 One of the things that is extremely
11 important to me is recognizing that we don't
12 have experience in this space as a Commission,
13 and FPL on the regulated side does not have
14 experience with this approach. So the concept
15 of three to five years to me makes a whole lot
16 of sense in terms of giving us an opportunity
17 to review everything that we've agreed to in
18 the guidelines, providing that we come to a
19 consensus of what these guidelines should look
20 like today. That in three to five years we'll
21 have an opportunity to take a look at that,
22 take a hard stop and take a look at that and
23 ensure that all the values that we've put in,
24 whether the cap is right, whether the cap and
25 the daily burn makes -- is appropriate, are

1 there adequate protections for consumers with
2 respect to what we envision in terms of the
3 savings that the program will bring, are the
4 reporting requirements adequate for us to be
5 able to gain and glean all the information
6 that, that we need in order to make those
7 decisions moving forward?

8 So from my perspective, and I'm interested
9 to hear from my colleagues, is what are those
10 other things that need to be included in these
11 guidelines so that when we reach a consensus
12 point in terms of number of years for review,
13 that we as a Commission, whether it's the five
14 of us or another set of five, will have an
15 opportunity to look back and identify those
16 factors and answer those questions for
17 themselves to see if the program is in a
18 position that they would continue the
19 guidelines as they are or develop new
20 guidelines based upon the information that is
21 brought in.

22 And so how I envision it, if I were king
23 for a day, is that on year five or coming up to
24 year five, that whatever projects are in the
25 queue, that's where we are. That if there's

1 another project that's coming in in year five,
2 you know, it would come in early and we'd get
3 to a certain point that we sort of begin to
4 evaluate this process. We're not taking any
5 new projects until we get to the point where we
6 have evaluated these guidelines. And once
7 we've evaluated the guidelines and either
8 modified them or, or continued the current
9 guidelines, then we would continue for --
10 continue based upon the new set of guidelines
11 moving forward.

12 Now, there is no retroactive action with
13 respect to the projects that are in the queue.
14 But recognizing the long-term investment that
15 is associated with, with these types of
16 projects, we would have gained, from my
17 perspective, a certain measure of experience to
18 be able to better position ourselves in terms
19 of guidelines looking forward.

20 Now, if I were king for a day as well, I
21 would say every five years we do a similar type
22 of thing, recognizing that these projects
23 through their, their length of life will have
24 different stages in them. And as we are in the
25 different stages, we can learn appropriately

1 from each stage, and that too may impact our
2 decision-making ability and future decisions
3 that Commissions will make with respect to the
4 guidelines. So those are some of my broad
5 thoughts in terms of some of the things that I
6 think that we need to think about with respect
7 to not only this set of guidelines, but how we
8 will look at guidelines in the future as well.

9 **CHAIRMAN GRAHAM:** Thank you, Commissioner
10 Brisé.

11 Commissioner Edgar.

12 **COMMISSIONER EDGAR:** I think it's my job
13 to jump in when I hear those crickets.

14 I've taken a slightly different approach
15 than the, the thoughtful comments of, of my
16 colleagues, although I agree with much of it,
17 and I know we'll get into more of the details.

18 So let me start with the, very briefly
19 with the staff recommendation, which, as
20 always, is very thoughtful and, and based on
21 the record and well approached.

22 I think that it is the responsibility of
23 our professional staff to be cautious and
24 conservative, and sometimes it is our
25 responsibility -- many times it is our

1 responsibility to maybe nudge that or push or
2 pull or twist it around and, and consider what
3 other approaches perhaps may, may also be
4 worthwhile, and I think that's kind of the
5 situation that we are in today.

6 As I'm sure probably we all did, I went
7 back and read the transcript from our
8 discussion on the Woodford item and, and other
9 post -- or hearing record documentation. And I
10 said at the time, and I think many of us did,
11 that the intent of this project, as I
12 understand it and as I believe it to be, is to
13 add some additional measures to reduce
14 volatility within the gas portion of the fuel
15 cost portion of the bill and the costs through
16 securing production while also minimizing risk.
17 And that -- those two factors, reduce
18 volatility while minimizing risk, is what I
19 think -- the whole big picture but yet
20 simplifying it down to its very essence is what
21 it comes down to.

22 I think it's also very important, and,
23 Commissioner Brisé, I think this is within what
24 you were saying, that as a Commission we retain
25 and exercise our authority and our ability to

1 have the information necessary to have
2 flexibility for future decisions and future
3 reviews in order to continue, of course, to
4 exercise our regulatory role and the role of
5 our staff within, of course, the regulatory
6 compact for a monopoly service provider.

7 So, again, coming back to it, when I look
8 at the staff analysis and the staff
9 recommendation and then I review the
10 information and the proposed changes for
11 Attachment A, it almost seems to me that the
12 staff-recommended changes to Attachment A go a
13 long way to countering the reason in the
14 analysis to not approve guidelines at this
15 point in time and to stay with a case-by-case
16 basis.

17 So that brings me then to looking more
18 closely, of course, at the recommended changes that the
19 staff have proposed to us for Attachment A, and so
20 that's where I'd like, like to go next.

21 Commissioner Brown, in keeping with some of,
22 of your comments, and I had this discussion with staff
23 at our briefing recently asking for some of the
24 rationale and the information in the record for the
25 suggested changes to the numbers for the two caps that

1 are part of the attachments, and I am interested, as we
2 discuss it further, in kind of hitting maybe a medium
3 point between what initially was requested and, and the,
4 the suggested changes that the staff has been making.

5 So -- and I know, Mr. Maurey, you touched on
6 this in response to a question from Commissioner Brown,
7 but specifically on the percentages for the maximum
8 volume of average daily burn, can you elaborate again on
9 the rationale of, say, for 2016, 20 to 7.5, in 2017,
10 25 to 10, and is there information in the record to make
11 some adjustments to those recommended changes?

12 **MR. MAUREY:** Well, the record -- my
13 apologies. The record indicates that FPL's
14 proposal is 15 percent, 20 percent, and
15 25 percent. So the record would support within
16 -- it's within the Commission's discretion to
17 go up to those percentages. And staff was
18 looking at, as I said earlier, at limiting it
19 to 20 -- limiting it to 10 percent by 2017 and
20 just went prorated back. And so there's no, no
21 direct link to a witness saying -- listing
22 these percentages. If -- higher percentages
23 than those that are reflected here in the type
24 and strike but lower than what was initially
25 proposed, that is within the Commission's

1 discretion.

2 **COMMISSIONER EDGAR:** All right. Thank
3 you. Well, that is something that I would put
4 out. And I think, Commissioner Brown, you
5 suggested that as well.

6 After my briefing with staff, the numbers
7 that I jotted down would be keeping the
8 5 percent for 2015, recognizing that we're,
9 we're almost, you know, we're just past about
10 halfway or almost at halfway of 2015, and
11 recognizing that we have approved the Woodford
12 project and the amount of money that was a part
13 of that approval. So I think the 5 percent is
14 appropriate, recognizing the situation and the
15 circumstances.

16 I would throw out 10 for 2016 and 15 for
17 2017 for discussion and consideration. Again,
18 I think that takes into account the desire that
19 we all have to, to put some caps on it, but
20 also to encourage continuation of the program
21 for at least the next two years, and we can get
22 into that future time period.

23 And then the -- just going through
24 Attachment A, as Commissioner Brown did,
25 turning the page, for my copy anyway, on page

1 22, Guideline I.D, that is what I consider the
2 second cap that is built into the guidelines,
3 and that staff recommendation of 750 to 250 for
4 the cap, again recognizing and drawing upon our
5 experience and the numbers with the Woodford
6 project, I would be interested in hitting
7 someplace in between those two numbers. I
8 would like to allow for some more well-advised,
9 thoughtful, and well-reviewed growth for 2016
10 if, indeed, we are going to move forward with
11 approving guidelines. So, you know, that
12 number, that happy middle number is 500
13 million. I think we probably could go up,
14 could go down, but I would put that out for
15 consideration.

16 Then I do want to talk a little bit more about
17 the audit language. That is something that I felt very
18 strongly, and I think we all did, but something that I
19 know I felt very strongly about with the Woodford
20 project as we had a long discussion and did indeed add
21 some language regarding a more arm's-length or
22 third-party audit.

23 And, Mr. Maurey, am I correct to say that the
24 language in the middle of page 23 is, if not word for
25 word, but is the same result and requirement for

1 additional projects for that third-party audit that we
2 did apply and require for Woodford?

3 **MR. MAUREY:** That's correct.

4 **COMMISSIONER EDGAR:** Okay. And, and
5 because we have had -- and I realize the
6 results aren't in and that that audit is yet to
7 come, but because there have been some
8 additional time and you all have had the -- we
9 all, particularly the staff -- to do some
10 additional analysis and some different thought,
11 are there tweaks or changes to that language or
12 that approach that you would recommend or feel
13 more comfortable with going forward, or do you
14 feel like we, we got it about right?

15 **MR. MAUREY:** You've got it about right.

16 **COMMISSIONER EDGAR:** Okay. I would say
17 we, but thank you.

18 **MR. MAUREY:** We, yes.

19 **COMMISSIONER EDGAR:** Okay. And then I had
20 some questions on the -- and I think,
21 Commissioner Brown, you were touching on
22 this -- the interaction between the additional
23 language added, suggested to be added to
24 Guideline II.A, and then also the paragraph
25 added right immediately under II, customer

1 savings.

2 Mr. Maurey, could you just talk about
3 those two suggested additional language changes
4 again for me, and, and if indeed there is some
5 interaction, and then also how the staff
6 believes that that does add additional
7 protections for customers and also for us to
8 have the information that we need going
9 forward?

10 **MR. MAUREY:** Yes. The -- during the
11 hearing, the Intervenors testified that there
12 were limits to the transparency of how these
13 investments would be reported. There were --
14 this is, as the record indicates, an investment
15 program that's already undergoing on the
16 nonregulated side of the company. And it was
17 suggested that there's no way to compare or
18 verify that the investments that were being
19 recorded on the books of FPL would be as good
20 as the investments they're keeping on their own
21 account.

22 And this language in II and carried -- and
23 added to under Guideline II.A would require the
24 company to provide that level of detail so the
25 Commission could compare how gas reserve

1 investments are working throughout the company
2 and to ensure that -- no one is suggesting the
3 company would be gaming this, but in order to
4 ensure that there is no gaming occurring, this
5 type of transparency would allow that type of
6 review.

7 **COMMISSIONER EDGAR:** Mr. Maurey, for the
8 paragraph added under II, the customer savings,
9 all of it, but especially towards the end, how,
10 how far does this direct that we either go or
11 have the ability to go as far as receiving
12 information, auditing, reviewing the
13 unregulated entities that are a part of this,
14 this effort?

15 **MR. MAUREY:** Okay. Well, this language is
16 asking for results. It would not open the door
17 for staff, for the Commission to audit any of
18 NextEra's other investments. It would be a
19 reporting requirement. And they could file it
20 under confidentiality. It's a nonregulated
21 activity; that would be appropriate. The --
22 and if there were any reasons for the company
23 to caveat the reported results, they would have
24 that opportunity as well.

25 Normally the Commission would not delve

1 into this area, but because of its request to
2 have nonregulated investments recovered through
3 the fuel clause, that, that treatment opens the
4 door, in staff's opinion, to, to look at these
5 types of investments across the company.

6 **COMMISSIONER EDGAR:** All right. Thank
7 you.

8 Again, Commissioners, I -- from my
9 discussions with staff and my understanding, I
10 believe very strongly that this language goes a
11 long ways and is intended to, again, protect
12 the, protect and promote the ability for our
13 staff and for the Commission to have the
14 information that we would need as this goes
15 forward. But if there are tweaks or ways to
16 make that language a little more workable, I'm
17 certainly open to that.

18 And then I guess my last, for the moment,
19 comment would be, Commissioner Brown, you
20 suggested a three- to five-year review.
21 Commissioner Brisé, I think you kind of were
22 around the five-year mark. I am very
23 comfortable with that approach and with that
24 concept. I think that's just kind of a best
25 practice in general when you're going -- when

1 you're doing something a little bit differently
2 to put in, you know, an opportunity to review
3 and learn and see if there are some ways to
4 improve or be more efficient or more effective.

5 The time period doesn't -- I guess from
6 the conservative regulatory bureaucrat that I
7 am, I'd probably lean more towards three than
8 five, but I'm open to discussion on that. And
9 I'm not completely sure how to word that if we
10 get to the point of directing our staff, so
11 I'll think on that, and I would ask our staff
12 to as well. Thank you.

13 **CHAIRMAN GRAHAM:** Question to you,
14 Commissioner Edgar. Are you looking -- I guess
15 adding on to what Commissioner Brisé and Brown
16 said, are you looking to review in three years
17 or basically sunset and then reestablish in
18 three years?

19 **COMMISSIONER EDGAR:** I'm going to have to
20 think about that a minute.

21 **CHAIRMAN GRAHAM:** Okay. Commissioner
22 Patronis.

23 **COMMISSIONER PATRONIS:** Thank you,
24 Mr. Chairman. And thank you, staff, for all
25 your hard work on this.

1 In, in reviewing, I'm, I'm in total
2 agreement, in support of the Woodford auditing
3 practices being included and moving forward. I
4 think that's, that's important. I think only
5 probable or proven wells should be considered.
6 I'm totally in support of the three to five. I
7 don't know which is, which is the better mix.
8 But in the spirit of what we're charged with
9 and prudent use of the ratepayers' monies, I
10 think, I think -- I'm looking forward to seeing
11 how we can endeavor into whole new unchartered
12 territory.

13 **CHAIRMAN GRAHAM:** Commissioner Brown.

14 **COMMISSIONER BROWN:** I came up with
15 something with regard to the three to five
16 year, some language, with the intent that it
17 would be proposed for some discussion. So
18 just -- I'm going to read it aloud, if that's
19 okay.

20 The Commission will initiate the review of
21 the approved guidelines three years from the
22 issuance date of the final Commission order
23 approving the guidelines. Consistent with
24 these guidelines, all projects entered into
25 during the three-year period will be deemed

1 prudent, and the approval of those projects
2 will not be revisited by the Commission unless
3 the Commission finds that there was fraud,
4 perjury, or intentional withholding of key
5 information. However, prudence will not attach
6 for any projects entered into after the
7 termination of the three-year period. I don't
8 know about that last sentence.

9 But I believe this will allow the
10 Commission, our staff, and the parties the
11 opportunity to have more experience with these
12 type of projects and will provide more actual
13 data on these projects. The only, the only one
14 I'm not so comfortable with is that "However,
15 prudence will not attach," because it could
16 possibly after we revisit it. But the intent
17 is to kind of not sunset it but to have it
18 revisited, reevaluated, reanalyzed, but for
19 anything, kind of like what Commissioner Brisé
20 said, for anything up to that period, that
21 those would be entitled to cost recovery under
22 the fuel clause. And I think that kind of
23 encapsulates it.

24 **CHAIRMAN GRAHAM:** So question to you,
25 Commissioner Brown. What happens from the time

1 your three-year mark is when you're supposed to
2 review, what happens to anything that comes in
3 from the beginning of the review to the end of
4 the review?

5 **COMMISSIONER BROWN:** I was kind of hoping
6 to have that discussion to see if those would
7 just kind of be stayed or if those could
8 trickle in. I talked it, I talked it over with
9 staff. I think the intent was to have them
10 just stop so that the Commission could set up a
11 new docket to review this type of program and,
12 and then go from there.

13 **CHAIRMAN GRAHAM:** I have to say I'm a
14 little lost. What you sound -- what you said
15 sounded a lot like sunseting where at that
16 point it stops until you restart it again.

17 **COMMISSIONER BROWN:** I don't mean to say
18 the word sunset by any means, because we could
19 continue the program but a docket would be set
20 up to discuss it further. It could -- it would
21 be initiated upon the three years' expiration
22 date. I'm not married to the idea of any other
23 projects coming in during that analysis,
24 don't -- are not entitled to cost recovery. I
25 just wanted to throw that out there. I took

1 this approach first rather than the other.

2 **CHAIRMAN GRAHAM:** Commissioner Brisé, help
3 us.

4 **COMMISSIONER BRISÉ:** So my, my thought,
5 and I'm conflicted between the three- to
6 five-year, and this is the reason why I'm
7 conflicted in terms of three to five years.
8 Considering what should happen at the beginning
9 of the exploration period and as time
10 progresses, I think part of the thing that we
11 want to be able to gain is the life of these
12 projects, and so having a five-year window for
13 me provides greater opportunity to do that.

14 In terms of the sunset, I mean, actually
15 it would be to ten or 12 years, which would
16 make more sense, but five years, to me, would
17 provide us enough information. But in terms of
18 the sunset component, I think it's a matter of
19 timing, that we don't have to sunset anything.
20 We, we could set the review in such a way that,
21 that we are done by the review within that
22 five-year period. Right? So at the end of the
23 five-year period, we've gone through the
24 process of the review, and then we can make a
25 determination as to what the new guidelines

1 will look like moving forward so it doesn't
2 stop any projects coming in up to that point.
3 And any projects that are coming in post the
4 review will be subject to the new guidelines,
5 if there are -- if there's provisions to the
6 guidelines.

7 So I think it's just a matter -- that is a
8 more administrative component of it than having
9 a hard, quote, unquote, sunset that we say, you
10 know, at this point no more projects are, are
11 let at this point.

12 **CHAIRMAN GRAHAM:** So let me think out
13 loud.

14 **COMMISSIONER BRISÉ:** Sure. That's always
15 dangerous.

16 **CHAIRMAN GRAHAM:** So what you're saying is
17 if, if we're going, if we're going for a
18 five-year window, in essence we would start the
19 review at year four.

20 **COMMISSIONER BRISÉ:** Right.

21 **CHAIRMAN GRAHAM:** And so we will review
22 and then propose new guidelines and then
23 approve those new guidelines, so at the
24 five-year mark those new guidelines will, will
25 rule the day.

1 **COMMISSIONER BRISÉ:** Right. So from my
2 perspective, at year, at year five, at the top
3 of year five your review beings. At the end of
4 year five, you're done with your review. So
5 projects can still come in till the end of year
6 five. Year six the new guidelines kick in
7 because you're done with your review. Right.

8 **CHAIRMAN GRAHAM:** At the end of year five.

9 **COMMISSIONER BRISÉ:** At the, at the end of
10 year five.

11 **CHAIRMAN GRAHAM:** So we want to make sure
12 that --

13 **COMMISSIONER BRISÉ:** Right.

14 **CHAIRMAN GRAHAM:** -- that the guidelines
15 are approved and ready to go.

16 **COMMISSIONER BRISÉ:** Right. Right. Yeah.

17 **CHAIRMAN GRAHAM:** So -- all right. So we
18 just need to make sure, and I guess staff can
19 do that --

20 **COMMISSIONER BRISÉ:** Right.

21 **CHAIRMAN GRAHAM:** -- how far before the
22 end of year five do we need to start the
23 process to make sure the review was done,
24 guidelines were posed and approved.

25 **COMMISSIONER BRISÉ:** Sure. Yeah.

1 **CHAIRMAN GRAHAM:** Commissioner Patronis.

2 **COMMISSIONER PATRONIS:** I'm just -- I'm
3 going to concur with Commissioner Brisé. But
4 also these are long-term projects, and I think
5 five years is probably the appropriate time
6 window to shoot for.

7 **CHAIRMAN GRAHAM:** Commissioner Brown.

8 **COMMISSIONER BROWN:** I want to turn to
9 staff, who helped kind of formulate this
10 language with me. Do you think that the
11 language as proposed -- and I'm going to turn
12 to Ms. Crawford, who particularly helped me
13 with it -- do you think the language that's
14 proposed encapsulates that idea? And it seems
15 that there's a sentiment to five years.

16 **MS. CRAWFORD:** I think however many years
17 the Commission wants to do is certainly within
18 its discretion. If, if the will of the
19 Commission is to have a period of review start
20 prior to the five-year expiration, it certainly
21 can, can incorporate language to that effect.

22 I would have to ask staff to -- I would
23 prefer to have staff's feedback on how long
24 that process might be. I would certainly want
25 to incorporate time for a hearing. This might

1 be one we would even set directly for hearing,
2 but I would like my General Counsel's and the
3 Commission's input on that as well. But we'd
4 want to make sure, if the intention is to have
5 that review process complete at the end of five
6 years so there's no question about new projects
7 coming on, that we do afford the Commission,
8 the staff, and the parties an opportunity to
9 have a full vetting of that process, of the
10 review. Does that make sense?

11 **COMMISSIONER BROWN:** Uh-huh.

12 **MR. CRAWFORD:** So I guess for the review
13 process --

14 **MR. MAUREY:** We can do the review in a
15 year, yes.

16 **MS. CRAWFORD:** I would anticipate for, for
17 a hearing process, again, that's what I would
18 anticipate we would need to account for, to be
19 prepared for, a year should be reasonable.

20 **CHAIRMAN GRAHAM:** Commissioner Edgar.

21 **COMMISSIONER EDGAR:** Commissioner Brown,
22 could -- sometimes you talk faster than I hear.
23 Would you please read the proposed language
24 again just a tad more slowly so I can think it
25 through?

1 **COMMISSIONER BROWN:** I talk fast. We all
2 know that. So does our court reporter.

3 The Commission will initiate the review of
4 the approved guidelines five years from the
5 issuance date of the final Commission order
6 approving the guidelines. Consistent with
7 these guidelines, all projects entered into
8 during the five-year period will be deemed
9 prudent, and the approval of those projects
10 will not be revisited by the Commission unless
11 the Commission finds that there was fraud,
12 perjury, or intentional withholding of key
13 information.

14 And then there's an additional sentence
15 that I'm not going to include. I don't think
16 it's appropriate. But then the last sentence
17 is, I believe this will allow the Commission,
18 our staff, and the parties the opportunity to
19 have more experience with these type of
20 projects and will provide more actual data on
21 these projects.

22 I would also like to add possibly the
23 inclusion of any projects entered into after
24 the initiation of the review process is
25 concluded will be subject to the new

1 guidelines -- something to Commissioner Brisé's
2 points.

3 **COMMISSIONER BRISÉ:** Restate that. Say
4 that last part again.

5 **COMMISSIONER BROWN:** Any projects entered
6 into after the initiation of the review process
7 or conclusion will be subject to the new
8 guidelines.

9 **COMMISSIONER BRISÉ:** No. That's not --

10 **COMMISSIONER BROWN:** Isn't that what
11 you're saying?

12 **COMMISSIONER BRISÉ:** That's not where I'm
13 coming from. My -- where I'm coming from is in
14 year five any project that falls within that
15 five-year window is within that five-year
16 window.

17 **COMMISSIONER BROWN:** So year six --

18 **COMMISSIONER BRISÉ:** Year six, any project
19 that comes in for year six then would fall
20 under the new guidelines, if there are new
21 guidelines.

22 **COMMISSIONER BROWN:** That's what I was
23 trying to get, get at actually. At the
24 conclusion then of the review process.

25 **COMMISSIONER BRISÉ:** Right.

1 **CHAIRMAN GRAHAM:** Well, then that becomes
2 the interesting spot. You said if there are
3 new guidelines.

4 **COMMISSIONER BRISÉ:** Right.

5 **CHAIRMAN GRAHAM:** So after the review, you
6 can decide that the guidelines are fine and
7 we're going to move forward the way we are.

8 **COMMISSIONER BRISÉ:** Absolutely.

9 **CHAIRMAN GRAHAM:** What happens if you get
10 bogged down in review and we never get around
11 to changing guidelines? Do they -- everything
12 --

13 **COMMISSIONER EDGAR:** Then we need a new
14 chairman.

15 **CHAIRMAN GRAHAM:** I'm sorry?

16 **COMMISSIONER EDGAR:** Then we need a new
17 chairman.

18 (Laughter.)

19 **CHAIRMAN GRAHAM:** I guarantee this will
20 not be the chairman in year five.

21 I just -- I get where you're coming from,
22 and it sounds like we're all saying the same
23 thing. I just want to make sure that there is
24 a mechanism that forces us to review, there's a
25 mechanism that forces us to make a decision,

1 and that's why I like the idea of sunseting
2 because I want for a decision to be made and
3 not for this thing to, you know, kind of have a
4 life of its own sort of thing.

5 And that's the only reason -- I mean,
6 people may not like the term "sunset," but I'm
7 forcing a decision be made, and that's, that's
8 the only reason why I throw that out there.

9 Commissioner Brisé.

10 **COMMISSIONER BRISÉ:** Yeah. So part of the
11 reason why I didn't -- why I'm not partial to
12 the sunset -- normally sunsets to me make a
13 whole lot of sense. But if you have a sunset,
14 you can have a situation that, you know, it
15 just, you just let it die just because versus a
16 review period is just that. You're reviewing,
17 and if you, if you can't decide in your review,
18 what you, what you have continues to work
19 versus a sunset. So if you don't review within
20 that period and you don't set the parameters
21 for extending your review, then what you have
22 continues to stand. That's how it works in my
23 mind. Now, I'm not an attorney, so it may not
24 work that way here at the Commission. But from
25 my perspective, if you go into year five and

1 you begin the process of the review and
2 ultimately you do not complete that process,
3 the guidelines continue to stand because you
4 have not put a sunset on it.

5 Now when you get to the end of year five,
6 you have not come with new guidelines or have
7 not affirmed the current guidelines and you
8 have -- and you need to extend, then you can
9 extend that, recognizing that whatever comes in
10 in that sixth year would fall under the new
11 guidelines.

12 **CHAIRMAN GRAHAM:** So you're saying that
13 there needs to be language forcing you to
14 extend it?

15 **COMMISSIONER BRISÉ:** I don't know that you
16 need the language in there to, to force you to
17 extend it. I'm just saying that the language
18 as we're discussing now is sort of permissive
19 in that sense. That, that you set your
20 deadline for your guidelines. If you don't
21 complete that task, the guidelines continue as,
22 as laid out.

23 **CHAIRMAN GRAHAM:** Once again, I'm just
24 playing devil's advocate here because there
25 quite possibly could be five new people all

1 sitting here and it's a complete different,
2 it's a complete different world, and it may not
3 be reviewed, it may not have new guidelines
4 come up, and this thing just kind of putters
5 along. And our focus right now is because
6 there is so much unknown that we will review
7 and we will make a determination to either
8 continue the status quo or tweak left or right.
9 And that's what I'm saying, that I think we
10 need to be getting to that so five years from
11 now whoever is sitting here is not just
12 ambivalent to the conversation that we are
13 having right now. Does that make sense?

14 **COMMISSIONER BRISÉ:** Yeah.

15 **CHAIRMAN GRAHAM:** All my lights are on.

16 **COMMISSIONER BRISÉ:** Commissioner Edgar
17 first.

18 **CHAIRMAN GRAHAM:** Oh, staff. Let's go
19 with staff first, and then we'll go back to the
20 Commissioners.

21 **MR. CRAWFORD:** Actually I was wondering if
22 this might help address that question of having
23 the proceeding take place prior to the
24 expiration of the five years, if that's what
25 the Commission wants to go with. Something to

1 the effect of the proceeding shall be initiated
2 prior to the expiration of the five-year period
3 and designed to result in a final decision by
4 the Commission by the expiration of the five
5 years.

6 The question then becomes, as you've been
7 discussing, what happens as the default if, if
8 there is no change to the guidelines or the
9 decision ultimately hasn't been made at that
10 time? Do you want to have, as you've been
11 saying, a sunset that, that any, any projects
12 entered into past the five years, absent the
13 establishment of new guidelines, shall not be
14 deemed prudently, you know, with a presumption
15 of prudence? That's for the Commission to
16 decide whether they want to take that step or,
17 as Commissioner Brisé has discussed, simply
18 have the existing approved guidelines continue
19 on until such time as guidelines are either
20 withdrawn, modified, so forth.

21 **CHAIRMAN GRAHAM:** Let's start at the top.
22 Commissioner Brown.

23 **COMMISSIONER BROWN:** I was hoping you'd
24 start with Commissioner Edgar, but --

25 **CHAIRMAN GRAHAM:** Okay. Commissioner

1 Edgar.

2 **COMMISSIONER EDGAR:** You know, when you
3 put these lights in when you first became
4 Chair, I told you I didn't like them. And
5 then, and then as time went on, I became
6 more -- and I admitted that -- but I don't like
7 these new lights because I'm pushing this
8 button, I am pushing this button and nothing's
9 happening over there. So to our staff, we need
10 to, we need to work on that. Because I've been
11 pushing this button; we've gone way past the
12 point that I wanted to make.

13 However, since you finally called on me --
14 anyways, the question of review or sunset, and
15 you asked me that and I said I wanted to think
16 about it. Now that I've had the chance to
17 think about it, my experience -- and I admit
18 this comes from my background of having early,
19 early in my professional career, then
20 professional staff in the Legislature, and
21 having conducted many analysis and reviews and
22 written many reports for consideration, of
23 course, by the legislators regarding programs
24 that were sunseting, statutes that were
25 sunseting, and programs that were sundowning,

1 and my experience over many years of that is
2 that it is very well intentioned. However, it
3 causes so much angst and handwringing and,
4 honestly, inefficiency that I don't know that I
5 would recommend that an actual full effect of
6 sunset would be the best way for us to go.

7 Okay. I do think we need to tweak
8 whatever language, and I think our staff can do
9 that. We don't need to necessarily come up
10 with the exact words, but certainly clear
11 enough for staff to have the direction to come
12 up with the words. And then as always, before
13 the order is issued, if any Commissioner wants
14 to look at that draft language to make sure
15 that it -- or to at least see if it meets,
16 there is that opportunity. So I think, I think
17 that that's good.

18 I think that if we're concerned about
19 there not being enough continuity of knowledge
20 or experience five years from now, then make it
21 three. Make it three. And I don't feel
22 strongly, but that would address one of the
23 concerns potentially that our Chairman raised.
24 I think it's important we are clear with what I
25 believe our intent is that during that one-year

1 period where our staff is conducting the
2 review, that the guidelines that are in effect
3 at that time are what govern. I think that
4 needs to be clear and it needs to give
5 certainty to all that are involved.

6 And so I think if we're going to go with
7 the five years, it needs to be along the lines
8 of during the review period the current
9 guidelines are in effect, and that if we go
10 with the five years, that our staff begins the
11 process to initiate the review four years after
12 the effective date of the order. So that's the
13 way I would approach that.

14 **CHAIRMAN GRAHAM:** Mr. Baez.

15 **MR. BAEZ:** I could very well make this
16 more complicated, but I really am trying to
17 simplify it. And I think that, Commissioners,
18 you, judging from your conversation and where
19 your interests, I think, lie, you're probably
20 best served just by giving staff instruction to
21 begin a review at a certain point in -- at a
22 time certain. I would urge you to trust the
23 process. And I think the, the comments that
24 Commissioner Edgar made are well taken, and I
25 would look to General Counsel to confirm this,

1 but it seems to me that, for example, in a
2 rulemaking universe, the rule that you're
3 reviewing is in force until the rule changes,
4 and it has an effective date. And I think
5 that's sort of the notion that would control by
6 what you all are discussing. So it would be my
7 sense that just giving a date certain upon
8 which to begin a review of, of whatever you're
9 going to approve today would probably be
10 sufficient. You can, you can discuss the scope
11 of the review or the parameters or what have
12 you, that's your discretion, but just by giving
13 a hard date at which you want that to begin
14 should probably be sufficient. I'm seeing
15 nods, so maybe that'll be simpler.

16 **CHAIRMAN GRAHAM:** Mr. Beck.

17 **MR. BECK:** Yes, I concur, you know, as
18 long as -- clarity is all important on the
19 issue. And as long as that's what you want, I
20 think we would get there.

21 **CHAIRMAN GRAHAM:** So let me understand.
22 What you said is what he said.

23 **MR. BECK:** Yes.

24 **CHAIRMAN GRAHAM:** Commissioner Brown.

25 **MR. BECK:** Could I --

1 **CHAIRMAN GRAHAM:** Yes.

2 **MR. BECK:** I do have one question,
3 Mr. Chairman. On the language that it says,
4 consistent with these guidelines, all projects
5 entered into in the five-year period will be
6 deemed prudent except certain things, I wanted
7 to make sure or at least understand the
8 guidelines in the staff recommendation at the
9 top of page 23, II.A, show -- govern the
10 evaluation of prudence. And my question is, is
11 it your intent that those, those evaluation
12 criteria will remain in effect during that
13 period of time?

14 **COMMISSIONER BROWN:** Of course, because
15 these are the guidelines that would be in
16 effect. So, yes, that's correct.

17 **MR. BECK:** Okay.

18 **CHAIRMAN GRAHAM:** Commissioner Brown.

19 **COMMISSIONER BROWN:** Well, I'm just so
20 happy that Commissioner Edgar got to go before
21 me because she covered the material with regard
22 to the sunset issue.

23 I think staff has enough information from
24 the discussion, and I just want to get --
25 before we can move on from this topic, are you

1 all comfortable with everything the group has
2 said? I know Commissioner Edgar and I
3 originally had a three- to five-year idea about
4 it, but it seems that the other Commissioners
5 at the other end like five. There is a
6 suggestion that maybe we have the discretion;
7 we must initiate no later than five years but
8 somewhere between three and five. And they
9 could word it, the legal lawyers can do all
10 that kind of stuff, wordsmithing.

11 **MS. CRAWFORD:** I think it would be
12 helpful, just to be clear, are you wanting us
13 to initiate after three years, four years, or
14 five years of the effective date of the final
15 order?

16 **COMMISSIONER BROWN:** My intention was to
17 really begin as -- at the earlier part, three
18 years.

19 **MS. CRAWFORD:** Okay.

20 **COMMISSIONER BROWN:** But my understanding
21 is my colleagues prefer five.

22 **MS. CRAWFORD:** We will, we will craft it
23 however the vote goes.

24 (Vote taken.)

25 **CHAIRMAN GRAHAM:** Commissioner Patronis.

1 **MS. BARRERA:** Commissioners, as the one
2 who would be writing, not to belittle what my
3 supervisor says, I -- my understanding is that
4 the review period would begin, if it's five
5 years, at the beginning of the fifth year. It
6 would end, like the fuel docket, it would end
7 by the end of the fifth year, and then it would
8 be effective on, beginning the sixth year.

9 **CHAIRMAN GRAHAM:** You're saying the same
10 thing. The end of the fifth year is the
11 beginning of the sixth year.

12 **MS. BARRERA:** Right. I'm sorry. But,
13 yes. And the guidelines would continue in
14 effect.

15 **CHAIRMAN GRAHAM:** Well, now, I guess my
16 question is, and this is key, when you say the
17 review process, do you mean the review process
18 and the proposed new guidelines or the proposed
19 continuance of the current guidelines all
20 happens in that year period of time? And
21 that's a staff question. Can you get all that
22 done in a year period of time?

23 **MS. BARRERA:** Yes. I think we concur that
24 that can be done within a period of time. I
25 think the way I envision it, of course you can

1 decide, was that towards the -- at the hearing
2 towards the end of the year either -- the
3 Commission would make a decision that either
4 new guidelines would be, these are the new
5 guidelines or we continue the guidelines. You
6 know, both options would be --

7 **CHAIRMAN GRAHAM:** But I just want to make
8 sure that we're going to review and be able to
9 move forward at that time.

10 **MS. BARRERA:** Right. Yes, I believe so.

11 **CHAIRMAN GRAHAM:** Commissioner Patronis.

12 **COMMISSIONER PATRONIS:** Thank you,
13 Chairman. Just to recap, these are long-term
14 projects. I can't stress that enough. And as
15 Commissioner Edgar can attest to, permitting
16 does not happen overnight. The details in
17 order to get the type of facts to know how this
18 Commission moves forward in the future, whether
19 it's this exact Commission, because this exact
20 Commission could be here five years from now,
21 or it could be a brand new Commission or some
22 other mix of it, but those details and facts
23 for anybody to make a good, educated decision
24 will be very hard to get a, a good conclusion
25 after three years. I think five years will at

1 least allow the permitting process to, to allow
2 hiccups that take place. I'm just, I'm just,
3 again, stressing leaning towards five because
4 of the long-term nature of what we're looking
5 at.

6 **CHAIRMAN GRAHAM:** So let me see if I
7 understand what we will call the Brisé
8 amendment, if he chooses to say it, that at the
9 end, at the end of the four-year period, so
10 four years from whenever the final order comes
11 out, we can even tie it to the fiscal year, but
12 four years we will start the review process.
13 And we will plan on within 12 months to review,
14 make any changes to the guidelines that we deem
15 necessary, and be ready to move forward with
16 those changes approved and what have you by the
17 beginning of year six, which will be the end of
18 year five. Would you consider that your
19 amendment?

20 **COMMISSIONER BRISÉ:** Yeah. I think when
21 we get to that point --

22 **CHAIRMAN GRAHAM:** Okay.

23 **COMMISSIONER BRISÉ:** -- in terms of that,
24 absolutely. I think that that language is
25 consistent with, with what I have in mind.

1 **CHAIRMAN GRAHAM:** Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you. I would
3 just add that another option of that review
4 would be to withdraw the guidelines and say
5 this has gone on for this long, but facts have,
6 you know, circumstances have changed. And so I
7 think the options, of course, to that, to that
8 Commission would be, after a review, continue,
9 amend, or end.

10 **COMMISSIONER BRISÉ:** Right.

11 **CHAIRMAN GRAHAM:** Okay. That horse is
12 beaten.

13 Let's take a five-minute break. It's
14 five till, so let's get back here -- let's not
15 kid myself. Let's get back here at five after
16 11:00, a ten-minute break.

17 (Recess taken.)

18 Let's move on on Item No. 3. I think
19 we've kind of locked down what we think the
20 timeframe should be. Now let's see if we can't
21 lock down some more of the details. And
22 everybody wants to speak at once.

23 I was going to say I'll make a motion if
24 someone wants to take the gavel. Commissioner
25 Edgar.

1 **COMMISSIONER EDGAR:** Was that crickets?

2 I'm still thinking on that timeline, just
3 so y'all know. But I would like to move us
4 along to some of the other points that were,
5 were raised and that I did. And so I think I'd
6 like to start, if I may, at this point with the
7 two caps that in the written version are on
8 page 21 and 22 of the item in front of us.

9 The first regards the maximum volume as a
10 percentage of average daily burn. I made some
11 comments earlier that I would like us to
12 consider something in between what had been
13 initially requested and what the staff has
14 suggested in the amended version. Earlier
15 today I suggested 5, 10, 15, but I'm very open
16 to discussion. But I do think somewhere in the
17 middle is where I would, I would like, in my
18 opinion, for us to, to end up at the end of our
19 discussions.

20 And then as far as the cap for the amount
21 of investment per year, initially requested at
22 750, suggested at 250, and per my comments
23 earlier regarding the amount for the Woodford
24 project and what we have learned as we're
25 continuing, as that moves forward, I'm going to

1 suggest 500 million. I think that is an
2 appropriate cap that gives appropriate
3 protections and parameters, but that also
4 recognizes that at 250 you may have just one
5 project and you may be missing some
6 opportunities, and also that it is an up to.
7 It is not a required amount, it is up to. So
8 I'd like to put those out for, if I may, for
9 our next points of discussion.

10 **CHAIRMAN GRAHAM:** That sounds like a good
11 place to start. Let's talk about the Edgar
12 suggestions of 5, 10, and 15 and the yearly cap
13 of 500 million.

14 Commissioner Brown.

15 **COMMISSIONER BROWN:** Thank you. And I
16 think earlier I made some comments about
17 encouraging this type of investment, and
18 obviously as the years pass, they're going to
19 be gaining more experience and hopefully more
20 production as well. So the numbers that I
21 believe that they have as the daily burn
22 probably are not accurate of what they're going
23 to be achieving and what their potential --
24 capable of achieving and thereby the savings
25 associated with that. So I actually had 5, 10,

1 20, knowing that in year 2017 they're going to
2 be producing a lot more and, of course, the
3 associated cap would thereby have to be more.
4 Obviously in consideration of what the Woodford
5 project is already, 191, if you're going to do
6 more than one project, even at 250 you just,
7 there's not a lot of flexibility there. So I'm
8 amenable to the 500 Commissioner Edgar
9 proposed. So with that, I -- my suggestion
10 would be about 5, 10, 20, with a cap at 500.

11 **CHAIRMAN GRAHAM:** Would you consider 5,
12 10, 15, 20 since we're going more than just the
13 three years?

14 **COMMISSIONER BROWN:** Yes. Good idea.

15 **CHAIRMAN GRAHAM:** Commissioner Brisé.

16 **COMMISSIONER BRISÉ:** Thank you, Mr.
17 Chairman.

18 Mr. Maurey, Mr. Maurey, if you can talk
19 about the interplay between the, the dollar cap
20 and the daily burn cap and how they intersect
21 with each other, and ensuring that the numbers
22 that we are talking about actually mesh so that
23 you have -- so that they're achievable if the
24 up to is, is, is a possibility moving forward.

25 **MR. MAUREY:** Yes. We, we have one data

1 point at this time, the Woodford project. And
2 as we mentioned, it was a \$191 million
3 investment for a maximum volume as a percentage
4 of average daily burn of 2.7 percent. And
5 these two limits, they work in conjunction but
6 they are separate. Because the, the percentage
7 of average daily burn will be cumulative over
8 time as additional projects are added, whereas
9 the aggregate annual investment amount is per
10 year. So they do work in conjunction, but they
11 are separate. And use -- the difficulty though
12 in extrapolating from Woodford is -- the
13 testimony indicated that was one example of a
14 range of agreements, and that relationship may
15 or may not remain constant to. But if we were
16 to presume it remains constant, then raising
17 the limit is consistent with raising this
18 percentage of average daily burn.

19 **CHAIRMAN GRAHAM:** Okay. So the last I
20 heard, we're looking at 5 in year 2015, 10 in
21 2016, 15 in 2017, and 20 in 2018, and \$500
22 million per year capped. Is there any other
23 discussion about that? Okay. We have a good
24 understanding on that one. Now let's move on.
25 Do we want -- Commissioner Brown.

1 **COMMISSIONER BROWN:** Mr. Chairman, I'm
2 comfortable with a lot of Section II, the
3 customer savings provision that they have in
4 there, the suggested underlying changes.

5 I don't know -- I know Commissioner Edgar
6 talked a little bit about that independent
7 third-party auditor, if we want to talk a
8 little bit more about that at this juncture,
9 but I'm comfortable as is under that section
10 right now.

11 **CHAIRMAN GRAHAM:** Okay. Anybody else?

12 **COMMISSIONER BROWN:** Okay. Moving to the
13 supply diversity section, Section III, I'm
14 comfortable with those suggested changes as
15 well. Commissioner Patronis mentioned earlier
16 in his comments that he, he was comfortable
17 with the proven and the probable reserve, so I
18 think we may have some collaboration here.

19 Moving to Section IV, the characteristics of
20 gas reserves, I'm comfortable with those parameters
21 except for the inclusion at the very bottom of the page
22 that I discussed with Mr. Maurey regarding including the
23 same benefit standard as is delineated in Guideline
24 II.A. Because to me the "is expected to benefit FPL
25 customers" is a little more vague than as specified

1 under II.A, which says that they will be based on a
2 showing that the project is estimated to generate
3 savings for customers on a net present value basis. And
4 other than that, I think we have to address the
5 timeframe somewhere in there, but those are my only
6 issues.

7 **CHAIRMAN GRAHAM:** Commissioner Brisé.

8 **COMMISSIONER BRISÉ:** Thank you,
9 Mr. Chairman. If we are comfortable with all
10 these other aspects, if we're back in the
11 circle to the timeframe issue, maybe we can be
12 permissive in the language that would allow us
13 to -- allow us the flexibility to begin the
14 review or have the option to begin the review
15 not before year three and not beyond year five.
16 So, therefore, the Commission then has the
17 ability to, to do that based upon the
18 circumstances on the ground at that time.

19 **CHAIRMAN GRAHAM:** I have to say I'm a
20 little lost. Say that again, please.

21 **COMMISSIONER BRISÉ:** Sure. So rather than
22 setting a hard cap -- a hard timeframe of five
23 years or hard timeframe of review has to be
24 done in year three or has to be done in year
25 five, we're saying now that we have the option

1 to have the review completed in year three,
2 year four, or year five as the Commission deems
3 necessary.

4 **CHAIRMAN GRAHAM:** So I guess my question
5 is, and this goes back to the fear of what
6 happens if nothing happens? I was looking to
7 put, I was looking to put something there that
8 would force staff or the Commission to do
9 something, and what you're saying doesn't sound
10 like it's forcing anybody to do anything.

11 **COMMISSIONER BRISÉ:** Sure. And so to
12 answer that, I would say that obviously year
13 five would be that limit, would be the end
14 limit.

15 **CHAIRMAN GRAHAM:** Okay. So you plan on
16 putting a --

17 **COMMISSIONER BRISÉ:** Right.

18 **CHAIRMAN GRAHAM:** It has to be done by
19 this time.

20 **COMMISSIONER BRISÉ:** By year five. By the
21 end of year five.

22 **MS. CRAWFORD:** Commissioners, may I ask a
23 question?

24 **CHAIRMAN GRAHAM:** Yes.

25 **MS. CRAWFORD:** Commissioner Brisé has used

1 the phrase "as the Commission deems necessary."
2 We'd want to know as staff how we would get
3 that direction from the Commission if the
4 Commission deems it necessary to move quicker.
5 I would presume it would be in the course of
6 the fuel clause hearings perhaps. The
7 Commission would as a body identify the need to
8 move more quickly than not in that review
9 process. But I just want to confirm that that
10 would be the process by which the Commission
11 would communicate to staff that it is -- it
12 deems necessary that a sooner review than later
13 is necessary.

14 **CHAIRMAN GRAHAM:** Well, I guess I have a
15 legal question. There's -- we don't have to
16 put in the order -- if we decide to do it next
17 year, we can make a review next year.

18 **MS. CRAWFORD:** That's an excellent point.
19 The Commission always has regulatory
20 discretion. If it believes it is necessary to
21 move even sooner than what the order reflects,
22 I believe that the Commission can certainly do
23 so.

24 **CHAIRMAN GRAHAM:** I mean, all we really
25 have to do is have the language on what's the

1 back end, when it, when it ends and, as you
2 said, Commissioner Brown, the intent.

3 Okay. Commissioner Edgar.

4 **COMMISSIONER EDGAR:** Well, since you're
5 not calling on me when I hit that light button,
6 you basically hit the points that I was going
7 to raise, which is I believe that it is in any
8 Commissioner's and any Commissioner's -- any
9 Commissioner's, any Commission's authority to
10 ask staff to conduct a review and an evaluation
11 and bring something before us, and anything
12 that we do today does not alter that in any
13 way.

14 I also think that we have the ability, and
15 I believe that we should take advantage of or
16 utilize that, to express some intent language
17 as a part of what we are approving today,
18 assuming we move in that direction. And so I
19 think to say that it is -- and for this to be
20 in the order that it is the intent that the
21 guidelines be reviewed and come before the
22 Commission for consideration no sooner than
23 three years and no later than five years covers
24 it. And that, that whatever dates that fall
25 from that occurring I think is -- there are

1 sufficient process and procedural mechanisms in
2 place to allow for that. And I also think that
3 that is very much in keeping with my general
4 approach, which is for the Commission at all
5 times to maintain flexibility so that we can
6 carry out what we are required to do.

7 **CHAIRMAN GRAHAM:** Commissioner Brown.

8 **COMMISSIONER BROWN:** And thank you,
9 Commissioner Brisé, for coming up with that
10 idea and, Commissioner Edgar, for your
11 comments. And I agree. I enjoy the
12 flexibility, and I think that language is
13 suitable to no earlier than, but I guess that
14 establishes the intent that we've discussed
15 here today to, to revisit this program no later
16 than five years -- the end of five years.

17 So with that, I think we're wrapping it
18 up. And I don't know if there's a formal
19 motion procedurally that we need to make
20 adopting the discussion we've had here today.
21 Legal?

22 **CHAIRMAN GRAHAM:** Yes.

23 **COMMISSIONER BROWN:** So, legal, do you
24 have enough information on that last aspect to,
25 to be able to prepare a final order?

1 **MS. BARRERA:** Yes, Commissioner.

2 **COMMISSIONER BROWN:** Mr. Chairman?

3 **CHAIRMAN GRAHAM:** Yes, ma'am.

4 **COMMISSIONER BROWN:** I'm prepared to make
5 a motion on Issue 5 at this time if the other
6 Commissioners are ready to move forward. Okay.

7 I would move to deny the staff
8 recommendation and approve the modified
9 attachment provided in Attachment A with the
10 following modifications. For -- under Issue,
11 under subsection I -- under Section I, for 2015
12 the burn rate would be 5 percent, for 2016 the
13 burn rate would be 10 percent, for 2017 the
14 burn rate would be 15 percent, for 2018 the
15 burn rate would be 20 percent.

16 Moving to bullet point Guideline I.B, that
17 cap would change from 10 percent to 20 percent.
18 Moving to Guideline I.C, that aggregate cap
19 would change from 250 to 500.

20 **CHAIRMAN GRAHAM:** That's I.D.

21 **COMMISSIONER BROWN:** Correct? Pardon me.
22 D, thank you, I.D.

23 Moving along to Section IV, to include the
24 same or similar language under guideline II.A
25 at the bottom of the page "for the benefit of

1 FPL's customers," and to include language
2 covering the concept we discussed that this
3 program shall be reviewed by the Commission no
4 earlier than three years but no later from --
5 than five years from the date the final order
6 is issued. Am I missing anything else? She's
7 pushing.

8 **CHAIRMAN GRAHAM:** Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you, Mr.
10 Chairman.

11 No, I think you did an excellent job of
12 covering. But I do have one question for
13 clarification, which is on the percentages for
14 the maximum volume daily -- average daily burn.
15 I think what I heard was a little different
16 than I thought we had discussed, so could I ask
17 you to just cover that point again?

18 **COMMISSIONER BROWN:** Thank you. I had
19 originally suggested 2015. I think you
20 suggested 5, 10, and 15 for years '15, '16, and
21 '17.

22 **COMMISSIONER EDGAR:** Right.

23 **COMMISSIONER BROWN:** We would keep that 5,
24 10, 15, add 20 percent for year 2018, with the
25 understanding that the review would occur

1 somewhere between three and five years.

2 **COMMISSIONER EDGAR:** Okay. Thank you.
3 Maybe I misunderstood earlier, but that is my
4 understanding of what we had discussed. And
5 with that clarification, then I second the
6 motion, with the addition, if I may, of giving
7 staff, of course, authority to make whatever
8 technical changes to the document to, to adopt
9 the intent of the changes today.

10 **CHAIRMAN GRAHAM:** We have a motion on the
11 floor. Does staff understand that motion on
12 the floor? Okay. I see all four of you
13 nodding your head yes, so that's good.

14 **MS. CRAWFORD:** For the record, yes, sir.

15 **CHAIRMAN GRAHAM:** And we have a second.
16 Commissioner Patronis.

17 **COMMISSIONER PATRONIS:** Do we need to
18 address proven and also probable wells?

19 **COMMISSIONER BROWN:** We are agreeing to
20 what they recommended, which include that.

21 **COMMISSIONER PATRONIS:** Okay. That's
22 fine. Okay. Making sure.

23 **CHAIRMAN GRAHAM:** Okay. A motion on the
24 floor duly seconded. All in favor, say aye.

25 (Vote taken.)

1 Any opposed? By your actions, you've
2 approved what we'll refer to as the Brown
3 amendment.

4 Okay. So are we done with this item?

5 **COMMISSIONER EDGAR:** I move approval of
6 staff recommendation for Issue 9.

7 **COMMISSIONER BRISÉ:** Second.

8 **CHAIRMAN GRAHAM:** It's been moved and
9 seconded, staff recommendation on Issue 9. Any
10 further discussion? Seeing none, all in favor,
11 say aye.

12 (Vote taken.)

13 Any opposed? By your actions, you've
14 approved the staff recommendation on Issue 9.

15 So we are finished now with Item No. 3;
16 correct?

17 (Agenda item concluded.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
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10 same has been transcribed under my direct supervision;
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13 I FURTHER CERTIFY that I am not a relative,
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18 DATED THIS 25th day of June, 2015.

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LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734