

1 PARTICIPATING:

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3 NATALIE SMITH, ESQUIRE, and ERIC TASHMAN, ESQUIRE,
4 representing Florida Power & Light Company.

5 COCHRAN KEATING, ESQUIRE, MICHAEL COOKE, GENERAL
6 COUNSEL, and DEAN CRIDDLE, ESQUIRE, representing the Florida
7 Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: We will take a minute to let people
3 get settled, and then we will move on to Item 5.

4 Mr. Staden, are we good? Okay.

5 I believe joining us by phone we have Mr. Dean
6 Criddle.

7 Mr. Criddle, can you hear me?

8 MR. CRIDDLE: I can. Thank you, Madam Chair.

9 CHAIRMAN EDGAR: Thank you for joining us.

10 Mr. Criddle is the outside bond counsel to the
11 Commission, and he is joining us from the west coast and will
12 be available to hear the discussion and also be available for
13 questions.

14 Who's going to start us off?

15 MR. KEATING: I will.

16 CHAIRMAN EDGAR: Mr. Keating.

17 MR. KEATING: Good morning, Commissioners. I'm
18 Cochran Keating with the Commission's legal staff.

19 Item 5 is staff's recommendation on Florida Power and
20 Light Company's motion for reconsideration and clarification of
21 certain portions of the financing order that was issued May
22 30th of this year. I just wanted to provide a very brief
23 summary of the recommendation.

24 Issue 1 addresses FPL's request for oral argument on
25 the motion. Staff has recommended that the Commission grant

1 oral argument limited to ten minutes per side. To my
2 knowledge, though, only FPL intends to present oral argument if
3 the motion is granted.

4 Issue 2 addresses the six portions of the financing
5 order for which FPL seeks reconsideration. The standard for
6 reconsideration is whether FPL's motion identifies a material
7 point of fact or law that the Commission overlooked or failed
8 to consider in rendering the financing order. Based on this
9 standard of review, staff has recommended that the Commission
10 deny the request for reconsideration with respect to all but
11 one of the points raised by FPL on reconsideration.

12 Issue 3 addresses the four portions of the financing
13 order for which FPL seeks clarification. Staff has recommended
14 that the Commission deny the request with respect to all but
15 one of the points raised by FPL. And, finally, in Issue 4 we
16 have recommended that the docket remain open pending the post
17 bond issuance review that will take place pursuant to law.

18 If you grant oral argument, I believe FPL is prepared
19 to present its argument and comments on this point, and staff
20 is available to answer any questions.

21 CHAIRMAN EDGAR: Thank you, Mr. Keating.

22 Commissioners, as you have heard and have read, Issue
23 1 is a request for oral argument. Is there an interest in
24 hearing oral argument? I'm seeing nods. Okay.

25 Is there a motion?

1 COMMISSIONER DEASON: Move staff.

2 COMMISSIONER ARRIAGA: Second.

3 CHAIRMAN EDGAR: We have a motion and a second on
4 Issue 1. All in favor say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN EDGAR: Opposed? Show Issue 1 adopted.

7 Will ten minutes accommodate the discussion that you
8 would like to have before us?

9 MS. SMITH: It will, Madam Chairman.

10 CHAIRMAN EDGAR: Then you are recognized.

11 MS. SMITH: Thank you, Madam Chairman, Commissioners.

12 Natalie Smith of the Florida Power and Light Company Law
13 Department on behalf of FPL. Thank you for the opportunity to
14 present oral argument.

15 FPL does not seek reconsideration of matters
16 associated with the amount of storm recovery costs approved for
17 recovery, but we are seeking reconsideration of certain matters
18 associated with the issuance of storm recovery bonds. While
19 some of the issues may seem like technicalities, they are
20 issues of critical importance that need to be resolved. FPL
21 appreciates staff's review and consideration of the issues
22 raised by FPL in its motion for reconsideration and request for
23 clarification.

24 As you can see from the handout we've distributed, we
25 agree with staff's recommended clarifications on

1 Reconsideration Item 6 and Clarification Item 3. We urge the
2 Commission to take staff's recommended action on those two
3 items.

4 On three items the language in the staff
5 recommendation provides the guidance and clarification needed
6 and no additional action is requested. These are
7 Reconsideration Item 3 and Clarification Items 1 and 4. On
8 three others items, we are simply requesting that the language
9 from the recommendation be reflected in the order on
10 reconsideration so the intent of the financing order is clear
11 on its face. These are Items 2 and 4 of the reconsideration
12 matters, and Item 2 of the clarification matters. On two items
13 further clarification is needed for the reasons I will discuss.
14 These are Items 1 and 5 of the reconsideration matters.

15 Turning to Item 1 of the reconsideration matters, FPL
16 requested that the Commission reconsider the financing order
17 directive that the transaction be structured to effectively
18 eliminate credit risk for all practical purposes and
19 circumstances. This requirement was not voted on by the
20 Commission and cannot be done.

21 The problem is that the standard to which the
22 financing order will hold FPL accountable to effectively
23 eliminate for all practical purposes and circumstances all
24 credit risk associated with the transaction is so vague and
25 imprecise as to make it impossible for FPL to know whether and

1 when it has complied with the order. There is no record
2 evidence or other analysis that illuminates what is meant by
3 the phrase for all practical purposes and circumstances and no
4 objective standard to which FPL can refer for guidance.

5 To remedy the vagueness of the order, and this is on
6 the handout, FPL recommends that the Commission clarify what is
7 meant by the phrase practical purposes and circumstances. And
8 the language that FPL specifically suggests is as follows: For
9 the purposes of this order, the phrase for all practical
10 purposes and circumstances does not include circumstances which
11 could excuse the state from the state pledge or acts or
12 omissions associated with any potential bankruptcy of FPL.
13 This is entirely consistent with the statute. With this
14 definition, FPL will have sufficient guidance to enable it to
15 make a reasoned judgment as to whether the Commission's
16 directive has been satisfied.

17 I'm prepared to move on to Item 2 of the
18 reconsideration matters now and just continue with my argument.
19 On Item 2, FPL requests that the order on reconsideration
20 simply reflect clarifying language from staff's recommendation.
21 In its motion, FPL requested that the Commission reconsider the
22 requirement that storm-recovery charges shall be in amounts
23 sufficient to guarantee the timely recovery of FPL's storm
24 recovery costs and financing costs detailed in the financing
25 order, including payment of principal and interest on the storm

1 recovery bonds. This language was not voted on by the
2 Commission and is unnecessary in light of the guarantee of
3 regulatory action associated with the true-up mechanism.

4 Our concern is that the word guarantee has a strong
5 and very specific meaning in the eyes of the investment
6 community. Circumstances entirely outside the control of FPL,
7 such as deficiencies caused by economic or regional
8 emergencies, could prevent timely payment. To make it clear
9 that the financing order is not intended to establish FPL as
10 guarantor of timely payment on the bonds, the order on
11 reconsideration should include clarifying language from the
12 staff recommendation on reconsideration. And this
13 clarification also on the handout states, "By its plain terms,
14 this requirement does not establish FPL as a guarantor of
15 payments on the storm-recovery bonds nor is it intended to do
16 so."

17 I am now to Item 3 of the reconsideration matters.
18 FPL no longer seeks reconsideration of this issue in light of
19 language in the recommendation.

20 And now I'm on Item 4. On Item 4 of the
21 reconsideration matters, FPL requests that the order be amended
22 to include certain clarifying language from the staff
23 recommendation. In its motion, FPL requested that the
24 Commission reconsider the requirement in the financing order
25 that there be certifications that, quote, each tranche of

1 storm-recovery bonds of each series, in fact, achieved the
2 lowest-cost objective. The requirement that there be
3 certifications for each tranche or each issuance of
4 storm-recovery bonds was not voted on by the Commission.
5 Instead, the staff recommendation provided that the goal of the
6 bond team was to obtain the lowest storm-recovery charge, not
7 the lowest cost on each tranche of bonds to the exclusion of
8 the impact of other costs, including transaction costs.

9 Under this new standard, FPL is concerned that
10 decisions could be made that lower the cost of individual
11 tranches of debt, but raise the overall storm-recovery charge
12 to FPL's customers. This would not be in FPL's customers best
13 interest, as it could lead to higher storm-recovery charges.

14 Again, FPL finds comfort in the staff recommendation
15 on reconsideration and requests that certain clarifying
16 language from staff's recommendation be included in the order
17 on reconsideration so that the intent of the order is clear.
18 As the handout shows, this clarifying language provides that
19 the financing order does not require that each tranche be
20 reviewed solely based on interest rate achieved, but also in
21 light of up-front and ongoing costs, including marketing costs.
22 FPL appreciates this clarification that the price on each
23 issuance of bonds needs to be evaluated in the context of the
24 entire transaction.

25 Moving to Item 5. Regarding Item 5, FPL requests

1 that the Commission reconsider its conclusion that FPL cannot
2 recover incremental costs associated with its role as servicer
3 and administrator of the bonds. Foreclosing FPL's opportunity
4 to seek recovery of these types of incremental costs associated
5 with servicing and administering the bonds in a future base
6 rate proceeding could be detrimental to bankruptcy law opinions
7 that are needed to accomplish the storm-recovery bond issuance.

8 In an arm's-length transaction, it is presumed that
9 parties will ensure that all actual costs can be recovered.
10 Requiring FPL to deposit all servicing and administration fees
11 to the storm reserve does not provide FPL the opportunity to
12 recover any incremental costs, because the use of those funds
13 is restricted by Commission rule.

14 Therefore, to ensure FPL is able to obtain the
15 requisite bankruptcy opinions to effectuate the securitization,
16 the bankruptcy remote special purpose entity must pay FPL as
17 servicer an amount that is deemed to cover its actual costs of
18 performing these functions. Findings of fact 114b and 116
19 should be clarified to provide that FPL will have the
20 opportunity to seek recovery of any incremental costs
21 associated with FPL's role as servicer or administrator of the
22 storm-recovery bonds as part of FPL's retail base rate
23 proceedings. This clarification would not prejudice the amount,
24 the reasonableness, or the prudence of any incremental costs
25 subject to approval by the Commission. Parties to the future

1 base rate proceeding would have the opportunity to contest
2 whether any such amounts are prudently incurred incremental
3 costs.

4 Moving to Item Number 6, FPL agrees with and supports
5 staff's recommendation on this item.

6 Now turning to the clarification issues. Based on
7 clarification and staff's recommendation, we can withdraw our
8 request for clarification on Item 1 of the clarification
9 matters.

10 On Item 2 of the clarification matters, FPL requests
11 that certain clarifying language included in the staff's
12 recommendation be included in the order on reconsideration.
13 The language is from the recommendation on Item 2 of the
14 clarification matters, which states, "The Commission has
15 provided itself the discretion to allow the storm-recovery
16 bonds to be issued in the absence of a certification from FPL,
17 the bookrunning underwriter, or its financial advisor."

18 Now moving to Item 3. FPL supports staff's
19 recommendation on Item 3 of the clarification matters. And on
20 Item 4 of the clarification matters, FPL no longer seeks
21 clarification in light of language included in the staff's
22 recommendation.

23 In conclusion, for the reasons discussed, we ask that
24 the Commission issue an order on reconsideration that makes the
25 clarifications provided on the handout, much of which simply

1 excerpts clarifying language that staff included in its
2 recommendation on reconsideration. This will provide the
3 guidance and clarification needed in order for FPL and the
4 investment community to better understand what is meant by
5 certain language in the financing order.

6 Thank you.

7 CHAIRMAN EDGAR: Thank you, Ms. Smith.

8 Mr. Keating, are you and staff prepared to speak to
9 us about the suggestions that Ms. Smith has made and the
10 language that was given to us?

11 MR. KEATING: I think we could address -- I could
12 give you some initial comments on some points, and if we need
13 to explore it further, we can.

14 CHAIRMAN EDGAR: Okay.

15 Commissioners, is there a place that you would like
16 to start? Is there a general comment, general question?

17 Commissioner Carter.

18 COMMISSIONER CARTER: Thank you, Madam Chair. I just
19 want to make a general comment. We spent days and hours on
20 these issues. And it seems to me that, you know, they are
21 using a tank to kill a gnat. I mean, what is the real issue?
22 I mean, we're going nit-picky, nit-picky, nit-picky. We went
23 through all of this. And I think that from reading the staff's
24 proposal, staff has gone to clarify the matters that were, for
25 whatever purpose, confusing. And it just seems to me that if

1 there is a real issue, we need to be dealing with the real
2 issue instead of doing cosmetic things. I mean, a lot of this
3 language here staff has already provided clarification and
4 further information, and all. And I'm just kind of scratching
5 my head trying to find out what is the real issue here.

6 Thank you, Madam Chair.

7 CHAIRMAN EDGAR: Thank you.

8 Commissioner Arriaga.

9 COMMISSIONER ARRIAGA: I understand your concern,
10 Commissioner Carter, but let me try to share with you some
11 previous experience that I have had in my life. I used to be
12 president of a financial institution many years ago, and we had
13 the opportunity to issue bonds through that institution, which
14 is a science that is, you know, away from you. You, of course,
15 know that. There are many things that are going to happen from
16 here on in the bond process, the issuance process. And one of
17 the things that really can help to have a very clean cut bond
18 issue is to clarify as much as possible, whatever is needed to
19 be clarified before we enter that process formally.

20 I find that clarifying may help a smooth transition
21 to the end product, which needs to be out, I hope, before the
22 end of the year. So the process of seeking clarification, the
23 way staff has handled it, denying the reconsideration by
24 clarifying seems to be interesting.

25 The thing that I'm struggling with is how do we put

1 this in an order, which phrases to use, which is the
2 nit-picking you are referring to. But if we could do
3 something, maybe legal counsel can help me about how do we do
4 this so that it is properly clarified in the order so nobody
5 has any doubts as to what to do, and the very detailed process
6 that is going to go ahead has to happen. I don't want any
7 disagreements in the middle of the process. The more we
8 clarify and let our staff, and the bond team, and FPL, and the
9 legal counsel, everybody know what to do the better. That
10 would be my suggestion.

11 CHAIRMAN EDGAR: Thank you, Commissioners.

12 Commissioner Carter, I have to, of course, echo your
13 comments that our staff, all the parties, and as I recall there
14 were multiple parties. We had a long hearing, we heard a lot
15 of testimony, we had lengthy, lengthy discussion when the
16 proposed order came before us. A lot of time was spent, an
17 awful lot of good work done for which I am quite proud of, of
18 the work of this Commission and all who participated.

19 However, we do have a request for reconsideration
20 before us, and it is our responsibility to address it. And if
21 by the fact that we are all here together we can continue that
22 good work and end up in, perhaps, a slightly better place, then
23 I certainly am interested in entertaining that. And so, Mr.
24 Keating, if you can --

25 Excuse me. Commissioner Tew. I'm sorry.

1 COMMISSIONER TEW: I have some of the same concerns,
2 but at the same time I feel like that what the company is
3 asking for here, and I want to hear what staff has to say, but
4 particularly those places where they have pulled language
5 directly from the staff recommendation which essentially
6 clarifies some of the points they have raised, whether it's on
7 reconsideration or clarification, it seems reasonable to at
8 least discuss whether or not those things can be pulled into
9 the motion for reconsideration.

10 Because I think staff put a lot of time and effort
11 into explaining why they didn't grant reconsideration, but in
12 doing so I think they have clarified some of the concerns. So
13 it seems reasonable to me to at least go through them and
14 consider using staff's own language here to clarify some
15 things.

16 CHAIRMAN EDGAR: Mr. Keating.

17 MR. KEATING: Just to start with, I'll start with
18 reconsideration Item 1, and I am referring to the handout that
19 FPL provided. I think our concern, we would have a concern
20 with adding the language that FPL suggested for a few reasons.
21 I think identifying anything that's an exclusion from the
22 phrase practical purposes and circumstances would, I think as
23 FPL has noted, probably go beyond the vote. I think FPL
24 indicated the record did not indicate what practical purposes
25 and circumstances would include. And to the best of my

1 knowledge, I don't know that these particular circumstances,
2 adding this language would be supported by the record.

3 The other concern with that language is that it would
4 appear to raise a red flag, perhaps to investors, that might be
5 misleading. I'm not sure why we would suggest that a practical
6 circumstance under which the bonds may not be paid could
7 include the state excusing itself from what is a pretty
8 powerful and unconditional state pledge included in the statute
9 to support and not interfere in the bond deal.

10 And then, second, I'm not sure why we would suggest
11 that a practical circumstance under which the bonds may not be
12 paid would include the potential bankruptcy of FPL, when the
13 statute establishes a separate credit and a bankruptcy remote
14 special purpose entity that is actually going to be issuing the
15 bonds. And I believe there is some information in the record
16 concerning a California utility that went bankrupt who had
17 issued similar bonds, and the bonds maintained a AAA rating.
18 My concern with the language is, one, to summarize my concerns
19 that it is probably not supported by the record and could raise
20 some -- unnecessarily increased the perception of risk
21 associated with the bonds.

22 CHAIRMAN EDGAR: And am I correct that the standard
23 for reconsideration does apply on this point?

24 MR. KEATING: We are here on a motion for
25 reconsideration that that standard would apply to.

1 CHAIRMAN EDGAR: Commissioners, are there questions
2 for Mr. Keating on this point? No.

3 Mr. Keating, if you would, let's move to the second
4 item, or point, whichever it is.

5 MR. KEATING: The second point and, again, referring
6 to FPL's document, I don't think we have any concern in
7 clarifying our order. I think as Commissioner Arriaga
8 suggested, it's a matter of how we do so. Traditionally, when
9 we have issued orders on reconsideration, the order, for
10 example, and I'm not suggesting the outcome of today's vote,
11 but if the Commission were to approve the staff recommendation
12 in some form or another, the order would typically look a lot
13 like the staff recommendation with the language present in it.

14 If that were the case here, this language that's
15 quoted from the staff recommendation would be in that order.
16 What FPL has suggested, it looks like, is a place in the
17 financing order, the existing order, to insert language. I do
18 have some pause with doing that, because the process of putting
19 together this order was unusual as compared to how we usually
20 issue an order in that we invited participation from all the
21 parties to look at the draft version of the financing aspects
22 of the order. It has gone through a pretty meticulous review
23 and every word has been carefully considered.

24 My concern is that the language that is quoted from
25 the staff recommendation was not drafted with the intent of

1 being able to somehow fit into the existing order. We did not
2 consider whether this specific language that's quoted from the
3 staff recommendation, how it would fit into the order, if it
4 was going to be put into an order. I think we would want to --
5 and we have given that some thought prior to today, since we
6 filed the recommendation, on how, if we wanted to make a
7 clarification and provide some specific language, how we could
8 reflect that clarification.

9 CHAIRMAN EDGAR: Commissioner Arriaga.

10 COMMISSIONER ARRIAGA: Let me see if I understand
11 you, Mr. Keating.

12 What I think you're saying is let's leave the current
13 order alone, just let it stand as it is, and issue an order for
14 reconsideration which will include the language that you are
15 proposing today. Is that what I understood?

16 MR. COOKE: May I jump in at this point, because we
17 have had a lot of discussion on this. It is not going to be an
18 easy order to craft or motion to craft. There is a range of
19 possibilities, depending on what the Commission decides to do.
20 One would be if the Commission were to decide to accept the
21 staff's recommendation as is, traditionally what we would do
22 would be to issue an order that essentially incorporates much
23 if not all of the language from the recommendation.

24 Now, to a large intent, or at least on some of these
25 issues, that appears to give FPL some comfort. Some of the

1 items that they originally asked either for reconsideration or
2 clarification on, they now feel can be treated as moot, based
3 on language in the recommendation. However, if the Commission
4 wants to go further and clarify using specific language out of
5 the recommendation and essentially inserting that, in a sense,
6 into the preexisting order, we couldn't adopt the
7 recommendation wholesale because the recommendation recommends
8 against making some of these clarifications. We could, in that
9 case, issue an order on reconsideration where the Commission
10 very simply says we have reconsidered this, and in light of the
11 reconsideration we direct that the following changes be made,
12 and state those changes with great specificity.

13 Now, what Mr. Keating is raising in terms of the
14 concerns with that approach, we didn't draft the
15 recommendation, per se, to change the existing order. So there
16 is a little bit of concern on our part that we don't know what
17 consequences would flow from specific word changes that are not
18 proposed in the recommendation itself. I don't think that
19 means that we couldn't necessarily find ways to clarify on some
20 of these issues, and I think Mr. Keating can address that in
21 more detail. Some of them we're not, perhaps, comfortable with
22 at all, but in some cases no written document is perfect, and
23 we could perhaps find a way to clarify.

24 I guess the bottom line is if we go beyond what the
25 staff has recommended, then we need to craft an order that is

1 perhaps fairly straightforward and tells us explicitly what
2 changes to make. Now it occurred to me, also, that one hybrid
3 approach would be to -- if the Commission wants to go beyond
4 just the recommendation of staff and clarify some additional
5 language in the existing order in specific detail, we could
6 preface that with a statement to the effect that the Commission
7 adopts the analysis in the recommendation.

8 The analysis is all of the explanation, all of the
9 context and all the nuance. And to the extent that the
10 Commission is comfortable with that and wants to make it clear
11 that the Commission is adopting that in the order, we could do
12 that and also make specific language changes to the extent we
13 want to do that. So I'm not sure if I -- I hope I was clear on
14 that. It's fairly cumbersome, perhaps.

15 CHAIRMAN EDGAR: Commissioner Carter.

16 COMMISSIONER CARTER: Madam Chairman, a question for
17 our General Counsel.

18 CHAIRMAN EDGAR: Yes.

19 COMMISSIONER CARTER: Mr. Keating said that to do
20 otherwise from staff recommendation will be making a decision
21 based upon something that is not within the record. Do you
22 remember when he said that?

23 MR. COOKE: In that case he's referring to Issue 1,
24 and I believe that our position -- I will defer to Mr. Keating
25 and to staff, but I believe that it's not in the record that

1 the definition of for all practical purposes and circumstances
2 has support in the record as to how to modify that in the way
3 FPL wants. So I don't think staff is prepared to accept that
4 change or recommend that change.

5 CHAIRMAN EDGAR: Commissioner Carter.

6 COMMISSIONER CARTER: One itty-bitty follow-up, Madam
7 Chair.

8 CHAIRMAN EDGAR: Please.

9 COMMISSIONER CARTER: Based upon what we're trying to
10 do, I accept what Commissioner Arriaga has said in terms of the
11 bond financing and streamlining the language and all like that,
12 but it seems to me if we were to do anything other than clarify
13 what we have already done, I think we are making a new law
14 based upon evidence not presented in the case below. That's
15 just my opinion. What do you say to that?

16 MR. COOKE: I think as the recommendation explains,
17 on some of these issues that have been raised and whether you
18 call them reconsideration or clarification, I think really what
19 we're talking about is more in the nature of clarification.
20 And I do believe on some of them the clarification, as
21 explained in the recommendation, obviously is supported by the
22 record. To the extent that additional language could be
23 inserted into the existing order that further clarifies what we
24 meant, then it would be supported by the record in those cases.

25 In other words, there are cases on some of these

1 issues where the record supports it, staff agrees with the
2 intent, and simply we're basically trying to -- I guess it's a
3 pejorative term, but wordsmith a document at this stage on that
4 issue.

5 One other thing I want to make, and Mr. Keating
6 brought this up, we have both a motion for reconsideration and
7 a request for clarification. With regard to the standard for
8 reconsideration, staff believes that only one of the six issues
9 has raised a new fact or a question of law that merits
10 reconsideration. Because we do not -- we agree that perhaps
11 the way it was phrased in the financing order was not supported
12 by the record in that case on Item 6, and staff has proposed
13 specific language to address that and to conform to that issue.
14 On everything else, we believe that the record supports what
15 staff has done. And, conversely, on some of these issues that
16 FPL is requesting changes on, we do not agree that the way they
17 want to make changes is supported by the record.

18 CHAIRMAN EDGAR: Commissioner Carter, Commissioner
19 Tew has been waiting, so I'm going to turn to her and then I'll
20 come back to you. Okay.

21 Commissioner Tew.

22 COMMISSIONER TEW: My question is to FPL. I just
23 want to clarify what it is that I'm looking at here to make
24 sure I understand what you're asking to be changed. And the
25 way I read these, each of these recommendations here, is that

1 it would be a change to the order on reconsideration, not any
2 changes to the financing order itself. I realize that some of
3 the language that is mentioned in the staff rec is directly out
4 of the financing order, but I wanted to make sure I understood
5 before we go further into the procedural aspect.

6 Are you asking for any changes to be made to the
7 financing order?

8 MS. SMITH: Commissioner, we would be fine with an
9 amended financing order, or an order on reconsideration that
10 makes these clarifications. Either one would suffice for our
11 purposes, but we felt that an order on reconsideration that
12 made these clarifications was perhaps administratively more
13 efficient and could be done in an easier fashion. Either way,
14 we think that it ultimately -- you would end up with one order.
15 You know, by looking at the two orders, you would know what was
16 intended by the financing order that was originally issued.

17 CHAIRMAN EDGAR: Commissioner Carter.

18 COMMISSIONER CARTER: Thank you, Madam Chairman.

19 In light of what General Counsel just said in
20 response to my former series of questions, I would ask, Madam
21 Chair, with your permission for them to let us know as we go
22 issue-by-issue where we are versus where we are creating new
23 territory. Because I really wouldn't want us to get outside of
24 the fact that we had a tribunal here, we had days of hearing,
25 we had hours of hearing, we had testimony, we had evidence

1 presented. I mean, it was a lengthy process. And I really
2 wouldn't want us to get outside of what we already have in the
3 record and create something new.

4 I mean, if you are talking about chaos, that would
5 throw the whole process into chaos. I really don't want to do
6 that. So I'm just saying I want us to be careful about what we
7 are doing. That's all I'm saying.

8 CHAIRMAN EDGAR: Commissioner Carter, I agree
9 completely. And I'm sure that our legal staff is prepared and
10 able to respond to the information and go through it just in
11 the way that you have requested.

12 MS. SMITH: Madam Chairman, excuse me.

13 CHAIRMAN EDGAR: Ms. Smith.

14 MS. SMITH: I'm wondering if I may address the points
15 raised made on Item 1 now or at a time that would be convenient
16 for the Commission.

17 CHAIRMAN EDGAR: Are there further comments or
18 questions before we turn back to the language? No. Okay.

19 Ms. Smith, Item 1.

20 MS. SMITH: On the first point that was raised that
21 what we are requesting is not part of the record, we would
22 submit that there is certain language that was included in the
23 staff recommendation and the financing order that was not part
24 of the record, as well. And that language is the language we
25 direct that the transaction be structured to achieve this

1 result. We felt that without this language the Commission is
2 expressing its own opinion on the creditworthiness of the
3 bonds.

4 But once FPL is being directed to structure the
5 transaction to achieve this result, then we are being asked to
6 do something and held to a standard for all practical purposes
7 and circumstances that we just feel is extremely vague. So if
8 the Commission is inclined to reject things on grounds that
9 it's not part of the record, I would just ask that that
10 particular sentence be considered as something that was not
11 part of the record.

12 Alternatively, we do think that clarifying what is
13 meant by the phrase for all practical purposes and
14 circumstances will enable FPL to satisfy the lowest cost
15 objective while at the same time not be misleading to
16 investors. I just don't understand how providing clarification
17 of what is intended by a phrase that is very vague could
18 somehow be misleading to investors. In fact, our fear is that
19 not providing clarification will be misleading to investors.

20 And, in fact, if we are required to include these
21 types of statements and the fact that we have met this standard
22 in our prospectus and other offering documents, we could very
23 well end up in a court of law in a securities law case with a
24 bondholder suing us on grounds that we did not structure the
25 transaction to eliminate credit risk for all practical purposes

1 and circumstances.

2 The definition that we have proposed, things that
3 could excuse the state from the state pledge, if the state
4 cannot perform the true-up mechanism for some event, a
5 catastrophe, a hurricane, an economic disaster, then it's
6 outside of FPL's control whether there is a potential risk of
7 default on the bonds.

8 COMMISSIONER DEASON: I have a question.

9 CHAIRMAN EDGAR: Commissioner Deason.

10 COMMISSIONER DEASON: If it is clear that FPL is not
11 the guarantor of payments, how is it that you find yourself
12 concerned that FPL may be in a position of being sued by some
13 future bondholder that FPL did not structure the financing the
14 way it was directed to?

15 MS. SMITH: I'm going to ask that Eric Tashman, he is
16 FPL's outside finance counsel with the Sidley Austin law firm,
17 I'm going to ask that he address that question.

18 MR. TASHMAN: Our concern is that we will be asked to
19 make a statement in the prospectus to the effect that the
20 transaction has been structured in a way to eliminate credit
21 risk for all practical purposes and circumstances, and that
22 statement will be a statement of FPL and the SPE. The SPE
23 being the issuer, FPL being the control party.

24 And our concern is that we want to make sure that
25 investors understand what those terms mean if we are forced to

1 make that statement. If it is merely -- as Ms. Smith said, if
2 it is merely a statement of the Commission, if it's the
3 Commission's view that the transaction has been structured in a
4 way as to eliminate for all practical purposes credit risk,
5 then that's the Commission's statement and we are prepared to
6 quote that statement in the prospectus.

7 But what we fear will happen is that we will be asked
8 to put that statement in not as the Commission's view, but as
9 the SPE's view, or FPL's view, and that we will be making a
10 conclusory statement to investors that there is really no
11 credit risk to this transaction. And we just feel that this
12 explanatory language will clarify to all concerned, both to FPL
13 and to the bondholders who may purchase these bonds, exactly
14 what is intended by this statement.

15 COMMISSIONER DEASON: So is this whole issue a
16 concern that the bond team may direct certain language be
17 included in the prospectus that would subject FPL to some
18 potential future liability?

19 MS. SMITH: I would say that we do foresee that --
20 that is our primary concern. Because the financing order
21 requires FPL to comply with every provision of the order,
22 including this provision that the transaction be structured to
23 achieve this result, we foresee that we will be pressured to
24 include a statement to this effect in the prospectus and
25 offering documents, yes, sir.

1 COMMISSIONER DEASON: Well, how do you suggest the
2 Commission in its order direct the entities involved to attempt
3 to structure this to achieve the result to the best degree that
4 it can be achieved? I think we all agree that we want the
5 least-cost financing available, and to do that we have to
6 eliminate risk. And we all believe that the state pledge and
7 the way that we are structuring this entire transaction
8 minimizes risk.

9 And then the question is eliminating risk for all
10 practical purposes, is that just another term for minimizing
11 risk? I don't know. How do we in the order indicate that we,
12 as a Commission, expect that to the degree that it can be that
13 this transaction be structured to eliminate as much risk as
14 possible?

15 MR. TASHMAN: Commissioner, the two elements that are
16 cited as supporting the elimination of credit risk are the
17 state pledge and the true-up mechanism, both of which are
18 within the statute. Aside from requesting true-ups, there is
19 nothing that FPL can do on its own to enhance that credit.
20 That credit is a statutory credit, and the protections that
21 bondholders will be looking for are incorporated in the
22 statute.

23 Accordingly, we are just -- much of this is outside
24 of FPL's control. You have requested us to direct -- you've
25 requested that we structure the transaction to eliminate credit

1 risk, and we will attempt to structure a transaction that will
2 survive stress tests presented by the rating agencies which
3 will demonstrate that under most circumstances, hopefully
4 virtually all circumstances, there will be little credit risk
5 to investors.

6 However, when you use the term for all practical
7 purposes and circumstances, you must mean that there are
8 certain circumstances that are impractical. There are certain
9 circumstances where bondholders may not be paid. And we just
10 are requesting that for FPL's purposes and investor purposes
11 that we describe those circumstances so that there will not be
12 any ambiguity with respect to what the directive is.

13 MS. SMITH: To summarize, Commissioner Deason, I
14 think we would just need clarification as to the definition of
15 for all practical purposes and circumstances, just so we know
16 what is intended by the Commission. If we do at some point end
17 up in litigation, we would be able to point to that, include
18 that definition in our prospectus and offering documents and
19 say something that excused the state from its obligation to
20 perform the true-up mechanism is something that excuses FPL
21 from the obligation or from the --

22 COMMISSIONER DEASON: What can happen to excuse the
23 state from its pledge that's in statute?

24 MS. SMITH: The case law provides -- I want to make
25 sure I'm quoting it -- a significant and legitimate public

1 purpose would excuse the state from the state pledge. And, of
2 course, the state pledge includes the pledge to true-up the
3 charge as well as the pledge to not do anything to impair or
4 alter the charge in a way that's inconsistent with the statute.
5 So we can't foresee exactly what circumstances that may be, and
6 that's actually the problem with the phrase is we don't know
7 what may be considered a practical or impractical circumstance
8 under various scenarios.

9 COMMISSIONER DEASON: Well, I'm having difficulty.
10 We cannot, as a Commission, direct the state, which is
11 basically the Legislature and the Governor, as to whether they
12 are going to abide by the pledge or not, or whether there are
13 circumstances that can excuse the state. And neither can we
14 direct you, FPL, as a regulated utility, to somehow guarantee
15 that the state is going to abide by its pledge. So how are you
16 concerned that you are going to be the subject of a potential
17 liability suit from a potential bondholder that you didn't
18 follow this Commission's directive to guarantee that the state
19 would not break its pledge? I just can't see -- it's just so
20 far removed. If someone brought a suit like that, it looks to
21 me like the judge would say there's no basis for this and just
22 dismiss it.

23 MR. TASHMAN: Commissioner, we would hope that would
24 be the case, but the circumstances under which the state could
25 be excused from its pledge from exercising its true-up are not

1 clearly defined in the case law. It depends on the facts and
2 circumstances that exist at the time. And we just think this
3 clarification will be helpful in selling the bonds and allowing
4 FPL to sell the bonds with a -- conveying a clear picture to
5 bondholders what risks they are assuming and what risks they
6 are not.

7 In effect, we're not adding anything to the already
8 existing proposition that the state has a state pledge and must
9 true-up bonds, must true-up the charge. All we're doing is
10 really stating what the law is, which is under certain
11 circumstances the state can be excused, and alerting people in
12 this context to the fact that that excuse could also cause
13 bondholders to be exposed to some credit risk.

14 CHAIRMAN EDGAR: Mr. Keating.

15 MR. KEATING: Commissioners, I did just want to make
16 clear that the language, the for all practical purposes and
17 circumstances language we have been discussing isn't something
18 new that has been added in this particular bond transaction.
19 This is language that was used in prospectuses for some recent
20 bond transactions, similar type transactions in Texas.

21 At this point we do have our outside counsel on the
22 line, and I think he may be able to provide some information on
23 how the risk associated with these types of transactions has
24 been conveyed in the prospectuses. Because this language has
25 been included in prospectuses, and to the best of my knowledge

1 there is a section of the prospectus that also allows for
2 discussion of really any possible risk.

3 MR. CRIDDLE: Yes, this is Dean Criddle. Can you
4 hear me?

5 CHAIRMAN EDGAR: Yes, Mr. Criddle. Proceed.

6 MR. CRIDDLE: The record for this transaction
7 includes testimony, and I believe documentary evidence, as
8 well, that this same language, essentially verbatim, was
9 included in the 2004 prospectus for TXU Encore, a Texas
10 transaction, a Texas utility. The language was proposed by
11 issuer's counsel, utility counsel, and then approved by
12 underwriters counsel as well as the financial advisor for the
13 Texas Commission and included then in the prospectus in 2004.

14 There was a 2005 transaction in Texas, once again,
15 for CenterPoint where this same language, again, was included
16 in the prospectus. And then both of those were included in the
17 record for this proceeding. Most recently, just last month, on
18 June 27th, an additional registration statement was filed for
19 yet another Texas utility, this one AEP Texas Central, and the
20 prospectus that was included in that registration statement,
21 once again, includes precisely the same language that is
22 included in the financing order and is being discussed now in
23 Item 1 for a motion for reconsideration. And I would point out
24 that in this most recent filing, the issuer's counsel for AEP
25 Texas Central is Sidley Austin, so I'm a bit puzzled as to why

1 this very disclosure is acceptable in Texas to Sidley Austin,
2 but not in Florida.

3 Finally, in the financing order, the structure of the
4 transaction is only prescribed in general outline and general
5 parameters. At FPL's request, flexibility was built into the
6 financing order to allow FPL to structure within those general
7 parameters. And a variety of the areas in which FPL has
8 requested flexibility will bear on the extent of credit risk.
9 For example, how frequently will payments be scheduled to be
10 made on the bonds; when will the first payment date be
11 scheduled is a very critical feature; how much time will be
12 allowed between scheduled payment dates and legal final payment
13 dates. Those are just a sampling of items as to which FPL has
14 requested and received flexibility, but those will bear on
15 whether, in fact, credit risk has been minimized or effectively
16 eliminated.

17 So I believe the feeling on the part of staff had
18 been that it was not appropriate for the Commission to make a
19 finding because only general parameters had been set forth in
20 the financing order. Instead, staff had recommended and the
21 Commission included in the original financing order a direction
22 that FPL exercise discretion which it requested so as to, in
23 fact, achieve this objective that we see reflected in the
24 disclosure documents and these various Texas transactions.

25 CHAIRMAN EDGAR: Commissioner Arriaga.

1 COMMISSIONER ARRIAGA: Thank you, Madam Chair.

2 Commissioners, it is evident to me from listening to
3 these conversations here that there is room for disagreement,
4 there is room for interpretation. And I think we are called
5 upon to satisfy those issues, clarify the agreement, clarify
6 the interpretation.

7 When I first got ahold of the motion for
8 reconsideration, and after that the staff's recommendation, I
9 said to myself I'm going to read this as an outsider. Let me
10 try to read this as an investor, as somebody who is reading it
11 for the first time. So I read the motion for reconsideration,
12 and I said, oh, my God, how could that Commission fail to do
13 all the things that FPL was claiming. And then I read staff's
14 recommendation, and I said, oh, my God, how could FPL claim all
15 the things they claim. Which led me to believe to say there is
16 room for interpretation and that we are obliged to satisfy
17 those interpretations.

18 My point, from a general point of view, rather than
19 going into the nitty-gritty of the language itself, which is
20 difficult to do in this setting, if staff took the time to
21 write this recommendation and clarify everything that was being
22 requested to be clarified, while at the same time denying the
23 motion for reconsideration, what could be the problem with
24 issuing an order for reconsideration with all of these
25 clarifications that you already decided were appropriate?

1 CHAIRMAN EDGAR: Mr. Cooke.

2 MR. COOKE: Commissioners, that would conform with
3 what staff has recommended. We are recommending that on
4 certain of these issues there be a clarification of the
5 language, but on others we believe the order is clear on its
6 face. And this simply explains why we believe that. The
7 problem, if you will, is FPL disagrees and wants additional
8 clarification.

9 COMMISSIONER ARRIAGA: May I continue, ma'am?

10 CHAIRMAN EDGAR: Commissioner Arriaga.

11 COMMISSIONER ARRIAGA: Let me try to understand,
12 because I'm having difficulty expressing myself, and I
13 understand that. What I'm proposing specifically, and it's not
14 a motion, Madam Chair, it's not a motion.

15 CHAIRMAN EDGAR: We are in discussion.

16 COMMISSIONER ARRIAGA: Yes, it is a thought. What
17 I'm trying to say here, is there any issue with issuing an
18 order for reconsideration that includes the language already
19 proposed by the staff in its recommendation?

20 MR. COOKE: There is none on the part of staff,
21 Commission staff. I'm not sure FPL would accept that as
22 resolving the issues they have raised.

23 MS. SMITH: I think that on every issue, except for
24 Issue 1 and 5 where we are requesting additional clarifying
25 language, that would satisfy FPL.

1 CHAIRMAN EDGAR: Mr. Cooke.

2 MR. COOKE: I know we're struggling to figure out
3 exactly what to do. I just want to make it clear, on Issue 1 I
4 believe it's staff's position that the language that was used
5 in the order is supported by the record, and it is clear, and
6 it has been used in other prospectus type documents and other
7 transactions. So on that issue, I do not believe that staff
8 sees any reason to make a change in Issue 1. And, frankly, I
9 think, feels pretty strongly that Issue 1 should stay the way
10 it is.

11 There could be some other issues where we might find
12 it relatively innocuous to make some clarifications, and we are
13 willing to try to work towards that in this meeting. That's a
14 tedious process. But, again, I go back to what I originally
15 said. We kind of have two extremes. One is the Commission, if
16 it chooses, can simply accept staff's recommendation and direct
17 us to issue an order on reconsideration that adopts the
18 language of the recommendation that we have made, and that
19 would satisfy staff. FPL might not be satisfied with that, and
20 would be left to whatever choices it wants to make as a result
21 of that.

22 If the Commission wants to try to continue working
23 with FPL to clarify some areas where maybe staff can come into
24 agreement that it does not do violence to the order that has
25 already been issued by making certain minor changes, we could

1 do that in this meeting, and in that case we could issue a
2 different type of order.

3 CHAIRMAN EDGAR: Commissioner Arriaga, if you could
4 hold for just a second.

5 Commissioner Tew.

6 COMMISSIONER TEW: I just have one clarification
7 question. Several people have mentioned this same language is
8 used in other jurisdictions whenever there are financing
9 orders. Is it the exact same language that we see here,
10 including the last sentence that originally FPL was asking to
11 strike, or what are the differences, if there are any?

12 MR. KEATING: I believe it is almost exactly the
13 same. I'm going to ask Mr. Criddle for his thought on that
14 because of his experience with those transactions.

15 CHAIRMAN EDGAR: Mr. Criddle.

16 MR. CRIDDLE: Yes. In my judgment, they are the same
17 in all material respects.

18 COMMISSIONER DEASON: Define all material respects.

19 MR. CRIDDLE: I believe precisely the same wording is
20 used in all three. There may be some slight differences in
21 cross-reference at the very end, but the language that we are
22 focussing on here, "shall effectively eliminate for all
23 practical purposes and circumstances," is precisely the same.

24 MS. SMITH: Madam Chairman.

25 CHAIRMAN EDGAR: Ms. Smith.

1 MS. SMITH: The language, again, I think this is to
2 Commissioner Tew's question. The language that was not in the
3 record here and also was not in the staff recommendation on the
4 financing order voted on by the Commission, the directive that
5 the transaction be structured to achieve this result to the
6 best of FPL's knowledge has not been included in a financing
7 order that has been issued to date.

8 CHAIRMAN EDGAR: Mr. Keating.

9 MR. KEATING: To clarify one thing, the financing
10 order that we did issue does not specify particular or specific
11 language to be included in the disclosure documents in this
12 proceeding. I understand from what FPL has said this morning
13 that part of their concern is that with this language with this
14 last sentence directing the transaction be structured in this
15 manner, that that would give some leverage to somebody in the
16 bond team process who wanted that specific language included in
17 the disclosure documents. But I did want to clarify that by
18 our financing order we did not specify what language would be
19 included in the disclosure documents, that was something that
20 was left for the bond team process.

21 CHAIRMAN EDGAR: Commissioner Tew, did you have
22 additional --

23 COMMISSIONER TEW: Well, I did specifically want to
24 know if that last sentence was included in other jurisdictions,
25 because I think that that is important. I think that was what

1 was originally claimed by FPL to not be included in part of the
2 record, and we keep hearing references that it has been used in
3 other jurisdictions, and that is aimed at giving us some
4 comfort that we are doing the right thing here.

5 And I think that maybe that is important, and maybe
6 we get away from defining what for all practical purposes are
7 by considering whether or not the last sentence should be
8 there. I don't know how important the last sentence is for
9 inclusion in that order, but I just throw that out as something
10 that I have a lingering concern over.

11 CHAIRMAN EDGAR: Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: Ms. Smith. (Pause.)

13 Ms. Smith.

14 MS. SMITH: Oh. Sorry, I apologize.

15 COMMISSIONER ARRIAGA: That's okay. I'm personally
16 inclined to leave the financing order as it is. Again, no
17 emotion, just a comment. Because to start modifying an
18 original order made by this Commission could get nasty, messy.
19 If I was a judge and I was sitting here looking at a case
20 regarding this bond issue, an investor suing or somebody like
21 that, what was meant by whatever, I would pull out the original
22 financing order, I would pull out the order for
23 reconsideration, which includes all of staff's comments, and I
24 would decide based on both documents. And I believe that an
25 order for reconsideration with staff's comment has clarified

1 everything that was meant to be said.

2 MS. SMITH: Commissioner, I would agree with that
3 with the exception of there has not been a clarification as to
4 what is meant by the phrase for all practical purposes and
5 circumstances. And I guess two alternatives. We would agree
6 with Commissioner Tew's alternative of striking the language
7 that was not in the record. We think that would be a favorable
8 outcome. And, additionally, if we could get -- or,
9 alternatively, if we could get clarification that we would not
10 be required to include this statement in the prospectus and
11 offering documents without clarification as to what is meant by
12 the phrase "for all practical purposes and circumstance," that
13 also would satisfy our concerns.

14 CHAIRMAN EDGAR: Commissioner Tew.

15 COMMISSIONER TEW: I wanted to follow up on what
16 Commissioner Arriaga just said about clarifying the financing
17 order, and wanted to clarify with you again, Ms. Smith, that if
18 we were to make a change to that paragraph, it would just be a
19 change that would be reflected in the order on reconsideration.
20 We would not go back and clarify in the financing order
21 document itself, is that correct?

22 MS. SMITH: You would clarify that this was being
23 stricken, correct.

24 COMMISSIONER TEW: A follow-up.

25 But it wouldn't strike that language from the

1 original financing order, it would just be clarified in the
2 order that would result from today's vote that we had done away
3 with that sentence, if that ends up being the Commission's
4 pleasure.

5 MS. SMITH: Yes, Commissioner.

6 COMMISSIONER TEW: Okay.

7 CHAIRMAN EDGAR: Mr. Cooke.

8 MR. COOKE: I think that has the same effect,
9 however. If we issue an order on reconsideration that strikes
10 language that is in the original order, it essentially deletes
11 that language from the original order. We simply don't marry
12 up the documents.

13 CHAIRMAN EDGAR: Commissioner Tew.

14 COMMISSIONER TEW: I suppose that gives rise to the
15 question whether or not we need that sentence. And I think
16 that goes back to the question I was asking before. If that
17 has not been used in several cases, do we need this sentence
18 here?

19 MR. COOKE: Well, let me say two things about that --
20 or say one thing and then ask Mr. Criddle a question.

21 First of all, I'm not certain that it hasn't been
22 used in financing orders in other jurisdictions, and I would
23 like to have that clarified.

24 Mr. Criddle.

25 CHAIRMAN EDGAR: Mr. Criddle, can you speak to that?

1 MR. CRIDDLE: To my knowledge this is the first time
2 that particular formulation has been used in a financing order.
3 We have seen the actual substantive disclosure repeatedly in
4 prospectuses, but the language that is now being focused on, to
5 my knowledge, is a variation that staff settled on and
6 recommended in connection with this financing order in light of
7 the flexibility that FPL requested.

8 MR. COOKE: Thank you.

9 My understanding of why that sentence is there,
10 essentially I believe, it's my understanding that the record
11 does support the beginning part of that paragraph that says for
12 all practical purposes, et cetera. And I believe that implicit
13 in the Commission's determination of that finding of fact,
14 implicit in that is a direction to, through the process of the
15 bond team, achieve the result of that finding of fact.

16 I think, essentially, that last sentence is an
17 ordering type of sentence. It probably should have been in the
18 ordering provisions. I think it's implicit in what the
19 Commission found in terms of the end result given the true-up
20 mechanism and the nature of the state pledge that for all
21 practical purposes the end result will be a bond decision that
22 achieves, for all practical purposes, this level of risk. And,
23 therefore, it is implicit that the Commission is asking staff
24 through its involvement in the bond team to achieve that
25 result.

1 MS. SMITH: Madam Chairman, may I?

2 CHAIRMAN EDGAR: Ms. Smith.

3 MS. SMITH: Respectfully, I just have trouble seeing
4 -- I mean, the first part of it, I am turning to what the
5 financing order says -- it says the Commission anticipates
6 stress case analyses will show that the broad nature of the
7 state pledge and the automatic true-up mechanism will serve to
8 effectively eliminate, for all practical purposes and
9 circumstances, all credit risk associated with the bonds.
10 That's an opinion of the Commission about what it anticipates
11 that the stress case analyses will show, and that's very
12 different from the directive to FPL that it structure the
13 transaction to achieve that result.

14 COMMISSIONER CARTER: Madam Chairman.

15 CHAIRMAN EDGAR: Commissioner Carter.

16 COMMISSIONER CARTER: I beg your indulgence. I just
17 want to ask a question out loud. I'm like, it seems that the
18 language is the same. I mean, why would we not want it to have
19 the transaction structure based upon our finding? I mean, is
20 there something I'm missing? I mean, I don't play a lawyer on
21 TV, but I've been to law school and it seems to me that the
22 language flows from the directive itself. And I can't get it,
23 I don't get it.

24 MR. KEATING: I think one of staff's concerns, also,
25 is that the financing order could lose some degree of strength

1 if the sentence is removed. With the sentence we're sort of
2 saying -- the statute has created this extraordinary risk, and
3 we will accept pretty much nothing less than what the statute
4 allows for here. If the sentence is removed, it could provide
5 an opportunity for somewhere down the road interpreting what we
6 did here to have, perhaps, more meaning than might be intended.

7 It would definitely give an impression, I think, that
8 we must have intended that there would be some consequence to
9 that change. There is some meaning to having that sentence
10 present.

11 MS. SMITH: Madam Chairman.

12 CHAIRMAN EDGAR: Ms. Smith. But I'm getting ready to
13 move on.

14 MS. SMITH: Okay. I would just say that if we could
15 get the clarification of what is meant by the phrase "for all
16 practical purposes and circumstances" and/or some agreement
17 that we will not be required to include this opinion in our
18 prospectus and offerings documents, that would satisfy our
19 concerns.

20 CHAIRMAN EDGAR: Okay.

21 Commissioners, I think what I would like to do is we
22 have had some discussion on Point 1, we have had discussion on
23 Point 2. Let's move on for the time being. We will come back.
24 Point 3, Ms. Smith has said, is moot in their minds. So let
25 move to the fourth point and have some discussion. And I think

1 what I would like to do, and this is also open to discussion,
2 but let's move through it and hear from our staff and have the
3 opportunity to answer questions on these additional points that
4 have been raised.

5 We did hear from Ms. Smith in oral argument. We'll
6 have the opportunity, of course, to ask her further and
7 additional questions, should we have them. But let's move
8 through the items. And then I'm thinking that it may behoove
9 us to take a short lunch break, have some time for some
10 personal reflection. We have had a lot of information. And
11 then we will need to come back this afternoon, regardless. We
12 have three and a half items remaining on our agenda, so we can
13 come back then and move through our decision-making process.
14 So, if that is okay.

15 Mr. Keating, I would like to ask you to speak to us
16 on Point 4.

17 MR. KEATING: Concerning Point 4, I think similar to
18 my comments on Point 2, FPL suggested in the document it handed
19 out that we lift a quote from the staff recommendation and
20 perhaps modify the financing order with that. We have since
21 had some discussion on that as to whether we should try to, in
22 this forum, craft specific language to revise the order or
23 simply allow the clarification as it's stated in the
24 recommendation to appear in an order on reconsideration that
25 may adopt the staff recommendation. I think that is our only

1 concern.

2 If with the language that's in the staff
3 recommendation, if that language is to appear in an order on
4 reconsideration, I don't think we have any concern there. I
5 mean, that language would typically, in our traditional order
6 on reconsideration, would typically be there if the Commission
7 approves the staff's recommendation. The only concern is where
8 we would try to craft something to fit that into the existing
9 financing order without doing any harm to it, without having
10 any unintended consequence.

11 On Point 5, I believe other than Point 1, this is
12 probably the only other one where we still have a fairly
13 significant difference with FPL. The language that FPL is
14 suggesting, which would allow FPL the opportunity to seek
15 recovery of incremental cost associated with its role as
16 servicer or administrator of the bonds in its next retail base
17 rate proceeding, I mean, it is at odds with what the order
18 found, which was that the amounts that it receives in terms of
19 the annual fee it gets paid under these agreements with the
20 special purpose entity should be credited to the storm reserve.

21 That finding was based on the fact that there was no
22 information in the record, despite staff's attempt to develop
23 the record in that area, there was no information as to what,
24 if any, incremental cost there would be to FPL in performing
25 these services. And also information that indicates that much

1 of the services that would be performed under these agreements
2 are activities that are already performed by FPL in the normal
3 course of business.

4 The concern they've raised, as I read the motion, is
5 perhaps a suggestion of a mistake of law concerning the
6 bankruptcy law effects of this finding. I know that we did, in
7 crafting the recommendation and crafting the issues, try to
8 take that into account. We had a separate issue concerning the
9 appropriate amount -- I'm sorry, the appropriate fee for the
10 SPE to pay FPL under these agreements. Recognizing that that
11 fee needed to represent an arm's-length transaction, we agreed
12 and the Commission approved that the fee that was proposed by
13 FPL was appropriate. And, again, that was to maintain an
14 arm's-length transaction, not that the fee necessarily was
15 necessary to cover incremental costs of FPL. That was the
16 first issue.

17 The second issue that followed that in the
18 recommendation was, okay, FPL is going to receive this fee to
19 establish the arm's-length transaction, what amount, if any of
20 that fee, is necessary to cover any true incremental cost to
21 FPL to perform services under the agreement. To us it was more
22 of a regulatory issue at that point. And because we didn't
23 believe the record supported that there were going to be
24 incremental costs to FPL to perform these services, we
25 recommended and the Commission approved that those amounts,

1 certain amounts, the annual fee under the agreements be
2 credited to the storm reserve.

3 We have discussed this one with our outside counsel
4 who feels that the necessary bankruptcy opinions could be
5 rendered based on the Commission's finding. But, again, in
6 summary, we think this is an issue where there isn't a point of
7 fact or law that the Commission overlooked or failed to
8 consider.

9 With respect to Reconsideration Item 6 --

10 MS. SMITH: Madam Chairman, may I address Item 5
11 before we move on, just respond?

12 CHAIRMAN EDGAR: Yes.

13 MS. SMITH: I will say that we provided extensive
14 information in discovery about the types of services that would
15 be performed under the servicing and administration agreement.
16 We simply said that it was not cost-effective at this time to
17 track the costs, but there was no dispute in the record as to
18 whether FPL would need to recover its incremental costs in
19 order to get the necessary bankruptcy opinions.

20 Respectfully, I know that the Commission's counsel
21 has said that this is not needed in order to get the necessary
22 bankruptcy opinions. But our bankruptcy counsel has told us
23 that it is necessary, you know, or at least very helpful to do
24 so, and it's something that would not harm customers. There
25 would be an opportunity to challenge whether there are any

1 incremental costs in a future base rate proceeding, and whether
2 those costs are reasonably and prudently incurred. And so
3 because there is no downside, I just don't understand why this
4 isn't something that could easily be addressed.

5 CHAIRMAN EDGAR: Mr. Keating, briefly.

6 MR. KEATING: With respect -- if you're looking for a
7 response, I don't know if I can give one with respect to the
8 nuances of bankruptcy law. I would ask, I guess, Mr. Criddle
9 to respond, if he has any comments.

10 MR. CRIDDLE: Just very briefly. From a bankruptcy
11 point of view, my bankruptcy specialist advises me that, in
12 particular, if there is an opportunity for the utility to make
13 a showing of its costs, that they feel any bankruptcy concern
14 on this point would be satisfied. And the Commission, I
15 believe, allowed an opportunity for a showing, and on the basis
16 of that showing, has approved the initial set-up fees as having
17 been documented, but concluded that the company failed to make
18 the adequate showing for on-going costs.

19 My bankruptcy lawyers advised me that there should be
20 no bankruptcy-related concern if there is a failure to make a
21 showing as opposed to no opportunity given at all. So I
22 believe that's the bankruptcy analysis that we feel should
23 prevail.

24 MS. SMITH: Madam Chairman, may I, again?

25 CHAIRMAN EDGAR: Ms. Smith.

1 MS. SMITH: All we are asking for is the opportunity.
2 Respectfully, we did not know until the time the staff
3 recommendation was issued that we were going to be held to a
4 standard of prospectively showing that we have satisfied and
5 shown any incremental costs of service that we were incurring
6 as part of this proceeding. Again, it's unrebutted in
7 testimony that we need the opportunity to recover incremental
8 costs in order to receive the necessary bankruptcy opinions.
9 And, certainly, when we don't find out until the staff
10 recommendation the standard that we are being held to, there is
11 really nothing we can do at that point.

12 CHAIRMAN EDGAR: Mr. Keating, Point 6.

13 MR. KEATING: Point 6, I believe we're in agreement.
14 Staff has recommended that you grant FPL's motion for
15 reconsideration with respect to Point 6.

16 CHAIRMAN EDGAR: And could you go ahead and speak to
17 us on Point 2 of Issue 3.

18 MR. KEATING: Yes. Again, this is a -- we haven't
19 discussed this one, so I'll give just a little bit of
20 background. The financing order requires that lowest cost
21 certifications be provided by FPL, the underwriters, and the
22 Commission's financial advisor. And that the Commission will
23 review those certifications, will review the transaction, and
24 will have an opportunity by the close of business on the third
25 business day after the bonds have been priced, the Commission

1 will have an opportunity at its discretion to issue a stop
2 order to stop the transaction. The financing order also
3 indicates that if no action is taken by the Commission by the
4 close of business on that third business day that the
5 transaction will go forward.

6 FPL has asked for clarification that the Commission
7 has the discretion to allow the transaction to go forward, even
8 in the absence of the certification from the Commission's
9 financial advisor, such that one party, the Commission's
10 financial advisor, that is, would not by himself be able to
11 hold up the transaction.

12 We think it's already implicit in the order that we
13 have the discretion as to whether or not to issue a stop order
14 by day three. And I believe that the language that's in the
15 staff recommendation that clarifies that would hopefully
16 address FPL's concern.

17 CHAIRMAN EDGAR: Ms. Smith.

18 MS. SMITH: Yes, it would.

19 CHAIRMAN EDGAR: Commissioners, comments or questions
20 at this time.

21 Commissioner Arriaga.

22 COMMISSIONER ARRIAGA: Issue Number 5, recovery of
23 incremental costs. I just wanted to remind ourselves that
24 during these lengthy proceedings, we held FPL to the very
25 strict standards of incremental costs, the recovery of only

1 incremental costs. And using a layman's term, what's good for
2 -- the sauce that is good for the geese is good for the goose,
3 I think that is the way it goes -- (laughter) -- I try to be as
4 English, as American as I can, you know.

5 CHAIRMAN EDGAR: That's goose and gander, I think.

6 (Laughter.)

7 COMMISSIONER ARRIAGA: Okay.

8 CHAIRMAN EDGAR: But we get you, we get your point.

9 COMMISSIONER ARRIAGA: Okay. Good.

10 So, I mean, all that is being asked here is to
11 recognize what we held this company to during the proceedings,
12 incremental cost. And this is something that OPC has advocated
13 throughout. And even in the last case we just saw a few hours
14 ago regarding GT Com, I purposely indicated I am so glad that
15 we're not talking about incremental cost in the telecom case
16 because it is something that is pertinent exclusively to the
17 electric utilities. I think that there is a point in
18 recognizing incremental costs.

19 CHAIRMAN EDGAR: Okay.

20 Commissioners, as we mentioned earlier, we have all
21 spent a great amount of time on these issues to bring us to
22 this point, and that's a good thing. And because of all the
23 time and work that has gone into it, I don't want to push a
24 decision at a low blood sugar moment, personally. So, I would
25 like to have the opportunity for a lunch break, realizing, as I

1 mentioned a few moments ago, we do have additional items on our
2 agenda this afternoon.

3 I'm showing about 12:35 on my clock, so we are going
4 to take a lunch break.

5 Mr. Criddle, I will ask, can you join us in
6 approximately an hour for further discussion?

7 MR. CRIDDLE: Yes, I can.

8 CHAIRMAN EDGAR: Thank you very much. Then we are on
9 break until approximately 1:30.

10 (Lunch recess.)

11 CHAIRMAN EDGAR: We are back on the record.

12 Commissioners, when we went to lunch we were
13 discussing Item 5, and I think that our staff and the parties
14 have asked for a little additional time to answer some of the
15 questions that came up.

16 So realizing that we do have other items of business
17 before us, what I would like to do is hold off on further
18 discussion on Item 5, and move along through our agenda and
19 come back to that in a little while later this afternoon.

20 * * * * *

21 CHAIRMAN EDGAR: We are back on the record.

22 And, Commissioners, as I said before the break, we
23 have one remaining item to address to complete our work for the
24 day, and that is to go back to Item 5. And I do believe that
25 we have Mr. Criddle with us by phone again.

1 Mr. Criddle, can you hear me?

2 MR. CRIDDLE: Yes, I can, Madam Chair.

3 CHAIRMAN EDGAR: Thank you for your patience and for
4 joining us again here towards the end of the day.

5 I'm going to look to staff to remind of us of where
6 we are.

7 Mr. Keating.

8 MR. KEATING: Thank you.

9 Commissioner, we have had the opportunity during the
10 time we were away to discuss some of the points that FPL would
11 like to have clarified in the order. And, in particular,
12 Reconsideration Items 2, 4, and Clarification Item 2.

13 As you will recall, on each of those points there was
14 language in the staff recommendation that FPL had requested be
15 reflected in an order on reconsideration. There was a question
16 as to, you know, what form or order on reconsideration would
17 take to reflect these clarifications. What we have done over
18 the last few hours is arrive at some language that I think both
19 FPL and staff feel fairly reflect the clarification that was
20 requested, and it's reflected in the staff recommendation while
21 not doing any harm to the intent of the financing order.

22 And I believe you have a copy of that now, it's a
23 two-page document. We couldn't quite get it onto one page.
24 And, again, that's with respect to Reconsideration Point 2,
25 Reconsideration Point 4, and Clarification Point 2. And, I

1 can, if it's your desire, walk through those and try to give
2 some explanation.

3 CHAIRMAN EDGAR: Okay. Yes, Mr. Keating, let's go
4 ahead and do that now.

5 MR. KEATING: On Reconsideration Point 2, the
6 language in the staff recommendation clarified that the
7 requirement that storm charges be set in amounts sufficient to
8 guarantee timely payment of the bonds, that by that requirement
9 we were not intending to establish FPL as a guarantor of
10 payments on the storm-recovery bonds. The language that is
11 provided here, this is the first block quote on the pages that
12 were just handed out, says that, if you look at the last two
13 lines of that language, I'm sorry, of that block quote, the
14 first three or four lines, three and a half lines, provides the
15 protection that we think is necessary so that, just a bare
16 statement that FPL is not intended to be a guarantor of the
17 payments is not interpreted to relieve them of any other
18 obligations that they are going to have as part of the
19 transaction in the various agreements.

20 The second reconsideration point, I'm sorry,
21 Reconsideration Point 4, the second block quote, that language
22 is almost word-for-word from the staff recommendation. Again,
23 this clarifies that in reviewing the transaction that we're
24 looking not only at interest rate, but also up-front and
25 ongoing costs as part of the lowest overall cost approach that

1 the Commission adopted.

2 I'm going to jump down to Clarification Point 2,
3 which is the last block quote on the first page and concludes
4 on the second page. This provides the clarification that the
5 Commission has the discretion to allow the storm-recovery bonds
6 to be issued in the absence of a certification from FPL, the
7 underwriters, or this Commission's financial advisor. Our
8 concern with including just the bare statement that was in the
9 recommendation as part of the financing order would undermine
10 or weaken the requirement of the lowest cost certifications as
11 set forth in the financing order.

12 The first sentence under Clarification Point 2 on
13 Page 1 there is intended to ensure that that does not happen.
14 It's clear that we expect the parties to provide the
15 certifications for this transaction to go forward, while still
16 retaining the discretion to allow the transaction to go forward
17 in the absence of a certification, or if we receive a
18 certification that is not in the form that we require that's
19 acceptable to the Commission. What's on Page 2 is simply the
20 associated ordering -- language that would go in the ordering
21 paragraph associated with the Finding of Fact 135.

22 And I'm going to jump back -- unless you would like
23 me to stop for any questions at this point, I could jump back
24 to Reconsideration Point 5, which is in the middle of that
25 first page.

1 CHAIRMAN EDGAR: Keep going.

2 MR. KEATING: Okay. As you recall, Reconsideration
3 Point 5 concerned FPL's recovery or opportunity to recover
4 incremental costs associated with their role as a servicer or
5 administrator of the storm-recovery bonds. Actually, I think
6 it would probably be best for me to defer to FPL at this point
7 to clarify what the request was in their motion that led to
8 this language.

9 CHAIRMAN EDGAR: Ms. Smith.

10 MS. SMITH: Yes. We do thank staff for working with
11 us to achieve a good result, we think, on these points of
12 clarification.

13 Regarding Reconsideration Item 5, what we did ask for
14 is the opportunity to seek recovery of incremental cost in a
15 future base rate proceeding in order to ensure that we are able
16 to get the necessary bankruptcy opinions. We understand that
17 staff's concern was that we were going to accumulate
18 incremental costs between now and the next base rate proceeding
19 and defer and seek recovery of those costs at the time of the
20 next rate case.

21 That is not the case, and we clarified that during
22 our discussions with staff. We worked on language with staff
23 that will satisfy our concerns about getting the necessary
24 bankruptcy opinions, and at the same time clarify that we are
25 only going to seek recovery of costs prospectively at the time

1 of the next rate case.

2 And in the handout that Mr. Cooke distributed, the
3 clarifying language that was added is on the third line
4 "Incurred on or after a test period." And actually we reached
5 some further clarifying language, an agreement with staff. The
6 language would read incurred during or after a test period
7 instead of on.

8 CHAIRMAN EDGAR: Mr. Keating.

9 MR. KEATING: And with FPL's clarification of their
10 motion on that point, staff is comfortable with that revised
11 language. Again, subject to your approval. And just to be
12 clear, what we have come up with here is specific language that
13 in an order on reconsideration can be referenced in the
14 specific portions of the financing order in the event that that
15 is the direction that the Commission would like us to go with
16 the order on reconsideration.

17 CHAIRMAN EDGAR: Thank you.

18 Commissioners, any questions?

19 Commissioner Deason.

20 COMMISSIONER DEASON: What about Reconsideration Item
21 1?

22 MR. KEATING: I should have mentioned, we do not have
23 agreement on Item 1, that is still something that's on the
24 table.

25 CHAIRMAN EDGAR: My understanding is that is

1 something that we will still need to discuss, and we will come
2 to that. But as long as we had this new language in front of
3 us, I thought that might be a good place to at least start our
4 continuing discussion to see if there is any questions or
5 additional information that we would like to get from either
6 FPL or our staff on these items before us.

7 COMMISSIONER DEASON: It looks like a good resolution
8 to me, Madam Chairman.

9 CHAIRMAN EDGAR: Thank you, Commissioner Deason.

10 Commissioners? There's none at this time.

11 Okay. Then let's hold on this for the moment. And,
12 Mr. Keating, I would like for you to refresh our memory on
13 Reconsideration Item 1.

14 MR. KEATING: Reconsideration Item 1 concerns what is
15 listed as Finding of Fact 81 in the financing order, in
16 particular the last sentence of that finding of fact which
17 states that we direct the transaction be structured to achieve
18 this result, which refers back to the statutory true-up
19 mechanism in the state pledge and the credit risk language that
20 we were discussing earlier.

21 What was, I think, on the table were a couple of
22 different suggestions by FPL. One, that the last sentence of
23 the finding of fact be deleted, or otherwise that all practical
24 purposes and circumstances be more specifically defined.

25 CHAIRMAN EDGAR: Ms. Smith.

1 MS. SMITH: May I? Thank you.

2 I will say that we made every effort to compromise on
3 Issue 1, but this is just a critical issue for us. And, again,
4 as we discussed earlier, and it has been presented to the PSC,
5 this directive that the transaction be structured to achieve
6 this result has never been in any other financing order, it was
7 not part of the record in this proceeding, and it was not in
8 the staff recommendation that was voted on by the Commission.
9 And so we think that this language should be stricken.

10 I will offer up one other alternative that we
11 considered as we were reflecting on the discussion this
12 morning. Commissioner Deason said this morning that he would
13 like to ensure that credit risk is minimized. And if that is
14 the Commission's intent, then we would suggest that that can be
15 achieved by changing the word eliminate to minimize in Finding
16 of Fact 81.

17 I can read how it would read.

18 CHAIRMAN EDGAR: Yes, please do.

19 MS. SMITH: We find that this true-up mechanism,
20 together with the broad based nature of the state pledge set
21 forth in Section 366.8260, Subsection 11, Florida Statutes,
22 constitutes a guarantee of regulatory action for the benefit of
23 investors and storm-recovery bonds. And we anticipate that
24 stress case analyses will show that these features will serve
25 to effectively minimize, for all practical purposes and

1 circumstances, any credit risk associated with the
2 storm-recovery bonds.

3 COMMISSIONER CARTER: Madam Chair.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: Before we get to that issue, do
6 you mind if I ask staff a question?

7 CHAIRMAN EDGAR: You're recognized for a question.

8 COMMISSIONER CARTER: In reverse order. Is that
9 assuming -- on Page 4, assuming that we put this sentence in
10 here, we direct that the transaction be structured, would it be
11 more appropriate to put that sentence someplace else in the
12 document?

13 CHAIRMAN EDGAR: Mr. Keating.

14 MR. KEATING: I'm not sure. I just don't know right
15 off the top of my head exactly where that would fit. I don't
16 know if there is an ordering paragraph that that language would
17 fit in or if there is any other place that that particular
18 language would fit. I'm not saying that it wouldn't, I just
19 haven't looked at the order in that light.

20 CHAIRMAN EDGAR: Commissioner Deason.

21 COMMISSIONER DEASON: Madam Chairman, I have a
22 suggestion that maybe would -- I'm sure it would not totally
23 eliminate FPL's concern, but maybe minimize it. If we were to
24 change the last sentence to read, "We direct that this
25 transaction be structured consistent with this expectation."

1 MS. SMITH: May we confer for just a moment?

2 COMMISSIONER DEASON: Sure.

3 MS. SMITH: Thank you.

4 CHAIRMAN EDGAR: Take a moment. And, Commissioner
5 Deason, will you read that one more time while they're
6 conferring.

7 COMMISSIONER DEASON: Yes. The last sentence would
8 read, "We direct that this transaction be structured consistent
9 with this expectation."

10 CHAIRMAN EDGAR: Are we close?

11 MS. SMITH: Yes, I think so.

12 CHAIRMAN EDGAR: Okay. Ms. Smith.

13 MS. SMITH: Our concern is that that language is
14 still holding us to the same standard that we feel is
15 ambiguous. But we do have some potential alternative language
16 to suggest that is somewhat consistent. "We direct that FPL
17 strive to structure the transaction consistent with this
18 expectation." And that along with the word minimize instead of
19 eliminate would address our concerns.

20 CHAIRMAN EDGAR: Commissioner Carter.

21 COMMISSIONER CARTER: Madam Chairman, I think with
22 the proposed language by Commissioner Deason, that really
23 reflects the finding from the case below as well as where we
24 are now, and I think with that you don't really have to deal
25 with whether it is eliminate or minimize.

1 CHAIRMAN EDGAR: Or strive.

2 COMMISSIONER CARTER: Or strive, right. "We direct
3 this transaction be structured consistent with this
4 expectation." I mean, that is fairly, on its face,
5 self-explanatory. And I think that any bond counselor or any
6 bond purchaser will be able to understand the perspective on
7 that. And I just think it makes more sense and it's cleaner.

8 MS. SMITH: Madam Chairman, if I may.

9 CHAIRMAN EDGAR: I'm going to come back to you, so
10 hold just a moment.

11 Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: Yes. I would like to agree
13 with Commissioners Deason and Carter. My only point is that no
14 bond transaction can completely eliminate credit risk, so I
15 think the word minimize is appropriate.

16 CHAIRMAN EDGAR: Mr. Keating, did you have a comment?

17 MR. KEATING: No. I'm sorry.

18 CHAIRMAN EDGAR: Did I miss you, Commissioner Carter?

19 COMMISSIONER CARTER: No.

20 CHAIRMAN EDGAR: Okay. Ms. Smith.

21 MS. SMITH: I still -- I did say this earlier, but I
22 still think, and I want to clarify that our primary concern is
23 that the language is going from what the Commission in its
24 opinion anticipates that the stress case analysis will show,
25 and the language, again, that causes us concern that wasn't in

1 the record is a directive to the company to meet this standard
2 that, again, we feel is ambiguous. And it's the opinion of the
3 Commission transitioning to a directive to the company that
4 gives us concern.

5 I will point out that we think we can satisfy
6 minimize, if minimize is substituted for eliminate.

7 CHAIRMAN EDGAR: Mr. Keating.

8 MR. KEATING: I would only point out that the
9 specific finding the Commission made included the phrase
10 effectively eliminate and not minimize. So I think there is --
11 I just want to point out that to use the word minimize is going
12 to be -- not going to track the specific language that was
13 voted on exactly.

14 CHAIRMAN EDGAR: Commissioner Arriaga.

15 COMMISSIONER ARRIAGA: Can I ask a question of
16 outside counsel?

17 CHAIRMAN EDGAR: Mr. Criddle. Mr. Criddle.

18 MR. CRIDDLE: Yes. If Mr. Arriaga could please speak
19 directly into the mike. I'm having a little bit of trouble
20 hearing, but I'm here.

21 CHAIRMAN EDGAR: Okay. All right. We have a
22 question for you.

23 COMMISSIONER ARRIAGA: Mr. Criddle, this is
24 Commissioner Arriaga.

25 MR. CRIDDLE: Yes, sir.

1 COMMISSIONER ARRIAGA: Do you know of any bond
2 transaction that has zero credit risk?

3 MR. CRIDDLE: No.

4 COMMISSIONER ARRIAGA: Thank you.

5 CHAIRMAN EDGAR: Mr. Cooke.

6 MR. COOKE: I'm wary of being an advocate, but I just
7 wanted to point out, just to clarify, that for all practical
8 purposes there is not any -- there is qualifying language that
9 has gotten us down this track to begin with. I just want to
10 make it clear that we're not suggesting the Commission's
11 finding and recommendation that was voted on in the bond
12 hearing itself doesn't say that there won't be any credit risk,
13 and I think that is laid out in Mr. Keating's draft
14 recommendation.

15 COMMISSIONER CARTER: Madam Chair.

16 CHAIRMAN EDGAR: Commissioner Carter.

17 COMMISSIONER CARTER: In view of the language that --
18 I mean, I think that it's masterful in terms of what
19 Commissioner Deason has said, is that why wouldn't it, I mean,
20 eliminate versus -- you used the word minimize versus
21 eliminate. I mean, we pretty much all know what we mean when
22 we say that. I mean, I don't think that that would give
23 anybody any grave heartburn. Because, as you say, Commissioner
24 Arriaga is correct, there is no such thing as a bond without
25 any risk. You can't eliminate it. You can obviously minimize

1 it by the parameters that we have put in there. So I think
2 that if we could go with Commissioner Deason's language on the
3 last sentence and this request to just use the word minimize
4 from Commissioner Arriaga, I think we may have some traction on
5 this. And it makes a lot of sense, and I think it keeps the
6 sense of the Commission, keeps the flavor of the order, and
7 keeps the perspective of the case that we had underlying.

8 If it makes sense to me, it has got to be simple.

9 CHAIRMAN EDGAR: Commissioner Tew.

10 COMMISSIONER TEW: Well, I hate to complicate things,
11 or maybe I don't, but I still remember all the discussion about
12 whether the last sentence or maybe any form of the last
13 sentence is in the record. And I would like for our staff
14 attorney to speak to that.

15 CHAIRMAN EDGAR: Mr. Keating.

16 MR. KEATING: I don't think we have a witness
17 testifying that we should direct the transaction to be
18 structured to achieve this result. That said, the findings
19 that the Commission make don't have to be word-for-word from
20 what's in the record. They have to be based on evidence that
21 is in the record. And we believe that the last sentence is
22 implicit in the Commission's finding that was specifically as
23 the Commission approved the staff's recommendation on Issue 61.

24 So I think it's a little -- the question of whether
25 something is in the record, that's not the question. The real

1 question is whether it is supported by the record. I think
2 that finding is supported by the record.

3 CHAIRMAN EDGAR: Commissioner Tew.

4 COMMISSIONER TEW: I guess my concern has been that
5 we have put in a sentence, it seems like at least based on the
6 discussion today, we are a little unclear as to exactly why we
7 put in that sentence, and now we are worried if we remove the
8 sentence we're going to end up with unintended consequences.
9 So I guess I'm just expressing frustration with where we are at
10 with this sentence that appeared and now we're worried that
11 getting rid of it will -- anyway, that's just my thoughts. I
12 think we are moving in the right direction. I'm just not sure
13 that we have gotten out of the -- the concern as to whether or
14 not it's in the record.

15 And I guess I will also note on the word minimize, if
16 that is also not in the record, it doesn't seem like those two
17 arguments mesh to me. It seems like if it is okay for us to
18 change minimize -- well, I guess I should just say we should be
19 consistent throughout.

20 MR. KEATING: I mean, it is the Commission's order,
21 and it should reflect the Commission's intent. And that's what
22 we try to do in crafting an order. And in crafting the order,
23 the specific finding -- I mean, there is very specific language
24 in the staff recommendation, that's why it is in the order,
25 that said that the financing order should include ordering

1 paragraphs, findings of fact, and conclusions of law that will
2 give appropriate comfort to investors about the high quality of
3 storm-recovery bonds as a potential investment. Examples
4 include, and the first one is a finding that the Commission
5 anticipates stress-case analyses will show that the broad
6 nature of the state pledge and the automatic true-up mechanism
7 will serve to effectively eliminate, for all practical purposes
8 and circumstances, all credit risk associated with the
9 storm-recovery bonds.

10 I just wanted to give some explanation as to the
11 basis for the statement. There is record support for that
12 particular finding, and we believe that the last sentence that
13 is in Finding of Fact 81 is consistent with that finding, which
14 is based on the record evidence, and is supported by the record
15 evidence.

16 CHAIRMAN EDGAR: Commissioner Tew.

17 COMMISSIONER TEW: An attempt to clarify what I was
18 saying. If we can find record support to craft the last
19 sentence, it seems like effectively eliminate and minimize are
20 close enough, as well.

21 CHAIRMAN EDGAR: Commissioner Carter.

22 COMMISSIONER CARTER: Thank you, Madam Chairman.

23 Commissioner Tew's question gets me back to where I
24 was when I asked about whether or not this sentence could be
25 placed somewhere else in the record. I guess the preliminary

1 question I should have asked was whether we even need this
2 sentence. I mean, I think that the paragraph itself says what
3 we found. I mean, this sentence, at best, is redundant and
4 therefore may not even be necessary. And even if it is
5 necessary, it doesn't seem to be necessary to place it here.
6 Maybe it should be someplace else in the record or someplace
7 else -- just, for all practical purposes, we are trying to move
8 a transaction and deal in the bond community.

9 And the thing in the bond community, particularly
10 when people are investing their money and people are spending
11 their money, they want to see some kind of definitive
12 perspective. You know, we want interest rates, we want a
13 payment schedule, we want time frames, we want an annual
14 percentage. We want all of that stuff locked down.

15 This sentence here, in my opinion, doesn't get us
16 where we need to be. If we need this sentence at all it
17 shouldn't be there, that's what I'm saying. Because it seems
18 to be giving us heartburn, and it was not specifically a
19 finding of fact in the case below. I mean, it was several
20 days, but I was paying attention every day. And I just think
21 that this sentence -- it's redundant, at best, for the
22 paragraph. And I just don't think it gets us where we really
23 need to be. And I think it hold us up from a process where we
24 need to be moving on to.

25 I mean, the time value of money. Every delay there

1 is a cost factor involved. And we say we want to be as
2 expeditious as possible in this process. And I think that the
3 paragraph, unless I'm missing something, this paragraph
4 represents what we found in the case below. This sentence at
5 the end of the paragraph is at best redundant, and that is
6 being charitable.

7 CHAIRMAN EDGAR: Commissioner Deason, you made an
8 effort to help us with our rewriting on the spot perhaps. Do
9 you have additional thoughts from the discussion, since you --

10 COMMISSIONER DEASON: Well, the purpose of the
11 suggestion was to alleviate the concern that we were ordering
12 FPL to achieve a result. We were just ordering them to
13 structure it consistent with our expectation. And we may be
14 wrong in our expectation, but that's our expectation and not
15 theirs. And so I was hoping that would give some comfort.

16 I'm still comfortable with changing the last sentence
17 with that terminology and without inserting the word minimize.
18 But at the same time, I think the Commission needs to express
19 what its intent is so that the bond team will have the
20 necessary direction to go forward. And whatever the intent of
21 the Commission is, so be it. But I can tell you, when I voted
22 that's exactly what I voted for, to effectively eliminate it,
23 and that's our expectation. And I think that's what the
24 customers deserve, that's what they expect, and that's what
25 this whole thing -- the statute was premised upon, and I think

1 we have an obligation to try and carry it forth as best we can.

2 CHAIRMAN EDGAR: Commissioner Carter.

3 COMMISSIONER CARTER: Just a question, Madam Chair.

4 CHAIRMAN EDGAR: You're recognized for a question.

5 COMMISSIONER CARTER: I just want to make sure that
6 we're on the same page. Therefore, then, what Commissioner
7 Deason is saying, and I agreed with him initially, and I think
8 I'm back to where I started. He was saying, before
9 Commissioner Arriaga and I asked our series of questions and
10 before Commissioner Tew asked her series of questions, he was
11 saying leave the word eliminate where it is in the paragraph,
12 and to say we direct that this transaction be structured
13 consistent with this expectation. Is that correct?

14 COMMISSIONER DEASON: Yes, that's what I --

15 CHAIRMAN EDGAR: That is my understanding of -- yes,
16 of what we have started to discuss and are still discussing.

17 COMMISSIONER CARTER: Well, that gives me far more
18 comfort. Because, one, I don't really think we need it. But
19 if we are going to have it, I think that is probably a better
20 use of the language to reflect the will and the expectation of
21 the Commission.

22 CHAIRMAN EDGAR: And, Commissioner Carter, I had
23 started to say, but I appreciate your clarification, that I
24 don't disagree or, likewise, I do agree that there is some
25 redundancy, but I'm not sure that redundancy is a bad thing in

1 this instance.

2 COMMISSIONER ARRIAGA: May I?

3 CHAIRMAN EDGAR: Commissioner Arriaga.

4 COMMISSIONER ARRIAGA: With all due respect to
5 Commissioner Deason's always clear and bright presentations, I
6 would definitely agree with direct this transaction to be
7 structured to be consistent with this expectation. We heard
8 legal counsel, outside counsel tell us that there is no way we
9 can structure a bond issue that eliminates credit risk. I
10 can't. I mean, I would love to second or vote in favor of the
11 way it has been proposed, but minimize or eliminate are two
12 different words, and there is absolutely -- I don't know of any
13 bond transaction that eliminates all credit risk. I would love
14 to second or approve --

15 CHAIRMAN EDGAR: Commissioner Arriaga, does the
16 descriptor of effectively give any additional comfort, perhaps?

17 COMMISSIONER ARRIAGA: Excuse me, please?

18 CHAIRMAN EDGAR: Looking at the language in the
19 sentence, it's not just eliminate, it is effectively eliminate.
20 And the effectively as a descriptor to eliminate, I mean, to me
21 the two words go together.

22 MR. CRIDDLE: Forgive me. If I may interrupt, Madam
23 Chair.

24 CHAIRMAN EDGAR: Mr. Criddle.

25 MR. CRIDDLE: Dean Criddle. To make clear in my

1 response to Commissioner Arriaga's question, the answer to his
2 question is it possible to eliminate, the answer is no. Is it
3 possible to effectively eliminate for all practical purposes
4 and circumstances, I believe the answer is yes. And so I want
5 to make sure that I wasn't misunderstood.

6 COMMISSIONER ARRIAGA: No, you weren't.

7 May I?

8 CHAIRMAN EDGAR: Commissioner Arriaga.

9 COMMISSIONER ARRIAGA: No, no, you weren't you. You
10 were very clear.

11 MR. CRIDDLE: Thank you.

12 COMMISSIONER ARRIAGA: I'm trying -- I'm following up
13 with the Chairman here. Effectively minimize. Is that what
14 you are suggesting, effectively minimize?

15 MR. CRIDDLE: No. I think effectively minimize
16 really doesn't convey the concept. Effectively minimize might
17 still leave enormous risk, whereas these transactions have been
18 structured or have the ability to be structured to reduce the
19 risk to an extraordinarily small level. As Witness Olson
20 testified, he was hard-pressed, in fact, was unable on
21 cross-examination to come up with an instance in which the
22 bonds would not be paid on time. And I think you're correct.

23 CHAIRMAN EDGAR: Commissioner Arriaga.

24 COMMISSIONER ARRIAGA: You just mentioned,
25 Mr. Criddle, the perfect words, reduce the risk. And that is

1 what minimize represents to me, reduce the risk. Reduce the
2 risk doesn't mean effectively eliminate. And anything that we
3 do, as Commissioner Deason said, that we owe to the consumer
4 the best effort to reduce the risk. But to promise the
5 consumer that we will effectively eliminate all risk, I can't
6 assume that responsibility. I can't.

7 CHAIRMAN EDGAR: Mr. Criddle, did you have an
8 additional comment?

9 MR. CRIDDLE: Yes. The language that is in the
10 record and that has been used elsewhere is effectively
11 eliminate for all practical purposes and circumstances. So it
12 is certainly conceivable that something would happen, for
13 example, all out nuclear war that entirely destroys and makes
14 forever uninhabitable the entire service territory of FPL. I
15 think we would all concede that the bonds would not be paid on
16 scheduled if that happened.

17 But the type of scenario that would have to occur
18 is -- I think, Witness Olson was quite correct, it's so
19 extraordinary it's difficult to imagine something far short of
20 those absolutely cataclysmic events giving rise to a failure to
21 pay. And, so, the idea has been to convey that sense to
22 investors.

23 CHAIRMAN EDGAR: Thank you, Mr. Criddle. You know,
24 just note, to state the obvious, that there is a bit of irony
25 in the fact that we have an order of -- I don't even know how

1 many pages. Mr. Keating, I'll be you know. How many pages?

2 MR. KEATING: I blocked that out. It's 64 total.

3 CHAIRMAN EDGAR: Sixty-four pages. And that each
4 word has been carefully crafted as a collective effort, and
5 that we have come down to really just one or two, or three or
6 four words, depending.

7 Commissioner Arriaga, I recognize your discomfort. I
8 have perhaps some discomfort myself with a change to --
9 minimize to me is a wider acceptable range than effectively
10 eliminate. And we really are right down to the itty-bitty of
11 it, I guess. But I also have additional comfort with carrying
12 consistent language throughout a document. And I think what I
13 have understood our outside counsel and our legal staff here
14 with us today to say is that the language of effectively
15 eliminate is carried elsewhere in the document.

16 Mr. Keating, is that correct?

17 MR. KEATING: I'm not sure if that language is used
18 more than once in the financing order.

19 COMMISSIONER DEASON: I doubt it is. If it were
20 there FPL would have pointed it out.

21 MS. SMITH: I will say that to the best of our
22 knowledge it is only in Finding of Fact 81.

23 MR. COOKE: Madam Chairman.

24 CHAIRMAN EDGAR: Mr. Cooke.

25 MR. COOKE: Just a point of clarification, however.

1 It is directly from the staff recommendation that was voted on
2 during this process, that language.

3 CHAIRMAN EDGAR: And I think that's the point that
4 Commissioner Deason made just a few minutes ago.

5 Commissioner Carter.

6 COMMISSIONER CARTER: Madam Chairman, at the proper
7 time, I'm going to move that we accept the recommendation with
8 the addition of language on the -- the entire paragraph as is,
9 including the word eliminate, but to say we direct that this
10 transaction be structured consistent with this expectation.
11 And at the appropriate time, when you are open for a motion,
12 that would be my motion.

13 CHAIRMAN EDGAR: Okay. Commissioner Carter, I think
14 we are very close to that, at least I know I am. I guess my
15 question to you, and -- well, let me ask you this. I was not
16 sure, and I'm going to recognize your motion, but is that to
17 deal just with Reconsideration Point 1 on Issue 2, or are you
18 embodying the additional language that we have been discussing
19 that there seemed to be some agreement reached?

20 COMMISSIONER CARTER: Yes, ma'am, because that would
21 make more efficient use of it. Yes, ma'am, that would include
22 all of that language.

23 CHAIRMAN EDGAR: Okay. Then my understanding is
24 that -- and make sure I get this right 'so that we are all clear
25 on your intent, is that we have a motion from Commissioner

1 Carter to adopt the changes, if change is the right word, the
2 language that has --

3 COMMISSIONER CARTER: Clarification.

4 CHAIRMAN EDGAR: The clarification language, thank
5 you, on Reconsideration Point 2, Reconsideration Point 4,
6 Reconsideration Point 5, and Clarification Point 2, and on
7 Reconsideration Point 1 to reword the last part of that last
8 sentence that we have been discussing, so that it would read,
9 "We direct that this transaction be structured consistent with
10 this expectation." And in clarifying or reiterating, I hope
11 that I didn't confuse it. Is that okay?

12 COMMISSIONER CARTER: Yes, ma'am, that's my motion.

13 CHAIRMAN EDGAR: Okay. Commissioners, Commissioner
14 Carter has made a motion.

15 COMMISSIONER DEASON: Second.

16 CHAIRMAN EDGAR: We have a motion and a second.
17 Commissioner Tew for discussion.

18 COMMISSIONER TEW: I just wanted to say that I still
19 have the same concerns I had about the last sentence, but I can
20 see that my colleagues think that that last sentence is
21 important, and I think that Commissioner Deason has made a good
22 attempt to address the concerns expressed, and so I will be
23 supporting the motion.

24 CHAIRMAN EDGAR: Thank you, Commissioner Tew.

25 Is there further discussion? Commissioner Arriaga.

1 COMMISSIONER ARRIAGA: I would have supported the
2 motion, especially -- I'm going to support the motion in all
3 other points except one, and I want to state for the record
4 that I cannot responsibly -- I cannot, and I'm not saying that
5 you are irresponsible, please understand me. I have
6 limitations in my expressions, and this is a very heartfelt
7 situation to me.

8 I have had experience with bond issues before. We
9 cannot, or at least I cannot responsibly guarantee our
10 consumers, or our investors, nor can we instruct the company to
11 issue bonds that will effectively eliminate for all practical
12 purposes and circumstance the credit risk, so I am going to
13 have to deny my vote on that specific issue.

14 CHAIRMAN EDGAR: Thank you for your comments,
15 Commissioner Arriaga.

16 Commissioners, we have a motion and we have a second,
17 and that motion will address Issue 2 and Issue 3 that is before
18 us. I'm going to call it for a vote. So all in favor of that
19 motion say aye.

20 COMMISSIONER CARTER: Aye.

21 COMMISSIONER DEASON: Aye.

22 COMMISSIONER TEW: Aye.

23 CHAIRMAN EDGAR: Aye. Opposed?

24 COMMISSIONER ARRIAGA: No, for the reasons expressed.

25 CHAIRMAN EDGAR: Thank you. So that motion is

1 carried.

2 Mr. Keating, was that you?

3 MR. KEATING: I just wanted to make sure it was clear
4 on the record, I'm not sure that in the motion we picked up
5 Reconsideration Item 6, which is one where we were in agreement
6 and recommending approval of FPL's motion on that point. I
7 just wanted to make clear, because it is not reflected in the
8 handout or in the discussion we had on Item 1.

9 CHAIRMAN EDGAR: And I appreciate that question for
10 clarification purposes, as well.

11 MS. SMITH: Madam Chairman.

12 CHAIRMAN EDGAR: Ms. Smith.

13 MS. SMITH: Just one more along the same lines as
14 what Mr. Keating just pointed out. Clarification Item Number
15 3, as well, I didn't hear that one, and I think that is Item 3
16 in the staff recommendation.

17 CHAIRMAN EDGAR: Okay. And we did not specifically
18 address those. Again, I appreciate the question being asked.

19 Commissioner Carter, it was your motion, and I was
20 not clear when I restated for my benefit, but my understanding
21 was that the motion did include the staff recommendation on the
22 other points that had not been addressed in this document.

23 Is that correct?

24 COMMISSIONER CARTER: That's correct. There was
25 already agreement on it.

1 CHAIRMAN EDGAR: Mr. Keating, does that --

2 MR. KEATING: That's all I need.

3 CHAIRMAN EDGAR: Does that suffice for your purposes?
4 Is Mr. Cooke comfortable? Okay.

5 And then, Commissioners, I believe that just leaves
6 us with the final item, which is Issue 4. And if I could have
7 a motion on that?

8 COMMISSIONER DEASON: Move staff.

9 COMMISSIONER CARTER: Second.

10 CHAIRMAN EDGAR: All in favor say aye.

11 (Unanimous affirmative vote.)

12 CHAIRMAN EDGAR: Opposed? Show Issue 4 adopted.

13 Thank you all for your patience and participation.

14 Mr. Criddle, thank you for joining us.

15 We are adjourned.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

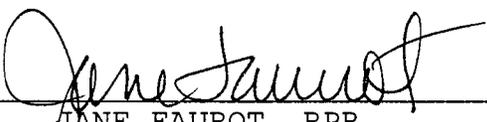
3 COUNTY OF LEON)

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

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

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

18 DATED THIS 26th day of July, 2006.

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22 JANE FAUROT, RPR
23 Official FPSC Hearings Reporter
24 FPSC Division of Commission Clerk and
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