BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090079-E1

In the Matter of:

PETITION FOR INCREASE IN RATES BY
PROGRESS ENERGY FLORIDA, INC.

AGENDA CONFERENCE
ITEM NO. 9

COMMISSIONERS
PARTICIPATING:

CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, May 19, 2009

PLACE: Betty Easley Conference Center
Room 148
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Tallahassee, Florida

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COMMISSIONER EDGAR: Commissioners, that will bring us to Item 9. And again we'll wait just a moment while everyone gets settled and ready.

(Pause.)

Okay. I'll ask our staff to introduce the item. We are on Number 9.

MR. SLEMKEWICZ: I'm John Slemkewicz. Item 9 is Docket Number 090079-E1, Progress Energy Florida, Inc.'s petition for a rate increase. PEF is seeking a $499.9 million permanent rate increase and a $13.1 million interim rate increase. Staff is recommending the suspension of the proposed permanent rate increase and the granting of the $13.1 million interim rate increase.

Staff does have one oral modification to make to Issue 3 on Pages 7 and 10. That has been approved already. It's -- at the end of the recommendation paragraph on Page 7, "Issue 4" should be revised to "Issue 8." And the same thing on Page 10, at the very end of that paragraph it should be "Issue 8" instead of "Issue 4."

And there are interested persons requesting permission to address the Commission on Item 9 and participation is at the discretion of the Commission.
COMMISSIONER EDGAR: Thank you. Let's go ahead and see who all is with us. So let's just kind of briefly take appearances so I know who is, who is here that would like to speak and who you are representing for the record.

MR. BURNETT: Good morning, ma'am. John Burnett on behalf of Progress Energy Florida. I have with me also Mr. Mike Walls and Mr. Rick Melson.

COMMISSIONER EDGAR: Thank you.

MR. REHWINKEL: Good morning. Charles Rehwinkel on behalf of the Office of Public Counsel and primary spokesman for the joint intervenors.


MR. WRIGHT: Good morning, Madam Chairman and Commissioners. Schef Wright, Young van Assenderp Law firm, on behalf of the Florida Retail Federation.

COMMISSIONER EDGAR: Thank you.

MS. BRADLEY: Cecilia Bradley on behalf of the Attorney General for the citizens of Florida. Thank you.

COMMISSIONER EDGAR: Thank you.

Let me begin here, if I might, noting that we
have a number of issues that are part of this item. For those who would like to address us, are any of your comments directed at Issue 1?

Commissioners, I'm just wondering if for discussion purposes and to put us in the right posture if it might make sense to go ahead and address that issue before we go into the others. I'm seeing, seeing some nods, and I'm hoping that our staff concurs. I'm seeing some nods there too. Any discussion on Issue 1 before we go into the remaining issues? Hearing none, is there a motion?

COMMISSIONER SKOP: Move to approve staff's recommendation as to Issue 1.

COMMISSIONER McMURRIAN: Second.

CHAIRMAN CARTER: Second.

COMMISSIONER EDGAR: Thank you. Then all in favor of the staff recommendation just on Issue 1, say aye.

(Unanimous affirmative vote.)

Opposed? Okay. Show Issue 1 adopted. I think that puts us in a better posture perhaps, and so we will begin and see if there are comments from the parties and then, Commissioners, see where that leads us.

Mr. Burnett.
MR. BURNETT: Thank you, Madam Chair.

Mr. Walls will make our comments. I do have two handouts. With your leave, if I may approach and present them.

COMMISSIONER EDGAR: Yes, please.

MR. BURNETT: Thank you, ma'am.

COMMISSIONER EDGAR: And, Mr. Walls, I expect that you will do this, but if you would, of course, make a point to describe the handout since we do have two Commissioners participating by phone.

(Pause.)

Okay. I think we're ready.

MR. WALLS: Thank you, Madam Chair. First to describe the exhibits, the first one is the 2002 stipulation, paragraph four, that includes the express prohibition on both interim decreases and interim increases in rates. And below that is the same paragraph from the 2005 stipulation which expressly prohibits only interim rate increases.

The second exhibit is entitled Progress Energy Florida 2009 projection of return on equity which shows the projected ROE for the company without any relief, interim or limited, at 6.89 percent, and with the increase for Bartow repowering at 8.22 percent, and then with the increase for both Bartow and interim relief at
8.36 percent.

So with that, I'd like to start with a few comments on the interim proceeding. To begin with, PEF supports the staff recommendation that PEF has established a prima facie entitlement to interim rate relief and that interim rate relief is allowed by the Commission-approved stipulation from PEF's last rate proceeding.

I'd like to make three points in support of this recommendation. First, PEF has a statutory right under Section 366.071(1) to request interim rates in any general rate case proceeding. That right exists by statute unless it was negotiated away in the parties' stipulation.

Second, the intervenors' assertion that the 2005 stipulation negotiated away that right is incorrect. Section 4 of the stipulation expressly prohibits the intervenors from seeking an interim decrease in rates. That's because any potential overearning situation is addressed by the settlement's revenue sharing mechanism. However, the parties did not prohibit PEF's right to seek an interim increase in rates. Rather, the 2005 stipulation is silent about PEF's right to interim rate increases. That's because any potential underearning situation is addressed by a
trigger mechanism in the settlement that gives PEF the right to seek a rate increase before January 2010 if its earnings fall below a minimum 10 percent ROE. There was no need for the stipulation to then say that PEF had a right to seek relief it already had in the statute.

PEF's earnings have fallen below 10 percent, a fact the intervenors do not dispute, and the trigger therefore has been met. Thus, nothing in the stipulation prohibits PEF from asking for interim rates that become effective before January 2010 as part of an application for a general rate increase. This proper interpretation of the 2005 stipulation is demonstrated by the exhibit that compares the 2005 stipulation to the 2002 stipulation where in 2002 the parties expressly prohibited both interim decreases and interim increases in rates. The 2005 agreement expressly prohibits interim decreases but omits the express prohibition on interim increases. This omission is a clear indication that the parties to the 2005 stipulation did not intend to prohibit interim rate increases provided the 10 percent trigger has been met.

Third, intervenors argue that the statute requires interim rates to be measured based on the minimum of the range of the utility's authorized rate of return on equity and the statute does not apply since
the stipulation does not expressly establish a range.

As staff recognized in its recommendation, the trigger mechanism in the stipulation does establish a required minimum authorized return just like the minimum of the range. The 10 percent trigger established the level below which rates are no longer fair, just and reasonable. If PEF's ROE remains above 10 percent, it cannot seek rate relief before January 2010. If the ROE drops below 10 percent, it can seek rate relief.

Therefore, the minimum authorized return is 10 percent. If the intervenors were right that the stipulation does not establish a minimum ROE for purposes of the interim rate statute, then PEF would actually be entitled to a larger interim rate increase than it requested.

The relevant part of the statute says that the last authorized return on equity shall be established in, quote, the most recent rate case of the utility, end quote, or, quote, by voluntary stipulation of the utility approved by the Commission, end quote. If the 2005 stipulation did not establish a minimum return on equity, then the Commission would have had to look back to the most recent rate order from the company in 1992 to find the minimum ROE, in which case the minimum would be 11 percent rather than the 10 percent that PEF believes the parties agreed to as the minimum in the

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current stipulation.

In summary, PEF is simply seeking the interim rate relief that it is entitled to under both the statute and the terms of the 2005 stipulation because its earnings are below the agreed upon authorized minimum return. PEF is harmed if this relief is not granted, customers are not. The interim rates by statute are held subject to refund, thus the Legislature, just like this Commission, understands that collection of funds subject to refund protects customers. Accordingly, we ask that you approve this staff recommendation.

COMMISSIONER EDGAR: Thank you.

Mr. Rehwinkel.

MR. REHWINKEL: Thank you, Madam Chairman and Commissioners.

Before I make my remarks, I would like to point out that the handout that purports to compare the two stipulations leaves out what I consider to be a crucial and determinative paragraph. I don't have my own paragraph, I don't have my own handout, but I would like to describe for you, and I can be corrected if I'm wrong, the differences between the two stipulations.

Commissioners, before I do that though I would like to state my view of interim is that there are two
types of interim that are available to companies
generally. One is a pure earnings-based interim relief,
which is what Mr. Walls described in 366.071. That's a
statutory right that is limited to general base rate
rate increases. I would concede to you that there is
another type of interim, the file-and-suspend interim,
which is not before you here in this case, it is in the
next item, and it is not an earnings-based interim test
but it is interim nevertheless. The staff and the
company have gone to great lengths to argue that it is
available and I would concede to you that it is.

But let's look at the two types of
stipulations that you have before you. In 2002 you had
a stipulation that is correctly portrayed in paragraph
four in the handout here that does expressly prohibit
interim rate increases. But paragraph seven of that
same stipulation, 2002 stipulation in Order PSC 020655
had a provision that allowed the company, if the
10 percent trigger was reached, to petition the
Commission to amend its base rates notwithstanding a
revision of Section 4. It doesn't say anything about a
limited proceeding.

Now a limited proceeding has been interpreted
by the Commission to allow by using the file-and-suspend
law interim rates pending a final hearing in that

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limited proceeding. In the 2002 stipulation there was
not interim under the limited proceedings statute
allowed. In the 2005 stipulation you have a stipulation
that expressly says that the revenue sharing mechanism
is the exclusive mechanism for determining earnings.
And it also has, as the company correctly points out and
as the staff goes to great lengths to discuss in their
recommendation, it has no express prohibition on interim
in the corresponding paragraph, but it does have,
contrasted to the 2002 stipulation, the right to PEF to
seek a limited proceeding under the limited proceedings
statute, 366.076. And the company has done that and
they're also asking for interim relief under that; i.e.,
rates that would go into effect without a hearing
pending final hearing by the Commission.

So what you have is you have an earnings test
prohibition in the 2005 stipulation. You have silence
as to whether interim is allowed. But when you contrast
it to the 2002 stipulation, the only harmonious reading
of those two is that the interim that is impliedly
allowed in the 2005 statute is the nonearnings interim
that the company could seek in the case of the Bartow
limited proceeding, and we're going to argue that in a
different case.

But with respect to getting an earnings test

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based interim, this stipulation flatly prohibits it and
the Commission's order recognizes that. You cannot go
and -- first of all, we also do not agree that you can
compare stipulations. We think it's a bad policy.
Stipulations are entered into based on the unique
circumstances that are before the parties when they
reach agreement. And I think that's well recognized by
the Commission that stipulations are unique and they
rarely, unless expressly allowed, constitute
precedential authority for the Commission and bind
future parties.

But, nevertheless, if you're going to go down
that route, our argument is that the only harmonious way
to read this supposed implied authorization for interim
relief in two thousand -- under the 2005 stipulation is
that it applies to the difference in the two
stipulations, which is the availability of interim
relief under the limited proceeding statute. I think
that is a, that is a glaring oversight in the analysis
that you've been presented because it is the only
difference between the two that's expressly in there.

Commissioners, we are before you here making
our arguments on this interim aspect because there's a
principle involved here. There's an earnings test that
is generally available to the companies to allow their

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rates to be determined -- for the allowance of a
determination as to whether their rates are fair and
reasonable. They bargained that away. It's exactly
what Mr. Walls said would undermine their statutory
right to interim relief, which would be if they
negotiated it away. In the, in the agreement that they
negotiated for 2005 they negotiated all ability to have
earnings evaluated. And the revenue sharing mechanism
is, is the only thing that is available to the, to the
company for, for a proxy for earnings.

Contrary to what the staff submits to you,
this is not about whether the company's rates are fair
and reasonable. They negotiated that away. In, in
doing so it is not for the Commission to reach out and
try to interpret the stipulation in a way that kind of
bootstraps the interim statute into this stipulation,
but that's exactly what is being recommended and urged
to you today, and we have a problem with that.

Commissioners, there's not a lot of money
relatively speaking on this matter, but it is a matter
of fundamental importance to us because the interim
statute is intended to be read as a recipe for granting
of interim relief on an expedited basis based on a very
strict formula in the statute. You cannot go and
interpret the statute in a way that says, well, it's
close enough, it's a proxy, it should be looked at that way. We think that is the wrong way to look at it.

Our -- I would also like to make this point. Mr. Walls suggested to you that if the stipulation is determined not to give them an authorized return, then you revert back to the 11.75 return that would be in their last order. That's wrong. What the stipulation does, and I have to reiterate it, is that it does, it covers for the year 2009 -- the year 2009 is covered by purely a revenue sharing mechanism. There is no earnings test available to the company. They have negotiated that away. So what they have is an order by the Commission that says they have no authorized rate of return for the duration of the stipulation. They have a stipulation that says that. So there is no reversion back to pre-stipulation 11.75 ROE. They are purely governed by this stipulation.

I also would like to address a subtle point here. They are filing this case outside of the stipulation. In their petition on Page 9 they represent to you that it is filed consistent with the stipulation, which all that means is they are not seeking general base rate relief before January 1, 2010. That is the only thing this stipulation has to do with their request.
In staff's analysis, I believe they are in error when they suggest on Page 9 that the -- in the final two paragraphs they suggest to you that our argument taken to its logical conclusion would pose that there are no circumstances under the 2005 stipulation under which PEF could request interim rate relief. Well, I've told you they do have the interim rate relief option under the limited statute, and that is a harmonious and consistent reading of the interim statute, of the stipulation. They say "if the stipulation allows," at the bottom of that next to the last paragraph, "if the stipulation allows PEF to seek an interim increase, then this provision was not meant to preclude PEF from being able to make a prima facie case for requesting interim rates under the statute." That's just plain wrong.

The statute, I mean, the stipulation and the order approving the stipulation says they do not have the availability to look to an earnings test in 2009. Again, the interim that is being requested here is not being filed under the stipulation. We suggest to you that it is being filed contrary to the stipulation. It's okay for them to come in and seek permanent relief for January 2010 and beyond, but 2009 is off limits from an earnings test standpoint. But what they're trying to
do is reach back into 2009, and the only way they can do that is to somehow negate the earnings prohibition provisions in the statute in paragraph 14 and your order. And the only way they can do that is to try to compare the two stipulations, 2002 and 2005.

And I've given you a basis for you to look at those two stipulations and say that it is reasonable on a non-earnings-based interim basis, earnings relief basis to say that they, that they have an interim opportunity and they are seeking it in the next item. But for purposes of interim under the statute, which is a specific recipe in the statute, they have missed the boat. They negotiated their rights away. And I think it's pretty clear in here in your order and our stipulation, and I would suggest to you, Commissioners, that you should not create bad law by trying to interpret the interim statute in a way that says, well, it's close enough, so we should give it to them. The interim statute is very specific, it uses specific language, and they negotiated their right to utilize that specific language away.

For $6.5 million I'd say it is not worth it for you to create a situation where the interim statute begins to stray away from the, stray away from the cut and dried application that you're used to applying.
This is, this is a different situation than your, than the Commission has normally faced when you're trying to interpret relief when there is a stipulation that potentially bars it. Now we say it absolutely bars it, but the company and your staff have raised a question about that.

At this point I have nothing else to add. I would entertain any questions or respond to further, further argument.

**COMMISSIONER EDGAR:** Thank you, Mr. Rehwinkel. I expect that we will have some questions and discussion.

Commissioner, do you want, do you want to jump in or would you like to hear from the others first?

**COMMISSIONER SKOP:** We'll hear.

**COMMISSIONER EDGAR:** Okay. Let's go ahead and, and give the opportunity for each party who has asked to speak to do so, and then we'll have questions and discussion.

Ms. Kaufman.

**MS. KAUFMAN:** Thank you, Commissioner. I'm not going to repeat what Mr. Rehwinkel said. I just wanted to add a comment or two, and that is that we do agree with him that the stipulation does not permit the interim increase because there's no return on equity
specified in our stipulation and, therefore, even the strict requirements of the interim statute cannot apply.

But then I also want to step back and look at it from a higher level. This stipulation is still in effect and was meant to be in effect from January '06 to December '09, for four years. And during that time period with limited exception that we're going to talk about in the next item about Bartow, it was the sole and only mechanism by which the company's earnings and revenues were going to be determined. That's what the parties agreed to. And I think, as Mr. Rehwinkel said, it seems to us now that the company is trying to step outside the document that all the parties agreed to in give and take and things gained and things given up in an attempt to increase their rates during the last half of 2009 when the stipulation is supposed to be in effect. So we think that that is inappropriate, and we think that if you look at the language of the stipulation as Mr. Rehwinkel described it to you, you will see that that is strictly prohibited. So we don't think that the request for interim relief is well taken and we think that you should deny it. Thank you.

COMMISSIONER EDGAR: Thank you.

Mr. Wright.

MR. WRIGHT: Thank you, Madam Chairman.
Consistent with Mr. Rehwinkel's representation that he is the principal spokesperson for us consumers, I will be very brief. I just want to say a couple of things, and thank you.

First, I agree, we agree with Mr. Rehwinkel's analysis and we oppose the granting of interim rate relief.

I want to make a couple of points in response to statements made by Mr. Walls. His assertion that if the company is earning less than 10 percent ROE explicitly creates a fact that their rates are not fair, just and reasonable is patently false. All that is is a negotiated trigger that gives them the right to ask for relief. We in turn have the opportunity to argue for whatever we want to argue for, as do they. They could say they're below 10 percent, the trigger is met, we can ask for 12. We can say, well, if you file and if the agreement says, well, if Progress files, we can ask for less, we can ask for 9. We do not agree that 10 percent ROE is a threshold that determines that Progress's rates are not fair, just and reasonable.

Secondly, his assertion that customers are not harmed we similarly believe is false. Now $6.5 million or $13 million, you know, 41 cents on a $1,000 -- a 1,000 kWh bill is not a whole lot of money, but it's
money out of, out of customers' pockets. That is harm.

Finally, I believe that the staff's reliance on the line of reasoning that the request for interim rate relief under 071 is not specifically prohibited is not appropriate and not fair. We didn't contemplate this. You know, the agreement no more specifically authorizes Progress to ask for interim relief than it does specifically prohibit it.

What paragraph seven says is that -- what paragraph four says is that Progress may not petition for an increase in base rates except as otherwise provided in seven, paragraph seven and ten. Ten is storm charges, nuclear decommissioning and things like that, RTO charges, I think. Seven is they can file for a general rate proceeding or a limited proceeding under 366.076. It does not authorize them to file under 366.071. And what this will lead to if we were ever to get to the possibility of a settlement or stipulation in the future is much, much longer stipulations because they will have to come to represent, embody something like a Napoleonic code or a European code of settlements to touch every last single issue. We did not contemplate that they could ask for interim relief. We -- our position is the agreement does not provide for it. It certainly doesn't explicitly provide for it.
Thank you.

COMMISSIONER EDGAR: Thank you, Mr. Wright.

Ms. Bradley, would you like to make a comment at this time?

MS. BRADLEY: I'll also be brief and just state that we are here in support of the Office of Public Counsel's position. I think, as Mr. Wright pointed out, if you review the settlement which we've been all looking at here this morning, it clear, is very clear that even if you buy the "it falls below 10 percent" argument, it specifically doesn't say that they could seek the interim rates. It says what they can do and it doesn't provide for interim rates. If that was their intent, we all know you have to ask for it. It has to be specified in the statute, in the stipulation, and it's not present here. So we would certainly urge the Commission to support the stipulation that was entered into by the parties and adopted by the order. It sends a bad message to everyone if these stipulations are not upheld and the order of the PSC is not upheld. So we would urge you to deny this request. Thank you.

COMMISSIONER EDGAR: Thank you.

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chairman.

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Just a question to Mr. Rehwinkel as we move into this discussion, and then I may have a follow-up question for staff as well as Mr. Walls.

But, Mr. Rehwinkel, I guess under a typical application for a general rate increase commonly known as a rate case would you agree that a utility would be entitled to interim rate relief pursuant to Florida Statutes 366.071?

MR. REHWINKEL: In the absence of a prohibition on earnings test, yes.

COMMISSIONER SKOP: Okay. But today you assert that PEF is not entitled to such interim rate relief on the basis of the settlement agreement; is that correct?

MR. REHWINKEL: That's correct.

COMMISSIONER SKOP: Okay. All right. So I guess what I'm struggling with amongst a couple of issues, but I guess notwithstanding interpretation of the settlement agreement, wouldn't the adoption of your position to deny interim rate relief have a tremendous chilling effect on the willingness of any IOU to engage in future settlement discussions if they were to reasonably conclude that the parties would construe the settlement agreement against them in a manner more restrictive than that provided for under the applicable

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MR. REHWINKEL: No, not at all. There's a significant amount of give and take that goes into a settlement, Commissioner, what they have negotiated away. But let me just say this, during the pendency of this stipulation their earnings got above 13 percent. Okay? That in our view is an unreasonable level of earnings. But we, we negotiated away the ability to come in and do the exact opposite. The interim statute that we're talking about here allows both ways. You can, you can seek an interim decrease, a reverse make whole where you can take the amount above the top of the range subject to refund and have a hearing on it, or the converse, the company has a right to come in and seek relief on the other side.

Both parties negotiated away their ability to have earnings be evaluated whatsoever from January 1, 2006, to December 31, 2009. That's an ironclad deal that everyone made. There's puts and takes every negotiation. So I would submit to you there's not a chilling effect whatsoever. You can negotiate away your statutory rights and they have done so.

COMMISSIONER SKOP: Can you point expressly to where they've negotiated their statutory rights away to the extent that the handout provided that addresses the
2002 stipulation specifically includes interim rate decreases and including interim rate increases but the 2005 stipulation expressly prohibits only interim rate decreases?

MR. REHWINKEL: The 2005 stipulation prohibits us from bringing a reverse make whole case against them. It allows them to come in and bring a major item such as Bartow and seek relief.

COMMISSIONER SKOP: Okay.

MR. REHWINKEL: It, it does not authorize them to come in and file a rate case and get interim relief. It allows them to file a rate case. They could file a rate case under the 10 percent trigger. They have chosen not to do that. They're filing their rate case outside of the stipulation. And so they take -- outside of the stipulation they take their ability to pierce the 2009 year, they take that as they find it in the stipulation.

I -- if your question was did they negotiate it away in 2002?

COMMISSIONER SKOP: My question is where specifically can you point to and identify that they negotiated that right away in light of the assertion made by Mr. Walls referencing the 2002 stipulation versus the 2005 stipulation?
MR. REHWINKEL: They negotiated away with the language in Paragraph 14 that says, "Effective on the implementation date, PEF will not have an authorized return on equity range for the purpose of addressing earnings levels. And earnings sharing mechanism described will be the appropriate and exclusive mechanism to address earnings levels."

COMMISSIONER SKOP: So your position, if I correctly understand it, is that the 10 percent threshold does not operate effectively as a trigger pursuant to our staff recommendation and Progress' assertions.

MR. REHWINKEL: No, I submit to you it does only work as a trigger. It is not an earnings floor. It is not part of an authorized range. That would render this Paragraph 14 a nullity to consider that part of any kind of a range, because it says PEF will not have an authorized return on equity range. That's the language from the interim statute. They gave that up.

COMMISSIONER SKOP: Well, I think that's your assertion. I think that's for the Commission to determine as to -- I guess this falls on an interpretation of what the agreement says and in relation to the statute. And I guess that the, you know, the parties enter into this agreement in good
faith and now we have the same parties that bound
themselves to the agreement crying foul about it.

So, again, I'm just trying to be fair and
equitable. But what I see here clearly is that in the
absence of a settlement agreement, and I think this is
very instructive on a forward-going basis -- in the
absence of a settlement agreement you come in and you
are able to apply for interim rate relief pursuant to
statute. No problem. But if you enter into a
settlement agreement in good faith you run the risk of
having the terms construed against you later in the term
of the settlement agreement which provides substantial
risk to a company and would at least to me have a
substantial chilling effect of wanting to negotiate to
begin with.

MR. REHWINKEL: Well, let me say something
about that. Again, let's look at how they would
construct their interim relief, and there's two things.
They are asking you to look at 2008 historical earnings
and have that apply to the pendency of their filing in
2009. And this company also came in and asked for
13 million when they are only entitled to 6.5. They
were actually looking for a make whole.

COMMISSIONER SKOP: I understand that, and
that's a separate issue, and I think our staff has
appropriately addressed that, so --

MR. REHWINKEL: But I think it's instructive
of the fact that the stipulation puts a lid on any kind
of earnings analysis for 2006, '07, '08, and '09.

COMMISSIONER SKOP: Okay. Madam Chair, just
two more quick questions, one to staff and then to
Mr. Walls. To our staff, do you have a copy of the most
recent earnings surveillance report, and is it possible
to distribute that?

MR. SLEMKEWICZ: Yes, I do have a copy of
that.

COMMISSIONER SKOP: And do you know what the
most recent -- under the surveillance report, the most
recent earnings level would be?

MR. SLEMKEWICZ: It was 9.59 percent for March
of 2009.

COMMISSIONER SKOP: Okay. So they are below
their 10 percent threshold subject to resolving the
disagreement between the parties and the interpretation
that OPC and such may have. They are below 10 percent.

MR. SLEMKEWICZ: Yes, they are currently below
10 percent.

COMMISSIONER SKOP: And then just one
follow-up question to Mr. Walls with respect to the
graphical handout on the projection of return on equity.

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I guess the current surveillance report indicates an ROE of, I guess, 9-point -- help me out again, please.

MR. SLEMKIEWICZ: 9.59 percent.

COMMISSIONER SKOP: 9.59 percent. I guess without the rate relief that's requested for interim rates and without the Bartow repowering, which is the subject of another item that we'll get to, it's estimated that the return on equity will fall to 6.89, is that the correct understanding of the graphical representation?

MR. WALLS: That's correct.

COMMISSIONER SKOP: And I guess just one follow on question to that. How would a company be able to attract capital at that realized ROE?

MR. WALLS: It would be very difficult. I mean, that's the reason we are here asking for this relief. And we thought we bargained for relief below 10 percent when our ROE fell below that. That was our agreement.

And to your question about the chilling effect, the answer is yes. There will be a chilling effect on future agreements if we haven't expressly waived away statutory rights, which OPC freely conceded they did, but we did not on the interim.

COMMISSIONER SKOP: Thank you, Madam Chair.
COMMISSIONER EDGAR: Commissioner McMurrian.

COMMISSIONER McMURRIAN: Thank you.

And I think I want to follow up with Mr. Rehwinkel on some of the points I think that Commissioner Skop was raising. I guess one of the problems I keep having is if the stipulation is to be read as how you suggest it, why would the intervening parties have ever allowed that particular phrase to come out? And I realize it wasn't -- we can argue about whether it was there, and you talked about it's not fair to compare the 2002 to the 2005, but staff had noted in their footnotes as case law that suggests to me that the absence of language can be important, as well. So I guess I will let you speak to that, but it's sort of this nagging thing that you had it on both sides in the 2002, and with respect to 2005 and the way you are interpreting it, it seems like it would have been important for the intervenors to leave that phrase in to protect yourselves.

MR. REHWINKEL: First of all, I think it's -- and I'm not suggesting any impropriety here, but I think it's not a good idea to sit and try to unravel the hundreds of things that could have been going on in a negotiation to reach a stipulation. I don't know what was going on in the minds of the people that negotiated
that stipulation. You can only read the agreement.

And I gave my view on one way to compare this is that -- I think it's relevant to look at what's not in the 2002 stipulation. They didn't have the option to seek limited relief. And limited relief has its own concomitant interim relief opportunity. That's the file and suspend law that the Wilson case and the Mayo case all say, and that the FPL case that we cited also acknowledges.

So the fact that the interim language is not in the 2005 stipulation does not mean that they did not negotiate away their right to have an earnings-based interim relief available to them. They are fully seeking their right to have a limited proceeding with interim relief in the next item, and that's consistent with this stipulation. And that's consistent with the no earnings test for 2009, 2008, 2007, and 2006. That is the only way to harmoniously look at those two documents, if you are going to even compare them at all.

Our view is that a stipulation should stand on its own, and I don't know how much clearer it can be that there is not availability of earnings-based relief for this company for 2009. Bartow, I would concede that if it was appropriate for them to get relief in the Bartow case that they get it without regard to earnings.

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They've imposed some level, a small level of earnings
governor, if you will, on what they've requested for
Bartow, but I don't believe that's required.

What they are seeking in this case is specific
statutory earnings-based interim relief, and the statute
is very specific on that. So to answer your question, I
don't think it's appropriate to go and try to look in
the minds of people that entered into the agreement.
The only thing you can do is interpret the stipulation
that's before you.

COMMISSIONER EDGAR: I'd like to ask a
question that approaches this from, I think, maybe a
little different angle. And I'm going to pose this
right now to both Progress and to OPC. If -- and for
the purposes of discussion and my own thought process --
if the Commission were to find in concurrence with the
staff recommendation on Issue 2, then I'd like to look
at the statute a little more. In looking at
Section 366.071, Sub 1, could each of you speak to me a
little bit about the interrelationship between the first
sentence and the last sentence? And what I'm trying to
focus on is, you know, the establishment of entitlement
for interim relief and how that works together with the
discretion of may in the first sentence.

(Inaudible. Microphone off.)
Yes, please.

And because I think what I'm thinking is that, again, if the Commission were to find it, and I know we're not there yet, but if we were to find the answer to Issue 2 to be yes, then I'm looking at the statute, again, more carefully. And I haven't heard as part of this discussion, I don't think, yet, specifically as to what the Commission's discretion is with the may -- anyway, the first sentence and the third sentence. So if you could speak to that.

MR. WALLS: Yes, I can give you my interpretation. I believe the reason they used the word may in the first sentence is to acknowledge that the utility may not establish a prima facie case. The last sentence says, you know, to establish a prima facie entitlement for interim relief the public utilities shall demonstrate. So if that demonstration is not made by the utility, then obviously the Commission wouldn't be bound to accept that.

But if you look in Paragraph 2(a), it says basically that the Commission shall authorize the collection of rates sufficient to earn the minimum of the range calculated in accordance with Subparagraph 5(b)(2). So, basically, if the utility meets its prima facie entitlement to interim relief, the Commission is
then obligated to grant that, of course, subject to refund.

COMMISSIONER EDGAR: And I'm still thinking through that, in your words, obligation.

Mr. Rehwinkel.

MR. REHWINKEL: I don't disagree with Mr. Walls' interpretation. I have never, in my time, seen the Commission on its own motion grant that in the face of a failure of a company to meet their prima facie burden, but I could be wrong.

With respect to 366.071, you know, I mean, it's our position they can't meet it because of the stipulation because of the lack of a range. But I think that in their requesting interim relief they do have an affirmative burden to meet the statutory recipe, if you will. But I have not considered whether the Commission could do this on its own motion or could deny them with respect to the may.

COMMISSIONER EDGAR: You know, we have had a lot of discussion in this room over certainly the last months, but years, probably, about, you know, if statute says shall, if the statute says may. Of course, we have all heard many of those discussions in many other forums, as well. The may is troubling to me in this instance.
MR. REHWINKEL: It may also -- if I might, it may also relate to the discretion the Commission might have in the Subsection 4 arena. I don't think in Subsection 4 there is symmetry with respect to a requesting party's entitlement to interim rates. I think on 2(a), if the company meets their prima facie case, I think the Commission is required to authorize interim rates. But in Subsection 4, a party seeking to reduce rates has to make a showing that it's at the mercy of the Commission's discretion to some degree, I believe. That could have some impact on the word may, or the reason why the word may is in there.

COMMISSIONER EDGAR: Mr. Walls, did you have an additional comment?

MR. WALLS: Not to that extra point about Subsection 4. I do believe, and I think we are in agreement that if we meet a prima facie case for entitlement to interim relief then the Commission is obligated to grant that because it is subject to refund.

COMMISSIONER EDGAR: I'm not sure that I understand why the fact that it would be subject to refund means an obligation by the Commission to grant.

MR. WALLS: Well, the interim relief is designed to cover a period during the pendency of the rate case to cover regulatory lag, so it is meant to be
a quick and dirty kind of procedure to allow relief. So
the ideal was if they met a prima facie entitlement they
would get the relief, and then the issues, if any, about
the interim relief could always be addressed in the rate
case hearing later on. So the subject of refund
protects customers in the extent that those issues are
revisited in the later rate case hearing.

COMMISSIONER EDGAR: I understand all of that.
It's the word obligation. Where do you see obligation?
I see may grant, or may authorize, and I'm hearing
obligation. And may authorize to me does not equate to
obligation.

MR. WALLS: Well, in the last sentence you
acknowledged or pointed it says to establish a prima
facie entitlement for interim relief, the Commission,
the petitioning party, or the public utility shall
demonstrate the public utility is earning outside the
range of reasonableness on rate of return calculated in
accordance with Subsection 5. So we have to establish
that prima facie case. If we do so, Subsection 2(a)
says in a proceeding for interim increase in rates, the
Commission shall authorize within 60 days of the filing
for such relief the collection of rates sufficient to
earn the minimum of the range of rate of return
calculated in accordance with Subsection or Subparagraph
5(b)(2). So it says if we meet the prima --

COMMISSIONER EDGAR: Mr. Walls, I have read it many, many, many times. And what I'm trying to put together, in my mind, is the shall and the may which seem to me to be somewhat inconsistent. You know, discretion or not discretion; obligation or not obligation. I don't see the word obligation. It's not a word I would use in this instance. But, yes, Mr. Burnett.

MR. BURNETT: Thank you, Madam Chair. I would appreciate to add my thoughts to the mix. Quite frankly, I have never been able to square them. I have always thought that the may was meant to talk about the Commission's discretion to bring this on their own motion, because I have never been able to square up the shall language in the bottom.

But, to your point, I cannot square them up. I believe that maybe it's bad drafting perhaps, or the intent there was to apply the may to your discretion to bring it on your own motion. But the shall in 2(a), and the shall in 2(b) seems to be quite direct. So to your point, I cannot square them up and only believe it was meant to modify your ability to bring these on your own accord, your own motion.

COMMISSIONER EDGAR: I appreciate that. I'm
not sure I agree with it, but I appreciate that
interpretation, or the possibility of that
interpretation, I guess. I guess, in my reading I am
wondering if, you know, to establish an entitlement --
and I have gone back to, quite frankly, even though I
think I know what entitlement is -- to looking it up,
and I've got two definitions here. One, to claim as a
need. To claim as a need does not necessarily mean an
obligation to grant. And the other definition I found
is the right to income which may not be abridged without
due process, and I would argue that this is due process
at this stage right here to have this discussion.

So I'm just wondering, you know, if a company,
in this case Progress, were to establish the entitlement
from my definitions that I've found, again, doesn't
necessarily mean shall grant or obligated to grant. If
you don't get past the may you don't even get to
Subsection 2. Although, of course, I know you are
supposed to read it all in its entirety, et cetera.

So the may is -- I'm grappling with that as to
whether -- and I realize this is an issue separate from
the stipulation, but they are broken out into separate
issues for discussion in this item.

Yes, Mr. Rehwinkel.

MR. REHWINKEL: Madam Chairman, I think that
one way to read that may, and I'm not sure that it was contemplated by the drafters of this statute, but within the context of having a stipulation like the one before you here today, is that in the last sentence it refers to demonstrating that they are earning outside the range of reasonableness on the rate of return calculated in accordance with Subsection 5. I think you have the discretion and probably the obligation to read that you cannot make that determination because of the stipulation because of the cap on any earnings analysis.

So I think that any earnings reasonableness test is violative of Section 14 of the stipulation, and the may is one more tool that you have to acknowledge that and to deny the relief that would otherwise be demonstrated, even if defectively based on the lack of a range or rate of return range.

COMMISSIONER EDGAR: Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chairman. I'd like to follow along the line of the question that you had with respect to the statute, because I also read that statute and was drawing the same conclusions to the extent whether the may on its own motion whether that just was speaking to the broad discretion of the Commission to remedy a problem, or to try to do the right thing, or arbitrate a dispute if it
came down to that.

But, assuming, Mr. Rehwinkel, that the Commission adopted your position in noting the current realized ROE and the fact that, you know, Progress is engaging in numerous construction projects and such and has a need to attract capital, what would be your recommended remedy to address what seems to be an issue that the recognized ROE would be the lowest in the nation right now by far? So how do you remedy that problem in the near term instead of waiting for the conclusion and final order of a rate case to provide appropriate relief. In the meantime, do you subject a major utility to credit impairment and limit their ability to attract capital?

**MR. REHWINKEL:** Well, first of all, again, they are under a revenue sharing mechanism that supplants any consideration of return on equity. They do not have one, and they -- I don't know what the investors are looking at.

**COMMISSIONER SKOP:** I understand that, but let's take this to a higher level. We can talk about the settlement agreement, we can talk about the statute, but then we can get into Supreme Court precedent under Bluefield and Hope about a reasonable rate of return, fair, just, and reasonable. And, you know, if they are
going to, as a result of the intervention and the action that you are advocating, if that results, and if the Commission were to adopt your position and that results in an ROE that is below 7 percent, obviously that's going to create a cascading problem there in the near term. How do you address that?

**MR. REHWINKEL:** Okay. I address it this way, because I think we have to go back and look. One of the things that the Commission today doesn't have I don't think a good feel for is the tortured, and convoluted, and very contentious history that interim rate relief has over the years. I understand you have looked at some of the cases and all, but it was before the interim statute this recipe here was put in. It was a very contentious matter. There's plenty of Supreme Court precedent on the matter. But what you're doing is you're raising customers rates without a hearing, and that's the fundamental problem that you struggle with. And that's why this statutory formula is here to be able to take that out of the mix.

Now, the fact that they have come in and agreed to be bound by an earning -- a revenue sharing mechanism versus earnings is very important. And I think the market, whatever they have done they have looked at that. But I would submit to you that it looks
to me like there is 14 basis points difference between getting and not getting interim relief. I would submit to you that does not have any impact on what the market looks at. The market has already looked at this company and said you've reached a stipulation that had other benefits. It had benefits of putting Hines in quickly, and that was done. It has benefits of some depreciation continuation. This is an overfunded depreciation situation.

So if you're going to give them a rate increase without a hearing, I think you have to stick to the statute and you have to honor the stipulation. Otherwise, you have to have a hearing, and you have to look at whether depreciation should be looked at in terms of whether they really and truly have a need, a financing need for 2009. They're going to get -- if the schedule holds true, they are going to get some level of earning relief on January 1 through a change in rates. I don't know what that will be, but the 2009 is written off as far as that goes, because they have agreed that they don't have earnings-based relief for 2006, '07, '08, and '09.

**COMMISSIONER SKOP:** Okay. Just some follow-ups on that. I guess, assuming for the sake of discussion, and, again, I'm privy to the settlement
agreement. I did not negotiate it. Again, I think that there has been concerns expressed and I think this is some of the fallout from that. But, with respect to if the ROE were established and authorized at 11.75, which it is for some other activities within there pursuant to the settlement agreement, then pursuant to the interim rate relief statute, basically you get the 100 basis points below the authorized range, below the midpoint, which would be 10.75 for return on equity, is that correct? If the midpoint were set previously authorized at 11.75, then for interim rates they would be entitled under statute to collect 10.75.

MR. REHWINKEL: Assuming that was, yes, in effect.

COMMISSIONER SKOP: Okay. All right. And I guess with respect to -- but what they're asking for here, and I think they noted that in their brief in fairness to them, of something substantially less than that in terms of the 10 percent of the threshold, if you will, they're only seeking to come up to the threshold.

MR. REHWINKEL: They're seeking to come up to what they consider to be the bottom of a range for purposes of the interim statute.

COMMISSIONER SKOP: Okay. And then with respect to your concern about the hearing, does this not
function somewhat -- again, there has been substantial briefs filed on both of these issues, but I guess my concern is, if I hear you correctly, you're suggesting that we need to wait until January 1st to address what seems to be a legitimate problem. And, again, I'm trying to be fair not only to counsel and the parties that it represents, but also balancing those interests and the interests of consumers with the interests of the company to have fair, just, and reasonable rates. And, again, if you have a sub 7 percent ROE, how are you going to fix that in the near term? Is it going to be too late to wait until January?

I mean, are we going to risk a credit downgrade or some other things? I know you're talking about the 14 basis points. And, again, we will spend far more time, as we always do, talking about small issues than we will the bigger issues that will follow today on the same --

**MR. REHWINKEL:** Commissioner, there's the old saying that hard cases make bad law. And I think that if you try to go out and contort the statute and make things work where you can give them 14 basis points of relief, that will haunt you for years to come. If you go outside of the statute, this will come back to haunt you. So that's my admonition on that.
Just to be frank with you, if you go down that path and you say, well, we're going to ignore the statute, we're going to make this our guide, then what you are doing is you are entertaining the possibility that stipulations will never be entered into again because the Commission will come back and pierce them and say, well, we're going to pick this part, but we're going to leave everything else in place.

The company has not come back to you and asked that they be relieved. They have not directly asked that they be relieved from the burdens of the stipulation. They made a deal, they have to honor it. We honored our part of the deal when they were above a reasonable top of the range. We were not before you seeking to have the stipulation cast out and have rates lowered.

And, finally, to answer your point about does this constitute a hearing on rates, absolutely not. We have only argued what I would consider to be a legal argument on the stipulation and interim. If you were to have a hearing, that would be effective for purposes of raising rates outside of the interim statute, then you would have to go into looking at what are the factors that are driving their earnings. Is there depreciation reserve, two, three, $400 million overfunded. Is that
in itself could fix their problem, depending on how you looked at it.

But we're not here arguing that the facts ought to be changed. We’re saying as a matter of law they do not meet the statutory threshold. But even more so, they are barred from seeking interim relief because they have agreed to a revenue sharing mechanism for 2006 through 2009. End of story.

**COMMISSIONER ARGENZIANO:** Madam Chair.

**COMMISSIONER EDGAR:** Yes, Commissioner Argenziano.

**COMMISSIONER ARGENZIANO:** Yes.

I have some questions, and undoubtedly will have some more before the end of the, I guess, the end of our meeting, discussion. I have several things. I want to go back to what Commissioner Skop said about a chilling effect. I also believe, and I've read this, as you said, Madam Chair, many, many, many times. And I have -- I guess I don't have to be a lawyer to understand the words in front of me. And the words in front of me show that there's no authorized rate of return. And I don't understand -- and I will go back to the chilling effect.

If you change what you had intervenors and everybody who signed the stipulation -- we were induced
to sign the stipulation over these particulars in this stipulation, and if you change or alter that stipulation, doesn't that also have a chilling effect? And maybe all parties can answer that.

And the second question is how do you get around, you know, the range of -- or having no range of return in the stipulation? I mean, how are you stretching that statutorily? I'm having a really hard time understanding that. And I don't see where we're not doing anything other than what Mr. Rehwinkel just said, was contorting and twisting the statute. So somebody really had better get very specific, otherwise I don't see that -- you know, the bigger picture. We are trying to stretch it and run all over the place. I keep going back to the stipulation, and I see the stipulating really basically saying there is no range of ROE.

And if Progress wants to interpret the 10 percent trigger, which was really intended to be a minimum ROE, and the statute doesn't say minimum range of authorization, authorized range, or imputed minimum. How are we twisting it that far? Maybe everybody can go and answer that starting with the chilling effect. Because I see a chilling effect when you have an agreement and you change the agreement. And I see the

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struggle to try to say we're not changing the agreement, but, sorry, the words say what they say to me. So I need everyone to go back to the chilling effect, and then tell me how it is -- that we're not contorting the statutes, because I just don't see what Progress is arguing.

COMMISSIONER EDGAR: Thank you, Commissioner, and we will begin with Progress.

MR. WALLS: Yes. I would just like to say to begin with that we are here to seek to affirm the deal we made, which was a deal that we could seek relief if our return fell below a minimum 10 percent, which they agree is a trigger. Now, the first thing we have got to say is what do they mean by that as a trigger. It meant that we could come in and ask for base rate relief including interim relief because we did not expressly preclude that. They want to look at both stipulations on their benefit, but come to us and say, well, you can't look at both stipulations.

But the point is we had a statutory right to seek interim rate relief. We can only give up that right if we expressly waive it. We did not. OPC admitted that they expressly waived it, and that's the standard. We did not expressly waive our right to seek interim relief. The 10 percent referred to, it says in
the statute it means the minimum of the range. That's the key point, what is the minimum authorized return. If we can't seek relief when it is 10.1 percent, which is what we agreed to, but we can seek relief if it's 9.9 percent, then what's the last minimum authorized return we're allowed under the stipulation? It's 10. That is the minimum relief. And the statute specifically says at the end that the last authorized return on equity for purpose of this subsection shall be established only in the most recent rate case, in a limited scope proceeding, or by voluntary stipulation of the utility approved by the Commission. That's what we have here, a voluntary stipulation approved by the Commission that recognized that the rates in the stipulation were fair, just, and reasonable with a minimum trigger of 10 percent. Meaning if we fell below that the rates were arguably no longer fair, just, and reasonable and that there was a minimum of 10 percent.

I would like to point out the Commission has in the past in an order cited in the staff recommendation recognized that the purpose of the statute, the interim rate statute can be interpreted broadly to grant relief. And I'll read from this. It's is PSC Order 04-0721-PCO-GU, July 26th, 2004, in re: Application for rate increase by Florida Public

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Utilities Company, where they asked for both petition
for permanent rate increase and interim increase.

On Page 5, the Commission in addressing the
cost of capital for that interim rate increase says,
"However, in the last rate case we approved a
stipulation by Order PSC 95-0518-FOF-GU issued
April 26th, 1995, in which FPUC's return on equity was
set at 11.4 percent with no range. In its request for
interim rates, FPUC used the return on equity of
10.4 percent. This agrees with our traditional method
and we find that the 10.4 return on equity is
appropriate." So the Commission has done this before,
recognizing that when you have the relief or you have
the rate of return established in a way that allows you
to apply the statute, you apply the statute.

And that's what we have here. We have a
10 percent minimum authorized return which, by the way,
was also in the 2002 stipulation, and in prior
proceedings before this Commission these very parties
here who now say this is not anything but a trigger, it
goes away, which you will find nothing in the agreement
that says that is what happens. No, they argued in that
proceeding that this was a floor, that it was a minimum
level of earnings, and that's what they have said before
about this percent. They've acknowledged that it
represents the minimum level of earnings the utility is allowed, and that's all we're asking for here.

And we have not expressly waived our rate to interim rate relief. They acknowledge that. And there is a minimum authorized return in the stipulation. And all we are asking for is to be entitled to relief under the statute up to that minimum rate of return, and that's what we agreed to in the stipulation.

COMMISSIONER ARGenzIANO: Can I hear from Mr. Rehwinkel, please.

COMMISSIONER EDGAR: Commissioner Argenziano, did you want to hear from Mr. Rehwinkel next?

COMMISSIONER ARGenzIANO: Yes, please.

COMMISSIONER EDGAR: Thank you.

Mr. Rehwinkel, can you respond.

MR. REHWINKEL: Yes. With respect to the question, I think the first question was about whether there would be a chilling impact on stipulations. I can't speak for the future, but I can tell you that certainly I believe that it would, especially if it's so contrary to a fundamental precept of the stipulation, i.e., no earnings test, no rate relief based on earnings. I think that, yes, that would be a chilling impact. And I would say that there's another item for another day that's part of this three-part filing about

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accounting treatment that we believe also is contrary to
the earnings test prohibition in the stipulation.

So if these two go in Progress' favor, I think
that there would be a very, very great reluctance to.
enter into stipulations if they could be undone on such
a fundamental foundation as the earnings test.

COMMISSIONER ARGENZIANO: Can I ask you a
question, and I'll ask Progress this also, because
Progress just said that -- basically said the 10 percent
was a floor set in the stipulation. But is that
10 percent a minimum authorized return? I think there
is a struggling here of that 10 percent that was in the
stipulation, and I don't see that as an authorized
return.

MR. REHWINKEL: Commissioner, it is our strong
view that the language of the statute in Paragraph 7
that has been read and reread says that if PEF's retail
base rate earnings fall below a 10 percent return on
equity as reported, et cetera, et cetera, PEF may
petition the Commission to amend its base rates. Plain
English. You look at this, if 10 percent, then they may
petition. That is all that 10 percent deals with. And
the FPL case, in 2000 --

COMMISSIONER ARGENZIANO: Wait, wait, hold on
a minute. So what you're saying is that it is wrong to
say that the 10 percent is anything but a trigger that would allow a rate case to start, is that what I'm getting?

MR. REHWINKEL: Yes, that is correct. And I say that for this reason. With very similar language, Florida Power and Light came in, and we cite this case in our pleading, and I think Progress, as well. FPL came in and sought emergency hurricane rate relief to replenish their storm reserve after the 2004 hurricanes. They filed very quickly. They came in with this same language. They were -- the trigger was met, and they, against the Public Counsel's argument that there should be an earnings cap or governor on what they received, the Commission authorized them to get dollar-for-dollar replenishment of their storm damage reserve under this very similar provision that showed that the ROE number was merely a trigger, and that once it was triggered, they got the rate relief without regard to earnings.

So in that case there was no earnings floor that said that they get hurricane storm damage reserve replenishment up to the bottom of their range. They got dollar-for-dollar. So I think that interpretation by the Commission says that there is not this floor or entitlement to earn up to that they can come in and seek relief upon. Because, again, the overarching statement
is that there is no authorized range and that revenue
sharing is the exclusive mechanism for determining
earnings.

COMMISSIONER ARGENZIANO: Thank you.

COMMISSIONER EDGAR: Mr. Wright.

Commissioners, I think we have one more who
would like to, and then -- actually, we have more than
one who would like to respond to you, so if I may call
upon them, and then we will come back to you.

COMMISSIONER ARGENZIANO: Good.

COMMISSIONER EDGAR: Mr. Wright.

MR. WRIGHT: Thank you, Madam Chairman. Very
briefly to respond to Commissioner Argenziano's
questions.

The statute requires that a showing be made
that the company would be outside the range of
reasonableness. Progress expressly agreed in Paragraph
14 that it will not have an authorized return on equity
range for the purpose of addressing earnings levels.
That's what it says.

If the Commission were to find that Progress
is earning outside the range of reasonableness, which is
requisite under 366.071, the Commission would
specifically have undone Paragraph 14 of the
stipulation. We don't think that's fair, and that would
have an extraordinary chilling effect on our willingness
to enter into future stipulations.

COMMISSIONER EDGAR: Ms. Kaufman.

MS. KAUFMAN: Thank you, Commissioner.

I wanted to address the same point. First of all, as a signatory to the stipulation, it absolutely would have a chilling effect. The stipulation has been in effect three and a half years. All the parties have, you know, relied upon it when it benefited them and when it was to their detriment. And if parties can't count on that, then certainly that's going to have a chilling effect.

And Mr. Wright read you the first clause in Paragraph 14. If you look at the second clause, not only does it say that Progress won't have an authorized return on equity range, but then it says the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels. And, you know, we have had some discussion about looking at the language of the stipulation, and we don't think that it can be any clearer than that.

Thank you.

COMMISSIONER EDGAR: Thank you.

And, Ms. Bradley, I think that you wanted to speak.
MS. BRADLEY: Commissioner Argenziano's question, I guess I would disagree to the extent I don't think it would have a chilling effect. I think it would be a cold hard freeze. You can't expect attorneys to ethically to recommend to their clients to give up rights that they have contracted for if there is no assurance that the benefits that they have contracted for are not going to be provided.

I support Office of Public Counsel and the other intervenors. But looking at Paragraph 7 of this contract, Progress fails to read the rest of the provision. They say if it drops below -- their return on equity drops below 10 percent they get interim rates. That's not what it says. It specifically provides that they may petition either as a general rate proceeding or as a limited proceeding under Section 366.075. And I hate to send the attorneys back to basic contract law, because I would hate to go back to law school, but it's just basic contract.

If you have a provision that says if this happens you can get A or B, and it doesn't say C, then by the very language of that contract C is not an option. And that's what they are trying to do here. They're not coming in looking for these other provisions that the contract provides, they're looking for an
option, interim rates, which is not specified in this contract. They have not contracted for that, and they are not entitled to that under law.

So we would ask you to -- urge you to reject their interpretation because it is not consistent with contract law. Thank you.

MR. WALLS: May I briefly respond to that?

COMMISSIONER EDGAR: Yes.

MR. WALLS: We certainly feel the same way about the chilling effect on an agreement that we thought we had reached with these parties. One, to address that language, it is also basic contract law that you look to the provision that deals with the issue most specifically rather than the general provision. That is the provision that deals with what happens when we are entitled to relief, and in our view sets a minimum. But if you want to know what the specific provision is that addresses interim increases or decreases and the right to them, that is Paragraph 4. And basic contract law says the specific controls over the general, and the specific there says that they expressly waived their right for an interim decrease and we did not waive our statutory right to seek an interim increase.

And I find it remarkable that these parties
are coming in and taking this position that the
10 percent trigger, which means we're entitled to seek
relief, is not setting an authorized floor because they
took the very different same position -- a different
position in the storm cost-recovery docket before this
Commission based on the same language in the 2002
stipulation, which in the first sentence said if PEF's
retail base rate earnings fall below a 10 percent ROE as
reported on an FPSC adjusted or pro forma basis on an
FPC monthly earnings surveillance report during the term
of the stipulation and settlement, FPC may petition the
Commission to amend its base rates, notwithstanding
Paragraph 4.

What did they say in that storm docket
proceeding? Well, FIPUG put on a witness who testified
that there was a 10 percent return on equity earnings
floor in PEF's last rate case, which was a reasonable
bottom line of earnings. That testimony is attached to
our response.

Similarly, FRF argued in its brief in that
docket that the 10 percent ROE still provides PEF with
the ROE that it agreed to as a "floor" in the 2002
stipulation. So they took the very opposite position in
response to the 2002 language in the stipulation and now
they are coming here and telling you that the same
language in the 2005 stipulation doesn't represent a floor or minimum level of earnings.

MR. REHWINKEL: If I might add, Madam Chairman. I don't know that those positions -- and I don't have any knowledge of them. I don't know that they were accepted by the Commission. In fact, I think they were rejected.

COMMISSIONER EDGAR: Commissioner Argenziano, did you have a follow-up?

COMMISSIONER ARGENZIANO: Can you hear me?

COMMISSIONER EDGAR: Yes.

COMMISSIONER ARGENZIANO: Sorry. You can hear me?

COMMISSIONER EDGAR: We can hear you.

COMMISSIONER ARGENZIANO: Okay. I'm having a hard time. Something is blocking in and out of sound here. I guess I will wait and listen to the rest of the discussion and the debate. I just am reading what I'm reading, and I don't see it the same way as Progress. I really don't. I see it as trying to change a stipulation and I have real problems with doing so.

And in reading the statute along with the stipulation, I just can't come up with what Progress is coming up with. So I will listen to the rest of discussion and debate.

FLORIDA PUBLIC SERVICE COMMISSION
COMMISSIONER EDGAR: Thank you, Commissioner.

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

I just wanted to see if possibly we could take a brief break. I know it has been about two and a half hours, and also I have a quick question for staff that I can either do before that or after that.

COMMISSIONER EDGAR: You were reading my mind. I just wanted to make sure we responded to the comments that Commissioner Argenziano had put on fully or at least to the best of our ability at this point.

Commissioner, why don't you pose your question, and then in just a moment we will take a short break.

COMMISSIONER SKOP: Thank you.

With respect to staff, I guess we haven't heard a lot from staff on this. We have heard a lot from the parties. I guess some of the comments made by Mr. Rehwinkel suggest that, you know, taking in terms of -- or Ms. Bradley, also, would imply that staff has got it all wrong in its recommendation and does not know how to construe a contract.

So I guess who's right and who's wrong in terms of how did staff come up with its recommendation which, you know, certainly took a lot of time and
effort, and I’d like to hear from our staff in fairness to them.

**MR. SAYLER:** Commissioners, this is Erik Sayler for Commission Legal staff.

Because the parties have placed the stipulation in dispute and there is competing meanings over what the stipulation actually means, they have called upon the Commission to interpret those statutes. And specifically at issue it appears to be Provisions 4, 7, and 14. And as the finder of fact, the Commission may interpret all aspects of the stipulation and should do so internally and consistently across the board.

It would be inconsistent to interpret that on one hand, the stipulation provides that the parties can, on one hand, ask for interim rates, but at the same time deny them the ability to calculate those interim rates. And Commission staff believes that the stipulation from silence omitted any prohibition against allowing -- or any prohibition against requesting an interim rate increase. Therefore, that was some provision that, by implication, was allowed under the statute, which is 366.071, which is the interim rate statute, which expressly allows a utility to come in and ask for a interim rate increase.

**COMMISSIONER ARGENZIANO:** Excuse me. Excuse
me. Can you hear me?

MR. SAYLER: Yes, Commissioner.

COMMISSIONER ARGENZIANO: Can I ask you a question at this point? I guess what I'm struggling with, and I'll say it again, is that what I'm reading in the stipulation and what I'm reading in the statute doesn't jibe with what you just said. I mean, words mean what they say, and I'm not sure that you're trying to not twist that to mean something else. So if you can be more specific on -- maybe when we come back from the break I'll give you a question that is more specific in answering, because I just see that words mean what they say. And you have now taken that beyond what I see the words meaning and what the words are saying in both the stipulation and the statute. So when we come back from the break, hopefully I'll develop a question that maybe can be more articulated that you can respond to.

MR. SAYLER: Yes, Commissioner. Why don't we go ahead and do the break, and we'll confer and come back.

COMMISSIONER EDGAR: Okay.

Commissioner Skop, anything further?

COMMISSIONER SKOP: No. I'll reserve those until after the break.

COMMISSIONER EDGAR: The clock says to me

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11:35. Let's come back at five minutes to.

CHAIRMAN CARTER: Thank you.

COMMISSIONER EDGAR: Thank you. We're on break.

(Recess.)

COMMISSIONER EDGAR: We are back on the record. My understanding is that our staff is continuing to look at some case law, and I know that I for one am getting hungry and I'm hearing that others may as well. So we are going to break for lunch and we will come back and reconvene at 1:00 to begin our discussions on this item. And so we are on lunch break.

(Recess taken.)

We are back from lunch break and we are back on the record.

When we took a break, we had, I believe, posed some questions to our staff. Commissioner Skop, would you like to kick us off?

COMMISSIONER SKOP: Yes. Thank you, Madam Chair.

Just again trying to gain a better understanding as to staff's rationale for the recommendation, again, at issue seems to be the interpretation of the stipulation as well as the statute. And, again, I think there's been some
criticism to the extent that, that neither the statute nor the stipulation are being properly construed. So I just wanted to get a better understanding as to staff's recommendation.

MR. SAYLER: Erik Sayler for Commission legal staff.

Commissioner, we, we understand that there's some ambiguity within the stipulation, and that is whether or not they can request interim rates, and that's Issue 2. And Issue 3 is whether or not that, the interim rate statute can be applied. And we understand and see the ambiguity and it's open to two different interpretations, and we came up with the most plausible interpretation that we thought would be out there for interpreting both the stipulation and the statute and that's what we put forward. And we do support our interpretation of both, but we understand that there are different ways to see it.

COMMISSIONER SKOP: As, as a follow-up to that, I guess one of the issues I'm struggling with, and again I understand the stipulation as well as the provisions of the statutes, but under a normal proceeding for a rate, rate increase, you know, interim rate relief is, is readily available. And I guess what I'm struggling with, and I don't know if this is
factored into, you know, the staff's reasonable
interpretation to the extent that it comports with how
things are normally done in a typical rate case, but
interim relief is typically available for addressing
those situations.

And if I understand this correctly, under the
stipulation that they -- and if their earnings had
fallen beneath the 10 percent threshold, they were
entitled under the stipulation to seek a rate increase
via a limited proceeding or a full-blown rate case; is
that correct?

MR. SAYLER: My understanding is that if they
fell below the 10 percent threshold, they could come in
for a full-blown rate case. And as far as a limited
proceeding, I would say that would be for other things
such as contemplated for like Bartow or other issues.

COMMISSIONER SKOP: Okay. Well, I'm looking
at, give me a moment, but I believe it was paragraph
seven of the settlement agreement. And it states if
PEF's retail base rate earnings fall below a 10 percent
return on equity as reported by a Commission adjusted or
pro forma basis on the PEF monthly earnings surveillance
report, which I think staff has provided to us, during
the term of the agreement PEF may petition the
Commission to amend its base rates, notwithstanding the
provision of Section 4 either as a general rate proceeding or as a limited proceeding pursuant to Section 366.076. So it should be an either/or; right?

MR. SAYLER: Yes, sir.

COMMISSIONER SKOP: Okay. All right. So, and, again, I'm just trying to gain a better understanding. I mean, staff's recommendation at least to me seems straightforward. I know there's adamant opposition to that from Mr. Rehwinkel and the, and the parties. Again, to me it's a matter of construction, and I'm not so sure that the, the parties kind of contemplated it would be construed this way. I mean, I'm trying to look at it holistically in total and what happens in, in a normal rate case proceeding where you have file-and-suspend and, you know, you get interim rates pretty much as a matter of course.

But here the way staff has construed, it seems to parallel what happens normally under the statute; whereas, the way Mr. Rehwinkel and the other parties would construe it that it's precluded by virtue of the settlement agreement. I think that's kind of the tension. But if staff could add just any more clarification to that, then I have one brief question for Mr. Walls.

MS. FLEMING: Commissioner, I believe -- this
is Katherine Fleming, Commission legal staff. I think what you're touching on is under Section 366.071. During -- a utility may seek interim rate increases during the pendency of a final rate case proceeding.

We looked at the statute. It's clear that a utility may seek interim rate increases during the pendency of a rate base proceeding if there has not been a waiver to that effect.

We then turned to the stipulation itself that the parties have entered into. And specifically under Section 4, which is what we were looking at, there was explicit language prohibiting an interim rate decrease but there was no such language prohibiting an interim rate increase. And that's how staff drew its analysis that the utility is able to seek a base rate proceeding if they fall below the 10 percent threshold as identified under Section 7, and there is no explicit language prohibiting an interim rate increase under Section 4.

COMMISSIONER SKOP: Okay. So just as a point of clarification, notwithstanding the settlement agreement terminating at the end of 2009 which would require a general rate increase proceeding on its own, that separate and apart from that if the earnings fell under the 10 percent threshold, they would still have...
the right under the settlement agreement, as staff has interpreted it, to seek either a general rate increase or a limited proceeding to address earnings falling below the 10 percent threshold; is that correct?

**MS. FLEMING:** That's correct.

**COMMISSIONER SKOP:** Okay. And then just a quick question to Mr. Walls. With respect to the number or the difference between the last two projections on ROE with 822 versus the 836, I believe that's a 14 basis point difference. If the Commission were to adopt the staff recommendation as to Issue 9 with respect to the percentage increase factor, would that difference not be reduced to seven basis points?

**MR. WALLS:** As I understand that, it accounts for the staff rec in Issue 9.

**COMMISSIONER SKOP:** Okay. All right. Thank you for that clarification.

And then I think I had one further question. To Mr. Rehwinkel, I understand your position and I've read, at lunch I went back and read both your brief as well as the rebuttal brief from PEF. There seems to be a lot of concern expressed in your brief as to a prior filing by an IOU in a rate case and the timing and all the things that are going on.

You know, the Commission as a whole, my
colleagues, staff, we're subject to the same
constraints. We just can't tell a company you can't
file for something. I mean, they have a legal right to
file whatever they choose to file. So I'm trying to
better understand that concern and how that falls into
being able to adequately address issues that are before
us in a timely manner.

MR. REHWINKEL: Commissioner, with respect to
the time constraint issue, that issue is more directed
to the Bartow and the accounting issues which are much
more fact based and substantive. This is really a legal
argument. And, I mean, we'd have to be here today
anyway when you're suspending. So our concern was not
so much directed at the interim itself. Does that, is
that the question you were asking about?

COMMISSIONER SKOP: Yes. And I think I have
one additional question, if, if time will permit me.

MR. REHWINKEL: I do have, I do have a desire
to respond to what Ms. Fleming said with respect to the
base rate increase, if you will permit me.

COMMISSIONER SKOP: Go ahead.

MR. REHWINKEL: I, I don't know if it was
intended to convey this, but I just want to be clear
that the petition in 090079, the increase, the
$499 million rate increase request is not, and I think
the company will agree with this, is not made pursuant
to paragraph seven of the stipulation. And the only
thing that's made, that's requested from a rate increase
standpoint pursuant to seven is the Bartow limited
proceeding request, and that has its own separate
non-earnings-based interim request. The interim request
that you're dealing with on this item right now has
nothing to do with paragraph seven, giving them the
right to do it.

COMMISSIONER SKOP: Okay. Very well, Madam
Chair.

COMMISSIONER EDGAR: Thank you, Commissioner.
I think I have a question.

CHAIRMAN CARTER: Madam Chairman.

COMMISSIONER EDGAR: Commissioner.

CHAIRMAN CARTER: While you're, while you're
formulating your questions, I've just got a general
question for staff on this.

COMMISSIONER EDGAR: Sure. Commissioner
Carter, go right ahead.

CHAIRMAN CARTER: I'm sorry I didn't ask it
before but --

COMMISSIONER EDGAR: That's okay.

CHAIRMAN CARTER: I think that the posture
that we're in, and I'm asking staff, is that you have
the parties to a stipulation that they agreed to and there's a question in terms of interpretation of that and the parties differ on that interpretation. Therefore they've come to the Commission for us to make a determination as to the resolution of that, this agreement in terms of how to interpret the provisions of that stipulation. Is that correct? Is that where we are?

COMMISSIONER EDGAR: And to staff.

MR. SAYLER: Yes. Yes, Commissioner.

CHAIRMAN CARTER: All right. Thank you. That lets me know exactly what the bottom line is.

Thank you, Madam Chair.

COMMISSIONER EDGAR: Thank you, Mr. Chairman.

COMMISSIONER ARGENZIANO: I have a question when you're done.

COMMISSIONER EDGAR: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Well, to the line of questioning that Commissioner Skop just had, it seems to me, and when we're done with this I'll have some comments for the whole, I guess the whole discussion, but to this one particularly it seems to me that staff wants to create something that's not in the stipulation based on the omitted language when I have no idea why they omitted the language. So I'm not sure why we're
taking that type of a position. And if they can think
on that and then I'll come back with a whole line of
questions and my thoughts on the discussion.

COMMISSIONER EDGAR: Commissioner Argenziano,
is that a question posed to staff now?

COMMISSIONER ARGENZIANO: Well, I'd like them
to think about that or others to think about that
because it seems to me that they want to create
something that's not in the stipulation based on what's
omitted that's not in there, and I don't even know why
it was omitted. I mean, maybe there was a reason. We
have, we have attorneys I'm sure who are very capable
attorneys when it came to drawing up stipulations and
contracts who maybe, who maybe omitted that purposely.
And I'm not sure that staff is not far reaching for
something that's omitted and then trying to change what
was, what was agreed upon in the stipulation. And if
that doesn't do it, I'll just wait and go through all my
thoughts that I've jotted down, and that may help, at
the proper time.

COMMISSIONER EDGAR: Staff, is there a
comment? If not, we can -- no comment at this time?

MR. SAYLER: No comment at this time.

COMMISSIONER EDGAR: Okay. Okay. Then,
Commissioner Argenziano, I'm going to try to, try to
frame a question, and then we can come back to you here in a moment.

To our staff, if, if the answer to Issue 2 is yes, then, as one point, then I'm coming back to, I think it was a point raised by Commissioner Argenziano and maybe others as well about can the statutory requirements to establish the entitlement for interim rates be met if there is not an authorized rate of return?

So I guess my question is because there is some question as to whether there is an authorized rate of return as it is laid out as a requirement in the statute, if there is not, then is there a way for the interim rate provision in the statute to be implemented?

**MR. SAYLER:** Yes, Commissioner. According to the statute, it says that if the company, if the company hasn't otherwise waived the right to interim rates in a stipulation or something, which is Issue 2, whether or not they've waived it or not, and then in Issue 3 is whether or not the statute, they can find or have established a prima facie case underneath the statute. And the staff believes that if they have established a prima facie case, then interim rates should be authorized.

However, the Commission as the finder of fact
makes that determination whether they have made their prima facie case. And the statute clearly says that they have to make their prima facie case according to that -- I'll read it. "To establish a prima facie case of interim relief,' the public utility shall demonstrate that the public utility is earning outside the range of reasonableness on a rate of return as calculated in accordance with (5)." And (5) lays out the formula by which interim rates are granted. And if the Commission finds that they have not established a prima facie case in accordance with (5), then the Commission does not have to authorize interim rates. And it seems to be turning on the question of authorized rate of return.

**COMMISSIONER EDGAR:** Uh-huh. So to expand on that, if, if the language in the stipulation -- the language that's in the stipulation that says Progress will not have an authorized return on equity range, et cetera, et cetera, in provision 14, if that is interpreted as meaning that there is no last authorized rate of return on equity, is there a way for Progress to establish a prima facie case under the statute?

**COMMISSIONER ARGENZIANO:** And, Madam Chair, I have a question also.

**MR. SAYLER:** That is -- one moment.

**COMMISSIONER ARGENZIANO:** Can you hear me?
COMMISSIONER EDGAR: Yes, Commissioner. I'm going to wait for our staff to respond to mine, and then we will come right back to you.

MR. SAYLER: To answer that question adequately, do you mind if I walk through the statute a little bit?

The -- it says that in setting interim rates the Commission shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return and its required rate of return. The achieved rate of return is what they're earning currently today. The required rate of return would be what would normally be calculated from their last authorized return on equity. And subsection or (b) defines achieved rate of return or the required rate of return, and under required rate of return the last authorized return on equity means the minimum of the range of the last authorized return on equity established in the most recent individual rate proceeding. And then the statute in its last sentence says the last authorized rate, authorized return on equity for purposes of this subsection shall be established only in one of three ways -- the most recent rate case of the utility in a limited proceeding for the individual utility or by voluntary stipulation of the
utility approved by the Commission. And we do have a voluntary stipulation approved by the Commission here.

**COMMISSIONER EDGAR:** Okay. And you're looking at 366.071(5)(b)(3)?

**MR. SAYLER:** (5)(b)(3). Yes, ma'am. My apologies.

**COMMISSIONER EDGAR:** Okay. That's, that's fine. I just wanted to make sure that we were both looking at the same thing.

Okay. Commissioner Argenziano, you had a question.

**COMMISSIONER ARGENZIANO:** I guess the question was I was trying to find out where in the statute did it indicate what staff said I guess a moment ago if the company hasn't waived? Where is that language in the statute?

**COMMISSIONER EDGAR:** She is asking about the statement about if the company has not waived.

**COMMISSIONER ARGENZIANO:** Right. Staff had indicated that if the company had waived and indicated to me, I think -- if I'm wrong, that's fine, just correct me -- that in 366.071 that that language would be in there. And I'd like him to point out where in the statute that language is because I'm reading the stipulation and I'm reading the statutes and I don't see
MR. SAYLER: Commissioner Argenziano, you are right. The waiver is not in the interim rate statute.

COMMISSIONER ARGENZIANO: And the ultimate question then is if there's no authorized ROE, how do you, how do you use that statute to do what you've just described to Commissioner Edgar if there's no authorized ROE? So you need to be more specific on how you're using that statute you did.

COMMISSIONER EDGAR: To our staff, I think that Commissioner Argenziano is asking, I think, a similar question to what I was posing. And as you, as you walk through the statute, I don't know if --

COMMISSIONER ARGENZIANO: It wasn't answered, Madam Chairman.

COMMISSIONER EDGAR: Well, Commissioner, I think what the staff was trying to do is walk, walk me through the different provisions that are in 366.071, which takes you down through (5)(b)(1), (2), (3) basically. But, again, I think that we're kind of posing a similar question or trying to focus in on a similar concern or thought or question. So I'm going to ask our staff to try to more specifically address Commissioner Argenziano's question, if you can. Thank you.
MS. FLEMING: This is Katherine Fleming.

We'll give it a try.

Commissioner Argenziano, when we were looking at this issue, we first started with the first step which is looking at the settlement and whether the settlement prohibited Progress from seeking an interim rate increase. We looked under Section 4 and there wasn't any express language prohibiting Progress from seeking an interim rate increase. So that was the substance of Issue 2. Then Issue 3 is whether Progress has made a prima facie entitlement to requesting interim rates.

I think the question you're asking is, with respect to the settlement, I believe it's under (14), it states that there is no authorized rate of return. The way staff looked at this with respect to the settlement as a whole, while it's clear that it does not authorize a minimum rate of return, rate of return under (10) of the settlement, it does contemplate that if PEF's retail earnings fall below 10 percent, PEF could seek for a base rate proceeding or a limited rate base proceeding.

We've looked at that as a threshold where the utility has an opportunity to file for some sort of rate relief. And we've then turned to (4) which specifically addresses the filing for a rate base proceeding, and it
states that rate base proceeding may not be filed for any rates that would take effect prior to January 2010. There wasn't any explicit language prohibiting Progress from seeking an interim rate increase, so staff believed that it was appropriate that they could seek for one.

As far as how we got to the ROE calculation, we walked through the analysis in the statute. And if the Commission -- the first determination for the Commission to make is whether the utility has made a prima facie entitlement that it is earning outside the range of reasonableness.

COMMISSIONER ARGENZIANO: Can you hear me?

Can you hear me? Hello?

COMMISSIONER EDGAR: Thank you, Ms. Fleming.

Commissioner, go ahead.

COMMISSIONER ARGENZIANO: I think what they're just repeating is the same thing over and over gain and not really getting to the heart of what I'm getting at. I'll wait for my statement and I will definitely address the lack of their understanding of what I am really asking and the lack of their specification in answering the questions I have. So I'll wait at the proper time and then just go ahead through my statements and where I see that staff's recommendation is not reasonable.

COMMISSIONER EDGAR: Okay, Commissioner.
Thank you. I think we have a few other questions from the bench, so we will come back to you.

Commissioner Skop.

**COMMISSIONER SKOP:** Thank you, Madam Chair.

And this may go back to the statute itself. But in provision (5)(a), I mean, excuse me, (5)(b)(2) it speaks to the required rate of return shall be calculated as the weighted average cost of capital for the most recent 12-month period, and then they look to the, to the prior authorized ROE for the plug-in number. But it seems to me that, you know, just -- I'm looking at this holistically, and I recognize the, you know, the struggles that, or the tensions that are going on here with staff is trying to make, I guess in its view, a reasonable interpretation of, of how to harmonize this request with what happens in the course of a normal rate increase proceeding. But some of that requires some interpretation, and I don't want to say quantum leaps; but some reasonable thinking to get to that; whereas, Mr. Rehwinkel and his related parties are saying, no, absolutely not, there is no provision for this by virtue of the fact there is no established ROE.

I think just trying to look at it at a high level perspective, again what perplexes me here is that in effect we're arguing about something that in a normal
rate case we wouldn't be arguing about. It's the settlement agreement by virtue of its drafting or what have you is somewhat leading to, in my mind, an absurd result to the extent that in a normal rate case interim rate relief is granted as a matter of course, but here it's significantly at issue maybe because of the procedural posture we're in. But clearly there is that 10 percent threshold that is expressly stated in the settlement agreement. And it seems to me in reading the settlement agreement, you know, the revenue sharing implies to me that there is no earnings cap. But the threshold, as staff I think has kind of interpreted, serves as an earnings floor to the extent that if you fall below the 10 percent, you're entitled to seek a base rate proceeding or you're entitled to seek a limited or an interim proceeding to go address that, that deficit, that deficit, I mean, that -- excuse me, I'm getting tongue-tied -- earnings deficit problem.

But looking at (5)(b)(2) in relation to (5)(a), you know, the difference between the achieved rate of return for the public utility and the required rate of return seems to be we know what the achieved rate is. The required rate of return holistically is the weighted average cost of capital plugging in an ROE that we have to somewhat synthesize. And I think
that's, if I heard Commissioner Argenziano correctly, the crux of her concern is there is no ROE, just as Mr. Rehwinkel has pointed out.

But I think that, you know, stepping away from all that, it would just seem to me very simple that, you know, one would know what the weighted average cost of capital would be and could apply, you know, some good rules of thumb. I think that staff has probably done -- and, again, staff's approach may not be the right one, but it's certainly a reasonable interpretation of, you know, how they, you know, approach this, and it may be in light of what happens normally in a rate case. Maybe they're trying to harmonize. But it seems to me that that weighted average cost of capital for the most recent 12-month period could certainly be calculated. I mean, that doesn't seem to be that hard. We know what the short-term costs, I mean, the long-term debt is. We know, you know, the equity ratio. We know a bunch of things that should allow, you know, should we choose to, to look at that, that that would provide that difference.

But it seems to me, I mean, holistically we're fighting about an issue, but in the grand scheme of things the dollar value magnitude of that is, is, is big but it's not as big as the Bartow that we'll consider on
a forward-going basis. But I guess I'm struggling with, you know, when I initially read staff's recommendation, I was somewhat supportive of it, but I saw that they had, I saw where they had to infer certain things and make certain assumptions to get to the conclusion they did.

But I guess what I'm really struggling with, and I probably said this and not as concise because it's been a long day so far, but in a normal rate case interim rates are a matter of course and here they're at issue. And to me it just seems like a complete inconsistent outcome that turns on the interpretation of the settlement agreement or a lack of maybe expressly stating something in a settlement agreement that might have been overlooked by the same parties that agreed to it that are before here, before us today. And as we've heard, there's also two different interpretations of what constitute a chilling effect. I mean, we've seen the company's perspective and we've seen OPC's and the Intervenor's perspective of neither party is going to be inclined to work together based -- if the interpretation doesn't go their way.

So, you know, getting to the end result, maybe, you know, the days of full-blown rate cases have reached us now where settlements are maybe not the best
thing if they're going to continue to cause issues that arise such as this. I know Commissioner Argenziano has repeatedly expressed the need for full-blown rate cases. And, you know, I like, and I think the Commission as a whole, we, we support settlements when they can be achieved. But this one, it seems like we're -- you know, it just doesn't seem to be a good use of, of resources to hash out over something that is ambiguous, but there could be equally competing rational views of what the right result is. And how I'm trying to harmonize it is what happens in a normal rate case. And to deny somebody what happens in a normal rate case seems to me that it would just, to construe language against them in that manner would just completely throw any trust out the window that I might have in terms of wanting to enter into a future settlement agreement. Again, if --

COMMISSIONER ARGENZIANO: Excuse me, Madam Chair.

COMMISSIONER EDGAR: Commissioner.

COMMISSIONER ARGENZIANO: Commissioner Argenziano.

COMMISSIONER ARGENDIANO: Yes. I'm sorry. I'm having a hard time with my phone. I hope you can hear me all right.

COMMISSIONER EDGAR: Did you want to
COMMISSIONER ARGENZIANO: I wanted to add to something that Commissioner Skop says that -- he keeps using the phrase "a normal rate case." This is not a normal rate case and it is very different. And I don't understand his confusion on what -- this is a stipulation and it's not -- it's very different than the normal rate case, and I'm wondering if he's trying to say it is. And I'm not really getting his message other than him saying, you know, a normal rate case. This is not normal.

COMMISSIONER SKOP: Well, I'd be happy to clarify that. What I'm saying is a normal rate case has been filed which represents the termination of the settlement agreement at the end of December, December 31, 2009. So that's the predicate for the existing rate case. But under the existing settlement agreement as I read it that if Progress's earnings fall below the 10 percent threshold, that they're entitled to seek a limited proceeding or a full-blown rate case to address that, that shortfall. And I think that the, the issue is, as, Commissioner, you've correctly pointed out, is the tension between the provisions of the settlement agreement which have some ambiguities in them and the statute which have some specific requirements
and trying to, to harmonize something that is frankly difficult to harmonize. And I think our staff has done a decent job of trying to make some assumptions to arrive at their result. And I'm not saying that that's the right result, but, again, I think that, you know, at least what they've done is one reasonable interpretation of how to remedy the disagreement between the parties. But, again, that may not be the right approach. Again, that's at the will of the Commission. But I agree with you that there is a full-blown rate case that addresses the end of the settlement agreement. But equally too under the settlement agreement they're entitled to seek a limited proceeding to address a revenue shortfall.

COMMISSIONER ARGENZIANO: It's not like a normal electric or gas rate case. PEF bargained, Progress bargained for that contract. And I just respectfully disagree that, that, that staff came up with a reasonable outcome. I think they were grasping and they, and they reached and twisted, I think, things that they shouldn't have, and I'll be more specific to that. To me, contract controls, so it's not a normal rate case by any means.

And I think, Madam Chair, when the time is proper, I have other comments that will maybe be more specific to why I think that's so.
COMMISSIONER EDGAR: Okay. Thank you, Commissioner.

Commissioner McMurrian, did you have a question?

COMMISSIONER McMURRIAN: I don't know if this, I don't know if it's a question. I think it's more of a comment to some of the things we've been talking about.

Commissioner Argenziano talked about the omitted language and I indicated earlier that that was important to me to at least discuss and try to figure out why that wasn't there and the lack of it. And with the case law that staff notes in their, in their footnotes, it seems that it's important that it's not there. And even if you don't compare it to the 2002 language, even looking at the 2005 language by itself in paragraph four, the fact that it's on one side of the equation with respect to rate decreases and not on the other side with respect to interim rate increases to me is important.

I will say that I think both sides have made good arguments in support of how they read the stipulation and the statutes. I don't think it's as clear as either of them make it out to be. I agree with what Mr. Sayler said about that it's ambiguous in the stipulation and that's why we're all here. They're
asking -- and it sort of feels like déjà vu, to be honest. They're asking us to look at what they've agreed to, and obviously none of us were there, so it's difficult.

But I guess to me what you said about there could be a reason that that language is omitted, that's a pretty persuasive point to me because it seems like they could have very well, and, again, I don't know what happened, but they could have very well, you know, taken that out very deliberately in order to get something else for their efforts. And we don't know what that is. But to me that's persuasive that in the past it's been there, and in particular just looking at this paragraph in 2005 it's only on one side and not the other. In fact, with respect to the, with the side that is there which says, "Any reduction in Progress's base rates and charges including interim rate decreases," and the wording is much less strong on the other side, there is no "any" reference. It does say, "may not petition for an increase in base rates and charges," and then there's no language about including interim rate increases. It seems like that's significant to me and I guess I can't get past that.

You've all raised some good points though about Section 14 and about the no range. But I guess I
keep having trouble with coming back to seven, and to me seven looks like an earnings test. I think OPC says it's not. But I guess to me when you, if you look at earnings falling below a 10 percent return on equity, as the words say there, to me that speaks to an earnings test. And I think that's what staff is saying, that that paragraph seven has to have some meaning there and that it's pulled out 10 percent ROE for some reason and has allowed general rate proceeding or a limited proceeding to be, to be filed in that situation. I don't know why I can't speak today after lunch. It allows that a general rate proceeding or a limited proceeding to take effect. And in a general rate proceeding the statutes allow companies to seek interim rates, and to me that's how I've read staff's arguments. Like I said, I think there have been good arguments on both sides, but to me it's compelling how staff has laid it out and the fact that that language is not there on that one side of the equation with respect to paragraph four and you do have the 10 percent return on equity listed in paragraph seven.

COMMISSIONER ARGENZIANO: I'm sorry, Commissioner McMurrian. You keep going in and out. I don't know if Commissioner Carter is having the same problem, but I am.
COMMISSIONER McMURRIAN: I'm sorry.

CHAIRMAN CARTER: It is fading in and out.

COMMISSIONER McMURRIAN: Did he say I was too?

Chairman, can you hear me?

CHAIRMAN CARTER: I can now.

COMMISSIONER McMURRIAN: Okay. I probably
kept turning away from the microphone.

I guess what I was saying at the last part is
I do see the paragraph seven, Commissioner Argenziano,
as an earnings test. OPC definitely disagrees with
that, or at least I heard that earlier, and I think I
see them nodding heads about that now.

But to me, once you -- in that paragraph seven
that sets up the 10 percent ROE, that it specifically
allows a general rate proceeding or a limited
proceeding. And in a general rate proceeding, which is
what we've already got underway with this, with this
particular docket for the major rate case, you're
allowed, a company is allowed to seek interim. I don't
think that means that they don't have to make a showing
for it. Clearly the statute says they have to make a
showing for that and it's up to us to decide. But I
believe that that's -- I think that's what staff's
analysis was with respect to seven and how -- and why
14, even though it clearly says that there's no range
of, there's no authorized range of return on equity, you
still have to place some import on paragraph seven.
And, again, to me it's also very, and I think I said
this earlier too, but it's also important to me that in
paragraph four that it includes interim rate decreases
on the one hand but does not include the interim rate
increases on the other. So I hope I went back through
what I said. Maybe you heard me that time.

CHAIRMAN CARTER: I heard you.

COMMISSIONER ARGENZIANO: Yes, I heard you.
It sounded very similar to what Progress said and what
staff said.

COMMISSIONER McMURRIAN: Yes.

COMMISSIONER EDGAR: Excuse me.
Commissioners, any questions or comments at this point?

CHAIRMAN CARTER: Just a, just a general
question, Madam Chairman.

COMMISSIONER EDGAR: Commissioner Carter.

CHAIRMAN CARTER: How -- I noticed that we've
disposed of Issue 1. How are we proceeding further
with, with this, this matter here? Because I think that
a lot of us, we've been talking -- I think what we've
been talking about primarily was -- was it Issue 2?

COMMISSIONER EDGAR: I think that my
interpretation --
CHAIRMAN CARTER: I guess I'm fading in and out and I'm sorry about that.

COMMISSIONER EDGAR: No. That's okay. That's okay. I appreciate you hanging in there with us. My, my read, my analysis is that most of the discussion has revolved around Issues 2, 3 and 8.

CHAIRMAN CARTER: Okay.

COMMISSIONER EDGAR: And my words, I would look at 4, 5 and 6 kind of as fallouts from decisions on 2, 3 and 8; 7 as a related, of course, but separate issue; 9, 10 and 11 dependent upon the decision on 8 is kind of the way I'm looking at it.

So I guess I would say let's go ahead and have whatever further discussion and comments, and then we can see if anybody is at the point of maybe trying to construct a motion to see if that will take us through.

So, Commissioner Argenziano, you had said that you wanted to make some comments. Would this be the time?

COMMISSIONER ARGENZIANO: Can you give me a moment and let someone else go, and I'll return in a minute.

COMMISSIONER EDGAR: Okay. Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

Again, I think, you know, staff's recommendation again
to me was straightforward recognizing that, you know, there were some gap filling measures that needed to be taken to get to staff's recommended result.

In terms of Commissioner Argenziano's concern, I understand her concerns. I think what gives me the most concern would be the provision in the statute that requires express ROE. I think staff has at least provided one reasonable interpretation on what you would use in that instance that may or may not control. But, again, I just wanted to -- that's the most troubling thing to me. I think that clearly the stipulation language does not expressly exclude the ability to seek interim relief as has been noted by Commissioner McMurrian.

And I'd also note that there is controlling case law, the Persani (phonetic) case from the Florida Supreme Court of '65, which basically stands for the proposition if the parties intended a certain provision, it would have been a simple matter to include it. The fact that they did not indicates the intention to exclude a provision. So I think that, you know, ruling of the court lent some clarity to the extent of the disconnect between the 2002 settlement agreement. And the 2005 or the 2002 said you can't do a decrease or an increase; whereas, the 2005 agreement clearly states
that you cannot seek a decrease. So I think that, you know, the fallout issue from that then turns on the requirement of the statute in terms of the express ROE.

**COMMISSIONER EDGAR:** Commissioner Skop, I tend to agree.

Commissioner Argenziano.

**COMMISSIONER ARGENZIANO:** Yes. Can you hear me?

**COMMISSIONER EDGAR:** We can.

**COMMISSIONER ARGENZIANO:** Okay. First, first let me say to what Commissioner Skop had just said that there is no authorized ROE, so staff has no reasonable way of creating that ROE. There is none. And the other thing I wanted to comment on was Commissioner McMurrian had said that she thinks that seven looks like an earnings test. It's not. It's a trigger to allow filing for petition only. So those arguments just don't cut it with me. They're just not there in my opinion and what I found in both the statutes and the stipulation.

Also -- hang on one second. I think everybody knows that I kind of stick to the statutes. And when I do that, it's fair, it's just fairly simple to see for me.

Section 4 of the 2005 stipulation says no
party will seek to change Progress's base rates unless certain things occur. Well, Section 7 is one of those certain things. It says that "If Progress's return on equity falls below 10 percent, Progress is entitled to file," excuse me, "to file either a general rate proceeding or a limited proceeding." That to me means file a rate case or a limited proceeding.

Progress has chosen in Item 9 today to file a general rate proceeding. And then when I read in Chapter 366, "One of the usual components of a general rate proceeding is the right to request interim rates as provided for in Section 366.071." So I go to 366.071, the interim statute. It basically says the company is entitled to interim rates under specified conditions: That the company's ROE has fallen below the minimum authorized range of return on equity from its last proceeding which can be a full rate case, a limited proceeding or a voluntary stipulation. In Progress's case we have a voluntary stipulation.

So back to the 2005 stipulation. Section 14 of that stipulation explicitly and unequivocally states that Progress will have no authorized range of return on equity. And since I read Section 366.071 to require an authorized range of return on equity, the case is closed in my mind. And it seems to me that Progress and staff
are attempting to create an ambiguity, excuse me, an ambiguity in the contract or stipulation which they can use I guess legal principles to resolve. The ambiguity they are trying to create, and that's what I see they're trying to create, if the stipulation says that you can file a general rate proceeding, a rate case, and rate cases include the opportunity for interim rates, then you have to find a way to use the very strict, very prescriptive and very precise language that's in the statute before you can grant the interim rates.

Since the stipulation itself seems to omit an element required to establish a right to interim rates, we have to create some way to grant them to resolve the ambiguity we have created precisely so that we can grant the interim rates which would be prohibited in the absence of this ambiguity.

I believe the error that staff has in creating the ambiguity in the first place is the right to use the interim rate statute. Instead, staff should conclude, this is what I think staff should have concluded, that since the stipulation was drafted by very highly paid lawyers who clearly know the ins and outs of Chapter 366, shouldn't we decide that the parties' failure to provide some way of authorizing interim rates is intentionally omitted, was it not included -- the fact
that it was not included, presumed to be omitted, rather than turn this principle on its head and conclude that although the contract is silent, of course, we have to find a way to allow interim rates by manipulating the contract since the case, since in this case the statute is less amenable to that type of manipulation? So, accordingly, I will be voting to reject staff's recommendation and deny Progress's petition for interim rate relief.

COMMISSIONER EDGAR: Thank you, Commissioner.

Commissioners, any other questions or comments at this time?

CHAIRMAN CARTER: Commissioners, I'm sorry. My phone was fading in and out. But I think that Commissioner Argenziano was very eloquent in, in her presentation which she's just gone through there and it made tremendous sense to me. I'm not on my meds, so you can't prescribe it to that. (Laughter.) But it made --

COMMISSIONER ARGENZIANO: Commissioner, are you saying you have to be on your meds to agree with me?

CHAIRMAN CARTER: I hope not. I hope that's not what I'm saying.

(Laughter.)

But I do think -- and the way, the symmetry in terms of how you laid it out particularly as you go
through Issue 9 and in the process of how you laid it out in terms of being able to find -- it's really -- that's why I asked the question early on about where are we is that we're here with a stipulation that was settled and agreed upon by the parties, and the parties are interpreting it -- they have different interpretations of it. So they're coming to us because they have a, a conflict on interpretation. So it falls to us to interpret that on, on behalf of the parties because they're asking us as an impartial arbiter to make that decision. So, but, again, I just wanted to say thank you, Commissioner Argenziano. That makes sense to me. Thank you.

COMMISSIONER ARGENZIANO: Thank you.

COMMISSIONER EDGAR: Okay. Commissioners, we have, oh my goodness, let's see, 10:30, 11:30, 1:00, 2:00, we've spent three and a half hours maybe on this issue. In my mind it presents, you know, clearly, to state the obvious, some very interesting legal questions. Obviously the point that great legal minds can differ on the interpretation when we're putting together numerous contract provisions and statutes and trying to look at all of that in the light of the case law that exists. But I think it's probably time to start looking at the, at the issues, and I'm going to

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take Chairman Carter's earlier question as a prompting
to me to do so.

So, Commissioners, what I would suggest is
that we try to work our way maybe down through the
issues and see where that takes us. As has been pointed
out, and I appreciate your willingness to do so at the
beginning, we have addressed Issue 1. We have 12 total.

Commissioners, is there any discussion or
specific question on Issue 2?

CHAIRMAN CARTER: Madam Chairman, let me ask
you this. We're going to take the issues individually;
is that correct?

COMMISSIONER EDGAR: That is my suggestion.

CHAIRMAN CARTER: Okay. Thank you.

COMMISSIONER EDGAR: But if, if there is a
preference to do it otherwise, I am of course open to
that.

CHAIRMAN CARTER: Thank you. I would
appreciate that. And I just wanted on this, if I'm in
order, on this issue here, just basically I just -- it
just kind of seems like we've been on this forever. But
just kind of a general, if staff can give me like a one
second on, maybe ten second on this, this stipulation
here. Because I think the question is does the
stipulation approved allow a request for an interim rate
increase. That's what we're dealing with just specifically on Issue 2; is that correct?

COMMISSIONER EDGAR: Yes, sir.

CHAIRMAN CARTER: Okay.

COMMISSIONER EDGAR: Would you like staff to speak to that specifically at this time?

CHAIRMAN CARTER: Yes, ma'am, I would.

COMMISSIONER EDGAR: Okay. Again, we've had good, good general discussion. We've jumped a little bit around on the issues. If I could ask our staff to help make sure that we're all focused on the same thing to present briefly Issue 2 specifically.

MR. SAYLER: Thank you, Commissioner. The question is for Issue 2 whether the stipulation approved by the order allows PEF to, to request an interim rate increase, and that is the narrow issue there.

COMMISSIONER EDGAR: And the staff recommendation is, is, yes --

MR. SAYLER: Yes.

COMMISSIONER EDGAR: -- that the stipulation does allow.

MR. SAYLER: Staff believes -- right. Staff believes it doesn't expressly disallow it. Yes.

COMMISSIONER EDGAR: Okay. Commissioner Carter, does that help?
CHAIRMAN CARTER: Yes, ma'am. Thank you.

COMMISSIONER EDGAR: You are very welcome.

Commissioners, we are on Issue 2.

COMMISSIONER SKOP: Madam Chair, I don't think
Issue 2, it may or may not be controversial, but I would
move to approve the staff recommendation as to Issue 2.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: Okay. Commissioners, any
further discussion specific to Issue 2? We have a
motion and a second to adopt the staff recommendation.

Hearing no further discussion --

CHAIRMAN CARTER: Excuse me.

COMMISSIONER EDGAR: Yes.

CHAIRMAN CARTER: Just to the interim -- I'm
sorry.

COMMISSIONER EDGAR: That's okay. That's all
right, Chairman Carter. We will, we will work through
it together. We are on Issue 2, which is very
specifically, and I will read it exactly, "Does the
stipulation allow Progress to request an interim rate
increase?" So this is does the stipulation allow the
request? And the motion is in favor of the staff
recommendation, which is, yes, that the stipulation does
allow the request for an interim rate increase. Okay?

So, again, we have a motion and we have a second. Are
there any additional questions or discussion before I call for a vote?

COMMISSIONER ARGENTANO: Yes. Just to make it very clear so as we go through issue by issue there's no mistake, I want it on record that I'm voting no on all except for 12 as to keep the docket open just in case we get lost somewhere.

COMMISSIONER EDGAR: Okay. We will take that down for the record and we will try to walk our way through the issues with that in mind.

Okay. Commissioner Skop has made a motion. Commissioner McMurrian has seconded it. We have had full discussion and opportunity for question amongst all the parties and amongst ourselves. So all in favor of the motion for Issue 2, say yes.

COMMISSIONER SKOP: Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER EDGAR: Aye.

COMMISSIONER McMURRIAN: Yes.

COMMISSIONER EDGAR: Okay. Show the motion carried on Issue 2. The staff recommendation is adopted.

That brings us to Issue 3. And I'll ask our staff, as they so ably did a moment ago, to help us focus in specifically and briefly present Issue 3 to us.
MR. SAYLER: Issue 3 is has Progress Energy established a prima facie entitlement for interim relief pursuant to Section 366.071? Staff's recommendation is, yes, we believe that the 10 percent threshold adopted by the parties in the stipulation represents a level below which rates are no longer fair, just and reasonable, thereby entitling PEF to petition the Commission to amend its rate base or base rates. And PEF has, or Progress has presented prefiled testimony and documentation supporting that it is earning below the 10 percent threshold. Accordingly, staff recommends that the Commission find that Progress has established a prima facie entitlement for interim rate relief and is entitled to the proposed interim rate increase pursuant to Section 366.071 as discussed in Issue 8.

COMMISSIONER EDGAR: Thank you. And, Commissioner Carter, just to hone in on one of your earlier questions, in my own opinion this is a question that much of our discussion has, has revolved around as we've discussed this item today. Commissioners, any questions or comments specifically on this issue at this time? Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

Just a question to staff. Since the
Commission has ruled as to Issue 2 with respect to the stipulation allowing PEF to seek a rate increase, and again they can do that through a base rate proceeding or through a, I'm losing my train of thought, base rate proceeding or a limited proceeding.

What -- if the Commission ruled against staff on Issue 3, what recourse would Progress have to seek relief under a limited proceeding and how could that be accommodated? Because I think if I were to understand some of the concerns that have been raised, that the problem likely hinges on the ROE itself and I think you'd have to establish ROE. So I just wanted staff to speak on that. I'm not sure which way.

MS. FLEMING: Just with respect to this filing, it's an interim rate proceeding. As far as the limited proceeding, I think that's more tailored to the Bartow limited proceeding. If the Commission votes no on Issue 3 that Progress has not shown a prima facia entitlement to interim rates, those, those rates are denied to Progress and they cannot recover those rates.

COMMISSIONER SKOP: And there is no other recourse for a limited proceeding? I mean, is that like res judicata against them? I mean, because under the stipulation they have the right to seek relief; correct?

MR. DEVLIN: My understanding, I'd agree
with -- Tim Devlin. I would agree with Katherine Fleming that there is no other recourse for this issue of interim. If Issue 3 is denied, there is no other avenue open for Progress other than a rate case and the limited proceeding you have next on the agenda.

**COMMISSIONER SKOP:** So there would be no ability for a limited proceeding as to the sole issue of establishing what would be necessary to seek interim rates for -- in the time between now and the rate case is heard and implemented?

**MR. DEVLIN:** I don't believe there is. A limited proceeding is just a different vehicle, if you will, for rate relief completely different than the interim statute, which is more in tune with overall revenue requirements. A limited proceeding is more in tune with the next item, Bartow, where you just have a limited issue and limited costs to deal with.

**COMMISSIONER SKOP:** Then why in the settlement agreement in Paragraph 7 did it speak to the option of a limited proceeding if you fell under the 10 percent threshold?

**MR. DEVLIN:** Well, I believe that that is what we are speaking to with respect to the next item, Bartow.

**COMMISSIONER SKOP:** All right. Very well. I
guess just for me, Issue 3 is the thorniest one for some of the same reasons articulated by Commissioner Argenziano. But on the flip side of that, I can understand what staff is trying to do, and I'm also cognizant of the fair, just, and reasonable criteria. And it would just seem to me there is a tension there. There is a tension between the statute and what we are required to do under state law, and there is a tension between that and what we're required to do under federal law, under Supreme Court precedent with fair, just, and reasonable. And I think that that is where the discretion of the Commission clearly comes in under 366.071, Subsection 1.

COMMISSIONER EDGAR: Commissioner McMurrian.

COMMISSIONER McMURRIAN: Thank you.

I think I kind of have a question along the same lines about the limited proceeding thing. And we talked about this the other day somewhat, too. But I thought I had heard OPC say earlier when they talked -- when Mr. Rehwinkel talked about the two different types, you had the pure earnings type of recovery, and then you had the file and suspend. I thought that I heard them say that the limited proceeding is available, but maybe I'm -- you are not saying here, though.

COMMISSIONER EDGAR: Commissioner McMurrian,
did you pose a question to our staff?

    COMMISSIONER McMURRIAN: Well, I did, but maybe I am putting -- maybe I'm attributing something to OPC that I shouldn't have. Can I ask a question of OPC?

    COMMISSIONER EDGAR: Sure. Oh, absolutely. I just wanted to make sure if you pointed that way that we went there first and then came back. So go right ahead.

    COMMISSIONER McMURRIAN: Okay. Can you clarify for me what you said early about limited proceeding being available. Were you talking about just under the statute -- I mean, under the stipulation in general, or were you meaning with respect to this type of -- well, this type is probably not a good term either in the sense that they have asked for it as interim.

    If they are trying to resolve the issue that they have with respect to the 2009 period that they are trying to address through this interim filing, is there a way to do that through the file and suspend limited proceeding avenue?

    MR. REHWINKEL: Commissioner, no. And I think there has been a significant amount of confusion about that particular aspect of that paragraph that goes to the core of this. And I think you should ask the company this. This case is not being filed pursuant to Paragraph 7. Bartow, the next item is. The interim
relief that they are requesting hangs off of, if you will, the extra stipulation filing that is 0079.

COMMISSIONER McMURRIAN: Right.

MR. REHWINKEL: And the wellspring of that authority does not come out of the 10 percent trigger or anything like that. It stands totally apart from it.

Our sole argument is that the stipulation is a bar to that on Issue 2. That's our argument. So, no, interim -- file and suspend relief is not available to them, and I think we cite it and the Commission has precedent on this, that .071 is the sole source of interim relief under a general case filing.

COMMISSIONER McMURRIAN: Okay. That clarifies it for me, then, because I think I understood that perhaps there was a reason that Progress filed it as interim as opposed to limited proceeding, but I didn't understand that they probably should not file it as a limited proceeding. So I think that is clarified for me now. So I appreciate that. And I think that was all. Thank you.

COMMISSIONER EDGAR: Okay. Commissioners, we are on Issue 3. Any further questions or discussion at this time?

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.
I was trying to compile my thoughts on this. Again, the way I see it is on Issue 2 the Commission acknowledged the ability under the stipulation to allow PEF to request an interim rate increase. I think that the tension that is focused through the lengthy discussion on this is clearly on Issue 3.

The way that I see it in looking at the settlement agreement is that the settlement agreement provides for no earning cap, but the threshold at least in my view serves as an earnings floor. And that's somewhat analogous to staff's recommendation. But under 10 percent, which they are currently earning, entitles them under the settlement agreement to seek relief.

Do they meet the full requirements of the statute? I think that's the $24,000 question. But looking beyond that under controlling federal Supreme Court precedent under Hope and Bluefield, they are entitled to earn a reasonable rate of return, and I think that the gist of this would be that if relief is not granted, they would arguably have the lowest ROE in the nation at the current earnings level. So, again, that's a concern for me. And I think that if I were in a situation where I had a conflict of law between federal controlling case law and statutory provisions that we are bound by, that in some instances where there
is ambiguity, we, as a Commission, have to reconcile those two. And it would seem to me that controlling U.S. Supreme Court precedent would control, and the strict adherence to a statutory provision would have to yield if it caused there not to be fair, just, and reasonable rates. And that's, again, just my perspective purely from my own analysis, and that's kind of the way I see it. So at the appropriate time, and I recognize that there is tension on this particular issue, but --

COMMISSIONER ARGENZIANO: Madam Chair.

COMMISSIONER EDGAR: Just a moment, Commissioner.

Commissioner Skop, go ahead and finish and then we will come back.

COMMISSIONER SKOP: Yes. I would at the appropriate time, and, again, I will be happy to yield to Commissioner Argenziano, but at the appropriate time I would make the motion to adopt staff recommendation as to Issue 3 based on federal controlling case law.

COMMISSIONER EDGAR: Okay. Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Yes. I'm sorry, I had gotten cut off and had to call back in, so I didn't hear the full comments. I think I got cut off at the

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point where Commissioner Skop was saying that -- was quoting Hope and Bluefield. Which I'd like to make reference to that same case law, Hope and Bluefield, and that what people fail to say when they quote Hope and Bluefield is that its whole premise was based upon the whole economics of the country, the viability of our whole financial institutions, everything included in that. And we fail to mention that.

So when we use Hope and Bluefield, why don't we go for the whole kit and caboodle by saying that, you know, in order to adhere to Hope and Bluefield, or to recite it, or to quote it, or whatever we are doing, you need to understand that it's based -- a large part of it is based on the whole economic conditions at the time. That to me seems to be a very important part of that case law.

So when we lose sight of that, we go somewhere else with Hope and Bluefield. So in saying that you have to look at the whole state of the economy, which is not like it has ever been before. It has even been described as differently as the Great Depression in the early '20s.

So, Commissioner Skop, I beg to differ with you. Without including that part of Hope and Bluefield, which is the largest part of it, you kind of...
misunderstand what Hope and Bluefield really says.

And the other part, what I was coming up to is I didn't hear the rest of what the Commissioner had said, so I was just asking him to kind of give me a synopsis. And I apologize, I just got cut off again for some reason.

COMMISSIONER SKOP: And, Madam Chair, I would be happy to clarify.

Again, I fully concur with your position as to the tension that exists under the statutory provision, and I think that your interpretation was very much spot on in terms of the comments that you made, which Chairman Carter echoed.

The problem I have, though, is, again, you know, following the -- construing the statutes strictly versus the staff interpretation, and that's at the state law level, and that's pursuant to statute which we are bound by, but we are equally bound by controlling federal case law under Supreme Court decisions of Bluefield and Hope.

And I just wanted to touch upon a point that you made which I think is a very good point. At least my interpretation of those two decisions were that under the United States Supreme Court decisions of Bluefield and Hope, public utilities entitled to earn a fair and
reasonable rate of return on the value of property
placed in service for the convenience of the public is
sufficient to ensure the financial integrity of the
utility to maintain its creditworthiness and to attract
capital.

And putting that in perspective to the
prevailing economic conditions that you have brought
forth and in the nation, I would respectfully assert
that based on the most recent earning surveillance point
that the current earnings are below the 10 percent
threshold in the settlement agreement, and at 9.59, and
expected subject to Commission not taking action, to
fall down to below 7 percent for projected ROEs. That
is of concern to me in light of the controlling Supreme
Court case law. And, again, my concern would be whether
those rates could be viewed as fair, just, and
reasonable in light of the fact that they would be
significantly lower than any ROE in the United States at
that point.

COMMISSIONER ARGENZIANO: May I respond to
that briefly, Commissioner?

COMMISSIONER EDGAR: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: While I understand
what you are trying to get at, and my concerns are, of
course, for the health of the company as well as the
health of the consumer, I don't agree with you. We have a rate case pending right now in regards to ROE, and we have testimony of different ROEs that are on record as to be acceptable, so you can't -- I think I have a problem with what is fair and what is not at this point.

But, also, when you say fair, just, and reasonable, do you understand to me that to deny ratepayers the benefit of a bargain, which is the stipulation, is not fair, just, and reasonable? And that may be just my opinion, but, you know, I'm only 54 years old and not an attorney, so that may make a difference. But, yet, I kind of disagree. I think that maybe not being an attorney, I read the words for what they are, and not stretch them out to what they are not. And I just respectfully disagree.

**COMMISSIONER EDGAR:** Thank you.

Commissioner Skop.

**COMMISSIONER SKOP:** Thank you, Madam Chair.

And, Commissioner Argenziano, I fully respect your disagreement, and in light of if there were not the controlling federal case law, I would be 100 percent with you in your interpretation of the statute.

So, again, I think it is a reasonable difference of opinion, nothing more. But, again, I'm cognizant equally of controlling federal case law.
COMMISSIONER ARGENZIANO: I'm not so sure it is controlling, but there is where our disagreements are. But thank you.

COMMISSIONER SKOP: Thank you.

COMMISSIONER EDGAR: Okay.

Commissioners, we are, again, on -- still on Issue 3, and I will just say this. In my own analysis prior to our discussions today, and all during our discussions today, in my opinion, in my mind, Issue 2 was clearer and is clearer, which we have already disposed of. Issue 3 I have struggled with in large part because there seems to me to be some internal inconsistencies or conflicts within the statute, and then looking from the statute beyond then, from the statute to the terminology and some of the language in the stipulation, that some of the results just seem somewhat convoluted both ways.

So, again, by virtue of some of the language in both. So this one has been a struggle for me. The discussion has been very helpful, but yet it's also still a little murky. However, I am persuaded by some of the discussion that we have had looking specifically at the language in Subsection 7 primarily, I think.

And, so with that, Commissioner Skop, you had
offered to make a motion, and I think that the time is now.

COMMISSIONER SKOP: Thank you, Madam Chair.

Based on the discussion, I would respectfully move to adopt the staff recommendation as to Issue 3. And, again, I think that my basis for that motion is resolving the ambiguities via the controlling federal case law as my guiding force in making that motion.

COMMISSIONER EDGAR: Thank you, Commissioner.

Commissioner McMurrian.

COMMISSIONER McMURRIAN: I'll second that motion. I will just say that, I mean, to me Issue 2 was just as thorny as 3. I guess it depends on how you look at it. And I think the majority of the argument today was about how the stipulation could be read, and like I said earlier, I think there's sort of good arguments on both sides of that.

I'm more compelled by staff's reading of it, and so I support the staff recommendation on Issue 3, and will second that, but it's the basis of my seconding of that motion. While I might have some of the same concerns that Commissioner Skop talked about, the basis of my seconding that motion really is laid out in the staff recommendation, because I believe Staff's -- for me Staff's arguments are more compelling than the other.
CHAIRMAN CARTER: Madam Chair.

COMMISSIONER EDGAR: Commissioner Carter.

CHAIRMAN CARTER: We're in debate. I was kind of running around on the Issue 2, but, I would support that. And I would support -- my basis for supporting it would be based upon staff's analysis and interpretation of the statute as it pertains to this. That would be the basis of my support for the motion.

COMMISSIONER EDGAR: Thank you. I appreciate that comment. Commissioners, we have a motion and we have a second in favor of the staff recommendation for Issue 3.

All in favor say aye. Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: Opposed?

COMMISSIONER ARGENZIANO: Aye.

COMMISSIONER EDGAR: Thank you. The motion carries.

Commissioners, that brings us to Issue 4. We have not had specific discussion on this, it is more of a calculation than a legal question in my mind, so we will look to staff once again to briefly present Issue 4 specifically to us.

FLORIDA PUBLIC SERVICE COMMISSION
MR. SLEMKEWICZ: Okay. Issue 4 is what is the appropriate interim test year rate base, and based upon my review of their filing, the $5 billion rate base that they filed is the appropriate rate base to use in this interim proceeding.

COMMISSIONER EDGAR: Thank you.

Commissioner McMurrian.

COMMISSIONER MCMURRIAN: Thank you.

I have one clarification question. With respect to the very last sentence, I believe it is, about the test year data being audited. So am I correct if this 5 billion stands to be adjusted in the rate case, if there are any problems discovered -- well, actually in the rate case, but in looking at the interim period for determining any refund.

MR. SLEMKEWICZ: That's correct. If there is anything in the audit or anything that we do uncover during the review in the rate case, those adjustments would be made to the 2008 data to determine whether or not there might be a refund due.

COMMISSIONER McMURRIAN: Okay. And if there was an issue with any amount of the 5 billion, that would be refunded regardless of what the ultimate rate case amount was determined to be for permanent.

MR. SLEMKEWICZ: I believe that's correct. If
we find, you know, errors or adjustments that should be made to the 2008 data.

COMMISSIONER McMURRIAN: Okay. Thank you.

COMMISSIONER EDGAR: Commissioners, any further questions on Issue 4? Hearing none.

COMMISSIONER SKOP: I move to approve staff recommendation as to Issue 4.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: Commissioners, we have a motion and a second for the staff recommendation on Issue 4. Hearing no further questions, all in favor of the motion say aye.

Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: Opposed?

COMMISSIONER ARGENZIANO: Absolutely not.

COMMISSIONER EDGAR: Show the motion carried.

That brings us to Issue 5. Staff.

MR. MAUREY: Andrew Maurey.

Issue 5 deals with is Progress Energy Florida's proposed return on equity of 10 percent and its overall cost of capital of 7.84 percent reasonable for purposes of determining interim rates. Staff's
recommendation is yes.

COMMISSIONER EDGAR: Commissioners, any questions for our staff or others on Issue 5? Hearing none.

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair. I move to approve staff recommendation as to Issue 5.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: We have a motion and a second. All in favor of the motion, which is to adopt the staff recommendation on Issue 5, say aye.

Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: All opposed?

COMMISSIONER ARGENZIANO: Let's see, four to one.

COMMISSIONER EDGAR: Yes, ma'am, on Issue 5. That brings us, Commissioners, to Issue 6. We will look to staff.

MR. SLEMKEWICZ: Issue 6 is what is the appropriate interim test year net operating income, and staff recommends that the $391,486,000 filed by the

FLORIDA PUBLIC SERVICE COMMISSION
company is the correct amount.

COMMISSIONER EDGAR: Thank you.

Commissioners, any questions on Issue 6?

Hearing none; Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

I move to approve staff recommendation as to Issue 6.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: All in favor of the motion say aye.

Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: Opposed?

COMMISSIONER ARGENZIANO: Once again, no.

COMMISSIONER EDGAR: Show the motion carried.

Commissioners, that brings us to Issue 7.

Staff.

MR. SLEMKIEWICZ: Issue 7 is the appropriate net operating income multiplier, and the 1.6343 that the company filed is appropriate.

COMMISSIONER EDGAR: Thank you.

Commissioners, any questions on this issue?

Hearing none; Commissioner Skop.
COMMISSIONER SKOP: Thank you, Madam Chair.

I would move to approve staff recommendation
as to Issue 7.

CHAIRMAN CARTER: Is there a second?

COMMISSIONER McMURRIAN: Sorry, I fell asleep
again. Second.

COMMISSIONER EDGAR: Okay. Commissioners, we
have a motion and a second for the staff recommendation
on Issue 7. All in favor of the motion say aye.

Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: Opposed?

COMMISSIONER ARGENZIANO: Aye.

COMMISSIONER EDGAR: Thank you. Show the
motion carried.

Commissioners, that brings us to Issue 8.

Staff.

MR. SLEMKEWICZ: Issue 8 is a fallout of
Issues 4 through 7 on what is the appropriate amount of
the interim revenue increase, and staff recommends that
the $13,078,000 interim increase should be approved.

COMMISSIONER EDGAR: Commissioners, any
questions on Issue 8? Hearing none. Is there a motion?
COMMISSIONER SKOP: Madam Chair, I would move to approve staff recommendation as to Issue 8.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: Commissioners, we have a motion and a second to adopt the staff recommendation on Issue 8.

Hearing no further questions, all in favor of the motion say aye.

Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: Opposed?

COMMISSIONER ARGENZIANO: Aye.

COMMISSIONER EDGAR: Show it adopted.

CHAIRMAN CARTER: Madam Chair.

COMMISSIONER EDGAR: Commissioner Carter.

CHAIRMAN CARTER: As we go to Item 9, I'm sorry, sometimes I'm fading in and out. Is that the oral modification as we are -- that is already included within the recommendation on Issue 9?

COMMISSIONER EDGAR: I appreciate the question; and my understanding, and I will look to Commissioner Skop, is that the oral modification was on Issue 3, and that that would have been included in
COMMISSIONER SKOP: Yes, it was.

CHAIRMAN CARTER: Okay. Thank you.

COMMISSIONER EDGAR: Thank you for the question. Absolutely. Okay.

Commissioners, that brings us to Issue 9.

Staff.

MS. DRAPER: Elizabeth Draper. Issue 9 reads should Progress Energy's request for a percentage increase factor of 1.7 percent be approved. Staff recommends denial of Progress's petition and recommends that the appropriate calculation yields a .91 percent increase factor, which would allow Progress to recover the interim increase over a six-month period.

COMMISSIONER EDGAR: Thank you.

Commissioners, I think we touched on this briefly earlier in the day. Are there questions?

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

Just a question to staff. At the bottom, or midpoint of Page 16, I guess staff explains that it has been Commission practice to calculate the percentage increase factor based on the annual revenues, and staff, pursuant to rule and the discussion provided on that page, has calculated this in a manner in which the Commission has
done it historically. Is that correct?

MS. DRAPER: Yes.

COMMISSIONER SKOP: And it has never been done in the manner that was proposed by Progress, is that correct?

MS. DRAPER: Not to my knowledge, no.

COMMISSIONER SKOP: And the manner in which Progress has proposed it would be analogous to a completely make whole in six months versus a typical 12-month process?

MS. DRAPER: That is correct. It would allow Progress to retroactively recover January through June revenues.

COMMISSIONER SKOP: All right. Thank you.

COMMISSIONER EDGAR: Commissioners, any additional questions?

Hearing none; Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

I would move to approve staff recommendation as to Issue 9.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: Commissioners, we have a motion and a second for the staff recommendation on Issue 9. All in favor of the motion say aye.

Aye.
CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: All opposed?

COMMISSIONER ARGENZIANO: Aye.

COMMISSIONER EDGAR: Show it adopted. That brings us to Issue 10. Staff.

MS. DRAPER: Issue 10 is how should the interim revenue increase for Progress Energy be distributed among the rate classes. And our recommendation is that it should be done according to rule and all existing base rates and charges should be uniformly increased. Interim rates would go into effect with the first billing cycle in July, and staff also recommends that the company give notice to its customers of the interim increase commencing with June 2009 bills.

COMMISSIONER EDGAR: Commissioners, any questions on Issue 10?

Hearing none; Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

I move to approve staff recommendation as to Issue 10.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: Commissioners, we have a motion to adopt the staff recommendation on Issue 10, a
motion and a second. All in favor of the motion say aye.

Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: All opposed?

COMMISSIONER ARGENZIANO: Aye.

COMMISSIONER EDGAR: Show the motion carried.

That brings us to Issue 11.

MR. MAUREY: Issue 11 asks what is the appropriate security to guarantee the amount collected subject to refund. Staff recommends that the appropriate security to guarantee the funds collected subject to refund is a corporate undertaking.

COMMISSIONER EDGAR: Thank you.

Commissioners, any questions on Issue 11?

Hearing none; Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

I would move to approve staff recommendation as to Issue 11.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: Commissioners, we have a motion and a second to adopt the staff recommendation on Issue 11. All in favor of the motion say aye.
Aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER McMURRIAN: Aye.

COMMISSIONER SKOP: Aye.

COMMISSIONER EDGAR: All opposed?

COMMISSIONER ARGENZIANO: Aye.

COMMISSIONER EDGAR: Show the motion carried.

That brings us to Issue 12, close the docket.

MS. FLEMING: Staff is recommending that this docket remain open pending the Commission's final decision in the base rate proceeding.

COMMISSIONER EDGAR: Thank you.

Commissioners.

COMMISSIONER SKOP: Thank you, Madam Chair.

I would move to approve the staff recommendation as to Issue 12.

COMMISSIONER McMURRIAN: Second.

COMMISSIONER EDGAR: All in favor of the most say aye.

(Simultaneous aye.)

COMMISSIONER EDGAR: Opposed?

Show it adopted.

Commissioners, and to the parties, thank you all for your patience as we worked through this. That concludes our deliberations on this item.

FLORIDA PUBLIC SERVICE COMMISSION
STATE OF FLORIDA  )

COUNTY OF LEON   )

CERTIFICATE OF REPORTERS

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 2nd DAY OF JUNE, 2009.

JANE FAUROT, RPR  
Commission Reporter  
(850) 413-6732

LINDA BOLES, RPR, CRR  
Commission Reporter  
(850) 413-6734

FLORIDA PUBLIC SERVICE COMMISSION
The 2002 Stipulation expressly prohibited both interim rate decreases and interim rate increases.

**2002 Stipulation:**

4. No Stipulating Party will request, support, or seek to impose a change in the application of any provision hereof. The Stipulating Parties other than FPC will neither seek nor support any additional reduction in FPC's base rates and charges, including interim rate decreases, that would take effect prior to December 31, 2005 unless such reduction is initiated by FPC. FPC will not petition for an increase in its base rates and charges, including interim rate increases, that would take effect prior to December 31, 2005, except as provided in Section 7.

Order No. PSC-02-0655-AS-EI, Attachment 1, p. 15.

The 2005 Stipulation expressly prohibits only interim rate decreases.

**2005 Stipulation**

4. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof. OPC, AG, FIPUG, FRF, AARP, Sugarmill, Hansen, White Springs, and CG will neither seek nor support any reduction in PEF's base rates and charges, including interim rate decreases, that would take effect prior to the first billing cycle for January 2010 (or prior to the first billing cycle for July 2010, if PEF elects to extend this Agreement pursuant to Section 1), unless such reduction is requested by PEF. PEF may not petition for an increase in base rates and charges that would take effect prior to the first billing cycle for January 2010 (or that would take effect prior to the first billing cycle for July 2010, if PEF elects to extend this Agreement pursuant to Section 1) except as otherwise provided for in Sections 7 and 10 of this Agreement. During the term of this Agreement, except as otherwise provided for in this Agreement, or except for unforeseen extraordinary costs imposed by government agencies relating to safety or matters of national security, PEF will not petition for any new surcharges, on an interim or permanent basis, to recover costs that are of a type that traditionally and historically would be or are presently, recovered through base rates.

Progress Energy Florida – 2009 Projection of Return on Equity

• Projected ROE
  6.89%

• With increase for Bartow Repowering
  8.22%

• With increase for Both Bartow and Interim Relief
  8.36%
May 15, 2009

Mr. John Slemkewicz,
Public Utility Supervisor
Electric and Gas Accounting Section
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mr. Slemkewicz:


The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended March 31, 2009. The separation factors used for the jurisdictional amounts were developed from the cost of service prepared in compliance with the stipulation and settlement agreement approved in Docket No. 050078-EI, Order No. PSC-05-0945-S-EI.

If you have any questions, please feel free to contact Cindy Lee at (727) 820-5535.

Sincerely,

Will Garrett
Controller, Progress Energy Florida

dc
Attachment
xc: Mr. J. R. Kelly, Office of the Public Counsel
## Rate of Return Report Summary

March 2009

### I. Average Rate of Return (Jurisdictional)

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
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<tbody>
<tr>
<td></td>
<td>Per Books</td>
<td>Adjustments</td>
<td>Adjusted</td>
<td>Adjusted</td>
<td>Adjusted</td>
<td>Adjusted</td>
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<td>Net Operating Income (a) (b)</td>
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<td>($124,422,417)</td>
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<td>Average Rate Base</td>
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<td>($1,800,471,496)</td>
<td>$5,193,864,478</td>
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<td>$5,193,864,478</td>
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<tr>
<td>Average Rate of Return</td>
<td>7.71%</td>
<td>7.69%</td>
<td>7.60%</td>
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</table>

### II. Year End Rate of Return (Jurisdictional)

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<th></th>
<th>Actual</th>
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<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
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<tbody>
<tr>
<td></td>
<td>Per Books</td>
<td>Adjustments</td>
<td>Adjusted</td>
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<td>Net Operating Income</td>
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<td>Year End Rate Base</td>
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<td>7.44%</td>
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**Footnotes**

(a) Column (1) includes AFUDC earnings.

(b) Column (2) includes reversal of AFUDC earnings.

### III. Required Rates of Return

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<tr>
<th></th>
<th>Average Capital Structure</th>
<th>End of Period Capital Structure</th>
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<tbody>
<tr>
<td>FPSC Adjusted Basis</td>
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<td></td>
</tr>
<tr>
<td>Low Point</td>
<td>8.27%</td>
<td>8.04%</td>
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<tr>
<td>Mid Point</td>
<td>8.77%</td>
<td>8.54%</td>
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<tr>
<td>High Point</td>
<td>9.27%</td>
<td>9.04%</td>
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<tr>
<td>Pro Forma Adjusted Basis</td>
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<tr>
<td>Low Point</td>
<td>8.27%</td>
<td>8.04%</td>
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<tr>
<td>Mid Point</td>
<td>8.77%</td>
<td>8.54%</td>
</tr>
<tr>
<td>High Point</td>
<td>9.27%</td>
<td>9.04%</td>
</tr>
</tbody>
</table>

### IV. FINANCIAL INTEGRITY INDICATORS

A. T.I.E. with AFUDC: 3.35 (System Per Books Basis)

B. T.I.E. without AFUDC: 2.80 (System Per Books Basis)

C. AFUDC to Net Income: 33.77% (System Per Books Basis)

D. Internally Generated Funds: -8.08% (System Per Books Basis)

E. STD/LTD to Total Investor Funds: 48.34% (FPSC Adjusted Basis)

F. Return on Common Equity: 9.56% (FPSC Adjusted Basis)

G. Current Allowed AFUDC Rate: 8.85% Docket 050078-EI Order PSC-05-0945-S-EI

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I am aware that Section 837-06, Florida Statutes, provides: Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.022, s. 775.023, or s. 775.094

Will Garrett, Controller Progress Energy Florida
### PROGRESS ENERGY FLORIDA
#### Average Rate of Return - Rate Base
March 2009

<table>
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<tr>
<th>System Per Books</th>
<th>Plant In Service</th>
<th>Accum Depr &amp; Amort</th>
<th>Net Plant In Service</th>
<th>Future Use &amp; Appd Unrecov</th>
<th>Const Work in Progress</th>
<th>Nuclear Fuel (Net)</th>
<th>Net Utility Plant</th>
<th>Working Capital</th>
<th>Total Average Rate Base</th>
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<tbody>
<tr>
<td>Less Recoverable:</td>
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<td>ARO</td>
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<td>866,442</td>
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<td>79,116,656</td>
<td>106,858,543</td>
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<td>($131,388,033)</td>
<td>$7,620,824,115</td>
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<td>Regulatory Base - Retail</td>
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<td>($180,257,466)</td>
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<td>FPSC Adjustments</td>
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<td>(1,595,117,928)</td>
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<td>0</td>
<td>(224,986,811)</td>
<td>225,581,231</td>
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<td>(2,286,276)</td>
<td>2,286,276</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2,286,276</td>
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<td>(224,986,811)</td>
<td>(222,270,535)</td>
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<td>(1,595,117,928)</td>
<td>0</td>
<td>(1,187,818,463)</td>
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<td>$4,284,962,357</td>
<td>$4,892,330,001</td>
<td>$26,575,569</td>
<td>$155,801,373</td>
<td>$92,057,013</td>
<td>$5,126,774,976</td>
<td>$37,089,502</td>
<td>$5,193,964,478</td>
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Schedule 2
Page 1 of 3
## PROGRESS ENERGY FLORIDA
### Average Rate of Return - Income Statement
#### March 2009

### Schedule 2

**Page 2 of 3**

<table>
<thead>
<tr>
<th>System Per Books (a)</th>
<th>Operating Revenues</th>
<th>Fuel &amp; Net Interchange</th>
<th>O&amp;M Other</th>
<th>Dep &amp; Amort</th>
<th>Taxes Other than Income</th>
<th>Income Taxes</th>
<th>Deferred Income Tax (Net)</th>
<th>Investment Tax Credit (Net)</th>
<th>Gain/Loss on Disposition &amp; Other</th>
<th>Net Operating Income</th>
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<tbody>
<tr>
<td>ARO</td>
<td>$4,997,083,016</td>
<td>$2,789,079,074</td>
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<td>$301,179,243</td>
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<td>$4,452,514,797</td>
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<tr>
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<tr>
<td>FUEL</td>
<td>2,755,394,553</td>
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<td>13,723,015</td>
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<td>0</td>
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<td>40,281,838</td>
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**Regulatory Base - System**

| Regulatory Base - System | $1,950,655,168 | $35,452,952 | $641,192,042 | $205,376,151 | $325,121,161 | $54,447,022 | $112,341,672 | ($5,591,499) | $0 | $1,449,549,122 | $511,089,466 |

### Footnotes

(a) The addition of earnings from AFUDC charges would increase the system YOI by $137,070,416 and Jurisdictional YOI by $125,924,749.

### Current Month

<table>
<thead>
<tr>
<th>System Per Books (e)</th>
<th>Operating Revenues</th>
<th>Fuel &amp; Net Interchange</th>
<th>O&amp;M Other</th>
<th>Dep &amp; Amort</th>
<th>Taxes Other than Income</th>
<th>Income Taxes</th>
<th>Deferred Income Tax (Net)</th>
<th>Investment Tax Credit (Net)</th>
<th>Gain/Loss on Disposition &amp; Other</th>
<th>Net Operating Income</th>
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<tbody>
<tr>
<td>ARO</td>
<td>$33,600,814</td>
<td>$229,067,251</td>
<td>$83,216,271</td>
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<td>ECRC</td>
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<td>5,292,378</td>
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<td>1,733,688</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>33,083,783</td>
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</table>

**Footnotes**

(a) The addition of earnings from AFUDC charges would increase the system YOI by $137,070,416 and Jurisdictional YOI by $125,924,749.
### Average Rate of Return - Adjustments
March 2009

#### Notes Rate Base Adjustments

<table>
<thead>
<tr>
<th>Notes</th>
<th>Rate Base Adjustments</th>
<th>P=Pro Forma F=FPSC</th>
<th>System</th>
<th>Retail</th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>CWIP - AFUDC</td>
<td>F</td>
<td>($1,782,204,134)</td>
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<td>(1)</td>
<td>GAIN/LOSS ON SALE OF PLANT</td>
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<td>CAPITAL LEASE-EPS</td>
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<td>(224,986,811)</td>
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<tr>
<td>(2)</td>
<td>CAPITAL LEASE-WORKING CAPITAL</td>
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<td>225,681,231</td>
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<td>(1)</td>
<td>NUC. DECOM. UNFUNDED - WHOLESALE</td>
<td>F</td>
<td>2,286,276</td>
<td>2,286,276</td>
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**Total**

<table>
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<tr>
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<th>System</th>
<th>Retail</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>($1,788,304,153)</td>
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#### Notes Income Statement Adjustments (to NOI)

<table>
<thead>
<tr>
<th>Notes</th>
<th>Income Statement Adjustments (to NOI)</th>
<th>P=Pro Forma F=FPSC</th>
<th>System</th>
<th>Income Tax Effect</th>
<th>Amount</th>
<th>Income Tax Effect</th>
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</thead>
<tbody>
<tr>
<td>(2)</td>
<td>CORPORATE AIRCRAFT ALLOCATION</td>
<td>F</td>
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<tr>
<td>(1)</td>
<td>FRANCHISE FEE &amp; GROSS REC TAX REVENUE</td>
<td>F</td>
<td>205,579,935</td>
<td>(79,302,460)</td>
<td>205,579,935</td>
<td>(79,302,460)</td>
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<tr>
<td>(1)</td>
<td>FRANCHISE FEES &amp; GROSS REC TAX - TOI</td>
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<td>79,239,225</td>
<td>(205,416,008)</td>
<td>79,239,225</td>
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<tr>
<td>(1)</td>
<td>GAIN/LOSS ON SALE OF PLANT</td>
<td>F</td>
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<td>(2,640,455)</td>
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<td>REMOVE DEFERRED TAX AFUDC DEBT</td>
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<td>(16,505)</td>
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<td>(25,583)</td>
<td>9,869</td>
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<td>(408)</td>
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**Total**

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<tr>
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<tbody>
<tr>
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<td>($12,113,250)</td>
<td>$24,806,642</td>
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|                  | ($12,442,940)           | $13,640,668             |

**Notes:**

1. Docket No. 910890-EI, Order No. PSC 92-0208-FOF-EI
2. N/A
## Average Rate of Return - Capital Structure

### FPSC Adjusted Basis

**March 2009**

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<tr>
<th></th>
<th>System Per Books</th>
<th>Specific Adjustments</th>
<th>System Adjusted</th>
<th>Pro Rate Adjustments</th>
<th>FPSC Adjusted</th>
<th>Ratio</th>
<th>Low Point</th>
<th>Mid Point</th>
<th>High Point</th>
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<td></td>
<td>Cost Rate</td>
<td>Weighted Cost</td>
<td>Cost Rate</td>
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<td>Short Term Debt *</td>
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<td>($0)</td>
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<td>0.00%</td>
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<td>5.35%</td>
<td>6.29%</td>
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<td>6.29%</td>
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<td>($125,912,030)</td>
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<td>0.00%</td>
<td>8.27%</td>
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* Daily Weighted Average

**Cost Rates Calculated Per IRS Ruling

***Equity Ratio Including Debt Associated With Qualifying Facilities Contracts (Based on FPSC Capital Structure)

Docket No. 050078-EI, Order No. 05-0945-S-EI, Paragraph No. 13

46.21%