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P R O C E E D I N G S

1
2 **COMMISSIONER SKOP:** Good morning. I'd like to
3 call this evidentiary hearing on confidentiality to
4 order, and if staff could please read the notice.

5 **MS. BENNETT:** By notice duly given, this date
6 and time was set for a confidentiality evidentiary
7 hearing in Docket Number 100009. I think I said the
8 right number of 0s.

9 **COMMISSIONER SKOP:** Thank you. And if now we
10 could please take appearances of counsel.

11 **MR. ANDERSON:** Good morning, Commissioner
12 Skop. My name is Bryan Anderson. I'm here today with
13 my colleague, Mitchell Ross. We are attorneys for
14 Florida Power & Light Company.

15 **COMMISSIONER SKOP:** Thank you.

16 **MR. McGLOTHLIN:** Good morning. My name is Joe
17 McGlothlin with the Office of Public Counsel.

18 **COMMISSIONER SKOP:** Thank you. And staff.

19 **MS. BENNETT:** Keino Young, Anna Williams and
20 Lisa Bennett on behalf of Commission staff.

21 **MS. CIBULA:** Samantha Cibula, Commission
22 advisor.

23 **COMMISSIONER SKOP:** All right. Very well. At
24 this time I believe there's some preliminary matters
25 that may need to be discussed. First and foremost,

1 Progress Energy Florida has been released from today's
2 hearing. The order was issued yesterday releasing them
3 and granting their revised request for confidentiality,
4 and I would like to commend Progress for going above and
5 beyond what was necessary in terms of disclosure to
6 address staff's concerns. And, again, that type of
7 transparency facilitates the process. So they are
8 released from this morning's proceeding. And the
9 remaining items deal with Florida Power & Light's
10 request for confidentiality that we'll be taking up this
11 morning.

12 Staff, are there any other additional
13 preliminary matters that we need to address?

14 **MS. BENNETT:** Yes, Commissioner Skop. I was
15 informed by OPC and FPL that they did want to discuss
16 the possible withdrawal or the withdrawal of some of
17 FPL's requests for confidential treatment, and I think
18 that they would like to address you to explain what it
19 is that they will be withdrawing.

20 **COMMISSIONER SKOP:** Okay. Mr. Ross,
21 Mr. Anderson.

22 **MR. ANDERSON:** Great. Thank you, Commissioner
23 Skop.

24 First of all, this is a somewhat unusual
25 hearing of a type that I don't think has been had at the

1 Commission before. But in the spirit that you indicated
2 a moment ago in relation to Progress Energy, Florida
3 Power & Light Company and the Office of Public Counsel
4 have worked together. We've also taken into account
5 some very specific requests that staff has had that they
6 shared with us last week and asked us to review. And
7 we've made a decision to withdraw our designations of
8 confidentiality with respect to portions of the staff
9 internal audit report, which are essentially consistent
10 with what staff had asked for and with what the Office
11 of Public Counsel had asked for.

12 And I believe that with that resolution of
13 issues with OPC -- the other thing I'd mention is Office
14 of Public Counsel had designated certain commercial
15 information that's potentially at issue. I've talked to
16 Mr. McGlothlin; I believe he'll confirm that OPC does
17 not have a problem with maintaining confidentiality of
18 that commercial information.

19 So long story short, in terms of the motion
20 practice that brought us here, in terms of OPC's
21 objection to our request for confidentiality, our
22 response and then our consideration of some points
23 raised by staff last week at least as with respect to
24 OPC and FPL, I believe we've resolved all outstanding
25 confidentiality issues with OPC, and we believe there's

1 also no need to proceed with the hearing in relation to
2 any of those considerations.

3 **COMMISSIONER SKOP:** Okay. Mr. McGlothlin.

4 **MR. MCGLOTHLIN:** The objections that we
5 submitted on August 2nd relate to the document that was
6 attached to staff's testimony, and the title is "Staff's
7 Audit Report on FPL's Project Management Internal
8 Controls for Nuclear Plant Uprate and Construction
9 Projects." Shorthand, staff audit.

10 And with respect to the company's claims and
11 redactions to that, we took, we took exception to two
12 portions of it. There was the portion captioned "Letter
13 Investigation," which appears at pages 40 through 44 of
14 that document. And there's a section entitled, "EPU
15 Management Replacement and Restructure," which appears
16 at pages 24 through 26. We contend that FPL failed to
17 demonstrate that those portions of the staff audit
18 report satisfy the criteria for exemption from public
19 records.

20 By withdrawing their claims for
21 confidentiality with respect to those two segments, FPL
22 has resolved the issues that we raised. And if FPL
23 prepares a revised version of the redacted audit report
24 that makes those sections public information, then we
25 have, our objective has been met in this hearing.

1 **COMMISSIONER SKOP:** Okay. Thank you. Again,
2 I think that certainly Public Counsel raised concerns.
3 Staff had concerns that I saw for the first time
4 yesterday evening. I have concerns. I've reviewed all
5 of the confidential documents in the filing, and I think
6 the issue, as I understand it, you know, there was a
7 request late yesterday afternoon, that the timeliness of
8 that request precluded thorough review.

9 The staff matrix, again trying to correlate
10 that to what is going on, obviously there -- it's a
11 shorthand notation versus seeing an actual revised
12 request. What I would propose doing in terms of being
13 constructive, because I do have some concerns related to
14 some additional documents that we will be taking up
15 today, but first and foremost I think a very
16 constructive dialogue would consist of addressing the
17 issues with the staff audit report to address not only
18 Public Counsel's concerns but staff's concerns.

19 I did have one additional concern. I think
20 that that could be facilitated in the most expedient
21 manner by providing a revised unredacted copy of that
22 document showing what remains confidential such that it
23 could be entered as a confidential exhibit at that time
24 and it would supersede all the prior requests that seem
25 to be hard to, to put your finger on.

1 Public Counsel's request is, is very simple.
2 I mean, you can -- you know, it specifies specific page
3 numbers. The staff request on the matrix has line
4 numbers that sometimes refer to the actual line numbers
5 on the page and other times they don't. So it's a very
6 shorthand notation, if you will. And what concerns me
7 as Prehearing Officer is making sure that, that there is
8 a meeting of the minds. But the easy way to do that is
9 to have the revised document, to quickly look at it and
10 say this is the document that governs the agreements
11 amongst the parties, staff and the Prehearing Officer as
12 to what will remain confidential within the staff audit
13 report and which information will not.

14 And I do have some questions on page 16 that
15 were not addressed by staff. And if it's possible to
16 get a revised document showing what FPL claims to remain
17 confidential within that document, I think that it would
18 be invaluable towards moving the proceeding along this
19 morning. And unfortunately we did not have that
20 available at that time. And, again, if there is ability
21 to do that, I'm prepared to take a brief recess so that
22 we can try and get that document to show what it
23 reflects the latest and greatest concessions to address
24 not only Public Counsel's concerns, but staff's
25 concerns.

1 **MR. McGLOTHLIN:** Commissioner, I have one more
2 item of business that will facilitate the hearing also.

3 **COMMISSIONER SKOP:** Yes.

4 **MR. McGLOTHLIN:** In OPC's August 6th issue
5 list, we, we inadvertently identified one item that, to
6 which we do not take exception to the claim for
7 confidentiality, and that is the redactions to the
8 testimony of our witness, Dr. Jacobs.

9 In his testimony addressing FPL, Dr. Jacobs
10 refers to some numerical values that he extrapolated
11 from a report prepared by one of FPL's consultants. We
12 have never contended that it should not be safeguarded.
13 Its inclusion here was inadvertent and that is not at
14 issue with us.

15 **COMMISSIONER SKOP:** Okay. Very well. And
16 staff sees no problem with that. Again, it's important
17 to preserve the confidentiality of numbers. Normally
18 you won't find me doing a critical analysis of that. So
19 it seems to be okay that that seemed to be a scrivener's
20 error on the part of the request, and as long as staff
21 is fine with that.

22 **MS. BENNETT:** Staff agrees.

23 **COMMISSIONER SKOP:** Okay. All right. So at
24 this point I think to facilitate things along there
25 seems to be a revised request for confidentiality. As I

1 understood Mr. Anderson's representations, I think it
2 would benefit me if I could see the revised copy of the
3 staff audit report to show what remains confidential
4 within the report so we can have a brief discussion, and
5 then we can move on from there. So do we have that
6 document available?

7 **MR. ANDERSON:** We will in, in just a moment.
8 We're doing a final little black line mark and checking
9 to ensure it's correct, then we'll give it to people.

10 **COMMISSIONER SKOP:** Okay. Very well. At this
11 point are we talking a couple of minutes or do we need
12 to recess?

13 **MR. ANDERSON:** Whatever your pleasure is.
14 Probably a couple of minutes.

15 **COMMISSIONER SKOP:** Okay. Why don't we take a
16 temporary recess for five minutes, and we'll reconvene
17 when the document is available.

18 (Recess taken.)

19 Okay. At this time we're going to go back on
20 the record. And where we left off is that FPL was going
21 to provide an unredacted copy or redacted copy of the
22 revised confidentiality request related to the staff
23 audit report. And do we have a copy of that available?

24 **MR. ANDERSON:** I'm just checking. We're
25 trying to make enough for people real quick. Just one

1 moment.

2 (Pause.)

3 If the Commissioner would like the
4 opportunity, we have one for you already and we'll have
5 one for staff in a moment and OPC.

6 **COMMISSIONER SKOP:** Thank you. And that'll
7 allow me the time to review it. I was up until
8 2:00 last night reading documents, so I'm happy to take
9 a quick look at it.

10 **MR. ANDERSON:** Great. Okay.

11 (Pause.)

12 **COMMISSIONER SKOP:** Mr. Anderson, I guess in
13 the interim while I'm still continuing to review this, I
14 would ask the parties to take a look and -- because the
15 document is in its unredacted form, I'm going to
16 carefully articulate things that remain confidential.

17 But if the company could please take a look at
18 page 16 and what is requested at the top of that page.
19 I think that the -- to the extent that we can avoid
20 putting on witness testimony and trying to get some
21 agreement. The concern I had was the basis for the
22 confidentiality request, and I would be comfortable with
23 redacting the numbers in question, the first major
24 number and the second major number and the percent.

25 The smaller number there in that passage I

1 don't necessarily think needs to be redacted to the
2 extent that it probably is constructive, if you would,
3 but I would ask you to take a look at that. And also
4 beginning on page 41, there is a, a redaction that
5 continues through. And I'm not so sure that -- you
6 know, while I would likely concur with the redaction on
7 page 40, the redaction as it pertains for reasons that
8 we can get into if we need to related to the other
9 redaction beginning on page 41, continuing on page 42, I
10 think you might want to take a look at that.

11 My understanding was that perhaps that in view
12 of addressing staff's concern, as I understood them,
13 that that redaction to the, the second redaction on
14 those pages would not be made. I'm trying, trying to
15 talk in, in code here, so.

16 **MR. ANDERSON:** Maybe we didn't do a good job
17 of clearly hand marking, but the intention on 41 and
18 42 there would strictly be individuals' names. So if
19 the marking inadvertently crosses that, then a copy you
20 have smears and that would just be our bad Magic Marker
21 use.

22 **COMMISSIONER SKOP:** I guess with respect to
23 the one on 40, I can see why one would do that. There's
24 a lot of reason to do that. I think that there's some
25 other issues that would make an argument against that,

1 but again we haven't reached that yet.

2 The second redaction, however, though, my
3 understanding was that staff had concerns in direct
4 relation to that and would expect that, that person to
5 be, have their name unredacted. And, like I say, I can
6 go into it further. I think we've made some quantum
7 leaps here and I think that we just need a few things to
8 sort out to get through this one.

9 But, you know, there are some additional
10 issues that I think would give some color and
11 transparency as to why that might be appropriate, and,
12 you know, certainly we can discuss that further if we
13 need to.

14 **MR. ANDERSON:** Okay. Just to reflect the
15 approach the Commissioner is taking of having called out
16 a point on page 16, et cetera, I think that is
17 productive. And if there's anything else on this
18 document that you want to raise that way, then I can
19 consult with our colleagues and we can --

20 **COMMISSIONER SKOP:** Okay. All right. Well,
21 why don't you, while I continue to work my way through
22 this, kind of discuss that amongst your parties. I know
23 staff had some concerns. And, you know, certainly I'll
24 listen to the parties fully and we can vet it, if we
25 need to, but I think that the redactions there are

1 minor, and addressing those go a long way towards
2 bringing us to where we need to go in getting this
3 document disposed of, so.

4 (Pause.)

5 We're still on the record, so we will
6 continue. Mr. Anderson, do we have any updates?

7 **MR. ANDERSON:** Sure. Looking with you at page
8 16, was that it?

9 **COMMISSIONER SKOP:** Yes, sir.

10 **MR. ANDERSON:** And could you please just state
11 which, which redactions you would keep?

12 **COMMISSIONER SKOP:** Again, I think the theory
13 on this or the basis for questioning or challenging the
14 request of confidentiality would be on the fact that on
15 external versus internal, if that makes sense. Again, I
16 think that to the extent that it focuses on the cost,
17 the number, the first number that you see, the second
18 number that you see with the percentage in parentheses
19 in terms of sample size, and that's the only thing that
20 I would, you know, think that would even remotely be
21 confidential in that passage. I know you may disagree
22 and that's fine and that's what we're here to discuss
23 today in good faith.

24 **MR. ANDERSON:** Just so you have the
25 information, that is work that was done by an external

1 at the direction of the internal essentially as a staff
2 augmentation.

3 **COMMISSIONER SKOP:** Okay. That's, that's not
4 clear from the information I had here, and that would be
5 my follow-up question.

6 **MR. ANDERSON:** Yeah. That's what, that's what
7 that is.

8 **COMMISSIONER SKOP:** I just wanted to take a
9 look -- again, I don't have strong feelings one way or
10 another on that. It just needed to be questioned in the
11 interest of being thorough just as we did for, for
12 Progress. So if there is some concessions that can be
13 made on that that the company feels comfortable with.
14 If not, you know, we can perhaps find a way to move
15 forward on the other issue.

16 **MR. ANDERSON:** Okay. Here's, here's our
17 thought. And, again, all of this is, is with the
18 preface that it's without waiving our, you know, legal
19 arguments and positions and all those other good things.
20 Because -- so you're aware, as I just related, this was
21 done in the manner I described, in our view is fully
22 entitled to confidential treatment.

23 **COMMISSIONER SKOP:** Okay.

24 **MR. ANDERSON:** But respecting what we're
25 trying to do here today --

1 **COMMISSIONER SKOP:** Right.

2 **MR. ANDERSON:** -- you had suggested I think
3 earlier the prospect of leaving redacted the first
4 number in the third line, leaving redacted the first
5 number in the fourth line, and, and then making public
6 the balance. I think that was the suggestion. We would
7 be okay with that.

8 **COMMISSIONER SKOP:** Okay.

9 **MR. ANDERSON:** Subject to all the reservations
10 and arguments and all that stuff.

11 **COMMISSIONER SKOP:** And that's fine. And,
12 again, having the clarity that you provided with respect
13 that it was at the direction of internal, to me that
14 changes the analysis.

15 **MR. ANDERSON:** Yes. Okay.

16 **COMMISSIONER SKOP:** If you want to preserve
17 confidentiality as a whole of what's requested, I'm
18 willing to honor that. If we can find a compromise to
19 preserve what the meat is and keep superfluous words, in
20 the interest of transparency that's probably, you know,
21 a better course knowing it's not binding or future
22 precedent for the company.

23 So at your discretion, what's the position of
24 your company with respect to --

25 **MR. ANDERSON:** Okay. If it's the

1 Commissioner's observation, which was -- we provided you
2 additional information just now, which, if necessary, we
3 could have testified to, but I can represent it's true,
4 is that the work was done by outside people at the
5 direction of that inside department, subject to all
6 those controls. And for that reason that's why we
7 designated a request.

8 **COMMISSIONER SKOP:** At this point do you want
9 to, do you wish to preserve that in its entirety or --

10 **MR. ANDERSON:** Our preference would just be to
11 preserve it in its entirety.

12 **COMMISSIONER SKOP:** All right. Show that that
13 will be done based on the information represented by
14 FPL's counsel. So the information on page 16 will
15 remain confidential. I don't see that as a show stopper
16 based on the additional information that was provided
17 that was not readily apparent from what I was reading.
18 So I do appreciate that.

19 With respect to the redaction on page,
20 beginning on page 41, however, and carrying through with
21 the same type of redaction on page 42 for the same
22 person, I'd like to get the company's position as to
23 whether it would waive that claim of confidentiality.

24 **MR. ANDERSON:** Commissioner Skop, our position
25 and request would be to please maintain the position of

1 confidentiality of the individual's name.

2 **COMMISSIONER SKOP:** Okay. I think we may need
3 to take some testimony on that. Again, the theory under
4 which I feel that that name would not be confidential is
5 to the extent that it's already been made public. The
6 person has provided testimony to the Commission.

7 Notwithstanding that, you know, whether we want to make
8 a constitutional argument, you know, the company can't
9 assert constitutional privilege on behalf of another
10 person. I mean, there's case law controlling on that.
11 But, moreover, I think the information has already been
12 publicly disclosed. So to hold it confidential --
13 again, the, the redaction on page 40, in an abundance of
14 caution, that's, that's a different, that's a different
15 animal.

16 **MR. ANDERSON:** Okay. If I may, if I might
17 just shed a little bit of additional thought in relation
18 to the maintenance of confidentiality of the, of the
19 other individual.

20 **COMMISSIONER SKOP:** Okay.

21 **MR. ANDERSON:** And of course we do have a
22 witness here, but maybe this will just help where we're
23 coming from. When we think about a confidentiality
24 hearing, our focus, as you've properly done here today,
25 is focus, laser in on the particular document. And I

1 would share your view that where any of our names in any
2 transcript, any time, any place in a public forum are in
3 the public record, those documents clearly, we all
4 agree, are in the public.

5 The distinction here is that this is not that
6 and that this individual's name is related here in the
7 context in which it is said. And the challenge for our
8 company, holding aside the individual's considerations
9 or concerns, I'm here focused today on the concerns for
10 our company. And the -- and we would elicit testimony
11 that identities of employees in this type of context
12 would make it very difficult, more difficult in an
13 already highly, highly competitive environment for
14 hiring and retaining in this particular area. It puts
15 our company at a disadvantage. So it really has nothing
16 to do with, with the individual per se. That's not,
17 will not be the basis if we need to have that
18 discussion. And we have our Nuclear Human Resources
19 Vice President here, if it's necessary to do that.

20 But with respect, I'd suggest just kind of
21 focusing on the particular document and reflecting on
22 those points, and that's what underlies our concern.
23 And as I've noticed, I've shared that with the Office of
24 Public Counsel. I believe they have no objection, and
25 we would, we would request that we maintain that as

1 confidential.

2 **COMMISSIONER SKOP:** Okay. Well, again,
3 staff's request, as I understood it, was that the
4 confidentiality of that should not be preserved or that
5 should not be confidential information. And I think
6 that I've reviewed the remainder of the staff audit
7 report, it addresses Public Counsel's concerns, it
8 addresses staff's concerns, it addresses my concerns,
9 with the exception of what we're talking about on page
10 41 and 42. So I think that what we're looking at is
11 either, if you wish to preserve, we can take brief
12 testimony from the parties as to preserving the
13 confidentiality of that specific name, and if you wish
14 to waive, we could move forward in an expeditious
15 manner.

16 **MR. ANDERSON:** Just help me out. Is, is -- we
17 have no problem putting on a witness in that way. Do
18 you have any other issues that you want to raise or
19 discuss with us just so we have an idea of what -- I'm
20 sorry. Let me draw back, just draw back, because this
21 is a bit of an unusual procedure.

22 The, you know, the fundamental way we're
23 coming in here today is we're doing our very, very best,
24 you know, working with you, working with OPC and all. A
25 little bit of a challenge is that unlike other

1 Commission hearings where, for example, as you presided
2 over the, the main Prehearing Conference for this case
3 where we get all the issues identified in advance, all
4 the witnesses, we all know just what is at issue, as we
5 sit here today, we really don't know, you know, on an
6 item by item. So I'm just trying to think in terms of
7 how this day would go. Is this kind of the extent of
8 your concerns? Because if so, we could put up a witness
9 and answer those, make a record, make a determination.
10 And I know the Commissioner and I know the parties need
11 to prepare for, for next week as well.

12 **COMMISSIONER SKOP:** I understand. The
13 timeliness again, and from my perspective, again, the
14 request for confidentiality, and I do appreciate the
15 company's concessions that they are making; however,
16 those concessions, frankly, could have been offered
17 sooner as other companies have done. We're making good
18 progress. The key is the audit report as I see it.
19 There are some additional documents that staff has
20 concerns on. I would look to the company to see what
21 other documents the company may be willing to revise its
22 requests on and we can proceed forward. I don't
23 anticipate being here long if we get the cooperation
24 that everyone seeks to have to have their concerns
25 resolved in a constructive manner. I would hope that

1 we'd finish before lunch.

2 **MR. ANDERSON:** Right. Good. And what we --
3 just as a suggestion in parallel, for example, we can
4 put a witness on. If staff has those documents that
5 they wish us to review, we'll review them in realtime in
6 parallel, if that's, if that's useful. Again --

7 **COMMISSIONER SKOP:** Well --

8 **MR. ANDERSON:** Just because we don't know
9 exactly what, what documents are on people's minds.

10 **COMMISSIONER SKOP:** All right. I think the
11 list of documents that staff had concerns with was
12 previously provided and filed in the docket, so FPL
13 should have actual knowledge.

14 **MR. ANDERSON:** It includes a, probably a foot
15 of paper and there's really no individual designation.

16 **COMMISSIONER SKOP:** Okay. All right.
17 Ms. Bennett, you're recognized.

18 **MS. BENNETT:** Well, the, the list we included
19 was the staff's fourth request for production of
20 documents and FPL's responses to it, and the seventh set
21 of interrogatories and FPL's responses to it, and a POD
22 response to OPC. They're all pretty much revolving
23 around the Concentric report, which has been discussed
24 in the audit. And so I think from that point, you know,
25 there, I think there might be portions of the Concentric

1 report that could be disclosed --

2 **COMMISSIONER SKOP:** Okay.

3 **MS. BENNETT:** -- in staff's opinion.

4 **COMMISSIONER SKOP:** All right. My -- just in
5 terms of proceeding in the most expedient manner, my
6 hope would be that we'd get the constructive cooperation
7 amongst the parties to address concerns related to the
8 staff audit report. I think we're almost there with one
9 minor difference of opinion that we may have to take
10 testimony on.

11 From there, staff has some concerns, as they
12 mentioned. It's probably not the intent to go through
13 all of them. We'll only go through those that are
14 necessary to where someone wishes to challenge the
15 confidentiality of those. I have a few questions of my
16 own, a few documents that I've reviewed in preparation
17 of today's hearing, and I think that we can get through
18 the remainder of that relatively quickly.

19 **MR. ANDERSON:** Okay.

20 **COMMISSIONER SKOP:** It's either going to get
21 bogged down real quick, in which case we, we have the
22 entire day, if necessary, to do what we need to do, or
23 we can try and proceed in a constructive manner where
24 there's ability for the company to, you know,
25 constructively look at what's being requested and revise

1 its position and concede some points. That's fine and
2 that helps us work through resolving the points. And
3 just as this, this is a minor sticking point. We can
4 take testimony on those specific things that seem to be
5 problematic to the company.

6 **MR. ANDERSON:** That's great. And so what I'm
7 hearing is in relation to the audit staff report, we've
8 got one thing to take testimony on.

9 **COMMISSIONER SKOP:** That's --

10 **MR. ANDERSON:** Are there other points in the
11 report you'd like to raise at this point or may we
12 present our witness?

13 **COMMISSIONER SKOP:** I do not. And if staff
14 has no further concerns, I would ask, look to FPL to
15 call a witness with respect to maintaining the
16 confidentiality of the name of the person identified on
17 page 41 and continuing for the same person on page 42 of
18 the staff audit report.

19 **MR. ANDERSON:** Okay. Just, just for logistics
20 purposes we'd be calling as a witness Mr. Michael Bryce,
21 who is our Human Relations Vice President in the nuclear
22 area. You know, we're pleased to put him up on this
23 particular point. And do you think there will be
24 anything else for Mr. Bryce today or -- I'm just, again,
25 trying to --

1 **COMMISSIONER SKOP:** There may be. I can't
2 predict the future. We need to see what, what the
3 concerns are and how the company wishes to proceed.

4 **MR. ANDERSON:** Okay. Okay.

5 **COMMISSIONER SKOP:** I mean, this could go
6 really quickly would be the hope, but --

7 **MR. ANDERSON:** Okay.

8 **COMMISSIONER SKOP:** All right. And I need to
9 swear the witnesses. So if --

10 **MR. ROSS:** Commissioner Skop, would you like
11 to swear all of our witnesses?

12 **COMMISSIONER SKOP:** It would preferable.
13 Could I have all the witnesses stand and raise, could I
14 have all the witnesses stand and raise their right hand
15 and repeat after me.

16 (Witnesses collectively sworn.)

17 **MICHAEL BRYCE**
18 was called as a witness on behalf of Florida Power &
19 Light Company and, having been duly sworn, testified as
20 follows:

21 **DIRECT EXAMINATION**

22 **BY MR. ROSS:**

23 **Q.** Would you please state your name and business
24 address.

25 **A.** Mike Bryce, 700 Universe Boulevard, Juno

1 Beach, Florida 33408.

2 Q. Mr. Bryce, by whom are you employed and what's
3 your position?

4 A. I'm employed by Florida Power & Light Company.
5 I'm the Vice President of Human Resources for the
6 Nuclear Division.

7 Q. And would you please describe your duties and
8 responsibilities in that position?

9 A. I'm responsible for all employment-related
10 matters for our nuclear business, which includes
11 recruiting, compensation, benefits, labor and employee
12 relations, as well as performance management.

13 Q. Mr. Bryce, I'd like to discuss FPL's
14 confidential hearing exhibit with you. And I understand
15 the exhibit list -- can we have this marked as Exhibit
16 2, hearing Exhibit 2?

17 **COMMISSIONER SKOP:** Okay. A brief title?

18 **MR. ROSS:** We'd call it staff audit report.

19 **COMMISSIONER SKOP:** All right. And any
20 objection? Hearing none, proceed.

21 (Exhibit 2 marked for identification.)

22 **BY MR. ROSS:**

23 Q. Mr. Bryce, do you have what's now been marked
24 as hearing Exhibit 2, the staff audit report, in front
25 of you?

1 **A.** I do.

2 **Q.** And are you familiar with this document, Mr.
3 Bryce?

4 **A.** I am.

5 **Q.** Would you please describe your familiarity
6 with the document as it relates to your areas of
7 responsibility at the company?

8 **A.** As I said earlier, I'm responsible for all
9 employment-related matters for the nuclear piece of our
10 business. In that, I'm responsible for also the, the
11 performance-related matters of that business unit. As
12 well, I was, had first-hand knowledge of the employees
13 listed in this report, as well as the other information
14 submitted to the FPSC regarding employees in this
15 report.

16 **Q.** And are you aware that FPL has requested
17 confidential treatment of certain names in this report,
18 particularly on pages 41 and 42 of the report?

19 **A.** I am.

20 **MR. ROSS:** I don't know if it's proper at this
21 time, Commissioner Skop. We would offer Exhibit 2 to
22 move admission.

23 **COMMISSIONER SKOP:** All right. Any objection?
24 Hearing none, show Exhibit 2 -- well, at this point do
25 we want to move it in its entirety because we need to

1 make a ruling on the confidentiality ultimately?

2 MR. ROSS: Okay. So why don't we hold off on
3 that.

4 COMMISSIONER SKOP: Okay. All right. Very
5 well.

6 MR. ROSS: Thank you.

7 BY MR. ROSS:

8 Q. Mr. Bryce, I'd like to turn your attention to
9 portions of the staff audit report that address or that
10 contain the name of an employee on pages 41 and 42.
11 Does, does this information in your view contain
12 competitively and sensitive proprietary confidential
13 business information?

14 A. It does.

15 Q. Does this information contain employee
16 personnel information that's unrelated to compensation,
17 duties, qualifications and responsibilities?

18 A. That's correct.

19 Q. Does FPL keep this type of information
20 private?

21 A. We do.

22 Q. Does FPL provide this information to internal
23 employees only on a need-to-know basis?

24 A. That's correct.

25 Q. Can you describe what FPL does to maintain the

1 confidentiality of this type of information and prevent
2 public disclosure of that information?

3 **A.** Well, as you alluded to in your questions and
4 my responses, employee performance information is held
5 in the strictest of confidence and only provided to
6 those with a need-to-know basis. And even those with a
7 need to know are bound by other confidential,
8 confidentiality provisions such as our code of business
9 conduct and ethics. So we hold it in the strictest,
10 strictest confidence. And wherever the information is
11 stored, it's stored under lock and key or in protected,
12 encrypted servers and that sort of thing.

13 **Q.** Could you please explain why public disclosure
14 of this information would cause harm to FPL's business
15 operation and/or FPL's customers?

16 **A.** Yes. The nuclear generation industry is
17 highly competitive when it comes to talent, especially
18 talent for senior leaders. If employees or potential
19 future employees believed that their own individual
20 performance, whether it be performance reviews or
21 assessments of their performance, would, would or could
22 end up in the public domain, whether it be in a
23 newspaper or on the Internet, that would increase -- it
24 would decrease our ability to attract and retain
25 employees, which ultimately would, you know, affect the

1 customer in that we would have additional costs of
2 attracting and retaining.

3 Q. Mr. Bryce, has FPL maintained the
4 confidentiality of this name in the context that it's
5 discussed in these pages of the staff audit report?

6 A. Yes.

7 MR. ROSS: No further questions. We tender
8 Mr. Bryce for cross.

9 COMMISSIONER SKOP: Very well. Staff is
10 recognized for cross-examination. Or Public Counsel, do
11 you have any cross?

12 MR. McGLOTHLIN: I do not.

13 COMMISSIONER SKOP: All right. Very well.
14 Staff?

15 MR. YOUNG: Thank you, sir.

16 **CROSS EXAMINATION**

17 **BY MR. YOUNG:**

18 Q. Good morning, Mr. Bryce. How are you?

19 A. Good morning. I'm fine, thanks.

20 Q. All right. Just to back up, can you please
21 state your title again?

22 A. I'm the Vice President of Human Resources for
23 the Nuclear Division.

24 Q. Okay. And you have the Concentric report with
25 you, correct, the staff internal audit report that was

1 marked as Exhibit Number 1 or 2? I forget. Two. Do
2 you have that with you?

3 A. Yes, I have Exhibit 2.

4 Q. Can you please turn to page 41 of that
5 exhibit?

6 A. I'm there.

7 Q. Okay. The last full paragraph before the
8 quotation, and it starts with "The." Are you there?

9 A. Yes, sir.

10 Q. The last sentence, can you please read that to
11 yourself?

12 (Witness reading.)

13 A. Okay.

14 Q. Okay. With this knowledge, how is it not
15 profoundly easy for a person to identify this individual
16 based on last year's testimony?

17 MR. ANDERSON: Commissioner Skop, may I
18 object, please?

19 COMMISSIONER SKOP: Mr. Anderson, are you
20 voicing an objection?

21 MR. ANDERSON: Yes, sir.

22 COMMISSIONER SKOP: The basis for the
23 objection?

24 MR. ANDERSON: The basis of the issue is the
25 question is irrelevant. And the reason is one looks at

1 the four corners of this document, listens to the
2 testimony and ascertains. It's not a question whether
3 one can look at extra record evidence and figure out who
4 is who. That was my point earlier. It is irrelevant to
5 the determination of whether FPL has proven the
6 confidentiality of this information in this document.
7 Thank you.

8 **COMMISSIONER SKOP:** Ms. Cibula to the
9 objection.

10 **MS. CIBULA:** Maybe staff wants to respond.

11 **COMMISSIONER SKOP:** Actually. I'm sorry. I'm
12 sorry. I'm getting a little bit ahead of myself because
13 of the different format.

14 Mr. Young to the objection.

15 **MR. YOUNG:** Mr. -- with all due respect to
16 Mr. Anderson, staff, staff believes that that argument
17 is flawed because if they're claiming confidentiality as
18 it relates to this individual, it should not be
19 reasonably apparent to go find the name of the
20 individual for them to claim confidentiality. That's
21 number one.

22 Number two, which we will get to, if we're
23 looking at the name of this individual on the four
24 corners of this document, Mr. Anderson or Mr. Ross or
25 the witness has not tendered as it relates to an

1 impairment, as it relates to whether a name is one --
2 I'm looking under statute, *Florida Statute*, 366.093(3).
3 And I'll wait for Mr. Anderson and Mr. Ross to get
4 there.

5 Under (3)(d), where the information concerns
6 bids or contractual data, the disclosure of which will
7 impair the efforts of the public utility or its
8 affiliate to contract for goods or services on available
9 terms, the name of the individual is not that. Two,
10 under (f) -- well, no, go to (e), under (e), whether the
11 information relating to the competitive interest, the
12 disclosure of which would impair the competitive
13 business of the provider or the information. A name of
14 an individual is not that.

15 So to me, when you look -- if Mr., if Mr.
16 Anderson wants to go under the four corners of the
17 document, a name of an individual does not meet
18 statutory -- under the statute based on the four corners
19 of the document.

20 **COMMISSIONER SKOP:** All right. Very well.
21 Ms. Cibula to the objection.

22 **MS. CIBULA:** I think the question should be
23 allowed.

24 **COMMISSIONER SKOP:** Okay. Very well. The
25 objection is overruled. Please respond to the question.

1 **THE WITNESS:** Can you repeat the question?

2 **BY MR. YOUNG:**

3 **Q.** Based on -- let's go back. Can you read the
4 sentence that's previously identified again, please, to
5 yourself?

6 (Witness reading.)

7 **A.** I've read it.

8 **Q.** With this knowledge, would it not be
9 profoundly easy to identify this individual based on
10 last year's testimony?

11 **A.** I don't know.

12 **Q.** Would you agree with me that it would be
13 profoundly easy to identify if I say -- to identify you
14 based on your title?

15 **A.** I would agree with that.

16 **Q.** You would agree with that. Okay.

17 Now you heard your counsel's arguments as it
18 relates to the, looking at the four corners of the
19 document that it should be limited to the four corners
20 of the document, this individual's name should be based
21 on, should be confidential based on the four corners of
22 the document. You heard, you heard that argument?

23 **A.** I did.

24 **Q.** Okay. Now based on that, are you familiar
25 with the *Florida Statutes* -- do you have the *Florida*

1 Statutes 366.093 with you?

2 A. I do not.

3 MR. YOUNG: Mr. Chairman, with your
4 indulgence, can I approach the witness?

5 COMMISSIONER SKOP: You may.

6 MR. ROSS: Commissioner Skop, I'd like to
7 object.

8 COMMISSIONER SKOP: Mr. Ross.

9 MR. ROSS: We've not proffered Mr. Bryce as an
10 attorney. I don't see what getting his legal opinion or
11 having him read a statute is going to help advance the
12 record in this case. Mr. Bryce was here to testify as
13 to the factual context around FPL's claims of
14 confidentiality, and I think that we're getting pretty
15 far afield here.

16 COMMISSIONER SKOP: Before -- Mr. Young, to
17 the objection.

18 MR. YOUNG: Exactly what Mr. Ross just said.
19 Mr. Bryce has laid an opinion as it relates to the
20 reasons for confidentiality of the witness, of this
21 individual. It seems to me that he has opened a door
22 for questioning of that witness as it relates to his
23 layman's opinion, as it relates to his familiarity as to
24 why the individual should remain, the individual named
25 should remain confidential.

1 **COMMISSIONER SKOP:** Very well. Ms. Cibula to
2 the objection, noting, noting that the request for
3 confidentiality has to be founded in, pursuant to one of
4 the statutory provisions to which the witness has
5 appeared to assert.

6 **MS. CIBULA:** I agree with FP&L that this
7 witness isn't an attorney. So if the questions are
8 being asked in regard to a legal opinion, that, that
9 shouldn't be allowed. However, the witness can still be
10 shown a copy of the statute and asked questions, but
11 with the understanding that he's not an attorney and
12 giving a legal opinion.

13 **COMMISSIONER SKOP:** All right. Very well.
14 And to the extent that the witness is asked questions,
15 the witness would be able to provide a lay opinion, not
16 a legal opinion, but a lay opinion as to how the request
17 of confidentiality relates to some of the statutory
18 provisions. Is that a correct understanding?

19 **MS. CIBULA:** Yes.

20 **COMMISSIONER SKOP:** Okay. All right. Very
21 well. The objection is overruled. However, the line of
22 questioning will be limited to asking the witness
23 questions that evoke his lay opinion in terms of the
24 answers that he's asked to provide and the -- Mr. Young,
25 you may show him the statute, if --

1 **MR. ROSS:** We provided him a copy of the
2 statute, Mr. Young.

3 **MR. YOUNG:** Okay. Thank you, Mr. Ross.

4 **COMMISSIONER SKOP:** You may proceed.

5 **BY MR. YOUNG:**

6 **Q.** Mr. Bryce, if you can look under -- if you can
7 look at *Florida Statutes* 366.093, specifically (3),
8 subsection (3).

9 **A.** Would you like me to read that?

10 **Q.** Looking under (3)(a) through (f). Based on
11 your lay opinion, from a laymen's opinion, is the name
12 of this individual a trade secret?

13 **A.** No.

14 **Q.** Is the name of this individual an internal
15 audit, internal auditing controls and reports of
16 internal auditors?

17 **A.** I don't know.

18 **Q.** Is the name of the individual security
19 measures, systems or procedures?

20 **A.** No.

21 **Q.** Is the name of the individual information
22 concerning bids or other contract, contractual data, the
23 disclosure of which would impair the efforts of a public
24 utility or its affiliates to contract for goods or
25 services on a favorable term?

1 **A.** I don't think so.

2 **Q.** Okay. Would you agree with me, would you
3 agree with me the name of the individual is not
4 information relating to competitive interests, the
5 disclosure of which would impair the competitive
6 business of the provider of the information?

7 **A.** I would not agree with you.

8 **Q.** You would not agree with me?

9 **A.** No.

10 **Q.** Okay. Would you agree with me then -- well,
11 is the name of the individual --

12 **COMMISSIONER SKOP:** Mr. -- may I ask -- hold
13 on.

14 Mr. Bryce, why would you not agree as to the
15 question that was just asked?

16 **THE WITNESS:** As I stated earlier, as I read
17 Exhibit 2 in that section that I was referred to, I
18 believe that the way I read that, that applies, meaning
19 the staff audit report implies or is implicit criticism
20 of the name of the person we're talking about. And then
21 in that way that's why I read (e) the way I did.

22 **COMMISSIONER SKOP:** How does that affect the
23 company's competitive interest in that regard?

24 **THE WITNESS:** If, if implicit criticism
25 regarding employee's performance, like I said earlier,

1 if that becomes public, that would affect our ability to
2 attract and retain.

3 **COMMISSIONER SKOP:** But the, the performance,
4 I believe, as it pertains to the name in question, is
5 that related to performance or is that related to the
6 voracity of testimony?

7 **THE WITNESS:** I read it as performance. I
8 don't know.

9 **COMMISSIONER SKOP:** Okay. All right. You may
10 continue, Mr. Young.

11 **MR. YOUNG:** Thank you.

12 **BY MR. YOUNG:**

13 **Q.** Finally, Mr. Bryce -- no further questions.

14 **COMMISSIONER SKOP:** All right. Very well.

15 I have some questions for Mr. Bryce and then
16 we'll go to redirect.

17 Mr. Bryce, when you took this stand this
18 morning, you were sworn to an oath; is that correct?

19 **THE WITNESS:** That's correct.

20 **COMMISSIONER SKOP:** Okay. And you're aware of
21 the duty of candor to the tribunal, to the Commission,
22 to tell the truth; is that correct?

23 **THE WITNESS:** That's correct.

24 **COMMISSIONER SKOP:** Okay. With respect to
25 prefiled testimony of witnesses before the Commission,

1 if you're appearing before the Commission and filed
2 prefiled testimony, would that testimony normally be
3 given confidential treatment, assuming it was never
4 confidential to begin with?

5 **THE WITNESS:** I have no idea.

6 **COMMISSIONER SKOP:** Okay. Are transcripts of
7 Commission hearings confidential?

8 **THE WITNESS:** I do not know.

9 **COMMISSIONER SKOP:** All right. So if this
10 person's name had been previously disclosed in a
11 transcript or during his prefiled testimony, how -- do
12 you know why it would affect the company's competitive
13 interest or any of the statutory provisions to give rise
14 to a claim of confidentiality?

15 **THE WITNESS:** I do not.

16 **COMMISSIONER SKOP:** Okay. Are you aware of
17 any provision -- you have the, the *Florida Statute*
18 366.093 before you?

19 **THE WITNESS:** I do.

20 **COMMISSIONER SKOP:** And you've looked at
21 subsection (3)?

22 **THE WITNESS:** I looked at (a) through (f).

23 **COMMISSIONER SKOP:** Okay. And I believe you,
24 you testified that the name was not a trade secret under
25 provision (3)(a); is that correct?

1 **THE WITNESS:** That's correct.

2 **COMMISSIONER SKOP:** Okay. And it's not an
3 internal audit control under (3)(b)?

4 **THE WITNESS:** I said I didn't know on that
5 one.

6 **COMMISSIONER SKOP:** Okay. All right. And
7 under (3)(c), do you see an exception there?

8 **THE WITNESS:** I do not.

9 **COMMISSIONER SKOP:** Okay. And under (3)(d),
10 you did not see an exception?

11 **THE WITNESS:** That's correct.

12 **COMMISSIONER SKOP:** Okay. And under (3)(e), I
13 believe you disagreed with the question that was asked
14 as it was a competitive interest.

15 **THE WITNESS:** That's correct.

16 **COMMISSIONER SKOP:** Okay. And I think you
17 adduced some additional testimony as to why, but -- and
18 with respect to (3)(f), again, how would a name qualify
19 for that exemption?

20 **THE WITNESS:** I wasn't asked about that one.

21 **COMMISSIONER SKOP:** Okay. If -- is there any
22 provision in the statute for, and again I'm not asking
23 for your legal opinion but I'm asking for your lay
24 opinion, do you see any provision in that statute that
25 would withhold or grant confidentiality relating to a

1 material misrepresentation made to the Commission, or a
2 party making a material misrepresentation to the
3 Commission?

4 **THE WITNESS:** I do not. I don't know enough
5 about it.

6 **COMMISSIONER SKOP:** Okay. With respect to the
7 name that's requested confidentiality of, if that name
8 was issued in a Commission order or the testimony given
9 by that particular witness, if that was embodied using
10 that person's name in the Commission order, would that
11 still give rise to the claim of confidentiality for that
12 name?

13 **THE WITNESS:** I guess it would depend on the
14 context in which it was included. I don't know.

15 **COMMISSIONER SKOP:** Okay. Is, is that named
16 person still an employee of the company to your
17 knowledge?

18 **THE WITNESS:** He is not.

19 **COMMISSIONER SKOP:** Okay. Is there a
20 statutory basis for claiming confidentiality of someone
21 that's no longer an employee?

22 **THE WITNESS:** I do not know.

23 **COMMISSIONER SKOP:** Is there a -- okay. Never
24 mind because you're, you're not offering a legal
25 opinion, so I'll save that question.

1 Mr., I believe, Anderson or Mr. Ross, you're
2 recognized for redirect.

3 **MR. ROSS:** Thank you, Commissioner Skop.

4 **REDIRECT EXAMINATION**

5 **BY MR. ROSS:**

6 **Q.** Mr. Bryce, can you look at the statute
7 366.093(3), the, the introductory paragraph? Do you see
8 where it says, "Proprietary confidential business
9 information means," and then there's a bunch of text
10 after that?

11 **A.** Yes.

12 **Q.** Is the, the name of the individual in the
13 context that it's discussed in the staff audit report,
14 is that treated by the company as private information?

15 **A.** It is.

16 **Q.** And I think you testified before, do you agree
17 that disclosure of the information would cause harm to
18 the customers or to the company's business operations?

19 **A.** Yes, for the reasons I stated earlier.

20 **Q.** And, again, in the context that the name is
21 discussed in the staff audit report, has that been
22 disclosed previously in any public matter that you're
23 aware of?

24 **A.** Not that I'm aware of.

25 **MR. ROSS:** That's all we have, Commissioner

1 Skop.

2 **COMMISSIONER SKOP:** All right. I do have
3 follow-up, and then I'll allow additional redirect.

4 But, Mr. Bryce, again, you were just asked a
5 question by Mr. Ross with respect to harm that would
6 occur to the company. What specific harm would occur to
7 the company on a competitive interest by releasing a
8 name of a person who testified before the Florida Public
9 Service Commission?

10 **THE WITNESS:** I don't know what specific harm
11 would come from someone whose name was released for
12 testifying in front of the Public Service Commission.

13 In the context of the staff audit, as I said,
14 the paragraph that I reviewed, I read it to be implicit
15 criticism of performance and performance matters or
16 individual employee's performance matters for the
17 reasons that I said before. If those be part of the
18 public domain, that would harm our interests.

19 **COMMISSIONER SKOP:** All right. Well,
20 actually -- all right. Let me ask you one question. On
21 page 41 at the bottom after the redaction, do you see
22 the word following the redaction as it modifies the use
23 of the name of the person?

24 **THE WITNESS:** I'm sorry. I don't understand
25 you.

1 **COMMISSIONER SKOP:** Okay. On page 41 of the
2 staff audit report, which has been marked for
3 identification as Exhibit 2, at the bottom there is a
4 redaction of the person's name. Do you see that?

5 **THE WITNESS:** I do.

6 **COMMISSIONER SKOP:** The word directly
7 following that name, do you see that word?

8 **THE WITNESS:** I do.

9 **COMMISSIONER SKOP:** Okay. Now I believe that
10 word is not confidential. Is that correct, Mr. Ross?

11 **MR. ROSS:** I'm sorry. Could you repeat that
12 again?

13 **COMMISSIONER SKOP:** I believe the word after
14 the redacted name on page 41 at the bottom, I believe
15 that word is not confidential; is that correct?

16 **MR. ROSS:** That is correct.

17 **COMMISSIONER SKOP:** Okay. Can you state that
18 word for the record?

19 **THE WITNESS:** "Testimony."

20 **COMMISSIONER SKOP:** Okay. So if the redacted
21 name and on page 41 is speaking to the person's
22 testimony, then can you explain how that context relates
23 to the person's performance?

24 **THE WITNESS:** I don't see that as relating to
25 their performance.

1 **COMMISSIONER SKOP:** Okay. So you -- to be
2 clear, the instance of the use of the name on page 41
3 relates to the person's testimony given at the Florida
4 Public Service Commission under oath; is that correct?

5 **THE WITNESS:** Well, I go on with that sentence
6 where it indicates where something should have occurred.

7 **COMMISSIONER SKOP:** And I understand that.
8 But that's, that's not job-related performance, that's
9 voracity of statements made under oath given to, you
10 know, the Florida Public Service Commission. So if I'm
11 missing something, you know, it's important to me to
12 understand the company's position, but, you know, job
13 performance is are you doing a good job as opposed to
14 being under oath and basically perhaps misrepresenting a
15 material fact to the Commission. So I'm trying to
16 discern the difference.

17 I think that in the context -- context is
18 everything as it pertains to the claim of
19 confidentiality. But the use of the name as it pertains
20 to testimony given, I'm trying to distinguish or better
21 understand if that relates to job performance or whether
22 it specifically relates to the voracity of the testimony
23 given under oath to the Florida Public Service
24 Commission.

25 **THE WITNESS:** I guess my response to that

1 would be I agree with you on the testimony part. What,
2 what follows that, what follows that is, is in my
3 opinion the way I read it, Commissioner, I --

4 **COMMISSIONER SKOP:** For clarity of the record,
5 can you, following the redaction, can you just read the
6 remainder of that sentence, please?

7 **THE WITNESS:** After the word testimony?

8 **COMMISSIONER SKOP:** Yes. No. Starting with
9 testimony.

10 **THE WITNESS:** Okay. "Testimony, we believe
11 that" -- the amounts as well?

12 **COMMISSIONER SKOP:** Yes. From "testimony." I
13 don't believe that's confidential.

14 **MR. ROSS:** It's not confidential,
15 Commissioner.

16 **COMMISSIONER SKOP:** Okay. So can you,
17 starting with the word "testimony," read the remainder
18 of that sentence?

19 **THE WITNESS:** I understand now. Thanks.
20 "Testimony, we believe that the \$300 million, or
21 27 percent, increase in the projected cost of the EPU
22 project should have been discussed in the live testimony
23 on September 8th, 2009."

24 **COMMISSIONER SKOP:** Okay. So is that portion
25 that you just read related to the testimony and what

1 should have been stated in the testimony in terms of the
2 voracity of the testimony given to the Florida Public
3 Service Commission by that witness and not their job
4 performance, but actually the testimony that they give,
5 excuse me, the testimony that they gave under oath
6 before this Commission?

7 **THE WITNESS:** I believe that's correct.

8 **COMMISSIONER SKOP:** Okay. All right.

9 Mr. Ross, you're recognized for any additional redirect.

10 **MR. ROSS:** Thank you, Commissioner Skop.

11 **FURTHER REDIRECT EXAMINATION**

12 **BY MR. ROSS:**

13 Q. Mr. Bryce, does job performance for some
14 employees include providing testimony to regulatory
15 agencies?

16 A. It does.

17 **MR. ROSS:** That's all I have. Thank you.

18 **COMMISSIONER SKOP:** All right. Thank you.

19 All right. Staff, where do we need to proceed
20 on this? I'm prepared to make a ruling. I'm not so
21 sure that I want to make a ruling at this moment without
22 having some time to consider some of the testimony.

23 **MR. YOUNG:** Mr. Chairman, staff has a witness
24 who would like to talk about the confidentiality of this
25 witness -- of the name.

1 **COMMISSIONER SKOP:** Okay.

2 **MR. YOUNG:** As relates, as reference, excuse
3 me, as it relates to the basis for denying
4 confidentiality of the name.

5 **COMMISSIONER SKOP:** Okay. All right. Very
6 well. So staff wants to offer a witness in rebuttal to
7 the witness offered by FPL. All right. Very well. All
8 right. Mr. -- one second -- Mr. Bryce, you may step
9 down.

10 **THE WITNESS:** Thank you.

11 **COMMISSIONER SKOP:** Thank you. All right.
12 And if staff could call their witness, please.

13 **MR. YOUNG:** At this time, Mr. Chairman, staff
14 calls Carl Vinson to the stand.

15 **COMMISSIONER SKOP:** And, Mr. Vinson, you've
16 been previously sworn; correct?

17 **MR. YOUNG:** Yes, he has.

18 And just to be clear, Mr. Chairman, this is
19 just relating to the name of the individual.
20 Mr. Vinson, Mr. Vinson will be back as other issues come
21 up.

22 **COMMISSIONER SKOP:** All right. Very well.

23 All right. Mr. Young, you may proceed.

24 **MR. YOUNG:** Thank you, sir.

25 **CARL VINSON**

1 was called as a witness on behalf of the Florida Public
2 Service Commission staff and, having been duly sworn,
3 testified as follows:

4 **DIRECT EXAMINATION**

5 **BY MR. YOUNG:**

6 Q. Good morning, Mr. Vinson. How are you?

7 A. Good morning. I'm fine.

8 Q. Can you please state your full name and --
9 first, have you been sworn?

10 A. Yes, I have.

11 Q. Okay. Can you please state your full name and
12 business address for the record.

13 A. Carl Vinson, 2540 Shumard Oak Boulevard,
14 Tallahassee, Florida 32 --

15 Q. By whom are you employed?

16 A. 32399. By the Florida Public Service
17 Commission.

18 Q. And in what capacity are you employed by the
19 Florida Public Service Commission?

20 A. I supervise a unit of operational auditors who
21 conduct operational audits of the regulated utilities.

22 Q. Okay. What are your current duties and
23 responsibilities as supervisor of the auditors?

24 A. As to what?

25 Q. What are your current duties, what are your

1 current duties and responsibilities?

2 A. As it relates to this hearing, I supervised
3 and directed the auditors who prepared the staff audit
4 report that we're discussing today.

5 Q. Okay. And in that staff audit report, there
6 are audit work papers in that report, correct, that go
7 along with that report; correct?

8 A. Yes. The audit work papers that support the
9 report. They've been collected during the several
10 months that the report was under preparation.

11 Q. And if we can briefly talk about that. After
12 you provide the final report to the utility, is it the
13 utility's burden to request confidentiality of certain
14 work papers and reports?

15 A. Yes. At the conclusion of the audit the
16 company reviews both the audit report before it's
17 released, before it's entered as testimony. They also
18 review the work papers, and the company makes a filing
19 that, of course, is the subject of the hearing today.
20 Of course it's limited today to the report, but they
21 also make a filing related to the work papers on the
22 confidentiality.

23 Q. Okay. And as relates to -- are you familiar
24 with our discussion as it relates to a certain
25 individual name on page 41 of the staff internal audit

1 report?

2 **A.** Yes, I am.

3 **Q.** Is that individual name included in the work
4 papers?

5 **A.** Yes. It's my understanding that it would be
6 mentioned several places in the work papers. I don't
7 have the work papers with me right now. But working
8 from memory, it would be throughout the work papers.

9 **MR. YOUNG:** Mr. Chairman, at this point in
10 time if I can possibly take, put a placeholder in that
11 with the company's -- without objection from the company
12 where we can provide the individual, the individual's
13 name as, as it reflects on staff's audit work papers.

14 **COMMISSIONER SKOP:** Okay. Can you please
15 restate that?

16 **MR. YOUNG:** As for an exhibit.

17 **COMMISSIONER SKOP:** Yes.

18 **MR. YOUNG:** And that can be marked as Exhibit
19 Number 3.

20 **COMMISSIONER SKOP:** 3, right.

21 **MR. YOUNG:** And staff will provide that to the
22 company. At this time I don't want, if the company will
23 allow me some leave to gather that paper, the audit work
24 papers with the individual's name, I can provide that to
25 the company and to the, to the witness.

1 **COMMISSIONER SKOP:** To the witness. Okay.

2 **MR. YOUNG:** The company and the Prehearing
3 Officer.

4 **COMMISSIONER SKOP:** Okay.

5 **MR. YOUNG:** And we can move it in at that
6 time.

7 **COMMISSIONER SKOP:** All right. We'll afford
8 you a few moments to get that piece of paper, subject to
9 objection upon looking at the proposed exhibit, and
10 we'll go from there. Again, this is a fluid process and
11 we're trying to give, afford the parties the time to
12 address what issues may arise. So we'll hold in place
13 until you get that exhibit.

14 **MR. YOUNG:** Okay.

15 **COMMISSIONER SKOP:** All right. So why don't
16 we take a brief five-minute recess.

17 **THE WITNESS:** Can I ask a question? I'm not
18 clear exactly what we'll be collecting. As I said, it
19 could be throughout the work papers. There are
20 thousands of pages. Would we be gathering --

21 **MR. YOUNG:** We will provide that. We'll
22 provide the individual's name with how it's labeled, how
23 it's detailed in the work papers.

24 **COMMISSIONER SKOP:** Okay. All right. All
25 right. Well, again, once we get the document before us,

1 and I'll allow the parties to review it, and we can take
2 up any objections at the time. So I guess we'll stand
3 for a five-minute recess and we'll reconvene.

4 **MR. YOUNG:** Sir, if we can -- I'm sorry, Mr.
5 Chairman. If we can have 15 minutes to gather that, the
6 name.

7 **COMMISSIONER SKOP:** All right. Why don't we
8 do this. Why don't we take a 15-minute break and we'll
9 reconvene at 25 after the hour. Stand on recess. Thank
10 you.

11 (Recess taken.)

12 **COMMISSIONER SKOP:** Okay. We're going to go
13 back on the record. And where we left off is staff was
14 going to collect some documents which they wish to
15 examine the witness. And, staff, you're recognized.

16 **MR. YOUNG:** Thank you, Mr. Chairman. In light
17 of talking to technical staff, at this time we're going
18 to withdraw our request for the name -- the objection to
19 the name as stated, as listed on page 41 of the internal
20 management controls audit report, and 42.

21 **COMMISSIONER SKOP:** Okay. All right. Very
22 well. So if I understood correctly with respect to the
23 witness that's been proffered on the stand to provide
24 testimony, staff has withdrawn its request. Does staff
25 intend to sponsor any additional testimony on this

1 issue?

2 **MR. YOUNG:** No. We'll withdraw our objection
3 to the confidentiality.

4 **COMMISSIONER SKOP:** Okay. And also staff is
5 withdrawing its request for confidentiality -- I mean,
6 objection to confidentiality on the redacted names on
7 page 41 and 42?

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

9 **COMMISSIONER SKOP:** Okay. All right. All
10 right. Based on the above, any objections, any comment?

11 Mr. Vinson, you may step down. Any
12 objections?

13 **MR. YOUNG:** Also, Mr. Chairman.

14 **COMMISSIONER SKOP:** Mr. Young.

15 **MR. YOUNG:** We would withdraw our request to
16 Exhibit Number 3. We no longer need that exhibit, so we
17 withdraw that.

18 **COMMISSIONER SKOP:** Are we talking about the
19 staff audit report now or are we talking about something
20 different?

21 **MR. YOUNG:** No. It's the papers that staff
22 requested that be identified as Exhibit Number 3 that we
23 were going to provide to the company.

24 **COMMISSIONER SKOP:** All right. Very well. We
25 never got a short title for that. So what was proposed

1 to be Exhibit 3 is now open again.

2 All right. So that leaves us with Exhibit 2,
3 what's been marked for identification as Exhibit 2. Any
4 further questions in relation to the document that's
5 been presented and discussed as Exhibit 2?

6 Mr. Anderson, any questions? If not, I think
7 we're --

8 **MR. ANDERSON:** No. That's great. We just
9 wanted to make sure the record is clear that our Exhibit
10 Number 2, which was the redacted form sent around, first
11 I want to provide a verbal notice of intent because
12 we'll need to do a new confidentiality filing reflecting
13 all the things we took out, and we'd offer it into
14 evidence for purposes of this evidentiary hearing.

15 **COMMISSIONER SKOP:** Okay. I guess the last
16 part of that just threw me with the notice of
17 confidential intent. I guess -- it would seem to me
18 that this document reflects the latest and greatest
19 revised request by the parties. It's been thoroughly
20 vetted and discussed. And what might be more expedient,
21 and, again, I know we need to tie up the procedural
22 methods and I'll look to staff, but it seems to me that
23 if this document, which is the unredacted form
24 reflecting the revised request of which the remaining
25 parts that are not claimed to be confidential are now

1 unconfidential, that this can be entered into the record
2 as a confidential document. And then the redacted form
3 could be filed, of this same document, fully redacted
4 form of what remains confidential could be filed with
5 the clerk's office such that Commissioners could review
6 it prior to the hearing on Tuesday. Is that correct?

7 **MR. ANDERSON:** I believe that's exactly right.
8 Does that square with staff's understanding also?

9 **MS. BENNETT:** Yes, it does.

10 **COMMISSIONER SKOP:** Okay. All right.

11 **MR. ANDERSON:** Yeah. Thank you for the
12 clarification.

13 **COMMISSIONER SKOP:** All right. So at this
14 time do you wish to move to enter Exhibit 2, what's been
15 marked for identification as Exhibit 2 into the record?

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

17 **COMMISSIONER SKOP:** Okay. Very well. Show
18 that Exhibit 2 has been requested to be admitted. Are
19 there any objections? Okay. Hearing none, Exhibit 2,
20 which is the revised confidentiality request of Florida
21 Power & Light related to the staff audit report, will be
22 entered into the record as a confidential document in
23 its current form. And I would request staff or FPL or
24 whatever's appropriate, I'll look to that. But what we
25 need to do is get the redacted form of this document

1 into the docket such that it's available for review
2 prior to the hearing.

3 **MS. BENNETT:** Staff will take care of that.

4 **COMMISSIONER SKOP:** Okay. All right. So show
5 Exhibit 2 is entered.

6 (Exhibit 2 admitted into the record.)

7 And I guess, staff, do we need to enter the
8 Comprehensive Exhibit List on Exhibit 1 or are we going
9 to do that?

10 **MS. BENNETT:** Yes. We need to enter the
11 Comprehensive Exhibit List for this hearing as Exhibit
12 1.

13 **COMMISSIONER SKOP:** Okay. Any objections?
14 All right. Show it done.

15 (Exhibit 1 marked for identification and
16 admitted into the record.)

17 And that takes us to our next issue. That
18 resolves the staff audit report differences between the
19 parties, staff and the concerns I had. So I want to
20 commend FPL for its cooperation. We took some witness
21 testimony that at the end of the day was helpful, but I
22 think we worked out the issues on that.

23 The next issue -- I'll give you a quick list
24 of issues that I want to raise. There may be some
25 issues from staff. But I have concerns with respect to

1 a certain document that is in -- give me one second. I
2 have a specific request or a specific line of questions
3 with respect to the confidentiality of what's Document
4 Number 06790-10, which is POD 21. And I can get into
5 why that document in itself may not meet the
6 requirements for confidentiality.

7 I also have concerns or lines of questioning
8 with respect to Document Number 06789-10, and the issues
9 are the foreword (phonetic). And Interrogatory Number
10 23 in that data set and Interrogatory Number 24 on that
11 data set, and I'm not necessarily sure that
12 confidentiality on some of that could not be maintained,
13 but I just have specific questions.

14 **MR. MCGLOTHLIN:** Commissioner Skop?

15 **COMMISSIONER SKOP:** Yes.

16 **MR. MCGLOTHLIN:** The only concerns that OPC
17 raised related to the staff audit report, those have
18 been resolved. May I be excused from the balance of the
19 hearing?

20 **COMMISSIONER SKOP:** If it's Public Counsel's
21 preference. I mean, ideally since this is an
22 evidentiary hearing related to concerns of
23 confidentiality, if the Public Counsel had, you know,
24 some objection or comments to make in relation to some
25 of the documents we're now reviewing, you know, it's

1 pretty much at Public Counsel's discretion whether they
2 want to be dismissed and lose the opportunity they may
3 have to opine on any comments, given the fact that at
4 least what they've previously objected to has been
5 addressed. But some of the discussion may lead to
6 additional concerns from Public Counsel.

7 **MR. MCGLOTHLIN:** Well, in that case, I'll
8 stay.

9 **COMMISSIONER SKOP:** Okay. All right. I'm
10 just -- it's at your choice, but --

11 **MR. MCGLOTHLIN:** You piqued my interest.

12 **COMMISSIONER SKOP:** Okay. And then finally we
13 have the Document Number 06642-10. And I hope I -- I'm
14 just going by the numbers on the documents. I've got a
15 voluminous stack of them in front of me, but I'll do my
16 best to try and articulate some of my concerns. And
17 does staff have additional concerns? I think staff had
18 some on the interrogatories and PODs.

19 **MS. BENNETT:** No. We did this more as a
20 placeholder. I know that the Concentric report, which
21 is in response to I believe POD 21, is the one that you
22 were -- 25.

23 **COMMISSIONER SKOP:** Yeah. Okay. All right.
24 Why don't, why don't we do this. Why don't we take up
25 first POD 21, which is Document Number 06790-10. And my

1 concern regarding portions of this document as it
2 pertains to the attachment that was forwarded to, for
3 lack of a better word, an external party, I would
4 question the claim of confidentiality for the underlying
5 document on the basis of waiver to the extent that the
6 document was provided to an external third party, as you
7 can see by looking at the POD. And if you -- there is
8 no disclaimer on the originating e-mail that was sent to
9 the third party preserving confidentiality.

10 Furthermore, if you look at the follow-along
11 document, and I believe, Mr. Ross, you might be able to
12 better provide some insight there, but it seems as if
13 the document was disclosed subject to, prior to
14 forwarding of the, a certain, lack of a better word,
15 engagement letter, and that the terms and conditions
16 still applied but had not been agreed to prior to the
17 letter being disseminated externally. So noting that
18 the name of the author of the document would likely be
19 protected in any, you know, personal information, I'd be
20 open to looking at. But on that basis of waiver, that's
21 a concern.

22 And also, too, the underlying document itself,
23 you know, originally was provided to -- was not provided
24 directly to the company, it looks like, so it raises
25 some issues as to confidentiality. However, the

1 strongest concern I have is with respect to what appears
2 to be waiver, and I can supplement that, if necessary,
3 by looking at some interrogatories. But if, if we look
4 closely, I think one can conclude that the document went
5 out the door before they agreed to terms and conditions
6 that are subject to what appears to be the engagement
7 letter. And there appears to be at least a five,
8 five-day lapse between the time the document went out
9 and was openly discussed prior to the engagement letter
10 thereafter being sent and executed.

11 And I would note that the external third party
12 is not legal counsel, and privilege that may have
13 previously existed I believe would have been waived by
14 disseminating this to a third party.

15 **MR. ANDERSON:** May I respond?

16 **COMMISSIONER SKOP:** You may.

17 **MR. ANDERSON:** Good. A couple of things to
18 start, and then we want to make sure that the record is
19 very complete, that I can -- this document has been
20 protected every which way and we're prepared to
21 demonstrate and prove that.

22 But I just want to highlight this is exactly
23 one of our core objections to this hearing today is we
24 have no prefiled testimony, we have no statement of
25 issues. We've worked diligently with, with counsel in

1 relation to documents that were raised and put in front
2 of us. This is a case with thousands and thousands and
3 thousands of documents. This is not an issue being
4 raised today for the first time with a legal argument by
5 OPC, it's not an issue being raised with a legal
6 argument by the staff of the Commission. And with all
7 respect, this is the first we've heard that this
8 particular issue was here, and we really take some
9 exception that we're hearing for the first time from the
10 presiding officer honestly. And it just goes to the due
11 process considerations of coming to a hearing and not
12 knowing what specifically needs to be attended to.

13 With that said, we are, we have the right
14 witnesses here, we have the right information which will
15 conclusively demonstrate that confidentiality has been
16 maintained at all times. Mr. Ross in particular knows
17 that information in detail and we have the right
18 witnesses to assist us in that.

19 So if it's the Commissioner's position that
20 FPL needs to demonstrate through testimony that it has
21 not waived confidentiality, we are prepared to do that
22 with respect to this subset of documents that you've put
23 before us just now.

24 **COMMISSIONER SKOP:** All right. Very well.
25 With respect to the representation made by Mr. Anderson

1 to staff, I believe that when we addressed the order
2 establishing the need to conduct an evidentiary hearing,
3 we referenced the voluminous nature of outstanding
4 confidentiality requests. And this was, I believe,
5 related to some discovery that came in recently; is that
6 correct?

7 **MS. BENNETT:** We did include that on our list
8 of issues. We knew that those documents would be coming
9 in late.

10 **COMMISSIONER SKOP:** Okay.

11 **MS. BENNETT:** And to address a little bit
12 more, the -- this is a new procedure. I think it's
13 designed to give everybody due process. The utility has
14 already filed an affidavit stating that many of these
15 documents are confidential. I'm not sure that they've
16 done so with this particular document, but they have
17 indicated their intent to maintain confidential
18 treatment of it. I think you've, by your order,
19 identified that you're going to need to rule on these
20 documents, and staff has certainly identified that these
21 documents will be used at the hearing next week.

22 **COMMISSIONER SKOP:** Okay. I think that
23 addresses the due process consideration. I think that,
24 you know, the documents that have been requested
25 confidentiality are, you know, fair game for discussion.

1 What concerns me is, from the Commission's
2 perspective, being able to go to hearing and talk openly
3 and freely regarding certain issues that may arise in
4 terms of the progress that we made on the staff audit
5 report. I think it was tremendous that we could get
6 consensus and agreement, however, on that document.
7 There is some additional information, however, in the
8 attached document that is the subject of discussion that
9 adds a little bit more detail on certain things,
10 particularly with respect to voracity of statements as
11 they pertain to representations made to the Commission.
12 And at the end of the day, you know, certainly we can,
13 we can take testimony or we can try and achieve some
14 sort of compromise where we redact selected information
15 on page 1 and page 2 of the attachment.

16 But as I see it, the originating transmittal
17 seems to just provide -- I don't even see anything in
18 the body -- seems to provide an attachment which was
19 originally directed outside of the regulated entity.
20 And then, you know, I don't want to give up too much
21 here, but the bottom line here is I think that we need
22 to get some insight from an evidentiary perspective as
23 to the chain of custody of the letter from the time it
24 came from the author to the recipient and where it went
25 from there. And it seems to me that, you know, we

1 probably need to talk about that a little bit based on
2 what I'm seeing and my legal judgment.

3 I think it's important because if it has been
4 disseminated externally, then, contrary to what FPL has
5 represented, it was not held to be private absent a
6 binding confidentiality agreement that existed at the
7 time.

8 **MR. ANDERSON:** I'm going to ask Mr. Ross to
9 address the particulars. But, you know, this was
10 actually sent to the people to do the particular
11 investigative work. There was at the time an existing
12 confidentiality agreement. And, you know, we provided
13 responses to staff's data request, which, as you know,
14 detail exactly to whom the document was provided.

15 **COMMISSIONER SKOP:** Okay. All right. Well,
16 let me, let me ask -- and I've seen that and I have some
17 problems with the responses, which I'll get to in a
18 second. However, if, Mr. Ross, if you could look with
19 me on -- you know, and, again, this is confidential, so
20 it's kind of hard to look at. But what I have is sheet
21 one, sheet two, sheet three, and then it looks like the
22 engagement starts on sheet four. Do you see that?

23 **MR. ROSS:** I do, Commissioner.

24 **COMMISSIONER SKOP:** Okay. All right. Now
25 this, this -- the document in question, and do we -- I

1 guess to staff or advisory staff, I mean, at this point
2 can we do this informally or would it be appropriate to,
3 to have Mr. Ross provide testimony or another witness
4 testimony?

5 **MS. BENNETT:** I'm still trying to figure out
6 which sheet one, sheet two and sheet three you're --

7 **COMMISSIONER SKOP:** Well, it's kind of hard
8 because they're not sequentially numbered.

9 **MS. BENNETT:** Okay. May I have a second?

10 **COMMISSIONER SKOP:** You may.

11 (Pause.)

12 Ms. Bennett.

13 **MS. BENNETT:** There's, there's two items I
14 want to address. First of all, I think to answer your
15 question, it's better to let's just address this
16 informally. There's some concerns with having an
17 attorney testify.

18 But, secondly, the document that is in
19 question goes to whether or not the entire next
20 document is confidential. But as I understand, there's
21 probably only portions that might be, of that document
22 that might be of interest to the Commission, to the
23 Prehearing Officer. And if, you know, if --

24 **COMMISSIONER SKOP:** I think concerns exist
25 with respect to the Concentric report in terms of

1 portions of that.

2 But, again, getting to maybe on this one, the
3 staff audit report, there were issues there. We
4 resolved those. You have the underlying letter as to
5 whether the letter itself is confidential, and then you
6 have the Concentric report.

7 And from my perspective, again, what's looking
8 at -- and this isn't -- you know, this is reasonably
9 calculated to focus on those issues that deal with
10 representations made to the Florida Public Service
11 Commission.

12 **MR. ANDERSON:** Uh-huh.

13 **COMMISSIONER SKOP:** Okay. And the voracity of
14 those statements that were given under oath. And I
15 think that's why some of these documents in question
16 that confidentiality under which had been broadly
17 claimed become relevant for discussion.

18 **MR. ANDERSON:** Okay. Let's, let's pause and
19 let me, let me offer a way to help. Okay?

20 First, and with respect, it's just a, it's a
21 reminder to all of us, you've directed the focus of the
22 hearing is on confidentiality and not contents. And
23 without specifying any particular sentence, I think some
24 of your last remarks move off into the content, with
25 respect.

1 In terms of handling confidentiality of this
2 document, here's an idea. Is this particular document,
3 the -- I'm turning pages with you. The first, first
4 document is a one-page piece of correspondence. You see
5 that; right?

6 **COMMISSIONER SKOP:** I see that.

7 **MR. ANDERSON:** And then you see a, a photocopy
8 with a card in the middle of the page?

9 **COMMISSIONER SKOP:** We have, we have a
10 different document apparently. I see the card after
11 what, what appears to be some form of engagement.

12 **MR. ANDERSON:** Okay. And then I see something
13 I'd call a two-page, there's a two-page single-spaced
14 document.

15 **COMMISSIONER SKOP:** Yes.

16 **MR. ANDERSON:** Okay. That two-page
17 single-spaced document, just as a purely practical
18 matter, is an attachment to the Concentric report, as we
19 all know.

20 **COMMISSIONER SKOP:** Right. I understand that.

21 **MR. ANDERSON:** So, and I'm just being again,
22 being real practical, is because that's at the back of
23 that report, we could, in terms of the merits of
24 confidentiality, I think we could talk about that in
25 that context very well.

1 Then let me turn to the other point is, you
2 know, you know, there is not one doubt in my mind that
3 this company has maintained at all times in the most
4 careful, extremely careful way the confidentiality of
5 the document, its transmittal to people, the terms and
6 conditions under which it was done.

7 **COMMISSIONER SKOP:** All right. Well, let's,
8 let's explore those real quick. Again, where the
9 connection -- actually let me, let me back up for a
10 second. We'll come back to this in one second.

11 Let me turn your attention to -- hold on real
12 quick. Let me find if I can find the interrogatories.

13 Document 06789-10, which deals with some of
14 the staff interrogatories, staff's seventh set of
15 interrogatories for which confidentiality has been
16 claimed, and if, and if I could draw your attention to
17 Interrogatory Number 23.

18 **MR. ANDERSON:** Yeah. Our documents don't have
19 your numbers on them, but I have Interrogatory Number
20 23. Right.

21 **COMMISSIONER SKOP:** Okay. Do you see the
22 response provided to Interrogatory 23?

23 **MR. ANDERSON:** I'm reading it. One moment.
24 Mr. Ross and I are both looking at it.

25 (Pause.)

1 Yes, we've read this.

2 **COMMISSIONER SKOP:** Okay. Do you have any,
3 any reason to doubt the accuracy of the response
4 provided?

5 **MR. ANDERSON:** No.

6 **COMMISSIONER SKOP:** Okay. Thank you. If I
7 could now turn your attention to Interrogatory Number
8 24, please. Would your answer to your previous response
9 still be the same in light of the fact that it was
10 previously disclosed to the entities stated in that
11 response and, therefore, the chronology does not appear
12 to be accurate but is accurately reflected in the
13 Concentric report?

14 It asks, Interrogatory 23 asks whom disclosed
15 outside, and they list the external, I mean, how it went
16 around, but --

17 **MR. ANDERSON:** No. 23, if you look at it,
18 it's to the PSC or audit staff.

19 **COMMISSIONER SKOP:** I understand.

20 **MR. ANDERSON:** The other one is to anyone
21 outside of.

22 **COMMISSIONER SKOP:** But look at the response
23 though. It discusses --

24 **MR. ANDERSON:** And they're both right answers.

25 **COMMISSIONER SKOP:** Does the response in

1 23 not disclose the chronology of who received the
2 document and where it went thereafter?

3 **MR. ANDERSON:** Yes, it does.

4 **COMMISSIONER SKOP:** Okay.

5 **MR. ANDERSON:** And it's in relation to staff's
6 question, which focused on the Commission and its staff.

7 **COMMISSIONER SKOP:** Okay. All right. Well --

8 **MR. ANDERSON:** And then you asked, a separate
9 question was asked, and a careful correct answer was
10 provided to that one, too.

11 **COMMISSIONER SKOP:** I would -- I'm not going
12 to belabor the issue.

13 **MR. ANDERSON:** Okay.

14 **COMMISSIONER SKOP:** I'd respectfully suggest
15 the chronology is not accurate to the extent that the
16 information in Interrogatory 24 would probably be likely
17 included in response to Interrogatory Number 23.

18 **MR. ANDERSON:** With respect, we disagree. We
19 worked on these responses.

20 **COMMISSIONER SKOP:** Okay.

21 **MR. ANDERSON:** We -- they're both accurate and
22 they're not inconsistent.

23 **COMMISSIONER SKOP:** All right. So let's,
24 let's talk about that. If you look at Interrogatory
25 Response Number 24, and after the letter was received

1 from the author. Obviously the letter went to the
2 entity that's stated on Interrogatory 24; is that
3 correct?

4 **MR. ANDERSON:** Yes.

5 **COMMISSIONER SKOP:** Okay. But that entity is
6 not listed in the chronology on Interrogatory 23.

7 **MR. ANDERSON:** That's because the question in
8 23 is different. And to be very, very clear, these
9 questions were served at the same time, they're
10 different questions. It's like being asked what did you
11 have for breakfast and what did you have for lunch? And
12 we provided a correct answer to one and we provided a
13 correct answer to the other and there's no
14 inconsistency. And clearly, even if one felt that there
15 was, you know, it would be an immaterial one in the
16 sense that the documents are each one page long, they
17 clearly set forth the information stated in them, and I
18 think they're, they're both --

19 **COMMISSIONER SKOP:** All right. Well, I'm not
20 going to split hairs on this. But the bottom line is
21 had the -- the point I'm trying to make in relation back
22 to the, the previous document that we were discussing is
23 after the letter was received, obviously it went to the
24 entity as listed in Interrogatory Number 24. At that
25 point there would have been privilege that likely would

1 have attached. Okay? Then --

2 **MR. ANDERSON:** It was privileged all along,
3 and privilege was maintained through that process is how
4 I'd characterize it.

5 **COMMISSIONER SKOP:** Well, and that's your
6 contention and that's what I need to get some
7 clarification on.

8 So let's go back to the prior document and
9 take a look. And, Mr. Ross, if you could help me out
10 with this, please. If you look at the engagement letter
11 specifically, at the time of that letter that was
12 transmitted, the document had been previously
13 transmitted to the external party, which is not a law
14 firm; is that correct?

15 **MR. ROSS:** That's correct.

16 **COMMISSIONER SKOP:** Okay. So that was five
17 days earlier; is that correct?

18 **MR. ROSS:** That's, that's true.

19 **COMMISSIONER SKOP:** Okay. Now so they had the
20 document, and the engagement letter speaks to some
21 existing agreement. And let me find where I'm at here.

22 Okay. If you would look at the last sentence
23 of that letter.

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

25 **COMMISSIONER SKOP:** Okay. And it was

1 basically an offer subject to acceptance; is that
2 correct?

3 **MR. ROSS:** No, I wouldn't characterize it that
4 way, Commissioner. We had had, as you, as you noted,
5 the document was provided to the third party. There
6 were discussions on the telephone about how this
7 document was going to be evaluated. There was an
8 agreement reached on the telephone that the third party
9 would do the work. And this letter is merely to confirm
10 that, that agreement that had been made previously.

11 The document was also provided, I think as you
12 noted, pursuant to an existing agreement which does have
13 extensive conditions in it for dealing with
14 confidentiality. So it supports the company's position
15 that the confidentiality, the underlying document that I
16 think you're trying to get at, was maintained at all
17 times.

18 **COMMISSIONER SKOP:** Can you look at the second
19 paragraph of the letter?

20 **MR. ROSS:** Yes, sir.

21 **COMMISSIONER SKOP:** And basically it
22 referenced the agreement by incorporation, is that
23 correct, that existing agreement by incorporation?

24 **MR. ROSS:** I think that's fair.

25 **COMMISSIONER SKOP:** But it's still subject to

1 offer and acceptance of the terms of the engagement
2 letter; is that correct?

3 **MR. ROSS:** No, I wouldn't characterize it that
4 way. Again, the, the agreement had been made prior to
5 this. This is a process the company uses to, to confirm
6 an oral, an oral agreement. So I don't, I don't, I
7 don't agree that this is the offer. The offer was made
8 on the previous telephone call with the outside firm.

9 **COMMISSIONER SKOP:** Can you go to the
10 original, not the engagement letter but basically the
11 original transmittal of that that happened five days
12 earlier. Do you see that originating transmittal?

13 **MR. ROSS:** Yes, I have that.

14 **COMMISSIONER SKOP:** Okay. Is there any words
15 of disclaimer on there that are picked up other than
16 those after the original transmittal was received by the
17 third party and forwarded internally? Do you see any --

18 **MR. ROSS:** No.

19 **COMMISSIONER SKOP:** Okay. Do they have any
20 documents that might provide the fact that
21 confidentiality was not waived when the document was
22 transmitted under the --

23 **MR. ROSS:** I'm not sure about that. But we're
24 working with an unusual document with our third party
25 expert witness. And when we, when counsel directs that

1 a communication is given to an expert witness, I'd
2 consider that work product.

3 **COMMISSIONER SKOP:** Okay. Well, let me, let
4 me draw your attention back to Interrogatory Number 24
5 for a second, please.

6 **MR. ROSS:** Yes.

7 **COMMISSIONER SKOP:** Upon the completion of the
8 Concentric report, was that ever provided for external
9 review back to that party?

10 **MR. ROSS:** I'm sorry. Could you repeat that?

11 **COMMISSIONER SKOP:** Upon the conclusion and
12 findings of the Concentric report, was that --

13 **MR. ROSS:** Yes.

14 **COMMISSIONER SKOP:** -- report ever forwarded
15 back to the party listed on Interrogatory Number 24?

16 **MR. ROSS:** Are you talking about the party
17 listed in the first line?

18 **COMMISSIONER SKOP:** Yes.

19 **MR. ROSS:** It was not.

20 **COMMISSIONER SKOP:** Okay. Is there a reason
21 for that?

22 **MR. ROSS:** Let me see how I can do this
23 without intruding on the confidentiality.

24 **COMMISSIONER SKOP:** I know what the original
25 reason is, but it seemed to me that the findings may

1 have changed that in terms of --

2 **MR. ROSS:** I think I know what you're getting
3 at. The, the work that was done by the third party that
4 is listed on the first line of the response to
5 Interrogatory 24 --

6 **COMMISSIONER SKOP:** Was prior to the
7 investigation, I mean, prior to the report issuance and
8 the findings of the report.

9 **MR. ROSS:** I don't know the exact timeline of
10 when that, when the third party listed on the first line
11 of Interrogatory 24, when that work was completed.

12 **COMMISSIONER SKOP:** Okay. Can I, can I make
13 this easier for probably both of us? If you could turn
14 to staff's seventh set of interrogatories, Interrogatory
15 Number 30, Attachment 1, page 1 of 3, please.

16 **MR. ROSS:** Okay. We, we have it.

17 **COMMISSIONER SKOP:** Okay. And it seems to me
18 that it explains somewhat the chain of custody regarding
19 the receipt of the author's letter to the recipient and
20 subsequent events that led to that.

21 **MR. ROSS:** Yes.

22 **COMMISSIONER SKOP:** So the firm listed in
23 Interrogatory 24 never reentered into the equation on
24 the back end of the findings; is that correct?

25 **MR. ROSS:** That's correct. Yeah. They made

1 a, they made a call as to whether the document you're
2 referring to should be within the scope of their work,
3 and that was the end of it from their perspective.

4 **COMMISSIONER SKOP:** Okay. I need to -- let's
5 hold on this one, and I'm going to need to get a
6 document, I believe, from, from upstairs or take a brief
7 recess to further address some of the issues associated
8 with that.

9 In terms of the Concentric report, I think the
10 concern is that the high level summary of the report is
11 provided within the staff audit report; however,
12 specific details related to -- let me find the page --
13 if I -- looking at Document 06642-10, which is the
14 Concentric report that confidentiality is being claimed
15 of.

16 (Pause.)

17 **MR. ANDERSON:** Yeah. We have the document.
18 We do not have your document tracking numbers on this,
19 but we do have the referenced report.

20 **COMMISSIONER SKOP:** Okay. Again, generally
21 speaking, concerns with this document pertain to the
22 requested confidentiality related to the sections
23 germane to the flow of information to the Florida Public
24 Service Commission and the findings. And obviously,
25 again, I think what's important and, you know, what also

1 should be important to the company to consider in making
2 claims of confidentiality that it chooses whether to be
3 transparent or to claim confidentiality under the
4 statutory provisions, but it seems that, you know, to be
5 aboveboard with the Commission, the company might want
6 to consider looking at the confidentiality requests
7 related to the portion of this report dealing with the
8 Public Service Commission. And I think that's, that's
9 some of the issues that I might want to review or
10 discuss. And perhaps, if appropriate, we could take a
11 brief break to allow counsel to confer and reconvene in
12 five minutes or so. Is that acceptable?

13 **MR. ANDERSON:** Yeah. We will give that
14 consideration.

15 **COMMISSIONER SKOP:** Okay. Very well. All
16 right. We're going to stand adjourned for five minutes
17 and we'll come back at ten after the hour. Thank you.

18 (Recess taken.)

19 **COMMISSIONER SKOP:** Okay. We'll go back on
20 the record. And I have a few quick questions, and then
21 I'll hear from the company.

22 If I could turn, Mr. Anderson, your attention
23 to what is POD 29, which may be a voluminous document.
24 And, specifically, I'm looking at what has been marked
25 as Bates Page FPL-153179.

1 **MR. ANDERSON:** We're looking through our
2 paperwork. Again, we did not have this specifically
3 queued up for you. It will be just a moment.

4 (Pause.)

5 **MR. ANDERSON:** Yes.

6 **COMMISSIONER SKOP:** Okay. And do you have
7 that page in front you, 153179?

8 **MR. ANDERSON:** We're turning to it.

9 **COMMISSIONER SKOP:** All right. Thank you.

10 **MR. ANDERSON:** As requested, we have a
11 document with 153179 in front of us, yes.

12 **COMMISSIONER SKOP:** Okay. Do you see the
13 comment at the upper right corner of that document?

14 **MR. ANDERSON:** The particular page I have does
15 not have any comment on it, so we must have different
16 versions or numbers.

17 **COMMISSIONER SKOP:** Staff?

18 **MR. YOUNG:** Maybe that might be 153217?

19 **COMMISSIONER SKOP:** Say that, again, please?

20 **MR. YOUNG:** 153217, if I'm following
21 correctly.

22 **COMMISSIONER SKOP:** I am looking at the
23 document I have in front of me, so you can approach and
24 I'll show it to you.

25 (Off-the-record discussion.)

1 **COMMISSIONER SKOP:** I get a little bit
2 dyslexic at times, I think. Sorry. So FPL 153197, and
3 I apologize.

4 **MR. ANDERSON:** Okay. We'll turn there.

5 I have the document in front of me. Given the
6 font size, I can't promise you I can read it, but go
7 ahead.

8 **COMMISSIONER SKOP:** Okay. Well, I wouldn't
9 want you to read it at this point, because it is
10 confidential, or at least the claim of confidentiality.
11 But what -- looking at what has been highlighted in it
12 looks like green or olive drab on that page, I don't
13 know what colors you have on yours.

14 **MR. ANDERSON:** We have no colors on the papers
15 we have.

16 **COMMISSIONER SKOP:** Okay. Do you see the
17 title on that page?

18 **MR. ANDERSON:** See the what, I'm sorry?

19 **COMMISSIONER SKOP:** The title.

20 **MR. ANDERSON:** Yes, I do.

21 **COMMISSIONER SKOP:** Okay. And do you see the
22 comment that has a tag line to the title?

23 **MR. ANDERSON:** Yes, right.

24 **COMMISSIONER SKOP:** Okay. What about the
25 title, notwithstanding anything else on the page the

1 confidentiality may be maintained on, what about that
2 title and that comment does the company consider to be
3 confidential as it pertains to who knew what at what
4 time?

5 **MR. ANDERSON:** Okay. Let me understand your
6 question. What you have done is you have asked us about
7 the response to Request Number 29.

8 **COMMISSIONER SKOP:** Correct.

9 **MR. ANDERSON:** And we produced about four
10 inches of paperwork here, and you're calling out the top
11 two words at Page 153197, right?

12 **COMMISSIONER SKOP:** Yes.

13 **MR. ANDERSON:** Okay.

14 **COMMISSIONER SKOP:** As well as the comment
15 that has a tag line attached to it.

16 **MR. ANDERSON:** Sure. Yes, I can explain my
17 understanding of these documents as a whole and our
18 basis for our assertion of confidentiality.

19 As the Commissioner is aware, our company has
20 a very, very thorough process that we take very
21 seriously to consider and investigate employee concerns.
22 As you are aware, the company maintained and retained an
23 independent investigator to do work resulting in the
24 concentric report. In the course of this proceeding,
25 the staff of the Commission asked for all of the prior

1 drafts of that work. That was obtained from the
2 investigator. That's all provided here.

3 You know, that entire process and entire
4 preparation, drafting, interviewing, planning, editing,
5 revising, ensuring correctness, that's all part of the
6 preparation by that outside party, who I'm not employed
7 by, and don't --

8 **COMMISSIONER SKOP:** I understand. But
9 specifically, with respect to the content of that
10 comment, what does the company assert is the basis for
11 confidentiality?

12 **MR. ANDERSON:** That it's part of the process
13 of developing this report. That's a comment prepared by
14 no one at FPL. It's a comment prepared by, I believe,
15 someone working for the lead person who did the
16 investigative work.

17 **COMMISSIONER SKOP:** Okay. All right. A few
18 additional questions, and then I'll look to the company
19 to see how we wish to proceed. We can call witnesses
20 and take some testimony on some of the issues I have
21 questions with.

22 With respect to the staff audit report which
23 most of the confidentiality has been waived on now, the
24 author of the letter -- let me make sure I'm looking at
25 the correct document that I have before me. There it

1 is, sorry.

2 **MR. ANDERSON:** If I may add in reference to
3 your last question. For the record, the point you're
4 referring to represented a notation of the type used in,
5 like, using Word containing probably 24 lines of very,
6 very, very tiny font print, and I have not carefully
7 studied that nor has our company been provided notice in
8 advance of this hearing of a need to study that
9 particular paragraph.

10 So, you know, this gets to my point earlier
11 about the challenges of due process associated with a
12 hearing of this type. Recognizing, of course, that, you
13 know, the preparer of this report has been available to
14 the Commission, and I'm sure will be in the future. So
15 I want to make sure I don't speak for them and what was
16 in their mind when they were preparing that comment.

17 **COMMISSIONER SKOP:** All right. And very well,
18 Mr. Anderson, your point is well taken. I think that
19 the concern I have as a presiding officer in an
20 evidentiary hearing is I have numerous requests for
21 confidentiality before me, and looking at data in terms
22 of -- that has been requested to remain confidential
23 that concerns the accuracy or veracity of
24 representations made to the Commission.

25 So, you know, that is the tension here is

1 that, you know, the confidentiality statute provides
2 broad cover to just say something is confidential, and
3 it is very hard to discern or get to the truth, even
4 though the truth is right in the red folder. So that's
5 what I'm trying to struggle with and trying to work
6 through. And if you will give me a moment, I need to
7 find one document so I can ask some additional
8 questions, and then I'll look to you for additional
9 comments.

10 All right. With respect to what has been
11 marked and entered into the record as Exhibit 2, which
12 is the revised FPL confidentiality request for the staff
13 audit report, if I could turn your attention, please, to
14 Page 40 of that report.

15 **MR. ANDERSON:** We're there.

16 **COMMISSIONER SKOP:** Okay. The author of this
17 letter addressed it to the recipient, which was Mr. Hay,
18 which is Chief Group Chairman, or FPL Group Chairman and
19 Chief Executive Officer, is that correct?

20 **MR. ANDERSON:** Yes.

21 **COMMISSIONER SKOP:** Okay. Bear with me for
22 one second.

23 Now, in parallel with this letter, the company
24 in response to three anonymous employee letters made AK
25 filings under Regulation FD with the Securities and

1 Exchange Commission on April 2nd and 6/17, in June of
2 this year, is that correct, to the best of your
3 understanding?

4 **MR. ANDERSON:** I just do not know. I really
5 don't know.

6 **COMMISSIONER SKOP:** Okay. In relation to the
7 April 2nd filing, there was, I believe, a letter that
8 Mr. Hay wrote which was included in that filing. And I
9 guess the question I have, in light of the common
10 element or allegation of the veracity or accuracy of
11 data provided to the Florida Public Service Commission,
12 and in light of a statement made in the April 2nd letter
13 which was included in the SEC filing that the accuracy
14 of the information we furnished to our external
15 regulators continues to satisfy scrutiny. Are you
16 aware -- actually, let me ask you another question.

17 Is Mr. -- I didn't know how you pronounce it,
18 Seving -- how do you pronounce his name, Mr. Seving?

19 **MR. ANDERSON:** Yes, correct.

20 **COMMISSIONER SKOP:** Is Mr. Seving aware of the
21 letter and the findings of the concentric report?

22 **MR. ANDERSON:** Let's pause, because I think we
23 are going far afield of the topics relating to
24 confidentiality.

25 **COMMISSIONER SKOP:** But just hear me out for a

1 second, okay. I think my question is as it pertains to
2 some of the issues that are remaining to be
3 confidential, whether, again, if the company chooses to
4 voluntarily disclose something or has a duty to
5 disclose, then the issue of spending a tremendous amount
6 of time to debate the fine points of confidentiality is
7 rendered moot. So I guess the question I would present,
8 and I'd look to the company if you want to take a break,
9 but do you know if the company, based on its previous AK
10 filings with the Securities and Exchange Commission on
11 April 2nd and June 17th of this year, plans to amend
12 those filings in light of the existence of the letter
13 that was directed to Mr. Hay, which is listed in the
14 staff audit report, and whether it would require an
15 amendment based on the findings in that letter, I mean
16 in that report?

17 **MR. ANDERSON:** Let me begin by saying that
18 this is another example of our strong objection to the
19 nature of this proceeding. We came here today, subject
20 to an order, to be prepared to address the
21 confidentiality of a number of specific exhibits and
22 then great uncertainty of what else would be asked.

23 I would point out that the question that the
24 Commissioner is asking involved questions of securities
25 law and a variety of other things, none of which are

1 properly before the Commission today, none of which
2 would have -- (Simultaneous conversation.)

3 **COMMISSIONER SKOP:** Excuse me. Excuse me.
4 Actually, they are properly before the Commission today
5 because what I asked is a relevant and reasonable
6 question. If the response was given that disclosure
7 would be made, then the issue regarding confidentiality
8 might be moot. So it's a fair question to ask in light
9 of the information that I have before me, okay. It's a
10 fair question to ask in light of some of the
11 representations that are made, and it is a fair question
12 to ask in light of the breadth of the confidentiality
13 requests that has been requested by the company.

14 So I guess the fair question in a nutshell,
15 and it's not to be inflammatory, it's just merely to
16 ascertain, to get to the point of do we need to spend
17 additional time taking testimony of witnesses to resolve
18 the differences, or is previous disclosure, waiver, or
19 subsequent disclosure sufficient to not have to get into
20 a debate on confidentiality questions. So I think it is
21 a fair question, with all due respect, so I will allow
22 you to respond.

23 **MR. ANDERSON:** I see your framing of the
24 issue. I don't know the answer to your question. And
25 we are here today to address our entitlement to

1 confidentiality of these particular documents with
2 witnesses to the extent -- you know, with very limited
3 notice we have been given of any of your questions here
4 today.

5 **COMMISSIONER SKOP:** Okay. Well, all of the
6 questions that are being asked, I think, have a very
7 relevant relationship to the breadth of the request for
8 confidentiality. At issue in this proceeding,
9 notwithstanding the confidentiality or, you know, the
10 accuracy of information provided to the Florida Public
11 Service Commission as well as the veracity of witness
12 testimony.

13 So, again, this is not a proceeding, but the
14 claim of confidentiality goes to the heart of some of
15 those very issues. And I think that has been Public
16 Counsel's concern that we addressed this morning. It
17 has been some of staff's concerns, as I understand it,
18 and I have my own concerns. And my question is with
19 respect to some of these documents that would facilitate
20 having an open constructive discussion at hearing of
21 confidentiality and the request for confidentiality
22 basically constrains being able to ask open questions
23 without having to stop every moment and point, which
24 gets to be a very lengthy process.

25 So I respect the company's request for

1 confidentiality, but, again, if there is instances where
2 the company has disclosed something making it
3 nonconfidential, public disclosure or disclosed it,
4 disseminated it to third parties absent a
5 confidentiality agreement, those are all relevant
6 questions with all due respect. So you may proceed or
7 continue.

8 **MR. ANDERSON:** Great. Just to kind of catch
9 us back where we are up at is you had asked before our
10 little break about our position in relation to a portion
11 of the concentric report.

12 Just to provide you a brief report, you know,
13 given a little bit of time over lunch to consult with
14 our management, we can probably check and see if we can
15 get an answer for you. I'm sure you can appreciate as a
16 trial counsel appearing, we don't necessarily have
17 authority to do that without consulting with our
18 management. So that would be good thing to be able to
19 check on, if that's of interest to you.

20 Your other considerations, we can reflect on
21 them, as well. You know, the last idea I would leave
22 before suggesting that we consider taking a little break
23 is that please recall that this report we're talking
24 about, this report we commissioned as part of our own
25 internal process so we have an environment where

1 employees can come forward and provide information, it
2 can be investigated and we can do the right thing. We
3 provided that to staff, we provided it to OPC, it is
4 available to the Commission. The Commission has
5 longstanding processes for dealing with that type of
6 information with our red folders and the like that have
7 been for years. There is always a balancing, and I
8 respect and understand the Commissioner's point.

9 **COMMISSIONER SKOP:** And that, Mr. Anderson, to
10 your point, that is why confidentiality of the author of
11 that letter has been maintained to prevent any of
12 that -- what typically is deemed a chilling effect from
13 occurring. Again, the confidentiality of that author of
14 that letter was maintained, okay. And so I don't
15 understand, per se, the chilling effect or -- you know,
16 what is at issue is FPL has requested confidentiality of
17 a large number of documents, and I commend FPL for, you
18 know, revising its request on the staff audit report.
19 There are some documents which are incorporated by
20 reference that appear to be relevant that provide
21 additional detail into who knew what when and other
22 things that are relevant to the summary level report
23 that's in the staff audit report.

24 And, again, I think those are the things we
25 are trying to flesh out, seeing what has been kept

1 private, what deserves confidentiality, which we can
2 take witness testimony absent, you know, the company
3 reconsidering positions on certain documents, which is
4 very helpful. Because if the company looks at something
5 and says we can live without this, then suddenly we
6 don't have to go through an evidentiary hearing. So
7 that's what the discussion is meant to try and
8 facilitate, but also looking at testing assumptions that
9 would otherwise preclude confidentiality from being
10 granted; public disclosure, waiver, some of those
11 issues. So those are all things that I feel are fair
12 game in the analysis to test the validity of the request
13 for confidentiality.

14 And, you know, again, I'm not doing this for
15 any other reason other than to try and make a ruling on
16 the merits in respect to what is before us. But, again,
17 you know, there are some things that warrant
18 questioning, and that's just part of the territory.

19 **MR. ANDERSON:** Okay. And just to help us all
20 remain, so at least I have an understanding of where we
21 are at also, at this point just in terms of we have put
22 on testimony or perhaps withdraw a position, the things
23 I'm hearing a topic of, one was the letter, right?

24 **COMMISSIONER SKOP:** The letter, yes.

25 **MR. ANDERSON:** The other thing you indicated

1 was the portion of the concentric report which you
2 discussed, which I think was at pages -- I think it ends
3 up being --

4 **COMMISSIONER SKOP:** Let me briefly, while we
5 are on the letter, before we move forward, if you look
6 at the letter in relation to some of the other
7 discussion and comments, on the second page of the
8 letter, on the second full paragraph --

9 **MR. ANDERSON:** We have that, Commissioner
10 Skop.

11 **COMMISSIONER SKOP:** Okay. Again, those are
12 the common elements that I'm kind of speaking of, or
13 trying to articulate to take a look at, because this
14 letter prompted the company to take certain actions
15 which resulted in certain findings. And, you know, the
16 existence of the letter is just now, you know, come to
17 light by revising the confidentiality request of the
18 staff audit report to some degree, because previously it
19 was all confidential.

20 **MR. ANDERSON:** Uh-huh.

21 **COMMISSIONER SKOP:** Okay. And, you know, the
22 findings of the staff audit report are now not
23 confidential, and so it gets to looking at in totality,
24 you know, what are the issues. And, you know, it seems
25 to me that the existence of the letter and the findings

1 associated with that letter and more detailed or
2 granular actually seem to be relevant to the discussion
3 that we are at regarding the request for
4 confidentiality, because many of the details, including
5 some of those which I just pointed you to have been
6 claimed to be fully confidential. But they are highly
7 relevant to the issue of veracity and statements made to
8 the Commission, and I think that's the point that I'm
9 trying to flesh out here.

10 **MR. ANDERSON:** To be clear, you're drawing a
11 distinction where I don't necessarily think there is
12 one. Is this relevant information? You bet. Is it
13 confidential? It's our position it is. But, you know,
14 it's not as if we have any desire to do anything other
15 than what we have done. We made sure everybody has the
16 information and it can be considered. We are always
17 concerned about, as a company, of maintaining an
18 environment where people can raise concerns without any
19 fear of retaliation so that people who are interviewed
20 can be interviewed freely and give information, again,
21 in any large organization, I bet you the Commission
22 probably has similar processes, also. It's just a good
23 practice. It's what good companies do.

24 And in this circumstance we don't question
25 that these are topics that should be discussed with the

1 regulator in the Nuclear Cost-Recovery Clause
2 proceedings. However, our position has been that
3 maintaining confidentiality of this type of information
4 is in the customers' best interest and the company. And
5 that's to just kind of share with you the perspective,
6 because we are more on the same page than not in terms
7 of the seriousness with which we regard these things,
8 and it's just --

9 **COMMISSIONER SKOP:** I understand. Again, I'm
10 trying to work with the company in good faith. Again,
11 what the company can expect from me is to have a
12 decision made on the confidentiality requests and decide
13 on the merits in a fair and impartial manner, okay. The
14 bottom line, however, is when certain preceding events
15 happen or subsequent events happen, that may bear on
16 confidentiality in terms of the request itself. And so
17 that's where, you know, it becomes relevant to ask those
18 probative questions to have a better understanding as to
19 whether something really deserves confidential
20 treatment.

21 I mean, we can hold it confidential and then
22 it can be disclosed after hearing and then pretty much
23 we talk about it, but we are talking about it with tied
24 hands. But, you know, duties to disclose and other
25 things, you know, all factor into what's going on before

1 us, to some degree. But the one comment that you did
2 make about having the appropriate culture, and I'll see
3 if I can find it, but we will get back --

4 **MR. ANDERSON:** Having a what culture, I'm
5 sorry?

6 **COMMISSIONER SKOP:** The appropriate culture.

7 **MR. ANDERSON:** Appropriate.

8 **COMMISSIONER SKOP:** Yes. If you would turn to
9 the concentric report, Page 5 of 23, Footnote 12. And I
10 won't ask you to read it, but I think that goes to, you
11 know, a comment that you made.

12 **MR. ANDERSON:** Right. Which page, sir?

13 **COMMISSIONER SKOP:** It was Page 5, Footnote
14 12.

15 **MR. ANDERSON:** Yes, I see that.

16 **COMMISSIONER SKOP:** So at this point, Mr.
17 Anderson, how would you like to proceed? Would you like
18 to take some time to confer with your company to see if
19 there may be a way to redress some of the concerns, or
20 caucus, or would we like to proceed forward and gather
21 our thoughts and take some testimony on some of the
22 issues related to the letter and the concentric report
23 specifically?

24 **MR. ANDERSON:** My suggestion and request would
25 be let's take a break so we can consult. We'll be

1 prepared with an answer in relation to the points we
2 have discussed, the letter portion of the concentric
3 report. If we could have a heads up, even a little bit,
4 as to if there is anything else on the Commissioner's
5 mind that we are going to need to deal with this
6 afternoon.

7 Part of the problem is that we are reading a
8 lot of these documents a little fresh ourselves before
9 you, because, honestly, we can do a better job for you
10 if we just have a little more idea. But that, of
11 course, is up to how the Commissioner conducts the
12 hearing. That's your role. I'm just trying -- my
13 suggestion is let's take a break, we'll come back, and
14 if staff can provide us any guidance along that latter
15 line, I would appreciate it.

16 **COMMISSIONER SKOP:** Let me, in summary, I
17 think we resolved the one question that I had that
18 precludes the need to get into the -- forward on the
19 staff's sixth set of interrogatories. I think the
20 remaining questions I have deal with the confidentiality
21 of the underlying letter itself, subject to redacting
22 obviously names and titles to protect the author of such
23 letter, and, you know, some other names, perhaps, if we
24 need to go there. But it seems to me that, you know, we
25 need to ascertain whether the claim of confidentiality

1 of that letter is appropriate and proper, noting that it
2 was originally addressed to Mr. Hay, which is FPL Group
3 and not Florida Power and Light, and look at all the
4 variations thereof.

5 The other issue, obviously, is the concentric
6 report, and I can briefly run through some concerns, if
7 it would be helpful.

8 **MR. ANDERSON:** Thank you.

9 **COMMISSIONER SKOP:** Okay. Looking at Page 1.

10 **MR. ANDERSON:** Yes.

11 **COMMISSIONER SKOP:** The first and second
12 paragraph, redacting the name of the author, and any
13 other names that might need to be appropriately
14 redacted. That would be a concern for what needs to
15 remain confidential of that document. Page 3 -- I mean,
16 Page 2, in Paragraph A --

17 **MR. ANDERSON:** Chair, let us catch back up
18 with you. Page 2, under A. Yes.

19 **COMMISSIONER SKOP:** In the second paragraph
20 under Paragraph A, there is a clause, and it begins -- I
21 don't want to articulate it, because there is still a
22 claim of confidential, but basically it pertains to the
23 -- it's under the second half of what is indicated as
24 Number 1 there. Do you see that?

25 **MR. ANDERSON:** Yes. Right.

1 **COMMISSIONER SKOP:** As it pertains to the
2 Commission.

3 **MR. ANDERSON:** Uh-huh.

4 **COMMISSIONER SKOP:** Okay. Page 3, under
5 Paragraph D, second sentence, where it relates to the
6 Commission, and I believe the last sentence where it
7 reflects the Commission, the first paragraph in
8 Paragraph D.

9 **MR. ANDERSON:** Uh-huh.

10 **COMMISSIONER SKOP:** Okay.

11 **MR. ANDERSON:** Right.

12 **COMMISSIONER SKOP:** Paragraph E on that same
13 page, the last clause of the first paragraph after the
14 comma.

15 **MR. ANDERSON:** Yes.

16 **COMMISSIONER SKOP:** Before the numbered lines.
17 Okay. And then Number 3 on that list, which I truly
18 believe is highly relevant.

19 Page 4, second paragraph, first sentence after
20 the comma. Then you have the third paragraph, the last
21 sentence in the third paragraph. The first sentence in
22 the fourth paragraph, and the first sentence of the last
23 paragraph on that page, redacting the name of the
24 author. And I'll try and make the rest of this pretty
25 quick, because I think the rest of it deals with more

1 internal issues than PSC issues. So Page 9, the last
2 bullet under Paragraph B.

3 **MR. ANDERSON:** Yes.

4 **COMMISSIONER SKOP:** Okay. I believe that's
5 also highly relevant. Page 11 starting with Section 7,
6 basically through to the page -- to the end of Page 16.
7 And I believe that would address the concerns related to
8 information provided to the Commission.

9 I think that the company, if they would please
10 take a look at that, and if not we can sponsor some
11 testimony as it pertains to things related --
12 Commission-related items as opposed to internal controls
13 and such. Okay. And pretty much I think that would do
14 it with the one exception of the part that we spoke
15 about, about the comment, and that is that one with the
16 title and the comment to it. And there may be a
17 legitimate request for confidentiality on that, but I'd
18 like to specifically hear the statutory provision that
19 applies.

20 And in relation to that statutory provision,
21 okay -- nevermind, I'll hold that back, and I think that
22 covers the concerns. Any other thoughts from staff
23 before we take a break, and maybe we can go to lunch and
24 come back at the appropriate time?

25 **MS. BENNETT:** Commissioner Skop, did you

1 address some specific concerns you had in the letter
2 itself?

3 **COMMISSIONER SKOP:** Yes. Let me do that
4 briefly. I think I did, but this might be a good point
5 to readdress those. So, thank you.

6 Again, I was up pretty late last night.
7 Specific concerns in the letter that I have,
8 notwithstanding the fact that obviously the name of the
9 author and their title should probably be preserved as
10 well as some names where it's able to be appropriately
11 done. But the meat of the question deals to, you know,
12 some of the issues on Page 2 about the concerns in
13 relation to the veracity of information that would be
14 provided. And, also, I guess it's the second paragraph
15 on the second page which seems to be worthy of note.
16 And then also the final paragraph where it specifically
17 mentions the PSC.

18 And as far as the other issues in there that I
19 don't want to articulate, but one can see in the last
20 paragraph there, I would expect that confidentiality of
21 those would be maintained as would be appropriate. So
22 what I'm concerned with is the PSC, not the personnel
23 issue.

24 **MR. ANDERSON:** Okay. On Page 1, did you have
25 particular things? My notes broke down on that page

1 only.

2 **COMMISSIONER SKOP:** Actually, while we are on
3 Page 2, we talked about the second paragraph. The third
4 paragraph, the first sentence, I think that's highly
5 relevant without giving up too much confidentiality.

6 Look at the paragraph as a whole and block out
7 numbers, but take a look at what might be able to be
8 done there. And, if not, we can take up some testimony
9 as to why confidentiality would need to be preserved
10 there, if it's appropriate or not.

11 Again, the first page, for lack of a better
12 word, tends to do with the players and what was going
13 on, and I'm not so sure that, you know, that's -- it is
14 relevant, but, again, that gets into some controls. So,
15 again, I think what concerns me about the request for
16 confidentiality from my perspective, looking at what has
17 happened, is information related to the existence of the
18 letter, the findings of the letter as they pertain to
19 representations made to the Commission. And I think
20 that's where the focus of confidentiality, my remaining
21 concerns lie, and I'd ask the company to just take a
22 look at that. And if not, we can tee it up after lunch.

23 **MR. ANDERSON:** Okay. So just to repeat back,
24 we will review with our client the points you have
25 reviewed. We will ascertain whether there are any

1 points there with which we can remove confidentiality
2 classification or whether it remains our position to
3 present testimony, and we will be prepared to do that in
4 relation to those things.

5 **COMMISSIONER SKOP:** Okay. And how long do you
6 expect you would need to do that and also get a --
7 hopefully it won't take too long when we get back, but
8 you never know. So I want to make sure that you guys
9 have adequate time to talk and consult, but, also, you
10 know, get a bite to eat.

11 **MR. ANDERSON:** Probably the shortest feasible
12 is about 45 minutes.

13 **COMMISSIONER SKOP:** Okay. Why don't we make
14 it an hour and that gives you a little bit of additional
15 time. So if I look at the clock, it is almost 1:00
16 o'clock, and we will stand on recess until 2:00 where we
17 will reconvene the hearing.

18 We are in recess. Thank you.

19 **MS. BENNETT:** Can we have the confidential
20 documents? Thank you.

21 (Lunch recess.)

22 **COMMISSIONER SKOP:** Okay. We are going to go
23 back on the record. And where we left off is FPL was
24 afforded some time to consult with its management as to
25 some of the outstanding issues regarding confidentially,

1 and I will look to Mr. Anderson to pick up where we left
2 off.

3 Mr. Anderson, you're recognized.

4 **MR. ANDERSON:** Thank you, Commissioner Skop.

5 First, I can't tell you how helpful it was for
6 you to take the time prior to the break and list out the
7 very specific considerations that remain for us today.
8 And, you know, we had asked for the opportunity to take
9 some time and speak with our management, and the fact
10 that the issues were laid out in such a clear way
11 permitted us to have that conversation.

12 Our company gave a lot of thought over the
13 lunch break, and we considered very carefully our
14 arguments and positions, and, you know, we just -- to
15 not belabor the point, we feel we have done right in
16 terms of asserting the confidentiality of these
17 documents under Florida law and all of those things.
18 But we also heard very much what the Commissioner stated
19 in relation to the interest in openness and the interest
20 in transparency and taking all of those factors into
21 account.

22 In this particular circumstance, and without
23 waiving any position we might ever take in any other
24 case, it's our determination and feeling that the thing
25 to do in this circumstance is to go above and beyond

1 what we feel are our obligations. And in addition to
2 the matters that you asked in relation to the concentric
3 report, I think you will see what I mean as well in just
4 a moment.

5 We suggest the following: Is that with
6 respect to the investigation letter that began the
7 investigation, we would agree to -- that that would be
8 public. All the things I'm going to relate are with the
9 request that in every instance we redact the name and
10 position of every employee in all the documents I will
11 relate.

12 And, in addition, we are willing in the
13 interest, again, of transparency, as you said, of going
14 above and beyond our obligations, releasing in its
15 entirety, in its entirety, the concentric report
16 subject, again, to redaction of employees names and
17 positions.

18 And we would hope that -- you know, you had
19 one last little bubble document, we ask that let's not
20 even deal with that because we are dealing with the meat
21 of the issues.

22 So, you know, again, it was so helpful that
23 you outlined with precision in advance. We were able to
24 talk with our management. We were able to arrive at
25 that point. And, you know, I believe we have addressed

1 all the things that you asked be addressed in this
2 hearing, and we are hopeful that we would then be at an
3 end for today, having made what I feel is a major, major
4 step in the direction of transparency and that has been
5 indicated.

6 **COMMISSIONER SKOP:** Very well.

7 If you will allow me a brief moment just to
8 cross-reference one thing in terms of the comments you
9 made. And, again, I think that certainly this is a very
10 constructive development. And, again, the purpose of
11 this is to determine what needs to be transparent, what
12 needs to be confidential; and if I can just take a
13 second, I need to look at one item. Thank you.

14 **MR. ANDERSON:** Sure.

15 **COMMISSIONER SKOP:** Thank you.

16 (Off the record.)

17 **COMMISSIONER SKOP:** What is the best way to
18 proceed with that? Does staff -- is it comfortable with
19 the company making those representations on the record,
20 or do we need to do anything further in terms of
21 accepting FPL's position, or offer?

22 **MS. BENNETT:** I think we can accept their
23 offer, and then ask that perhaps on Monday, they file
24 the document, the documents with the redactions.

25 **COMMISSIONER SKOP:** Okay. All right. So,

1 very well.

2 Mr. Anderson, I do want to commend Florida
3 Power and Light. Again, this is an awkward situation,
4 not only for the company, but also for the Commission to
5 the extent that it deals with the representation that
6 was made to the Commission. And the company has taken
7 some efforts that ultimately will be discussed, I'm
8 hopeful, and the appropriate constructive comments given
9 towards the corporate action.

10 There are still some areas of concern. One of
11 them deal with the bubble that we talked about that we
12 are not going to get into about who knew what when. And
13 that is a little bit of a concern, but I think the
14 company's offer goes over and above in good faith what
15 is necessary to address the concerns, to add some
16 transparency, to protect the company in certain
17 instances.

18 And I think that, you know, with respect to
19 the offer, with respect to the letter to disclose that
20 publicly with the redaction of the names and titles of
21 the people with the exception of the addressee of the
22 letter, because it is already made public by virtue of
23 the staff audit report. And also on the concentric
24 report, to release that in its entirety, redacting the
25 names and titles of any employees that are mentioned, I

1 think that that addresses probably everyone's concerns
2 in a very constructive manner. And we commend the
3 company for taking the positive steps at the end of the
4 day.

5 You know, an abundance of disclosure can't
6 hurt, whereas sometimes false statements are
7 self-inflicted wounds. But I think that it goes a long
8 way of addressing the concerns, and I am willing to
9 accept the company's offer, and I think that will
10 resolve the outstanding confidentiality issues that are
11 the basis of needing a ruling to go to hearing.

12 So, in summary, staff, and I'll look to staff
13 for any additional issues, we have Hearing Exhibit 2,
14 which is the revised FPL confidentiality request for the
15 staff audit report, which has been entered into the
16 record. It's my understanding that the redacted portion
17 of that report will -- a redacted copy of that report
18 will be filed in the docket so it will be available.

19 And then, Mr. Anderson, when will your company
20 be able to file the remaining two documents in their
21 redacted form and provide those to the Commission?

22 **MR. ANDERSON:** Monday, Commissioner Skop.

23 **COMMISSIONER SKOP:** Okay. Is it possible to
24 get those, say -- we have the hearing on Tuesday, is it
25 possible to get those by noon on Monday?

1 **MR. ANDERSON:** We'll make every effort to have
2 them as soon in the day as we can.

3 **COMMISSIONER SKOP:** Okay. All right. Very
4 well.

5 Staff, are there are any additional items that
6 we need to take up?

7 **MS. BENNETT:** No, Commissioner Skop.

8 **COMMISSIONER SKOP:** Okay. And there will be
9 an order as a result of the evidentiary hearing
10 acknowledging what we have discussed in relation to the
11 staff audit report and the company's offer and
12 acceptance of what they have proposed, is that correct?

13 **MS. BENNETT:** That's correct.

14 **COMMISSIONER SKOP:** Okay. Very well.

15 Any other comments before we adjourn?

16 Ms. Bennett?

17 **MS. BENNETT:** Co-counsel was advising me that
18 we probably should wait until the new filing is made on
19 Monday to rule on the confidentiality of the new filing
20 instead of --

21 **COMMISSIONER SKOP:** Okay. All right. Very
22 well. So we have already made a ruling on the
23 revised -- FPL revised request for the staff audit
24 report, which has been entered into the record, so I
25 think that is taken care of. It is just waiting for the

1 other two documents to be produced on Monday.

2 **MS. BENNETT:** That's correct.

3 **COMMISSIONER SKOP:** Okay. Very well. Show
4 that done. And any additional comments?

5 **MS. BENNETT:** No, sir.

6 **COMMISSIONER SKOP:** All right.

7 Mr. Anderson, I want to thank your company.
8 Mr. Ross, I want to thank your company. Again, it's an
9 awkward position, but it's necessary as a result of some
10 of the information contained in the documents to have to
11 have gone to this length to address what are, from a
12 Commission's perspective, legitimate concerns. So I
13 thank you for taking the time and the effort to work
14 with your management to bring transparency to documents
15 that otherwise would have remained confidential. So,
16 thank you, again.

17 And with that, we stand adjourned. Thank you.

18 (The hearing concluded at 2:18 p.m.)

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STATE OF FLORIDA)

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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 said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

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

DATED THIS 23rd DAY OF AUGUST, 2010.



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