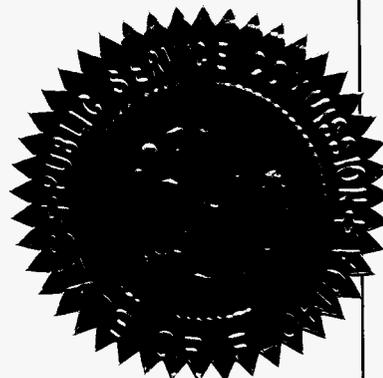


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100001-EI

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



VOLUME 3

Pages 376 through 451

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PROCEEDINGS:

HEARING

COMMISSIONERS  
PARTICIPATING:

CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NATHAN A. SKOP  
COMMISSIONER RONALD A. BRISÉ

DATE:

Monday, November 1, 2010

TIME:

Commenced at 9:30 a.m.

PLACE:

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

REPORTED BY:

MARY ALLEN NEEL, RPR, FPR  
850.878.2221

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER - DATE

09127 NOV-30

FPSC-COMMISSIONER CLERK

I N D E X

WITNESSES

NAME

PAGE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

EXHIBITS

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
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## P R O C E E D I N G S

1  
2 (Transcript follows in sequence from  
3 Volume 2.)

4 CHAIRMAN GRAHAM: Okay. Sounds good.  
5 Mr. Beasley?

6 MR. BEASLEY: That concludes our case.

7 CHAIRMAN GRAHAM: Do we have any other  
8 questions or things for this witness?

9 MS. BENNETT: No, Mr. Chairman.

10 CHAIRMAN GRAHAM: Then I believe you're  
11 excused. Thank you so very much for spending your  
12 time with us.

13 Staff, it looks like you guys are up.

14 MS. BENNETT: Staff would call Ronald Mavrides  
15 to the stand.

16 CHAIRMAN GRAHAM: Was this witness sworn in  
17 earlier?

18 MS. BENNETT: Yes, I believe he was,  
19 Mr. Mavrides, were you sworn in earlier?

20 THE WITNESS: I was.

21 Thereupon,

22 RONALD A. MAVRIDES

23 was called as a witness on behalf of the FPSC Staff and,  
24 having been first duly sworn, was examined and testified  
25 as follows:

## DIRECT EXAMINATION

1  
2 BY MS. BENNETT:

3 Q. Good afternoon, Mr. Mavrides. Would you state  
4 your name for the record, please?

5 A. My name is Ronald A. Mavrides.

6 Q. And who do you work for, Mr. Mavrides?

7 A. I'm employed by the Florida Public Service  
8 Commission as a professional accountant in the Office of  
9 Auditing and Performance Analysis.

10 Q. I think you just told us our position, so I'll  
11 go on to the next question. Did you prepare the  
12 testimony and one exhibit filed in Docket No. 2 -- I'm  
13 sorry, 100001?

14 A. Yes.

15 Q. Do you have any changes or corrections to the  
16 testimony?

17 A. No.

18 Q. Do you have any changes or corrections to the  
19 exhibit which is identified as Exhibit 30 in the  
20 Composite Exhibit List?

21 A. I have no changes to them.

22 Q. If I asked you the same questions today, would  
23 your responses be the same?

24 A. Yes.

25 MS. BENNETT: At this time, Mr. Chairman, I

1 would ask that Mr. Mavrides' testimony be entered  
2 into the record as though read.

3 CHAIRMAN GRAHAM: Let's Mr. Mavrides' record  
4 into the -- his prefiled testimony into the record  
5 as though it was read.

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## DIRECT TESTIMONY OF RONALD A. MAVRIDES

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**Q. Please state your name and business address.**

A. My name is Ronald A. Mavrides and my business address is 4950 West Kennedy Blvd., Suite 310, Tampa, Florida 33609.

**Q. By whom are you presently employed and in what capacity?**

A. I am employed by the Florida Public Service Commission as a Professional Accountant in the Office of Auditing and Performance Analysis.

**Q. How long have you been employed by the Commission?**

A. I have been employed by the Florida Public Service Commission since October 2007.

**Q. Briefly review your educational and professional background.**

A. In 1990, I received a Bachelor of Science degree from the University of Central Florida with a major in accounting. I am also a Certified Government Auditing Professional and a Certified Management Accountant.

**Q. Please describe your current responsibilities.**

A. I perform conservation, environmental, hedging, and staff-assisted rate case audits. Also, I perform various other financial audits of electric, gas, and water and wastewater utilities.

**Q. Have you previously presented testimony before this Commission?**

A. Yes. I presented testimony in the Fuel and Purchased Power Cost Recovery Clause with generating performance incentive factor Docket No. 090001-EI.

1 **Q. What is the purpose of your testimony today?**

2 A. The purpose of my testimony is to sponsor the staff audit report of Progress Energy  
3 Florida, Inc. (PEF, Company, or Utility) which addresses the Utility's August 1, 2009 through  
4 July 31, 2010 hedging activities. The audit report is filed with my testimony and is identified as  
5 Exhibit RAM-1.

6  
7 **Q. Was this audit prepared by you or under your direction?**

8 A. Yes, it was prepared by me.

9  
10 **Q. Please describe the work performed in this audit.**

11 A. I reviewed PEF's Hedging Information Reports filed on April 1, 2010 and August, 16,  
12 2010. I examined the report for reasonableness and used it as a basis for our sample tests. I  
13 requested a listing of each futures, options, and swap contracts executed by PEF for the 12-  
14 month period covered by the Hedging Information Report. I requested the volumes of each fuel  
15 PEF actually hedged using a fixed price contract or instrument. I tested 35 sample transactions,  
16 choosing an array of transaction types throughout the 12-month period for each hedged fuel  
17 type. I traced the transactions to the general ledger and trade tickets. I did not note any  
18 exceptions.

19 I recalculated the gains and losses by multiplying the volume by the difference between  
20 the fixed price and the settlement price from the trade tickets, and compared them to the  
21 recorded gains and losses per the general ledger. I determined that the gains and losses flowed  
22 through the fuel and purchased power cost recovery clause as either a charge or a credit as  
23 required in Order No. PSC-02-1484-FOF-EI. When there was existing inventory, the inventory  
24 account was adjusted, and when there was no existing inventory, the gains and losses flowed  
25 through the fuel expense account.

1 I obtained and reviewed PEF's Risk Management Plan. I compared the percentage  
2 limits of purchased power hedged in the Risk Management Plan with the actual volumes of  
3 hedged burns. The actual volumes of hedged burns fall within the percentage limits delineated  
4 in the Risk Management Plan.

5 I reviewed PEF's written procedures for separation of duties related to hedging  
6 activities. I reviewed the internal and external auditor's workpapers addressing the separation  
7 of duties and no exceptions were noted.

8 I randomly chose four transactions for the diesel fuel used to transport coal. I traced the  
9 invoices to the inventory adjustment per the general ledger, and recalculated the gain and loss.  
10 There was one error by PEF that was subsequently corrected and is discussed in audit finding 1.

11 I reviewed the existing tolling arrangements and tested all tolling transactions for one  
12 vendor for one month by tracing the invoices to the general ledger.

13  
14 **Q. Please review the audit findings in this audit report, RAM-1, which addresses the**  
15 **hedging activities of PEF from August 1, 2009 through July 31, 2010.**

16 A. There is one audit finding in the audit report. In my analysis of #2 oil used to transport  
17 coal, I sampled a fixed swap from April 2010 and independently recalculated a gain that was  
18 greater than that recorded on the trade invoice by the amount of \$252. PEF informed us this  
19 was an error caused by incorrectly using a waterborne settlement price, rather than the correct  
20 pipeline settlement price. PEF made and provided a copy of an adjusting journal entry to  
21 correct this error.

22  
23 **Q. Does this conclude your testimony?**

24 A. Yes.

25

1 MS. BENNETT: Mr. Chairman, the witness waives  
2 the summary, and I tender this witness for  
3 cross-examination.

4 CHAIRMAN GRAHAM: Thank you very much,  
5 Ms. Bennett.

6 Mr. Brew, do you have any questions for this  
7 witness?

8 MR. BREW: No, Mr. Chairman.

9 CHAIRMAN GRAHAM: Mr. Moyle?

10 MR. MOYLE: I have a few, Mr. Chairman.

11 CROSS-EXAMINATION

12 BY MR. MOYLE:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. We've had a lot of discussion about hedging  
16 today, and I assume you've been in the room and heard a  
17 lot of it. I just want to ask you, when you are charged  
18 with going and looking at, in this case, Progress Energy  
19 Florida's hedging program, what is your charge, if you  
20 will?

21 A. My charge is specifically delineated in the  
22 audit service request.

23 Q. Okay. And can you describe that to me, or  
24 refer --

25 A. Sure.

1 MS. BENNETT: If it will be helpful, we do  
2 have a copy of the audit service request that we  
3 can hand out for the Commissioners. The witness  
4 has it.

5 (Documents distributed.)

6 A. We reviewed Progress Energy's Hedging  
7 Information Report. We recalculated the gains and  
8 losses by multiplying the volume by the difference  
9 between the fixed price and the settlement price from  
10 the trade tickets and compared them to the recorded  
11 gains and losses per the general ledger. We determined  
12 that the gains and losses flowed through the fuel and  
13 purchased power cost recovery clause as either a charge  
14 or a credit as required by the orders.

15 In essence, the audit consisted of verifying  
16 the market price and the exercise price and multiplying  
17 the difference between them by the volume of the fuel  
18 and then tracing that resulting gain or loss to the  
19 general ledger.

20 Q. Okay. So it's really kind of a lot of review  
21 of existing processes, double-checking the math; is that  
22 fair?

23 A. That is fair to say. It's a largely  
24 mechanical sort of task.

25 Q. Okay. And with respect to a review of the

1 hedging program, to the extent that you saw something  
2 that -- you heard Commissioner Skop talk about an  
3 opportunity or a qualitative situation to say, "Well,  
4 you know, I think they're a little heavy here in a  
5 particular fuel type. You know, their management plan  
6 gives them a range between X and Y, and they've decided  
7 to go to Y, and there's a lot of losses associated with  
8 that decision to go to Y, and if they had been at X,  
9 there would be a lot less losses." Would that be  
10 something that you would maybe raise as an issue, or so  
11 long as they're within the X to Y, that doesn't matter?  
12 I mean, it matters, but it doesn't matter for the  
13 purposes of your audit?

14 A. I see where you're going with this.  
15 Qualitative issues and subjective things are really  
16 outside the scope of my audit.

17 Q. Okay. And you would agree that a lot of these  
18 management plans you know, without revealing the  
19 percentage numbers, that they give the company the  
20 latitude to hedge between X and Y in terms of fuel for  
21 certain commodities; correct?

22 A. I'm given that plan, and I only verify that  
23 they follow it.

24 Q. Right. But with respect to the plan that you  
25 look at, you would agree that there is latitude with

1 respect to the percentages they can hedge of, say, like  
2 natural gas?

3 A. There is a range.

4 Q. Okay. And just so I'm clear, but you're not  
5 commenting in any way about their decision as to where  
6 to fall within the range?

7 A. That's outside my scope, and I have no  
8 expertise in that.

9 Q. So then from the Commission's perspective,  
10 then who is it within the Commission that makes the  
11 qualitative judgments that may be made with respect to  
12 reviewing a plan? And let's say, for example, a utility  
13 hedged at the upper limit of a plan and it was way out  
14 of the money. You know, maybe they should have hedged  
15 at a lower limit. Who would generally kind of make  
16 that --

17 A. I believe that's the technical staff. I  
18 believe the technical staff does that.

19 Q. Okay. But you're the only PSC witness that  
20 has testimony in this case; correct?

21 A. I believe that's so.

22 Q. Okay. Would you also agree that that's a role  
23 that the Commission plays, to review the plans and make  
24 qualitative judgments?

25 A. Repeat that again.

1           Q.    Sure.  Would you also agree that with respect  
2           to the qualitative judgments, that that is a role that  
3           the Commission plays, that the Commissioners sitting as  
4           a Commission plays?  Reviewing the plans, approving the  
5           plans, a part of that is making a qualitative judgment  
6           about the plans?

7           A.    I don't know that for a fact.  I don't know  
8           who does that.

9           Q.    Were you involved in the staff audit, the  
10          comprehensive audit that was just entered into the  
11          record by counsel for the PSC?

12          A.    No.  Another team within the Auditing and  
13          Performance Analysis Division did that.  I had nothing  
14          to do with that.

15          Q.    As part of your audit responsibilities, do you  
16          look and see whether the plan comports with the  
17          Commission orders on hedging?

18          A.    No.  I take the plan as it is and just verify  
19          that the utility is complying with the management plan.

20          Q.    Okay.  I had asked the witness for Progress  
21          earlier to point to the numerical assessment of an  
22          acceptable level of price risk for natural gas found in  
23          the risk management plan.  Assuming that that's one of  
24          the criteria that is in one of the hedging orders, you  
25          would not take that plan and say, "Okay.  Did they come

1 up with a numerical assessment," correct?

2 A. That was not within the scope of my audit  
3 service request. It didn't go into that, and I did not  
4 do that.

5 Q. Okay. And at the end of the day, there was a  
6 slight error, I guess, that you discovered on the books;  
7 right?

8 A. That is correct.

9 Q. Okay. Given all of the questions about the  
10 order of magnitude of the losses that these plans have  
11 incurred in 2009 and 2010, I'm a little embarrassed to  
12 ask you, but the total amount of the trade invoice that  
13 you found in error was \$252; correct?

14 A. It was a small amount; that's right.

15 MR. MOYLE: Thank you. That's all I have.

16 CHAIRMAN GRAHAM: Thank you, sir. Do I have  
17 any cross from any of the utilities?

18 MR. BURNETT: No, sir.

19 CHAIRMAN GRAHAM: Sounds good. Before I  
20 forget, I'm going to enter this document that was  
21 just passed out as Exhibit 70 for identification  
22 purposes.

23 MS. BENNETT: Thank you. And that is the  
24 Audit Service Request of May 7th, 2010.

25 CHAIRMAN GRAHAM: That's correct.

1 (Exhibit 70 was marked for identification.)

2 MR. MOYLE: We have no objection to it being  
3 entered into evidence.

4 CHAIRMAN GRAHAM: We need to go to the  
5 Commission board. Do any of the Commissioners have  
6 any questions? No questions here.

7 Any redirect?

8 MS. BENNETT: No redirect. I'm ready to enter  
9 the exhibits into the record.

10 CHAIRMAN GRAHAM: Sounds good. You want to  
11 enter just Number 70; correct?

12 MS. BENNETT: I would ask that Exhibit 30 on  
13 the Comprehensive Exhibit List, page 4, be entered  
14 into the record, as well as Exhibit Number 70.

15 CHAIRMAN GRAHAM: Enter Exhibit 30 and enter  
16 Exhibit 70. Do we have any objections? Seeing  
17 none, so moved.

18 (Exhibits 30 and 70 were admitted into the  
19 record.)

20 MS. BENNETT: May this witness be excused?

21 CHAIRMAN GRAHAM: Do we have any other  
22 questions or concerns for this witness? Seeing  
23 none, yes, sir, you're excused. Thank you very  
24 much for your time.

25 Are there any additional exhibits that need to

1 be entered into the record?

2 MS. BENNETT: Staff does have additional  
3 testimony and exhibits when you're ready for us to  
4 enter those into the record.

5 CHAIRMAN GRAHAM: Well, that's true. We've  
6 got three more people. Let's go with them.

7 MS. BENNETT: Commissioner, Kathy L. Welch has  
8 been excused. We would ask that her testimony be  
9 entered into the record as though read.

10 CHAIRMAN GRAHAM: Let's enter Ms. Welch's  
11 prefiled testimony into the record as if it were  
12 read.

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DIRECT TESTIMONY OF KATHY L. WELCH

**Q. Please state your name and business address.**

A. My name is Kathy L. Welch and my business address is 3625 N.W. 82nd Ave., Suite 400, Miami, Florida, 33166.

**Q. By whom are you presently employed and in what capacity?**

A. I am employed by the Florida Public Service Commission as a Public Utilities Supervisor in the Office of Auditing and Performance Analysis.

**Q. How long have you been employed by the Commission?**

A. I have been employed by the Florida Public Service Commission since June, 1979.

**Q. Briefly review your educational and professional background.**

A. I have a Bachelor of Business Administration degree with a major in accounting from Florida Atlantic University and a Masters of Adult Education and Human Resource Development from Florida International University. I have a Certified Public Manager certificate from Florida State University. I am also a Certified Public Accountant licensed in the State of Florida, and I am a member of the American and Florida Institutes of Certified Public Accountants. I was hired as a Public Utilities Analyst I by the Florida Public Service Commission in June of 1979. I was promoted to Public Utilities Supervisor on June 1, 2001.

**Q. Please describe your current responsibilities.**

A. Currently, I am a Public Utilities Supervisor with the responsibilities of administering the District Office and reviewing work load and allocating resources to

1 complete field work and issue audit reports when due. I also supervise, plan, and conduct  
2 utility audits of manual and automated accounting systems for historical and forecasted  
3 data.

4  
5 **Q. Have you presented testimony before this Commission or any other**  
6 **regulatory agency?**

7 **A.** Yes. I have testified in several cases before the Florida Public Service  
8 Commission. Exhibit KLW-1 lists these cases.

9  
10 **Q. What is the purpose of your testimony today?**

11 **A.** The purpose of my testimony is to sponsor the staff audit report of Florida Power  
12 & Light Company (FPL or Utility) which addresses the Utility's August 1, 2009 through  
13 July 31, 2010 hedging activities. This audit report is filed with my testimony and is  
14 identified as Exhibit KLW-2.

15  
16 **Q. Was this audit prepared by you or under your direction?**

17 **A.** Yes, it was prepared under my direction.  
18

19 **Q. Please describe the work you performed in these audits.**

20 **A.** We obtained a summary schedule of all financial futures, options and swaps that  
21 were executed by the Utility for the 12-month period ended July 31, 2010. We  
22 reconciled the monthly gain or loss to the Company's filing. We traced these gains and  
23 losses to the calculation of the average unit cost of gas and oil and to FPL's books and  
24 records. FPL's accounting treatment of hedging gains and losses was verified to be in  
25 compliance with Commission Order PSC-02-1484-FOF-EI, issued October 30, 2002.

1           We reviewed the Company's external auditor's reports and workpapers on  
2 derivative activity for the 12-month period ended July 31, 2010. We confirmed that  
3 FPL's accounting treatment is consistent with applicable FASB statements.

4           We obtained the monthly level of hedging gains and losses and verified that they  
5 are consistent with the requirements of Commission orders and FPL's Hedging Plans.  
6 We traced the monthly hedging gains and losses to the supporting documents that were  
7 used to prepare FPL's filing. FPL provided the "Derivative Settlements-All Instruments"  
8 report that shows the calculation of all gains and losses by deal options and swaps made  
9 by each counter party. This report was traced to the filing. A sample of the September  
10 2009 natural gas and heavy oil transactions were selected for testing. The deals sampled  
11 were traced to confirmation letters, bank invoices, deal forms, and purchase statements.  
12 In addition, the settle price was traced to Platts and NYMEX market data. In order to  
13 trace the September 2009 gains and losses to the general ledger, account 151 Fuel  
14 Inventory, we first reconciled the gains and losses to the "Monthly Gas Closing Report"  
15 and "Allocation of Oil Financing Instrument" report, which, in turn, were reconciled to  
16 the general ledger.

17           We obtained the 2009 Risk Management and the Planned Position Strategy (PPS)  
18 procedures, which show the hedged targets by months. The natural gas and the heavy oil  
19 actual percentage hedged were compared to the target hedged and verified to the specified  
20 tolerance bands. If the actual percent hedged of a particular month was not within the  
21 tolerance band, then a rebalance would be required. The rebalancing was implemented by  
22 either purchasing or selling the swaps to meet the established targets. We verified and  
23 recalculated the percent of hedge amounts and the rebalancing by month. No exceptions  
24 were noted.

25           We verified that the Value at Risk Activities were within the transaction limits and

1 authorization as stated in the Risk Management Plans.

2 We reviewed all of the invoices related to commission costs. No exceptions were  
3 noted.

4 We obtained an organizational chart and identified new employees since August 1,  
5 2009. We obtained FPL's procedures related to the separation of duties and determined  
6 the change in the procedures from August 1, 2009 to July 31, 2010. We also compared  
7 the procedures and the employees to the prior audit to determine if any changes had been  
8 made.

9 We obtained a detail report from FPL's general ledger detailing the source of the  
10 transactions. A sample of the various charges was reviewed to determine if the charges  
11 were incremental in nature compared to prior years. We also reconciled the charges to  
12 invoices, expense reports and payroll reports. No exceptions were noted.

13

14 **Q. Does the staff audit report of Florida Power & Light Company which**  
15 **addresses the Utility's annual Hedging Information Report and marked as Exhibit**  
16 **DDB-1 contain any findings noting any errors or exceptions taken by staff?**

17 A. No it does not.

18

19 **Q. Does this conclude your testimony?**

20 A. Yes it does.

21

22

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25

1 MS. BENNETT: And Ms. Welch sponsored Hearing  
2 Exhibits 31 and 32 found on page 4 of the  
3 Comprehensive Exhibit List. We would ask that  
4 those be entered into the record at this time.

5 CHAIRMAN GRAHAM: Exhibits 31 and 32, is there  
6 any objections to either one of those exhibits?  
7 Seeing none, let them be entered into the record.

8 (Exhibits 31 and 32 were admitted into the  
9 record.)

10 MS. BENNETT: Staff sponsored Donna D. Brown,  
11 an audit witness. She has been excused. We would  
12 ask that her testimony, prefiled testimony be  
13 entered into the record as though read.

14 CHAIRMAN GRAHAM: Let's enter Ms. Brown's  
15 record into the -- let's enter Ms. Brown's prefiled  
16 testimony into the record as if it were read.

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## DIRECT TESTIMONY OF DONNA D. BROWN

1

2 **Q. Please state your name and business address.**

3 A. My name is Donna D. Brown, and my business address is 2540 Shumard Oak  
4 Boulevard, Tallahassee, Florida, 32399.

5

6 **Q. By whom are you presently employed and in what capacity?**

7 A. I am employed by the Florida Public Service Commission as a Professional Accountant  
8 in the Office of Auditing and Performance Analysis.

9

10 **Q. How long have you been employed by the Commission?**

11 A. I have been employed by the Commission since February 2008.

12

13 **Q. Briefly review your educational and professional background.**

14 A. I graduated from Florida A&M University's School of Business & Industry in 2006 with  
15 a Bachelor of Arts degree in accounting.

16

17 **Q. Please describe your current responsibilities.**

18 A. Currently, I am a Professional Accountant with the responsibilities of managing  
19 regulated utility financial audits. I am also responsible for creating audit work papers and  
20 programs to meet the specific purpose of each audit.

21

22 **Q. Have you presented testimony before this Commission?**

23 A. No.

24

25 **Q. What is the purpose of your testimony today?**

1 A. The purpose of my testimony is to sponsor the staff audit report of Gulf Power Company  
2 (Gulf Power, the Utility, or the Company) addressing the Utility's August 1, 2009 through July  
3 31, 2010 hedging activities. This audit report is filed with my testimony and is identified as  
4 Exhibit DDB-1.

5  
6 **Q. Was this audit prepared by you or under your direction?**

7 A. Yes, it was prepared by me and other audit staff under my direction,  
8

9 **Q. Please describe the work you performed in this audit.**

10 A. We reviewed the Risk Management Plan for Fuel Procurement filed by Gulf Power with  
11 this Commission on August 4, 2009 in Docket No. 090001-EI. We compared pricing strategy  
12 included in the Risk Management Plan to the Hedging Reports for the 12 months ended July 31,  
13 2010 as filed by the Utility on March 11, 2010 and August 13, 2010.

14 We obtained the Utility's supporting detail of the hedging settlements for the 12 months  
15 ended July 31, 2010. The support documentation was traced to the general ledger transaction  
16 detail for Account No. 547-4. We reviewed the compliance of the hedging settlements to the  
17 risk management plan and verified that the accounting treatment for the hedging transactions as  
18 well as any transaction costs were consistent with the criteria established in Docket No. 011605-  
19 EI.

20 We reviewed the quantity limits, individual and group transaction limits and  
21 authorizations as well as the procedures for separating duties related to the hedging program as  
22 set forth in the Risk Management Plan. We obtained the Utility's analysis of the monthly  
23 percent of fuel hedged in relation to fuel burned. We reviewed the applicable average price of  
24 the financial transactions settled and the average costs of natural gas purchased for the 12  
25 months ending July 31, 2010. We noted compliance of the hedging transactions to the

1 Risk Management Plan.

2 We reviewed the Coal Sales Agreement (CSA) and all court issued orders from the  
3 United States District Court for the Southern District of Illinois and the United States District  
4 Court for the Northern District of Florida – Pensacola Division. We traced the litigation-related  
5 adjustments to fuel costs from the monthly-filed Schedule A-1 to the general ledger and to the  
6 supporting invoices from 2005 through July 2010. We noted that the United States District  
7 Court for the Northern District of Florida – Pensacola Division granted Gulf Power’s Motion for  
8 Partial Summary which stated that Coalsales LLC breached the CSA. The trial was held on  
9 Tuesday, February 9, 2010. No orders awarding damages have been issued as of September 21,  
10 2010. We determined that the litigation costs appeared to be reasonable and prudent.

11

12 **Q. Does the staff audit report of Gulf Power Company which addresses the Utility’s**  
13 **annual Hedging Information Report and marked as Exhibit DDB-1 contain any findings**  
14 **noting any errors or exceptions taken by staff?**

15 A. No it does not.

16

17 **Q. Does this conclude your testimony?**

18 A. Yes it does.

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1 MS. BENNETT: And then Ms. Brown sponsored  
2 Hearing ID Exhibit 33. We would ask that that be  
3 moved into the record at this time.

4 CHAIRMAN GRAHAM: Exhibit 33, do we have any  
5 objections to that exhibit? Seeing none, let's  
6 move that into the record as well.

7 (Exhibit 33 was admitted into the record.)

8 MS. BENNETT: Finally, we have Daniel  
9 Acheampong. He has been excused from the  
10 proceeding, and we would ask that his testimony,  
11 prefiled testimony be entered into the record as  
12 though read.

13 CHAIRMAN GRAHAM: Let's just go ahead and  
14 enter that into the record as if it were read.  
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DIRECT TESTIMONY OF DANIEL ACHEAMPONG

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**Q. Please state your name and business address.**

A. My name is Daniel Acheampong and my business address is 4950 West Kennedy Blvd., Suite 310, Tampa, Florida 33609.

**Q. By whom are you presently employed and in what capacity?**

A. I am employed by the Florida Public Service Commission as a Regulatory Analyst II in the Office of Auditing and Performance Analysis.

**Q. How long have you been employed by the Commission?**

A. I have been employed by the Florida Public Service Commission since June 1, 2007.

**Q. Briefly review your educational and professional background.**

A. I received a Bachelor of Arts in Economics in 1997 from the University of Ghana, a Bachelor of Science with a major in Accounting in 2003 and a Masters in Accounting in 2006 from the University of South Florida. I am also a Certified Public Accountant and an Accounting Instructor at Strayer University.

**Q. Please describe your current responsibilities.**

A. I perform conservation, environmental, hedging, and staff-assisted rate case audits. Also, I perform various other financial audits of electric, gas, and water and wastewater utilities.

**Q. Have you previously presented testimony before this Commission?**

A. No.

1 **Q. What is the purpose of your testimony today?**

2 A. The purpose of my testimony is to sponsor the staff audit report of Tampa Electric  
3 Company (TECO, the Company, or the Utility) which addresses the Utility's August 1, 2009  
4 through July 31, 2010 hedging activities. The audit report is filed with my testimony and is  
5 identified as Exhibit DA-1.

6  
7 **Q. Was this audit prepared by you or under your direction?**

8 A. Yes, it was prepared by me.  
9

10 **Q. Please describe the work performed in this audit.**

11 A. I reviewed the information presented in the Utility's Hedging Information Reports that  
12 were filed on April 1, 2010, and August 16, 2010.

13 I interviewed TECO representatives concerning derivative and hedging activities with its  
14 affiliates. Additionally, I reviewed TECO's policy regarding separation of transaction costs  
15 with its affiliates. The Utility declared that it does not participate in any financial hedges with  
16 any of its affiliates. However, TECO hedged gas for both TECO and Peoples Gas (PGS), a  
17 subsidiary of TECO. I reviewed the general ledger for TECO derivatives and hedging activities  
18 as well as the Settled Report. I found that TECO and PGS maintain separate portfolios for their  
19 hedging activities and the transaction costs are separate.

20 I scheduled all financial futures, options and swap contracts that were closed by the  
21 Utility from August 1, 2009, through July 31, 2010. I reviewed the listing and selected samples  
22 for further testing. I reviewed fourteen contracts with the International Swap Dealers  
23 Association Inc., seven contracts with Credit Support and thirty-two confirmation contracts. I  
24 also reconciled the Settlement Report to the Utility's general ledger and supporting invoices. I  
25 tested invoices for the proper amount, proper approval procedures and proper periods. I

1 reviewed the internal audit report and workpapers for the year 2009. I confirmed that the  
2 accounting treatment is consistent with applicable FASB statements.

3 I audited one hundred percent of hedging gains and losses. I recalculated the gains and  
4 losses by multiplying the traded volume by the differences between fixed price and settlement  
5 price (NYMEX price). I reconciled the calculated monthly gains and losses to the Utility's  
6 general ledger. I traced general ledger numbers to the Mark to Market Report and supporting  
7 journal entries. I reconciled the general ledger amounts and the Mark to Market Report to the  
8 Utility's filing. I verified that the Utility's accounting treatment of hedging gains and losses  
9 complies with Commission Orders and Rules. However, I did discover an error in the  
10 Company's filing relating to the December 2009 numbers. Audit Finding 1 addresses this issue.

11 I reviewed the TECO hedging plan for 2009 and 2010. I obtained the actual  
12 consumption from Bayside, Polk, City of Tampa, and the Big Bend power plants. I recalculated  
13 the total volumes and reconciled them to the Utility's filing. I recalculated the hedged  
14 consumption from the Utility's Settled Report. I recalculated the hedged percentage and  
15 compared it to allowable minimum and maximum limits prescribed by the Risk Management  
16 Plan on a monthly basis.

17 I reviewed the TECO Risk Management Plan regarding transaction limits. I selected a  
18 sample from the Mark to Market Report and compared it to the established credit limits for  
19 counterparties shown in the Credit Exposure Report. I compared the selected sample to the  
20 individual transactional limit and found the company followed its plan. I also compared the  
21 selected sample to the Utility's preset limits.

22 I reviewed the Risk Management Plan and interviewed key personnel concerning their  
23 activities as they related to the Risk Management Plan. I followed up with observations. I  
24 determined that there are adequate separations among the Front Office, Middle Office, and Back  
25 Office.

1 **Q. Please review the audit findings in this audit report, DA-1, which addresses the**  
2 **hedging activities of TECO from August 1, 2009 through July 31, 2010.**

3 A. There is one audit finding in the audit report. TECO filed its hedging results on April 1,  
4 2010, and August 16, 2010, for the 2009 hedging year and the first half of 2010, respectively. I  
5 determined that the gains and losses amount, the hedged volume, as well as the consumption  
6 quantity in the filing for December 2009 did not reconcile to the Utility's general ledger.  
7 However, the general ledger and the Utility's Settled Report did reconcile for December 2009.  
8 It was determined that the Utility erroneously entered January 2010 numbers as December 2009  
9 in its filing. This affected TECO's gains and losses, consumption, and hedged volume amounts.  
10 The Utility agreed to file a revised Filing for the 2009 hedging year. A proposed revised filing  
11 is included in the audit workpapers.

12

13 **Q. Does this conclude your testimony?**

14 A. Yes.

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1 MS. BENNETT: Staff has Exhibit 34 for  
2 Mr. Acheampong. We would ask that it be moved into  
3 the record as though read -- I mean moved into the  
4 record at this time.

5 CHAIRMAN GRAHAM: Is there any objection to  
6 moving Exhibit 34 into the record? Seeing none,  
7 let's move that into the record.

8 (Exhibit 34 was admitted into the record.)

9 MS. BENNETT: I'm looking to Progress Energy.  
10 There was an additional exhibit that they were  
11 proposing to enter into the record on the new  
12 factors.

13 MR. BURNETT: Mr. Chair, my understanding from  
14 Ms. Triplett is that we're still finalizing that  
15 exhibit, so we don't have it prepared at this time.  
16 Let me see if I can get any -- Ms. Triplett tells  
17 me any minute, so I'm not sure what that means.

18 CHAIRMAN GRAHAM: We'll try to drag our feet  
19 as much as possible.

20 MR. BURNETT: Thank you, sir.

21 MS. BENNETT: During the break -- to explain  
22 this, during the break the parties got together and  
23 discussed the reprojected numbers that will be  
24 coming from Progress Energy, and Progress has  
25 agreed to provide us with new dollar amounts for

1 Exhibits 8 -- I mean for Issues 8, 9, 10, and 15.  
2 And so that is what they are preparing and going to  
3 provide us shortly with those new numbers.

4 They are high level numbers. There won't be a  
5 new completed reprojection until November the 10th,  
6 but these are better estimates than the  
7 September 1st filing, and those should be available  
8 to us shortly.

9 CHAIRMAN GRAHAM: Do we have -- what are we  
10 going to do with Exhibits 65 and 66? I don't have  
11 them being entered into the record.

12 MS. HELTON: Mr. Chairman, my records show  
13 that they were entered into the record.

14 CHAIRMAN GRAHAM: Okay. Now it's entered  
15 twice.

16 Well, if we're waiting on those exhibits,  
17 let's go ahead and take a 10-minute break and see  
18 what we come up with. We'll be back about 10 after  
19 3:00.

20 (Short recess.)

21 CHAIRMAN GRAHAM: All right, guys. Let's move  
22 forward.

23 Ms. Bennett, do you have your exhibit yet?

24 MS. BENNETT: I understand it's on the way. I  
25 would suggest that we go ahead with closing

1 arguments at this time and then enter that last  
2 exhibit into the record.

3 CHAIRMAN GRAHAM: Yep. That sounds like a  
4 winner to me. Let's start with the closing  
5 arguments, and let's start over here to my left  
6 with Progress.

7 MR. BURNETT: Mr. Chair, if I may, typically  
8 as the party carrying the burden, the utilities get  
9 to go first in opening and last in closing, so I  
10 would respectfully request that I go last if that's  
11 your pleasure, sir.

12 CHAIRMAN GRAHAM: Sure.

13 MR. BURNETT: Thank you.

14 CHAIRMAN GRAHAM: You want to be the last  
15 utility, is that what you're saying, or you want  
16 for the utilities to be last?

17 MR. BURNETT: The utilities to be last, sir,  
18 after the intervenors give theirs.

19 CHAIRMAN GRAHAM: Is that normal?

20 MR. BURNETT: Yes, sir.

21 MS. BENNETT: Yes.

22 MR. MOYLE: In criminal court I think it is.

23 (Laughter.)

24 MS. BENNETT: I think I told you wrong  
25 earlier. It would start with the intervenors first

1 and then go to the utilities.

2 CHAIRMAN GRAHAM: See how you are? This is my  
3 first time up here.

4 MS. BENNETT: Did they warn you about me?

5 CHAIRMAN GRAHAM: All right. Let's start with  
6 Public Counsel.

7 MR. BECK: If I may, Mr. Chairman, I think  
8 we've agreed to go the other way.

9 CHAIRMAN GRAHAM: Okay. Who wants to go  
10 first?

11 MR. BREW: Mr. Chairman, it appears that I'm  
12 going to start, only because nobody else wants to.

13 And I would like to just briefly address the  
14 Crystal River 3 outage.

15 CHAIRMAN GRAHAM: I don't mean to cut you off,  
16 but before you get started, I'm going to try to  
17 limit each one of you guys to 15 minutes. So as we  
18 get closer to about 14 minutes into it, we need to  
19 wrap it up.

20 MR. BREW: I can safely say that I won't take  
21 that much time, and I'll let Mr. Moyle take the  
22 rest.

23 I thought I would start by just talking a  
24 little bit about what this issue is not about.  
25 It's not about the Commission's jurisdiction. You

1 have unquestioned jurisdiction to make a decision  
2 regarding this issue. It's not about the burden of  
3 proof to establish the prudence of cost recovery.  
4 That doesn't change. It stays with Progress  
5 Energy. That's not an issue. It's not about the  
6 prudence of the underlying replacement power cost  
7 or the prudence of the Crystal River 3 outage.  
8 That's been -- the Commission has already ruled  
9 that that's going to be addressed in a spinoff  
10 proceeding. So none of those things are what we're  
11 talking about here.

12 What we're talking about in Issue 1D is a  
13 matter of discretion with the Commission, which is  
14 whether to vote to allow interim recovery at  
15 consumer expense of the excess Crystal River 3  
16 replacement power cost, when it has already been  
17 decided to conduct a second proceeding.

18 And Mr. Moyle talked earlier today in his  
19 opening statement about the fact that the  
20 Commission has pretty much spoken on this in a  
21 prior Florida Power Corp. case back in '97 and '98  
22 when it discussed that while in practice, it may  
23 have voted to allow interim recovery pending  
24 prudence in the past, it actually expected to see  
25 some kind of a filing demonstration that the cost

1 would be recoverable before allowing it to be  
2 recovered again.

3 Here that issue is the exactly what we're  
4 talking about, only we don't have that showing.  
5 And from our perspective, the issue really boils  
6 down to whether or not the Commission in addressing  
7 this issue at this time, with the economy as it is,  
8 is going to put consumers first or the utility  
9 first. Since we also agree that dollars, the  
10 prudence are going to be addressed in the separate  
11 docket and subject to interest one way or the  
12 other, the question is whether or not you saddle  
13 the consumers with those dollars now or they're  
14 collected from consumers if and only if those costs  
15 are determined in the subsequent docket to be  
16 prudent. It's pretty much as simple as that.

17 And I would note that these costs are  
18 material. We're talking, even with the revised  
19 estimates, over \$100 million, that those costs are  
20 the only reason that Progress's proposed fuel  
21 factors in its September filing would result in an  
22 increase in the fuel factor for consumers. And so  
23 these are material dollars that have a direct  
24 impact on consumers.

25 It is not so much a -- it is not a legal

1 judgment for the Commission. It is a discretionary  
2 matter for you to decide based on the circumstances  
3 here. And based on the circumstances that exist  
4 now with the pendency of the case, certainly it's  
5 PCS's view that the approach should be to take care  
6 of consumers first and then let the dollars flow  
7 through once the prudence case has been decided.  
8 And that's really the only thing I wanted to  
9 address on that.

10 If I may, and subject to being corrected by  
11 Mr. Burnett, I thought I would give a quick summary  
12 of what we had talked about at the break on the  
13 revisions to the fuel factor.

14 CHAIRMAN GRAHAM: Sure.

15 MR. BREW: And what the parties had discussed  
16 was that in lieu of the proposed fuel factors in  
17 Progress's September filing, that the updated  
18 factors that are shown on Exhibit 65 would be  
19 substituted, with the understanding that those  
20 numbers would be further updated before  
21 November 10th, and that Progress would be sharing  
22 that information with the parties in an effort to  
23 hopefully reach a stipulation on those revised  
24 factors by that time.

25 And that's all I have. Thank you.

1 CHAIRMAN GRAHAM: Thank you, sir. Who wants  
2 to be next? Mr. Moyle.

3 MR. MOYLE: Thank you, Mr. Chairman. And with  
4 respect to Mr. Brew's last point, I think after our  
5 closing arguments, Progress may have an exhibit  
6 that will come in, and we just want to make sure  
7 that we're on the same page with respect to show  
8 that's going to go forward on resolving the revised  
9 fuel forecast.

10 Thank you for your attention today, and thank  
11 you for the opportunity to present some closing  
12 arguments. Let me take first the issue that we  
13 spent quite a bit of on, which was the hedging  
14 issue. As I stated in the opening, that is an  
15 important issue for consumers, in that there are a  
16 lot of dollars that flow through that provision.  
17 This is the first year that I've been involved in  
18 the fuel case, and in reviewing all the material,  
19 it caught my attention that when you look at the  
20 order of magnitude of losses, Progress Energy, if  
21 you combine the 2009 and 2010 losses, it's over 700  
22 million, which is a lot.

23 And Commissioner Skop's point is a fair point  
24 to say, well, yeah, the markets are going down.  
25 You know, we don't hear you when the markets are

1 going up and you're in the money. But given some  
2 of the conversation and the exhibit that we used  
3 with the Gulf witness that showed the markets  
4 moving up and down and there were only five months  
5 where the customers were in the money, FIPUG would  
6 suggest that it's probably appropriate to have a  
7 look at the whole hedging program.

8 And in terms of moving forward, you know, the  
9 utilities are trying to protect against fuel  
10 volatility. That's something -- the consumers  
11 would like to see that protection. But it might be  
12 something as you move forward, whether it's a  
13 workshop or a generic look at it, that there can be  
14 a review of it so to the extent that there's an  
15 opportunity, you know, to come in and hedge gas  
16 when it's at a historic low, I think that to the  
17 extent that the consumers were part of that  
18 conversation and could be convinced that made  
19 sense, if we were in that discussion and decision  
20 and used the phrase "skin in the game" on that  
21 issue, I think probably if we said yes, we think  
22 it's appropriate to hedge X percent at this number,  
23 we would be very -- we wouldn't be in a good  
24 position to come back later and do the old  
25 proverbial Monday morning quarterbacking.

1           And it sounded like based on the review of the  
2 plans, the auditor, that it's a little bit of a  
3 process that -- it's somewhat on autopilot, in  
4 terms of here's the plan. I don't think it has  
5 changed a whole lot over the years, and they follow  
6 the plan consistently. But I'm not sure that  
7 consumers are getting the best bang for their buck  
8 out of the hedging program.

9           So respectfully, with regard to the hedging  
10 issue, we think that a good resolution of that  
11 would be to have another look at that, a closer  
12 look at it to see if there's not some opportunities  
13 that we might be able to realize so that consumers  
14 are part of the conversation. That's not  
15 necessarily like we had today where we're kind of  
16 poking holes, but maybe there's a collective way  
17 that we can move forward. And I think part of  
18 that, the first part would be some kind of a  
19 workshop, a Commission workshop on hedging as you  
20 move forward.

21           You know, Commissioner Skop mentioned that  
22 he's a short-timer and you will have two new  
23 Commissioners. That's a top that is -- it's not  
24 something that's talked about every day. It's a  
25 little bit of a sleeper, but it's important. So

1 with respect to the hedging, we would ask that you  
2 consider taking a closer look at it as you move  
3 forward.

4 The second issue that we spent some time  
5 talking about is the Crystal River 3 issue and the  
6 recovery of costs associated with replacement  
7 power. And FIPUG would suggest there's two good  
8 reasons why you ought to say that consumers should  
9 be able to keep the money in their pockets until  
10 Progress goes forward with its case to show  
11 prudence.

12 The first good reason is that it's within your  
13 discretion. There are previous orders that say  
14 it's a discretionary call that you all can make.  
15 Given that the World Series is going on, I would be  
16 remiss if I didn't suggest that to the extent  
17 there's a question as to should the utilities get  
18 the money or should the consumers keep the money,  
19 that that question, the tie goes to the consumers,  
20 and that the consumers should be able to keep their  
21 hard-earned money, particularly before you have any  
22 demonstration of prudence.

23 Progress has filed a separate pleading saying  
24 we need to have a look at this. We think there are  
25 going to be legitimate questions of prudence in

1 terms of the decisions and the timing and look  
2 forward to that conversation, but would suggest  
3 respectfully that you not go ahead and award the  
4 moneys in advance. I think roughly, based on some  
5 of the testimony and the calculations, it would be  
6 about three bucks per month for your residential  
7 consumers that are consuming about 1,000 megawatts  
8 a month, which is not an insignificant amount of  
9 money.

10 So we would urge that you exercise your  
11 discretion to indicate that the money should not be  
12 recovered until after the prudence hearing. That's  
13 the one reason, your discretionary ability.

14 The second reason is that your orders act as  
15 precedent. They set direction. They're followed.  
16 They should be followed. And this is unique, in  
17 that you had the same situation before you  
18 previously. Crystal River 3, the same plant was  
19 out. They had to go get replacement power. And in  
20 that order, which I cited to you -- it's the  
21 97-0359 order -- you said, "Well, maybe they didn't  
22 know exactly what we were expecting of them, but  
23 let's be clear. In the future, we're going to  
24 require that if they want to come in and get the  
25 money before they show prudence, they're going to

1 have to put on some evidence that the actions or  
2 events that gave rise to having to go get that  
3 replacement power, that the underlying costs are  
4 reasonable, and some evidence with respect to the  
5 reasons for the outage.

6 Now, they didn't have hardly any evidence on  
7 that, and I haven't seen anything -- I asked the  
8 witness with respect to the little bit of testimony  
9 they had about the outage if there was anything in  
10 her testimony to affirmatively demonstrate prior  
11 the approval for recovery that the actions or  
12 events that gave rise to the need for the recovery  
13 and the underlying costs were reasonable, and she  
14 said, "No, there's nothing in my testimony." And  
15 your order I think suggests that it would be  
16 prefiled testimony.

17 Now, Mr. Burnett, he may -- I don't know this,  
18 but he's going in a second, so I didn't get a  
19 chance to hear what he was going to say, but he  
20 might point to a document somewhere or something  
21 that says, well, you know, we didn't cut the hole  
22 big enough for the generator to go in, and that was  
23 the reason why. Respectfully, I don't think, even  
24 if there's something like that out there, that  
25 that's sufficient.

1           The way business has been going at this  
2 Commission is, witnesses come in, and they file  
3 their testimony. To the extent they have exhibits,  
4 they reference the exhibits largely in the  
5 documents, in the testimony. So if -- I don't  
6 think I'll have a chance for rebuttal, but if  
7 there's an, oh, let me show you line 32 on an  
8 exhibit, I would argue even if that's there, it's  
9 not sufficient. It's not sufficient to demonstrate  
10 what you said in your order about an affirmative  
11 demonstration that the events or actions giving  
12 rise to the need for recovery and the underlying  
13 costs are reasonable.

14           So we would suggest that you don't allow them  
15 to have early recovery for two reasons: Exercise,  
16 with all due respect, your discretion in a way that  
17 lets the consumers hold on to the money for the  
18 time being; and secondly, that you've already laid  
19 your groundwork. You've set your order out there,  
20 and they have not complied with the order.

21           So that would be closing argument of FIPUG.  
22 If you're inclined to accept their argument, which  
23 we're not suggesting that you should, but if you  
24 were, in the spirit of all the discussion of  
25 hedging, you know, give them 20 percent, give them

1 25 percent. Don't give them 100 percent. Let the  
2 consumers keep those moneys in their pocket. So  
3 you may have that discretion because of the  
4 previous orders, but with that, Mr. Chairman, I  
5 would close and thank you again for your time and  
6 attention.

7 CHAIRMAN GRAHAM: Thank you, sir. Public  
8 Counsel?

9 MR. BECK: Thank you, Mr. Chairman.

10 Commissioners, in the short opening statement  
11 we made, I mentioned that this is really the worst  
12 combination for customers with respect to the  
13 extended outage at Crystal River 3. Customers are  
14 saddled with the very high capital costs associated  
15 with the nuclear plant, but they not receiving the  
16 offsetting benefits of the lower fuel costs that  
17 you would expect.

18 I agree with all the comments made by our  
19 fellow intervenors regarding the legal standard,  
20 that Progress has simply made no showing with  
21 respect to the cause of the outage and whether  
22 prudence is an issue or not. They will have that  
23 opportunity in the spinoff. They will be held  
24 harmless. If at that time they are able to prove  
25 the prudence of the actions that led to the

1 extended outage, then so be it. They collect the  
2 revenues, and they collect it with interest.

3 But these are very, very rough times for  
4 customers. I've just finished two weeks of  
5 attending six customer meetings in the Aqua case in  
6 various places throughout the state. There have  
7 been hundreds upon hundreds of customers that  
8 attended the meetings, and Commissioner Skop was at  
9 these meetings. We heard heartbreaking stories  
10 about people being out of work, their hours have  
11 been reduced from what they normally have. We  
12 heard customers say this is the second year in a  
13 row they're not going to receive any raise in  
14 Social Security benefits, and there are many people  
15 on fixed income. This is the worst time, I think,  
16 to saddle customers with an expense before it has  
17 been proved to be prudent.

18 So we agree with our fellow intervenors. We  
19 ask you not to give them the recovery ahead of  
20 time. Even when they prove the prudence of the  
21 actions led to the outage, so be it, but we would  
22 ask you not to give to it them before you've done  
23 that. Thank you.

24 CHAIRMAN GRAHAM: Anybody else?

25 CAPTAIN McNEILL: Very briefly, thank you for

1 the opportunity to address you. And I just want to  
2 say that the Federal Executive Agency supports the  
3 comments that have been made by our fellow  
4 intervenors. This is an important issue, which is  
5 why we come and attend the hearings. It matters to  
6 our fuel costs. It matters to our utility costs.  
7 So we thank you for the time and attention that you  
8 spend on these issues, and we thank the staff and  
9 the intervenors for their work on this too.

10 CHAIRMAN GRAHAM: Thank you. Okay. Have you  
11 guys come up with your hierarchy of who's going  
12 first?

13 MR. BURNETT: Yes, sir. Thank you. I  
14 appreciate your indulgence.

15 Commission, you know, we heard a lot of sound  
16 bites, are you going to vote for the utility or are  
17 you going to vote for the customer, and we heard  
18 some heart breaking stories, it's true. The  
19 economy is bad, no doubt about it. And we even  
20 heard a suggestion, hey, pick a percentage, throw a  
21 dart at it, I guess, and whatever percentage feels  
22 right, pick one.

23 That's not the way this Commission does  
24 business. This Commission says, what's sound  
25 regulatory policy, what provides regulatory

1           certainty, what's our precedent, what's our  
2           procedure, what makes sense to balance the  
3           regulatory compact. That's how this Commission  
4           does business.

5           The question here is whether or not PEF from  
6           binding precedent and good regulatory policy can  
7           have interim recovery for the CR3 replacement costs  
8           prior to the PSC determining prudence.

9           Now, you've heard several things, but  
10          Mr. Moyle started out with two issues. He says  
11          first there's a 1997 order that says we have to  
12          make some sort of specific filing. Secondly, I  
13          heard him say this is unconstitutional, this is a  
14          taking, and it just puts the cart before the horse.  
15          I would like to start with the second one first,  
16          the unconstitutional violation of due process.

17          You know, if we believe that argument, for the  
18          past 30 years, this Commission has violated due  
19          process, has unconstitutionally taken money, and  
20          has put the cart before the horse, because that's  
21          exactly what happens every year in the fuel clause.  
22          All the money gets passed through without a  
23          prudence determination. In fact, I learned that  
24          point of law very distinctly in the coal refund  
25          case, where this Commission, in fact, two seated

1 members, did a very comprehensive order on what we  
2 do do and what we don't do in the fuel clause. To  
3 quote from that order, quoting the Seminole fuel  
4 case order, this Commission says, "As pointed out  
5 by staff, the true-up hearings have never been  
6 relied on by the Commission or any other party as  
7 the point at which prudence is actually reviewed.  
8 With rare exception, prudence has not been alleged,  
9 proven, or ruled on in those proceedings." The  
10 Commission goes on to say, "Under the new clause,  
11 recovery is immediate. There's a tradeoff under  
12 the new clause, however. The utility remains  
13 uncertain as to whether the Commission will  
14 ultimately determine its expenditures to be  
15 prudent."

16 So every single year, we're doing what  
17 Mr. Moyle is telling you is unconstitutional and  
18 putting the cart before the horse. That is not and  
19 cannot be right.

20 Interim recovery subject to refund allows for  
21 due process. Everyone has a point of entry.  
22 Everyone has their day. It is not a taking, and  
23 it's perfectly fair. In fact, this is not a  
24 foreign concept to the law. The appellate rules  
25 recognize that, look, if there's a judicial

1 decision made, someone can post a bond, can stay  
2 that proceeding, can continue to collect money so  
3 long as they can be held whole at the end, subject  
4 to refund with interest. And there's no  
5 presumption that someone is guilty until proven  
6 innocent. That's not the way the law operates.  
7 That's not the way this Commission has operated.  
8 So to suggest this is some sort of foreign concept  
9 does not square with the law or the precedent.

10 Now, as to the 1997 order Mr. Moyle has quoted  
11 to you several times, I would like to turn to the  
12 1998 order that came after that, and that's PSC  
13 Order 98-0049-FOF-EI. At the very end of that --  
14 this did in fact deal with an outage of a  
15 generation unit, and the question was what does a  
16 utility have to file if there is an extended outage  
17 that is substantial, over 5 percent. And we don't  
18 dispute that the money at issue is over 5 percent.  
19 It said, "Based on the foregoing, it is ordered  
20 that prior to interim recovery, utilities shall  
21 demonstrate in their prefiled testimony the  
22 reasonableness of the costs that exceed the  
23 threshold." That's what you ordered in that order.

24 Now, so what does this mean? What does it  
25 mean about the reasonableness? What are we trying

1 to prove? Well, I can tell you again, the coal  
2 order helps a lot with that, and I think the  
3 procedure helps a lot with that, what do we do in  
4 the Commission. Every single year, this Commission  
5 does a comprehensive view to see if costs are  
6 reasonable. And what that means, reasonable, is  
7 did you buy the right commodity at the right price  
8 at the right quantity. That's what reasonable  
9 means.

10 Prudent goes on to mean, what the Commission  
11 says in meant in the coal order, what a reasonable  
12 utility manager would have done in the light of  
13 conditions and circumstances which are known or  
14 reasonably should have been known at the time. So  
15 we don't dispute that we're going to determine  
16 prudence later in the spinoff docket.

17 So what does reasonable mean? Again,  
18 everything that we do in this fuel docket says it  
19 means did you buy the right thing at the right  
20 price and the right quantity.

21 Okay, Burnett, prove that. A schedules we  
22 file every single month that goes in this docket,  
23 price, quantity, what we bought. 423 reports that  
24 we file every month with this Commission, the price  
25 of what we bought and what quantity. The informal

1 meetings we have with staff that's usually about,  
2 hey, did you make a purchase that was out of line  
3 or in line with normal market conditions. Staff  
4 audits, they look at bookkeeping and records, but  
5 they can also look at the question of did you buy  
6 the right thing, did you enter the market at the  
7 proper time. We do depositions. We do GPIF  
8 reports. We file testimonies, E schedules, look  
9 through there. Everything about what we do in the  
10 fuel clause is, did you buy the right commodity at  
11 the right price at the right quantity. It's a  
12 comprehensive review.

13 The Commission has reserved -- as you've told  
14 us in the coal order, we reserve the right to look  
15 at prudence later, but that's what we do on the  
16 front end. So I can tell you by your practice,  
17 that's what reasonable means. By inference and  
18 everything I've seen in your order, that's what  
19 reasonable means.

20 Mr. Moyle is suggesting that prudence means  
21 something else, that I have to make a filing for  
22 this outage that says what's not reasonableness  
23 about the price, quantity, and type of commodity  
24 you bought. It's certainly not prudence. It's  
25 something in between. I don't know what that is.

1 Is that diet prudence, prudence-like? I don't know  
2 what that means.

3 So if I was going to try to make a filing that  
4 comported to what Mr. Moyle is saying I have to  
5 have in my testimony, what is it? I'll tell you  
6 this. There's never been a Commission order  
7 telling me what that is. There's not a rule  
8 telling me what that is. There's no Commission  
9 practice that tells me what that is other than what  
10 the Commission does every year in the fuel clause  
11 and what we look at every single year in the fuel  
12 clause. That's the only reasonable thing prudence  
13 can mean.

14 That's why our filing this year looks like it  
15 does every single year. We demonstrated to you  
16 that we brought the right quantities, the right  
17 prices, and the right things, and that we made  
18 reasonable transactions in the market to account  
19 for this outage. Later we're going to prove to you  
20 that we were reasonable and prudent in dealing with  
21 this outage.

22 Another thing you said in the order that  
23 followed the one Mr. Moyle quoted to you is, "An  
24 ambiguous policy would be difficult to administer  
25 and enforce. In addition, an ambiguous policy

1 leads to uncertainty by entities who must file  
2 under the fuel clause as to what the rules are.  
3 Such a policy would be subject to challenge." Your  
4 words, Commission, in the order that followed the  
5 one that Mr. Moyle cited to you.

6 So what I can say is, in closing, there has to  
7 be some logic and reason when I'm trying to figure  
8 out what I file. If I follow the intervenors'  
9 suggestion, we don't know. They can't tell you.  
10 I'll bet if you asked them right now, you would get  
11 three different answers. I'll bet we would get  
12 five different answers between what the Commission  
13 would say if we were saying this is what I think it  
14 means. But I can say objectively we've been told  
15 what it means, and it means what we do every single  
16 year.

17 Now, think about -- I'm getting close to the  
18 end, but think the illogic in the argument to say,  
19 for \$1.8 billion of fuel costs just for my company  
20 this year, reasonableness means did you buy the  
21 right quantity, right price, and the right thing,  
22 as demonstrated by all those things we do  
23 throughout the year. That's fine. But for  
24 \$110 million in outage costs, we have to do  
25 something different. We have to file

1           reasonableness-plus. I can't tell what you that  
2           means. I don't know what that looks like. It  
3           doesn't make any sense.

4                        So we've clearly demonstrated the  
5           reasonableness of our costs through the normal  
6           process of this docket. The costs are reasonable,  
7           the prices are reasonable, and the quantities are  
8           reasonable. Later we're going to talk to you about  
9           prudence.

10                      One last thing. You know, we've been  
11           transparent and open in this entire process. I'm  
12           not going to go to any documents and try to  
13           convince you that the fact that we've shared our  
14           root cause report with you or let you come up to  
15           the plant and given the Commission information  
16           satisfies the standard. I don't need to go there,  
17           because your standard is what it is under the law  
18           already. We've proved our reasonableness.

19                      So I would ask this Commission to not buy the  
20           sound bites. Focus on your precedent and what  
21           makes sense for sound regulatory policy and allow  
22           these costs to be recovered subject to refund with  
23           interest if and when we are determined to be  
24           imprudent. Thank you.

25                      CHAIRMAN GRAHAM: Thank you, sir.

1 MR. BADDERS: Good afternoon, Mr. Chairman and  
2 Commissioners. I'll be very brief. I'm going to  
3 focus solely on hedging as it relates to Gulf  
4 Power.

5 And I actually thought I was going to be  
6 speaking a little bit more towards your guidelines  
7 from the 2008 order, whether or not our plans met  
8 that, all the things we've talked about today in  
9 testimony. But to hear Mr. Moyle's closing  
10 argument, it appears to me that he's not  
11 questioning Gulf Power's current plan, the 2011  
12 plan, whether or not it meets the Commission's  
13 guidelines. He's not necessarily questioning  
14 whether or not our hedging activities were in line  
15 with our Commission-approved plan.

16 What I believe he has asked the Commission to  
17 do is to take a further look at this at some point  
18 in the future. That obviously is the Commission's  
19 -- within your discretion to do so, and I can say  
20 that Gulf will fully participate if the Commission  
21 decides to take another look at hedging. I will  
22 remind you that this will be the third time we do  
23 it again. We fully vetted this in 2008, after  
24 having several years of practice and experience  
25 based on what we were told to go do in 2002.

1           So again, I think it has been looked at  
2 thoroughly in the past, and I believe from Gulf  
3 Power's perspective, the Commission's current  
4 guidelines are very good guidelines. They're  
5 reasonable, and they give us a clear set of  
6 parameters for us to guide our actions as far as  
7 hedging. Thank you.

8           CHAIRMAN GRAHAM: Thank you, sir.

9           MR. BEASLEY: Mr. Chairman and Commissioners,  
10 we're in a similar posture. The only remaining  
11 non-fallout issues for Tampa Electric are 5A and  
12 5B, 5A having to do with whether we've prudently  
13 administered our hedging programs during 2009 and  
14 the first half of 2010. Ms. Wehle testified that  
15 we have, that we followed a disciplined and  
16 non-speculative hedging program consistent with the  
17 guidelines set forth in the management plans for  
18 Tampa Electric applicable to 2009 and 2010. That's  
19 unrefuted. There's no evidence to the contrary in  
20 the record.

21           On Issue 5B, that has to do with the prudence  
22 of the company's 2011 risk management plan.  
23 Ms. Wehle indicated to you that that plan was  
24 developed consistent with prior plans and  
25 consistent with the guidelines expressed by the

1 Commission in its 2002 hedging order as clarified  
2 in 2008.

3 We urge you to approve Tampa Electric's  
4 position and find that it operated properly and  
5 prudently with respect to the 2009 and 2010 hedging  
6 administration and that you will approve the 2011  
7 hedging plan for the company.

8 CHAIRMAN GRAHAM: Thank you, sir. I believe  
9 that concludes our closing arguments.

10 Commission Skop.

11 COMMISSIONER SKOP: Thank you. Just to the  
12 parties, Progress and the intervenors, on the  
13 Progress docket in relation to the briefs for the  
14 PEF CR3 replacement power fuel costs, in the  
15 briefs, if intervening parties and Progress can  
16 specifically address consistency or distinguishing  
17 from PSC Order 98-0049-FOF-EI, and also Order No.  
18 PSC-97-0359-FOF-EI, that would at least from my  
19 perspective be helpful to my analysis, as well as  
20 looking at recent Commission decisions, whether  
21 they are consistent or inconsistent with the  
22 position advocated by the intervenors as opposed to  
23 -- or in relation to the recovery of costs when  
24 prudence has been pushed out to some point in the  
25 future, and whether it would be consistent with

1 more recent Commission decisions on point in other  
2 cost recovery clauses or dockets. Thank you.

3 CHAIRMAN GRAHAM: Staff.

4 MS. BENNETT: I think that concludes the  
5 closing arguments. We do have the final exhibit  
6 ready to hand out. I would ask that it be marked  
7 as Exhibit Number 71.

8 Mr. Burnett, would you like explain what it  
9 is?

10 MR. BURNETT: Yes, ma'am. Seeing it for the  
11 first time, I believe that this is the exhibit that  
12 we had spoke of, Commissioners, that attempts to  
13 take our current view, before running the FOF, of  
14 what the forthcoming mid-course correction would  
15 look like. Now, again, this is not completely  
16 accurate, because we don't have the benefit of that  
17 yet. But this looks to incorporate those numbers  
18 set in the E schedules, revised positions to be  
19 consistent with the new numbers. And I believe, if  
20 I'm not mistaken, this would represent  
21 approximately a 7 percent adjustment, as we sit  
22 here today, again, without the benefit of the FOF.

23 CHAIRMAN GRAHAM: Can I get a brief  
24 description of this, Exhibit 71?

25 MS. BENNETT: It would be PEF's revised

1 positions and supporting schedules.

2 (Exhibit 71 was marked for identification.)

3 CHAIRMAN GRAHAM: Do I have any objections to  
4 this exhibit?

5 Commissioner Edgar.

6 COMMISSIONER EDGAR: Thank you. Just a  
7 question, Mr. Burnett. I think I just heard you  
8 say that the numbers reflected in this document --  
9 and I also heard somebody say earlier that they  
10 rolled up pretty high, but would be approximately a  
11 7 percent adjustment from the information that was  
12 filed in September?

13 MR. BURNETT: Yes, ma'am, that is correct.

14 COMMISSIONER EDGAR: I guess I was expecting  
15 closer to 10 percent. Can you --

16 MR. BURNETT: Yes, ma'am, I can. This exhibit  
17 was put together by Ms. Olivier just about a month  
18 ago just as a directional for her deposition, where  
19 she was asked the question of how were you booking  
20 without the benefit of the FOF. So it was just  
21 based on fuel prices that are now, admittedly,  
22 about a month-plus old, as well as Crystal River 3  
23 replacement cost numbers that are overstated as  
24 well. But at the time of her deposition, that's  
25 the best numbers that we had at that time, so it

1 was made a late-filed exhibit and made part of  
2 discovery.

3 I guess the logic is that since we have that  
4 today and it has been factored out to E schedules  
5 and we can make real numbers, it's better to go  
6 ahead and lower the factors at least by that amount  
7 and then come back in, and if we have to add some  
8 more to that, we can make that adjustment yet  
9 again.

10 COMMISSIONER EDGAR: All right. Thank you.

11 MR. BURNETT: Yes, ma'am.

12 CHAIRMAN GRAHAM: Do I have any objections to  
13 Exhibit 71?

14 MR. BREW: I just have a question, if the  
15 company can explain the differences between this  
16 new exhibit and the late-filed deposition exhibit  
17 in terms of the calculations.

18 MR. BURNETT: My understanding, again without  
19 having the benefit to study it, since we just got  
20 it, Mr. Chair, is that this -- not a lot, is the  
21 answer to the question, other than this exhibit I  
22 see takes the issues now and rolls the new numbers  
23 into it, so it's correcting the issues where we  
24 have positions. The supporting schedules would be  
25 consistent with what was filed in the late-filed

1 deposition exhibit. And again, these would all be  
2 subject to being redone once we have the benefit of  
3 the FOF.

4 MR. BREW: May I please with a minute off the  
5 record?

6 CHAIRMAN GRAHAM: Sure. Mr. Moyle, did you  
7 have a concern?

8 MR. MOYLE: (Nodding head.)

9 CHAIRMAN GRAHAM: Let's give him a minute.  
10 Let's just go ahead and take a five-minute  
11 recess.

12 (Short recess.)

13 CHAIRMAN GRAHAM: Okay. Let's see where we  
14 are, guys.

15 I believe we left off with Mr. Brew had a  
16 question off the record, and now we're back on the  
17 record.

18 MR. BREW: Mr. Chairman, the fuel factor  
19 numbers on Exhibit 71 don't match up with the fuel  
20 factor numbers shown on Exhibit 65, which was the  
21 late-filed deposition exhibit, both in terms of the  
22 levelized factor and the on- and off-peak factors,  
23 and so I would simply ask the company if they could  
24 reconcile the two.

25 MR. BURNETT: Mr. Chairman, at this point I

1 cannot, so if I may, I will tell you that certainly  
2 it gives me a little bit of concern that we tried  
3 to do this quickly on the break, so I don't have a  
4 lot of confidence trying to explain it to you here  
5 without studying it too.

6 I guess there was a couple of things we talked  
7 about earlier today. One option would be that if  
8 the Commission wanted to, they could vote up the  
9 current factors, knowing that we were going to come  
10 in with a mid-course and change that, and we just  
11 disregard this altogether.

12 I think another option is to say we disregard  
13 this altogether and know that there's going to be a  
14 late-filed sort of change up, and we can all vet it  
15 between the parties and make sure everyone agreed  
16 to it first.

17 Those are two equally reasonable options we're  
18 fine with. I think the staff may favor one and the  
19 intervenors may favor one, but I'm dead in the  
20 middle, so we can do whatever is most beneficial.  
21 But I do have some concern that we've had this for  
22 three minutes and we've already found an error, so  
23 that one is probably not the most ideal situation.

24 CHAIRMAN GRAHAM: Okay. Thank you.

25 Mr. Moyle.

1           MR. MOYLE: Thank you, Mr. Chairman. I talked  
2 with Mr. Burnett on the break, and given that there  
3 is a little confusion about this -- this issue sort  
4 of got moving along during the deposition of  
5 Ms. Olivier, and she provided an exhibit, and it  
6 was a late-filed deposition exhibit. She provided  
7 it during her deposition and then subsequently  
8 revised it a little bit and provided to it staff.

9           Just so that the record is clear, and Progress  
10 said they didn't have any objection, I would like  
11 to enter into the record the late-filed deposition  
12 exhibit that goes to this fuel factor.

13           Particularly, one of the things that I think  
14 is in this that I didn't see in the other  
15 late-filed exhibit was that it shows the dollar  
16 savings associated with the downward adjustment,  
17 being -- I think \$125 million, 126 million. The  
18 total change is from the filing, so just so we have  
19 something that we're real clear on.

20           The point that Mr. Burnett just brought up  
21 about how do we sort of resolve this, because I  
22 think we're all in agreement that they're going to  
23 file revised numbers, we want to make that we have  
24 the opportunity to look at the numbers and make  
25 sure they're consistent with all the testimony.

1           You know, counsel have been working very well  
2           throughout this process stipulating and agreeing to  
3           things. I have a high level of confidence that a  
4           late-filed exhibit which has the numbers that  
5           they're going to project, if they give us a chance  
6           to review it, that we could probably go ahead and  
7           get a late-filed exhibit to you that then could be  
8           used for the purposes of moving forward with the  
9           calculations.

10           The idea of voting out the factors now  
11           unchanged is -- I think Mr. Brew was saying there's  
12           a little challenge in explaining to a client when  
13           we say, well, the numbers are going to come down,  
14           but they voted out numbers that are significantly  
15           higher today. So I think we would probably favor  
16           the idea of doing a late-filed exhibit that has the  
17           revised numbers, give the intervenors a chance to  
18           review them. I think we'll be able to agree, but  
19           if we didn't, we could object to the late-filed  
20           exhibit and sort it out that way.

21           So I guess two things. One is the preference  
22           of the late-filed exhibit to address the issue, and  
23           then secondly, being able to just admit into the  
24           record the actual deposition exhibit of  
25           Ms. Olivier.

1                   CHAIRMAN GRAHAM: Okay. Mr. Beck.

2                   MR. BECK: Yes. I agree with the fellow  
3 intervenors. I think we would be concerned to have  
4 the Commission vote out numbers on information we  
5 know is stale and is going to be reduced  
6 substantially with the filing on or before  
7 November 10th. So of the options Mr. Burnett  
8 mentioned, we would certainly join other  
9 intervenors in preferring waiting until that final  
10 end comes before the Commission makes findings.

11                   CHAIRMAN GRAHAM: Sounds good. Looks like  
12 everybody is nodding their head over there.

13                   MR. BREW: Mr. Chairman, yes, I would agree  
14 with that as well. Rather than vote out stale  
15 numbers, we would prefer that the company take the  
16 time to sort out the numbers and then have numbers  
17 that we can agree on going forward.

18                   CHAIRMAN GRAHAM: All right. We still have  
19 this -- just a second. I'll be right with you. We  
20 still have this document labeled as 71. We are not  
21 entering it into the record as of yet.

22                   Commissioner Edgar.

23                   COMMISSIONER EDGAR: My apologies.

24                   CHAIRMAN GRAHAM: That's fine.

25                   COMMISSIONER EDGAR: Of course, I have to make

1 note of the fact that we have OPC and FIPUG and  
2 Mr. Brew on behalf of their clients requested a  
3 late-filed exhibit. But more importantly, when,  
4 Mr. Burnett, when would that late-filed exhibit, in  
5 order to give you and your client the amount of  
6 time so that you have comfort that the numbers that  
7 you're putting forward are indeed to be relied  
8 upon, what is the time frame?

9 MR. BURNETT: Yes, ma'am. No later than  
10 November 10th, with the understanding that we  
11 wanted to provide documents in advance of that as  
12 soon as they're ready to everyone so that they can  
13 get the process of looking at it started.

14 COMMISSIONER EDGAR: I'm having a hard time  
15 thinking that through then to the next steps and  
16 not wanting to throw a wrench into things when we  
17 had people nodding, but just trying to think  
18 through where that would leave us. And I'm going  
19 to, if I may, look to staff to help me see more  
20 clearly how that would work so that everybody knows  
21 what would be coming and where that would leave the  
22 Commission, and obviously, the issues that would  
23 flow from our decisions.

24 MS. BENNETT: I hate to be the cog in the  
25 wheel, or whatever the saying is, but leaving it

1 open for a late-filed exhibit that we don't know  
2 exactly what the numbers are and we might have some  
3 argument later and we might have to reopen the  
4 record and have additional hearing causes me some  
5 pause. I am wondering if this might not be  
6 something that we could look at, that the parties  
7 could look at tonight, and could come back tomorrow  
8 with the higher level numbers.

9 Staff's original suggestion to the parties,  
10 one of our suggestions was that we go ahead and  
11 approve a number today or tomorrow, and then also  
12 as part of that, require the utility to come back  
13 with a mid-course correction on November the 10th.  
14 And that's an interim type proceeding and would be  
15 a cleaner avenue of allowing staff and the parties  
16 to look at the final numbers, where we still close  
17 this record and are completed with this record and  
18 then can move forward with the interim proceeding.  
19 We could still come back, we believe, by November  
20 the 30th and have the most recent rates in effect  
21 for Progress on January 1st through the process  
22 that I'm suggesting, the decision tomorrow and  
23 interim mid-course correction filed November  
24 10th and back to you on November the 30th.

25 COMMISSIONER EDGAR: Thank you, Ms. Bennett.

1 Mr. Chair, I'm still, with that, trying to think  
2 through what makes the most sense as a procedural  
3 way to move forward and move through what we need  
4 to do.

5 I do recognize that this may be easier for me  
6 to say because I am not traveling, but we did have  
7 on the calendar scheduled way in advance three days  
8 for this hearing. As Mr. Moyle has stated, and  
9 others too, and I think the prehearing officer  
10 represented, everybody in this docket appears to  
11 have worked together quite well, and so I am  
12 wondering if it might be useful to take advantage  
13 of the end of the day, the evening, and the morning  
14 and let the parties and our staff get together and  
15 talk through what might make the most sense, and  
16 that we come back tomorrow and then have the  
17 benefit of that discussion presented to us so we  
18 are all clearer on what needs to be done.

19 CHAIRMAN GRAHAM: Well, I know there's no rush  
20 here, because as you said, we do have plenty of  
21 time, and there's parts of this that can be  
22 probably handled by a bench -- there's parts of  
23 this that we would probably have to get a brief  
24 back for, so it's just a matter of it comes down  
25 for to us to decide what part we're going to split

1 off and take care of now and which part we're going  
2 to have to get a fuller recommendation back from  
3 the staff later.

4 So Commissioner Skop has got the floor, and  
5 then we'll decide where we're going to go from  
6 there. Commissioner Skop.

7 COMMISSIONER SKOP: Thank you. Just a  
8 question to staff, because I guess I'm following  
9 along. I'm hearing the preference of the  
10 intervenors is not to vote out what would be  
11 otherwise a moot factor, knowing the factor is  
12 going to change. The twist in this I think came to  
13 me when we suggested instead of filing a late-filed  
14 exhibit, which remedied the problem to everyone's  
15 satisfaction. I think I've heard Progress nod  
16 affirmatively as well the intervenors' preference.

17 The monkey wrench in this, at least from my  
18 perspective, where staff lost me is adjourning  
19 overnight, only to come back tomorrow and hope that  
20 the document is ready to figure out so we can vote  
21 out factors, I'm not sure why it wouldn't be  
22 efficient to have the exhibit filed as a late-filed  
23 exhibit, give the parties time to review that  
24 exhibit, and the Commission still has time to get  
25 the briefs and vote out the remaining issues to put

1 the factors in place, if I understand the time  
2 schedule correctly. So if staff could elaborate on  
3 that, please.

4 MS. BENNETT: Usually I'm the optimist in the  
5 crowd and believe that we can work it out, but my  
6 concern is that if the parties do not work out the  
7 numbers and we have problems with the late-filed  
8 exhibit, then we are back into the hearing mode  
9 with cross-examination of the witnesses to get the  
10 correct numbers and then having you make a decision  
11 sometime much later than November 30th. That's my  
12 concern.

13 The suggestion that the numbers that you would  
14 approve today are close to accurate, but they're  
15 not going to be the final numbers, which would be  
16 taken care of in a mid-course correction, so that  
17 was an alternative that we offered so that we could  
18 go ahead and close this record and then start with  
19 the mid-course correction, which would allow the  
20 parties to review the documents and offer comments  
21 at the next agenda conference to the Commission.

22 COMMISSIONER SKOP: And just as a follow-up,  
23 what would be the peril of I guess allowing the  
24 late-filed, as the intervenors and as I think  
25 Progress has concurred to, giving an opportunity to

1 work out what the factors would be such that  
2 they're available at the agenda conference you  
3 reference to approve, noting that if they're close  
4 now, you know, the likelihood of detailed -- those  
5 being hotly contested is probably not probable,  
6 but, you know, hope springs eternal on that one.  
7 But it seems to me that the parties have worked  
8 very hard to achieve consensus across all the  
9 dockets in the fuel clause. But I guess I'm still  
10 struggling to understand the benefit of the staff's  
11 approach versus the approach suggested by the  
12 parties appearing before the Commission.

13 MR. BURNETT: Thank you, Mr. Chair. We really  
14 are at the will of the Commission. We're happy to  
15 do whatever the Commission finds to be in the best  
16 interests.

17 CHAIRMAN GRAHAM: I think what we'll do,  
18 especially since we have today and tomorrow noticed  
19 and blocked off, let's just go ahead and recess for  
20 the day, and we'll allow for the staff to sit down  
21 with the utilities and intervenors, and we'll  
22 reconvene tomorrow morning at 9:30. And at that  
23 time, we'll hear from staff as far as where we  
24 currently are, and we'll also hear from everybody  
25 else, and we can decide at that point what we need

1 to do to move forward. I think there's no decision  
2 trying to cram it all in now in the next hour or so  
3 when we have all day tomorrow that we can massage  
4 this if need be.

5 So tomorrow morning, Ms. Bennett, I'll  
6 probably be calling on you first thing to see where  
7 we are and see if we everybody nodding their head,  
8 and then we'll figure it out from there.

9 MS. BENNETT: We will see you tomorrow morning  
10 at 9:30, hopefully with a resolution.

11 CHAIRMAN GRAHAM: Is there any other last  
12 minute comments or concerns before we --  
13 Commissioner Brisé.

14 COMMISSIONER BRISÉ: Thank you, Mr. Chair. I  
15 just certainly hope that since Progress came up  
16 with some numbers today, since we do have until  
17 Wednesday, really, that they can really work on the  
18 numbers so that we can be at a position where we  
19 can vote potentially on Wednesday. I too have some  
20 reservations as to, you know, just trying to move  
21 it with the numbers sort of floating versus  
22 addressing the real numbers the way they ought to  
23 be, and so I certainly hope that we get there  
24 sooner than later.

25 CHAIRMAN GRAHAM: You guys fully aware of

1 options you have in front of you. We can do some  
2 of this as a bench decision. We can have as much as  
3 you want come back as far as you filing briefs and  
4 we having a written decision coming back. I think  
5 you guys have a couple of hours, at least an hour  
6 today to talk it over and figure out where you want  
7 to go from there.

8 And I see Mr. Moyle is itching to get on the  
9 mike, so what is it I can do for you, sir?

10 MR. MOYLE: Just on that one point, if you  
11 don't mind before gaveling down for the night, if I  
12 can just go head and move in that exhibit that we  
13 had agree, the Olivier PEF high level review  
14 outlook.

15 CHAIRMAN GRAHAM: Is this going to be Exhibit  
16 Number 72?

17 MR. MOYLE: I believe that's right.

18 CHAIRMAN GRAHAM: Okay. Let's pass that out  
19 and make sure nobody has any objection to this.  
20 Staff, can I get somebody to help pass this out?

21 We'll call this Exhibit 72, and the short  
22 title will be PEF High Level Revised Outlook?

23 MR. BURNETT: Mr. Chair, PEF has no objection  
24 to this exhibit. And we wanted to apologize for  
25 all the good confusion we added to the process

1 here. Sorry about that.

2 CHAIRMAN GRAHAM: Hey, trust me, let's just  
3 get it right the first time, because it takes a lot  
4 longer if we leave and have to come back to do it.

5 Are there any objections to Exhibit 72?  
6 Staff, anything?

7 MS. BENNETT: No.

8 CHAIRMAN GRAHAM: Okay. That all being said,  
9 let's enter that into the record.

10 I'm sorry. Did the Commission board have any  
11 objection to this? Seeing none, we'll enter that  
12 into the record.

13 (Exhibit 72 was marked for identification and  
14 admitted into the record.)

15 CHAIRMAN GRAHAM: Is there anything else  
16 before we gavel down for the evening, any other  
17 direction that people are looking for?

18 We appreciate your time and your effort, and  
19 we'll see you tomorrow morning at 9:30.

20 (Proceedings recessed at 4:10 p.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, Registered Professional Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 376 through 450 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 2nd day of November, 2010.

  
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