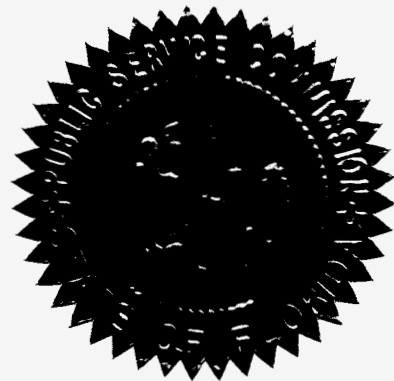


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110018-EU

JOINT PETITION FOR MODIFICATION  
TO DETERMINATION OF NEED FOR  
EXPANSION OF AN EXISTING RENEWABLE  
ENERGY ELECTRICAL POWER PLANT IN  
PALM BEACH COUNTY BY SOLID WASTE  
AUTHORITY OF PALM BEACH COUNTY  
AND FLORIDA POWER & LIGHT COMPANY,  
AND FOR APPROVAL OF ASSOCIATED  
REGULATORY ACCOUNTING AND PURCHASED  
POWER AGREEMENT COST RECOVERY.



PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER PARTICIPATING: COMMISSIONER LISA POLAK EDGAR  
PREHEARING OFFICER

DATE: Monday, April 18, 2011

TIME: Commenced at 1:30 p.m.  
Concluded at 3:45 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

## 1 APPEARANCES:

2 ALEXANDRIA LARSON, 16933 W. Narlena Drive,  
3 Loxahatchee, Florida 33470, appearing on behalf of  
4 Daniel R. Larson.

5 WILLIAM P. COX, ESQUIRE, BRYAN S. ANDERSON,  
6 ESQUIRE, and KEVIN DONALDSON, ESQUIRE, Florida Power &  
7 Light Company, 700 Universe Boulevard, Juno Beach,  
8 Florida 33408-0420, appearing on behalf of Florida Power  
9 & Light Company.

10 RICHARD A. ZAMBO, ESQUIRE, Richard A. Zambo,  
11 P.A., 2336 S.E. Ocean Boulevard, #309, Stuart, Florida  
12 34996, and MARSHA E. RULE, ESQUIRE, Rutledge, Ecenia &  
13 Purnell, P.A., 119 South Monroe Street, Suite 202,  
14 Tallahassee, Florida 32301, appearing on behalf of the  
15 Solid Waste Authority of Palm Beach County.

16 CHARLES W. MURPHY, ESQUIRE, LAWRENCE D.  
17 HARRIS, ESQUIRE, and ADAM J. TEITZMAN, ESQUIRE, Florida  
18 Public Service Commission, 2540 Shumard Oak Boulevard,  
19 Tallahassee, Florida 32399-0850, appearing on behalf of  
20 the Florida Public Service Commission Staff.

21 MARY ANNE HELTON, Deputy General Counsel,  
22 Florida Public Service Commission, 2540 Shumard Oak  
23 Boulevard, Tallahassee, Florida 32399-0850, Advisor to  
24 the Florida Public Service Commission.

25

## P R O C E E D I N G S

1  
2           **COMMISSIONER EDGAR:** Good afternoon. Welcome,  
3 everyone, this afternoon. I call this prehearing to  
4 order. I note, for the record, that we have a court  
5 reporter present, and that this proceeding will be  
6 transcribed. And I'd like to start off by asking our  
7 staff to read the notice.

8           **MR. MURPHY:** By notice issued April 1, 2011,  
9 this time and place has been set for a prehearing  
10 conference in Docket Number 110018-EU, Petition for  
11 Determination of Need by Solid Waste Authority of Palm  
12 Beach County and Florida Power and Light Company and  
13 associated issues.

14           **COMMISSIONER EDGAR:** Thank you.

15           Give me just a moment so I will actually be  
16 able to see you all. Ah, much better; thank you.

17           Okay. Let's move on to our next step, which  
18 is taking appearances from the parties and staff. And  
19 I'll start here to my left. Ms. Larson, would you  
20 identify yourself for the record, please.

21           **MS. LARSON:** Hi, I'm Alexandria Larson. My  
22 husband, Daniel Larson, he's sitting behind me, if  
23 that's okay.

24           **COMMISSIONER EDGAR:** That's fine. Thank you.

25           **MR. COX:** Good afternoon, Commissioner Edgar.

1 My name is Will Cox, and with me is Kevin Donaldson, to  
2 my right, both appearing on behalf of Florida Power and  
3 Light Company at the address provided in the draft  
4 prehearing order. I would also like to enter an  
5 appearance on behalf of Bryan Anderson for FPL.

6 **COMMISSIONER EDGAR:** Thank you.

7 **MS. RULE:** Marsha Rule and Richard Zambo for  
8 the Solid Waste Authority of Palm Beach County, and our  
9 addresses have been provided to staff.

10 **COMMISSIONER EDGAR:** Thank you. And,  
11 Commission Staff?

12 **MR. MURPHY:** Charles Murphy and Larry Harris  
13 representing Commission staff.

14 **COMMISSIONER EDGAR:** Thank you.

15 **MS. HELTON:** Mary Anne Helton, Advisor to the  
16 Commission.

17 **COMMISSIONER EDGAR:** Thank you, Ms. Helton.

18 Okay. Preliminary matters before we get into  
19 the word and substance of the draft prehearing order.  
20 Today I received, and the Commission received a notice  
21 of withdrawal from intervenors Woods and Sullivan, so  
22 I'll note that receipt for the record, and that notice  
23 of withdrawal is granted as a matter of right. Also,  
24 that all information received regarding this docket  
25 prior to that withdrawal, or to the withdrawal hereby



1 granted, will be placed in the correspondence portion of  
2 this docket.

3 With that, Staff, are there any other  
4 preliminary matters that you are aware of that it would  
5 be helpful for us to address at this point?

6 **MR. MURPHY:** Not at this time.

7 **COMMISSIONER EDGAR:** Okay. Ms. Larson.

8 **MS. LARSON:** I just wanted to beg the court's  
9 mercy -- I guess, well, you, Ms. Edgar, to go slowly,  
10 you know, to go through the things. I just want to be  
11 able to pay attention and understand each and every  
12 issue, because I'd like -- Mr. Murphy made me aware that  
13 Ms. Woods had withdrawn this morning when I came over to  
14 look at some documentation, so I wasn't aware of that  
15 until the moment he told me. So if we can just go  
16 through the issues a little slow, bear with me, that  
17 would be great.

18 **COMMISSIONER EDGAR:** Okay, absolutely. I  
19 think I understand the request, and I'm glad to try to  
20 do so. And let me say to you, Ms. Larson, of course you  
21 have appeared here before, and we always welcome your  
22 participation. I do have a tendency sometimes to get on  
23 a roll and move things through. If we are moving too  
24 fast, just let me know, and I will be glad to slow down,  
25 and know that that is not intentional.

1           And I was just made aware of the withdrawal by  
2 Ms. Sullivan and Mr. Woods mid-morning this morning, I  
3 believe, when Mr. Murphy let me know, so we are at the  
4 same point there.

5           **MS. LARSON:** Well, I just did -- I truly was.  
6 He goes there was a withdrawal. I'm, like, oh, okay.  
7 And I do -- I have never participated in this particular  
8 portion of the Public Service Commission. I have always  
9 come before you when you're -- when it's the board, and  
10 it's the public, you know, you're just speaking as the  
11 public. This is a little bit different venue, so that's  
12 why I ask to beg your forgiveness.

13           **COMMISSIONER EDGAR:** That's fine. This type  
14 of forum is a little stuffier sometimes, but we  
15 certainly want it to be transparent and clear. So,  
16 again, just speak up, but let me recognize you. Okay?

17           **MS. LARSON:** Thank you.

18           **COMMISSIONER EDGAR:** Okay. And to the other  
19 parties, any other matters to address at this time?

20           **MR. COX:** No, ma'am.

21           **COMMISSIONER EDGAR:** No? No other matters.  
22 Okay.

23           Then I think the next step is to go through  
24 the draft prehearing order -- Does everybody have a  
25 copy? -- that was distributed by our staff, and

1 recognize that this is a draft, and what we are here  
2 for, a variety of things, but one of which is to go  
3 through this, and per my decisions and our discussions  
4 today, then this document will be issued in final form  
5 prior to the actual hearing.

6 So with that in mind, we'll go through slowly  
7 section-by-section. If there are any questions about  
8 any section, recognizing -- and, Ms. Larson, this is  
9 primarily for your benefit, but it is always a good  
10 helpful reminder to me, as well, to stop and think  
11 through each thing that we are doing.

12 Much of the language in this draft is what we  
13 would call boilerplate, or is typical for these types of  
14 proceedings until we get into the specific issues which,  
15 of course, are unique to this case. Realizing that much  
16 of this, especially in the beginning pages, are kind of  
17 formal and often-used language.

18 If you have a question, again, just speak  
19 right up, and this is a good time to ask those  
20 questions. Okay. So we will go through Roman numeral  
21 section by Roman numeral section, and with that, on just  
22 Page 2 of the draft order, the first section, Roman  
23 numeral I is case background, which is, of course,  
24 unique to this proceeding. Any questions about the  
25 language in this section?

1           **MR. COX:** Commissioner Edgar.

2           **COMMISSIONER EDGAR:** Yes, sir.

3           **MR. COX:** On the fifth line there is a  
4 reference to the Statute Sections 403.519 and 377.701.  
5 I believe the second reference should be 377.709.

6           **COMMISSIONER EDGAR:** Thank you for bringing  
7 that to my attention. And let me look to our staff.  
8 Go ahead -- into the microphone, please.

9           **MR. MURPHY:** We'll correct it.

10          **COMMISSIONER EDGAR:** Okay. So that is a typo,  
11 the fifth line. Thank you for bringing that to our  
12 attention, and we will change that second statutory  
13 reference to Florida Statute 377.709. Thank you for  
14 that.

15                   Any other changes or questions about this  
16 particular section? Okay. Then we will move on to the  
17 immediate section below, Roman numeral II, conduct of  
18 proceedings.

19          **MR. MURPHY:** Commissioner.

20          **COMMISSIONER EDGAR:** Mr. Murphy.

21          **MR. MURPHY:** There is a reference to Kelly  
22 Sullivan Woods having been granted intervention. Is it  
23 your desire that we remove the references to them as a  
24 party from the prehearing order, and then that  
25 information will all be in the correspondence side of

1 the file?

2 **COMMISSIONER EDGAR:** Thank you, Mr. Murphy,  
3 also for bringing that to my attention. I didn't catch  
4 that. I think what I would like to do is keep this  
5 language as is, but add an additional statement there at  
6 the end that on this date notice of withdrawal from  
7 Ms. Woods and Mr. Sullivan (sic) was received at the  
8 Commission, or whatever is the appropriate language to  
9 make that clear, and that that withdrawal was granted,  
10 is granted -- again, whichever is correct -- on this  
11 date as a matter of right.

12 **MR. MURPHY:** Thank you.

13 **COMMISSIONER EDGAR:** Is that clear and meets  
14 with approval?

15 **MR. COX:** (Indicating affirmatively.)

16 **COMMISSIONER EDGAR:** Okay. And thank you for  
17 catching that, Mr. Murphy. Again, Section II, conduct  
18 of proceedings.

19 Hearing nothing, we will move on to  
20 Section III immediately below it on the same page,  
21 jurisdiction.

22 Section IV, procedure for handling  
23 confidential information.

24 **MR. MURPHY:** Commissioner.

25 **COMMISSIONER EDGAR:** Yes, Mr. Murphy.

1           **MR. MURPHY:** Staff has proposed a stipulated  
2 composite exhibit that will include one confidential  
3 document. And to the extent that we work through  
4 getting the stipulation approved, we would ensure that  
5 it's handled properly when it's at hearing.

6           **COMMISSIONER EDGAR:** Yes, I agree. And we'll  
7 come to that. I do note -- and, again, we will discuss  
8 here, I'm sure, in a few minutes -- that I did issue an  
9 order, I guess it was late last week, granting the  
10 request for confidentiality. And we will handle that  
11 document as is prescribed here generally. And when we  
12 come to -- we'll have more discussion when we come to  
13 the exhibits portion.

14           **MR. MURPHY:** Thank you.

15           **COMMISSIONER EDGAR:** Okay. Section V, which  
16 is Page 3 of the draft, prefiled testimony and exhibits;  
17 witnesses.

18           Ms. Larson, I'm just going to give you a  
19 minute, in case you want to flag me. I'm not suggesting  
20 that you need to, I just want you to know I'm going to  
21 give you a minute.

22           **MS. LARSON:** Well, like I said, I'm not  
23 familiar with the protocol. I begged Larry Harris and  
24 Mr. Murphy's -- they have had much patience with me. In  
25 the interrogatories there were several issues that were

1 answered by other people. And Mr. Hartman is the one,  
2 he seems to be the one that's listed as the main witness  
3 for FPL. I don't know if that comes up later with the  
4 witnesses; I guess it does. It comes up in VI.

5 **COMMISSIONER EDGAR:** It's related, and it's  
6 fine for you to bring that up now. Actually, we can do  
7 that, we can look at Section V and Section VI together  
8 at this time. Recognizing that as is listed here, and  
9 with the prefiled testimony that there are only three  
10 witnesses in this case, two put forth by the Solid Waste  
11 Authority, and the third by Florida Power and Light.  
12 And are you drawing to my attention, or do you have a  
13 question about the testimony by -- is it Mr. Bruner?

14 **MS. LARSON:** Mr. Hartman.

15 **COMMISSIONER EDGAR:** I'm sorry, Mr. Hartman.

16 **MS. LARSON:** I apologize.

17 **COMMISSIONER EDGAR:** It's okay.

18 **MS. LARSON:** But with the voluptuous amount of  
19 interrogatories, I don't know what other word to use for  
20 it, there were some that were other witnesses, you  
21 know --

22 **COMMISSIONER EDGAR:** Participated perhaps  
23 in --

24 **MS. LARSON:** In answering the interrogatories,  
25 and I didn't know if it was the regular purview of the

1 Public Service Commission to have those witnesses  
2 available in a hearing when they are the ones who  
3 specifically answered, you know, a particular  
4 interrogatory. When they have listed five -- truly, I  
5 didn't even understand panel depositions until I came to  
6 the Public Service Commission and it was explained to  
7 me. I'm not saying it wasn't. But would those  
8 witnesses be available at the hearing when it comes to  
9 certain interrogatories that were specifically answered  
10 by that person, party?

11 **COMMISSIONER EDGAR:** Okay. Let me, first,  
12 start with this comment that having a single witness, or  
13 dual witnesses together, or having a panel, all of those  
14 scenarios and probably some others have been utilized in  
15 prior proceedings, and I'm sure will be in the future,  
16 all with the goal of getting the right information and  
17 accurate information on the record in whatever way is  
18 deemed to be the most efficient and effective. And  
19 that's certainly what we will strive for in this  
20 proceeding, as well. So let me turn to the counsel for  
21 FPL, since I believe we are speaking about your witness,  
22 and ask for your comment and see where that takes us.

23 **MR. COX:** Sure.

24 Commissioner Edgar, FPL has put forward Tom  
25 Hartman as its witness in this case. As is customary in



1 dockets where significant amounts of information were  
2 requested, in this case from staff via discovery, we  
3 rely on a number of affiants within our company to  
4 gather information, numbers.

5 Mr. Hartman is qualified to speak to all of  
6 the issues in this proceeding. And we also understand  
7 that staff is proposing, and the joint petitioners, I  
8 believe, are in agreement that all the interrogatory and  
9 POD responses that FPL has filed in this docket would be  
10 made part of a stipulated exhibit. So all of the  
11 information by all the affiants that we have provided to  
12 date would be included in the record, if that  
13 stipulation were approved. Again, it is FPL's intent to  
14 have Mr. Hartman at the hearing, and he will be able to  
15 address the issues in this case for FPL.

16 **COMMISSIONER EDGAR:** Let me turn to our staff,  
17 please. Mr. Murphy, jump right in.

18 **MR. MURPHY:** I guess the question is whether  
19 Mr. Hartman would be able to answer any questions  
20 related to the exhibits that would be moved in in the  
21 stipulated exhibits.

22 **MR. COX:** He will.

23 **MR. MURPHY:** Thank you.

24 **COMMISSIONER EDGAR:** Ms. Larson? I think what  
25 I'm hearing here -- and, again, jump in if I get this

1 wrong. I think what I'm hearing here is that counsel  
2 for FPL believes that Mr. Hartman will be able to answer  
3 all questions that are put to him on cross-examination  
4 relating to the prefiled testimony that he has filed,  
5 and relating to the issues that will be before us in  
6 this proceeding.

7 Do you have a question as to whether, indeed,  
8 Mr. Hartman will be able to answer the questions that  
9 you may have for him on cross?

10 **MS. LARSON:** I have grave concerns about that  
11 because of the way -- I mean, the interrogatories are  
12 unbelievable, and they listed five different witnesses,  
13 there was four women, and then in a late-filed it was a  
14 Mr. Iglesias (sic), I think, that wasn't even listed as  
15 a witness, but he answered one of the interrogatories.

16 I'm just curious. I worry, I am concerned at  
17 this juncture that we'll get here and Mr. Hartman will  
18 say, I'm sorry, I didn't look at that particular of the  
19 99 interrogatories that we have put into the record.  
20 And I don't know, I'm sorry, I can't specifically name  
21 the date and time when one of the interrogatories was  
22 answered by a party that wasn't even on the panel  
23 deposition. And I don't think it's through anybody's  
24 fault, but I don't -- I wouldn't want to waste the  
25 court's time or your time, but if we get here and I ask

1 a question and Mr. Hartman says I can't answer that,  
2 what happens then?

3 **COMMISSIONER EDGAR:** Mr. Cox, if your witness  
4 cannot answer a question that is allowed and deemed  
5 relevant or material by the Chairman or the Commissioner  
6 that's conducting the proceeding, what would you  
7 suggest?

8 **MR. COX:** In the first instance, I'm hoping he  
9 can answer all the questions.

10 **COMMISSIONER EDGAR:** I understand.

11 **MR. COX:** In the second instance, if he were  
12 not able to answer the question, I would certainly think  
13 the Commission could take that into account in terms of  
14 whether or not we have put forward our case or not.  
15 Thirdly, I think on occasion the Commission maybe has  
16 asked for late-filed exhibits. I know this has happened  
17 in depositions, I believe in hearings, as well, so  
18 that's another possibility to get the information into  
19 the record. Those would be the three things that come  
20 to mind.

21 **COMMISSIONER EDGAR:** And as I am sure you  
22 know, and, Ms. Larson, you may -- filing late-filed  
23 exhibits or an exhibit to address a point that comes up  
24 at hearing, and have that information filed after the  
25 close of the hearing when it is available, and then

1 available to all parties and the public, of course, is a  
2 mechanism that this Commission does use. We try to  
3 avoid it, but it is a tool and a mechanism to try to get  
4 all the information that is needed into the record  
5 timely.

6 Mr. Murphy, additional thoughts and/or -- I'm  
7 sorry, Mr. Murphy, let me look further to my left.

8 Ms. Helton.

9 **MS. HELTON:** Yes, ma'am. I was just going to  
10 say that I agree with Mr. Cox. I think it's important  
11 to keep in mind for all of the parties and the  
12 Commissioners, too, that joint petitioners have the  
13 burden to show that there is a need for this facility.  
14 And so if there is a witness who can't answer a question  
15 on point that is relevant to the case, that would go to  
16 whether the burden has been met. That would also go to  
17 the credibility of the witness that has been put forward  
18 to show that need. So I think that there are tools  
19 within your arsenal to take into account whether a  
20 witness can answer a question or not.

21 **COMMISSIONER EDGAR:** Ms. Larson.

22 **MS. LARSON:** I have to go with my frame of  
23 reference. I do know that the -- I have been told  
24 several hundred times the Public Service Commission  
25 works in a different manner. And, you know, I discuss

1 it, and I'm just concerned about -- if you have listed  
2 witnesses, they should be available. And I can only go  
3 by civil or a DOAH procedure. Now, I have never -- I  
4 haven't -- I'm begging your mercy on this one --

5 **COMMISSIONER EDGAR:** You're fine. We're doing  
6 fine.

7 **MS. LARSON:** You know, if I do -- you get to a  
8 point, and I am, I am at a bit of a disadvantage because  
9 one of the parties has withdrawn that was, you know,  
10 going to be a party to this. So I'm trying to learn and  
11 do all the processes properly, but when you list a  
12 witness anywhere else in the world, the witnesses are  
13 available if the one witness cannot answer, because they  
14 are answering for five different people. So I guess  
15 with the late filing, or the questions getting answered  
16 afterwards, after the hearing, but from my point of view  
17 I would hope that the witnesses are available. But if  
18 that is not how they do the procedures here, that's  
19 okay.

20 **COMMISSIONER EDGAR:** Let me ask this question,  
21 Mr. Cox.

22 Can you clarify, for my benefit, when Ms.  
23 Larson refers to witnesses that are listed in this  
24 proceeding, but yet are not on the witness list that is  
25 available and before me for the hearing next week, can

1 you clarify that distinction.

2 **MR. COX:** Sure. Recognizing that Ms. Larson  
3 is new to this process and not an attorney, when she  
4 says witnesses, I think she is referring to affiants  
5 that signed onto various interrogatory responses for  
6 FPL. They are not the witness, the one witness, Tom  
7 Hartman, that we have put forward in this case. This is  
8 a routine practice in other dockets. FPL uses multiple  
9 people within our company to provide answers to  
10 discovery, and there are multiple affiants, and those  
11 affiants are not all witnesses, and that's the case  
12 here.

13 **COMMISSIONER EDGAR:** So perhaps what we are  
14 dealing with is a distinction or difference in the use  
15 of the term witness. Whereas I'm looking at that from  
16 my perspective as those witnesses that are listed and  
17 will be available and testifying as a matter of record,  
18 whereas others that participated in the discovery  
19 process are not to be witnesses, so to speak, officially  
20 testifying in the proceeding.

21 **MR. COX:** And just to clarify one more thing,  
22 Commissioner Edgar, that we were asked by the staff for  
23 a deposition, to make available a number of those  
24 affiants for deposition. We did that. And we are also  
25 willing to stipulate that that deposition transcript be

1 made part of the record, as well.

2           **COMMISSIONER EDGAR:** Okay. And that is noted  
3 for the record. Thank you. Ms. Larson, I think that we  
4 are getting and that we are to where you want us to be  
5 and need us to be in that we have three witnesses that  
6 are listed and will be participating and appearing  
7 before us and available to you -- just a moment --  
8 available to you for questions during the hearing.

9           It is up to the applicants, the petitioners,  
10 as Ms. Helton has pointed out for us, to carry the  
11 burden in this proceeding. You will have the  
12 opportunity to ask questions on cross. If there is a  
13 question that cannot be answered, we will deal with it,  
14 but we have had full discussion here today, and the  
15 counsel -- and I'm sure it will be conveyed to the  
16 witness, that the witness needs to be prepared to answer  
17 all questions on this matter per the issues that he has  
18 listed to be able to answer questions about.

19           **MS. LARSON:** Well, I guess I want it on the  
20 record, because FPL listed five witnesses. SWA, Solid  
21 Waste Authority, listed two witnesses. Their two  
22 witnesses will be here. The five witnesses won't. I am  
23 trying to wrap my arms around a panel deposition,  
24 because, you know, everybody -- you had five witnesses  
25 listing -- well, I took care of 19, 27, 29, 31 and 47 of

1 this interrogatory, the interrogatories. They literally  
2 listed numbers next to them. These are the people who  
3 answered this, and it seems unbalanced to me. And I am;  
4 I'm trying to wrap my arms around it. But the two  
5 witnesses for SWA that were deposed on the panel  
6 deposition are available, they are listed right here as  
7 witnesses, and yet FPL is relying on one person when  
8 five people were listed. Am I making sense?

9 **COMMISSIONER EDGAR:** I believe I understand  
10 your concern. And, Ms. Larson, I do believe that we  
11 have addressed it.

12 **MS. LARSON:** Okay.

13 **COMMISSIONER EDGAR:** Okay. And, as always,  
14 during the hearing, if need be, if there is a concern,  
15 it will also be dealt with then. Mr. Murphy, does that  
16 work for you?

17 **MR. MURPHY:** Yes, Commissioner. I think if he  
18 is unable to answer, I think it would go either to the  
19 weight of the evidence, or if he is truly unable to  
20 answer, they might move to strike the exhibit that it is  
21 related to, if he is not able to give a satisfactory or  
22 at least a sufficient answer.

23 **COMMISSIONER EDGAR:** And, Ms. Larson,  
24 patience. We will work with you at that time within the  
25 bounds of what we are able to do, okay?



1           Okay. That brings us back to the draft and  
2 prehearing order, and we were on Sections V and VI on  
3 Pages 3 and 4. I would also like to point out, again,  
4 we have three witnesses and that occasionally this  
5 changes, but it is generally practice to allow  
6 five-minute summaries for each witness. Is that  
7 amenable?

8           I'm seeing nods, so I think --

9           **MR. COX:** Yes, that is amenable to FPL.

10          **MR. ZAMBO:** That is amenable to SWA.

11          **COMMISSIONER EDGAR:** Okay. Thank you.

12           Okay. That brings us to, on Page 4 of the  
13 draft, Roman numeral VII, Basic Positions. I'm going to  
14 go ahead and ask staff for Section VII and the section  
15 that we will come to next, Section VIII, to go ahead and  
16 remove the issue positions for prior intervenors Woods  
17 and Sullivan, since they are no longer parties to the  
18 case. And if I forget that again, please know that  
19 carries through to all issues.

20           On Section VII, Basic Positions, any other  
21 comments or concerns?

22           Okay. Hearing none, that brings us to  
23 Section VIII, which begins on Page 6 of the draft.  
24 Realizing that we have a number of issues, at least one  
25 alternative in the first 12 or so, and then some other

1 proposed additional issues. Let's go issue-by-issue,  
2 slowly but not too slowly, so that we can get through it  
3 all.

4 And, you know, the basic question, Ms. Larson,  
5 and, of course, to the other parties, is are the  
6 positions correctly reflected in the draft that are  
7 before us. And if there is something, as we had a typo  
8 or something else that has been transcribed or cut and  
9 paste to put in here inaccurately, this is the time to  
10 point it out. So, Issue 1.

11 **MS. LARSON:** (Inaudible; microphone off.)

12 **COMMISSIONER EDGAR:** That's okay. That's all  
13 right. Okay. On Issue 1, which deals with the proper  
14 applicant -- excuse me a moment. I have a lovely summer  
15 cold that was not helped by cub scout camping this  
16 weekend.

17 **MS. LARSON:** (Inaudible; microphone off.)

18 **COMMISSIONER EDGAR:** Thank you. So we are on  
19 Issue 1, and, again, we will remove the language from  
20 the Woods Sullivan proposals. We do have, Ms. Larson,  
21 suggested by you an alternative language for Issue 1,  
22 and so this would be the opportunity for you to address  
23 your suggested language to me.

24 **MS. LARSON:** (Inaudible; microphone off). --  
25 proper applicants when the original application was put

1       forth to the Public Service Commission, and my opinion  
2       was that FPL and SWA were the joint application. The  
3       way it was presented to the public, it was a joint  
4       application, and I base that on being at the meeting on  
5       February 9th for the Solid Waste Authority and FPL, when  
6       they did the --

7               **COMMISSIONER EDGAR:** Okay. Can I ask, when  
8       you say presented to the public, do you mean just sort  
9       of generally discussion, understanding which is kind of  
10      hard to speak to -- (Inaudible; simultaneous  
11      conversation.) -- or documents actually filed as a  
12      petition to us.

13             **MS. LARSON:** Well, they made a presentation to  
14      my county commissioners, which sit as the Solid Waste  
15      Authority board. It was -- they pointed out several  
16      issues with the situation, because even the public,  
17      people like me, the public, went up because we were  
18      like, okay, this is -- we had questions, we had queries,  
19      but they did present it the entire time during the  
20      meeting as a joint application that had to be filed as a  
21      joint application. And they gave reasons to the -- not  
22      you Commission, but our commission of why this was done  
23      as a joint application. So in my opinion, in my humble  
24      opinion, yes, it is a joint application. So that was --  
25      I guess that's it in a nutshell.

1                   **COMMISSIONER EDGAR:** Okay.

2                   Mr. Cox, or Mr. Zambo.

3                   **MR. ZAMBO:** Thank you, Commissioner Edgar.

4                   And on behalf of the Authority, Solid Waste  
5 Authority, let me just make a couple of points. I  
6 appreciate Ms. Larson's newness to this process, but the  
7 February 9th proceeding that she referred to was a  
8 workshop, basically, of the Solid Waste Authority and  
9 the Solid Waste Authority's staff. It is no they made a  
10 presentation to them, it was the Authority, the Solid  
11 Waste Authority is who made the application for the  
12 power plant site modification to DEP, and they are the  
13 joint petitioner with FPL in this proceeding for a need  
14 determination.

15                   I would suggest -- or ask that the Commission  
16 just take judicial notice of the application that is  
17 pending at DEP where the Solid Waste Authority is the  
18 only application for site certification. And it's the  
19 DEP requirements that send us here for a need  
20 determination.

21                   And the joint petition is divided into two  
22 pieces. One is to grant the modification to an existing  
23 determination of need that was granted by this  
24 Commission to the Solid Waste Authority, I believe in  
25 1984, and it also -- another part of that petition is to

1 approve a contract that has been negotiated between the  
2 Solid Waste Authority and FPL for the sale of that  
3 electricity.

4 So from a legal, you know, my legal opinion is  
5 that it is pretty clear at DEP that FPL's name is not on  
6 the site certification. And if you grant us the need  
7 determination order that we have requested, FPL's name  
8 will not be on the site -- the certification for the  
9 site that comes from the board or from the Governor and  
10 the Cabinet sitting as the Power Plant Siting Board.

11 **COMMISSIONER EDGAR:** Mr. Cox, anything before  
12 I speak?

13 **MR. COX:** Just really briefly. To the extent  
14 this is an issue for Ms. Larson in this case, we believe  
15 that the Issue 1 that is currently in the docket  
16 captures the issue. She could raise that FPL should be  
17 the proper applicant, for example.

18 Secondly, we agree with everything that Mr.  
19 Zambo said that she is confusing two terms: Applicant,  
20 which is a term in the Power Plant Siting Act, which is  
21 the applicant that applies for power plant siting with  
22 DEP versus the joint petitioners, which are FPL and SWA.  
23 And we are not -- FPL -- are not the applicant at DEP at  
24 this time. It is just a matter of fact and record.

25 **COMMISSIONER EDGAR:** Ms. Larson.

1           **MS. LARSON:** I'm sorry, we wouldn't be here if  
2 they weren't -- you know, the whole question, the whole  
3 thing that was brought up from the beginning for us is  
4 FPL is wanting to -- I don't even know how to describe  
5 it. They want to do the power block and the design of  
6 the power block and the capacity, and this is all tied  
7 to the solid waste expanded facility. And they came to  
8 you when this was initially brought to this Commission,  
9 the Power Plant Siting Act, whatever, you know, there is  
10 a reason they were listed together when they brought  
11 this before you. I don't think I'm confused at all. I  
12 really don't.

13           **MR. ZAMBO:** Chairman Edgar. Commissioner  
14 Edgar.

15           **COMMISSIONER EDGAR:** Mr. Zambo.

16           **MR. ZAMBO:** I'm aware of a recent case that  
17 had a similar issue to this. I think it was the  
18 Gainesville Regional Utilities versus the Gainesville  
19 biomass. In the Gainesville biomass project, they came  
20 to this Commission in a similar situation with a joint  
21 petition. And I believe the determination was made in  
22 that case that only the biomass facility that was  
23 seeking the need determination was deemed to be the  
24 applicant. So to the extent that parallel applies here,  
25 I just thought I would bring that to your attention.

1                   **COMMISSIONER EDGAR:** Thank you.

2                   And I did participate in that case, and I am  
3 familiar with it. But candidly, and on the record, I'm  
4 not completely remembering that point. So let me look  
5 to staff to see if their memory is better than mine on  
6 the point that Mr. Zambo has raised with that recent  
7 case.

8                   **MS. HELTON:** Madam Chairman, I'm sitting in  
9 the same boat you are. I was there for that case, as  
10 well, and I honestly don't remember whether that was a  
11 specific issue or not. But it also seems to me that  
12 here the facts speak for themselves, and that -- you're  
13 not asking for my opinion, but if you would like it, it  
14 seems that the two issues are very similar, and one  
15 would do.

16                   **COMMISSIONER EDGAR:** I think --

17                   **MR. HARRIS:** Commissioner --

18                   **COMMISSIONER EDGAR:** Yes, Mr. Harris.

19                   **MR. HARRIS:** Just one thing I would point out  
20 that I heard. I believe if you look at 403.501 that the  
21 title, that Section 403.501 through 403.518 are known as  
22 the Power Plant Siting Act. We are proceeding here  
23 under 403.519, which by the very terms of the statute  
24 would not be part of the Power Plant Siting Act. I  
25 believe, actually, .519 was part of FEECA originally.

1           So my thought would be, to the extent that we  
2 are talking about language for a joint applicant under  
3 the Power Plant Siting Act, the DEP side, that's not  
4 what we are proceeding on here at the Commission. What  
5 we are talking about, I believe, is an issue that staff,  
6 as I understand it, added some number of years ago to  
7 try and resolve -- to try and deal with some of the  
8 effects of a Supreme Court decision about who the proper  
9 applicant was.

10           We're talking about the Commission being the  
11 determination of need for the generating facility. I  
12 believe that is substantially different from a proper  
13 applicant for the DEP, the Power Plant Siting Act  
14 portion. So I do believe that a distinction can be made  
15 as to what we have here under .519 versus the Power  
16 Plant Siting Act over at DEP. So it's possible we're  
17 not really -- we're making a mountain out of a molehill  
18 in the sense that in a way it doesn't necessarily matter  
19 what goes on here when we term proper applicants,  
20 because DEP, under the Power Plant Siting Act, is going  
21 to resolve who the proper applicant is, and that would  
22 probably not be FPL. But for them I can't offer their  
23 legal opinion.

24           **COMMISSIONER EDGAR:** I understand what you're  
25 saying. I think I understand what you are saying. I



1 will say no mountains are being built, but we are  
2 working our way through it. We may be splitting hairs a  
3 little bit.

4 Ms. Rule, do you have a concern?

5 **MS. RULE:** Yes. I would point out that Ms.  
6 Larson's statements indicate that she has a position,  
7 and that position can be well expressed under the issue  
8 that is the Issue Number 1, not the alternative. So I  
9 would suggest we not take a position and change it into  
10 an issue.

11 And the other thing is to address what Mr.  
12 Harris said, and that is it sounded like he was saying  
13 that there may be a different applicant under the Siting  
14 Act versus determination of need. And I believe 403.519  
15 refers back to the Siting Act, and you can't be a need  
16 determination applicant unless you are a siting act  
17 applicant, and that is the SWA in this case. So I think  
18 all opinions and issues can be adequately addressed,  
19 well addressed under Issue 1 as it is phrased without  
20 the need for the alternative.

21 **COMMISSIONER EDGAR:** Mr. Harris.

22 **MR. HARRIS:** I think Ms. Rule is correct. You  
23 have to be -- to be an applicant at DEP, you have to  
24 have a determination of need from the Commission.

25 **COMMISSIONER EDGAR:** Okay. This is what we

1 are going to do, and I appreciate the discussion and the  
2 participation and everybody working with me to work  
3 through it all. We are going to use as Issue 1 for our  
4 hearing scheduled for next week the language in  
5 alternative Issue 1 that was proposed by the Larsons,  
6 and we are going to take judicial notice of the fact, as  
7 Mr. Zambo suggested and is the case, that SWA is the  
8 applicant for the DEP site determination proceeding,  
9 that this is a piece of that larger process. Does that  
10 work for you, Mr. Zambo?

11 **MR. ZAMBO:** I think that will work, yes.

12 **COMMISSIONER EDGAR:** I think it does, too, but  
13 I appreciate that.

14 Okay. With that, then, Staff, do you have  
15 what you need? Okay. Then we will move on to Issue 2.  
16 There are, to my knowledge, no alternative language  
17 suggestions on this or the issues between here and 12,  
18 so we may move just a little bit faster.

19 Ms. Larson.

20 **MS. LARSON:** Due to the fact that I found out  
21 about the Woods situation this morning, I was going to  
22 ask, you know, after reading the draft prehearing  
23 statement, I was going to change my position to the  
24 Woods Sullivan position.

25 **COMMISSIONER EDGAR:** And is that what you --

1 you're telling us that your position on your written --

2 MS. LARSON: Well, it was more eloquently  
3 written than mine was. How about that? At least I will  
4 admit to that. Is that okay?

5 COMMISSIONER EDGAR: You don't have to tell me  
6 why, but it is okay if you do.

7 MS. LARSON: Well, I went home -- no, I left  
8 Charles and the gentleman here, Mr. Cox, and I went  
9 home -- not home, but to the hotel and read things real  
10 quickly. So I did want to make that suggestion on Issue  
11 2.

12 COMMISSIONER EDGAR: Okay. And we will get to  
13 this at the end, but at the end of this proceeding  
14 today, before we adjourn, while we are on the record, I  
15 will say then and now that there will be the opportunity  
16 for all parties to submit language changes to the staff  
17 prior to this document being issued in final form, if  
18 there are changes that need to be made to positions as a  
19 result of discussions and/or rulings today. So I see  
20 this in exactly that same vein, just a little earlier,  
21 and I like early when possible.

22 So I would look to our staff. And, Ms.  
23 Larson, listen to me and make sure I get this correct.  
24 My understanding is that Ms. Larson is asking for her  
25 position on Issue 2 to be worded differently such that

1 the position previously submitted by Woods Sullivan  
2 would be her substitute language, and I believe our  
3 staff can make that change.

4 **MR. MURPHY:** If there might be more of  
5 these -- we are agreeable to that, but having said what  
6 you did about the possibility of changing, if you could  
7 just give us an e-mail --

8 **MS. LARSON:** (Inaudible; microphone off.)

9 **COMMISSIONER EDGAR:** I think we can work  
10 through it today. We'll take our time. We're all here  
11 in the same room; we'll take our time and --

12 **MS. LARSON:** Can I handwrite it to you and  
13 give you the list, or --

14 **COMMISSIONER EDGAR:** Mr. Murphy, just work  
15 with me; we'll get there.

16 **MR. MURPHY:** We will do it now, okay.

17 **COMMISSIONER EDGAR:** Okay. Thank you.

18 Okay. So per Ms. Larson here on the record,  
19 my direction to our staff is to substitute the Woods  
20 Sullivan language for the Larson position for Issue 2.  
21 And, Ms. Larson, if there are other issues that you want  
22 to do that, we will take the time, and you tell me, and  
23 we will make sure that we are all clear. Or other  
24 changes. Okay. That brings us to Issue 3.

25 Ms. Larson, any changes?

1 MS. LARSON: Number 3 is going to be the same.

2 COMMISSIONER EDGAR: You would like to  
3 substitute the previous Woods Sullivan position?

4 MS. LARSON: Uh-huh.

5 COMMISSIONER EDGAR: Mr. Murphy, we're clear?  
6 Any objections? Okay.

7 MR. MURPHY: Does this reflect back to  
8 Alternative 1? Are you keeping your position on  
9 Alternative 1?

10 MS. LARSON: Yes. I mean, Number 1, I was  
11 keeping -- I didn't touch Number 1 at all.

12 COMMISSIONER EDGAR: Are we all clear; all  
13 fine? Okay. Then we will move on to Issue 4.

14 Ms. Larson, are you ready to move on?

15 MS. LARSON: I didn't read Number 4. I  
16 apologize. I skipped right over it.

17 COMMISSIONER EDGAR: Take a moment.

18 MS. LARSON: I apologize.

19 COMMISSIONER EDGAR: That's okay.

20 MS. LARSON: We'll do the same with Number 4,  
21 is that okay?

22 COMMISSIONER EDGAR: Mr. Murphy, any objection  
23 from the parties? Seeing none, then for Issue 4,  
24 similarly, I will ask our staff in the final draft that  
25 they are preparing for me to review and then issue, that

1 the stated position of Ms. Larson be changed to  
2 substitute the prior stated position by Woods Sullivan.

3 Okay. That brings us to Issue 5.

4 **MS. LARSON:** (Inaudible; microphone off.)

5 **COMMISSIONER EDGAR:** Ms. Larson --

6 **MS. LARSON:** I apologize.

7 **COMMISSIONER EDGAR:** That's okay. For the  
8 record, so I'm understanding you to say that, again, on  
9 Issue 5 you would like to substitute the Woods Sullivan  
10 previous stated language as their position for the  
11 language that you had submitted prior. You can take a  
12 moment.

13 **MS. LARSON:** Sorry, I wanted to ask him.

14 **COMMISSIONER EDGAR:** So for the record, I need  
15 you to agree with me yes or no. Yes, I have got that  
16 correct, or, no, I do not. You want to substitute. I'm  
17 seeing nods.

18 **MR. LARSON:** That's fine.

19 **MS. LARSON:** I'm sorry. I was nice to  
20 acknowledge him.

21 **COMMISSIONER EDGAR:** Court reporter, are we  
22 okay? Staff, are we good?

23 **MR. MURPHY:** Yes.

24 **COMMISSIONER EDGAR:** I'm seeing nods. Okay.  
25 Issue 6.

1           **MS. LARSON:** I am going to adopt Number 6 with  
2 the Woods Sullivan language.

3           **COMMISSIONER EDGAR:** Okay. A similar  
4 substitution. Our staff will take care of that.

5           **MR. MURPHY:** Yes.

6           **COMMISSIONER EDGAR:** Thank you. That brings  
7 us to Issue 7.

8           And, Ms. Larson, I note that --

9           **MS. LARSON:** I apologize; I'm sorry.

10          **COMMISSIONER EDGAR:** No, no; that's okay. You  
11 take a moment. I note that the stated position  
12 previously submitted by Woods Sullivan is significantly  
13 longer, that's not always clearer, but it's for you to  
14 tell us what your position is and then we will make sure  
15 that there are no objections.

16          **MS. LARSON:** On Number 7 I'm going to adopt  
17 Woods Sullivan.

18          **COMMISSIONER EDGAR:** Okay. Then we'll ask our  
19 staff to make a similar substitution, hearing no  
20 objection from the other parties.

21          That brings us to Issue 8. We are on Page 13.

22          **MS. LARSON:** Number 8 is fine.

23          **COMMISSIONER EDGAR:** Okay. We will leave  
24 Issue 8 as is. Got that, Charlie?

25          **MR. MURPHY:** Yes.

1                   **COMMISSIONER EDGAR:** That brings us to Issue  
2 9.

3                   **MS. LARSON:** I'm going to adopt Woods Sullivan  
4 on Number 9.

5                   **COMMISSIONER EDGAR:** Okay. Any objection?  
6 Then we will ask our staff to make that substitution.  
7 That brings us to Issue 9A, and we are on Page 15.

8                   **MS. LARSON:** Adopt Woods Sullivan on 9A.  
9 Correct, we are on 9A?

10                   **COMMISSIONER EDGAR:** We are on 9A. And if you  
11 would like that substitution, we will ask our staff to  
12 make that on Issue 9A, hearing no objections.

13                   That brings us to 9B, which is on Page 16.

14                   **MS. LARSON:** Sorry about that. On 9B, I'm  
15 going to adopt Woods Sullivan, the language.

16                   **COMMISSIONER EDGAR:** Any objection? Hearing  
17 none, we will ask our staff to make that substitution.

18                   That brings us to Issue 10, also on Page 16.

19                   **MS. LARSON:** I'm going to keep mine on Number  
20 10, if that makes it easy for you.

21                   **COMMISSIONER EDGAR:** Okay. And seeing no  
22 other changes, we will move to Issue 11.

23                   **MS. LARSON:** Issue 11, I'm keeping my  
24 position.

25                   **COMMISSIONER EDGAR:** Okay. Seeing no other



1 changes, that brings us to Issue 12.

2 **MS. LARSON:** It's the same; I'm keeping mine.

3 **COMMISSIONER EDGAR:** It is the same, so you  
4 may keep the same language that you had. And seeing no  
5 other changes.

6 Okay. That brings us to the end of that  
7 section of issues that there had been previous  
8 discussion about. So that brings us from my  
9 understanding to Page 18 of the draft order, and to the  
10 proposed additional issues and positions is the heading,  
11 as was previously described, also. And, let's see,  
12 PAI1.

13 **MS. LARSON:** I'm going to keep my position.

14 **COMMISSIONER EDGAR:** I have a concern about  
15 the relevancy of this issue to this proceeding per the  
16 statute and the rule that I would like to look to the  
17 other parties for comments.

18 **MR. ZAMBO:** Commissioner, the Solid Waste  
19 Authority believes it's not a proper issue. It's  
20 irrelevant. The question is whether sufficient  
21 information has been provided to the Commission to make  
22 the findings that the joint applicants or joint  
23 petitioners have requested. But having said that, you  
24 know, to the extent this is subsumed within other  
25 issues, you know, I can't make a big deal out of it, if

1 this is real important to Ms. Larson. But I think it's  
2 going to fall out of all the other issues.

3 **COMMISSIONER EDGAR:** Ms. Larson, my  
4 understanding and my thinking is that what is listed in  
5 this before us as PA11 is -- although it's worded as a  
6 question is more a position than an actual issue per the  
7 statute for the matter before us. And although subsumed  
8 is not a word that I often use, I think I do agree with  
9 Mr. Zambo that in this case were that to be something  
10 that you wanted to question the witnesses about, per the  
11 chair, there would be that opportunity. So my thinking  
12 right now is unless I hear something much more  
13 persuasive from you right now, that this does not need  
14 to be a separate issue with all of the itemized issues  
15 that we have already agreed to. And this is your  
16 opportunity to respond.

17 **MS. LARSON:** Well, it's kind of difficult for  
18 me, Ms. Edgar. Because when I -- you have to take into  
19 consideration, I try to look at the global picture. I  
20 think you know that dealing with me before in several  
21 issues. I do try to look -- I weigh all the issues.  
22 And I was privy to the meetings at the Solid Waste  
23 Authority, so my purview can only be what I have  
24 witnessed. And then I read newspaper articles. I read  
25 several hundred newspapers a month. And right in

1 this -- right in this chamber they literally used the  
2 word political theater the other day in an article. So  
3 are the critical issues being covered? I don't know.  
4 As a layperson, I am not -- I am not voiced, I am not a  
5 lawyer, doctor, or Indian Chief. I have said it many,  
6 many times. But is critical data missing? Even up  
7 until the depositions the other day, the numbers keep  
8 changing on this power block, this capacity, this --  
9 maybe that's me, maybe I'm just looking at it  
10 differently, or from another angle, or not the legal  
11 angle, I don't know. But I think that critical data to  
12 the taxpayers and the ratepayers to me might be  
13 different than anybody else sitting in this room.

14 So I am not quite sure what argument you would  
15 like me to give you, but I am concerned about the way --  
16 a lot of numbers are being bantered about, and with  
17 tremendous differences. It might be this many Watts, it  
18 might be this many Watts, it might be this much money,  
19 it might be that much money. No solid, you know what I  
20 mean, concrete "This is what it's going be, Ms. Larson."  
21 Does that make any sense at all that this is the number?  
22 You know, you give me a number. I'm selling you a car,  
23 but I want -- it could be any price between \$20,000 and  
24 \$120,000, and I guess -- I don't know if that is  
25 relevant in the way to explain it to you, but that is

1 what it looks like.

2 I've walked into a car dealership. I see a  
3 \$20,000 car, but the salesman is telling me, no, with  
4 the rust-proofing and the new tires it's going to cost  
5 \$120,000, and I don't know how else to explain. When I  
6 look at the data and do try to comprehend it, I really  
7 have, I have gone through lots of interrogatories, and I  
8 have tried to understand it, and that particular part of  
9 it, is all the critical data being presented to the  
10 public, not necessarily in a manner that we understand.

11 **COMMISSIONER EDGAR:** Ms. Larson, I do  
12 understand your comment, I really do. And I also  
13 understand and agree that there's a lot of information  
14 and a lot of documents, and that is, in my mind, and I  
15 believe also per the statute, the purpose of having an  
16 evidentiary hearing at this point in the processing of  
17 this petition for this proposal is to nail down just  
18 some of those things that you have pointed out.

19 But with that said and meant, I think that it  
20 is partially my responsibility as one of five  
21 Commissioners in this proceeding and as the assigned  
22 prehearing officer in this case to help us, to the  
23 extent that we can, make sure that the necessary issues  
24 to answer the necessary questions are presented for  
25 evidentiary review and discussion at the hearing. And I

1 think the issues that we have agreed to and your  
2 opportunity to present your positions and to ask cross  
3 during the proceeding get us there, and get us to what  
4 it is you are saying you want and need.

5 I don't think, from my read and my  
6 understanding of these proposed additional issues, I  
7 don't think that they do that.

8 **MS. LARSON:** As a layperson, I think the Solid  
9 Waste Authority, and I don't know, we weren't supposed  
10 to be arguing the case today, we were supposed to be  
11 going over the issues.

12 **COMMISSIONER EDGAR:** We are not arguing the  
13 case today.

14 **MS. LARSON:** But you know what I mean. From  
15 my point of view, somebody is asking me, the ratepayer,  
16 the taxpayer, to give someone a blank check. The  
17 number, the critical data that nailed down is what  
18 scares me. That's all.

19 **COMMISSIONER EDGAR:** Okay. Ms. Larson, you  
20 will have the opportunity for opening statements and  
21 also to ask cross. As you have pointed out, that is not  
22 what we are doing here today. What we are doing here  
23 today is to put us, to the best of my ability and all of  
24 our ability, in the posture such that the hearing will  
25 be what it needs to be under the statute, to answer the

1 questions and handled in the clearest and most  
2 transparent way that we can accomplish.

3 So with that, it is my ruling that proposed  
4 additional Issue 1, the language that is before us, is  
5 subsumed in the prior issues, and that it is a stated  
6 specific separate proposed issue that is not necessary  
7 for this proceeding.

8 Okay. We will move on to PAI2, but before we  
9 do that, let me look to our staff to see if there is  
10 anything additional you need on that?

11 **MR. MURPHY:** No, we understand.

12 **COMMISSIONER EDGAR:** Okay. PAI2, which is  
13 also on Page 18.

14 **MS. LARSON:** (Inaudible; microphone off.)

15 **COMMISSIONER EDGAR:** Okay. Ms. Larson, I have  
16 really the same concern as on 1 with, I think, pretty  
17 much all of these additional issues, although we will go  
18 through them one-by-one. As I stated in the order  
19 establishing the tentative issues list, which was issued  
20 on March 18th of this year, the final issues that are to  
21 be tried at hearing need to be concise and material to  
22 the petition that is pending before us. And I have a  
23 concern that these additional issues are, as I stated  
24 earlier, not necessarily additional issues for the case,  
25 but are a restatement of positions as opposed to issues.

1           Let me also point out on PAI4, there is an  
2 Alternative A language and an Alternative B language.  
3 The Alternative A would no longer be before us, per my  
4 prior ruling, realizing that that had been submitted by  
5 intervenors Sullivan and Wood.

6           Let me go ahead, since I'm kind of now taking  
7 these as a group, and ask you to look to that one  
8 specifically, the PAI4 Alternative A language, which had  
9 been submitted, and the PAI4 Alternative B language,  
10 which you had submitted, both of which, I note for the  
11 record, as it is before us are very similar, but yet the  
12 wording is not exactly the same.

13           My thinking, Ms. Larson, since I have drawn  
14 your attention to that is that both of those alternative  
15 language suggestions are, again, Mr. Zambo, subsumed in  
16 Issues 9, 9A, and 9B specifically, is my thinking,  
17 realizing that those issues, per the statute, address  
18 the cost-recovery issue.

19           **MS. LARSON:** I'm going to stand with PAI3.  
20 That's how I feel. I can't change my mind. I'm sorry,  
21 I --

22           **COMMISSIONER EDGAR:** No, that's okay. That's  
23 okay.

24           **MS. LARSON:** I may not say it as creatively as  
25 a lawyer might, but I just --

1                   **COMMISSIONER EDGAR:** Okay. I want to make  
2 sure that we are all, to the extent that we can, in the  
3 same place, and understanding one another. So I was  
4 waxing probably not eloquently about the additional, or  
5 the alternative language suggestions on PAI4. You just  
6 spoke --

7                   **MS. LARSON:** I'm sorry.

8                   **COMMISSIONER EDGAR:** That's okay. -- spoke to  
9 PAI3. Is there anything more specifically about any of  
10 the suggested issues, other than what is before me, that  
11 you would want to highlight or speak to me about at this  
12 time?

13                   **MS. LARSON:** Well, I haven't changed my mind;  
14 I'm not going to change my mind. I apologize, I don't  
15 know, you know.

16                   **COMMISSIONER EDGAR:** No, no, no, there's  
17 nothing to apologize for. You are doing just fine; it's  
18 just that you and I are not completely agreeing, I  
19 think, right now, and that happens sometimes.

20                   **MS. LARSON:** I apologize. My opinion hasn't  
21 changed in this thing while I walked into the room  
22 today.

23                   **COMMISSIONER EDGAR:** Okay. Anything on any of  
24 the PAI Issues 1 through 7 that are before us that --  
25 from FPL or SWA that you would like to speak to at this



1 time?

2 **MR. ZAMBO:** For the record, I just want to  
3 make it clear I never use the word subsumed outside of  
4 this hearing room.

5 **COMMISSIONER EDGAR:** Understood.

6 **MR. ZAMBO:** And I would just point out for  
7 Ms. Larson's benefit, she might look at the position she  
8 adopted on Issues 6 and 7, which were Woods Sullivan  
9 issues, basically bring in this question of the capacity  
10 availability and the ten-year site plan. So it is easy  
11 for you to address these as issues, or as positions on  
12 the issues. Thank you.

13 **MS. LARSON:** Sorry. I apologize. But I guess  
14 when we get to the hearing stage, I just don't want you  
15 to sit up there and say, no, Alex, you can't say that  
16 because we addressed this, and we are not going to  
17 listen to this today. I guess that's my biggest fear as  
18 an intervenor, and not being an attorney. And I beg,  
19 you know, the court's mercy here, or whatever you want  
20 to call it, but it's -- because, you know, I just don't  
21 want to walk into this room next week and be told, well,  
22 no, you can't bring that up, because we decided in Issue  
23 whatever, 75, when somebody filed a brief in the middle  
24 of the week and said we are going to discard this.

25 Do you see what I'm saying? We change our --

1 it is not your fault, Ms. Edgar, but they have opposed  
2 everything. We object to this, we object to that. I  
3 mean, I have seen 74,000 objections. So that's where,  
4 in this venue, it's like if I miss something  
5 inadvertently, then, like I said, I wasn't a hindrance  
6 because Mr. Murphy, and he said, whoops, she's gone,  
7 bye-bye. So I have had to readdress some of my issues  
8 in a 15-minute period, which I did, and I just want to  
9 be able to keep that on the record.

10 If I have a question, I will beg the court's  
11 indulgence that I might have screwed up with the issue,  
12 that I didn't particularly address it properly in this  
13 venue when we get to the hearing next week. Fair  
14 enough?

15 **COMMISSIONER EDGAR:** Mr. Zambo, before I  
16 respond.

17 **MR. ZAMBO:** I just wanted to ask a question.  
18 I guess I'm a little confused procedurally here. I get  
19 the impression that Ms. Larson plans to testify next  
20 week at the hearing.

21 **COMMISSIONER EDGAR:** I did not hear that, but  
22 this is a fine time to ask that question.

23 Ms. Larson, as an intervenor you have the  
24 ability to ask questions on cross-examination of the  
25 witnesses that have been and will be presented, and is

1 that your understanding?

2 **MS. LARSON:** Yes, you ask questions.

3 **COMMISSIONER EDGAR:** Mr. Zambo.

4 **MR. ZAMBO:** That's fine; thank you.

5 **MS. LARSON:** I'm sorry, that's what I thought  
6 I could do. Just ask questions.

7 **COMMISSIONER EDGAR:** Yes.

8 **MS. LARSON:** Good. We're good.

9 **COMMISSIONER EDGAR:** Staff, anything?

10 **MR. MURPHY:** I think staff believes that her  
11 questions are really positions that are subsumed, to use  
12 your word, in other issues. And, actually, the  
13 petitioners have told her where, and they seem to be on  
14 record where she can address it. The one exception  
15 appears to be PAI2, which I believe they are arguing is  
16 not appropriate for this proceeding.

17 **COMMISSIONER EDGAR:** It is my understanding  
18 that PAI2, to the extent that Ms. Larson chooses, or  
19 staff chooses to ask questions of the witnesses could be  
20 contained within the prior issues that we have reviewed,  
21 I think 6 and 7, but maybe others, as well.

22 **MR. COX:** Commissioner Edgar, FPL agrees with  
23 that statement.

24 **COMMISSIONER EDGAR:** And I'm seeing nods.  
25 Thank you, Mr. Murphy.

1           **MR. MURPHY:** Thank you.

2           Ms. Larson, did you have additional?

3           **MS. LARSON:** I just -- well, the only -- most  
4 of my reasoning was we cited the 2010 Site Plan, and the  
5 2011 Site Plan was not issued until the beginning of  
6 April. You know, so, I mean, if you see a question of  
7 why I'm asking about the Site Plan all over the place,  
8 that's the reason, because you're -- the Public Service  
9 Commission adopted the 2010 Site Plan in January of -- I  
10 think it was the first part of January of this year was  
11 when the Ten-Year Site Plan was adopted. So, I mean, if  
12 you hear my angst and terror, that's why with the 2011  
13 -- (Inaudible; microphone off.)

14           **COMMISSIONER EDGAR:** Okay. I think where we  
15 are, let me make sure that we are all of a similar  
16 understanding, is that we have gone through the Issues 1  
17 through 12. We have agreement on the record as to the  
18 language of those issues and the positions that have  
19 been presented by the parties, realizing that Ms. Larson  
20 has made some changes, and that will be reflected.

21           It is my ruling that proposed additional  
22 issues and positions marked as PAI1 through PAI7 will  
23 not be considered as separate additional issues in the  
24 matter before us, but that they, as per our discussion,  
25 to the extent that they are relevant and questions are

1 asked, can be addressed with the issues that we have  
2 walked through up to that point. Yes, Mr. Murphy.

3 **MR. MURPHY:** Not to belabor this, but looking  
4 at PAI7, there is also an assertion that this is not an  
5 appropriate issue. Is there somewhere that she can  
6 argue rate impact in the proceeding?

7 **COMMISSIONER EDGAR:** First of all, PAI7 in its  
8 entirety would have already been removed.

9 **MR. MURPHY:** The only clarification I was  
10 having is --

11 **COMMISSIONER EDGAR:** However --

12 **MR. MURPHY:** I'm sorry.

13 **COMMISSIONER EDGAR:** It's okay.

14 **MR. MURPHY:** It seemed that we were saying  
15 that she could argue everything, that the parties seemed  
16 to have said where it's appropriate for her to argue it  
17 except for PAI4 and PAI7. And I just wanted to know  
18 what issue they believe --

19 **COMMISSIONER EDGAR:** Okay. And if I get this  
20 wrong, speak up, but let me pose it to the parties. If  
21 Ms. Larson as an intervenor party and/or if our staff  
22 have questions for the witnesses regarding rate impact  
23 from the proposal that is before us, what issues do you  
24 believe would be the best issues to raise questions on  
25 that point?

1           **MR. COX:** Commissioner Edgar, I believe the  
2 rate impact question is -- first of all, it's a factual  
3 question that has been asked by staff in discovery. It  
4 flows out of what, if any, is the proper amount of the  
5 advanced capacity payment has been the focus, and the  
6 advanced capacity payment is covered well in several of  
7 the issues, including among others, Issues 7, 8, 9, and  
8 9A.

9           **COMMISSIONER EDGAR:** Anything additional from  
10 SWA?

11           **MR. ZAMBO:** I would agree with what Mr. Cox  
12 said. And just as he said, these issues have been  
13 raised in the interrogatories, so I don't think it would  
14 be off limits for her to raise, if she wants to pursue  
15 an interrogatory response from Mr. Hartman.

16           **MR. MURPHY:** Thank you.

17           **COMMISSIONER EDGAR:** Okay. Thank you. Where  
18 I am, and I hope that is where you all are, as well, is  
19 on Section IX, the Exhibit List, which is on Page 21 of  
20 the draft.

21           Mr. Murphy, let's speak to composite and  
22 comprehensive and matters of that ilk.

23           **MR. MURPHY:** Yes. Staff typically creates a  
24 composite exhibit list, which is a composite of all  
25 the -- or a list of all the exhibits that have been

1 filed, and it's just to coordinate the numbering of  
2 exhibits. And that usually is Exhibit Number 1 in the  
3 hearing, and it is just literally a list. It is not  
4 anything more than that.

5 Staff also intends, with the agreement of the  
6 parties, to create a composite hearing exhibit that  
7 would be comprised of all of the discovery in the case,  
8 the two ten-year site plans. Within that there is the  
9 response to Staff's Production of Document Number 8,  
10 which is confidential. To the extent that that is  
11 included, it would be handled pursuant to the  
12 confidentiality requirements in the proceeding.

13 We are still working through whether there can  
14 be a composite of all of the discovery and the ten-year  
15 site plans, but we hope to have a resolution of that if  
16 we can by Wednesday so we know where we are.

17 **COMMISSIONER EDGAR:** Ms. Larson, do you have  
18 any questions about that? I want to make sure, again,  
19 to the extent that we can that we are all of the same  
20 mind.

21 **MS. LARSON:** Well, the composite -- I think I  
22 can understand a composite. It will be a list of  
23 everything, every interrogatory that has been introduced  
24 into evidence, and it will be a composite of everything  
25 we have dealt with so far, correct?

1           **MR. MURPHY:** The composite exhibit would  
2 actually be the exhibits. The first thing that I talked  
3 about literally is just a list, and it's so that -- it's  
4 a road map to the Chairman when he is going through that  
5 he can go down the list and see what he has got, and  
6 everybody agrees how things are numbered. The other  
7 thing that you're talking about is composite of exhibits  
8 that are put together by staff.

9           **MS. LARSON:** Like a big binder?

10          **MR. MURPHY:** I don't think it will fit in a  
11 binder.

12          **COMMISSIONER EDGAR:** I don't think it will fit  
13 in a binder. More like a pile. More like a big pile.

14          **MS. LARSON:** Bear with me, Charles. I'm  
15 trying to wrap my arms around how you are going to --  
16 everything is different here. Everything single thing  
17 you guys do is different from any other proceeding I  
18 have ever dealt with in my entire life. So I'll admit  
19 that wholeheartedly on the record. So I'm just trying  
20 to wrap my arms around it a little bit.

21                 You know, I mean, I have been in a DOAH  
22 administration and they will hand you a binder this  
23 thick. I mean, I'm not shocked or surprised, you know.

24          **MR. MURPHY:** This would probably be unbound,  
25 but it would probably be that thick.



1           **MS. LARSON:** Okay. It's not your fault.  
2 Thank you. I do -- I'm not quite sure where to bring  
3 this up, if it is on the record or not with you, but I  
4 was asked to sign a confidentiality agreement, and  
5 everything in my being tells me not to sign it. And I'm  
6 not quite sure. You know, I'm lost here. I'm truly,  
7 truly lost here. And in this particular instance,  
8 anything I have ever done in my entire life -- and I'm  
9 not going to tell you how old I am.

10           **COMMISSIONER EDGAR:** Well, you know, it's a  
11 matter of public record how old I am, so --

12           **MS. LARSON:** But this one, this one really  
13 worries me. And I talked it over with my husband, I'm  
14 talking to him for two hours, and we are like -- I'm  
15 trying to wrap my arms around it, I truly am, but I  
16 don't understand it. Because in the situation with  
17 public records, I don't understand this. I really --  
18 and I don't know if I'm breaking a rule by not signing  
19 it, am I terrorizing the whole case because I'm not  
20 signing this? I really can't wrap my arms around this.  
21 Because as a ratepayer and as a taxpayer, I'm getting  
22 hit from both sides. And I did explain this to Mr. Cox  
23 and them when they handed this to me. I'm worried. You  
24 know, I am a SWA customer besides being an FPL  
25 ratepayer, so I feel like the tragedy and comedy sign

1 right now, the two masks. What do I do? Because I'm  
2 concerned about this. And I guess I'm begging the mercy  
3 of the hearing officer, you, Ms. Edgar. What do I do?

4 **COMMISSIONER EDGAR:** All right. Well, let's  
5 see if we can walk our way through it. First off, I  
6 certainly, as both a public official and also as a  
7 citizen understand concern and reluctance to sign  
8 anything, especially -- and would not want you or others  
9 to sign something that they don't completely understand.  
10 I can assure you that as long as we are talking about  
11 what I think we are talking about, that it is nowhere  
12 near as scary or terrifying as one might consider from  
13 some of the concerns that you have expressed.

14 Per the statutes that we operate under, there  
15 are certain exemptions to the public records law by  
16 statute, and the FPL/SWA request -- FPL, I guess,  
17 requested or cited their belief that certain information  
18 submitted as a part of the discovery process in this  
19 proceeding met the requirements of one of the statutory  
20 exemptions. Our staff reviewed that request. I  
21 reviewed that request, and it was my ruling as issued in  
22 an order sometime last week that, yes, indeed, their  
23 request and that information did meet the letter of that  
24 public records exemption.

25 Now, that is, as my understanding, although it

1 may be a voluminous document, it is, one, voluminous in  
2 pages, but one more narrow bits of information as part  
3 of this proceeding. And my understanding, but I will  
4 look to staff to correct me if I misstate, is that the  
5 document that you have been asked to sign means that you  
6 understand that that document has been found to meet the  
7 confidentiality requirements per that public records  
8 statutory exemption, and that you will abide by -- and  
9 abide sounds kind of serious, but that you will handle  
10 that information in recognition of the requirements that  
11 exemption carriers with it.

12 **MS. LARSON:** Well, the --

13 **COMMISSIONER EDGAR:** Hang on, Ms. Larson.

14 Mr. Murphy, did I state that correctly?

15 **MR. MURPHY:** Except that I'm not privy to what  
16 the document that she is asked to sign --

17 **COMMISSIONER EDGAR:** Ms. Larson, will you show  
18 that to Mr. Murphy and, if need be, to the parties, as  
19 well, so we all --

20 **MS. LARSON:** (Inaudible; microphone not on.)  
21 You can keep that. They gave me another one. That is  
22 yours now. Thank you.

23 **COMMISSIONER EDGAR:** Mr. Murphy, upon review?

24 **MR. MURPHY:** Upon review, this appears to be a  
25 confidentiality agreement between the parties that if

1 they make this information available to her that she  
2 will not disclose it. Beyond that, it's a quick read,  
3 and I don't know how to counsel her on --

4 **COMMISSIONER EDGAR:** Ms. Larson.

5 **MS. LARSON:** I am not comfortable signing this  
6 until I talk to my own -- you know, the guy who wrote my  
7 will, whose name is Dennis Boyce (phonetic) -- I have an  
8 attorney in Palm Beach County -- and have him look at  
9 this. Because I'm not going to sign anything I don't  
10 understand. Because they might say, well, Ms. Larson,  
11 you said you're light bill was \$64. You have screwed up  
12 the confidentiality of this agreement, and that's what  
13 worries me right here, as a layperson.

14 **COMMISSIONER EDGAR:** Okay. Again, I am not  
15 asking you to sign something that you don't understand,  
16 and you certainly have the opportunity to give that some  
17 additional thought. I do want to make sure that we all  
18 understand, to the best we can, for you to sign that,  
19 what means for you and for the proceeding, and to not  
20 sign it, what that means for you and for the proceeding.  
21 So that is my goal here.

22 Yes, sir.

23 **MR. COX:** Commissioner Edgar, just to briefly  
24 respond to that. The document that was put before  
25 Ms. Larson is FPL's standard confidentiality agreement

1 that it provides to every intervenor that wants to look  
2 at our information in a proceeding before the PSC. It  
3 protects the confidentiality of that information. It  
4 allows Ms. Larson to use it, to include it in her  
5 questions at the hearing to the extent she keeps the  
6 information confidential, and then requires her to  
7 return the information after the Commission's decision  
8 in this matter.

9 It is nothing unusual, nothing out of the  
10 ordinary. We are not trying to do anything to be  
11 difficult here. This is confidential information that  
12 relates to fuel forecasts. It is information that is  
13 routinely requested confidential treatment at the  
14 Commission by the FPL and routinely granted confidential  
15 treatment. And that really is, like you said, the  
16 narrow limited area that we are talking about here in  
17 this case with this information. And that's all I have.  
18 Thank you.

19 **COMMISSIONER EDGAR:** Okay. And I believe that  
20 that is consistent. I think that's consistent with my  
21 comments a moment ago and also with the order that I  
22 referred to, Order Number PSC-11-0193-CFO-EU.

23 Mr. Murphy.

24 **MR. MURPHY:** Just getting out your order to  
25 check that.

1                   **COMMISSIONER EDGAR:** If you need a copy, I  
2 have one right here. Okay. So let me go back to my  
3 goal, which is that we all understand, to the best that  
4 we can. So Ms. Larson has said that she is not  
5 comfortable signing this document at this point in time.  
6 She may get additional comfort; she may not. I  
7 certainly don't know that right now.

8                   **MS. LARSON:** I guess, you know, I did read  
9 your order, I did, because it is for 18 months, and I  
10 understand all that. I just don't know if I am  
11 encompassing myself into something that I don't want to  
12 be encompassed into just because I read that gas is  
13 going to cost \$375 million next year.

14                   **COMMISSIONER EDGAR:** Hypothetically.

15                   **MS. LARSON:** I hope you will bear with my  
16 hesitation. I mean, I might be able to get this off to  
17 them tomorrow morning, you know, mail it off or  
18 whatever, but at this juncture I'm not comfortable with  
19 it.

20                   **COMMISSIONER EDGAR:** Okay. At this point this  
21 sounds to me, we do have some additional time, perhaps  
22 something that the parties and our staff can discuss  
23 beyond this point off-line and see where that takes us.  
24 Does that work, or is there something that we need to  
25 specifically address today?

1 Ms. Helton.

2 MS. HELTON: I was just going to say that that  
3 is completely consistent with our rule on confidential  
4 information, 25-22.006, which contemplates that there  
5 are these types of agreements between the parties, and  
6 which also provides that all persons are urged to seek  
7 mutual agreement regarding access prior to bringing the  
8 controversy to the Commission. So this sounds like one  
9 of those perfect opportunities where they can go after  
10 the prehearing and discuss it. Ms. Larson can talk to  
11 her counsel about it. Hopefully, you know, maybe she  
12 can gain comfort from that, and this is something that  
13 can be worked out prior to next Monday when the  
14 hearing --

15 MS. LARSON: I'm not saying I might not sign  
16 it before next Monday. I promise. I just -- I do  
17 have -- the guy who wrote my will, at least he knows how  
18 to read a document that I might not know how to read  
19 properly. Because if they are saying you can't talk  
20 about FPL ever again, I'm in big trouble, aren't I?

21 COMMISSIONER EDGAR: Okay.

22 MS. LARSON: I appreciate your patience.

23 COMMISSIONER EDGAR: I will ask you, Ms.  
24 Larson, and before you leave the room today, but after  
25 we adjourn, to please get with FPL specifically, and

1 also with our staff, I would like our staff to work with  
2 you on that, and see if they can answer questions that  
3 you have, recognizing that you would like additional  
4 time to think and consult with whomever --

5 **MS. LARSON:** Today.

6 **COMMISSIONER EDGAR:** -- you would like to,  
7 which is perfectly proper, and let's see if we can get  
8 there.

9 **MS. LARSON:** I apologize. I apologize for my  
10 hesitancy, but I'm not home right now to say, hey, call  
11 someone up and say can you look at this fax. You know,  
12 I can't do it.

13 **COMMISSIONER EDGAR:** I think we are all good,  
14 and we do have the next few days to continue to work on  
15 these last kind of remaining items.

16 Okay. Anything else under Section IX of the  
17 draft order? Okay. That brings us then to Section X,  
18 which is on Page 22, proposed stipulations. I am not  
19 aware of agreed to stipulations in this case. Let me  
20 look to our staff first.

21 **MR. MURPHY:** I don't believe there are any  
22 yet.

23 **COMMISSIONER EDGAR:** Always hopeful, perhaps,  
24 though. Okay. With that, then on the draft that is  
25 before us, I believe that the first paragraph language



1 should be removed. And, Mr. Murphy, the second  
2 paragraph.

3 **MR. MURPHY:** If we are able to reach a  
4 stipulation, we would draft that there and for your  
5 review and signature. If we are not, that would  
6 obviously come out.

7 **COMMISSIONER EDGAR:** Do we need a deadline?

8 **MR. MURPHY:** It could be great if we could  
9 have that by -- if we could know by Wednesday at noon  
10 whether we had a stipulation.

11 **COMMISSIONER EDGAR:** Okay. And I'm going to  
12 use that, also, as the date -- and we will talk about  
13 this some more. My goal is to -- it is my goal, but it  
14 is also what we are going to do, I guess, it is what we  
15 are going to do, which is have Wednesday of this week,  
16 noon for changes, additional information, agreements, or  
17 disagreements to go to our staff by Wednesday at noon  
18 such that they can make all changes to the proposed  
19 draft prehearing order for my review so that I can get  
20 that out by Thursday at the latest, sometime Thursday,  
21 to be available to all parties and all Commissioners and  
22 our staff, since it is sort of the -- since the document  
23 itself is the roadmap for the hearing that is scheduled  
24 for Monday and will be on Monday.

25 Okay. Anything else on Section X?

1                   Okay. Hearing none, that brings us to  
2 Section XI, Pending Motions. I am not aware of any.  
3 Are there any pending motions?

4                   **MR. MURPHY:** I'm not aware of any.

5                   **COMMISSIONER EDGAR:** Okay. And I'm seeing  
6 none from the parties, as well. That brings us to  
7 Section XII, Pending Confidentiality Matters. We have  
8 already addressed that that was before us. I'm not  
9 aware of any others or any others to come. So noted for  
10 the record, and as will be reflected in the language in  
11 the order.

12                   That brings us to Section XIII, Post-hearing  
13 Procedures. Note for the record that in this section  
14 there are limitations for the number of words and the  
15 number of pages for proposed hearing filings. I want to  
16 make sure that all parties are aware of that, and that  
17 these are agreeable. And also it is my understanding  
18 that SWA and FPL post-filing will be filed jointly and  
19 as one document subject to those limitations. Is that  
20 your understanding, as well?

21                   **MR. COX:** Yes, that's FPL's understanding.

22                   **MR. ZAMBO:** That's Solid Waste Authority's  
23 understanding, as well.

24                   **COMMISSIONER EDGAR:** Okay. Sobeit.

25                   Okay. That brings us to the bottom of Page

1 22, section Roman numeral XIV, Rulings. As some of you  
2 may know, I am personally, as a Commissioner, a fan of  
3 opening statements. We set varying limits, often ten.  
4 Ten minutes for opening statements, Ms. Larson, for you  
5 to utilize. You do not need to use all of that. It is  
6 up to you up to ten minutes, and jointly up to ten  
7 minutes between FPL and SWA. Does that work?

8 **MR. ZAMBO:** That's fine with SWA.

9 **COMMISSIONER EDGAR:** Thank you.

10 **MR. COX:** That's fine with FPL.

11 **COMMISSIONER EDGAR:** Thank you.

12 **MS. LARSON:** That's fine. Thank you.

13 **COMMISSIONER EDGAR:** Okay. Then we have  
14 worked our way completely through the draft prehearing  
15 order. We have on the record a number of changes that  
16 our staff will make and submit a revised draft to me.  
17 My intent is to issue that Thursday of this week.

18 As I discussed a few minutes ago, any changes  
19 to positions, proposed stipulations that could be  
20 included -- and by proposed stipulations I mean  
21 stipulations that have been agreed to by all parties, if  
22 any, that would then be for consideration at the hearing  
23 by the full Commission. Any of that, please to be  
24 submitted to our staff. Mr. Murphy, is that you?

25 **MR. MURPHY:** Yes.

1                   **COMMISSIONER EDGAR:** Okay. To Mr. Murphy, you  
2 all know how to find him, by noon, Wednesday of this  
3 week, April 20th, 2011.

4                   Any other matters while we are all here  
5 together on the record? Mr. Zambo.

6                   **MR. ZAMBO:** Yes, Commissioner. During the  
7 discovery process some issues came up which we were well  
8 aware were going to come up because the proposed  
9 agreement that was submitted to you for approval  
10 included some blanks. They were bracketed by highs and  
11 lows, and we are now in a position where we can give you  
12 some of those precise numbers, like the megawatts of  
13 committed capacity, the price of the electrical  
14 components, the date the payment for the advanced  
15 capacity payment would be due.

16                   We would like to update the record, and I'm  
17 not sure how to do that. Is that something we should  
18 work out informally with staff? Would you like me to  
19 read those numbers and dates into the record?

20                   **COMMISSIONER EDGAR:** How much -- can you give  
21 me a feel, are we talking about a few numbers or are we  
22 talking about many -- can you give me just a little more  
23 information?

24                   **MR. ZAMBO:** Well, I'm talking about a  
25 committed capacity. For example, the contract provides

1 for a minimum of 45 and a maximum of 90. We have  
2 recently selected our contractor last Wednesday. We now  
3 can raise the minimum from 45 to 70. The committed  
4 capacity will be at least 70. That can allow staff to  
5 do some calculations for cost-effectiveness. We believe  
6 it may be as high as 80, but we won't have that for you  
7 until next Monday.

8 The other issue is the date that the advanced  
9 capacity payment would be due. The contract tied it  
10 into the delivery date of the turbine generator to the  
11 site. We now have the contractor's schedule for that.  
12 That would be December of 2013. And the power block  
13 cost, I understand there's a letter on its way to me  
14 today which will set that number at fifty-six million  
15 six hundred and some odd thousand dollars. That's the  
16 extent of the information I have. That leaves one blank  
17 to be completed in the contract.

18 **COMMISSIONER EDGAR:** Do you need to take a  
19 moment? Off the record.

20 (Off the record briefly.)

21 **MR. ZAMBO:** The suggestion is that we  
22 supplement our discovery, and we could do that within  
23 the next few days, if that works for you, Commissioner.

24 **COMMISSIONER EDGAR:** Let me turn to our staff.

25 Mr. Murphy.

1           **MR. MURPHY:** I can't see the lights. Ms.  
2 Larson had expressed concern with agreeing to a  
3 stipulation that was a moving target. With that in  
4 mind, for walking-around numbers I think you have given  
5 them to us, but I don't know why that we couldn't when  
6 we summarize the testimony -- when you asked would your  
7 testimony be the same today, if you couldn't with your  
8 sworn witness clarify those numbers, it doesn't seem  
9 like to would take very long. That would be my  
10 recommendation, when they summarize their testimony when  
11 they move it into the record at the beginning.

12           **COMMISSIONER EDGAR:** Let me think about that  
13 for a moment, okay? Realizing that we have, as you have  
14 pointed out, had some information that was still in the  
15 process of coming together, and that I believe I can say  
16 that the goal of the Commission is -- one of many goals  
17 of the Commission is always to have, to the best of our  
18 ability, the most accurate information available to the  
19 Commission and all parties. It seems to me that the  
20 sooner the better, realizing you have given us on the  
21 record, as Charlie said, Mr. Murphy said some ballpark  
22 figures.

23           I am wondering if there is a way to have that  
24 submitted in document form that would be available to  
25 Ms. Larson sooner -- and I'm kind of thinking out

1 loud -- as you have said supplemental testimony.

2 Ms. Helton, as I am thinking out loud, can you  
3 help me think through procedurally? I think you know  
4 where I'm trying to go.

5 **MS. HELTON:** Well, I think if I understood Mr.  
6 Zambo, he said that he had all of the blanks filled now  
7 except for one, and that that last one he will be  
8 getting this afternoon.

9 **MR. ZAMBO:** I'm sorry, no, there's four  
10 blanks. Well, by Monday we will have the final numbers  
11 for three of those four blanks. We'll have the  
12 committed capacity, but what we can do today is tell you  
13 that we are raising the I minimum from 45 to 70. We  
14 don't know what the actual number will be. It may be  
15 80, but I don't have that confirmation. We know the  
16 date that the --

17 **MS. HELTON:** So you are getting closer, but  
18 you're not there?

19 **MR. ZAMBO:** If you understand how the formula  
20 works moving from 45 to 80 makes a big difference in  
21 doing the cost-effectiveness evaluation. At least  
22 that's what I understand. So we could get this to you  
23 by Wednesday, if you can agree to the vehicle. We can  
24 amend our responses or supplement our responses to  
25 previous interrogatories which have asked these

1 questions, and that was the approach we originally  
2 planned to take, unless you have an objection to that.

3 **MS. HELTON:** I don't have an objection to  
4 that, but I guess I must have zoned out there a little  
5 bit when you were talking about what the numbers are  
6 that you are going to be providing, and I now understand  
7 Mr. Murphy's comment about having moving targets. So  
8 you have given us four additional numbers today, but  
9 only one of them is the final number that will be used  
10 in the hearing next week. The three -- I guess four  
11 remaining numbers, or three remaining numbers will  
12 continue to change until we get to the hearing next  
13 week?

14 **MR. ZAMBO:** Just a second.

15 **MS. HELTON:** I'm just trying to understand  
16 where we are in the process.

17 **MR. ZAMBO:** Of the four numbers, by Wednesday  
18 I can have you final numbers on two of them, and I will  
19 have the final number on the third by hearing, and the  
20 fourth is months out. The fourth number wouldn't be  
21 determined until the contract was actually executed by  
22 the parties.

23 **MS. HELTON:** Madam Chairman, I guess a little  
24 bit of information is better than no information. So it  
25 seems to me that if Mr. Zambo is able to provide



1 additional information that will help the parties  
2 further prepare for the case, and that he can do that as  
3 soon as he has that information, it seems to me that if  
4 I were more involved in this case than I am, I would  
5 want to know that sooner rather than later.

6 And maybe when you provide that information,  
7 if you could also let us know when the final version  
8 will be available, either at the hearing or just before  
9 the hearing. And Mr. Murphy may have something to add.

10 **COMMISSIONER EDGAR:** Mr. Murphy, are you  
11 thinking -- let me put it this way. Can SWA submit  
12 supplemental testimony that would be obviously on the  
13 record and public and available to all Wednesday by  
14 noon, I'm hearing, and then in the summary testimony of  
15 the appropriate witness or witnesses we can ask that  
16 that be brought specifically to the attention of the  
17 Commission?

18 **MR. MURPHY:** I think that would work better  
19 than updating discovery, because what I have heard as a  
20 condition of getting discovery is that it not be a  
21 moving target. If it is sworn testimony to be updated  
22 and supplemental, I don't have the same concern there.

23 **COMMISSIONER EDGAR:** Mr. Zambo.

24 **MR. ZAMBO:** The concern I have, I think what  
25 you are suggesting will work, but the issue is that some

1 of our interrogatory responses have now changed as a  
2 result of what has transpired in the last week or two.  
3 So if we submit supplemental testimony, we are still  
4 going to have a disconnect between the testimony and the  
5 interrogatory responses. So I guess I would like to do  
6 at least both, but whatever works for staff.

7 **COMMISSIONER EDGAR:** Okay. And we want it to  
8 work for staff, we want it to work for Ms. Larson, and  
9 we want, to the extent that we can, the cleanest and  
10 clearest record. I'm not quite sure how to get there,  
11 but we are going to figure it out.

12 Ms. Larson.

13 **MS. LARSON:** I am so concerned with this. The  
14 bids were in on the -- I call it the flex capacitor, the  
15 incinerator on April 13th. It was a very long meeting,  
16 a very arduous meeting, but pretty much a fait accompli  
17 during the whole entire day. I sat through that  
18 meeting. So for the numbers -- I'm worried about these  
19 numbers because the 56 million has been bantered about  
20 in, I don't know, 99 interrogatories. And here we are,  
21 oh, now we have got some solid stuff.

22 I don't -- you know, we will have -- first I  
23 heard we will have up to two of the four numbers, then  
24 we will have up to three of the four numbers. Do you  
25 see -- I'm just -- this is the whole reason I'm sitting

1 here before you today. This is. This is it in a  
2 nutshell. There is no solid -- I can't wrap my arms  
3 around it. I don't know how to explain it to you  
4 without saying hell no, and hell no again. That's how I  
5 feel.

6 **COMMISSIONER EDGAR:** Okay, Ms. Larson.

7 **MS. LARSON:** I know. You get frustrated, and  
8 I'm a layperson, and I don't mean to do that to you, but  
9 I'm like -- I don't even know what to do here. I have  
10 no -- you know, it will come up on Monday, so we will  
11 know by Monday. Is that what we are going for?

12 **COMMISSIONER EDGAR:** Again, let's see how we  
13 can work our way through while we are all in the same  
14 room together. First off, for the record, there may be  
15 some things that frustrate me, but this isn't one of  
16 them. We will work our way through it, but I do need to  
17 ask you, realizing the forum that we are in, to watch  
18 your language.

19 **MS. LARSON:** I apologize.

20 **COMMISSIONER EDGAR:** That's okay. Just on a  
21 go-forward basis.

22 Mr. Zambo, I appreciate you bringing to our  
23 attention that you may have -- that you have information  
24 that is and can be supplemental and helpful to the  
25 record. As I stated a few minutes ago, I would like us

1 to find the best mechanism so that that information is  
2 available to all appropriately sooner rather than later.  
3 And, Ms. Larson, that is for your benefit and for our  
4 benefit, as well.

5 I also understand, I think, the concern that  
6 you have expressed about -- that if we do that through  
7 supplemental testimony, then there being some disconnect  
8 for some numbers that would not add up with numbers that  
9 were submitted earlier. And, Ms. Larson, that is not a  
10 totally unusual scenario.

11 **MS. LARSON:** As I told you, I apologize. I'm  
12 learning your process. I promise.

13 **COMMISSIONER EDGAR:** And we will take the time  
14 that we need here today. So as I am continuing to think  
15 it through, and while we are all here, Ms. Helton, do  
16 you have, perhaps, an additional helpful suggestion?

17 **MS. HELTON:** I'm not sure if I have a  
18 suggestion at this point, but I have a question for  
19 Mr. Zambo, if I may ask him.

20 **COMMISSIONER EDGAR:** You may.

21 **MS. HELTON:** How many interrogatories are we  
22 talking about that will be changed by these adjusted  
23 numbers?

24 **MR. ZAMBO:** A small number, but I can't tell  
25 you how many. Maybe half a dozen.

1           **MS. HELTON:** Total?

2           **MR. ZAMBO:** If you give us a few minutes we  
3 can scan through it and count them and give you a  
4 number.

5           **COMMISSIONER EDGAR:** Actually, if I may  
6 interject, you are reading my mind. I would like five  
7 minutes, too, to just take a stretch and maybe some of  
8 the rest of us could use one, too. We have been very  
9 focused. You know, I'll say five and that always turns  
10 into more. So let's take the opportunity for a stretch.  
11 We are almost done, but let's make sure we take the time  
12 to get as far as we can. So we will go on break off the  
13 record, and we will be back on the record at 3:30.  
14 Thank you.

15                   (Recess.)

16           **COMMISSIONER EDGAR:** Okay. We are back on the  
17 record after a short break. And before we went on  
18 break, we were discussing how to possibly get in some  
19 supplemental testimony, or another mechanism. And I  
20 asked the parties during the break to discuss and  
21 consider.

22                   Mr. Murphy, can you kick us off?

23           **MR. MURPHY:** I'm not aware of how it would be  
24 resolved.

25           **COMMISSIONER EDGAR:** All right. Mr. Zambo,

1 let me look to you.

2 **MR. ZAMBO:** Yes. I think there was a question  
3 posed to me about how many interrogatories we would  
4 change. We did a quick count, and it looks like we've  
5 got six. For the record, 9B, 10, 17, and 25G, which are  
6 really the same question, 23C, and 25F.

7 **COMMISSIONER EDGAR:** Ms. Larson.

8 **MS. LARSON:** I'm really sorry. I did, I  
9 thought long and hard. I pondered this outside, and I  
10 do have a family emergency, so hopefully we'll get  
11 through this pretty quickly.

12 The time for discovery is over, and changing  
13 interrogatories, I don't -- I really am trying to wrap  
14 around the procedures for the Public Service Commission.  
15 I only have parameters that I can witness from the  
16 outside world, which is DOAH, civil, supreme, and the  
17 other courts that I have witnessed, and the time for  
18 discovery is over. And changing the interrogatories,  
19 maybe you want to change direct testimony, I don't know,  
20 but the deadline passed, and is it different at the  
21 Public Service Commission?

22 **COMMISSIONER EDGAR:** The time for discovery  
23 may have passed; however, I think we are talking about  
24 two different things. And my understanding is that what  
25 we are talking about is supplementing the testimony with

1 more accurate and concrete information. And that is --  
2 again, we want the record to be as up-to-date and  
3 accurate as is possible, and not to be dealing with out  
4 of date or incomplete information if, indeed, that  
5 information is available. And that is what I want to  
6 facilitate today, to the extent that I can. So with  
7 that, Mr. Zambo, I am going to ask you to make a  
8 proposal, and then we will discuss it.

9 **MR. ZAMBO:** The Solid Waste Authority would  
10 propose to submit amended responses to a series of  
11 interrogatories, which I will read off in a moment,  
12 which will reflect updated information that resulted  
13 from the fact that the Solid Waste Authority on  
14 Wednesday, April 13th, entered into a contract to design  
15 and construct the solid waste facility. So we now have  
16 numbers that will be useful in evaluating the agreement  
17 that's pending before the Commission.

18 The interrogatories that will -- we may not  
19 need to do all of these, but it appears that there are  
20 six of them; 9B, 10, 17, 23C, 25F, and 25G. And we  
21 would propose to have that filed electronically with the  
22 Commission by noon on Wednesday.

23 **COMMISSIONER EDGAR:** Okay. And that was going  
24 to be my next question, is when those amended responses  
25 can be anticipated to be received. Mr. Murphy, and to

1 all, it is my belief that for our staff and Ms. Larson  
2 to have that updated information at the earliest  
3 possible time will be of assistance in preparing for the  
4 hearing and also in conducting the hearing, and will  
5 probably save us time in the long run, even if it takes  
6 a little more time on the front side.

7 Mr. Murphy, what I would like -- and I am  
8 amenable to that, I think. Let me just walk it through  
9 for another moment or two. Mr. Murphy, what I would  
10 like to do is also, to the best that we can today,  
11 facilitate agreement on a composite exhibit and a  
12 comprehensive list. So realizing that you and Mr.  
13 Harris will probably be doing much of the work on that,  
14 how can we get there?

15 **MR. MURPHY:** One of the considerations is  
16 whether there is fallout from SWA's numbers that also  
17 affect FPL's numbers and their discovery. And I don't  
18 know the answer to that. Do we need supplemental  
19 discovery responses from FPL recognizing the new numbers  
20 from SWA?

21 **COMMISSIONER EDGAR:** Mr. Cox, can you respond?

22 **MR. COX:** I will do my best. We have over, I  
23 think, 102, plus subparts, in discovery, so we have gone  
24 through some of them at this point, Commissioner Edgar,  
25 but not all. There are some numbers that would require



1 some adjustments. Our overall positions, I think, in  
2 the case will not change, but there are some adjustments  
3 that would need to be made on some of our responses.  
4 For example, customer savings. Now that they have a  
5 precise cost of the power block, that number would  
6 change slightly, although I think we are very close to  
7 probably the original number. I don't think that any of  
8 our changes will be very significant, but there will be  
9 some changes that would need to be made. And I don't  
10 have the complete list at this time, given the amount of  
11 questions that we would have to go through.

12 **COMMISSIONER EDGAR:** When do you think that  
13 you would have that information? How about Wednesday at  
14 noon?

15 **MR. COX:** We will certainly make every effort  
16 to do that. But, again, with 102 questions and numerous  
17 runs, that's -- I'll have to say, quite honestly, that's  
18 a tall order for us, but we will make our best effort.

19 **COMMISSIONER EDGAR:** Mr. Murphy.

20 **MR. MURPHY:** I'm not sure of the status of the  
21 composite stipulation with that. If we were limited to  
22 just the six, I think we could try to work out something  
23 with Ms. Larson that we might stipulate the things that  
24 are not moving targets. But at this point, we don't  
25 even have a roadmap of what is going to change, so I

1 don't know how we would do that.

2 **MR. COX:** Commissioner Edgar, if I might  
3 suggest that by sometime, hopefully, tomorrow morning, I  
4 can get back with my technical folks and go through all  
5 of our discovery, and try to come up with a roadmap, at  
6 least from our end, in terms of what we think would  
7 actually need to be changed, and hopefully come up with  
8 a roadmap that works with the Wednesday calendar. I  
9 mean, that's all I can offer at this point.

10 **COMMISSIONER EDGAR:** Uh-huh. What I'm trying  
11 to accomplish, and I want y'all to work with me to get  
12 there, is all that can reasonably and accurately be done  
13 by Wednesday at noon be submitted so that it will be  
14 available to all and so that the staff, and the parties,  
15 and individual Commissioners and their staff can best  
16 prepare with the most complete information available.

17 I certainly recognize that the world will not  
18 stop turning Wednesday at noon, and there may be things  
19 that need to be dealt with prior, at the beginning of,  
20 and during the hearing. Mr. Murphy, maybe there are --  
21 I can almost sense you shuddering before I even say  
22 this, but perhaps two exhibit lists. One fully  
23 stipulated and one still being worked on between  
24 Wednesday and Monday. Just think on that for a moment.  
25 Again, wanting everything to be as accurate and as

1 transparent and easy for all as possible.

2 So, with that I'm going to direct Mr. Zambo to  
3 submit the amended responses as needed and the updated  
4 information, as you have described, to our staff by  
5 Wednesday at noon. Ask Mr. Cox, on behalf of your  
6 client and your colleagues, to submit all information  
7 that is kind of fallout and reactive to that as possible  
8 by Wednesday at noon, making all realistic but yet  
9 accurate effort. We will see where we are there, and  
10 ask the staff to put that all together.

11 Yes, Ms. Larson.

12 **MS. LARSON:** I just want to be on the record  
13 that I object to the discovery deadline. We're done  
14 and, we're changing things. And I just want to be on  
15 the record. I have a really strong objection to this,  
16 changing interrogatories after the deadline. And I am  
17 trying to understand the proceedings of the Public  
18 Service Commission, but --

19 **COMMISSIONER EDGAR:** Ms. Larson, this is --  
20 and let me be as clear and on the record, as well. What  
21 we are doing here is to facilitate so that you and all  
22 others, all interested official parties, all interested  
23 individuals, groups, and the Commissioner  
24 decision-makers have the most accurate information that  
25 is possible in a transparent manner. And that is

1 absolutely my belief to be of benefit to you and your  
2 case as well as to the record and to the Commission as a  
3 whole.

4 So I hear your objection, it is noted for the  
5 record, but I will also state that you and I are  
6 actually, I think, trying to get basically to the same  
7 place and maybe just using some different terminology.

8 Mr. Cox.

9 **MR. COX:** Commissioner Edgar, just one minor  
10 small point for the record, that per your order  
11 modifying the order establishing procedure issued  
12 March 3th, the discovery deadline was moved to  
13 April 20th, which is Wednesday.

14 **COMMISSIONER EDGAR:** Thank you for pointing  
15 that out. As we have all talked about, we all have lots  
16 of dates and lots of pieces of paper. So perhaps, Mr.  
17 Murphy, it's going to all come together. Perhaps it  
18 will all come together.

19 **MR. MURPHY:** Yes.

20 **COMMISSIONER EDGAR:** Okay. Any other matters?

21 **MR. MURPHY:** I'm not aware of any.

22 **COMMISSIONER EDGAR:** None from staff; none  
23 from the parties. The court reporter is good. Okay.

24 I know that this has taken awhile this  
25 afternoon. I appreciate everyone working with me. I

1 appreciate your patience. It is absolutely my hope and  
2 belief that by taking some additional time and going  
3 through things slowly today we may save some time and  
4 have some clarity on Monday. So thank you all for your  
5 patience with that.

6 As I stated earlier, my goal, and I know the  
7 staff will be working toward it, will be to get the  
8 final prehearing order out on Thursday, and we look  
9 forward to seeing you all at the hearing. And please  
10 work with our staff on anything that comes up between  
11 now and then.

12 Thank you, and we are adjourned.

13 (The prehearing concluded at 3:45 p.m.)

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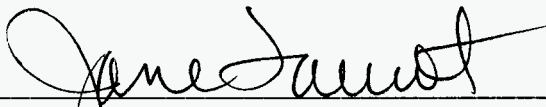
STATE OF FLORIDA        )  
                                  :        CERTIFICATE OF REPORTER  
COUNTY OF LEON        )

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

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

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

DATED THIS 20th day of April, 2011.

  
\_\_\_\_\_  
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