

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.
_____ /

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PROCEEDINGS:	PREHEARING CONFERENCE
COMMISSIONER PARTICIPATING:	COMMISSIONER EDUARDO E. BALBIS PREHEARING OFFICER
DATE:	Wednesday, August 15, 2012
TIME:	Commenced at 9:30 a.m. Concluded at 12:40 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

FLORIDA PUBLIC SERVICE COMMISSION

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1 APPEARANCES:

2 BRYAN S. ANDERSON, ESQUIRE, JESSICA A. CANO,
3 ESQUIRE, Florida Power and Light Company, 700 Universe
4 Boulevard, Juno Beach, Florida, 33408, appearing on
5 behalf of Florida Power & Light Company.

6 JOHN T. BURNETT, ESQUIRE, Progress Energy
7 Florida, Inc., Post Office Box 14042, St. Petersburg, FL
8 33733-4042; JAMES MICHAEL WALLS, ESQUIRE, and BLAISE N.
9 GAMBA, ESQUIRE, Carlton Fields, P.A., Post Office Box
10 3239, Tampa, Florida 33601-3239, appearing on behalf of
11 Progress Energy Florida, Inc.

12 KAREN WHITE, ESQUIRE Federal Executive
13 Agencies, and CAPTAIN SAMUEL T. MILLER, ESQUIRE, USAF
14 Utility Law Field Support Center, Air Force Legal
15 Operations Agency, 139 Barnes Drive, Suite 1, Tyndall
16 Air Force Base, Florida 32403 on behalf of Federal
17 Executive Agencies.

18 JAMES W. BREW, ESQUIRE, Brickfield Law Firm,
19 Eighth Floor, West Tower, 1025 Thomas Jefferson Street,
20 NW, Washington, DC 20007, appearing on behalf of White
21 Springs Agricultural Chemicals Inc.

22 VICKI GORDON KAUFMAN, ESQUIRE, Keefe Law Firm,
23 118 North Gadsden Street, Tallahassee, Florida 32301,
24 appearing on behalf of the Florida Industrial Power
25 Users Group (FIPUG).

1 APPEARANCES (Continued):

2 JOHN T. LAVIA, ESQUIRE, and ROBERT SCHEFFEL
3 WRIGHT, ESQUIRE, c/o Gardner Law Firm, 1300 Thomaswood
4 Drive, Tallahassee, Florida 32308, appearing on behalf
5 of the Florida Retail Federation.

6 ERIK SAYLER, ESQUIRE, JOSEPH MCGLOTHLIN,
7 ESQUIRE and CHARLES REHWINKEL, ESQUIRE, Office of Public
8 Counsel, c/o The Florida Legislature, 111 W. Madison
9 Street, Room 812, Tallahassee, Florida 32399-1400,
10 appearing on behalf of the Citizens of the State of
11 Florida.

12 MICHAEL T. LAWSON, ESQUIRE, and LISA C.
13 BENNETT, ESQUIRE, FPSC General Counsel's Office, 2540
14 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
15 appearing on behalf of the Florida Public Service
16 Commission Staff.

17 MARY ANNE HELTON, Deputy General Counsel,
18 Florida Public Service Commission, 2540 Shumard Oak
19 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
20 the Florida Public Service Commission.

P R O C E E D I N G S

1
2 **COMMISSIONER BALBIS:** Good morning. I'd like
3 to welcome everyone to the prehearing conference for
4 Docket Number 120009-EI for the Nuclear Cost-Recovery
5 Clause.

6 And, Staff, could you please read the notice.

7 **MR. LAWSON:** Yes, thank you.

8 By notice issued July 17th, 2012, the time and
9 place was set for this prehearing conference in Docket
10 Number 120009-EI, the Nuclear Cost-Recovery Clause. The
11 purpose of this prehearing conference is set forth in
12 that notice.

13 **CHAIRMAN BRISÉ:** Okay. Thank you.

14 I'd like to take appearances now. And I
15 apologize, there are some new faces, so if we can just
16 start from my left.

17 **MR. ANDERSON:** Good morning, Commissioner.
18 Bryan Anderson and Jessica Cano appearing for Florida
19 Power and Light Company.

20 **MS. GAMBA:** Good morning, Commissioner. Blaze
21 Gamba for Progress Energy Florida; along with me, John
22 Burnett with Progress Energy Florida.

23 **MR. WALLS:** Good morning. Mike Walls with
24 Carlton Fields on behalf of Progress Energy Florida.

25 **MS. WHITE:** Good morning. I'm Karen White on

1 behalf of Federal Executive Agencies, and I'm also
2 entering an appearance today for Captain Samuel Miller
3 also for Federal Executive Agencies.

4 **MR. SAYLER:** Good morning, Commissioner. Erik
5 Sayler on behalf of the Office of Public Counsel. With
6 me today is Joseph McLaughlin, and I'd also like to
7 enter an appearance for Charles Rehwinkel.

8 **MR. BREW:** Good morning, Commissioner. For
9 White Springs Agricultural Chemicals, PCS Phosphate, I'm
10 James Brew of the law firm of Brickfield, Burchette,
11 Ritts & Stone. I'd also like to note an appearance for
12 F. Alvin Taylor.

13 **CHAIRMAN BRISÉ:** Okay. And, Mr. Brew, I have
14 to ask you, when I refer to who you represent, because I
15 have used PCS White Springs, I have used -- what would
16 you prefer?

17 **MR. BREW:** We customarily use PCS Phosphate,
18 although documents sometimes say White Springs, but I
19 think PCS Phosphate is the easiest way to make clear who
20 we are.

21 **COMMISSIONER BALBIS:** Okay. Thank you.

22 **MS. KAUFMAN:** Good morning. I'm Vicki Gordon
23 Kaufman, I'm appearing on behalf of the Florida
24 Industrial Power Users Group, and I would also like to
25 is enter an appearance for Jon Moyle.

1 **MR. LaVIA:** Good morning. My name is Jay
2 LaVia. I'm appearing on behalf of the Florida Retail
3 Federation. Also I'd like to enter an appearance for
4 Robert Scheffel Wright, my law partner.

5 **MR. JACOBS:** Good morning, Commissioner. My
6 name is Ennis Leon Jacobs. I'm entering an appearance
7 on behalf of the Southern Alliance for Clean Energy and
8 I'd also like to enter an appearance on behalf of Jamie
9 Whitlock and Gary Davis.

10 **COMMISSIONER BALBIS:** And for Commission
11 staff?

12 **MR. LAWSON:** Mike Lawson on behalf of General
13 Counsel's Office.

14 **MS. BENNETT:** And Lisa Bennett on behalf of
15 General Counsel's Office.

16 **MS. HELTON:** Mary Anne Helton, advisor to the
17 Commission.

18 **COMMISSIONER BALBIS:** Okay. I think that
19 covers everyone.

20 We're going to move on to preliminary matters.
21 And we have a -- you know, as you are aware, Progress
22 Energy Florida filed a motion yesterday to defer a
23 determination of reasonableness of the CR-3 uprate
24 project. The decision on this motion will be made by
25 the full Commission. So without going into the merits

1 of that particular motion, and it's clear that if it is
2 granted by the full Commission it may render a number of
3 issues moot. So before we move on, I'd like to allow
4 Progress an opportunity just to briefly summarize their
5 motion so that all of the parties, since it did come in
6 late yesterday, understand what it comprises of as it
7 may affect positions on upcoming issues.

8 **MS. GAMBA:** Thank you, Commissioner.

9 As you know, Progress filed a motion for
10 deferral of the determination of the reasonableness
11 decision on 2012 and 2013 projected construction
12 expenditures, and the associated carrying costs, and the
13 approval of the long-term feasibility for the Crystal
14 River Unit 3 uprate project, and also an alternative
15 petition for temporary variance or waiver of Rule
16 25-6.0423(5)(c) 2 and 5 on an emergency basis, if the
17 Commission determines that waiver is necessary.

18 This motion, if it is granted, in our opinion
19 at this time would affect Issues 12, 16, 17, 18, and
20 affect a revision of our position on likely Issue 19, as
21 well, as well as testimony that we have filed in this
22 docket of Mr. Franke and Mr. Foster. Certainly
23 something that we can discuss more at the appropriate
24 time.

25 A quick summary of the reason for the motion.

1 The company certainly takes very seriously intervenors'
2 concerns, this Commission's concerns regarding the CR-3
3 containment building and the repair/retire decision.
4 The company has decided that it makes the most sense at
5 this time to move forward to petition for a deferral of
6 '12 and '13 costs until next year's docket when certain
7 decisions from Duke Energy, parent company of Progress
8 Energy, would likely be determined at that time, or at
9 least much more certainty, as well as requesting a
10 feasibility determination deferral, based on those
11 reasons, as well.

12 We certainly believe that the Commission can
13 move forward and determine '12 and '13 reasonableness,
14 and we do believe that our filing and our costs are
15 reasonable as filed, and that we can prove up the
16 feasibility of the CR-3 uprate project. However, again,
17 based on some of the concerns expressed and, you know,
18 our willingness to work with people on these issues, we
19 have decided to file this motion.

20 This motion would not affect our presentation
21 of 2012 CR-3 uprate costs to this Commission, and we
22 would be asking for a prudence determination and will
23 show prudence of those costs and those decisions made in
24 2012, and believe -- oh, I'm sorry, 2011. My apologies,
25 Commissioner, 2011 costs would not be affected.

1 I think that pretty much summarizes. Please
2 let us know if you have any questions. I know there
3 were some questions as far as the numbers on the
4 exhibit, and we do have our regulatory folks here today
5 that could talk to that a bit more, or we could provide
6 additional information as far as how the numbers would
7 be affected, if that is something that the intervening
8 parties or the Commission would like.

9 **COMMISSIONER BALBIS:** Okay. Thank you. And
10 thank you for that summary. I wanted all the parties --
11 I assume you have read the motion, and when the full
12 Commission makes that decision, you know, again, it may
13 affect your position on issues. So when we go to
14 Section VIII of the draft prehearing order of the
15 basic -- I'm sorry, the issues and positions, just keep
16 in mind which one of those may be modified, because
17 obviously we have to have some time for the Commission
18 to make the decision on that issue and have you all
19 prepared to modify whatever position is on the
20 appropriate issues.

21 I will turn to staff. We will move on, unless
22 there are any comments from any of the intervenor
23 parties. Again, not arguing the merits of the motion,
24 but from a procedural matter of this issue.

25 Yes, Mr. Brew.

1 **MR. BREW:** Thank you, Commissioner.

2 As noted in the motion, White Springs has had
3 some initial discussions with Progress, but had not
4 finally touched base with them on a final motion. So I
5 would just like to represent in terms of closing out
6 that matter that White Springs does not or PCS does not
7 object to the deferral of the 2012 and 2013
8 reasonableness insofar as their representation of the
9 motion.

10 **COMMISSIONER BALBIS:** Okay. Thank you.

11 Any other parties? Okay. So we will move on
12 to staff as far as any comments on that summary of the
13 motion or any other items that we need to discuss on
14 that? And, if not, you can move on to other preliminary
15 matters.

16 **MR. LAWSON:** No, not at this time, other than
17 to reinforce what you said a moment ago that obviously
18 this motion may affect positions and positions on
19 issues, and that at some point when decisions are made
20 we may need to ask the parties to revise, or if they
21 desire to revise to present those within a reasonable
22 time frame. Probably several days, maybe five days, but
23 just be aware that this will impact things and that we
24 all need to work together to keep the logistics on
25 track.

1 And with the Commissioner's indulgence, I will
2 just move on to several other preliminary matters.

3 First, just to note --

4 **MS. KAUFMAN:** Commissioner, I'm sorry to
5 interrupt. I'm just trying to understand the process.
6 If the full Commission is going to make that decision,
7 is that going to be at the start of the nuclear hearing?

8 **COMMISSIONER BALBIS:** What will happen is we
9 will set a date for that decision to be made, and we
10 haven't made that decision at the time. I believe it
11 will be between my office and the Chairman's office to
12 figure out when we're going to do that and still have to
13 meet all the other deadlines with the hearing. So that
14 will be -- all the parties will be given enough notice
15 as to when that decision will be made.

16 **MS. KAUFMAN:** That was my question as to how
17 we would change our positions to reflect the decision.
18 Thank you.

19 **MR. LAWSON:** Do I need to respond to that,
20 Commissioner?

21 **COMMISSIONER BALBIS:** If you would like.

22 **MR. LAWSON:** Just to say as soon as we know
23 anything, again, it's all very soon and staff will be
24 working to do that. It's like we said earlier,
25 obviously there will need to be changes. We will make

1 sure everyone has time, but just be aware that that's
2 out there.

3 **MS. KAUFMAN:** Thank you, and I'm sorry to
4 interrupt.

5 **MR. LAWSON:** Moving on to some other
6 preliminary matters, we would note that the parties have
7 agreed upon an order of witnesses which staff recommends
8 that the prehearing officer approve. The order is that
9 PEF's cases will be presented in its entirety followed
10 by FPL's case. Please note the exception to this is
11 that one witness, Mr. Reed, will appear on
12 September 5th, 2012, to present his direct testimony to
13 the Commission.

14 **COMMISSIONER BALBIS:** Okay. Thank you. And I
15 noted from staff that the parties have all agreed, so I
16 just want to make sure that that is the case. If not,
17 I'm inclined to approve that order.

18 **MS. GAMBA:** May I be heard?

19 **COMMISSIONER BALBIS:** Yes.

20 **MS. GAMBA:** Real quickly on witness order.
21 There is a couple of developments based on Progress and
22 Duke being a combined company that we need to alert the
23 Commission to. One of them is that our Witness Daryl
24 O'Cain has taken the voluntary severance package and
25 will be leaving the company. He would be available to

1 testify, if absolutely necessary, but would be
2 appreciative, certainly, if the parties did not have any
3 questions for him. We're not sure that they will, but
4 if they would consider that. So that could be a
5 potential impact to witness order.

6 Mr. Garrett has moved to Charlotte as a result
7 of the merger, as well, and has developed a conflict.
8 He is going to be available. Obviously this is his
9 priority, but he would appreciate consideration of the
10 parties agreeing to stipulate to his excusal, as well,
11 if possible. So I appreciate the opportunity to present
12 that.

13 And then the only other item I wanted to
14 address was the September 5th date, just to confirm that
15 Progress is not necessary to appear on September 5th
16 with any of our witnesses or attorneys. If that could
17 be confirmed that would be appreciated. Thank you.

18 **COMMISSIONER BALBIS:** Thank you.

19 And, Staff, if you could respond to the two
20 witnesses you mentioned, and also confirm on
21 September 5th. I believe only Witness Reed is the one
22 that is --

23 **MS. BENNETT:** That is correct. It is only
24 Witness Reed whose testimony will be taken up on
25 September 5th, but I did want to advise of the

1 possibility that the motion to defer that Progress has
2 filed might be considered by the Commission on
3 September 5th, and we would notify the parties ahead of
4 time if that was the case.

5 **COMMISSIONER BALBIS:** Okay. Thank you.

6 Any other questions or comments concerning the
7 order of the witnesses? Okay. Seeing none, then I
8 guess I can give verbal approval for that order.

9 **MR. LAWSON:** Good. Moving forward, we have
10 several pending motions. The first does not require a
11 ruling, but just an update. FPL and Progress have filed
12 a joint motion for a variance or partial waiver from
13 Rule 25-6.0423, Subsection (5)(c)4. The purpose of this
14 motion is to accommodate the schedule change requested
15 by several parties and agreed upon by all parties which
16 requires this Commission to waive its rules for
17 completing this docket by certain deadlines.

18 The motion must be ruled on by the full
19 Commission, and we have set that for the September 18th,
20 2012, agenda, which is the first available agenda date
21 after we have passed our notice period.

22 **COMMISSIONER BALBIS:** Okay. Thank you.

23 Any questions or comments on that item? Okay.
24 Seeing none, you can move on to the next.

25 **MR. LAWSON:** Next, on August 1st, 2012, FPL

1 filed a motion to file supplemental testimony in order
2 to update information related to this docket which was
3 not available until well after the June 17th, 2012,
4 deadline has passed. To date no objections have been
5 received from any party, and staff recommends approval
6 of this motion, and we would request that you make a
7 decision at this time.

8 **COMMISSIONER BALBIS:** Okay. Thank you. At
9 this time I would like to offer the opportunity to any
10 of the parties to provide any comments on this motion.

11 Okay. Seeing none, I will make a decision at
12 this time and approve the motion to file supplemental
13 testimony.

14 **MR. LAWSON:** Thank you, Commissioner.

15 Next we have a -- Florida Power and Light has
16 filed a motion to strike portions of the testimony of
17 the Office of Public Counsel's Witness Jacobs. OPC
18 filed its response on October 10th, 2012. We recommend
19 that you address this in a separate order. However, if
20 you would like, we would also recommend that you allow
21 oral testimony from the parties as desired. I'm sorry,
22 not oral testimony, oral argument.

23 **COMMISSIONER BALBIS:** Thank you. And I will
24 allow oral argument of two minutes from each side on
25 this issue. And we can start with Florida Power and

1 Light, since it is your motion.

2 **MR. McGLOTHLIN:** How much time did you say?

3 **COMMISSIONER BALBIS:** Two minutes. Is that
4 sufficient?

5 **MR. McGLOTHLIN:** I'll work with whatever you
6 want.

7 **COMMISSIONER BALBIS:** Again, I will ask
8 Florida Power and Light, is two minutes sufficient?

9 **MR. ANDERSON:** It is, Commissioner.

10 **COMMISSIONER BALBIS:** Okay. Then you may
11 proceed.

12 **MR. ANDERSON:** Thank you, Commissioner.

13 FPL has presented a motion to strike portions
14 of the testimony of Public Counsel Witness Jacobs. Our
15 position is fully represented in a short memorandum that
16 we filed. The heart of our motion is that Public
17 Counsel is asking that the Commission set a hard cap on
18 a subset of our EPU costs, extended power uprate costs,
19 for one of the plants we're doing work at. And the
20 heart of our motion is that this is absolutely contrary
21 to the nuclear cost-recovery provisions set forth by our
22 Legislature, by this Commission in the statute and the
23 rules, and in the Commission's prior orders.

24 And I think when you take a look at the
25 response filed by Public Counsel, what you will see is a

1 lot of arguments about facts. And we fully respect the
2 entitlement of people to ask all kinds of questions
3 about our project; we are bringing in our witnesses to
4 do that. But a legal motion like this really goes to
5 the question of what is permitted and not permitted
6 under the law, and we submit that it is very, very clear
7 that the extraordinary relief of turning nonbinding cost
8 estimates and hard estimates of potentially disallowing
9 costs that haven't even been incurred yet and
10 potentially disallowing costs that occurred in the past
11 is not at all consistent with the policy of the state
12 and the law of the state, which is designed to encourage
13 development of new nuclear generation, and specifically
14 takes into account the kinds of uncertainty in costs and
15 schedule that is incumbent in making these very, very
16 difficult projects go forward. That's all we have to
17 say.

18 **COMMISSIONER BALBIS:** Okay. Thank you. And
19 Office of Public Counsel.

20 **MR. McGLOTHLIN:** Commissioner, when you look
21 at the motion to strike, what you will first observe is
22 that the motion takes the language that is the subject
23 of the motion to strike out of context and addresses it
24 in isolation, and it is for that reason that we provided
25 the background section of our responsive memorandum of

1 law, because you have to look at it in context. And in
2 context we demonstrate that in last year's proceeding
3 FPL assured the Commission that its then current
4 estimate of the cost of completing Turkey Point was,
5 quote, highly informed. And it was on the basis of that
6 representation, among other things, that the Commission
7 deemed that estimate to be adequate.

8 At this time, our Witness Doctor Jacobs
9 discloses that from that point the cost increase, the
10 estimated cost has increased from last year by over
11 \$600 million and \$555 million of that relates to the
12 Turkey Point component of the uprate.

13 We regard that as a game changer and as
14 grounds for reviewing the feasibility of the Turkey
15 Point project on a stand-alone basis. We have a witness
16 who has done that, and under generous assumptions,
17 generous to FPL, has concluded that at this point Turkey
18 Point is already underwater.

19 More importantly, Doctor Jacobs testifies that
20 in 2010, FPL had information which should have led it to
21 recognize that it was on this trajectory and should have
22 done something about it. And for that reason he
23 recommends using the current estimate as the available
24 measurement of the impact of the imprudent decision,
25 imprudent management that occurred earlier. So when Mr.

1 Anderson talks about a hard cap, we reject that and have
2 offered testimony that demonstrates this is the best
3 available proxy for the measurement of the consequences
4 of imprudence.

5 Very quickly, though, there are other reasons
6 why you should reject the motion to strike. First of
7 all, the APA limits the grounds for a motion to strike.
8 It says the Commission can strike irrelevant,
9 immaterial, or unduly repetitious information. Nothing
10 in the motion to strike attempts to meet that standard.
11 Then in their motion they mischaracterize the
12 recommendation by calling it another effort to
13 relitigate the risk-sharing mechanism decision. That's
14 not true, because when the Commission rejected the
15 risk-sharing mechanism, it was first offered as a means
16 of putting some skin in the game for FPL. In this
17 instance very differently there is this causal
18 connection. There is the finding of imprudence and the
19 recommendations related to imprudence. That was not the
20 case in the first time the Commission addressed risk
21 sharing.

22 Secondly, FPL portrays this as a relitigation
23 of last year's order. That, again, is inaccurate. You
24 will recall that last year OPC offered a different kind
25 of analysis, a break-even analysis, and also criticized

1 FPL for excluding past spent amounts called sunk costs.
2 This time we are using FPL's own methodology, and the
3 only difference being to break out the Turkey Point.
4 And in the order coming out of last year's proceeding,
5 the Commission emphasized it has the discretion and
6 latitude to consider any type of economic analysis that
7 it deems helpful.

8 Finally, FPL argues that this recommendation
9 would prevent it from recovering all prudent costs.
10 That simply begs the question of what are the prudent
11 costs and we have got testimony that goes to that.
12 Boiled down, this is another effort, another invitation
13 to the Commission to preempt and prejudge. It ought to
14 be rejected for the same reasons you rejected last
15 year's motion to strike.

16 If I were to make a quick analogy, it's like
17 in a legal breach of contract action when the defendant
18 says before you take proof on this we want you to strike
19 the prayer for damages. You should resist that
20 invitation and proceed to hear all of the evidence and
21 then apply the law to the facts as you have determined
22 them to be. And for the rest of it, I'll rely on our
23 written response.

24 **COMMISSIONER BALBIS:** Okay. Thank you. And
25 since the Office of Public Counsel went a minute and 23

1 seconds over, I will allow, Mr. Anderson, for you to
2 respond. But before that, I must tell you this
3 Commission in the past has been fairly consistent on
4 allowing as much information into the record as
5 possible, and then having the Commission give that
6 information its due weight.

7 So keeping that in mind, and I'm leaning
8 towards not making a decision at this time, but looking
9 at our past precedence, if you will, on this type of
10 information, if you would like to respond to Office of
11 Public Counsel.

12 **MR. ANDERSON:** Sure. And your comments are
13 very helpful in framing.

14 Our company does not object at all to
15 explaining in detail the status of our project. We are
16 hearing completion; it is going rather well; we are
17 getting more megawatts than we expected. That is all
18 good. The cost estimates have increased for reasons
19 that are specified. We will testify to that and explain
20 that.

21 What we are submitting is not permissible
22 under the law, though, is for Public Counsel to seek
23 relief that is contrary to the statute. So I think you
24 can harmonize the goals of having a full discussion of
25 all the factual issues. In fact, you will note Public

1 Counsel filed many pages of testimony. We have looked
2 to strike just the portions seeking the relief which has
3 been turned down twice by this Commission already.

4 So we agree that there should be a full
5 discussion of the facts and a full development of the
6 record, but we think the better policy approach is not
7 to continue to litigate efforts to essentially rewrite
8 the statute and rule, which is very important to the
9 state in terms of companies' willingness to continue
10 investment in nuclear projects. That is the last idea I
11 would share with you.

12 But we do think it would be good to grant the
13 motion and send a signal that, you know, having ruled in
14 a way twice, the same type of claim cannot be brought up
15 a third time. That's a very well-established principle
16 in law, and we suggest that it would be a good time to
17 apply that.

18 **COMMISSIONER BALBIS:** Okay. Thank you.

19 And I'd like to offer staff an opportunity to
20 ask any questions.

21 **MR. LAWSON:** We appreciate the comments, and
22 we don't have any questions at this time. Thank you,
23 Commissioner.

24 **COMMISSIONER BALBIS:** Okay. Thank you.

25 And as I stated earlier, I will make a

1 decision on that motion after this prehearing as I
2 absorb all of the information.

3 Are there any other preliminary matters that
4 we need to discuss? Okay. So we're going to move on
5 through the draft prehearing order itself. And what I
6 will do is I will briefly mention each section, and I
7 will try to give the parties enough time to get my
8 attention that you may have a comment or wish to speak
9 on each of those sections. And that way hopefully we
10 can get through this as efficiently as possible.

11 Mr. Saylor.

12 **MR. SAYLER:** One question. With regard to the
13 disputed issues that are in this proceeding, when will
14 those be addressed? Is that as we reach those issues
15 where the parties will have an opportunity to speak to
16 whether they should be included or excluded? And I was
17 just curious.

18 **COMMISSIONER BALBIS:** Yes. What I will do is
19 when we get to Section VIII, which is issues and
20 positions, we will skip the disputed issues until the
21 end of going through the nondisputed issues. That way
22 we can handle all the disputed issues at once, and at
23 that time I will give the parties an appropriate amount
24 of time to discuss this.

25 **MR. SAYLER:** Thank you. That seems a very

1 efficient resolution.

2 **COMMISSIONER BALBIS:** Okay. We'll start with
3 Section I, case background. Are there any comments or
4 questions on that section?

5 Seeing none, we will move on to Section II,
6 conduct of proceedings.

7 Section III, jurisdiction.

8 Section IV, procedure for handling
9 confidential information.

10 Section V, prefiled testimony and exhibits;
11 witnesses.

12 **MR. LAWSON:** Yes, Commissioner. Due to the
13 number of witnesses in this docket, staff recommends
14 that each witness be given two minutes to summarize his
15 or her testimony.

16 **COMMISSIONER BALBIS:** Okay. Thank you. Any
17 comments from any of the parties on the two-minute
18 limit?

19 **MR. SAYLER:** I believe it has been
20 longstanding policy of this Commission to allow a
21 five-minute summary, and we think that it would be
22 helpful at least for the intervenor witnesses, since
23 there are so few of those, that they be at least allowed
24 a five-minute summary. As for the utility witnesses, if
25 the intervenor witnesses are allowed five minutes, they

1 should get five minutes, as well.

2 **COMMISSIONER BALBIS:** And from the utilities?

3 **MR. ANDERSON:** For FPL's part, three minutes
4 works just fine; and for combined ones, five minutes.

5 **MS. GAMBA:** We agree, three minutes would be
6 sufficient time for our witnesses.

7 **COMMISSIONER BALBIS:** Okay. Before I set that
8 limit, I want to move on to the issue of friendly cross.
9 I think in the past we have had some issues with that
10 where intervenor parties may have engaged in that type
11 of cross-examination. So as we set the time limit to
12 this, I will grant four minutes, which I think is a good
13 resolution between the three and the five, but I just
14 want to remind all the parties that friendly cross is
15 not allowed, and so that way we can be a little more
16 efficient, and I will allow the four-minute summary.

17 Okay. We will move on. Any other comments on
18 Section V?

19 **MR. LAWSON:** None.

20 **COMMISSIONER BALBIS:** If you will excuse me
21 one moment. (Pause.)

22 Okay. I will go back to Section V. I think
23 this is an appropriate time to make this comment. I
24 believe it was the last nuclear hearing where there were
25 some exhibits that were requested from the dais, and

1 there were some objections filed by FIPUG on that. And
2 Mr. Moyle is not here, but that's something that, as we
3 know, may happen, so I want to make sure everyone
4 understands the position that we are in. There is a lot
5 of information that is entered into the docket that may
6 not be sponsored by a witness, and, you know, obviously
7 the presiding officer will make the decision on any
8 objections at that time, but I just want to remind
9 everyone what happened last year, and the uncomfortable
10 position that at least we were in up here.

11 **MS. KAUFMAN:** Commissioner, I don't know if
12 you're looking for a response to that.

13 **COMMISSIONER BALBIS:** No.

14 **MS. KAUFMAN:** Okay. Thank you. I would be
15 glad to respond.

16 **COMMISSIONER BALBIS:** Moving on to, I believe,
17 Section VI, order of witnesses.

18 **MR. ANDERSON:** We would just note for FPL that
19 we would suggest that Terry Jones' supplemental be taken
20 up with his direct testimony. He's not coming back is
21 the point.

22 **COMMISSIONER BALBIS:** Okay. Thank you.

23 And my prehearing order shall reflect my
24 ruling that Progress Energy's petition will be taken up
25 first followed by FPL's petition. And are there any

1 witnesses that can be stipulated at this time?

2 **MR. LAWSON:** Commissioner, staff believes that
3 no party has any questions of its witnesses except for
4 Witnesses Fisher and Rich, and we would ask at this time
5 for confirmation of this by the parties.

6 **MR. ANDERSON:** FPL can confirm that.

7 **MS. GAMBA:** That's accurate for Progress.

8 **MS. WHITE:** FEA doesn't anticipate any
9 questions.

10 **MR. SAYLER:** Commissioner Balbis, at this time
11 OPC is reviewing as far as the staff witnesses and we
12 will notify the staff as soon as practicable whether we
13 intend to have any questions for them.

14 **MR. BREW:** Commissioner, at this point PCS
15 cannot waive questions for Mr. Coston and Hallenstein,
16 depending upon how we resolve some of the disputed
17 issues.

18 **COMMISSIONER BALBIS:** Okay. And those are
19 other staff witnesses?

20 **MR. BREW:** Yes.

21 **MS. KAUFMAN:** We're also taking a look at the
22 testimony, and we are not in a position now to stipulate
23 to staff's witnesses.

24 **COMMISSIONER BALBIS:** Okay.

25 **MR. LaVIA:** The same for the Florida Retail

1 Federation.

2 **MR. JACOBS:** SACE would agree as well.

3 **COMMISSIONER BALBIS:** Sorry. I keep
4 forgetting about you over there. You're kind of to the
5 side.

6 **MR. JACOBS:** That's okay.

7 **MR. LAWSON:** Given that, presently there are
8 no witnesses that can be stipulated. However, staff
9 would like to remind the parties that if they agree to
10 stipulate a particular witness, please let staff know so
11 we can begin the process of confirming with each
12 Commissioner whether they have questions for the
13 stipulated witness.

14 **COMMISSIONER BALBIS:** Okay. Are there any
15 other comments regarding Section VI, order of witnesses?

16 Seeing none, we will move on to Section VII,
17 basic positions.

18 **MS. WHITE:** Commissioner Balbis, FEA would
19 like to amend our basic position to state that FEA
20 supports FIPUG's position instead of what is currently
21 written there.

22 **COMMISSIONER BALBIS:** Okay. We're going to
23 move on to Section VIII, issues and positions. And I
24 have already made some preliminary comments on how we
25 are going to deal with any modifications to each party's

1 position on the issues. So with that --

2 **MR. SAYLER:** With apologies, Commissioner.
3 OPC on Page 15 will need to make a slight change on its
4 position regarding the CR-3 extended power uprate. We
5 referred to at the time our prehearing statement was
6 filed, the status conference had not taken place, and we
7 were referencing historical data. So with your leave,
8 we can either leave it the same, recognizing that it is
9 essentially not historically accurate, or with your
10 leave we can after today just send a correction just
11 stating that the status conference has taken place and
12 just correct that language.

13 If you will look on Page 15, the first
14 paragraph about midway down it talks about a status
15 conference is currently scheduled. So we just wanted to
16 correct that for accuracy.

17 **COMMISSIONER BALBIS:** Okay. If you can
18 provide that to staff quickly. I don't know when the
19 latest that staff would need to receive it, so we can
20 get the prehearing order out.

21 **MR. LAWSON:** Yes. If you can just send that
22 to me directly we will make sure it gets inserted. Do
23 you think you can have that by tomorrow, or do you need
24 a little more time?

25 **MR. SAYLER:** No, I would endeavor by today,

1 but thank you for tomorrow.

2 **MR. LAWSON:** Tomorrow is fine. Thanks.

3 **COMMISSIONER BALBIS:** Okay. Now we will move
4 to the individual issues. And I will try and save the
5 disputed issues towards the end, but correct me if I
6 make a mistake, or if there was an issue that was
7 previously undisputed but now would be. So we are going
8 to move on to, I believe, Issue 1A is the first
9 nondisputed issue.

10 **MS. KAUFMAN:** Excuse me, Commissioner.

11 Back on Issue 1, we have a number of changes
12 where we took no position at this time, and I would
13 happy to put them on the record or provide them to
14 staff, whichever you prefer.

15 **COMMISSIONER BALBIS:** Could your repeat that
16 again.

17 **MS. KAUFMAN:** Yes. If you look, for example,
18 at Issue 1, and you see FIPUG's position -- and it is on
19 Page 24 in the draft -- it says no position at this
20 time. And we do have positions now on a number of
21 issues, and I would be glad to put them on the record
22 right now or simply provide them to staff by tomorrow,
23 whichever you and staff prefer.

24 **COMMISSIONER BALBIS:** Well, normally -- and we
25 have a unique situation with the late-filed motion. You

1 have to take a position by the end of the prehearing
2 conference. So I think it is probably best if you can
3 summarize your position for staff so that at least we
4 meet that intent. So if you do have a change in
5 position for Issue 1A, if you could state that.

6 **MS. KAUFMAN:** Well, my first one is on Issue
7 1.

8 **COMMISSIONER BALBIS:** We will go to the
9 disputed ones at the end and discuss, and I think it
10 would probably be appropriate to handle that there.

11 **MS. KAUFMAN:** I'm sorry. I didn't understand.
12 I thought we were going in numerical order.

13 **COMMISSIONER BALBIS:** Okay. So back to Issue
14 1A. We will move on to Issue 4.

15 **MR. SAYLER:** With regard to Issue 1A, OPC
16 e-mailed its position out to the parties yesterday, and
17 I don't know if you're looking for the parties to
18 provide their position on 1A now, or if they can just
19 send it to the staff this afternoon before the close of
20 business today.

21 **COMMISSIONER BALBIS:** I'd defer to staff on
22 this.

23 **MR. LAWSON:** I'm sorry. Go ahead,
24 Commissioner.

25 **COMMISSIONER BALBIS:** I'm deferring to you to

1 respond. You're going to be the ones that are changing
2 that position.

3 **MR. LAWSON:** Just taking a quick conference
4 there. On Issue 1A, since it is a new issue, we would
5 simply ask everyone to provide their positions by close
6 of business tomorrow. And if they will just send them
7 to me, I'll make sure they get sorted and distributed
8 appropriately.

9 **COMMISSIONER BALBIS:** Mr. Brew.

10 **MR. BREW:** Yes. The PCS Phosphate position on
11 Issue 1A is yes.

12 **MR. LAWSON:** Good.

13 **COMMISSIONER BALBIS:** So we will move on to
14 Issue 4.

15 Issue 5.

16 **MS. WHITE:** Commissioner, I hate to interrupt.
17 FEA took several positions that were no position at this
18 time. Maybe I just don't have them marked right, but I
19 have 2 and 3. Are those disputed?

20 **COMMISSIONER BALBIS:** Yes, those are disputed.

21 **MS. WHITE:** Okay. I'm sorry. For Positions 4
22 and 5, FEA changes our position from no position at this
23 time to agree with FIPUG.

24 **COMMISSIONER BALBIS:** Okay. It might be good
25 for me to just read what I have as disputed issues.

1 **MS. KAUFMAN:** Thank you.

2 **COMMISSIONER BALBIS:** I'm sorry, I keep
3 thinking you have the same papers that I do. Okay. The
4 list that I have states that Issue 1 is disputed, Issue
5 2, 3, 14, 16, 28A, 29A, and that is all.

6 Okay. And I believe we finished with Issue 6.

7 **MS. WHITE:** Commissioner, if it be would be
8 easier, for FEA I have 6 through 13, the change is the
9 same, if that would make it easier for the parties.
10 Six through 13, FEA changes our position from no
11 position at this time to agree with FIPUG.

12 **COMMISSIONER BALBIS:** Okay.

13 **MS. KAUFMAN:** And, Commissioner, on Issue 2 --

14 **COMMISSIONER BALBIS:** That's disputed.

15 **MS. KAUFMAN:** I just can't get the program,
16 sorry. I'll just be quiet.

17 **MR. JACOBS:** Commissioner, you're asking for
18 Issue 6, is that correct?

19 **COMMISSIONER BALBIS:** Yes.

20 **MR. JACOBS:** Okay. SACE changes its position
21 to no position completely at this time.

22 **COMMISSIONER BALBIS:** Okay. Any other changes
23 for Issue 6? Okay. Other than --

24 **MS. BENNETT:** Mr. Prehearing Officer, I want
25 to remind the parties that if you take no position at

1 this time it converts to a no position unless you show
2 good cause as to why you can't take a position at this
3 time.

4 **MR. JACOBS:** Understood.

5 **COMMISSIONER BALBIS:** Okay. Other than FEA's
6 change, are there any comments, or questions, or changes
7 for Issue 7? And the same for Issue 8; Issue 9; Issue
8 10; Issue 11.

9 **MS. KAUFMAN:** I think I do have a change on
10 that issue --

11 **COMMISSIONER BALBIS:** Okay.

12 **MS. KAUFMAN:** -- if it's appropriate. And our
13 change on Issue 11 would be agree with OPC.

14 **COMMISSIONER BALBIS:** Any other changes for
15 Issue 11? Issue 12.

16 **MR. JACOBS:** Commissioner, SACE would change
17 its position to agree -- in fact, for Issues 12 through
18 18, SACE would change its position to agree with OPC.

19 **COMMISSIONER BALBIS:** Okay. Thank you.

20 Issue 13. Issue 15.

21 **MS. WHITE:** FEA changes our position from no
22 position at this time to agree with FIPUG.

23 **MS. KAUFMAN:** And on Issue 15, FIPUG changes
24 its position to agree with OPC. I don't know if that
25 affects --

1 **MS. WHITE:** I'll just make it easy; we're
2 agreeing with OPC, too.

3 **MR. LAWSON:** Just to clarify, FEA, is your
4 position going to be agree with FIPUG or agree with OPC.

5 **MS. WHITE:** Just to make it easy, agree with
6 OPC.

7 **MR. LAWSON:** Thank you.

8 **COMMISSIONER BALBIS:** Okay. Issue 17.

9 **MS. KAUFMAN:** FIPUG has a change on 17, which
10 is, "None. Agree with OPC." And that is also our
11 position on Issue 18.

12 **MS. WHITE:** And for Issues 17 and 18, FEA
13 agrees with FIPUG.

14 **COMMISSIONER BALBIS:** Which would be to agree
15 with OPC.

16 **MS. WHITE:** Well, there is the none first, and
17 then the agree with OPC, yes.

18 **COMMISSIONER BALBIS:** Okay. Issue 18. Issue
19 19.

20 **MR. JACOBS:** Commissioner, SACE would change
21 its position to state -- and I will provide this in
22 writing to all the parties, but to state it now, the
23 total jurisdictional amount will fall out from other
24 decisions. There should be no recovery of L&P-related
25 costs, as PEF has failed to demonstrate the requisite

1 intent to build and as such has not engaged in siting,
2 design, licensing, and construction. Furthermore, PEF
3 has failed to demonstrate completion of L&P is feasible
4 in the long-term. As to CR-3, EPU costs, recovery of
5 costs should be deferred from consideration until 2013.

6 **COMMISSIONER BALBIS:** Thank you. Did staff
7 get that?

8 **MR. LAWSON:** We've got that. And if you could
9 just send us a copy of that in writing by, like everyone
10 else, close of business tomorrow, we will make sure it
11 gets in.

12 **MR. JACOBS:** We'll make we do that.

13 **MR. LAWSON:** Thank you.

14 **MR. BREW:** Mr. Commissioner, PCS Phosphate is
15 changing its position on 19 to agree with the Retail
16 Federation.

17 **MS. WHITE:** And FEA is changing our position
18 from no position at this time to agree with OPC.

19 **MS. KAUFMAN:** And FIPUG is going to change its
20 position also to agree with the Florida Retail
21 Federation.

22 **COMMISSIONER BALBIS:** Okay. Moving on to
23 Issue 20.

24 **MS. KAUFMAN:** Commissioner, on Issues 20, 21,
25 and 24, FIPUG takes no position.

1 **MR. LAWSON:** Ms. Moyle, could you repeat the
2 numbers for me, please?

3 **MS. KAUFMAN:** It's Kaufman.

4 **MR. LAWSON:** Kaufman. Sorry, it has been a
5 long morning.

6 **MS. KAUFMAN:** Yes. And a long day yesterday.
7 Twenty, 21, and 24.

8 **COMMISSIONER BALBIS:** Okay. Any other
9 comments or changes to Issue 20? Issue 21. Issue 22.
10 Issue 23.

11 **MS. WHITE:** I'm sorry, Commissioner, I was
12 behind. On 22, we change from no position at this time
13 to agree with FIPUG, as well as 23, as well.

14 **COMMISSIONER BALBIS:** Okay. I believe we were
15 on 23. Issue 24. Issue 25.

16 **MS. WHITE:** FEA changes to agree with FIPUG.

17 **COMMISSIONER BALBIS:** Issue 26.

18 **MS. WHITE:** FEA changes to agree with FIPUG.

19 **COMMISSIONER BALBIS:** Issue 27.

20 **MS. WHITE:** FEA changes to agree with FIPUG.

21 **COMMISSIONER BALBIS:** Issue 28.

22 **MS. KAUFMAN:** On Issue 28, FIPUG would agree
23 with OPC.

24 **MR. JACOBS:** Issue 28 for SACE -- in fact,
25 Issues 28 through 32, we would change our position to

1 agree with OPC.

2 **MS. WHITE:** And FEA changes its position on 28
3 to agree with OPC, as well.

4 **COMMISSIONER BALBIS:** Okay. Moving on to
5 Issue 29. Issue 30.

6 **MS. KAUFMAN:** I'm sorry, I wasn't fast enough.
7 We will agree -- on Issue 29, we'll agree with OPC.

8 **MS. WHITE:** And FEA does, as well, agree with
9 OPC.

10 **COMMISSIONER BALBIS:** Issue 30.

11 **MS. WHITE:** FEA agrees with FIPUG.

12 **COMMISSIONER BALBIS:** Issue 31.

13 **MS. WHITE:** FEA agrees with FIPUG.

14 **COMMISSIONER BALBIS:** Issue 32.

15 **MS. WHITE:** FEA agrees with FIPUG.

16 **COMMISSIONER BALBIS:** You can't have them do
17 all of the work.

18 (Audience laughter.)

19 **MS. WHITE:** We have a deal.

20 **COMMISSIONER BALBIS:** Issue 33.

21 **MS. WHITE:** Same; FEA agrees with FIPUG.

22 **MR. JACOBS:** SACE will have a position in
23 Issue 33 that is pretty much parallel to our position in
24 Issue 19, except substituting in Turkey Point. And I
25 will get the same to the staff and the parties.

1 **COMMISSIONER BALBIS:** Staff, is that
2 sufficient?

3 **MR. LAWSON:** That's fine. Thank you.

4 **COMMISSIONER BALBIS:** Okay. Now we're going
5 to move on to the disputed issues, and I will let staff
6 take over at this point.

7 **MR. LAWSON:** We recommend that each party be
8 given -- we have grouped this into three groups: Issues
9 1, 2, and 3; Issues 14 and 16; and Issues 28A and 29A.
10 And we recommend that for each group that the parties be
11 given three minutes to present their oral arguments on
12 this issue as desired.

13 **COMMISSIONER BALBIS:** Okay. Thank you. I
14 will grant that three minutes for these issues. And,
15 Staff, do you recommend an order for the parties?

16 **MR. LAWSON:** We recommend that you take all
17 the argument under advisement and issue an order at that
18 time, or issue an order subsequent to this hearing.

19 **COMMISSIONER BALBIS:** I meant the order of the
20 arguments.

21 **MR. LAWSON:** Oh, I'm sorry. I would say to
22 start with, we would start with Issues 1, 2 and 3, the
23 legal issues.

24 **COMMISSIONER BALBIS:** Okay. I'll handle this.

25 **MR. LAWSON:** Oh.

1 **COMMISSIONER BALBIS:** Okay. We're going to
2 start with Issue 1. And, again, each party is given
3 three minutes, and so we will start with Progress Energy
4 Florida.

5 **MR. GANTZ:** Thank you, Commissioner.

6 Generic Legal Issue 1, just to provide a bit
7 of context, is an appropriately stated and framed legal
8 issue, unlike Issue 2, which we will address in a
9 moment. And it is appropriately framed as to whether
10 the Commission has the express statutory authority to
11 disallow recovery of all or a portion of the carrying
12 costs prescribed by Section 366.93(2)(b), Florida
13 Statutes. However, simply put, Progress still opposes
14 this issue as an unnecessary issue for this Commission
15 to determine for a very simple reason. Simply put,
16 there is no reason to include an issue in the NCRC
17 proceeding that is plainly answered on the face of the
18 statute.

19 Indulge me as I read the statute for a moment.
20 Section 366.93(2)(b) provides, in pertinent part, within
21 six months after enactment, the Commission shall
22 establish by rule alternative cost-recovery mechanisms
23 for recovery of costs on the construction of a nuclear
24 power plant. Such mechanisms shall be designed to
25 promote utility investment in nuclear and allow for

1 recovery in rates of all prudently incurred costs, and
2 shall include, but not be limited to Subsection (b),
3 recovery through an incremental increase in the
4 utility's capacity cost-recovery clause rates of the
5 carrying costs on the utility's projected construction
6 cost balance associated with nuclear to encourage
7 investment and provide certainty for nuclear or
8 integrated gasification combined cycle power plant need
9 petitions submitted on or before December 31st, 2010.
10 Associated carrying costs shall be equal to the pretax
11 AFUDC in effect upon this act becoming law.

12 Plainly, the Florida Legislature declared that
13 the Commission shall allow for recovery of carrying
14 costs on the utility's reasonable projected construction
15 cost balance associated with nuclear power plants.

16 Shall means shall, according to Webster's Dictionary and
17 according to the Florida Supreme Court in Neal versus
18 Bryant. The Florida Supreme Court said according to its
19 normal usage, the use of the word shall in a statute has
20 a mandatory connotation.

21 The Commission does not have the authority
22 under Section 366.93 to disallow recovery of all or any
23 portion of the statutorily prescribed carrying costs.
24 For this reason, the issue is unnecessary and
25 inappropriate at this time. Thank you.

1 **COMMISSIONER BALBIS:** I do have a question for
2 you, and it probably isn't appropriate for me to ask,
3 but, you know, one of the options I do have is to rule
4 on this issue now rather than in the prehearing order.
5 But in your description of Section 366.93 you noted that
6 it does state that we shall approve reasonable costs.
7 Doesn't that imply that there are unreasonable costs?

8 **MS. GAMBA:** As there are issues in this docket
9 to be admitted, and I don't have them in front of me,
10 but there are issues dealing with the reasonableness of
11 costs, and that is always an issue that is presented to
12 this Commission for determination. There is no argument
13 here that the Commission has the authority and the power
14 to say that a cost is unreasonable. We come in front of
15 the Commission and present evidence on that and argument
16 on that. Here, however, the implication is that the
17 statute says that if there are costs that are determined
18 reasonable, you cannot allow appropriate carrying costs
19 prescribed by statute on those reasonable costs, and
20 that is clear on the face of the statute that that is
21 not allowed. Does that answer --

22 **CHAIRMAN BRISÉ:** No, and I agree with you. I
23 mean, the problem that we're facing is that the issue as
24 it is stated does not have anywhere in there the word
25 reasonable. It's shall. You know, does Section 366.93,

1 Florida Statutes, authorize the Commission to disallow
2 recovery of all or a portion of the carrying costs
3 prescribed by 366.93(2)(b) of the Florida Statutes? So
4 although it references it where that term reasonable is
5 in there, it would be a different situation if that
6 issue was framed with does the Commission have the
7 authority to disallow recovery of reasonable costs.

8 **MS. GAMBA:** The need statute prescribes for
9 the Commission to allow recovery, and the only way it
10 may disallow recovery of costs is if they are proven
11 after a 120.57 hearing to be imprudent. And the rule
12 that the statute mandated that the Commission put
13 forward prescribes for this process to annually
14 determine whether or not costs are reasonable and
15 whether or not those associated carrying costs are
16 reasonable. And that argument kind of gets to Issue 2,
17 as well. So I understand you're saying the word
18 reasonable is not in the statute, but, again, if we are
19 arguing whether the Commission has the authority to
20 disallow recovery of unreasonable costs, I don't think
21 that that is a disputed issue.

22 **COMMISSIONER BALBIS:** Okay. We'll allow the
23 other parties three minutes.

24 **MS. WHITE:** Very briefly. It occurs to me
25 that it seems like what we are really discussing here

1 today is whether this is an issue that the Commission
2 should decide. And it sounds to me like what Progress
3 is saying to you is that they have a position on this
4 issue that the costs should or should not be -- I mean,
5 should be allowed, and that there may be positions from
6 the other parties that maybe they shouldn't be allowed.
7 And it strikes me that that probably means that this is
8 exactly the type of issue that you ought to be deciding,
9 and therefore it should stay on the issues list.

10 **COMMISSIONER BALBIS:** Thank you. And, OPC.

11 **MR. SAYLER:** Did FPL want to weigh in? They
12 also filed a response.

13 **COMMISSIONER BALBIS:** I'm sorry. That's an
14 excellent point.

15 **MS. CANO:** That's okay. Good morning,
16 Commissioner.

17 FPL essentially agrees with the argument put
18 forth by Progress here this morning. The issue asks a
19 legal question, and there is only one answer permitted
20 to that question by law, and that is essentially what do
21 the carrying costs -- what should the carrying costs
22 reflect. The statute -- and I won't reread it, again --
23 says that carrying costs shall be equal to the pretax
24 AFUDC rates then in effect.

25 If I could turn actually now to the question

1 you posed to Progress, and I think it was addressed
2 somewhat by FEA, as well. Of course to the extent
3 underlying costs are determined to be imprudent or
4 unreasonable, the Commission would have the authority to
5 disallow the carrying costs associated with those costs.
6 It is not our understanding that that is what this issue
7 was intended to address. We are under the impression
8 that this has to deal with even assuming the underlying
9 costs are determined prudent or reasonable, what can the
10 Commission do with respect to carrying costs? And in
11 that regard, it is our position that the Commission only
12 has the authority to do that which is set forth in the
13 law, which is approve carrying costs equal to the pretax
14 AFUDC rate in effect. So that's our position on that
15 issue.

16 We take no position for the record on Issues 2
17 and 3 at this time; those are for Progress. Thank you.

18 **COMMISSIONER BALBIS:** And maybe you answered
19 it or stated this. So Florida Power and Light's
20 position on the issue is that it should be included or
21 not included, or is it subsumed or do you recommend that
22 it is subsumed in another issue?

23 **MS. CANO:** I'm sorry. Yes, we think that the
24 issue should not be included in this docket for
25 consideration because it asks a legal question for which

1 there is only one answer, and that is answer is
2 prescribed by law.

3 **COMMISSIONER BALBIS:** Okay. Thank you. Now
4 we will go back to Office of Public Counsel.

5 **MR. SAYLER:** Thank you, Commissioner.

6 We're in an interesting situation where Issue
7 1 was not an issue proposed by OPC. OPC proposed Issue
8 2 because we wanted to -- and that was proposed in light
9 of the continuing lack of a final decision to repair or
10 retire CR-3. In carrying costs when it comes to those
11 accruing, they accrue over time, and our Issue 2 was as
12 it relates to, you know, what portion of the carrying
13 costs should go to the benefit of the company as it
14 relates to the equity portion. And I will get into that
15 later, but initially we proposed Issue 2 with kind of a
16 fact-specific, policy-specific for Progress Energy, and
17 then that was broken out and made broader into whether
18 or not the Commission has the authority to disallow all
19 or a portion of the carrying costs. And as FPL
20 correctly stated, if this Commission determines that a
21 cost was imprudently incurred, then any carrying cost --
22 excuse me, if a cost was unreasonably incurred or
23 reasonably incurred and then later determined to be
24 imprudently incurred, then any associated carrying costs
25 with that -- associated with that imprudently or

1 unreasonably incurred cost should not be allowed.

2 It is true that Section 366.93 does not state
3 reasonable. It is the rule that the Commission adopted
4 with regard to the statute that created the -- you do
5 the reasonableness determination on the front end and
6 then the prudence determination on the back end.

7 However, if the Commission on the front end
8 determines that a cost is unreasonable, then the
9 Commission can also disallow the carrying costs
10 associated with that. But when you're looking at the
11 plain language of the statute where it says, in
12 pertinent part, 366.932, Sub (b), to encourage
13 investment and provide certainty for nuclear or
14 integrated gasification combined cycle power plant need
15 petitions submitted on or before December 31st, 2010,
16 associated carrying costs shall be equal to the pretax
17 AFUDC in effect upon this act becoming law.

18 This statute as it describes AFUDC carrying
19 costs really just tells this Commission what AFUDC rate
20 will be applied to a nuclear construction project that
21 comes underneath the statute. It's not a it shall be
22 done, it just says it shall be done at this level and
23 this rate. And as you may be aware, the AFUDC rate for
24 both Progress and FPL when it was locked in after they
25 got their need determination is much higher today,

1 significantly higher today than their currently approved
2 AFUDC carrying costs. So, in my opinion, the intent of
3 the Legislature was to if the utilities came in at this
4 particular time, they would be guaranteed this levelized
5 AFUDC rate for the life of the project. And that's
6 where we are at.

7 We're not talking about whether the Commission
8 shall do AFUDC -- I'm wrapping up here, but, it is just
9 more of, the statute is more a mechanism to explain what
10 level of AFUDC. So if another company came in for a new
11 nuclear power project and received a determination of
12 need, that AFUDC rate -- if I understand the ratemaking
13 process -- would be based upon that utility's currently
14 approved AFUDC rate. Thank you.

15 **COMMISSIONER BALBIS:** Okay. And I'm not sure
16 how pertinent that was to the argument as to whether or
17 not this issue should be included, not included, is it
18 subsumed. And what is your position?

19 **MR. SAYLER:** We would prefer that Issue 2 be
20 included as opposed to Issue 1. But if Issue 2 is going
21 to be excluded, we would prefer that Issue 1 be in
22 there, and then the arguments that we're making under
23 Issue 2 we would roll in under Issue 1. However, if you
24 look at Issue 1 and 2, they are an apples and oranges
25 comparison, and it's difficult to adjudicate for this --

1 or for this Commission to consider and then adjudicate
2 an issue if you're talking about apples and we're trying
3 to raise arguments about oranges.

4 **COMMISSIONER BALBIS:** Okay. Thank you.

5 **MR. SAYLER:** Was I --

6 **COMMISSIONER BALBIS:** No, that was good.

7 Thanks.

8 **MR. BREW:** Commissioner, PCS Phosphate did not
9 propose this issue, but the question really is whether
10 it is an appropriate issue for consideration, not a
11 decision on the merits. And I think Ms. Gamba's opening
12 statement was that this was a properly framed issue,
13 which I agree with. And I think as long as there are
14 disparate views of the parties on that issue, then it's
15 a properly framed issue for going forward.

16 **COMMISSIONER BALBIS:** Okay. Thank you.

17 Ms. Kaufman.

18 **MS. KAUFMAN:** Thank you, Commissioner.

19 I think Mr. Sayler explained the evolution of
20 this issue, and it almost seems to me that I haven't
21 really heard any argument from the utilities, and it
22 seems like we are all in agreement that the Commission
23 does have authority to disallow certain carrying costs.
24 And I'm not going to repeat what the others have said.
25 If the costs are unreasonable or imprudent you have the

1 authority to disallow them.

2 And I think that it was, if I'm not mistaken,
3 staff that wanted a more generic legal issue, and I'm
4 perfectly happy to include it, but I am not sure that
5 there is really disagreement among the parties on the
6 answer. And as the issue was originally raised, it had
7 to do specifically with the Crystal River 3 uprate and
8 that situation. So I think it's an issue that is not
9 really controversial, but we are fine to include it.

10 **COMMISSIONER BALBIS:** Okay. Thank you.

11 **MR. LaVIA:** Jay LaVia on behalf of the Retail
12 Federation. We support OPC's position on this, on
13 including 2 and 3, and, if necessary, 1. It seems to me
14 that we have heard strong arguments from the other side
15 as to what their position is on 1, but when you're
16 talking about statutory interpretation that is an issue,
17 and it is an issue in which apparently the parties
18 disagree, you know. And even though they feel strongly
19 as to what they believe the statute means, that doesn't
20 mean that it's not an appropriate issue. So I would
21 argue for including all three issues, but definitely
22 including 2 and 3. Thank you.

23 **COMMISSIONER BALBIS:** Okay. Thank you. And
24 from SACE?

25 **MR. JACOBS:** Very quickly, Commissioner.

1 I think we will join into the comments of the
2 other intervenors, but I would add this one quick point.
3 It is obvious that you have the authority to consider
4 this, and it would be illogical that you would have the
5 authority to consider this, but you could not, if you
6 found imprudence or other issues, make a decision as to
7 whether or not it was reasonable to include it for
8 recovery. That's an illogical conclusion to the idea
9 that you do have the authority to look at it. Having
10 said that, we would join in the comments and believe
11 that this is an appropriate issue for inclusion.

12 **COMMISSIONER BALBIS:** Okay. Thank you. And I
13 would like to offer staff the opportunity to respond to
14 the parties and provide your opinion on whether or not
15 it is an appropriate issue.

16 **MR. LAWSON:** Thank you, Commissioner.

17 We had proposed Issue 1 primarily because we
18 believed Issues 2 and 3 are a legal issue, and this
19 would strip out the essence of that legal issue into
20 Issue 1. And as we have heard from the discussion from
21 all parties there is considerable dispute as to what
22 366.93 allows the Commission to do or not to do, and as
23 such, we believe that that is an issue worth hearing.

24 With regards to 2 and 3, we would note that as
25 they are written they are essentially position

1 statements. And it is particularly interesting to note
2 that since it involves Crystal River 3 primarily, it
3 would ask the Commission to address an issue that
4 affects both Progress and FPL, even though the question
5 is written primarily to address the Crystal River Unit 3
6 project.

7 So in order to make this available to all
8 parties, and since it will affect any nuclear operator
9 in the State of Florida, we would say that Issue 1 is
10 clearly a disputed issue and must be heard. But Issues
11 2 and 3 are essentially position statements. They
12 essentially deal with a single project and not the legal
13 issue.

14 We would also suggest that once Issue 3 is --
15 if Issue 3 is included, then Issues 2 and 3 would
16 obviously be subsumed by Issue 1. That's all we have.

17 **COMMISSIONER BALBIS:** Okay. Then I have a
18 question for Progress, and you can add whatever comment
19 you were about to state, and also for Florida Power and
20 Light. And, staff, you can reign me in if this is
21 inappropriate. Or, actually, legal counsel.

22 Do the utilities intend to argue Issues 2 and
23 3 by using the argument that we do not or do have the
24 authority under that statute?

25 **MS. GAMBA:** As to Issues 2 and 3 as framed by

1 OPC, they do implicate a threshold legal issue that the
2 Commission would need to determine. As to Issue 2 in
3 particular, it's attempting to change the legal
4 determination by putting in facts and circumstances.
5 And as to Issue 3, we believe it is a legal threshold
6 issue that the Commission -- that is clear on the face
7 of the statute, again, and that the prehearing officer,
8 you know, has the authority to determine -- at this
9 point has the authority to narrow issues. Hopefully,
10 that answered your question.

11 Really briefly, I'm not sure if there is
12 disagreement. I'm finding myself somewhat confused as
13 to Issue 1. As stated, what I'm hearing from the
14 parties is that they are going to argue that the
15 Commission has authority to disallow carrying costs on
16 unreasonable costs, if the underlying unreasonable costs
17 are found unreasonable. As I think we have stated,
18 Progress doesn't dispute that issue. But as framed,
19 this issue is framed as though does the Commission have
20 the underlying authority to disallow carrying costs on
21 costs that are determined prudent and reasonable? And I
22 haven't heard from the parties that that's their
23 position. We might not have a dispute here, frankly.

24 **COMMISSIONER BALBIS:** Okay. Thank you.

25 And, Florida Power and Light? And I can

1 repeat the question I asked, if you would like.

2 **MS. CANO:** That would be great; thank you.

3 **COMMISSIONER BALBIS:** Okay. The question is
4 in arguing Issues 2 and 3, are you going to use -- and I
5 will steal your term -- you know, the threshold legal
6 argument as to whether or not we have the authority
7 under that statute?

8 **MS. CANO:** With respect to Issues 2 and 3, FPL
9 at this point hasn't provided a position. But to the
10 extent they are included, we would take a position on
11 Issue 2 to simply refer back to our arguments under
12 Issue 1, so they would be linked. With respect to Issue
13 3, if it is included, we would revise our position to
14 say that we support PEF's position.

15 **COMMISSIONER BALBIS:** Okay. Thank you.

16 And I think we are almost in agreement here.
17 I mean, if you are using whether or not we have the
18 authority under that statute to make the changes that
19 are recommended in 2 and 3, I think, you know, what
20 staff did in making it a cleaner separate issue so we
21 can handle that on its own might be the best way to
22 approach this. And I'm not hearing any strong
23 objections or reasons why we shouldn't do that. But,
24 again, I will allow in a few moments for many of the
25 other parties to provide any last comments to that

1 effect, but at this point I'm inclined to keep that
2 issue in.

3 **MS. CANO:** Excuse me, Commissioner. To the
4 extent the issue is going to be included, FPL would like
5 to slightly modify the position that it has provided on
6 it. And I can also provide this to staff by the end of
7 the day tomorrow in writing, consistent with the other
8 requests.

9 **MR. LAWSON:** Thank you. That would be
10 wonderful.

11 **MS. CANO:** Okay. We will do that. Thank you.

12 **MR. JACOBS:** Likewise, Commissioner, SACE
13 would modify its position to agree with OPC.

14 **MS. WHITE:** And FEA, as well, will agree with
15 OPC on Issue 1.

16 **MS. GAMBA:** For the record, Progress will file
17 its position statement if the issue is included by end
18 of day tomorrow.

19 **MR. LAWSON:** Thank you.

20 **COMMISSIONER BALBIS:** Okay. Seeing no
21 other --

22 **MR. LAWSON:** Just a clarification. If Issue 1
23 is in, are we going to have a -- are you making a
24 decision on Issues 2 and 3 today, or are you going to
25 defer that?

1 **COMMISSIONER BALBIS:** Excuse me. I would
2 actually like to hear the parties' positions on those
3 specific issues. I know we talked about them a little
4 bit, but I want to make sure that each party has an
5 opportunity to provide a clear position. If it is an
6 issue that is as clear as Issue 1 was, then I will be --
7 I am more than willing to make a decision. I have a
8 feeling that these two may not be as clear and may
9 require additional review, if you will, and I will issue
10 that in the prehearing order, but it depends on how good
11 their arguments are.

12 **MR. LAWSON:** Thank you. I just wanted to
13 clarify that. Thank you.

14 **COMMISSIONER BALBIS:** Okay. We will start
15 with Progress Energy Florida, again, for Issue 2.

16 **MS. GAMBA:** Thank you, Commissioner.

17 I would incorporate my arguments regarding the
18 statute on Issue 1 into this argument. I will not
19 repeat myself. However, as an initial matter, Progress
20 does agree with staff this issue is subsumed in some of
21 the other issues regarding reasonableness of costs.
22 That's really what OPC seems to be getting at here,
23 whether or not the Commission has the authority to
24 disallow recovery of equity in 2012 and 2013 on costs.
25 And certainly yes, if those costs are found

1 unreasonable; certainly no, pursuant to the express
2 provision of the statute if those costs are found
3 reasonable. So this issue is subsumed. The legal issue
4 is addressed in Issue 1.

5 It is inappropriately -- this issue
6 inappropriately combines facts and law in a way that
7 makes the issue, inappropriate phrasing of the issue and
8 not appropriate for determination at this time. As I
9 discussed previously, as a threshold legal matter the
10 Commission does not have the authority to disallow
11 recovery of all or a portion of the carrying costs. The
12 statute states that the Commission shall allow recovery
13 of carrying costs on the utility's projected
14 construction cost balance. I believe that Mr. Sayler
15 said that they were just -- that the statute was just
16 providing for AFUDC equity, but it says they shall allow
17 carrying costs directly in the statute.

18 The Florida Legislature also did make clear
19 how those carrying costs were to be defined and that
20 carrying costs included all components of AFUDC. The
21 Commission does not have the authority to disallow AFUDC
22 equity on the CR-3 uprate project no matter the
23 circumstances or any facts. A fact cannot change a
24 legal determination. If a legal determination is made
25 that that is the law of the land, a fact cannot change

1 that judge's mind, you know, that prehearing officer's
2 mind as far as that law and what that statute means.

3 The Commission is bound by express statutory
4 authority, and the Commission is also required to follow
5 its own rules. As this Commission knows, the rule that
6 it promulgated is Rule 25-6.0423, which provides for
7 recovery of these carrying costs on construction costs
8 balance if it is determined to be reasonable.

9 The Commission should not entertain as a
10 matter of policy that which is legally impermissible to
11 consider. And, again, it bears emphasis that Issues 16,
12 17, and 18 in this docket address the reasonableness of
13 costs. And to staff's point, we believe that, if
14 anything, this issue is subsumed in those, and OPC can
15 make its arguments in those issues regarding
16 reasonableness or unreasonableness of AFUDC and those
17 underlying costs.

18 **COMMISSIONER BALBIS:** Okay. Thank you. And,
19 Florida Power and Light.

20 **MS. CANO:** We have nothing further to add on
21 Issues 2 and 3.

22 **COMMISSIONER BALBIS:** We will go to Office of
23 Public Counsel.

24 **MR. SAYLER:** Thank you. I'm keeping an eye on
25 the clock. I will try to keep it to three minutes.

1 By way of brief history, this issue, Issue 2
2 is related to the equity portion of the AFUDC rate that
3 the Commission approves as it relates to carrying
4 charges as calculated by statute. And it's really -- we
5 initially proposed it more as a policy issue, should the
6 Commission disallow the equity portion. And during the
7 discussions of the issue formation, there was a little
8 bit of push back from some of the parties, including
9 staff, that there was a question of does the Commission
10 have the legal authority to do that.

11 So this issue then was framed as part legal,
12 does the Commission have the authority, and then part
13 policy is if the Commission does have the authority,
14 should they exercise that authority. If it makes it
15 cleaner for the parties, we would be happy to split
16 these into two discreet issues for adjudication. One is
17 a legal issue and one is a policy issue.

18 But, really, the bottom line is the statute,
19 the NCRC statute prescribes or describes how you
20 calculate AFUDC. I don't think anyone disputes that.
21 However, we are in a situation with Progress Energy that
22 but for the delamination and but for the subsequent lack
23 of a decision, we believe that that kind of takes this
24 decision, this issue outside of the realm of 366.93 and
25 into the Commission's general ratemaking authority under

1 Chapter 366.

2 In FPL's brief they cited a couple of cases
3 that discuss, you know, what duties or powers or
4 authorities the Commission has. And it says, quoting
5 Southern States Utilities, "Inasmuch as the PSC, like
6 other administrative agencies, is a creature of statute,
7 the Commission's powers, duty, and authorities are those
8 and only those that are conferred expressly or impliedly
9 by the statute of the state."

10 Now, we have express powers communicated
11 before this Commission under general ratemaking under
12 Chapter 366, and then there are also implied powers.
13 Since the delamination and the subsequent decision as
14 far as repair or retire has not been made, that's why we
15 believe that this is a pertinent issue and why we think
16 that this issue is ripe for consideration. And we're
17 not asking for the entirety of the AFUDC rate to be
18 deferred. We are concerned about any undue delay and
19 things of that nature that could enure to the benefit of
20 the shareholders in the equity portion of it. So that
21 is kind of the background and the context of why this
22 issue is here.

23 One question that we do have, and it's really
24 for staff in a sense. And with your indulgence, as
25 staff's position states, you know, OPC does not

1 understand how Issue 2 is really subsumed under Issue 1,
2 because we're talking apples and oranges. Would it be
3 possible for staff to explain how Issue 2 is really
4 subsumed under Issues 1, 3, 16, 17, and 18?

5 And also we have a question, how can Issue 2
6 be subsumed under Issue 3, which is an issue that staff
7 itself says should be subsumed under another issue? And
8 the same thing for Issue 16. We don't understand, and
9 especially since staff is saying that this Issue 2 is
10 subsumed over the objection of parties in this case, and
11 staff isn't a party. So if it would be possible to have
12 a clearer understanding of staff's position on the
13 record so that all the parties, whether it be the
14 utility parties or the intervenor parties, so that we
15 can know so that if we have that fuller understanding
16 then if we disagree with that decision then we can make
17 a full understanding of whether we seek reconsideration
18 or not at a later date.

19 **COMMISSIONER BALBIS:** Okay. Thank you. And I
20 have a question for you, Mr. Saylor, and it is
21 concerning whether or not this issue is subsumed in the
22 other issues, which you indicated a concern about.

23 Looking at Issue 17, which states what system
24 and jurisdictional amount should the Commission approve
25 as reasonably estimated 2012 costs and estimated trip

1 costs, et cetera. Are you saying that AFUDC equity is
2 not a jurisdictional amount and should be included as a
3 separate issue?

4 **MR. SAYLER:** I'm not sure if I'm following
5 your question, I'm sorry.

6 **COMMISSIONER BALBIS:** Sure. Well, Issue 2,
7 does the Commission have the authority to disallow
8 recovery of any AFUDC equity on CR-3 uprate project in
9 2012/2013? And in Issue 17, what system and
10 jurisdictional amounts for CR-3 uprate for 2012.

11 **MR. SAYLER:** I think I understand. For the
12 most part, and this is my understanding, and the other
13 intervenors, and maybe Mr. Rehwinkel can clarify. Issue
14 17 is just, you know, what's the final number. You
15 know, what's the amount as it relates to Crystal River
16 Unit 3 that should be approved and baked into that
17 recipe is, you know, the 2011, 2012, 2013, there's a lot
18 of costs, a lot of moving parts, and it all kind of
19 comes together and coalesces into that, what Progress
20 was recommending or seeking approval for capital system
21 costs, jurisdictional and O&M costs in their number.
22 And I believe that may have changed a little bit
23 following their motion that they filed yesterday.

24 But the question is -- that AFUDC equity
25 portion is a very small portion of whatever that final

1 number is under Issue 17 that the Commission approves,
2 but the question is how do you get to isolating that
3 number, and then if it's keyed up as a separate issue
4 then you can isolate and calculate that number
5 specifically. And then after that has been calculated,
6 then the Commission can determine whether they want to
7 disallow it. Or you reach the legal issue of should
8 they or do they have the authority to disallow it, and
9 if you don't, then you don't need to get to the
10 calculation of the number.

11 **COMMISSIONER BALBIS:** But aren't there other
12 costs that are included in the jurisdictional amount
13 that aren't separated out into a separate issue?

14 **MR. SAYLER:** That is correct. But for the,
15 you know, the situation that we are in, we wouldn't be
16 seeking that this Commission consider or even adjudicate
17 this issue.

18 **COMMISSIONER BALBIS:** Okay.

19 **MR. REHWINKEL:** Commissioner Balbis, would you
20 entertain me adding to Mr. Sayler's remarks in that
21 answer?

22 **COMMISSIONER BALBIS:** You can add to the
23 question I asked, yes.

24 **MR. REHWINKEL:** Yes, that's what I intended.
25 Charles Rehwinkel with the Office of Public Counsel.

1 I think earlier in Mr. McGlothlin's remarks,
2 you heard -- well, in the issue that we raised you heard
3 FPL argue that you couldn't go back and disallow costs
4 that had already been incurred or costs that were
5 projected. I don't know how that's going to be resolved
6 by the Commission, but what we're trying to get at is,
7 and I think that's what's in Issue 16 and 17 are
8 discreet expenditures, whether they are capitalized
9 engineering or they are hard assets that are being put
10 in there, those are the things that I think the
11 Commission is used to dealing with in evaluating costs.

12 The carrying charge issue is a very, very
13 fact-specific issue that is based on the temporal aspect
14 of the outlay of cash for these assets. So the carrying
15 cost issue is one based on delay and not the actual
16 expenditures related to services or items that
17 traditionally are looked at or audited by the
18 Commission. That is really the issue that we're
19 offering the Commission another way to evaluate the very
20 unusual fact situation you have before you.

21 **COMMISSIONER BALBIS:** Okay. Thank you. And I
22 appreciate those comments, which really brought to mind
23 another issue.

24 I mean, obviously one of the decisions that I
25 have to make is whether or not it is subsumed in another

1 issue, it's irrelevant, et cetera. But the question I
2 have for you is this issue is focusing -- and, again,
3 just reading from the text -- due to the delay caused by
4 the lack of implementation of a final decision to repair
5 or retire CR-3.

6 And what is your opinion as to the 100437
7 docket, which is the CR-3 spinoff docket? How is this
8 not included in what would be Phase III of that docket,
9 which is everything from the first delamination until it
10 is back in operation.

11 **MR. REHWINKEL:** I think it's related, because
12 the underlying facts of that case give this case some
13 dependency. In other words, another way of saying that
14 is the timing of this project, which is separate and
15 apart from the steam generator replacement project, is
16 wholly dependent upon that repair and that repair
17 timeline, which is a decision-making that is going to be
18 evaluated.

19 I think when we were in some earlier
20 proceedings related to 100347.

21 **COMMISSIONER BALBIS:** 437.

22 **MR. REHWINKEL:** 437. The issue about the
23 uprate costs being part of the damages was discussed at
24 length, and it was somewhat, I think, agreed upon that
25 the NCRC statute controls the Commission's determination

1 of those costs. But we are saying that your evaluation
2 of those costs are very much dependent upon some of the
3 facts that are going to come out in the 100437 docket.
4 And I think that's one of the reasons why other parties,
5 including the Public Counsel, have proposed deferral of
6 all consideration because there are still some facts
7 that drive this timeline that relate to this AFUDC
8 issue. So they are intertwined, but at the same time
9 they are separate fact situations.

10 **COMMISSIONER BALBIS:** Okay. Thank you.

11 And, Mr. Brew.

12 **MR. BREW:** Thank you, Commissioner.

13 With respect to 2 and 3, and eventually we get
14 to it in 14 and 16, too, we're talking about a unique
15 circumstance that wasn't really contemplated by the
16 statute. The uprate is a \$600 million investment that
17 can be rendered completely useless, depending upon
18 whether or not the company decides to repair or retire
19 CR-3 in light of the containment issues.

20 The timing of that decision is exclusively
21 within the control of the company. And I think Issues 2
22 and 3 are an attempt by OPC to frame how to address
23 that. Issue 2 is, as parties stated, more of a factual
24 prudence issue. There is a cost delay. How do you
25 address that? And that's not with the initial plan for

1 the uprate, it's the fact that it's in a comatose state
2 based on where we are or where we aren't with the
3 repair.

4 And, I think, Issue 2 tries to frame how do we
5 address the real cost of delay within the confines of
6 the statute, given this completely unique circumstance.
7 And Issue 3 takes that issue apart from simply the
8 equity component of AFUDC to how can the Commission
9 rationally make a determination when the core issue,
10 which is the company's decision on whether to repair or
11 retire, hasn't been made, and you're not going to have
12 that fact before you have to make a decision in this
13 docket. And that's why I would recommend that both
14 Issues 2 and 3 stay in.

15 **COMMISSIONER BALBIS:** Okay. Thank you.

16 Ms. Kaufman.

17 **MS. KAUFMAN:** Thank you, Commissioner.

18 I support Public Counsel and PCS's comments on
19 Issues 2 and 3 and think that they should stay in. And
20 I wanted to particularly address Issue 3, since I think
21 you have had a lot of argument on 1 and 2.

22 As Mr. Brew said, Issue 3, some of us have
23 referred among ourselves to it as sort of the elephant
24 in the room, and I think that the question of what is
25 happening with the uprate in light of the lack of any

1 decision on the repair or retirement of Crystal River 3
2 is highly unusual. And I know we always have
3 discussions about can this issue be subsumed in another
4 issue, and I think that in this instance, as I
5 understand it, this is the big, big dollar issue for PEF
6 in the nuclear case, and we think that it deserves to
7 have a separate issue and to be highlighted, because I
8 think that is where the focus of the discussion is going
9 to be.

10 The other issues that have been referred to, I
11 think, 14 and 16, are more what I would call your
12 standard issues that we see every year in the nuclear
13 case, and I don't think that they are as clearly stated
14 as Issue Number 3. And I'd also like to say that it is
15 my understanding, and I'm ready to be corrected, that
16 all the parties agreed to Issue Number 3 and its
17 wording, and that it was staff that for some reason has
18 an objection to sort of looking at the Crystal River 3
19 uprate situation separately. And so I urge the
20 inclusion of 2 and particularly 3 as a separate issue.

21 **COMMISSIONER BALBIS:** Okay. Thank you.

22 **MR. LaVIA:** Thank you. Jay LaVia for the
23 Retail Federation. I will be very brief.

24 I strongly support the inclusion of these
25 issues. There hasn't really been a proliferation of

1 issues in this case. This is a big money issue. It's
2 something that is important, we think, for the
3 Commission to vote on, this specific issue. And OPC has
4 focused on this issue. Given the unique facts that we
5 have with, you know, with PEF in this case, I think it's
6 fair to have this issue voted on. So we strongly
7 support inclusion of both 2 and 3.

8 **COMMISSIONER BALBIS:** Okay. Thank you.

9 And, SACE.

10 **MR. JACOBS:** Nothing further. I think you
11 have had some great argument from the intervenors, and
12 we agree with those comments.

13 **COMMISSIONER BALBIS:** Okay. Thank you. And I
14 will allow staff an opportunity to comment.

15 **MR. LAWSON:** Thank you.

16 We have several points. First, in looking at
17 this question as to whether the issue itself should be
18 allowed, it's pretty clear that this is an improper
19 combination of law and fact. As written, Issue 2 will
20 require the Commission to look at factual data related
21 to CR-3 and then draw a legal conclusion. A legal
22 conclusion that will affect not only Progress, but FPL
23 and any other potential nuclear operator in the State of
24 Florida. And as such we believe that the legal issue is
25 already subsumed by Issue 1, which has just been

1 allowed. But Issue 2 requires a mixture of -- an
2 improper mixture of law and fact.

3 Moving on to the factual issue, if this is a
4 policy question, we believe that the issue from a policy
5 standpoint has been subsumed by Issues 16, 17, and 18,
6 particularly 17, which has been discussed here already.
7 And in those issues, particularly 17, OPC or any other
8 party can take a position on the AFUDC, or Crystal
9 River, or any relevant portion and argue that and
10 expound on it as they see fit during the course of the
11 hearing.

12 And we don't need to make the policy issues in
13 Issues 2 and 3 a separate policy issue. They are
14 already covered. It's redundant. It's a second bite at
15 the apple. And we would also note that if this is a
16 policy issue, that in our brief caucus we realized there
17 is no testimony in the record on this. It might be
18 raised next year, but at the moment there is a dearth of
19 information for which we could -- there is no testimony
20 on the record on this matter. And that is essentially
21 our position at the moment.

22 **COMMISSIONER BALBIS:** Okay. I have a few
23 questions for you, then.

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

25 **COMMISSIONER BALBIS:** Regarding your last

1 point that there is no testimony in the record. So are
2 you saying that there is not a witness that filed
3 prefiled testimony from any party on this issue?

4 **MS. BENNETT:** If I might address that,
5 Commissioner Balbis. I was conferring with Mr. Laux and
6 Mr. Breman, and our original concern with this issue,
7 Issue 2, from a policy standpoint is that there is
8 testimony from Mr. Jacobs that some money be deferred,
9 but there is no testimony from Mr. Jacobs on the policy
10 implications. And I'm now hearing that the parties are
11 saying that this is a policy decision as well as a legal
12 and factual decision.

13 From a factual standpoint, OPC can raise its
14 issue, you know, that it's imprudent to incur costs, X,
15 Y, and Z, and those carrying costs should not be allowed
16 under Issue 17. The ability to disallow those costs if
17 they are prudent is Issue 1. From a policy standpoint
18 we are kind of concerned that there is nothing really
19 for the Commission to base its decision on for this
20 year.

21 **COMMISSIONER BALBIS:** Okay. And then, I
22 guess, the other question from a procedural standpoint,
23 I think the problem that we are facing now is that Issue
24 1 was kind of stripped out of those two issues, and yet
25 the wording of 2 and 3 still includes some sort of

1 discussion about whether or not the Commission has the
2 authority to do so, and it's already included in 1, so
3 there is some redundancy here.

4 From a procedural standpoint, do we have an
5 opportunity now to modify the text of the issue, or at
6 this point it is too late, it's either in or out.

7 **MS. BENNETT:** You have the authority as the
8 prehearing officer to modify those issues, and that's
9 certainly within your realm to do so, either now or
10 after the hearing issue a ruling.

11 **COMMISSIONER BALBIS:** Okay. And I'd like to
12 give the opportunity for both the utilities and everyone
13 briefly respond to the possibility of perhaps changing
14 the text, since Issue 1 has been allowed in, so that it
15 is clear what those two issues will focus on. And we
16 will start with Progress.

17 **MR. BURNETT:** Thank you, Commissioner. John
18 Burnett.

19 I don't think from what I've heard today that
20 perhaps any rewording is going to be possible to get at
21 the concept. Maybe I could be helpful. I will be
22 brief. But, Commissioner, if we are simply trying to
23 get at the question of given the specific facts of CR-3
24 if this Commission makes a determination that any of our
25 costs were unreasonably or imprudently incurred, based

1 on the testimony that you hear, we don't dispute at all
2 the fact that you would have the authority to disallow
3 those costs and the carrying charges on them. That is
4 not in dispute.

5 If we are going to try a reword to say if this
6 Commission finds that our costs were reasonably or
7 prudently incurred, but nonetheless the Commission
8 should act to reduce the amount of carrying charges or
9 disallow carrying charges. Even though the costs are
10 deemed reasonable and prudent, there is no reword that
11 we could ever get comfortable with to get to that
12 concept because it is, frankly, illegal.

13 **COMMISSIONER BALBIS:** Well, although I
14 promised I would never mention the fact that I'm not an
15 attorney, I tend to agree with you with that, and the
16 rewording that I was more -- that I was discussing was
17 stripping out does the Commission have the authority and
18 focusing in on possibly, you know, FIPUG's, and PCS, and
19 OPC's argument on specifically as a result of CR-3 are
20 there any costs incurred or projected that should be
21 disallowed. Something to that effect. The way it
22 strips off the authority and allows the Commission to
23 focus specifically on that issue.

24 **MR. BURNETT:** Yes, sir. I'm sorry, I might
25 have misunderstood. I do agree with Mr. Lawson that I

1 believe those issues are covered in others. And if we
2 wanted to rewrite those issues to basically repeat, I
3 think, that concept from other issues, I don't have a
4 problem with that as long as they were within the spirit
5 of the issues that are already in, but I do think it
6 would be redundant. But we are happy to work with the
7 parties to something like that. I'm sorry if I
8 misunderstood your question.

9 **COMMISSIONER BALBIS:** No, that's fine. And
10 then Florida Power and Light?

11 **MS. CANO:** As these issues are particularly
12 framed for Progress Energy Florida's facts, we certainly
13 don't have any suggested rewording to the issues.

14 **COMMISSIONER BALBIS:** Okay. OPC?

15 **MR. SAYLER:** We are certainly amenable to the
16 rewording of the issues. And as regards to testimony in
17 this docket, some of these issues, Issues 2 and 3, I
18 believe, were formulated after we filed our testimony.
19 However, our intent was to elucidate evidence for this
20 Commission to consider through cross-examination. And
21 by having a separate issue tailored for that, however it
22 is reworded, we think would be very helpful to kind of
23 focus the decision of this Commission as it relates to
24 this issue. But, yes, we would welcome a rewording of
25 this issue.

1 **COMMISSIONER BALBIS:** Okay. And really the
2 purposes of you all commenting on it is to -- along with
3 provide your opinion on the reword, is from a procedural
4 standpoint and the timing standpoint. I think we have
5 the unique opportunity, since Progress filed that motion
6 that may affect other issues for you to establish a
7 position, so I want to make sure that you have time to
8 establish a position if it is reworded and left in.

9 **MR. SAYLER:** Yes, sir. We would do what we
10 needed to do to come to a new position on a reword.

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

12 Mr. Brew.

13 **MR. BREW:** Thank you, Mr. Commissioner.

14 First, as a preliminary, I'm always concerned
15 when we try to address discreet issues in the ultimate
16 how many dollars should we give them issues, which are
17 17 and 19. Particularly as I mentioned earlier given
18 the unique circumstances here.

19 I prefer your suggestion. If it were me, I
20 would take Issue 2 and simply say should the Commission
21 disallow recovery of the AFUDC component as the rest of
22 the issue reads and delete the reference to does it have
23 the authority. As to Issue 3, I suggest that maybe the
24 parties take a break and discuss with Progress, in light
25 of their deferral motion, how much of that issue we

1 really still need to debate.

2 **COMMISSIONER BALBIS:** Okay. I will take that
3 under advisement.

4 Ms. Kaufman.

5 **MS. KAUFMAN:** I agree with Mr. Brew on Issue
6 2, and I might have a relatively simple fix to Issue 3,
7 pending the other outcomes. It seems like we are
8 focusing on the question of authority, as you said. And
9 I think it you just reworded Issue 3 to say should the
10 Commission defer and continue on, then if people feel
11 the Commission does not have the authority to do that,
12 they can so argue. I think it gives the parties the
13 opportunity to make what arguments they think are
14 appropriate, and it removes the authority question which
15 seems to be what everybody is focusing on.

16 **COMMISSIONER BALBIS:** Okay. Thank you.

17 **MR. LaVIA:** Jay LaVia for the Retail
18 Federation. I jotted down the same wording on my copy.
19 I think it's a fairly easy fix, and the parties can
20 probably do it in a few minute break and suggest it to
21 you. I do not know that the utilities would agree to
22 it, but it would at be neutral language and take out the
23 legal issue. Thank you.

24 **COMMISSIONER BALBIS:** Okay. Thank you.

25 And, SACE.

1 **MR. JACOBS:** Thank you, Commissioner.

2 We would agree with the idea of the rewording
3 and then I think the logic that Mr. Brew states is
4 exactly how we would like to see it.

5 **COMMISSIONER BALBIS:** Okay. Thank you.

6 **MS. WHITE:** FEA occurs with the suggested
7 reword.

8 **COMMISSIONER BALBIS:** Okay. Thank you.

9 **MR. LAWSON:** We're happy to work with the
10 parties, and I believe a suggestion has been made
11 already to take a brief recess, say 15 minutes or so, to
12 discuss Issues 2 and 3. That would be our suggestion at
13 the moment.

14 **COMMISSIONER BALBIS:** Okay. And if there is
15 no objection, we can go to recess for 15 minutes and
16 come back at 11:35, and hopefully be able to work out
17 some revised wording that everyone is agreeable to.

18 (Recess.)

19 **COMMISSIONER BALBIS:** Thank you. And I guess
20 I will go to staff as far as working out any revisions
21 to Issues 2 and 3.

22 **MR. LAWSON:** Yes, Commissioner. I'm happy to
23 report that the parties were able to take a few moments
24 and reach a compromise on Issues 2 and 3 concerning the
25 wording and positions that staff finds perfectly

1 acceptable, and we accept them at this time. I would
2 ask in a moment for Mr. Sayler to read those into the
3 record for your consideration and to get them read into
4 the record, and also ask that you give the parties a
5 moment to respond as desired.

6 **COMMISSIONER BALBIS:** Okay. Thank you.

7 Mr. Sayler.

8 **MR. SAYLER:** Thank you, Commissioner.

9 For Issue 2, I will just read the issue as
10 revised. I won't try to do type-and-strike or anything
11 of that nature. And if it's helpful, I will go just
12 ahead and read it twice through for the benefit of the
13 parties.

14 For Issue 2, "Should the Commission disallow
15 recovery of any AFUDC on the Crystal River Unit 3 uprate
16 project in 2012 and 2013 due to the lack of a final
17 decision to repair or retire Crystal River Unit 3? If
18 yes, what amount should the Commission disallow, if any.

19 Repeating it, "Should the Commission disallow
20 recovery of any AFUDC on the Crystal River 3 uprate
21 project in 2012 and 2013 due to the lack of a final
22 decision to repair or retire Crystal River Unit 3? If
23 yes, what amount should the Commission disallow, if
24 any?"

25 **COMMISSIONER BALBIS:** Okay. Thank you.

1 And I'll allow very quickly Progress and
2 Florida Power and Light to comment on the revisions.
3 And if everyone could just agree that that is the
4 revision that was discussed and agreed upon.

5 **MS. GAMBA:** That is an accurate description of
6 what was discussed and agreed to, yes.

7 **COMMISSIONER BALBIS:** Okay. Florida Power and
8 Light.

9 **MS. CANO:** We weren't part of those
10 discussions, but we have no comments on the issue as
11 reworded.

12 **COMMISSIONER BALBIS:** Okay.

13 **MS. WHITE:** Yes, that's what we discussed and
14 agreed to.

15 **MR. BREW:** Yes, sir.

16 **MS. KAUFMAN:** Yes, we're fine with that issue.

17 **MR. LaVIA:** Agreed.

18 **COMMISSIONER BALBIS:** Okay. Thank you. And
19 moving on to Issue 3.

20 **MR. LAWSON:** We would just simply ask the same
21 from Mr. Sayler, to go ahead and read it into the record
22 and for the parties to give their assent or comment as
23 they request or require.

24 **COMMISSIONER BALBIS:** Mr. Sayler, I would
25 recommend you read it once. That way if you make a

1 mistake, then we'll be confused as to which one is
2 accurate.

3 **MR. SAYLER:** Yes, sir. And at the request of
4 staff, I'm going to e-mail the revised wording to all
5 the parties later today.

6 Issue 3, "Does the Commission have the
7 authority to defer the determination of prudence for
8 Crystal River Unit 3 uprate project for 2011 (and thus
9 should defer cost recovery in 2013) until a final
10 decision to repair or retire has been implemented? If
11 yes, should the Commission exercise this authority?"

12 **COMMISSIONER BALBIS:** Okay. Thank you. And I
13 would ask the same from the parties as to your consent
14 that this is what was discussed.

15 **MS. GAMBA:** Yes, that's accurate.

16 **MS. CANO:** No comments on the proposed wording
17 of the issue.

18 **MS. WHITE:** FEA agrees.

19 **MR. BREW:** PCS agrees with that framing of the
20 issue.

21 **MS. KAUFMAN:** FIPUG agrees, as well.

22 **MR. LaVIA:** Retail Federation agrees.

23 **MR. JACOBS:** SACE agrees, as well.

24 **COMMISSIONER BALBIS:** Okay. And with that,
25 since obviously there are no objections, I will approve

1 the inclusion of those revised issues and we'll reflect
2 that in the prehearing order.

3 So with that, we will move on to Issue 14.

4 **MS. WHITE:** Commissioner Balbis, may I ask a
5 question?

6 **COMMISSIONER BALBIS:** Yes.

7 **MS. WHITE:** Since we've revised these issues,
8 would you like us to just e-mail our new positions on
9 them to the staff, or would you like to take them now?

10 **COMMISSIONER BALBIS:** Let's just take them now
11 real quick and then you can e-mail them, as needed.

12 **MS. WHITE:** Okay. For Issue 2, FEA agrees
13 with Office of Public Counsel. And for Issue 3, FEA
14 agrees with FIPUG.

15 **COMMISSIONER BALBIS:** Okay. Office of Public
16 Counsel.

17 **MR. SAYLER:** For Issue 2, at this time I don't
18 see any changes that we need to make.

19 Issue 3, which relates more substantially in
20 light of the motion that was filed yesterday to defer
21 reasonableness of '12 and '13 costs, we will need to
22 modify our issue as it relates to the reasonableness of
23 those '12 and '13 costs, but if you will give me leave
24 to provide that to the staff.

25 **COMMISSIONER BALBIS:** That's fine. That's

1 included in the motion and will be dependent upon the
2 Commission's decision.

3 **MR. SAYLER:** Yes.

4 **COMMISSIONER BALBIS:** We will allow you that
5 time.

6 **MR. SAYLER:** Thank you.

7 **COMMISSIONER BALBIS:** PCS.

8 **MR. BREW:** Commissioner, for Issue 2, PCS
9 agrees with OPC. And I'm not sure at this point whether
10 we need to change our position on Issue 3.

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

12 FIPUG.

13 **MS. KAUFMAN:** On Issue 2, we would agree with
14 OPC, and I think that we are okay with our current
15 position on Issue 3.

16 **MR. LaVIA:** The Florida Retail positions do
17 not change.

18 **COMMISSIONER BALBIS:** SACE.

19 **MR. JACOBS:** SACE will change its position on
20 Issue 2 to agree with OPC. On Issue 3, we'll need to
21 provide that in short order. It will probably be in
22 close concert with the position that OPC takes there, as
23 well.

24 **COMMISSIONER BALBIS:** Okay.

25 **MS. GAMBA:** Progress will need to revise its

1 positions on Issues 2 and 3 and would ask a deadline
2 from staff or the prehearing officer to provide those
3 revised position statements.

4 **COMMISSIONER BALBIS:** Okay. And Florida Power
5 and Light?

6 **MS. CANO:** FPL would also like the opportunity
7 to provide its revised positions to staff in writing.

8 **COMMISSIONER BALBIS:** Okay. Thank you. And,
9 Staff, do you have a recommended deadline?

10 **MR. LAWSON:** We have been going with close of
11 business tomorrow. Do you folks need more time or is
12 that adequate? And we'd ask this just apply to all the
13 parties, if they would like to change their position or
14 present them to us at close of business tomorrow.

15 **COMMISSIONER BALBIS:** Okay. And we will go
16 ahead and allow that. And obviously if it is dependent
17 upon the Commission's decision on the motion, on
18 Progress' motion, then that time frame would apply.

19 Okay. So if it's okay to move on to Issue 14,
20 which is another disputed issue. Well, let me do it
21 this way, because it might be a little more efficient,
22 and allow whichever party is in dispute, if there is
23 only one or several, then we will have them start and
24 then allow the parties to respond accordingly. So I
25 guess we will start with Mr. Brew.

1 **MR. BREW:** Commissioners, my understanding is
2 that we had substantial discussion regarding Issues 14
3 and 16 in the development of the issues, and that
4 subsequent to the filing of prehearing statements, staff
5 announced that they thought those issues should be
6 deleted or subsumed in others. So I, for one, would
7 like to hear from staff as to their rationale, given the
8 discussions that preceded the prehearing statements and
9 the fact the parties have taken positions on it.

10 **MR. LAWSON:** During the course --

11 **COMMISSIONER BALBIS:** Yes, go ahead.

12 **MR. LAWSON:** During the course of the
13 discussions and analysis, you know, the issues were
14 being reviewed both by legal and Commission staff as to
15 the policy implications, legal implications, and impact
16 with regard to other dockets. And in the course of
17 reviewing, particularly Issue 14, while we initially
18 were working toward some sort of compromise, the staff
19 consensus built that there was an issue, that we did
20 feel that these issues in and of themselves were
21 subsumed by other issues, that we were essentially
22 breaking out specific portions of other issues and
23 essentially using them as a platform for argument as
24 opposed to answering any material issues to the case.

25 It is just simply a case of that, yes, these

1 things happen when parties look at things, when parties
2 review them, when individuals review them and provide
3 their input, positions can change during the middle of
4 the course of discussions.

5 **COMMISSIONER BALBIS:** Yes, Mr. Brew.

6 **MR. BREW:** I will try to move this along. It
7 was my understanding, because we had a lot of discussion
8 of the development of this issue which originally was
9 framed by PCS that staff thought that 14 would either be
10 subsumed in 13 or 19 or 17. And 13, of course, only
11 goes to project controls and doesn't go to prudence of
12 decisions or actions or dollars expended, and 17 is the
13 ultimate dollar issue. So absent more specificity from
14 staff on which issues they are subsumed in, and I would
15 strongly disagree that it simply belongs in the ultimate
16 dollar issue given, as I mentioned earlier, this is an
17 extraordinarily unique issue for the Commission.

18 The parties had, as I said, debated that and
19 that Issue 14 and 16 sort of framed the issue that the
20 Commission really needs to consider. And we don't think
21 that it falls even remotely within the scope of Issue
22 13, which in prior years NCRCs we have discussed with
23 staff as to the scope of their recommendations on
24 project controls and accounting, nor to the ultimate
25 dollar recovery issues of 17 and 19. Thank you.

1 **COMMISSIONER BALBIS:** And I will allow any
2 other party that would like to speak on this issue.

3 Ms. Kaufman.

4 **MS. KAUFMAN:** We totally agree with Mr. Brew's
5 position.

6 **MR. LaVIA:** The Retail Federation strongly
7 supports inclusion of these issues.

8 **MR. JACOBS:** Two things, Commissioner.

9 One, I had indicated earlier just to reconfirm
10 here that SACE changes its position here to agree with
11 OPC, and we agree with the logic of PCS.

12 **COMMISSIONER BALBIS:** Okay. And I'll allow
13 FEA, kind of go backwards and then allow --

14 **MS. WHITE:** We agree with PCS Phosphate and
15 the other intervenors and support inclusion of this
16 issue.

17 **COMMISSIONER BALBIS:** Okay. And, Florida
18 Power and Light.

19 **MS. CANO:** No position on these Progress
20 issues.

21 **MS. GAMBA:** Commissioner, it's true that these
22 issues were discussed at length. And while we do agree
23 with staff that the issues are technically subsumed, in
24 compromise Progress did agree to the wording of these
25 issues and so is fine with their inclusion.

1 **MR. SAYLER:** Excuse me, Commissioner Balbis.

2 OPC agrees with PCS and the other intervenors.
3 One thing we would like to note, and this is an
4 inadvertent oversight on my part, but our Witness Doctor
5 Jacobs does also provide testimony as it relates to our
6 recommended adjustment for Issues 14 and 16,
7 specifically in the sense that he recommends that the
8 Commission defer any deferable or avoidable cost as it
9 relates to the uprate. So if possible to modify under
10 the appropriate section of the prehearing order that
11 Doctor Jacobs also testifies to 14 and 16.

12 **COMMISSIONER BALBIS:** Okay. And I just want
13 to clarify with Progress. The comments you made both
14 apply to 14 and 16?

15 **MS. GAMBA:** The comment I made applied as to
16 14. We believe that as to 16, is it likely a moot issue
17 if the Commission grants the motion to defer. But as
18 far as the language that is presented in the prehearing
19 order, yes, that was -- my comments as to 14 apply, as
20 well, yes.

21 **COMMISSIONER BALBIS:** Okay. And a question
22 for staff. If you have all the parties agreeing to
23 Issue 14, including Progress Energy, could you explain
24 why you are still recommending this issue be excluded?

25 **MR. LAWSON:** Yes. Our point on this is

1 essentially that Issue 13 states PEF's project
2 management, contracting, accounting, and cost oversight
3 controls were reasonable and prudent. And then the next
4 question is just a small subset of that, were all of the
5 actual Crystal River Unit 3 uprate project expenditures
6 prudently incurred or expended in 2011? Parties all
7 have the opportunity to expound on this issue and expand
8 on it through Issue 13.

9 And we would also note that in the wording in
10 the absence of a final decision or to repair or retire
11 Crystal River Unit 3 in 2011, it strikes us that it will
12 be difficult to make a decision on the prudence or
13 imprudence of a decision that technically hasn't been
14 made yet. There is an absence of a decision. How can
15 you determine if that is prudent or imprudent? We
16 disagree with the wording on those two fronts, and we
17 also believe that given the amount of time and effort
18 and taxpayer dollars involved, that when issues can be
19 combined and still afford the parties an opportunity to
20 speak, to gather evidence, to present evidence, that
21 they can do so in the other questions.

22 This is just simply -- we believe it is simply
23 an issue that is duplicative and would simply cost a lot
24 of time and effort, but achieve nothing.

25 **MR. REHWINKEL:** Commissioner Balbis, would you

1 allow me to respond to that? On behalf of the Public
2 Counsel's Office, we have engaged and we have spent
3 taxpayer monies to bring a witness, an expert witness --
4 actually, in this case, two expert witnesses to testify.
5 It is our role and it is our statutory responsibility to
6 bring issues that we believe should be adjudicated by
7 the Commission. We have highlighted certain issues.
8 This is not an 800-pound gorilla, it is an 8 million
9 pound gorilla in the room, and that is the CR-3 issue
10 and the repair.

11 It is not an ordinary generic issue that
12 should be subsumed under a catch-all issue. The
13 taxpayers are best served by having this issue aired,
14 and I think the Commission has an obligation to hear it
15 and to hear it separately. We strongly, strongly agree
16 with what PCS has argued that these issues should be
17 done separately, and we appreciate their effort and
18 their work to get these issues worded correctly, and all
19 the parties have agreed to it.

20 **COMMISSIONER BALBIS:** Thank you, Mr.
21 Rehwinkel.

22 And I just want to respond to staff's
23 comments. And I'm trying to be careful not to argue the
24 merits of the actual issue itself, but you mentioned
25 that a decision was not made, a final decision. But I

1 believe the issue is specific to 2011, not 2012, or no
2 other specific date, that Issue 14 is focusing on
3 expenditures in 2011. And there was not a final
4 discussion made in 2011, so how is that not appropriate?

5 **MR. LAWSON:** We would just simply say that it
6 is subsumed in the larger issue and leave it at that.

7 **COMMISSIONER BALBIS:** Okay.

8 **MR. BREW:** Commissioner Balbis, may I make one
9 final comment, and that is with respect to Issue 13. We
10 have been through this a number of times in prior years
11 dockets, and I think staff would confirm that their
12 testimony filed in this docket by their auditors goes to
13 Issue 13, but does not address Issue 14.

14 **COMMISSIONER BALBIS:** And I want to interrupt
15 you. And that was the second question that I have for
16 staff, so thank you for reminding me about that. But,
17 again, Issue 13 really focuses on the, I would assume,
18 results of the management audit that was performed on
19 the project management controls. And Issue 14, I think,
20 is fairly clear that it's all of the expenditures, and
21 Issue 13 really focuses on the project management controls, et
22 cetera. So how would 14 be subsumed in 13?

23 I agree in the overall final number, you know,
24 it theoretically is, but, again, this is an important
25 issue that even the utility is in agreement with this

1 issue. So if you can answer the 13/14 differences or
2 similarities, and then I guess that would be it, because
3 the fact that you have the utility in agreement really
4 has me leaning toward just putting it in and moving on.

5 **MS. BENNETT:** We believe that Issue 14
6 covers -- I mean, Issue 13 covers everything including
7 what is in Issue 14. That's not to say that the
8 Commission can't break out issues. We try and focus on
9 really not having to write the same type of thing twice,
10 where it's going to appear in 13 and then it's going to
11 appear in 14. But there are times, if the Commission
12 decides that an issue is appropriate and needs to be
13 specific to go ahead and leave it in and let the parties
14 address that particular issue separately.

15 Did I answer your question, or do I need to
16 clarify it?

17 **COMMISSIONER BALBIS:** It sounded like you were
18 softening -- staff was softening its position, which I
19 like to hear. But it did answer my question. And,
20 again, you know, back to the start of this, at least the
21 437 docket, the Commission recognized and staff
22 recognized that CR-3 is an important issue and to
23 separate it out for a more focused discussion, et
24 cetera, and I think it is appropriate to do it in this
25 hearing as well for having the specific issues separated

1 out.

2 Again, you have all parties in agreement. I
3 apologize that it may result in a little additional work
4 for staff, but you have witnesses that are testifying
5 specifically on this issue. You know, I'm inclined to
6 allow it to be included. So one last chance to convince
7 me otherwise.

8 **MS. BENNETT:** No, we're fine with it being
9 included.

10 **MS. WHITE:** Commissioner Balbis, as you
11 included Issue 14, FEA will change their position from
12 no position at this time to agree with FIPUG.

13 **COMMISSIONER BALBIS:** Okay. Any other changes
14 to positions on 14? Okay. Seeing none, we can move on
15 to Issue 16, which, again, I agree with Progress that it
16 would be rendered moot if the Commission decides or
17 agrees with Progress' motion. So I assume we could wait
18 until that time to include it or not, or what does staff
19 recommend how we deal with Issue 16?

20 **MR. LAWSON:** For the moment we can all -- I
21 think at least staff agrees that 16 would be moot, as
22 well. However, since we have to wait until the
23 Commission makes an actual formal decision, we should
24 either allow or disallow it subject to that motion.

25 **COMMISSIONER BALBIS:** Okay. Thank you. And I

1 agree that that seems like a reasonable approach. So I
2 guess the question is for any of the parties that is in
3 disagreement with Issue 16, either in its entirety or in
4 its wording, we can decide on whether or not to include
5 it if the Commission denies Progress' motion. So who is
6 challenging this issue?

7 **MR. LAWSON:** We are the ones who are
8 challenging it, and in light of everything that has been
9 discussed with regards to the motion and the previous
10 ruling, we would simply state that we still believe it
11 is subsumed. But it basically is the same argument as
12 14, and the same arguments would apply and should be
13 applied by you.

14 **COMMISSIONER BALBIS:** Okay. And with that I
15 will include the issue. And, again, it will be rendered
16 moot if the Commission grants the motion from Progress.

17 **MS. WHITE:** And just to make sure the record
18 is clear, sir, FEA will change its position from no
19 position at this time to agree with FIPUG.

20 **COMMISSIONER BALBIS:** Any other changes?

21 **MR. JACOBS:** Yes, Commissioner. As stated
22 earlier on Issue 16, SACE would change to agree with
23 OPC.

24 **COMMISSIONER BALBIS:** Okay. Seeing no other
25 changes, we can move on to Issue 28A. And if those that

1 are contesting or have requested changes or concerns
2 about this could indicate so.

3 Florida Power and Light.

4 **MS. CANO:** Yes. Thank you. It is FPL's
5 position that Issue 28A should be excluded from this
6 docket. Issue 28A is wholly subsumed within another
7 properly framed issue before this Commission, namely 28.
8 No party will be harmed by its exclusion as any
9 arguments intended to be made under Issue 28A can
10 clearly be made under Issue 28. And for that reason,
11 it's FPL's position that it should be excluded. Thank
12 you.

13 **COMMISSIONER BALBIS:** Okay. And I have a
14 feeling everyone would like to speak on this. So we
15 will go to Office of Public Counsel.

16 **MR. McGLOTHLIN:** Sir, earlier you indicated
17 that you wanted to take these in blocks, 28A and 29A.
18 Is that still the game plan; are we to address those two
19 issues together?

20 **COMMISSIONER BALBIS:** I'm sorry, I didn't
21 understand your question.

22 **MR. McGLOTHLIN:** I thought earlier you said
23 you wanted to take 28A and 29A in a single block. Are
24 we addressing them individually at this point?

25 **COMMISSIONER BALBIS:** Yes, we can take it

1 individually. I mean, I know staff indicated there is
2 three separate blocks, but we'll start individually, and
3 if we can combine them we will.

4 **MR. McGLOTHLIN:** All right. My comments will
5 probably very obviously apply to both 28A and 29A. And
6 since I went too long earlier, I have tried to
7 recalibrate and I will try to stay within the three
8 minute timeframe that you've identified.

9 As a general matter, and in the abstract it is
10 clear that with respect to issues, it would be possible
11 to roll them up into one overall umbrella issue. It
12 would also be possible to break them down into very
13 specific discreet issues. There's a balancing that's
14 required, and I think there are two or three
15 considerations that, when applied, would require that
16 you draw the line to include 28A and, for the reasons I
17 will talk about in a minute, 29A.

18 First of all, think of the purpose of an issue
19 or the purposes. I think there are two. First of all,
20 this is a prehearing order for the benefit of the panel.
21 Does the issue inform the decision-makers as to the
22 nature of the disagreement, dispute between the parties?

23 And, secondly, does the framing of the issue
24 provide assurance to the party who brings the issue
25 that, first of all, it's going to be teed up in a way

1 that is clear; and, secondly, is it going to be resolved
2 in a way that ensures the party has received a specific
3 disposition of its concern.

4 The other consideration is this, many times
5 the Commission receives issues that are brought to it by
6 the parties. That is the case here. And when a party
7 brings an issue to the Commission for the disposition,
8 that party has an interest in how it is framed. And
9 while the standard set of wording that has been evolved
10 over time is certainly valuable in terms of an
11 organizing tool, care should be taken such that the
12 objective is not to subsume as many issues into those
13 standard wording as possible, because if that is the
14 case, then the risk is that the price of the parties to
15 frame their issues is impinged upon, because at some
16 level of generality the concern becomes vague and the
17 matter at issue is obscured.

18 And the third -- that is the case here. We
19 have identified, we have offered testimony to support
20 our view that, first of all, the costs at the Turkey
21 Point uprate project are skyrocketing. That FPL was
22 informed of that and had an opportunity to do something
23 about it and failed to do so. And that as a
24 consequence, based upon an analysis, customers are being
25 asked to pay for a project that is already at this point

1 no longer economically feasible.

2 And when you look at 28 and 29, neither refers
3 to Turkey Point. And we think that testimony deserves a
4 separate breakout issue. We certainly agree that 28 and
5 29 provide the ultimate umbrella issue, but nothing in
6 the wording of 28 and 29 puts the Commissioners on
7 notice of what the nature of the dispute is.

8 And the other point I would make is that 28
9 and 29 as worded are biased in the direction of FPL,
10 because the wording presumes that the Commission is
11 going to look at what is described as the uprate project
12 as a single activity, when the point we are trying to
13 make is that based upon this change of circumstances
14 there is reason to look at the Turkey Point on a
15 separate stand-alone basis. And for that reason --

16 **COMMISSIONER BALBIS:** Your time is up.

17 **MR. McGLOTHLIN:** All right. I will stop with
18 that.

19 **COMMISSIONER BALBIS:** Mr. McGlothlin, I do
20 have one question for you, and I may allow you to
21 elaborate. You started to get into it, but really the
22 issue for me here is you have Issue 28, which clearly
23 addresses the long-term feasibility of completing FPL's
24 extended power uprate project, and not arguing the
25 merits of the issue, but the uprate project includes

1 both St. Lucie and Turkey Point. In Issue 28A --
2 "Should the Commission evaluate the economic feasibility
3 of Turkey Point and St. Lucie extended power uprate
4 activities separately?" -- how is that not subsumed in
5 28? Because in 28 we are going to be assessing the
6 long-term feasibility of the entire project.

7 **MR. McGLOTHLIN:** Well, I think you just made
8 my point by referring to it as a single project when the
9 essence of our testimony and the purpose of our
10 separately framed issue is that you should not look at
11 it as a single project. There should be a separate
12 analyses done, and the Commission should consider and
13 evaluate the Turkey Point specific analysis that our
14 witness sponsors.

15 **COMMISSIONER BALBIS:** Okay. And,
16 unfortunately, I don't think I can engage you in debate
17 without arguing the merits of it, but I will allow
18 FIPUG's position on this.

19 **MS. KAUFMAN:** Thank you, Commissioner.

20 We agree with Mr. McGlothlin. And it always
21 strikes me we always have these discussion it seems at
22 prehearing conferences, whether one issue is subsumed in
23 another issue. Not whether or not the issue is
24 appropriate, or not whether or not the Commission is
25 going to have to make a decision on this issue, but

1 whether it should all be rolled up into a much broader
2 issue.

3 And I agree that it seems that also in these
4 hearings certain issues kind of come to the top are
5 really the issues that the Commission is going to
6 consider and ultimately get to the issue of how many
7 dollars should be allowed or disallowed. And I think
8 that issues that direct the Commissioners to the
9 discreet part of an issue that a party has raised are
10 very helpful. I don't think that it saves any time
11 whether or not this issue is in 28 or broken out. I
12 think it doesn't save any party any time one way or
13 another, because I believe the questions are still going
14 to be asked.

15 What it does is it frames a specific issue a
16 party has raised for the Commission to answer rather
17 than lumping it into the more general issues. And I
18 think there is always a balance to be weighed, but when
19 you have issues that a witness has specifically focused
20 on, I think it is important that that issue be
21 discreetly identified. So we would agree with Mr.
22 McGlothlin's comments.

23 **COMMISSIONER BALBIS:** Thank you.

24 **MR. LaVIA:** For the Florida Retail Federation,
25 delineating issues is as much an art as it is a science.

1 And I understand the desire to limit issues, but in this
2 case OPC in exercising their statutory authority have
3 carved this out as an important issue that they want the
4 Commission to vote on; they want the public to see as an
5 issue, that's part of it, too. And I think it is really
6 important, and the Retail Federation strongly supports
7 the inclusion of this as an issue for those reasons.

8 You know, we could subsume everything into one
9 issue and merrily write a very long brief if you
10 extended our word count on our summaries, but this is
11 one that needs to be broken out. This is an important
12 issue, and we believe it should be broken out.

13 Thank you.

14 **COMMISSIONER BALBIS:** Okay. Thank you.

15 And, SACE.

16 **MR. JACOBS:** Thank you, Commissioner.

17 I would join those comments and add just one
18 brief point. It's always important for the Commission
19 to enunciate competent and substantial evidence that it
20 relies on in reaching its conclusions, and I would
21 suggest to you to the extent that you are going to have
22 to be very specific and very clear on a particular
23 issue, this one included, in reaching your ultimate
24 conclusions, that it always helps you to enunciate those
25 facts and the rationale that allowed you to reach those

1 conclusions.

2 So to that extent, I think this issue, I
3 think, will be very significant for you, because this
4 issue is going to be very prominent in how you reach
5 conclusions in this matter. So to that extent, I would
6 urge that it does bear separate consideration.

7 **COMMISSIONER BALBIS:** Okay. Thank you.

8 **MS. WHITE:** I don't have any comments to add
9 other than to say we support the inclusion of both of
10 these issues.

11 **COMMISSIONER BALBIS:** Okay. And, Staff.

12 **MR. LAWSON:** Staff believes that Issue 28A is
13 subsumed in Issue 28. Essentially, the Commission in
14 Issue 28 will be looking at the entire FPL extended
15 power uprate project; that's the whole focus of that
16 question. And Issue 28A essentially just breaks out the
17 two components of it and asks us to simply reanswer
18 Issue 28 separately. I believe that all the parties
19 will have ample opportunity under Issue 28 through the
20 use of testimony, evidence, exhibit, and their arguments
21 to illustrate any points they desire on this matter,
22 especially considering we're just looking at the single
23 extended power uprate project for FPL.

24 **COMMISSIONER BALBIS:** Okay. Thank you.

25 And I believe that is all the parties who have

1 spoken on this issue. I will reserve my decision on
2 this issue until after the conclusion of this prehearing
3 conference. We will move on to Issue 29A, and we'll
4 start with Florida Power and Light.

5 **MS. CANO:** Thank you.

6 Like Issue 28A, it is FPL's position that
7 Issue 29A should be excluded from the docket as it is
8 wholly subsumed within another properly framed issue,
9 namely 29. No party will be harmed by its exclusion, as
10 any arguments, as specific as they may wish to be, may
11 be made under Issue 29.

12 If included, however, Issue 29A presents
13 another problem. It lacks a reference to a year,
14 presumably 2011, to which the issue is intended to
15 apply. As was discussed at some length during last
16 year's nuclear cost-recovery hearing, there are only
17 particular years that are up for Commission review each
18 year in the nuclear cost-recovery case. This year those
19 years are 2011, 2012, and 2013. Examination of any year
20 prior to 2011 is precluded by rule.

21 Accordingly, if it is included, and, again, we
22 submit that it need not be, because it is wholly
23 subsumed within Issue 29, but if it is included, it
24 should be revised to include a reference to the year to
25 which its proponent intended for the issue to apply.

1 Thank you.

2 **COMMISSIONER BALBIS:** Thank you.

3 Office of Public Counsel? And this time I'm
4 going to stick to the 3 minutes; I gave you 4:15 last
5 time.

6 **MR. McGLOTHLIN:** I'll adopt the arguments that
7 I submitted in support of 28A, and add the fact that we
8 have sponsored testimony of Doctor Jacobs who identifies
9 what he describes as imprudence on the part of FPL, and
10 that occurred at Turkey Point. This is necessary to
11 convey to the Commissioners with the requisite degree of
12 specificity the concerns and issues that we have brought
13 for adjudication.

14 **COMMISSIONER BALBIS:** Okay. Thank you.

15 FIPUG.

16 **MS. KAUFMAN:** I will adopt my argument on
17 Issue 28A.

18 **MR. LaVIA:** The same for the Retail
19 Federation. We strongly support inclusion of this
20 issue.

21 **MR. JACOBS:** We will join in those comments.
22 Thank you.

23 **COMMISSIONER BALBIS:** Okay. FEA.

24 **MS. WHITE:** We join our colleagues and
25 intervenors and we support the inclusion.

1 **COMMISSIONER BALBIS:** And since I asked FPL to
2 comment on one of Progress' issues, I will offer the
3 same opportunity for Progress.

4 **MS. GAMBA:** We have no position on the FPL
5 issues. Thank you.

6 **COMMISSIONER BALBIS:** Staff?

7 **MR. LAWSON:** We believe this issue has been
8 subsumed. Issue 29 reads should the Commission find
9 that FPL's 2011 project management contracting,
10 accounting, and cost oversight controls are reasonable
11 and prudent? 29A literally says should the Commission
12 find FPL managed the extended power uprate. We would
13 also note the disconnect that FPL raised with regards to
14 the 2011 versus future years. We believe there is
15 adequate opportunity, especially in this case where they
16 both address management issues, for all the parties to
17 expound on the management and whether it's prudent or
18 imprudent and present their cases to the Commission in
19 Issue 29.

20 **COMMISSIONER BALBIS:** Okay. Thank you.

21 And as indicated previously, I will make a
22 decision on the outstanding disputed issues, and that
23 will be reflected, I believe, in the prehearing order
24 when that goes out.

25 **MS. WHITE:** Commissioner Balbis, may I just

1 for the record note that if you include these issues we
2 will change our position from no position at this time
3 to agree with OPC. Thank you.

4 **COMMISSIONER BALBIS:** I will give the same
5 opportunity to the other parties, if this is included,
6 to state your position. I will allow OPC.

7 **MR. McGLOTHLIN:** I would comment that, you
8 know, we support the inclusion of these. If the ruling
9 is adverse to us, we would need an opportunity to
10 restate our position with respect to 28 and 29.

11 **COMMISSIONER BALBIS:** Okay. FIPUG.

12 **MS. KAUFMAN:** If 28A and 29A are included, our
13 position would be agree with Public Counsel. And, as
14 Mr. McGlothlin stated, we would need to revise 28 and 29
15 if 28A and 29A are deleted.

16 **COMMISSIONER BALBIS:** Okay. The Retail
17 Federation.

18 **MR. LaVIA:** Our positions remain the same.

19 **COMMISSIONER BALBIS:** SACE.

20 **MR. JACOBS:** Thank you. As stated earlier, we
21 would agree with OPC on Issues 28 and 29, but also for
22 28A and 29A. And similar to FIPUG, we would request the
23 opportunity to revise our positions on 28 and 29, should
24 those issues not be included.

25 **COMMISSIONER BALBIS:** Okay. Florida Power and

1 Light?

2 **MS. CANO:** Our positions would remain the
3 same, because they point back to the issues that they
4 are subsumed within.

5 **COMMISSIONER BALBIS:** Okay. So with that, I
6 think we have finished out Section VIII which deal with
7 the issues. And now we are moving on to Section IX with
8 the exhibit list.

9 **MR. BREW:** Commissioner Balbis, may I ask?

10 **COMMISSIONER BALBIS:** Yes.

11 **MR. BREW:** Can I just confirm for Progress
12 that in light of their motion to defer they will be
13 revising the table relating CR-3 uprate dollars that's
14 included in Issue 19?

15 **MS. GAMBA:** I would think certainly if the
16 motion to defer is granted we would revise that.

17 **MR. BREW:** Thank you.

18 **COMMISSIONER BALBIS:** Okay. And, again, are
19 there any changes or corrections to the issues or party
20 positions for the exhibit list? Staff?

21 **MR. LAWSON:** No, not at this time.

22 **COMMISSIONER BALBIS:** How about the
23 Comprehensive Exhibit List?

24 **MR. LAWSON:** Yes. Staff notes that we have
25 prepared a Comprehensive Exhibit List consisting of all

1 the prefiled exhibits for the purpose of numbering and
2 identifying the exhibits at the hearing. Included in
3 the comprehensive exhibit are the exhibits staff wants
4 entered into the record at the hearing. Staff has
5 e-mailed the comprehensive exhibit list, including
6 staff's exhibits, to the parties prior to this
7 prehearing conference. I believe there is no objections
8 to either, but I would request the parties confirm this
9 at this time.

10 **COMMISSIONER BALBIS:** Okay. Do any of the
11 parties object to this?

12 **MS. KAUFMAN:** We are still reviewing the
13 exhibits, Commissioner, so we don't have a position at
14 this time. We're still looking at them.

15 **COMMISSIONER BALBIS:** Okay.

16 **MR. SAYLER:** For OPC, we did stipulate to the
17 comprehensive exhibit list and the exhibits for staff
18 for both Progress and the FPL side. However, the other
19 day FPL submitted revised responses to some of the
20 interrogatories, so my question for staff, are you
21 planning to use the revised interrogatory responses or
22 the original ones that we based our original stipulation
23 on?

24 **MR. LAWSON:** We haven't seen those filings at
25 this moment. When we review them, we may change our

1 position, but -- and we'll add to our comprehensive
2 exhibit list at that time.

3 **COMMISSIONER BALBIS:** Okay. So we will hold
4 off on the comprehensive exhibit list, since some of the
5 parties have not reviewed it yet.

6 So we're going to move on to Section X,
7 proposed stipulations. Are there any proposed
8 stipulations at this time?

9 **MR. LAWSON:** There are no proposed
10 stipulations at this time.

11 **COMMISSIONER BALBIS:** Okay. Moving on to
12 Section XI, pending motions. Obviously, besides the
13 pending motions that were discussed during preliminary
14 matters, are there any other pending motions?

15 **MR. LAWSON:** None that we are aware of.

16 **COMMISSIONER BALBIS:** Section XII, pending
17 confidentiality motions.

18 **MR. LAWSON:** We have a number of
19 confidentiality requests that we will be addressing in
20 separate written orders.

21 **COMMISSIONER BALBIS:** Okay. Section XIII,
22 post-hearing procedures.

23 **MR. LAWSON:** We would suggest at the moment
24 that post-hearing positions be limited to 50 words and
25 that post-hearing briefs be limited to 50 pages per

1 case.

2 **COMMISSIONER BALBIS:** Any objections to that?

3 **MR. McGLOTHLIN:** OPC requests 75 instead of
4 50 -- words that is.

5 **COMMISSIONER BALBIS:** But the 50 pages per
6 case, no objections to that, correct?

7 **MR. McGLOTHLIN:** No objection.

8 **COMMISSIONER BALBIS:** A question for staff.
9 At last year's proceeding, what were the limitations?

10 **MR. LAWSON:** Last year it was 50/50.

11 **MS. CANO:** If FPL may also be heard on this?

12 **COMMISSIONER BALBIS:** Yes.

13 **MS. CANO:** Thank you. Last year, I have the
14 prehearing order from last year in front of me, and each
15 party was given 120 words for their position. And we
16 would certainly, you know, be amenable to that. We
17 would also be happy to accept 100 words if a little
18 shorter position is desired. The page limit of 50 would
19 be fine, and that is the same as it was last year.

20 **COMMISSIONER BALBIS:** And last year was 120?

21 **MS. CANO:** I'm sorry, yes; 120 words for the
22 position on each issue, and 50 pages in total for the
23 brief.

24 **COMMISSIONER BALBIS:** Okay. I feel that the
25 issues that we are facing in this year's docket are very

1 similar to what we were facing in last year's docket.
2 So with that, I rule that we match what we did last year
3 and include 120 words with a 50-page limit per case. I
4 assume there's no objections from any of the parties to
5 that?

6 Okay. We're moving on to Section XIV,
7 rulings.

8 **MR. LAWSON:** Staff would suggest that you, as
9 the prehearing officer, make a ruling that the open
10 statements, if desired, or if any, should not exceed
11 five minutes per party per case.

12 **COMMISSIONER BALBIS:** Any objections to five
13 minutes?

14 **MR. ANDERSON:** FPL would request ten minutes,
15 recognizing there are many, many intervenors. That's
16 it.

17 **COMMISSIONER BALBIS:** And, Ms. Cano, what did
18 we do last year?

19 (Laughter.)

20 **MS. CANO:** Let me see.

21 **COMMISSIONER BALBIS:** While she's checking
22 that, any requests from the other parties for a
23 five-minute limitation?

24 **MR. McGLOTHLIN:** I didn't hear what
25 Mr. Anderson said.

1 **COMMISSIONER BALBIS:** I believe his request
2 was ten minutes; is that correct?

3 **MR. ANDERSON:** Yes. I'm kind of following the
4 pattern from the rate case yesterday. Yesterday for the
5 rate case it was 20 for FPL, ten Public Counsel, five
6 for others. We don't need 20 minutes for this. Ten
7 minutes is more than ample, but then a lesser amount for
8 the balance of the parties. Otherwise you get into
9 basically ten for FPL and 70 minutes of everybody else.

10 **COMMISSIONER BALBIS:** Okay. And, OPC?

11 **MR. McGLOTHLIN:** I think five would crimp me
12 just a little bit. I would like to have maybe seven, if
13 you could give it.

14 **MR. ANDERSON:** FPL has no problem with that.

15 **COMMISSIONER BALBIS:** And we will go to
16 Progress on this. I'm sorry for skipping over you.

17 **MS. GAMBA:** Seven would be fine with us.

18 **COMMISSIONER BALBIS:** Any other parties?

19 **MS. KAUFMAN:** FIPUG is fine with five minutes
20 for opening statements. And, again, I assume that would
21 be per case as the brief limit was.

22 **COMMISSIONER BALBIS:** Okay. Retail
23 Federation.

24 **MR. LaVIA:** No objection to five. And we
25 would support additional time of seven for OPC.

1 **COMMISSIONER BALBIS:** And, SACE?

2 **MR. JACOBS:** No objection.

3 **COMMISSIONER BALBIS:** FEA?

4 **MS. WHITE:** No objection.

5 **COMMISSIONER BALBIS:** Okay. I think what I'm
6 going to do with this is I agree with FPL's point that,
7 you know, you have two of the petitioners, and you have
8 multiple intervening parties, so I think what might be
9 appropriate is come up with additional time for Progress
10 and FPL, and then maybe additional time for OPC, and
11 then limit some of the other intervenors, since they
12 seem to be matching OPC's position on a lot of the
13 issues. But I'm not sure if I'm ready right now to come
14 up with that. But just to give you a hint of a few
15 extra minutes for each of the parties, and I guess
16 petitioners and OPC, and limit the others. So that will
17 be indicated in the prehearing order, as well.

18 **MR. SAYLER:** Commissioner Balbis, if on the
19 Progress side we feel that we don't need the full time
20 limitation, can we submit to our other side, to the FPL
21 side some additional time for my co-counsel, Mr.
22 McGlothlin? Would we have that flexibility to kind of
23 share time amongst each other and amongst the
24 intervening parties?

25 **COMMISSIONER BALBIS:** I'm confused. I would

1 allot time to OPC. And if you're saying that you are
2 going to speak for half the time and then have Mr.
3 McGlothlin speak, I'm not too concerned with that,
4 unless I'm misunderstanding the request.

5 **MR. SAYLER:** I was thinking if I spoke for
6 half of my time, say I used five minutes of seven
7 minutes, I could cede an additional two minutes to Mr.
8 McGlothlin when he addressed his case with FPL.

9 **COMMISSIONER BALBIS:** Okay. I will take that
10 under advisement.

11 **MR. SAYLER:** Okay.

12 **COMMISSIONER BALBIS:** Any other --

13 **MR. ANDERSON:** FPL for its part would oppose
14 that, because that gets exactly into a very, very long
15 intervenor or Public Counsel position, much longer than
16 anything we do.

17 **COMMISSIONER BALBIS:** Okay.

18 We will move on to other matters. Are there
19 any other matters to address in this prehearing
20 conference?

21 **MR. LAWSON:** Staff has one request.
22 Notwithstanding the extent that positions are going to
23 change due to the motion, PEF motion, but as far as
24 positions changing today based on what has been
25 discussed today, I know that most people have already

1 announced their changes, but if anyone wishes to change
2 their position based on the prehearing conference today,
3 that if they could provide those to us by close of
4 business tomorrow. And, again, understanding I think we
5 all know the PEF motion is different, and when decisions
6 are made that adequate time will be given for those
7 positions to change.

8 **COMMISSIONER BALBIS:** Any objections to that?
9 Okay. Seeing none, I'm going to move on to a couple of
10 other really suggestions that might make the process
11 move a little more efficiently. One having to do with
12 exhibits, especially presented during -- well, obviously
13 presented during the hearing. And I have asked staff to
14 distribute a sample cover sheet, because there have been
15 a lot of documents that are provided that don't have the
16 same format. So I think a cover sheet would be useful
17 in allowing the presiding officer to assign the exhibit
18 number, et cetera, so that is being distributed to you.

19 If everyone could use that as a format. Just
20 attach that on the top, I think it would be helpful.
21 And also, of course, the Chairman will be asking for a
22 short title, so if you can be prepared to provide a
23 short title, or obviously indicate it on the cover
24 sheet, that would be helpful as well.

25 And the other issue we faced in the past is

1 not having enough copies. So I recommend you bring
2 enough copies for Commissioners, court reporters, et
3 cetera. Staff has recommended 25 copies, which seems a
4 little excessive, but I think with all the parties that
5 are present, et cetera, that might be a good option,
6 although I hate to kill that many trees. If anyone has
7 any other suggestions?

8 Mr. Brew.

9 **MR. BREW:** Commissioner, when I come down I
10 typically bring 20 copies, and that's sufficient for all
11 the hearings that I have attended.

12 **MS. KAUFMAN:** Commissioner, I would agree 45
13 copies --

14 **COMMISSIONER BALBIS:** No, no, 25.

15 **MR. BREW:** Oh. I heard 45.

16 **MS. KAUFMAN:** I'm sorry, I thought you said
17 45.

18 **COMMISSIONER BALBIS:** Oh, no, no, no. Did you
19 hear 25 or 45?

20 **MS. KAUFMAN:** We heard the same thing.

21 **COMMISSIONER BALBIS:** No, it was 25 copies,
22 not 45. And obviously if you need help passing out the
23 exhibits, just get it to one of our staff and they will
24 approach the bench.

25 **MR. LaVIA:** Commissioner, Jay LaVia.

1 **COMMISSIONER BALBIS:** Yes.

2 **MR. LaVIA:** Two sided copies, as long as there
3 is one one-sided for the court reporter, that's what we
4 are doing in the rate case. I wanted to know if we
5 could save some trees by doing it that way.

6 **COMMISSIONER BALBIS:** Yes. I mean, if you can
7 do that and save it, I'm not sure what capabilities the
8 other intervenors have. I'm sure they do, but --

9 **MR. LaVIA:** As long as there is no objection
10 from the bench to doing it that way.

11 **COMMISSIONER BALBIS:** I can't see of any
12 reason not to allow that.

13 **MR. LaVIA:** Okay. Thank you.

14 **COMMISSIONER BALBIS:** Okay. And availability
15 of witnesses, this hearing is scheduled for several
16 days, you know, it's kind of hard to predict how long
17 each witness is going to take, but it's really helpful
18 if you have the witnesses that are there at the time
19 that they are called. I think that makes it easier.
20 And if conflict comes up, please let our staff know as
21 quickly as possible so that we can make arrangements.

22 And the other thing, I think we have gotten,
23 at least since I have been here, better at this -- is
24 dealing with confidential documents with witnesses.
25 Make sure that you remind them what can and cannot be

1 discussed, especially during cross-examination, so that
2 we don't have any confidentiality issues.

3 And any questions you have procedurally or
4 otherwise, contact our legal counselor or staff and they
5 will be able to help you out with that. So are there
6 any other additional matters to discuss?

7 **MR. LAWSON:** Yes. Staff has one more request
8 to make. Since there are two legal issues in this
9 docket, Questions 1 and Issue 1A -- I'm sorry, Issues 1A
10 and 3, we would ask that due to the unique timing of the
11 case, that if any of the parties wish to submit legal
12 briefs on these legal issues in this docket, we would
13 request that all briefs be submitted prior to the
14 hearing and no later than close of business
15 September 4th, 2012. And this is not only a reflection
16 of the needs of this schedule, but the fact that the
17 Commission has a number of other dockets that are
18 running into our schedule.

19 **COMMISSIONER BALBIS:** I note this is a
20 departure of what we have done in the past, but I think
21 these are specific legal issues, so I would like to hear
22 any objections to that. I think it would make it easier
23 for staff. I mean, we have obviously made
24 accommodations on this entire hearing track based on
25 Office of Public Counsel's requests and also on the

1 utilities' request with specific witnesses. We have
2 done a lot of juggling, so --

3 **MR. McGLOTHLIN:** We would like to be heard
4 about that, on that point.

5 **COMMISSIONER BALBIS:** I'm just reminding the
6 concessions that I made due to your schedule, and just
7 pointing out that staff has identified something that
8 would help them provide information to us, but I would
9 be more than happy to hear from you.

10 **MR. REHWINKEL:** Yes, Commissioner. We
11 appreciate the effort that was made and it has been very
12 helpful to us. The driving reason for asking for the
13 concessions was the timing of the preparation for the
14 FPL case. And what was worked out was that the brief
15 was originally due in the FPL case on the 14th. To
16 accommodate your efforts to reschedule this, we kind of
17 extended the briefing schedule in the FPL case for
18 another week to kind of give the parties an opportunity
19 to take time out of the time they would be using to
20 write the brief from the FPL case, which ends at the end
21 of August, to conduct this hearing.

22 Now, to put the briefing -- which we had not
23 anticipated. This had not been discussed at all. To
24 put the briefing for these legal issues, and there are
25 significant legal issues to be briefed on both the FPL

1 and the Progress side, into the brief writing time frame
2 for the FPL case is a problem for us, and that's just an
3 aspect that we had not contemplated needing to be done.

4 I don't know any other way to put it. We kind
5 of had worked this out where the briefing was extended
6 in FPL so we could kind of reserve this week to conduct
7 the hearing. It's not so much a problem on the Progress
8 side, because Mr. Sayler is not engaged in the FPL case,
9 and he will be working on that. I think it's more of an
10 issue on the FPL side where Mr. McGlothlin is up to his
11 eyeballs in both cases.

12 **MS. KAUFMAN:** Commissioner, I'd like to be
13 heard on that, as well, if I could.

14 **COMMISSIONER BALBIS:** Yes. Go ahead.

15 **MS. KAUFMAN:** And we are in the same position
16 and have the same timing issues in the FPL rate case
17 that have already been discussed. But I would also note
18 that I'm not sure that it makes any difference to the
19 progress of the hearing whether those issues are briefed
20 before or included in the post-hearing brief as would be
21 the normal practice.

22 Maybe I'm wrong about this, but I'm not
23 anticipating that there would be an earlier ruling on
24 any of those issues. And since they are legal issues, I
25 don't think it's going to effect the questioning of the

1 witnesses or the conduct of the proceeding. So it
2 doesn't seem to me, given all the constraints all of us
3 are under, that there would be any problem with briefing
4 them in the normal course of the hearing after the
5 hearing.

6 **MR. LaVIA:** The Florida Retail Federation is a
7 party to both the FPL rate case and this case; we are in
8 a similar situation. We had planned on briefing legal
9 issues as part of our post-hearing brief, and that's the
10 way we have typically done it. The departure would
11 cause us some significant problems. So departing from
12 the standard practice, which I think this is, would
13 cause us problems. Thank you.

14 **COMMISSIONER BALBIS:** Okay. And anyone else
15 who would like to speak on this before I allow FPL and
16 Progress?

17 **MS. WHITE:** FEA is also in the same situation
18 in that we are in both cases, and both people involved
19 in both cases are basically it. So we ask for the
20 standard procedure, as well, to brief the legal issues
21 when we brief the post-hearing brief.

22 **COMMISSIONER BALBIS:** Okay. And, Progress.

23 **MS. GAMBA:** Progress is not involved in the
24 FPL rate case, and so won't comment on those workload
25 issues, and will defer to FPL on that. However, we have

1 no issue with the briefing schedule presented by staff,
2 and appreciate the issue that staff has, as well.

3 **COMMISSIONER BALBIS:** Florida Power and Light.

4 **MS. CANO:** I think this is a circumstance
5 where there is agreement on both sides of the table
6 here. And unless I'm missing something, we don't see a
7 need to file an additional round of briefs to address
8 legal issues. We typically address these types of
9 issues in our post-hearing brief. So perhaps that would
10 be even more accommodating to staff to eliminate
11 entirely this additional briefing step that has been
12 raised.

13 **COMMISSIONER BALBIS:** And, Staff, can you
14 respond to that recommendation or option?

15 **MS. BENNETT:** Two things. First of all, we
16 understand the difficulty that the parties are facing,
17 because the reason we requested it is we also face those
18 difficulties. The reason we asked for the briefs ahead
19 of time was it is not based on the record. They are
20 truly legal issues. And the second half of the
21 recommendation that will be written by technical staff
22 is based upon what legal staff will recommend on the
23 legal issues.

24 And so that's why we had suggested a
25 bifurcation of the briefing schedule to allow the legal

1 issues so that we can address those as soon as the
2 hearing is over so that the technical staff can then
3 focus on writing the briefs. And they are also involved
4 in the FPL rate case, and so they need to bifurcate
5 their time also. That's why we had asked for a
6 bifurcation of the briefs, and it's really not a
7 duplication of efforts, it's just dividing them up. And
8 I would point out that Issue 1 is the only issue that
9 FPL would be facing, while 1A and 3 will be Progress
10 issues, as well as 1.

11 **COMMISSIONER BALBIS:** Well, let me ask one
12 question. And I appreciate that position, but taking
13 Issue 1 as an example, and correct me if I'm wrong, what
14 you're saying is the legal briefs are filed, staff
15 reviews and then prepares a recommendation on that
16 brief, correct, on those issues?

17 **MS. BENNETT:** That will only be shared with
18 technical staff. They will then begin following through
19 with their recommendation, but they can't write their
20 recommendation until we write ours on the legal end.

21 **COMMISSIONER BALBIS:** Right. But, I guess,
22 again, using Issue 1 as an example, which is do we have
23 the authority to disallow recovery of all or a portion
24 of carrying costs, and I assume that what you're saying
25 is that Legal's opinion and recommendation is we do not

1 have the authority and, therefore, the other issues may
2 become moot. But staff still has to prepare a
3 recommendation on that, because we ultimately decide
4 whether or not we have the authority or not using
5 staff's recommendation, post-hearing briefs, et cetera.

6 **MS. BENNETT:** They will address it differently
7 in their recommendation. They will touch on the issues,
8 but the recommendation would be a little bit different
9 in how it was written.

10 For instance, if we were to say yes, the
11 Commission has the authority to do this, then they may
12 indeed focus more on how much should be eliminated from
13 a particular cost. But if we were to say no, then they
14 would evaluate the rate case -- I mean, the rate case --
15 the nuclear cost-recovery case, but pay less attention
16 to the amount in that recommendation. They would still
17 pay attention to it, but it would not be the focus.

18 **COMMISSIONER BALBIS:** Okay. And I assume that
19 I can decide on this prior to the prehearing order
20 coming out?

21 **MS. BENNETT:** That's correct. And I will
22 commit to you all that -- not to back off of our
23 position and request, but if it is your decision to go
24 ahead with the regular briefing schedule, that Legal
25 will endeavor to do a quicker answer as soon as the

1 briefs are here. But we use -- and I want to reiterate
2 this -- we use the parties' briefs heavily when we write
3 our recommendation. They are very important in our
4 recommendation process, and are very necessary. So we
5 really don't start writing recommendations, especially
6 on the legal end of it, until we get the briefs.

7 **COMMISSIONER BALBIS:** Okay. Well, thank you.
8 I appreciate that, and I appreciate the intervenor
9 parties, you know, with the schedule that we have and
10 the fact that we have a two-week block that has been
11 very difficult to schedule for the FPL hearing. And I
12 understand all the parties are involved, and it's very
13 hard to get that lined up. So I appreciate that. And I
14 will take all of your comments into consideration and
15 make a decision quickly so that you all can prepare.

16 Mr. Saylor.

17 **MR. SAYLER:** When I first heard this as being
18 recommended I thought it was optional briefs like where
19 I proposed last week, but now I find that it is more of
20 a mandatory briefing schedule for these issues. The
21 question I would have is if you decide to go with this,
22 you know, bifurcated briefing schedule, what are the
23 parameters for length and things of that nature? I'm
24 assume we don't need 50 pages on the legal side, but I
25 was just wondering about things of that nature, as well.

1 **COMMISSIONER BALBIS:** I will allow staff to
2 clarify that.

3 **MS. BENNETT:** I think you could address that
4 in your decision. If you were to require the briefs,
5 you would probably -- I would suggest maybe ten pages
6 for briefs and 50 words for positions.

7 **MR. SAYLER:** Ten pages per issue, or ten pages
8 per brief? I mean, we are in uncharted territory here.

9 **MS. BENNETT:** I would think ten pages per
10 brief.

11 **MR. SAYLER:** And what was the due date again?

12 **MS. BENNETT:** September 4th.

13 **MR. SAYLER:** So after Labor Day weekend.

14 **COMMISSIONER BALBIS:** Is there further
15 softening from staff on this?

16 **MS. BENNETT:** I'm pretty firm that I'm soft on
17 this.

18 **COMMISSIONER BALBIS:** Okay. Any limitations
19 to this bifurcated briefing process. It will be listed
20 in the prehearing order in the somewhat unlikely event
21 it is requested, but I will consider all of your
22 comments on that issue. So, again, staff, are there any
23 other additional matters?

24 **MR. LAWSON:** No, I believe that's it.

25 **COMMISSIONER BALBIS:** Thank you, and thank you

1 all for working well together. And this prehearing is
2 adjourned.

3 (The Prehearing Conference concluded at
4 12:40 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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

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

10 I FURTHER CERTIFY that I am not a relative,
11 employee, attorney or counsel of any of the parties, nor
12 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.

13 DATED THIS 21st day of August, 2012.

14
15 
16 _____
17 JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732