

1 BEFORE THE
2 FLORIDA PUBLIC SERVICE COMMISSION

3 DOCKET NO. 120015-EI

4 In the Matter of:

5 PETITION FOR INCREASE IN RATES
6 BY FLORIDA POWER & LIGHT COMPANY.

7 VOLUME 1

8 Pages 1 through 168

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COMMISSION
CLERK

10 PROCEEDINGS: HEARING

11 COMMISSIONERS
12 PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
13 COMMISSIONER LISA POLAK EDGAR
13 COMMISSIONER ART GRAHAM
13 COMMISSIONER EDUARDO E. BALBIS
13 COMMISSIONER JULIE I. BROWN

14 DATE: Monday, August 20, 2012

15 TIME: Commenced at 9:34 a.m.
16 Concluded at 2:44 p.m.17 PLACE: Betty Easley Conference Center
18 Room 148
4075 Esplanade Way
Tallahassee, Florida19 REPORTED BY: LINDA BOLES, RPR, CRR
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FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DATE

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5 and KEVIN DONALDSON, ESQUIRE, Florida Power & Light
6 Company, 4200 West Flagler Street, Miami, Florida 33134;
7 and CHARLES GUYTON, ESQUIRE, Gunster Law Firm, 215 South
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9 and SUSAN CLARK, ESQUIRE, Radey Law Firm, 301 South
10 Bronough Street, Suite 200, Tallahassee, Florida 32301;
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20 of Florida Power Users Group?

21 KENNETH L. WISEMAN, MARK F. SUNDBACK, LISA M.
22 PURDY, WILLIAM M. RAPPOLT, J. PETER RIPLEY, and BLAKE R.
23 URBAN, ESQUIRES, Andrews Kurth, LLP, 1350 I Street NW,
24 Suite 1100, Washington, DC 20005, appearing on behalf of
25 South Florida Hospital and Healthcare Association

1 APPEARANCES (Continued) :

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3 Sarasota, Florida 34234, appearing pro se.

4 J. MARTIN HAYES and JASON S. LICHSTEIN,
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7 ESQUIRE, Algenol Biofuels, Inc., 28100 Bonita Grande
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9 appearing on behalf of Algenol Biofuels, Inc.

10 THOMAS SAPORITO, 177 US Hwy 1N, Unit 212,
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12 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III,
13 ESQUIRES, Gardner, Bist, Wiener, Wadsworth, Bowden,
14 Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Drive,
15 Tallahassee, Florida 32308, appearing on behalf of the
16 Florida Retail Federation.

17 J.R. KELLY, PUBLIC COUNSEL, and JOSEPH A.
18 MCGLOTHLIN, CHARLES J. REHWINKEL, and PATRICIA A.
19 CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The
20 Florida Legislature, 111 West Madison Street, Room 812,
21 Tallahassee, Florida 32399-1400, appearing on behalf of
22 the Citizens of Florida.

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1 APPEARANCES (Continued) :

2 WILLIAM C. GARNER, ESQUIRE, Nabors, Giblin &
3 Nickerson, P.A., 1500 Mahan Drive, Suite 200,
4 Tallahassee, Florida 32038, appearing on behalf of the
5 Village of Pinecrest, Florida.

6 KEINO YOUNG, LARRY HARRIS, CAROLINE KLANCKE,
7 and MARTHA CARTER BROWN, ESQUIRES, FPSC General
8 Counsel's Office, 2540 Shumard Oak Boulevard,
9 Tallahassee, Florida 32399-0850, appearing on behalf of
10 the Florida Public Service Commission Staff.

11 CURT KISER, GENERAL COUNSEL; MARY ANNE HELTON,
12 DEPUTY GENERAL COUNSEL; ROSANNE GERVASI and SAMANTHA
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14 2540 Shumard Oak Boulevard, Tallahassee, Florida
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1 P R O C E E D I N G S

2 **CHAIRMAN BRISÉ:** Good morning, everyone.3 Today is August 20th. And how do I know that? Today is
4 my son's first day in first grade.5 So it is 9:30, and we are convening for a
6 hearing on Docket Number 120015-EI.

7 Mr. Young, if you could read the notice.

8 **MR. YOUNG:** Good morning. By notice issued on
9 July 17th, 2012, by this, by the Commission Clerk, this
10 time and place has been set for a hearing in Docket
11 Number 120015-EI, petition for rate increase, petition
12 for increase in rates by Florida Power & Light Company.13 **CHAIRMAN BRISÉ:** Thank you very much. At this
14 time we will take appearances.15 **MR. LITCHFIELD:** Thank you, Mr. Chairman.
16 Wade Litchfield and John Butler appearing on behalf of
17 Florida Power & Light. And I would also like to enter
18 appearances for four other attorneys with us who will be
19 presenting witnesses throughout this proceeding. They
20 are Ken Rubin and Kevin Donaldson of Florida Power &
21 Light. In addition, Ms. Susan Clark of the Radey, Yon &
22 Clark firm, and Mr. Charlie Guyton of the Gunster law
23 firm.24 **CHAIRMAN BRISÉ:** All right. Thank you very
25 much.

1 **LIEUTENANT COLONEL FIKE:** Good morning.

2 Lieutenant Colonel Greg Fike appearing on behalf of the
3 Federal Executive Agencies. Also like to enter
4 appearances for Ms. Karen White.

5 **CHAIRMAN BRISÉ:** Thank you.

6 **MR. MOYLE:** Jon Moyle on behalf of the Florida
7 Industrial Power Users Group, FIPUG. I'd also like to
8 enter an appearance for Vicki Kaufman on behalf of
9 FIPUG.

10 **CHAIRMAN BRISÉ:** Thank you.

11 **MR. WISEMAN:** Good morning. Kenneth Wiseman
12 of the law firm Andrews Kurth on behalf of the South
13 Florida Hospital and Healthcare Association. And I
14 would also like to enter the appearances of Mark
15 Sundback, Lisa Purdy, Bill Rappolt, Peter Ripley, and
16 Blake Urban, all of the Andrews Kurth law firm.

17 **CHAIRMAN BRISÉ:** Thank you.

18 **MR. HENDRICKS:** Good morning. John Hendricks
19 appearing pro se.

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

21 **MR. GARNER:** Bill Garner of the law firm
22 Nabors, Giblin & Nickerson, appearing on behalf of the
23 Village of Pinecrest.

24 **CHAIRMAN BRISÉ:** Thank you.

25 **MR. SAPORITO:** Thomas Saporito, appearing pro

1 se.

2 **CHAIRMAN BRISÉ:** Thank you.

3 **MR. WRIGHT:** Good morning, Commissioners.

4 Robert Scheffel Wright and John T. Lavia, III, of the
5 Gardner, Bist, Wiener law firm, appearing on behalf of
6 the Florida Retail Federation.

7 **CHAIRMAN BRISÉ:** Thank you.

8 **MR. REHWINKEL:** Good morning, Commissioners.

9 Charles J. Rehwinkel, J. R. Kelly, Joseph McGlothlin,
10 and Patricia Christensen, on behalf of the Citizens of
11 the State of Florida.

12 **CHAIRMAN BRISÉ:** Thank you. Any other
13 Intervenors?

14 **MR. HAYES:** (Inaudible. Not on microphone.)

15 **CHAIRMAN BRISÉ:** You may have to come to the
16 microphone, please, sir. There's a seat available right
17 there. Turn on the microphone, please, sir.

18 **MR. HAYES:** This is my first time here.

19 **CHAIRMAN BRISÉ:** Understood. Understood.

20 **MR. HAYES:** Martin Hayes, Jason Lichstein from
21 Akerman Senterfitt on behalf of Algenol Biofuels, Inc.

22 **CHAIRMAN BRISÉ:** All right. Thank you.

23 Staff.

24 **MR. YOUNG:** Keino Young, Caroline Klancke,
25 Martha Carter Brown, and Larry Harris on behalf of

1 Commission staff.

2 **CHAIRMAN BRISÉ:** Okay.

3 **MS. HELTON:** Mary Anne Helton, advisor to the
4 Commission. I'd also like to make an appearance for our
5 General Counsel, Curt Kiser, and Rosanne Gervasi and
6 Samantha Cibula, who will also be advising you during
7 the course of the proceeding.

8 **CHAIRMAN BRISÉ:** Thank you very much. There
9 are some.

10 **MR. HAYES:** Excuse me, Mr. Chair. I did not
11 enter an appearance for Quang Ha, General Counsel for
12 Algenol. I apologize.

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

14 Mr. Young, there are some individuals who are
15 not present this morning. How do we handle that?

16 **MR. YOUNG:** Yes, sir. The individuals, the
17 parties who are not present this morning are Daniel R.
18 Larson and Alexandria Larson and Mr. Larry Nelson.

19 Pursuant to Section 7 of the Order
20 Establishing Procedure, Hearing and Procedures, under
21 (a), attendance at hearing, it states, unless excused by
22 the presiding officer for good cause shown, each party
23 or designated representative shall personally appear at
24 the hearing. Failure of a party or a party's
25 representative to appear shall constitute a waiver of

1 all the party -- of that party's issues, and that party
2 may be dismissed from the proceeding.

3 Given the fact that Ms. Larson is not here,
4 staff would recommend -- Ms. Larson and Mr. Nelson are
5 not here and didn't state an appearance, staff would
6 recommend that they be dismissed from the proceeding.

7 **CHAIRMAN BRISÉ:** Okay. I think everyone had
8 ample notice with respect to the fact that we would
9 proceed today.

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

11 **CHAIRMAN BRISÉ:** I have not heard anything or
12 gotten a notice from anyone saying that they would not
13 be present here today, so I think that the
14 recommendation that they would be dismissed from the
15 hearing is appropriate and I think we'll move forward in
16 that direction.

17 **MR. YOUNG:** Duly noted, sir.

18 **CHAIRMAN BRISÉ:** Thank you. Are there
19 preliminary matters that we need to deal with?

20 **MR. YOUNG:** Yes, sir. Staff would note that
21 an amendatory order to the Prehearing Order that was
22 issued was issued this morning. The amendatory order
23 corrects three scrivener's errors. This -- the
24 amendatory order was passed out to the parties and
25 Commissioners this morning.

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

2 **MR. YOUNG:** Staff would note that an order
3 denying the joint motion to suspend the procedure
4 scheduled was issued on Friday, August 17th, 2012.

5 **CHAIRMAN BRISÉ:** All right.

6 **MR. YOUNG:** Staff would note that FPL, FIPUG,
7 FEA, South Florida Hospital filed a joint motion for
8 approval of settlement agreement. Staff recommends that
9 the Commission proceed with the hearing as scheduled and
10 the joint motion for approval of settlement be taken up
11 at a later time.

12 **CHAIRMAN BRISÉ:** Okay.

13 **MR. YOUNG:** Moreover, staff recommends that
14 all, that all other motions relating to any stipulation
15 that has been ruled -- that has not been ruled on prior
16 to the hearing, prior to the start of the hearing be
17 taken up at a later time.

18 **MR. REHWINKEL:** Mr. Chairman?

19 **CHAIRMAN BRISÉ:** Yes, Mr. Rehwinkel?

20 **MR. REHWINKEL:** I don't know if, where the
21 posture is, but if, if we are still on the, the initial
22 matter relating to this order, the Public Counsel and
23 the Florida Retail Federation would like to be heard on
24 this matter. And we would like to ask that the
25 Commission reconsider the order of the Chairman, and we

1 would ask that we be granted leave to present argument
2 at this time, prior to the commencement of the
3 evidentiary hearing.

4 **CHAIRMAN BRISÉ:** Okay. What are my options?

5 **MS. HELTON:** Mr. Chairman, our procedural
6 rules provide for the opportunity to seek
7 reconsideration of nonfinal orders, which is what your
8 order was that was issued on Friday. So my
9 recommendation to you is to hear argument from
10 Mr. Rehwinkel and Mr. Wright and then to allow a
11 response by FPL and any of the other parties who joined
12 in on the motion to suspend the schedule.

13 **CHAIRMAN BRISÉ:** All right. We will do that
14 in terms of providing ample opportunity for, for us to
15 hear what has to be said.

16 **MS. HELTON:** Mr. Young was reminding me that
17 maybe I should state the standard, and the standard for
18 a motion for reconsideration is a mistake of fact or
19 law. They must show that there was a mistake of fact or
20 law for your order to be reconsidered.

21 **CHAIRMAN BRISÉ:** Thank you.

22 Mr. Rehwinkel.

23 **MR. REHWINKEL:** Thank you, Mr. Chairman. And
24 I, I have argument that, that may, you may consider
25 lengthy, but I believe that, that it will be aimed at

1 efficient use of the Commission's resources. And I also
2 can represent to you that these are, these remarks were
3 jointly prepared by the Retail Federation and the Public
4 Counsel, and I will make the arguments for two parties
5 at once.

6 **CHAIRMAN BRISÉ:** Okay.

7 **MR. REHWINKEL:** And I do appreciate at the
8 outset the, the reminder by Ms. Helton about the mistake
9 of law and fact. And before I get into my prepared
10 remarks, we believe that the mistake, if you can call it
11 that, was a matter of timing of our full and complete
12 remarks prior to the, the Chairman's issuance of the
13 order, and it is not a matter of timing that we take
14 issue with. It was what it was.

15 The Citizens of the State of Florida through
16 the Office of Public Counsel and the Florida Retail
17 Federation respectfully request this Commission to
18 reconsider the decision reflected in Order Number
19 PSC-12-0430-PCO. I have extra copies of the order, if
20 any of the Commissioners or parties do not have the
21 order with them, and I will be referring to this, to
22 this order, if it would be appropriate to pass them out.

23 **CHAIRMAN BRISÉ:** Okay. If you can make that
24 available to, to one of our staff persons so that it can
25 be passed out. Or actually I think we have our own

1 copies, so.

2 **MR. REHWINKEL:** Okay.

3 **MR. YOUNG:** It's tab 5 in your books.

4 **CHAIRMAN BRISÉ:** You may proceed.

5 **MR. REHWINKEL:** Thank you, Mr. Chairman.

6 We ask you to reconsider this decision to not
7 suspend the hearing in light of the August 15th filing
8 by FPL and the parties with whom they cut this deal. To
9 be absolutely clear, Commissioners, the Public Counsel
10 and FRF do not advocate for suspension for the same
11 reason that FPL does.

12 We believe that you are required to suspend
13 this hearing in order to rid the process of the undue
14 influence of the pendency of the FPL document, as I will
15 refer to the August 15th filing, has on the scheduled
16 hearing. We strongly contend that FPL document must be
17 removed from consideration completely. The only way
18 that can happen is by the denial that it richly
19 deserves.

20 Any hearing on the merits of that new filing
21 we believe must be in the form of a full revenue
22 requirement rate case that has effectively been filed.
23 That cannot occur without a duly noticed full and
24 evidentiary hearing accompanied by new MFRs and
25 supporting testimony.

1 To the extent you believe it to be appropriate
2 to consider that FPL document on a standalone basis, a
3 posture that we contend would be unlawful in a number of
4 significant ways, starting with the fact that it would
5 convert a ten-day hearing, this hearing, on a
6 full-blown, eight-month file and suspend rate case into
7 a one-day hearing on a 17-page summary document and the
8 accompanying tariffs, and continuing with the fact that
9 it would violate both Chapter 120, *Florida Statutes*, the
10 Florida Rules of Administrative Procedure, and almost
11 certainly Chapter 366, as well as the parties'
12 fundamental due process rights.

13 We have advanced arguments on the legal
14 deficiency in that approach, and I will not address them
15 here but I can answer questions on them, and they are
16 still our positions and perhaps they will be
17 supplemented as allowed by law and our response to the
18 substantive provisions of the motion to approve.

19 The Public Counsel and FRF understand the
20 rationale of the Chairman's order under the rushed
21 circumstances that FPL forced onto this process. Our
22 request for reconsideration and the comments supporting
23 them are not intended as a criticism of that order.

24 While we believe the preliminary view that the
25 Commission should go forward is understandable on its

1 face, given the 11th hour nature of the filing, we
2 submit that there are nevertheless serious
3 countervailing public policy and due process reasons
4 that should be considered which dictate suspension of
5 this hearing.

6 The analysis, the analysis and ruling section
7 of the order is found on pages 2 and 3 of the order.
8 The OPC and FRF submit that the Commission should
9 reconsider that order, and I will address these
10 provisions by highlighting them and briefly addressing
11 them, and then presenting our argument supporting the
12 request to suspend this hearing.

13 I would also note that the reference in the
14 order on page 1 is limited to the very brief preliminary
15 response filed by OPC and the Retail Federation just
16 hours after the company's filing. Therein we told the
17 Commission that we would be filing a complete response,
18 and we did do that the next day.

19 We submit that reconsideration consider all
20 the arguments that were advanced in the version we filed
21 less than 48 hours after the FPL filing, but only
22 minutes before the order was issued. This is where the
23 mistake of fact or law occurred, is that the order in
24 the rushed circumstances did not consider all of the
25 arguments that we advanced for, for the suspension of

1 the hearing.

2 In the analysis and ruling section there is a
3 statement that says the joint motion was filed less than
4 three working days before the start of a ten-day
5 hearing. As we noted in our joint response, the FPL
6 document was filed at 5:15 on Wednesday, 5:15 p.m. This
7 is really less than two full working days before the
8 hearing and less than two days before the order was
9 issued. This late disruption and the impact on OPC and
10 FRF preparation of the case was instead a factor
11 supporting suspension.

12 The order further states, at this point over
13 36 witnesses are scheduled to appear and travel and
14 accommodations arrangements made. This is a situation
15 caused by FPL. The remaining parties should not be
16 penalized because of FPL's brinksmanship. This is not a
17 consideration that should support continuation of the
18 hearing at this point.

19 The provisions also state that it appears that
20 the dates proffered in the joint motion are untenable,
21 and alternate dates may raise due process concerns.
22 Furthermore, this Commission has carefully crafted a
23 procedural schedule that will allow post-hearing
24 activities and a final decision within the statutory
25 time frame required by Section 366, *Florida Statutes*.

1 The OPC has demonstrated, and we will discuss
2 in more detail shortly, that FPL has constructively
3 waived its right to assert any due process claims. They
4 have created their own problems by the new rate relief
5 request they have filed in the FPL document. FPL cannot
6 have it both ways in this last-minute filing.

7 There is no statutory time frame applicable to
8 the March filing or this new filing. They have either
9 waived such rights or abandoned them by a new and so far
10 MFR and testimony deficient request for a completely new
11 and different revenue increase.

12 The order also states, there is no requirement
13 that a ruling on the motion to approve settlement be
14 made prior to the taking of witness testimony and the
15 development of the record.

16 This is the crux of our concern. This
17 statement alone is a tacit, if not explicit,
18 acknowledgment that an unsupported -- purported
19 settlement along with tariffs may, will, or can be given
20 some substantive status along with the extensive record
21 that has been developed and will be developed regarding
22 the March filing.

23 As discussed later, this dual track or dual
24 pendency is a serious and fundamental due process
25 violation. This statement in the order succinctly

1 describes the core of the prejudice and due process
2 concern of the Public Counsel and FRF, which I will get
3 to.

4 The order finally states that, given
5 significant time, effort, and expense that has been
6 expended to date, as well as the monumental task of
7 rescheduling such a, such a complex hearing, if the
8 Commission does not approve a settlement and a later
9 evidentiary hearing is required, I find the joint motion
10 to suspend shall be denied.

11 Aside from this express statement in the order
12 that the settlement is still actively pending during
13 this hearing, the elevation of administrative ease over
14 protecting due process of parties, other than the Public
15 Counsel and FRF, is a great concern. FPL is the one
16 that has created this morass, and they're the ones who
17 should bear any inconvenience occasioned by their own
18 purposeful action in filing the FPL document. You
19 should not visit on the customers the resulting
20 disruptive and prejudicial disadvantage of proceeding at
21 this juncture of the hearing.

22 So, in summary, we're asking for
23 reconsideration because the arguments made in our
24 pleading were not considered in the, the order that was
25 issued 48 hours later.

1 I also need to note that we, and I'll get to
2 this in more detail, we believe that the 2010 settlement
3 that FPL is currently operating under constitutes a --
4 it supersedes the eight-month clock that would otherwise
5 be on this hearing. There is no eight-month clock on
6 this hearing. You do not need to be concerned about an
7 eight-month clock. They cannot put rates into effect
8 until any earlier than January of 2012.

9 And additionally, the Office of Public
10 Counsel, which the State of Florida has designated to
11 represent all ratepayers in proceedings conducted by
12 this Commission, is among eight Intervenors, maybe now
13 six, who have not executed the purported settlement.

14 Given our plenary statutory representative
15 role, the Public Counsel asserts that it is a necessary
16 party to any settlement that would legally, fully, and
17 effectively resolve all revenue requirements in a
18 typical case.

19 Typically you would not proceed to hear a case
20 and possibly waste extensive resources when a legitimate
21 comprehensive settlement among all the major parties was
22 pending before you, especially when it could potentially
23 obviate the need for a hearing. That situation is
24 different than the one pending before you now in that
25 there is no such valid settlement.

1 With the FPL document lacking any legitimacy,
2 the instant situation does not lend itself to the dual
3 track contemplated in the Commission's order. This in
4 and of itself would be prejudicial to the parties who
5 did not sign the settlement. As we noted in our Friday
6 response, the purported settlement, the FPL document, is
7 the elephant in the room, and we are asking you to
8 remove that elephant before beginning any evidentiary
9 consideration on the March filing.

10 Your preliminary determination to proceed to
11 hearing on the March filing, while leaving this document
12 pending, the FPL document pending, very much creates a
13 severe difficulty for the OPC and FRF. The very
14 pendency of that proposal creates an untenable situation
15 where the parties who have not capitulated in that
16 self-serving proposal cannot be assured that they have
17 not suffered prejudice just by the mere filing of what
18 cannot be deemed a valid settlement.

19 Let me be specific. We believe the FPL
20 document and the order creating this situation by
21 denying suspension creates genuine issues of due process
22 denial as to, one, whether the Commission has been
23 tainted unwittingly by a suggestion within the filing
24 and in statewide media that the Public Counsel and FRF
25 are uncooperative, recalcitrant, and cannot reach a

1 settlement.

2 Absent definitive resolution by the Commission
3 on the motion for approval and the FPL document, the
4 specter of this taint cannot be effectively removed.
5 Its mere perception undermines the orderly
6 administration of justice and erodes public confidence
7 in this process.

8 Two, whether the testimony, evidence, and
9 positions reflected in the Prehearing Order that you
10 have issued and the March filing have been modified in
11 any way by agreements that may or may not be reflected
12 in publicly filed documents is not known. On Friday, a
13 fifth party filed a notice of agreement with a
14 stipulation. The basis for this agreement and its
15 impact on customer rates or company earnings over the
16 next two years is not yet a matter of public record.

17 Three, whether the unilateral filing of the
18 FPL document has on the eve of this hearing interjected
19 issues and signaled FPL's true wish list of issues they
20 would like to be resolved in their favor over the next
21 four years must be resolved with a full evidentiary
22 hearing on the March request.

23 The Public Counsel and FRF are not suggesting
24 that the Commission cannot at least facially describe a
25 process for legally quarantining such issues related to

1 the FPL document. However, we believe that the true
2 effectiveness of such a process is a matter of some
3 doubt.

4 We suggest that the better course of action in
5 terms of providing due process and avoiding even the
6 perception that the hearing and record, which are the
7 subject of protections of Sections 120.57 -- 120.57(1),
8 *Florida Statutes*, have been contaminated would be -- the
9 better course would be to take a timeout and first
10 dispose of the FPL document by either denial or
11 dismissal.

12 Only then can the Commission decide when the
13 hearing should be resumed or, in the unlikely event of
14 approval of that document, the Commission can issue an
15 order that we will swiftly take to court, appeal.

16 Whether -- four, whether the process is harmed
17 by the mere specter of the mechanism used here where the
18 utility petitioner can choose, one, two, or three
19 special interest customer intervenors who don't
20 represent all the customers to reach a self-serving
21 so-called settlement, and file it at a crucial time when
22 the non-submitting Intervenors are preparing for hearing
23 and create mass confusion and uncertainty, is offensive
24 to the legislative scheme that considers the Public
25 Counsel to be a necessary party.

1 FPL's tactic under the misplaced authority of
2 the South Florida Hospital case must be strongly
3 discouraged by this Commission. Why misplaced? The
4 Public Counsel was a party to that case, in the South
5 Florida Hospital case, and that proceeding was a
6 proceeding, a limited proceeding that you, the
7 Commission, started and you, the Commission, controlled
8 the out -- the schedule of.

9 We ask you to put an end to this and to do it
10 emphatically. Do not let it linger and cast its
11 unsavory shadow over this hearing process. Allowed to
12 flourish, this scheme embodied in the FPL document will
13 be destructive to the process and, if encouraged, it
14 will let its proponents try again and again to exclude
15 their legal representative of all the customers from
16 major rate cases.

17 The only way to do that is to suspend this
18 hearing, deal with the FPL document swiftly and
19 decisively, and then and only then reconvene the hearing
20 at a time that is convenient to the Commission and the
21 parties, without regard to the time frame that FPL
22 mistakenly wants to impose.

23 Remember, FPL created this situation. Avoid
24 the temptation to let them play Baron Munchausen.
25 Again, they created this situation. Don't empower them

1 to resolve it.

2 It is clear the company has constructively
3 waived any time clock that, that might exist by filing
4 the FPL document and the accompanying proposed tariffs,
5 and that, more significantly, FPL has in fact submitted
6 a new and materially different request for rate relief
7 when compared to the one it filed in March of 2012.

8 On the point of the clock, let me turn to
9 that. You should feel no pressure, Commissioners, in
10 deciding this matter that you must agree to the
11 unrealistic time frames that FPL proposes in their, in
12 their motion.

13 FPL is prohibited by the terms of the 2010
14 settlement from placing new base rates into effect prior
15 to January 1, 2012. Therefore, the otherwise applicable
16 statutory eight-month clock effectively has been
17 superseded by that agreement. The same settlement
18 agreement also provides that existing rates shall
19 continue into effect until you approve new rates.

20 What's more, by introducing relief based on
21 new issues -- by introducing a request for relief based
22 on new issues and theories, FPL has effectively amended
23 its case and constructively waived the additional time
24 clocks, the 12-month time clock that would otherwise be
25 applicable.

1 In short, your ability to provide a time frame
2 for the hearing suspension that affords the Public
3 Counsel, FRF, and other non-signing parties their full
4 procedural rights is not impinged in this instance by
5 the statutory time clocks in Chapter 366.

6 We submit, and this is important, that the FPL
7 document also constitutes a new filing for timing
8 purposes. FPL filed its MFRs and supporting direct
9 testimony on March 19th, 2012. As you have noted in
10 your order, you established ten days, beginning
11 August 20, 2012, for the evidentiary hearing on FPL's
12 filing.

13 FPL has filed testimony of many witnesses
14 supporting the MFR schedules that are the foundational
15 evidentiary element of its request for rate relief. The
16 Public Counsel and FRF have prepared the presentation of
17 our respective cases and evidence based on the case FPL
18 filed, and based it upon the resulting understanding of
19 which parties are aligned with respect to evidence and
20 positions they are advancing. FPL is the one who
21 dropped the bomb in the form of a whole new rate case on
22 its own case.

23 Why do I contend that FPL has filed a new
24 case? The purported settlement materially amends the
25 terms of the original filing. It proposes revenue

1 shifts inconsistent with the March filing. It proposes
2 a novel and complex asset sharing mechanism that was not
3 a part of the new -- the March filing. It proposes two
4 generation base rate adjustments, or GBRAs, for two
5 future test years, 2014 and 2016, for which no evidence
6 exists. It proposes an increase in the late payment
7 charge filed in the March case, and it adds rate
8 increases and mechanisms affecting recovery in fuel and
9 capacity cost recovery clauses, all of which were not
10 part of the March filing.

11 Effectively, simply, the FPL document
12 constitutes a new rate case filing. This new filing is
13 unaccompanied by supporting MFRs, supporting testimony,
14 or notice to customers. It is tellingly unaccompanied
15 by a tariff that has its own legal status. The file and
16 suspend statute applies to those proposed tariff sheets
17 as well.

18 Yet FPL basically wants the Commission and the
19 parties who did not execute the FPL document to process
20 this very different filing by August 31. The order on
21 suspension unwittingly leaves a possibility of
22 consideration of this type of determination, a possible
23 outcome, by leaving the FPL document pending during the
24 hearing.

25 We submit to you it is not appropriate for

1 them to have two alternative forms of relief pending at
2 the same time. The prejudice to the Public Counsel and
3 FRF is as obvious as the necessity for suspension of the
4 scheduled hearing. At a minimum, the FPL document
5 constitutes a constructive waiver of the time frames
6 that would attend a new rate case filing, as I have
7 pointed out.

8 Let me also point out that with respect to the
9 alignment of the parties as -- that goes to the heart of
10 prejudice that we believe this hearing will suffer,
11 there are two provisions of the FPL document that are
12 worth noting. Paragraph 15, and this is, this is in the
13 purported settlement that was filed on August 15,
14 provides in relevant parts, in relevant part, and this
15 is the second sentence of paragraph 15.

16 The parties further agree that they will
17 support this agreement and will not request or support
18 any order, relief, outcome, or result in conflict with
19 the terms of this agreement in any administrative or
20 judicial proceeding relating to, reviewing, or
21 challenging the establishment, approval, adoption, or
22 implementation of this agreement or the subject matter
23 thereof.

24 Paragraph 16 also provides that the parties
25 that have reached agreement with FPL receive the

1 benefits that they negotiated, and will not be deprived
2 of them if new parties sign on.

3 Together these provisions indicate that the
4 FPL document represents that the four signatories, FPL,
5 FIPUG, the Hospital Association, and the FEA, have a
6 contract that is, has separate force and effect from
7 what would result from Commission approval. And that is
8 an agreed to modification of the March filing, and that
9 FPL and the enlisted signatories have contractually
10 obligated themselves to advocate it before the
11 Commission, and they cannot advocate anything different
12 than what is in the FPL document proposal, the March
13 filing notwithstanding.

14 Until you dispose of the motion for approval
15 and get rid of the FPL document, the Commission and
16 non-signatories such as FRF and OPC are at a minimum
17 prejudiced because they will not, in the preparation and
18 presentation of our case, be able to gauge the tension
19 in the alignment and/or participation of the signatories
20 during the hearing on the March 12th base rate request.

21 Furthermore, it is not clear exactly what
22 FPL's proposal is under these facts. What rate does FPL
23 actually want to implement in January 2013? The rates
24 in the March 2012 testimony and MFRs, or those attached
25 to the August 2012 settlement document, or something

1 that's a combination of both?

2 And if FPL asserts that it is the former, what
3 are the Commission and the parties to make of FPL's
4 facial breach of its contractual obligation with the
5 other three parties? This creates an impossible
6 situation for the parties, including OPC and FRF, in
7 conducting our case.

8 As a result, in the circumstances this
9 Commission finds itself in, it should find that it is no
10 longer obligated to provide a schedule that facilitates
11 what is now just a desire rather than a statutorily
12 guaranteed right by FPL to implement rates by January 1,
13 2013.

14 You now have before you two different cases,
15 and the latter filed case has irretrievably tainted the
16 first one. Commissioners, you do have the ability to
17 suspend the hearing. We believe that the order that was
18 issued is understandable, but it contains a mistake in
19 that it did not consider our arguments that we advanced.
20 That mistake is an opportunity for you to reconsider the
21 Chairman's order under those circumstances and consider
22 the arguments that we have just advanced. If you do
23 that, it will enable you to exercise the appropriate
24 deliberations while observing, observing the parties'
25 due process rights.

1 For these reasons, we urge you to reconsider
2 the initial decision to deny and to affirmatively
3 suspend this hearing scheduled for the next two weeks,
4 establish procedures and time frames for the disposition
5 of the purported settlement in a way that respects the
6 due process rights of Public Counsel, FRF, and other
7 parties.

8 I appreciate your patience in listening to my
9 lengthy remarks, but we felt this is very important for
10 both of us. Thank you.

11 **CHAIRMAN BRISÉ:** Thank you, Mr. Rehwinkel.
12 And you said you were speaking on behalf of yourself and
13 FRF; right?

14 **MR. REHWINKEL:** Yes.

15 **CHAIRMAN BRISÉ:** Thank you.

16 **MR. WRIGHT:** Mr. Chairman, might I have
17 60 seconds?

18 **CHAIRMAN BRISÉ:** I think there was a statement
19 that was made that you were represented already; right?

20 **MR. WRIGHT:** Yes, sir. Thank you.

21 **CHAIRMAN BRISÉ:** Okay. FPL.

22 **MR. LITCHFIELD:** Thank you, Chairman Brisé.

23 We can certainly understand why Public Counsel
24 and the Retail Federation would like to convince you
25 that this is something unusual, out of the ordinary,

1 extraordinary in fact, a new rate case. I think I heard
2 that at least 15 to 20 times. Nothing could be further
3 from the truth.

4 The public policy of this Commission and the
5 State of Florida is to encourage settlement discussions,
6 and that's exactly what we did. We sat down with
7 parties that were willing to sit down with us and we
8 negotiated in good faith an outcome that we and the
9 other signatories feel represents a reasonable balancing
10 of interests. And we did what has been done in many
11 cases before, we filed a proposed stipulation and
12 settlement agreement.

13 No, it's not unanimous, but contested
14 settlements have been approved in the past. We felt
15 like we wanted to get it in front of the Commission and
16 that's why we filed it.

17 Nothing could be further from the truth in
18 terms of it being a separate or new proceeding. The
19 discovery has been going on for eight months, these
20 issues have been out there. We did not sit down with
21 the parties to my immediate left and map out a new
22 filing or a new set of issues. We were negotiating from
23 the case as filed and the issues as filed.

24 We, we worked together collaboratively,
25 reached a good settlement agreement, and we brought it

1 to the Commission. It's certainly within the
2 Commission's latitude to take the settlement up at some
3 point during this process. It's filed in the context of
4 this hearing.

5 The Commission determined that it would not
6 take it up immediately, and I presume the Commission
7 will yet determine when it will take it up. In the
8 meantime, the schedule goes forward. We're here, this
9 is a properly noticed hearing, not a separate rate case.

10 Again, if the OPC and Retail Federation's
11 arguments are accepted, that would have an unbelievably
12 chilling effect on settlement discussions and parties
13 agreeing to file a settlement agreement for fear that
14 their rate case would be called a new rate case, put on
15 a separate track, and a new clock started. That just
16 can't be the public policy of the State of Florida.

17 I don't think anything that I heard has
18 changed my mind in terms of whether they have, whether
19 there has been a mistake of law or fact here with
20 respect to the Commission's order.

21 Granted, we did ask that the Commission take
22 up the settlement agreement at the close of the hearing.
23 That's not what the Commission determined to do. We're
24 willing to support the Commission in a process that
25 provides reasonable due process to all parties to have

1 the settlement agreement heard.

2 We think a part of the record of this case
3 would normally be a part of that consideration, and then
4 whatever additional proceeding the Commission sees fit
5 to institute, we are willing participants in that
6 process.

7 I would, I would say that, in closing, that
8 again, if, if the public policy of the state to
9 encourage settlements is to be encouraged, Public
10 Counsel and Retail Federation's efforts to obstruct and
11 literally hold this proceeding hostage until, until we
12 agree to where they want us to be in terms of a
13 settlement simply should not be countenanced.

14 Thank you.

15 **CHAIRMAN BRISÉ:** Thank you, Mr. -- were you
16 speaking on behalf of anyone else, or just --

17 **MR. LITCHFIELD:** Just Florida Power & Light,
18 sir.

19 **CHAIRMAN BRISÉ:** Okay. Mr. Moyle.

20 **MR. MOYLE:** Thank you. Thank you, Mr.
21 Chairman.

22 Let me, let me start by saying I've practiced
23 before this Commission for a long time, and I'm not sure
24 I can recall many orders on a procedural matter entered
25 by a Chairman that have been in effect reconsidered and

1 reversed, and that's what you're being asked to do. And
2 the standard, has there been a mistake of law or fact,
3 is a very high standard.

4 And I think, I think the arguments set forth
5 by Public Counsel do not meet that, that standard. They
6 said that, well, there was a timing issue. We filed one
7 set of papers opposing the motion and then we filed
8 another set of papers, and then I think what they said
9 was a short period of time went by and then an order
10 came out.

11 You know, whether you who, who signed the
12 order read that, had the ability to read it, you know, I
13 don't know, but, but they surely had an opportunity here
14 today to rearticulate those points.

15 They are arguing it's a mistake of law, that,
16 that they're a necessary party to a settlement. I mean,
17 the Legislature, I think, can clearly articulate when
18 someone is a necessary party. And in our review of the
19 statute, we don't see that they're a necessary party to
20 a settlement, and that the way it works is they, by
21 statute, can participate in cases when they so desire.
22 They have discretion, I'm in this case, I'm not in this
23 case, and they file a notice.

24 But Public Counsel is saying, well, we have
25 veto authority over, over any settlement. And if that

1 were to be the result, it, you know, it would be
2 detrimental to parties like FIPUG in terms of trying to
3 have discussions related to settlement.

4 I mean, why would, why would, why would we
5 have discussions if, you know, if OPC, you know, had
6 veto authority, and it could, it could, I think, not be
7 the proper result. I don't think there's anything in
8 the statute that gives them veto authority, and I don't
9 think that with respect to a settlement that they have
10 to necessarily sign.

11 There's a Supreme Court case that South
12 Florida Hospital Association took up on a previous
13 settlement when they did not sign an agreement, and the
14 Supreme Court looked at it and said, you know what,
15 South Florida, they didn't have to sign it. The
16 settlement with less than all parties is approved. So
17 there's, there's precedent for that.

18 I think, I think an issue that has been raised
19 by their remarks is sort of the status, you know, of, of
20 the settlement agreement. In terms of characterizing
21 this as a brand-new rate case, you know, rate cases have
22 MFRs that fill up huge boxes and you've got to get rooms
23 to stack them in. You know, this settlement agreement,
24 you know, is not more than 50 pages.

25 So it's, you know, it does contain terms that

1 have been discussed in part of this rate case and part
2 of the process for a long, long time. And this notion
3 about, oh, well, it has other, other matters in it going
4 forward, the generation base rate adjustment, well, it
5 has a four-year term, a stay-out term, where we're not
6 coming back in front of you in 2004 and 2006 having the
7 rate cases.

8 We think that the settlement is a fair deal,
9 and we're prepared to present testimony that it is a
10 fair deal. And with respect to, you know, the notion
11 about due process, I would argue that by Public Counsel
12 opening the door and talking in great detail about the
13 settlement agreement, what its terms are, characterizing
14 it as, quote, unquote, a self-serving agreement, you
15 know, I think that provides us the opportunity to put
16 some evidence on because, you know, they've opened the
17 door with respect to the settlement agreement.

18 So we, you know, while we initially filed and
19 said we'd like additional time, we understand the
20 Chairman's ruling. We understand that, that everyone is
21 dressed up, you have all the witnesses here, they've
22 come, they're ready, they're ready to go.

23 The concern about due process, they're going
24 to have a chance to ask all these witnesses questions
25 about the settlement agreement. Well, the settlement

1 agreement this, the settlement agreement that, they can
2 do that. I think evidentiary, from an evidentiary
3 standpoint it's a, it's a filing, a pleading. It can be
4 used as part of this case.

5 So, you know, the notion about the settlement
6 agreement being tantamount to a rate case, I'm not sure
7 that we, you know, agree with that. Surely if you just
8 look at the weight of paper involved in the MFRs of a
9 rate case and you look at the settlement, there's a big
10 material difference there.

11 And the timing of it, you know, I don't know
12 that, that, you know, there needs to be an apology for
13 that. I mean, it has put some time pressures on it.
14 But, you know, you pick up the papers about every day
15 and you read about cases settling on the courthouse
16 steps before they go in. So, you know, it, it, you
17 know, it is what it is, but we're prepared to move
18 forward.

19 We're prepared to talk about the settlement
20 agreement with respect to the terms of it, and we think
21 that would help build a full record for you all, so that
22 you would have a lot of testimony, a lot of back and
23 forth about the settlement agreement, in addition to the
24 case as filed.

25 So, you know, we would -- while we had

1 initially filed in support of postponing it, at this
2 point, with all the witnesses here, we would encourage
3 that you move forward. We think that due process is
4 afforded, because all these witnesses will be here and
5 there will be an opportunity to ask questions about it.

6 If you all decide to say, well, not only will
7 we give you two weeks of hearing and due process now,
8 we'll give you additional time at a later point in time
9 when you, if you decide to consider the settlement
10 separately, which, you know, we would encourage that it
11 be considered at the appropriate time.

12 So I guess we sort of changed our, our
13 position. We're ready to, we're ready to put on, put on
14 the case and cross-examine witnesses. And, and
15 Mr. Rehwinkel said that the contract won't allow me to
16 take adverse positions. You know, I respectfully
17 disagree, because the settlement agreement, I think the
18 provision he was referring to -- first of all, it's
19 contemplated that in future administrative proceedings
20 you're not going to take positions that are contrary to
21 a settlement.

22 I mean, I think from the standpoint of
23 perspective it was forward-looking, not necessarily
24 considering this case. But there's also the first
25 sentence of paragraph 15 says, the provisions of this

1 agreement are contingent on approval of this agreement
2 in its entirety by the Commission without modification.

3 So that's a contingency that has not yet taken
4 place, approval. So our position is, is while it is
5 procedurally awkward, you know, we're going to put on
6 our litigation position. We have a litigation position
7 and a settlement position, and we're going to talk about
8 our litigation position and we'll also talk about our
9 settlement position.

10 But I think to the extent you allow the
11 hearing to, to move forward, you're giving everybody
12 ample due process, because you've got everybody here,
13 you've got all the witnesses here, and you've got the
14 opportunity to, to ask the questions.

15 Thank you for the chance to respond.

16 **CHAIRMAN BRISÉ:** Thank you, Mr. Moyle.

17 Mr. Wiseman.

18 **MR. WISEMAN:** Thank you, Mr. Chairman.

19 SFHHA supports the statements that have been
20 made by FPL and FIPUG. As Mr. Moyle points out, yes, we
21 moved to suspend the procedural schedule. But,
22 Mr. Chair, you ruled against that on Friday and we're
23 prepared to go forward at this point.

24 I was really surprised frankly by some of the
25 statements I heard from Public Counsel about this being

1 a last-minute deal put on the, put before the Commission
2 just two business days before the commencement of this
3 hearing.

4 If you'll recall, back in 2000 there was a
5 settlement proposed to this Commission. South Florida
6 Hospital and Healthcare Association represents most of
7 the major hospitals in South Florida, which is probably
8 the most important business segment in that community.
9 And, in that settlement, no one consulted us prior to
10 entering into a settlement. We were handed a document
11 just a few days before the hearing was to commence and
12 told, take it or leave it. And we came before this
13 Commission and we opposed it. Everyone else was in
14 favor of it. And we asked for a hearing on the merits
15 to discuss the terms of that settlement, and what we
16 were given was half an hour of oral argument.

17 What we're proposing here is something far
18 different than what happened in 2000. This hearing is
19 ready to go forward. There is going to be a lot of
20 evidence presented in the context of a litigated
21 proceeding.

22 And to the point Mr. Moyle just raised, we're
23 going to take, we're going to put on evidence in support
24 of our litigation position. We don't know whether
25 you're going to approve the settlement or disapprove the

1 settlement, so we have to support the litigation
2 position that we've expressed in the prepared testimony
3 of our witnesses and which we will pursue through
4 cross-examination. I can assure you that FPL is not
5 going to like some of that cross-examination, but that's
6 our litigation position.

7 Where we are in terms of litigation versus a
8 settlement are two different things. Settlement is give
9 and take. You win some issues, you lose some issues.
10 That's inevitable. But that doesn't mean that the
11 settlement is a bad settlement. That's the nature of
12 every settlement that I'm aware of.

13 So we're prepared to go forward with this
14 hearing. We have witnesses who will be here. We're
15 prepared to cross-examine witnesses. And we, we think
16 OPC and the Retail Federation and the other Intervenors
17 should be given their due process rights. Absolutely.
18 Frankly, more than we were given back in 2000.

19 We think they should be able to explore in
20 this hearing all issues, and explore whether they
21 believe they can show that the proposed settlement
22 should be approved or disapproved. That's fair. And we
23 don't see any reason why you should limit those due
24 process rights. But that can take place commencing
25 today. There's no reason at this point to delay that,

1 and we think the hearing should go forward.

2 Thank you.

3 **CHAIRMAN BRISÉ:** Thank you.

4 Mr. Wright, do you have any comments?

5 **MR. WRIGHT:** Thank you, Mr. Chairman. And I
6 will abide by my previous commitment to hold this to
7 60 seconds.

8 **CHAIRMAN BRISÉ:** Okay.

9 **MR. WRIGHT:** Mr. Rehwinkel presented lengthy
10 eloquent argument as to why we, we do believe that our
11 due process rights have been, will be abridged by
12 continuing with this hearing today. I just wanted to
13 bring that in for a quick landing.

14 FPL's motions have in very practical terms
15 caused obvious prejudice. I lost three-plus person days
16 that I would have otherwise spend, spent getting ready
17 for the hearing. Public Counsel probably lost two or
18 three times that amount in what would have been spent
19 getting ready for the hearing instead of dealing with
20 these motions in the last five critical days before the
21 hearing starts. That's obvious prejudice.

22 Additionally, we are, we are prejudiced -- and
23 I just heard Mr. Wiseman and Mr. Moyle say they're going
24 to put on their litigation cases. I'm very interested
25 to see how this plays out, because what we've got is a

1 contract to support one litigation position and, and
2 litigation positions.

3 The old saying goes, you can't tell the
4 players without a program. We got a program. It's the
5 Prehearing Order. But frankly, under the circumstances,
6 we can't really tell what uniforms exactly a bunch of
7 the other players are wearing. We've got two sets of
8 proposed tariffs, which really are two different rate
9 cases pending at the same time.

10 I, we truly believe that it's prejudicial for
11 us to have to go forward to hearing on this at this
12 time.

13 And by the way, just to be clear, we will
14 resist any effort at all vigorously to take up anything
15 relating to the settlement agreement. There's -- it's
16 functionally a petition, we've had no opportunity for
17 discovery, as vouchsafed to us by the Florida
18 administrative procedure rules, we've had no opportunity
19 to prepare for a hearing on it, there's been no notice
20 of a hearing on it, and it clearly violates Chapter 120.

21 Thanks for your indulgence.

22 **CHAIRMAN BRISÉ:** Thank you. I think there's a
23 question from -- okay.

24 Mr. Saporito.

25 **MR. SAPORITO:** Thank you, Mr. Chairman. I

1 agree with OPC, there is certainly an elephant in the
2 room, but that elephant is called due process rights.
3 It matters not that OPC's decision may have came after
4 the Commission's decision in their order to deny the
5 continuance and rescheduling of this matter, because the
6 ultimate decision by this Commission would not have
7 changed because of the due process rights, my due
8 process rights that are being violated with any
9 continuance.

10 I, I suffered extensive and significant
11 financial hardship to come to the August 14th Prehearing
12 Conference, to the extent that I had to make financial
13 arrangements to, for my lodging stay and travel, and I
14 cannot get refunded for those lodging arrangements.
15 They're prepaid and they don't issue refunds.

16 So I made that decision because, you know, I
17 intended to follow the Commission's rules. I'm a
18 consumer, I'm a private citizen, I'm a United States
19 citizen, and I wanted to engage the Commission to share
20 my viewpoints and my opinions in this, in this
21 proceeding.

22 Therefore, any continuance or rescheduling of
23 this proceeding to another time, another day would just
24 deprive me and undercut my due process rights 100%, and
25 that's not fair to me.

1 I understand OPC's position, FRF's position
2 with respect to due process, but the due process rights
3 that are being violated here are caused by FP&L. FP&L
4 and these other attorneys, these other signatories to
5 this alleged settlement agreement were done in secret,
6 and without the participation or even the invite of the
7 other parties in this proceeding. No one else was
8 invited to participate in that document.

9 So we were denied due process because we
10 weren't even allowed to engage in those settlement
11 negotiations. And I'm sure the Commission can reflect
12 back on *Jaber* (phonetic), which OPC argued, and the
13 Supreme Court found where, I think it was SFHHA was
14 arguing about their due process rights, but they were a
15 party to a proceeding, a settlement. I'm not a party to
16 that settlement, nor are many of the other parties here.
17 So it's, it's a violation of our due process rights not
18 to even be in that, in that document.

19 To the extent that FPL and these other
20 signatories would even suggest that this Commission
21 allow this proceeding to go forward and allow them to
22 bring in evidence and testimony to support their alleged
23 settlement agreement is another violation of my due
24 process rights and the due process rights to the people
25 who weren't signatories to that alleged document,

1 because we didn't, we didn't have an opportunity to
2 engage in discovery. I didn't have an opportunity to
3 depose anybody. I didn't have an opportunity to ask for
4 documents. I didn't have an opportunity to ask them to
5 answer interrogatories under affirmation. So my due
6 process rights and those of the non-signatories are
7 being violated in that way also.

8 To the extent that they, FPL's alleged
9 settlement agreement was even submitted to this
10 Commission, it's outrageous. The terms, conditions,
11 and -- proposed in there would shift a significant
12 amount of costs and expenses from the signatories and
13 put them back on people like me, who, who are the
14 residential consumers of FP&L. And that in and of
15 itself is unfair, and the Commission cannot possibly
16 approve that, in my view.

17 Therefore, my suggestion to the Commission is
18 such that you ought to go back and take another look at
19 my emergency order for relief, where I posited that the
20 solution to this is to, one, deny any continuance or
21 rescheduling in this matter, deny FPL's proposed
22 settlement agreement, and continue this hearing as
23 ordered by Commission Graham on August 14th.

24 Thank you very much.

25 **CHAIRMAN BRISÉ:** Thank you very much.

1 Mr. Rehwinkel.

2 **MR. REHWINKEL:** Very briefly, Mr. Chairman.

3 The remarks of Mr. Litchfield and Mr. Moyle
4 taken together illustrate the precise problem that we
5 see with these two pending requests for relief.

6 Mr. Moyle said, contends to you that they can introduce
7 evidence relating to the petition, that it can be
8 considered by you, that it is a pleading, and that
9 evidence and testimony can be taken on this.

10 Rebuttal testimony was due on March -- on
11 July 31st. Discovery cutoff was on August 13th. They
12 cannot introduce new evidence, new testimony at this
13 time.

14 What you heard was an explicit admission by
15 them that they do intend for you to consider all of the
16 evidence that's filed plus what was filed on August
17 15th. That is a patent, express admission that they
18 will violate our due process rights if the Commission
19 accepts that as a way to proceed in this hearing.

20 The Public Counsel would even consider seeking
21 appellate relief in the form of a writ if the proceeding
22 were to proceed under these circumstances. I, I was a
23 little bit shocked to even hear an expression that
24 frankly about how they would expect us to, this to be
25 considered in the case.

1 Thank you.

2 **CHAIRMAN BRISÉ:** Thank you very much. I think
3 we've heard from all the parties on this issue.

4 **MR. KISER:** Mr. Chairman.

5 **CHAIRMAN BRISÉ:** Commissioner Graham, I saw
6 your light first.

7 **MR. KISER:** Mr. Chairman, I'll wait until the
8 Commissioners are finished.

9 **CHAIRMAN BRISÉ:** Thank you.

10 Commissioner Graham.

11 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

12 I am speaking from a truly layman's point of
13 view, not being the registered attorney like some of my
14 colleagues are, I can just tell you from the way I
15 understand this, we, we get stipulations when we go
16 through rate hearings all the time. We've gotten them,
17 we've had them at the beginning of the hearings, we've
18 had them halfway through, and we've had them on the last
19 day of the hearings where stipulations get floated
20 through. So this is nothing that's new or special in my
21 short bit of time that's been on the council. So I
22 can't see why this is such a, a different thing from,
23 from the norm.

24 I, I agree with the, with the Chairman's
25 position. I think we should move forward with the case

1 as we have it.

2 With the stipulation that came forward, the
3 first thing I noticed, that we didn't have General
4 Counsel -- I'm sorry -- Public Counsel signed on to it.
5 And, in my opinion, Public Counsel is here to speak for
6 all of the ratepayers, and their job is to put on a case
7 for all the ratepayers. And that being the case, it's
8 difficult to even entertain a stipulation that Public
9 Counsel is not part of.

10 So I think we should wait, put the stipulation
11 at the end of the hearing, let the Public Counsel put on
12 their case, listen to what they have to say, and
13 determine if we want to settle that case or if we want
14 to listen to the settlement.

15 That, in my layman's term, is where I think we
16 are. I look at it almost like someone being at a trial,
17 and there's continuing plea bargaining during the middle
18 of the trial as the trial is moving forward. I can't
19 see that being any different than this.

20 Thank you.

21 **CHAIRMAN BRISÉ:** Thank you, Commissioner
22 Graham.

23 Commissioner Balbis.

24 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
25 And I agree a lot of -- with what Commissioner

1 Graham said on this. I do have some questions or
2 concerns that were brought up by this, and I want to
3 direct a question or two to Mr. Moyle on it. And it's
4 really the issue of a legal position and a settlement
5 position.

6 And just to be specific, I think one of the,
7 one of the things that I'm struggling with is, you know,
8 for example, on the issue of return on equity, and
9 you're going to be cross-examining or proffering
10 witnesses on return on equity, and FIPUG's position as
11 listed in the Prehearing Order is that, and I quote,
12 given market conditions today, FPL's ROE should be no
13 higher than 9%.

14 So I'm struggling with if you're going to be
15 cross-examining or proffering witnesses that support
16 that, in essence you are supporting a denial of the
17 settlement agreement because the settlement agreement
18 has an ROE that's higher than that. So how are you
19 going to deal with that specifically and, and still
20 provide an adequate argument to your position?

21 **MR. MOYLE:** Sure. And our -- FIPUG, just so
22 we're clear, has one witness, Jeff Pollock, who is going
23 to talk about rate design and interruptible credit,
24 which is important to FIPUG, it's a part of the
25 settlement agreement, and we're going to focus a lot on

1 that, and we have adopted positions of others with
2 respect to the ROE.

3 So, you know, we have an agreement, we support
4 the agreement. The agreement is contingent upon
5 approval of the Commission, as I indicated, which has
6 not yet been done.

7 So we are going to cross FPL's ROE witnesses,
8 Mr. Avera, because they are at a position of 11.5 in
9 their testimony, 11.25 with a .25 adder for good
10 performance, and we're going to challenge the good
11 performance adder and we're going to challenge the, you
12 know, 11.25. It's higher than the settlement number,
13 which is 10.7. Okay? And so we'll argue it needs to be
14 lower, it needs to be lower.

15 You'll have conflicting evidence on that
16 point. I don't know that I'll be able to get Mr. Avera
17 to concede that, oh, yes, it should be lower. He's been
18 an expert a long time, and I'll maybe make a few points,
19 but I'm not sure he will concede to that point. So
20 you're going to have conflicting evidence.

21 Now, you know, the settlement agreement is at
22 10.7. Ultimately you may have to say, well, you know,
23 is that, is that the right number? There'll probably be
24 some discussion about that. What does, what does Gulf
25 have, what does Progress Energy have with its nuclear

1 operations? I think that will be part of the
2 discussion.

3 But I think that it is an unusual position,
4 and in my opening remarks I was going to comment on
5 that, and I don't want there to be confusion that we do
6 not support the settlement agreement because of some of
7 the, some of the cross that we're going to be
8 conducting. It will be adverse. But I think at the end
9 of the day it'll provide you with a full record that you
10 can consider and, and make a decision as to, as to the
11 settlement agreement.

12 So that's, that's kind of how I see it with
13 respect -- I don't, I don't see it as you've got to be
14 this or you've got to be that. I mean, I think, to
15 Commissioner Graham's point, you know, in a criminal
16 context plea bargaining is going on, sometimes in a
17 civil context settlement discussions ensue during the
18 course of the proceeding. So, so that's, that's kind
19 of, I hope, responsive to your question.

20 **COMMISSIONER BALBIS:** Okay. Thank you. And I
21 appreciate the analogy of plea bargains, and
22 Commissioner Graham did bring it up, and settlements
23 being agreed to at a courthouse steps.

24 I think what we may be facing with here is
25 instead of a prosecution and a defense agreeing to a

1 settlement, we in essence have a prosecution and the
2 prosecution perhaps. So we don't have all parties, and
3 the organization who's legislatively designated to
4 represent all the ratepayers is not a signatory.

5 So that's kind of the unusual situation that I
6 know I'm personally dealing with here, and whether to
7 proceed or not to proceed is what we're facing, and
8 actually was there a mistake in fact or law made by the
9 Chairman in his decision. So I, I appreciate that
10 explanation.

11 And I have a question for OPC on -- you
12 indicated a lot of, in the beginning of your statement,
13 legal, I'll use the word issues, but legal challenges
14 associated if we start the hearing and then take up the
15 settlement. But those challenges only exist if the
16 settlement is agreed to. If it's dismissed or denied,
17 would there still be those legal challenges?

18 **MR. REHWINKEL:** No.

19 **COMMISSIONER BALBIS:** Okay.

20 **MR. REHWINKEL:** If -- yes. If the elephant is
21 removed, we're good. But we don't think you're in a
22 posture today because, as much as I have enmity toward
23 that document, there are parties that have substantial
24 interests that are embodied in that document, and
25 they're entitled to a hearing on whether you should

1 entertain that or not.

2 We, we think that it's facially invalid, but
3 we're willing to put on a case about the substantive
4 invalidity of it, and we'll be filing something tomorrow
5 on that.

6 So I don't think you're in a position right
7 now to dispose of it the way it needs to be disposed of
8 in order to take it out of this process.

9 **COMMISSIONER BALBIS:** Okay. And then the
10 other legal point that you brought up, and it's actually
11 a question for staff on this, and is that, the Chairman,
12 I assume it would be the Chairman did not consider OPC's
13 response to the motion. Is there a, a time frame? Is
14 there any limitations or deadlines in order to consider
15 it, or is that, is that a valid legal argument at all?

16 **MR. REHWINKELE:** Before the staff addresses
17 that, may I make a point about that? Ordinarily a
18 motion under the rules entitles any person who has an
19 interest and wants to respond to it to do so within
20 seven days in writing.

21 We weren't stupid. We knew that there was an
22 exigent circumstance. We filed a document early in the
23 next, next day to say, hey, we have a problem with this,
24 we're going to file something the next day.

25 So we accelerated our response, we did the

1 best we could. We filed it, I believe, at 4:20, and we
2 knew that the Commission needed to get something out.

3 The reporters were calling us saying, what are
4 they going to do? And they were calling the Commission,
5 I'm sure; what are they going to do? We knew there was
6 a big rush. We were trying as hard as we could.

7 He did nothing wrong in the sense of waiting
8 as late as he could. But we did the best we could. I
9 call it a mistake of law or -- but it wasn't something
10 that, that he could be faulted for. It just was the
11 circumstance that they were in. But we, we rushed, and
12 we should not be dinged, if you will, because we did
13 something in less than 48 hours that we normally have
14 seven full days to do.

15 **COMMISSIONER BALBIS:** Staff?

16 **MS. HELTON:** I think I agree with what
17 Mr. Rehwinkel has said. I believe there has not been a
18 mistake here. Rule 28-106.204, which is set out in the
19 uniform rules of procedure, which addresses motions and
20 the filing of motions and the filing of responses,
21 states that when time allows, the other parties may,
22 within seven days of service of a written motion, file a
23 response in opposition.

24 So the rules themselves contemplate situations
25 that are such as this that -- there was a definite need,

1 I think, on the part of all the parties here today, the
2 staff, you, all the people here in the audience, to know
3 whether the hearing was going to happen on Monday or
4 not.

5 As far -- I almost hesitate to say this, but
6 let me just throw it out there. The rules don't
7 contemplate filing two responses, which is in effect
8 what OPC has, has done here with this situation. I
9 understand what they did, and if I were sitting in Mr.
10 Rehwinkel and Mr. Wright's shoes, I probably would have
11 done the same thing, but the rules do not contemplate
12 filing two responses.

13 And I will also note that we have spent quite
14 a bit of time here this morning already, and I think
15 that Mr. Rehwinkel and Mr., Mr. Wright have had an
16 opportunity to make the Chairman and the rest of you
17 fully aware of the issues that they see where we are in
18 the process.

19 **COMMISSIONER BALBIS:** Okay. Thank you. I
20 have nothing further.

21 **CHAIRMAN BRISÉ:** Thank you, Commissioner
22 Balbis.

23 Commissioner Brown.

24 **COMMISSIONER BROWN:** Thank you.

25 And I think that OPC did raise some good

1 points in its response and during here. But I'm of like
2 mind with my non-lawyer colleague, Commissioner Graham.
3 I'm trying -- I'm having a hard time finding the mistake
4 of law or fact here.

5 That being said, I have some questions for
6 staff that were raised here. Can we consider the
7 settlement along with the rate case during this
8 technical hearing?

9 **MR. KISER:** I would be very hesitant to do
10 that, just because there are issues in the settlement
11 that haven't been raised and the parties haven't had due
12 process to look at those. And when it gets appropriate
13 time for me to address the, the Commission, I have one
14 solution in mind that might put some fears aside about
15 these issues coming up during the regular rate case. A
16 motion in limine is one of the things I'm thinking
17 about.

18 **COMMISSIONER BROWN:** Okay. And a question for
19 Ms. Helton regarding the eight-month clock that was, OPC
20 said that is inappropriate and inapplicable. Can you
21 please address that?

22 **MS. HELTON:** I think I understand OPC's point
23 with respect to the eight-month clock. However, I don't
24 think you can ignore the eight-month clock. I think you
25 have to read that in conjunction with the settlement

1 that was signed by many of the parties sitting here at
2 the table now. And it's my understanding
3 and my belief that the schedule that we're operating
4 under today was meant to allow the company to implement
5 rates under the settlement agreement so that they can
6 implement new rates effective January 1, 2013. So
7 that's what, where we are.

8 **CHAIRMAN BRISÉ:** Thank you.

9 Any other comments from Commissioners?

10 Well, since I was the one that issued the
11 order, I guess I have a couple of words to say myself.
12 And then we'll hear from Curt, because after that point
13 we'll, you know, you all have to decide whether I made a
14 mistake of law or fact.

15 There are a couple of issues that I thought
16 were important in dealing with this whole issue of
17 whether to proceed or not to proceed and so forth. And
18 I view the, the settlement issue and the rate case as
19 two completely separate issues. That, one, we go
20 through this process and we get all the information that
21 needs to come to us this way. And we needed to provide
22 an opportunity for us to work on a schedule that makes
23 sense so that rates can be implemented when they need to
24 be implemented.

25 The second aspect of this that I thought was

1 important, and we will probably address this later on
2 this week, is that if it is not found that, you know, I
3 made a mistake of law or fact, then we would lay out a
4 schedule that is separate from this process to deal with
5 the settlement. And then that would provide an
6 opportunity for interrogatories and all of that to occur
7 within that space, with deadlines, and, and put us at a
8 position that is forward-looking and with an
9 understanding that, you know, at this point on those
10 things can be addressed, the settlement and so forth can
11 be addressed.

12 So I think that this provides us an
13 opportunity to move forward with the cases looked as,
14 thought about since it was scheduled months and months
15 ago. It provides a certain amount of certainty for
16 everyone who is involved in this process, and, moving
17 forward, it takes away some of the uncertainty that we
18 would have had to deal with with all of the scheduling
19 things that we would have to handle if we had sort of
20 suspended the hearing. That is sort of my layman's
21 basic rationale.

22 And with respect to the, the two responses by
23 OPC, I know what time they came in. And we sat down and
24 contemplated all the issues that were there, and they
25 were all taken into account. And at the end of that, we

1 came up with the decision that the process that we are
2 outlining is the most appropriate process for this
3 instance. Does it become precedential? Hopefully not.
4 But, as every instance is an individual instant, we
5 thought that at this time this is the proper course of
6 action for the circumstances that we have before us.

7 Mr. Kiser.

8 Oh, I'm sorry. Commissioner Balbis.

9 **COMMISSIONER BALBIS:** Whenever we're in a
10 position for a motion, I'd be willing to make one.

11 **CHAIRMAN BRISÉ:** Okay. I think we may have
12 some counsel from, from our General Counsel.

13 **MR. KISER:** Thank you, Mr. Chairman and
14 members of the Commission.

15 First of all, I think that in setting out the
16 argument it's very obvious that Mr. Rehwinkel cited
17 absolutely zero case law for what he's advocating, not
18 one item did he give us of a misinterpretation of the
19 law and any case filings on that.

20 Most of the things that he talked about are
21 speculative, things that could happen in the future, not
22 things that are certain to happen. As you said in your
23 comments, no date has been set for dealing with the
24 issues of that settlement. That is something to be
25 decided by the Commission and the Chairman as they move

1 along and as we see the case develop and as you see the
2 speed with which we move or we don't move, and giving
3 all the limitations on the calendar.

4 That's one of the, one of the serious
5 considerations that you, that you mentioned, over the
6 last Thursday and Friday trying to deal with this issue
7 of just the logistical problem of trying to move these
8 things back with other things that do have some definite
9 deadlines to them that we also have to respect.

10 In civil practice, whenever there's some issue
11 in the case that is a significant issue and parties are
12 concerned that it will be inappropriately brought up and
13 discussed and therefore have a tainting effect on the
14 potential outcome, they use a motion in limine, where
15 the judge rules that that issue cannot be brought up,
16 that issue cannot be addressed, can't be spoken to, no
17 information, no evidence, no witnesses, no statements by
18 counsel, all of that are barred.

19 And if the Commission is concerned that there
20 might be some chance that these issues might bleed over
21 into one another, something like taking that approach to
22 where comments, et cetera, evidence, witnesses, et
23 cetera are off limits on that issue until the
24 appropriate time for that settlement or any other
25 settlement to be taken up, let's keep the case limited

1 to the way it was filed and set aside that, the two
2 settlements are there and potentially others that might
3 still come forward.

4 So I think there are ways to guard against
5 that and keep that from happening. But by and large,
6 most of the issues that Mr. Rehwinkel raised are
7 speculative, and therefore I would suggest that the
8 Chair would be, it would be appropriate to deny the
9 motion for reconsideration for failure to meet the
10 standard that was enunciated earlier of, of a mistake in
11 law or fact.

12 **CHAIRMAN BRISÉ:** Thank you, Mr. Kiser.

13 If there are no further comments from
14 Commissioners, I think we're in a position to entertain
15 a motion.

16 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
17 I move that we deny the motion for reconsideration in
18 this matter.

19 **CHAIRMAN BRISÉ:** Okay. Is there a second?

20 **COMMISSIONER GRAHAM:** Second.

21 **CHAIRMAN BRISÉ:** It's been moved and seconded.
22 Any further discussion? Okay. Seeing none, all in
23 favor, say aye.

24 (Vote taken.)

25 All right. Thank you very much.

1 **MR. REHWINKEL:** Mr. Chairman?

2 **CHAIRMAN BRISÉ:** Yes, sir, Mr. Rehwinkel.

3 **MR. REHWINKEL:** In view of the Commission's
4 decision, the Public Counsel has a further motion to
5 make. I will let Mr. Kelly address that.

6 **MR. KELLY:** Good morning, Mr. Chairman,
7 Commissioners.

8 **CHAIRMAN BRISÉ:** Good morning.

9 **MR. KELLY:** I'll be very brief. We're making
10 a motion. It's a motion in the alternative of three
11 parts.

12 We're making a motion to dismiss the
13 settlement altogether or set for expedited oral argument
14 on the motion to approve or deny the settlement that's
15 submitted by Florida Power & Light, the Hospital
16 Association, FIPUG, and FEA, or, in the alternative,
17 dismiss FPL's petition for rate increase that was
18 submitted on March 12th.

19 I won't go into the -- we spent a lot of time
20 here, Mr. Chair. In the interest of time, I won't go
21 into argument about this. It's set forth in the motion,
22 and you folks are, can read it very quickly. But we
23 need to do this in order to have a proper record,
24 please.

25 **CHAIRMAN BRISÉ:** Okay. I suppose everyone is

1 going to need a few minutes to, to digest this, take a
2 look at it. It is five minutes to 11:00. Thirty
3 minutes or an hour or so to take a look at it? Let's
4 set reconvening at 11:30, and then we'll sort of gauge
5 where we are at that point. Okay? So we are at recess
6 until 11:30.

7 (Recess taken.)

8 **CHAIRMAN BRISÉ:** All right. We will reconvene
9 at this time.

10 Lieutenant Colonel Pike, I think you
11 have someone --

12 **LT. COL. PIKE:** Yes. Thank you, Mr. Chairman.
13 The Federal Executive Agencies wanted to enter an
14 appearance also for Captain Samuel Miller. I failed to
15 mention his name at the initial beginning of the
16 proceeding. Thank you.

17 **CHAIRMAN BRISÉ:** Thank you very much. All
18 right. We have a motion on the table that has been
19 offered by the Office of Public Counsel. Commissioners,
20 we took some time to take a look at it. As I read it, I
21 think we heard all the arguments for the issues
22 contained within this motion. So I think we are
23 probably in the posture to have discussion among
24 Commissioners and then vote.

25 So whoever feels that they are comfortable

1 leading the discussion, we're welcome to that at this
2 point, or we are also ready to entertain a motion.

3 Commissioner Brown.

4 **COMMISSIONER BROWN:** Thank you. And I do take
5 issue with being forced to make a decision on the
6 settlement agreement one way or the other today. With
7 regard to there are three issues in this motion to
8 dismiss, I have some questions for staff with regard to
9 the motion to dismiss.

10 Do we have to vote the settlement up or down
11 now in order to proceed with the hearing?

12 **MS. HELTON:** It is my belief that you do not
13 have to do that. It is my belief that it's -- that
14 everyone in the room is capable of distinguishing
15 between what would be the litigation phase of the docket
16 and what would be potentially the settlement phase of
17 the docket and that they can easily be separated and
18 that you can easily not allow any discussion, any
19 argument, any cross-examination about the settlement
20 during the course of the litigation phase of the
21 proceeding.

22 **COMMISSIONER BROWN:** So a motion in limine,
23 would not -- we don't have to do that?

24 **MS. HELTON:** That is one vehicle that is
25 available in the law to do that.

1 **COMMISSIONER BROWN:** Okay. If I may, with
2 regard to the third alternative, the alternative motion
3 to dismiss the petition for the rate increase, having a
4 rate case pending -- we already heard this over the past
5 hour and a half, so it's kind of rearguing the merits
6 again of what we just discussed. But having a rate case
7 pending along with a settlement agreement that has not
8 yet been voted on today, that does not translate into
9 two separate rate cases, and I just wanted that clear.
10 Is that correct?

11 **MS. HELTON:** That's my understanding. I mean,
12 the settlement agreement has not really -- does not have
13 the force and effect of law at this point in time
14 because to do that you would have to approve it. I
15 believe that you can proceed forward with the litigation
16 phase of the proceeding.

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

18 **CHAIRMAN BRISÉ:** Thank you, Commissioner
19 Brown.

20 Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
22 And I agree with Commissioner Brown and
23 staff's analysis of the issues brought forth in this
24 motion. So if the Commission desires, I would be in a
25 position to make a motion on this issue.

1 **CHAIRMAN BRISÉ:** Okay.

2 **MR. WRIGHT:** Mr. Chairman.

3 **CHAIRMAN BRISÉ:** Mr. Wright.

4 **MR. WRIGHT:** May I be heard very briefly?

5 **CHAIRMAN BRISÉ:** Sure.

6 **MR. WRIGHT:** Thank you, sir.

7 I just want to make clear two things. First,
8 this is the Public Counsel's motion; we are not joint
9 movants with respect to this. And we would oppose any
10 expedited ruling on the motion for approval, the second
11 request for relief articulated in the motion.

12 Thanks for letting me speak.

13 **CHAIRMAN BRISÉ:** Thank you very much.

14 Commissioner Balbis.

15 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

16 And in light of staff's comments and the fact
17 that settlement agreements are being negotiated I assume
18 all of the time during numerous proceedings, so the fact
19 of having addressing Item C of OPC's motion that we have
20 two dual tracks, I think you have multiple tracks going
21 on all the time behind the scenes as parties try to come
22 to an agreement.

23 So with that, I disagree with the three
24 sections of the motion, and I move that we deny OPC's
25 motion to dismiss.

1 **CHAIRMAN BRISÉ:** All right. It has been
2 moved. Is there a second?

3 **COMMISSIONER GRAHAM:** Second.

4 **CHAIRMAN BRISÉ:** It has been moved and
5 seconded. Any further discussion? Okay.

6 Seeing none, all in favor say aye.

7 (Vote taken.)

8 **CHAIRMAN BRISÉ:** All right. Let the record
9 reflect that the motion by OPC has been denied. Okay.

10 With respect to how we move forward, the idea
11 is that on Wednesday, and I know that is the last day
12 for people to respond to the settlement agreement, and
13 once that is done, then we will set out sort of a
14 schedule specifically for that part of this docket.

15 The other aspect is that we suppose that there
16 will be interrogatories and so forth that will go on
17 throughout this process. So I know that our staff has
18 some that they want to proceed with, so parties are able
19 to do so as necessary, and we will set dates for that.
20 All of that will be laid out by Thursday afternoon.
21 That is our plan at this juncture, and any further
22 discussion on this will take place on Thursday
23 afternoon.

24 **MR. WRIGHT:** Mr. Chairman.

25 **CHAIRMAN BRISÉ:** Yes, Mr. Wright.

1 **MR. WRIGHT:** You may have already articulated
2 this point, and if you have, then please consider this
3 request for clarification. But you, Ms. Helton,
4 Mr. Kiser, and Commissioner Brown have all mentioned
5 some concept of a ruling in limine or a motion in
6 limine. And just so I am clear, I would offer an
7 ore tenus motion in limine that no testimony or evidence
8 with respect to the settlement agreement be received in
9 this hearing.

10 **MR. REHWINKEL:** Mr. Chairman, if the Public
11 Counsel could just add to that --

12 **CHAIRMAN BRISÉ:** Sure.

13 **MR. REHWINKEL:** -- the Evidence Code, Section
14 90.408 states, "Compromises and offers to compromise:
15 Evidence of an offer to compromise a claim, which was
16 disputed as to validity or amount, as well as any
17 relevant conduct or statements made in negotiations
18 concerning a compromise is inadmissible to prove
19 liability or absence of liability for the claim or its
20 value." We would cite that as well in support of the
21 motion that the Retail Federation just made.

22 Thank you.

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

24 Ms. Helton.

25 **MR. MOYLE:** May I be heard?

1 **CHAIRMAN BRISÉ:** Mr. Moyle before we go to
2 Ms. Helton.

3 **MR. MOYLE:** The provision that Public Counsel
4 just cited, you know, has just made as an ore tenus
5 motion, I haven't researched it, but I would suggest
6 that that relates to digging behind what was in the
7 settlement. What did you trade this for for that, and
8 it gets into the settlement discussions themselves.

9 And I think everyone presumably understands
10 that is not something that can be done. But to the
11 extent that the settlement agreement, which is a public
12 document and has been filed with the SEC, to the extent
13 that it can be used in a limited fashion to point out,
14 say, an evidentiary provision of statement against
15 interest.

16 If FPL's ROE witnesses is on the stand and,
17 again, as I responded to Commissioner Balbis, you know,
18 we are going to take a position that the ROE should be
19 lower. I think I should at least be able to say are you
20 aware that in the SEC filing that you on behalf your
21 client agreed to a 10.7 ROE? I think that's fair game
22 with respect to, you know, a statement against interest
23 or an admission that from an evidentiary standpoint,
24 then I should be able to ask those questions.

25 I also think that Public Counsel has opened

1 the door with respect to the substance of the settlement
2 by, you know, all of their opening remarks that they
3 talked about the terms of the settlement and made a
4 whole bunch of comments about it. I think from an
5 evidentiary standpoint that they have opened the door
6 and now they want to close it, and I don't think they
7 can do that.

8 So from a standpoint of the motion in limine,
9 and it also presents a practical issue which is, you
10 know, if your plan is to have this hearing and then a
11 subsequent hearing, you know, there will probably be
12 relevant evidence that comes out in this hearing and how
13 you deal with that. I guess you could take this whole
14 record and incorporate it and put it into the settlement
15 hearing.

16 But, I don't want there to be some kind of an
17 argument, you know, if somebody is saying, well, Mr.
18 Reed was here, but he's not at the next one, and my due
19 process rights have been waived because I couldn't ask
20 Mr. Reed questions about the settlement per your ruling.
21 I mean, I think that is sort of inviting error, and I
22 don't I think that could be done. But, you know, from
23 FIPUG's position, you've got all the folks here, we
24 don't have any objection to the extent that questions
25 want to be asked about the fairness of the settlement.

1 And then if it is followed up by a subsequent fairness
2 hearing, I think everybody's due process is more than
3 afforded.

4 But if the ruling is we are only going to talk
5 about the litigated case, I would like to have the
6 latitude to, at least from an evidentiary standpoint,
7 make some points about statements against interest. And
8 also don't want there to be subsequent arguments that
9 people would make to somehow say, well, the motion in
10 limine ruling, you know, prejudices due process rights.

11 So I guess if all of the parties who are not
12 signed onto the agreement to support the motion in
13 limine, I think they would have a hard time later saying
14 the due process rights have been denied. But I just
15 wanted to bring those points up for consideration.

16 **CHAIRMAN BRISÉ:** Mr. Litchfield.

17 **MR. LITCHFIELD:** Thank you, Chairman Brisé.

18 Mr. Moyle beat me to the mike. I endorse what
19 he just said, so my comment is brief. And that is, at
20 the end of the day this is the same proceeding. This is
21 about Florida Power and Light Company's base rates that
22 will be established 1/1/13.

23 There is record evidence that all the parties
24 have filed and certainly we are not backing away from
25 our prefilled position. At the same time, we have

1 entered into a compromise with some of the major parties
2 here that we fully support and intend to support
3 throughout the process. So in this regard, you really
4 can't de-link the two proceedings.

5 This record that we develop here will be some
6 frame of preference for the Commission's decision at the
7 end of the day whether to approve the settlement or not.
8 And Public Counsel will take a position contrary to the
9 settlement agreement. They will do that through this
10 proceeding, and they will do that through any subsequent
11 proceeding, but I really don't think that we can de-link
12 them in the way that Mr. Kiser was suggesting.

13 **MR. REHWINKEL:** Mr. Chairman, I apologize, but
14 these arguments that you have just heard from these two,
15 they make our case for us. And they are putting a
16 record down here that an appellate court is going to
17 review.

18 We have not opened the door to anything. This
19 is preliminary matters. The evidence is not being taken
20 yet. You have not started -- you haven't even heard
21 opening statements. So we have not opened the door on
22 anything. And we reject in every possible way that this
23 settlement, which was filed two days even after the
24 close of discovery, can have any bearing in this case.

25 And I apologize, I will keep my mouth shut,

1 but they have reopened this can of worms, and they are
2 illustrating for you how intertwined this filing is that
3 has no place in this case. And I appreciated your
4 remarks as you were explaining your order that your
5 effort was going to be to keep the settlement out of the
6 rate case. And it is no -- there is not one shred of
7 testimony offered by any of the witnesses, the 36 that
8 you have noted, that addresses a settlement offer that
9 was filed after they filed their testimony.

10 So we strongly support their motion in limine,
11 and we believe Mr. Kiser had it right that that is at
12 least a good start to curing what ails this hearing.

13 Thank you.

14 **CHAIRMAN BRISÉ:** Thank you.

15 Mr. Wiseman.

16 **MR. WISEMAN:** Thank you, Mr. Chair.

17 I just want to add to the comments that were
18 made by FPL and FIPUG. The subject matter of the
19 proposed settlement obviously is the subject matter of
20 this litigated proceeding. And as a result, many of the
21 issues that are in the settlement proposal obviously are
22 issues that are in the litigated proceeding, as well.

23 Purely as a matter of administrative
24 efficiency, there is going to be evidence taken on those
25 issues in the litigated proceeding. And so to the

1 extent that you were to grant the motion for limine and
2 simply cut off additional questions concerning those
3 same issues because they arguably are relevant to the
4 settlement proposal, as well, I think it's going to end
5 up in a nightmare, where what you are going to end up
6 with is one record here and then you are going to have
7 to in major part duplicate that record in a subsequent
8 proceeding on the settlement proposal.

9 I think from the perspective of administrative
10 efficiency, the much more logical way to go is to have
11 the technical hearing, take the evidence, whether it is
12 about the litigated proceeding or about the settlement
13 proposal, then subsequently give the parties their due
14 process rights to bring in any -- in a subsequent
15 procedure, however you decide to establish that, and
16 allow the parties opposing the settlement their
17 opportunity in that subsequent proceeding to develop
18 additional evidence as they wish concerning the
19 reasonableness of the settlement. But there is no
20 reason to make that second proceeding simply a duplicate
21 in major ways of the proceeding that is about to take
22 place.

23 Thank you.

24 **CHAIRMAN BRISÉ:** Thank you.

25 Commissioner Graham, you have a question or

1 comment.

2 **COMMISSIONER GRAHAM:** Thank you, Mr. Chair.

3 This is, once again, from my layman point of
4 view. This is to staff. Staff, to cut through all this
5 stuff that we are going through right now, is it
6 possible just to -- the original settlement agreement
7 that is put up there, is it possible to deny the
8 settlement without prejudice, or maybe even give Florida
9 Power and Light to withdraw it, so then all this stuff
10 goes away?

11 **MR. KISER:** Let me take a shot at it.

12 Certainly, Commissioner Graham, going at the last
13 comment you made, that would always be in order that if
14 one of the parties, in this case Florida Power and
15 Light, if they were to withdraw it, yes, that would end
16 it. But they haven't chosen to do so so far. I don't
17 know if a break would cause that to happen or not, but
18 that would clear the air on that.

19 And I think that some of the issues that are
20 raised, the problem is if you do the motion in limine,
21 you are going to have to stick with it. And if that
22 means that you come back in a subsequent hearing and you
23 have to go back to some of those issues because somebody
24 said I wasn't able to raise that on the first go-round,
25 yes, you will have to go back through that. It will be

1 a little bit time consuming.

2 But I think in order to try to stick with what
3 the intent of what the Commission has done so far, and
4 to try to totally separate the process on the rate
5 hearing as filed, you're going to have limit. Otherwise
6 you're going to be constantly, in my opinion, going back
7 and forth between, you know, arguments and documents and
8 witnesses trying to use the stuff that they want for the
9 settlement in this hearing.

10 And so to try to keep it separate, you're just
11 going to have to draw a line and say that is out of
12 bounds. We will come back to it later, if necessary.
13 Recognizing, yes, there may be a little bit of having to
14 go back, but, you know, this isn't the most expedited
15 process.

16 Go ahead, Mary Anne.

17 **CHAIRMAN BRISÉ:** Mary Anne.

18 **MS. HELTON:** I just conferred with Ms. Cibula
19 who, as you all know, heads up our appellate department.
20 And I asked her, well, what do you think about
21 Commissioner Graham's suggestion if you were to go ahead
22 and deny it, and she has not taken issue with that. If
23 you wanted to deny it without prejudice, then I think
24 that would help clear the air. Or Florida Power and
25 Light could help clear the air and let us get forward

1 with their case in chief and withdraw the petition. Or
2 the motion, excuse me. I didn't mean to say petition.

3 **CHAIRMAN BRISÉ:** Mr. Litchfield.

4 **MR. LITCHFIELD:** Our answer in either case
5 would be no. We stand by our petition for a base rate
6 increase filed in March. But, again, in an interest in
7 reaching a compromise with a lot of the major
8 constituents here in the State of Florida and working
9 out a deal that we believe is in the best long-term
10 interests of the State of Florida, our customers, and
11 our investors who back the infrastructural investments
12 that we make in the billions of dollars a year in this
13 state, we fully support the settlement. And, frankly,
14 for it to be denied even with prejudice -- without
15 prejudice, excuse me, at this time, we think could
16 potentially impair our due process rights.

17 We've heard a lot about the due process rights
18 of Public Counsel, and we are respectful of those, but
19 you have parties here who have worked very, very hard
20 over months. We have heard the term surprise. We have
21 heard the term bomb. We have heard the term last minute
22 from the far end of the table here several times today.
23 And I want to be clear that if there is any suggestion
24 in those assertions that folks other than Mr. Saporito,
25 for good reason, which I don't need to go into here,

1 unless you need me to, but that other folks were fully
2 invited to engage in the settlement discussions. If
3 there is any indication or suggestion by the use of
4 those terms to the contrary, that simply would not be
5 accurate.

6 So the settlement that you have before you is
7 not a last minute effort. It is the result of a -- and
8 the culmination of a lot of very lengthy and vigorous
9 and rigorous discussions among the parties that were
10 willing to meet. We think it represents very, very good
11 value for the State of Florida as a whole. And so, no,
12 we are not willing to withdraw it.

13 We do think there is a very easy path forward
14 here. This record in terms of -- just like any
15 stipulation that comes before the Commission, the record
16 of this case is going to provide the appropriate context
17 for the Commission to consider ultimately whether to
18 approve that or not.

19 If there are additional procedures or
20 additional evidence or days that the Commission thinks
21 that we should institute in order to establish and
22 provide due process for all parties, as I said before,
23 we are very willing participants in all of that, and we
24 support the concept of discovery and responding to
25 staff's requests. We just don't see a reason not to

1 proceed here this morning.

2 It's clear that Public Counsel does not like
3 the settlement. We understand that. And Retail
4 Federation has joined with them. But what is also clear
5 is not only do they oppose the settlement, they want to
6 oppose any procedural path forward that would allow us a
7 meaningful opportunity in the form of our due process
8 rights to have that settlement agreement taken up at an
9 appropriate time.

10 They have filed two responses to the initial
11 motion that we filed. They have intended that they want
12 to file yet a third, even though the seven-day waiting
13 period is not an automatic right of the parties, as Ms.
14 Helton pointed out. But they have filed two, they plan
15 to file a third.

16 This morning they asked for the Commission,
17 again, to reconsider Chairman Brisé's order. That was
18 denied, so then they promptly filed a motion to dismiss
19 the settlement agreement, largely on the basis of the
20 same arguments which the Commission properly denied.
21 Even in the body of that motion they said, and if the
22 Commission will not grant our motion to dismiss the
23 settlement agreement, we'd like you to dismiss the
24 entire base rate petition that Florida Power and Light
25 Company has filed.

1 Well, this at the end of the day is just a
2 collection or a series of efforts and tactics to prevent
3 due process from going forward. So we have heard a lot
4 about their due process. There is due process that must
5 be adhered to down here at this end of the table, as
6 well, Mr. Chairman.

7 **CHAIRMAN BRISÉ:** Commissioner Graham.

8 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

9 See, that's why I'm an engineer and Mr.
10 Litchfield is an attorney. I just throw that out there
11 for conversation. Thanks.

12 **MR. MOYLE:** Mr. Chairman, if I could just be
13 heard briefly, because we all are, you know, joint
14 movements on that. And I really think given your
15 previous ruling that is postured to move forward with
16 taking evidence shortly.

17 And, you know, this isn't completely new
18 ground that's being tread upon in that you may recall in
19 the Gulf case there was a settlement that sort of
20 traveled along with the hearing, and you all had
21 separate proceedings to take that up and consider that.
22 And so to the extent that that is the desire to have
23 evidence, I heard Public Counsel say -- initially in
24 their argument they said, well, you know, our due
25 process is violated because we can't, you know, take

1 evidence. But then they filed a motion to say, well,
2 rule.

3 I mean, I don't think you can have it both
4 ways. And I think the better course is to take the
5 evidence, listen to it, make a fair judgment about the
6 settlement, and whether you say nothing about the
7 settlement comes in, we can deal with that as long as we
8 have a separate opportunity to present evidence about
9 why we think the settlement is fair.

10 But I just don't want someone who's not
11 supportive of the settlement to say, well, because you
12 didn't allow me to cross-examine a witness who may not
13 come in later, I don't want that to be the basis for any
14 kind of appellate thing. And, I don't know that we have
15 that, because I think both Retail and OPC have said they
16 are filing, you know, to support the motion in limine.

17 But, you know, I think from our perspective,
18 you know, denial should not be pursued. But, you know,
19 you haven't seen the arguments in opposition, which I
20 think are coming Wednesday. We wouldn't be opposed to
21 pushing that off, if they need more time to do that. We
22 are in a middle of a trial, you know, and then have a
23 separate procedure for the consideration of the
24 settlement where if we have to we can just basically
25 adopt the record here and try to put that in.

1 So, you know, I think, I guess, in sum, that
2 the motion to, you know, deny we would not support. And
3 we think, as Mr. Litchfield said, we've put a lot of
4 time into it. We think it's a fair settlement, and at
5 some point want to talk about it. And today may not be
6 the day, but we think, as was done in the Gulf case,
7 keeping it out there makes sense and would encourage you
8 to keep it out there.

9 **CHAIRMAN BRISÉ:** Thank you.

10 Commissioner Balbis.

11 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

12 And I just want to follow up on Commissioner
13 Graham's comments because, apparently, I mean, OPC keeps
14 talking about what I would consider this cloud of the
15 settlement agreement that may taint the record. So I
16 want to talk about that, but first I want to ask Mr.
17 Litchfield, how would your due process rights be
18 violated if the Commission voted on the motion that FPL
19 filed last week?

20 **MR. LITCHFIELD:** I'm sorry, I was just handed
21 a note when you asked your question. I apologize.
22 Would you repeat that?

23 **COMMISSIONER BALBIS:** How would your due
24 process rights be violated if we voted on the motion
25 that FPL filed last week today?

1 **MR. LITCHFIELD:** On the motion to approve the
2 settlement agreement?

3 **COMMISSIONER BALBIS:** Yes.

4 **MR. LITCHFIELD:** Our due process rights would
5 be violated if you voted on the motion to -- if you
6 voted to deny the settlement agreement and simply held
7 it out for later -- for us to refile, because the clock
8 is ticking, Mr. Commissioner.

9 We have an eight-month statutory clock, and
10 what we have asked is that this settlement agreement be
11 taken up at the end of the evidentiary record. We're
12 not interested in creating any procedural infirmity
13 here, either. We'd like the record evidence to come
14 through, and then we would like the Commission to give
15 reasoned consideration to the settlement that we have
16 worked out.

17 **COMMISSIONER BALBIS:** I just want to follow up
18 on something you just said. Correct me if I'm wrong.
19 So you're saying that if this Commission denies the
20 motion to approve the settlement, that will be a
21 violation of your due process rights.

22 **MR. LITCHFIELD:** If you vote today to deny it?

23 **COMMISSIONER BALBIS:** Yes.

24 **MR. LITCHFIELD:** We would not have had a
25 chance to be heard on it, yes.

1 **COMMISSIONER BALBIS:** Okay. And if staff
2 could respond to that. (Pause.) Because it contradicts
3 what staff has just said, Commissioner Graham.

4 **MS. HELTON:** No, I'm trying to formulate an
5 answer for you, Commissioner. Oral argument is not a
6 right. They have filed a motion to approve the
7 settlement. If you, for whatever reason you decide, do
8 not think that that settlement is appropriate, I don't
9 know that you have to hear testimony, you do not have to
10 hear evidence, or you do not have to hear oral argument.
11 I don't know that that is a right provided in Chapter
12 120, or in our procedural rules, or in Chapter 366 that
13 you must hear that.

14 If you decide as a matter of efficiency that
15 we have already spent this morning talking about the
16 settlement, or the proposed settlement, and you decide
17 that you do not need to hear anymore argument about it
18 and you are ready to deny it either with or without
19 prejudice, I think that -- I don't see -- I cannot
20 conceptually understand how Florida Power and Light's
21 due process rights have been hurt in any way.

22 **COMMISSIONER BALBIS:** Okay.

23 **MR. MOYLE:** Could I be heard on that?

24 **COMMISSIONER BALBIS:** No. Hold on one second.
25 Well, yes, because I was going to change gears, so it

1 probably is the appropriate time.

2 **MR. MOYLE:** We take a slightly different view.
3 And I think that in the settlement the question is is it
4 fair. And some parties are saying, yes, it is fair and
5 other parties are saying no, it's not fair. So that
6 presents, in effect, an issue for which it's probably
7 appropriate to take some evidence. So to the extent
8 that it was summarily, you know, denied without the
9 opportunity to present some evidence, then maybe to the
10 point about due process you may have an issue.

11 **MR. SAPORITO:** Commissioner Balbis, may I be
12 heard on that?

13 **COMMISSIONER BALBIS:** Yes, sure.

14 **MR. SAPORITO:** First of all, I want to talk
15 very quickly about FPL's contention that their due
16 process rights have been harmed in any way in this issue
17 related to this proposed settlement agreement are
18 specious at best.

19 They lost and waived all their due process
20 rights with respect to this proposed settlement when
21 they intentionally, as they just admitted on the record
22 a while ago, omitted me from any of these discussions.
23 For whatever reason they did that, they waived their due
24 process rights in this matter. So they have no due
25 process rights. The only thing they did here is put

1 this Commission between a rock and a hard place.

2 And I respect Commissioner Brown's legal
3 opinion and her position in not wanting to make an up or
4 down decision today, but the only way that can happen is
5 if this Commission does one of two things, it either
6 grants the opportunity for someone to file a motion in
7 limine and this Commission holds them to the letter of
8 that motion, or as you have suggested, Commissioner, you
9 do an up or down vote and deny this petition or deny
10 their proposed settlement with prejudice. And that way
11 it can be readressed later as the Chairman has
12 previously spoken.

13 Thank you.

14 **CHAIRMAN BRISÉ:** Commissioner Balbis, go
15 ahead.

16 **COMMISSIONER BALBIS:** Yes. And I just wanted
17 to really discuss the issues before us now and whether
18 or not that procedure should be followed or not. And
19 one thing that I don't want to have happen is go through
20 this hearing and have questions not asked by parties or
21 by ourselves that that may be an important question.
22 Especially if we are going to be considering the
23 settlement, or if we proceed down that line, consider
24 the settlement, deny the settlement, and we can't now go
25 back.

1 So I want to make sure that all the
2 information is entered into the record. But I'm kind of
3 concerned with something that Mr. Moyle said on a line
4 of questioning that he is going to be asking. And it
5 would be, well, are you aware that in the settlement you
6 agreed to X, Y, and Z? And I'm not sure how appropriate
7 that is, and I do have some concern about that. But I
8 just wanted to put out there that the last thing I want
9 to do is have parties not ask questions because we have
10 limited their ability to do so.

11 And back to the previous discussion, I agree
12 with staff in that if this Commission would like to,
13 that can move -- we can rule on a motion that was filed
14 by FPL without having due process rights violated.

15 **CHAIRMAN BRISÉ:** All right. Any further
16 comments?

17 **MR. WRIGHT:** Mr. Chairman.

18 **CHAIRMAN BRISÉ:** Mr. Wright.

19 **MR. WRIGHT:** Thank you, sir. I appreciate the
20 opportunity. I'll be brief. I just want to say
21 basically two things. First, I cannot for the life of
22 me see how a denial of a motion without prejudice can
23 possibly abridge due process rights. That's what
24 without prejudice means, you have the opportunity to
25 refile.

1 In this context, you know, I have articulated
2 the view that what FPL has filed is a complete new set
3 of tariffs. I think those tariffs as proposed are
4 subject to the requirements of Chapter 366, the
5 Commission's rules, Chapter 120, and the Florida Rules
6 of Administrative Procedure.

7 I think we're entitled, as you suggested, I
8 believe, to conduct full discovery on them and to have a
9 hearing with notice, and so on. And that is really the
10 gist of my motion in limine, as the Retail Federation's
11 motion in limine, and that is don't take evidence now
12 because we haven't had notice. We haven't had any of
13 the requirements of our due process rights to hearing.

14 And that leads to my second point. I am
15 sorry, but my friend, Mr. Litchfield, simply misstated
16 our position. We are not in any way attempting to deny
17 or deprive FPL or the signatories to the settlement,
18 even though we disagree with it, of their due process
19 rights. It's a new filing. I believe it's functionally
20 the equivalent of a petition. It's asking you, the
21 Commission, to approve a new set of tariffs.

22 Their due process rights are fully satisfied
23 by the Commission having a hearing on that proposal,
24 that set of proposed tariffs at an appropriate time
25 after all parties have had the opportunity to conduct

1 discovery, present evidence, present testimony, conduct
2 cross-examination, and all the other things that we are
3 expressly authorized to do pursuant to the
4 Administrative Rules and the Administrative Procedure
5 Act.

6 They have full rights to pursue this. You
7 know, we could conclude this case, and they could file a
8 new petition. For example, we could have a hearing on
9 this case, having hopefully granted our motion in limine
10 to preclude evidence being taken on the settlement
11 agreement, per se, at this point. We could go through
12 this hearing, and then you could continue the record of
13 this hearing to some future date after we have had the
14 opportunity to conduct discovery, after we have all had
15 the opportunity to present evidence and testimony with
16 respect to settlement in some future hearing.

17 You have continued the record before. You
18 continued the record in the St. Lucie 2 case thirty
19 years ago.

20 Thank you.

21 **CHAIRMAN BRISÉ:** Thank you very much.

22 Commissioner Brown.

23 **COMMISSIONER BROWN:** Thank you. And I like
24 what Mr. Wright is suggesting.

25 Staff, after hearing all of the different

1 arguments by the parties here, can you give us your best
2 recommendation?

3 (Laughter.)

4 **MS. HELTON:** I like my job. I'm not sure if I
5 want to give you my best.

6 **CHAIRMAN BRISÉ:** I like that.

7 **MS. HELTON:** I have not heard anything this
8 morning, nor have I read anything in the filings that
9 have been made by the parties to date that makes me
10 think that we need to suspend this hearing, that makes
11 me think that you cannot start this hearing, you cannot
12 hear opening statements, and you cannot take evidence
13 from the parties.

14 I think that whether you have a motion in
15 limine granted or whether the presiding officer as he is
16 sitting as the presiding officer decides to keep the
17 scope of the hearing narrow and tailored to the prefilled
18 testimony that is filed and tailored to the petition
19 that was filed back in March. I think that you can keep
20 the hearing on track, and we can build a record for you
21 to make a decision on the petition. And I think that
22 you can take up the settlement motion at a later date
23 after we have had a chance to hear from all of the
24 parties, after we have had a chance in particular to
25 hear from OPC and FRF, who are not signatories, about

1 how they would like to proceed with the process.

2 I haven't heard the Chairman or any of you say
3 how you think that should go, and I don't think any
4 decision has been made on that because we do not know
5 yet all of the arguments that are going to be raised
6 with that respect. But having not heard that I do not
7 believe creates a situation where you can't go forward
8 today and do your job.

9 **MR. KISER:** I agree.

10 **CHAIRMAN BRISÉ:** Thank you.

11 Just my thoughts on this. I understand the
12 idea of sort of limiting the questions and so forth, but
13 I think we have the discretion -- particularly, I have
14 the discretion to pull back on questions which I think
15 are beyond the scope of the prefiled testimony, and I
16 think we are going to manage it accordingly,
17 understanding everything that is working here together.

18 So we dealt with the motion, the original
19 motion. There was a comment, and I don't know if that
20 was a sort of formal motion by Mr. Wright, and so that
21 is where we are procedurally. In essence, are we going
22 to move forward with the motion in limine, in essence.

23 I will tell you candidly that I think that the
24 Chair is quite capable of limiting the questions, if
25 they go out of the scope that we are seeking. But that

1 is a decision that the board has to make. So, you know,
2 I'm ready to entertain a motion at this point -- or
3 further comment, I mean.

4 Commissioner Balbis.

5 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

6 And I'm not sure it requires a motion or not,
7 but I will be more than happy to do so. And I move we
8 proceed with the hearing as scheduled and have the
9 Chairman retain all the authority in dealing with
10 questions asked during the hearing.

11 **CHAIRMAN BRISÉ:** Commissioner Edgar.

12 **COMMISSIONER EDGAR:** Mr. Chairman, I concur,
13 and I do believe that that is the most appropriate way
14 to move forward, and that the discretion as to any
15 individual objections or questions should remain with
16 the Chair.

17 **CHAIRMAN BRISÉ:** Thank you.

18 Commissioner Graham.

19 **COMMISSIONER GRAHAM:** I just want to make sure
20 that Commissioner Balbis' motion is speaking to
21 Commissioner Wright (sic). Do we have to deny his
22 motion? I don't know if it just goes away, or is it all
23 one motion.

24 **CHAIRMAN BRISÉ:** Yes, there was a motion
25 dealing with limine, and that is all this motion is

1 dealing with.

2 **COMMISSIONER BALBIS:** So to be clear, the
3 motion denies Mr. Wright's motion.

4 **CHAIRMAN BRISÉ:** Right. It has been moved and
5 seconded. All right.

6 Mr. Counsel.

7 **MR. KISER:** Thank you, Mr. Chairman.

8 I just wanted to say that however the vote
9 goes, at any time if at the development of the hearing
10 it looks like you need a little more control, you can --
11 he can, or any parties or a Commissioner can make
12 another motion for it at that point, if it looks like
13 you need to go that route. But at this point it sounds
14 like you are going to with the Chair's discretion and
15 that will certainly work.

16 **CHAIRMAN BRISÉ:** Thank you.

17 Okay. It has been moved and seconded. All in
18 favor say aye.

19 (Vote taken.)

20 **CHAIRMAN BRISÉ:** All right. Thank you very
21 much.

22 It is 12:10. So we have spent all this time
23 getting to where we need to be in terms of being in a
24 position to move forward. We are going to take our
25 lunch break at this time. We look to come back at 1:00

1 o'clock. You can expect that we are going to run until
2 6:00 p.m. this afternoon. Tomorrow we are going to
3 begin at the same time, 9:30, and we expect to run until
4 6:00 p.m. tomorrow evening.

5 Wednesday we may begin start -- we may begin
6 having different ending times, but we will let you know
7 on Wednesday as to how that will proceed. But for today
8 and tomorrow it's 6:00 p.m.

9 **MR. SAPORITO:** Mr. Chairman.

10 **CHAIRMAN BRISÉ:** Mr. Saporito.

11 **MR. SAPORITO:** Yes. I would just like to have
12 an opportunity before we start the proceedings in this
13 case to address the full panel on Issue 188, which the
14 presiding officer dropped, and I made an oral motion to
15 do that.

16 **MR. YOUNG:** That's the next item.

17 **CHAIRMAN BRISÉ:** That's the next preliminary
18 matters item.

19 Okay. Thank you very much. At this time we
20 stand in recess.

21 (Lunch recess.)

22 **CHAIRMAN BRISÉ:** Good afternoon. We are going
23 to reconvene at this time. I think we are going through
24 some of the issues. I think we are now on -- per my
25 script, we are on D. So if you would move forward at

1 this time, Mr. Young.

2 **MR. YOUNG:** All right. Mr. Saporito made an
3 ore tenus motion for reconsideration at the prehearing
4 of the prehearing officer's ruling at the prehearing
5 conference striking the inclusion of Issue 188 into this
6 proceeding.

7 The proposed Issue 188 states that, "Is FPL's
8 investment in energy conservation, advertisement,
9 consumer energy efficient appliances, and consumer
10 electric generating system prudent, appropriate, and are
11 reasonable?" I stated 188 was proposed by Mr. Saporito
12 and objected to by Florida Power and Light. The
13 Prehearing Officer struck the issue.

14 As stated earlier today, the standard for
15 review on a motion for reconsideration is whether the
16 motion identifies a point -- the motion identifies a
17 point of fact or law which was overlooked or which the
18 Commission -- in this case, the prehearing officer
19 failed to consider when rendering its decision.

20 Staff believes that Mr. Saporito has failed to
21 meet his burden, and his ore tenus motion for
22 reconsideration of the Prehearing Officer's ruling
23 should be denied. As stated during the prehearing
24 conference, staff believes that issue -- Mr. Saporito's
25 Issue 188 is subsumed in Issue 94.

1 **CHAIRMAN BRISÉ:** Okay. Thank you very much.

2 Mr. Saporito, you requested to be heard on
3 this issue, so we're going to go ahead and grant that
4 request.

5 **MR. SAPORITO:** Thank you, Mr. Chairman.

6 Issue 188 states whether FPL's investment in
7 energy conservation, advertisement, consumer energy
8 efficient appliances, and consumer electric generating
9 system is prudent, appropriate, and/or reasonable. At
10 the August 14th, 2012, prehearing, the presiding officer
11 dropped this issue from this docket following objections
12 raised by FPL and on the basis of ill-conceived opinions
13 proffered by Staff in support of FPL's allegations.

14 Notably, staff and FPL improperly and
15 incorrectly interpreted Issue 188 to the disadvantage of
16 me by alleging that Issue 188 somehow relates to FPL's
17 demand-side management programs. FPL stated that we
18 object to Issue 188. It really goes to a point that was
19 made at the very outset of this prehearing conference
20 that this docket isn't about demand-side management
21 programs and sort of the appropriate goals -- plans for
22 achieving the goals, et cetera. We just don't think
23 this issue is appropriate to the base rate proceeding,
24 ID at Page 98 of the transcript.

25 Staff stated that we agree, and also as

1 pointed out that the prehearing officer has already made
2 a ruling that issues dealing with conservation and goals
3 in terms of questioning the plans are not appropriate
4 for this docket, ID at Page 1000 (sic) of the
5 transcript.

6 The argument to be made here is that Chapter
7 366.06, rates, procedure for fixing and changing,
8 provides in relevant part that in fixing fair, just, and
9 reasonable rates for each consumer class, the Commission
10 shall, to the extent practical, consider the cost of
11 providing service to the class as well as the rate
12 history, value of service, and experience of the public
13 utility, the consumption and load characteristics of the
14 various classes of customers, and public acceptance of
15 the rate structures consistent with Chapter 366.06.

16 The presiding officer, over my objection,
17 allowed Intervenor Algenol to maintain Issue 62 in this
18 docket. Issue 62 states, "Has FPL maximized the sources
19 of net jurisdictional revenue that are projected to be
20 reasonably available and technically viable for the 2013
21 test year? If not, what action, if any, should the
22 Commission take in setting FPL's rates in this case?"

23 And then in parentheses, "(for purposes of
24 this issue, 'net jurisdictional revenue,' may include
25 net revenue related to the supply of CO₂ captured from

1 an FPL facility.)" Here the Commission found that Issue
2 62 was relevant in this docket despite the fact that the
3 record is devoid of any evidence that FPL has net
4 jurisdictional revenue even remotely related to the
5 supply of CO₂ captured at any FPL facility.

6 The Commission's ruling on Issue 62 was
7 reiterated here not to challenge the Commission's ruling
8 on Issue 62, but rather to show the relevance of Issue
9 62 in comparison to Issue 188, and that Issue 188 is
10 just as relevant in this docket on the very basis that
11 the Commission allowed Issue 62 in this docket.

12 Notably on July 2nd, 2012, Algenol Biofuels,
13 Inc. filed direct testimony of R. Paul Woods, the CEO of
14 the company. Mr. Woods testified in relevant part as
15 follows:

16 "Question: What is the purpose of your
17 testimony in this proceeding?

18 "Answer: My testimony is to expand upon the
19 facts and questions raised by Algenol's petition to
20 intervene. The harm that an increase will do to
21 Algenol's current and future business, as well as
22 providing a revenue generating alternative to a rate
23 increase that Algenol can provide to FPL." At the ID at
24 Page 3 of the prehearing statement.

25 With respect to Issue 188, the heart of the

1 issue goes to whether FPL maximizes the sources of net
2 jurisdictional revenue that are projected to be
3 reasonably available and technically viable for the 2013
4 test year in connection with investment in revenue
5 generation through consumer electric generating systems,
6 consumer energy efficient appliances, et cetera.

7 Notably, when consumers install electric
8 generating systems, such as PV solar systems, wind
9 generators in connection with energy efficiency
10 appliances, such as hot water systems, surplus electric
11 power is put back into FPL's electric grid through
12 Florida's net metering law. Although FPL credits the
13 consumer provider for the electric power returned to
14 FPL's grid, FPL then resells that very same electric
15 power back to other consumers but at a much higher
16 monetary rate, and thereby generates revenue which FPL
17 would otherwise not have received.

18 Notably, these additional revenue streams
19 benefit consumers first by allowing FPL to maintain
20 lower electric rates; second, by negating FPL's need to
21 build more and more power plants; and, third, by
22 negating FPL's need for additional infrastructure
23 through a rate request and ROE adjustment.

24 Unlike Algenol's proposed theoretical and
25 unproven utilization of CO₂ capturing devices for use by

1 FPL described in Issue 62 for the purposes of revenue
2 generation, Issue 188 deals with proven technology which
3 is already installed at consumer locations and connected
4 to FPL's grid. Therefore, Issue 188 is extremely
5 relevant to this docket consistent with the Commission's
6 rationale relied upon in deciding to allow Issue 162
7 (sic) in this docket.

8 To the extent that Issue 188 is just as
9 relevant in this docket, if not more relevant than Issue
10 62, where both issues are related to FPL's net
11 jurisdictional revenue streams available and technically
12 viable for the 2013 test year, this Commission should
13 allow Issue 188 in this docket as a matter of law.

14 In the alternative, I respectfully request
15 that the question of relevance and whether to allow
16 Issue 188 in this docket be certified on the record to
17 preserve my appeal rights and my due process rights in
18 this matter accordingly. Thank you.

19 **CHAIRMAN BRISÉ:** Thank you, Mr. Saporito.

20 On the issue of Issue 188 being subsumed in
21 194 -- I mean, 94, I think we are ready for a discussion
22 here at the Commission level. I don't know if staff
23 wanted to add anything at this point before we entertain
24 that.

25 FPL.

1 **MR. BUTLER:** Just very briefly. I think that
2 Commissioner Graham properly rules on Page 205 of the
3 Prehearing Order that what Mr. Saporito is talking about
4 is really a subject that is covered by the goals-setting
5 process, the process of developing DSM plans with
6 respect to the goals, and in the annual energy
7 conservation cost-recovery proceeding. It's not so much
8 a matter of relevance as it is just that you have other
9 proceedings where those subjects are properly and fully
10 addressed, and it just doesn't need to be addressed here
11 in this rate case docket.

12 **CHAIRMAN BRISÉ:** All right. Thank you.

13 Commissioners? Commissioner Graham.

14 **COMMISSIONER GRAHAM:** I move we deny the
15 request.

16 **COMMISSIONER EDGAR:** Second.

17 **CHAIRMAN BRISÉ:** Okay. It has been moved and
18 seconded. All in favor say aye.

19 (Vote taken.)

20 **CHAIRMAN BRISÉ:** All right. The request is
21 denied. So the issues are subsumed in 94.

22 **MR. YOUNG:** Staff will also note that there
23 are some outstanding motions regarding confidentiality
24 that will be addressed by separate order.

25 **CHAIRMAN BRISÉ:** Okay. Are there any

1 witnesses that have been excused from the hearing?

2 **MR. YOUNG:** Yes, sir. But before we go to the
3 witnesses, staff would recommend that the presiding
4 officer make some notes about -- comments about
5 confidentiality.

6 **CHAIRMAN BRISÉ:** Okay. Staff has already
7 addressed the issue that we will address some of those
8 confidentiality issues by separate order. I will also
9 take this opportunity to remind everyone that the record
10 does include confidential information. When discussing
11 issues that are supported by evidence that is
12 confidential, all must take every precaution to avoid
13 stating the confidential information out loud. I think
14 that that is standard procedure here, and we trust that
15 everyone will respect that process.

16 Okay. Witnesses that have been excused from
17 the hearing. The parties have indicated that they have
18 no objection to the excusal of a few people, so at this
19 time if we can have Mr. Young go through that with us.

20 **MR. YOUNG:** Not a problem. As you stated, Mr.
21 Chairman, the parties have indicated that they have no
22 objection to excusal of Staff's Witnesses, Rhonda Hicks
23 and Kathy Welch, provided that Kathy Welch's deposition
24 is entered into the record.

25 The Commissioners have also indicated that

1 they do not have any questions for staff witnesses.
2 Staff requests that Rhonda Hicks and Kathy Welch be
3 excused from the proceeding and at the appropriate time
4 their testimony and exhibits be entered into the record
5 as though read. Staff further requests that the
6 deposition transcript of Kathy Welch be marked and
7 entered into the record at the appropriate time.

8 **CHAIRMAN BRISÉ:** Okay. Thank you very much.

9 **MR. YOUNG:** Staff notes that there are no
10 other stipulated witnesses at this time.

11 **CHAIRMAN BRISÉ:** Okay.

12 **MR. YOUNG:** Dealing with the Comprehensive
13 Exhibit List. The Comprehensive Exhibit List, prefilled
14 testimony and exhibits, and the composite exhibits to
15 staff and the parties, staff notes that the
16 Comprehensive Exhibit List was distributed to the
17 parties and marked as Exhibit Number 1. Staff further
18 notes that the service hearing exhibits are marked on
19 the Comprehensive Exhibit List as Exhibit Numbers 2
20 through 37.

21 At this time, staff requests that the
22 Comprehensive Exhibit Number 1 and the Service Hearing
23 Exhibits marked as Exhibits 2 through 37 be moved into
24 the record.

25 **CHAIRMAN BRISÉ:** Okay. Do I have --

1 **MR. BUTLER:** Mr. Chairman.

2 **CHAIRMAN BRISÉ:** Yes.

3 **MR. BUTLER:** We have a minor correction to
4 make on the Comprehensive Exhibit List that we would
5 like to make before it is moved into the record.

6 **CHAIRMAN BRISÉ:** Sure. If you can do that at
7 this time.

8 **MR. BUTLER:** Okay. It's on Page 16 of the
9 Comprehensive Exhibit List, Exhibit Number 125. It is
10 Mr. Reed's Exhibit JJR-3, and there was a problem on the
11 header of the exhibit, but the proper title for this
12 exhibit is Situational Assessment Rankings, not
13 Productive Efficiency Rankings. As you can see, the
14 Productive Efficiency Rankings is actually JJR-4, the
15 next one down.

16 **CHAIRMAN BRISÉ:** Okay.

17 **MR. BUTLER:** I would just note for the record,
18 Mr. Chairman, that that same error occurred in the
19 prehearing order on Page 182. The same thing,
20 Situational Assessment Rankings instead of Productive
21 Efficiency Rankings.

22 Thank you.

23 **CHAIRMAN BRISÉ:** Thank you very much.

24 Are there any other corrections that need to
25 be made with respect to these exhibits? Okay. Seeing

1 none, we seek to move these exhibits into the record at
2 this time. Okay. Does that require a vote? Okay. So
3 those records will be moved into the record at this
4 time.

5 **MR. MOYLE:** Just so I'm clear, are all -- are
6 we moving all those exhibits in? Because I was thinking
7 that we were moving the exhibit list in and not all the
8 exhibits. That we would do that with individual
9 witnesses.

10 **MR. YOUNG:** You're moving Exhibit Number 1 and
11 2 through 37, which are the service hearing exhibits.

12 **MR. MOYLE:** Okay. No objection.

13 **CHAIRMAN BRISÉ:** All right. Thank you. So
14 those exhibits will be moved into the record.

15 **MR. YOUNG:** Yes.

16 (Exhibit Number 1 through 37 marked for
17 identification and moved into the record.)

18 **CHAIRMAN BRISÉ:** Okay. Staff.

19 **MR. YOUNG:** Staff notes that the parties in
20 this proceeding have agreed to stipulate the
21 introduction of the following exhibits into the record,
22 and they are Exhibit Numbers -- and I'll go slow -- 38
23 through 52, 56, 61, with the exception of response
24 Numbers 58 through 60; 62, 66, 67, 70 through 73.

25 **CHAIRMAN BRISÉ:** Okay.

1 **MR. YOUNG:** That's it for the exceptions. And
2 also staff would move 62 through 85, 87 through 90, 92
3 through 95, 97, 100, 101, and 103 through 105. Staff
4 would request that these exhibits be moved into the
5 record at this time.

6 **CHAIRMAN BRISÉ:** Okay. Are there any
7 objections?

8 **MR. WRIGHT:** Mr. Chairman, I have no
9 objection, but as slow as Mr. Young was going --

10 **CHAIRMAN BRISÉ:** Sure. Go ahead and go over
11 it again.

12 **MR. WRIGHT:** -- it's too fast for this lawyer.
13 Thank you.

14 **MR. REHWINKEL:** Could he do both sets of
15 numbers that he went through? I'm trying to catch up,
16 too.

17 **CHAIRMAN BRISÉ:** Sure. We will ask Mr. Young
18 to go over the staff exhibit numbers again.

19 **MR. YOUNG:** All right. So at this time the
20 staff would move the agreed-to stipulation of the
21 introduction of the following exhibits into the record:
22 Exhibit Numbers 38 through 52, 56, 61, with the
23 exception of Response Numbers 58 through 60; 62, 66, 67,
24 and 70 through 73.

25 Staff now would move also into the record -- I

1 think Mr. Wright has a question.

2 **CHAIRMAN BRISÉ:** Mr. Wright.

3 **MR. WRIGHT:** I apologize, but because of the
4 close proximity of the numbering of the exhibit numbers
5 and the interrogatory numbers within Exhibit 61, I
6 frankly just wasn't sure whether they are moving 61 with
7 the exception of 58 through 60, 62, 71, and all those as
8 part of 61, or whether Mr. Young had moved on to the
9 rest of the exhibit numbers. I apologize. I'm trying.

10 **CHAIRMAN BRISÉ:** Okay. Let's see if we can
11 separate those two and go that route.

12 **MR. YOUNG:** So if you look at Page 8 on the
13 Comprehensive Exhibit List, Exhibit Number 61, staff
14 will move that -- staff requests that it be moved into
15 the record and there are some exceptions within Exhibit
16 Number 61. And those exceptions that we have -- that
17 everyone has not agreed upon informally was numbers --
18 in 61, Numbers 58 through 60, 62, 66, 67, and 70 through
19 73. That's within 61, okay? All right.

20 Staff moves Numbers 62 through 85.

21 **CHAIRMAN BRISÉ:** Okay.

22 **MR. MOYLE:** 62 to 85 of the other exhibits,
23 right?

24 **CHAIRMAN BRISÉ:** Yes.

25 **MR. YOUNG:** Was identified Exhibit Numbers --

1 Hearing Identification Numbers 62 through 85.

2 All right. Also, staff moves 87 through 90.

3 **CHAIRMAN BRISÉ:** You may proceed.

4 **MR. YOUNG:** 92 through 95, 97, 100, 101, 103
5 through 105.

6 **CHAIRMAN BRISÉ:** Okay. Everyone got that?

7 Okay.

8 Are there any objections?

9 Okay. Seeing no objections, we will move
10 those exhibits into the record.

11 (Exhibit Numbers 38 through 52; 56; 61, with
12 the exception of Response Numbers 58 through 60, 62, 66,
13 67, 70 through 73; 62 through 85; 87 through 90; 92
14 through 95; 97; 100; 101; and 103 through 105.)

15 **MR. BUTLER:** Mr. Chairman, may I inquire with
16 staff as to what their plans are for the ones that
17 weren't on the list just read, the sort of ones in
18 between?

19 **MR. YOUNG:** We're about to get to that. Just
20 one second.

21 **CHAIRMAN BRISÉ:** All right.

22 **MR. YOUNG:** In addition, Mr. Chairman, staff
23 has circulated hearing exhibits which contain documents
24 produced by Florida Power and Light in Response to
25 Staff's 12th Request for Production of Documents Numbers

1 86, 87, and 88. These pages were inadvertently omitted
2 from the Hearing Exhibit Number 64. Okay.

3 **CHAIRMAN BRISÉ:** Okay.

4 **MR. YOUNG:** And you should have this right
5 now -- you should have this up in front of you for your
6 disposal.

7 As stated, these pages were inadvertently
8 omitted from Hearing Exhibit 64, which we just moved
9 into the record. No parties objected to the
10 introduction of this exhibit. As such, I would ask that
11 this item be marked with a hearing exhibit number and
12 moved into the record, and that will be Hearing Exhibit
13 Number 741. I mean, 471.

14 **CHAIRMAN BRISÉ:** 471. All right. Let's move
15 that into the record at this time. Are there any
16 objections? Okay. Seeing none --

17 **MR. SAPORITO:** Mr. Chairman, why can't we just
18 put those -- include those pages in Exhibit 64 if that
19 is where they belong?

20 **CHAIRMAN BRISÉ:** No, I think the process
21 requires that we set a separate exhibit number to them.

22 **MR. WRIGHT:** And, Mr. Chairman, just so I'm
23 clear, this is the files regarding Production Responses
24 84, 86, and 87 that is now coming in as 471?

25 **CHAIRMAN BRISÉ:** Right. That is correct.

1 **MR. WRIGHT:** Thank you, sir.

2 **CHAIRMAN BRISÉ:** Okay. All right. So we will
3 move Exhibit Number 471 into the record at this time.

4 (Exhibit Number 471 moved into the record.)

5 **MR. YOUNG:** Staff would note for the clarity
6 of the record that Exhibit Numbers 86 and 91 have been
7 withdrawn.

8 (Exhibit Number 86 and 91 withdrawn.)

9 **CHAIRMAN BRISÉ:** Okay.

10 **MR. YOUNG:** Now, with regard to the remaining
11 of staff's exhibits, the following exhibits have not
12 been stipulated to, and those are Exhibit Numbers 53
13 through 55, 57, the remaining portion of Exhibit Number
14 61, 96, 98, and 99.

15 All of these exhibits consist of documents
16 produced by Florida Power and Light in response to
17 interrogatories and requests for production of
18 documents. Florida Power and Light has stipulated that
19 the documents and responses that it has produced are
20 authentic and are either documents maintained by the
21 company in the ordinary course of business or were
22 prepared under FPL's supervision or control.

23 At this time, Mr. Chairman, staff recommends
24 that these exhibits be moved into the record.

25 **CHAIRMAN BRISÉ:** Okay. Let me make sure I get

1 this right. So Exhibit Numbers 53 through 55, 57, the
2 remaining portion of 61, 96, and 99.

3 **MR. YOUNG:** 98 and 99.

4 **CHAIRMAN BRISÉ:** 98 and 99. Thank you. Are
5 there any objections? Okay. Seeing none, at this time
6 53 through 55, 57, the remainder portion of 61, 98, and
7 99 are entered into the record.

8 (Exhibit Numbers 53 through 55, 57, remainder
9 of 61, 98, and 99 admitted into the record.)

10 **MR. YOUNG:** And 96. I don't think you
11 mentioned 96.

12 **CHAIRMAN BRISÉ:** And 96.

13 (Exhibit Number 96 admitted into the record.)

14 **MR. YOUNG:** 96, 98, and 99.

15 **CHAIRMAN BRISÉ:** 96, 98, and 99.

16 **MR. YOUNG:** Thank you.

17 **CHAIRMAN BRISÉ:** Okay.

18 **MR. YOUNG:** With respect to all other
19 exhibits, staff intends to authenticate and move those
20 exhibits into the record at the appropriate time.

21 **CHAIRMAN BRISÉ:** All right. Thank you.

22 **MR. YOUNG:** Staff also recommends that the
23 parties' prefiled exhibits be marked as designated on
24 the Comprehensive Exhibit List. Moreover, Mr. Chairman,
25 staff recommends that any exhibits proffered during the

1 technical hearing that are not identified on the exhibit
2 list be numbered sequentially following those in the
3 exhibit list. And I think the next item, if an exhibit
4 is proffered, will be Number 472.

5 (Parties' Prefiled Exhibits marked as
6 designated on the Comprehensive Exhibit List.)

7 **CHAIRMAN BRISÉ:** Okay. All right.

8 **MR. YOUNG:** I think the Chairman has already
9 set a preliminary schedule that he stated before
10 breaking for lunch.

11 **CHAIRMAN BRISÉ:** Right.

12 **MR. YOUNG:** At this time, Mr. Chairman, there
13 are no stipulated issues for the Commission to consider
14 at this time.

15 **CHAIRMAN BRISÉ:** All right. We are soon going
16 to be moving into opening statements. We will begin
17 with FPL, and then we will hear from the intervenors.

18 For the purpose of the hearing, we would like
19 to -- let me rephrase that. For the purpose of the
20 hearing, we would like the intervenors to provide
21 opening statements and cross-examination in the
22 following order -- let me make sure this order is
23 correct.

24 **MR. YOUNG:** Mr. Chairman, staff recommends
25 that the intervenors provide opening statements and

1 conduct cross-examination in the following order: After
2 Florida Power and Light, FIPUG -- after Florida Power
3 and Light, the intervenors will provide opening
4 statements with OPC providing the first opening
5 statement, and then followed by FIPUG, South Florida
6 Hospitals, Federal Retail Federation, Village of
7 Pinecrest, FEA, Algenol, Mr. Saporito, Mr. Hendricks.
8 Hopefully, I did not forget anyone.

9 **CHAIRMAN BRISÉ:** Okay.

10 **MR. YOUNG:** All right. However, during
11 cross-examination staff recommends this order. That for
12 FPL witnesses, staff recommends that FIPUG, South
13 Florida Hospital, FEA, Algenol, then OPC, then Florida
14 Retail Federation, then the Village of Pinecrest, Mr.
15 Saporito, and Mr. Hendricks.

16 **CHAIRMAN BRISÉ:** Okay. So let me make sure I
17 got that right. So then we have FPL, then OPC, then
18 FIPUG, South Florida Hospital Association, Federal
19 Executive Association -- Agencies, rather, Algenol,
20 Florida Retail Federation, Village of Pinecrest, Mr.
21 Saporito, and then Mr. Hendricks.

22 **MR. YOUNG:** Yes.

23 **CHAIRMAN BRISÉ:** Okay. That is the order for
24 opening statements.

25 **MR. REHWINKEL:** Mr. Chairman.

1 **CHAIRMAN BRISÉ:** Yes, Mr. Rehwinkel.

2 **MR. REHWINKEL:** Charles Rehwinkel. Public
3 Counsel would prefer to -- we would ask that we be
4 allowed to give our opening after the signatories;
5 meaning after FIPUG, South Florida Hospital and Health
6 Care Association, and FEA. If you could -- we think
7 that would be appropriate under this posture that we
8 find ourselves in right now.

9 **CHAIRMAN BRISÉ:** Sure. I think that could be
10 granted.

11 **MR. REHWINKEL:** Thank you.

12 **MR. YOUNG:** Mr. Chairman, just to inquire, Mr.
13 Rehwinkel, so you wouldn't want Algenol to go after you?

14 **MR. REHWINKEL:** I apologize. I forgot about
15 Algenol. We would want Algenol together. I didn't know
16 whether they were -- I'm not 100 percent certain of
17 their alignment, but, yes, we would like to go after
18 Algenol. Thank you.

19 **CHAIRMAN BRISÉ:** Okay. Perfect. So then with
20 that in mind, so we will hear from FPL, then FIPUG, then
21 South Florida Hospital Association, FEA, Algenol, and
22 then OPC.

23 Okay. I want to thank our prehearing officer
24 for keeping a tight ship in terms of allotting times and
25 so forth.

1 **MR. REHWINKEL:** Mr. Chairman, one other thing.
2 If you are leaving preliminary matters, I just need to
3 make a statement before you do that. But if you are
4 still there, I will wait until you are concluded. Thank
5 you.

6 **CHAIRMAN BRISÉ:** Okay. And so we are looking
7 to limiting the amount of time for opening statements to
8 20 minutes for FPL, if I'm reading this right, ten
9 minutes for OPC, and then five minutes for all the other
10 intervenors. And there will not be any sharing of time
11 moving forward. Okay. So I think that provides a
12 guideline in terms of the amount of time that is
13 allotted to anyone.

14 A couple of comments on friendly cross. I
15 want to give every party and every witness the time they
16 need to do the job that you are here to do, but we would
17 ask for your cooperation. To that end, I would like to
18 ask the parties to make an effort to limit friendly
19 cross, as I would like the parties not to conduct
20 discovery during this proceeding as you go through the
21 process of asking questions to those who are on the
22 stand.

23 Mr. Rehwinkel.

24 **MR. REHWINKEL:** Thank you, Mr. Chairman.

25 I would need to make a statement for the

1 record. I do not intend to provide argument, but I need
2 to renew three objections for the record. The Office of
3 Public Counsel renews its objection to this proceeding
4 continuing with the August 15th settlement pending.

5 Number two, the Office of Public Counsel
6 renews its objection to the settlement agreement being
7 considered in any way in this hearing that you are about
8 to conduct.

9 And, number three, the Office of Public
10 Counsel objects to the lack of a preemptive measure such
11 as would be contained in FRF's motion in limine which
12 was denied that would prevent the settlement signatories
13 from interjecting the August 15th settlement filing into
14 the case.

15 Thank you for allowing me to make that
16 statement. And I would like to give the Commission
17 notice that based on what has happened so far in
18 preliminary matters, the Public Counsel for planning
19 purposes is considering asking that the order of
20 witnesses be modified based on alignment of party
21 interests based on the discussion earlier today. I have
22 nothing to suggest to you now, but we will endeavor to
23 provide a proposal, and we will do it off the record
24 with the other parties first.

25 Thank you.

1 **CHAIRMAN BRISÉ:** Thank you very much. And
2 duly noted.

3 **MR. WRIGHT:** Mr. Chairman.

4 **CHAIRMAN BRISÉ:** Mr. Wright.

5 **MR. WRIGHT:** Thank you, sir. Just very
6 briefly.

7 I respect your ruling on our motion in limine.
8 I wish it had been granted, it wasn't. That puts the
9 burden on us to object on a continuing basis to anything
10 that we think strays to where it shouldn't in this
11 context to anything relating to the settlement
12 agreement.

13 I would just like to state at this time that
14 we have a continuing objection to any such questions and
15 I and Mr. LaVia will do our very best to lodge a
16 specific objection every time it happens, if it happens
17 at all. Thank you, sir.

18 **CHAIRMAN BRISÉ:** Thank you very much.

19 Mr. Saporito.

20 **MR. SAPORITO:** Thank you, Mr. Chairman.

21 Yes, I would just request clarification from
22 the Chairman relevant to this issue that we have all
23 been talking about all morning, the settlement issue.

24 My concern is that the Commission made a
25 judgment today that, you know, you are well knowledgable

1 that you can reign in any improper testimony at will
2 during the proceeding, and that is all fine and good. I
3 would just -- since we are going through an order of
4 procedure on the record as a preliminary matter to take
5 in evidence in here, can you issue a directive or order
6 from the bench there that, so that the record is clear
7 that no evidence or testimony is to come into this
8 record with respect to that FPL proposed settlement.

9 **MR. LITCHFIELD:** Objection.

10 **CHAIRMAN BRISÉ:** We addressed all of that
11 earlier today, okay. Thank you.

12 **MR. MOYLE:** Mr. Chairman.

13 **CHAIRMAN BRISÉ:** Yes.

14 **MR. MOYLE:** I have a preliminary matter. We
15 brought it up with the Prehearing Officer last week
16 related to FIPUG's sole witness, Mr. Jeff Pollock. And
17 we brought it up last week. He is obligated to be in
18 another proceeding during the second week and needed to
19 work with the parties to have him go out of order as
20 compared to what is found on the list. All the parties
21 have been contacted, and I think Ms. Kaufman has worked
22 with them, and there is an agreement that Mr. Pollock
23 could go this week. And I think he is scheduled to go
24 after FPL Witness Santos.

25 So thank you to the Prehearing Officer for

1 making that accommodation, and the parties for allowing
2 us to accommodate our expert witness' schedule. Thank
3 you.

4 **CHAIRMAN BRISÉ:** Thank you very much.

5 Are there any other preliminary matters that
6 we need to address?

7 **MR. WISEMAN:** Mr. Chairman.

8 **CHAIRMAN BRISÉ:** Yes, Mr. Wiseman.

9 **MR. WISEMAN:** Sorry. I just wanted to raise a
10 preliminary issue, as well, concerning --

11 **CHAIRMAN BRISÉ:** Sure.

12 **MR. WISEMAN:** -- our witnesses' availability.
13 We have informed the other parties that two of our three
14 witnesses also have commitments before other state
15 agencies, and that they are unavailable on certain
16 dates. But we are certainly happy to work with OPC and
17 try to work out a schedule to accommodate everybody's
18 witnesses.

19 **CHAIRMAN BRISÉ:** Thank you very much. All
20 right. Are there any other preliminary matters that we
21 need to address at this time?

22 **MS. KLANCKE:** Staff is unaware of any other
23 preliminary matters at this time.

24 **CHAIRMAN BRISÉ:** All right. Thank you very
25 much. At this time we are going to move into swearing

1 in our witnesses. If you know that you are a witness,
2 if you would rise with me so I can swear you in.

3 (Witnesses sworn collectively.)

4 **CHAIRMAN BRISÉ:** Okay. We'll go into our
5 opening statements. We laid out the order and we will
6 go with FPL.

7 **MR. LITCHFIELD:** Thank you. Good afternoon,
8 Mr. Chairman and Commissioners. It's good to finally
9 begin here this afternoon. And I have asked your staff
10 to distribute to you a compilation of exhibits in this
11 docket that I will work through briefly, mind you, in
12 the course of my opening remarks.

13 We filed our petition, as you know, along with
14 supporting materials back in March of 2012, earlier this
15 year. We have had months and months of discovery. And,
16 in fact -- and I put this number out there because it is
17 pretty eye-popping -- 349,000 pages of data and
18 information have been produced and reviewed in
19 connection with this docket. This means one thing; it's
20 a complex case.

21 Any rate case is a complex proceeding. And I
22 suppose at this point, in light of Public Counsel's
23 statements on the record subsequent to the
24 pre-prehearing matters that we all participated in this
25 morning, it's appropriate for FPL, again, on the record

1 to simply state our support for a settlement that we did
2 negotiate and reach with the other parties. And I won't
3 go into any further detail in that regard, but I want to
4 note that we certainly support that settlement moving
5 forward.

6 The package that I have compiled for you here,
7 these are exhibits that appear in the docket, and we
8 have numbered the bottom center page sequentially and
9 that will be probably an easier frame of reference for
10 you as I work through the exhibits. But I want to start
11 with describing FPL's performance, because we think
12 fundamentally that that is very important for this
13 Commission to take into context as you decide the merits
14 and the issues in this case.

15 The standard for the recovery of costs in a
16 base rate proceeding is prudence and a fair rate of
17 return on the capital that's invested in fulfilling
18 FPL's statutory obligation under Section 366.03 of the
19 Florida Statutes, which is that we provide, quote,
20 reasonably sufficient, adequate, and efficient service,
21 close quote.

22 We believe that the evidence will show that
23 FPL is doing far more than meeting this baseline
24 standard, and that is, in large measure, why we are
25 proposing and requesting indeed a 25-basis point or a

1 quarter of a percent adder to the return on equity that
2 we are asking for in this case. Our bills are low, our
3 reliability is high, and our customer service is very
4 strong.

5 But beyond that, in assessing the merits of
6 our request, our budget proposals, our capital needs,
7 return on equity, or conversely whether to accept
8 positions of the intervenors to cut FPL's operating
9 budgets, to weaken its financial integrity, to cut or
10 slash its return on equity, or even to disallow portions
11 of employee compensation that we believe have produced
12 these benefits.

13 I would suggest two things in this regard as
14 we move forward in the case, Commissioners. One, what
15 we're doing at Florida Power and Light is working very
16 well. And, secondly, with the exception of the last
17 base rate decision that we were involved in,
18 constructive regulation here in Florida has really
19 worked well for us and for our customers, and has
20 facilitated the achievements that we are going to
21 present to you today.

22 So with that, I'd like you to turn Page 1.
23 And this is an exhibit from Renae Deaton's testimony.
24 It's a comparison of the Florida utility typical 1,000
25 kWh residential bill. And you will see there at the top

1 of the page in blue is Florida Power and Light Company's
2 average of \$96.29, and then you will see the Florida
3 average of \$126.01, and the national average of \$128.11.

4 Now, a fair question is this: What kind of
5 savings would it mean for a residential customer to take
6 service from Florida Power and Light Company compared to
7 taking service from somebody that provides at the
8 national average? And we did the math, and it would
9 mean that a Florida Power and Light residential customer
10 in this category would save about \$381.84 annually.
11 That's the equivalent of almost four months of free
12 electric service.

13 The aggregate numbers are equally impressive.
14 If our customers were paying average U.S prices
15 conservatively, they would be paying and their bills
16 would be collectively \$2.3 billion higher.

17 Now, you will hear from others in this
18 proceeding that FPL's low-cost position is due to scale
19 effects or to the current low natural gas prices. Mr.
20 Reed, who is going to be before you momentarily, and Mr.
21 Dewhurst, who appears in this proceeding, among others,
22 will explain that these factors are not the primary
23 driver or reason for FPL's low-cost position. Rather,
24 they will testify that productivity improvements and
25 strategic investments in better and more efficient

1 technology, decisions supported by this Commission in
2 the past, have made the difference. In fact, of that
3 \$2.3 billion figure I refer to, well over half of it
4 comes from O&M, operation and maintenance, efficiencies.

5 Now turn to Page 2, if you would. This is an
6 exhibit that David DeRamus, a witness in this case, is
7 going to be filing, and he discusses the overall
8 affordability of Power and Light's electric service.
9 And you will see that this exhibit reflects prices in
10 the Miami-Fort Lauderdale area, which is a major portion
11 of our service territory.

12 Prices for a few of the goods and services
13 most of us would consider to be essentials in the daily
14 lives of our customers, and he compares that to the
15 consumer price index, or the rate of general inflation
16 over the past 27 years. And as you see by the green
17 line there representing FPL's electric prices, we have
18 performed very, very well over an extended period of
19 time, and not just during periods of low natural gas
20 prices.

21 Now, I'd like for you to turn Page 3, then.
22 And this is an exhibit that Mr. Reed will discuss,
23 productivity efficiencies discussing nonfuel operation
24 and maintenance costs per customer. And it shows our
25 relative position compared to a group of Florida-IOUs, a

1 national group of IOUs that he refers to as the straight
2 electric group, and then a subset of that group with
3 customers of more than 2 million; meaning the larger
4 utilities. And it shows that we are 47 percent lower in
5 non-fuel O&M than the large utilities group shown there
6 with the purple line.

7 And so if one believes that FPL's cost
8 position is simply due to economies of scale, this one
9 exhibit demonstrates that that is just not the case
10 because there is virtually no difference if you look
11 between the purple-dotted line and the red-dashed line.
12 Or, in another words, no difference between the large
13 group and the straight electric group, which is
14 comprised of smaller utilities.

15 Page 4 demonstrates the same impact except on
16 a per megawatt hour basis. So whether you look at it on
17 a per customer or a per megawatt hour, the results are
18 the same.

19 And so a fair question is what are some of the
20 costs in FPL's O&M figures? Well, for one, salaries,
21 including the employee incentive compensation that
22 Public Counsel says should be disallowed because they
23 claim that the incentives are driven towards shareholder
24 benefits and not consumer benefits or customer benefits.

25 It seems pretty clear from this graph that

1 customers are benefiting greatly from our employees'
2 productivity, and we believe that if we are taking care
3 of the customer that our shareholders should be treated
4 fairly. We just don't want to be penalized for the way
5 we decide to structure our compensation as part base and
6 part incentive.

7 Page 7 is also -- excuse me, Page 6 of -- I
8 need you to skip forward to Page 6. I apologize. I
9 have got the order slipped a little bit here. But if
10 you will skip to Page 6, again, an exhibit of Mr.
11 Reed's, shows the direct benefits to customers.

12 Now, each bar graph there shows the amount of
13 savings relative to the averages that he computes. And
14 if you look at the one on the far right compared to the
15 national average standards that if FPL customers were
16 paying those costs it would mean a loss of savings to
17 our customers that would exceed \$1.6 billion alone in
18 2010.

19 Now, if you could turn back to Page 5 for me.
20 This is where Mr. Reed benchmarks us on an important
21 reliability measure that you are very familiar with,
22 SAIDI, or the System Average Interruption Duration
23 Index. And this shows that we are performing 27 percent
24 better relative to the industry average. These are just
25 a few of the benchmarks that Mr. Reed has compiled and

1 we will be prepared to discuss when he takes the stand.

2 Now, there are individual witnesses, and I'd
3 invite you to turn to Page 7, that will appear on behalf
4 of FPL. And the first one that I will focus you on is
5 Ms. Kennedy's exhibit that shows some significant
6 improvements in four categories. I'll just focus you on
7 the first one there, a lower heat rate by 24 percent.

8 This means that FPL's system is now able to
9 generate 24 percent more electricity using the same
10 amount of fuel. So whether fuel prices go up or down,
11 FPL's customers are better off, and she shows that she
12 has reduced her O&M costs by 41 percent. Measurable and
13 meaningful benefits for our customers.

14 Flipping to Page 8, she shows that relative to
15 the industry whose costs have risen generally at the
16 rate of inflation, you see that the yellow and the
17 dashed line fairly on top of one another. And then you
18 look at the blue line at the bottom showing FPL's
19 improvements, and it shows a 67 percent difference lower
20 than the industry average.

21 Page 9, also from Ms. Kennedy, again, shows
22 that our heat rate is 22 percent better than the
23 industry average. This means that FPL has saved
24 customers billions in fuel costs and will continue to
25 save customers billions in fuel costs going forward.

1 And yet you are going to hear that fuel costs
2 are not an issue in this proceeding. I've got a couple
3 of observations in that regard. The first is that fuel
4 prices and fuel costs are not the same, and we cannot
5 conflate the two. We are not taking credit at FPL for
6 lower fuel prices, but we are taking credit for the
7 investments that we have made and the productivity
8 improvements that we have implemented that have reduced
9 the amount of fuel that we need to generate the same
10 amount of electricity. As I said, this lowers fuel
11 costs independent of prices. And so while the recovery
12 of the fuel costs is certainly not an issue in this
13 proceeding, a lot of the factors and the costs and the
14 initiatives, including employee performance, that leads
15 to those fuel costs certainly is at issue in this
16 proceeding.

17 Page 10 is shifting gears to customer
18 complaint rates. You will see that, generally speaking,
19 Florida and Florida utilities do pretty well in this
20 category, and FPL shows on a per 1,000 customer basis
21 only .06 customers per 1,000.

22 Page 11, if you will turn there. This was
23 filed in the docket yesterday. As we typically do at
24 the end of the quality of service hearings, we
25 essentially take inventory and we submit that report to

1 the Commission, and this is a graphic representation of
2 the attendance and the participation at those hearings.

3 And the one thing that, of course, we know,
4 and if we took a poll in this room, I'm sure it would
5 come out like this. Nobody really wants to pay more for
6 milk; they don't want to pay more for gasoline; they
7 don't want to pay more for really anything. So we
8 understand that, and we obviously are not surprised when
9 people express their preference that they would rather
10 not see their electric bills go up.

11 But the one thing that was very significant to
12 us as a result of those hearings is that how few people
13 actually had service complaints from Florida Power and
14 Light. Less than 6 percent who appeared of the 281
15 actually voiced negative service complaints about FPL.
16 That is gratifying to us. We work very hard at that,
17 and we have a good record in that regard.

18 And maybe even more significant is that of
19 those who spoke against a rate increase, 50 percent of
20 them spoke favorably about the service that we do
21 provide. Again, we take that to heart. It's in part a
22 reward to us for what we do. We don't provide perfect
23 service. With 4.5 million customers, we are going to
24 have some misses, and we try to responsibly address
25 those as quickly as possible.

1 You will hear from Witness Hardy and Witness
2 Santos as to the level of effort that we spend in, A,
3 minimizing the number of complaints, and, B, when they
4 do occur, getting after them quickly and addressing them
5 responsibly. You will hear from Witness Santos, and
6 she's somewhat modest, too modest, eight years in a row
7 winner of the Service One Customer Award.

8 Now, turning to Page 12. Mr. Flaherty
9 provides another example, and I won't spend any time
10 here but, again, in every category compared to his peer
11 group on A&G expenses better in every group in every
12 case for every single year from 2007 to 2010.

13 Now, against this backdrop, I would like to
14 focus a little bit on the actual request itself, because
15 I think this frames it properly. And I would like you
16 to focus on some of the key drivers here, but really
17 just one. Look at the one on the far left, \$367
18 million. That is really a composite of the effect of
19 the reserve surplus issue that obviously was at the
20 center of debate and discussion not only in the last
21 case, but even was a central part of the settlement
22 agreement. And Mr. Barrett will talk to you about the
23 details, but I want focus you on that as a significant
24 impact in why we are back here today.

25 The bill impacts of FPL's revenue request

1 appear on the next two charts. These are Ms. Deaton's
2 exhibits. At FPL we are very, very bill conscious, and
3 these show the specific breakdowns of the bills. And as
4 Mr. DeRamus will testify, the bill at FPL remains one of
5 the most affordable bills that our customers pay today.

6 This clearly shows the breakdown, or the
7 distinction between base and fuel, so I don't want there
8 to be any confusion that we are trying to confuse the
9 two. This clearly shows the separation, but the bottom
10 line remains that even with the request granted, we will
11 remain the lowest residential bill in the State of
12 Florida.

13 Now I want to talk a little bit about the fair
14 rate of return at FPL, something that obviously is a
15 very important topic for us and will be litigated
16 extensively here. But the picture is quite clear. The
17 company is investing billions annually. We are the
18 largest investor in the State of Florida and we have to
19 go to the capital markets to get financing for those
20 investments.

21 The capital markets are competitive. We
22 compete against other utilities. We compete against the
23 clients of a lot of the folks here to my left for the
24 financial capital that is out there. Some of the folks
25 to my left have clients that are earning in the 20 to

1 25 percent rate on their return on equity. It takes a
2 fair rate to maintain our financial strength.

3 If you will look at Page 16, this shows what
4 FPL has been earning within its authorized ranges. And
5 the current settlement agreement has enabled the company
6 to earn 11, 11, and 11 in each of the last three years.
7 That agreement which enabled us to do that is expiring,
8 and we are asking the Commission to establish an ROE of
9 11.25 along with a 25-basis-point adder.

10 **CHAIRMAN BRISÉ:** You have about five minutes
11 left.

12 **MR. LITCHFIELD:** Thank you, sir. If you'll
13 turn to Page 17 in the booklet. This shows three
14 things. It shows that at 10 percent we currently have
15 the lowest authorized return on equity in the entire
16 southeast region of coastal states there. Yet we have
17 got the highest residential customer satisfaction scores
18 and the second lowest typical residential bill.

19 The next three pages, and I won't spend much
20 time on them, Mr. Chairman, show a breakdown of each of
21 these points on a map of the southeast, and you can see
22 the utilities plotted there with their authorized rates
23 of return. And if you flip the page, you will see we
24 have plotted the customer satisfaction scores. And if
25 you flip to the third page you will see that we have

1 plotted the residential bills. So, again, currently
2 lowest authorized ROE in the southeast in this area,
3 highest customer satisfaction score among residential,
4 and second lowest bill.

5 If we contrast this to OPC's recommended ROE,
6 which if granted, would be the lowest return on equity
7 awarded any utility in the United States in the last two
8 years. And it's even lower than an award that was
9 granted recently to a Massachusetts utility that is a
10 distribution only; no generation, no nuclear, no
11 hurricane exposure of the nature that we have here, and
12 the utility that received that ROE being penalized for
13 poor performance. Poor performance, and their ROE was
14 higher than the one that Public Counsel is recommending
15 to you in this case.

16 You'll hear that FPL's ROE should be low
17 because its capital ratio is higher than average. Yes,
18 it is, and we don't dispute that. But what we do
19 disagree with is that capital structure or equity ratio
20 should be the sole measure of risk to the exclusion of
21 all other risk factors.

22 The truth is it is just one of many, and we
23 have a unique risk profile that our witnesses will
24 testify to that justify a capital structure in that
25 order, and it has been in place for close to 20 years

1 and served customers in the State of Florida well.

2 Well, OPC is taking a lot of extreme positions
3 in this case. And I want to focus on them specifically,
4 because they are taking positions that are more extreme
5 than a lot of the customers they that purport to
6 represent here. I talked about the lowest ROE. The
7 capital structure -- they are recommending a shift in
8 our capital structure that would be an effectual swing
9 of \$3 billion relative to, or in term of debt and equity
10 in that relative ratio.

11 They are proposing a \$40 million swag to
12 punish the company for not using a corporate structure
13 that would be more familiar to one of its witnesses.
14 They are requesting that the Commission intrude on how
15 the company designs and administers its compensation
16 programs, and it would propose to eliminate from base
17 rates properties that the company has purchased and
18 acquired in order to provide service in the future.

19 I won't spend time showing you the graph that
20 is in your packet relating to Mr. Silva's testimony, but
21 he will be prepared to talk about that. They say that
22 there are no negative consequences if you accept the
23 recommendations. That is worse than conjecture. It's
24 just flat out false. The last two exhibits that we
25 include in this packet are exhibits that Mr. Dewhurst

1 sponsors in which he will show that categorically that
2 is not an accurate picture.

3 But even beyond that, Commissioners, without
4 reference to the miscalculations or miscitations with
5 regard to what other jurisdictions are doing, I would
6 ask you to consider two things as we move forward. A
7 strong capital structure and rate of return for Florida
8 Power and Light has served its customers in the State of
9 Florida extremely well for decades, and that is borne
10 out by the materials that I have just walked you
11 through.

12 Our cost structure is among the very lowest,
13 our performance among the very best, and we would ask
14 that any decision in this case that you make be made
15 with reference to these points. And in that regard, I
16 hope that this booklet will serve you well as we move
17 forward in this proceeding.

18 Thank you.

19 **CHAIRMAN BRISÉ:** Thank you very much, Mr.
20 Litchfield. Thank you for managing your time
21 appropriately.

22 At this time, we will hear from FIPUG. You
23 have five minutes.

24 **MR. MOYLE:** Thank you, Mr. Chairman.
25 And let me start just by thanking the

1 Commission and staff for the time this morning to work
2 through some procedural issues. We are in a somewhat
3 unique procedural posture. We have talked a lot about
4 it. In my prepared opening, I was going to clearly make
5 the point that we are going to be taking a litigation
6 position that is different from a settlement position,
7 and we will. We will be crossing FPL's witnesses, but I
8 don't want that to be confused in any way that at the
9 end of the day we support the settlement agreement, and
10 at the end of the hearing we will support the
11 settlement agreement. We support it now, and we think
12 it is a fair deal. So, thank you. Thank you for the
13 time. I think those were important legal issues, and I
14 know it took up a lot of time.

15 You're going to hear from one witness for
16 FIPUG, a direct witness, Jeff Pollock, and he focuses on
17 rate design, and rate design is complex. You kind of --
18 you get into the weeds pretty quickly with rate design.

19 But I want to just spend a minute and talk
20 about an issue that we think is very important to the
21 industrial clients that I represent, and also is
22 important -- and they will speak for themselves, but the
23 military, and the Federal Executive Agencies, and a
24 number of hospitals -- and that relates to an
25 interruptible credit. That is Issue Number 169 in the

1 case; it's squarely in front of you. And the
2 interruptible, you know from your previous proceedings
3 that the interruptible credit is something that people
4 who say, look, you can turn my power off on a hot summer
5 day rather than going out and building a peaking power
6 plant. You can cut the switch on my power. I will
7 agree to allow you to do that, but in exchange I should
8 receive some credit. And there is an interruptible
9 credit that is in place. It hasn't been raised in
10 something like twelve years.

11 So you hear all this testimony, Mr. Reed is
12 going to talk about the CPI going up, and it costs more
13 to build power plants, and, you know, we need an
14 increase. Well, likewise and similarly, the
15 interruptible credit should go up as well, because it's
16 pegged to the cost of building a peaking power plant.
17 And we are going to spend a lot of time on that
18 interruptible credit issue, so I wanted to preview that
19 for you.

20 The details on it, the current interruptible
21 credit rate is \$4.68. Mr. Pollock is going to suggest
22 that it be north of \$12, and the settlement agreement
23 has it at \$7.30, so it's in between.

24 And why is this credit, you know, so
25 important? Well, the case as filed by Florida Power and

1 Light, the base rates as filed would have resulted --
2 will result that my clients, a lot of them would see an
3 increase in their base rates of 24 percent. All right.
4 That is a tough number to try to deal with when you are,
5 you know, mired in a recession and trying to come out to
6 say, well, we're emerging from the recession, welcome to
7 a 24 percent base rate increase. It's among the highest
8 increases proposed in the case as filed in terms of
9 customer classes.

10 So the credit that we negotiated and that you
11 will hear Mr. Pollock talk about mitigates that impact
12 of the rate increase. And this administration, Governor
13 Scott has talked about jobs, jobs, jobs, jobs,
14 jobs.

15 **MR. McGLOTHLIN:** Commissioner, I object. He
16 is talking about the negotiated purported settlement and
17 not his prefilled testimony. I object to any
18 consideration of those remarks.

19 **MR. WRIGHT:** Join the objection.

20 **CHAIRMAN BRISÉ:** Thank you.

21 Mr. Moyle.

22 **MR. MOYLE:** Well, okay. I don't think it's a
23 secret that this Governor has focused on jobs, and I
24 just want to tell you a little bit about the jobs and
25 the economic impacts. Witness Reed spends a lot of time

1 looking at statistics from the Bureau of Labor.

2 I'm going to use an exhibit with him, the most
3 recent labor statistics that come out. It came out last
4 week. Florida's percentage went up 2/10ths of a
5 percent. But there is also segments in there that talk
6 about manufacturing jobs and health jobs combined with
7 education. And from month-to-month, from June until
8 July, Florida lost more than 10,000 jobs, more than
9 10,000 jobs in those two sectors.

10 So, you know, again, with the focus on jobs,
11 if your decision is can we do something to mitigate the
12 impact of FPL's case as filed by adjusting the credit
13 upward, I think the strong answer ought to be yes, and
14 this is the time to do it. You know, it's not the time
15 to kick this credit issue down the road. It's front and
16 center here. Witness Pollack has testimony. There is
17 no other witness, no other party that has taken a
18 position opposing it other than FPL, and FPL's
19 opposition is, well, it may not be the right place to
20 have this conversation. But we are having the
21 conversation, we have witnesses that will be here, it's
22 part of the settlement agreement, a chief part of the
23 settlement agreement.

24 **MR. WRIGHT:** Mr. Chairman, renew the
25 objection. If he keeps to his witness' testimony and

1 what the evidence will show, that's fine; but mentioning
2 the settlement agreement is improper. Continue the
3 objection. Thank you.

4 **MR. McGLOTHLIN:** Mr. Moyle seems to be intent
5 on injecting this settlement agreement along with
6 several of them into even opening statements, and I
7 think that is reason enough to renew our motion in
8 limine.

9 **MR. MOYLE:** So can I just --

10 **MR. SAPORITO:** This is Mr. Saporito, and I
11 agree with that.

12 **CHAIRMAN BRISÉ:** Thank you, sir.

13 Mr. Moyle, if you could address the objection.

14 **MR. MOYLE:** Thank you. Maybe you can give me
15 a little more time, because I have been interrupted --

16 **CHAIRMAN BRISÉ:** Yes, understood.

17 **MR. MOYLE:** Typically, opening statements are
18 not interrupted. Mr. Rehwinkel talked about the
19 settlement at length this morning, and I didn't
20 interrupt him. They have made their objection known.
21 They filed a motion in limine. You have ruled on it;
22 you said I will allow some discussion about it.

23 I think it's appropriate for putting in
24 context the settlement on this credit that is so
25 important to us to give you some perspective about,

1 okay, it's at, you know, four bucks and change now.

2 We're taking it to twelve in the testimony. You know,
3 the settlement is seven.

4 I think that's appropriate and consistent with
5 your ruling. We'll have to put on evidence on it, but
6 it gives you a better frame of reference. So I'll move
7 on and just make the --

8 **MR. McGLOTHLIN:** Not before I move to strike
9 that reference to specific terms of the settlement
10 agreement. That is bordering on the outrageous, and I
11 move to strike.

12 **MR. WRIGHT:** We would join that motion to
13 strike.

14 **MR. SAPORITO:** I join that motion, Mr.
15 Chairman. I would point out, I believe my recollection
16 is that this attorney misstated the Chairman's decision.

17 It is my understanding that the Chairman does
18 not allow any testimony with respect to the settlement,
19 and I think he just stated that you are going to accept
20 some in this record.

21 **CHAIRMAN BRISÉ:** Thank you for your comments,
22 Mr. Saporito, but these are opening statements, so there
23 is no testimony being offered at this time.

24 Secondly, part of Mr. Moyle's comments are
25 dealing with how he's going to frame his case with the

1 issues that he is going to address with his witness that
2 he's going to bring forth.

3 I understand your objection with the issue of
4 mentioning certain specific terms within the settlement,
5 and we are going to ask Mr. Moyle at this point as he
6 continues his comments to remove -- I mean, not to
7 continue down that path. But to strike whatever has
8 been stated at this point, we're just going to sort of
9 move on from here. Thank you.

10 Mr. Moyle, you have about a minute left.

11 **MR. MOYLE:** Okay. So I was trying to make the
12 point that jobs are important. That my clients, you
13 know, they hire a lot of people, they pay a lot of
14 taxes. You know, the military is facing budget cuts
15 coming up with Congress. You know, the hospitals have
16 Medicaid.

17 There are a lot of fiscal pressures. So given
18 a choice between taking some action on this
19 interruptible credit, which will provide additional
20 revenue in the form of a credit, that we're not running
21 from that, we think it's due and owing because it hasn't
22 been adjusted, you know, in twelve years. And all the
23 other things are going up, why shouldn't the credit go
24 up, as well. That we think you should make the
25 adjustment. Mr. Pollock says \$12. That would be great

1 if you did that, because nobody -- these other parties
2 are not saying, no, that's not; they have taken no
3 position on that issue.

4 So I was saying please don't kick the credit
5 can down the road. Please make a decision on that, and
6 make a decision that recognizes the important role that
7 industrial customers and others play in our Florida
8 economy. So, thank you, Mr. Chairman.

9 And I guess the only other thing, I mean, this
10 is unusual because we're typically aligned with OPC, and
11 we're really not. But OPC is statutorily charged with
12 representing all the customers and, you know, the
13 military, the hospitals, and large industrials are part
14 of their client class, and they have taken no position,
15 you know, on this issue. So it's a little unusual, but,
16 you know, we're kind of -- we're not, you know, the old
17 term about potted plants. I mean, we are important
18 members of the fabric of Florida, and I just wanted to
19 make that point.

20 Thank you.

21 **CHAIRMAN BRISÉ:** Thank you very much, Mr.
22 Moyle.

23 Okay. At this time we will hear from the
24 South Florida Hospital Association. Mr. Wiseman.

25 I think Mr. Moyle got a little excited over

1 there.

2 **MR. WISEMAN:** Thank you, Your Honor.

3 Mr. Chair, I expected OPC to throw water all
4 over me, but I didn't think it was coming from Mr.
5 Moyle. Hopefully, I can still make sense of this.

6 Commissioners, first of all, thank you for the
7 opportunity to make this opening statement. And at the
8 outset I want to make clear that SFHHA strongly supports
9 the proposed settlement. We believe that the settlement
10 provides substantial benefits to all FPL ratepayers and
11 that its approval will substantially benefit --

12 **MR. WRIGHT:** I renew my objection, Mr.
13 Chairman.

14 **CHAIRMAN BRISÉ:** Duly noted.

15 **MR. WRIGHT:** Thank you, sir.

16 **MR. WISEMAN:** In my opening statement, I want
17 to focus on two technical aspects of our filed case that
18 also show that the discussions in the press about cost
19 shifts seriously mischaracterize the effect of the
20 settlement, and by implication mischaracterize the
21 recommendations that we are making to you in our
22 litigated case, as well.

23 One of the most basic tenets of utility law is
24 the cost responsibility should follow cost causation.
25 In other words, responsibility for payment costs the

1 utility incurs to provide service should be allocated to
2 customer classes commensurate with the degree to which
3 each customer class causes the utility to incur those
4 costs.

5 FPL's cost of service model and its rate
6 design violate that basic ratemaking principle. Over
7 the course of the last several years, FPL has incurred
8 billions of dollars to install new generating capacity
9 and is going to spend hundreds of millions of dollars
10 more in the next few years, again, to add more
11 generating capacity.

12 The evidence will show that FPL is adding that
13 capacity only for one reason, to serve its summer peak
14 demand. It has no need to add that capacity to serve
15 demand in any other months. In fact, the forecasted
16 winter reserve margin for FPL from now through 2021
17 ranges from 26 percent to over 42 percent. That is
18 obviously far in excess of a 20 percent or 15 percent
19 reserve margin.

20 Now that begs the question, which rate classes
21 are causing FPL to add capacity to serve the summer
22 peak? The definitive answer is that it is not large
23 commercial class customers whose load is basically flat
24 throughout the year, but FPL's continued use of the 12
25 CP and a 13th methodology for allocating production

1 costs and the way FPL develops its demand allocation
2 factors completely distort this picture. FPL's studies
3 significantly underestimate the contribution that large
4 commercial class customers make to collection of FPL's
5 revenue requirement.

6 Now, in the last rate case the Commission
7 acknowledged that SFHHA's Witness Mr. Baron made a
8 persuasive argument in favor of the summer CP
9 methodology which allocates production costs based upon
10 each customer classes' contribution to the summer peak,
11 but nonetheless the Commission opted to stay with the 12
12 CP and a 13th methodology.

13 Commissioners, it is now time to adopt the CP
14 methodology -- summer CP methodology, because the
15 evidence in this case will support that methodology on
16 an overwhelming basis. And I want to be very clear
17 about this. This is about the process of accurately
18 assigning cost responsibility to the rate classes
19 responsible for incurrence of those costs. This is not
20 about shifting costs from one rate class to another.

21 Now, the other technical issue that I want to
22 discuss, and it is related, is to discuss SFHHA's
23 recommendation for the Commission to adopt the minimum
24 distribution system for classification of distribution
25 facilities. There is a misperception at this Commission

1 about the underlying rationale for the MDS system. In
2 the last rate case, FPL's witness opposed the MDS system
3 based upon an argument, and the Commission paraphrased
4 it as follows in its order, quote, zero or minimum load
5 requirements of customers is purely fictitious because
6 no utility builds to serve zero load, end quote.

7 Commissioners, the MDS system does not
8 contemplate that a utility would built facilities to
9 serve zero load. The MDS system is based upon the
10 indisputable fact that a minimum set of facilities must
11 be installed to serve each customer regardless of its
12 load. The evidence will show that FPL has established
13 procedures to install minimum facilities on a
14 customer-specific basis as it hooks up new customers in
15 exactly the way that is contemplated by the MDS system.

16 Now, the MDS system you may or may not be
17 aware of is not some strange methodology that is being
18 proposed here and is just adopted in maybe a handful of
19 states. It has been adopted in 21 states in this
20 country, and its opponents here in Florida have
21 mischaracterized it. Without recognition of the MDS
22 system, costs are being imposed on customer classes that
23 are not accurately tracked by cost causation and that
24 results in a subsidy.

25 Commissioners, you adopted the MDS system in

1 the Gulf Power case in the context of a partial
2 settlement. We submit it is time for the Commission to
3 take a fresh look at the MDS system in the context of
4 this case, and that the evidence will support its use on
5 FPL's system and result in the proper assignment of
6 costs among the customer classes.

7 Thank you very much.

8 **CHAIRMAN BRISÉ:** Thank you very much, Mr.
9 Wiseman.

10 **MR. McGLOTHLIN:** Before we take the next one,
11 I respectfully move to strike the references to the
12 settlement agreement and the media that were in the
13 early part of Mr. Wiseman's remarks.

14 **CHAIRMAN BRISÉ:** Thank you very much. Duly
15 noted.

16 FEA.

17 **LT. COL. PIKE:** Thank you, Mr. Chairman and
18 Commissioners. I am appearing today on behalf of the
19 Federal Executive Agencies. Those agencies represent
20 essentially four different major groups; cape Canaveral,
21 NASA, Patrick Air Force Base, and Homestead Air Force
22 Base. Those FEA customers at these locations fall into
23 primarily four rate classes with roughly 80 percent of
24 all payments being made under the commercial/industrial
25 CILC 1T rate class.

1 Under FPL's proposal, according to Schedule
2 E-13A, the CILC 1T rate class would see a 34 percent
3 increase in its base revenue rate. This is by far the
4 largest percentage increase of any of the rate classes
5 and three times higher than the proposed 11 percent
6 average for all rate classes. Such an increase would
7 result in an approximately \$3.5 million increase in
8 utility bills for FEA facilities excluding fuel costs.

9 Such a large increase is entirely
10 unreasonable. And as a background, every base or FEA
11 facility has a wing commander or a facility manager that
12 is ultimately responsible for achieving the base's
13 mission. Every year the base or facility is allocated a
14 portion of money appropriated by Congress to carry out
15 that mission. The appropriated money pays for things
16 like, in the case of NASA, space launch operations, or
17 in the case of the Air Force, fuel for aircraft,
18 deployment equipment, and training for deploying
19 personal, or gate guards, et cetera.

20 However, that money also needs to cover
21 utility bills. So every dollar of increase utility cost
22 is a dollar less that the wing, or in this case, NASA,
23 or a wing commander can spend on the flying mission, the
24 national security mission, the deployment mission, et
25 cetera.

1 As primarily a commercial/industrial customer,
2 it is less costly for FPL to deliver power to FEA
3 customers. FEA customers primarily receive power from
4 FPL at more efficient higher voltages, the distribution
5 networks are less complex, and the commercial/industrial
6 load control program benefits all customers by helping
7 FPL avoid the necessity of building costly additional
8 peaking facilities.

9 However, the petition for a rate increase by
10 FPL does not adequately take into consideration these
11 factors, and if approved by this Commission would result
12 in disparate treatment of FEA customers. To aid in the
13 Commission's efforts to determine a fair and reasonable
14 rate for all rate classes, we ask the Commission to
15 consider the testimony of our two expert witnesses,
16 Mr. Michael Gorman and Mr. Robert Stephens with special
17 emphasis on three main areas I would like to highlight
18 at this point right now.

19 The first, consider the testimony of Robert
20 Stephens with regard to the minimum distribution cost of
21 service methodology to more appropriately identify the
22 portion of primary and secondary costs that are customer
23 related for future cost of service work. And I echo the
24 comments of the Hospital Association in that regard.

25 Second, consider the testimony of Mr. Gorman

1 whose adjusted ROE of 9.25 percent, which would
2 recognize the significant decline in the capital market
3 costs since 2010, FPL's last rate case.

4 And, third, consider the testimony of
5 Mr. Gorman with regard to the common equity ratio
6 currently in place at FPL of 59 percent, which is far in
7 excess of common equity ratios necessary to support
8 FPL's current bond rating and is unreasonable in
9 relation to its proxy group, and it is materially out of
10 line generally with the electric utility industry
11 capital structures used to set rates.

12 At the end of the day, you know, every
13 additional tax dollar spent by the FEA or DOD on
14 utilities is a dollar less spent on flying the jets, the
15 NASA mission, taking care of the troops and defending
16 our nation. If the increase request by FPL is adopted
17 as proposed that could equate to an additional
18 \$3.5 million that are no longer available for
19 operational mission requirements.

20 FEA respectfully requests that the Commission
21 establish rates that are fair and reasonable for all FEA
22 customers. Thank you very much.

23 **CHAIRMAN BRISÉ:** Thank you very much. At this
24 time we are going hear from Algenol.

25 **MR. HAYES:** Thank you, Mr. Chairman. Algenol

1 is going to waive its right to an opening statement and
2 we'll rely on our prefiled statements and testimony.

3 Thank you.

4 **CHAIRMAN BRISÉ:** Thank you very much.

5 OPC.

6 **MR. McGLOTHLIN:** Mr. Chairman, we have a
7 PowerPoint slide presentation to make. We just need
8 enough time to put that in motion, and we also have it
9 in handout form.

10 **CHAIRMAN BRISÉ:** Sure.

11 **MR. McGLOTHLIN:** If you could give us a couple
12 of minutes to hand those out.

13 **CHAIRMAN BRISÉ:** All right. No problem.

14 (Pause.)

15 **CHAIRMAN BRISÉ:** You may proceed. You have
16 ten minutes.

17 **MR. McGLOTHLIN:** Mr. Chairman, Commissioners,
18 this proceeding is largely a cost of capital case. The
19 major dollars at issue are in this area. At issue in
20 the case are FPL's cost of equity capital and also the
21 proportions of debt and equity capital and the capital
22 structure that you should employ for ratemaking
23 purposes. The subject of capital structure on the one
24 hand and return on equity on the other hand separately
25 place hundreds of millions of dollars at issue in this

1 case.

2 I want to point you to the first slide, which
3 is a line graph of interest rates that Dr. Woolridge,
4 one of our witnesses prepared. It shows that, first of
5 all, interest rates are at historically low levels. It
6 also shows that interest rates in the economy are lower
7 now than they were in 2010, the last time this
8 Commission visited FPL's required return on equity.

9 That leaves me to make an observation as to an
10 interesting consensus in this case, and the consensus is
11 that FPL's cost of equity capital has come down since
12 the Commission authorized 10 percent ROE in March of
13 2010, nearly two and a half years ago. In the last
14 case, FPL's witness advocated a midpoint of 12.5
15 percent. After reviewing current data in this case, the
16 same FPL witness recommends 11.25 percent midpoint,
17 lower than before.

18 In the last case, OPC recommended a 9.5
19 percent midpoint. Our same witness in this case
20 recommends a range of 8.5 to 9, depending on the capital
21 structure that you employ. So it stands to reason that
22 anyone who believes the Commission got things about
23 right when it set the return on equity at 10 percent in
24 the last case, after reviewing this more current data
25 would also conclude that the appropriate return on

1 equity for FPL is below 10 at the current time.

2 Now, you and we have heard FPL complain that a
3 return on equity of 10 percent is unfair because it is
4 the lowest in the state. When it makes that unfairness
5 claim, FPL tends to leave out the fact that its equity
6 ratio of 59.62 percent is by far the highest in the
7 state and, in fact, is higher than most any other
8 utility in the country. FPL's extreme high equity ratio
9 lowers FPL's overall risk profile, and the return on
10 equity that the Commission sets must be commensurate
11 with that lower risk.

12 You will see in the second slide, which is a
13 very brief quotation from the March 2010 order
14 establishing ROE of 10 percent, that the Commission
15 observed the connection between equity ratio and the
16 required return on equity at that time. But while FPL
17 often prefers to describe its earnings on a
18 weather-adjusted basis, in this case it doesn't want to
19 view its authorized return on equity on a risk-adjusted
20 basis. FPL would prefer to present return on equity and
21 equity ratio as separate items. You will hear them say
22 we need a higher return on equity, and we need this 59
23 percent equity ratio.

24 It's important to focus on the significance of
25 the disconnect in that presentation, and in my several

1 minutes remaining, I want to tell you how OPC's
2 witnesses will establish and quantify that critical
3 relationship explicitly. Our witnesses will describe
4 that a utility raises capital in two forms, debt, by
5 which I mean bonds and short-term notes, and equity in
6 the form of common shares and preferred shares. Equity
7 capital is more expensive than debt. Debt must be paid
8 before shareholders make a profit, so equity investors
9 require a premium on top of the cost of debt. The
10 utility, therefore, gets more bang for the capital buck
11 with debt, and that's why the use of debt is referred to
12 as leverage, but use of more debt also increases
13 financial risk.

14 On the other hand, because equity costs more
15 than debt, the higher the equity ratio the higher the
16 revenue requirements that customers have to pay. So the
17 question is where do you draw the line? And with
18 respect to that, it is instructive to look at what the
19 utility industry has done on broad basis.

20 The next slide shows the proxy group that FPL
21 Witness Avera uses, and you will see on that slide that
22 the average equity ratio of the utilities in his group
23 is 47 percent.

24 Another slide shows the utility industry
25 sector followed by Value Line, and that shows that Value

1 Line calculates a 47 percent average equity ratio.

2 Now, our Witness O'Donnell will testify that
3 if a company has high business risk, logically it should
4 offset that high business risk with low financial risk,
5 which would mean low debt and high equity. Similarly,
6 if the company has low business risk, it has the
7 opportunity to use more debt, which argues for a lower
8 equity rate.

9 Now the rating agencies agree that NextEra's
10 unregulated-affiliates have a higher business risk than
11 the regulated utility FPL. So let's see what NextEra
12 does with respect to how it places equity capital in its
13 companies.

14 That is the next slide, which is a three-bar
15 chart. And you will see that the higher risk affiliates
16 have only 21 percent equity ratio compared to the low
17 risk FPL, which has a 59.62 percent equity ratio. In
18 terms of relative risk, it doesn't make sense. It's
19 actually topsy turvy. But while it's irrational from
20 the standpoint of relative risk, it does make sense if
21 the strategy is to maximize equity returns where they
22 are the safest in the regulated entity, and to use those
23 returns to finance expansion of more risky unregulated
24 businesses.

25 Our Witness Mr. O'Donnell concludes that 59.62

1 percent equity ratio is unnecessarily expensive to
2 customers. The Commission's choice in that event is
3 either to use a lower equity ratio by imputing one for
4 ratemaking purposes, or if it chooses to permit FPL to
5 employ the 59 percent equity ratio for ratemaking
6 purposes, it needs to reflect that lower financial risk
7 in the ROE returns.

8 He recommends a 50 percent equity ratio, and
9 he arrives at that conclusion by reference to two
10 things. First of all, the 47 percent average in the
11 industry, and the fact that NextEra itself on a
12 composite basis, which includes FPL, has only a 39
13 percent equity ratio. And that 39 percent is the equity
14 ratio that equity investors see, perceive, and evaluate
15 when they buy stock in the parent company.

16 On the other hand, if the Commission employs a
17 59.6 percent equity ratio, then our Witness Dr.
18 Woolridge recommends that the corresponding ROE must be
19 lower by 50 basis points. You will see his
20 recommendation in the next slide. He recommends that if
21 the 50 percent rate ratio is used, the corresponding ROE
22 is 9 percent. On the other hand, at a 59.6 percent
23 equity ratio, the appropriate return on equity is 8.5
24 percent.

25 **CHAIRMAN BRISÉ:** Mr. McGlothlin, you have got

1 about two minutes left. Just thought I'd let you know.

2 **MR. McGLOTHLIN:** All right. I'll wrap up very
3 quickly.

4 I'll move to my next slide, which shows three
5 different scenarios. This slide was prepared by our
6 Witness Kevin O'Donnell, and it shows the significance
7 of the matters I've been describing.

8 First of all, the choice of capital structure
9 by itself, without reference to the ROE aspect, the
10 difference between the 59 and 50 percent by itself, the
11 choice of 50 percent would reduce FPL's revenue
12 requirements by \$214 million. That's in his testimony.

13 Now, the three scenarios that you see there
14 correspond to a combination of a 59 percent equity ratio
15 and 8.5 percent ROE, the 50 ratio and 9 percent ROE, and
16 a third scenario that falls midway between those, 55
17 percent common equity ratio and 8.75 percent ROE.

18 And the right-hand column shows the impact on
19 FPL's revenue request of each of those scenarios. And I
20 will simply conclude by making the point that regardless
21 of whether you choose the 50 percent equity ratio that
22 we recommend, the 59 percent equity ratio that FPL
23 desires, or someplace in the middle, and if you employ
24 the appropriate return on equity in combination with
25 that, the impact is almost enough by itself to

1 completely offset the amount of the increase that FPL
2 proposes to place into effect on January 1st, 2013.

3 Thank you for listening. Thank you.

4 **CHAIRMAN BRISÉ:** Thank you, Mr. McGlothlin.

5 At this time we will hear from Mr. Wright from
6 FRF.

7 **MR. WRIGHT:** Thank you very much, Mr.
8 Chairman. Good afternoon, Commissioners, and thank you
9 for the opportunity to address you in this important
10 case on behalf of the Florida Retail Federation and its
11 membership of more than 9,000 Florida businesses.

12 In this case, FPL seeks your authorization to
13 increase its base rates so as to recover from its
14 customers an additional \$516 million a year starting in
15 January of 2013, plus an additional \$173.9 million a
16 year starting in June of 2013.

17 We are not saying at all that FPL does not
18 provide safe, adequate, reliable service. What we are
19 saying is this, as agreed by FPL's former President Mr.
20 Olivera and by the presidents of at least two other
21 Florida investor-owned utilities, it is FPL's duty -- it
22 is a Florida Public Utilities' duty to provide safe,
23 adequate, reliable service at the lowest possible cost.

24 Thus, this case is about how much, if any,
25 additional base revenues FPL needs in order to fulfill

1 this duty. Does it need more money to do its job of
2 providing safe, adequate, reliable service? This is the
3 ultimate issue you are called upon to decide, and, by
4 the way, it is ultimately Issue 126.

5 The evidence will show that FPL does not need
6 any additional base rate revenues in order to do its
7 job. In fact, competent substantial evidence of record,
8 the testimony of the Citizens' witnesses, and the
9 testimony of several other consumer parties' witnesses
10 will show that FPL can continue to provide safe,
11 adequate, reliable service with a rate decrease of up to
12 \$253 million a year.

13 And by the way, when we talk about the impact
14 on jobs, we, you, everyone, should talk about the
15 beneficial impact of keeping an additional \$516, \$690
16 million in the pockets of Florida customers instead of
17 sending a good chunk of it off to investors in other
18 states.

19 FPL's request is excessive and unreasonable.
20 Granting the request would result in unfair, unjust, and
21 unreasonable rates, because FPL doesn't need any
22 increase at all in order to do its job, to provide safe,
23 adequate, and reliable service.

24 Historical evidence will show that this is
25 just the latest example in a longstanding unbroken

1 pattern of excessive FPL rate-hike requests over the
2 past 40 to 50 years. In the 1960s, the Commission
3 ordered a handful of rate reductions to FPL, no
4 increases at all. In the '70s and '80s, in six or seven
5 rate cases the Commission, the Florida Public Service
6 Commission granted rate increases that ranged between 38
7 percent and 63 percent of what FPL requested in those
8 cases. By the way, the 63 percent was 30-years ago in
9 1982.

10 Since the 1983 case; that is, over the last
11 28-years, FPL's rate case history has been dominated by
12 four major dockets: Docket Number 990067, an earnings
13 review initiated by the Public Counsel in 1999, in which
14 FPL settled with all consumer parties for a \$350 million
15 permanent base rate reduction that also produced
16 additional revenue sharing refunds of more than
17 \$200 million in succeeding years.

18 In 2002, a settlement agreed to by all parties
19 in Docket 001148 was a Commission initiated earnings
20 review for FPL. FPL took the position that its base
21 rates should not be changed in MFRs and in testimony.
22 However, at the conclusion of that case, FPL agreed to a
23 settlement that reduced its base rates permanently by
24 \$250 million a year with additional revenue-sharing
25 refunds following.

1 In 2005, FPL sought a base rate increase of
2 \$430 million a year, which the parties, including
3 myself, litigated literally up to the eve of the
4 hearing, but then agreed to a settlement that included
5 zero increases in base rates, but with provisions for
6 FPL to increase its base rates in subsequent years as
7 new power plants came on-line.

8 In 2009, in Docket 080677, FPL asked for
9 \$1.29 billion, the Commission awarded seventy-five and a
10 half million dollars. FPL didn't like that decision,
11 but the evidence will show clearly that since that
12 decision, over the last three years, FPL has increased
13 its dividend three times, including a month after the
14 Commission's vote. Their stock price has increased
15 roughly 50 percent from the day of the Commission's vote
16 to yesterday, or Friday. And that FPL has consistently
17 attained ROEs at the top of its authorized range. That
18 is already shown by Mr. Dewhurst's exhibit that was
19 presented by FPL.

20 So over the last 30 years, last 28 years,
21 other than the base rate increases that all parties
22 agreed to for new power plants as they came into
23 service, we have had four dockets. FPL agreed to reduce
24 rates twice, it agreed to freeze its rates once, and in
25 the fourth case the Commission granted about a 7 percent

1 of what it requested.

2 Now as Mr. McGlothlin mentioned in his
3 opening, the witnesses testimony will show that just two
4 issues ROE and capital structure would result in wiping
5 out \$547 million of FPL's total base revenue request.
6 That's more than the request they have asked for
7 effective January 1st, 2013. Other adjustments offered
8 by the Citizens' witnesses and by witnesses for the
9 other parties would further reduce that to the point
10 that on a net-basis FPL, in our view, does not need any
11 base rate increase at all to do its job of providing
12 safe and reliable service next year in 2013.

13 Commissioners, under Chapter Section 366.01,
14 your polestar is the public interest. In this case, the
15 public interest, the interest of the State of Florida as
16 a collective whole, the Florida economy, and Florida's
17 individual and corporate citizens would be harmed by the
18 massive increases requested by FPL in this case.

19 History shows, amply demonstrates that FPL has
20 never needed what it claimed it needed in order to do
21 its job of providing safe, adequate, reliable service
22 while covering all of its costs and earning healthy
23 returns. Competent substantial evidence of record
24 demonstrates -- or will demonstrate, it's not in yet --
25 that FPL does not need a base rate increase to do its

1 job, to provide safe and reliable service at the lowest
2 possible cost in the 2013 test year. And, accordingly,
3 you should deny its requests.

4 Thank you very much.

5 (Transcript continues in sequence with Volume
6 2.)

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2 STATE OF FLORIDA)

3 : CERTIFICATE OF REPORTERS

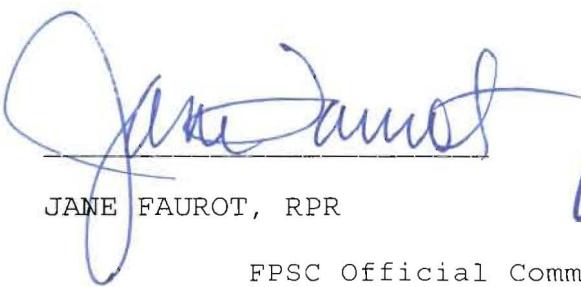
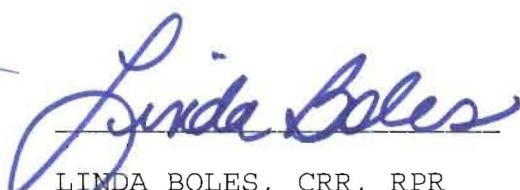
4 COUNTY OF LEON)

5
6 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR,
CRR, Official Commission Reporters, do hereby certify
7 that the foregoing proceeding was heard at the time and
place herein stated.

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

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

14
15 DATED THIS 23rd day of August, 2012.

16
17  
18 JANE FAUROT, RPR LINDA BOLES, CRR, RPR

19
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