

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041272-EI

In the Matter of:

PETITION FOR APPROVAL OF STORM
COST RECOVERY CLAUSE FOR RECOVERY
OF EXTRAORDINARY EXPENDITURES
RELATED TO HURRICANES CHARLEY,
FRANCES, JEANNE, AND IVAN, BY
PROGRESS ENERGY FLORIDA, INC.



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER CHARLES M. DAVIDSON
PREHEARING OFFICER

DATE: March 18, 2005

TIME: Commenced at 9:30 a.m.
Concluded at 10:35 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
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1 APPEARANCES:

2 JAMES WALLS, ESQUIRE and JOHN BURNETT, Carlton
3 Fields Law Firm, P.O. Box 3239, Tampa, Florida 33601-3239,
4 appearing on behalf of Progress Energy Florida, Inc.

5 JOHN W. MCWHIRTER, JR., ESQUIRE, and TIMOTHY
6 PERRY, ESQUIRE, McWhirter Reeves, 400 North Tampa Street, Suite
7 2450, Tampa, Florida 33601-3350, appearing on behalf of Florida
8 Industrial Power Users Group.

9 JOSEPH A. MCGLOTHLIN, ESQUIRE and PATRICIA A.
10 CHRISTENSEN, ESQUIRE, Office of Public Counsel, c/o The Florida
11 Legislature, 111 West Madison St., Room 812, Tallahassee,
12 Florida 32399-1400, appearing on behalf of the Office of Public
13 Counsel.

14 ROBERT SCHEFFEL WRIGHT, Landers and Parson, 310
15 West College Avenue, appearing on behalf of the Florida Retail
16 Federation,

17 MICHAEL B. TWOMEY, ESQUIRE, P. O. Box 5256,
18 Tallahassee, Florida 32314-5256, appearing on behalf of Buddy
19 Hansen and Sugarmill Woods.

20 JENNIFER BRUBAKER, ESQUIRE, and JENNIFER RODAN,
21 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
22 Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf
23 of the Florida Public Service Commission Staff.

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P R O C E E D I N G S

COMMISSIONER DAVIDSON: Call the prehearing to order. Staff, can you please read the notice.

MS. RODAN: Pursuant to notice, this time and place has been set for the purpose of conducting a prehearing in Docket No. 041272-EI.

COMMISSIONER DAVIDSON: Let's take appearances. And we will start here, with those present, and then move to any appearing by phone.

MR. WALLS: Mike Walls with the law firm of Carlton Fields on behalf of Progress Energy Florida.

MR. BURNETT: John Burnett with Carlton Fields on behalf of Progress Energy Florida.

MR. PERRY: John McWhirter and Timothy Perry of the McWhirter Reeves law firm on behalf of the Florida Industrial Power Users Group.

MR. MCGLOTHLIN: Joe McGlothlin and Patty Christensen of the Office of Public Counsel.

MR. WRIGHT: Robert Scheffel Wright, Landers and Parson, 310 West College Avenue, appearing on behalf of the Florida Retail Federation, subject to our petition to intervene being granted. That petition was filed yesterday afternoon, Commissioner.

MR. TWOMEY: I'm Mike Twomey appearing on behalf of Buddy L. Hansen and Sugarmill Woods Civic Association, Inc.

1 MS. RODAN: Jennifer Rodan and Jennifer Brubaker on
2 behalf of the Commission.

3 COMMISSIONER DAVIDSON: Do we have any parties
4 appearing by phone? All right.

5 MS. BRUBAKER: None that staff are aware.

6 COMMISSIONER DAVIDSON: Any preliminary matters,
7 staff?

8 MS. RODAN: None that staff is aware of.

9 COMMISSIONER DAVIDSON: Parties? All right. Let's
10 proceed through the draft prehearing order. I'm assuming
11 everyone has a copy. For the sake of efficiency, I'll lump
12 some of these sections together. And if you have got any
13 changes, suggested changes/concerns, please raise them before
14 we leave the section.

15 Sections I through III, conduct, case background and
16 attendance. Any concerns or issues there? Section IV, other
17 than the motion of the Florida Retail Federation to intervene,
18 are there any pending motions? Section V, are there any
19 proposed stipulations?

20 MS. RODAN: Commissioners, staff was advised
21 yesterday afternoon that there may be some proposed
22 stipulations. I'll let the parties elaborate.

23 COMMISSIONER DAVIDSON: We'll start with Progress and
24 move down the line. To your knowledge, are there proposed
25 stipulations?

1 MR. WALLS: Yes, Commissioner. We have a proposed
2 stipulation on Issues 12, 19, 23, 24, and 25. And we may have
3 one on Issue 21, as well. At least some of the parties have
4 talked about a stipulation on that issue.

5 MR. MCGLOTHLIN: Did you intend to include Number 13,
6 which was also on the list that was circulated?

7 MR. WALLS: I'm sorry, I did miss Number 13, yes.
8 Sorry, Joe.

9 COMMISSIONER DAVIDSON: And are Issues 12, 13, 19,
10 23, 24, and 25 issues to which the parties have stipulated or
11 are considering stipulating?

12 MR. McWHIRTER: FIPUG agrees to those issues.

13 COMMISSIONER DAVIDSON: Mr. Twomey?

14 MR. TWOMEY: Yes, sir.

15 COMMISSIONER DAVIDSON: OPC?

16 MR. MCGLOTHLIN: Yes, Commissioner. We participated
17 in the drafting of the stipulation language. I think, for your
18 benefit, perhaps we should point out that Number 12 is a
19 partial stipulation. And with respect to several, the
20 stipulation language makes clear that the stipulation as to
21 methodology and no party is precluded from arguing an
22 adjustment to a specific value in the accounting-related
23 issues.

24 COMMISSIONER DAVIDSON: Is that consistent with your
25 understanding, Progress?

1 MR. WALLS: Yes, it is.

2 COMMISSIONER DAVIDSON: FIPUG?

3 MR. McWHIRTER: Correct.

4 COMMISSIONER DAVIDSON: Mr. Twomey?

5 MR. TWOMEY: Correct.

6 COMMISSIONER DAVIDSON: Staff?

7 MS. RODAN: Correct.

8 COMMISSIONER DAVIDSON: And, staff, are you fine with
9 the proposed stipulations on 12, 13 -- the partial stipulation
10 on 12, and the stipulations on 13, 19, 23, 24, and 25?

11 MS. RODAN: Staff agrees to the stipulations.

12 COMMISSIONER DAVIDSON: And is modification going to
13 be necessary to the wording, or does the wording reflect the
14 stipulated language? What are we going to need to do with
15 regard to the prehearing order on these issues?

16 MS. BRUBAKER: Typically, what's done is where the
17 issue would normally appear, there is language saying this has
18 been proposed as a stipulation by the parties. And the actual
19 language itself gets moved to the stipulation section at the
20 back of the order.

21 COMMISSIONER DAVIDSON: Okay. Parties fine with
22 that? Great.

23 And, Mr. Walls, you also raised as a possible
24 stipulation something that you all have been discussing, Issue
25 21. What is the status of that issue?

1 MR. WALLS: Well, as I understand, if you look at
2 Issue 21, FIPUG agrees with the methodology proposed by PEF.
3 And OPC and Sugarmill take no position. And it was FIPUG that
4 had raised the possibility of a stipulation on that. So it is
5 just Progress and FIPUG right now, that I know of.

6 COMMISSIONER DAVIDSON: Okay. So let's just go ahead
7 and work through this at this point. Mr. Twomey and Mr.
8 McGlothlin, would you be fine with a stipulation that is
9 agreeable between FIPUG and PEF on Issue 21 if what Mr. Walls
10 stated was correct, that you all have taken no position on
11 that?

12 MR. MCGLOTHLIN: We are no not at issue on that, and
13 OPC would not get in the way of a stipulation, although we
14 would not be shown as participating.

15 COMMISSIONER DAVIDSON: What about you?

16 MR. TWOMEY: Same.

17 COMMISSIONER DAVIDSON: Okay.

18 MS. BRUBAKER: Typically, Commissioner, this is
19 handled as a different category stipulation, a Category I
20 stipulation and Category II stipulation. We can certainly
21 reflect that in the prehearing order.

22 COMMISSIONER DAVIDSON: Matching up with the
23 hurricanes.

24 MS. BRUBAKER: Exactly.

25 COMMISSIONER DAVIDSON: Excellent. Well, then let's

1 go ahead and sort of accept that stipulation here from the
2 bench, and staff can adjust the prehearing order as necessary.
3 All right.

4 So for the record, we have a partial stipulation
5 between all the parties on Issue 12, and the stipulation on
6 Issue 13, 19, 23, 24, and 25, we have a stipulation between
7 Progress and FIPUG on Issue 21 to which the other parties have
8 no objections and we will accept as part of the case.

9 Staff, you can correct me if I'm wrong, I understand
10 there to be three pending requests for confidentiality, and
11 there has been another one filed by Progress on March 16th, and
12 so there are four requests for confidentiality on the table.

13 MS. RODAN: That is correct.

14 COMMISSIONER DAVIDSON: All right. Staff, I will
15 await your recommendation, and we will get those addressed in a
16 separate order.

17 Section VIII. On opening statements, the draft
18 prehearing order provides for 20 minutes per party. Is that
19 acceptable to all the parties?

20 MR. MCGLOTHLIN: Yes, sir.

21 MR. MCWHIRTER: Too long.

22 COMMISSIONER DAVIDSON: Did you say too long? I
23 would agree with you. I always thought my draft orders had ten
24 minutes per party, but hopefully folks can keep it down.
25 Twenty minutes is a long time for an opening statement.

1 MR. McWHIRTER: I'm going to quit mumbling over here.

2 COMMISSIONER DAVIDSON: Yes, that's good. Speak up,
3 please.

4 MS. RODAN: Commissioner, at your pleasure we can
5 modify the order to specify ten minutes per party.

6 MR. WALLS: PEF would request 20 minutes.

7 COMMISSIONER DAVIDSON: What would the other parties
8 request?

9 MR. MCGLOTHLIN: I believe ours will be less than 20,
10 but if that is provided to one party, I think everybody --

11 COMMISSIONER DAVIDSON: Oh, everybody is going to get
12 the same amount of time.

13 MR. McWHIRTER: I would like to reserve until I hear
14 what they say in their 20 minutes.

15 COMMISSIONER DAVIDSON: All right. We are going to
16 knock that down to 15 minutes per party. And this is just a
17 question for staff. On this prehearing you all worked with my
18 office and used my standard template, right?

19 MS. RODAN: That's correct.

20 COMMISSIONER DAVIDSON: Okay. I know there were a
21 number of issues I addressed sort of early on. I don't want to
22 necessarily read it line-by-line here to make sure all those
23 are in here, but if you used the standard template, that's
24 great.

25 Sections IX and X, are there any changes at this

1 point to the order of the witnesses or to the issues that they
2 will be addressing?

3 MR. WALLS: Commissioner, we would just ask if there
4 could be a stipulation to the Witnesses Jeff Lyash, David
5 McDonald, and Sarah Rogers. They have not been the subject of
6 any depositions or any discover that I know of directed to what
7 they are testifying about. And so we would just ask if the
8 parties have anything to say if we could just go ahead and get
9 them excused from appearing and just submit their prefiled
10 testimony.

11 MR. MCGLOTHLIN: Commissioner, we have not been able
12 to focus sufficiently on that question to discharge them today,
13 but we will attempt to do so in the next couple of days if that
14 is all right.

15 COMMISSIONER DAVIDSON: That would be great. For all
16 the parties, there is time and expense in coming here. So if
17 you don't plan on calling witnesses, for everyone, if you all
18 can work that out and perhaps reach an agreement on how their
19 testimony will be appearing in the record.

20 MS. BRUBAKER: Commissioner Davidson, if I may also
21 make one further clarification. If the parties are willing and
22 able to stipulate to witnesses, I will also need to poll the
23 additional Commissioners assigned to the panel to make sure
24 they won't have questions for the witnesses prior to their
25 being excused. As long as that is understood.

1 COMMISSIONER DAVIDSON: Perfect. The draft
2 prehearing states that where a witness has provided both direct
3 and rebuttal, their testimony will be heard at the same time.
4 And we have found that this does create efficiencies, to just
5 get a witness up there and address all of the issues. And I
6 want that to be clear now, so that we can hear any concerns
7 about that. And if it is clear during the hearing, we don't
8 have sort of motions to pull people back up on the stand.

9 Prehearing testimony is typically very detailed, and
10 folks have an opportunity to sort of cover everything when a
11 witness is up. And just me personally, there is not a whole
12 lot of benefit from having someone come back up and hear from
13 them again. But, again, I don't want to interfere with what
14 the parties intend. So I wanted to make that clear and hear
15 from the parties if you have any objections to that process.

16 Mr. McWhirter.

17 MR. McWHIRTER: I like that approach, sir.

18 COMMISSIONER DAVIDSON: Okay. Mr. Twomey, are you
19 fine with having direct and rebuttal taken up at once?

20 MR. TWOMEY: Yes, sir.

21 COMMISSIONER DAVIDSON: Progress?

22 MR. WALLS: We have no objection to that procedure.

23 COMMISSIONER DAVIDSON: OPC?

24 MR. MCGLOTHLIN: We are fine with that.

25 COMMISSIONER DAVIDSON: Okay. Then we will go with

1 that, staff. To also speed this up, I personally am a fan of
2 having no summaries at the beginning of testimony. Again, I
3 personally don't benefit from that as much as I do from
4 Q and A, but I want to get the parties' views on that.

5 Do you all prefer short summaries or no summaries?
6 We'll start with Mr. Twomey.

7 MR. TWOMEY: Short summaries.

8 COMMISSIONER DAVIDSON: OPC?

9 MR. MCGLOTHLIN: Short summaries.

10 COMMISSIONER DAVIDSON: McWhirter?

11 MR. MCWHIRTER: Reasonable length summaries.

12 COMMISSIONER DAVIDSON: And Progress?

13 MR. WALLS: Well, if we have summaries, we would
14 certainly make them short.

15 COMMISSIONER DAVIDSON: We are going to go with short
16 summaries, majority vote. Short by definition is reasonable in
17 length here.

18 MS. RODAN: Commissioner, I would suggest setting a
19 time limit for summaries of three or five minutes. Or three to
20 five minutes.

21 COMMISSIONER DAVIDSON: All right. Three to five
22 minutes it is. And if a witness goes beyond three to five
23 minutes, no redirect.

24 MR. TWOMEY: Commissioner, why don't you be precise
25 and say five minutes? Three to five minutes is not a standard.

1 COMMISSIONER DAVIDSON: But for an agency it is. It
2 gives us due flexibility and discretion. But good point, Mr.
3 Twomey. And that was a joke by the way. Three to five minutes
4 for summaries.

5 At this time any correction to the exhibit list?
6 And, staff, if you could, on this, take a look at how we
7 handled the exhibits in the rate rebalancing case, and I think
8 how you all followed up in some of the additional cases. To
9 the extent we can, let's go ahead and prepare ahead of time for
10 the parties, for the Chairman, for the other Commissioners sort
11 of a comprehensive listing of all the exhibits. Which I think
12 you have done this before, Mr. Brubaker.

13 I remember a discussion now, there was a discussion
14 about the -- you had actually marked as Exhibit 1 your listing
15 of exhibits, so that's great. You know exactly what I'm
16 talking about and that will help everyone sort of -- we can
17 just pick up with new exhibits at the hearing where you have
18 left off.

19 MS. BRUBAKER: And just for clarification, staff will
20 be speaking with the parties in the upcoming week to talk about
21 what exhibits can be stipulated to. Hopefully, a number of
22 them can be, and we can simply move that into the record
23 efficiency and quickly.

24 COMMISSIONER DAVIDSON: Okay. Let me ask the
25 parties, as an aside unrelated to this case, there is a ton of

1 paperwork that comes in in all of these cases in terms of
2 exhibits. And it is just a tremendous, I think, burden on the
3 parties and the staff. Do you all have any suggestions, and I
4 know, sort of outside the context of this hearing, but do you
5 have any suggestions on how we can sort of streamline the
6 amount of paperwork and come up with some type of perhaps
7 electronic system, some type of additional filing, something
8 where we have the documents we need, but that the parties and
9 the staff, everyone is not sort of reproducing these huge boxes
10 of documents, you know, 21 copies of those?

11 MR. McWHIRTER: I think that if exhibits could be
12 dealt with electronically, it is quite beneficial, because you
13 have the search function and you can deal with them
14 expeditiously. And it does save paper.

15 COMMISSIONER DAVIDSON: When I was in practice that
16 is what we did. And during depositions or the hearing you
17 could pull something up using the search function. Do we have
18 the capability to do that?

19 MS. BRUBAKER: To be honest, Commissioner, I don't
20 know. I'm certainly not the person to ask technological
21 questions for. I'm not particularly successful in that area,
22 but I will try to find out for you.

23 COMMISSIONER DAVIDSON: That's a good idea. We
24 should look into that.

25 Mr. Twomey, I mean, do you find that you have got,

1 like, boxes of papers that are difficult to manage, or
2 do you --

3 MR. TWOMEY: Yes, sir. I think in some cases I don't
4 even look at those papers. Being a sole practitioner, I use
5 the computer more and more. And I think your idea is an
6 excellent one. You just have to get used to the idea of
7 cutting the string, so to speak, and wanting to have paper, to
8 have the agency or the parties to possess it. I think if you
9 got settled what you needed to have for your public records
10 retention requirements here at the agency, you could probably
11 get agreement amongst the parties, you know, unless you had a
12 party that was unsophisticated enough to have the computers and
13 so forth, and just do away with a great deal of paper.

14 COMMISSIONER DAVIDSON: I mean, we can have enough
15 copies that go to the Clerk's Office to satisfy public records
16 requests. And if Commissioners or if the staff needs a copy,
17 we can do that. But I just look at these boxes that come up,
18 including on this.

19 Mr. Willis, were you pointing or raising your hand?

20 MR. WILLIS: I was trying to figure out how we can do
21 this.

22 COMMISSIONER DAVIDSON: Well, I mean, it is in the
23 water cases, as well, a tremendous amount. It is in every
24 case, we have a tremendous amount of discovery. And it is
25 useful to have the depositions, that is useful sometimes to

1 print out and we can look at those.

2 MR. WILLIS: I was just pointing at the screen up
3 there, which is the only method I have seen in here is to have
4 an actual projector that picks it up. Some courts I have seen
5 have monitors where the clerk will actually pull up some
6 exhibits. It takes special preparation.

7 COMMISSIONER DAVIDSON: I mean, it probably would
8 take some time. I mean, we have monitors up here. Is there a
9 TV on the front there at all? So it is just that. But I know
10 even when the parties -- the reality is when the parties are
11 going through and referring to a previously filed exhibit.

12 MR. McWHIRTER: I definitely think you ought to move
13 in that direction. I don't think technologically we are quite
14 there yet. And you have two big areas that are not filed
15 electronically. Depositions are not filed electronically under
16 the rule, and they are used by the parties for whatever
17 purposes the parties need them. And the second item is
18 confidential information that you would have to figure out a
19 way to deal with effectively.

20 But I agree with Mike Twomey that it is a marvelous
21 idea to move in that direction, to make as much of the record
22 as possible available on the Internet so that the people
23 understand what is going on and can access it. On how the
24 hearing itself would work, maybe it is a little more complex,
25 but we certainly should move in the direction.

1 COMMISSIONER DAVIDSON: Ms. Brubaker, maybe you can
2 take the lead on this project.

3 MS. BRUBAKER: Actually I was going to suggest,
4 Commissioner, for the purposes, at least, for this hearing, but
5 also on an on-looking basis. For this hearing, one thing that
6 we can do to streamline that we have done in the past is poll
7 the Commissioners to see if they would actually like individual
8 copies of the exhibits produced by each party. Often they will
9 decline to do so, since there is, of course, a record copy
10 presented to the court reporter. And typically staff is also
11 given a copy. So those are available for the Commissioners'
12 reference, should they wish to see that information. And that
13 will do away with at least four to five copies of the
14 information right there.

15 COMMISSIONER DAVIDSON: Perfect. That will help.
16 And maybe whoever is in charge -- and maybe you all can go back
17 and ask legal and technical this -- the courts have a great
18 system for electronic filing. But maybe somebody -- we don't
19 have to reinvent the wheel, but maybe somebody can, sort of,
20 have our system upgraded to do that. And our website is not
21 very functional, either, by the way. It is a nightmare to find
22 things for the average -- I think for the average user.
23 Anyway.

24 MR. MCGLOTHLIN: Commissioner, if you want to
25 entertain one more suggestion, and I don't know if this is

1 applicable to this proceeding. But as a general comment, I
2 think all of us have been in numerous proceedings in which if a
3 party asked for and received a response to a discovery request,
4 that response to a discovery request was made an exhibit
5 whether or not that party intended it for any use in the
6 hearing. And there have been cases when that practice has led
7 to mountains of paper. Because a lot of discovery goes on, and
8 each party has to have its copy of the exhibit and then
9 numerous copies for the staff and Commissioners.

10 My view has always been that there is a lot of
11 duplication in that. Because the responses to discovery may be
12 duplicative of something that is in the prefiled testimony or
13 an exhibit for a witness. And perhaps the better practice
14 would be that if a party -- discovery is not automatically an
15 exhibit to the hearing. And the parties may want to use it.
16 And, if so, the burden is on them to go through the process and
17 sponsor it through a witness, either their own witness or as a
18 cross-examination exhibit. But unless that happens, I see no
19 reason, personally, why all of those document requests and all
20 those answers to interrogatories become part of the record and
21 many times over.

22 COMMISSIONER DAVIDSON: Since you all are sitting
23 here, Mr. Willis and Ms. Brubaker, could you all perhaps even
24 put together, just based on some of these ideas, just a short
25 informal memo on things we could perhaps do. And that can be

1 sort of the starting point for trying to streamline. That was
2 a very good suggestion, Mr. McGlothlin.

3 MS. BRUBAKER: We can certainly brainstorm on that.
4 One thing I will just offer, I know at least in hearings I have
5 been involved with, staff does not do blanket introduction of
6 discovery. We select the ones that we think are going to be
7 pertinent for the record and introduce it. And we certainly
8 urge the parties to do so in their best judgment.

9 COMMISSIONER DAVIDSON: Perfect. Let's move on to
10 the issues and positions.

11 MR. MCGLOTHLIN: Commissioner, at the appropriate
12 time, I have informed staff and parties that I would like to
13 add an issue to those that are already in the draft order. We
14 can take that at the end of the ones that are already on paper,
15 if you like, or I can do it now.

16 COMMISSIONER DAVIDSON: Well, let's go ahead and take
17 that up now and get points on that heard.

18 MR. MCGLOTHLIN: This arises as a result of seeing
19 the many references in Progress Energy's rebuttal testimony and
20 in their statements of position. As I understand it, their
21 contention is that with respect to the issues that relate to
22 accounting methodology, those questions have been essentially
23 resolved by a 1994 study and order entered by the Commission in
24 that time frame. And if their contention is that the study and
25 the order have some kind of binding legal effect that

1 constrains what the Commission can do with our contentions,
2 then I think it would help crystallize what is at issue if we
3 could have a stand-alone issue that frames that question.

4 If I don't understand that correctly, if they aren't
5 maintaining that the Commission is somehow -- Commission and
6 parties are somehow restricted or bound by earlier
7 determinations, then there is no reason to add this. But if
8 there is a legal argument there, I would like to have a
9 separate legal issue.

10 COMMISSIONER DAVIDSON: Staff, has the study raised
11 by Mr. McGlothlin been the subject of discussions and discovery
12 in the case?

13 MS. BRUBAKER: Yes, it has.

14 COMMISSIONER DAVIDSON: And, in your opinion, at some
15 point are we going to -- is the Commission at some point in
16 some manner going to have to give effect to that study?

17 MS. BRUBAKER: To be honest, Commissioner, I think
18 that is a subject for debate. I haven't had an opportunity to
19 give it a great deal of thought at this point. For that reason
20 alone, I think it could stand as a valid issue. But there are
21 differing opinions on it, it has been a subject of discussion.

22 COMMISSIONER DAVIDSON: And is the -- okay, fair
23 enough. Progress?

24 MR. WALLS: Yes. We have submitted the study as an
25 exhibit to Mr. Portuondo's rebuttal testimony. And we have

1 made an argument that this was a study that was submitted
2 pursuant to a Commission order requiring the company to provide
3 the methodology by which it would account for storm costs,
4 identifying the type of cost that would be charged to the
5 reserve, which the company did 12 years ago, and filed that
6 study.

7 And our position is that study was adopted by the
8 Commission when it approved the accrual in '94 based on that
9 study and closed the prior docket in which the study had been
10 ordered to be submitted, which was the '93 docket establishing
11 the company's self-insurance program.

12 COMMISSIONER DAVIDSON: What is your position on
13 whether to include this as a separate issue?

14 MR. WALLS: I don't see it as a separate issue. If
15 they want to make a legal argument, that is subject to the
16 briefs that would be submitted after the hearing. But we have
17 certainly raised it as a matter of evidence because it is an
18 exhibit and it does provide the basis for which our storm
19 charges are being charged against the reserve. **And so we do**
20 intend to introduce it through Mr. Portuondo, and have done so
21 in his rebuttal testimony.

22 MR. McGLOTHLIN: Commissioner, it is unclear to me as
23 to whether Progress Energy is contending that the study and
24 what they characterize as the Commission's approval, and that
25 is subject to dispute, is dispositive because of a legal

1 effect, or whether they are sponsoring the study and contending
2 that it is persuasive only. If they are contending it is
3 persuasive, then we don't believe it is a legal issue. But if
4 they are contending that there has been some legal resolution
5 of the things we have teed up in other issues, then I think it
6 is appropriate to have a legal issue separately framed.

7 Could I ask Mr. Walls to clarify as to whether they
8 are making that legal argument or not?

9 MR. WALLS: We are contending that in the first
10 place, yes, it is dispositive because the company submitted the
11 order in accordance with the Commission's order requiring --
12 I'm sorry, submitted the study in accordance with the
13 Commission's order requiring it to be submitted and closed the
14 docket upon receipt of it. **And, so, yes, we are contending it**
15 **is dispositive.** We also suggest that it is very persuasive
16 evidence not only about what we are doing now, but what we have
17 done in the past 12 years with respect to our storm costs. But
18 we don't see it as a separate legal issue because it is a
19 matter for argument. If Mr. McGlothlin would like to raise
20 these issues, he can do so in his brief.

21 COMMISSIONER DAVIDSON: Well, I will take this under
22 advisement. I understand the parties' positions on this, and
23 I'm just not going to rule upon this right now. As I read the
24 wording, I'm okay with part of the gist of the issue, but I
25 will work with staff, and we'll --

1 MR. McWHIRTER: Can I jump in a minute in support of
2 what Public Counsel has said. What you had was in the early
3 years in order to establish a storm damage reserve you asked
4 each of the utilities to come up with a study. Those studies
5 were submitted and the Commission had orders for each utility
6 developing the size of the storm damage reserve. It based its
7 determination in that order on what the study showed and other
8 things.

9 What we have had in this case is we have accountants
10 coming in and giving the Commission legal advice on what the
11 order means and how it should be interpreted. And the position
12 of Progress is that by issuing an order in response to that
13 study, everything in the study was accepted and is binding upon
14 this Commission legally.

15 What Mr. McGlothlin has attempted to do with his
16 statement of issue is to try to focus on what actually the
17 impact of those orders were and whether the contents of the
18 study are legally binding on the Commission, or whether certain
19 things in the order and certain things in the study were merely
20 dicta or were overlooked by the Commission.

21 COMMISSIONER DAVIDSON: I'm going to accept the issue
22 as modified by this wording. What are the effects -- strike
23 the word legal -- what are the effects, continue on if any, all
24 the way down to the next to the last line, on the manner in
25 which PEF may account for storm-related costs in this

1 proceeding. So we will accept that as an issue. And, staff,
2 you can add that in wherever it fits, sort of logically, in the
3 listing of issues.

4 MS. BRUBAKER: We have two suggestions, I guess, we
5 can float out with the parties. One is to make it an Issue A,
6 which is often where we will put legal jurisdictional type
7 issues. We could also put it as the second to the last issue
8 before the close of the docket.

9 COMMISSIONER DAVIDSON: I would put it as second to
10 the last. I don't want to, sort of, necessarily prejudge the
11 issue as one being sort of legal or jurisdictional. We have
12 got different views of the parties. We will have parties
13 arguing that there are likely -- there may be certain legal
14 effects, others arguing that it is sort of persuasive, others
15 arguing that it is factual. So I don't want to somehow by
16 placement suggest that it is jurisdictionally dispositive one
17 way or the other.

18 MR. WALLS: Commissioner, if I could just make one
19 final comment on that, since we just received it this morning
20 and we haven't seen it before today. And I do appreciate your
21 comments, because that is our concern, is while we do believe
22 that this is dispositive in the manner which I described based
23 on the prior orders of the Commission, we would object to any
24 attempt to exclude any discussion of the study and what it
25 means as an evidentiary matter simply by making it a

1 jurisdictional test or threshold, so we do agree with that.

2 COMMISSIONER DAVIDSON: Well, there is not a motion
3 on the table. And I can tell you, if there is a motion to
4 somehow exclude that study, it needs to be made prior to the
5 hearing. I'm not aware of anybody --

6 MR. MCGLOTHLIN: That wasn't my intention,
7 Commissioner.

8 COMMISSIONER DAVIDSON: -- saying we shouldn't
9 consider it. So I can tell you here that the study has been
10 discussed in the case, and it clearly is relevant evidence. I
11 mean, people are going to be talking about -- people are going
12 to be talking about that issue. And just for the sake of
13 clarity, as I understand it, it is already part of the record.

14 MS. BRUBAKER: And also just for clarification, if
15 the parties could get their positions to legal counsel in a
16 prompt fashion for inclusion in the prehearing order, so we can
17 get it finalized.

18 COMMISSIONER DAVIDSON: All right. We are on the
19 issues now, and we will -- I have a three-page document
20 entitled Docket No. 041272-EI, OPC's proposed stipulations
21 relating to Issues 12, 13, 19, 23, 24, and 25.

22 Are these the stipulations previously discussed?

23 MS. RODAN: Yes, Commissioner.

24 COMMISSIONER DAVIDSON: All right. So in our
25 discussion of the issues, the discussion in the three-page

1 document will be dealt with appropriately in the prehearing
2 order, and we will remove those issues from consideration in
3 this part of the prehearing.

4 Do the parties have views on going issue-by-issue?
5 And I guess I'm asking is there consensus on most of the
6 remaining issues, or is there likely to be discussion on many
7 of the issues?

8 MR. WALLS: Commissioner, we have one issue that we
9 would like to propose some additional language to, and that is
10 Issue 14.

11 COMMISSIONER DAVIDSON: Okay. Let's move down the
12 line first. And, FIPUG?

13 MR. McWHIRTER: No, sir.

14 COMMISSIONER DAVIDSON: Okay. And OPC?

15 MR. McGLOTHLIN: Ms. Christensen pointed out to me
16 that with respect to Number 12, the stipulations, the partial
17 stipulations, so it isn't clear to us that it should be moved
18 to the stipulation section for that reason.

19 COMMISSIONER DAVIDSON: And that is my understanding,
20 as well. The part that has been stipulated would be addressed
21 in the stipulation and whatever remains would exist.

22 MR. McGLOTHLIN: Right.

23 COMMISSIONER DAVIDSON: Mr. Twomey.

24 MR. TWOMEY: No changes or suggestions to the issues.
25 I have minor changes to the positions, but that can go in the

1 order.

2 COMMISSIONER DAVIDSON: Okay. Can you work with
3 staff on that and we will just get that in the order?

4 MR. TWOMEY: Yes, sir.

5 COMMISSIONER DAVIDSON: Okay, thanks. Well, then
6 let's move to -- so we are fine with Issues 1 through 11,
7 parties? FIPUG, 1 through 11 you're okay with?

8 MR. McWHIRTER: Okay.

9 COMMISSIONER DAVIDSON: Okay, OPC?

10 MR. MCGLOTHLIN: Yes, sir.

11 COMMISSIONER DAVIDSON: And, Twomey?

12 MR. TWOMEY: Yes, sir.

13 COMMISSIONER DAVIDSON: Thanks.

14 Ms. Christensen, let's go ahead and jump to Issue 12.
15 And if you can just sort of identify for the benefit of the
16 record and me the scope of the stipulation and what would
17 remain.

18 MS. CHRISTENSEN: Could I have Mr. McGlothlin address
19 that?

20 COMMISSIONER DAVIDSON: Okay.

21 MR. MCGLOTHLIN: The stipulation addresses the
22 accounting treatment to be applied to replacement plant. The
23 issue, as worded, encompassed more than that. It encompassed
24 the retirements and cost of removal. Those aspects are not
25 addressed by the stipulation. In addition, as several of these

1 stipulations recite, there is no preclusion of a challenge to
2 the reasonableness of amount in any of those categories.

3 COMMISSIONER DAVIDSON: Staff, is that your
4 understanding of the scope of the stipulation on Issue 12?

5 MS. RODAN: Yes, Commissioner.

6 COMMISSIONER DAVIDSON: And will you be rewording
7 Issue 12 to sort of make it more specific so that we are clear
8 as to specifically the costs we are talking about and the costs
9 we are not?

10 MS. RODAN: Yes.

11 COMMISSIONER DAVIDSON: Okay, great. And, Progress,
12 you have a proposal for Issue 14?

13 MR. WALLS: Yes, Commissioner. The current Issue 14
14 reads, "Taking into account any adjustments identified in the
15 preceding issues, what is the appropriate amount of
16 storm-related cost to be charged against the storm damage
17 reserve?" And what we would propose is that it read as
18 follows, "Taking into account any adjustments identified in the
19 preceding issues, what is the appropriate amount of reasonable
20 and prudently incurred storm-related costs to be charged
21 against the storm damage reserve subject to true up."

22 The reason we propose this is it is our understanding
23 from the issues conference that it is at least implicitly
24 understood that the standard is reasonably and prudently
25 incurred storm costs, and we just want to make explicit what is

1 implicit. And we had added the words at the end "subject to
2 true-up" because we recognize we are working off of estimates
3 right now, and the numbers may change during the true-up
4 process.

5 But what we wanted to make clear was that once we get
6 through the Issues 1 through 13, that in the true-up process,
7 we don't have someone challenging a category of cost that was
8 addressed in Issues 1 through 13, or coming back and
9 challenging, you know, the level of the costs incurred such as
10 how many crews we had out, or whether we should have gone to
11 Heinz Avenue instead of some other avenue in the order in which
12 we restored work. Because we want those issues to be resolved
13 by the time we get to Issue 14. And we don't want to have to
14 revisit these issues in the true-up, because that is what the
15 purpose of this hearing is for. So that is why we would like
16 to propose those additional words to be added to Issue 14.

17 COMMISSIONER DAVIDSON: Well, I tell you, in terms of
18 process, I definitely prefer a true-up type process to an
19 advanced surcharge type of process. And just as one
20 Commissioner, I appreciate the fact that the company is going
21 through what I believe is the process contemplated by the rules
22 on this.

23 FIPUG, do you have any comments on that proposal?

24 MR. McWHIRTER: No, sir.

25 COMMISSIONER DAVIDSON: OPC?

1 MR. MCGLOTHLIN: Yes, sir. We are fine with the
2 process. But with respect to the additional language, what are
3 the reasonably and prudently incurred costs, as I explained to
4 counsel, OPC will acknowledge to the Commission or to anyone
5 else who inquires that we have not challenged costs on the
6 basis of unreasonableness in amount or imprudence. But by the
7 same token, we haven't attempted to review the huge number of
8 costs incurred and make any kind of judgment on that or not.

9 And so what I'm afraid happens with the additional
10 language there is they are adding something that becomes
11 implicit, an implicit finding or agreement by the parties that
12 whatever falls out has been determined by the parties to be
13 reasonable and prudent. I just don't think -- and for that
14 reason, I can't support the additional language. And further,
15 I don't think Progress Energy needs it.

16 With the addition of the reference to the true-up, I
17 think it is clear that to the extent parties want to sponsor
18 and advocate adjustments based on reasonableness or imprudence,
19 this is their opportunity. And if they haven't done that, then
20 there is no opportunity in the true-up mechanism for that to
21 happen.

22 COMMISSIONER DAVIDSON: Mr. Twomey.

23 MR. TWOMEY: We support Public Counsel's view of it.

24 MS. BRUBAKER: Commissioner, if I may ask a
25 clarifying question of Progress. Are you talking about costs

1 or are you talking about categories of costs?

2 MR. WALLS: Well, we are certainly talking about both
3 to a degree. I mean, what we don't want is to have in the
4 true-up process someone say that one of the categories of costs
5 that were identified in Issues 1 through 13 should be
6 eliminated, such as looking at public relations or advertising
7 related specifically to the storms. Once we get to the true-up
8 process, the item should be what was the cost of that. If our
9 estimate was the cost was \$2 million, and it turns out the
10 actual cost is 1,700,000, we are not going to ask you to pay 2
11 million. We will ask to pay 1.7. But we don't want to have to
12 revisit the issue of whether it was appropriate to incur those
13 costs in the true-up process.

14 MS. BRUBAKER: I think one of the concerns staff has
15 is to the extent additional costs are identified down the road
16 and are then included, we haven't had the opportunity to
17 examine those costs. So was there some sort of assurance --

18 MR. WALLS: I guess we need to clarify what you mean
19 by additional costs. You mean in a certain category? Because
20 the cost estimates may differ. I mean, that's why they are
21 estimates now.

22 MR. SLEMKEWICZ: Yes, I just wasn't clear on whether
23 you were talking about -- in the true-up process you said you
24 were working with estimates. If you come up with new dollars,
25 you know, your example was it was 2 million and then you said

1 1.7. Well, suppose instead of 2 million, it was 2 and a half
2 million.

3 And I guess if we determined that the cost or that
4 category is appropriate and we have come up with some level of
5 dollars, I guess that that could be adjusted. But I guess some
6 of it is just, you know, not being able to get a handle on the
7 dollars when you just come up with a true-up and say, yes, we
8 need 10 million more dollars, and it just goes in there without
9 anybody really scrutinizing it.

10 COMMISSIONER DAVIDSON: Well, I think in a true-up
11 process staff looks at any proposed adjustments and assesses
12 those, correct? I mean, a true-up is not just automatic. I
13 participated in a couple of true-ups, and we have taken a look
14 at what is being proposed in the true-up.

15 MR. SLEMKEWICZ: Well, that is a concern. Because
16 what I heard was that -- or my understanding, which may or may
17 not be correct, is that it was just going to be automatic. The
18 true-up was just -- they don't want anybody to argue anything
19 in the true-up.

20 COMMISSIONER DAVIDSON: Well, I mean, staff typically
21 takes a look at things when they come in for true-up, and I
22 would assume that would be the process here.

23 MR. WALLS: Yes, we don't dispute that. What we are
24 talking about is if we incurred a category, we don't want to
25 get into a dispute during the true-up process of whether we

1 should have incurred costs in that whole category at all.

2 COMMISSIONER DAVIDSON: I'm going to accept the
3 language with the sort of notation for the language that any
4 proposed cost, just like the adjustments proposed by other
5 companies, would be subject to staff review. But I'm
6 comfortable with the language. I like the making explicit
7 reasonable and prudently incurred. I do agree that it is
8 implicit, but I think it is sort of useful to remove any
9 ambiguity to modify the issue.

10 So we will accept the language in Issue 14, "Taking
11 into account any adjustments identified in the preceding
12 issues, what is the appropriate amount of reasonable and
13 prudently incurred storm-related costs to be charged against
14 the storm damage reserve subject to true-up."

15 MR. McGLOTHLIN: OPC may want to amend its position
16 in light of the revised wording.

17 COMMISSIONER DAVIDSON: Absolutely. On any of these
18 the parties should amend their issues as they deem appropriate.

19 MR. McWHIRTER: Does this mean that five years from
20 now they can come in and say, oh, we should have charged
21 something to the 2004 storm and add that as a true-up amount?
22 I would think you would want some degree of regulatory finality
23 on this case.

24 COMMISSIONER DAVIDSON: Well, I agree. But we have
25 got established true-up proceedings here. I would, as one

1 Commissioner, say the answer to your answer is in all
2 likelihood no.

3 MR. WALLS: Commissioner, if someone submits us a
4 bill five years from now saying they did work for us in the
5 hurricane, I don't think we will pay it.

6 MR. MCWHIRTER: Even if it is somebody within the
7 company?

8 MR. WALLS: I would hope we would know that before
9 five years from now.

10 COMMISSIONER DAVIDSON: Anything on Issues 15 through
11 18?

12 MR. MCGLOTHLIN: In OPC's response to Issue 17, in
13 the second line, PEF should be OPC. That was our error. It
14 was picked up when the staff incorporated our position.

15 COMMISSIONER DAVIDSON: In the second line?

16 MR. MCGLOTHLIN: Yes, sir.

17 COMMISSIONER DAVIDSON: Okay. Anything on Issues 21
18 and 22? Anything on 26? Anything in the post-hearing
19 procedures, Issue 14?

20 MR. WALLS: Yes, Commissioner. We would ask that the
21 page limit be extended from 40 pages to 60 pages. While we
22 don't anticipate filing a 60-page brief, we do note that there
23 are 26 issues that have to be addressed in the brief and within
24 that page limit, as well, so we just want to make sure that we
25 have plenty of space.

1 COMMISSIONER DAVIDSON: FIPUG?

2 MR. McWHIRTER: Commissioner, we're satisfied with
3 40, but have no objection to Progress taking an additional ten.

4 COMMISSIONER DAVIDSON: OPC?

5 MR. McGLOTHLIN: No objection.

6 MR. TWOMEY: Same.

7 COMMISSIONER DAVIDSON: We are going to move it up to
8 50 pages.

9 MR. McGLOTHLIN: Commissioner, in the same section,
10 as currently worded the summary of the positions limited to 50
11 words, in my experience, it is many times difficult to craft
12 anything that is meaningful to the reader in 50 words. Could
13 we have 80 on that?

14 COMMISSIONER DAVIDSON: Sugarmill?

15 MR. TWOMEY: I support Public Counsel's request.

16 COMMISSIONER DAVIDSON: FIPUG?

17 MR. McWHIRTER: No objection.

18 COMMISSIONER DAVIDSON: Progress?

19 MR. WALLS: No objection.

20 COMMISSIONER DAVIDSON: Granted.

21 Critical dates. According to the order establishing
22 procedure, discovery is to be completed by today, and the
23 hearing is scheduled for three days; March 30th, 31st, and
24 April 1st. The final service hearing begins at 9:30 on March
25 30th. Any other issues?

1 MR. WRIGHT: Commissioner Davidson, if I may, all the
2 parties are here. And earlier this morning my friend, Mr.
3 Dolan, said to me, "Welcome to the case," which leads me to
4 believe that there will not be any objection to the Retail
5 Federation's position to intervene. We did file in hard copy
6 and electronically our prehearing statement with all of our
7 positions yesterday. And I would ask that you grant our
8 petition to intervene, and move ore tenus, if you think that is
9 necessary, to have me listed as appearing here and have our
10 positions included in the prehearing statement. I think the
11 only thing we will have to modify, we'll agree with the
12 stipulations and we will have to give you a position possibly
13 modified on Issue 14 as Public Counsel said.

14 COMMISSIONER DAVIDSON: Let me hear from the parties
15 on this.

16 Progress?

17 MR. WALLS: I'm not sure if that was intended, but we
18 have no objection to the intervention.

19 COMMISSIONER DAVIDSON: I'm assuming FIPUG and
20 Sugarmill have no objections?

21 MR. TWOMEY: No objection.

22 MR. McWHIRTER: No objection.

23 MS. BRUBAKER: Staff has no objection, of course.
24 However, if you do want to continue to take the matter under
25 advisement, just to have a chance to fully review the pleading,

1 certainly that is also within your discretion. Also, if you
2 would to rule from the bench, that would be fine.

3 COMMISSIONER DAVIDSON: I will grant the motion and
4 rule from the bench. Let's get it included in the prehearing.
5 And I believe that all that is left to do in the prehearing is
6 sort of work with the wording, incorporate the stipulations,
7 add in the new OPC issue as modified, modify the language as
8 proposed by PEF, and that should --

9 MS. BRUBAKER: We will also need to incorporate the
10 new intervenor's positions. We will do so.

11 COMMISSIONER DAVIDSON: Exactly. Are there any other
12 outstanding disputes? Is discovery going to be completed?

13 MR. MCGLOTHLIN: Commissioner, this isn't discovery
14 related, but my colleagues pointed out to me -- and I think we
15 thought of this as a consequence of the discussion of the
16 true-up, that we find no issue in the current draft that
17 identifies when Progress Energy would have to complete its work
18 and verify costs and go through the true-up process. As Mr.
19 McWhirter says, it certainly has to be less than five years,
20 but when is it? And if that isn't spelled out in the proposal,
21 then we may be at issue on that.

22 COMMISSIONER DAVIDSON: Well, I'll tell you, my
23 understanding is, one, I think that is probably -- the time
24 limit on true-up is probably a substantive decision for the
25 entire Commission. There is not a proposal on the table right

1 now. And I'm not just going to, sort of, craft one out of mid
2 air a year, two years, six months. But in any true-up
3 proceeding, it would be my understanding that as staff is
4 attempting to verify the numbers, that there might be
5 additional -- there would be additional discovery associated
6 with that. I mean, a party seeking to true-up would have the
7 burden of establishing its case. So I think that issue will
8 take care of itself. We are not going to know a true-up amount
9 until that true-up is proposed.

10 MR. McGLOTHLIN: Does the Company have a time frame
11 in its proposal for that true-up process to be completed,
12 though, that is the question. If there is a proposal, we may
13 not have an issue. But if it is open-ended, then I hope there
14 is some aspect of the prehearing order that establishes that as
15 a subject to be addressed.

16 MR. WALLS: The Company is willing to follow the
17 true-up process in any clause matter. So, just as it would be
18 handled in a fuel docket or any other clause, we would follow
19 that same true-up process. I can't give you an exact date as I
20 sit here right now of when it will be completed.

21 COMMISSIONER DAVIDSON: I mean, we're not going to be
22 able to resolve this issue because there is not a proposal. I
23 mean, it will be something to address in the hearing or at some
24 point in time if the parties contend that it's too late in
25 time. I mean, we'll try to provide additional guidance, but I

1 just can't, sort of, sit here without a proposal, without the
2 facts, and say, okay, to has to be done in three months.

3 MR. MCGLOTHLIN: No, sir, I wasn't suggesting a
4 ruling of that nature. But perhaps an issue that asks when
5 should Progress Energy be prepared to complete the true-up
6 process. And we would expect some input from them on that.

7 MS. BRUBAKER: If I may, I'm sorry, I wonder if I
8 could direct the parties to Issue 20, "What mechanism should be
9 used to collect the amount of the storm-related costs
10 authorized for recovery?" Whether true-up and the timing
11 thereof could be adequately addressed therein. That would be
12 my suggestion.

13 COMMISSIONER DAVIDSON: Yes, I agree with that. I
14 see the rest of staff nodding their head yes. We can go ahead
15 and address that, and the parties can say, you know, it must be
16 60 days, someone can say it must 90, someone can say six
17 months, someone can say a year, whatever. And I think that is
18 an appropriate way to have the issue addressed before the full
19 Commission.

20 MR. MCGLOTHLIN: Thank you. We were just looking for
21 a place where that should land, and I think that works.

22 COMMISSIONER DAVIDSON: So let's go ahead and agree
23 that that timing of the true-up lands in that issue.

24 MR. MCWHIRTER: Mr. Davidson, I'm sorry to be
25 ignorant, but I'm perplexed by the phrase storm damage reserve

1 in connection with true-up. What's happened in this case is
2 Progress Energy has come in and asked for a cost-recovery
3 mechanism. And it wants to recover its hurricane costs in two
4 years.

5 The historic way this matter has been treated is when
6 a hurricane came there was an accounting entry to an account
7 called the storm damage reserve. And that went on the books.
8 I'm not sure it came through the Commission and the Commission
9 approved it, or it ever saw the light of day until such time --
10 maybe many years later there was a rate case, and you examined
11 what was in that account.

12 So, I'm a little bit -- just a lack of understanding
13 of accounting mechanisms on my part is, I'm a little bit
14 confused when you put true-up in connection with storm damage
15 reserve. It would seem to me if this is a cost-recovery
16 mechanism, they have got two years to operate, and within those
17 years reasonable true-ups might be appropriate to recover the
18 deficit through this surcharge mechanism.

19 COMMISSIONER DAVIDSON: Well, my understanding is, of
20 this wording is that it is probably a good point to address
21 this, is that the subject to true-up is the -- modifies the
22 reasonably and prudently incurred storm-related costs that
23 would be subject to true-up, and those costs would be charged
24 against the storm damage reserve. But I don't want to sort of
25 prejudge what you might see to be sort of a legal issue or a

1 historical practice. And I think that this issue in connection
2 with the issue that has been added at the request of OPC will
3 provide the parties an opportunity to address what either is a
4 state of confusion or a state of a certainty or clarity.

5 Anything else? Prehearing adjourned.

6 (The prehearing conference concluded at 10:35 a.m.)
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1 STATE OF FLORIDA)

2 CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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

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

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

13 DATED THIS 21st day of March, 2005.

14
15 

16 JANE FAUROT, RPR
17 Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
18 Administrative Services
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