BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060038-E1

In the Matter of:

PETITION FOR ISSUANCE OF A STORM
RECOVERY FINANCING ORDER, BY FLORIDA
POWER & LIGHT COMPANY.

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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Monday, May 15, 2006

TIME: Commenced at 1:30 p.m.
Concluded at 5:40 p.m.

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

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

PARTICIPATING: (As heretofore noted.)
CHAIRMAN EDGAR: Commissioners, that will bring us to Issue 28, and I'm going to ask staff to give an overview of that issue.

MR. BREMAN: Commissioners, 28 is the vegetation side of 27. FPL had the opportunity to implement vegetation programs prior to the storms. They developed a program initiated in 2003, but they didn't initiate it as initially proposed. They ramped it in kind of slowly. Again, because of FPL's slow implementation of the program, it results in a basis of argument between FPL and the intervenors.

FPL believes no adjustment is warranted. The intervenors believe some adjustment should be made because the forensic team that reviewed FPL's system found that had FPL done some level of tree trimming, some of the pole failures would not have occurred.

Staff has a very similar approach in Issue 28 as in 27. I don't think we need to go back through all of that. Staff is ready to answer your questions.

COMMISSIONER CARTER: Madam Chairman.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: I was thinking that if
Commissioner Deason still had his calculator handy that we could follow the process that we just did on Issue 27. If that doesn't give anybody heartburn, it seems that at least we will be consistent.

COMMISSIONER DEASON: Madam Chairman, if I may.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: I want to be internally consistent, but there's a big factor here which applies to vegetation management adjustment, and that has to do with the third line, which is percent avoidable. And we certainly have a big difference in opinion between the Public Counsel witness and the FPL witness. And I know staff is taking the same position as Public Counsel, and I think that is partly attributable to the fact that FPL's own forensics team drew a conclusion that there were some pole failures that could have been avoided with more aggressive vegetation management; is that correct?

MR. BREMAN: That's correct.

COMMISSIONER DEASON: Did the forensic team offer any estimate of the percent of failures that would have been avoided?

MR. BREMAN: They only recorded what their specific observations were. They recorded three. Those
three observations were not on FPL-owned poles. They were third-party poles.

The center column, Ms. Williams' testimony, results in three -- excuse me, four avoidable pole failures. The testimony of Mr. Byerley results in 888 avoidable pole failures. So that's the difference in all these factors for you.

COMMISSIONER DEASON: So we do have an extreme difference of opinion.

Madam Chairman, I've looked at this issue with some difficulty, and I'm just having difficulty jumping to the conclusion that half of the pole failures could have been avoided by a more aggressive vegetation management approach.

Tree trimming is certainly a vital part of the utility services necessary. It's necessary to provide reliable service. But I'm just not convinced that normal, even aggressive tree trimming is going to have that much of a meaningful impact when it comes in terms of avoiding pole failures from a hurricane.

Tree trimming certainly is advantageous and necessary for just the normal day-to-day operations of a reliable utility. But, Madam Chairman, I just -- it's difficult for me to conclude that simply trimming the limbs is going to have that meaningful of an effect on
preventing pole failures. When an entire tree -- even though its limbs may have been trimmed, if it blows over, it's going to take the line and the pole down with it whether the limbs had been trimmed or not. That's the difficulty I'm having.

So maybe I'll throw that out to staff for their viewpoint and discussion about the real impact of tree trimming in terms of catastrophic storms of this nature and storms of the nature we're talking about, entire pole failures as opposed to normal reliability disruptions from a branch that may swing in the wind and touch the line from time to time.

MR. BREMAN: I think you have two extremes being proposed to you by the witnesses, and the truth is somewhere in between. FPL does not have the data, and it's not in the record, because they just don't have the data. We're going to be getting the data through the other dockets that we have, the hardening dockets and so forth, and the pole inspection dockets.

So that's where we stand today. The truth is somewhere in between the two numbers, Commissioners.

COMMISSIONER CARTER: Madam Chairman.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: I just wanted to ask -- I guess I'm just thinking aloud. It seems to me that
FP&L would have an incentive to provide as much
information as possible, particularly something where
we're talking about recovering costs on something as
significant as trimming. I mean, if the data is there,
it's there. I mean, if I were in that position, I would
certainly want to prove my costs and say, "Here's the
documentary evidence to show that these costs were
incurred."

So I'm just having some internal concerns
about the differentiation between the OPC witness,
staff's recommendation, and FPL's witness on the -- I'm
just zeroing in on the percent avoidable here. I don't
know. There's a big difference. You say somewhere in
the middle between 0.3 and 50. That's a big middle.

COMMISSIONER DEASON: May I ask another
question at this point?

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: The second line, percent
due to trees, these are pole failures that were
categorized as due to trees was the reason for the pole
to fail?

MR. BREMAN: Right. There's two levels of
review that the forensic team did. They determined
which poles failed and for what cause. In this case,
we're just interested in the cause code due to trees.
And the next step of the review asks the question, if FPL had trimmed, would that failure have occurred. So that's what the two percentages are. Effectively, Mr. Byerley is saying 12 percent of the total poles, and Ms. Williams is 0.063 percent. That's the differences we're really talking about.

COMMISSIONER DEASON: And what was the rationale for Mr. Byerley's recommendation of 50 percent? Was there some analysis done, or was it just a subjective professional estimate?

MR. BREMAN: The latter, sir.

COMMISSIONER DEASON: And of the percent that were due to trees, the 24 percent, how many of those were because the tree fell across the line as opposed to a limb blowing in the breeze that was not trimmed?

MR. BREMAN: That information is not here.

CHAIRMAN EDGAR: I always have discomfort when there is a data gap, a data gap or multiple data gaps.

MR. BREMAN: I want to -- I don't know. Maybe I'm confusing everybody more, but the percentages that we're talking about here are applicable to only those 1,740-some sites that the forensic team reviewed. And those numbers are then being allocated to the pole population that FPL owned. That's Mr. Byerley's analysis and the analysis that Williams advocates if you
need to do an adjustment.

COMMISSIONER DEASON: Madam Chairman, may I ask legal a question?

CHAIRMAN EDGAR: Commissioner Deason for a question.

COMMISSIONER DEASON: How much discretion do we have in terms of -- do we need to accept the 0.3 or the 50 percent? Are those our two options that are supported in the record, or do we have discretion for something in between?

MR. MELSON: That's a good question. If you were talking about cost of capital, I would tell you you probably had discretion for something in between. When you're dealing with a matter of either fact or opinion, I have a hard time suggesting that you can pick a number in the middle.

I think you almost have to believe one number or the other or disbelieve them both. And if you disbelieve them both, then you get back to asking who has the burden of proving what, and that may not simplify your analysis.

COMMISSIONER DEASON: Well, Madam Chairman, if it's a question of either/or, I have more confidence in the 0.3 number than I do the 50 percent number, which almost makes the adjustment meaningless. There is some
adjustment, but in terms of the magnitude of this case, it's very small. Certainly it could be calculated, but --

COMMISSIONER CARTER: Madam Chairman.

COMMISSIONER DEASON: -- I just have -- and I don't think it boils down to a burden of proof either. I think that -- I believe that FP&L made a very credible case that the majority of the pole failures were not due to a lack of tree trimming. And so I just put more faith in the 0.3 number if we have to choose between the two. That's just my personal opinion.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: If I may think aloud, Madam Chairman, I just have far more credence in the OPC and staff's recommendation on this matter here, because I don't see -- I see no incentive for staff to be otherwise, and I see an incentive for FPL to be more forthcoming with data and evidence. It just -- you know, it defies logic.

So I'm real leery on getting beyond staff's recommendation on something as obvious as this. And obviously, if I was in the superior position with the documents and evidence, I would present that data. And I think if it were available, then, you know, we wouldn't be trying to guess between 0.3 and 50. So I
think that staff is right on this one.

COMMISSIONER DEASON: We have a difference of opinion. This is what makes this process good, though.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Try to explain to me why did you select that 50 percent. What was the empirical or the mathematical procedure? I mean, is it just something that I took out of a bag and this is a number that I like? And I'm saying that in a nice way. I'm not -- you know, I'm worried. Where did it come from? Why 50 and why not 0.3?

MR. BREMAN: I can't speak for Mr. Byerley. He used his judgment based on whatever experience he has to come up with his recommendation.

Staff was inclined not to agree with what Williams was proposing, because FPL does not have pole-specific data and because FPL's vegetation program was not fully rolled out. It wasn't fully developed. So there's no guarantee that at the beginning of the hurricane season of 2005, all the streets, all the trees were trimmed. Some trees were and some weren't. And we don't have the information saying how much of the system was or wasn't trimmed, was it within the cycle. All we know is that FPL was in the process of trimming trees somewhere on its system, and we hope that the 1,700
inspection locations the forensic review team looked at were substantially randomly selected and not chosen because they were associated with the tree trimming locations.

COMMISSIONER ARRIAGA: I'm going to continue.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: If you just told us that the truth is somewhere in between, why isn't your proposal where you think it is, according to yourself?

MR. BREMAN: I couldn't answer the question you're struggling with, Commissioners. I just picked one side or the other.

COMMISSIONER ARRIAGA: So you didn't think that going in the middle was more appropriate when we don't have specific data to rely on?

MR. BREMAN: I just didn't come up with a methodology to pick a number one side or the other. I know it's more than four poles, and so I picked the number that was proposed by Byerley. He has some experience, some years of experience in the field, so I relied on that information. I wasn't a witness.

COMMISSIONER ARRIAGA: Okay.

CHAIRMAN EDGAR: Well, again, Commissioners, I think we're struggling with data gaps. And as the staff has told us, we have as a Commission tried to take steps
so that in future years, perhaps in similar situations, although we're all hoping there won't be a similar situation, but that there will be some additional data gathered for analysis. I think that's a good thing. However, here we are.

COMMISSIONER CARTER: Madam Chairman, I'm just -- I don't know where the Commissioners are, but I'm prepared to follow staff's recommendation on Issue 28. And if I'm in order, I would make a motion to that effect.

CHAIRMAN EDGAR: Commissioners, we do have a motion on the table in favor of the staff recommendation on Item 28. Is there discussion?

Commissioner Tew.

COMMISSIONER TEW: Commissioner Carter, if I may, I just wanted to be clear. Are we including all of staff's column in Table 28-1, all the recommendations there, or are we following some of our decision in Table 27.1 in the prior issue regarding the number of poles and the conductor cost per replaced pole, number of poles replaced, those sort of things that we changed in the last issue?

COMMISSIONER CARTER: Madam Chair, if I may.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: In view of the

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representation that these two would be inconsistent to
do it that way, I'm prepared to go with staff's
recommendation, unless staff has a perspective that
would make this all different. I'm prepared to go in my
motion with the recommendation as presented in 28,
unless staff says that throws everything off from Item
27. But from the discussion I heard earlier, they said
the two were apples and grapefruit, so it didn't really
throw it off that much. I mean, that's -- apples and
grapefruit is my term.

MR. BREMAN: Commissioner Carter, the
adjustment that you would have to make on this one would
be to reduce the 11,400 number to one of the two pole
count numbers provided by the witnesses.

Mr. Byerley presented a 7,400 figure. That
would tend to include more than just wooden poles.
Witness Williams simply used the same pole count that
she used in Issue 27, the 6,500. So that's the
difference between the two numbers.

Whichever number you all pick would be -- of
those two numbers would still be consistent with your
vote in Issue 27, which was to stay with company-owned
assets.

COMMISSIONER CARTER: So in answer to your
question, Commissioner Tew, yes, it would be consistent.
I just see it moot to Issue 28 as presented.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: Let me ask Mr. Breman about the number of poles. Is there reasoning with regard to this issue that doesn't exist with regard to Issue 27 when the number of pole failures may differ? In other words, would there be a reason with regard to vegetation management in this case to go along with the greater number of poles, FPL-owned and non-FPL-owned poles, with respect to vegetation management?

MR. BREMAN: As I understand the record, the record shows that -- the KEMA report specifically addresses that FPL practice is to trim all poles, all circuits, regardless of who owns the poles. I don't know if that helps you or not.

Did I answer the question about the 7,400 that has non-wood poles in it? Okay.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Mr. Melson, did I understand you correctly a few minutes ago to indicate that we should not pick a number in the middle, that we should go either staff recommendation or OPC recommendation? I mean, can't we just go in the middle? The staff is saying that the truth is somewhere in the middle.
MR. MELSON: And the problem is, we don't have support in the record to choose a number in the middle. If there was a methodology in the record and we could use different assumptions in the record and calculate a number in the middle, my answer would be different. But to just pull a number out in between leaves you potentially with a decision that is not supported by the record and that someone could challenge on appeal. Whether in this case it's a significant enough issue that either party would be unhappy with choosing a number in the middle and would choose to appeal, I don't know. But with an appeal, it could be a very tough one to defend.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: I just want to be clear about the motion again. Is it to move the staff recommendation as we have before us without any changes to the number of pole failures?

COMMISSIONER CARTER: Yes.

COMMISSIONER TEW: I can second the motion.

CHAIRMAN EDGAR: Commissioners, we have a motion and a second. Is there further discussion?

Okay. All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed?
COMMISSIONER DEASON: Nay.

COMMISSIONER ARRIAGA: Nay.

CHAIRMAN EDGAR: Commissioners, Issue 29 has been withdrawn. That will bring us to Issue 30.

COMMISSIONER DEASON: Madam Chairman, this appears to be duplicative, but I can move staff on Issue 30.

CHAIRMAN EDGAR: Thank you, Commissioner Deason. Is there a second?

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: I have a motion and a second on Issue 30. All in favor say aye.

(Simultaneous affirmative responses.)


That will bring us to Issue 31, which is also, Commissioner Deason, similarly duplicative, but I will look for a motion.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: I have a motion and a second on Issue 31.

Issue 32 has been withdrawn.

It is almost three o'clock. I am expecting that we will have some discussion on the next issue, so
I would say let's take 15-minute break and come back at 3:15.

(Short recess.)

CHAIRMAN EDGAR: We'll go ahead and go back on the record.

Commissioners, at the break, we were just coming to Issue 33. For planning purposes, I think that my thinking is that we will move through Items 33, 34, 35, 36, and then go back to the two items that we TP'd, which was a portion of Issue 17, and then Issue 25. That will then have us have moved through all of the issues dealing with charges.

So with that, I'm going to ask staff to start us off with a discussion of Issue 33.

MR. BREMAN: Commissioners, Issue 33 has to do with a transmission line that failed during Hurricane Wilma, the Conservation-Corbett line. And when it failed, it fell on top of the Alva-Corbett transmission line and took that line out of service.

The question that's being raised in this issue is whether or not FPL acted reasonably and prudently to avoid this transmission line failure.

In brief, the history of the transmission line is that it went into service in 1996. In 1998, FPL had a transmission line outage due to a failed insulator.
During that investigation and review, FPL found that bolts were missing off the towers. An FPL engineer subsequently reviewed the scenario and recommended that FPL peen its bolts that are on the towers and also address the conductor vibration. Conductor vibration is a phenomenon that exists on all transmission lines, and it is apparently the cause for the outage that happened in 1998.

Now, FPL proceeded with the conductor vibration analysis and wanted to minimize it. Prior to 1998, FPL had no history of transmission towers similarly built with bolts coming loose and falling off, so this is a rather unique event on FPL's system.

FPL proceeded with the conductor vibration analysis remediation and operated under the assumption that all problems were associated with conductor vibration, including the missing bolts or the bolts that had come loose. FPL proceeded to do subsequent inspections to verify they were addressing the assumed conductor vibration problem in subsequent years.

In 2000, everything looked good. The vibration problem was not a problem. 2001, same story. In 2002, no conductor vibration, but they found a missing bolt. FPL decided that that bolt problem, that one bolt was an anomaly. They apparently didn't go back
and test themselves to see whether or not their initial assumption that everything was a conductor vibration problem was correct. They didn't apparently go back and revisit the bolt peening recommendation by their engineers.

In 2003, FPL did another conductor vibration review and inspection, and again, no missing bolts were found. And the record does not show that -- well, the record shows that FPL did not do any subsequent inspections after 2003, so we don't know if there were missing bolts in 2004 and in 2005 prior to Hurricane Wilma.

The intervenors, and staff agrees with the intervenors, believe that FPL had a unique circumstance. Bolts were coming off towers. It was unique to FPL's system, and it was unique in North America. And in 2002, FPL had a warning sign, the one missing bolt, that the problem still was not fully addressed, but apparently FPL decided otherwise. And that's where staff and intervenors recommend that you make an adjustment to recognize that FPL should have taken the precaution to peen the bolts and tighten the bolts.

Mr. Byerley's testimony has an exhibit that includes a forensic review by FPL. FPL's engineers reviewed the situation and found that FPL had not
tightened the bolts in 1998. They found that there was no evidence that bolt tightening had occurred, which further supports the lack of activity by FPL to avoid transmission tower failure. So that really puts the icing on the cake, so to speak, and suggests that an adjustment is appropriate.

CHAIRMAN EDGAR: Thank you, Mr. Breman.

Commissioners, there are questions or discussion?

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: I have a motion and a second on the staff recommendation for this issue. Is there further discussion? Seeing none, all in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 33 approved. Issue 34.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

MR. SLEMKIEWICZ: Commissioners, I just would like to point out that you really can't vote on the dollar amount. You can vote on the concept that there should be interest, but because of subsequent adjustments, that dollar amount will change.

CHAIRMAN EDGAR: Thank you. Commissioners, Issue 34, we have a motion and a second. All in favor.

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say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 34 approved.

That will bring us to Issue 35, and I'll ask for an overview.

MR. DEVLIN: Madam Chair, Issue 35 deals with the issue of sharing. And this may, by the way the issue is worded, be a moot issue, but that's something for the Commissioners to consider. By virtue of other decisions in the case, I would proffer that sharing has already taken place.

Staff agrees that FPL should not be 100 percent insulated from the adverse effects of storms, and indeed, they have not been. We talked earlier about the business risk associated with weather changes and lost revenue, et cetera. FPL through your decision is absorbing that risk in their cost of capital. The same with the uncollectibles. To the extent there's prudence adjustments that Mr. Breman talked about, to me, that's an adverse effect to FPL. Even being subject to prudence adjustments is an element of risk for FPL.

So I'm giving you two examples where I think the shareholders of FPL are sharing in the adverse effects of storms. And the third area I think is still...
up for grabs, and that would be the indirect costs
issue, backfill and catch-up work. To the extent that
FPL absorbs those costs, that would be a third category
of costs that FPL would absorb and share in the risk of
the storms. So I guess in that sense, staff is saying
sharing does make sense, and it has indeed happened as a
result of other issues in the case.

CHAIRMAN EDGAR: Thank you, Mr. Devlin.

Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chair.

I don't know if I heard you right, but did you say that
this is -- because of other votes we've taken so far in
this case, that this issue is moot? Or what are you
saying?

MR. DEVLIN: Commissioner Carter, I think you
could entertain taking that position, that it's moot
because of other issues that have been decided upon in
this case, such as the lost revenue and the
uncollectibles and a couple of the issues that
Mr. Breman talked about.

My view is that because of those decisions,
FPL has shared in the adverse effects of the storms. So
the answer is yes, and, yes, they have already done that
as a result of your decisions in other issues. There
are a couple of them that are still pending, but there

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have been decisions in three or four areas that will result in adverse effects to FPL shareholders.

COMMISSIONER CARTER: Madam Chair, permission to follow up, please.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: So what is your recommendation on Issue 35?

MR. DEVLIN: No further action is necessary. And by virtue of other adjustments in the case, FPL shareholders are sharing in the adverse effects of the storms, and no further adjustments are necessary.

COMMISSIONER CARTER: Thank you.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: I like the way you say Arriaga. It's really appropriate Spanish.

CHAIRMAN EDGAR: I've been practicing.

COMMISSIONER ARRIAGA: You are rolling the R's.

My question is to Mr. Keating. It's basically a legal issue here. During the whole process, there were a lot of comments regarding our not being bound by this settlement agreement, and I would like to interact with you a little bit regarding this issue.

First of all, am I understanding correctly that whatever recommendation you're making right now is
based on the fact that we are not bound by the
settlement agreement?

MR. KEATING: I think to accept staff's
recommendation here, which is essentially to recognize
that the items that are listed here on page 124, with
the exception of, I guess, the matters raised in Issues
17B and C that have yet to be addressed, essentially
result in some sharing of adverse effects. I don't
think you have to get into an analysis of what the
stipulation does or doesn't preclude to recognize that.

COMMISSIONER ARRIAGA: Nevertheless, on page
128, in the last paragraph, in the second sentence, you
indicated that we are not entirely bound. And when I
read that, it means that we are partially bound. So
what is it?

MR. KEATING: I'll clarify. I think we are
bound to the extent that we're bound by any final order
we issue setting rates. Any order we issue setting
rates, we do so recognizing that we retain authority
going forward to set fair and reasonable rates. If
there's a change in circumstances that warrants doing so
or if there's a modification of those rates that's
required in the public interest, we retain the authority
to make a change.

Now, that said, I'm sure we've discussed this
before, and it has been discussed in the public forum
before that the Commission has given deference to
settlements. But as a legal matter, you're bound by it
not an as a signatory as the other parties are, but to
the extent that it's adopted as your final order setting
rates for FPL.

COMMISSIONER ARRIAGA: May I continue, please?
And I have a little concern here, because to me, the
issue is -- originally I had some second thoughts, and
during the discussion, I was wondering if we are bound
or not.

And to me, it was very important to notice the
silence of certain intervenors and the active
participation of others, whether we are bound or not.
And after listening to the discussion, I came to the
conclusion personally that we are not. And like you
just said, we do have -- the Commission has deference
for these types of agreements, and we encourage them, as
a matter of fact.

Now, the point that I'm trying to make is, for
future references about our own personal participation,
or institutional participation, I should say, wouldn't
it be better -- and this is more or less a legal
semantics issue. Rather than approving settlement
agreements, wouldn't it be better to authorize

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settlement agreements?

And let me read -- may I read, Madam Chair? I went to Webster's dictionary, and I started looking at the definition of approved versus authorized, and approved says, "To give one's consent to, to sanction, to confirm, to be favorable towards, think or declare to be good and satisfactory." To authorize means to give official approval to or permission for, to give power or authority, to empower, to commission.

Wouldn't it be better in the future, to avoid this kind of confusion, to authorize settlements rather than approve settlements?

MR. KEATING: I think as a practical matter, you would get to the same point. The decision or the order approving the settlement would have the same legal effect, in my opinion.

COMMISSIONER ARRIAGA: It may have the same legal effect, but the interpretation of third parties may be different as to their request for us to intervene in something that we have authorized rather than -- and the reason being that you're saying we're not entirely bound, which to me meant that we are partially bound.

MR. KEATING: And again, only to the extent that we would be bound by any final order we issue. There is the doctrine of administrative finality. We
issue an order, and it speaks to the matters addressed
in that order. And so that the parties have some
assurance going forward that we're not just going to
reverse ourselves on that order, the doctrine is that --
the legal doctrine is that we allow that order to govern
unless we find that there's a significant change in
circumstances or some modification is warranted to be in
the public interest.

COMMISSIONER ARRIAGA: And allow me make a
clarification, if I may, Madam Chairman. I'm not trying
to send a message. Let's be very clear. I'm not
sending a message out there that I'm not supporting
settlement agreements. On the contrary, welcome, do
them as much as you can.

But this Commission, how much it interferes or
intervenes or participates in approval or authorization
is my worry, because one of the intervenors during the
case indicated thoroughly many times that we should
intervene because we're not bound. And I just want to
reserve that possibility and leave it there just for the
sake of argument.

I'm just thinking out loud here, because I'm
concerned about how much should we participate or
endorse or, you know, become part of the settlement
agreements, which are really the responsibility of the

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people out there. We should authorize, overview, but not become participants in any way.

MR. KEATING: From my recollection of the settlements that we've seen in recent years, in rate cases in particular, I think we've always been careful to say that the settlement binds the parties, that it doesn't necessarily bind the Commission, that it's subject to the standard that I cited before, significant change in circumstances or some modification to make sure our decisions are in the public interest.

We have, I think, almost always made that point in recommending or presenting a settlement to the Commission for discussion or for approval, that while we have given them great deference and encouraged settlements, there may come a point when circumstances change to the extent that we feel it's necessary going forward in the public interest to do something different, even though -- using this settlement as an example, it's got a certain term. If you were to find two or three years into the term that something significant has changed and that it's just not a fair arrangement anymore, we could pursue that.

COMMISSIONER ARRIAGA: Okay. Thank you.

CHAIRMAN EDGAR: Commissioners, questions on Issue 35?
COMMISSIONER DEASON: I have a couple of questions.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: I guess my question pertains to just the concept of sharing and what that term implies. And the way I think staff is using it here is that if we make any determination that an amount is unreasonable or imprudent or inappropriate and we disallow that, that's a sharing.

And I'm not sure that I agree with that, but I think that's where you are. You're certainly not adopting a certain percentage sharing. It's that you've gone in and you've analyzed all the issues and you've made recommendations. And in fact, this Commission has voted on a number of those, and there have been adjustments made for various reasons. And by disallowing those amounts from total costs, staff is interpreting that as a sharing of those costs. Is that correct?

MR. DEVLIN: That's correct. Not necessarily costs even. I'm looking at it in a more broader sense, a sharing of adverse effects, which could be a shifting of business risk to shareholders.

COMMISSIONER DEASON: But the goal is that by analyzing all these issues that we're in the process of
doing, the ultimate goal is to determine the reasonable, prudent, and appropriate amount of recovery for storm recovery; is that correct?

MR. DEVLIN: Yes, sir.

COMMISSIONER DEASON: Okay. But we're not recommending sharing any of the reasonable, prudent, and appropriate amounts. It's just that there may be some amounts beyond that that we're disallowing.

MR. DEVLIN: Correct.

COMMISSIONER DEASON: Okay. Madam Chairman, with that understanding, I can move staff's recommendation, realizing that some of the numbers in the table on page 124 may change. In fact, I think maybe some of those numbers have changed.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Commissioners, we have a motion and a second on Issue 35. Is there further discussion? All in favor of the motion say aye.

(Simultaneous affirmative responses.)


And, Commissioners, I did say a few moments ago that we would finish this sort of subsection of our issues, but upon further reflection, I think it makes sense to go back to 17 now, so I would like to go ahead
and do that. And if the staff can give us just a second
so that we all get the right papers in front of us, we
will go back and take up the remainder of Issue 17,
which began on page 62. And when we TP'd this item, we
left subparts B, C, and E that still need to be disposed
of. So, Mr. Breman.

MR. BREMAN: Commissioner, the record only has
one number. I don't remember who -- I think it was
Commissioner --

CHAIRMAN EDGAR: Actually, it was me.

MR. BREMAN: Okay. There's only one number
that's not broken down. There's no breakdown between
whether or not it's outsourced or not, capital versus
noncapital. There's only one number.

COMMISSIONER CARTER: I'm sorry. I couldn't
hear.

CHAIRMAN EDGAR: Mr. Breman, a little louder.

And, Commissioner Carter, I'll paraphrase, and then
staff can certainly jump in.

When we were discussing this item, I had asked
about the number. I think it's a couple of times in the
item, but I'm looking right now at the top of page 68,
where it gives a dollar value estimated at 7.8 million
for catch-up work. And I was wondering if there was
some additional information in the record to help break

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that down, and Mr. Breman I believe is telling us that
there really is not.

MR. BREMAN: There is not. It's Exhibit
KMD-13, page 2 of 2, line 11. There's only one number.

CHAIRMAN EDGAR: Thank you.

So, Commissioners, with that additional
discussion and review that our staff has done of the
record while we proceeded with the other items -- as I
said, we still have subparts B, C, and E before us. Are
there further questions?

COMMISSIONER DEASON: I have a question.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: Well, as a follow-up
question, does staff has an opinion as to whether the
$7.8 million of catch-up work is an appropriate estimate
at this point or not?

MR. BREMAN: It's appropriate for the purposes
of this proceeding, Commissioner. It will be trued up,
and there's no way to avoid that.

CHAIRMAN EDGAR: Mr. Breman, I thank you for
raising that point, because I was about to ask that
question, that there would be true-up as we move through
the process.

Commissioners, are there further questions or
discussion? Then I think it's time for a motion.
COMMISSIONER DEASON: Madam Chairman, I can make a motion. I would move that we deny staff’s recommendation on Issues 17B, C, and E, and that we allow backfill and catch-up work to be charged to the reserve for recovery.

CHAIRMAN EDGAR: Okay. Commissioner Deason has made a motion on all three of the subparts that we had yet to take up. We will have some further discussion on his motion.

I do note that in the discussion that the staff has laid out an analysis for us that -- my understanding is that one of distinctions they had used was trying to draw that line between indirect and direct costs that can be attributed to storm restoration. And I note again -- I think I said this earlier -- that I fully recognize that sometimes there can be a gray area. It’s not always a bright line. But yet in my opinion, it is one way, and it is a very useful way of trying to categorize costs and expenses.

Commissioners, we do have a motion on the table. Is there a second or discussion or a question? Commissioner Arriaga.

COMMISSIONER ARRIAGA: I’m not going to second it yet. I just want a clarification from Commissioner Deason.
CHAIRMAN EDGAR: You're recognized.

COMMISSIONER ARRIAGA: Thank you.

Commissioner, please explain to me, are you proposing this for the same reason that we did the previous Issue 17 items, the same reason, that we may be sending a message to the company not to appropriately go ahead and do what they need to do to restore power?

COMMISSIONER DEASON: Yes, Commissioner. I'm concerned that we're providing a financial disincentive to make decisions to restore service as quickly and as efficiently as possible.

And I also think that -- while I agree with the Chairman that there may be degrees of difference between true incremental costs and directly associated costs and unassociated costs, I think this type work, while perhaps it was not direct costs of restoring service, it's costs that are the direct consequence of trying to restore service quickly and efficiently. And for that reason, I would think they are costs that should be allowed for recovery.

COMMISSIONER ARRIAGA: May I continue, please?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Listening to what Commissioner Deason has to say, Mr. Breman, what would be your reasoning to propose that we don't allow this
expense?

MR. DEVLIN: I have two reasons. One is the reason that the Chair mentioned, that it's not directly related to storm restoration. And the other is, I think it would be very difficult to verify these costs. I mean, they're after the fact. It could be six months, could be a year down the road that this backfill and catch-up work takes place. And I think it might be very hard to discern, you know, regular O&M costs from costs that were incurred because people were taken off the job six months earlier. So I have a little auditability question that comes into play here as well.

COMMISSIONER ARRIAGA: But if there's going to be a true-up, wouldn't that be an opportunity for us to determine --

MR. DEVLIN: I was just asking John about how difficult that might be to true up, because these are costs -- and somebody can correct me if I'm wrong -- that are not charged to the storm reserve. They would be charged to perhaps an O&M account. And if we allow these costs in this case, yes, we would do an audit, and I didn't know how difficult it would be to discern that these costs related to backfill and catch-up versus normal O&M, and I don't have an answer to that question. I think it might be difficult to audit and verify.
COMMISSIONER ARRIAGA: But it says it represents additional overtime hours or contractor work incurred until catch-up work is completed. Additional overtime hours are -- I mean, a record is kept in any company of overtime, and so is a record of contractor work. There are invoices. There are all kinds of things that you can verify.

MR. DEVLIN: That's very true, Commissioner, but overtime takes place all the time, and they have contract labor all the time as well.

COMMISSIONER ARRIAGA: So what you're saying is that it's difficult to determine whether that overtime was applied to storm-related activities or to normal overtime that the company incurs?

MR. DEVLIN: It might be difficult. I'm not sure. It's not really storm restoration activities. It would be this backfill and catch-up work that they'll be doing, you know, after the fact. And I'm just not sure how -- I think it would be difficult to tag those dollars as relating to the hurricanes.

COMMISSIONER ARRIAGA: So because it is difficult for us as the Commission and staff to determine, we are denying it because of the difficulty?

MR. DEVLIN: That was one reason I have, and the other is that it's not directly related to
restoration. Those are my two reasons.

CHAIRMAN EDGAR: Commissioner Deason, I agree wholeheartedly with your thought about us wanting to avoid trying to unpurposefully put in a disincentive to the actions that we want our regulated utilities to carry out. And I think that -- and I am also, Commissioner Carter, thinking out loud here. But there certainly are times when, you know, decisions are made, and down the road you realize that there was an impact or effect that had not been realized.

In this instance, though, I am somewhat persuaded by comments made by Mr. Devlin earlier about the good work done by the utilities in the state and the seriousness with which they take the responsibility to provide service and to provide it reliably and safely and efficiently to all of the customers that they serve.

And again, pointing out that -- I've said it now two or three times, but that is because I'm thinking out loud -- that I fully recognize there are some gray areas, but trying to provide some consistency between direct and indirect costs to me seems like a good message and a clear message to send as well. And I put that out also just for discussion.

Commissioners, are there further questions or comments?

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Commissioner Carter.

COMMISSIONER CARTER: Madam Chairman, I would agree wholeheartedly, because I think if you have an incentive to have a bifurcated process or have at least some distinguishable perspective in terms of what costs are and what they are pertinent to in terms of cost areas and income areas and things like that, it gives a greater perspective, and it makes the whole process more transparent. And I think that's really what we should be doing as Public Service Commissioners.

And I just think that it -- the industry is doing a great job, and we appreciate that, but also, in the process of doing a great job that should be appreciated, it should also be a transparent job so that we don't come back six months or four months or whatever down the road and say, you know, we don't really know what the real number is.

And I think that if we put in some parameters, then at least they will have some direction to say the Commission says put these costs in this category, put these costs in this category, such that later on when there's a process for audit, then there's legitimate audit process taking place. So that's why I'm convinced to take staff's position on Items B, C, and E that are outstanding.
COMMISSIONER DEASON: Madam Chairman, I don't
think the motion is going to have a second, but I want
to clarify the motion for just a moment. I'm not
recommending that we do anything of an opaque nature,
and I'm not recommending that we do anything that can't
be audited and verified. I'm simply recommending or
suggesting that we make decisions internally consistent
with what we expect a well run and managed utility to
do. Our decisions should be consistent with what we
expect management to do, and that was the reason for the
motion.

COMMISSIONER ARRIAGA: May I?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: And I truly understand
what Commissioner Deason has just clarified, and I take
the same point of view, and I even go one step further.
We're telling the company, "You're doing a good job, and
whenever you're doing a good job, we appreciate it, but
at the same time, we're going to penalize you for it."
It's sort of like, "Stop doing a good job," and that
worries me a little bit. So, Commissioner Deason, I'm
going to second your motion.

CHAIRMAN EDGAR: Commissioners, we have a
motion and a second. Is there further discussion?
Seeing none, all in favor of the motion say aye.
COMMISSIONER DEASON: Aye.

COMMISSIONER ARRIAGA: Aye.

CHAIRMAN EDGAR: All opposed? Nay.

COMMISSIONER TEW: Nay.

COMMISSIONER CARTER: Aye, aye for opposed. I thought you were going to say "like sign."

CHAIRMAN EDGAR: Commissioner Tew, I'm sorry, but I did not hear you, and that means I hear a 2-2, and so I'm going to ask for a clarification of your vote.

COMMISSIONER TEW: I also said nay. But let me just clarify that I also have concerns about sending the wrong signals to utilities and feel like I'm believer in incentive based regulation, but I've just really struggled with this, and I feel like I just have to come down on the side of staff in this case.

CHAIRMAN EDGAR: Thank you. Commissioners, I believe that means we need a motion.

COMMISSIONER CARTER: We're on -- where are we at? Two to 2?

CHAIRMAN EDGAR: No. The motion failed.

COMMISSIONER CARTER: The motion failed.

CHAIRMAN EDGAR: And so if we want to adopt the staff recommendation --

COMMISSIONER CARTER: Okay. I would move we follow the staff recommendation on Items B, C, and E,
Madam Chairman, on Issue 17.

CHAIRMAN EDGAR: Thank you, Commissioner Carter.

COMMISSIONER TEW: Second.

CHAIRMAN EDGAR: I have a motion and a second.

All in favor of Commissioner Carter's motion say aye.

COMMISSIONER CARTER: Aye.

CHAIRMAN EDGAR: Aye.

COMMISSIONER TEW: Aye.

CHAIRMAN EDGAR: Opposed?

COMMISSIONER DEASON: Nay.

COMMISSIONER ARRIAGA: Nay.

CHAIRMAN EDGAR: All right. Thank you very much. And with that, we will move to the next temporarily passed item, which was Issue 25, and that was on page 87.

Mr. Slemkewicz, in light of the votes that we have just taken, can you give us an overview of Issue 25, please.

MR. SLEMKEWICZ: Okay. Issue 25, the only change -- let's see. Okay. There were no changes through Issue 25, so there would not be a -- there should not be a change to the number. The number in the recommendation does not reflect the change we made to Issue 22. And the bottom line number based on the
changes to Issue 22, if you turn to page 88, on the
third number from the bottom, the 725,972,500 would now
be $730,129,115, and the jurisdictional portion of that
would be $729,552,313.

CHAIRMAN EDGAR: Thank you, Mr. Slemkewicz.

Commissioners?

COMMISSIONER DEASON: I have a question. I
thought that we made an adjustment to staff's
recommendation on the issue dealing with pole
inspections and pole replacements. Am I mistaken?

MR. SLEMKEWICZ: Yes, 27, but that's past 25.

COMMISSIONER DEASON: Okay. That's going to
be taken up in the next --

MR. SLEMKEWICZ: That's in the next fallout
issue, in 36.

COMMISSIONER DEASON: That's fine. So there
will be a further adjustment on that fallout issue.

MR. SLEMKEWICZ: Yes, sir.

COMMISSIONER DEASON: Okay. Thank you.

CHAIRMAN EDGAR: Thank you, Commissioner
Deason.

Commissioners, with the clarification, are
there further questions?

COMMISSIONER DEASON: Move staff as modified
and described by staff.

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CHAIRMAN EDGAR: Thank you. Do I have a second?

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: I have a motion and a second.

All in favor say aye.

(Simultaneous affirmative responses.)


Commissioners, that will bring us then to Item 36.

MR. SLEMKEWICZ: Okay. Item 36 is again another fallout issue, and this one will incorporate Issue 27, where the amount changed from 4,460,000 to 1,650,000. So if you turn to page 132, the fifth number from the bottom, where it says -- let's see.

$718,962,500 would now be $725,929,115. The jurisdictional factor doesn't change. The net jurisdictional costs would then be -- instead of the 718 million that's listed there, it would be $725,355,631. The interest adjustment or the total interest would increase to $10,213,507, which would give you a grand total of $735,569,138.

CHAIRMAN EDGAR: I'm sorry, Mr. Slemkewicz. I was still one number up. Can you give me the very last number there, the total jurisdictional number?
MR. SLEMKEWICZ: 735,569,138.

CHAIRMAN EDGAR: Thank you.

MR. MELSON: Chairman Edgar, could I ask Mr. Slemkewicz one question?

CHAIRMAN EDGAR: Mr. Melson.

MR. MELSON: John, did that include the change to the top number on the page, the carryover from changed Item 25?

MR. SLEMKEWICZ: Yes. All those numbers would change. I was just trying to get to the bottom line. I'll have to redo all these schedules to get all the numbers to show correctly. I was just trying to get to the bottom line numbers.

CHAIRMAN EDGAR: Thank you. Commissioners, with the numbers that have been described to us by staff, are there other questions for Issue 36?

COMMISSIONER DEASON: I can move staff.

CHAIRMAN EDGAR: I have a motion. Is there a second?

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: I have a motion and a second on Issue 36. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Please show 36 adopted.

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Commissioners, that will bring us to Item 37. And I'll look to our staff to give us an overview.

MR. BREMAN: Issue 37 has to do with the contribution to the storm damage reserve. It's a one-time infusion. FPL has recommended a $650 million figure, and it's based on the traditional sense of, if we were insuring, where would we try to target the reserve to.

The intervenors took a different tack. They said that FPL had no risk; therefore, how much are we willing to pay as a one-time infusion into the reserve so that we're going to mitigate some level of price or bill volatility. And that's the difference between the two presentations.

In this case, FPL's rebuttal witness indicated the company is not at risk with the lower reserve level, and it has no effect except resulting in the volatility that we just spoke about. And the intervenors appear to be in agreement with that and are willing to go forward with a lower reserve level because they think that's in their best interest, at least today.

And witness Stewart provided an exhibit to his testimony where he calculated 16 years of FPL hurricane costs. He averaged those 16 years and came up with a $147 million figure, and he added a little bit more to
that and came up with his $200 million contribution to try to pad the reserve so that there wouldn't be a filing, hopefully, this year.

FPL made an assumption using traditional long-term hurricane insurance methodologies, and they came up with an estimate that on average, FPL will have about $73.7 million of annual storm damage. Whichever is approximately correct, the $200 million will cover us either for one year, or perhaps three years. Again, the intervenors are willing to go forward with the higher risk and the volatility associated with the lower amount.

CHAIRMAN EDGAR: Commissioners?

COMMISSIONER CARTER: Madam Chairman, just for a comment. I think the 200 million gives an opportunity for -- if things do happen in a, quote, unquote, worst-case scenario, at least we can come back and revisit this issue, and everybody, including the public, will be able to see the nature of that.

So the 200 million seems to be a reasonable amount for the storm damage reserve. I notice there was testimony to between 140 million all the way up to 650 million, and the perspective of the AG's office, as well as from staff, is 200 million.

And I think that's a reasonable amount,
because nobody really knows -- notwithstanding the
predictors, nobody really knows what the level of storms
will be in any given year. But it certainly will give
the public comfort if there is a catastrophic storm
season to have a process where they get some input as we
go through this process. And I think that people are
reasonable. If things are significant like that, they
will want to have it taken care of. So I think the 200
million is a fairly reasonable amount to have in the
storm damage reserve.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: I think I totally agree
with staff and with the intervenors on the fact that
this is a 100 percent consumer risk. I agree with that.
And you have indicated that the consumers are willing
to -- the citizens are willing to take that risk.

But at the same time, I think this Commission
needs to weight what the citizens -- we're not
second-guessing them, but we need to weight whether
their proposals are also in the best public interest.

So I don't have any problem with the figure.
It could be 100, 600, or whatever. My problem is, how
do we get to $200 million? What is the mathematical
formula we use to get to that? Why not 150?

MR. BREMAN: I relied on the testimony that
was provided. And there's two groups of testimony.  
There's testimony supporting 200 million, and there's  
testimony supporting 650 million, and those are the only  
two numbers in the record.  
The 200 million was sponsored by witness  
Stewart, and the way he calculated it was simply  
averaging the 16-year history of FPL and adding to it a  
50 million kicker, so to speak, to get to the round  
figure of 200 million. His theory was that the kicker  
was necessary to recognize the potential for more  
frequent storms.  
That's essentially it, Commissioners. So you  
have two options, either 200 million or 650 million.  
COMMISSIONER ARRIAGA: Nowhere in between?  
MR. BREMAN: Not in the record.  
COMMISSIONER ARRIAGA: Not in the record.  
MR. MELSON: Commissioner Arriaga?  
COMMISSIONER ARRIAGA: Yes.  
MR. MELSON: This is one where there are a  
number of factors that each witness who sponsored a  
number testified to that went into their calculation.  
And without examining it further, I'm reluctant to tell  
you that this is a case where you could not choose a  
number in between if you weighed those factors  
differently, for example, the likelihood of increased
storm activity, the more recent experience.

Obviously, the safest thing to do is to go with one of the two numbers in the record. But unlike the prior discussion, I would be hesitant to tell you that choosing something in the middle would be inappropriate. If you did choose something in the middle, you would have to think about it in terms of the specific factors in the record and how you weighed those.

COMMISSIONER ARRIAGA: May I, Madam Chair?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: And I appreciate that, and let me clarify my position. I said at the beginning that I truly understand that it is the citizens' call, and if they want 200 million, I'm willing to go with that. There's absolutely no problem. But I think that we have an obligation to weight all the factors, considering, for the record, that this is a call made by who is assuming 100 percent of the risk, and they're entitled to assume that risk. And if that's what they want to do, that's fine with me. I have absolutely no problem with that. I'm willing to go with the 200 million reserve.

But I do need to ask the question, because again, these numbers pulled out of the hat worry me a
lot. Let's talk about any other utility, maybe Progress Energy, for example. What would be the storm reserve that is being discussed right now for Progress Energy, if at all? And what I'm trying to get here is the size of Progress Energy versus the size of Florida Power & Light and the amounts that would be going to the storm reserve in either case. Is that a fair question? I'm just trying to figure out where did this 200 million number come from. And, again, beforehand, I'm saying I'm going to approve the million 200, because that's what the citizens want, but I'm trying to figure out what mathematical calculation was made to get to that point.

MR. BREMAN: As I said, the record has a very simple mathematical process. They took historical data for the past 16 years and averaged it, and that came up to $147 million. And then witness Stewart added $50 million, in his judgment, took into account the other various factors that he was concerned about.

No witness specifically quantified all the various factors. They didn't say factor A has these dollars associated, factor B has these dollars, and then added all those complements up. The witnesses simply produced one number based on a judgment.

COMMISSIONER ARRIAGA: May I continue, please?
CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Thank you. Would it be fair to say in the future, for example, that -- let's say Gulf Power, which is five times smaller than FPL, or ten times smaller. Would it have been fair to say that in the case of Gulf Power, if we had a similar case presented here, and assuming they're ten times less than FPL, that we would be approving a storm reserve of 20 million?

MR. BREMAN: No. I think the facts and circumstances of each utility have to be considered, including such things as what are the customers already paying for through their base rates. That's a factor you have to consider. And FPL has a different set of facts and circumstances. In this case, FPL's base rates do not include a component for storm damage reserve, so you set a target level.

The theory of that would be, suppose they have no storms for a period of years and the storm reserve continues to accrue that annual amount and it starts getting really big. So that becomes the concern about what level do you have before you say, "Okay. Stop accruing to it. Let's do something else with the dollars."

So the whole regulatory concept of how you
deal with the utility has to be done case by case, looking at the specific facts and circumstances of that utility. It's very hard to make a generalized statement about what a storm damage reserve should be for any given utility using some uniform rule.

COMMISSIONER ARRIAGA: Madam Chair, with those clarifications, I'm prepared to move staff's recommendation.

COMMISSIONER CARTER: Second.

COMMISSIONER DEASON: Madam Chairman, if I may.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: I'm going to support the motion, but just let me say that it causes me some concern. And I believe that the comfort that I find is in the possibility that we're going to approve the securitization. And I know that's in subsequent issues, and we will deal with that.

But let me say this. If we were to choose not to go the route of securitization and go back to a more traditional surcharge, reserve target approach, maybe even trying to -- in the future, after this stipulation expires, trying to have some type of an accrual in base rates, I think that the number should be higher than 200 million.
I know that when the Commission reviewed the target of an appropriate reserve that was necessitated by Andrew and the fact that insurance was no longer available in that era, and continues now, I think the Commission had internally set a target of having in the reserve at least enough to cover one type Andrew event. And I don't know what that would be in current dollars, but I would anticipate it probably would be 400 million plus, just in round numbers.

So I'm comfortable with the 200 million, even though -- given that hopefully we're going to review securitization, and maybe that's what the Commission is going to decide. If the Commission were not to decide to go to securitization and go to a more traditional approach, Madam Chairman, I probably would move that we reconsider the 200 million and maybe look at a higher number. But given what I know now, I'm comfortable with going with the 200 million.

CHAIRMAN EDGAR: Thank you. Commissioner Arriaga, you did make a motion?

COMMISSIONER ARRIAGA: Yes, I did.

CHAIRMAN EDGAR: And we had a second?

COMMISSIONER CARTER: Yes.

CHAIRMAN EDGAR: And we had a second. Okay.

Thank you. Is there further discussion?
Okay. All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Motion carries.

We are on Item 38. Commissioners, are there questions for our staff or discussion on Issue 38?

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second on Issue 38. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 38 is carried.

That will bring us to Issue 39.

Commissioners, questions or discussion?

COMMISSIONER DEASON: I can move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Issue 39 is approved.

Issue 40 has been withdrawn. That will bring us to Issue 41.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second on Issue
41. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 41 is approved. Issue 42. Mr. Slemkewicz.

MR. SLEMKEWICZ: Issue 42 is the last fallout issue. And based on all the other adjustments that have been made, I'll give you the bottom line number equivalent. If you look on page 149, the bottom line number would now be 708,137,799. And that would include the estimated up-front bond issuance costs of 11,425,000. And there probably would be some rounding. When they want to issue bonds, they're not going to issue them in these dollar amounts. They would at least round up to the nearest thousand anyway, if not millions.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 42 approved.

Issue 43. Commissioners, are there questions?

COMMISSIONER DEASON: Well, given our earlier vote, how does that affect this issue? Is it moot, or

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is it --

MR. KEATING: I believe it's moot. Basically, through Issues 39, 41 and 42, you voted to approve recovery through the securitization mechanism. Forty-three just gives you the dollar amount if we're going to go the route of a traditional surcharge, so I don't think there's any approval required there.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: And you just mentioned that we did approve securitization. Therefore, Commissioner Deason's observation on the last issue kicks in; correct?

COMMISSIONER DEASON: Well, I'm comfortable with the 200 million, since we --

COMMISSIONER ARRIAGA: Because of the securitization issue.

COMMISSIONER DEASON: Yes.

MR. KEATING: Let me try to avoid a potential problem up front. I just second-guessed myself already. There is an Issue -- we won't look at it for quite a while -- 76, which asks whether -- if the bond issuance is delayed, whether a surcharge should go into effect temporarily until the bonds are issued. In the event that the Commission approves that request from FPL -- and I'll look to staff to some extent. I'm not sure
that -- well, the number in Issue 43 may be relevant there.

MR. SLEMKEWICZ: Well, I can give you the number that 43 -- if you turn to page 151, I will give you all three numbers. Instead of the 728 million, it's now 735,569,138. The 200 million remains the same, and the 198 million remains the same. So the total would be $1,134,249,570.

COMMISSIONER DEASON: Madam Chairman, if it's going to facilitate the potential for other issues, I can move staff on 43.

COMMISSIONER CARTER: I want to second that -- Madam Chairman?

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: I want to second it, but I wanted to find out -- I mean, we're into the securitization right now, are we not? So by approving -- I'm asking for legal. By approving these numbers, the 43 basically will tie into the actual securitization process; is that correct?

MR. MELSON: Commissioner Carter, on further reflection, I think the best thing to do may be to treat Issue 43 as moot, since you've approved securitization. If in one of the later issues you decide to approve an interim surcharge, we could simply write the correct
number in in that issue and avoid having any confusion
here.

COMMISSIONER DEASON: Madam Chairman, I'll
withdraw my motion. I'm comfortable with just finding
Issue 43 moot.

CHAIRMAN EDGAR: And I am more comfortable
with that as well, so I say thank you to you all,
because --

COMMISSIONER CARTER: That's great.

CHAIRMAN EDGAR: -- I was finding myself in
this sort of circular reasoning.

Okay, so with that, we will take up Item 44.

Commissioners --

COMMISSIONER CARTER: Is this -- excuse me,

Madam Chairman.

CHAIRMAN EDGAR: In light of this, are there
questions? Commissioner Carter.

COMMISSIONER CARTER: I was going to ask
Mr. Melson, are we now into this 49? I thought you said
it was 73. Is this the real issue here?

MR. MELSON: I asked Mr. Keating to look at
this one, but I think this one is moot also.

MR. KEATING: I would agree. And I think for
clarification of my earlier comments, if we get to Issue
76 and approve some sort of interim mechanism, I think
it was only envisioned to be based on 2005 costs and not replenishment of the reserve. That's just a clarification, but I do agree that 44 is moot.

CHAIRMAN EDGAR: Commissioner Deason, did you have a question? No? Okay.

All right, Commissioners. Then we will move on to Issue 45, and I'll look to staff.

MR. LOWE: Commissioners, 45 deals with deferred taxes. The issue as stated specifically refers to the deferred tax liability. All parties are in agreement on that particular part of it. However, OPC has expanded the issue to include the deferred tax debits and their treatment.

Staff agrees with most of what OPC wishes to do, which would eliminate the deferred tax debits for AFUDC and surveillance purposes in the future.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Is there discussion? There's a motion and a second for Issue 45. All in favor say aye.

(Simultaneous affirmative responses.)


COMMISSIONER DEASON: Move staff.
COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: Motion and a second on Issue 46. All in favor say aye.

(Simultaneous affirmative responses.)
CHAIRMAN EDGAR: Opposed? Issue 46 is approved. Issue 47.
COMMISSIONER DEASON: Move staff.
COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: Motion and a second. All in favor of the motion on Issue 47 say aye.

(Simultaneous affirmative responses.)
COMMISSIONER DEASON: Move staff.
COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: Motion and a second on Issue 48. All in favor say aye.

(Simultaneous affirmative responses.)
CHAIRMAN EDGAR: Opposed? Issue 48 is approved. Issue 49 has been withdrawn. We are on Issue 50.
COMMISSIONER DEASON: Move staff.
COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: Motion and a second on Issue 50. All in favor say aye.

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(Simultaneous affirmative responses.)


COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and second. All in favor say aye.

(Simultaneous affirmative responses.)


COMMISSIONER DEASON: I move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion on Issue 52 say aye.

(Simultaneous affirmative responses.)


COMMISSIONER DEASON: I move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion on Issue 53 say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 53 is approved. We are on 54.

COMMISSIONER DEASON: Madam Chairman, I
thought Item 54 was stipulated. So we need to vote on the stipulation; is that correct?

MR. KEATING: Yes.

COMMISSIONER DEASON: Move to approve the stipulation.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Fifty-five.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 55 is approved. We are on 56.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)


COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: All in favor of the motion on Issue 57 say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 57 is approved. Fifty-eight.

COMMISSIONER DEASON: Madam Chairman, I know that this is not something that we initially set up for staff to discuss, but it would be helpful for me if staff could --

CHAIRMAN EDGAR: Absolutely.

COMMISSIONER DEASON: -- give us some background information on 58.

CHAIRMAN EDGAR: Mr. Maurey.

MR. MAUREY: Thank you. Commissioners, the process that was recommended by FP&L for review of these costs was to look at their estimates of the costs, the background they provided, and to -- that if they fell within a given range of estimates, that they would be approved.

Staff is recommending that the Commission look at these costs in the 120-day look-back review when there are actual costs provided and make a determination there. The initial costs, or the estimated costs that will be used in the initial charge will still be in place. However, if the Commission determines that any
of the estimated costs were excessive, the Commission can make a charge to the reserve in the amount of that excess.

This review is consistent the statutory review.

COMMISSIONER DEASON: Move staff.
COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: All in favor of the motion on Issue 58 say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 58 is approved. We are on 59.

COMMISSIONER DEASON: Move staff.
COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)


COMMISSIONER DEASON: Move staff.
COMMISSIONER CARTER: Second.
CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 60 is

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approved. We are on Issue 61, and I will look to our
staff for an overview.

MR. MAUREY: In Issue 61, staff is
recommending certain findings of fact, conclusions of
law, and ordering paragraphs be included in the
financing order to provide the appropriate comfort to
investors regarding the high quality of these storm
recovery bonds. In addition, staff is recommending that
the financing order require fully accountable
certifications from the lead underwriter, FPL, and the
Commission's financial advisor that the actual
structuring, marketing, and pricing of the storm
recovery bonds in fact resulted in the lowest storm
recovery charges consistent with then prevailing market
conditions, the financing order, and applicable law.

CHAIRMAN EDGAR: Thank you. Commissioners,
are there questions for our staff?

COMMISSIONER CARTER: I have a question.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam
Chairman. Just for staff, this won't have any negative
impact on FP&L getting the appropriate amount necessary
for their storm cost recovery; is that correct?

MR. MAUREY: That's correct. It will not
hinder their ability to raise that money, no.
COMMISSIONER CARTER: And if I may, Madam Chairman, this will in no way enhance the rating quality of the bonds?

MR. MAUREY: It will enhance the rating quality of the bonds.

COMMISSIONER CARTER: I'm sorry. I was trying to go in the inverse, but that makes sense. I just wanted to make sure that it would not deter the value or reduce it from investment grade quality or reduce the quality of the bonds. That's my question.

MR. MAUREY: That's correct.

COMMISSIONER CARTER: All right. My brain got ahead of my mouth on that one. Thank you.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: I have a question on Items 5 and 6 within Issue 61. This seems to be some fairly specific conclusions of law that we are being asked to make. First of all, I want to make sure that it's consistent with Florida Statutes, and do we have -- is this something that we need evidence in the record, or is this just a conclusion of law that we can make based upon counsel's representations?

MR. KEATING: We believe it's a conclusion of law that you can make based on the statute that we operate under here in Florida, the new securitization
law. We looked at these proposed conclusions of law in relation to the statutory provisions to ensure that they are supported, and we do believe that they are supported by the securitization law.

COMMISSIONER DEASON: And these provisions will enhance the marketability of the bonds and perhaps expand the potential participants, potential buyers of these bonds?

MR. KEATING: That is what's anticipated, and that is the intended purpose of including those conclusions.

COMMISSIONER DEASON: I can move staff if there are no other questions.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Commissioners, any further questions?

COMMISSIONER ARRIAGA: May I ask something, please.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Mr. Keating, page 185 again. And I know we have spoken about this, but I just want to make sure it's clear for everyone. At the top of page 185, you went into a whole explanation of what the Legislature intended to do but did not do. Is it at all necessary to try to second-guess the Legislature or
something like that?

MR. KEATING: Probably not, in hindsight, after having a little more time, after the short turnaround time for the recommendation.

When you look at construing the statute, you look at the plain language of the statute first, and if it's real clear, there's really no need to try to go behind the plain language to discern what the Legislature's intent was. In this case, we believe that the plain language of the statute is clear that it gives the Commission the opportunity to impose any other conditions that it deems appropriate in the financing order. And we don't see any provisions of the statute that are inconsistent with using the lowest cost standard.

COMMISSIONER ARRIAGA: I appreciate the clarification. And I know that sometime in the future this is going to come back to us eventually. Not this specific issue, but the fact that the Legislature intended but did not do, somebody is going to raise that argument eventually for other things. That's why I wanted to clarify it.

CHAIRMAN EDGAR: Commissioners, we have a motion and a second on Issue 61. All in favor of the motion say aye.
(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? The item is approved. We are on Issue 62.

COMMISSIONER DEASON: Madam Chairman, I have a question on 62.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: The recommendation actually references a decision to be made in Issue 74B and references the bond team concept. I guess the first question is, should we go ahead and address this before we address 74B, or will we come back and revisit this if something in 74B is inconsistent with the decision in Issue 62?

MR. MELSON: Commissioner, if you wanted to proceed to 74B, I notice there are several issues in a row here that do cross-reference 74B, at least Issues 62, 63, and 64, and several -- there's another one. It might make sense to take 74A and B both out of order and deal with the review process, because that then helps answer the question on these. I'm sorry we didn't pick up on that earlier.

CHAIRMAN EDGAR: I'm sorry. Mr. Melson?

MR. MELSON: I recommend that you may want to move to 74A and B, because we've got several issues in a row that really assume a decision on 74B that has not
been made.

CHAIRMAN EDGAR: Okay. Then on the advice of counsel, we will take items out of order, and we will move now to Item 74A. For those following along, I believe that begins on page 205.

MR. KEATING: Commissioners, in Item 74A, staff recommends that an informal meeting with staff, its counsel and advisors, FPL, its counsel and advisors, and intervenors be held at some point before issuance of the financing order to allow input on the portions of the order related to securitization.

The purpose of the meeting would be to ensure that the order -- that there's precise wording in the order that allows for issuance of the bonds on the most favorable terms and meets the anticipated requirements of the financial community.

Most orders that we issue are done so without the input -- once the Commission's vote has been taken, without the input of other parties. I think we want to make sure, given the irrevocable nature of this order, that it doesn't include any provisions that are going to throw a wrench in the works when it comes time to do the financing, and that's why we've proposed -- and I believe that the parties that did brief this issue appear to be in agreement that an informal meeting would
be appropriate.

And again, that would be limited to review of the financing portions of the order. The order would still be subject to reconsideration under the time frame permitted in the statute.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: I like the language, but I just want to be sure that this meeting is not something that's going to -- I mean, we're talking about presecuritization interest and things like that. This is not going to be a meeting that's going to hold up the process. This is -- you know what I'm trying to get to here? Because I don't want us to pat ourselves on the back on the front end and stab ourselves in the back on the back end with these meetings.

So give me some comfort here in terms of what the nature of this meeting is. I mean, is this a stop meeting, this is a drop dead meeting, is this a "let's get together have a cup of coffee" meeting? You know what I'm saying?

MR. KEATING: Again, it would be for the limited purpose of looking at the financing provisions in the order. To the extent that there's something perhaps that comes up that would require reconsideration, I think that would have to take place.
I don't think we can modify your order, modify an order inconsistent with the vote. I mean, the order is going to have to be consistent with the vote here today. And I don't anticipate it being a meeting where we open up everything for discussion again. It should be a limited scope meeting.

COMMISSIONER CARTER: Thank you, Madam Chairman.

CHAIRMAN EDGAR: Commissioners? Yes, Commissioner Deason.

COMMISSIONER DEASON: And this is just for the period of time from the vote until the order is actually issued. It's a very narrow focus; correct?

MR. KEATING: Correct.

COMMISSIONER DEASON: And the purpose is to make sure that the securitization portion of the order is consistent with best practices, I suppose, using that term kind of loosely, but to make sure that the order does not do anything that would do harm to the ultimate issuance of the bonds.

MR. MELSON: That's correct. And to the extent after the order is actually issued any party feels that violence is done, they will have an opportunity to seek reconsideration. But we're hoping if there were any issues that could be worked out
consistent with the order and written in a way that
would satisfy the financial community, we could perhaps
avoid some delay caused by reconsideration.

COMMISSIONER DEASON: I can move staff, Madam
Chairman.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Commissioners, we have a
motion and a second on Issue 74A. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show 74A approved.

And we will now take up 74B.

MR. MAUREY: Commissioner, 74B concerns the
level of post-financing order regulatory oversight for
the transaction.

Staff recommends the Commission, its staff,
its outside counsel and financial advisor, along with
FPL, FPL'S financial advisor, and its counsel work in a
collaborative process to ensure that the structure,
marketing, and pricing of the storm recovery bonds
result in the lowest cost consistent with prevailing
market conditions and the terms of the financing order.

Staff recommends that the Commission be represented
primarily by its staff, but be advised by its outside
counsel and financial advisor. Staff would periodically
brief the Commissioners and parties on the progress of
the transaction.

Issues that arise during the process that cannot be resolved collaboratively should be submitted in writing to a designated Commissioner for guidance. If any party objects to the designated Commissioner's proposed resolution, the matter should be submitted to the full Commission for de novo consideration.

The final structure of the transaction, including pricing, should be subject to a limited review of the full Commission for the limited purpose of ensuring that all requirements of the law and the financing order have been met.

In this recommendation, we will talk about three key decisions staff recommends the Commission make regarding its participation in the transaction. We also have a discussion of FPL's proposed review process, a seven-step process with the staff's comments on each step. But if we decide on the first initial three decisions, that encompasses the seven-step process that FPL has proposed.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chair. On staff's recommendation, just kind of in my brain, I'm -- did we not in the process of the hearings, the public hearings, and in the process of the evidentiary hearings
say that whatever we did, we wanted it to be in the most
immediate manner possible so that we don't hold up the
financing process? We said that; right?

MR. MAUREY: I believe so, yes.

COMMISSIONER CARTER: Madam Chairman, if I may
follow up.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: And in your
recommendations, it's incumbent upon that to where, even
going with your recommendations, if there were an
appeal -- I know if we were to say there's one
Commissioner that's responsible, but in case there was
an appeal by the parties to the full Commission, we
would expedite that hearing as soon as possible. That's
what I'm thinking, Madam Chairman. I know that I didn't
see it in here anywhere, but that's what I'm thinking,
because when you're talking about bonds, you're talking
about dollars, and when you're talking about dollars,
you're talking about interest, you're talking about the
time value of money. So I'm -- I mean, if that's not in
there, that's what my thinking was on that issue, to
make it as expeditious as possible. Did you guys get
that?

MR. MAUREY: Well, we looked at this. If it
had to -- first of all, if it could not be resolved in a

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collaborative process and it had to be kicked up to a
designated Commissioner, we would hope that that
decision would be final. But if necessary for a look by
the full Commission, we would work within the noticing
requirements, but we would hold those meetings as
expeditiously as possible. We would not necessarily --
we wouldn't have to hold any additional hearings, but we
would have to notice those meetings for the full
Commission.

COMMISSIONER CARTER: Madam Chairman, just --

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: And I don't want to beat
a dead horse to sleep or anything like that, but it
seems to me that the parties that would have to be
notified would be the parties to the transaction; right?

MR. MAUREY: Yes.

COMMISSIONER CARTER: And if I may follow up,
Madam Chairman, obviously, in Florida, we pride
ourselves on Government in the Sunshine, so we would
obviously have to notify the press and the public at
large.

But in that process, my thing is that if
there's a bump in the road and it cannot be resolved by
one sitting Commissioner, we need to specifically say we
want this process to be expedited so that we don't have,
you know, the regular -- this is not a regular matter, in my opinion, and I think we want to have it expedited as soon as possible so that the financial markets will be comfortable. And we're really just talking about best practice in business and all that, but I think that the financial markets would find some comfort in knowing that we're not going to dilly and dally or -- what is it they say in baseball? You know -- well, I won't use that term, but lollygag.

Thank you, Madam Chairman.

CHAIRMAN EDGAR: Thank you. Commissioner Deason.

COMMISSIONER DEASON: When you use the term "collaborative process," you know, collaborative is a good thing. You know, we encourage collaboration. You know, it's reasonable people getting together and discussing matters and hopefully resolving them. But is there some special connotation you give to collaborative process, perhaps something that was done in other states? Is there some legal meaning to the term "collaborative process"?

MR. MAUREY: I don't know if it has a legal distinction, but it is a process that has been modeled in other states, yes. This recommendation is based on the record in this case, but it has also been

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successfully employed in other transactions in other states. And I would say collaborative process, because there are different parties, different transaction parties involved. Each has their own interests that they're representing, and those interests aren't -- while they're not all mutually exclusive, they're not all overlapping either, and so there has to be some give and take so that the specific credit quality of this instrument can be communicated effectively and accurately, but also that all of the rights and responsibilities are understood by everyone and that the instruments can be marketed and sold so that we can take the maximum advantage of the legislation and place the minimum financial burden on the ratepayers.

COMMISSIONER DEASON: Well, let me ask this question. As a result -- hopefully, the collaborative process would go very smoothly. Being an optimist, I would hope that would be the case. But what happens in the -- I know you've got some backstop things here, but if the collaborative process does not work, who has the final say as to what happens, when, and what process is followed?

MR. MAUREY: Based on staff's recommendation here, it would be the full Commission that would have the final say.
COMMISSIONER DEASON: And it would be -- it's your recommendation that it would be a de novo -- now, your recommendation is to have one Commissioner assigned, is that correct, and then have a de novo proceeding to the full Commission if necessary? Explain that to me.

MR. MAUREY: That's correct. One Commissioner would be designated to not necessarily be on the bond team. We're not recommending against their participation on the bond team. But looking at, from a practical standpoint, all of the responsibilities, the weekly conference calls which may turn into multiple calls within a week and even within a day as we get closer to the pricing, the range of responsibilities might be too much for the Commissioner's other responsibilities.

So we didn't want to force a Commissioner to be on the bond team, but we certainly wouldn't recommend against it if they wanted to be part of the process. But that's why we recommended multiple staff members be on the bond team for day-to-day activities.

But for the designated Commissioner that's going to resolve differences between the principal transaction parties, if there's a difference between FPL's financial advisor and the Commission's financial...
advisor on some key point, that will be -- those
differences would be submitted in writing to the
designated Commissioner for a proposed resolution. And
only then if some party disagrees with that resolution
would it get kicked up to the full Commission for a
de novo look.

COMMISSIONER DEASON: And when it gets kicked
up to the full Commission, what type -- and maybe this
is a quasi-legal question. What type of noticing
requirements, what type of time frames are involved?
Does it jeopardize the overall process that we're trying
to achieve here?

MR. MAUREY: We've talked about that, and we
didn't believe that we would be able to get along with
the FAW notice requirements, but that we would be able
to satisfy the minimum notice requirements and still
have these meetings in a timely manner.

MR. KEATING: Commissioner, I think what I had
envisioned in the process is, to the extent possible, to
use the existing agenda conference schedule. Those are
already noticed. You've got the full Commission
present. That would probably be the preference to avoid
having to have a meeting that's separately noticed.

COMMISSIONER DEASON: Okay. Madam Chairman, I
had one other question.

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I'm looking at your recommendation statement, which is on page 207, the last sentence. It says the Commission should specifically determine that the fees and expenses of its financial advisor and outside counsel in this post-financing order collaborative process are entitled to payment from the bond proceeds.

Now, I don't have a problem with that statement if that's as far as it goes. But I do have -- let me ask this question. Is there going to be some type of review by someone, someplace, somehow, as to the reasonableness of the fees and expenses of our financial advisor and our outside counsel for ultimate payment from bond proceeds?

MR. MAUREY: Yes.

COMMISSIONER DEASON: And how is that to take place?

MR. MAUREY: I believe it's going to be done in-house. We have -- the contract manager will review those costs for approval.

COMMISSIONER DEASON: Who is contract manager?

MR. MELSON: Commissioner Deason, let me give maybe a slightly different answer. We've got a contract with a financial advisor that at this point is on an hourly basis, and that contract was entered into as a result of an RFP. Under that contract, the staff
instructs the financial advisor on what tasks he's to
undertake, basically approves participation in meetings,
that sort of thing. So long as he has performed within
the scope of that assignment, there's no post facto
review to say, "Hey, wait a minute. This was a lot of
hours and a lot of dollars." We've got a contract that
calls for those costs to be paid out of the bond
proceeds.

COMMISSIONER DEASON: Is there any outside
limitation on what the ultimate amount would be?

MR. MELSON: Not at this point. There may be
in terms of the certifications that were referred to in
Issue 61, I believe it is. At this point, that type of
certification is beyond the scope of the contract, so
there will have to be a contract modification
negotiated, and presumably we could look at a cap on the
fee for that portion of the work. But at this point,
there is no overall dollar cap on the contract, and the
contract would have to be amended to include one.

COMMISSIONER DEASON: Well, let me tell you
what my concern is. If we agree with staff's
recommendation, these fees are going to be paid out of
bond proceeds. Well, what that means is it's coming
directly out of the pocket of the ratepayers.

MR. MELSON: Yes, sir.
COMMISSIONER DEASON: And I think we should engage in the same prudency review of our own internal counsel -- I mean our outside counsel and our advisor as if we were reviewing what we've just gone through with FP&L, the prudency of all the actions and costs that they've incurred, because it's ultimately coming out of the pocket of the ratepayer. I don't want to write a blank check. While I think it's appropriate that we have counsel and that we have an advisor, there needs to be limitations on those costs as well. Would you agree with that?

MR. MELSON: In the abstract, yes. In many other states, the arrangement has been a fee that is a percentage of the bonds issued, subject to a cap. I think we are unique in having gone to an hourly rate, and that was a conscious decision that staff made at the front end to go to an hourly rate.

The contracts are -- payment of the advisor is contingent on a bond closing. If we never get to a closing, the Commission is on the hook for nothing. The statute contemplates that our advisor's fees will be paid out of the bond proceeds.

I guess what I'm saying is, we could have negotiated a different type of contract, but the RFP we put out we thought after consulting with folks at the FLORIDA PUBLIC SERVICE COMMISSION
Division of Bond Finance and elsewhere was going to be
the way that would get us a reasonable cost for the
services.

COMMISSIONER DEASON: There is going to be a
review as to the reasonableness of the fees associated
with counsel and the advisor?

MR. MELSON: There's a review to ensure that
the advisor was performing the work that was assigned
under the contract. But if he was performing the work
that was assigned, there's no post facto judgment about
the total dollar amount, as I recall the current
contract.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: I'm going to try to get
some of the money's worth out of legal counsel, outside
counsel. I do have a question for you. He came all the
way from San Francisco, so we might as well use him.

During the hearing process, I asked two or
three times different people a specific question, and
every one related me to outside counsel or legal
counsel. And the question was, our oversight could be
somehow interpreted as some kind of limitation on SEC
rulings or SEC regulations. In other words, by
participating the way staff is suggesting we participate
with full Commission involvement, that could make some

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kind of liability on behalf of the Commission. Is that true?

MR. CRIDDLE: Under the federal securities laws, responsibility for any materially false or misleading statements rests in the first instance with the issuer of bonds. In this case, it would be the special purpose subsidiary, generally referred to in the application as the SPE, special purpose subsidiary of FPL. That entity would be fully responsible for the entire disclosure. Therefore, the federal securities liability, if any, would rest initially with the issuer.

There are other parties who might have derivative responsibility. For example, FPL as the wholly owned -- the owner of the SPE issuer might have responsibility as a control party. Although it would be derivative responsibility, because FPL wouldn't be the issuer, FPL would be responsible if it either knew or had reasonable grounds to believe that any statement in the disclosure was false or misleading.

If the Public Service Commission were deemed to be a control person of the SPE issuer, then the Public Service Commission in theory might also have responsibility to the extent it also knew or had reasonable grounds to believe that a statement in the disclosure document was false or misleading. We're not
aware of any case or statement by the SEC that takes the position or even suggests that a regulatory body acting within the scope of its regulatory authority would be treated as a control person of a regulated entity. We also would fully intend and be vigilant to ensure that nothing the Commission requests or urges be included in a disclosure document be false or misleading in any respect.

However, the financial advisor has testified that in its experience, it's important for a financial advisor to step forward on behalf of ratepayers to ensure that the full credit story in favorable terms is put forward in the disclosure document for the benefit of ratepayers. And so that's what we've seen, for example, take place in Texas, in a recent New Jersey transaction, and the groundwork is set for that same model in a recent West Virginia financing order and in a recent Wisconsin financing order.

Having said all that, staff's recommendation would be that FPL -- would recognize that FPL also has a responsibility as a control party. If anything that's recommended by any party in a disclosure document in the view of FPL would be false or misleading, staff's recommendation, at our urging, has been that FPL have an affirmative duty to step back and not allow the bonds to
be issued.

So we envision that each party, the Commission and its representatives, as well as FPL, would have a responsibility with respect to disclosure, that the Commission wouldn't supplant the responsibility of FPL, but would be an active and aggressive advocate for the benefit of correct favorable disclosure so as to capture the credit of the instrument for ratepayers.

COMMISSIONER ARRIAGA: So would it be -- let me go to a hypothetical exercise here. Let us assume that we're in the middle of the process, we're ready to write up the prospectus, and all of a sudden FPL says, "I want to include a disclaimer, a bottom footnote disclaimer saying that because the Commission has participated fully, we're not totally responsible, or there is a proportional liability on behalf of the Commission, on the part of the Commission." Is that something that could happen? Could you foresee something like that happening? And this is hypothetical. And again, it goes back to all the questions that I asked in the hearing, and I did not get a straight answer.

MR. CRIDDLE: I suppose you would really need to ask FPL, but I haven't seen that dynamic arise. What I have seen arise in other transactions in other states
has been the financial advisor pressing for a more fulsome, a more complete disclosure of the favorable credit features of securitized utility bonds and utilities being more reticent about including a more complete statement of the favorable features, and there has been considerable give and take. But in each case, the utilities had the responsibility to make sure ultimately it's comfortable with the disclosure, and if it were uncomfortable, it would have had a responsibility to step back and not allow the bonds to be issued.

COMMISSIONER ARRIAGA: Thank you. May I continue?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Thank you. So now, having heard that, I go to Decisions 1, 2, and 3 that we have to make according to the staff proposal, because we can be unconcerned with the fact that there may be some kind of disclaimer, and we can go ahead and review staff's recommendation with Decisions 1, 2, and 3.

Two and 3 are okay to me, perfectly okay. But I see that you stepped away on Issue 1, and you do not include the Commissioner in your recommendation. You include the bond team without the Commissioner, and you insinuate that X Commissioner may not have the proper
time to take care of this and work along with you. And I can understand that. I personally will say, yes, you're right. But would it be wrong, would it be a problem to include a Commissioner in Decision 1 in the bond team all from the beginning?

MR. MAUREY: Absolutely not. It would not wrong. You could have a Commissioner on the bond team.

COMMISSIONER ARRIAGA: Then why are you not recommending that possibility?

MR. MAUREY: Well, for the reasons you just --

COMMISSIONER ARRIAGA: Because of our time?

MR. MAUREY: Because of the time constraints. We looked at it purely from a practical standpoint, not that any given Commissioner couldn't do it, but we just didn't want to put that kind of demands on their time.

COMMISSIONER ARRIAGA: And I appreciate that. Madam Chair, I'm going to yield to you and to Commissioner Deason any kind of personal interest in being the Commissioner. I am not -- I would allow you make that -- I would suggest that you make that decision yourself, but if you don't want to make it, I'm going to also suggest that Commissioner Deason would be the most appropriate. I'm sorry to throw that in your lap.

CHAIRMAN EDGAR: I'm not sure I had a chance.

COMMISSIONER ARRIAGA: He's the Prehearing
Officer.

CHAIRMAN EDGAR: That was a pretty short window to --

COMMISSIONER ARRIAGA: What I really wanted to say, I yield. I yield to do whatever you wish.

COMMISSIONER DEASON: So after you confirmed that it would be very burdensome. Thank you, Commissioner.

COMMISSIONER ARRIAGA: You're really the best prepared because of your background and all that.

COMMISSIONER DEASON: I would defer to the Chairman, and if she would free my schedule up --

COMMISSIONER ARRIAGA: I'm comfortable with the proposals made by staff, except in Decision 1, I would suggest that if the designated Commissioner wants to take on that responsibility, that he also be included, he or she be included on the bond team. That would be my only modification to the proposal made by staff.

CHAIRMAN EDGAR: Commissioners, discussion?

COMMISSIONER CARTER: Madam Chair, on this Commissioner that's involved, particularly if it's our Chairman, I mean, with the demands on your time, and if it's Commissioner Deason and the demands on his time, still I would think that -- I would hate -- I'm just
thinking aloud. I would hate to have the bond team
cancel a meeting just because a Commissioner can't make
it, even when staff is there to check out the dotting of
the I's and the crossing of the T's.

So I would just -- if you're going to do that
-- I mean, I don't read it as precluding the
Commissioner from participating, but if I am, then I
just would say you would want to put it in such a manner
where the Commissioner could participate at his or her
discretion with the support of staff, because staff
would be there on a day-to-day basis.

CHAIRMAN EDGAR: Commissioner Carter, I am in
agreement with your comments and am very comfortable
with that.

In essence, since I'm obviously just speaking
personally as the Chair of the moment, and hopefully a
little while beyond, but I would think each of you, many
of you sitting here with me might have an interest in
this as well, which is that I think it's important
within the structure that we have that we don't start
carving out exceptions for the administrative function
of the Chairman's office. So, with that, my preference
is that the Chairman's office, and I do mean office,
from this point forward and into the next years retains
that ability. I think that's important.
With that said, while I am the Chair, I am always going to look first to the Prehearing Officer for any post-hearing activities, decisions, or items that need to be addressed. But I do, Commissioner Carter -- again, I am comfortable with a Commissioner, and in this instance, I think it should be the Prehearing Officer being the one Commissioner who is most involved in those items. But as far as -- and for them to be able to determine their degree of participation and the method of that participation is the way that I'm most comfortable.

So Commissioners, with that, we are on 74B. Is there a motion?

COMMISSIONER DEASON: I would move staff's recommendation consistent with the discussion that we've had.

COMMISSIONER CARTER: Second.

COMMISSIONER DEASON: Whatever that means.

CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? And the motion carries. It is almost five o'clock. Commissioners, I do think we're in the home stretch. Although we're about two-thirds of the way through the issues by
number, there are a number of issues ahead that have
been stipulated and/or withdrawn. But as it is five
o'clock, I would like to take about a 10-minute break,
and then we will come back.

Mr. Keating, did you have a comment?

MR. KEATING: I was just going to add that
based on the vote on 74B, during the break we can go
back through some of the prior issues to see which ones
are essentially resolved by the vote on Issue 74B.

CHAIRMAN EDGAR: Thank you. And with that, we
will come back at 5:15.

(Short recess.)

CHAIRMAN EDGAR: We'll go back on the record.

Commissioners, our legal counsel tells me that
although we have covered probably much in our discussion
that is contained in some of the previous items, in the
interest of making sure that we don't miss something, it
probably behooves to us to go back through the items
that we have not yet addressed in our chronological
order. So with that, we will begin on Issue 62 and move
through the list until we get to the end. And so if
we'll take up Issue 62, Commissioners, questions or
discussion?

Commissioner Carter.

COMMISSIONER CARTER: I just had a -- excuse
me, Madam Chairman. I just had brief question about --
in light of what we've done in our earlier votes on 74B,
what implication does this have on Issue 62?

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: Looking at the recommendation
statement in Issue 62, I believe what we've discussed in
74B probably addresses the first sentence in the
recommendation statement. I'm not sure the second
sentence is explicitly addressed. That's part of the
reason I suggested to the Chair that we go back through
these. I don't want to inadvertently not address
something that we had intended to address in these
separate issues. And I look to Mr. Maurey to help me if
my recollection is incorrect on any of these.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: For a follow-up, Madam
Chairman. So in essence, your recommendation for Item
62 stands?

MR. KEATING: Yes.

COMMISSIONER CARTER: Okay. Thank you.

CHAIRMAN EDGAR: Thank you.

COMMISSIONER DEASON: Move staff on 62.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in
favor of the motion on Issue 62 say aye.
(Simultaneous affirmative responses.)


COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second on Issue 63. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 63 approved. Issue 64.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second on Issue 64. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 64 approved. We are on Issue 65.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in favor of the motion for Issue 65 say aye.

(Simultaneous affirmative responses.)


COMMISSIONER DEASON: I had a --
CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: -- question as to -- is this issue moot at this point, or is this something we need to address?

MR. MAUREY: I don't believe it's moot. We're proposing that the initial true-up letter be combined with the issuance advice letter. There wouldn't be a need for a separate letter. The initial true-up letter will provide the projected initial storm bond repayment charges and tax charges and also provide the tariff sheets, but we can have that all combined with the issuance advice letter, as discussed in Issue 65.

COMMISSIONER DEASON: With that understanding, I can move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in favor of the motion for Issue 66 say aye.

(Simultaneous affirmative responses.)


COMMISSIONER DEASON: Move staff on 67.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Those in favor of the motion say aye.

(Simultaneous affirmative responses.)

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COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Issue 68 is approved.

Commissioners, Issue 69 and Issue 70 have been withdrawn. We are on Issue 71.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion on Issue 71 say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show 71 approved.

Commissioners, Issue 72 and 73 have been stipulated. We need a motion to approve the stipulations.

COMMISSIONER CARTER: Move staff on 73, Issues 72 and 73.

COMMISSIONER DEASON: Second.

CHAIRMAN EDGAR: Those in favor of the motion say aye.

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(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: We are on Issue 74.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 74 approved. That will bring us to Issue 75.

COMMISSIONER DEASON: Move staff on 75.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Those in favor of the motion on Issue 75 say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show 75 approved.

We are on Issue 76.

Commissioner Arriaga.

COMMISSIONER ARRIAGA: Seventy-six?

CHAIRMAN EDGAR: Yes.

COMMISSIONER ARRIAGA: I was reading this, and something came up in my mind that concerned me. Are you saying that if anything happens here that delays indefinitely or for a short period or medium-term period of time, there is absolutely no recovery?

MR. MAUREY: What staff is recommending in

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this issue is that the Commission not approve an interim surcharge for 2005 at this time. With the Commission issuing a financing order in the form that we believe, based on all its decisions earlier in the case, the company will be able to issue storm recovery bonds in a timely manner.

If at some point in the future the company uncovers some delay, something occurs, there's an appeal and the bond issuance is delayed, at that time, the company is free to file a petition to have an interim surcharge imposed then for the recovery of 2005 costs. It would be a matter that could be taken up relatively quickly, much like the interim surcharge was approved for 2004 recovery.

COMMISSIONER ARRIAGA: Let me continue, please. Let's go to a hypothetical scenario, and let's remember our rate rebalancing case that went all the way up to the Supreme Court, and it took two years for it be resolved. In the meantime, everything was paralyzed completely. So let's say that XYZ party decides to protest this whole process and take it all the way to the Supreme Court. What's going to happen? Are you saying it's zero?

MR. MAUREY: Well, no. If that were to be the case and the company finds itself in that position, say,
six weeks, eight weeks from now, when they're well into 
the process of trying -- well, let me back up. If the 
financing order is appealed, that will be before the 
bonds are moving towards being issued. And if this 
financing order is appealed, then it's staff's 
recommendation that the company come back at that time 
with a separate petition and ask for a surcharge for 
2005 interim recovery.

COMMISSIONER ARRIAGA: But isn't this an 
unnecessary burden that can be solved? I mean, why 
place a additional burden on the company that I believe 
is unnecessary? Why not recognize the fact that a third 
party may come in and delay this thing for XYZ reason 
and put the company in harm's way?

MR. MAUREY: You have a point, Commissioner. 
There is that extra step. But we're also hopeful that 
the transaction goes through as planned and there isn't 
an appeal, there isn't any delay, and they issue the 
bonds.

COMMISSIONER ARRIAGA: Let me take you back to 
the rate rebalancing case. Everybody was hopeful that 
nothing was going to happen, and it went all the way up 
to the Supreme Court. We need to be fair and listen to 
all sides and equate them. Do you have any suggestion?

MR. WILLIS: Commissioner, you could put a
requirement in here -- and this is, of course, with legal's approval. You could put a requirement in here to have a surcharge approved if a party other than FPL protests it at that point. You could have an automatic provision.

COMMISSIONER ARRIAGA: What you're saying is anybody can protest except FP&L?

MR. WILLIS: Yes.

COMMISSIONER ARRIAGA: That's fine with me.

MR. WILLIS: That would protect FP&L at that point.

COMMISSIONER ARRIAGA: Okay. Thank you.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: The part that gives me heartburn is -- one would be -- well, obviously, a lot of people do a lot of things for a lot of different reasons, and we certainly wouldn't want to hold up the -- the company has incurred costs. We know that. I mean, all of us here know that. We certainly don't want to have anyone playing games out there to work an extraordinary burden on the company. By the same token, we wouldn't want the company to sandbag either.

But I think that somewhere there's a comfort zone, if you will, or a meeting of the minds, because I'm thinking that if -- let's say hypothetically, if you
take what Commissioner Arriaga has said about the rate rebalancing case, it takes two years. When you get the rate increase, do we just automatically throw a number out there, or how do we -- do you know what I'm saying? Do we just say, "Well, we'll just grant them a rate increase"? What's the amount of the rate increase? When does it -- I mean, do we not have a transparent process then? I mean, since you guys are thinking aloud, I'm thinking aloud with you. I'm trying to --

MR. MAUREY: In its application, the company offered a 2005 surcharge. I believe it was $2.98 for 1,000 kWH that would be additive to the 2004 surcharge currently in place, to start being billed by August 15th if the securitization bonds are delayed for any reason.

It's staff's position that the Commission doesn't need to make that decision now, that if there is a delay later, that the company could come back and get that interim surcharge. The prudence of those costs have already been determined earlier today, and that charge would probably need to be recalculated to be consistent with the decisions that were made earlier today. But that would be available to the company, and it would be some interim protection that would be available to them quickly. But it's staff's recommendation that if the bond transaction in fact is
delayed, then they come back after that and petition for that surcharge.

COMMISSIONER CARTER: Madam Chairman, just one itty-bitty follow-up.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: But it's multiple.

CHAIRMAN EDGAR: And I knew that.

COMMISSIONER CARTER: You're at 1.57 a month, and now you're saying it's 2.78?

MR. MAUREY: I'm sorry. I believe it's 1.65 a month right now, the current 2004 surcharge. It's per thousand kWH, obviously. And in its petition, FPL requested a 2005 surcharge of $2.98 per thousand kWH. Again, that was based on their estimate of their costs. Now that you've made decisions that have adjusted that level, that factor would be reduced. Staff doesn't have that calculation in front of us. We don't know what that 2005 interim surcharge would be.

MR. WILLIS: The two surcharges would have to be on top of each other. They already have one for 2004.

COMMISSIONER CARTER: That's exactly what I was asking. There you go.

MR. WILLIS: The new one would be only for the 2005 costs. It would not include anything to rebuild
the reserve. It would have to be only for the 2005
costs, and that would be on top of the 2004. So you
would have the two costs running simultaneously.

COMMISSIONER CARTER: Thank you.

COMMISSIONER ARRIAGA: May I?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Thank you. And I can
relate to Commissioner Carter's concern about the
amount, but I wasn't talking about the amount. I'm
talking about the process. I think if I read your
recommendation right, it's absolutely no. That's what
I'm reading in your recommendation. It says no interim
surcharge. But what you said to me verbally a few
minutes ago is different.

MR. MAUREY: Okay. I apologize.

COMMISSIONER ARRIAGA: Can you clarify the
specific recommendation?

MR. MAUREY: Okay. I apologize for any
misunderstanding.

COMMISSIONER ARRIAGA: No, don't worry.

MR. MAUREY: The recommendation is -- the
question as it's written is, should the Commission
approve an interim surcharge today to be implemented on
or after August 15th in the event the bonds get delayed.
And our position is no, it should not do that at this
time.

I offered in the form of an oral communication that the company is free to petition for a separate interim surcharge at any point in the future, and if the bonds are delayed at some point in the future and the company takes advantage of that opportunity then, then the Commission can consider an interim surcharge then at that point in time, and that it's staff's recommendation that it's not necessary to approve an interim surcharge today.

COMMISSIONER ARRIAGA: And I understand what you're saying, but I don't read it. And I'm worried that -- is this going to be interpreted as no, you cannot have an interim surcharge.

MR. MAUREY: Okay. I understand your question. We should clarify that. Our position is no, in the way the question is asked, should an interim surcharge be approved today. We're not saying, no, an interim surcharge should never be approved under a separate petition.

MR. MELSON: Commissioner Arriaga?

COMMISSIONER ARRIAGA: Yes, sir.

MR. MELSON: To address your concern, if what Mr. Maurey has described would address it, you could amend the staff's recommendation statement to add a
sentence that says something to the effect, "This does
not preclude FPL from seeking an interim surcharge at a
future date in the event of an undue delay," and make it
clear that you contemplate that they could come back and
that this hasn't put the issue to bed forever.

COMMISSIONER ARRIAGA: Thank you, Mr. Melson.
I appreciate the clarification, and I accept it, and,
yes, I will make a motion with that addendum.

CHAIRMAN EDGAR: And, Mr. Melson, if indeed we
were to find ourselves in that hypothetical situation,
that petition would come before us at an already
scheduled agenda conference?

MR. MELSON: Correct.

CHAIRMAN EDGAR: And I'll also note that,
Commissioner Arriaga, the example you used of the rate
rebalancing, which was delayed for a significant amount
of time, that in that instance they did not have
Commissioner Deason on the bond team.

(Laughter.)

CHAIRMAN EDGAR: Commissioner Arriaga, did you
make a motion?

COMMISSIONER ARRIAGA: I did. I did make a
motion adding what Mr. Melson had indicated.

COMMISSIONER CARTER: Second the motion.

CHAIRMAN EDGAR: We have a motion and a

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second. Is there further discussion? All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show the motion approved. We are on Issue 77.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Motion and a second. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Approved? I'm sorry. Opposed?

COMMISSIONER ARRIAGA: It's getting late.


Issue 77 has been approved. We are on Issue 78.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 78 approved.

Issue 79 has been stipulated. We need a motion in favor of the stipulation.

COMMISSIONER DEASON: Move the stipulation.
COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Those in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 79 approved. We are on Item 80.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion for Item 80 say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Item 80 approved. We are on Issue 81.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 81 approved. We are on Issue 82.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: Those in favor of the motion say aye.

(Simultaneous affirmative responses.)

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CHAIRMAN EDGAR: Opposed? Show Item 82 approved.

Commissioners, we are on Item 83, which is a stipulated issue. Is there a motion in favor of the stipulation?

COMMISSIONER CARTER: Madam Chairman.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: If I may, in light of the fact that Items 84, 85, 86, and 87 are stipulated, I would move the approval of those issues.

CHAIRMAN EDGAR: So moved. Is there a second?

COMMISSIONER DEASON: Second.

CHAIRMAN EDGAR: Motion and a second to approve Issues 83, 84, 85, 86, and 87. All in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show those issues approved. We are on Issue 88.

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor of Issue 88 per the motion say aye.

(Simultaneous affirmative responses.)

CHAIRMAN EDGAR: Opposed? Show Issue 88 approved.

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Commissioners, that takes us all of the way through the 90 issues that we have before us. We've moved through a lot of information thoroughly, timely, and I appreciate your cooperation.

I would like to before we close thank again our staff for the enormous workload that they have had to work their way through to get us to this point today. As you know, we had a very long hearing. We had a very short turnaround time for a number of the pieces to get us to this point that was dictated by the statutory framework. We are implementing a statute of first impression.

And I would like to take this opportunity to again urge the collaboration of the bond team and that we move forward through the next steps without undue delay.

Commissioner Keating -- I'm so sorry.

Counselor Keating.

MR. KEATING: Where do I sit?

COMMISSIONER CARTER: She's just kidding.

COMMISSIONER ARRIAGA: We've got two seats.

CHAIRMAN EDGAR: Don't we all. Mr. Keating, are there any further items that we need to take up?

MR. KEATING: None that I'm aware of.

CHAIRMAN EDGAR: Thank you. Commissioner

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Carter.

COMMISSIONER CARTER: Madam Chairman, if I may be recognized for the good of the order.

CHAIRMAN EDGAR: You may.

COMMISSIONER CARTER: On behalf of Commissioners Tew and Arriaga and myself, we have extended an opportunity to our staff to visit with us tomorrow morning before their hard work in not only doing their regular jobs, but working with us through the confirmation process, and so tomorrow we want to have a good, old-fashioned PSC breakfast. It's in Room 140 for staff, all of our Tallahassee staff, at 8:00 a.m. In fact, our Chairman and Commissioner Deason as well, the entire Commissioners will be there, and we want to tell staff how much we sincerely appreciate your help.

Thank you, Madam Chairman.

CHAIRMAN EDGAR: Thank you. Commissioners, further comments?

We are adjourned.

(Proceedings concluded at 5:40 p.m.)
CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF LEON:

I, MARY ALLEN NEEL, Registered Professional Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 49 through 159 are a true and correct record of the aforesaid proceedings.

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

DATED THIS 16th day of May, 2006.

[Signature]
MARY ALLEN NEEL, RPR
2894-A Remington Green Lane
Tallahassee, Florida 32308
(850) 878-2221

FLORIDA PUBLIC SERVICE COMMISSION