BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060038-EI

In the Matter of:

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

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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 5

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

DATE: Tuesday, July 18, 2006

PLACE: Betty Easley Conference Center
Room 148
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Tallahassee, Florida

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NATALIE SMITH, ESQUIRE, and ERIC TASHMAN, ESQUIRE, representing Florida Power & Light Company.

COCHRAN KEATING, ESQUIRE, MICHAEL COOKE, GENERAL COUNSEL, and DEAN CRIDDLE, ESQUIRE, representing the Florida Public Service Commission Staff.
CHAIRMAN EDGAR: We will take a minute to let people get settled, and then we will move on to Item 5.

Mr. Staden, are we good? Okay.

I believe joining us by phone we have Mr. Dean Criddle.

Mr. Criddle, can you hear me?

MR. CRIDDLE: I can. Thank you, Madam Chair.

CHAIRMAN EDGAR: Thank you for joining us.

Mr. Criddle is the outside bond counsel to the Commission, and he is joining us from the west coast and will be available to hear the discussion and also be available for questions.

Who's going to start us off?

MR. KEATING: I will.

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: Good morning, Commissioners. I'm Cochran Keating with the Commission's legal staff.

Item 5 is staff's recommendation on Florida Power and Light Company's motion for reconsideration and clarification of certain portions of the financing order that was issued May 30th of this year. I just wanted to provide a very brief summary of the recommendation.

Issue 1 addresses FPL's request for oral argument on the motion. Staff has recommended that the Commission grant
oral argument limited to ten minutes per side. To my knowledge, though, only FPL intends to present oral argument if the motion is granted.

Issue 2 addresses the six portions of the financing order for which FPL seeks reconsideration. The standard for reconsideration is whether FPL's motion identifies a material point of fact or law that the Commission overlooked or failed to consider in rendering the financing order. Based on this standard of review, staff has recommended that the Commission deny the request for reconsideration with respect to all but one of the points raised by FPL on reconsideration.

Issue 3 addresses the four portions of the financing order for which FPL seeks clarification. Staff has recommended that the Commission deny the request with respect to all but one of the points raised by FPL. And, finally, in Issue 4 we have recommended that the docket remain open pending the post bond issuance review that will take place pursuant to law.

If you grant oral argument, I believe FPL is prepared to present its argument and comments on this point, and staff is available to answer any questions.

CHAIRMAN EDGAR: Thank you, Mr. Keating.

Commissioners, as you have heard and have read, Issue 1 is a request for oral argument. Is there an interest in hearing oral argument? I'm seeing nods. Okay.

Is there a motion?
COMMISSIONER DEASON: Move staff.

COMMISSIONER ARRIAGA: Second.

CHAIRMAN EDGAR: We have a motion and a second on Issue 1. All in favor say aye.

(Unanimous affirmative vote.)

CHAIRMAN EDGAR: Opposed? Show Issue 1 adopted.

Will ten minutes accommodate the discussion that you would like to have before us?

MS. SMITH: It will, Madam Chairman.

CHAIRMAN EDGAR: Then you are recognized.

MS. SMITH: Thank you, Madam Chairman, Commissioners.

Jatalie Smith of the Florida Power and Light Company Law Department on behalf of FPL. Thank you for the opportunity to present oral argument.

FPL does not seek reconsideration of matters associated with the amount of storm recovery costs approved for recovery, but we are seeking reconsideration of certain matters associated with the issuance of storm recovery bonds. While some of the issues may seem like technicalities, they are issues of critical importance that need to be resolved. FPL appreciates staff's review and consideration of the issues raised by FPL in its motion for reconsideration and request for clarification.

As you can see from the handout we've distributed, we agree with staff's recommended clarifications on
Reconsideration Item 6 and Clarification Item 3. We urge the Commission to take staff's recommended action on those two items.

On three items the language in the staff recommendation provides the guidance and clarification needed and no additional action is requested. These are Reconsideration Item 3 and Clarification Items 1 and 4. On three others items, we are simply requesting that the language from the recommendation be reflected in the order on reconsideration so the intent of the financing order is clear on its face. These are Items 2 and 4 of the reconsideration matters, and Item 2 of the clarification matters. On two items further clarification is needed for the reasons I will discuss. These are Items 1 and 5 of the reconsideration matters.

Turning to Item 1 of the reconsideration matters, FPL requested that the Commission reconsider the financing order directive that the transaction be structured to effectively eliminate credit risk for all practical purposes and circumstances. This requirement was not voted on by the Commission and cannot be done.

The problem is that the standard to which the financing order will hold FPL accountable to effectively eliminate for all practical purposes and circumstances all credit risk associated with the transaction is so vague and imprecise as to make it impossible for FPL to know whether and
when it has complied with the order. There is no record
evidence or other analysis that illuminates what is meant by
the phrase for all practical purposes and circumstances and no
objective standard to which FPL can refer for guidance.

To remedy the vagueness of the order, and this is on
the handout, FPL recommends that the Commission clarify what is
meant by the phrase practical purposes and circumstances. And
the language that FPL specifically suggests is as follows: For
the purposes of this order, the phrase for all practical
purposes and circumstances does not include circumstances which
could excuse the state from the state pledge or acts or
omissions associated with any potential bankruptcy of FPL.
This is entirely consistent with the statute. With this
definition, FPL will have sufficient guidance to enable it to
make a reasoned judgment as to whether the Commission's
directive has been satisfied.

I'm prepared to move on to Item 2 of the
reconsideration matters now and just continue with my argument.
On Item 2, FPL requests that the order on reconsideration
simply reflect clarifying language from staff's recommendation.
In its motion, FPL requested that the Commission reconsider the
requirement that storm-recovery charges shall be in amounts
sufficient to guarantee the timely recovery of FPL's storm
recovery costs and financing costs detailed in the financing
order, including payment of principal and interest on the storm
recovery bonds. This language was not voted on by the
Commission and is unnecessary in light of the guarantee of
regulatory action associated with the true-up mechanism.

Our concern is that the word guarantee has a strong
and very specific meaning in the eyes of the investment
community. Circumstances entirely outside the control of FPL,
such as deficiencies caused by economic or regional
emergencies, could prevent timely payment. To make it clear
that the financing order is not intended to establish FPL as
guarantor of timely payment on the bonds, the order on
reconsideration should include clarifying language from the
staff recommendation on reconsideration. And this
clarification also on the handout states, "By its plain terms,
this requirement does not establish FPL as a guarantor of
payments on the storm-recovery bonds nor is it intended to do
so."

I am now to Item 3 of the reconsideration matters.
FPL no longer seeks reconsideration of this issue in light of
language in the recommendation.

And now I'm on Item 4. On Item 4 of the
reconsideration matters, FPL requests that the order be amended
to include certain clarifying language from the staff
recommendation. In its motion, FPL requested that the
Commission reconsider the requirement in the financing order
that there be certifications that, quote, each tranche of
storm-recovery bonds of each series, in fact, achieved the lowest-cost objective. The requirement that there be certifications for each tranche or each issuance of storm-recovery bonds was not voted on by the Commission. Instead, the staff recommendation provided that the goal of the bond team was to obtain the lowest storm-recovery charge, not the lowest cost on each tranche of bonds to the exclusion of the impact of other costs, including transaction costs.

Under this new standard, FPL is concerned that decisions could be made that lower the cost of individual tranches of debt, but raise the overall storm-recovery charge to FPL's customers. This would not be in FPL's customers best interest, as it could lead to higher storm-recovery charges.

Again, FPL finds comfort in the staff recommendation on reconsideration and requests that certain clarifying language from staff's recommendation be included in the order on reconsideration so that the intent of the order is clear. As the handout shows, this clarifying language provides that the financing order does not require that each tranche be reviewed solely based on interest rate achieved, but also in light of up-front and ongoing costs, including marketing costs. FPL appreciates this clarification that the price on each issuance of bonds needs to be evaluated in the context of the entire transaction.

Moving to Item 5. Regarding Item 5, FPL requests
that the Commission reconsider its conclusion that FPL cannot
recover incremental costs associated with its role as servicer
and administrator of the bonds. Foreclosing FPL's opportunity
to seek recovery of these types of incremental costs associated
with servicing and administering the bonds in a future base
rate proceeding could be detrimental to bankruptcy law opinions
that are needed to accomplish the storm-recovery bond issuance.

    In an arm's-length transaction, it is presumed that
parties will ensure that all actual costs can be recovered.
Requiring FPL to deposit all servicing and administration fees
to the storm reserve does not provide FPL the opportunity to
recover any incremental costs, because the use of those funds
is restricted by Commission rule.

    Therefore, to ensure FPL is able to obtain the
requisite bankruptcy opinions to effectuate the securitization,
the bankruptcy remote special purpose entity must pay FPL as
servicer an amount that is deemed to cover its actual costs of
performing these functions. Findings of fact 114b and 116
should be clarified to provide that FPL will have the
opportunity to seek recovery of any incremental costs
associated with FPL's role as servicer or administrator of the
storm-recovery bonds as part of FPL's retail base rate
proceedings. This clarification would not prejudge the amount,
the reasonableness, or the prudence of any incremental costs
subject to approval by the Commission. Parties to the future

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base rate proceeding would have the opportunity to contest whether any such amounts are prudently incurred incremental costs.

Moving to Item Number 6, FPL agrees with and supports staff's recommendation on this item.

Now turning to the clarification issues. Based on clarification and staff's recommendation, we can withdraw our request for clarification on Item 1 of the clarification matters.

On Item 2 of the clarification matters, FPL requests that certain clarifying language included in the staff's recommendation be included in the order on reconsideration. The language is from the recommendation on Item 2 of the clarification matters, which states, "The Commission has provided itself the discretion to allow the storm-recovery bonds to be issued in the absence of a certification from FPL, the bookrunning underwriter, or its financial advisor."

Now moving to Item 3. FPL supports staff's recommendation on Item 3 of the clarification matters. And on Item 4 of the clarification matters, FPL no longer seeks clarification in light of language included in the staff's recommendation.

In conclusion, for the reasons discussed, we ask that the Commission issue an order on reconsideration that makes the clarifications provided on the handout, much of which simply
excerpts clarifying language that staff included in its recommendation on reconsideration. This will provide the guidance and clarification needed in order for FPL and the investment community to better understand what is meant by certain language in the financing order.

Thank you.

CHAIRMAN EDGAR: Thank you, Ms. Smith.

MR. KEATING: I think we could address -- I could give you some initial comments on some points, and if we need to explore it further, we can.

CHAIRMAN EDGAR: Okay.

Commissioners, is there a place that you would like to start? Is there a general comment, general question?

COMMISSIONER CARTER: Thank you, Madam Chair. I just want to make a general comment. We spent days and hours on these issues. And it seems to me that, you know, they are using a tank to kill a gnat. I mean, what is the real issue? I mean, we're going nit-picky, nit-picky, nit-picky. We went through all of this. And I think that from reading the staff's proposal, staff has gone to clarify the matters that were, for whatever purpose, confusing. And it just seems to me that if
there is a real issue, we need to be dealing with the real
issue instead of doing cosmetic things. I mean, a lot of this
language here staff has already provided clarification and
further information, and all. And I'm just kind of scratching
my head trying to find out what is the real issue here.

    Thank you, Madam Chair.

    CHAIRMAN EDGAR: Thank you.

    Commissioner Arriaga.

    COMMISSIONER ARRIAGA: I understand your concern,
Commissioner Carter, but let me try to share with you some
previous experience that I have had in my life. I used to be
president of a financial institution many years ago, and we had
the opportunity to issue bonds through that institution, which
is a science that is, you know, away from you. You, of course,
know that. There are many things that are going to happen from
here on in the bond process, the issuance process. And one of
the things that really can help to have a very clean cut bond
issue is to clarify as much as possible, whatever is needed to
be clarified before we enter that process formally.

    I find that clarifying may help a smooth transition
to the end product, which needs to be out, I hope, before the
end of the year. So the process of seeking clarification, the
way staff has handled it, denying the reconsideration by
clarifying seems to be interesting.

    The thing that I'm struggling with is how do we put
this in an order, which phrases to use, which is the
nit-picking you are referring to. But if we could do
something, maybe legal counsel can help me about how do we do
this so that it is properly clarified in the order so nobody
has any doubts as to what to do, and the very detailed process
that is going to go ahead has to happen. I don't want any
disagreements in the middle of the process. The more we
clarify and let our staff, and the bond team, and FPL, and the
legal counsel, everybody know what to do the better. That
would be my suggestion.

CHAIRMAN EDGAR: Thank you, Commissioners.

Commissioner Carter, I have to, of course, echo your
comments that our staff, all the parties, and as I recall there
were multiple parties. We had a long hearing, we heard a lot
of testimony, we had lengthy, lengthy discussion when the
proposed order came before us. A lot of time was spent, an
awful lot of good work done for which I am quite proud of, of
the work of this Commission and all who participated.

However, we do have a request for reconsideration
before us, and it is our responsibility to address it. And if
by the fact that we are all here together we can continue that
good work and end up in, perhaps, a slightly better place, then
I certainly am interested in entertaining that. And so, Mr.
Keating, if you can --

Excuse me. Commissioner Tew. I'm sorry.
COMMISSIONER TEW: I have some of the same concerns, but at the same time I feel like that what the company is asking for here, and I want to hear what staff has to say, but particularly those places where they have pulled language directly from the staff recommendation which essentially clarifies some of the points they have raised, whether it's on reconsideration or clarification, it seems reasonable to at least discuss whether or not those things can be pulled into the motion for reconsideration.

Because I think staff put a lot of time and effort into explaining why they didn't grant reconsideration, but in doing so I think they have clarified some of the concerns. So it seems reasonable to me to at least go through them and consider using staff's own language here to clarify some things.

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: Just to start with, I'll start with reconsideration Item 1, and I am referring to the handout that FPL provided. I think our concern, we would have a concern with adding the language that FPL suggested for a few reasons. I think identifying anything that's an exclusion from the phrase practical purposes and circumstances would, I think as FPL has noted, probably go beyond the vote. I think FPL indicated the record did not indicate what practical purposes and circumstances would include. And to the best of my
knowledge, I don't know that these particular circumstances, adding this language would be supported by the record.

The other concern with that language is that it would appear to raise a red flag, perhaps to investors, that might be misleading. I'm not sure why we would suggest that a practical circumstance under which the bonds may not be paid could include the state excusing itself from what is a pretty powerful and unconditional state pledge included in the statute to support and not interfere in the bond deal.

And then, second, I'm not sure why we would suggest that a practical circumstance under which the bonds may not be paid would include the potential bankruptcy of FPL, when the statute establishes a separate credit and a bankruptcy remote special purpose entity that is actually going to be issuing the bonds. And I believe there is some information in the record concerning a California utility that went bankrupt who had issued similar bonds, and the bonds maintained a AAA rating.

My concern with the language is, one, to summarize my concerns that it is probably not supported by the record and could raise some -- unnecessarily increased the perception of risk associated with the bonds.

CHAIRMAN EDGAR: And am I correct that the standard for reconsideration does apply on this point?

MR. KEATING: We are here on a motion for reconsideration that that standard would apply to.
CHAIRMAN EDGAR: Commissioners, are there questions for Mr. Keating on this point? No.

Mr. Keating, if you would, let's move to the second item, or point, whichever it is.

MR. KEATING: The second point and, again, referring to FPL's document, I don't think we have any concern in clarifying our order. I think as Commissioner Arriaga suggested, it's a matter of how we do so. Traditionally, when we have issued orders on reconsideration, the order, for example, and I'm not suggesting the outcome of today's vote, but if the Commission were to approve the staff recommendation in some form or another, the order would typically look a lot like the staff recommendation with the language present in it.

If that were the case here, this language that's quoted from the staff recommendation would be in that order. What FPL has suggested, it looks like, is a place in the financing order, the existing order, to insert language. I do have some pause with doing that, because the process of putting together this order was unusual as compared to how we usually issue an order in that we invited participation from all the parties to look at the draft version of the financing aspects of the order. It has gone through a pretty meticulous review and every word has been carefully considered.

My concern is that the language that is quoted from the staff recommendation was not drafted with the intent of
being able to somehow fit into the existing order. We did not consider whether this specific language that's quoted from the staff recommendation, how it would fit into the order, if it was going to be put into an order. I think we would want to -- and we have given that some thought prior to today, since we filed the recommendation, on how, if we wanted to make a clarification and provide some specific language, how we could reflect that clarification.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Let me see if I understand you, Mr. Keating.

What I think you're saying is let's leave the current order alone, just let it stand as it is, and issue an order for reconsideration which will include the language that you are proposing today. Is that what I understood?

MR. COOKE: May I jump in at this point, because we have had a lot of discussion on this. It is not going to be an easy order to craft or motion to craft. There is a range of possibilities, depending on what the Commission decides to do. One would be if the Commission were to decide to accept the staff's recommendation as is, traditionally what we would do would be to issue an order that essentially incorporates much if not all of the language from the recommendation.

Now, to a large intent, or at least on some of these issues, that appears to give FPL some comfort. Some of the
items that they originally asked either for reconsideration or clarification on, they now feel can be treated as moot, based on language in the recommendation. However, if the Commission wants to go further and clarify using specific language out of the recommendation and essentially inserting that, in a sense, into the preexisting order, we couldn't adopt the recommendation wholesale because the recommendation recommends against making some of these clarifications. We could, in that case, issue an order on reconsideration where the Commission very simply says we have reconsidered this, and in light of the reconsideration we direct that the following changes be made, and state those changes with great specificity.

Now, what Mr. Keating is raising in terms of the concerns with that approach, we didn't draft the recommendation, per se, to change the existing order. So there is a little bit of concern on our part that we don't know what consequences would flow from specific word changes that are not proposed in the recommendation itself. I don't think that means that we couldn't necessarily find ways to clarify on some of these issues, and I think Mr. Keating can address that in more detail. Some of them we're not, perhaps, comfortable with at all, but in some cases no written document is perfect, and we could perhaps find a way to clarify.

I guess the bottom line is if we go beyond what the staff has recommended, then we need to craft an order that is
perhaps fairly straightforward and tells us explicitly what changes to make. Now it occurred to me, also, that one hybrid approach would be to -- if the Commission wants to go beyond just the recommendation of staff and clarify some additional language in the existing order in specific detail, we could preface that with a statement to the effect that the Commission adopts the analysis in the recommendation.

The analysis is all of the explanation, all of the context and all the nuance. And to the extent that the Commission is comfortable with that and wants to make it clear that the Commission is adopting that in the order, we could do that and also make specific language changes to the extent we want to do that. So I'm not sure if I -- I hope I was clear on that. It's fairly cumbersome, perhaps.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Madam Chairman, a question for our General Counsel.

CHAIRMAN EDGAR: Yes.

COMMISSIONER CARTER: Mr. Keating said that to do otherwise from staff recommendation will be making a decision based upon something that is not within the record. Do you remember when he said that?

MR. COOKE: In that case he's referring to Issue 1, and I believe that our position -- I will defer to Mr. Keating and to staff, but I believe that it's not in the record that
the definition of for all practical purposes and circumstances has support in the record as to how to modify that in the way FPL wants. So I don't think staff is prepared to accept that change or recommend that change.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: One itty-bitty follow-up, Madam Chair.

CHAIRMAN EDGAR: Please.

COMMISSIONER CARTER: Based upon what we're trying to do, I accept what Commissioner Arriaga has said in terms of the bond financing and streamlining the language and all like that, but it seems to me if we were to do anything other than clarify what we have already done, I think we are making a new law based upon evidence not presented in the case below. That's just my opinion. What do you say to that?

MR. COOKE: I think as the recommendation explains, on some of these issues that have been raised and whether you call them reconsideration or clarification, I think really what we're talking about is more in the nature of clarification. And I do believe on some of them the clarification, as explained in the recommendation, obviously is supported by the record. To the extent that additional language could be inserted into the existing order that further clarifies what we meant, then it would be supported by the record in those cases.

In other words, there are cases on some of these
issues where the record supports it, staff agrees with the intent, and simply we're basically trying to -- I guess it's a pejorative term, but wordsmith a document at this stage on that issue.

One other thing I want to make, and Mr. Keating brought this up, we have both a motion for reconsideration and a request for clarification. With regard to the standard for reconsideration, staff believes that only one of the six issues has raised a new fact or a question of law that merits reconsideration. Because we do not -- we agree that perhaps the way it was phrased in the financing order was not supported by the record in that case on Item 6, and staff has proposed specific language to address that and to conform to that issue. On everything else, we believe that the record supports what staff has done. And, conversely, on some of these issues that FPL is requesting changes on, we do not agree that the way they want to make changes is supported by the record.

CHAIRMAN EDGAR: Commissioner Carter, Commissioner Tew has been waiting, so I'm going to turn to her and then I'll come back to you. Okay.

Commissioner Tew.

COMMISSIONER TEW: My question is to FPL. I just want to clarify what it is that I'm looking at here to make sure I understand what you're asking to be changed. And the way I read these, each of these recommendations here, is that
it would be a change to the order on reconsideration, not any changes to the financing order itself. I realize that some of the language that is mentioned in the staff rec is directly out of the financing order, but I wanted to make sure I understood before we go further into the procedural aspect.

Are you asking for any changes to be made to the financing order?

MS. SMITH: Commissioner, we would be fine with an amended financing order, or an order on reconsideration that makes these clarifications. Either one would suffice for our purposes, but we felt that an order on reconsideration that made these clarifications was perhaps administratively more efficient and could be done in an easier fashion. Either way, we think that it ultimately -- you would end up with one order. You know, by looking at the two orders, you would know what was intended by the financing order that was originally issued.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chairman.

In light of what General Counsel just said in response to my former series of questions, I would ask, Madam Chair, with your permission for them to let us know as we go issue-by-issue where we are versus where we are creating new territory. Because I really wouldn't want us to get outside of the fact that we had a tribunal here, we had days of hearing, we had hours of hearing, we had testimony, we had evidence
presented. I mean, it was a lengthy process. And I really wouldn't want us to get outside of what we already have in the record and create something new.

I mean, if you are talking about chaos, that would throw the whole process into chaos. I really don't want to do that. So I'm just saying I want us to be careful about what we are doing. That's all I'm saying.

CHAIRMAN EDGAR: Commissioner Carter, I agree completely. And I'm sure that our legal staff is prepared and able to respond to the information and go through it just in the way that you have requested.

MS. SMITH: Madam Chairman, excuse me.

CHAIRMAN EDGAR: Ms. Smith.

MS. SMITH: I'm wondering if I may address the points raised made on Item 1 now or at a time that would be convenient for the Commission.

CHAIRMAN EDGAR: Are there further comments or questions before we turn back to the language? No. Okay.

Ms. Smith, Item 1.

MS. SMITH: On the first point that was raised that what we are requesting is not part of the record, we would submit that there is certain language that was included in the staff recommendation and the financing order that was not part of the record, as well. And that language is the language we direct that the transaction be structured to achieve this
result. We felt that without this language the Commission is expressing its own opinion on the creditworthiness of the bonds.

But once FPL is being directed to structure the transaction to achieve this result, then we are being asked to do something and held to a standard for all practical purposes and circumstances that we just feel is extremely vague. So if the Commission is inclined to reject things on grounds that it's not part of the record, I would just ask that that particular sentence be considered as something that was not part of the record.

Alternatively, we do think that clarifying what is meant by the phrase for all practical purposes and circumstances will enable FPL to satisfy the lowest cost objective while at the same time not be misleading to investors. I just don't understand how providing clarification of what is intended by a phrase that is very vague could somehow be misleading to investors. In fact, our fear is that not providing clarification will be misleading to investors.

And, in fact, if we are required to include these types of statements and the fact that we have met this standard in our prospectus and other offering documents, we could very well end up in a court of law in a securities law case with a bondholder suing us on grounds that we did not structure the transaction to eliminate credit risk for all practical purposes.
and circumstances.

The definition that we have proposed, things that
could excuse the state from the state pledge, if the state
cannot perform the true-up mechanism for some event, a
catastrophe, a hurricane, an economic disaster, then it's
outside of FPL's control whether there is a potential risk of
default on the bonds.

COMMISSIONER DEASON: I have a question.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: If it is clear that FPL is not
the guarantor of payments, how is it that you find yourself
concerned that FPL may be in a position of being sued by some
future bondholder that FPL did not structure the financing the
way it was directed to?

MS. SMITH: I'm going to ask that Eric Tashman, he is
FPL's outside finance counsel with the Sidley Austin law firm,
I'm going to ask that he address that question.

MR. TASHMAN: Our concern is that we will be asked to
make a statement in the prospectus to the effect that the
transaction has been structured in a way to eliminate credit
risk for all practical purposes and circumstances, and that
statement will be a statement of FPL and the SPE. The SPE
being the issuer, FPL being the control party.

And our concern is that we want to make sure that
investors understand what those terms mean if we are forced to
make that statement. If it is merely -- as Ms. Smith said, if
it is merely a statement of the Commission, if it's the
Commission's view that the transaction has been structured in a
way as to eliminate for all practical purposes credit risk,
then that's the Commission's statement and we are prepared to
quote that statement in the prospectus.

But what we fear will happen is that we will be asked
to put that statement in not as the Commission's view, but as
the SPE's view, or FPL's view, and that we will be making a
conclusory statement to investors that there is really no
credit risk to this transaction. And we just feel that this
explanatory language will clarify to all concerned, both to FPL
and to the bondholders who may purchase these bonds, exactly
what is intended by this statement.

COMMISSIONER DEASON: So is this whole issue a
concern that the bond team may direct certain language be
included in the prospectus that would subject FPL to some
potential future liability?

MS. SMITH: I would say that we do foresee that --
that is our primary concern. Because the financing order
requires FPL to comply with every provision of the order,
including this provision that the transaction be structured to
achieve this result, we foresee that we will be pressured to
include a statement to this effect in the prospectus and
offering documents, yes, sir.
COMMISSIONER DEASON: Well, how do you suggest the
Commission in its order direct the entities involved to attempt
to structure this to achieve the result to the best degree that
it can be achieved? I think we all agree that we want the
least-cost financing available, and to do that we have to
eliminate risk. And we all believe that the state pledge and
the way that we are structuring this entire transaction
minimizes risk.

And then the question is eliminating risk for all
practical purposes, is that just another term for minimizing
risk? I don't know. How do we in the order indicate that we,
as a Commission, expect that to the degree that it can be that
this transaction be structured to eliminate as much risk as
possible?

MR. TASHMAN: Commissioner, the two elements that are
cited as supporting the elimination of credit risk are the
state pledge and the true-up mechanism, both of which are
within the statute. Aside from requesting true-ups, there is
nothing that FPL can do on its own to enhance that credit.
That credit is a statutory credit, and the protections that
bondholders will be looking for are incorporated in the
statute.

Accordingly, we are just -- much of this is outside
of FPL's control. You have requested us to direct -- you've
requested that we structure the transaction to eliminate credit
risk, and we will attempt to structure a transaction that will survive stress tests presented by the rating agencies which will demonstrate that under most circumstances, hopefully virtually all circumstances, there will be little credit risk to investors.

However, when you use the term for all practical purposes and circumstances, you must mean that there are certain circumstances that are impractical. There are certain circumstances where bondholders may not be paid. And we just are requesting that for FPL's purposes and investor purposes that we describe those circumstances so that there will not be any ambiguity with respect to what the directive is.

MS. SMITH: To summarize, Commissioner Deason, I think we would just need clarification as to the definition of for all practical purposes and circumstances, just so we know what is intended by the Commission. If we do at some point end up in litigation, we would be able to point to that, include that definition in our prospectus and offering documents and say something that excused the state from its obligation to perform the true-up mechanism is something that excuses FPL from the obligation or from the --

COMMISSIONER DEASON: What can happen to excuse the state from its pledge that's in statute?

MS. SMITH: The case law provides -- I want to make sure I'm quoting it -- a significant and legitimate public
purpose would excuse the state from the state pledge. And, of course, the state pledge includes the pledge to true-up the charge as well as the pledge to not do anything to impair or alter the charge in a way that's inconsistent with the statute. So we can't foresee exactly what circumstances that may be, and that's actually the problem with the phrase is we don't know what may be considered a practical or impractical circumstance under various scenarios.

COMMISSIONER DEASON: Well, I'm having difficulty. We cannot, as a Commission, direct the state, which is basically the Legislature and the Governor, as to whether they are going to abide by the pledge or not, or whether there are circumstances that can excuse the state. And neither can we direct you, FPL, as a regulated utility, to somehow guarantee that the state is going to abide by its pledge. So how are you concerned that you are going to be the subject of a potential liability suit from a potential bondholder that you didn't follow this Commission's directive to guarantee that the state would not break its pledge? I just can't see -- it's just so far removed. If someone brought a suit like that, it looks to me like the judge would say there's no basis for this and just dismiss it.

MR. TASHMAN: Commissioner, we would hope that would be the case, but the circumstances under which the state could be excused from its pledge from exercising its true-up are not
clearly defined in the case law. It depends on the facts and circumstances that exist at the time. And we just think this clarification will be helpful in selling the bonds and allowing FPL to sell the bonds with a -- conveying a clear picture to bondholders what risks they are assuming and what risks they are not.

In effect, we're not adding anything to the already existing proposition that the state has a state pledge and must true-up bonds, must true-up the charge. All we're doing is really stating what the law is, which is under certain circumstances the state can be excused, and alerting people in this context to the fact that that excuse could also cause bondholders to be exposed to some credit risk.

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: Commissioners, I did just want to make clear that the language, the for all practical purposes and circumstances language we have been discussing isn't something new that has been added in this particular bond transaction. This is language that was used in prospectuses for some recent bond transactions, similar type transactions in Texas.

At this point we do have our outside counsel on the line, and I think he may be able to provide some information on how the risk associated with these types of transactions has been conveyed in the prospectuses. Because this language has been included in prospectuses, and to the best of my knowledge
there is a section of the prospectus that also allows for
discussion of really any possible risk.

    MR. CRIDDLE: Yes, this is Dean Criddle. Can you
hear me?

    CHAIRMAN EDGAR: Yes, Mr. Criddle. Proceed.

    MR. CRIDDLE: The record for this transaction
includes testimony, and I believe documentary evidence, as
well, that this same language, essentially verbatim, was
included in the 2004 prospectus for TXU Encore, a Texas
transaction, a Texas utility. The language was proposed by
issuer's counsel, utility counsel, and then approved by
underwriters counsel as well as the financial advisor for the
Texas Commission and included then in the prospectus in 2004.

    There was a 2005 transaction in Texas, once again,
for CenterPoint where this same language, again, was included
in the prospectus. And then both of those were included in the
record for this proceeding. Most recently, just last month, on
June 27th, an additional registration statement was filed for
yet another Texas utility, this one AEP Texas Central, and the
prospectus that was included in that registration statement,
once again, includes precisely the same language that is
included in the financing order and is being discussed now in
Item 1 for a motion for reconsideration. And I would point out
that in this most recent filing, the issuer's counsel for AEP
Texas Central is Sidley Austin, so I'm a bit puzzled as to why
this very disclosure is acceptable in Texas to Sidley Austin, but not in Florida.

Finally, in the financing order, the structure of the transaction is only prescribed in general outline and general parameters. At FPL's request, flexibility was built into the financing order to allow FPL to structure within those general parameters. And a variety of the areas in which FPL has requested flexibility will bear on the extent of credit risk. For example, how frequently will payments be scheduled to be made on the bonds; when will the first payment date be scheduled is a very critical feature; how much time will be allowed between scheduled payment dates and legal final payment dates. Those are just a sampling of items as to which FPL has requested and received flexibility, but those will bear on whether, in fact, credit risk has been minimized or effectively eliminated.

So I believe the feeling on the part of staff had been that it was not appropriate for the Commission to make a finding because only general parameters had been set forth in the financing order. Instead, staff had recommended and the Commission included in the original financing order a direction that FPL exercise discretion which it requested so as to, in fact, achieve this objective that we see reflected in the disclosure documents and these various Texas transactions.

CHAIRMAN EDGAR: Commissioner Arriaga.
COMMISSIONER ARRIAGA: Thank you, Madam Chair.

Commissioners, it is evident to me from listening to these conversations here that there is room for disagreement, there is room for interpretation. And I think we are called upon to satisfy those issues, clarify the agreement, clarify the interpretation.

When I first got ahold of the motion for reconsideration, and after that the staff's recommendation, I said to myself I'm going to read this as an outsider. Let me try to read this as an investor, as somebody who is reading it for the first time. So I read the motion for reconsideration, and I said, oh, my God, how could that Commission fail to do all the things that FPL was claiming. And then I read staff's recommendation, and I said, oh, my God, how could FPL claim all the things they claim. Which led me to believe to say there is room for interpretation and that we are obliged to satisfy those interpretations.

My point, from a general point of view, rather than going into the nitty-gritty of the language itself, which is difficult to do in this setting, if staff took the time to write this recommendation and clarify everything that was being requested to be clarified, while at the same time denying the motion for reconsideration, what could be the problem with issuing an order for reconsideration with all of these clarifications that you already decided were appropriate?
CHAIRMAN EDGAR: Mr. Cooke.

MR. COOKE: Commissioners, that would conform with what staff has recommended. We are recommending that on certain of these issues there be a clarification of the language, but on others we believe the order is clear on its face. And this simply explains why we believe that. The problem, if you will, is FPL disagrees and wants additional clarification.

COMMISSIONER ARRIAGA: May I continue, ma'am?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Let me try to understand, because I'm having difficulty expressing myself, and I understand that. What I'm proposing specifically, and it's not a motion, Madam Chair, it's not a motion.

CHAIRMAN EDGAR: We are in discussion.

COMMISSIONER ARRIAGA: Yes, it is a thought. What I'm trying to say here, is there any issue with issuing an order for reconsideration that includes the language already proposed by the staff in its recommendation?

MR. COOKE: There is none on the part of staff, Commission staff. I'm not sure FPL would accept that as resolving the issues they have raised.

MS. SMITH: I think that on every issue, except for Issue 1 and 5 where we are requesting additional clarifying language, that would satisfy FPL.
CHAIRMAN EDGAR: Mr. Cooke.

MR. COOKE: I know we're struggling to figure out exactly what to do. I just want to make it clear, on Issue 1 I believe it's staff's position that the language that was used in the order is supported by the record, and it is clear, and it has been used in other prospectus type documents and other transactions. So on that issue, I do not believe that staff sees any reason to make a change in Issue 1. And, frankly, I think, feels pretty strongly that Issue 1 should stay the way it is.

There could be some other issues where we might find it relatively innocuous to make some clarifications, and we are willing to try to work towards that in this meeting. That's a tedious process. But, again, I go back to what I originally said. We kind of have two extremes. One is the Commission, if it chooses, can simply accept staff's recommendation and direct us to issue an order on reconsideration that adopts the language of the recommendation that we have made, and that would satisfy staff. FPL might not be satisfied with that, and would be left to whatever choices it wants to make as a result of that.

If the Commission wants to try to continue working with FPL to clarify some areas where maybe staff can come into agreement that it does not do violence to the order that has already been issued by making certain minor changes, we could
do that in this meeting, and in that case we could issue a
different type of order.

CHAIRMAN EDGAR: Commissioner Arriaga, if you could
hold for just a second.

Commissioner Tew.

COMMISSIONER TEW: I just have one clarification
question. Several people have mentioned this same language is
used in other jurisdictions whenever there are financing
orders. Is it the exact same language that we see here,
including the last sentence that originally FPL was asking to
strike, or what are the differences, if there are any?

MR. KEATING: I believe it is almost exactly the
same. I'm going to ask Mr. Criddle for his thought on that
because of his experience with those transactions.

CHAIRMAN EDGAR: Mr. Criddle.

MR. CRIDDLE: Yes. In my judgment, they are the same
in all material respects.

COMMISSIONER DEASON: Define all material respects.

MR. CRIDDLE: I believe precisely the same wording is
used in all three. There may be some slight differences in
cross-reference at the very end, but the language that we are
focusing on here, "shall effectively eliminate for all
practical purposes and circumstances," is precisely the same.

MS. SMITH: Madam Chairman.

CHAIRMAN EDGAR: Ms. Smith.
MS. SMITH: The language, again, I think this is to Commissioner Tew's question. The language that was not in the record here and also was not in the staff recommendation on the financing order voted on by the Commission, the directive that the transaction be structured to achieve this result to the best of FPL's knowledge has not been included in a financing order that has been issued to date.

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: To clarify one thing, the financing order that we did issue does not specify particular or specific language to be included in the disclosure documents in this proceeding. I understand from what FPL has said this morning that part of their concern is that with this language with this last sentence directing the transaction be structured in this manner, that that would give some leverage to somebody in the bond team process who wanted that specific language included in the disclosure documents. But I did want to clarify that by our financing order we did not specify what language would be included in the disclosure documents, that was something that was left for the bond team process.

CHAIRMAN EDGAR: Commissioner Tew, did you have additional --

COMMISSIONER TEW: Well, I did specifically want to know if that last sentence was included in other jurisdictions, because I think that that is important. I think that was what

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was originally claimed by FPL to not be included in part of the record, and we keep hearing references that it has been used in other jurisdictions, and that is aimed at giving us some comfort that we are doing the right thing here.

And I think that maybe that is important, and maybe we get away from defining what for all practical purposes are by considering whether or not the last sentence should be there. I don't know how important the last sentence is for inclusion in that order, but I just throw that out as something that I have a lingering concern over.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Ms. Smith. (Pause.)

Ms. Smith.

MS. SMITH: Oh. Sorry, I apologize.

COMMISSIONER ARRIAGA: That's okay. I'm personally inclined to leave the financing order as it is. Again, no emotion, just a comment. Because to start modifying an original order made by this Commission could get nasty, messy. If I was a judge and I was sitting here looking at a case regarding this bond issue, an investor suing or somebody like that, what was meant by whatever, I would pull out the original financing order, I would pull out the order for reconsideration, which includes all of staff's comments, and I would decide based on both documents. And I believe that an order for reconsideration with staff's comment has clarified
everything that was meant to be said.

MS. SMITH: Commissioner, I would agree with that with the exception of there has not been a clarification as to what is meant by the phrase for all practical purposes and circumstances. And I guess two alternatives. We would agree with Commissioner Tew's alternative of striking the language that was not in the record. We think that would be a favorable outcome. And, additionally, if we could get -- or, alternatively, if we could get clarification that we would not be required to include this statement in the prospectus and offering documents without clarification as to what is meant by the phrase "for all practical purposes and circumstance," that also would satisfy our concerns.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: I wanted to follow up on what Commissioner Arriaga just said about clarifying the financing order, and wanted to clarify with you again, Ms. Smith, that if we were to make a change to that paragraph, it would just be a change that would be reflected in the order on reconsideration. We would not go back and clarify in the financing order document itself, is that correct?

MS. SMITH: You would clarify that this was being stricken, correct.

COMMISSIONER TEW: A follow-up.

But it wouldn't strike that language from the
original financing order, it would just be clarified in the order that would result from today's vote that we had done away with that sentence, if that ends up being the Commission's pleasure.

MS. SMITH: Yes, Commissioner.

COMMISSIONER TEW: Okay.

CHAIRMAN EDGAR: Mr. Cooke.

MR. COOKE: I think that has the same effect, however. If we issue an order on reconsideration that strikes language that is in the original order, it essentially deletes that language from the original order. We simply don't marry up the documents.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: I suppose that gives rise to the question whether or not we need that sentence. And I think that goes back to the question I was asking before. If that has not been used in several cases, do we need this sentence here?

MR. COOKE: Well, let me say two things about that -- or say one thing and then ask Mr. Criddle a question.

First of all, I'm not certain that it hasn't been used in financing orders in other jurisdictions, and I would like to have that clarified.

Mr. Criddle.

CHAIRMAN EDGAR: Mr. Criddle, can you speak to that?
MR. CRIDDLE: To my knowledge this is the first time that particular formulation has been used in a financing order. We have seen the actual substantive disclosure repeatedly in prospectuses, but the language that is now being focused on, to my knowledge, is a variation that staff settled on and recommended in connection with this financing order in light of the flexibility that FPL requested.

MR. COOKE: Thank you.

My understanding of why that sentence is there, essentially I believe, it's my understanding that the record does support the beginning part of that paragraph that says for all practical purposes, et cetera. And I believe that implicit in the Commission's determination of that finding of fact, implicit in that is a direction to, through the process of the bond team, achieve the result of that finding of fact.

I think, essentially, that last sentence is an ordering type of sentence. It probably should have been in the ordering provisions. I think it's implicit in what the Commission found in terms of the end result given the true-up mechanism and the nature of the state pledge that for all practical purposes the end result will be a bond decision that achieves, for all practical purposes, this level of risk. And, therefore, it is implicit that the Commission is asking staff through its involvement in the bond team to achieve that result.
MS. SMITH: Madam Chairman, may I?

CHAIRMAN EDGAR: Ms. Smith.

MS. SMITH: Respectfully, I just have trouble seeing -- I mean, the first part of it, I am turning to what the financing order says -- it says the Commission anticipates stress case analyses will show that the broad nature of the state pledge and the automatic true-up mechanism will serve to effectively eliminate, for all practical purposes and circumstances, all credit risk associated with the bonds. That's an opinion of the Commission about what it anticipates that the stress case analyses will show, and that's very different from the directive to FPL that it structure the transaction to achieve that result.

COMMISSIONER CARTER: Madam Chairman.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: I beg your indulgence. I just want to ask a question out loud. I'm like, it seems that the language is the same. I mean, why would we not want it to have the transaction structure based upon our finding? I mean, is there something I'm missing? I mean, I don't play a lawyer on TV, but I've been to law school and it seems to me that the language flows from the directive itself. And I can't get it, I don't get it.

MR. KEATING: I think one of staff's concerns, also, is that the financing order could lose some degree of strength.
if the sentence is removed. With the sentence we're sort of saying -- the statute has created this extraordinary risk, and we will accept pretty much nothing less than what the statute allows for here. If the sentence is removed, it could provide an opportunity for somewhere down the road interpreting what we did here to have, perhaps, more meaning than might be intended. It would definitely give an impression, I think, that we must have intended that there would be some consequence to that change. There is some meaning to having that sentence present.

MS. SMITH: Madam Chairman.

CHAIRMAN EDGAR: Ms. Smith. But I'm getting ready to move on.

MS. SMITH: Okay. I would just say that if we could get the clarification of what is meant by the phrase "for all practical purposes and circumstances" and/or some agreement that we will not be required to include this opinion in our prospectus and offerings documents, that would satisfy our concerns.

CHAIRMAN EDGAR: Okay.

Commissioners, I think what I would like to do is we have had some discussion on Point 1, we have had discussion on Point 2. Let's move on for the time being. We will come back. Point 3, Ms. Smith has said, is moot in their minds. So let move to the fourth point and have some discussion. And I think

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what I would like to do, and this is also open to discussion, but let's move through it and hear from our staff and have the opportunity to answer questions on these additional points that have been raised.

We did hear from Ms. Smith in oral argument. We'll have the opportunity, of course, to ask her further and additional questions, should we have them. But let's move through the items. And then I'm thinking that it may behoove us to take a short lunch break, have some time for some personal reflection. We have had a lot of information. And then we will need to come back this afternoon, regardless. We have three and a half items remaining on our agenda, so we can come back then and move through our decision-making process. So, if that is okay.

Mr. Keating, I would like to ask you to speak to us on Point 4.

MR. KEATING: Concerning Point 4, I think similar to my comments on Point 2, FPL suggested in the document it handed out that we lift a quote from the staff recommendation and perhaps modify the financing order with that. We have since had some discussion on that as to whether we should try to, in this forum, craft specific language to revise the order or simply allow the clarification as it's stated in the recommendation to appear in an order on reconsideration that may adopt the staff recommendation. I think that is our only
If with the language that's in the staff recommendation, if that language is to appear in an order on reconsideration, I don't think we have any concern there. I mean, that language would typically, in our traditional order on reconsideration, would typically be there if the Commission approves the staff's recommendation. The only concern is where we would try to craft something to fit that into the existing financing order without doing any harm to it, without having any unintended consequence.

On Point 5, I believe other than Point 1, this is probably the only other one where we still have a fairly significant difference with FPL. The language that FPL is suggesting, which would allow FPL the opportunity to seek recovery of incremental cost associated with its role as servicer or administrator of the bonds in its next retail base rate proceeding, I mean, it is at odds with what the order found, which was that the amounts that it receives in terms of the annual fee it gets paid under these agreements with the special purpose entity should be credited to the storm reserve.

That finding was based on the fact that there was no information in the record, despite staff's attempt to develop the record in that area, there was no information as to what, if any, incremental cost there would be to FPL in performing these services. And also information that indicates that much
of the services that would be performed under these agreements are activities that are already performed by FPL in the normal course of business.

The concern they've raised, as I read the motion, is perhaps a suggestion of a mistake of law concerning the bankruptcy law effects of this finding. I know that we did, in crafting the recommendation and crafting the issues, try to take that into account. We had a separate issue concerning the appropriate amount -- I'm sorry, the appropriate fee for the SPE to pay FPL under these agreements. Recognizing that that fee needed to represent an arm's-length transaction, we agreed and the Commission approved that the fee that was proposed by FPL was appropriate. And, again, that was to maintain an arm's-length transaction, not that the fee necessarily was necessary to cover incremental costs of FPL. That was the first issue.

The second issue that followed that in the recommendation was, okay, FPL is going to receive this fee to establish the arm's-length transaction, what amount, if any of that fee, is necessary to cover any true incremental cost to FPL to perform services under the agreement. To us it was more of a regulatory issue at that point. And because we didn't believe the record supported that there were going to be incremental costs to FPL to perform these services, we recommended and the Commission approved that those amounts,
certain amounts, the annual fee under the agreements be credited to the storm reserve.

We have discussed this one with our outside counsel who feels that the necessary bankruptcy opinions could be rendered based on the Commission's finding. But, again, in summary, we think this is an issue where there isn't a point of fact or law that the Commission overlooked or failed to consider.

With respect to Reconsideration Item 6 --

MS. SMITH: Madam Chairman, may I address Item 5 before we move on, just respond?

CHAIRMAN EDGAR: Yes.

MS. SMITH: I will say that we provided extensive information in discovery about the types of services that would be performed under the servicing and administration agreement. We simply said that it was not cost-effective at this time to track the costs, but there was no dispute in the record as to whether FPL would need to recover its incremental costs in order to get the necessary bankruptcy opinions.

Respectfully, I know that the Commission's counsel has said that this is not needed in order to get the necessary bankruptcy opinions. But our bankruptcy counsel has told us that it is necessary, you know, or at least very helpful to do so, and it's something that would not harm customers. There would be an opportunity to challenge whether there are any
incremental costs in a future base rate proceeding, and whether
those costs are reasonably and prudently incurred. And so
because there is no downside, I just don't understand why this
isn't something that could easily be addressed.

CHAIRMAN EDGAR: Mr. Keating, briefly.

MR. KEATING: With respect -- if you're looking for a
response, I don't know if I can give one with respect to the
nuances of bankruptcy law. I would ask, I guess, Mr. Criddle
to respond, if he has any comments.

MR. CRIDDLE: Just very briefly. From a bankruptcy
point of view, my bankruptcy specialist advises me that, in
particular, if there is an opportunity for the utility to make
a showing of its costs, that they feel any bankruptcy concern
on this point would be satisfied. And the Commission, I
believe, allowed an opportunity for a showing, and on the basis
of that showing, has approved the initial set-up fees as having
been documented, but concluded that the company failed to make
the adequate showing for on-going costs.

My bankruptcy lawyers advised me that there should be
no bankruptcy-related concern if there is a failure to make a
showing as opposed to no opportunity given at all. So I
believe that's the bankruptcy analysis that we feel should
prevail.

MS. SMITH: Madam Chairman, may I, again?

CHAIRMAN EDGAR: Ms. Smith.
MS. SMITH: All we are asking for is the opportunity. Respectfully, we did not know until the time the staff recommendation was issued that we were going to be held to a standard of prospectively showing that we have satisfied and shown any incremental costs of service that we were incurring as part of this proceeding. Again, it's unrebutted in testimony that we need the opportunity to recover incremental costs in order to receive the necessary bankruptcy opinions. And, certainly, when we don't find out until the staff recommendation the standard that we are being held to, there is really nothing we can do at that point.

CHAIRMAN EDGAR: Mr. Keating, Point 6.

MR. KEATING: Point 6, I believe we're in agreement. Staff has recommended that you grant FPL's motion for reconsideration with respect to Point 6.

CHAIRMAN EDGAR: And could you go ahead and speak to us on Point 2 of Issue 3.

MR. KEATING: Yes. Again, this is a -- we haven't discussed this one, so I'll give just a little bit of background. The financing order requires that lowest cost certifications be provided by FPL, the underwriters, and the Commission's financial advisor. And that the Commission will review those certifications, will review the transaction, and will have an opportunity by the close of business on the third business day after the bonds have been priced, the Commission
will have an opportunity at its discretion to issue a stop order to stop the transaction. The financing order also indicates that if no action is taken by the Commission by the close of business on that third business day that the transaction will go forward.

FPL has asked for clarification that the Commission has the discretion to allow the transaction to go forward, even in the absence of the certification from the Commission's financial advisor, such that one party, the Commission's financial advisor, that is, would not by himself be able to hold up the transaction.

We think it's already implicit in the order that we have the discretion as to whether or not to issue a stop order by day three. And I believe that the language that's in the staff recommendation that clarifies that would hopefully address FPL's concern.

CHAIRMAN EDGAR: Ms. Smith.

MS. SMITH: Yes, it would.

CHAIRMAN EDGAR: Commissioners, comments or questions at this time.

Commissioner Arriaga.

COMMISSIONER ARRIAGA: Issue Number 5, recovery of incremental costs. I just wanted to remind ourselves that during these lengthy proceedings, we held FPL to the very strict standards of incremental costs, the recovery of only
incremental costs. And using a layman's term, what's good for
-- the sauce that is good for the geese is good for the goose,
I think that is the way it goes -- (laughter) -- I try to be as
English, as American as I can, you know.

CHAIRMAN EDGAR: That's goose and gander, I think.

(Laughter.)

COMMISSIONER ARRIAGA: Okay.

CHAIRMAN EDGAR: But we get you, we get your point.

COMMISSIONER ARRIAGA: Okay. Good.

So, I mean, all that is being asked here is to
recognize what we held this company to during the proceedings,
incremental cost. And this is something that OPC has advocated
throughout. And even in the last case we just saw a few hours
ago regarding GT Com, I purposely indicated I am so glad that
we're not talking about incremental cost in the telecom case
because it is something that is pertinent exclusively to the
electric utilities. I think that there is a point in
recognizing incremental costs.

CHAIRMAN EDGAR: Okay.

Commissioners, as we mentioned earlier, we have all
spent a great amount of time on these issues to bring us to
this point, and that's a good thing. And because of all the
time and work that has gone into it, I don't want to push a
decision at a low blood sugar moment, personally. So, I would
like to have the opportunity for a lunch break, realizing, as I
mentioned a few moments ago, we do have additional items on our agenda this afternoon.

I'm showing about 12:35 on my clock, so we are going to take a lunch break.

Mr. Criddle, I will ask, can you join us in approximately an hour for further discussion?

MR. CRIDDLE: Yes, I can.

CHAIRMAN EDGAR: Thank you very much. Then we are on break until approximately 1:30.

(Lunch recess.)

CHAIRMAN EDGAR: We are back on the record.

Commissioners, when we went to lunch we were discussing Item 5, and I think that our staff and the parties have asked for a little additional time to answer some of the questions that came up.

So realizing that we do have other items of business before us, what I would like to do is hold off on further discussion on Item 5, and move along through our agenda and come back to that in a little while later this afternoon.

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CHAIRMAN EDGAR: We are back on the record.

And, Commissioners, as I said before the break, we have one remaining item to address to complete our work for the day, and that is to go back to Item 5. And I do believe that we have Mr. Criddle with us by phone again.
Mr. Criddle, can you hear me?

MR. CRIDDLE: Yes, I can, Madam Chair.

CHAIRMAN EDGAR: Thank you for your patience and for joining us again here towards the end of the day.

I'm going to look to staff to remind of us of where we are.

Mr. Keating.

MR. KEATING: Thank you.

Commissioner, we have had the opportunity during the time we were away to discuss some of the points that FPL would like to have clarified in the order. And, in particular, Reconsideration Items 2, 4, and Clarification Item 2.

As you will recall, on each of those points there was language in the staff recommendation that FPL had requested be reflected in an order on reconsideration. There was a question as to, you know, what form or order on reconsideration would take to reflect these clarifications. What we have done over the last few hours is arrive at some language that I think both FPL and staff feel fairly reflect the clarification that was requested, and it's reflected in the staff recommendation while not doing any harm to the intent of the financing order.

And I believe you have a copy of that now, it's a two-page document. We couldn't quite get it onto one page. And, again, that's with respect to Reconsideration Point 2, Reconsideration Point 4, and Clarification Point 2. And, I
can, if it's your desire, walk through those and try to give some explanation.

CHAIRMAN EDGAR: Okay. Yes, Mr. Keating, let's go ahead and do that now.

MR. KEATING: On Reconsideration Point 2, the language in the staff recommendation clarified that the requirement that storm charges be set in amounts sufficient to guarantee timely payment of the bonds, that by that requirement we were not intending to establish FPL as a guarantor of payments on the storm-recovery bonds. The language that is provided here, this is the first block quote on the pages that were just handed out, says that, if you look at the last two lines of that language, I'm sorry, of that block quote, the first three or four lines, three and a half lines, provides the protection that we think is necessary so that, just a bare statement that FPL is not intended to be a guarantor of the payments is not interpreted to relieve them of any other obligations that they are going to have as part of the transaction in the various agreements.

The second reconsideration point, I'm sorry, Reconsideration Point 4, the second block quote, that language is almost word-for-word from the staff recommendation. Again, this clarifies that in reviewing the transaction that we're looking not only at interest rate, but also up-front and ongoing costs as part of the lowest overall cost approach that
the Commission adopted.

I'm going to jump down to Clarification Point 2, which is the last block quote on the first page and concludes on the second page. This provides the clarification that the Commission has the discretion to allow the storm-recovery bonds to be issued in the absence of a certification from FPL, the underwriters, or this Commission's financial advisor. Our concern with including just the bare statement that was in the recommendation as part of the financing order would undermine or weaken the requirement of the lowest cost certifications as set forth in the financing order.

The first sentence under Clarification Point 2 on Page 1 there is intended to ensure that that does not happen. It's clear that we expect the parties to provide the certifications for this transaction to go forward, while still retaining the discretion to allow the transaction to go forward in the absence of a certification, or if we receive a certification that is not in the form that we require that's acceptable to the Commission. What's on Page 2 is simply the associated ordering -- language that would go in the ordering paragraph associated with the Finding of Fact 135.

And I'm going to jump back -- unless you would like me to stop for any questions at this point, I could jump back to Reconsideration Point 5, which is in the middle of that first page.
CHAIRMAN EDGAR: Keep going.

MR. KEATING: Okay. As you recall, Reconsideration Point 5 concerned FPL's recovery or opportunity to recover incremental costs associated with their role as a servicer or administrator of the storm-recovery bonds. Actually, I think it would probably be best for me to defer to FPL at this point to clarify what the request was in their motion that led to this language.

CHAIRMAN EDGAR: Ms. Smith.

MS. SMITH: Yes. We do thank staff for working with us to achieve a good result, we think, on these points of clarification.

Regarding Reconsideration Item 5, what we did ask for is the opportunity to seek recovery of incremental cost in a future base rate proceeding in order to ensure that we are able to get the necessary bankruptcy opinions. We understand that staff's concern was that we were going to accumulate incremental costs between now and the next base rate proceeding and defer and seek recovery of those costs at the time of the next rate case.

That is not the case, and we clarified that during our discussions with staff. We worked on language with staff that will satisfy our concerns about getting the necessary bankruptcy opinions, and at the same time clarify that we are only going to seek recovery of costs prospectively at the time
of the next rate case.

And in the handout that Mr. Cooke distributed, the clarifying language that was added is on the third line "Incurred on or after a test period." And actually we reached some further clarifying language, an agreement with staff. The language would read incurred during or after a test period instead of on.

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: And with FPL's clarification of their motion on that point, staff is comfortable with that revised language. Again, subject to your approval. And just to be clear, what we have come up with here is specific language that in an order on reconsideration can be referenced in the specific portions of the financing order in the event that that is the direction that the Commission would like us to go with the order on reconsideration.

CHAIRMAN EDGAR: Thank you.

Commissioners, any questions?

Commissioner Deason.

COMMISSIONER DEASON: What about Reconsideration Item 1?

MR. KEATING: I should have mentioned, we do not have agreement on Item 1, that is still something that's on the table.

CHAIRMAN EDGAR: My understanding is that is
something that we will still need to discuss, and we will come
to that. But as long as we had this new language in front of
us, I thought that might be a good place to at least start our
continuing discussion to see if there is any questions or
additional information that we would like to get from either
FPL or our staff on these items before us.

COMMISSIONER DEASON: It looks like a good resolution
to me, Madam Chairman.

CHAIRMAN EDGAR: Thank you, Commissioner Deason.

Commissioners? There's none at this time.

Okay. Then let's hold on this for the moment. And,
Mr. Keating, I would like for you to refresh our memory on
Reconsideration Item 1.

MR. KEATING: Reconsideration Item 1 concerns what is
listed as Finding of Fact 81 in the financing order, in
particular the last sentence of that finding of fact which
states that we direct the transaction be structured to achieve
this result, which refers back to the statutory true-up
mechanism in the state pledge and the credit risk language that
we were discussing earlier.

What was, I think, on the table were a couple of
different suggestions by FPL. One, that the last sentence of
the finding of fact be deleted, or otherwise that all practical
purposes and circumstances be more specifically defined.

CHAIRMAN EDGAR: Ms. Smith.
MS. SMITH: May I? Thank you.

I will say that we made every effort to compromise on Issue 1, but this is just a critical issue for us. And, again, as we discussed earlier, and it has been presented to the PSC, this directive that the transaction be structured to achieve this result has never been in any other financing order, it was not part of the record in this proceeding, and it was not in the staff recommendation that was voted on by the Commission. And so we think that this language should be stricken.

I will offer up one other alternative that we considered as we were reflecting on the discussion this morning. Commissioner Deason said this morning that he would like to ensure that credit risk is minimized. And if that is the Commission's intent, then we would suggest that that can be achieved by changing the word eliminate to minimize in Finding of Fact 81.

I can read how it would read.

CHAIRMAN EDGAR: Yes, please do.

MS. SMITH: We find that this true-up mechanism, together with the broad based nature of the state pledge set forth in Section 366.8260, Subsection 11, Florida Statutes, constitutes a guarantee of regulatory action for the benefit of investors and storm-recovery bonds. And we anticipate that stress case analyses will show that these features will serve to effectively minimize, for all practical purposes and
circumstances, any credit risk associated with the
storm-recovery bonds.

COMMISSIONER CARTER: Madam Chair.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Before we get to that issue, do you mind if I ask staff a question?

CHAIRMAN EDGAR: You're recognized for a question.

COMMISSIONER CARTER: In reverse order. Is that assuming -- on Page 4, assuming that we put this sentence in here, we direct that the transaction be structured, would it be more appropriate to put that sentence someplace else in the document?

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: I'm not sure. I just don't know right off the top of my head exactly where that would fit. I don't know if there is an ordering paragraph that that language would fit in or if there is any other place that that particular language would fit. I'm not saying that it wouldn't, I just haven't looked at the order in that light.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: Madam Chairman, I have a suggestion that maybe would -- I'm sure it would not totally eliminate FPL's concern, but maybe minimize it. If we were to change the last sentence to read, "We direct that this transaction be structured consistent with this expectation."
MS. SMITH: May we confer for just a moment?

COMMISSIONER DEASON: Sure.

MS. SMITH: Thank you.

CHAIRMAN EDGAR: Take a moment. And, Commissioner Deason, will you read that one more time while they're conferring.

COMMISSIONER DEASON: Yes. The last sentence would read, "We direct that this transaction be structured consistent with this expectation."

CHAIRMAN EDGAR: Are we close?

MS. SMITH: Yes, I think so.

CHAIRMAN EDGAR: Okay. Ms. Smith.

MS. SMITH: Our concern is that that language is still holding us to the same standard that we feel is ambiguous. But we do have some potential alternative language to suggest that is somewhat consistent. "We direct that FPL strive to structure the transaction consistent with this expectation." And that along with the word minimize instead of eliminate would address our concerns.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Madam Chairman, I think with the proposed language by Commissioner Deason, that really reflects the finding from the case below as well as where we are now, and I think with that you don't really have to deal with whether it is eliminate or minimize.
CHAIRMAN EDGAR: Or strive.

COMMISSIONER CARTER: Or strive, right. "We direct this transaction be structured consistent with this expectation." I mean, that is fairly, on its face, self-explanatory. And I think that any bond counselor or any bond purchaser will be able to understand the perspective on that. And I just think it makes more sense and it's cleaner.

MS. SMITH: Madam Chairman, if I may.

CHAIRMAN EDGAR: I'm going to come back to you, so hold just a moment.

Commissioner Arriaga.

COMMISSIONER ARRIAGA: Yes. I would like to agree with Commissioners Deason and Carter. My only point is that no bond transaction can completely eliminate credit risk, so I think the word minimize is appropriate.

CHAIRMAN EDGAR: Mr. Keating, did you have a comment?

MR. KEATING: No. I'm sorry.

CHAIRMAN EDGAR: Did I miss you, Commissioner Carter?

COMMISSIONER CARTER: No.

CHAIRMAN EDGAR: Okay. Ms. Smith.

MS. SMITH: I still -- I did say this earlier, but I still think, and I want to clarify that our primary concern is that the language is going from what the Commission in its opinion anticipates that the stress case analysis will show, and the language, again, that causes us concern that wasn't in

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the record is a directive to the company to meet this standard
that, again, we feel is ambiguous. And it's the opinion of the
Commission transitioning to a directive to the company that
gives us concern.

I will point out that we think we can satisfy
minimize, if minimize is substituted for eliminate.

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: I would only point out that the
specific finding the Commission made included the phrase
effectively eliminate and not minimize. So I think there is --
I just want to point out that to use the word minimize is going
to be -- not going to track the specific language that was
voted on exactly.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Can I ask a question of
outside counsel?

CHAIRMAN EDGAR: Mr. Criddle. Mr. Criddle.

MR. CRIDDLE: Yes. If Mr. Arriaga could please speak
directly into the mike. I'm having a little bit of trouble
hearing, but I'm here.

CHAIRMAN EDGAR: Okay. All right. We have a
question for you.

COMMISSIONER ARRIAGA: Mr. Criddle, this is
Commissioner Arriaga.

MR. CRIDDLE: Yes, sir.
COMMISSIONER ARRIAGA: Do you know of any bond transaction that has zero credit risk?

MR. CRIDDLE: No.

COMMISSIONER ARRIAGA: Thank you.

CHAIRMAN EDGAR: Mr. Cooke.

MR. COOKE: I'm wary of being an advocate, but I just wanted to point out, just to clarify, that for all practical purposes there is not any -- there is qualifying language that has gotten us down this track to begin with. I just want to make it clear that we're not suggesting the Commission's finding and recommendation that was voted on in the bond hearing itself doesn't say that there won't be any credit risk, and I think that is laid out in Mr. Keating's draft recommendation.

COMMISSIONER CARTER: Madam Chair.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: In view of the language that -- I mean, I think that it's masterful in terms of what Commissioner Deason has said, is that why wouldn't it, I mean, eliminate versus -- you used the word minimize versus eliminate. I mean, we pretty much all know what we mean when we say that. I mean, I don't think that that would give anybody any grave heartburn. Because, as you say, Commissioner Arriaga is correct, there is no such thing as a bond without any risk. You can't eliminate it. You can obviously minimize
it by the parameters that we have put in there. So I think that if we could go with Commissioner Deason's language on the last sentence and this request to just use the word minimize from Commissioner Arriaga, I think we may have some traction on this. And it makes a lot of sense, and I think it keeps the sense of the Commission, keeps the flavor of the order, and keeps the perspective of the case that we had underlying.

If it makes sense to me, it has got to be simple.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: Well, I hate to complicate things, or maybe I don't, but I still remember all the discussion about whether the last sentence or maybe any form of the last sentence is in the record. And I would like for our staff attorney to speak to that.

CHAIRMAN EDGAR: Mr. Keating.

MR. KEATING: I don't think we have a witness testifying that we should direct the transaction to be structured to achieve this result. That said, the findings that the Commission make don't have to be word-for-word from what's in the record. They have to be based on evidence that is in the record. And we believe that the last sentence is implicit in the Commission's finding that was specifically as the Commission approved the staff's recommendation on Issue 61.

So I think it's a little -- the question of whether something is in the record, that's not the question. The real
question is whether it is supported by the record. I think
that finding is supported by the record.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: I guess my concern has been that
we have put in a sentence, it seems like at least based on the
discussion today, we are a little unclear as to exactly why we
put in that sentence, and now we are worried if we remove the
sentence we're going to end up with unintended consequences.
So I guess I'm just expressing frustration with where we are at
with this sentence that appeared and now we're worried that
going rid of it will -- anyway, that's just my thoughts. I
think we are moving in the right direction. I'm just not sure
that we have gotten out of the -- the concern as to whether or
not it's in the record.

And I guess I will also note on the word minimize, if
that is also not in the record, it doesn't seem like those two
arguments mesh to me. It seems like if it is okay for us to
change minimize -- well, I guess I should just say we should be
consistent throughout.

MR. KEATING: I mean, it is the Commission's order,
and it should reflect the Commission's intent. And that's what
we try to do in crafting an order. And in crafting the order,
the specific finding -- I mean, there is very specific language
in the staff recommendation, that's why it is in the order,
that said that the financing order should include ordering
paragraphs, findings of fact, and conclusions of law that will give appropriate comfort to investors about the high quality of storm-recovery bonds as a potential investment. Examples include, and the first one is a finding that the Commission anticipates stress-case analyses will show that the broad nature of the state pledge and the automatic true-up mechanism will serve to effectively eliminate, for all practical purposes and circumstances, all credit risk associated with the storm-recovery bonds.

I just wanted to give some explanation as to the basis for the statement. There is record support for that particular finding, and we believe that the last sentence that is in Finding of Fact 81 is consistent with that finding, which is based on the record evidence, and is supported by the record evidence.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: An attempt to clarify what I was saying. If we can find record support to craft the last sentence, it seems like effectively eliminate and minimize are close enough, as well.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chairman.

Commissioner Tew's question gets me back to where I was when I asked about whether or not this sentence could be placed somewhere else in the record. I guess the preliminary
question I should have asked was whether we even need this sentence. I mean, I think that the paragraph itself says what we found. I mean, this sentence, at best, is redundant and therefore may not even be necessary. And even if it is necessary, it doesn't seem to be necessary to place it here. Maybe it should be someplace else in the record or someplace else -- just, for all practical purposes, we are trying to move a transaction and deal in the bond community.

And the thing in the bond community, particularly when people are investing their money and people are spending their money, they want to see some kind of definitive perspective. You know, we want interest rates, we want a payment schedule, we want time frames, we want an annual percentage. We want all of that stuff locked down.

This sentence here, in my opinion, doesn't get us where we need to be. If we need this sentence at all it shouldn't be there, that's what I'm saying. Because it seems to be giving us heartburn, and it was not specifically a finding of fact in the case below. I mean, it was several days, but I was paying attention every day. And I just think that this sentence -- it's redundant, at best, for the paragraph. And I just don't think it gets us where we really need to be. And I think it hold us up from a process where we need to be moving on to.

I mean, the time value of money. Every delay there
is a cost factor involved. And we say we want to be as
expeditious as possible in this process. And I think that the
paragraph, unless I'm missing something, this paragraph
represents what we found in the case below. This sentence at
the end of the paragraph is at best redundant, and that is
being charitable.

CHAIRMAN EDGAR: Commissioner Deason, you made an
effort to help us with our rewriting on the spot perhaps. Do
you have additional thoughts from the discussion, since you --

COMMISSIONER DEASON: Well, the purpose of the
suggestion was to alleviate the concern that we were ordering
FPL to achieve a result. We were just ordering them to
structure it consistent with our expectation. And we may be
wrong in our expectation, but that's our expectation and not
theirs. And so I was hoping that would give some comfort.

I'm still comfortable with changing the last sentence
with that terminology and without inserting the word minimize.
But at the same time, I think the Commission needs to express
what its intent is so that the bond team will have the
necessary direction to go forward. And whatever the intent of
the Commission is, so be it. But I can tell you, when I voted
that's exactly what I voted for, to effectively eliminate it,
and that's our expectation. And I think that's what the
customers deserve, that's what they expect, and that's what
this whole thing -- the statute was premised upon, and I think
we have an obligation to try and carry it forth as best we can.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Just a question, Madam Chair.

CHAIRMAN EDGAR: You're recognized for a question.

COMMISSIONER CARTER: I just want to make sure that we're on the same page. Therefore, then, what Commissioner Deason is saying, and I agreed with him initially, and I think I'm back to where I started. He was saying, before Commissioner Arriaga and I asked our series of questions and before Commissioner Tew asked her series of questions, he was saying leave the word eliminate where it is in the paragraph, and to say we direct that this transaction be structured consistent with this expectation. Is that correct?

COMMISSIONER DEASON: Yes, that's what I --

CHAIRMAN EDGAR: That is my understanding of -- yes, of what we have started to discuss and are still discussing.

COMMISSIONER CARTER: Well, that gives me far more comfort. Because, one, I don't really think we need it. But if we are going to have it, I think that is probably a better use of the language to reflect the will and the expectation of the Commission.

CHAIRMAN EDGAR: And, Commissioner Carter, I had started to say, but I appreciate your clarification, that I don't disagree or, likewise, I do agree that there is some redundancy, but I'm not sure that redundancy is a bad thing in
this instance.

COMMISSIONER ARRIAGA: May I?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: With all due respect to Commissioner Deason's always clear and bright presentations, I would definitely agree with direct this transaction to be structured to be consistent with this expectation. We heard legal counsel, outside counsel tell us that there is no way we can structure a bond issue that eliminates credit risk. I can't. I mean, I would love to second or vote in favor of the way it has been proposed, but minimize or eliminate are two different words, and there is absolutely -- I don't know of any bond transaction that eliminates all credit risk. I would love to second or approve --

CHAIRMAN EDGAR: Commissioner Arriaga, does the descriptor of effectively give any additional comfort, perhaps?

COMMISSIONER ARRIAGA: Excuse me, please?

CHAIRMAN EDGAR: Looking at the language in the sentence, it's not just eliminate, it is effectively eliminate. And the effectively as a descriptor to eliminate, I mean, to me the two words go together.

MR. CRIDDLE: Forgive me. If I may interrupt, Madam Chair.

CHAIRMAN EDGAR: Mr. Criddle.

MR. CRIDDLE: Dean Criddle. To make clear in my
response to Commissioner Arriaga's question, the answer to his question is it possible to eliminate, the answer is no. Is it possible to effectively eliminate for all practical purposes and circumstances, I believe the answer is yes. And so I want to make sure that I wasn't misunderstanding.

COMMISSIONER ARRIAGA: No, you weren't.

May I?

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: No, no, you weren't you. You were very clear.

MR. CRIDDLE: Thank you.

COMMISSIONER ARRIAGA: I'm trying -- I'm following up with the Chairman here. Effectively minimize. Is that what you are suggesting, effectively minimize?

MR. CRIDDLE: No. I think effectively minimize really doesn't convey the concept. Effectively minimize might still leave enormous risk, whereas these transactions have been structured or have the ability to be structured to reduce the risk to an extraordinarily small level. As Witness Olson testified, he was hard-pressed, in fact, was unable on cross-examination to come up with an instance in which the bonds would not be paid on time. And I think you're correct.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: You just mentioned, Mr. Criddle, the perfect words, reduce the risk. And that is
what minimize represents to me, reduce the risk. Reduce the
risk doesn't mean effectively eliminate. And anything that we
do, as Commissioner Deason said, that we owe to the consumer
the best effort to reduce the risk. But to promise the
consumer that we will effectively eliminate all risk, I can't
assume that responsibility. I can't.

CHAIRMAN EDGAR: Mr. Criddle, did you have an
additional comment?

MR. CRIDDLE: Yes. The language that is in the
record and that has been used elsewhere is effectively
eliminate for all practical purposes and circumstances. So it
is certainly conceivable that something would happen, for
example, all out nuclear war that entirely destroys and makes
forever uninhabitable the entire service territory of FPL. I
think we would all concede that the bonds would not be paid on
scheduled if that happened.

But the type of scenario that would have to occur
is -- I think, Witness Olson was quite correct, it's so
extraordinary it's difficult to imagine something far short of
those absolutely cataclysmic events giving rise to a failure to
pay. And, so, the idea has been to convey that sense to
investors.

CHAIRMAN EDGAR: Thank you, Mr. Criddle. You know,
just note, to state the obvious, that there is a bit of irony
in the fact that we have an order of -- I don't even know how
many pages. Mr. Keating, I'll be you know. How many pages?

MR. KEATING: I blocked that out. It's 64 total.

CHAIRMAN EDGAR: Sixty-four pages. And that each

word has been carefully crafted as a collective effort, and

that we have come down to really just one or two, or three or

four words, depending.

Commissioner Arriaga, I recognize your discomfort. I

have perhaps some discomfort myself with a change to --

minimize to me is a wider acceptable range than effectively

eliminate. And we really are right down to the itty-bitty of

it, I guess. But I also have additional comfort with carrying

consistent language throughout a document. And I think what I

have understood our outside counsel and our legal staff here

with us today to say is that the language of effectively

eliminate is carried elsewhere in the document.

Mr. Keating, is that correct?

MR. KEATING: I'm not sure if that language is used

more than once in the financing order.

COMMISSIONER DEASON: I doubt it is. If it were

there FPL would have pointed it out.

MS. SMITH: I will say that to the best of our

knowledge it is only in Finding of Fact 81.

MR. COOKE: Madam Chairman.

CHAIRMAN EDGAR: Mr. Cooke.

MR. COOKE: Just a point of clarification, however.

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It is directly from the staff recommendation that was voted on during this process, that language.

CHAIRMAN EDGAR: And I think that's the point that Commissioner Deason made just a few minutes ago.

Commissioner Carter.

COMMISSIONER CARTER: Madam Chairman, at the proper time, I'm going to move that we accept the recommendation with the addition of language on the -- the entire paragraph as is, including the word eliminate, but to say we direct that this transaction be structured consistent with this expectation. And at the appropriate time, when you are open for a motion, that would be my motion.

CHAIRMAN EDGAR: Okay. Commissioner Carter, I think we are very close to that, at least I know I am. I guess my question to you, and -- well, let me ask you this. I was not sure, and I'm going to recognize your motion, but is that to deal just with Reconsideration Point 1 on Issue 2, or are you embodying the additional language that we have been discussing that there seemed to be some agreement reached?

COMMISSIONER CARTER: Yes, ma'am, because that would make more efficient use of it. Yes, ma'am, that would include all of that language.

CHAIRMAN EDGAR: Okay. Then my understanding is that -- and make sure I get this right so that we are all clear on your intent, is that we have a motion from Commissioner

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Carter to adopt the changes, if change is the right word, the
language that has --

COMMISSIONER CARTER: Clarification.

CHAIRMAN EDGAR: The clarification language, thank
you, on Reconsideration Point 2, Reconsideration Point 4,
Reconsideration Point 5, and Clarification Point 2, and on
Reconsideration Point 1 to reword the last part of that last
sentence that we have been discussing, so that it would read,
"We direct that this transaction be structured consistent with
this expectation." And in clarifying or reiterating, I hope
that I didn't confuse it. Is that okay?

COMMISSIONER CARTER: Yes, ma'am, that's my motion.

CHAIRMAN EDGAR: Okay. Commissioners, Commissioner
Carter has made a motion.

COMMISSIONER DEASON: Second.

CHAIRMAN EDGAR: We have a motion and a second.

Commissioner Tew for discussion.

COMMISSIONER TEW: I just wanted to say that I still
have the same concerns I had about the last sentence, but I can
see that my colleagues think that that last sentence is
important, and I think that Commissioner Deason has made a good
attempt to address the concerns expressed, and so I will be
supporting the motion.

CHAIRMAN EDGAR: Thank you, Commissioner Tew.

Is there further discussion? Commissioner Arriaga.
COMMISSIONER ARRIAGA: I would have supported the motion, especially -- I'm going to support the motion in all other points except one, and I want to state for the record that I cannot responsibly -- I cannot, and I'm not saying that you are irresponsible, please understand me. I have limitations in my expressions, and this is a very heartfelt situation to me.

I have had experience with bond issues before. We cannot, or at least I cannot responsibly guarantee our consumers, or our investors, nor can we instruct the company to issue bonds that will effectively eliminate for all practical purposes and circumstance the credit risk, so I am going to have to deny my vote on that specific issue.

CHAIRMAN EDGAR: Thank you for your comments, Commissioner Arriaga.

Commissioners, we have a motion and we have a second, and that motion will address Issue 2 and Issue 3 that is before us. I'm going to call it for a vote. So all in favor of that motion say aye.

COMMISSIONER CARTER: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER TEW: Aye.

CHAIRMAN EDGAR: Aye. Opposed?

COMMISSIONER ARRIAGA: No, for the reasons expressed.

CHAIRMAN EDGAR: Thank you. So that motion is
Carried.

Mr. Keating, was that you?

Mr. Keating: I just wanted to make sure it was clear on the record, I'm not sure that in the motion we picked up Reconsideration Item 6, which is one where we were in agreement and recommending approval of FPL's motion on that point. I just wanted to make clear, because it is not reflected in the handout or in the discussion we had on Item 1.

Chairman Edgar: And I appreciate that question for clarification purposes, as well.

Ms. Smith: Madam Chairman.

Chairman Edgar: Ms. Smith.

Ms. Smith: Just one more along the same lines as what Mr. Keating just pointed out. Clarification Item Number 3, as well, I didn't hear that one, and I think that is Item 3 in the staff recommendation.

Chairman Edgar: Okay. And we did not specifically address those. Again, I appreciate the question being asked.

Commissioner Carter, it was your motion, and I was not clear when I restated for my benefit, but my understanding was that the motion did include the staff recommendation on the other points that had not been addressed in this document.

Is that correct?

Commissioner Carter: That's correct. There was already agreement on it.

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CHAIRMAN EDGAR: Mr. Keating, does that --

MR. KEATING: That's all I need.

CHAIRMAN EDGAR: Does that suffice for your purposes? Is Mr. Cooke comfortable? Okay.

And then, Commissioners, I believe that just leaves us with the final item, which is Issue 4. And if I could have a motion on that?

COMMISSIONER DEASON: Move staff.

COMMISSIONER CARTER: Second.

CHAIRMAN EDGAR: All in favor say aye.

(Unanimous affirmative vote.)


Thank you all for your patience and participation.

Mr. Criddle, thank you for joining us.

We are adjourned.

* * * * *
STATE OF FLORIDA

COUNTY OF LEON

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

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

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

DATED THIS 26th day of July, 2006.

[Signature]

JANE FAUROT, RPR

Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and Administrative Services
(850) 413-6732

FLORIDA PUBLIC SERVICE COMMISSION