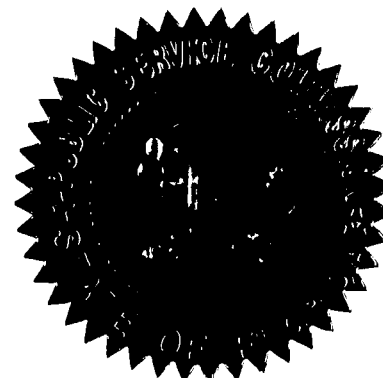


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070650-EI

In the Matter of:

PETITION TO DETERMINE NEED FOR TURKEY  
POINT NUCLEAR UNITS 6 AND 7 ELECTRICAL  
POWER PLANT, BY FLORIDA POWER & LIGHT  
COMPANY.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER NATHAN A. SKOP  
PREHEARING OFFICER

DATE: Monday, January 14, 2008

TIME: Commenced at 1:35 p.m.  
Concluded at 5:22 p.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR  
Official Commission Reporter  
(850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 00424 JAN 16 8

FPSC-COMMISSION CLERK

## 1 APPEARANCES:

2 R. WADE LITCHFIELD, ESQUIRE; JOHN T. BUTLER, ESQUIRE;  
3 and JESSICA A. CANO, ESQUIRE, Florida Power & Light Company,  
4 700 Universe Boulevard, Juno Beach, Florida 33408-0420, and  
5 KENNETH A. HOFFMAN, ESQUIRE, Rutledge, Ecenia, Purnell &  
6 Hoffman, P.A., 215 South Monroe Street, Suite 420, Tallahassee,  
7 Florida 32302-0551, appearing on behalf of Florida Power &  
8 Light Company.

9 FREDERICK M. BRYANT, ESQUIRE, Florida Municipal Power  
10 Agency, Post Office Box 3209, Tallahassee, Florida 32315-3209,  
11 appearing on behalf of Florida Municipal Power Agency and the  
12 Florida Municipal Electric Association.

13 ROY C. YOUNG, ESQUIRE, Young van Assenderp, P.A.,  
14 225 South Adams Street, Suite 200, Tallahassee, Florida 32301,  
15 and ZOILA PUIG EASTERLING, ASSOCIATE GENERAL COUNSEL, Orlando  
16 Utilities Commission, 500 South Orange Avenue, Orlando, Florida  
17 32802, appearing on behalf of the Orlando Utilities Commission.

18 CHARLES J. BECK, ESQUIRE, Office of Public Counsel,  
19 c/o The Florida Legislature, 111 W. Madison St., Room 812,  
20 Tallahassee, Florida 32399-1400, appearing on behalf of the  
21 Citizens of the State of Florida.

22 SUZANNE S. BROWNLESS, ESQUIRE, 1975 Buford Boulevard  
23 Tallahassee, Florida 32308-4466, and BRUCE PAGE, ESQUIRE, 117  
24 West Duval Street, Suite 480, Jacksonville, Florida 32202,  
25 appearing on behalf of JEA.

1 APPEARANCES (Continued):

2 VICKI GORDON KAUFMAN, ESQUIRE, Anchors, Smith,  
3 Grimsley, 118 North Gadsden Street, Tallahassee, Florida 32301,  
4 appearing on behalf of Seminole Electric Cooperative, Inc.

5 BOB and JAN M. KRASOWSKI, 1086 Michigan Avenue,  
6 Naples, Florida 34103-3857, appearing pro se (Krasowski).

7 MICHAEL COOKE, GENERAL COUNSEL; MARY ANNE HELTON,  
8 ESQUIRE; KATHERINE FLEMING, ESQUIRE; JENNIFER BRUBAKER,  
9 ESQUIRE; and CAROLINE KLANCKE, ESQUIRE, FPSC General Counsel's  
10 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
11 32399-0850, appearing on behalf of the Commission Staff.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

1  
2 COMMISSIONER SKOP: Good afternoon. I'd like to call  
3 this prehearing conference to order. Commissioner Nathan A.  
4 Skop presiding. If staff could please read the notice.

5 MS. FLEMING: Pursuant to notice issued by the  
6 Commission Clerk, this time and place has been set for a  
7 prehearing conference in Docket Number 070650-EI.

8 COMMISSIONER SKOP: Thank you. And if we could  
9 please now take appearances.

10 MR. LITCHFIELD: Thank you, Commissioner Skop. Wade  
11 Litchfield and John Butler for Florida Power & Light Company,  
12 with the address as set forth in the Draft Prehearing Order.  
13 And also I'd like to enter an appearance for Mr. Kenneth  
14 Hoffman of the Rutledge, Ecenia Firm here in Tallahassee also  
15 with the address as set forth in the Prehearing Order, and  
16 Jessica Cano of Florida Power & Light.

17 COMMISSIONER SKOP: Thank you.

18 MR. BRYANT: Thank you, Commissioner. Frederick M.  
19 Bryant on behalf of the Florida Municipal Power Agency and the  
20 Florida Municipal Electric Association.

21 COMMISSIONER SKOP: Thank you.

22 MS. EASTERLING: Zoila Easterling with Orlando  
23 Utilities Commission.

24 COMMISSIONER SKOP: Thank you.

25 MR. YOUNG: Roy Young representing OUC.

1 COMMISSIONER SKOP: Thank you.

2 MR. BECK: Charlie Beck, Office of Public Counsel, on  
3 behalf of the citizens of Florida.

4 MS. BROWNLESS: Suzanne Brownless, Suzanne Brownless,  
5 P.A., 1975 Buford Boulevard, Tallahassee, Florida 32308. I'm  
6 appearing today on behalf of JEA. And I'd also like to enter a  
7 notice of appearance on behalf of Bruce Page of JEA.

8 COMMISSIONER SKOP: Thank you.

9 MS. KAUFMAN: Good afternoon. Vicki Gordon Kaufman  
10 of the Anchor, Smith, Groomsley Firm. I'm appearing today on  
11 behalf of Seminole Electric Cooperative, Inc.

12 COMMISSIONER SKOP: Thank you.

13 MR. KRASOWSKI: I'm Bob Krasowski representing myself  
14 as a ratepayer of FP&L and speaking on behalf of myself and Jan  
15 Krasowski.

16 MRS. KRASOWSKI: And I'm Jan Krasowski.

17 COMMISSIONER SKOP: Thank you. And Commission staff.

18 MS. FLEMING: Katherine Fleming, Jennifer Brubaker  
19 and Caroline Klancke on behalf of Commission staff.

20 COMMISSIONER SKOP: Thank you. Moving forward, are  
21 there any -- I guess with respect to preliminary matters,  
22 staff, do you have any? I have two.

23 MS. FLEMING: Staff is not aware of any preliminary  
24 matters except for the pending interventions.

25 COMMISSIONER SKOP: Thank you. Okay. With respect

1 to the petitions for intervention by FMEA, FMFA, OUC and  
2 Seminole, my ruling is going to grant the request for  
3 intervention pursuant to the direction contained in my  
4 forthcoming orders. In this regard -- excuse me. In this  
5 regard, participation will be strictly limited to the issues  
6 that are relevant to the need determination proceeding. I  
7 would also note that the possibility for limited intervention  
8 was raised by FPL in its responses to the petitions for  
9 intervention filed by the subject utilities.

10 With respect to the petition to intervene by JEA, the  
11 petition to intervene was filed on January 9th, 2008. FPL  
12 filed its response in opposition to the intervention on  
13 January 10th, 2008. And basically the -- my ruling is also  
14 going to be to grant the intervention pursuant to the direction  
15 that will be contained in the forthcoming order. Again, that  
16 participation will be strictly limited to the issues relevant  
17 to the need determination proceeding.

18 Okay. And at this point I'd like to proceed through  
19 the Draft Prehearing Order. And I'll identify the sections and  
20 I'd like the, to ask the parties to let me know if there are  
21 any corrections or changes to be made. We'll probably go  
22 quickly through some of this, so if you could please speak up  
23 if you have a change or correction to be made.

24 With respect to Section I, case background, I'd like  
25 to see if there's any opposition. FPL? None? If the parties

1 could just go down the line, that would probably be of some  
2 assistance to myself, and if you could identify which party  
3 you're representing.

4 MR. LITCHFIELD: Florida Power & Light.

5 COMMISSIONER SKOP: Yes.

6 MR. LITCHFIELD: Yeah. No issues with respect to  
7 Section I.

8 COMMISSIONER SKOP: Okay.

9 MR. BRYANT: No issues, sir.

10 COMMISSIONER SKOP: Okay.

11 MR. YOUNG: If I may, I had spoken to staff. I would  
12 respectfully request that Ms. Easterling be added on the  
13 appearance first page as representing OUC as well as myself,  
14 and I have given them a copy of her particulars.

15 MS. FLEMING: Staff will reflect that in the final  
16 order.

17 COMMISSIONER SKOP: Okay. Thank you.

18 MR. YOUNG: And it was my fault.

19 MR. BECK: None on case background, but on the  
20 appearances I'd ask that the appearance be on behalf of the  
21 citizens of Florida.

22 COMMISSIONER SKOP: Staff. Okay. Thank you.

23 MS. BROWNLESS: And with regard to JEA, if you could  
24 just add my name to appearances for JEA, that would be  
25 appreciated.

1 COMMISSIONER SKOP: Thank you.

2 MS. FLEMING: Ms. Brownless, just for the record --  
3 for clarification, Ms. Brownless is already listed in the  
4 appearances for JEA.

5 MS. BROWNLESS: I didn't -- on the Draft Prehearing  
6 Order that I have I wasn't listed.

7 MS. FLEMING: It is on the Draft Prehearing Order  
8 that's been distributed.

9 MS. KAUFMAN: I don't have any changes, Commissioner.

10 COMMISSIONER SKOP: Thank you. And Mr. Krasowski.

11 MR. KRASOWSKI: The Krasowskis have no objection to  
12 that first paragraph.

13 COMMISSIONER SKOP: Thank you.

14 MR. KRASOWSKI: And the second line as well.

15 COMMISSIONER SKOP: Thank you. Okay. We're ready to  
16 proceed. We'll now take up Section II, conduct of proceedings.  
17 I'll start with FPL.

18 MR. LITCHFIELD: No.

19 MR. BRYANT: No, sir.

20 COMMISSIONER SKOP: Okay.

21 MR. YOUNG: Nothing.

22 MR. BECK: No issue.

23 MS. BROWNLESS: No, sir.

24 MS. KAUFMAN: No, Commissioner.

25 COMMISSIONER SKOP: Mr. Krasowski.



1 MR. KRASOWSKI: No objection.

2 COMMISSIONER SKOP: Thank you. Section III,  
3 jurisdiction.

4 MR. LITCHFIELD: No objection.

5 MR. BRYANT: No objection.

6 MR. YOUNG: No objection.

7 MR. BECK: No objection.

8 MS. BROWNLESS: No objection.

9 MS. KAUFMAN: No objection.

10 MR. KRASOWSKI: No objection.

11 COMMISSIONER SKOP: Thank you. Section IV, procedure  
12 for handling confidential information.

13 MR. LITCHFIELD: No objection.

14 MR. BRYANT: No objection.

15 MR. YOUNG: No objection.

16 MR. BECK: No objection.

17 MS. BROWNLESS: No objection, Your Honor.

18 MS. KAUFMAN: No objection, Commissioner.

19 MR. KRASOWSKI: Commissioner, it'll take us probably  
20 a little longer than others because we want to read what we're  
21 not objecting to.

22 COMMISSIONER SKOP: Yes, sir. That's fine.

23 (Pause.)

24 MR. KRASOWSKI: No objection.

25 COMMISSIONER SKOP: Thank you. With that, we'll move

1 forward to Section V, prefiled testimony, exhibits and  
2 witnesses. I guess the -- I would like to ask the parties  
3 whether they may be willing to shorten or dispense with the  
4 witness summary testimony. Typically we allow five minutes  
5 that's typically provided. This is a big proceeding and I  
6 think we have four days docketed. So if there might be some  
7 ability of the parties to agree to shorten time, that would be  
8 greatly appreciated. If not, I'd like to go through that  
9 section with the typical five minutes. FPL?

10 MR. LITCHFIELD: Considering I think we're the only  
11 party that has actually filed direct testimony, I think this  
12 issue relates strictly to us, and we agree. We, we would  
13 propose that maybe three or four of our witnesses take the  
14 allotted five minutes time, but the rest of them we propose to  
15 limit to three minutes.

16 COMMISSIONER SKOP: Staff? Okay. Thank you.

17 With respect to Section V, again, I think that only  
18 applies to FPL. But if there are any concerns or objections,  
19 now is the time to be heard on that before we move forward.

20 Seeing none, move forward to Section VI, order of  
21 witnesses. I need to ask the parties at this point if there  
22 are any, if the parties are willing to stipulate to any  
23 witnesses.

24 MR. LITCHFIELD: Before we do that, Commissioner  
25 Skop, may I just mention that with respect to Mr. Olivera, he

1 has one scheduling constraint that would preclude him from  
2 appearing on the 31st. So the hearing will start on the 30th.  
3 Assuming we get through any preliminary matters and the public  
4 comment portion of that hearing, he'd be prepared to take the  
5 stand on the 30th. Alternatively, he would be available on the  
6 1st, if that's acceptable.

7 COMMISSIONER SKOP: Okay. So noted. And if staff  
8 could make note of that, and I don't see any concerns that  
9 would preclude us from trying to accommodate that. Thank you.

10 MR. LITCHFIELD: Thank you.

11 COMMISSIONER SKOP: And with respect to that, again,  
12 I'd like to -- with respect to the order of witnesses, I'd like  
13 to ask the parties if they'd be willing to stipulate to the  
14 testimony of any witnesses at this point?

15 MR. LITCHFIELD: Commissioner Skop, I believe  
16 Mr. Butler had circulated an e-mail and would probably be  
17 prepared to discuss at least the preliminary input from the  
18 parties in that regard, and then the parties could comment or  
19 supplement as they deem appropriate.

20 COMMISSIONER SKOP: Thank you. And that would be  
21 certainly welcomed.

22 MR. BUTLER: Yes. Commissioner Skop, I had, excuse  
23 me, circulated an e-mail at the end of last week in which FPL  
24 had proposed the following witnesses for a possible  
25 stipulation: Dr. Green, Ms. McBee, Mr. Yupp, Mr. Villard,

1 Mr. Kosky, Mr. Sanchez, Dr. Sim and Ms. Ousdahl. We have heard  
2 back from a few of the parties, indications from staff and  
3 Public Counsel that they would be willing to stipulate  
4 Mr. Green. Staff has indicated they preliminarily might be  
5 willing to stipulate Ms. McBee. Public Counsel -- I would  
6 emphasize this too for Public Counsel's preliminary, but  
7 suggested Mr. Villard, Mr. Sanchez, both staff and OPC had said  
8 they may be able to stipulate. Ms. Ousdahl, Public Counsel  
9 said they may be able to stipulate. Have not heard back from  
10 other parties at this point, but we are obviously anxious to  
11 work through stipulation of any or all of these witnesses, if  
12 it's possible to do so.

13 COMMISSIONER SKOP: Thank you, and I appreciate that.  
14 And I'd like to hear from the other parties at this point.

15 MR. BRYANT: Yes, sir. I'm sorry. I don't recall  
16 that e-mail. And maybe if you could refresh my memory as to  
17 each of those witnesses, what they're testifying about. I  
18 don't think we have any problems, I just don't recall the  
19 e-mail. And I'm so sorry for that.

20 MR. BUTLER: I'm sorry. Fred, it was the bottom of  
21 the one where I was proposing the Issue 10 rewording. I think  
22 you may have read that and responded, which I know you did.

23 MR. BRYANT: You're correct. I missed that.

24 MR. BUTLER: But then -- so I probably should have  
25 separated it out more.

1 I can briefly describe what they are testifying to.  
2 Dr. Green --

3 MS. FLEMING: Excuse me, Mr. Butler. If I may, if  
4 staff may interject, instead of prolonging the prehearing  
5 conference, staff can continue to work with all the parties.  
6 And to the extent that there are any possible stipulations,  
7 we'll notify the Commissioners' offices. And if those  
8 witnesses -- if there are no Commissioners that have questions,  
9 then we'll notify FPL if those witnesses can be excused.

10 MR. BRYANT: That is fine.

11 COMMISSIONER SKOP: Thank you, Ms. Fleming. If  
12 that's acceptable to the parties, it's certainly acceptable to  
13 me. All right. Thank you.

14 MR. KRASOWSKI: Excuse me, Commissioner.

15 COMMISSIONER SKOP: Yes, Mr. Krasowski, you're  
16 recognized.

17 MR. KRASOWSKI: Bob Krasowski. I'd just like to make  
18 the point that we have no interest in stipulating Mr. Green.  
19 We've been reviewing the testimony of the other witnesses and  
20 at this time have not come to a decision. There are two that  
21 we have at this time identified as potentially stipulating, but  
22 many of the others we don't see doing that. But just, just to  
23 let you know.

24 COMMISSIONER SKOP: And thank you for that. And  
25 certainly you're a party of record and should be provided on

1 the e-mails from, from FPL so you'll have the opportunity to  
2 see what's transpiring and also to work with staff. So if you  
3 could just keep legal staff abreast of any concern that you  
4 would like to raise with respect to the stipulation, that would  
5 be greatly appreciated.

6 MR. KRASOWSKI: Yes, sir. One other thing, we did  
7 receive FP&L's e-mail Friday afternoon about a little bit after  
8 3:00 and we did respond to them. I believe some of their party  
9 had, had received it, and I told, I mentioned to them what I  
10 just mentioned to you. So thank you.

11 COMMISSIONER SKOP: Thank you. Very well.

12 MR. LITCHFIELD: Commissioner Skop, if I might. FPL  
13 is certainly amenable to continuing to work with the parties  
14 and with staff on potential stipulations with respect to  
15 witnesses. I wonder if we might, again, in the interest of  
16 efficiency try to get some idea as to when folks felt like they  
17 could wrap up their review of the witnesses and the testimony  
18 and the extent of the cross they might or might not have for  
19 the individual witnesses.

20 COMMISSIONER SKOP: And thank you, Mr. Litchfield.  
21 That's certainly an appropriate question. If staff could add  
22 some input there.

23 MS. FLEMING: Yes. I would like to note that we  
24 still have -- we have scheduled six depositions for the  
25 remainder of the week. So I think it would be premature at

1 this point to determine whether those witnesses that are still  
2 scheduled to be deposed should be stipulated. So I think after  
3 that point we can continue having discussions with parties to  
4 make a determination.

5 MR. LITCHFIELD: Right. No. I understand that. I'm  
6 just wondering if perhaps by early next week we could agree  
7 that we would talk and be in a position to compare notes and  
8 maybe advance the ball somewhat.

9 MS. FLEMING: As we've stated, you know, staff and  
10 the parties can make every effort to come to some sort of  
11 agreement. We leave it up to all the parties, and just keep  
12 staff apprised of any settlement or stipulation discussions  
13 that occur.

14 COMMISSIONER SKOP: And just if I could just  
15 interject here. Ms. Fleming, I think Mr. Litchfield's question  
16 pertains to trying to resolve what stipulations could be  
17 arrived at now. I know that you've mentioned that there are  
18 some pending depositions.

19 MS. FLEMING: That's correct.

20 COMMISSIONER SKOP: With respect to the prefiled  
21 testimony that's not subject to the additional depositions, is  
22 there a date certain that we could perhaps bring some certainty  
23 with respect to any stipulations that might be able to be  
24 arrived at?

25 MS. FLEMING: As far as -- I think maybe for the

1 date, Mr. Litchfield was recommending possibly early next week,  
2 maybe the 22nd. That's a little over a week from today. Maybe  
3 if the parties can let FPL and staff know if there's any  
4 agreement as far as additional stipulation of witnesses that  
5 are not subject to cross -- to depositions.

6 COMMISSIONER SKOP: Thank you. Mr. Litchfield, will  
7 that resolve your concerns?

8 MR. LITCHFIELD: Thank you.

9 COMMISSIONER SKOP: And any other concerns by the  
10 parties?

11 MS. BROWNLESS: Commissioner, I would just say that  
12 at this time JEA is prepared --

13 COMMISSIONER SKOP: Ma'am, could you, could you speak  
14 into the microphone?

15 MS. BROWNLESS: Oh, I'm sorry. JEA is prepared to  
16 stipulate these into the record. However, we would have one  
17 slight modification to the terms and conditions of that  
18 stipulation. To the extent that any of these folks are  
19 deposed, we would also like their deposition placed in the  
20 record.

21 COMMISSIONER SKOP: Thank you.

22 Mr. Krasowski.

23 MR. KRASOWSKI: Commissioner, we're also aware  
24 through notification that the staff is going to depose several  
25 of the witnesses, and that certainly could have an effect on



1 what we do or do not agree to as far as stipulation.

2 But on this, I'd like to request from you a  
3 clarification on what you mentioned earlier, if this is  
4 appropriate at this time, so I can better understand that you,  
5 you are allowing the intervention of the other utilities. And  
6 you mentioned that it, there were certain conditions of the  
7 intervention relating to issues of the case. Now my question  
8 would be are these the issues that they've identified specific  
9 to their issues or will they be involved in the entire case,  
10 Issues 1 through 8 plus their issues? Because that might  
11 impact what's going to be, what will happen in terms of a  
12 conversation with the witnesses.

13 COMMISSIONER SKOP: Thank you for your question,  
14 Mr. Krasowski. The answer to your question is we're going to  
15 be discussing the proposed issues in a moment. So it's putting  
16 the cart ahead of the horse, if you will, and we'll get into  
17 that. And hopefully the intervention and the participation  
18 will be, become more clear as we move forward. So if you can  
19 bear with us. And, like I say, my order, pending order on the  
20 intervention will be granted pursuant to the direction in that  
21 order, so it will be clear. But they are being granted  
22 intervention in the case.

23 MR. KRASOWSKI: Thank you, sir.

24 COMMISSIONER SKOP: Thank you. And moving forward,  
25 staff, if we could take up Section VII, basic positions,

1 starting with FPL.

2 MR. LITCHFIELD: FPL has nothing to add to its basic  
3 position.

4 COMMISSIONER SKOP: Mr. Bryant.

5 MR. BRYANT: Oh, no, sir. I'm sorry.

6 MR. YOUNG: No, sir.

7 MR. BECK: No changes.

8 MS. BROWNLESS: No changes, sir.

9 MS. KAUFMAN: Seminole has no changes.

10 COMMISSIONER SKOP: Okay.

11 MR. KRASOWSKI: For Issue 1, opening statements --

12 COMMISSIONER SKOP: We're in Section VII, basic  
13 positions.

14 MR. KRASOWSKI: Basic positions. No changes.

15 COMMISSIONER SKOP: Thank you. Okay. Moving forward  
16 to Section VIII, issues and positions. I guess I'm going to  
17 pose this to the parties. It's my understanding generally that  
18 the parties are in agreement on Issues 1 through 8. We can  
19 take them up as a block or we can go through them separately.  
20 Again, I'd like to seek some input there. But I'm prepared to  
21 go through them separately just to round out the record if the  
22 parties feel that it is appropriate to do so. Okay.

23 MS. BROWNLESS: Commissioner, we do have some minor  
24 changes to Issues 1 through 8, to our position. The issues are  
25 what the issues are, of course.

1           COMMISSIONER SKOP: Okay. With that we're going to  
2 move through them in the following manner: We're going to  
3 address Issues 1 through 8 individually, we'll take Issues 9  
4 through 12 up last, we'll take Issue 13, and then we'll take up  
5 Issues 14 through 20, and then go back in to revisiting Issues  
6 9 through 12.

7           So with that, let us begin with Issue 1. I'd like to  
8 see if there's any comments or concerns with respect to Issue  
9 1. FPL?

10           MR. BUTLER: No.

11           COMMISSIONER SKOP: Mr. Bryant?

12           MR. BUTLER: No, sir.

13           MR. YOUNG: None.

14           COMMISSIONER SKOP: None?

15           MR. BECK: None.

16           MS. BROWNLESS: No, sir.

17           MS. KAUFMAN: No, Commissioner.

18           COMMISSIONER SKOP: Mr. Krasowski?

19           MR. KRASOWSKI: Okay. We maintain our position that  
20 has --

21           COMMISSIONER SKOP: That's fine. You'll be able to  
22 take your position with respect to the issues. This is just  
23 the issue as it's presented in the consolidated issues list,  
24 the language for Issue 1.

25           MR. KRASOWSKI: Okay. That's fine with us.

1 COMMISSIONER SKOP: All right. Thank you.

2 MR. KRASOWSKI: Thank you.

3 COMMISSIONER SKOP: Moving forward to Issue 2, FPL?

4 MR. BUTLER: That's fine.

5 COMMISSIONER SKOP: Mr. Bryant?

6 MR. BRYANT: Yes, sir.

7 MR. YOUNG: Fine.

8 MR. BECK: Fine.

9 MS. BROWNLESS: Fine, sir.

10 MS. KAUFMAN: Yes. That's okay. Thank you.

11 MR. KRASOWSKI: Fine.

12 COMMISSIONER SKOP: Thank you. Moving on to Issue 3.

13 FPL?

14 MR. BUTLER: Fine with FPL.

15 COMMISSIONER SKOP: Mr. Bryant?

16 MR. BRYANT: Yes, sir.

17 MR. YOUNG: Fine.

18 MR. BECK: We're fine.

19 COMMISSIONER SKOP: Okay.

20 MS. BROWNLESS: Oh, it's fine, sir.

21 MS. KAUFMAN: That's fine, Commissioner.

22 MR. KRASOWSKI: Fine.

23 COMMISSIONER SKOP: Thank you. Issue 4. FPL?

24 MR. BUTLER: Fine with FPL.

25 COMMISSIONER SKOP: Mr. Bryant?

1 MR. BRYANT: Yes, sir.

2 MR. YOUNG: Fine.

3 MR. BECK: Yes.

4 MS. BROWNLESS: Yes, sir.

5 MS. KAUFMAN: Yes.

6 MR. KRASOWSKI: Yes.

7 COMMISSIONER SKOP: Okay. And if everyone in the  
8 panel here, the parties, can speak up just to benefit our court  
9 reporter, I think that would help her getting the responses  
10 down in the record.

11 Moving forward to Issue 5. FPL?

12 MR. BUTLER: That's fine.

13 COMMISSIONER SKOP: Okay. Mr. Bryant?

14 MR. BRYANT: Yes, sir.

15 MR. YOUNG: Fine.

16 MR. BECK: We're fine.

17 MS. BROWNLESS: Fine, sir.

18 MS. KAUFMAN: We're fine with that one.

19 MR. KRASOWSKI: Fine.

20 COMMISSIONER SKOP: Thank you. Issue 6.

21 MR. BUTLER: Good for FPL.

22 COMMISSIONER SKOP: Okay.

23 MR. BRYANT: Yes, sir.

24 COMMISSIONER SKOP: Thank you.

25 MR. YOUNG: We're fine.

1 MR. BECK: We're fine.

2 MS. BROWNLESS: We'd like to change our answer, our  
3 position to simply, "Yes."

4 COMMISSIONER SKOP: Okay. And I believe you'll be  
5 able to do that in the issue statement. We'll get to that  
6 later in the prehearing conference.

7 MS. KAUFMAN: We're fine with that issue.

8 MR. KRASOWSKI: We're fine with that as well.

9 COMMISSIONER SKOP: All right. Thank you.

10 Moving on to Issue 7. FPL?

11 MR. BUTLER: It's fine.

12 MR. BRYANT: Yes, sir.

13 MR. YOUNG: We're fine.

14 MR. BECK: We're fine.

15 MS. BROWNLESS: We're fine, sir.

16 MS. KAUFMAN: Yes. Thank you.

17 MR. KRASOWSKI: Fine.

18 COMMISSIONER SKOP: Thank you. And this one should  
19 be an easy one, Issue 8. FPL?

20 MR. BUTLER: It's fine with us.

21 COMMISSIONER SKOP: Okay.

22 MR. BRYANT: Yes.

23 MR. YOUNG: Yes.

24 MR. BECK: Yes.

25 MS. BROWNLESS: Yes, sir.

1 MS. KAUFMAN: It's fine.

2 MR. KRASOWSKI: Are we seven now?

3 COMMISSIONER SKOP: No. We're on eight.

4 MR. KRASOWSKI: Oh, on eight. Yes. We're fine with  
5 eight as well.

6 COMMISSIONER SKOP: Okay. Thank you.

7 Okay. Having agreed to the proposed language for  
8 Issues 1 through 8, we're going to move on to Issue 13. And I  
9 think how we're going to proceed with this is that we're going  
10 to hear from the parties and then staff and OPC, or actually  
11 the parties include OPC and then staff, and we'll address  
12 Issue 13. And I have some comments with respect to Issue 13  
13 also. But, again, I'd like to hear from the parties before I  
14 make my comments. So Issue 13, FPL.

15 MR. BUTLER: Commissioner Skop, we're reaching a  
16 point where it would be very helpful for FPL to have some  
17 greater specificity of understanding of your ruling about what  
18 you understand the issues relevant to the proceeding to be.  
19 Because as you probably remember vividly from oral argument,  
20 there was quite a range of opinion on what the relevant scope  
21 of issues is to the proceeding and going through the issues  
22 here. Would it be possible for us to get a greater degree of  
23 understanding of where you see the appropriate or relevant  
24 areas of inquiry?

25 COMMISSIONER SKOP: Yes, it would be, and I'm fully

1 prepared to make that. I just wanted to get the positions of  
2 the parties out there. I know in the prehearing statement I've  
3 seen some of the positions of the parties, I'm very familiar  
4 with the brief, I took oral argument, extensive oral argument,  
5 and, again, procedural due process on this issue has been very  
6 important to me to make sure that the parties are all heard and  
7 have the opportunity to be heard.

8 I think generally I'd like to ask staff and OPC with  
9 respect to their concerns and comments on Issue 13, and then  
10 I'll make my statements, which I think will add a lot of  
11 clarity to Mr. Butler's concern. So we'll begin with OPC and  
12 then go to staff.

13 MR. BECK: Commissioner, OPC has not taken a position  
14 on 13.

15 COMMISSIONER SKOP: Okay. Thank you. Staff?

16 MS. FLEMING: Staff feels that this rule -- this  
17 issue tracks the rule and the statute and we feel that it may  
18 be appropriate for this proceeding. Staff does not object to  
19 the inclusion of this issue.

20 COMMISSIONER SKOP: Okay. Thank you. Okay. That  
21 being said, with respect to Issue 13 I'm going to go through  
22 some bullet points which are my observations and consistent  
23 with my ruling which will be reflected in the forthcoming  
24 order.

25 MR. KRASOWSKI: Excuse me, Mr. Chairman.



1 Mr. Krasowski over here.

2 COMMISSIONER SKOP: Mr. Krasowski, you're recognized.

3 MR. KRASOWSKI: Will we have an opportunity to  
4 comment on the appropriateness of 13 now that it is included in  
5 this procedure?

6 COMMISSIONER SKOP: It's not yet been included, but  
7 you're certainly welcome to comment before I render my  
8 decision.

9 MR. KRASOWSKI: And this will be for the inclusion of  
10 this issue as worded in the document?

11 COMMISSIONER SKOP: That's as it's worded, correct.  
12 You're commenting on the language as worded.

13 MR. KRASOWSKI: Okay. We have no objection to that.

14 COMMISSIONER SKOP: Okay. Thank you. Having heard  
15 from the parties -- and if there are any other inputs that need  
16 to be taken, now is the time.

17 MS. BRUBAKER: Commissioner?

18 COMMISSIONER SKOP: Yes.

19 MS. BRUBAKER: Just as staff I would offer an  
20 additional comment. I think staff is comfortable with this  
21 rule as worded because it tracks the language that appears in  
22 the rule. There's been a great deal of discussion in the  
23 context of the interventions regarding co-ownership of the  
24 proposed plants. And in staff's opinion, this is, this issue  
25 is designed to track the requirements that are set forth in the

1 rule, which is largely an issue of disclosure. And staff would  
2 not read into this issue, as appropriate, discussions regarding  
3 or compelling co-ownership or discussions of co-ownership.

4 COMMISSIONER SKOP: Thank you. And just looking out  
5 to see Mr. Trapp in the audience, I don't know if technical  
6 staff would like to make any comments with respect to Issue 13,  
7 but now would be the appropriate time before I render my  
8 decision.

9 MR. TRAPP: I think technical staff will play the  
10 game that is dealt us.

11 COMMISSIONER SKOP: Thank you, Mr. Trapp.

12 Okay. That being said and hearing from the parties,  
13 with respect to Issue 13 I'd note the following: Historically,  
14 nuclear access claims have been litigated within the federal  
15 court system. The petitions -- excuse me. The Petitioners  
16 have asserted that Section 403.519(4)(a)(5), Florida Statutes,  
17 provides the statutory basis for revisiting co-ownership  
18 issues. As written and enacted by the Florida Legislature, the  
19 statute is clear on face and does not support the Petitioners'  
20 assertion. Section 403.519(4)(a)(5), Florida Statutes,  
21 expressly requires the affirmative disclosure of whether there  
22 were any discussions with any electric utility regarding  
23 ownership.

24 Petitioners have also raised the issue regarding the  
25 adequacy of disclosure. Petitioners have stated that they're

1 generally in favor of the need determination proceeding.

2 Therefore, in order -- based on the concerns raised, in order  
3 to address their concerns, the Petitioners will be afforded the  
4 opportunity to cross-examine witnesses regarding the adequacy  
5 of FPL's disclosure only under the statute, not the merits of,  
6 not the merits of co-ownership.

7 In closing, I would also note that Issue 13 allows  
8 this Commission to make an important factual finding with  
9 respect to the evidentiary record supporting the need  
10 determination decision.

11 So hopefully that will lend some clarity to what will  
12 be forthcoming in my order with respect to the intervention.  
13 Issue 13 is the appropriate forum to address the adequacy of  
14 disclosure only, not the merits of co-ownership. And with  
15 that, Issue 13 will be part of this proceeding.

16 I heard a microphone click, so I assume --

17 MR. LITCHFIELD: FPL, Wade Litchfield for FPL.

18 Commissioner Skop, what I suggest, therefore, if that  
19 is indeed your ruling and Issue 13 stays in, it would occur to  
20 me that the balance of the issues that have been proposed by  
21 the municipal and cooperative entities that have sought  
22 intervention in this case would not be relevant in this  
23 proceeding.

24 COMMISSIONER SKOP: And thank you for your input,  
25 Mr. Litchfield. I think that we're going to take up that very

1 issue in a moment moving forward. So, again, Issue 13 will  
2 come into the proceeding. That will, based on the concern  
3 raised it will allow the Petitioners to address their concern  
4 that FPL's disclosure was inadequate and address the adequacy  
5 of the disclosure itself, not the merits of co-ownership.

6 And, again, not to be redundant, but I do also think  
7 that Issue 13 allows the Commission to make a very important  
8 factual finding with respect to the evidentiary record  
9 supporting the need determination.

10 Moving on to Issue 14, I'll first look to staff.

11 MS. FLEMING: With respect to Issue 14, there --  
12 whether -- if this issue is speaking to reliability, it's more  
13 appropriately discussed under Issue 1. If it's speaking to  
14 co-ownership as we've discussed, if it's the adequacy of the  
15 disclosure, it's more appropriately addressed under Issue 13.  
16 If it's with respect to the merits of co-ownership, then this  
17 issue would not be appropriate for this proceeding.

18 COMMISSIONER SKOP: Thank you. Any other brief  
19 comments from the parties with respect to Issue 14? And brief  
20 comments.

21 MR. BUTLER: I would say, first all, FPL agrees with  
22 staff.

23 COMMISSIONER SKOP: Thank you. Mr. Bryant?

24 MR. BRYANT: I'm sorry. Perhaps you might clarify a  
25 little bit what you're, what you're saying to us, staff, to

1 make sure I understand. Maybe an example or just maybe restate  
2 it is all maybe makes it clearer.

3 MS. FLEMING: The issue as it's currently worded is  
4 not appropriate for the proceeding. If there's a position that  
5 relates to reliability or co-ownership, OUC could revise their  
6 position within those issues.

7 MR. BRYANT: If I might have a moment, I'm going to  
8 reread it, if I could.

9 (Pause.)

10 Brief response. It would appear to me that if the  
11 proceeding is not to be muddled up with discussions or pointed  
12 fingers of FPL failing to discuss ownership with other electric  
13 utilities -- I assume I understand FPL's concerns and staff's  
14 concerns on this as an issue. However, under the reliability  
15 provisions and the provisions of the statute that allow the  
16 Commission to take into account matters within its  
17 jurisdiction, discussions between FPL and other utilities not  
18 only as to ownership but as to other possibilities of  
19 participation in the unit might well be very relevant to this  
20 Commission in determining the suitability of this power plant  
21 and the needs of this power plant, not only for FPL but for the  
22 grid itself, but not as to whether or not ownership should be  
23 the foundation for the Commission's determination of this issue  
24 is the point I'm trying to make.

25 COMMISSIONER SKOP: So noted. Any other comments?

1 MR. YOUNG: Yes. Since it's our issue, I, I have a  
2 couple of comments.

3 If it's the Commission's predetermined decision that  
4 this is not a matter within its jurisdiction, then that's  
5 obviously a decision that the Commission can make. But we were  
6 pointing out in this question that you do have the jurisdiction  
7 to consider whatever you deem relevant, including co-ownership.  
8 I would hope that by your ruling you don't foreclose you or the  
9 rest of the Commissioners from considering in this hearing any  
10 matter within your jurisdiction that might be pertinent to it.

11 As to the second part of the issue, and I probably  
12 should have separated them, the issue of long-term stability  
13 and reliability of the electric grid I think clearly is an  
14 issue in this case. It's clearly an issue that this Commission  
15 could, should consider in this case, and I think it's required  
16 by the statute that you do so. Thank you.

17 COMMISSIONER SKOP: Thank you. And just as a brief  
18 response, you have been afforded intervention with respect to  
19 the issues as we discussed. So, again, reliability to me does  
20 not imply ownership or implicate co-ownership. So, again, you  
21 know, your concern is duly noted. But, again, the issue that  
22 has been raised is merely the adequacy of disclosure, and I  
23 think that's adequately addressed in Issue 13.

24 Moving forward, if we could take other concerns.

25 MS. BROWNLESS: Yes, sir. On behalf of JEA, when we

1 looked at this issue, we rephrased it in our thinking a little  
2 bit differently, and I'll just state the way we see this, the  
3 concerns raised by this issue. "Is co-ownership an appropriate  
4 issue to be considered in the determination of need for a  
5 nuclear power plant?"

6 As I understand your ruling, your position on this is  
7 that it is not an appropriate issue to be considered. Is that  
8 correct?

9 COMMISSIONER SKOP: My ruling, I think that we've  
10 made clear and it'll be properly reflected in the order, is  
11 that essentially Section 41 -- 403.519(4)(5) -- or, excuse me.  
12 Let me start over. Section 403.519(4)(a)(5), Florida Statutes,  
13 expressly requires the affirmative disclosure of whether there  
14 were any discussions with any electric utility regarding  
15 ownership. Nothing more.

16 MS. BROWNLESS: And I guess I just want to be clear,  
17 Commissioner. As we perceive this issue, Issue Number 14 as  
18 stated, it was whether co-ownership was an appropriate issue to  
19 be considered or discussed in a nuclear plant need  
20 determination, and that is the issue as phrased that we would  
21 like to proffer into the record. And so I guess what I would  
22 like is -- I under -- you know, if you could just rule on  
23 whether you believe that as stated is appropriate.

24 MS. BRUBAKER: Commissioner, may -- I'm sorry.

25 COMMISSIONER SKOP: Hold on. What I intend to do is

1 upon hearing from the parties is rule on Issue 14, not a  
2 variation or modification of that. So, again, the issues that  
3 are before us that we're considering are presented and that's  
4 the language that we're currently considering.

5 MS. BROWNLESS: And I guess then for the record I  
6 would just like to proffer that wording of the issue into the  
7 record. I'll be glad to provide copies of that to the staff.

8 MS. BRUBAKER: May I ask a point of clarification?

9 COMMISSIONER SKOP: Yes.

10 MS. BRUBAKER: Ms. Brownless, are you referring to a  
11 specific issue that Seminole has proposed in this proceeding?  
12 And, if so, could you identify it for me?

13 MS. BROWNLESS: No. I'm talking about OUC's Issue  
14 Number 14. Mr. Young and I discussed rewording that issue as I  
15 just stated it, and we did that in an effort to respond to  
16 FP&L's concerns that the issues, some of the issues were  
17 argumentative. So that is -- parties have a right to raise  
18 issues, and I guess that is what we believe the gist of Issue  
19 Number 14 to be. So it can either be OUC's issue or it can be  
20 our issue as stated. That's --

21 MS. BRUBAKER: Thank you for that clarification.

22 May I offer a comment, sir?

23 COMMISSIONER SKOP: Yes, ma'am.

24 MS. BRUBAKER: I would just note, although the  
25 proffer certainly gives me no pause, my reading of this matter



1 is, is that the Commission has the discretion to take any  
2 matters which it deems relevant, and I think that's what we're  
3 discussing here. Do -- does the Prehearing Officer in his  
4 discretion as the procedural officer believe that what's being  
5 discussed here is relevant, not whether the Commission has  
6 jurisdiction, but is it something they want to hear in the  
7 context of this proceeding? So I just want to make sure I'm  
8 clear on that understanding.

9 MS. BROWNLESS: Yes, ma'am. And I guess what we're  
10 saying is that we believe the Commission has jurisdiction such  
11 that it could require co-ownership of this plant or any other  
12 should it deem appropriate and make the appropriate findings.  
13 And, therefore, we think co-ownership is an appropriate issue  
14 to be considered in this proceeding.

15 MS. BRUBAKER: And you are not, you are not  
16 disagreeing that the Commission has the discretion to determine  
17 what it believes is relevant to this proceeding; is that  
18 correct?

19 MS. BROWNLESS: Absolutely they have the discretion.

20 MS. BRUBAKER: Okay. Thank you.

21 MR. YOUNG: I think the point we were trying to make  
22 is that it shouldn't be foreclosed at this point. And the  
23 reference to the additional add-on to this provision of the  
24 Legislature is not even mentioned in this question. We don't  
25 mention a -- this question doesn't have anything to do with

1 whether or not discussions were held or not. I think it's --  
2 my only point, Commissioner, is that certainly the Commission  
3 has jurisdiction to look at anything that it deems relevant.  
4 And if and only if the Commission in this hearing determines  
5 that information is brought forth that makes co-ownership or  
6 anything else along those lines appropriate, the Commission has  
7 the opportunity and the right to hear that. And to foreclose  
8 it at this point in the proceeding is to foreclose the  
9 opportunity of you and the other Commissioners to exercise your  
10 jurisdiction, which we agree is totally within your discretion.

11 But this issue has nothing to do with the statutory  
12 add on a couple of years ago that discussions with utilities  
13 have got to be held relative to co-ownership. It's totally  
14 separate from that. And it also ties in the statutory  
15 requirement relative to looking at the long-term stability and  
16 reliability of the electric grid.

17 So I would please ask you in making your ruling not  
18 to make a ruling that relates to the statutory change because  
19 this issue doesn't have anything to do with that. Thank you.

20 COMMISSIONER SKOP: Thank you. And I'd like to hear  
21 from the parties, then I'll go back to staff with respect to  
22 that.

23 MS. KAUFMAN: Commissioner, yes. Vicki Kaufman on  
24 behalf of Seminole. And I share Mr. Young's concern. If I'm  
25 understanding your ruling, you are essentially foreclosing

1 consideration of these issues. And it would be our view then  
2 in the context of this proceeding and the sort of project  
3 that's being proposed, its magnitude and its effect on all the  
4 citizens of Florida, that the Commission would want to have  
5 more information rather than less information. At the end of  
6 the day, of course, the Commission has to sift through the  
7 testimony and the evidence and consider what it thinks is  
8 relevant. But we haven't even had the evidentiary hearing yet  
9 in this case, nor depositions, et cetera, and certainly we  
10 believe that it is well within the Commission's jurisdiction to  
11 consider this issue and that they should do so in this  
12 proceeding, and that the parties should not be foreclosed on  
13 this issue from cross-examination or presentation of evidence  
14 or whatever might be appropriate.

15 COMMISSIONER SKOP: Thank you. And Mr. Krasowski.

16 MR. KRASOWSKI: In regard to Issue 14 specifically,  
17 we are in agreement with the original comments of the staff.  
18 In terms of this joint ownership, I think it's addressed in  
19 other issues coming up and we'd reserve comment on that for  
20 that.

21 COMMISSIONER SKOP: Thank you for your input. And  
22 with that, I'd look to staff and Ms. Brubaker and Ms. Helton  
23 and Ms. Fleming, if you guys might provide legal staff's  
24 analysis on the arguments raised with respect to the matters  
25 within our jurisdiction, and comments on that would be

1 appreciated.

2 MS. BRUBAKER: Certainly. In my mind there are  
3 certain core issues that really must be addressed in a need  
4 determination and those are set forth very clearly in the  
5 statute. They talk about reliability, they talk about the load  
6 management issues and what have you.

7 And although this information certainly needs to be  
8 addressed in the context of a need determination, I do not --  
9 it is not my reading that the requirement of discussions  
10 regarding co-ownership, I don't see that as one of those core  
11 issues. The Commission certainly has the discretion to address  
12 that if it wishes to do so, in my opinion. However, the  
13 purpose of the prehearing conference is to winnow the issues to  
14 what the Commission believes is relevant to this proceeding. I  
15 certainly think you have the discretion to not address this  
16 issue as stated. If the parties wish to proffer it into the  
17 record for whatever preservation purposes they wish to do so, I  
18 think that's fine.

19 Also, if it is your preference to take this issue  
20 under advisement and give it some additional consideration, you  
21 also have the discretion to do that.

22 COMMISSIONER SKOP: Thank you. Ms. Fleming and  
23 Ms. Helton, if you'd like to add anything more to it.

24 MS. FLEMING: I don't have anything to add. Thank  
25 you.

1 COMMISSIONER SKOP: Okay.

2 MS. HELTON: I don't have anything to add. I agree  
3 with what Ms. Brubaker said.

4 COMMISSIONER SKOP: Okay. Thank you. And technical  
5 staff, any concerns, input?

6 MR. TRAPP: I don't wish to offer a legal opinion. I  
7 will stand by my staff's, technical staff's initial position.  
8 We will play the game as dealt to us. I would note, however,  
9 that this is not the only game in town, and that technical  
10 staff would look to the prudence of any company's decision to  
11 not explore potential benefits associated with any aspect of a  
12 power plant that was certified as needed. And that absent a  
13 showing of that prudence, the Commission can take the  
14 appropriate action to ensure that the ratepayers are protected.

15 COMMISSIONER SKOP: Thank you for that, Mr. Trapp.

16 Based on hearing the testimony and arguments before  
17 me with respect to Issue 14, I'm going to concur with staff  
18 that the issue is not relevant to the core proceeding and Issue  
19 14 will not be part of the need determination proceeding.

20 With that, we'll move to Issue 15, and I'd like to  
21 briefly hear from the parties before moving forward on that  
22 issue. And I guess we can begin with staff and then the  
23 parties. Actually we'll go to the parties and then go to  
24 staff. Sorry. Go ahead.

25 MR. BUTLER: FPL's view is that Issue 15 is covered

1 by Issue 13 that you had allowed. I don't see that anything  
2 would be gained from having a separate issue stated the way  
3 that 15 reads.

4 COMMISSIONER SKOP: Thank you, Mr. Butler.

5 Mr. Bryant.

6 MR. BRYANT: I think the issue is relevant in its  
7 entirety because they have not obviously filed a summary of the  
8 discussions that they've had with other electric utilities. As  
9 a matter of fact, the witness that they're proffering for  
10 purposes of putting it into the record, those discussions  
11 apparently were not part of the discussions that were between  
12 my client and FPL. I don't know how Mr. Scroggs can testify as  
13 to something that he was not a participant in and how he can  
14 summarize those discussions when apparently he wasn't involved  
15 in those discussions. Certainly his summary does not give us  
16 any insight whether or not he was part of those discussions or  
17 any discussions.

18 MR. LITCHFIELD: And I'll object to Mr. Bryant's  
19 characterization of Mr. Scroggs' testimony as to what  
20 Mr. Scroggs may be able to testify to. I think it prejudices  
21 evidence that's really not yet even on the record.

22 COMMISSIONER SKOP: So noted.

23 MR. BRYANT: His testimony has been prefiled and it's  
24 one sentence: "We have had discussions." And that's why I say  
25 there have been discussions with my client. Everyone knows

1 that. And just from a technical sense, how can Mr. Scroggs  
2 testify as to those discussions? Not what the materiality of  
3 those discussions, not what those discussions are a basis for.  
4 Pure following the rule, a summary of discussions, and he has  
5 not summarized the discussions had with my client. That's the  
6 only thing I'm saying right here.

7 MR. LITCHFIELD: Are we arguing the merits?

8 COMMISSIONER SKOP: Excuse me for one second,  
9 Mr. Litchfield.

10 Mr. Bryant, are you referring in general to the  
11 e-mail that you presented at the oral argument with respect to  
12 the discussions you're referencing?

13 MR. BRYANT: Those are part of the discussions, yes,  
14 sir.

15 COMMISSIONER SKOP: Okay.

16 MR. BRYANT: And the only thing I'm saying is we  
17 assume that should have been summarized.

18 COMMISSIONER SKOP: Let me stop you there. Okay?

19 Again, the issue was raised. I'm a little  
20 disappointed in the manner in which the issue was raised to the  
21 extent that it should have been part of your brief that you  
22 filed. Again, no one likes trial by surprise or surprises, but  
23 at the prehearing, I mean, the oral argument that came out.  
24 FPL was not put on notice. Again, addressing the issue that  
25 you raised, there seems to be some issue floating around with

1 respect to the adequacy of disclosure and that's why merely  
2 under 13 you had the opportunity to conduct cross-examination  
3 of any witness with respect to the adequacy of disclosure. I  
4 think that that should address the concern that was raised at  
5 the oral argument. Again, your point's noted. And if that is  
6 your point, it is so noted and I'm happy to move on and hear  
7 from the others, but I'll give you the last parting comments.

8 MR. BRYANT: Just a response, and I understand what  
9 you're saying. My point, Commissioner, maybe I'm not  
10 articulating it very well, is that the way I read this issue is  
11 simply have discussions, have summary of the discussions that  
12 have been held and filed in accordance with the rule. And the  
13 point I was making, that obviously when you read Mr. Scroggs'  
14 testimony in this proceeding, they have not filed a summary of  
15 those discussions.

16 Now upon cross or further elaboration by Mr. Scroggs  
17 or any other witness, that may well give a total summary of  
18 those discussions. But until that happens, it seems to me the  
19 answer to this issue is that they haven't, haven't filed the  
20 summary of those discussions yet. That's the only thing I'm  
21 saying.

22 COMMISSIONER SKOP: Thank you. And I think  
23 Mr. Butler has a brief response, and then we're going to again  
24 move on because we're going to get through these issues.

25 MR. BUTLER: You know, I don't want to slow this



1 down, but this is really in my mind very inappropriate. This  
2 is simply argument on the substance of the issue. We've got  
3 two issues, 13 and 15, that read virtually identically. 13 is  
4 in and this is exactly what presumably Mr. Bryant and his  
5 clients will want to explore during the course of their  
6 examination on it. But I don't see how we need to have further  
7 argument about the difference between 13 and 15.

8 COMMISSIONER SKOP: So noted. Thank you.

9 Brief comments from the remaining parties.

10 MR. YOUNG: Well, if your ruling on 15 is going to be  
11 the same as 13, we might as well eliminate 15 and only have one  
12 issue.

13 COMMISSIONER SKOP: Thank you. OPC?

14 MR. BECK: I have nothing to add.

15 COMMISSIONER SKOP: Thank you.

16 MS. BROWNLESS: I think 15 basically can be addressed  
17 in 13.

18 COMMISSIONER SKOP: Thank you.

19 MS. KAUFMAN: I agree. I think 13 and 15 are the  
20 same.

21 COMMISSIONER SKOP: Thank you. Mr. Krasowski?

22 MR. KRASOWSKI: It's our understanding that under the  
23 requirements of the statutes FP&L must provide a summary of  
24 what they admit in their original application of preliminary  
25 discussions, but I can't find where it says they have to

1 provide a summary. So maybe that, I took that out of someone  
2 else's position. So I apologize for that.

3 But if there is a requirement under law for FP&L to  
4 provide such a summary and they admittedly have had  
5 discussions, although preliminary, then they should have to do  
6 that. And all they have to do is amend their, their petition.  
7 If they haven't had preliminary summaries, preliminary  
8 discussions and so they can't comply with providing the  
9 summary, then they should withdraw their petition and come back  
10 with a comprehensive accurate petition. That's our position on  
11 this. Thank you, sir.

12 COMMISSIONER SKOP: Thank you very much. And at this  
13 time I'd like to hear from staff with respect to Issue 15.

14 MS. FLEMING: Commissioner, just looking over the  
15 positions that the parties have taken on Issue 15, they  
16 essentially appear to be very similar to that of the positions  
17 stated in Issue 13. For example, FMPA and FMEA's position  
18 states to see their position on Issue 13. So staff would note  
19 that Issue 13 is essentially what Issue 13 -- or Issue 15 is  
20 essentially what Issue 13 has already captured.

21 COMMISSIONER SKOP: Thank you. Hearing from the  
22 parties, hearing from staff, I concur with staff. Issue 15 is,  
23 will not be coming into the proceeding. It's adequately  
24 addressed by Issue 13, which tracks almost identically the  
25 statutory provision in question. So, again, 15 will not be

1 coming in based on the input that we've heard both from the  
2 parties and technical -- I mean, and legal staff.

3 Moving to Issue 16. And, again, to facilitate this,  
4 brief comments from the parties would be appreciated, and we'll  
5 start with FPL.

6 MR. BUTLER: We do not believe that Issue 16 should  
7 be included for a couple of reasons. First of all, the gist of  
8 it is arguing the position that the statutory provisions for  
9 discussions of co-ownership must imply some sort of substantive  
10 requirement for discussions or substantive requirement for  
11 co-ownership, which I think you already have ruled on in your  
12 earlier descriptions of your rationale for allowing Issue 13 to  
13 be included and the limitations on that issue. We agree with  
14 your ruling and don't think that Issue 16 is appropriate.

15 Also note that it is in any event worded in an  
16 improperly argumentative fashion. It really reads like a brief  
17 of what some of the recent Intervenors would say the outcome  
18 ought to be rather than a neutrally worded issue. But in any  
19 event, we don't think it's appropriate.

20 COMMISSIONER SKOP: Thank you, Mr. Butler.

21 Mr. Bryant.

22 MR. BRYANT: No other comments.

23 COMMISSIONER SKOP: Thank you.

24 MR. YOUNG: If you're going to rule the same way you  
25 did, I don't see any point in keeping that in. I would

1 certainly like the record to note my objection to your ruling  
2 on that point.

3 COMMISSIONER SKOP: Thank you.

4 MR. BECK: I have nothing.

5 MS. BROWNLESS: Commissioner, again, JEA would reword  
6 this issue slightly differently as follows: "Do Section  
7 403.519(4)(a)(5), Florida Statutes, and Rule 25-22.081(2)(d),  
8 F.A.C., create a duty upon Florida Power & Light Company to  
9 initiate and meaningfully discuss co-ownership of nuclear power  
10 plants with other electric utilities in the State of Florida?"  
11 I think that would state the issue as I understand it.  
12 That's -- so we can add that as a JEA issue at this time, if  
13 you wish, and we would ask you to rule upon that.

14 COMMISSIONER SKOP: I'll look to legal staff on that.  
15 Again, the issues that we're considering -- again, I note, I  
16 recognize that you're probably proffering a modification of one  
17 of the existing issues on the consolidated issue list, but,  
18 again, I'll look to legal staff with respect to the comments  
19 that were made by JEA.

20 MS. BRUBAKER: Well, with respect to Issue 16 as it  
21 is currently worded, I think it is, it is our opinion that  
22 Issue 13 sets forth what would be appropriate to be addressed  
23 in this issue as far as the discussions and the disclosure  
24 requirement. And in keeping with that ruling on Issue 13, I do  
25 not believe that Issue 16 would be appropriate for this

1 proceeding.

2           With regard to the reworded issue JEA has just  
3 proffered, I would recommend that that issue not be allowed in  
4 the proceeding much for the same reasons that we've discussed  
5 prior; that it is certainly within your discretion to address  
6 that issue, if you, if you wish to do so, but there is  
7 certainly no requirement that you do so. In keeping with the  
8 rulings that have been made previously it would be my  
9 recommendation that that issue not be included.

10           COMMISSIONER SKOP: Thank you, Ms. Brubaker.

11           And also not to leave anyone out, Mr. Krasowski, if I  
12 could get your input on Issue 16, please.

13           MR. KRASOWSKI: I certainly appreciate it,  
14 Commissioner.

15           We, we will -- we do not support the inclusion of  
16 Issue 16, and also for the reasons we mentioned on 15, and our  
17 comments that are listed here also pertain to this. Thank you  
18 very much.

19           COMMISSIONER SKOP: Thank you, Mr. Krasowski.

20           MS. KAUFMAN: Commissioner?

21           COMMISSIONER SKOP: Ma'am, you're recognized.

22           MS. KAUFMAN: Yes. If I, if I might comment on  
23 Seminole's behalf on this issue.

24           COMMISSIONER SKOP: Yes.

25           MS. KAUFMAN: I think there's obviously a clear

1 difference of opinion about what the statutes and the rules do  
2 and do not require. And I think that in our view the more,  
3 more prudent course would be to allow the issue as framed or  
4 Ms. Brownless's reworded issue to remain in the record so the  
5 parties can have the opportunity to discuss or brief that issue  
6 before the full Commission. Because this is the first time to  
7 my knowledge that this statute has been looked at and  
8 interpreted, and so we would argue that this is an important  
9 legal issue that should remain in the case.

10 COMMISSIONER SKOP: Thank you. Any additional  
11 comment from the parties or legal staff prior to rendering a  
12 decision on this issue? Seeing none, Issue 16 will not be  
13 allowed within the proceeding. It is adequately addressed.  
14 Some of the issues raised with respect to statutory  
15 interpretation I think have been adequately addressed through  
16 applying sound statutory construction principles. Again, I  
17 don't believe that Issue 16 needs to come in. And the  
18 modification by JEA, although welcome and proffered, I don't  
19 also believe that that needs to be part of the core proceeding.  
20 Again, I think the issue that was raised with respect to the  
21 adequacy of disclosure as required by the statutory provision  
22 is adequately addressed by Issue 13, which has been allowed in  
23 the proceeding.

24 With that, we're going to move on to Issue 17. We'll  
25 start with the parties and then we'll hear from legal staff and

1 I'll render my decision with respect to Issue 17. FPL.

2 MR. BUTLER: Thank you, Commissioner. Excuse me.

3 FPL does not believe that Issue 17 is appropriate. It is  
4 basically asking about the existence of a substantial interest,  
5 which is really term of art for the test for establishing basis  
6 for standing to intervene. You've granted intervention and  
7 described earlier the extent of limitations on that  
8 intervention. We don't see how Issue 17 would serve a further  
9 purpose.

10 COMMISSIONER SKOP: Thank you, Mr. Butler.

11 And if -- okay. Thank you. Mr. Bryant.

12 MR. BRYANT: No. Nothing to add, sir.

13 COMMISSIONER SKOP: Thank you.

14 MR. YOUNG: In anticipation of a similar ruling, I  
15 would respectfully suggest that we just refer that to Issue 13  
16 and note my objection to your ruling.

17 COMMISSIONER SKOP: So noted. Mr. Beck.

18 MR. BECK: I have nothing to add, sir.

19 COMMISSIONER SKOP: Thank you, sir.

20 MS. BROWNLESS: We, again, have a rewording of this  
21 issue we'd like to tender at this time, and here's the issue.  
22 "If a statutory or administrative duty exists to initiate  
23 meaningful discussions regarding co-ownership of nuclear power  
24 plants with Florida electric utilities pursuant to Section  
25 403.519(4) (a) (5) and Rule 25-22.081(2) (d), do Florida electric

1 utilities have a substantial interest in the need  
2 determinations for those nuclear power plants?" Obviously we  
3 support the inclusion of the issue as reworded, reworded in the  
4 docket in this case. And I would just echo Ms. Kaufman's  
5 statements that since this is the first need determination  
6 under the new 403 statute applying to nuclear power plants,  
7 that these fundamental issues should be considered by the  
8 Commission, even if the Commission's ultimate decision is that  
9 no such duty exists.

10 COMMISSIONER SKOP: Thank you, ma'am, and so noted.  
11 And upon the, hearing from the other parties I'll get legal  
12 staff to opine on that.

13 Moving down the line. Ms. Kaufman.

14 MS. KAUFMAN: Thank you. I'm not going to belabor  
15 the point. As I said on the prior issue, we think these are  
16 important issues that should be included in the docket, and  
17 I'll just adopt my prior remarks, if that, if that will  
18 suffice.

19 COMMISSIONER SKOP: Yes, ma'am. Thank you.  
20 Mr. Krasowski.

21 MR. KRASOWSKI: Though we agree these are important  
22 issues, we say no to the inclusion of this issue.

23 COMMISSIONER SKOP: Thank you. Staff.

24 MS. BRUBAKER: First, I'd like to start with a point  
25 of clarification. This is not the first time that a need



1 determination has been filed pursuant to this section. For  
2 instance, in Docket 070602, which was an uprate proceeding with  
3 FPL, it was filed under that section of the statute. I am  
4 speaking off the top of my head, so I may or may not be correct  
5 about this. But it also may be that 070467, which was the TECO  
6 IGCC, may also have been filed under that new statute. But,  
7 honestly, I don't remember, so I don't want to commit myself  
8 there. And for the record, the issue of co-ownership was not  
9 raised in 070602 and the, it proceeded to pace just fine.

10           With regard to Issue 17 and JEA's proposed rewording  
11 of the issue, I would merely echo the comments I've made  
12 before. I think Issue 13 adequately reflects the parameters  
13 that are being set in this proceeding. I don't want to engage  
14 in a great deal of discussion about reading the statute, but I  
15 think reasonable minds certainly can differ over the reading of  
16 the statute. I would simply say that I think Issue 13  
17 adequately covers what is required under that statute, and I  
18 would recommend that Issue 17 and the proposed JEA rewording  
19 not be permitted into the proceeding.

20           COMMISSIONER SKOP: Thank you, Ms. Brubaker. And I  
21 tend to agree with your analysis to the extent I think that the  
22 parties during oral arguments and the questions that they  
23 answered have, at least the utility Intervenors have all  
24 accurately stated that they did not previously seek to  
25 intervene in either the uprate proceeding or the IGCC, although

1 that's also implicated under this statute.

2           So moving on to the issue at hand, having heard from  
3 the parties as well as legal staff and adding my comments,  
4 Issue 17 seems to turn on an argument that prior ownership  
5 somehow implicates a right to future ownership, and at least to  
6 me, at least to my legal analysis this appears to be somewhat  
7 of a misapplication of a corporate opportunity argument. So  
8 based on the above, Issue 17 is going to be properly denied and  
9 will not be part of the proceeding.

10           Issue 18, again, we'll start with FPL.

11           MR. BUTLER: I'll keep it brief. I think that your  
12 ruling previously, particularly your ruling with respect to,  
13 excuse me, intervention and Issue 13 covers the subject matter  
14 that this could legitimately relate to and don't see any need  
15 for this issue.

16           COMMISSIONER SKOP: Thank you, Mr. Butler.

17           Mr. Bryant.

18           MR. BRYANT: I agree the issue is not relevant.

19           COMMISSIONER SKOP: Thank you. Mr. Young.

20           MR. YOUNG: I agree it's covered by --

21           THE COURT REPORTER: Please turn your mike on.

22           MR. YOUNG: It is on. I agree to abide by your  
23 previous ruling, and would again note my objection for the  
24 record.

25           COMMISSIONER SKOP: So noted.

1 Ms. Brownless.

2 MS. BROWNLESS: We believe this is an appropriate  
3 issue and should stand.

4 COMMISSIONER SKOP: Thank you. Ms. Kaufman.

5 MS. KAUFMAN: It would be our view that if some of  
6 the other issues had stayed in, this issue could have been  
7 handled under those issues. But since all the previous issues  
8 that have discussed co-ownership, et cetera, have been  
9 stricken, I'm assuming that your ruling would be the same on  
10 this one and we will just adopt our prior comments.

11 COMMISSIONER SKOP: Thank you. Mr. Krasowski.

12 MR. KRASOWSKI: Specifically regarding to Issue 18,  
13 we don't -- we say no and we see it as being irrelevant.

14 COMMISSIONER SKOP: Thank you, sir. Legal staff.

15 MS. FLEMING: Staff's recommendation is that we don't  
16 believe that this issue is relevant to the need determination  
17 proceeding.

18 COMMISSIONER SKOP: Thank you, Ms. Fleming.

19 Based on the above, and, again, I think that my  
20 pending order will get into this a little bit further with  
21 respect to statutory construction, but Issue 18 will not be  
22 allowed.

23 Moving on to Issue 19, hearing from FPL.

24 MR. BUTLER: Issue 19 we see as being essentially a  
25 variant on Issue 13 but carrying it beyond the proper scope.

1 We don't think that Issue 19 should be included.

2 COMMISSIONER SKOP: Thank you, Mr. Butler.

3 Mr. Bryant.

4 MR. BRYANT: No further comments.

5 COMMISSIONER SKOP: Thank you. Mr. Young.

6 MR. YOUNG: No comment.

7 COMMISSIONER SKOP: Ms. Brownless -- or Mr. Beck.

8 I'm sorry.

9 MR. BECK: No comments.

10 COMMISSIONER SKOP: I didn't mean to leave OPC out.

11 Ms. Brownless.

12 MS. BROWNLESS: Let me tell you what I see as the  
13 potential difference between Issue 13 which is in the record,  
14 which simply is basically saying does it contain a summary of  
15 the discussions consistent with the rule? And Issue Number 19,  
16 which is the factual part of what discussions were had, did  
17 they engage in any meaningful discussions? I guess, I guess I  
18 see Issue 13 perhaps as a legal issue in the sense as a  
19 completeness issue: Is it in there? And Issue 19 is a factual  
20 issue as to what discussions were had. But if it is the  
21 staff's position that those factual discussions can be included  
22 in Issue Number 13, then I'm fine.

23 COMMISSIONER SKOP: Thank you. And I'll get staff to  
24 address that in a second after hearing from Ms. Kaufman and the  
25 Krasowskis. Ms. Kaufman.

1 MS. KAUFMAN: Thank you, Commissioner. Issues 19 and  
2 20 are issues that Seminole originally raised and --

3 COMMISSIONER SKOP: Ms. Kaufman, we're just on Issue  
4 19. If we can just limit it to that, please.

5 MS. KAUFMAN: Sure. Issue 19 was an issue that  
6 Seminole originally raised. And we agree with Ms. Brownless  
7 that this issue goes to the quality of the discussions, whether  
8 any discussions were had. And if discussions were had, were  
9 they meaningful or not? It's a factual issue. It's certainly  
10 an issue appropriate for exploration on cross-examination and  
11 we think that it should remain in the case in the way that it's  
12 stated in Issue 19.

13 COMMISSIONER SKOP: Thank you. Mr. Krasowski.

14 MR. KRASOWSKI: On Issue 19, we believe that FP&L has  
15 engaged other utilities in discussions as they have stated in  
16 their petition under, on Page 37, Item Number 9, but they have  
17 not provided a summary. If a summary is required, they should  
18 do that. But I'm looking through the statutes now. I can't  
19 find the specific place that says that a summary is required.  
20 I don't know if I could ask if any, if the staff or you know if  
21 a summary is required, but our position --

22 COMMISSIONER SKOP: Mr. Krasowski, we're not going to  
23 get into an evidentiary issue at this time. That will be a  
24 determination made by the Commission under Issue 13 as to  
25 whether the language of Issue 13 was met, and that'll be based

1 on the evidence that'll be adduced at the need determination  
2 proceeding.

3 So in terms of whether that was met or not met,  
4 again, I think that's the purpose for having Issue 13. So I'd  
5 rather not dive into whether a summary was provided at this  
6 time because it's not relevant to whether the issue should be  
7 included or not included.

8 MR. KRASOWSKI: Okay. Well, thank you. Excuse me.  
9 And we'll just stand on what we have registered and object to  
10 the inclusion of this issue. Thank you.

11 COMMISSIONER SKOP: Thank you, sir. And actually  
12 before I engage legal staff I have one brief question, I guess,  
13 related to Ms. Brownless. I guess you mentioned "meaningful  
14 discussions" in, in your comments. Can you point me with  
15 specificity to any provision within either the statute or the  
16 rule that characterizes "meaningful discussions"?

17 MS. BROWNLESS: No, sir. I guess my issue is not the  
18 presence of the word "meaningful" or "not meaningful." My  
19 issue is whether there will be a factual issue regarding the  
20 discussions as opposed to whether FP&L has included a summary.  
21 So it seems to me that Issue Number 13 is an issue in which one  
22 could look at the application and say, A, B, C, D, E, as  
23 opposed to this issue, Number 19, which is an issue of fact:  
24 Were discussions held and what were those discussions? That's  
25 the dichotomy that I see, Commissioner.

1           COMMISSIONER SKOP: Yes, ma'am. Thank you. And,  
2 again, I think what controls, at least what's controlling my  
3 decision is the legal basis for requiring certain issues to  
4 come before the proceeding. And under the existing statute and  
5 the plain meaning of the statute, I'm just not, I'm not seeing  
6 that. Legal staff, if you could please try and --

7           MS. BRUBAKER: Certainly. Certainly. Issue 13 is  
8 really crafted directly from the language of the rule, which  
9 does ask, "Is there a summary?" If the concern is to be able  
10 to address discussions outside the context of that summary, my  
11 suggestion would be take the language directly from the  
12 statute. And in that case if we were to do that, my suggestion  
13 would be to word the issue something like, "Did FPL have any  
14 discussions with any electric utilities regarding ownership of  
15 a portion of the nuclear integrated gasification combined cycle  
16 power plant by such electric utilities?" That's directly from  
17 the statute, just as Issue 13 is directly from the rule. And  
18 if that captures JEA's concern, I think that would be a better  
19 way to phrase that.

20           On the same point, to me that's, there's really not  
21 much distinction between those two. To me, the same facts  
22 would be adduced in any event, so I think the issue would be a  
23 bit duplicative anyway. So I agree. I don't see a requirement  
24 about meaningful discussions, so I think my recommendation  
25 overall is simply to strike the issue and keep Issue 13 as the

1 relevant issue to the proceeding.

2 COMMISSIONER SKOP: Thank you. Again, based on the  
3 above, again, the statute reads and the rule closely tracks it,  
4 based on the above I think that the issue is adequately  
5 addressed under Issue 13 which has been allowed. And on the --  
6 based on the aforementioned input and staff recommendation,  
7 Issue 19 will not be allowed in the proceeding.

8 MS. BROWNLESS: And, Commissioner --

9 COMMISSIONER SKOP: Ma'am.

10 MS. BROWNLESS: -- may I just clarify?

11 COMMISSIONER SKOP: Ms. Brownless, yes, you're  
12 recognized.

13 MS. BROWNLESS: So Issue 13 would allow the  
14 intervenors to ask questions about the discussions that were  
15 had as well as questions about the summary; is that correct?

16 COMMISSIONER SKOP: Legal staff, would you like to  
17 interject here? Again, I'm happy to answer the question from  
18 my perspective. But, again, I want to make sure we have the  
19 right legal reasoning before we opine.

20 MS. BRUBAKER: I'm happy to offer my opinion. I  
21 think what Issue 13 contemplates is that you would be able to  
22 ask of whatever FPL witness would be appropriate, "Did you have  
23 discussions? What were the discussions?" And to the extent  
24 the answer is not confidential, it can be discussed. Now if  
25 you're talking -- and that goes to, again, to what we've talked



1 about, the adequacy of the discussions, were they held, what  
2 were the discussions?

3 If you're seeking to ask questions about, you know,  
4 meaningful, I don't know what that means and I don't know where  
5 you would take that. I have some concerns about verging into  
6 the issue of co-ownership. And so without a specific example  
7 or better understanding of where, where you're thinking the  
8 questioning would go, it's really hard for me to, to provide  
9 any assistance.

10 MS. BROWNLESS: Yeah. I just, if I understand  
11 what's, what's being shared, 13 would allow us to pursue  
12 cross examination about the discussions; is that correct?

13 MS. BRUBAKER: I believe that's correct. Again,  
14 reasonable minds could differ about what we're, the plain  
15 language, but I think we're in the same place.

16 MS. BROWNLESS: Okay. Great. Thank you.

17 COMMISSIONER SKOP: And I would concur with that. I  
18 just want to reemphasize again, the only reason that we're  
19 bringing this in is that, again, the concern was raised about  
20 the disclosure or lack of disclosure and there was a question  
21 raised at oral argument with respect to that. So, again, this  
22 is, this is a way to allow the parties to conduct some  
23 cross-examination with respect to disclosure and answer the  
24 questions, but it's not going to be used as a mechanism to  
25 address the merits of co-ownership. It's going to be related

1 strictly to discussions: Whether discussions were held,  
2 whether they weren't held, when did you have the discussion?

3 But, again, you know, if -- as the statute states or  
4 if FPL were to say there were no discussions, again, the  
5 statute is pretty clear on face in my eyes. But, again, you  
6 will be able to conduct cross-examination with respect to what  
7 discussions were held to address the concern that was raised  
8 during oral argument. And any other comments from legal staff?

9 MS. BRUBAKER: Staff has none.

10 COMMISSIONER SKOP: Okay. So with that, Issue 19  
11 will not be allowed. And we're going to move into Issue 20,  
12 and we'll take brief comments starting with FPL. Mr. Butler,  
13 you're recognized.

14 MR. BUTLER: Issue 20 is really a follow-up on Issue  
15 19 as worded, and we don't think that based on your wording on  
16 19 it would be appropriate to have 20.

17 COMMISSIONER SKOP: Thank you, sir. Mr. Bryant.

18 MR. BRYANT: No.

19 COMMISSIONER SKOP: Okay. Mr. Young.

20 MR. YOUNG: Nothing.

21 COMMISSIONER SKOP: Mr. Beck.

22 MR. BECK: I have nothing to add.

23 COMMISSIONER SKOP: Ms. Brownless.

24 MS. BROWNLESS: No, sir.

25 COMMISSIONER SKOP: Ms. Kaufman.

1 MS. KAUFMAN: I agree with Mr. Butler that Issue 20  
2 is a follow-up to Issue 19. And based on your ruling, I'm  
3 assuming that that issue will be stricken. And just so the  
4 record is clear, we would want to be sure that Seminole's two  
5 issues were proffered as appropriate issues in the proceeding.

6 COMMISSIONER SKOP: Ma'am, can you please --

7 MS. KAUFMAN: I'm sorry. I just want to be sure  
8 after you rule on Issue 20, I don't want to get ahead of you,  
9 that Seminole wants the record to be clear that it has  
10 proffered both Issues 19 and 20 as appropriate for this  
11 proceeding.

12 COMMISSIONER SKOP: So noted. Mr. Krasowski.

13 MR. KRASOWSKI: We have no comment at this time.

14 COMMISSIONER SKOP: Thank you, sir. Legal staff.

15 MS. FLEMING: Staff's of the opinion that Issue 20  
16 seems to be more of a position rather than an issue, and we  
17 feel that it's not relevant for this proceeding.

18 COMMISSIONER SKOP: Thank you. Based on the above  
19 and the statutory provision as written and enacted by the  
20 Florida Legislature, again, it's clear on face. I don't think  
21 it supports the Petitioners' assertion. And, again, I don't --  
22 I'm not exactly sure what statute would allow the Commission  
23 to, to make that a requirement. So, again, I don't think that  
24 20 is relevant to the core proceeding under the statutory  
25 framework that we're dealing with and Issue 20 will not be

1 allowed in the proceeding.

2 Okay. Based on that, let me ask my court reporter  
3 how she's doing over there. Do we need to -- an appropriate  
4 time to take a brief break?

5 THE COURT REPORTER: I'm fine.

6 COMMISSIONER SKOP: Okay. How I would like to  
7 proceed --

8 MR. TRAPP: Commissioner Skop?

9 COMMISSIONER SKOP: Mr. Trapp, you're recognized.

10 MR. TRAPP: Play one more hand?

11 COMMISSIONER SKOP: Yes.

12 MR. TRAPP: Technical staff would like to seek  
13 direction and guidance from the Prehearing Officer with regard  
14 to the staff having meaningful discussions with the parties  
15 here today with regard to the possible stipulation of Issue 13.

16 COMMISSIONER SKOP: Certainly as Prehearing Officer,  
17 again, we always, as Commissioners and the Commission as a  
18 whole we always like stipulations and meaningful -- actually  
19 not -- let me shy away from that term. (Laughter.) That's,  
20 that's a bad, that's a bad term. I'm not going there. But we  
21 always, again, we look -- it's always better for the parties  
22 to, if they feel it's right for them, to reach agreements  
23 amongst themselves and bring them to the Commission. Certainly  
24 staff is an integral part of that. It's not like I can go out  
25 there and reach out and have discussions in my position. But

1 I, I have no, no problem with staff doing what staff normally  
2 does. If staff would like to approach the parties and see if  
3 there's any consensus in terms of coming up with an amicable  
4 solution, certainly that, that would be the prerogative of  
5 staff, which I would endorse just in the ability to try and  
6 compromise and stipulate on issues. But, again, that's up to  
7 the parties on an individual basis whether they choose to do  
8 that. But, again, certainly if staff would like to undertake  
9 that, I have no objection to staff doing that.

10 MR. TRAPP: Thank you, sir.

11 COMMISSIONER SKOP: Thank you, Mr. Trapp.

12 Okay. I think moving forward, as I stated, we've  
13 covered Issues 1 through 8, Issues 14 through 20, Issue 13, and  
14 now we're going to address Issues 9 through 12, which I  
15 previously stated would be taken up last. And how I'd like to  
16 approach this is I would like to briefly address Issue 9,  
17 followed by taking a brief break.

18 It's my understanding there's been some revised  
19 language that's been presented for Issue 10 which was presented  
20 to me just prior to the prehearing, which I'd like to have the  
21 opportunity to review to get familiar with what's being  
22 presented. So upon taking up Issue 9, I'd like to take a  
23 break, a ten- or 15-minute break. I think that would be  
24 welcome by the parties as well as the court reporter. I see  
25 nods, I hope I see nods. Then we'll address Issues 10 through

1 12 and the remaining issues before us.

2 So with that, Issue 9, FPL.

3 MR. BUTLER: Thank you, Commissioner. I'll try to be  
4 brief here. As you know, this is quite an undertaking building  
5 the project in question and, for that matter, the need  
6 proceeding that you are going to be determining in this docket.  
7 FPL feels that it is important given the magnitude of the  
8 project, given the special circumstances of needing to start  
9 out so well in advance of final completion of the project,  
10 given the step-wise approach that FPL -- bless you -- expects  
11 to pursue and that we want the Commission, expect the  
12 Commission agrees with our pursuing, that we have a measure of  
13 confidence from the Commission that it concurs with the  
14 approach that we are describing and that we are headed down a  
15 path that both the Commission and FPL believe is the  
16 appropriate way to pursue this. To some extent that is wrapped  
17 up in getting an affirmative determination of need. But under  
18 the special circumstances of this project, we really feel that  
19 it would be appropriate to have more clarity being sure that  
20 everything about this is being undertaken in a direction that  
21 is mutually supported.

22 We initially thought of just having some of the type  
23 of wording that appears in the issue and then perhaps some of  
24 the support that appears in our position on it be something  
25 that we would list under one of the sort of standard seven or

1 eight issues for the need determination proceeding. But our  
2 concern was in doing that that we really, we wouldn't  
3 necessarily be structuring things in a way to get the sort of  
4 statement from the Commission of concurrence with our direction  
5 that we were looking for. And, therefore, we developed this  
6 separate issue that was laying out kind of with specificity the  
7 concurrence we're seeking, and that we will be able at the end  
8 of the day in the need proceeding if this issue is included  
9 know the extent to which the Commission concurs with our path,  
10 which, of course, we hope is fully. Thank you.

11 COMMISSIONER SKOP: Thank you, Mr. Butler.

12 Mr. Bryant, and I'd just like to briefly hear from  
13 the parties.

14 MR. BRYANT: Yes, sir. I see that in the prehearing,  
15 draft prehearing under FMEA and FMFA we state "No position." I  
16 think we should have said "Yes" to both. No pun intended, but  
17 there's no sense having any kind of discussions, meaningful or  
18 otherwise, if they're not able to have the total support of the  
19 State of Florida in building this plant. And we have always  
20 said we support the building of this plant. I think this is a  
21 good position for them to ask for an affirmative statement from  
22 the Commission (phonetic).

23 COMMISSIONER SKOP: Thank you, Mr. Bryant.  
24 Mr. Young.

25 MR. YOUNG: Yes, sir. Thank you. I think that, if I

1 understand the issue, we've been expressing in this proceeding  
2 up to this point that the development of this type of  
3 generation may be the only thing available for the near future  
4 for the utilities in this state to generate the kind of  
5 capacity it needs for future growth. And I would hope that if  
6 you adopt this issue, that it really seems to me to go beyond  
7 the specific generating units that are being proposed and  
8 express state support for the development of new nuclear  
9 generation. I would hope that if you do that, you really do  
10 that in terms of the whole state, not just within the confines  
11 of Florida Power & Light's area. And to affirm the need to  
12 take steps now to preserve new nuclear generation as a resource  
13 option, I would hope that in that process, if you address this,  
14 that you look at all the utilities in the state, you look at  
15 all the customers in the state and you look at how we're going  
16 to best utilize this resource option for the good of the State  
17 of Florida and all of its citizens, not just for those who live  
18 within the confines of the utilities that have the financial  
19 means to bring these things on board. So I think that's a  
20 wonderful issue if it's utilized in that way and I would  
21 support it.

22 COMMISSIONER SKOP: Thank you, Mr. Young. Mr. Beck.

23 MR. BECK: Thank you, Commissioner. Issue 9 is not a  
24 necessary issue for this proceeding. The core issue in the  
25 proceeding is to determine whether there's a need for Turkey



1 Point 6 and 7, and Issue 9 starts off by assuming that the  
2 Commission grants that core issue and then asks for certain  
3 language. I view this essentially as a request by the company  
4 for precatory language in the order to state the Commission's  
5 overall view. I think it's purely in the discretion of the  
6 Commission whether it wishes to do so or not.

7 COMMISSIONER SKOP: Thank you, Mr. Beck. Ms.  
8 Brownless.

9 MS. BROWNLESS: We support the issue.

10 COMMISSIONER SKOP: Thank you, ma'am. Ms. Kaufman.

11 MS. KAUFMAN: Thank you, Commissioner. I agree with  
12 the comments that Mr. Young made in regard to the importance of  
13 nuclear power, not just in FPL's service territory but in the  
14 entire state. When we looked at this issue, we actually  
15 submitted some changes to it that were not picked up by the  
16 staff and included in the prehearing, Draft Prehearing Order.  
17 But essentially what we -- we suggested rewording the issue a  
18 bit to make it clear that if you are inclined to include this  
19 issue, that it apply to the entire State of Florida and not  
20 just to these two particular plants.

21 COMMISSIONER SKOP: Thank you, ma'am. Mr. Krasowski.

22 MR. KRASOWSKI: I think some of the utilities have  
23 made my case for me. I think that this is inappropriate for  
24 this docket. FP&L is overreaching. All nuclear power plants  
25 or any power plant proposed for Florida should be evaluated on

1 a case-by-case basis. We have now a process for doing that.  
2 That's what the PSC does. That's what this hearing is about.  
3 And we trust that whatever the outcome of this process, that  
4 the PSC can determine what comments they will make at the time  
5 and what the range of those comments will be and what  
6 parameters they'll fit in. There's no need for this issue to  
7 be raised. We know to what extent new nuclear is encouraged in  
8 different realms within the State of Florida, and this is just  
9 not necessary at all, inappropriate. Thank you.

10 COMMISSIONER SKOP: Thank you, Mr. Krasowski. And  
11 just before I move on to staff, I know that OPC, Mr. Beck has  
12 already raised some significant reservations. But it's my  
13 understanding, I think staff also has some significant  
14 reservations, but I'll let staff speak to those.

15 MS. BRUBAKER: Certainly. You know, the Legislature,  
16 I believe, made a statement about nuclear generation when it  
17 made its changes to Section 403.519, and I think the Commission  
18 took that legislative mandate and promoted it through its  
19 adoption of the rule. To me, this issue is really asking for a  
20 statement of policy. It's not an issue of fact and it's not  
21 really an issue of law. And certainly Mr. Beck is correct.  
22 It's not a necessary issue and the Commission always has the  
23 discretion, I think, in its proceedings to make what statements  
24 of policy it feels is appropriate. I do not believe this, this  
25 issue is really necessary to the proceeding. And, you know,

1 again, it is certainly your discretion. My recommendation,  
2 however, is to, to not have it in the proceeding.

3 COMMISSIONER SKOP: Thank you.

4 MR. BUTLER: Commissioner Skop.

5 COMMISSIONER SKOP: Yes, sir. Mr. Butler, you're  
6 briefly recognized.

7 MR. BUTLER: Thank you. Just briefly, FPL would  
8 agree that, you know, the Commission taking a position on this,  
9 it is really a statement of policy. It would be within the  
10 Commission's discretion to do so. I just kind of return to my  
11 original point that we were wanting to be sure there was kind  
12 of a placeholder for seeing that a decision was made, sort of a  
13 conscious decision what to have as a statement of policy, if  
14 any, on this subject, and that's really why we think it would  
15 be appropriate to include the issue.

16 COMMISSIONER SKOP: Thank you, Mr. Butler. Again --

17 MR. KRASOWSKI: Commissioner Skop?

18 COMMISSIONER SKOP: Mr. Krasowski, you're recognized.

19 MR. KRASOWSKI: If I could add one other thing, that  
20 this, every aspect of this can already be dealt with in what's  
21 identified as, now as 1 through 8 and 13.

22 COMMISSIONER SKOP: Thank you, sir. Okay. With  
23 respect to Issue 9, again, I think it's been pointed out by  
24 Ms. Brubaker, there already exists strong legislative support  
25 for nuclear and new nuclear construction in Florida. And,

1 again, I do think it's extremely important to have a stable  
2 regulatory environment consistent with legislative intent with  
3 respect to that issue.

4 I do personally find Issue 9 somewhat problematic  
5 just to the extent that it, that it's generic and aspirational.  
6 And I do feel that on, upon the conclusion and in the process  
7 of the need determination proceeding that some of these same  
8 issues that FPL has raised in Issue 9 could be affirmed within  
9 the comments made during the, the prehearing, I mean, excuse  
10 me, not during the prehearing, but during the need  
11 determination in itself.

12 So, again, I think it's, it's essentially asking for  
13 something that may happen on its own. And, again, the concern  
14 that I have again that it's, it is somewhat generic and  
15 aspirational, I tend to agree with Mr. Beck from OPC that it's  
16 not really part of the core proceeding. It may happen on its  
17 own. And I think legal staff has also concurred with that.

18 So it would be my position, again, to exclude  
19 Issue 9 just on the basis of some of the concerns that were  
20 raised. Not that there's, not that those points aren't worthy  
21 of consideration, I just think that, again, it's an issue  
22 that's not, not strongly tied to the core proceeding. And,  
23 again, I think it's a collateral issue that is better left to  
24 speak for itself in the final order of the need determination.

25 So at this point what I'd like to do is recess, and,

1 again, I think that -- to give the court reporter a little time  
2 to relax her fingers and the parties to collect their thoughts  
3 and perhaps Mr. Trapp to engage in some of the things that he  
4 may want to engage in, and give myself a, some time to review  
5 the newly revised language for Issue 10, I'd like to recess and  
6 come back at 3:30. So we're recessed until 3:30.

7 (Recess taken.)

8 Okay. I'd like to reconvene this proceeding at  
9 approximately 3:39 p.m. As we left off, we're about ready to  
10 take up Issue 10. And it's my understanding, again, I'll hear  
11 from the parties as well as OPC and staff, but it's my  
12 understanding that there probably -- ma'am, excuse me. I'm  
13 sorry. It's my understanding that they're probably, OPC and  
14 staff will probably have some significant reservations with  
15 respect to Issues 10 through 12. And, you know, briefly  
16 speaking, you know, I'd like to raise some points for  
17 consideration and then listen to the parties.

18 But, again, without getting into the merits,  
19 personally I'm strongly in favor of addressing these issues or  
20 addressing and bringing the issues raised by FPL to decision  
21 sooner rather than later in order to promote a stable  
22 regulatory environment for nuclear construction in Florida.

23 Now that being said, just because FPL wants clarity  
24 sooner rather than later I don't really necessarily think is a  
25 bad thing. My concerns in that regard are couplefold. One, I

1 have a concern about putting the core proceeding at risk.  
2 Procedurally the way the case and the issues are styled, there  
3 may have been perhaps better ways, and I'll ask Mr. Butler to  
4 opine on this, to style and address these issues and I think  
5 that we'll get into that.

6 But, again, I think that there are some significant  
7 benefits for addressing these issues sooner rather than later,  
8 one of which I think that we'll get into in Issue 10 with  
9 respect to cost escalation risk. Again, you know, making sure  
10 we're doing the right thing is important. And, again, there  
11 may be better procedural ways to address some of these issues  
12 and I think we're going to tee that discussion up momentarily.

13 But, again, without getting into the merits, I do  
14 think that there is a compelling policy reason for getting to,  
15 for addressing and bringing up these issues and ultimately  
16 bringing it to decision in some way, form or fashion. Because  
17 I do, I do think it is incumbent upon this Commission to form  
18 the basis for having a stable regulatory environment for  
19 nuclear construction in Florida. And, you know, again, I think  
20 addressing and giving assurances, while, you know, the  
21 respective utilities may already or should already be doing  
22 some of these things, perhaps seeking additional assurance in  
23 the face of untested statutes is not necessarily a bad thing.

24 So with that, we're going to move into Issue 10 and  
25 we'll -- and let me just say getting into Issue 10 there is

1 some proposed modification language and we'll speak to that  
2 language. But, again, my preference would have been to have  
3 kept the original language for Issue 10 subject to some  
4 modification. And I do have some pointed questions for  
5 Mr. Butler, and we'll hear from the parties and staff and OPC.  
6 But let's just move forward and tee up Issue 10 based on the  
7 revised language. And with that, Mr. Butler, you're  
8 recognized.

9 MR. BUTLER: Thank you. Well, Commissioner, the  
10 reason that we proposed the revised language to Issue 10 -- I  
11 guess first of all I should back up and say that, you know,  
12 basically the purpose of this issue in either of its forms is  
13 to try to get assurance, understanding as to the Commission's  
14 concurrence that it is appropriate under the right  
15 circumstances to be making early advanced payments for certain  
16 types of long-lead items where FPL has opportunities both to  
17 get places in line, positions in the queue, as it were, to have  
18 these long-lead items, mainly heavy forgings fabricated in a  
19 timely manner, and also to avoid risks of escalation on costs  
20 for those and other items.

21 And we have a timing problem that really is what had  
22 motivated both versions, and in particular what we tried to  
23 refine is the revised version of the issue. That timing  
24 problem being that there are a small number, at this moment it  
25 may be as small as one, but a small number of advance payments

1 that we really need to make in the time frame of the sort of  
2 early summer of this year, of 2008 in order to secure  
3 reservations, keep things moving toward the 2018/2020  
4 in-service dates. And the problem if we don't get the decision  
5 here in this docket is that, you know, the Commission's rule on  
6 cost recovery proceedings envisions a cycle that culminates in  
7 a hearing and a final order. It's no later than October 1 of  
8 each year. We aren't suspecting it would be very much before  
9 that. So basically, you know, the end of the summer, early  
10 fall is when we would be getting a decision, and it's just,  
11 it's too late.

12           And in our early, you know, original version of this  
13 issue what we had understood as a concern is that the issue and  
14 the position taken on it didn't necessarily coincide directly  
15 or exclusively with this concern over getting an early decision  
16 on the specific reservation charge that we would have to pay,  
17 advance payments we would have to make in this summer 2008 time  
18 frame. And so we have revised the issue with the intent of  
19 trying to provide clarity that what we're looking for here  
20 specifically relates to a determination kind of in principle  
21 that it would be appropriate to go ahead and make these  
22 payments, specifically limiting the determination at this point  
23 to the ones that would be made in the 2008 time frame and  
24 specifically reserving to the Commission and all parties  
25 opportunities to question the specifics about the amount of the



1 payments, the terms of it, the sorts of things that would go to  
2 prudence in the sense of the actual costs incurred. But that  
3 we're looking to get a determination that everybody agrees as  
4 against the risk of losing a spot in line, as against the risk  
5 of escalation, the best thing to do is go ahead and make these  
6 payments.

7           COMMISSIONER SKOP: Thank you, Mr. Butler. And,  
8 again, I think now would probably be an appropriate time for me  
9 to address some of my concerns because, again, I don't want to  
10 get into some of the things that have been presented. But I  
11 need to clarify for my knowledge specifically what payments  
12 that we're talking about. Now let me lay some predicate for  
13 that. I recognize the need to lock in long-lead materials and  
14 I'm fine with that. I've done that all my life. I know that  
15 FPL is obviously, as any utility would be, wants to be risk  
16 adverse with respect to a large capital undertaking. I do see  
17 a substantial public benefit for raising this issue. Again,  
18 not getting into the merits, but, again, there, you know,  
19 locking in priority in the queue to meet an in-service date for  
20 need, the cost escalation risks -- there certainly are some  
21 compelling issues that make this worthy of consideration here.  
22 Again, my biggest concern is putting the core proceeding at  
23 risk and jeopardizing that. Again, I think that -- again,  
24 there are some compelling reasons to take a close look at this.  
25 Not to say it's coming in or staying out, but, again, we'll

1 hear concerns from everyone.

2 My concern is the current language of Issue 10 when  
3 it speaks to making advance payments for long-lead procurement  
4 items in order to preserve, it talks about multiple payments.  
5 Again, my personal preference is I like the original language  
6 subject to modifications because, because I really do think  
7 that if there's a compelling reason and you can look at  
8 something discretely, you can discretely identify what the  
9 payment is for, what the amount of the payment is, who the  
10 payment is going to and what the public benefit is in terms of  
11 cost escalation risk for doing this sooner rather than later,  
12 there's a tremendous benefit. And I'm almost willing to say  
13 that, you know, if you have all the facts before you with  
14 respect to a discrete item, you could even render a prudence  
15 determination based on that. That could be an issue.

16 So the way Issue 10 was originally framed was of  
17 interest. My problem with the original framing of Issue 10 was  
18 that it was not discrete, and I'm going to get to that in, in  
19 one second, because, again, I find the language in Issue 10 to  
20 be equally indiscrete when it talks to advance payments.

21 I'm all for, generally speaking, teeing up issues  
22 which would allow the Commission to address, you know, what we  
23 need to do and the compelling reasons why we need to do it. If  
24 it involves multiple payments, so be it. But I think it's  
25 important to discretely identify what these payments are, what

1 their purpose is, what the amount of the payment is, what  
2 vendor they're going to, yada yada yada.

3           But my understanding from reviewing some  
4 documentation, and I see this in some rationale that was  
5 submitted as a, with the revised language that you'd sent, it  
6 speaks to the need to make a payment in the early part of 2008,  
7 of this year. And it's my understanding that that payment  
8 amount is 16 -- well, I guess that can come out because it's,  
9 it's in the record that you sent, but hopefully there's no  
10 objection. But it was a payment to lock in a discrete amount  
11 of money for reservation of the forgings for long-lead  
12 materials, and I think that's to one specific vendor. So if  
13 that's the only payment that we're talking about that we need  
14 to jump start on to get some assurances and certainty, I'm  
15 certainly willing to consider that and look at that from is it  
16 prudent to consider making that payment? Okay. And that's  
17 kind of like a hybrid of what 10 originally was. But to me it  
18 seems a little bit nebulous as to what these payments are going  
19 to be. I mean, if there's a compelling reason to jump in and  
20 improve something, I think that we can -- you know, I'm willing  
21 to tee that up before my colleagues in an issue. Again, I  
22 think there's going to be some strong reservations from staff  
23 and I'm going to listen to that, and I'm sure there will be a  
24 strong reservation perhaps from OPC.

25           But the bottom line is, is that if we're talking

1 about one specific payment, then let's definitize it for what  
2 it is. We know what it is. And if you have all the facts  
3 before you, you can tee it up as an issue for a prudency  
4 determination at the appropriate time. But when we have  
5 language that's not really tight, it gives me concern. And I'm  
6 happy to put in language if that's the direction that we decide  
7 to go in. But my concern is, is that when it gets to a  
8 decisional posture, that there may be some criticism on, in a  
9 couplefold: Why is the language vague? What does this mean?  
10 What are the expenditures? I mean, to me, I'd like to see, you  
11 know, some sort of Excel spreadsheet. But if it's a simple  
12 matter of one payment, tell me what it is, what it's for, and  
13 we can go from there.

14 But one other related question -- and, again, I don't  
15 say this in a, in a bad way. I'm just -- I think that the way  
16 the question is presented, I'm trying to work with the parties  
17 to achieve the right result, to address the compelling public  
18 interest, if we need to go in that direction. So, again, I'm  
19 not adverse to the question because, again, I do think there is  
20 some substantial merit on addressing issues of magnitude sooner  
21 rather than later and locking in priority and the cost  
22 escalation risk. But, likewise, too I'm tempering that --  
23 again, I don't mean to be redundant but, again, the -- I don't  
24 want to put the core proceeding at risk. I'm not in the  
25 practice of writing blank checks, nor do I think this

1 Commission should be. And, you know, I just think that we, we  
2 can probably address the issue somewhat in its original form  
3 and get, get maybe the decision on the answer you seek, but it  
4 needs to be very discrete and specific.

5           So if it's just a matter of you want some sort of  
6 assurances with respect to the payment, which I believe is to  
7 Japan Steel Works, then just tell us. I mean, come out and say  
8 it. Don't be afraid to say it or couch it like that. Because  
9 I think that if that's the only payment, that's a very discrete  
10 issue and you can just address it for what it is. But if we  
11 talk about payments generally, then I think it's going to give  
12 some reservation in the proceeding, the course of the  
13 proceeding.

14           So, again, where I think I was originally at was the  
15 way the issue was previously framed when it talked to prudence.  
16 If we could definitize it to a specific payment, for a specific  
17 purpose, for a specific amount, for a specific benefit and  
18 rationale, then, I mean, that's a very discrete issue. You  
19 have all the facts before you. But when you talk generically I  
20 think it may be problematic.

21           And so with that I'm going to drop out. And, you  
22 know, I'm just kind of getting out there what I'm thinking  
23 because I'm trying to do the right things for the right reasons  
24 here supported by the rules that we have to, we have to operate  
25 under. But, again, I did want to tee that up for discussion

1 because I know there is some substantial difference of opinion.  
2 And I'll let you interject and respond because I know you've  
3 been wanting to, and then through the parties and then we'll  
4 get into staff. So Mr. Butler.

5 MR. BUTLER: Thank you. You are correct, the item in  
6 question as it has turned out, this is something that has  
7 evolved as we have moved forward in discussions with vendors.  
8 It's not something that we would have had this level of  
9 definition even a month ago, but it is indeed the  
10 \$16 million -- you know, that's probably going to put too much  
11 precision on that, but approximately \$16 million payment to  
12 Japan Steel Works to get a forging reservation spot in line so  
13 that some of the large steel components that have to be  
14 fabricated such as the reactor vessel, steam generator shells,  
15 you know, we have the spot in line to do that. My  
16 understanding is they're -- at present we're not expecting for  
17 roughly a year or two after that needing to make additional  
18 advanced payments of this nature. So we've got an opportunity  
19 in that period to get further refinement and use the normal  
20 cost recovery mechanism.

21 We would be fine with either an approach that built  
22 that specificity into the issue, or what it sounds like you may  
23 be more comfortable with is having an issue that reads somewhat  
24 broadly and then our position on it, which is what the  
25 Commission would be asked to, you know, evaluate and approve or

1 not would be to lay out the specifics of the, you know, the  
2 forging reservation fee in question and ask that you approve,  
3 you know, approve the prudence of the proceeding with that  
4 particular payment.

5 COMMISSIONER SKOP: Okay. Just two points of  
6 clarification. So it is, in fact, because I saw some  
7 contradictory information, but I think the gist of it is, the  
8 concern is merely the one payment to reserve the place in the  
9 queue with just Japan Steel Works. Is that, is that my  
10 understanding?

11 MR. BUTLER: That is in the time frame we're talking  
12 about.

13 COMMISSIONER SKOP: The near term, something that  
14 needs to be addressed by this Commission immediately.

15 MR. BUTLER: Right. Yes.

16 COMMISSIONER SKOP: Okay. Secondly, with respect to  
17 that, I'm going to call it an option or holding queue, that's  
18 not the materials, that's just the privilege of being in line  
19 in the queue?

20 MR. BUTLER: That's right. That's my understanding  
21 as well.

22 COMMISSIONER SKOP: Okay. And, you know, to do  
23 otherwise would subject one to not being in the queue, not  
24 having that availability and also cost escalation risk. Is  
25 that also your understanding?

1 MR. BUTLER: Yes.

2 COMMISSIONER SKOP: Okay. With that in mind, I do  
3 take a little bit -- not exception, but I just want to clarify  
4 what I meant. Issue 10 in its current form, again, to me I  
5 think is a little too broad. What I was looking at was more of  
6 a narrowed, tailored approach should we wish to go there, and  
7 it would kind of be framed such like this going back to the  
8 original Issue 10. Would be if the Commission grants FPL's  
9 petition to determine the need for the proposed generating  
10 units, is it prudent for FPL to make an advanced payment to  
11 Japan Steel Works in the amount of, for whatever purpose it is?  
12 That's narrow, discrete, definite. I mean, it's easily, one  
13 can easily comprehend that. All the information is before you.  
14 It takes out the uncertainty of advanced payments. If it's  
15 going to one vendor for a particular purpose for a particular  
16 reason in a particular amount, I think that, you know, people  
17 can readily understand that. But I would just kind of float  
18 that out there just as a, as a point of consideration. And I  
19 know that there's probably going to be some alternate  
20 viewpoints. But my comfort level, if it's for a compelling  
21 public interest, would be to perhaps consider it. But, again,  
22 it's -- it can't be -- you know, I'm not in the practice, nor  
23 is this Commission, I think, of writing blank checks. And if  
24 it's for a discrete something that's critical, I think that  
25 it's something we could probably all get comfortable with to



1 provide those, you know, assurances that you guys seek to be  
2 risk adverse.

3           Again, we're in the face of an untested statute, so  
4 certainly I think there's apprehension on the part of people.  
5 But I do think, again, addressing some of these issues and  
6 bringing the issues raised to some form of decision sooner  
7 rather than later I think lends to that stable regulatory  
8 environment that we all hope to attain.

9           But with that, I'll let you briefly respond. We'll  
10 go down the order, hear from the parties, OPC, and then staff.  
11 And I probably said a little bit more than I should, but,  
12 again, I think it's important to address some of these issues.

13           MR. BUTLER: Your rewording of it I think is  
14 something that could work for us. We could certainly work  
15 within that format.

16           COMMISSIONER SKOP: Okay. And I think one of the  
17 questions too, and, again, I think that it'll come out, but I  
18 kind of chalk it up to wanting assurances, but I think one of  
19 the questions that will probably arise is shouldn't you guys  
20 already be doing this without seeking additional clarity or  
21 what have you? But, again, I am equally respectful of the  
22 position that you guys find yourself in to the extent that, you  
23 know, you want reassurances under, under a new statute. Okay.  
24 So with that, we're going to move forward. Mr. Bryant, do you  
25 have anything to add?

1 MR. BRYANT: No, sir. We're not opposed. I'm not  
2 sure it's appropriate for us to be in favor because this is a  
3 more narrow type of issue, but we --

4 COMMISSIONER SKOP: Okay. Mr. Young.

5 MR. YOUNG: No, sir.

6 COMMISSIONER SKOP: Okay. Mr. Beck, if you could  
7 opine, and hopefully I've provided some rationale, but  
8 certainly I'd like to hear OPC's perspective.

9 MR. BECK: Thank you, Commissioner. We're not  
10 opposed to Issue 10. I actually prefer the revisions that FPL  
11 made not so much because of the change in the issue but because  
12 of their change in the position where they made it clear that  
13 it's, that the determination they're seeking from the  
14 Commission is only the decision to enter into the advanced  
15 payment. The contractual terms, the prices, the conditions are  
16 all subject to later review. You know, with that -- and I  
17 think it makes sense what you said that perhaps some of that  
18 should go into the issue itself, not just the position that FPL  
19 says. But with those changes they've made we're not opposed to  
20 Issue 10.

21 COMMISSIONER SKOP: Okay. One, one follow-up  
22 question for OPC. And, again, this gets to the sticky point of  
23 a prudency determination. And my understanding of the  
24 controlling case law is that this Commission will not render a  
25 prudency determination of any form unless all the facts are

1 before it. Now for discrete payment for a specific purpose to  
2 a specific vendor, you know, it seems to me like all the facts  
3 would be before us. So, so in that regard would OPC -- could  
4 OPC be comfortable with -- would it be prudent language or do  
5 you guys want to recede from that if it's just a matter, again,  
6 of one payment to one vendor for one defined amount for a  
7 well-known reason?

8 MR. BECK: I think it's a good idea to be specific  
9 about it. If it's a specific \$16 million payment, I think it  
10 ought to say so. But I still would prefer the qualification  
11 that appears in the position that FPL took in the revision, and  
12 that is it's only the decision to enter into an advanced  
13 payment, not the specific contract terms that are being decided  
14 by the Commission.

15 COMMISSIONER SKOP: Okay. Point noted.

16 Go next to Mr. Brownless -- I mean, Ms. Brownless.  
17 Sorry.

18 MS. BROWNLESS: Yes, sir. We don't have any problem  
19 with this issue being included, and probably being more  
20 specific in the wording of the issue is better than being less  
21 specific.

22 I would just add one note, that obviously prudence  
23 determinations and cost recovery determinations are within the  
24 jurisdiction of the Commission, but we do not normally include  
25 them in need determination proceedings. So here is, here's an

1 instance which I think is appropriate and which the Commission  
2 has gone beyond normal issues to deal with a legitimate  
3 problem.

4 COMMISSIONER SKOP: Yes, ma'am. Thank you.  
5 Ms. Kaufman.

6 MS. KAUFMAN: Thank you, Commissioner. We have  
7 nothing to add on this issue.

8 COMMISSIONER SKOP: Okay. Mr. Krasowski.

9 MR. KRASOWSKI: Well, we think -- I definitely  
10 realize the seriousness of this issue. I'm not taking this  
11 lightly. But I think it's not appropriate for this docket, it  
12 goes beyond the range of, of what we perceive to be the issues  
13 included in this docket. The provision of existing law, the  
14 nuclear, as I humbly understand it, the nuclear power plant  
15 cost recovery, 25-6.042(3)(5) states that preconstruction and  
16 carrying costs, and this is going under the category of  
17 preconstruction, I believe, on a cost balance, it says, after  
18 the Commission has issued a final order granting a  
19 determination of need, and that's after.

20 So we believe that this is prejudicial to the nuclear  
21 power plant, and we are Intervenors here that support a  
22 discussion for the reason that we believe that there are other  
23 options instead of these, this nuclear power project proposed,  
24 that there's a matrix of options that can be implemented as an  
25 alternative. So -- and I don't mean to speak too long on this,

1 but this is very, very important. Okay?

2           So without any sworn testimony as to the urgency of  
3 taking this action, we haven't had a chance to speak to the  
4 witnesses that are offering this, that are identified in this,  
5 on this issue yet, and, and we feel that it's kind of  
6 premature. We don't know if, if this is a reality or not. It  
7 says right here in, on the issue here that FPL expects that  
8 commitments for some of those purchases will have to be made.  
9 They have the expectation of that. They can't prove that. And  
10 there are so many variables that will affect this: How many  
11 other people are going to buy it, what other countries, that  
12 kind of stuff.

13           So being that -- I'll go back to the fact we're  
14 concerned it's prejudicial to our case because there's no  
15 provision for doing the same thing for the alternatives that we  
16 propose, if we were going to spend \$16 billion on a  
17 preinvestment in the, in the alternatives that we are preparing  
18 to suggest. So we haven't had that opportunity. They  
19 shouldn't have the opportunity to do this. Plus it adds an  
20 additional burden on the Public Service Commission to, to  
21 realize that a \$16 million prepayment has, has been registered,  
22 and there will be a heightened interest by the people who make  
23 these products that benefit from the economy of going this  
24 direction. So we, we really can't support this. So -- and  
25 it's -- if I can just look over my notes and see if I have any

1 other specific comments to make, I'd appreciate it.

2 I understand your comments and appreciate your  
3 comments about putting the core issue at risk. I think it  
4 threatens the validity of the entire process. And FPL could  
5 make a timely schedule, an event to be held according to the  
6 existing law after this determination of need if they're, if  
7 they're in a big rush. And those are some of the thoughts and  
8 ideas I have on this issue. And depending on the outcome of  
9 this, I'll expand more, but I don't want to take up all your  
10 time. Thank you.

11 COMMISSIONER SKOP: And I appreciate that, as do, I  
12 think, the parties.

13 Again, and I just want to clarify that the, the  
14 Issue 10 would be predicated upon a finding of need. It would  
15 not, you know, be encompassed within the need determination  
16 proceeding. You'd have to get to the need first before you'd  
17 even address proposed Issue 10.

18 MR. KRASOWSKI: Excuse me. Commissioner, if I may.

19 COMMISSIONER SKOP: Sure.

20 MR. KRASOWSKI: Then for the purpose of  
21 understanding, why is it even here if it, if it seems that it  
22 would be going along with the existing rule that it would  
23 require -- it would be done after the determination of need?  
24 It seems to me all those arguments can be made in 1 through 8  
25 and 13. And then if it's going to be, require a determination

1 of need, why is it even involved here? It just adds to the  
2 fact it's inappropriate and it's kind of grandstanding and --  
3 well, not grandstanding, that's not a legal term, but it just  
4 seems excessive, you know, to me. Thank you.

5 COMMISSIONER SKOP: And thank you for your input.  
6 And if I could ask Mr. Butler to briefly comment on some of the  
7 concerns that have been raised and then we'll get staff.

8 MR. BUTLER: Well, I think the main concern that I  
9 heard raised was Mr. Krasowski's. And in terms of the timing,  
10 what I had described earlier is the bind we find ourselves in,  
11 that the cost recovery proceedings, which is certainly the  
12 ordinary vehicle for this sort of thing, but they're on a cycle  
13 that in this first instance of using it doesn't fit well, and  
14 we do have kind of a special problem because of that  
15 circumstance.

16 Our issue is proposed to be worded, I think it would  
17 be appropriate for it to be worded conditionally. If there's  
18 not a determination of need for the project, then -- an  
19 affirmative determination, then this issue obviously wouldn't  
20 need to be addressed. It wouldn't be appropriate to do so.  
21 And we're certainly not trying to put the cart before the  
22 horse, grandstand or otherwise. We simply have this timing  
23 constraint that we're trying to work within to move this  
24 project forward on a good schedule for everyone, assuming it's  
25 approved.

1           COMMISSIONER SKOP: And thank you. And I do  
2 appreciate that for some of the reasons that, policy reasons  
3 that I've kind of articulated. Again, I think that there,  
4 there are some significant reservations and I think staff has  
5 some, so we'll give them the opportunity to opine.

6           MS. FLEMING: Just a few comments, Commissioner.  
7 Staff's preference is that Issue 10 not be included in this  
8 proceeding. It seems to us as if Issue 10 is going to a  
9 prudence determination, which is more appropriately addressed  
10 in a cost recovery proceeding. Our concern is that this could,  
11 leaving this issue in could potentially establish precedent.

12           COMMISSIONER SKOP: Thank you. Any other comments  
13 from either legal staff or technical staff? Mr. Cooke, you're  
14 recognized.

15           MR. COOKE: If I may just add one, is there's also  
16 concern about whether we really will be able to have a record  
17 developed that can properly address these issues. I think you  
18 were asking questions about what are the specifics that are  
19 going to be looked at? And I'm not, I'm not certain that  
20 during the time frames that are allowed that we're going to be  
21 able to get that type of information to do what in essence is a  
22 prudence review.

23           COMMISSIONER SKOP: Thank you. And technical staff,  
24 Mr. Trapp, do you have any comments with respect to that?

25           MR. TRAPP: No, sir, not really. Again, we'll play



1 the game that's dealt us.

2 COMMISSIONER SKOP: Okay. And, Mr. Butler, do you  
3 have any comments based on staff's recommendations?

4 MR. BUTLER: I think that the concern over precedent  
5 is a valid one but probably a little bit overstated in these  
6 circumstances. This is a very unusual situation. You know, we  
7 have not sought some sort of, you know, determination forever  
8 out in the future. I think that in many instances these cases  
9 will fall in a way where the cost recovery cycle doesn't raise  
10 a concern of this type. We think we have a pretty close to one  
11 off (phonetic) situation. I don't think that the Commission's  
12 giving us the relief we seek here is going to create any sort  
13 of significant precedent that you need to be concerned with in  
14 the future.

15 COMMISSIONER SKOP: Okay. Thank you.

16 MR. KRASOWSKI: Mr. Chairman.

17 COMMISSIONER SKOP: Mr. Krasowski, you're briefly  
18 recognized.

19 MR. KRASOWSKI: Yes. Thank you. I'd just like to  
20 make the point that we received notice of this change of  
21 language just a few, a little while ago, and the original  
22 e-mail went out Friday afternoon at 2:48 -- or was it Thursday  
23 afternoon -- I believe on the 11th. So, you know, it's, it's  
24 an enormous, enormous issue. Okay. Thank you.

25 COMMISSIONER SKOP: Thank you. And, again, I also

1 received the revised language prior to the proceeding.

2           Mr. Butler, I guess, you know, I find the Commission  
3 in somewhat of a little bit of a touchy situation. Again, I'm  
4 tempering the policy reasons for wanting to act affirmatively  
5 on allowing the issue to the extent that it is important not  
6 only for priority in-service date, but protects the consumers  
7 from cost escalation risk. But I'm wondering, and I think  
8 based on some of the concerns I've had, whether, one, there  
9 might be a better procedural mechanism that one could consider  
10 to, to answer this question in maybe a more appropriate forum.  
11 But moreover, if we do consider this issue, again, I was  
12 wondering whether OPC, you guys and staff might be able to get  
13 together and fine-tune or make that language a little bit more  
14 tight than it currently is. I think that OPC has raised some  
15 reservations about prudence versus the lesser language, and I  
16 think that's a point well-taken. Although if it's for a  
17 specific amount for a specific purpose, again, I'm not readily  
18 opposed to prudence, but I think that there have been some  
19 issues raised to where perhaps compromise might be the better  
20 course of action. But I think that if you could briefly  
21 respond procedurally to whether there would be an alternate  
22 perhaps more advisable mechanism, maybe a declaratory statement  
23 or something like that, to address this in a timely manner  
24 which wouldn't compromise some of the things that you guys are  
25 seeking to get assurances on in a timely manner, I'd be happy

1 to hear that.

2 MR. BUTLER: I don't think that a declaratory  
3 statement procedure would be appropriate or useful in this  
4 particular issue. It is pretty much a fact issue. You know,  
5 it does have to look to, you know, the specifics of our  
6 circumstances. I'm concerned that in a declaratory proceeding  
7 either it wouldn't fit or there would be a need to schedule  
8 some sort of hearing and I'm concerned about the timing of  
9 that.

10 You know, we raised the issue of, excuse me, advance  
11 payments for long-lead procurement items in our petition. We  
12 pled specifically for relief on it. So my feeling is that the  
13 best place where there has been notice given to persons who  
14 would be interested in, you know, reviewing, critiquing those  
15 costs and our desire to incur them in the way that we have  
16 described is in this proceeding. And, frankly, if we embark on  
17 some sort of new proceeding, just knowing how long it takes to  
18 have a final determination for anything that has a factual  
19 component to it, I'm concerned that that's going to be very  
20 difficult to do before the sort of early summer time frame that  
21 we're looking for the decision. Where we have something that's  
22 more purely a matter of interpreting a rule or a statute,  
23 probably that vehicle would be, you know, better suited to it.  
24 But here I'm concerned that it may not be. Whatever we can do  
25 with -- I mean, honestly, and I'm not, don't mean this as any

1 either critique or slight of staff, but I thought that staff  
2 thought that this rewording of the issue was going to meet  
3 their needs as well. We can work with them further, work with  
4 Mr. Beck with the Office of Public Counsel. If there are  
5 specifics in the wording of it and getting the information  
6 narrowed in a way that would make people comfortable, you know,  
7 that's fine. We're more than happy to do so.

8           And maybe my creativity is just flagging, but I'm not  
9 really seeing another form of, you know, fact determination  
10 proceeding that we would initiate from scratch today that would  
11 do a better job of meeting the, you know, objections to due  
12 process or opportunity to participate, et cetera, than what  
13 we've got right here where we've already got the issue.

14           COMMISSIONER SKOP: Okay. Let us do this because,  
15 again, I think this is the forum where we need to consider the  
16 issues and we have all the parties present.

17           MR. KRASOWSKI: Mr. Chair, may I make one brief  
18 comment?

19           COMMISSIONER SKOP: Mr. Krasowski, you're recognized  
20 briefly.

21           MR. KRASOWSKI: Thank you. I would just like to  
22 state that I believe I heard earlier Mr. Butler identify a  
23 decision to approve the inclusion of Issue 10 as a  
24 determination in principle. So once again we don't think it's  
25 appropriate that any determinations be made other than what

1 comes out at the end of this process. Thank you.

2 COMMISSIONER SKOP: Thank you, Mr. Krasowski. I  
3 think what we're going to do on this issue, and, again, we have  
4 the parties before us, so we need to definitize some language  
5 that's going to be acceptable to me, that's going to be  
6 acceptable to Mr. Beck, which may not be acceptable to all the  
7 parties, but I need at least some revised language with respect  
8 to Issue 10 that makes it more specific towards the end of the  
9 sentence with respect to -- instead of "advance payments for  
10 long-lead," making it more specific, which is something that  
11 once we get that language -- and if we need to take a brief  
12 recess and move this towards the end, we can do so later and  
13 maybe let some of the parties and staff get together to try and  
14 come up with some words that would allow me to make a decision  
15 either before we adjourn this proceeding or to take Issue  
16 10 under advisement.

17 But right now there have been some significant  
18 reservations expressed. But, again, I do think that we need to  
19 look at the language of Issue 10 reflecting Mr. Beck's concerns  
20 and the concerns that I've raised because right now, as it's  
21 currently framed, "advance payments for long-lead procurement  
22 items" I don't think is as specific as it needs to be  
23 unfortunately. And, again, I'm just looking at to, to avoid  
24 issues that may arise in the course of the proceeding.

25 And, again, my, my overarching concern is the need

1 for addressing policy issues, important policy issues that  
2 affect consumers in a timely manner. But I'm equally  
3 apprehensive about putting the integrity of the court  
4 proceeding at risk. And, again, it's a tenuous situation at  
5 best, so I am struggling with that.

6           So in the interim we're going to move Issue 10, we've  
7 heard discussion, we're going to kind of move that back and  
8 step away from it and move into Issue 11. And perhaps if we  
9 could get through these other issues efficiently, we'll have  
10 time for the parties to, to get together in a brief recess to  
11 try and address that concern and we'll move forward from there.  
12 All right. So we're going to temporarily table Issue 10 and  
13 we'll get back to that. Let's move on to Issue 11, please, and  
14 we'll start with FPL.

15           MR. BUTLER: Well, Issue 11 concerns just seeking  
16 clarification from the Commission that the sort of advanced  
17 payments we were just talking about, if they are made prior to  
18 the completion of Turkey Point 6 and 7 site clearing work,  
19 would be preconstruction costs as that term is used under the  
20 Commission's cost recovery rule. Again, I won't belabor this  
21 with a lengthy discussion, but it's just, it's one of these  
22 things we think is important to get an answer to. We raised it  
23 here specifically in our pleadings and supported it with the  
24 testimony of one of our witnesses. This seems like a good  
25 place. We kind of -- we have the people, the people here who

1 have shown interest in the docket and the subject to debate it,  
2 and I guess in our mind why not, why not get it resolved here  
3 rather than in some separate proceeding where maybe one is  
4 starting over again.

5 COMMISSIONER SKOP: Thank you. Mr. Bryant, we'll  
6 just go quickly down the line.

7 MR. BRYANT: No opposition.

8 COMMISSIONER SKOP: Okay. Mr. Young.

9 MR. YOUNG: None.

10 COMMISSIONER SKOP: Mr. Beck, if you could, please.

11 MR. BECK: Yes, Commissioner. We're opposed to the  
12 issue and for the reasons that are stated in our, in the Draft  
13 Prehearing Order. It's not relevant and it's a very broadly  
14 worded issue. I think as we thought about this in the office,  
15 you know, there are no specific terms, no contract terms, it  
16 doesn't say what payments are made, when they're made, for what  
17 purpose, what offsets might be there, what are the other terms  
18 of whatever contract that might be in mind. Those are all  
19 matters that are more properly determined in a separate  
20 proceeding.

21 And Rule 25-6.0423(5) sets forth the proceeding for  
22 determination of preconstruction costs. And it says, "After  
23 the Commission has issued a final order granting a  
24 determination of need, the utility may petition the Commission  
25 for recovery," and then goes forward. That's the place for

1 this sort of determination where you have specific contracts,  
2 specific terms. We can look at it, see what it says and make  
3 the determination in that proceeding.

4 COMMISSIONER SKOP: Thank you. And just as a  
5 follow-up on Issue 11, does OPC view that as more of a cost  
6 recovery issue or more of one of statutory interpretation and  
7 construction, the request as presented?

8 MR. BECK: You'd have to ask FPL how they view it. I  
9 just think it's inappropriate.

10 COMMISSIONER SKOP: Okay. All right. So noted.  
11 Ms. Brownless.

12 MS. BROWNLESS: Our response would be virtually the  
13 same. We have no problem leaving Issue Number 11 in there,  
14 although it is an issue not normally considered in need  
15 determination proceedings.

16 COMMISSIONER SKOP: Thank you. Ms. Kaufman.

17 MS. KAUFMAN: We don't have anything to add on this  
18 issue, Commissioner.

19 COMMISSIONER SKOP: Okay. Mr. Krasowski.

20 MR. KRASOWSKI: It's Krasowski.

21 COMMISSIONER SKOP: Sorry.

22 MR. KRASOWSKI: That's okay. I understand. Just for  
23 the purpose of the court reporter it's important.

24 COMMISSIONER SKOP: Can you say that again? I'm  
25 sorry.



1 MR. KRASOWSKI: It's one of the few that are, that  
2 sound like they're spelled. Krasowski.

3 COMMISSIONER SKOP: Okay.

4 MR. KRASOWSKI: Not like Shippasheski (phonetic),  
5 which drives us all nuts, you know. But Krasowski. Thank you.

6 COMMISSIONER SKOP: Krasowski. Okay.

7 MR. KRASOWSKI: On Issue Number 11 we say no, and we  
8 believe Issue 11 is not appropriate for this docket. And just  
9 like Issue Number 10, it belongs elsewhere. Thank you.

10 COMMISSIONER SKOP: Thank you. Staff, please.

11 MS. FLEMING: Staff's preference on this issue is  
12 that it not be included. We feel that it would be more  
13 appropriately addressed in the cost recovery proceeding as OPC  
14 had stated.

15 COMMISSIONER SKOP: Thank you. And I see Mr. Trapp  
16 has made an appearance, so we'll hear from technical staff.

17 MR. TRAPP: I just wanted to come up and concur with  
18 our legal staff on this. I think all of these issues involve  
19 decisions that a utility should make. They're prudent  
20 decisions. It's up to the company to make these decisions, and  
21 in this issue in particular it belongs in the cost recovery  
22 docket.

23 COMMISSIONER SKOP: Okay. Mr. Butler, going back to  
24 you, to me I guess there's two readings of what Issue 11 really  
25 actually pertains to. One obvious interpretation could be that

1 it seeks to have an interpretation of the statute with respect  
2 to preconstruction costs and what would be encompassed with  
3 that. Again, we have a new statute before us. I don't think  
4 it's ever really been tested yet. But is it seeking to address  
5 specific cost recovery issues or is it more generally advanced  
6 to get some sort of definitization on how the Commission might  
7 interpret the statute?

8 MR. BUTLER: I think that I would go with the latter.  
9 It is -- I mean, our -- here's what drives the concern, I  
10 guess. When one looks at the cost recovery rule and the  
11 definition of preconstruction costs, it really doesn't define  
12 very much what types of costs are preconstruction costs. It  
13 really seems to be structured sort of as a temporal limitation,  
14 that it's costs incurred in conjunction with constructing the  
15 plant up to a point in time up to the conclusion of the site  
16 clearing activities. And in our view, you know, the specific  
17 application we're interested in here and the issue goes to is  
18 the advanced payments are payments made in furtherance of the  
19 construction. They occur -- or if they occur within this  
20 temporal window, then they would be preconstruction, and that's  
21 what we're looking to confirm. So in my view that really is a  
22 matter of interpreting and applying the statute.

23 COMMISSIONER SKOP: So my understanding, the  
24 apprehension seems to stem from how the Commission might  
25 interpret the statute that's never really been interpreted by

1 the Commission.

2 MR. BUTLER: That's correct.

3 COMMISSIONER SKOP: Given the overwhelming opposition  
4 and the significant reservations that have been raised, and I  
5 go to, I know that it was pled in the pleadings, is there a  
6 better procedural mechanism, again, maybe a declaratory  
7 statement that -- again, my understanding, it's, upon petition  
8 it's a 90-day turnaround in getting some sort of affirmative  
9 ruling from the Commission. Would that be adequate to address  
10 the concern, the root concern of Issue 11 in a more appropriate  
11 form?

12 MR. BUTLER: We have, you know, the continued  
13 preference that it be handled in this proceeding. But I think  
14 that if we had the understanding that this would get turned  
15 around, you know, in a 90-day decision, which I believe is what  
16 the rules provide for declaratory statements, I think it is  
17 something that we could work with. It's not our, not our first  
18 choice. We think it can and should be decided in this docket.  
19 Some of these issues, frankly, the ones we've been talking  
20 about, are the sort of indicia of support for moving forward in  
21 a partnership we were talking about earlier. But by the same  
22 token, you know, my answer to your question is I think probably  
23 much more so than is the case with 10. This is one that there  
24 at least is an alternative mechanism available, and that would  
25 be the declaratory statement.

1           COMMISSIONER SKOP: Okay. Well, like I say, I think  
2 my, my thoughts are -- again, I think some of the issues being  
3 teed up are important issues, and certainly addressing those  
4 and getting those to decision sooner rather than later I think  
5 is very important to promote a stable regulatory environment  
6 for nuclear construction in Florida. So I'm very cognizant of  
7 the issues.

8           Again, I think some of the reservation seems to be is  
9 this the appropriate forum to tee those issues up? And if it's  
10 as simple as requesting what would be equivalent to a  
11 declaratory statement on how the Commission would interpret the  
12 statute within a 90-day window, I would think that that would  
13 be a more appropriate mechanism to get the answer that you seek  
14 and the assurances you seek, but in a manner that wouldn't  
15 cloud the core proceeding. And, you know, I would note also  
16 that, you know, if that were filed in the near term, and I  
17 guess the Commission is supposed to ultimately reach a decision  
18 on need somewhere in mid-March, I think that the timing is  
19 almost concurrent there if, if declaratory statement would be  
20 the mechanism which your organization decides to go forward to  
21 clarify that issue.

22           I have concerns and I share the concerns of Mr. Beck  
23 and staff that bringing that issue in -- notwithstanding some  
24 of the due process concerns, because, again, I think there are  
25 other entities out there that would want to kind of probably

1 support the need to get that clarified sooner rather than  
2 later. So what I would respectfully do is decline to bring  
3 Issue 11 into the proceeding. And if certainly a declaratory  
4 statement is the appropriate mechanism to get the  
5 determination, then I'll leave that with your legal team to  
6 decide if that is the appropriate direction to go.

7 But so with that, I think we're going to move into  
8 Issue 12. Unfortunately, I do think there probably are some  
9 other significant reservations. So we'll start with FPL and go  
10 down the line.

11 MR. BUTLER: Commissioner, Issue 12, this is  
12 something that tracks very, very closely a stipulation that was  
13 approved in the uprate docket with respect to the sort of use  
14 of the mechanism and the timing of the mechanism for cost  
15 recovery. We think it would be appropriate to have that same  
16 sort of determination here. That's the way that the issue is  
17 structured. And we think, frankly, we think this one ought to  
18 be pretty straightforward; that there would not be disagreement  
19 with what we are describing in the issue. But, heck, again,  
20 it's one of these that if we're wrong on that, if there is  
21 actually a disagreement that we should be using the cost  
22 recovery mechanism envisioned by the cost recovery rule and  
23 should commence doing so with, you know, the first cycle after  
24 we've received an affirmative determination of need, we need to  
25 know that and we need to know it sooner rather than later. I

1 don't think that this is doing anything differently than what  
2 was done in the uprate docket, and it's very important to FPL  
3 to have that sort of certainty as we move forward.

4           COMMISSIONER SKOP: Point well taken. And, again, I  
5 do think addressing the issues that seem to track the statutory  
6 language almost verbatim -- but, again, I think what this  
7 ultimately boils down to is, is trying to mitigate any  
8 uncertainty and be risk adverse and to try and get an  
9 affirmative determination from the Commission how the  
10 Commission feels with respect to the issues. We'll move down  
11 the line and ultimately get to Mr. Beck in a second, I'm sure  
12 he has some concerns, but we'll start with Mr. Bryant.

13           MR. BRYANT: No positions.

14           COMMISSIONER SKOP: Okay. Mr. Young.

15           MR. YOUNG: None.

16           COMMISSIONER SKOP: Mr. Beck.

17           MR. BECK: Thank you, Commissioner Skop. I think the  
18 same concerns we stated with Issue 11 apply to 12. In fact,  
19 some of the comments that FPL made I think speak in favor of  
20 the Commission deciding these cases when you have specific  
21 contracts in front of you, specific costs. To the extent  
22 there's uncertainty on how to apply the rule to specific  
23 contracts and costs, that's best determined when they're in  
24 front of you instead of some generic statement. This issue is  
25 not ripe for this case. It will be ripe when they file with

1 specific items. And I think you ought to not have this issue  
2 in this case.

3 COMMISSIONER SKOP: Thank you. And just with respect  
4 to OPC's position, would OPC concur that a declaratory  
5 statement might perhaps provide a more appropriate procedural  
6 mechanism for addressing some of these concerns?

7 MR. BECK: We'd certainly look at it. I can't commit  
8 absent seeing what they file.

9 COMMISSIONER SKOP: Okay. Ms. Brownless.

10 MS. BROWNLESS: We have no position on this one, Your  
11 Honor.

12 COMMISSIONER SKOP: Ms. Kaufman.

13 MS. KAUFMAN: We have no comment on this issue.

14 COMMISSIONER SKOP: Okay. And I'm going to try and  
15 get this right because I know I've, I've not done a good job at  
16 this, so help me with this pronunciation. Mr. Krasowski.

17 MR. KRASOWSKI: Yeah. There you go.

18 COMMISSIONER SKOP: Did I get it right?

19 MR. KRASOWSKI: Very good.

20 COMMISSIONER SKOP: Okay. I'm trying. Because  
21 people mispronounce my last name all the time. But, again, any  
22 comments or concerns?

23 MR. KRASOWSKI: I appreciate your efforts at the name  
24 pronunciation.

25 Yes, a couple of brief comments. We view this as the

1 previous issue before that. We parallel -- well, we think it's  
2 inappropriate in this docket. There is a place for it under  
3 the nuclear power plant cost recovery. We're real sensitive to  
4 the needs of FP&L as far as this, their situation, even though  
5 we don't agree with them. But we don't think we should be  
6 writing the law as we go through this procedure. There are  
7 existing laws. And there was a comment earlier about the law  
8 not being -- identifying -- not being inclusive. And this  
9 nuclear power plant cost recovery, 256.0423(f) identifies site  
10 selection costs and preconstruction costs included are not  
11 limited to -- the ones that are included but are not limited to  
12 any and all costs associated with preparing, reviewing and  
13 defending a combined operation license, a COL application for a  
14 nuclear power plant. That's a pretty wide range and covers  
15 just about everything when it's included with the other things  
16 that are identified in this, in this law. So, you know, not to  
17 belabor the point, but we believe that this is more  
18 appropriately dealt with under another venue.

19 I don't know if I entirely understand. Maybe I could  
20 ask for a clarification what a declaratory statement is. But  
21 if I do understand it, we would be interested in having the  
22 same treatment given to other options that are available to the  
23 residents of Florida to satisfy their energy needs. Anything  
24 given to these or implied in this proceeding should apply to  
25 other energy generating or conservation efforts that will be



1 discussed as a course of the proceeding. Thank you.

2 COMMISSIONER SKOP: Thank you for your concern. And,  
3 again, I think a declaratory statement merely is an  
4 interpretation of how the Commission would interpret a  
5 particular provision or particular set of facts. So with that  
6 noted, and I see legal and technical staff still lined up, so  
7 I'm sure certainly that they want to express some concerns.  
8 And we'll start with Ms. Fleming.

9 MS. FLEMING: Thank you, Commissioner.

10 Yes, Mr. Butler is correct that in the uprate docket  
11 there was a rule very similar, or an issue very similar to this  
12 one. However, I would like to point out that in the uprate  
13 docket there was a question as to whether uprates could qualify  
14 for recovery under this rule. I don't believe that there's a  
15 question here. The rule is what it is. So staff's preference  
16 is that this rule not be included, or this issue not be  
17 included.

18 COMMISSIONER SKOP: Okay. And also just as a point  
19 of information with respect to the uprate docket, pretty much  
20 everything was stipulated in that, is that correct, as opposed  
21 to the current procedural posture?

22 MS. FLEMING: That's correct. Yes, that's correct,  
23 Commissioner.

24 COMMISSIONER SKOP: Okay. Mr. Cooke was here  
25 momentarily. I saw him sitting there. But I think he wanted

1 to add something perhaps.

2 MR. COOKE: Not on this issue, Commissioner. There's  
3 just -- perhaps if we go back to Issue 10, I have something to  
4 add.

5 COMMISSIONER SKOP: Okay. And staying on Issue 12, I  
6 see technical staff. Mr. Trapp, would you like to opine?

7 MR. TRAPP: We agree with legal.

8 COMMISSIONER SKOP: Thank you. Okay. With respect  
9 to Issue 12, I would like to ask one more question of  
10 Mr. Butler. With respect to Issue 12, noting the concerns that  
11 you've, that have been expressed here, is Issue 12 something  
12 that could be more appropriately handled via a different  
13 procedural vehicle; i.e., a declaratory statement?

14 MR. BUTLER: More appropriately, not in our view. It  
15 probably could be handled that way.

16 COMMISSIONER SKOP: Okay. All right. Okay. I'm  
17 trying to work with everyone here. I'm trying to build  
18 consensus but it's difficult.

19 That being said, with respect to Issue 12 I'm going  
20 to respectfully decline to put it into the proceeding based on  
21 the -- there may be more appropriate procedural, procedural  
22 ways of addressing that issue in a timely manner that would,  
23 again, not compromise the integrity of the court, of the court  
24 proceeding with collateral issues.

25 So that will bring us back to Issue 10. And what I'd

1 like to do, and I know we're pressing for time here, I would  
2 like to briefly take a five-minute recess so I could speak to  
3 legal staff with respect to -- and allow the parties to maybe  
4 come up with some proposed language and have that before me.  
5 And at that time we'll reconvene and I'll render some sort of  
6 determination one way or another. So with that we stand  
7 recessed.

8 (Recess taken.)

9 Okay. We're going to reconvene this proceeding.  
10 It's my understanding that there is some proposed revised  
11 language for Issue 10 that is floating around. Do they have a  
12 copy that I might be able to look at or can I read from it  
13 after you read it?

14 MR. LITCHFIELD: Let me read it and then I'll share  
15 this copy with you. This is our only copy. I'm happy to leave  
16 it with staff at the end of the day here as well.

17 COMMISSIONER SKOP: Okay. Okay. Thank you.

18 MR. LITCHFIELD: This would be Issue 10 as restated.  
19 "If the Commission grants FPL's petition to determine the need  
20 for the proposed generating units, should FPL commit, prior to  
21 the completion of the Rule 25-6.0423 cost recovery proceeding  
22 in 2008 (the 2008 NPPCR proceeding) to make advance forging  
23 reservation fee payments of approximately \$16 million to Japan  
24 Steel Works in order to preserve the potential for 2018 to 2020  
25 in-service dates for the proposed generating units?" And then

1 FPL's position would be as reflected in the revised position  
2 statement submitted to the parties on 1/11/2008 and as  
3 reflected on the document that I'll leave with staff.

4 COMMISSIONER SKOP: Okay. And briefly may I just --  
5 can you approach and let me take a look at the language? And,  
6 Mr. Cooke, do you have any comments that you'd like to add?

7 MR. COOKE: Commissioner, again, I think preference  
8 wise staff would rather not see the issue in, but we understand  
9 that there's a desire to try to find a way to encourage nuclear  
10 construction. And I guess the better -- if we're going to have  
11 the issue in here, I think we'd be more comfortable with the  
12 type of language that you're looking at now.

13 COMMISSIONER SKOP: Okay. Thank you. And with  
14 respect to --

15 MR. COOKE: And, Commissioner, it is within your  
16 discretion, I believe, to do this.

17 COMMISSIONER SKOP: All right. Thank you. And with  
18 respect to Mr. Beck's concerns versus -- that this isn't the  
19 final determination of prudence in any way, that it is just  
20 merely a commitment to make a payment subject to further review  
21 later, are you comfortable with the language that's been  
22 proposed?

23 MR. BECK: Yeah. Our concurrence with the issue is  
24 dependent on the position FPL has taken that it's only -- the  
25 decision the PSC will be making is only the decision to enter

1 advance payment commitments, not the specific contract terms  
2 including price.

3 I guess my concern is as the issue becomes more  
4 specific where it's naming dollars and specific, it seems to be  
5 contradicting the notion that it's only the decision to make a  
6 commitment, not the price and terms. If it's understood that  
7 the PSC's decision is only, is limited to the way it's stated  
8 in FPL's position, I'm okay with it.

9 COMMISSIONER SKOP: Okay. And I think, also, too,  
10 the underlining in the position statement about the "would  
11 remain subject to prudence," that remains the same. So OPC is  
12 comfortable with the revised proposed language?

13 MR. BECK: Yes, with that understanding.

14 COMMISSIONER SKOP: Okay. Thank you. Based on the  
15 input from OPC, FPL, the revised language and staff's input --

16 MR. KRASOWSKI: Commissioner Skop, am I going to have  
17 an opportunity to comment on this?

18 COMMISSIONER SKOP: Yes, sir. I would be remiss if I  
19 did not let Mr. -- let me try one more time to hopefully --  
20 I've got it hyphenated. Krasowski.

21 MR. KRASOWSKI: Yeah. Great.

22 COMMISSIONER SKOP: Thank you.

23 MR. KRASOWSKI: Thank you. I appreciate your effort.

24 COMMISSIONER SKOP: You're recognized.

25 MR. KRASOWSKI: Sure. It's our basic contention that

1 this does not belong in this docket. It's inappropriate  
2 because it can be dealt with under the nuclear power plant cost  
3 recovery process, and that's the appropriate place for it.

4 Now I do understand and I believe I finally get it  
5 that if FP&L has to wait to go through that process, they're  
6 going to potentially be at risk of missing an earlier action  
7 that they can take to secure their place in the queue, so it  
8 might cost more money. Okay? So there's a great effort now  
9 going on on your part and everybody else's part here to make an  
10 exception to the rule and the process to accommodate what they  
11 describe as their need for the purposes I just mentioned.  
12 Okay? So, you know, we oppose -- we think there are other ways  
13 of doing things, but not to the point where we're unreasonable.  
14 Okay? But we, we see -- this is a -- we're trying to  
15 circumvent the process to accommodate the building of this  
16 plant according to their schedule. That might be or might not  
17 be a good thing. But we haven't determined at all if they're  
18 correct in their assessment that moving ahead with this thing  
19 now is going to be, save money. It might be that in the long  
20 run if they don't move now, more people will reject nuclear  
21 power around the world, as once a couple of years ago everybody  
22 was jumping online to get, to build coal plants, you know. So  
23 as an example of that we don't know, and I don't think it's up  
24 to the PSC to make a predetermination on those issues because I  
25 just don't think we have the information in front of us now.

1           So we just have to stick with our position and  
2 respectfully so, and -- thank you, Jan -- and suggest, not  
3 suggest but represent our position that we don't believe this  
4 is an appropriate place for the docket, for this, for this  
5 issue on the docket. And who knows what the result will be,  
6 whether we move forward with accommodating their request or  
7 not. It isn't prudent, their position isn't prudent. Thank  
8 you very much for allowing me the time to make my comments.

9           COMMISSIONER SKOP: Thank you, sir, and your points  
10 are extremely well-taken.

11           Based on the input from FPL, OPC and legal staff,  
12 again, there have been significant reservations and concerns, I  
13 think, based on the proposed language, and to address  
14 Mr. Krasowski's concern, again, Issue 10 is just not carte  
15 blanche. It's predicated by a determination of need by the  
16 Commission before you'd ever reach that issue.

17           There is a tremendous public benefit though with  
18 respect to the potential for priority, not being able to have  
19 access to those forgings, the inherent cost escalation risks  
20 that may ensue if this issue is not addressed in a timely  
21 manner. There is a substantial nexus to the decision itself to  
22 the extent that it is predicated again by a determination of  
23 need. So you'd never reach this issue and it would become moot  
24 if there were not an affirmative finding of need. So, again,  
25 no one is predisposing themselves to a result or whatever, but

1 this is a substantial nexus that follows a logical decision by  
2 this Commission.

3           Based on the revised language that's been submitted  
4 by the parties for Item 10 and OPC's willingness to, to agree  
5 that that's in principle acceptable to them as an issue I do  
6 feel it is a very important issue for this Commission to  
7 consider, and on that I will allow the revised language for  
8 Issue 10 into the proceeding for determination by this  
9 Commission should there be a -- predicated by a determination  
10 of need. So Issue 10 will come in.

11           And based on that -- I think that addresses all the  
12 issues that we have before us, and we're going to at this point  
13 hopefully move forward in short order and address the exhibits  
14 list under Item IX. And I believe staff has some comments with  
15 respect to the exhibit list.

16           MS. FLEMING: Yes. Staff would just like to note for  
17 the record that we will prepare a comprehensive list that will  
18 consist of the prefiled exhibits. We also intend to prepare a  
19 proposed staff composite exhibit that we will provide to all  
20 the parties to see if we could possibly stipulate that as, as  
21 an exhibit.

22           The -- our intent is that the composite exhibit shall  
23 include some discovery responses and possibly deposition  
24 transcripts as well as previously discussed.

25           COMMISSIONER SKOP: Thank you, Ms. Fleming. And



1 based on that, if there isn't any further comments with respect  
2 to Section IX, we'll move on to Section X, proposed  
3 stipulations. And --

4 MS. BROWNLESS: Commissioner, I just have a  
5 clarifying question.

6 COMMISSIONER SKOP: Yes, ma'am. Yes, Ms. Brownless.

7 MS. BROWNLESS: Will any confidential materials --  
8 are you aware of whether any confidential materials will be  
9 included in your exhibits? And, if so, I would just indicate  
10 to FP&L that we would be willing to execute whatever  
11 confidentiality agreements were necessary.

12 MS. FLEMING: Well, at this time staff is not aware  
13 if we're going to have any confidential discovery responses as  
14 part of the exhibit. We're still working on that. Once we  
15 determine what responses are necessary for staff's composite  
16 exhibit, then we'll notify the parties and we'll designate  
17 which exhibits are confidential.

18 MR. BECK: Katherine, if I may, this is Charlie Beck.  
19 At this point it's my expectation that we'll use Pages  
20 141 through 143 of the ICF study which was produced in  
21 discovery and that would be confidential. So it's my intent at  
22 least at this point that we would have one confidential  
23 exhibit.

24 MS. FLEMING: Okay.

25 COMMISSIONER SKOP: Okay. Moving forward with -- I

1 think that resolves all the discussion on the exhibit list.

2 Moving forward to Section X, proposed stipulations. Staff?

3 MS. FLEMING: We're not aware of any stipulations at  
4 this time.

5 COMMISSIONER SKOP: Okay.

6 MR. TRAPP: Commissioner Skop, this is Bob Trapp.

7 COMMISSIONER SKOP: I'm sorry. Mr. Trapp, you're  
8 recognized.

9 MR. TRAPP: I would just like to comment that I did  
10 circulate amongst the parties at the last break, last big  
11 break, and I think we've tentatively agreed to meet next  
12 Tuesday to see if some resolution can't be resolved with regard  
13 to Issue 13. We will, staff will -- legal staff will be  
14 noticing that and we will try to go forward with that.

15 COMMISSIONER SKOP: Okay. And I appreciate any  
16 efforts in that regard. Again, what is ultimately decided I  
17 think depends on the position of what the parties want to do.  
18 And certainly if staff wants to facilitate discussions,  
19 that's -- again, I have no objection. But, again, I think  
20 that's a decision that the parties will have to make for  
21 themselves.

22 Any further comments before we move on into the  
23 pending motions under Section XI?

24 MS. FLEMING: Staff would note for the record as far  
25 as FPL's motion for a temporary protective order, an order was

1 issued today, as well as for the other pending motions on the  
2 motions for intervention the orders will be forthcoming as  
3 discussed earlier today.

4 COMMISSIONER SKOP: Thank you, Ms. Fleming. Moving  
5 on to Section XII, pending confidentiality motions.

6 MS. FLEMING: Staff would note that the request for  
7 confidential classification of Exhibit SDS-3, there was an  
8 order issued today. The other pending confidentiality matter  
9 regarding the response to PODs Numbers 16 and 17 is still  
10 pending.

11 COMMISSIONER SKOP: Thank you. Okay. Moving on to  
12 Section XIII, post-hearing procedures, I guess it's -- okay.  
13 Typically the position, post-hearing position is 50 words and  
14 the number of pages in post-hearing briefs is limited to 40.  
15 Is that going to be acceptable to the parties? Mr. Butler.

16 MR. BUTLER: We were -- I was inquiring as to what we  
17 had in the Glades Power Park project docket, and I think that  
18 it was extended somewhat. I'm hearing 50 pages. But I guess  
19 what we would like to have is the same page limit that we were  
20 permitted in the Glades project docket.

21 COMMISSIONER SKOP: Ms. Brubaker, Ms. Fleming, can  
22 you --

23 MS. BRUBAKER: Unfortunately my memory is not quite  
24 that good. I don't recall if it was 50 or 60. But we'd be  
25 happy to check, provided it's amenable to all. Is it 60?

1 MR. BUTLER: I'm hearing 60 now from the back.

2 MS. BRUBAKER: Okay. You know --

3 MR. BUTLER: We would like to have that same limit.

4 MS. BRUBAKER: -- I always operate from the viewpoint  
5 of less is more, but --

6 COMMISSIONER SKOP: Oh, I agree. I've had to digest  
7 quite a few dockets, so I do agree with less is more. I would  
8 like to be, you know, consistent with past practices, assuming  
9 there's no overwhelming objection. But certainly if they could  
10 accomplish it in 50, that would be great. But if Glades was  
11 60, then I'm willing to entertain that.

12 MR. KRASOWSKI: Excuse me, Commissioner.

13 COMMISSIONER SKOP: Mr. Krasowski.

14 MR. KRASOWSKI: That's close enough.

15 COMMISSIONER SKOP: Okay. I got it. Sorry.

16 MR. KRASOWSKI: My memory isn't the best, but I  
17 thought the Glades project was 100 pages.

18 COMMISSIONER SKOP: We don't need to go there.

19 MR. KRASOWSKI: Well, actually our post-hearing  
20 statement was nine pages. But it was single-spaced, so it  
21 would have been 18. But I think 50 pages might be adequate.  
22 But are you saying 50 words for each issue?

23 COMMISSIONER SKOP: I believe that the issue is for  
24 number of words in the post-hearing position, and I'll ask  
25 staff to clarify that.

1 MS. BRUBAKER: I think what Mr. Krasowski is  
2 referring to is in addition to extending the page limit for the  
3 briefs, there's also an extension of the number of words  
4 allowed for the position statement that's between the  
5 asterisks, and I think that was extended possibly 100 words. I  
6 don't know. And then the number of pages in the brief itself  
7 was 50 or 60. And, again, my apologies for the lack of recall.

8 COMMISSIONER SKOP: Okay. For the sake of making a  
9 command decision under the time frames that we are dealing  
10 with, we're going to limit the words to 100 words in the  
11 post-hearing positions. I think that should be fair and  
12 adequate to say what the parties need to say. The number of  
13 pages for the post-hearing briefs is going to be 60.

14 Moving forward. Section XIV, rulings, and I would  
15 suggest, if the parties concur, that the opening statements be  
16 limited to ten minutes. And I would like to get some quick  
17 input on that, but typically less is more. Mr. Butler.

18 MR. BUTLER: We don't think that we -- you know, ten  
19 minutes per party is fine for us. Our concern is that we think  
20 that ten minutes per party for each of the parties that have  
21 been permitted to intervene on the issue of potential  
22 participation in the units would be excessive because they have  
23 some variation but largely the same themes and issues among  
24 them.

25 COMMISSIONER SKOP: I understand. I do think -- I

1 know we addressed the issue in the oral arguments where we gave  
2 FPL a little bit more time, but I do think that the, the  
3 forthcoming order will address the intervention as granted. It  
4 seems generally that the parties have expressed that they're in  
5 favor of the, the need determination position, at least the  
6 intervening utilities. And if they would respectfully try to  
7 limit their opening statements, I think that would facilitate.  
8 But I do think ten minutes would be adequate. I understand the  
9 concern that is raised.

10 Let me just briefly go through the line just to check  
11 this while I have the parties here. With respect to the  
12 intervening utilities, Mr. Bryant, do you expect that you'll  
13 use your entire ten minutes or will it be substantially shorter  
14 based on some of the rulings today?

15 MR. BRYANT: I don't think it will be ten minutes,  
16 sir, but I just haven't thought about it. I'm sorry.

17 COMMISSIONER SKOP: I'm asking a lot of people today,  
18 but thank you. Mr. Young.

19 MR. YOUNG: I can do mine in five.

20 COMMISSIONER SKOP: Okay. Mr. Beck.

21 MR. BECK: Ten is more than adequate.

22 COMMISSIONER SKOP: Okay. Ms. Brownless.

23 MS. BROWNLESS: I would agree with Roy; five is  
24 enough for me.

25 COMMISSIONER SKOP: Okay. Ms. Kaufman.

1 MS. KAUFMAN: I haven't really given any thought to  
2 that yet either, so, you know, I'd like to stick with ten, and  
3 I'll try to do it more briefly if I can.

4 COMMISSIONER SKOP: Okay. Mr. Krasowski.

5 MR. KRASOWSKI: Ten would probably do it, but we'd  
6 like, if we go over ten, we wouldn't want to be cut off. And  
7 given the extent of what we're trying to represent -- and I  
8 would write it out beforehand so it would be succinct and  
9 concise.

10 COMMISSIONER SKOP: Well, I understand. I think the  
11 purpose of setting a limit is to make sure that we don't go  
12 over because, again, we have a lot to encompass within the  
13 hearings. But it's my understanding that ten minutes would be  
14 adequate. Five or less or under ten would, I think, adequately  
15 address most of the intervening utilities.

16 So based on what you've heard, Mr. Butler, is ten  
17 still less than you would need or would it be sufficient?

18 MR. BUTLER: I was probably not making myself clear  
19 there. We don't want more. We're okay with ten.

20 COMMISSIONER SKOP: Okay.

21 MR. BUTLER: We just really don't want to see the  
22 proceeding get bogged down with lengthy duplication in prior or  
23 subsequent statements.

24 COMMISSIONER SKOP: Okay. Right. And just also,  
25 too, I would ask the parties to limit friendly cross in terms

1 of the things that may be brought up to promote efficiency.

2 Mr. Krasowski.

3 MR. KRASOWSKI: Yes, Commissioner. I'd like to make  
4 the point that we are the only Intervenors that are critical of  
5 the proposal and have an alternative to offer. The other  
6 parties are trying to be involved with the project and are  
7 supportive of the petition overall for the most part. So, you  
8 know, we'd appreciate -- we'll try to keep it to ten. If we go  
9 a couple of minutes over, not to exceed 15, we'd like to be  
10 able to do that because we have to make a case for a whole new  
11 strategy.

12 COMMISSIONER SKOP: I understand. Typically in the  
13 proceedings we do try and limit it for ten minutes. And, you  
14 know, you should have ample time in the cross-examination  
15 process to flesh out the, the points that you feel need to be  
16 made in terms of whatever you decide to advocate for.

17 Based on that, we are going to limit the opening  
18 statements to ten minutes based on what I've heard today. And  
19 I think that that's consistent with past practice and certainly  
20 something that everyone can live with.

21 That moves us into other matters. Staff, are there  
22 any other matters that we need to address? And I know there's  
23 one I need to, to speak to with respect to changing parties'  
24 positions based on some of the rulings.

25 MS. FLEMING: Yes, and that was going to be my



1 comment as well. With all the issues being dropped or excluded  
2 from this proceeding, to the extent that parties' positions  
3 change, if they could e-mail staff as well as copy all the  
4 parties as far as the position change. And to the extent that  
5 they can do so by the close of business on Thursday, Thursday,  
6 January 17th, so that we can incorporate that in the Prehearing  
7 Order.

8 COMMISSIONER SKOP: And thank you, Ms. Fleming. And,  
9 like I say, I'd like to echo that. In light of the issues that  
10 we discussed here today, I would strongly encourage the parties  
11 to revisit their initial positions and provide staff with their  
12 revised position statement. I think that would go a long way  
13 in facilitating getting things up to speed and moving forward.

14 If there's no other concerns that should be brought  
15 forth, I think at this point finally we're ready to -- I stand  
16 corrected. Ms. Brownless, you're recognized.

17 MS. BROWNLESS: Just very briefly. I know that we  
18 had talked about excluding certain witnesses. And if we're all  
19 going to meet together next Tuesday, perhaps we could use that  
20 as an opportunity to work on that.

21 And along that same line, if witnesses are excluded,  
22 do you still intend to order your witnesses more or less as  
23 they are in the Prehearing Order, Mr. Butler?

24 MR. BUTLER: I expect that we would just take the  
25 ones that were excused out and remain in the order for the ones

1 that were left.

2 MS. BROWNLESS: Sure. And then just go as you have  
3 them listed?

4 MR. BUTLER: That's right.

5 MS. BROWNLESS: Thank you.

6 COMMISSIONER SKOP: All right. Based on the above, I  
7 think we've handled all the business before us here today. And  
8 if there are no further questions, we stand adjourned. Thank  
9 you.

10 (Prehearing Conference adjourned at 5:22 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 16<sup>th</sup> day of January, 2008.

Linda Boles  
LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734