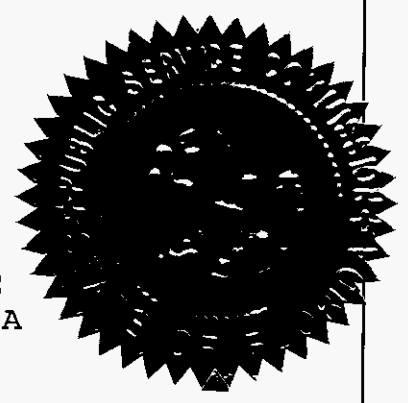


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR INCREASE IN RATES BY FLORIDA POWER & LIGHT COMPANY. DOCKET NO. 080677-EI

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PETITION FOR INCREASE IN RATES BY PROGRESS ENERGY FLORIDA, INC. DOCKET NO. 090079-EI



PROCEEDINGS: AGENDA CONFERENCE  
ITEMS NO. 4 and 4A

COMMISSIONERS PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, August 18, 2009

TIME: Commenced at 10:52 a.m.  
Concluded at 3:36 p.m.

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

REPORTED BY: MARY ALLEN NEEL, RPR, FPR

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

1  
2 CHAIRMAN CARTER: We are back on the record.  
3 And, Commissioners, when we last left, we had  
4 completed Item 6, which, as you know, was a phone  
5 participation, so we had to take that one out of  
6 order. Right now we will revert to the order, and  
7 we are on Item 4.

8 Staff, you're recognized.

9 MS. GERVASI: Good morning, Commissioners.  
10 Roseanne Gervasi on behalf of Commission legal  
11 staff.

12 Item 4 is staff's recommendation to deny  
13 Progress Energy and Florida Power & Light's  
14 requests for confidential classification for  
15 certain information pertaining to employee  
16 compensation that staff requested and the companies  
17 have provided by way of discovery propounded in  
18 Docket Nos. 080677-EI, which is FPL's rate case,  
19 and 090079-EI, Progress Energy's rate case.

20 We have an oral modification to this  
21 recommendation with respect to Issue 3 for Florida  
22 Power & Light. On August 13, 2009, FPL filed its  
23 second revised request for confidential  
24 classification, which FPL indicates is intended to  
25 replace and supersede its previously filed requests

1 for confidentiality that are the subject of this  
2 recommendation.

3 By this new filing, FPL seeks to protect  
4 employee compensation information that the company  
5 included in supplemental responses to certain staff  
6 interrogatories. FPL's arguments for maintaining  
7 the confidentiality of this employee compensation  
8 information are the same arguments that it made in  
9 its previous requests for confidentiality and are  
10 laid out in Issue 3.

11 Staff recommends that FPL's second revised  
12 request for confidential classification be denied  
13 for the reasons set forth in the recommendation.

14 Staff also recommends that the companies be  
15 required to provide in a publicly available manner  
16 spreadsheets which, at a minimum, match the  
17 compensation information at issue to the specific  
18 job titles previously provided. That information  
19 is the subject of Item 4A on today's agenda  
20 pertaining to staff's motions to compel.

21 Mr. Tim Devlin has some opening remarks in  
22 cueing up this item as well.

23 CHAIRMAN CARTER: Commissioners, after we hear  
24 from Mr. Devlin, then we'll go to the parties.

25 Mr. Devlin, good morning.

1 MR. DEVLIN: Thank you, Mr. Chair. I thought  
2 it might be helpful to provide a brief overview of  
3 the interrogatories that we're going to be talking  
4 about, the topic of conversation this morning.

5 These interrogatories -- and there's actually  
6 three groups of them -- provide a breakdown of the  
7 major compensation components for all employees of  
8 FPL, FPL Group, Progress of Florida, and Progress  
9 Energy, whose total compensation exceeds \$165,000.  
10 This includes salary, overtime, bonus, incentive  
11 payments, stock awards, et cetera. This represents  
12 approximately -- well, between 4 and 5 percent of  
13 the total workforce of FPL and Progress.

14 Neither company, to my knowledge, has alleged  
15 that it would be costly or burdensome to produce  
16 this information. The only concern appears to be  
17 the public disclosure. In recognition of this  
18 concern, staff has modified its request to leave  
19 out employee names and rely on position titles and  
20 the related compensation levels.

21 Now, compensation levels are typically at  
22 issue in a rate case. However, the level of detail  
23 in this case has not been requested before. We  
24 believe there are good reasons to heighten the  
25 level of scrutiny of compensation levels for the

1 higher paid employees.

2 One, these are extraordinarily large rate  
3 increase requests, about 1.5 billion for FPL when  
4 you total the generation base rate adjustment, the  
5 2010 and 2011 subsequent year adjustments, and a  
6 half a billion for Progress.

7 Second, the state of the economy has increased  
8 the concern, heightened the concern of consumers  
9 over levels of executive compensation.

10 And third, and related to two, I suppose, this  
11 has been an issue that has been in parts of the  
12 American economy in general, most notably the  
13 financial sector.

14 I would like to stress at this point it's  
15 always a judgment call on what level of information  
16 is needed for any particular subject in a rate  
17 case. The higher level of detail will lead to a  
18 better analysis, hopefully, and ensure that only  
19 reasonable costs are included in rate setting.

20 In this particular area, we're looking at four  
21 areas. We're looking at the trend analysis, 2008,  
22 '9, '10, and for FPL, 2011, for these individuals  
23 to see what level of increase in pay is embedded in  
24 their analysis.

25 We're also looking at the allocation of costs

1           between regulated FPL and non-regulated, maybe a  
2           non-regulated affiliate or FPL Group, and the same  
3           with Progress. We need to assure that the  
4           companies do not overallocate costs to the  
5           regulated operations.

6                     We're going to be looking at justification,  
7                     since we've already found out there's overtime  
8                     payments for salaried employees, and justification  
9                     for incentive payments and bonuses that perhaps are  
10                    related to achieving shareholder goals. We will  
11                    scrutinize those situations.

12                   And lastly, we are looking at all the IOUs for  
13                   comparison purposes to see if compensation levels  
14                   for a particular utility are out of line.

15                   The companies, I think you're going to hear  
16                   this morning, would prefer to provide this  
17                   information in an aggregate format, such as a  
18                   payroll category. This provides a higher level  
19                   review and is useful, but not as useful as  
20                   disaggregated information, compensation levels by  
21                   certain employees where it's easier to identify  
22                   anomalies. Let me give one example. For instance,  
23                   by looking at individual compensation levels, we  
24                   may note that a particular position, let's say a  
25                   comptroller, has allocated 100 percent of his or

1 her time to regulated operations. We would pursue  
2 that, question that. If we had aggregate  
3 information, we would not know that.

4 The bottom line, averages tend to mask  
5 possible problem areas.

6 Mr. Chairman, that's what I have. That's all  
7 I have. Thank you.

8 CHAIRMAN CARTER: Thank you. Ms. Gervasi.

9 MS. GERVASI: Mr. Chairman, prior to hearing  
10 from the parties, we would suggest that the  
11 Commission first make a ruling on Issue 1, which is  
12 staff's recommendation to grant the companies'  
13 request for a full determination -- rather for a  
14 determination by the full Commission, and staff  
15 recommends that Issue 1 be ruled upon before  
16 hearing from representatives of the companies who  
17 are here to speak today.

18 CHAIRMAN CARTER: Commissioners, that's a  
19 procedural matter from staff.

20 COMMISSIONER EDGAR: Chairman Carter, in order  
21 to put us in the proper posture to proceed, I would  
22 make a motion in favor of the staff recommendation  
23 on Issue 1.

24 COMMISSIONER SKOP: Second.

25 CHAIRMAN CARTER: Commissioners, it has been

1 moved and properly seconded. That will give us an  
2 opportunity for the full Commission to determine  
3 this. Are you ready for the question? All in  
4 favor, let it be known by the sign of "aye."

5 (Simultaneous affirmative responses.)

6 CHAIRMAN CARTER: All those opposed, like  
7 sign. Show it done.

8 Now, staff, tee it up for us.

9 MS. GERVASI: Thank you, Commissioner. I  
10 think that's what we've just attempted to do.  
11 Parties are hear to speak. Issue 2 is with respect  
12 to FP -- rather, Progress Energy's request for  
13 confidentiality, so perhaps they should go first.

14 CHAIRMAN CARTER: Commissioner Skop.

15 COMMISSIONER SKOP: Thank you, Mr. Chairman.  
16 Just as a point of information, I guess I had a  
17 concern on Issue 4 versus 4A to the extent that  
18 neither company has essentially been completely  
19 responsive and provided a complete dataset to  
20 staff's discovery request. So I wonder if by  
21 ruling on the confidentiality of an incomplete  
22 dataset, only to then consider the motion to  
23 compel, whether that causes any -- whether that  
24 might be in proper order or not.

25 I guess I would be more comfortable if I could



1 have my aide pass out what I would, I guess, hope  
2 to have seen at this point. I have a spreadsheet  
3 that basically -- I guess each company has provided  
4 different types of data. Some have kept certain  
5 data at their offices. Some have not provided it  
6 at all.

7 But it would seem to me -- and again, this is  
8 just a template of at least what I would like to  
9 see, irrespective of reaching the confidential  
10 issue or not. It would be nice at this point in  
11 the proceeding if we had this information, but we  
12 don't, and I think staff will explain that.

13 But essentially, the first sheet -- and it  
14 goes year by year -- would be the job title,  
15 whether one is an officer or what entity they work  
16 for, and the salary information that has been  
17 requested by staff. The second page would be the  
18 names which are at issue and contentious in this  
19 docket, which would be on another confidential  
20 document. These documents are not confidential,  
21 but just merely to illustrate what I would hope  
22 that in response to a reasonable discovery request  
23 the companies would have already provided, and they  
24 have not done so, for reasons that I think they'll  
25 get to. There are some legal arguments.

1           But again, I hope that, you know, if we were  
2           to have information in this format, consistent,  
3           uniform format, it would be a lot easier. I really  
4           had no interest in the salary information itself.  
5           I was content to let the staff do its analysis.  
6           But unfortunately, this information has not been  
7           provided to our staff at this point, so it's  
8           unfortunate that we are here today.

9           But again, my interest is getting staff the  
10          necessary information they need to do the  
11          regulatory function. Thank you.

12          CHAIRMAN CARTER: Hang on, Commissioner,  
13          before you go.

14          Commissioner Argenziano, Commissioner Skop has  
15          a --

16          COMMISSIONER ARGENZIANO: Yes, Mr. Chair.

17          CHAIRMAN CARTER: Commissioner Skop has a  
18          document here, and I want to make sure that you  
19          understand what he's talking about here.

20          COMMISSIONER ARGENZIANO: I don't know at this  
21          point.

22          CHAIRMAN CARTER: Okay. Well, let's do this.  
23          Commissioner, could you take a moment, please, sir,  
24          and just kind of walk us through this document?

25          COMMISSIONER SKOP: Yes, sir. Thank you.

1           Commissioner Argenziano, I know it's hard to  
2           see because you're not able to be with us today,  
3           but essentially, staff has propounded upon the  
4           various utilities discovery requests for which the  
5           respective utilities have not been fully responsive  
6           to. They've asserted confidentiality, which would  
7           be the norm, but certain information is tucked away  
8           in certain keys, some companies have multiple keys,  
9           and there's no real response to what staff has  
10          deemed to be a legitimate discovery request.

11           So to try and standardize or, you know, put a  
12          template into what I would expect to see at this  
13          point as a Commissioner, at a minimum, I would  
14          expect to have seen a confidential filing with a  
15          numbered key on the left-hand side for each of the  
16          individual job titles, and then there would be  
17          columns, whether they're an officer, or what entity  
18          they're affiliated with, their base salary, stock  
19          awards, option awards, non-equity incentive  
20          compensation, all other, total compensation, and  
21          adjusted jurisdictional amount. So basically it's  
22          a spreadsheet that would basically be responsive to  
23          what staff has asked for. Now --

24                    COMMISSIONER ARGENZIANO: Commissioner Skop.

25                    COMMISSIONER SKOP: Yes.

1                   COMMISSIONER ARGENZIANO: What you're  
2 describing is what I asked staff and asked to have,  
3 and what you're saying it should be -- what you're  
4 showing is a spreadsheet of how it should have been  
5 delivered?

6                   COMMISSIONER SKOP: Well, I would hope that we  
7 would have had it presented in that manner, and  
8 what I see is a very fragmented, not fully  
9 responsive response from the various companies.  
10 And I just wonder -- you know, I can't help but  
11 wonder whether this, you know, basically boils down  
12 to a fundamental lack of respect for the regulatory  
13 process. I mean, we have a regulatory function to  
14 perform.

15                   And I know that there are valid legal  
16 arguments that the companies are asserting, but  
17 typically if the Commission requests something, you  
18 should file the data. You have adequate protection  
19 under confidentiality statutes and the appellate  
20 process to protect your interests and disclosure of  
21 that data.

22                   But what it has boiled down to essentially is  
23 the state of regulation has basically gotten to  
24 that point of the regulated entities dictating what  
25 they will provide and how they will provide it to

1 this Commission.

2 And my interest in this, irrespective, again,  
3 of how the Commission rules on the confidentiality  
4 issue, is getting staff the basic data that they  
5 need to do their job. And that's essential  
6 regulatory function. It's relevant data. And my  
7 view is that it should have been provided to the  
8 Commission without a lot of iteration, without a  
9 lot of hiding the ball. It's plain and simple.  
10 It's a very straightforward request.

11 And again, the template that was created just  
12 merely illustrates what I would expect to see as a  
13 Commissioner in consistent, uniform format that the  
14 companies would be responsive to.

15 Now, I understand they can file that under  
16 confidentiality, and I would expect them to do so.  
17 The names, again, are more contentious. That could  
18 be in a separate confidential document. But  
19 putting the job titles with the compensation in one  
20 stand-alone document seems to me very  
21 straightforward and a reasonable request. And we  
22 can get to the underlying legal arguments in a  
23 second, but my concern is that there has not been a  
24 full response to a legitimate data request  
25 forwarded to the regulated entities by Commission

1 staff.

2 And you've got two major rate cases, and it  
3 just seems to me that, you know, if the information  
4 were consistently presented, that would help, you  
5 know, cut through the process. I mean, to me, it's  
6 very unfortunate that we're where we're at today,  
7 because just having to go through this exercise  
8 takes a lot of time away from our Commission staff  
9 from reviewing the merits of the respective rate  
10 cases. And it's a drain on our resources to have  
11 to go through this, and it would be much simpler  
12 and much less acrimonious if the utilities would  
13 have simply replied or responded fully to a  
14 legitimate discovery request and argued the merits  
15 of the confidentiality and the disclosure later.  
16 That's the good way of going about it. But what  
17 they've done is selectively responded, dictated  
18 what they will provide, how they will provide it,  
19 and to me, basically, that is unacceptable.

20 COMMISSIONER ARGENZIANO: Commissioner Skop,  
21 Mr. Chairman.

22 CHAIRMAN CARTER: You're recognized,  
23 Commissioner.

24 COMMISSIONER ARGENZIANO: Commissioner Skop, I  
25 don't know how else to say it other than -- you

1           said that the lack of that information being  
2           provided by the companies is not -- it is actually  
3           not good for staff in doing their job. Okay. The  
4           reason I asked for that information to begin with  
5           was because I felt it was for every Commissioner to  
6           be able to have to do their job as well as staff.  
7           So I think I understand what you're saying. But,  
8           of course, they didn't want to give that  
9           information. That's why they're here today saying  
10          they want to keep it confidential, even to us, the  
11          Commission, rather than a separate issue of it  
12          being public.

13                 But what you're saying is, in the paper you  
14          handed out, you have -- and forgive me, because you  
15          probably said it and I didn't catch it. But it's a  
16          spreadsheet of how they should have provided that  
17          information, at least to the Commission and staff?

18                 COMMISSIONER SKOP: Yes, Commissioner. Again,  
19          at least in my opinion -- and again, my opinion may  
20          not be shared by the Commission, but I would expect  
21          to see a consistent, uniform response that is fully  
22          compliant with staff's discovery request, and I  
23          have not seen that.

24                 I looked at the data on Friday. Again, I was  
25          content at this point in the process to allow staff

1 to review the data. But again, what heightened my  
2 scrutiny of this, notwithstanding the issues that  
3 we'll be called upon to decide, was to see the  
4 gamesmanship in terms of the manner in which the  
5 data was being provided, and that to me is  
6 unacceptable.

7 It would be a far better, more prudent course  
8 of action for the utilities to be fully compliant  
9 with the discovery request and litigated the  
10 various confidentiality issues later. They have  
11 the appellate process to protect them, and they  
12 also have the confidentiality statutes that I'm  
13 sure this Commission will address.

14 But the fact is, when this Commission requests  
15 data, we are the regulators. We should be provided  
16 the data as regulators. We should not allow the  
17 utilities to regulate the Commission nor Commission  
18 staff.

19 CHAIRMAN CARTER: Commissioner Argenziano, are  
20 you clear on that? Just for review, the column has  
21 a key, then there's a job title.

22 COMMISSIONER ARGENZIANO: Yes, I think I  
23 understand that.

24 CHAIRMAN CARTER: Okay. All right. And it  
25 goes all the way through. I just wanted to make



1           sure.

2           COMMISSIONER ARGENZIANO: Thank you.

3           CHAIRMAN CARTER: It's a very comprehensive  
4 document too, Commissioner Skop.

5           COMMISSIONER ARGENZIANO: Thank you very much.

6           CHAIRMAN CARTER: Okay. We were getting ready  
7 to hear from the parties, right, Ms. Gervasi?

8           MS. GERVASI: Yes, Commissioners.

9           Commissioner Skop's concerns appear to go more  
10 towards the motions to compel, and if it's the  
11 Commission's pleasure to hear Item 4A before Item  
12 4, I think we could accommodate that. We could  
13 probably do it either way.

14          COMMISSIONER ARGENZIANO: Well, Mr. Chair.

15          CHAIRMAN CARTER: Commissioner Argenziano,  
16 you're recognized.

17          COMMISSIONER ARGENZIANO: In giving it some  
18 thought, not being able to see the sheet -- and  
19 believe me, I wish I was there. If there's  
20 something that's missing from the sheet that I  
21 can't see -- I'm not sure that at this point staff,  
22 you know, is not doing right all by itself with its  
23 own recommendation. We have not gotten the  
24 information we requested.

25                 And I'm not sure what weight that particular

1 sheet that I can't see would have, even though I  
2 agree with Commissioner Skop on the face of it  
3 that, you know, we asked for information and we  
4 didn't get it. And I think the company is saying  
5 they don't want to give it to us. It's quite  
6 clear. And I'm waiting to hear why, of course, to  
7 figure out if they have a legitimate reason.

8 But I'm not sure what weight we want to give  
9 to that spreadsheet, with all due respect to  
10 Commissioner Skop, because I'm not sure if  
11 something is missing from that. I don't want to --  
12 I think staff has done a pretty good job thus far  
13 and would hope that if there's something missing on  
14 that sheet, that they would include it in there.

15 CHAIRMAN CARTER: Commissioner Skop.

16 COMMISSIONER SKOP: Thank you, Mr. Chair.  
17 Briefly, to Commissioner Argenziano, I do agree,  
18 again, what the spreadsheet attempted to be was  
19 just merely a template to encourage a uniform  
20 response such that each company just doesn't decide  
21 what it's going to do, because what I see is a  
22 bunch of randomness, and it's an attempt to unify  
23 and provide a uniform -- encourage the companies,  
24 depending upon what the Commission decides, an  
25 attempt to cause the utilities to provide a uniform

1 response that will allow staff to review the data  
2 quickly instead of the iterative nature of what has  
3 occurred to date, where staff has spent a  
4 considerable amount of its time having to cull  
5 through incomplete data. And again, that takes our  
6 staff away from its critical job function of not  
7 only reviewing that data, but reviewing the other  
8 essential elements of the rate case. And we are  
9 resource constrained here. And again, it's a  
10 simple basic discovery request that should have  
11 been complied with, and it's disappointing that  
12 we're here today.

13 COMMISSIONER ARGENZIANO: Mr. Chair.

14 CHAIRMAN CARTER: Commissioner Argenziano.

15 COMMISSIONER ARGENZIANO: Commissioner Skop, I  
16 think my question is -- I understand what you're  
17 doing with the spreadsheet, and I know we are  
18 resource constrained, but these are some very big  
19 cases at the PSC. Our staff need the information,  
20 obviously.

21 But what I'm suggesting is if we use your  
22 spreadsheet rather than the utilities -- I mean, I  
23 don't have a problem with the utilities providing  
24 it, but they're telling us they don't want to. But  
25 I thought if there's something missing, what I

1 would like from you is the ability to let staff add  
2 or, you know, modify as we go along, because I  
3 can't see that sheet, and I'm not sure you have  
4 everything that -- I've asked for things, and I  
5 quite simply just want answers to what I asked for,  
6 as well as staff. So if we're going to depend or  
7 rely on your spreadsheet, I would like the ability  
8 for staff to modify that as necessary.

9 COMMISSIONER SKOP: And absolutely. Again,  
10 this took what was the elements of the staff  
11 request and tried to reduce it to paper. But I'm  
12 open to that. Again, I'm just trying to get  
13 uniform data and just cut through the chase of the  
14 iterative nature of what has been provided and  
15 having utilities dictate what they will provide and  
16 the manner in which they will provide it. Again,  
17 that's getting really old really quick. We need to  
18 get the data we need to do our job, and I fully  
19 back staff. So again, thank you, Commissioner.

20 CHAIRMAN CARTER: Commissioners, before we go  
21 forward, staff raised an interesting issue, and I  
22 would like some feedback from you on how to  
23 proceed. Ms. Gervasi mentioned the possibility of  
24 dealing with 4A before 4. Could you just kind of  
25 give us a little more on that, and we can determine

1 then how we want to proceed procedurally,  
2 Ms. Gervasi.

3 MS. GERVASI: Certainly, Commissioner. Item 4  
4 concerns information that the companies have  
5 provided already under claims or requests for  
6 confidentiality. Item 4A concerns the items that  
7 staff needs and has requested in discovery that the  
8 companies have thus far not given us. And that I  
9 think goes more towards Commissioner Skop's concern  
10 about needing the information that he created the  
11 spreadsheet about. So it's a matter of which  
12 item --

13 CHAIRMAN CARTER: What's your recommendation?

14 MS. GERVASI: We could do 4A first if you want  
15 to go into what has not been provided.

16 CHAIRMAN CARTER: Commissioners.

17 MS. GERVASI: But I really think we could do  
18 it either way.

19 CHAIRMAN CARTER: Commissioners, we've got a  
20 recommendation from staff to go with Item 4A before  
21 we do 4. Does anyone have heartburn on that?

22 COMMISSIONER ARGENZIANO: No, Mr. Chair. I  
23 agree with staff.

24 CHAIRMAN CARTER: Okay. Commissioner Edgar?

25 COMMISSIONER EDGAR: I guess I didn't hear the

1 staff recommend 4A before 4.

2 CHAIRMAN CARTER: That's what I thought she  
3 said.

4 COMMISSIONER EDGAR: But I can see arguments  
5 -- let me refrain from that word. I can see  
6 reasons for approaching it either way. I think  
7 they very much are interrelated. And,  
8 Mr. Chairman, I defer to you as our chair to  
9 determine the best way to proceed.

10 CHAIRMAN CARTER: Well, since staff mentioned  
11 it, I thought we probably would allow them to tee  
12 it up that way. It would probably flow better for  
13 us, Commissioners, but if anyone has any great  
14 heartburn, we can go back to it. Okay?

15 Commissioner McMurrin, you're recognized.

16 COMMISSIONER McMURRIAN: I guess the only  
17 other idea I throw out -- and this may make it  
18 worse, but is perhaps letting the parties address  
19 both at the same time.

20 CHAIRMAN CARTER: Yes, I think that makes  
21 sense. Ms. Gervasi, what do you think?

22 MS. GERVASI: I think the items are truly  
23 interrelated, and as long as we end up getting  
24 decisions on each issue of each recommendation,  
25 maybe -- as long as that's clear. And it might be

1 more clear to do them one recommendation at a time.

2 CHAIRMAN CARTER: Commissioner Edgar.

3 COMMISSIONER EDGAR: Mr. Chairman, I would  
4 just add on to that, speaking only for myself, I  
5 think some of the discussion that we've heard over  
6 the last few minutes from Commissioner Skop and  
7 Commissioner Argenziano have kind of covered some  
8 of the information in both 4 and 4A, and so if the  
9 parties are comfortable with that, I am  
10 comfortable, if the Chair is, with having them kind  
11 of give us an overview on both issues and then see  
12 where the questions from the bench take us into  
13 specifics, and then when we come to a point of  
14 voting, which I don't expect to be immediate, then  
15 we can very clearly separate the two as we approach  
16 it that way.

17 CHAIRMAN CARTER: Okay. And also,  
18 Commissioners, as we allow the parties to make  
19 their statements, what we can do, for the parties'  
20 information, we can always come back in our  
21 questions to anything like that, we can direct our  
22 questions to either 4A or 4. But still, as you  
23 say, Commissioner Edgar, prior to the voting, we'll  
24 be voting on those issues as they are delineated.  
25 And I think that way, there is some overlap, but

1 certainly we want to make sure that we hear from  
2 the parties on both issues as we proceed.

3 Let's do this, Commissioners, before we go  
4 beat a dead horse to sleep -- and Commissioner  
5 Argenziano reminds me that that's illegal in the  
6 State of Florida, so we can't beat any more dead  
7 horses. So why don't we do this. Why don't we  
8 given the parties an opportunity to make their  
9 opening statements, and then we'll come back. And  
10 to the parties, if you prefer to deal with both 4  
11 and 4A simultaneously, it's fine.

12 Mr. Richard, are you first, or is it  
13 Mr. Glenn. Who's on first?

14 Good morning. You're recognized. Turn your  
15 microphone on.

16 MR. RICHARD: Mr. Chairman and members of the  
17 Commission, I'm here representing Florida Power &  
18 Light Company and the 15 employees who have  
19 intervened on their own individual behalves, and I  
20 appreciate the opportunity to make this  
21 presentation.

22 Florida Power & Light Company and this  
23 Commission have a long history of cooperation with  
24 respect to the production of information that the  
25 Commission has requested and that it requires.



1 That history, that cooperation has been entered  
2 into by both parties with an acknowledgment of the  
3 balance that had been created by the Florida  
4 Legislature and the people of Florida through its  
5 Constitution designed to protect the interests of  
6 all parties involved, the Commission itself, the  
7 Public Counsel, the public at large, the company,  
8 the company's employees. This case is no  
9 exception.

10 And let me begin by noting that Florida Power  
11 & Light Company has given access, has provided the  
12 Commission and placed in its possession a  
13 spreadsheet that is almost the same as the one  
14 that's being proposed by Commissioner Skop. It  
15 contains all of the information in almost the same  
16 columns. The only difference, actually, is that  
17 the company has broken down two of the columns  
18 between the FPL Group and FPL. And the only thing  
19 that it did not include on what was filed was the  
20 job title. The key, however, enables staff, at the  
21 offices of Rutledge Ecenia, to get both the job  
22 title and the name of the individual employee. So  
23 all of that information was made available to the  
24 Commission.

25 I'm going to suggest as I move on that the

1 area of -- I don't know if "disagreement" is the  
2 right word, but the area of difference here is  
3 extremely narrow. And it seems to me, particularly  
4 having heard the staff recommendation and the staff  
5 comments today, that we are moving even closer  
6 philosophically to a resolution, which would be  
7 consistent with the history of cooperation that  
8 we've had in the past.

9 We have provided all of this information with  
10 the exception of the job titles for simply this  
11 reason. And let me suggest that when I heard the  
12 staff a few moments ago say that they were  
13 requesting this information by job title rather  
14 than by name, there seems to be an agreement here  
15 that in fact there is a legitimate interest, both  
16 by the company and by the individual employees, of  
17 maintaining a semblance of privacy with regard to  
18 the individual compensation identified by name.  
19 The only difference here is that the company  
20 recognizes that in some instances, providing the  
21 job title is tantamount to providing the individual  
22 identification, because there is only one or a very  
23 small number of positions with that job title.

24 If in fact we are in agreement in this  
25 respect, then that is a simple issue for us to

1 resolve. So the only thing that the company is  
2 concerned with here is disclosing  
3 individual-identifiable information with regard to  
4 the compensation, not keeping it from the  
5 Commission or its staff.

6 The reason for this, which we've laid out in  
7 our written filings -- and I don't know that it is  
8 really an issue -- is twofold. First, Florida  
9 Power & Light Company has a legitimate interest, in  
10 a very competitive industry, in maintaining the  
11 confidentiality of information that would allow  
12 competitors, not only in Florida, but outside of  
13 Florida, to raid key employees, which not only  
14 would make the efficient operation in Florida of  
15 its utility more difficult, but would raise the  
16 costs both to FP&L and its customers.

17 In addition, FP&L has long maintained a policy  
18 of confidentiality of compensation even within the  
19 company. I know that different companies treat  
20 this in different manners, but many companies  
21 legitimately believe that there is a maintenance of  
22 a better workplace relationship if employees don't  
23 know each other's compensation. And I will tell  
24 you that my law firm, which has 1,800 lawyers in  
25 it, maintains that policy, and has for decades.

1           And I believe that all the partners in my company  
2           believe that it is the best way to go.

3           So it is a legitimate consideration by the  
4           company. And obviously, if this information  
5           becomes public, the company loses the ability to  
6           maintain that policy internally.

7           I mentioned that I also represent 15  
8           intervenor employees who seek to assert their  
9           confidentiality, their privacy right under the  
10          Florida Constitution. I will tell you that I could  
11          easily have moved to intervene several hundred  
12          employees, because this is consistent with the  
13          position of most, if not all, of the employees of  
14          the company. But for practicality purposes -- and  
15          I'm sure, or I would hope you appreciate it -- I  
16          limited it to only 15 of them.

17          But under the Florida Constitution, Article I,  
18          Section 23, the people of this state have secured  
19          to themselves a right to privacy from government  
20          intrusion. I'm well personally familiar with that  
21          because I chaired the legislative subcommittee in  
22          the '70s that passed out that privacy provision,  
23          and I believe it has been well taken by the people  
24          of Florida.

25          The Florida Supreme Court, in recognition of

1 the fact that this represented an important  
2 principle for the people of this state, have held  
3 that this is a fundamental right in Florida and  
4 that what it does in a practical sense is, it  
5 shifts to an agency seeking to obtain privacy  
6 information on an individual the burden of  
7 demonstrating two things: First, that it has a  
8 compelling interest in receiving the information,  
9 which within the law is the highest standard that  
10 the law recognizes in terms of a governmental  
11 burden, a compelling interest in receiving the  
12 information; and second, that once it has  
13 demonstrated that compelling interest, that it is  
14 using the least intrusive means of acquiring it.

15 And what that tells us in this case, I  
16 believe, is that we have an easy resolution,  
17 because this Commission's staff has been given the  
18 ability to review all of this information with  
19 individual name identification in a manner which is  
20 least intrusive, because it does not make it  
21 available to any person in Florida who under the  
22 public records law would have the right to see it  
23 if it comes into the possession of the agency.

24 And second, the willingness to file the  
25 information under the flag of confidentiality is

1 clearly less intrusive than filing it in a manner  
2 that would enable any person to see it. The public  
3 remains protected not only by this Commission, but  
4 by the Public Counsel. That's the type of balance  
5 that the people of this state have created with the  
6 privacy provision, with the provisions in the  
7 statute giving this Commission the ability to  
8 recognize that privacy and to designate things  
9 confidential.

10 And the only reason that we have a problem  
11 here is because of two statements in the staff  
12 recommendation that I am uncertain about. The  
13 first one, which in the August 11th recommendation  
14 appears at page 12, says that, "FPL's concern about  
15 the disclosure of employee-identifiable  
16 compensation would likely disappear if the  
17 Commission had the ability to afford such  
18 information confidential treatment, thereby  
19 protecting it from public disclosure." But then it  
20 continues to say, "However, section 366.093(3)(f)  
21 instructs otherwise."

22 What confuses me is that on page 14 after a  
23 discussion of the employees' assertion of their  
24 privacy interests under the Constitution; staff  
25 says, "The privacy concerns are inapplicable to the

1 production of this information because the  
2 Commission has procedures in place to keep the  
3 information confidential until determined  
4 otherwise."

5 I have no doubt that the problem is in my  
6 reading of the staff report and not in the staff  
7 itself, and perhaps if the staff -- and from what I  
8 hear this morning, I suspect that really we are  
9 pretty close together. And if it in fact is the  
10 staff's position that this Commission has the  
11 ability to designate this information confidential  
12 and the Commission is prepared to do so, or if the  
13 staff is satisfied to view the information as they  
14 have historically, because historically, they have  
15 always done it in this fashion without having to  
16 take it into possession and make it a public  
17 record, then we have no problem here. We are all  
18 in agreement, and we can make this a very short  
19 hearing.

20 I would -- and with that elucidation, I just  
21 want to once again point out -- because I  
22 thoroughly understand the concern of Commissioner  
23 Skop and Commissioner Argenziano. I want to make a  
24 point of the fact that my client, Florida Power &  
25 Light Company, has filed all of this information in

1 almost this exact same format. We thoroughly  
2 understand the fact that the staff is busy and  
3 needs to have this laid out carefully. There is no  
4 intention on the part of my client to make it  
5 difficult for them to understand. Our sole concern  
6 is the one that I mentioned, which is protecting  
7 the privacy of the individual employees.

8 And by the way, the five top executives are  
9 publicly filed in the SEC filings and are available  
10 to this Commission and anybody else. So we're not  
11 talking about the highest paid salaries.

12 Thank you.

13 CHAIRMAN CARTER: Thank you. Mr. Glenn.

14 COMMISSIONER ARGENZIANO: Mr. Chair.

15 CHAIRMAN CARTER: Yes, Commissioner  
16 Argenziano.

17 COMMISSIONER ARGENZIANO: I do have a couple  
18 of questions for Mr. Richard.

19 CHAIRMAN CARTER: Commissioner, you want to  
20 hold them until we hear from Mr. Glenn, or do you  
21 want to do it now?

22 COMMISSIONER ARGENZIANO: If I could just ask  
23 him a couple of brief questions.

24 CHAIRMAN CARTER: You're recognized. You may  
25 proceed.



1                   COMMISSIONER ARGENZIANO: Can I ask,  
2                   Mr. Richard, you said that you filed almost the  
3                   identical information or have given us all the  
4                   information. One, the information on salaries, is  
5                   that not averages that the company has provided or  
6                   said that that's what they want to provide?

7                   MR. RICHARD: We have filed, as I understand  
8                   it, two things, one of them which is a public  
9                   filing on which we have not requested  
10                  confidentiality, or perhaps we have. I don't want  
11                  to get confused about this. But the one that we  
12                  have filed is the averages by job role. The second  
13                  thing that we filed is what I was referring to,  
14                  which is this form, which has all of the  
15                  information and has the key on the left side, but  
16                  does not provide the job title or the job name, so  
17                  that staff is able to go to the offices of Rutledge  
18                  Ecenia, and using the key, is able to then see the  
19                  job title and the job name.

20                  COMMISSIONER ARGENZIANO: But nonetheless,  
21                  they're averages.

22                  MR. RICHARD: Well, no. That information at  
23                  Rutledge Ecenia, which I understand the staff has  
24                  actually looked at, is specific. You can tell the  
25                  compensation paid to each employee and officer by

1 name.

2 COMMISSIONER ARGENZIANO: Okay. The second  
3 part of that is, it's not actually filed with the  
4 Commission. It's at the office; is that correct?  
5 It's at the law firm?

6 MR. RICHARD: Yes. The information on this  
7 chart, or one very much like it, is filed with the  
8 Commission with the number of the key.

9 COMMISSIONER ARGENZIANO: But it's not really  
10 filed with the Commission if it's in your office.  
11 Is the information with the clerk of the PSC?

12 MR. RICHARD: I'm sorry. I'm obviously not  
13 being clear. The information, other than the name  
14 and job title, has been filed with the Commission.  
15 So if you wanted to look at this chart and find out  
16 what -- and not by average, but by specifics, and  
17 you wanted to know how many employees are paid this  
18 much money, you would be able to determine that.  
19 Or if you want to know employee 1, 2, 3, and 4 are  
20 each paid this much money, you have that on file.  
21 You cannot tell from what's on file what that  
22 employee's name is or specific job title is without  
23 going to Rutledge Ecenia. You can tell the average  
24 amount paid to everybody in that job title. Is  
25 that --

1                   COMMISSIONER ARGENZIANO: Mr. Chair, I will  
2 ask staff if that information is with the clerk at  
3 the PSC.

4                   CHAIRMAN CARTER: You want to ask staff now,  
5 Commissioner?

6                   COMMISSIONER ARGENZIANO: Yes, please, and  
7 then I'll preserve questions for later, other  
8 questions.

9                   CHAIRMAN CARTER: Staff, you're recognized.

10                  MR. DEVLIN: If I understand the question --  
11 this is Tim Devlin. No, that information about the  
12 key, as we call it, is not in our possession.

13                  COMMISSIONER ARGENZIANO: It's not filed with  
14 the clerk. Okay. Thank you.

15                  CHAIRMAN CARTER: Thank you. Mr. Glenn.

16                  MR. GLENN: Thank you, Mr. Chairman. Alex  
17 Glenn on behalf of Progress Energy Florida, and  
18 with me, Mr. Rick Melson as well.

19                  Ditto, first of all, what Mr. Richard said.  
20 We agree and support the arguments that Florida  
21 Power & Light has made.

22                  Before Mr. Melson addresses kind of the  
23 specifics of a couple of the legal issues, I just  
24 wanted to give a couple of points to emphasize from  
25 our company's perspective, first, to say we have

1 provided nearly the identical information that  
2 Florida Power & Light has. The only thing that we  
3 have not provided is the key, and the reason for  
4 that is our concern that once you provide that, it  
5 may (a) become a public record subject to  
6 disclosure, and (b) it would implicate and  
7 potentially waive our employees' privacy rights.  
8 So that is the reason why we have not filed that  
9 with the Commission clerk. But all of the other  
10 information is line item detail, chapter and verse.

11 So what we believe is, what Progress has  
12 already provided is sufficient for the staff to  
13 meet those discovery requests and to address the  
14 real issue of the case, which is, and why we all  
15 want to be here, setting just and reasonable rates.  
16 It's the type of information, as Mr. Richard said,  
17 that has been provided to this Commission and to  
18 the intervenors and Office of Public Counsel in  
19 every rate case for the last 50 years, and it's  
20 sufficient and has been sufficient for all of the  
21 intervenors to present their testimony in Florida  
22 Power & Light's rate case as well as in Progress  
23 Energy's rate case.

24 That said, we understand and recognize and  
25 appreciate that legitimate inquiries into employee

1 compensation are a reasonable and necessary part of  
2 this process, and that's why we believe we've been  
3 an open book. But in deciding whether to compel  
4 the disclosure of that information, the names and  
5 the detailed compensation of individual employees,  
6 which no other state commission in this country has  
7 done, the Commission has got to balance the staff's  
8 claim that you need to publicly disclose it against  
9 our responses, which are not disputed, I think, by  
10 any record evidence in this case, that the  
11 information constitutes confidential and  
12 proprietary information, and that by forcing us to  
13 disclose that publicly, we're going to incur real,  
14 tangible direct and indirect costs.

15 Progress Energy, like every other business in  
16 the country, has consistently strived to maintain  
17 and limit our O&M costs, as well as our  
18 compensation costs, by keeping that employee  
19 information confidential. Why? Why do we do that  
20 not only, as Mr. Richard said, internally among our  
21 co-workers, but to the outside world? It's to  
22 avoid competitors coming in and cherrypicking our  
23 employees, select employees who are our best and  
24 most valuable asset, who we've trained for years,  
25 in some cases, decades.

1           These aren't the CEOs necessarily who are the  
2 publicly disclosed salaries. These are positions  
3 like people who will operate and manage nuclear  
4 power plant, who run our training and safety for  
5 nuclear power, who are turbine experts for our  
6 natural gas turbines, union superintendents, who  
7 unconditionally work overtime, whether it's three  
8 o'clock in the morning or Christmas or Thanksgiving  
9 or the Fourth of July. That's who we're talking  
10 about here.

11           Why else? To avoid employees second guessing  
12 why one employee is paid more than another or why  
13 their peer is paid more than them.

14           There's no doubt that this is going to  
15 inevitably lead to higher costs, lower  
16 productivity, and poor employee morale and employee  
17 turnover.

18           Now, I know Mr. Melson and Mr. Richard can  
19 certainly much more eloquently discuss the legal  
20 arguments here, but this really isn't just some  
21 esoteric legal argument. We're talking about  
22 affecting real people's lives here, employees who  
23 work hard every single day to ensure that we've got  
24 reliable and safe electric service. And think  
25 about accepting the ramifications of staff's

1 recommendation. Publicizing each employee's  
2 compensation to the dime, to the dime, to their  
3 friends, their neighbors, their co-workers, their  
4 congregations, their creditors, to anybody on the  
5 Internet who will have access to this information.  
6 And for what purpose, what real interest? When  
7 Mr. Richard talks about the balance here, what real  
8 purpose? To embarrass or humiliate individuals,  
9 decent, dedicated, hardworking people who never  
10 bargained for this?

11 COMMISSIONER ARGENZIANO: Excuse me. Excuse  
12 me. Mr. Chair, I'm sorry to cut this discussion  
13 off, but may I ask a question?

14 CHAIRMAN CARTER: You're recognized.

15 COMMISSIONER ARGENZIANO: I'm sorry, but I  
16 think you're stretching really horribly what we  
17 asked for. We didn't ask for each and every  
18 employee. We even made concessions as far as not  
19 even asking for names because we didn't want a  
20 particular employee to be targeted, so I think  
21 you're stretching it a bit. And let's stick to  
22 what we did ask for, and that was what the law says  
23 that we have a right to have and the public has a  
24 right to have.

25 Now, I didn't mean to interrupt you, but I

1 just have to say that that went a bit too far.

2 MR. GLENN: Mr. Chairman, thank you. And I  
3 appreciate Commissioner Argenziano's comments, but  
4 I'm not stretching it. Interrogatory Number 197  
5 asked for the name, title, base salary, overtime,  
6 bonuses, stock awards, option awards, non-equity  
7 incentive plan compensation, all other  
8 compensation, total compensation, amount of total  
9 compensation allocated to Progress Energy Florida  
10 for people making \$165,000 a year or more.

11 COMMISSIONER ARGENZIANO: Exactly.

12 MR. GLENN: So it's very detailed.

13 CHAIRMAN CARTER: Hang on a second, Mr. Glenn.  
14 Commissioner.

15 COMMISSIONER ARGENZIANO: Mr. Chair, I'm  
16 sorry, but that's exactly right. Those people  
17 making 165 and above, not each and every employee.  
18 Thank you.

19 CHAIRMAN CARTER: You may proceed, Mr. Glenn.

20 MR. GLENN: Thank you. Those people never  
21 bargained for this, as the history of cooperation,  
22 I think as Mr. Richard aptly said. And who is  
23 ultimately going to pay for this? It's the  
24 customers who are going to pay for this. The  
25 ratepayers will. And the recommendations of the



1 staff, they're wrong as a matter of law. They're  
2 wrong as a matter of good public policy, which  
3 virtually every state commission in the country  
4 that has addressed this has decided. And approving  
5 this recommendation is only going to demean good  
6 people and increase costs.

7 Thank you.

8 CHAIRMAN CARTER: Thank you. Mr. Melson.

9 MR. MELSON: Commissioners, Mr. Richard  
10 covered a number of the points that I had intended  
11 to address, so I may skip around a bit and not be  
12 quite as eloquent as Mr. Glenn promised you I would  
13 be.

14 We've got a real concern here regarding the  
15 interplay of the discovery process and the  
16 confidentiality statute. Once we produce  
17 information to the Commission and put it into your  
18 hands, it then becomes a public record, and you, in  
19 the normal course of things, if we file it  
20 confidentially, at some later date address whether  
21 it is confidential and entitled to protection or  
22 whether it becomes public. And, of course, we've  
23 got the right to appeal that, but at that point, if  
24 the court agrees with you that it's public, the cat  
25 is out of the bag. It's too late.

1           The reason, one reason that the discovery  
2 responses may not have provided all of the  
3 information in exactly the format you requested is,  
4 you, in essence, lose the opportunity to protect  
5 the individual's constitutional privacy right if  
6 you turn it over, and ultimately on a statutory  
7 basis it's found not to be protected. That concern  
8 is heightened in this case because the staff in its  
9 recommendation on this issue in dicta, and then in  
10 its recommendation on Item 4, says it cannot be  
11 confidential. If we provide it to you and it  
12 cannot be confidential, those privacy rights are  
13 gone, and that's the fundamental basis of the  
14 concern.

15           Staff also -- Mr. Richard, I think, pointed  
16 out a couple of statements in the staff  
17 recommendation that gave him pause for concern  
18 about the understanding. There's a third one that  
19 concerns me, and with respect to Progress, I guess  
20 it's on page 21 of the recommendation. It says the  
21 Commission doesn't have to weigh the individual's  
22 constitutional privacy rights, because under the  
23 statute, the confidentiality statute, it's not  
24 confidential and PEF's employees do not have a  
25 basis upon which to expect that their compensation

1 information will be protected.

2           Regardless of whether we agree with the staff  
3 as to how the statute operates, they do have a  
4 right to expect that their information won't come  
5 into the Commission's hands unless it is clearly  
6 relevant and material to decisions the Commission  
7 has to make. And as Mr. Glenn says -- I mean,  
8 Mr. Devlin was quite eloquent this morning in  
9 identifying for the first time some potential bases  
10 of relevancy, but in general, whether John earns  
11 175,000 and Mary earns 195 and they're both  
12 managers is not the kind of level of detail that  
13 this Commission gets into or needs to get into to  
14 do its job. Whether you gave one employee a  
15 \$25,000 bonus and a similarly situated employee no  
16 bonus, again, your responsibility is to look at  
17 compensation in the aggregate and determine if the  
18 aggregate request is reasonable. And in the past,  
19 you've had the tools to do that without delving  
20 down into this specific line item information.

21           And I guess the final point I would make would  
22 be on the statute itself, because if you ultimately  
23 -- Commissioners, if you rule that you can protect  
24 this information and can keep out of the public eye  
25 the specific dollars associated with specific

1 names, I think much of the issue goes away.

2 Staff says that under section 366.093(3)(f),  
3 employee compensation information is not protected  
4 as exempt from -- it cannot be exempt from  
5 disclosure. What they ignore is that there's  
6 another section, (3)(e), which allows the company  
7 to protect confidential business information that  
8 impacts its competitive business interests. The  
9 limitation, we believe, in subsection (f) does not  
10 carry over as a limitation into subsection (e). If  
11 the Legislature had intended to say that  
12 compensation information will never be protectable,  
13 they could have put it up in the general language  
14 of (3) and said propriety confidential business  
15 information means that information you protect as  
16 private that has an adverse impact on your business  
17 operations and ratepayers, and that is not employee  
18 compensation information. That's not where they  
19 put it. They put it down in (3)(f), which is one  
20 of the six independent bases on which you can find  
21 information is confidential.

22 Final point. In a certain respect, the  
23 confidentiality is a fact-intensive matter. We  
24 have provided the affidavit of Progress's Director  
25 of Compensation that details the reasons that this

1 information is confidential. And the staff,  
2 because of their what we believe is incorrect  
3 statutory interpretation, never gets to the factual  
4 issue of is this really information that, if  
5 disclosed, would cause harm. And as you see from  
6 the affidavit and have heard from Mr. Glenn this  
7 morning, it certainly falls into that category.

8 CHAIRMAN CARTER: Commissioner Skop.

9 COMMISSIONER SKOP: Thank you, Mr. Chair. I  
10 do think there's a lot of merit in some of the  
11 things that were stated in the arguments. I also  
12 think that, you know, if the names were taken out,  
13 the specific names of individuals were taken out of  
14 this equation, that constitutional argument becomes  
15 relatively moot and it's a matter of does  
16 confidentiality prevail and should an interest  
17 balancing analysis be applied accordingly.

18 But I did have some specific questions for  
19 Mr. Richard, if I could, and they're related to the  
20 constitutional issues that you raised in your  
21 brief. I'm trying to gain a better understanding  
22 of the relative strengths and weaknesses of the  
23 arguments. And part of what I'm hearing as an  
24 overarching theme draws my attention to the current  
25 pending litigation between the NCAA and FSU over

1 violations and what's going on there and the  
2 efforts the NCAA is taking to protect  
3 non-disclosure of the information. I see a lot of  
4 parallels between, you know, if something becomes a  
5 public record, then protecting it is obviously a  
6 legal battle that is being fought as we speak.

7 But with respect to the constitutional issues  
8 that you've raised, isn't the constitutional  
9 privacy protection afforded under Article I,  
10 Section 23, premised in part upon a reasonable  
11 expectation of privacy?

12 CHAIRMAN CARTER: Turn your microphone on.

13 MR. RICHARD: The answer is yes, and Florida  
14 courts have consistently held that personal  
15 financial information is protected by Article I,  
16 Section 23, which, of course, trumps any statutory  
17 provision. But also, we must interpret statutes,  
18 to the extent we're able to without doing them  
19 complete injustice, in a manner that would make  
20 them compatible with the privacy provision. So I  
21 think people do have the right to -- and, by the  
22 way, because this Commission has consistently, at  
23 least with respect to my client, permitted it to  
24 avoid filing publicly identifiable information,  
25 people have that right to anticipate the

1 confidentially.

2 COMMISSIONER SKOP: Thank you. Doesn't FPL  
3 regularly divulge the same executive compensation  
4 information for its directors and officers,  
5 including their names and compensation, to the SEC?

6 MR. RICHARD: It does, as I understand it,  
7 with respect to the top five officers, and I'm not  
8 sure about directors. I don't do SEC work, but if  
9 they do, they do. And that information, of course,  
10 is public, and we're not suggesting that the  
11 Commission and the staff can't have it filed.

12 COMMISSIONER SKOP: Okay. But in disclosing  
13 this data to the SEC, hasn't FPL essentially  
14 violated the same constitutional privacy rights  
15 which the FPL employee intervenors allege are  
16 protected under Article I, Section 23 of the  
17 Florida Constitution?

18 MR. RICHARD: No, for the very reason you  
19 raised originally. I think in those cases, anybody  
20 who chooses to become an officer that the SEC  
21 requires compensation to be filed has no  
22 expectation of privacy in that respect because they  
23 know that they're going to have to file it in  
24 advance. So that is a important distinction that I  
25 agree with.

1           And if I might, Commissioner, if I can clarify  
2 one thing. I know it's not what you asked, but  
3 I've been anxious to clarify it. It may have  
4 sounded by the response that the gentleman with the  
5 staff gave that he and I are in disagreement as to  
6 what was filed. I think it's just a semantics  
7 problem, so if I could just explain it very  
8 briefly.

9           What we filed, which is almost exactly the  
10 same, Commissioner, as the chart that you've  
11 suggested, on the left-hand column it has a series  
12 of numbers by each line. That represents every  
13 employee in the company with a salary above  
14 \$165,000, which was requested. And all of the  
15 information that appears on your chart appears  
16 beside each of those lines, and that has been filed  
17 with the Commission. The only thing that is not  
18 included is the job title and name. What I am  
19 referring to as the key is the list that you can go  
20 to Rutledge and Ecenia's offices and look at, which  
21 would then tell you what each of those numbers  
22 represents. And I suspect that staff will agree  
23 with that.

24           COMMISSIONER SKOP: I understand. And again,  
25 at the end of the day what's more important to me



1 is the titles rather than the names. I do respect  
2 the privacy right of the names. I'm trying to  
3 flesh out how important the titles are.

4 But getting back to the point you made about  
5 the officers and directors would not have the  
6 expectation or reasonable expectation of privacy,  
7 if an FPL officer or director individually asserted  
8 the constitutional privacy protection afforded to  
9 them Under Article I, Section 23 of the Florida  
10 Constitution, would the compelling federal interest  
11 in securities regulations and the necessary  
12 disclosure of corporate financial information to  
13 protect investors outweigh the constitutional right  
14 to privacy?

15 MR. RICHARD: Well, first, the Florida  
16 Constitution cannot overcome federal law, so to the  
17 extent that the -- and the federal privacy  
18 protection, which is implicit, it is not explicit,  
19 as is Florida's, is much weaker than Florida's and  
20 does not include information filed with regulatory  
21 agencies. So I think that the Florida Constitution  
22 would have no bearing upon the requirement to file  
23 information with the SEC.

24 COMMISSIONER SKOP: Okay. Fair enough. In  
25 your mind, should there be a distinction between a

1 broad-based overreaching intrusion into a natural  
2 person's financial information, similar to what was  
3 done in the Woodward case, versus a narrowly  
4 tailored discovery of corporate compensation data  
5 held by FPL, which is relevant to the subject  
6 matter of the pending action and necessary to allow  
7 the Commission staff to perform its regulatory  
8 function?

9 MR. RICHARD: The Constitution is not  
10 absolute. It doesn't say that the right to privacy  
11 means that the government can never see anything,  
12 including personal compensation. What it does is,  
13 it creates, as interpreted by the Florida Supreme  
14 Court, this weighing test that says that before a  
15 government agency can see the information, it must  
16 demonstrate those two things I mentioned, a  
17 compelling need to see it in order to perform its  
18 function, and in the event that that need exists,  
19 that they are using the least intrusive means of  
20 accomplishing it. Sometimes that's a very  
21 difficult thing to determine. In this case, I  
22 think it's not.

23 COMMISSIONER SKOP: Okay. Mr. Chair, just a  
24 few more questions. I won't belabor this.

25 CHAIRMAN CARTER: You may proceed.

1                   COMMISSIONER SKOP: I'm just trying to flesh  
2 this out.

3                   Mr. Olivera's letter mentioned human resources  
4 consultants and compensation data. Does FPL share  
5 its employee compensation information titled  
6 compensation, et cetera, with human resources  
7 consulting firms such as Hewitt and Mercer?

8                   MR. RICHARD: I apologize, but I don't know  
9 the answer to that.

10                  COMMISSIONER SKOP: Okay. Well, for the sake  
11 of argument, if FPL were to disclose employee  
12 compensation information titled compensation  
13 without disclosing the names of the individual  
14 employees, then would the constitutional argument  
15 under Article I, Section 23, be moot because it no  
16 longer implicates the individual financial  
17 information of the FPL employees?

18                  MR. RICHARD: I'm sorry.

19                  COMMISSIONER SKOP: I'll repeat it. I'm  
20 sorry. I talk a little fast. Let me slow it down  
21 a notch.

22                  For the sake of argument, if FPL were to  
23 disclose employee compensation information titled  
24 compensation without disclosing the names of the  
25 individual employees, then would the constitutional

1 argument under Article I, Section 23 be moot  
2 because it no longer implicates the individual  
3 financial information of FPL employees?

4 MR. RICHARD: Okay. That's a good question.  
5 We're talking about two different issues. So far  
6 as Florida Power & Light's assertion that it has a  
7 right because of proprietary confidentiality,  
8 because of competitive interests or its internal  
9 policies, if it were to disclose them to a third  
10 party without requiring appropriate confidentiality  
11 agreements from that party, it would significantly  
12 reduce the strength of its argument, because part  
13 of the right to confidentiality under trade secret  
14 or any other proprietary information is that the  
15 company has taken reasonable steps to protect its  
16 confidentiality. Now, companies often will bring  
17 in consultants, but they require their consultants  
18 as well to agree to confidentiality, and that's  
19 considered sufficient.

20 The second question, though, requires us to  
21 distinguish between private disclosure and  
22 governmental, because the only thing that the  
23 Constitution prohibits is government from unduly  
24 intruding on our privacy rights. So it may be that  
25 if the company -- the company may by not protecting

1 privacy lose its rights to assert its company  
2 rights, which it does not have under the  
3 Constitution, but the individuals would not lose  
4 those rights as to the government.

5 COMMISSIONER SKOP: Okay. I just would like  
6 to briefly turn your attention to the question of  
7 standing for the FPL employee intervenors that  
8 you've raised. The FPL employee intervenors must  
9 individually in their own capacity assert the right  
10 to privacy under Article I, Section 23 of the  
11 Constitution; is that correct?

12 MR. RICHARD: That's correct. It only applies  
13 to natural persons.

14 COMMISSIONER SKOP: And based upon your  
15 pleadings, there are only 15 FPL employee  
16 intervenors that have asserted their individual  
17 right of privacy under Article I, Section 23. I  
18 think you mentioned there could be others, but  
19 before us today there are only 15 employees; is  
20 that correct?

21 MR. RICHARD: That's correct. And if I could  
22 modify what I said to you, by the way, I think that  
23 the desire to respect the employees' assertion of  
24 their privacy rights is a legitimate basis under  
25 Chapter 166 for the company to assert that it would

1           like to preserve it, but the company doesn't have  
2           that right under the Constitution directly.

3           COMMISSIONER SKOP: Right. And also, too, a  
4           natural person cannot assert the right on behalf of  
5           another natural person; is that correct?

6           MR. RICHARD: I don't know that that has ever  
7           been addressed. I'm not aware of any court  
8           addressing that. You know, it depends on the  
9           provision. For instance, under the first  
10          amendment, you can. But I don't know that any  
11          court has ever addressed it with regard to this  
12          provision. But I think you're probably right.

13          COMMISSIONER SKOP: At least what I found in  
14          the case of Sieniarecki, I believe a daughter could  
15          not assert her mother's right to privacy.

16          MR. RICHARD: I think that would probably be  
17          the judicial interpretation.

18          COMMISSIONER SKOP: All right. So since the  
19          constitutional right must be asserted individually,  
20          would it stand to reason that the constitutional  
21          argument is moot for those FPL employees who have  
22          not already asserted the individual right to  
23          privacy? For instance, if the Commission were to  
24          carve out the intervenors and then do something  
25          drastic, which we probably won't do, but for the

1           sake of argument, would that constitutional right  
2           not be implicated because the other employees have  
3           not intervened?

4           MR. RICHARD: You may be right, but then you  
5           risk that I'll be back tomorrow with another 200.

6           COMMISSIONER SKOP: Okay. Fair enough. Just  
7           three more questions. Assuming for the sake of  
8           discussion that the constitutional argument  
9           premised upon Article I, Section 23 of the Florida  
10          Constitution, has become moot either because it was  
11          not individually asserted or because it does not  
12          intrude upon the individual's financial  
13          information, then the only remaining constitutional  
14          question before us is whether section 366.093 is  
15          facially unconstitutional; correct?

16          MR. RICHARD: I would respectfully disagree  
17          with both premises, and I'll take them one at a  
18          time. The Florida Supreme Court has held that  
19          certain constitutional rights which it designates  
20          as fundamental are never waived. You can even  
21          raise them for the first time -- even though you've  
22          been through an entire trial and appeal, you can  
23          raise them for the first time in the Supreme Court.  
24          The Court has said that the right to privacy under  
25          the Florida Constitution is fundamental. They have

1 not directly addressed the question of whether or  
2 not it can be waived by failure to assert it at any  
3 given point. So I can't tell you that I know that,  
4 but I would not suggest that it can be waived  
5 simply because it was not asserted at this point.

6 As to the other question, which is 366, the  
7 question raises an issue that the staff report  
8 mentioned, which is that the Commission as an  
9 agency cannot declare a statute that gives it power  
10 unconstitutional. My client is not saying that,  
11 and my client is not suggesting that 366 is  
12 unconstitutional. What they are saying is that 366  
13 must be read in tandem with the right to privacy,  
14 which means two things: First, that it must be  
15 interpreted in such manner as to embrace the  
16 requirements, because you must always interpret a  
17 statute in a manner that would make it  
18 unconstitutional (sic) if possible, and an agency  
19 does have the right to do that.

20 So we are suggesting that you can't say that  
21 366 says that you can never make this information  
22 confidential. You can't interpret it that way.

23 And the second thing is that -- and by the  
24 way, I don't think there's a reason to interpret it  
25 that way. And I don't want to overdo my response,



1 but the reason I don't think so is because 366  
2 creates two categories of information. One of them  
3 is made automatically confidential. The Commission  
4 cannot even open it if it wants to. The second --  
5 and that category -- and by the way, in 1989, it  
6 was amended to significantly expand the amount of  
7 information that could be made confidential. One  
8 of the things that has been excluded from that  
9 automatic confidentiality is employee compensation,  
10 which means it still leaves it within the  
11 Commission's discretion, but it throws it into the  
12 second category, which is the category of those  
13 things that can or cannot be confidential,  
14 depending upon the circumstances.

15 I also think that 366 was intended by the  
16 Legislature to apply to the relationship between  
17 the Commission and a regulated company and really  
18 was not intended to disregard the privacy provision  
19 of the Florida Constitution when it comes to an  
20 assertion by an individual.

21 COMMISSIONER SKOP: Thank you. Just one final  
22 -- actually, two final questions. You mentioned  
23 that the applicable standard of review for a  
24 constitutional question that implicates the privacy  
25 rights under Article I, Section 23 would be a

1           compelling state interest or strict scrutiny; is  
2           that correct?

3           MR. RICHARD: Yes, sir.

4           COMMISSIONER SKOP: So I guess what I'm saying  
5           or trying to understand or reason through is, if  
6           the individual right to privacy constitutional  
7           argument becomes moot, then you're left with the  
8           statutory provisions which provide for  
9           confidentiality. But it would seem to me that the  
10          applicable standard of review then becomes a  
11          rational basis test rather than the strict scrutiny  
12          required under the privacy constitutional  
13          provision; is that correct?

14          MR. RICHARD: I think that would certainly be  
15          a reasonable argument if the constitutional  
16          assertion were moot. I don't know that you -- I  
17          think that the -- I think that the Commission is  
18          given a broad range of discretion with regard to  
19          that category that can or cannot be considered  
20          confidential. But as with any judicial body, it  
21          must exercise that discretion reasonably. And  
22          again, as I said, happily for both the Commission  
23          and my client, I don't think it's a difficult  
24          burden for us to resolve in this instance.

25          COMMISSIONER SKOP: And just one final

1 question. Under Florida Rule of Florida Civil  
2 Procedure 1.280(b)(1), would a request by a  
3 regulatory agency, namely, the PSC, reasonably  
4 calculated to lead to the discovery of information  
5 relevant to the subject matter of the pending  
6 action provide that rational basis?

7 MR. RICHARD: Perhaps, because when we talk  
8 about relevancy, we have to go back to the initial  
9 question of what the function of this agency is,  
10 and therefore, what its power is. It seems to me  
11 that this agency has received all of the  
12 information that it needs to perform any function  
13 that is delegated to it by the Florida Legislature,  
14 so that what we are really talking about here is  
15 not what this agency needs to perform its function,  
16 but whether or not that information should be made  
17 public, and that is not a function of this  
18 Commission. That is a function of the Legislature  
19 and whoever the Legislature designates as the  
20 enforcing authority under the public records law,  
21 which is either the Attorney General or the  
22 individual seeking to obtain the information, not  
23 this Commission.

24 And I would respectfully suggest that it's  
25 very important that we distinguish between those

1 two things, because if all we're talking about is  
2 whether or not the public should be given access to  
3 a private company or a private individual's  
4 information, that's not something that's an  
5 appropriate subject for the Commission to be  
6 concerning itself with.

7 COMMISSIONER SKOP: I think that's all the  
8 questions I had. I just wanted to --

9 COMMISSIONER ARGENZIANO: Mr. Chair.

10 CHAIRMAN CARTER: Commissioner Argenziano.

11 COMMISSIONER ARGENZIANO: Yes. I have some  
12 questions for staff and then for Mr. Richard. And  
13 might I just say that it's not a private company.  
14 It's a publicly regulated company, first.

15 Now, if I can ask staff a few questions and  
16 then to Mr. Richard.

17 CHAIRMAN CARTER: You're recognized.

18 COMMISSIONER ARGENZIANO: Staff, first --  
19 thank you, Mr. Chair. I've heard a few times now  
20 that this information has been filed with the  
21 clerk, and I asked before, staff, if that  
22 information was filed with the clerk. Can you  
23 clarify that for me again, please? Is that  
24 information that we've requested filed with the  
25 clerk at the PSC?

1 MR. DEVLIN: Commissioner Argenziano, this is  
2 Tim Devlin. My understanding is that what is not  
3 filed with the clerk is the key, the ability to  
4 relate the total compensation levels to the  
5 individual titles. I think what has been filed  
6 with the clerk, and I can be corrected by staff if  
7 I'm wrong, is -- the clerk -- we have in our  
8 possession the total compensation levels for these  
9 positions that are over 165,000. We just have no  
10 way to relate those levels to particular positions.

11 COMMISSIONER ARGENZIANO: So effectively, no,  
12 it's not filed with the clerk.

13 Second, I've heard it said that the  
14 expectation of those top employees that have to  
15 provide their compensation to the SEC, that there's  
16 an expectation and they know that when they're  
17 going into that. Isn't that the same for the  
18 statute, for the employees under 366.093(3)(f),  
19 that knowing that if you're going to work for a  
20 publicly regulated company, that your compensation  
21 is excluded? And I differ, obviously, from the  
22 others, because I believe it is not to be kept  
23 confidential according to that statute. So  
24 wouldn't the expectation be the same for those  
25 employees under the statute, not just under the

1 SEC, the federal law or rules?

2 MS. GERVASI: Commissioner Argenziano, this is  
3 Roseanne Gervasi. That is what the statute says.

4 COMMISSIONER ARGENZIANO: Okay. That's how I  
5 read it. And under 366.093, I've heard that the  
6 PSC -- and that would be (3)(f). I've heard  
7 someone mention -- I don't know if it was  
8 Mr. Richard -- that the PSC has discretion, and I  
9 don't read it that way. When I read 366.093(3)(f),  
10 it's a mandate, because to me it looks like -- and  
11 I need guidance here, if this is right or not, if  
12 this is how staff perceives it -- that even though  
13 section (e) talks about proprietary information,  
14 the Legislature all well knowing that here we were  
15 in (e) talking about proprietary information, then  
16 separated and made specifically in (f), saying, no,  
17 the compensation is not included in that. And I  
18 see it as a totally separate move by the  
19 Legislature to say that -- we see proprietary  
20 information here in (e), and they didn't include it  
21 in (e) except for, you know, compensation or  
22 certain compensation, and in (f), they did that  
23 knowing that there was a proprietary  
24 confidentiality, and then in (f) singled out the  
25 compensation.

1 I made that longer than I had to, but to me,  
2 it looks like we don't have discretion. It's a  
3 mandate under 366, (f), that compensation shall not  
4 be exempt from public records. Is that how staff  
5 is reading that?

6 MS. GERVASI: Yes, ma'am, and that is our  
7 recommendation. And it is consistent with the vast  
8 majority of Commission cases and rulings on this  
9 point in the past, most recently in the Aqua  
10 Utilities order that we cited to in the  
11 recommendation, which discusses that -- in that  
12 case, the utility also attempted to rely on other  
13 paragraphs, (d) and (e) of the sister statute in  
14 the water industry, which is virtually identical to  
15 the electric industry statute on confidentiality.  
16 But the Commission determined that it appeared that  
17 paragraph (f) was controlling and that the  
18 information for which the utility sought  
19 confidential treatment related to salaries and  
20 compensation, and that, notwithstanding the fact  
21 that there have been a few cases where the  
22 Commission ruled otherwise, the Legislature has  
23 spoken on the issue, and because the salary  
24 information is employee personnel information  
25 related to compensation, that the Legislature

1 determined in this case, section 366.393(3)(f),  
2 that it is not to be afforded confidential status.  
3 That's not to say that the information won't be  
4 protected from disclosure during the pendency of  
5 the parties' rights to challenge the Commission's  
6 decision on that point all the way through an  
7 appeal.

8 COMMISSIONER ARGENZIANO: Right. I understand  
9 that. It just seems to me that (f) definitely --  
10 it was the Legislature's understanding that there  
11 was proprietary language above it also, said  
12 separately, but, compensation shall not fit into  
13 that category and made it separate and distinct.

14 One other question for staff, because we seem  
15 to be getting drawn into the constitutional issue.  
16 Do we have -- does the PSC deal with constitutional  
17 issues, or are we solely to deal with statutory  
18 issues?

19 MS. GERVASI: Commissioner, the Commission has  
20 the ability to consider the constitutionality of  
21 its decisions and of the statutes that it  
22 interprets. What it doesn't have the power to do  
23 is to make a determination that a particular  
24 statute is not constitutional and that therefore  
25 the Commission won't abide by it. The Commission



1 is required to abide by the statute unless and  
2 until it is taken off the books.

3 COMMISSIONER ARGENZIANO: Okay. So that would  
4 have to be decided in a court somewhere, really,  
5 not at the PSC.

6 MS. GERVASI: Yes, ma'am.

7 COMMISSIONER ARGENZIANO: And Mr. Chairman,  
8 can I ask, if I may, Mr. Richard a question, and  
9 then I'll probably want to come back to staff with  
10 the same question.

11 CHAIRMAN CARTER: Okay. You may proceed.

12 COMMISSIONER ARGENZIANO: Thank you.

13 Mr. Richard, I read Article I, Section 23 of  
14 the Florida Constitution that was cited in your  
15 memorandum in its entirety, and maybe you can  
16 explain to me how the carve-out that I see in  
17 Section 23, the second sentence -- and I'm going to  
18 read the second sentence to you. It says, "This  
19 section shall not be construed to limit the  
20 public's right of access to public records and  
21 meetings as provided by law." And when I look at  
22 the law, the law is 366.093(3)(f). And that second  
23 sentence, if you could tell me how that's not fatal  
24 to your argument, I would appreciate that.

25 MR. RICHARD: Yes, ma'am. That sentence,

1           which incidentally, I wrote when I was on that  
2           subcommittee, that applies to public records, which  
3           applies to public agencies and the records that are  
4           made or received in the conduct of official  
5           business by those agencies.

6           This leads to a comment that Commissioner  
7           Argenziano made earlier about this being a publicly  
8           regulated company. This is not a public agency.  
9           Florida Power & Light is not a public agency by any  
10          definition that the Florida Supreme Court has  
11          given. And I'm not going to go into the details of  
12          the definition of what an agency is or when a  
13          private party is acting on behalf of an agency.  
14          This is a private company that enters into certain  
15          contracts with public agencies, as a result of  
16          which it is regulated by the State of Florida.  
17          There are many instances in which companies and  
18          individuals are regulated by the State of Florida,  
19          and they do not sacrifice their constitutional  
20          rights simply because they are so regulated. So  
21          this is not a public company. It is a regulated  
22          company.

23          With respect to my leaving out that line, I  
24          want to point out that I did not leave it out. I  
25          quoted from the Florida Supreme Court, and the

1 quotation in that opinion did not include that last  
2 line. And the reason it did not include that last  
3 line is, it was not dealing with a public agency,  
4 and so that line was not relevant to the Supreme  
5 Court's decision as to personal privacy, which I  
6 believe remains a critical element here.

7 COMMISSIONER ARGENZIANO: And to staff, that  
8 same question. I don't necessarily agree with  
9 Mr. Richard. I'm trying to figure out or to  
10 ascertain if he has a legitimate argument. The way  
11 I read the Constitution, I see that it says that it  
12 shall not be construed to limit the public's right  
13 to access to those records provided by law, and the  
14 law I see in front of me says that compensation  
15 shall not be exempt from public records. And if  
16 staff can help me on that second part of the  
17 constitution, because that to me is a big argument  
18 here. Section, I'm sorry.

19 MS. GERVASI: Yes, Commissioner. I'm not  
20 going to say that he doesn't have a plausible  
21 argument. It may be plausible, but it's not one  
22 for the Commission to rule upon.

23 What I can tell you, though, is that the  
24 Florida Supreme Court has spoken on the issue  
25 outside of the context of the Commission, but with

1 respect to the personal financial information of an  
2 individual. And what the Court has said is that  
3 the disclosure of personal financial information  
4 may cause irreparable harm to a person forced to  
5 disclose it in a case in which the information is  
6 not relevant. And the parties have asserted that  
7 the information here is not relevant to the rate  
8 cases.

9 However, the fact of the matter is that in  
10 section 366.093(2), the Legislature has said that  
11 information which affects a utility's rates or cost  
12 of service shall be considered relevant for  
13 purposes of discovery in any docket or proceeding  
14 where the utility's rates or cost of service are at  
15 issue. So we have relevant information that we're  
16 requesting, and we have case law that suggests that  
17 that type of information is not private under the  
18 Constitution, so you can certainly read the statute  
19 in a constitutional fashion.

20 COMMISSIONER ARGENZIANO: Thank you very much.  
21 That really answered my question. And the reason I  
22 asked for some of that information was because I  
23 thought it was relevant in my position as a Public  
24 Service Commissioner, and I really do appreciate  
25 that explanation. Thank you, Mr. Chair.

1 CHAIRMAN CARTER: Thank you. I'm going to go  
2 to Commissioner McMurrian and then Commissioner  
3 Skop. Commissioner McMurrian.

4 COMMISSIONER McMURRIAN: Thank you, Mr. Chair.  
5 I'm still admittedly confused about exactly what it  
6 is we have in this building, so I'm going to try to  
7 get at that. And I'm using Commissioner Skop's  
8 handout to look at, but I don't think it really  
9 matters if you have it or not.

10 I think the recommendation states that there's  
11 approximately 368 employees at FPL that have  
12 salaries of 165,000 and above that are at issue  
13 here. Is that right?

14 MR. DEVLIN: I believe FPL has revised some of  
15 their filings, and that number has increased now to  
16 463.

17 COMMISSIONER McMURRIAN: Okay. 400 and --

18 MR. DEVLIN: Sixty-three.

19 COMMISSIONER McMURRIAN: Okay. So let me ask  
20 it this way. Is there a document that you all have  
21 access -- well, that you have in this building that  
22 has essentially line items for all this breakdown  
23 for 400-and-something salaries? In other words,  
24 are there essentially 400-and-something line items  
25 that have a breakdown of those salaries above

1 165,000?

2 MR. DEVLIN: Yes. I'm looking at it right  
3 now. It basically has the breakdown that we asked  
4 for, not just salaries, but all levels of  
5 compensation, bonuses, incentive plans, et cetera,  
6 for each of those 463.

7 COMMISSIONER McMURRIAN: So that has been --

8 MR. DEVLIN: But you can't identify the  
9 particular positions.

10 COMMISSIONER McMURRIAN: Right. And I'm  
11 putting that aside now. I'm asking is there a  
12 chart that shows essentially 400 -- I keep  
13 forgetting the number, but essentially 400 line  
14 items that show all the way across the breakdown of  
15 what those salaries of 165,000 and above would be?  
16 The compensation, not salary.

17 MR. DEVLIN: Yes.

18 COMMISSIONER McMURRIAN: Okay. So we do have  
19 -- that was filed with the clerk's office.

20 MR. DEVLIN: Correct.

21 COMMISSIONER McMURRIAN: Okay. And now I want  
22 to ask Mr. Richard, is FPL claiming confidentiality  
23 for what we have in this building?

24 MR. RICHARD: I believe we have filed a  
25 request for confidentiality. Can I confer to make

1           sure?

2           Yes, with the exception of the average for --  
3           yes, we've requested confidentiality as to the  
4           information with this breakdown. The reason we've  
5           done that is because of the feeling that due to the  
6           limited nature of a certain number of positions,  
7           that somebody could determine what the identity  
8           was. We have not requested confidentiality as to  
9           the average salary for any given group of job  
10          roles.

11          COMMISSIONER McMURRIAN: Okay. Let ask, then,  
12          it was my understanding that the titles and the  
13          positions were not included on the information the  
14          staff has now. Is that correct? So their list of  
15          400-and-some-odd line items does not include the  
16          name or the position title?

17          MR. RICHARD: That's correct. It includes the  
18          number by which they can go over to the office and  
19          look at the key and figure that out.

20          COMMISSIONER McMURRIAN: Okay. But you are  
21          still requesting confidentiality of those dollar  
22          amounts? For all those 460-something numbers,  
23          you're still requesting confidentiality of the  
24          dollar amounts and how that total compensation is  
25          broken down and allocated?

1 MR. RICHARD: Yes. My understanding is that  
2 that is correct.

3 COMMISSIONER McMURRIAN: Okay. So I guess I'm  
4 still a little confused about whether the issue is  
5 just about whether you want to keep the names and  
6 the titles confidential, or whether the dollar  
7 amounts themselves.

8 MR. RICHARD: Well, as of the current filing,  
9 my understanding is that my client has requested  
10 that all of that be designated confidential. And  
11 I'm not authorized to change that request on my  
12 own. And I'm not suggesting I think they should.  
13 It's just that you're asking me two questions,  
14 really. If the question is, have they requested  
15 confidentiality, the answer is yes. If the  
16 question is, would they be willing to modify that,  
17 I have no instructions from my client as to that  
18 issue.

19 COMMISSIONER McMURRIAN: Right. At this  
20 point, I'm just trying to get straight what it is  
21 at issue that's actually being requested as  
22 confidentiality, and I think this line of  
23 questioning at least is helping me, so I want to  
24 ask the same thing with respect to Progress Energy,  
25 to the staff. And I don't know how many positions



1 we're talking about. I can't remember what the  
2 number was, but essentially, is there a document  
3 that exists in this building that was filed with  
4 the clerk that essentially has the dollar  
5 compensation listed for each of those, however many  
6 there are, that meet that 165,000 and above and has  
7 some kind of breakdown like this in this building?

8 CHAIRMAN CARTER: Turn your microphone on.

9 MR. DEVLIN: I'm sorry. Commissioner  
10 McMurrian, yes, that's my understanding.

11 COMMISSIONER McMURRIAN: Okay. And so I'll  
12 ask Mr. Glenn the same question. Are you all  
13 requesting confidentiality of the document that  
14 would not have titles or positions, but would be  
15 the compensation amounts? Are you requesting  
16 confidentiality of that piece of the equation?

17 MR. GLENN: Yes, we are. Yes, we are. One of  
18 the reasons too is, if you disclose the delta  
19 between what your base compensation and what your  
20 at-risk compensation, equity, all other, long-term  
21 incentives, stock awards, that gives your  
22 competitors a very good picture of how much you're  
23 paying by different classes so they can come in and  
24 determine, all right, if we pay this level of  
25 individual more in longer term compensation, we can

1 get them. So that is a very confidential piece of  
2 information that's very valuable.

3 COMMISSIONER McMURRIAN: So your concern is  
4 about the breakdown of the total compensation, not  
5 so -- well --

6 MR. GLENN: We've given publicly the  
7 aggregate. For example, Progress Energy Florida  
8 employees who earn greater than \$165,000, pick a  
9 number, no titles, right, but aggregate  
10 compensation of all those, that's how much those  
11 people do. Say it's \$8 million or whatever. I  
12 don't know what the number is.

13 So we provided that information, which we  
14 think is adequate for the Commission to do its job,  
15 because if you look at your MFR -- I think it's  
16 C-35 and C-41 -- you address the benchmark. And so  
17 what we pay individuals up under that is really not  
18 relevant in the big sense of the word, because  
19 we've got our O&M benchmark that says, okay, when  
20 the Commission set rates in 2002 or 2005 and you  
21 used that O&M benchmark, and then your compensation  
22 increases, for example, by much greater than  
23 inflation -- which in our case it has not. It has  
24 been under that inflation, so we're under the  
25 Commission benchmark. I believe that's accurate on

1 salaries. Then you know that we're not out of line  
2 in our compensation. That's why getting into this  
3 minutia of detail is not, we believe, relevant to  
4 the Commission setting just and reasonable rates.

5 Now, if we're out of whack and we're, you  
6 know, 50 percent above the benchmark on salary,  
7 then what do you do? You ask additional  
8 interrogatory and discovery requests. But again,  
9 we haven't been. No one else has filed testimony  
10 to say, yeah, you're out of whack.

11 COMMISSIONER McMURRIAN: Okay. I think that's  
12 all I have for now, Mr. Chairman.

13 CHAIRMAN CARTER: Thank you. Commissioner  
14 Skop.

15 COMMISSIONER SKOP: Thank you, Mr. Chairman.  
16 I just want to go back to Ms. Gervasi's comments in  
17 response to Commissioner Argenziano's questions,  
18 which I agree with wholeheartedly in terms of the  
19 interpretation. I think part of the tension here  
20 seems to be how broad the term "personal financial  
21 information" is. To me, that implies a broad-based  
22 intrusion into somebody's full financial picture,  
23 like basically saying what are all your assets,  
24 what are all your liabilities, not necessarily  
25 singular. So I guess I would ask the same question

1 to our staff. Should there be a distinction  
2 between a broad-based overreaching intrusion into a  
3 natural person's financial information versus the  
4 narrowly tailored discovery of corporate  
5 compensation data held by FPL, which is relevant to  
6 the subject matter of the pending action and  
7 necessary to allow Commission staff to perform its  
8 regulatory function?

9 MS. GERVASI: Could you repeat the first part  
10 of that, please? I'm sorry.

11 COMMISSIONER SKOP: I think we're saying the  
12 same thing. What I'm hung up on is the term -- I  
13 guess somebody could logically argue that any  
14 intrusion into a natural person's financial  
15 information would be an impermissible violation of  
16 the Constitution. What I'm trying to distinguish  
17 and flesh out is, should there be a distinction  
18 between a broad-based overreaching intrusion into a  
19 natural person's financial information, i.e.,  
20 everything they have, as opposed to a narrowly  
21 tailored discovery of corporate compensation held  
22 by FPL, which is relevant to the subject matter of  
23 the pending action and necessary to allow  
24 Commission staff to perform its regulatory  
25 function? Again, the least intrusive means. We're

1 not looking at diving into every employee's  
2 history, but we're merely saying, look, FPL, you  
3 hold relevant information. So is that essentially  
4 what staff is saying?

5 MS. GERVASI: I think the Legislature has  
6 spoken on the issue of compensation relative to  
7 employee compensation with respect to the  
8 Commission's functions when it's involved in a  
9 proceeding where the information is relevant.

10 COMMISSIONER SKOP: I also agree with staff's  
11 characterization that 366.093(3)(f) is controlling  
12 in this case, to the extent that the Legislature  
13 expressly excluded compensation information from  
14 confidentiality. I know that the argument  
15 surrounds (3)(e) in terms of competitive interests,  
16 but again, one is expressly stated and more narrow  
17 than the broader under (3)(e), so I would agree  
18 wholeheartedly with Commissioner Argenziano on  
19 that.

20 And I guess for me -- you know, I'm just going  
21 to kind of put it out there. Here's the bottom  
22 line on this as far as I'm concerned. If you take  
23 the individual names out of the equation, the  
24 constitutional arguments become moot. Therefore,  
25 if the Commission were to narrowly tailor a

1           discovery request to harmonize any tension between  
2           the constitutional provision and the statute, it  
3           could avoid a direct conflict with the  
4           constitutional provisions. And so it seems to me  
5           that the Commission could decide this case without  
6           reaching the constitutional questions on the basic  
7           premise that has been asserted by staff that the  
8           underlying statute, namely, 366.093(3)(f), is  
9           constitutional on its face, and that's a guiding  
10          premise.

11                   And it seems to me that the courts  
12           historically when they've had to struggle with such  
13           issues often resort to adopting an interest  
14           balancing test, and that's kind of the way I'm  
15           looking at this. At least my rationale is that if  
16           the Commission were to apply some sort of interest  
17           balancing test to deal with the confidentiality  
18           issue looking at the statute.

19                   I would note that FPL is a regulated monopoly.

20                   And then along the lines of what Commissioner  
21           Argenziano I think is saying, at least to me,  
22           there's a compelling and overarching public  
23           interest in the transparency and disclosure of  
24           total compensation above a specified total  
25           compensation threshold level. For instance, if you

1 get up to a certain level, there's an overarching  
2 interest there, I think, in having that  
3 transparency, again, not names, just title and  
4 compensation, whereas I do believe there's a  
5 company interest in maintaining the rank and file  
6 compensation data that would include job title and  
7 compensation -- excuse me. I get tongue-tied at  
8 times. I do believe there is a company interest in  
9 maintaining rank and file job title and  
10 compensation data confidential for competitive  
11 reasons below a certain specified threshold level.

12 So I don't know where the Commission would  
13 draw that line. You know, I know that we've seen  
14 two different numbers floated, above 165,000 and  
15 above 200,000. Maybe the line is a little bit  
16 higher, maybe it's a little bit lower. That's  
17 certainly something I'm willing to discuss with my  
18 colleagues. But I think once you hit a specified  
19 threshold, there is an overarching, compelling  
20 public interest that comports with the statute of  
21 having that transparency.

22 Now, again, I do wholeheartedly agree with FPL  
23 and Progress to the extent that if you disclose the  
24 rank and file employees, people making  
25 substantially less than that, all it's going to do

1 is breed animosity. And I do think that you would  
2 have the propensity to go target certain employees  
3 to attract them away. But at a significant salary  
4 level, I think that's less likely than not. I  
5 mean, everyone pays competitive salaries at that  
6 level, or people have the individual choice to go  
7 elsewhere. So at the rank and file level, not so  
8 important, but above a certain total compensation  
9 level, I think there's a public interest there, and  
10 I think it's compelling and overarching.

11 COMMISSIONER ARGENZIANO: Mr. Chair.

12 CHAIRMAN CARTER: Commissioner Argenziano.

13 COMMISSIONER ARGENZIANO: To Commissioner  
14 Skop, I couldn't agree with you more. That's the  
15 reason why I asked for those and not -- 165 and  
16 above and not the rank and file.

17 And to reiterate, I have said in letters and  
18 to staff to convey to the utilities that I did not  
19 need to have the names, I didn't think that was  
20 necessary, for safeguarding the employees, you  
21 know, in case of anything, and also to try to reach  
22 a middle point.

23 And truthfully, I believe their discussions  
24 were not in good faith when our staff, Mary Anne  
25 Helton in particular, I believe, tried to discuss



1 that with Progress and FPL.

2 So that's exactly how I feel. I don't think  
3 we need the names, and I think everybody can  
4 understand why you don't need the names, but there  
5 is a very compelling reason that the ratepayer who  
6 pays the salaries should be able to get that  
7 information. And the biggest reason is that the  
8 law says that that's what they shall have. So I  
9 couldn't agree with you more.

10 CHAIRMAN CARTER: Thank you. Commissioner  
11 Skop.

12 COMMISSIONER SKOP: Thank you, Mr. Chair. And  
13 again, I'm pretty much in full agreement. I think  
14 the tension for me is setting the appropriate  
15 threshold level in terms of compensation. Again,  
16 I've seen 165, I've seen 200,000, relating that  
17 back to my own salary history. But it would seem  
18 to me that 165 would probably be below a director  
19 level within the company structure that I'm  
20 familiar with. And I'm not so sure that that's  
21 appropriate or not appropriate. I'm open-minded on  
22 that. But I do think above a certain level, it  
23 just boils down to an interest balancing test where  
24 there's a compelling and overarching public  
25 interest in transparency and disclosure.

1 COMMISSIONER ARGENZIANO: Mr. Chair.

2 CHAIRMAN CARTER: You're recognized,  
3 Commissioner.

4 COMMISSIONER ARGENZIANO: Let me tell you how  
5 I came to the 165, because first I had asked for  
6 200,000 and above. First of all, I think it's a  
7 fair number to ask as a Commissioner sitting and  
8 weighing in on all of this to find out how many,  
9 and now I'm finding out it's not 300, it's 400, and  
10 we're talking about millions and millions of  
11 dollars that the ratepayer should be able to  
12 understand and have that information. But what  
13 it's based on, that comes out to four times the  
14 average income of a person in my county, the  
15 average person in my home county. And that's how I  
16 looked at it, is four times the amount of the  
17 average person's income was something I thought was  
18 reasonable to say let's take a look at.

19 CHAIRMAN CARTER: Thank you. Commissioners, I  
20 was -- of course, I probably shouldn't venture my  
21 thoughts, because sometimes they tend to spiral us  
22 down a rabbit trail. But this is -- you know, for  
23 being a lawyer, this is probably one of the more  
24 fascinating cases that has been before us. That's  
25 why I was really enjoying it. I'm not saying this

1 is not significant for other reasons, but from a  
2 legal standpoint, it's probably one of the more  
3 fascinating cases that we've had since I've been  
4 here. On the one hand, we're talking about  
5 Article I, Section 23 of the Constitution, but I  
6 was listening -- and I did get the answer that I  
7 was looking for, because Mr. Richard said he was  
8 not saying the statute was unconstitutional.  
9 Right, Mr. Richard?

10 And then you zeroed in on the perspective that  
11 -- the concern between 366.093(3)(f) and (3)(e).  
12 Do you remember when you had that -- if you can  
13 kind of walk me through that again. Do you  
14 remember when you talked about the language in  
15 (3)(f) and the language in (3)(e)?

16 MR. RICHARD: I don't think it's a distinction  
17 in the language. If you look at the statute,  
18 there's no question that (e) says -- I'm sorry,  
19 that (f) says employee personnel -- when the  
20 Legislature in 1989 expanded the sphere of  
21 confidential information, they included all of the  
22 language in the first paragraph of (3) that now  
23 lays out the circumstances under which a company  
24 should be entitled to confidentiality. When you go  
25 down to (f), it says employee personal information

1 unrelated to compensation, duties, qualifications  
2 and responsibilities. That's part of a laundry  
3 list. If you look at (a) through (f), it's a  
4 laundry list of information which is automatically  
5 confidential. It's beyond this Commission's  
6 ability to open it unless -- some of them have  
7 language that gives you some degree of discretion,  
8 but it says by and large these things are  
9 confidential, period.

10 There's a second category of information in  
11 this statute, which is that information which may  
12 or may not be confidential, depending upon the  
13 circumstances, in which this Commission has a  
14 degree of discretion. And I'll give you a good  
15 example of it using employee compensation, because  
16 I think it falls into that category. I think what  
17 (f) is saying is that employee compensation and  
18 these other items are not automatically  
19 confidential. And I'll give you an example. Let's  
20 say we have a company that discloses its employee  
21 compensation among its employees and to third  
22 parties, or a company that, while it may claim it's  
23 confidential, has never taken any steps to maintain  
24 its confidentiality. I don't think that that  
25 company -- because if you look at the language up

1 here under (3), it says they must take steps to  
2 maintain its confidentiality, which is the usual  
3 definition, as, Mr. Chairman, you know, of a trade  
4 secret or other confidential proprietary  
5 information. If they don't take steps, they lose  
6 that ability. And if I were to come before you on  
7 behalf of my client and say it's important for my  
8 client that this be confidential, and yet you have  
9 evidence that my client had never maintained  
10 confidentiality before, you would have the right to  
11 say, no, you don't fall within that category that  
12 may or may not be. But if my client can establish  
13 that it has good reason for it and it has  
14 consistently packed it to maintain that  
15 confidentiality, what I'm suggesting to you is it  
16 falls within the category of things that you have  
17 the discretion to make confidential.

18 And if I might, with respect, because I'm not  
19 trying to tell you what you should or should not  
20 do, I think it would be a mistake for this  
21 Commission to so narrow its discretion to make that  
22 determination, because we never know what's coming  
23 down the road, that in the future you're going to  
24 be bound by a decision that says we cannot grant  
25 confidentiality to you for this type of information

1 under any circumstances. And I see no reason under  
2 this statute for you to have to arrive at that  
3 conclusion.

4 So I hope that clarified the point I was  
5 making and didn't make it more complicated.

6 CHAIRMAN CARTER: No, no. I'm always  
7 interested in statutory construction and  
8 interpretation, and I think you've done a good job  
9 of it.

10 The perspective in the series of questions  
11 asked by Commissioner McMurrian to staff --  
12 remember the line of questions she asked about the  
13 information, what was in the building?

14 MR. RICHARD: Right.

15 CHAIRMAN CARTER: And I think she followed up  
16 with both companies, asking is this what you're  
17 asking for confidentiality on, notwithstanding  
18 whether we may disagree on if what you have given  
19 is what we asked for, let's zero in on that for a  
20 moment. And the perspective was that even though  
21 the information as presented that we currently have  
22 in the building, you're claiming confidentiality on  
23 that; is that correct?

24 MR. RICHARD: That is true. And again, I  
25 can't tell you all the parameters of my client's

1 concern, but I would address one thing that has  
2 arisen because of the reference to names. I think  
3 that's a giant step towards resolving this problem  
4 in a way that everybody could probably live with.  
5 The difficulty is, and I know you realize this, is  
6 that there are some instances in which knowing the  
7 job title knows who it is. If you have a director  
8 of human relations and you say director of human  
9 relations, you've told them who the individual is.  
10 And if this Commission were to decide that it  
11 wanted to balance these interests, it needs to take  
12 into consideration that factor, so that if knowing  
13 the position effectively tells a person who it is,  
14 there ought to be some accommodation made for that.  
15 That's what I would suggest.

16 CHAIRMAN CARTER: Mr. Glenn.

17 MR. GLENN: I agree with what Mr. Richard  
18 said, particularly -- if you break down Progress  
19 into individuals, those folks whose salaries are  
20 allocated to PEF -- and that's at Progress Energy  
21 Carolinas. For example, some of the nuclear people  
22 allocate their time, service company employees,  
23 attorneys, others, tax people allocate their time  
24 and then Progress Energy Florida employees. Those  
25 employees are around, I think, 130 employees.

1           Okay? For Progress Energy Florida, we may have  
2           five, six vice presidents. To say vice President  
3           of South Central Region or Director of Nuclear  
4           Maintenance, you've giving away the person. You  
5           know, even if you say vice president, you know,  
6           there's four regional vice presidents, and they're  
7           going to know what everybody is making, and then  
8           your outside people, your competitors are going to  
9           know what they're making.

10           I think to Mr. Richard's point, I think we are  
11           close together, and that's our concern. You know,  
12           you strip away the names and you still have the  
13           titles, it's pretty darn easy with a few people to  
14           know who's making what, for not only internal  
15           people but for our competitors.

16           CHAIRMAN CARTER: Let me go to Commissioner  
17           Skop, because I forgot my third question.  
18           Commissioner Skop, you're recognized.

19           COMMISSIONER SKOP: Thank you, Mr. Chairman.  
20           To Mr. Glenn, with respect to that distinction, I  
21           guess that could be the case, but in that case,  
22           you're not directly disclosing personal financial  
23           information. So again, with the title, I guess  
24           maybe a person with inside knowledge of the  
25           organizational structure might be able to make that



1 connection, but would an average natural person be  
2 able to draw that conclusion?

3 MR. GLENN: Yes.

4 COMMISSIONER SKOP: With respect to trying to  
5 harmonize the tension between 366.093(3)(f), which  
6 expressly excludes compensation information from  
7 being confidential, versus the provision of (3)(e),  
8 which speaks to competitive interests which would  
9 impair the competitive business position of the  
10 provider, wouldn't a reasonable attempt to  
11 harmonize those two provisions, but equally  
12 respecting the, the competitive reasons, be not to  
13 disclose the rank and file and above a certain  
14 total compensation threshold level in the interest  
15 of the public's compelling and overarching interest  
16 to make that transparent? I mean, is that an  
17 appropriate balance to rationalize this,  
18 notwithstanding the argument you've raised about  
19 maybe you can identify what the director of HR  
20 makes?

21 MR. GLENN: No, I don't think so. Then you're  
22 on the slippery slope of where do you draw that  
23 line? Why not \$100,000? Why not twice the average  
24 annual income of somebody's district? I think that  
25 leads us into the weeds that this Commission has

1 never been in before, nor needed to, nor any party  
2 we know who is conspicuously absent here is saying  
3 this is important. I don't think there is that  
4 overarching public interest, because, really, for  
5 what purpose?

6 COMMISSIONER SKOP: I know Commissioner  
7 Argenziano has raised a couple of instances to the  
8 extent that, you know, various things that have  
9 happened in the financial community and such. It  
10 seems to me again above a certain -- just as they  
11 disclose for key executives and directors or  
12 officers, their information is out there. The SEC  
13 requires it. I think it could be a slippery slope,  
14 but I also think that if one reasonably set their  
15 mind upon drawing a fine line between, hey, you  
16 know, here's a compensation level, total  
17 compensation level which, you know, there's a  
18 compelling and overarching interest in having that  
19 transparency and the disclosure of the information  
20 so that the public can see, I don't necessarily  
21 think that's a bad thing. I can understand some of  
22 the reasons why -- that have been well articulated  
23 by the parties why you want to do that, why it  
24 might be a slippery slope, but if you make an  
25 appropriate choice, I think it's appropriately

1 balancing the interests of the rank and file,  
2 preventing that workplace animosity of Joe the  
3 lineman making more than Billy Bob the lineman, you  
4 know, taking care of those issues, but also  
5 providing that openness to kind of see what's going  
6 on in the interest of the public -- I mean, it's a  
7 different story. If it was a completely private,  
8 unregulated company, I wouldn't even be thinking  
9 about this. But again, they enjoy the privilege  
10 and the benefits of being a regulated monopoly, and  
11 I'm wondering whether that kind of needs to factor  
12 into the calculus.

13 MR. GLENN: Mr. Chairman, if I may, I  
14 appreciate the statements that you're making. I  
15 think that just as a policy matter that what we're  
16 looking to do is to try to control our costs, to  
17 try to keep those down, to try to attract the best  
18 and brightest people that we've got. And that 132  
19 people are the best and the brightest in a lot of  
20 areas, and we're going to lose them. We're going  
21 to lose some of them. There's no question about  
22 it. If you disclose the director of site  
23 operations for a nuclear power plant, in today's  
24 economy, he's gone, or she's gone.

25 And so at the end of the day, what you're

1 really going to do for what little value I see in  
2 disclosing these publicly, we are going to increase  
3 the cost to consumers ultimately, because we're  
4 going to be pressed with salary. You're going to  
5 have morale issues. There's no question about it  
6 that you will, and there's no record evidence to  
7 the contrary that's in this record before you  
8 today.

9 And then with respect to the whole Wall Street  
10 issue, I know that has gotten a lot of press and a  
11 lot of play, we're not that. Okay? We are an  
12 outstanding company that -- if you look at the O&M  
13 benchmark, we are within that line. And so I don't  
14 think that's an overarching concern.

15 I think it's in the customers' best interest,  
16 both in the short term and the long term, if you do  
17 maintain the confidentiality, recognizing that the  
18 people who represent the citizens of the State of  
19 Florida and the customers, the Office of Public  
20 Counsel and the Attorney General who have been  
21 here, can see all of that information and draw  
22 their own -- and ask any more detailed questions  
23 that they want and bring any anomalies to your  
24 attention if there are any.

25 COMMISSIONER SKOP: Thank you, Mr. Chairman.

1 And I do respect that analysis. I guess what I  
2 was -- the tension I have, again, is (3)(f) in my  
3 mind is controlling. And I'm sure that will be  
4 changed in the next legislative session, or  
5 amended.

6 MR. GLENN: Let the record reflect that  
7 Commissioner Skop was not looking at me when he  
8 said that.

9 COMMISSIONER SKOP: No. But again, I'm torn  
10 with, you know, being a good Commissioner and  
11 attorney trying to follow the law and the  
12 legislative -- you know, the language of the  
13 statute on its face expressly excludes compensation  
14 data. I know that we can go beyond that and  
15 consider, you know, competitive positioning,  
16 competitive harm, competitive interests, but  
17 there's a tension there. It does -- staff, I  
18 believe, correctly interpreted under the current  
19 law, the State of Florida supports disclosure.  
20 It's just a question of where do you draw that line  
21 in recognizing the valid arguments that not only  
22 have been advanced by Mr. Glenn, but Mr. Richard,  
23 the companies.

24 You know, it's a tough one. Like Chairman  
25 Carter stated, it's probably one of the most

1 interesting issues and challenging issues the  
2 Commission has faced in such time, and I'm glad  
3 that we're having very good, open, thoughtful  
4 discussion on it.

5 CHAIRMAN CARTER: Thank you, commissioner.

6 COMMISSIONER ARGENZIANO: Mr. Chair.

7 CHAIRMAN CARTER: One second, Commissioner.  
8 Commissioner Edgar, and then I'll come back to you.  
9 Commissioner Edgar.

10 COMMISSIONER ARGENZIANO: Thank you.

11 COMMISSIONER EDGAR: Thank you, Mr. Chairman.  
12 Just a couple of quick comments, if I may. First,  
13 just to say I'm pleased finally to hear where the  
14 165,000 threshold number came from, because I asked  
15 that question a number of times and had some  
16 difficulty getting an answer. And to know that  
17 there was a reason, four times the income in Citrus  
18 County average, I'm just pleased to know where it  
19 came from, so I'm glad to have that come out.

20 Those of us -- and I hope not to too much  
21 speak for my friends and colleagues, but those of  
22 us who have served as attorneys for the  
23 Legislature, Chairman Carter and our general  
24 counsel, and I'm sure others in the room, I know  
25 particularly enjoy discussions of statutory

1 construction. I do, and I could listen to it all  
2 day, truly, and enjoy it, and I mean that. And I  
3 do say as attorneys for the Legislature, not as a  
4 legislator, Mr. Richard.

5 But I do think that perhaps we may have gone a  
6 little bit far afield with discussions of Wall  
7 Street and some other things, so if I may, I would  
8 kind of like to try to bring us back a little bit.  
9 And I did ask that we have an overarching  
10 discussion, and I think that has been helpful, but  
11 I do think at some point we do need to get to the  
12 more specific issues that are before us today.

13 And I have heard staff say in my briefing  
14 yesterday, which was helpful, and then also today  
15 here in this room with all of us, that -- I believe  
16 I've heard staff say that the request may have  
17 changed somewhat as to the specificity of  
18 individual names in recognition of concerns that  
19 have been raised about privacy and other concerns.

20 And I also think I've heard the parties today  
21 say that they, we, are maybe pretty close or at  
22 least closer than maybe at one point in time as to  
23 agreeing as to what our staff needs and what they  
24 say they need, which I want to support, and what  
25 has been given and is in the process of being

1 given.

2 So I'm just wondering, recognizing that we've  
3 been at this for a while, if it may be possible to  
4 take a brief break -- I defer to you, Mr. Chairman,  
5 on that, of course -- and see if there is the  
6 possibility that we really are this close as to  
7 what we have, what we don't have, what our staff  
8 needs, what the utilities can do that meets what  
9 our staff needs, and if there may be some value in  
10 allowing them to have that discussion while I,  
11 quite frankly, take a stretch, and perhaps some  
12 others do as well.

13 CHAIRMAN CARTER: Okay. Commissioner  
14 Argenziano.

15 COMMISSIONER ARGENZIANO: Mr. Chair.

16 CHAIRMAN CARTER: Commissioner Argenziano.

17 COMMISSIONER ARGENZIANO: Two things, one to  
18 the discussion that Commissioner Edgar just had. I  
19 don't want staff to do any kind of trading on the  
20 issue. I want them to comply with the law. And if  
21 that's what they're doing, I want them to stick to  
22 their position. With all due respect, I appreciate  
23 and want to try to get to some consolidation, but  
24 I'm not hearing -- it sounds like -- what I think  
25 I'm hearing is that we think we're closer in



1 getting to some kind of agreement, and I'm still  
2 hearing that the company doesn't want to provide  
3 the information that staff asked for. And I'm of  
4 the opinion at this point that nothing they've said  
5 has changed my mind that the statute is as simple  
6 as it is. And I know while sometimes attorneys are  
7 right on point, they sometimes can make things a  
8 lot more complicated than they are. And to me, the  
9 statute says what it says, and I just want to make  
10 sure that staff is not going to concede on  
11 something they think is critical or is complying  
12 with the law.

13 Secondly, if I can, I just want to go back.  
14 Commissioner Skop had mentioned something before in  
15 his comments about the overreaching interest, and  
16 then -- overarching, I'm sorry, overarching  
17 interest. And the gentleman from Progress had said  
18 something, and I don't want to put words in his  
19 mouth, so I just want him to answer to me. You  
20 said something about there being no reason to  
21 disclose, that there was no reason. And could I  
22 ask you, is that what you said? I want to make  
23 sure, and then I may have a question for you.

24 MR. GLENN: Chairman Carter, if I may.

25 CHAIRMAN CARTER: You may proceed.

1 MR. GLENN: Commissioner Argenziano, I think  
2 when you look at the aggregate amount of all of the  
3 salary information that you have, even the line  
4 item salary information that you have, it is clear  
5 that the utility is not out of line with the O&M  
6 benchmark that this Commission uses to determine  
7 generally what the reasonableness of compensation  
8 is. And so we believe if you have everything at  
9 your fingertips to make a decision in this case,  
10 number one. Number two --

11 COMMISSIONER ARGENZIANO: With all due  
12 respect, I think what I was asking you was, did you  
13 make a comment that there was no reason to disclose  
14 when -- that information when Commissioner Skop had  
15 mentioned the overarching interest of the public.  
16 I don't want to get it wrong, because I wanted to  
17 ask you a question or ask staff a question to that.  
18 But if I'm incorrect, I want you to correct me.

19 MR. GLENN: No, I don't believe you're  
20 incorrect in one sense, Commissioner Argenziano,  
21 and that is, really, for what purpose, when you  
22 weigh that against what are the consequences and  
23 ramifications of that type of disclosure to  
24 customers. That's the point I was trying to make.

25 COMMISSIONER ARGENZIANO: Okay. I appreciate

1 that. And now I just want to get to the point. I  
2 wanted to tell you that -- because I heard that,  
3 and then I thought about a statute that I had read,  
4 and I went back and looked at it, and I'll tell  
5 you, yes, it goes go to a public -- there is a  
6 purpose and there is reason to disclose, and it  
7 goes to 366.06(1), which charges the Commission to  
8 consider public acceptance, quote, public  
9 acceptance of rates. And public input is  
10 necessary, it says, regarding range of salary  
11 awards to determine that public acceptance. So,  
12 yes, there is a reason. And public acceptance of  
13 rates, how would we know that unless they know it  
14 and they can tell us? So, yes, there is a reason  
15 to know that and a purpose for that, according to  
16 366.06(1).

17 Now, staff, if I could have staff answer a  
18 question for me, according to that statute,  
19 366.06(1), which, quote, says that we shall --  
20 we're charged with considering public acceptance,  
21 wouldn't that be another reason, another, because  
22 there's a few others, but another reason for us to  
23 have -- or to consider that information important  
24 to disclosure?

25 MS. GERVASI: Yes, ma'am, I would agree with

1           that. The reason the information is relevant and  
2           the Legislature has specified that it's relevant is  
3           because the Commission has a duty to set fair,  
4           just, and reasonable rates, and this information is  
5           relevant to the Commission's charge in that regard.

6           COMMISSIONER ARGENZIANO: So then without the  
7           public having that information, we could never -- I  
8           could never as a Commissioner know whether they've  
9           accepted it or not, and according to that statute,  
10          which charges me to consider public acceptance, I  
11          would not be able to get that acceptance without  
12          that being public; is that correct? I'm having a  
13          hard time -- I'm trying to find other reasons, and  
14          I'm trying to look at valid concerns, but I'm also  
15          looking at the statutes. And if I am to consider  
16          public acceptance, then by denying them what the  
17          statute, I believe, says they should have, then  
18          again, I'm not going to be able to have their input  
19          because they won't have that information. Does  
20          that make sense?

21          MS. GERVASI: It does make sense. I think  
22          it's also important to keep in mind that if the  
23          Commission is wrong and the parties chose to  
24          challenge the Commission's decision in court, this  
25          information by law will continue to be confidential

1           until such time as a court of competent  
2           jurisdiction tells us otherwise, in which case if  
3           the court says --

4                    COMMISSIONER ARGENZIANO: Thank you.

5           Mr. Chair -- I'm sorry. Did I cut you off?

6                    MS. GERVASI: No, that's okay. I'm finished.

7                    COMMISSIONER ARGENZIANO: I'm just going to  
8           read that again, because it makes a difference.  
9           And if nobody has read it, 366.06(1) charges the  
10          Commission to consider, quote, public acceptance of  
11          rates. Public input is necessary regarding range  
12          of salary awards -- I'm sorry. Public acceptance  
13          is the quote. What I'm saying is it's necessary to  
14          determine the public's acceptance of that. And I  
15          find it hard to be able to determine the public  
16          acceptance if we're not giving them that  
17          information that I think the statute --

18                   CHAIRMAN CARTER: Commissioners, I want  
19          everybody -- hold on where we are. We have one  
20          court reporter today, and I really do need to give  
21          her a break, so let's hang on. Just everybody hold  
22          your points. Commissioner, just kind of hang onto  
23          your notes there, and we'll pick up. Let me give  
24          the court reporter at least a break to kind of  
25          stretch her legs and go to the necessary room. I'm

1 looking at coming back at 10 after. We're on  
2 recess.

3 (Short recess.)

4 CHAIRMAN CARTER: Commissioners, as I said  
5 before, we have one court reporter, and we're going  
6 to go ahead and give her a break, and that way when  
7 we come back -- I'm going to give her a break so we  
8 can come back and start afresh, because -- what I  
9 was hoping to do was we could finish 4 and 4A, but  
10 it looks like we need to go ahead on and give her a  
11 lunch break, and we'll come back everybody fresh.  
12 We'll come back at 2:30.

13 (Recess from 1:18 to 2:35 p.m.)

14 CHAIRMAN CARTER: We are back on the record.  
15 Commissioner Argenziano, can you hear us okay?

16 COMMISSIONER ARGENZIANO: Yes, I can.

17 CHAIRMAN CARTER: Excellent, excellent. I  
18 hope everybody is like I am. I had a wonderful  
19 lunch.

20 COMMISSIONER EDGAR: Well nourished,  
21 Mr. Chairman.

22 CHAIRMAN CARTER: Well nourished, great,  
23 great, great. I won't tell you where I went, but  
24 they say Publix shopping is a pleasure.

25 Let's kind of before we go, Commissioners --

1 Ms. Helton, you're recognized.

2 MS. HELTON: Thank you, Mr. Chairman. I did  
3 get to eat, but I also had a working lunch. I had  
4 a discussion with an individual from each of the  
5 utilities here today in an attempt to resolve this  
6 so that we can move on. Unfortunately, those  
7 discussions were not fruitful.

8 I would be happy to let you know what staff  
9 offered up, but we would be willing to recommend to  
10 you what should be public and what should be held  
11 confidential if that will help you in your  
12 deliberations.

13 CHAIRMAN CARTER: Please proceed.

14 MS. HELTON: Looking at the two prongs of  
15 366.093 that we've been discussing today,  
16 subsection (e) that deals with competitive  
17 interests and subsection (f) which discusses  
18 personnel information unrelated to compensation,  
19 duties, qualifications, or responsibilities, we  
20 asked the companies to file publicly the  
21 compensation information that is listed on  
22 Commissioner Skop's sheet, which I think is similar  
23 to what we asked for in discovery.

24 So that would be, if you look at his columns,  
25 the base salary information to the right. It's not

1 clear to me -- there may be one column missing  
2 there from our discovery which we would also want.  
3 As you all know, I'm not an accountant, but it's  
4 that specific compensation information that we  
5 asked for in our discovery.

6 We asked for them to tie that information to a  
7 generic title, not a specific title, and not any  
8 name, but we did ask for that generic title that  
9 would be tied to the line item compensation  
10 information to be filed publicly so that everyone  
11 here in this room and members of the public would  
12 have access to that.

13 We then agreed -- or not agreed, but we then  
14 offered for them to file the specific names of the  
15 individuals at issue here with their specific  
16 titles under cover of confidential treatment. And  
17 we told them -- or actually, I told them that we  
18 would recommend to you that you could find that to  
19 be proprietary and confidential business  
20 information under subsection (e) because we were  
21 persuaded, potentially persuaded by their arguments  
22 that the disclosure of that information could  
23 impair their competitive interests.

24 Unfortunately, the companies did not agree to  
25 that, and so we are here on the recommendations



1 that Ms. Gervasi has filed, and we need an answer  
2 from you all.

3 CHAIRMAN CARTER: Okay. Commissioners.  
4 Commissioner Skop, you're recognized, sir.

5 COMMISSIONER SKOP: Thank you. Just briefly  
6 to Ms. Helton, with respect to the generic now  
7 named descriptions that staff may have offered up  
8 during the lunch break, is that consistent or  
9 inconsistent with the way any other utilities may  
10 have treated those job titles in the past?

11 MS. SALAK: Commissioner --

12 CHAIRMAN CARTER: Ms. Salak.

13 MS. SALAK: Our division asked for some data  
14 requests associated with other data, and that is  
15 sort of a cross between two of them. There's one  
16 company that filed under generic titles, but didn't  
17 give us the associated key yet, and there is  
18 another company that filed all titles and all  
19 names, and specific titles, but then let be public  
20 the more generic pieces of that information. So it  
21 would be consistent with that company's, yes.

22 COMMISSIONER SKOP: So if it were more of a  
23 generic job title, that would still give the public  
24 transparency and visibility as to the compensation  
25 by job title, but it would also address the concern

1 that I thought I heard that if you had two  
2 similarly named positions within a 300-person  
3 thing, that you wouldn't be able to really kind of  
4 distinguish too much from a generic title as  
5 opposed to the specific title, like vice president  
6 north, vice president south. You wouldn't be able  
7 to tie it to in individual. It would be vice  
8 president.

9 MS. BENNETT: That would be the goal, yes.

10 COMMISSIONER SKOP: All right. Thank you.

11 CHAIRMAN CARTER: All right. Commissioners.

12 Commissioners, we are -- I think we've pretty  
13 much -- Commissioner Edgar, you're recognized.

14 COMMISSIONER EDGAR: I would just like to hear  
15 from the parties as to why the discussions that  
16 Ms. Helton has described to us did not meet their  
17 ability to respond or comply, or whatever would be  
18 the appropriate response or word.

19 CHAIRMAN CARTER: We'll start with  
20 Mr. Richard, and then we'll have Mr. Glenn.

21 MR. RICHARD: I was not at that party, so I'll  
22 have to ask somebody else to respond to that. I  
23 went off to eat lunch, and apparently nobody could  
24 find me.

25 CHAIRMAN CARTER: Let's go to Mr. Glenn, and

1 then we'll come back to someone from FPL that was  
2 at the party. Mr. Glenn.

3 MR. GLENN: Yes. Thank you, Commissioner.  
4 The bottom line on the generic titles is, we have a  
5 limited number of people in some of those generic  
6 titles, even vice president, and to disclose those,  
7 apart from privacy interests, apart from all the  
8 other arguments we raised, the ability for anybody  
9 then to see what everyone else is making, it's  
10 pretty much an identifying of each individual.  
11 They would know who is at this title and who is at  
12 that title the higher up you get. And that's apart  
13 from just the other arguments that we believe -- we  
14 believe we've established also that there is --  
15 there has been a lot of discussion about the  
16 discretion under 366.093, and we believe that if  
17 you've determined on the factual record that you  
18 have before you today that it's confidential and  
19 proprietary, that shouldn't be disclosed. And we  
20 think there's no record evidence to the contrary.

21 But apart from that, just because of the  
22 nature of some of those positions, you're going to  
23 be able to know what people are going to make  
24 internally in the company. And then externally,  
25 they're going to be able to see the specific

1 breakdown of a line item by salary, by incentive  
2 compensation, by restricted stock, and that again  
3 is going to publicly put out to our competitors the  
4 ability to come in and raid our employees.

5 I think we would, without question, provide  
6 the Commission the detailed titles and salary  
7 information under confidential treatment. I think  
8 we've always been of that mind. We were just  
9 concerned that that would be -- as the staff  
10 recommendation has been issued, would not be  
11 maintained confidential.

12 COMMISSIONER EDGAR: Mr. Chairman, if I could,  
13 to Mr. Richard, let me try again, if I may. In  
14 some of the discussion this morning before the  
15 lunch break, I think I heard you say that your  
16 client and our staff were close. I thought I heard  
17 you say that a couple of times. And my  
18 understanding from that, which apparently was  
19 incorrect, was that something very similar to what  
20 Ms. Helton described was perhaps what we were  
21 getting close to. Could you just clarify for my  
22 own benefit, I guess, what we are or were close on  
23 and what we are not from the perspective of your  
24 client.

25 MR. RICHARD: Yes, I'll clarify as best I can,

1 with the understanding that I wasn't at these last  
2 discussions.

3 It seems to me that there's a general  
4 recognition of the fact that there is an element of  
5 reasonableness in both the companies' concerns over  
6 competitive disadvantage and in my company's, at  
7 least, say, internal work relationships, and also a  
8 legitimate concern over privacy of the individual  
9 employees. So I think we're -- it doesn't seem to  
10 me that we're that much at odds on those two  
11 issues. It's just a question of where the line is  
12 drawn. As I've heard the discussions take place  
13 today, I don't even see that wide a divergence  
14 there.

15 The question -- it seems to me that there's a  
16 general acceptance, at least by the staff, of the  
17 fact that information that would identify  
18 individuals fairly is something that the companies  
19 would prefer to keep confidential, and the issue  
20 is, what is that information.

21 And if I might in that respect comment. The  
22 issue of the level of compensation I don't think  
23 helps us a lot, because it's the people at the  
24 higher levels of compensation -- and by that I  
25 don't mean the very high levels, which are public,

1 but the higher levels within the 165,000 where the  
2 biggest issue arises, because those are the ones  
3 that are most likely to be subject to raiding and  
4 would have the most impact upon the customers if it  
5 drove up their level of income because of the  
6 competitive raiding. Those are the ones where  
7 divulgence within the company creates the highest  
8 tension, and those are the people who, for many  
9 reasons, may have the most interest in protecting  
10 their privacy. So while I think if we could create  
11 a dividing line according to the amount, that would  
12 make it easier for all of us, I don't think that  
13 that alone solves the problem.

14 Finally, getting to your answer, it seems to  
15 me, from what Mr. Glenn said and from what the  
16 staff said and what I understand from my client,  
17 that we are getting closer even with respect to  
18 finding out where that proper line in, because the  
19 more generic we get, the less the problem becomes.  
20 The question just becomes, based upon how a given  
21 company defines those roles, how identifiable it  
22 becomes. So if all we're talking about -- if we're  
23 all in agreement that we should avoid identifiable  
24 information in order to protect all those interests  
25 and the question only becomes how do we do that, it

1 seems to me that we've gotten pretty close. So  
2 that's what I meant.

3 COMMISSIONER EDGAR: All right. Thank you.

4 CHAIRMAN CARTER: Commissioner Skop.

5 COMMISSIONER SKOP: Thank you, Mr. Chair.

6 Just in regards to Mr. Richard's statement, I guess  
7 I would respectfully disagree. I do recognize the  
8 importance of maintaining the confidentiality of  
9 the rank-and-file employees. I think as  
10 Mr. Richard spoke, that at the higher pay grades,  
11 it would breed more animosity, I would beg to  
12 differ. Those people are mobile. They can go  
13 places should they need to. But I think the  
14 rank-and-file employees, that's where I think you  
15 would have the animosity that would manifest  
16 itself. If joe the lineman was making, you know,  
17 65,000 and Billy Bob the lineman was making 70,  
18 then obviously that might cause some consternation  
19 amongst the rank-and-file employees.

20 I think as you move higher up in the total  
21 compensation range, disclosure of that information  
22 for the most part is less important and weighs in  
23 favor of disclosure. And again, I don't know where  
24 that range is. It might be higher than 165. You  
25 know, it could even be 300. But I do feel that --

1           you know the concern to me, at least from my  
2           perspective, I'm more receptive to the arguments  
3           advanced on the rank-and-file employees than I am  
4           for senior level executives. And those may be  
5           falling somewhere below the officers and directors.

6           But I think that once you reach a critical  
7           threshold, there becomes that compelling,  
8           overarching public interest in having transparency  
9           of that data, particularly for a regulated  
10          monopoly. And I think that's where I would  
11          distinguish from a normal private company. Again,  
12          there are some benefits that go with regulation and  
13          being a monopoly, and again, I think that's just  
14          part of the regulatory function.

15          Now, I do think it's important, as Mr. Richard  
16          has correctly pointed out, that the less attenuated  
17          you make the situation from being able to readily  
18          identify an individual employee or their individual  
19          financial information, the easier the analysis  
20          becomes. And that's why I thought that if you take  
21          the names out of the equation, again, that whole  
22          constitutional privacy argument becomes moot. And,  
23          you know, if the Commission is able to narrowly  
24          tailor the discovery request to harmonize any  
25          tension and then also look at what is best practice



1 in terms of what may or may not be disclosed under  
2 confidentiality, I think that could go a long way  
3 to, you know, resolving the tension that we have  
4 here.

5 I am happy to hear Mr. Glenn concede that, you  
6 know, Progress would be willing to file the  
7 requested information under seal of  
8 confidentiality, so that's a start. And I think  
9 had that been done from the onset today, this  
10 hearing would have been far less contentious, and  
11 then we would have been left solely with the issue  
12 of what's confidential and not confidential.

13 So I think that we've made some substantial  
14 progress so far. I do like Ms. Helton's  
15 suggestion. I'm not so sure that 165 is the  
16 appropriate threshold, but again I'm open to reason  
17 on that. I'm just trying to be reasonable, trying  
18 to find a way to uphold the legislative intent that  
19 I see clearly reflected in the statute that I  
20 believe to be controlling, as staff does, but  
21 equally respect the compelling business reasons for  
22 why you may not want to overdisclose.

23 So again, if somebody has a magic answer to  
24 strike that fine balance, I'm happy to listen to  
25 it, but otherwise, I think we're going to have to

1 face and make a difficult decision, which I'm  
2 prepared to make.

3 CHAIRMAN CARTER: Thank you. Commissioner  
4 McMurrian.

5 COMMISSIONER ARGENZIANO: Mr. Chairman.

6 CHAIRMAN CARTER: Commissioner Argenziano, I'm  
7 going to come right back to you. I'm going to  
8 Commissioner McMurrian, and then you're next.

9 COMMISSIONER ARGENZIANO: Just a question to  
10 Commissioner Skop, and then --

11 CHAIRMAN CARTER: You're recognized.

12 COMMISSIONER ARGENZIANO: To me?

13 CHAIRMAN CARTER: Yes, ma'am. You're  
14 recognized.

15 COMMISSIONER ARGENZIANO: Just a question to  
16 Commissioner Skop. I may agree with you on the  
17 165. How about we go down then to where the  
18 Governor and the Cabinet's salaries are? Give that  
19 some thought in the meantime. And then, Mr. Chair,  
20 I'll come back to other questions at the  
21 appropriate time.

22 CHAIRMAN CARTER: Thank you. Commissioner  
23 McMurrian.

24 COMMISSIONER McMURRIAN: Thank you,  
25 Mr. Chairman. And I'm not sure who to direct this

1 to, but in staff's proposal about the generic  
2 titles -- and I don't mean to be flippant by asking  
3 this, but how generic are the generic titles,  
4 first, and who decides what the generic titles  
5 would be? I mean, it's easy to say generic titles,  
6 but does that mean we say vice president, and there  
7 are seven or eight different vice presidents, or  
8 does it means kind of in a sense -- and I'm not  
9 sure if everyone here will follow this, but  
10 essentially, the State has these broadband titles  
11 where a lot of positions fall under them. And, for  
12 instance, there may be a title -- I think there's  
13 one for financial analyst, and perhaps even when I  
14 was an advisor, that's what I fell under. I'm not  
15 sure. So it wouldn't have been clear to someone if  
16 they looked at financial analyst, you know, what I  
17 would have made as an advisor. And I'm just using  
18 that as example. So I think it's important to  
19 understand how generic they are and who decides  
20 what the generic title would be.

21 MS. HELTON: Unfortunately, the discussions  
22 didn't ever get quite that far. I can tell you  
23 that -- and maybe it might be better for Mr. Devlin  
24 and Ms. Salak to tell you what the other companies  
25 have filed. But I have looked at that information,

1 and in my mind, it's pretty generic. It's manager,  
2 director, I mean, not any more specific than that.

3 CHAIRMAN CARTER: Mr. Devlin.

4 MR. DEVLIN: Yes. Just to follow up  
5 Ms. Helton, it's very much like broadband -- I  
6 think that's a very good analogy, Commissioner  
7 McMurrian. It's like our broadband categories.  
8 The company we were looking at had like four  
9 categories, manager, director, vice president, and  
10 supervisor, very broad.

11 CHAIRMAN CARTER: Thank you. Commissioner  
12 Argenziano.

13 COMMISSIONER ARGENZIANO: Thank you,  
14 Mr. Chairman. I guess there will be a time for  
15 final comments, and what I would like to ask staff  
16 on this particular issue right now, when it comes  
17 to generic titles, would that also apply since the  
18 company, or one company -- I think Progress has  
19 said they would provide that information  
20 confidentially to the Public Service Commission,  
21 but FPL has said they will not. So if they're  
22 saying they will not in regards to FPL, how would  
23 generic titles enable me as a Commissioner to  
24 determine -- manager of what? Are you manager of  
25 washing the outside of the turbine, or manager of

1 the nuclear procurement? How would I be able to  
2 differentiate in any way or do my job as a  
3 Commissioner in trying to define whether, or even  
4 acknowledge that salary and say, okay, let me  
5 compare it to a comparable company somewhere else.  
6 How would I be able to find if that company is  
7 being efficient or if that salary is comparable to  
8 another company somewhere else if it's just a  
9 generic title?

10 CHAIRMAN CARTER: Commissioner, we're going to  
11 go to staff, and then we're going to ask the  
12 companies to comment on that. Okay?

13 COMMISSIONER ARGENZIANO: Thank you.

14 MR. DEVLIN: Tim Devlin again. I think,  
15 Commissioner Argenziano, it's really the  
16 two-pronged part of this process we're talking  
17 about. First is the public disclosure part of it,  
18 which would involve the generic titles and the  
19 compensation levels, and then also, Mary Anne was  
20 talking about having the particular specific titles  
21 and names in our possession here under a  
22 confidentiality order. We would keep the so-called  
23 key that we've been talking about. Instead of  
24 being on the company's premises, it would be on our  
25 premises where you could use, the staff could use

1 -- it's just that it would be under a confidential  
2 veil.

3 COMMISSIONER ARGENZIANO: But that -- isn't  
4 that just what Progress has said they would give  
5 us? FPL said they don't even want to give us that  
6 under the confidentiality, the specific titles. Am  
7 I correct?

8 CHAIRMAN CARTER: Well, let's hear from the  
9 companies, and then we'll come back to staff on  
10 that. Let's start with Mr.-- let's go with  
11 Mr. Glenn first, and then we'll go to Mr. Richard.  
12 Mr. Glenn.

13 MR. GLENN: And I apologize for not mentioning  
14 this before, but when I discussed it with FPL  
15 outside, they were willing to do the exact same  
16 thing that we were, which is to provide the  
17 detailed names with the compensation, the key, what  
18 have you, under confidential protection. So I  
19 didn't certainly mean to --

20 MR. RICHARD: That's correct.

21 MR. GLENN: So I wanted to -- just with  
22 Commissioner Argenziano's point about FPL not  
23 agreeing to that, that's not the case.

24 CHAIRMAN CARTER: Staff.

25 MR. DEVLIN: Mr. Chairman, is there a

1 question?

2 CHAIRMAN CARTER: Yes, there is. The question  
3 before you was in regards to FPL and Progress in  
4 terms of the information that was provided, the  
5 nature of the information provided. I think it  
6 was -- Progress said they would provide the  
7 information as requested, but provide a key. Is  
8 that right?

9 MR. DEVLIN: That's my understanding.

10 CHAIRMAN CARTER: I'm trying to ask the  
11 question again, because I want to make sure that  
12 Commissioner Argenziano hears the questions and the  
13 responses --

14 MR. DEVLIN: Yes, sir.

15 CHAIRMAN CARTER: -- from both the parties as  
16 well as from staff.

17 MR. DEVLIN: Yes. My understanding is that  
18 the distinction here is what the companies agreed  
19 to provide us under confidential veil versus what  
20 they had agreed to provide us publicly, if you  
21 will, and I think that's where the breakdown is.  
22 Both companies are unwilling to provide  
23 compensation publicly with the generic titles;  
24 however, they are willing -- and correct me if I'm  
25 wrong -- to provide all the information, specific

1 titles, compensation levels, et cetera, if it's  
2 protected under confidentiality veil.

3 CHAIRMAN CARTER: Gentlemen; is that correct?

4 MR. GLENN: That's correct, yes.

5 MR. RICHARD: We agree.

6 CHAIRMAN CARTER: Commissioner Argenziano,  
7 would you yield for a moment?

8 COMMISSIONER ARGENZIANO: Certainly.

9 CHAIRMAN CARTER: Why don't we do this,  
10 Commissioner. You go ahead, and I'll just go to  
11 Commissioner McMurrian after you've completed.  
12 Commissioner Argenziano, you're recognized.

13 COMMISSIONER ARGENZIANO: Well, Mr. Chairman,  
14 I think the question I had, I think when  
15 Commissioner Edgar had asked Ms. Helton how close  
16 they were or how close they weren't, I thought --  
17 and, please, Ms. Helton, correct me if I didn't  
18 hear it right. I thought her response was that  
19 Progress would give all that information not  
20 publicly, but confidentially, meaning even specific  
21 titles, and I thought she said that FPL did not  
22 want to give specific titles. Could she answer  
23 that, please?

24 MS. HELTON: Commissioner, if I said that,  
25 that was not what I meant. I think that we already



1 have who are in the building the specific  
2 compensation information and the names and titles.  
3 We just don't have the key that would match it up.  
4 We have looked at the key at Rutledge Ecenia's  
5 offices for Florida Power & Light. We have not  
6 been given access to the key for Progress Energy.

7 COMMISSIONER ARGENZIANO: And can I ask you --  
8 because I think the key is essential, otherwise,  
9 the information we have to me is kind of useless.  
10 Can I ask you what the specific reason that the  
11 staff needs the key for, if you can elaborate.

12 MS. HELTON: That would be for the reasons  
13 that Mr. Devlin very artfully discussed this -- I  
14 think it was this morning. And if I could defer to  
15 him, he can answer that question better than I can.

16 CHAIRMAN CARTER: Mr. Devlin. Turn your mic  
17 on there.

18 MR. DEVLIN: I'm sorry. The key would permit  
19 staff, intervenors, Commissioners, anybody who has  
20 the desire, to link up the compensation levels and  
21 all the underlying detail that goes along with it  
22 to particular positions to test for reasonableness,  
23 to see if there are anomalies. Right now we don't  
24 have the ability to do that because we don't have  
25 the ability to link up the compensation levels to

1 the particular positions. By having that link, the  
2 key, we'll be able to better analyze this  
3 information and pursue areas that need pursuing.

4 COMMISSIONER ARGENZIANO: So basically,  
5 Mr. Chairman, that's my point, the Commission  
6 needing that information to be able to make those  
7 comparisons, to find out if the company is being  
8 efficient in their salaries, if they're not giving  
9 too much salaries, if they're comparable salaries  
10 to comparable positions somewhere else. By not  
11 having that key or not having that type of  
12 information would, I believe, render my ability as  
13 a Commissioner or the Commission's ability to  
14 scrutinize that type of investigation that we have  
15 before us. After all, we are the only policemen on  
16 the block. I think it would render us useless  
17 without that, so I think it's pertinent to a  
18 Commissioner, especially this one -- I can speak  
19 for myself -- in having that information.

20 Otherwise, I feel like it's just information  
21 supplied, and I can't link it up, and I can't tell  
22 anybody with assurance that there's efficiencies or  
23 it's being used the right way or they're not paying  
24 too much for a salary, or, if you know, somebody's  
25 friend or sister-in-law or brother-in-law -- I'm

1 not saying the companies are doing this, but that's  
2 part of my job -- are in a position that's a  
3 no-fill position, no-show position. You know, is  
4 the limo driver -- I don't want to say limo driver.  
5 Is it some position making \$500,000 that I can't  
6 connect that somewhere else is only making  
7 \$100,000? And I think that's crucial in  
8 determining efficiencies and being the policemen  
9 that we're supposed to be.

10 With that said, I understand we don't have  
11 that information, and the company doesn't want to  
12 give that information, and that's something I  
13 object to.

14 CHAIRMAN CARTER: Thank you. Commissioner  
15 McMurrin, and then Commissioner Skop.

16 COMMISSIONER McMURRIAN: Thank you. I want to  
17 talk about how -- with the proposal that we're  
18 talking about, how it will work during hearing, and  
19 to the point I think Commissioner Argenziano is  
20 talking about, about what kind of access we have at  
21 the Commission to all the information. So I want  
22 to get it straight. We'll have under  
23 confidentiality -- with what the companies are  
24 proposing, we would have under cover of  
25 confidentiality the entire information which the

1 staff could have access to, and Commissioners.  
2 Even during the hearing, we could have the entire  
3 information before us if we wanted to in the red  
4 folders like we usually treat it. We also would  
5 have the public document, as I understand it, under  
6 what you all are proposing, that would have a  
7 generic title, perhaps just manager, director,  
8 supervisor, maybe vice president that you were  
9 talking about, that would have the complete -- that  
10 would have the numbers on it as well, and that  
11 could even be discussed as long as perhaps when we  
12 were asking questions and all of the parties or the  
13 witness that would be up, we would do it in such a  
14 way to tie to maybe a line number or something. We  
15 wouldn't be disclosing the specific title or the  
16 person's name. Am I understanding all that  
17 correctly, so that we would be able to use it like  
18 we would need to do to ask questions during the  
19 hearing?

20 MR. DEVLIN: Your understanding and mine are  
21 exactly the same as to what is on the table right  
22 now.

23 COMMISSIONER McMURRIAN: All right. So let me  
24 ask the companies, because I want to make sure I  
25 have this right. Mr. Glenn and Mr. Richard, or Mr.

1 Melson, I want to make sure. That's my  
2 understanding of how we usually deal with  
3 confidential information. And I have to admit that  
4 I haven't dealt with specific confidential salary  
5 information that I can recall in exactly this  
6 manner, but I think we have had some confidential  
7 salary information before us before. But if we  
8 wanted to -- if the Commissioners wanted to ask  
9 questions, isn't there a way we could do that and  
10 make sure we have the information we need without  
11 disclosing the specific title or the specific name  
12 of the person?

13 MR. GLENN: Yes.

14 COMMISSIONER McMURRIAN: Okay. Mr. Richard?

15 MR. RICHARD: I agree.

16 COMMISSIONER McMURRIAN: Thank you. I think  
17 that helps me. Thank you all.

18 CHAIRMAN CARTER: Commissioner Skop, you're  
19 recognized, sir.

20 COMMISSIONER SKOP: Thank you, Mr. Chairman.  
21 I want to go back to Commissioner Argenziano's  
22 question, because what I understand the situation  
23 to be is that the companies will agree to file  
24 under cloak of confidentiality the specific job  
25 titles along with the compensation data that's

1 generally outlined in the template that we talked  
2 about earlier, but what the companies will not  
3 agree to do is provide the generic titles and the  
4 compensation to disclose to the company. Did I  
5 hear that correctly, Ms. Helton?

6 MS. HELTON: I'm not sure that our discussions  
7 got as far as that they would agree to give us the  
8 compensation information publicly. My concern was  
9 being able to tie the generic title to the  
10 compensation information, and we didn't reach  
11 agreement there.

12 COMMISSIONER SKOP: Well, I guess I'm getting  
13 confused, and I want to make sure we're crystal  
14 clear on this, because it's important. First and  
15 foremost, I want to make sure that the Commission,  
16 specifically Commission staff, has the detailed  
17 information it needs, not aggregated, detailed  
18 information it needs to conduct its analysis of the  
19 compensation of various employees and various  
20 positions, whatever staff feels it needs to be  
21 appropriate to do. I would expect that to be filed  
22 with this Commission, if it has not already been  
23 done so, under cloak of confidentiality.

24 Now, the problem here is that we don't have  
25 the key in-house. And I think it's patently absurd

1 for staff to have to go off-site to do their job,  
2 so I would expect, at a minimum, again, getting  
3 back to the confidential template that we talked  
4 about earlier, specific job titles, specific  
5 compensation, everything staff needs to do its job,  
6 sealed under confidentiality. Then the issue  
7 becomes -- the fall-out issue is simply what should  
8 be disclosed to the public and deemed  
9 non-confidential.

10 Now, I think staff has offered up during lunch  
11 a reasonable compromise that would say give generic  
12 titles and the compensation data, which the company  
13 said, no, we're not doing that. So again, they're  
14 two separate and distinct issues for me, but I  
15 wholeheartedly agree with Commissioner Argenziano  
16 that we're going to have that key in-house, and  
17 again, staff is not going to be expected to go  
18 off-site to do their job. That's absurd.

19 Now, getting back to what is confidential and  
20 not confidential with respect to public disclosure,  
21 I think generic titles are certainly a move in the  
22 right direction to the extent that it addresses the  
23 relevant concerns I've heard expressed by the  
24 company, that if you have too specific of a title,  
25 you might be able to relate that back to a specific

1 person. So I think that attempts to address the  
2 company's concern, although they have not agreed to  
3 that. Again, maybe they feel the total  
4 compensation of 165 is too low of a threshold. I  
5 guess what I would ask the companies in a spirit of  
6 compromise, would the companies' position change,  
7 both Progress and FPL, if generic titles were  
8 provided and the compensation for employees making  
9 a total compensation above \$250,000 were provided?  
10 Would that change your position, in lieu of 165?

11 MR. GLENN: Mr. Chairman, if I may.

12 CHAIRMAN CARTER: You're recognized.

13 MR. GLENN: I don't know that sitting here  
14 today I can make that on behalf of my company. I  
15 would have to certainly talk to our management.  
16 Certainly the same policy issues are the same  
17 regardless of really where you draw the line, if  
18 that answers your question.

19 COMMISSIONER SKOP: I appreciate that. And  
20 don't get this wrong. I totally respect the  
21 positions of the companies. But again, what I'm  
22 trying to do is find a happy balance between  
23 addressing the confidentiality issues, the need for  
24 the Commission to get the data we need, and then to  
25 make a reasonable determination of what can be



1 disclosed without harm to the companies, but also  
2 in the spirit of transparency, the fact that the  
3 companies are regulated monopolies, but also too,  
4 that compelling overarching public interest in  
5 being able to see, but not readily identify back to  
6 a specific person, because again, I'm perfectly  
7 comfortable protecting the privacy interests of the  
8 individual employees. The more attenuated you get  
9 away from an individual employee, the fairer game I  
10 think the analysis becomes. So it's a matter of,  
11 again, not causing great competitive harm, but  
12 adhering to the statute that to me is plain on its  
13 face and controlling before the Commission. Thank  
14 you.

15 COMMISSIONER ARGENZIANO: Mr. Chair.

16 CHAIRMAN CARTER: Commissioner Argenziano,  
17 you're recognized.

18 COMMISSIONER ARGENZIANO: First I would like  
19 to say I first and foremost want us to comply with  
20 the law. And I think staff has correctly stated  
21 what the law says, and that's what it says very  
22 simply to me. Without going to all kinds of  
23 whatever, lengths, the law says that compensation  
24 shall not be withheld from the public.

25 Now, saying that, and also to Commissioner

1           McMurrian's bringing up -- it's funny that she  
2           brings up the confidentiality of salaries being  
3           before us or compensation being before us. And I  
4           have looked, and I just want to cite to one case.  
5           And oddly enough, Mr. Chair, it was your case,  
6           where you denied confidentiality in the filings of  
7           07-05894, 07-070579. And just briefly, what it  
8           says, the information for which the utility seeks  
9           confidential treatment clearly relates to salaries  
10          and compensation that the Commission has  
11          repeatedly, with very few exceptions, denied  
12          confidential classification for information  
13          relating to salaries, compensation, duties,  
14          qualifications, or responsibilities. And it just  
15          goes on with one other line that says, "Because the  
16          salary information at issue is employee personnel  
17          information related to compensation, and the  
18          Legislature specifically excluded that category of  
19          information from the statutory definition of  
20          proprietary business information, the information  
21          must be treated as public record pursuant to  
22          section 119.01. And I realize that's a small  
23          company, but surely it still applies to even the  
24          larger companies. So in saying that, we had it  
25          before us, and that was your determination.

1           And let me just make one other point regarding  
2 Commissioner Skop's offering up a 250 figure. And  
3 I would like to ask what rational basis is there  
4 for arriving at that figure as opposed to the one I  
5 chose, which is higher than our Governor makes,  
6 which is higher than our Cabinet members make. And  
7 I think it was a rational and reasonable figure.

8           But saying that, the companies have fought  
9 tooth and nail on giving us that information we  
10 asked, and I'm not inclined to give concessions to  
11 an obstructionist position. So I don't understand  
12 -- I understand we're trying to form consensus.  
13 But given the fact that even our Governor doesn't  
14 make that much, I think that's a pretty good  
15 starting point. And I just feel like we're  
16 fighting tooth and nail here, and I'm not sure I'm  
17 willing to even go up to 250.

18           So making that point, and then the only other  
19 thing, Mr. Chairman is that unless something else  
20 comes up, before we actually go to a vote, I would  
21 like to make several comments on the record.

22           CHAIRMAN CARTER: Absolutely, absolutely,  
23 Commissioner. And that was a very wise  
24 Commissioner who you just quoted. He's one of my  
25 favorite Commissioners. He always makes wise

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decisions.

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chair.

Just to Commissioner Argenziano, again, we're in full agreement. I wholeheartedly support the 165. I am more comfortable perhaps with considering a higher number for some of the rationale I heard. Again, I'm attempting to balance what the statute says, but also respect some of the concerns that have been raised. But I agree wholeheartedly with you. And as a matter of fact, part of the reason I was offering this up was to basically see if there would be any movement of the utilities, and there is none. So again, I agree with you that this is a tooth and nail, a big battlefield debate that we're having here. And I'm a reasonable person, but again, when you get that position that has been laid out dictating what will be provided and the manner in which it will be provided to the Commission, that doesn't resonate well with me. And again, that had been my primary tension with how we got to this position. Again, as of Friday afternoon, I looked, I saw what data we had. It was not responsive, and that perked my concerns. And so again, there has been no movement over the

1 weekend, no movement today. You know, a lot of  
2 this issue could be resolved by just mere  
3 compliance, and we could hash out the other issues  
4 in far less time. But that's not what is happening  
5 here, and that's my biggest dismay, is that this  
6 Commission is spending a tremendous amount of time  
7 and resources that could otherwise be dedicated to  
8 reviewing the numerous rate case filings, and we're  
9 fighting tooth and nail over this issue that to me  
10 is crystal clear by a plain reading of the statute.  
11 So I agree wholeheartedly with you, Commissioner.

12 CHAIRMAN CARTER: Commissioners, I think we've  
13 kind of gone all over the place. I don't have  
14 anything else to say, and I know that Commissioner  
15 Argenziano has asked for final comments, so I guess  
16 we'll make our final comments before I'll be  
17 recognizing one of you or all of you for a motion.

18 But my comments are basically we've had a  
19 vigorous debate, we've had great input from our  
20 staff, we've had great input from the companies,  
21 and it's an issue that probably will come up again.  
22 And I think that at this point in time, we've kind  
23 of got all we can get out of it today, and I think  
24 we probably need to move forward.

25 So final comments, Commissioner, before I

1 recognize -- whoever would like to make a motion,  
2 you'll be recognized for that. Just make your  
3 final comments.

4 Okay. No final comments?

5 COMMISSIONER ARGENZIANO: Mr. Chair.

6 CHAIRMAN CARTER: You're recognized,  
7 Commissioner.

8 COMMISSIONER ARGENZIANO: I didn't hear you  
9 there. If no one else has final comments, I do.  
10 And you'll just have to bear with me. It's going  
11 to sound long, but it's only a few minutes, I  
12 promise that, and it's because of the importance of  
13 the issue. Am I clear to go?

14 CHAIRMAN CARTER: You're recognized. You may  
15 proceed.

16 COMMISSIONER ARGENZIANO: Thank you, Mr.  
17 Chairman. I have read the motion to compel of  
18 staff, the memorandum in opposition, and reviewed  
19 the filings, and I just have these observations  
20 that I would like maybe four and a half minutes to  
21 do.

22 The disclosure as moved by staff would, I  
23 think, in my opinion, one, provide --

24 CHAIRMAN CARTER: Hang on, Commissioner. Hang  
25 on one second. Chris, can you do something about

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COMMISSIONER EDGAR: I'm sorry, Commissioner Argenziano. This is Lisa Edgar, and I'm having a hard time understanding you. I don't know if it's the --

CHAIRMAN CARTER: We might need to work on the volume. Chris, can you adjust that downward some?

Commissioner, give us a test. Just say something. He's going to adjust the volume.

COMMISSIONER ARGENZIANO: Is it maybe that it's too loud?

CHAIRMAN CARTER: Yes, ma'am. That's much better. I hope you don't mind starting over.

COMMISSIONER ARGENZIANO: No, no, not at all. Commissioner Edger, is that more understandable.

COMMISSIONER EDGAR: I think so. Thank you.

COMMISSIONER ARGENZIANO: Okay. Thank you, as I said, I've read the motion to compel of staff, the memorandum in opposition, and reviewed the filings, and have these observation that I would just like to make.

I believe the disclosure as moved by staff would, one, provide cost comparison of executive/highest level employee salaries as it relates to production of product.

1           Number two, I think it permits position by  
2 position contrast, as well as aggregated contrast  
3 of FPL operations versus other similarly situated  
4 utility operations. You can see the efficiencies,  
5 are they being had. Also, I think it provides a  
6 basis of possibly -- and I'm not accusing any  
7 company, but that's my job to look into, possibly  
8 excessive salary awards and excess in rate base.  
9 And I think that's extremely important to the  
10 consumer, to make sure that we aren't doing that.

11           Also, it provides a basis for ensuring  
12 ratepayers are not burdened with awards of no-show  
13 jobs, as I mentioned before. And I'm not accusing  
14 the companies of that. It's just I feel it's my  
15 job to look for those things, and also providing  
16 data for cost comparison with other electric  
17 utilities.

18           Further, I think neither TECO, FPUC, or Gulf  
19 objected to disclosure of their officer/employees.  
20 And I would think they are much more subject to  
21 poaching by the larger utilities, so that issue  
22 kind of -- you know, I look at it very differently.

23           I think salaries may be kept confidential  
24 merely by taking them out of rate base and relying  
25 on the boards of directors to oversee any tendency



1 to excess, as staff observed, if that's a real  
2 problem. But while then of no interest to the  
3 ratepaying public, perhaps the extent that an  
4 oversufficient ROE would be used to alleviate the  
5 board of directors' concerns would again give rise  
6 to PSC interest.

7 No matter how you want to cut it, I think  
8 numbers of citizens are captive to economic demands  
9 of the IOUs and the allowances of the Public  
10 Service Commission. These citizens, I think, have  
11 every right to know the extent and style of the  
12 operational costs for which they are paying. And  
13 as a matter of fairness, I believe that  
14 officer/higher level employee salaries should be  
15 absorbed by ratepayers only to a point, beyond  
16 which the shareholders should absorb those costs of  
17 awards.

18 And like the observations of Justice Holmes,  
19 which I've been trying to learn more about what you  
20 attorneys learned in school, the one that had  
21 the -- excuse me one moment -- the observation of  
22 Justice Holmes that one had the right to free  
23 speech, but not the right to be a policeman.  
24 Employees uncomfortable with disclosure of their  
25 salaries may work somewhere else. And I'm speaking

1 to those employees of 165,000 and above. And  
2 simply, I'm aware -- I'm sorry. I've got an itch  
3 in my throat. Give me one second, please,  
4 Mr. Chairman.

5 CHAIRMAN CARTER: Just take a moment,  
6 Commissioner. Take a moment.

7 COMMISSIONER ARGENZIANO: Wouldn't you know,  
8 at the time you're going to speak, that itch comes  
9 along that makes your eyes tear.

10 CHAIRMAN CARTER: You need a cup of tea is  
11 what you need.

12 COMMISSIONER ARGENZIANO: That would be good.

13 Okay. I apologize. I'm of the opinion that  
14 the public's right to know trumps the individual's  
15 right to keep secret their essentially publicly  
16 funded salary. And while FPL's concern regarding  
17 the emotional welfare of its upper level officers  
18 and employees is impressive, I question whether  
19 maintaining this futile construct is in the best  
20 interest of the ratepaying public.

21 The declaration at page 8 of the memorandum in  
22 opposition reflects that, quote, FPL employs some  
23 of the best people in the industry and pays for  
24 performance, and I have no argument with that. But  
25 that would suggest that poaching of FPL employees

1 by other entities may be a concern without merit,  
2 and especially those upper level employees.

3 The failure to present the language of  
4 Article I, Section 23, Florida Constitution, in the  
5 first enumerated paragraph of the memorandum rather  
6 reflects an appreciation that the section, read in  
7 its totality, does not support the contention of  
8 the memorandum, as I mentioned before. I am  
9 uncertain whether the disclosure of the top --  
10 excuse me. I have to change this. I had 300, but  
11 I learned today that it was 400 or so --  
12 officers/employees of FPL would be, quote, contrary  
13 to the atmosphere of workplace goodwill, job  
14 satisfaction, morale, and employee retention,  
15 unquote. Perhaps it would challenge lower level  
16 employees' confidence in their abilities and  
17 performance to measure that performance against the  
18 awards to their economic superiors. It's kind of  
19 hard to argue that a policy of retention based on  
20 ignorance is an admirable one.

21 I think the majority of the cases cited in the  
22 memorandum are not on point and represent an  
23 obscuring of the issues, which in some arenas could  
24 even lead to sanctions.

25 Salaries of employees of a company subject to

1 regulation by the PSC in the provision of essential  
2 services and constituting a substantial component  
3 of the rate base chargeable to the serviced public  
4 are not, quote, private, unquote, in my opinion.  
5 We need not get to the, quote, least intrusive,  
6 unquote, method of obtaining the information  
7 sought, inasmuch as that information is not  
8 protected by Article I, 23, and the second sentence  
9 of that section tells me that.

10 I wonder if, quote, most of it, not all,  
11 unquote, of the qualified employees would not be  
12 agreeable to measuring compensation against  
13 performance.

14 I'm almost done, Mr. Chairman.

15 CHAIRMAN CARTER: Take your time.

16 COMMISSIONER ARGENZIANO: The record reflects  
17 comments by Mr. Willingham representing the co-ops  
18 and Mr. Bowling representing the munis to the  
19 effect that their principals regard salary  
20 information relevant to our inquiry as public, and  
21 further, Mr. Valene and Mr. Willingham both  
22 identify, quote, poaching of their employees by FPL  
23 as a problem.

24 In that 366.06(1) charges the Commission to  
25 consider, quote, public acceptance of rates, public

1 input is necessary regarding range of salary awards  
2 to determine, quote, that public acceptance. I  
3 think that's critical.

4 And finally, Mr. Chairman, capital costs as a  
5 component of rate base invite the most scrupulous  
6 investigation as to their prudence and legitimacy.  
7 It is unreasonable that salaries, a component of  
8 equal, if not greater, economic impact upon the  
9 ratepayers should escape equal scrutiny.

10 And with that, Mr. Chairman, my only other  
11 comment is that I really wish the companies would  
12 have not been -- I don't know. I just find it --  
13 to a great extent, that their hubris, I guess, that  
14 the companies have taken in its position to keep  
15 the information from the ratepayer really disturbs  
16 me.

17 And with that said, Mr. Chair, I'll be ready  
18 to take a vote when you are.

19 CHAIRMAN CARTER: Thank you. Commissioner  
20 Skop, we're giving everyone an opportunity to make  
21 closing comments. You're recognized, sir.

22 COMMISSIONER SKOP: Thank you, Mr. Chairman.  
23 Part of me is tempted -- I see Public Counsel in  
24 the back, and I know interested persons can speak.  
25 I don't know if Mr. Beck would like to say a few

1 words.

2 COMMISSIONER ARGENZIANO: Commissioner Skop, I  
3 can't hear you. I'm sorry.

4 COMMISSIONER SKOP: Part of me was wondering  
5 if Mr. Beck, Public Counsel, who is in the back of  
6 the room, might want to say a few words on this,  
7 but I'm not seeing a resounding nod one way or  
8 another. Come on down, and then I'll make my  
9 comments. I would like to hear from Public  
10 Counsel, because I think they've had the  
11 opportunity to listen to the debate, and their  
12 input is certainly important too.

13 MR. BECK: Commissioners, we have filed  
14 testimony in the cases on compensation. We agree  
15 with the staff recommendation I think down the  
16 line. I think the written recommendation is  
17 correct.

18 COMMISSIONER SKOP: Thank you.

19 COMMISSIONER ARGENZIANO: Commissioner Skop,  
20 thank you, because I wondered where OPC was too.  
21 Thank you, Mr. Beck.

22 COMMISSIONER SKOP: And I apologize for  
23 bringing them down out of sequence, but I will go  
24 ahead and make my closing comments and try not to  
25 be too redundant, but summarize some of the things

1           that I've said, and I appreciate that opportunity,  
2           Mr. Chairman.

3           At least from my perspective, FPL and Progress  
4           have not been fully responsive to a legitimate  
5           discovery request which is relevant to the subject  
6           matter of the pending rate case before the  
7           Commission and necessary to allow the Commission  
8           staff to perform its regulatory function. At the  
9           end of the day, it comes down to respect for the  
10          regulatory process. Having utilities dictate what  
11          they will provide and the manner in which they will  
12          provide it is not regulation.

13          It would seem to me that listening to the  
14          concerns, as well as the controlling statute under  
15          366.093(3)(f), the Legislature has expressly saw  
16          fit not to cloak compensation under  
17          confidentiality. It would seem to be that,  
18          recognizing and considering the constitutional  
19          arguments that have been raised, that if you take  
20          the individual names out of the equation, the  
21          constitutional argument related to privacy becomes  
22          moot. So therefore, if the Commission narrowly  
23          tailors a discovery request to harmonize any  
24          tension between the statute and the Constitution,  
25          it can avoid a direct conflict with any

1 constitutional questions. It seems to me that the  
2 Commission can decide this case without reaching  
3 the constitutional questions again solely on the  
4 premise that the underlying statute, 366.093, is  
5 constitutional on its face.

6 Further, to address the concerns -- again,  
7 this is an issue that courts have often struggled  
8 with, in which they often resort to adopting an  
9 interest balancing test or interest balancing  
10 analysis, it stands to reason FPL is a regulated  
11 the monopoly and that there's a compelling and  
12 overarching public interest in the transparency and  
13 disclosure of total compensation above a specified  
14 total compensation threshold level.

15 Equally, in fairness to the company, there is  
16 a company interest in maintaining the  
17 confidentiality of compensation data for  
18 rank-and-file employees below a specified total  
19 compensation threshold level. I guess I've heard  
20 from one of my colleagues that 165 seems to be an  
21 appropriate level. Again, I'm open to discussion  
22 on that. But at the end of the day, I think that  
23 what I want to see is a full and complete response  
24 to staff's discovery request provided to this  
25 Commission, one in which the key is not located



1 off-site, one in which we have complete information  
2 under confidentiality that has adequate protection  
3 under that statute as well as the appellate  
4 process.

5 With respect to the disclosure and the public  
6 interest, again, it becomes that compelling and  
7 overarch and transparency of salaries that they  
8 effectively pay for. So again, I'm a reasonable  
9 person. I would hope the utilities would have been  
10 reasonable, but we are where we are today, and  
11 that's consuming a lot of resources unnecessarily  
12 in my eyes. So I hate to take such a stern  
13 position, but again, a lot of this could have been  
14 reasonably avoided in my eyes. I do think that  
15 staff's recommendation is spot on, and again, at  
16 the appropriate time, I'm willing to vote my  
17 conscience on this. Thank you.

18 CHAIRMAN CARTER: Thank you, Commissioner.

19 We've --

20 COMMISSIONER ARGENZIANO: Mr. Chair.

21 CHAIRMAN CARTER: You're recognized,  
22 Commissioner.

23 COMMISSIONER ARGENZIANO: If the discussion is  
24 done, I would like to make a motion, please.

25 CHAIRMAN CARTER: You're recognized.

1           COMMISSIONER ARGENZIANO: I would like to move  
2 to approve staff on 4 and 4A on all issues.

3           CHAIRMAN CARTER: Commissioners. We have a  
4 motion on the table to approve staff  
5 recommendations on 4 and 4A on all issues.

6           COMMISSIONER SKOP: Second.

7           CHAIRMAN CARTER: It has been moved and  
8 properly seconded. Commissioners, we're in debate.  
9 We're in debate, in debate on staff recommendation  
10 on Issues 4 and 4A.

11           Commissioner McMurrin, you're recognized in  
12 debate.

13           COMMISSIONER McMURRIAN: I don't know if it's  
14 debate. I just wanted to -- when you asked for  
15 final thoughts, I hadn't developed final thoughts,  
16 but I'm trying to -- I've tried to write down some  
17 of my thoughts. And I don't know that they're  
18 final thoughts. They're just thoughts.

19           CHAIRMAN CARTER: Why don't we listen to them.

20           COMMISSIONER McMURRIAN: I wanted to try to  
21 listen to my colleagues. And this is something  
22 that -- I mean, it's a tough issue. It may not  
23 seem that tough if you're not sitting up here, but  
24 trust me, it's tough.

25           I share some of the concerns that I've heard

1 from both Commissioner Skop and Commissioner  
2 Argenziano. So while my questions might indicate  
3 otherwise, that's not true. I want our staff and  
4 the Commission to have everything it needs to make  
5 in decisions that we need to make in accordance  
6 with the statute. And most everyone knows here  
7 that I'm not an attorney, but that definitely  
8 doesn't mean that I'm not just as concerned with  
9 following the law.

10 And I think what concerns me most is perhaps I  
11 don't have quite the understanding of the extent of  
12 what our decision might do, and we're hearing a lot  
13 of different interpretations of that. I want to  
14 make sure we get what we need to complete the case  
15 and assure the public that we have looked at the  
16 salaries to the full extent that we need to and  
17 make sure that someone is not getting paid more for  
18 the work that they're doing and that sort of thing,  
19 but also respecting an individual's right to some  
20 privacy about his or her salary.

21 And I think some of the testimony we have  
22 heard about someone -- if you have such specific  
23 information about a job title such that it is the  
24 director of human resources, for instance, that  
25 their neighbor knows that they're the director of

1 human resources for Florida Power & Light or  
2 Progress Energy, and now their neighbor would  
3 probably know exactly what they make. And I do  
4 think we have to weigh some of that, how much --  
5 you know, should the public be entitled to all that  
6 information. And again, that's what we're dealing  
7 with here.

8 You know, I was very interested in what  
9 Ms. Helton proposed about using some sort of  
10 generic title, and so I just wanted to share my  
11 thoughts on that. The way I see what staff is  
12 proposing -- and I'm not sure if they're  
13 recommending it or not. But with respect to the  
14 motion to compel, we could compel generic position  
15 titles and specific compensation as broken down per  
16 staff's request and how it is actually allocated  
17 between the parent company and the utility.

18 And with respect to what would be  
19 confidential, I think I was hearing that we would  
20 maintain confidentiality of the key that would  
21 contain the specific names and the specific titles  
22 of those people.

23 And what my question earlier was trying to get  
24 at, that we would be able to at least have all that  
25 information in front of us as we questioned

1 witnesses and things, and we would be able to deal  
2 with it in such a way that I think we could ask all  
3 the questions we needed to ask about a specific  
4 employee without disclosing that specific  
5 employee's name or specific title. I think we  
6 could talk about the manager on line 70, for  
7 instance. And the numbers I think in what staff is  
8 proposing would not be confidential, but the names  
9 and the specific title with that would be. So it  
10 seems that we would have what we would need to do  
11 the job we need to do without disclosing that.

12 I realize the companies haven't agreed to  
13 this, but it seems like a reasonable way to deal  
14 with it, in my mind. And again, it's because I'm  
15 not exactly sure what we will have done if we  
16 disclose the exact title, and that seems to be  
17 where the confusion is.

18 So in my mind, that kind of a proposal seems  
19 like it provides an ability for the staff to do its  
20 job, the Commission to do its job. Probably the  
21 only place I'm a little bit unclear is exactly  
22 where the parties -- how they would be able to deal  
23 with the information. I know that oftentimes they  
24 sign non-disclosure agreements and that there are  
25 some special circumstances for the Office of Public

1 Counsel and the Attorney General's Office. But I  
2 think that they could do their jobs. And the  
3 public could see the exact salaries at issue in a  
4 list without seeing the exact name and the exact  
5 title of those people.

6 So to me, it seems like a reasonable  
7 compromise that I've heard today, and I just wanted  
8 to share those thoughts. But again, I'm not sure  
9 that they're final thoughts, but I guess we're at  
10 that point.

11 Thank you, Chairman.

12 CHAIRMAN CARTER: Thank you. Commissioner  
13 Skop.

14 COMMISSIONER SKOP: Thank you, Mr. Chairman.  
15 And again, I second the motion, but I also agree  
16 with what staff had proposed as a reasonable  
17 alternative. Unfortunately, although it was a  
18 win-win, and I think it probably would have gotten  
19 some support across the Commission, unfortunately,  
20 the utilities didn't take that up. So I don't know  
21 if there would be something to be gained by having  
22 them reconsider their position briefly or taking it  
23 to a full Commission vote.

24 CHAIRMAN CARTER: Commissioner McMurrian.

25 We're in debate, Commissioners. We're in debate.

1                   COMMISSIONER McMURRIAN: I guess just one  
2 thought on that, Commissioner Skop. I don't think  
3 the companies do have to agree to it for to us find  
4 that, I guess is what I'm saying.

5                   COMMISSIONER SKOP: It's always nice to get  
6 their, I guess, compromise and for them to agree to  
7 do something. That's the biggest problem I see  
8 here, is that there is no agreement for any sort of  
9 cooperation, that the line has been strictly drawn  
10 in the sand, and we're being forced to make a  
11 difficult decision instead of trying to achieve a  
12 reasonable compromise that reflects the public  
13 interest as well as the Commission's necessity to  
14 get the data necessary to do its job. So again,  
15 I'm open to that.

16                   I would like to see what Commissioner  
17 Argenziano might think, but certainly anything we  
18 can do to attenuate disclosing individual personal  
19 information weighs in favor of not violating the  
20 constitutional provision in terms of the Article I,  
21 Section 23 argument. Again, I think it's not a  
22 very strong argument so long as you don't reference  
23 specific names, and I think that we're pretty --  
24 and correct me if I'm wrong, Commissioner  
25 Argenziano. Names aren't really important here.

1           What we want is the titles and the compensation  
2           data; is that correct?

3           COMMISSIONER ARGENZIANO: Commissioner Skop, I  
4           said in my previous letters and said it repeatedly,  
5           that I'm not -- I don't need the names. I've said  
6           that many times, and I think Ms. Helton had  
7           conveyed that to the companies several times, to no  
8           avail. So I have no problem with that.

9           However, with the titles, I think it's  
10          extremely important. It could be generic, I guess,  
11          to the public. That's going to be decided  
12          somewhere down the line. But I want detailed  
13          information as a Commissioner. And as far as  
14          names, I said that's not a problem. I believe that  
15          we can do without that.

16          I do not agree with the constitutional  
17          argument because of the second sentence, which  
18          seems to be forgotten by a lot of people, the  
19          second sentence basically says that that was a  
20          carve-out, and that is that when there's state law  
21          that says something else, that's what you'll do  
22          regarding the public's right to know. So I don't  
23          agree with that. I don't think it's a good  
24          argument.

25          But as far as the names are concerned, if



1 that's the answer you want, yes. I've said it  
2 repeatedly. I don't care about the names. And I  
3 think that takes care of the constitutionality  
4 concern anyway. Thank you.

5 COMMISSIONER SKOP: And with respect to  
6 Commissioner McMurrian's point in terms of what  
7 would be disclosed or potentially disclosed to the  
8 public, would you be comfortable amending your  
9 motion to include generic names -- excuse me,  
10 generic job title descriptions as opposed to the  
11 full job title descriptions? I think that's the  
12 only point left to consider.

13 COMMISSIONER ARGENZIANO: I'll tell you the  
14 reason why not, because the statute says -- the  
15 statute says differently.

16 COMMISSIONER SKOP: Okay.

17 COMMISSIONER ARGENZIANO: And I think we have  
18 a motion. I think there's been so much -- it's  
19 like tooth pulling trying to get anybody to come to  
20 consensus, and at this point, I really have no  
21 consensus left. I look it as the state law says  
22 this to me, and that's what I think, and that's  
23 where I'm willing to go. And if it goes to a  
24 higher court or something else, then so be it.

25 COMMISSIONER SKOP: And I agree. I seconded

1 the motion. It's a reasonable interpretation.

2 COMMISSIONER ARGENZIANO: Thank you. And I  
3 appreciate your trying. I really do. Thank you.

4 CHAIRMAN CARTER: Thank you. Commissioners,  
5 any further debate? Any further debate?

6 Hearing none, all in favor of the motion let  
7 it be known by the sign of "aye."

8 (Simultaneous affirmative responses.)

9 CHAIRMAN CARTER: All those opposed?  
10 Show it done. That's both Items 4 and 4A.

11 (Conclusion of consideration of Items 4 and  
12 4A.)

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CERTIFICATE OF REPORTER


STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, Registered Professional Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 154 are a true and correct record of the aforesaid proceedings.

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

DATED THIS 29th day of August, 2009.

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

Florida Power & Light Company

Docket No. 080677-EI

Salary Information

2008

Confidential

*Commission Staff*  
 Parties/Staff Handout  
 Internal Affairs/Agenda  
 on 8/18/09  
 Item No. 7

Key	Job Title	Officer FPLG, FPL, Both, NA	Base Salary	Stock Awards	Option Awards	Non-equity Incentive Compensation	All Other	Total Compensation	Adjusted Jurisdictional Other O&M
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NOTE: Each Line of Data should be for an individual employee and not aggregated  
 NOTE: Data should be sorted from the highest to lowest Total Compensation

Florida Power & Light Company  
Docket No. 080677-EI  
Salary Information - 2008

Confidential

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NOTE: Each Line of Data should be for an individual employee and not aggregate  
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Florida Power

Docket No . 080677-EI

Salary Information

2009

Confidential

Key	Job Title	Officer FPLG, FPL, Both, NA	Base Salary	Stock Awards	Option Awards	Non-equity Incentive Compensation	All Other	Total Compensation	Adjusted Jurisdictional Other O&M
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NOTE: Each Line of Data should be for an individual employee and not aggregated

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**Florida Power & Light Company**  
**Docket No . 080677-EI**  
**Salary Information - 2009**

**Confidential**

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NOTE: Each Line of Data should be for an individual employee and not aggregate  
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Florida Power

Docket No. 080677-EI

Salary Information

2010

Confidential

Key	Job Title	Officer FPLG, FPL, Both, NA	Base Salary	Stock Awards	Option Awards	Non-equity Incentive Compensation	All Other	Total Compensation	Adjusted Jurisdictional Other O&M
1			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
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NOTE: Each Line of Data should be for an individual employee and not aggregated

NOTE: Data should be sorted from the highest to lowest Total Compensation



Florida Power & Light Company

Docket No . 080677-EI

Salary Information - 2010

# Confidential

Key	Name
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Confidential

Key	Job Title	Officer FPLG, FPL, Both, NA	Base Salary	Stock Awards	Option Awards	Non-equity Incentive Compensation	All Other	Total Compensation	Adjusted Jurisdictional Other O&M
1			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
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Florida Power & Light Company

Docket No . 080677-EI

Salary Information - 2011

Confidential

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