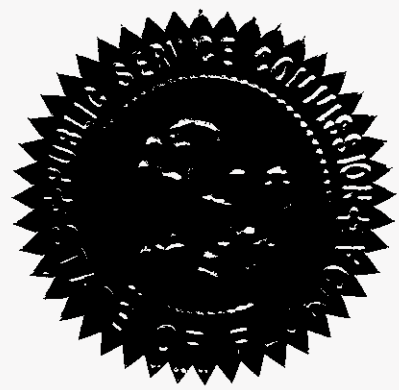


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090002-EI

ENERGY CONSERVATION COST
RECOVERY CLAUSE.



PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER PARTICIPATING: COMMISSIONER NATHAN A. SKOP
PREHEARING OFFICER

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

TIME: Commenced at 9:30 a.m.

DATE: Tuesday, October 20, 2009

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

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P R O C E E D I N G S

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2 **COMMISSIONER SKOP:** And we are going to now
3 proceed with the 02 docket. Okay. Starting with the 02
4 docket, Ms. Fleming, are there any preliminary matters
5 that we need to address before we get to the draft
6 prehearing order?

7 **MS. FLEMING:** I would just note for the record
8 that Progress has filed a motion to take Witness
9 Masiello out of order, and they had requested that he be
10 taken up on November 2nd. I believe none of the parties
11 objected to that request, and I think that request can
12 be accommodated, and we will coordinate with the
13 parties.

14 **COMMISSIONER SKOP:** All right. Very well.
15 Show it done. And any other preliminary matters?

16 **MS. FLEMING:** I'm not aware of any other
17 matters.

18 **COMMISSIONER SKOP:** Okay. Very well.

19 Captain, can you hear us? Captain McNeill?

20 **CAPTAIN McNEILL:** Yes, sir, I can hear you.
21 Thank you.

22 **COMMISSIONER SKOP:** All right. Very well.
23 Thank you.

24 Just so you know, we concluded the 07 docket
25 and now we are proceeding with the 02 docket, and we

1 were addressing the preliminary matters.

2 Okay. Any other additional preliminary
3 matters?

4 **MS. FLEMING:** I'm not aware of any,
5 Commissioner.

6 **COMMISSIONER SKOP:** All right. Very well. We
7 are going to proceed with the draft prehearing order for
8 the 02 docket. And again, the same exercise. We will
9 go through the sections, and if there are any concerns,
10 if the parties could please bring any changes or
11 corrections to my attention and we will proceed from
12 there.

13 Section I, Case Background.

14 **MS. FLEMING:** No changes.

15 **COMMISSIONER SKOP:** Okay. Section II, Conduct
16 of Proceedings.

17 **MS. FLEMING:** No changes.

18 **COMMISSIONER SKOP:** Section III, Jurisdiction.

19 **MS. FLEMING:** No changes.

20 **COMMISSIONER SKOP:** Section IV, Procedure for
21 Handling Confidential Information.

22 **MS. FLEMING:** No changes.

23 **COMMISSIONER SKOP:** Okay. Section V, Prefiled
24 Testimony, Exhibits, Witnesses.

25 **MS. CHRISTENSEN:** OPC would renew its

1 objection to the last paragraph.

2 **COMMISSIONER SKOP:** Very well. So noted.

3 Again, the same ruling, I am going to exclude friendly
4 cross.

5 Any other concerns as to Section V that staff
6 would have?

7 **MS. FLEMING:** Staff would just note that if
8 witnesses do take the stand in this docket, that witness
9 summaries be limited to five minutes or if the witnesses
10 can shorten or dispense summaries.

11 **COMMISSIONER SKOP:** Very well.

12 **MS. FLEMING:** That's something they should
13 consider.

14 **COMMISSIONER SKOP:** Show that done. Again, if
15 the parties, if we do have witnesses, if they can
16 shorten or dispense with the written summaries, that
17 would be greatly appreciated. And if not, we will limit
18 the witnesses to five minutes on the witness summaries.

19 All right. Moving on to Section VI, Order of
20 Witnesses. Staff.

21 **MS. FLEMING:** Currently we are not showing any
22 witnesses as stipulated. However, I believe that once
23 we get through some of the issues, some witnesses may be
24 stipulated because some of the intervenors have taken no
25 position. So in particular I believe that the witnesses

1 for FPUC, Gulf, and TECO may potentially be stipulated
2 as well as others.

3 **COMMISSIONER SKOP:** Okay. Very well. So we
4 have no stipulations at this time, but there may be
5 before we go to the actual hearing?

6 **MS. FLEMING:** That is correct.

7 **COMMISSIONER SKOP:** Very well. Any other
8 concerns as to Section VI, Order of Witnesses? Seeing
9 none, we will move to Section VII, Basic Positions.

10 **MS. FLEMING:** No changes.

11 **COMMISSIONER SKOP:** Okay. Section VIII,
12 Issues and Positions, and I guess many concerns. Does
13 staff want to proceed issue-by-issue?

14 **MS. FLEMING:** Staff would recommend that we do
15 proceed issue-by-issue as there are several issues in
16 dispute. And I would like to note that several parties
17 have taken no position at this time on several issues,
18 and that the parties should be aware based on the order
19 establishing procedure that each party shall take a
20 position by the time of the prehearing conference or
21 such later time as permitted by the prehearing officer,
22 unless they can show good cause. If a party fails to
23 take a position or wishes to maintain their no position,
24 then we will reflect that in the final prehearing order
25 and some issues may potentially be stipulated.

1 **COMMISSIONER SKOP:** Okay. Very well. We are
2 going to proceed issue-by-issue. Again, if there are
3 concerns, if you could bring those concerns to our
4 attention, and we will address them for each specific
5 issue. And, again, if the parties have not yet taken a
6 position, staff, is there an appropriate time frame? I
7 believe you just mentioned that some parties have not
8 taken a position, but is there the ability for the
9 parties to do so by a certain time or date?

10 **MS. FLEMING:** I believe with respect to the
11 first few issues, I believe Issues 1 through 4, I
12 believe the parties should be able to take a position
13 today unless there is some outstanding discovery that
14 I'm not aware of.

15 **COMMISSIONER SKOP:** Okay. We need to also --
16 I'm trying to find my 02 order. Just hold in place for
17 a second. Thank you. Okay. I'm going to start with
18 Issue 1. Any comments from the parties? Hearing none,
19 staff.

20 **MS. FLEMING:** With respect to Issue 1, I
21 believe that Issue 1 may potentially be stipulated. I
22 would note that OPC, FIPUG, and PCS are taking no
23 position at this time, and those will be reflected as no
24 position.

25 **COMMISSIONER SKOP:** Okay. Very well. Moving

1 on to Issue 2. Comments from the parties? Hearing
2 none, staff.

3 **MS. FLEMING:** With respect to Issue 2, Issue 2
4 may potentially be stipulated, noting that OPC, FIPUG,
5 and PCS will take no position.

6 **COMMISSIONER SKOP:** All right. Very well.
7 Issue 3. Hearing no concerns from the parties, staff.

8 **MS. FLEMING:** I believe the same applies for
9 Issue 3. Issue 3 may potentially be stipulated, noting
10 that OPC, FIPUG, and PCS take no position.

11 **COMMISSIONER SKOP:** Okay. Very well.

12 That brings us to Issue 4.

13 **MS. FLEMING:** Issue 4 may potentially be
14 stipulated, as well, noting that OPC, FIPUG, and PCS
15 take no position.

16 **COMMISSIONER SKOP:** Very well. Issue 5.

17 **MR. McWHIRTER:** If you don't mind going back
18 to 3 and 4.

19 **COMMISSIONER SKOP:** Okay. Let's go back to 3.

20 **MR. McWHIRTER:** FIPUG has taken a position
21 with respect to the allocation factors, and if you agree
22 with FIPUG on that reallocation, I believe that any
23 change would flow through into the ECCR factors that
24 show up for the CILC and the CILCT and the SSTIT and so
25 forth factors.

1 **COMMISSIONER SKOP:** Okay. Now, Mr. McWhirter,
2 are we sure we are talking about the -- I guess the same
3 thing on Issue 3? I see no position.

4 **MR. McWHIRTER:** Well, we took no position
5 then, but it occurs to me as we look at this that that
6 may be inconsistent with the position we take later on,
7 because if the Commission agrees with us, the change
8 would flow through to the factors that are established.

9 **COMMISSIONER SKOP:** Staff.

10 **MS. FLEMING:** I believe what Mr. McWhirter is
11 referring to is that there are some issues that were
12 raised by FIPUG specific just to FPL and Progress that
13 may affect their position on Issue 3, and so it may be
14 more appropriate to address -- come back to Issue 3
15 after there is a determination made of those
16 company-specific issues with respect to Progress and
17 FPL.

18 **COMMISSIONER SKOP:** Okay. And what are those
19 specific issues that we need to go forward to before we
20 come back to 3?

21 **MS. FLEMING:** Mr. McWhirter is speaking to the
22 load factors, so I believe it would be Issue 9 for FPL.
23 Is that correct, Mr. McWhirter?

24 **MR. McWHIRTER:** I think it's --

25 **MS. FLEMING:** And Issue 12?

1 **MR. McWHIRTER:** -- Issue 8, 9, and 12, and
2 Issue 13.

3 **COMMISSIONER SKOP:** Okay. Very well. We will
4 come back to Issue 3 after Issues 8, 9, and 12. Any
5 other concerns as to Issue 4?

6 **MR. McWHIRTER:** The same proposition.

7 **COMMISSIONER SKOP:** Same concerns. So we will
8 come back to Issues 3 and 4 after we address the
9 follow-on issues. That brings us to Issue 5.

10 **MR. McWHIRTER:** We take the same position.

11 **COMMISSIONER SKOP:** Okay. Staff.

12 **MS. FLEMING:** Staff would note that this is an
13 issue that was raised by FIPUG. Maybe if we could give
14 the parties an opportunity to address this issue, and
15 staff can provide a recommendation on this issue.

16 **COMMISSIONER SKOP:** Very well. Parties.

17 **MR. BUTLER:** In the case of FPL on Issue 5, in
18 our no position at this time I guess we can just change
19 it to no position. We are okay with the way that we are
20 currently recovering the programs on an energy basis,
21 and would be, you know, comfortable continuing to do
22 that, but we do not have an objection if the Commission
23 sees fit to moving to a demand basis for the demand
24 metered classes for that recovery. So I think no
25 position would be appropriate for FPL.

1 **COMMISSIONER SKOP:** All right. Very well.
2 Mr. Burnett.

3 **MR. BURNETT:** Yes, sir. Our position is
4 correct as reflected in Issue 5, sir.

5 **COMMISSIONER SKOP:** Okay. Very well.
6 Ms. Christensen.

7 **MS. CHRISTENSEN:** We would take no position.

8 **COMMISSIONER SKOP:** Okay. Mr. McWhirter, I
9 guess you have the same concern.

10 **MR. McWHIRTER:** Our position is the same, yes,
11 sir.

12 **COMMISSIONER SKOP:** PCS.

13 **MR. TAYLOR:** Our position remains the same.

14 **COMMISSIONER SKOP:** Okay. Very well. Any
15 other parties before I go to staff? Hearing none,
16 staff, you're recognized.

17 **MS. FLEMING:** Staff believes that this issue
18 should remain in this proceeding. This is an
19 appropriate issue that the Commission has addressed in
20 the ECCR proceedings, so we would recommend that Issue 5
21 remain as a live issue.

22 **COMMISSIONER SKOP:** Okay. Very well. My
23 ruling will be to include Issue 5 as written.

24 That takes us to Issue 6. Any concerns from
25 the parties? Hearing none, staff.

1 **MS. FLEMING:** Staff would note that this is an
2 issue that may potentially be stipulated, noting that
3 OPC, FIPUG, and PCS take no position.

4 **COMMISSIONER SKOP:** Very well. Issue 7, any
5 concerns from the parties?

6 **MS. FLEMING:** Staff would note that this is
7 another issue that may potentially be stipulated, noting
8 that OPC, FIPUG, and PCS take no position.

9 **COMMISSIONER SKOP:** All right. Very well.
10 Issue 8, any concerns from the parties?
11 Hearing none, staff.

12 **MS. FLEMING:** Issue 8 is an issue that was
13 raised by FIPUG, and we believe that this issue should
14 not be included in this proceeding for the following
15 reasons: This issue is more appropriately addressed in
16 the program implementation phase of the DSM goals
17 proceeding. And it is my understanding that Progress --
18 that this will be addressed -- the recommendation for
19 the goals has been filed. The Commission will be voting
20 on the goals on October 27th, an order will forthcoming,
21 and within 90 days the utilities will be required to
22 file programs. And at that point, we believe that it
23 would be appropriate for FIPUG to raise those issues.

24 **COMMISSIONER SKOP:** Okay. Mr. McWhirter, any
25 comments as to the staff recommendation?

1 **MR. McWHIRTER:** It is very perplexing,
2 Mr. Skop. We have a base rate proceeding in which
3 Progress has dramatically changed its cost of service
4 methodology to shift away from demand costs toward
5 energy costs. And we presented testimony in that case
6 based on the methodology that is utilized in the cost of
7 service study. And then that flows through into the
8 conservation docket, because they apply the same
9 procedure in the conservation docket with only nominal
10 testimony on the subject, and that is where the rubber
11 hits the road, so to speak, because that is where the
12 credit shows up for the interruptible and curtailable
13 and stand-by classes.

14 In the goals docket it is, in our opinion,
15 totally alien to the rate setting methodology. That is
16 the goals that each one of the utilities wishes to
17 establish for its conservation activity, and it doesn't
18 deal with setting prices to be charged to the customers
19 for meeting those goals. FPL raised that issue in a
20 motion in this case, but to us it seems quite bizarre,
21 because goals are what the utility is going to try to
22 achieve to conserve energy and conserve demand side
23 management and it doesn't have anything to do with
24 money. We are interested in the customer's bill, and it
25 either shows up in the rate case where there has been

1 substantial testimony, or it shows up, we don't think
2 appropriately, in the conservation docket, but that is
3 where the credits are established.

4 The credits for Progress in this case are
5 different in the conservation docket than they are in
6 the base rate docket, and it is somewhat confusing, so
7 we put in testimony for our own protection. The staff's
8 proposition would be to totally remove the issue from
9 these dockets where the customers' bills are set and put
10 it into one in which the utility is telling the
11 Commission what it plans to save through the programs
12 that it is going to establish. So, I respectfully
13 suggest that we disagree quite vigorously with the
14 staff's recommendation in this case. You may wish to
15 speak to the matter, as well.

16 **COMMISSIONER SKOP:** You're recognized.

17 **MR. TAYLOR:** I do think Mr. McWhirter hits it
18 on the head. As a customer trying to remain competitive
19 in this environment, we need to know what our rates are
20 and we need to have the opportunity to speak to this
21 issue in a rate-making setting, be that the base rate
22 case or be it here. And I would agree, I think, the
23 base rate case is probably the most appropriate place,
24 but to try to move this over to the goals docket just
25 seems inappropriate.

1 **COMMISSIONER SKOP:** Very well. With respect
2 to the staff's suggestion that this should be moved to
3 the implementation phase of the DSM goals setting
4 proceeding, why would not shifting that over adequately
5 protect the interests of FIPUG to the extent that they
6 could fully litigate the issue there?

7 **MR. McWHIRTER:** Well, it is tantamount to
8 harassment, because the issue was raised in the rate
9 cases and we went out and hired an expert witness. And
10 then it is tangentially raised in the conservation case,
11 and we went out and hired a witness. And now if we go
12 into the implementation phase of the goals setting
13 docket, the argument will be raised later on that we
14 didn't come in in time and do it last August when you
15 had the hearing. So, it is kind of a utility shell game
16 that leaves the customers at great expense. We not only
17 pay for our experts, but we pay for the utilities'
18 experts in the case, and we think it is a gross abuse of
19 the regulatory process.

20 **COMMISSIONER SKOP:** Very well. Staff, how
21 would you address the concerns by Mr. McWhirter and
22 Mr. Taylor?

23 **MS. FLEMING:** First, Commissioner, I would ask
24 to see if Progress wanted to address this issue.

25 **COMMISSIONER SKOP:** Okay. Very well.

1 Mr. Burnett.

2 **MR. BURNETT:** Thank you, Commissioner. I
3 would note that just for the record, I do take exception
4 to Mr. McWhirter's comments about this being a utility
5 shell game as we have filed testimony on the issue and
6 have not taken any position on this topic, so those
7 comments are both incorrect and offensive. But with
8 that stated, I would say that we would support staff.
9 We think staff does make the most logical point and we
10 would defer to the Commission.

11 **COMMISSIONER SKOP:** Very well. Staff.

12 **MS. FLEMING:** To Mr. McWhirter's point, he
13 stated that the goals proceeding would not set the
14 implementation, and I just want to make something clear.
15 What the Commission is voting on October 27th is setting
16 the goals. An order will be issued, and then the
17 utilities will have to file programs which will be
18 addressed as PAA items. And a party has an opportunity
19 to intervene in those proceedings and set its rate for
20 hearing.

21 In the program implementation phase, the
22 utilities are filing for Commission approval of
23 programs, and that is where the credits are set.
24 Staff's position is if the Commission were to set
25 credits in this proceeding, those credits may or may not

1 be changed or reset again when the utilities file for
2 their program implementations. So, once again, staff
3 just believes that this issue would be more
4 appropriately addressed and more efficiently addressed
5 in the program implementation phase of the DSM goals
6 proceeding.

7 **COMMISSIONER SKOP:** Thank you.

8 Mr. McWhirter, brief rebuttal.

9 **MR. McWHIRTER:** Mr. Skop, on the first bill we
10 receive in January it will contain the charges that are
11 based upon procedures that we deem inappropriate. And
12 the goals, I'm not quite sure when the implementation
13 takes place, but I presume that what happens is when the
14 programs are approved and to be implemented, it will
15 come up in next year's conservation docket. In the
16 meantime, we will be paying throughout 2010 rates that
17 are based upon what we presume to be a fallacious
18 procedure.

19 **COMMISSIONER SKOP:** Any additional comments
20 from staff before I make a ruling?

21 **MR. TAYLOR:** Commissioner, if I may?

22 **COMMISSIONER SKOP:** Mr. Taylor, you're
23 recognized.

24 **MR. TAYLOR:** I would just note the tariffs are
25 being eliminated now, and by taking this out of the

1 realm of both the base rate case and this proceeding, if
2 you accept staff's recommendation, we do not have a
3 chance to fully litigate this, the rates that we are
4 going to be paying come January 1, and we need that
5 opportunity.

6 Waiting for the PAA, which will be issued some
7 90 days down the road and then litigate that later into
8 the future just puts us in the hole to begin with, and
9 never gives us the chance to address the issues for
10 which there is evidence on the table now both entered
11 into by the utility and by FIPUG.

12 **COMMISSIONER SKOP:** Thank you.

13 Just to staff, any additional comments with
14 respect to Issue 8, specifically addressing -- the staff
15 position, obviously, believes that the appropriate
16 docket would be in the DSM goals setting proceeding. I
17 guess if I hear the parties correctly, they are saying
18 they are irreparably harmed to the extent that the
19 credits would not be accurate and there would be
20 substantial delay.

21 **MR. BUTLER:** Commissioner Skop, excuse me.

22 **COMMISSIONER SKOP:** Mr. Butler, you are
23 recognized.

24 **MR. BUTLER:** Thank you. While staff is
25 conferring, we are going to have the same issue with

1 respect to some similar positions by FIPUG on FPL
2 programs coming up in a moment. Would it be appropriate
3 for me to comment now or should I wait until we get to
4 their concern that it may be, you know, decided by the
5 same logic?

6 **COMMISSIONER SKOP:** Probably wait until we get
7 to the specific issues that we are dealing with
8 company-specific issues at that time. And, again, we
9 hopefully would have consistent rulings.

10 **MR. BALLINGER:** Commissioner Skop, it is my
11 understanding -- I'm sorry, Tom Ballinger with staff --
12 that two of the issues Mr. McWhirter raised, the cost of
13 service methodology and the load factor basis are being
14 dealt with in the rate case, and those are issues that
15 go to the tariff itself.

16 The credit issue is a program implementation
17 phase when utilities file new programs. You will have
18 load management credits, you will have
19 residential/commercial load management credits, look at
20 the cost-effectiveness test and determine that the
21 credit should be at that juncture.

22 **COMMISSIONER SKOP:** Any other additional
23 comments from staff?

24 **MS. FLEMING:** We have no additional comments.
25 Mr. Ballinger has correctly reflected staff's opinion on

1 this matter.

2 **COMMISSIONER SKOP:** Okay. Very well. Based
3 on hearing the testimony from the parties as well as the
4 staff recommendation, I am going to adopt the staff
5 recommendation as to Issue 8, that this is more
6 appropriate in terms of the setting of the credit to be
7 considered in the implementation phase of the DSM
8 goal-setting proceeding. That actually, if what I just
9 heard is correct, establishes the amount of the credit.
10 The other concerns are addressed within the other
11 dockets as addressed by Mr. Ballinger. So, again, my
12 ruling on Issue 8 is going to be exclude it consistent
13 with the staff recommendation.

14 Mr. McWhirter.

15 **MR. McWHIRTER:** I would like to respectfully
16 take exception to your ruling and take it to the full
17 Commission.

18 **COMMISSIONER SKOP:** Very well. So noted, and
19 that can be a motion for reconsideration.

20 **MR. McWHIRTER:** Yes, sir.

21 **COMMISSIONER SKOP:** Mr. Taylor, do you have
22 the same?

23 **MR. TAYLOR:** Yes, same motion.

24 **COMMISSIONER SKOP:** All right. Very well.
25 Thank you.

1 That takes us to Issue 9. Any comments from
2 the parties? Staff.

3 **MS. FLEMING:** Staff would note that Issue 9 is
4 already included in the Progress rate case proceeding,
5 and it will be addressed by staff in the recommendation.
6 It is identical to the Progress rate case issue, so
7 staff doesn't believe that it is necessary to have a
8 duplicative issue in this proceeding when it will be
9 addressed in the rate case.

10 **CHAIRMAN CARTER:** Very well. Comments from
11 the parties? Hearing none, I am going to rule in favor
12 of the staff recommendation to exclude Issue 9 from the
13 02 docket. And that will take us to Issue 10.

14 **MR. McWHIRTER:** Mr. Skop, to protect the
15 record, we take the same position with excepting to the
16 ruling.

17 **COMMISSIONER SKOP:** Okay. Very well. So
18 going back to Issue 9, Mr. McWhirter, you have the same
19 objection even though you stated no concerns as to Issue
20 9?

21 **MR. McWHIRTER:** I'm sorry, were you posing a
22 question to me?

23 **COMMISSIONER SKOP:** Yes, sir. Issue 9, when I
24 asked if there were any concerns, I did not hear any,
25 but then subsequently you restated your objection, the

1 same objection that you had to Issue 8.

2 **MR. McWHIRTER:** It is the same objection. We
3 didn't -- as Mr. Butler pointed out, it is the same
4 issue that flows through into the FPL case. And the
5 argument would be the same, and I don't see any reason
6 to rehash the argument, you've pretty well made up your
7 mind on the subject.

8 **COMMISSIONER SKOP:** So noted. Let the record
9 reflect Mr. McWhirter's objection on behalf of FIPUG.
10 Mr. Taylor, is that a similar objection for you, also?

11 **MR. TAYLOR:** To the extent this issue is
12 addressed in the base rate case, as Ms. Fleming said, I
13 think we're comfortable with that.

14 **COMMISSIONER SKOP:** Okay. Very well. So let
15 the record reflect Mr. McWhirter has taken an objection
16 as to Issue 9 on behalf of FIPUG. And, again, his
17 motion for reconsideration for the full Commission would
18 be appropriate should he choose to challenge the ruling.

19 That takes us to Issue 10. Any concerns?
20 Staff.

21 **MS. FLEMING:** Issue 10 relates, once again, to
22 the credits that we are setting forth, and I think the
23 same arguments that were addressed in Issue 8 apply.
24 Staff believes that this is more appropriate in the
25 program implementation phase of the goals. Credits for

1 interruptible standby customers are usually approved or
2 addressed in the program implementation phase.

3 **CHAIRMAN CARTER:** Very well. Comments from
4 the parties.

5 **MR. McWHIRTER:** No, sir, we think that is
6 appropriate.

7 **MR. TAYLOR:** Yes. I would just like to
8 clarify with staff whether they believe this issue
9 addresses what the credits are or who they apply to, and
10 just to clarify that they will be addressed in the DSM
11 goals docket.

12 **MS. FLEMING:** To my understanding, and I am
13 just looking at the wording of the issue, which states,
14 "Should the value of interruptible power be reflected in
15 the credits applicable to PEF standby customers?" We
16 are taking the issue on its face, and we believe that
17 when Progress files its program implementation, PCS and
18 FIPUG can, once again, raise that issue, since we will
19 addressing the credits to particular classes of
20 customers and will be setting credits in the program
21 implementation phase.

22 **MR. TAYLOR:** All right.

23 **COMMISSIONER SKOP:** Mr. Taylor then Mr.
24 McWhirter. Mr. McWhirter, you're recognized.

25 **MR. McWHIRTER:** As I understand it, this is

1 just the methodology for implementing, and we agree that
2 the methodology is appropriate. It doesn't deal with
3 money. We were concerned about money in 8 and 9, but
4 how the money is refunded or not collected, we all agree
5 that the methodology for a credit is appropriate.

6 **COMMISSIONER SKOP:** Very well. So would it be
7 correct to understand, Mr. McWhirter, that you have no
8 objection as to Issue 10?

9 **MR. McWHIRTER:** That is correct.

10 **COMMISSIONER SKOP:** Okay. Mr. Taylor, does
11 the same apply?

12 **MR. TAYLOR:** Correct, no objection.

13 **COMMISSIONER SKOP:** All right. Very well.
14 Let my ruling hold that Issue 10 will be excluded for
15 the reasons that staff has provided. That takes us to
16 Issue 11. Any concerns from the parties?

17 Mr. Butler, you're recognized.

18 **MR. BUTLER:** Thank you, sir. Commissioner
19 Skop, if staff has the same proposal here that this
20 should be moved to the conservation docket, we would
21 support that. If this issue does stay, though, in our
22 position the word inconsistent should be changed to
23 consistent.

24 **COMMISSIONER SKOP:** Okay. Very well. Any
25 other comments from the parties?

1 **MR. McWHIRTER:** No, sir.

2 **COMMISSIONER SKOP:** Staff.

3 **MS. FLEMING:** Just looking at the positions
4 provided by the parties in Issue 11, it appears as if
5 there may be a potential stipulation here. And if this
6 issue is not in dispute, then staff would suggest that
7 this remain as an issue and the parties work out some
8 stipulated language.

9 **COMMISSIONER SKOP:** Okay. Very well. Show it
10 done. So, Issue 11 will remain, and if the parties are
11 able to stipulate, we will address it on a forward going
12 basis.

13 That brings us to Issue 12. Any comments from
14 the parties?

15 Mr. McWhirter.

16 **MR. McWHIRTER:** Our position remains the same.
17 I don't know if this is something you are going to shift
18 to the goals docket, but this shows you the magnitude of
19 the dollars involved and the impact on the customers
20 that are affected.

21 **COMMISSIONER SKOP:** All right. Any other
22 comments from the parties? Hearing none, staff. I'm
23 sorry, Mr. Butler.

24 **MR. BUTLER:** Thank you. I was just going to
25 ask if staff could identify its intention for this

1 issue, and I may or may not have comments at that point.

2 **COMMISSIONER SKOP:** Staff.

3 **MS. FLEMING:** It is my understanding that this
4 issue is addressed in the FPL rate case, and I believe
5 that if that is the case this issue should be excluded
6 from this proceeding as it will be addressed within the
7 rate case docket, and staff will be preparing a
8 recommendation within the rate case docket addressing
9 this issue.

10 **COMMISSIONER SKOP:** Okay. Very well.

11 Mr. McWhirter, does that address your concern?

12 **MR. McWHIRTER:** Does that mean that we don't
13 have to pay this portion of our bill when it comes out
14 in January if the rate case hasn't been resolved?

15 **COMMISSIONER SKOP:** Mr. McWhirter, as to
16 whether staff's comments addressed your concerns as to
17 the fact that this is already included in the rate
18 case --

19 **MR. McWHIRTER:** No, sir, we are not satisfied
20 with that response because of the timing. And I was
21 unduly facetious in my remarks, but we think we would
22 like to litigate that issue.

23 **COMMISSIONER SKOP:** All right. Very well.
24 Staff.

25 **MS. FLEMING:** I believe that the parties will

1 have or have had that opportunity to litigate that issue
2 in the FPL rate case.

3 **COMMISSIONER SKOP:** Okay. Any other comments
4 from staff?

5 **MS. FLEMING:** We still believe that since that
6 is a live issue that still remains in the FPL rate case
7 it should be addressed in that proceeding.

8 **COMMISSIONER SKOP:** Okay. Very well. That is
9 my ruling on the issue, that the issue is already
10 addressed within the FPL rate case proceeding. Again,
11 adding it here, I believe would be duplicative.
12 Mr. McWhirter, if you have an objection, it will be
13 noted for the record.

14 **MR. McWHIRTER:** Yes, sir. I object to that,
15 and respectfully take exception to the ruling if you are
16 going to defer action to the rate case, and we will file
17 an appropriate motion for reconsideration.

18 **COMMISSIONER SKOP:** Very well. Show it done.
19 Issue 13. Any comments from the parties?
20 Hearing none, staff.

21 **MS. FLEMING:** It is my understanding with
22 respect to Issue 13, it is similar to the prior issues
23 that we have addressed with respect to a credit, and
24 that we need to show that credits are cost-effective and
25 that the credit really should be addressed in the

1 program implementation phase for the DSM goals
2 proceeding.

3 **COMMISSIONER SKOP:** All right. Very well.

4 Mr. Butler, any comments as to this issue?

5 **MR. BUTLER:** We agree with staff's position.

6 **COMMISSIONER SKOP:** Okay. Mr. McWhirter.

7 **MR. McWHIRTER:** We respectfully disagree with
8 the staff's position for the reasons stated.

9 **COMMISSIONER SKOP:** Okay. Very well.

10 Mr. Taylor, any comments on behalf of your
11 client? All right. Mr. McWhirter, how would FIPUG
12 respond to the extent that the issues that it seeks to
13 address in this proceeding could not be otherwise
14 addressed in the program implementation phase of the DSM
15 goals setting in terms of establishing the appropriate
16 values?

17 **MR. McWHIRTER:** Mr. Skop, if I understand your
18 comment, what we are looking at here is the amount of
19 the credit that will be utilized. And if you defer this
20 proceeding, does that mean that the credit isn't
21 established in this case and will be established in some
22 other case? And if that is the case, that effects the
23 amount of money to be collected from the customers that
24 are addressed back in Issues 3 and 4. And I, frankly,
25 don't know what is going to happen on the January bills,

1 because it may well be that the rate case decision is
2 not going to be made until late spring. So, what
3 happens is you implement the prices that are going to be
4 charged, you see the magnitude of the money involved,
5 it's peanuts with respect to the general ratepayers, but
6 when you are dealing with maybe 10 or 12 customers
7 having to pay an additional \$22 million, it is quite
8 significant, and that appears on their bills.

9 If it is determined later on that that is an
10 inappropriate methodology, then what happens? Do we
11 wait until next year and then get a true-up? And if you
12 get a true-up it flows in some other fashion, and in the
13 meantime our clients have to establish budgets and pay
14 their electric bill, and it is a very significant
15 problem to a very few businesses.

16 **COMMISSIONER SKOP:** Very well. So if I
17 understand your concern, it is not so much as to the
18 credit itself but, basically, the timing issue of any
19 appropriate credit given the budgeting.

20 **MR. McWHIRTER:** That is it exactly, yes, sir.

21 **COMMISSIONER SKOP:** All right. Very well.
22 Staff, if you could briefly respond to this concern.

23 **MS. FLEMING:** Just listening to Mr.
24 McWhirter's concerns, I believe to answer his question,
25 the credit does remain in effect until there is a

1 change.

2 **COMMISSIONER SKOP:** Okay. But with respect to
3 Mr. McWhirter's specific concern to the extent that if
4 the credit changed and resulted in a greater credit, how
5 would the companies be able to -- or Mr. McWhirter's
6 clients be able to avail themselves of the higher credit
7 amount if that were to happen? I think his concern is
8 not so much the credit, but the timing of the credit and
9 being able to take advantage of the credit for not only
10 budgeting purposes, but also for payment purposes.

11 **MS. FLEMING:** It is my understanding that
12 there is a tariff in place that hasn't been changed.
13 And when the utilities file their programs in the
14 program implementation phase of the goals, FPL may
15 propose a change in that credit, but it is subject to
16 Commission approval at that time. So the credit as
17 currently reflected will remain until there is some
18 change either through a DSM program modification or
19 through the program implementation phase.

20 **COMMISSIONER SKOP:** Okay. So, if I understand
21 staff correctly, the existing tariff that is currently
22 in place would govern until such time as the Commission
23 approves a change and the tariff itself has changed.

24 **MS. FLEMING:** That is my understanding, yes.

25 **COMMISSIONER SKOP:** Okay. Very well. Any

1 additional comments, Mr. McWhirter?

2 **MR. McWHIRTER:** I apologize, you know, I am
3 old and ignorant, but it seems to me that back in Issues
4 3 and 4 you establish amounts of money that are going to
5 be collected, and the amounts of money that are going to
6 be collected in the bill come January is based upon the
7 credits as they are established in these later issues.
8 And so if the staff is saying there will be no change in
9 the credit that was in existence in the current 2009
10 year, then we are perfectly happy. But if the money
11 that is collected from our clients is -- you are going
12 to use the new reduced credit, then we are not satisfied
13 because you are dealing with an impact on a very few
14 customers.

15 We have got four million customers and maybe
16 this impacts 20. And if there is some kind of refund in
17 later years that is going create a mismatch on how that
18 money flows back. So, I am satisfied that the staff
19 thinks that everything is going remain pretty much the
20 same, but I don't think it will, because when the money
21 to be collected from our clients is established, it is
22 going to be using the credits that are specified in this
23 issue and not the ones that are presently in existence.

24 I think we could stipulate, and would be happy
25 to do that, that maintaining the credits that are in

1 existence in 2009 until resolution is resolved in the
2 base rate case or the conservation goals implementation
3 procedure, and then true it up with these specific
4 customers after that decision is made. That might work.
5 But dealing with the impact on 20 customers versus
6 four million customers or, I guess, six million
7 customers is going to be very, very difficult to unwind
8 if you are going to be using the 4.48 as opposed to the
9 5.50 per kW credit.

10 **COMMISSIONER SKOP:** Very well.

11 Mr. Butler, did you have comments?

12 **MR. BUTLER:** Commissioner Skop, my comments
13 are simply that it seems Mr. McWhirter is kind of mixing
14 two different phases of this. You know, the Commission
15 every five years looks at the goals and then looks at
16 programs to implement the goals. We are coming to the
17 end of the current period under the current goals. The
18 Commission is about to set new ones, and we will be
19 proposing programs with changes in them, no doubt, to
20 achieve the new goals. And, as staff pointed out, there
21 are points of entry through the proposed agency action
22 process if Mr. McWhirter or any other party has a
23 concern with that process. But that sets what the
24 credits are going to be, and appropriately, you know,
25 they will change when the Commission has approved the

1 program revisions that FPL and other utilities would
2 make.

3 Now, the cost-recovery through this docket is
4 for whatever the costs of those programs are, and if the
5 changes in this or any other types of programs occurs,
6 you know, sometime next spring, then that will just be
7 trued up as part of the normal true-up mechanism that
8 works through this docket to keep the pot right for all
9 parties. I just don't think that there is any timing
10 problem that exists here, other than, basically, a
11 collateral attack on your earlier almost five-year-old
12 order setting the current goals and current programs.

13 **COMMISSIONER SKOP:** Very well. Any further
14 comments from staff before I make a ruling?

15 **MR. McWHIRTER:** May I make a suggestion,
16 Mr. Chairman?

17 **COMMISSIONER SKOP:** You may. Mr. McWhirter,
18 you're recognized.

19 **MR. McWHIRTER:** Perhaps it would be beneficial
20 after this session that we sit down with staff and the
21 attorneys for the respective utilities and see if some
22 resolution can be made without the implementation of the
23 credits that are established in this proceeding. I
24 have -- I hear what Mr. Butler is saying. He said
25 nothing really changes for five years and that doesn't

1 quite ring true to me. And if nothing changes for five
2 years, then I don't guess we need Paragraphs 13 and 12,
3 and -- because, obviously, that has no impact on the
4 money my clients are going to be charged in Issues 3 and
5 4. But I have a sneaking feeling that we are going to
6 be charged more money in Issues 3 and 4 as a result of
7 this credit thing. And if we are able to meet with the
8 staff and the utilities, they may be able to explain to
9 my simple mind that there is no problem, that our rates
10 aren't going to go up. But our expert seems to think
11 that they are going to go up quite dramatically.

12 **COMMISSIONER SKOP:** Okay. Very well. You
13 know, anytime that the parties are able to get together
14 and find common ground that results in stipulations or
15 disposition of issues that are currently in dispute is a
16 good thing, so I would encourage the parties to do so.

17 As to my ruling on Issue 13, it is going to be
18 consistent with my prior rulings as to staff, the
19 recommendation that this issue not be included for the
20 reasons that they stated.

21 Mr. McWhirter, if you have a standing
22 objection to that, again, it will be recognized and you
23 can preserve that either through a motion for
24 reconsideration or trying to reach a stipulation with
25 the parties on the issues that seem to be contentious.

1 **MR. McWHIRTER:** Thank you very much.

2 **COMMISSIONER SKOP:** Very well. Thank you.

3 Let's move to Issue 14. Any concerns by the
4 parties? All right. This appears to be one of those
5 other issues, so I will look to staff.

6 **MS. FLEMING:** Commissioner, I believe this
7 issue is identical to Issue 10, whereby FIPUG stated
8 that this issue was meant to address the methodology
9 concerns. Staff's recommendation is that it be
10 addressed in the program implementation phase, and I
11 believe that based on our prior discussions, FIPUG and
12 PCS should not have an objection to the exclusion of
13 this issue.

14 **MR. McWHIRTER:** I agree with that.

15 **COMMISSIONER SKOP:** All right. Very well.
16 All right. So based on the comments from the parties
17 and staff, Issue 14 will not be included for the
18 aforementioned reasons.

19 And that takes us to Issue 15. Any concerns
20 from the parties?

21 **MR. McWHIRTER:** That's the same deal, isn't
22 it?

23 **COMMISSIONER SKOP:** Staff.

24 **MS. FLEMING:** This is the same as Issue 11,
25 but contrary to Progress, FPL, I believe, is not -- the

1 positions don't seem like they are aligned where this
2 issue can be stipulated. And, thus, if this issue
3 cannot be stipulated and it is still in dispute, staff
4 believes that it is more appropriately addressed in the
5 program implementation phase of the DSM goals; whereby,
6 in the program implementation phase, we will once again
7 be looking at the credits and whether -- however those
8 credits are set, whether they are locked in for a time
9 certain or what have you.

10 **CHAIRMAN CARTER:** Okay. Very well. Again, my
11 ruling will be consistent with past rulings. Again, I
12 am going to exclude this issue. Based on the staff
13 recommendation, it is my understanding there are
14 existing tariffs that are currently in place. Those
15 tariffs will be changed at a later point in time. But,
16 again, Mr. McWhirter, if you have an objection as to
17 Issue 15, I will note it for the record.

18 **MR. McWHIRTER:** No, I have no objection.

19 **COMMISSIONER SKOP:** No objection. Okay. Very
20 well. Then we will leave this issue out and move
21 forward.

22 That takes us to Section IX from the exhibits
23 list. Staff.

24 **MS. FLEMING:** Staff will prepare a
25 comprehensive exhibit list consisting of all prefiled

1 exhibits for the purposes of numbering and identifying
2 the exhibits at the hearing, and we will provide that
3 exhibit list as soon as possible.

4 **COMMISSIONER SKOP:** Very well.

5 That takes us to Section X, Proposed
6 Stipulations.

7 **MS. FLEMING:** I'm not aware of any proposed
8 stipulations at this time, but as previously noted,
9 there may be some issues that may be ripe for
10 stipulation, and we will confer with the parties to see
11 if there are any stipulations that can be reached and
12 whether that will lend itself to stipulating any
13 witnesses, particularly for FPUC, Gulf, and TECO.

14 **COMMISSIONER SKOP:** Very well. And as I
15 previously stated, and Mr. McWhirter has alluded to,
16 again, if we are able, the parties in discussions
17 amongst themselves to reach additional stipulations on
18 any contested issue, again, it would be greatly
19 appreciated. So I will leave that to the parties.

20 Section XI, Pending Motions.

21 **MS. FLEMING:** The draft prehearing order notes
22 that there is one pending motion. There are actually
23 two. The one previously discussed was the motion to
24 take Witness Masiello out of order, and there is also a
25 pending motion for PCS Phosphate's petition to

1 intervene, which will be addressed by a separate order.

2 **COMMISSIONER SKOP:** Okay. Very well. The
3 second motion that you spoke to with respect to take the
4 witness out of order, I believe I previously granted
5 that this morning, so we will deal with the second order
6 when it comes before me for signature.

7 And as to Section XII, Pending Confidentiality
8 Matters.

9 **MS. FLEMING:** There are two pending
10 confidentiality matters in this proceeding which will be
11 addressed by separate order.

12 **COMMISSIONER SKOP:** Very well. Section XIII,
13 Post-Hearing Procedures.

14 **MS. FLEMING:** Sorry.

15 **MR. TAYLOR:** I'm sorry. Could we go back to
16 Section XI, pending motions?

17 **COMMISSIONER SKOP:** Yes. Can you turn your
18 microphone on, please?

19 **MR. TAYLOR:** Regarding Section XI, pending
20 motions, I missed it. Are you planning to address our
21 petition to intervene separately?

22 **COMMISSIONER SKOP:** It will be addressed by
23 separate order.

24 **MR. TAYLOR:** Very good.

25 **COMMISSIONER SKOP:** All right. Thank you.

1 **MR. TAYLOR:** And just to note, we pushed back
2 the discussion of Issues 3 and 4 earlier.

3 **COMMISSIONER SKOP:** Yes. Yes. We need to go
4 back to the other issues, 3 and 4. So, again, we will
5 do that before we adjourn this one. I just wanted to
6 get through some of the preliminary issues.

7 Any other questions as to post-hearing
8 procedures?

9 **MS. FLEMING:** Staff would just note with this
10 proceeding, once we have heard from the witnesses, staff
11 will be prepared to make a recommendation on whatever
12 remaining issues and the Commission may render a bench
13 decision at that time.

14 **COMMISSIONER SKOP:** All right. Very well. As
15 to Section XIV, Rulings, opening statements, if any,
16 will be limited to five minutes per party. And any
17 other comments from staff as to Section XIV?

18 **MS. FLEMING:** We will also add in that the
19 motion has been granted with respect to taking Witness
20 Masiello out of order.

21 **COMMISSIONER SKOP:** Okay. Very well. I guess
22 that brings us back to Issues 3 and 4 that we previously
23 deferred. Any comments as to Issue 3?

24 **MR. McWHIRTER:** I still have a concern,
25 Mr. Chairman, until the time I meet with staff and

1 counsel on both 3 and 4.

2 **COMMISSIONER SKOP:** Okay. All right. Very
3 well. Show the objection noted for FIPUG on behalf of
4 Mr. McWhirter for Issues 3 and 4.

5 **MR. TAYLOR:** And on behalf of PCS, we would
6 just note that to the extent Issue 8, if it happens to
7 be reconsidered --

8 **COMMISSIONER SKOP:** Can you start over,
9 please?

10 **MR. TAYLOR:** Sure. We would note that with
11 regards to Issue 3 and 4, to the extent Issue 8 is --
12 the ruling is subject to change and is included, we
13 believe those rates set forth for Progress on Issue 3
14 and 4 should be adjusted to reflect any final ruling on
15 Issue 8.

16 **COMMISSIONER SKOP:** Show it done. And show
17 the objection noted by Mr. McWhirter as to Issues 3 and
18 4. Those will remain in place as currently written.
19 Again, I would encourage the parties if they are able to
20 reach stipulation and compromise on those issues
21 certainly that would expedite the proceeding in this
22 docket. So I will leave that to the parties.

23 Are there any additional matters that we need
24 to discuss on the 02 docket?

25 **MR. McWHIRTER:** Yes.

1 **MS. FLEMING:** Yes, Commissioner. With respect
2 to Issue 3, if I may, it is my understanding that FIPUG
3 is really taking issue only with FPL and Progress, so I
4 would propose that FIPUG consider the stipulation, at
5 least the partial stipulation of Issue 3 with respect to
6 FPUC, Gulf, and TECO.

7 **MR. McWHIRTER:** No objection. That is
8 appropriate.

9 **COMMISSIONER SKOP:** Okay. Very well. Any
10 other matters that we need to address as to the 02
11 docket?

12 **MR. McWHIRTER:** Yes, sir. With respect to
13 order of witnesses, FIPUG has proposed Mr. Pollock with
14 respect to the issues that have been deferred and the
15 rebuttal testimony also relates to the issues that have
16 been deferred. I would suggest that perhaps rather than
17 having Mr. Pollock come all the way down here, we just
18 proffer his testimony into the record for purposes of
19 whatever later procedure is followed through.

20 **COMMISSIONER SKOP:** Staff.

21 **MR. BUTLER:** Commissioner Skop, may I be
22 heard?

23 **COMMISSIONER SKOP:** Yes. Mr. Butler, you're
24 recognized.

25 **MR. BUTLER:** Thank you. Sort of the same

1 point applies to FPL's witness, Mr. Haney (phonetic).
2 It seems like, though, that we are going to need to have
3 the decision reached. I mean, you have made your
4 decision. There is a suggestion, perhaps, that there
5 would be reconsideration sought of it. But if these for
6 some reason ended up being back as live issues in the
7 proceeding, I would think that we would want to
8 cross-examine Mr. Pollock, and I expect that
9 Mr. McWhirter might end up wanting to cross-examine
10 Mr. Haney and the other rebuttal witnesses on it. So it
11 speaks to the need for all parties, his, as well -- his
12 witnesses as well as ours to get to a resolution of
13 whether those issues are definitively in or out before
14 the start of the hearing so we can know how to proceed.

15 **COMMISSIONER SKOP:** Well, I think my rulings
16 speak for themselves. To the extent that those are
17 overturned by a motion for reconsideration over and
18 above the staff's recommendation, I guess we would need
19 to litigate those issues and have the witnesses present
20 so that they could be cross-examined by the respective
21 parties.

22 Again, I will leave it to the respective
23 parties, though, to see if there is some common ground
24 that they can find in terms of reaching an appropriate
25 stipulation on those issues that would address the

1 timing concerns of the credits and thereof. But, again,
2 that needs to be between the parties.

3 But, my ruling stands, and as the objection
4 has been noted, certainly I can entertain that as a
5 motion for reconsideration as a preliminary matter
6 before we take up that docket at hearing.

7 **MR. BUTLER:** Yes, sir.

8 **COMMISSIONER SKOP:** All right. Any other
9 comments from staff?

10 **MS. FLEMING:** The only other comment,
11 Commissioner, is on Issue 4. I just need clarification
12 from FIPUG and PCS, because Issue 4 states what should
13 be the effective date of the new conservation
14 cost-recovery factors for billing purposes. And I'm
15 trying to understand how the issues that they have
16 raised with respect to the credits affects the effective
17 date, which is standard in this proceeding.

18 **MR. McWHIRTER:** They don't. Well, maybe it
19 does, because we wouldn't want it to be effective on --
20 I wouldn't want it to be effective on my clients until
21 there has been a ruling on the issue. But I don't have
22 any objection to 4 that I think it will create such a
23 problem and postpone it in the conservation charges on
24 January 1 until we -- if we have to wait until there is
25 a resolution in the rate cases. I will withdraw my

1 objection on 4.

2 **COMMISSIONER SKOP:** So noted. Staff, any
3 additional concerns?

4 **MS. FLEMING:** I would just confirm with PCS
5 now that there are no objections from FIPUG, does PCS
6 still have an objection to this issue?

7 **COMMISSIONER SKOP:** Mr. Taylor.

8 **MR. TAYLOR:** Generally, we agree that -- or we
9 believe that the rates should not take effect until the
10 beginning of year and there shouldn't be carryover from
11 the prior year; that is, the rates should be in effect
12 for just 12 months and not longer. And, unfortunately,
13 as proposed that is not the case. That being said, we
14 have no objection and will maintain no position at this
15 time.

16 **COMMISSIONER SKOP:** So noted. Any other
17 concerns from staff?

18 **MS. FLEMING:** No. Thank you, Commissioner.
19 So with that clarification, we will also reflect Issue 4
20 as a stipulation.

21 **COMMISSIONER SKOP:** Okay. Very well. Is that
22 the understanding of the parties? Okay. Hearing no
23 objection, that concludes the prehearing conference for
24 the 02 docket. And what we are going to do is take a
25 brief ten-minute recess, and then we will reconvene for

1 the 01 docket.

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STATE OF FLORIDA)
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)
COUNTY OF LEON)

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

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

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

DATED THIS 26TH day of OCTOBER, 2009.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
FPSC Division of Commission Clerk
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