

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

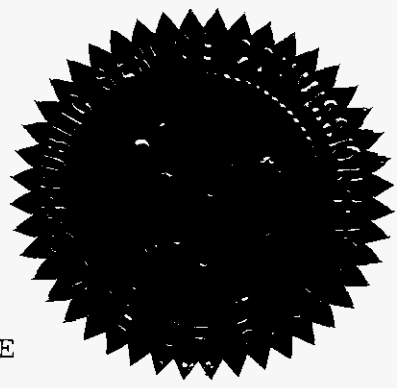
2009 DEPRECIATION AND DISMANTLEMENT STUDY BY FLORIDA POWER & LIGHT COMPANY. DOCKET NO. 090130-EI

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

PETITION FOR LIMITED PROCEEDING TO INCLUDE BARTOW REPOWERING PROJECT IN BASE RATES, BY PROGRESS ENERGY FLORIDA, INC. DOCKET NO. 090144-EI

PETITION FOR EXPEDITED APPROVAL OF THE DEFERRAL OF PENSION EXPENSES, AUTHORIZATION TO CHARGE STORM HARDENING EXPENSES TO THE STORM DAMAGE RESERVE, AND VARIANCE FROM OR WAIVER OF RULE 25-6.0143(1)(C), (D), AND (F), F.A.C., BY PROGRESS ENERGY FLORIDA, INC. DOCKET NO. 090145-EI

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 2



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FPSC-COMMISSION CLERK

1 COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
2 COMMISSIONER LISA POLAK EDGAR
3 COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP
4 COMMISSIONER DAVID E. KLEMENT

5 DATE: Tuesday, October 27, 2009

6 PLACE: Betty Easley Conference Center
Room 148
7 4075 Esplanade Way
Tallahassee, Florida

8 REPORTED BY: LINDA BOLES, RPR, CRR
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P R O C E E D I N G S

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3 **CHAIRMAN CARTER:** With that, Commissioners and
4 staff, let's move to Item 2.

5 **MS. BENNETT:** Good morning, Commissioners. My
6 name is Lisa Bennett, and with me is Katherine Fleming.
7 We're two of the staff attorneys for the Public Service
8 Commission.

9 Item 2 on the agenda is staff's recommendation on
10 whether or not to postpone the Commission's decisions on
11 the Progress Energy Florida and Florida Power & Light rate
12 cases until the two new Commissioners take office.

13 I do have before we start an oral modification,
14 if that's appropriate to take up at this time.

15 **CHAIRMAN CARTER:** You're recognized.

16 **MS. BENNETT:** On Page 3 of the recommendation,
17 the first line of the fourth paragraph, I'd like for you to
18 please strike the last two words and replace them with
19 "take office." The sentence should then read, "On October
20 2nd, 2009, Governor Charlie Crist sent a letter requesting
21 that the Commission postpone its decision until the two
22 newly appointed Commissioners take office."

23 **CHAIRMAN CARTER:** Commissioner Argenziano.

24 **COMMISSIONER ARGENZIANO:** Wouldn't there be
25 another correction to one since we have one already?

1 **MS. BENNETT:** To -- I'm sorry?

2 **CHAIRMAN CARTER:** So it would now be, instead of
3 two new, two newly appointed Commissioners, it would be one
4 newly appointed Commissioner.

5 **MS. BENNETT:** I guess that would be correct now.

6 **CHAIRMAN CARTER:** So let's, let's back up in that
7 sentence, Commissioners, until the one --

8 **COMMISSIONER EDGAR:** Mr. Chairman?

9 **CHAIRMAN CARTER:** Commissioner Edgar.

10 **COMMISSIONER EDGAR:** Thank you. With all due, if
11 this is quoting the letter, then I don't know that we
12 should change it in the language of the item itself. In
13 other words, I would -- my suggestion would be that we
14 stick with the language that Ms. Bennett has given us, with
15 the understanding that there have been some changed
16 circumstances.

17 **MS. BENNETT:** I was paraphrasing Governor Crist's
18 letter.

19 **COMMISSIONER ARGENZIANO:** Of course, Mr. Chair, I
20 was joking. We know he's here.

21 **CHAIRMAN CARTER:** Well, see, Dave Klement threw
22 me off with my grandchildren comment. I was, you know --
23 when I get grandchildren, I'll call them great
24 grandchildren, but for now they'll just be wonderful.
25 We'll go with that. All right? So we have the wonderful

1 quality of the word. It's the thaumaturgy.

2 So, Ms. Bennett, we'll just correct that. I tell
3 you what, Commissioners, when we deal with this in the
4 final disposition of the matter, whatever form of motion we
5 take, we'll give staff leave to operate and update the
6 language consistent and pursuant with our directions. All
7 right? How about we do that?

8 Okay. Ms. Bennett, you're recognized.

9 **MS. BENNETT:** At this point, staff can go over
10 each issue or I can give you an overview of the entire
11 recommendation, whatever is your pleasure. It's also my
12 understanding that the parties to both cases are here and
13 would like to address you.

14 **CHAIRMAN CARTER:** Okay. Well, let's do this.
15 Why don't we get -- Commissioners, why don't we have staff
16 do an overview, then we'll listen to the parties, and then
17 we may have to have you do the overview again, but we'll
18 come back from that. Let's do that. Staff, you're
19 recognized for the overview, and I'll start to my, Mr.
20 Moyle -- I'll start with Mr. Brew and then come forward
21 like that. Okay? And then we'll go with both, both will
22 have, from Progress and FPL, do it that -- Ms. Bennett.

23 **MS. BENNETT:** For Issues 1 and 3, the question is
24 can the Commission postpone the decisions? Staff's
25 recommendation is, no, that the Commission should not

1 postpone the decisions from its current schedule. Staff
2 believes that Section 366.063 is a legislative mandate and
3 that the Commission must make its decisions for FPL on or
4 before March 18th and for Progress on or before March 20th.
5 March 20th is a Saturday. And also 120.569(2)(1) is a
6 requirement, and to comply with that statute a final order
7 must be issued by, for Progress by December 30th and for
8 FPL by January 21, 2010. I still have a hard time with
9 2010. Staff is of the opinion that to comply with the due
10 process concerns raised by OPC in its brief would likely
11 push the decisions past the legislative timelines, and
12 accordingly we recommend that the current schedule be
13 followed. But if you decide that the new Commissioners
14 should decide the case or if you want to follow a different
15 schedule, staff has several alternative dates available.

16 For Issue 2, the question is can FPL begin to
17 implement its new rates? Staff's of the opinion that it
18 cannot begin to implement its new rates subject to refund
19 based upon the stipulation that it, stipulation and
20 settlement agreement it entered into with all of the
21 parties.

22 For Issue 4, can Progress Energy begin to
23 implement its new rates subject to refund on January 1,
24 staff, the parties all agree that, yes, they could begin to
25 implement. Their settlement agreement is a little bit

1 different than Florida Power & Light's. With that, I'm
2 available for questions, as is Ms. Fleming.

3 **CHAIRMAN CARTER:** Okay. Before I go to the
4 parties, Commissioner Skop, you're recognized. And,
5 Commissioners, anything from the bench before we go there?
6 I'm going to recognize Commissioner Skop at this time, and
7 then, Commissioner Argenziano, you'll be next.
8 Commissioner Skop, you're recognized.

9 **COMMISSIONER SKOP:** Thank you, Mr. Chair. Just a
10 point of clarification to Ms. Bennett. As to the wording
11 on Issue 1 in the staff recommendation, is it correct to
12 understand that the statutory deadlines are the absolute
13 deadlines in terms of the March 18th, 2010, and March 20th,
14 2010?

15 **MS. BENNETT:** Yes, that is correct.

16 **COMMISSIONER SKOP:** Okay. So to the extent that
17 the decision must be made before those respective dates,
18 the Commission would have flexibility to shift the decision
19 dates from the currently scheduled dates forward to the
20 beginning of next year; is that correct?

21 **MS. BENNETT:** That is correct.

22 **COMMISSIONER SKOP:** Okay. So as it pertains to
23 Issue 1, the staff recommendation, although it says no is
24 not an absolute no; is that correct?

25 **MS. BENNETT:** That's correct.

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

2 **CHAIRMAN CARTER:** I think it probably should have
3 read, Commissioners, should as opposed to can. But that's
4 just, you know, I'm just mingling my words today. It's one
5 of those word days.

6 Commissioner Argenziano, you're recognized.

7 **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chair.
8 Much on the same lines. Basically you had indicated that
9 there were alternative dates available that you believe
10 would still meet the deadline?

11 **MS. BENNETT:** We have alternative dates available
12 that will meet the 366.06(3) 12-month deadline for both
13 Progress and FPL. There are also a couple of dates
14 available that would meet the 90-day deadline established
15 by the Administrative Procedures Act available.

16 **COMMISSIONER ARGENZIANO:** Let me just ask this
17 because it's confusing. Because if there's a no and then I
18 saw words in there that said not likely to meet the
19 deadline, if I hear not likely, that means then there is a
20 likely chance also, and now I'm hearing there's
21 alternatives to meeting the deadline. So how does the no
22 fit in there?

23 **MS. BENNETT:** Staff's concern and the reason we
24 worded the recommendation the way we did was that both
25 Florida Power & Light and the Office of Public Counsel

1 identified some due process concerns.

2 **COMMISSIONER ARGENZIANO:** Right.

3 **MS. BENNETT:** If we were to follow -- of course
4 Florida Power & Light's solution to the due process
5 concerns as AIF is to stay with the current schedule.
6 Office of Public Counsel had a different alternative that
7 said you could meet these due process concerns, I'm going
8 to paraphrase, but, of course the Commissioners, the new
9 Commissioners would need to look at the archived videos,
10 review the record, they would need to wait, staff would
11 need to wait and file its recommendation until after that
12 had happened, and that the parties would like to have oral
13 arguments, about two and a half hours of oral arguments
14 which would require reopening the record. And I believe
15 there was one other requirement. I think that they stated
16 that none of that should happen until after the newly
17 appointed Commissioners take office.

18 Now understand that this was written before we
19 knew that the newly appointed Commissioner Klement would be
20 taking office. So the concern was if we waited until
21 January 4th and then started that whole process -- as you
22 know, the, the hearings were long.

23 (Laughter.)

24 **COMMISSIONER ARGENZIANO:** I think we all know
25 that. Okay. But can I, if we have alternative dates, now

1 I understand the complications and the due process issue is
2 one that I'm concerned with also, everybody is entitled to
3 due process, and with that in mind, if you had alternative
4 dates, what would be, excuse the expression, the drop-dead
5 dates that we would have to abide by to make it and still
6 feel that we are, you know, thinking about the due process
7 issue and allowing that due process to happen?

8 **MS. BENNETT:** Quite frankly, the drop-dead date
9 for FPL is March 18th and for Progress is March 19th. You
10 would have to have your rates voted on by that date.

11 **COMMISSIONER ARGENZIANO:** And then if the new
12 Commissioner came in, he would have that time frame from
13 January -- walk me through this for a minute. The new
14 Commissioner needs -- we need to give the new Commissioner
15 a certain amount of time, and then if there, so there has
16 to be a reopening for oral arguments. I'm trying to figure
17 out --

18 **MS. BENNETT:** That would be OPC's request. I'm
19 not sure that you would have to do that.

20 **COMMISSIONER ARGENZIANO:** Have to do that. Okay.

21 **MS. BENNETT:** There are several options that you
22 guys, you guys can consider and what your comfort level is.
23 The one, the one thing that we, the Commission must do is
24 to make a decision based upon the record. And so that's
25 the primary importance is to make sure that the

1 Commissioners have the records available and can review
2 them and then make their decision. We can file our staff
3 recommendation in the same time frame and have the
4 Commissioner review the record with the recommendation in
5 hand. So there are lots of options available.

6 **COMMISSIONER ARGENZIANO:** Okay. And has this
7 ever happened at the PSC before? And I looked at some of
8 the case law where they talk about justices and how it may
9 affect a judge or has affected a judge in case law, and it
10 seems to me that it was kind of fuzzy in some areas as to
11 how it applies here.

12 **MS. BENNETT:** We actually have a statute that
13 talks about administrative law judges, and the statute
14 permits a new administrative law judge to --

15 **COMMISSIONER ARGENZIANO:** Take over?

16 **MS. BENNETT:** -- take over, and that
17 administrative law judge has the opportunity to decide what
18 he needs to make his decision from, anywhere from reviewing
19 the record, which is permissible, to requiring a de novo
20 proceeding. Of course, if we do a de novo proceeding, I
21 don't think we will make the March 18th deadline.

22 **COMMISSIONER ARGENZIANO:** Right. Okay. Thank
23 you.

24 **CHAIRMAN CARTER:** Thank you.

25 Commissioner Edgar, then Commissioner Skop.

1 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

2 Ms. Bennett, if -- I'm getting a little -- I
3 thought I knew, but now I'm getting a little confused about
4 some of the time frames and the requirements. There's the
5 90-day requirement in Chapter 120. In Chapter 366 there's
6 an 8-month requirement and a 12-month requirement, and then
7 there's the additional 30-day notice requirement to
8 customers before rates can go into effect.

9 So with all of that in mind and the discussion
10 that we've, we've been having, is there a date -- let me
11 focus on Progress first because I think that's a little,
12 perhaps a little simpler. For Progress is there a date
13 that they could put rates into effect prior to March if we
14 did not act prior to that time? Do I need to restate?

15 **MS. BENNETT:** I think I understand your question.

16 **COMMISSIONER EDGAR:** Okay. We've talked about in
17 response to Commissioner Argenziano's question the 12-month
18 time frame, and I believe I heard you say that we would
19 have until the middle of March basically to render a
20 decision.

21 **MS. BENNETT:** Correct. Right.

22 **COMMISSIONER EDGAR:** Okay. But isn't there a
23 date prior to that that by law Progress would have the
24 ability to put rates into effect as requested which may be
25 different than as eventually approved?

1 **MS. BENNETT:** Yes. On -- for the 8-month
2 requirement Progress Energy -- I'm sorry. There is the
3 ability for Progress Energy to put into effect its rates
4 subject to refund starting January 1, 2010. If the
5 Commission were to make a decision in early December on
6 revenue requirements, and there's option one, there's a
7 decision date for revenue requirements of December 2nd,
8 2009, with a rates agenda of December 15th, 2009. You
9 would come close to being, to meeting that 8-month time
10 clock and basically Progress could put their rates into
11 effect January 15th, 2009, giving customers a 30-day
12 notice.

13 **COMMISSIONER EDGAR:** And I guess -- and maybe,
14 maybe you said it and I just missed it, but when we were
15 talking a few minutes ago about the drop-dead date and what
16 time lines are in effect, I don't know that I heard that
17 8-month provision and the impact that it could have when we
18 were talking about what are our drop-dead rates. And so
19 that's why I'm trying to understand the relationship
20 between the 8-month time line and the 12-month time line
21 and what, if any, ramifications there are to meeting the 12
22 but not meeting the 8.

23 **MS. FLEMING:** And if I could just clarify a point
24 with respect to the 8-month time clock and the date that
25 Progress can implement its rates, Progress currently has a

1 settlement agreement in place which states that the
2 agreement will become effective with the first billing
3 cycle in January of 2006 and continue through the last
4 billing cycle of, in December of 2009. The settlement
5 agreement expires at the end of this year. Absent this
6 settlement, then Progress would have had to put its rates
7 or would have been able to put its rates on November 19th
8 because of the 8-month time clock. But because we have the
9 settlement agreement in place, Progress cannot implement
10 its rates until January 1st, 2010.

11 **COMMISSIONER EDGAR:** Excuse me. Mr. Chairman,
12 just a follow-up.

13 **CHAIRMAN CARTER:** And then by the way,
14 Commissioner, as you finish, I'm going to go to
15 Commissioner Skop, then Commissioner Klement. Commissioner
16 Edgar, you may proceed.

17 **COMMISSIONER EDGAR:** Again, just to try to
18 understand when we're talking about drop-dead dates, that
19 difference between the January 1 and the March 20th, is it,
20 March -- what exactly, so to speak, would be the impact of
21 a decision in the, say, January, February, early March time
22 frame versus a decision that meets that January 1 deadline?

23 **MS. FLEMING:** Well, based on Progress's current
24 settlement, Progress could implement its rates that it's
25 requested subject to refund on January 1st, 2010, if the

1 Commission has not made a decision, and they could continue
2 those rates in effect until the Commission makes a
3 decision. So there could potentially be a lag from the
4 time if Progress chose to implement those rates that it's
5 requested in January to the time that the Commission makes
6 a decision on the rate case. But the March 19th date is
7 the drop-dead date with a 12-month clock where the
8 Commission needs to make a decision. OPC has raised an
9 argument in its brief that based on the 12-month clock, if
10 the Commission does not make that deadline, that the
11 utilities could potentially implement the rates that
12 they've requested and those would not be subject to refund.

13 **COMMISSIONER EDGAR:** Okay. And I guess,
14 Commissioners, I know we'll have more discussion about
15 this, but I want to make sure that I am as clear as I can
16 be on what, if any, is the impact between that drop-dead
17 date but also this other deadline that is in the statute
18 that then in my mind triggers other rights to the
19 petitioners. Thank you, Mr. Chairman.

20 **CHAIRMAN CARTER:** Thank you.

21 Commissioner Skop, then Commissioner Klement.
22 Commissioner Skop.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
24 Just as a point of reference, actually the optional date
25 sheet, I'd actually asked our staff to prepare that, you

1 know, as a useful reference. So I think that that does at
2 least illustrate some alternatives should the Commission
3 choose to go in a different direction from that recommended
4 by staff.

5 I guess with respect to the alternate dates, and
6 I think Ms. Bennett touched upon this in response to
7 Commissioner Edgar's question, but as I understand it, the
8 settlement agreement for FPL has an evergreen or a
9 continuation provision within it to the extent that FPL is
10 not allowed to raise its rates until such time as the
11 Commission approves them, and the existing rates would
12 continue in effect into the next year if the dates were
13 shifted outward; is that correct?

14 **MS. BENNETT:** That is correct. It's my opinion
15 that if we don't make the 12-month mandate, we might have
16 to look at a different option. But, yes.

17 **COMMISSIONER SKOP:** I understand. And with
18 respect to Progress, again their settlement agreement
19 expires at the end of this year. So as of the beginning of
20 the year, should they choose to do so, they could implement
21 their new proposed rates but those rates could only be
22 implemented subject to refund; is that correct?

23 **MS. BENNETT:** That is correct.

24 **COMMISSIONER SKOP:** Okay. And so at least with
25 respect to Progress, it would seem that they are adequately

1 protected by the ability to implement proposed rates should
2 they choose to do so if the Commission were so inclined to
3 move the decision date into early January or a little bit
4 later than that, although meeting the hard 12-month
5 statutory deadline; is that correct?

6 **MS. BENNETT:** That's correct.

7 **COMMISSIONER SKOP:** Okay. All right. And then I
8 guess Commissioner Argenziano brought up a very, I think,
9 valid point in relation to some of the due process concerns
10 that were raised by not only the respective IOUs but also
11 Public Counsel, and I just wanted to touch upon that. I'm
12 sure we'll have some additional discussion. At least when
13 Commissioner Argenziano and myself were appointed to the
14 Commission and came onboard, if my memory serves me
15 correctly, we actually were similarly situated to the
16 extent that we came into the Commission posthearing on two
17 major dockets, and that was the Glades need determination
18 as well as the Progress coal refund case. So at least in
19 both of those cases the record had been closed and we as
20 new Commissioners had to read the record and evaluate the
21 case before us.

22 So, again, when we get to that point, OPC again
23 has asked, I mean has asked or requested some additional
24 due process considerations that the Commission might want
25 to consider. But I think it's my recollection in those two

1 major cases we did not reopen the record and take
2 additional testimony; is that correct?

3 **MS. BENNETT:** That is correct. And that is a
4 concern of staff's to reopen the record.

5 **COMMISSIONER SKOP:** Okay. So then, like I said,
6 we'll get, we'll get to that in a second. I think that's
7 my only other comment. Again, I look forward to hearing
8 from my Commissioners and their perspective, but I also
9 just want to indicate that I'm going to be probably very
10 deferential to our new Commissioner, Commissioner Klement,
11 to the extent that he would have the most work to do. I
12 know when, when I was in that position it was very
13 difficult, not impossible, but again it requires a lot of
14 reading. So I'm happy to listen to what the new
15 Commissioner has to say and I'm going to give that great
16 weight. But I'd say other than that, you know, personally
17 if staff were to issue the recommendations on the current
18 schedule, I would have no real problem with that to the
19 extent that it would, you'd have the record and the
20 recommendation for the Commissioners as well as the new
21 Commissioners to consider and you just have more time
22 before the decision. So that might be a proposed
23 alternative also. Thank you, Mr. Chair.

24 **CHAIRMAN CARTER:** Thank you.

25 Commissioner Klement.

1 **COMMISSIONER KLEMENT:** Thank you.

2 **CHAIRMAN CARTER:** Turn your mike on.

3 **COMMISSIONER KLEMENT:** It's on. Perhaps what I
4 have to say will maybe simplify this process a bit, and I
5 have a few words to say because I have spent a lot of time
6 studying this and talking to staff about it and the
7 alternatives.

8 I believe I know how Solomon must have felt when
9 he was presented with a baby and two arguing mothers.
10 Fortunately for the baby, Solomon was extremely wise. I
11 hope that I can come close to that, but I fear I can't.
12 Even though this case seems more complicated than the one
13 Solomon faced because if it were today, look what would
14 happen. All we'd have to do is say do a DNA test. We'd
15 know who the mother was. If only this case were that
16 simple.

17 As I said, I've read the summaries provided by
18 staff from the briefs filed by the attorneys for the docket
19 parties as well as those filed by the attorneys for the
20 intervenors. And as a layperson in legal affairs, I marvel
21 at how two or six or seven in this case lawyers can look at
22 the same set of words and come up with such conflicting
23 views of what they mean. But because I am a layman, I have
24 had to look at the facts presented here and, and evaluate
25 them as most ordinary people would as a common sense

1 assessment while respecting the law.

2 I know there's a lot riding on this decision
3 today and regarding the seating of the new Commissioners.
4 I'm aware that the Governor wants those matters to be
5 delayed until the new Commissioners are seated. I'm aware
6 that this matter is now entangled in politics, which is
7 unfortunate for all parties concerned. And I'm aware that
8 the staff recommends against a postponement, as we've
9 heard, because they don't think there's enough time to make
10 a final decision and still stay within the 12-month window
11 provided in Section 366.073, *Florida Statutes*, that closes,
12 as has been noted, on March 18th for Progress and
13 March 20th for FPL.

14 But I'm also aware that there are conflicting
15 opinions about this matter as has been pointed out both as
16 to the strict interpretation of the 12-month window and as
17 to the feasibility of the new Commissioners being able to
18 catch up with the rest of the Commissioners on the two
19 cases that have already had weeks of hearings and thousands
20 of pages of documents filed by interested parties.

21 I'm also aware that FPL itself states, according
22 to the staff summary, that the Commission can defer or
23 postpone its final decision until new Commissioners have
24 taken office. If I may quote from the staff report, quote,
25 but for the reason of due process and fundamental principle

1 of fairness, FPL argues that the better practice, end
2 quote, would be to, for the Commissioners who presided over
3 the case to render the decision.

4 So what we have here, due process and fundamental
5 principles of fairness is what are at stake according to
6 one of the principals in this case, and I could not agree
7 more. But I believe due process would allow the Commission
8 to vote to delay. It's not the same process as a court of
9 law as we have heard where a judge who's heard a case and
10 falls ill cannot be replaced by a substitute and then
11 render a verdict. This quasi-judicial proceeding permits
12 flexibility, we've heard. And the Office of Public Counsel
13 advises that it, and if I may quote again, does not object
14 to the Commission postponing its decision in deference to
15 the Governor's request provided that certain due process
16 safeguards are in place to allow the new Commissioners a
17 sufficient opportunity to become immersed in the dockets to
18 the full extent necessary to make informed and reasoned
19 decisions, end quote.

20 So the Public Counsel, as you have in your
21 record, states four conditions for that. You have -- if I
22 may read them, Mr. Chairman --

23 **CHAIRMAN CARTER:** You may.

24 **COMMISSIONER KLEMENT:** -- for the benefit of the
25 record.

1 A, adequate time between the start date of the
2 new Commissioners taking office and the decision date in
3 order to become familiar with the issues contained in the
4 Prehearing Order and the evidentiary record of the hearing
5 on those issues.

6 B, an opportunity for new Commissioners to review
7 the archived video coverage of the actual hearings in order
8 to gauge the demeanor of witnesses in the same manner as
9 those who presided over the hearings.

10 C, an opportunity after such time frame for
11 review and viewing of the record for parties to present
12 oral closing arguments based solely on the evidence
13 presented at the hearing.

14 And, D, and staff recommendations not be
15 finalized and distributed until after the new Commissioners
16 have completed the review. That would seem easy.

17 Okay. This argument then seems to come down to
18 whether the two new Commissioners can complete a review of
19 a very voluminous record in basically two months. By my
20 calculation for both cases, that would amount to 9,699
21 typed pages and 829 pages of exhibits, along with viewing
22 approximately 23 days' worth of videos at the hearing.
23 Granted that's a lot of reading and viewing. Can we do it?
24 I can't speak for Commissioner-Elect Stevens, but I can
25 speak for myself. I believe I can get up to speed in time

1 to meet the statutory requirements and provide due process
2 to both utilities and I will commit to do so.

3 If any of you watched my interview before the
4 Nominating Council, you heard near the end about a piece of
5 my life's history where I grew up on a dairy farm. You
6 hear a lot today about 24/7. Well, we had 2/7/52. That
7 means two times a day, seven days a week, 52 weeks a year
8 was our work schedule. That was my life for my first 24
9 years on this earth.

10 As a journalist, I was expected to absorb huge
11 amounts of data on any given subject, it could be some new
12 development in the economic recession, it could be a crisis
13 in the UN, it could be something in the Legislature
14 regarding property insurance, and I was expected to come up
15 with a reasoned, articulate and accurate summary of that
16 issue by the end of the day.

17 Two and a half months I have. I think I can do
18 it. It would certainly be easier for me to vote, vote
19 against a delay. Look at all the work I would avoid. But
20 I believe one of the reasons I'm sitting in this chair is
21 because I'm expected to do the work with diligence and
22 integrity, every bit of it that is within my being. And I
23 think I was appointed by the Governor to represent the
24 interests of all the people of Florida, including the
25 companies. And as one of the Intervenors has stated, the

1 Commission as an institution will have to live with the
2 results of these decisions, and it makes sense for those
3 who have to live with the consequences to be those who make
4 the decision.

5 As to the fairness issue that FPL has rightfully
6 cited, I believe it is achieved by delaying this case until
7 there's a full board. After all, if the existing time
8 limit, timetable is followed, I would have to recuse myself
9 and the decision would be made by a four-member Commission.
10 That means there could be a tie. What if that -- if there,
11 if -- let's see. Where was I? Well, I'm told that if
12 there were a tie, the issue would fail because there wasn't
13 a majority for approval. And then the case would languish
14 until a fifth Commissioner were sworn in and had adequate
15 time to become familiar with the case, which makes it
16 certain the statutory time limit would be exceeded. I'm
17 almost done.

18 That seems to be, Mr. Chairman, where we are now,
19 except that if the proposal to -- if the delay is approved
20 today, I could start hitting the books right away and have
21 a chance of making the deadline. And besides, the tie vote
22 is hardly a ringing endorsement of this case, it's hardly a
23 message, a clear message to the people of Florida or to the
24 utilities that we are charged with regulating regarding the
25 direction of this board. After all, ties are stalemates

1 and they serve no one. Thank you, Mr. Chairman.

2 **CHAIRMAN CARTER:** Thank you, Commissioners.
3 Before I go further, let me just kind of give you my bottom
4 line. I don't want to restate what you guys have already
5 said. We've looked at the record also. I do want to
6 mention that in addition to OPC, the Attorney General's
7 Office did also look at that due process issue, and I'm
8 convinced that, based upon their arguments, that -- here's
9 where I'm looking just so nobody will be in the dark, is
10 that, staff, I want you to walk us through this Option 2 in
11 terms of these dates.

12 My reading of the record, Commissioners, from
13 both the Intervenors and the companies is that looking at
14 what staff has provided to us as Option 2, our revenue
15 requirement agenda is January 7th, 2010, for FPL and
16 January 4th for Progress Energy, and then a rates agenda
17 January 22nd for FPL and January 20th for Progress Energy
18 would still give staff and still give the new Commissioners
19 an opportunity to be ready for that March 18th and
20 March 19th deadline so they'll have plenty of opportunity
21 to do that.

22 Commissioner Skop reminded me of how we were
23 when, when he and Commissioner Argenziano came onboard.
24 We had three Commissioners. We had gone through the
25 Glades power plant. And you're right, it was a lot of

1 reading, Commissioners, but, you know, that goes with
2 the territory. And I think, Commissioners, I mean I'm
3 just telling you where I'm coming from. I believe that
4 when you look at this Option 2, this will give us ample
5 opportunity for both, notwithstanding the provision that
6 Progress is in on the last month in, last payment cycle
7 in December, I do believe that the companies would want
8 to have some integrity going forward with their rates.
9 And I think that they may, notwithstanding the
10 opportunity that they would have the option to go
11 forward and raise the rates and all like that, but it
12 probably would raise them commensurate with an
13 opportunity for a refund or things of that nature.
14 Because, as Commissioner Klement so eloquently said, is
15 that I think that the companies would definitely want to
16 have some form of integrity going forward and that we'll
17 have some form of stability on the, the decision.

18 So that's why I wanted to kind of let everyone
19 know upfront in terms of what I'm looking at in terms of
20 these dates, and I think those dates will put us where
21 we need to be, won't unnecessarily impinge upon the due
22 process rights of the parties, won't necessarily put an
23 overwhelming burden on the new Commissioners, nor staff
24 for that matter, and the parties can still be heard.
25 And then I wanted to say that before we got to the, to

1 the Intervenors and all like that because we were having
2 discussion and I wanted to have comments by the
3 Commissioners before we went further on that. And
4 that's kind of where I'm coming from.

5 Commissioner Skop, you're recognized, and then
6 Commissioner Klement and then Commissioner Edgar.

7 Commissioner Skop, you're recognized.

8 **COMMISSIONER SKOP:** Thank you, Mr. Chair. And I
9 think I agree with you. I guess in trying to look at
10 alternatives with staff, one of the important
11 considerations to me was the difference in the two
12 settlement agreements. Again, FPL has the evergreen or
13 continuation provision, so it's not that much of a problem
14 so long as we meet the statutory deadline for making the
15 decision.

16 With Progress, again, their agreement lapses at
17 the end of this year, so it's important that they have
18 adequate protection vis-a-vis the ability to implement
19 proposed rates subject to refund or create a regulatory
20 asset during that delay period. So to avoid the potential
21 to implement rates subject to refund, the quicker we could
22 make a decision might avoid that and prevent, you know, a
23 rate perturbation, if you will.

24 So, again, trying to respect the necessity of the
25 new, our new colleagues coming onboard and reading a

1 voluminous record, but also trying to equally respect the
2 position of the parties and making sure that we have
3 consistent outcomes to the extent that I don't personally
4 believe it would be fair to defer one case and not the
5 other, I think that if you do one, you have to do both.
6 But that necessitates looking critically at rates subject
7 to refund and how you could mitigate the possibility of
8 that happening. So I think sooner rather than later is the
9 mantra should we shift the dates to the beginning of the
10 new year. And so I support Option 2 also.

11 **CHAIRMAN CARTER:** Thank you.

12 Commissioner Klement.

13 **COMMISSIONER KLEMENT:** Mr. Chairman, thank you.

14 Just a point of clarification on the dates you
15 were, you were mentioning there. Were you meaning dates in
16 December? Because staff had mentioned two dates there that
17 were relevant.

18 **CHAIRMAN CARTER:** Do you have the one pager?
19 Commissioners, do y'all have this one pager?

20 **COMMISSIONER KLEMENT:** Oh, right. Right.

21 **CHAIRMAN CARTER:** Okay. Staff, take a moment and
22 give the parties, all the parties a copy.

23 **MS. BENNETT:** Do all the Commissioners have a
24 copy?

25 **CHAIRMAN CARTER:** Yes. Commissioner Klement, do

1 you have one?

2 **COMMISSIONER KLEMENT:** That's, that's all.

3 **CHAIRMAN CARTER:** Okay. Let's take a second so
4 staff can give one to all the parties.

5 Okay. Just hang on one second, Commissioner. I
6 just want to make sure.

7 Okay. Commissioner Klement, you're recognized.

8 **COMMISSIONER KLEMENT:** Nothing. I just was
9 trying to clarify what you were --

10 **CHAIRMAN CARTER:** Okay. All right.

11 Commissioner Edgar, you're recognized.

12 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman. A
13 couple of very brief comments and a question.

14 Commissioner Klement, I thank you for your
15 thoughtful comments. And as we expected and knew, you have
16 clearly put a lot of time and thought into these issues.

17 I would, however, like to say, speaking just for
18 myself, I've worked for state government for 20 years, and
19 the decisions that I made in a job prior to this I still
20 live with, and when I leave the Commission I will still
21 live with every vote. So the inference, if indeed there
22 was one, that votes made do not, prior to the time that we
23 move on to a different phase do not mean as much as votes
24 that we make when we will be here a year or two, I, I, I,
25 for me anyway is inaccurate.

1 Now to the question about the dates. The Option
2 that the Chairman has pointed out to us, for Progress it
3 suggests the revenue requirement agenda on January 4th of
4 2010. My question to that is that would be the first
5 workday of the new year. Would Commissioner-to-be Stevens
6 be here and be voting then or not? I'm not clear.

7 **CHAIRMAN CARTER:** He would be, he will be
8 required to be here to vote, Commissioner, because that'll
9 be our first agenda. Additionally, I've spoken with --

10 **COMMISSIONER EDGAR:** But it's the day before the
11 first agenda.

12 **CHAIRMAN CARTER:** It would be the first day --

13 **COMMISSIONER EDGAR:** The date that is on here is
14 January 4th. That is a Monday. The first agenda is
15 January 5th, a Tuesday. And so my question is realizing
16 that it is the first Monday, the first day of the year, is
17 that date intended to include him and be expecting him to
18 vote on his first day? Because sometimes we don't start
19 until Tuesday. I'm just not sure how it works.

20 **CHAIRMAN CARTER:** Let me ask -- let me answer
21 this before we go to staff, Commissioner, because this came
22 up when I was coming onboard for Chairman and we looked at
23 the statute in terms of when does the term of a
24 Commissioner begin. And I think it's on -- because our
25 terms end December 31, the new Commissioner's term will

1 begin January 1 of that year.

2 **DR. BANE:** January 2nd.

3 **CHAIRMAN CARTER:** January 2nd of that year. So
4 this will be January 4th. And I've talked to
5 Dr. Bane, and she's assured me that whenever
6 Commissioner Stevens comes over, staff will be more than
7 happy to provide briefings, staff analysis, office space
8 or whatever he needs to get up to speed on that. And I
9 didn't want to cut you off, but I remember distinctly
10 dealing with that date when we were dealing with that.
11 But if you would rather have staff to elaborate further,
12 I'd be more than happy to recognize them to speak to
13 that issue.

14 **COMMISSIONER EDGAR:** Please.

15 **CHAIRMAN CARTER:** Staff?

16 **MS. BENNETT:** It's -- this date is staff's
17 intention that the new Commissioner would be involved in
18 that decision, and it was our understanding that he would
19 probably be sworn in that morning and we'll put him to
20 work.

21 **COMMISSIONER EDGAR:** But it is a tried and true
22 tradition of the Commission that we put you to work the
23 first day. I think we've all had that experience.

24 **CHAIRMAN CARTER:** Yeah. Trial by fire.

25 **COMMISSIONER EDGAR:** Okay. I just wanted to

1 clarify because I was not sure. And if the intent is, with
2 that option is to include him, then I wanted to make sure
3 that we actually did so since it is the day before the
4 first agenda. So thank you for that clarification.

5 And then to follow along with some of
6 Commissioner Skop's comments about the sooner the better,
7 if indeed we are moving dates, I, I do have great concern
8 about the possibility of an implementation of requested
9 rates that could be different in some way or above what
10 would ultimately be approved. And I fully recognize,
11 Commissioner Skop, as you've pointed out to us, that the
12 subject to refund is built into the statute as a protection
13 to ratepayers and also a protection to the company, but
14 yet, you know, that right after Christmas or very soon
15 thereafter putting in rates subject to refund potentially
16 that could be above what the rates are that we ultimately
17 approve gives me great pause. It is just a scenario that
18 if we can avoid I would prefer to avoid. And if we can't
19 avoid it, then, as you said, sooner rather than later make
20 that time period as short as possible.

21 But truthfully I would like to avoid, if we can,
22 and meet all other due process requirements and desires,
23 not have a point where the first or second week in January
24 we are hearing from customers that rates went into effect
25 because we did not act is, is just, it's a concern. It is

1 a scenario that I would like to try to avoid. So with that
2 in mind and realizing, realizing the difference,
3 differently situated nature by virtue of the language in
4 the settlement agreements, et cetera, between FPL and
5 Progress, you know, potentially Option 1 may still be a
6 good option for Progress and Option 2 or 3 for FPL. But
7 I'm still thinking it through and wanted to, to the best of
8 our ability, get dates that again try to meet all, all
9 needs and all desires. Thank you, Mr. Chairman.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

13 To the concern raised as to the, the new
14 Commissioner, Commissioner Stevens coming onboard on
15 January 4th and being put to work the same day is
16 Commission tradition. Certainly again we do have some
17 flexibility in the dates during the first week of January.
18 Those two dates are not cast in stone. You know, things
19 could be shifted around that first week, if necessary. But
20 to me, making the initial decision on the first week would
21 be very important in terms of meeting the statutory
22 deadline for both cases to the extent that you have your
23 initial decisions for the respective rate cases as to
24 revenue requirements followed by staff compiling the
25 information, and you'd have your second Agenda Conference

1 to establish the rates, be able to get a final order out
2 within the deadline. And if there were a motion for
3 reconsideration, you know, even that might be able to be
4 accommodated within the statutory deadline, although it's
5 my understanding that the statutory deadline is not
6 applicable to those types of motions. It's just a matter
7 that the Commission needs to make a final decision.

8 As to your comment, I was trying to understand,
9 are you, are you suggesting that you prefer Option 1, that
10 you would decide the Progress case in December as opposed
11 to moving both cases into the new year?

12 **COMMISSIONER EDGAR:** To me, Commissioner?

13 **COMMISSIONER SKOP:** Yes.

14 **CHAIRMAN CARTER:** Commissioner Edgar.

15 **COMMISSIONER EDGAR:** Thank you. I'm not, I'm not
16 saying that I prefer it. I, I see it still as a viable
17 option. I realize that for, for the Governor that gives
18 him half of his request and not all, but yet also avoids
19 that, going into that time period beyond the eight months
20 of rates, again subject to refund, which I recognize is an
21 important protection, but I still see as a far from
22 desirable possibility.

23 **COMMISSIONER SKOP:** Okay. And to that point I
24 would, I would just reasonably suggest that with respect to
25 Progress again, that would be their discretion, although

1 they would have the statutory right to implement rates.
2 Again, Progress historically has shown restraint and
3 willingness to do the right things. Again, I think that if
4 the Commission could render an order and get that order out
5 by early February, that might necessitate the need to do
6 that. But also too instead of implementing rates subject
7 to refund, effectively a regulatory asset might be created
8 as an alternative to avoid that rate perturbation. But,
9 again, I'm reasonably certain that if the Commission moves
10 along normal process in a manner which would consider these
11 cases after the beginning of the year and we move quickly,
12 again, that scenario might be otherwise avoided.

13 **CHAIRMAN CARTER:** Thank you.

14 Commissioner Klement.

15 **COMMISSIONER KLEMENT:** Yes. Sorry. A point of
16 clarification again, Mr. Chairman.

17 **CHAIRMAN CARTER:** Yes, sir.

18 **COMMISSIONER KLEMENT:** The -- for Option 2 or 3,
19 what would be the requirement or expectation of Mr. Stevens
20 having been caught up on the record to the extent that I
21 just said that I think I can, but I have two and some
22 months to do that?

23 **CHAIRMAN CARTER:** Well, Commissioner, let me --
24 this is not a flippant answer. It's a direct answer. Is
25 that when I was appointed Commissioner, I was sworn in that

1 morning about 9:30, and I think about 11:30 we were voting
2 on some significant issues. So I left my prior employment
3 three months early and I came over, and the Commission was
4 gracious enough to provide me space, staff briefings and
5 all like that. And it would be incumbent upon any
6 Commissioner, knowing that on day one you've got work, to
7 do that. And Dr. Bane has made that opportunity available
8 to where staff will be available to provide briefings,
9 organizing the requirements, as Commissioner Skop said when
10 he came on, having to deal with that Glades case, there
11 was, there were voluminous documents there and materials
12 and all like that, it can be done. As I said, it's not a
13 flippant answer. It's just that that's just the nature of
14 the beast. And I think that in the context of -- and
15 that's why I wanted to be upfront with everyone on this
16 particular, why I personally feel that Option 2 is the best
17 perspective is that on the one hand we have these due
18 process concerns. On the other hand we say that we take on
19 the standpoint from a former judge coming in taking on the
20 place of another judge who has not heard the facts, but
21 then we look at it from the standpoint of an administrative
22 law judge. That administrative law judge can come in and
23 take on those things. So those arguments have been made.

24 But I do feel, Commissioner and Commissioners,
25 for that matter, is that we do have ample time. On the one

1 hand is that those are the most, in my opinion those are
2 the earliest dates that will allow the protection of the
3 due process rights for the companies as well as allow the
4 Commissioners an ample opportunity to get ramped up and
5 ready to roll on our first agenda in January. So that's
6 why I support Option 2.

7 Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And
9 just to echo I guess your points, again, I think that, you
10 know, certainly I did not have the benefit, nor did
11 Commissioner Argenziano when we got appointed -- I know,
12 Chairman Carter, you were able to come to the Commission
13 and get up to speed in those three months or that interim
14 period. I nor Commissioner Argenziano really didn't have
15 that luxury, nor did Commissioner Klement, but he took the
16 initiative to show --

17 **CHAIRMAN CARTER:** My wife wouldn't consider that
18 a luxury because I had to quit my job. But go ahead,
19 Commissioner.

20 **COMMISSIONER SKOP:** Okay. But, you know,
21 Commissioner Klement is actually, and which I think is
22 very, reflects positively upon him, took the initiative to
23 come to the Commission to meet our staff, to try and get
24 some initial information, to take reading home with him.
25 And, you know, I would just think that whatever the

1 Commission chooses to decide, it puts our new Commissioner,
2 Commissioner Stevens, on constructive notice of the
3 expectations and you've got to do your homework and be
4 prepared, as Chairman Carter alluded to. And I'm confident
5 that Commissioner Stevens will do what's necessary to
6 prepare himself for, for his first decision.

7 **CHAIRMAN CARTER:** Commissioner Klement, you had a
8 comment?

9 Commissioners, I'm going to go, I'm going to go
10 to the parties. But I did want to say, because we were in
11 our comment phase, I wanted us to get comments because
12 we've been on this, I mean, it seems like forever on these
13 hearings, both the service hearings around the state and
14 going into the night, both the actual technical hearings
15 here in this room seem like, it seems like I've aged
16 20 years in dog years in this room on these hearings. But
17 we've had an opportunity to do that, and we've listened to
18 the parties, we've had an opportunity to witness people on
19 cross-examination, we've asked questions, we've had
20 discussions from the bench to different witnesses and all
21 like that. And I do think that based upon where we are
22 now, and, I mean, I believe that it's the best alternative
23 for us as we move forward, particularly in light of the
24 fact that we do, we don't want to be a disservice to
25 Commissioner Stevens or to Commissioner Klement, but by the

1 same token is that we don't want to be a disservice to the,
2 to the parties, both the Intervenors as well as the
3 companies. And I think that this Option 2, Commissioners,
4 gets us where we really need to be to move forward without,
5 I don't know who said it, I don't want to -- a lot of times
6 as a lawyer we attribute, Commissioner Skop, a lot of
7 things to Oliver Wendell Holmes, Commissioner Edgar, but I
8 don't think he said that. But I do think it's -- maybe
9 Yoda said it, is do less harm, and that's where I see
10 Option 2 as being that.

11 And at this point in time, Commissioners, we're
12 going to go ahead with the parties and we'll come back and
13 have staff to kind of bring us in for a landing and then
14 we'll do that.

15 Here's what my plans are for the Intervenors.
16 Let me go to the Intervenors and have you discuss both
17 cases, and then we'll have Progress come up and then we'll
18 talk to FPL. But let's talk to the Intervenors first and
19 then we'll do it that way. Okay?

20 Mr. Brew, you're recognized. Good morning.

21 **MR. BREW:** Good morning, Mr. Chairman. Actually
22 I believe I'm batting ninth in this lineup, so I'd like to
23 defer to OPC to start things.

24 **CHAIRMAN CARTER:** Okay. Mr. McGlothlin, are you
25 on first?

1 **MR. McGLOTHLIN:** Yes, sir.

2 **CHAIRMAN CARTER:** Mr. McGlothlin, good morning.
3 You're recognized.

4 **MR. McGLOTHLIN:** Good morning, Commissioners.
5 Joe McGlothlin with the Office of Public Counsel. I've
6 read the staff memorandum, I've listened to the comments
7 from the Commissioners this morning, so I will try to be
8 brief and tailor my comments accordingly.

9 I do want to emphasize a couple of things. First
10 of all, OPC believes that we have supported our litigation
11 positions well, and we would be pleased to submit the
12 record to the existing panel, if that's the Commission, if
13 that's the Commission's decision. But we also recognize
14 that the Governor has requested that the decision be
15 delayed and that the new appointees be given the
16 opportunity to participate. We think that request deserves
17 deference and serious consideration. And as Commissioner
18 Klement noted, in our brief we said we don't object to that
19 course of action, but we think those special circumstances
20 require some additional due process considerations that
21 would be designed both to be helpful to the new
22 Commissioners as well as provide additional due process to
23 the parties.

24 Those, those additional procedures would include
25 the opportunity to review the video coverage of the

1 hearings and closing arguments by counsel. I would like to
2 clarify that in that recommendation we did not envision
3 that the record would be reopened. There would be no
4 additional testimony. What we envisioned is that the
5 record is what it is, but that there would be something in
6 the nature of closing arguments by counsel limited solely
7 to the existing evidence of record. And we think that
8 would be useful for the new Commissioners, as well as
9 additional due process for the parties.

10 In terms of what's been discussed today, we
11 envisioned that the 12-month clock is the time frame that
12 gives the Commission the opportunity to proceed on that
13 basis, and the 12-month clock means March 18 of one
14 company, March 20th for the other.

15 In terms of the options provided in this, in this
16 one-page handout which we had not seen prior to today, that
17 seems ambitious to the point of being infeasible to me as I
18 look at it. Because I think it would be infeasible for the
19 other new appointee, Commissioner Stevens, to be expected
20 to arrive on either the first day or the first week of his
21 new job and be positioned to take part in this very
22 involved decision-making.

23 Because of the 12-month clock and because of the
24 protection that affords the companies, we believe there's
25 more time available for that process to take place.

1 I agree with the analysis of, by the staff of the
2 differences between the two settlement agreements. On the
3 one hand, FPL, by the terms of its settlement agreement,
4 does not have the opportunity to raise rates or charge
5 different rates until the Commission issues its order in
6 that rate case. We acknowledge that the language of the
7 Progress Energy settlement agreement is different. That
8 settlement agreement expires at the end of December, and so
9 that option is available to Progress. But we think there's
10 perhaps the possibility that they would choose not to
11 implement that. But if they do, that's the way the statute
12 is fashioned, that's a protection available to them, and
13 they have that ability under the statute.

14 But in any event, we believe that if the
15 Commission goes forward with the decision to alter the time
16 frame, the full use of the time between now and March
17 should be, should be regarded as available to the
18 Commission to complete its work, and no shortcuts in terms
19 of trying to make a decision the first week of January are
20 necessary or would be appropriate in this case.

21 **CHAIRMAN CARTER:** Mr. McGlothlin, the reason that
22 I was suggesting those is that for precisely the reason
23 that you delineated. On the one hand is that the Progress
24 case ends on the last payment cycle in December, so you've
25 got some differences there. But by the same token is that

1 with, as I said, is that the due process argument that you
2 and Ms. Bradley make in your brief gives me the perspective
3 to where this is why I was so supportive of, and I am, by
4 the way, still supportive of Option 2 because it gives an
5 opportunity as a balancing act. It's as soon as practical.
6 And then, and it's not unprecedented that Commissioners
7 have been required to make significant votes once we get
8 here and that's just the way it operates. And I do think
9 that's probably the better balance when you consider the
10 due process arguments as well as new judges coming in, as
11 well as what we talked about about the administrative law
12 judges coming in. I think that that's probably the better
13 because, remember now, the end goal is March 18th and
14 March 20th. So in order to do that, you'll need as much
15 time as possible to move forward from that. So that's
16 why -- and I'm glad you made the argument, but I still want
17 to let you know where I'm coming from and that's why I'm
18 coming from that perspective.

19 **MR. McGLOTHLIN:** Yes, sir. And the concern that
20 Option 2 gives me is whether that provides an adequate
21 opportunity for the fifth Commissioner to, as we've said,
22 immerse himself in the record and get up to speed with
23 respect to what the issues are, access the video coverage.
24 And among other things, there are some limitations on what
25 the, the designated appointee can do prior to taking

1 office. One thing that comes to mind is whether that
2 individual can have access to confidential information if
3 he's not in office and not an employee of the Commission.
4 That's one concern that comes immediately to mind. And
5 because of the availability of January and February, for
6 that process to take place in a more, I would argue a more
7 reasonable and adequate manner, this, this January, early
8 January time frame seems unnecessarily swift to me.

9 **CHAIRMAN CARTER:** Point well taken. But I think
10 out of 8,000 pages, probably less than five of them are
11 confidential.

12 Who's next? Is it you, Ms. Bradley, or who's,
13 who's next?

14 **MS. BRADLEY:** I'd be happy to go.

15 **CHAIRMAN CARTER:** Ms. Bradley, you're recognized.

16 **MS. BRADLEY:** Thank you. We support the Office
17 of Public Counsel, but I would like to add we really
18 appreciate our new Commissioner being willing to do
19 whatever is necessary. And I know having come in at the
20 last minute on some cases how difficult it is to get up to
21 speed and what that involves. So we appreciate that. And
22 if it involves another one, we certainly appreciate that as
23 well.

24 At the same time, we appreciate what I think is
25 something of an unselfish act of the Chairman in his

1 comments this morning, and I appreciate that. And we
2 appreciate -- we know it's going to be a lot of work for
3 everybody. I mean, we, we have to look through some of the
4 same documents and go through that, and it's not the most
5 fun I've ever done. But it's necessary for all of us and
6 it's our job, so we'll do it.

7 We certainly agree with Public Counsel, and I
8 think staff has indicated that you do have a 12-month
9 period. I'll let Mr. Wright address it more thoroughly
10 because I think he has the statute in front of him, but I
11 think it requires an order, not a vote by the 12, the end
12 of the 12 months. So I would ask you to check that
13 carefully because we don't want to mess up on that.

14 But I, you know --

15 **CHAIRMAN CARTER:** And if that's true,
16 Ms. Bradley, then all the more reason to go with Option
17 2; wouldn't you agree?

18 **MS. BRADLEY:** Don't put me on the spot, Mr.
19 Chairman.

20 **CHAIRMAN CARTER:** No. No. No. Don't agree.
21 Okay. That's -- you've been very courteous this morning.
22 Let's not do that. Just go, finish your thought.

23 **MS. BRADLEY:** You know, we are here and we think
24 we've put on good cases and we will serve at your pleasure
25 as to what you decide, and we appreciate you looking after

1 all our interests and our due process concerns and, and all
2 of that. And I trust somebody has checked with the new
3 Commissioner that will be coming in as to whether he's
4 willing to do all this before he takes office.

5 But as I said, we, we appreciate it and we will
6 do whatever is necessary, and we think we've put on a case
7 that regardless of the panel before us we should hopefully
8 have the result that we're looking for. So I'd like to
9 thank you all.

10 **CHAIRMAN CARTER:** Thank you, Ms. Bradley. And I
11 did, Commissioners, and we all did for the record is that
12 at the close of the hearings we spoke to the level of
13 professional, level of professionalism that the lawyers
14 conducted themselves, and you guys did a fantastic job on
15 both of those cases and we have no doubt that you will
16 continue in the future. And I want to continue that from
17 both the company attorneys as well as those of the
18 Intervenors, you did a fantastic job. And you guys have
19 been around the block a couple of times. I think you'll be
20 ready to roll.

21 Mr. Wright, are you next? Mr. Wright.

22 **MR. WRIGHT:** I'm happy to go next, Mr. Chairman.
23 Thank you very much.

24 I'm Schef Wright, and I have the privilege of
25 representing the Florida Retail Federation in these

1 dockets. And on behalf of the Retail Federation I want to
2 thank you for the opportunity to speak on these issues this
3 morning. Before I go further, I want to say first off I
4 really appreciate the thorough discussion that y'all had
5 before you kicked it over to this side of the room. And in
6 particular, Mr. Chairman, I appreciate your careful
7 balanced consideration of the competing interests here. As
8 I said probably three or four times in our brief, this is a
9 close call that requires careful balancing. And I also
10 want to thank Commissioner Klement particularly for his
11 willingness to jump in and get to work on this. This is --
12 I'm glad to be here.

13 I'll be brief. While the Governor's request is
14 entitled to full and fair consideration by the Commission,
15 I think the really important issue for you to decide is
16 what is in the public interest. That's the Commission's
17 overarching mandate under 366.01, and also parallel to
18 that, what is in the best interest of the Commission as an
19 institution. The Governor's request is entitled to,
20 certainly to close attention and deference, but ultimately
21 you're the Public Service Commission and you have to make
22 the decisions that are in the public interest.

23 I do want to reiterate something that we put in
24 our brief and that's this simply: We're comfortable with
25 whatever panel votes, whether it's the four of y'all who

1 sat through the 24 days of the hearings with us or whether
2 it is the five of you who are sitting here today or whether
3 it's the five Commissioners who will be seated as of
4 January 4th, I guess it'll be, when we actually get to work
5 after the, after the holiday. We're comfortable however it
6 works out.

7 As I said, this is a close call and it really
8 does require some careful balancing. We believe that the
9 best interest of the Commission as an institution will be
10 served by postponing votes on these rate cases. I don't
11 probably need to go much further than that except to say
12 that I think that ultimately the magnitudes of the amounts
13 involved, the billion and a half dollars a year ultimately
14 in the FPL case, a half billion dollars a year in the
15 Progress case, militates strongly toward having this
16 decided by the Commission that's going to have to live with
17 the consequences.

18 Accordingly, we would agree with OPC, Public
19 Counsel, that you do have more time than set forth on the
20 staff's handout. I think the statute does require you to
21 issue an order by the conclusion of the 12-month period.
22 You know, nominally you could make your final vote on rates
23 in the window of February 20th to 25th and still get the
24 orders issued by that date.

25 You know, having said that, you know, there's --

1 you have to make one completely reasonable assumption in
2 order to get to either Option 2 or Option 3, and that is
3 that appointee, Commissioner-Designate Stevens will be, is
4 willing to jump in starting tomorrow or today, as
5 Commissioner Klement is, and, and read everything over the
6 next couple of months so that he would be ready to start
7 voting either on January 4th or January 20th depending on
8 whether you went with Option 2 or Option 3. And I did want
9 to add too, while you do have time available, you've heard
10 me say this more than a few times, Mr. Chairman, you're the
11 Chairman of the Florida Public Service Commission.
12 Commissioners, you're the Florida Public Service Commission
13 and you're going to do the right thing and we're going to
14 do what we have to do to accommodate your decisions on
15 this.

16 We agree with the staff's conclusions regarding
17 the effects of the Commission's 2005 orders approving the
18 stipulations such that FPL is precluded by both the
19 stipulation and by the Commission's order which
20 incorporates a stipulation by reference from implementing
21 rates prior to the issuance of a final order following the
22 hearing in this case. Progress on the other hand, by
23 virtue of the really clear explicit differences between the
24 stipulation and order approving it for Progress versus
25 FPL's, may implement its rates effective in January if it

1 so wishes. Thank you very much for the opportunity to the
2 address you, and I'd be happy to answer any questions.

3 **CHAIRMAN CARTER:** Okay. Mr. Moyle, do you want
4 to go and then Mr. Brew bat cleanup, or how do you want to
5 do it?

6 **MR. MOYLE:** Why don't we go Mr. Brew and then I
7 can go last.

8 **CHAIRMAN CARTER:** Mr. Brew, you're recognized.

9 **MR. BREW:** I think it was more batting ninth than
10 cleanup. But thank you, Mr. Chairman.

11 **CHAIRMAN CARTER:** You must be a Yankees fan.

12 **MR. BREW:** Yes, indeed.

13 I am here for PCS Phosphate-White Springs, as you
14 know, which is one of the largest loads on the Progress
15 Energy system. We're a significant employer in North
16 Florida. We're a substantial source of renewable energy
17 and we're a major resource of interruptible load to help
18 enhance the reliability of the system. My comments
19 strictly apply to Progress Energy Florida's case and not
20 Power & Light's.

21 As you also know, I'm a relative newcomer to the
22 Florida proceedings, but I have been doing utility
23 regulatory proceedings for 30 years, and I must say I've
24 never sat in front of a Commission arguing these issues
25 before and so it is kind of extraordinary. I do think the,

1 the initial "can the Commission" question has been
2 answered. As, Mr. Chairman, you noted at the outset, the
3 staff's recommendation is more of a should than a can. I
4 think the legal arguments have sorted out that the
5 Commission is empowered to adjust the schedule within the
6 12-month time frame, and the questions that we've heard
7 this morning are properly focused on how's, what's the best
8 way to do that to accommodate the Governor's request and
9 still provide for due process.

10 And with that, I have only one additional comment
11 with respect to the options that were put forward, which
12 was that apart from reviewing the transcripts or watching
13 videotapes, of which there's a lot there, it would be very
14 helpful if the new Commissioners have a chance not only to
15 vote on the matter but to have an opportunity to ask
16 questions, and not just of the staff but of the active
17 parties in the proceedings. So my concern with respect to
18 Option 2 is I don't see where you've allowed time for that.
19 And I would imagine --

20 **CHAIRMAN CARTER:** You would, you would agree
21 though, Mr. Brew, that we were, we would run into all kind
22 of due process matters if we were to try to reopen the case
23 because the case is closed, would you not agree with that?

24 **MR. BREW:** Yes, sir. The last issue is the close
25 the docket. But my point would be not to allow necessarily

1 oral argument, but for the parties to be available to field
2 questions for the Commissioners on whatever issues that are
3 presented in the matters I think would enhance the record
4 without filling (phonetic) the record anew. So that would
5 be my one suggestion is allow the opportunities for the new
6 Commissioners to ask questions of the active participants
7 in the docket. Thank you.

8 **CHAIRMAN CARTER:** I like everything you said
9 except "enhance the record." That gives me cause -- I
10 mean, it gives me pause, Mr. Brew.

11 **MR. BREW:** Well, to respond to questions from the
12 Commissioners based on the record, the evidence in the
13 record would be how I would respond to it.

14 **CHAIRMAN CARTER:** Okay. Mr. Moyle. And then,
15 Commissioners, after we hear from the Intervenors, we're
16 going to hear from the companies. We'll hear from FPL
17 first and then Progress.

18 Mr. Moyle, you're recognized, sir.

19 **MR. MOYLE:** Thank you. Thank you, Mr. Chairman.
20 For the record, Jon Moyle on behalf of the Florida
21 Industrial Power Users Group, FIPUG.

22 Mr. Brew in his comments noted the somewhat
23 extraordinary nature of what is before us, and I think it
24 is. And I would like to start with a, with a compliment to
25 you for bringing this matter before the Commission,

1 allowing the parties to comment, allowing a full vetting of
2 the issue. I'm not sure that that was necessarily
3 required. And, you know, since this request was made,
4 circumstances have changed. We have a new Commissioner
5 here and, you know, this discussion is taking place and
6 there's policy issues, there's arguments being made,
7 there's legal arguments, you know, what's the right thing
8 to do. And given the extraordinary nature of the, of the
9 situation, I just wanted to make sure that it was
10 understood, you know, you and I have known each other a
11 long time, and with respect to a decision in this case, you
12 know, this really is about whether you'll be making the
13 decision or the new Commissioner will be making the
14 decision. But that your decision, if you were to make it,
15 and it sounds, given the fact that you're saying you
16 suggest Option 2, that you weren't, but that there's no
17 concern that it would be fair, reasonable and thoughtful,
18 you know, should it be made. So I wanted to make that,
19 that point to start.

20 There have been arguments made, you have the
21 Chief Executive Officer of the state, the Governor making a
22 request. You know, in some respects out of deference to
23 that office that's a request that should be considered and,
24 and, if practical, probably acted on in a favorable way.
25 And I think that's, I think that's been recognized.

1 I think there's some good points about
2 consistency and regulatory certainty, that if you have one
3 group of individuals, particularly if it's a close vote,
4 making a decision and another group making another
5 decision, I think that probably does not work well for the,
6 for the parties, for the companies, for the Intervenors.
7 You know, and in the cases we've heard a lot about Wall
8 Street, and I think, I think it would probably be a better
9 policy to have, have the decisions in both cases made by
10 the, by the same group. And given the recommendation,
11 already Power & Light is bifurcated under the current
12 schedule with an initial decision being made in December
13 and a second decision in January, that, you know, I think
14 your judgment about, about doing it in January is, is, is
15 sound.

16 A couple of, a couple of points with respect to
17 the options. You know, I think, I think the staff has said
18 your drop-dead dates are the middle of March. And if you
19 look at the Option 3 where the actions are taken in early
20 February, you know, it gives you a month and a half to get
21 an order issued, which, you know, should be ample time.

22 **CHAIRMAN CARTER:** But my problem, Mr. Moyle, is
23 the balancing act. On the one hand is you've got FPL,
24 which by the settlement agreement obviously it pertains to
25 when the order is signed or when we make a decision on the

1 Commission, but for Progress you've got an expiration date
2 on the settlement.

3 So -- and the other thing is, as I said with my
4 initial comments, about the balancing acts between the due
5 process rights of the parties including, you know, your
6 clients too, the Intervenors, as well as the companies is
7 that this to me is probably the better option.

8 And the reason, just since you mentioned it, the
9 reason that I wanted to bring this issue to all of the
10 Commissioners so that we all could deal with this issue,
11 obviously we've got a request from the Chief Executive
12 Officer of the state, but in addition to that -- but I
13 still wanted to have the parties, you guys have a vested
14 interest, the Intervenors and the companies, I wanted to
15 have the parties to have an opportunity to come to the
16 Commission and say to us what you guys think as well.

17 And I think that Commissioner Klement was reading
18 the briefs -- and I think that you guys did an excellent
19 job, by the way, on your briefs. Outstanding, great --
20 I've seen some good lawyering before, but it was really
21 good lawyering particularly in the context of how OPC and
22 the Attorney General's Office dealt with the due process
23 issue, but also in terms of how you and your colleagues
24 dealt with the fact that an administrative law judge can
25 step in and pick up where the other judge left off, as well

1 as what the companies were arguing about, a judge, a
2 judicial judge per se would come in and had not been the
3 trier of fact, they'd have to bring in another judge. But
4 I think that all of those -- and I'm trying to balance all
5 of those. And I think that in the context of that, this
6 Option 2 with these dates gives us the best possible
7 alternative. Is it going to be easy for the, for the
8 Commission? No. But, hey, that's why we have the
9 Commission. We don't have the easy ones. The easy ones
10 already -- they don't get to this level. Is it going to be
11 easy for the parties? No. You guys are going to hump it a
12 little bit more. But that's the nature of these cases.
13 That's why you don't have a rate case every so often. But
14 I do believe that -- and as a lawyer we believe, we have to
15 say that we believe in fundamental fairness. And as such,
16 for me, particularly in light of where we are as a
17 Commission, where we are as a state, where we are as these
18 companies, we listen to the testimony, we listen to that,
19 but also looking at where we need to be in a going-forward
20 position, and I think that Option 2 gives us that
21 perspective.

22 You mentioned ever so briefly about Wall Street.
23 Just parenthetically, having been a former broker at
24 Merrill Lynch, I think my colleagues in New York need to
25 clean up their act first. But anyway, having said that, is

1 that these companies will be vibrant, they'll be vital and
2 they'll still be able to go to the capital markets and
3 access capital. But that's -- so I think that this gives
4 us the best possible alternative, gives us the best
5 opportunity to balance the rights of all of the parties.

6 Mr. Moyle, you may continue.

7 **MR. MOYLE:** Yes, sir. And I think just briefly
8 in response, and I had some prepared remarks, but I think,
9 I think you're on sound legal ground given, given your and
10 staff's reference to administrative law judges, that you
11 can have administrative law judges pick up records and
12 move, move forward. And you've had that in previous
13 situations, as Commissioner Skop and Commissioner
14 Argenziano reflected back on the Glades need determination.
15 So you have precedent for it.

16 You know, I was kind of, kind of thinking that,
17 that it might be a nice happy holidays message to your new
18 Commissioner to be, Mr. Stevens, rather than saying we'll
19 see you on the 4th and be ready, to provide a little more
20 time.

21 And, again, on the due process point, I mean I
22 know you recognize that the consumers, my clients, and OPC
23 have asked for a rate decrease. So that, you know, that
24 issue cuts, cuts both ways. To the extent that there was a
25 conclusion of a rate decrease, then that may be some funds

1 that, you know, we may not have or you would have to figure
2 out a way to pick it up.

3 But I guess, I guess given what I understand to
4 be the situation with Power & Light, that there's not an
5 issue really there of them putting the rates in
6 January 1 given the contractual situation. It's solely
7 related to Progress Energy, and we go a long time between
8 rate cases. You know, is there not a mechanism whereby,
9 you know, a catch-up -- you know, let's say the decision
10 was in favor of the consumers, could you have some catch-up
11 mechanism, or if there was a decision to increase rates,
12 could there be a mechanism, a catch-up mechanism, a true-up
13 mechanism for, you know, a two-month period of time? I
14 would think there probably should or could be some
15 mechanisms such as that.

16 So I guess on, on the points, you know, the two
17 and the three, I understand, you know, the need. But, you
18 know, I think Mr. McGlothlin said, you know, the holidays
19 are a time when, when people are spending time with family,
20 and to the extent we were going to try to schedule an oral
21 argument between, you know, Christmas and New Years, I
22 just, I'm not sure that would be the best way to go,
23 particularly with a new Commissioner who would not be sworn
24 in.

25 You know, a better way to go might be to, you

1 know, let him take office, figure out, you know, where,
2 where his office is and the necessary facilities are.

3 **CHAIRMAN CARTER:** Where the restroom is too.

4 **MR. MOYLE:** And then, you know, kind of, kind of
5 get into it without his first day, welcome to the PSC, you
6 have two rate cases in front of you. So that's, those are
7 some thoughts that, that I would share.

8 I want to just briefly respond to a point that
9 Commissioner Edgar raised about, about the eighth month
10 issue, and I think she was trying to understand how the
11 eighth month factors in. As I understand staff, that the
12 eighth month issue is obviated by the settlement agreement,
13 by the contractual arrangement. So that to the extent that
14 the eighth month date, you know, was there, it's going to
15 come and pass regardless. So I don't, I don't think that
16 is, you know, a real strong reason as to why to, to
17 bifurcate Progress from the others. And I think the
18 compelling reasons are given the regulatory certainty, the
19 messages that would be sent with respect to regulatory
20 decisions, one of the things we've heard is certainty is
21 valued, you know, that having, having the new Commission
22 decide both is probably the better way to, to go.

23 My final point is, is that during these hearings
24 and proceedings the Intervenors have largely been on the
25 same page on things. We've had a couple of points where

1 we've had, had disagreement. But with all, with all due
2 respect to my friend and colleague, Mr. Brew, while oral
3 arguments may, may be helpful, based on the record I do
4 have some concern about an opening up of the record, if you
5 will, to say let's have, you know, have questions asked and
6 answered. Because, you know, if you ask the question, the
7 answer can go way beyond what's in the record and change
8 circumstances, and I think that, that might be a little bit
9 of a, of a tricky endeavor should you decide to pursue it,
10 and we would urge you probably to think very clearly about
11 that, and that may not be the best idea.

12 So for the record, you know, FIPUG supports the
13 new Commission making, making the ultimate decision, and
14 thank you for, for hearing our arguments and thoughts.

15 **CHAIRMAN CARTER:** Thank you.

16 Commissioners, what we're going to do is that
17 after we hear from the parties, then they'll still be
18 available and we can ask questions and all that like.
19 Let's hear from the companies now, and then we'll, we'll be
20 at it a little bit. And so Mr. Wright and Mr. Brew, don't
21 go far.

22 Okay. Mr. Butler, you're recognized.

23 **MR. BUTLER:** Thank you. Good morning, Mr.
24 Chairman.

25 Just to confirm, you want Florida Power & Light

1 Company to go first; is that right?

2 **CHAIRMAN CARTER:** Yes, sir, I do.

3 **MR. BUTLER:** Okay. Thank you. Good morning, Mr.
4 Chairman, Commissioners. Welcome, Commissioner Klement.
5 I'm John Butler appearing on behalf of Florida Power &
6 Light Company. I'll try to keep my remarks brief because
7 there's been quite a bit said already on the subject.

8 We support staff's recommendation to proceed on
9 the current schedule. FPL's rates, rate request should be
10 considered on the facts and merits. We expect this is how
11 any Commission will decide, whether it's the currently
12 configured Commission, whether it includes Commissioner
13 Klement, or whether it's a full new Commission after the
14 first of the year. So, therefore, we don't think there's
15 any compelling need or reason to postpone the decision from
16 the current schedule for FPL and think that there's some
17 very good reasons to stay on schedule as there's been some
18 considerable discussion, you know, so far.

19 Though it's not required, we think that it's
20 preferable for a quasi-judicial decision such as this to be
21 made involving all of the decision-makers who heard the
22 case. And Commissioner Carter -- or, Chairman Carter, I'm
23 sorry, we very much respect your insights. We know you've
24 participated at length in our proceeding and, you know, we
25 would welcome your participation in a decision on our case.

1 We think it's especially true to, or especially
2 important to involve the people who have heard the case
3 when you have a case that is as involved as ours has been.
4 There's already been some citations to the figures, but,
5 you know, we've got over 6,000 pages of transcripts, about
6 100 hours of live testimony, actual time of witnesses
7 testifying, 550, 560 exhibits. And if we defer, don't have
8 all of the, you know, four Commissioners who participated
9 in the actual hearing of that case, we'll lose some of that
10 valuable insight.

11 We also share staff's concern about the amount of
12 time needed to involve new Commissioners. Although I
13 recognize the willingness and appreciate the willingness of
14 Commissioner Klement, and I'm sure the same would be true
15 of Commissioner Stevens, to do everything necessary to come
16 up to speed, we're concerned that a delay is going to
17 unnecessarily and unfairly prejudice FPL in its abilities
18 to put new rates into effect when we had expected to do so
19 and all of the parties had understood and, you know, at
20 least tacitly consented to our doing so.

21 As you're aware, there's a stipulation in our
22 case, it was Issue 172, and approved as part of the
23 prehearing process that the new rates would be going into
24 effect at the beginning of January. You know, on the
25 current schedule that we have that the Commission approved

1 for our case, we won't miss that by much and we don't think
2 that it's a substantial issue that the rates would be
3 deferred slightly. However, further postponement of the
4 decision in the case is going to push us out further and
5 further from when we envision and we believe that staff and
6 all of the parties understood that those rates were going
7 to be going into effect.

8 You know, that's just going to create an added
9 atmosphere of uncertainty. It's uncertainty at FPL with
10 respect to our financial planning. The company is of
11 course in the process now of kind of finalizing its
12 financial plans, its budgets for 2010, and further deferral
13 is just going to make it harder and harder for the company
14 to know what its actual financial position will be in 2010
15 once we reach there.

16 And we're concerned about the investment
17 community. You know, the investment community has been I
18 think a little bit unnerved, certainly concerned by the
19 delays that have transpired to date in completing the
20 hearing. I think they would be further concerned by a
21 further delay or postponement in the time for reaching a
22 decision where things remain just kind of in a suspended
23 period of uncertainty.

24 To make it clear, I think I already have, I just
25 want to be sure that --

1 **CHAIRMAN CARTER:** Mr. Butler --

2 **MR. BUTLER:** Yes.

3 **CHAIRMAN CARTER:** I don't want to interrupt you,
4 but --

5 **MR. BUTLER:** Certainly.

6 **CHAIRMAN CARTER:** -- I hear this argument about
7 the investment community, and I'm not arguing with you, I'm
8 just kind of, had a train of thought. And I'm not bragging
9 about my knowledge of investments, but I do know this is
10 that from the TALF and the TARP we put over a billion
11 dollars in the investment community, and they haven't had
12 anything to show for it yet. So right now people are still
13 not being able to get their mortgages, businesses,
14 particularly small businesses are still not able to get
15 loans. So I'm kind of not really -- you know, my heart is
16 not really bleeding for Wall Street right now because
17 they've got a lot of work to do on their part. And that's
18 taxpayer dollars that they've been getting, by the way. So
19 just so you understand, you know, when Wall Street comes in
20 crying, you know, crocodile tears, we need to understand
21 that, you know, Wall Street needs to be understanding about
22 Main Street. You may proceed.

23 **MR. BUTLER:** Thank you, Mr. Chairman.

24 First of all, I will say that I definitely don't
25 tout my own investment experience or expertise. But I will

1 say that FPL's concern, just to be clear, isn't over the
2 investment community. It's over what the investment
3 community can do to FPL. And whether they are making good
4 decisions or bad, they are making decisions. And those
5 decisions affect our company and our ability to raise
6 capital, our ability to manage our business as we need to,
7 so I don't want to comment on the wisdom of their
8 decision-making. But perhaps if they're in a period of
9 uncertainty and difficulty in making decisions, it's all
10 the more important to us that they not be given additional
11 reasons for uncertainty.

12 Returning to just the point that I wanted to
13 make, Commissioner Klement, that with respect to, you know,
14 a decision on the current timetable, we certainly would
15 welcome your participation. We think that you have clearly
16 the background with your editorial expertise to come up to
17 speed quickly on information. And although it is a tall
18 order, we expect that it would be manageable for you to
19 become fully prepared and to participate, you know, as a
20 fully informed Commissioner on our decision really
21 regardless of whatever timetable ends up being ultimately
22 adopted by the Commission.

23 Let me turn and respond to a few points briefly,
24 if I may, raised by others. Regarding OPC's proposal for
25 closing arguments, FPL really doesn't think that is useful

1 or frankly a good idea here. The Commission has typically
2 had kind of a fork in the road in its proceedings as to
3 whether it is going to have oral argument and make a
4 decision, something like a bench decision promptly based on
5 just the immediate results of the hearing, or that matters
6 are complex and need to be briefed fully and the Commission
7 staff, everybody will have the benefit of extensive
8 briefing. Obviously we're on that second path with respect
9 to the FPL rate case. That's the appropriate path. You
10 know, we hope that we will do as good a job as you were
11 bragging earlier about how, the progress the parties have
12 done in briefing that. We expect that the briefing from
13 all parties will be very high quality, very informative,
14 and that at the end of it Commissioners, both those who
15 participated in hearing the case and those who would be
16 coming up to speed subsequently if they are involved in the
17 decision, would be fully informed on the parties'
18 positions.

19 Our concern is really just that it's, it's an
20 extra step. It will add both the time of the oral
21 argument, not a particularly great concern, but just
22 further push out the decision from when it otherwise could
23 be made. And we really don't see, you know, that length of
24 time trying to cover the sort of complex issues that we
25 have in our rate cases being a productive addition to the,

1 to the briefing that will have been provided to you.

2 We are especially concerned about Public
3 Counsel's comments of the need to defer the proceeding or
4 defer the decision even further than the Options 2 or 3
5 that have been laid out in staff's spreadsheet. You know,
6 we, we think that a decision should be made on the current
7 schedule for FPL. If it's not, we think that the Option
8 2 is a legitimate, reasonable basis to involve new
9 Commissioners in the decision and keeps as close as
10 possible to what everybody had understood was FPL's
11 expectation and really believe everybody's expectation
12 before the hearings became protracted that our rates would
13 go into effect at the beginning of January.

14 One thing I'll offer just as a possible aid in
15 getting there, if in fact the Commission went down that
16 path, is that Public Counsel had expressed concerns
17 regarding access to confidential information that would
18 have been made part of the record. To the extent that the
19 new Commissioner, Commissioner Stevens, was not yet an
20 employee of the Commission, not a Commissioner, not, you
21 know, a public official that would be given access to the
22 confidential information in our record by virtue of the
23 sort of involvement with the organization itself, we
24 believe that we could enter into a bilateral
25 confidentiality agreement with him as we've done with

1 private parties in the proceeding and make that information
2 available in whatever measure he saw fit to bring himself
3 up to speed. I think I'm just about done.

4 I would for the very first time I believe since
5 we started the hearings agree with Mr. Moyle with respect
6 to our concern about the proposal of having questions from
7 new Commissioners. I just, that really doesn't seem like
8 it's a workable mechanism. If it's not evidence, then
9 there's a question of what you do with it as a Commission.
10 And if it is evidence, then there's a concern about having
11 to reopen the record and the extent of required
12 participation by others in the process. So with that, I
13 will conclude my comments. Thank you very much. I know
14 you have a difficult decision. I know you're trying to
15 balance a lot of competing considerations, and I trust that
16 you will do a thorough and appropriate job of doing so.
17 Thank you.

18 **CHAIRMAN CARTER:** Thank you.

19 Mr. Glenn.

20 **MR. GLENN:** Thank you, Mr. Chairman. Alex Glenn
21 on behalf of Progress Energy Florida. I want that portion
22 of the record marked where Butler agrees with Moyle so we
23 can frame that.

24 (Laughter.)

25 **CHAIRMAN CARTER:** I think that was just

1 temporary.

2 **MR. GLENN:** It was a temporary agreement. We
3 favor adhering to the current schedule. We think it's the
4 fair and the right thing to do. The schedule has been in
5 place since March of this year when we filed our case, and
6 all the parties, including, as much as I hate to admit it,
7 Mr. Moyle, have diligently worked to meet that schedule,
8 and we concluded our hearing on October 1st, about two
9 weeks.

10 I think deciding the matter in accordance with
11 that schedule is going to provide all the parties with the
12 certainty that we all anticipated when we filed our case.
13 And it's consistent with the timing requirements of Chapter
14 120. That's one point I wanted to make I think that, that
15 needs to be made is that Chapter 120, Section 120.569(2)(1)
16 requires the Commission to issue a final order within
17 90 days of the conclusion of the hearing. In our case
18 that's December 30, 2009.

19 So the current schedule that this Commission set
20 forth is consistent with that, with the 120 requirement
21 that the final order has got to be rendered within 90 days
22 after the hearing is concluded. There's no conflict
23 between this, this statute and this provision and 366.063
24 which states that you have to issue a final order within 12
25 months. They're both consistent. So we think Chapter 120

1 certainly controls, and the Commission should act and it's
2 consistent with the schedule that the, that the, that the
3 Commission has set in this case. That's kind of with
4 respect to Issue 3 that staff has dealt with.

5 With respect, with respect to Issue 4, and that's
6 the implementation of the new rates effective with the
7 first billing cycle of 2010, we agree with staff's
8 recommendation. We have the statutory right to implement
9 new rates subject to refund, and that's consistent with our
10 settlement agreement, which I think all of the Intervenors
11 in this proceeding agree. If the Commission were to defer
12 a decision, our concern is what the language of the statute
13 and some of the supreme court cases say is that the
14 proposed new rates shall go into effect subject to refund
15 and of course with interest.

16 In the Citizen's case, the Florida Supreme Court
17 in 1983 held that after eight months, if the Commission has
18 not concluded the work, the utility is, quote, required to
19 put the requested rates into effect. I'm not sure there's
20 much discretion given to the utility or this Commission in
21 that regard.

22 One of the concerns I have is say you set a date
23 for Option 2 but that you revisit that date and decide
24 we're going to wait until March to decide or to vote or to
25 February, we would arguably -- I believe it is an

1 all-or-nothing proposition, either you implement the new
2 rates or you don't, and I would expect that OPC would come
3 in and argue that there's a waiver that you cannot
4 implement new rates. And if that were the case, we would
5 be going without new revenues for approximately five months
6 because you're going to give notice, say the order is
7 issued at the end of March, a 30-day notice, you're into
8 May. That is a significant, significant concern with our,
9 with our company, you know, given our declining sales.

10 You know, we requested in March \$500 million of
11 revenue requirements for a rate increase. Today we have an
12 additional \$100 million at least decline in sales. So
13 that's really a \$600 million request. We've got
14 \$100 million of sales decline and they're declining more.
15 We have a declining earned rate of return. We've got a
16 need for cash flow to cover our investments that we've made
17 and that we continue to make to cover increasing expenses.
18 So, so it may seem like a couple of days, but I don't think
19 it really is and it has the potential not to be. So we
20 would ask that the Commission adhere to the schedule out of
21 fundamental fairness, out of consistency with the statute
22 and the law.

23 And also to a point that Mr. Butler did make on
24 certainty, we need to make decisions on budgets in 2010
25 going forward. We need to make decisions on capital

1 expenditures in 2010. We've relied on this schedule to do
2 that. We need to make decisions on capital purchases with
3 our Levy plant. The outcome of this case has, has a heck
4 of a lot to do with all of those decisions.

5 And so one thing to be clear with Commissioner
6 Klement, to the extent that the Commissioner can get up to
7 speed on reading the record, on reviewing the video to see
8 the demeanor of the witnesses, to pay particular attention
9 to my opening argument that I made which I hear was quite
10 good, that, you know, that November 11th agenda vote is a
11 possibility and we think could be done.

12 So to that, I very much appreciate, Chairman
13 Carter, your openness in having us speak to you today. We
14 thank you.

15 **CHAIRMAN CARTER:** Thank you. Commissioners, I
16 wanted to give all of the parties an opportunity to be
17 heard before we get back into our deliberations. Let's
18 see. Commissioner Skop, you're recognized, and then
19 Commissioner Edgar.

20 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

21 I guess just some of my thoughts as to I guess
22 why I would support, you know, essentially Option 2. I
23 think it accomplishes a couple of objectives. Obviously
24 there's competing interests, as we've heard from the
25 respective parties.

1 As the schedule is currently written, again,
2 staff recommendations are set to be filed upon the
3 conclusion of the hearing. We're posthearing now. Staff
4 is in the process of writing its recommendations. Those
5 will be filed well before the holidays, available for new
6 Commissioners as well as existing Commissioners to read, to
7 gain an appreciation, understanding of, to review those
8 recommendations in light of the record evidence that was
9 conducted at hearing. And I think it gives, I don't want
10 to say a cooling off period, but it allows more time to
11 consider the ramifications of the decision, to fully
12 understand the case, as well as giving our hard working
13 staff a well deserved holiday break. I know for me, if we
14 adopt, what Commissioner, I mean Chairman Carter has posed
15 as Option 2 as a reasonable alternative, I know I will be
16 working over the holidays, and I'm happy to do so. I do
17 what's necessary to, to make myself well-informed and do
18 the job, as do all of my colleagues and my newest colleague
19 Commissioner Klement. So I have no doubt that
20 Commissioner-Elect Stevens will take the same level of
21 preparation. He's a professional, and I would expect that
22 he would be able to, to watch the DVDs as well as read the
23 transcripts. Unfortunately in the Glades case and the, and
24 the coal refund case there were no DVDs. Again, I had to
25 read the voluminous record, and I actually read it so

1 closely I noticed that in the transcript it had a pinpoint
2 reference to the Gators winning yet another national
3 championship.

4 **CHAIRMAN CARTER:** I knew he would get that in
5 somehow.

6 **COMMISSIONER SKOP:** I would. I would. But I
7 guess, you know, and that's part of the reason why during
8 these very important rate case hearings I asked our
9 technical staff to ensure that the public would have access
10 to streaming video so they could go back and watch the
11 proceedings later if they chose to do so or at least have
12 public access to the proceedings in light of, you know,
13 only being able to request a transcript just as a result of
14 some of those things that have happened to me.

15 But I do think that there's, there's merit to
16 moving, shifting the dates while meeting the statutory
17 deadlines, sooner rather than later I think would be the
18 appropriate mantra to address the concerns raised in light
19 of the different provisions within the settlement
20 agreements and the consequence of implementing rates
21 subject to refund. Again, I think those issues can be
22 resolved in short order.

23 But I think it's important that the Commission
24 move on with the people's business and reach a decision in
25 each of the respective rate cases at the earliest possible

1 opportunity in the new year. And I've listened to the
2 concerns of the respective IOUs as well as Public Counsel.
3 Again, with the Glades decision as well as the coal refund,
4 we did not reopen the record, there were no closing
5 arguments, I had to read the record, and I was not
6 permitted the opportunity to ask questions of the parties
7 by virtue of the fact that the record had been closed. I
8 accepted that. You know, there's pros and cons to doing it
9 both ways. But, again, consistency and uniformity is very
10 important to me as an attorney, so I see merits to, you
11 know, closing the record and letting the record speak for
12 itself and giving the Commissioners the ability to, to make
13 their own decisions based on the record. I don't really
14 foresee that having quasi-closing arguments again would
15 really bring anything to the process. I mean, we had the
16 staff recommendation, we had the records to rely upon, and
17 that would almost be tantamount to reopening the record, as
18 would asking questions, as Mr. Moyle has alluded to. And
19 the fact, just in closing, the fact that Mr. Butler has
20 actually agreed with Mr. Moyle, we might, we might want to
21 get Mr. Butler checked for that concussion. I know he got
22 a head injury from Mr. Moyle, but --

23 **CHAIRMAN CARTER:** I think it was Mr. Moyle that
24 did it to him.

25 **COMMISSIONER SKOP:** Yeah, it was. But, again, I

1 just think that there's merit, substantial merit to, to
2 moving, shifting the dates to the beginning of the new
3 year, allowing the new Commissioners to come up to speed
4 during the two-month interval. I know that this says a lot
5 for Chairman Carter who has participated in the hearings
6 to, to support shifting the dates and not desiring to, to
7 participate in the decision itself. I show -- I think that
8 shows that he's a very honorable man, not selfish, and
9 wants the best interest of the state. So I commend you,
10 Chairman, for your leadership on this issue this morning,
11 and I'll turn it over to my colleagues. Thank you.

12 **CHAIRMAN CARTER:** Thank you, Commissioner.

13 Commissioner Edgar, you're recognized.

14 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman. I,
15 of course, agree with all of the gracious comments about
16 your leadership, and down the road we'll have more of an
17 opportunity to discuss that. But I'm not completely sure
18 that it's a great gift to the rest of us to, to, to not
19 bring your leadership to these particular votes. I'll say
20 it that way.

21 A couple of comments. And on that note, I
22 recognize the points that have been raised about Option
23 2 for both cases. And if that is the decision of this
24 body, I am comfortable with it. But let me give you a
25 pitch, if I may, for a different approach.

1 In the spirit of, as I mentioned when we first
2 sat down, of settlement and compromise and cooperation and
3 coordination, and that is indeed the way I mean it, a
4 couple of points.

5 The first, Mr. Moyle, I appreciate you raising,
6 in response to one of my questions earlier, about the
7 eight-month time -- eight-month, 12-month time frame, and I
8 may have -- I probably was not as articulate as I would
9 have liked to be. That particular provision in the statute
10 is not crystal clear to me as to how the eight-month and
11 the 12-month interrelated in a perfect scenario let alone
12 in real life where in a complicated case there are things
13 that come up and extensions and all of that.

14 I do agree with I think what you were saying,
15 what I think I heard our staff say, that in this particular
16 situation for both dockets that the settlement language is
17 probably more controlling than the eight-month, but I was
18 trying to understand how they all would interrelate.

19 I also would point out, and I have, I have not
20 yet had the pleasure of meeting Commissioner-Designate
21 Stevens, I look forward to the opportunity, but I
22 certainly, before I have met him and after I meet him, do
23 not presume to speak for him. But I would point out one
24 significant difference in how our new Commissioner is
25 situated and how our soon to be Commissioner is situated,

1 which is that the time from today leading up to January the
2 five of us will be paid for being prepared, and
3 Commissioner-Designate Stevens will not have the
4 opportunity to receive fair wages for a job done in
5 preparation for November, December, leading up to the first
6 week of January. And I recognize that as a public servant
7 who has offered to step in that I'm sure he understands the
8 responsibility and absolutely could be prepared, I have no
9 doubt, but I do recognize that the time that we would be
10 asking him to serve in November and December would be prior
11 to a paycheck, and I think we all have at least one
12 mortgage anyway.

13 So, so with a few of those -- and also
14 recognizing in response to one other comment that Mr. Moyle
15 made, I don't completely agree that having the same five
16 vote on one case is of utmost importance as that same five
17 voting on another case. I think Wall Street and any, and
18 ratepayers and everybody else are generally appreciative of
19 the fact that of a five-member body that is specifically
20 composed of staggered terms, that in cases that go on and
21 decisions that go on, that there is going to be a time
22 where a change in one member may take place from one case
23 to another. So I just don't see that as, as, as important
24 as perhaps has been emphasized by some others.

25 So with that, kind of -- and I also recognize

1 that in my mind we are a little bit differently situated
2 with Progress and FPL. In this instance there are
3 certainly the differences in the settlement language.
4 There is the difference in that the Progress case is,
5 candidly the record is smaller. I mean it was a shorter
6 case, a less number of days. The amount of DVDs and
7 transcripts and all of that will be somewhat less I
8 believe. One could perhaps say that there are fewer
9 issues. I'll leave that to others to debate. But I also
10 recognize that from the record that we had that the
11 financials are different between the two companies. So
12 with that, I would propose, Commissioner Chairman, or --
13 Commissioner Chairman -- Chairman Carter, in putting the
14 compromise together again that we consider revisiting
15 Option 1 for Progress and perhaps Option 3 for FPL.

16 And that gets us really, Mr. Chairman, to that
17 Solomon division of that would mean a two and two. See the
18 compromise I'm trying to get at?

19 **CHAIRMAN CARTER:** That was Commissioner Klement's
20 comment about Solomon. I did not raise Solomon in this
21 one.

22 **COMMISSIONER EDGAR:** No. No. But if indeed we
23 were to do that Option 1 for Progress, my understanding is,
24 would meet the 120 time limit requirement. Option 3, I
25 believe, would still meet the 120 requirement for FPL since

1 that hearing did go on and was extended into further
2 additional dates. It would minimize the time, realizing
3 also the 30-day notice requirement before rates go into
4 effect, it would minimize that window of potentially rates
5 being able to be put into place before this Commission
6 acts. Acts, A-C-T-S, is what I was trying to say. And it
7 would give Commissioner Klement some additional time for
8 Progress, it would bring Commissioner Stevens in for FPL,
9 but with a little more time after he's actually in office
10 to have some additional time to come up to speed and get
11 comfortable with the record and the issues.

12 And I had one other reason that I thought that
13 would be good that has just escaped me. Oh, it would also
14 come closer then to that first, first day of the year that
15 I think is, for Progress is a date that is important. And
16 there may be some other factors there that I would ask to
17 be able to speak to in a little bit.

18 **CHAIRMAN CARTER:** Thank you. Commissioners, I,
19 the reason I proposed to you Option 2 is, first of all,
20 we've heard a lot during the course of these hearings about
21 Wall Street and things of that nature. There's no doubt in
22 my mind, and I'm not saying it because I won't be here, but
23 there's no doubt in my mind that this Commission will
24 always give the companies a fair hearing. That's all
25 they're entitled to, nothing more, nothing less. These

1 companies will get a fair hearing. My being here will not
2 inhibit or impede that process. This Commission has a
3 tremendous history of being fair. But we have a balancing
4 act: Fair, just and affordable rates for the consumers,
5 for the ratepayers, and giving the companies an opportunity
6 to earn a fair rate of return. So what Wall Street needs
7 to understand is that the Florida regulatory model is
8 consistent. The companies will get a fair hearing, no
9 question about it.

10 Secondly is that in the context of where we find
11 ourselves today with both of these companies, and I think,
12 and as I said earlier, and I don't want to sound like a
13 broken record, but I think that the parties, both the
14 companies as well as the Intervenors, did a fantastic job
15 in their briefing of this issue. And I think that from a
16 context of fundamental fairness for both companies, Option
17 2 to me puts us in the best, best posture. Obviously the
18 Progress settlement is different than the, than the FPL
19 settlement perspective. However, Commissioners, I believe
20 that in terms of the context of fundamental fairness and
21 consistency is that we have what we have. These, both of
22 these cases are before us now.

23 And I think that in the -- and I don't want to, I
24 don't -- it sounds like, sounds like that we're trying to
25 pile on Commissioner Stevens, but we're not. It's just the

1 nature of the job. That's, that's what we do. That's what
2 we do as Public Service Commissioners. That's what we do.
3 So it's -- you know, and it was a voluntary process. I
4 mean, I even subjected myself to trying to come back again,
5 so it's a voluntary process. So there's no, no, no
6 impediment on a person to do this. And in the process of
7 going through this, our website is, in my opinion is one of
8 the best in the country in terms of providing a basic
9 understanding and comprehension of what the Florida Public
10 Service Commission's mission, value, goals and requirements
11 are.

12 Secondly is that Commissioner Skop mentioned
13 earlier, and it may have sounded like a passing thought but
14 it was a fundamental thought is that during these hearings,
15 Commissioners, remember, we put those on streaming. So not
16 only could the parties listen, but the public at large
17 could listen to the whole process. So it's out there. And
18 that's, that's probably unprecedented. It's probably
19 boring, but it was out there.

20 And I think that in the context of Wall Street is
21 that these companies will get a fair hearing. These
22 companies have gotten a fair hearing. They will always get
23 a fair hearing. The other thing too is that, for Wall
24 Street is that Florida is at the forefront. We have some
25 dynamic things, the Governor has led us in the context of

1 renewables and in terms of green energy. Also our
2 companies are dealing with solar, different kind of things,
3 waste energy. Just the nature of the Intervenors in this
4 case here show you that Florida has a vibrant environment
5 for business. And I think that it would be incumbent upon
6 Wall Street to want to come and do business with our
7 companies to provide, you know, capital. Where else are
8 you going to go? So I'm not trying to dismiss that, but I
9 think that we make too much ado about what Wall Street will
10 do or what Wall Street won't do. Is that we have testimony
11 in both of these records that this is the worst economic
12 time in our country since the Great Depression. We have
13 that on record, Commissioners. I mean, you all heard that.
14 And so that, that puts us in a different perspective.

15 I wasn't trying to tee off on my former
16 colleagues at Wall Street, but I do mention the fact that
17 \$1.5 trillion, that's a lot of money that went to Wall
18 Street firms and banks. That came from the taxpayers. So
19 what are you going -- are they going to just use it to, and
20 I don't want to take a cheap shot at them and saying
21 they're giving it to corporate bonuses or anything like
22 that, but by the same token is that that money was given to
23 them by the government to stimulate the economy, not to
24 enrich themselves and all. So I'm, I'm -- like I say, I'm
25 not beating up on Wall Street, but I'm not buying the doom

1 and gloom of Wall Street either. I'm just saying that what
2 we're required to do as regulators is to provide the
3 company and the Intervenors a fair hearing to balance the
4 interest of the ratepayers, fair, just and affordable, with
5 the companies an opportunity to earn a reasonable rate of
6 return. And that's what we've done and that's what we
7 shall continue to do.

8 And I think based upon where we find ourselves
9 today, Commissioners, with two companies here before us is
10 that, as for me, and I think that in where we find
11 ourselves, I believe that the best possible alternative for
12 us is to move with Option 2. It's, it's, it's a short
13 enough time to where we can meet our goal for March with
14 that final order. It's, it's not long enough to where
15 there will be any dillying and dallying by anybody, you
16 know. And it's also, it's doable. That Glades case,
17 Commissioner Skop, as you know, that was, like you say,
18 there was no DVDs. There was like just the cold, dry
19 record there. And the Progress coal refund case, same kind
20 of thing. But as I said before, that's the nature of the
21 beast. That's why we call it the Public Service
22 Commission.

23 It's like when Darryl Dawkins came to the NBA and
24 he tried to dunk on, I believe it was -- I don't know if
25 Dr. J was, I mean, Kareem Abdul-Jabbar was there and he

1 tried to dunk and he got blocked. Kareem says, "Welcome to
2 the NBA." So, I mean, we all remember later on his
3 Chocolate Thunder and all like that, but that first day it
4 was like "Welcome to the NBA." So this is the NBA. This
5 is the way it works, Commissioners.

6 And I cannot, based upon the outstanding work
7 done by these lawyers here and the companies as well as
8 Intervenors, based upon the facts that are before us, based
9 upon the briefs that have been done before us, and also
10 based upon a recommendation from the Chief Executive
11 Officer of the State of Florida, I believe that the best
12 possible alternative for us today is to go with the
13 schedule as proposed by staff in Option 2. And whenever we
14 get to a point of voting, that's where I'm coming from.

15 Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. I'm
17 also in support of that for the reasons I previously
18 stated. Again, I think that having uniform, consistent and
19 fair outcomes for both respective IOUs is very important,
20 having the regulatory certainty, not having the split
21 decisions, all those factor into the reasons as to why I
22 think shifting both dates as in Option 2 is the appropriate
23 option for the Commission to consider adopting.

24 As a backup plan, you know, I might entertain
25 the -- if you look at Option 2 for the rate agenda dates,

1 you know, a hybrid alternative could be making those rate
2 agenda dates actual revenue requirement agenda dates, and
3 then picking the rate agenda from Option 3 as the
4 subsequent follow-on dates to establish the rates.

5 But, again, I think Option 2 is the best choice.
6 Certainly there's some flexibility there for the Commission
7 to consider that would buy us another week or two doing the
8 hybrid alternative. But, again, I think that we can move
9 forward as a Commission respecting the need to address the
10 issues before us, do so in a timely manner which allows our
11 new Commissioners to come up to speed.

12 I guess Commissioner Edgar's suggestion that we
13 bifurcate the proceedings and, you know, continue on track
14 with the Progress dates, I just have heard that I think
15 suggestion twice. That's just really not persuasive to me.
16 I think that, again, fairness is important. And I think
17 that if you shift one, you need to shift them both, and I
18 think that Option 2 meets that essential requirement.

19 **CHAIRMAN CARTER:** Thank you, Commissioner.

20 **COMMISSIONER EDGAR:** Mr. Chairman, I need to
21 correct that because Option 1 is a shift. It is not the
22 current dates. The current dates, I understand, are 11/19
23 for revenue agenda and 12/1 for rates agenda. Option
24 1 would be a shift of two and a half weeks or so for both.
25 So I am -- by suggesting Option 1 for Progress, I am

1 agreeing that we give additional time for our new
2 Commissioner and for the rest of us and anybody else who is
3 interested as well. I have suggested it twice, but it is
4 not a suggestion that we stay with the current dates. It
5 is a shift.

6 **CHAIRMAN CARTER:** Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chair.

8 My concern -- there's a few concerns. I'm
9 comfortable with Option 2, but I was going to even suggest
10 exactly what Commissioner Skop had just said by taking like
11 a hybrid of Option 2 and 3. And the reason to do that, my
12 thoughts were is that there's just -- I think it gives more
13 time for the new Commissioners. I know how I felt when I
14 came in, and my concern would be as after -- if we took
15 Option 2 and let's say Commissioner Stevens came in, what
16 if, and as being a responsible person he didn't feel
17 comfortable that he had enough time? What happens then?
18 And a responsible person would say I don't have enough
19 time, I can't make a decision on this, and then we're stuck
20 with that same type vote that Commissioner Klement was
21 talking about.

22 So maybe taking, as Commissioner Skop had talked
23 about, part of Option 2 and Option 3 and giving us maybe
24 another week or so just makes me, just pushes me a little
25 bit more into the comfort zone as the Commissioner

1 having -- especially Commissioner Stevens. And hopefully,
2 I mean, he can come in ahead of time. We don't know what's
3 on his schedule too. I mean, he may have commitments now
4 that may make it very hard for him to dedicate the time
5 that he needs. In saying that -- and with the company, FPL
6 also saying that they could deal with the confidentiality
7 issue, if we could just bump it a little bit, maybe that
8 gives me a little bit more comfort. Even though I could
9 settle for Option 2, I think that maybe if we just made
10 that little tweak of the revenue requirement agenda and
11 the, from, from Option 2 pushed down to where the rates
12 agenda is in Option 2 and then moving that --

13 **CHAIRMAN CARTER:** Is that right, Commissioner
14 Skop?

15 **COMMISSIONER SKOP:** Yes, Mr. Chair.

16 **CHAIRMAN CARTER:** Hang on a second, Commissioner.

17 **COMMISSIONER SKOP:** Yes, Mr. Chair. What I was
18 suggesting as the hybrid alternative would be taking the
19 rate agenda dates from Option 2 and establishing those as
20 the revenue requirement agenda dates. And then taking the
21 rate agenda dates for Option 3 would be the subsequent
22 follow-on rate agenda dates.

23 **COMMISSIONER ARGENZIANO:** And that's what I was
24 thinking of even before we came into it. And with the
25 other feeling there is not going too far because we do have

1 to allow -- the companies do have to make decisions on
2 budgets and they have capital investments and we need to
3 look at all sides of that by not pushing it too far. I
4 think anything before that, just as a new Commissioner, I'm
5 not saying, you know, that they couldn't, but maybe it
6 would make it more comfortable and, you know, it just may,
7 incorporating the two, Option 1 with Option 2 and maybe
8 bumping it up that extra little time just gives me less
9 heartburn.

10 **CHAIRMAN CARTER:** Okay. Let me go to
11 Commissioner Klement. Then when we do get to that point,
12 and as I understand it, Commissioner Skop, would be from
13 Option 2, the revenue requirement agenda would be the dates
14 on Line 2 that's currently for the rate agenda; is that
15 right?

16 **COMMISSIONER EDGAR:** That would be the same dates
17 in Option 3?

18 **CHAIRMAN CARTER:** And the rate agenda for, would
19 be the rates agenda from Option 3; is that right? Am I
20 making sense?

21 **COMMISSIONER EDGAR:** That is Option 3.

22 **CHAIRMAN CARTER:** Okay.

23 **COMMISSIONER SKOP:** Option 3. Okay.

24 **CHAIRMAN CARTER:** Option 3? Okay. Let me --
25 let's -- Commissioner Klement, you're recognized.

1 **COMMISSIONER KLEMENT:** Yes. It's just a question
2 of maybe clarification. If I may ask the Executive
3 Director, have you heard from Commissioner-Elect Stevens
4 and gotten any idea of his status?

5 **DR. BANE:** I have spoken with him briefly week
6 before last, but I have not discussed this case with him or
7 these cases with him at all.

8 **COMMISSIONER KLEMENT:** So you don't know if he's
9 aware of any of this or, you know, any of this possibility?

10 **CHAIRMAN CARTER:** No, he would not have these
11 dates because they're just available today.

12 **COMMISSIONER KLEMENT:** Or if he is interested
13 in -- had been interested in coming here just to get
14 acquainted.

15 **DR. BANE:** I made the offer that staff would be
16 pleased to brief him on upcoming issues at his convenience.
17 As the Chairman said, we've offered to brief him on any
18 matters that he would like for us to do before he comes
19 onboard.

20 **COMMISSIONER KLEMENT:** Okay.

21 **COMMISSIONER ARGENZIANO:** Mr. Chair? Oh, sorry.

22 **COMMISSIONER KLEMENT:** Mr. Chairman, I don't have
23 anything else to add. Your eloquent summation of the
24 proposal is, speaks very well, and I think I said
25 everything that I wanted to say in the beginning. Thank

1 you.

2 **CHAIRMAN CARTER:** Thank you. Commissioner
3 Argenziano, then I'll come back to Commissioner Skop.

4 Commissioner Argenziano.

5 **COMMISSIONER ARGENZIANO:** And I'm sure that any,
6 any Commissioner getting ready to come, come aboard knows,
7 and if he's aware of what's going on, and we need to make
8 sure he is because we are making commitments for him, and
9 I'm sure that he would want to be --

10 **CHAIRMAN CARTER:** Welcome to the NBA.

11 **COMMISSIONER ARGENZIANO:** If he knows that he is
12 on the spot for a vote, I'm sure he'd want to be, but I
13 think we actually have to reach out to him and let him
14 know. And, and I don't know if -- I mean, these dates are
15 just dates that staff put together as options. We could
16 perhaps see if there's something in between Option 2 and 3
17 on the schedule that would make it a little, take it back a
18 little, not going all the way with Option 3, and still
19 allow staff to have enough time and not crunch them in
20 either. So we don't know what's -- I'm asking staff
21 perhaps there's something in between those two options that
22 would bring it closer to Option 2 maybe but allow a week or
23 so more so that a Commissioner, a new Commissioner would
24 have that opportunity.

25 **MR. DEVLIN:** While staff is looking at different

1 dates, another option to consider is basically splitting up
2 the companies, and that would give a little more room for
3 studying and catch-up. Perhaps have Progress go Option
4 2 dates and Power & Light Option 3 dates. Just something
5 for your consideration.

6 **COMMISSIONER ARGENZIANO:** That would, that would
7 be fine with me.

8 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

9 **COMMISSIONER SKOP:** Thank you, Mr. Chair. I know
10 we've been going quite a bit and maybe staff might want to
11 look at those dates, so if our court reporter might need a
12 break, maybe we could take --

13 **CHAIRMAN CARTER:** Linda, how are you doing?

14 **COMMISSIONER ARGENZIANO:** I could use one.

15 **COMMISSIONER SKOP:** Yeah, I could too. But I
16 just wanted to speak to that. I mean, something in between
17 or, I mean, I haven't looked at the dates other than the
18 ones that staff had proposed. And maybe there is some
19 flexibility. I'm happy to accommodate somewhere between
20 Option 2, Option 3 or doing something. But what's
21 important to me is just consistency; what we do for one we
22 do for both as soon as practical.

23 **CHAIRMAN CARTER:** Okay. Well, let's give the
24 court reporter a break and we'll come back -- I'm
25 looking -- you know, our clocks are not on the same time,

1 but that's not -- how about we come out at five -- we'll
2 come back at five of.

3 (Recess taken.)

4 **CHAIRMAN CARTER:** We are back on the record. And
5 when we last left a question was posed to staff about the
6 possibility of either looking at Option 2 or something in
7 between. I think, Commissioner Argenziano, that was a
8 question in terms of whether or not something --

9 Mr. Devlin, you had made a statement. You're
10 recognized, sir.

11 **MR. DEVLIN:** Thank you, Mr. Chairman.

12 We have two more options, and if I can just walk
13 through them.

14 **CHAIRMAN CARTER:** We need less, not more. Go
15 ahead.

16 **MR. DEVLIN:** I'm trying to find viable options.

17 **CHAIRMAN CARTER:** Okay.

18 **MR. DEVLIN:** And the first one I'll talk about
19 would be Progress Energy. It will be the revenue
20 requirements agenda, January 7th, and the rates agenda,
21 January 22nd. And then Florida Power and Light, the
22 revenue requirements agenda would be January 20th and the
23 rates agenda, February 4th.

24 **CHAIRMAN CARTER:** Give me those again for FPL.

25 **MR. DEVLIN:** FPL would be revenue requirements

1 January 20th, and rates February 4th.

2 **CHAIRMAN CARTER:** Now, is that one of the options
3 that you were talking about?

4 **MR. DEVLIN:** That is one of the options.

5 **CHAIRMAN CARTER:** One of the four?

6 **MR. DEVLIN:** No, one of two I'm going to present.

7 **CHAIRMAN CARTER:** One of the two.

8 **MR. DEVLIN:** Yes.

9 **CHAIRMAN CARTER:** So FPL, the first one was
10 January 20th, and the rates agenda was February -- what was
11 that?

12 **MR. DEVLIN:** Fourth.

13 **CHAIRMAN CARTER:** February the 4th. Thank you.

14 **MR. DEVLIN:** Using the same dates we were talking
15 about earlier this morning.

16 **CHAIRMAN CARTER:** Okay.

17 **MR. DEVLIN:** And then another approach would be
18 to use new dates that we've found.

19 **CHAIRMAN CARTER:** I beg your pardon?

20 **MR. DEVLIN:** These are new dates that we found
21 available. That would be January 11th for Progress,
22 revenue requirements; January 13th for Florida Power and
23 Light, revenue requirements. And since we have these dates
24 squished together, we do have some concern with the rate
25 recommendation, so we moved them out a little bit to

1 January 28th for Progress and January 29th for FPL. That
2 would be the rates agenda, agendas.

3 **CHAIRMAN CARTER:** Commissioner Skop, you're
4 recognized.

5 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

6 I like the option that was just mentioned. I
7 think that that's a good in between.

8 **CHAIRMAN CARTER:** So that would be Number 2 where
9 Progress would be -- the revenue would be February 2nd.

10 **COMMISSIONER SKOP:** No. The revised dates that
11 Mr. Devlin just mentioned, if I heard him correctly, would
12 be January 11th for the Progress revenue requirement
13 agenda, January 13th for the FPL revenue requirement
14 agenda, January 28th for the Progress rate agenda, and
15 January 29th for the FPL rate agenda.

16 **CHAIRMAN CARTER:** Is that right, Mr. Devlin?

17 **MR. DEVLIN:** That's correct.

18 **CHAIRMAN CARTER:** I hope somebody is writing this
19 down. I need a playbook here. So January 11th and
20 January 13th would be the revenue requirement agendas,
21 correct?

22 **COMMISSIONER SKOP:** Correct.

23 **CHAIRMAN CARTER:** And February 28th and
24 February 29th would be the --

25 **COMMISSIONER SKOP:** No, January 28th and 29th

1 would be the rate requirement agendas.

2 **CHAIRMAN CARTER:** Okay. So both would be in
3 January.

4 **COMMISSIONER SKOP:** Yes.

5 **CHAIRMAN CARTER:** One would be the 11th for
6 Progress and the 13th for FPL, and then the subsequent
7 would be the 28th for Progress and the 29th for FPL, is
8 that correct?

9 **COMMISSIONER SKOP:** Yes.

10 **CHAIRMAN CARTER:** Okay. Commissioner Edgar,
11 you're recognized.

12 **COMMISSIONER EDGAR:** Thank you.

13 Questions to staff. For that second alternative
14 that you just gave us that there seems to be some support
15 for, how does that meet the 90-day requirement is my first
16 question?

17 **MS. BENNETT:** It goes outside for both of them,
18 of the 90-day requirement.

19 **COMMISSIONER EDGAR:** Okay. And for Progress in
20 particular, realizing the language in the stipulation and
21 settlement, and that the second date then would be for the
22 rates agenda, January 28th and then whatever time to issue
23 an actual order, and then the 30-day requirement before a
24 change in rates goes into effect, talk to me about how
25 these dates would interact with Issue 4, please.

1 **MS. BENNETT:** I'm going to turn it over to Mr.
2 Devlin in a minute, but Progress Energy would have the
3 ability under 366.063 to enact rates subject to refund
4 beginning January 1. The requirements, the notice
5 requirements would require that Progress Energy not be able
6 to put its rates into effect until 30 days from our vote on
7 January 28th. Our vote. Your vote on January 28th. Did I
8 answer your question?

9 **COMMISSIONER EDGAR:** Is the 30 days notice
10 requirement from the vote or from the order? It's from the
11 vote? I'm seeing nods. From the vote. Okay. So how long
12 would the period be that they would have the legal ability
13 to put rates into effect that this Commission had not
14 approved?

15 **MS. BENNETT:** Two months.

16 **COMMISSIONER EDGAR:** Okay. Thank you.

17 **CHAIRMAN CARTER:** Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you, Mr. Chair. Just a
19 question to staff on that point. And I know that, you
20 know, that is -- the statutory right as a consequence of
21 the expiration of the settlement agreement. Are there -- I
22 mean, I think Mr. Moyle mentioned it, and I think I have
23 mentioned it previously, just based on, you know, my
24 knowledge of regulatory avenues to address situations, but
25 certainly subject to refund as an alternative if it were a

1 small period of time with a small amount, are there other
2 alternatives that might be available? I think one has been
3 mentioned is regulatory asset, but I just would like to
4 hear technical staff's perspective on that.

5 **MR. DEVLIN:** Yes, Commissioner Skop. Actually we
6 discussed that internally when we thought this might be a
7 possibility moving dates into January, and Commissioner
8 Edgar brought the point up earlier in our discussions, the
9 ability of the company to put in the full relief asked for,
10 which is close to \$500 million is quite a hit to the
11 consumer.

12 There is another possible option that perhaps it
13 would take acquiescence on Progress the way the statute --
14 where they have the ability, it says shall put in their
15 amounts subject to refund. But an option to that would be
16 a regulatory asset, as you and Mr. Moyle mentioned, I
17 believe. Once the Commission makes a determination --
18 we'll just talk about Option 2 right now -- on
19 January 11th, we will know the amount. And, quite frankly,
20 it could be an asset or a liability. It could be a rate
21 increase or perhaps a rate decrease. I mean, we have a
22 wide spectrum there.

23 But whatever that decision is, we could create a
24 regulatory asset or a regulatory liability on that date.
25 We could have an issue in the recommendation to address

1 exactly what you and Commissioner Edgar are talking about.
2 And then have a recovery mechanism, perhaps -- depending on
3 whether it's a liability or an asset, we could have a
4 recovery mechanism where that amount would be recovered
5 through a surcharge or a credit starting whenever,
6 March 1st throughout the end of the year. And I can better
7 articulate this, but there is an opportunity there, I
8 think, to do that as opposed to putting the full amount
9 subject to refund. That may require, though, and I may
10 need some legal help, waver from Progress of the statute.

11 **COMMISSIONER SKOP:** Thank you.

12 And, again, I know that there is a slight
13 difference between the settlement agreements that's causing
14 this additional discussion to the extent that, again, FPL
15 has the evergreen or the continuation provision where
16 Progress doesn't. So as of January 1st, Progress could,
17 subject to refund, implement its proposed rates. But I
18 think that the Commission as a whole has a way to deal with
19 that, but I also think that moving forward with the cases,
20 you know, should the dates be shifted into January, which I
21 think is a good thing, and I'm seeing some consensus on,
22 that we try and address deciding those cases on the merits
23 and moving forward from there.

24 **MR. DEVLIN:** And, Commissioner, and Mr. Chairman,
25 this principle that we are discussing right now, the

1 regulatory asset liability is very similar to what the
2 Commission faced with the Aqua Utilities case, and not to
3 get into particulars --

4 **COMMISSIONER SKOP:** We don't want to get into
5 that one.

6 **MR. DEVLIN:** But there is some precedent for it,
7 is what I'd like to say.

8 **CHAIRMAN CARTER:** Commissioner Klement, did you
9 have a comment?

10 Commissioner Edgar.

11 **COMMISSIONER EDGAR:** Thank you. I have a couple
12 of brief comments.

13 The first is, I'm pleased that we have had the
14 opportunity to have the discussion. And I know it has been
15 mentioned before, but I'm very pleased that both of the
16 companies and that most of the intervenors participated in
17 the discussion today, and also by filing the briefs, and
18 the legal citations. I found it very helpful, and it has
19 been a good process. So thank you for that.

20 I also am appreciative of the opportunity, as has
21 been said, to give deference to the Governor's request and
22 to have the options worked out, because I know in my
23 conversations with the Governor, not about this issue, but
24 other issues generally previously, one of his comments to
25 me has always been, well, of course, follow the law and try

1 to do what you can within your discretion within that. I
2 think it's important that we take note of the time lines
3 that are in the statutes and those requirements that are on
4 us. And I know that is what we are trying to do, so to
5 honor the requirements of the law, to give deference to the
6 request from the Governor.

7 I do have a very strong concern about the
8 potential for rates to go in effect that have not been
9 approved by this Commission. That just gives me great
10 pause. And so -- and I'm not sure that -- well, I am sure.
11 I do not completely understand what you are describing
12 right now about a potential regulatory asset or liability
13 for a short period of time. I just don't understand that
14 yet. I would like to have that fleshed out a little bit
15 more if that is something that we are potentially seriously
16 putting ourselves in the position to maybe do by virtue of
17 some of these dates that we are talking about.

18 So with that, Mr. Chairman, not to put anybody on
19 the spot, but I would like to hear, if we could briefly,
20 from, at a minimum, OPC and Progress as to some of this
21 discussion to try to understand that better.

22 **CHAIRMAN CARTER:** In the context of this schedule
23 being Progress on January 11th, and FPL on January 13th,
24 and Progress on January 28th and FPL on January 29th,
25 that's the context?

1 **COMMISSIONER EDGAR:** Yes.

2 **CHAIRMAN CARTER:** Okay. Who's on first? Mr.
3 Glenn, you're recognized.

4 **MR. GLENN:** Sure. Mr. Chairman, if I might ask
5 for a point of clarification from Mr. Devlin. What I'm not
6 clear on is the timing of the regulatory asset. The
7 concern that the company has that I have expressed is we
8 are under significant pressures with lower sales, lower
9 earned returns. And to the extent that there is a gap of
10 months where we are not being compensated anything, that is
11 particularly troubling to us from a financial perspective.
12 And I just wanted to figure out when that regulatory asset
13 would be, I guess, hung up on the books, and when we could
14 take credit for it. And I think it is something that we
15 would have to talk with our financial people.

16 **CHAIRMAN CARTER:** Mr. Devlin.

17 **MR. DEVLIN:** Again, it may be a regulatory
18 liability depending on what the ultimate decision is, but
19 --

20 **MR. GLENN:** I was trying to be optimistic.
21 (Laughter.)

22 **MR. DEVLIN:** Whatever the magic number is that
23 would be decided upon by the Commission on January 11th, it
24 will be defined as a regulatory asset or liability and
25 would not -- in my mind would not set on the books any

1 longer than 30 days after the rates agenda, which is
2 somewhere around the first of March.

3 **CHAIRMAN CARTER:** Mr. Glenn.

4 **MR. GLENN:** Again, I think I would have to talk
5 with my client on that issue.

6 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

8 And I think that, again, pursuant to statute they
9 are able to implement proposed rates subject to refund as
10 of January 1st. Again, the consequence of that would be
11 that the rates would go up perhaps initially only to be
12 reduced if there is a rate decrease or, you know, adjusted
13 depending upon what the Commission decides in January on
14 those specific cases.

15 I guess the regulatory asset, if I understand its
16 use correctly still captures any revenue that would be, you
17 know, occurring after January 1st, but it prevents that
18 rate adjustment that would happen in between the months, or
19 if Mr. Devlin could just briefly elaborate on that.

20 **MR. DEVLIN:** That is the way I would envision it,
21 Commissioner Skop. The regulatory asset would just be for
22 that period of time that they would have the ability to put
23 in rates versus what they could logistically under the
24 statute. It might be a short period, and then start to
25 recover it through a recovery mechanism, such as a

1 surcharge or a credit, depending on what the decision is,
2 starting March 1st through the end of the year.

3 **COMMISSIONER SKOP:** Okay. So that would smooth
4 out the rates as decided by the Commission.

5 **MR. DEVLIN:** I believe so.

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

7 **CHAIRMAN CARTER:** Thank you. Mr. Moyle and then
8 Mr. Rehwinkel. Or is it Mr. Rehwinkel and then Mr. Moyle?
9 Mr. Rehwinkel.

10 **MR. REHWINKEL:** Yes. Commissioners, Charles
11 Rehwinkel on behalf of Public Counsel's office. And Mr.
12 McGlothlin was making an argument for us in this policy
13 matter generically, but since the Progress case was my
14 case, I would like to address the concern about the
15 creation of the regulatory asset.

16 I would have to concede from a legal standpoint
17 that I concur with the remarks that Mr. Glenn made earlier
18 about the kind of a lack of option that the company has at
19 the expiration of the eighth month is that the rates shall
20 go into effect. And while we would be open to
21 consideration of a mechanism that would balance what the
22 Governor has requested and what the statute requires, one
23 of the concerns that we would have is the precedential
24 nature of departing from decades of precedent with respect
25 to how this file and suspend law works.

1 We do not necessarily concur that you can create
2 a regulatory asset, because I think that requires invoking
3 the provisions of FAS 71, which would require the
4 Commission to make a determination about the certainty of
5 recovery of that asset for it to be considered within GAAP.
6 Doing so eleven days after what would effectively be their
7 opportunity to implement rates upon expiration of the eight
8 months, which would be expiration of this stipulation
9 creates uncertainty in our opinion. We think the Governor
10 has made a request that requires the Commission to balance
11 putting rates into effect under the file and suspend law
12 and having a newly constituted Commission make the
13 decisions, and we respect that. We think a judgment has
14 been made in that regard.

15 We are not, as we sit here today, willing to
16 concede that a regulatory asset can be created which would
17 be a mechanism essentially to allow the company to reach
18 back to recover rates -- revenues that they would
19 effectively have forgone by not putting them in when they
20 were required to. So that's a conundrum that we are
21 presented with, and I'm not familiar with the Aqua
22 situation and what happened there and would need to
23 understand that more in order to be able to give our
24 office's consent to the precedential nature of this case.

25 This is a very difficult case and a very

1 difficult situation, and I am sympathetic to the concerns
2 that Progress has raised in this regard. So we have
3 concerns about it, but certainly are not closed to it. I
4 think Progress needs to understand more about the
5 mechanisms and how that would affect them, and we would
6 want to be concerned about the precedent, not necessarily
7 for this case and for what the Commission is trying to do
8 that balances the interest of the company and our clients,
9 but how it would affect future cases. I don't know if
10 that's much help for you, but we are kind of in limbo on
11 that.

12 **CHAIRMAN CARTER:** Commissioner Skop, and then I
13 will come back to you, Commissioner Edgar.

14 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

15 To Mr. Rehwinkel's point, again, I certainly
16 don't want to complicate the issue. I think the statute is
17 very clear with respect to file and suspend where they can
18 implement rates subject to refund as of January 1st, which
19 is the expiration of their existing settlement agreement.

20 I understand and respect Mr. Glenn's position. I
21 think he is advocating on behalf of his company for the
22 need to begin to recover rates prior to the Commission
23 reaching its final decision. The appropriate true-ups will
24 be made. So, again, I'm comfortable with the file and
25 suspend without trying to delve into whether a regulatory

1 asset may or may not be applicable. If that would simplify
2 the discussion, we can just deal with that. Again, what
3 I'm trying to do is look at ways that, you know, each of
4 the respective parties' concerns could be addressed in a
5 manner which is the most straightforward as possible.
6 Unfortunately, I think that that may complicate things.

7 So if it would make it easier, and my colleagues
8 agree, we can just deal with the file and suspend, which
9 will be what they are entitled to per statute. Again, the
10 shall seems to be very strong language. You know, I wish
11 it wasn't shall, but the law is what it is. I just wanted
12 to bring that clarification, and that might simplify the
13 discussion that seems to be getting complicated.

14 **CHAIRMAN CARTER:** Thank you, Commissioner.

15 Commissioner Edgar you're recognized.

16 **COMMISSIONER EDGAR:** Well, at the risk of being
17 repetitious and redundant --

18 **CHAIRMAN CARTER:** We are way beyond that.

19 **COMMISSIONER EDGAR:** Thank you. As a whole, you
20 meant, right?

21 **CHAIRMAN CARTER:** I mean as a whole, that's
22 correct.

23 **COMMISSIONER EDGAR:** During my time at the
24 Commission, I think that every time a Commissioner or a
25 party has requested additional time or an extension of time

1 that was not in conflict with the statutory time line, or
2 did not put significant burden on another party, that it
3 has always been granted. And I would certainly expect and
4 would hope that that is a practice that continues.

5 So, again, to move the dates is something that I
6 am -- as I said earlier, I'm comfortable in doing as long
7 as we can meet the statutory requirements that I believe we
8 are bound by. But as Commissioner Skop just said, not to
9 overly smudge or gray, but to try to be clear and simplify,
10 what I would want to understand better than I do at this
11 very moment is if we were to, for Progress specifically,
12 move the dates to January 11th and January 28th, what would
13 that decision -- let me reword. How would that decision
14 impact rates and at what point in time for the Progress
15 ratepayers?

16 I'm just not clear as to what the actual impact
17 on the body of ratepayers and/or an individual ratepayer
18 will be, and I would like to understand that.

19 **CHAIRMAN CARTER:** Okay. Who would you want --

20 **COMMISSIONER EDGAR:** Whoever can answer it.

21 **CHAIRMAN CARTER:** Mr. Moyle.

22 **MR. MOYLE:** I wanted to be heard on the other
23 point.

24 **CHAIRMAN CARTER:** Let's do that on the other
25 point and then we will come back, Commissioner Edgar, if

1 you can remember your question.

2 **MR. MOYLE:** I mean, it seems like the
3 conversation has led down the road where it's a matter of
4 how best to move forward with a decision that the rate
5 cases will be decided in January. And the FPL one is not
6 warranting a lot of discussion, I think, because of the
7 evergreen provision. The Progress Energy one is the one
8 that is sort of a bit of a head scratcher.

9 Mr. Mendiola, who was here with us who
10 represented the South Florida Hospital Association
11 practices in Texas, and he was in the FPL case, and when it
12 became clear that the FPL case was not going to finish on
13 time and we had additional days and additional days, we
14 kind of said, well, how do they do this in Texas? And
15 maybe not how they do it in Texas is the best thing, but I
16 thought it was interesting just to kind of get a sense of
17 what other states do.

18 And he said that it often happens in Texas that
19 the statutory deadlines are not met and that the company is
20 free to waive those deadlines. So I guess to my way of
21 thinking, the ability of Progress to put the rates into
22 effect as filed, that's a decision that they can make and
23 exercise their statutory right or they can say, you know
24 what, we are going to hold off. And I think given the
25 unusual circumstances of why this Commission is deferring

1 action, a request upon the Governor that it -- you know,
2 Commissioner Edgar's concern about whether the rates go
3 into effect, I mean, that assumes that, number one, they
4 will take advantage of that statute and file it, which I
5 think is probably a debatable point.

6 **COMMISSIONER EDGAR:** Mr. Moyle, I did not
7 understand that. I'm trying to get an answer to that.
8 Which I had asked the question, and your comments are
9 deferring my question being answered.

10 **MR. MOYLE:** Okay. I was unclear. I mean, I
11 think if they tell you today, you know what, Commissioner,
12 we are going to waive our right to put those rates into
13 effect on January 1, then it is a simple issue. And it's
14 probably not a fair question to ask them and put them on
15 the spot because they probably need to consider it.

16 **COMMISSIONER EDGAR:** Is it fair for me to be
17 asked to vote and not know what the impact on rates will
18 be?

19 **MR. MOYLE:** Well, I think we have record evidence
20 as to what those are. If they put in their full ask, you
21 know that is a matter of just running the numbers, and you
22 will have that subject to refund. But I would just
23 represent from the consumers' standpoint, while we would
24 prefer that they waive the ability to put those in, if they
25 want to put them in, you know, then that's okay. The

1 statute gives them the right to do that, and it's subject
2 to refund. So if your ultimate decision is a rate
3 decrease, then we will get the money back subject to refund
4 provisions. So I think it is much ado about not much, in
5 my judgment, because I think ultimately there will be a
6 true-up. Because if they put the rates in subject to
7 refund, you know, I'm just not sure where the --

8 **COMMISSIONER EDGAR:** Mr. Moyle, I'm sorry that
9 you feel that my questions are much ado about nothing, but
10 I still would like an answer to the question, which is what
11 will the impact on rates be if, indeed, this Commission
12 votes for these dates.

13 **MR. GLENN:** Mr. Chairman.

14 **CHAIRMAN CARTER:** Mr. Glenn, you're recognized
15 for Commissioner Edgar's question.

16 **MR. GLENN:** Commissioner Edgar, I think the
17 answer to your question is about -- and I may have this
18 wrong -- but I think it is about \$8 in addition per 1,000
19 kWh for a residential customer. I think that's it. It may
20 be retail versus residential, but I think that would be an
21 increment of about \$8 on the people's bill if rates -- if
22 we implemented rates subject to refund with interest
23 effective with the first billing cycle of January 2010.

24 **COMMISSIONER EDGAR:** And that would be for a
25 period of three months, maybe, is what we are looking at?

1 **MR. GLENN:** My best guess on this is probably
2 three months given that if you look at the dates, you had a
3 revenue requirement vote on January 11th, and then your
4 rate vote on the 28th. Typically, it takes us about a week
5 to develop our rate tariffs, to revise them. It's a fairly
6 complicated process. We put that in, and then we have to
7 give 30 days notice. If that kicks us into March or
8 mid-March, you're talking about three months of revenues
9 that we would not be receiving if we did not implement the
10 new rates subject to refund.

11 So I think that's generally it. That is if you
12 keep this schedule. If Commissioner-elect Stevens comes in
13 and says I need more time, you know, I need until February
14 or March, then you are kicking it out to May, and that's --
15 you know, both of those dates are concerns to us. And
16 that's why we had hoped to try to keep with the current
17 schedule of November 19th so we would avoid even this
18 issue. If the Commission were to grant less than our full
19 ask, obviously those rates would go into effect on the
20 first billing cycle of January 2010, so we wouldn't have
21 this issue.

22 **COMMISSIONER EDGAR:** So when -- and I try not to
23 ever put anybody on the spot --

24 **MR. GLENN:** If I'm anticipating your question,
25 when would we need to decide on when to put rates into

1 effect --

2 **COMMISSIONER EDGAR:** Yes. That was the question,
3 yes.

4 **MR. GLENN:** In order to get bills with the
5 appropriate notice to our customers on, say, December 1,
6 it's going to be in the November 15 time frame when we
7 actually have to go in the printing and, you know, bill
8 stuffers, and all of that. So we are going to have to make
9 a decision pretty quickly.

10 And if the extent is, you know, to implementing
11 rates in March or the end of March, I think we'll be forced
12 to implement those new rates. But, again, we still have
13 some time. I think we would have to look at that
14 internally. But a drop-dead date on when we are really
15 going to have to make a decision is going to be in the
16 mid-November time frame, maybe a little bit later, because
17 we have got to get those bill inserts to print and in so
18 people would have notice.

19 Is that responsive?

20 **COMMISSIONER EDGAR:** Yes. Thank you.

21 **CHAIRMAN CARTER:** Thank you. Commissioner Skop,
22 you're recognized.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

24 To Mr. Glenn's point, thank you for the
25 clarification. I had looked at, just based on the proposed

1 dates that the Commission had discussed, which you added
2 some clarity to, that it might be as limited as a two-month
3 period that rates, final rates would go into effect in
4 March, but due to the lead time in terms of preparing the
5 billing inserts, I can see how that might slip out the
6 additional month.

7 I guess, you know, to Mr. Moyle's point, and it's
8 the same point I raised earlier, certainly, you know,
9 Progress has legal rights pursuant to statute to implement
10 rates subject to refund. The question, ultimate question
11 will be, and the one that affects consumers is whether they
12 will choose to do that. But what was important to me in
13 terms of moving forward with this, the sooner the
14 Commission could decide the case on the merits and get the
15 final results issued via an order, the more chance and less
16 hard I think it would be to make that decision.

17 As Mr. Glenn appropriately alluded to, if this
18 continues to linger, obviously they would be forced to do
19 it to protect their financial interest and their legal
20 rights. If the case itself is decided in January and an
21 order is promulgated by the Commission in early February,
22 there's a chance that might be avoided and that just the
23 final rates, whatever they may be, whether they be a
24 decrease or an increase, those would go into effect
25 beginning March 1st. So, again, time is somewhat of the

1 essence in terms of, I believe, making a decision on the
2 merits in the new year when that comes, and I think that
3 the January dates that are proposed by staff, the
4 January 11th and the 13th, and then the 28th and 29th, I
5 think operate to further the Commission being able to not
6 only make a decision, but to do so by the statutory
7 deadlines.

8 So I'm comfortable with those dates and recognize
9 the fact that the ramification of the difference in the two
10 settlements -- settlement agreements allows Progress the
11 legal right to implement rates subject to refund as of
12 January 1st, should they choose to do so.

13 **CHAIRMAN CARTER:** Thank you.

14 Commissioners, I was the one that was dogmatic on
15 Option 2, but if we have a consensus, I certainly can be
16 persuaded to go with what staff had proposed, this
17 January 11 for Progress, January 13th for FPL, and then
18 January 28th for Progress and January 29th for FPL. I
19 wanted to kind of -- I'm trying to stay within the ambit of
20 where I'm coming from in the context of the dates, but I
21 believe that if that is where the -- it's the will of the
22 Commission to go there, I can be persuaded to go there.

23 I did feel, and I still do feel comfortable with
24 Option 2, but I believe that if we have got consensus and
25 we have looked at those, and the Commissioners have had

1 their questions answered and their concerns answered, this
2 will give our incoming Commissioner an additional week, and
3 also give the Commissioners an opportunity to move the
4 calendar and move the schedule in a manner that will still
5 allow to -- and I was going back to what I originally said,
6 is that March 18th and that March 19th date, we can still
7 do that and then meet the terms and conditions of that.
8 And I'm comfortable that still gives me comfort with the
9 due process argument and the fairness, fundamental fairness
10 perspective of where I was coming from.

11 So I just wanted -- I'm going to stay on the
12 dates myself. I know there's other things pertaining and
13 all like that, but I want to kind of stay on the dates
14 here, because I think once we come down on where we are
15 going with the dates, we can kind of move everything else
16 from there, because everything is going to flow from that
17 anyway. So if we can do that, I think that will get us
18 where we really need be on that.

19 And I appreciate, you know, the dialogue and
20 discussion we have had. I appreciate staff going back, you
21 know, sharpening their pencils and looking at the
22 calendars, all of our calendars. Well, all of the
23 calendars coming into the next year. I appreciate the
24 questions that you had, Commissioner Edgar and Commissioner
25 Skop, in terms of how this impacts on Progress and where

1 they will be. And they still will be afforded their due
2 process rights and we won't be impinging upon those.

3 So basically, Commissioners, I'm fairly
4 comfortable in us moving forward. And when I say us moving
5 forward, I'm comfortable in us moving forward with these
6 dates that were presented to us, alternative dates from
7 staff, and I'm comfortable with us moving forward with the
8 case in toto, for that matter.

9 Commissioner Skop, you're recognized.

10 **COMMISSIONER SKOP:** Thank you, Mr. Chair. And I
11 think that those dates, as proposed by staff, I also concur
12 with; and I also think that that addresses the concern
13 mentioned by Commissioner Argenziano to have something in
14 between Option 2 and Option 3, and I think that that
15 fulfills that requirement.

16 **CHAIRMAN CARTER:** Thank you. Commissioners, I
17 said that I'm comfortable with moving forward with the case
18 in toto. So, I mean, let's kind of -- if there are any
19 further concerns, or discussions, or questions and all like
20 that, we can get those answered and then move forward.

21 I believe, Staff, now, do we need to go
22 issue-by-issue, is that your recommendation?

23 **MS. BENNETT:** I think for Issues 1 and 3 you can
24 vote together, and then 2 and 4 you can approve staff's
25 recommendation if that's your desire. But 1 and 3 you're

1 disagreeing with staff's recommendation.

2 **CHAIRMAN CARTER:** Say again, 1 and 3 --

3 **MS. BENNETT:** 1 and 3 you are disagreeing with
4 staff's recommendation.

5 **CHAIRMAN CARTER:** Okay. Commissioners, before I
6 ask them to tee those issues up, 1 and 3, let me just make
7 sure that we are all on the same page. Are there any
8 further discussions, or questions, or any concerns before
9 we do that?

10 Okay. Staff, would you kind of tee up Issues 1
11 and 3, please. Hang on a second. Commissioner Skop,
12 you're recognized.

13 **COMMISSIONER SKOP:** Just for clarity, can we just
14 take up the issues individually? I know that 1 and 3 could
15 be kind of considered, but I think it probably would be
16 easier if we just went 1 through 4.

17 **CHAIRMAN CARTER:** Okay. We'll do that. Let's do
18 that, then. Again, as I said at the initial,
19 Commissioners, I viewed Issue 1 as being a should versus a
20 can, and none less than Mr. Brew actually agreed with me on
21 that. But I do believe it should be a should question,
22 because it's a question in terms of how we determine the
23 perspective in terms of those dates and the decisions and
24 all like that. So, staff, would you kind of tee us up on
25 Issue 1, please.

1 **MS. BENNETT:** Yes, Mr. Chairman.

2 Changing the word can to should, should the
3 Commission postpone its final decision in the Florida Power
4 and Light Company and Progress Energy Florida, Inc.'s
5 petition for base rate increase; and if so, how?

6 And staff's recommendation was no. My
7 understanding is the Commission is going to disagree with
8 staff and give us different dates.

9 **COMMISSIONER EDGAR:** Mr. Chairman, if it would --

10 **CHAIRMAN CARTER:** Commissioner Edgar, you're
11 recognized.

12 **COMMISSIONER EDGAR:** Thank you.

13 If it would be helpful, because they do all
14 really work together, I can make a motion that I think
15 embodies what I have heard the will of the body to be for
16 Issues 1, 2, 3, and 5, and then take up Issue 4 separately.

17 **CHAIRMAN CARTER:** Give it a shot. Give it a shot
18 and we will come back if there are any questions or
19 concerns.

20 **COMMISSIONER EDGAR:** And if this isn't -- but I
21 just think it really might be clearer to do at least those
22 four of the five. So for Issue 1, my motion is that on
23 Issue 1 we deny the staff recommendation, and in the
24 alternative adopt dates of January 11th for the revenue
25 requirement agenda and January 28th for Progress, of

1 January 13th for the revenue requirement agenda and
2 January 29th for the rates agenda. That would basically
3 subsume Issue 3, meaning no additional action on Issue 3.

4 Issue 2, the motion would be to recognize that
5 for FPL that the stipulation controls, and that FPL may not
6 begin charging new rates subject to refund as of
7 January 1st, 2010, or beyond until this Commission takes
8 further action.

9 And for Issue 5, which would be to close the
10 docket, no.

11 **CHAIRMAN CARTER:** Commissioners, Commissioner
12 Edgar has given a shot at proposing a motion. Before I ask
13 for a second, is there any further discussion?

14 Commissioner Skop, you're recognized.

15 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

16 Just a point of clarification to the proposed
17 motion as it pertains to Issue 1. Is it correct to assume
18 that embodied within the motion that the OPC request would
19 not be included to the extent that it would reopen the
20 docket, and that the staff recommendation would have to be
21 delayed until such time as those other, I guess, Point D
22 that OPC made. But I am just trying to get some
23 understanding as to -- with respect to the arguments that
24 OPC made that I really don't agree with. I mean, my own
25 personal view is that the record should remain closed and

1 that staff should issue the recommendations based on the
2 record evidence on the currently scheduled dates. So, so
3 long as the motion embodies that, I am --

4 **COMMISSIONER EDGAR:** I think the answer to your
5 question is yes. In other words, to -- I think that there
6 are too -- my own opinion is that there are too many
7 potential problems with reopening the record to the point
8 where it would perhaps avoid any positives or negate any
9 positives that could be created by that. So, I'm
10 specifically not addressing the request on those points.

11 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

12 And absent any other discussion, I'm sure there
13 will be some, I would be willing to second the motion.

14 **CHAIRMAN CARTER:** Okay. Commissioners, we are in
15 discussion.

16 Commissioner Klement, any comment on the motion
17 as proposed?

18 Commissioners, anything further? We have a
19 motion that is proposed.

20 And, Commissioner Edgar, I'm not going to try to
21 restate it, I'm going to ask you if you can give it another
22 stab.

23 **COMMISSIONER EDGAR:** Sure.

24 **CHAIRMAN CARTER:** With the understanding that we
25 agree with Commissioner Skop, because I don't think we need

1 to go down this road and reopen the docket. I'm not in
2 favor of that.

3 You're recognized.

4 **COMMISSIONER EDGAR:** Okay. Then hopefully
5 succinctly for Issue 1, to deny the staff recommendation.
6 And, in the alternative, adopt the new dates as we have
7 discussed, January 11th and then 28th for Progress,
8 January 13th and then 29th for FPL. That subsumes Issue 3,
9 so it takes care of that issue, as well.

10 For Issue 2, that we recognize that the
11 stipulation language controls, and determine that FPL may
12 not begin charging new rates subject to refund as of
13 January 1st, 2010, or beyond until this Commission takes
14 final action on the -- takes action on the docket that is
15 before us.

16 And that Issue 5, which is close the docket, the
17 answer is no. And that takes care of everything except
18 Issue 4.

19 **COMMISSIONER SKOP:** All right. I would second.

20 **CHAIRMAN CARTER:** Okay. Commissioners, now we
21 are in the context of discussing the motion.

22 Commissioners, before we go further, are there
23 any questions whatsoever on the nature of the motion or
24 what it propends to do. Or proposes to do. I guess I
25 should use the word proposes to do. And, Issue 5 would not

1 be to be close the docket.

2 Are there any further questions or any further
3 concerns? Okay. Hearing none, there is a motion and a
4 second. All in favor, let it be known by the sign of aye.

5 (Simultaneous vote.)

6 **CHAIRMAN CARTER:** All those opposed?

7 Show it done.

8 Now, we did not deal with Issue 4. Is there a
9 reason for us -- do we need to do it?

10 Commissioner Edgar, you're recognized.

11 **COMMISSIONER EDGAR:** Well, I was just going to
12 say that yes, I do think we need to make a decision on
13 Issue 4. It's the same thing as volunteering to make the
14 --

15 **CHAIRMAN CARTER:** I was just trying to see if you
16 were paying attention.

17 **COMMISSIONER EDGAR:** I'm trying, Mr. Chairman.
18 I'm trying. Let me look at it real quickly.

19 **CHAIRMAN CARTER:** Yes, take a minute. Just take
20 a minute. If you want to, let me have staff tee it up and
21 then we can do that. Do you want to do that?

22 **COMMISSIONER EDGAR:** I've got it.

23 **CHAIRMAN CARTER:** You've got it? Okay.

24 **COMMISSIONER EDGAR:** As I have said, again, at
25 the risk of, again, being repetitious and redundant, this

1 issue gives me great concern. I have a strong concern,
2 speaking just for myself, about a utility putting rates
3 into effect that this Commission has not approved and/or
4 because of inaction by this body. I also have great
5 concern about the potential -- and I do say potential for
6 rates to go into effect for even a short period of time
7 that potentially could be more than what this Commission
8 would ultimately approve, recognizing that the subject to
9 refund is built in there to give protection to the
10 ratepayers and to give protection to the utility.

11 With that said, Mr. Chairman, I also recognize,
12 and Commissioners, that we are in somewhat of a unique
13 situation, and we are as always trying to balance competing
14 interests, maybe competing legal requirements. And I also
15 recognize that Progress is in, you know, a financial
16 situation that brought them to file the rate case as it is.
17 So with all of that, I will say as I hope is evident, that
18 I have a great deal of discomfort with this issue. But in
19 lieu of a perfect answer, which I have not yet been able to
20 come up with, I would pose this: A motion for Issue 4 that
21 recognizes Progress' ability under the statute to begin
22 charging rates subject to refund on January 1st, but with
23 our both request and direction as a Commission that they do
24 everything that they can to minimize any potential impact
25 on ratepayers in the short-term.

1 **CHAIRMAN CARTER:** Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

3 I'm willing to second that motion. Again, I
4 think, as has been discussed, Progress has a legal right
5 provided for under statute that is adequately protected by
6 their ability to implement the proposed rates subject to
7 refund beginning January 1st, 2010, should they choose to
8 do so. I know the statute says shall, but ultimately it's
9 the company's decision.

10 I'm comfortable that moving forward with the
11 decision in the case in a timely manner beginning in the
12 new year will cause them to evaluate the need to implement
13 rates as opposed to waiting until the final order, the
14 decision of the Commission is implemented. So I think
15 Commissioner Edgar's motion embodies that philosophy. And,
16 again, I know the company is in a difficult position, but
17 also, too, there are benefits to the consumers that will
18 result as a result of not implementing rates should they
19 choose not to do so. So I would second the motion.

20 **CHAIRMAN CARTER:** Commissioner Argenziano, you're
21 recognized.

22 **COMMISSIONER ARGENZIANO:** I agree, also. And
23 just with respect to the companies, the company could -- as
24 we say, has the ability to either go with what they can ask
25 totally, you know, or they can moderate somewhere in

1 between to help themselves with what they need and knowing
2 that they could either be subject to refund or -- what am I
3 looking for, it can go either way at the end when we
4 finally decide what to do. So, hopefully that helps the
5 company to some degree to have some kind of certainty where
6 they know they could go, rather than just say they are
7 going to go full blown. We don't know that that is what
8 they are going to do, so they it could go any way at that
9 point.

10 **COMMISSIONER KLEMENT:** Mr. Chairman.

11 **CHAIRMAN CARTER:** Commissioner Klement.

12 **COMMISSIONER KLEMENT:** May I ask a question?

13 I share Commissioner Edgar's concerns about that.
14 Staff, has this been done before? Has a utility gone ahead
15 and put a rate into effect that had not been approved on
16 the contingency that it would refund if not approved?

17 **MS. BENNETT:** Yes, it has been done before.

18 **COMMISSIONER KLEMENT:** Can you tell me by whom
19 and how long ago? About? Any recent years, or ancient
20 history?

21 **CHAIRMAN CARTER:** Let's get one of the
22 old-timers.

23 **MS. BENNETT:** I'm hearing discussion --

24 **COMMISSIONER KLEMENT:** I'm sorry?

25 **CHAIRMAN CARTER:** Mr. Devlin. Hang on a second.

1 Commissioner Skop and then --

2 **COMMISSIONER SKOP:** Thank you, Mr. Chair. And I
3 will look to staff to clarify this, but I think that is
4 done typically often in water cases where they file and
5 suspend to implement proposed rates pending their rate case
6 or interim rates. Is that correct?

7 **MR. DEVLIN:** Well, interim rates for sure is
8 normal, Commissioner, that within 60 days their interim
9 rates are placed subject to refund until the case is fully
10 completed. But there have been other cases, Mr. Willis
11 tells me, more analogous to this situation where at the end
12 of the case and the rates went in subject to refund because
13 of the eight-month clock. And I guess Aloha was the last
14 are --

15 **MR. WILLIS:** About 2000.

16 **MR. DEVLIN:** That was a long time ago. About
17 2000 there was a water case that was similar to this, I
18 have been informed.

19 **COMMISSIONER KLEMENT:** So it is not precedent
20 setting, Mr. Chairman, right?

21 **COMMISSIONER EDGAR:** What about for electric?

22 **MR. DEVLIN:** I don't believe so, but that would
23 be subject to check. I can't recall.

24 **CHAIRMAN CARTER:** Commissioner Klement, I'll come
25 back to you. Commissioner Skop, I will come back to your

1 question in a second. We're trying to find out if there
2 has been any electric cases. I think the problem is that
3 the statute says shall. It gives the company the
4 alternative to do that, and if they -- they can waive it if
5 they wish to do so, but the statute is pretty much direct.

6 Commissioner Skop.

7 **COMMISSIONER SKOP:** Mr. Chair, just to
8 Commissioner Edgar's point about the electric, and to
9 staff. Did we do that with FPUC at all? Somewhere I
10 remember seeing something. But, again, I would have to tap
11 the institutional knowledge of our staff.

12 **MR. DEVLIN:** You might be referring, Commissioner
13 Skop, to the protest of the PAA order, and at that juncture
14 it becomes subject to refund until the case is litigated.
15 That might be what you are thinking about.

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

17 **CHAIRMAN CARTER:** So I think the short answer to
18 Commissioner Klement's question is in the context of
19 electric is that because the statute is a directive that
20 says shall, we have not done that other than by operation
21 of the statute. Is that correct?

22 **MR. DEVLIN:** I think it is correct in this
23 situation where you have the eight-month long. I don't
24 think we have ever had this happen after. We have had
25 interim cases, but that's different.

1 **COMMISSIONER EDGAR:** In other words, we have
2 always met the time clock prior to this.

3 **MR. DEVLIN:** That's my understanding. Somebody
4 can poke me if I'm wrong.

5 **CHAIRMAN CARTER:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Just for clarification,
7 go back to the 12-month that we clearly have an ability
8 to -- please go back over that again.

9 **MS. BENNETT:** The 12-month time clock?

10 **COMMISSIONER ARGENZIANO:** Uh-huh.

11 **MS. BENNETT:** The 12-months would be March 18th
12 for Florida Power and Light, and March 20th for Progress
13 Energy Florida. March 20th is a Saturday, so we would back
14 it up one day to Friday, March 19th. That's the drop dead
15 date of 12 months.

16 **CHAIRMAN CARTER:** The differentiation is the
17 determination of the settlement agreement. Progress'
18 settlement ends at the last pay schedule in -- last billing
19 cycle. Is that the right word, Mr. Glenn?

20 **MR. GLENN:** That is correct, Chairman.

21 **CHAIRMAN CARTER:** The last billing cycle in
22 December.

23 **COMMISSIONER ARGENZIANO:** The final decisions, I
24 mean.

25 **MS. BENNETT:** Final decisions.

1 **CHAIRMAN CARTER:** Oh, final decision. Okay.

2 **COMMISSIONER ARGENZIANO:** Is 12 months.

3 **MS. BENNETT:** Is 12 months from the schedules
4 filed. So for Progress it would be March 19th, for FPL
5 March 18th.

6 **CHAIRMAN CARTER:** Sorry, Commissioner. I
7 misunderstood your question.

8 **MR. GLENN:** Mr. Chairman, if I may clarify one
9 point.

10 **CHAIRMAN CARTER:** Mr. Glenn.

11 **MR. GLENN:** I don't think it's a final decision.
12 I think it's a final order. So you have got to issue your
13 order, so your decision would come before that.

14 **CHAIRMAN CARTER:** Okay. I think, Ms. Bradley, it
15 seemed like forever ago that you mentioned that. What day
16 is it? Ms. Bradley mentioned that this morning as we
17 started down this -- again, Commissioners, we are in the
18 discussion phase, because there is a proposed motion.
19 Before I ask for a second, I want to make sure that we are
20 all on the same page, so we understand exactly what the
21 impact of this will do.

22 Commissioner Klement, any further questions?

23 **COMMISSIONER KLEMENT:** No.

24 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

1 If there are no further questions, I would second
2 Commissioner Edgar's motion.

3 **CHAIRMAN CARTER:** Okay. Commissioners, it has
4 been moved and properly seconded.

5 Are there any further questions, concerns? Any
6 discussion? Any debate?

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

9 (Simultaneous vote.)

10 **CHAIRMAN CARTER:** All those opposed, like sign.
11 Show it done.

12 Thank you, staff. Thank you, Commissioners.

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STATE OF FLORIDA)

CERTIFICATE OF REPORTERS

COUNTY OF LEON)

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 10th DAY OF NOVEMBER, 2009.

Jane Faurot / JB
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Parties/Staff Handout
 Internal Affairs/Agenda
 on 10/12/09
 Item No. 2
 080677E1, 090130-E1, 090079-E1, 090144-E1
 090145-E1

Optional dates for FPL and PEF Agendas

	Florida Power & Light	Progress Energy Florida
Option 1:		
Revenue Requirement Agenda	No change	12/02/09
Rates Agenda	No change	12/15/09
Option 2:		
Revenue Requirement Agenda	1/07/10	1/04/10
Rates Agenda	1/22/10	1/20/10
Option 3:		
Revenue Requirement Agenda	1/22/10	1/20/10
Rates Agenda	2/04/10	2/02/10