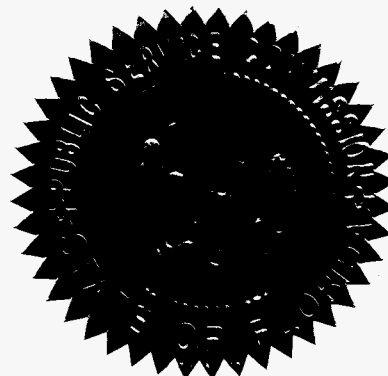


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110009-EI

NUCLEAR COST RECOVERY CLAUSE.  
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PROCEEDINGS: ORAL ARGUMENT

COMMISSIONER  
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ  
PREHEARING OFFICER

DATE: Tuesday, May 10, 2011

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

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

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## 1 APPEARANCES:

2 MITCHELL ROSS, ESQUIRE, and JESSICA CANO,  
3 ESQUIRE, Florida Power & Light Company, 700 Universe  
4 Boulevard, Juno Beach, Florida 33408-0420, appearing on  
5 behalf of Florida Power & Light Company.

6 MATTHEW J. FEIL, ESQUIRE, Gunster, Yoakley &  
7 Stewart, P.A., 215 South Monroe Street, Suite 618,  
8 Tallahassee, Florida 32301, appearing on behalf of Rajiv  
9 Kundalkar.

10 JON C. MOYLE, JR., ESQUIRE, Keefe, Anchors,  
11 Gordon & Moyle Law Firm, The Perkins House, 118 North  
12 Gadsden Street, Tallahassee, Florida 32301, appearing on  
13 behalf of the Florida Industrial Power Users Group.

14 JOSEPH A. MCGLOTHLIN, ESQUIRE, Office of Public  
15 Counsel, c/o The Florida Legislature, 111 West Madison  
16 Street, Room 812, Tallahassee, FL 32399-1400, appearing  
17 on behalf of the Citizens of the State of Florida.

18 KEINO YOUNG, ESQUIRE, FPSC General Counsel's  
19 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
20 32399-0850, appearing on behalf of the Florida Public  
21 Service Commission Staff.

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1 APPEARANCES (Continued):

2 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, and  
3 CURT KISER, GENERAL COUNSEL, Florida Public Service  
4 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
5 Florida 32399-0850, Advisors to the Florida Public Service  
6 Commission.

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

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2           **COMMISSIONER BRISÉ:** Good morning, everyone.  
3 Thanks for being here. Today is May 10th, 2011. It is  
4 currently 9:30, and we are calling this status  
5 conference to order. I guess I've got to hit the gavel,  
6 so we'll do that. At this time we will take -- we'll  
7 ask Staff to read the notice.

8           **MR. YOUNG:** Good morning, Commissioner. By  
9 notice issued 2000 -- by notice issued May 3rd, 2011,  
10 this time and place has been set for oral argument in  
11 the motion to quash, the motion to quash deposition  
12 subpoena and notice of deposition by, for Mr. Rajiv  
13 Kundalkar in Docket Number 110009-EI, In Re: Nuclear  
14 Cost Recovery Clause. The purpose of the oral argument  
15 is set out in the notice.

16           **COMMISSIONER BRISÉ:** Thank you. At this time  
17 we will take appearances, and we will start left to  
18 right.

19           **MR. ROSS:** Good morning, Commissioner.  
20 Mitchell Ross and Jessica Cano for Florida Power & Light  
21 Company.

22           **MR. FEIL:** Matthew Feil with the Gunster,  
23 Yoakley, Stewart Firm in Tallahassee. I'm representing  
24 Mr. Kundalkar, the movant.

25           **MR. McGLOTHLIN:** Good morning. Joseph A.

1 McGlothlin with the Office of Public Counsel, appearing  
2 for the citizens of the state of Florida. At the  
3 appropriate time, Commissioner, I have a preliminary  
4 matter to raise.

5 **MR. MOYLE:** Good morning. Jon Moyle, Keefe,  
6 Anchors, Gordon & Moyle Law Firm. I'm representing the  
7 Florida Industrial Power Users Group, more commonly  
8 known as FIPUG.

9 **COMMISSIONER BRISÉ:** All right. Thank you.

10 **MR. YOUNG:** Good morning, Commissioner. Keino  
11 Young, Commission Staff.

12 **MS. HELTON:** Mary Anne Helton, and also here  
13 today is Curt Kiser, the General Counsel, advisors to  
14 the Commission.

15 **COMMISSIONER BRISÉ:** Thank you. At this time  
16 we're going to talk about procedural matters, but I  
17 understand that there may be some preliminary matters.  
18 Would this be the appropriate time to deal with that?

19 **MR. McGLOTHLIN:** I raised that to make sure  
20 that there is a plan to address the pending motion of  
21 FP&L for leave to file comments. I wanted to make sure  
22 that that was treated before we continue further.

23 **COMMISSIONER BRISÉ:** Thank you. Okay. Now  
24 I'm going to move into procedural matters. The purpose  
25 of, the primary purpose of this oral argument is for the

1 parties to present their positions of Mr. Rajiv  
2 Kundalkar's motion to quash subpoena and notice of  
3 deposition. The parties will have ten minutes each for  
4 their presentation. During their presentation I may ask  
5 a few questions.

6 Before we get to the presentations, it is my  
7 understanding that FPL has filed a motion for leave to  
8 file comments in reference to the motion to quash. This  
9 motion for leave was filed about two weeks late, and I  
10 am not inclined to entertain that motion at this time,  
11 so it is denied. Notwithstanding the denial of the  
12 motion, I may have questions as things move along today.

13 Now let's proceed with Mr. Rajiv Kundalkar's  
14 motion to quash subpoena and notice of deposition. The  
15 presentations will be presented in the following order.  
16 I will allow each party that is present today with ten  
17 minutes to present their arguments. Mr. Kundalkar will  
18 go first, the Office of Public Counsel, then FIPUG, then  
19 Florida Power & Light -- the federal agencies are not  
20 present today -- and then the Commission Staff, if any.

21 **MR. MOYLE:** Just a point of clarification. Is  
22 Florida Power & Light going to have the opportunity to  
23 present an argument or just respond to questions?  
24 Because I understood, you know, they were trying to be  
25 afforded full party status but that the late motion

1 doesn't give them that, that right.

2 **COMMISSIONER BRISÉ:** Okay. I will --

3 **MR. ROSS:** Commissioner, can I address the  
4 point by Mr. Moyle?

5 **COMMISSIONER BRISÉ:** Please.

6 **MR. ROSS:** The notice of oral argument  
7 specifically states that the purpose of this, this  
8 hearing is for the parties to present their positions on  
9 the motion to quash. So it's FPL's position that FPL  
10 should be able to participate in this matter as the  
11 other parties are participating. We are, of course, the  
12 petitioner in this matter, so it's a matter of  
13 significant importance for the company.

14 **MR. YOUNG:** Mr., Mr. Chairman, generally,  
15 given the fact -- we treat a, we treat this motion for  
16 oral argument and the motion to quash similar to a  
17 motion for reconsideration. Although sometimes parties  
18 do not file responses to a motion for reconsideration,  
19 when the Commission does allow parties to present oral  
20 arguments, we, it is the Commissioners' discretion to  
21 whether they want to hear from the parties who did not  
22 respond to the motion for oral arguments -- I mean,  
23 motion for reconsideration. So similar to that, we, we  
24 believe that it is appropriate to treat that, that, that  
25 failure to respond by FPL in a timely manner to a

1 similar situation as current here.

2 COMMISSIONER BRISÉ: Thank you. And I'll ask  
3 my advisor.

4 MR. MCGLOTHLIN: May I be heard before you do?

5 COMMISSIONER BRISÉ: Oh, sure. Thank you.

6 MR. MCGLOTHLIN: Commissioner, I, I saw the  
7 wording of the notice. I know that it mentioned  
8 parties, but I assumed that that notice was prepared  
9 prior to the time that the issue with respect to FPL's  
10 request to file comments was filed and prior to the time  
11 when we pointed out that the motion to quash and our  
12 response to that framed an issue that is specific to  
13 Mr. Kundalkar on the one hand and those of us who are  
14 seeking to discover through him on the other. So I do  
15 think that, that that should be taken into account.

16 Further, one of the points we made in our  
17 response is that through its timing, putting aside the  
18 question of whether they have an interest that entitles  
19 them to argue, through the timing FPL is setting itself  
20 up as some kind of a super party. We'll watch  
21 Mr. Kundalkar go forward, then we'll watch OPC and FIPUG  
22 go forward, and then in our own good time we'll weigh  
23 in, having the benefit of all that's gone before us.

24 Now even if you do permit FPL to participate  
25 today, it is clear that FPL has aligned itself with



1 Mr. Kundalkar, and to that end I suggest that if you're  
2 going to permit them to participate, they should do so  
3 at the same time Mr. Kundalkar goes forward so that  
4 we're not causing the situation where we have responded  
5 and then FPL, as they did in their written pleadings, is  
6 able to watch everything that goes before and somehow  
7 get in the last word. Because if they are aligned with  
8 Mr. Kundalkar, if you're going to in your discretion  
9 allow them to participate, they should be sharing some  
10 of that time and in that sequence.

11 **MS. HELTON:** First, Mr. Chairman, if I can ask  
12 a clarifying question to make sure I understand the  
13 process here. Is it contemplated that each party will  
14 give ten minutes or is it each side will have ten  
15 minutes?

16 **MR. YOUNG:** Each party.

17 **MS. HELTON:** Mr. Chairman, I in certain ways  
18 agree with Mr. Young and/or Mr. McGlothlin. I think  
19 that it is within your discretion to hear from Florida  
20 Power & Light; however, I agree with Mr. McGlothlin that  
21 if you choose to hear from Florida Power & Light, that  
22 they should follow immediately after Mr. Feil's  
23 argument, and then hear from OPC and FIPUG.

24 **MR. ROSS:** Commissioner, we have no objection  
25 to that order of presentation.

1                   **COMMISSIONER BRISÉ:** Okay. With that in mind,  
2 then we will move forward in that order. So then we  
3 will have representation from Mr. Kundalkar, and then we  
4 will have FPL, then the Office of Public Counsel, then  
5 Florida Industrial Power Users Group, and then  
6 Commission Staff.

7                   Okay. So at this time Mr. -- representation  
8 from Mr. Kundalkar.

9                   **MR. FEIL:** Thank you, Commissioner. In the  
10 way of background, and I don't mean to be redundant of  
11 what's in the pleadings, my client is a former employee  
12 of a regulated company, FPL. He testified for FPL in a  
13 case over a year and a half ago, and has been retired  
14 for well over a year.

15                   OPC served a blank Commission-issued subpoena  
16 on my client, then blank cross-notices came from FIPUG  
17 and Staff via e-mail. The subject of my motion is  
18 whether the Commission should enforce the subpoena and  
19 those piggybacking notices.

20                   The foundation for my position is in large  
21 part jurisdictional. The source of the Commission's  
22 power comes from Chapter 350, *Florida Statutes*, with  
23 specific powers over different types of regulated  
24 entities coming through other provisions like Chapter  
25 366. This Commission regulates utilities; you enforce

1 rules and statutes against utilities; you approve or  
2 disapprove of the rates, services of regulated utility  
3 companies. My client is not a regulated utility, does  
4 not work for a regulated utility. The Commission did  
5 not issue him any sort of license or a certificate and  
6 does not regulate him. He's a private citizen, a  
7 retired person.

8 My motion focuses on the Commission's power  
9 under 350, specifically Section 350.123. In 350.123 it  
10 states the Commission may issue subpoenas and compel  
11 attendance of witnesses necessary for the purpose of any  
12 investigation or proceeding. This case is a proceeding  
13 initiated by FPL under Section 366.93 and involves FPL  
14 as a regulated company. FPL is here today and has made  
15 its case in the filings that you have before you on the  
16 underlying request, and has made available ample  
17 witnesses to be deposed and to address the disputed  
18 issues and to support its filed request.

19 The subpoena issued to my client is  
20 unnecessary under Section 350.123, and any attempt to  
21 portray our debate with OPC as simply a discovery  
22 dispute doesn't change that, nor does it change that the  
23 Commission's authority is over FPL. And by blank, when  
24 I refer to that on the subpoenas and the notices, all I  
25 mean to say is that there's no basis stated in the

1 subpoena, there's no boundaries, there's no field of  
2 inquiry or identification of any kind regarding the  
3 subject matter of the deposition.

4           There's a few practical points I want to make  
5 sure you understand before I talk about legal arguments.  
6 The issue that OPC has said that they want my client to  
7 testify about is identified on page 4 of its response,  
8 and that issue is did FPL willfully withhold information  
9 that the Commission needed to make an informed decision  
10 during the September 2009 hearing in Docket 090009?  
11 Let's put aside the question for the time being of the  
12 PSC's authority over that issue and what it can and  
13 can't do. Let's talk about the issues of material fact  
14 within that issue.

15           And the first issue of material fact  
16 encapsulated within that issue is did my client state  
17 FPL's position during the September 2009 hearing? That  
18 fact is not in dispute. My client did state FPL's  
19 position, that was his testimony in the case, that's  
20 what his affidavit attached to the motion to quash  
21 states, that's what FPL's response to OPC interrogatory  
22 number 21 in this case states, that it was the company's  
23 position.

24           FPL witness Mr. Jones testified in the  
25 hearings you listened to last year, Commissioner, that

1 it was the company's position. Mr. Stall, an FPL  
2 witness who prefiled testimony in this case, states that  
3 it was the company's position. This fact is not in  
4 dispute.

5 The second material fact issue encapsulated  
6 within the OPC request or issue is did FPL executive  
7 management have knowledge prior to the September 2009  
8 hearing that there were proposed cost and scope changes  
9 suggested by its EPC contractor, Bechtel? That fact is  
10 not in dispute either. It's already been established  
11 that in last year's hearing there was discussion about a  
12 July 25th, 2009, executive steering committee meeting at  
13 FPL where the preliminary Bechtel numbers were  
14 discussed. Mr. Jones and Mr. Reed both testified to  
15 that at length, as you'll recall, in last year's  
16 hearing.

17 At the July 25, 2009, executive steering  
18 meeting, committee meeting Mr. Jones was present;  
19 Mr. Stall was present; Mr. Olivera, the president of  
20 FP&L, was present. FPL's response to OPC interrogatory  
21 number 25 establishes who was there. All three of the  
22 people I named prefiled testimony in this case.

23 The only issue of material fact to consider  
24 and the only one disputed for OPC's concerns is whether  
25 FPL executive management adopted or accepted those

1 proposed Bechtel changes, and what significance did or  
2 should FPL's executive management should have attached  
3 to those proposed changes?

4 The appropriate persons to ask that are FPL  
5 executive management. They run the company that you  
6 regulate. Mr. Jones, Mr. Stall, Mr. Olivera, again all  
7 prefiled testimony in this case, were all at the  
8 steering committee meeting, and all are available for  
9 deposition and none have been deposed. Even if  
10 discovery rules are the only rules that govern here,  
11 discovery is for the purpose of adducing facts, disputed  
12 issues of material fact. And the only disputed material  
13 fact here is something only FPL executive management can  
14 and should answer to. That is a big part of why the  
15 motion states that the subpoena should be quashed and  
16 that the necessity standard of Section 350.123 is not  
17 met, and why, even under discovery rules, the blank  
18 subpoena here is not facially relevant to the case and  
19 is really posed for the purpose of annoyance and  
20 harassment.

21 Often times when we discuss these issues it's  
22 best to talk about what points we have in agreement and  
23 what points we have in disagreement. We do have points,  
24 a few points of agreement with OPC. I think that those  
25 are three. And one is, the first one is more of a group

1 of facts which is what my client states in his  
2 affidavit. Those facts are not controverted. He's a  
3 nonparty private citizen. He testified a year and a  
4 half ago. He's been retired for over a year. He's had  
5 no involvement in this docket. And OPC has cited to and  
6 can cite to no facts that contradict what's in his  
7 affidavit.

8 We're in agreement, I believe, that it's  
9 unprecedented in the history of the Commission to  
10 enforce a subpoena on a nonparty citizen. And I  
11 recognize, as I noted in my motion, that the search  
12 tools are somewhat imprecise, and I'll talk about some  
13 of OPC's cases in a moment. But let's put the history  
14 in perspective.

15 The Commission has been around since the  
16 1950s. And before that, it was the Railroad Commission  
17 in the 1800s, and all this time the PSC has not forced a  
18 citizen to appear. Not only that, if we look at also  
19 how uncommon this is, I think it's safe to say that  
20 99.99 percent of all discovery in every PSC case is  
21 between the parties and the Staff.

22 Another point of agreement we have, the last  
23 point of agreement I think we have with OPC is that on a  
24 question of statutory interpretation. Different  
25 provisions of statutes which address a similar subject

1 must be read together to harmonize the provisions. I  
2 agree with that. But there's also a proviso:  
3 Harmonizing different provisions cannot come at the  
4 expense of rendering a word or words in a statute a  
5 nullity. OPC seems to think that in my analysis I left  
6 something out, namely Chapter 120. I didn't. There's  
7 no mystery in my analysis, no hidden agenda.

8 Your power, Commissioner, comes from Chapter  
9 350, and no interpretation which OPC has offered based  
10 on Chapter 120 would not render Section 350.123  
11 meaningless.

12 I think that the OPC request to subpoena and  
13 depose my client is attenuated from every angle you look  
14 at it factually and legally.

15 I know the, the question of statutory  
16 interpretation is not an exciting one. But to sort of  
17 illustrate the issue, let me address it this way. Ex  
18 parte communications. Under Chapter 350, you're subject  
19 to rules regarding ex parte communications. There are  
20 also rules regarding ex parte under Chapter 120. Well,  
21 which ones do you follow? You follow both. You read  
22 the two together. You harmonize the two. But if you  
23 followed only 120 and not 350, you know who would be in  
24 here complaining regarding ex parte communications.

25 Section 350.123 already tells you how to



1 harmonize 350 and 120. If the subpoena power of the PSC  
2 came from 120 and not from 350 or if only rules  
3 regarding discovery pertained, then 350.123 would tell  
4 you that, but it doesn't.

5 I looked prior to coming here today at the  
6 subpoena power for other state agencies. There are  
7 literally dozens of different provisions peppered  
8 throughout *Florida Statutes*. The language in each one  
9 is different. Some actually require supporting  
10 affidavits, like in 456.071 in the Department of Health,  
11 and some agencies do their own hearings, some do not.  
12 But the point I'm making is that each agency has a  
13 different provision regarding subpoena power tailored by  
14 the Legislature specifically to the needs and purposes  
15 of that agency, but many of those separate provisions  
16 would not be necessary if 120 was all that was needed.

17 On the question of harmonizing, harmonizing  
18 the two provisions, 350 and 120, let's test it. Let's  
19 take the word "necessary" out.

20 **COMMISSIONER BRISÉ:** You have about two  
21 minutes.

22 **MR. FEIL:** Okay. I'll, I'll sum up then.

23 I would have liked to have been able to go  
24 through all of OPC's cites, but I don't think any of  
25 them pertain anyway. There's -- none of the PSC orders

1 cited by OPC regard subpoenas that were nonparty  
2 citizens. All the PSC orders that they cited were for  
3 staff or for current company employees. There have been  
4 no cases where a former employee was subpoenaed, except  
5 I was once subpoenaed as a former employee of the  
6 Commission Staff. And in that case, the Commissioner  
7 weighed whether or not any of the information would have  
8 been relevant to a material issue in the case, and  
9 Commissioner Johnson at that time said no.

10 Balancing policy considerations is part of  
11 your determination here. OPC has suggested that, or  
12 seems to suggest that you're only allowed to balance  
13 policy considerations when it's a Staff subpoena. That  
14 is not the case. The *Sugarmill Woods* decision of the  
15 1st DCA did not limit you only to balancing policy in  
16 cases with Staff.

17 But let's balance the policy considerations  
18 here. On the one hand, there's the interest of the  
19 private citizen to be left alone in his home away from  
20 the reach of government, removed from having to deal  
21 with the expense and burden of hiring an attorney,  
22 preparing for a deposition, going to a deposition and so  
23 forth, versus on the other hand here the interest of the  
24 government that lies with the utility that the  
25 government regulates, and that is the entity who should

1 answer for the disputed fact in this case.

2 In summary and in closing, even if the  
3 necessity standard is utterly frail under 350.123, as  
4 OPC suggests, and only discovery rules govern, a blank  
5 subpoena to a nonparty is inappropriate; whereas, here  
6 only the company can and should answer to the disputed  
7 issue of fact. The subpoena serves no purpose other  
8 than inconvenience, annoyance and harassment. Your  
9 subpoena power cannot be and should not be unbridled.  
10 You should exercise moderation, restraint and caution in  
11 wielding such power. The subpoena power should not be  
12 exercised against the citizenry of the state merely for  
13 the sake of your showing that you have it when those  
14 asking you to exercise it have only suspect reasons. I  
15 ask that you look at and to the utility you regulate,  
16 exercise your sound discretion, and quash the subpoena.

17 **COMMISSIONER BRISÉ:** Thank you.

18 **MR. ROSS:** Good morning, Commissioner. Let me  
19 start with the company's bottom line position is that --  
20 and we have a slight point of departure from  
21 Mr. Kundalkar in that we think that the issue that's  
22 been teed up here today is perhaps premature and that  
23 OPC should pursue information from the company and its  
24 witnesses before addressing the very significant legal  
25 issues and policy issues that present you today about

1 whether the Commission has the authority and should  
2 subpoena retired company witnesses or nonparties to the  
3 proceeding. Let me explain the basis for our, our  
4 position.

5 In 2010 in the previous docket, the company  
6 produced 153,000 pages in discovery to the parties,  
7 including responding to interrogatories, requests for  
8 production of documents, and some of that was on the  
9 issue before the Commission, the 2009 extended power  
10 uprate cost estimate.

11 2011 to date, the company has produced 40,000  
12 pages of documents to OPC such, such -- thus far.  
13 There's a set of document production requests that are  
14 outstanding. The company has responded to 25  
15 interrogatories and 49 document production requests.

16 As Mr. Feil noted, last fall you heard the  
17 testimony of Mr. Jones, the vice president for the  
18 uprate project, and Mr. Reed, the company's outside  
19 witness, who testified both for several hours on this  
20 topic. You have the prefiled testimony of Mr. Stall;  
21 you have the prefiled testimony of Mr. Olivera, the  
22 president of the company. So our initial position is  
23 that OPC should be required to avail itself of those  
24 witnesses before it can demonstrate to this Commission  
25 that it has met the necessity requirement in the

1 statute. And in fact in the last few days the company  
2 and OPC have exchanged -- OPC proposed that they want to  
3 take depositions of some of these witnesses and the  
4 company has proposed dates for those depositions. So  
5 the issue is live, it's here today. Let's go through  
6 the discovery process. And if at that point OPC can  
7 make a finding that it needs to have Mr. Kundalkar  
8 testify in some way, then that issue can be heard by  
9 the, by the Commission. But at this point that, that  
10 standard has not been met.

11 One other -- two other points I'd like to  
12 make, and this goes to the issue of the Commission's  
13 jurisdiction over the issue that OPC seems to be  
14 pursuing. On page 5 of its May 5th filing in opposition  
15 to FPL's filing in this matter OPC is suggesting that  
16 the issue is whether FPL was straightforward with the  
17 Commission under the cost recovery rule. OPC further  
18 suggested that the Commission could penalize the company  
19 if the company willfully withheld the best, most current  
20 information on the subject required by the Commission's  
21 rule. While the company strongly disagrees with the  
22 suggestion that it withheld any information required to  
23 be provided to the Commission or the parties, the relief  
24 that OPC seems to be suggesting is not authorized by  
25 either the statutes or the cost recovery rule.

1           The longstanding case law is the Commission is  
2 a creation of the Legislature and the *Florida Statutes*,  
3 and the powers and duties of the Commission are only  
4 those conferred expressly or impliedly by statute. The  
5 *Florida Statutes* have penalty authority vested in the  
6 Commission at 366.095 to penalize entities under its  
7 jurisdiction found to have refused to comply with or  
8 have willfully violated any rule or order of the  
9 Commission or of the *Florida Statutes*, but there is no  
10 authority in the, in the *Florida Statutes* or in the cost  
11 recovery rule to authorize the penalty that OPC is  
12 apparently seeking.

13           The company is required to file its budgeted  
14 and actual costs as compared to estimate in-service  
15 costs as nonbinding estimates on an annual basis. The  
16 company has done this. Neither the statute nor the rule  
17 require the company to provide the update that OPC is  
18 apparently now seeking.

19           Now to the extent that there is a discrepancy  
20 in witness testimony that OPC wants to look into what  
21 Mr. Reed said versus what Mr. Kundalkar said and  
22 Mr. Stall said and so on, the Commission can resolve  
23 those discrepancies based on witness credibility. And  
24 it already has the testimony of all of the witnesses in  
25 the record, with the exception of Mr. Stall and

1 Mr. Olivera who have not yet testified live but will at  
2 hearings this year. The testimony of Mr. Reed,  
3 Mr. Jones and Mr. Kundalkar are all already in the  
4 record for the Commission to evaluate.

5 One other point briefly. Mr. Kundalkar was a  
6 witness in the 2009 case, and all the pertinent facts in  
7 this issue occurred in 2009. The Prehearing Order in  
8 that case required that discovery be taken by  
9 August 21st, 2009, and OPC didn't take any discovery  
10 along these lines or by that deadline. So we don't  
11 believe that OPC should be given another opportunity to  
12 conduct the discovery that they should have conducted  
13 two years ago.

14 So for these reasons the company believes that  
15 OPC should follow the witnesses and seek discovery from  
16 the company on this point before they can demonstrate --  
17 and the company believes that they have not demonstrated  
18 this to date -- that the necessity requirement has been  
19 met or that the balance of interest should weigh in  
20 favor of compelling Mr. Kundalkar's deposition. Thank  
21 you very much.

22 **COMMISSIONER BRISÉ:** Thank you. And I have a  
23 question for you. So from, from the company's  
24 perspective, all of the information that could be  
25 gleaned from Mr. Kundalkar should be able to -- they

1 should be able to glean it from the company?

2 **MR. ROSS:** Yes, sir. Mr. Kundalkar testified  
3 as to what the company's cost estimate was at that point  
4 in time, in September of 2009 where he brought down his  
5 prefiled testimony.

6 The, the position of the company that the, the  
7 Bechtel information had not been vetted to the point  
8 where it was in a, in a form or format that should or  
9 could have been presented to this Commission, that's a  
10 position that has been taken by every other company  
11 witness. And the facts underlying those assumptions are  
12 all, have all been made available to the parties in this  
13 case.

14 **COMMISSIONER BRISÉ:** Thank you. All right.  
15 At this time we'll have the Office of Public Counsel.

16 **MR. McGLOTHLIN:** Commissioner, given the time  
17 limits of ten minutes, I'll devote those ten minutes to  
18 answering the specific arguments of the parties. But I  
19 ask you to bear in mind that in our written response to  
20 the motion to quash we did outline the background of the  
21 matters that brought us to this point, including the,  
22 the Concentric report, the Staff's audit report, both of  
23 which surfaced in 2010, not 2009, and the prefiled  
24 testimony of Mr. Kundalkar in May 2009, which he adopted  
25 without change in September of 2009. Again, I have



1 discussed that in, in sequence in the written response  
2 to the motion, and that frames the, the arguments that  
3 you're hearing today.

4           The first argument that counsel for  
5 Mr. Kundalkar makes is that Section 350.23 [sic] must be  
6 read to be restrictive in nature. Really? Well, let's  
7 look at how 350.23 fits in the larger scheme of things,  
8 something that Mr. Feil did not do in his motion to  
9 quash and that he's trying to add to this morning. That  
10 larger framework includes Section 120.569(2) of the  
11 Administrative Procedure Act. Under that provision the  
12 presiding officer has power to effect discovery by any  
13 means available in the (phonetic) course and in the  
14 manner provided in the *Federal Rules of Civil Procedure*.

15           Let's look at the model rule that implements  
16 that provision, 28-106.206. Parties may obtain  
17 discovery through means and in the manner provided in  
18 the *Rules of Civil Procedure* 1.280 to 1.400. I think, I  
19 think there's no argument by Mr. Kundalkar's attorney  
20 that that does not apply to PSC proceedings.

21           What about those *Rules of Civil Procedure* that  
22 are implemented through the uniform rule? 1.280, a  
23 party may engage in discovery if the matter is relevant  
24 to the subject matter. And in fact there's no grounds  
25 for objection to a discovery request if it is reasonably

1 calculated to lead to the discovery of admissible  
2 evidence.

3           *Rules of Civil Procedure* 1.310, a party may  
4 take the deposition of any person, including a party,  
5 implicitly recognizing that the scope of the rule  
6 includes both parties and nonparty witnesses for a  
7 deposition. 1.310 also says that appearance at a  
8 deposition can be commanded by, through subpoena. The  
9 counsel did not cite, much less discuss anywhere in his  
10 motion to quash any of the provisions. These provisions  
11 establish a broad discovery right, and his argument  
12 depends on taking one phrase in 350.123 out of context  
13 and giving it a construction that conflicts and  
14 contradicts these larger, this larger framework that is  
15 in violation of the rules of statutory construction  
16 which require that one harmonize statutes. And the way  
17 to harmonize 350 is to recognize that the term  
18 "necessary" means necessary to effectuate the discovery  
19 either requested by a party entitled to that broad and  
20 liberal scope or necessary to the satisfactory  
21 investigation initiated by the Commission on its own  
22 motion.

23           Now counsel did cite the Prehearing Officer's  
24 order in the *Sugarmill Woods/Southern States* docket. I  
25 want to read to you the standard that the Prehearing

1 Officer in that case concluded was applicable to the  
2 Prehearing Officer's role in such a dispute.

3 The job is to take the broadest view, quote,  
4 the broadest view as to the potential for eliciting  
5 information that will lead to the discovery of  
6 admissible information. And I agree that that, that  
7 that is your role under the provisions I've cited.

8 In that case the party seeking discovery  
9 attempted to depose Staff members, and Mr. Feil was also  
10 subpoenaed. But something he didn't mention was that  
11 the subpoenas attempted to depose Mr. Feil not with  
12 respect to matters in that case but with matters that he  
13 handled as a Staff attorney in a prior PSC case. For  
14 that case to have any application here, I would have to  
15 subpoena Mr. Feil and say produce documents that you  
16 worked on when you were Staff attorney. And that's  
17 clearly not what's going on here, and yet that's a fact  
18 pattern of the *Southern States* case that he cited.

19 In that case, the Prehearing Officer  
20 determined that notwithstanding the very liberal  
21 framework for conducting discovery and notwithstanding  
22 the job of the Prehearing Officer to effectuate that  
23 broad standard, efforts to depose Staff members and  
24 former Staff members about prior cases was so disruptive  
25 that it fell short of the standard. But that's not

1 what's going on here.

2 And related to this point is the claim in the  
3 motion to quash that Mr. Kundalkar is a bystander.  
4 That's his term. That, that characterization is  
5 disingenuous. Mr. Kundalkar was the vice president of  
6 nuclear uprates through much of 2009. In that capacity  
7 he would have had a point person type of responsibility  
8 for the relationship with the principal contractor; he  
9 would have had responsibility over the reasonableness of  
10 the expenses incurred in 2009, so I think that's pending  
11 before the Commission as a result of a stipulation that  
12 defers certain issues; he would have had responsibility  
13 over either revising or supervising the revision of  
14 estimates to the cost of completing the, the uprate  
15 projects; he would have been involved in communications  
16 to higher management and to the steering committee with  
17 respect to the growing disparity between the May 2009  
18 estimated prefiled testimony and the evolution of that  
19 estimate over time.

20 And last, but certainly not least, he was the  
21 person who testified, who submitted prefiled testimony  
22 in late 2009 and who took the stand in September 2009  
23 and adopted that testimony without change. All of which  
24 is to say that we're not attempting to depose someone  
25 whose involvement was either peripheral or tangential.

1 Mr. Kundalkar was, if you would, at the epicenter of the  
2 things that are still before the Commission in an active  
3 docket and it is very reasonable for us to seek to take  
4 his deposition.

5 Now counsel for Mr. Kundalkar complains that  
6 there's no delineation of areas of inquiry. There's no  
7 requirement that there be one. And one danger in  
8 granting the motion to quash or trying to impose such  
9 delineation is that there is a danger of precedent. But  
10 if you look at the form that the Commission provides for  
11 subpoena, there's no requirement, there's no blank to be  
12 filled in with respect to what areas are you going to  
13 delve into.

14 This argument was tried in the Cargill  
15 self-service wheeling docket to which I alluded in my  
16 written response. In that case, TECO complained that  
17 the subpoena issued to its employees did not provide  
18 areas of inquiry, and the Prehearing Officer rejected  
19 that argument. Let me point out now that TECO also  
20 suggested that because the persons being subpoenaed were  
21 not being put forward as witnesses, the subpoena should  
22 be quashed. That also should be rejected.

23 I'm going to run out of time before I run out  
24 of arguments, but let me just say that with respect to  
25 the last argument that appears in his pleading, Mr. Feil

1 worries aloud about a parade of horrors: Oh, my  
2 goodness, this is going to lead to subpoenas being  
3 issued left and right to people who barely know each  
4 other and, before you know it, the Commission won't be  
5 able to recruit competent people for its staff. Well,  
6 counsel has a vivid imagination.

7           It would be -- it's easy for me to argue that  
8 if you quash the subpoena, then every rate case going  
9 forward, any time parties seek to depose utility  
10 employees there's going to be a rash of resignations,  
11 retirements and forced pink slips because obviously  
12 that's going to leave the utilities to put their people  
13 out of reach of discovery. Well, that's, that's equally  
14 absurd, and I think we should put flights of fancy to  
15 one side.

16           And I ask you to recognize that OPC is  
17 proceeding under the status quo. The rules permit  
18 subpoenas issued to parties and nonparty witnesses, and  
19 yet under the status quo these terrible things have not  
20 happened.

21           With respect to FPL's arguments, I would point  
22 out that in addition to the issue that we identified,  
23 there is Issue 3B that is being carried over as part of  
24 the deferral of the 2010 issues. That was a Staff  
25 issue, which, as I understand it, is related to the same

1 fact pattern. So, again, OPC is coming at it from a  
2 different angle, different perspective with different  
3 language in terms of a penalty as opposed to just  
4 allowance of, quote, rate case type expenses.

5 But the fact pattern that gives rise to both  
6 the issues that have been carried over, our opportunity  
7 to pursue discovery and the relevance of Mr. Kundalkar's  
8 testimony is something that is new, and we're entitled,  
9 under the liberal scope of discovery, to pursue our  
10 deposition with Mr. Kundalkar. Thank you.

11 **COMMISSIONER BRISÉ:** Thank you. I will ask  
12 you the same question that I asked the company. Do you  
13 think that Mr. Kundalkar is the only person that you can  
14 glean the information that you're seeking, considering  
15 the individuals that the company mentioned that you all  
16 have been in contact dealing with depositions for those  
17 individuals such as Mr. Reed, Mr. Olivera and people  
18 like him?

19 **MR. McGLOTHLIN:** Mr. Kundalkar is the  
20 individual who submitted prefiled testimony in May 2009.  
21 He is a person who took the stand and adopted that  
22 testimony in September 2009. As the person who  
23 testified, his role is unique, his perspective is  
24 unique. Others may have information, I'm not saying  
25 they don't, but I, I think that the involvement of

1 Mr. Kundalkar and the circumstances in which he  
2 participated and the communications in which he  
3 participated, only he can give adequate disclosure as to  
4 those matters.

5 And I would say something else, you know, this  
6 is similar to the Cargill situation in that TECO said  
7 you're trying to subpoena people that we haven't put  
8 forward. They're witnesses, go to them. And that's  
9 what FPL is saying here too. But in a sense FPL is  
10 trying to take the steering wheel away from OPC. We're  
11 conducting our case, we're preparing our case. We have  
12 the right to talk to the individuals who have  
13 information that we want to talk to, and so we decline  
14 their generous invitation to let them structure our case  
15 preparation.

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

17 At this time we'll hear from FIPUG.

18 **MR. MOYLE:** Thank you. And I'm not checking  
19 e-mails. I'm going to try to use this fancy stopwatch  
20 on my watch to monitor my time.

21 **COMMISSIONER BRISÉ:** I've been, I've been  
22 relatively liberal with the time, so.

23 **MR. MOYLE:** Again, for the record, Jon Moyle  
24 on behalf of FIPUG. And let me, let me start, I have  
25 prepared remarks that I'll get to, but just by making a



1 comment. I think the arguments that Mr. Feil made,  
2 they're, they're very creative, and I think they would  
3 be much stronger if OPC had served a subpoena on  
4 Mr. Kundalkar's brother who hypothetically might be a  
5 professor of physics at the University of Miami and  
6 you're like, well, why would you be serving a subpoena  
7 on, you know, a guy that we may not -- what does he have  
8 to do with anything? Then those arguments about, you  
9 know, not really necessary and, and harassment might  
10 hold weight.

11 But Mr. Kundalkar was a key player in this  
12 thing. He was the vice president of the nuclear uprate  
13 project. One of the issues that's been deferred is  
14 whether there were imprudent costs incurred in 2009 as a  
15 result of mismanagement. Well, what, what better person  
16 to ask than the vice president in charge of nuclear  
17 uprate? Clearly he has relevant information.

18 So to somehow kind of say, well, you know, you  
19 might be able to get it from some other people, you  
20 know, that's, that's telling us how to prepare our case,  
21 which there's a lot of precedent about, you know, legal  
22 strategy, work product. You can prepare your case as  
23 you see best.

24 Now the fact that Mr. Olivera may have  
25 information and Mr. Reed may have information, well,

1 that's, that's great. But Mr. Kundalkar, we don't know  
2 what information he may have. He's no longer working at  
3 FPL. You know, what happened? He, he was relieved of  
4 responsibilities. Maybe he has a different perspective.  
5 Maybe he'll say, well, this or that or the other. We  
6 don't know. And I think that's why, that's why we  
7 cross-noticed the deposition to have the conversation.

8 **MR. FEIL:** Mr. Chairman, if I may interject.  
9 He -- my client was not relieved of responsibility and  
10 there's no proof of that. And I'm sorry to interrupt,  
11 but he just made a factually incorrect statement. I'm  
12 sorry, Mr. Moyle.

13 **COMMISSIONER BRISÉ:** Please continue.

14 **MR. MOYLE:** Well, I'm, I'm sorry if I, if I --  
15 I didn't mean to impugn him, but I understood that he  
16 was, you know, when he took the stand he was no longer  
17 vice president of nuclear uprates. So if I got that  
18 wrong, I'm sorry. But, anyway, he's no longer there.  
19 As we sit here today, he's not an employee of, of FPL.

20 And I don't know. We can ask him that  
21 question, sort of making the point. Was he relieved of  
22 responsibility? Did he resign? We don't know. But I  
23 think that's something that is, is fair game. And what  
24 are the circumstances surrounding that, you know, if he  
25 was?

1           I want to, I want to talk a little bit about,  
2 about some of the arguments that, that were made. The  
3 fact that there's no precedent for a subpoena, you know,  
4 that's never, never been issued -- I mean, usually these  
5 cases go where you, you look at the prefiled testimony.  
6 But the fact that, that there's never been one enforced,  
7 I'm not sure there's ever been one sought, but it  
8 doesn't mean it's not permissible. I mean the, the  
9 statute, the *Rules of Civil Procedure*, they all allow a  
10 party to, to obtain discovery.

11           And, for example, let's say -- let me give you  
12 a hypothetical. Let's say there's an issue in the  
13 future about a turbine and the ratepayers are going to  
14 be charged for a \$25 million turbine. There's an issue  
15 about is, is it a defective turbine? If it's defective,  
16 the ratepayers don't want to pay for it. FPL files  
17 their testimony, or not FPL but any IOU, and they file  
18 their testimony and say, no, it's a, it's a turbine  
19 that'll work. Let's say FIPUG comes into information  
20 that there might be a defect in the turbine and we want  
21 to talk to the manufacturer. Well, the manufacturer is  
22 not, not a party. But the head of engineering of the,  
23 of the turbine manufacturer, you know, maybe he had a  
24 memo that says, you know, we've got real problems with  
25 these turbines. Shouldn't FIPUG be able to, to take a

1 deposition of the head of manufacturing of the turbine?  
2 You know, disputed issues of fact, y'all are calling  
3 balls and strikes. That would be relevant information.  
4 And if you set a precedent today and say, no, you really  
5 can't issue subpoenas to nonparties, you know, it's  
6 going to hamstring us, tie our hands behind our back,  
7 and basically force us to, to tailor cases based on,  
8 exclusively on testimony filed by our adversaries.

9 You know, it's baseball season, so I'm going  
10 to use a baseball analogy. And, you know, the job that  
11 the Commission has is, is to call balls and strikes on  
12 issues like, like this. I would, I would argue that  
13 this is a pitch that has hit the dirt before it reached  
14 the plate. It's an easy call. It's a ball. And that  
15 is, is because there is a fundamental right, due process  
16 for parties to be able to conduct discovery in preparing  
17 their case.

18 Mr. Feil suggested somehow that 350 does not  
19 allow depositions to be issued to nonparties. If you're  
20 going, if that's the road that he wants to take you  
21 down, then I would suggest, because, you know, it's set  
22 up disputed issues of fact, you can send them to the  
23 Division of Administrative Hearings where subpoenas are  
24 issued to nonparties all the time. But if somehow the  
25 Commission does not have that authority, you know, I

1 think it's a fundamental due process issue and I think  
2 it might prompt arguments that the Division of  
3 Administrative Hearings is the proper place to hear all  
4 these cases because they have full and complete subpoena  
5 authority under 120; whereas, Mr. Feil is saying, well,  
6 you have some subpoena authority but it really is not  
7 that broad, it's limited, you can't send subpoenas to  
8 nonparty witnesses. I think that would be a very, very  
9 dangerous precedent to go down.

10 The argument about, well, they're, there's  
11 nothing in the subpoena that says what we're going to  
12 talk to him about. Well, you know, a lot of subpoenas  
13 don't have that information. That's what lawyers do,  
14 they prepare witnesses for depositions. I think you can  
15 always have an objection on relevancy, not likely to  
16 lead to discoverable evidence and those things. And he  
17 pointed out that he did a little research and maybe the  
18 Department of Health or others had requirements that you  
19 have to submit affidavits to say here's what, what I'm  
20 going to ask about. Well, I think it's important to  
21 note that the PSC doesn't have that requirement. If the  
22 Legislature wanted to say, well, you can issue nonparty  
23 subpoenas so long as you tell them clearly what you're  
24 going to ask questions about, they could have put it in  
25 the statute like what he cited in the Department of

1 Health. It's not here, so there's no requirement that  
2 you, that you do that.

3 The arguments by FPL about, about the  
4 documents, about the whole host of documents, I mean  
5 it's a little bit of a, of a red herring because, you  
6 know, the documents all speak for themselves. There's  
7 nothing like a deposition where you get to ask a live  
8 witness questions. You don't know what his answers are  
9 going to be. He may take you down another path that has  
10 relevant information and you use that information to  
11 prepare for hearing.

12 So, you know, this is a fight largely between  
13 Mr. Kundalkar and OPC. FIPUG has jumped in because we  
14 probably will have a few questions for Mr. Kundalkar.  
15 But we're very concerned about a precedent that might be  
16 set that would limit the ability of this Commission to,  
17 to issue subpoenas to nonparties, kind of back to my, my  
18 turbine example. We don't know when you might have that  
19 need. But if every time we wanted to conduct discovery  
20 of somebody who might have evidence, you know, we're  
21 going to have this kind of fight -- I mean, at some  
22 point in the future FIPUG may issue trial subpoenas and  
23 put people up here live and ask them questions like you  
24 do at the Division of Administrative Hearings. I mean,  
25 it's a disputed issue of fact. The purpose is, is to

1 get to the truth, and discovery is a, is a good tool to,  
2 to allow that. Let me just check my notes, if I could.

3 You know, Mr. McGlothlin in his brief did a  
4 very good job, I think, of pointing out the legal  
5 authorities: 120.569(2)(f) that authorizes the issuance  
6 of discovery, the model rules, the *Rules of Civil*  
7 *Procedure*. All of those are very clear that you have  
8 the ability. I think it would be improper to limit  
9 yourself unnecessarily in doing this.

10 To the extent that, as I said, it was  
11 Mr. Kundalkar's brother, the UM professor in physics,  
12 and it was like this is, this has no bearing or  
13 relevancy, then I think it would be appropriate to have  
14 this discussion. And why in the world would you want to  
15 take him, or if you go subpoena the, you know, the  
16 attendant at the gas station on the corner or somebody  
17 in Publix. I mean, that's not what's going on. This is  
18 a very key witness who has relevant, pertinent  
19 information, and the, and the discovery deposition ought  
20 to stand and you ought not to quash it. So with that,  
21 I'll wrap up. Thank you.

22 **COMMISSIONER BRISÉ:** Thank you.

23 At this time we'll have Staff.

24 **MR. MCGLOTHLIN:** Commissioner, if I may, my  
25 colleague has just informed me that he was involved in a

1 1987 case involving Ferncrest Utilities in which OPC  
2 subpoenaed a former manager of the utility who was a  
3 nonparty witness at that time, and that individual did  
4 comply with the subpoena.

5 **MR. FEIL:** But there's no order on it  
6 of whether or not the party objected, which is my point  
7 exactly. It's never been -- if somebody voluntarily  
8 appeared, they voluntarily appeared.

9 **COMMISSIONER BRISÉ:** Thank you.

10 **MR. MOYLE:** Mr., Mr. -- can I just make one,  
11 one point? I -- for the record, I did not mean to, to  
12 disparage your client. I may have gotten that fact  
13 wrong. But, you know, my understanding was he was in a  
14 different position. So, anyway, I wanted to apologize  
15 on that point.

16 **COMMISSIONER BRISÉ:** Thank you.

17 To Commission Staff.

18 **MR. YOUNG:** Thank you, Mr. Chairman.

19 Mr. Chairman, we have heard a lot today and,  
20 quite frankly, Staff, given the fact of the parties'  
21 argument, Staff would appreciate additional time to  
22 consider some of the arguments that we've heard here  
23 today.

24 **COMMISSIONER BRISÉ:** Okay. Thank you.

25 **MR. FEIL:** Commissioner, if I, if I may just



1 raise one key, key point, not a full rebuttal of what  
2 they said but just one key point, and that is the issue  
3 --

4 **COMMISSIONER BRISÉ:** Wait one second. Let me  
5 ask my advisors if that's allowable.

6 **MS. HELTON:** Mr. Chairman, it's within your  
7 discretion. However, I would note at the beginning of  
8 the arguments that nobody asked for rebuttal, nobody  
9 reserved time for rebuttal. And as you noted, you were  
10 very liberal with the time that you provided to the  
11 parties, so.

12 **MR. FEIL:** It's in your discretion,  
13 Commissioner.

14 **COMMISSIONER BRISÉ:** Thank you. If I, if I  
15 were to allow rebuttal, I would have to allow everyone  
16 with rebuttal. So to be fair to everyone, I will avoid  
17 that.

18 I am going to move to, to the next section,  
19 which is other matters. And if anyone has any other  
20 matters that they would like to address at this point, I  
21 will give you the opportunity to do so.

22 Yes, Jon.

23 **MR. MOYLE:** I have one. It's related a little  
24 bit to this, but, but I wanted to bring it up. The  
25 Commission has a long-standing practice of when somebody

1 is deposed that other parties are able to ask questions.  
2 In this case OPC filed the notice of deposition with a  
3 subpoena, Staff filed a cross-notice, as did FIPUG, and  
4 I think Mr. Feil has raised concerns about that.

5 If you decide to, to not quash the subpoena  
6 and allow that deposition to take place, FIPUG would  
7 like to ask some questions. If the other side is going  
8 to say, no, you can't because you cross-noticed and  
9 that's deficient, then I'll serve him with a subpoena at  
10 his deposition and take his deposition two weeks later.  
11 But I'd like to just kind of have that issue discussed a  
12 little bit, and if there is going to be a deposition, to  
13 make sure that FIPUG will be able to ask questions or  
14 set another deposition to ask questions if the  
15 cross-notice is somehow going to be argued as defective.

16 **MR. FEIL:** Commissioner, in response to that.

17 **COMMISSIONER BRISÉ:** Yes.

18 **MR. FEIL:** I can tell you what I told  
19 Mr. Moyle when he first brought this up is, which is as  
20 far as I'm concerned at our present state of affairs  
21 here, as the subpoena goes, so will go the  
22 cross-notices. So if you allow blank subpoenas, then a  
23 blank cross-notice is no different. So as, as goes your  
24 ruling on OPC, so goes your ruling on the, the FIPUG  
25 notice.

1                   **COMMISSIONER BRISÉ:** Okay. Thank you.

2                   **MR. MOYLE:** Thank you.

3                   **COMMISSIONER BRISÉ:** All right. Are there any  
4 other matters for anyone else?

5                   **MR. YOUNG:** Not that -- none that Staff is  
6 aware of, Mr. Chairman.

7                   **COMMISSIONER BRISÉ:** All right. Now as to my  
8 decision, I'm going to take a little bit of time to, to  
9 think about this, continue to review the information  
10 that I have before me, and in the next few days I will  
11 probably issue an order. So sit tight and sort of wait  
12 to see what happens there.

13                   And since there are no other issues before us  
14 at this time, we are adjourned.

15                   (Proceeding adjourned at 10:26 a.m.)

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STATE OF FLORIDA )  
  :  
COUNTY OF LEON    )

CERTIFICATE OF REPORTER

I, LINDA BOLES, CRR, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 16<sup>th</sup> day of May, 2011.

Linda Boles  
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