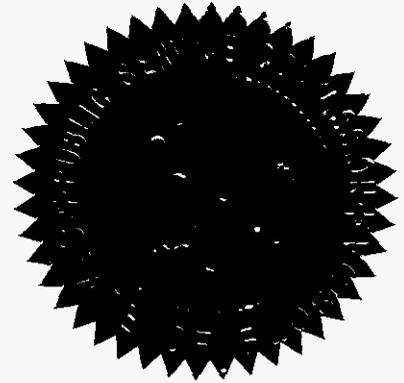


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090144-EI

In the Matter of:

PETITION FOR LIMITED PROCEEDING TO  
INCLUDE BARTOW REPOWERING PROJECT  
IN BASE RATES, BY PROGRESS ENERGY  
FLORIDA, INC.



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 10

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

DATE: Tuesday, May 19, 2009

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

REPORTED BY: JANE FAUROT, RPR  
LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6732\413-6734

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

1  
2           **COMMISSIONER EDGAR:** Okay. We are back on the  
3 record. And we are on Item 10. I'll ask our staff to  
4 present.

5           **MR. SLEMKEWICZ:** Item 10 is Docket Number  
6 090144-EI, Progress Energy Florida, Inc.'s petition for  
7 a limited proceeding to include the Bartow Repowering  
8 Project in base rates. PEF is requesting to increase  
9 its base rates by \$126.2 million for the Bartow  
10 Repowering Project. Staff is recommending that the  
11 \$126.2 million base rate increase be approved subject to  
12 refund pending a review of the appropriateness of the  
13 calculations in PEF's rate case in Docket Number  
14 090079-EI.

15           Staff does have oral modifications to make to  
16 Issue 1 on Page 7 and Issue 7 on Page 15. And Ms.  
17 Fleming of our legal staff will address those  
18 modifications.

19           **CHAIRMAN CARTER:** I'm sorry, Madam Chairman,  
20 he faded out on the second modification.

21           **COMMISSIONER ARGENZIANO:** Yes. He's very low.

22           **COMMISSIONER EDGAR:** Okay. Basically, Mr.  
23 Slemkewicz had just kind of given us a very brief  
24 overview of the item, and Ms. Fleming is going to  
25 briefly describe the two oral modifications.

1 Ms. Fleming.

2 **MS. FLEMING:** The first oral modification is  
3 on Page 7 of the recommendation, the first full  
4 paragraph, the last sentence. Upon further review staff  
5 believes that this sentence should be stricken. The  
6 second modification relates to Issue 7, which is on Page  
7 15 of the recommendation. In order to more accurately  
8 reflect staff's recommendations in other issues, the  
9 close the docket issue has been modified. Staff's  
10 recommendation has been provided to the parties. It has  
11 been placed in the docket file. If you would like, I  
12 can go into it more specifically, but it has been  
13 afforded to the parties.

14 **CHAIRMAN CARTER:** How about the bottom line?

15 **MS. FLEMING:** Sure. Staff's recommendation is  
16 the docket -- should the docket be closed. No, this  
17 tariff should remain in effect with any revenues held  
18 subject to refund pending review in the base rate  
19 proceeding in Docket Number 090079-EI.

20 Furthermore, this docket should be  
21 consolidated with Docket Number 090079-EI, PEF's base  
22 rate proceeding in the interest of administrative  
23 efficiency and given the congruence between the issues  
24 and the parties in the two dockets.

25 **CHAIRMAN CARTER:** Thank you.

1                   **COMMISSIONER EDGAR:** Thank you.

2                   Commissioners, any questions for our staff  
3 before we look to the parties for their brief comments?  
4 Hearing no questions. Mr. Walls, why don't you start us  
5 off on this item.

6                   **MR. WALLS:** Thank you.

7                   PEF supports the staff recommendation that the  
8 Commission should approve a rate increase subject to  
9 refund to allow PEF to recover the cost of the Bartow  
10 Repowering Project beginning 30 days after its  
11 in-service date.

12                   As you know, the Bartow Repowering Project is  
13 a state of the art natural gas-fired combined cycle  
14 power plant that replaces 1950s oil-fired technology.  
15 The plant begins commercial operation next month in June  
16 to meet the customers capacity and energy needs.

17                   Based on what I heard this morning, I think  
18 this should be a much easier issue for the Commission  
19 than the interim rates that you just considered. First,  
20 there is no dispute that the stipulation expressly  
21 allows PEF to seek limited proceeding rate relief for  
22 this type of project once the 10 percent trigger has  
23 been met. To quote the intervenor's response, "The  
24 stipulation recognized that major costs such as the  
25 Bartow Repowering Project could negatively impact PEF's

1 earnings and provided a triggering mechanism to bring  
2 such assets into base rate recovery. This is not in  
3 dispute." Those are the intervenor's own words.

4 Second, the intervenor's main objection is  
5 that PEF did not file its limited proceeding request  
6 earlier and that they will somehow be overburdened by  
7 litigating the limited proceeding at the same time as  
8 the full rate case. This is in our view simply a red  
9 herring. All the facts surrounding the Bartow  
10 Repowering Project are fair game in the rate case. As  
11 staff has recommended and PEF agrees, the limited  
12 proceeding should be consolidated with the rate case for  
13 purposes of hearing. Thus, there will be only need for  
14 one hearing on these facts versus potentially two  
15 hearings if PEF had filed the limited proceeding last  
16 year as the intervenors suggest.

17 It's important to remember, also, that the  
18 ratepayers are fully protected under staff's recommended  
19 approach. If the Commission makes any adjustments or  
20 disallowances to the Bartow Repowering Project in the  
21 full rate case, those would apply equally to the periods  
22 of rates subject to refund were in effect and an  
23 appropriate refund can be ordered.

24 Third, the intervenor's objections must be  
25 rejected because they deny PEF the very right it

1 bargained for in the stipulation. The parties all  
2 agreed that if PEF earns fell below 10 percent ROE,  
3 which they have, then it can seek limited proceeding  
4 relief. Contrary to the intervenor's claim, PEF does  
5 not believe that the stipulation guarantees a right to a  
6 10 percent ROE, but it certainly guarantees the right to  
7 ask for relief if PEF's returns fall below that level.

8 By opposing the request for temporary rates,  
9 the intervenors are effectively trying to deny PEF the  
10 rights it bargained for. That is because unless rates  
11 subject to refund are put into effect when the Bartow  
12 Repowering Project goes into service, PEF will never be  
13 able to recover those costs for providing service to its  
14 customers between the in-service date of the unit and  
15 the date permanent rates go into effect.

16 On the other hand, if rates are put into  
17 effect, holding the revenues subject to refund fully  
18 protects customers in the event that any changes are  
19 ultimately made to the amount that PEF is entitled to  
20 recover. As the Commission said in its prior order, PSC  
21 050187, customers are, "Fully protected," by granting  
22 requested rate relief subject to refund with interest.

23 So, in sum, the staff recommendation preserves  
24 the intervenor's right to a hearing on issues related to  
25 the Bartow Repowering Project, it preserves the

1 customers right to a refund if the requested rates are  
2 too high, and it preserves PEF's right to get timely  
3 cost recovery for a new power plant that will be serving  
4 customers beginning in June, just as PEF bargained for  
5 under its agreement. We, therefore, ask that the  
6 Commission approve staff's recommendation.

7 **COMMISSIONER EDGAR:** Mr. Rehwinkel.

8 **MR. REHWINKEL:** Thank you, Madam Chairman and  
9 Commissioners. I believe I am in agreement with Mr.  
10 Walls that this item should take much less time. It is  
11 correct that there is a lot of areas of agreement that  
12 we have with respect to Bartow. It is correct that we  
13 have a serious concern about the timing of the filing,  
14 and that's probably the only thing I will substantively  
15 address here to any length.

16 This is the single biggest item in the rate  
17 case that the company is requesting. It's \$130 million  
18 revenue requirements out of 499 million. It is the  
19 single largest discreet item. It is a request that they  
20 are asking for rate relief across the entire spectrum of  
21 customers, save for a few areas of credit. This is a  
22 base rate request.

23 We agree that the stipulation authorized the  
24 company to request limited relief for a scenario just  
25 like Bartow, but we do not agree that the agreement

1 necessarily contemplated that rates would be increased  
2 without a hearing. I conceded earlier today that  
3 interim relief is available, but interim relief for a  
4 \$130 million revenue requirement associated with an  
5 \$800 million rate base item is something that the  
6 Commission should think long and hard about, especially  
7 if it is filed or requested on the eve of a rate case.

8           There is a slippery slope that this kind of  
9 scenario could lead you to if a company wanted to  
10 vulcanize their rate requests and bring forward to you  
11 items or time the filing of the rate case in such a way.  
12 I am not suggesting that PEF did that in this case.  
13 It's probably fair to say that they have valid reasons  
14 for doing what they did in the timing that they did.  
15 But the way they did it and the scenario that is before  
16 you creates potential precedential problems down the  
17 road.

18           We have pointed out and for the sake of  
19 fairness we just contend that there is some incongruity  
20 or inequality with the way this case is being processed  
21 or recommended to be processed and a mirror image  
22 scenario in a 1994 Tampa Electric case where on the flip  
23 side, the customers sought an interim reduction  
24 associated with some changes in cost of capital, and the  
25 Commission decided that it would decline.

1           They used their discretion to decline to hold  
2 a limited proceeding or grant interim relief by stating  
3 that while we could use this type of proceeding to  
4 adjust rates, it would be virtually impossible to do so  
5 on an expedited basis as requested by OPC and still  
6 comply with the notice requirements of Chapter 366,  
7 Florida Statutes, by providing a reasonable opportunity  
8 to present testimony, conduct discovery, and obtain  
9 ratepayer input. And that's Order PSC-94-0794 from  
10 1994, 930987 docket.

11           We also have cited the FPL case as a way of  
12 contrasting the factual scenario there where FPL acted  
13 with deliberate speed to seek rate relief associated  
14 with their storm damage reserve depletion for the 2004  
15 hurricane season. Progress, on the other hand, waited  
16 until March -- probably the very last moment in time  
17 that they could and get this process undertaken in order  
18 to get at least interim file and suspend rates in place  
19 before or coincident with the in-service date of the  
20 Bartow repowering.

21           We think the contrast there mitigates against  
22 Progress being allowed to come and ask for file and  
23 suspend type interim relief based on an exigency that  
24 they themselves created. I do not know the reasons why  
25 they waited from the fall until now. Mr. Walls has

1 indicated that it avoids having two hearings. But,  
2 again, a \$130 million annualized revenue request  
3 associated with an \$800 million rate base item is  
4 something not to be taken lightly. And the hearing  
5 process that this Commission is here to afford the  
6 customers is something that should not be taken lightly,  
7 either.

8 We would suggest that it would be appropriate  
9 since we are so near in time to the rate case for this  
10 to be held out and decided in the rate case and that  
11 rates be adjusted as appropriate based on findings and  
12 facts presented in the rate case hearings before rates  
13 are changed. That is our position that we have advanced  
14 in our pleading before you and we adhere to that.

15 We do have a serious concern about where you  
16 draw the line on large big ticket items that are  
17 themselves mini-rate cases, and when should they be  
18 allowed to go into effect absent a hearing. So with  
19 those remarks, we have made our objections known. Thank  
20 you for your consideration.

21 **COMMISSIONER EDGAR:** Thank you.

22 Ms. Kaufman.

23 **MS. KAUFMAN:** Thank you, Madam Commissioner.

24 We agree with Mr. Rehwinkel and his comments  
25 that he made about the timing of the filing and the fact

1 that we are right on the heels of a rate case. And it  
2 would be appropriate, given the magnitude of the  
3 request, to consider it in the rate case, not with these  
4 rates in without having a hearing.

5 But I did want to point out something that Mr.  
6 Rehwinkel did not mention, and that is in Issue 3 of the  
7 recommendation, your staff talks about a number of  
8 concerns or areas where perhaps calculations were not  
9 appropriate, or at least need to be investigated further  
10 to see what would be appropriate. That begins about  
11 midway on Page 10 and goes over to Page 11.

12 And it would be our view that certainly given  
13 even just the concerns that your staff has raised here  
14 that before you put the rates into effect you would want  
15 to have a hearing to review and vet and take evidence on  
16 what adjustments, if any, should be made and what would  
17 be appropriate in terms of dealing with this very large  
18 capital expenditure.

19 And so we support Mr. Rehwinkel's suggestion  
20 to you that you not place these rates into effect now.  
21 You roll it into the base rate case and we will all have  
22 an opportunity there to look at the filings and to make  
23 our views known to you.

24 Thank you.

25 **COMMISSIONER EDGAR:** Thank you.

1 Mr. Wright.

2 **MR. WRIGHT:** Thank you, Madam Chairman.

3 We agree with the comments made by

4 Mr. Rehwinkel and Ms. Kaufman. Thank you.

5 **COMMISSIONER EDGAR:** Thank you.

6 Did we lose the Attorney General's Office? I  
7 don't see -- okay.

8 Commissioners, we have heard briefly an  
9 overview of the positions of the petitioner and the  
10 intervenors. Are there questions or comments at this  
11 point?

12 Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Madam Chair.

14 And I guess my question would be directed to  
15 Mr. Rehwinkel. In light of staff's recommendation,  
16 which does a couple of things, it acknowledges some of  
17 the exceptions staff may have that will be consolidated  
18 and fully litigated in the course of the rate case  
19 proceeding, it also provides for, pursuant to the  
20 settlement agreement, allowing the recovery subject to  
21 refund. And I guess the question I have to you would be  
22 why are the citizens not adequately protected by the  
23 subject-to-refund provision with the ability to fully  
24 litigate this issue during the rate case?

25 **MR. REHWINKEL:** Thank you, Commissioner.

1           If I have suggested to you, and I apologize if  
2 I suggested that we do not feel like our rights will be  
3 adequately protected. Our certain is more a matter of  
4 is this the right way to handle such a large item on a  
5 regular basis. We think the preferable way to raise  
6 rates, especially of such a significant amount, is to do  
7 it after holding a hearing.

8           We are not here suggesting that we won't  
9 vigorously pursue issues associated with this aspect of  
10 the rate case in the rate case through discovery, et  
11 cetera, and testimony. So to that extent, we are not  
12 here arguing that our rights won't be protected. It  
13 will remain to be seen how things proceed and how this  
14 issue is viewed once you get to the rate case.

15           Certainly there should be no issue associated  
16 with the Bartow repowering that is off the table as a  
17 result of the vote here today. There should be no  
18 aspect of the Bartow repowering revenue requirement --  
19 associated revenue requirement where the burden shifts  
20 to the parties other than PEF to justify an adjustment.

21           Their burden of proof should be as if this  
22 case or this revenue requirement is solely a part of  
23 what's at hearing in September. So we are not here  
24 suggesting that in theory our rights will not be  
25 protected. It is really more a matter of principle. We

1 think you have the discretion not to grant this rate  
2 increase. We think it will be better not to. But we  
3 are not saying that it will ultimately deprive us of our  
4 rights.

5 **COMMISSIONER SKOP:** Madam Chair, just a quick  
6 follow up to that.

7 I guess you described this item as a very  
8 large item, and I recognize it as that. But on Page 22  
9 of your -- let's see what the title was -- Consolidated  
10 Response to the Progress Request you described this as a  
11 drive-by rate increase scenario. And, again, I'm trying  
12 to better understand your position in light of the  
13 settlement agreement which clearly indicates the right  
14 of the parties or of Progress to bring interim requests  
15 for a limited proceeding. I mean, a limited proceeding.  
16 But I guess I'm troubled by if we were to adopt the  
17 position that I heard Ms. Kaufman advocate, and these  
18 plants are coming in service on or about June 1st, 2009,  
19 and new rates under the rate case won't come into effect  
20 until January 1, 2010, if I'm doing my math right, then  
21 realistically aren't you asking Progress to eat the  
22 recovery for those six months over and above what you  
23 agreed to in the settlement agreement? I mean, how is  
24 that inherently fair? I'd like for you to point to a  
25 specific reason why that would be equitable in light of

1 the settlement agreement.

2 **MR. REHWINKEL:** Okay. Commissioner, again,  
3 what we agreed to in the settlement agreement is that  
4 Progress could request limited relief. What they're  
5 asking for here is a rate increase without a hearing.  
6 We did not -- we are not saying that we agree that they  
7 could get a rate increase without a hearing. The  
8 specific language in -- and we should all know this by  
9 memory right now, I think it's Paragraph 7 of the  
10 stipulation, is that if their ROE falls below  
11 10 percent, then they are allowed to petition for a  
12 general rate proceeding or limited. They have done  
13 that.

14 We acknowledge that. We have no objection to  
15 their petitioning for -- our sole objection here is the  
16 -- what I consider brinksmanship of filing this request  
17 in such a way that the only way they can get timely or  
18 coincident rate relief with the in-service date is  
19 through this interim mechanism without a hearing. That  
20 is the sole concern that we're raising for your  
21 consideration here today. Did that answer your  
22 question?

23 **COMMISSIONER SKOP:** Yes. And just one  
24 follow-up to that. Again, they have made a filing, and  
25 I know there has been extensive discussion in your

1 pleading about who filed a rate case first, and  
2 congested dockets, and, you know, all the parade of  
3 horribles that results in this. And I'm sympathetic to  
4 that, because we're all busy, our staff is overwhelmed,  
5 you guys are overwhelmed. We understand that. But I  
6 can't control when parties file things.

7 But it seems to me that if they had an  
8 inherent agreement under the settlement agreement or  
9 inherent right under the settlement agreement to seek a  
10 limited proceeding, and, again, I think on Page 7 of  
11 their responsive pleading they talked about the material  
12 difference between the relief available under file and  
13 suspend and the PAA relief requested in this limited  
14 proceeding that's before us today. You know, they have  
15 submitted a tariff, and, you know, it's almost -- there  
16 is at least to me, unless you can help me better  
17 understand, there doesn't seem to be a difference there.

18 They have made a timely filing. They have  
19 petitioned for a request. They have submitted the  
20 tariff, and the issue can be fully litigated within the  
21 course of the rate case proceeding. So I guess I'm  
22 struggling to understand what harm would come from the  
23 staff recommendation of subject to refund where the  
24 consumers are adequately protected, but equally  
25 recognizing the fact that they are doing what they're

1       afforded -- were afforded the ability to do pursuant to  
2       the agreement by the parties that now stand before us  
3       today.

4               **MR. REHWINKEL:** Yes. Commissioner, I've  
5       acknowledged that they are doing what they are  
6       authorized to do. I knowledged at the very beginning of  
7       the day that they are entitled to seek interim relief.  
8       I guess just stated another way, we believe that interim  
9       relief should be granted with great caution, and it  
10      should not be the -- it should be the exception rather  
11      than the rule.

12              And our issue as to timing is that this could  
13      have been filed in the fall. We could have already had  
14      a hearing by now that would have determined rates before  
15      they went into effect. The whole issue here is having a  
16      hearing before you increase rates. It's not that they  
17      have not legally entitled to ask, that they are not  
18      legally in the way they did. We think it is minimally  
19      sufficient in such a way that causes us concern.

20              The cases that authorize this, the Wilson  
21      cases and the Mayo cases, these are cases that deal with  
22      fairly narrow discreet tariff filings that aren't  
23      across-the-board mini-rate case type increases, but  
24      those precedents are being used basically to authorize a  
25      prehearing increase in rates. That is the only issue

1 that we are raising for your consideration.

2 **COMMISSIONER SKOP:** And just one final one,  
3 Madam Chair.

4 With respect to the temporal nature under  
5 which they filed, I mean, we understand the premise.  
6 You take the case as you find it, but it seems to me  
7 that, you know, their filing is temporally, at least,  
8 consistent with the expected in-service date of the  
9 plant. I mean, for instance, if they came in as you  
10 suggested last year or that you seem to be critical of  
11 now because everything is coming in what is arguably the  
12 most busiest docket the Commission has faced in decades,  
13 but if they would have sought initial approval to do  
14 something, you know, would you have not made the same  
15 argument that temporally it was premature?

16 **MR. REHWINKEL:** No, to the contrary. I think  
17 the time frame -- we're arguing or we're discussing  
18 water that's over the dam at this point. I fully  
19 understand that. But the time frame for seeking a  
20 \$130 million rate increase if it was filed, let's say,  
21 in October, you know, you have a period for discovery,  
22 you have a hearing, you have the briefing, and  
23 recommendation schedule just in time to be where we are  
24 today.

25 That's kind of the time frame that I would

1 envision would occur were they to have filed in a more  
2 timely fashion. They filed when they did. We're  
3 dealing with the case as we did. We are raising an  
4 objection based on a matter of policy and principle and  
5 that's the extent of it.

6 **COMMISSIONER SKOP:** And I'm sympathetic to  
7 your concern, but I think also, too, what's asking is  
8 for me to temporarily ignore the provisions of the  
9 settlement agreement and cause them to delay recovery by  
10 six months until the conclusion of a rate case which  
11 causes them economic harm.

12 **MR. REHWINKEL:** No, I would like at it this  
13 way, Commissioner. This same event could have occurred  
14 in 2006 or 2007. No rate case on the horizon  
15 whatsoever. And if they had come in, there would not  
16 have been this concern. I mean, they would have had to  
17 have had a hearing, and assumedly they would have filed  
18 it in a more orderly fashion.

19 There's nothing that we're arguing here today  
20 that is contrary to the stipulation whatsoever. Their  
21 right to ask legally for a limited proceeding rate  
22 increase is vindicated, and we're not objecting to that.  
23 It's a matter of how you grant the relief once they ask  
24 that's the issue.

25 **COMMISSIONER SKOP:** And just one final thing,

1 and, I'm sorry, I'm going to turn this over to my  
2 colleagues, because I don't mean to hog the microphone.  
3 But, temporally, doesn't it make sense for judicial  
4 economy and such instead of having a whole limited  
5 proceeding as you yourself argued within the course of  
6 all that's going on, wouldn't it make sense as staff has  
7 logically, I think, recommended to consolidate this  
8 issue within the course of the rate case where it could  
9 be fully litigated to your heart's content, all the  
10 attention given it to. And it's just doing -- it's  
11 accomplishing the same thing. The same protections are  
12 there. It's like a file and suspend, subject to refund,  
13 and you litigate it in conjunction with a major rate  
14 case in lieu of it being a stand-alone issue. It seems  
15 to me like a lot of economies could be achieved by what  
16 staff has recommended there.

17 **MR. REHWINKEL:** Under the circumstances we are  
18 under today I would agree with you. I would note,  
19 though, however, with respect to file and suspend,  
20 before the statute that we have spent hours pouring over  
21 today, file and suspend was a mechanism under which  
22 interim relief was granted in general rate cases, but  
23 they didn't get the full amount of their request. It  
24 was a measured amount, and it was litigated about make  
25 whole. That's why the statute was put in place.

1           This type of full or whole hog, if you will,  
2 interim under the file and suspend means they get  
3 everything they ask for. And I don't think the  
4 Commission would want that scenario where you had  
5 mini-rate case after mini-rate cases where they got the  
6 full amount under the file and suspend theory.

7           **COMMISSIONER SKOP:** And also, too, to your  
8 point on the whole hog or make whole, they didn't just  
9 get what they asked for. On Issue 9 in the last item we  
10 considered, we adopted the staff recommendation which  
11 was a historical instead of the complete make whole that  
12 they asked for.

13           **MR. REHWINKEL:** That's not -- yes, that's kind  
14 of bringing them up to the bottom that was constructed  
15 for them. I'm talking about the full amount of their  
16 entire rate increase, which is what effectively this is.

17           **COMMISSIONER SKOP:** Fair enough. Thank you.

18           **COMMISSIONER EDGAR:** Commissioner McMurrian.

19           **COMMISSIONER McMURRIAN:** Thank you. And I  
20 think I have a few. I will start with a couple to  
21 Progress, because what Mr. Rehwinkel said about the  
22 burden of proof I kind of wanted to go back to that.  
23 And I'm not sure exactly if he was talking about with  
24 respect to the issues that staff has raised about some  
25 of the numbers we're not sure about, and we'll be

1 looking at those in the rate case. And I'm not sure if  
2 he is saying that the company would maintain its burden  
3 of proof there, but I guess that's my understanding, and  
4 I want to see if you all agree with that, and I guess  
5 just, frankly, everything about the rate case.

6 You have the burden of proof to put on to make  
7 your case about what you need with the rate case.

8 **MR. WALLS:** Yes, Commissioner. Absolutely we  
9 have that burden. It doesn't change. It doesn't shift,  
10 and we have not asked for that to occur.

11 **COMMISSIONER McMURRIAN:** Okay. And also, and  
12 maybe you addressed it earlier, it sounds like perhaps  
13 you touched on it a little bit, and perhaps it's a  
14 little bit of an inside baseball. But to this question,  
15 I guess I can't get it out of my head. Why didn't you  
16 ask sooner?

17 **CHAIRMAN CARTER:** I'm sorry, I didn't get the  
18 last question.

19 **COMMISSIONER McMURRIAN:** Mr. Chairman, I  
20 said -- I asked Progress why didn't they file sooner, or  
21 why did they file it when they did.

22 **CHAIRMAN CARTER:** Thank you.

23 **MR. WALLS:** I was going to give my answer, but  
24 Mr. Burnett would like to give an answer.

25 **MR. BURNETT:** Commissioner, I'm probably

1 better asked, since I was part of the internal team. I  
2 do appreciate the question and I want to dispel any  
3 thought that, you know, we were twiddling our evil Simon  
4 Legree mustache just thinking about the best way that we  
5 could hurt the intervenors. Not at all so.

6 A few things had to happen. I mean, first of  
7 all, we had to fall. We had to trigger the 10 percent.  
8 So there had to be a mechanism by which we, under the  
9 settlement agreement, could even file an interim. So  
10 our earnings had to get below the 10 percent, and it had  
11 to be there in a methodology where we saw that and it  
12 wasn't going to immediately shoot back up or the  
13 calculations weren't too close. And also we had to get  
14 to a point in the Bartow hearing where we could file  
15 competent testimony and avoid -- and give facts that  
16 were sufficient enough to even carry the limited  
17 proceeding. That's to say not to file them in concept.

18 So the timing just is what it was. Trust me,  
19 you know, my company, if we are in -- especially in the  
20 condition we are in, we are not going to drag our feet  
21 if we have a right to seek some relief that's going to  
22 get us more financially sound in the market, especially  
23 with the numbers we are looking at. So it is just  
24 counterintuitive to us to think that we had some plot to  
25 wait.

1           But that's the reason why is, number one, we  
2 had to trigger the threshold, the timing of that to get  
3 below the 10 percent. And, number two, the Bartow  
4 project had to be concrete enough to where we could do  
5 the numbers and make a competent filing before the  
6 Commission.

7           **COMMISSIONER McMURRIAN:** Thank you, Chairman.

8           And I guess, one more along those lines. And  
9 I guess this is directed more at the intervenors, and  
10 particularly with what Mr. Rehwinkel was talking about  
11 about it would be better to look at the magnitude of a  
12 project like this separately. But I guess -- and I  
13 can't attribute it to any certain party, but I know a  
14 lot of times we talk about whether or not it's better to  
15 look at something separately and spin it out or include  
16 it in -- and I know a lot of times this has to do with  
17 the fuel proceedings. We spin out issues or we decide  
18 to leave them in and we try to decide which one is the  
19 better way to deal with it.

20           And I hear the same thing about rate cases,  
21 that sometimes it's better to look at the whole picture  
22 together rather than to pull projects out. So, I guess,  
23 and maybe it's because I, in some sick fashion, like to  
24 discuss these procedural type issues. I want to  
25 understand why we are talking about this. How is it the

1 parties think it is best to deal with that? I mean, I  
2 hear you saying that in this case you want to look at it  
3 separately, but it seems to me I also hear sometimes  
4 from parties it's better to look at it as a whole.

5 **MR. REHWINKEL:** Well, Madam Chairman, first of  
6 all, I don't think we are in a position right now where  
7 we want to look at it separately. I mean, part of the  
8 argument we made is that just practically as a matter of  
9 economy, efficiency, workload, you can't look at it  
10 separately. So that horse is out of the barn. So, you  
11 know, our criticism of this is not directed at -- it is  
12 not really focused on that at this point. Because, as  
13 Commissioner Skop said, you take the case as you find  
14 it. This is what we found. These are the concerns that  
15 we had. And a lot of times we will get before you and  
16 argue about things that we are worried about the  
17 precedential value of them down the road. And, I think  
18 you have to make the best of this situation. And I  
19 appreciate Mr. Burnett's remarks. I don't think anyone  
20 thinks that I was suggesting that this was timed. In  
21 fact, I did say that I didn't think that it was done as  
22 a way to harm us in way, shape, or form. It is just  
23 that the opportunity -- the unknown about how a decision  
24 here today might be used down the road is a fear, and  
25 it's a caution that we put out there for you.

1                   **COMMISSIONER McMURRIAN:** And, Madam Chair, if  
2 Mr. Wright or Ms. Kaufman or Progress wants to make a  
3 comment to that, or even staff, I'm comfortable with  
4 that, but I'm not trying to force them into it either.

5                   **COMMISSIONER EDGAR:** Mr. Walls.

6                   **MR. WALLS:** Yes. I'd like to make a brief  
7 comment. Mr. Rehwinkel seems to be suggesting that,  
8 that he has no objection to us filing a petition or  
9 seeking this relief. And if that's so, I'm starting to  
10 wonder why we're here because that's exactly what  
11 they're doing is objecting to our petition and our  
12 request, which is what we bargained for in the  
13 stipulation. And he's worried about the precedential  
14 value. We're not talking about the future. We're  
15 talking about an instance that is triggered by a  
16 stipulation that we agreed to that they admit the  
17 trigger has been met and they admit this particular  
18 project falls within the scope of that limited  
19 proceeding relief that was bargained for in the  
20 agreement. So, I mean, we're really here just dealing  
21 with this issue right now.

22                   And it's interesting that he brings up the  
23 FP&L storm case as a case where FP&L timely sought  
24 relief through the same kind of proceeding that led to a  
25 tariff filing when in that order they took the same

1 exact position they're taking here. They argued that  
2 there should be no rates in effect until they had a  
3 hearing which effectively denies the utility relief,  
4 which is what would occur here. And the Commission  
5 denied that request and found, as we're asking the  
6 Commission here and as staff has recognized, that all  
7 the parties' interests are fully protected if the rates  
8 go into effect subject to refund. All these issues that  
9 they want to raise about Bartow can be taken up at the  
10 hearing, and there will be a hearing. So no one is  
11 prejudiced by this request except if it's denied,  
12 because then we lose the right for relief for the Bartow  
13 costs until the end, through '09, which is what we  
14 bargained for.

15 **MR. REHWINKEL:** Okay. Can I address -- it'll  
16 take me 30 seconds, Madam Chairman, just on that one  
17 point.

18 We also bargained for the sentence immediately  
19 after the authorization to file a limited proceeding is  
20 that the parties to this agreement are not precluded  
21 from participating in such a proceeding. We bargained,  
22 we bargained to do what we're doing here today and I  
23 think we're doing it fairly. And I'll be quiet. Thank  
24 you.

25 **COMMISSIONER EDGAR:** Commissioner.

1                   **COMMISSIONER McMURRIAN:** It's just a follow-up  
2 to what Mr. Walls said. I mean, in a way I think we got  
3 a little bit far afield of what my question was about  
4 anyway. But I guess you do recognize, Mr. Walls, that  
5 the arguments that the intervenors are raising about the  
6 timing, it is difficult, I believe -- the timing is very  
7 important of course to them with the resources and all  
8 they have, and we have the same issues here.

9                   Now I'm not convinced that it would have been  
10 any easier whether we were dealing with this in a  
11 separate hearing a few months ago or not because we also  
12 had several rate cases and all going on at the same  
13 time. I'm not sure there's any getting, you know,  
14 getting around it. It wouldn't have been a Progress  
15 rate case going on at the same time but we had several  
16 other issues.

17                   But I think, I think we all agree that the  
18 timing of filings like this do impact workload and  
19 response and trying to get the best case there to make  
20 the best decision we can. So I think if we can all  
21 agree on that, we probably have made some progress. But  
22 that was really the point of the question. At the same  
23 time I do believe that it's hard to know when it's  
24 better to split something out or include it in because I  
25 hear different messages at different times depending on

1 what we have before us from different parties. So  
2 that's, that's not directed at anyone. But, anyway,  
3 that was just an afterthought. Thank you, Chairman.

4 **COMMISSIONER EDGAR:** Thank you. And I guess  
5 we had a question, we've kind of gone around it and  
6 that's okay. You know, earlier you had asked if any of  
7 the other intervenors wanted to speak to any of these  
8 points and I wanted to make sure we didn't foreclose  
9 that. Okay.

10 Commissioners, any other comments, questions  
11 at this time?

12 **CHAIRMAN CARTER:** Madam Chairman.

13 **COMMISSIONER EDGAR:** Commissioner Carter.

14 **CHAIRMAN CARTER:** I just wanted to be sure, I  
15 think when Ms. Fleming was talking about the oral  
16 modification --

17 **COMMISSIONER EDGAR:** Yes, sir.

18 **CHAIRMAN CARTER:** -- and I think Commissioner  
19 Skop reiterated that during the course of his  
20 questioning, is that this, this Bartow plant will be put  
21 into the full rate case so that the parties will have an  
22 opportunity for a full hearing and the whole process; is  
23 that correct?

24 **COMMISSIONER EDGAR:** That is my understanding.  
25 Our staff is nodding yes in the affirmative.

1           **CHAIRMAN CARTER:** Thank you. I just wanted to  
2 be sure.

3           **COMMISSIONER EDGAR:** Commissioners, any other  
4 questions or comments?

5           Commissioner Skop.

6           **COMMISSIONER SKOP:** Thank you, Madam Chair.  
7 If there are no further discussions, I'd move staff's  
8 recommendation for Issues 1 through 7, with the oral  
9 modification included.

10          **COMMISSIONER EDGAR:** Thank you.

11          **COMMISSIONER McMURRIAN:** Second.

12          **COMMISSIONER EDGAR:** Okay. Commissioners, we  
13 have a motion and a second for the staff recommendation  
14 as modified for Issues 1 through 7. Is there any  
15 further discussion?

16                 (Technical difficulties.)

17          **CHAIRMAN CARTER:** That wasn't me this time.

18          **COMMISSIONER EDGAR:** Okay. We will hold in  
19 place for just a moment.

20          **CHAIRMAN CARTER:** Okay.

21                 (Pause.)

22          **COMMISSIONER EDGAR:** We're going to keep  
23 ourselves in suspense for just a few moments longer. My  
24 apologies. We are having a little bit of technical  
25 difficulties. We are going --

1                   **COMMISSIONER ARGENZIANO:** Hello.

2                   **COMMISSIONER EDGAR:** Oh, hold on.

3                   **COMMISSIONER ARGENZIANO:** Okay. Got back on.

4                   **COMMISSIONER EDGAR:** Okay. Commissioner, we  
5 were just about to take a few moments to try to find  
6 you, so thank you for jumping back in.

7                   Commissioner, we have, for all of us just to  
8 recap, we have a motion and a second in favor of the  
9 staff recommendation inclusive of Issues 1 through 7.  
10 Is there any further discussion or question?

11                   **COMMISSIONER ARGENZIANO:** Yes.

12                   **COMMISSIONER EDGAR:** Commissioner Argenziano.

13                   **COMMISSIONER ARGENZIANO:** Since I got cut off,  
14 I wasn't able to have a concern of mine voiced. I have  
15 different votes for different issues. And now that  
16 you've consolidated them, I'd have to vote no on all  
17 rather than what I wanted to do was Issue 3 -- vote  
18 affirmative on 3, 6 and 7 and no on 1, 2, 4, 5, and I  
19 think that's correct. And now if it's been  
20 consolidated, then I have to vote no on all of them.

21                   **COMMISSIONER SKOP:** Madam Chair, I'll withdraw  
22 my motion to allow issue by issue to accommodate  
23 Commissioner Argenziano.

24                   **COMMISSIONER McMURRIAN:** The same goes with  
25 the second.

1                   **COMMISSIONER EDGAR:** Okay. Commissioner  
2 Argenziano, just so I am clear, is your preference to  
3 take an individual vote on each issue?

4                   **COMMISSIONER ARGENZIANO:** I hate to make it go  
5 the long way. I don't know if there's another way of  
6 doing that.

7                   **COMMISSIONER EDGAR:** There's probably another  
8 way, but I think we can go through rather quickly and  
9 accommodate your concern.

10                  **COMMISSIONER ARGENZIANO:** Thank you.

11                  **COMMISSIONER EDGAR:** So, so what I will ask my  
12 colleagues is we'll go through them very, very quickly.  
13 If there are questions, I'll make sure that there's the  
14 opportunity, or discussion. But right now, Commissioner  
15 Skop, I'm going to ask you for a motion on Issue 1.

16                  **COMMISSIONER SKOP:** Thank you, Madam Chair.  
17 Move to approve staff recommendation as to  
18 Issue 1.

19                  **COMMISSIONER McMURRIAN:** Second.

20                  **COMMISSIONER EDGAR:** Commissioners, any  
21 discussion or questions on Issue 1? Hearing none, all  
22 in favor, say aye. Aye.

23                  **COMMISSIONER McMURRIAN:** Aye.

24                  **COMMISSIONER SKOP:** Aye.

25                  **CHAIRMAN CARTER:** Aye.

1           **COMMISSIONER EDGAR:** Opposed?

2           **COMMISSIONER ARGENZIANO:** Aye.

3           **CHAIRMAN EDGAR:** Show the motion adopted.

4           We are on Issue 2. Commissioner Skop.

5           **COMMISSIONER SKOP:** I move to approve the  
6 staff recommendation as to Issue 2.

7           **COMMISSIONER McMURRIAN:** Second.

8           **COMMISSIONER EDGAR:** Commissioners, any  
9 questions on Issue 2 or discussion? Hearing none, all  
10 in favor of the motion, say aye. Aye.

11          **CHAIRMAN CARTER:** Aye.

12          **COMMISSIONER McMURRIAN:** Aye.

13          **COMMISSIONER SKOP:** Aye.

14          **COMMISSIONER EDGAR:** Opposed?

15          **COMMISSIONER ARGENZIANO:** Aye.

16          **COMMISSIONER EDGAR:** Show the motion adopted.

17          That brings us to Issue 3.

18          **COMMISSIONER SKOP:** I would move to approve  
19 staff recommendation as to Issue 3.

20          **COMMISSIONER McMURRIAN:** Second.

21          **COMMISSIONER EDGAR:** Commissioners, we have a  
22 motion and a second for the staff recommendation on  
23 Issue 3. Any questions, discussion?

24          **COMMISSIONER ARGENZIANO:** If we can, just  
25 reiterate Issue 3 for me, please.

1           **COMMISSIONER EDGAR:** Sure. Issue 3 is should  
2 the \$126 million approximately annual base rate --

3           **COMMISSIONER ARGENZIANO:** Consolidated, is  
4 that it?

5           **COMMISSIONER EDGAR:** I'm sorry, Commissioner.  
6 I can't hear you. Could you --

7           **COMMISSIONER ARGENZIANO:** I'm sorry. Is that  
8 the consolidation issue?

9           **COMMISSIONER EDGAR:** No.

10          **COMMISSIONER ARGENZIANO:** I'm sorry. Okay. I  
11 lost track.

12          **COMMISSIONER EDGAR:** Okay. I want to make  
13 sure that we're all as clear as we can be. We do have a  
14 motion and a second. I will leave, I am leaving that  
15 pending for just a moment. But I will ask our staff,  
16 can you very quickly restate Issue 3 for us?

17          **MR. SLEMKEWICZ:** Okay. Issue 3 is the subject  
18 to refund issue to hold the entire \$126,212,000 subject  
19 to refund, you know, pending a full review in the rate  
20 case.

21          **COMMISSIONER EDGAR:** Okay. Commissioners, any  
22 additional questions on Issue 3? Hearing none, all in  
23 favor of the motion, say aye.

24                 (Unanimous affirmative vote.)

25                 Opposed? Show Issue 3 adopted.

1           That brings us to Issue 4.

2           **COMMISSIONER SKOP:** Move to approve staff  
3 recommendation as to Issue 4.

4           **COMMISSIONER McMURRIAN:** Second.

5           **COMMISSIONER EDGAR:** Okay. Commissioners, we  
6 have a motion and a second to adopt the staff  
7 recommendation on Issue 4. Are there any questions?  
8 Hearing none, all in favor of the motion, say aye.

9           **COMMISSIONER SKOP:** Aye.

10          **COMMISSIONER EDGAR:** Aye.

11          **COMMISSIONER McMURRIAN:** Aye.

12          **CHAIRMAN CARTER:** Aye.

13          **COMMISSIONER EDGAR:** Opposed?

14          **COMMISSIONER ARGENZIANO:** Aye.

15          **COMMISSIONER EDGAR:** Show the motion adopted.

16          That brings us to Issue 5.

17          **COMMISSIONER SKOP:** I would move to approve  
18 staff recommendation as to Issue 5.

19          **COMMISSIONER McMURRIAN:** Second.

20          **COMMISSIONER EDGAR:** Any questions on Issue 5?  
21 Hearing none, all in favor of the motion, say aye.

22          **COMMISSIONER SKOP:** Aye.

23          **COMMISSIONER EDGAR:** Aye.

24          **COMMISSIONER McMURRIAN:** Aye.

25          **CHAIRMAN CARTER:** Aye.

1           **COMMISSIONER EDGAR:** Opposed?

2           **COMMISSIONER ARGENZIANO:** Aye.

3           **COMMISSIONER EDGAR:** Show Issue 5 adopted.  
4           Issue 6.

5           **COMMISSIONER SKOP:** I would move to approve  
6           staff recommendation as to Issue 6.

7           **COMMISSIONER McMURRIAN:** Second.

8           **COMMISSIONER EDGAR:** Any questions on Issue 6?  
9           Hearing none, all in favor of the motion, say aye.

10                   (Unanimous affirmative vote.)

11                   Opposed? Show Issue 6 adopted.

12                   That brings us to --

13           **CHAIRMAN CARTER:** Madam Chairman, on Issue 7,  
14           this was the staff modification on the --

15                   **COMMISSIONER EDGAR:** Yes. Yes. There was --

16                   **CHAIRMAN CARTER:** Okay. Thank you.

17                   **COMMISSIONER EDGAR:** -- a staff modification  
18                   on --

19                   **COMMISSIONER SKOP:** Issue 1 and Issue 7.

20                   **COMMISSIONER EDGAR:** -- Issue 1 and Issue 7.

21                   Thank you. Issue 1, we've adopted the oral modification  
22                   as part of the motion. Issue 7, I will look for a  
23                   motion to encompass the oral modification.

24                   **COMMISSIONER SKOP:** Thank you, Madam Chair.  
25                   Move to approve staff recommendation reflecting, for

1 Issue 7 reflecting the oral modification.

2 **COMMISSIONER McMURRIAN:** Second.

3 **COMMISSIONER EDGAR:** We have a motion and a  
4 second. Any questions? Hearing no additional  
5 questions, all in favor of the motion on Issue 7, say  
6 aye.

7 (Unanimous affirmative vote.)

8 Opposed? Show Issue 7 adopted.

9 That concludes our discussions on this item.

10 (Agenda item concluded.)

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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 2nd DAY OF JUNE, 2009.

  
\_\_\_\_\_  
JANE FAUROT, RPR  
Commission Reporter  
(850) 413-6732

  
\_\_\_\_\_  
LINDA BOLES, RPR, CRR  
Commission Reporter  
(850) 413-6734