

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS (FLORIDA POWER & LIGHT COMPANY). DOCKET NO. 080407-EG

COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS (PROGRESS ENERGY FLORIDA, INC.). DOCKET NO. 080408-EG

COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS (TAMPA ELECTRIC COMPANY). DOCKET NO. 080409-EG

COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS (GULF POWER COMPANY). DOCKET NO. 080410-EG

COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS (FLORIDA PUBLIC UTILITIES COMPANY). DOCKET NO. 080411-EG

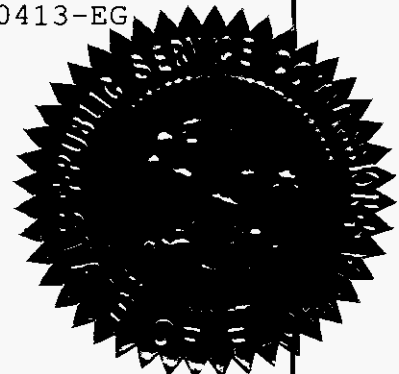
COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS (ORLANDO UTILITIES COMMISSION). DOCKET NO. 080412-EG

COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS (JEA). DOCKET NO. 080413-EG

PROCEEDINGS: PREHEARING

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
PREHEARING OFFICER

DATE: Monday, August 3, 2009



DOCUMENT NUMBER - DATE
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TIME: Commenced at 9:30 a.m.
Concluded at 10:06 a.m.

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

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

1 PARTICIPATING:

2 JEREMY SUSAC, ESQUIRE, Florida Energy and
3 Climate Commission, Governor's Energy Office, 600 South
4 Calhoun Street, Suite 251, Tallahassee, Florida
5 32399-0001, representing Florida Energy and Climate
6 Commission.

7 VICKI G. KAUFMAN, ESQUIRE, c/o Keefe Law Firm,
8 The Perkins House, 118 North Gadsden Street,
9 Tallahassee, Florida 32301, representing Florida
10 Industrial Power Users Group.

11 SUZANNE BROWNLESS, ESQUIRE, c/o Suzanne
12 Brownless, P.A., 1975 Buford Blvd., Tallahassee, Florida
13 32308, representing Florida Solar Coalition.

14 E. LEON JACOBS, JR., ESQUIRE, c/o Williams &
15 Jacobs, LLC, 1720 South Gadsden Street, MS 14, Suite
16 201, Tallahassee, Florida 32301, and BRANDI COLANDER,
17 BENJAMIN LONGSTRETH, and GEORGE CAVROS, representing
18 SACE and NRDC.

19 CHARLIE GUYTON, ESQUIRE, Squire Law Firm, 215
20 South Monroe Street, Suite 601, Tallahassee, Florida
21 32301, representing Florida Power & Light Company.

22 JOHN T. BURNETT, Progress Energy Service
23 Company, LLC, Post Office Box 14042, Saint Petersburg,
24 Florida 33733-4042, representing Progress Energy
25 Florida, Inc.

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JAMES D. BEASLEY and LEE L. WILLIS, ESQUIRE,
Ausley Law Firm, Post Office Box 391, Tallahassee,
Florida 32302, representing Tampa Electric Company.

STEVEN R. GRIFFIN, ESQUIRE, and RUSSELL
BADDERS, ESQUIRE, Beggs & Lane Law Firm, P.O. Box 12950,
Pensacola, Florida 32591, representing Gulf Power
Company.

NORMAN H. HORTON, JR., ESQUIRE, Messer Law
Firm, Post Office Box 15579, Tallahassee, Florida 32317,
representing Florida Public Utilities Company

ROY C. YOUNG, ESQUIRE, Young Law Firm, 225
South Adams Street, Suite 200, Tallahassee, Florida
32301, representing Orlando Utilities Commission.

KATHERINE FLEMING, ESQUIRE and ERIC SAYLER,
ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
Boulevard, Tallahassee, Florida 32399-0850, representing
the Commission Staff.

MARY ANNE HELTON, Deputy General Counsel,
Florida Public Service Commission 2540 Shumard Oak
Blvd., Tallahassee, Florida 32399, Advisor to the
Commission.

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P R O C E E D I N G S

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2 **CHAIRMAN CARTER:** Good morning to one and all.
3 I'd like to call this hearing to order. Actually, it's
4 a prehearing, but let's call it to order anyway.

5 Staff, would you please read the notice.

6 **MS. FLEMING:** Pursuant to notice issued by the
7 Commission Clerk, this time and place has been set for a
8 prehearing conference in Docket Numbers 080407-EG
9 through 080413-EG.

10 **CHAIRMAN CARTER:** Okay. Let's take
11 appearances.

12 **MR. GUYTON:** Charles Guyton with the law firm
13 of Squire Sanders and Dempsey appearing on behalf of
14 Florida Power and Light Company.

15 **MR. GRIFFIN:** Steven Griffin with the Beggs
16 and Lane law firm appearing on behalf of Gulf Power.
17 Also, Russell Badders.

18 **MR. BEASLEY:** James D. Beasley of the law firm
19 of Ausley and McMullen appearing on behalf of Tampa
20 Electric Company with Lee L. Willis.

21 **MR. BURNETT:** John Burnett on behalf of
22 Progress Energy Florida.

23 **MR. HORTON:** Norman H. Horton, Jr., with the
24 law firm of Messer Caparello and Self on behalf of
25 Florida Public Utilities Company.

1 **MR. YOUNG:** Roy Young with the firm of Young
2 Van Assenderp here in Tallahassee appearing on behalf of
3 the Orlando Utilities Commission.

4 **MR. PERKO:** Gary Perko of the law firm of
5 Hopping Green and Sams appearing on behalf of JEA.

6 **MS. KAUFMAN:** Vicki Gordon Kaufman of the law
7 firm Keefe Anchors Gordon and Moyle on behalf of the
8 Florida Industrial Power Users Group.

9 **MR. JACOBS:** Leon Jacobs of the firm of
10 Williams and Jacobs appearing on behalf of the Natural
11 Resources Defense Council and the Southern Alliance of
12 Clean Energy joined by Mr. Ben Longstreth, Ms. Brandi
13 Colander, and Mr. George Cavros.

14 **MS. BROWNLESS:** Suzanne Brownless, Suzanne
15 Brownless PA, appearing on behalf of the Florida Solar
16 Coalition.

17 **MR. SUSAC:** Good morning, Chairman. Jeremy
18 Susac appearing on behalf of the Florida Energy and
19 Climate Commission.

20 **CHAIRMAN CARTER:** Jeremy, we can get you a
21 better seat. How about over there? We could do a
22 little better than that.

23 **MR. SUSAC:** Thank you very much, Chairman.

24 **CHAIRMAN CARTER:** Okay. Did we get all the
25 parties before I go to staff? Did we get all the

1 parties yet?

2 Staff.

3 **MS. FLEMING:** Katherine Fleming and Erik
4 Sayler appearing on behalf of the Commission.

5 **MS. HELTON:** Mary Anne Helton, Advisor to the
6 Commission.

7 **CHAIRMAN CARTER:** Thank you. That covered all
8 the parties as well as staff.

9 Okay. Let's move to preliminary matters.

10 **MS. FLEMING:** Yes, Chairman.

11 Last week we disseminated an e-mail, staff
12 disseminated an e-mail regarding the Florida Energy and
13 Climate Commission's request to put in an exhibit of the
14 government action plan. We would suggest that we take
15 that up as a preliminary matter to hear from the parties
16 whether there could be a stipulation reached with
17 respect to this exhibit.

18 **CHAIRMAN CARTER:** Okay. Let's tee it up,
19 gentlemen and ladies.

20 **MR. GUYTON:** Commissioner, Charlie Guyton on
21 behalf of FPL.

22 FPL is willing to stipulate to the
23 authenticity of this document being the report of the
24 Governor's Climate Task Force. FPL would stop short of
25 stipulating that it's appropriate evidence for

1 consideration by the Commission as to what the
2 appropriate goals would be.

3 It is much broader in scope than the statutory
4 comments that are requested of FECC. It is not from
5 FECC, but another entity, and we just simply reserve our
6 opportunity to raise any specific objections if it's
7 offered for purposes of evidence as to what the
8 appropriate goals would be.

9 **CHAIRMAN CARTER:** Okay.

10 **MR. GRIFFIN:** And Gulf would concur with that
11 position.

12 **MR. BEASLEY:** As does Tampa Electric Company.

13 **MR. BURNETT:** As does Progress, sir.

14 **MR. HORTON:** And FPUC.

15 **MR. YOUNG:** As does OUC.

16 **MR. PERKO:** As does JEA.

17 **MS. KAUFMAN:** We have no objection to the
18 exhibit.

19 **MR. JACOBS:** Mr. Chairman, NRC and SACE are in
20 agreement with the proposed stipulation. We believe
21 that not only does it stand for the weight that
22 Mr. Guyton would give it, but we believe it has
23 important relevance to the Commission's decision here.
24 The statute is in the direction it gives that the
25 Florida Energy Climate Commission should have a role in

1 these processes, and it's clear that that role should be
2 substantive.

3 We believe that this is a pertinent and
4 relevant piece of evidence and it comes from the
5 legislative progeny of the Commission, its predecessors,
6 if you will. So we believe that the stipulation on its
7 own should be adopted.

8 **CHAIRMAN CARTER:** Ms. Brownless.

9 **MS. BROWNLESS:** We would agree with Mr. Jacobs
10 and say that it should be admitted both for the
11 substance contained therein as well as the comments. In
12 other words, it should be able to be relied upon as
13 evidence in the hearing.

14 **CHAIRMAN CARTER:** Thank you.

15 Mr. Susac.

16 **MR. SUSAC:** Thank you, Chairman.

17 I think we are all saying a similar thing. We
18 would agree to the stipulations. We look forward to
19 working with the parties. We would like the document
20 just entered in and the Commission can give it the
21 weight it's due.

22 **CHAIRMAN CARTER:** Thank you.

23 Ms. Fleming.

24 **MS. FLEMING:** The statute states that the
25 Florida Energy and Climate Commission shall file with

1 the Commission comments on the proposed goals, including
2 but not limited to. With the language "not limited to"
3 it is more expansive than the three areas that they are
4 designated within the statute. Staff would recommend
5 that this be put in as an exhibit and the Commissioners
6 can give it the weight that it's due.

7 **CHAIRMAN CARTER:** Ms. Helton.

8 **MS. HELTON:** Mr. Chairman, I agree with the
9 conclusion that Ms. Fleming reaches that the exhibit
10 should be entered into the record and given the weight
11 it's due.

12 **CHAIRMAN CARTER:** Okay. Show it done. The
13 next matter.

14 **MS. FLEMING:** And staff will designate this
15 exhibit in the Comprehensive Exhibit List.

16 **CHAIRMAN CARTER:** Okay. It was clear in my
17 ruling, right, that it's accepted and we will give it
18 whatever weight it's due. Okay. Whatever concerns that
19 any party may have, you may raise them at the
20 appropriate time, but my ruling stands, okay. All
21 right. Everybody clear? It's about as clear as mud,
22 right?

23 Staff, preliminary matters.

24 **MS. FLEMING:** I am not aware of any other
25 preliminary matters at this time.

1 **CHAIRMAN CARTER:** Are there any preliminary
2 matters of any of the parties at this time?

3 Ms. Brownless.

4 **MS. BROWNLESS:** Yes, sir, we have one
5 preliminary matter, and that is with regard to how the
6 hearing will be conducted. Will there be an opportunity
7 at the beginning of the hearing for public comment?

8 **CHAIRMAN CARTER:** Ms. Helton.

9 **MS. HELTON:** I haven't looked at FEECA with
10 respect to that particular point as far as it
11 contemplates public comment. My recollection is from
12 prior readings that it does not. Typically, the
13 Commission hears public comment in ratemaking matters
14 and need determinations. I just don't believe that the
15 Legislature contemplated the need for public comment,
16 but if Ms. Brownless knows of a particular part of the
17 statute that does and she can point it out to me, I
18 would be happy to look at it.

19 **CHAIRMAN CARTER:** Ms. Brownless.

20 **MS. BROWNLESS:** Commissioner, what I would
21 argue is that it is obvious that the goals proceeding
22 will have a direct and immediate impact on the rates.
23 As a matter of fact, that is vociferously and strongly
24 being argued by everyone to my right that they believe
25 it is essential that rate impacts be taken into account

1 in setting FEECA goals. Because whatever goals come up
2 with -- you know, are set here affect the recovery
3 factor and the recovery factor dramatically affects
4 rates.

5 It's the conservation goals recovery factor
6 that goes into developing rates, so I believe because it
7 is, in that sense, directly affecting the rates paid by
8 the average run-of-the-mill customer there should be
9 some opportunity for public comment.

10 **CHAIRMAN CARTER:** I still didn't hear any
11 statutory reference.

12 **MS. HELTON:** No, sir. Maybe this is one of
13 those things that we could take under advisement and
14 look further at the statute and you can make your ruling
15 in the prehearing order.

16 **CHAIRMAN CARTER:** Okay. Let's do that, and
17 any of the parties that wish to submit information can
18 do so. Let's do it that way. Any further preliminary
19 matters? Yes, sir.

20 **MR. YOUNG:** Mr. Chairman, I don't know if this
21 is the proper place, but OUC did not indicate the
22 numbers of the issues either for their witnesses or
23 their rebuttal witnesses, and I'm prepared to put those
24 numbers in now if appropriate.

25 **CHAIRMAN CARTER:** Hang on one second.

1 Staff.

2 **MS. FLEMING:** What I would suggest is that any
3 designation of the number of issues that the witnesses
4 are testifying to, or any changes in their positions,
5 those be provided to staff by e-mail, and we will
6 incorporate those in the final prehearing order.

7 **CHAIRMAN CARTER:** Okay. We'll allow staff to
8 do that. That would be better for all parties involved.
9 We can kind of sequentially put that in there. That's
10 normally done. Okay.

11 Any further preliminary matters from the
12 parties? Okay. That was about as fun as going to get a
13 root canal. Those of you that have seen me as
14 Prehearing Officer before know that I like to go through
15 the document, and if there are any comments, you make
16 your comments. If not, we move on.

17 Those that have not seen me as Prehearing
18 Officer before, what I like to do is I like to go
19 through the document, and if there are any comments we
20 deal with them at that point in time. If there's no
21 comments, then don't feel the need to be extemporaneous
22 or anything like that, okay?

23 Let's go through the draft of the prehearing
24 order.

25 Section I, Case Background.

1 Section II, Conduct of the Proceedings.

2 Section III, Jurisdiction.

3 Section IV, Procedure for Handling

4 Confidential Information.

5 Ms. Brownless, you're recognized.

6 **MS. BROWNLESS:** Thank you.

7 With regard to the order of witnesses, and

8 this is just for my understanding.

9 **CHAIRMAN CARTER:** We're not there yet.

10 **MS. BROWNLESS:** Oh. I'm sorry, sir.

11 **CHAIRMAN CARTER:** Okay. That's Section VI.

12 Those Roman numerals, they kind of get -- no problem.

13 On Section IV, Procedure for Handling

14 Confidential Information.

15 **MR. JACOBS:** I'm sorry, Mr. Chairman.

16 **CHAIRMAN CARTER:** Mr. Jacobs.

17 **MR. JACOBS:** You know what, that doesn't

18 happen in this case. I'm getting cases mixed up. That

19 was another case where there was some confidential

20 deposition exhibits, but that's not the case here, so

21 strike that.

22 **CHAIRMAN CARTER:** Okay. Section V, Prefiled

23 Testimony and Exhibits; Witnesses.

24 Staff, I'm going to allow you guys to kind of

25 explain that, because you know my style. So you're

1 recognized.

2 **MS. FLEMING:** We would just point out under
3 Section V that summaries of testimony shall be limited
4 to five minutes.

5 **CHAIRMAN CARTER:** That's the testimony of your
6 witnesses. Anything further on Section V, Prefiled
7 Testimony and Exhibits and Witnesses. Okay.

8 Now, Ms. Brownless, Section VI, Order of
9 Witnesses. You're recognized.

10 **MS. BROWNLESS:** Thank you, sir.

11 All I was wondering was, Mr. Kushner is here
12 several times because obviously he has offered testimony
13 about several of the different parties here. Are we
14 going to try to combine everybody's direct and rebuttal
15 testimony in one fell swoop, or put Mr. Kushner up one
16 time and allow him to testify about both OUC and JEA?

17 **CHAIRMAN CARTER:** What we're probably going to
18 do is that once staff has a complete listing of the
19 issues and the witnesses and all, they'll make some
20 recommendations, and I would recommend to each of you to
21 work with our staff as expeditiously as possible as they
22 put together that process. So we'll try to make it as
23 streamlined as possible and as convenient for the
24 parties as well as all of those involved. When I say
25 all those involved, the witnesses, as well, because

1 there may be some traveling concerns and things of that
2 nature, as well as there may be some witnesses that are
3 in direct that won't be in rebuttal, and we'll try to
4 accommodate you there.

5 Staff.

6 **MS. FLEMING:** I would note for the record that
7 this morning I did receive a sheet showing me the order
8 of witnesses for the utilities. I know Mr. Kushner
9 appears once. It's my understanding that he will be
10 appearing once for OUC and JEA. I would have the
11 parties address that, but we will work with all the
12 parties in streamlining this hearing process because we
13 do have five days for this hearing.

14 **CHAIRMAN CARTER:** Yes, and we would like to
15 stay within that because time is really a premium this
16 time of year. And as I said, please work with our
17 staff. We'll try to get the prehearing order out as
18 soon as possible this week. So please work with our
19 staff. Okay.

20 **MS. BROWNLESS:** And, Commissioner, will we be
21 getting an e-mail, or when you put out the final
22 prehearing order, Ms. Fleming, will it have the correct
23 order of witnesses?

24 **MS. FLEMING:** The final prehearing order will
25 incorporate all changes made at the prehearing

1 conference today, including the order of witnesses, any
2 changes in positions, and we will try to get that out --
3 our goal is by Wednesday so that the parties can at
4 least have enough time to look at the document prior to
5 the hearing.

6 **MS. BROWNLESS:** Thank you, ma'am.

7 **CHAIRMAN CARTER:** And I'll be available to
8 make sure it gets done posthaste. All right.

9 **MS. KAUFMAN:** Mr. Chairman.

10 **CHAIRMAN CARTER:** Ms. Kaufman.
11 Ms. Gordon-Kaufman.

12 **MS. KAUFMAN:** Thank you, Mr. Chairman.

13 In light of streamlining the process and
14 keeping expenses down, FIPUG has one witness. In this
15 case it has one set of testimony, Mr. Pollock. He has
16 to travel here from St. Louis, Missouri, and I was
17 wondering if we could get a date certain for him to
18 appear. I'm assuming the utilities will go first, so
19 maybe mid-week just so that he can plan for his travel
20 in trying to get the least costly ticket that he can.

21 **CHAIRMAN CARTER:** I don't know if we're there
22 yet. Are we, Ms. Fleming?

23 **MS. FLEMING:** Chairman, I don't believe we are
24 there yet. I would point out at this point if there are
25 any witnesses that the parties are willing to stipulate,

1 please convey that information to staff. That will also
2 help us to streamline this process and maybe make a
3 better determination as to when Mr. Pollock will be on
4 the stand. But at this point I think it's too soon to
5 tell.

6 **CHAIRMAN CARTER:** Okay. Anything further on
7 order of witnesses? Okay.

8 Section VII, Basic Positions.

9 **MR. JACOBS:** I'm sorry, Mr. Chairman, we will
10 come back. I have a very similar requests to
11 Ms. Gordon-Kaufman's, but I will hold until the proper
12 time.

13 **CHAIRMAN CARTER:** About the order of
14 witnesses?

15 **MR. JACOBS:** Yes.

16 **CHAIRMAN CARTER:** If you can get that to
17 staff. I mean, the thing about it, it's going to be --
18 if the parties, if you guys can get together and
19 stipulate to some witnesses and all like that, that will
20 help with the process. Also, once we know who's on
21 first, and what's on second, and I-don't-know is on
22 third, and those kinds of things, as we get that lined
23 up it will be a lot easier for staff to incorporate that
24 within the context of the prehearing order as well as
25 communicate that to the parties.

1 **MR. JACOBS:** We'll make sure we do that also
2 by the end of the day.

3 **CHAIRMAN CARTER:** Okay, thank you.

4 Section VII, Basic Positions.

5 Section VIII, Issues and Positions. Staff,
6 you're recognized.

7 **MS. FLEMING:** Staff would note that the
8 parties are in agreement on Issues 1 through 13. There
9 are three additional issues that have been raised by the
10 parties during an Issue ID; they are identified as
11 Issues 14, 15, and 16. Staff would suggest that we just
12 check with the parties to see if there are any comments
13 with respect to including these three issues in the
14 issues.

15 **CHAIRMAN CARTER:** Okay. Have you guys had an
16 opportunity to look those over in terms of the
17 incorporation of 14, 15, and 16? Are there any
18 objections of any of the parties? We are really just
19 talking about incorporating them from the perspective
20 that they have been listed here, not that you would --
21 we're not asking you to give away the farm or anything
22 like this. It is merely a procedural perspective.

23 Mr. Jacobs.

24 **MR. JACOBS:** Yes, sir. Thank you, Mr.
25 Chairman. As we have indicated in our positions to

1 Issues 15 and 16, we believe that these issues -- and I
2 won't belabor this. We have had this conversation
3 already in our preliminary meetings, but we believe that
4 these issues are subsumed in prior issues. But one
5 point I would add here, a considerable concern is,
6 particularly with regard to Issue 15, is that by
7 including this issue it could give an appearance, at
8 least, as if the Commission is welcoming the parties to
9 give them an interpretation. If you buy our argument
10 that Issue 15 is subsumed in Issue 7, then the only
11 additional value for Issue 15 then is to invite
12 statutory interpretation.

13 **CHAIRMAN CARTER:** But if we don't buy your
14 argument, then --

15 **MR. JACOBS:** Yes, sir.

16 **CHAIRMAN CARTER:** Okay. We're talking about
17 Issues 14, 15, and 16, hearing from the parties. I'll
18 come to you in a minute, staff. I want to hear from the
19 parties.

20 Yes, sir, you are recognized.

21 **MR. YOUNG:** Yes, sir. I'm responsible on
22 behalf of OUC, I think, for Issue 15, and the idea that
23 the Commission should not give any consideration to the
24 impact of the goals that it might set on the rates of
25 the customers of those utilities is just a foreign

1 argument to me.

2 The paramount interest of this Commission is
3 to protect the ratepayers and to protect them on how
4 much they have to pay for their rates. So to take a
5 position or an argument that you ought not even consider
6 that I think flies in the face of what the Public
7 Service Commission stands for and what it has been
8 standing for for these many years.

9 As to the statute itself, I don't think
10 anything that happened in the last session or two on the
11 FEECA goals changed the fact that you need to consider
12 the impact of rates on the individual ratepayers. I
13 would point out that the statute itself gives the
14 Commission the authority to deny plans that would be
15 submitted following these rate goals that you think have
16 an undue impact on the cost passed on to the customers.

17 I would also point out that as far as the
18 munies are concerned, we are sort of in a different
19 position. You have rate-setting ability for the IOUs,
20 you don't with us, and that is a difference, and it's a
21 difference that we ought to recognize in this hearing.

22 In the FEECA legislation, you, as a
23 Commission, for example, can give the IOUs rewards if
24 they exceed their goals. You can actually give them an
25 added rate of return on equity up to 50 basis points if

1 they exceed 20 percent of their annual goals. You also
2 can consider their experience in this area when you are
3 taking action on their rates when they come before you.

4 That's not anything that the munies can
5 consider. Our stockholders are our ratepayers. Our
6 dividends to our stockholders are keeping the rates low,
7 and anything that happens that increases the rates to
8 those customers, especially now at this particular point
9 in time in our history, would be devastating to a lot of
10 our folks. We plan on putting on testimony, if allowed,
11 that will show that a very large segment of our
12 customers are in the service industry and by nature make
13 fairly low income, and by nature live in rental housing
14 to a large extent, probably more so than any other
15 percentage-wise service area of any of the utilities in
16 the state.

17 And although the impact of some of the goals
18 that are being proposed by some of the intervenors'
19 testimony would seem like it might be minor money to
20 some of us, it isn't minor money to folks that don't
21 have any money. And so I think that the Commission
22 would, should, and must consider the impact of costs
23 when they are establishing the goals for all the
24 utilities, but especially for the munies.

25 Thank you, sir.

1 **CHAIRMAN CARTER:** Thank you.

2 Mr. Perko.

3 **MR. PERKO:** Thank you, Mr. Chairman.

4 JEA concurs that Issues 15 and 16 should be in
5 this case. I won't belabor the points made by
6 Mr. Young. However, I would like to respond to
7 Mr. Jacobs' argument that these issues would somehow
8 invite statutory interpretation. I think necessarily
9 and in the testimony of virtually all parties, if not
10 all parties, there is discussion of the statute. I
11 think that's necessary for the Commission to do. And to
12 suggest that the parties can't discuss statutory
13 interpretation is just not right.

14 **CHAIRMAN CARTER:** Any further parties before I
15 go to staff? Any further parties? Okay. Staff.

16 **MS. FLEMING:** The statute contemplates that
17 the Commission shall take into consideration the costs
18 and benefits to the general body of ratepayers as a
19 whole. We believe that this issue does address that
20 section of the statute. While it may be accurate that
21 some of the positions taken under this issue could be
22 subsumed under Issue 7, Issue 7 goes specifically to the
23 cost-effectiveness of the test, and we believe that this
24 is an issue that may be necessary for the parties to
25 highlight their specific rate impacts on their specific

1 customers.

2 **CHAIRMAN CARTER:** Thank you.

3 Ms. Helton, anything further?

4 **MS. HELTON:** No, sir.

5 **CHAIRMAN CARTER:** Well, we'll leave it in.
6 We'll allow those in. That seems to make sense, and you
7 guys can make your argument at the appropriate time.

8 Anything further on the issues and positions?

9 Sections IX, Exhibit List.

10 Staff, you're recognized.

11 **MS. FLEMING:** Staff is in the process of
12 preparing a Comprehensive Exhibit List. That
13 Comprehensive Exhibit List will consist of prefiled
14 testimony as well as any additional stipulated exhibits
15 that we can get as part of staff's composite exhibit.

16 We have provided several e-mails to the
17 parties that contain interrogatories, PODs, the
18 technical potential studies, as well as the ten-year
19 site plans. We have asked the parties to respond by
20 tomorrow at 2:00 to let us know whether the parties can
21 stipulate to those exhibits. If so, those will also be
22 included in the Comprehensive Exhibit List. And we will
23 hope to get a finalized Comprehensive Exhibit List by
24 the end of the week so that the parties can see the list
25 prior to the hearing.

1 **CHAIRMAN CARTER:** Anything further from the
2 parties on exhibit lists?

3 Mr. Jacobs.

4 **MR. JACOBS:** Mr. Chairman, thank you.

5 There is one report that came out in the last
6 week that we are reviewing to determine, but I'll get
7 with staff, but I just wanted to kind of alert here, and
8 I will meet those time deadlines. We will get to staff
9 to determine whether or not we want to try to make that
10 an additional exhibit to one of our witnesses, but it
11 only came out in the last week, so that's why it's not
12 in here. And I'll meet those deadlines and determine
13 whether or not we will supplement it as an exhibit.

14 **CHAIRMAN CARTER:** Ms. Helton. I mean, Ms.
15 Fleming.

16 **MS. FLEMING:** I'm not clear as to what Mr.
17 Jacobs is proposing. Could you --

18 **MR. JACOBS:** Yes. I'm proposing that we may
19 want to add an exhibit for one of our witnesses, and
20 that exhibit will consist of a report that was only
21 published in the last week. That's why we didn't have
22 it in our prehearing statement. And, quite frankly, we
23 want to make sure -- we are doing our due diligence to
24 make sure that it is a piece of evidence that we would
25 like to propose. So I'll have that answer to staff

1 within the time deadline that they have submitted, but I
2 wanted to just alert them to that now.

3 **MS. FLEMING:** Just to be clear, the staff
4 exhibit list that we have provided are interrogatories,
5 the technical potential studies. My understanding is
6 that Mr. Jacobs want to add an additional exhibit to his
7 prefiled testimony, is that --

8 **MR. JACOBS:** That is correct, not to your
9 stipulated list, to ours.

10 **CHAIRMAN CARTER:** Ms. Helton.

11 **MS. HELTON:** Mr. Chairman, the time has come
12 and gone for filing prefiled testimony for both the
13 utilities and the intervenors. It seems to me that
14 that's something that when Mr. Jacobs has that report in
15 hand and decides he would like to attempt to get it into
16 the record that he would need to file a motion for your
17 disposition as to whether that is appropriate or not.

18 I think that would be, at this point, untimely
19 filed. And without knowing more specifics, I think it's
20 very hard to address it here today.

21 **CHAIRMAN CARTER:** Okay. That will be fine,
22 and also that will give the parties an opportunity to
23 look it over.

24 **MR. JACOBS:** We can take that approach, Mr.
25 Chairman. No problem.

1 **CHAIRMAN CARTER:** Okay. Show it done.

2 **MS. KAUFMAN:** Mr. Chairman.

3 **CHAIRMAN CARTER:** Ms. Kaufman.

4 **MS. KAUFMAN:** Over the weekend I have been in
5 communication with Ms. Fleming about an additional group
6 of interrogatories that FIPUG would like to add to the
7 Stipulated Exhibit List. I believe that all the parties
8 were advised of that by e-mail. And if there is no
9 objection, it's interrogatory responses to some FIPUG
10 discovery that we would like to include.

11 **CHAIRMAN CARTER:** Ms. Fleming.

12 **MS. FLEMING:** Yes, we conveyed that
13 information to the parties yesterday afternoon, I
14 believe, and we have heard back from some of the
15 parties. If there are no objections, those will be
16 included as part of staff's exhibit.

17 **CHAIRMAN CARTER:** Are there any objections
18 from any of the parties that have had an opportunity to
19 look at these interrogatories?

20 **MR. GUYTON:** Mr. Chairman, I don't believe
21 that FPL has looked at those. I think we gave a
22 preliminary indication that we're not going to object to
23 our own interrogatory response, but we would like the
24 opportunity to take a look at it before we --

25 **MS. FLEMING:** And all parties do have until

1 tomorrow at 2:00 o'clock to let us with respect to any
2 of the staff's exhibits, as well as Ms. Kaufman's
3 interrogatory request.

4 **CHAIRMAN CARTER:** Okay. You can get with our
5 staff. I think that's -- because of where we are headed
6 procedurally time wise and all that, that should give
7 the parties ample opportunity to revisit that before we
8 go further.

9 Anything further on Exhibit Lists? Okay.

10 Section X, Proposed Stipulations.

11 **MS. FLEMING:** We are not aware of any proposed
12 stipulations at this time.

13 **CHAIRMAN CARTER:** Are there any proposed
14 stipulation by the parties? You all look so cooperative
15 this morning. Okay. Let's move on.

16 Section XI, Pending Motions.

17 **MS. FLEMING:** There are no pending motions at
18 this time.

19 **CHAIRMAN CARTER:** Okay. Section XII, Pending
20 Confidentiality Motions.

21 **MS. FLEMING:** There is one pending
22 confidentiality request by Gulf, and that will be
23 addressed by separate order.

24 **CHAIRMAN CARTER:** Okay.

25 **MR. GRIFFIN:** And we actually need to add one

1 more in response to Staff's 8th Interrogatories.

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

3 **MR. GRIFFIN:** We filed that request on
4 July 31st.

5 **CHAIRMAN CARTER:** I'm sorry. Jane, did you
6 hear him? I didn't hear you.

7 **MS. FLEMING:** It's my understanding that Gulf
8 will be adding an additional request for
9 confidentiality.

10 **CHAIRMAN CARTER:** Okay.

11 From any of the other parties, anything
12 further on confidentiality matters? Okay.

13 And, staff, we'll get to that in a separate
14 order.

15 Section XIII, Post-hearing Procedures. Staff.

16 **MS. FLEMING:** Post-hearing briefs shall be
17 limited to 40 pages.

18 **CHAIRMAN CARTER:** I assume that we should be
19 able to get to the point in 40 pages, right? Okay.

20 Mr. Jacobs, did you want to make a comment, or
21 are you just thinking out loud?

22 **MR. JACOBS:** I'm thinking out loud.

23 **CHAIRMAN CARTER:** That's okay. I do that all
24 the time.

25 **MR. JACOBS:** But I will hold my thoughts.

1 **CHAIRMAN CARTER:** Okay. Section XIV, are
2 there any pending rulings? Staff.

3 **MS. FLEMING:** Staff would recommend that the
4 opening statements shall not exceed ten minutes per
5 party.

6 **CHAIRMAN CARTER:** I think by then we should
7 have it down. Don't you guys think we should have it
8 down by then? Okay. Show it done.

9 Any our matters? Staff.

10 **MS. FLEMING:** Staff would just ask, once
11 again, to the extent that there are any changes in
12 positions, or the order of witnesses, or any changes to
13 this draft prehearing order that they be provided to
14 staff by close of business tomorrow.

15 **CHAIRMAN CARTER:** And let me just say this to
16 the parties, our staff is -- we're trying to work
17 cooperatively with you as much as possible, and we are
18 trying to expedite as much as we can. So if there's any
19 questions or concerns, if you would just get them to
20 staff and they will get it to my attention, and we will
21 try to -- I'll be available to do what we need to do to
22 sign whatever orders, or move forward on that.

23 Cooperation is always appreciated, and
24 obviously we want to get this matter done as soon as
25 possible. It is a very, very important issue, not just

1 for the state of Florida, but for all of us who live in
2 the state of Florida. I mean, not just for the state in
3 terms of a policy issue, but also for the individuals in
4 the state of Florida.

5 It's a good thing to do. It's the right thing
6 to do. So, please, ma'am; and please, sir, govern
7 yourselves accordingly.

8 Any further matters from any of the parties?

9 Staff, are there any further matters that you
10 know of?

11 **MS. FLEMING:** One thing that I will note.
12 With the inclusion of Issues 14, 15, and 16, staff is
13 going to restructure the issues so that they flow
14 accordingly within the issue list, and we will provide
15 that to the parties, as well.

16 **CHAIRMAN CARTER:** And that will be more of an
17 organizational perspective. And I think that you have
18 had an opportunity to see 14, 15, and 16, they will just
19 be incorporated from -- I guess it will be from a
20 subject matter perspective so they flow?

21 **MS. FLEMING:** (Indicating yes.)

22 **CHAIRMAN CARTER:** Anything further from any of
23 the parties?

24 Staff, any further matters?

25 **MS. FLEMING:** I'm not aware of any other

1 matters.

2 **CHAIRMAN CARTER:** Hearing none, we are
3 adjourned.

4 (The prehearing concluded at 10:06 a.m.)

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STATE OF FLORIDA)
 :
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

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

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

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

DATED THIS 4th day of August, 2009.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732