GT GreenbergTraurig

080203-EI

BARRY RICHARD

TALLAHASSEE (Resident Office)
NEW YORK
WASHINGTON, D.C.

September 2, 2010

Via Hand Delivery

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket Nos. 100001-EI, 100002-EG, 100007-EI, 100009-EI, 080677-EI, 090130-EI, 100077-EI, 100155-EG, 080203-EI, 080245-EI, 080246-EI, 090494-EI, 060038-EI

Dear Ms. Cole:

Enclosed for filing in the above-referenced dockets is an original and seven (7) copies of Florida Power & Light Company's ("FPL's") Verified Motion to Disqualify Commissioner Skop and accompanying Request for Oral Argument.

Also enclosed is a CD containing FPL's Motion and Request in Word. Please contact me should you or your staff have any questions regarding this filing.

Sincerely,

Barry Richard

COM ___
APA ___
ECR 2
GCL 2
RAD 3
SSC ___
ADM ___
OPC ___
CLK ___

Enclosures

cc: parties of record w/ enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor	Docket No. 100001-EI
In Re: Energy Conservation Cost Recovery Clause	Docket No. 100002-EG
In Re: Environmental Cost Recovery Clause	Docket No. 100007-EI
In Re: Nuclear Cost Recovery Clause	Docket No. 100009-EI
In Re: Petition for Rate Increase by Florida Power & Light Company	Docket No. 080677-EI
In Re: 2009 Depreciation and Dismantlement Study by Florida Power & Light Company	Docket No. 090130-EI
In Re: Investigation of the Appropriateness of the Affiliate Product Offerings to Florida Power & Light customers	Docket No. 100077-EI
In Re: Petition for Approval of Demand Side Management Plan of Florida Power & Light Company	Docket No. 100155-EG
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In Re: Petition for Determination of Need for Conversion of Cape Canaveral Plant in Brevard County, By Florida Power & Light Company	Docket No. 080246-EI

In re: Application for Authority to Issue and Sell Securities During Calendar Year 2010 Pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company	)	Docket No. 090494-EI
In re: Petition for Issuance of a Storm Recovery Financing Order, By Florida Power & Light Company	)	Docket No. 060038-EI Filed: September 2, 2010

REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 25-22.0022, Florida Administrative Code, Florida Power & Light Company ("FPL" or the "Company") hereby requests oral argument on its Verified Motion to Disqualify Commissioner Skop (the "Motion"). Oral argument will aid in the understanding and evaluation of the issues to be decided as follows:

1. Oral argument would allow counsel for FPL to further discuss the factual grounds, applicable law and legal standard for granting a motion to disqualify a Commissioner.[1]

2. Oral argument would also allow counsel for FPL to respond to questions concerning the factual basis and legal grounds supporting FPL's position that Commissioner Skop should be disqualified.

WHEREFORE, FPL requests that oral argument be heard on its Motion to Disqualify Commissioner Skop, and that FPL be granted 15 minutes for such oral argument.

[1] *See In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners*, Docket No. 070368-TP; Order No. PSC-08-0415-FOF-TP; 2008 Fla. PUC Lexis 248 at *8, 08 FPSC 6:115 (June 23, 2008) (granting request for oral argument that would aid in "understanding and evaluating the legal bases" of the relief sought).

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CERTIFICATE OF SERVICE
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail (* Hand Delivery) on September 2, 2010, to the following:

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By: _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition for Issuance of a Storm Recovery Financing Order, By Florida Power & Light Company	)	Docket No. 060038-EI

Filed: September 2, 2010

VERIFIED MOTION TO DISQUALIFY COMMISSIONER SKOP

Florida Power & Light Company (FPL) moves to disqualify Commissioner Nathan Skop from participating as a member of the Public Service Commission (PSC or Commission) in PSC hearings, deliberations, decision-making, or acting in any other capacity, on all active dockets and matters involving FPL that have not yet been decided by the Commission including, but not limited to, the above-referenced dockets, as well as any future dockets involving FPL that are opened in calendar year 2010. FPL is filing this motion and requests the same relief in each of the above-referenced dockets. The grounds for this motion are set forth below.

Statement of the Facts

Nathan Skop was employed by a subsidiary of FPL's parent company from 2000 until 2002, at which time he was involuntarily terminated as part of a company-wide staff reduction. In 2006, Mr. Skop was appointed to the PSC for a term ending in January 2011. Pursuant to Section 350.031, Florida Statutes, nomination by the Public Service Commission Nominating Council was a prerequisite to his reappointment to the Commission. Commissioner Skop applied for reappointment on June 16, 2010, but on June 30, 2010, the Nominating Council informed

him that it did not intend to interview him. The Nominating Council's decision means that Commissioner Skop's term on the PSC will end as of January 1, 2011.

Within hours after the Nominating Council decision not to interview him for reappointment to the PSC, Commissioner Skop issued a public statement attacking the Nominating Council for allegedly acting on the basis of "money, influence, special interest, and politics" rather than the "most qualified" applicants. Statement by Commissioner Skop posted online, *Herald/Times* political blogs (June 30, 2010). Speaking with various newspapers and TV stations in the wake of the Nominating Council decision, Commissioner Skop proceeded to specifically blame FPL for his lack of success in securing an interview for reappointment:

> "It's a sad day for the people of the state of Florida," Skop said in a telephone interview with the News Service of Florida. "It shows the extent to which the Legislature is influenced by the companies that we regulate. **Four members of the commission who voted against the (FPL) rate case have lost their job, which clearly smells of retaliation."...**"How can that many people have it wrong?," he said. "What was done last time was very brazen. What was done this time was just an abuse of the public trust."

News Service of Florida, June 30, 2010 (parentheses as in original article; emphasis supplied)

> **Skop said the nominating panel's decision "absolutely" was payback for the five-member commission's unanimous votes earlier this year to reject most of the rate increases sought by Florida Power & Light Co.** and Progress Energy Florida. "The people of the state of Florida need to demand accountability from the Legislature or they will continue to be raped by the special interests," Skop said in an interview. **"It says, basically, FPL owns state government."**... "If this were a list to be most qualified, clearly I would be on the list," Skop said.

Associated Press, July 1, 2010 (emphasis supplied)

In the midst of a subsequent hearing on FPL's request for recovery of costs incurred in pursuing new nuclear generation projects,[1] Commissioner Skop again referred on the record to his belief that FPL was responsible for the decision by the Nominating Council not to interview him for reappointment:

> I'm a regulator, I do my job, and I've lost my job because I've chosen to do my job. So again, I'm not backing down from FPL in any way. I can back up what I state.

PSC Nuclear Cost Recovery Clause hearing, Aug. 26, 2010, (the transcript of part 1 of day 3 of the hearing is included as Exhibit 1), Tr. 39.[2]

Commissioner Skop's outbursts followed a year in which his conduct toward FPL in fact-finding hearings has become increasingly more hostile and adversarial. The following example is illustrative of many that occurred over the past year.

Soon after the Commission's January 2010 decision rejecting FPL's rate request almost in its entirety, Commissioner Skop added an item identified only as a "procedural matter" to a regularly scheduled Commission meeting, did not disclose to Commission staff counsel or to FPL the nature of the "procedural matter" to be addressed, and then accused FPL on the record of continuing to collect carrying costs from customers on projects that had been suspended. Without having made any inquiry of FPL prior to his accusation, Commissioner Skop rebuked FPL:

> [C]onstructive regulation requires a framework of mutual respect. Unfortunately, as FPL's conduct clearly demonstrates we're not there yet.[3]

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[1] PSC Docket: In re: Nuclear cost recovery clause, Docket No. 100009-EI.

[2] The context of this comment was that Commissioner Skop made an allegation that FPL did not disclose certain facts to some parties to a stipulation that was proposed in the Nuclear Cost Recovery Clause docket. This allegation was unfounded. Ex. 2, Tr. 5 [Office of Public Counsel Statements]

[3] March 2, 2010 PSC Agenda Conference, Item No. 17 (Ex. 3).

FPL, when permitted to speak, advised Commissioner Skop that no such collections were occurring.

Commissioner Skop's level of animosity and bitterness toward FPL reached a zenith during the recent nuclear cost recovery hearing. At the outset of the FPL portion of that hearing, Commissioner Skop engaged in the equivalent of an "opening statement" of issues that he intended to pursue during the hearing.[4] In that statement, Commissioner Skop accused an FPL witness of "perjury" in a past proceeding *before* the first witness in the current hearing was sworn and *before* any evidence on the matter was heard and admitted into the record.[5] He also accused FPL of "spin," and "selective disclosure"[6] and accused FPL's counsel of "misrepresentations."[7]

During that same proceeding, Commissioner Skop engaged in openly adversarial examination of FPL witnesses that in length and hostile tone was well beyond any questioning by other commissioners or intervenors, including the Office of Public Counsel. This was typified by his questioning of FPL vice-president Terry Jones. Commissioner Skop conducted an overtly hostile examination (as opposed to impartial fact-finding) of Mr. Jones for hours. Commissioner Skop's examination of Mr. Jones took the entire afternoon and early evening of a hearing day, during which Commissioner Skop asked approximately 70 questions, many of which were preceded by lengthy statements. A transcript of Commissioner Skop's examination of FPL's vice-president Jones is included as Exhibit 2.

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[4] See Ex. 1, Tr. 9-18 (statement by Commissioner Skop regarding matters that he intended to cover in the hearing).

[5] Ex. 1, Tr. 11.

[6] Ex. 1, Tr. 13, 25, 39, 43.

[7] Ex. 1, Tr. 35.

Commissioner Skop's adversarial conduct toward FPL was also illustrated by his comments in response to objections raised by FPL's counsel (Mr. Anderson) to a request made by Commissioner Skop that FPL's President and Chief Executive Officer, Mr. Olivera, appear to testify in the recent nuclear cost recovery proceeding. Mr. Olivera was not on the witness list for the proceeding. Following a full day in hearing where Progress Energy had presented its witnesses, Commissioner Skop, without notice, requested Mr. Olivera's appearance later that week to testify.[8] In response to FPL's objections, Commissioner Skop accused FPL's attorney of failure to show him adequate respect and insisted that he would not be "intimidated by FPL":

> Mr. Anderson's earlier comments were not well taken. Never in the history of the Commission has a Commissioner been treated with such blatant disrespect by a regulated utility. That being said, I am not intimidated by FPL, and I have absolutely no intention of backing down from my prior reasonable request to have Mr. Olivera appear before this Commission.[9]

A review of the transcript reveals that there was nothing in the responses of Mr. Anderson to justify Commissioner Skop's characterization or the clearly adversarial statement that the commissioner was not "intimidated" by FPL.

Additional examples of Commissioner Skop's adversarial conduct are documented in the transcript.[10] A review of the full transcripts of recent hearings illustrates that Commissioner Skop has reserved his antagonistic behavior for FPL and displayed no similar behavior with respect to the other utility that was before the Commission on its nuclear cost recovery request in the same hearings.

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[8] Commissioner Skop made this request despite serving as the Prehearing Officer assigned to the Nuclear Cost Recovery Clause docket and in that capacity, in addition to handling all prehearing matters, had reviewed and approved all issues to be addressed and witnesses to be presented at the hearing.

[9] Ex. 1, Tr. 1-2.

[10] Ex. 1.

Argument

The Commissioner's Obligation to Maintain the Reality and Appearance of Impartiality

Members of the PSC perform a judicial function and are bound by the fundamental requirement of all judges to maintain both the reality and the appearance of absolute impartiality in the conduct of their fact-finding duties. In the context of an administrative proceeding, as in any adjudicative proceeding, the right to an impartial decision-maker is a basic component of minimum due process. *Cherry Communications v. Deason,* 652 So. 2d 803 (Fla. 1995) (In the administrative context, "an impartial decision-maker is a basic constituent of due process.") *Ridgewood Properties, Inc. v. Dept. of Community Affairs,* 562 So. 2d 322 (Fla. 1990) ("An impartial decisionmaker is a basic constituent of minimum due process."); *Jones v. Florida Keys Community College,* 984 So. 2d 556 (3d DCA 2008) ("A litigant is entitled to have confidence that the hearing officer before whom he or she appears is acting impartially as a fact-finder."); *Charlotte County v. TMC-Phosphates Company,* 824 So. 2d 298 (Fla. 1st DCA 2002) ("[A]n impartial decision-maker is a basic component of minimum due process in an administrative proceeding."); *World Transportation, Inc. v. Central Florida Regional Transportation,* 641 So. 2d 913 (Fla. 5th DCA 1994).

There are two independent grounds for concluding that the impartiality requirement has not been met: (1) the fact-finding officer must not make public comments that suggest animosity toward a party to proceedings, *See World Transportation, Inc. v. Central Florida Regional Transportation, supra; Williams v. Balch,* 897 So. 2d 498 (Fla. 5th DCA 2005); *Coleman v. State,* 866 So. 2d 209 (Fla. 4th DCA 2004); *Novartis Pharmaceuticals Co. v. Carnoto,* 840 So. 2d 410 (Fla. 4th DCA 2003), and (2) the fact-finding officer must not cross the line from neutral arbiter to advocate for or against a party in the conduct of the proceedings. *Barrett v. Barrett,* 851 So. 2d

799 (Fla. 4th DCA 2003); *Cammarata v. Jones,* 763 So. 2d 582 (4th DCA 2000); *Sparks v State,* 740 So. 2d 33 (Fla. 1st DCA 1999).[11] Violation of either of these standards is sufficient for disqualification. In this case, Commissioner Skop has violated both components of the impartiality requirement.

The Commissioner's Failure to Meet His Obligation to Maintain the Reality and Appearance of Impartiality

The Commissioner's Public Comments — It is egregiously inappropriate for a quasi-judicial officer sitting in an adjudicative hearing involving the substantial rights of a party to make public statements that he has unjustly been denied reappointment because of the actions of the very party whose rights are being decided. It is difficult to imagine scenarios that more clearly convey a mindset that would make it difficult at best for Commissioner Skop to maintain impartiality.

The Commissioner's Adversarial Conduct During Hearings — The PSC performs both investigatory and quasi-judicial functions. Nevertheless, the dual roles of the Commission do not relieve individual commissioners from their obligation to maintain impartiality in the performance of their adjudicative duties. *Charlotte County v. IMC-Phosphates Co., supra.* Commissioners have the authority to question witnesses during the course of a proceeding and to comment on the evidence during deliberations. However, when a commissioner crosses the line from neutral arbiter to zealous advocate for or against a party, he becomes subject to disqualification. Commissioner Skop's delivery of a speech equivalent to an opposing counsel's "opening statement", his adversarial cross-examination of FPL witnesses, his antagonistic remarks regarding FPL's counsel during hearings, and his statement in the midst of hearing that

[11] The standard of objectivity and impartiality for PSC Commissioners has been adopted by the Legislature through statutory standards of conduct and the oath of office. Sections 350.04(2)(g), (h) and 350.05, Florida Statutes.

he is not "intimidated" by FPL and that he has "no intention of backing down" illustrates that the Commissioner has crossed the line from impartial arbiter to zealous adversary and that his personal animosity toward FPL has risen to such a level that he utterly fails to maintain even an appearance of impartiality.

The Legal Standard for Determination of Motion

In determining a motion to disqualify a quasi-judicial officer, the facts stated in the motion must be accepted as true. *Charlotte County v. IMC-Phosphates Company*, 824 So. 2d 298 (Fla. 1st DCA 2002). The standard for determining a motion to disqualify is an objective one, having nothing to do with the commissioner's own belief as to impartiality:

> The question presented is whether the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing. *Department of Agriculture v. Broward County*, 810 So. 2d 1056, 1058 (Fla. 1st DCA 2002). It is not a question of how the judge actually feels, but what feeling resides in the movant's mind and the basis for such feeling. *Id.*

Charlotte County v. IMC-Phosphates Company at 824 So. 2d 300; *Jones v. Florida Keys Community College, supra.*

Commissioner Skop's hostile accusations, both during hearings and in public statements to news media, that FPL was responsible for his failure to be reappointed to the PSC, and his aggressive adversarial behavior toward FPL during hearings, certainly meet that standard.

Conclusion

The evidence presented in this Motion clearly demonstrates that a reasonably prudent person in FPL's position would fear that he or she would not receive a fair and impartial hearing from Commissioner Skop. Disqualification therefore is both proper and necessary under State law.

Wherefore, FPL respectfully requests: (a) that Commissioner Skop rule on this Motion prior to participating in PSC hearings, deliberations, decision-making, or acting in any other capacity, on all active dockets and matters involving FPL that have not yet been decided by the Commission including, but not limited to, the above-referenced dockets; and (b) that this Motion to Disqualify Commissioner Skop be granted.

VERIFICATION

STATE OF FLORIDA

COUNTY OF PALM BEACH

Eric Silagy, as a representative of Florida Power & Light Company, being first duly sworn, deposes and says that the information provided within this document is true and correct to the best of his/her knowledge, information and belief.

Name: Eric E. Silagy
Position: Senior Vice President

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me this second day of September, 2010, personally appeared Eric Silagy, who is personally known to me.

VALERIE A. HNASKO
MY COMMISSION # DD 793305
EXPIRES: May 29, 2012
Bonded Thru Notary Public Underwriters

Notary Public, State of Florida
Printed Name: Valerie A. Hnasko

(SEAL)

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TAL 451,562,369v2 9-1-10

CERTIFICATE OF SERVICE
Docket Nos. 100001-EI, 100002-EG, 100007-EI, 100009-EI, 080677-EI, 090130-EI, 100077-EI, 100155-EG, 080203-EI, 080245-EI, 080246-EI, 090494-EI, 060038-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail (* Hand Delivery) on September 2, 2010, to the following:

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:

NUCLEAR COST RECOVERY CLAUSE.

_____/

PROCEEDINGS:	Hearing
BEFORE:	COMMISSIONER NANCY ARGENZIANO COMMISSIONER RONALD A. BRISÉ COMMISSIONER LISA POLAK EDGAR COMMISSIONER ART GRAHAM COMMISSIONER NATHAN A. SKOP
DATE:	Thursday, August 26, 2010
PLACE:	Betty Easley Conference Center 4075 Esplanade Way Tallahassee, Florida
TRANSCRIBED BY:	LORI DEZELL Registered Professional Reporter

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ITEM

PROCEEDINGS

CHAIRMAN ARGENZIANO: Okay. We'll call our meeting to order. And I believe, Commissioner Skop you asked me to recognized you.

COMMISSIONER SKOP: Yes, Madam Chair.

CHAIRMAN ARGENZIANO: You're recognized.

COMMISSIONER SKOP: Thank you, Madam Chair. Before we take up the motion that we have before us -- give me one moment to collect my pieces of paper that I seem to have perhaps misplaced at the moment.

I just want to touch upon two things. First, some comments for the benefit of my colleagues that were not here, that had to leave early last night, related to some concerns that were raised yesterday.

And secondly, before we take up the motion, I'd like to articulate my reasons why taking up that motion is premature and should be deferred until the conclusion of the evidentiary portion of the FPL docket.

To begin with, Mr. Anderson's earlier comments that were made yesterday were not well taken. Never in the history of this Commission has a Commissioner sitting on the bench been treated with

such blatant disrespect by a regulated utility. That being said, I'm not intimidated by FPL and I have no intention of backing down from my prior reasonable request to have Mr. Olivera appear before this Commission. I have sufficient legal basis to justify this request and I will get into that in due course.

Now, with respect to Mr. Anderson, Commissioner Argenziano, you raised a very good point yesterday because Mr. Anderson raised some representations which I had the court reporter take the time to read back and we ascertained the fact that those statements were not accurate. The question arises whether Mr. Anderson knew or should have known those statements he made before the Commission, including the two new Commissioners, were not accurate.

Mr. Anderson is authorized in-house counsel for FPL. Accordingly, he's subject not only to the rules of practice before the Commission which he should be diligent and aware of, but also the rules regulating the practice of law by the Florida Bar.

Now, everyone knows that has knowledge of the ex parte restrictions of this Commission, which I believe Mr. Anderson would have constructive

knowledge of at the very least, that Commissioners cannot see documents provided from the utility until those time -- those dockets are formally entered into the record. And that record is the public record that's available on the Commission's website.

So case in point, again, those documents that were provided to the Commission audit staff, Commission audit staff is separate and independent, I don't get to go get their documents and get involved in that. But the document was entered into the record, the redacted version, on August 23rd, I believe was Monday, and that resulted from the evidentiary hearing that was held on the 20th at which time FPL was going to file the revised redacted request. And ironically, you know -- or not ironically, it's typical of them, they filed it at 3:30 in the afternoon on Monday which required myself, Commission staff and the clerk's office to stay here until 7:00 p.m. issuing the three orders granting confidentiality so that they would be ready to go for the start of the hearing on Tuesday morning. Okay.

So Mr. Anderson, again, I think that, you know, there's advocacy and there's points where

advocacy crosses the line. And again, my concern -- you're entitled to say whatever you want to say -- but I think that, you know, I deal in facts and I don't spin the truth. And while my credibility and integrity may have been challenged yesterday, the one thing I can assure this Commission is win or lose this morning, I will walk out of here with my credibility. Okay?

So that, Madam Chair, I would like to go in briefly into the reasons for why discussing and ruling on the proposed stipulation is premature at this point. And if the chair would allow me to, I would move forward at this point.

MR. ANDERSON: Pardon me, Chairman.

CHAIRMAN ARGENZIANO: Would you like to respond?

MR. ANDERSON: If I may. I just think it would be good in due order to respond to those points and then proceed on to the other business.

CHAIRMAN ARGENZIANO: Absolutely.

MR. ANDERSON: Would that be acceptable?

CHAIRMAN ARGENZIANO: Absolutely.

MR. ANDERSON: Thank you very much.

Commissioner Skop said last night, and I mean to address the entire Commissioner -- Commission,

EXHIBIT 1

not any individual Commissioner -- that never in the history of the PSC has a Commissioner been treated with such blatant disrespect. I'd like to emphasize disagreement is not disrespect.

Due process is not a two-way street. Due process means that all parties have fundamental, constitutional and statutory rights of notice and opportunity to be heard. FPL, like any other party, has a right to professionally and responsibly advance its legal rights on these arguments, and that is not disrespect toward any Commissioner or this tribunal.

I'd like to take up in relation to the points that we made yesterday, in stating our position in relation to the request for Mr. Olivera to appear. Our company stands by the statement we made yesterday morning. It is well-founded in fact and in law. Specifically FPL did provide access to the Concentric report in its response to OPC document request on June 23. It served notice availability of those documents for review by staff and the parties. In addition and separately on that same day, FPL made a separate production of the same report to the audit staff, same day. About two months prior to the start of the hearings.

We based our statement on FPL's understanding also that Commissioners have access to any document or information provided to the Commission by audit or otherwise at their request and discretion. We know of no law, no rule that precludes such access to information.

We confirmed that with the former Commissioner who did not recall any information requested not being provided to a Commissioner. So that's the factual basis in which we made those statements, Chairman. I want to be very direct because you asked what did we know and what's our position on that. And that very clearly is our position.

We have no ability to know what documents any individual Commissioner read, Commissioner Skop, and when you read them. But based on all of these facts, we believe that the Commissioner and the Commission had access to the documents in question since the time they were filed.

And that's the end of my points. Thank you.

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair. And I think that takes care of that. I would respectfully disagree with the company's position. Again I thought the statements made yesterday were

very brazen, cavalier and directed at what constructive or actual knowledge I had. Instead of ascertaining that knowledge to be true, it was intended to say that -- and I'm not going to waste my time getting into it. Let's get down to the facts before us which are the docket annual review process and why taking up their proposed stipulations at this point is premature. So if I may begin. Thank you.

Madam Chair, Commissioners, I am adamantly opposed to and vigorously object to considering the proposed stipulations prior to hearing all of the FPL witness testimony in this docket. As the basis for that, I would cite the Commission rule which is 25-6.0423(5)(c), and that deals with the capacity cost recovery clause for nuclear integrated gasification combined cycle power plant costs.

Specifically provision 2, in subsection (c), the Commission shall, prior to October 1 of each year, conduct a hearing and determine the reasonableness of projected preconstruction expenditures and the prudence of all -- of actual preconstruction expenditures expended by the utility, or, once construction begins, to determine the reasonableness of the projected construction

expenditures and the prudence of actual construction expenditures expended by the utility and the associated carrying costs. I can read the remainder of that paragraph but I feel it's unnecessary to do so at this point.

So with that framework in mind, there are numerous red flags that warrant a constructive discussion as to the adequacy of project controls consistent with this Commission's regulatory oversight function. I'm going to give a host of illustrative examples, and these examples are evidenced to state why this review should go forward, not to prejudge anything in the docket. So I want to make that crystal clear. And I'm going to try and frame these issues as crystal clear. But they should not be construed in any way that it's prejudged. It's a matter of here's issues that need to be discussed.

First, there is evidence in this docket to suggest that an FPL witness allegedly may have failed to disclose material information to this Commission and may have perjured himself during his sworn testimony given to the Commission during the 2009 NCRC proceeding.

Second, there is within the staff audit

report, there is a technical issue related to pressure discrepancies. Somebody made a technical mistake. Apparently it's uncertain as to who that mistake will be charged to. But there is a disconnect between the steam inlet pressure and the -- or the steam header pressure and the turbine inlet pressure on the turbine. And that's articulated on page 34 of the staff audit report.

That's a question that warrants discussion in itself because I believe the financial impact is $50 million. And as a result of that impact, they've having to change the main steam valves and other things that are discussed in that to reduce the pressure drop across those valves so they can better match it with the turbine inlet pressure that was apparently mis-specified or whatever is in there. That's worthy of having a discussion in itself.

Second -- or third, Nuclear Regulatory Commission, NRC, letter dated August 13, 2010 -- excuse me, the Nuclear Regulatory NRC response letter dated August 13, 2010, let's talk about that for a second.

FPL allegedly withheld disclosure of the material information contained in the letter for

ten days and disclosed such information to the Florida PSC on August 23rd only after Commission staff placed the NRC letter in the docket on the afternoon of August 23rd. That's less than 24 hours before the start of the NCRC hearing. That was never disclosed.

Moreover, the same letter suggests that FPL allegedly knew that it would request withdrawal of that St. Lucie 1 LAR on or before August 13th and allegedly failed to disclose this material information to the Commission as it pertains to this docket. That's another instance of selective disclosure.

This begs the question as to whether this material fact was properly disclosed to Public Counsel and the intervening parties prior to agreeing to the proposed stipulations on or about August 17th, 2010. If that disclosure was not made, that's another Jedi mind trick that was perpetrated upon the intervening parties.

Now, let's talk about the Public Counsel prehearing statement. Specifically with respect to Issue 16 and Issue 17 which pertain to whether FPL's project controls were reasonable and prudent, Public Counsel in its prehearing statements which

are issued in the prehearing order, for Issue 16, Public Counsel for the uprates OPC believes there are indications of inadequate cost oversight controls.

Issue 17, with respect to OPC, or Issue 17, OPC, with respect to the uprate projects, OPC believes there are indications of inadequate management and contracting oversight controls.

Accordingly, Public Counsel's willingness to support the proposed stipulation seems to be inconsistent with Public Counsel's own prehearing statements. Now, let's compare this to the two-day hearing we just had for Progress Energy Florida which had related issues which were Issues 4 and 5. Public Counsel essentially took the same position with respect to same PEF issues. Public Counsel spent over four hours conducting the cross-examination of PEF witness Franke on various issues, including project controls.

It's hard to understands why the Commission doesn't have the same obligation to conduct the same thorough review for FPL given what is known to the Commission at this time. I'm not sure why -- why Public Counsel, you know, entered into the stipulations. Maybe it's fear out of, you know,

retaliation from the Legislature. I don't know.

So my final points on this matter, the proposed stipulations. Let's talk about those. The proposed stipulations represent a blanket deferral of all FPL issues. This Commission has not only the duty and responsibility but also the obligation to conduct a thorough annual review of the NCRC project controls and costs. In fact, the utility's demanded this for regulatory certainty purposes when the Commission rule was adopted.

Approval of the proposed stipulations prior to discussing these issues in this case shirks the Commission's duty, in my opinion. Approval of the stipulations also prevents questions from being asked. Given the numerous red flags in this -- in this -- based on the audit report and some of the information before us, an open discussion is not only warranted but required.

So to put this into perspective, I'm going to use an auto pilot analogy. What's happening here is we're ignoring all the warning lights and indicator messages in the cockpit. We press auto pilot and we go back to the bar and start drinking Kool-Aid for the next 12 months, doubling the workload at the next NCRC proceeding.

Because that's what's happening here. No one wants to discuss the numerous red flags we have before us. They just want to wave a wand and make it all go away where people can't ask questions and ignore all the bad things. They don't want to have an open, frank discussion about what happened good and what happened bad and what corrective action is being taken. It's nothing more than a blanket deferral.

In summation, I respect that the parties have entered proposed stipulations for the FPL portion of this docket. The parties have their own respective interests in reaching the proposed stipulation for the FPL portion of this docket.

The Commission, however, has a separate and distinct interest in performing its regulatory oversight function independent from the interests of the parties. There are numerous red flags that warrant having a discussion regarding the FPL related issues in this docket.

Approval of the proposed stipulations presents -- or prevents questions from being asked. You know, that's a form of censorship. I have questions I want to ask. Knowing what I know, I cannot in good faith approval of the proposed

stipulations prior to hearing all of the FPL witness testimony in this docket. I respectfully suggest that the Commission defer considering the proposed stipulations for the FPL portion of this docket until after all -- until -- excuse me, until after hearing all of the FPL witness testimony in this docket. Again there are red flags, there are instances here where there has been arguably selective disclosure and withholding of material facts.

The NCRC letter, Mr. Anderson yesterday said, my concerns were all about the Concentric report. That is absolutely incorrect. The failure to disclose the NCRC letter until after it was put in the docket by Commission staff ten days after the NRC approved it is just wrong.

It's another -- another instance where -- and Commission staff can speak to this -- they wait till the last minute, they don't disclose things. It is a selective self-serving disclosure method. And that's due process, Mr. Anderson, right there. So if we want to talk due process, I can talk it till the cows come home.

So Madam Chair, at this point I would respectfully move to defer consideration of the

motion for the proposed stipulations until the conclusion of the FPL portion of this docket.

CHAIRMAN ARGENZIANO: Any discussion?

MR. McGLOTHLIN: Chairman Argenziano, may I be heard on this?

CHAIRMAN ARGENZIANO: Yes. Let me go to Commissioner Graham first.

MR. KISER: Excuse me, Madam Chairman. I think Commissioner made a motion and I didn't hear a second.

COMMISSIONER SKOP: Can you ask for a second, second and discussion? I did make a motion.

CHAIRMAN ARGENZIANO: Yes, that's true. There was a motion made. I wanted to see if Commissioners wanted to discuss it. How about can we -- can we temporarily withdraw the motion and have discussion?

COMMISSIONER SKOP: Yes. I will defer to the Chair and I will withdraw the motion.

CHAIRMAN ARGENZIANO: Okay. The motion is withdrawn. It's open for discussion. Commission Graham. Calhoun County.

COMMISSIONER GRAHAM: Thank you, Madam Chair. I know that staff specifically has got a couple of questions, I think, a witness or two they want to

talk to before they're even ready to write off on the stipulations that are before us. So I would like to recommend, or maybe I don't need to make a motion yet, but that we hear from staff and hear their questioning from the witnesses and then maybe at that time Mr. Skop would want to bring forth his motion and we can -- we can move forward from that point.

CHAIRMAN ARGENZIANO: I have some discussion and then we'll go to OPC. Did you want to make comment first? I'm sorry.

MR. McGLOTHLIN: If I may, I'd like to respond to some of Commissioner Skop's comments.

CHAIRMAN ARGENZIANO: Certainly.

MR. McGLOTHLIN: And what I'd like to do is inform the Commissioners as to how Public Counsel became involved in what is now a stipulation.

In this case, our consultant, Dr. Jacobs, focuses on some uprate related issues. He'll focus on what is described as a nonbinding but growing estimate of completed costs. He'll focus on what he says is inadequate feasibility study.

And so when we saw the staff testimony and saw that the staff witnesses also have some comments about uprate issues, it appeared to us that OPC's

testimony and staff's testimony were in a sense complementary.

Now, at the conclusion of their testimony, alluding to some of the matters contained in the staff's audit report, the staff witnesses say, because of the activities of management, we believe some of the uprate related costs prior to and after those activities may have been unnecessarily high, and for that reason we recommend, the staff recommends that the Commission consider -- examine those costs in a separate docket or in the next hearing cycle. And we thought that was a good idea.

So that is why -- and let me refer you to the Prehearing Order also in 21. Issue 21 asks what system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up analysis for the extended power uprate. Well, that is the issue which we think captures the staff's contention that certain costs incurred prior to those activities may have been too high. And that is why in our position statement we say OPC agrees with staff's proposal to conduct a more detailed examination of the costs in a separate docket.

The next issue, 22, asks what system and jurisdictional amounts should the Commission approve as the reasonable estimated 2010 cost for the extended power uprate. We think this issue is what captures the staff's concern that post-activity costs may have been too high. And that is why we said in our position we agree with staff's proposal to conduct a more detailed examination of the costs in a separate docket.

So we saw -- we saw these position statements as being consistent with and supportive of the staff's positions in this case, as were those position statements that Commissioner Skop referred to, indications that controls may have been inadequate.

And so, for us, the possibility of a deferral of these uprate related costs was a natural progression of our position which was supportive of the staff. And that grew into a broader agreement.

But we've always understood that any stipulation is subject to approval or disapproval by the Commission. And when during the prehearing conference Commissioner Skop said I asked the questions I intended to ask, my working assumption since that time is that people will have that

opportunity to ask the questions.

So I didn't -- as I see it, this -- this could unfold in several ways, all within the discretion of the Commission.

One possibility would be to defer these issues in entirety. Another possibility would be to deny the stipulation and go forward and have -- try to complete things today.

The other possibility is that in its discretion, the Commission may have individual Commissioners ask their questions, staff ask their questions, and then defer the balance.

So I want to make the point that from the outset with respect to the uprate related costs, we have been -- our position has been consistent with the idea that some of these issues arose too late in the game to examine thoroughly and make any decision as to whether the activities described in the staff audit report did or did not lead to imprudent costs.

Now, I want to mention one more thing that I think bears on this. And I think Mr. Anderson may have misspoken a while ago when he was describing who received the Concentric report and when they received it.

We received the staff's audit report in its redacted fashion when the staff filed its testimony on July 20th and we asked for, you know, a confidential version. And that's the first time we saw that the -- and within the staff summary report references to the replacement of uprate management and the references to the employee complaint letter that had been shielded. And our review suggested that the company's confidentiality request was overbroad. So on August 2nd we disputed that contention and asked the Prehearing Officer, or Commissioner Skop, to conduct an in-camera examination of that and resolve the dispute.

Almost simultaneously Commissioner Skop, maybe the same day or a day later, we received an order setting that and other similar issues for hearing on August 20th. And we went to that hearing prepared to litigate our contention that the utility's attempt to shield that information was overbroad, had they not withdrawn their -- their request for confidentiality that day.

So I believe that hearing was the first time I had personally seen any version of the Concentric report, August 20th. And we didn't get the -- the revised redacted copy until the 23rd when it was

filed.

So that's, I hope, some clarification as to our -- how our belief that our position was consistent with staff's led to us support staff's proposal to have a more detailed examination of certain costs in either a spinoff proceeding or in the next hearing cycle, and how that seemed logical to us to have a deferral on all of those questions.

And that is the background of OPC's involvement in this.

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair. And thank you, Mr. McGlothlin. I do appreciate that clarification.

I think what concerns me, again, I'm not opposed to the stipulations per se. However, taking up those stipulations as a whole in the beginning of the proceeding would be a blanket deferral and would not allow questions to be asked.

So I'm more than willing to look at the merit of the stipulations at the end of the conclusion of the testimony which would provide testimony, but also if you spun it off of a docket, provide for additional testimony.

The question that I have for you, and I need

to clarify one additional point also, Madam Chair, is with respect to this NRC response letter regarding the withdrawal of the application for -- the LAR application for the St. Lucie 2 EPU, or extended power uprate, when was Public Counsel made aware of that document?

MR. McGLOTHLIN: I think I personally became aware of it when I saw it on the website when FPL filed it.

COMMISSIONER SKOP: So would Public Counsel have a concern with respect to the selective disclosure of material information in that regard?

MR. McGLOTHLIN: I am not sufficiently informed about the background on that, but we certainly intend either in this hearing or in subsequent hearings to explore the ramifications or the significance of that withdrawal.

COMMISSIONER SKOP: Okay. But you -- you were induced, were you not, into a stipulation, agreement to a stipulation after that letter, before -- you were induced into a stipulation after that response letter had been issued but it was not yet disclosed to you?

MR. McGLOTHLIN: Well, you use the word induce.

COMMISSIONER SKOP: I'm saying you entered into a stipulation but FPL in good faith did not disclose the existence of that letter to Public Counsel.

MR. McGLOTHLIN: The chronology is such that the stipulation happened and then we learned of the letter. I think that's your point.

COMMISSIONER SKOP: That's what I'm getting at. Okay. So again, we want to talk about due process. How due process is that for your company, Mr. Anderson? Is that due process? Is that the way your company does business, by selectively disclosing documentation? Madam Chair, I'll leave with that.

But I have one other point to mention too with respect to a point that requires the Commission to ask questions. There is also evidence in this docket to suggest that the chief executive officer of FPL Group conducted a line-by-line budget review of the EPU on or about July 25th, 2009. So what one might include from that, again not prejudging but warranting the questions need to be asked to deduce what the truth may or may not be, one might conclude that not only did the EPU management team have knowledge that the cost estimate had

changed -- and we're not talking about the dollar number. We're talking about indicators that the magnitude of that cost had shifted substantially. Not going to debate the fine points of what the actual number is going to be. It is going to be what it is going to be. But the magnitude had shifted.

And at that time, one might look at the fact that the evidence in the docket, subject to going through an evidentiary process but just proffering this for why such a discussion is necessary and proper, there is evidence to suggest that not only FPL knew, its management may have knew, but certainly the chief operating officer of FPL Group who requested this review knew.

And before you get to the confidentiality issue, again on that issue, if you look at the footnote in the order, there is no -- been no protective order of that. There has been no challenge to the confidentiality on my order I issued.

So before you even try to make a confidentiality argument on that, look at the footnote in the order and the order that was issued on the 23rd.

So again, I think that's fair. It's fair to conduct a hearing where the Commission is required and obligated to conduct a hearing.

And Mr. McGlothlin, with all due respect, I'm likely more than happy to take up these stipulations at the appropriate time. I think there's substantial merit to some of these stipulations as you stated. But by doing so now denies me the opportunity to review project controls and redress and get some of that information that might be germane to moving forward and making a decision to spin off this docket.

Thank you.

MR. McGLOTHLIN: We've always understood that's within the discretion of the Commission and we've also understood that asking questions is an individual Commissioner's prerogative. And I said this to Mr. Anderson, and I'll say it to you. Our participation in the stipulation was never designed to get in the way of anything the Commission wants to do.

COMMISSIONER SKOP: Yes, sir. And I understand that. I think my concern would be that if there's a majority vote of this Commission and they went that way, this could be yanked right from

out from under me and I'd never be having the opportunity to call witnesses and ask questions, or ask questions of the witnesses who are put on the stand.

And so that's a ramification of the proposed motion for stipulation. So that's where I have my concerns, because I don't want to be denied the opportunity to have my questions answered and explore the various areas that we've discussed, nor do I want to abrogate the Commission's responsibility to conduct a thorough annual review, which we did for many hours on the Progress case.

So it can't be Progress gets a thorough review and FPL gets a free pass. I think we need to be fair to both utilities.

Thank you.

MR. ANDERSON: Chairman Argenziano, may I be heard at your convenience, please?

CHAIRMAN ARGENZIANO: Yes, please. You're recognized.

MR. ANDERSON: Thank you very much. I'd suggest if I may address just two points very briefly.

One, I want to just make a clarification, and second, I'd like to suggest a way that might permit

the type of discussion to see about, for example, Commissioner Graham's idea about whether staff has questions and the like. Okay?

My -- the first thing I'd like to do, and this will just take a moment. And this is -- this is with all respect and just for clarification of the record with Mr. McGlothlin and OPC, who, you know, we have great regard for. Just to be clear, we reviewed our records and determined that, on June 23rd, we did provide the Concentric report in response to OPC POD No. 35. This was placed into our office as a confidential document, as is the ordinary practice.

Then on June 29 our records indicate that OPC reviewed the document and requested a copy. The document was Bates numbered and provided via CD as POD 35 Supplemental with Bates numbers FPL 148839, 148886. That's not to take away from anything Mr. McGlothlin said. These cases involve enormous volumes of documentation. I just wanted to make that clear.

The second thing I'd like -- I'd like to ask and suggest in the way of proceeding is if I might be -- I'd like to move our stipulation. That would then permit discussion by the Commission as how to

take up the stipulation in reference to the questions. So I am prepared to offer that. And we -- may I proceed? Thank you.

We've made our request for deferral and we support it for several reasons. Our motion was filed, as the Commission is aware, on August 17th stating our various legal reasons and attaching the stipulation which was approved by the parties. The parties that have taken positions in this proceeding are the Office of Public Counsel, Florida Industrial Power Users Group, and the Southern Alliance for Clean Energy.

With respect to those parties, OPC and FIPUG support deferral. SACE does not object. The stipulation is set forth in the Prehearing Order.

Just so we're all clear about what we're talking about when we talk about the stipulation, it provides deferral of issues until the 2011 nuclear cost recovery cycle and for recovery of FPL's requested 2011 nuclear cost recovery amount, with the express stipulation that approval of the collection amounts presented by FPL is preliminary in nature and those amounts are subject to refunding in the form of a true-up based on the outcome of the deferred consideration.

This means the customers remain fully protected in relation to nuclear cost recovery amounts and the parties retain all of their rights to take such positions and make such arguments as they may choose in the deferred proceeding.

To put the amounts at issue in perspective, FPL's 2010 nuclear cost recovery amount presently being collected amounts to about 67 cents per month per thousand kilowatt hours of a typical residential customer. Our requested 2011 amount that is subject to the stipulation amounts to a reduction by a little more than 50 percent, to 33 cents per month for a thousand kilowatt hour residential customer.

I'd like to point out this stipulation is very similar to the stipulation for deferral that was approved by the Commission with respect to FPL in the Commission's 2008 nuclear cost recovery order. That's Order No. PSC-08-0749-FOF-EI in Docket No. 080009-EI, and that approval appears and deferral appears at page 22 therein, in which collection of certain nuclear cost recovery was permitted on a preliminary basis with a determination of whether certain costs should be disallowed was deferred until the following 2000 nuclear cost recovery

cycle. So this is consistent with that practice.

In addition, FPL has moved and no party has objected to our request for deferral of consideration of Issue 3B. This was a late-raised issue at the prehearing conference, raised at the time.

We -- in support of our motion to defer that as well, so we would be taking all of the issues and not just hit or miss, I'd point out that this issue was not addressed in the prefiled testimony or exhibits of any witness. It was not raised in any testimony of a party. It was not addressed in FPL's rebuttal testimony because it really had not been raised. There's been no testimony prepared by any party to address Issue 3B.

And, you know, it was raised August 11, which is less than two weeks before this hearing, and honestly, we really even don't know how or what we're at issue on with respect to that particular matter. And that's again why we think that we fully support full exploration of all issues, including Issue 3B. We stand ready to cooperate with staff and all the parties in providing immediate beginning of a discovery through deposition documents, whatever.

But we believe that the most appropriate step at this juncture would be a deferral, for many of the reasons Mr. McGlothlin stated in relation to permitting time for consideration of issues raised by staff, things addressed by OPC's witness, Dr. Jacobs, and others.

You know, staff in its report and testimony did note its interest in conducting additional reviews to consider whether any imprudently-incurred costs arose during 2009. We respect those parties' interest and right to conduct those reviews.

Our position -- and when those issues are fully developed we'd present testimony responding to those. But again, it's a matter where we're not at issue.

The NCRC is an annually recurring docket. The proceeding will provide a clear and well-established method for staff and parties to obtain information, to raise any considerations they wish to raise through preparation and filing of prefiled testimony, for our company to respond in prefiled testimony, and for the Commission to consider and decide based upon issues identified through the Commission's prehearing process.

And so for all of those reasons, we would request that the Public Service Commission approve the stipulation which has been submitted to you and put forward before you by the parties and without objection.

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair. In regards to Mr. Anderson's comments and the manner in which he, you know, advocates zealously on behalf of his client but fails to disclose or provide complete disclosure, I feel compelled to correct some of the misrepresentations once again that Mr. Anderson just made because it paints a false picture.

Let's talk about the August 17th stipulation. What Mr. Anderson did not just tell the Commission was that that stipulation was entered into without disclosing a material document, namely the NRC response letter, namely prior to August 13th that FPL had decided to withdraw its LAR application for St. Lucie 1, and that disclosure of that document may have changed the parties' willingness to enter into such stipulation.

There you have an instance where the company not only selectively disclosed something but

withholds material information from this Commission, from Commission staff, from Commissioners, from Public Counsel, and the intervening parties. I don't think that fact is in dispute, Mr. Anderson.

Secondly, with respect to due process, the questions I have that I want to propound upon Mr. Olivera, we want to talk due process. Let's talk due process. You may have provided documents on June 28th, but those documents just basically got put in the record here recently, okay, some of which could have been put in more recently had FPL not claimed broad confidentiality and other things and filed things at the last minute on the -- on the 23rd that required our Commission staff to stay here until 7:00 at night filing these orders that I talked about.

So due process, you need adequate time to review things. So if data is filed late or data is held up in internal audit, which the other parties don't really have access, I don't have access to, it stands to reason that I may have some additional questions. Okay?

The fact remains, we had an evidentiary hearing on the 20th and it took an evidentiary

hearing to get FPL to disclose the stuff that they seek to protect under the cloak of confidentiality. They may have a legal right but, you know, when, when you get down to issues of veracity of statements made under oath to the Florida Public Service Commission, I truly feel, as I stated in my footnote of the order, that the confidentiality statute really wasn't designed to protect that. That's just basically hiding perjury, if you want to call it perjury, if that's in fact what actually happened. Okay?

Now, third, Mr. Anderson referred to this stipulation as consistent with prior stipulations that the Commission agreed to in this docket. I'm happy to put any member of our staff sitting over there on the bench -- I mean on the witness stand, and have them state for the record that that is not true. What happened in that proceeding, as I was here, was the first year, if my recollection is correct, that the NCRC proceeding went forth. There wasn't a lot of cost, the process was still new, there weren't red flag issues.

So to make the analogy that we should just do it now because we did it before is complete bunk. It's nonsense. There are many red flags staring

before this Commission and it would be absolutely shameful for this Commission not to conduct a thorough review of some of these very same issues, the selective disclosure, the withholding of material information, the project management controls, the NRC letters, the prior testimony given to the Commission.

And we're not talking about small numbers here. We're talking about $300 million. Okay? Whether the number is -- it is what it is. You know, the final number won't be determined. But the bottom line is there were -- there seems to be based on the evidence reason to suggest, and I'm not saying this to prejudge, I'm saying this as the basis for why we need to put people on the witness stand and ask questions, that there's a disagreement between FPL and the Concentric report. And I respect that agreement.

But there's also within their management discussion that we'd get into if we put the people on the stand the fact that their chief operating officer of FPL Group was aware that the magnitude of the cost estimate had shifted.

So at the very least, one might argue that, you know, for purposes of putting someone on the

stand, that we should have a discussion as to whether they knew whether the magnitude of costs should shift and that should have been disclosed.

So, you know, it seems to me that we get a lot of spin around here, we get a lot of selective disclosure, and basically I'm fed up with it. I'm very concerned about the accuracy and the timeliness of the information provided to the Florida Public Service Commission. I don't view this as a game. I'm a regulator. I do my job, and I've lost my job because I've chosen to do my job.

So again, I'm not backing down from FPL in any way. I can back up what I state. But accepting this motion prior to hearing witness statements is completely improper for this Commission. We would abdicate our responsibility.

CHAIRMAN ARGENZIANO: Commissioner Graham?

COMMISSIONER GRAHAM: Madam Chair, as a -- I guess as a way of just moving forward, because it seems like we can go back and forth on this issue for a while, I'm not ready -- I'm not ready to -- to -- to make a decision on the stipulations yet.

I guess through the Chair if I could speak to General Counsel. What I'd like to see happen is, before we rule on the stipulation, if we can get

staff to ask their questions of the two witnesses, and then I think at that point, and I'm speaking for myself, I can't speak for the board as a whole, maybe at that point we can make a decision on where we're going to move with the stipulations one way or the other. And I don't know a good way of putting us into that position.

CHAIRMAN ARGENZIANO: Well, I don't think legal counsel is going to make that decision for you. I think I can. I don't have any problem with staff asking the questions. I just am going to put the brakes on moving forward beyond that, because a Commissioner has some very legitimate concerns that I do also.

So if that's the desire of the Commissioner to hear the staff's questions now, I don't see any reason why we can't do that. Commissioner Skop, and then we'll move on.

COMMISSIONER SKOP: Madam Chair, and thank you, Commissioner Graham. I respect your position. I also want to hear staff's witnesses. But again, staff's questions are not my questions. And again, I think the benefit of deferring consideration of the stipulation until hearing the testimony of all witnesses is that everyone's questions get

answered, and then if the stipulations are then found to be taken up and have sufficient merit, I have no problem with going with the will of the Commission.

But what I'm opposed to is being denied the opportunity to ask relevant questions over and above those being asked by staff. And I think that there's a laundry list here of red flags, and I'm sorry if the company finds it inconvenient that I would merely want to ask questions, which I am entitled to do by virtue of my position on this Commission. But the selective disclosure or the withholding of material information, I don't know how the company can explain it. It's absolutely shameful.

MR. ANDERSON: May I be heard very briefly on that point?

Our company takes the very strongest exception to these assertions that are being made that the company -- and the term I heard was hiding perjury. This is a serious allegation. It's not based on evidence. It's not based on testimony. It's not, you know -- the -- the statements made with respect from the bench are not evidence and that is not evidence. And we take the sternest and most

serious exception to that.

Second, very briefly --

CHAIRMAN ARGENZIANO: Right, continue.

MR. ANDERSON: The second point, just very briefly, pointing to the NRC withdrawal of the LAR, to be clear, there was a public document released with and through the normal Nuclear Regulatory Commission process that is not a terrifically -- it's a -- you know, the nuclear licensing is complicated, but that is not a terrifically great or dismaying point in the course of this project.

You know, Mr. Jones, our vice president for EPU, can explain all those considerations. We take exception to the idea about selective or untimely disclosure of that information as well.

So I just wanted to be very clear that we do take exception to an array of these comments and they give us -- they give us grave concern with respect to the fairness with which we may be treated.

CHAIRMAN ARGENZIANO: Briefly, Commissioner Skop.

COMMISSIONER SKOP: Briefly. Mr. Anderson, from what I heard your comments, you would unreasonably suggest that by virtue of the fact

that the NRC has its website, that the Commission is tasked with constructive knowledge of a document that you should have otherwise provided. The facts are what they are. They're not allegations. It is withholding of material information. It is selective disclosure.

The NRC letter, which is in the Commission docket file, was dated August 13th. That was the NRC response letter to the FPL request. Obviously it seems as if in the letter they referenced the FPL letter. So FPL knew or should have known that it was withdrawing its application prior to August 13th, yet it failed to disclose such information to the intervening parties, to Public Counsel prior to entering into the stipulation. It failed to disclose that information to the Commission until not only after Commission staff put that document in the record did we get your letter late in the day on August 23rd acknowledging what everyone in the world already knew. So it's just nonsensical to hear you spin this like this. It's a poor excuse.

CHAIRMAN ARGENZIANO: Can I do this? Commissioner Skop, excuse me. I think what we have, both sides, you've expressed your concerns,

and Commissioner Skop has certainly expressed his concerns.

I think at this point I don't -- I think it may be wise, let's have staff ask their questions. I'm not prepared to say let's move on. I want every Commissioner to be able to ask questions, and I certainly would like to hear some of the answers from both sides. I'd like to -- I think that's the way to go.

I'm not prepared to give, you know, a blanket let's move on and not be able to ask questions. If there's any point that we are indicating something, this Commission is indicating that we just want to move on without hearing any questions or getting the answers to those questions, which might help some of the angst that brought on the questions to begin with, then I would not be in favor of bypassing that ability to do so. That's my opinion.

But at this point, why don't we shift to staff to ask questions. That does not then prohibit us from continuing to ask questions.

Commissioner Skop, to the procedure.

COMMISSIONER SKOP: To that procedure. The concern I have with that, Madam Chair, that seems

in totality to be good, but staff would have to call at least, I believe, three FPL witnesses, or whichever witnesses.

CHAIRMAN ARGENZIANO: Two.

COMMISSIONER SKOP: Two, or however many they choose to call. My problem is, is are we just going to focus on selective portions of the testimony or are we going to focus on their complete testimony?

CHAIRMAN ARGENZIANO: Well, Commissioner Skop, that's staff.

COMMISSIONER SKOP: And briefly. But what I'm saying is I don't want to reinvent the wheel. If it's more administratively efficient to just go through the case and defer consideration of the stipulation until the end of the testimony, then everyone gets their questions answered. It seems to be more expedient.

CHAIRMAN ARGENZIANO: Okay.

COMMISSIONER BRISÉ: Thank you, Madam Chairman. I think I agree with you that at this point it would be very prudent for us to go to staff and listen to the witnesses that they are interested in hearing from. And I think that as Commissioners, then we can ask the questions and

hopefully some of the issues that are outstanding can be brought forth or brought to light as a result of the questions that we as Commissioners may want to pose. And I think at that point we may want to determine if we need to bring any other witnesses or -- or whatever direction we might be willing to take at that point. So I think that that may be a good direction to go.

CHAIRMAN ARGENZIANO: Well -- Commissioner Edgar, question?

COMMISSIONER EDGAR: Thank you, Madam Chairman. And I think maybe we're saying the same thing. I just want to make sure that I understand to the best of my ability where we are right now. And so if I may.

Staff had shared with me in our briefing a couple of days ago that there were two witnesses that they had questions of. I don't remember which two those are, and so I'd like to pose that question while I'm looking at the witness list.

And so if it's okay, Madam Chair, I'm going to ask staff to remind me which two witnesses they have prepared questions for today.

MR. YOUNG: Madam Commissioner, we have questions for witness Jones, witness Reed -- and

witness Reed. We had questions for witness Powers, but FPL has agreed to enter her deposition in its entirety into the record in lieu of our questions, and that satisfies staff's concerns as it relates to Ms. Powers.

COMMISSIONER EDGAR: Thank you. And just to continue with that for a moment.

Then recognizing that witness Cooper and witness Gundersen, I believe, have been stipulated prior to this, if I may, again, just for my understanding to Commissioner Skop, am I hearing you say that you have questions that you would like to ask today to -- to other witnesses perhaps other than those that have been stipulated and the two that our staff have shared with us that they have questions prepared?

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair. Commissioner Edgar, I have not released any of the FPL witnesses and I've also indicated my express desire to ask questions of Mr. Olivera. So that's my position on the matter.

MR. MOYLE: Madam Chairman?

CHAIRMAN ARGENZIANO: Mr. Moyle?

MR. MOYLE: Yeah. And for the record,

Jon Moyle on behalf of the Florida Industrial Power Users Group.

It's a little unusual procedurally, and FIPUG is perfectly willing to accommodate the Commission's desire, it seems, to sort of ask some questions and refrain from asking questions. But I'm assuming that our not asking questions, to defer to the Commission and staff asking questions, is not going to be any kind of waiver of the right at some point to possibly ask questions.

I mean, I don't know that you're envisioning the witnesses getting on and giving their summaries and doing the whole thing. I think you're talking about sort of a rifle shot. We've got a few questions for this witness and we're fine with that, but I just want to make sure we're not waiving any ability to ask questions.

CHAIRMAN ARGENZIANO: I can't answer for the rest of the Commissioners, but I don't want to waiver anybody's right to ask anything. Okay? At this point I'd like to hear some answers too, because it would help very much on some questions that have been raised on all sides. I think that's the way to go.

So if we are at any time, staff and legal

staff, precluding someone's right to ask a question, answer a question, or, you know, if we are somehow waiving somebody's right to do so, I want to be advised before we make that -- that leap, because I'm not prepared to agree with that as an individual Commissioner, so --

MR. DAVIS: Madam Chair, may I be heard? Gary Davis on behalf of Southern Alliance for Clean Energy.

It seems like we're moving into a suggestion of kind of a bifurcated procedure here. Is it that the first part would be to ask the questions that the Commission has and the staff has for the purposes of determining whether to grant the stipulation. It seems like that would be --

CHAIRMAN ARGENZIANO: Well, that's not my take.

MR. DAVIS: Well, I'm trying to understand.

CHAIRMAN ARGENZIANO: I got a suggestion from a Commissioner and it was a worthy suggestion to do. I think -- I'm not sure at this point. I think the best thing to do is hear from the parties as far as how we're moving forward and what implications it has, and then I may want to take a break to discuss with legal where we really are and

how is the best way to go about this. And then as the presiding officer and according to what the will is of the Commission, I'm going to have to make a determination on which way we go.

MR. DAVIS: And may I just state for the record and for the Commission that SACE is not really taking a position and doesn't intend to present evidence or questions on the uprate issues.

CHAIRMAN ARGENZIANO: Okay.

MR. DAVIS: And I understand that's the focus of what this discussion is about. And so we would be happy to have our part of the program be as a separate part if that's the desire of the Commission, because I understand the focus is on the uprate at the moment.

CHAIRMAN ARGENZIANO: Well, I think -- should we bifurcate anything and what does that do, Mr. Kiser?

MR. KISER: Madam Chairman, I would just caution the Chair that everybody agreeing that their notion is that you're not going to be waiving anybody's rights, I would suggest you might want to also ask FPL if they agree that we're not waiving anybody's rights.

CHAIRMAN ARGENZIANO: Well, I've had it open

to everybody. I didn't -- I did not disqualify them from participating. I meant for everyone, and that's what I said.

MR. KISER: Well, what I'm suggesting to you, they haven't commented on whether or not they agree with that. And you just might want to ask if they're in agreement that we're not waiving anybody's rights by going in and talking to some of these witnesses.

CHAIRMAN ARGENZIANO: Well, weren't we talking about waiving the rights of people to ask and answer questions? I'm not sure what you just said. Repeat it one more time.

MR. KISER: What I'm saying is that you just want to be sure that all parties agree that by going the steps you're now taking, that you're not waiving anybody's right to ask questions, that everybody is still going to be available for everybody to ask questions. And I wouldn't want us to go down that road and then suddenly find -- have an objection saying those rights have been waived. So I was just suggesting you might want to get their concurrence.

CHAIRMAN ARGENZIANO: Commissioner Skop, do you have a comment?

COMMISSIONER SKOP: Yes, Madam Chair, to our General Counsel.

Mr. Kiser, with respect to the Commission's obligation pursuant to Commission rule to conduct an annual hearing and determine the reasonableness of projected costs and controls and such, how is the Commission capable of doing that without having a full evidentiary hearing similar to what just was done for Progress over the last two days?

MR. KISER: What I'm suggesting, Commissioner, is that I think it sounded like, from the discussion I heard, that everybody was not nodding and agreeing that by going ahead and doing this you weren't waiving anybody's rights. And I'm just saying that you want to make sure that all the parties sitting here also agree with that. Because if you start down that road and then they raise an objection to that and say, no, they don't agree to that, they think we are waiving some rights, we need to -- we need to know that now if they have an objection to that. That's all I'm asking.

CHAIRMAN ARGENZIANO: Well --

COMMISSIONER SKOP: A brief response. And that's exactly my point, is we don't undertake that risk if we do the evidentiary hearing and then get

to the stipulations at the very end. If we decide to spin off or defer, then we do it at that time.

CHAIRMAN ARGENZIANO: Okay. Let me get -- let me go -- let me do this. If we move forward as Commissioner Skop indicates, that requires the Commission to vote on which way we're going to go or not? So then --

MR. KISER: I'm not suggesting that you have to vote on that. I think -- I think you have every right to go ahead and go down that road. We just want to be sure that when we go down that road, that everybody agrees that we're doing that and that there's no objection to that. Otherwise we end up -- we could have a dispute on our hands which we then have to sort out. I'm trying to avoid that.

CHAIRMAN ARGENZIANO: Wait a minute. Let me see if I'm -- I'm not getting confused here. But wouldn't it be if you stipulated and wanted to take a particular route, that you would not think that this is the route to take?

MR. KISER: Mary Anne would like to address the Commission.

CHAIRMAN ARGENZIANO: Okay.

MS. HELTON: It was my suggestion, so maybe

let me, let me give a shot at it.

My concern was that if we -- staff calls the two witnesses that it wants to question and the Commissioners have questions but the parties don't have questions, at the conclusion of that, a decision is made not to approve the stipulation and then we go forward with the remainder of the hearing, my concern was I wanted to make sure that we have the agreement from everyone sitting on this side of the room --

CHAIRMAN ARGENZIANO: Got it.

MS. HELTON: -- that we can't call back witnesses that staff has asked -- directed questions to or that the Commissioners have directed questions to.

CHAIRMAN ARGENZIANO: Can, I think, right?

MS. HELTON: I'm sorry. Right.

CHAIRMAN ARGENZIANO: Mr. Anderson?

MR. ANDERSON: Madam Chairman, FPL is fine with the suggestion, I believe, Mr. Jones and Mr. Reed, right? And it sounds like the process would be we'd bring them in, they can be sworn, they can answer questions. We do urge consideration and acceptance of our motion to defer.

We're okay proceeding in this way. And we expressly acknowledge that if we need to have a full evidentiary hearing, you know, then and there, then we'd put our witnesses on and with the summaries and cross-exam and all that.

But, you know, in order to facilitate things, we'll just bring in Mr. Jones, I guess, to start. Is that acceptable?

CHAIRMAN ARGENZIANO: Okay. I do have -- I do want to make this suggestion, because what I see coming down here is that those -- just because staff is going to ask questions, that is not going to alleviate some of the questions, other questions that I believe Commissioner Skop has or I may have or any one of you may have coming down. We don't know what staff is going to ask. We don't know if it's going to fully address everything that we have concerns on.

So if we're going to go down that road and staff -- then we're just saying that, staff, you're just going to ask questions now but we're still going to go down to an evidentiary hearing it seems like in order to accommodate Commissioner Skop and maybe any one of us, so maybe this is not the -- the best way to approach it.

Commissioner Graham?

COMMISSIONER GRAHAM: Thank you, Madam Chair. I guess I'm trying to -- and I'm not even sure that we have any sort of a -- if we're in the proper order, if we've got any sort of motion on the floor or not. But my understanding was the questions before us is the stipulations.

And there's a lot of back and forth about what's going on with the stipulations, and it seems to me that the key to most of this is the August 13th letter, the NRC letter that started all this and that's what got the staff started with their questions. And I can't speak for Mr. Skop, if he had more questions before or after that point or not.

And I don't know if -- I don't know if the motion on the floor is the stipulations, and if that's what the case is, I'd like to hear, I'd like to hear the staff question those two witnesses, for the board itself to -- if we have any questions to those two witnesses. And then at that point we make the determination if we want to open up to a full hearing or if we're -- if we're happy with the questions there and we can move forward with the stipulations.

CHAIRMAN ARGENZIANO: It does come down to then if we still have a Commissioner who wants to have more questions, and outside of those two witnesses, where do we go from there? Hang on.

MR. KISER: Well, Madam Chairman, it's always best to have a motion and passed so that it's clear what people want to do.

CHAIRMAN ARGENZIANO: That's why I asked if we had to vote on it. That's what I meant.

MR. KISER: And so I would say that, you know, again, to kind of build building blocks up to the top, you start with the motion, that frames the question, that sets the course of action, it's seconded. If it passes, then that's the course you go. If that doesn't pass, then someone else suggests a motion. And if that one passed and is seconded, then that's the direction you go.

But it's just usually easiest and proper business to get your motions in order first.

CHAIRMAN ARGENZIANO: Okay. Here's what it's going to come down to. We're going to take a vote on whether you want to hear other questions that Commissioners may have. And I think that's what we're faced with right now, because I don't have a motion on the table. We had a withdrawn motion.

COMMISSIONER SKOP: I'll make a motion but it may, you know -- Madam Chair, if I may be recognized.

CHAIRMAN ARGENZIANO: You're recognized.

COMMISSIONER SKOP: Again, if staff calls witnesses for the purpose of asking staff's question, I am not waiving my right under evidentiary hearing to ask questions and hear other Intervenor testimony questions or cross-examination that may spur additional questions I have.

So, again, what I proposed the first time, which would, you know, to me streamline this whole discussion, is defer taking up the motion on the stipulations until the conclusion of the evidentiary portion of the hearing.

Now, if the stipulations are approved at that time, the dockets would be spun off and additional testimony and discovery could be conducted over and above what's already created in this record. The record will not be limited to what we discuss here today. That's my understanding. I think that's the appropriate legal way to proceed, to call the first witness and let's get on with this instead of trying to bifurcate it.

Because when staff asks its questions, I'm not

asking mine then. I'm sorry. That's staff's desire to do that, but I want to hear from the intervening parties. I want to hear what they have to say. I've got my questions. I think an evidentiary hearing is required by our own rule.

CHAIRMAN ARGENZIANO: Okay. It doesn't seem efficient to bifurcate, I believe. You're going to hear staff's questions anyway if we just move on and let Commissioner Skop and any other Commissioner proceed.

So if you have a motion, let's go with it.

COMMISSIONER SKOP: Thank you, Madam Chair. I'd like to be recognized for the motion to --

CHAIRMAN ARGENZIANO: You're recognized.

COMMISSIONER SKOP: Thank you. To defer consideration of the motion to accept the proposed stipulations until the end of the FPL witness testimony.

CHAIRMAN ARGENZIANO: Do I have a second? Pass the gavel to Commissioner Brisé, please.

MR. KISER: You don't need to pass the gavel for a second. That's my feeling.

CHAIRMAN ARGENZIANO: Okay. Well, I'm not sure what rules we're operating under here, so --

MR. KISER: That's a problem that we have.

But generally speaking a second does not indicate to you support. It's just for discussion, so it's --

CHAIRMAN ARGENZIANO: Well, it's been up in the air and I'm not going to take any chances, so I will just second the motion.

COMMISSIONER SKOP: And discussion.

CHAIRMAN ARGENZIANO: And discussion. Question?

COMMISSIONER BRISÉ: I have a question on the motion.

CHAIRMAN ARGENZIANO: Sure.

COMMISSIONER BRISÉ: If I understand the motion properly, that staff will bring forth its, who it seeks to ask questions to and that the Intervenors and the Commission can then ask questions of --

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER BRISÉ: -- of those individuals as well.

COMMISSIONER SKOP: No, Commissioner Brisé. The way the motion was styled is that the FPL case in chief would proceed just as the way it did with Progress. FPL would call its first witness. The witness would be tendered for cross-examination by

the Intervenors, by staff, by, you know, the Commissioners, redirect, call your next witness, the full evidentiary hearing.

So what I'm suggesting in the motion is to defer consideration of the proposed stipulations until after we hear from all the witnesses and then take that up.

CHAIRMAN ARGENZIANO: It would just be doing it all at once rather than bifurcating and saying staff, you ask your questions and then later we get to ask questions. It's doing it at all at one time. I don't see any difference, to be honest with you. I really don't. It's either you do it now or you have staff do it separately and then we come back and do it. I don't see the difference.

Commissioner?

COMMISSIONER BRISÉ: May I ask a question --

CHAIRMAN ARGENZIANO: Absolutely.

COMMISSIONER BRISÉ: -- to those who entered into the agreement?

CHAIRMAN ARGENZIANO: Ask. Absolutely.

COMMISSIONER BRISÉ: Okay. And this would be a broad question to -- to all of those who have entered into the agreement. I'd like to hear from each one of you individually. What would be your

interest relative to how we proceed and how would that impact your commitment or your position with respect to the stipulation?

And I don't know if that question is within the bounds of what I'm allowed to ask.

CHAIRMAN ARGENZIANO: Mr. Moyle?

MR. MOYLE: Well, it's happening quickly, so I need to consider further a little bit, but it seems like you might be heading down a path where you're going to have a full-blown hearing and then take up a deferral, which would say we're not going to decide these issues, we're going to defer them later, which sort of seems to me that you're doing it twice. And so I'm not sure. You know, I'd have to think about it. It -- you'd -- it could go on for some time. I don't know if that's administratively the most efficient.

CHAIRMAN ARGENZIANO: Mr. Moyle, that's what I'm trying to find, is what is the most efficient.

MR. MOYLE: Yeah. I thought that you guys were heading in a direction of essentially saying let's have a limited evidentiary proceeding that will help us, inform us with respect to whether we want -- how we want to take action on this stipulation and the motion. Have very limited

evidence which I'm fine with. I'll defer my questions if you guys --

CHAIRMAN ARGENZIANO: But that could -- but that could change, because it could be limited and then Commissioners could have additional questions, and I'm trying to figure out which is the most efficient way.

MR. MOYLE: But I would suggest that they could ask all the questions, the Commissioners and staff could ask all the questions they want, have a -- have a limited evidentiary record that would inform you as to do we want to go forward or not go forward. And if you, after hearing some evidence, say, okay, let's take up the stipulation, not go forward, you know, we can all, you know, do other things and get ready at a later point in time. If after hearing some limited evidence you say, you know what, there's enough here, we want to go forward and you vote to go forward, then we have an opening and we go forward with the proceeding.

I think, you know, with all due respect, that that's probably a way to proceed that makes sense. And, again, my only point in raising the waiver issue is I don't want to have, you know, limited, which I think makes sense administratively.

CHAIRMAN ARGENZIANO: Absolutely. Absolutely.

MR. MOYLE: -- because you'll hear just a focus point --

CHAIRMAN ARGENZIANO: Sure.

MR. MOYLE: -- without waiving the right to ask other questions.

So, thank you for, thank you for the question, Commissioner. Appreciate it.

CHAIRMAN ARGENZIANO: You did ask for all, so let's have him --

MR. DAVIS: I guess we're going this direction.

Commissioner Brisé, I just wanted to first of all state that SACE was asked to stipulate to this stipulation at -- on Monday the 16th is when we first heard about it. And the way it was represented to us is that staff had requested a deferral and that OPC had already agreed. And it was also focused on the uprate, which SACE has not focused on in this hearing.

And that's why we did not object, because we wanted to -- we didn't want to -- to support something that we really hadn't followed and that we didn't really necessarily agree to. But the purposes of our do not object was to allow for the

will of the Commission on how to proceed, basically.

And I do agree with Mr. Moyle's suggestion that the most efficient way to do this is to do whatever the Commission needs to do to decide on whether to accept the stipulation, and then if the Commission decides to reject the stipulation, then we proceed with the full hearing. That would be my suggestion as well. Thank you.

MR. YOUNG: Madam Chairman? Just to clarify one point. When Mr. Davis represented that staff had requested a deferral, audit staff in their testimony requested that the Commission either defer or open a separate docket as relates to what he's talking about. So I just wanted to make sure we're clear that staff did not -- I think if, I think he said FPL stated that staff requested a deferral. That was not the case.

MR. DAVIS: That's exactly what I stated. That was the way Mr. Anderson represented it to us.

CHAIRMAN ARGENZIANO: Wow. Okay.

MR. ANDERSON: If I could correct that. No, I indicated that in staff's testimony, just as staff had stated.

CHAIRMAN ARGENZIANO: Does anybody know what

they've said?

MR. ANDERSON: I very much do, and you can tell by my chapter and verse we're very particular.

CHAIRMAN ARGENZIANO: Thank you.

MR. McGLOTHLIN: Commissioners, our office is ready to proceed in the way you think is most helpful to you in getting to your decision.

CHAIRMAN ARGENZIANO: Thank you. Mr. Anderson, Commissioner Brisé asked that everyone --

MR. ANDERSON: We're on a little bit of untrod ground here. We think it makes sense to follow the will of the Commission in terms of presenting the witnesses that have been asked for, so you can test and consider whether to approve the stipulation. We do believe that's in the best interest, for all the reasons we've explained. And, you know, we're prepared to bring Mr. Jones, Mr. Reed, sit them down, have them sworn, and proceed in just the way that's been indicated.

CHAIRMAN ARGENZIANO: Commissioner Edgar?

COMMISSIONER EDGAR: Thank you. Thank you, Madam Chair. And I -- I recognize that a motion has been made and that, Madam Chair, you gave the second, and I appreciate that, to open us up into more of a discussion posture, which is my

understanding of where we are.

CHAIRMAN ARGENZIANO: Yes.

COMMISSIONER EDGAR: I think we may have gone, you know, all the way around the barn and are kind of back at the beginning perhaps, well-intentioned. But I don't completely crystal clearly understand the intent or effect of the motion that is before us.

And so with that as -- as -- as preamble, let me say this. I think what I'm hearing and what may be effective and efficient would be what may have been suggested here a couple of times, is to ask our staff or FPL to call at the appropriate time here shortly witness Jones, and for our staff and any other party and Commissioner who has questions of Mr. Jones to -- to -- to do that in the normal course of the way we handle witnesses.

And then after that, to -- and I realize this would be taking witnesses out of the order that was written before, but we do that frequently as well. And then ask for witness Reed to come before us and go through the same, I was going to say exercise, but I mean the same process, and then see where we are.

And I, and I say that without asking anybody

to waive any rights or not ask any question. And it just seems like I'm hearing a desire to hear from those two witnesses from -- from others and the opportunity to have those questions, and I think that might get us to where would be a helpful posture to be in.

CHAIRMAN ARGENZIANO: Okay. Commissioner Graham and then Commissioner Skop.

COMMISSIONER GRAHAM: Thank you, Madam Chair. It seems to me the motion that's before us is basically to have a full-blown hearing like we just had earlier this week with Progress. I can say right now that I do not plan on voting for that motion. I have a second motion after that where I think we should go. As I mentioned before, move forward with the staff's questions. If we want to ask questions of those same two witnesses, then we can ask those questions, and at that point we can decide if we move forward with the stipulations or if we go to a full-blown hearing.

So for the questions that's at hand, and I guess now after I've talked I can't call the question, but the question at hand is the full-blown hearing, and I do not plan on voting for that.

CHAIRMAN ARGENZIANO: Let me ask you a question. If we did it that way, what's the difference if after the staff asks questions that we, a Commissioner or I or you or any one of us, wanted to ask questions of everyone, and it became a full-blown hearing? What's the difference? Couldn't it also then become a full-blown hearing afterwards?

COMMISSIONER GRAHAM: Are you asking that question?

CHAIRMAN ARGENZIANO: Yeah.

COMMISSIONER GRAHAM: At that question -- because it seemed like, like I said, a lot of the problems was this letter from August 13th. I think when those questions get asked, at that point I would know if I want to go with the stipulations or if I want to go into a full hearing.

CHAIRMAN ARGENZIANO: I got you. So you're thinking that maybe the staff can answer your questions. Okay. But I'm telling you ahead of time, I believe that there are going to be other questions from other Commissioners, and I believe then at that point are you indicating that you would not want -- I don't know if you want to say that or not -- indicating that you would not be

willing to have other Commissioners ask questions?

COMMISSIONER GRAHAM: Well, I think we take this first step.

CHAIRMAN ARGENZIANO: Okay.

COMMISSIONER GRAHAM: Then I can make the determination, I think the board as a whole can make a determination. If -- you know, they may decide -- and there are several different steps where you can decide that, you know, that Mr. Skop may have a list of --

COMMISSIONER SKOP: It's Commissioner Skop.

COMMISSIONER GRAHAM: Commissioner. I'm sorry, sir. No disrespect.

That Commissioner Skop may have five witnesses that he wants to bring forward. Those five witnesses may address some questions that the Chair has and some other people. And so at that point it can be an alternative motion.

CHAIRMAN ARGENZIANO: Okay. Okay. Commissioner Skop to respond and then we have a motion.

COMMISSIONER SKOP: Briefly to respond. Again, my concern is this. Staff wants to call two witnesses. That's for staff's purposes. Knowing what I know, giving all the red flags that I've

articulated, knowing what the Intervenors know, I can't in good faith support approval of the proposed stipulations prior to hearing all the FPL witness testimony in this docket, and that's having a full evidentiary hearing. That seems to be consistent with our obligations pursuant to our own Commission adopted rule.

And I'm not so sure why we would not want to -- you know, the Commission's interests are separate and distinct from what the parties want. The parties have their own interests in entering into agreements, and sometimes the Commission agrees with that and sometimes they don't.

So while I respect Commissioner Graham's position, I'm not so sure why the Commissioner would not want to have a full evidentiary hearing, given some of the red flags that have been raised here.

CHAIRMAN ARGENZIANO: Okay. We have a motion and a second. All those in favor of the motion signify aye. Aye.

COMMISSIONER SKOP: Aye.

CHAIRMAN ARGENZIANO: All those opposed?

COMMISSIONER EDGAR: Aye.

COMMISSIONER BRISÉ: Aye.

COMMISSIONER GRAHAM: Aye.

CHAIRMAN ARGENZIANO: Okay. The motion fails. Now, what we'll do is move on to having staff call their witnesses, and that in no way precludes --

COMMISSIONER SKOP: Is that funny, Commissioner Edgar? Because I see a big smile on your face.

CHAIRMAN ARGENZIANO: Okay. Let's not get -- let's not -- let's not -- let's just -- where we are. Let's -- we are at a point where -- I'm sorry, Commissioner Graham, did you want to --

COMMISSIONER GRAHAM: Well, we need a motion on the floor now because the one failed.

CHAIRMAN ARGENZIANO: Well, do we need the motion actually to go ahead with staff now? The motion --

MR. KISER: Well, you don't know what his motion is going to be. He may state a slightly different motion. It may be bigger than just two -- you don't know. You need to hear the motion.

CHAIRMAN ARGENZIANO: I didn't know -- I thought that the motion that was made -- okay. To put us in the proper position, I didn't think we needed a motion to have staff ask the questions and

then proceed from there. But if you'd like to restate the motion.

COMMISSIONER GRAHAM: My motion is -- my motion is to move forward with the stipulation based on the -- the -- the -- the questioning of the two witnesses by staff and by this Commission as a whole.

So basically what I'm saying is the staff is going to ask their questions of the two witnesses, this Commission will ask those questions of those two witnesses, and at the end of those interviews of those witnesses, we can decide if we move forward with the stipulation or if we go back to a full-blown hearing.

CHAIRMAN ARGENZIANO: Well, then, so your motion is to -- you're saying to move forward with the stipulation, not just to have staff -- that's what I thought we were talking about before was not talking about the stipulations and having staff ask questions and then from that point on we would determine.

COMMISSIONER GRAHAM: Well, based on -- based on the questionings of staff and of this board of those two witnesses.

CHAIRMAN ARGENZIANO: Well, I wouldn't be

willing -- I'll just tell you where I am. I wouldn't be willing to move forward on the stipulations. I wouldn't mind moving forward with staff asking the questions, but I'm not prepared to move forward on the stipulations at all. There are serious concerns that need to be addressed in my view, and I'm not prepared to do so.

So, that, you know, votes will be where they are, win or lose. I've been a winner and a loser, and you lose more times than you win, but that's not why you vote.

COMMISSIONER GRAHAM: Well, I guess my motion, and maybe General Counsel can help me clearly, more clearly state my motion, but my motion was based on the stipulation question will not come up until after we hear back from, until after we hear from the two witnesses, until after this board and staff asks questions of the two witnesses.

MR. KISER: That was the way I would have interpreted it, that you would go forward with the questioning and answering of both the staff questions and Commissioners' questioning, and at the conclusion of that you would then be back on, unless someone makes a new motion, you'd be back on the issue of whether to approve the request for

deferral.

And if, again at that time it's subject to another motion, if -- if, because of some of the testimony that comes up or other considerations, there's another two or three or however many other witnesses, a motion can be made to now bring those witnesses forward. You don't have to automatic -- if you don't -- someone is free to make any motion they want as to how they want to proceed after they complete what your motion envisions. So it's wide open once that's over just to go on with other things.

COMMISSIONER EDGAR: Madam Chair?

CHAIRMAN ARGENZIANO: Commissioner Edgar?

COMMISSIONER EDGAR: Thank you. And what I'd like to do is restate what my understanding of the motion is, and if I am correct with my restatement, that I'm understanding what it is you're suggesting.

MR. KISER: Excuse me, but, Madam Chairman, I don't believe that motion has been seconded yet, has it?

CHAIRMAN ARGENZIANO: I don't think the motion was completed. So -- so we don't have a second, because it wasn't completed. He was asking about

how to better pose the motion, so he never completed the motion, and that's what we're trying to get to, I think.

Commissioner Edgar.

COMMISSIONER EDGAR: Thank you. What I want to do is restate it, and if I'm understanding it correctly, then I was going to second it, but I didn't want to second it if I didn't understand it correctly.

My understanding of the motion that Commissioner Graham has made is that we would ask -- that the Commission would ask FPL to call witness Jones and there would be the opportunity for his testimony and for questions from all the parties and Commissioners, which would of course include staff. And at the conclusion of all of that, then we would ask FPL to call witness Reed, go through that same evidentiary process, and then at that point there would be the opportunity for a motion as to how to proceed further.

Is -- is -- am I correct that that was the intended effect of the motion?

COMMISSIONER GRAHAM: That was the effect if that's a legal motion.

COMMISSIONER EDGAR: I believe that it is, and

in that case I second.

CHAIRMAN ARGENZIANO: That -- discussion. Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair. With respect to the proposed motion, again, I'm going to be voting in, opposed to the motion. I am not going to be limited to asking my questions to witnesses that staff calls in line with staff's questions. Again, a lot of times my questions arise following from questions that are asked by the intervening parties. That's part of the process to have full breadth of cross-examination.

The Commission has its duty and obligation to perform an annual review. Everyone was aware of that review. We did it for Progress. We should be doing it for FPL, given the information known to the Commission, and to do otherwise is a dereliction of duty.

CHAIRMAN ARGENZIANO: If I may, for discussion for myself. I cannot support the motion. I think that -- I don't understand why -- I think a lot of serious issues were raised, and I also believe that having the opportunity to have some of those serious concerns addressed is due process to the parties also. And I'd like to hear their answers,

because they could very much clear them up very easily, and by not allowing me to do that or somehow stopping the evidentiary hearing from coming to fruition I think is a very, very big mistake. I am not prepared to not ask questions and -- and -- and I think feel limited to that.

It changed from what I originally thought we were asking or that some of the Commissioners were asking, just to have staff go ahead and ask questions, and then if we wanted to we could move forward. But it seems to me that we're trying to put the brakes on asking questions that, on -- on very serious issues, and I'm not here to do that, so I couldn't support that.

If it passes, it passes. If it doesn't, it doesn't. I just can't support that, for those reasons.

Commissioner Brisé?

COMMISSIONER BRISÉ: Thank you, Madam Chair.

I'm not certain, and I guess I'm going to make a statement and then hopefully it clarifies it for me.

If I understand properly, the motion is that we will hear from the witnesses, we will be able to ask questions of the witnesses, staff will be able

to ask questions of the witnesses, I think the Intervenors will be able to ask questions of the witnesses, and at that point we would be able to then see if we want to move forward with the stipulation or move into either taking up other witnesses through a motion by someone else, by any one of the Commissioners, or move into a full-blown hearing.

So I understand the Chairwoman's point was, well, why do we need the motion in the first place if we're going to get to that point anyway? But I think the -- the idea behind the motion is to get us to a point that we can arrive at a decision so that all the Commissioners can be aware as to the direction that we're going to move from that point.

And hopefully I'm clear for myself and clarified it maybe for some others.

CHAIRMAN ARGENZIANO: And if I may respond to that, while we're discussing, is that that sounds good, but when you really think about it, if you have to go through all of this, there must be, there has to be some feeling here that says that, you know, as long as the questions I have are answered, I may -- it doesn't -- let's say that there are four Commissioners who don't agree with

one or three that don't agree, whatever way it is.

If we come back with we're unbalanced after the staff asks their questions and there are still questions, I think the bigger issue for me is then are we even for one Commissioner going to say that the other questions that you might have subject to really us saying no. And that's our prerogative. That's your prerogative. But I don't feel like saying that to any Commissioner, and I don't think it's justified, and I may have questions that I really think need to be answered.

After all, the statute does say that the evidentiary hearing is something that is what we're supposed to do. And if you want to agree with the stipulations and that, that's fine. I don't want to stop any Commissioner, including myself, from being able to go full blown into an evidentiary hearing that is of great importance to the people of the State of Florida as well as all the parties involved.

So that's my decision on that. And it just seems like in -- the way we're doing it is ultimately just to say, okay, my, my question has been answered and, you know, the vote is probably not going to be with you later, and I'm not willing

to do that. So that's up to the Commission. If the Commissioners want to do it that way that's fine with me. I just can't do it that way.

So we have motion and we have a -- I'm sorry. I'm sorry. Commissioner Edgar.

COMMISSIONER EDGAR: That's okay. Thank you. I would like to take the opportunity to be clear in that my restatement and support by seconding the motion that Commissioner Graham made was not in any way to make a decision on the stipulations now, I meaning now at this moment, or to preclude the asking of questions of any witness. It was simply intended on my part to request that we take two witnesses out of order first --

CHAIRMAN ARGENZIANO: I have no problem.

COMMISSIONER EDGAR: -- that there has been an expressed desire to hear from, and then see where we, see where we were, and that was the intent. Not to make a decision at this time. And that was my point.

CHAIRMAN ARGENZIANO: And I have no problem with taking witnesses out of order. I just think what I see happening is that what's going to happen is then, and as you say, see where we are then, and that may be that, you know, where you are is that

if Commissioner Brisé has more questions and you think yours are satisfied, then it just comes to a vote and he may, and that's the way it is, you vote, and he may not get to ask his questions.

And I think in the bigger picture of what we're doing here, I'm not willing to stamp that right now and say that's probably what's going to happen down the line. I think that, if the motion is just take, take witnesses out of order, point blank, then I don't see anything else further and it doesn't somehow then work on somebody's vote later to say, well, I don't think your concerns matter. I do.

And that's where I'm coming. I'm not saying that you don't think they matter, but I see that that's what can happen, and I'm not willing to do that.

So we're here -- Commissioner Graham, we do have a motion and a second, but I don't want to stifle discussion here.

COMMISSIONER GRAHAM: I was just going to call the question.

CHAIRMAN ARGENZIANO: Well, we like to discuss it fully, and there will be a time you will too. Trust me.

We have a motion and a second. All those in favor of the motion say aye.

COMMISSIONER BRISÉ: Aye.

COMMISSIONER EDGAR: Aye.

COMMISSIONER GRAHAM: Aye.

CHAIRMAN ARGENZIANO: All those opposed?

COMMISSIONER SKOP: Nay.

CHAIRMAN ARGENZIANO: Nay. Or aye, however you want to say it. The motion prevails. So now we are at staff to call their -- and make no mistake, Commissioners, you still can ask your questions and we'll move forward.

So if we want to -- I'm sorry. Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair. As I previously stated in discussion of the motion that passed, I will be preserving my questions for all witnesses until the evidentiary hearing. This was supposed to be about staff asking a question, not the Commission, not the cross-examination. And again, questions, additional questions that I may have spawned from listening to how witnesses are being cross-examined, and to do otherwise and conduct an evidentiary hearing denies me that opportunity.

CHAIRMAN ARGENZIANO: Mr. Anderson?

MR. ANDERSON: Can I suggest just taking a moment so we can --

CHAIRMAN ARGENZIANO: Yeah, let's do that. Let's take a ten-minute.

MR. ANDERSON: Thanks.

(Recess taken.)

* * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, LORI DEZELL, RPR, CCR, certify that I transcribed the video and audio of the aforementioned proceedings, and that the transcript is a true and complete transcription of the proceedings to the best of my ability to hear and understand.

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.

WITNESS my hand and official seal this 1st day of September, 2010.

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EXHIBIT 2

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:

NUCLEAR COST RECOVERY CLAUSE.

_____/

PROCEEDINGS:	Hearing
BEFORE:	COMMISSIONER NANCY ARGENZIANO COMMISSIONER RONALD A. BRISÉ COMMISSIONER LISA POLAK EDGAR COMMISSIONER ART GRAHAM COMMISSIONER NATHAN A. SKOP
DATE:	Thursday, August 26, 2010
TIME:	Commenced at : a.m. Concluded at : .m.
PLACE:	Betty Easley Conference Center 4075 Esplanade Way Tallahassee, Florida
TRANSCRIBED BY:	LORI DEZELL Registered Professional Reporter

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WITNESS

EXHIBITS

NUMBER:		ID.
242	FPL's responses to fourth	109

PROCEEDINGS

MR. McGLOTHLIN: (no audio) -- LAR for the energy project. And that would have been about the time of the withdrawal which would have been prior to the finalization of the stipulation.

So the chronology I mentioned earlier was inaccurate in that respect.

CHAIRMAN ARGENZIANO: Okay. Thank you. Mr. Anderson? Hang on. Commissioner -- Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair.

Mr. McGlothlin, would Public Counsel, if that were the case, not have had any discussions with Commission staff on that issue?

MR. McGLOTHLIN: I don't recall that we had any conversations. I would have expected that they would have their own source of information to that extent.

COMMISSIONER SKOP: Or lack thereof. Thank you.

CHAIRMAN ARGENZIANO: Ms. Helton, did you have a --

MS. BENNETT: That was me.

CHAIRMAN ARGENZIANO: Or Ms. Bennett.

MS. BENNETT: If you were ready to proceed, I

wanted to let you know that Mr. Jones is the first witness that staff has questions of. And I spoke with Mr. Anderson prior to having Mr. Jones up.

It seems to me the indication of the Commission is that you don't want to hear the case in chief. So if you don't mind, we'll just ask the questions, instead of giving him the summary of his entire testimony. But if it's your pleasure to hear the summary of the testimony then -- I'm not making myself clear, but -- I can just go into the questions without his summary if you would prefer.

CHAIRMAN ARGENZIANO: Commissioners have a preference? Summary. The summary, please.

Mr. Anderson? Okay.

MR. ANDERSON: Chairman Argenziano, just to be clear. If I followed the motions earlier, the intention is to put on two witnesses to answer the various questions. Do I understand correctly that we are not in our case in chief, we're still preliminary to ruling on a motion for deferral?

And I want to make clear to all the parties that, you know, if -- if we do end up needing to do the whole hearing, which I'm hopeful we do not, we will -- you know, we understand people are not waiving in any respect their rights to ask all of

their questions then. If it's helpful to the Commission to hear the witness's summary, we'll do that -- we'll do that now. But it wouldn't be our intention to offer the testimony into the record at this time. Does that make sense?

CHAIRMAN ARGENZIANO: Yes, it does.

MR. ANDERSON: Okay. So we'll do the summary and then elicit your questions.

CHAIRMAN ARGENZIANO: Hold on one second. Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair. Just one follow-up question, Mr. McGlothlin. If Mr. Kelly had been made aware of that, would he not have told, I guess, you, since you're the attorney on this issue?

MR. McGLOTHLIN: Yes. It was my omission, Commissioner Skop.

COMMISSIONER SKOP: Thank you.

CHAIRMAN ARGENZIANO: We're ready to proceed.

MR. ANDERSON: Great. Mr. Jones, could you move your chair a little bit to the left? I can't see you at all.

CHAIRMAN ARGENZIANO: To the next microphone probably would be easier for you. Does that help?

MR. ANDERSON: Thanks so much. And what I'm

going to do is just introduce the witness and ask him just to present his -- his direct testimony summary so you get the background of things.

COMMISSIONER EDGAR: I believe he needs to be sworn in too.

MR. ANDERSON: Sure. And Mr. Reed is here too.

CHAIRMAN ARGENZIANO: Okay. So why don't we have both of you stand up. Mr. Reed. Raise your right hand.

TERRY O. JONES

was called as a witness on behalf of the FPL, and having been duly sworn, testifies as follows:

CHAIRMAN ARGENZIANO: Very good. Thank you.

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Jones, will you please tell us your full name for the record.

A My full name is Terry O. Jones.

Q Could you move a little closer to the microphone? I'm having trouble hearing you.

A My full name is Terry, middle initial O, last name Jones.

Q Great. We're still having trouble hearing you. These microphones really require you to be up

close.

By whom are you employed and in what position?

A I'm employed by Florida Power & Light, vice president of the extended power uprate project.

Q How long have you been employed by FPL?

A Approximately 23 years.

Q Okay. And do you have a summary that you had prepared for your direct testimony that you could present to the Commission just so they understand a little background about your work and something about the project?

A Yes, I do.

Q Would you please provide that to the Commission.

A Yes.

Good afternoon, Madam Chairman and Commissioners. As vice president, I'm responsible for the management and execution of extended power uprate projects. Our project team is safely and cost-effectively implementing extended power uprates at St. Lucie and Turkey Point nuclear plants.

An extended power uprate is the largest and most complex uprate that can be approved by the Nuclear Regulatory Commission. It requires a replacement or modification of a significant number of plant components

in order to accommodate a higher unit output.

When completed, the FPL uprates will provide FPL customers with an additional 450 megawatts of clean zero-emission electrical generation without expanding the footprints of these plants. This project will add approximately one-half the electrical output of a new nuclear unit.

The EPU project is unique in that the engineering and implementation override each other and the major construction is integrated with a normal unit refueling cycles. We choose this methodology to maximize fuel savings for our customers.

When complete, the project will provide FPL customers with an estimated fuel savings of $146 million in the first full year of operation and savings of approximately $6 billion nominal over the life of the plants. Additionally, the EPU project will reduce FPL's annual fossil fuel usage by the equivalent of 5 million barrels of oil or 31 million BTUs of natural gas and reduce carbon dioxide emissions by approximately 33 million tons.

Good progress was made in 2009 in a number of project areas. We completed mobilization of the engineering procurement and construction vendor, Bechtel Corporation. We began the detailed design engineering

for the required modifications to support the near-term upcoming refueling cycles. We completed an outage optimization plant which adjusted the sequence of work and duration of the refuelings to minimize the overlap between the outages. The EPU project activities completed to date or planned for 2010 include the successful completion of the first St. Lucie Unit 1 outage,the successful completion of the engineering design modifications for the upcoming Turkey Point Unit 3 fall outage, and completion of the engineering design modifications are being prepared for the St. Lucie Unit 2 outage that starts in January of 2011.

The EPU project activities planned for 2011 include completion of the engineering and planning phases for two of the three 2011 unit outages, successful implementation of three EPU outages, and performing the engineering and planning in support of three EPU outages in the year 2012.

In short, FPL has implemented the right project scope in the appropriate sequence to achieve the project goal of providing an additional 450 megawatts of clean, reliable electricity for our customers.

And when compared to other generating options, the EPU project is solidly cost-effective. FPL requests that the Commission determine that FPL's actual 2009

uprate project costs were prudently incurred and that its 2010 actual estimated and 2011 projected costs are reasonable. These expenditures are necessary to bring this highly beneficial, cost-effective resource addition to FPL customers. This concludes my summary.

MR. ANDERSON: And I would just note for the record we're not at issue on prudence or reasonableness. Those are portions of the ordinary summary, summaries provided so we all have an idea where we're at so we can -- you can have your information.

Mr. Jones is certainly available for further questions.

CROSS-EXAMINATION

BY MS. BENNETT:

Q Mr. Jones, my name is Lisa Bennett and I will -- I'm an attorney for the Public Service Commission staff. I'm going to have Mr. Locks pass quite -- pass an exhibit out. I would like that marked for identification purposes. I'm not sure what number we are --

SPEAKER: No. 240.

MS. BENNETT: 240? And while he's passing this out to the Commissioners and the witness, I just want to make sure, and want the Commissioners

to know and the witness know that there's a couple of points that staff wants to learn from -- information that staff wants to learn from this witness. And first is that there was a license withdrawal for St. Lucie Unit 1. And we want to understand if that license withdrawal was tied to the prior 2009 management team. Mr. Jones is the new management team. That's my terminology. And if it is tied to the prior 2009 management team, we want to understand -- staff wants to understand what additional costs and time for this project, the St. Lucie Unit 1 project. And then there's also an additional document that we've learned I think was filed -- or provided by the NRC yesterday on Turkey Point 3 and 4 that has some license amendment that we want to ask some questions about.

So with that long explanation, I'm ready to ask my questions.

BY MS. BENNETT:

Q I'd like to have you review staff Exhibit marked 240, and it's titled the August 13th, 2010 withdrawal of St. Lucie Unit 1 NRC application. Are you familiar with this document?

A Yes, I am.

Q And the document is NRC's application that FPL

withdrew its LAR, and LAR stands for license amendment.

A Yes, that is correct. License amendment request.

Q And this is an affirmation from NRC, from the Nuclear Regulatory Commission, that the LAR was withdrawn by FPL, is that correct, for St. Lucie 1?

A Yes, that is correct.

Q FPL completed the background work supporting the withdrawal of the LAR during 2009 and 2010, correct?

A I'm sorry, could you repeat the question?

Q The background work that goes into the license application, the LAR, when did FPL begin work on that and when did they complete work on that LAR?

A I'm not certain of the exact start date for the engineering analysis for the license amendment request. But it would have been in 2008 continuing through 2009. The license amendment request is -- it's a -- just to give you an idea, it's about 2,500 pages for St. Lucie Unit 1. And it involves hundreds of calculations. And what it's required to do for the extended power uprate is compare the extended power uprate conditioned to your current licensing basis, the plan as currently licensed and operating. And per the instructions, you must prepare engineering analysis and do the calculations to determine what changes or impact

operating at the higher output would have. And so there are hundreds and even thousands of engineering analyses and technical issues that arise as the process of doing that license amendment request.

Q Would it be fair to say that the majority of that work was done by the prior management team, the management team that's in charge of the EPUs prior to you?

A No, that wouldn't be fair to say. In fact, the license amendment request manager has been in her job for quite some time. She's been with the project longer than I have, and the license amendment request engineers that are working on the project for St. Lucie have been on the project since the beginning. And the -- and given that there are thousands of analyses and sensitivity analyses that are run, we contract the very best nuclear experts in the world, Westinghouse, Areva, Shaw, Stone & Webster, engineering to perform those analyses.

There is a core group at the St. Lucie plant that validates that the vendor follows the process and that they're following the process for the -- for the formatting of the license amendment request. And so from the very beginning, Westinghouse, Areva, Shaw have been doing the engineering analysis for their license

amendment request.

Q Okay. I guess what I'm really focusing on are the change in management, the senior management for the EPU for FPL in 2009 and what responsibility that management team had over this license that was recently withdrawn as compared to the current senior management in 2010.

A Okay. The vice president that had responsibility for extended power uprates also had responsibility for all other major projects for FPL as well as nuclear fuels. And as a part of that responsibility for extended power uprate, the license amendment request process certainly fell under his charge. His -- but again, the license amendment request manager in place in July of -- I'll just back it up a month -- June of 2009, for example, is the same person who's in charge today.

Q Who -- who is that, can you --

A That's Ms. Liz Abbot.

Q Okay. Do you know why FPL decided to withdraw its application?

A Yes. As a part of the license amendment request, the NRC has a process -- I apologize for the acronym, I'm not even sure I know what the acronym stands for. But it's called -- we refer to it as LIC

109 process. In that process, you submit your license amendment request and the staff can take up to about two months to do a technical review of that license amendment request. And this is called the acceptance period.

If during the acceptance period they have -- they may have questions in regard to some of the technical attributes of the license amendment. And so let me just pause right there for a second. The license amendment, even though it involves hundreds and -- of calculations that spawn off into subsets of calculations which could be thousands of engineering issues and analyses, that is not what you submit. That would not fit on 2500 pages.

You provide a summary of those analyses. And so during that acceptance review, the staff may ask for technical clarifications. There's two branches within the Nuclear Regulatory Commission. There's the reactor operating licensing branch which has -- which has accountability for the licensing process, and they have project managers. And then there's the technical staff branch and they have accountability for doing the technical review and ultimately will do the detailed review and write the safety evaluation that says it's okay to raise the power level of the reactors. So they

have ultimate responsibility for the technical review and approval.

We interface with a project management branch. To interface with a technical branch would require -- and in some cases, depending on how much stuff you got into, would require a public meeting. So during the acceptance process, the technical branch will feed to the project management branch, "I have some additional questions or I need some additional information." That is a normal part of the process. That occurred with the St. Lucie license amendment. It's occurring right now with a Turkey Point license amendment that's in with the NRC staff for review.

The questions that the staff had as we receive them from the project manager -- and again it's not a detailed technical paper we get, it's a phone call and then it's followed up, you know, with a written paper that's briefed. And it was in the area of spent fuel pool criticality analysis. One -- one other technical issue was involving a reactor control rod withdrawal of that and then some clarification around an event called a station blackout event.

In our numerous exchanges with the project management licensing staff, what we were being asked to provide -- and again I go back to the extended power

uprate as a comparison of the EPU conditions, extended power uprate conditions, to your current licensing basis, is we felt that on two of the technical issues, it really was outside our current licensing basis and that -- and that we were trying to find a path forward to be able to address the technical staff's concerns and stay in process.

And it's kind of hard to have this discussion without getting too technical so I apologize for the bug dust here. But at the end of the day, the tech reviewer wanted really a detailed analysis around the spent fuel pool criticality that was beyond our current licensing basis. And we're not able to do that in the short period of time which is the acceptance review.

And during that acceptance review window, if you're not able to satisfy the staff -- and there's really only -- there's really only two options. One, the NRC can decide not to accept the license amendment request and provide you some information and some basis for why they're not going to accept that request. You can withdraw that request and then the NRC will accept your request for withdrawal and then give you the technical information and then once it's formally withdrawn from the docket, then we can have a public meeting engineer to engineer to understand what the

delta is so that we can fill in those technical gaps and resubmit. That's a long answer to a short question.

Q Can you let me know, first of all, is FPL going to continue to pursue an uprate in St. Lucie Unit 1?

A Oh, absolutely. When we -- we -- on -- on August the 11th, we had a phone call with the NRC staff and they stated their position in regards to our license amendment request for St. Lucie and they felt like we needed much more technical detail and analysis included within the license amendment report. We stated our position that we thought it was outside the current licensing basis but clearly understood it's their process, their rules. And we asked that we vet this with senior management. And totally already scheduled, our -- CEO and our executive vice president and chief nuclear officer were scheduled to be in Washington to meet with NRC commissioners and NRC senior staff. And this was one of the issues that was to be discussed, the spent fuel pool criticality, which is an industry issue.

There is interim NRC staff guidance that's going to come out that's going to require much more conservative assumptions and analysis going forward to license spent fuel pools.

So on August the 13th, or actually on August

the 12th, those meetings with senior NRC management occurred. We had some assurances in regards to the path forward. And so therefore -- also what occurred on August the 12th in addition to that senior management interaction, we had -- I had actually talked to staff about when they would finalize their decision and either issue their letter. And I had asked them to -- to not make it final until the following week to give time for our senior management and their senior management to vet the issue. Because it is a very complicated technical issue both from a nuclear physics perspective as well as from a licensing perspective.

The staff did agree. The staff did agree to wait till the following week or hear back from us following those senior management meetings on August the 12th. On August the 13th we had a follow-up phone call with the staff. And again the staff is not permitted to make the technical staff immediately available to us so that we can talk in great detail to understand what -- what the additional information is that they needed. They give us kind of a high level summary and it's included in the letter. But to get that letter, we needed to withdraw our application. And -- and we did not want to delay getting that information. We wanted to have the benefit of getting that information and set

up a public meeting with the NRC as soon as practical, which we got agreement to set that meeting on August the 18th. So we submitted our letter on August the 13th and asked the staff to -- the NRC staff to issue their letter accepting our withdrawal on that same day so that we could get the technical information, or at least the summary of the technical information, so that we could work between August the 13th and right up to August the 18th to make the meeting on the 18th as beneficial as -- beneficial as practical.

On the 18th we went to Washington. We had our engineering-to-engineering meeting with the technical staff. It took the better part of the day for the spent fuel pool criticality and this rod withdrawal sequence.

Following -- following that meeting, we had a series of other meetings with our specialty vendors. In fact, we had our specialty vendors participate in that meeting as they are the industry experts. And we had a series of -- of meetings on what our different scenarios would be going forward to resubmit the license amendment request. And most of that involves additional technical analysis above and beyond where we went.

So it's not bad engineering, it's more engineering to be done to take it to another level and then what that would look like and how much time that

would take.

And -- and so we worked on that really through -- and we're still working on it. We produced a preliminary schedule that I just went through Tuesday morning, as a matter of fact. And so that's how fluid this is.

Q And you're getting right into my next set of questions. And that is, is this going to add time for the project? Is this going to -- first -- and I think there's probably two answers that I'm looking for. First is would the withdrawal of the application cause an extension of time? And secondly, I think I heard you say the NRC technical staff is requiring a lot more analysis. Will that analysis be the cause of additional time?

A Yes. In regard to the -- and there's many different schedules on a major complex project like this. But in regards to the license amendment request schedule, this most definitely impacts that schedule. And again, where we are is there's several different options involved with this technical issue as we have certainly several scenarios in front of us. And so my -- our preliminary look is that this could impact the license amendment schedule by up to two months to resubmit.

Q Up to two months and that includes the additional technical information plus the information to the --

A Yes. There's the detail -- again, engineering that would have to be done, then formatted into the license amendment request, and then what I refer to the owner reviews that have to be done and the validation. And again, this -- I want to be very clear here -- is that there are multiple scenarios and what we looked at was -- was that we could be ready to submit in one of the scenarios by November the 30th. Again that's very preliminary. And by that I mean is we're still providing some technical inputs into -- into the specialty vendor that performs all that analysis. We're scheduled to have those inputs to them by this Friday, they'll work on that through the weekend, and I expect to get a proposal back from them on -- sometime in the middle to late next week preliminarily. They've told us what their capability is. But until I see that and what I call a detail level 3, right now that's just -- that's just preliminary.

But to give you a rough feel, you know, it looks like approximately, you know, the end of November. But again, until, you know, I vet through that and my management vets through that, that's very preliminary.

Q And that -- let me make sure I'm clear on this. It will extend the time of the completion of the uprate also, is that correct, by at least two months?

A I haven't determined -- we haven't determined that yet. The NRC, having gone through the acceptance review, they could take up to two months to do the acceptance review. They could do what would be a delta review, look at just what was different from what we submitted. And the Nuclear Regulatory Commission states that their normal review is two months acceptance, 12 months review and -- and approval.

Now, we -- and when I say that we haven't determined, the outage that I need to uprate and that's currently planned, it could impact that first outage or I could change the fuel loading for that reactor and move that outage, which could be a delay, or one of the other options is that -- that we're considering is that the modifications that we need to make preliminarily don't look like we need the license amendment request to make those. We would only need the license amendment request to go up in power. And so therefore the outage and actual modification schedule itself may not be impacted.

But again, that is all work that -- that the current project team is -- is working through to assess.

Q What about costs? Are there going to be changes in the costs associated with the license amendment withdrawal?

A Yes. As I said, the engineering that was done is good engineering but we have to take it to another level to be able to satisfy the staff. And so there's -- there's a cost. You've got to pay the vendor for their work.

Q I'm going to ask that you look at a second letter from the NRC. I don't know if you've seen this one yet. It's from -- it's dated August 25th.

MS. BENNETT: And I'd like that marked as Exhibit No. 241 for identification purposes. Description, August 25th, 2010 NRC letter with REIs.

COMMISSIONER SKOP: Thank you, Madam Chair. Just to staff. Does staff have a copy of the meeting request or notice on the August 18th meeting that you referenced?

MS. BENNETT: No. Let me rephrase that. Not with us.

COMMISSIONER SKOP: Okay.

CHAIRMAN ARGENZIANO: Thank you.

THE WITNESS: (Examining document.)

BY MS. BENNETT:

Q Mr. Jones, are you familiar with this letter?
A No, I am not.
Q Okay. Just a couple of questions about the Turkey Point Unit 3 and 4 uprate then since you're not familiar with the withdrawal letter.
A Well, this is not a withdrawal letter associated with extended power uprate.
Q I'm sorry. Can you go ahead and explain what it is to the best of your ability?
A This was -- this is in regards to a previous request for a licensed amendment in regards to changing the technical specifications that restrict the movement of heavy loads over spent fuel pools. And that -- this is not a license amendment request submitted for or related to the extended power uprate.
Q Okay.
A And beyond that, I don't know the background or the history around this license amendment request.
Q Okay. I don't have any further questions on that document then.
You're -- you're part of what I refer to as the new EPU management team; is that correct? In other words, you took over in 2009 on senior management for the extended power uprate for Florida Power & Light?
A That is correct.

Q And your --

A But I wouldn't characterize it that way. There was a reorganization. The prior organization involved the extended power uprate as well as all major projects for the FPL nuclear fleet as well as nuclear fuels. Those were the major groups.

What was done in July of 2009 was to reorganize at a corporate level and we split out the extended power uprate group from the major projects group and the fuels team. And so the EPU organization became a standalone organization that directly reported to our senior vice president and chief nuclear officer. And yes, I became the vice president of extended power uprate at that time.

Q And that group that became the senior management for the extended power uprate, that reorganization, that's a new group of management, is that correct, over the uprates? In other words --

A There were -- there were -- yes. There were a number of changes but also there were a number of people that remained with the project as well.

Q Senior management people?

A Yes.

Q Okay.

A And by senior management I mean director. Or

senior manager or direct level. Such as I mentioned previously, the license amendment request manager.

Q I'm going to ask the question. I'm not sure that your attorneys may not want you to give me the names of the senior management. I'm not sure at what level employee confidentiality attaches. But the names and positions of the management team in 2009 that are still the EPU management team, can you give me that information?

A Well, following our reorganization in July of 2009, the site director for Turkey Point remained. He has -- he has since left the company. The site director for St. Lucie remained. The senior manager in charge of the license amendment request for all our nuclear uprates remained. I'm trying to think in terms of the final -- final organization.

And there was a position that was a corporate centric position that was called director for -- director of EPU remained in a different capacity. Really I would call it a -- as a senior technical adviser which is kind of like a chief engineering type position for the project. I'm -- I'm new to the project or was new in July of 2009 as well as a position that we called implementation owner south that had responsibility for both Turkey Point and St. Lucie. He

was certainly new to the team.

The reorganization in the beginning phase of the project, it was heavy into evaluating engineering procurement and construction type vendors. And I don't want to mention the various companies involved. It involved with procuring long lead material and really a conceptual engineering type approach to the project. And so it was quite a large corporate organization and everything was -- was centrally controlled.

To be able to do this project successfully, if you think about it, and I don't want to -- you know, it's like deciding to remodel both your bathrooms and all three of your bedrooms and your garage all at the same time. And that's not something that you do from downtown. It's a normal progression on a major project like this that once you've done scoping analysis and engineering conceptual, what does this look like, what an overall time line looks like, get major contracts in place, is you've got to establish a site centric organization that has to be fully integrated with the site because you're going to be doing work while the nuclear reactors are operating as well as you're going to be doing major work, construction type work, during the refueling cycles.

And so it -- it's only natural to decentralize

the project and push the management and the resources to the site and retain a small core group at corporate for the governance and oversight of the project and to maintain synergy and to leverage -- leverage our resources accordingly.

Q Okay. Do you believe that any of the reorganization was designed to address concerns by senior management of poor performance of the prior management team?

A I wouldn't characterize it as poor performance. I would -- the folks running the projects had vast experience, huge success in major projects, everything from steam generator replacements, pressurizer replacement, reactor vessel head replacements. And it was -- it was for the reasons I -- the reasons I stated as well as to enhance and improve performance, not that there was poor performance or inadequate performance.

It's not unusual, you know, for -- for an organization of our size, is we do succession planning twice a year and we evaluate people's skill sets and their functions and -- and we make movements and make changes -- I don't want to say frequently, but on a regular basis that's planned to better align skill sets and functions. And it's not unusual to reorganize our

departments to further improve performance.

Q You were talking about enhance performance. Can you give me some ideas of areas that needed enhancement perhaps?

A As I mentioned earlier, when you go from the conceptual phase of what it is you want to accomplish and the time line and you get the major contracts in place, you've got to turn your attention to the integration with the site operations. It's an operating nuclear facility. And -- and to give you kind of a rough idea as you mobilize Bechtel, which is our engineering procurement vendor, you have about 135 people that are Bechtel employees, of which about 80 are design engineers that are going to be on site working on the specific designs for the changes in the components. And they need access to our system engineers which are the most knowledgeable about the plant. They need access to our operators.

And so one of the enhancements that you want to do, you want to make the -- extend the power uprate part of the core business for the site. And so you want to integrate with the site through their outage planning meetings. On any given week at a nuclear power plant, and Commissioner Skop I know you know this, is you have hundreds of activities that are occurring, from

preventative maintenance to corrective maintenance to critical testing that occurs. At the same time, extended power uprate, we're trying to determine the designs that we need to do to achieve the higher output. We need access to plant staff but not so much that it's a distraction.

And so you really need people with a strong operations background that know how to integrate with an operating facility. And that's one of the things that we wanted to achieve by decentralizing and pushing the -- what I call the command and control of the project to the site level and have them integrate with the station activities. That would be one example.

Q Were you given any specific instructions on how to improve the performance from your -- the prior, the predecessors to the EPU, senior management?

A Well, in July of 2009, we conducted a detailed review of the project. And out of that detailed review, there were a number of scope growths as well as we had with I'll call Bechtel's view of what they thought they would need from a staffing perspective to accomplish the project. This dealt largely with forecasts for 2011 and 2012 when you get into the large outages. And Bechtel tends to forecast things on what they call a crew level, is I think I'm going to need this people to do this

activity.

And so it's a very rough order of -- of magnitude. And so part of reorganizing and pushing the command and control to the site level is to make sure that -- that the folks that are responsible for overseeing the engineering of Bechtel have the authority, have the ability to challenge Bechtel on their estimates for the engineering, do scope reviews and make sure that the scope is appropriate for what we're trying to achieve.

And so coming out of that July project review meeting, we had a number of concerns. Some of our concerns were did we have the right scope from just a total modification perspective. Only about -- little to none of the design engineering was actually complete at that phase, so everything was highly conceptual.

And so part of our charge was -- was to go validate a number of the large scope activities. For example, the engineering had not yet been completed to determine whether or not we were going to have to replace the condenser, which is a massive component that condenses the steam after it goes through the turbine as well as what's called a steam generator moisture carryover modification. Those two modifications alone were worth about $180 million.

And so we were looking -- so one of the things we were looking at is do we have the right scope, should we accelerate some of the engineering to get the right scope, and then from a Bechtel perspective and a Bechtel philosophy on how they crew up a job and what they were projecting in 2011 and 2012, we were also directed to evaluate whether or not we should consider another engineering procurement constructor for either all or part of the project. In other words, have one EPU for St. Lucie, one EPU for Turkey Point, whether we should self-perform all or part of the project, in addition to completing our scope review.

Those -- one other charge was to look to see ways in which we could validate and challenge the EPC on their -- what we call their ramp or their staffing and what they were saying they needed for resources in the out years. And those activities carried over into 2010.

Q You mentioned the July 2009 meeting, correct?

A Yes.

Q And prior to the July 2009 meeting, what involvement did you have with the EPU management or the steering team?

A The involvement that I had with extended power uprate prior to 2009 was in relation to an affiliate company that's part of NextEra Energy.

Q Were you -- quite often --

A So I may explain that, is my prior position before I became the vice president of extended power uprate was vice president of operations for Midwest region. So I had responsibility for the operation of Duane Arnold Nuclear Power York Plant and Point Beach Nuclear Power Plant, which is, you know, the affiliate company, NextEra. And so there's an extended power uprate project in progress with Point Beach.

Q Is it fair to say then that you were not involved in the presentation to -- for the July meeting? I'm trying to not disclose some confidential information.

A I was in that meeting but I was not involved in the -- in preparing the presentation for that meeting.

Q And were you involved in giving direction to the new team for that meeting?

A The folks that were responsible and accountable for running extended power uprate for Florida Power & Light prepared all the presentations and presented in the July 2009 meeting.

Q But you -- so you were there at the July 2009 meeting and you saw the presentation. Can you describe what it contained, what the presentation contained?

A The presentation contained commercial information around the various attributes of the project such as progress on license amendment request, cost associated with license amendment request, progress on staffing up the engineering procurement contractor, Bechtel. It had project estimates for license amendment request engineering, design engineering, and head counts associated with future staffing.

Q Did it include new numbers or new budget estimates at that July 2009 meeting?

A In July 2009, the forecast, based on what was known at the time, was higher than the original conceptual estimate that was done. And those estimates were -- were prepared by the project controls part of the organization. Project controls consist of cost engineers, schedulers -- I'm going to be redundant, project control folks. And what they'll do is based on your contracts or information that they receive from the project manager such as here is -- here is how many people I'm going to bring in, here's where I'm going to bring them in at, here is -- is the wage rate per the contract, project controls will take that and roll that up into an overall estimate.

So what was presented on July the 2009 was that based on the conceptual scope that was a part of

the project but still under review, based on a proposed -- what I'm going to call a ramp, ramp-up by Bechtel, that the forecast was going to be higher than -- than the original feasibility study that was done.

That's why the -- that's why senior management in that meeting directed that there was an ongoing scope review, that the priority was to complete the scope review and, if necessary, accelerate the engineering associated with some of the larger scope items because very little engineering, I think less than, I'm going to say -- I'm not going to guess. It was -- I know it was less than 2 percent of the engineering at that point had been completed, was to look at the scope, if necessary, accelerate the scope, look at options to -- to an EPC vendor, including even self-performing and complete that work to validate the forecast.

Q So let me make sure I understand that you were telling us that in July of 2009, you had -- FPL had a good idea that it was going to have an increase in the cost of the uprate; is that correct?

A What I said is that the forecast that was provided in 2009, okay, was based on a proposed Bechtel ramp, a proposed Bechtel staffing plan, a proposed Bechtel resource plan, if you will, and it was based on

a scope or a list of modifications for which little to no engineering had been completed to date, and that coming out of that meeting were several actions to address that.

Q And when did FPL address those changes?

A Well, that was ongoing work and actually that work that continues today. We're constantly evaluating options and different levers to pull on the project. But one of the specific modifications that was challenged as being necessary or not, or actually two, was the main condenser modification, which was on the order of -- I'm just making sure I can say this and it's not confidential -- was on the order of about 130 to 150 million dollars, somewhere in there, and a steam generator moisture carryover modification that was on the order of 30 to 40 million dollars. There were other modifications, but my recollection from the meeting, there were two that stood out.

We completed the engineering analysis and review for the condenser modification late October and ultimately determined that the condenser modification was necessary and that, in fact, if we did not perform it, that there would likely be a megawatt penalty with not performing the condenser modification. And that it, in fact, was separate and apart and needed to -- for the

additional megawatts.

The steam generator moisture carryover modification took us until early 2010 to complete the engineering analysis and study associated with this. And the steam generators take the heat from the reactor and generate the steam to drive the turbines, and the modification was -- is internal to the steam generator. So it's inside the containment building. It's high dose work. It's very expensive and clearly has some maintenance risk associated with it.

And it took us until after the first of the year to bring that to conclusion. And that modification was deemed as not necessary to support the additional megawatts and was eliminated.

We -- the other actions is, you know, we contacted -- we looked at a couple of EPCs. We contacted one specifically. Had a number of meetings with another EPC to assess their capability. And we evaluated whether or not we wanted to take all or a portion of the work away from Bechtel including what portion of the work that we would self perform as Florida Power & Light FPL.

We ultimately, after the first of the year, decided to stay with Bechtel Power Corporation and turn most of our focus and energy on making them just as

efficient and cost-effective as possible.

It should be noted that, you know, during 2009 the money that was being invested or expended on the project was -- was on plan and is for -- for 2010 as well.

The large sums of money and the large scopes we're talking about in future outages, 2011 and 2012, if you can envision like a major construction project like a -- like a bridge, we're doing the engineering and the planning now. The big spend, you know, occurs when you actually go to do that work.

So we felt like we had plenty of opportunity to explore ways to mitigate or accomplish things more efficiently. And, in fact, one of the other things that we did was -- well, there's several things. Is in our discussions with another EPC -- and again, from that July 2009 meeting, senior management just was not going to accept that Bechtel number. And one of the catalysts for that was that we have certainly self-performed a number of projects ourselves very successfully, and we have done an evaluation for one of our sites on what the self perform -- what the project would cost if we self-performed it. And in comparison to Bechtel, Bechtel was almost a magnitude of double of what we thought a self-perform would cost.

And so coming out of that meeting then is -- was the direction on how do we leverage our knowledge and expertise to drive Bechtel to reduce their forecast. And as I mentioned, we interviewed another EPC. And we had thought about bringing that competitor in to provide us an independent project estimate.

We ultimately decided against that because we thought it was a conflict of interest and we were concerned that if that competitor undercut significantly Bechtel and then we brought them on and they failed to perform, that that would not be a good thing.

So we hired an independent third party estimator. There were three that we evaluated. We brought in one that does bottoms-up estimating and -- so that we would have a very detailed estimate for Turkey Point Unit 3 that we could use to challenge and leverage Bechtel.

Q Mr. Jones, I almost forgot my original question. Let me go back to that. Which is the July 2009 meeting in which you indicated that there were some costs that probably I think would increase; is that correct? Just yes or no.

A It's -- this is a complex project and I can't answer that yes or no. The forecast for -- for the scope and for Bechtel's proposed plan, that forecast was

higher than the original estimate.

Q Okay.

A That part is correct. That did not deal with realtime dollars in 2009.

Q And that's going to lead me -- I'm going to skip a couple of other questions and lead into a next series of questions. And this is with the Commission's indulgence something that the staff is looking at proposing or looking at a rule, something like the fuel clause, the mid course correction noticing requirement just to -- to inform us of the types of changes that Mr. Jones is talking about. So with your indulgence, I have about three or four questions on that and I may be done.

CHAIRMAN ARGENZIANO: One second. Commissioner Skop?

COMMISSIONER SKOP: Yes, Madam Chair. To Ms. Bennett with respect to the line of questioning, is staff suggesting that if there is material change, that the company does not already have a duty to inform the Commission?

MS. BENNETT: I'm not suggesting anything at this point. We're just gathering information that we find useful.

BY MS. BENNETT:

Q Mr. Jones, the -- the EPU project increased in approximately -- and I'm not going to say the dollar -- but during 2009; is that correct? The dollar amount is confidential.

A There was, as with all projects such as this -- let me clarify. Okay? When it comes to a major nuclear project such as this, a -- an approach that could be taken would be to do all of the engineering analysis similar to building your house. Get an architect, draw up the plans, do all of the engineering, have it reviewed and stamped, and then you would know exactly the design associated with your home and from that you could do pickoffs for material and estimate labor and things like that.

When it comes to an extended power uprate, which again is the most complex, the biggest thing you could do to operating a nuclear facility, the only thing that would compare it go build a new nuclear plant, is -- is you do the engineering and the implementation overlapping, otherwise we would spend the next -- if we did the LAR first and then the engineering analysis, you'd lose the realtime, realtime value of energy and it would take years to complete the engineering. And then would you probably spend a year doing an estimate -- an estimate once you completed all the engineering. Okay.

So based on when this started, just rough order of magnitude, you finish the engineering in about 2011 and take you about a year to do a detailed estimate that you would -- and then you would have maybe some certainty around maybe plus or minus 25 percent around that because that would be equivalent to about a level 3 estimate. And then you would be looking at implementation the out years which would take you to 2016 and you would eat up all of the value that there is, you know, for the customers.

And so I'm just trying to explain the concept about why the Legislature and this Commission, you know, had the wisdom to choose a nonbinding estimate, recognizing that if you're going to get maximum value for the customers, that you're going to do the engineering and implementation, okay, and overlapping and you're going to integrate it with the refueling outages. And so that's the reason you have a conceptual, you know, estimate to start with.

And as we complete the detailed engineering, now I have something that I can have the construction experts review, do detail lockdowns on, know commodities, how many linear feet of conduit, wire cable terminations and come up with a detailed estimate. We're dealing with about 196 complicated modifications.

And to date, only 20 percent of the engineering is complete, is final for the -- those modifications.

Q And really --

CHAIRMAN ARGENZIANO: Ms. Bennett, can I go back because something got my attention when Commissioner Skop ahd asked you a question before. You did say something about a possible rule or rule change. What were you referring to?

MS. BENNETT: We were -- staff is beginning to gather information about possibly doing a rule modification to this rule, proposing one, not doing one, that would be your job, requiring maybe a mid-course correction type of -- of procedure, noticing requirement like we do in the fuel clause. If it was 10 percent over or under the budget that you approve the prior year. Something -- you know, we're still in the discovery phase of that.

And that's why I asked for your indulgence. I know that this particular set of questions is not really directed at your -- the motion that you're going to be voting on soon. So if you would prefer me to stop on this and --

CHAIRMAN ARGENZIANO: No, no, no. I wanted to go back because I wanted clarification. Excuse me. Commissioner Skop, did you want to be recognized?

COMMISSIONER SKOP: Well, I think Ms. Bennett answered my question or the question I would have had, that the line of questioning seems to be in relation to something that I would normally expect would be thoroughly discussed or recommended in the staff recommendation upon the conclusion of the hearing. Not articulating every thought of what staff may or may not be thinking. I mean, staff can continue.

It seems to me though again for nonbinding estimates, I don't think anyone is really concerned with, you know, the fact that the estimate changed. Okay? The number at the end of the day is going to be what the number is going to be subject to prudency review.

I think what -- what's of concern to me which I will get into is that there were or should have been sufficient indicators to management to indicate not only as your testimony has indicated, that the scope had grown, but indications that there were scheduling cost impacts that were not reported to this Commission even if they were not definitized or subject to be challenged. The fact is there were indicators that, hey, we've got an issue here, we're working it, we're scrubbing the

numbers, we're beating on the vendors. Again, the final number is not important to me. But it's a matter of candid disclosure to the Commission. And I think that's what's at issue with the concerns I have. Thank you.

THE WITNESS: Commissioner Skop, at the same time that, you know, we're looking at that scope and again without discussing the specific number, about half of that number was associated with two modifications. And as I mentioned before, it took several months to address that. I do understand your point and I can see your point.

At the same time, we had -- we were evaluating the fact that we could get more megawatts. But clearly -- clearly in my mind, that was just as preliminary, just as preliminary and not -- and not ready for any kind of discussion or debate until we completed fielding -- field testing and validation. And as a matter of fact, as a part of that field testing that we did at Turkey Point, you know, we discovered a significant challenge around megawatts that people were ready to sign up for in the summer of 2009.

And so, you know, until the engineering is done, the engineering is not done and --

COMMISSIONER SKOP: And I respect that. I've read your management response to the Concentric Report and I'll get into that if I chose to do have some questions. But Madam Chair, if I may be permitted, I do have one.

Mr. Jones, you testified that progress -- or I forget, let me see if I can find it real quick. Significant progress was made in 2009 regarding nuclear efforts, including the EPU, if I'm correct. I believe that's on page -- page -- page 4 of your prefiled testimony at line 15; is that correct?

THE WITNESS: I'm sorry, Commissioner, could you give me the reference?

COMMISSIONER SKOP: Page 4 of your prefiled testimony at line 15. In relation to the EPU project team, you indicated on line 15 significant progress was made in 2009 including a laundry list of activities; is that correct?

THE WITNESS: You're referring to the March prefiled?

COMMISSIONER SKOP: March 1 prefiled testimony, yes.

THE WITNESS: Sorry. I was looking at the May. Yes.

COMMISSIONER SKOP: Okay. So if progress

was -- significant progress was being made in 2009 and everything was going well, then I guess the question I would ask, why was it necessary to replace the EPU management team?

THE WITNESS: As I stated earlier, the EPU management team, the way it was organized was a large corporate group. It was corporate centric. Their mission of evaluating EPC contractors, getting contracts in place for long-lead materials such as turbine rotors, the conceptual engineering analysis phase and -- and getting the groundwork laid for all of that was appropriate.

That organization had extended power uprate, all FPL capital projects across the nuclear fleet as well as nuclear fuels. And so it was a very large organization, and it was -- it was time to -- to make it more site centric and move in -- move more into a focus of implementation and an operating nuclear facility and get, you know, Bechtel up to speed and running, get the metrics in place to be able to measure and improve performance. And -- and that progress was -- was certainly made.

COMMISSIONER SKOP: All right. Fair enough. And just one follow-up question and I'll move back

to staff, on the same issue.

The replacement of the EPU management team that you just spoke to, was that not -- did that not occur as a direct result of the executive steering committee meeting that was held on July 25th, 2009?

THE WITNESS: Well, first, I wouldn't characterize it as a replacement of the EPU management team. As I stated earlier, there -- there were several reassignments, but a number of the key players for EPU remained with EPU, a number of key players went to the projects organization. There are hundreds of millions of dollars of capital project that aren't EPU that have to be managed, and you certainly need the right skill set and expertise to be able to continue to do that business along with -- with EPU.

I was -- I was approached by my boss before the meeting in July about his ideas around reorganizing the project and making them site -- site centric and using my operational expertise and my background as having been a plant general manger at a nuclear plant, a site vice president, been involved and being responsible for running a site while major projects are involved.

I was the site vice president during a reactor head replacement at Turkey Point. And to use my skill sets to take over the project. And again the emphasis was on improving performance and bringing some fresh ideas to the project.

COMMISSIONER SKOP: Thank you. And I recognize again you came into the project late so, I mean, I'm not being critical of your actions.

CHAIRMAN ARGENZIANO: Ms. Bennett?

MS. BENNETT: May I have just a minute more?

CHAIRMAN ARGENZIANO: Oh, yes. Go right ahead.

MS. BENNETT: That was ten seconds. I have no more questions.

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: Thank you, Mr. Jones. And with respect to the replacement of the EPU management team, again probably I should have tightened up my language but I didn't have the page in front of me, but reading from the staff audit report that has been declassified, I guess the title seems to be removal of the EPU senior management team and that was in July of 2009. So that's what my question was directed to. Thank you.

CHAIRMAN ARGENZIANO: Commissioners? I have a couple that I would just like to ask.

How significant of a decrease in long-term need for new generation has resulted from the recession? And do you believe, I guess, the effects -- or that this affects the prudency of FPL's decision to continue with the current nuclear projects? If you can answer that.

THE WITNESS: Madam Chairman, witness Dr. Sim can best address that from a feasibility standpoint.

CHAIRMAN ARGENZIANO: Okay.

THE WITNESS: As far as the feasibility for the extended power uprates -- and again you evaluate environmental factors, future load demand, all other sources of generation, many factors that go into that -- is the 2010 feasibility analysis for extended power uprate, you know, has a -- a present cost benefit for our customers for the medium fuel cost environmental II case of about $1.1 billion.

CHAIRMAN ARGENZIANO: Okay. And can you address the issue of site banking and how it relates to the NRC's permitting process?

THE WITNESS: I'm sorry, I didn't hear the

question.

CHAIRMAN ARGENZIANO: Can you address the issue of site banking and how it relates to NRC's permitting process, or should I ask a different individual?

THE WITNESS: I'm sorry, Madam Chairman, I don't know what site banking is.

CHAIRMAN ARGENZIANO: Okay. Fair enough. Thank you. Staff has --

MR. YOUNG: I think Ms. Bennett said she was through with her line of questioning. I don't know if the parties have questions. It seems like Mr. Moyle might have some questions.

CHAIRMAN ARGENZIANO: Okay. Hang on. Commissioner Skop and then we'll go to the parties.

COMMISSIONER SKOP: Thank you, Madam Chair.

I guess, Mr. Jones, since I kind of got into this, I might as well just ask some questions after all here. But again I reserve my right to ask a full series of questions if we get to an evidentiary hearing posture.

Let's see where I'd like to begin. Have you discussed the testimony you've given here today with FPL employees or any FPL employees?

THE WITNESS: The question is have I discussed

my testimony here today with any other FPL employees?

COMMISSIONER SKOP: Yes.

THE WITNESS: Yes. There have been a number of FPL employees that have been involved in providing the information that is the basis for my testimony.

COMMISSIONER SKOP: Okay. And have you further discussed the scope of your testimony this morning with regulatory affairs or legal members of FPL?

THE WITNESS: Yes, I have.

COMMISSIONER SKOP: Okay. All right. I guess your prefiled testimony, you became the vice president of nuclear power uprate on -- or about August 1st, 2009. And I believe that you testified that you were invited to or attended the executive steering committee meeting that was held on or about July 25th, 2009; is that correct?

THE WITNESS: That is correct. I was in attendance at that meeting.

COMMISSIONER SKOP: Okay. And did you receive a meeting request for that meeting?

THE WITNESS: Yes, I did.

COMMISSIONER SKOP: Do you know who requested

that meeting?

THE WITNESS: I don't recall who requested that meeting.

COMMISSIONER SKOP: Okay. Was the purpose of that executive steering committee meeting that day to -- part of the purpose of the meeting to discuss a line by line item or line item by line item of the various project controls and cost estimates associated with the extended power uprate?

THE WITNESS: Yes. One of the purposes of the meeting was to look at the project and I said from a number of different views from the license amendment request, engineering analysis, the design engineering analysis, Bechtel's resource plan, FPL's resource plan, and look at that in comparison to the original FPL conceptual feasibility study.

COMMISSIONER SKOP: And with respect to that, I believe you testified that as a result of that meeting, it was determined that there would be a scope growth to which I also believe you testified that there would be some potential cost and schedule impacts.

I guess in the Concentric Report, it suggests that the -- let me try to turn to the page so I can state this properly. The Concentric Report

concludes, and I know that I've read your management response to the Concentric Report, but one of the findings, concerning findings of the Concentric Report notwithstanding the potential of the drafts of the information provided to the Commission, but the finding was that Concentric believes that a $300 million or 27 percent increase in the projected cost of the EPU project should have been discussed in live testimony on September 8, 2009. Is that your understanding of concentric's finding in relation to the scope growth?

THE WITNESS: Yes. That's the -- my understanding of the conclusion. But I wouldn't say as a result of scope growth, as I -- and maybe I didn't explain it clearly. As my project controls director reminds me constantly, he says my job is to tell you where you're going to land based on how you're -- on what your current plan or activities or concept is. And -- and my job is to tell you in the forecast that if you make changes to that, what the downstream impact will be.

So again, July, and it's in my letter, there was a lot of scope review that was ongoing, there was a lot of review about how we were going to

execute this project, and those all would have significant, significant impact. When you mentioned $300 million, about half of that was associated with two mods that were under evaluation that took months to complete.

Also, I think that saying a 27 percent increase is not correct in regards to because you're not taking into account the megawatt gain. And probably a more -- more -- it would be better to look at it on a dollar per kilowatt as opposed to just looking at the overnight construction cost. I think that's an oversimplification.

COMMISSIONER SKOP: Perhaps it would. But again when the Florida Power & Light petitioned force need determination for the extended power uprates, again there was a projected cost. Again my concern is not necessarily what the final cost will end up being. But there was a projected cost and there was projected gain in terms of net increase in either rated power or electricity in terms of generation capability.

I think that, you know, the question as a result of this meeting was in a line-by-line comparison of the cost, that there had to be some indication, was there not, that the magnitude -- or

there were indicators that the magnitude of the cost of the project was increasing. Would you agree that there were indicators that --

THE WITNESS: Yes, Commissioner, there were -- the forecast was as you said, for the scope and resource plan that was presented but not executed, and certainly the engineering, not complete. As well as there were a number of opportunities that were flagged to mitigate that as well.

COMMISSIONER SKOP: And again, the -- I think in your management response to the Concentric Report, you mentioned that, and I also think you mentioned there was a lot of turmoil or transition going on with the replacement of the management team. But what -- you know, I'm trying to drive to the crux of is who knew what when. And were there sufficient indicators to show that, yes, indeed the magnitude of the cost estimate was growing and growing in a manner that was material and why were those changes not communicated to the testimony that was given on September 8th as well as any expected benefits.

I mean, if FPL had a good idea that would, you know, have some positive impact and certainly, hey, we want to do this additional mod that we didn't

consider before, here's the cost ramifications, here's the impact, that's a good thing.

Again, the purpose of this proceeding is not to beat up on the Florida Power & Light. That's not what I'm here to do. Do I disdain what I feel to be a demonstrated lack of disclosure on some issues that are important to the Commission? Yes.

But all I ask as a regulator is you tell me the good and you tell me the bad. Progress did that yesterday. That's all I want to know. I'm not going to beat you up on things that your company is doing well. And I think it was constructive in light of some of the things that were going on perhaps to have made some of the management changes.

So let's get back to the meeting that was held on July 25th for a second. You were invited, you testified that you attended. Are you aware of who else attended that meeting?

THE WITNESS: Yes. There was a -- there were a large number of people that were there. There were of course the --

COMMISSIONER SKOP: Let's limit -- let's limit it to management. Was Florida Power & Light executive management at that meeting?

THE WITNESS: Yes.

COMMISSIONER SKOP: Was Mr. Silagy at that meeting?

THE WITNESS: I don't recall.

COMMISSIONER SKOP: Was Mr. Olivera at that meeting?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. Now let's take that up. I previously asked you who had requested the meeting and the line by line analysis and you indicated that you did not know, so I will respect your personal knowledge of who may have requested the meeting. But in terms of FPL Group executives that may have attended that meeting, do you have any recollection who may have attended?

THE WITNESS: Our president and COO of what is now, you know, NextEra Energy Corporation was in attendance.

COMMISSIONER SKOP: Okay.

THE WITNESS: My -- my boss, the executive vice president and chief nuclear officer, Mano Nazar was present at the meeting.

COMMISSIONER SKOP: Okay. So in this meeting that I guess based on information I'm looking at, it was an all-day meeting that discussed things

beyond uprates, but with respect to the uprates did so on a very detail specific basis line-by-line project review of the costs and such, I believe you testified in response to my question there were indications that the magnitude of the cost at that point in time had shifted upward. They weren't fully definitized but there were indicators, were there not, that the magnitude of the costs were increasing?

THE WITNESS: Yes, Commissioner. I want to be clear that -- and we refer to that as the project forecast for the -- for the in-state.

COMMISSIONER SKOP: Yes, sir. Now, subsequent to the live testimony that was given on September 8th, did FPL not revise its cost estimates on September 9th, the next -- the last -- the day after the testimony was given?

THE WITNESS: No, Commissioner. The executive presentations from July 2009 and continuing today have the forecast that -- with changes, puts and takes, that was a product of not only the work that was done leading up to July 2009, but the scope reviews that we continued to perform and challenges, including changes that Bechtel made, changes that we made to optimize the project.

So in every executive meeting going forward, and the -- the forecast has been -- will -- again, with some puts and takes relatively about the same. In fact, as -- as I tried to explain earlier, we're now at about 20 percent final on -- on engineering. And when we brought in High Bridge, we were using High Bridge to -- to try and validate as well as identify additional opportunities to optimize the project. We -- our plan when we brought in High Bridge in December, I hope you don't mind me mentioning their company's name --

COMMISSIONER SKOP: It's too late now. I think it's been declassified. I could be incorrect, but --

THE WITNESS: What we really wanted -- we really wanted to get that work done if we could by -- by March in time to support the May filing. You just don't put this together, you know, May 1 and it goes in on May 3rd as I'm sure you can appreciate. And the scope of the work and the amount of work for both High Bridge, Bechtel and FPL turned out to be quite extensive. So it took us until April -- April to finalize our new nonbinding cost range.

COMMISSIONER SKOP: Okay.

THE WITNESS: And I know that sounds like a long time and -- but there's just something this big and this complex with changing scope, it -- it took us those many months. And, in fact, I -- we didn't want to finalize a new nonbinding cost estimate because you've got to have a basis for it. You've got to be able to stand behind it. It has to be solid. Without High Bridge -- and High Bridge, we didn't complete the work and finalize that until June 16th but we felt comfortable enough with the preliminary information from High Bridge to finalize our own range mid April.

As a matter of fact, the feasibility analysis that -- that's before the Commission, when it comes to capital expenditures, that's when the last inputs -- they literally spend -- Dr. Sim and his team spends months on load forecast and all of these other alternatives. But the capital input, you can -- you can wait almost till the end. And we took -- we took every minute of time we had to give him that capital input.

So we -- my project team, my management was -- did not have certainty around our new nonbinding cost estimate and approve it until April of 2010.

COMMISSIONER SKOP: Okay. And again, I think

this is part of the construction -- I mean, constructive discussion I'm trying to have. I'm trying to look at the good, what the company has done well, and what we, you know, we focus on as positives and also look at some things that maybe we need to do better.

But, you know, without being able to have open and transparency in the discussion and deferring issues, it's not able to do that. So I think this is bringing some, you know, things to light that, frankly, need to be discussed.

You mentioned the -- that the budget information had not been changed as of the day after or shortly thereafter of the live testimony that was given. I guess in my -- my briefing that I had with staff, either I've got it wrong or -- or I think staff would perhaps disagree. But that's maybe an issue that we can flesh out a little bit further.

THE WITNESS: Well, I want to be clear that when we -- in our presentations, we put the original need filing, that's our benchmark, and then we put the -- we'll put a current month and then we'll put the previous month and the current month. And there's some variation on that in

there. But the higher number was -- was in the forecast.

Now, maybe this is -- this is probably the issue is that we did not have a meeting in August as -- as I recall. Now, we were very focused on -- on the orderly transition of separating EPU project from major I'm going to say nonEPU projects. Doesn't make it any less or more important. And so -- but that meeting on September 9th had been scheduled for -- for quite some time.

COMMISSIONER SKOP: With respect to the acceptance, I know that you in your management, management discussion of the Concentric Report and your testimony given today, you testified that, you know, there perhaps was some uncertainty as to what the final costs might be based on the potential changes in scope that originated. But you have also testified that there were indicators that that scope was growing. And that's my concern about the disclosure of that.

When you have those indicators, you know, I don't like surprises. I'd rather just, hey, this is what we're doing and, you know, I can get comfortable with it real quick once I understand it.

With respect to the prior EPU management team, do you feel that there was an unwillingness or denial on their part to accept some of the indicators that they were seeing from project controls?

THE WITNESS: In regards to the senior EPU management team, in my view they were appropriately challenging Bechtel as well as the other vendors. And again, largely we're talking about future out-year costs. And, you know, those numbers, it's not like getting an estimate for a brake job. It's just -- you know, it's -- it's not that exact.

COMMISSIONER SKOP: But those estimated costs flow through. We do a 2009 true-up and a 2010-2011 estimated actual on projected cost. So to some degree those costs are relevant in having, you know, access to material information to evaluate the prudency of such cost is not important, is it not, for the Commission to have that type of information and discussion?

THE WITNESS: I would agree that any information you have is -- you know, as long as it's relevant to the project, is good information to have.

COMMISSIONER SKOP: Okay. Let's move quickly

to -- I think I have a few other points. Let's talk about the NRC response letters, okay, that was dated August 13th where Florida Power & Light withdrew its St. Lucie 1 LAR application. Did you in your capacity as vice president of nuclear power uprate discuss the withdrawal of the St. Lucy 1 LAR with the legal department prior to August 12th, 2009?

THE WITNESS: I don't recall having any conversations with the legal department about the withdrawal of the licensed amendment request. Wait. I had -- I had discussions with general counsel in regards to this license amendment request and the position that the NRC staff was taking in regards to our current licensing basis and, you know, what remedies we had through senior management or legal staff, you know, at the NRC to --

COMMISSIONER SKOP: Is that general counsel of Florida Power & Light or Group at that point?

THE WITNESS: That's Florida Power & Light.

COMMISSIONER SKOP: All right. Did you discuss the withdrawal of the St. Lucie 1 LAR with anyone in FPL's executive management team?

THE WITNESS: Yes. And if we -- you know,

earlier I talked about we had a phone call with NRC on August the 11th, members of my project team, members of the NRC project team, where the NRC at a high level had told us about additional information they would need to allow the law to go through and that basically their process, acceptance process does not allow for us to submit or follow up.

And so, you know, following that -- that call with the NRC, I alerted -- I alerted my management that we had a problem and that, frankly, we were quite surprised that the NRC was -- was taking -- taking that path because two of the issues were outside our current licensing basis.

COMMISSIONER SKOP: And who was that management? Was that Mr. Olivera or was that your direct supervisor, I believe you mentioned --

THE WITNESS: I notified -- I notified my direct supervisor.

COMMISSIONER SKOP: AND did anyone discuss this proposed action with regulatory affairs prior to action being taken?

THE WITNESS: I didn't have any discussions with regulatory affairs. And again, just to be clear on the time line, there was already a previously-planned meeting for the -- my boss and

the CEO of our company to meet with NRC commissioners and other members of senior management staff. And one of the issues was around spent fuel pool criticalities. That's related and not related to EPU. It's an emerging -- an emerging industry issue.

And certainly that topic was discussed. And then --

COMMISSIONER SKOP: I'm just --

THE WITNESS: Well, I'm just trying to explain to you that -- that this was -- was a fluid -- a fluid situation and we're, you know, discussing, you know, what our options are, what the NRC process is, are they in process, or are we in process, and how can we bring this to successful remedy without withdrawing the LAR, or even if that opportunity exists. Which is why on August the 13th I called, you know, the NRC management and asked them -- asked them about their time line and asked them if their time line could go into next week because our senior executives were meeting with their senior executives and we needed time for both sides to vet this out, you know, to determine the best course of action to comply with their processes and to have the least amount of impact

on -- on the project.

And so again, given the technical complexity of the issue, this was not something that was easily accomplished and took a couple of days.

COMMISSIONER SKOP: Okay.

THE WITNESS: In fact, I wasn't -- I really wasn't planning on submitting -- you know, my thought was that if we had to withdraw the LAR, that we would do so on the following Monday.

COMMISSIONER SKOP: That would have been -- okay.

THE WITNESS: And I don't want to kind of guess at that date. And then the NRC told me that they would -- that then the letter from them would come out probably -- would come out on that Tuesday.

COMMISSIONER SKOP: Right.

THE WITNESS: But there was a benefit after further discussion with the staff, is that if we really -- to get to the technical detail and get started on -- on resolving the issues so that we could resubmit, is if we withdrew a few days earlier, then we could get that and get the public meeting set up so that we could let the engineers work together to come up with a success path.

COMMISSIONER SKOP: Okay. Let me -- let me get back to my point. I think the fact was that the LAR for the St. Lucie plant 1 was withdrawn. And notwithstanding the fact of why that needed to occur, the Commission was not notified of that until 10 days after it happened. Can you offer explanation of -- of why that was and why that's acceptable?

THE WITNESS: Well, as I -- as I stated on --

COMMISSIONER SKOP: I'm talking about -- let me clarify my question. I'm aware obviously this was a negotiated withdrawal so that it could facilitate the meeting that happened on the 18th and the other things, and I'm familiar with all the details in the letter.

My question is, FPL made a management decision to request withdrawal of the St. Lucie 1 LAR. The Nuclear Regulatory Commission in its response dated the same day as the transmittal letter approved that request and listed the three things that you spoke of.

Why was the Florida Public Service Commission not informed and not provided with that document on behalf of your company?

THE WITNESS: Commissioner Skop, it was

neither a conscious decision to notify or not notify at -- at this particular time. And up until August the 18th, I'm not even sure of what the scope, depth and breadth of the NRC issue is and what it will take to resubmit. Are we talking a two-week resubmittal, are we talking a two-month, are we talking a six-month?

So I don't know how big it is after that -- you know, that all-day meeting.

And then -- and then of course given spent fuel pool criticality of course which is complicated and not my area of expertise, there was a series of meetings with our vendor to how big is this and how long will it take you to do what it is the technical staff, you know, wants done?

COMMISSIONER SKOP: And that goes to the crux of my very question. I know that you're pursuing what's necessary to achieve approval of the LAR. I've got that.

What I'm taking exception to is there was a very significant event that FPL took for probably reasons that you've explained. I don't doubt the reasons. What I'm questioning is the fact the action was done, the NRC responded on the 13th, days before Public Counsel and the intervenors

entered into the stipulation that we have before us and days before the start of this proceeding.

Now you've testified -- and so my concern is that that document which failed to be material or contain material information was not provided to this Commission as soon as the either FPL made the request or on the same day the NRC approved the request. It was actually disclosed only after staff put it in the docket ten days later, less than 24 hours before the start of this proceeding.

Now, why is that important? Because as you've testified to Ms. Bennett's question, that the withdrawal of the LAR will result -- and I believe I wrote down -- I believe you testified that withdrawal of the St. Lucie 1 LAR will result in material cost and schedule impact and at that point that impact cannot be quantified because you said it might be two months or two-and-a-half months because of the date it was withdrawn or the end of November. That's actually like two-and-a-half months. But then you further receded from that in response to her questions to indicate it may be longer than that. I understand we don't control the NRC schedule. But you did also indicate there would be some additional costs associated with

that. And so to me when you have something that is material, material information, I'm just merely asking the company, disclose it openly. It can do you no harm.

We wouldn't be having this discussion if you had provided it on the day it was requested and released. But I do feel that it's important and germane to the cost recovery that the Commission is being asked to approve now because we are dealing with estimated and projected costs for 2010 to 2011.

So -- you know, where am I off base on that or is that a reasonable request on behalf of the Commission?

THE WITNESS: Commissioner Skop, I can fully appreciate where you are at the -- you now, at the time. You know, my first thought was not of the Commission, it was -- it was, you know, how big is this and what is the impact relative to the total spend on license amendment request which is like 100 probably 25 million dollars. The additional engineering cost for this is -- is -- is going to be not significant relative to that amount.

What I would -- but obviously the potential, the potential that it could impact the refueling

outage schedule, that could -- that could be material. But I haven't made that determination as of this time. And I'm trying to be as open and candid as I possibly can here. That's work that I've got to do.

COMMISSIONER SKOP: Well, in response to my perspective, suffice it to say the lesson learned from this is that open disclosure and disclosing such events to the PSC I think would be a positive thing whereas not disclosing and withholding it and only doing it after it's put in the docket by our own staff, again, I think I don't need to belabor that point. I do have --

THE WITNESS: Well, Commissioner Skop, I would tell you that whatever day that we provided it, and I don't remember the day, we were preparing that write-up in the morning. And so we -- we did not provide that in response to going on the website, and I want to be very clear about that. That I had gotten with counsel and we prepared our notice to put -- to notify staff that morning.

COMMISSIONER SKOP: Okay. Very well.

THE WITNESS: So the posting by the staff was -- did not prompt us.

COMMISSIONER SKOP: Okay. Well, had staff not

put it in the docket, I do have to question whether it would have even been disclosed or discussed in the scope of the testimony. But again --

THE WITNESS: I have to respectfully disagree with you on that. I met with -- I met with counsel and reviewed a draft for posting, and I hadn't -- obviously I have no knowledge what staff was doing or planned to do. And -- and -- and, you know, I really care about my integrity here.

COMMISSIONER SKOP: And I'm not questioning your integrity. I'm not questioning your integrity at all. We're having a very constructive discussion. What I am questioning though is the fact remains is FPL requested or contemplated requesting withdrawal of its LAR for the St. Lucie 1 on or before August 13th. And I think I also heard a meeting on August 12th. NRC approved it the same day. The Commission was agnostic to that fact and FPL never disclosed that fact.

Now, I'm not blaming you. I'm just saying that information needs to be transmitted to the Commission so we stay abreast of issues that deal with this.

I have a few more questions and then I'm sure --

THE WITNESS: But for the record, on the morning of August 13th, my plan at that time, if after talking to the staff that morning was that it -- if we had not made any headway to find a way to get the LAR accepted, that I would withdraw on that Monday. Only after talking to staff and then they come to the realization that the LAR, they were standing by their current position on the current licensing basis, there was benefit to do it early.

And so I made the decision on the 13th to go ahead and execute that withdrawal. But that was not my plan when I woke up that morning on the 13th.

COMMISSIONER SKOP: And I'm not questioning that. I'm merely stating that when such action is taken by FPL and approved by the NRC, it would be very constructive for the Commission to have been provided notice of that by your company and not ten days after the fact, the day before a hearing and is -- is not a reflection on you.

THE WITNESS: Yeah, I understand your point. I appreciate your point. I was just trying -- August the 18th I needed the August 18th meeting to understand the scope and the breadth of what the

NRC's concerns were.

COMMISSIONER SKOP: I understand. I'm not faulting management action.

THE WITNESS: You keep referring to the ten days, Commissioner, and, you know, I --

COMMISSIONER SKOP: I'm sorry.

THE WITNESS: -- I can't make a material determination until after I have a meeting.

COMMISSIONER BRISÉ: Commissioner Argenziano --

CHAIRMAN ARGENZIANO: Thank you, Mr. Chair. Could we -- I think that's been addressed and I don't want to just go into -- I think we -- what I wanted to mention to the chair is that we are going to switch out reporters and we figured we'd go to -- our court reporters and we figured we'd go to lunch around 2:00. But I think Commissioner Skop has a couple more questions or something. So if I just let you know that we plan to go to lunch about 2:00 or at the end of his questioning.

THE WITNESS: Commissioner Skop, again, I pride myself in being self-critical. My company is very self-critical and we say a self-improved learning organization. So if I sounded defensive, I didn't mean to sound defensive. I was just

trying to clarify. I appreciate your position about knowing sooner rather than later.

COMMISSIONER SKOP: Right. And I'm not being -- again, I'm not being critical of you. The ten days that I speak of is the ten days in which the letter was approved by the NRC, actually requested by -- I don't want to repeat the thing but it's important on this distinction.

The ten days is when FPL's counsel actually informed the Commission that the letter existed in response to what staff had put in the docket earlier that day. So I think we're done with that point. I understand why FPL did what it did. I'm just merely saying that I view the event as material and the Commission should have been provided notice no later than the 14th or the day of that event happening. I mean, that to me is my concern.

MR. ANDERSON: For the record, please, I believe that it was just mischaracterized, the witness's testimony. The witness was very clear that the company was preparing that information for filing irregardless of what staff did. So the characterization a moment ago that the evidence showed to the contrary, I just wanted -- counsel,

that the way you frame the question would be objectionable.

COMMISSIONER SKOP: Thank you. Mr. Anderson, I don't believe I characterized anything. The factual basis is that on or before the 13th of August, Florida Power & Light made a management decision to do something. I don't fault that decision. The same day the NRC responded and approved the FPL request.

There was a filing made on the -- in the docket on the 23rd of August, late afternoon, hours after staff had placed the document in question into our record. The fact remains that FPL never notified the Commission of the existence of that document until your filing was made. That's my point. Moving on, and if we want to break at 2:00 I'll ask my questions when we come back from lunch.

COMMISSIONER BRISÉ: I think that's a good way to go. An hour and 15 minutes. We will reconvene at 3:15. We are now in recess.

(Lunch break taken.)

CHAIRMAN ARGENZIANO: Okay. We're going to begin. Let everybody find their way to their seats. And if anybody is missing, hopefully

they'll know we're beginning. We're good to go, I guess. Okay. Did you want to --

Commissioner Skop, you're recognized.

COMMISSIONER SKOP: Thank you, Madam Chair. And I just wanted to pick up where we left off before lunch. Just one point of passing, and I hate to belabor the point but I think it will become important because I'm sure it will come up on redirect.

Mr. Jones, the letter that Mr. Anderson signed dated August 23rd that informed the Commission after the NRC response letter had been posted in the Commission's docket, the FPL letter that was provided to the Commission subsequent to that on the 23rd, did you review that letter before it was sent to the Commission or did Mr. Anderson ask you to review that letter?

THE WITNESS: Yes, I did.

COMMISSIONER SKOP: Okay. And do you have a copy of that letter in front of you?

THE WITNESS: No, I do not.

COMMISSIONER SKOP: Okay. Subject to check, would you concur that that's basically a one-paragraph letter?

THE WITNESS: Yes. As I recall, it's about

one paragraph.

COMMISSIONER SKOP: Is there any reason why it would take ten days to prepare a one-paragraph letter to notify the Commission of this information?

THE WITNESS: No, it doesn't take ten days to write a one-paragraph letter.

COMMISSIONER SKOP: Thank you. I won't belabor that point. But I just anticipated that something might arise so I thought I would address it before it came up.

I want to turn your attention real quick to the staff audit report and cover a technical issue with you. And if you could please turn your attention to page 34 of the staff audit report.

THE WITNESS: Do I have that report?

CHAIRMAN ARGENZIANO: Make sure he has a copy. Is that --

COMMISSIONER SKOP: Thank you. Okay. Are you with me?

THE WITNESS: I have the report.

COMMISSIONER SKOP: If I could ask you to turn to page 34 of the report where it discusses pressure discrepancies.

MS. HELTON: Excuse me, Madam Chairman and

Commissioner Skop. If I could just say for purposes of a clear record, that that's already been marked as Exhibit 77.

CHAIRMAN ARGENZIANO: Okay. Thank you. Did you ask a question?

MR. YOUNG: I'm sorry, Ms. Helton. I gave Ms. Helton the wrong information. That -- if you flip the page, it's --

CHAIRMAN ARGENZIANO: It's not 77.

MR. YOUNG: No, ma'am. It's No. 178.

CHAIRMAN ARGENZIANO: Quite a bit of difference. Okay. 178. Thank you. Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair.

Mr. Jones, do you see the passage entitled pressure discrepancies on page 34 of the staff audit report?

THE WITNESS: Yes, I do.

COMMISSIONER SKOP: And can I ask you to read the first sentence with the exception of the confidential number at the end of that sentence, please?

THE WITNESS: Do you want me to read that out loud or --

COMMISSIONER SKOP: Yes, please, with the

exception of the confidential --

THE WITNESS: Okay. FPL has found discrepancies between the design pressure used for the Siemens turbine upgrade contract and actual plant parameters and estimates a cost to resolve this issue will reach -- and that part is redacted.

COMMISSIONER SKOP: Okay. All right. Would it be correct to understand that what this pertains to is that the steam header pressure, the existing steam header pressure and the turbine inlet pressure, there's a mismatch between the design specification that was specified for the inlet pressure to the turbine?

THE WITNESS: Yes, Commissioner Skop, if I could explain that. As you're, you know, very much aware, whatever heat is produced from the reactor is transferred through the steam generator and you expect a certain steam generator pressure. And then from the steam generator you have a number of components between the steam generator and the turbine and so there is some pressure loss through those -- those components.

And what this is -- and so this is to that issue in that as a part of the early specification for the turbine, there are heat rates that are run

by Shaw Engineering, basic modeled heat rates that look at the desired reactor output, and then it looks at -- it takes the design basis documents, the original vendor information for the several components to which the -- those vendors have performance specs which would through engineering analysis tell you what the pressure loss in that line would be.

So if you picture, you know, a garden hose running real far out into the yard or the street, by the time you get to the end of that there's very little water pressure, so to speak. And so this is -- and so early on in the project, through engineering analysis, and through the vendor information for each of those components, there was a pressure drop calculated. And then the -- and so based on that, you communicate that early information to Siemens. The overall project plan is do the engineering analysis on what the performance should be, then go do field testing to verify actual performance.

Following that actual field testing to validate performance, then you go back and finalize your design specification with your turbine supplier, in this case which is Siemens.

In this case, the existing instrumentation and test points at Turkey Point, Turkey Point is a real -- it's a -- I'm not going to say old, it's a -- it's an old plant, and the test points that were needed weren't there. And so there was a modification to add the test points during a refueling outage and then there was testing that was performed throughout the years to -- throughout the year to verify the actual plant conditions, compared that to the heat rate which is part of the project plan, and we had about 40 pounds per square inch less than what we had desired, which then would -- would cause us to take one of several paths.

We could revise the turbine spec because the turbine isn't designed yet. Siemens is waiting for that input. So this is a perfect example in a project where there are logic ties. You must do this before you do that and you must do this before you do that. And so Siemens is not allowed to proceed until we've done the infield verifications, fed that back to Shawn who did the original heat rate to get that final specification for that turbine.

So with the pressure drop greater which is an

existing plant condition for the original design, we either needed to change the turbine design to accommodate that lower pressure which would have meant fewer megawatts than what we wanted, or evaluate other alternatives such as removing those 1960 vintage components and upgrading those components so there would be less line loss and so more of the energy from the reactor could get to the turbine, or increase the average temperature of the reactor coolant system which would have the same effect as replacing the obsolete components.

So we went through a decision making process and ultimately -- and we did an economic analyses by our resource planning people, and it was very cost-effective to just replace the obsolete components rather than sacrifice the megawatts.

COMMISSIONER SKOP: Okay. With respect to that in terms of the design point or design specification discrepancy, has there been any root cause analysis done to determine who was responsible for specifying the steam line pressure versus what the actual header pressure would have been?

THE WITNESS: No, there was no root cause. As I said, Commissioner Skop, the project plan starts

with the unit heat rate and that analysis is performed by Shaw. Shaw doesn't have any in-plant data because the test points don't exist so they have to use the vendor specifications for the components. The vendor specifications for the components that were installed back in the late '60s and, you know, the plant went on line in '72, those -- those numbers from those original manufacturers would have indicated less of a pressure drop than real conditions.

COMMISSIONER SKOP: Okay. And that's my question. To the extent that the plant is relatively old and design specifications would have been what they were with the existing equipment and that the equipment may foul or degrade over time causing, you know, additional pressure drop over design specification at the time, was there no cross check done to actual plant parameters of the steam header pressure?

THE WITNESS: Oh, yeah, I understand your question. The -- the components actually hadn't degraded. It's that -- like for main steam isolation valve, the engineering factors, without getting a lot of detail, would assume say for sake of argument a 5-pound pressure drop. Actual

measured condition when we installed a pressure tap during the outage between that valve and another valve, the measured differential pressure was higher. So Shaw used the correct design input parameters but we didn't have a way to field verify that particular point without installing the test taps.

COMMISSIONER SKOP: Okay. Well, the -- I think the test taps would have determined the differential pressure or at least the pressure drop across any piece of either vale or fitting, if you would, and you might have to do that in sequence across the steam header for the main steam valve or main shutoff valves or whatever that's in there, and I don't want to get into too much technical mumbo jumbo detail.

But it seems to me that you know what your steam inlet pressure would be, your steam chest pressure would be and you know what actual plant parameters currently deliver to the existing turbine. And seems to me that that would be the basis for notwithstanding the design specification what FPL would seek to achieve. But you would think somebody would cross-reference the design specification data against the actual data which

isn't looking at the pressure drop, it's a summation of all those pressure drops at the steam -- to the turbine, existing turbine. Does that kind of make sentence?

THE WITNESS: It definitely makes sense to me. Those are the same questions that I asked, is was there any way that we could have gotten a rough order of magnitude by looking at other plant-installed instrumentation. The critical pressure as you say is the inlet pressure to the turbine.

Unfortunately, the -- and so I do know what the steam chest pressure is, it's before the steam hits the first moving set of blades and the turbine. If you picture a turbine is just a big fancy fan and you're going to blow steam through the blades and make it spin.

So we're interested in what the pressure of that steam is right before the blades on this -- this turbine. And we -- that is certainly a parameter that you can block in the control room and see what that is.

The turbine upgrade and design however is changing the turbine control valves. The turbine control valves at Turkey Point are sequentialled

and throttled and so therefore there is pressure drop across those. So that current steam chest pressure to me is meaningless at this point. I can't make, I can't make a comparison.

However, to your point though, you know, upstream of that is a steam header pressure to the turbine that -- that it's not a calibrated gauge but -- and so it could be off, you know, 20, maybe 30 pounds. And so it would give you some -- some information, however it's not a calibrated gauge.

But to that point -- but to that point, the team was on the project time line to do -- to install the test points and get actual field conditions. Could they have known earlier? They could have had indication earlier that, that the pressure could have been off by some amount. They still would have had to install the test ports and they still would have had to collect all the infield data to validate, which -- which was done toward the end of the year.

COMMISSIONER SKOP: Okay. And again what I was interested in, and maybe I got a little bit more detailed of the steam chest pressure and the throttle valve. What I was more concerned with is the header pressure right before you go into the

turbine controls that would give you some -- at least a critical check and balance on does the specification, design specification match up with actual plant parameters within a range of uncertainty that one could, you know, estimate to check and see.

Because again looking at the confidential numbers, the summation of the two numbers that are remaining to be confidential, and without disclosing those numbers, those numbers are not insignificant. There may be some, you know, benefit to replacing aged equipment. But there's still a cost impact as a result of the pressure discrepancies and somebody, the ratepayer, is going to have to ultimately pay for that unless it's found to be imprudent. So that's where I think trying to get to the bottom of this new development is an issue. Sometimes things happen, but it's important I think to get a better understanding because the two dollar amounts there are almost as much as -- that's been requested for the EPU for the 2011 projected cost. I mean, that's not giving anything away. It's just order of magnitude.

So I think that addresses the technical question I had and I want to go back now to some

remaining questions.

THE WITNESS: Commissioner Skop, could I clarify?

COMMISSIONER SKOP: You may.

THE WITNESS: Yeah. It was always a part of the project plan to do the heat rate so that Siemens could start work preliminary engineering design type work. It was always part of the project plan to go modify the plant, to install test points so that we could get the detailed accurate information because that critical parameter needs to be within 12 PSI. It can accommodate about a 12 PSI margin. And that plan was followed.

I think that everyone was expecting it to just be okay. Even if they would have discovered it six months early, it doesn't change the output. The output is still either don't replace the components with components that have less pressure drop and we certainly could do that. And -- and the turbine would be designed to that spec but you'd have lower megawatts. But the cost associated with those modifications, which the last time I looked was -- was for the modifications around $34 million, is -- is very cost-effective. It's a positive NPV of

about $116 million benefit to our customers to make that modification. If it would have been a negative NPV, we would have said, no, we're not going to replace those components, those megawatts are too expensive. Does that make --

COMMISSIONER SKOP: I think it makes sense. I think what I'm trying to drive out without, you know, questioning, you know, management action, is that there has been a discrepancy that was identified and there's costs associated with resolving that issue and also some cost to resolve the differences and change the steam header lineup in terms of the steam isolation valves, main steam pressure valves, whatever is in there, going from memory.

But I think my concern would be -- and certainly that may have been part of the plan, but obviously the -- putting the pressure taps in and determining the actual pressure drop between the respective valves and the fittings, at some point could that work have -- and I'm not trying to -- to armchair quarterback the decision that was made. But I'm just trying to look in totality should that work have been perhaps done prior to specifying the design pressure used for the Siemens turbine or

could that have been reserved or did the turbine contract need to be, you know, executed and moved forward to preserve schedule. But again there is a cost impact associated with whatever happened and I'll leave it to the intervenors after I'm gone to hash that one out. But I'm just trying to get some visibility into how did this arise and, you know, what are the costs to remedy the pressure discrepancies that have been found.

THE WITNESS: Yes, I'd like to explain.

COMMISSIONER SKOP: Please do.

THE WITNESS: Okay. To preserve the megawatt guarantee that we have contractually with Siemens, there are a lot of specific data points that they want collected. So that's part of the driver.

So that's one reason to go install a lot of test ports. In fact, on unit 3, this fall-outage will be installing some test pressure taps inside the unit 3 condenser. These particular test points, the plant needed to be shut down, depressurized and cooled down to install these because they're in the main steam system which at power is normally 800 PSI as I know you're aware.

The question, could the testing have been done like immediately following the outage? It could

have. It wasn't scheduled that way because we didn't need that final input until much further downstream. Siemens was not -- Siemens was not scheduled to go to manufacturing until a certain points so the project plan was laid out to this outage do the test points and then you had this number of months to do the actual infield measurements, feed it back to Shaw who did the heat balance.

So I did want to be clear that Shaw didn't make any error. Their inputs were -- were off of paper, and components that were installed in 1970 or whatever may perform exactly as designed, may perform a little different.

And so therefore, I just want to be clear that it's not added costs. I could have chose to spend zero dollars. And -- and the components that are currently installed are perfectly fine and will be there for the next 20 years. But there was an opportunity for those megawatts with a net present value benefit to our customers and so it was -- it was -- it was a business decision.

Now, we could have made that business decision earlier but at the end of the day, it doesn't matter.

COMMISSIONER SKOP: Okay. And the reason I ask,Mr. Jones, is again the pressure discrepancies were identified in this iteration of the staff audit report which is -- let me make sure I'm looking at it. The one that was issued in July, 2010. This was not, I don't believe, and I have it in front of me, in last year's report. So again this seems to be an emerging issue. And I'm not suggesting that Shaw did anything wrong other than rely on the existing, you know, as-built specification given the hardware that was specced out for the steam header.

But that would not be intuitively obvious to me from reading the summary contained in the staff audit report. That part is kind of left out so I think that's where my line of questioning originates from is, okay, here's an issue, is there root cause of the issue and then here's a cost to remedy the issue.

But certainly there does seem to be a cost, and I know you said there wasn't because you did the, you know, financial analysis on the net present value requirement. But the last sentence in page 34 seems to suggest there is an increase in project cost to resolve the differences. So again

I'm not sure and I'm not sure whether the Commission has been provided with that additional analysis, financial analysis that's been performed to -- to ascertain whether -- you know, the various options there.

So that's the question that's -- you know, I don't want to get too much into that. I think you addressed my concerns a little bit to the intervenors. But we need to try and get some transparency of what's going on there. It seems like FPL and the vendors did what they were supposed to do.

But relating that back to loss or gain of uprate and generation capability, that's something that the full picture is not there for me. So that's why I asked those specific questions. And I think we can move on from here on that one, unless you have anything to add on that.

THE WITNESS: Yes, Commissioner. We did provide to the audit staff our detailed white paper that -- that did go back and look at that overall time line, did look at several options, and it's including a decision-making white paper that we wrote and provided to senior management on or about -- the date of the report was March 11th,

2010 when we brought the -- brought it to conclusion as to whether to modify or not modify.

COMMISSIONER SKOP: Okay. And just to follow up on a couple of different lines of questions and then hopefully we can wrap this up. You mentioned that FPL, after it removed the EPU senior management team, started looking at options of self-performing work remaining on the EPU, looking at other EPC contractors. I think you mentioned Highpoint as one of them. And again I've confirmed that's not confidential, at least from the redacted information I'm looking at because I saw the word unredacted, so I don't believe that's a problem. But ultimately FPL decided not to shift the work to a different EPC contractor; is that correct?

THE WITNESS: That is correct. We ultimately decided to retain Bechtel as the EPC, we decided to take some portions of the work such as start-up testing and do that in-house, and we looked at some specific engineering and gave that to other companies that we thought could do it more officially.

But as the overall engineering procurement contractor, we did decide to stay with Bechtel because we at the end of the day, we thought that

the energy and effort to switch horses, if you will, at this point demobilize Bechtel, mobilize a new EPC, was -- any cost benefit we would get there would negate the cost benefit we were looking for.

COMMISSIONER SKOP: And that was my point. Again I can try and look it up but I don't belabor that. But I guess the conclusion in relation to not going towards a new EPC contractor then would be cost probative in doing such when you look at those additional ramp-up costs and termination costs and all of the things that go into that. So it was more financially driven rather than benefit driven; is that correct?

THE WITNESS: I'm not sure I understand your question.

COMMISSIONER SKOP: Okay. Somewhere in the voluminous record, again one of the reasons -- it may be in the Concentric Report -- but I believe one of the reasons why they did not go with an alternate EPC contractor was because it would have been cost probative in terms of gaining any benefit and -- as opposed to staying with the existing contractor at this point; is that correct? I mean, I can try and look for it real quick but --

THE WITNESS: Yes, Commissioner. In effect,

to demobilize Bechtel, there have been costs associated with that. Mobilize a second EPC, there would have been cost associated with and disruption to the project we felt was too great a risk to take.

COMMISSIONER SKOP: Okay. All right. That resolves that question.

Let's talk real quick about you mentioned that you assumed the position of vice president of nuclear power uprate on or about August 1st of 2009 and prior to that you worked for NextEra specifically on the Point Beach project; is that correct? Or one of the Point -- you were Midwest manager type of position?

THE WITNESS: To clarify, if I may, I'm an employee of Florida Power & Light Company. I worked for the nuclear fleet. My assignment was to the affiliate company to which the customers do not pay for that. I was the vice president of operations for Midwest.

As far as EPU for that particular plant, that was a project being done for my plant. I did not have responsibility for the actual project, just the results.

COMMISSIONER SKOP: All right. And so to be

clear, Point Beach is a nuclear unit operated by the unregulated entity which is now, I believe, Next Energy -- NextEra Energy Resources; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And with respect to Point Beach, do you know what -- you mentioned in your testimony your reference to LAR. Do you know what the status of the LAR is for Point Beach at this time?

MR. ANDERSON: Chairman Argenziano, I'd like to be heard very briefly.

CHAIRMAN ARGENZIANO: Yes.

MR. ANDERSON: This proceeding involves FPL Florida plants. It does not involve in any respect our sister companies, plants and other --

COMMISSIONER SKOP: Madam Chairman, to the objection?

CHAIRMAN ARGENZIANO: Commissioner Skop.

COMMISSIONER SKOP: It's relevant. I'm laying a foundation for my next question. The status of -- merely it's inquiring of the status of the LAR and just merely asked the witness if he knew of the status of the LAR. And its a simple yes or no. I don't --

CHAIRMAN ARGENZIANO: That's fine. That's fine. Is that all right?

THE WITNESS: Yes, I know the status of the extended power uprate license amendment request for Point Beach.

COMMISSIONER SKOP: Okay. Can you -- and feel free to object. Can you tell me what that status is?

THE WITNESS: Yes. That status is -- it is in the review and approval part of it. As I mentioned earlier, the NRC's process has an acceptance review which they can take up to two months. And once -- once they've agreed to accept it, then they get into a much more detailed review for that license amendment request, and that is the process that we are in with Point Beach.

COMMISSIONER SKOP: Okay. And just very few remaining questions. The nuclear division is organized at FPL but it -- it -- it's intertwined to some degree to the extent that it has the entire fleet, both unregulated reactors and existing reactors under the nuclear division; is that correct?

THE WITNESS: That is correct. We operate as a nuclear fleet.

COMMISSIONER SKOP: Okay. I guess the question that I would ask is, is the fact that -- you know, you have limited resources to accomplish projects and I think you've mentioned the organizational structure. It was detailed with great specificity in last year's audit report with the org chart and we've talked about the management changes. Is that combined organization, are there sufficient resources available that allow or don't impact the ability to execute the EPU completion on a costing schedule as it pertains to the regulated units?

Let me reframe my question. You have the nuclear division which has unregulated and regulated plants as a fleet. Okay. But we have specific issues related to EPU and new construction in Florida as well as the unregulated entity has their own business segment.

My question is, is that organizational structure as a whole impacting the ability of FPL to execute the EPU completion on costing schedule?

THE WITNESS: No, Commissioner. As far as the other company is concerned, they have their extended power uprate team, St. Lucie and Turkey Point each -- each have theirs. There are always

resource challenges in -- in any business or any major activity. So we do -- we will supply people, you know, within the fleet to -- to wherever there is a need and will properly allocate those costs and then we'll either backfill that position or we'll -- we may have some -- a regular employee backfill or we may use a contractor to substitute. And we don't just do that within the -- within the nuclear fleet. I've gotten people from all other business units within the company to come on the project either on a project-bound basis, temporary basis. And so we do move resources -- resources around. But as with any -- any -- EPU aside, EPU aside, just running the day-to-day business within the nuclear fleet or within our nonnuclear fleet, there's always pressure on resources and challenges with that. But not to the extent that I'm worried about resources being a major risk for the project.

COMMISSIONER SKOP: Okay. Thank you. And I'm just -- no need to have you reference a confidential document at this point. And staff, the Bates page I'm looking at, this is what's been marked as POD 29, and the Bates page specifically is 153493 of NCRC-10. And if we could pass out copies to the witness and the Commissioners

perhaps.

MR. ANDERSON: Which number was that again, please?

COMMISSIONER SKOP: It's what's been marked for identification -- or actually not marked, but it's POD 29, and the Bates page is FPL 153493, NCR-10.

THE WITNESS: I'm sorry, Commissioner, can you repeat that number?

COMMISSIONER SKOP: Yes. The number -- and like I say, it's probably going to have to get looked at so everyone can follow along. But it's FPL 153493 is the number I have.

THE WITNESS: 153493, just --

COMMISSIONER SKOP: And that's at the top right-hand corner. And staff, if I can get a copy of that confidential document after all because again there may be a mismatch between the pages I have and what you passed out. So I just want to double-check that I'm on the right page.

MS. HELTON: Madam Chairman?

CHAIRMAN ARGENZIANO: Yes.

MS. HELTON: Just so we can have a clear record, staff is telling me that this has not been given any kind of an exhibit number. And I'm just

wondering whether it should be in case it is admitted into the record so that we will have a clear record.

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: We can mark it for identification. I don't usually move exhibits. But we need to do what we need to do.

MS. HELTON: I think that might be -- I just think that might be better.

CHAIRMAN ARGENZIANO: To give it a number.

MS. HELTON: Yeah. I think Ms. Bennett would like to do that.

MS. BENNETT: It's a set of documents in its entirety that we were going to ask to be moved into the record. So -- and they're almost all confidential. It's Document No. 06790-10 in our case management system. And that's all of FPL's responses to staff's fourth production of documents. And I believe Commissioner Skop is asking questions on the POD No. 29 which consists of several hundred pages.

COMMISSIONER SKOP: Okay. And staff, like I say, because this is being thrown on the Commissioners, can we have someone from staff help everyone on the bench get to the page? Or is

everyone there? Okay.

CHAIRMAN ARGENZIANO: I think so.

MR. YOUNG: And Madam Chairman, for identification purposes, that will be Exhibit No. 242.

CHAIRMAN ARGENZIANO: And what did we -- what did we title it, Commissioner Skop? What do we call it? Want to just call it --

COMMISSIONER SKOP: Ms. Bennett? I would call it Concentric Report.

MS. BENNETT: Oh, the name of the document?

CHAIRMAN ARGENZIANO: Yes, please.

MS. BENNETT: Let's short title staff's -- FPL's responses to fourth PODs, staff's fourth PODs.

(Exhibit No. 242 was marked for identification.)

CHAIRMAN ARGENZIANO: Thank you. You're recognized.

COMMISSIONER SKOP: Thank you, Madam Chair. At the beginning of that document if we go seven pages in, that should be that Bates number because the bottom of the page is numbered page 7 of 23.

Okay. Mr. Jones, are you at that page which is Bates marked stamped as FPL 153493?

THE WITNESS: Yes, I am.

COMMISSIONER SKOP: Okay. And do you see the deleted comment at the top right of that page?

THE WITNESS: Yes, I do.

COMMISSIONER SKOP: Okay. With respect to that comment and my prior line of questioning regarding whether there was sufficient level of effort dedicated to ensuring that FPL's ability to execute the FPL EPU effort on cost and schedule, should that comment factor in that analysis given the extent of -- of, for lack of a better word, time that was dedicated within the scope of that comment without getting into too much detail? If you read the comment, I think it should be somewhat evident where I'm going with that.

THE WITNESS: Yes, I've read the comment. I don't know, I can't speak to what portion of the team was involved in -- in the activity that's referenced here and what the impact was. In other words, it's -- it's not clear if we're talking an entire group of people, some portion of the team. And so I can't draw any conclusion from that -- that comment.

COMMISSIONER SKOP: All right. Well let me try and help home in on the point that concerns me.

The first sentence obviously, that's going to address the location. The second sentence addresses the team, the time, and the -- I guess perhaps the location, and then the remaining portion of that addresses what occurred subsequent to that. And I guess my -- my -- where I'm going with this in line in my previous question is this occurred shortly before the July 25th type meeting and probably at the same time that all of this, you know, cost data for the Florida base proceedings would have been prepared and testimony would have been filed. So that's kind of where I'm getting to on that.

THE WITNESS: Yes, I understand. And I understand the location in regard to the second sentence. I don't know if that's the entire team, a portion of the team. The team in general at that time was quite large. So -- and so I -- I cannot offer what, if any, impact that had on the Florida project. There's just not enough information to know.

I would -- I would tell you that, that it's not unusual, in fact, it's more the norm, in our nuclear fleet that when we have a refueling outage, say, at St. Lucie, that a good portion of our staff

will go and provide additional oversight and monitoring at St. Lucie. That doesn't mean they stop everything they're doing. But it means they do spend a portion of their day evaluating performance and assisting during the refueling outage.

And so this statement is -- it doesn't go to what type of effort this -- this was.

COMMISSIONER SKOP: Okay. Thank you. Two follow-up questions and then one small line of questioning and I think we'll be done.

This is a draft copy of the Concentric Report or what ultimately became the Concentric Report. And enclosed as part of the Concentric Report was the employee letter.

The question that I have is were you provided with a copy of the employee letter that was sent to Mr. Hay?

THE WITNESS: I read a copy of the employee concern letter. I don't recall exactly when that was. If that -- I was interviewed as a part of the Concentric investigation and I just don't specifically recall if it was at that particular date or after that that I saw the letter. But it -- as you mentioned, it is an attachment to the

report.

COMMISSIONER SKOP: Okay. And with respect to the report which was prepared at FPL's direction by Concentric in an independent report, were you asked to review any drafts of this report?

THE WITNESS: Yes, I did review drafts of the Concentric Report and I provided my verbal comments, feedback to the Concentric Report in regards to things such as time line or -- or facts in the report.

COMMISSIONER SKOP: Okay. And if I could ask you to turn to the first page -- actually let me get the right Bates number page will probably be the best way to go about this.

I may -- I may have to shift documents on us. Ms. Bennett, if you can help me out. I'm looking at the same confidential document POD 29 and the page is Bates page FPL 153197.

Let me see if that's in the same grouping. I think that may be actually in a different document. So if you can help everyone get to that. This is -- right. That's the page we're all looking for. So if we can get the witness a copy and the Commissioners because -- yes, 153197. And I believe it's the first page of a separate document

in that stack they gave you with the big green comment box. Okay. Is everyone there?

All right. Mr. Jones, if I could ask you to review what's been marked for identification as Exhibit No. 242, Bates page FPL 153197, and the comment at the top right corner of this document.

MR. ANDERSON: We're still catching up with you here -- over here for a moment.

CHAIRMAN ARGENZIANO: Let's make sure everybody is caught up before we move on. If you would just indicate when you're ready.

MR. ANDERSON: We're there now. Thank you.

COMMISSIONER SKOP: And Mr. Johns, have you had an opportunity to review Bates page FPL 153197 which is page 1 of 20 of that document?

THE WITNESS: Yes, I have.

COMMISSIONER SKOP: Okay. In a prior line of questioning, we discussed the executive steering committee meeting that was held on or about July 25th, 2009, and I asked you a question as to who may have requested that meeting.

THE WITNESS: Yes.

COMMISSIONER SKOP: Does that comment give some clarity to who may have requested that meeting and the line by line review that we discussed.

THE WITNESS: That comment makes a statement as to who requested the line by line.

COMMISSIONER SKOP: Okay. And you stated that that person, which I believe you previously testified was the president and chief operating officer of FPL Group, attended the meeting on July 25th, 2009; is that correct?

THE WITNESS: That's correct.

COMMISSIONER SKOP: Okay. And I don't believe that name is confidential based on my ruling and the fact that there is no protective order or challenge to the ruling on that. This document is confidential, but however the name of a corporate officer of FPL Group I don't believe is confidential. So I would ask if you could name that individual.

THE WITNESS: The president and chief operating officer of NextEra.

COMMISSIONER SKOP: Back at the time it would have been FPL Group.

THE WITNESS: It would have been FPL Group at the time.

COMMISSIONER SKOP: So can you please identify that individual, please?

THE WITNESS: That individual is James Robo.

COMMISSIONER SKOP: All right. Thank you. Just one final question that I have. Just in summary -- I could ask the court reporter to read back the transcript and I'd rather avoid doing that but I'm trying to also anticipate what might be an objection from Mr. Anderson.

But just to be clear, on the July 25th, 2009 executive steering committee meeting at which point a line by line financial review of the FPL EPUs was conducted, I believe it was your testimony that Mr. Olivera attended that meeting and Mr. Robo attended that meeting from FPL Group -- actually let me reframe that. That Mr. Olivera as president and chief operating officer of FPL Group at Power & time Light attended that meeting and that Mr. Robo as president and chief operating officer of FPL Group at that time attended the meeting on the 25th to have that line by line budget discussion; is that correct.

THE WITNESS: Yes, among others.

COMMISSIONER SKOP: Okay. And you also attended that meeting?

THE WITNESS: Yes, I did.

COMMISSIONER SKOP: Very well. Madam Chairman, at this time I don't believe I have

any additional questions. Let me just double and triple check here. I don't believe I have any additional questions at this point for Mr. Jones. However, I would reserve my right to ask additional questions if we get into an evidentiary hearing posture. Thank you.

CHAIRMAN ARGENZIANO: Thank you. Commissioners?

I think I have a question, and stop me if it's something that shouldn't be asked. I'm sure you will.

The Concentric Report, I guess it goes through periods of change and edits that occur. And anywhere else there's edits to either mistakes or grammar or technical terms or whatever. Has -- has it changed substantially from its initial --

THE WITNESS: Madam Chairman, prior to this hearing I was shown the stacks of drafts for the Concentric Report prior to being shown that, just prior to the hearing. I had no knowledge of how many drafts there were. I didn't know that I reviewed at least two and provided my verbal comments and feedback on that report. But I can't speak to the number of changes and whether they were -- but all editorial or context or such.

CHAIRMAN ARGENZIANO: Okay. Did staff --

THE WITNESS: But I would defer that to the author of the report, John Reed.

CHAIRMAN ARGENZIANO: Okay.

COMMISSIONER SKOP: May I have some brief follow-up on that?

CHAIRMAN ARGENZIANO: Commissioner Skop.

COMMISSIONER SKOP: Thank you.

Mr. Jones, if this was an independent effort, then how can independence be maintained if FPL management is offering its comments and suggestions to the independent investigation report? I don't get to -- as an example, I don't get to do that with our staff audit report.

THE WITNESS: Well, we have a number of independent or internal reports that we Commission. It could be, you know, human resources and those people that have a need to know or are close to the issues are asked to verify the facts or time line is correct. They're asked for the feedback. At the end of the day it is up to the investigating entity to make the final decision on -- on their report. I do not provide any written comments. I do not provide any electronic editing. I just provide my perspective on -- tone and perspective

and whether or not there was any technical errors in the drafts that I was -- that I reviewed.

COMMISSIONER SKOP: Thank you.

CHAIRMAN ARGENZIANO: Thank you. And Mr. Jones, you indicated that Mr. Reed would be the person to ask about maybe track changes and the differences.

THE WITNESS: Yes, ma'am, Madam Chairman.

CHAIRMAN ARGENZIANO: Thank you. Are we done with this witness?

MR. YOUNG: I think FIPUG might have some questions.

CHAIRMAN ARGENZIANO: Oh, I'm sorry, yes. Forgot where we were.

CROSS-EXAMINATION

BY MR. McGLOTHLIN:

Q Sir, you said earlier that the uprate project had progressed from very little engineering to about 20 percent engineering at this point; is that correct?

A About 19 to 20 percent of the total number of modifications that are currently identified are complete. There may be additional modifications that will be identified through the LAR engineering analysis process and based on the inner sees review as well as there could be additional modifications identified as a

part of the design engineering.

And then one other source is similar to when you are doing a little remodeling of your house, and you were going to do a simple thing like move the stove and you discovered that the conduit is in a different spot than what you expected and you're in the middle of a modification, you may have to make another modification to be able to complete the original intended modification.

Q Now, your direct testimony also states that the nonbinding estimate, the term that you used, has increased to something like $2.3 billion for all the uprate projects; is that correct?

A For the feasibility analysis, we used 2. -- I should -- 2.050 to 2.3 billion. The feasibility analysis used the upper end of that range. My forecast range for everything that I had identified as modifications, the Bechtel resource ramp, FPL ramp, as well as the new modifications at the time were at the low end of that range.

Q You've also used a term "level of certainty." What level of certainty do you attach to this latest nonbinding estimate?

A P-50.

Q Say again.

A P-50.

Q What is that?

A P-50 means that there's an equal probability of it going up as there is of it going down.

Q And are there any parameters in terms of how far up or how far down that attach to P-50?

A I think it's important to look at the trend and the rate at which you're identifying issues and the magnitude of which you're identifying issues. That doesn't mean that you wouldn't have a discovery through testing as we did for the steam pressure that -- where you would need to do a business case on whether to proceed or no.

But the -- but it's more important to look at the trend of discovery than, you know, just a subjective, gee, it could go there or could go there.

Dr. Sims will report in detail on the feasibility. I do know that the needs filing, that the present value for the customer was around 347 million, and I do know that for 2010, using the upper end of the 2.3 billion and the 450-megawatt, that the present value is now over a billion for the customers. But of course there are many different factors that go into that feasibility and Dr. Sims is best suited to explain that.

Q Well, my question is limited to capital costs,

the price tag of completing the unit. And you used the term P-50 which means the equal probability of increasing or decreasing but you also said look at the trend.

Now, compared to the nonbinding estimate that was presented a year ago and using the upper end of $2.3 billion, that is an increase of about $500 million, is it not?

A Could you restate the question?

Q Comparing the nonbinding estimate that has been presented in your testimony in this case, comparing that, comparing the high end of that range to the nonbinding estimate that was presented a year ago, that represents an increase of approximately $500 millions, does it not?

A That represents a change in forecast of $500 million if you take the 2.3 and compare it to the needs find, that's correct.

Q Now, you also said the important thing is to look at the trend. Is that the trend we should be concerned with if we are trying to get a handle on what the ultimate price tag of the uprate is going to be?

A The trend you should be concerned with is the month over month and the types of engineering discovery that we're having through engineering analysis and

whether those are -- are significant, medium or low.

And by that I mean as a part of this project, we have a risk management tool. And so anyone on the project or anyone external to the project, if they identify anything that could impact costs, schedule, quality, can raise that -- raise that issue and we'll assign some probability of that occurring. We'll conceptually assign some dollar amount with that or some schedule impact with that and we'll capture that as a part of the project cost.

So when you are looking at that $2.3 billion figure as the high end, about 158 million of that is what we've identified as risk. It's things that haven't come to pass and there's opportunities to mitigate.

Now, you're not going to mitigate the entire $158 million clearly and you're not going to mitigate it tomorrow. Some of those things that are on that risk metrics is I've got to complete the engineering to know what the answer is or I've got to devise a strategy what to do with it.

So here's a very simple example. Is -- is the secondary side of the nuclear power plant which is all steam and water, we refer to as the clean side of the power plant. It's not part of the primary site.

Well, back in the '80s, the original steam

generators for Turkey Point had some very, very tiny leakage but that resulted in some contamination of the secondary side. And so what was in the project was a nominal amount of dollars in the event that some of that secondary side component once we removed it, that we would not be able to free release it or salvage it, that we'd have to treat it as radioactive waste.

And so it was identified as a risk in a very conceptual estimate of an additional 11 -- could be 11 or 13 million dollars. I have a lot of numbers in my head for a $2 billion project. But nonetheless, that's when they got my attention is, is we're putting $11 million in the project, $11 million hit because someone raised the potential that the secondary may have internal contamination and it's going to be very expensive to dispose of.

Now, I can't mitigate that risk overnight but I have a project plan and I have someone working on that and I don't expect all of that to come to fruition. In fact, I suspect it will be a fraction of that cost. But until we get to the end answer, however months it takes, that $11 million will be there.

So not that entire amount is -- is definitely hardware. A certain portion of that is allocated for scope not defined as well as risk, things that -- that

people have thought this could occur, I don't have an answer yet, I may -- that engineering for that is going to occur next year and then I can give a definitive number for that.

Q And at the end of that process, your estimate is at the probability of the 2.3 billion being more or less is P-50, correct? Is that what you said earlier?

A That's what I said earlier. The key is cost certainty, cost certainty comes with completing the design engineering. And as I stated earlier, okay, we -- if we would have done the law engineering first, then all the design engineering, then you would spend a year estimating and then you could provide a project estimate which is what most people are used to when they get an estimate to get their house reroofed or, you know, a brake job done on their car, so to speak.

If we were to take that approach and that's what the Legislature and this Commission had the wisdom to do is -- is you wouldn't have any benefit, you know, for the customers. And so you do that in overlapping phases and you sequence it with the refueling outage so that you bring the megawatts sooner. But with that, because the engineering isn't done, you trade off a huge customer benefit for cost uncertainty for the first few years of the project until the engineering is done.

That's the trade-off.

MR. McGLOTHLIN: That's all I have at this time.

CHAIRMAN ARGENZIANO: Commissioner Skop? I'm sorry, Mr. Moyle?

MR. MOYLE: Thank you, Madam Chairman. I have just a couple of lines of questions, one related to this issue of timing and the other related to some of these confidential documents.

CROSS-EXAMINATION

BY MR. MOYLE:

Q But good afternoon, sir. Jon Moyle on behalf of FIPUG. I just wanted to make sure I have some timing down properly with respect to the withdrawal of the licensing action that you guys withdrew.

I'm correct that that withdrawal letter, you sent a letter on August 13th and you got a letter back from the Nuclear Regulatory Commission on August 13th as well; is that right?

A Yes, that's correct.

Q Okay. I think you testified earlier that on August 11th you had a phone call where I assume they kind of delivered the bad news to you; is that right?

A On August -- that is correct. On August the 11th we had a phone call and the NRC informed us that

there was significantly more detail they were looking for in a couple of areas and that at that point they didn't think they could accept the license amendment request. We provided push back on that for the basis for that and started discussions with senior management.

Q And -- and essentially the -- what the NRC staff told you was you really had two options. One, you could withdraw your request or, two, you could not withdraw it and get a denial notice, correct?

A The process is that if you do not withdraw your license amendment request, you'll get a denial request, that is correct.

Q So then, I guess, sequencing again, your senior management already had a meeting set up on the 12th of August with senior NRC staff, correct?

A That is correct. And we began the escalation of the issue with our management and they began the escalation with their management.

Q And your objective was to try to turn them around, was it not, with respect to their decision either to deny or to require you to withdraw?

A That is correct.

Q And I tried to take notes when you were going through this because all of this is happening pretty close to the hearing. Do you know -- wasn't the

discovery cutoff date in this hearing on August 12th? Do you know that?

A No, I do not know what the cutoff is for the hearing.

Q But this decision of the NRC that basically resulted in you withdrawing this application, I think you testified it will add additional cost to the project, correct?

A That is correct. And I further explained that -- that the engineering that was done is good engineering. They're asking to go to another whole level so that's additional engineering to be done and so there is a cost associated with that.

Q And the cost, I think you used the phrase, you said 125 million or 150 million that you expected there to be increased costs not of that magnitude, but do you know the order of magnitude of cost that -- that will flow from this decision as we sit here today, or is that something that's to be decided as time goes forward?

A No, I was referring to -- to the amount that we've spent on the license amendment request process for our Florida plants is on the order of around $100 million. And we forecast, you know, approximately another 20 or 25 million. The additional engineering to be done here to satisfy the technical reviewers could be

on the order of a million or a million-and-a-half. I'd rather not speculate and say this is definitely the number. But it will probably be on that order of magnitude for the engineering analysis. If there are additional modifications required by the NRC to the spent fuel pool to allow extended power uprate, then that would be, that would be additional cost.

Q Right. And with respect to -- I think the two variables were the additional cost and the additional time, correct, that resulted from this withdrawal?

A Well, yes, there's the additional engineering analysis --

Q Right.

A -- that has not yet been performed. The time aspect of it is it takes time to do the engineering and that's what you're paying for. The time variable that I was referring to is the time it will take the NRC to review the resubmittal and whether or not it will have an impact on the scheduled refueling outage, and that's yet to be determined. However, one of our contingencies is to perform all the modifications and -- and do the power ascension online which we call that an online implementation which we've done before.

The other impact -- again, since the rules are changing, the staff guidance on spent fuel pool

criticality just came out last night, or we just got a copy of it last night or today I was informed, and it's just going to be going on the public register for comment. That's going to be the standard that we're going to have to live to. And that could require physical modifications to the existing spent fuel pools at Turkey Point and Saint Lucie. Until we complete that unless, I cannot tell you the extent of that physical modification.

Q All right. Your testimony in this case, there's an issue No. 22 that says, and I quote, what system and jurisdictional amount should the Commission approve as FPL's reasonable actual estimated 2010 cost and estimated true-up amounts for the extended power uprate project? Your testimony speaks to that issue, correct? Yes, no?

A Yes.

Q Okay. And are you aware that Public Counsel's position which FIPUG agreed with was that OPC agrees with staff proposal to conduct a more detailed examination of the cost in a separate docket. You're aware that that's the position of FIPUG and OPC with respect to that issue?

A No, I'm not aware of what your position is.

Q The -- the fact that there could be additional

cost associated with this withdrawal, wouldn't you agree that -- that allowing the parties the opportunity to dig into this issue further as it develops, to understand the magnitude of those costs would be beneficial in determining whether these -- these costs were prudently incurred or imprudently incurred?

A First let me speak to the characterization.

Q Well, if you could --

A You tie it to --

MR. MANAUSA: Madam Chairman.

A -- you tie it to the withdrawal.

CHAIRMAN ARGENZIANO: Hang on one second.

Mr. Moyle?

MR. MOYLE: Yeah. I mean, obviously the Commission rule is the yes, no, and then the explanation.

BY MR. MOYLE:

Q I'm just simply trying to ask a yes/no question which is should additional time -- would additional time help ascertain the costs associated with the withdrawal that a future Commission may decide could be prudent or could be imprudent? Would additional time help ascertain those costs?

A Yes, additional time would help ascertain those costs.

Q And you were asked a few questions about the -- your -- the Point Beach uprate project, correct?

A That's correct.

Q Okay. Did the Point Beach uprate project also have a withdrawal of a requested licensing action for its extended power uprate efforts?

A The license amendment request for the extended power uprate for Point Beach as not been withdrawn.

Q Okay. Throughout the country, some of these extended uprate projects have gone forward, correct, and have been completed?

A Yes. There are a number of extended power uprate projects that have been accomplished in the United States. The boiler water reactors, there are a large number of those. As far as pressurized water reactors in the context of a true extended power uprate, although if you check the NRC website you'll see a couple other listed, but the true extended power uprate has been Ginaa.

Q The -- the other line of questions I had just briefly, you have all of these confidential documents in front of you, do you not, that staff identified as an exhibit? I want to direct your attention to FPL Bates stamped document 152887 which is a letter dated February 19, 2010.

A Did you say 152887?

Q Yeah, 152887.

A I'm not there yet.

Q And 152888. It's a February 19, 2007 letter. And there's actually a cover page associated with it, 152886. Just tell me when you're there.

COMMISSIONER SKOP: Mr. Moyle, if I could ask, what Bates number is that? Because some of the documents we have you have to scroll through them. Do you have a front cover Bates page and then a subsequent Bates page?

MR. MOYLE: Yeah. The Bates page on the very first is 152886, and then it's 152887 and then 152888 according to the information I have.

COMMISSIONER SKOP: That's what I thought it was.

MR. YOUNG: It's at the bottom of the page, Commissioner. And Madam Chairman, it's my understanding that this letter is no longer confidential except for the name of the employee and the position, I think.

MR. ANDERSON: Yeah. All the names and titles I believe here are -- just to be clear, there's a public version of this, there's a nonpublic. We just want to be careful how we proceed.

CHAIRMAN ARGENZIANO: All names are confidential and positions.

MR. YOUNG: Except for the Commissioner's ruling on the --

MR. ANDERSON: ON the one individual.

COMMISSIONER SKOP: The one individual, Mr. Jim Robo who is president and chief operating officer of FPL Group at the time -- actually FPL Group at the time of this letter was withheld from being confidential.

CHAIRMAN ARGENZIANO: Okay.

BY MR. MOYLE:

Q Just a couple of questions on this letter. The person who signed this letter, are they still with FPL, do you know?

A No, they are not.

Q And you were asked questions previously about the change in management related to the EPU project. You talked about succession planning. But the change in management related to the EPU project didn't have anything to do with succession planning, did it?

A Yes. Succession planning does factor into that. It's part of my development to run a major construction project. I've been in line operations most of my career.

Q The -- so the point -- counsel for FPL has indicated this letter is declassified or not confidential. The letter suggests that on the second page that there was trouble with the EPU project and it says, quote, the trouble was enough to replace the entire senior project team. Do you disagree with that statement?

A Yes, I do.

Q So you were involved and had knowledge of the senior project team and how they were -- they were performing?

A I disagree with that statement in the context that the entire senior project team was replaced as I testified to earlier.

Q Okay. With respect to any members of that project team that were replaced, was the reason that they were replaced was because of poor performance or trouble with the EPU project?

A As I mentioned before, the very most senior people associated with that project, solid performers, had been solid performers for decades. The -- I already testified to the fact that there was a reorganization to take the EPU and separate the EPU from the projects and fuels organization. That required a division of responsibility. There were some reassignments. And so

that's part of the reason, was to decentralize it. Part of the reason was to align skill sets and functions. Part of the reason was to get different performance and put a different area of focus on the project.

Q Okay. The bottom of the first page, 152887, there's a statement, "Finally in July of 2009, senior management decided it was time to inform executive managers of the poor condition of EPU which precipitated the replacement of the entire EPU project senior management team. I take it from your previous answers that you would -- you would take exception with that sentence in this letter; is that right?

A I'm sorry, I lost the sentence.

Q It's the second from the last sentence, the bottom of page 1. Finally in July of 2009.

A I'm with you. Yes. I do not agree with the characterization that that statement makes.

Q Do you know the individual who wrote this letter?

A Yes, I do.

Q As we sit here today, I take it you question his veracity?

A No, I don't question his veracity. I have a difference of opinion in regard to how he characterizes that.

MR. MOYLE: Okay. Thank you. That's all I have.

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chairman. A couple follow-up questions and I'll try to make this as brief as possible.

Mr. Jones, if I could direct you back to the same letter that Mr. Moyle asked you to refer to, and I don't have the Bates page in front of me but we, for the sake of discussion, we know what letter we're talking about. This is the employee letter dated February 19th, 2010 that was directed to Mr. Hay who is FPL Group chairman and chief executive officer. Do you see the first page of the letter?

THE WITNESS: Yes, I do.

COMMISSIONER SKOP: The last sentence at the first page, can you please read that last sentence for me?

THE WITNESS: The last sentence on the first page?

COMMISSIONER SKOP: Yes, sir. Beginning with "my."

THE WITNESS: "My project control group prepared detailed reviews that were presented

to" -- it's redacted -- "late in July 2009 on the poor condition of EPU."

COMMISSIONER SKOP: And that redaction, there is Mr. Jim Robo who's no long confidential so could I ask you to reread the sentence noting that that Information is no longer redacted based on my ruling?

THE WITNESS: "My project control groups prepared detail reviews that were presented to Mr. Jim Robo late in July 2009 on the poor condition of EPU."

COMMISSIONER SKOP: And on the second page of the letter, second paragraph, can you read that paragraph in its entirety, please.

THE WITNESS: "I'm concerned about how FPL will report these findings at the upcoming PSC hearings. Any information from EPU other than -- other than which was presented to management last summer will be a manipulation of the truth. Current reporting for PTN and PSL, meaning Turkey Point and St. Lucie, does not contain information showing there is serious trouble with these projects. The trouble was enough to replace the entire senior project team."

COMMISSIONER SKOP: Okay. And then can you

read the first sentence of the next paragraph, please.

THE WITNESS: "Enclosed with this letter are the presentations given to Mr. Robo last July. If you investigate" -- do you want me to read the whole paragraph?

COMMISSIONER SKOP: No, that's fine. I think we've covered enough on that. Do you -- notwithstanding the Concentric Report, do you have any reason to doubt the validity of these allegations?

THE WITNESS: Yes, I do. Going to the second paragraph on page 2, as I stated earlier, the project forecast that we had and the direction that we had coming out of July 2009 remained within our monthly reports. Those numbers are generated by the project controls organization and continue to -- that forecast along with the progress we were making on the actions in regards -- and I won't go back through those.

But in regards to ongoing activities continuing to be reported to the senior execs, those same presentations with those forecast numbers were provided to PSC audit, audit staff as a normal course of discovery. In fact, when I

learned that --

COMMISSIONER SKOP: How do we -- can we move to strike that or what do we want to do.

MR. ANDERSON: We move to strike that, please, as clearly an inadvertent error.

CHAIRMAN ARGENZIANO: So moved.

THE WITNESS: Sorry. When I learned that this employee was -- he was the -- that's a title. "When I learned this employee was leaving the company, I had a meeting with this employee and I showed him the executive steering committee presentations that had the forecast numbers in it as well as the actions that were being taken by the project team. And then I also showed him the documents that we were providing in discovery that had those same forecast numbers in it and he commented to me that, one, he was pleased that I took the time to meet with him, that he was not aware of that information and that he was glad that that information was being shared with the senior executives and being provided to the PSC staff.

COMMISSIONER SKOP: All right. And notwithstanding your difference of opinion with the Concentric Report as identified in your management discussion, Concentric took a different position

and indicated that they found the employee -- allegations in the employee letter and the employee to be credible and that most of the allegations were indeed fact accurate, is that correct, based on the Concentric appeal of their own independent analysis?

THE WITNESS: Mr. Skop, it isn't that I disagree with the Concentric Report. This employee is a good employee. He's credible. He knows what he's doing. And I -- I disagreed with concentric's conclusion in regard to that number being, being final, that number been solid, that number being well vetted and ready -- and ready for reporting. No different than the megawatts. In that regard --

COMMISSIONER SKOP: We'll get to that in a second. Just to follow up on one page of question that Mr. Moyle asked with respect to removal of the EPU senior management team, if you could turn to page 24 of the staff audit report. And staff has a number that's been marked for identification yet on that document.

MR. YOUNG: 178.

COMMISSIONER SKOP: Okay. So the document is mark for identification as document 178 which is the staff audit report for Florida Power & Light's

project management internal controls for nuclear plant operating construction projects.

MR. ANDERSON: Could I pause for a second? I noted an inadvertent reference by the witness to a title. Could we have the same treatment in relation to that?

CHAIRMAN ARGENZIANO: Absolutely?

MR. ANDERSON: Thank you.

CHAIRMAN ARGENZIANO: Absolutely.

COMMISSIONER SKOP: Absolutely.

MR. ANDERSON: Thank you. And I'll just ask that everyone, including our witness, slow down, pay careful, careful attention in relation to the --

COMMISSIONER SKOP: I certainly did not want that to come out, again that the action of that employee was, you know -- again, you want to encourage that type of concerns to come forward when it's appropriate to do so.

Mr. Jones, if I could turn your attention to page 24 of the staff audit report, Commission staff audit report.

THE WITNESS: I'm there.

COMMISSIONER SKOP: Okay. And on that page under section 3.1.2, it discusses EPU management

replacement and restructure. And in response to a line of questioning from Mr. Moyle, I guess you reached different conclusions as to why the EPU or the EPU senior management team was removed. Can I ask you to read the first paragraph regarding the removal of the EPU senior management team on that page, please.

THE WITNESS: Excuse me, which paragraph?

COMMISSIONER SKOP: Okay. Where it begins, "Removal of EPU senior management team." Can I ask you to read that first paragraph, please.

THE WITNESS: "In July 2009, FPL senior management changed EPU project management teams. The significance of this event is that FPL senior management believed the original team was not performing as expected. Senior management believed that a change in EPU management was necessary to ensure the project quality and forecasted costs were not compromised. FPL senior management noted" -- and there's a footnote 3.

COMMISSIONER SKOP: We can skip the footnote.

THE WITNESS: Okay.

COMMISSIONER SKOP: And if you could just keep reading that indented paragraph and then the next sentence after that indented paragraph, please.

THE WITNESS: "Both previously assigned FPL level mangers were no longer involved in the EPU project because FPL Group senior management decided that changes to these leadership positions would enhance FPL's ability to bring the EPU projects to successful completion, promote effective successive planning and talent utilization and improve the quality and timeliness of forecasted project costs."

COMMISSIONER SKOP: Okay. And then the next sentence right after that, please.

THE WITNESS: The next sentence is, "According to FPL, the original management team had not been aggressive in keeping cost estimates from the EPU contractor under control. FPL senior management stated that the original EPU project team was not able to accomplish this. FPL senior management further noted" --

COMMISSIONER SKOP: That's fine. With respect to the indentation part that you previously read, that references FPL Group senior management decided; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. So putting this into perspective, the executive steering committee

held a line-by-line project review -- or line-by-line review of the EPU project on or about July 25th, 2009. Subsequent to that, according to this staff audit report, FPL Group senior management decided to replace the EPU senior management team. And I guess as we stated, Mr. Robo, who was chief operating officer who as you testified requested that line by line and would have attended that meeting, I guess it's interesting that the decision to replace the EPU senior management team seems to have been made at the FPL Group level, not the Florida Power & Light level according to that information. I just picked up on that myself so I thought I'd ask you what your person knowledge may be regarding who made that decision.

And that goes to my previous question about the EPU senior management team seems to be removed immediately after that July 25th, 2009 meeting, or somewhere shortly thereafter.

MR. ANDERSON: Commissioner Skop, I'd ask that the questions more carefully characterize the testimony earlier today. There was no testimony that the entire team, for example, was removed, et cetera.

COMMISSIONER SKOP: Okay. And that's fine. Just the -- it states that, you know -- again, I'm reading what I have before me. I wasn't there, I didn't do the staff internal audit. And again I'm not trying to be inflammatory. I'm trying to have a very constructive discussion.

So Mr. Anderson I do appreciate your comment so we can couch it in the fact that maybe not every person was removed, but certainly there was an event and that event was a line-by-line management review at a meeting that was attended by Jim Robo who is chief operating officer and president of FPL Group at the time, according to your testimony, Mr. Olivera from Florida Power & Light was there, you attended the meeting, and then shortly thereafter, according to this paragraph, FPL Group senior management decided to change the leadership positions that were changed because I think that should tighten that up a bit.

So do you have any personal knowledge of why FPL Group senior management would make that decision in lieu of FPL Power and Light management? Seems to be a lot of people involved in this meeting here on July 25th.

THE WITNESS: Commissioner Skop, as I recall,

the reorganization was announced prior to that July 25th meeting. I know I was certainly approached before that July 25th meeting in regards to FPL Group's senior management. I'm not privy to which of the senior executives were -- were involved in any decision making.

I would like to point out that these two paragraphs are taken from the response that we provided, which is -- is -- we provided several paragraphs and so to just focus in on two could characterize this improperly.

COMMISSIONER SKOP: Okay. Very well. And let me move on on that line. I think that obviously what's important there is the fact that the meeting was held, it was attended by high level executives from Florida Power & Light and also high level executives from FPL Group, and then there was action taken after that.

But let me get back to my point as to your disagreement with the findings of the Concentric Report. And as you previously testified, based upon the line-by-line formal review of the EPU projects that was conducted on July 25th, 2009, there was clear indication that the magnitude of the projected cost estimate had increased

substantially; is that correct?

THE WITNESS: That's correct. The forecast was significantly higher than the original needs filing.

COMMISSIONER SKOP: Okay. And that was known based on -- that was known by both FPL and FPL Group executive management who attended the July 25th, 2009 executive steering committee meeting; is that correct?

THE WITNESS: Yes, Commissioner, that is correct. And as I stated, there was clear direction given and clearly opportunities identified to mitigate that.

COMMISSIONER SKOP: I understand. But I'm talking about the magnitude. Again, end number is going to be what the end number is going to be. But what I'm trying to get at is that there seem to be warning flags or key indicators that, you know, caused management to be replaced and that the cost magnitude of the projected cost estimate had increased substantially, and that gets back to the point of who knew what when and why was that not disclosed in the testimony.

And so my next question is, since we're on a roll here, if the FPL witness who gave testimony on

September 8th, 2009 who attended that meeting on July 25th knew or should have known that there was a clear indication that the magnitude of the projected cost estimate had increased substantially and that witness did not amend his prefiled testimony that was given under oath to the Florida Public Service Commission to reflect this material information, then would it stand to reason that the FPL witness testimony was inaccurate and incomplete?

MR. ANDERSON: I object to the question. It contains numerous, numerous facts and assumptions not in evidence. This is about the third time we've been through all of the details in relation to this July meeting. Mr. Jones has carefully explained the context of all of those numbers and figures. I believe we've been very patient in relation to the provision of Mr. Jones, but we're also crossing over into -- we're -- you know, the -- I believe the questions are not even questions. We're getting paragraph-long statements and characterizations or what could be described as testimony. And that is not proper questioning either, so we object.

CHAIRMAN ARGENZIANO: Commissioner Skop to the

objection and can you phrase questions to be questions?

COMMISSIONER SKOP: Okay. To the objection, the question goes to the heart of the veracity and accuracy of the information provided to the Florida Public Service Commission by FPL witness that gave testimony to this Commission under oath. It requires laying a predicate to determine who knew what when, and based on that predicate that was the result of the Concentric Report which I think I've clearly established the foundation that not only Jim Robo who was president and chief executive officer of FPL Group, but Armando Olivera, based on witness testimony, attended that meeting, the witness before us attended that meeting, and the witness that gave testimony previously to the Commission whose name has been redacted, why, again I accepted the argument but I disagree with it. But the bottom line is we've laid the foundation of who knew what when.

So the person that gave the testimony to the Commission knew or should have known based on this witness's testimony that there was clear indication that the magnitude of the projected cost estimate had increased substantially.

So my question, Mr. Anderson, goes to the very heart in the opinion of this witness is that if the FPL witness gave previous testimony, sworn testimony, and knew what he knew or should have known based on that July meeting, then -- and that witness did not amend his prefiled testimony while under oath to reflect this material information, then I ask the witness merely to opine whether it would stand to reason that the FPL witness testimony that was previously given on September 8th, 2009, was inaccurate and incomplete. I mean, it's lengthy but you to be lengthy to kind of get there. I mean, I'm doing this on the fly.

CHAIRMAN ARGENZIANO: Mr. Anderson?

MR. ANDERSON: The final question itself is absolutely inappropriate. It asks for a legal conclusion of an engineering witness. In addition, the lengthy, lengthy, lengthy prelude and predicate are -- are argumentative and characterizing of one's position. The arguments one associates with an advocate, honestly, and not with a decision maker. I'm being very careful.

COMMISSIONER SKOP: Let me withdraw the question and proffer what the --

CHAIRMAN ARGENZIANO: The question is

withdrawn. And are you going to ask a question?

COMMISSIONER SKOP: The problem here is I don't have the witness that gave his testimony so I can't examine that witness. That witness my understanding is no longer employee of FPL Company.

The problem is also with, you know, some of the deferral thing as time goes on and we defer these items, witnesses leave, time fades, memories fade. So I'm at a little bit of a strategic disadvantage here.

But I would respectfully proffer that the question I'm trying to ask the witness of which he may not have personal knowledge were to establish whether the testimony given under oath was accurate and complete based upon what should have been known from that July 25th meeting. And I'll just move on from that point.

I think that's -- that's the core of the issue, given the fact that the witness -- the witness before the Commission has indicated and responded that, yes, it was true that there was clear indication of the magnitude of the projected cost estimate had increased substantially and that was known by the people that attended the meeting, including the prior FPL witness on July 25th. I

won't belabor the point. I'll move on to my next question.

MR. ANDERSON: We'll note the record speaks for itself as to what the witness said for more than four hours.

COMMISSIONER SKOP: And for the record, I'd also note that you asked the question to the witness as to whether he had any changes to his prefiled testimony.

CHAIRMAN ARGENZIANO: Let's do this. Let's take a break and let's do ten minutes. Thank you.

(Break taken.)

CHAIRMAN ARGENZIANO: I think we're back on. And I want to say something first, and I know Commissioner Graham had indicated -- if you would just allow me to make a couple of comments first I'd appreciate it and then I'll recognize you and then Commissioner Skop.

To the witness, if I could ask you to please, if you're answered -- if you're asked a question, to answer yes or no. And if you feel that you must elaborate, I can understand that and then we'll allow that. But I think that we'll be here till after Christmas if we just continue. But I understand the necessity sometimes that a yes or no

answer is not always the end all. So please let me know. But if you can kind of -- if it's -- if it's possible, please do that.

And the other thing I wanted to say, and it may set us on track to where we need to be, I just wanted to make a comment that I think Commissioner Skop's subject matter that he was asking is something that I am very interested in also and I think it's very pertinent.

And I'm going to read part of this, and that's why I think it's pertinent. I'm not going to go to as whether he's being advocate or not. I think it's very difficult. I didn't hear that, I think it's very difficult to get to where you want to go sometimes. But I want to read part of the report. And I want to make sure before I read part of that report that it is not confidential except for the names, is that correct, and any number amount? Okay. I want to read a part of that very quickly and then make a suggestion, if I may.

And it is on -- let's see if I can find the page -- page 47 of 56 -- I'm sorry, 41. Forty-one. Page 41 where it begins on the bottom next to the last paragraph, "The Concentric investigation also examined the 2009 nuclear cost recovery clause

proceedings to evaluate whether information provided to the FPSC during the proceedings was accurate and consistent with the standards expected for testimony before and submissions made to a regulatory agency. Concentric identified that budget estimate information provided by the vice president of uprates in his May 2009 testimony had changed and the change was not discussed in the hearing. Concentric stated in -- I'm sorry, Concentric stated in its report that, while Concentric agrees that the new analysis confirmed the conclusions of mister blank's testimony, we believe that a -- pick out a number, and I'm not going to go into that -- or percentage increase in the percentage cost of the EPU project, okay, should have been discussed in the live testimony on September 8, 2009.

In an interview with Concentric, FPSC audit staff determined that FPL witnesses are prepared by their attorneys for potential questions that might be asked during the hearing as most witnesses are. During the interview, Concentric agreed that mister blank had participated in a line by line budget discussion with FPL's executive steering committee in July of 2009 and therefore understood that the

budget information provided in May 2009 was indeed incorrect by the time of the hearing on September 8, 2009. Yet, when asked by FPL attorney Anderson if I ask you the same questions contained in your prefiled direct testimony would your answers be the same? Mister blank answered, yes, they would be.

FPSC audit staff and Concentric agree mister blank knew the budget estimate was being reviewed and likely would change. In fact, Concentric states in the investigation report on September 9th, 2009, the PSC was presented with a newly revised forecast that further increased the cost -- did you say the numbers were not -- by 104 million total for both sites. This presentation stated that approximately 30 percent of the total project costs have high certainty.

And the reason I read that, because it is pertinent and it is important to find out what happened there. But can I make the suggestion that possibly this is not the right witness and perhaps the next witness is the person to ask that question?

COMMISSIONER SKOP: I think that the information you read, had I been able to find that,

would have been able to lay a foundation to ask the witness the question without the objection by Mr. Anderson, but I'll yield --

CHAIRMAN ARGENZIANO: The question is, can we ask that question, would you be satisfied with asking that of the next -- the next gentleman is the man who wrote the report. Okay. Explain, please give me an explanation.

COMMISSIONER SKOP: I would not. What I need to do is instead of a lengthy predicate, I need to tighten it up. It's been a long day. But the witness has already testified that there was clear indication that the magnitude of the projected cost estimate had increased substantially. He answered yes to that question.

The Concentric Report indicated, as you stated, that the -- while Concentric agrees that the new -- Concentric agrees that they believe that a $300 million or 27 percent increase in the projected cost of the EPU project should have been discussed during the live testimony of September 8th, 2009.

So my question to the witness is I know why you disagree with the Concentric Report. Okay. And that's on what the final number is going to be.

My question to you, which you've answered yes, is that at that meeting on July 25th, there was clear indication that the magnitude of the projected cost estimate had increased substantially.

So based on that foundation, the question I have to you is, and let me ask one other thing. The passage that Commissioner Argenziano read, is it your understanding from attending that July 25th meeting that that person was in attendance at that meeting, the prior FPL witness?

THE WITNESS: Yes, that person was in attendance at the meeting.

COMMISSIONER SKOP: Okay. So based upon attendance at that meeting and based upon your prior testimony that you just gave, he also would have had a clear indication that the magnitude of the projected cost estimate had increased substantially based upon attending that meeting; is that correct?

THE WITNESS: Yes, Commissioner. Based on being -- not only being in attendance for that meeting but his team had prepared those numbers and that -- that forecast. And also I want to make sure it's clear that reorganizing the project was announced prior to this meeting. And the prior

witness -- we go through a change of management process for an orderly transition. As I described before, we needed to split the EPU project and the other major capital projects apart and you have to have people to run both organizations.

Having said that, the prior witness retained the responsibilities for the preparation for the hearing and had access to that information.

I do need to be -- I do need to say again that that number was not considered a valid number and there was work to be done to -- to validate that number and that's where I disagree with Concentric.

And if I can say one other thing. You asked me a question much earlier in the day about the September 9th presentation and had the forecast changed, and I said, no, the numbers are basically the numbers. And as I look at this passage here, specifically on page 42, and the reference to the $104 million, I want to correct my prior testimony and say the number from July to that time could have -- could have changed. They move month over month.

The point I was trying to make earlier is that the numbers that go in those presentations come right out of the project controls. If you could

visualize a notebook this thick of spreadsheets that roll up to that number, that number from July never goes away, is what I was trying to attest to in regards to the September 9th meeting. You build on that or you subtract from that.

COMMISSIONER SKOP: Let me get back to the question before the Commission. The person whose names are redacted that attended the July 25th, 2009 meeting with you, you just testified that by virtue of the fact that the person attended the line-by-line review, that that person would have had a clear understanding that the magnitude of the projected cost estimate had increased substantially. Again, I'm framing my question not into what the ultimate dollar amount will be but the magnitude and the indicators that the magnitude had increased substantially.

The question I have to you --

MR. ANDERSON: We object even to that -- the predicate. Because what he just said, as I do need to say again, that the number was not a valid number. At every turn, every one of these hypothetical questions which you're asking of this witness is mischaracterizing that vital point.

COMMISSIONER SKOP: Okay. Well, again, the

witness has testified, and we can have the court reporter read it back, Madam Chair, that by virtue of attending the meeting of July 25th, 2009, and by virtue of the line-by-line discussion, there was a clear indication that the magnitude of the projected cost estimate had increased substantially. The witness answered that question yes. I'll be happy to have the court reporter read that back.

The witness also testified that this was known by both FPL and FPL Group executive management who attended the July 25th, 2009 executive steering committee meeting. So I hate to beat this into the thing, but the subtlety here is they're talking about the actual number. I'm talking about indicators to say we've got a problem and the -- the magnitude has changed.

So the question I have -- and Mr. Anderson, you can object to your heart's content -- but the question is this. Based upon the fact that the witness has testified that the magnitude of the projected cost estimate had increased, this is my question. If the FPL witness whose name is redacted knew that the magnitude of the projected cost estimate had increased substantially by virtue

of his attendance at the July 25th, 2009 meeting, and did not amend his prefiled testimony under oath to reflect this material information, then would it stand to reason that his testimony was inaccurate and incomplete?

MR. ANDERSON: We object again to the formulation of the question. You state "and did not amend testimony," et cetera. What you're doing in there is you're wrapping an entire legal opinion which you're asking for this particular person to respond to.

COMMISSIONER SKOP: I don't have the -- Mr. Anderson, to your objection, I don't have the luxury of having the former FPL employee to question them -- question him on that thing. So that's part of the problem here. And again, I can withdraw the question. I think we know the heart of what I'm trying to get at. I'll leave it to staff if they want to go after this or one of the intervenors and try to frame it.

CHAIRMAN ARGENZIANO: Do you want me to --

COMMISSIONER SKOP: Yeah, we can ask staff if they want because I've got a few more questions after that and I'm done.

MR. YOUNG: Commissioner Skop, that's one of

my questions for Witness Reed as relates to the testimony that he -- his Concentric Report that he produced when he talked about it, frankly, in that report as relates to whether the witness from last year was truthful towards -- in his statements towards the Commission.

COMMISSIONER SKOP: And to Mr. Young, I think the point I'm trying to induce from the witness is that the witness testified there was clear indication that the magnitude of the projected cost estimate had increased substantially. And by virtue of the former FPL employee who gave testimony that was at that meeting, then they would have had that same knowledge that the current witness has.

So what I'm trying to get at, if they had the same knowledge and didn't amend their testimony to reflect that material information, then I'm trying to get an answer as to whether their testimony was accurate and complete. And that's -- that's the problem I'm facing here.

And Mr. Reed, I don't know whether he -- the disconnect here is Mr. Reed is not an FPL employee and didn't attend the July 25th meeting.

CHAIRMAN ARGENZIANO: I want to ask counsel a

question. Does a Commissioner as I guess I've seen -- excuse me, Commissioner Skop. I've seen judges ask questions of witnesses all the time and I'd like to know, I guess I'd like to know your opinion on the objection. Commissioner Skop and then --

COMMISSIONER SKOP: Thank you. The point I wanted to make too, Madam Chair, and I apologize for interrupting but it's directly on point -- again Mr. Anderson's objection, I understand his basis. However when it gets down to the veracity of testimony given under oath before the Florida Public Service Commission, you know, I was accused of being an advocate or whatever, I think it's well within my prerogative as a Commissioner for this Commission to determine and make a substantial inquiry as to the accuracy and the veracity of the testimony that was given under oath. So I think we ought to have broad latitude in that regard.

CHAIRMAN ARGENZIANO: Well that's the reason for my question.

MS. HELTON: If I'm understanding Mr. Anderson's objection correctly, I think it's that he thinks in his opinion that perhaps Commissioner Skop is trying to draw some kind of a

legal conclusion out of the witness and the witness is not an attorney.

MR. ANDERSON: Right.

MS. HELTON: Perhaps Commissioner Skop could phrase his question --

CHAIRMAN ARGENZIANO: That's what I was going to ask you. Could it be phrased different or do you have to be an attorney to answer that question?

MS. HELTON: Well I was going to give a suggestion just for Commissioner Skop perhaps to phrase his question, all legalities aside, in his opinion, was the testimony given in the 2009 proceeding accurate based on the information that was learned in that meeting.

CHAIRMAN ARGENZIANO: That would get to the same point. Commissioner Skop?

COMMISSIONER SKOP: Thank you, Madam Chair.

And again, Mr. Jones, I'm not asking for your legal conclusion and I'm not asking for you to articulate the reason why you disagree with the Concentric Report. What I'm asking is in relation to actual knowledge that there was clear indication that the magnitude of the projected cost estimate had increased substantially as you testified to, whether the prior witness who knew that same

information should have amended his testimony and -- should have amended his testimony to include that material information.

MS. HELTON: Madam Chairman and Commissioner Skop, I think the problem is whether he should have amended his testimony. I don't think -- and I have to say, I agree with Mr. Anderson there that I'm not sure that this witness would have any basis upon which to know whether his testimony should be amended or not. I think it is a fair question, however, to ask in his opinion, was --

CHAIRMAN ARGENZIANO: I'd ask in his opinion.

COMMISSIONER SKOP: Mr. Jones, let me ask two questions as a follow-up to that. First, if you were similarly situated based on attending that meeting in July 25th, 2009, and you knew based on your testimony there was clear indication that the magnitude of the projected cost estimate for the EPU had increased substantially as you testified to, then if you were appearing to testify before this Commission, would you have found it appropriate to amend your testimony to include the fact that the magnitude of the projected cost estimate had increased?

THE WITNESS: I don't know, because you're asking me really --

CHAIRMAN ARGENZIANO: Answer yes or no.

THE WITNESS: I do not know.

CHAIRMAN ARGENZIANO: Okay.

COMMISSIONER SKOP: All right. On that same thought, if the FPL witness that provided live testimony on September 8th, 2009, who attended that meeting with you and also based on your testimony should have had a clear indication that the magnitude of the projected cost estimate had increased substantially by virtue of attending that meeting, in your opinion should that witness have amended his testimony to reflect that material information?

MR. ANDERSON: Same objection. Same objection. In fact, just to be -- you know, Ms. Helton I think formulated an unobjectionable question. The fundamental problem with these questions is they have these front-end predicates which are, are not right.

COMMISSIONER SKOP: Why don't I defer to our legal staff to ask an unobjectionable question in that same line and then I'll continue my questions if I have more thought out.

MS. HELTON: Since I'm here in an advisory capacity, I don't feel comfortable asking the question. Perhaps Mr. Young or Ms. Bennett could remember the question that I suggested to Commissioner Skop and they can ask it.

MR. YOUNG: Madam Chairman, if Commissioner Skop can repeat the question and I can go from there.

CHAIRMAN ARGENZIANO: Well, wasn't it a little something like in your opinion --

MR. YOUNG: Okay. I got it.

CHAIRMAN ARGENZIANO: I think you have it.

MR. YOUNG: In your opinion, should the FPL witness should have amended his testimony?

CHAIRMAN ARGENZIANO: Well, you just asked the question. Mr. Jones, he just asked the question.

COMMISSIONER SKOP: Mr. Jones, should the FPL witness --

CHAIRMAN ARGENZIANO: In your opinion.

COMMISSIONER SKOP: -- in your opinion have amended his testimony, period? Yes or no?

THE WITNESS: No.

COMMISSIONER SKOP: Why? Based on the fact that he had a clear understanding of the magnitude that the projected cost estimate had increased

substantially as you testified by attendance at the meeting.

THE WITNESS: He clearly had, as I stated earlier, knowledge of the change in the forecast as well as he clearly had knowledge of all the opportunities in regards to mitigating that forecast and he clearly had knowledge of all project activities that were going and he clearly had knowledge of all the directions from senior management to -- to mitigate such to reduce that.

And so, therefore, I don't want to speak to the state of his -- his mind. But one could conclude that he knew that that was not a valid, acceptable number. No different than the increase in megawatts.

The position that you put me in is when I think about prudence, is I have the benefit of hindsight for where the project is now. And so therefore it is hard for me to -- to transport myself exactly back in time other than going back and looking at the facts at the time which I just stated.

CHAIRMAN ARGENZIANO: I have a question because now that brings up a question that I have.

In your opinion, knowing that -- that

individual whose name is confidential understood that the budget information -- and I'm going to read it right from the line here -- understood that the budget information provided in May 2009 was indeed incorrect by the time of the hearing, do you still think -- is your opinion still no, that he shouldn't have amended even though he knew it was incorrect?

THE WITNESS: And I think the chairman is reading from the Concentric conclusion as opposed to anything the witness talked about.

CHAIRMAN ARGENZIANO: Yes, I did read from the Concentric.

MR. ANDERSON: Yeah. And Mr. Jones, you know, you can -- I just ask that you specify what you're reading from so that the source --

CHAIRMAN ARGENZIANO: Oh, I'm sorry, if I didn't say that -- I thought I said it was from the report. If I didn't, it was from the Concentric Report that I just read in the entirety, that paragraph.

MR. ANDERSON: Could you indicate the page and line if you want him to look at it?

CHAIRMAN ARGENZIANO: Certainly.

MR. ANDERSON: Because remember he --

CHAIRMAN ARGENZIANO: Page 42, and I couldn't count the line. You'll have to look. It's the first paragraph.

MR. YOUNG: Excuse me, Madam Chairman. I think it's staff audit that you're looking at.

CHAIRMAN ARGENZIANO: Yes, I'm sorry. I'm talking about the Concentric Report, and yes, it is the staff audit. I'm sorry. And I hope that's the way I identified the first time when I read it. If not, I will make that correction now.

MR. ANDERSON: May I just check that the witness have the -- does have the page and the report in front of him because that helps a lot.

CHAIRMAN ARGENZIANO: The page is 42 and it is the top paragraph beginning with "in an interview."

MR. ANDERSON: Thank you. I appreciate that.

CHAIRMAN ARGENZIANO: Thank you. I didn't realize I had made that mistake. Thank you.

THE WITNESS: (Examining document.)

CHAIRMAN ARGENZIANO: Where it indicates that --

THE WITNESS: Yes, I'm with you.

CHAIRMAN ARGENZIANO: Okay. I think the fifth line down. And I'm just simply asking if knowing that, that line where it does read "understood that

the budget information provided in May 2009 was indeed incorrect," dot, dot, dot, that your opinion would still remain the same that no, he should not have amended his comments in his report?

THE WITNESS: Yes, my opinion remains the same.

CHAIRMAN ARGENZIANO: Okay.

THE WITNESS: I read this and this is someone's opinion in regards to correct or incorrect.

CHAIRMAN ARGENZIANO: Thank you. Commissioner Skop, did you have any another questions?

COMMISSIONER SKOP: Yeah, a few more questions. Mr. Jones, to the Chairman's prior question that you disagree with, those are the findings of Concentric which was independently -- I mean which was retained to provide independent analysis of the facts associated with the accuracy of information provided to the Florida Public Service Commission; is that correct?

THE WITNESS: Yes, Commissioner, that's correct.

COMMISSIONER SKOP: Okay. And they take a different conclusion based upon their own

independent analysis than -- than -- that you disagree with, correct?

THE WITNESS: Yes, that's correct.

COMMISSIONER SKOP: All right. Just a few more questions.

Mr. Jones, as part of a April 2nd filing with the Securities & Exchange Commission, that AKFD disclosure contained a letter dated April 2nd that was directed to Team. And as an employee of Florida Power & Light Company, did you receive a copy of that letter that appears to be sent to employees regarding the anonymous employee letters?

MR. ANDERSON: What document is this again, please?

CHAIRMAN ARGENZIANO: Can you repeat that, Commissioner Skop?

COMMISSIONER SKOP: Okay. I'm asking if Mr. Jones received a copy of an April 2nd letter from Mr. Hay to Team related to the anonymous employee letters? And that was filed as attachment to a Securities Exchange filing, AK under regulation FD on April 2nd, 2010.

CHAIRMAN ARGENZIANO: Mr. Anderson, do you need a minute to get it?

MR. ANDERSON: I do. But I -- but I'm puzzled

because this involves in no respect the nuclear cost recovery clause or anything we've talked about.

COMMISSIONER SKOP: I believe, Madam Chairman --

MR. ANDERSON: If there's no foundation for it, there's no relation of this to any issue, you know --

COMMISSIONER SKOP: Let me attempt to lay a foundation. As an FPL employee, did you receive a letter from Mr. Hay directed to Team on April 2nd, 2010 that addressed the subject of anonymous employee letters?

THE WITNESS: Commissioner Skop, if I can see the letter, I would feel more comfortable answering the question.

COMMISSIONER SKOP: We need to make a copy real quick, so if we can hold in place.

CHAIRMAN ARGENZIANO: Okay. Let's get a copy. He needs to be able to see that letter. Do we have an extra copy that -- okay. Do you have a different question you may get to while we're doing that?

COMMISSIONER SKOP: Again, my different -- my next question --

CHAIRMAN ARGENZIANO: Pertains to that? Okay.

COMMISSIONER SKOP: Yeah, I'm laying the foundation for my final question.

CHAIRMAN ARGENZIANO: Okay. Then we're on kind of an informal recess until the copy gets made. Anybody needs to -- remember, in --

COMMISSIONER SKOP: Highlights, I don't know how that got done.

COMMISSIONER EDGAR: Madam Chairman, I'm not sure we're back on the record or our court reporter was ready, so --

CHAIRMAN ARGENZIANO: Okay. Thank you. Are we all ready? That's the question I had asked if -- okay. We're ready. We're back on.

COMMISSIONER SKOP: Madam Chair, I'm not so sure that the copies we passed out -- again, the intent was to make copies without the highlights so again I'm not sure how that got highlighted. But --

CHAIRMAN ARGENZIANO: Does it matter?

COMMISSIONER SKOP: I don't believe it matters but it may warrant the objection that can otherwise by cured by having an un-highlighted copy of the document put before for purposes -- Mr. Jones, I want to give you a minute to review this letter

that was dated April 2nd, 2010 address to Team that was attached as part of an AK filing under regulation FD that was filed with the Securities & Exchange Commission on April 2nd, 2010. Do you see that letter?

THE WITNESS: I have the letter, yes.

COMMISSIONER SKOP: As an FPL employee, did you receive a copy of that letter that was directed to Team?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. Thank you.

The first highlighted section at the bottom of the page --

MR. ANDERSON: We do not have highlights, Commissioner Skop.

COMMISSIONER SKOP: Okay. I don't know what's been passed out and what hasn't been passed out --

CHAIRMAN ARGENZIANO: I do, so --

MS. HELTON: While we're kind of interrupted, maybe it might be good if we can just go ahead for purposes of a clear record, give this an exhibit number for identification.

COMMISSIONER SKOP: Well, my preference would be to enter into the record an un-highlighted copy of the letter. That was my intent but I couldn't

seem to get the copies --

CHAIRMAN ARGENZIANO: Can we do that afterwards?

COMMISSIONER SKOP: I think we can do that afterwards. So, I mean, the highlight is not intended to be on the document. Okay. That was my own personal highlight to attract my attention to a position on the page.

All right. Mr. Johns, you testified that you received a copy of this letter dated April 2nd, 2010, from Mr. Hay who is the chairman and CEO of FPL Group. And the last paragraph on the first page, can you read the first sentence of that paragraph, please, beginning with the words "we are proud"?

THE WITNESS: Yes. We are proud of the quality of major company processes for validating the accuracy of information we furnish to our external stakeholders --

COMMISSIONER SKOP: Keep going.

THE WITNESS: I think I was going a little fast.

COMMISSIONER SKOP: Okay. Can you --

MR. ANDERSON: Yeah. At this time I'd like to go ahead and interpose an objection. This letter

does not come within 100 yards of the testimony of this witness. This witness did not write the document, did not participate in the preparation of the document. It relates in no way to any issue of the NCNR proceeding. And yes, looking at this letter, we are proud that the quality of our company processes for validating the accuracy of the information we furnish to external shareholders. Yes, that's absolutely true. But has absolutely nothing to do with this proceeding or this case and we go farther and farther afield as the hours proceed.

COMMISSIONER SKOP: Madam Chairman, to the objection I respectfully disagree. I'm laying a foundation to ask the witness a question -- a question that the witness would have direct personal knowledge of in relation to an employee letter.

So again I'm laying the foundation between the letter that Mr. Hay sent to employees on April 2nd, 2010 that was part of the Securities & Exchange Filing which the witness has testified as FPL employee he received a copy of. That is critical to the question that I'm going to ask on my subsequent questions. So I'm merely laying a

foundation to avoid an objection. I think I should be given broad latitude because it pertains to the witness's opinions and some of the veracity of statements that have been made to the Florida Public Service Commission.

MR. ANDERSON: I'd like a ruling.

CHAIRMAN ARGENZIANO: Legal counsel --

MR. ANDERSON: I'm sorry. Two things. Constructively, I suggest just asking that question then. We do object to this document and we'd ask for a ruling.

CHAIRMAN ARGENZIANO: Legal counsel to the objection and to Commissioner Skop's purpose for laying the foundation and could the question be asked without the document? No, I didn't think so. Okay.

MS. HELTON: Madam Chairman, my recommendation is to go a little bit further down this line and see where we're going and allow Commissioner Skop to ask the next question or two. And if we haven't reached the point where it all comes together, then maybe we can revisit it.

CHAIRMAN ARGENZIANO: Well, we have an objection.

MS. HELTON: To do that, you'd have to

overrule the objection at this time.

CHAIRMAN ARGENZIANO: Well, at this time I'll overrule the objection and, Commissioner Skop, if you can move us down the line.

COMMISSIONER SKOP: Thank you. Mr. Jones, the first paragraph on that letter that you testified that you received on or about April 2nd, 2010, can you read the full sentence beginning with the word "we" of that last paragraph, please.

THE WITNESS: We're proud that the quality of major company processes for validating the accuracy of information we furnish to our external stakeholders continues to satisfy scrutiny.

COMMISSIONER SKOP: Okay. Thank you. With respect to the employee complaint letter that you indicated that you were interviewed regarding and that you had seen a copy of which the name of the person remains confidential, the April 2nd letter deals with the anonymous employee complaints. The employee letter of February 19th, 2010, deals with the actual redacted name of an employee who made the complaint.

And the question that I would like to ask on the employee letter in the Concentric Report that you talked about there previously and I'll want to

ask you, that employee letter which was in parallel with -- you know, which was sent to FPL Group management prior to the April 2nd being sent to the team, there was an investigation conducted. But the concerns expressed in the employee letter indicated concern about how FPL would report findings of upcoming PSC hearings and that any information from the EPU other than which was presented to management last summer will be a manipulation of the truth. Okay?

So my question based upon your knowledge of the employee letter and its concerns and the existence of that letter and the existence of the findings of the Concentric Report which you may or may not agree with, but --

CHAIRMAN ARGENZIANO: Is there a question?

COMMISSIONER SKOP: The question. I'm trying to look at my small notes.

CHAIRMAN ARGENZIANO: Okay.

COMMISSIONER SKOP: My question is, as it pertains to the accuracy of the information provided to the Florida Public Service Commission -- let me see. Hold on. I want a minute.

The common element between the anonymous

letters and the employee letter of February 19th, 2010, one common element again seems to be pertaining to the accuracy of information provided to the Florida Public Service Commission.

My question is, based upon the existence of the employee letter dated February 19th, 2010 and the subsequent findings of the Concentric Report which brought into question the veracity of statements made under oath to the Florida Public Service Commission, did it occur to you that the employee complaint letter dated February 19th, 2010 should be made public?

MR. ANDERSON: We object to that question. That is a multi, multi, multi-part question. I couldn't even begin to follow it. I think if the information which is desired to be elicited of the witness asks a direct question of the witness, there is -- look at the basic predicate of that. It began with "the common element between anonymous letters and this letter were X." There was no even discussion or foundation that the witness even read the common letter. So I just would suggest asking plain, simple questions.

COMMISSIONER SKOP: Okay. I'll reframe the question.

CHAIRMAN ARGENZIANO: Commissioner Skop, if you can reframe the question and then I think -- then I think I'm going to make a decision for the rest of the day.

COMMISSIONER SKOP: All right. Thank you.

Mr. Jones, you've read the employee complaint letter dated February 19th, 2010 that was addressed to Mr. Hay; is that correct?

THE WITNESS: Yes, I have.

COMMISSIONER SKOP: Okay. And a concern expressed in that letter is the accuracy of information and how information would be reported to the Florida Public Service Commission, is that not correct? That one of the allegations in that letter has that very concern in it?

THE WITNESS: Yes. It states that it's a concern about how FPL would report these findings at the upcoming PSC hearings.

COMMISSIONER SKOP: Okay. And the finding of the Concentric Report which you disagree with, but the finding of the Concentric Report which was prepared independently concludes that the witness should have amended his testimony to address a $300 million or 27 percent cost escalation at the September 8th, 2009 hearing, correct?

MR. ANDERSON: I suggest that the -- I ask that the witness be pointed to the specific portion of the report rather than have it paraphrased.

COMMISSIONER SKOP: Okay. Very well. On the -- let's go to the staff audit report because it's quicker that way. And what's the -- 178, Mr. Young? Hey, guys.

CHAIRMAN ARGENZIANO: I think it was 178; is that correct, the staff audit report?

MS. HELTON: Yes, ma'am, that's my recollection, 178.

COMMISSIONER SKOP: If we go to what's been marked for identification as Exhibit 178, and I believe it's on page 41 of the staff audit report --

CHAIRMAN ARGENZIANO: Everybody there? Okay.

COMMISSIONER SKOP: Okay. Can you read the last paragraph on page 41 of the staff audit report?

THE WITNESS: The inset?

COMMISSIONER SKOP: Yes.

THE WITNESS: While Concentric agrees the new analysis confirmed the conclusions in mister blank's testimony, we believe that a $300 million or 27 percent increase in the

projected cost of the EPU project should have been discussed in the live testimony on September 8, 2009.

COMMISSIONER SKOP: All right. Would you agree that the Concentric finding deals with the veracity of the testimony given to the Florida Public Service Commission for that witness?

MR. ANDERSON: Object. The document speaks for itself and he's asking the wrong witness.

CHAIRMAN ARGENZIANO: Perhaps it should be the other witness?

COMMISSIONER SKOP: I'll try to reframe.

Mr. Jones, based upon reading the Concentric finding at the bottom of page 41 of the staff audit report which has been marked for identification as Exhibit 178, does that not relate to how information is provided to the Florida Public Service Commission?

THE WITNESS: Yes. This paragraph is in that context.

COMMISSIONER SKOP: Okay. And that was a concern in the employee letter dated February 19th, 2010, correct, the letter that you read?

THE WITNESS: No, Commissioner. I believe the employee stated in the upcoming Florida Public

Service Commission hearings.

COMMISSIONER SKOP: But the general concern was the accuracy of information provided in the Florida Public Service Commission; is that correct?

MR. ANDERSON: I would object. That letter speaks for itself, and I believe the witness has accurately characterized exactly what it does say.

CHAIRMAN ARGENZIANO: Commissioner Skop?

COMMISSIONER SKOP: I was looking to get an answer from the witness but I will take Mr. Anderson's comments as an objection. Is that correct, Mr. Anderson?

CHAIRMAN ARGENZIANO: He objected.

COMMISSIONER SKOP: Okay.

CHAIRMAN ARGENZIANO: Can you ask a different question or rephrase?

COMMISSIONER SKOP: I will try to rephrase to avoid an objection.

Mr. Jones, based on the February 19th employee letter, did the employee express concerns regarding how information would be provided to the Florida Public Service Commission?

THE WITNESS: Yes, Commissioner. He states that he is concerned about how FPL will report these findings at the upcoming PSC hearings.

COMMISSIONER SKOP: And you've read the finding of the Concentric Report as it pertains to the testimony given by the name of the redacted FPL witness; is that correct?

THE WITNESS: Yes, I have.

COMMISSIONER SKOP: Okay. And that concerns the accuracy of the information provided to this Commission; is that correct?

THE WITNESS: Yes, it does.

COMMISSIONER SKOP: Okay. So does not the finding of the Concentric Report and the employee letter dated February 19th, 2010 not stand in sharp contrast to the statements made in the letter sent to employees on April 2nd, 2010 with respect to the accuracy of information furnished to external stakeholders that continues to satisfy scrutiny?

MR. ANDERSON: That's an -- objection. That's an inappropriate question for this witness.

COMMISSIONER SKOP: All right. It's getting late in the day. I think I've made my point so I'm going to --

CHAIRMAN ARGENZIANO: Commissioner Skop, here's what I'm going to do because it is late in the day. I really hoped that we could get through this today. But unfortunately people are tired and

I can see that maybe some people maybe just need to take a break away from here. And I do have several questions for Mr. Reed coming up. So I don't think that any of us need to stay here till nine, ten o'clock tonight. Unfortunately, I was hoping we could get it done today, but I don't think that's going to happen.

So I suggest that we recess until tomorrow morning at 9:30. I'm sorry, did I forget to do anything?

MR. KISER: I'm just not clear. What's the status of this witness?

CHAIRMAN ARGENZIANO: Well, we didn't excuse him so he has to sit here all night. I'm only kidding. No. I think, I think -- Commissioner Skop, were you done with questions for this witness?

COMMISSIONER SKOP: I'm done unless staff or redirect or anything.

CHAIRMAN ARGENZIANO: Any other questions for the -- so we will excuse Mr. Jones. Thank you.

COMMISSIONER SKOP: Thank you, Mr. Jones.

MS. HELTON: Unless do you all have redirect?

COMMISSIONER SKOP: And then staff will move in the other exhibits that we marked at a later

point in time; is that correct?

CHAIRMAN ARGENZIANO: And might I -- might I do this. Just a little change because I forgot something. Can we start at 9:45 tomorrow rather than 9:30? Is there any problem with doing that? 9:45 tomorrow morning. Thank you.

(Hearing adjourned.)

* * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, LORI DEZELL, RPR, CCR, certify that I transcribed the video and audio of the aforementioned proceedings, and that the transcript is a true and complete transcription of the proceedings to the best of my ability to hear and understand.

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.

WITNESS my hand and official seal this 1st day of September, 2010.

LORI DEZELL, RPR, CCR
2894-A Remington Green Lane
Tallahassee, Florida 32308
850-878-2221

EXHIBIT 3

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

UNDOCKETED

FPL SUSPENSION OF CAPE CANAVERAL AND RIVIERA BEACH CONVERSION PROJECTS.
_____/

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 17

COMMISSIONERS PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, March 2, 2010

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

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

Cape Canaveral and Riviera Beach need determinations specifically required the reporting of annual costs, and in that order, annual reporting of costs, FPL has agreed that it will report on an annual basis budgeted and actual costs compared to the estimated total in service cost of the proposed WEC 3, Cape Canaveral and Riviera units, the report shall be submitted to the Director of the Division of Economic Regulation. In addition, FPL has also agreed that a different combustion turbine design from one presented in the proceedings is chosen, FPL will report to us regarding the comparative cost advantage of the alternative design chosen. Such a selection would only be made if the projected cost to FPL customers would be lower as a result of using an alternate design.

COMMISSIONER EDGAR: Commissioner Skop, you are going way too fast for me, and I'm thinking maybe a little fast for the court reporter. Could you read that last paragraph or two again for both of our benefits.

COMMISSIONER SKOP: I'll start over with this section. Furthermore, the Commission order for the Cape Canaveral and Riviera Beach need determinations specifically required the annual reporting of costs. And in that order, FPL has agreed that it will report

on an annual basis budgeted and actual costs compared to the estimated total in-service cost of the proposed WEC 3, Cape Canaveral, and Riviera units. The report shall be submitted to the Director of the Division of Economic Regulation.

In addition, FPL also agreed that if a different combustion turbine design from the one presented in these proceedings is chosen, FPL will report to us regarding the comparative cost advantage of that alternate design chosen. Such a selection would only be made if the projected cost to FPL customers would be lower as a result of the use of the alternate design.

FPL was late in filing that annual report. In fact, it was filed upon staff request on February 25th. The report as filed was incomplete. It had no actual cost data for the Riviera Beach or Cape Canaveral conversion projects. FPL subsequently resubmitted this information, which was filed yesterday, and the resubmitted report lacked sufficient detail to ascertain what the specific AFUDC costs would be as they have been incurred to date. So I would ask staff to get with FPL to resolve those discrepancies, to give a little better insight as to what charges are being accrued in support of the

recommendation I've requested.

In closing, constructive regulation requires a framework of mutual respect. Unfortunately, as FPL's conduct clearly demonstrates, we're not there yet. While FPL is certainly free to diminish its future earnings potential by failing to make additional investments to plant, property, and equipment, the question of whether FPL ratepayers should continue incurring carrying costs for projects that -- excuse me -- the question of whether FPL ratepayers should continue incurring carrying costs for projects that FPL unilaterally suspended remains to be answered.

Thank you, Madam Chairman, and I'd like to thank my colleagues for your time.

CHAIRMAN ARGENZIANO: Commissioner Stevens.

COMMISSIONER STEVENS: Madam Chair, did we -- did staff notice FPL that this was going to be on the agenda today?

CHAIRMAN ARGENZIANO: Mary Anne.

MS. HELTON: Sorry. I'm having a hard time getting to the button.

When I learned from Commissioner Skop that he wanted to have this item added to the agenda, I went to the Chairman's Office and filled out the

but in the interim, again, I'm questioning whether it's appropriate for ratepayers to continue to incur interest on the approximate $9 million that has already been spent to date, assuming the FPL report is accurate. And, again, I would look to staff to provide that recommendation.

CHAIRMAN ARGENZIANO: Mr. Butler.

MR. BUTLER: Thank you, Madam Chairman.

I just wanted to advise the Commission -- I just confirmed that FPL, it has suspended the accrual of AFUDC. The last AFUDC was recorded in December 2009, so we are not recording it for January, they are not recording it for February, and it will not recommence.

You know, I really can't speak to when it would recommence. It obviously depends on what happens with the suspension, and there's lots of factors there, but I can confirm to you that there has been no AFUDC recorded in 2010, and that's the status of it today.

CHAIRMAN ARGENZIANO: Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair.

And thank you, Mr. Butler, for clarifying that. Again, pursuant to Commission rule, FPL has six months to advise the Commission and submit proposed

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 19th day of March, 2010.

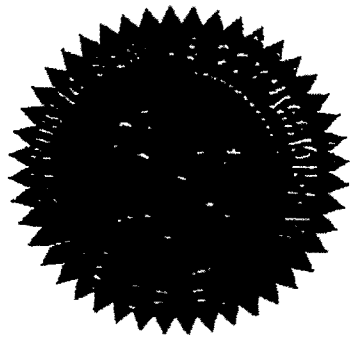
JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

EXHIBIT 4

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090109-EI

PETITION FOR APPROVAL OF SOLAR ENERGY POWER PURCHASE AGREEMENT BETWEEN TAMPA ELECTRIC COMPANY AND ENERGY 5.0, LLC.
_____/



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 13

COMMISSIONERS PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, February 9, 2010

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

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

MR. BALLINGER: The answer is yes. And I would say, also, that is above and beyond avoided cost already. So even at a lower -- at the cost at the levelized cost of this contract that we calculated at 22.4 cents, that would still be, in my mind, TECO's ratepayers paying more for this energy than --

COMMISSIONER SKOP: I understand that, and I supported the staff recommendation that was not to limit it to avoided cost. I was comfortable with that. The Commission chose to go beyond that, and I was comfortable with that, too. What I'm not comfortable with, if I'm getting out there on a limb, in light of going beyond the expressed mandate of the Florida Legislature for 110-megawatts statewide, because that was supposed to be used to evaluate whether this was feasible, it was a feasibility analysis, it wasn't a broad open the floodgate, do whatever you want, Florida Public Service Commission.

You know, 110 megawatts, rightfully or wrongfully was fully subscribed by FPL. They gobbled it all up, okay. So it didn't leave anything for TECO and Progress, and I'm sympathetic to that. But what I'm saying is there is a difference between a purchased power agreement or a power purchase agreement that this contract is and building it yourself, and that is what

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 22nd DAY OF FEBRUARY, 2010.

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

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