

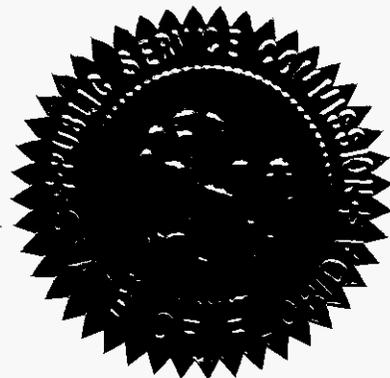
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

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

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



VOLUME 1

Pages 1 through 105

PROCEEDINGS: HEARING  
BEFORE: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP  
DATE: Monday, September 21, 2009  
TIME: Commenced at 9:48 a.m.  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
REPORTED BY: LINDA BOLES, RPR, CRR  
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## I N D E X

	NAME:	PAGE NO.
1		
2		
3	<b>OPENING STATEMENTS:</b>	
4	MR. GLENN	42
5	MR. REHWINKEL	54
6	MR. WRIGHT	65
7	MS. ALEXANDER	74
8	MS. VAN DYKE	77
9	MR. BREW	78
10	MR. MOYLE	81
11	MS. BRADLEY	88
12		
13		
14	<b>CUSTOMER TESTIMONY:</b>	
15	MIKE NEPOTE	
16	Direct Statement	96
17		
18		
19		
20	CERTIFICATE OF REPORTER	105
21		
22		
23		
24		
25		

	EXHIBITS		
	NUMBER:	ID.	ADMTD.
1			
2			
3	1 Comprehensive Exhibit List	27	27
4	2 Service Hearing Exhibit 2	29	29
5	3 Service Hearing Exhibit 3	29	29
6	4 Service Hearing Exhibit 4	29	29
7	5 Service Hearing Exhibit 5	29	29
8	6 Service Hearing Exhibit 6	29	29
9	7 Service Hearing Exhibit 7	29	29
10	8 Service Hearing Exhibit 8	29	29
11	9 Service Hearing Exhibit 9	29	29
12	10 Service Hearing Exhibit 10	29	29
13	11 Service Hearing Exhibit 11	29	29
14	12 Service Hearing Exhibit 12	29	29
15	13 Service Hearing Exhibit 13	29	29
16	14 Service Hearing Exhibit 14	29	29
17	15 Service Hearing Exhibit 15	29	29
18	16 Service Hearing Exhibit 16	29	29
19	17 Service Hearing Exhibit 17	29	29
20	18 Service Hearing Exhibit 18	29	29
21	19 Service Hearing Exhibit 19	29	29
22	20 Staff's Stipulated Composite Exhibit - 20	30	30
23			
24	262 Staff's Stipulated Composite Exhibit	30	31
25			

EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

NUMBER:	ID.	ADMTD.
263 Document Submitted by Customer Mike Nepote	101	

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

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2           **CHAIRMAN CARTER:** Now let's convene the  
3 technical portion. We've had the notice read, we've had  
4 the appearances taken. Staff, preliminary matters?

5           **MS. FLEMING:** Yes, Chairman, there are several  
6 preliminary matters to take up. And if you'd like, we  
7 could take them up one at a time.

8           **CHAIRMAN CARTER:** Okay. Let's do that.

9           **MS. FLEMING:** The first one that was  
10 identified, I just wanted to make the parties aware that  
11 OPC and the Intervenors filed a motion to reschedule the  
12 evidentiary hearing or request alternative relief. I  
13 wanted to make the parties aware that the Prehearing  
14 Officer ruled on this motion and a copy of this order  
15 has been provided to the Commissioners and the parties.

16           **CHAIRMAN CARTER:** Okay. Mr. Moyle.

17           **MR. MOYLE:** I just received this order this  
18 morning, but the last paragraph states that the revised  
19 load and sales forecast information and study shall only  
20 be used to rebut issues raised in the testimony of the  
21 Intervenors regarding the impact of lower sales and  
22 shall not be used as the basis for claiming additional  
23 revenue requirements in this proceeding.

24           It's my understanding that this information  
25 was put in in rebuttal specifically to rebut positions

1 that were asserted by a FIPUG witness, Mr. Marz. And we  
2 would like to withdraw the portions of his direct  
3 testimony that's being rebutted to take this issue off  
4 the table. And for the record, that would be on Page 7,  
5 Lines 15 through 20, and Page 8, Lines 1 through 9. So  
6 if that, if that comes off the table, then, then there's  
7 nothing to rebut and this issue is effectively dealt  
8 with that way.

9 **CHAIRMAN CARTER:** Thank you.

10 Commissioner Skop.

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

12 In response I guess to Mr. Moyle's comment,  
13 had the intervening parties stated that in their  
14 pleading, I would have likely stricken the testimony for  
15 both sides. But it did not seem fair in response to a  
16 question that was propounded by OPC to strike only the  
17 company's testimony, and I sought to limit that just to  
18 be rebuttal to the testimony that was raised.

19 So if Mr. Moyle has proposed striking the  
20 Intervenors' testimony, I see no reason why the revised  
21 filing would be required. But I just wanted to state my  
22 views, and that was a new revelation to me.

23 **MR. MOYLE:** I'm sorry. We've been running  
24 hard and fast. I thought we were going to have a -- I  
25 wasn't aware this ruling was going to come out. I

1 thought it was going to be handled as a preliminary  
2 matter. I was going to bring it up then. So my  
3 apologies.

4 **CHAIRMAN CARTER:** Okay.

5 **MR. REHWINKEL:** Mr. Chairman, if I may be  
6 heard.

7 **CHAIRMAN CARTER:** Mr. Rehwinkel, yes, sir.

8 **MR. REHWINKEL:** And I appreciate what the  
9 Prehearing Officer has advised. Part of what Mr. Moyle  
10 brought up was, just was learned in a deposition taken  
11 Friday afternoon, I believe --

12 **MR. MOYLE:** Yeah. Friday.

13 **MR. REHWINKEL:** -- of Mr. Crisp, whose  
14 testimony rebuts Mr. Marz's. So we only then learned  
15 the scope of what the company, at least that witness  
16 said was the scope of his effort to rebut using that  
17 testimony.

18 On looking at this document over the weekend,  
19 I did notice there's a date on it of June 15th, the  
20 document at issue. The discovery that this was  
21 purportedly in response to was due on May 13th. In  
22 Florida the Rules of Civil Procedure do not impose upon  
23 a party the obligation to respond -- they don't have a  
24 continuing obligation to respond to discovery in the  
25 sense of after-produced documents or created documents

1 or answers.

2 This is not a document that existed on  
3 May 13th, 2009. The company's propounding or responding  
4 to the discovery we propounded on June 17th was well  
5 after their obligation to respond to discovery. So --  
6 and also looking at the petition of the company, on Page  
7 16 in Paragraph 32, they state, "Because of the inherent  
8 uncertainties associated with forecasting future  
9 economic trends and their impact on retail sales, PEF  
10 requests that the Commission allow PEF to update its  
11 current sales forecast prior to or at the hearings  
12 scheduled in this proceeding and adjust, if necessary,  
13 its existing forecast based on changes and the extent of  
14 economic recovery expected in 2010."

15 So I raise these in the sense, in, with the  
16 purpose of seeking clarification about the scope of the  
17 order. We -- I think what the Prehearing Officer has  
18 stated is, is fair, and that what he would have done had  
19 some of these facts been brought before them -- before  
20 him. We would just like to make sure that -- and I  
21 guess I raise this in the sense of an ore tenus motion  
22 in limine is that if, if it is as it's stated, that it's  
23 only intended to rebut Mr. Marz and Mr. Marz's testimony  
24 is effectively withdrawn, we should not hear any more  
25 about this document or the forecast in response to

1 questions or testimony in this case. And we would hope  
2 that that's the scope or the intent of the order as it  
3 stands now, and what we don't know is exactly what the  
4 company's intent in that regard is.

5 **CHAIRMAN CARTER:** Thank you, Mr. Rehwinkel.

6 Ms. Helton.

7 **MS. HELTON:** Mr. Chairman, I think this is one  
8 we need to hear from the company first, if you don't --

9 **CHAIRMAN CARTER:** Okay.

10 Mr. Glenn -- or Mr. Melson, good morning to  
11 you.

12 **MR. MELSON:** Good morning. Mr. Moyle is  
13 correct. As we indicated in our motion, the updated  
14 forecast was filed in rebuttal to Witness Marz. If he  
15 withdraws that portion of Witness Marz's testimony, then  
16 it seems to me we would be in a position to withdraw the  
17 rebuttal to it.

18 And just in response, and it's a nonissue at  
19 this point, Mr. Rehwinkel suggested that because we had  
20 no obligation to update a response, this was somehow a  
21 backdoor attempt on Progress's part to do something. In  
22 fact, when we first answered the interrogatory, we said  
23 a revised forecast is in the process of being prepared  
24 and we will submit it when it's ready. So our June  
25 filing was in furtherance of our commitment that we made

1 when we first answered the interrogatory, to give the  
2 answer when it was done.

3 **CHAIRMAN CARTER:** Thank you.

4 Ms. Helton.

5 **MS. HELTON:** Mr. Chairman, if I understand the  
6 discourse that has happened this morning, it sounds like  
7 this is a nonissue. It sounds like that the FIPUG  
8 witness has, will be withdrawing the subject of the  
9 testimony that Progress rebutted, and that Progress will  
10 be withdrawing that portion of the rebuttal testimony as  
11 well as the revised forecast, and that there will be no  
12 further discussion about that revised forecast during  
13 the course of this proceeding.

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

15 Continuing preliminary matters?

16 **MS. FLEMING:** Chairman, the next item is the  
17 motion in limine filed by the AG's Office. This is,  
18 this motion relates, is similar to the one that you  
19 heard in the FPL rate case just addressing late-filed  
20 exhibits. Staff would recommend that we just take this  
21 up on a case-by-case basis, if and when any late-filed  
22 exhibits are introduced.

23 **CHAIRMAN CARTER:** Same, same ruling as in the  
24 other case. We'll do that on a case-by-case -- as they  
25 come up, Ms. Bradley, obviously you have the opportunity

1 to make your objections at that point in time. It will  
2 be the same, be the same way as we did it in the FPL  
3 case.

4 Staff?

5 **MS. FLEMING:** The next motion is a motion for  
6 reconsideration filed by the AG's Office. The AG's  
7 Office has moved for reconsideration of the Prehearing  
8 Officer's ruling denying inclusion of Issue 1. I have  
9 provided the Commissioners copies of the motion for  
10 reconsideration.

11 **CHAIRMAN CARTER:** Okay. Ms. Bradley, you're  
12 recognized.

13 **MS. BRADLEY:** Thank you, Mr. Chairman. We  
14 filed a motion for reconsideration because there were  
15 several comments that were made in response to this  
16 motion. One was that it was consumed by all the other  
17 issues. Specifically they addressed Issue 87, they  
18 talked about was the rate increase appropriate, which is  
19 actually not the language that the statute uses. We've  
20 cited the statutory provisions.

21 And there's 114 issues that address all  
22 aspects of the company, and we thought it was important  
23 to have an issue that addresses the consumers and their  
24 interest. And I would hate for a rate increase to be  
25 granted and the customers to go away thinking, well, you

1 didn't address our issue. And if something is consumed  
2 within other issues and not specifically addressed,  
3 sometimes they get the feeling they've been overlooked.  
4 And we've heard days of testimony from a lot of people  
5 that are having a real hard time and businesses that are  
6 having a hard time, and we want to make sure they know  
7 that their interests are being considered in these  
8 proceedings.

9           This is the statutory mandate for this  
10 Commission as to what should be considered, and we'd  
11 like to see a specific issue addressing that. You know,  
12 we've offered to rephrase it and we've offered to move  
13 it to the end so that you can consider all the other  
14 issues first. But we think a specific issue addressing  
15 the consumers is very important, and we would ask that  
16 you include that.

17           **CHAIRMAN CARTER:** Thank you, Ms. Bradley.

18           Mr. Glenn -- Mr. Melson, you're recognized.

19           **MR. MELSON:** Mr. Chairman, this is actually a  
20 motion for reconsideration to a Prehearing Officer's  
21 order. And so the standard for your view is, is very  
22 limited. And the, the Prehearing Officer ruled  
23 basically that this issue misstated the law and that it  
24 was subsumed in Issue 87.

25           The offer this morning to use different

1 language comes after that ruling. So they're attempting  
2 on reconsideration to raise a new matter that was not  
3 considered. They've not shown that there was anything  
4 that the hearing officer, Prehearing Officer failed to  
5 consider or misapprehended in the context of his ruling.  
6 So for that reason we believe it's inappropriate to  
7 grant the motion for reconsideration.

8 I would say if you were inclined to consider  
9 it, we believe that even the alternative language that  
10 the Attorney General has put forward does not capture  
11 all of the relevant aspects of the statute, and we've  
12 got proposed alternative language, if you were inclined  
13 to, to reconsider. And we can share that with you now  
14 or, or after you've considered whether it's even  
15 appropriate to reconsider.

16 **CHAIRMAN CARTER:** Okay. Ever so briefly, Mr.  
17 Wright.

18 **MR. WRIGHT:** Pardon?

19 **CHAIRMAN CARTER:** Ever so briefly.

20 **MR. WRIGHT:** Yes, sir. Commissioner Skop, the  
21 Prehearing Officer in this case, can certainly tell you  
22 what he was thinking. But what I understood him to say  
23 at the Prehearing Conference is that he was denying the  
24 motion as phrased, which suggested the possibility that  
25 it could be rephrased to track the statutory language.

1           The Attorney General's proffered Issues 115A  
2           and 115B do so. I think that these appropriately  
3           address the statutory criteria. It's appropriate for  
4           the Attorney General of Florida to ask you to decide the  
5           issue and it's appropriate for you to decide these  
6           issues as prayed (phonetic) by the Attorney General.

7           Thank you.

8           **CHAIRMAN CARTER:** Commissioner Skop, before I  
9           go to Ms. Helton. Commissioner Skop.

10          **COMMISSIONER SKOP:** Thank you, Mr. Chairman.  
11          In deciding this issue initially at the Prehearing  
12          Conference, again, the original issue as framed was  
13          framed as Issue 1. It did not cite the appropriate  
14          legal standard pursuant to statute. I was concerned  
15          with the order. I made those concerns known to the AG's  
16          Office as well as the parties at the prehearing.

17          But unlike what I believe Mr. Melson  
18          characterized it, I did grant leave to the parties to  
19          seek reconsideration of the issue. I would like to see  
20          Progress's proposed language with respect to what they  
21          may propose to amend Ms. Bradley's language.

22          But I guess my concern at the time was making  
23          sure that we had the appropriate legal standard, which  
24          was not characterized at the time, and also ordering,  
25          putting the cart before the horse. It seems to me that

1 Ms. Bradley has addressed both of the concerns. And in  
2 terms of the issue coming in, if this is merely a  
3 conclusory issue that summarizes the findings of the  
4 Commission on the issues preceding that, I see no real  
5 harm in, in having that be a summary issue.

6 But I just wanted to lend my colleagues my  
7 thoughts on why it was denied. Again, we didn't want to  
8 rewrite something on the fly. But my understanding is  
9 that they were granted leave to seek reconsideration  
10 with some guidance that I had provided. And assuming  
11 that we could get to some agreement as to the issues, I  
12 think I would be in support of including those at the  
13 end.

14 I do have a little bit of a concern with the  
15 lengthiness of 115B, but perhaps looking at the Progress  
16 language -- again, I think it should be open to the  
17 Commission as a whole. And part of me almost deferred  
18 the issue as a whole, but at the time of consideration  
19 it did not cite the appropriate legal standard.

20 So, again, I just wanted to share my views to  
21 my colleagues. Thank you.

22 **CHAIRMAN CARTER:** Before I go to Ms. Helton,  
23 Commissioners, why don't, why don't we take a look at  
24 the proposed language from, from Progress. Get it to  
25 the, to the parties and to the bench. We'll check this

1 out and -- staff, are you going to need a moment for  
2 that, Ms. Helton?

3 Okay, everyone. We're going to go off the  
4 record and we'll be back in ten minutes.

5 (Recess taken.)

6 We are back on the record. When we left we  
7 were dealing with a preliminary matter. But before we  
8 go forward, I'll recognize Ms. Alexander to make her  
9 appearance.

10 Good morning.

11 **MS. ALEXANDER:** Thank you, Mr. Chair.  
12 Stephanie Alexander for the Florida Association for  
13 Fairness in Rate Making. Thank you.

14 **CHAIRMAN CARTER:** Thank you so kindly.

15 Now Ms. Helton.

16 **MS. HELTON:** Yes, sir. Mr. Chairman and  
17 Commissioners, where we are procedurally is the Attorney  
18 General's Office has sought a reconsideration of the  
19 Prehearing Officer's Prehearing Order. So pursuant to  
20 our rule on reconsideration of nonfinal orders of a  
21 Prehearing Officer, this would require a vote from all  
22 of you.

23 I agree with Mr. Melson that the standard for  
24 reconsideration is whether there's been a mistake of  
25 fact or law. But listening to the discussion here

1 today, I think we're a little bit beyond that. It  
2 sounds -- I was not present at the Prehearing  
3 Conference. But listening to what the parties have said  
4 and what Commissioner Skop has said this morning, it  
5 sounds to me that there was some contemplation of a kind  
6 of all-inclusive-bring-it-all-together issue. I do  
7 agree that it's more appropriate for that issue to be at  
8 the end of the list of issues versus the beginning of  
9 the issues.

10 I have talked to during the break Mr. Melson  
11 and Ms. Bradley about the, Progress's suggestions to the  
12 issues that were laid out by Ms. Bradley in her motion,  
13 and I have two things that I think we are all in  
14 agreement to. One is to correct a typo on Issue 115A.  
15 The last subsection listed from 366 should be 366.06(1).  
16 I'm reading from Progress's or PEF's alternative  
17 language for Attorney General's proposed issues from the  
18 sheet that Progress passed out during the, at the, right  
19 before we started talking about this.

20 And then with respect to Issue 115B, at the  
21 end of the third line in the middle of the underlining  
22 that Progress has suggested we would add the language,  
23 "that consider among other things the value of such  
24 service to the public and." So I'll read that whole  
25 issue for you adding the additional language that

1 Ms. Bradley, Mr. Melson and I discussed during the  
2 break.

3 "In fulfilling its mandate under Section  
4 366.01, *Florida Statutes*, to regulate public utilities  
5 in the public interest and for the protection of the  
6 public welfare in its mandate under Section  
7 366.041(1) to fix fair, just, reasonable and  
8 compensatory rates that consider, among other things,  
9 the value of such service to the public and that do not  
10 deny the utility a reasonable return upon its rate base  
11 should the Commission grant any part of PEF's proposal  
12 to increase its base rates in this docket."

13 So my suggestion to you, Mr. Chairman and the  
14 Commissioners, is that you vote to reconsider the  
15 Prehearing Order and to strike -- or to add issues 115A  
16 and 115B with the changes that I have just mentioned on  
17 the record.

18 **CHAIRMAN CARTER:** Thank you, Ms. Helton.

19 Commissioners, any questions to Ms. Helton?

20 **COMMISSIONER EDGAR:** I do. I need that  
21 additional phrase.

22 **CHAIRMAN CARTER:** Commissioner Edgar.

23 **MS. HELTON:** I'm sorry.

24 **COMMISSIONER EDGAR:** That's okay. That's  
25 okay. The additional phrase which would be added in

1 what would -- one, two, three, the fourth line into the  
2 underlying, "consider, among other -- "to fix fair,  
3 just, reasonable and compensatory rates that consider,  
4 among other things," and if you could pick up from there  
5 for me.

6 **MS. HELTON:** Certainly. "The value of such  
7 service to the public and."

8 **COMMISSIONER EDGAR:** So it would read "and do  
9 not deny the utility a reasonable return upon its rate  
10 base should the Commission grant any part of Progress's  
11 proposal to increase its base rates in this docket."

12 **MS. HELTON:** That's correct.

13 **COMMISSIONER EDGAR:** All right. Thank you for  
14 that clarification.

15 **CHAIRMAN CARTER:** Thank you, Commissioners.  
16 Everyone clear on the language?

17 Before we deal with the language, I guess  
18 procedurally, Ms. Helton, we need to vote on the motion  
19 for reconsideration. Is that correct?

20 **MS. HELTON:** Yes, sir. It's my, it's my  
21 belief that with -- this is a reconsideration request  
22 for a nonfinal order, and our rule on reconsideration  
23 for nonfinal orders requires a vote of the full  
24 Commission. Would such a motion --

25 **COMMISSIONER EDGAR:** Mr. Chairman, would it

1 be -- I'm sorry. I'm sorry, Ms. Helton. I'm sorry, Mr.  
2 Chair.

3 Would, would it be possible to hear briefly  
4 from the Attorney General's Office and Progress on this  
5 kind of third alternative language that's been placed  
6 before us?

7 **CHAIRMAN CARTER:** On the new language?

8 Ms. Bradley, you're recognized.

9 **MS. BRADLEY:** We agreed to this proposed  
10 alternative. We think it addresses the issues that we  
11 wanted to include. And I think it, I can't speak for  
12 them, but I think it addresses their issue as well.

13 **CHAIRMAN CARTER:** Mr. Melson.

14 **MR. MELSON:** We're fine with the language, and  
15 we thank the Attorney General for working with us on it.

16 **COMMISSIONER EDGAR:** Then, Mr. Chairman, could  
17 I ask Commissioner Skop as Prehearing Officer --

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

19 **COMMISSIONER EDGAR:** Commissioner Skop, could  
20 you --

21 **CHAIRMAN CARTER:** Commissioner, are you  
22 comfortable with this language?

23 **COMMISSIONER SKOP:** I am comfortable with the  
24 proposed language. Again, I think that essentially  
25 these issues are inherent in Chapter 366. But, again, I

1 see no harm in putting them in the end, and they've been  
2 properly framed to represent the legal standard that  
3 would need to be considered.

4 So, again, at the end it's a summation issue  
5 building upon the issues preceding them. I see no harm  
6 in doing it. And since I was Prehearing Officer, I  
7 really can't make the motion. But if I could, I would.  
8 So I'll defer that to someone else. But I'm in support  
9 of the revised language.

10 **COMMISSIONER EDGAR:** Thank you, Commissioner  
11 Skop.

12 Then, Mr. Chairman, if it's appropriate, I  
13 would make a motion at this time that we add additional  
14 Issues 115A and 115B with the alternative or the  
15 suggested language that the parties have spoken to here  
16 in the last few minutes and that Commissioner Skop has  
17 addressed as read to us by Ms. Helton.

18 **COMMISSIONER McMURRIAN:** Second.

19 **CHAIRMAN CARTER:** It's been moved and properly  
20 seconded. Let me do this before I call for the vote.

21 Ms. Helton, does this motion as it's properly  
22 construed and constructed and presented, does it capture  
23 everything that we need to do for this matter here?

24 **MS. HELTON:** Yes, sir, I believe it does.

25 **CHAIRMAN CARTER:** Okay. Commissioners, we've

1 got a motion. We've got a second. Is there any further  
2 debate? Any further comment? Any further discussion?

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

5 (Affirmative vote.)

6 All those opposed, like sign.

7 Show it done.

8 Staff?

9 **MS. BRADLEY:** Thank you.

10 **COMMISSIONER EDGAR:** I would just ask,  
11 Mr. Chairman, if maybe at one of the next breaks if we  
12 could get a --

13 **CHAIRMAN CARTER:** A clean copy.

14 **COMMISSIONER EDGAR:** -- a clean copy of the  
15 two issues as, as we have adopted them. Thank you.

16 **CHAIRMAN CARTER:** Okay. Thank you,  
17 Ms. Bradley.

18 Staff, further preliminary matters?

19 **MS. FLEMING:** Yes, Commissioners. We'd like  
20 to identify for the record that several witnesses have  
21 been excused from this proceeding, stipulated and  
22 excused. Those witnesses are Kevin Murray, Sasha  
23 Weintraub, James Selecky, Rhonda Hicks, and Jocelyn  
24 Stephens. We've also created --

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

1 second. Give them to me again. I got the last one,  
2 Rhonda Hicks. Why don't you go from the order of  
3 witnesses that we have in the, in the prehearing so I  
4 can follow you -- oh, it's the other --

5 **MS. FLEMING:** I've also provided a cheat  
6 sheet --

7 **CHAIRMAN CARTER:** Okay. Oh, a cheat sheet.

8 **MS. FLEMING:** -- for the order of witnesses  
9 that I've provided to the Commissioners and all the  
10 parties.

11 **CHAIRMAN CARTER:** I was looking at the  
12 Prehearing Order. Okay. Let's go down again.

13 **MS. FLEMING:** Kevin Murray.

14 **CHAIRMAN CARTER:** Kevin Murray. Okay.

15 **MS. FLEMING:** Sasha Weintraub.

16 **CHAIRMAN CARTER:** Okay.

17 **MS. FLEMING:** James Selecky.

18 **CHAIRMAN CARTER:** Okay.

19 **MS. FLEMING:** Rhonda Hicks.

20 **CHAIRMAN CARTER:** Okay.

21 **MS. FLEMING:** And Jocelyn Stephens.

22 **CHAIRMAN CARTER:** Okay. Commissioners, do you  
23 have any problem, or does any Commissioner have any  
24 problem with these witnesses being excused pursuant to  
25 this stipulation? Hearing none, show it done.

1                   You may proceed.

2                   **MS. FLEMING:** Staff would note that the  
3 stipulated prefiled testimony and exhibits of these  
4 witnesses can be taken up in turn as shown on this order  
5 of witnesses list.

6                   **CHAIRMAN CARTER:** Okay.

7                   **MS. FLEMING:** The next item to address is the  
8 Comprehensive Exhibit List. Staff will request that the  
9 Comprehensive Exhibit List, which is Item 1, as well as  
10 all the items that are identified, which include service  
11 hearing exhibits as well as staff composite exhibits and  
12 prefiled testimony, be identified and marked as  
13 contained in the Comprehensive Exhibit List.

14                   **CHAIRMAN CARTER:** Are there any objections  
15 from the parties? Okay. Staff's composite -- Staff's  
16 Comprehensive Exhibit List will be entered as Exhibit 1.

17                   (Exhibit 1 identified and admitted into the  
18 record.)

19                   Now do we need a separate motion for the, the  
20 hearing exhibits? Are there any objections to any of  
21 the hearing exhibits that we got? Do we have to go --  
22 we'll do that separately?

23                   **MS. FLEMING:** Let's just take it -- what I  
24 would ask now is we've moved in the Comprehensive  
25 Exhibit List. Staff would ask that the service hearing

1 exhibits be moved into the record, and those are  
2 identified as Exhibits 2 through 19 on the Comprehensive  
3 Exhibit List.

4 **CHAIRMAN CARTER:** Are there any objections of  
5 the parties for the introduction of these exhibits from  
6 the service hearings? Are there any objections from any  
7 of the parties? Without objection --

8 **MR. MOYLE:** We don't object to the, to the  
9 documents coming in from the service hearings. I was a  
10 little unclear as to whether we were identifying the  
11 staff comprehensive exhibit --

12 **CHAIRMAN CARTER:** That's Exhibit 1. This list  
13 is Exhibit 1.

14 **MR. MOYLE:** -- or admitting it. I thought it  
15 was identifying it, not, it wasn't being moved for  
16 admittance.

17 **MS. HELTON:** I think maybe there might be  
18 talking past each other here. What we have historically  
19 done in the last several years is the Composite Exhibit  
20 List is actually entered as an exhibit, and I think  
21 that's what happened as Number 1.

22 **MR. MOYLE:** Right.

23 **MS. HELTON:** Staff's composite exhibits will  
24 be taken up later.

25 **MR. MOYLE:** My apologies.

1                   **CHAIRMAN CARTER:** Okay.

2                   So, Commissioners, Exhibit 2 through --

3                   **MS. FLEMING:** 19.

4                   **CHAIRMAN CARTER:** -- 19 of the service  
5                   hearings, no parties have any objection to that, so show  
6                   that entered into the record without objection. Show  
7                   those entered into the record without objections.

8                   (Exhibits 2 through 19 identified and admitted  
9                   into the record.)

10                  Staff?

11                  **MS. FLEMING:** Commissioners, the next exhibit  
12                  is a staff composite exhibit, which is Exhibit 20, which  
13                  has been stipulated by all parties. And staff would ask  
14                  that this be moved into the record.

15                  **CHAIRMAN CARTER:** Let's hear from the parties.  
16                  Are there any objections? Mr. Moyle, this is actually  
17                  staff's exhibit, Comprehensive Exhibit List, and the  
18                  composite listed as 20, but there are several documents  
19                  on it. Any objections?

20                  **MR. MOYLE:** Ms. Kaufman has been, been working  
21                  with staff on this. If the representation is Ms.  
22                  Kaufman stipulated, I'm, I'm fine.

23                  **CHAIRMAN CARTER:** Okay.

24                  **MS. FLEMING:** And just to be clear for the  
25                  record, Exhibit 20 only includes those exhibits that

1 have been stipulated to by all parties.

2 **CHAIRMAN CARTER:** Okay. Without objection,  
3 show it done. Exhibit 20 is entered into the record.

4 (Exhibit 20 identified and admitted into the  
5 record.)

6 **MS. FLEMING:** Commissioners, the next item is  
7 this green -- it's titled Staff's Stipulated Composite  
8 Exhibit. It was handed out during the break. This is  
9 an exhibit that all parties stipulated to on Friday  
10 afternoon. And we would ask that this be marked as I  
11 guess the first hearing exhibit, which would be two --

12 **CHAIRMAN CARTER:** Hang on. Let me go to the  
13 back page. That'll be 262; is that correct?

14 **MS. FLEMING:** That's correct.

15 **CHAIRMAN CARTER:** Commissioners, for your  
16 records, this will be Exhibit Number 262.

17 Short title?

18 **MS. FLEMING:** Responses to Ninth PODs.

19 **CHAIRMAN CARTER:** I like the Staff's  
20 Stipulated Composite Exhibit.

21 **MS. FLEMING:** Okay.

22 **CHAIRMAN CARTER:** Okay? Let's go with that.

23 (Exhibit 262 marked for identification.)

24 **MS. FLEMING:** And we would ask that this be  
25 moved into the record as well.

1           **CHAIRMAN CARTER:** Do you have agreement from  
2 all of the parties on these stipulated issues?

3           **MS. FLEMING:** Yes, we did.

4           **CHAIRMAN CARTER:** Are there any objections  
5 from any of the parties? Without objection, show it  
6 done. Exhibit Number 262 is entered into the record.

7           Staff, you may continue.

8           (Exhibit 262 admitted into the record.)

9           **MS. FLEMING:** Chairman and Commissioners, I  
10 just would like to note, to address Mr. Moyle's concern,  
11 there are several staff composite exhibits in this  
12 exhibit list. We're still working with the parties to  
13 stipulate some of these exhibits. For ease of reference  
14 we have stipulated all the exhibits by witness and  
15 subject matter so that it may make it easier for the  
16 parties to stipulate to these exhibits. All parties  
17 were provided a copy of these exhibits, or provided a  
18 list of all these exhibits four weeks ago. So hopefully  
19 throughout the duration of this proceeding the parties  
20 will be able to stipulate additional staff exhibits.

21           **CHAIRMAN CARTER:** Okay.

22           **MR. MOYLE:** Yes, Chairman.

23           **CHAIRMAN CARTER:** Yes, sir. Mr. Moyle.

24           **MR. MOYLE:** Staff has done that. I appreciate  
25 all the efforts and I appreciate the ability to see

1 these in advance, and thank, thank them for doing that.  
2 I think it's a good way to go, and we will surely work  
3 to stipulate to those that we can.

4 **CHAIRMAN CARTER:** Thank you, Mr. Moyle. I  
5 appreciate that.

6 Ms. Fleming?

7 **MS. FLEMING:** The next item is a separate  
8 handout that we have provided titled Proposed  
9 Stipulations. There are proposed stipulations on  
10 several issues, and the stipulations fall in one of two  
11 categories.

12 **CHAIRMAN CARTER:** Hang on a second. Let me --  
13 okay. Got it. Okay. You may proceed.

14 **MS. FLEMING:** There are two categories of  
15 stipulations. Category 1 stipulations reflect the  
16 agreement of PEF, staff and at least one of the  
17 Intervenors in this docket. Intervenors who do not  
18 affirmatively agree with one, a particular Category 1  
19 stipulation but take no position on the issue are  
20 identified in the stipulation.

21 Category 2 reflects the agreement of Progress  
22 and staff where no other party has taken no position on  
23 the issues.

24 **CHAIRMAN CARTER:** Okay. Is that the  
25 understanding of the parties?

1           **MR. WRIGHT:** Yes, sir.

2           **MR. GLENN:** Yes.

3           **CHAIRMAN CARTER:** Okay.

4           **COMMISSIONER EDGAR:** Mr. Chairman, if it's  
5 appropriate at this time, I would like to offer a motion  
6 that we adopt the Category 1 stipulations and the  
7 Category 2 stipulations as have been described by our  
8 staff and distributed to all the parties.

9           **COMMISSIONER SKOP:** Second.

10          **CHAIRMAN CARTER:** It's been moved and properly  
11 seconded. Commissioners, any discussion, any debate?  
12 Hearing none, all in favor, let it be known by the sign  
13 of aye.

14                   (Affirmative vote.)

15                   All those opposed, like sign. Show it done.  
16                   Staff.

17          **MS. FLEMING:** The next item, there's a  
18 separate one-page item that's labeled Additional  
19 Stipulations. These are additional stipulations that  
20 were discussed this past weekend that are not included  
21 as part of the Prehearing Order. It is my understanding  
22 that some of the parties wish to take no position on  
23 these stipulations, so I think it would be best to hear  
24 from the parties with respect to the stipulations on  
25 these issues.

1           **CHAIRMAN CARTER:** On this one-pager to the  
2 parties, this one-pager, any, any objections? Any  
3 objections?

4           **MR. MELSON:** Progress is fine with all three  
5 of them.

6           **MS. ALEXANDER:** AFFIRM takes no position.

7           **CHAIRMAN CARTER:** Okay. Mr. Wright.

8           **MR. WRIGHT:** Mr. Chairman, the Retail  
9 Federation agrees to these stipulations. So with  
10 respect to us it would be a Cat 1 type stipulation,  
11 these would be.

12           **CHAIRMAN CARTER:** Okay. Let's hear from the  
13 Navy.

14           **MS. VAN DYKE:** The Navy agrees as a Category  
15 2.

16           **CHAIRMAN CARTER:** Okay. Mr. Brew.

17           **MR. BREW:** Yes, Mr. Chairman. PCS agrees as a  
18 Category 2.

19           **CHAIRMAN CARTER:** Mr. Moyle.

20           **MR. MOYLE:** FIPUG would like to have a  
21 conversation with Progress at the next break to make  
22 sure that it's understanding something clearly, and then  
23 we can probably be in a position to stipulate at that  
24 time.

25           **CHAIRMAN CARTER:** Okay. What, what issue

1 would it, would it include? Would it be all of them or  
2 just one of them?

3 **MR. MOYLE:** All of them.

4 **CHAIRMAN CARTER:** On all of them? Okay.

5 Ms. Bradley? I'll come back to you,  
6 Mr. Moyle, in a minute.

7 **MS. BRADLEY:** We took no position on the first  
8 two and I think stipulated to the last one.

9 **CHAIRMAN CARTER:** Okay. Mr. Rehwinkel.

10 **MR. REHWINKEL:** Public Counsel has agreed to  
11 all three.

12 **CHAIRMAN CARTER:** Okay. And --

13 **MS. FLEMING:** And, Chairman, if I may get some  
14 clarification.

15 **CHAIRMAN CARTER:** Yes, ma'am.

16 **MS. FLEMING:** Because I guess I'm a little  
17 confused as to FIPUG's position, because it was my  
18 understanding by e-mail that FIPUG had stipulated to  
19 these issues. But I think the issue that was still up  
20 is whether Witness Young and his exhibits could be  
21 stipulated.

22 **CHAIRMAN CARTER:** Mr. Moyle.

23 **MR. MOYLE:** I guess the question that I have  
24 is, is that we have witnesses that are appearing here  
25 that are talking about nuclear O&M and cost, and, you

1 know, this appears to be taking nuclear issues off the  
2 table. And, you know, maybe I'm not reading it  
3 correctly, but I want to make sure that, you know, by,  
4 by stipulating to this, you know, that, that the nuclear  
5 issues are largely off the table as it relates to the  
6 nuclear cost recovery docket.

7 **MS. FLEMING:** Chairman, if I may, the issues  
8 here are with respect to the nuclear decommissioning,  
9 not the nuclear issues that are on the table. This,  
10 this stipulation really states the nuclear  
11 decommissioning study which was filed by the utility  
12 will be addressed next year with FPL's nuclear  
13 decommissioning study. But I don't believe that the  
14 nuclear issues with respect to nuclear costs have been  
15 taken off the table and they're not part of these  
16 issues.

17 **MR. MOYLE:** Okay. What I do believe, if I  
18 can, Mr. Chairman.

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

20 **MR. MOYLE:** In the Power & Light case we had  
21 an issue about monies being over accrued beyond the  
22 amount recommended by the Nuclear Regulatory Commission  
23 for decommissioning. There was an over accrual, for  
24 lack of a better term, and there was some testimony  
25 about could the utility go to the NRC and seek to use

1 those monies for something else.

2 You know, if I enter into this stipulation, is  
3 that issue off the table?

4 **MR. MELSON:** If, if I might respond.

5 **CHAIRMAN CARTER:** Mr. Melson.

6 **MR. MELSON:** I'm not sure that issue is on the  
7 table at this point. That's not identified as an issue  
8 in our Prehearing Order. There is no testimony from  
9 either Mr. Young or any of the Intervenor witnesses on  
10 it. I believe this is intended to roll the  
11 decommissioning study and the handling of that study out  
12 into a case next year. So it would be off the table if  
13 it had been on the table to begin with.

14 **CHAIRMAN CARTER:** Okay. Mr. Moyle.

15 **MR. MOYLE:** I mean, the ultimate question is  
16 \$500 million in revenues for operating and maintenance  
17 and everything related to running the railroad. But  
18 maybe if I could just finish this conversation during a  
19 break, Mr. Chairman, I think we can probably work  
20 something out.

21 **COMMISSIONER EDGAR:** Mr. Chairman, I would  
22 ask, to help us keep things moving along, if we defer a  
23 vote on the additional stipulations until maybe after  
24 the opening comments and a short break before we move  
25 into the next witness.

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

2           Staff, further preliminary matters?

3           **MS. FLEMING:** I would just note for the record  
4 that there, along with these additional stipulations  
5 that the parties will discuss during the break, there  
6 are some other additional stipulations that the parties  
7 will continue to discuss, and hopefully we will have  
8 those addressed as well at the beginning of opening  
9 statements.

10          **CHAIRMAN CARTER:** Okay.

11          **MR. REHWINKEL:** Mr. Chairman, if I might be  
12 heard briefly.

13          **CHAIRMAN CARTER:** Mr. Rehwinkel, yes, sir.

14          **MR. REHWINKEL:** If I could ask the  
15 Commissioners to turn to Page 12.

16          **CHAIRMAN CARTER:** Of what?

17          **MR. REHWINKEL:** Of the Prehearing Order. And  
18 this is connected to the discussion we've had on the  
19 stipulations and a conversation that was had on the  
20 break and related to the ruling by the Prehearing  
21 Officer and the Commission on the, the May 2009  
22 forecast.

23                 Just so there's no misunderstanding about the  
24 Public Counsel's position, as this paragraph relates to  
25 our positions in the order, I want to make it clear for

1 the record that this paragraph that begins "To the  
2 extent that OPC takes no position," the second paragraph  
3 of our position, is no longer -- it is a moot point with  
4 respect to the rulings and the agreements that we have  
5 made with the parties. So that should not interfere in  
6 any way with any stipulation on any issues listed here  
7 that dealt with that issue as long as the understanding  
8 is that that forecast is out, and I think it is.

9 **CHAIRMAN CARTER:** Okay. I think, Ms. Fleming,  
10 I think that was the understanding. Is that correct?

11 **MS. FLEMING:** That is correct, Chairman. And  
12 I think that Mr. Rehwinkel is speaking to Issues 3, 4  
13 and 5. We're still waiting to hear from Mr. Moyle  
14 regarding the stipulations of those three additional  
15 issues. But we will discuss those during the break.

16 **CHAIRMAN CARTER:** Okay. We'll do it on the  
17 break.

18 **MR. REHWINKEL:** I just wanted to make it  
19 clear, we were not reserving any position with respect  
20 to any of the other issues to the extent that they may  
21 be impacted in the 80s, some of those issues. So that  
22 is a moot point for us. Thank you.

23 **CHAIRMAN CARTER:** Okay.

24 Mr. Moyle, briefly.

25 **MR. MOYLE:** And FIPUG can stipulate. I had a

1 brief opportunity to speak with Progress. Also included  
2 within this, this area with respect to the stipulation  
3 is a revised jurisdictional separation study that was  
4 submitted as a rebuttal exhibit. I believe Progress has  
5 indicated verbally that that also is off the table.

6 **CHAIRMAN CARTER:** Mr. Melson.

7 **MR. MELSON:** That's correct.

8 **CHAIRMAN CARTER:** Okay.

9 **MR. MOYLE:** Thank you.

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

11 **MR. WRIGHT:** Mr. Chairman?

12 **CHAIRMAN CARTER:** Mr. Wright, yes, sir.

13 **MR. WRIGHT:** Thank you. I'd just like to add  
14 comments similar to those made by Mr. Rehwinkel, that  
15 the last paragraph of the Retail Federation's statement  
16 of basic position likewise addressed the updated sales  
17 forecast and how that might influence our positions on  
18 issues. Since we've worked that out and since that's  
19 not going to affect rates in this case, you can relay  
20 (phonetic) our last paragraph as with OPC's. Thank you.

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

22 And, staff, as we proceed, kind of, if I  
23 overlook that, bring it to my attention. Okay?

24 **MS. FLEMING:** Okay.

25 **CHAIRMAN CARTER:** So we can move forward with

1 that.

2 Staff, any further preliminary -- Commissioner  
3 Skop, you're recognized.

4 **COMMISSIONER SKOP:** Thank you, Mr. Chair.  
5 Just a point of information. I think it's been disposed  
6 of, but I just wanted to let the parties know as well as  
7 the Commissioners that the Progress motion seeking  
8 confidential classification of the supplemental  
9 information regarding executive compensation has been  
10 denied based upon the Commission's prior order and the  
11 rationale contained within my concurring opinion of that  
12 order. So the, that filing, however, will remain  
13 confidential until the appellate period lapses.

14 But, again, I wanted to, as a point of  
15 information, let everyone know that that motion had been  
16 denied.

17 **CHAIRMAN CARTER:** Okay. And for the parties,  
18 we'll handle it just like we did in the prior case.  
19 Everyone did a good job on handling information that's  
20 been requested to be held confidential, and we'll just  
21 continue. We've got some experience doing that, so  
22 we'll do it the same way.

23 Staff, any further preliminary matters?

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

1                   **CHAIRMAN CARTER:** Okay. Are there any  
2 preliminary matters from any of the parties before we go  
3 forward?

4                   Okay. It's my understanding, Commissioners,  
5 as we proceed with opening statements, that Progress  
6 will do 20 minutes, OPC will have 20 minutes, and the  
7 remaining Intervenors will have up to ten minutes each  
8 for opening statements. Is that correct? Is that the  
9 understanding of the parties?

10                   **MR. MOYLE:** Yes, sir.

11                   **MR. WRIGHT:** Yes, sir.

12                   **CHAIRMAN CARTER:** Okay. Anything further  
13 before we begin? Anything further from the parties?

14                   Okay. Mr. Glenn, you're recognized. Ten  
15 minutes.

16                   **MR. GLENN:** Thank you, Mr. Chairman and  
17 Commissioners.

18                   **CHAIRMAN CARTER:** I mean, excuse me. You have  
19 20 minutes.

20                   **MR. GLENN:** Thank you.

21                   We are here today because Progress Energy  
22 Florida has real and substantial capital investments and  
23 real and significant decreases in sales. No one sitting  
24 at this table disputes that. We also have real O&M  
25 needs to run our business the way you and our customers

1 expect it will be run. Progress is also embarking on  
2 one of the largest capital expenditure programs in the  
3 company's history, which includes the licensing and  
4 construction of its Levy Nuclear Project. These  
5 investments are key to securing the state's energy  
6 future and to implementing the energy policies set forth  
7 by the Legislature, the Governor, the Cabinet and this  
8 Commission.

9 What happens here therefore will not only  
10 affect the financial health of our company and the  
11 service we provide, but how we as utilities, regulators,  
12 and customers will meet the energy needs of our state.

13 We are a good company. We are a well-run  
14 company. I don't think you're going to hear any  
15 Intervenor witnesses say that we're not. In fact, at  
16 the service hearings you heard from several of the  
17 Intervenors' counsel say that we are an excellent  
18 company. And of those customers who spoke against the  
19 price increases, many emphasized, I think to use their  
20 term, the boots-on-the-ground service folks are the  
21 best. Our customers gave us these compliments because  
22 we do provide excellent service.

23 As you'll hear from our witnesses, our  
24 benchmarking shows that our distribution reliability is  
25 top quartile. We run our power plants efficiently. Our

1 nuclear power plant is one of the best performing  
2 nuclear power plants over the last decade. And our  
3 storm response is really second to none.

4 Now most of the people who spoke, including  
5 this morning, Commissioner Parrish from Franklin County,  
6 and at the other nine service hearings gave passionate  
7 and sincere testimony about the difficult times they're  
8 facing, the impact of this proposed rate increase on  
9 them, and also about nuclear cost recovery.

10 We would not be here today if we did not  
11 absolutely have to be. We've laid off 150 employees at  
12 the end of 2008, including an entire level of  
13 management, we've eliminated another 150 open positions,  
14 and we've reduced our workforce by 7.5 percent. We've  
15 reduced our distribution contractor workforce alone from  
16 553 contractors in 2006 to 101 today. That's an  
17 82 percent decrease. An 82 percent decrease. We have  
18 been and are a fiscally responsible company, and we're  
19 mindful of the impact of any rate increase on our  
20 customers.

21 So why are we here then? It's pretty simple  
22 and really I think for the most part not disputed. We  
23 have identifiable costs and less sales to cover those  
24 investments. So what are the big ticket items that  
25 drive our revenue requirement? You heard me talk about

1       it at the service hearing, Bartow repowering. We spent  
2       more than \$800 million in repowering our Bartow  
3       oil-fired plant, which went commercial this June and is  
4       now generating twice the amount of power as our older  
5       plant but with significantly less emissions and better  
6       fuel costs and lower fuel costs to our customers. The  
7       revenue requirements of this investment alone equal  
8       \$130 million of our \$500 million revenue request. No  
9       one at this table takes issue with this investment, the  
10      prudence of it, the cost. Indeed, all parties have  
11      stipulated to the testimony of Mr. Murray that's now in  
12      who sponsored this portion of our case.

13               Our steam generator replacement at our nuclear  
14      plant, you heard me talk about this at the service  
15      hearings. We're investing \$300 million right now to  
16      replace the steam generators. We receive the two  
17      massive 500-ton pieces of equipment this month and we're  
18      going to start installing them in October. The project  
19      will be completed by the end of this year, and it's  
20      going to ensure that customers will continue to receive  
21      the state of the art performance from our lowest cost  
22      and only carbon-free baseload need and resource on our  
23      system. The revenue requirement for this investment  
24      alone equals another \$43 million of our total request.  
25      You'll hear that no one at this table takes issue with

1 that investment, the prudence of that investment or the  
2 cost of that investment.

3 We're rebuilding our electrostatic  
4 precipitators, or ESPs, at our Crystal River 4 and 5  
5 power plants right now as part of our ongoing fossil  
6 plant efficiency improvements. These are huge boxes,  
7 probably four times the size of this room, and they're  
8 critical to meeting our air emission requirements.  
9 Again, another significant capital investment we're  
10 making now to reduce costs to customers over the  
11 long-term. The revenue requirements of this investment  
12 equal another \$13 million of our total request. Again,  
13 no one at this table disputes the prudence of this  
14 investment, the cost of this investment.

15 Pension. We have a deficit in our pension  
16 fund. No one disputes at this table that we have a  
17 deficit in our pension fund. The Commission has, as it  
18 did in the recent TECO case and as it did, as it has  
19 done in prior rate cases, include pension costs as  
20 legitimate and recoverable expenses. This equals  
21 another \$34 million of our total revenue requirement  
22 asked.

23 O&M. Witnesses Sorrnick, Oliver and Joyner  
24 will testify that we have O&M needs to appropriately  
25 maintain our power plants, to run our plants

1 efficiently, to meet new NERC and FERC transmission  
2 reliability requirements, and expand and harden our  
3 transmission and distribution system. The revenue  
4 requirements of these, of these investments equal  
5 another \$50 million of our overall request. These five  
6 items alone equal about \$290 million of our \$500 million  
7 request.

8 Now while our fixed costs like these are  
9 increasing, our sales are decreasing. Simply put, our  
10 sales are not covering the cost to provide reliable  
11 electric service in the manner that this Commission or  
12 our customers expect. Again, no party to this  
13 proceeding disputes the sales forecasts that we filed in  
14 March. No one disputes the accuracy of those forecasts  
15 or that our actual sales are decreasing. This sales  
16 decrease equates to roughly about \$170 million of our  
17 \$500 million request.

18 Now in addition to these investments and  
19 costs, we also plan, and we've got to, for the future  
20 today. Florida's energy policy, I know as you are well  
21 aware, is aimed at developing a cleaner and more diverse  
22 energy portfolio. We're embarking on the largest  
23 capital expenditure program in our more than 100-year  
24 history. We plan to spend between \$4.5 billion and  
25 \$6 billion over the next five years on our system.

1 That's not including the \$17 billion investment that  
2 we're currently on track to make in our Levy nuclear  
3 power project. We've got to be financially strong to  
4 execute this program.

5 So what does this mean? It means we need a  
6 reasonable ROE and cap structure and a legitimate  
7 opportunity to earn that ROE, and we need stable cash  
8 flows. The investments we're making now, Bartow, steam  
9 generators, ESPs, you name it, in addition to Levy, in  
10 addition to all the other ones we're going to make over  
11 the next five years, are going to put significant strain  
12 on our triple B plus credit rating and put significant  
13 pressure on the company's cash flows. Wall Street,  
14 potential investors and credit rating agencies recognize  
15 this, and they are watching intently this proceeding as  
16 well as our nuclear cost recovery proceeding.

17 The rating agency Fitch has said this about  
18 Progress Energy Florida, and I'll quote. "PEF's stable  
19 rating outlook assumes that the outcomes of the base  
20 rate and Levy filings will result in improvement in cash  
21 flow and credit matrix at PEF in 2010. On the other  
22 hand, if regulatory decisions are adverse, Fitch would  
23 expect to take negative rating action." That's about as  
24 strong a statement as you're going to get from a credit  
25 rating agency, and they said it less than two weeks ago.

1           Our costs are real and immediate. Our cash  
2 flow is real and immediate. Our sales forecasts are  
3 real and unchallenged.

4           What then are you going to hear from the  
5 intervenors? Well, they want you to permanently  
6 decrease our base rates by \$35 million. Their witnesses  
7 will tell this Commission that such a decrease, it's no  
8 big deal, it's not going to be a problem for the  
9 company. Given the undisputed capital expenditures in  
10 this case, the company's declining sales, also  
11 undisputed, as well as our O&M needs, this is quite a  
12 remarkable proposal.

13           Think about it. If the Commission were to  
14 simply grant no increase to Progress Energy, say no rate  
15 increase, our ROE would fall to 1.3 percent in 2010.  
16 This would be the lowest ROE in the history of Florida  
17 regulation, the lowest ROE in the nation. It would be  
18 970 basis points below Florida Public Utilities Company,  
19 a distribution-only company serving 60,000 customers and  
20 owning and operating no power plants. It would be about  
21 a thousand basis points lower than TECO's ROE, a company  
22 with a compact service territory, with much fewer power  
23 plants, no nuclear risk, and no large immediate capital  
24 expenditures like we're facing and undertaking right now  
25 today.

1           The Intervenors' rate reduction proposal would  
2 do what? It's going to reduce cash flows. It's going  
3 to weaken our credit ratings. It's going to weaken our  
4 balance sheet. All during a time in what remains one of  
5 the tightest and uncertain capital markets still today,  
6 and when we're embarking on a monumental CAPEX program,  
7 not even including the Levy Nuclear Project, where we  
8 need access to capital at the lowest possible cost.  
9 It's difficult to imagine how even an irrational  
10 investor would invest in such a company with a  
11 9.75 percent ROE, let alone a 1.3 percent ROE.

12           The acceptance of such a proposal would send a  
13 clear message to Wall Street, to investors, to credit  
14 rating agencies, to our company that there's been a sea  
15 change in the regulatory policy and stability at this  
16 Commission.

17           Now apart from this general disagreement that  
18 we have with the, with the Intervenors, where do we  
19 specifically differ with the Intervenors? Really in  
20 three areas. This case really kind of boils down to  
21 three issues. It's ROE cap structure, it's depreciation  
22 and it's certain O&M expenses. That's it. That's  
23 really where we differ.

24           Now ROE, Intervenors, like I said, recommend a  
25 9.75 percent ROE and a 47 percent cap structure. To put

1 their proposal in perspective, this is close to the same  
2 ROE that the Commission awarded this year to Aqua Water,  
3 the water and wastewater company that this Commission  
4 held was not a stellar service provider by any stretch  
5 of the imagination.

6 The bottom line is this: Does this Commission  
7 really believe that PEF should be treated like or worse  
8 than a water and wastewater utility or an electric  
9 distribution company 1/25th our size that doesn't even  
10 own and operate power plants, let alone nuclear power  
11 plants, let alone going on and constructing a new  
12 nuclear power plant? And really what does this say  
13 about the credibility of the other arguments that the  
14 Intervenors are making in this case, about depreciation,  
15 about eviscerating the company's O&M?

16 Now speaking of depreciation, you heard a  
17 great deal about this in FPL's case, and I'm not going  
18 to go into it in any detail here. But OPC proposes to  
19 reduce the company's book depreciation reserve by  
20 \$646 million over a short four-year period. This is  
21 about \$161 million a year, or, to put it in context,  
22 equates to nearly half the net income of Progress Energy  
23 Florida each year for four years.

24 FIPUG goes easy on us. They only propose to  
25 whack us \$300 million over that, over a shorter period

1 of time, three years. That's \$100 million a year, if  
2 I'm doing my math right, or only 20 to 30 percent the  
3 net income of the company.

4 Now our witnesses are going to tell you why  
5 this is bad policy. It's inconsistent with standard  
6 accounting, retroactive ratemaking, and has never been  
7 adopted by this Commission, let alone any other  
8 Commission in the United States of America for that  
9 matter.

10 But consider three points on depreciation  
11 alone. First, the impact on customers. The fact of the  
12 matter, and their witnesses will admit that customers in  
13 the four-year window of OPC's proposal are going to  
14 receive a windfall. Any new customers in year five and  
15 beyond are going to have to be required to pay back to  
16 PEF the \$646 million that was refunded in the preceding  
17 four years over the remaining life of the plant. Again,  
18 neither this Commission or any other utility commission  
19 in the country has viewed this as sound policy.

20 Second, and really more significantly and  
21 unique to Progress Energy, when you apply this type of  
22 policy to Progress Energy's unique context, it's even  
23 worse. With the large projects that we're undertaking  
24 right now, steam generators, Bartow that we've already  
25 done, and our Levy Nuclear Project underway, and with

1 our sales declining, cash flow is absolutely critical to  
2 the company. OPC's proposal would wipe out \$149 million  
3 a year in cash flow each year for four years at a time  
4 when we need stable cash flow the most.

5 Third, the Intervenor's proposal cuts both  
6 ways; right? What's good for the goose is good for the  
7 gander. And, you know, in a, in a situation where  
8 there's a theoretical, to use OPC's term, which we don't  
9 agree with, a theoretical deficit, in a fair and  
10 symmetrical world, which I hope we live in, customers  
11 would have to pay back these amounts over a short period  
12 of time. Do you think the same, do you think these same  
13 Intervenor's would really be sitting here today pounding  
14 the table on behalf of their clients demanding that  
15 customers should immediately pay back to Progress Energy  
16 \$646 million?

17 Finally, O&M. Intervenor's want to gut O&M.  
18 Theirs aren't subtle scalpel incisions. Theirs are  
19 amputating limbs with hacksaws. The result would be to  
20 reduce PEF's requested revenue requirements by  
21 \$133 million. That wipes out Bartow right there.

22 Now you'll hear from our witnesses who  
23 actually run power plants, who actually build things,  
24 who actually maintain our electric grid, who actually  
25 develop budgets and are held accountable to them. Now

1 in contrast, who are you going to hear from the  
2 Intervenors? An accountant. You be the judge of who's  
3 more credible about what our company needs to run its  
4 business.

5           Commissioners, when all the dust settles, you  
6 will see that we are here because we have followed what  
7 the Legislature, the Governor, the Cabinet, this  
8 Commission has told us to do, and what we think is the  
9 right thing for our customers, to implement an energy  
10 policy that will secure Florida's energy future. Our  
11 request is made up of real investments today that  
12 provide real benefits to customers, of real cash flow  
13 needs that are necessary for us to succeed in making  
14 this policy a reality. But at the end of the day,  
15 however, your decision in this case will ultimately tell  
16 us how and when and whether this policy will be  
17 achieved. Thank you very much.

18           **CHAIRMAN CARTER:** Thank you.

19           Mr. Rehwinkel, also 20 minutes.

20           **MR. REHWINKEL:** Thank you, Mr. Chairman.

21           I'm almost embarrassed to even talk.

22 Mr. Glenn did such a good job of making his case. I  
23 don't even know why the customers are here today,  
24 because obviously Progress Energy has filed a perfect  
25 case and everything is right about what they say.

1           But, Commissioners, in all seriousness, what  
2 this case is about is a case of timing. It's a case  
3 about bad timing. Now it would be easy for me to sit  
4 here and say that the company is, to say the standard  
5 things about the company is greedy. I'm not going to  
6 say that. That is not my contention here. Mr. Glenn is  
7 absolutely right, that the company is made up of a lot  
8 of fine people who care about their community and their  
9 state.

10           But what we are here about is what the state  
11 of the community and the state is today. Progress  
12 Energy has come in here and asked you for \$500 million  
13 at a time when the state is suffering immensely. You've  
14 heard that. You're tired of hearing it. I'm sure  
15 you've heard it in TECO, you've heard it in Peoples Gas,  
16 you've heard it in FP&L. But it is what it is.

17           The problem with this filing is that there's  
18 not enough sharing of the pain that's going on in the  
19 state today. Progress has come in and asked for a  
20 depreciation increase at a time when their, their  
21 depreciation reserve is grossly overfunded, and that's  
22 on a conservative basis. We think it's more like  
23 \$850 million, not \$640 million -- \$646 million.

24           I want to focus in my remarks to you today  
25 about the three overriding issues that are in the case,

1 and Mr. Glenn has identified them. They are  
2 depreciation, return on equity and certain of the O&M  
3 costs of the company.

4 And I would also like to start off by reading  
5 from the statute that governs a significant part of this  
6 case, and this is 366.01. It says, "A public utility  
7 shall not directly or indirectly charge or receive any  
8 rate not on file with the Commission for the particular  
9 class of service involved, and no change shall be made  
10 in any schedule. All applications for changes in rates  
11 shall be made to the Commission in writing under rules  
12 and regulations prescribed, and the Commission shall  
13 have the authority to determine and fix fair, just and  
14 reasonable rates that may be requested, demanded,  
15 charged or collected by any public utility for its  
16 service. The Commission shall investigate and determine  
17 the actual legitimate costs of the property of each  
18 utility company actually used and useful in the public  
19 service, and shall keep a current record of the net  
20 investment of each public utility company in such  
21 property which value, as determined by the Commission,  
22 shall be used for ratemaking purposes and shall be the  
23 money honestly and prudently invested by the public  
24 utility company and such property used and useful in  
25 serving the public, less accrued depreciation, and shall

1 not include any goodwill or ongoing concern value or  
2 franchise value in excess of payment made therefor. In  
3 fixing fair, just and reasonable rates for each customer  
4 class, the Commission shall, to the extent practicable,  
5 consider the cost of providing service to the class, as  
6 well as the rate history, value of service, and  
7 experience of the public utility; the consumption and  
8 load characteristics of the various classes of  
9 customers; and public acceptance of rate structures."

10           Commissioners, that statute has been around a  
11 long time. And essentially what it says is that your  
12 ratemaking is based on cost. There's a lot of  
13 conversation already today, and you'll hear a lot in  
14 testimony about things that are not quite cost-based,  
15 things such as cash flow. A cash flow is not a, is not  
16 strictly in terms of ratemaking a cost element.

17           Cash flow is a, is a tool that businesses use  
18 to run the business, and management uses it to run the  
19 business, and it is a significant and important tool.  
20 But there's no criteria in the statute or the ratemaking  
21 rules of this Commission that talk about cash flow. We  
22 are not ignoring cash flow. Our witnesses address cash  
23 flow. But cash, I think to quote some of the people  
24 that Mr. Glenn quoted, people say cash is king.

25           Well, what does that mean? It doesn't mean

1 anything with respect to the laws that you are  
2 implementing here today and you will be implementing as  
3 you make your decision. So I just ask you to keep that  
4 in mind.

5 Mr. Glenn is passionate about his company, and  
6 for good reason. There are good people there who, as I  
7 said, care about their state. Public Counsel represents  
8 the customers of this state and we care about our  
9 clients. The people that we are putting before you as  
10 expert witnesses, they care about the people they  
11 represent. They do this on a, on a daily basis  
12 throughout the country. Certainly they do it for a  
13 living, but they are passionate about what they're  
14 talking about, and they have expertise that goes beyond  
15 maybe what their degree says.

16 You'll see a lot of innuendo in the testimony  
17 that denigrates the qualifications of these people. But  
18 these are witnesses that have been accepted as experts  
19 around the country and even by this Commission. So I  
20 think you need to keep things in perspective. Certainly  
21 we didn't hire another utility to come in here and talk  
22 about their company. We don't have people who are  
23 running power plants come in and testify, and you really  
24 don't ever have that in your history of ratemaking, as  
25 people who operate fleets of generating facilities or

1 operate transmission lines or trim trees. These are  
2 people who have a lot of experience and are here to  
3 testify based on that experience and their expertise.  
4 So that's a lot of a red herring in my opinion, and I  
5 just ask you to keep that in mind.

6 Cost of capital. You've heard some discussion  
7 about that already, and I think you know that is one of  
8 the big issues in this case. But cost of capital is one  
9 thing and cash flow is another. Do not be seduced by  
10 the arguments about what someone in Wall Street expects  
11 to see in terms of cost of capital.

12 Progress Energy has its burden to show what  
13 the cost of capital is under the Hope and Bluefield  
14 standards, not based on what Standard & Poor's or Fitch  
15 and Moody's says or wants to see. The Florida Public  
16 Service Commission are the decision-makers in this case,  
17 not Standard & Poor's, not Fitch, not Moody's, and we  
18 ask you to keep that in mind, and I know that you will.

19 There was some discussion already been had,  
20 and you'll see in some of the testimony, about the Levy  
21 nuclear plant and how there's a great need to have cash  
22 flow and credit metrics to cover that. Well, I just  
23 want to make one point about the nuclear plant.

24 Everyone knows that there's a statute that  
25 gives upfront recovery to the companies for the cost of,

1       preconstruction costs of the nuclear plants. One thing  
2       that is novel in the ratemaking history of this state  
3       and really the country is the provision that no matter  
4       how much they spend, if they change their plans and they  
5       even abandon the project, they get to keep that money  
6       and the customers have to finish paying for whatever  
7       outstanding costs are out there. That's the will of the  
8       Legislature. I'm not quibbling with that.

9                 But that reduces the risk of the company to  
10       build the plant. When you're being asked to set return  
11       on equity in this case to make sure that they have an  
12       opportunity to build that plant or that their  
13       opportunity to build that plant is not harmed, keep this  
14       in mind. If you give an extra increment of return on  
15       equity just to make sure their credit matrix are the way  
16       they want them to be, and they decide at some point down  
17       the road to change their plans about the nuclear plant,  
18       we don't get that money back.

19                In other words, if you've given them money to  
20       improve their creditworthiness to build the nuclear  
21       plant and there's an increment that the customers pay  
22       for in rates going forward, there's no similar  
23       opportunity for the, for customers to get the money back  
24       that they would have provided to do that. So I'd like  
25       you to keep that in mind, is that let's keep the base

1 rates base rates and the nuclear is off on its own.

2 We're not trying to hamper their ability to  
3 build the plant, but I don't think that you should be  
4 convinced that you have to do something extra just so  
5 that they can.

6 You heard a lot about depreciation and how  
7 unfair it is that we're proposing that there be a return  
8 to the customers of the excess depreciation that they've  
9 paid. I read you from the statute about the ratemaking  
10 standard, the net investment standard and the accrued  
11 depreciation standard that is in 366. You are the ones  
12 that determine the level of depreciation and the  
13 depreciation reserve of this Commission, of this  
14 company. The statute says right there that you keep the  
15 records about that. You make the determinations.

16 We're asking you to make a correction in rates  
17 that, as it turns out today, are higher than they should  
18 have been, not because you made a mistake, not because  
19 the company did something wrong, but because  
20 circumstances changed. We know today -- what we know  
21 today, had we known then, the rates would have been  
22 lower.

23 You heard about the, the severe impact on net  
24 income that would occur if this depreciation  
25 amortization occurred. Well, that's not really the

1 case, because the net income would be enhanced by credit  
2 in the income statement of \$161 million. The company  
3 wants to tell you that their return would be 1.3 percent  
4 or whatever. Well, no, it wouldn't, because what you  
5 would be doing is you would be saying these are the  
6 actual or the projected returns on equity that you would  
7 be achieving if we set rates at this level, and they  
8 would be what you say they are. They have to make  
9 adjustments for it.

10 That's the way the ratemaking process works.  
11 It's not what they would like them to be measured  
12 against what you've awarded. It's what you say the  
13 return on equity and the achieved return is based on  
14 your ratemaking standard. So we'd ask you to keep that  
15 in mind is it's, it's not about how they'd like it to  
16 look, it's about what you say it is.

17 The big issue about O&M that we are putting  
18 forward is about compensation. There's been a lot in  
19 the FP&L case that you've heard, there's a lot in the  
20 record in this case today, and it goes back to the  
21 initial issue that I raised. The company is coming in  
22 here and they're acting like it's business as usual with  
23 respect to the level of pay, the level of employees and  
24 the level of incentive compensation that they're paying.

25 The people of the State of Florida, employees,

1 customers alike, they're not sharing in the opportunity  
2 to make, to receive incentive pay, to receive bonuses  
3 and to receive enhanced compensation in the form of  
4 raises. That's just not the way the business market is  
5 today.

6 And we think that Progress should be like the  
7 other businesses in the state and they should -- that  
8 ratemaking should reflect fairness, that they should not  
9 be given the opportunity to enhance their earnings based  
10 on, on, on bonuses and increases in pay that the  
11 customers of the state are not getting generally.

12 Those are the three big issues. The one issue  
13 that I would like to raise for your attention that is  
14 not a substantive issue but that affects substantive  
15 issues is the burden of proof of the company. This is a  
16 projected test year case. It is based on their  
17 projections of what their, their earnings will look like  
18 or their operations will look like next year. They  
19 don't get a presumption of correctness about it. They  
20 have a burden of proof.

21 I read to you from the statute that you get to  
22 prescribe in writing in rules and regulations that they  
23 have to follow when they file their case. Those are the  
24 minimum filing requirements. There will be testimony,  
25 there will be cross-examination about whether they have

1 complied with those rules and they have demonstrated  
2 upfront as is required the justification for what  
3 they're requesting.

4 And we believe in a lot of cases the reason  
5 there are issues here is because they have not provided  
6 upfront justification that your rules require. In  
7 depreciation, you'll hear testimony about whether they  
8 filed the depreciation study in accordance with the  
9 rules. Your staff, our staff, we do not have the burden  
10 of asking additional and extra and extra discovery  
11 responses to draw out of them what they should have done  
12 in the first place. That's not our burden. That's not  
13 your staff's burden. That's their burden.

14 So because they have filed testimony that says  
15 here's the number and then in rebuttal say, well, we  
16 gave you the number and then we provided these five or  
17 six discovery responses and dump, here it is, that  
18 doesn't necessarily mean that they've met their burden  
19 of proof. These are big dollar issues. And they should  
20 take it seriously. They're asking the customers to pay  
21 a \$500 million, write a \$500 million check. They need  
22 to justify that to you. It's their burden. It's not  
23 our burden. It's not your staff's burden.

24 Commissioners, with those remarks I think  
25 we've kind of laid out what our case is going to be

1 about. We have the three big issues. We have some  
2 other issues about allocation of cost to nonregulated  
3 operations. We have concerns about whether the O&M  
4 expenses that they are reflecting in the, in the test  
5 year are representative of going-forward operations, and  
6 I think that's something that you will hear some  
7 evidence about.

8 We look forward to putting our case on and we  
9 look forward to your decision in this matter. Thank you  
10 very much.

11 **CHAIRMAN CARTER:** Thank you. Let me give,  
12 give Chris an opportunity to recalibrate the timing. I  
13 think, Mr. Wright, you wanted to be last; is that  
14 correct?

15 **MR. WRIGHT:** Mr. Chairman, I don't care about  
16 being last. I just wanted the extra minute because I've  
17 got a little cold going on.

18 **CHAIRMAN CARTER:** Maybe we should have you do  
19 it first.

20 **MR. WRIGHT:** Your pleasure, Mr. Chairman.

21 **CHAIRMAN CARTER:** Okay. Mr. Wright, ten  
22 minutes. Well, if you happen to drag through it --  
23 let's give Mr. Wright 11 minutes.

24 **MR. WRIGHT:** Thank you very much, Mr.  
25 Chairman.

1           Good morning, Commissioners. I'm Schef Wright  
2 and I have the privilege of representing the Florida  
3 Retail Federation in this case. The Federation is a  
4 statewide organization of more than 9,000 members --  
5 four years ago it was more than 10,000 -- from the  
6 smallest mom and pop operations to the largest chains of  
7 grocery, department, electronics, pharmacies and other  
8 stores that serve Floridians in competitive markets.

9           Commissioners, there are many issues in this  
10 case, but at bottom the decision that you are called  
11 upon to make in this case is whether Progress Energy  
12 Florida needs any rate increases at all in order to  
13 provide adequate and reliable service at the lowest  
14 possible cost.

15           The evidence will show that Progress does not  
16 need any rate increase at all to provide adequate and  
17 reliable service, and accordingly you should deny  
18 Progress's requested increases, and in fact you should  
19 lower Progress's rates from their current levels.

20           Before I get into some regulatory details, I  
21 have to say that I don't believe that you or anyone can  
22 hear this case without knowing, as we all do, the  
23 economic conditions in which Progress is asking for an  
24 extra half a billion dollars a year of customers' money.  
25 We all know that Florida's unemployment rate is at

1 10.7 percent, among the highest in the country. We all  
2 know that Florida's foreclosure rate is the highest in  
3 the country. We know that a high percentage of  
4 Progress's customers live on fixed incomes, many of  
5 those on low fixed incomes with no prospects for  
6 increases in sight. These are objective facts.

7 But what struck me personally and powerfully  
8 was the testimony of the hundreds of customers who  
9 showed out and testified in opposition to Progress's  
10 requested increase. We all saw the extraordinary  
11 turnout. I about fell over when I showed up at the  
12 Citrus County Auditorium for the Inverness hearing and  
13 saw the huge auditorium filled to nearly standing room  
14 only. This is an important case to Floridians.

15 We heard the pleas of dozens of citizens who  
16 have told you that they simply cannot afford this kind  
17 of an increase and that you are their only hope. We  
18 heard the testimony of folks who work at elder services  
19 centers, presidents of homeowners associations and  
20 community associations, mayors and commissioners, city  
21 commissioners, county commissioners and legislators  
22 testifying on behalf of their members and constituents  
23 that they cannot afford this.

24 We heard from a lot of people, people who  
25 don't even have a job, let alone the prospect for a

1 4.7 percent pay raise or even a 2.35 percent pay raise  
2 or an incentive pay bonus, tell you that Progress's  
3 proposed increase is a week's worth of breakfast or  
4 lunches for their families or a tank of gasoline or  
5 medicine or food or doing without.

6 We heard them testify that Progress doesn't  
7 need the increase, that 9 percent is plenty in return,  
8 and that Progress and its management need to tighten  
9 their belts just like the vast majority of their  
10 customers are having to do. We saw and heard men and  
11 women choke up with emotion because they can't afford to  
12 pay the increased rates.

13 Now I know and you know that there's no free  
14 lunch. Electricity is not free. And the difference  
15 between \$127 a month and \$140 a month is not all that  
16 great in the grand scheme of things. But it is great,  
17 it is significant, and it makes a huge difference to the  
18 lives of citizens and customers who testified at the  
19 service hearings.

20 The corresponding increases proposed for  
21 Progress's commercial customers also make dramatic  
22 differences in our competitive operations and would put  
23 substantial upward pressure on our prices, leading to  
24 further adverse impacts on Florida's economy and  
25 Floridians.

1           So it is in this real personal context, as  
2 well as in the objective context of Florida's very  
3 difficult economic times, that I ask you on behalf of  
4 the Florida Retail Federation and on behalf of all of  
5 Progress's customers to keep in mind the following as  
6 you hear this case.

7           We believe, and we expect the Commission and  
8 Progress will agree, that it is Progress's duty to  
9 provide safe, adequate, reliable service at the lowest  
10 possible cost, and that it is accordingly the  
11 Commission's duty under Chapter 366 to set rates  
12 accordingly that will result in Progress's being able to  
13 provide safe, adequate, reliable service at the lowest  
14 possible cost, or at the lowest cost with any reasonable  
15 range.

16           It is not consistent with your mandate simply  
17 to approve a request by a utility if you merely find  
18 them to be reasonable. The public interest and the  
19 interest of Floridians require more: That you set rates  
20 sufficient for Progress to provide adequate and reliable  
21 service at the lowest cost within the reasonable range.  
22 Wherever there's a choice or a reasonable range, it's  
23 Progress's duty to find the lowest cost and it's your  
24 duty to approve the lowest cost in setting their rates.

25           Now as to why Progress doesn't need a rate

1 increase, you have to make decisions on about 100 issues  
2 in this case, but there are really a handful that are  
3 going to drive the result.

4 With regard to ROE, return on equity, Progress  
5 has requested an after-tax return on equity of  
6 12.54 percent. This is more than 20 percent before  
7 taxes. We don't believe this is even within the  
8 reasonable range. Factual evidence in this proceeding  
9 will show that the national average for all cases  
10 decided by United States regulatory commissions this  
11 year has been 10.5.1 percent -- 10.51 percent.

12 More than that, the unreasonableness of  
13 Progress's request is demonstrated by the fact that in  
14 the cases decided this year no other utility in the  
15 country even asked for a return this high. Progress  
16 recovers 76 percent of its revenues through pass-through  
17 cost recovery clauses and line item tax charges, and  
18 with these minimal risks a return of 9.75 percent is at  
19 least reasonable and even generous to the company.  
20 Setting the company's rate of return on equity at  
21 9.75 percent would save customers about \$160 million a  
22 year.

23 With regard to depreciation reserve, we  
24 believe that you should flow back at least the  
25 \$646 million surplus acknowledged by Progress to

1 customers over the next four years. This will reduce  
2 customers' bills by about \$149 million a year. Progress  
3 has had the luxury of this extra money for years, and  
4 Progress's proposal to amortize its huge surplus over 20  
5 years or so is inconsistent with Commission policy and  
6 precedent, and is unfair, unjust and unreasonable  
7 because it would force current customers to subsidize  
8 future customers.

9 On depreciation expense, we ask that you  
10 choose the value at the low end of the reasonable range.  
11 Use Mr. Pous's recommendations based on extensive,  
12 detailed account and subaccount by account and  
13 subaccount analyses to reduce Progress's request by  
14 \$113 million a year.

15 With regard to O&M issues, we again ask you to  
16 choose values at the low end of the reasonable range.  
17 On several issues this will produce adjustments totaling  
18 well over \$100 million a year.

19 With regard to storm reserve, we ask you to  
20 choose the low end of the reasonable range, a zero storm  
21 accrual for purposes of setting Progress's rates in this  
22 case, because the company's existing reserve of  
23 \$135 million is far greater than is necessary to handle  
24 non-catastrophic storms and it's 20 times Progress's  
25 average storm costs incurred over the last three years.

1 They were under \$7 million a year average over the last  
2 three years.

3 And, remember, even if you grant this, which  
4 will save customers \$14.9 million a year in today's  
5 economy, even if you grant this, Progress is going to  
6 have \$135 million going into 2010 in its storm reserve.

7 With regard to pension costs, we do dispute  
8 Progress's pension cost request because we dispute both  
9 paying pension expense on a current basis as part of  
10 employee benefits, which we do, and that's okay, but now  
11 we're being asked to bail Progress out because the  
12 investment performance on its pension fund has not been  
13 adequate. Nobody is bailing customers out when our  
14 401Ks, IRAs, and retirement funds have gone into the  
15 tank.

16 With regard to employee compensation, we ask  
17 you to choose the low end of the reasonable range of  
18 values. Set, set rates based on employment at  
19 reasonable levels, not based on 500 extra positions that  
20 the company claims, but based on reasonable levels, and  
21 eliminate the company's requested incentive compensation  
22 from customers' rates because that compensation is  
23 geared far more to benefiting shareholders than it is to  
24 customers. There are several other O&M issues that I'd  
25 like to mention, but I want to stay within my time.

1                   And lest you think that we don't care  
2 Progress's financial health, we do. Our proposals will  
3 cover all of Progress's reasonable and prudent operating  
4 costs, they'll preserve Progress's financial integrity  
5 and provide a reasonable return to investors, provide  
6 reasonable returns of interest and equity capital to  
7 investors.

8                   When you add it all up, Progress's requested  
9 increases are not necessary for Progress to fulfill its  
10 duty of providing adequate, reliable service at the  
11 lowest reasonable cost.

12                   In the vernacular, I'd like -- at the New Port  
13 Richey customer hearing, Representative John Legg told  
14 you about a constituent of his who called to talk about  
15 the rate case, and the man simply said to the  
16 Representative, "Can you cut a guy a break?"

17                   Progress's customers in Florida's economy  
18 today need a break. But we're not asking for an  
19 arbitrary break just because a rate hike would be a  
20 hardship for many customers. It will, but that's not  
21 our case. The evidence in this case shows that  
22 Progress's customers deserve a break and you, the  
23 Commission, can and should give us that break through  
24 your decisions in this case based on the evidence.

25                   In regulatory and statutory terminology as

1       opposed to the vernacular all we are asking for is that  
2       you set rates that will allow Progress to provide safe,  
3       adequate, reliable service at the lowest reasonable  
4       cost, deny the rate request, rate increase requested by  
5       Progress, and lower their rates by \$35 million a year as  
6       testified by the consumers' witnesses and warranted by  
7       the evidence.

8                 Thank you very much.

9                 **CHAIRMAN CARTER:** Thank you, Mr. Wright.

10                Ms. Alexander.

11                **MS. ALEXANDER:** Good morning, Mr. Chairman and  
12       Commissioners. My name is Stephanie Alexander and I  
13       represent the Florida Association for Fairness in Rate  
14       Making, also called AFFIRM.

15                Florida AFFIRM is a coalition of quick-serve  
16       restaurants that have substantially similar electrical  
17       usage characteristics. The members of AFFIRM are the  
18       corporations and the corporations' franchisees that own  
19       and operate over 500 business locations served by  
20       Progress Energy Florida to the following brand names:  
21       Waffle House, Wendy's, Arby's and Young Brands, doing  
22       business as Pizza Hut, Kentucky Fried Chicken, Taco  
23       Bell, Long John Silvers and A&W. These 500 plus Florida  
24       restaurants also employ many thousands of Florida  
25       citizens. Virtually all are concerned with the

1 potential increase in their electric rates.

2 This is the second rate case in which AFFIRM  
3 has intervened. The first of course is the Florida  
4 Power & Light rate case, which is ongoing. Both of  
5 these cases involve some monumental decisions that will  
6 affect the people of the state for years to come, and  
7 both cases involve significant and sometimes strident  
8 differences on how the Commission should resolve the  
9 many, many issues before it.

10 At first glance, the issue raised by AFFIRM  
11 may not seem as grand or far-reaching as some of the  
12 other issues before the Commission, but it nonetheless  
13 remains important that AFFIRM's request for relief not  
14 be overlooked.

15 Under Progress's current tariff, the members  
16 of AFFIRM are unfairly disadvantaged as compared to  
17 other commercial customer -- to other commercial  
18 customers and industrial users. A new commercial  
19 time-of-use rate should be developed and implemented  
20 under which the rate charged by Progress, one, varies  
21 during different time periods and reflects the variance,  
22 if any, in the utility's cost of generation in  
23 purchasing electricity at the wholesale level, and, two,  
24 enables the electric consumer to manage energy use and  
25 costs through advanced metering and communications

1 technology.

2 AFFIRM has thus intervened to ask the  
3 Commission to address the structure and resulting prices  
4 its members must pay for electric power from Progress  
5 Energy. The issue is important to AFFIRM's members and  
6 lies at the heart of the Commission's mission to protect  
7 consumers from unfair rates.

8 AFFIRM's expert witness Russell Klepper will  
9 explain in detail why the current rate structures and  
10 resulting prices are unfair to AFFIRM's members, and of  
11 course will answer any questions about what should be  
12 done to remedy these unfair and unjust rate structures.

13 In a nutshell, however, the reason that the  
14 rate structures and resulting prices are unfair is  
15 simple. The GSD-1 rate is an average cost, average  
16 characteristic, one-size-fits-all rate. But that rate  
17 does not actually fit AFFIRM's members. As Mr. Klepper  
18 will explain, the load shape and other electric  
19 characteristics of AFFIRM's members materially differ  
20 from the load shape and other average electric  
21 characteristics of the GSD-1 rate group as a whole, but  
22 they are charged as if they are the same. As a result  
23 of this substantial mismatch, the members of AFFIRM are  
24 penalized by the GSD-1 rate.

25 As Mr. Klepper will testify, the net result of

1 this mismatch is that the usage of AFFIRM's members,  
2 when compared to the majority of commercial customers,  
3 make a smaller contribution to the company's monthly  
4 system peaks while using a disproportionately greater  
5 percentage of total energy consumption during all the  
6 periods. But these key differences are not recognized  
7 in the current rate structure and resulting prices, and  
8 this is the fundamental unfairness inequity that we will  
9 be asking the Commission to address.

10 Thank you.

11 **CHAIRMAN CARTER:** Thank you. Is it Ms. Evans  
12 or Ms. Van Dyke? Which is it?

13 **MS. VAN DYKE:** Ms. Van Dyke.

14 **CHAIRMAN CARTER:** Ms. Van Dyke, you're  
15 recognized.

16 **MS. VAN DYKE:** The Navy focuses on one issue  
17 in this hearing, that being the allocation of production  
18 capacity costs in Progress Energy of Florida's allocated  
19 class cost of service and rate return study.

20 We refer the Commission to the Navy's position  
21 as set forth in its issue summary on Pages 17 and 18 of  
22 the Prehearing Order and the testimony of our witness,  
23 Mr. Selecky, for the details of our concerns and our  
24 suggested changes.

25 Our intervention is focused on this single

1 issue, but the strength of our interest is reflected in  
2 that fact, that we would intervene and take the time and  
3 resources to intervene based on our belief that Progress  
4 Energy of Florida is misguided in how it allocates its  
5 production capacity costs. We urge you to read  
6 Mr. Selecky's testimony with care and to adopt his  
7 proposals on this issue.

8 Thank you.

9 **CHAIRMAN CARTER:** Thank you.

10 Mr. Brew.

11 **MR. BREW:** Thank you. Good morning. I'm here  
12 for actually a single customer, PCS Phosphates, but it  
13 is one of the biggest loads on the Progress system.  
14 It's a load that's bigger than many towns in Florida.  
15 We're also a renewable energy producer. We're also an  
16 important source of interruptible curtailable load to  
17 help preserve system reliability.

18 I was struck by a comment that we'll get to  
19 when the Progress witnesses appear, that they're facing  
20 the same pressures as other businesses in Florida. I  
21 beg to differ. We are operating in globally competitive  
22 commodity markets. We don't have the ability to raise  
23 price when sales slip. We don't have the ability to pay  
24 for capital projects in advance of them going into  
25 service. It's not at all together different.

1           I have, in this context, coming towards the  
2 middle of the end of the line, having most of the  
3 consumers already stolen my lines, but there was one  
4 comment that Mr. Rehwinkel mentioned that I need to  
5 reinforce, and that's that throughout this proceeding  
6 we're going to be talking about the effects of the  
7 recession and yet Progress has filed a business-as-usual  
8 rate case.

9           Many of the adjustments, from the overstated  
10 rate of return to ignoring the excess depreciation  
11 reserve to executive compensation, fit the  
12 run-of-the-mill utility rate filing in a time that's  
13 truly extraordinary and it can't be addressed as just a  
14 business-as-usual rate case. And in that regard, the,  
15 the major adjustments on the key issues that have been  
16 outlined that Mr. Rehwinkel went through I think are  
17 extremely critical to get to.

18           The, on a couple of points, as the company  
19 looks at its capital expenditures, it truly has  
20 undervalued the benefits of interruptible load which  
21 help to not only maintain system reliability on an  
22 ongoing basis, but help to, help the company minimize  
23 their capital expenditures and what they need (phonetic)  
24 for their planning reserve. Their proposal to  
25 eviscerate the interruptible credit year is something

1 that really needs close attention and that I'd encourage  
2 you to take a close look at FIPUG's witness  
3 Mr. Pollock's testimony.

4 Also, it's also very important to note that  
5 this is not a \$499 million rate case. This is a  
6 \$945 million price increase for customers, because you  
7 have another \$446 million in nuclear cost recovery  
8 that's been proposed as well as a rate increase here.  
9 So that's the prospect of what we're looking at in our  
10 bills.

11 As Mr. Rehwinkel mentioned also, the company  
12 has the advantage of seeking cost recovery on an early  
13 basis through the nuclear cost recovery that Wall Street  
14 is well aware of.

15 When you add it up, Mr. Glenn's summary of  
16 what they are looking for, as he added up his capital  
17 expenditure, you came up to 270, \$290 million. Well,  
18 there's still another 200 million to go.

19 Our view is that in this rate case the  
20 Commission's actions need to support one thing, and  
21 that's Florida's economic recovery. So in looking at  
22 each of the issues that are going to come up, the major  
23 issues, the question is is this going to help support  
24 Florida's economic recovery, and that's the basis upon  
25 which this, this rate case should be decided.

1 Thank you.

2 **CHAIRMAN CARTER:** Thank you, Mr. Brew.

3 Mr. Moyle.

4 **MR. MOYLE:** Thank you, Mr., Mr. Chairman.

5 Jon Moyle on behalf of the Florida Industrial  
6 Power Users Group. My clients are large users of  
7 electricity, and we're privileged to appear before you  
8 in this, in this rate case.

9 Before I get into my opening comments with  
10 respect to some of the issues that are important to  
11 FIPUG members and others, I want just to say thank you  
12 to, to you all for the patience and the attention that I  
13 know you'll give to this case. It's a, it's a long  
14 haul, you've been at it a long time, but these are  
15 important issues to people in Florida, people in  
16 Progress's service territory, consumers and the company.  
17 And so thank you for, for the attention that I know  
18 you'll give to this case as we put it on and do our best  
19 to put it on.

20 Advocates oftentimes, you know, get very  
21 engaged and are trying to represent their clients to the  
22 best of their ability, and I anticipate that this will  
23 not be an exception, that we will do that in this case.  
24 But the other thank you I wanted to say was to Progress  
25 and staff in their professionalism in preparing this

1 case and in dealing with issues that come up. I think  
2 largely we've been able to work through those, and I  
3 want just to publicly say that I appreciate that on  
4 behalf of FIPUG.

5 A couple of issues that you will hear about as  
6 it relates to FIPUG is the cost of service issue. And  
7 currently Progress uses the 12CP and 1/13th methodology  
8 to allocate cost of service. It has worked in the past.  
9 They're proposing to change it to a 12CP and 50 percent  
10 average demand, which is not appropriate. If it ain't  
11 broke, don't fix it. It ain't broke. It shouldn't, it  
12 shouldn't go to this 12CP and 50 percent average demand.

13 Our position aligns with the Navy on this.  
14 The Navy has intervened, is going to be here for two  
15 weeks on this one issue. And, again, we would urge you,  
16 as Mr. Pollock comes and testifies on behalf of  
17 Progress, to listen carefully, and at the end of the day  
18 to keep the 12CP 1/13th approach.

19 We would also ask you to be mindful, there's  
20 been a lot of talk about the economy, and that will be a  
21 theme in this case. FIPUG's members are, are employers,  
22 they're businesses. They are struggling through this  
23 tough economic time as well, and that should be  
24 something that is kept in mind as you all consider the  
25 issues before you.

1           I don't think we have a disagreement with,  
2 with Progress on the idea that no individual class of  
3 customers' rates should go up by more than 150 percent.  
4 In their prehearing position they agree with the  
5 Commission policy on that. But, but I want to just  
6 specifically raise the point that this is a tough  
7 economy and the FIPUG members are ones that pay taxes  
8 and employ a number of people in the community, and they  
9 need your help to recover, and please keep that in mind  
10 as you, as you deliberate, and we know that you will.

11           Finally, with respect to cost of service,  
12 there's an issue related to the interruptible credit.  
13 FIPUG contends that that needs to be adjusted upward  
14 because it needs to truly reflect the costs that  
15 Progress Energy avoids by providing, by us agreeing to  
16 have service interrupted.

17           You know, this is -- an interruptible credit  
18 is something that allows Progress when there's high  
19 demand to shed load. It's something that we agree to  
20 do. But the credit that we receive ought to be updated,  
21 just like other things are updated. You know, we see  
22 all these projections on cost and O&M and growth, but  
23 the interruptible credit ought to be adjusted upward to  
24 \$10.49 per kilowatt hour and the demand credit should  
25 not be load-factor adjusted. I want to highlight these

1 issues. Mr. Pollock will be here talking about them, so  
2 you'll have a chance to explore them further with him.

3 Also FIPUG Witness Marz will be here. He will  
4 talk about incentive compensation and indicate that,  
5 that it is too high, it is too generous, particularly  
6 given these economic circumstances, that the O&M  
7 projections by Progress is also too high, and will  
8 suggest that the O&M has kind of been loaded heavily  
9 into, into the test year. And that if you look back and  
10 average it out over time and say, wait a minute, why is  
11 it so high in, you know, in 2010? Well, I think he will  
12 probably suggest that when you go in for a rate case --  
13 you know, the last time I believe Progress was in for a  
14 fully litigated rate case has been over 15 years ago,  
15 you know, those rates are set for a long time. So we,  
16 we would ask you to listen carefully to his testimony  
17 with respect to O&M being, being set too high.

18 And then finally, you've heard about the storm  
19 accrual account. That doesn't need to be continued.  
20 There's 133 million give or take in the kitty for  
21 Progress, and that's sufficient when you consider all of  
22 the other tools that are available to deal with storms.  
23 Also, fortunately, we have been free from storms for the  
24 last few years.

25 Now the -- Mr., Mr. Glenn talked about these

1 projects, Bartow and electrostatic precipitators, ESPs  
2 and things, and he says, well, these are real costs,  
3 these are real dollars. But I found it interesting,  
4 because then he said, kind of at the end, well, there's  
5 really three issues, and it's return on equity,  
6 depreciation and O&M, which to me suggests that those  
7 issues -- a lot of times over the years we've seen  
8 capital additions be dealt with with increase in  
9 revenues and other things.

10 But to focus on the three issues just briefly.  
11 Return on equity. You've already heard a lot about it.  
12 You're going to get to see again the exhibit that shows  
13 all of the cases decided in 2009. And I would venture  
14 to say that Florida ought to strive to be first in a  
15 number of areas. You know, we're working on  
16 biotechnology down in the Stuart, Martin County area.  
17 Education is always a goal that Florida has to be first.  
18 A lot of people say football is a goal that Florida  
19 strives to be first. We should not strive to be first  
20 in ROE, in return on equity. And if you grant the  
21 request made by Progress, that's what you'll be. You'll  
22 be first in return on equity this year. You know, the  
23 Progress, the TECO case of 11.25 was second only behind  
24 one out of California, but that is too high, with all  
25 due respect.

1           You're going to ask Progress, there'll be  
2 testimony about they had a settlement, 10 percent worked  
3 for a settlement. We'll ask them, well, what was their  
4 ROE last year? What's their ROE this year? You know,  
5 quite frankly, they don't need 12.54 ROE. That's too  
6 high and it makes a significant impact to customers.

7           Now you'll hear about, well, Wall Street this  
8 and financing that. You're not going to hear anybody  
9 who gets on the stand and says, hi, I'm from Wall  
10 Street, or, hi, I'm an investor. It's all going to be,  
11 well, we think and maybe and this is what so-and-so  
12 said, and that's not what you should make your judgment  
13 on, particularly when you're being asked to balance the  
14 views of Wall Street versus the views of people from  
15 Franklin County. The county commissioner showed up  
16 again today on behalf of his constituents. And, you  
17 know, you heard the people in these areas come to your  
18 service hearings and tell you that they are, they are  
19 hurting. So when you're considering Wall Street versus  
20 Main Street, we would urge you to lean on Main Street  
21 and not strive to be number one in return on equity.

22           My time is about to expire, but let me just  
23 make two other brief points. With respect to  
24 depreciation, you know, it's a concept that is, you'll  
25 hear some expert testimony on. I think some people may

1 consider it an estimate. I would argue that you ought  
2 to be guided by the economic times here. And to the  
3 extent you can take action which will return money to  
4 people who need it now, consumers in Florida who are  
5 hurting in this great recession, that your judgment  
6 ought to be to take steps in the direction of returning  
7 money to them sooner rather than later. And that, we  
8 would argue, should be your guiding principle when  
9 considering the, the depreciation issue.

10 Finally, O&M, you'll hear Mr. Marz. We think  
11 it's elevated. There's some adjustments on O&M that can  
12 be made.

13 And then the final point, Levy, don't, don't  
14 let Levy capture you in terms of making decisions. I  
15 mean, I think you will hear Progress say Levy, we  
16 haven't decided even whether to move forward with it.  
17 We're taking steps in that direction, but it's not a  
18 done deal. There's still opportunities for  
19 partnerships. There's a lot of things out there with  
20 respect to Levy, and surely you should not make your  
21 rate case decision about something that is uncertain as  
22 to whether it's going to take place at all.

23 And I think that you can give a fair judgment  
24 that still allows that nuclear project to move forward,  
25 but surely not, not go to the level that you're being

1 asked to by Progress Energy.

2 Thank you, Mr. Chairman.

3 **CHAIRMAN CARTER:** Thank you, Mr. Moyle.

4 Ms. Bradley.

5 **MS. BRADLEY:** Thank you.

6 Contrary to the idea we got from Progress in  
7 their opening statement, we're not trying to put them  
8 out of business. We want strong, reliable utilities in  
9 Florida.

10 Unfortunately though the 12.5 percent increase  
11 return on equity that they're asking for puts a burden  
12 on consumers that we don't think is necessary. We had  
13 consumers that came in and testified about being  
14 investors and stockbrokers, and they pointed out the  
15 fact that this is a monopoly. It's a regulated utility.  
16 And the risk that you have to raise a return on equity  
17 to meet is not present here. They're not as much at  
18 risk because they're regulated, they have guaranteed  
19 rates. They don't need this high an increase.

20 There's been mention of the depreciation, and  
21 we agree with the others that, you know, this is money  
22 the customers have overpaid, and this is a time that  
23 they're having such a rough time and they need that  
24 money. So we would ask you to give some of this  
25 depreciation that's been overpaid back to the customers

1 who paid for it when they have this time of need.

2           There's been comments about nobody likes a  
3 rate increase, and that's true. But this is more an  
4 issue of these people can't afford it. We went all over  
5 the state and heard from numerous people that talked  
6 about their Social Security payments being fixed.  
7 They're on fixed incomes because of disability or  
8 retirement, and they're not going up. Some people  
9 talked about, you know, \$400 to pay their bills for the  
10 month, and they said they simply can't afford to pay any  
11 more for their utilities. They've done everything they  
12 can to conserve.

13           We went to New Port Richey and it kind of  
14 showed the variety of customers where this would affect.  
15 They ranged from, I believe Nathan was ten, to a  
16 90-year-old Mr. Douglas, who was a World War II veteran.  
17 The thing that was consistent about their testimony,  
18 despite the great disparity in age, was the fact that  
19 they both said that they oppose this rate increase  
20 because their families couldn't afford it.

21           We also heard from Ms. Tilton who testified in  
22 New Port Richey, and she works with seniors trying to  
23 help them get jobs. These are people who have worked  
24 hard all their lives and have retired looking for things  
25 you enjoy during retirement. And she mentioned the

1 84-year-old senior who she was helping find a second  
2 job. He was already working a part-time job as a  
3 janitor.

4 The last speaker at that hearing was  
5 Ms. Grimard. She came not expecting to testify, but sat  
6 for hours and was the last person to testify. She said  
7 she thought she needed to represent the people that were  
8 85 to 90 years of age and to tell you they simply cannot  
9 afford this rate increase. Things are tough for seniors  
10 right now.

11 We went to Inverness where we heard from  
12 Ms. Dolly who said seniors can't afford this type of  
13 increase. There were numerous people who spoke of that  
14 in Inverness. And then there was Ms. Webb, and  
15 Ms. Webb, her touching statement was, "Please help us."  
16 These people are looking to you to help them because  
17 they simply can't afford this.

18 In St. Petersburg we heard from Ms. Knapp.  
19 She was one of two or three people who said they felt  
20 like they were living in a cave. They keep their  
21 windows closed as much as possible, they put blankets up  
22 over the windows to keep it as cool as possible so they  
23 don't have to turn on the air conditioning, and they  
24 stated they felt like they were living in a cave.

25 We went to Clearwater, where Ms. Hughes

1 testified, as a lot of the seniors did, about having to  
2 watch everything, including their food intake. And  
3 Ms. Hughes testified she was living on beans and rice  
4 even for breakfast.

5 Ms. Wooten testified about the 65-year-old son  
6 who has asthma so they have to use electricity, and like  
7 a number of seniors that testified around the state,  
8 Ms. Wooten said, "I only take my medication every other  
9 day."

10 These are the things the customers testified  
11 that they are being affected already and will be even  
12 more affected if this rate increase goes through.

13 There's been some mention of reliability, and  
14 while there were comments around the state about power  
15 surges and outages, that people had lost appliances and  
16 had problems with tree trimming, that type of thing, it  
17 probably was brought to light though most in  
18 Apalachicola. We heard from Mr. Crum who had come down  
19 from Tallahassee to say he was a crane operator who used  
20 to do business with Progress, but that Progress had  
21 canceled all of their contracts and now were paying  
22 extra to bring in people from out of state when they  
23 needed a crane.

24 We also heard about, the story about an  
25 accident that occurred down there and the person was

1 trapped in his car for over an hour because they had to  
2 bring in people from a distance to kill the lines so the  
3 firefighters could get in to rescue this person.

4 And then finally the last witness in  
5 Apalachicola got everyone's attention. He came in with  
6 his base, meter base and slammed it on the table. He  
7 was a little upset, as you can understand, because they  
8 had come in that morning, Progress had, to change his  
9 meter and set fire to his restaurant. The city, he  
10 said, worked with him to get everything fixed, but it  
11 still took him hours to get Progress to come back in to  
12 turn on his electricity. So he lost business that day,  
13 and in this time, in this economy, losing business is  
14 not a good thing for our business owners.

15 That brings us to the mention of the  
16 trickle-down problem that we're having. Our small  
17 businesses are really hurting. They've tried to eat as  
18 much of their cost as they can so they won't have to  
19 pass it on to their customers, but they testified that  
20 if the rate increase goes through, then they will be  
21 forced to pass along some of this cost to their  
22 customers. And they fear for the customers that won't  
23 be able to afford the increased costs for their goods  
24 and services. They also fear that it might put their  
25 businesses, you know, out of business or cause them to

1 lay off people that work there, which would cause even  
2 more problems in this economy.

3 So whether we're talking about residential  
4 customers or small businesses, the consensus was they  
5 simply can't afford this rate increase. It was kind of  
6 emphasized in Apalachicola. I think they took four or  
7 five votes and everyone there voted in opposition to the  
8 increase.

9 And, again, this is not an issue of don't  
10 want. It's can't afford. And please take that into  
11 consideration when you're looking at this request.

12 Thank you.

13 **CHAIRMAN CARTER:** Thank you, Ms. Bradley.

14 Before we go any further, first of all, I  
15 know -- I think all of the lawyers that are here have  
16 practiced before us. So, as you know, tell your  
17 witnesses when they do their opening to follow the  
18 lights and all so we can do that.

19 The other thing is I think that most of you  
20 have been before us and heard our discussion on we don't  
21 allow friendly cross.

22 The other thing that we're getting ready to  
23 do, Commissioners, is that we've been going at it for  
24 about three hours, and I think the court reporter and I  
25 are about to reach our limits. So why don't I do this.

1 I want to have all the witnesses that are going to  
2 testify that are in the room today, I'm going to swear  
3 in the witnesses and then we'll take a quick break.

4 **MS. BRADLEY:** Mr. Chairman?

5 **CHAIRMAN CARTER:** Yes, ma'am.

6 **MS. BRADLEY:** For the record, can I first  
7 voice an opinion, an objection to the friendly cross  
8 instructions, since it's not covered by the rules of  
9 evidence in civil procedure? And I think there are  
10 sufficient rules that are applicable that can prevent  
11 any redundant and immaterial questions.

12 Thank you.

13 **CHAIRMAN CARTER:** Same answer as before.

14 Okay. All the witnesses that are going to  
15 testify, would you please stand and raise your right  
16 hands.

17 (Witnesses collectively sworn.)

18 Thank you. Please be seated.

19 Commissioners, we're on break until 12:15.

20 (Recess taken.)

21 **COMMISSIONER EDGAR:** We are back on the  
22 record. Thank you. We had some technical difficulties  
23 that took us a little bit longer than we had foreseen  
24 before the break, so thank you all for your patience.  
25 And I understand that some other documents are being

1 passed out. We will take those up in just a moment.  
2 But before we do that, Mr. Rehwinkel, I understand that  
3 you may have an issue to raise for us.

4 **MR. REHWINKEL:** Yes. Commissioner Edgar, on  
5 the break I was approached by a citizen from  
6 Apalachicola named Mike Nepote. And he arrived here  
7 late intending to testify, and I consulted with the  
8 company and they have no objection if he makes his  
9 public testimony before we get into the actual technical  
10 witness, witnesses. So I would ask the Commission's  
11 indulgence to allow this witness to testify since he has  
12 traveled all this way from Apalachicola. And I have  
13 advised him of the limitation of five minutes and he  
14 says he can keep his remarks within that scope. So with  
15 your approval.

16 **COMMISSIONER EDGAR:** Thank you, Mr. Rehwinkel.  
17 And Mr. Glenn?

18 **MR. GLENN:** We have no objection, Your Honor.

19 **COMMISSIONER EDGAR:** Okay. Then,  
20 Commissioners, in order to accommodate travel schedules  
21 and all of that, and of course Mr. Rehwinkel realizing  
22 that we will not be able to break in daily, but  
23 absolutely appreciate us all working together to try to  
24 do what we need to do. So, Mr. Rehwinkel, if you would  
25 call your witness.

1           **MR. REHWINKEL:** Thank you. The citizens call  
2 Mike Nepote to the stand.

3           **COMMISSIONER EDGAR:** Sir, come forward, if you  
4 would, and right here to these microphones. And I will  
5 need to swear you in, and then I will ask you to tell us  
6 your name and spell it for me. But if you would right  
7 now stay standing with me and raise your right hand.  
8 Yes, please.

9           (Witness sworn.)

10          Thank you. Have a seat.

11          **MR. NEPOTE:** Thank you. I really appreciate

12          --

13          **COMMISSIONER EDGAR:** Hang on. I want you to  
14 please tell us your name and your address, and if you  
15 would spell your last name, and then you have five  
16 minutes.

17          Whereupon,

18                           **MIKE NEPOTE**

19          was called as a witness on behalf of the Citizens of the  
20 State of Florida and, having been duly sworn, testified  
21 as follows:

22                           **DIRECT STATEMENT**

23          **MR. NEPOTE:** Okay. I think I got that. First  
24 I must apologize. My hearing aids have gone -- they're,  
25 they're not working. And I couldn't -- I'm hard of

1 hearing anything you could say, but I really appreciate  
2 the opportunity to speak.

3 **MR. REHWINKEL:** State your name.

4 **MR. NEPOTE:** Okay. My name is Mike Nepote,  
5 and I'm actually from Carrabelle. I was at the  
6 Apalachicola meeting. And I just wanted to -- is there  
7 anything else I need to --

8 **MR. REHWINKEL:** Spell your name and give your  
9 address.

10 **MR. NEPOTE:** Oh, spell my name. I'm sorry.

11 **COMMISSIONER EDGAR:** That's okay.

12 **MR. NEPOTE:** It's Mike, and it's N-E-P-O-T-E,  
13 Nepote. And I'm at 602 Northwest Avenue B, Carrabelle,  
14 Florida 32322.

15 So thank you for the opportunity. And I  
16 appreciate everyone involved allowing me to speak, and I  
17 hope it's not too far out of the scope. But I wanted to  
18 get an edge up because there is legislation regarding  
19 cap-and-trade that's already been approved by the House,  
20 and I'm very concerned about that. I would be very  
21 upset whatever rate increases we get right now. But to  
22 me that would be minimal compared to what will happen to  
23 us if we get cap-and-trade. And I think it would be bad  
24 for the industry, I think it would be bad for the  
25 company, Progress Energy itself, and I think it would be

1 especially bad for the consumers, especially when maybe  
2 as many as half the people won't be able to pay their  
3 bills at all.

4 I feel like the people where I live in  
5 Carrabelle is probably, if, if the cap-and-trade were to  
6 go through, that they probably -- I'd guess maybe half  
7 the people would not be paying their bills, and I don't  
8 know what would happen if that kind of scenario took  
9 place. And if Progress Energy took the initiative  
10 instead of getting on the, into the pressure of going  
11 along with cap-and-trade and seeing if it would make  
12 things, enrich them in some way, I don't think that  
13 would be the right way to go. I think if they took the  
14 consumers' side and educated the consumers about what  
15 they're doing to lobby against cap-and-trade, then I  
16 think it would be better for all of us. And I would go  
17 door to door myself to let people know what good thing  
18 Progress Energy would be doing if that were the case.

19 But cap-and-trade is based upon the premise of  
20 global warming. My understanding is the earth's  
21 temperature has not gone up in about eight years and it  
22 actually may have decreased just a tad. Also that CO2  
23 is not nearly as big a factor as, that it has been  
24 assigned to be. Case in point is the, somebody from the  
25 EPA put out a report that showed that CO2 is still going

1 up and the earth's temperature had leveled off on their  
2 grass, and that report was suppressed. And I've got  
3 some, some, just a tad of information that I looked up  
4 that I'd like to submit. My printer went out, so some  
5 of it got kind of blurry. But anyway what I've stated  
6 so far I have the information regarding, or  
7 documentation regarding that.

8 And of all things, you know, the anti or the,  
9 what you call it, the people that don't see global  
10 warming as a big threat are usually considered  
11 conservative. One of the guys, one of the clips I have  
12 is from CBS News, which is not usually considered very  
13 conservative, and that was the one about the EPA  
14 suppressing the information. And there's a lot more  
15 information out there regarding that.

16 But we, we -- the -- the best, the best  
17 scenario you could have if you were pro, whatever you  
18 want to call it, global warming is that the jury is not  
19 in. And we shouldn't take trillions and trillions of  
20 dollars to try to do something that will have minimal  
21 effect. The bottom line is it would have, it would, it  
22 might alter, change to the tune of about one-half a  
23 degree by the year 2085. And that's a lot of, a lot of  
24 resources to spend and misallocation of resources for  
25 something that's just a shot in the dark. And that's

1 my, that's my whole point, and I thank you very much.

2 **COMMISSIONER EDGAR:** Thank you, Mr. Nepote.  
3 Mr. Rehwinkel, I understand that Mr. Nepote would like  
4 to leave some documents with us.

5 **MR. REHWINKEL:** Yes. Commissioner, we will  
6 take those documents and we will file them for  
7 consideration as customer correspondence as is your  
8 practice.

9 **COMMISSIONER EDGAR:** Ms. Fleming, does that  
10 work, or do we need to mark?

11 **MS. FLEMING:** I guess my question would be  
12 would the customer like to mark these and have them  
13 marked in as a hearing exhibit?

14 **MR. REHWINKEL:** The question is do you want  
15 those considered as part of the hearing record or would  
16 you like those considered as, as if they were filed as  
17 correspondence to the Commission?

18 **MR. NEPOTE:** I have no idea what would be the  
19 best route to take. Y'all, y'all do what you think is  
20 best I guess.

21 **COMMISSIONER EDGAR:** Okay. Mr. Rehwinkel, how  
22 about we do this? And continuing the cooperating and  
23 working together and facilitating, we will go ahead and  
24 mark as Document Submitted by Customer Mike Nepote, and  
25 that will be 263. We will not enter at this time, but

1 we will wait to have the opportunity to have copies made  
2 and have that distributed and we can take that up later  
3 today. Mr. Rehwinkel, may I ask you to, to take charge  
4 of those documents and facilitate later on maybe at  
5 lunch getting copies made and submitted to the clerk?

6 **MR. REHWINKEL:** Yes, Commissioner, we'll do  
7 that. Thank you.

8 (Exhibit 263 marked for identification.)

9 **COMMISSIONER EDGAR:** Thank you. Mr. Nepote,  
10 thank you very much.

11 **MR. NEPOTE:** Thank you for your time, I  
12 appreciate it, and your patience with my lack of  
13 hearing. Somebody got me an earplug just at the very  
14 last second here. But I appreciate it very much.

15 **COMMISSIONER EDGAR:** Commissioner McMurrian.

16 **COMMISSIONER McMURRIAN:** Thank you. I wanted  
17 to ask you one question, Mr. Nepote. I remember you  
18 from the Apalachicola service hearing that you mentioned  
19 before, and I remember you making similar comments to  
20 these. And I just wanted to ask you one quick question.

21 After, after that service hearing or any time  
22 since that service hearing has anyone from the company  
23 spoken to you about what their efforts are with respect  
24 to the cap-and-trade legislation?

25 **MR. NEPOTE:** Yes. Well, I got a letter, and I

1 was going to make mention of that when I, if I had a  
2 chance to testify today. But I wanted to mainly address  
3 the cap-and-trade because that's really my main issue.

4 But I did get a letter which said they tried  
5 to call me, and I was a little disconcerted because it  
6 said they had the wrong phone number on file. And that  
7 could have easily been rectified if they had looked in a  
8 phone book or called information, which would have taken  
9 less than five minutes.

10 But and then on the second, second issue about  
11 intervals, billing intervals, I was kind of -- I  
12 complained about the long intervals being during the  
13 summer or more or less longer intervals. I had one last  
14 summer of 34 days. And this winter I had 29-day  
15 intervals three times in a row from January, February or  
16 March. And now in the summer I'm getting, you know,  
17 some 32s mixed in with the 29. But it's like, you know,  
18 it's still overall average longer intervals and they  
19 just said it was because of weekends. Well, you can,  
20 you can change -- you could still get, you could still  
21 get 32-day intervals back in the winter and still come  
22 up with 29-day intervals during the summer. I'm sure  
23 that could be worked out quite easily, you know.

24 And then the third one was about  
25 cap-and-trade, and that's about the issues of, of, you

1 know, of the global warming and environment. And I'm a,  
2 I'm a, pretty much of a coal advocate. I was upset that  
3 they didn't put that coal plant in Perry. That -- I'm  
4 sure that Progress didn't have anything to do with that.  
5 But, you know, there's cheaper alternatives and we can  
6 work on developing alternative energy as we go instead  
7 of trying to force it down, and it's not going to work  
8 if it gets forced down. And that was my main points and  
9 that was the points of the letter that -- and I meant to  
10 write them back on that, and I apologize that I haven't  
11 gotten around to it.

12 **COMMISSIONER McMURRIAN:** Well, thank you. I  
13 just wanted to make sure that someone did speak to you  
14 about your questions about that. Because I don't -- and  
15 I don't think it would necessarily be appropriate for us  
16 to go into what their positions are on federal  
17 legislation and all here. But I think that there,  
18 surely there's someone who can help explain that to you,  
19 what their positions are that they're lobbying in  
20 Congress on those issues and such and your concerns  
21 about billing intervals. My main concern was just  
22 checking to see if someone had followed up with you.

23 **MR. NEPOTE:** They did write me a letter and it  
24 was a very nice letter, so anyway.

25 **COMMISSIONER McMURRIAN:** Thank you.

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**MR. NEPOTE:** Thank you very much.

**COMMISSIONER EDGAR:** Thank you.

(Transcript continues in sequence with Volume

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STATE OF FLORIDA        )  
                                  :  
COUNTY OF LEON        )

CERTIFICATE OF REPORTER

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

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

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

DATED THIS 27<sup>th</sup> day of September, 2009.

Linda Boles  
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